TITLE: FEDERAL REGISTER.

REEL NO: 3 OF 7

VOLUME: 52 ISSUES: 165-183

DATE: August 26 - September 22, 1987

PUBLICATION NO: 2575

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8-26-87
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Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

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Presidential Documents

Title 3—

The President

Memorandum of August 12, 1987

Delegation of Authority for a Certification Concerning the Southern Africa Development Coordination Conference

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of State the certification function conferred upon the President by the paragraph entitled "Assistance for Southern Africa" of the Act making supplemental appropriations for the fiscal year ending September 30, 1987, (Public Law 100–71), as it relates to assistance for the members of the Southern Africa Development Coordination Conference.

This memorandum shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, August 12, 1987.

[FR Doc. 87–19724
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1924 and 1962

Sale and Release of Chattel Security

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to further clarify the use of proceeds from the sale of chattel security and the release of chattel security. The need for this action is to provide FmHA chattel borrowers a clear and concise explanation of FmHA's and the borrower's responsibilities in the use of proceeds from the sale of chattel security and the release of chattel security. The intended effect is to avoid any misunderstanding between the borrower and the FmHA County Supervisor on the release of funds and/or chattel security regarding Form FmHA 1962–1.

EFFECTIVE DATE: August 26, 1987.

FOR FURTHER INFORMATION CONTACT: Paul J. Decker, Jr., Chief, Loan Processing Branch, Farm Real Estate and Production Division, Farmers Home Administration, USDA, Room 5449, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, telephone (202) 447–4572.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V [48 FR 29115, June 24, 1983] and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," [December 23, 1983], Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:
10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the final action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of Changes

On January 15, 1987, FmHA published in the **Federal Register** [52 FR 1706] a proposed rule giving interested parties until February 17, 1987, to submit comments. On February 18, 1987, FmHA published a statement in the **Federal Register** [52 FR 4913] extending the comment period until March 19, 1987, upon request from the public. Some borrowers have stated that Form FmHA 1962–1 is difficult to complete and that the purpose of the form is not clear. These points have also been raised in a North Dakota lawsuit. After consideration of the comments, FmHA decided to revise Form FmHA 1962–1 and the related regulations of Subpart B of 1924 and Subpart A of 1962 of this chapter (§§ 1924.57(b)(2), 1924.57(d)(2) and 1962.17) to clarify the borrower's and FmHA's responsibilities in the use of proceeds from the sale of chattel security and the release of chattel security. FmHA wants to accomplish this as soon as possible and is therefore removing the sale and release of chattel security sections from the original **Federal Register** document [52 FR 1706] and move to a separate Final Rule at this time.

Discussion of Comments

Comments received on this subject under **Federal Register** [52 FR 1706] and **Federal Register** [52 FR 4913] as related to § 1924.57 of Subpart B of Part 1924, § 1962.17 of Subpart A of Part 1962 and Form FmHA 1962–1 are discussed below.

There was concern expressed that if a borrower had a Form FmHA 1962–1 on file and the County Supervisor denied a request for a release, would the borrower be given the opportunity to appeal? The borrower would be allowed to appeal. The appeal regulation (Subpart B of Part 1900 of this chapter) provides that when a decision by FmHA is adverse, the borrower must be given the reasons for the decision and the opportunity to appeal.

There were concerns that the five conditions in § 1962.17(b)(1) were dropped. Since Form FmHA 1962–1 is revised and now includes an agreement between FmHA and the borrower regarding the use of proceeds from the sale of chattel proceeds and the release of chattel security for essential family living and farm operating expenses, it is our opinion that these conditions impose restrictions on borrowers which are no longer necessary.

To eliminate any misunderstanding concerning transactions which will result in the making of a new or subsequent loan, a subordination or a transfer and assumption involving chattel security, FmHA has received § 1924.57 (b)(2) and (d)(2).

Subordinations and transfers and assumptions transactions have been added as these transactions, when they involve chattel security, will require the completion of a Form FmHA 1962–1. One concern raised was that the reference to Form FmHA 1962–1 when a new or subsequent loan was made would indicate that Form FmHA 1962–1 was required as part of the completed application package. This reference has been deleted and has been revised to refer the County Supervisor to 7 CFR 1962.17 regarding the release of planned proceeds. The revision clarifies the amount of proceeds which will be released while an appeal is pending when the County Supervisor and the applicant could not agree on the use of the planned proceeds. FmHA's past experience, when an appeal is pending, has indicated that there are instances where the borrower and FmHA could not agree on the amounts which should be released for essential family living and farm expenses. To provide additional guidance to the field, FmHA has revised these sections to where the average essential family living and farm operating expenses will be released during the appeal period and that if the applicant requests larger releases, the applicant must provide justification in writing which will be documented in the case file. FmHA believes these revisions will provide the guidance to its field offices and will allow the field staff to provide sufficient releases to the applicants during the appeal process to carry on the essential operation of the family and the farm.

Another concern raised was that the term "major change in the borrower's operation" is vague and that it should be the responsibility of the County Supervisor to determine if the requested change was major or not. Past experience has indicated there has been some confusion in the field as to what constitutes a major change and in order to address the concern and reduce the confusion, FmHA has provided examples of what constitutes a major change in a borrower's operation and will also require that it will be the County Supervisor's responsibility to advise the borrower if the requested change is major or not. All major changes will require the completion of a new farm and home plan and revised Form FmHA 1962–1 to assure that the major change in the operation will be beneficial and feasible for the borrower.

The language used in Form FmHA 1962–1 is simplified to provide a borrower a clearer understanding of the FmHA requirements and the borrower's responsibilities. Most of these changes and the revisions of Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security," were the results of further discussions with the plaintiffs' attorneys in the *Coleman* v. *Block* case.

List of Subjects

7 CFR Part 1924

Agriculture, Construction and repair, Loan programs—Agriculture.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Management Advice to Individual Borrowers and Applicants

2. Section 1924.57 is amended by revising paragraphs (b)(2) and (d)(2) to read as follows:

§ 1924.57 Planning.

* * * * *

(b) * * *

(2) If the County Supervisor and the borrower (or transferee) cannot reach an agreement on the planned uses of proceeds on Forms FmHA 431–2 and 1962–1 when a new loan, a subsequent loan, a subordination request, or a transfer and assumption is involved, the loan will not be made (or the subordination/transfer and assumption will not be approved). A Form FmHA 431–2 and Form FmHA 1962–1 must be completed and signed by the applicant/borrower for loan approval (subordination/transfer and assumption). Any appeal will be handled in accordance with Subpart B of Part 1900 of this chapter. When the above transactions are not involved, the borrower will be given the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The notice to the borrower must identify the items on which the County Supervisor and the borrower cannot agree and must explain why the County Supervisor does not agree with the borrower's planned use of proceeds. While any appeal is pending, FmHA *must* make releases which are average for the area for essential family living and farm operating expenses in accordance with § 1962.17 of Subpart A of Part 1962 of this chapter. Those borrowers whose requests are in excess of the average essential family living and/or farm operating expenses must provide justification in writing which will be documented in the case file. In addition, FmHA *must* make releases for other items on which the borrower and the County Supervisor agree. After the appeal is concluded, the County Supervisor and the borrower will sign a Farm and Home Plan, when applicable, and a Form FmHA 1962–1 which complies with the hearing (or any review) officer's decision. If the borrower refuses, the County Supervisor will give the borrower a copy of the Farm and Home Plan, when applicable, and Form FmHA 1962–1 and will explain that those documents are considered binding by FmHA. Borrowers who do not abide by those documents will be handled under § 1962.18 of Subpart A of Part 1962 of this chapter. If the borrower does not appeal, the County Supervisor will mail the borrower a copy of the completed form along with a cover letter explaining that FmHA considers the form binding.

* * * * *

(d) * * *

(2) Form FmHA 1962–1 will be revised whenever major changes, (examples of major changes are: feeder pigs to sow operation, cow/calf to feeder steer operation, dairy to rowcrop, etc.) in the borrower's operation occur during the year. It is the borrower's responsibility to notify FmHA of any changes which occur and the County Supervisor will be responsible for determining if the requested change is major or not. The Form FmHA 1962–1 will be marked "Revision" and changes noted by crossing out any original estimates and inserting new estimates immediately above. The borrower and the County Supervisor will initial and date revisions to the Form FmHA 1962–1. Also, if the changes would result in a major change in the operation, a new farm plan must be developed. If the borrower and the County Supervisor cannot agree on a revision, the borrower will be given the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The notice to the borrower must identify the items on which the County Supervisor and the borrower cannot agree and must explain why the County Supervisor does not agree with the borrower's planned use of proceeds. While any appeal is pending, FmHA *must* make releases which would be average for the area for essential family living and farm operating expenses. Those borrowers whose requests are in

excess of the average essential family living and/or farm operating expenses must provide justification in writing which will be documented in the case file. In addition, FmHA *must* make releases for other items on which the borrower and the County Supervisor agree. After the appeal is concluded, the County Supervisor and borrower will sign a Form FmHA 1962–1 which complies with the hearing (or any review) officer's decision. If the borrower refuses, the County Supervisor will give the borrower a copy of the form and will explain that it is considered binding by FmHA. Borrowers who do not abide by the form will be handled under § 1962.18 of Subpart A of Part 1962 of this chapter. If the borrower does not appeal, the County Supervisor will mail the borrower a copy of the completed form along with a cover letter explaining that FmHA considers the form binding.

PART 1962—PERSONAL PROPERTY

3. The authority citation for Part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

4. Section 1962.17 is amended by revising paragraph (b)(1), introductory text of paragraph (b)(2), and paragraphs (b)(2)(i)(A), (b)(4) and (b)(5) to read as follows:

§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.

* * * * *

(b) * * *

(1) County Supervisors are authorized to approve or disapprove dispositions of FmHA chattel security in accordance with this subpart. The County Supervisor, with the assistance of the borrower, will complete Form FmHA 1962–1 in accordance with the Forms Manual Insert (available in any FmHA office) to show how, when, and to whom the borrower will sell, exchange, or consume security and use sale proceeds (include milk sale proceeds) and insurance proceeds derived from the loss of security. This includes, for example, sale proceeds on hand and crops in storage. When proceeds from the disposition of security are to be used to pay essential family living or farm operating expenses, County Supervisors must approve the disposition.

(2) Under all circumstances, sales proceeds must be remitted to creditors with liens on the proceeds, in order of priority of those liens. Proceeds which are released by a prior lienholder or which are in excess of the amount due to prior lienholder and which come to FmHA can be used as follows:

(i) * * *

(A) The form must provide for releases of proceeds from the sale of crops, livestock, and livestock products planned to be marketed in the regular course of business so that the borrower can pay essential family living and farm operating expenses. Essential expenses are those which are basic, crucial or indispensible. This will not include expenses for expansion of the operation. Excess proceeds must be applied to the FmHA debt or used to preserve existing security. If the sale of crops, livestock, and livestock products planned to be marketed in the regular course of business will not generate enough income to meet all essential family living and farm operating expenses, the borrower may sell other chattel security (such as machinery, equipment, or foundation livestock) to meet those expenses.

* * * * *

(4) If, for any sale, the amount of proceeds actually received is above or below the amount of proceeds planned to be received as shown on Form FmHA 1962–1, the borrower will immediately notify the County Supervisor. If the borrower sells security to a purchaser not listed on the Form FmHA 1962–1, the borrower must immediately notify the County Supervisor of what property has been sold and of the name and business address of the purchaser. Such notification may be by telephone to the County Office, by letter, by visit to the County Office, or any other method the borrower chooses.

(5) If a borrower wants to dispose of chattel security which is not listed on Form FmHA 1962–1 or wants to dispose of chattel security in a way not listed in the "How" section or wants to use proceeds in a way not listed in the "Use of Proceeds" section on Form FmHA 1962–1, the borrower must obtain FmHA's consent before the disposition or before the proceeds are used. FmHA *must* give consent if the change is necessary for the borrower to meet essential family living and farm operating expenses. FmHA *must* also give consent if the conditions set out on the form and in paragraph (b)(2) of this section are met. The borrower may obtain prior consent by telephoning the county office, by letter, by visiting the county office, or by any other method the borrower chooses. When revisions are agreed to over the telephone, the County Supervisor *must* revise the Form FmHA 1962–1 contained in the borrower's case file, initial and date the change, and mark the form "Revised." The County Supervisor will then either write to the borrower and send a copy of the "Revised" form to the borrower asking the borrower to date and initial the change and return the form to the county office, or the County Supervisor will ask the borrower to date and initial the change the next time the borrower is in the county office. Changes that would result in a major change (examples of major changes are: feeder pig to sow operation, cow/calf to feeder steer operation, dairy to row crop, etc.) in a borrower's operation will always require a visit to the county office so that the County Supervisor and the borrower can complete a new farm and home plan and revise Form FmHA 1962–1. The County Supervisor will be responsible for determining if the requested change is major or not. If a revision cannot be agreed upon, see § 1924.57(d)(2) of Subpart B of Part 1924 of this chapter.

* * * * *

Dated: July 10, 1987.

La Verne Ausman,

Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 87–19583 Filed 8–25–87; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 368 through 399

[Docket No. 70862–7162]

Exports to Finland; General License G-COM and Shorter Processing Time Frames

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: As part of the Department of Commerce initiative to remove unnecessary export licensing requirements for exports to nations protecting strategic goods and technology, Export Administration is removing some of the requirements for a validated license and shortening the processing time frames for validated licenses for exports to Finland. Specifically, Export Administration is amending General License G-COM to authorize shipments of certain U.S.-origin commodities to Finland and revising § 370.14 to subject license applications for Finland to shorter processing time frames. This final rule

also revises the authority citations for 15 CFR Parts 368 through 399.

EFFECTIVE DATE: This rule is effective August 26, 1987.

FOR FURTHER INFORMATION CONTACT: John Black, Regulations Branch, Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under Control Numbers 0625–0001 and 0625–0181.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412 (a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements beause it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to John Black, Office of Technology and Policy Analysis, Export Administration, International Trade Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 368 Through 399

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 368 through 399 of the Export Administration Regulations are amended as follows:

1. The authority citation for 15 CFR Parts 368, 369, 370, 374, 375, 376, 378, 388, and 391 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citation for 15 CFR Parts 371, 372, 373, 379, 385, 386, 387, 389, and 399 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 370—[AMENDED]

3. In the introductory text of § 370.13(a), the second sentence is revised to read as follows:

§ 370.13 Procedures for processing license applications.

(a) *General.* * * * Section 370.14 describes shorter processing time frames for certain export license applications for certain selected other countries.
* * *
* * * * * *

4. Section 370.14 is amended as follows:

A. The heading is revised to read as set forth below;

B. The introductory text of paragraph (a) is amended by changing the period to a semi-colon at the end of the first sentence and adding to the end of the first sentence the words "these special processing time frames also apply to license applications for shipments to other selected countries.", by revising the words "November 12, 1985" in the second sentence to read "August 26, 1987", and by adding the words "for Finland" immediately after the word "applications" in the second and third sentences;

C. Paragraph (a)(3) is redesignated as paragraph (a)(3)(i) and a new (a)(3) heading and paragraph (a)(3)(ii) are added to read as set forth below;

D. Paragraph (a)(6) is amended by adding the words "or other selected" immediately after the words "COCOM participating" and by revising the words "non-COCOM participating countries" and the words "non-COCOM countries" to read "countries not listed in Paragraph (a)(3) of this section";

E. The introductory text of paragraph (b) is amended by adding the words, "or other selected" immediately after the words "a COCOM participating";

F. The words "or other selected" are added immediately after the words "the COCOM participating" in paragraphs (f)(l)(ii) and (f)(2)(ii).

§ 370.14 Processing license applications for COCOM participating countries and other selected countries.

(a) * * *

(3) Eligible Countries.

* * * * * *

(ii) "Other selected countries" means Finland.

* * * * * *

PART 371—[AMENDED]

5. Section 371.8 is amended by adding "Finland," immediately before "Sweden" in paragraph (a) and by adding "Finland," between "Denmark," and "France," in paragraph (b).

PART 372—[AMENDED]

6. In § 372.11, paragraph (d)(3) is amended by adding the words "Finland or" immediately before the words "COCOM participating".

Dated: August 21, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–19591 Filed 8–25–87; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF STATE

22 CFR Part 171

Freedom of Information; Revision of Fees, Fee Waiver Policy, and the Law Enforcement Exemption

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule implements certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–570) regarding fees, fee waivers, and law enforcement records. It codifies the circumstance under which expeditious processing of FOIA requests will be provided. Expeditious processing has been recognized in custom and practice

since 1983 in accordance with Department of Justice guidance. The rule also revises the general fee schedule applicable to all requests under the FOIA, Privacy Act, Ethics in Government Act, and Executive Order 12356 as provided in Part 171.

EFFECTIVE DATE: September 25, 1987.

FOR FURTHER INFORMATION CONTACT: Frank M. Machak, Information and Privacy Coordinator, (202) 647–7740.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99–570) amended the Freedom of Information Act (5 U.S.C. 552) by modifying the terms of exemption 7 and by supplying new provisions relating to the charging and waiving of fees. The Reform Act specifically required the Office of Management and Budget to develop and issue a schedule of fees and guidelines, pursuant to notice and comment, which OMB did on January 16. After consideration of comments received, OMB issued the final publication of fee schedule and guidelines implementing certain provisions of the Reform Act on March 27 (52 FR 10012). In addition to the OMB guidelines, the Department of Justice provided agencies with advisory fee waiver policy guidance regarding the Reform Act in keeping with its statutory responsibility to encourage compliance with the FOIA. This guidance was distributed to all agency heads in a memorandum from Assistant Attorney General Stephen J. Markman on April 2, 1987. Finally, based on administrative practice and judicial precedent, the Department of Justice developed guidelines for agencies to use in considering request for expedition of FOIA requests. Since this guidance reflects prior practice, the Department is codifying it in its rules at this time.

On April 20, 1987 (52 FR 12936) the Department published a proposed rule to implement the foregoing with an abbreviated comment period closing on April 23. In view of the considerable public interest and short public comment period, on April 29 (52 FR 15513) the Department issued an amendment to its notice of proposed rulemaking in order to extend the public comment period to May 20, thereby allowing a full thirty (30) days from the date of the original publication.

The Department received numerous comments regarding the proposed rules from the public including professional societies or public interest groups affiliated with the news media, a Member of Congress, and special interest groups or organizations. A variety of Department officials—attorneys, programs managers, and information officers—gave careful consideration to all comments submitted. Most of the commentators focused on the Department's reliance on OMB's implementing Fee Schedule and Guidelines and on Justice's guidance; the short public comment period (which subsequently was lengthened to a full thrity days); the definitions of the "commercial use request," "educational institution," "noncommercial scientific institution," and "representative of the news media," including "freelance" journalists; and certain paragraphs regarding administrative requirements within the section pertaining to "Categories of Requesters for Fee Purposes (§ 171.14)." The final rule incorporates the changes deemed appropriate as a result of extensive review and consideration of the public comments received. In addition to editorial changes, the substantive revisions have been made to the provisions regarding the defintion of "commercial use request"; the requirement regarding the affiliation between "freelance" journalists and a news organization; and the deletion of requirements regarding requesters' providing extensive information concerning themselves vis a vis their eligibility for inclusion in non-commercial categories and the statement of verification (§ 171.14, proposed paragraphs (e) and (f)); and a change in the language regarding the impact on future requests (§ 171.14, proposed paragraph (g), revised paragraph (e)).

This rule does not constitute a "major rule" within the meaning of executive Order 12291. This rule is not subject to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 611) since it will not exert a significant economic impact on a substantial number of small entities. This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Donald J. Bouchard,

Assistant Secretary, Bureau of Administration.

List of Subjects in 22 CFR Part 171

Administrative practice and procedure, Classified information, Freedom of Information, Privacy.

For the reasons set forth in the preamble, portions of Title 22, Chapter I, Subchapter R of the Code of Federal Regulations, are amended as set forth below:

PART 171—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

1. The authority citation of Part 171 is revised to read as follows and the authority citations following the sections in Part 171 are removed:

Authority: Sec. 3, Administrative Procedure Act, as amended (Pub. L. 89–478, Stat. 250); The Freedom of Information Act, as amended (5 U.S.C. 552); the Privacy Act (5 U.S.C. 552a); E.O. 12356; the Ethics in Government Act of 1978 (Pub. L. 95–521); 22 U.S.C. 2658 and 3926; and the Freedom of Information Reform Act of 1986 (Pub. L. 99–570).

2. Section 171–6 is revised to read as follows:

§ 171.6 Fees—General.

(a) The Department will charge a duplication fee of $.25 per page for copies of documents which are identified and made available to an individual pursuant to a request except, that there will be no charge for requests involving costs of $10.00 or less.

(b) The Department will charge the actual cost of production for copies prepared by computer (such as tapes or printouts), including operator time.

(c) The Department will charge the actual direct costs of producing the document(s) for methods of reproduction or duplication other than those described in paragraphs (a) and (b) of this section.

(d) In those cases when estimated duplication charges are likely to exceed $25, the Department shall notify requesters of the estimated amount of fees, unless they have indicated in advance their willingness to pay fees as high as those anticipated. Such notice shall offer requesters the opportunity to confer with Department personnel with the objective of reformulating requests to meet their needs at lower costs.

(e) Certification under the official seal that a copy or extract made from an official document is a true copy; the fee for certifying each copy of each page is $2.00.

(f) The Department shall charge the actual costs for sending documents by special methods such as express mails, etc. when such is requested.

(g) Remittances shall be in the form of either a personal check or bank draft drawn on a bank in the United States, a postal money order, or cash. Remittance shall be made payable to the order of the Treasurer of the United States and delivered or mailed to the Information and Privacy Coordinator, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street, NW., Washington, DC, 20520. The

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Department will assume no responsibility for cash sent by mail.

(h) Fees must be paid in full prior to release of requested documents and/or provision of service described above.

(i) A receipt for fees paid will be given only upon request.

(j) See § 171.13 for additional fees chargeable for Freedom of Information requests.

3. Section 171.10 is amended by adding paragraphs (d), (e), (f), (g), (h), (i), (j), and (k) to read as follows;

§ 171.10 Definitions.

* * * * *

(d) The term "direct costs" means those expenditures which the Department actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(e) The term "search" includes all time spent looking for identifying and retrieving material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The Department will attempt to ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the Department and the requester. For example, the Department will not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" should be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (g) of this section). Searches may be done manually or by computer using existing programming.

(f) The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA requst. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(g) The term "review" refers to the process of examining documents located to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general, legal or policy issues regarding the application of exemptions.

(h) The term "commercial use request" refers to a request from or on behalf of one who requests for information for a use or purpose that furthers the commercial, trade or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester belongs within this category, the Department will look at the use to which the requester will make of the documents requested.

(i) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(j) The term "non-commerical scientific institution" refers to an institution that is not operated on a "commerical" basis as that term is referenced in paragraph (h) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(k) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (*e.g.*, electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a likelihood of publication through that organization, even though not actually employed by it. Likelihood of publication can be demonstrated through, for example, a publication contract or past publication record. Similarly, the absence of a publication record, especially where the requester has previously received records from the Department as a "representative of the news media" will be taken into account in determining the likelihood of publication.

4. Section 171.11 is amended by revising paragraph (a)(7) to read as follows:

§ 171.11 Exemptions.

(a) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

5. Section 171.12 is revised to read as follows:

§ 171.12 Time limits.

(a) Whenever possible, the Department will furnish the requested records within 10 days (excluding Saturdays, Sundays, and legal public holidays) of receipt of the request by the Information and Privacy Coordinator, except as cited in § 171.4 of this subchapter.

(b) The Department will consider requests for expeditious handling whenever the requester can demonstrate one of the following:

(1) An individual's life or personal safety would be jeopardized by the

failure to process a request immediately, or

(2) Substantial due process rights of the requester would be impaired by the failure to process immediately, and the information sought is not otherwise available.

6. Section 171.13 is revised to read as follows:

§ 171.13 Fees.

(a) In addition to fees cited in § 171.6, the following shall be applicable with respect to services rendered to members of the public under this subpart:

(1) The following is the range of categories and average grade levels for employees within each category who perform the search and review functions involved in responding to a FOIA request:

(i) Administrative/clerical (to include GS–1 through GS–8 or FS–9): GS–5/5 or FS–9/1.

(ii) Professional (to include GS–9 through GS–13 or FS–5 through FS–2): GS–11/5 or FS–4/4.

(iii) Executive (to include GS–14 through SES or FS–2 through SFS): GS–15/1 or FS–1/1.

(2) The salary rates for these categories will be calculated based on the rates published on the "Department of State Salary Chart" effective at the time that the function was actually performed; copies of this chart are available in the Public Reading Room. The actual fee schedule for each category will be included in the Department's acknowledgment letter.

(3) The costs for manual search include the salary of the category of the employee who actually performed the search function (as provided in paragraph (a)(1) of this section) above plus an additional 16 percent of that rate to cover benefits.

(4) The cost for computer searches will be calculated based on the salary of the category of the employee who actually performed the computer search (as provided in paragraph (a)(1) of this section) plus 16 percent of that rate to cover benefits, in addition to the direct costs of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

(5) Only requesters who are seeking documents for commercial use will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. The cost for review will be calculated based on the salary of the category of the employee who actually performed the review (as provided in paragraph (a)(1) of this section) plus 16 percent of the rate to cover benefits. Charges will be assessed only for the initial review (i.e., review undertaken the first time in order to analyze the applicability of specific exemption(s) to a particular record or portion of a record) and not for review at the administrative appeal level of the exemption(s) already applied.

(6) If records requested under this subpart are stored elsewhere than the headquarters of the Department of State at 2201 C Street, NW., Washington, DC, the special cost of returning such records to the headquarters shall be included in the search costs. These costs will be computed at the actual costs of transportation of either a person or the requested record between the place where the record is stored and Department headquarters when, for time or other reasons, it is not feasible to rely on Government mail service or diplomatic pouch.

(7) When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the amount or size or type thereof, the Information and Privacy Coordinator is authorized to establish an appropriate fee, pursuant to the criteria establsihed in Office of Management and Budget Circular No. A–25, entitled "User Charges."

(b) Where it is anticipated that the fees chargeable under this subpart will amount to more than $25 and the requester has not indicated in advance her/his willingness to pay fees as high as anticipated, the requester shall be promptly notified of the amount of the anticipated fees or such portion thereof as can readily be estimated. The notice or request for an advance deposit shall extend an offer to the requester to confer with knowledgeable Departmental personnel in an attempt to reformulate the request in a manner which will reduce the fees and meet the needs of the requester. Dispatch of such a notice or request shall suspend the running of the period for response by the Department until a reply is received from the requester.

(c) Search costs are due and payable even if the record which was requested cannot be located after all reasonable efforts have been made, or if the Department determines that a record which has been requested, but which is exempt from disclosure under this subpart, is to be withheld.

(d) The Department will begin assessing interest charges on an unpaid bill starting the 31st day following the day on which the billing was sent. The accrual of interest will be stayed upon receipt of the fee, rather than upon its processing by the Department. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.

(e) A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Department reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Department will aggregate any such requests and charge accordingly.

(f) The Department will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The Department estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, the Department will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) Requesters who have previously failed to pay fees charged in a timely fashion (i.e., within 30 days of the date of the billing), the Department will require such requesters to pay the full amount owed plus any applicable interest as provided above or demonstrate that they have, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process new requests or pending requests from such requesters.

When the Department acts under paragraph (f)(1) or (2) of this section, the administrative time limit prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests plus permissible extensions of that time limit) will begin only after the Department has received payments described above.

(g) In accordance with the provisions and authorities of the Debt Collection Act of 1982 (Pub. L. 97–365), the Department reserves the right to disclose information to consumer reporting agencies and to use collection agencies, where appropriate, to encourage repayment.

7. Section 171.14 is added to read as follows:

§ 171.14 Categories of requesters for fee purposes.

There are four categories of requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of

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the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories. The Department will take into account information provided by requesters in determining their eligibility for inclusion in one of these categories is as defined in § 171.10. It is in the requester's best interest to provide as much information as possible to demonstrate inclusion within a non-commercial category of fee treatment.

(a) The Department will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought for commercial use. Commercial use requesters are entitled to neither two hours of free search time nor 100 free pages of reproduction of documents.

(b) The Department will provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request being made is authorized by, and under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(c) The Department will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 171.10(k), and the request must not be made for a commercial use. In reference to this class of requesters, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(d) The Department will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(e) In making determinations under this section, the Department may take into account whether requesters who previously were granted (b), (c), or (d) status did in fact use the requested records for purposes compatible with the status accorded them.

8. Section 171.15 is added to read as follows:

§ 171.15 Fee waivers and appeals.

(a) Waiver or reduction of any fee provided for in § 171.6 and 171.13 may be made upon a determination by the Chief of the Request Processing Section, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520. The Department shall furnish documents without charge or at a reduced charge provided that: Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interst of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, the Department will consider the following four factors:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Department will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) The Department will not consider waiver or reduction of fees for requesters (persons or organizations) from whom unpaid fees remain due to the Department for another information access request.

(c) (1) The Department's decision to refuse to waive or reduce fees as requested under paragraph (a) of this section may be appealed to the Chief of the Information Access Branch, Room 1239, Department of State, 2201 C Street NW., Washington, DC 20520. Appeals should contain as much information and documentation as possible to support the request for a waiver or reduction of fees.

(2) Appeals will be reviewed by the Information Access Branch Chief who may consult with other officials of the Department as appropriate. The requester will be notified within thirty working days from the date on which the Department received the appeal.

[FR Doc. 87-19508 Filed 8-25-87; 8:45 am]
BILLING CODE 4710-24-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commission

24 CFR Parts 201, 203, and 234

[Docket No. N-87-1718; FR-2393]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by (1) revising the limits for Bristol and Kent Counties, Rhode Island and The San Juan/Caguas P.R. MSA; (2) adding new high-cost mortgage limits for Providence and Washington Counties, Rhode Island, Allentown/Bethlehem, Pennsylvania MSA, Reno, Nevada MSA, Biloxi-Gulfport, Mississippi MSA and Pascagoula/Moss Point, Mississippi MSA; and (3) increasing the mortgage limits for the Pittsfield, Massachusetts MSA (Berkshire County).

EFFECTIVE DATE: August 26, 1987.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, Room 9270; telephone (202) 755–6720. For manufactured homes: Christopher Peterson, Director, Office of Manufactured Housing and Regulatory Functions, Room 9158; telephone (202) 755–5210; 451 Seventh Street SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), 12 U.S.C. 1710 through 1749, authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured home lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, section 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features (see 49 FR 21520). First, there was no separate listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and lots and individual lots, and specified the special high-cost amounts for manufactured homes, combination manufactured homes and lots and individual lots insured in Alaska, Guam and Hawaii. Third, it made changes to the list based on a new definition of "metropolitan area".

On October 1, 1986 (51 FR 34961), the Department published its annual complete listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act and the applicable limits for each area.

This Document

Today's document (1) revises the high-cost mortgage amounts for Bristol and Kent Counties, Rhode Island and The San Juan/Caguas, P.R. MSA; (2) adds new high-cost mortgage limits for Providence and Washington Counties, Rhode Island, Allentown/Bethlehem, Pennsylvania MSA, Reno, Nevada MSA, Biloxi-Gulfport, Mississippi MSA and Pascagoula/Moss Point, Mississippi MSA and; (3) increases the mortgage limits for the Pittsfield, Massachusetts MSA (Berkshire County).

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists changes for single family residences insured under section 203(b) or 234(c) of the National Housing Act.

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam and Hawaii)

To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Washoe County (Reno, Nevada, MSA) has a one-family limit of $90,000. The combination home and lot loan limit for Washoe County is $90,000 x .80, or $72,000.

B. Section 2(b)(1)(E). Lot only (excluding Alaska, Guam and Hawaii)

To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Washoe County (Reno, Nevada, MSA) has a one-family limit of $90,000. The lot-only limit for Washoe County is $90,000 x .20 or $18,000.

C. Section 2(b)(2). Alaska, Guam and Hawaii limits

The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. ($40,500 x 140%).

2. For combination manufactured homes and lots: $75,600. ($54,000 x 140%).

3. For lots only: $18,900. ($13,500 x 140%).

II. Title II:

Updating of FHA Section 203(b), 234(c) and 214 Area Wide Mortgage Limits.

REGION I.—HUD FIELD OFFICE—PROVIDENCE OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Providence, RI, PMSA	$85,850	$96,700	$117,500	$135,550
Newport County	83,600	94,150	114,400	132,000
Kent County	83,600	94,150	114,400	132,000
Bristol County	83,600	94,150	114,400	132,000
Washington County	83,600	94,150	114,400	132,000
Providence County	83,600	94,150	114,400	132,000

HUD FIELD OFFICE—BOSTON OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Pittsfield, MA, MSA Berkshire County	$85,500	$96,300	$117,000	$135,000

REGION II.—HUD FIELD OFFICE—CARIBBEAN OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Caguas, PR, PMSA: Aguas Buenas Municipio, Caguas Municipio, Cayey Municipio, Cidra Municipio, Gurabo Municipio, San Lorenzo Municipio	$90,000	$101,300	$122,650	$142,650

REGION III.—HUD FIELD OFFICE—PHILADELPHIA OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Allen/Bethlehem, PA MSA, Lehigh County, Northampton County, Carbon County, Warren County	$73,400	$82,650	$100,400	$115,850

REGION IV.—HUD FIELD OFFICE—JACKSON OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Biloxi-Gulfport, Mississippi, MSA, Harrison County, Hancock County	$79,100	$89,100	$108,200	$124,900
Pascagoula/Moss Point, MS, MSA, Jackson County	77,400	87,200	106,000	122,200

REGION IX.—HUD FIELD OFFICE—RENO OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Reno, NV, MSA, Washoe County	$90,000	$101,300	$122,650	$142,650

Dated: August 19, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-19592 Filed 8-25-87; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-36145A; 3251-9]

Interim Policy for Sulfiting Agents on Grapes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment of policy statement and request for comments.

SUMMARY: This Notice announces amendments to EPA's December 31, 1986, policy statement regarding the use of sulfiting agents on grapes. In addition to the existing policy providing for certification that sulfite-treated grapes will not have detectable sulfite residues, EPA has concluded that there are two other acceptable options that are adequate to protect the public health while allowing the marketing of sulfited grapes of domestic or foreign origin. These alternatives are placarding at the retail level or tagging individual bunches of grapes.

DATES: This amended policy is effective on August 26, 1987. Comments must be submitted by October 26, 1987.

ADDRESS: Comments should be sent, in triplicate if possible, by mail to:

Information Services Section, Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

All comments should bear the identifying notation OPP-36145A.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be availale for public inspection in Room 236, at the Virginia address given above from 8:30 a.m. to 4 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Walter C. Francis, Disinfectants Branch, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 711, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-3964).

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 31, 1986 (51 FR 47240), EPA announced an interim policy regarding the use of sulfiting agents on grapes. That action was prompted by an announcement by the Food and Drug Administration (FDA) in the **Federal Register** of July 9, 1986, that the use of sulfiting agents as preservatives on raw fruits and vegetables served or sold to consumers was no longer deemed to be generally recognized as safe (GRAS) because some individuals experience severe allergic reactions to sulfite residues on food (51 FR 25021). That action by FDA did not affect the use of sulfiting agents as pesticides on grapes, a use that historically has been treated as if it were GRAS, because the pesticidal use is within EPA's jurisdiction.

In light of FDA's action, and because EPA no longer regards the use of sulfiting agents on grapes as if it were GRAS (for the reasons set forth by FDA with regard to preservative uses), nor has established a tolerance for sulfite residues in or on grapes, EPA decided to adopt certain interim measures to inform and protect sulfite sensitive individuals until a tolerance or some other appropriate clearance could be established. These interim measures were effective December 31, 1986, and

were intended to permit shipment of sulfite-treated grapes for one year.

The December 1986 policy statement stated:

1. Residues of sulfites (determined as sulfur dioxide) on grapes must be below the current level of detection under the modified Monier-Williams procedure [i.e., less than 10 parts per million (ppm)] when the grapes are offered for entry into the United States or are otherwise introduced into interstate commerce. If residues are maintained at a level less than 10 ppm, the use of sulfites as a pesticide on grapes will not be regarded as rendering the grapes adulterated.

2. The shipping containers of both foreign and domestic grapes must be labeled in accordance with the provisions of section 403(1) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 343(1), which requires that shipping containers are to be labeled when a raw agricultural commodity has received postharvest pesticide treatment.

3. Each domestic or foreign shipper must have a certification program acceptable to FDA to insure that sulfite residue levels will be less than 10 ppm. FDA will monitor this program to assure compliance.

4. Any shipment found to have detectable levels of sulfur dioxide residues (10 ppm or higher) will be deemed to be adulterated and subject to seizure or detention by FDA.

5. Any shipment of sulfite-treated grapes not covered by a certification program will be deemed to be adulterated and subject to seizure or detention by FDA.

II. Reasons for Policy Change

EPA's interim policy has imposed restrictions on a postharvest use of sulfiting agents which has been practiced for many years, and which grape producers allege is essential to grape production. EPA's policy was intended to be responsive to the needs of growers by allowing the continued marketing of domestic and foreign grapes. At the same time, the measures chosen were designed to protect the health of sulfite-sensitve individuals.

Certification programs were developed by Chilean exporters between January and April 1987 and California shippers beginning in June 1987. However, information developed by the California table grape industry, and verified by FDA through its enforcement of the California certification program, indicates that there are significant cost and logistical difficulties associated with continuation of the California certification program.

Furthermore preliminary evidence developed by the California table grape industry indicates that repeated sulfite treatment during long-term storage of grapes, necessary to even out the distribution of grapes and make them available through the fall and early winter, may result in sulfur dioxide residues in or on the grapes that would be detectable (10 ppm or higher) and could be present at levels significantly higher than 10 ppm.

III. Amendment to Policy

Because of the difficulties that have developed during the course of the California certification program and the possibility of detectable residues of sulfur dioxide in or on California grapes, and other domestic and foreign grapes, EPA (in consultation with FDA) has developed an approach incorporating the following measures as alternatives to the certification provisions set forth in the December 1986 interim policy:

1. The shipment or sale of sulfite-treated grapes that contain detectable residues of sulfites (determined as sulfur dioxide) into and within the United States will not be deemed to be an actionable violation of the Federal Food, Drug, and Cosmetic Act (FFDCA) if the domestic or foreign shipper and seller comply with one of the following alternatives:

a. The shipper has assured EPA that it has entered into a written agreement with the retail seller of the grapes that placards will be posted at the retail point of sale, and placards are, in fact, posted at the retail point of sale; or

b. The shipper implements a tagging program in which no less than 40 percent of the individual bunches of treated grapes in a given lug or box of grapes are labeled with a stem tag and the grapes are, in fact, so labeled at the retail point of sale. (EPA has determined that this percentage is sufficient to alert the consumer that all the bunches have been sulfite-treated.)

2. Placards or stem tags must state clearly and conspicuously:

"Grapes have been treated with sulfites."

A phrase such as "to insure freshness" or "to insure quality" may follow the mandatory message.

3. Any shipment or delivery of sulfite-treated grapes with detectable levels of sulfites (determined as sulfur dioxide) (10 ppm or higher) that is not in compliance with a placarding or tagging program that conforms to this policy statement will be deemed to be a shipment or delivery of adulterated food and subject to appropriate enforcement action by FDA.

In its December 31, 1986 notice, EPA concluded that a certification program to insure that residues of sulfites (determined as sulfur dioxide) in or on grapes below 10 ppm would alleviate concern for sulfite-sensitive individuals, while permitting the shipment of sulfite-treated grapes into and within the United States. EPA now has decided to allow the placarding and tagging options because the Agency believes that if sulfite-sensitive individuals are able to see placards or tags at the point of sale, they will be alerted to the possibility of detectable residues of sulfur dioxide. Sulfite-sensitive consumers will be able to avoid buying treated grapes and, therefore, will not be at risk.

In consideration of the problems of California growers for the remainder of the 1987 growing season, the amendments to the December 1986 policy announced by this document are immediately effective. The interim policy statement, as amended, will expire December 31, 1987. EPA is considering extending this interim policy until May 1989. This extension would provide time for the grower community to evaluate and implement technical alternatives to current sulfiting practices. Public comment is invited on the interim policy and the proposed extension date. While the policy statement is in effect, EPA and FDA will work jointly to assure that domestic and foreign grape shippers adhere to it. In addition, EPA will continue to consider the establishment of a tolerance for sulfur dioxide in or on grapes and registration of sulfiting agents under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act.

IV. Request for Comments

The EPA requests comments within 60 days on its amended interim policy and any impact and consequences to grape growers, grape distributors, food retailers, or grape consumers. EPA has already received a number of comments expressing strong views on the placarding or tagging of grapes at the retail level. Although these amendments are effective August 26, 1987, comments received in response to this notice, as well as an assessment of the progress toward establishing a permanent tolerance or other clearance for the use of sulfiting agents in or on grapes, will be considered in any future modification to these interim measures.

Dated: August 20, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 87-19523 Filed 8-25-87; 8:45 am]

BILLING CODE 6560-50-M

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

Department Hearings and Appeals Procedures; Indian Trust Property, etc.

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule; correction.

SUMMARY: This rule corrects Departmental regulation 43 CFR 4.202 *General authority of administrative law judges* in order to reinstate provisions previously contained in that regulation which were omitted inadvertently in the final rule published October 2, 1986 (51 FR 35219). Three asterisks should have appeared after the last word in the published final rule to indicate that the remainder of the paragraph is unchanged. Correction is made also with respect to typographical errors which appear in the final rule.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Frances A. Patton, Special Counsel to the Director, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203; Telephone: (703) 235–3810 (not toll free).

Dated: August 11, 1987.

Earl Gjelde,

Chief Operating Officer.

PART 4—[AMENDED]

Accordingly, 43 CFR 4.202 is correctly revised to read as follows:

§ 4.202 General authority of administrative law judges.

Administrative law judges shall determine the heirs of Indians who die intestate possessed of trust property, except as otherwise provided in §§ 4.205(b) and 4.271; approve or disapprove wills of deceased Indians disposing of trust property; accept or reject full or partial renunciations of interest in both testate and intestate proceedings; allow or disallow creditors' claims against estates of deceased Indians; and decree the distribution of trust property to heirs and devisees, including the partial distribution to known heirs or devisees where one or more potential heirs or devisees are missing but not presumed dead, after attributing to and setting aside for such missing person or persons the share or shares such person or persons would be entitled to if living. They shall determine the right of a tribe to take inherited interests and the fair market value of the interests taken in appropriate cases as provided by statute. They shall hold hearings and issue recommended decisions in matters referred to them by the Board in the Board's consideration of appeals from administrative actions of officials of the Bureau of Indian Affairs.

[FR Doc. 87–19562 Filed 8–25–87; 8:45 am]

BILLING CODE 4310–79–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 304

Child Support Enforcement Program; Prohibition of Federal Funding of Costs of Incarceration and Counsel for Indigent Absent Parents

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This rule amends § 304.23 to specify that Federal funding under title IV–D of the Social Security Act for costs of incarceration of absent parents in child support enforcement cases and costs of counsel for indigents in IV–D actions is not available. In addition, § 304.27, which concerns Federal funding prior to December 31, 1975, is deleted because it is obsolete.

EFFECTIVE DATE: August 26, 1987.

FOR FURTHER INFORMATION CONTACT: Joyce Linder, (202) 245–1773.

SUPPLEMENTARY INFORMATION:

Background

Costs of Incarceration and Providing Counsel for Indigent Absent Parents

The Senate Committee on Finance, in its report on H.R. 4325, which became the Child Support Enforcement Amendments of 1984, stated: "It is not the intent of the Congress to match all costs that might be related to operating a child support enforcement program. For example, the Committee believes Federal matching should not be available for expenditures related to incarceration of delinquent obligors and providing defense counsel for absent parents." (See S.Rep. No. 98–387, 98th Cong., 2d Sess., p. 23.)

Periodically, through the years, States have requested that the costs of incarceration of delinquent obligors and of defending indigent absent parents in IV–D cases should be reimbursed, OCSE's policy since the inception of the program has been that costs of incarceration of delinquent obligors and costs of defense counsel are not necessary and reasonable costs associated with the proper and efficient administration of the Title IV–D program.

Furthermore, there is no statutory authority for payment of such costs. These regulations add such costs to the list of expenditures for which Federal financial participation is not available.

Federal Funding in the Operation of the Child Support Enforcement Program in the Absence of an Assignment

Current regulations at § 304.27 make Federal funding available at the applicable rate for expenditures made under an approved IV–D State plan until December 31, 1975, irrespective of the requirement of an assignment of rights to support. Furthermore, § 304.27(b) states that this section remains in effect until December 31, 1975. Because it was repealed as of the close of business on that date, we are deleting this obsolete section.

We published a Notice of Proposed Rulemaking in the **Federal Register** on June 6, 1986 (51 FR 20673). The comments received on the proposed rule and our response to the comments are discussed below.

Statutory Authority

This regulation is implemented under the authority granted to the Secretary by sections 454(13) and 1102 of the Social Security Act (the Act). Section 454(13) of the Act requires States to comply with such requirements and standards as the Secretary of the Department of Health and Human Services determines to be necessary for the establishment of an effective Title IV–D program. Section 1102 of the Act requires the Secretary to publish the regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Regulatory Provisions

In enacting Title IV–D of the Act in 1975, Congress did not intend that every expense incurred by the State in enforcing child support obligations would be reimbursable by Federal funding. In fact, Congress expected "the States to continue to devote to this purpose (law enforcement) at least as much non-Federal funding as they currently provide." S.Rep. No. 93–1356, 93rd Cong., 2nd Sess., p. 50. Incarceration is a punishment for violation of State and local laws in general, not just those related to child support enforcement. Imposing a jail sentence for willful refusal to abide by a court order to pay support promotes respect for the laws and the judicial decisions of the State and its courts. Therefore, we believe that payment for

the costs of incarceration is entirely a responsibility of State and local governments and is not subject to Federal funding under Title IV–D of the Act.

Title IV–D of the Act was enacted for the purpose of enforcing the support obligations owed by absent parents. Nowhere in the Act nor in any legislative history explaining the IV–D program is there language providing funding for costs incurred in connection with the defense of absent parents who have failed to support their children. In fact, as stated previously, Congress indicated in connection with the Child Support Enforcement Amendments of 1984 that Federal funding should not be available for these costs. Such funding would be antithetical to the purpose of the program, i.e., to ensure that children receive the support to which they are entitled. A defense attorney's function is to promote the best interests of the client, which may actually be to limit or avoid imposition of support liability.

To make these policies explicit, we are amending § 304.23 by adding a new paragraph (i) to prohibit Federal funding for expenditures resulting from the jailing of absent parents in IV–D cases and a new paragraph (j) to prohibit Federal funding for costs of counsel for indigent defendants in IV–D actions.

We are deleting § 304.27, Federal financial participation in the operation of the Child Support Enforcement Program in the absence of an assignment, because it is obsolete.

Response to Comments

We received six comments in response to the Notice of Proposed Rulemaking. Two private attorneys, two attorneys from a County Domestic Relations Court, one State agency and one private individual submitted comments.

1. *Comment:* The proposed rule should be rejected because it prohibits IV–D funding for the costs of obtaining counsel for indigent absent parents. Public defenders' offices are understaffed and overburdened and as a result, indigents are often excused because they cannot afford representation. Therefore, IV–D funds should be available for defense counsel for indigent absent parents.

Response: While we agree that indigent absent parents may be entitled to representation, title IV–D of the Act was enacted for the purpose of establishing and enforcing the support obligations owed by absent parents, not for defending against the establishment and enforcement of support obligations. As noted earlier, Senate Finance Committee Report (H.R. 4325) indicates that Congress believes that Federal matching should not be available for expenditures related to providing defense counsel for absent parents. Finally, Title IV–D funding is not available to State or local governments for activities which are beyond the scope of activities required under Title IV–D of the Act. Defending persons who owe support is not a IV–D activity and therefore, IV–D funds are not available for this activity.

2. *Comment:* Since approximately half of the States require, by statutory or case law, that counsel must be provided to indigent defendants in paternity cases, and since IV–D funding is available for part of the paternity determination process such as scientific bloodtesting, there is no justification for prohibition of payment for costs of counsel for indigent defendants in paternity cases.

Response: Federal funding is available for part of the paternity determination process including bloodtesting. However, these costs result in the production of evidence that can be used to settle disputed paternity cases or can be introduced in court to show a likelihood of parentage. The results are objective evidence which can be used to "establish" the support order. Lawyers fees for the defense do not contribute to the "establishment or enforcement" of support. Therefore, defending child support obligors or accused fathers serves no legitimate IV–D purpose.

3. *Comment:* By refusing to fund the costs for defense in paternity cases, we are in violation of our own regulations at § 304.20(b)(2)(ii).

Response: Regulations at § 304.20(b)(2)(ii) make Federal financial participation available for services and activities which are determined to be necessary expenditures properly attributable to the Child Support Enforcement program including court or other actions to establish paternity pursuant to procedures established under State statutes or regulations having the effect of law. As stated previously, defending persons who owe support is not a IV–D activity and therefore is not a necessary expenditure attributable to the functions of the Child Support Enforcement program which is to establish and enforce child support obligations. As explained above, while some actions to establish paternity, such as bloodtesting costs, are funded under existing regulation, defense of indigent absent parents does not fall under the same classification.

4. *Comment:* Since defendants in paternity cases "do not become parents unless or until a court determines they are", the Senate Finance Committee's statement that Federal matching should not be available for expenditures related to providing defense counsel for absent parents does not apply to those whose parental status is still in doubt.

Response: The suggestion that "putative fathers" are not "parents" is deceptive. Court ordered obligations should not be confused with the common law duty to support one's dependents whether compelled to do so by court order or not. The intent of the Senate Finance Committee's discussion on which expenditures should be excluded from Federal financial participation is to exclude Federal matching for the costs of providing defense counsel for anyone who may owe a support obligation.

Paperwork Reduction Act

This regulation contains no information collection requirements that are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not result in significant impact on a substantial number of small entities. The primary impact is on State governments and political subdivisions and we believe that this impact will be nominal because the rule merely puts in regulation longstanding OCSE policy.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The rule is expected to have an insignificant impact on State and Federal expenditures because it only specifies in regulation current OCSE policy.

List of Subjects in 45 CFR Part 304

Child welfare, Grant programs/social programs.

PART 304—[AMENDED]

For the reasons discussed above, 45 CFR Part 304 is amended as follows:

1. The authority citation for Part 304 continues to read as set forth below:

Authority: 42 U.S.C. 651—658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396(d)(2), 1396b(o), 1396b(p) 1396(k).

2. 45 CFR 304.23 is amended by adding introductory text and new paragraphs (i) and (j) to read as follows:

§ 304.23 Expenditures for which Federal financial participation is not available.

Federal financial participation at the applicable matching rate is not available for:

* * * * *

(i) Any expenditures for jailing of parents in child support enforcement cases.

(j) The costs of counsel for indigent defendants in IV–D actions.

§ 304.27 [Removed and Reserved]

3. 45 CFR 304.27 is removed and reserved.

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Date: April 24, 1987.

Wayne A. Stanton,

Director, Office of Child Support Enforcement.

Approved June 1, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87–19581 Filed 8–25–87; 8:45 am]

BILLING CODE 4190–11–M

ACTION

45 CFR Part 1207

Senior Companion Program; Non-Stipended Volunteers

AGENCY: ACTION.

ACTION: Final rule.

SUMMARY: These are the final rules implementing the provisions included in Pub. L. 99–551, the 1986 amendments to the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, regarding volunteers serving without stipends in the Senior Companion Program Certain revisions have been made in response to comments and suggestions from project staff, sponsors, and other members of the public.

DATE: This regulation shall take effect on October 13, 1987.

FOR FURTHER INFORMATION CONTACT: C. Wade Freeman, Assistant Director, Older American Volunteer Programs, ACTION, 806 Connecticut Avenue, NW., M–1006, Washington, DC 20525, (202) 634–9355.

SUPPLEMENTARY INFORMATION:

I. Description of the Rule

This rule responds to a new provision of the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, encouraging the recruitment and placement of persons aged 60 and over, who are not low-income, as non-stipended volunteers to augment the services of volunteers mobilized through the Senior Companion Program. The Senior Companion Program (SCP) is described in the Catalog of Federal Domestic Assistance under reference Number 72.008. Reference is also made to the Retired Senior Volunteer Program, Number 72.006.

The purpose of the regulation is to:

(1) Open opportunities for and to tap the unused resources of Older Americans;

(2) Expand needed services to unserved and underserved populations.

The regulation prescribes: cooperative responsibilities between a local Senior Companion Program (SCP) project and a local Retired Senior Volunteer Program (RSVP) project under circumstances where they are co-located in a given community setting; equal treatment of both groups of volunteers including training, supervision, etc.; freedom from competition between stipended and non-stipended volunteers for available assignments, support, etc.; and other conditions relating to the service and benefits of non-stipended volunteers.

II. Discussion of Comments

The Agency has considered the comments received and has determined to adopt the proposed rule with some modifications. Discussed below are the major public comments received by the Agency in response to its proposed rule (52 FR 8479, March 18, 1987).

The Agency received several comments on this proposed rule, the majority of which pertained to the conditions of service (§ 1207.3–7). Some respondents indicated that the current language was unclear regarding the role of an RSVP project co-located in the same community with an SCP project. Objections were raised to the inclusion of the limitation that only RSVP projects "with programs serving the frail elderly or children with special or exceptional needs" be designated as hosts and managers of non-stipended volunteers as exceeding legislative intent. A small number urged that both local RSVP and SCP projects be permitted to recruit and place non-stipended volunteers in the same community area. A few respondents (4) raised questions regarding ACTION's role in resolving possible disputes between active co-located projects. These asked for clarification and an indication as to which office in ACTION would exercise the role of arbiter. The following is the Agency response to the foregoing comments, and the resulting modifications.

The intent of the regulation is to meet the purpose of the legislative changes of Pub. L. 99–551; maintain the integrity of SCP and safeguard the ability of RSVP projects to meet their local programming objectives; and to minimize confusion and competition for volunteers. A cooperative working relationship between two co-located OAVP projects continues to be imperative. Consequently, § 1207.3–7(b)(1) has been modified to read as shown and paragraph (b)(2) has been deleted in its entirety.

Clarification of some segments of paragraph (b)(3) (renumbered paragraph (b)(2) in the final rule) was requested and chantes were made as shown.

Several respondents questioned the ability of projects to provide equal treatment given previous allegations of elitism among non-stipended volunteers, practicularly where separate placements were arranged. However, no changes to paragraph (b)(3)(ii) or (b)(3)(v) were requested and none have been made.

Comments focused on who would provide training, supervision, physical examinations, liability insurance, smocks (where needed) and transportation. No change was requested and none will be made to paragraph (b)(3)(iii).

Costs for the non-stipended volunteers can be borne by the volunteer station or by the project. If the project pays for the cost of such items as insurance, transportation, and physicals, other than Federal or non-Federal match funds must be used.

In the absence of a co-located RSVP project, or if such a project is unable or unwilling to provide the presecribed management support, the task will be undertaken by the SCP project. In that case, the regulations referred to in paragraph (b)(3)(iv) are those of the SCP program as provided in the SCP Operations Handbook.

Non-stipended volunteers serving SCP volunteer stations and clients will be encouraged but not required to serve 20 hours per week and 50 weeks per year; and to the extent possible will serve a minimum of 2 clients on a regular basis. Several comments were received asking

for a clarification of intent, indicating that the likelihood of non-stipended volunteers serving 20 hours per week for 50 weeks was extremely small. The agency concurs and has modified paragraph (b)(3)(vi) accordingly.

All comments on paragraph (c), "Funding", were submitted by ACTION field staff dealing with practical administrative concerns. The stated restrictions on sources of funding were intended to protect the funding of traditional, stipended volunteers under SCP and the integrity of the SCP volunteer delivery system. Paragraph (c) was modified accordingly.

ACTION has determined that this rule is not a major rule as defined by Executive Order 12291. The rule will not result in any of the following:

1. Any effect on the economy;

2. Any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

3. Any adverse effects on competition, employment, investment productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to section 3(c)3 of E.O. 12291, entitled "Federal Regulation," the required review process has been completed by the Director of the Office of Management and Budget.

List of Subjects in 45 CFR Part 1207

Aged, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

PART 1207—[AMENDED]

1. The authority citation for 45 CFR Part 1207 is revised to read as follows:

Authority: Secs. 211 (d), (e); 212, 213, 221, 222, 223, 402(14) and 420 of Pub. L. 93–113, 87 Stat. 402, 403, 404, 407 and 414, sec. 213 of Pub. L. 97–35, 97 Stat. 487, 42 U.S.C. 5011 (b) (d) and (e); 5012, 5021, 5022, 5023, 5042(14), 5060 and 5013.

2. Accordingly, 45 CFR Part 1207 is amended by adding 1207.3–7 to read as follows:

§ 1207.3–7 Non-stipended volunteers

(a) *Purpose:* Projects are encouraged to enroll persons aged 60 and over, who are not low-income, as non-stipended volunteers in order to:

(1) Open opportunities for and tap the unused resources of older Americans, and

(2) Expand needed services to unserved and underserved populations.

(b) *Conditions of Service:* (1) Over-income persons, age 60 or over, may not be enrolled in SCP projects as non-stipended volunteers in communities where a Retired Senior Volunteer Program (RSVP) project is available and the RSVP project is willing and able to assume the management role of placing the volunteer at an SCP volunteer station. When a Senior Companion project is contacted by an individual expressing an interest in serving as a non-stipended volunteer, the project shall contact the ACTION State Office for its determination as to whether:

(i) Enrollment in the project is appropriate,

(ii) The volunteer should be referred to an RSVP project that has agreed, in writing, to serve in the prescribed management role.

(2) Non-stipended volunteers serve under the following conditions:

(i) Their service must not supplant, replace, or displace any stipended volunteers.

(ii) No special privilege or status is granted or created among volunteers, stipended or non-stipended, and equal treatment is required.

(iii) Training, supervision, and other support services and direct benefits, other than the stipend, are available equally to all volunteers.

(iv) All regulations and requirements applicable to the program, with the exception listed in paragraph (b)(2)(vi) of this section, apply to all volunteers.

(v) Non-stipended volunteers may be placed in separate volunteer stations where warranted.

(vi) Non-stipended volunteers serving in SCP volunteer stations will be encouraged but not required to serve 20 hours per week and 50 weeks per year. Volunteers will maintain a close one-to-one relationship with clients, and will serve a minimum of two clients on a regular basis.

(vii) Non-stipended volunteers may contribute the cost of direct benefits.

(3) There are no requirements on either SCP or RSVP projects to enroll non-stipended volunteers. Implementation of these regulations by a local project may not be a factor in awarding new or renewal grants.

(c) *Funding:* No appropriated funds for SCP may be used to pay any cost, including any administrative cost, incurred in implementing these regulations. Such costs may be paid with:

(1) Funds received by the Director as unrestricted gifts.

(2) Funds received by the Director as gifts to pay such costs.

(3) Funds contributed by non-stipended volunteers.

(4) Locally-generated contributions in excess of the amount required by law.

Donna M. Alvarado,

Director of ACTION.

[FR Doc. 87–19247 Filed 8–25–87; 8:45 am]

BILLING CODE 6050–28–M

45 CFR Part 1208

Foster Grandparent Program; Non-Stipended Volunteers

AGENCY: ACTION.

ACTION: Final rule.

SUMMARY: These are the final rules implementing the provisions included in Pub. L. 99–551, the 1986 amendments to the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, regarding volunteers serving without stipends in the Foster Grandparent Program. Certain revisions have been made in response to comments and suggestions from project staff, sponsors, and other members of the public.

DATE: This regulation shall take effect on October 13, 1987.

FOR FURTHER INFORMATION CONTACT: C. Wade Freeman, Asssitant Director, Older American Volunteer Programs, ACTION, 806 Connecticut Avenue, NW., M–1006, Washington, DC 20525, (202) 634–9355.

SUPPLEMENTARY INFORMATION:

I. Description of the Rule

This rule responds to a new provision of the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, encouraging the recruitment and placement of persons aged 60 and over, who are not low-income, as non-stipended volunteers to augment the services of volunteers mobilized through the Foster Grandparent Program. The Foster Grandparent Program (FGP) is described in the Catalog of Federal Domestic Assistance under reference Number 72.001. Reference is also made to the Retired Senior Volunteer Program, Number 72.006.

The purpose of the regulation is to:

(1) Open opportunities for and to tap the unused resources of Older Americans;

(2) Expand needed services to unserved and underserved populations.

The regulation prescribes: cooperative responsibilities between a local Foster Grandparent Program (FGP) project and local Retired Senior Volunteer Program (RSVP) project under circumstances where they are co-located in a given community setting; equal treatment of both groups of volunteers including training, supervision, etc.; freedom from

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competition between stipended and non-stipended volunteers for available assignments, support, etc.; and other conditions relating to the service and benefits of non-stipended volunteers.

II. Discussion of Comments

The Agency has considered the comments received and has determined to adopt the proposed rule with some modifications. Discussed below are the major public comments received by the Agency in response to its proposed rule (52 FR 8480, March 18, 1987).

The Agency received several comments on this proposed rule, the majority of which pertained to the conditions of service (§ 1208.3–8). Some respondents indicated that the current language was unclear regarding the role of an RSVP project co-located in the same community with an FGP project. Objections were raised to the inclusion of the limitation that only RSVP projects "with programs serving the frail elderly or children with special or exceptional needs" be designated as hosts and managers of non-stipended volunteers as exceeding legislative intent. A small number urged that both local RSVP and FGP projects be permitted to recruit and place non-stipended volunteers in the same community area. A few respondents (4) raised questions regarding ACTION's role in resolving possible disputes between active co-located projects. These asked for clarification and an indication as to which office in ACTION would exercise the rule of arbiter. The following is the Agency response to the foregoing comments, and the resulting modifications.

The intent of the regulation is to meet the purpose of the legislative changes of Pub. L. 99–551; maintain the integrity of FGP and safeguard the ability of RSVP projects to meet their local programming objectives; and to minimize confusion and competition for volunteers. This regulation opens up opportunities to volunteer for individuals who are not low income. A cooperative working relationship between two co-located OAVP projects continues to be imperative. Consequently, § 1208.3–8 (b)(1) has been modified to read as shown and paragraph (b)(2) has been deleted in its entirety.

Clarification of some segments of paragraph (b)(3) (renumbered paragraph (b)(2) in the final rule) was requested and changes were made as shown.

Several respondents questioned the ability of projects to provide equal treatment given previous allegations of elitism among non-stipended volunteers, particularly where separate placements were arranged. However, no changes to paragraph (b)(3)(ii) or (b)(3)(v) were requested and none have been made.

Comments focused on who would provide training, supervision, physical examinations, liability insurance, smocks (where needed) and transportation. No change was requested and none will be made to paragraph (b)(3)(iii).

Costs for the non-stipended volunteers can be borne by the volunteer station or by the project. If the project pays for the cost of such items as insurance, transportation, and physicals, funds other than Federal or non-Federal match funds must be used.

In the absence of a co-located RSVP project, or if such a project is unable or unwilling to provide the prescribed management support, the task will be undertaken by the FGP project. In that case, the regulations referred to in paragraph (b)(3)(iv) are those of the FGP program as provided in the FGP Operations Handbook.

Non-stipended volunteers serving FGP volunteer stations and clients will be encouraged but not required to serve 20 hours per week and 50 weeks per year; and, to the extent possible, will serve a minimum of two clients on a regular basis. Several comments were received asking for a clarification of intent, indicating that the likelihood of non-stipended volunteers serving 20 hours per week for 50 weeks was extremely small. The agency concurs and has modified paragraph (b)(3)(vi) accordingly.

All comments on paragraph (c), "Funding", were submitted by ACTION field staff dealing with practical administrative concerns. The stated restrictions on sources of funding were intended to protect the funding of traditional, stipended volunteers under FGP and the integrity of the FGP volunteer delivery system. Paragraph (c) was modified accordingly.

ACTION has determined that the rule is not a major rule as defined by Executive Order 12291. The rule will not result in any of the following:

1. Any effect on the economy;

2. Any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

3. Any adverse effects on competition, employment, investment productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to section 3(c) 3 of E.O. 12291, entitled "Federal Regulation" the required review process has been completed by the Director of the Office of Management and Budget.

List of Subjects in 45 CFR Part 1208

Aged, Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

PART 1208—[AMENDED]

1. The authority citation for 45 CFR Part 1208 is revised to read as follows:

Authority: Secs. 211(a), 212, 221, 222, 223, 402(14) and 420 of Pub. L. 93–113, 87 Stat. 402, 403, 404, 407 and 414, 42 U.S.C. 5011 (a) and (f), 5012, 5021, 5022, 5023, 5042(14) and 5060.

2. Accordingly, 45 CFR Part 1208 is amended by adding § 1208.3–8 to read as follows:

§ 1208.3–8 Non-stipended volunteers.

(a) *Purpose:* Projects are encouraged to enroll persons aged 60 and over, who are not low-income, as non-stipended volunteers in order to:

(1) Open opportunities for and tap the unused resources of older Americans, and

(2) Expand needed services to unserved and underserved populations.

(b) *Conditions of Service:* (1) Over-income persons, age 60 or over, may not be enrolled in FGP projects as non-stipended volunteers in communities where a Retired Senior Volunteer Program (RSVP) project is available and the RSVP project is willing and able to assume the management role of placing the volunteer at an FGP volunteer station. When a Foster Grandparent project is contacted by an individual expressing an interest in serving as a non-stipended volunteer, the project shall contact the ACTION State Office for its determintion as to whether:

(i) Enrollment in the project is appropriate,

(ii) The volunteer should be referred to an RSVP project that has agreed, in writing, to serve in the prescribed management role.

(2) Non-stipended volunteers serve under the following conditions:

(i) Their service must not supplant, replace, or displace any stipended volunteers.

(ii) No special privilege or status is granted or created among volunteers, stipended or non-stipended, and equal treatment is required.

(iii) Training, supervision, and other support services and direct benefits, other than the stipend, are available equally to all volunteers.

(iv) All regulations and requirements applicable to the program, with the exception listed in paragraph (b)(2)(vi) of this section, apply to all volunteers.

(v) Non-stipended volunteers may be placed in separate volunteer stations where warranted.

(vi) Non-stipended volunteers serving in FGP volunteer stations will be encouraged but not required to serve 20 hours per week and 50 weeks per year. Volunteers will maintain a close one-to-one relationship with clients, and will serve a minimum of two clients on a regular basis.

(vii) Non-stipended volunteers may contribute the cost of direct benefits.

(3) There are no requirements on either FGP or RSVP projects to enroll non-stipended volunteers. Implementation of these regulations by a local project may not be a factor in awarding new or renewal grants.

(c) *Funding:* No appropriated funds for FGP may be used to pay any cost, including any administrative cost, incurred in implementing these regulations. Such costs may be paid with:

(1) Funds received by the Director as unrestricted gifts.

(2) Funds received by the Director as gifts to pay such costs.

(3) Funds contributed by non-stipended volunteers.

(4) Locally-generated contributions in excess of the amount required by law.

Donna M. Alvarado,

Director of ACTION.

[FR Doc. 87-19246 Filed 8-25-87; 8:45 am]

BILLING CODE 6050-28-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-247; RM-5158]

Radio Broadcasting Services; Kennebunkport, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 284A to Kennebunkport, Maine, as that community's first broadcast service, in response to a petition filed by Robert Towne. Supporting comments were filed by the petitioner.

Concurrence of the Canadian government has been obtained for the allotment of Channel 284A at Kennebunkport, Maine. With this action, this proceeding is terminated.

DATES: Effective October 5, 1987; The window period for filing applications will open on October 6, 1987, and close on November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-247, adopted August 3, 1987, and released August 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Maine by adding Channel 284A at Kennebunkport.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19499 Filed 8-25-87; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1059

[Ex Parte No. MC-186]

Elimination of Embargo Regulations; Motor Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Removal of rule.

SUMMARY: The Commission has determined to eliminate 49 CFR Part 1059 as obsolete and unnecessary. This part governs notification requirements for embargoes and any other delay in performing service by motor common carriers of property. The regulations were adopted on March 2, 1943 (8 FR 3003, March 11, 1943). Abuses, should they occur, can best be corrected on a case-by-case basis without the need for the existing regulations in 49 CFR Part 1059.

EFFECTIVE DATE: September 25, 1987.

FOR FURTHER INFORMATION CONTACT: Richard L. Gagnon, (202) 275-7711.

or

Mark Shaffer, (202) 275-7292.

TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision. A copy may be purchased from T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357 (assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup from TSI in Room 2229 at Commission headquarters.

This action will not significantly affect either the quality of the human environment or conservation of energy resources. The Commission certifies that this action will not have a significant adverse effect on a substantial number of small entities. It removes a rule that no longer is necessary to protect small shippers and removes regulatory burdens for small carriers.

List of Subjects in 49 CFR Part 1059

Motor carriers.

Authority: 49 U.S.C. 10101 and 10922; 5 U.S.C. 553.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1059—[REMOVED]

49 CFR Part 1059 is removed.

Decided: August 14, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19555 Filed 8-25-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845-7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments and request for comments.

SUMMARY: NOAA announces (1) revised quotas for coho salmon in commercial and recreational fisheries south of Cape Falcon, Oregon, and (2) inseason adjustment of management measures for commercial fisheries from Cascade

Head to Cape Perpetua, Oregon. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council (Council) and the Oregon Department of Fish and Wildlife (ODFW), that these modifications of quotas and possession and landing requirements meet the criteria for inseason adjustments to management measures. This action is necessary to conform with the preseason announcement of regulations for the 1987 ocean salmon fisheries. It is intended to allow maximum harvest of ocean salmon quotas established for the 1987 season.

EFFECTIVE DATE: These inseason adjustments to commercial and recreational management measures in the exclusive economic zone (EEZ) south of Cape Falcon, Oregon, are effective at 0001 hours local time, August 22, 1987. Comments on this closure will be received until September 5, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director) at 206–526–6150.

SUPPLEMENTARY INFORMATION: The ocean salmon fisheries are managed under a framework fishery management plan (50 CFR Part 661). An amendment to the plan (52 FR 4146, February 10, 1987) authorizes inseason adjustments of management measures if the adjustments are consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the framework amendment. In addition, all inseason adjustments must be based on consideration of the following factors: Predicted sizes of salmon runs; harvest quotas and hooking mortality limits for the area and total allowable impact limitations if applicable; amount of recreational, commercial, and treaty Indian catch for each species in the area to date; amount of recreational, commercial and treaty Indian fishing effort in the area to date; estimated average daily catch per fisherman, predicted fishing effort for the area to the end of the scheduled season; and other factors as appropriate.

Transfer of Coho Salmon From Recreational Quota to Commercial Quota

In its preseason notice of 1987 management measures (52 FR 17264, May 6, 1987), NOAA announced that recreational fisheries south of Cape Falcon, Oregon, would be managed by an overall recreational impact quota of 269,200 coho salmon. Any portion of the recreational quota not needed to complete scheduled recreational seasons would be transferred to the troll fishery on or about August 1 (Table 2, footnote c).

Members of the Salmon Plan Development Team (Team) conferred on August 18 and, based on the best available information, projected that the recreational fisheries south of Cape Falcon would harvest only 234,200 coho salmon, leaving 35,000 coho salmon available for transfer to the commercial fisheries.

Modification of Commercial Possession and Landing Restrictions

NOAA also announced in its preseason salmon notice that the commercial fisheries south of Cape Falcon would be partitioned into six subareas and managed not to exceed an overall troll catch quota south of Cape Falcon of 401,700 coho salmon. After the coho quota is met, fishing will continue for all salmon except coho until October 31, 1987.

Several of the six subareas south of Cape Falcon currently are closed to commercial fishing for coho salmon. Two subareas south of Point Delgada, California, were closed to commercial fishing for coho salmon on July 21, 1987, when the catch quota of 26,800 coho salmon was projected to be reached (52 FR 27817, July 24, 1987). The subarea from Cape Blanco, Oregon, to Point Delgada, California, was closed to commercial fishing for all salmon on June 25, 1987, when the commercial fishing quota of 113,300 chinook salmon was projected to be reached (52 FR 24297, June 30, 1987).

In accordance with the preseason notice, commercial fisheries from Cape Falcon to Cape Blanco, Oregon, were closed for three days, July 29 through 31, 1987, when 80 percent of the coho quota for the area south of Cape Falcon was projected to have been reached (52 FR 28562, July 31, 1987).

Three subareas in the area from Cape Falcon to Cape Blanco, Oregon, currently are open to commercial fishing for all salmon species with some restrictions. There are different requirements for possession and landing of coho salmon depending upon the subarea, the season, and how much of the overall coho quota for the area south of Cape Falcon, Oregon, has been taken (Table 1). In specified subareas during specified times, fishermen are allowed a single daily possession and landing per vessel of 100 coho salmon before a restriction on the number of coho accompanying the possession and landing of chinook (a ratio restriction) is applied. In other subareas or times, fishermen are not allowed this single daily possession and landing allowance before the ratio restriction is applied. After the commercial coho quota has been reached, fishing will continue for all salmon except coho salmon.

The Team conferred on August 18 and, bases on the best available information and the current rate of harvest, projected that the commercial fisheries south of Cape Falcon would not meet the commercial coho quota until mid-September. Coho fishing that late in the season would increase impacts on Oregon coastal natural (OCN) coho stocks, and may prevent the ocean escapement goal of 200,000 OCN coho from being met.

The Team recommended that a single daily possession and landing allowance of 100 coho salmon be implemented in the subarea from Cascade Head to Cape Perpetua, to increase the likelihood that the commercial coho quota south of Cape Falcon would be harvested while coho stocks other than OCN coho were still in the area. The single daily possession and landing allowance of 100 coho salmon currently is in effect for the subarea from Cape Falcon to Cascade Head.

Therefore, NOAA issues this notice, after consideration of the factors specified for inseason adjustments, to adjust commercial and recreational management measures in specified areas south of Cape Falcon, Oregon, effective 0001 hours local time, August 22, 1987, as follows:

1. The recreational quota for the area south of Cape Falcon is reduced from 269,200 to 234,200 coho salmon, and the commercial quota is increased from 401,700 to 436,700 coho salmon.

2. Possession and landing restrictions from Cascade Head to Cape Perpetua, Oregon, are change to allow the single daily possession and landing per vessel of 100 coho salmon. The restrictions on possession and landing of more than 100 coho salmon remain as indicated in the preseason notice.

This notice does not apply to other fisheries which may be operating in this or other areas.

The Regional Director consulted with the Chairman of the Council and the

representatives of ODFW regarding these adjustments to recreational and commercial quotas and commercial possession and landing restrictions south of Cape Falcon, Oregon. The ODFW representative confirmed that Oregon will manage the commercial fishery in state waters adjacent to these subareas of the EEZ in accordance with this notice.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: August 21, 1987.

James E. Douglas, Jr.

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-19586 Filed 8-21-87; 4:38 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 61220-7033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish target quota (TQ) allocated to pot gear in the Western Regulatory Area of the Gulf of Alaska will be reached shortly. Therefore, the Regional Director is prohibiting fishing for sablefish in the Western Regulatory area by persons using pot gear on August 22, 1987, through the remainder of the year.

DATES: This notice is effective at noon, August 22, Alaska Daylight Time, until midnight, Alaska Standard Time, December 31, 1987. Public comments are invited until September 7, 1987.

ADDRESSES: Comments should be addressed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672.

Section 672.20(a) of the regulations establishes an optimum yield range of 116,000 to 800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. For 1987, a TQ was established for each of the groundfish species and apportioned among the regulatory areas and districts.

Section 672.,2 of the regulations defines the Western Regulatory Area in the Gulf of Alaska. The TQ for sablefish is 3,000 mt in this area (52 FR 785, January 9, 1987). Section 672.24(b)(2) of current regulations provides a share of the TQ for pot gear in the Western Regulatory Area equal to 25 percent of the TQ, or 750 mt. Section 672.24(b)(3)(ii) specifies that when the Regional Director determines that the share of the sablefish TQ assigned to any type of gear for any year and any area or district is reached, further catches of sablefish must be treated as prohibited species by persons using that type of gear for the remainder of the year.

For pot vessels, the fishing season began on April 1, 1987. Several pot vessels have targeted, or are targeting, on sablefish. The estimated pot catch through August 1 in the Western Gulf was 682 mt. At current harvest levels, the estimated pot catch through August 18 was 730 mt and the remainder of the pot quota in the Western area will be reached on August 22, 1987.

This closure will be effective when this notice is filed for public inspection with the Office of the Federal Register and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice may be submitted to the Regional Director at the address above for 15 days following its effective date. It comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this closure's continued effect, modifying it, or rescinding it.

Classification

Allocation of the sablefish resource between gear types in the Western Gulf of Alaska and the health of the sablefish resource will be jeopardized unless this notice takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. This action is taken under §§ 672.22 and 672.24 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: August 21, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-19585 Filed 8-21-87; 4:38 pm]

BILLING CODE 3510-22-M

VOL 52 ISS 165 AG 26 1987 UMI

Proposed Rules

Federal Register
Vol. 52, No. 165
Wednesday, August 26, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Docket No. R-0611]

Credit by Brokers and Dealers; Regulation T Exercise of Employee Stock Options

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing for public comment an amendment to Regulation T that will permit broker-dealers to aid in the exercise of company stock options owned by a employees of the company. In lieu of the securities to be received upon exercise, the proposed amendment will allow broker-dealers to accept a fully-endorsed employee stock option and instructions to the employer to deliver the securities to the broker-dealer.

DATE: Comments should be received on or before September 28, 1987.

ADDRESS: Comments, which should refer to Docket No. R-0611, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street, & Constitution Avenue NW., Washington, DC 204551, or delivered at the C Street Entrance between 8:45 a.m. and 5:15 p.m. weekdays to Room B-2223. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Scott Holz, Attorney, Division of Banking Supervision and Regulation, (202) 452-2781. For the hearing impaired *only*, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson, (202) 452-3544.

SUPPLEMENTARY INFORMATION: Since the complete revision of the margin regulations in 1983, the Board has reduced restrictions on employee stock ownership and option plans. Regulation G (12 CFR Part 207) has always had less restrictive margin requirements for the financing of employee stock options, which many corporations view as a form of compensation to their employees. Broker-dealers cannot currently lend customers money to exercise these options using the option as collateral. The proposed amendment will allow the broker-dealer to accept a fully-endorsed employee stock option with instructions signed by the costomer instructing the employer to deliver the securities to the broker-dealer. The customer would designate the account into which the securities should be deposited and would comply with the applicable time limits and any required payment.

Some companies that have desired to help their employees exercise company stock options in the past have established a procedure with a broker-dealer and extended unsecurred credit to their employees. Under this arrangement, described in the *Federal Reserve Regulatory Service* at 5-347.14, the employee signs the option exercise form and an unsecured demand promissory note payable to the company for the exercise price of the shares. If the employee wishes to sell the shares, he requests *that* the shares be registered in the name of the broker-dealer and that the proceeds of the sale be sent to the company. The company deducts an amount sufficient to pay off the note and any applicable tax and remits a check for the balance to the employee. The proposed amendment will simplify the process by eliminating the need for the company to establish a procedure with a broker-dealer, including the extension of unsecured credit by the company. The borker-dealer will be able to extend secured credit by relying temporarily on the exercise notice and customer instructions in lieu of the stock itself.

Regulatory Flexibility Act

The Board believes there will be no significant economic impact on a substantial number of small entities if this proposal is adopted. Comments are invited on this statement.

Paperwork Reduction Act

No additional reporting requirements of modification to existing reporting requirements are proposed.

List of Subjects in 12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin Requirements, Investments, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under sections 3, 7, 8, 17, and 23 of the Securities Exchange Act of 1934, as amended, (15 U.S.C. 78c, 78g, 78h, 78q and 78w), the Board proposes to amend 12 CFR Part 220 by adding new § 220.3(e)(4) as follows:

PART 220—[AMENDED]

1. The authority citation for Part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 79q, and 78w.

2. The Board proposes to add § 220.3(e)(4) as follows:

§ 220.3—General provisions

* * * * *

(4) A creditor may accept, in lieu of securities, a properly executed exercise notice for a stock option issued by the customer's employer and instructions to the issuer to deliver the resulting stock to the creditor. Prior to acceptance, the creditor must verify that the employer will deliver the securities promptly and the customer must designate the account into which the securities are to be deposited.

By order of the Board of Governors of the Federal Reserve System, August 20, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19511 Filed 8-25-87; 8:45 am]

BILLING CODE 6210-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[PP 7H5532/P430; FRL 3252-2]

Pesticide Tolerances for Metalaxyl; Certain Food and Feed Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that food and feed additive regulations be established to permit residues of the fungicide metalaxyl and its metabolites in or on certain food and feed items. This proposed regulation to establish a maximum permissible level for residues

of metalaxyl in or on the commodities was requested in a petition submitted by Ciba-Geigy Corp.

DATE: Comments, identified by the document control number, [PP 7H5532/P430], should be received on or before September 25, 1987.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 236 at the address given above, for 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail.

Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Office location and telephone number: Room 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1900.

SUPPLEMENTARY INFORMATION: Giba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, submitted petition 7H5532 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, proposes the establishment of a tolerance for residues of the fungicide metalaxyl, [*N*–92,6–dimethylphenyl)–*N*–(methoxyacetyl)alanine methyl ester] and its metabolites containing the 2,6–dimethylaniline moiety, and *N*–(2–hydroxymethyl–6–methenyl)–*N*–(methoxyacetyl)alanine methyl ester, each expresséd as metalazyl, in or on the commodity dry hope at 10 ppm. The petitioner amended the petition to include a food additive tolerance at 50 ppm on dry hops and a feed additive tolerance on spend hops at 50 ppm.

It is proposed that these regulations expire 1 year after the date the final rule is published in the **Federal Register**. If the following are submitted and are acceptable to the Agency, the Agency will consider extending this tolerance beyond the one-year time period: Revised label with correct calculations for total metalaxyl (ai) applied per year; residue data on samples with analysis by the Pesticide Analytical Manual (PAM–11) procedure or another proven procedure that determines parent and metabolites included in the U.S. tolerance expression (storage intervals between sampling and analysis and storage conditions should be reported for all residue data).

The data submitted in this petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 3–month dietary study in rats with a non-observed-effect level (NOEL at 12.5 milligrams/kilogram body weight (mg/kg bwt/day) (250) ppm.

2. A teratology study in rats with a teratogenic NOEL of 400 mg/kg/ bwt (highest dose tested). Metalaxyl was not teratogenic, even in the presence of maternal toxicity. The NOEL for both developmental and maternal effects was 50 mg/kg.

3. A teratology study in rabbits with a teratogenic NOEL of 300 mg/kg/bwt (highest dose tested). Matalaxyl was not teratogenic, nor did it cause developmental toxicity even in the presence of maternal toxicity 300 mg/kg.

4. A Salmonella mutagencity study that was negative for reverse mutations with and without mammalian microsome activation.

5. A mouse dominant lethal study that was negative for mutagenicity.

6. Metalaxyl did not induce unscheduled DNA synthesis in rat hepatocytes or human fibroblasts.

7. A hamster *in vivo* nucleus anomaly test was negative for mutagenic activity.

8. A three-generation rat reproduction study with a NOEL of 62.5 mg/kg/ bwt/day (1,250 ppm, highest dose tested).

9. A 6-month dog feeding study with a NOEL of 6.3 mg/kg bwt/day (250 ppm).

10. A 2-year rat chronic feeding/oncogenic study with no compound-related oncogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 12.5 mg/kg bwt/day (250 ppm) based upon vacuolation of hepatocytes at 1,250 ppm.

11. A 2-year mouse oncogenic study with no compound-related oncogenic effects under the conditions of the study at dietary levels up to 1,250 ppm.

The acceptable daily intake (ADI), based on the 6-month dog feeding study (NOEL of 6.3 mg/kg bwt/day) and using a hundred-fold safety factor, is calculated to be 0.60 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for the U.S. population average is calculated to be 0.0098 mg/kg bwt/day. The current action will increase the TMRC by 0.0011 mg/kg day or 11.2 percent. Published tolerances utilize 16.4 percent of the ADI, and the current action will utilize an additional 1.9 percent of the ADI.

The nature of the residues is adequately understood, and analytical methodology is available in the Pesticide Analytical Manual, Volume II (PAM–II) for enforcement purposes. The PAM II method involves gas-liquid chromatography (GLC) with alkali flame ionization detection (AFID), and with mass spectrometry for samples that show interference in the GLC/AFID.

Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, it is proposed that these tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Inspecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after published of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number [PP 7H5532/P430]. Written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 through 612), the Administrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant economic impact on a

substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514, (21 U.S.C. 346a(e)))

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 19, 1987.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Chapter I of 21 CFR be amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 193.277 is amended by adding new paragraph (d), to read as follows:

§ 193.277 Metalaxyl.

* * * * *

(d) A food additive regulation is established until (date 1 year after date of publication of the final rule in the **Federal Register** for residues of the fungicide metalaxyl [N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-alanine methylester] and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the following processed foods when present therein as a result of application to growing hops:

Foods	Parts per million
Hops, dried	50

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 561.273 is amended by adding new paragraph (d), to read as follows:

§ 561.273 Metalaxyl.

* * * * *

(d) A feed additive regulation is established until (date 1 year after date of publication of the final rule in the **Federal Register** for residues of the fungicide metalaxyl, [N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-alanine methylester] and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the following processed feeds when present therein as a result of application to growing hops:

Feeds	Parts per million
Hops spent	50

[FR Doc. 87-19522 Filed 8-25-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 302

Civil Defense; State and Local Emergency Management Assistance Program (EMA)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises the Emergency Management Assistance (EMA) program formula factors by removing from the calculation the factor that provides that 10 percent of the appropriated funds will be allocated on the basis of the State's population in EMA participant jurisdictions as a percentage of the State's total population. The proposed rule increases the factor known as the "base" that now provides that 5 percent will be equally divided among the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico by the 10 percent removed form the EMA population factor; the base would thus be 15 percent that is equally divided among each of the States, the District of Columbia, and the Commonwealth of Puerto Rico.

DATE: Comments must be received by October 26, 1987.

FOR FURTHER INFORMATION CONTACT: Marilyn Barton, FEMA, Office of Civil Defense, Washington, DC 20472, (202) 646-3510.

SUPPLEMENTARY INFORMATION: The proposal to remove the 10 percent allocated on the basis of the State's population in EMA is supported by the following:

1. The existing factor can be a deterrent to good program management. By eliminating a local jurisdiction for nonperformance, the State penalizes itself; and the EMA population is reduced, the funds to that State are decreased.

2. From time to time program emphases change to reflect a more current assessment of the locations where the capability is to be developed and the kinds of civil preparedness readiness activities. In this context, a renewed emphasis on surging civil defense resources suggests a more deliberate expansion of the number of EMA participant jurisdictions.

Due to changing conditions it is appropriate to eliminate this EMA factor. Similarly, these conditions also warrant increasing the base factor to each State from 5 percent to 15 percent for reasons including awareness that all States are at potential risk and that the costs of maintaining emergency management activities are increasing.

The change in this factor will facilitate the allocation process without substantive negative impact on the amount allocated to the States. Using the FY 1987 appropriated EMA funds level, State population figures, and prior year allocations, FEMA studied various iterations that spread the 10 percent from the EMA population factor in various ways over the other formula factors, which are: The amount of EMA funds allocated in the previous year (50 percent), the population of the State (33 percent), and the reserve (2 percent). In each of the sample computations, except for the one that is proposed in this rule, the variances as to the amount of funds that would be provided by the formula were judged to be disruptive to the program. While all States would be affected by the change in the formula, most of the changes would be less than 3 percent, plus or minus, of the total allocated to a State by the formula. Listed below are the initial FY 1987 EMA State allocations (excluding distribution of the 2 percent reserve and the territories) compared with the allocations based on the proposed formula factors an the same appropriation of $54,123,000 (also excluding the 2 percent reserve distribution and the territories whose allocations would remain the same) along with the percentage of increase or decrease. As Federal funding to which these regulations will be applicable is less than $100,000,000 annually, the regulation is not considered to be a major regulation requiring a regulatory analysis under Executive Order 12291. The regulation is also applicable to States to which the funding is made available and, thus, is not subject to the requirements of the Regulatory Flexibility Act which is concerned with small entities. No regulatory flexibility

analysis will be prepared. This amendment does not call for any collection of information requiring clearance under section 3504(h) of the Paperwork Reduction Act and, as the regulation is administrative in character, there is no requirement for environmental clearance.

State	FEMA region	Proposed formula allocations	Initial FY 1987 allocation	Dollar difference	Percent change
Allocation factors		$53,040,540	$53,040,540	$0	0
Connecticut	01	798,262	770,341	27,921	3.62
Maine	01	508,045	513,336	(5,291)	−1.03
Massachusetts	01	1,141,848	1,112,591	29,257	2.63
New Hampshire	01	339,517	355,549	43,968	12.37
Rhode Island	01	381,655	343,884	37,771	10.98
Vermont	01	315,209	238,313	76,986	32.30
New Jersey	02	1,445,315	1,467,951	(22,636)	−1.54
New York	02	3,489,924	3,510,621	(20,697)	−.59
Puerto Rico	02	859,589	884,554	(24,964)	−2.82
Delaware	03	409,957	429,817	(19,859)	−4.62
District of Columbia	03	424,435	449,399	(24,964	−5.56
Maryland	03	1,005,161	1,030,125	(24,964)	−2.42
Pennsylvania	03	2,133,328	2,121,723	11,605	.55
Virginia	03	1,166,413	1,158,602	7,811	.67
West Virginia	03	545,908	524,788	21,121	4.02
Alabama	04	982,994	1,004,864	(21,871)	−2.18
Florida	04	1,985,316	2,007,407	(22,090)	−1.10
Georgia	04	1,271,963	1,269,278	2,684	.21
Kentucky	04	864,954	865,876	(923)	−.11
Mississippi	04	703,193	687,640	15,555	2.26
North Carolina	04	1,283,929	1,296,867	(12,938)	−1.00
South Carolina	04	842,296	865,683	(23,387)	−2.70
Tennessee	04	1,028,233	1,023,125	5,108	.50
Illinois	05	2,006,871	2,003,964	2,907	.15
Indiana	05	1,113,789	1,122,091	(8,302)	−.74
Michigan	05	1,718,506	1,725,524	(7,018)	−.41
Minnesota	05	1,246,693	1,266,088	(19,395)	−1.53
Ohio	05	1,812,382	1,815,656	(3,275)	−.18
Wisconsin	05	1,107,676	1,108,101	(425)	−.04
Arkansas	06	688,186	702,859	(14,673)	−2.09
Louisiana	06	994,402	991,031	3,372	.34
New Mexico	06	393,349	379,562	13,787	3.63
Oklahoma	06	798,697	788,321	10,375	1.32
Texas	06	2,565,485	2,524,728	40,756	1.61
Iowa	07	707,036	692,491	14,545	2.10
Kansas	07	692,265	697,948	(5,684)	−.81
Missouri	07	1,029,730	1,010,365	19,365	1.92
Nebraska	07	530,316	505,957	24,359	4.81
Colorado	08	774,234	773,490	744	.10
Montana	08	462,899	475,295	(12,395)	−2.61
North Dakota	08	423,198	448,162	(24,964)	−5.57
South Dakota	08	405,193	397,374	7,818	1.97
Utah	08	556,354	561,221	(4,867)	−.87
Wyoming	08	402,353	422,206	(19,854)	−4.70
Arizona	09	793,709	814,357	(20,648)	−2.54
California	09	4,379,151	4,373,834	5,317	.12
Hawaii	09	510,524	535,489	(24,964)	−4.66
Nevada	09	423,709	443,784	(20,075)	−4.52
Alaska	10	377,666	353,451	24,216	6.85
Idaho	10	420,652	442,536	(21,884)	−4.95
Oregon	10	715,734	721,482	(5,748)	−.80
Washington	10	1,002,246	1,010,839	(8,593)	−.85

List of Subjects in 44 CFR Part 302

Civil defense, Grants programs, National defense.

For the reasons set forth in the premamble it is proposed to amend Chapter I, Subchapter E, Part 302, Code of Federal Regulations as follows:

PART 302—[AMENDED]

1. The authority citation of Part 302 continues to read as follows:

Authority: 50 U.S.C. App. 2251 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

2. In § 302.5, paragraphs (b)(3) and (b)(4) are removed and paragraph (b)(5) is redesignated as paragraph (b)(4).

3. A new paragraph (b)(3) is added:

§ 302.5 Allocations and reallocations.

(b) * * *

(3) Fifteen (15) percent will be divided equally among the 50 States, the District of Columbia, and Puerto Rico, in fulfillment of the statutory requirement to give due regard to "relative state of development of civil defense readiness of the State" (State level).

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 87-19520 Filed 8-25-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-324, RM-5750 and RM-5865]

Radio Broadcasting Services; Eupora and Columbus, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two petitions for rule making. The petitions are mutually

exclusive. Tri County Broadcasting Company requests the substitution of FM Channel 241C2 for Channel 269A at Eupora, Mississippi and modification of the license for Station WEXA(FM), Channel 269A to reflect Channel 241C2. A site restriction 18.1 kilometers east of the community is required to accommodate the substitution. Radio Columbus, Inc. proposes the substitution of Channel 241C2 for 276A at Columbus, Mississippi and modification of its license for Station WMBC, to reflect the higher class channel. A site restriction 23.5 kilometers west of the community is necessary for this allotment. This proposal could provide a first wide coverage area station to Eupora or a second such service to Columbus.

DATES: Comments must be filed on or before October 13, 1987, and reply comments on or before October 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Olvie E. Sisk, Partner, Tri County Broadcasting Company, Sisk Engineering, Inc., P.O. Box 549, Fulton, Mississippi 38843

Marvin Rosenberg, Frank R. Jazzo, Flectcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036 (Counsel For Radio Columbus, Inc.)

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–324, adopted August 3, 1987, and released August 20, 1987. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington. DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–19501 Filed 8–25–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-308, RM-5628]

Radio Broadcasting Services; Socorro, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Haynes Communications Company seeking the substitution of Channel 225C1 for Channel 224A at Socorro, New Mexico, and the modification of its license for Station KHBN–FM to specify the higher powered channel. Channel 225C1 can be allocated to Socorro in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. In accordance with § 1.420(g) of the Commission's Rules, The petitioner will not be required to demonstrate the availability of an additional equivalent channel and the Commission will not accept competing expressions of interest in use of the higher powered channel at Socorro. Mexican concurrence in the allotment is required since Socorro is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

DATES: Comments must be filed on or before October 13, 1987, and reply comments on or before October 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Carl Haynes, President, Haynes Communications Company, P.O. Box 31235, Jackson, MS 39206.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530,

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–308, adopted July 27, 1987, and released August 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–19502 Filed 8–25–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-625; RM-4739]

Television Broadcasting Services; North Las Vegas, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document denies a petition for rule making filed by James D. Merkel proposing the allotment of VHF television Channel 4 to North Las Vegas, Nevada. This allotment would have necessitated the substitution of VHF Channel 2 in lieu of Channel 3 in las Vegas, Nevada, the substitution of VHF Channel 7 in lieu of Channel 4 in Cedar City, Utah, and deletion of VHF Channel 2 in Goldfield, Nevada. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 84–625, adopted July 28, 1987, and released August 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets

Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau

[FR Doc. 87–19500 Filed 8–25–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Experimental Population Status for an Introduced Population of Colorado Squawfish

AGENCY: Fish and Wilflife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to introduce Colorado Squawfish (*Ptychocheilus lucius*) into the Lower Colorado River in Arizona and to determine the population to be "nonessential experimental" according to section 10(j) of the Endangered Species Act of 1973, as amended. Section 10(j) of that Act authorizes experimental populations of endangered species to be treated as if they were threatened. The Service has much more discretion in devising a management program for threatened species than for endangered species, especially on matters regarding regulated taking. Accordingly, a special rule to allow take in accordance with State law is proposed for this nonessential experimental population. In the past, Colorado squawfish were more widespread in the State of Arizona, occurring in several river drainages. This action is being taken in an effort to establish an additional population of Colorado squawfish within the species' historic range. The Service is requesting comments and information pertaining to this proposed reclassification.

DATES: Comments from all interested parties must be received by October 26, 1987. Public hearing requests must be received by October 13, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Gerald Burton, Endangered Species Biologist, Albuquerque, New Mexico (see **"ADDRESSES"** above) (505/766–30972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

Among the significant changes made by the 1982 Amendments to the Endangered Species Act (Pub. L. 97–304) was the creation of a new section 10(j), which established procedures for the designation of specific populations of listed species as "experimental populations." Regulations implementing the experimental population designation were published on August 27, 1984 (49 FR 33885). Previous to the 1982 Amendments, the Service was permitted to translocate populations into unoccupied portions of a listed species' historic range if such an action would foster the conservation and recovery of the species. Local opposition to translocation efforts severely handicapped the effectiveness of translocation as a management tool. This opposition stemmed from concerns regarding the restrictions and prohibitions on private and Federal activities affecting endangered species under sections 7 and 9 of the Act. Under section 10(j) of the 1982 Amendments, past and future translocated populations established outside the current range, but within the species' historic range, may now be designated at the discretion of the Service as experimental. Such a designation will increase the Service's flexibility to manage these translocated populations because the Amendments provide that experimental populations of species that are otherwise listed as endangered may be treated as threatened. The Service has much more discretion in devising management programs for threatened species than for endangered species, especially on matters regarding regulated takings. Moreover, populations found to be nonessential to the continued existence of the species in question would not be afforded protection under section 7(a)(2) of the Act, which requires Federal agencies to refrain from activities that are likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. The individual organisms comprising the designated experimental population will be removed from an existing source or donor population only after it has been determined that their removal itself will not violate section 7(a)(2) of the Endangered Species Act and complies with the permit requirements in section 10(a)(1)(A) and (d). The Service proposes a nonessential experimental population of the Colorado squawfish, currently listed as endangered.

The Colorado squawfish was once widespread, occupying the entire Colorado River system including the Gila River system in Arizona. Squawfish were also present in tributaries of the Gila River, including the Salt, Verde, and San Pedro Rivers and likely several other rivers. The last specimen known from the Arizona waters was collected in the early 1950's. Extensive sampling since the 1950's has failed to locate specimens anywhere within the State of Arizona. The reasons for the decline of the Colorado Squawfish are dewatering, dams, and competition with exotic species of fish.

Recovery actions, detailed in the Colorado Squawfish Recovery Plan, include the reintroduction of the species into selected streams within the historic habitat. Securing several, isolated populations ensures protection from extinction due to catastrophic destruction of a single population. Recent reintroduction efforts have included stocking of captive reared Colorado squawfish in the Salt and Verde Rivers in Arizona. Because potentially good habitat remains in the Lower Colorado River, the establishment of an additional population in the Lower Colorado River also seems likely. This additional population, if successfully established could contribute to the recovery of the species. The stock of Colorado squawfish to be used in this reintroduction will come from an existing captive-bred population and will not result in the removal of any individuals from the wild population.

Status of Reintroduced Populations

The reintroduced population of Colorado squawfish is proposed as a nonessential experimental population according to the provisions of the 1982 Amendments to the Endangered

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Species Act. Nonessential experimental population status for the introduced Colorado squawfish means that they would be subject only to provisions of section 7(a) (1) and (4) of the Endangered Species Act which authorizes Federal agencies to establish programs furthering species conservation and which require Federal agencies to informally confer with the Secretary regarding actions that are likely to jeopardize the continued existence of the species. The restrictions on Federal agency activity in section 7(a)(2) would not apply (with the exception of activities on National Wildlife Refuge and National Park lands). Justification for the nonessential status for the proposed introduced experimental population of Colorado squawfish is as follows. Viable, native populations of this species remain in portions of the Green, Colorado, and Yampa Rivers in the upper Colorado River basin. In addition, attempts are being made to establish other experimental populations in the Salt and Verde Rivers. Sufficient brood stock is available at Dexter National Fish Hatchery, where successful techniques for propagating and rearing this species have been developed and are in progress. Creation of the proposed experimental population from captive breeding stock would not affect the survivorship of the remaining native populations.

Location of Reintroduced Populations

The site for this proposed reintroduction of Colorado squawfish is the Lower Colorado River, upstream from the Imperial Dam to Parker Dam in Yuma and La Paz Counties, Arizona, and in Imperial, Riverside and San Bernardino Counties, California. The reintroduction site is within the historic range of the species, and is isolated from all other populations of Colorado squawfish. This proposed population is 500 miles from the nearest native population, which is in the upper reaches of Lake Powell. The closest designated experimental population in the Verde River near Perkinsville, Arizona, is located about 300 river miles distant.

Management

The Service and Arizona Department of Game and Fish plan to initiate this reintroduction as soon as possible. Present plans call for annual stocking over the next 10 years. The first stocking would consist of as many as 100,000 individuals. All of the fish will come from hatchery stock spawned and reared at Dexter National Fish Hatchery, Dexter, New Mexico. Fish from Dexter NFH will be reared to fingerling size by the State of Arizona at Page Springs State Fish Hatchery, Cornville, Arizona.

Condition of the reintroduced populations will be checked annually. Population expansion or reduction, reproductive success, and the general health condition of the fish will be determined by monitoring surveys. This proposed experimental population of squawfish will be treated as threatened species under all provisions of the Act other than section 7(a)(2). All of the prohibitions referred to in 50 CFR 17.31 would apply to these populations, except that individual fishes of these populations may be taken in accordance with applicable State law.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or other interested parties concerning any aspect of this proposal are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to Colorado squawfish in the Lower Colorado River;

(2) Information of environmental impacts that would result from the rule; and

(3) Possible alternatives to this proposed rule.

Final promulgation of the regulation on Colorado squawfish will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

National Environmental Policy Act

A draft Environmental Assessment under NEPA has been prepared and is available to the public at the Endangered Species Office, U.S. Fish and Wildlife Service, at the address listed above. This assessment will form the basis for a decision, to be made prior to the publication of a final rule, as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500 through 1508).

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The U.S. Fish and Wildlife Service has determined that this is not a major rule as defined by Executive Order 12291; that the rule would not have a significant econoimic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). The introduction site occurs within the high recreation use area of the Lower Colorado River. However, this listing is not expected to have any impact on recreational uses and is notably compatible with existing uses. The rule as proposed does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Author

The primary author of this proposed rule is Sue Rutman, Endangered Species Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 98–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by revising the entry "Squawfish, Colorado" under FISHES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Squawfish, Colorado	*Ptychocheilus lucius*	USA (AZ,CA,CO,NM,NV,UT,WY), Mexico.	Entire, except where listed as experimental populations below	E	1,193	NA	NA
Do	do	do	Salt and Verde Rivers drainages, AZ; and lower Colorado River from Imperial Dam to Parker Dam, AZ, CA	XN	193	NA	17.84(b) 17.84(f)

3. Add the following special rule to Part 17 by adding a new § 17.84(f) as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(f) Colorado squawfish (*Ptychocheilus lucius*).

(1) The Colorado squawfish population identified in paragraph (f)(6) below is a nonessential experimental population.

(2) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act, or

(ii) Incidential to State permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat, or

(iii) In accordance with State conservation laws and regulations during open season.

(3) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(4) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulation.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (f) (2) through (4) of this section.

(6) The proposed nonessential experimental population will be placed in the Lower Colorado River, upstream from Imperial Dam to Parker Dam in Yuma and La Paz Counties, Arizona, and in Imperial, Riverside, and San Bernardino Counties, California.

Dated: July 9, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-19519 Filed 8-25-87; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal to Determine Endangered Status for the Shortnose Sucker and the Lost River Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for the shortnose sucker (*Chasmistes brevirostris*) and Lost River sucker (*Deltistes luxatus*), fishes restricted to the Klamath Basin of south-central Oregon and north-central California. Dams, draining of marshes, and diversion of rivers have reduced the range and numbers of both species by more than 95 percent. This action would implement the protection of the Endangered Species Act of 1973 for these two fish. The Service seeks relevant data and comments from interested parties on this proposal.

DATES: Comments from all interested parties must be received by October 26, 1987. Public hearing requests must be received by October 13, 1987.

ADDRESSES: Comments, hearing requests, and materials concerning this proposal should be sent to the Regional Director (FWE–SE), U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

Cope (1879) originally described the shortnose sucker (*Chasmistes brevirostris*) and Lost River sucker (*Deltistes luxatus*) from Upper Klamath Lake, Oregon. Later during the 1800's, Gilbert (1898) and Evermann and Meek (1898) described two other species of *Chasmistes* from the same lake. A careful review of all available specimens, however, documented that *brevirostris* is the only valid species of *Chasmistes* from Upper Klamath Lake and that the other two "species" were merely sex or condition variants of *brevirostris* (Miller and Smith 1981).

The Lost River sucker was originally placed in the genus *Chasmistes* by Cope (1879). *Deltistes*, monotypic genus, was erected for the Lost River sucker in 1896 based on the delta-shaped gill rakers (Seale 1896). In addition to the deltoid, short gill rakers, the Lost River sucker is characterized by subterminal mouth, small hump on the snout (at least in preserved specimens), and large size of adults (ca. 10 lbs.). The primary morphological characters that distinguish the shortnose sucker from other species of *Chasmistes* include the presence of a terminal, oblique mouth with weak or no papillae on the lips. Scales are small, with 65 to 79 in the lateral line and 21 to 25 around the caudal peduncle (Miller and Smith 1981).

The Upper Klamath Lake and its tributaries are now the primary refuge for both the Lost River and Shortnose suckers. Remnant or highly hybridized (hybrids are not protected under the Endangered Species Act per 1983 Solicitor's Opinion) populations of these two species occur in the Lost River system and other nearby areas.

In addition to Upper Klamath Lake and its tributary streams, shortnose suckers and Lost River suckers have been collected from Copco Reservoir, California (Coots 1965, Moyle 1976), Boyle Reservoir, Oregon (Jeff S. Ziller, pers. comm.), and Clear Lake Reservoir, California (Coots 1965, Koch *et al.* 1975). Additionally, shortnose suckers have been collected from Lake of the Woods, Oregon (Andreasen 1975a). The Lost River sucker also was known from

Sheepy Lake, Lower Klamath Lake and Tule Lake in California (Coots 1965).

The population of shortnose suckers in Copco Reservoir may have resulted from drift of individuals downstream in the Klamath River from Upper Klamath Lake. Specimens of shortnose suckers collected from Copco Reservoir in 1962, 1978 and 1979 were introgressed with the Klamath smallscale sucker (Catostomus rimiculus) (Miller and Smith 1981). Nonetheless, Miller and Smith (1981) regarded the Copco Reservoir population as consisting of "relatively intact gene pool of *Chasmistes brevirostris.*" A few shortnose suckers have recently been collected from Boyle Reservoir, located along the Klamath River between Upper Klamath Lake and Copco Reservoir. The status of this population, which appears quite small, is uncertain. The remaining populations of shortnose suckers have not fared as well. The Lake of the Woods population was lost in 1952 during a fish eradication program aimed at removing carp and perch from the late (Andreasen 1975a). The Clear Lake Reservoir population of shortnose suckers shows evidence of extensive hybridization and repeated backcrossing with the Klamath largescale sucker (*Catostomus snyderi*) (Williams *et al.*, 1985). Unlike the population of suckers in Copco Reservoir where debate exists concerning the extent of hybridization, the Clear Lake Reservoir population is not considered to be true-breeding or to consist of a relatively intact gene pool.

Like the shortnose sucker, the population of Lost River suckers in Copco Reservoir may have resulted from downstream drift of individuals from Upper Klamath Lake. The species also may exist just downstream from Copco in Iron Gate Reservoir (California Department of Fish and Game 1980). A few individuals have been collected from Boyle Reservoir in the Klamath River between Upper Klamath Lake and Copco Reservoir (Jeff S. Ziller, pers. comm.). Populations of Lost River suckers in Sheepy Lake, Lower Klamath Lake and Tule Lake were lost after 1924, when the lakes were drained for farming (Moyle 1976). Prior to 1924, large numbers of Lost River suckers were taken from Sheepy Creek, the spawning stream tributary to Sheepy Lake, for human consumption and livestock feed (Coots 1965). The Clear Lake Reservoir population of Lost River suckers is the last remnant of the species in the Lost River system. The population in Clear Lake Reservoir is small and suffers from large numbers of exotic species and lack of sufficient spawning area (Koch *et al.* 1975).

The primary factors in the widespread decline of the shortnose sucker and Lost River suckers have included damming of rivers, instream flow diversion, draining of marshes and other forms of water manipulation. Dams have been particularly destructive in that they have blocked spawning runs of the fish and facilitated hybridization with other types of suckers in the dam's tailwaters. Although the construction of large reservoirs may provide suitable feeding and resting habitat for these lacustrine species, the reservoirs often lack large inflowing rivers that are necessary for successful spawning. Such in the case in Clear Lake Reservoir, for example, where a small intermittent creek is the only habitat that remains for spawning attempts.

Survey work performed in 1984–1986 by the Oregon Department of Fish and Wildlife, The Klamath Tribe, and the Service have shown drastic declines in the largest remaining population of both species in Upper Klamath Lake. During the 1984 survey, the population of shortnose suckers moving out of Upper Klamath Lake in the spawning run was estimated at 2,650 individuals. The 1985 and 1986 surveys found too few shortnose suckers to accurately estimate the population size. The catch per unit effort of shortnose suckers declined 34 percent between the 1984 and 1985 spawning runs. In 1986, catch per effort statistics yielded 74 percent decrease in the spawning run when compared to 1985. Although the population levels of the Lost River sucker have remained substantially above those critically low levels observed for the shortnose, the overall decline has been equally precipitous. In 1984, a population of 23,123 Lost River suckers was estimated in the Upper Klamath Lake spawning run. By the 1985 spawning run, the population had declined to 11,861 (Bienz 1986). Although the shortnose sucker and Lost River sucker are long-lived (up to at least 43 years in the latter species), the drastic decline can be explained by lack of successful spawning. No significant recruitment of young into the populations has occurred for approximately 18 years (Scoppettone 1986).

The Service included both the Lost River and shortnose suckers in category 2 of its December 30, 1982, comprehensive notice of review (47 FR 58954) of vertebrate species under consideration for listing as endangered or threatened. Category 2 includes those species for which information indicates that proposing to list as endangered or threatened is possibly appropriate but for which additional data are needed. These two suckers were maintained in the September 18, 1985, update (50 FR 37957) of the 1982 notice. Additional information that has since been provided to the Service indicates that listing is now appropriate.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the shortnose sucker (*Casmistes brevirostris)* and Lost River sucker (*Deltistes luxatus)* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Initial biological surveys of the Klamath Basin indicated the presence of large populations of fishes, and suckers in particular (Cope 1879, Gilbert 1898). Spawning runs of suckers from Upper Klamath Lake were large enough to provide a major food source for Indians and local settlers. The shortnose sucker and Lost River sucker were staples in the diet of the Klamath Indians for thousands of years (Charles E. Kimbol, pers. comm.). Even through the 1960's and 1970's, runs of suckers moving from Upper Klamath Lake up into the Williamson and Sprague Rivers were great enough to provide a major sport fishery that annually attracted many (John Fortune, pers. comm.). The primary species was the larger Lost River sucker, locally known as mullet, but significant numbers of shortnose suckers also occurred in the runs. During the past three years, however, the Klamath Tribe and local biologists have been so alarmed by the population decline of both suckers that the Oregon Department of Fish and Wildlife has recommended a closed season for the 1987 sport fishery.

Causes of the declines are varied and not fully understood. Clearly, there has been a drastic reduction in spawning success. Recent data show that neither species of sucker has successfully spawned for approximately 18 years (Scoppettone 1986). Most of the spawning habitat for the shortnose sucker and Lost River sucker has been lost. The primary factor may have been

the construction of the Sprague River Dam at Chiloquin, Oregon. The dam is located just upstream of the junction of the Sprague and Williamson Rivers and probably eliminated more than 95 percent of the historical spawning habitat. Neither the shortnose sucker or Lost River sucker spawn in the Williamson River upstream of its confluence with the Sprague. Fish ladders have been constructed at various times on the Sprague River Dam but their effectiveness in facilitating movement of suckers around the structure has been minimal to non-existent because, although these suckers are strong-swimmers, their leaping ability is greatly limited. Any successfully-spawned larvae may be diverted into agricultural fields by unscreened irrigation pumps and diversions. Minor secondary spawning occurred in the larger springs that flow from along the shores of Upper Klamath Lake. However, the usefulness of these spawning areas was lost when a railroad was constructed along the east shore of the lake and riprap was used to fill in the springs. Further problems may have been caused by decreases in water quality that result from timber harvest, removal of riparian vegetation and livestock grazing.

B. Overutilization For Commercial, Recreational, Scientific, or Educational Purposes

In past years, Oregon State law has allowed a snag fishery for the Lost River sucker. The shortnose sucker is incidentally taken each spring during its spawning runs by sport fishermen snagging the larger Lost River sucker. Approximately 1.3 percent of the shortnose suckers in the spawning run were taken in the 1984 sport fishing season (Bienz 1986). The take of Lost River suckers was greater, with a 5 percent exploitation rate in 1984 and 5.3 percent in 1985 (Bienz 1986). With normal population sizes, some recreational take of the shortnose sucker and Lost River sucker is acceptable and even may be beneficial because creel censuses provide valuable life history data on the species. Under the greatly reduced population levels now existing, however, any recreational take is detrimental. No commercial take is known. There is no evidence to suggest that collection for scientific or educational factors is significant. It should be noted that nearly all scientific data have been obtained from fish collected in natural die-offs (see Factor E, below), or during sport fishing.

C. Disease or Predation

Exotic fishes have been stocked into the Klamath Basin and may have played some role in the decline of the shortnose sucker and Lost River sucker. Such exotic species can serve as sources of parasites and/or diseases.

D. The Inadequacy of Existing Regulatory Mechanisms

Oregon state law requires collection permits to obtain specimens of either species for scientific or educational purposes. Although Oregon state law has allowed recreational take of these species in the past, the Oregon Department of Fish and Wildlife has proposed a closed season to the Fish and Game Commission. Regardless, sufficient State laws do not exist to protect the habitat. California State law lists the shortnose sucker and Lost River sucker as endangered. However, the only potentially viable California populations, in Copco Reservoir, are located near the border and probably utilize Oregon waters for spawning.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Hybridization with the Klamath largescale and Klamath smallscale suckers has been recognized as a problem in maintaining the genetic purity of shortnose sucker populations (Miller and Smith 1981, Williams *et al.* 1985). Similarly, hybridization between the Klamath largescale sucker and Lost River sucker has been reported in Upper Klamath Lake (Andreasen 1975a) Although hybridization occurs naturally between many species of suckers (family Catostomidae), increased incidence of hybridization occurs if one of the parental species experience a major population decline, as in the case of the shortnose sucker. Further hybridization is facilitated by dams that block spawning runs and force individuals of closely related species to spawn in mass in the dam's tailwaters. Spawning of the shortnose, Lost River and Klamath largescale sucker occurs below the Sprague River Dam at chiloquin.

An additional source of mortality is late-summer die-offs in Upper Klamath Lake. A major die-off of Lost River shortnose suckers was observed during 1986 that resulted from blue-green algal blooms (genus *Aphanizomenon*) (Scoppettone 1986). Sucker die-offs do not occur every year, but may occur in dry or particularly hot years. Pollution of the lake and decrease summer inflows, perhaps caused by diversion of water the agricultural purposes, aggravate this phenomenon.

The presence of exotics, such as fathead minnows (*Pimephales promelas*) and yellow perch (*Perca flavescens*), may inhibit recovery. Fathead minnows were first documented in the Klamath River system during 1974 and have now spread into Upper Klamath Lake, where they have become abundant (Andreasen 1975b; Jeff S. Ziller, pers. comm.). The minnows may compete with the native suckers for food. Perhaps in response to the increased number of fathead minnows, the yellow perch population in Upper Klamath Lake has increased recently (Jeff S. Ziller, pers. comm.). The perch are potential predators on young suckers. Exotic fishes in the Lost River system include bullheads (*Ictalurus* spp.), largemouth bass (*Micropterus salmoides*) crappie (*Pomoxis* sp.) green sunfish (*Lepomis cyanellus*), rainbow trout (*Salmo gairdneri*), and Sacramento perch (*Archoplites interruptus*) (Koch *et al.* 1975; Jack E. Williams, pers. obs.).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list the shortnose sucker and Lost River sucker as endangered. This action is warranted because of the reduced distribution and numbers of these species. Where the shortnose sucker and Lost River sucker remain, the populations are declining rapidly with no substantial recruitment of young into the populations for the past 18 years. In addition to stopping any additional losses, extensive research and initiation of recovery actions are necessary to prevent extinction within the immediate future.

Critical Habitat

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened.

The Service finds that designation of critical habitat for the shortnose sucker and Lost River sucker is not prudent at this time. As noted in factor "A" of the above "Summary of Factors Affecting the Species", much of the historic spawning habitat is not now accessible to either species because of a dam blocking the spawning migrations from Upper Klamath Lake. Therefore, determining the boundaries of areas to be included as critical habitat is difficult. Further, agency personnel are well-aware of the presence of both species through the Klamath Basin

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Sucker Interagency Working Group. Little additional benefits of notification of the species presence would be achieved through critical habitat designation. Because of these factors, the Service finds not net benefit from proposing critical habitat at this time. If spawning grounds are more clearly identified, critical habitat may be proposed at such time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part below.

Section 7(a) of the Act, as amended requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal actions that may affect the shortnose sucker and Lost River sucker are issuances of licenses for dam projects by the Federal Energy Regulatory Commission; grazing or timber harvesting practices of the Forest Service along Upper Klamath Lake and the Sprague River; and agreements, leases or other arrangements between The Klamath Tribe and local irrigation interests that would result in the diversion of water from the Williamson or Sprague Rivers. Permitting activities of the Army Crops of Engineers pursuant to section 404 of the Clean Water Act or section 10 of the River and Harbor Act may be affected, although no known permits are pending in the subject area.

Recovery activities that may be initiated include: Maintain or improve spawning habitat in streams, reduce nutrient inflow into lake habitat to improve water quality, reduce algal blooms and increase level of dissolved oxygen, obtain pure stock for captive propagation and reintroduction, and conduct research to determine what would facilitate the successful movement of these fish around existing and planned dams since passage of fish over the existing fish ladders is questionable.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or the lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species;

(4) Current or planned activities in the subject area and their possible impacts on these species; and

Final promulgation of the regulations on these species will take into consideration the comments any and additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Request must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Regional Director (FWE–SE), U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Dr. Jack E. Williams, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (telephone 916/978–4866; FTS 460–4866).

List of Subjects in 50 CFR Part 17

Endangerd and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884, Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h), by adding the following, in alphabetical order under "Fishes", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•		
Sucker, Lost River	*Deltistes luxatus*	U.S.A. (OR, CA)	Entire	E		N/A	N/A
•	•	•	•	•	•		
Sucker, Shortnose	*Chasmistes brevirostris*	U.S.A. (OR, CA)	Entire	E		N/A	N/A

Dated: August 13, 1987.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–19589 Filed 8–25–87; 8:45 am]

BILLING CODE 4310–55–M

BEST COPY AVAILABLE

Notices

Federal Register
Vol. 52, No. 165
Wednesday, August 26, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 21, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

EXTENSION

• Agricultural Stabilization and Conservation Service
Summary of Buyers Correction Accounts
MQ-71
Weekly for six week period only
Small businesses or organizations; 3,012 responses; 1,506 hours; not applicable under 3504(h)
Sarah Matthews, (202) 475–5012

• Agricultural Stabilization and Conservation Service
Daily Warehouse Sales Summary
MQ-80, MQ-82, and MQ-72–2
On occasion
Businesses or other for-profit; 41,045 responses; 5,238 hours; not applicable under 3504(h)
Sarah J. Matthews, (202) 475–5012

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 87–19582 Filed 8–25–87; 8:45 am]
BILLING CODE 3410–1–M

Forest Service

Intent To Supplement the Environmental Impact Statement for the San Juan National Forest Land and Resource Management Plan; Archuleta, Conejos, Dolores, Hinsdale, La Plata, Mineral, Montezuma, San Juan, San Miguel, and Rio Grande Counties, Colorado

The Department of Agriculture, Forest Service, will prepare a supplement to the Final Environmental Impact Statement (EIS) and will amend the San Juan Forest Land and Resource Management Plan (the Forest Plan). The Forest Plan was approved September 29, 1983. The Notice of Availability for the EIS, Forest Plan and Record of Decision, appeared in the October 14, 1983, **Federal Register**. A reanalysis of the Forest Plan was required by Deputy Assistant Secretary of Agriculture, Douglas W. MacCleery's decision of July 31, 1985, related to a review of the Chief's decision on an appeal of the EIS and Plan by the Natural Resources Defense Council.

There is no determination as yet as to what specific changes will be made to the Forest Plan. The Forest Service has made a preliminary determination that changes to management of the timber resource will occur, requiring amendment(s) to the Forest Plan [36 CFR 219.10(f)]. This determination is based on results of its reanalysis efforts to date. The Forest Service will subsequently make a final determination of significance in a new Record of Decision.

The analysis will concentrate on the following issue areas which initiated the need for a change:

1. USDA decision of July 31, 1985;
2. Below cost timber sales;
3. Timber demand; and
4. Aspen management.

The issues focus on demand for wood fiber on the Forest, "below-cost" timber sales, and the main points of the MacCleery decision. These six main points deal with economic implications of the timber program, the timber program's contribution to net public benefits, timber cost reduction—revenue enhancement studies, timber demand, timberland suitability, and "below-cost" timber sales.

The Proposed Action (Forest Plan) and alternatives are described in Chapter II of the Final Environmental Impact Statement prepared for the Forest Plan (Chapter II, pages II–15 through II–38). A discussion of the issues addressed in the Final EIS is on pages I–10 through I–14. Public comment on the issues and the Forest Service responses appear in Chapter VI of the Final EIS.

As part of the reanalysis effort, the original alternatives will be redesigned to respond to the issues described above. Additional alternatives may be developed. Federal, State, and local agencies, individuals, and organizations are invited to submit comments on the issues.

The Forest Service is following the requirements in 36 CFR Part 219 for amending the Forest Plan.

Gary E. Cargill, Regional Forester, Rocky Mountain Region, is the responsible official.

The draft supplement to the Environmental Impact Statement should be available for public review and comment by April 1988. The final supplement to the Environmental Impact Statement is scheduled to be completed by September 1988.

Written comments and suggestions concerning the issues and their analysis should be sent to John R. Kirkpatrick, Forest Supervisor, San Juan National Forest, 701 Camino del Rio, Durango, Colorado 81301, by September 30, 1987.

Date: August 17, 1987.
S.H. Hanks,
Deputy Regional Forester.
[FR Doc. 87-19505 Filed 8-25-87; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Intent To Prepare an Environmental Impact Statement; Whites Creek Watershed, MS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Whites Creek Watershed, Webster County, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, 1321 Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601-965-5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. However, because the plan requires Congressional Committee approval, L. Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for flood prevention and providing for future municipal and industrial water storage. Alternatives under consideration to reach these objectives include a multiple purpose structure.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consulation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Further information on the proposed action may be obtained from L. Pete Heard, State Conservationist, at the above address.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consulation with state and local officials)

Dated: August 17, 1987.
L. Pete Heard,
State Conservationist.
[FR Doc. 87-19512 Filed 8-25-87; 8:45 am]
BILLING CODE 3410-16-M

AVIATION SAFETY COMMISSION

Meeting; Cancelled

Previous announcement: 52 FR 31798, August 24, 1987. Meeting 10 a.m. to 1 p.m., August 28, 1987.

Change in meeting: Cancelled.

For further information contact: Richard K. Pemberton, Administrative Officer, Aviation Safety Commission, Premier Building, Room 1008, 1725 I Street NW., Washington, DC 20006, (202) 634-4677 or (202) 634-4860.

John M. Albertine,
Chairman.
[FR Doc. 87-19677 Filed 8-25-87; 8:45 am]
BILLING CODE 6820-AG-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency
Title: Memorandum of Understanding for City/State Governments
Form Number: Agency—NA; OMB—0640—0012
Type of Request: Extension of a currently approved collection
Burden: 150 respondents; 150 reporting hours
Needs and Uses: The Memorandum of Understanding (MOU) identifies opportunities that State and local governements will make available to minority firms. The MOU program contributes directly to the success of the President's Volunteer Assistance Programs.
Affected Public: State or local governments
Frequency: Annually
Respondents Obligation: Voluntary
OMB Desk Officer: Donald Arbuckle, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Consititution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: August 19, 1987.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 87-19518 Filed 8-25-87; 8:45 am]
BILLING CODE 3510-CW-M

International Trade Administration

[A-122-701]

Potassium Chloride From Canada; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that potassium chloride from Canada is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by November 3, 1987.

EFFECTIVE DATE: August 26, 1987.

FOR FURTHER INFORMATION CONTACT: Michael Ready (202 377-2613) or Mary S. Clapp (202 377-1769) Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that potassium chloride from Canada is being or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We made fair value comparisons on sales of the class or kind of merchandise to the United States during the period of investigation, September 1, 1986, through

February 28, 1987. The margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

On February 10, 1987, we received a petition in proper form filed by Lundberg Industries, Ltd. and New Mexico Potash Corporation on behalf of the U.S. industry producing potassium chloride. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated such an investigation on March 2, 1987 (52 FR 6337, March 1987) and notified the ITC of our action.

On March 16, 1987, questionnaires were presented to counsel for five Canadian producers and exporters of potassium chloride. An extension of time in which to respond was granted to all respondents. We received responses from the Potash Company of America (PCA), Potash Corporation of Saskatchewan (PCS), Central Canada Potash (CCP), PPG Industries, Inc./ Kalium Chemicals (Kalium), and International Minerals and Chemical Corporation (IMC) from May 1, 1987, to May 3, 1987.

We sent deficiency letters to all five respondents during the period of May 10 through 16, 1987.

On June 26, 1987, petitioners requested a postponement of the preliminary determination. On July 1, 1987, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to August 7, 1987 (52 FR 25897, July 9, 1987).

On July 21, 1987, in accordance with the above-referenced section of the Act, we further postponed the preliminary determination to August 20, 1987 (52 FR 28035, July 27, 1987), at the request of the petitioners.

Additional deficiency letters sere sent to respondents during July and August. Responses to all deficiency letters were received by the Department prior to this determination.

Scope of Investigation

The product covered by this investigation is potassium chloride, otherwise known as muriate of potash. The product is currently classified in the *Tariff Schedules of the United States* (TSUS) under item number 380.50 and currently classifiable under Harmonized System (HS) item number 3104.20.00.

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this harmonized system by January 1, 1988. In view of this, we will be providing both the appropriate TSUS item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUS, the HS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUS item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Additionally, all customs offices have reference copies, and petitioners may contact the Import Specialist at their local customs office to consult the schedule.

Fair Value Comparisons

To determine whether sales in the United States of the potassium chloride were made at less than fair value, we compared the United States price with the foreign market value as specified below. We investigated sales of potassium chloride for the period September 1, 1986, through February 28, 1987.

United States Price

We based United States price on exporter's sales price (ESP) for sales made after importation, in accordance with section 772(c) of the Act. For those sales which were made prior to importation, we determined that the merchandise had been purchased through related parties directly from the manufacturer or producer and, therefore, based on the United States price on purchase price in accordance with section 772(b) of the Act. We used purchase price for those sales based on the following analysis:

1. The mechandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of a related U.S. selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

We regard the diversion of merchandise into the related U.S. selling agent's inventory as an important factor in distinguishing between ESP and purchase price because it is associated with a materially different type of selling activity than that which occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, it commonly incurs substantial storage and financial carrying costs and has added flexibility in its marketing. With direct shipments, the activity which takes place in the U.S. is the mere facilitation of a transaction.

We also use the inventory test because it can be readily understood and applied by respondents who must reply to Department questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commerical documents associated with the sale and verified with certainty.

We calculated purchase price and ESP based on the unpacked, f.o.b. or c.i.f., delivered prices to unrelated purchasers in the United States. We made deductions from the purchase price and ESP, where appropriate, for foreign inland freight, water freight, U.S. inland freight, marine insurance, brokerage, and handling charges pursuant to section 772(d)(2)(A) of the Act. We also made deductions, where appropriate, for discounts and rebates. Where we used EPS, we made additional deductions, where appropriate, for credit expenses, advertising, warranty, commissions and other U.S. selling expenses, pursuant to section 772(e)(1) and (2) of the Act.

Foreign Market Value

We initially determined that all respondents, except CCP, had an adequate number of sales in the home

market to be used for determining foreign market value in accordance with section 733(a)(1)(A) of the Act. We determined that CCP did not have an adequate number of home market sales and, therefore, used sales through Canpotex, a consortium established by Canadian potassium chloride producers for exporting to third countries, for determining foreign market value in accordance with section 773(a)(1)(B) of the Act.

Petitioners alleged that home market and third country prices were made at less than the cost of production and that constructed value should be used to compute foreign market value.

We calculated cost of production based on respondents' submissions. We made certain adjustments to the cost data when the value reported did not fully reflect the costs incurred by the company.

We adjusted the cost of manufacturing:

- To include a "resource payment" made by PCA for leasing land.
- To calculate a weighted-average cost of manufacturing for both PCA mines producing potash during the period of investigation.

We adjusted the general expenses:

- To exclude the "resource payment" made by PCA.
- To exclude ex-factory transportation expense for IMC and CCP.
- To include or revise the financial expenses for all companies.
- To include general research and development for PCS, Kalium, CCP, and IMC.
- To reclassify certain expenses reported as packing for IMC and PCS.
- To include actual selling expenses for third country or home market sales, as applicable, for all companies.

We are requesting additional information regarding possible costs associated with the closing of mines due to flooding. We will consider how such costs should be treated for purposes of the final determination.

We compared home market or third country prices, as appropriate, to cost of production. For PCS and PCA, we found insufficient home market sales above cost to use as the basis for determining fair value and, therefore, used constructed value. For ICM, Kalium, and CCP, we calculated foreign market value on the basis of home market or third country (for CCP) sales where there were an adequate number of sales above cost. Where there were no sales of such or similar merchandise or insufficient sales of such or similar merchandise at prices above cost of production, we based foreign market value on constructed value.

In accordance with section 773 of the Act, where we calculated foreign market value based on f.o.b. delivered or c.i.f., home market or third country prices to unrelated purchasers, we made deductions, were appropriate, for rebates, inland freight, water freight, and insurance. The third country price used to represent sales by CCP were Canpotex's prices to Japan.

We made adjustments under section 353.15 of the Commerce Regulations for differences in circumstances of sale for credit expenses, warranties, advertising, technical service expenses, and after sale warehousing expenses in the United States and home market, where appropriate. Where appropriate we made an adjustment for differences in commissions or offset commissions in one market with selling expenses in the other market.

For comparison to exporter's sales price transactions, we offset indirect selling expenses incurred on home market or third country sales up to the amount of the selling expenses incurred on sales in the U.S. market, in accordance with § 353.15(c) of our regulations.

In accordance with section 773(e) of the Act, the constructed value included material and fabrication costs, general expenses and profit, adjusted as noted in our description of "cost of production" above. Since general expenses exceeded the statutory minimum of 10 percent of material and fabrication costs, the actual expenses were used. Since profit was less than the statutory minimum, eight percent profit was added.

Since all potassium chloride is sold in bulk, there were no packing expenses to be added. We made adjustments to constructed value for difference in circumstances of sale and to offset ESP selling expenses as described above.

Currency Conversion

For ESP comparisons, we used the official exchange rate in effect on the date of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984 (1984 Act). For purchase price comparisons, we used the exchange rate described in § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On June 19, 1987, the petitioners alleged that "critical circumstances" exist within the meaning of section 733(e) of the Act with respect to potassium chloride from Canada. In determining whether critical circumstances exist, that section provides that we examine whether:

(A) (i) There is history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following data in order to determine whether massive imports have taken place over a short period of time: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports.

To determine whether imports have been massive over a relatively short period, we analyzed recent Department of Commerce IM–146 trade statistics on imports of this merchandise for equal periods immediately preceding and following the filing of the petition. Comparing imports during December-February to March-May, these statistics show an increase in both quantity and value in the post-filing period over the pre-filing period. (The petition was filed on February 10, 1987.)

However, a further review of the statistics shows that a seasonal trend exists for imports of potassium chloride to the U.S. The statistics show that imports of potassium chloride from Canada during the March-May period exceeded imports during the preceding December-February period in each of the last four years. The average increase was 27 percent. The increase this year (since the filing of the petition) was 15 percent, a percentage increase less than the average of the preceding four years, and also a smaller percentage increase than in any of the last four years. In addition, our review of import penetration figures indicates that the Canadian share of domestic consumption has dropped from 84 percent in 1986 to 74 percent in the first five months of 1987.

We therefore conclude that massive imports do not exist. Having so concluded, it is not necessary for us to address the issue of whether there is a history of dumping or whether the importers should have known that the merchandise was being sold at less than fair value.

Based on the above information, we believe that massive imports have not occurred and, therefore, we preliminarily conclude that critical circumstances do not exist with respect to imports of potassium chloride from Canada.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of potassium chloride from Canada that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market values of potassium chloride exceed the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Potash Corporation of Saskatchewan	51.90
International Minerals and Chemical Corporation	9.14
PPG/Kalium	29.67
Central Canada Potash	85.20
Potash Company of America	77.44
All Others	36.62

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:30 a.m. on October 5, 1987, at the U.S. Department of Commerce, Room 6802, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, the telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 2, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This notice is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Joseph Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 20, 1987.

[FR Doc. 87-19577 Filed 8-25-87; 8:45 am]

BILLING CODE 3510-DS-M

Petitions by Producing Firms for Determinations of Eligibility to Apply for Trade Adjustment Assistance

Petitions have been accepted for filing on the dates indicated from the following firms: (1) Triton Industries, Inc., 1020 North Kolmar Avenue, Chicago, Illinois 60651, producer of parts for computers and office machines (February 18, 1987); (2) Buffalo Computer Graphics, 3741 Lake Shore Road, Blasdell, New York 14219, producer of radar simulators (February 25, 1987); (3) Florida Medical Industries, Inc., P.O. Box 510, Leesburg, Florida 32749, producer of thermometers and fever strips (February 27, 1987); (4) Midwestco Enterprises, Inc., 2735 North Ashland Avenue, Chicago, Illinois 60614, producer of electronic transformers (March 3, 1987); (5) CPC, Incorporated, One Circuit Drive, Randolph, Massachusetts 02368, producer of circuit boards (March 3, 1987); (6) The Short Run Stamping Company, Inc., 925 East Linden Avenue, Linden, New Jersey 07036, producer of metal stampings for electronic components (March 6, 1987); (7) Dunleigh-Tuxton Corporation, 1 East 33rd Street, New York, New York 10016, producer of men's neckwear (March 10, 1987); (8) Best Craft Handbags Corporation, 3 East 33rd Street, New York, New York 10016, producer of handbags, wallets, belts, cassette cases (March 11, 1987); (9) Infitec, Inc., P.O. Box 2956, Syracuse, New York 13320, producer of timing devices (March 12, 1987); (10) American Industries, Inc., P.O. Box 463, East Longmeadow, Massachusetts 01028, producer of security alarms and components (March 16, 1987); (11) Perfect Optics, Inc., 2601 South State Street, Ann Arbor, Michigan 48104, producer of optical lenses, prisms & coatings (March 19, 1987); (12) IMS Manufacturing Company, Inc., P.O. Box 8, Lietchfield, Kentucky 42754, producer of men's & women's coats & jackets & women's slacks (March 20, 1987); (13) Catciogue Service of Westchester, Inc., 159 Main Street, New Rochelle, New York 10801, producer of colored catalogue sheets (March 24, 1987); (14) National Fabricator Industries, Ltd., 937 Saw Mill River Road, Yonkers, New York 10710, producer of exercise equipment (March 24, 1987); (15) B and B Diversified Contractors, Inc., 1005 Northwest Jones Avenue, Albany, Oregon 97321, producer of processed emery (March 26, 1987); (16) Rudbar, Inc., 55 South Street, Mount Vernon, New York 10550, producer of TV stands (March 26, 1987); (17) Tulane Luggage Corporation, 592 Johnson Avenue, Brooklyn, New York 11237, producer of attache, cases and other occupational bags and cases (March 26, 1987); (18) DeWitt Apparel, Inc., P.O. Box 438, Uniontown, Alabama 36786, producer of men's and boys' slacks (March 31, 1987); (19) Ron-Vik, Inc., 800 Colorado Avenue South, Minneapolis, Minnesota 55416, producer of strainers and washers of wire mesh (April 3, 1987); (20) Expert-Rex, Inc., 459 West 15th Street, New York, New York 10011, producer of ladies' belts, shaving kits and shoe shine kits (April 6, 1987); (21) Burnett Process, Inc., P.O. Box 331, Syracuse, New York 13206, producer of fiberglass insulating material and hardboard backing materials (April 7, 1987); (22) QDP Computer Systems, Inc., 23632 Mercantile, Beachwood, Ohio 44122, producer of circuit boards (April 7, 1987); (23) Comfy, Inc., 1533 26th Street, Santa Monica, California 90404, producer of auto sheepskin covers, (April 9, 1987); (24) Fredon Corporation, P.O. Box 600, Mentor, Ohio 44061, producer of component parts for diesel locomotive engines, transmission parts

for off-highway vehicles and component parts for various other machinery and equipment (April 13, 1987); (25) Crippen Manufacturing Company, Inc., P.O. Box 350, Alma, Michigan 48801, producer of agricultural seed cleaners (April 13, 1987); (26) Master Engraving, Inc., 19 Wallace Street, Elmwood Park, New Jersey 07407, producer of industrial robots, laboratory and testing equipment, and component parts for aircraft (April 15, 1987); (27) Apparat, Inc., 6801 S. Dayton Street, Englewood, Colorado 80112, producer of expansion boards and cables for personal computers (April 21, 1987); (28) Stylex, Inc., 620 Cooper Street, Delanco, New Jersey 08075, producer of office furniture (April 22, 1986); (29) Computer Components, Inc., 629 Fifth Avenue, Pelham, New York 10803, producer of coils and relays (April 22, 1987); (30) TJT Incorporated, P.O. Box 278, Emmett, Idaho 83617, producer of rebuilt running gears for transportation of mobile homes (May 1, 1987); (31) European Jewelry, Inc., 1424 Fourth Avenue, Room 630, Seattle, Washington 98111, producer of rings, pendants, earrings, and bracelets (May 7, 1987);l (32) Phoell Manufacturing Company, 5700 West Roosevelt Road, Chicago, Illinois 60654, producer of fasteners (May 5, 1987); (33) Sahlin International, Inc., P.O. Box 289, Birmingham, Michigan 48012, producer of automated press handling equipment, industrial robots (May 11, 1987); (34) Adorable Coat Co., Inc., 85 Tenth Avenue, New York, New York 10011, producer of women's fake fur coats and jackets (May 11, 1987); (35) Jameco Metal Products Co., Inc., Jamaica, New York 11433, producer of women's metal belts (May 7, 1987); (36) Lipe-Rollway Corporation, P.O. Box 4827, Syracuse, New York 13221, producer of roller bearings (May 11, 1987); (37) Anchor Industries, Inc., 1725 London Road, Cleveland, Ohio 44112, producer of motor mounts and drive line supports (May 13, 1987); (38) Spectra Products Corportion, 335 North Griffin Street, Grand Haven, Michigan 49417, producer of forklift fenders and channels for overhead cranes (May 12, 1987); (39) Dunleigh-Tuxton Corporation, 1 East 33rd Street, New York, New York 10016, producer of men's neckwear (May 18, 1987); (40) Midwestco Enterprises, Inc., 2735 North Ashland Avenue, Chicago, Illinois 60614, producer of electric transformers (May 22, 1987); (41) Mitchell Electronics Corporation, 85 West Grand Street, Mount Vernon, New York 10552, producer of transformers of men's and women's coats and jackets (May 21, 1987); (43) Musebeck Shoe Company, 803 Westover Street, Iconomouloc, Wisconsin 53066, producer of men's and women's footwear (June 1, 1987); (44) Fredon Development Industries, Inc., R. D. 2, Box 108, Newton, New Jersey 07860, producer of steel injection models and plastic parts (May 27, 1987); (45) Autotrol Corporation, 365 East Prairie Street, Crystal Lake, Illinois 60014, producer of small electric motors (June 2, 1987); (46) Midwestco Enterprises, Inc., 2735 North Ashland Avenue, Chicago, Illinois 60614, producer of electric transformers (May 22, 1987); (47) Canton Castings, Inc., 2408 13th Street, NE., Canton, Ohio 44705, producer of metal mounting brackets (June 3, 1987); (48) James P. Piedmonte & Sons, Inc., 16662 Telegraph Road, Holley, New York 14470, producer of cabbage, cucumbers, corn, and wheat (June 5, 1987); (49) Bayer Industries, Inc., 951 W. Watlins, Phoenix, Arizona 85007, producer of milling, drilling and tapping machines for iron and steel (June 5, 1987); (50) Koehler Instrument Company, Inc., 1595 Sycamore Avenue, Bohemia, New York 11716, producer of scientific laboratory instruments (June 9, 1987); (51) Plastic Mold Tool & Die Company, Inc., 1 Maple Street, East Rutherford, New Jersey 07073, producer of steel molds, orthopedic surgery devices (June 11, 1987); (52) Alpine Research, Inc., 765 Indian Peaks Road, Golden, Colorado 80403, producer of skis, ski boots, ski poles and ski bindings (June 15, 1987); (53) ATF-Davidson Company, Inc., 355 Main Street, Whitinsville, Massachusetts 01588, producer of offset presses (June 19, 1987); (54) Robinson Sawmill Company, Route 1, Box, 1, Weston, Colorado 81091, producer of lunber (June 19, 1987); (55) BRB, Incorporated, 320 Spring Street, Puyallup, Washington, 98372, producer of men's women's jackets and shorts (June 23, 1987); (56) Alpha Awards Limited, 1 Southside Avenue, Hastings-on-Hudson, New York 10706, producer of metal medallions (June 23, 1987); (57) Sagan Industries, Inc., 36–14 35th Street, Long Island City, New York 11106, producer of paper joggers and custom-made, other automated equipment (June 24, 1987); (58) Clearborne Reproductions Corporation, 23–14 College Point Boulevard, College Point, New York 11356, producer of diamond styli (needles) (June 26, 1987); (59) Gillette Machine & Tool Company, Inc., 955 Millstead Way, Rochester, New York 14624, producer of parts for automobiles, cameras, business machines, and optical deviles (July 1, 1987); (60) Gemini Tool & Precision Machining, Inc., 1620 Dewey Avenue, Rochester, New York 14615, producer of camera attachments and parts to copier machines (June 30, 1987); (61) Superior Electric Company, 383 Middle Street, Bristol, Connecticut 06101, producer of motion controls and voltage control (July 7, 1987); (62) Gerraks Fashions, Inc., 1320 West McCay Lane, Santa Maria, California 93455, producer of bridal gowns and fancy frocks (July 2, 1987); (63) Bren-Tronics, Inc., 10 Brayton Court, Commack, New York 11725, producer of batteries (July 10, 1987); (64) The Pilliod Company, Inc., 302 Church Street, Swanton, Ohio 43558, producer of agricultural truck and tractor parts (July 10, 1987); (65) Gallmeyer & Livingston Company, 336 Straight Avenue SW., Grand Rapids, Michigan 49504, producer of metalworking grinding machines for tool cutters for flat surfaces (July 17, 1987); (66) Buckeye Boiler Company, Inc., P.O. Box 865, Dayton, Ohio 45401, producer of metal tanks and reserviors for contents under pressure (July 28, 1987); (67) Duro Instrument Corporation, 3700 West Oceanside Road, Oceanside, New York 11572, producer of pressure and temperature gauges (July 28, 1987); (68) Sahlin International, Inc., P.O. Box 289, Birmingham, Michigan 48012, producer of industrial robots (July 29, 1987); (69) Lorrol Machine & Tool Company, Inc., 1916 Lyell Avenue, Rochester, New York 14607, producer of cylindrical rollers, metal feed plates and covers, and brackets (August 5, 1987); (70) Electronic Coils, P.O. Box 1665, Springfield, Massachusetts 01101, producer of electronic coils (August 6, 1987); (71) Vega Tool Company, Inc., 1840 Commerce Street, Unit H, Boulder, Colorado 80301, producer of component parts for optical lasers, computers and industrial robots (August 3, 1987); (72) Wenatchee Packing Company, P.O. Box 2717, Wenatchee, Washington 98801, meat processor (August 5, 1987); (73) Woodhaven Dress Company, Inc., 21st Street & Casimir Avenue, Yonkers, New York 10701, producer of women's dresses (August 10, 1987); (74) Roffe, Inc., 808 Howell Street, Seattle, Washington 98101, producer of men's & women's jackets, slacks, sweat suits and ski suits (July 27, 1987); (75) Charlotte Art Glass, Inc., 2194 Lansing Road, Charlotte, Michigan 48813, producer of stained glass windows (August 13, 1987); and (76) Jimmy Jems Activewear, Inc., 2636 Rimrock Drive, Colorado Springs, Colorado 80915, producer of men's shirts, shorts and pants (August 11, 1987).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93–618), as amended. Consequently, the United States Department of Commerce has initiated separate investigations to determine

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whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any part having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A-95 regarding review by clearinghouses do not apply.

Rosemary Farmer,

Acting Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 87-19575 Filed 8-25-87; 8:45 am]

BILLING CODE 3510-DR-M

President's Export Council; Open Meeting

A meeting of the President's Export Council will be held September 16, 1987, at the Fairmont Hotel, 950 Mason Street, San Francisco, California. The morning session from 10:00 a.m. - 12:00 noon will include meetings of the U.S. Trade Laws and Disincentives Subcommittee, the Foreign Trade Practices and Negotiations Subcommittee, the Trade Expansion Subcommittee, the International Competiveness and Productivity Subcommittee and the Export Administration Subcommittee. The Full Council meeting in the afternoon will be held in the Gold Room from 2:00 p.m. - 5:00 p.m. The Council's purpose is to advise the President on matters relating to U.S. export trade.

Agenda; Topic of the Subcommittee meetings: "Trade Concerns of Western States." The theme of the Full Council meeting: "The Future of U.S. Manufacturing," will include such topics as Fiscal Policy and U.S. Competitiveness and The Outlook for U.S. Manufacturing.

The meeting will be open to the public with a limited number of seats available. For further information and reservations to attend the meeting, call the San Francisco District Office, (415) 556-7722 or (415) 556-7337. For copies of the minutes, contact Sylvia Lino, (202) 377-1125.

Date: August 19, 1987.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 87-19576 Filed 8-25-87; 8:45 am]

BILLING CODE 3510-DR-M

[C-489-603]

Countervailing Duty Order; Acetylsalicylic Acid (Aspirin) From Turkey

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that aspirin from Turkey is being subsidized within the meaning of the countervailing duty law. In a separate investigation, the U.S. International Trade Commission (ITC) determined that imports of aspirin from Turkey are materially injuring a U.S. Industry.

Therefore, based on these findings, all unliquidated entries of asprin from Turkey which were entered, or withdrawn from warehouse, for consumption, on or after March 3, 1987, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register,** and on or before July 1, 1987, the date we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and all entries and withdrawals made on or after the date of publication of this order will be liable for the possible assessment of countervailing duties. Further, a cash deposit of estimated countervailing duties of 6.54 percent *ad valorem* for all companies in Turkey must be made on all entries of asprin from Turkey, or withdrawals from warehouse, for consumption, made on or after the date of publication of this countervailing duty order in the **Federal Register.** Aspirin produced and exported by Proses Kimya Sanayi ve Ticaret A.S. (Proses) is not subject to this order.

EFFECTIVE DATE: August 26, 1987.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose, Office of Investigations, or Richard Moreland, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377-2815 (Malmrose) or 202/377-2786 (Moreland).

SUPPLEMENTARY INFORMATION: The product covered by this investigation is acetylsalicylic acid, currently provided for in item 410.72 of *Tariff Schedules of the United States.*

In accordance with section 703 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671b), on March 3, 1987, the Department published its preliminary determination that there was reason to believe or suspect that manufacturers, producers, or exporters of aspirin in Turkey received benefits which constitute subsidies within the meaning of the countervailing duty law (52 FR 6367). On July 1, 1987, the Department published its final determination that these imports are being subsidized (52 FR 24494).

On August 12, 1987, in accordance with section 705(d) of the Act (19 U.S.C. 1671d), the ITC notified the Department that subsidized imports of aspirin from Turkey materially injure a U.S. industry.

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to section 706(a)(1) and 751 of the Act [19 U.S.C. 1671e(a)(1) and 1675], countervailing duties equal to the amount of the estimated net subsidy on all entries of aspirin, except aspirin produced and exported by Proses, from Turkey. These countervailing duties will be assessed on all unliquidated entries of aspirin from Turkey which were entered, or withdrawn from a warehouse, for consumption, on or after March 3, 1987, the date on which the Department published its preliminary affirmative countervailing duty determination notice in the **Federal Register** (52 FR 6367) and on or before July 1, 1987, the date we instructed the U.S. Customs Service to discontinue the suspension of liquidation on future entries, and on all entries and withdrawals made on or after publication of this order in the **Federal Register.** Entries of aspirin after July 1, 1987, and prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties since we cannot impose the suspension of liquidation of the subject merchandise for more than 120 days without the issuance of a final affirmative ITC injury determination.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 6.54 percent *ad valorem* on all entries of

aspirin from Turkey, except aspirin produced and exported by Proses.

This determination constitutes a countervailing duty order with respect to aspirin from Turkey pursuant to section 706(a)(1) of the Act [19 U.S.C. 1671e(a)(1)] and § 355.36 of the Commerce Regulations [19 CFR 355.36]. We have deleted from the Commerce Regulations Annex III of 19 CFR Part 355, which listed countervailing duty orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act [19 U.S.C. 1675(a)(1)], the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact Richard Moreland at (202) 377-2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and § 355.36 of the Commerce Regulations (19 CFR 355.36).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 18, 1987.

[FR Doc. 87-19696 Filed 8-25-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-091]

Final Results of Antidumping Duty Administrative Review; Certain Electric Motors From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 5, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain electric motors from Japan. We have not changed the final results from those presented in our preliminary results of review.

EFFECTIVE DATE: August 26, 1987.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 21338) the preliminary results of its administrative review of the antidumping duty order on certain electric motors from Japan (45 FR 84994, December 24, 1980). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of alternating current, polyphase electric motors of not less than 150 horsepower but not greater than 500 horsepower, not including submersible well pump motors. Such motors are currently classifiable under items 682.4545, 682.5010, and 682.5030 of the Tariff Schedules of the United States Annotated. The review covers one manufacturer/exporter, Toshiba Corporation ("Toshiba"), of certain electric motors and the period December 1, 1985 through November 30, 1986.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The antidumping duty margin is 9.3 percent for entries during the period December 1, 1985 through November 30, 1986 of merchandise produced by Toshiba.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions on Toshiba directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 9.3 percent shall be required on shipments of certain Japanese electric motors by Toshiba.

For further shipments from the remaining exporters not covered in this review, a cash deposit shall be required at the rates published in the notice of final results of antidumping duty administrative review (49 FR 32627, August 15, 1984) for each of those firms. For any future shipments of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1986 and who is unrelated to Toshiba or any other previously reviewed firm, a cash deposit of 6.3 percent shall be required on shipments of certain Japanese electric motors. These deposit requirements are effective for all shipments of certain Japanese electric motors entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: August 6, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-19578 Filed 8-25-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit, The Ocean Reef Club (P393)

Notice is hereby given that an Applicant has applied in due form for a Permit to import marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: The Ocean Reef Club, Key Largo, Florida 33037.

2. Type of Permit Requested: The Ocean Reef Club, a private resort with a membership fee, requests a public display permit to capture and maintain two Atlantic bottlenose dolphins (*Tursiops truncatus*).

3. Period of Activity: One (1) year.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the

publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administration for Fisheries.

All statements and opinions contained in this notice of application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC 20009;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersberg, Florida 33703.

Dated: August 21, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-19549 Filed 8-25-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Export Visa Arrangement and Exempt Certification for Certain Textiles and Textile Articles Produced or Manufactured in Malaysia

August 20, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 1, 1987. For further information contact Pamela Smith, International Trade Specialist, Office or Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption, and withdrawal from warehouse for consumption, of certain textiles and textile articles, as specified, for which the Government of Malaysia has not issued an appropriate export visa.

Background

A CITA directive dated November 17, 1977 (42 FR 60198), as amended, established an export visa arrangement and exempt certification system for cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Malaysia.

Under the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated July 1 and 11, 1985, as amended and extended, the Governments of the United States and Malaysia have exchanged notes establishing a new export visa arrangement and exempt certification system.

Effective on Septembr 1, 1987, commercial shipments of textiles and textile articles of cotton, wool and man-made fibers, other vegetable fibers, blends of any of the foregoing fibers and blends containing silk but does not include garments which contain 70 percent or more silk by weight, or products other than garments which contain 85 percent or more silk by weight, regardless of value, in Categories 300-354, 359-369, 400-469, 600-654, 659-670 and 831-859, exported on or after September 1, 1987 must be accompanied by a valid visa that includes the correct category(s), part category(s), merged category(s), quantity(s) and unit(s) of quantity or exempt certification as described in the letter published below to the Commissioner of Customs. Shipments of merchandise in Categories 800-810 and 863-899 do not require a visa.

The visa and exempt certification stamps remain unchanged. Any change to the stamped markings must be provided to the Government of the United States prior to its use, to be effective sixty days after approval. The Government of Malaysia shall notify the Government of the United States of any changes of officials authorized to sign visas and exempt certifications.

Interested persons are advised to take all necessary steps to ensure that textiles and textile articles, as described above, produced or manufactured in Malaysia and exported on and after Septemer 1, 1987, which are to be entered or withdrawan from warehouse for consumption into the United States will meet the requirements set forth in this notice.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 20, 1987.

Committee For The Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive cancels and supersedes the directive issued to you on November 17, 1977, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for the consumption of certain cotton, wool and man-made fiber textile products, produced or manufactured in Malaysia in designated categories for which the Government of Malaysia had not issued an appropriate export visa or exempt certification.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated July 1 and 11, 1985, as amended and extended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 1, 1987, entry into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption, and withdrawal from warehouse for consumption, of textiles and textile articles of cotton, wool and man-made fibers, other vegetable fibers, blends of any of the foregoing fibers and blends containing silk but does not include garments which contain 70 percent or more silk by weight, or products other than garments which contain 85 percent or more silk by weight, regardless of value, in Categories 300-354, 359-369, 400-469, 600-654, 659-670 and 831-859, including the part and merged categories listed in Annex A to this letter, produced or manufactured in Malaysia and exported on and after September 1, 1987 from Malaysia for which the Government of Malaysia has not issued an appropriate visa or exempt certification in accordance with the procedures outlined below.

A valid export visa or exempt certification must accompany each commercial shipment of the aforementioned textiles and textile articles. Shipments covering merchandise in Categories 800-810 and 863-899 do not require a visa or exempt certification and should not be denied entry for lack of a visa or exempt certification.

However, should additional categories, merged categories or part categories be added to or changed in the Bilateral

Agreement or become subject to import quotas, the entire category or categories shall be automatically included in the coverage of the visa arrangement. Merchandise exported on or after the date the category(s) is added to the Agreement or becomes subject to import quotas shall require a visa subject to a grace period to establish the required administrative procedures. Notification will be provided when additions or changes are made.

Textiles and textile articles of cotton, wool and man-made fibers, other vegetable fibers, blends of any of the foregoing fibers and silk blends exported from Malaysia on and after September 1, 1987 shall be visaed by the stamping of the original circular visa in blue ink on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original of the invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number and date of issuance. The visa number shall be nine digits and letters, beginning with one numeric digit for the last digit of the year of export, the two character alpha country code specified by the International Organization for Standardization (ISO), and a six digit numeric serial number identifying the shipment; e.g., 7MY123456.

2. The signature of the issuing official.

3. The correct category(s), merged category(s), part category(s), quantity(s), and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the U.S. Tariff Schedules of the United States Annotated (TSUSA) (e.g., "Cat. 340—510DZ"). Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., quota Category 347/348 may be visaed as "Cat. 347/348" or, if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

U.S. Customs shall not accept a visa and entry will not be permitted if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted.

If the visa is not acceptable to U.S. Customs, a new visa must be obtained from the Malaysian Government or a visa waiver issued by the U.S. Department of Commerce at the request of the Malaysian Government and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

If import quotas are in force, U.S. Customs shall charge only the actual quantity in the shipment and the correct category will be charged to the restraint level. If a shipment from Malaysia has been allowed entry into the commerce of the United States with either an incorrect visa or no visa and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Certain textiles and textile articles of cotton, wool and man-made fibers, other vegetable fibers, blends of any of the foregoing fibers and silk blends will be exempt from levels of restraint and visa requirements if they are certified, prior to shipment leaving Malaysia, by the placing of the original rectangular-shaped stamped marking in blue ink on the front of the original commercial invoice. The original copy of the invoice with the original exempt certification will be required to enter the shipment into the United States. Duplicate copies of the invoice and/or exempt certification may not be used.

In order to qualify as exempt, products must be hand printed Batik, defined as fabric to which the design has been applied by hand in units of the Malaysian cottage industry.

Each exempt certification stamp will include the following information: (1) date of issuance, (2) signature of issuing official, and (3) the basis for the exemption shall be noted as, for example, handprinted Batik or the name of the particular traditional folklore handicraft product (Malaysian Item) as cited in a list to be agreed upon by the Governments of the United States and Malaysia.

Should a shipment be exported from Malaysia without an exempt certification being issued prior to the date of exportation, or the certification is incorrectly certified (i.e., the date of issuance, signature or basis for the exemption is missing, incorrect or illegible, or have been crossed out or altered in any way), then the exempt certification will not be accepted and entry shall not be permitted.

If the exempt certification is not acceptable then a visa or a visa waiver must be obtained prior to release of any portion of the shipment by U.S. Customs Service. An exempt certification may not be issued after exportation of the shipment from Malaysia. If quotas are in force, the shipment will be charged to the appropriate quota level.

An invoice may cover visaed merchandise or exempt certification merchandise, but not both.

Any shipment which requires a visa but which is not accompanied by a valid and correct visa or a valid exempt certification in accordance with the foregoing provisions shall be denied entry by U.S. Customs Service unless the Government of Malaysia authorizes the entry and any charges to the Agreement levels through the visa waiver process.

The visa and exempt certification stamps remain unchanged.

The actions taken with respect to the Government of Malaysia and with respect to imports of textiles and textile articles of cotton, wool and man-made fibers, other vegetable fibers, blends of any of the foregoing fibers and silk blends from Malaysia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Annex A

Part Categories

317–S TSUSA items 320.—through 331.—with statistical suffixes 50, 87 and 93

317–O TSUSA items 320.—through 331.—with statistical suffixes 51, 52, 83, 85, 89, 91 and 95

369–S TSUSA 366.2840

369–W TSUSA 303.2040

369–O All TSUSAs in category except 303.2040 and 366.2840

438–W TSUSAs 384.1307, 384.1309, 384.2711, 384.5434, 384.5910, 384.6310, 384.7724 and 384.9640

438–O All TSUSAs in category except 384.1307, 384.1309, 384.2711, 384.5434, 384.5910, 384.6310, 384.7724 and 384.9640

605–T TSUSA 310.9500

605–O All TSUSAs in category except 310.9500

647–K TSUSAs 381.2350, 381.2370, 381.2375, 381.2859, 381.6679, 381.8531, 831.8730, 381.8815, 381.8835, 381.8840 and 381.9234

648–K TSUSAs 384.1926, 384.1927, 384.1929, 384.1950, 384.2010, 384.2015, 384.2017, 384.2030, 384.2040, 384.2050, 384.2267, 384.2722, 384.5482, 384.7756, 384.8241, 384.9242, 384.8244, 384.8245, 384.8247, 384.8256, 384.8258, 384.8262, 384.8263, 384.8265, 384.8682 and 791.7458

Merged Categories

333/334/335/835

337/637

338/339

340/640

341/641

342/642/842

347/348

351/651

445/446

634/635

638/639

645/646
647/648

Merged Part Category

605–T/369–W In Category 605, only TSUSA 310.9500; in Category 369, only TSUSA 303.2040

[FR Doc. 87–19564 Filed 8–25–87; 8:45 am]
BILLING CODE 3510–DR–M

Continuation of an Import Limit for Cotton Textile Products Produced or Manufactured in the People's Republic of China

August 21, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 28, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715. For information on categories on which consultations have been requested call (202) 377–3740.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 300/301, produced or manufactured in China and exported during the twelve-month period which begins on August 28, 1987 and extends through August 27, 1988, in the excess of the designated level of restraint.

Background

On August 28, 1986, a notice was published in the **Federal Register** (51 FR 30692) which announced the establishment of import restraint limits for certain cotton and man-made fiber textile products, including Category 300/301, produced or manufactured in the People's Republic of China and exported during the twelve-month north period which began on August 28, 1986, and extends through August 27, 1987, pending agreement on a mutually satisfactory solution concerning this category between the Governments of the United States and the People's Republic of China. To avoid continued risk of market disruption, the Committee for the Implementation of Textile Agreements, in accordance with section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended by protocols on December 14, 1977, December 22, 1981 and July 31, 1986; and the Bilateral Cotton, Woll and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, has decided to renew the restraint level for the twelve-month period which begins on August 28, 1987 and extends through August 27, 1988.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987)*.

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 21, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 28, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 300/301, produced or manufactured in China and exported during the twelve-month period which begins on August 28, 1987 and extends through August 27, 1988, in excess of 4,341,307 pounds.

Goods shipped in excess of the twelve-month limit established in the directive of August 25, 1986, which began on August 28, 1986 and extends through August 27, 1987 shall be subject to the level set forth in this letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–19598 Filed 8–21–87; 5:01 pm]
BILLING CODE 3510–DR–M

Continuation of an Import Limit for Silk Blend and Other Vegetable Fiber Sweaters Produced or Manufactured in the People's Republic of China

August 21, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 31, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715. For information on categories on which consultations have been requested call (202) 377–3740.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for

consumption, or withdrawal from warehouse for consumption, of silk blend and other vegetable fiber sweaters in Category 845/846, produced or manufactured in China and exported during the twelve-month period which begins on August 29, 1987 and extends through August 28, 1988, in the excess of the designated level of restraint.

Background

On January 20, 1987, a notice was published in the **Federal Register** (52 FR 2143) which announced the establishment of an import restraint limit for certain silk blend and other vegetable fiber sweaters in Category 845/846, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on August 29, 1986 and extends through August 28, 1987, pending agreement on a mutually satisfactory solution concerning this category between the Governments of the United States and the People's Republic of China.

Inasmuch as no mutually agreed solution has been reached and to ensure steady and orderly development of trade and to avoid an exacerbation of market disruption, the Committee for the Implementation of Textile Agreemnents, in accordance with paragraph 8 of the 1986 Protocol of Extension of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended by protocols on December 14, 1977, December 22, 1981 and July 31, 1986, has decided to renew the restraint level of the twelve-month period which begins on August 29, 1987 and extends through August 28, 1988. Overshipments of the previous restraint level in the amount of 430,073 dozen are being charged to the restraint level established in this directive.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987)*.

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 21, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 31, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of silk blend and other vegetable fiber textile products in Category 845/846,[1] produced or manufactured in China and exported during the twelve-month period which begins on August 29, 1987 and extends through August 28, 1988, in excess of 1,001,167 dozen.[2]

Goods shipped in excess of the twelve-month limit which began on August 29, 1986 and extends through August 28, 1987, which currently amount to 167,166 dozen, shall be subject to the level set forth in this letter.

Effective on August 31, 1987, you are directed to charge 262,907 dozen in missing charges to the restraint limit for Category 845/846 for goods imported during the period January 1–20, 1987.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–19599 Filed 8–21–87; 5:01 pm]

BILLING CODE 3510–DR–M

[1] All TSUSA numbers except 381.3574, 381.3578, 381.6685, 381.8554, 381.9985, 384.2733, 384.2735, 384.5316, 384.7781, 384.9694.

[2] For goods produced or manufactured in China and exported in Category 845(2) and 846(2) under TSUSA numbers 381.3574, 381.3578, 381.6685, 381.8554, 381.9985, 384.2733, 384.2735, 384.5316, 384.7781, 384.9694, a proper visa from Hong Kong is required under the directive of July 25, 1986. If such a visa is not presented, these goods shall be denied entry under this directive and the directive of July 25, 1986.

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting and availability of draft report.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety will meet on September 10 and 11, 1987, in Washington, DC to receive oral presentations from the public concerning a draft of the final technical report specified by the Cigarette Safety Act of 1984, as amended. Individual copies of the draft report will be available without charge.

DATE: The meeting will be September 10 and 11, 1987, from 9:30 a.m. to 5:00 p.m. The draft report will be available to the public on or about September 4, 1987.

ADDRESS: The meeting on September 10 will be in the Auditorium, first floor, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC. The meeting on September 11, will be in room 703A of the Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC. Persons who desire to make oral presentations should notify Colin B. Church, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6554. Individual copies of the draft report will be available by writing or calling Ms. Terri Buggs, Office of Program Management and Budget Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6554.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Buggs, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION: The Cigarette Safety Act of 1984 (Pub. L. 98–567, 98 Stat. 2925, October 30, 1984; as amended by section 110, Pub. L. 99–591, October 30, 1986) created the Technical Study Group of Cigarette and Little

Cigar Fire Safety to prepare a final technical report concerning the technical and commercial feasibility of developing cigarettes and little cigars with a minimum propensity to ignite upholstered furniture and mattresses.

The Technical Study Group will meet on September 10 and 11, 1987, to receive oral presentations from the public concerning a draft of the final report specified by the Cigarette Safety Act of 1984, as amended, and to discuss those presentations and the draft report.

Persons desiring to make oral presentations at the meeting of September 10 should notify the Technical Study Group as soon as possible and submit a brief summary of each presentation to Colin B. Church, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6554. Persons making presentations should not repeat any information they have previously given at public meetings of the Technical Study Group in 1985 and 1986. Presentations should be limited to approximately 20 minutes. Additional restrictions may be imposed on the length of presentations depending upon the number of persons who wish to speak. The Technical Study Group is not soliciting and does not expect to discuss confidential business information.

After receiving oral presentations for the public, the Technical Study Group will meet to discuss the presentations and consider any revisions to the draft report which may be appropriate in response to those presentations. This portion of the meeting will be open to observation by the public, but only members of the Technical Study Group may participate in the discussion.

A draft of the final technical report of the Technical Study Group is expected to be available to the public on or about September 4, 1987. A single copy of the draft report will be sent without charge to each person on the Cigarette Safety Act mailing list as soon as the report is available. Others who want to obtain a copy of the draft report without charge should write or call Ms. Terri Buggs, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6554. The draft may be changed before the Technical Study Group issues the final technical report specified by the Cigarette Safety Act, as amended.

Dated: August 20, 1987.

Colin B. Church,

Federal Employee Designated by the Interagnecy Committee on Cigarette and Little Cigar Fire Safety.

[FR Doc. 87–19529 Filed 8–25–87; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information:

(1) Type of submission;

(2) Title of Information Collection and applicable OMB Control Number and Form Number;

(3) Abstract statement of the need for and the uses to be made of the information collected;

(4) Type of Respondent;

(5) An estimate of the number of responses;

(6) An estimate of the total number of hours needed to provide the information;

(7) To whom comments regarding the information collection are to be forwarded; and

(8) The point of contact from whom a copy of the proposed information collection may be obtained.

This information collection is as follows:

(1) New information collection

(2) "ASVAB Counselor and Student Questionnaires," Survey Form;

(3) The purpose of these questionnaries is to obtain information from high school counselors and students about the use and usefulness of the materials available in conjunction with Armed Services Vocational Aptitude Battery (ASVAB–14) Student Testing Program. This information is being collected so that when new materials are created for ASVAB–18 program, they will be maximally useful for their intended population.

(4) Students and counselors;

(5) Current responses of 6,600;

(6) Current burden hours of 3,300;

ADDRESSES: (7) Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia, Virginia 22202–4302, telephone 202/746–0933.

FOR FURTHER INFORMATION CONTACT: (8) A copy of the information collection proposal may be obtained from Mr. Vitiello, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

August 20, 1987.

[FR Doc. 87–19527 Filed 8–25–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Reinstatement

MARS Member Station Questionnaire Transcript (AFCC Form 132) (OMB No. 0701–0021)

The Military Affiliate Radio System (MARS) program uses the AFCC Form 132 to collect data about MARS members and their capabilities in the MARS program. The form requests the name, call sign, address, and emergency capability of the member. It is a concise and simple method for recording the data needed about the capabilities of member stations. Various computer lists are developed from this simple form for use by State, regional, and national officials, as well as Master Net Control Stations. It is a vital link between the Air Force and its Mars affiliate member stations.

MARS program affiliate stations

Responses 3,600
Burden hours 1,200.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. H.R. Collins, Chief, USAF MARS, HQ AFCC/DOOC, Scott AFB, IL 62225–6001, telephone (618) 256–5552..

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

August 20, 1987.

[FR Doc. 87–19526 Filed 8–25–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information; Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Extension

Application for the Review of Discharge or Dismissal from the Armed Forces of the United States; DD Form 293 (OMB No. 0704–0004)

The DD Form 293 is the form used by former members of the military services to request a change in the type of discharge or the reason for their separation from the military.

Individuals or households
Responses: 14,000
Burden Hours: 7,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, SAIS–ADR, Room 1C638, The Pentagon, Washington, DC 20310–0107, telephone (202) 694–0754.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

August 20, 1987.

[FR Doc. 87–19528 Filed 8–25–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (i) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Academic Certification for Marine Corps Officers Candidate Program, 0703–0011
NAVMC 10469.

This form is used by the Marine Corps as a standardized method of determining the academic eligibility of applicants for all Reserve Officer Candidate Programs. If it were not utilized, status of applicants could not be determined.

Individuals
Responses 3000
Burden hours 750.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer; Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Major J.W. Sondermann, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001, telephone (202) 694–1017.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

August 20, 1987.

[FR Doc. 87–19525 Filed 8–25–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87–34–LNG]

Application To Import Liquefied Natural Gas From Algeria; Pan National Gas Sales, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application for blanket authorization to import liquefied natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on June 30, 1987, of an application filed by Pan National Gas Sales, Inc. (Pan National), a wholly owned subsidiary of Panhandle Eastern Corporation (PEC), for a 20-year blanket authorization to import Algerian liquefied natural gas (LNG) from Sonatrading Amsterdam B.V. (Sonatrading), a Netherlands company that is wholly owned by Sonatrach, the state oil and gas company of Algeria.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, or notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 25, 1987.

FOR FURTHER INFORMATION CONTACT:

John Glynn, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076,

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1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9482
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: Pan National, a Delaware corporation with its principal office in Houston, Texas, is a wholly owned subsidiary of PEC. PEC, a holding company, also has other affiliates or subsidiaries, including the Panhandle Eastern Pipe Line Company, (PEPL), Trunkline Gas Company (Trunkline), Trunkline LNG Company (TLC), Panhandle Trading Company (PTC), and Pan Transportation Inc. (Pan Transport). The applicant states that the volumes of LNG proposed to be imported will be purchased pursuant to a purchase agreement dated April 26, 1987, transported to the U.S. in existing LNG tankers to be supplied by Sonatrack and Pan Transport, received and regasified by TLC at its Lake Charles, Louisiana, terminal, and resold to various unspecified customers at market-responsive prices under spot, intermediate or longer-term arrangements, depending on current market conditions.

By its application, Pan National seeks approval to import up to 3,300 million Btu or approximately 3.3 Tcf of LNG (FOB Algeria) over a period of up to 20 years. However, the applicant points out that if LNG purchases are resumed under the September 17, 1975, LNG purchase contract between TLC and Sonatrach, obligations under the proposed import arrangement would be limited to the existing sales arrangements previously agreed to by all parties prior to resumption. The 1975 contract was the basis for a 20-year, 3.4 Tcf LNG import authorization granted by the Federal Power Commission in Opinion Nos. 796 and 796–A at Docket Nos. CP74–138, *et al.*, 58 FPC 2935 (1977). Purchases of LNG pursuant to the 1975 contract were made from September 1982 through December 1983; however, in December 1983 TLC indefinitely suspended purshases because of marketing difficulties.

In its application, Pan National contemplates the sale of LNG supplies for short-term, spot purchases, base load use, and for winter peaking needs to a wide variety of potential customers, including gas distribution companies, brokers or marketers, and large volume end-users throughout the United States. The applicant states that it has contracted with PTC, its marketing and brokerage company affiliate, to provide initial market planning and development and continuing marketing services. The terms of each prospective sales transaction under this import arrangement will be subject to approval by both Pan National and Sonatrading, including price, term and volumes. Once the terms are approved, Sonatrading will be obligated to supply the necessary volumes, and Pan National will proceed to execute the negotiated sales agreement. Pan National states that the FOB price it pays to Sonatrading for the LNG will equal 63.24 percent of the average per unit (MMBtu) sales price, multiplied by the number of MMBtu loaded FOB Algeria. Pan National, in turn, will receive the remaining percentage (36.76) of the sales price to cover transportation, bunker fuel, and regasification costs. If the anticipated sales price is not sufficient to recover the incremental costs to Pan National and Sonatrading, no LNG will be imported.

The applicant states that the proposed import arrangement is designed to accommodate changes in market conditions and will result in prevailing market responsive prices. The gas purchase agreement contains no minimum purchase requirement, and the applicant would be required only to take and pay for quantities specifically contracted for with customers. Contracts for transportation and terminal services only obligate Pan National to pay the actual incremental costs involved in obtaining these services, and the transportation agreement contains no ship-or-pay commitment.

The applicant proposes to notify the ERA of the first delivery of LNG into the U.S. within fifteen days of such delivery. Additionally, it also proposes to file quarterly reports to the ERA describing the transactions made under its import authorization, including volumes imported, average selling price, and markets served.

In support of its application, Pan National maintains that the import proposal will further the implementation of DOE policy objectives by "fostering the development of a fully functioning and responsive market for natural gas", and by providing a source of competitively priced natural gas supplemental to domestic supplies. Furthermore, Pan National also maintains that approval of its import application will support the "productive use of extensive existing facilities and their continued viability as an important long-term resource in meeting future energy requirements."

The decision on this application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issues of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that the ERA may limit the term of any blanket authority granted in this docket and may proportionately reduce the volumes.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., September 25, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material

and relevant to a decision in the proceeding. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of the Pan National's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 19, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–19596 Filed 8–25–87; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. PP–84]

Issuance of an Order Granting Time Extension; Central Maine

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Issuance of an Order granting time extension.

SUMMARY: On August 17, 1987, the Economic Regulatory Administration (ERA) issued an order to Central Maine Power Company (CMP) granting an extension of the time within which CMP may file answers to all petitions for intervention in the Presidential permit proceeding Docket No. PP–84.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, U.S. Department of Energy, Office of Fuels Programs (RG–22), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5935.

Lise Courtney M. Howe, U.S. Department of Energy, Office of General Counsel (GC–41), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2900.

SUPPLEMENTARY INFORMATION: On August 14, 1987, Central Maine Power Company (CMP) filed a request with the Economic Regulatory Administration for an extension of time within which to file CMP's answer to all petitions for intervention in the Presidential permit proceeding Docket No. PP–84. Pursuant to Rule 2008, 18 CFR 385.2008, CMP requested that the time to answer, provided in 18 CFR 385.214, be extended from fifteen days after each petition is filed to fifteen days after the last day of the public comment period, i.e., Tuesday, September 15, 1987. CMP requested this extension to allow for a more orderly and efficient proceeding without prejudicing any other person.

ERA notes that CMP's petition follows ERA's decision on July 31, 1987, to extend the time within which public comments, protests and interventions could be filed from August 5, 1987, to August 31, 1987 (52 FR 28481). Three petitions to intervene (No Thank Q Hydro-Quebec, Pennsylvania-New Jersey-Maryland Interconnection, and Boston Edison) already have been filed with ERA, and it is possible that others may be filed on or before August 31, 1987.

ERA is authorized, pursuant to 18 CFR 385.2008, for good cause shown to extend the time by which CMP is required to respond to petitions for intervention in this proceeding. ERA agrees with CMP that permitting it to respond to all of the petitions following the close of the comment period on August 31, 1987, rather than requiring CMP to respond to each petition within fifteen days after the filing of such petitions, would make for a more orderly and efficient proceeding; and that an extension of the time period to September 15, 1987, would not prejudice any of the existing or potential parties to this proceeding.

It is ordered that:

(A) The request filed by Central Maine Power Company for an extension of time within which to file answers to petitions to intervene in the Presidential permit proceeding Docket No. PP–84 to Tuesday, September 15, 1987, is granted.

(B) Central Maine Power Company is required, until September 15, 1987, to serve any filings or other submissions which it makes with ERA on No Thank Q Hydro-Quebec, the Pennsylvania-New Jersey-Maryland Interconnection, Boston Edison, and any others which may file petitions to intervene before August 31, 1987, thereby treating these parties during this interim period as though they have been granted temporary status as intervenors in this proceeding.

Issued in Washington, DC, on August 17, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–19595 Filed 8–25–87; 8:45 am]

BILLING CODE 6450–01–M

Office of the Secretary

Senior Executive Service; Performance Review Board Members; Appointments

ACTION: Notice of SES Performance Review Board Appointments.

SUMMARY: This notice lists those persons who have been appointed to serve on the Performance Review Board standing register for the Department of Energy. This supplements the listing published in 51 FR 32353 on September 11, 1986.

EFFECTIVE DATE: These appointments are effective on August 20, 1987.

FOR FURTHER INFORMATION CONTACT: Barbara J. Hall, MA–204.1, U.S. Department of Energy, Office of Personnel, (202) 586–8477.

SUPPLEMENTARY INFORMATION:

Section 4314(c) of Title 5, United States Code (as amended by the Civil Service Reform Act of 1978), requires that the Department of Energy establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s) to review and evaluate the initial rating and make a final written recommendation on performance appraisals assigned to the Departmental members of the Senior Executive Service.

The newly appointed Performance Review Board members shall make written recommendations to the Executive Personnel Board concerning SES performance ratings, bonuses, awards, and performance related actions.

The new members of the SES Performance Review Board are:

William Bernsdorf
Peter Brush
David Goldman
Richard Hahn
Steven Hickok
Thomas Isaacs
Vito Magliano
John Milloway
Robert Morgan
John Notestein
Gerald Prudom
Wolfgang Repke
Michael Roberts
Jack Roeder
Margaret Sibley
Charles Simpson
Marvin Singer

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Edward Williams
William Williams

Issued in Washington, DC, on August 14, 1987.

Harry L. Peebles,

Executive Secretary, Executive Personnel Board.

[FR Doc. 87-19593 Filed 8-25-87; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Power Rate for the Pick-Sloan Missouri Basin Program—Eastern Division

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of Power Rate for Economy Energy Sales and Order Placing This Rate into Effect on a Final Basis—Pick-Sloan Missouri Basin Program—Eastern Division (P-SMBP-ED).

SUMMARY: In a June 9, 1987, **Federal Register** notice, the Western Area Power Administration (Western) announced plans to implement a power rate for Economy Energy sales. Following the analysis of the public comments received as a result of this proposal, Western has finalized and is placing into effect a rate for Economy Energy for the P-SMBP-ED as follows: The rate for Economy Energy is based upon the pricing for short-term energy sales among power suppliers within the interconnected systems.

The continued marketing of that portion of P-SMBP-ED surplus energy which is sold as Fuel Replacement Energy is operationally restrictive and difficult to comply with from a contract administration standpoint. Timely implementation of the rate for Economy Energy, while retaining the Fuel Replacement Energy class of service, will eliminate current difficulties. Therefore, the rate for Economy Energy is effective upon publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box EGY, Billings, MT 59101, (406) 657-6532.

SUPPLEMENTARY INFORMATION:

Western's Billings Area Office (BAO) is encountering difficulty in the marketing of Fuel Replacement Energy under the existing pricing mechanism. BAO sells short-term surplus energy to entities that reduce power production from, or shut down, fossil-fueled power plants to conserve fuel. The pricing for that energy is 85 percent of the cost of the saved fuel plus 50 percent of any other savings realized by the purchaser. Selling surplus energy at 85 percent of a plant's fuel cost provided a basis for pricing, and could be adhered to when a specific unit could be easily identified. The price of the energy was directly related to the results obtained; i.e., saved fuel. However, present day situations in the utility industry have changed from when the sale of Fuel Replacement Energy was initiated more than 20 years ago. Today, major utilities have numerous plants in daily operation which may vary in size from relatively small to extremely large and which have a wide range of operating costs. Because of multiple-unit operations, utilities often reduce power generation of more than one unit when buying energy from another utility. A utility's highest cost unit is not always the one reduced in power level because of such considerations as "take or pay" coal contracts or transmission constraints. Minimum power levels of large plants also affect which units may be backed down.

Economic dispatch is also evolving among utilities, as in the State of Iowa, where a newly formed organization will be conducting surplus energy transactions on the basis of the composite hourly costs of most of the investor-owned units in Iowa. Superimposed upon all of the factors noted above is the matter of large regional surpluses which result in a highly competitive market. Because of these considerations, pricing of short-term energy transactions among power supplier is driven by factors other than fuel savings at a particular plant. As a result, it is increasingly more difficult, and less reflective of reality, for Western to base short-term surplus energy prices on fuel savings associated with a specific generating unit.

The BAO considers that many short-term surplus energy sales which have previously been conducted as Fuel Replacement Energy sales can be more appropriately conducted under the proposed category of Economy Energy. Conservation of fuel will still be accomplished and can be quantified as at present, but the energy prices will directly reflect all of the factors which establish short-term energy prices among thermal suppliers. As with all of BAO's short-term surplus energy sales, this class of service is designed for those interconnected area utilities that continuously generate power for themselves and/or others. Any transmission costs or losses beyond the limits of the Federal transmission system will be the responsibility of the purchaser. At present, a number of utilities interconnected with the Federal transmission system do not purchase fuel replacement energy. These utilities are able to purchase surplus energy from others at costs less than 85 percent of fuel savings for their relatively more costly units. In this regard, the adoption of Economy Energy as a class of service can be expected to increase the number of utilities to whom Western will be able to market short-term surplus energy.

Expected Change in Annual Revenue

The BAO does not anticipate that Economy Energy sales will provide a revenue change, from what would otherwise be obtained from Fuel Replacement Energy sales, because there will not be an increase in the amounts of energy for sale. Nor is it anticipated that there will be a significant change in overall hydro energy prices as a result of this change in ratesetting methodology.

Discussion of Issues—Public Comments

During the 30-day public comment period, Western received 10 comment letters and 1 letter requesting additional information. All of the comment letters were from interconnected utilities and were supportive of the proposal. The additional information requested by one entity concerns the criteria a utility must meet to qualify for this type of service. In that regard, Economy Energy, as well as all other P-SMBP-ED surplus hydro energy, is sold to utilities who continuously generate power for themselves and/or others. Surplus energy is not sold to utilities that have generation only on standby, used for reserves, or run only occasionally for emergencies or for test purposes.

Procedural Authorization

Power rates for the P-SMBP-ED are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*); the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); the Flood Control Act of 1944 (16 U.S.C. 825s); and the acts specifically applicable to the project system involved.

The Secretary of Energy issued Delegation Order No. 0204-108 on December 14, 1983 (48 FR 55664), amended May 30, 1986 (51 FR 19744). The order contains several provisions including delegation to Western's Administrator of the authority to develop and place in effect on a final basis power and transmission rates for short-term sales.

Environmental Compliance

Western has conducted an analysis of this rate increase pursuant to the National Environmental Policy Act of 1969 and Department of Energy regulations published in the **Federal Register** on March 28, 1980 (45 FR 20694–20701), as amended on January 6, 1983 (48 FR 685 through 686), and on February 25, 1985 (50 FR 7629 through 7630). The regulations provide that:

1. Rate proposals for power marketing services which produce an increase in revenue, no greater than the rate of inflation, normally do not require the preparation of an environmental assessment (EA) nor an environmental impact statement (EIS).

2. Contracts for short-term or seasonal (less than 1 year) allocations of existing or excess power resources to customers who can receive the resources over existing transmission facilities do not require the preparation of either an EA or an EIS, in accordance with National Environmental Policy Act guidelines.

Because the proposed new rate for Economy Energy service is for an optional short-term service, would not result in an increase in revenues, and clearly would have no significant environmental impact, the proposed action does not require the preparation of an EA or an EIS. Documentation supporting this decision is on file in Western's Billings Area Office.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment a regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the proposed action for P–SMBP–ED relates to nonregulatory services provided by Western. Under 5 U.S.C. 601(2), rates of service or particular applicability are not considered "rules" within the meaning of the act. Since this proposed new rate for P–SMBP–ED power is of limited applicability, and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4 and 7 of Executive Order 12291.

Order

In view of the foregoing, and pursuant to the authority delegated to me by the Secretary of Energy in Delegation Order No. 0204–108, dated December 14, 1983, as amended, I hereby approve and place into effect on a final basis, effective immediately, a new rate for Economy Energy to be based upon the pricing for short-term energy sales among power suppliers within the interconnected system of the P–SMBP–ED.

Issued at Golden, Colorado, August 14, 1987.

William H. Clagett,

Administrator.

[FR Doc. 87–19594 Filed 8–21–87; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180743; FRL 3252–1]

Receipt of Application for a Specific Exemption To Use Mancozeb; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Department of Food and Agriculture (hereafter referred to as the "Applicant") for use of mancozeb (CAS 8018–01–7) to control the fungi, *Alternaria alternata*, on 5,000 acres of dates in California. In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before September 10, 1987.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP–180743," should be submitted by mail to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 716A, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue an emergency exemption to permit the use of the funigicide, mancozeb available as Dithane M–45–S Dust (California State Registration No. 11169–50008 AA) from San Joaquin Sulphur Co., to control *Alternaria* infections on 5,000 acres of dates in California.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant indicates that Ferbam dust, the only product registered for control of *Alternaria* on dates, is no longer manufactured by FMC Corporation and is no longer available. According to the Applicant, without effective control, date growers could experience 30 to 50 percent crop losses. With the use of Dithane M–45–S Dust, growers expect their crop losses to be less than 5 percent. The 1987 crop was valued at $37.4 million.

Dithane M–45–S Dust will be applied at a maximum rate of 30 pounds product per acre. Up to three applications at 15-day intervals may be made. A maximum of 450,000 pounds product will be needed to threat a maximum of 5,000 acres. Applications will be completed by November 15, 1987.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register**

and solicit public comment on an application for a specific exemption proposing use of a pesticide which contains an active ingredient which is or has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of the pesticide which is or has been the subject of the Special Review (40 CFR 166.24(a)(5)). A Notice of Initiation of Special Review of EBDC Pesticides, which include mancozeb, was published July 17, 1987 (52 FR 27172). The risks considered in that document which could be similar to the risks posed by this proposed use are: Oncogenicity; teratogenicity; and thyroid toxicity. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Date: August 18, 1987.

Herbert S. Harrison,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-19524 Filed 8-25-87; 8:45 am]

BILLING CODE 6560-50-M

[FIFRA Docket No. 562, et al.; FRL-3252-3]

Pesticide Products Containing Diazinon; Hearing; Ciba-Geigy Corp., et al., Petitioner

In accordance with 40 CFR 164.8, notice is given that a hearing on the captioned proceeding under section 6 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136(d)), will commence at 10:00 a.m. on Monday, August 24, 1987, in Conference Room 3, Waterside Mall, 401 M Street SW., Washington, DC. The hearing will be conducted in accordance with the Rules of Practice governing hearings under FIFRA (40 CFR Part 164) and in particular Subpart B thereof. Issues to be considered in the hearing are set forth in the Notice published by the Administrator, 51 FR 35034 (October 1, 1986), as amended by 51 FR 45039 (December 16, 1986), and 52 FR 5656 (February 25, 1987). For information on the several parties to this proceeding and their positions on the various issues, interested persons may examine the file in the office of the Hearing Clerk, Room 3708, Waterside Mall, 401 M Street SW., Washington, DC.

Dated this 21st day of August 1987.

Gerald Harwood,

Chief Administrative Law Judge.

[FR Doc. 87-19645 Filed 8-25-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

August 19, 1987

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None
Title: Section 73.54, Antenna resistance and reactance measurements
Action: Existing collection in use without OMB control number
Respondents: Businesses (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 590 Recordkeepers; 590 Hours

Needs and Uses: Section 73.54 requires that background information regarding antenna resistance measurement data for AM stations be kept on file at the station. Data is used by FCC staff in field investigations to ensure measurements are taken properly and by AM licensees to identify any problems that may occur.

OMB Number: 3060-0175
Title: Section 73.1250, Broadcasting emergency information
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 250 Responses; 250 Hours

Needs and Uses: Section 73.1250 requires that AM station licensees submit a report to the FCC regarding the emergency information broadcast over increased facilities. Emergency situations in which the broadcasting of information is considered as furthering the safety of life and property include, but are not limited to, tornadoes, hurricanes, floods, tidal waves, earthquakes, and school closings. The data is used by FCC staff to evaluate the need and nature of the emergency broadcast to confirm that an actual emergency existed.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-19503 Filed 8-25-87; 8:45 am]

BILLING CODE 6712-01-M

Specialized Mobile Radio Service Frequencies To Be Available for Reassignment

August 10, 1987.

The following channels were recently recovered from licensees who failed to meet the Commission's loading or construction requirements and will be available for reassignment to trunked Specialized Mobile Radio (SMR) applicants. They were previously licensed at the coordinates indicated and are available at any location within the geographic area which will protect existing SMR systems pursuant to Rules 90.362 and 90.621.

856/858.0875 MHz, Oldsmar, Fl, 28-02-20 North, 82-39-29 West
856/860.5625 MHz, Clayton, MO, 38-38-51 North, 90-20-13 West
861/865.9500 MHz, Tucson, AZ, 32-26-30 North, 110-46-51 West
856/860.1375 MHz, San Antonio, TX, 29-28-37 North, 98-36-42 West
856/860.0625 MHz, West Lake Hills, TX, 30-18-21 North, 97-50-28 West
861/865.7000 MHz, Tucson, AZ, 32-26-30 North, 110-46-51 West
863.9375, 864.3875, 864.8375, 865.2875, 865.7375 MHz, Buffalo, NY, 42-52-29 North, 78-51-12 West
856/860.5125 MHz, Clayton, MO, 38-38-51 North, 90-20-13 West
856/860.1375 MHz, New Orleans, LA, 29-56-55 North, 90-03-47 West
856/860.7875 MHz, Canton, OH, 40-44-03 North, 81-24-48 West
856/860.1625 MHz, San Antonio, TX, 29-30-37 North, 98-34-13 West
856/860.5875 MHz, Minneapolis, MN, 44-58-31 North, 93-16-19 West

Pursuant to the Public Notice of January 6, 1986, Mimeo No. 1805, these channels will be available for reassignment on September 9, 1987. All applications received before September 9, 1987 will be dismissed. The first application received after the channels become available for reassignment opens the filing window. The window stays open only for the day on which the first application is received. *All applications MUST reference the date and DA number of this Public Notice in*

order to be considered for these frequencies.

There is a $30.00 fee required for each application filed. All checks should be made payable to the FCC. Applications should be mailed to: Federal Communications Commission, 800 Megahertz Service, P.O. Box 360416M, Pittsburgh, PA 15251–6416. Applications may also be filed in person between 9:00 am and 3:00 pm at the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259, Attention: (Wholesale Lockbox Shift Supervisor).

For further information, refer to Public Notice of January 6, 1986 or contact Riley Hollingsworth or Betty Woolford (202) 632–7125 of the Private Radio Bureau's Land Mobile and Microwave Division.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–19504 Filed 8–25–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ageement(s) Filed; American Transport Lines, Ltd. et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each ageement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207–011142.
Title: NOSAC Agreement.
Parties:
K/S NOSAC A/S & Co.
Wilh. Wilhelmsen Limited A/S
K/S Benargus A/S & Co.

Synopsis: The proposed agreement would establish a joint service between the parties for the carriage of cargo between U.S. Atlantic, Gulf and Pacific ports and all points via such ports and Atlantic ports in Spain, East and West Germany, Poland, Portugal, France, Belgium and the Netherlands; Scan/Baltic ports in Denmark, Norway, Sweden and Finland; and ports in the United Kingdom and Ireland and all points via such ports. The joint service will be administered by Oivind Lorentzen A/S. The parties have requested a shortened review period.

Agreement No.: 232–011143.
Title: American Transport Line/Regency Navigation Co., Ltd. Space Charter Agreement.
Parties:
American Transport Lines, Ltd.
Regency Navigation Co., Ltd.

Synopsis: The proposed agreement would permit the parties to charter space on one another's vessels operating in the trade between United States ports and ports in Europe, to interchange containers and related equipment in the trade and to cooperate in rationalizing their vessel sailings and schedules in the trade. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: August 21, 1987.

[FR Doc. 87–19548 Filed 8–25–87; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; Fred Imbert, Inc.; et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 244–200025.
Title: Port of Houston Terminal Agreement.
Parties:
Port of Houston Authority (Port)
Universal Shipping Agencies, Inc. (Assignee)

Synopsis: The proposed agreement provides for Assignee, an independent contractor, to perform or have performed freight handling services at the Port's Wharves and Transit Sheds Number 8 and 9 subject to charges, rates, rules, and regulations in the Port's Tariff No. 8. The term of this agreement ends December 31, 1988.

Agreement No.: 244–200026.
Title: Puerto Rico Ports Authority Terminal Agreement.
Parties:
Puerto Rico Ports Authority
Fred Imbert, Inc.

Synopsis: The proposed agreement provides exclusive use of certain space for office, warehouse, repair shop, parking and open area at Pier 13, Old San Juan Puerto Rico. Agreement also provides preference to use open area, dockage platform, warehouse and loading platform at Pier 13, Old San Juan, Puerto Rico.

Agreement No.: 244–003934–002.
Title: Port of Palm Beach Lease Agreement.
Parties:
Port of Palm Beach District
Florida Molasses Exchange, Inc. (Corporation)

Synopsis: The proposed agreement modifies the basic agreement to provide for a nonexclusive easement for the construction and maintenance of facilities for the collection and flow of molasses and liquid cattle feed related to the Corporation's operations at the premises.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Date: August 21, 1987.

[FR Doc. 87–19565 Filed 8–25–87; 8:45 am]

BILLING CODE 6730–01–M

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer will hold its Fall meeting October 14–16, 1987, at the Quality Inn Hotel, New Jersey Avenue NW, between D and E Streets.

The purpose of this meeting is to discuss the Depository Library Program.

The meeting will be open to the public. Anyone who wishes to attend should notify the Conference Manager, David H. Brown, U.S. Government Printing Office, 20401 (telephone 275–2255).

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General participation by members of the public, or questioning of Council members or other participants, shall be permitted with approval of the Chair.

Dated: August 14, 1987.

Joseph E. Jenifer,

Deputy Public Printer.

[FR Doc. 87-19509 Filed 8-25-87; 8:45 am]

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87N-0262 (DESI 1786); Formerly Docket No. 77N-0240]

Pentaerythritol Tetranitrate; Hearing on the Proposals to Withdraw Approval of Certain New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs is granting a hearing on the proposal to withdraw approval of the new drug applications for certain single-entity coronary vasodilators containing pentaerythritol tetranitrate (PETN). The drug is used in the treatment of angina pectoris.

DATES: Notices of participation shall be filed with the Dockets Management Branch no later than September 25, 1987. Disclosure of data and information and submission of narrative statement by FDA's Center for Drugs and Biologics by October 26, 1987 and by other participants by December 24, 1987. Prehearing conference on February 2, 1988, at 10 a.m.

ADDRESSES: Written notices of participation, disclosures, and statements to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857. Submissions should be identified with the above docket number and clearly labled "PETN Hearing." Prehearing conference in the FDA Hearing Room, Room 4A-35, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Rice, Jr., Division of Regulations Policy (HFC-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 14, 1984 (49 FR 40213), the Director of the Center for Drugs and Biologics issued a notice of opportunity for hearing on a proposal to withdraw approval of the new drug applications for certain single-entity coronary vasodilators containing PETN because there was a lack of substantial evidence that these products were effective for their labeled indications. In response to the notice, a hearing was requested by various manufacturers and a distributor of PETN products. These products are as follows:

1. *NDA 8-072;* Peritrate Tablets containing 10 milligrams (mg), 20 mg, and 40 mg PETN; Parke-Davis, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Planes, NJ 07950

2. *NDA 11-109;* Peritrate SA (Controlled release) Tablets containing 80 mg PETN (20 mg in the immediate release layer and 60 mg in the controlled release base); Parke-Davis.

3. *NDA 12-311;* Pentritol Tempules (controlled release capsules) containing 60 mg PETN; Armour Pharmaceutical Co., 303 South Broadway, Tarrytown, NY 10591.

4. *NDA 12-748;* Duotrate-45 Plateau Capsules (controlled release) containing 45 mg PETN; Marion Laboratories, Inc., 10236 Bunker Ridge Rd., Kansas City, MO 64137.

5. *NDA 16-457;* Pentritol Tempules (controlled release capsules) containing 30 mg PETN (incorrectly listed in the October 15, 1984 notice of opportunity for hearing as containing 60 mg PETN); Armour Pharmaceutical Co.

6. *NDA 16-470;* Duotrate-30 Plateau Capsules (controlled release) containing 30 mg PETN; Marion Laboratories, Inc.

7. *NDA 16-625;* Pentaerythritol Tetranitrate Tablets containing 10 mg and 20 mg PETN; Bolar Pharmaceutical Co., Inc. 130 Lincoln St., Copiague, NY 11726.

8. *ANDA 86-193;* Pentaerythritol Tetranityrate Tablets (controlled release) containing 80 mg PETN; Bolar Pharmaceutical Co.

9. *ANDA 87-683;* Pentaerythritol Tetranitrate Capsules (controlled release) containing 80 mg PETN; Inwood Laboratories, Inc., Division of Forest Laboratories, Inc., 300 Prospect St., Inwood, NY 11696

10. Purepac Pharmaceutical Co., Division of Kalipharma, Inc., 200 Elmora Ave., Elizabeth, NJ 07207 filed a letter on its behalf as a distributor of PETN products.

Because a hearing was not requested for other PETN products, the Director withdrew approval of the pertinent new drug applications on September 5, 1985 (50 FR 36152).

The Commissioner has considered the data and information that were filed in support of the hearing requests and has concluded that a hearing should be held. Two issues will be addressed by the hearing:

1. Whether there is evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of PETN; and

2. Whether, on the basis of any such adequate and well controlled investigations, it could fairly and responsibly be concluded by experts qualified by scientific training and experience to evaluate the effectiveness of drugs that PETN will have the effect that it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof. (21 U.S.C. 355(d); 21 CFR 314.126).

Parke-Davis submitted a petition dated November 30, 1984, requesting that the Director withdraw the October 1984 notice for further evaluation by FDA of certain data allegedly not considered by the Center in that notice. The Commissioner denies this petition. Parke-Davis can present the data at the evidentiary hearing that will be held.

The parties to the hearing will be FDA's Center for Drugs and Biologics and Parke-Davis, Armour, Marion, Inwood, Bolar, and Purepac. Any other interested person shall be permitted to participate in the hearing as a nonparty participant (see 21 CFR 12.89) provided that the person files a notice of participation pursuant to 21 FR 12.45(a). The presiding officer will be Administrative Law Judge Daniel J. Davidson.

In accordance with 21 CFR 12.85(a)(4), the Center for Drugs and Biologics (Center) would normally file with the Dockets Management Branch a narrative statement setting forth its position on the issues of the hearing and a summary of the types of evidence to be introduced in support of its position in the hearing, together with copies of data contained in the Center's files that relate to the issues raised herein, at the time this notice issues. I am under 21 CFR 10.19 modifying that requirement to the extent that the Center will be granted until October 26, 1987 to make these submissions. I have concluded that this modification of this regulation in the context of this proceeding does not prejudice any participant in the hearing, serves the end of justice, is in accordance with law, and thus is authorized by § 10.19. The modification allows FDA to advise the parties that a hearing is pending on the matter prior to the completion by the Center of the sometimes lengthy process of complying with the requirements of § 12.85. Interested persons may obtain a copy of the Center's narrative statement from

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the Dockets Management Branch (address above).

Participants other than the Center for Drugs and Biologics shall disclose data and information and submit their narrative statements pursuant to 21 CFR 12.85 on or before December 24, 1987. Pursuant to 21 CFR 10.20(j)(2)(ii), confidential material submitted must be segregated and clearly marked. All claims of confidentiality must be raised at the prehearing conference or will be considered waived. Interested persons may examine the data on the drugs subject to this hearing notice (with the exception of any data identified as confidential pursuant to the provisions of 21 CFR 10.20(j)) at the Dockets Management Branch from 9 a.m. to 4 p.m., Monday through Friday.

A prehearing conference will be held in the FDA Hearing Room, Room 4A-35, 5600 Fishers Lane, Rockville, MD, on February 2, 1988. The prehearing conference may be subject to change by order of the presiding officer. Hearing participants will be notified of any such change. Others may wish to confirm the schedule for the prehearing conference by telephoning the contact person listed above shortly before the announced date. The hearing itself will also be held in the FDA Hearing Room on a date to be set at the prehearing conference. Written notices of participation shall be filed with the Dockets Management Branch no later than September 25, 1987. All participants are required to attend the prehearing conference and to be prepared to comply with the provisions of 21 CFR 12.92.

The hearing will be open to the public except for matters ruled by the Administrative Law Judge to be confidential. Any participant may appear in person, or by or with counsel, or with other qualified representatives, and may be heard on matters relevant to the issues under consideration.

Because this is a public hearing, it is subject to FDA's guideline concerning the policy and procedures for electronic media coverage of public agency administrative proceedings (21 CFR Part 10, Subpart C). These procedures are primarily intended to expedite media access to FDA's public proceedings, including formal evidentiary hearings conducted pursuant to Part 12 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videtape, film, or otherwise record FDA's public administrative proceedings, including the testimony of witnesses in the proceeding. Accordingly, the parties and nonparty participants to this hearing, and all other interested persons, are directed to the guideline, as well as **Federal Register** notice announcing issuance of the guideline (April 13, 1984, 49 FR 14723), for a more complete explanation of the guideline's effect on this hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052 as amended (21 U.S.C. 355)) and under authority delegated to me (21 CFR 5.10), I order that a public hearing be held on the issues set out in this notice.

Dated: August 18, 1987.

John A. Norris,

Acting Commissioner of Food and Drugs.

[FR Doc. 87-19553 Filed 8-25-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

[AA-660-07-4133-02]

Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, NM; Correction

The Order of the Secretary of the Interior revising the Order covering Oil, Gas, and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico, that appeared on pages 39425 to 39427 of the **Federal Register** of October 28, 1986, is corrected as follows:

1. On page 39425, column 1, the phrase "Section 1. Purpose. This order" is corrected to read "Section 1. Purpose. This Order".

2. On page 39425, column 1, the phrase "Section 2. Authority. This order" is corrected to read "Section 2. Authority. This Order".

3. On page 39425, column 1, the land description appearing in the parenthetical phrase appearing immediately after the phrase "the Order of February 6, 1939" is corrected to read "E1/2 SE1/4, sec. 24 and the E½ E½, W½ SE¼, S½ SW¼, sec. 25, T. 20 S., R. 29 E.,".

4. On page 39425, column 1, in the last sentence of the text appearing under the symbol I, the word "within" is corrected to read "with".

5. On page 39425, column 3, in section D., c., the phrase "more ore zone, i.e., those areas (enclaves) where potash ore is kown to" is corrected to read "more ore zones, i.e., those areas (enclaves) where potash ore is known to".

6. On page 39425, column 3, in the last paragraph of the text under "D. *Mineable Reserves*," the phrase "boundaries or the proposed mineable" is corrected to read "boundaries of the proposed mineable".

7. On page 39426, column 1, the language appearing at the end of the first partial paragraph appearing in column 1 is corrected by adding the word "and" at the end of the partial paragraph.

8. On page 39426, column 1, in the language in paragraph 2., the phrase "unitizaion pursuant to" is corrected to read "unitization pursuant to" and in the same paragraph the phrase "This unitization will be a prerequisite to the approval of any well which is: (1) Located" is corrected to read "Thus, unitization will be a prerequisite to the approval of any well which is: (1) located".

9. On page 39426, column 2, in the language in paragraph 3., the phrase "potash lessees shall continue" is corrected to read "potash lessees shall continue", and in the same paragraph, the phrase "the drilling or any proposed well" is corrected to read "the drilling of any proposed well".

10. On page 39426, column 2, in the language of paragraph 4., the phrase "vertical test wells for oii and gas" is corrected to read "vertical test wells for oil and gas".

11. On page 39426, column 3, the date appearing in the first line of column 3 is corrected to read "February 7, 1927".

12. On page 39426, column 3, in the text appearing under IV, the phrase "Part III of this Order by filding" is corrected to read "Part III of this Order by filing" and also the phrase "leasing and development of potash" is corrected to read "leasing and development of oil and gas".

13. On page 39426, column 3, in the description under T. 19 S., R. 29 E., the phrase "Secs. 34 and 36" is corrected to read "Secs. 35 and 36".

14. On page 39426, column 3, in the description under T 20 S., R. 29 E., the phrase "Secs. 34 and 36 inclusive" is corrected to read "Secs. 34 to 36 inclusive".

15. On page 39426, column 3, in the description under T. 21 S., R. 29 E., the phrase "Secs. 34 and 36 inclusive" is corrected to read "Secs. 34 to 36 inclusive".

16. On page 39426, column 3, in the description under T. 19 S., R. 31 E., the phrase "Section 7, 18;" is corrected to read "Secs. 7 and 18;".

17. On page 39426, column 3, the description is corrected by adding immediately following the phrase "T. 22 S., R 31 E.," the phrase "T. 23. S., R. 31 E.,".

18. On page 39427, column 1, in the description under T. 19 S., R. 33 E., the phrase "Secs. 21 and 36 inclusive" is

corrected to read "Secs. 21 to 36 inclusive."

19. On page 39427, column 1, in the description under T. 20 S., R. 34 E., the phrases "Secs. 3 and 10 inclusive;" and "Secs. 15 and 36, inclusive." are corrected to read "Secs 3 to 10 inclusive;" and Secs 15 to 36 inclusive".

James E. Cason,

Acting Secretary of the Interior.

August 13, 1987.

[FR Doc. 87-19554 Filed 8-25-87; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

[PRT-720930, et al.]

Receipt of Applications for Permits; Oxton Kennels & Exotics et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-720930

Applicant: Gibbon & Gallinaceous Bird Center, Saugus, CA.

The applicant requests a permit to import two male and two female agile gibbons (*Hylobates agilis*), and one male white-cheeked gibbon (*H. concolor leucogenys*) from the Perth Zoo, South Perth, Australia, for the purpose of research and captive propagation.

PRT-718405

Applicant: Oxton Kennels & Exotics, Salinas, CA 93907.

The applicant requests a permit to purchase in interstate commerce one captive-bred male tiger (*Panthera tigris*) from Gene Davis, Pasadena, Maryland, for educational purposes.

PRT-720885

Applicant: David James Calvin, Greeley, CO 80634.

The applicant requests a permit to import two male and two female Blyth's tragopan pheasants (*Tragopan blythii*) from Glenn Howe, Aylmer, Ontario, Canada, for captive breeding.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: August 21, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-19587 Filed 8-25-87; 8:45 am]

BILLING CODE 4310-55-M

[PRT 718896 et al.]

Issuance of Permit for Marine Mammals; Hiroo Aquarium et al.

On June 18, 1987, a notice was published in the **Federal Register** (Vol. 52, No. 115) that applications had been filed with the Fish and Wildlife Service by Marine Palace (Oita Ecological Aquarium) (PRT# 718896) and Hiroo Aquarium (PRT# 718972), both located in Japan, for permits to capture and export five Alaska sea otters each for the purpose of public display.

Notice is hereby given that on August 13 & 12 respectively, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 611, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: August 21, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-19588 Filed 8-25-87; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[NV-930-07-4410-08]

Availability of the Shoshone-Eureka Proposed Resource Management Plan (RMP) Amendment and Final Environmental Impact Statement (EIS), Battle Mountain, NV

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the National Environmental Policy Act of 1969, the Battle Mountain District of the Bureau of Land Management has prepared a proposed RMP amendment and final EIS for the Shoshone-Eureka Resource Area. Through reexamination of the criteria used to categorize livestock grazing allotments into management categories along with new information on condition and trend, 14 additional allotments were categorized into the "Improve" category. The changes in management actions associated with the recategorization of allotments were significant enough to require a proposed amendment to the original RMP and an assessment of impacts through an EIS.

DATES: The proposed RMP amendment and final EIS is now available to the public. The 30 day protest period will end September 28, 1987.

ADDRESSES: Individuals wishing to obtain copies of the draft and final planning documents should contact Terry L. Plummer, District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820, telephone (702) 635-5181.

Any protests are to be sent to the following address: Director, Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: Copies of the final planning documents have been mailed to individuals and organizations of the Shoshone-Eureka mailing list and are available for review at all BLM offices in Nevada and at all county and university libraries in the state.

Individuals wishing to protest should provide the following information to the Director not later than the above date:

a. The name, mailing address, telephone number and interest of the person filing the protests;

b. A statement of the issue or issues being protested;

c. A statement of the part or parts of the amendment being protested;

d. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

e. A concise statement explaining why the State Director's decision is believed to be wrong.

Date: August 17, 1987.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87-19506 Filed 8-25-87; 8:45 am]

BILLING CODE 4310-HC-M

[CO-942-06-4520-12]

Colorado; Filing of Plats of Survey

August 14, 1987.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., August 14, 1987.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of sections 2 and 3, T. 37 N., R. 16 W., New Mexico Principal Principal Meridian, Colorado, Group No. 717, was accepted August 4, 1987.

The plat representing the dependent resurvey of portions of the south boundary and the subdivisional lines, and the survey of the subdivision of section 34, T. 38 N., R. 16 W., New Mexico Principal Principal Meridian, Colorado, Group No. 717, was accepted August 4, 1987.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

The plat representing the dependent resurvey of portions of the Ninth Standard Parallel North (south boundary, T. 37 N., R. 7 W.) and the subdivisional lines, and the metes-and-bounds survey in section 4, T. 36 N., R. 7 W., New Mexico Principal Meridian, Colorado, Group No. 843, was accepted August 13, 1987.

This survey was executed to meet certain administrative needs of this Bureau and the Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 87-19507 Filed 8-25-87; 8:45 am]

BILLING CODE 4310-JB-M

Bureau of Reclamation

Colorado River Floodway Task Force; Meeting

SUMMARY: The Colorado River Floodway Protection Act, Pub. L. 99-450, requires the Secretary of the Interior to establish a federally declared floodway along the Colorado River below Davis Dam on the Arizona/Nevada border and the southerly international border between the United States and Mexico. The Act requires that a task force be established to assist in the development of the floodway boundaries.

The Colorado River Floodway Task Force has previously met on June 30, 1987, and on July 27, 1987. A steering committee was organized and other subcommittees have been formed to address the specific tasks identified in the Act.

The third meeting of the Task Force is scheduled for September 17, 1987, at Lake Havasu City, Arizona. At this meeting the subcommittee reviewing the methodology for the development of the 100-year flood and mapping on the Colorado River will make a presentation and will provide recommendations to the Task Force. The Task Force will also identify the chairpersons of the other subcommittees, and will develop schedules and activities for the accomplishment of the remaining tasks.

An open meeting will be held as described below:

Date: September 17, 1987

Time: 8:30 a.m.

Address: Pioneer Hotel 271 Lake Havasu Avenue Lake Havasu City, Arizona 86403 (602) 855-1111

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Brose, Bureau of Reclamation, Nevada Highway and Park Street, P.O. Box 427, Boulder City, Nevada 89005, (702) 293-8520.

Dated: August 20, 1987.

William C. Klostermeyer,

Acting Commissioner.

[FR Doc. 87-19517 Filed 8-25-87; 8:45 am]

BILLING CODE 4310-09-M

Office of Surface Mining Reclamation and Enforcement

Reopening and Extension of Public Comment Period; Abandoned Mine Land Reclamation Fee Liability for Culm Combustion Project

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of reopening and extension of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) held a public meeting on August 11, 1987, in Camp Hill, Pennsylvania, to discuss whether culm should be considered coal, and therefore subject to the Abandoned Mine Land (AML) reclamation fees (52 FR 27265). In order to allow further public participation on this subject, OSMRE is now reopening and extending the comment period.

DATE: The comment period on the subject matter is reopened and extended until 5:00 p.m. Eastern time September 25, 1987.

ADDRESSES: Hand-deliver written comments to Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC; or mail to the Office of Surface Minit Reclamation and Enforcement, Administrative Record, Room 5131-L, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jane Robinson, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone 202-343-2853 (Commerical or FTS).

SUPPLEMENTARY INFORMATION: OSMRE has received inquiries from companies proposing to construct culm fueled electrical power generation facilities in the Comonwealth of Pennsylvania regarding their AML fee liability for culm. The culm, to be used as fuel in the combustion units, was originally produced as a waste product from surface and subsurface anthracite mines that operated on Pennsylvania from approximately 1900 to 1956. OSMRE is advised that the facilities will utilize newly developed technology in their proposed operations that will eliminate the need to separate the combustible from the non-combustible materials contained in the culm. The companies contemplating the use of this new technology are of the opinion that such an operation will not be feasible if OSMRE imposes the AML fee on the culm.

To assist OSMRE in making its determination on whether an AML fee should be imposed on Pennsylvania culm cumbustion operations, a public meeting was held. This meeting provided a forum for OSMRE to obtain comments, information, and recommendations from all interested parties. Among the panelists at the meeting were a representative of the Department of Natural Resources of the Commonwealth of Pennsylvania. Since the participants expressed great interest in the topic, OSMRE has decided to reopen and extend the comment period in order to allow further public participation prior to any decision it makes on the treatment of culm for AML fee purposes. OSMRE is particularly interested in receiving comments on the following:

The impact the payment of AML fees will have on the economic vialbility of a culm combustion project.

Suggestions for an equitable measurement of the tonnage upon which the fee is calculated, assuming the actual percentage of coal by bulk is low.

The economic consequence of environmental conditions imposed by Federal or State regulatory authorities on the use of culm as a fuel.

A rationale and/or legal basis for making a determination that culm is or is not coal.

Any impact that an existing or proposed Federal or State legislation, or regulation, will have on the economic viability of these projects.

OSMRE will rely, in part, on information obtained at the meeting and through written public comments to

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make its decision regarding AML fee liability of culm operations.

Jed. D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

August 18, 1987.

[FR Doc. 87–19495 Filed 8–25–87; 8:45 am]

BILLING CODE 4310–05–m

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Statement of Organization, Functions, and Procedures, (Public Notice No. 1, Revised); Information Guidance

In compliance with the Freedom of Information Act (5 U.S.C. 552), this notice provides information and guidance to the public regarding: The basic authorities and programs of A.I.D.; the organization and functions of the Agency's central and field organizations; the Agency's methods of operation; statements of policy, rules, and procedures; and the process by which the public may obtain information, make submittals or requests, or obtain decisions.

This notice is a revision of "A.I.D.'s Public Notice No. 1," published in the **Federal Register** on October 4, 1985. It reflects the organization, basic functions, and methods of operations of A.I.D. as of June 30, 1987. Subsequent revisions of this statement will also be published in the **Federal Register**, as appropriate.

I. Creation and Authority of the Agency

The Agency for International Development (A.I.D.) carries out economic assistance programs designed to help the people of developing countries develop their human and economic resources, increase their productive capacities, and improve the quality of human life as well as promote economic and political stability in friendly countries.

The Foreign Assistance Act of 1961 (75 Stat. 424; 22 U.S.C. 2151, *et seq.*), as amended, authorizes the President to exercise functions under that act through such agency or officer of the U.S. Government as he/she may direct. Executive Order 12163 of September 29, 1979, delegates to the Director of the International Development Cooperation Agency (IDCA) the authorities set forth in the Foreign Assistance Act of 1961, as amended, and in certain other acts, with certain limited exceptions. The Executive Order also directs that the Director of IDCA continue within that Agency A.I.D.

IDCA Delegation of Authority No. 1 of October 1, 1979 (44 FR 57521), continued A.I.D. in existence as an agency within IDCA and delegates to the Administrator of A.I.D. the functions conferred upon the Director of IDCA by Executive Order 12163 and certain related Executive Orders, except as otherwise reserved or delegated.

A.I.D. functions under an Administrator, who also currently serves as the Acting Director of IDCA. The Administrator directs U.S. foreign and economic assistance operations in more than 60 countries.

II. Programs of the Agency

The Foreign Assistance Act of 1961, as amended (75 Stat. 424; 22 U.S.C. 2151 note), authorizes A.I.D. to administer—normally on a bilateral basis—two kinds of foreign assistance: Development assistance and economic support funds.

In addition, A.I.D., in cooperation with the Department of Agriculture and State, also carries out Pub. L. 480, the Agriculture Trade Development and Assistance Act of 1954, as amended (68 Stat. 454; 7 U.S.C. 1691 *et seq.*), which includes the sale of agricultural commodities on concessional terms (Title I), the donation of agricultural commodities (Title II), and the provision of food under the Food for Development Program (Title III).

A.I.D. also conducts humanitarian relief activities in support of those who suffer from natural calamities such as earthquake, famine, flood, and drought. Programs are conducted, often in conjunction with those of other nations and private, charitable organizations, to quickly alleviate the effects of disaster and reduce human suffering.

A.I.D. emphasizes four major thrusts to achieve successful economic development: (1) Use of market forces to stimulate growth of market economies in developing countries and to interest U.S. companies' investment in those countries; (2) policy dialogue to encourage those countries that receive U.S. assistance to adopt rational economic policies that foster economic growth; (3) institution building that supports establishment and growth of institutions such as schools, colleges, training organizations, and supportive government ministries necessary for economic growth in developing countries; and (4) practical technology transfer to enable countries to produce their own resources.

A.I.D.'s main objective is to help developing countries help themselves.

Specifically, A.I.D. administers programs under the Foreign Assistance Act within the following major categories of assistance:

A. Development Assistance

A.I.D. focuses its development assistance programs on critical problem areas in those functional sectors which affect the majority of the people in the developing countries. The areas of concentration are:

1. Agriculture, Rural Development and Nutrition

To increase the incomes of the poor majority and to expand the availability and consumption of food—while maintaining and enhancing the natural resource base.

2. Health

To lower infant and child mortality rates through child survival programs and improve community and family health in general through primary health care programs; reduce the incidence of serious communicable diseases; and assist developing countries to effectively manage the allocation of financial and human resources so that preventitive and curative health services are sustained and more equitably distributed.

3. Population Planning

To extend voluntary family planning services to the village level through programs that provide or promote safe, effective, affordable, acceptable family planning services.

4. Education and Human Resource Development

To expand access to basic education, particularly for the rural poor, through programs which improve the education system's management, the quality of primary education and the cost-effectiveness of resources used; to encourage the use of mass media and communication technology and the development of informal education and training approaches for rural families and workers in agriculture; nutrition; health and family planning; and to provide advanced training needed for technicians, scientists and managers at all levels.

5. Energy, Private and Voluntary Organizations, and Selected Development Activities

To support selected development activities that deal with a wide range of development concerns which do not fall within the above functional sectors; e.g., projects directed toward assisting developing countries with their national energy and natural resource problems and projects which provide for the transfer and adaptation of appropriate technology and lessen the problems of

rapid urbanization, including employment and income problems. These activities place high priority on greater involvement of the private sector of both the United States and less-developed countries, in development, including greater reliance on private and voluntary organizations.

6. Private Enterprise

Private enterprise is integrated into each of the functional program areas to assist, both directly and in collaboration with the U.S. private sector, those developing countries that want to support a private sector, market-oriented, developmental strategy. U.S. and developing country private sector resources can be an important supplement and complement to existing bilateral and multilateral aid programs; and private investment can make a vital contribution to development through job creation, increased productivity, transferred technology and management know-how and the generation of additional and diversified products to meet internal demand and expand export capacity.

B. Economic Support Fund

The primary objective of The Economic Support Fund (ESF) is to support U.S. economic, political and security interests and to advance U.S. foreign policy objectives. ESF provides resources that stem the spread of economic and political disruption and to help friends and allies in dealing with threats to their security and independence.

ESF is flexible economic assistance provided on a grant or loan basis, and may be used, for example, to sustain economic activity and restore equilibrium, to address basic development needs, or to improve infrastructure. In administering ESF, consideration is given to policy guidance which underlies the provision of development assistance. This would include, for example, assisting developing countries in building and maintaining social and economic institutions necessary for self-sustaining and equitable growth, providing opportunities to improve the quality of life of their people, and meeting basic human needs.

C. Specific Programs

1. Sahel Development

A.I.D. participates in a long-term program for the development of the Sahelian region of West Africa. The objectives of the Sahel Development Program are to promote regional food self-reliance and self-sustaining economic growth. The program is coordinated, planned, and designed by the Club du Sahel, comprised of nine Sahel states: Mali, Chad, Niger, Burkina Fasco, Senegal, Mauritania, Cape Verde, the Gambia, and Guinea-Bissau; the United States; and over 20 participating governments and international organizations.

2. American School and Hospitals Abroad

The American Schools and Hospitals Abroad program provides grants to private U.S. nonprofit organizations sponsoring American schools and hospitals abroad. The purpose is to demonstration American ideas and practices in education and medicine.

3. International Disaster Assistance

The Office of U.S. Foreign Disaster Assistance administers A.I.D.'s overseas disaster assistance program. The Office draws upon other U.S. Government agencies, voluntary and international organizations and the U.S. private sector to meet the demands of disaster relief, rehabilitation, preparedness, early warning and mitigation in countries stricken or threatened by natural or man-made disasters, including earthquakes, floods, cyclones, volcanic eruption, accidents and civil strife. OFDA provides technical assistance and training for the development of host government disaster assistance programs, technology transfer for improved prediction and warning systems and material and personnel resources for emergency relief and rehabilitation. The A.I.D. Administrator serves as the President's Special Coordinator for International Disaster Assistance.

4. Housing Guaranty Program

A.I.D.'s Housing Guaranty Program facilitates private financing for shelter for lower income families in developing countries by guaranteeing repayment to U.S. lenders for projects requested by these countries. A.I.D. seeks to finance innovative programs such as squatter upgrading through the provisions of sewerage, potable water, electricity, and credit for home improvements; sites and services by the provision of a basic urbanized lot, with the family constructing its own dwelling unit; and low-cost, expandable core housing units.

These projects are designed to promote affordable homeownership for lower-income households, increase the participation of the private sector in the financing and development of low-cost shelter, support improved housing finance policies, and strengthen local delivery of essential urban services to poorer neighborhoods.

The Office of Housing and Urban Programs also supports a program of research and technical assistance in urban development. Key areas of emphasis are the development and application of new tools for analyzing urban issues and urban investment strategies and assistance in strengthening urban investment strategies and assistance in strengthening urban and financial management policies and practices.

5. Food for Peace

In cooperation with the Department of Agriculture, A.I.D. participates in the sale of agricultural commodities on concessional terms under Title I of Public Law 480 to encourage economic development, assist in combating hunger and malnutrition, and for other purposes. Under Title II, A.I.D. administers the donation of agricultural commodities to meet famine or other urgent or extraordinary relief requirements, to combat malnutrition, to promote economic and community development, and for needy persons and nonprofit school lunch and preschool feeding programs outside the United States. A.I.D. also administers Title III, which provides that a portion of funds accruing from Title I sales be used for Food for Development Programs to improve the production, protection, and utilization of food to increase the well-being of the poor in the rural sector of the recipient country, and that funds so used are applied against that government's Title I repayment obligation (Pub. L. 480, Agricultural Trade Development and Assistance Act of 1954, as amended). A.I.D. supports the use of food aid in ways that promote rather than hinder the growth of food production and associated policy and program initiatives in the host government.

Additionally, A.I.D. administers on behalf of USDA the Sector 416 surplus agricultural commodity program. These commodities can be utilized on a grant basis for time-limited humanitarian and developmental purposes.

6. Science and Technology

In recognition of the higher priority that developing countries are placing on science and technology, A.I.D. is focusing on more innovative and collaborative approaches to the problems and processes of development research and technology transfer. This program includes both support of the research to explore the potential uses of emerging technologies for development,

and innovative approaches to strengthen the capacity of less developed countries to take advantage of these new technologies.

D. Special Provisions

1. Capital Technology

A.I.D. supports projects with the specific objective of broadening the range of technologies in use. This is accomplished by increasing local research and the flow of information on appropriate technologies; promoting local development, adaptation, and utilization of technologies appropriate to developing countries; and providing assistance which encourages the formulation of policies that broaden the range of technological options.

2. Women in development

In recognition of the fact that women in developing countries play a signficant role in economic production, family support, and the overall development process of the national economies of such countries, Congress requires that U.S. bilateral aid be administered so as to give particular attention to the programs, projects, and activities which tend to integrate women into the national economies of developing countries, thus improving their status and assisting the total development effort. A.I.D. implements this congressional mandate with leadership by the Office of Women in Development.

III. Organization, Functions, and Methods of Operations

A. General

A.I.D. consists of a central headquarters staff in the Washington metropolitan area (A.I.D./W) and a number of overseas missions and offices. The structure of the Agency headquarters includes: The Office of the Administrator which is supported by the Office of the Executive Secretary; a Board for International Food and Agricultural Development Support Staff; eight staff offices; six functional bureaus; and three geographic bureaus.

B. The Office of the Administrator (A/A.I.D.)

The Administrator plans, directs, and coordinates the operations of the Agency and is responsible, subject to the approval of the President, for the formulation and execution of U.S. foreign economic assistance policies and programs. The Administrator supervises and directs the activities of all personnel of the Agency in the United States and overseas. In addition, the Administrator of A.I.D. serves as the President's Special Coordinator for International Disaster Assistance.

The Office of the Executive Secretary (ES) facilitates and expedites the decision-making process of A.I.D. It serves as a channel of communication and coordination between the Office of the Administrator and the Agency's Senior Staff.

C. Staff Offices

The following staff offices report to the Office of the Administrator:

1. The Office of the Inspector General (IG) is the Agency's focal point for assuring the integrity of A.I.D.'s operations. It is the central authority concerned with the quality, coverage, and coordination of the audit, inspection and investigation services of the Agency. In directing, monitoring, and reviewing these activities, the Inspector General emphasizes both the protective and constructive aspects of these services as a tool of management within a comprehensive Agency effort to attain improved management effectivenss. The Inspector General has full access to all phases of the Agency's operations in order to carry out a comprehensive plan of selected audits, investigations and inspections, surveys and reviews to provide reasonable protection and constructive advice for Agency management. The IG serves as Agency liaison with the Department of State to assure that adequate security services are performed for A.I.D. by that Department.

2. The Office of Legislative Affairs (LEG) has responsibility for the Agency's relations with the Congress, and is the central point of contact between the Agency and the Congress, including Congressional members and committees. The Office coordinates the preparation of A.I.D.'s legislative program, including the preparation and submission of information relating to legislative authority and appropriations requests. The Office is also responsible for advising the Administrator and the Agency on the status of pending legislation of interest and on the history of pending legislation, including the concerns and views of members of the Congress on pending legislation and other matters of interest to A.I.D.

3. The Office of the General Counsel (GC) provides all legal advice, counsel, and services to the Agency and its officials both in the United States and abroad, and ensures that A.I.D. Programs are administered in accordance with legislative authorities. The Office maintains legal staffs both at headquarters and at regional or country organizations overseas.

4. The Office of U.S. Foreign Disaster Assistance (OFDA) plans and implements overseas disaster preparedness, relief, and rehabilitation programs. It formulates U.S. foreign disaster assistance policy and coordinates disaster assistance activities of the Agency, the Department of State, and other elements of the U.S. Government. The Office maintains contingency planning and preparedness for foreign disasters, mobilizes U.S. Government resources with those of voluntary agencies, international organizations and other donors. It promotes and supports, in conjunction with U.S. Missions abroad, preparedness programs in disaster prone countries. The Office maintains disaster relief stockpiles overseas and directs a disaster coordination center in Washington, DC.

5. The Office of Equal Opportunity Programs (EOP) is the central Agency office responsible for formulating the policy and administering, monitoring, and evaluating the implementation of all government laws, policies, regulations and executive orders relating to the provision of equal opportunity in employment and personnel administration for all employees and applicants for employment with A.I.D. and activities financed by it without regard to race, color, religion, national origin, physical or mental handicap, sex, or age.

6. The Office of the Science Advisor (SCI) serves as the focal point for coordinating the more innovative and collaborative approaches to the problems and processes of development research, technology transfer and related capacity-building programs and activities. The Office has a major responsibility for identifying scientific and technological needs and opportunities in developing countries and resources to meet those needs from U.S. and foreign public and private sources; for establishing effective mechanisms for involving foreign public and private sector sources in working with developing countries to realize these opportunities; for enhancing relationships of IDCA and A.I.D. with other U.S. public and private sector resources; and for ensuring effective linkage between U.S. scientific and technological capacities and the development programs in which the U.S. Government participates.

7. The Office of Small and Disadvantaged Business Utilization (SDB) administers the Agency's small and disadvantaged business utilization programs in accordance with governing legislation, including the Gray

Amendment, the Small Business Act, as amended (Pub. L. 95–507); section 123 of the International Development Cooperation Act of 1979 and section 602 of the Foreign Assistance Act of 1961, as amended.

8. The BIFAD Support Staff (BIFAD/S), in compliance with A.I.D.'s statutory obligation, provides staff support to the Board for International Food and Agricultural Development (BIFAD) and its subcommittee as authorized by section 298 of Title XII of the Foreign Assistance Act, as amended.

9. The Office of Private Sector Coordination (PSC) has responsibility for assisting, coordinating, and advising on the involvement of the U.S. business community with A.I.D. to achieve Agency objectives. The Office undertakes activities or sponsors initiatives to stimulate cooperative projects between A.I.D. and the U.S. business community which are within the Agency's mandate.

PSC has responsibility for coordinating A.I.D.'s efforts to promote greater U.S. private sector involvement in developing countries with U.S. business promotion efforts of other U.S. agencies, including the Overseas Private Investment Corporation (OPIC), U.S. Trade and Development Program (TDP), the Department of Agriculture, the Department of Commerce, the Department of Treasury, and financing programs of the multilateral development banks, including the International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC), Inter-American Development Bank (IDB), Asian Development Bank (ADB), and African Development Bank (AFDB).

D. Functional Bureaus

1. The Bureau for Program and Policy Coordination (PPC) is responsible for the Agency's overall program policy formulation, planning, coordination, resource allocation, evaluation and development information utilization activities, and the program management information utilization activities, and the program management information systems which support them. The Bureau develops economic assistance policies, provides guidance on long-range program planning, economic analysis, sector assistance strategies, and project analysis and design. It coordinates the formulation and revision of the Agency's program and budget, and participates in the presentation of the Agency's program to the Congress. The Bureau reviews and monitors all country program strategies and project proposals and selectively reviews project papers from other bureaus and offices to ensure compliance with Agency policy guidance. It provides in-depth analyses of development problems and related issues and formulates the Agency's position on major U.S. development policies affecting the Agency's assistance programs in the developing countries.

The Bureau assures implementation of Title IX of the Foreign Assistance Act (FAA), which emphasizes the encouragement of democratic institutions and seeks to develop an Agency policy for the furtherance of human rights in the developing countries. In accordance with sections 116 and 502B, implements sections 113 and 305 of the FAA relating to women in development. The Bureau provides leadership in the development of Agency policies and procedures for the integrated use of capital, technical, Pub. L. 480, and other assistance and for evaluation of progress toward program goals; incorporates these policies and procedures into Agency directives; reviews the policy aspects of all types of Agency projects to assure consistency with Agency objectives; develops and coordinates Agency environmental policies; and serves as Secretariat for the Bilateral Assistance Subcommittee (BAS) of the Development Coordination Committee (DCC).

The Bureau carries out significant evaluations of Agency-supported projects which can introduce improved ideas and valuable experience into the Agency's program at key points. The Bureau exercises systems management responsibilities for the policy, planning, and program management systems, both automated and nonautomated assigned to the Bureau; and provides central Agency statistical services.

The Bureau is also responsible for Agency policy and program coordination with other bilateral assistance donors, United Nations development organizations, and Multilateral Development Banks. In close collaboration with State, Treasury and other interested USG agencies, the Bureau reviews programs, budgets and staffing of the international development organizations, makes recommendations on the USG position regarding these matters, and provides guidance to the U.S. representatives to these organizations. Lastly, the Bureau is responsible for carrying out the USG lead agency responsibility for coordination and preparation of the U.S. position brought before the Development Assistance Committee, including the calculation of official development assistance and other measures of development cooperation.

2. The Bureau for Science and Technology (S&T) has primary responsibility for enhancing the Agency's capabilities to use science and technology to further economic and social progress in developing countries. To accomplish this, the Bureau provides professional leadership and technical support to Agency activities in the sectors of agriculture, nutrition, forestry, environment and natural resources, energy, rural and urban development, development administration, employment generation, education, health and family planning. It also administers the Agency's International Training program. Within each of the above sectors, the Bureau:

a. Serves as the Agency's primary liaison with the scientific and technical communities of the United States and the developing and more developed countries.

b. Serves as the Agency's focal point for the development of those sectoral strategies which require significant science and technology inputs. The Bureau develops appropriate methodology to ensure that these strategies are responsive to the needs of developing countries.

c. Identifies, in collaboration with the geographic bureaus, field service needs which can be met more effectively and efficiently from a central source and arranges for these needs to be met.

d. Mobilizes resources to provide assistance needed and requested by the field officies and Less Developed Countries (LDCs), building upon the Bureau's liaison with U.S. universities, government agencies and professional organizations.

e. Supplies the scientific and technical dimensions to the Agency's overall development assistance policy and to those sector assistance policies and strategies which govern the Agency.

The Bureau administers the Agency's central research and development program and coordinates centrally funded, regional and country research and development activities. The Bureau ensures that new knowledge and methods are disseminated within the Agency and are utilized in the Agency's field projects.

The Bureau serves as the Agency's focal point for technical coordination with the United nations (U.N.), specialized agencies, and other international organizations. The Bureau also coordinates the Agency's operational relationships with: (a) The Board for International Food and Agricultural Development (BIFAD) and its subcommittee in the management and implementation of programs/

activities authorized under section 298 of Title XII of the Foreign Assistance Act, as amended, and (b) the U.S. university community generally.

3. The Bureau for Food for Peace and Voluntary Assistance (FVA) has central Agency responsibility for encouraging and strengthening the effective participation of nongovernmental organizations in support of A.I.D.'s developmental and humanitarian objectives; performs designated Agency responsibilities for the Food for Peace Program; and administers the American Schools and Hospitals Abroad Program.

In the area of private and voluntary cooperation, the Bureau creates and explores approaches to enlarge the role of volunteerism in the development process; maintain liaison with the American Council on Foreign Aid, the Advisory Committee on Overseas Cooperative Development and the U.S. cooperatives engaged in overseas cooperative development, and with the community of voluntary agencies generally; and provides staff support to the Advisory Committee on Voluntary Foreign Aid.

4. The Bureau for Management (M) provides centralized services in the areas of financial management, personnel management, information resources management, management operations, and contract and commodity management. It establishes and monitors Agency policies, regulations, and procedures in all of these areas.

The Bureau provides advice and assistance to Agency management on the financial implications of legislation, plans, programs, policies, procedures, operating activities, and audit and evaluation findings. It administers and coordinates such financial management activities as accounting, operating expense and workforce budgets, internal financial management control, advice and assistance to overseas missions regarding financial policies, practices and procedures, and preparation and interpretation of financial and related statistical reports. The Bureau also administers the Agency's workforce resources management program.

The Bureau has central responsibility for personnel administration. It develops policies, standards, and guidelines for operation of overseas and domestic personnel systems; operates centralized personnel recruitment, assignment, evaluation, and employee training programs; and conducts a full range of personnel operations for the Agency. Additionally, the Bureau is responsible for the administration of the Agency's labor relations program (Executive Orders 11491 and 11636).

The Bureau assists Agency management in the development, implementation, and evaluation of management policies and practices; provides or arranges for management consulting services to the headquarters and overseas organizations; and oversees administration of the programs for organizaton and functional alignment, directives, committee management (Pub. L. 92–463), management improvement, and systems coordination.

The Bureau provides leadership and coordination to the development and administration of the Agency's automated data information systems; provides leadership and guidance on all phases of the use of automatic data processing technology; reviews, recommends, and monitors the Agency-wide use of management consulting firms, contracts, or Participating Agency Service Agreements (PASAs) for automated data information systems; and provides leadership and policy guidance to the Agency's data management systems.

The Bureau develops policies, standards, and guidelines for, and oversees the development, operation, and management of worldwide administrative and logistical support systems; counsels and assists senior Agency personnel on all phases of administrative and logistical support services; acts as the Agency coordinator for overseas combined administrative support services for all aspects of foreign affairs administrative support (FAAS) and joint nonappropriated fund activities; and provides a wide range of administrative and logistical services for A.I.D.

The Bureau directs the development and maintenance of policies, procedures, standards, and regulations governing direct contracting and A.I.D.-financed borrower/grantee contracting; directs centralized contracting services; encourages the participation of U.S. small business in services, contracting, and export supply activities of the Agency; and develops and maintains the Agency's procurement regulations.

The Bureau provides leadership and coordination to the development and administration of the Agency's policies and procedures for commodity management; serves as the principal advisor on the commodity management aspects of the economic assistance programs; administers commodity import programs and provides support for the implementation of the commodity and transportation elements of other programs financed by the Agency; implements requirements for commodity marking and labeling; and provides support for the transportation element of all Agency programs and for programs financed by Title II, Pub. L. 480, and the world food programs.

5. The Bureau for Private Enterprise (PRE) has responsibility for developing a closer and more effective partnership between the Agency and the U.S. Private sector and for facilitating the participation of the U.S. Private sector not only in A.I.D.-finaced transactions, but in privately financed projects and activities which can accelerate the development process overseas.

The Bureau also adminsters the Agency's Housing Guaranty Program and serves as Agency liaison with IDCA's Trade and Development Program (TDP) and Overseas Private Investment Cooperation (OPIC).

6. The Bureau for External Affairs (XA) has broad responsibility for the Agency's diverse external programs for communicating with the American public, private U.S. communities, other donor nations, and the developing economies concerning the purpose and role of the U.S. economic assistance program and its place in international efforts to foster stability and economic grwoth and development.

E. Geographic Bureaus

There are three Geographic Bureaus: Africa, Latin America and the Caribbean, and Asia and Near East.

These Bureaus are the principal A.I.D. line offices with responsibility for the planning, formulation, and management, of U.S. economic development and/or supporting assistance programs in their respective areas overseas. Their programs are administered within delegated authorities and in accordance with policies and standards established by the Administrator.

Each Geographic Bureau is headed by an Assistant Administrator who:

1. Directs and supervises the activities of the Bureau and its overseas missions and offices.

2. Directs the formulation of U.S. economic assistance programs; approves programs and projects within the limits of authorities delegated from the Administrator; and authorizes the execution of economic assistance agreements with Bureau countries and regional organizations.

3. Execises policy control within the region over the housing guaranty programs which are administered by the Office of Housing and Urban Programs within the Bureau for Private Enterprise.

4. Submits, through the Bureau for Program and Policy Coordination for the Administrator's approval, an annual budget of proposed Bureau activities

and assists in presenting the Bureau's program and budget to the Congress.

5. Approves and directs the allocation of available resources among bureau offices and overseas missions.

6. Assures necessary liaison with other Agency offices, the Department of State, other U.S. bilateral, and multilateral agencies and officials of recipient countries; and represents the agency at country consortia or consultative group meetings.

7. Oversees the implementation of Bureau programs and projects; monitors performance under loan and grant agreements contracts, and other operating agreements; and takes or recommends any required remedial action.

8. Represents the Agency before the press and the public, as required.

F. Overseas Missions and Offices

1. A.I.D.'s country organizations are located in countries where the Agency is carrying out bilateral economic assistance programs. Such organizations report to the Geographic Bureau, and include the following:

a. *Missions* are currently located in 43 countries for which the the Agency's program is major, continuing, and usually involves multiple types of aid in several sectors. Each mission is headed by a Mission Director who has been delegated program planning, implementaion, and representation authorities.

b. Offices are currently located in 25 countries for which the Agency's program is moderate, declining, or has limited objectives. Each office is usually headed by an Agency Representative who has been delegated program planning, implementation, and representation authorities.

c. Sections of Embassy are currently located in four countries for which the Agency program is small or is being phased out. The Agency program planning and implementation authorities are delegated to the chief U.S. diplomatic representative in the country.

2. Offices for Multicountry Programs (seven offices) administer the Agency's overseas program activities which involve more than one country. These offices may also perform "country organization" reponsibilities for assigned countries and report directly to the Geographic Bureaus.

3. Offices for Multicountry Services (three offices) provide services to other overseas organizaitons, primarily the Agency's country organizations and Multicountry Program Offices and report to the Geographic Bureaus.

4. Development Assistance Coordination and Representation offices (four offices) maintain liaison with various international organizations and represent U.S. and the Agency's interest in development assistance matters. Such offices may be only partically staffed by Agency personnel and may be headed by employees of other U.S. Government agencies.

5. Audit and Investigations/ Inspections Offices (six offices) are maintained by the Office of the Inspector General at overseas locations to carry out a comprehensive program of selected audits, investigations, inspections, surveys, reviews, and security services for the Agency.

IV. Statements of General Policy, Rules, and Procedures

The Statements of A.I.D. policy and the nature and requirements of formal and informal procedures, which are currently available to the public, are contained in published regulations and other publications of the Agency as listed below. To the extent applicable, these also contain descriptions of forms available or specify the places at which forms may be obtained, and give instructions as to the scope and content of papers, reports, or examinations involved in the transaction of business with A.I.D.

A. Code of Federal Regulations

1. A.I.D.'s general regulations are codified in Chapter II of Title 22 of the Code of Federal Regulations.

2. The procurement regulations for A.I.D. are codified in Chapter 7 of Title 48 (A.I.D.AR) and Chapter 7 of Title 41 (A.I.D. FPR) of the Code of Federal Regulations.

B. A.I.D. Handbooks

There are 33 A.I.D. Handbooks containing Agency policy, regulations, procedures and guidance on all aspects of the Agency's operation.

C. In addition, the following A.I.D. publications contain information for those transacting business with A.I.D.:

1. A.I.D.'s Country Contracting Procedures, including:

a. A.I.D.'s Handbook 11—Country Contracting (formerly Capital Projects Guidelines).

b. Environmental Assessments Guidelines Manual.

c. Information Packet for Architect-Engineer Firms.

2. A.I.D.-Financed Export Opportunities.

3. A.I.D.'s Procurement Information Bulletins.

4. A.I.D.'s Small Business Memos.

5. A.I.D.'s Importer Lists.

Copies of the above listed Agency regulations and other publications are available for public inspection and copying through the Bureau for External Affair's Office of Public Inquiries, A.I.D., Washington, DC 20523. In addition, publications listed under No. 2 through No. 5 above are available from the Office of Small and Disadvantaged Business Utilization, A.I.D., Washington, DC 20523, and at Department of Commerce field offices located in principal cities of the United States. The Agency's procurement regulations are also for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

V. Information, Submittals, and Requests for Decisions

A: Information

A.I.D. Regulations Nos. 12, 14, and 15 (22 CFR Parts 212, 214, and 215, respectively) specify the Agency's policy and procedures for public access to Agency records.

B. Submittals, Requests, or Decisions

Members of the public doing business, or wishing to do business, with A.I.D. may make their submittals or requests, or obtain decisions at the cognizant bureau of office described in section III above, in accordance with provisions of A.I.D. regulation or other publication which govern the action or process.

In case of uncertainty by a member of the public as to the appropriate bureau of office, or as to the methods of applying for or obtaining A.I.D. action, application should be made to the Director, Office of Public Inquiries, Bureau for External Affairs, A.I.D., Room 4889, 21st Street and Virginia Avenue, NW., Washington, DC 20523.

C. Effective Date

This notice shall be effective June 30, 1987.

Date: August 18, 1987.

R.T. Rollis, Jr.,

Assistant to the Administrator for Management.

[FR Doc. 87-19513 Filed 8-25-87; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[TA-503(a)-15 and 332-249]

Generalized System of Preference; List of Articles Which May Be Designated or Modified As Eligible Articles; Investigation and Scheduled Hearing

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on August 10, 1987, of a request from the U.S. Trade Representative made in part at the direction of the President, the Commission instituted investigation No. TA-503(a)-15 and 332-249 under sections 503(a) and 131(b) of the Trade Act of 1974 (19 U.S.C. 2463(a) and 2151(b)) and section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g))—

(1) Pursuant to sections 503(a) and 131(a) of Trade Act, and the authority of the President delegated to the U.S. Trade Representtive by sections 4(c) and 8 (c) and (d) of Executive Order 11846, as amended, to advise the President, with respect to each article listed in Part A of the attached Annexes, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties under the U.S. Generalized System of Preferences (GSP). In providing its advice, the USTR requested the Commission to assume that benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the "competitive need" limitations specified in section 504(c) of the Act.

(2) Pursuant to section 332(g) of the Tariff Act and at the direction of the President—

(A) To advise the President, with respect to each article listed in Parts B and C of the attached Annexes, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers (a) of the removal of articles in Part B from eligibility for duty-free treatment under the GSP, (b) of the removal of the GSP duty-free status frm articles in Part C of the list which are imported from the respective countries specified which currently receive GSP duty-free treatment, and(c) the redesignation for GSP duty-free treatment for articles in Part C of the list which are imported from a specified country which does not currently receive GSP duty-free treatment for the article;

(B) In accordance with section 504(c)(3)(A)(i) of the Trade Act, to advise the President on whether any industry in the United States is likely to be adversely affected by waiving the competitive need limits for countries specified with respect to the articles listed in Part D of the attached Annexes; and

(C) To advise the President, with respect to whether products like or directly competitive with those described in Part A of the attached Annexes were being produced in the United States on January 3, 1985, for purposes of section 504(d) of the Trade Act.

In addition, with respect to two cases involving molybdenum ore and metal-bearing materials in chief value of molybdenum (TSUS items 601.33 and 603.40; HS items 2613.10.00 and 2620.90.10), the USTR requested that the Commission consider these products separately from its normal investigation and provide advice on these two products not later than October 1, 1987. In view of the compressed time on these products, public hearings will not be held on these products.

EFFECTIVE DATE: August 20, 1987.

FOR FURTHER INFORMATION CONTACT:

(1) Agricultural products, Mr. Fred Warren (202-724-0090)
(2) Textiles and apparel, Mr. Lee Cook (202-523-0348)
(3) Chemical products, Mr. Larry Johnson (202-523-0127)
(4) Minerals and metals, Mr. Jim Brandon (202-523-5437)
(5) Machinery and equipment, Mr. John Cutchin (202-523-0231)
(6) General manufactures, Mr. Ruben Moller (202-724-1732)

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202-523-0487.

SUPPLEMENTARY INFORMATION:

Background

The USTR announced the items which have been sent to the Commission for probable effects advice in the **Federal Register** of August 4, 1987 (52 FR 28896).

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street NW., Washington, DC 20436, beginning at 9:30 a.m. on October 7, 1987, and continuing as required on October 8 and 9. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 701 E Street, NW., Washington, DC 20436, not later than noon, September 24, 1987. Post-hearing briefs are required by October 16, 1987.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on October 2, 1987.[1] Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirement of §201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submission's, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: August 21, 1987.

[1] For the above mentioned molybdenum ore and materials which are being considered on an expedited basis, written submissions are required by September 8, 1987.

ANNEX I (TSUS ITEM NUMBERS) [1]

A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.

112.01	169.13	370.8405	411.08(pt.) [2]	606.42
131.27	169.1415	370.8450	455.04	737.2415
141.15	206.67	372.5005	533.79	755.15
141.83	309.20	372.5505	534.97 [2 3]	760.0520
161.08	309.21	389.40(pt.)	606.22	

[1] See USTR FEDERAL REGISTER notice fo August 4, 1987 (52 FR 28896) for article descriptions.
[2] Currently eligible for GSP under the TSUS; request is for GSP eligibility under the HS.
[3] Section 504(d) waiver requested.

B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.

450.2015	740.50
601.33	740.60
603.40	740.75
610.74	740.80
740.41	745.6740

C. Petitions to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles for the Generalized System of Preferences.

408.72 (Korea)
423.0050 (Brazil)
618.15 (Argentina, Brazil, Mexico, Taiwan, Venezuela,[4] Yugoslavia)
618.20 (Argentina, Brazil, Venezuela)
642.2010 (Korea)
652.80 (Mexico, Korea)
682.4130 (Taiwan, Korea)
682.5010 (Taiwan, Korea)
682.5030 (Taiwan, Korea)
685.28 (Korea, Hong Kong, Taiwan)
688.20 (Brazil, Korea, Taiwan, Venezuela)
735.09 (Taiwan,[4] Korea)
735.10 (Taiwan,[4] Korea)
735.11 (Taiwan, Korea)
735.12 (Taiwan,[4] Korea)
745.32 (Taiwan)
772.06 (Korea, Mexico, Hong Kong)
772.09 (Korea, Mexico, Hong Kong)

D. Articles being considered for waiver of competitive-need limit for a product on the list of eligible products.

547.3720 (Taiwan)
657.40(pt.) (Taiwan)
685.25 (Korea)
692.3262 (Mexico)
692.3264 (Mexico)
735.09 (Mexico)
735.10 (Mexico)
735.11 (Mexico)
735.12 (Mexico)
737.07 (Mexico)
737.14 (Mexico)
737.16 (Mexico)
737.80 (Mexico)
737.93 (Mexico)
737.96 (Mexico)
737.98 (Mexico)
740.14 (Thailand)

ANNEX II (HS ITEM NUMBERS) [1]

A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.

1104.12.00	2005.80.0	3920.20.00	6307.90.80(pt.)	9608.10.00
1302.20.00	2208.40.00.30	4421.90.40	7013.10.00	
1604.16.00	2208.40.00.80	6117.10.30(pt.)	7202.49.50	
2001.90.20	2934.90.25	6213.10.00	7202.50.00	
2001.90.30	3604.10.00	6214.10.00	9502.10.30.60	

[1] See USTR FEDERAL REGISTER notice of August 4, 1987 (52 FR 28896) for article descriptions.

B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.

2613.10.00	7117.11.00	7117.19.30
2620.90.10	7117.19.10	7117.19.50
3301.30.10.20	7117.19.20	7307.19.90

C. Petitions to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles for the Generalized System of Preferences.

2825.90.50 (Brazil)
3903.30.00 (Korea)
3924.10.20 (Hong Kong, Korea, Mexico)
3924.10.30 (Hong Kong, Korea, Mexico)
7312.10.50 (Korea)
7312.10.70 (Korea)
7314.50.00 (Korea, Mexico)
7414.90.00 (Korea, Mexico)
7604.10.30 (Argentina, Brazil, Mexico, Taiwan, Venezuela,[2] Yugoslavia)
7604.29.30 (Argentina, Brazil, Mexico, Taiwan, Venezuela,[2] Yugoslavia)
7605.11.00 (Argentina, Brazil, Venezuela)
7605.19.00 (Argentina, Brazil, Venezuela)
7605.21.00 (Argentina, Brazil, Venezuela)
7605.29.00 (Brazil, Korea, Taiwan, Venezuela)
7614.10.50 (Argentina, Brazil, Venezuela)
7614.90.50 (Argentina, Brazil, Venezuela)
8501.52.40 (Korea, Taiwan)
8501.53.60 (Korea, Taiwan)
8501.53.80 (Korea, Taiwan)
8525.20.60 (Hong Kong, Korea, Taiwan)
9503.90.40 (Korea, Taiwan) [2]
9506.62.80 (Korea, Taiwan) [2]
9506.69.40 (Korea, Taiwan) [2]
9606.21.40 (Taiwan)

D. Petitions for waiver of competitive-need limit for a product on the list of eligible products.

7011.20.00 (Taiwan)
7113.11.50 (Thailand)
7113.19.50 (Thailand)
7113.20.50 (Thailand)
7616.90.00(pt) (Taiwan)
8525.20.50 (Korea)
8708.39.50 (Mexico)
8708.39.50.10 (Mexico)
8708.39.50.50 (Mexico)
9503.90.40 (Mexico)
9506.62.80 (Mexico)
9506.69.40 (Mexico)
9506.69.60 (Mexico)

[4] Advice is requested on the probable effects of redesignation of the country as eligible for the GSP.

[2] Advice is requested on the probable effects of redesignation of the country as eligible for the GSP.

[FR Doc. 87-19571 Filed 8-25-87; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-258]

Import Investigations; Certain Moldable/Extrudable Polyetheresteramide Copolymers; Commission Decision To Extend Deadline For Determining Whether To Review an Initial Determination

AGENCY: International Trade Commission.

ACTION: Extension of deadline for deciding whether to review an initial determination.

SUMMARY: Notice is hereby given that the Commission has determined to extend the deadline by which it must decide whether to review the initial determination (ID) (Order No. 8) issued

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by the presiding administrative law judge (ALJ) in the above-captioned investigation until 30 days after the ALJ has filed his ruling on the requests for reconsideration of that ID which have been filed by complainant and respondents.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–3395.

SUPPLEMENTARY INFORMATION: On July 15, 1987, the ALJ (Judge Harris) issued an ID (Order No. 8) which granted a joint motion to withdraw the complaint in the investigation and dismissed the complaint with prejudice. The ID also discussed certain matters having to do with the possible settlement agreement termination of the investigation. Complainant and respondents have filed requests for reconsideration of the ID. Complainant has, in addition, filed a petition for review of the ID by the Commission. The Commission investigative attorney has filed responses to the requests for reconsideration and the petition for review, recommending that the Commission delay action on the ID and petition for review until after the ALJ has ruled on the requests for reconsideration.

This action is taken under authority of section 337 of the Tariff Act of 1930 and § 210.53(h) of the Commission's Rules of Practice and Procedure (19 U.S.C. 1337; 19 CFR 210.53(h)).

Copies of the nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202/724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: August 18, 1987.

[FR Doc. 87–19572 Filed 8–25–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–275]

Import Investigations; Certain Nonwoven Gas Filter Elements

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 24, 1987, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) on behalf of Freudenberg Nonwovens Limited Partnership, 20 Industrial Avenue, Chelmsford, Massachusetts 01824. The complaint was supplemented on August 10, 1987. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation of certain nonwoven gas filter elements into the United States, and in their sale by reason of alleged infringement of at least claims 1–4 and 7–9 of U.S. Letters Patent 4,056,375. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Cheri M. Taylor, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–0440.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 19, 1987, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain nonwoven gas filter elements into the United States, or in their sale by reason of alleged infringement of claims 1, 2, 3, 4, 7, 8, or 9 of U.S. Letters Patent 4,056,375, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Freudenberg Nonwovens Limited Partnership, 20 Industrial Avenue, Chelmsford, Massachusetts 01824.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the compalint is to be served:

Filtrair, B.V., De Werf 16, P.O. Box 611, 8440 AP Heerenveen, Holland

APB Corporation, One Commerce Center, Suite 300, P.O. Box 250, Wilmington, Delaware 19899

(c) Cheri M. Taylor, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission 701 E Street, NW, Room 125, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (198 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: August 19, 1987.

[FR Doc. 87–19570 Filed 8–25–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-248]

Import Investigations: Certain Plastic Fasteners and Processes for the Manufacture Thereof; Commission Decision To Extend The Administrative Deadline and Further Extend The Deadline for Determining Whether To Review an Initial Determination

AGENCY: International Trade Commission.

ACTION: Extension of the administrative deadline for completion of investigation and further extension of the deadline for deciding whether to review final initial determination.

SUMMARY: Notice is hereby given that the Commission has determined to extend until November 17, 1987, the administrative deadline for completion of the above-referenced investigation as well as extending until September 18, 1987, the deadline by which it must decide whether to review the final initial determination (ID) issued by the presiding administrative law judge (ALJ).

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0421.

SUPPLEMENTARY INFORMATION: On June 19, 1987, the presiding ALJ issued his final ID finding that there is no violation of section 337 in the importation and sale of certain plastic fasteners. The original deadline for deciding whether to review the ALJ's final ID was August 6, 1987, but was subsequently extended to August 14, 1987. the original deadline for completion of the investigation was June 18, 1987, but that deadline was extended to September 18, 1987, while the investigation was pending before the ALJ.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.53(h) and 210.59 of the Commission's Rules of Practice and Procedure (19 CFR 210.53(h), 210.59).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202/523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202/724-0002

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: August 17, 1987.

[FR Doc. 87-19573 Filed 8-25-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-10 (Sub-No. 46]

Norfolk and Western Railway Co.; Abandonment Between Briery and Jarratt in Prince Edward, Lunenberg, Brunswick, Greensville, and Sussex Counties, VA; Findings

The Commission has issued a certificate authorizing the Norfolk and Western Railway Company to abandon its 63.6-mile line of railroad between Jarratt (milepost V-73.3) and Briery, VA (milepost V-136.9). The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding fianancial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Decided: August 20, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred in the result with a commenting expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19563 Filed 8-25-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31090]

Railroad Operation, Continuance in Control Exemption; Richard J. Corman Railroad Co., Memphis Line

Richard J. Corman (Corman), an individual, has filed a notice of exemption to continue in control of R.J. Corman Railroad Company—Memphis Line (C-M), a newly-formed rail carrier.

Mr. Corman owns all of the outstanding stock of C-M and of R.J. Corman Railroad Corporation (RJC). RJC is a Class III carrier that operates a rail line between Bardstown Junction, KY, and Wickland, KY.

C-M will acquire, under a purchase agreement with CSX Transportation, Inc., 62.2 miles of rail line extending between South Union, KY (milepost 128.00), and Zinc, TN (milepost 182.50), and between Russelville, KY (milepost 144.30), and Lewisburg, KY (milepost 152.00). CSX will retain trackage rights between Guthrie, KY (milepost 164.00), and Zinc, TN (milepost 182.50). A transaction relating to C-M's acquisition and operation of these lines is the subject of a notice of exemption in Finance Docket No. 31091, filed concurrently with this notice.

Mr. Corman states that RJC and C-M do not connect with each other and that the continuance in control by Mr. Corman of RJC and C-M is not part of a series of anticipated transactions that would lead to a connection between them or any railroad in their corporate family. This is a transaction involving the acquisition or continuance in control of a nonconnecting carrier that is exempt from the prior-review requirement of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). This will satisfy the requirements of 49 U.S.C. 10505(g)(2).[1]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 10, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19556 Filed 8-25-87; 8:45 am]

BILLING CODE 7035-01-M

[1] The Railway Labor Executives' Association (RLEA) filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 11343, whereby the imposition of labor protective conditions is mandatory, labor protective conditions have been imposed above.

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[Finance Docket No. 31091]

Railroad Operation; R.J. Corman Railroad Co., Memphis Line Exemption, Acquisition and Operation; Certain Lines of CSX Transportation, Inc.

R.J. Corman Railroad Company—Memphis Line (C–M), a non-carrier, has filed a notice of exemption to acquire and operate 62.2 miles of rail line from CSX Transportation, Inc. (CSX), extending between South Union, KY (milepost 128.00), and Zinc, TN (milepost 182.50), and between Russellville, KY (milepost 144.30), and Lewisburg, KY (milepost 152.00). CSX will retain trackage rights between Guthrie, KY (milepost 164.00), and Zinc, TN (milepost 182.50). A transaction relating to the control of C–M is the subject of a notice of exemption filed concurrently in Finance Docket No. 31090. Any comments must be filed with the Commission and served on Deborah A. Phillips, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797, and on David Hemphill, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202. This transaction will also involve the issuance of securities by C–M, which will be a Class III carrier. The issuance of these securities is an exempt transaction under 49 CFR 1175.1.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 10, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19557 Filed 8–25–87; 8:45 am]

BILLING CODE 7035–01–M

[Decision No. 1, Finance Docket No. 31088]

Railroad Operation; Intent to File Application; Southern Railway Co. and Norfolk Southern Corp, Purchase; Illinois Central Gulf Railroad Company Lines Between Fulton, KY and Haleyville, AL.

Decided: August 19, 1987.

Pursuant to 49 CFR 1180.4(b), Southern Railway Company (Southern), Norfolk Southern Corporation (NS), and Illinois Central Gulf Railroad Company (ICG) have notified the Commission of their intent to file an application seeking Commission approval and authorization, under 49 U.S.C. 11343 *et seq.*, for Southern to acquire ICG's line of railroad between milepost 406.1 in Fulton, KY and milepost 80.16 in Haleyville, AL, a distance of approximately 199 miles. Southern also intends to acquire ICG branch lines to Bemis, Poplar Corner and Carroll, TN. A related application will be filed seeking approval and authorization under 49 U.S.C. 11343 for Southern to acquire trackage rights over ICG between milepost 406.1 in Fulton, KY, and milepost 252.4 in Centralia, IL, a distance of approximately 154 miles.

Southern is a subsidiary of NS, which also owns and controls Norfolk and Western Railway Company (NW). "Applicant carriers" will include Southern, NW, and their consolidated railroad subsidiaries.

Southern or an affiliated applicant carrier will operate the acquired line and trackage rights as a direct route between Birmingham, AL and St. Louis, MO. Applicants believe this direct route will result in significantly more efficient and effective competitive service. The transaction will also extend Southern's service into a new market along the Fulton, KY to Corinth, MS portion of the line being acquired.

Applicants will use the year 1986 for purposes of their impact analyses to be filed in the application. They intend to file the application on or about October 1, 1987.

Because the application involves one Class I railroad acting together with another Class I railroad in a major market extension, it is a "significant" transaction under 49 CFR 1180.2(b) and is subject to the requirements in 49 CFR Part 1180 for significant transactions. Modification of the evidentiary requirements may be ordered on our own motion or in response to appropriate requests for waiver. A request has also been made for partial revocation of the class exemption for the acquisition of trackage rights at 49 CFR 1180.2(d)(7) to allow the filing and concurrent consideration of a directly-related trackage rights application. We will establish a procedural schedule after the application has been filed and accepted as complete.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19559 Filed 8–21–87; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 394 (Sub-No. 4)]

Cost Ratio For Recyclables; 1987 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed determination of maximum rate ceiling for rates on nonferrous recyclable commodities for the year 1987.

SUMMARY: The Commission has calculated the proposed 1987 revenue-to-variable cost (R/VC) ratio for rates on nonferrous recyclables under the statutory standard of 49 U.S.C. 10731(e). The calculation was made in accordance with the procedures outlined in our decision in Ex Parte No. 394 (Sub-No. 1), *Cost Ratio for Recyclables—1983 Determination*, 3. I.C.C.2d 407 (June 19, 1985). The proposed R/VC ratio for 1987 is 149.1 percent.

COMMENTS: Comments are due on September 15, 1987.

DATES: This decision will be effective on September 15, 1987, unless comments are received, in which case the effective date will automatically be postponed and a further decision will be issued.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275–7354 (TDD for hearing impaired (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Office of Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 275–7428 (assistance for the hearing impaired is available through TDD services (202) 275–1721).

This action will not significantly affect either the quality of the human environment or energy conservation. This proceeding will not have a significant impact on a sub stantial number of small entities.

Decided: August 18, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19560 Filed 8–25–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 207X)]

Railroad Services; Abandonment of Track in Colleton County, SC; CSX Transportation, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc., of 14.16 miles of track in Colleton County, SC, subject to conditions for labor protection, public use, historic preservation, and protection of endangered species.

DATES: This exemption is effective on September 25, 1987. Petitions to stay must be filed by September 10, 1987 and petitions for reconsideration must be filed by September 21, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 207X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Patricia Vail, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357 (assistance for the hearing impaired is available through TDD services (202) 275–1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: August 18, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred in the result with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19558 Filed 8–25–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Final Judgment; Parke Davis & Co. et al.

Notice is hereby given that defendant Eli Lilly and Company has filed with the United States District Court for the Eastern District of Michigan a motion to terminate the final judgment in *United States* v. *Parke Davis & Company and Eli Lilly and Company*, Civil No. 8940; Warner-Lambert Company, as successor to defendant Parke Davis & Company, has joined Lilly's motion; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment as to both Lilly and Warner Lambert, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on February 9, 1950) alleged that defendants conspired to fix prices of hard gelatin capsules (used as soluble containers for medicines) and to restrain and monopolize interstate trade and commerce in such capsules and in machinery for making and filling them, and that, by acquiring and using United States patents, among other things, defendants had actually monopolized such trade and commerce.

The judgment (entered on September 6, 1951) requires, among other things, that defendant Lilly and Warner-Lambert, as successor to defendant Parke Davis: (1) License (a) royalty free, its United States hard gelatin capsule and related machinery patents issued or acquired by the decree's entry date, and (b) at a reasonable royalty, those patents issued or acquired within five years thereafter, or issued on United States patent applications either pending on that date or filed within five years thereafter; (2) lease or sell capsule making and filing machines under certain conditions; and (3) furnish relevant instruction manuals and technical information to any patent licensee and any lessee or purchaser of a capsule filling machine. The judgment also enjoins Lilly and Warner-Lambert from, among other things: (1) Further performing under, enforcing, adhering to, maintaining, or reviving the agreement between defendants cancelled by the judgment or any of several similarly cancelled provisions of the agreement between defendant Parke, Davis & Company and Arthur Colton Company; (2) disposing of any patent to be licensed under the decree without also transferring the obligation to license it, or acquiring certain other patent rights unless (a) those rights are non-exclusive, and (b) that defendant or the licensor thereof agrees to offer to any applicant the equivalent rights on equally favorable terms and conditions; (3) bringing, threatening to bring, or maintaining any action for infringement of any patent to be licensed royalty free under the decree, or seeking damages or royalties thereon, for acts alleged to have occured before entry of the decree; (4) furnishing to each other hard gelatin capsule-related technical information not also furnished to all other capsule manufacturers; (5) selling or leasing capsule filling machines on condition that only its capsules, or a specified volume of its supplies, be used in such machines, or selling or making avaliable hard gelatin capsules on conditon that they, or a specified volume of them, be used only in its capsule filling machines; (6) granting cumulative quantity discounts to capsule purchasers; and (7) entering into or maintaining any agreement or understanding (a) to fix capsule prices, or (b) to restrain or prevent any person from (i) producing or selling capsules or capsule making or filling machines or (ii) buying or leasing such machines.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, Lilly's motion papers, all papers filed by Waner-Lambert as successor to defendant Parke Davis, the stipulation contaiing the Government's consent, the Department's memorandum, and all further papers filed with the court in connection with this motion will be available for inspection at Room 7233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone 202/633–2481), and at the Office of the Clerk of the United States District Court for the Eastern District of Michigan, 231 West Lafayette Street, Detroit, Michigan 48226. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within the sixty (60) day period established by court order, and will be filed with the court. Comments should be addressed to John W. Clark, Chief Professions and Intellectual Property Section, Antitrust Division, Department of Justice, Washington, DC 20530 (Telephone: 202/724–6335).

Dated: August 19, 1987.

Joseph H. Widmer,

Director of Operations, Antitrust Division.

[FR Doc. 87–19492 Filed 8–25–87; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Act of 1984; Portland Cement Association; Notification; Membership Change

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney

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General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, PAC advised that General Portland Inc. will be listed as Lafarge Corporation, the correct spelling for Caleveras is Calaveras, Lone Star-Falcon will be listed as LoneStar-Falcon, and Centennial Engineering, Inc. and Allis-Chalmers Corp. have resigned as "Participating Associates" of the Manufacturing Process Committee of PCA's General Technical Committee.

Accordingly, at present the members of the PCA are those companies listed below:

United States

Aetna Cement Corp.
Alaska Basic Industries
Ash Grove Cement Co.
Ash Grove Cement West, Inc.
Blue Circle Atlantic, Inc.
Blue Circle, Inc.
Blue Circle West Inc.
Calaveras Cement Co.
CalMat Co.
Capitol Aggregates, Inc.
Capitol Cement Corp.
Independent Cement Corp.
Lafarge Corp
Lehigh Portland Cement Co.
LoneStar-Falcon
Lone Star Industries, Inc.
Medusa Cement Corp.
Missouri Portland Cement Co.
The Monarch Cement Co.
Moore McCormack Cement, Inc.
Northwestern States Portland Cement Co.
Continental Cement Co.
Davenport Cement Co.
Dragon Products Co.
Dundee Cement Co.
Hawaiian Cement
Ideal Basic Industries, Inc.
Rinker Materials Corp.
Rochester Portland Cement Corp.
St. Marys Peerless Cement Co.
St. Marys Wisconsin, Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Co.
Tarmac-LoneStar, Inc.
Tilbury Cement Co.

Canada

Canada Cement Lafarge Ltd.
Federal White Cement Ltd.
Inland Cement Ltd.
Lake Ontario Cement Ltd.
North Star Cement Ltd.
St. Lawrence Cement Inc.
St. Marys Cement Corp.
Tilbury Cement Ltd.

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Baker-Dolomite (DBCA)
C–E Raymond
Holderbank Consulting Ltd.
Humboldt Wedag Co.
F.L. Smidth and Co.
Claudius Peters, Inc.
Polysius Corp.
The Fuller Co.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986 February 3, 1987, April 17, 1987, and June 3, 1987, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 28183), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87–19493 Filed 8–25–87; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Act of 1984; Forecast of Fuel Composition to the Year 2000 Project (Southwest Research Institute)

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, Southwest Research Institute ("SwRI") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled: "Forecast of Fuel Composition To The Year 2000." The notification discloses (1) the identities of the parties to the project and (2) the nature and objective of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below.

The parties to this project are:

Information Resources, Inc.
PSA Etudes Et Recherches, acting on its behalf as well as on behalf of Peugeot, S.A. subsidiaries
Texaco, Inc.
Volvo of America Corp.
Burlington Northern Railroad Co.

The purpose of the project is to project fuel composition and fuel quality to the year 2000 of gasoline, diesel fuel and jet fuels through a detailed evaluation of the following factors, as appropraite to a particular fuel. Gasoline quality will be projected through a detailed evaluation of: Current and recent gasoline quality, lead phasedown requirements, other regulated items, regional and seasonal variations, refinery processing trends, alcohol blend regulations and tax incentives, and future gasoline demand. Diesel fuel quality will be projected through a detailed evaluation of: Current diesel fuel quality and past trends, refinery processing trends, crude oil quality trends and imported distillates, segregation of distillate fuels, and new government regulations. The projected quality of distillate commercial jet fuels will be projected by analyzing: Current and recent jet fuel property trends, refinery surveys, jet fuel demand and airline trends, competing distillate markets, and military jet fuel requirements.

Membership in this group research project remains open.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87–19494 Filed 8–25–87; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

New Personal Audio Dosimeter Accepted

AGENCY: Mine Safety and Health Administration (MSHA) Labor.

ACTION: Notice of MSHA acceptance of a new personal audio dosimeter.

SUMMARY: After testing and evaluation, the Mine Safety and Health Administration (MSHA) announces the acceptance of the Quest Electronics Model Micro–14 Audio Noise Dosimeter for use in coal mines.

EFFECTIVE DATE: August 26, 1987.

FOR FURTHER INFORMATION CONTACT: Robert G. Peluso, Pittsburgh Technical Support Center, Mine Safety and Health Administration, 4800 Forbes Avenue, Pittsburgh, PA 15213, (412) 621–4500.

SUPPLEMENTARY INFORMATION: On September 12, 1978, the Mine Safety and Health Administration (MSHA) published a final rule that became effective on October 1, 1978 and amended the mandatory health standards governing noise dosimeters (43 FR 40760). Those amendments to 30 CFR Parts 70 and 71 permitted the use of personal noise dosimeters to make required noise exposure measurements in coal mines and set forth the procedures to be followed in taking such noise measurements. When noise exposure measurements and surveys required by Parts 70 and 71 are taken by personal noise dosimeters, the dosimeters must be acceptable to MSHA.

The test and criteria used by MSHA to determine acceptability of personal noise dosimeters are published in "MSHA Test Procedures and Acceptability Criteria for Noise Dosimeters," MSHA Informational Report IR–1072.

MSHA has recently completed testing and evaluation of the Quest Electronics Model Micro–14 Audio Noise Dosimeter. MSHA has determined that the dosimeter met all of the criteria listed in MSHA Informational Report IR–1072 and hereby gives notice that this dosimeter is acceptable for use under 30 CFR 70.506 and 71.801.

Accordingly, operators may use the Quest Electronics Model Micro–14 Audio Noise Dosimeter to take the noise exposure measurements and surveys at underground coal mines as required by 30 CFR 70.503, 508 and 509 and at surface coal mines as required by 30 CFR 71.802, 803 and 804.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 17, 1987.

[FR Doc. 87–19561 Filed 8–25–87; 8:45 am]

BILLING CODE 4510–43–M

MERIT SYSTEMS PROTECTION BOARD

Information Collection To Obtain Information From Users of MSPB Decisions

AGENCY: Merit Systems Protection Board.

ACTION: Information collection request submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, Pub. L. 96–511, 5 U.S.C. Chapter 35, for review.

SUMMARY: The Merit Systems Protection Board (MSPB) has requested OMB review under 5 CFR 1320.12 of a questionnaire to be used to collect, from users of MSPB decisions, information concerning the adequacy of the Board's method of citing past cases in its current decisions. This information would be used to ensure that the Board's method of citing cases meets the needs of the users of those decisions.

DATE: Comments concerning this information collection must be submitted on or before September 25, 1987.

ADDRESSES: Copies of the submission ot OMB may be obtained from Paul D. Mahoney, Director, Policy and Evaluation, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419; telephone (202) 653–8900. Comments on the submission should be addressed to the Office of Management and Budget, Office of Information and Regulatory Management and Budget, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Katie Lewin, Desk Officer for MSPB; telephone (202) 395–7321.

FOR FURTHER INFORMATION CONTACT: Keith Bell, Office of Policy and Evaluation, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419; telephone (202) 653–7208.

Date: August 21, 1987.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 87–19546 Filed 8–25–87; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Bi-weekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all notices of amendments issued, or proposed to be issued from August 3, 1987 through August 14, 1987. The last bi-weekly notice was published on August 12, 1987 (52 FR 29909).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC TPublic Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 25, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment Tand make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that

the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram TIdentification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, Maricopa County, Arizona

Date of amendment request: June 29, 1987

Description of amendment request: The proposed amendment consists of a number of proposed changes to the Technical Specifications (Appendix A to Facility Operating License No. NPF-41) in support of Cycle 2 operation for the plant. The specific proposed changes are discussed below:

(1) Specification 5.3.1 - propose to change the fuel maximum enrichment from 4.0 to 4.05 weight percent U-235 in support of achieving 18 month equilibrium cycles.

(2) Specification 3.1.1.2 - propose to change Figure 3.1-1A, "Shutdown Margin Versus Cold Leg Temperature," by changing the Hot Zero Power endpoint from 6.0 to 6.5% delta k/k to maintain plant operation during Cycle 2 within the bounds of safety analysis.

(3) Specification 3.1.1.3 - propose to change Figure 3.1-1, "Allowable MTC Modes 1 and 2," by broadening the operating bounds of the Moderator Temperature Coefficient (MTC) to accommodate Cycle 2 operation, and by revising the x axis parameter from average moderator temperature to core power level. The change to the Figure is proposed to ensure that the assumptions used in accident and transient analyses remain valid through each fuel cycle.

(4) Specification 3.2.8 - propose to change the operational pressure band of the pressurizer from 1815 - 2370 psia to 2025 - 2300 psia to ensure that the actual value of the pressurizer pressure is maintained within the range of values used in safety analyses.

(5) Specifications 3.1.3.1, 3.1.3.2 and 3.1.3.7 - propose to add a new specification (3.1.3.7) to specify insertion limits for part length Control Element Assemblies (CEA), and to delete the part length CEA insertion limits from Specifications 3.1.3.1 and 3.1.3.2. The proposed change would add a more explicit limiting condition for operation of the part length CEAs to clarify the allowable duration for these CEAs to remain within the defined ranges of axial position. T

(6) Specification 3.3.1 - propose to change Table 3.3-2 in this specification by decreasing the response time, from 0.75 to 0.30 seconds, for the DNBR - Low Reactor Coolant Pump Shaft Speed Trip. The proposed change would be consistent with the faster response time assumed in the Cycle 2 safety analysis.

(7) Specification 3.1.3.6 - propose to make the insertion limits for the full length CEAs in Figures 3.1-3 and 3.1-4 more restrictive due to the proposed changes in Cycle 2 core physics. The revised insertion limits are proposed to ensure that there is sufficient margin to mitigate the effects of a dropped CEA or an ejected CEA.

(8) Specification 3/4.3.1 - propose to change Table 3.3-2 by excluding an allowance to enter Core Protection Calculator (CPC) penalty factors to compensate for Resistance Temperature Detector (RTD) response times greater than 8 seconds. Table 3.3-2a, which specifies the amounts of the allowable CPC penalty factors, would be deleted. The proposed change would be required since the Cycle 2 safety analyses do not consider RTD response times greater than 8 seconds and, therefore, allowances for longer response times would not be permissible during Cycle 2 operation.

(9) Specification 2.1.1.1 and Table 2.2-1 - propose to change the Departure from Nucleate Boiling Ratio (DNBR) limitation from 1.231 to 1.24; delete references to the calculation of additional rod bow penalties into the DNBR limit; and change the pressurizer pressure floor incorporated into the DNBR limit from 1861 to 1860 psia. The proposed changes would be required to account for the core changes in Cycle 2.

(10) Specification 3.2.5 - propose to change the minimum Reactor Coolant System (RCS) total flow rate in Mode 1 from 164.0×10^6 to 155.8×10^6 lbm/hr. The proposed value of 155.8×10^6 lbm/hr is higher than the value used in the safety analysis (i.e., is more conservative). The proposed change would eliminate ambiguity regarding compensation for instrument uncertainty.

(11) Specification 3.2.1 - propose to change the Linear Heat Rate (LHR) limit for the fuel assemblies from 14.0 to 13.5 kw/ft and to delineate how LHR is to be monitored. The change is proposed to ensure that the peak fuel clad temperature does not exceed safety limits during Cycle 2 operation.

(12) Specifications 3.2.4 and 3.3.1 - propose to change Specification 3.2.4 as follows: (a) provide a new format which would address the specific conditions for monitoring DNBR with or without COLSS and/or the CEACs, (b) provide a new format which would delineate the Actions that should be taken, (c) remove reference to the DNBR Penalty Factor table used in Specification 4.2.4.4, and (d) replace the present graph Figures 3.2-1 and 3.2-2 for the DNBR limits with graph Figures 3.2-1, 3.2-2 and 3.2-2a which would address the DNBR operating limits for the conditions mentioned in (a) above. Propose to change Specification 3.3.1 by: (a) removing references to the operation of the reactor with both CEA calculators (CEACs) inoperable with or without the Core Operating Limit Supervisory System (COLSS) in service, and (b) deleting the graph of DNBR margin operating limit based on COLSS for both CEACs inoperable (Figure 3.3-1) since these changes would be incorporated into the proposed changes in Specification 3.2.4. The changes Tare proposed to ensure operation of Cycle 2 within safety analysis limits and to improve these Specifications from a human factors point of view.

(13) Specification 3.2.7 - propose to delete numerical references for the

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limits on the Axial Shape Index (ASI) when COLSS is operable, and to provide clarification and consistency for monitoring ASI. The change is proposed to eliminate the need to change Specification 3.2.7 for each cycle and to provide a more consistent approach to monitoring ASI.

(14) Specification 3.3.2 - propose to change Table 3.3-4 by removing the "greater than" sign from the Refueling Actuation Signal (RAS) trip value in order to ensure optimal protection of the Refueling Water Storage Tank pumps by maintaining adequate margin for the RAS trip value within the allowable values specified in Table 3.3-4.

(15) Administrative Changes - propose to change the Bases Sections for Specifications 3/4.3.1, 3/4.3.2 and 2.2.1 to ensure clarity and conciseness. The proposed changes to the Bases Sections for 3/4.3.1 and 3/4.3.2 would update, to the latest approved revision, the report used for controlling changes to the CPC software, and remove Cycle 1 specific information. The proposed changes to the Bases Section for 2.2.1 would refer to the appropriate CE reports to be used for calculating trip setpoint values.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided guidance for determining whether a proposed amendment involves a significant hazards consideration (51 FR 7751). Examples of amendments that are not likely to involve a significant hazards consideration are as follows:

(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature.

(ii) A change that constitutes an additional limitation, restriction or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

The staff considers the first 12 items of the proposed amendment to be similar to example (iii) since they are directly related to a reactor core reloading and the fuel assemblies are not significantly different than those previously found acceptable for the initial core loading at Palo Verde. The only difference is the proposed increase for maximum fuel enrichment from 4.0 to 4.05%. In addition, no significant changes are being made to the previously approved acceptance criteria for the technical specifications or to the analytical methods used to demonstrate conformance with the specifications and regulations.

Items (2) and (4) through (9) are also similar to example (ii) since they involve more restrictive limitations in the technical specifications to Tensure that operation of the facility during Cycle 2 remains within the bounds of the safety analyses. Items (10), (11) and (12) are also similar to example (i) since they involve certain clarifications to the technical specifications as well as a proposed new format for Specifications 3.2.4 and 3.3.1.

The staff considers Items (13) and (15) to be similar to example (i) since they involve a clarification and administrative changes to the technical specifications.

The staff considers Item (14) to be similar to example (ii) since it imposes a more stringent limitation to the RAS trip value.

Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Arizona Public Service Company et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: July 1, 1987 and August 7, 1987

Description of amendment request: The proposed amendment consists of a proposed change to the Technical Specifications (Appendix A to Facility TOperating License Nos. NPF-41, NPF-51, and NPF-65 for PVNGS, Units 1, 2 and, 3 respectively).

Technical Specification 6.8.1.(o) requires that a Control Element Assembly (CEA) Symmetry Test Program be implemented. An accompanying note references Section 4.2.2 of the Commission's Safety Evaluation Report for Palo Verde Nuclear Generating Station (November 11, 1981) which includes a requirement to perform a CEA Symmetry Test at the beginning of each cycle of operation. The proposed change would rename the program to CEA Reactivity Integrity Program and would expand the note to allow either the CEA Symmetry Test or an alternate test program to be used.

The alternate test program has been developed by Combustion Engineering (C-E) for the C-E Owner's Group whereby the CEA Group Worth Measurements are replaced by a CEA Exchange Test and the CEA Symmetry Test is replaced as a means of verifying that no fuel assembly misloading has occurred by a Flux Symmetry Test using the incore neutron detector system. The program allows the required measurements to be performed in less time, thereby reducing the length of time during which the plant is operated with off-normal control rod configuration of design values.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create Tthe possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensees have provided a discussion of the proposed change as it relates to these standards; the discussion is presented below.

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The concern, being addressed by the subject Technical Specification, is the potential for control material to be lost from CEAs through perforations in the CEA cladding and for such loss to go undetected. Such an undetected loss could result in a reduction in the available CEA shutdown worth and violate assumptions made in the Safety Analysis regarding such. The program, which has previously been accepted by

the NRC to address this concern, utilizes a CEA Symmetry Test which is performed at the beginning of each cycle of operation to assess the relative worths of the individual CEAs.

The alternate surveillance method would consist of measuring the reactivity worth of all full-length CEA groups and comparing them to design predictions. The licensee stated that the proposed alternate surveillance methods will be no less adequate than the CEA Symmetry Test in identifying events of loss of CEA control material which could significantly degrade available shutdown margin. Therefore, the proposed change does not involve Ta significant increase in the probability or consequence of an accident previously evaluated.

Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. As described above, the alternate surveillance method (the CEA Group Exchange Test) measures the worth of entire groups whereas the CEA Symmetry Test measures individual CEAs. By allowing the performance of the Exchange Test, the plant would experience less off-normal control rod configurations of design values, thus reducing the possibility of any kind of accident occurring.

Standard 3 - Involve a Significant Reduction in a Margin of Safety.

The proposed change does not involve a significant reduction in a margin of safety because it does not affect the design basis of the plant. The subject technical specification is associated with concern for a potential loss of available shutdown worth. The mechanism for this reduction is a loss of CEA clad integrity accompanied by a subsequent loss of control material. The licensees stated that the CEA design has functioned well at other plants. The licensees also stated that, since the probability of a breach of CEA clad integrity is small throughout its design lifetime and since the mechanism by which control material would be lost subsequent to a loss of integrity occurs slowly, the possibility of such an occurrence is quite small. The licensees further stated that the worths of Tall full-length CEA groups will be measured and compared to design predictions as part of the test program. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensees' no significant hazards consideration determination and agrees with the licensees' analysis.

Accordingly, the Commission has proposed to determine that the above change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2 and 3, Maricopa County, Arizona

Date of amendment request: August 10, 1987

Description of amendment request: The proposed amendments would modify the Technical Specifications, Section 6, "Administrative Controls," Parts 6.1 through 6.8 and Figures 6.2-1 & 6.2-2, for each unit to reflect a proposed change to the licensees' nuclear organizational structure. The proposed changes to the organizational structure are as follows: T

(1) Revise the duties of the Vice President-Nuclear Production to eliminate daily responsibilities over offsite activities in order to focus attention on operating activities.

(2) Establish a Plant Manager for each of the three Palo Verde units, reporting to the Vice President-Nuclear Production, who will be responsible for operations, maintenance and other daily activities relating to unit performance.

(3) Revise the duties of the Assistant Vice President to oversee the onsite support functions for the units. He will continue to report to the Vice President-Nuclear Production.

(4) Establish an onsite Director of Standards and Technical Support, reporting to the Vice President-Nuclear Production, to oversee control of plant standards used by the units for operations, maintenance and work practices, and to provide support for and control over other existing programs, such as the system engineer concept and performance of validation and surveillance testing.

(5) Establish a Director of Engineering and Construction, reporting to the Executive Vice-President, whose responsibilities will also include nuclear fuel, cost and schedule and records management.

(6) Establish a Director of Site Services, reporting to the Executive Vice President, whose responsibilities will include security, training, emergency planning and material control.

(7) Establish a Director of Nuclear Safety and Licensing, reporting to the Executive Vice President, whose responsibilities will also include compliance and technical data.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of the proposed change, as it related to these standards is presented below.

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change involves a restructuring of the licensees' nuclear organization. The change does not effect plant design, plant operation or any limiting condition for operation in the Technical Specifications. Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated since it is administrative in nature and does not alter plant design, plant operating conditions or component requirements. T

Standard 3 - Involve a Significant Reduction in a Margin of Safety.

The proposed organization does not delete any responsibilities currently existing in the present organization; in some cases, those responsibilities would be assigned to a different manager. The proposed organization would reduce the layers of management. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Accordingly, the Commission has proposed to determine that the above change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: June 21, 1985 as supplemented by letters dated September 24, 1985, June 4, 1987, and August 13, 1987.

Description of amendment request: The amendment would revise the Technical Specifications (TS) by updating the Table of Primary Containment Isolation Valves (TS Table 3.7-1) as follows:

Past and Proposed Design Changes

HPCI Vacuum Breakers - Vacuum breakers are being added to the HPCI system to prevent water hammers. A Group 7 Isolation has been added for these valves. This modification will improve system reliability.

Reactor Water Sample - These lines will be used for continuous sampling for crack arrest verification. The normal valve position has been changed from closed to open. All isolation signals, in the event of an accident, remain the same.

Purge Valves - The original 20 in. valves have been replaced with 8 in. valves for better operability. The closing times have been reduced to prevent over-pressurization of the ductwork outside of primary containment following a design basis LOCA.

H_2, O_2, Post Accident Sampling System (PASS), and Leak Detection Valves - The original hydrogen and oxygen sample systems have been modified in accordance with NUREG-0737. These are post-accident systems.

Correct Previous Errors

Valve Line-ups - Valves AO-5033B, AO-5035B and AO-5036 A/B are maintained in a normally closed position.

Traveling Incore Probe (TIP) Ball valves are being added to the Table.

Editorial Changes

Definition EE - This definition was numbered "Y" in the Proposed Technical Specification submitted June 21, 1985. Because of recent Technical Specification amendments, this definition is renumbered to "EE."

Technical Specifications 3.7.A.2.b and 4.7.A.2.b.2 - References to Table 3.7-1 have been added to this Limiting Conditions for Operation (LCO) Tand surveillance to incorporate the table into the Proposed Technical Specification submitted June 21, 1985.

Valve and Penetration Numbers - These have been added to the table to assure correct identification of the valves.

Group I Isolation, Condition 5 - The original wording of this condition has caused confusion. The proposed rewording (into Conditions 5 and 6) will avoid misinterpretation.

Footnotes - The footnotes have been reworded and four footnotes have been added to provide clarity for the plant operators.

Removal of HPCI Suction Valve From Table 3.7-1

The HPCI torus suction isolation valves (MO2301-35 and 36) are removed from Table 3.7-1 because the line which they isolate terminates below the free water surface of the suppression pool and will remain so throughout the duration of any accident. Consequently, these valves are not relied upon to prevent the escape of containment atmosphere to the environs, and therefore, do not perform a containment isolation function.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of Tsafety. The Licensee in their submittals of June 4, and August 13, 1987 addressed these standards as follows:

1. Operating Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

HPCI Vacuum Breakers - The HPCI vacuum breaker modification requires a new penetration in primary containment. Two valves are provided to ensure completion of the safety action (primary containment isolation) prior to uncovering the fuel in the event of a design basis accident (DBA). This modification enhances the performance of the HPCI system, and other accident mitigating systems which utilize the torus, by reducing the possibility of failure due to hydrodynamic transients. The function of relieving vacuum in the HPCI turbine exhaust line is better performed by the added vacuum breaker.

Reactor Water Sample Valves - Changing the normal position of the Reactor Water Sample valves from closed to open does not affect the safety function of the valves or any other system and allows continuous sampling for crack arrest verification. These valves automatically close upon receipt of containment isolation signals.

Purge and Vent Valves - Reduction of the maximum closing times for the Purge and Vent valves will have no adverse effects on primary containment integrity. The original 20 in. valves have been replaced with more reliable 8 in. valves. Reduction of the maximum closing times prevents over-pressurizing the ductwork located outside containment following a design basis LOCA.

H_2, O_2, PASS and Leak Detection Valves - The original Hydrogen and Oxygen Analyzer systems were modified for the H_2, O_2, PASS and Leak Detection Systems. The modifications included a reduction in the total number of primary containment isolation valves (several penetrations were cut and capped) and upgrading the system with faster closing solenoid valves. These valves ensure containment isolation prior to fuel uncovering in the event of an accident.

HPCI Suction Valves - The HPCI torus suction isolation valves (MO2301-35 and 36) are removed from Table 3.7.1 because the line which they isolate terminates below the free water surface of the suppression pool and will remain so throughout the duration of any accident. Consequently, these valves are not relied upon to prevent the escape of containment atmosphere to the environs and, therefore, do not perform a containment isolation function. The containment isolation function of these valves was reviewed previously by the NRC, and their concurrence with the above evaluation is documented in NRC letter to BECo, dated April 28, 1981.

Corrections of Previous Errors and Editorial Changes - During the BECo review of Table 3.7-1, several errors were identified and have been corrected: 4 valves were shown open and are normally closed; 2 valves have been removed because they are not primary containment isolation valves; and, the TIP Ball valves have been added.

2. Operating Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The new vacuum breaker for the HPCI system has been designed to equal to or more stringent requirements than the original requirements for the HPCI system. The new primary containment penetration has been provided with automatic isolation valves with closing times in accordance with the Pilgrim FSAR.

Changing the normal position of the Reactor Water Sample valves from closed to open does not impact their safety operation. The isolation signals remain unchanged, and function to isolate on all Group 1 and 2 signals. The modification to the Purge and Vent lines replaces the 20 in. valves with more reliable 8 in. valves.

The post accident sampling modifications, made in accordance with NUREG-0737, utilized existing sampling system primary containment penetrations. The original valves were replaced with more reliable solenoid valves. Removal of the HPCI suction valves from Table 3.7-1 does not represent a plant design change. These valves are not relied upon to perform a containment isolation function.

3. Operating Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

Each of the affected components, with the exception of the HPCI torus suction valves (see below), are safety-related containment isolation valves that are required to automatically isolate or remain isolated upon receipt of an isolation signal. The primary function of the containment system and containment isolation valves is to limit the release of radioactive material, and thereby limit the radiological consequences of accidents to within the limits set by 10 CFR Part 100. The containment and components Tnecessary to maintain the containment provide a margin of safety to protect the public and environment from radioactive releases following a Design Basis Accident (DBA). In order to accomplish this function, containment isolation valves must meet specified leakage rates and closing times, and be periodically tested to assure that the specified rates and times are met. The HPCI torus suction valves are safety-related valves that are required to isolate or remain isolated upon receipt of an isolation signal. These valves perform safety functions which are important to the operation of the HPCI system and are not relied upon to perform a containment isolation function.

The discussions provided in Sections 1 and 2 above on the various changes demonstrate that the proposed amendment is bounded by the Pilgrim DBA. The changes will not result in the violation of containment integrity. These proposed changes involve additions and deletions of valves listed on Table 3.7.1 are due to plant modifications, changes in the normal valve line-up, reduced valve operating times, and editorial changes for clarity and consistency. BECo has performed safety evaluations for all changes in accordance with 10 CFR 50.59 and determined that no unreviewed safety questions exist.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the proposed amendment satisfied the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make a no significant hazards consideration determination.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: V. Nerses, Acting Director.

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 22, 1987.

Description of amendment request: By letter dated March 27, 1984 the licensee consolidated and refined previous submittals of July 11, 1983; September 12, 1983; October 13, 1983; November 16, 1983; and December 28, 1983, which proposed amendments to revise the Fire Protection Technical Specifications to reflect changes made to the station in accordance with the requirements of Appendix R to 10 CFR Part 50 and National Fire Protection Association (NFPA) Standards. This request was noticed on May 23, 1984 (49 FR 21826). Subsequent to corrections contained in the Licensee's letter dated June 11, 1984, Amendment No. 76 dealing with fire barriers was issued on August 22, 1984; noticed on September 28, 1984 (49 FR 38415). Further changes relating specifically to the Halon System in the cable spreading room were described by Licensee letters dated August 9, 1984 and October 29, 1984. After a separate prenotice on September 28, 1984 (49 FR 38396) Amendment No. 84 was issued on November 27, 1984; noticed on December 31, 1984 (49 FR 50832).

By letter dated May 22, 1987 supplemented by letter dated July 28, 1987 the Licensee provided proposed Technical Specification changes reflecting changes to the Pilgrim Nuclear Power Station in accordance with Appendix R Tto 10 CFR Part 50 and National Fire Protection Association Standards. These changes include and complement those proposed in the March 27, 1984 letter but not yet approved by the NRC. They cover:

(1) Fire Detection Instrumentation Section 3/4.12A

(2) Fire Water Supply System Section 3/4.12B

(3) Spray and/or Sprinkler System Section 3/4.12C

(4) Fire Hose Stations Section 3/4.12E and H

(5) Alternate Shutdown Panels Section 3/4.12G

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a Licensee requests an amendment it must provide to the Commission its analysis, using the standards in 10 CFR 50.92, about the issue of no significant hazards consideration. Accordingly, the Licensee has provided a safety analysis which is summarized below:

1. *Fire Detection Instrumentation Section 3/4.12A*

The proposed changes address the fire detection instrumentation added as a result of more restrictive NRC requirements than those presently included in the Technical Specifications. They increase the minimum number of operable instruments from 50 to 160 and impose the further requirement that no more than two adjacent detectors shall be out of service.

2. *Fire Water Supply System Section 3/4.12B*

The proposed changes;

(a) correct vague wording regarding flow paths

(b) upgrade surveillance/test requirements in Section 4.12.B.1.b to meet National Fire Protection Association (NFPA) requirements

(c) revise subsection 4.12.B.2.b to meet revised ASTM standards pertaining to diesel fuel inspection and

(d) Combine, renumber or otherwise modify surveillance requirements in subsection 4.12.B.

3. *Spray and/or Sprinkler System Section 3/4.12C*

The proposed changes involve the addition of four new wet pipe sprinkler systems to meet the more restrictive requirements of Appendix R. In addition they propose deletion of the Standby Gas Treatment System (SGTS) Spray System from the Technical Specifications. The SGTS Spray System originally provided capablility to achieve decay heat removal from the charcoal filters. However, when the equipment was installed as an atmospheric cleanup system an additional cooling method was provided by a cross connection air cooling feature. The air cooling system will prevent unacceptable decay heat building. Moreover, even before the addition of air cooling, the water spray was not credited in the original PRPS FSAR (Section 10.8) as a fire protection system for the SGTS. Instead, the fire protection was in the form of general plant fire protection features which included (1) control of ignition sources, (2) limited combustible materials, (3) portable fire extinquishers, (4) local hose reels, and (5) an on-site fire brigade. None of these features have been altered or removed as a result of the proposed amendment.

4. *Fire Hose Stations Sections 3/4.12E and H*

The proposed changes cover the addition of new fire hose stations, renumbering of hose stations and elimination of reference to temporary yard stations. They also cover a change to protect backup fire hoses from damage by deleting the requirement that they be connected and deployed vs. stored in protective enclosures. In addition, they cover correction of references and section numbers.

5. *Alternate Shutdown Panels Section 3/4 12.G*

These changes simplify testing requirements and combine the requirements for testing from "Alternate Shutdown Panels" into a separate Section (3.12G) bearing that name.

The Commission has provided guidance for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards consideration. Two of these examples are:

(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature, and

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

After a review of the proposed changes and the licensee's safety analysis the staff has made the following preliminary determinations:

1. *Fire Detection Instrumentation*

The changes impose more restrictive requirements and are thus similar to example (ii), above.

2. *Fire Water Supply System*

The changes are both administrative in making organization and editorial changes and impose additional restriction or control by upgrading requirements to more recent National Standards. Thus they are similar to both examples (i) and (ii).

3. *Spray and/or Sprinkler System*

With the exception of the deletion of the water spray on the SGTS charcoal filters, the changes impose more restrictive requirements and are thus similar to example (ii). As described above, the charcoal filters have been provided with air cooling. Additionally, the water spray was never considered to be part of the Safety System. Therefore removal of the Spray System will not result in a significant reduction in the margin of safety, create the possiblilty of a new or different kind of accident or involve a significant increase in the probablity or consequences of an accident.

4. *Fire Hose Stations*

The addition of new fire hose stations and deletion of yard stations which were replaced by the new interior stations, followed by renumbering of the hose stations are similar to both examples (i) and (ii). The staff has reached the preliminary conclusion that storing the backup fire bases in protective enclosures will result in an improvement in safety. Therefore that change will not result in a Tsignificant reduction in the margin of safety, create the possibility of a new or different kind of accident or involve a significant increase in the probability or consequences of an accident.

5. *Alternate Shutdown Panels*

This change is purely administrative in reorganizing the statement of requirements in the Technical Specifications and is similiar to example (i).

Based on the above, the staff has concluded that no significant hazards consideration exists.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

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NRC Project Director: V. Nerses.

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: July 8, 1987.

Description of amendment request: The proposed amendment would revise Technical Specification 4.5.A.3.d to explicitly specify low pressure coolant injection (LPCI) pump performance necessary to comply with the current loss-of-coolant accident (LOCA) analysis for the Pilgrim Station.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed Tamendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

1. The current Pilgrim Technical Specification 4.5.A.3.d requires three LPCI pumps to deliver 14,400 gpm against a system head corresponding to a vessel pressure of 20 psig. The proposed change does not reduce the LPCI pump capacity requirements. It restates the requirements in clearer language commonly used for specifying pump capacity. The pump capacity required by the proposed Technical Specification ensures pump performance necessary to comply with Pilgrim's LOCA analysis. Therefore, this change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change restates the LPCI pump requirements in clearer language. It assures that pump capacity complies with that required by the Pilgrim LOCA analysis; hence operating Pilgrim in accordance with this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The current Technical Specification 4.5.A.3.d contributes to the margin of safety by assuring that LPCI pumps can generate sufficient flow to Tprevent Peak Cladding Temperatures (PCT) from rising such that the fuel cladding degrades (acceptance PCT is 2200°F). The proposed change restates the pump capacity, but does not change the

capacity from that used in Pilgrim's LOCA analysis. Therefore, the margin of safety assured by 4.5.A.3.d is unchanged, and operating Pilgrim in accordance with the change will not involve a significant reduction in the margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the standards which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: V. Nerses, Acting Director

Carolina Power & Light Company, North Carolina Eastern Municipal Power Agency, Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: June 12, 1987

Description of amendment request: The amendment would delete Figure 6.2, "Offsite Organization," and Figure 6.2-2, "Unit Organization," from the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The Carolina Power & Light Company (CP&L) reviewed the proposed change and determined, and the NRC staff agrees, that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts from the Technical Specifications does not affect plant operation. As in the past, the NRC will continue to be informed of organizational changes through other required controls. In accordance with 10 CFR 50.34(b)(6)(i) the applicant's organizational structure is required to be included in the Final Safety Analysis Report. Chapter 13 of the Final Safety Analysis Report provides a description of the organization and detailed organization charts. As required by 10 CFR 50.71(e), CP&L submits annual updates to the FSAR. Appendix B to 10 CFR Part 50 and 10 CFR 50.54(a)(3) govern changes to organization described in the Quality Assurance Program. Some of these organizational changes require prior NRC approval. Also, it is CP&L's practice Tto inform the NRC of organizational changes affecting the nuclear facilities prior to implementation.

(2) The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature, and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

(3) The proposed amendment does not involve a significant reduction in a margin of safety because CP&L, through its Quality Assurance programs, its commitment to maintain only qualified personnel in positions of responsibility, and other required controls, assures that safety functions will be performed at a high level of competence. Therefore, removal of the organization chart from the Technical Specifications will not affect the margin of safety.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610

Attorney for licensees: Thomas A. Baxter, Esq.; Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket No. STN 50-456, Braidwood Station, Unit No. 1, Will County, Illinois; and Docket No. STN 50-455 Byron Station, Unit No. 2, Ogle County, Illinois

Date of application for amendments: August 7, 1987

Description of amendments request: The amendment would revise Technical Specification 4.8.1.1.2f to extend, on a one-time basis, the frequency for performing certain diesel generator surveillance tests for an additional 13 months from the specified 18 months. This would allow such tests to be performed during the refueling outages of Braidwood Station Unit 1 and Byron Station Unit 2. The current Technical Specification includes the phrase ..."18 months, during shutdown ...". This wording implies that the surveillance tests were intended to be performed during a refueling outage shutdown. The refueling outage for Braidwood Unit 1 is scheduled for May 1989; the refueling outage for Byron Unit 2 is scheduled for January 1989. Commonwealth Edison Company has stated that Braidwood and Byron Stations do not intend to use any of the 25% extension permitted by Technical Specification 4.0.2 if this amendment is approved, since this could result in scheduling concerns for subsequent fuel cycles. It is the staff's intention to apply this amendment, if it is found acceptable, to Braidwood Station Unit 2, when it receives its operating license.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated this proposed amendment and has determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: T

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

This proposed amendment involves the frequency of surveillance tests to prove diesel generator availability. Previously evaluated accidents which involve a loss of offsite power are the only accidents which depend on diesel generator availability. The probability of other accidents concurrent with a loss of offsite power are not affected by this diesel generator surveillance frequency.

The consequences of previously evaluated accidents would not be significantly increased because the diesel generator availability would not be significantly decreased. The previously established preventive maintenance programs at each station are sufficient to detect up to 95% of the potential failure modes that would be detectable during the performance of the deferred surveillances. The remaining 5% of the potential failure modes are mostly related to a mechanical wear type of failure. Because the operation

time of the diesel generators is small, these kinds of failures have a small probability of occurring. This information provides confidence that the diesels will be capable of performing their intended function, resulting in no significant increase in the consequences of an accident previously evaluated.

The change does not add or modify any existing equipment, nor introduce a new mode of plant operation. The operability of the diesel generators Twill continue to be verified by performing the other related Technical Specification required surveillances, which remain unchanged. As such, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

Commonwealth Edison Company indicated that the proposed change had been discussed with the diesel generator manufacturer and that they found the change to be acceptable. Deferral of the surveillance will not significantly increase the possibility of undetected degradation of the diesel generators because they are operated infrequently for short periods of time. Since the actual operation time of the diesel generator is small, the probability of a diesel generator failure due to mechanical wear is small. Commonwealth Edison Company reviewed the failure history for the diesel generator and did not find any trends identifying abnormal failures. The limiting conditions for operation and other surveillance requirements to verify operability are unchanged and will remain in effect. The monthly and quarterly diesel generator surveillances will continue to be performed during the surveillance interval extension, as well as the previously indicated preventive maintenance programs. As such, the margin of safety is not reduced.

Therefore, based upon the above analysis, the staff concludes that the proposed amendment to the Technical Specifications does not involve significant hazards considerations.

Local Public Document Room location: For Byron Station the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103; for Braidwood TStation the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael Miller, Isham, Lincoln and Beale, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; and Docket No. STN 50-456, Braidwood Station, Unit No. 1, Will County, Illinois

Date of application for amendments: July 28, 1987, as amended August 10, 1987

Description of amendments request: The amendment would revise Technical Specifications 3.8.1.1 and 4.8.1.1.2 to clarify how the gradual loading of the diesel engine is applied to minimize the mechanical stress and wear on the diesel generator. The proposed change clarifies that all surveillance tests may be preceded by warmup procedures and, with the exception of the one performed once per 184 days, may also include gradual loading as recommended by the manufacturer. It is the staff's intention to apply this amendment, if it is found acceptable, to Braidwood Station, Unit 2 when it receives its operating license.

The amendment would also remove some interim notes in Specifications 3.8.1.1 and 4.8.1.1.2 for Byron Station which were only needed for the first two years after the issuance of the operating license for Byron Unit 1. Since this time period has elapsed, these notes can now be deleted for Byron Station.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and has determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed amendment does not increase the probability or consequences of an accident previously evaluated. The proposed amendment is administrative in nature. Clarifying the note regarding diesel engine start does not alter the type or intent of surveillance being performed to demonstrate diesel generator operability. The intent of Surveillance Requirement 4.8.1.1.2.1.5 is to load the diesel generator gradually for the monthly starts and only verify the diesel generator is loaded to 5500kw in less than or equal to 60 seconds for the 184 day starts. This note had been previously added to provide flexibility in the routine diesel generator start requirements so that mechanical stress and wear on the diesel generator could be minimized. This method or approach should result in enhanced reliability when the diesel generators are actually needed to respond to an accident. Also the deleting of Technical Specification notes Tthat are no longer necessary for Byron Station does not impact on any accident analysis results.

The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated because the revisions do not alter the surveillances or operability requirements for the diesel generators currently in the Technical Specifications. The changes are of an administrative type and do not affect any accident analysis.

The note regarding diesel generator start requirements was previously added based on guidance from Generic Letter 84-15. The purpose of this note was to enhance the reliability of the diesel generators by not performing testing which would unnecessarily degrade the performance of the diesel generators. Therefore, clarifying the wording of this note and removing notes that are no longer applicable will not affect the margin of safety.

Therefore, based upon the previous analysis, the staff concludes that the proposed amendment to the Technical Specifications does not involve significant hazards considerations.

Local Public Document Room location: For Byron Station the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael Miller, Isham, Lincoln and Beale, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Unit Nos. 1 and 2, LaSalle County, Illinois

Date of amendment request: June 16, 1987

Description of amendment request: The proposed amendment to Operating License Nos. NPF-11 and NPF-18 would allow the storage of fuel from each unit in either pool as originally intended with the connected fuel pool design. This capability would to extend the time (number of cycles) for which it will be possible to accomplish unloading of all

the core fuel assemblies when required for maintenance. In addition, this change will minimize radiation exposure during installation of the high density fuel racks if they are licensed for use at LaSalle.

Presently, only spent fuel from Unit 1 may be stored in the Unit 1 fuel pool, and only spent fuel from Unit 2 may be stored in the Unit 2 fuel pool. This is in accordance with section 2.B.5 of the present licenses which state, "Pursuant to the Act and 10 CFR Parts 30, 40, and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility." The word "facility" is defined as the unit for which that license is applicable.

Spent fuel storage space at LaSalle is supplied in the spent fuel pool for each unit, with each pool capable of storing 1120 fuel assemblies (Technical Specification 5.6.3). The spent fuel pools are connected via the transfer pools (canals) and the cask well vault, thus allowing underwater transfer of spent fuel from one pool to another with no significant safety consequence.

The proposed Unit 1 and Unit 2 licensee amendments modify the following:

- Section 2.B.5 of Facility Operating License NPF-11 is proposed to be revised such that the word "facility" will be deleted and the words "LaSalle County Station Units 1 and 2" be inserted.

- Section 2.B.5 of Facility Operating License NPF-18 is proposed to be revised such that the word "facility" will be deleted and the words "LaSalle County Station Units 1 and 2" be inserted.

At the present time, the Unit 1 and Unit 2 fuel assemblies have essentially the same mechanical design, enrichments, and burnup histories. Consequently, the design bases as described in the Updated FSAR Subsection 9.1.2 and Technical Specification Section 5.6, are not compromised by the storage of spent fuel from one unit in the spent fuel pool storage racks of the other unit. For each future fuel design, the peak reactivity of the fuel assemblies will be evaluated prior to their placement in the spent fuel pool. Compatibility of the fuel in both spent fuel pools will be verified at that time. This will ensure that the new fuel design will meet storage requirement design bases as described in the Updated FSAR and Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the Tprobability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the configuration and operation of the plant will remain essentially the same. The designs of the two fuel pools and the associated operating and accident analysis assumptions are not changed by these amendments. Fuel assemblies discharged from the Units 1 and 2 reactors have essentially the same mechanical design, enrichments, and burnup histories. Fuel assemblies being used at LaSalle County Station are analyzed for storage in both fuel pools prior to their placement in the fuel pools.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because this change does not modify the configuration or operation of the plant. Transfer of fuel assemblies from one fuel pool to the other is performed with the fuel handling platform utilizing the main fuel grapple or the auxiliary fuel hoist, and does not require defeating any fuel handling interlocks. Transfer of fuel assemblies from a fuel pool to the transfer canal and the cask well vault is discussed in the Updated FSAR, Subsection 9.1.2. Potential fuel handling accidents are also evaluated in the Updated TFSAR, Section 15.7. Consequently, the handling and transport of the spent fuel are enveloped by previous analyses.

(3) Involve a significant reduction in the margin of safety because Keff will be maintained below 0.95 and the Updated FSAR accident analyses results bound the evolutions that would be necessary in transferring spent fuel from one fuel pool to the other.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room Location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Beale, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendments: May 29, 1987

Description of amendments request: The purpose of this proposed change is threefold:

1. This change is intended to reflect the STS Format.

2. This proposed amendment will allow increased flexibility during low temperature operations to permit simultaneous charging pump operation for a short time duration during pump switchover operations.

3. The allowable time period of depressurizing the reactor coolant system (RCS) following the failure of two PORVs will be reduced.

ITEM 1. Section 3.4.9.3 of the STS identifies two methods for low temperature over pressure protection.

A. Two power operated release valves (PORV) must be operable, or

B. The RCS is to be depressurized with an open vent path

Both the current Zion Technical Specifications and the proposed amendment include the above two options, with the substitution of an open PORV for the specified RCS vent. In addition, the proposed amendment includes the option to permit RCS pressure to be reduced to less than 100 psig concurrent with pressurizer level less than 25%.

All three methods discussed above currently exist in the Zion Technical Specifications. The bases for these methods are contained on page 94 of the existing Technical Specifications. Thus, this proposed amendment does not explicitly involve the approval of new low-temperature over pressure protection methods.

ITEM 2. The proposed amendment has included the restrictions on charging pump, safety injection pump, and accumulator operation. These restrictions are unchanged from the existing Zion Technical Specification.

However, the flexibility to allow two charging pumps to operate for short periods of time for the purpose of maintaining seal injection flow to the reactor coolant pumps has been added. The purpose of this clause is to maintain the cleaner seal injection flow to the RCP seals during charging pump realignment. This will prevent the

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backflow of RCS water through the TRCS seals when the seal injection flow has been interrupted which will help prevent RCP seal failure.

ITEM 3. The action statement for STS Section 3.4.9.3 requires that the RCS be vented within 8 hours following the inoperability of one PORV for greater than 7 days or the inoperability of two PORV's. The proposed amendment incorporates 24 hours and 16 hours, respectively, for venting the RCS subsequent to the above conditions.

These time periods reflect Zion Stations belief that it is difficult to depressurize the RCS in a controlled manner in 8 hours. The initial conditions for such an operation would include a steam bubble within the pressurizer. Thus the 24 hour limit, which exists within the current Zion Technical Specifications, represents a reasonable time frame in which to depressurize the RCS event the failure of only one PORV.

However, Zion Station recognizes that the inoperability of two PORV's is a more serious situation and that every attempt should be made to depressurize the RCS in a controlled manner as rapidly as possible. Therefore, a 16 hour time period is proposed as the minimum amount of time in which the depressurization could proceed in a controlled manner. This 16 hour time period is more restrictive than the 24 hours allowed by the existing Zion Technical Specifications.

ITEM 4. The STS incorporates the requirement for the performance of ASME boiler and pressure code surveillances in the PORV technical specification in Specification 3.3.2.E. Therefore, they are not repeated in this proposed amendment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria:

Criterion 1

An amendment to the Zion Facility Operating License is proposed to:

(a) Incorporate the format and guidance of NUREG-0452, Rev. 4.

(b) Allow simultaneous charging pump operation for a short time duration while low temperature conditions exist and pump switchover operations are in progress.

(c) Reduce the allowable time period for depressurizing the RCS following the failure of two PORVs.

The incorporation of the guidance contained in the Standard Technical Specification NUREG-0452, Rev. 4, provides needed clarification and guidance to Sections 3.3.2.G and 4.3.2.G of the Zion Technical Specifications. The incorporation of the STS's guidance constitute expanded and clarified constraints on the operation of Zion Station. The reduction of the allowed Ttime period for RCS depressurization following the failure of two PORV's constitutes a more conservative restriction on Zion's operation.

The inclusion of the flexibility to allow two operating charging pumps during pump switchover operations will increase the reliability of Zion's RCPs. If the injection of filtered water is interrupted, then RCS water backs up into the seal region of the RCP. Minute amounts of debris in this water can cause damage to the seals on an operating RCP. This would result in the need for an RCS depressurization for RCP seal repair. Thus, the maintenance of active seal injection eliminates the introduction of the debris-laden RCS water and promotes more reliable operation of the RCPs.

The charging pump switchover operation occurs quickly. The simultaneous operation of two charging pumps is not expected to last more than approximately five minutes. Thus, the total time of dual pump operation is negligible and is consistent with the pre-existing intent of the limitations on pump operations. In addition, this operation is required to be performed by a licensed reactor operator.

Since changes (a) and (c) above both represent more conservative and clarified requirements on the operation of Zion Station, there can be no adverse effect on the performance of any Zion system or structure. In addition, change (b) will provide for more reliable RCP operation while involving a negligible amount of dual pump operation.

Based upon the above information, the proposed amendment will not adversely affect the safety performance of any Zion system or structure and will have no effect on any previously evaluated accident.

Therefore, this proposed amendment does not involve a significant increase in the probability of or consequences of any accident previously evaluated.

Criterion 2

The incorporation of the three changes discussed above will have no adverse effect on any of Zion's systems or structures. There will be no change in the normal operation of Zion's low temperature overpressure protection system. Thus, there can be no potential for any previously unanalyzed malfunction or component failure.

The low temperature overpressure protection system is intended to protect the RCS from pressure transients below 250°F. These transients include the effects of inappropriate operation of charging pumps and RCPs. These accident sequences have been reviewed and based on the lack of system interaction discussed above, the proposed amendment of the Zion Technical Specifications will not affect any of these pre-existing accident sequences.

Thus, this proposed amendment does not create the possibility of a new or different kind of accident from those previously evaluated.

Criterion 3

The three changes discussed above will not affect the safety function of the low temperature overpressurization system. The low temperature overpressurizaton system will remain available to perform the intended safety function.

Since the low temperature overpressurization system's ability to effectively protect the RCS from pressure transients below 250°F will be Tunaltered by this proposed change, there will be no change in the margin of safety.

This proposed change involves the expansion and clarification of the affected sections, the reduction of allowed action time periods, and a clarification of a pre-existing requirement. Thus, examples (i) and (ii) are applicable in this instance. Examples (i) and (ii) read as follows:

(i) A purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specification, correction of an error, or a change in nomenclature.

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specification: for example, a more stringent surveillance requirement.

Therefore, since the application for amendment satisfies the criteria specified in 10 CFR 50.92 and is similar to examples for which no significant hazards consideration exists,

Commonwealth Edison Company has made a determination that the application involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specification involve no significant hazards consideration.

Local Public Document Room: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney to licensee: P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

NRC Project Director: Daniel R. Muller

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: June 1, 1987 as modified by July 22, 1987

Description of amendment request: The proposed license amendment involves two extensive modifications to the existing plant technical specifications (TS). The first major effort concerns a revision to the technical specifications to reflect an upgraded design basis analysis of transients at the Haddam Neck Plant for operation during Cycle 15. This revision was originally started as an upgrade to the existing design basis analyses and was expanded to include additional analyses of transients not previously evaluated as part of the licensing bases. The new upgraded transient analyses have been performed with bounding physics design values required to assure the continued safe operation of the Haddam Neck Plant during Cycle 15 operation.

The second major effort involves a major change in the format of the Cycle 15 technical specifications. As part of the licensee's program of converting the Haddam Neck Plant custom technical specifications to the Westinghouse standard technical specification (STS), the licensee has submitted some Cycle 15 specific technical specifications in the STS format. TIn many cases, this format change has resulted in additional surveillance requirements or action statements beyond those that had existed in the plant custom technical specifications.

In general, the license amendment would delete old technical specifications 3.15, "Reactivity Anomalies," 3.16, "Isothermal Coefficient of Reactivity," 3.18, "Power Distribution Monitoring and Control," and 3.20, "Reactor Coolant System Flow, Temperature and Pressure." The information contained in those specifications would be reorganized along with additional limiting conditions of operation, action statements and surveillance requirements into revised Technical Specifications 3.3, "Reactor Coolant System Operational Components," 3.10, "Reactivity Control" and 3.17, "Limiting Linear Heat Generation Rate," as required, to assure completeness with the previous existing technical specification. One new specification (3.24) would be added to formalize the special test exceptions required to perform various startup physics tests.

During the reformatting of the above specifications, additional limiting conditions of operation actions statements and surveillance requirements have been added and are consistent with the guidance of the Westinghouse STS.

In addition, existing technical specifications in sections 1.0, "Definitions," 2.2, "Safety Limits," 2.4, "Maximum Safety Settings - Protective Instrumentation," 3.11, "Containment," 3.13, "Refueling," 3.5, "Chemical and Volume Control System," 3.7, "Minimum Water Volume and Boron Concentration in the Refueling Water Storage Tank," and 4.9, "Main Steam Isolation Valves" would be revised to account for the revised safety Tanalyses design basis in support of the safe operation of the Haddam Neck Plant for Cycle 15.

More specifically, the licensee is proposing to modify current specifications 1.0, 2.2 and 2.4 to account for changes in the minimum reactor coolant flow rates and the methodology calculating shutdown margin and other Cycle 15 physics parameters. In addition, surveillance requirements for the Startup Rate reactor trip have been added to specification 2.4 to assure the assumptions used in the safety analyses are preserved.

Proposed specification 3.3 has been reformatted and replaces in entirety the current specification 3.3. However the licensee has proposed to delete current specifications 3.3.C.2, 3.3.C.3, 3.3.C.5 and 3.3.H. Proposed deletion of specifications 3.3.C.2, 3.3.C.3 and 3.3.C.5 are necessary because operation in the configurations permitted by the above specifications could not be supported by existing safety analyses. Specification 3.3.H required a onetime natural circulation cooldown test in 1981. Since this test was satisfactorily completed, the licensee is proposing to delete this requirement. In addition to the deletions proposed, the licensee has also proposed adding additional limiting conditions of operation, action statements and surveillance requirements consistent with the guidance found in the Westinghouse STS.

The licensee proposes to modify specifications 3.5, 3.7, 3.11 and 3.13 to incorporate the revised requirements for shutdown margin as described in Section 1.0 of the technical specifications.

The licensee proposes to modify specification 3.9 to include a new startup rate trip as well as two additional changes in set point logic based upon the safety analyses submitted in support of Cycle 15 operation.

Proposed specification 3.10 has been reformatted and replaces in entirety existing specifications 3.10, 3.15 and 3.16. In addition, the licensee proposes to delete existing specifications 3.10.B and 3.10.C. The proposed deletion of 3.10.B and 3.10.C are based on the Westinghouse methodology used in evaluating the Cycle 15 transients which no longer require technical specifications on ejected rod worth. The proposed deletion of specification 3.10.F.3 is also required to assure that only one rod position indicator is inoperable hence preserving the assumption of a single rod stuck out of the core which was used in evaluating specific Cycle 15 transients.

In addition to the deletions identified above, the licensee also has proposed additional limiting conditions of operation, action statements and surveillance requirements consistent with the guidance found in the Westinghouse STS.

Proposed specification 3.17 has been reformatted and replaces in entirety current specifications 3.17, 3.18 and 3.20. In addition, proposed specifications 3.17 includes a new requirement for radial power peaking factors as well as an existing requirement for quadrant power tilt previously contained in specification 2.4. The licensee also proposes to delete existing specifications 3.18.B.1.2 and 3.18.C.2. The existing specifications reflect practices employed prior to Cycle 6 operation but which have become obsolete in more frequent cycles. In addition to the Tdeletions identified above, the licensee also has proposed additional limiting conditions of operation, action statements and surveillance requirements consistent with the guidance found in the Westinghouse STS. The licensee also proposes to revise the axial four loop RCS inlet temperature to be consistent with the design basis safety analysis.

Proposed specification 3.24 is a new specification which formalizes exceptions to the requirements of the technical specifications to perform various low-power start-up physics tests currently required in existing specifications.

The proposed revision to specification 4.9 is to require that the total closure time for steam isolation valves is within 10 seconds instead of the current requirement of each valve being closed in 10 seconds. This change is consistent with the design basis of the Haddam Neck Plant.

No significant changes have been made in the acceptance criteria for the technical specifications. In those cases where modification of the technical specifications was required specifically for operation during Cycle 15, the staff has reviewed the analyses and the analytical methods and has found them to be acceptable.

The following table provides a direct comparison of the existing plant technical specifications and the new reformatted (proposed) technical specifications.

COMPARISON OF CURRENT HADDAM NECK TECHNICAL SPECIFICATIONS TO THE PROPOSED REFORMATTED STANDARD TECHNICAL SPECIFICATION SECTIONS FOR CYCLE 15 OPERATION AT THE HADDAM NECK PLANT

Current Technical Specification	Proposed Cycle 15 Technical Specification
3.3 - Section	
3.3.A	3.3.2.1
	3.3.2.2
3.3.B	3.3.1.2 Action Statement C
	3.3.1.3 Action Statement B
	3.3.1.4.1 Action Statement B
	3.3.1.4.2
3.3.C (1)	3.3.2.2
	3.3.2 BASES
3.3.C (2)	(deleted)
3.3.C (3)	(deleted)
3.3.C (4)	3.3.1.1 Action Statement A
3.3.C (5)	(deleted)
3.3.C (6)	3.3.4.1
3.3.C (6)(a)	3.3.4.1 Action Statement A
	3.3.4.1 Action Statement B
3.3.C (6)(b)	3.3.4.1 Action Statement A
	3.3.4.1 Action Statement B
3.3.C (7)	3.3.3 Action Statement A
	3.3.3 Action Statement B
3.3.C (7)(a)	3.3.3 Action Statement B
3.3.C (7)(b)	3.3.3
3.3.D	3.3.1.3
	3.3.1.4.1
3.3.E	3.3.4.2
3.3.E (1)	3.3.4.2 Action Statement A
3.3.E (2)	3.3.4.2 Action Statement B
3.3.E (3)	3.3.4.2 Action Statement C
3.3.F (1)	3.3.1.2
3.3.F (2)	3.3.1.2
3.3.F (2)(a)	3.3.1.2 Action Statement A
3.3.F (2)(b)	3.3.1.2 Action Statement C
3.3.G (1)	3.3.1.3
3.3.G (2)	3.3.1.4.1
	3.3.1.4.2
3.3.G(2)(a)	3.3.1.3 Action Statement A
	3.3.1.4.1 Action Statement A
	3.3.1.4.2 Action Statement A
3.3.G(2)(b)	3.3.1.3 Action Statement B
	3.3.1.4.1 Action Statement B
	3.3.1.4.2 Action Statement B
3.3.H	(deleted)

COMPARISON OF CURRENT HADDAM NECK TECHNICAL SPECIFICATIONS TO THE PROPOSED REFORMATTED STANDARD TECHNICAL SPECIFICATION SECTIONS FOR CYCLE 15 OPERATION AT THE HADDAM NECK PLANT—Continued

Current Technical Specification	Proposed Cycle 15 Technical Specification
Section 3.10	
3.10.A	3.10.2.6
	3.10.2.7
	3.24.2
3.10.B	(deleted)
3.10.C	(deleted)
3.10.D (i)	3.10.1.2
	3.10.1.3
	3.10.1.2 Action Statement
	3.10.1.3 Action Statement
3.10.D (ii)	3.10.2.6
	3.10.2.7
3.10.D (ii)(1)	3.10.2.6 Action Statement A
	3.10.2.7 Action Statement A
3.10.D (ii)(2)	3.10.2.6 Action Statement B
	3.10.2.7 Action Statement B
3.10.D (ii)(3)	3.10.2.6 Action Statement C
	3.10.2.7 Action Statement C
3.10.E	3.10.2.1
	3.10.2.1 Action Statement
3.10.F	3.10.2.2
	3.10.2.2 Action Statement
3.10.G	3.10.2.3
3.10.H	3.10.2.4
	3.10.2.4 Action Statement
	3.10.2.4 Surveillance Req.
3.10.I	3.10.2.5
	3.10.2.5 Action Statement
	3.10.2.5 Surveillance Req.
Section 3.15	3.10.1.1
	3.10.1.4
	3.10.1.1 Surveillance Req.
	3.10.1.4 Surveillance Req.
Section 3.16	3.10.1.5
Section 3.17	
3.17.A	3.17.2.1
3.17.C	3.17.2.1
	3.17.2.1 Surveillance Req.
	3.17.2.2
	3.17.2.2 Surveillance Req.
3.17.D	3.17.2.2
Section 3.18	
3.18.A	3.17.2.1
	3.17.2.1 Surveillance Req.
3.18.B.1.1.a	3.17.1.1
	3.17.1.2
	3.17.1.1 Surveillance Req.
	3.17.1.2 Surveillance Req.
3.18.B.1.1.b	3.17.1.1 Action Statement
	3.17.1.2 Action Statement
3.18.B.1.1.c	3.17.1.1
	3.17.1.2
	3.17.1.2 Surveillance Req.
3.18.B.1.2	(deleted)
3.18.C.1	3.10.2.6
	3.10.2.7
3.18.C.2	(deleted)
Section 3.20	
3.20.A	3.17.5.a
3.20.B	3.17.5.b
3.20.C	3.17.5.c
3.20.D	3.17.5 Surveillance Req.
3.20.E	3.17.5 Action Statement
3.20.E	3.17.5 Surveillance Req.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (51 FR 7751, March 6, 1986). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed changes and has determined that they do not constitute an unreviewed safety question. The licensee also has provided extensive information (attachment 3 to their application) in Tsupport of a conclusion that the proposed changes do not involve a significant hazards consideration. Specifically, the licensee concluded that:

(1) The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated because the plant response to the LOCA and non-LOCA transients has not been significantly altered by the proposed changes. More specifically, while the axial offset limits will be changed, they continue to assure that the initial conditions for the LOCA are maintained such that linear heat generation rate (LHGR) limits are not exceeded and that the axial power shapes are within the non-LOCA transient design basis. The limiting LHGRs are unchanged and assure that the LOCA peak cladding temperature (PCT) is less than 2300°F. New specifications have been incorporated to limit the radial power peak to a value less than the original design basis for departure from nucleate boiling (DNB) transients and the core safety limits. The minimum departure from nucleate boiling ratio (MDNBR) for the non-LOCA transients remains greater than 1.30.

The inlet temperature, pressurizer pressure, and reactor coolant system (RCS) flow rate also affect DNB and PCT. The pressure limits are unchanged. The minimum RCS flow rate is being reduced and the minimum T_{cold} increased, but the OCA and non-LOCA transients continue to meet appropriate acceptance criteria (i.e., PCT less than or equal to 2300°F, MDNBR less than or equal to 1.3, and centerline fuel Ttemperature less than or equal to melt limit) without significantly modifying plant and performance.

The plant response to the boron dilution accident with the shutdown margin requirement in all operational modes continues to provide sufficient operator response time. The three-loop operation core physics parameters were generated using the less restrictive control bank insertion limits. The design

accidents are not significantly affected by these changes.

(2) The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not affect the performance of safety system or the probability of a failure of a safety system. There are no new failure modes associated with the proposed changes to the Technical Specification requirements. Additionally, there is no increase in the probability of an accident due to the proposed changes or a failure mode associated with the change, such that an accident previously thought incredible should be considered within the design basis, and

(3) The proposed amendment does not involve a significant reduction in a margin of safety because (1) there is no impact on the cladding protective boundary since the MDNBR remains above 1.3, (2) the operator has sufficient time to respond to a boron dilution accident, (3) the peak cladding temperature remains less than 2300°F, and (4) the fuel centerline temperature is less than the melt limit. The changes proposed do not significantly affect system response, so other protective boundaries are not impacted. The proposed specifications do not affect the safety limits of the protective boundaries.

In addition to the technical issues associated with operation during Cycle 15 (as discussed above), the conversion of the present TS to the STS format can be categorized into either administrative changes or additional requirements not currently found in the plant specifications.

As mentioned earlier, the Commission has provided examples of amendments that are likely to involve no significant hazards consideration (51 FR 7751, March 6, 1986). Example (i) involves a purely administrative change to the technical specifications such as a change in nomenclature or correction of an error. The staff has reviewed the proposed amendment and concluded that those specifications which involve only a reformatting of or administrative changes to the existing specification are enveloped by this example.

Example (ii) involves a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications. The staff has reviewed the proposed amendment and concluded that the proposed incorporation of additional limiting conditions of operation as well as new action statements and surveillance requirements are enveloped by this example because they constitute additional restrictions on plant operation which are not currently in the plant technical specifications.

On the basis of the above examples and the licensee's determination that the license amendment involves no significant hazards consideration, Tthe staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: Cecil O. Thomas

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County,. Connecticut

Date of amendment request: July 29, 1987

Description of amendment request: The proposed license amendment would add a new technical specification (TS) section, Section 3.25 "Feedwater Isolation Valves," to the existing plant technical specifications. The accident analysis for a main steam line break in containment assumes the main feedwater isolation valves close within 70 seconds. Addition of this technical specification will assure that surveillance testing is performed to verify the 70 second closure time is maintained.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance (51 FR 7751, March 6, 1986) on actions not likely to involve a significant hazards consideration. Example (ii) of this guidance states that a change that constitutes an additional limitation restriction or control not presently included in the technical specifications, for example, a more stringent surveillance requirement, would not likely Tconstitute a significant hazard. The staff has reviewed the proposed amendment and concluded that it falls within the envelope of example (ii) because the proposed amendment adds a new surveillance requirement to assure that assumptions used in the plant safety analyses are maintained.

Accordingly, the staff proposes to determine that the proposed change does not involve a significant hazards considerations.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: Cecil O. Thomas

Consolidated Edison Company of New York, Inc. Docket No. 50-03, Indian Point Unit No. 1, Buchanan, New York

Date of amendment request: December 19, 1985 as revised July 27, 1987.

Description of amendment request: The licensee proposes that License No. DPR-5 for the shutdown and defueled Indian Point Unit No. 1 (IP-1) be amended to revise the Technical Specifications (TS) to assure that IP-1 requirements for the Radiological Protection Program are consistent with IP-2 requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation and/or maintenance of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes with respect to 10 CFR 50.92(c) and has determined that the proposed amendment would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not entail any physical changes in plant equipment. The proposed change involves a revision to the site personnel access control requirements for IP-1 radiation areas in which the intensity of radiation is greater than 100 mrem/hr but less than 1000 mrem/hr. Thus, it does not in any way affect the dose consequences of offsite releases. The proposed change remains conservative based on consistency with NRC approved Standard Technical Specification (STS). The proposed revision would also help to reduce site radiation exposure and minimize the confusion of workers who have to comply with two different procedures in IP-1 and IP-2.

(2) create the probability of a new or different kind of accident from any previously evaluated, since the proposed change would not alter the

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configuration of any of the plant's equipment and remains conservative in providing assurance of maintaining adequate radiation protection for site personnel.

(3) involve a significant reduction in a margin of safety, since the proposed change remains conservative for controlling access to high Tradiation areas. The proposed change involves revisions to the IP-1 access control requirements for radiation areas in which the intensity of radiation is greater than 100 mrem/hr but less than 1000 mrem/hr. These areas will be barricaded and conspicuously posted as high radiation areas and entry will be controlled by the issuance of a Radiation Work Permit (RWP). In addition, a radiation monitoring device which continuously indicates the radiation dose rate in the area will be provided to the individuals who are permitted to enter such areas. These requirements provide a conservative measure of radiation protection for site workers based on consistency with the NRC approved STS. The proposed change will also reduce radiation exposure by eliminating the need for a guard to be posted at the entrance of the area and will minimize the confusion of workers who have to comply with two different sets of procedures in IP-1 and IP-2.

Based on the above, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Maritime Avenue, White Plains, New York 10601

Attorney for licensee: Brent L. Brandenburg, Esquire, Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, New York 10003

NRC Project Director: Herbert N. Berkow

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 5, 1977, as modified February 16, 1984, July 18, 1986 and July 14, 1987.

Description of amendment request: The amendment would revise the Technical Specifications to reflect provisions consistent with the appropriate Edition and Addenda of Section XI of the ASME Boiler and Pressure Vessel Code. Specifically the amendment would replace the inservice inspection requirements in Section 4.2 of the Technical Specifications with a commitment to perform an inservice inspection program as specified in 10 CFR 50.55a. The request for this amendment was initially noticed October 27, 1983 (48 FR 49713), renoticed May 23, 1984 (49 FR 21828) and September 10, 1986 (51 FR 32266).

The July 14, 1987 modification is responsive to NRC concerns identified during the review of the proposed amendment. Specifically, the modification revises the inservice inspection and testing sections to provide for compliance with 10 CFR 50.55a(g) "except where specific relief has been granted".

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards determination by providing certain examples (51 FR 7751). One of these examples (ii) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the Technical Specifications. The proposed changes with regard to 10 CFR 50.55a are Trepresented by this example. Therefore, based on the above, the staff proposes to determine that the proposed revision to the Technical Specifications involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Acting Director

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendments request: April 16, 1987

Description of amendments request: The proposed amendments would delete the remaining sections, Sections 1.0 and 5.0, of the Turkey Point Plant Environmental Technical Specifications (ETS) and replace the ETS with an Environmental Protection Plan.

Section 1.0 includes the definitions for terms used in the ETS. Section 5.0 describes the administrative controls and procedures necessary to implement the ETS requirements.

Recently issued amendments have deleted the non-radiological and radiological environmental monitoring programs and requirements from the ETS. Amendments 93/87, issued March 11, 1983, deleted the non-radiological water quality related requirements. Amendments 100/94, issued January 4, 1984, deleted the non-radiological monitoring programs related to terrestrial, biological, and physical monitoring. Amendments 105/99, issued August 24, T1984, deleted the groundwater monitoring requirements and other environmental protection limits. Environmental concerns which relate to water quality and biological monitoring will be regulated by the Environmental Protection Agency and other Federal, State and Local Environmental Agencies.

Also, Amendments 103/97, issued April 23, 1984, deleted the radiological environmental monitoring requirements from the ETS. These requirements are now included in the Turkey Point Plant Technical Specifications, Appendix A to Operating License Nos. DPR-31 and DPR-41.

The requirements of Sections 1.0 and 5.0 of the ETS which are still applicable will be included in the Turkey Point Plant Environmental Protection Plan, which would provide for the protection of the environment at the plant site and immediate adjacent areas.

Protection of the environment at the Turkey Point Plant and immediate adjacent areas will continue to be provided for by the Environmental Protection Plan which would replace the existing Appendix B Environmental Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change in accordance with the standards of 10 CFR 50.92 and has determined that operation of Turkey

Point Units 3 and 4 in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed amendments are administrative in that they replace administrative requirements in Appendix B with similar requirements in an Environmental Protection Plan. They do not change any current safety limitation related to operation of the plants. (Safety limits are necessary to reasonably protect the integrity of certain physical barriers which guard against the uncontrolled release of radioactivity). They do not modify any of the design features of the plant. The radiological monitoring programs included in the Appendix A Technical Specifications are not affected by these amendments.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the proposed amendments do not affect the design or operation of the plant, and therefore could not cause a new or different kind of accident from any previously evaluated to occur.

(3) Involve a significant reduction in a margin of safety.

The proposed amendments are not safety-related, pose no reduction in any requirement for safe operation of the plant and, therefore, could not affect any margin of safety. As discussed above, the radiological monitoring programs are not affected by these amendments.

The staff agrees with the licensee's determination above, and therefore proposes to determine that the amendments do not involve a significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Lester S. Rubenstein

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: May 19, 1986 as revised July 16, 1987.

Description of amendments request: The proposed amendments would revise the Technical Specifications by adding requirements for the containment sump level and flow monitoring system for both units and by correcting a duplication of surveillance requirements on the reactor coolant leakage detection system for Unit 1. The proposed amendment was originally noticed on June 18, 1986 (51 FR 22238).

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards determination by providing certain examples (51 FR 7751). One of the examples, (ii), is a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications. The change to add requirements for the containment sump level and flow monitoring system for both units is directly related to this example. This system was required as part of the TTMI Action Plan, NUREG-0737. Another example, (i), is a purely administrative change to the technical specifications. Surveillance Requirement 4.4.6.1 is now on page 3/4 4-14 for Unit 1 and is exactly repeated on page 3/4 4-15.

The removal of the duplication is purely administrative and directly related to the example. Therefore, the Commission proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: July 22, 1987

Description of amendments request: The proposed amendments would change the Technical Specifications for functional tests of snubbers by allowing an extension in test frequency from 18 to 24 months with a corresponding increase in the test sample from 10 to 14% of the snubbers. The proposed amendments also correct an editorial oversight on visual inspections to include percent signs on the frequency span.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards Tconsideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The proposal by the licensee to increase the frequency and the number of snubbers to be tested from 18 months and 10% of the snubbers to 24 months and 14% of the snubbers is based on calculations to ensure that the confidence in snubber operability is maintained. If the confidence in operability remains unchanged, there should be no significant increase in the probabilities or consequences of any accident previously analyzed. Since there is no change to operations or modifications to the plant involved in the proposed change, there is no possibility of a new or different kind of accident from any previously evaluated. The confidence in operability does not change, therefore there is no significant reduction in a margin of safety.

The Commission has provided guidance concerning the determination of significant hazards by providing certain examples (51 FR 7751) of amendments considered not likely to involve a significant hazards determination. The first example, (i), is a purely administrative change to technical specifications. The editorial change to replace percent signs is directly related to this example.

Based on the above considerations, the staff proposes to determine that the licensee's request involves no significant hazards considerations.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: July 30, 1987.

Description of amendment request: The proposed amendment would modify the Technical Specifications to reflect revised LOCA Monitoring Limits which could be used when the Incore Monitoring System is inoperable.

Maine Yankee Atomic Power Company uses the Incore Monitoring

System to monitor the LOCA Linear Heat Generation Rate (LHGR) Limits. If the incore alarms become inoperable, power operation can be continued as allowed by Technical Specification 3.10.C.3.1.1. This specification places limits on control element assembly (CEA) position and axial symmetric offset, and based on these restrictions, penalizes the last incore LHGR measurement for potential power peaking increases and establishes a maximum allowable power level for operation. The following conditions must be met:

- CEA's are maintained above the 100% power insertion limit.
- Excore symmetric offset remains with ±0.05 of the value measured when the last core readings were taken.
- Core power is reduced to less than or equal to P (% of rated power), where P is given by:

$$P = 0.85 \times R,$$

where R is the minimum ratio of

$$\frac{\text{[Linear Heat Rate Permitted by Specification 3.10.C.1 x 100]}}{\text{[Latest Measured Peak Linear Heat Rate Corrected to 100% Power]}}$$

The intent of this specification is to permit continued operation based on the latest measured LOCA LHGR margin to limits. The penalty factor of 0.85 accounts for the maximum possible loss in margin due to peaking increase that could result from operation within the restricted CEA and symmetric offset limits. The analysis used in the determination of the Reactor Protection System setpoints forms the basis of this penalty factor, which is evaluated each cycle.

The proposed specification separates this combined penalty factor into CEA and symmetric offset components and expresses the penalty as a function of CEA movement relative to the CEA position at the time of the measurement. In addition, the proposed specification defines two symmetric offset ranges to cover the most likely conditions of core operation. The actual LOCA LHGR Limits specified in Technical Specification 3.10.C.1, which are determined using an approved ECCS Evaluation Model and meet the criteria established in 10 CFR 50.46 and 10 CFR Part 50, Appendix K, remain the same.

Basis for proposed no significant hazards consideration: The proposed changes to the Technical Specifications for revised LOCA Monitoring Limits when the Incore Monitoring System is Inoperable for the Maine Yankee plant have been evaluated against the standards of 10 CFR 50.92 and have been determined to not involve a significant hazards consideration. These proposed changes do not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

Operation of the plant at the revised LOCA Monitoring Limit when the Incore Monitoring System is Inoperable does not increase the probability of a LOCA. Furthermore, Maine Yankee has evaluated operation of the plant during Cycle 10 for Non-LOCA events and has established Non-LOCA Limits independent of LOCA Limits. The imposition of a LOCA Monitoring Limit when the Incore Monitoring System is Inoperable further restricts operation and does not affect Non-LOCA events. Therefore, the proposed changes do not increase the probability of an accident previously evaluated.

The LOCA Limits specified in Technical Specification 3.10.C.1 are determined using methods found to be in compliance with 10 CFR 50.46 and 10 CFR Part 50 Appendix K. These regulations established the criteria which assure that the consequences of LOCA's are acceptable. The revised LOCA Monitoring Limits when the Incore Monitoring System is Inoperable assures adequate margin exists to the LOCA LHGR Limits in Technical Specification 3.10.C.1. Therefore, operation of the plant at the revised LOCA Monitoring Limit when the Incore Monitoring System is Inoperable does not significantly increase the consequences of LOCAs. Furthermore, operation with the revised limits does not increase the consequences of Non-LOCA events for the reason stated in the previous paragraph. Therefore, the proposed changes do not increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change revises the LOCA Monitoring Limit when the Incore Monitoring System is Inoperable. Operating within the revised limits assures adequate margin exists to the LOCA LHGR Limits specified in Technical Specification 3.10.C.1. These limits meet the criteria of 10 CFR Part 50, Appendix K.

Furthermore, operation with the revised LOCA Limits for Non-LOCA events does not create the possibility of a new or different kind of accident for the reason stated in Item 1. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The LOCA Limits were specified in Technical Specification 3.10.C.1 are determined using methods found to be in compliance with 10 CFR 50.46 and 10 CFR Part 50 Appendix K. These regulations establish the criteria which assure that adequate margin of safety exists for LOCAs. The revised LOCA Monitoring Limits when the Incore Monitoring System is Inoperable assures adequate margin exists to the LOCA LHGR Limits in Technical Specification 3.10.C.1. Furthermore, operation with the revised limits does not reduce a margin of safety for Non-LOCA events for the reason stated in Item 1. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Maine Yankee has concluded that the proposed changes to Technical Specifications do not involve a significant hazards consideration as defined by 10 CFR 50.92. We have reviewed the licensee's analysis and have agreed with it. Accordingly, the Commission proposes to determine that this change does not involve a significant hazard.

Local Public Document Room location: Wiscasset Public Library, High Street, P. O. Box 367, Wiscasset, Maine 04578.

Attorney for licensee: J. A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: V. Nerses, Acting Director

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: July 1, 1987, as revised August 4, 1987

Description of amendment request: The proposed amendment would change Paragraph 2.C.(36) in the Grand Gulf Nuclear Station, Unit 1 Operating License NPF-29. This license condition requires completion of the emergency response capabilities as identified in Attachment 1 to the license. Items (c)(2) and (c)(3) of Attachment 1 would be changed by deleting the require ment for post-accident flow monitoring of the standby liquid control system (SLCS) and deferring the implementation date for post-accident neutron flux monitoring from the second refueling outage to the third refueling outage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed Tamendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards consideration in its request for a license amendment. The licensee has concluded with appropriate bases, that the proposed amendment satisfies the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. The licensee's analysis is reproduced below.

SLCS Flow Monitoring

Standard 1.

Deletion of the requirement to install SLCS flow monitoring does not involve a significant increase in the probability or consequences of an accident previously evaluated. The SLCS is an alternate reactor shutdown system to be used in an ATWS event when the control rods do not fully insert. Since SLCS functions (post accident) to mitigate the consequences of an ATWS event, not having the SLCS flow instrumentation does not alter the probability of occurrence of this event.

Using an alternate means to detect SLCS flow does not increase the consequences of an accident previously evaluated in the FSAR. SLCS flow monitoring would provide a direct indication that the SLCS pumps are injecting poison into the reactor; however, other parameters can be monitored to confirm SLCS injection. These alternate indications (i.e., SLCS storage tank level, SLCS tank outlet valve position) have been shown to meet the requirements of R.G. 1.97, are of high reliability, and can provide indirect TSLCS flow indication in the unlikely event that it is needed to mitigate an ATWS. The steps utilized by the reactor operators in the Emergency Procedure Guidelines assume use of presently installed instrumentation and have been approved by the NRC as appropriate to mitigate the consequences of an ATWS event. Since the presence or absence of direct flow indication does not affect SLCS performance, the consequences of an accident previously evaluated are not increased by not installing direct SLCS flow monitoring.

Standard 2

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. The only analyzed event requiring the use of the SLCS is an ATWS. Other valid methods are presently available to provide indirect SLCS flow monitoring during an ATWS event. The SLCS will still perform its design function whether or not SLCS flow monitoring is installed; therefore, the possibility of a new or different kind of accident is not created.

Standard 3

Using an alternate means of SLCS flow monitoring does not involve a reduction in a margin of safety. The safety function of SLCS flow monitoring is satisfied by use of alternate methods of assessing SLCS flow. This alternate method has been previously accepted by the NRC as being a valid method of confirming SLCS flow and an acceptable method of meeting the requirements of R.G. 1.97 for SLCS flow monitoring. Therefore, deletion of the requirement to install SLCS flow monitoring does not reduce the margin of safety.

Neutron Flux Monitoring

Standard 1

The absence of a post accident neutron monitoring system during the third fuel cycle does not involve a significant increase in the probability of an accident previously evaluated since the absence of the proposed system modification would not affect reactor operation. The post accident neutron flux monitoring system provides post-accident indication of reactor power and does not provide any signals to actuate engineered safety features or to trip the reactor. Furthermore, reactor trip signals from the present neutron flux monitoring system to the reactor protection system will not be changed as a result of the installation of a post accident neutron monitoring system.

Several factors were considered in determining if the consequences of an accident previously evaluated have been significantly inoreased as a result of the proposed delay in installation of the post accident neutron flux monitoring system. If the new system were installed during the second refueling outage, it would provide improvements over the presently installed system. However, the presently installed system is expected to function during the initial phase of an accident (including a LOCA) to indicate subcritical reactor power. Since the presently installed system is not qualified to R.G. 1.97 Category 1 requirements, long term monitoring in a harsh environment may not be directly available. In this event, other measures and indications can provide the operator with reactor power information as discussed below:

a. The presently installed neutron flux monitoring system has 8 channels of Average Power Range Monitors, 6 channels of Source Range Monitors and 8 channels of Intermediate Range Monitors some of which may survive a harsh accident environment.

b. The present control rod position indication system provides the reactor operator with information that all rods are inserted. The control rod position indication instrumentation meets Category 3 requirements per R.G. 1.97.

c. Qualified instrumentation such as reactor pressure and safety relief valve (SRV) actuation provide the reactor operator with post-accident information for assessment of reactor power if direct neutron monitoring capability was not available.

d. GGNS has implemented Revision 3 of the Emergency Procedure Guidelines (EPG's). The EPG's are symptom based and provide appropriate conservative actions if reactor power could not be directly measured in a post-accident situation. The EPG's contain action steps which mitigate the symptomatic effects of design basis events (such as LOCA, rod drop, HELB's) and beyond design basis events (such as ATWS).

The compensatory measures listed above ensure that the consequences of an accident previously evaluated will not be significantly increased by the absence of a post accident neutron flux monitoring system during the third fuel cycle.

Standard 2

The absence of a post accident neutron flux monitoring system during the third fuel cycle does not create the possibility of a new or different kind of accident from any previously evaluated because the new system will perform only a mitigative role in an accident.

Standard 3

The absence of a post accident neutron flux monitoring system during the third fuel cycle does not result in a significant reduction in the margin of safety. The installation of the neutron flux monitoring system at the third refueling outage will provide an enhancement over the present system for post accident monitoring capability. However, even with the proposed system not available, other instrumentation and the GGNS EPs assure that conservative actions are taken and margins of safety are (based on the EPGs) not significantly reduced.

The NRC staff has made a preliminary review of the licensee's analysis and agrees with the licensee's conclusions that the three standards in 10 CFR 50.92 are met for the proposed operating license amendment for Grand Gulf Nuclear Station, Unit 1.

Accordingly, the Commission proposes to determine that the requested changes to the operating

license do not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Lester S. Rubenstein

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: July 14, 1987 as supplemented by letter dated July 31, 1987 (partial response).

Description of amendment request: By application for license amendment dated July 14, 1987 as supplemented by letter dated July 31, 1987, Northeast Nuclear Energy Company, et al. (the licensee), requested changes to the Technical Specifications (TS) for Millstone Unit 2 as follows: (1) a new TS 6.9.1.5d, "Annual Reports", would require reporting of pressurizer relief valve and safety valve (RV & SV) failures and challenges and (2) a new TS 6.17, "Secondary Water Chemistry", would specify requirements for the steam generator secondary water chemistry program.

In addition to the TS changes described above, the July 14, 1987 application also requests a change to the TS regarding steam generator tube degradation which will be addressed in a future licensing action.

Basis for proposed no significant hazards consideration determination: By letter dated July 23, 1979, the NRC staff informed licensees that a review of steam generator water chemistry status within the nuclear industry indicated a need for a license condition to specify the nature of the plant-specific water chemistry programs. More recently, the NRC staff has requested that the licensee's propose inclusion of water chemistry program requirements in the Administrative Controls section of the TS. The July 14, 1987 application proposes a change to the Administrative Controls section of the TS to incorporate secondary water chemistry requirements in accordance with the NRC letter dated July 23, 1979 as follows:

1. Identification of a sampling schedule for the critical variables and control points for these variables.

2. Identification of the procedures used to measure the values of the critical variables.

3. Identification of process sampling points, which shall include monitoring the discharge of the condensate pumps for evidence of condenser in-leakage.

4. Procedures for the recording and management of data.

5. Procedures defining corrective actions for all off-control point chemistry conditions, and

6. A procedure identifying: (a) the authority responsible for the interpretation of the data, and (b) the sequence and timing of administrative events required to initiate corrective action.

The above program would be incorporated in new, proposed, TS 6.17.

The other change to the TS, addressed herein, concerns TMI Action Item II.K.3.3, "Reporting of RV and SV Failures and Challenges." In an NRC letter dated March 8, 1982, the NRC staff expressed the need to formalize the reporting of pressurizer RV and SV failures and challenges via a change to the TS. No model TS was provided at that time. In a subsequent NRC letter dated October 29, 1986, the licensee was provided with an acceptable model TS. The July 1, 1987 application, as supplemented by the licensee's letter dated July 31, 1987, proposes an addition to the annual reporting requirements of TS 6.9.1.5 to include: "Documentation of all failures (inability to lift or reclose within the tolerances allowed by the design basis) and challenges to the pressurizer PORVs or safety valves."

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration. One example of amendments not Tlikely to involve significant hazards considerations is example (ii) which involves "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." Both the water chemistry requirements of proposed TS 6.17 and the reporting of RV and SV failures and challenges of proposed TS 6.9.1.5d represent controls that are not presently included in the TS. Accordingly, the Commission proposes to determine that the proposed change to the TS involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 3, 1987

Description of amendment request: By application for license amendment dated August 3, 1987, Northeast Nuclear Energy Company, et al. (the licensee), requested changes to the Technical Specifications (TS) for Millstone Unit 2 regarding Control Room inleakage. The licensee has proposed a new TS 4.7.6.1e.3 which would require periodic verification of control room inleakage.

Basis for proposed no significant hazards consideration determination: On July 19, 1982, the NRC staff issued its Safety Evaluation (SE) concerning TTMI Action Item III.D.3.4, "Control Room Habitability". The SE approved control room HVAC modifications proposed by the licensee, as described in the licensee's letter dated July 1, 1981, which included increasing the capability of the control room charcoal filtration system and reducing the control room unfiltered inleakage. Subsequently, on June 19, 1985, the NRC staff issued License Amendment No. 100 for Millstone Unit 2 which included TS consistent with the staff's July 19, 1982 SE. The SE associated with License Amendment No. 100, however, concluded, "...the technical specification contains no provisions to periodically verify the licensee's calculational assumptions regarding the control room inleakage during isolation. The staff will pursue resolution of this prior to the next refueling outage currently scheduled for late 1986 or early 1987." Following discussions with the NRC staff, the licensee submitted their application dated August 3, 1987. The TS proposed by the licensee (TS 4.7.6.1e.3) would require measurement of the control room inleakage at least once per 18 months. The maximum allowable inleakage would be 100 scfm at a delta P of 1/16 in. water gauge.

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration. One example of amendments not likely to involve significant hazards considerations is example (ii) which involves "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." Proposed TS 4.7.6.1e.3 represents an additional "control" not

presently included in the TS. Accordingly, the TCommission proposes to determine that the proposed change to the TS involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: June 30, 1987

Description of amendment request: The licensee has proposed changes to Susquehanna Steam Electric Station (SSES) Unit 2 Technical Specifications, to permit extended operation of the Unit with one recirculation loop out of service. The single loop operation (SLO) was previously approved by the Commission on April 11, 1986 in Amendment No. 26 to SSES Unit 2 Technical Specifications. Subsequent to that approval, the licensee voluntarily requested the Commission to terminate the SLO provision from the Unit 2 Technical Specifications, pending completion of additional analyses. The analyses have now been compeleted, reviewed and adopted by the licensee as the basis for its current request to reinstate the approval of SLO operation at SSES, Unit 2.

Specifically, the licensee has requested the following Technical Specification changes:

- A Footnote, which was inadvertently deleted by a previous amendment, will be restored to Table 3.3.6-2.
- In Technical Specification section 3.4.1.1.2, the recirculation pump speed is restricted to 80% to reflect the results of jet pump vibration analysis for SLO.
- In the Technical Specification section 3.4.1.1.2, proper multipliers for Maximum Average Planar Linear Heat Generation Rates (MAPLHGR) for General Electric (GE) fuel and ANF fuel have been proposed for SLO. The proposed changes are based on Loss Of Coolant Accident (LOCA) analyses.
- In the Technical Specification section 3.4.1.1.2, new Minimum Critical Power Ratio (MCPR) values have been proposed for SLO. The new values are based on transient analyses.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusions provided by the licensee in its June 30, 1987 submittal.

The following three questions will be addressed for each of the proposed changes:

I. Does the proposed change involve a significant increase in the Tprobability or consequences of an accident previously evaluated?

II. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

III. Does the proposed change involve a significant reduction in a margin of safety?

- *Table 3.3.6-2, Control Rod Block Instrumentation Setpoints*

I. No. Footnote "*u*" is provided as a reference for the trip functions in this table which have revised trip setpoints and allowable values during SLO. This change applies this setpoint to the APRM Flow Biased Neutron Flux - Upscale trip. This change is administrative in nature since the revised setpoint and allowable value were previously approved as part of the original SLO Specification (reference Amendment 26 to License NPF-22), but footnote *u* on the subject trip function was inadvertently omitted as part of the amendment.

II. No. See I above.

III. No. See I above.

- *Specification 3.4.1.1.2, Recirculation Loops - Single Loop Operation*

I. No. The revision to 80% recirculation pump speed is a restriction due to gaps discovered on the jet pump restrainer bracket. The new limit is based on a GE jet pump vibration analysis which was previously referenced for Susquehanna SES Unit 1.

Specification a.3 is revised to provide the proper MAPLHGR Tmultipliers for GE and ANF fuel. The GE multiplier is 0.81 based on the previously approved analysis in support of Amendment 26. LOCA analyses performed by ANF ...indicate that the two loop MAPLHGR limits are applicable to SLO for ANF fuel, and therefore the multiplier has been set to 1.0.

New Specification a.5 proposes new MCPR limits for SLO based on transient analyses performed by ANF ...for events initiated from SLO conditions. These analysis show that the Safety Limit MCPR must be increased to 1.07 and the Operating Limit MCPR must be increased to a minimum of 1.42 for Single Loop Operation. A 0.01 constant is added to the two loop Operating Limit MCPR for low power and low core flow conditions for Single Loop Operating Limit MCPR values greater than 1.42.

Based on the addition of the new MCPR limits, the current Specification a.5 is revised to a.6. Under this listing of RMB/APRM Control Rod Block Setpoints, two lines of text are deleted. This change is editorial in that the test applies to setpoints that were deleted in approved Amendment 31 to License NPF-22, and therefore this information should have been deleted at that time.

Based on the above analyses of the non-editorial changes to Specification 3.4.1.1.2, appropriate limits have been proposed to assure that operation with one recirculation loop out of service will not result in a significant increase in Tthe probability or consequences of any accident previously evaluated. The editorial changes have no impact on previous analyses.

II. No. The 80% pump speed restriction ensures that jet pump vibration greater than normally expected will not occur during SLO, thereby eliminating it as a contributor to any new accident scenario. The revised MAPLHGR and MCPR limits have been developed based on approved LOCA and transient analysis methods and therefore will not create any new accident. The deleted text is editorial as explained in I above.

III. No. The analyses for jet pump vibration, LOCA, and other anticipated operational occurrences ensure that no significant reduction in safety margin has occurred based on their inputs, applied conservatisms and calculation methodologies as documented in the previously referenced reports. The editorial changes have no safety impact.

In addition to concurrence with the above licensee basis and its conclusions, the staff also finds that the addition of a footnote to Table 3.3.6-2 entails a correction of an error and therefore is similar to Commission's example (i) (51 FR 7751) of an amendment likely to involve no significant hazards consideration.

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Based on the above considerations, the Commission proposes to determine that the proposed changes involve a no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: May 20, 1987

Description of amendment request: The proposed amendment would eliminate the Condensate Storage Tank (CST) as vital equipment and therefore revise the level of security protection provided to the CST.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has provided the following no significant hazards analysis:

1. Does the proposed license amendment involve a significant increase Tin the probability or consequences of an accident?

The proposed change does not involve a significant increase in the probability or consequences of an accident since there is no change to any plant system or operating procedure. This change merely revises the level of security protection provided to the CST, a nonsafety-related component. Loss of the CST would not prevent the auxiliary feedwater (AFW) system from performing its function of decay heat removal since the service water (SW) system remains available as a water source. As a Seismic Category II portion of the condensate and feedwater system, the CST is not essential for safe shutdown of the plant.

2. Does the proposed license change create the possibility of a new or different kind of accident from any accident previously analyzed?

The proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed since the plant design and operating procedures remain unaffected. This change only addresses security measures associated with a nonsafety-related component. Loss of the CST has been considered in the design of the AFW system by providing a Seismic Category I, safety-related backup system consisting of two separate, redundant trains.

3. Does the proposed license change involve a significant reduction in a margin of safety?

The proposed change does not involve a significant reduction in a margin of safety since no change is made to the plant design or operating procedure. The CST is not essential to the safe shutdown of the plant.

The staff has reviewed the licensee's no significant hazards analysis Tand concurs with their conclusions. As such, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 731 S. W. Harrison Street, Portland Oregon 97207

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: July 14, 1987

Description of amendment request: The amendment would revise Technical Specification 4.1.5.b.2 for the standby liquid control (SLC) system by increasing the required amount of sodium pentaborate from 5760 pounds to 5776 pounds and would revise Technical Specification Figure 3.1.5-1 to increase the minimum sodium pentaborate solution concentration requirements from 12.9 weight percent to 13.6 weight percent and to change the low level and high level alarm levels from volumes of 4690 and 4997 gallons to 4640 and 4880 gallons respectively. These changes are necessary in order for Hope Creek Generating Station (HCGS) to maintain compliance to 10 CFR 50.62(c)(4) with a minimum flow capacity and boron equivalent in control capacity to 86 gallons per minute (gpm) of 13 weight percent (13 w/o) sodium pentaborate Tsolution.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following evaluation with its July 17, 1987 amendment request:

The proposed change to the HCGS Technical Specifications:

(i) Does not involve a significant increase in the probability or consequences of an accident previously evaluated. This change does not affect the ability of sodium pentaborate to reach the core nor the capability of boron to absorb neutrons; hence, the design intent of the SLC system is not affected. This change increases the ability of the SLC system to shutdown the reactor during an ATWS event since more sodium pentaborate will be available to absorb neutrons.

The proposed change increases the minimum allowable boron concentration by increasing the amount of sodium pentaborate in the SLC storage tank by 16 pounds (less than 0.3 percent) and reducing the SLC tank low level by 210 gallons (approximately 4%). As a result of these changes, the sodium Tpentaborate solution saturation temperature increases to 62°F from 59°F (approximately 5%). However, as shown in revised FSAR Section 9.3.5 and Figure 9.3-9 (see Attachment 3), the increased saturation temperature is still less than the temperature maintained by the electrical heater system which maintains the SLC tank solution between 75°F and 85°F. The performance of Technical Specification Surveillance Requirements 4.1.5.a.1 and a.3, on a daily basis, assures that the SLC system heat tracing and SLC tank electrical heater system maintains system temperature at greater than or equal to 70°F. Additionally, the areas in which the SLC system is located are maintained at temperature of at least 70°F. Therefore, the proposed change does not significantly increase the possibility of the sodium pentaborate coming out of solution.

Hence, the proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

(ii) Does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not alter SLC system operation nor affect any other system, including the ability of the plant to recover from accident conditions. Therefore, it can be concluded that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(iii) Does not involve a significant reduction in a margin of safety. The proposed change increases the ability of the SLC system to respond to ATWS events by increasing the amount of sodium pentaborate which is available to safely bring the reactor to a shutdown condition. Although as Tdiscussed in subparagraph (i) above, the saturation temperature of sodium pentaborate is increased, this increase is not significant especially in light of the fact that the electrical heater system maintains solution temperature with a margin of approximately 21%. Additionally, the Technical Specifications maintain a margin of approximately 13%. The changes to the actual Technical Specifications are conservative in nature and hence, the proposed change does not significantly reduce a margin of safety.

Finally, this amendment request conforms to Example (ii) for Amendments That Are Not Likely To Involve Significant Hazards Considerations (published in Federal Register Vol 51, No. 44 dated March 6, 1986) in that this change constitutes an additional limitation not presently included in the Technical Specifications. In addition, based upon the discussions provided in the above three subparagraphs, PSE&G concludes that the proposed change does not involve a Significant Hazards Consideration.

The staff agrees with the licensees evaluation and conclusion as stated above. Accordingly, the staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: September 22, 1986, as supplemented February 20, 1987

Description of amendment request: The proposed amendment consists of two parts. The first is a proposed revision to the definition of Refueling Interval in Technical Specification 1.2.8 which removes reference to the first refueling interval and makes the language consistent with Standard Technical Specifications. The actual specified time period of the Refueling Interval - 18 months - is unchanged. The second proposed change would grant a waiver from surveillance of the Reactor Vessel Internal Vent Valves (RVVV) until the cycle 8 refueling outage, which is scheduled to begin in May 1989. Section 4.1.2 and 1.9 of the current Technical Specifications require surveillance of the RVVV to be completed prior to restart from the current outage, which began on December 26, 1985. The last surveillance was in April 1985. This proposed change would provide a one-time increase in the time between consecutive surveillances.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed Tamendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The evaluation of the proposed changes relative to these standards follows:

(1) The proposed wording change to Technical Specification 1.2.8 is purely an administrative change which does not increase the probability or consequences of an accident previously evaluated. The proposed increase in time between surveillances of the RVVV will not increase the probability or consequences of an accident previously evaluated because the increased exposure of the RVVV to the reactor coolant system between surveillances will not increase significantly the probability of the valves failing to open during an accident. This is because (a) the valves are passive type swing check valves held closed by the relatively small pressure drop through the reactor vessel and are not prone to sticking at the seat/disc interface; and (b) the valve parts are made of materials not susceptible to significant rates of corrosion while exposed to reactor coolant conditions experienced during shutdown and power operation.

(2) Neither the proposed wording change to technical specification 1.2.8 nor the increase in time between surveillances of the RVVV create the possibility of a new or different kind of accident from any accident previously evaluated because neither change introduces new features into the design of the plant nor the way in which it is operated.

(3) The proposed wording change to technical specification 1.2.8 is Tpurely an administrative change and therefore does not involve a significant reduction in the margin of safety. The proposed increase in time between surveillances of the RVVV will not involve a significant reduction in the margin of safety because the increased exposure of the RVVV to the reactor coolant system between surveillances will not increase significantly the probability of the valves failing to open during an accident. This is because (a) the valves are passive type swing check valves held closed by the relatively small pressure drop through the reactor vessel and they are not prone to sticking at the seat/disc interface; and (b), the valve parts are made of materials not suceptible to significant rates of corrosion during exposure to the reactor coolant conditions experienced during shutdown and power operation.

On the basis of the above considerations, the Commission proposes to determine that the proposed changes involves no significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813

NRC Project Director: George W. Knighton

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: December 12, 1986

Description of amendment request: The amendment request identifies three

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proposed changes to the Rancho Seco Technical Specification for surveillance testing of the Reactor Building Purge Exhaust Filter System (i.e., Technical Specification 4.11.1). The changes are as follows:

(1) Reduction in the specified air flow rate in Technical Specification 4.11.1A from 66,700 cfm ± 10% to 60,000 cfm O± 10% during conditions of containment integrity. The flow reduction resulted when the purge valve stroke was reduced to conform to the manufacturer's recommendation.

(2) Incorporation of Technical Specification 4.11.1D.2(b), which requires verification that the HEPA filter banks remove greater than or equal to 99.9% of the DOP when they are tested in-place in accordance with the ANSI Standard N510 while operating the filter train at a flow rate of 66,700 cfm ± 10%. This specification, through oversight, was not included in a previous amendment.

(3) Provide clarification in the bases of the Technical Specification that the air flow rate through the reactor building purge valves is different with and without conditions of containment integrity.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves a no significant hazards consideration if operation of the facility in accordance with the proposed Tamendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The first and third proposed changes described above do not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because a reduction in purge flow would contain more airborne radioactivity inside containment during an accidental radioactive release and decrease exposure to the general public.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not create purge system failure modes not previously considered.

(3) Involve a significant reduction in margin of safety because the lower purge system flow rate tends to reduce the rate at which containment atmosphere is released to the environment prior to containment isolation.

The Commission has also provided guidance (51 FR 7751) concerning the application of the standards for determining whether a significant hazards consideration exists. This guidance is provided in terms of certain examples of actions not likely to involve a significant hazard consideration. One example (ii) of an action not likely to involve a significant hazards consideration is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement.

The second change to the Technical Specifications as described above, TIncorporates an additional filter surveillance which is not presently included in the Technical Specification; therefore, this proposed change is similar to example (ii) and we propose to determine that it does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento CityCounty Library, 828 I Street, Sacramento, California 95814

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813

NRC Project Director: George W. Knighton

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: May 14, 1987

Description of amendment request: The amendment would revise the Technical Specifications (TS's) to provide for a modification that would change the Combustible Gas Control System in Rancho Seco Nuclear Generating Station from a system based on a redundant Hydrogen Purge System (with capability to install an external hydrogen recombiner) to a system using a redundant Internal Hydrogen Recombiner System as the means for controlling combustible gas concentrations in containment following a postulated LossofCoolant Accident (LOCA).

Specifically, the amendment would change Specification 4.4.3, "Hydrogen Purge System," and add Specifications 3.29 and 4.33, "Hydrogen Recombiners," to be consistent with the "Standard Technical Specifications for Babcock and Wilcox Pressurized Water Reactors," NUREG–0103 (Rev. 4, Fall 1980) for atmospheric containments as applicable to Westinghouse Electric Hydrogen Recombiners. Conforming changes would be made to the Table of Contents.

Both the existing system and the Internal Hydrogen Recombiner System are in compliance with the regulatory requirements of 10 CFR 50.44, "Standards for Combustible Gas Control System in LightWaterCooled Power Reactors." Both systems are consistent with associated regulatory guidance:

Regulatory Guide 1.7 (Rev. 2, November 1978) and Safety Guide 7 (1971), as applicable.

General Design Criteria 41, 42, and 43

Standard Review Plan 6.2.5, as applicable.

The Combustible Gas Control System is not being changed for regulatory reasons, but is being changed due to considerations of operational reliability and maintainability. No changes are being made to the required capabilities for mixing or measuring combustible gases.

Basis for proposed no significant hazards consideration determination: The proposed changes have been reviewed against each of the criteria in 10 CFR 50.92, namely that the proposed changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of new or different kind of accident from any Taccident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed facility change from a redundant Hydrogen Purge System to a redundant Internal Hydrogen Recombiner System to control combustible hydrogen following an accident and the associated TS changes would in no way increase the probability or consequences of an accident previously evaluated. Installation of internal hydrogen recombiners improves hydrogen removal capability while minimizing the consequences of a postulated LOCA. The proposed system change would affect the type of equipment used to meet the regulatory requirement for co..trol of combustible gas concentration in containment (10 CFR 50.44(b)(3)). The proposed system, consisting of hydrogen recombiners, is comprised of components which have been given a degree of regulatory preference. The proposed TS's would have no effect on the probability or consequences of an accident previously evaluated.

The proposed facility change and the associated changes in the TS's would

not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed hydrogen recombiners have been environmentally qualified, they are to be installed in locations which will ensure their effectiveness and no negative impact on other safetyrelated equipment, and they will be consistent with regulatory requirements relating to Combustible Gas Control Systems. The proposed TS's would not affect the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed facility modification and associated TS changes would not involve a significant reduction in a margin of safety. The proposed Tequipment change is from a type of system which allows controlled release of combustible gas from containment (10 CFR 50.44(h)(2)(i)) to a type of system that does not result in a release from containment (10 CFR 50.44(h)(2)(ii)). The recombiner system has been given regulatory preference because of its characteristic of not generating releases during a postulated LOCA. The recombiner system proposed to be installed has greater hydrogen removal capability than the current purge system, in the event that it should be used. Although both systems meet the regulatory requirements, the proposed system is an improvement on the system currently in place. The proposed TS's are equivalent to or more conservative than the existing TS's for the Hydrogen Purge System and thus do not involve a reduction in a margin of safety.

On these bases, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento CityCounty Library, 828 I Street, Sacramento, California 95814

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813

NRC Project Director: George W. Knighton

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: July 7, 1987

Description of amendment request: The proposed amendment is to Technical Specification (TS) Table 4.31, "Reactor Trip System Instrumentation Surveillance Requirements." The proposed change deletes notation 5 from line item 5 (Intermediate Range, Neutron Flux) and line item 6 (Source Range, Neutron Flux). The proposed change also deletes reference to the Intermediate Range in line item 5 of the Table Notation.

By letter dated January 8, 1987, South Carolina Electric & Gas Company (SCE&G) requested an amendment to the Technical Specifications to support modifications necessary to meet Regulatory Guide 1.97, Revision 3, requirements for Post Accident Neutron Monitoring Instrumentation. Those modifications replaced the nonpost accident qualified source range BF3 detectors and Intermediate Range Compensated Ion Chamber detectors with Class 1E, post accident qualified fission chamber detectors, and were approved by the Nuclear Regulatory Commission by Amendment No. 65 to Operating License No. NPF–12 issued on April 14, 1987.

TS Table 4.31 line items 5 and 6 refer to detector plateau curves to be obtained once per refueling. Detector plateau curves are not applicable to fission chamber detectors.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed Tamendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has determined that the requested amendment: (1) would not involve a significant increase in the probability of consequences of an accident previously evaluated because the TS to be deleted do not apply to the plant configuration approved by Amendment No. 65 and (2) would not create the possibility of a new or different kind of accident from any accident previously evaluated because no physical plant changes are made by this amendment. Also, the amendment (3) would not involve a significant reduction in the margin of safety because detector plateau curves are not applicable to fission chamber detectors.

Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Southern California Edison Company, et al., Docket No. 50206, San Onofre Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: July 20, 1987

Description of amendment request: The proposed changes to the Technical Specifications would revise existing Section 4.2.1 Safety Injection and Containment Spray Periodic Testing, to incorporate requirements for hot functional testing of valves HV851 A and B into the existing periodic functional tests of the safety injection system. These valves must open in order to initiate safety injection in the event of a lossofcoolant accident. The proposal would also make minor administrative and format changes to Specification 4.2.1 to renumber and reword certain existing sections for increased clarity. In addition, the proposed change would delete interim Technical Specification 4.2.3 which established a temporary testing program for valves HV851 A and B which expired in November 1985. This interim specification is no longer necessary since the important aspects of this test will be incorporated into the revised Section 4.2.1.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident Tpreviously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee's July 20, 1987 submittal states the following with respect to these three factors:

1. Will operation of the facility in accordance with this proposed change involves a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

This change will not significantly increase the probability or consequences of an accident previously evaluated.

The performance of this test will require the SIS to perform as if actually needed. All valves will sequence and the pumps will stop and/or stop and restart as required. The MOV 850 A, B and C valves will all open as part of this test whereas they were not required to open in the interim test. This change allows the SIS to remain in service during the test. This was not the case previously since when the MOV's are locked closed the SIS cannot deliver the necessary flow to the core should an actual event occur. Opening the MOV 850 A, B and C valves will not significantly increase the probability of an intersystem LOCA due to the check valves downstream of the MOV 850 A, B and C valves and the check valves at the discharge of the feedwater pumps. In any case, the advantage of having SI available during the test outweighs the small increase in the probability of an intersystem LOCA.

This proposed change will require an enhanced surveillance program Tto assure and confirm longterm system operability. One of the problems identified as causing the 1981 valve failures was longterm set of the valve seat faces. The interim 92 day interval hot SIS test was designed to provide, among other things, continuing assurance that the actuators had adequate margin to overcome the effect of longterm set. The results of the interim test program were summarized in Amendment Application No. 132 submitted by SCE letter dated November 20, 1985. The conclusion was that the actuators now have adequate margin to account for this phenomenon.

The proposed change provides a longterm program which will increase the time between tests and provide continuing assurance that the valves will perform their function under simulated conditions. Longterm set which may have occurred after 92 days will now be monitored for its effect after longer periods on the order of 9 months. The changes in the equation to determine testing frequency will require more frequent testing if actuator force is between 10,000 lbf and 22,000 lbf.

Elimination of the interim T.S., 4.2.3, is merely administrative in nature since the provisions of the specification expired at the refueling outage which began in November 1985.

Therefore, it is concluded that operation of the facility in accordance with this proposed change will not cause a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

This change modifies an existing surveillance requirement (T.S. 4.2.1) on the SIS to include a surveillance that was previously done at 92 day intervals. Since a similar test has previously been performed and since it is a surveillance test intended to assure system operability, no new accidents will be created. The remaining changes are purely administrative and do not affect any type of accident. Therefore, it is concluded that operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The facility's margin of safety will not be decreased but will be increased by having increased and more rigorous surveillance of this safety system. No system setpoints or operating parameters are being changed. The negative effect of the increased surveillance will be increased maintenance and outage time, though this will be minimized due to the test being done as the unit is being shut down for a planned MODE 5 operation. The remaining changes are purely administrative and do not affect a margin of Tsafety. Therefore, it is concluded that operation of the facility in accordance with this proposed change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's determination and agrees with their analysis. Therefore, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: General Library, University of California, P. O. Box 19559, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, James Beoletto, Esquire, Southern Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: George W. Knighton

United States Department of Commerce, National Bureau of Standards (NBS), Docket No. 50184, NBS Test Reactor

Date of amendment request: June 22, 1987

Description of amendment request: The licensee plans to install seven neutron guide tubes through the confinement building to guide cold neutrons from the reactor into a new building called the Guide Hall. The Guide Hall will house fifteen or more stateoftheart neutron instruments which will provide the capability, not presently available in the U.S., to characterize new material, analyze chemical and biological processes, develop advanced technologies, and explore fundamental physical concepts. The guide tubes Tare mounted in pipes that penetrate the confinement building wall. The penetrations are similar to existing penetrations. The pipes are sealed to the wall with gastight seals and the guide tubes/pipes are evacuated and sealed at each end with gastight seals. In addition, automatic isolation valves are provided in each guide tube that serve two functions. The primary function is to close automatically whenever an event calls for sealing the building. The second function is to act as beam tube shutters and to seal the building whenever maintenance work is being performed on the guide tubes. The function of these valves is the same as that of existing isolation valves in the confinement closure system.

In anticipation that it may be necessary to replace the existing reactor main heat exchangers, provisions are being made now to expedite the installation of new heat exchangers in the future. Rather than physically removing the existing heat exchangers, which are located deep within the process room, they would be left in place and the new heat exchangers would be located in a new, easily accessible room adjacent to the west wall of the process room. The new location would be below ground at the elevation of the existing process room and have direct access for personnel and piping. The new room would be considered as part of the confinement boundary and be subject to the confinement system Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists, as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant Thazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's evaluation with regard to the three criteria in 10 CFR 50.92(c) are as follows: The proposed change in the NBS Reactor Technical Specifications does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated since the proposed confinement penetrations are similar to existing penetrations and would not affect confinement integrity or performance.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated since confinement penetrations were

considered in the original Safety Analysis Report and the proposed penetrations would not affect confinement integrity performance.

3. Involve a significant reduction in a margin of safety since both confinement structural integrity and confinement performance requirements would not be affected.

The staff agrees with the licensee's no significant hazard consideration determination analysis for the following reasons.

1. The only Technical Specification change that is being requested by the licensee is the addition of guide tubes to Technical Specification Section 1.3(2) to read as follows: "All automatic isolation valves in Tventilation, process piping and guide tubes are either operable or closed." The only difference between the existing and proposed Technical Specifications is the addition of "guide tubes."

2. The Technical Specifications dealing with the confinement system would not be changed and, therefore, the confinement system performance would not be affected.

3. Addition of the new penetrations would not affect any conclusions reached in previous accident analyses.

4. The licensee has detailed structural calculations that show the planned penetrations through the confinement building wall, for both the guide tubes and heat exchanger room, would not affect the structural integrity of the confinement building and that it would continue to meet its original design objectives.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: N/A

Attorney for licensee: N/A

NRC Project Director: Herbert N. Berkow

Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 28, 1987.

Description of amendment request: This application for amendment revises Technical Specification Figure 6.22 to reflect changes in organizational reporting relationships. Technical Specification 6.3.1 is also being revised to replace reference to the Site Health Physicist with a reference to the Radiation Protection Manager.

The first requested revision results from changes in reporting relationships. The Medical and Safety Groups are being deleted from Figure 6.22 as they now report through the Operating Corporation Organization, Figure 6.21, to the Director Administrative Services. The Results Engineering Group previously reporting to the Superintendent of Plant Support now reports to the Superintendent of Technical Support. The Health Physics Group previously reporting to the Superintendent of Technical Support now reports to the Superintendent of Plant Support. These changes represent organizational enhancements by altering reporting relationships and do not constitute a change in job responsibilities or overall organizational commitments.

The second requested revision allows a qualified individual to assume the responsibilities of the Radiation Protection Manager if he or she meets or exceeds the qualifications required by Technical Specification 6.3.1. This change does not reduce the level of Health Physics expertise within the Plant Staff since the same technical and management responsibilities are still embodied in the Plant Support Organization.

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92 the licensee has submitted Tthe following no significant hazards determination:

The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes involve organizational modifications and reassignment of responsibilities, as such, have no effect on plant equipment or reduce the level of qualifications for the Radiation Protection Manager.

The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated. These changes do not affect plant systems or the overall operating philosophy of Wolf Creek Generating Station.

The proposed revisions do not involve a significant reduction in a margin of safety. These changes do not involve any changes in overall organizational commitments. Organizational modifications and reassignment of responsibilities do not reduce any margin of safety.

Based on the above discussions it has been determined that the requested Technical Specification revisions do not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. Therefore, the requested license amendment does not involve a significant hazards consideration.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka Kansas

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this biweekly notice. They are repeated here because the biweekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, Docket Nos. 50369 and 50370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Dates of amendment request: May 4 and July 2, 1987

Brief description of amendments: The proposed amendments would revise the Technical Specifications (TSs) to

incorporate the ventilation system of the Equipment Staging Building (ESB) as a new gaseous effluent release point, to specify the limiting conditions for operation and surveillance requirements for this ventilation system and its monitoring instrumentation, and to add associated requirements to the gaseous waste sampling and analysis program.

Date of publication of individual notice in **Federal Register:** July 31, 1987 (52 FR 28624)

Expiration date of individual notice: August 31, 1987

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC) Station, North Carolina 28223

NOTICE OF ISSUANCE OF AMENDMENT TO TFACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related Tletters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al, Docket Nos. STN 50–528, STN 50–529 and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of applications for amendments: January 23, 1987 (as supplemented by letter dated May 15, 1987), April 6, May 4 and May 6, 1987.

Brief description of amendments: The amendments revised the surveillance requirements in Specification 4.6.4.2 for the hydrogen recombiner system, the pressurizer heater capacity in Specification 3/4.4.3, the definition in Table 2.21 of the Rate and Band terms which provide input to the Variable Overpower Trip function, and the number of steps in Specification 3.0.3 for achieving Cold Shutdown.

Date of issuance: August 14, 1987

Effective date: August 14, 1987

Amendment Nos.: 19, 10 and 1

Facility Operating License Nos. NPF41, NPF51 and NPF65: Amendments change technical specifications.

Date of initial notice in **Federal Register:** May 6, 1987 (52 FR 16940) and June 3, 1987 (52 FR 20796) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 14, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Boston Edison Company Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 29, 1987, as supplemented by a letter dated July 15, 1987.

Brief description of amendment: This amendment revises the Technical Specifications to reflect modifications to the Standby Liquid Control System in reponse to the Anticipated Transient Without Scram Rule, 10 CFR 50.62(c)(4).

Date of issuance: August 5, 1987

Effective date: August 5, 1987

Amendment No.: 102

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23096) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Boston Edison Company Docket No. 50293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: February 18, 1987.

Brief descripiton of amendment: The amendment revises the Technical Specifications by correcting addresses for reports to NRC to comply with the revision to 10 CFR 50.4.

Date of issuance: August 5, 1987

Effective date: August 5, 1987

Amendment No.: 103

Facility Operating License No. DPR35. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23096) TThe Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Dates of application for amendments: August 29, 1986, as supplemented July 16, 1987

Brief description of amendments: The amendments remove the requirement that primary containment isolation valves only be tested in the cold shutdown or refueling modes of operation. The containment isolation valves are capable of being tested during power operation.

Date of issuance: August 10, 1987

Effective date: August 10, 1987

Amendments Nos.: 110 and 137

Facility Operating License Nos. DPR71 and DPR62: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** October 8, 1986 (51 FR 36084) TThe July 16, 1987 letter provided supplemental information which did not change the initial determination as published in the **Federal Register**. The

Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 10, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: September 10, 1986, supplemented October 7, 1986; and March 5, 1987

Brief description of amendments: These amendments revise the Administrative Controls section of the Technical Specification to reflect a new organization and add requirements to the Technical Specifications that the High Energy Line Break Isolation Sensors be operable. The October 7, 1986 submittal was made to correct the orginal submittal and did not contain any substantive changes.

Date of issuance: July 23, 1987

Effective date: July 23, 1987

Amendment Nos.: 9

Facility Operating License Nos. NPF–37 and NPF–66: Amendments revised the TTechnical Specifications.

Date of initial notice in Federal Register: October 8, 1986 (51 FR 36085) and April 22, 1987 (52 FR 13334). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 23, 1987

No significant hazards consideration comments received: No

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: May 14, 1986

Brief description of amendments: 4KV Bus Tie operability and surveillance requirements for Units 1 and 2 have been incorporated to assure availability of an alternative offsite electrical power source.

Date of issuance: August 6, 1098

Effective date: August 6, 1987

Amendment Nos.: 102, 99

Facility Operating License Nos. DPR29 and DPR30: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 19, 1986 (51 FR 41848). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 6, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendments: April 9, 1987

Brief description of amendments: These amendments expand the containment isolation valve list, correct minor errors, and incorporate guidance of NUREG–0452, Rev. 4.

Date of Issuance: June 23, 1987

Effective date: June 23, 1987

Amendment Nos.: 105 and 95

Facility Operating License Nos. DPR–39 and DPR–48: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 20, 1987 (52 FR 18975) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 23, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendments: April 8, 1987

Brief description of amendments: These amendments revise the specimen capsule withdrawal schedule to incorporate the removal of two additional specimen capsules at fluences in excess of those expected at End of Life. This is consistent with the requirements of 10 CFR 50, Appendix H.

Date of issuance: July 20, 1987

Effective date: July 20, 1987

Amendment Nos.: 106 and 96

Facility Operating License Nos. DPR39 and DPR48: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 20, 1987 (52 FR 18974) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 20, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Connecticut Yankee Atomic Power Company, Docket No. 50213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: February 20, 1987.

Brief description of amendment: By-Product Material License No. 0611682–01 was issued May 13, 1966 to allow the possession and use of certain byproduct materials prior to the issuance of the Haddam Neck Operating License (DPR–16). This amendment adds conditions to the Operating License (DPR–16) to permit the possession and use of certain byproduct materials currently allowed by the byproduct material license.

Date of issuance: August 5, 1987

Effective date: August 5, 1987

Amendment No.: 92

Facility Operating License No. DPR61: Amendment revised the technical specifications.

Date of initial notice in Federal Register: March 25, 1987 (52 FR 9565). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Dairyland Power Cooperative, Docket No. 50409 , LaCrosse Boiling Water Reactor, LaCrosse, Wisconsin

Date of application for amendment: May 22, 1987

Brief description of amendment: This amendment modifies Provisional Operating License No. DPR–45 to possessbutnotoperate status.

Date of issuance: August 4, 1987

Effective Date: August 4, 1987

Amendment No.: 56

Facility Operating License No. DPR–45: This amendment revises the license.

Date of initial notice in Federal Register: July 1, 1987 (52 FR 24546). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: June 10, 1987, as supplemented June 11 and 16, 1987

Brief description of amendments: The amendments allow the extension, on a

one–time basis, of several 18-month Technical Specification surveillance intervals until the first refueling outage for Unit 2.

Date of issuance: August 7, 1987
Effective date: August 7, 1987
Amendment Nos.: 29 and 20
Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24548) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 7, 1987
No significant hazards consideration comments received: No
Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: November 19, 1985, as supplemented June 16, 1986, February 18, 1987 and June 5, 1987
Brief description of amendments: The amendments revise the Station's common Technical Specifications to allow the use of the multielement (threefuelassembly) spent fuel casks in the Oconee Unit 3 spent fuel pool.
Date of Issuance: August 6, 1987
Effective date: August 6, 1987
Amendment Nos.: 160, 160, and 157
Facility Operating Licenses Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 12, 1987 (52 FR 7682) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 6, 1987, and in an Environmental Assessment dated July 30, 1987 (52 FR 29098)
No significant hazards consideration comments received: No
Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691

General Electric Company, Docket No. 5070, General Electric Test Reactor

Date of application for amendment: April 2, 1987
Brief description of amendment: The proposed amendment would revise the Technical Specifications (TS) to authorize the deletion of the cooling tower from the definition of the reactor facility.
Date of issuance: August 3, 1987
Effective Date: August 3, 1987
Amendment No.: 15
Facility License No. TR1: This amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23098) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1987.
No significant hazards consideration comments received: No.
Local Public Document Room location: N/A

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: August 25, 1986, as supplemented January 23 and April 30, 1987
Brief description of amendments: The amendments modified the Technical Specifications by revising the high room temperature setpoints for the Reactor Water Cleanup system.
Date of issuance: August 10, 1987
Effective date: August 10, 1987
Amendment Nos.: 144 and 79
Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 26, 1987 (52 FR 5855) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 10, 1987
No significant hazards consideration comments received: No
Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Dates of applications for amendments: February 17, May 16, August 27, October 27, and November 24, 1986
Brief description of amendments: The amendments modify the Technical Specifications to reflect organization changes.
Date of issuance: August 10, 1987
Effective date: August 10, 1987
Amendment Nos.: 145 and 80
Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.
Dates of initial notices in **Federal Register:** May 7, 1986 (51 FR 16928), July 2, 1986 (51 FR 24255), October 19, 1986 (51 FR 41854), December 17, 1986 (51 FR 45200) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 10, 1987
No significant hazards consideration comments received: No
Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Gulf States Utilities Company, Docket No. 50–458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of application for amendment: May 15, 1987 as supplemented June 30, and July 15, 1987.
Brief description of amendment: This amendment authorizes onetime extensions to the surveillance intervals for certain reactor protection system and isolation actuation instrumentation until the first refueling outage scheduled to begin September 15, 1987.
Date of issuance: August 3, 1987.
Effective date: August 3, 1987.
Amendment No.: 8
Facility Operating License No. NPF–47. This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24553). The licensee's June 30, 1987 submittal withdrew the Technical Specification change request specified in Attachment 4 to the May 15, 1987 application and the July 15, 1987 letter provided clarification regarding typographical errors in the May 15, 1987 submittal. These submittals did not alter the NRC staff's determination of no significant hazards as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1987.
No significant hazards consideration comments received: No
Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Gulf States Utilities Company, Docket No. 50–458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of application for amendment: May 11, 1987 as supplemented July 15 and 27, 1987.
Brief description of amendment: This amendment authorizes onetime extensions to the surveillance intervals for certain reactor protection system and engineered safety feature instrumentation and other miscellaneous systems until the first refueling outage scheduled to begin September 15, 1987.

Date of issuance: August 12, 1987.
Effective date: August 12, 1987.
Amendment No.: 9
Facility Operating License No. NPF–47. This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24552). The licensee's July 15 and 27, 1987 submittals provided editorial changes to the May 11, 1987 submittal and did not alter the NRC staff's determination of no significant hazards as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1987.
No significant hazards consideration comments received: No.
Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: March 26, 1987, as supplemented by letter dated May 8, 1987.
Brief description of amendment: The amendment revised the Technical Specifications by adding operability and surveillance requirements for the Auxiliary Pressurizer Spray system.
Date of issuance: August 12, 1987.
Effective date: August 12, 1987.
Amendment No.: 22
Facility Operating License No. NPF–38. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23099) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1987.
No significant hazards consideration comments received: No.
Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: May 21, 1987 as supported by letters dated June 30 and July 14, 1987.
Brief description of amendment: This amendment will revise the current Tminimum critical power ratio (MCPR), the linear heat generation (LHGR), and the maximum average planar linear heat generation rate (MAPLHGR) to reflect Reload 11/Cycle 12 operation using 196 General Electric type GE8x8EB (GE–8B) fuel assemblies.
Date of issuance: August 6, 1987
Effective date: August 6, 1987
Amendment No.: 6
Facility Operating License No. DPR21. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 2, 1987 (52 FR 25099). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 6, 1987.
No significant hazards consideration comments received: No.
Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station Unit No. 3, Town of Waterford, Connecticut

Date of application for amendment: February 26, 1987
Brief description of amendment: The amendment revised the Technical Specification Tables 3.31 and 3.32 to delete functional unit 21 (Reactor Trip Bypass Breakers). This is an editorial change to ensure consistency of the Millstone 3 Technical Specifications with Generic Letter 85–09.
Date of issuance: August 7, 1987
Effective date: August 7, 1987
Amendment No.: 8
Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9578) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 7, 1987.
No significant hazards consideration comments received: No.
Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

Portland General Electric Company, Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: February 20, 1987, as revised April 20, 1987
Brief description of amendment: The amendment revised the steam generator tube plugging criteria based upon the use of the F* distance criteria.
Date of issuance: August 7, 1987
Effective date: August 7, 1987
Amendment No.: 133
Facility Operating License No. NPF–1: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 6, 1987 (52 FR 16952) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 7, 1987.
No significant hazards consideration comments received: No.
Local Public Document Room location: Branford Price Millar Library, Portland State University, 731 S. W. Harrison St., Portland Oregon 97207

Southern California Edison Company, et al, Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of applications for amendments: January 24, 1984; April 19, July 1 and October 25, 1985, and February 7, 1986.
Brief description of amendments: The amendments revise the operating licenses by deleting License Condition 2.C.(5) relating to environmental qualification of electrical equipment. The amendments also revise Technical Specification 3/4.3.2, "Engineered Safety Feature Actuation System Instrumentation;" 3/4.3.3.6, "Accident Monitoring Instrumentation;" and 3/4.7.1.5, "Main Steam Isolation Valves."
Date of issuance: August 14, 1987
Effective date: August 14, 1987, to be implemented within 30 days of issuance.
Amendment Nos.: 60 and 49
Facility Operating License Nos. NPF–10 and NPF–15: The amendments delete certain conditions of the licenses and change the Technical Specifications.
Date of initial notice in **Federal Register:** April 9, 1986 (51 FR 12240); and June 4, 1986 (51 F.R. 20375) and May 21, 1986 (18694). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 14, 1987.
No significant hazards consideration comments received: No.
Local Public Document Room location: General Library, University of California, Irvine, California 92713.

Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 7, 1987.
Brief description of amendment: The amendment revised Technical Specification 3.35, Engineered Safety Features (ESF) response times for items 2.a. (Containment PressureHigh1, Safety Injection), 3.a. (Pressurizer PressureLow, Safety Injection), and 4.a. (Steam Line PressureLow, Safety Injection).
Date of issuance: August 4, 1987.

Effective date: August 4, 1987.
Amendment No.: 9
Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: May 20, 1987 (52 FR 18991). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 1987.
No significant hazards consideration comments received: No.
Local Public Document Room location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka Kansas

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy TAct of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued Twithout opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By September 25, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with

reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and crossexamine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a tollfree telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General CounselBethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request Tshould be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba New York

Date of application for amendment: July 22, 1987

Brief description of amendment: This amendment revises Technical Specification 3/4.7.1 to change the service water supply header discharge temperature to 77°F or less during the startup test program at power levels below 50%.

Date of issuance: July 31, 1987

Effective date: July 22, 1987

Amendment No.: 1

Facility Operating License No. NPF–69: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendment, consultation with the State, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated July 31, 1987.

Attorney for the Licensee: Mark J. Wetterhahn, Conner & Wetterhahn, P.C., 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

Local Public Document Room location: Penfield Library, State TUniversity College, Oswego, New York 13126.

NRC Project Director: Robert A. Capra, Acting

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: May 22, 1987

Brief description of amendment: Proposed change to Technical Specification Sections 3.4, 4.4, and the associated bases to reflect compliance with 10 CFR 50.62 requirement for Standby Liquid Control Systems. Proposal change uses B–10 enriched sodium pentaborate to achieve equivalent injection capacity.

Date of issuance: July 30, 1987

Effective date: July 30, 1987

Amendment No.: 5

Facility Operating License No. DPR21. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes, July 2, 1987 (52 FR 25907).

Comments received: No.

The Commission's related evaluation of the amendment, consultation with the State, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated July 30, 1987.

Attorney for the licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385

Project Director: Cecil O. Thomas

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: July 23, 1987 as supplemented July 30, 1987.

Brief description of amendment: The changes to the technical specifications (TS) allows startup of Millstone Unit No. 1 with flow indication from nineteen (19) jet pumps, rather than the previously required twenty (20) and revises jet pump surveillance provisions. The technical specifications currently permit operation with flow indication from nineteen (19) jet pumps. This requirement is unchanged.

Date of issuance: August 6, 1987

Effective date: August 6, 1987

Amendment No.: 7

Facility Operating License No. DPR–21. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are considered in a Safety Evaluation dated August 6, 1987.

Attorney for Licensee: Gerald Garfield, Esq., Day, Berry and Howard, City Place, Hartford, Connecticut, 06103–3499.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: August 11, 1987.

Brief description of amendment: The change to the technical specifications (TS) allows a single control rod drive to be removed and repaired or replaced without the reactor vessel head on, the cavity flooded and the spent fuel pool gates removed. The change is consistent with the intent of the TS in effect prior

to the issuance of Amendment No. 1 on January 29, 1987.

Date of issuance: August 14, 1987
Effective date: August 14, 1987
Amendment No.: 8
Facility Operating License No. DPR21. This amendment revised the technical specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are considered in a Safety Evaluation dated August 14, 1987.

Attorney for Licensee: Gerald Garfield, Esq., Day, Berry and Howard, City Place, Hartford, Connecticut, 061033499.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

NRC Project Director: Cecil O. Thomas

Virginia Electric and Power Company, et al., Docket No. 50-339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of application for amendment: July 30, 1987

Brief description of amendment: The amendment suspends the surveillance testing requirements of TS 3.7.1.7 and 4.7.1.7.2.a relating to the turbine Tgovernor valves for the remainder of Cycle 5 operation for NA2.

Date of issuance: August 6, 1987
Effective date: August 6, 1987
Amendment No.: 81
Facility Operating License No. NPF7: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, consultation with the state and final determination of no significant hazards consideration are contained in a Safety Evaluation dated August 6, 1987.

Attorney for Licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

NRC Project Director: Lester S. Rubenstein

Dated at Bethesda, Maryland this 20th day of August 1987.

For the Nuclear Regulatory Commission
Steven A. Varga, Director
Division of Reactor Projects I/II
Office of Nuclear Reactor Regulation

[FR Doc. 87-19435 Filed 8-25-87; 8:45 am]
BILLING CODE 7590-01-D

OFFICE OF PERSONNEL MANAGEMENT

Meeting; Director's Task Force on the Combined Federal Campaign

August 25, 1987.

Time and dates: Tuesday, September 8, 1987, 8:30 a.m., and Thursday, September 10, 1987, 8:30 a.m.

Place: Office of Personnel Management Auditorium, 1900 E Street NW., Washington, DC 20415.

Status: Open.

Matters to be considered: Future of the Combined Federal Campaign.

Contact Person for more information: Jeremiah J. Barrett, Secretary, Director's Task Force on the Combined Federal Campaign, 1900 E Street NW., Room 7354, Washington, DC 20415, (202) 632-5564.

SUPPLEMENTARY INFORMATION: All persons wishing to testify before the Task Force must submit eight copies of their testimony to Mr. Barrett at the above address no later than September 1, 1987.

Constance Horner,
Director.

[FR Doc. 87-19756 Filed 8-25-87; 11:23 am]
BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 15944; (812-6687)]

Application for Exemption; American Healthcare Systems

August 20, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: American Healthcare Systems.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the Act.

Summary of Application: Applicant seeks an order exempting certain wholly-owned finance subsidiaries to be created by Applicant from all provisions of the Act in connection with the issuance and sale by such subsidiaries of certain debt obligations.

Filing Date: The application was filed on April 15, 1987 and amended on August 7, 1987 and August 14, 1987.

Hearing or Notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on September 14, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 1205 Prospect, Suite 520, San Diego, California 92037.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney (202) 272-3046 or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300)

Applicant's Representations

1. American Healthcare Systems ("AHS" or "Applicant") is a corporation formed in 1984 under the laws of the State of California, all of the outstanding stock of which is currently held by 32 hospital systems (the "Member Systems"). The Member Systems are non-profit corporations (except for one Member System that is a for-profit corporation but is wholly-owned by non-profit hospitals) that control the operation of more than 450 hospitals and health care facilities throughout the United States and conduct, through subsidiaries or affiliates (some of which are for-profit entities), related health care business activities such as occupational health clinics, home health agencies, hospital management services, retirement housing communities and health care consulting services. Each of the Member Systems (or, in the case of the one for-profit Member System, each of its hospital owners) is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Under Applicant's Articles of Incorporation and Bylaws, a Member

System may only transfer its shares of the Applicant to entities that are approved by the executive committee of the board of directors of Applicant or a majority of the other Member Systems, and a Member System must grant Applicant an option to redeem such shares in the event that the Member System sells or transfers substantially all of its assets.

2. The business of Applicant is to develop and coordinate the activities of the Member Systems in those areas in which such coordination will permit the Member Systems to better carry out their health care functions by achieving cost savings or other efficiencies or engaging in activities of a size or geographic scope which no one system could undertake on its own. Applicant provides to the Member Systems, either directly or through subsidiaries, joint ventures and partnerships, the management and staff support in such areas as human resources, marketing, material management, quality assurance, pharmacy and planning. Applicant plans to establish a wholly-owned subsidiary that will provide malpractice insurance coverage for the Member Systems at savings over current premium costs.

3. Applicant is proposing to create one or more wholly-owned finance subsidiaries (the "AHS Finance Company") to respond to the Member Systems' financing requirements in light of continuing changes in the laws governing the issuance of tax-exempt bonds and regulations governing Federal health care programs such as Medicare. In the past, the Member Systems relied on tax-exempt bonds issued by various state and local health care facilities authorities for a significant portion of their capital funding. The issuance of such bonds and the application of the a proceeds therefrom has been limited by recent changes in the tax laws. Moreover, cash flow changes resulting from recent cutbacks and modifications in federal health care programs have increased the financing needs of the Member Systems. The financing needs of the individual Member Systems are not large enough to support the issuance of taxable debt securities in amounts that can be effectively sold at competitive rates in the taxable debt market. Therefore, Applicant and the Member Systems desire to establish the AHS Finance Company as a means of issuing taxable debt securities to meet the aggregate financing needs of Applicant and the Member Systems.

4. All of the proceeds of sales of the debt securities will, except to the extent applied to redeem maturing securities, be loaned to the Member Systems, certain subsidiaries and affiliates of the Member Systems, Applicant and subsidiaries of Applicant (collectively, the "AHS Group") or to joint ventures or partnerships of which a member or members of the AHS Group form a part. Such proceeds will be loaned primarily to the Member Systems or their subsidiaries or affiliates or to joint ventures or partnerships of which a member or members of the AHS Group form a part. In no event will proceeds be loaned to (i) joint ventures or partnerships comprising entities outside the AHS Group that are not charitable institutions or (ii) subsidiaries of the Member Systems or Applicant whose equity securities are also owned by private individuals or entities that are not charitable institutions. In addition, loans will be made to joint ventures or partnerships only where Applicant or the AHS Group has the power to exercise a controlling influence over the management and policies of the partnership or joint venture. The Member Systems will pay a fee to the AHS Finance Company for its administrative and servicing activities in connection with the financing programs.

5. The AHS Finance Company will issue and sell medium term notes (the "Medium Term Notes") initially up to an aggregate principal amount of approximately $100,000,000 which will have stated maturities from nine months to ten years from the date of issue, and be issued and sold primarily to institutional investors in denominations of $100,000 or more. The Medium Term Notes, and any future offering of debt securities by the AHS Finance Company, will have received prior to their issuance one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization. It is anticipated that payments of principal of and interest on the initial issues of the Medium Term Notes will be backed by an irrevocable letter of credit (the "Note Letter of Credit") issued by a United States bank or a United States branch or agency of a foreign bank (the "Bank") that will entitle the Trustee (defined below) to make drawings in an amount equal to the principal amount of the outstanding Medium, Term Notes plus interest accured thereon.

6. The Medium Term Notes will be issued pursuant to the terms of an indenture (the "Indenture") between the AHS Finance Company and a trustee (the "Trustee") that, while exempt from qualification under the Trust Indenture Act of 1939 (the "1939 Act") by virtue of the Note Letter of Credit and the Guarantee Letter of Credit (hereinafter defined), will be generally consistent with the requirements of the 1939 Act. The Indenture will provide that it can be amended without noteholder consent to qualify under the 1939 Act. In the event that any future issues of Medium Term Notes are not guaranteed by a Note Letter of Credit, they will, absent another applicable exemption, be registered under the Securities Act of 1933 and the related trust indenture will be qualified under the 1939 Act.

7. The Medium Term Notes will be exempt from registration under the Securities Act of 1933 (the "1933 Act") pursuant to section 3(a)(2) thereof. In the event that any future issues of Medium Term Notes are ot guaranteed by a Note Letter of Credit, they will, absent an applicable exemption under sections 3(a)(3) or (4)(2), be registered under the 1933 Act and the related trust indenture will be qualified under the 1939 Act.

7. The Member Systems will use the proceeds raised through issuance of the Medium Term Notes to purchase specialized medical equipment; to provide interim financing for construction of health care related facilities; to finance health care related joint ventures and refinance bank or other loans previously incurred to finance their health care activities; to finance the construction of medical office buildings; and to provide interim financing for acquisitions by Member Systems of hospitals or other health care facilities. A portion of the proceeds of the Medium Term Notes will be loaned to subsidiaries of Applicant, particularly the malpractice insurance subsidiary that Applicant plans to organize.

8. Applicant will unconditionally guarantee payment of the principal of, and intrest on, the Medium Term Notes (the "AHS Guarantee"). In addition, whenever any Member System, or any subsidiary or affiliate of a Member System, or partnership or joint venture of which one of such entitries is part, borrows from the AHS Finance Company, the Member System in question will enter into a reimbursement agreement with Applicant (the "Reimbursement Agreement"), pursuant to which such Member System will agree to reimburse Applicant for any amounts Applicant pays under the AHS Guarantee as a result of a default by the borrower on the loan to it by the AHS Finance Company. The articles of incorporation of AHS grant the power and authority to the board of directors of AHS to levy and collect from each member System additional contributions to the Capital of AHS in the event that the working capital of AHS becomes or is likely to become insufficient for the conduct of its business. The power of assessment provides further support for the AHS Guarantee. Further, whenever AHS, or any subsidiary thereof or any

joint venture or partnership of which AHS or an AHS subsidiary forms a part, borrows from the AHS Finance Company, the payment of principal of and interest on such borrowing will be unconditionally guaranteed by the Member Systems. In the case of Medium Term Notes that are backed by a Note Letter of Credit, the AHS Guarantee will also be backed by an irrevocable letter of credit issued by a United States bank or United States branch or agency of a foreign bank (the "Guarantee Letter of Credit" and, together with the Note Letter of Credit, the "Letters of Credit"). The Guarantee Letter of Credit will entitle the Trustee to make drawings in the event of any failure by Applicant to make payment as required by the terms of its guarantee.

9. Loans made by the AHS Finance Company will be evidenced by loan agreements (the "Loan Agreements") between the AHS Finance Company and the borrowing entity and by notes of the borrowing entity (the "Hospital Notes"). Pursuant to the Indenture, the AHS Finance Company will pledge and assign to the Trustee, as additional security for the Medium Term Notes, all right, title and interest in and under the Loan Agreements and the Hospital Notes. The Trustee will be entitled to commence legal proceedings against any obligor on a Hospital Note that defaults in the payment of principal or interest thereon and the holders of a majority in principal amount of outstanding Medium Term Notes may direct the Trustee to bring suit for any remedy available or to exercise any power conferred upon the Trustee under the indenture.

10. Applicant anticipates that the Medium Term Notes will be offered by the AHS Finance Company, initially on a continuing basis, through one or more major investment banking firms experienced in the marketing of such securities. Applicant will cause the AHS Finance Company to ensure that each dealer in the Medium Term Notes will provide to each offeree, prior to any sale of such securities, an offering memorandum that contains certain financial and other descriptive information regarding Applicant, the AHS Finance Company and the Bank, describes the Member System to which loans may be made, and describes the Letters of Credit and any other collateral or credit enhancement securing the Medium Term Notes, as well as any arrangements with the Member Systems regarding such collateral. The memorandum will be updated periodically to reflect material changes in the financial status of Applicant, the AHS Finance Company and the Bank, and will be comparable to those customarily used in similar offerings.

11. The AHS Finance Company may, from time to time in the future, offer and sell commercial paper and short, medium and long term debt. Proceeds raised by the issuance of commercial paper and such debt will be loaned to members of the AHS Group in a manner similar in all material respects to that described above. Applicant will guarantee payments of principal of and interest on such securities and the Member Systems will enter into a Reimbursement Agreement with respect to such AHS Guarantee as described above. Such securities may also be guaranteed by a bank letter of credit. Applicant will cause the AHS Finance Company to ensure that, prior to the sale of any such securities, offerees will be provided with disclosure documents containing descriptions of Applicant, the AHS Finance Company and the Bank (if applicable), and any collateral or other credit enhancement securing such securities, comparable to that contained in the type of offering memoranda customarily used in offerings of commercial paper or such other debt securities, as the case may be. Absent an applicable exemption, such securities will be registered under the 1933 Act; and any indenture governing such securities will be generally consistent with the requirements of the 1939 Act and, absent an applicable exemption, will be qualified under the 1939 Act.

Applicant's Conclusions of Law

1. Approval of the Application would be appropriate in the public interest. If the exemption requested by the Application were not granted, the access of the Member Systems to the debt markets as a source of financing will be severely restricted for reasons unrelated to their creditworthiness, namely changes in the tax law affecting tax-exempt securities and the issue size required by the taxable debt market to offer debt securities at competitive rates.

2. Approval of the Application would be consistent with the protection of investors and the purposes fairly intended by the 1940 Act because, among other things, the business in which the AHS Finance Company proposes to engage is not of the type intended to be regulated by the 1940 Act; the organization of the AHS Finance Company and its activities are consistent with the type of activities excluded from the 1940 Act under section 3(c)(10) and Rule 3a–5; and investors will be protected under the proposed arrangements to the same extent as under equivalent arrangements where specified exclusions from the 1940 Act apply. The members of the AHS Group that will receive proceeds raised by the AHS Finance Company are not investment companies within the meaning of the 1940 Act and there is no risk of the type of abuses against which the 1940 Act is directed.

Applicant's Conditions

Applicant expressly agrees to the following conditions:

(1) Debt obligations issued by the AHS Finance Company will be registered under the 1933 Act unless an exemption from registration is available under sections 3(a)(2), 3(a)(3) or 4(2) thereof and each indenture relating to such obligations will be qualified under the 1939 Act unless exempt from qualification pursuant to the 1939 Act;

(2) Debt obligations issued by the AHS Finance Company will have received, prior to their issuance, one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization;

(3) In the event that debt obligations issued by the AHS Finance Company are exempt from registration under the 1933 Act, Applicant will cause the AHS Finance Company to ensure that each dealer in such debt obligations will provide each offeree with an offering memorandum that contains certain financial and other descriptive information regarding Applicant, the AHS Finance Company and the Bank (if applicable), describes the member of the AHS Group to which loans may be made, and describes any letters of credit and any other collateral or credit enhancement securing such debt obligations, as well as any arrangements with the members of the AHS Group regarding such collateral, which memorandum will be updated periodically to reflect material changes in the financial status of Applicant, the AHS Finance Company and the Bank (if applicable). Such memorandum will be comparable to those customarily used in similarly exempt offerings;

(4) Applicant will unconditionally guarantee payment of the principal of and interest on debt obligations issued by the AHS Finance Company through the AHS Guarantee; and whenever any Member System, or any subsidiary or affiliate of a Member System, or a partnership or joint venture of which one of such entities forms a part, borrows from the AHS Finance Company the Member System in question will enter into a

Reimbursement Agreement with Applicant, pursuant to which such Member System will agree to reimburse Applicant for any amounts Applicant pays under its guarantee as a result of any default by the borrower. In addition whenever AHS or any subsidiary thereof, or any joint venture or partnership of which AHS or an AHS subsidiary forms a part, borrows from the AHS Finance Company the payment of principal of and interest on such borrowing will be unconditionally guaranteed by the Member Systems;

(5) Loans made by the AHS Finance Company will be evidenced by the Loan Agreements between the AHS Finance Company and the borrowing entity and by the Hospital Notes of the borrowing entity; pursuant to an indenture, the AHS Finance Company will pledge and assign to the Trustee, for the benefit of the holders of debt obligations of the AHS Finance Company, all right, title and interest in and under the Loan Agreements and the Hospital Notes. The Trustee will be entitled to commence legal proceedings against any obligor on a Hospital Note that defaults in the payment of principal thereof or interest thereon and the holders of a majority in principal amount of outstanding notes may direct the Trustee to bring suit for any remedy available or to exercise any power conferred upon the trustee under the indenture.

(6) All of the proceeds of sales of the debt obligations of the AHS Finance Company will, except to the extent applied to redeem maturing securities, be loaned to the AHS Group or to partnerships or joint ventures of which a member or members of the AHS Group form a part. In no event will proceeds be loaned to joint ventures or partnerships comprising entities outside the AHS Group that are not charitable institutions or to subsidiaries of the Member Systems or Applicant whose equity securities are also owned by private individuals or entities that are not charitable institutions; loans will be made to joint ventures or partnerships only where Applicant or the AHS Group has the power to exercise a controlling influence over the management and policies of the partnership or joint venture; and

(7) Members of the AHS Group that will receive proceeds raised by the AHS Finance Company will not be investment companies under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19536 Filed 8-25-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24813; File No. 4-260]

Self-Regulatory Organizations; Filing of Proposed Amendment to Plan by the American Stock Exchange, Inc., Relating to the Quarterly Reporting of Minor Disciplinary Rule Violations

Pursuant to section 19(d)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19d-1(c) thereunder,[1] notice is hereby given that on June 9, 1987, the American Stock Exchange, Inc. ("Amex") submitted copies of a proposed amendment to its minor rule violation plan. The Commission previously approved a minor rule violation plan filed by the Ames.[2] The plan relieves the Amex of the current reporting requirements imposed by section 19(d)(1) for "final" disciplinary actions, with respect to violations listed under the Amex plan.[3]

The proposed amendment would increase the fines that may be imposed under the Amex's minor rule violation plan. At present, fines pursuant to the plan range from $50 for a first offense to $500 for a sixth offense within a rolling six month period. Further, under the current plan after the sixth offense within that period, the member or member organization may not plead guilty and have the disposition of the violation processed pursuant to the plan by payment of the assessed fine, but must instead appear at a hearing before the Exchange's Disciplinary Committee. The Amex is proposing to amend this schedule by assessing fines of $100 for a first offense, $300 for a second offense, and $500 for a third offense. This would effectively eliminate the use of the plan for fourth, fifth or sixth repeat offenses. The amendments would also require a member or member organization to appear before the Disciplinary Committee after three offenses of the same type within a six month period, rather than after six offenses, as currently required under the Plan. The amended plan would also permit a lesser fine of $50 or the maximum fine of $500 to be imposed for a first offense, if the Floor Governor or Exchange Official determines that the particular circumstances of the violation warrant such a response. Finally, the proposed amendments codify the Exchange's right to bring formal or summary charges against a member or member organization for violations or rules listed under the plan.

In order to assist the Commission in determining whether to approve the proposed amendments to the plan or institute proceedings to determine whether the proposed amendments should be disapproved, interested persons are invited to submit written data, views, and arguments concerning the submission by [insert 21 days from date of publication]. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. 4-260. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendments which are filed with the Commission, and all written communications relating to the proposed amendment between the Commission and any other person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the file will also be available at the principal office of the Amex.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: August 18, 1987.

[FR Doc. 87-19531 Filed 8-25-87; 8:45 am]

BILING CODE 8010-01-M

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[1] *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828. The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations. Under the amendments, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for the purposes of section 19(d)(1) if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

[2] *See* Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14068.

[3] *See* 17 CFR 240.19d-1(c). By deeming unadjudicated, minor violations as not final, the Commission permits the Amex to report violations on a periodic, as opposed to immediate, basis.

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[Release No. 34-24814; File No. SR-CBOE-87-07]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On March 16, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to require firms that execute stock transactions for Exchange options market makers to apply and register as stock execution services and to follow certain business practices and recordkeeping obligations.

The proposed rule change was noticed in Securities Exchange Act Release No. 24517 (May 27, 1987), 52 FR 20813 (June 3, 1987). No written comments were received by the Commission on the proposed rule change.

The CBOE states that the purpose of the proposed rule change is to recognize in the Exchange's rule structure those firms that conduct a stock execution service ("stock service") for members. The proposed rule would recognize stock service as a floor function for which Membership Committee approval is required. Such firms have existed for some time, but have not been identified or regulated as such by the rules. Under the proposed rule, all members engaged in the stock service business would be assured of equal treatment. The Exchange has described the stock service business as follows.[3]

A stock service has as its primary function the execution of hedging transactions in underlying securities for Exchange options market makers. Stock orders are solicited and intiated by stock service personnel from facilities maintained on the Exchange floor. To the extend that the stock orders are executed on the floor of a stock exchange, either by stock service personnel or through execution arrangements with other members of the stock exchange, a stock service may be authorized to use its own name or the name of another stock exchange member as the clearing broker ("give-up"). The contraside to an order will know the give-up as the party to the transaction.

In view of the interfaces of the various stock clearing corporations, the clearing broker (stock service or give-up) is able to "flip" the stock trade by settlement date to any stock clearing corporation for the account of the market-maker clearing firm.[4] If during this process the stock service or its authorized give-up should for whatever reason cease to be a valid clearing member, it is likely that many market-maker stock transactions would not settle. This could occur despite the fact that the market-maker clearing firm and the various contra parties are valid clearing agents and are willing to clear the trades. Further, it is nearly impossible for the actual parties to these transactions to identify one another, as their dealings have been only with the stock service and/or its give-up clearing broker. This could expose CBOE market makers to enormous risk, as options positions they believed to be hedged by stock positions would become unhedged.

In order to avoid the potential for significant market risk in uncleared stock trades, the CBOE states that the proposed rule will require firms operating from the Exchange floor to apply and register to become stock service firms and establishes certain recordkeeping obligations. Stock services will be reviewed, prior to admission to membership and on an on-going basis threreafter, to ensure compliance with applicable recordkeeping, financial reporting and net capital standards, and to determine that proper procedures are in place to prevent, detect and liquidate errors.

To provide that the parties to market-maker stock trades may be identified at any given time, the Exchange has determined to work with stock services to establish recordkeeping standards and formats. Such records will form the basis for negotiating clearing safeguards at both Midwest Clearing Corporation and National Securities Clearing Corporation. It is not anticipated that any information would be required which the stock services are not already maintaining in some form.

The CBOE states that another purpose of the proposed rule change is to reduce the risk to Exchange members of uncleared stock transactions should a stock service firm become insolvent by requiring that a stock service utilize only Exchange members as clearing give-ups. Because the Exchange's jurisdiction is limited to its members, the proposed rule change will ensure the Exchange's ability to enforce necessary recordkeeping standards, and help the Exchange to monitor the financial condition of stock execution services by making certain that the Exchange has jurisdiction over the books and records needed to ensure that market-makers' stock transactions are settled.

The CBOE states that a final purpose of the proposed rule change is to assist market-markets in assessing the financial security of giving their business to a particular stock service by requiring that a stock service provide limited financial information in the form of a current balance sheet upon request to its market-maker customers.

The CBOE contends that the statutory basis for the proposed rule change is section 6(b)(5) of the Act [5] in that the rule change is designed to improve the market clearing and trading mechanism, and assure appropriate regulation of stock execution services.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[6] and the rules and regulations thereunder. More specifically, the Commission agrees that it is appropriate for an options exchange to monitor firms operating on its floor to ensure the proper operation of floor activities. Thus, the proposed rule would recognize stock service as a floor function for which Membership Committee approval is required. In addition, the Commission agrees that the proposed rule change will improve the market clearing and trading mechanism by requiring firms that register as stock service firms to comply with recordkeeping, financial reporting, and net capital standards, and to utilize only Exchange members as clearing give-ups. The CBOE has an interest in ensuring the financial integrity of its options market makers. These minimal obligations imposed on stock execution services should help in this regard by ensuring that market makers' stock trades are subject to less risk of failure. In the ordinary course, a market maker presumably would be satisfied with the financial stability of a stock execution service before choosing that firm. The Commission believes that the CBOE's decision to facilitate market maker access to stock execution firms' current financial statements by Rule should

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1986).

[3] Letter from Mary Bender, Vice President, CBOE, to Howard Kramer, Assistant Director, Dvision of Market Regulation, dated May 11, 1987.

[4] The Exchange states that these services are common to the national system for securities settlment and permit members of different clearing coroporations to readily settle securities transactions, irrespective of the exchange on which those transactions occurred.

[5] 15 U.S.C. 78f(b)(5) (1982).

[6] 15 U.S.C. 78f (1982).

assist further market makers in making their selection of stock execution firms. Finally, the Commission does not believe that requiring stock execution services to use only CBOE members as give-ups improperly limits access by non-member clearing agents. Although the provision requires the clearing agent to be a member of CBOE, that clearing agent is free to settle the transaction at the clearing agency of its choice, consistent with section 17A.[7] Moreover, the Commission believes that it is not inappropriate for an Exchange to require that transactions originating on its floor that might have a significant impact on market markers' financial exposure be subject to that Exchange's capital and financial responsibility rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19532 Filed 8-25-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC—15937; 812-6647]

Application; Collateralized Mortgage Securities Corp.

August 18, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an amended order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Collateralized Mortgage Securities Corporation.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order amending an existing order (Investment Company Act Release No. IC—14960, February 26, 1986) (the "Order") which exempted the Applicant from all provisions of the 1940 Act, to permit the issuance of variable rate bonds.

Filing Date: The application was filed on March 13, 1987 and amended on June 16, 1987. A second amendment, the substance of which is included herein, will be filed during the notice period.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 14, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Park Avenue Plaza, New York, New York 10055.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney (202) 272-3046, or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. One hundred percent of Applicant's outstanding common stock is owned by First Boston Securities Corporation ("FBSC"). FBSC is a wholly-owned subsidiary of First Boston, Inc., a holding company which, primarily through its wholly-owned subsidiary The First Boston Corporation, a broker dealer in securities, provides a full range of investment banking and related financial services to corporations, institutions, governments and international agencies on a world-wide basis. Applicant was formed as a general purpose corporation, whose promary activities include issuing Bonds collaterialized by interests in mortgage-backed securities (as described below).

2. Applicant will issue series (each a "Series") of bonds (the "Bonds"), pursuant to an Indenture as supplemented by a supplemental indenture for each such Series (the "Indenture") between the Applicant and an independent trustee for the bondholders (the "Trustee"). The indenture will be subject to the provisions of the Trust Indenture Act of 1939 or appropriately exempt therefrom.

3. The Bonds will be secured by mortgage certificates consisting of any combination of "fully modified pass-through" mortgage-backed certificates fully guaranteed as to principal and interest by GNMA; Mortgage Participation Certificates issued by FHLMC; Guaranteed Mortgage Pass-Through Certificates issued by FNMA; Stripped Mortgage Backed Securities issued by GNMA; FHLMC or FNMA; and stripped mortgage backed securities issued by First Boston Mortgage Securities Corp. ("SPLITS") [1] (collectively, the "Mortgage Certificates"). In addition to the Mortgage Certificates, the Bonds may be secured by additional collateral which may include distribution and reinvestment earnings on such Mortgage Certificates and certain collection accounts and reserve funds as specified in the prospectus for a particular Series (hereinafter collectively, the "Collateral").

4. The Mortgage Certificates that initially secure a Series of Bonds will have an aggregate "Collateral Value" (as defined in the related Indenture) at least equal to the unpaid principal balance of such Bonds. The Applicant will pledge to the Trustee as security for the Bonds its entire right, title and interest in the Mortgage Certificates securing such Series. The Mortgage Certificates will be held by the Trustee or on behalf of the Trustee by an independent custodian which will not be an affiliate of the Applicant.

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[7] 15 U.S.C. 78q-1 (1982). Section 17A of the Act is designed to establish a National Clearance and Settlement System to facilitate the prompt and accurate settlement of securities transactions. Among other things, section 17A requires clearing agencies, as defined in section 3(a)(23) of the Act, to register with the Commission and meet certain specified statutory criteria.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1986).

[1] SPLITS issued by First Boston Mortgagge Securities Corp., a wholly owned subsidiary of FBSC are similar to Stripped Mortgage Backed Securities issued by GNMA FHLMC and FNMA in that they are issued in series of two or more classes, with each class representing a specified undivided fractional interest in principal distributions and/or interest distributions on the underlyng pool of assets, and the fractional interests of each class are not identical but in the aggregate represent 100% of the principal and interest distributions on the particular pool. In addition, each series of SPLITS (a) will be rated in one of the two highest rating categories by at least one nationally recognized statistical rating agency; (b) will represent an underlying pool of assets consisting entirely of "fully modified pass-through" mortgage-backed certificates fully guaranteed by GNMA, Mortgage Participation Certificates issued by FHLMC or Guaranteed Mortgage Pass-Through Certificates issued by FNMA; and (c) will be mortgage related securities within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. Use of SPLITS as collateral for Bonds will not reduce the security afforded to bondholders (the "Bondholders") nor expose them to a level of risk significantly different from that present in a series of Bonds directly secured by the certificates guaranteed by FNMA, GNMA or FHLMC in which the SPLITS represent an interest.

5. The Bonds of a Series may bear interest at fixed rates or at rates which vary in relation to an index specified in the prospectus relating to such Series of Bonds. Bonds bearing interest at a variable rate will be subject to maximum interest rates ("interest rate caps") or to minimum interest rates in the case of an inverse variable rate Bond. The maximum and minimum interest rates may vary from period to period, and always will be specified in the prospectus. The cash flow generated by the related Mortgage Certificates securing the Bonds (together with other collateral) plus income received thereon at the assumed reinvestment rate specified in the related prospectus will be sufficient to provide for the full and timely payment of the Bonds of such series (even if the interest rates on variable rate Bonds were the maximum applicable interest rates for each specified period).

6. In the case of a Series of Bonds that contains a class or classes of variable rate Bonds, a number of mechanisms exist to ensure that the above representation will be valid notwithstanding subsequent potential increases in the interest rate applicable to the variable rate Bonds. Procedures that have been identified to date for achieving this result include the use of (i) interest rate caps for the variable rate Bonds; (ii) "inverse" variable rate Bonds (which pay a lower rate of interest as the rate increases on the corresponding "normal" variable rate Bonds); (iii) variable rate collateral to secure the Bonds; (iv) interest rate swap agreements (under which the issuer of the Bonds would make periodic payments to a counterparty at a fixed rate of interest based on a stated principal amount, such as the principal amount of Bonds in the variable rate class, in exchange for receiving corresponding periodic payments from the counterparty at a variable rate of interest based on the same principal amount) and (v) hedge agreements (including interest rate futures and option contracts, under which the issuer of the Bonds would realize gains during periods of rising interest rates sufficient to cover the higher interest payments that would become due during such periods on the variable rate class of Bonds). It is expected that other mechanisms may be identified in the future. Applicant will give the SEC notice by letter of any such additional mechanisms before they are utilized, in order to give the SEC an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

7. The Applicant may have, as to certain Series of Bonds, a limited right to substitute new Mortgage Certificates for Mortgage Certificates initially pledged as security for such Series of Bonds, provided that such substitution does not result in a reduction of the ratings assigned to such Series of Bonds by the nationally recognized rating agency or agencies rating such Series.

8. Without the consent of each Bondholder to be affected, neither the Applicant nor the Trustee will be able to: (1) Change the stated maturity on any Bonds; (2) reduce the principal amount of, or the rate of interest on any fixed rate Bonds or alter the method of determining the interest rate on any variable rate Bonds; (3) change the priority of repayment on any class of any Series of Bonds; (4) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (5) permit the creation of a lien ranking prior to or on parity with the lien of the ralated Indenture with respect to the Mortgage Certificates; or (6) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

Conditions to Order

Applicant expressly agrees that the proposed transactions will conform to the following conditions:

A. Conditions Relating to the Bond Collateral

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration, either pursuant to section 4(2) of the 1933 Act or because such Series of Bonds is offered and sold outside the United States to non-U.S. persons in reliance upon an opinion of U.S. counsel that registration is not required. No single offering of the Bonds sold within and outside the United States would be made without registration of all such Bonds under the 1933 Act, without obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings. In all cases, Applicant will adopt agreements and procedures reasonably designed to prevent such debt securities from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissible). Disclosure provided to purchasers located outside the United States will be substantially the same as that provided to U.S. investors in United States offerings.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended, and the collateral directly securing the Bonds will be limited to mortgage pass-through certificates, including Stripped Mortgage Based Securities, guaranteed by GNMA or issued and guaranteed by FNMA and FHLMC and SPLITS.

3. If new Mortgage Certificates are substituted for Mortgage Certificates initially pledged as security for a Series of Bonds, the substitute Mortgage Certificates must: (i) Be of equal or better quality than those replaced; (ii) have similar payment terms and cash flow as those replaced; (iii) be insured or guaranteed to the same extent as the collateral replaced; and (iv) meet the conditions set forth in paragraphs (2) and (4). In addition, new Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates.

4. The Collateral will be held by the Trustee or on behalf of the Trustee by an independent custodian. Neither the custodian nor the Trustee may be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of Applicant. The Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the Act.

6. So long as applicable law required, no less often than annually, an independent public accountant will audit the books and records of the Applicant. In addition, as long as any Bonds of a Series are outstanding, on the basis of a review of the Collateral, the independent accountant will report at least annually on whether the anticipated payments of principal and interest on the Collateral for each such Series continue to be adequate to pay the principal of and interest on the Bonds in accordance with their terms. All accountant's reports with respect to payments on the Bonds will be provided to the Trustee.

B. Conditions Relating to Variable Rate Bonds

1. Each class of variable rate Bonds will have maximum interest rates (interest rate caps) which may vary from period to period as specified in the related prospectus.

2. The Collateral pledged to secure a Series of Bonds will be sufficient to provide for the full and timely payment of the Bonds then outstanding, assuming maximum applicable interest rates for each specified period on variable rate Bonds. Until the Bonds of a Series are paid, no Mortgage Certificate will be released by the Trustee (except pursuant to condition A.3. above).

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19537 Filed 8-25-87; 8:45 am]

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[Rel. No. IC-15945; 812-6693]

Application; Eaton Vance Corporate High Income Dollar Fund, L.P., et al.

August 20, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Eaton Vance Corporate High Income Dollar Fund, L.P. and Eaton Vance U.S. Government Income Dollar Fund, L.P.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 2(a)(19).

Summary of Application: Applicants seek an order exempting each of their Managing General Partners (as defined below) and any Managing General Partner who may be elected in the future to the extent that they are deemed "interested persons" solely because they are partners of the Applicants.

Filing Date: The application was filed on April 27, 1987, and amended on August 17, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 14, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 24 Federal Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272-2190 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each Applicant is an open-end diversified, management investment company registered under the 1940 Act. Each Applicant is organized as a limited partnership in the State of Delaware and has been designed as a specialized investment vehicle to preserve certain tax benefits for foreign investors. Partnership interests in each Applicant are being offered exclusively to such foreign investors with the objective of earning a high level of current income free of U.S. taxes and U.S. tax-withholding requirements.

2. Each Applicant will offer a single class of partnership interests registered under the Securities Act of 1933 and the 1940 Act, and purchasers (other than general partners) will be required to become limited partners ("Limited Partners") of the Applicant in which they invest. Each Limited Partner will have the voting, approval, consent and other rights required under the 1940 Act, but consistent with the Delaware Revised Uniform Limited Partnership Act will not have the right to participate in the control of the Applicant's business.

3. Each Applicant intends to include in its contracts a provision limiting the claims of creditors to the Applicant's assets. Each Partnership Agreement of the Applicant provides for indemnification out of the Applicant's property for any Limited Partner held personally liable for any obligation of the Applicant, and provides for the Applicant to assume the defense of any claim made against any Limited Partner, for any act or obligation of the Applicant, and satisfaction of any judgment. Each Applicant will carry insurance in such amounts as the Managing General Partners consider reasonable to cover potential liabilities of the Applicant, and the Managing Gneral Partners will periodically review the question of the appropriateness of obtaining errors and omissions insurance for each Applicant.

4. The general partners of each Applicant consist of one corporate general partner (the "Non-Managing General Partner"), which will not take any role in management (except temporarily, in extraordinary circumstances) and a number of individual general partners (the "Managing General Partners"), who are expressly charged with the responsibility of managing such Applicant. The primary obligation of the corporate Non-Managing General Partner is to maintain, together with the Managing General Partners, a minimum one percent (1%) investment in each Applicant to ensure that each Applicant will be treated as a partnership under the Internal Revenue Code of 1986.

5. The Managing General Partners (who must be individuals) will perform the same functions as directors of a corporation or the trustees of a business trust, will act only by majority vote, and will assume all the responsibilities and obligations imposed by the 1940 Act on directors of an investment company. Limited Partners of each Applicant have the right to elect or ratify the appointment of new general partners and vote on all matters requiring shareholder action to the extent required by the 1940 Act. Limited Partners presenting 10% or more of the outstanding partnership interests of each Applicant may also call a meeting to remove any or all of the general partners. Applicants currently have seven Managing General Partners, five of whom are independent Managing General Partners (functionally equivalent to non-interested directors). Each of the independent Managing General Partners currently own less than one percent of the outstanding partnership interests of each Applicant and will not at any time own, control or hold five percent or more of such outstanding partnership interests.

6. Eaton Vance Management, Inc. ("EVM"), a Massachusetts corporation, is the corporate Non-Managing General Partner and investment adviser of each Applicant. EVM is a wholly-owned subsidiary of Eaton Vance Corp. ("EVC"). Eaton Vance Distributors, Inc., the distributor and principal underwriter for the partnership interests of each Applicant, is a wholly-owned subsidiary of EVM.

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Applicants' Legal Analyses

1. All the Managing General Partners are "affiliated persons" of each Applicant, as defined in section 2(a)(3) of the 1940 Act, by virtue of being partners of each Applicant, and co-partners with EVM, the Applicant's Non-Managing General Partner and investment adviser. Thus, they may be deemed to be "interested persons" of each Applicant and its investment adviser and principal underwriter, as defined in section 2(a)(19) of the 1940 Act. Messrs. James B. Hawkes and James G. Baur, who are two of the seven Managing General Partners of each Applicant, would continue to be "interested persons" of each Applicant, its investment adviser and its principal underwriter, notwithstanding the requested exemption, because of their positions as officers and/or directors of the Applicants, EVM and EVC.

2. Applicants request that the remaining five Managing General Partners, who are the independent Managing General Partners of each Applicant, be exempted from the provisions of section 2(a)(19) of the 1940 Act to the extent that they are deemed to be "interested persons" of each Applicant and its investment adviser and principal underwriter solely because of their status as partners, and co-partners with EVM, of each Applicant. Section 2(a)(19) contains a provision that excludes those individuals who would be "interested persons" of an investment company solely by virtue of their status as directors of an investment company. However, there is no comparable provision that excludes those individuals who would be "interested persons" solely because they are general partners of the Applicant, and co-partners with EVM, the Applicant's Non-Managing General Partner and investment adviser.

3. Nevertheless, Applicants state that they have been structured so that the independent Managing General Partners are the functional equivalents of the non-interested directors of an incorporated investment company. Therefore, Applicants believe that granting the requested exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19538 Filed 8-25-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15943; File No. 811-5136]

Application for Exemption; Hartford Global Fund, Inc.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: Hartford Global Fund, Inc. ("Fund").

Relevant 1940 Act Sections: Exemption requested *under* Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on July 17, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 14, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Fund, P.O. Box 2999, Hartford, Connecticut 06104-2999.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Margaret Warnken (202) 272-2058) or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Fund's Representatives

1. On April 29, 1987, Hartford Global Fund, Inc., filed a notification of registration on Form N-8A, and a registration statement on Form N-1A. The Fund, a validly existing Maryland corporation, is an open-end, diversified management company.

2. The registration statement on Form N-1A was never declared effective. The Fund has never made a public offering of its securities, nor does the Fund intend to make a public offering or engage in business of any kind.

3. There is one securityholder of the Fund.

4. No debts remain outstanding, and no assets have been retained by the Fund. The Fund has not within the last eighteen months transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of the Fund.

5. The Fund is not party to any litigation or administrative proceedings, and is not now engaged nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19539 Filed 8-25-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15941; File No. 811-4597]

Application; Lincoln National Government Securities Fund, Inc.

August 19, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of proposal for order under the Investment Company Act of 1940 (the "1940 Act").

Registrant: The Lincoln National Government Securities Fund, Inc. (the "Lincoln Fund").

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Proposal: The SEC proposes to declare by order upon its own motion that the Lincoln Fund has ceased to be an investment company.

Hearing or Notification of Hearing: If no hearing is ordered, the proposal will be granted. Any interested person may request a hearing on this proposal, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., September 14, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Send the request to the Secretary of the SEC. A copy of the request should be served personally or by mail upon the Lincoln Fund at the address stated below. Proof of service by affidavit, or, for lawyers, by certificate shall be filed with the request. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. The Lincoln Fund, 1300 South Clinton Street, Fort Wayne, Indiana 46801.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Jeffrey M. Ulness (202) 272–3027 or Special Counsel Lewis B. Reich (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the proposal.

The SEC's Representations

1. The SEC states that on February 26, 1986, the Lincoln Fund, registered under the Act on Form N–8A, and filed its registration statement on Form N–1A pursuant to section 8(b) of the Act on the date. As of the date of the filing of this proposal, that registration statement pursuant to the Securities Act of 1933 has not become effective and no initial public offering of the Lincoln Fund's securities has taken place.

2. The Lincoln Fund's registration statement on Form N–1A was declared abandoned on March 18, 1987 pursuant to Rule 479 of the Securities Act of 1933, as amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–19540 Filed 8–25–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15939; File No. 811–4514]

Application; MFS Fund of Stripped Zero

August 19, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of proposal by the SEC to issue upon its own motion an Order under the Investment Company Act of 1940 (the "1940 Act").

Registrant: The MFS Fund of Stripped ("Zero") U.S. Treasury Securities, Series 1, Massachusetts Financial Services Company (the "MFS Fund").

Relevant 1940 Act Sections: Order proposed under secton 8(f).

Summary of Proposal: The SEC proposes to declare by order upon its own motion that the MFS Fund has ceased to be an investment company.

Hearing or Notifiogtion of Hearing: If no hearing is ordered, the proposal will be granted. Any interested person may request a hearing on this proposal, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., September 14, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Send the request to the Secretary of the SEC. A copy of the request should be served personally or by mail upon the MFS Fund at the address stated below. Proof of service by affidavit, or, for lawyers, by certificate shall be filed with the request. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. The MFS Fund, 200 Berkeley Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Jeffrey M. Ulness (202) 272–3027 or Special Counsel Lewis B. Reich (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the proposal.

The SEC's Representations

1. The SEC states that on December 13, 1985, the MFS Fund registered under the Act on Form N–8A, and filed its registration statement on Form S–6 pursuant to section 8(b) of the Act on the date. As of the date of the filing of this proposal, that registration statement pursuant to the Securities Act of 1933 has not become effective and no initial public offering of MFS Fund's securities has taken place.

2. The MFS Fund's registration statement on Form S–6 was declared abandoned on March 18, 1987 pursuant to Rule 479 of the Securities Act of 1933, as amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–19542 Filed 8–25–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15940; File No. 811–4380]

Application; Managed Government Trust

August 19, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of proposal for order under the Investment Company Act of 1940 (the "1940 Act").

Registrant: Managed Government Trust (the "Trust")

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Proposal: The SEC proposes to declare by order upon its own motion that the Trust has ceased to be an investment company.

Hearing or Notification of Hearing: If no hearing is ordered, the proposal will be granted. Any interested person may request a hearing on this proposal, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., September 14, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Send the request, to the Secretary of the SEC. A copy of the request should be several personally or by mail upon the Trust at the address stated below. Proof of service by affidavit, or, for lawyers, by certificate shall be filed with the request. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, 450 5th Street, NW., Washington, DC 20549. The Trust, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Jeffrey M. Ulness (202) 272–3027 or Special Counsel Lewis B. Reich (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the proposal.

The SEC's Representatives

1. The SEC states that on August 9, 1987, the Trust registered under the Act on Form N–8A, and filed its registration statement on Form N–1A pursuant to section 8(b) of the Act on the date. As of the date of the filing of this proposal, the registration statement pursuant to the Securities Act of 1933 has not become effective and no initial public offering of Trust's securities has taken place.

2. The Trust's registration statement on Form N–1A was declared abandoned on April 2, 1987 pursuant to Rule 47a of the Securities Act of 1933, as amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–19541 Filed 8–25–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24819; File No. SR–MSE–87–05]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc., Order Approving Proposed Rule Change

The Midwest Stock Exchange Inc. ("MSE") on February 27, 1987, filed with the Commission under section 19(b) of the Securities Exchange Act ("Act") a proposed rule change concerning customer account transfers. The proposal authorizes procedures in MSE's automated customer accounts transfer system ("ACATS") for the transfer of customer accounts: (1) Between MSE

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member organizations; and (2) between MSE member organizations and other self-regulatory organization members who use registered clearing agencies. The Commission published notice of the proposal in the **Federal Register** on May 5, 1987. [1] No public comments were received. This Order approves the proposal.

I. Description

The proposed MSE rule change would replace existing Rule 21 of Article VIII of MSE's Rules.[2] MSE's proposal generally provides that when a customer gives written notice to the customer's carrying firm to transfer an account to a designated receiving firm, both the receiving firm and the carrying firm must expedite the transfer. Moreover, once a receiving firm has received the customer's signed account transfer request form, the rule would require that the receiving firm immediately notify the carrying firm. The carrying firm generally has five business days from receipt of the transfer notice to either: (1) Validate and return the instruction with a statement reflecting the securities and money balances in the customer's account; or (2) take exception to the transfer instruction. The carrying broker would be prohibited from rejecting the account transfer request based on a dispute with the customer or the receiving firm concerning the contents of the account. Instead, the carrying firm must transfer whatever securities and money balances are shown for that customer on its records.

The proposal provides that once the carrying firm has validated the transfer instruction, the carrying firm generally has five business days to complete the transfer. If the customer's securities have not been delivered to the receiving firm within five business days, as required under the proposal, both the carrying and receiving firms must establish, as appropriate, fail to deliver or fail to receive contracts respecting the deliveries that have not occurred. At that point, the account is deemed to have been transferred, and the fail positions must be closed out within ten business days. In addition to establishing specific time frames and procedures for completing customer account transfers, the MSE rule would require that where both the carrying organization and the receiving organization are members of a registered clearing corporation that provides automated customer account transfer facilities (*i.e.*, ACATS), the customer account transfer must be effected through those facilities.[3]

The proposal would authorize MSE to exempt from the provision of the rule any member, class of members, type of account, or security—either unconditionally or on a case-by-case basis. Finally, the proposal would permit MSE to impose on its member organizations a discretionary "late fee" of $100 per account for each day that the member organization firm fails to follow the rule.

II. Discussion

The Commission believes the proposed rule change is consistent with the requirements of the Act, particularly section 6(b)(5) of the Act. Like the comparable proposals of the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers ("NASD"),[4] MSE's proposal, is designed to address weaknesses in the customer account transfer process.

MSE's proposed modifications to its Rule 21 represent a step toward assuring that customer accounts will be transferred in a timely manner. The proposed MSE rule would: (1) Establish uniform procedures and specific time frames; (2) provide increased certainty to customers that, as of ACATS settlement dates, most positions will be deemed transferred; and (3) ensure that assets and funds will be available for customers' use at the receiving firm on a timely basis. By requiring organizations to establish fail positions on their books relative to customer securities that have not been transferred within the prescribed time frames, the rule transfers the risks associated with transfer delays from customers to broker-dealers. The rule thus creates significant incentives for MSE members to transfer accounts on time, while extending traditional close-out remedies to the customer account transfer process of MSE members. Accordingly, the Commission believes that the proposal is well-designed to provide both timely and financially responsible transfers.

In addition, requiring the use of automated clearing agency account transfer facilities, such as ACATS, extends the benefits of such services to MSE members and their customers. Injecting centralized clearing facilities into the transfer process promotes timely delivery and receipt of communications between the receiving and delivering organizations and permits effective compliance monitoring. Also, use of an automated system should enhance efficiency and reduce expenses in account transfer processing by eliminating, for all depository-eligible securities, the manually intensive handling of certificates and related paper between the carrying and receiving broker-dealers. Thus, by assuring that customers' accounts will be transferred promptly and accurately, MSE's proposal should reduce risk, expense, and potential exposure for public customers.

Finally, the proposed rule, like NYSE Rule 412(g), would authorize MSE to impose a "fee" on its member organizations for failing to adhere to the time frames or procedures required by the rule or its interpretations. As the Commission noted in its order approving NYSE Rule 412(g), the proposed "fee" is functionally a sanction, in the nature of a disciplinary fine, for violating an exchange rule.[5] As such, that fine must be imposed in a manner consistent with the Act.[6] The Commission is sympathetic with the MSE's desire to act swiftly to enforce compliance and ensure that customer account transfers are not delayed unnecessarily. Accordingly, the Commission anticipates that MSE will develop and file with the Commission standards and guidelines for administrative fees. Pending a determination, if any, to file such a proposed rule change, however, the Commission expects MSE to administer any late fee under Rule 21 pursuant to the requirements of the Act governing disciplinary actions, including sections 6 and 19 of the Act.

III. Conclusion

For the reasons discussed in this Order, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

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[1] Securities Exchange Act Release No. 24400 (April 28, 1987), 52 FR 16472.

[2] MSE's existing Rule 21, captioned "Customer Account-Transfer Contracts," would be deleted.

[3] ACATS provides a centralized mechanism for communicating customer account transfer information between firms involved in a transfer and automated procedures to facilitate transferring customers' assets within required time frames. In 1985, the National Securities Clearing Corporation ("NSCC") developed ACATS. *See* Securities Exchange Act Release No. 22481 (September 30, 1985), 50 FR 41274.

[4] *See* NYSE Rule 412. *See also* Securities Exchange Act Rel. Nos. 22663 (November 26, 1985), 50 FR 49638; (File No. SR-NYSE-85-17) 22913 (February 14, 1986), 51 FR 6845 (File No. SR-NYSE-85-5) In February 1986, NASD adopted a substantially similar requirement in Section 65 of its Uniform Practice Code. *See* Securities Exchange Act Release No. 22941 (Feburary 24, 1986), 51 FR 7170 (File No. SR-NASD-85-29). The proposed MSE rule is similar to the NYSE and NASD rules.

[5] *See* Securities Exchange Act Rel. No. 22663.

[6] Section 6(b)(7) of the Act requires that an exchange provide a "fair procedure for the disciplining of members." Such fairness includes bringing specific charges, providing notice of those charges, and providing an opportunity for a hearing. *See* section 6(d)(1) of the Act.

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applicable to a national securities exchange.

It is therefore ordered, pursuant to section 19(b) of the Act, that the above-mentioned proposed rule change (File No. SR-MSE-87-05) be and hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 19, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19533 Filed 8-25-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-6530]

Issuer Delisting; Application to Withdraw From Listing and Registration; Oxford First Corp. (Common Stock, Par Value $1.00)

August 19, 1987.

Oxford First Corp. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw its Common Stock, Par Value $1.00, from listing and registration on the American Stock Exchange, Inc. ("Amex"). The Company's common stock recently began trading on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before September 10, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19543 Filed 8-25-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24443]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); The Southern Co. et al.

August 20, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 14, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Co., et al. (70-6982)

The Southern Company ("Southern"), a registered holding company, and its wholly owned subsidiary, The Southern Investments Group, Inc. ("SIG"), 64 Perimeter Center East, Atlanta, Georgia 30346, have filed an application-declaration pursuant to sections 6(b), 9(a), 10 and 12(g) of the Act.

By order dated October 1, 1984 (HCAR No. 23440), Southern was authorized to acquire up to 75,000 common shares of Integrated Communications, Inc. ("ICS"), for an aggregate purchase price of up to $1,650,000. Southern now proposes to acquire additional common shares of ICS from time to time through December 31, 1992, for an aggregate purchase price up to $2,650,000, and to transfer all its shares of ICS common stock to SIG. Southern also requests that the issuance and sale of securities by ICS from time to time to finance its operations be exempted from the requirements of Section 7 of the Act, pursuant to Section 6(b).

American Electric Power Co., Inc. (70-7440)

American Electric Power Company, Inc. ("AEP") 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed a declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

AEP proposes to guarantee the obligations of its subsidiary service company, American Electric Power Service Corporation ("Service Corporation"), under a proposed sale and leaseback transaction of a new laboratory facility ("Facility") in Groveport, Ohio which Service Corporation has constructed with a nonassociate ("Lessor"). The Lessor will purchase the Facility for approximately $12 million and lease it to Service Corporation for an initial term of 30 years. Service Corporation's participation in the transaction is contintent upon AEP's guarantee of Service Corporation's obligations under a proposed Facility Lease and related agreements consisting of a Participation Agreement with respect to funding of the purchase of the Facility, a Tax Indemnity Agreement, and a Site Lease Agreement.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19544 Filed 8-25-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15942; File No. 812-6790]

Xerox Financial Services Life Insurance Co., et. al.

Date: August 20, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicants: Xerox Financial Services Life Insurance Company (the "Company"), Account for Performance (the "Separate Account") and Van

Kampen Merritt Life Marketing Inc. (collectively, "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 26(a) and 27(c)(2).

Summary of Application: Applicants request an exemption from sections 26(a) and 27(c)(2) of the Act to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account in connection with the issuance and sale of variable annuity contracts.

Filing Date: July 13, 1987.

Hearing or Notification: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC no later than 5:30 p.m., on September 15, 1987. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues you contest. Applicant should be served with a copy of the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or for attorneys, by certificate. Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

ADDRESS: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, Xerox Financial Services Life Insurance Company, 1001 Warrenville Road, Lisle, Illinois 60432.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272–3017 or Lewis B. Reich, Special Counsel (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's Commercial Copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Company is a stock life insurance company which was orginally incorporated in 1981 as Assurance Life Company, a Missouri Corporation. In 1985, the North River Insurance Company ("North River") acquired the Company from Business Men's Assurance Company. North River is a wholly-owned subsidiary of Crum and Foster, Inc., which is a wholly-owned subsidiary of Xerox Financial Services, Inc., which in turn is a wholly-owned subsidiary of Xerox Corporation.

2. The Company established the Separate Account on February 24, 1987, pursuant to the provisions of Missouri insurance law. The Separate Account, a segregated investment account of the Company, is currently seeking registration with the SEC as a unit investment trust pursuant to the provisions of the Act.

3. The Company proposes to offer individual flexible purchase payment deferred variable annuity contracts ("Contracts") which are available for both Qualified and Non-Qualified Retirement Plans under the Internal Revenue Code. The Separate Account is divided into Sub-Accounts. Each Sub-Account is invested solely in the shares of one of the Portfolios of Van Kampen Merritt Series Trust (the "Fund"), a Massachusetts business trust currently seeking registration under the Act as a diversified open-end management investment company. The Fund is a series fund which is currently divided into four separate portfolios consisting of a quality income portfolio, high yield portfolio, growth portfolio and managed portfolio.

4. The Contracts will be distributed through Van Kampen Merritt Life Marketing Inc., a wholly-owned subsidiary of Van Kampen Merritt Inc., a subsidiary of Xerox Corporation.

5. The minimum initial purchase payment for Contracts issued pursuant to a Non-Qualified Plan is $5,000 with minimum additional purchase payments of $1,000. The minimum initial purchase payment for a Contract issued pursuant to a Qualified Plan is $1,000. Subsequent purchase payments must be at least $100.

6. Any premium taxes or other taxes payable to a state or other governmental entity will be charged against Contract values. The Company currently intends to advance any premium taxes due at the time purchase payments are made and then deduct premium taxes from Contract value at the time annuity payments begin or upon surrender if the Company is unable to obtain a refund.

7. The Company will deduct an annual Contract Maintenance Charge of $30 from the Contract value on each Contract anniversary. This charge is to reimburse the Company for the expenses it incurs in establishing and maintaining the Contracts and the Separate Account. When the Contract is surrendered and its full surrender value, on other than the Contract anniversary, the Contract Maintenance Charge will be deducted at the time of surrender. During the annuity period, the Contract Maintenance Charge will be collected on a monthly basis and will result in a reduction of the monthly benefit. This charge has not been set at a level greater than its cost and contains no element of profit.

8. The Contracts do not provide for a front end sales charge to be deducted from purchase payments. Instead, a total or partial withdrawal of a Contract is subject to a Contingent Deferred Sales Charge should the withdrawal exceed a free withdrawal amount equal to ten percent (10%) of all purchase payments made prior to the withdrawal. The amount of the Contingent Deferred Sales Charge is calculated by: (a) Allocating purchase payments to the amount surrendered; (b) multiplying each allocated purchase payment that has been held under the Contract for less than five (5) Contract Years by 5%; and (c) adding the products of (b) together. In no event will the aggregate Contingent Deferred Sales Charge exceed 5% of the total purchase payments made.

9. The amounts obtained from the Contingent Deferred Sales Charge will be used to pay sales commissions and other promotional or distribution expenses associated with the marketing of the Contracts, including costs associated with the printing and distribution of prospectuses, the Contracts, sales material and any other relevant information concerning the Contracts.

10. The Company proposes to assess each Sub-Account of the Separate Account with daily charges for mortality and expense risks ("Risk Charges") and administrative expenses ("Administrative Expense Charge") which amount to an aggregate of 1.40% per annum (consisting of approximately .90% for mortality risks, approximately .35% for expenses risks and .15% for administrative expenses).

11. The Administrative Expense Charge is designed to cover the shortfall in revenues from the Contract Maintenance Charge which is used to reimburse the Company for expenses incurred in the maintenance of the Contracts and the Separate Account.

12. The Company does not intend to profit from the Administrative Expense Charge. Applicants represent that this charge has been set at a level which represents the Company's administrative costs taking into account the Contract Maintenance Charge. The Administrative Expense Charge will be reduced to the extent that the amount of this charge is in excess of that necessary to reimburse the Company for its administrative expenses. Should this charge prove to be insufficient, the Company will not increase this charge and will incur the loss.

13. The mortality risk assumed by the Company arises from its contractural obligation to make annuity payments for the life of the annuitant and to waive the Contingent Deferred Sales Charge in the event of the death of the annuitant or contract owner (as applicable).

14. The expense risk assumed by the Company under the Contracts is that all actual expenses involved in administering the Contracts, including maintenance costs, administrative costs, mailing costs, data processing costs, legal fees, accounting fees, filing fees and the costs of other services may exceed the amount recovered from the Contract Maintenance Charge and the Administrative Expense Charge.

15. If the Risk Charges are insufficient to cover actual costs, the loss will borne by the Company. Conversely, if the amount deducted proves more than sufficient, the excess will be a profit to the Company. The Company expects a profit from this charge.

16. To the extent that the Contingent Deferred Sales Charge is insufficient to cover the actual cost of distribution, the Company may use any of its corporate assets, including potential profit which may arise from the Risk Charges, to make up any difference. The Risk Charges are guaranteed by the Company and cannot be increased.

17. Applicants represent that the 1.25% total which it proposes to charge for the Risk Charges is within the range of industry practice for such charges.

18. Applicants' representations are based upon an analysis of the mortality risks (taking into consideration such factors as any contractual right to increase charges above current levels and the guaranteed annuity purchase rates), the expense risks (taking into account the existence of charges against separate account assets for other than mortality and expense risks) and the estimated costs, now and in the future, for certain product features. The Company will maintain at its principal office, available to the Commission, a memorandum setting forth in detail this analysis.

19. Applicants acknowledge that the Contingent Deferred Sales Charges may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the Risk Charges, all or a portion of such profit may be applied to offset distribution expenses not reimbursed by the Contingent Deferred Sales Charge. In such circumstances a portion of the Risk Charges might be viewed as providing for a portion of the costs relating to distribution of the Contracts.

20. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Separate Account and the contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the Commission.

21. The Company represents that the Separate Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–19545 Filed 8–25–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24801; File No. SR–PSE–87–14]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval to a Proposed Rule Change by the Pacific Stock Exchange Inc.; Conformity With the Uniform Code of Arbitration.

The Pacific Stock Exchange, Incorporated ("PSE") submitted on April 28, 1987, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78(b)(1) and Rule 19b–4 thereunder to amend various provisions of PSE Rule XII (Arbitration) to bring them into conformity with amendments to the Uniform Code of Arbitration ("UCA") which were adopted by the Securities Industry Conference on Arbitration ("SICA").[1]

The proposed rule change would amend section 2 of PSE Rule XII ("Rule") to increase both the jurisdictional limit and filing fees for small claim proceedings. The proposed amendments would raise the jurisdiction limit for small claims proceedings from $2,500 to $5,000 and replace the $15 flat filing fee with a graduated filing fee based on the amount of the claim. Under the proposal, there would be a $15 fee for claims of $1,000 or less, $25 for claims of more than $1,000 but less than $2,500, and $100 for claims between $2,500 and $5,000.

The Amendment to section 4 of the Rule would increase the statute of limitations for filing claims from three to six years. In addition, the proposed rule change would amend section 4 to preclude the six year time limitation from barring the submission of a claim, to arbitration where the claim is ordered to arbitration by a court of competent jurisdiction. Further, the proposed amendments to section 7 would, where permitted by law, toll the statute of limitations for legal proceedings when the claimant(s), rather than all parties to the proceedings, files an arbitration agreement. The six year statute of limitations also will be tolled if the parties submit the claim to the court's jurisdiction.

Amended section 8(b) of the Rule would provide that for member to member controversies involving $5,000 or less the panel of arbitrators will consist of one member. For all other member controversies, the panel shall consist of three members.[2]

Section 10 would be amended to allow each party one peremptory challenge to the panel's composition in all cases, including arbitrations where there are multiple parties (i.e., multiple Claimants, Respondents, and/or Third Party Respondents). In arbitrations with multiple claimants, however, the Director of Arbitration can grant additional peremptory challenges if it is in the "interest of justice." The amendment also makes clear that there would be unlimited challenges for cause.

The amendment to section 13 would give the arbitrators discretion to bar a Respondent, Responding Claimant, Cross-Claimant, or Third Party Respondent from presenting any facts or defense at the arbitration proceeding if that party only pleads a general denial in his Answer.[3] Further, the amendment would permit the arbitrators, within their discretion, to bar a Respondent from presenting any facts or defenses at the arbitration hearing if they have not

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[1] The Uniform Code of Arbitration was developed by SICA in November 1968. The UCA provides Uniform Arbitration Procedures throughout the securities industry and is implemented by various national securities exchanges. SICA is a securities industry association composed of representatives of the National Association of Securities Dealers, Inc. ("NASD"), nine other self-regulatory organizations, four public members, and the Securities Industry Association.

[2] Under the existing rule, member controversies involving $500 or more requires a three-member arbitration panel.

[3] Currently, according to the PSE, the Claimant has the burden to specify the relevant facts in an arbitration hearing. The Respondent, although required to designate all available defenses in his Answer, frequently limits his written defense to a general denial and waits for the hearing to disclose his actual defense(s).

been included in the Answer and the arbitrators believe that these facts are relevant and the defenses were available at the time the Answer was filed. Finally, section 13(c) would be amended to permit the Director of Arbitration to determine preliminarily whether multiple Claimants, Respondents, or Third Party Respondents should proceed in the same or separate arbitration proceedings.

Under amended section 27, a party would be permitted to amend its pleading, as a matter of right, prior to the appointment of an arbitration panel, and, subsequently, only if in response to an amended pleading or with the consent of the arbitration panel.

Finally, the Exchange proposes to revise its schedule of arbitration fees. The required deposit fee for claims of $1,00 or less would be reduced from 4100 to $15. Similarly, the fee for claims of $1,000 but less than $2,500 would be reduced from $100, to $25 while the fee for claims between $2,500 and $5,000 would remain the same at $100. There would be no change in the $200 fee for claims above $5,000, but less than $10,000. Where the amount in controversy excees $10,000 but is less than $20,000, the fee would be increased from $250, to $300. For controversies involving an amount greater than $20,000 but less than $100,000 the fee would be increased from $350 to $500. The fee for all other claims above $100,000 would be $750 (the current maximum fee is $550).[4]

The amendments would also permit the arbitrators to assess forum fees for any controversy settled or withdrawn.

Discussion

As noted above, SICA substantially revised the UCA to reflect trends and developments which had occured in the securities industry several years earlier. Four stock exchanges and the NASD have since amended their arbitration rules to bring them into conformity with the UCA amendments. These changes ensure a degree of uniformity in arbitration proceedings among the self-regulatory organizations. ("SRO's")[5]

The PSE has indicated in its filing that the purpose of the proposed rule change is to amend its arbitration rules to reflect the amendments to the UCA developed by SICA and adopted by the other SROs.

The prooposed amendments to the Rule are identical to the SICA amendments to the UCA and the conforming amendments adopted by the other SROs with the exception. There is currently no provision in the UCA that provides for a one member panel in member controversies involving small claims.[6] As noted above, under existing section 8(b), the dollar amount involved in the member controversy determines the number of arbitrators that will hear the claim. Presently, all controversies involving $500 or more require a three person arbitration panel to resolve the controversy. The Exchange proposes to increase the threshold dollar amount, required before a claim will be heard by a panel of three arbitrators, from $500 to $5,000, a tenfold increase. The net result of this change would be that an increased number of member controversies would be heard by one arbitrator rather than by three.

The Exchange indicates in its filing that adoption of this amendment would reduce its cost in providing a forum for arbitration by reducing the number of honoraria paid as well as facilitate arbitration hearings scheduling.

Request For Comments

Because the securities industry has experienced developments in arbitration since the Commission last approved proposals similar to the PSE's proposed revisions to section 8(b), the Commission believes that the public should have the opportunity to comment on the proposed changes to section 8(b).

Commentators may wish to focus on and discuss the potential impact, if any, of the proposed change to section 8(b) of the Rule on member controversies because if the amendment is approved more of these claims will be heard by single arbitrator.

Interested persons are invited to submit written data, views and arguments concering the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with resquest to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the file number in the caption above and should be submitted by September 16, 1987.

Conclusion

The Commission finds the approval of all portions of the proposed rule change, with exception of section 8(b) concerning member controversies, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and, in particular, the requirements of section 6(b)4 requiring that national securities exchanges provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and 6(b)(5) requiring that the rules of an exchange promote just and equitable principles of trade and protect investors and the public interest in that they provide a forum for the resolution of securities disputes.

The Commission finds good cause for approving all amendments, except those affecting section 8(b), prior to the thirtieth day in that the Commission has on prior occasions approved similar amendments submitted to the Commission by the NASD, NYSE, Amex, MSE, and CBOE. Further, approval of the proposed rule change would ensure uniformity among self-regulatory organizations arbitration procedures.

It is therefore ordered, pursuant to section 19(b)(2) oft he Act, that the proposed rule change, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated August 14, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19534 Filed 8-25-87; 8:45 am]

BILLING CODE 8010-01-M

[4] The proposal also increased the maximum forum fees that can be charged to the parties.

[5] The four stock exchanges are the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange, Inc. ("Amex"), the Midwest Stock Exchange Incorporated ("MSE"), and the Chicago Board of Options Exchange, Inc. ("CBOE"). See Securities Exchange Act Release Nos. 21295 (September 7, 1984) 49 FR 36040 (SR-NASD-84-16); 21542 (December 6, 1984) 49 FR 48403 (SR-84-20; 21476 (November 9, 1984) 49 FR 45687 (SR-CBOE-84-6); and 21506 (November 20, 1984) 49 FR 46857 (SR-MSE-84-6).

[6] Both the NYSE and the Amex have adopted provisions in their arbitration rules that provide for a one member panel where the amount in controversy in member to member disputes is less than $10,000.

[7] 17 CFR 200.30-3

[Release No. 34-24820; File No. SR-Phlx-87-4]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Establishment of Standards for the Operation of a System of Alternate Specialists

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, the Philadelphia Stock Exchange, Inc. ("Phlx") submitted, on March 2, 1987, copies of a proposed rule change to adopt a system of rules to establish formal standards for the operation of an alternate specialist system. The rules are intended primarily to establish the financial obligations and trading responsibilities that a member must satisfy in order to qualify as an alternate specialist.

Notice of the proposed rule change, together with its terms of substance, was given by the issuance of a Commission release (Securities Exchange Act Release No. 24446, May 12, 1987) and by publication in the **Federal Register** (52 FR 19002, May 20, 1987). No comments were received regarding the proposal.

The proposed Phlx alternate specialist system is intended to add depth and liquidity to the Phlx equity markets by bringing added capital into the Exchange's specialist system. During periods of unusual or heavy trading in an issue, an alternate specialist may be called in by the specialist or a Floor Official. As with alternate specialist systems on other regional exchanges, [1] the alternate specialist is already present on the floor as a specialist in other issues traded on the exchange. To qualify as an alternate specialist, a Phlx member must meet the same financial requirements as other Phlx specialists.[2] Once an applicant qualifies, the Allocation, Evaluation and Securities Committee will assign one or more equity issues to the alternate specialist, following consultation with the Floor Procedure Committee. However, no alternate specialist may be assigned an issue in which he or any affiliated person, or the member organization with which the alternate is affiliated, is a specialist or registered options trader in an option overlying the equity issue.[3]

The proposed rules also impose "negative" and "affirmative" trading obligations on the alternate specialist, pursuant to Section 11 of the Act and the rules thereunder.[4] Consistent with its trading obligations under the Act to maintain a fair and orderly market, an alternate specialist is required under the rules to execute all orders in his assigned security, and, after having been called in by a floor official or the equity specialist, to establish a bid or offer in his assigned security at the request of a floor broker.[5] Proposed Rule 202A.(e) gives the Floor Procedure Committee authority to specify the percentage of an alternate specialist's volume that must be in his specialty stock.[6] Further, except under unusual circumstances, an alternate specialist is prohibited from initiating a transaction in an assigned stock from off the floor. The rules permit alternate specialists as a group to participate in the opening of any security on the Exchange with respect to any net imbalance following specialist participation.[7] Consistent with its stated purpose of adding liquidity to the market, the rules also mandate that an alternate specialist must accept and guarantee all 100 share agency orders in his assigned stock that are not accepted by the specialist.[8]

The Commission believes the Phlx alternate specialist system should achieve its intended purposes of adding depth and liquidity to the market, while conforming to the requirements of the Act and providing for the protection of investors. In particular, the rules conform to section 11(b) of the Act, and Rule 11b–1(a)(2) thereunder, by ensuring minimum capital requirements. The rules are also structured to ensure that alternate specialist trading contributes to the maintenance of a fair and orderly market. Specifically, the Commission views as important the provisions requiring the alternate specialist to establish a bid and offer in assigned stocks; restricting him from making off-floor transactions in assigned stocks; and providing a guarantee for all 100 share market orders. The Commission believes that these rules will assist the Phlx in ensuring that alternate specialist trading will be beneficial to investors and the market in general. Finally, by providing that the alternate specialist is a specialist as envisioned by section 11 of the Act, Phlx specialist compliance and surveillance rules will also apply to its alternate specialist system.[9]

Accordingly, the Commission believes that the proposed rule changes are in accordance with section 6(b)(5) of the Act. The capital that will be introduced in the market by the alternate specialist system should help to increase depth and liquidity in Phlx traded stocks, should facilitate transactions in securities, and help foster a free and open market. Further, the financial requirements imposed on alternate specialists are also consistent with the intent of that section, in that they will protect investors, and the public interest generally, by requiring alternate specialists to be adequately capitalized. The Commission therefore finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

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[1] The proposed Phlx alternate specialist system is substantially similar to alternate specialist systems on other regional exchanges. *See, e.g.*, Midwest Stock Exchange Article XIV.

[2] *See* proposed Phlx Rule 201A.(a). The proposed Phlx Rule provides that the Exchange's Allocation, Evaluation and Securities Committee shall ensure that an alternate specialist applicant substantially meets the same financial adequacy standards as equity specialists and options specialists. *See also* letter from William W. Uchimoto, Vice President, Phlx, to Stephen Luparello, Staff Attorney, Division of Market Regulation, SEC, dated July 22, 1987. Although the rule is broad enough to allow either equity or options specialists to be appointed alternate specialists, the Exchange, at this time, intends to limit the application of the rule to equity specialists. *See* telephone conversation between William W. Uchimoto and Stephen Luparello, August 14, 1987.

[3] *See* proposed Phlx Rule 201A.(b). *See also* proposed Phlx Rule 201A.01. which notes that the Committee may also consider the assignment factors set forths in Phlx Rule 501(b).

[4] 15 U.S.C. 78k. Generally, section 11(b) of the Act governs specialist rights and obligations. In particular, however, Rule 11b–1(a)(2) under the Act provides that the rules of an exchange concerning specialist registration must include provisions on the following: (1) Minimum capital requirements; (2) requirements that the specialist engage in a course of dealing for his own account that will assist in the maintenance of a fair and orderly market and that substantial, continued failure to meet these requirements will result in suspension or cancellation of the specialist's registration in his specialty stock(s); (3) provisions restricting the specialist's dealings to those necessary to maintain a fair and orderly market or to act as an odd-lot dealer; (4) provisions stating the responsibilities of the specialist as broker; and (5) procedures for the effective and systematic surveillance of specialist activities. According to the Phlx rules, an alternate specialist is a specialist as envisioned by section 11 of the Act.

[5] *See* proposed Phlx Rule 202A.11. Rule 202A.11 provides that the alternate specialist may only participate pursuant to a request by the specialist or a Floor Official.

[6] Initially, the Phlx has determined that 50% of an alternate specialist's volume (excluing all volume done as a specialist) must be in assigned stocks. Further, in a situation in which the alternate specialist is called in to participate in trading in an issue to which he is not assigned, the resulting volume will be counted toward the 50% requirements. *See* proposed Phlx Rule 202A.03.

[7] *See* proposed Phlx Rule 202A.06.

[8] *See* proposed Phlx Rule 202A.07. In executing the transaction, the alternate specialist must guarantee execution at the best consolidated quote system bid on a sell order, and the best consolidated quote system offer on a buy order.

[9] *See* proposed Phlx Rule 202A.(b).

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 19, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19535 Filed 8-25-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 20, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0214.
Form Number: 5695.
Type of Review: Resubmission.
Title: Residential Energy Credit Carryforward.
Description: This form is used by individual taxpayers to claim any unused residential energy credit carryforward the taxpayer may have from previous tax years.
Respondents: Individuals or households.
Estimated Burden: 20,755 hours.

OMB Number: 1545-0930.
Form Number: 8396.
Type of Review: Resubmission.
Title: Mortgage Interest Credit.
Description: Form 8396 is used by individual taxpayers to claim a credit against their tax for a portion of the interest paid on a home mortgage in connection with a qualified mortgage credit certificate. Internal Revenue Code section 25 allows the credit and Internal Revenue Code section 163(g) provides that the interest deduction on Schedule A will be reduced by the credit.
Respondents: Individuals or households.
Estimated Burden: 2,451 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-19514 Filed 8-25-87; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 20, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., WAshington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0203.
Form Number: 5329.
Type of Review: Extension.
Title: Return for Individual Retirement Arrangement and Qualified Retirement Plans Taxes.
Description: This form is used to compute and collect taxes related to distributions from individual retirement arrangements (IRAs) and other qualified plans. These taxes are excess contributions to an IRA, premature distributions from an IRA, and other qualified retirement plans excess accumulations in an IRA and excess distributions from qualified retirement plans. The data is used to help verify that the correct amount of tax has been paid.
Respondents: Individuals or households.
Estimated Burden: 113,059 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-19515 Filed 8-25-87; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

Dated: August 20, 1987.

By direction of the Administrator.

John J. McKenna,

Acting Director, Office of Systems Planning, Policy and Acquisition Control.

Reinstatement

1. Office of the General Counsel
2. Application for Accreditation as Service Organization Representative
3. VA Form 2-21
4. This information is needed to enable the VA to determine eligibility for accreditation as representative of a recognized service organization.
5. On occasion
6. Individuals or households
7. 1,100 responses
8. 275 hours
9. Not applicable

Extension

1. Department of Veterans Benefits
2. Pension Claim Questionnaire for Farm Income
3. VA Form 21–4165
4. This information is required to determine veterans and dependents eligibility for payment of pension benefits.
5. On occasion
6. Individuals or households
7. 25,000 responses
8. 12,500 hours
9. Not applicable

Revision

1. Department of Veterans Benefits
2. Notice of Default
3. VA Form 26–6850
4. This information is provided by holders of guaranteed or insured loans when default occurs by reason of nonpayment. This notification sets forth collection procedures for clearing the debt.
5. On occasion
6. Businesses or other for-profit
7. 85,192 responses
8. 14,199 hours
9. Not applicable

1. Department of Veterans Benefits
2. VA Application for Home Loan Guaranty
3. VA Form 26–1802a
4. This is joint form used by VA, HUD and FMHA to determine eligibility of potential home buyers for guaranty of home loans.
5. On occasion
6. Individuals or households; Businesses or other for-profit
7. 400,000 responses
8. 313,333 hours
9. Not applicable

Extension

1. Department of Veterans Benefits
2. Status of Loan Account—Foreclosure or Other Liquidation
3. VA Form Letter 26–567
4. This information is obtained from holders of loans in foreclosure and is needed to determine what amount to bid at the foreclosure sale.
5. On occasion
6. Businesses or other for-profit; and Small businesses or organizations
7. 41,800 responses
8. 20,900 hours
9. Not applicable

[FR Doc. 87–19566 Filed 8–25–87; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 165
Wednesday, August 26, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: At 8:00 a.m., Friday, August 28, 1987.

PLACE: In the Board Room, 6th Floor, 1700 G Street, NW., Washington, DC.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).

MATTERS TO BE CONSIDERED: Amendments to FSLIC regulations concerning insurance premiums, new regulations for financing corporation assessments in addition to FSLIC assessments, and book-entry procedure for financing corporation securities.

No. 9, August 24, 1987.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 87–19630 Filed 8–24–87; 12:12 pm]

BILLING CODE 6720–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 19, 1987.

TIME AND DATE: 10:00 a.m., Thursday, August 27, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: In addition to the previously announced items, the Commission will consider and act upon the following:

3. *Austin Power, Inc.*, Docket No. CENT 86–40, 86–59–R, etc. (Issues include whether Austin Power violated 30 CFR 77.1607(g) and 30 CFR 77.1710(g) and, if so, whether the violations were significant and substantial, and the civil penalty assessments were proper.)

4. *Local Union 2274, District 28, UMWA v. Clinchfield Coal Co.*, Docket No. VA 83–55–C. (Issues include the consideration of a petition for discretionary review.)

It was determined by a unanimous vote of Commissioners that these items be discussed in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean H. Ellen, (202) 653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87–19626 Filed 8–24–87; 11:18 am]

BILLING CODE 6735–01–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 14, 1987.

PLACE: On board MV MISSISSIPPI at foot of Eighth Street, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 87–19663 Filed 8–24–87; 1:39 pm]

BILLING CODE 3710–GX–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 15, 1987.

PLACE: On board MV MISSISSIPPI at City Front, vicinity of Beale Street, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 87–19664 Filed 8–24–87; 1:39 pm]

BILLING CODE 3710–GX–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 3:30 p.m., September 16, 1987.

PLACE: On board MV MISSISSIPPI at City Front, foot of Crawford Street, Vicksburg, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 87–19665 Filed 8–24–87; 1:39 am]

BILLING CODE 3710–GX–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 18, 1987.

PLACE: On board MV MISSISSIPPI at City Front, Morgan City, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 87–19666 Filed 8–24–87; 1:39 pm]

BILLING CODE 3710–GX–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, September 1, 1987.
PLACE: Board Room (Room 812A), Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.
STATUS: Open.
MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report:* Piedmont Airlines, Flight 467, Boeing 737–222, N752N, Charlotte Douglas International Airport, Charlotte, North Carolina, October 25, 1986.
2. *Railroad Accident Report:* Collision and Derailment of Southern Pennsylvania Transportation Authority Train, Upper Darby, Pennsylvania, August 23, 1986.
3. Safety Study—Uninspected Fishing Vessel Safety.

FOR MORE INFORMATION, CONTACT: Bea Hardesty, *Federal Register Liaison Officer.*

Bea Hardesty,
Federal Register Liaison Officer.
August 21, 1987.

[FR Doc. 87–19597 Filed 8–21–87; 4:38 pm]
BILLING CODE 7533–01–M

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Corrections

Federal Register
Vol. 52, No. 165
Wednesday, August 26, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 994

[Docket No. EMO-1]

Egg Marketing Order; Establishment of Programs Relating to Research, Consumer Education, and Advertising

Correction-

In proposed rule document 87-18124 appearing on page 29531 in the issue of Monday, August 10, 1987, make the following corrections on that page:

1. In the first column, under **SUPPLEMENTARY INFORMATION**, in the eighth line insert "member to administer programs and projects relating to" after the word "public".

2. In the second column, in the first complete paragraph, in the ninth line, the date should read "December 16, 1985".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 70470-7070]

Electronic Data Dissemination Policies and Guidelines

Correction

In notice document 87-19056 beginning on page 31442 in the issue of Thursday, August 20, 1987, make the following corrections:

1. On page 31443, in the first column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the sixth line, "not will" should read "not nor will".

2. On the same page, in the second column, under **Background**, in the fourth paragraph, in the fifth line, "relected" should read "selected".

3. On the same page, in the third column, in the fourth line, "patent" should read "patents".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42065B; FRL-3223-9]

2-Ethylhexanoic Acid; Technical Modification

Correction

In rule document 87-14673 beginning on page 24157 in the issue of Monday, June 29, 1987, make the following correction:

§ 799.1650 [Corrected]

On page 24158, in the first column, in § 799.1650(c)(3), in the fifth line, "§ 795.233(c)(2)(ii)(C)" should read "§ 795.223(c)(2)(ii)(C)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regs. No. 16]

Pension Funds for Deeming Purposes and Grandfathering Provisions

Correction

In rule document 87-18310 beginning on page 29840 in the issue of Wednesday, August 12, 1987, make the following correction:

§ 416.1202 [Corrected]

On page 29841, in the second column, in § 416.1202(a), in the 14th line, insert "also" after "are".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-39468; OR-943-07-4220-11: GP-07-247]

Realty Actions; Conveyance of Public Land; Order Providing for Opening of Land; Oregon

Correction

In notice document 87-18459 appearing on page 30259 in the issue of Thursday, August 13, 1987, make the following correction:

In the third column, in the 16th line, "20° 19' 14"" should read "28° 19' 14"".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-87-19]

Petition for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

Correction

In notice document 87-18770 beginning on page 30989 in the issue of Tuesday, August 18, 1987, make the following correction:

On page 30990, in the second column, under **DATE**, in the last line, the date should read "September 7, 1987".

BILLING CODE 1505-01-D

Federal Register

Wednesday
August 26, 1987

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Foreign Tax Credit; Application of Section 904 to Income Subject to Separate Limitations; Notice of Proposed Rulemaking and Public Hearing

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-931-86]

Foreign Tax Credit; Application of Section 904 to Income Subject to Separate Limitations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations and a notice of a public hearing relating to the application of section 904 with respect to income received or accrued by a taxpayer consisting of income described in section 904 (d). These proposed regulations are necessary because of the changes made to the applicable law by the Tax Reform Act of 1986. The regulations would provide the public with guidance needed to comply with that act and would affect individuals and entities claiming the foreign tax credit.

DATES: Written comments and /or requests to appear at a public hearing scheduled for November 12, 1987 must be delivered or mailed by October 26, 1987. The amendments are proposed generally to be effective for taxable years beginning after December 31, 1986. Paragraph (c)(2) of § 1.904–6 applies to taxable years beginning after December 31, 1987.

ADDRESS: Send comments and requests to appear at the public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL–931–86), Washington, DC 20224. The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marnie J. Carro or Carolyn M. DuPuy of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3499).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 904 of the Internal Revenue Code of 1954. These amendments are proposed to provide regulations under section 904 (d) which was amended by section 1201 of the Tax Reform Act of 1986 (Pub. L. 99–514).

Prior Law

Prior to 1987, the foreign tax credit limitation was generally determined in the following manner: The taxpayer totaled its net income and net losses from all sources outside the United States and calculated one aggregate limitation based on the total. Separate foreign tax credit limitations were calculated, however, for certain categories of income that bore high or low rates of foreign tax or that could easily be earned in low-tax countries rather than in the United States. For example, section 904 (d)(3) provided that dividends, interest, or subpart F income earned or accrued by a United States person that was attributable to certain types of passive interest income earned by the payor would be subject to a separate foreign tax credit limitation. This separate limitation prevented taxpayers from inflating their foreign tax credit limitation by averaging low-taxed interest income with high-taxed active business income and thereby distorting the foreign tax credit.

Statutory Provision

Section 1201 of the Tax Reform Act of 1986 (the Act) amends section 904 (d) by replacing the separate limitation for interest income with a separate limitation for passive income generally. In addition, the Act requires that a taxpayer calculate a separate foreign tax credit limitation for financial services income, high withholding tax interest, shipping income, and dividends from each noncontrolled section 902 corporation. This discussion incorporates changes to the Act proposed in the Technical Corrections Act of 1987.

Section 904 (d)(2)(A) defines passive income as any income received or accrued by any person that is of a kind that would be foreign personal holding company income, as defined in section 954 (c). Passive income also includes any amount includible in gross income under section 551 or section 1293. Passive income does not include any income that is defined under section 904 (d) as high withholding tax interest, financial services income, shipping income, or dividends from a noncontrolled section 902 corporation. In addition, passive income does not include any high-taxed income, any export financing interest, or any foreign oil and gas extraction income.

Section 904 (d)(2)(B) defines income as high withholding tax interest if the interest is subject to a foreign withholding tax and the rate of the tax applicable to such income is at least 5 percent. High withholding tax interest, like passive income, does not include export financing interest.

Section 904 (d)(2)(C) defines financial services income as certain income that is derived by a person that is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. Financial services income also includes income that would otherwise be passive income or shipping income. Section 904 (d)(2)(C)(iii) excludes export financing interest, high withholding tax interest, and dividends from a noncontrolled section 902 corporation from the definition of financial services income.

Section 904 (d)(2)(D) defines shipping income as any income of a kind that would be foreign base company shipping income, as defined in section 954 (f). Shipping income does not include dividends from a noncontrolled section 902 corporation of financial services income.

Section 904(d)(2)(E) defines a noncontrolled section 902 corporation as any foreign corporation in which the taxpayer meets the stock ownership requirements of section 902(a) or section 902(b). However, a controlled foreign corporation (CFC) will not be treated as a noncontrolled section 902 corporation with respect to periods when it was a CFC. A special rule is provided that limits the amount of foreign taxes available for credit under section 902 if the tax is attributable to high withholding interest received or accrued by a noncontrolled section 902 corporation.

Section 902(d)(2)(F) defines high-taxed income. As stated above, high-taxed income is specifically excluded from the definition of passive income. Under section 904(d)(2)(F), passive income will be considered to be high-taxed income (and, therefore, not passive income) if the sum of the foreign taxes paid and deemed paid by the taxpayer with respect to that income exceeds the highest rate of United States tax multiplied by the amount of such income. The high-tax "kick-out" applies after allocation of expenses at the taxpayer level.

Section 904(d)(2)(G) defines export financing interest. As stated above, export financing interest is specifically excluded from the definitions of passive income, high withholding tax interest, and financial services income. Export financing interest is defined as interest derived from financing the sale (or other disposition) for use or consumption outside the United States of any

property that is manufactured, produced, grown, or extracted in the United States by the interest recipient or a related person, and not more than 50 percent of the fair market value of which is attributable to products imported into the United States.

Section 904(d)(3) (A), (B), (C), and (D) provides that dividends, interest, rents, or royalties received or accured by a United States shareholder from a CFC will be treated as income subject to a separate limitation to the extent that the income of the payor is itself subject to one or more of the separate limitations. Subpart F inclusions are also subject to this look-through rule. A special look-through rule is provided with respect to interest payments made by a CFC to a United States shareholder or to a CFC related to a United States shareholder. Section 954(b)(5) is amended to provide that any interest paid or accrued by a CFC to any United States shareholder (or to any CFC related to such shareholder) shall be allocated first to foreign personal holding company income which is passive income. Therefore, these interest payments will be considered to be attributable to passive income of the CFC for purposes of the look-through rule on interest.

Section 904(d)(3)(E) provides that, if a CFC is considered to have no subpart F income for the taxable year pursuant to the de minimis rule provided in section 954(b)(3)(A), none of its income for such taxable year shall be treated as income in a separate category. For purposes of applying the dividend look-through rule, passive income of a CFC that meets the requirements of section 954(b)(4) (the taxpayer establishes that the income was subject to a high rate of foreign tax) will not be considered to be income subject to a separate category.

Section 904(d)(3)(H) provides that the look-through rules will not apply to an interest payment that is subject to a high withholding tax if the payment would be allocable under the look-through rules to financial services income of a controlled foreign corporation.

Explanation of Proposed Regulations

The proposed regulations incorporate changes proposed to be made to the Tax Reform Act of 1986 by the Technical Corrections Act of 1987.

Section 1.904–6 (a) provides that a taxpayer must compute a separate foreign tax credit limitation for income within each of the following separate limitations: (1) Passive income, (2) high withholding tax interest, (3) financial services income, (4) shipping income, (5) dividends from each noncontrolled section 902 corporation, (6) DISC dividend income, (7) foreign trade income, (8) FSC income, and (9) general limitation income.

Section 1.904–6(b)(1) defines the term "passive income." Paragraph (b)(2)(i) provides rules for determining whether rents or royalties are derived in the active conduct of a trade or business. A special rule is provided for certain affiliated corporations. Paragraph (b)(2)(ii) provides rules for determining whether certain types of royalties derived by a CFC will be treated as general limitation income for purposes of the look-through rules.

Section 1.904–6(c)(1) provides rules for determining whether an item of income that is otherwise passive income is high-taxed income and, therefore, should be treated as general limitation income. Paragraph (c)(2) provides grouping rules for purposes of determining whether an item of passive income is high-taxed income. The grouping rules are proposed to be effective for taxable years beginning after December 31, 1987. See Notice 87–6, 1987–3 I.R.B. 8, for the grouping rules for taxable years beginning after December 31, 1986 and before January 1, 1987. Paragraph (c)(3) provides rules relating to the determination of whether an amount included in gross income under section 951(a) is high-taxed income if additional taxes are paid or deemed paid in the year of receipt of this income. Taxpayers are invited to comment on the appropriate treatment of a change in the effective tax rate on an inclusion due to a difference between the amount of tax accrued and the amount actually paid.

The proposed regulations do not address the application of the rules in paragraph (c) to gains and losses resulting from a change in the effective rate of tax because of exchange rate fluctuations between the time an amount is included in the gross income of a United States shareholder of a controlled foreign corporation under section 951 and the distribution to the United States shareholder of earnings attributable to that amount. For example, if passive income is treated as general limitation income in the year of inclusion because it is high-taxed income, a currency gain in the year of distribution arguably affects the effective rate of tax on the inclusion amount and therefore would require a redetermination of the character of the inclusion. As another example, if passive income is not treated as general limitation income in the year of inclusion because it is not high-taxed income, a currency loss in the year of distribution arguably affects the effective rate of tax on the inclusion amount and therefore would required a redetermination of the character of the inclusion. Paragraph (c) also does not address the appropriate treatment of exchange gain or loss with respect to remittances from branches and from other entities subject to the look-through rules. Taxpayers are invited to comment on the appropriate treatment in these cases and other related cases.

Paragraph (c)(4) provides special rules for determining whether income that has been taxed under an integrated tax system is high-taxed income. Taxpayers are invited to comment on the application of this rule to cases in which the foreign tax system does not provide a mechanism for tracing distributions out of a particular year's earnings.

Section 1.904–6(d) defines the term "high withholding tax interest." High withholding tax interest does not include any interest described as export financing interest.

Section 1.904–6(e)(1) defines the term "financial services income." Paragraph (e)(2) describes income derived in the active conduct of a banking, insurance, financing, or similar business which relates to the definition of financial services income and the definition of a financial services entity. Paragraph (e)(3)(i) provides a definition of a financial services entity. Paragraph (e)(3)(ii) provides a special rule for affiliated groups. Paragraph (e)(3)(iii) provides a rule for treatment of partnerships and other pass-through entities. Paragraph (e)(4) describes incidental income that will be considered to be financial services income if earned by a financial services entity. Paragraph (e)(5) describes income that is excluded from the definition of financial services income.

Section 1.904–6(f) defines the term "shipping income." Shipping income does not include dividends received from a noncontrolled section 902 corporation or financial services income.

Section 1.904–6(g)(1) defines the term "noncontrolled section 902 corporation." Paragraph (g)(2)(i) provides a rule for the treatment of dividends from noncontrolled section 902 corporations. Paragraph (g)(2)(ii) provides a special rule for determining whether a controlled foreign corporations owns stock in a noncontrolled section 902 corporation. Paragraph (g)(2)(iii) provides rules relating to dividends from a noncontrolled section 902 corporation that are attributable to high withholding tax interest earned by the corporation. Paragraph (g)(3) provides a rule for the treatment of dividends from a CFC attributable to a period when the CFC was neither a CFC nor a noncontrolled section 902 corporation.

Section 1.904–6(h)(1) defines the term "export financing interest." Paragraph (h)(4)(i) provides that export financing interest that is also related person factoring income (within the meaning of section 864(d)(1)) shall be subject to a taxpayer's passive limitation unless the taxpayer is a financial services entity. If the taxpayer is a financial services entity, such income will be subject to the separate limitation for financial services income. Paragraph (h)(4)(iii) provides that income derived from factoring receivables that is not considered to be related person factoring income under section 864(d)(1) because it is income described in section 864(d)(7) (income on a trade or service receivable acquired from a related person in the same foreign country as the recipient) will be treated in the same manner as interest income that is excepted from related person factoring treatment because of the same country exception. This income shall be treated as general limitation income unless the income is earned by a financial services entity. If the income is earned by a financial services entity, it will be subject to the separate limitation for financial services income.

Section 1.904–6(i) provides rules relating to the interaction of section 907 (c) (oil and gas income) and income described in the separate limitations.

Section 1.904–6(j) provides priority rules in the case of income that meets the definitions of more than one category of separate limitation income.

Section 1.904–7 provides look-through rules for CFCs and other entities. Paragraph (a)(1) defines the term "separate category" of income. Paragraph (a)(2) defines the term "controlled foreign corporation." Paragraph (a)(3) defines the term "United States shareholder."

Section 1.904–7(b) provides that dividends, interest, rents, and royalties received or accrued by a taxpayer from a controlled corporation will be general limitation income unless under the look-through rules they are allocated or attributable to another separate category of income.

Section 1.904–7(c)(1) provides for look-through treatment of section 951 (a)(1)(A) inclusions. Paragraph (c)(2)(i) provides that interest that is received or accrued from a CFC in which the taxpayer is a United States shareholder shall be treated as income in a separate category to the extent it is allocable to income of the CFC in that category. Paragraph (c)(2)(ii) provides rules for allocating expenses of a CFC to the income of the CFC in separate categories if interest is paid to a U.S. shareholder of the CFC. Pursuant to section 954(b)(5), this paragraph provides that such related person interest is allocated to passive income of the CFC to the extent of such passive income (the "netting rule"). Any excess of related person interest over passive income ("excess related person interest") is allocated among the CFC's separate categories (other than passive) on the basis of the assets in each such category. Other interest expense of the CFC is allocated among the CFC's separate income categories, including passive income, on the basis of the assets in each such category (reduced by related person debt allocable to that category), including assets in the passive category.

The Internal Revenue Service will reassess this rule in the process of adopting final regulations. For example, the following alternative will be considered in that process. Excess related person interest would be allocated in the same manner as interest expense other than definitely related interest and related person interest. Under this rule, related person interest would be allocated among a CFC's separate categories on the basis of assets in each separate category, including passive assets, with passive assets reduced by related person debt attributable to the passive category under the netting rule. The amount of excess related person interest that could be allocated to passive income under this rule would be limited to an amount that, when combined with related person interest allocated to the passive category under the netting rule, would not exceed the related person interest that would have been allocated to the passive category under § 1.861–8 without regard to the netting rule. Taxpayers are invited to comment on the relative merits of the rule as proposed, the suggested alternative, and any other alternatives.

Paragraph (c)(3) provides that rents or royalties received or accrued from a CFC shall be treated as income in a separate category to the extent allocable to the income of the CFC in that category. Paragraph (c)(4)(i) provides that dividends shall be treated as income in a separate category in proportion to the ratio of the portion of earnings and profits attributable to income in such category to the total amount of earnings and profits of the CFC. Paragraph (c)(4)(ii) provides a special rule for dividends attributable to loans made to the CFC payor by a related person.

Section 1.904–7(d) provides that, if a CFC satisfies the de minimis rule of section 904(b)(5), all of the CFC's gross foreign base company income and gross insurance income shall be treated as general limitation income. Paragraph (d)(2) provides that, for purposes of the dividend look-through rule, an item of net income that would otherwise be passive income will be treated as general limitation income if the taxpayer elects to establish that such income was subject to a high effective rate of foreign income tax.

Section 1.904–7(e) provides that if all of a CFC's income is treated as Subpart F income because the CFC's foreign base company income and gross insurance income exceeds 70 percent of the CFC's gross income, the look-through shall apply to all of the CFC's income, including the amount of income that would not otherwise have been considered to be Subpart F income without the application of the 70 percent full inclusion rule.

Section 1.904–7(f)(1) provides that if a taxpayer receives interest that is allocable to financial services income of a CFC that would be treated as high withholding tax interest if the look-through rules did not apply, such interest shall be treated as high withholding tax interest.

Section 1.904–7(g) provides rules for the application of the look-through rules to related CFCs. Section 1.904–7(h) provides rules for the application of the look-through rules to certain domestic corporations. Section 1.904–7(i)(1) provides rules for the application of the look-through rules to partnerships. Paragraph (i)(2) provides an exception to the look-through rules for certain general and limited partnership interests.

Section 1.904–7(j) provides ordering rules for purposes of determining the character of income received or accrued by a person from a related person if the payor or another related person also receives or accrues income from the recipient and the look-through rules apply to the income in all cases.

Section 1.904–7(l) provides rules for the application of section 904(g) to income of a CFC. The application of section 904(g) to income of United States-owned foreign corporations other than CFCs is not addressed in these rules. Paragraph (l)(2) provides rules for determining the portion of an interest payment that is allocable to income earned by a CFC from sources within the United States. Paragraph (l)(4) provides rules for determining the portion of a dividend paid by a CFC from sources within the United States. Paragraph (l)(5) provides rules for determining the portion of an amount included in gross income under section 951(a) from sources within the United

States. Paragraph (l)(6) provides that the section 78 amount shall be treated as United States source income to the extent that it is attributable to taxes paid with respect to United States source income. Paragraph (l)(7) provides a special rule for income that is United States source income under the Code but is treated as foreign source income pursuant to an income tax convention with the United States.

Section 1.904–7(m) provides an ordering rule for the application of sections 904(d), (f), and (g).

Section 1.904–7(n) provides the effective date of the look-through rules.

Section 1.904–8 provides rules for the allocation of taxes to a separate category of income. Paragraph (a)(1) provides the general rule for allocating taxes to separate categories of income. Paragraph (a)(2) provides a special rule for the treatment of foreign taxes allocable to certain dividends from noncontrolled section 902 corporations.

Section 1.904–8(b)(1) provides rules for the determination of the deemed paid credit under sections 902 and 960 for taxes allocated to different categories of income. Paragraph (b)(2) provides a special allocation rule for taxes on income excluded from subpart F under section 954(b)(4). Paragraph (b)(3) provides rules for distributions received from foreign corporations if the distributions are excluded from gross income under section 959(b). Paragraph (b)(4) provides that the section 78 amount shall be treated as income in a separate category to the extent that it is attributable to taxes paid with respect to income in that category. Paragraph (b)(5) provides that the increase in foreign tax credit limitation under section 960(b) shall be determined with regard to the applicable category of income under section 904(d).

Section 1.904–9 provides transition rules for the application of section 904(d). Paragraph (a) provides rules for the characterization of distributions and section 951(a)(l)(B) inclusions of earnings of a foreign corporation accumulated in taxable years beginning before January 1, 1987 during taxable years for both the payor foreign corporation and the recipient which begin after December 31, 1986. Paragraph (b) provides rules for the application of the look-through rules to distributions (including deemed distributions) and payments by an entity to a recipient when one's taxable year begins before January 1, 1987 and the other's taxable year begins after December 31, 1986. Paragraph (c) provides a transitional rule for income received after the effective date of the Act attributable to an installment sale that occurred prior to the effective date of the Act. Paragraph (d) provides a special effective date for high withholding tax interest earned with respect to qualified loans described in section 1201(e)(2) of the Act. Paragraph (e) provides a rule for the characterization of amounts subject to recapture under section 585(c).

Section 701 of the Act (relating to the limitation on the use of foreign tax credits against minimum tax liability) shall apply notwithstanding any treaty provisions in effect on the date of enactment of the Act.

Comments and Requests To Appear at the Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held on November 12, 1987 in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

Special Analysis

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal authors of this regulation are Marnie J. Carro and Carolyn M. DuPuy of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects in 26 CFR 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are as follows:

Income Tax Regulations

Paragraph 1. The authority for Part 1 continues to read in part:

PART 1—[AMENDED]

Authority: 26 U.S.C. 7805. * * * Section 1.904–6 also issued under 26 U.S.C. 904 (d)(5). * * *

Par. 2. New § 1.904–6 through § 1.904–9 are added immediately after § 1.904–5. The added sections read as follows:

§ 1.904–6 Separate application of section 904 with respect to certain categories of income.

(a) *In general.* A taxpayer is required to compute a separate foreign tax credit limitation for income received or accrued in a taxable year that is described in section 904 (d) (1) (A) (passive income), (B) (high withholding tax interest), (C) (financial services income), (D) (shipping income), (E) (dividends from each noncontrolled section 902 corporation), (F) (dividends from a DISC or former DISC), (G) (foreign trade income), (H) (distributions from a FSC or former FSC), or (I) (general limitation income).

(b) *Passive income*—(1) *In general.* The term "passive income" means any—

(i) Income received or accrued by any person that is of a kind that would be foreign personal holding company income (as defined in section 954 (c)), including any amount of gain on the sale or exchange of stock in excess of the amount treated as a dividend under section 1248; or

(ii) Amount includible in gross income under section 551 or section 1293.

Passive income does not include any income that is described in another subparagraph of section 904 (d) (1), any export financing interest (as defined in section 904 (d) (2) (G) and paragraph (h) of this section), any high-taxed income (as defined in section 904 (d) (2) (F) and paragraph (c) of this section), or any foreign oil and gas extraction income (as defined in section 907 (c)). In determining whether any income is of a kind that would be foreign personal holding company income, the rules of section 864 (d) (6) shall apply only in the case of income of a controlled foreign corporation (as defined in section 957).

(2) *Active rents or royalties*—(i) *In general.* Passive income does not include any rents or royalties that are derived in the active conduct of a trade

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or business and received from a person who is an unrelated person. Except as provided in paragraph (b) (2) (ii) of this section, the principles of § 1.954–2 (d) (1) shall apply in determining whether rents or royalties are derived in the active conduct of a trade or business. For this purpose, the term "taxpayer" shall be substituted for the term "controlled foreign corporation" if the recipient of the rents or royalties is not a controlled foreign corporation. If rents or royalties are received or accrued by a United States corporation from an unrelated person, the active trade or business requirement may be satisfied by the recipient or by—

(A) A corporation that is a member of an affiliated group of corporations (within the meaning of section 1504 (a)) of which the recipient is a member if the group files a return on a consolidated basis; or

(B) A controlled foreign corporation of which the recipient of the income is a United States shareholder (as defined in section 951 (b)).

(ii) *Royalties earned by a controlled foreign corporation.* Royalties are considered derived in the active conduct of a trade or business by a controlled foreign corporation for purposes of section 904 (but not for purposes of section 954 unless, without regard to this paragraph (b) (2) (ii), the requirements of section 954 (c) (2) (A) and the regulations thereunder are satisfied) if:

(A) The property which the controlled foreign corporation licenses is property which the United States shareholder of the controlled foreign corporation (or any other member of the affiliated group (as defined in section 1504(a)) of which the United States shareholder is a member) has developed, created, or produced, or has acquired or added substantial value to, but only if the United States shareholder (or a member of the United States shareholder's affiliated group) is regularly engaged in the development, creation, or production of, or the acquisition and addition of substantial value to, and licensing of such property, and

(B) The controlled foreign corporation's activities are an essential economic element in the realization of the royalties.

A controlled foreign corporation's activities are an essential economic element in the realization of royalty income only if the controlled foreign corporation performs significant services, sales, or manufacturing activities incident to the production of such income.

(iii) *Unrelated person.* For purposes of this paragraph (b)(2), a person is considered to be an unrelated person if the person is not a related person within the meaning of section 954(d)(3), without regard to whether the relationship described in section 954(d)(3) is between a controlled foreign corporation and another person or between two persons neither one of which is a controlled foreign corporation.

(iv) *Examples.* The following examples illustrate the application of paragraph (b)(2)(ii) of this section.

Example (1). Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. S is regularly engaged in the restaurant franchise business. P licenses trademarks, tradenames, certain know-how, related services, and certain restaurant designs for which S pays P an arm's length royalty. P is regularly engaged in the development and licensing of such property. The royalties received by P for the use of its property are allocable under the look-through rules of § 1.904–7 to the royalties S receives from the franchisees. All of the franchisees are unrelated to S or P and operate in S's country of incorporation. S employs a substantial staff in its country of incorporation that regularly engages in selecting franchisees, training employees of franchisees, marketing of products, developing an independent supplier network, providing quality control, selecting restaurant sites, and providing other services to franchisees. S does not satisfy the active trade or business requirements of § 1.954–2(d)(1) but its activities are an essential economic element in the realization of the royalty income. Therefore, the royalty income earned by S with regard to its franchisees is foreign personal holding company income that is general limitation income, and the royalties paid to P are general limitation income to P.

Example (2). Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. P is a soft drink manufacturer and S manufactures the syrup used in P's soft drinks. P licenses tradenames, trademarks, and certain product designs to S which S relicenses to unrelated bottlers. P is regularly engaged in the development and licensing of such property. The income S receives consists of general limitation non-Subpart F sales income and Subpart F foreign personal holding company royalty income. The royalties received by P for the use of its property are allocable under the look-through rules of § 1.904–7 to the royalty income earned by S. S does not satisfy the active trade or business requirement of § 1.954–2(d)(1) but its activities are an essential economic element in the realization of the royalty income. Therefore, the royalty income S earns is Subpart F foreign personal holding company income that is general limitation income, and the royalties paid to P are general limitation income to P.

(c) *High-taxed income*—(1) *In general.* Income received or accrued by a United States person that would otherwise be passive income shall not be treated as passive income if the income is determined to be high-taxed income. Income shall be considered to be high-taxed income if, after allocating expenses of the United States person to that income, the sum of the foreign income taxes paid or accrued by the United States person with respect to such income and the foreign taxes deemed paid or accrued by the United States person with respect to such income under section 902 or section 960 exceeds the highest rate of tax specified in section 1 of section 11, whichever applies (and with reference to section 15 if applicable), multiplied by the amount of such income (including the amount treated as a dividend under section 78). If, after application of this paragraph, income that would otherwise be passive income is determined to be high-taxed income, it shall be treated as general limitation income, and any taxes imposed on that income shall be considered related to general limitation income under § 1.904–8.

(2) *Grouping of items of income in order to determine whether passive income is high-taxed income*—(i) *In general.* For purposes of determining whether passive income is high-taxed income, the grouping rules of this paragraph (c)(2) apply. These rules shall be applied separately to items of income received or accrued from or inclusions with respect to each controlled foreign corporation of which the taxpayer is a United States shareholder. These rules shall be applied separately to income attributable to each qualified business unit (as defined in section 989(a)) of a taxpayer. These rules shall also be applied separately to income attributable to each qualified business unit of a controlled foreign corporation or any other entity subject to the look-through rules of § 1.904–7. Notwithstanding the preceding sentence, a taxpayer shall not apply these rules separately to income from each qualified business unit that is income described in paragraph (c)(2)(v) of this section (income that does not carry with it any direct foreign tax credits). The rules contained in this paragraph (c)(2) apply to taxable years beginning after December 31, 1987.

(ii) *Amounts received or accrued by a United States shareholder of a controlled foreign corporation*—(A) *Rents or royalties.* All rents or royalties received or accrued by a taxpayer during the taxable year from a controlled foreign corporation of which the taxpayer is a United States shareholder that are (after application of the look-through rules of section 904(d)(3) and § 1.904–7) allocable to passive income of the controlled foreign

corporation shall be treated as a single item of income and shall not be grouped with other amounts.

(B) *Other amounts received or accrued by a United States shareholder.* All amounts, other than rents or royalties described in paragraph (c)(2)(ii)(A) of this section and dividends described in paragraph (c)(2)(ii)(C) of this section, received or accrued by a taxpayer during the taxable year from a controlled foreign corporation of which the taxpayer is a United States shareholder that are (after application of the look-through rules of section 904(d)(3) and § 1.904–7) allocable to passive income of the controlled foreign corporation shall be treated as a single item of income and shall not be grouped with other amounts.

(C) *Dividends received or accrued by United States shareholders.* Dividends received or accrued by a taxpayer during the taxable year from a controlled foreign corporation of which the taxpayer is a United States shareholder that are (after application of the look-through rules of section 904(d)(3) and § 1.904–7) attributable to periods when the controlled foreign corporation was neither a controlled foreign corporation nor a noncontrolled section 902 corporation (as described in paragraph (g)(3) of this section) shall be treated as a single item of income and shall not be grouped with other amounts.

(iii) *Subpart F inclusions*—(A) *Attributable to passive rent or royalty income.* All amounts included in the gross income of a United States shareholder under section 951(a)(1) for a particular year that (after application of the look-through rules of section 904(d)(3) and § 1.904–7) are attributable to passive income consisting of rents or royalties received or accrued by a controlled foreign corporation shall be treated as a single item of income and shall not be grouped with other amounts.

(B) *Attributable to passive income other than passive rent or royalty income.* All amounts included in the gross income of a United States shareholder under section 951(a)(1) for a particular year that (after application of the look-through rules of section 904(d)(3) and § 1.904–7) are attributable to passive income consisting of income other than rents or royalties received or accrued by a controlled foreign corporation shall be treated as a single item of income and shall not be grouped with other amounts.

(iv) *Amounts paid or accrued to a taxpayer other than a United States shareholder that carry direct foreign credits*—(A) *Rents or royalties.* All passive income consisting of rents or royalties received or accrued by a taxpayer during the taxable year from a person other than a controlled foreign corporation of which the taxpayer is a United States shareholder and with respect to which an income tax described in § 1.901–2(a) is paid or accrued shall be treated as a single item of income and shall not be grouped with other amounts.

(B) *Other income.* All passive income not consisting of rents or royalties that are received or accrued by a taxpayer during the taxable year from a person other than a controlled foreign corporation of which the taxpayer is a United States shareholder with respect to which an income tax described in § 1.901–2(a) is paid or accrued shall be treated as a single item of income and shall not be grouped with other amounts.

(v) *Certain income that does not carry direct foreign tax credits.* All passive income that is received or accrued by a taxpayer during the taxable year from a person other than a controlled foreign corporation of which the taxpayer is a United States shareholder with respect to which no income tax described in § 1.901–2(a) is paid or accrued shall be treated as a single item of income and shall not be grouped with other amounts.

(vi) *Certain partnership income.* A partner's distributive share of partnership income that is treated as passive income under § 1.904–7(i)(2) shall be treated as as single item of income and shall not be grouped with other amounts.

(3) *Application of this paragraph to additional taxes paid or deemed paid in the year of receipt of previously taxed income*—(i) *Determination made in year of inclusion.* The determination of whether an amount included in gross income under section 951(a) is high-taxed income shall be made in the taxable year the income is included in the gross income of the United States shareholder under section 951(a) (hereinafter the "taxable year of inclusion"). Thus, any additional foreign tax paid or accrued, or deemed paid or accrued, when the taxpayer receives an amount that is excluded from gross income under section 959(a) and that is attributable to a controlled foreign corporation's earnings and profits relating to the amount previously included in gross income will not be considered in determining whether the amount included in income in the taxable year of inclusion is high-taxed income.

(ii) *Exception.* The provisions of paragraph (c)(3)(i) of this section shall not apply to the extent that the taxpayer receives a distribution that is excluded from gross income under section 959(a) and the distribution is received within 30 or more days prior to the day that the taxpayer files its return for the taxable year of inclusion of the amount to which the distribution is attributable (the "prefiling period"). In such a case, for purposes of determining whether the amount included in income in the taxable year of inclusion is high-taxed income, the United States shareholder shall consider as taxes attributable to that inclusion all foreign taxes paid or accrued, or deemed paid or accrued, prior to the end of the prefiling period with respect to that inclusion.

(iii) *Allocation of foreign taxes imposed on distributions of previously taxed income.* If an item of income is considered high-taxed income in the year of inclusion, then any additional foreign income taxes imposed with respect to that item shall be considered to be related to general limitation income. If an item of income is not considered to be high-taxed income in the taxable year of inclusion, the following rules shall apply. The taxpayer shall treat taxes paid or accrued, or deemed paid or accrued, on any distribution of the earnings and profits attributable to the amount included in gross income in the taxable year of inclusion as taxes related to passive income to the extent of the excess of the product of (A) the highest rate of tax in section 11 (determined with regard to section 15 and determined as of the year of inclusion) and (B) the amount of the inclusion (after allocation of parent expenses) over (C) the taxes paid or accrued, or deemed paid or accrued, in the year of inclusion. The taxpayer shall treat any taxes paid or accrued, or deemed paid or accrued, on the distribution in excess of this amount as taxes related to general limitation income.

(4) *Application of this paragraph to certain reductions of tax on distributions of income*—(i) *In general.* If the effective rate of tax imposed by a foreign country on income of a foreign corporation that is included in a taxpayer's gross income may be reduced under foreign law on distribution of such income, the rules of this paragraph (c) apply at the time that the income is included in the taxpayer's gross income without regard to the possibility of subsequent reduction of foreign tax on the distribution. If the inclusion is considered to be high-taxed income, then the taxpayer shall treat the inclusion as general limitation income. If the foreign corporation distributes the

earnings and profits to which the inclusion was attributable, then the taxpayer shall redetermine whether the inclusion should be considered to be high-taxed income. If, taking income into account the reduction in foreign tax, the inclusion would not have been considered high taxed income, then the taxpayer shall redetermine its foreign tax credit for the year or years affected and shall treat the inclusion and the associated taxes (as reduced on the distribution) as passive income and taxes. See section 905(c) and the regulations thereunder regarding the method of adjustment.

(ii) *Exception.* The provisions of paragraph (c)(4)(i) of this section shall not apply to the extent that the taxpayer receives a distribution that is excluded from gross income under section 959(a) within the prefiling period, as defined in paragraph (c)(3)(ii) of this section. In such a case, for purposes of determining whether the amount included in income in the taxable year of inclusion is high-taxed income, the United States shareholder shall consider as taxes paid or accrued, or deemed paid or accrued, with respect to that inclusion all foreign taxes paid or accrued, or deemed paid or accrued (as reduced at the time of distribution) prior to the end of the prefiling period with respect to that inclusion.

(iii) *Interaction with section 954(b)(4).* If the effective rate of tax imposed by a foreign country on income of a foreign corporation may be reduced under foreign law on distribution of that income, the rules of section 954(b)(4) shall be applied without regard to the possibility of subsequent reduction of foreign tax. If a taxpayer excludes passive income from a controlled foreign corporation's foreign personal holding company income under these circumstances, then the income shall be considered to be passive income until distribution of that income. At that time, the rules of this paragraph (c) shall apply to determine whether the income is high-taxed income and, therefore, general limitation income.

(5) *Examples.* The following examples illustrate the application of this application of this paragraph (c).

Example (1). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. S is a single qualified business unit (QBU). In 1988, S earns $130 of gross passive royalty income, and incurs $30 of expenses that do not include any payments to P. S's $100 of net passive royalty income is subject to $30 of foreign tax, and is included under section 951 in P's gross income for the taxable year. P allocates $50 of expenses to the $100 (consisting of the $70 section 951 inclusion and $30 section 78 amount), resulting in a net inclusion of $50. After application of the high-tax kick-out rules of paragraph (c)(2)(iii)(A) of this section, the $50 inclusion is treated as general limitation income, and the $30 of taxes deemed paid are treated as taxes imposed on general limitation income, because the foreign taxes paid and deemed paid on the income exceed the highest United States tax rate multiplied by the $50 inclusion ($30>$17 (.34 × $50)).

Example (2). The facts are the same as in example (1) except that instead of earning $130 of gross passive royalty income, S earns $65 of gross passive royalty income and $65 of gross passive interest income. S incurs $15 of expenses and $5 of foreign tax with regard to the royalty income and incurs $15 of expenses and $10 of foreign tax with regard to the interest income. P allocates $50 of expenses pro rata to the $50 inclusion ($45 section 951 inclusion and $5 section 78 amount) attributable to the royalty income earned by S and the $50 inclusion ($40 section 951 inclusion and $10 section 78 amount) attributable to the interest income earned by S. Pursuant to paragraph (c)(2)(ii)(A) and (B) of this section, the high-tax kick-out rules are applied separately to the section 951 inclusion attributable to the royalty income and the section 951 inclusion attributable to the interest income. Therefore, after allocation of P's $50 of expenses, the resulting $25 inclusion attributable to the royalty income is still treated as passive income because the foreign taxes paid and deemed paid on the income do not exceed the highest United States tax rate multiplied by the $25 inclusion ($5<$8.50 (.34 × $25)). The $25 inclusion attributable to the interest income is treated as general limitation income because the foreign taxes paid and deemed paid exceed the highest United States tax rate multiplied by the $25 inclusion ($10>$8.50 (.34 × $25)).

Example (3). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. S is incorporated in country X and has branches in country Y and country Z. The branches are qualified business units (QBUs), within the meaning of section 989(a). In 1988, S earns $65 of gross passive royalty income in each QBU and allocates $15 of expenses to the gross passive royalty income earned by each QBU, resulting in net income of $50 in each QBU. Country X imposes $5 of foreign tax on the $50 of net royalty income earned in X, and country Y imposes $10 of tax on the $50 of net royalty income earned in Y. All of S's income constitutes subpart F foreign personal holding company income that is passive income and is included in P's gross income for the taxable year. P allocates $50 of expenses pro rata to the $100 Subpart F inclusion attributable to each QBU (consisting of the $45 section 951 inclusion derived through QBU X, the $5 section 78 amount attributable to QBU X, the $40 section 951 inclusion derived through QBU Y, and the $10 section 78 amount attributable to QBU Y), resulting in a net inclusion of $50. Pursuant to paragraph (c)(2)(iii)(A) of this section, the high-tax kick-out rules must be applied separately to the Subpart F inclusion attributable to the royalty income earned by QBU X and the royalty income earned by QBU Y. After application of the high-tax kick-out rules, the $25 inclusion attributable to X will still be treated as passive income because the foreign taxes paid and deemed paid on the income do not exceed the highest United States tax rate multiplied by the $25 inclusion ($5<$8.50 (.34 × $25)). The $25 inclusion attributable to Y will be treated as general limitation income because the foreign taxes paid and deemed paid on the income exceed the highest United States tax rate multiplied by the $25 inclusion ($10>$8.50 (.34 × $25)).

Example (4). Domestic corporation M operates in branch form in foreign countries X and Y. The branches are qualified business units (QBUs), within the meaning of section 989(a). In 1988, QBU X earns passive royalty income, interest income and rental income. The royalty income is not subject to foreign tax, and the interest income and the rental income are subject to a 4 percent and 15 percent withholding tax, respectively. QBU Y earns interest income that is not subject to foreign tax. For purposes of determining whether M's foreign source passive income is high-taxed income, the royalty income earned in QBU X and the interest income earned in QBU Y are treated as one item of income pursuant to paragraph (c)(2)(v) of this section. The interest income earned by QBU X and the rental income earned in QBU X are each treated as a separate item of income.

Example (5). S, a controlled foreign corporation incorporated in foreign country R, is a wholly-owned subsidiary of P, a domestic corporation. For 1988, P is required under section 951(a) to include in gross income $80 attributable to the earnings and profits of S for such year, all of which is foreign personal holding company income that is passive rent or royalty income. S does not make any distributions in 1988 or 1989. Foreign income taxes paid by S for 1988 that are deemed paid by P for such year under section 960(a) with respect to the section 951(a) inclusion equal $20. Twenty dollars ($20) of P's expenses are properly allocated to the section 951(a) inclusion. The foreign income tax paid with respect to the section 951(a) inclusion does not exceed the highest United States tax rate multiplied by the amount of income after allocation of parent expenses ($20<$27.20 (.34 × $80)). Thus, P's section 951(a) inclusion for 1988 is included in P's passive income and the $20 of taxes attributable to that inclusion are treated as taxes related to passive income. In 1990, after P has filed its return for its 1988 tax year, S distributes $80 to P, and under section 959 that distribution is treated as attributable to the earnings and profits with respect to the amount included in income by P in 1988 and is excluded from P's gross income. Foreign country R imposes a withholding tax of $15 on the distribution in 1990. Under paragraph (c)(3)(i) of this section, the withholding tax in 1990 does not affect the characterization of the 1988 inclusion as passive income nor does it affect the characterization of the $20 of taxes paid in 1988 as taxes paid with respect to passive income. No further parent expenses are allocable to the receipt of that distribution. In 1990, the foreign taxes paid ($15) exceed the product of the highest United States tax rate and the amount of the

inclusion reduced by taxes deemed paid in the year of inclusion ($15>((.34 × $80) −$20)). Thus, under paragraph (c)(3)(iii) of this section, $7.20 ((.34 × $80) − $20)) of the $15 withholding tax paid in 1990 is treated as taxes related to passive income and the remaining $7.80 ($15–7.20) of the withholding tax is treated as related to general limitation income.

Example (6). The facts are the same as in Example (5), except that S distributes the $80 in 1989 rather than 1990 and the distribution is made 30 days before P files its return for its 1988 tax year. Under paragraph (c)(3)(ii) of this section both the $20 tax paid by S in 1988 and the $15 withholding tax paid by P in 1989 are considered in determining whether the section 951(a) inclusion for 1988 is high-taxed income. Thus, because the total amount of foreign taxes paid with respect to the 1988 inclusion exceeds the amount determined by multiplying the highest United States rate for 1988 by the amount of the inclusion reduced by allocable parent expenses ($35>$27.20 (.34 × $80)), the section 951(a) inclusion in 1988 is treated as general limitation income and the entire $35 of tax (the $20 of 1988 taxes and the $15 of 1989 taxes) is treated as taxes related to general limitation income.

Example (7). S, a controlled foreign corporation, is a wholly-owned subsidiary of P, a domestic corporation. P and S are calendar year taxpayers. In 1987, S's only earnings consist of $200 of passive income that is foreign personal holding company income that is earned in a foreign country X that has an integrated tax system. Under this system, the foreign corporate tax on particular earnings is reduced on distribution of those earnings. In 1987, S pays $100 of foreign tax. P does not elect to exclude this income from Subpart F under section 954(b)(4) and includes $200 in gross income ($100 of net foreign personal holding company income and $100 of the section 78 amount). At the time of the inclusion, the income is considered to be high-taxed income under paragraph (c) of this section and is general limitation income to P. S does not distribute any of its earnings in 1987. In 1988, S has no earnings. On December 31, 1988, S distributes the $100 of earnings from 1987. At that time, S receives a $50 refund from X attributable to the reduction of the country X corporate tax imposed on those earnings. Under paragraph (c)(4) of this section, P must redetermine whether the 1987 inclusion should be considered to be high-taxed income. By taking into account the reduction in foreign tax, the inclusion would not have been considered high-taxed income. Therefore, P must redetermine its foreign tax credit for 1987 and treat the inclusion and the taxes associated with the inclusion as passive income and taxes. P must follow the appropriate section 905(c) procedures.

Example (8). The facts are the same as in example (7) except that P elects to apply section 954(b)(4) to S's passive income that is Subpart F income. Although the income is not considered to be Subpart F income, it remains passive income until distribution. In 1988, S distributes all of its earnings to P and pays P a $150 dividend consisting of the $100 of earnings in 1987 and the $50 refund in 1988 attributable to the 1987 earnings. P has no expenses allocable to the dividend from S. In 1988, the income is subject to the high-tax kick-rules under paragraph (c)(4)(iii) of this section. The income is passive income to P because the foreign taxes paid and deemed paid by P with respect to the income do not exceed the highest United States tax rate on that income.

(d) *High withholding tax interest.* The term "high withholding tax interest" means any interest if such interest is subject to a withholding tax of a foreign country or a possession of the United States and the rate of tax applicable to such interest is at least 5 percent. For purposes of the preceding sentence, a withholding tax is any tax imposed by a foreign country or possession of the United States that is determined on a gross basis. A withholding tax shall not be considered to be determined on a gross basis if the tax is not the final tax payable on the interest income, but is merely a prepayment or credit against a final foreign tax liability determined on a net basis on the interest alone or on interest and other income. High withholding tax interest does not include any interest described as export financing interest (as defined in section 904(d)(2)(G) and paragraph (h) of this section). If interest income is excluded from the definition of high withholding tax interest because it is described as export financing interest, the interest shall be treated as general limitation income unless the interest is received or accrued by a financial services entity, as defined in paragraph (e)(3) of this section. In that case, the income shall be treated as financial services income.

(e) *Financial services income*—(1) *In general.* The term "financial services income" means income derived by a financial services entity, as defined in paragraph (e)(3) of this section, that is:

(i) Income derived in the active conduct of a banking, insurance, financing, or similar business (as defined in paragraph (e)(2) of this section) except income described in paragraph (e)(2)(i)(W) of this section (high withholding tax interest);

(ii) Passive income as determined before the application of the exception for high-taxed income;

(iii) Export financing interest as defined in section 904(d)(2)(G) and paragraph (h) of this section that, but for section 904(d)(2)(B)(ii), would also meet the defintion of high withholding tax interest; or

(iv) Incidental income as defined in paragraph (e)(5) of this section.

(2) *Income from the active conduct of a banking, insurance, financial or similar business*—(i) *Income included.* For purposes of paragraph (e)(1) and (e)(3) of this section, income is derived from the active conduct of a banking, insurance, financing, or similar business if it is described in any of the following subdivisions.

(A) Income that is of a kind that would be insurance income as defined in section 953(a) but excluding related party insurance income as defined in section 953(c)(2) and determined without regard to those provisions of section 953(a)(1)(A) that limit insurance income to income from countries other than the country in which the corporation was created or organized.

(B) Income from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary to the proper conduct of the insurance business.

(C) Income from investing deposits of money received from the public.

(D) Income from making personal, mortgage, industrial, or other loans to the public.

(E) Income from purchasing, selling, discounting, or negotiating for the public on a regular basis, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness.

(F) Income from issuing letters of credit to the public and negotiating drafts draws thereunder.

(G) Income from providing trust services for the public.

(H) Income from arranging foreign exchange transactions for the public or engaging in foreign exchange transactions with the publlic.

(I) Income from purchasing stock, debt obligations, or other securities from an issuer or holder with a view to the public distribution thereof or offering or selling stock, debt obligations, or other securities for an issuer or holder in connection with the public distribution thereof, or participating in any such undertaking.

(J) Income earned by broker-dealers in the ordinary course of business (such as commissions) from the purchase or sale of stock, debt obligations, commodities futures, or other securities or financial instruments as an agent for a party in the sale.

(K) Service fee income from investment and correspondent banking.

(L) Income from interest rate and currency swaps.

(M) Income from providing fiduciary services to unrelated parties.

(N) Income from services provided to related parties with respect to the management of funds.

(O) Bank-to-bank participation income.

(P) Income from providing charge and credit card services.

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(Q) Income from financing purchases from third parties.

(R) Income from gains on the disposition of tangible or intangible personal property or real property that was used in the active conduct of a banking, insurance, financing, or similar business but only to the extent that the property was held to generate or generated income derived in the active conduct of a banking, insurance, financing, or similar business prior to its disposition.

(S) Income from hedging gain with respect to other financial services income.

(T) Income from providing traveller's check services.

(U) Income that is determined to be financial services income under the look-through rules of § 1.904–7.

(V) Income from finance leasing that would not qualify as active leasing income under section 954(c)(2)(A).

(W) Income from lending activities that give rise to high withholding tax interest.

(X) Such other income as the Secretary may designate.

(ii) *Income excluded.* Income from merely serving as a finance vehicle for a parent corporation or a related person as defined in section 954(d)(3) shall not be considered to be income from the active conduct of a banking, insurance, financing, or similar business.

(3) *Definition of a financial services entity*—(i) *In general.* The term "financial services entity" means an individual or entity that is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business for any taxable year. Except as provided in paragraph (e)(3)(ii) of this section, a determination of whether an entity is a financial services entity shall be done on an entity-by-entity basis. An individual or entity is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business for any year if for that year 80 percent of its gross income is income described in paragraph (e)(2)(i) of this section. For this purpose, gross income includes all income realized by an individual or entity, whether includible or excludible from gross income under other operative provisions of the Code.

(ii) *Special rule for affiliated groups.* In the case of any domestic corporation that is not a financial services entity under paragraph (e)(3)(i) of this section, but is a member of an affiliated group (as defined in section 1504 (a)), such corporation will be deemed to be a financial services entity if the affiliated group as a whole meets the requirements of section (e)(3)(i) of this section and the group files its return on a consolidated basis.

(iii) *Treatment of partnerships and other pass-through entities*—(A) *Rule.* For purposes of determining whether a partnership is a financial services entity, all of the partnership's income, including income characterized under the look-through rules of § 1.904–7, shall be taken into account. If the partnership is determined to be a financial services entity and, under § 1.904–7(i)(1), the partner's distributive share of income from the partnership is subject to the look-through rules, then financial services income of the partnership will be treated as income from the active conduct of a banking, insurance, financing, or similar business of the partner for purposes of determining whether the partner is a financial services entity. In such circumstances, for purposes of determining a partner's foreign tax credit limitations, the income shall be considered to be financial services income regardless of whether the partner is itself a financial services entity. If the partnership is determined not to be a financial services entity, then for purposes of determining whether a partner in a partnership is a financial services entity, income of the partnership shall retain its character in the hands of the partner. Thus, if the income is derived in the active conduct of a banking, insurance, financing, or similar business by the partnership, it shall be treated as income derived by the partner in the active conduct of such business. The rules of this paragraph (e)(3)(iii) will apply for purposes of determining whether an owner of an interest in any other pass-through entity the character of the income of which is preserved when such income is included in the income of the owner of the interest is a financial services entity.

(B) *Examples.* The principles of this paragraph (e)(3)(iii) are illustrated by the following examples.

Example (1). PS is a domestic partnership operating in branch form in foreign country X. PS has two equal general partners, A and B. A and B are domestic corporations that each operate in branch form in foreign countries Y and Z. All of A's income, except that derived through PS, is manufacturing income. All of B's income, except that derived through PS, is income from the active conduct of a banking, insurance, financing, or similar business. PS is a financial services entity and all of its income is financial services income. Therefore, A and B's distributive shares of PS's taxable income consist of financial services income whether or not A or B is a financial services entity. In order to determine if A or B are financial services entities, the income from PS is considered to be income of A and B from the active conduct of a banking, insurance, financing, or similar business and will be combined with A's and B's manufacturing and active banking income, respectively, to determine if either or both satisfy the gross income test of paragraph (e)(3)(i) of this section.

Example (2). PS is a domestic partnership operating in branch form in foreign country X. A and B are domestic corporations that are equal general partners in PS. Fifty (50) percent of PS's gross income is income from the active conduct of a banking, insurance, financing, or similar business. The other 50 percent of PS's income is from manufacturing. PS is therefore not a financial services entity. A's and B's distributive shares of partnership taxable income consist of general limitation manufacturing income and income derived in the active conduct of a banking, insurance, financing, or similar business. Under paragraph (c)(3)(i) of this section, the income derived in the active conduct of a banking, insurance, financing, or similar business shall be financial services income to A or B if either A or B is determined to be a financial services entity. If A or B is not a financial services entity, the income shall be passive income to A or B.

(4) *Definition of incidental income*—(i) *In general*—(A) *Rule.* Incidental income is income that is integrally related to financial services income of a financial services entity. Such income includes, for example, income from precious metals trading and commodity trading that is integrally related to futures income. If securities, shares of stock, or other types of property are acquired by a financial services entity as an ordinary and necessary incident to the conduct of a banking, insurance, financing, or similar business, the income from such property will be considered to be financial services income but only so long as the retention of such property remains an ordinary or necessary incident to the conduct of such business. Thus property, including stock, acquired as the result of, or in order to prevent, a loss in banking, insurance, financing, or similar business upon a loan contracted in the ordinary course of such business will be considered ordinary and necessary to the conduct of such business, but income from such property will be considered financial services income only so long as the holding of such property remains an ordinary and necessary incident to the conduct of such business. If a financial services entity holds such property for 12 months or less, the entity shall be considered to hold such property incident to its financial services business. If an entity holds such property for more than 12 months, a presumption will be established that the entity is not holding such property incident to its financial services business. An entity will be able to rebut the presumption by

demonstrating that under the facts and circumstances it is not holding the property as an investment.

(B) *Examples.* The following examples illustrate the application of paragraph (e)(4)(i) of this section.

Example (1). X is a financial services entity within the meaning of paragraph (e) (3) (i) of this section. In 1987, X made a loan in the ordinary course of its business to an unrelated foreign corporation, Y. As security for that loan, Y pledged certain operating assets. Those assets generate income of a type that would be subject to the general limitation. In January 1989, Y defaulted on the loan and forfeited the collateral. From January to February of 1989, X attempted but was unable to sell the forfeited assets. During that period, X earned operating income generated by those assets. This income was applied in partial satisfaction of Y's obligation. In March of 1989, X sold the operating assets. The sales proceeds were in excess of the remainder of Y's obligation. The operating income received in the period from January to February of 1989 and the income on the sale of the assets in March of 1989 are financial services income of X.

Example (2). The facts are the same as in example (1), except that instead of pledging its operating assets as collateral for the loan, Y pledged the stock of its operating subsidiary Z. In March of 1989, X sold the stock of Z in complete satisfaction of Y's obligation. X's income from the sale of Z stock in satisfaction of Y's obligation is financial services income.

Example (3). P, a domestic corporation, is a financial services entity within the meaning of paragraph (e) (3) (i) of this section. P holds a United States dollar denominated debt (the "obligation") of the Central Bank of foreign country X. The obligation evidences a loan of $100 made by P to the Central Bank. In 1988, pursuant to a program of country X, P delivers the obligation to the Central Bank which credits 70 units of country X currency to M, a country X corporation. M issues all of its only class of capital stock to P. M invests the 70 units of country X currency in the construction and operation of a new hotel in X. In 1990, M distributes 10 units of country X currency to P as a dividend. The dividend is not financial services income to P because, under the facts and circumstances, P is not able to rebut the presumption that it is not holding the property incident to its financial services business.

(ii) *Financing vehicles.* Income from acting as a financing vehicle for borrowing funds for a related person (within the meaning of section 954 (d) (3)) is incidental income within the meaning of paragraph (e) (4) (i) of this section.

(iii) *Income that is not incidental income.* Income that is attributable to non-financial activity is not incidental income within the meaning of paragraph (e) (4) (i) and (ii) of this section solely because such income represents a relatively small proportion of the taxpayer's total income or that the taxpayer engages in non-financial activity on a sporadic basis. Thus, for example, income from data processing services provided to unrelated parties or income from the sale of goods or non-financial services (for example travel services) is not financial services income, even if the recipient is a financial services entity.

(5) *Exceptions.* Financial services income does not include income that is:

(i) Export financing interest as defined in section 904 (d) (2) (G) and paragraph (h) of this section unless such income also meets the definition of high withholding tax interest;

(ii) High withholding tax interest unless such income also meets the definition of export financing interest; and

(iii) Dividends from noncontrolled section 902 corporations as defined in section 904 (d) (2) (E) and paragraph (g) of this section.

(f) *Shipping income.* The term "shipping income" means any income received or accrued by any person that is of a kind that would be foreign base company shipping income (as defined in section 954 (f) and the regulations thereunder). Shipping income does not include any dividends received or accrued from a noncontrolled section 902 corporation or any income that is financial services income.

(g) *Noncontrolled section 902 corporation*—(1) *Definition.* Except as otherwise provided, the term "noncontrolled section 902 corporation" means any foreign corporation with respect to which the taxpayer meets the stock ownership requirements of section 902 (a) or, for purposes of applying the look-through rules described in section 904 (d) (3) and § 1.904–7, the taxpayer meets the requirements of section 902 (b).

(2) *Treatment of dividends from each separate noncontrolled section 902 corporation*—(i) *In general.* Except as otherwise provided, a separate foreign tax credit limitation applies to dividends received or accrued by a person from each noncontrolled section 902 corporation. Any dividend distribution made by a noncontrolled section 902 corporation out of earnings and profits attributable to periods in which the shareholder did not meet the stock ownership requirements of section 902 (a) or section 902 (b) shall be treated as distributions made by a noncontrolled section 902 corporation.

(ii) *Special rule for dividends received by a controlled foreign corporations.* If—

(A) Stock in a foreign corporation is owned by a controlled foreign corporation,

(B) There are two or more United States shareholders of that controlled foreign corporation, and

(C) The ownership requirements of section 902(b) with respect to the foreign corporation are met by one of the United States shareholders of the controlled foreign corporation,

then any dividends received by the controlled foreign corporation from the foreign corporation shall be treated in their entirety to the controlled foreign corporation as dividends from a noncontrolled section 902 corporation, notwithstanding that all the United States shareholders of the controlled foreign corporation do not meet the requirements of section 902(b). Any income received or accrued by a United States shareholder of a controlled foreign corporation described in the preceding sentence that is attributable to a dividend paid by a foreign corporationshall be considered to be passive income if the shareholder's interest in that foreign corporation does not satisfy the requirements of section 902(b).

(iii) *Special rules for high withholding tax interest.* If a taxpayer receives or accrues a dividend distribution from a noncontrolled section 902 corporation out of earnings and profits attributable to high withholding tax interest earned or accrued by the noncontrolled section 902 corporation, any gross basis foreign tax (as defined in paragraph (d) of this section) imposed on such interest, to the extent that the taxes are imposed at a rate in excess of 5 percent, shall not be treated as foreign taxes for purposes of determining the amount of foreign taxes deemed paid or accrued by the taxpayer under section 902. The preceding sentence shall have no effect upon the determination of the amount of earnings and profits of a noncontrolled section 902 corporation.

(3) *Special rule for controlled foreign corporations.* Distributions from a controlled foreign corporation shall be treated as dividends from a noncontrolled section 902 corporation, and therefore not subject to the look-through rules of § 1.904–7, only to the extent that the distribution is out of earnings and profits for periods during which the controlled foreign corporation was a noncontrolled section 902 corporation. Distributions from a controlled foreign corporation that are attributable to periods when the controlled foreign corportion was neither a controlled foreign corporation nor a noncontrolled section 902 corporation shall be treated as passive income.

(4) *Examples.* The following examples illustrate the application of this paragraph.

Example (1). A and B are domestic corporations. A owns 90 percent of the stock of C, a foreign corporation and B owns the remaining 10 percent of the C stock. C is a controlled foreign corporation. A and B are United States shareholders. C owns 20 percent of the stock of D, a foreign corporation, not a controlled foreign corporation, that is incorporated in a different country than C. D is a noncontrolled section 902 corporation with respect to C and A, but not with respect to B. In 1987, C has foreign personal holding company income of $1000, $100 of which is attributable to a dividend from D. The remainder of the foreign personal holding company income is passive income. Assume that gross income and net income are equal and that C pays no foreign taxes on its foreign personal holding company income. In 1987, A and B have section 951(a)(1)(A) inclusions of $900 and $100, respectively, attributable to foreign personal holding company income. Under paragraph (g)(2)(ii) of this section the $900 included by A consists of $810 passive income and $90 of income attributable to a dividend from a noncontrolled section 902 corporation. The $100 included by B in gross income is characterized as passive income in its entirety although $10 of the $100 is attributabe to the dividend from D, and, as to C, is characterized as a dividend from a noncontrolled section 902 corporation. As to B, the $10 is characterized as passive income because B does not meet the ownership requirements of section 902(b) with regard to D.

Example (2). In 1987, A, a domestic corporation, owned 9 percent of the stock of B, a foreign corporation. In 1988, A acquired an additional 20 percent of the stock of B. Thus, in 1988, B is a noncontrolled section 902 corporation with regard to A. In 1989, A acquired an additional 25 percent of the stock of B. A acquired no additional stock in 1990. In 1989 and 1990, A owned 54 percent of the stock of B. For 1989 and 1990, B is a controlled foreign corporation is which A is a United States shareholder. B has no Subpart F income in 1989 or 1990. In 1990, B pays a divdend of $3,000 to A. One thousand dollars ($1,000) of the dividend is attributable to earnings and profits from 1987, $1,000 is attributable to earnings and profits from 1988, and $1,000 is attributable to earnings and profits from 1989. Under paragraph (g)(3) of this section, the $1,000 attributable to the earnings and profits from 1989 is subject to the look through rules of section 904(d)(3) and § 1.904–7(c)(4) and is characterized in A's hands according to those rules. The $1,000 attributable to the 1988 earnings and profits is treated as income subject to a separate limitation for dividends from a noncontrolled section 902 corporation (B corporation), and the $1,000 attributable to the earnings and profits in 1987 is treated as passive income.

Example (3). M owns 40 percent of the voting stock of foreign corporaiton N. N is a noncontrolled section 902 corporation. In 1987, N earns $2,000 of gross interest income and incurs $1,700 of interest expense. N. incurs no other expenses and earns no other income. One-thousand dollars ($1,000) of the interest income is subject to a 10 percent withholding tax and is, therefore, high withholding tax interest. N's earnings and profits are $200 ($2,000 gross interest income less $1,700 intereste expense less $100 withholding tax). N pays the full $200 out as a dividend. M receives $80 (40 percent of the $200). Under paragraph (g)(3) of this section, $50 ($100–5% x $1,000) of the $100 withholding tax is not treated as a foreign tax for purposes of determining the amount of foreign taxes deemed paid by M under section 902. M's deemed paid credit with respect to the $80 dividend it receives is, therefore, reduced from $40 ($100 x $80/$200) to $20 ($50 x $80/$200).

(h) *Export financing interest*—(1) *In general.* The term "export financing interest" means any interest derived from financing the sale (or other disposition) for use or consumption outside the United States of any property that is manufactured, produced, grown, or extracted in the United States by the taxpayer or a related person, and not more than 50 percent of the fair market value of which is attributable to products imported into the United States. For purposes of this paragraph, the term "United States" includes the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) *Fair market value.* For purposes of this paragraph, the fair market value of any property imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation. For purposes of determining the foreign content of an item of property imported into the United States, see § 1.927(a)–1T(e)(4).

(3) *Related person.* For purposes of this paragraph, a related person is an individual, corporation, partnership, trust, or estate that is controlled by the same person or persons that control the recipient of the export financing interest. In the case of a corporation, control means the direct or indirect ownership of stock possessing 50 percent or more of the total voting power of all classes of stock entitled to vote or of the total value of stock of the corporation. In the case of a partnership, trust, or estate, control means the direct or indirect ownership of 50 percent or more by value of the beneficial interests in the partnership, trust, or estate. Ownership of stock and ownership of beneficial interests shall be determined under the principles of section 958(b).

(4) *Interaction of export financing interest and related person factoring income*—(i) *Export financing interest that is also related person factoring income.* Section 904(d)(2)(A)(iii)(II) (providing that passive income excludes export financing interest) does not apply to income that also meets the definition of export financing interest (with the result that such income shall be treated as passive income) if such income is—

(A) Income received or accrued by a controlled foreign corporation (other than a financial services entity) that is income described in section 864(d)(6) (income of a controlled foreign corporation from a loan for the purpose of financing the purchase of inventory property or services of a related person); or

(B) Income received or accrued by any person (other than a financial services entity) that is income described in section 864(d)(1) (income from a trade or service receivable acquired from a related person).

If the income described in the preceding sentence is received or accrued by a financial services entity, it shall be treated as financial services income.

(ii) *Examples.* The following examples illustrate the operation of paragraph(h)(4)(i) of this section.

Example (1). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. S hasd accumulated cash reserves. P has uncollected trade and service receivables of foreign obligors. P sells the receivables at a discount ("factors") to S. The income derived by S on the receivables is described in section 864(d)(1). The income is also export financing interest. Because the income is described in section 864(d)(1), section 904(d)(2)(A)(iii)(II) does not apply and the income is passive income to S.

Example (2). The facts are the same as in example (1) except that S is a financial services entity and derives the income in the conduct of a banking business. The income derived by S on the receivables is income described in section 864(d)(1). The income is also export financing interest. Section 904(d)(2)(C)(iii)(III) does not apply and the income is financial services income to S.

Example (3). Domestic corporation S is a wholly-owned subsidiary of domestic corporation P. S has accumulated cash reserves. P has uncollected trade and service receivables of foreign obligors. P factors the receivables to S. The income derived by S on the receivables is income described in section 864(d)(1). The income is also export financing interest. Because the income is described in section 864(d)(1), section 904(d)(2)(A)(iii)(II) does not apply and the income will be passive income to S.

Example (4). The facts are the same as in example (3) except that instead of factoring P's receivable, S finances the sales of P's goods by making loans to the purchasers of P's goods. The interest derived by S on these loans is export financing interest and is not income described in section 864(d)(6)(S is not a controlled foreign corporation) or section

864(d)(1)(P does not factor receivables). The income will be general limitation income to S.

(iii) *Income eligible for section 864(d)(7) exception (same country exception) from related person factoring treatment*—(A) *Income other than interest.* If any foreign person that is not a financial services entity receives or accrues income that is described in section 864(d)(7) (income on a trade or service receivable acquired from a related person in the same foreign country as the recipient) as such income would also meet the definition of export financing interest if section 864(d)(1) applied to such income (income on a trade or service receivable acquired from a related person treated as interest), then the income shall be considered to be export financing interest for purposes of section 904(d)(2)(A)(iii)(II) and shall be treated as general limitation income. If a financial services entity receives or accrues such income, the income shall not be considered to be export financing interest under section 904(d)(2)(C)(iii)(III) and shall therefore be treated as financial services income.

(B) *Interest income.* if export financing interest is received or accrued by any foreign person and that income would otherwise be treated as related person factoring income under section 864(d)(6) If section 864(d)(7) did not apply, section 904(d)(2)(A)(iii)(II) shall apply, and the interest shall be treated as general limitation income unless the interest is received or accrued by a financial services entity. In that case, section 904(d)(2)(C)(iii)(III) shall not apply and the interest shall therefore be treated as financial services income.

(C) *Examples.* The following examples illustrate the operation of paragraph (h)(4)(iii) (A) and (B) of this section.

Example (1). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. Controlled foreign corporation T is a wholly-owned subsidiary of controlled foreign corporation S. S and T are incorporated in country M. In 1987, P sells tractors to T, which T sells to X, a foreign corporation organized in country M. The tractors are to be used in country M. T has uncollected trade receivables from X that it factors to S. The income derived by S from the receivables is not derived in the conduct of a banking business, and S is not a financial services entity. The income is not described in section 864(d)(1)(related person factoring interest income) because it is described in section 864(d)(7)(income eligible for the same country exception). Because the income derived by S from the receivables would meet the definition of export financing interest if the income were described in section 864(d)(1), the income is considered to be export financing interest for purposes of section 904(d)(2)(A)(iii)(II) and is general limitation income to S.

Example (2). The facts are the same as in example (1) except that S is a financial services entity and derives the income on the receivables in the conduct of a banking business. The income derived by S from the receivables is not described in section 864(d)(1) because it is described in section 864(d)(7). Because the income is not considered to be export financing interest for purposes of section 904(d)(2)(C)(iii)(III), the income is financial service income to S.

Example (3). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation, P. Controlled foreign corporation T is a wholly-owned subsidiary of controlled foreign corporation S. S and T are incorporated in country M. S is not a financial services entity. In 1987, P sells tractors to T, which T sells to X, a foreign partnership that is organized in country M and is related to S and T. S makes a loan to X to finance the tractor sales. The interest earned by S from financing the sales is export financing interest. Under paragraph (h)(4)(iii)(B) of this section, since the interest is described in section 864(d)(7) and is export financing interest, section 904(d)(2)(A)(iii)(II) shall apply and the income shall be general limitation income to S.

Example (4). The facts are the same as in example (3) except that S is a financial services entity and derives the interest on the loan to X in the conduct of a banking business. The interest earned by S is export financing interest that is not described in section 864(d)(1) because it is described in section 864(df)(7). Since the interest is described in section 864(d)(7) and is export financing interest, section 904(d)(2)(C)(iii)(III) shall not apply and the income shall be financial service income to S.

(i) *Interaction of section 907(c) and income described in this section.* If a person receives or accrues income that is income described in section 907(c) (relating to oil and gas income), the rules of section 907(c) and the regulations thereunder, as well as the rules of this section, shall apply to the income. Thus, for example, if a taxpayer receives or accrues a dividend distribution from two separate noncontrolled section 902 corporations out of earnings and profits attributable to income received or accrued by the noncontrolled section 902 corporations that is income described in section 907(c), the rules provided in section 907 shall apply separately to the dividends received from each noncontrolled section 902 corporation. The reduction in amount allowed as foreign tax provided by section 907(a) shall therefore be calculated separately for dividends received or accrued by the taxpayer from each separate noncontrolled section 902 corporation.

(j) *Priority rules.* In the case of income that meets the definitions of more than one category of separate limitation income the following priority rules apply:

(1) Income that meets the definitions of passive income and of any other separate limitation income will be subject to the other separate limitation;

(2) Income that meets the definitions of financial services income and of either shipping income or passive income will be subject to the separate limitation for financial services income;

(3) Income that meets the definitions of financial services income and of any separate limitation income other than shipping or passive income will be subject to the other separate limitation;

(4) Income that meets the definitions of dividends from a noncontrolled section 902 corporation and of any other separate limitation income will be subject to the separate limitation for dividends from a noncontrolled section 902 corporation; and

(5) Income that meets the definitions of high withholding tax interest and of any other separate limitation income will be high withholding tax interest.

§ 1.904–7 Look-through rules as applied to controlled foreign corporations and other entities.

(a) *Definitions.* For purposes of section 904(d)(3) and this section, the following definitions apply:

(1) The term "separate category" means, as the context requires, any category of income described in section 904 (d) (1) (A), (B), (C), (D), (E), (F), (G), (H), or (I) and in § 1.904–6 (b), (d), (e), (f), and (g), or any category of earnings and profits to which income described in such provisions is attributable.

(2) The term "controlled foreign corporation" has the meaning given such term by section 957 (taking into account the special rule for certain captive insurance companies contained in section 953(c)).

(3) The term "United States shareholder" has the meaning given such term by section 951(b) (taking into account the special rule for certain captive insurance companies contained in section 953(c)).

(b) *In general.* Except as otherwise provided in section 904(d)(3) and this section, dividends, interest, rents, and royalties received or accrued by a taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as general limitation income.

(c) *Rules for specific types of inclusions and payments*—(1) *Subpart F inclusions*—(i) *Rule.* Any amount included in gross income under section 951(a)(1)(A) shall be treated as income in a separate category to the extent the amount so included is attributable to income received or accrued by the

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controlled foreign corporation that is described as income in such category. For purposes of this paragraph, the priority rules of § 1.904(d)–6(j) shall apply prior to application of the rules of this paragraph.

(ii) *Examples.* The following examples illustrate the application of this paragraph (c)(1):

Example (1). Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. S earns $200 of net income, $85 of which is foreign base company shipping income, $15 of which is foreign personal holding company income, and $100 of which is non-Subpart F general limitation income. No foreign tax is imposed on the income. One hundred dollars ($100) of S's income is Subpart F income taxed currently to P under section 951(a)(1)(A). Because $85 of the Subpart F inclusion is attributable to shipping income of S, $85 of the Subpart F inclusion is shipping income to P. Because $15 of the Subpart F inclusion is attributable to passive income of S, $15 of the Subpart F inclusion is passive income to P.

Example (2). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. S is a financial services entity. P manufactures cars. In 1987, S earns $200 of interest income unrelated to its banking business and $900 of interest related to its banking business. Assume that S pays no foreign taxes and has no expenses. All of S's income is included in P's gross income as foreign personal holding company income. Because S is a financial services entity, income that would otherwise be passive income is considered to be financial services income. Therefore, P treats the entire Subpart F inclusion as financial services income.

Example (3). Controlled corporation S is a wholly-owned subsidiary of domestic corporation P. P is a financial services entity and S manufactures cars. In 1987, S earns $200 of passive income that is Subpart F income and $900 of general limitation non-Subpart F income. Assume that S pays no foreign taxes on its passive earnings. P includes the $200 of Subpart F income in gross income. Because P is a financial services entity, the inclusion will be financial services income to P.

Example (4). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. S owns 40 percent of foreign corporation A, 45 percent of foreign corporation B, 30 percent of foreign corporation C and 20 percent of foreign corporation D. A, B, C, and D are noncontrolled section 902 corporations. In 1987, S's only income is a $100 dividend from each foreign corporation. Assume that S pays no foreign taxes and has no expenses. All $400 of the income is foreign personal holding company income and is included in P's gross income. P must include $100 in its separate limitation for dividends from A, $100 in its separate limitation for dividends from B, $100 in its separate limitation for dividends from C, and $100 in its separate limitation for dividends from D.

(2) *Interest*—(i) *In general.* Any interest that is received or accrued from a controlled foreign corporation by a taxpayer that is a United States shareholder in such foreign corporation shall be treated as income in a separate category to the extent it is allocable to income of the controlled foreign corporation in that category. If related person interest (as defined in this paragraph (c)(2)(ii)) is received or accrued from a controlled foreign corporation by two or more persons, the amount of interest received or accrued by each person that is allocable to any separate category of income shall be determined by multiplying the amount of related person interest allocable to that separate category of income by a fraction. The numerator of the fraction is the amount of related person interest received or accrued by that person and the denominator is the total amount of related person interest paid or accrued by the controlled foreign corporation.

(ii) *Allocating expenses including interest paid to a related person.* If interest is paid or accrued by a controlled foreign corporation to any United States shareholder in such corporation (or to any related controlled foreign corporation within the meaning of paragraph (g) of this section) ("related person interest"), such related person interest and other expenses of a controlled foreign corporation shall be allocated and apportioned in the following manner:

(A) Gross income in each separate category shall be determined;

(B) Any expenses, including unrelated person interest, that are definitely related expenses shall be directly allocated and apportioned under the principles of § 1.861–8 to, and reduce, income in each separate category;

(C) Any expenses, excluding interest, that are not definitely related expenses shall be apportioned under the principles of § 1.861–8 to, and reduce, income in each separate category;

(D) Related person interest shall be allocated to and shall reduce (but not below zero) the amount of passive foreign personal holding company income as determined after the application of paragraph (c)(2)(ii) (B) and (C) of this section;

(E) To the extent that related person interest exceeds passive foreign personal holding company income as determined after the application of paragraph (c)(2)(ii) (B) and (C) of this section, the related person interest shall be allocated to separate categories other than passive income according to the following formula:

Related person interest minus Related person interest allocated under paragraph (c)(2)(ii)(D) times Value (as determined under § 1.861–8) of assets *in a separate category (other than passive)* divided by Value (as determined under § 1.861–8) of all assets (other than passive)

(F) Interest expense other than definitely related interest and related person interest ("unrelated person interest expense") shall be allocated according to the following formula:

Unrelated person interest expense allocable to a separate category equals Total unrelated person interest times Value of adjusted assets in *a separate category divided* by Value of adjusted total assets

(iii) *Value (as determined under § 1.861–8) of assets.* For purposes of this section, the value of assets shall be determined under the principles of § 1.861–8. For this purpose, the value of assets in any category shall be reduced by the principal amount of any indebtedness to the extent that interest on such indebtedness is definitely related and therefore directly allocated to income in such category.

(iv) *Adjusted assets.* Adjusted assets in a separate category equals the value of assets in a separate category minus the related person debt in that category for the year. Adjusted total assets equals the value of total assets minus the total related person debt for the year. Related person debt allocable to assets in a separate category shall be determined according to the following formula:

Related person debt allocated to a separate category equals Total related person debt times Related person interest allocable to a separate category under *paragraph (c)(2)(ii) (D) or (E)* divided by All related person interest

The term "total related person debt" means the sum of the principle amounts of obligations of a controlled foreign corporation owed to any United States shareholder of such corporation or to any controlled foreign corporation related to such shareholder (within the meaning of paragraph (g) of this section).

(v) *Examples.* The following examples illustrate the operation of this paragraph (c)(2).

Example (1). Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1987, S earns $200 of foreign personal holding company income that is passive income. S also earns $100 of foreign base company sales income that is general limitation income. S has $2000 of passive assets and $2000 of general limitation assets. In 1987, S makes a $150 interest payment to P with respect to a $1500 loan from P. S also pays $100 of interest to an

unrelated person on a $1000 loan from that person. S has no other expenses.

Under paragraph (c)(2)(ii)(D) of this section, the $150 related person interest payment is allocable to S's passive foreign personal holding company income. Therefore, the $150 interest payment is passive income to P.

Because the entire related person interest payment is allocated to passive income under paragraph (c)(2)(ii)(D) of this section, none of the related person interest payment is allocable to general limitation income under paragraph (c)(2)(ii)(E) of this section.

Under paragraph (c)(2)(iv) of this section, the entire amount of the related person debt is allocable to passive assets ($1500 = $1500 × $150/$150).

Under paragraph (c)(2)(ii)(F) of this section, $20 of interest expense paid to an unrelated person is allocated to passive income ($20 = $100 × ($2000 − $1500)/($4000 − $1500). Eighty dollars ($80) of the interest expense paid to an unrelated person is allocated to general limitation income ($80 = $100 × ($2000 − $0)/($4000 − $1500).

Example (2). Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1987, S earns $100 of foreign personal holding company income that is passive income. S also earns $100 of foreign base company sales income that is general limitation income. S has $1000 of general limitation assets and $1000 of passive assets. In 1987, S makes a $150 interest payment to P on a $1500 loan from P and has $20 of general and administrative expenses (G & A). S also makes a $25 interest payment to an unrelated person on a $250 loan from the unrelated person. S has no other expenses.

Under paragraph (c)(2)(ii)(C) of this section, $10 of the G & A is allocable to S's passive foreign personal holding company income and $10 of the G & A is allocable to S's general limitation income.

Under paragraph (c)(2)(ii)(D) of this section, $90 of the interest payment to P is allocable to S's passive foreign personal holding company income.

Under paragraph (c)(2)(ii)(E) of this section, the additional $60 of related person interest expense is allocated to general limitation income ($60 = $60 × $1000/$1000).

Under paragraph (c)(2)(iv) of this section, related person debt is allocated to passive and general limitation assets. The related person debt allocable to passive assets equals $900 ($900 = $1500 × $90/$150). The related party debt allocable to general limitation assets equals $600 ($600 = $1500 × $60/$150).

Under paragraph (c)(2)(ii)(F) of this section, $5 of the $25 of interest expense paid to an unrelated person is allocated to passive income ($5 = $25 × ($1000 − $900)/($2000 − $1500). Twenty dollars ($20) of the interest expense paid to an unrelated person is allocated to general limitation income ($20 = $25 × ($1000 − $600)/($2000 − $1500).

Example (3). Controlled foreign corporation T is a wholly-owned subsidiary of S, a controlled foreign corporation. S is a wholly-owned subsidiary of P, a domestic corporation. S and T are incorporated in the same country. In 1987, P sells tractors to T, which T sells to X, a foreign corporation that is related to both S and T and is organized in the same country as S and T. S makes a loan to X to finance the tractor sales. Assume that the interest earned by S from financing the sales is export financing interest that is neither related person factoring income nor foreign personal holding company income. S earns no passive income. S makes a $100 interest payment to P. The $100 of interest paid to P is allocable under the look-through rules of paragraph (c)(2)(ii) of this section to the export financing interest earned by S and is general limitation income to P.

Example (4). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. P manufactures industrial equipment in the United States and sells some of the equipment to S for use in S's business. P provides financing to S in connection with the purchase of P's equipment. In 1987, S pays P $100 of interest relating to the financing. S also pays P $150 on a loan unrelated to the financing. In 1987, S has assets that generate general limitation income and income attributable to dividends from a noncontrolled section 902 corporation. Under paragraph (c)(2)(ii) of this section, $150 of the interest payments to P are allocable to S's general limitation income and $100 are allocable to S's dividends from a noncontrolled section 902 corporation. Therefore, under the look-through rules of paragraph (c)(2)(i) of this section, $150 of interest is general limitation income to P and $100 of interest is included in P's separate limitation for dividends from the noncontrolled section 902 corporation.

(3) *Rents and Royalties.* Any rents or royalties received or accrued from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as income in a separate category to the extent they are allocable to income of the controlled foreign corporation in that category under the principles of § 1.861–8.

(4) *Dividends*—(i) *Look-through rule.* Any dividend paid or accrued out of the earnings and profits of any controlled foreign corporation shall be treated as income in a separate category in proportion to the ratio of the portion of earnings and profits attributable to income in such category to the total amount of earnings and profits of the controlled foreign corporation.

(ii) *Special rule for dividends attributable to certain loans.* If a dividend is distributed to a taxpayer by a controlled foreign corporation, that controlled foreign corporation is the recipient of loan proceeds from a related person (within the meaning of paragraph (g) of this section), and the purpose of such loan is to alter the characterization of the dividend for purposes of this section, then, to the extent of the principal amount of the loan, the dividend shall be characterized with respect to the earnings and profits of the related person lender rather than with respect to the earnings and profits of the dividend payor.

(iii) *Examples.* The following examples illustrate the application of this paragraph (c)(4).

Example (1). Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1987, S has earnings and profits of $1,000, $600 of which is attributable to manufacturing income that is not Subpart F income and $400 of which is attributable to dividends received by S from a noncontrolled section 902 corporation, T. T is incorporated and operates in the same country as S, and S has a 50 percent ownership interest in T. In December of 1987, S pays a dividend of $200, all of which is attributable to earnings and profits earned in 1987. Six-tenths of the dividend, $120, is treated as general limitation income because six-tenths of S's earnings and profits are attributable to general limitation income. Four-tenths of the dividend, $80, is treated as income subject to a separate limitation for dividends from a noncontrolled section 902 corporation because four-tenths of S's earnings and profits are attributable to dividends from T, a noncontrolled section 902 corporation.

Example (2). A, a United States person, has been the sole shareholder in controlled foreign corporation X since its organization on January 1, 1963. X's earnings and profits for 1963 through the end of 1987 totaled $3,000. A sells his stock in X at the end of 1987 and realizes a gain of $4,000. Of the total $4,000 gain, $3,000 (A's share of the post-1962 earnings and profits) is includible in A's gross income as a dividend and is subject to the look-through rules. The remaining $1,000 of the gain is includible as gain from the sale or exchange of the X stock and is passive income to A.

(d) *Effect of exclusions from Subpart F income*—(1) *De minimis amount of Subpart F income.* If the sum of a controlled foreign corporation's foreign base company income (determined without regard to section 954(b)(5)) and gross insurance income for the taxable year is less than the lesser of 5 percent of gross income or $1,000,000, then all such income shall be treated as general limitation income.

(2) *Exception for certain income subject to high foreign tax.* For purposes of the dividend look-through rule of paragraph (c)(4)(i) of this section, an item of net income that would otherwise be passive income (after application of the priority rules of § 1.904–6 (j)) that is received or accrued by a controlled foreign corporation shall be treated as general limitation income, and the earnings and profits attributable to such income shall be treated as general limitation earnings and profits, if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country greater

than 90 percent of the maximum rate of tax specified in section 11 (with reference to section 15, if applicable). The preceding sentence has no effect on amounts (other than dividends) paid or accrued by a controlled foreign corporation to a United States shareholder of such controlled foreign corporation to the extent those amounts are allocable to passive income of the controlled foreign corporation. For treatment of foreign taxes imposed on income described in this paragraph (d)(2), see § 1.904–8.

(3) *Examples.* The following examples illustrate the application of this paragraph.

(*Example (1).* Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1987, S earns $100 of gross income, $4 of which is interest that is Subpart F foreign personal holding company interest and $96 of which is gross manufacturing income that is not Subpart F income. S has no other earnings for 1987. S has no expenses and pays no foreign taxes. S pays P a $100 dividend. Under the de minimis rule of section 954(b)(3), none of S's income is treated as foreign base company income. Therefore, all of S's income is treated as general limitation income. The entire $100 dividend is general limitation income to P.

Example (2). Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1987, S earns $50 of shipping income of a type that is foreign base company shipping income. S also earns $50 of dividends from T, a foreign corporation in which S owns 45 percent of the voting stock, and $50 of dividends from U, a foreign corporation in which S owns 5 percent of the voting stock. Foreign persons hold the remaining voting stock of both T and U. S, T, and U are all incorporated in different foreign countries. The dividends received by S from T and U are of a type that would normally be Subpart F foreign personal holding company income that is passive income. However, under § 1.904–6 (j), the dividends from T are dividends from a noncontrolled section 902 corporation rather than passive income. S has no expenses. The earnings and profits of S are equal to the net income of S. The dividends and the shipping income are taxed abroad by S's country of incorporation at an effective rate of 40 percent. P establishes to the satisfaction of the Secretary that the effective rate of tax on both the dividends and the shipping income exceeds 90 percent of the maximum United States tax rate. Therefore, under section 954(b)(4), neither the shipping income nor the dividends are currently taxed to P under Subpart F. Under paragraph (d)(2) of this section, S's earnings attributable to the dividends from U are treated as earnings attributable to general limitation income.

In 1988, S has no earnings and pays a $150 dividend to P. The dividend is paid out of S's post-1986 pool of earnings and profits. One-third of the dividend, $50, is attributable to S's shipping earnings, one-third, $50, is attributable to the dividend from T, and one-third, $50 is attributable to the dividend from U. Under section 904(d)(2)(E) and paragraph (c)(4) of this section, one-third of the dividend is shipping income, one-third is a from a noncontrolled section 902 corporation, T, and one-third is general limitation income to P.

(e) *Treatment of subpart F income in excess of 70 percent of gross income*—(1) *Rule.* If the sum of a controlled foreign corporation's foreign base company income (determined without regard to section 954(b)(5)) and gross insurance income for the taxable year exceeds 70 percent of the gross income, then all of the controlled foreign corporation's gross income shall be treated as foreign base company income and, thus, included in a United States shareholder's gross income. However, the inclusion in gross income of an amount that would not otherwise be Subpart F income does not affect its character for purposes of determining whether the income is within a particular category of income.

(2) *Example.* The following example illustrates the application of this paragraph.

Example. Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. S earns $100, $75 of which is foreign base company shipping income, as defined in section 954(f), and $25 of which is non-Subpart F services income. S's gross and net income are equal. The $75 of shipping income includes $10 of rental income that also meets the definition of foreign personal holding company income. That $10 is treated as shipping income to S under § 1.904–6(f). Under the 70 percent full inclusion rule of section 954(b)(3)(B), the entire $100 is foreign base company income currently taxable to P under section 951. Because $75 of the $100 section 951 inclusion is attrubutable to S's shipping income, $75 of the inclusion is shipping income to P. The remaining $25 of the inclusion is treated as general limitation income to P because $25 is attributable to S's general limitation income.

(f) *Modification of look-through rule for certain income*—(1) *High withholding tax interest.* If a taxpayer receives or accrues interest from a controlled foreign corporation that is a financial services entity, and the interest would be described as high withholding tax interest if section 904(d)(3) and paragraph (c)(2) of this section did not apply, then the interest shall be treated as high withholding tax interest to the extent that the interest is allocable under section 904(d)(3) and paragraph (c)(2)(i) of this section to financial services income of the controlled foreign corporation.

(2) *Dividends from a noncontrolled section 902 corporation.* If a United States shareholder receives or accrues income from a controlled foreign corporation that is attributable to dividends from a noncontrolled section 902 corporation, such income shall be subject to a separate limitation for such dividends except as provided in § 1.904–6(g)(2)(i).

(3) *Example.* The following example illustrates the operation of paragraph (f)(1) of this section.

Example. Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. S is a financial services entity. In 1988, S earns $80 of financial services income and $20 of high withholding tax interest. S makes a $100 interest payment to P. The interest payment to P is subject to a withholding tax of 15 percent. Twenty dollars ($20) of the interest payment to P is considered to be high withholding tax interest because, under section 904(d)(3), it is allocable to the high withholding tax interest earned by S. The remaining eighty dollars ($80) of the interest payment is also treated as high withholding tax interest to P because, under paragraph (f)(1) of this section, interest that is subject to a high withholding tax but would not be considered to be high withholding tax interest under the look-through rules of paragraph (c)(2) of this section, shall be treated as high withholding tax interest to the extent that the interest would have been treated as financial services income under the look-through rules of paragraph (c)(2)(i) of this section.

(g) *Application of look-through rules to related controlled foreign corporations.* The principles of paragraphs (b), (c), and (f) of this section shall apply to distributions and payments from a controlled foreign corporation to a related controlled foreign corporation. For purposes of the preceding sentence, two controlled foreign corporations shall be considered to be related to each other if one controlled foreign corporation owns, directly or indirectly, stock possessing more than 50 percent of the total voting power of all classes entitled to vote or of the total value of stock of such corporation or the same United States shareholders own, directly or indirectly, stock possessing 50 percent or more of the total voting power of all classes entitled to vote or of the total value of stock of each controlled foreign corporation. For purposes of this preceding sentence, indirect ownership shall be determined under section 958 (b) and the regulations thereunder.

(h) *Application of look-through rules to certain domestic corporations.* If a domestic corporation meets the 80 percent foreign business requirements described in section 861(c)(1), the look-through rules of paragraphs (b), (c), and (f) apply to interest, rents or royalties paid by or accrued by the domestic corporation to a related person within the meaning of section 861(c)(2)(B).

(i) *Application of look-through rules to partnerships and other pass-through entities*—(1) *General rule.* Except as provided in paragraph (i)(2) of this section, a partner's distributive share of partnership income shall be characterized as income in a separate category to the extent that the distributive share is a share of income earned or accrued by the partnership in such category. Payments to a partner described in section 707 (*e.g.*, payments to a partner not acting in capacity as a partner) shall be characterized as income in a separate category to the extent that the income is attributable to income earned or accrued by the partnership in such category and the payments would be characterized under the look-rules of this section if the partnership were a foreign corporation. The disposition of a partnership interest shall be treated as a disposition of the partner's proportionate share of each of the assets of the partnership for purposes of characterizing the gain or loss allocable to a separate category. For purposes of allocating the purchase price of the interest and the seller's basis in the interest to partnership assets, the principles of § 1.751–1(a) will apply. The rules of this paragraph (i)(1) also apply to inclusions and gains with respect to, and payments from, an S corporation, simple trust, and any other pass-through entity described in § 1.904–6(e)(3)(iii)(A).

(2) *Exception for certain partnership interests.* Except as otherwise provided, if any limited partner or corporate general partner owns less than 10 percent (by value) of the beneficial interest in a partnership, the partner's distributive share of partnership income from the partnership shall be passive income to the partner, and the partner's distributive share of partnership deduction from the partnership shall be allocated and apportioned under the principles of § 1.861–8 only to the partner's passive income from that partnership. However, if a less than 10 percent partnership interest is held in the ordinary course of a partner's active trade or business, the rules of paragraph (i)(1) of this section shall apply and the partner's distributive share of partnership income shall be characterized as income in a separate category to the extent that the distributive share is a share of income earned or accrued by the partnership in such category. A partnership interest will be considered to be held in the ordinary course of a partner's active trade or business if the partner (or a member of the partner's affiliated group of corporations (within the meaning of section 1504(a) and without regard to section 1504(b)(3))) engages (other than through a less than 10 percent interest in a partnership) in the same or similar trade or business as the partnership. To the extent that the partner's distributive share of income from the partnership is a share of high withholding tax interest received or accrued by the partnership, the partner's distributive share of partnership income from the partnership shall be high withholding tax interest to the partner. Any gain or loss from the sale of a partnership interest described in this paragraph (i)(2) shall be treated as passive income or loss. The rules of this paragraph (i)(2) apply to less than 10 percent owners of other passthrough entities described in paragraph (i)(1) of this section.

(j) *Ordering rules*—(1) *In general.* The rules of paragraph (j)(2) of this section apply for purposes of determining the character of income received or accrued by a person from a related person if the payor or another related person also received or accrues income from the recipient and the look-through rules apply to the income in all cases.

(2) *Specific rules.* For purposes of characterizing income under this paragraph, the following types of income are characterized in the order stated:

(i) Rent, royalty, interest, or other amounts definitely related to income of the payor;

(ii) Interest that is not definitely related to income of the payor;

(iii) Subpart F inclusions;

(iv) Dividend distributions.

The amount of interest paid or accrued by a person to a related person shall be offset against and eliminate any interest received or accrued by a person from that related person before application of the ordering rules of this paragraph.

(k) *Examples.* The following examples illustrate the application of paragraphs (g), (h), (i), and (j) of this section.

Example (1). S and T, controlled foreign corporations, are wholly-owned subsidiaries of P, and domestic corporation. S and T are incorporated in two different foreign countries and T is a financial services entity. In 1987, S earns $100 of income that is general limitation foreign base company sales income. After expenses, including a $50 interest payment to T, S's income is subject to foreign tax at an effective rate of 40 percent. P elects to exclude S's $50 of net income from Subpart F under section 954 (b)(4). T earns $350 of income that consists of $300 of Subpart F financial services income and $50 of interest received from S. The $50 of interest is foreign personal holding company income in T's hands because section 954 (c)(3)(A)(i) (same country exception for interest payments) does not apply. The $50 of interest is also general limitation income to T because the look-through rules of paragraph (c)(2)(i) of this section apply to characterize the interest payment. Thus, with respect to T, P includes in its gross income $50 of general limitation foreign personal holding company income and $300 of financial services income.

Example (2). The facts are the same as in example (1) except that, instead of earning $100 of general limitation foreign base company sales income, S earns $100 of foreign personal holding company income that is passive income. Although the interest payment to T would otherwise be passive income, because T is a financial services entity, under § 1.904–6(e)(1), the income is treated as financial services income in T's hands. Thus, P's entire $350 section 951 inclusion consists of financial services income.

Example (3). P, a domestic corporation, wholly owns S, a domestic corporation. S meets the 80 percent active foreign business requirements described in section 861 (c) (1). In 1987, S's earnings consist of $100 of shipping income and $100 of high withholding tax interest. S makes a $100 interest payment to P. The interest payment to P is subject to the look-through rules of paragraph (c)(2)(i) of this section, and is characterized as shipping income and high withholding tax interest to the extent that it is allocable to such income in S's hands.

Example (4). PS is a domestic partnership that is the sole shareholder of controlled foreign corporation S. PS has two general partners, A and B. A and B each have a greater than 10 percent interest in PS. PS also has two limited partners, C and D. C has a 50 percent interest in the partnership and D has a 9 percent interest. A, B, C and D are all United States persons. In 1987, S has $100 of general limitation non-subpart F income on which it pays no foreign tax. S pays a $100 dividend to PS. The dividend is the only income of PS. Under the look-through rule of paragraph (c) (4) of this section, the dividend to PS is general limitation income. Under paragraph (i) (1) of this section, A's, B's, and C's distributive shares of PS's income are general limitation income. Under paragraph (i) (2) of this section, because D is a partner with a less than 10 percent interest in PS, D's distributive share of PS's income is passive income.

Example (5). P has a 25 percent interest in partnership PS that he sells to X for $110. P's basis in his partnership interest is $35. PS has the following assets: A passive asset with a basis of $80 and a fair market value of $40 and a general limitation asset with a basis of $60 and a fair market value of $400. None of the assets in the partnership are described in section 751 (c) or (d). Under the principles of § 1.751–1 (a), P recognizes $85 of general limitation gain ($100 - $15) and $10 of passive loss ($10 - $20) on the sale of his partnership interest.

Example (6). P, a domestic corporation, owns 100 percent of the stock of S, a controlled foreign corporation, and S owns 100 percent of the stock of T, a controlled foreign corporation. S has $100 of passive foreign personal holding company income from unrelated persons and $100 of general limitation income. S also has $50 of interest

income from T. S pays T $100 of interest. Under paragraph (j) (2) of this section, the $100 interest payment from S to T is reduced for limitation purposes to the extent of the $50 interest payment from T to S before application of the rules in paragraph (c) (2) (ii) of this section. Therefore, the interest payment from T to S is disregarded. S is treated as if it paid $50 of interest to T, all of which is allocable to S's passive foreign personal holding company income. Therefore the $50 interest payment from S to T is passive income.

Example (7). P, a domestic corporation, owns 100 percent of the stock of S, a controlled foreign corporation, and S owns 100 percent of the stock of T, a controlled foreign corporation. In 1987, S earns $100 of passive foreign personal holding income and $100 of general limitation non-Subpart F sales income from unrelated persons and $100 of general limitation non-Subpart F interest income from a related person, W. S pays $150 of interest to T. T earns $200 of general limitation sales income from unrelated persons and the $150 interest payment from S. T pays $100 of interest.

Under paragraph (j) (2) of this section, the $100 interest payment from T to S reduces the $150 interest payment from S to T. S is treated as though it paid $50 of interest to T. T is treated as though it made no interest payment to S.

Under paragraph (j) (2) (ii) of this secton, the remaining $50 interest payment from S to T is then characterized. The interest payment is first allocable under the rules of paragraph (c) (2) (ii) of this section to S's passive income. Therefore, the $50 interest payment to T is passive income. The interest income is foreign personal holding company income in T's hands. T, therefore, has $50 of Subpart F passive income and $200 of non-Subpart F general limitation income.

Under paragraph (j) (2) (iii) of this section, Subpart F inclusions are characterized next. P has a Subpart F inclusion with respect to T of $50 that is attributable to passive income of T and is treated as passive income to P.

Example (8). P, a domestic corporation, owns 100 percent of the stock of S, a controlled foreign corporation, and S owns 100 percent of the stock of T, a controlled foreign corporation. P also owns 100 percent of the stock of U, a controlled foreign corporation. In 1987, S earns $100 of passive foreign personal holding company income and $200 of non-Subpart F general limitation income from unrelated persons. S also receives $150 of dividend income from T. S pays $100 of interest to T and $100 of interest to U. U earns $300 of non-Subpart F general limitation income and the $100 of interest received from S. U pays a $100 royalty to T. T earns the $100 interest payment received from S and the $100 royalty received from U.

Under paragraph (j) (2) (i) of this section, the royalty paid by U to T is characterized first. Assume that the royalty is definitely related to U's general limitation income. Also assume that the royalty is not Subpart F income to T. With respect to T, the royalty is general limitation income.

Under paragraph (j) (2) (ii) of this section, the interest payments from S to T and U are characterized next. This characterization is done without regard to any dividend income received by S because, under paragraph (j) (2) of this section, dividends are characterized after interest payments from a related person. The interest payments are first allocable to S's passive income under paragraph (c) (2) (ii) (D) of this section. Therefore, $50 of the interest payment to T is passive and $50 of the interest payment to U is passive. The remaining $50 paid to T is general limitation income and the remaining $50 paid to U is general limitation income. The entire amount of the interest payments to T and U is subpart F foreign personal holding company income to both recipients.

Under paragraph (j) (2) (iii) of this section, P has a $100 subpart F inclusion with respect to T that is characterized next. Fifty dollars ($50) of the Subpart F inclusion is passive income to P because it is attributable to the passive income portion of the interest income received by T from S, and $50 of the inclusion is treated as general limitation income to P because it is attributable to the general limitation portion of the interest income received by T from S.

Under paragraph (j)(2)(iii) of this section, P also has a $100 subpart F inclusion with respect to U. Fifty dollars ($50) of the subpart F inclusion is passive income to P because it is attributable to the passive portion of the interest income received by U from S, and $50 of the inclusion is general limitation income to P because it is attributable to the general limitation portion of the interest income received by U from S.

Under paragraph (j)(2)(iv) of this section, the $150 distribution from T to S is characterized next. One-hundred dollars ($100) of the distribution is out of earnings and profits attributable to previously taxed income. Therefore, only $50 is a dividend that is subject to the look-through rules of paragraph (d) of this section. The $50 dividend is attributable to T's general limitation income and is general limitation income to S in its entirety.

Example (9). P, a domestic corporation, owns 100 percent of the stock of S, a controlled foreign corporation, and S, owns 100 percent of the stock of T, a controlled foreign corporation. P also owns 100 percent of the stock of U, a controlled foreign corporation. S, T and U are all incorporated in the same foreign country. In 1987, S earns $100 of passive foreign personal holding income and $200 of general limitation non-Subpart F income from unrelated persons. S pays $100 of interest to T and $100 of interest to U. U earns $300 of general limitation non-subpart F income and the $100 of interest received from S. T's only income is the $100 interest payment received from S.

Under paragraph (j)(2)(ii) of this section, the interest payments from S to T and U are characterized. The interest payments are first allocated under the netting rule of paragraph (c)(2)(ii)(D) to S's passive income. Therefore, under that provision and paragraph (c)(2)(i) of this section, $50 of the interest payment to T is passive income to T and $50 of the interest payment to U is passive income to U. The remaining $50 paid to T is general limitation income and the remaining $50 paid to U is general limitation income.

Under paragraph (j)(2)(iii) of this section, any subpart F inclusion of P is determined and characterized next. Under paragraph (g) of this section, paragraphs (c)(2)(i) and (c)(2)(ii) apply not only for purposes of determining the separate category of income of S to which the interest payments from S to T and U are allocable but also for purposes of determining the Subpart F income of T and U. Although the interest payments from S to T and U are "same country" interest payments that would otherwise be excludible from T's and U's Subpart F income under section 954 (c)(3)(A)(i), section 954 (c)(3)(B) provides that the exception for same country payments between related persons shall not apply to the extent such payments have reduced the Subpart F income of the payor. In this case, $50 of the $100 interest payment from S to T reduced S's Subpart F income and $50 of the $100 interest payment from S to U reduced the remaining $50 of S's Subpart F income. Therefore, T has $50 of Subpart F income that is passive income and U has $50 of Subpart F income that is passive income. P includes $100 of Subpart F income in gross income that is passive income to P.

The remaining $50 of interest paid by S to T and the remaining $50 of interest paid by S to U is not Subpart F income to T or U because it did not reduce S's Subpart F income and is therefore eligible for the same country exception.

(l) *Application of section 904 (g).*—(1) *In general.* For purposes of determining the portion of an interest payment that is allocable to income earned or accrued by a controlled foreign corporation from sources within the United States under section 904 (g)(3), the rules in paragraph (l)(2) of this section apply. For purposes of determining the portion of a dividend paid or accrued by a controlled foreign corporation that is treated as from sources within the United States under section 904 (g) (4), the rules in paragraph (l)(4) of this section apply. For purposes of determining the portion of an amount included in gross income under section 951 (a) that is attributable to income of the controlled foreign corporation from sources within the United States under section 904 (g)(2), the rules in paragraph (l)(5) of this section apply. In order to determine whether section 904 (g) applies, section 904 (g)(5) (exception if controlled foreign corporation has a de minimis amount of United States source income) shall be applied to the total amount of earnings and profits of a controlled foreign corporation for a taxable year without regard to the characterization of those earnings under section 904(d).

(2) *Treatment of interest payments.* If interest is received or accrued by a United States shareholder or a person related to a United States shareholder (within the meaning of paragraph (c)(2)(ii) of this section) from a controlled foreign corporation, the interest shall be considered to be

allocable to income of the controlled foreign corporation from sources within the United States for purposes of section 904(d) to the extent that the interest is allocable under paragraph (c)(2)(ii)(D) of this section to passive income that is from sources within the United States. If related person interest is less than passive income, the related person interest will be allocable to United States source passive income based on the ratio of United States source passive income to total passive income. To the extent that related person interest exceeds passive income, and, therefore, is allocated under paragraph (c)(2)(ii)(E) of this section to income in a separate category other than passive, the following formula applies in determining the portion of the interest payment that is from sources within the United States:

The amount of the interest payment allocated to the separate category under paragraph (c)(2)(ii)(E) of this section times value of domestic assets in that category divided by value of total assets in that category

(3) *Examples.* The following examples illustrate the application of this paragraph.

Example (1). Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1988, S pays P $300 of interest to P. S has no other expenses. In 1988, S has $3000 of assets that generate $650 of foreign source general limitation sales income and a $1000 loan to an unrelated foreign person that generates $20 of foreign source passive interest income. S also has a $400 loan to an unrelated United States person that generates $70 of United States source passive income and $4000 of inventory that generates $100 of United States source general limitation income. The following chart summarizes S's assets and income:

	Foreign	U.S.	Totals
Assets:			
Passive	1,000	4,000	5,000
General	3,000	4,000	7,000
Total	4,000	8,000	12,000
Income:			
Passive	20	70	90
General	650	100	750
Total	670	170	840

Under paragraph (c)(2)(ii)D) of this section, $90 of the related person interest payment is allocable to S's passive income. Under paragraph (l)(2) of the section, $70 is from sources within the United States and $20 is from foreign sources.

Under paragraph (c)(2)(ii)(E) of this section, the remaining $210 of the related person interest payment is allocated to general limitation income. Under paragraph (l)(2) of this section, $120 of the remaining $210 is allocated to general limitation United States source income ($120 = $210 x $4000/$7000). Ninety dollars ($90) of the remaining $210 of the realted person interest payment is allocated to general limitation foreign source income. ($90 = $210 x $3000/$7000).

Example (2). Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1988, S pays $300 of interest to P. S has no other expenses. In 1988, S has $4000 of assets that generate $650 of foreign source general limitation manufacturing income and a $1000 loan to an unrelated foreign person that generates $100 of foreign source passive interest income. S has $500 of shipping assets that generate $200 of foreign source shipping income and $500 of shipping assets that generate $200 of United States source shipping income. S also has a $1,000 loan to an unrelated United States person that generates $100 of United States source passive income. S's passive income is not also described as shipping income. The following chart summarizes S's assets and income:

	Foreign	U.S.	Totals
Assets:			
Passive	1,000	1,000	2,000
Shipping	500	500	1,000
General	4,000	0	4,000
Total	5,500	1,500	7,000
Income:			
Passive	100	100	200
Shipping	200	200	400
General	650	0	650
Total	950	300	1,250

Under paragraph (c)(2)(ii)(D) of this section, $200 of the related person interest payment is allocable to S's passive income. Under paragraph (l) (2) of this section, $100 of this amount is from foreign sources and $100 is from United States sources.

Under paragraph (c)(2)(ii)(E) of this section, $80 of the remaining $100 of the related person interest payment is allocated to general limitation income ($80 = $100 x $4000/$5000) and $20 is allocated to shipping income ($20 = $100 x $1000/$5000)

Under paragraph (l)(2) of this section, none of $80 of the interest payment allocated to general limitation income is allocated to United States source income ($0 = $80 x $0/$4000). Therefore, $80 is allocated to general limitation foreign source income.

Under paragraph (l)(2) of this section, $10 of the $20 of the interest payment allocated to the shipping income is allocated to United source income ($10 = $20 x $500/$1000) and $10 of the $20 is allocated to foreign source income ($10 = $20 x $500/$1000).

(4) *Treatment of dividend payments*—(i) *Rule.* Any dividend or distribution treated as a dividend under this section that is received or accrued by a United States shareholder from a controlled foreign corporation shall be treated as income in a separate limitation derived from sources within the United States in proportion to the ratio of the portion of the earnings and profits of the controlled foreign corporation in the corresponding separate category from United States sources to the total amount of earnings and profits of the controlled foreign corporation in that separate category.

(ii) *Determination of earnings and profits from United States sources.* In order to determine the portions of earnings and profits from United States sources and from foreign sources within each separate category, related person interest shall be allocated to the United States source portion of income in a separate category by applying the rules of paragraph (l)(2) of this section. Other expenses shall be allocated by applying the rules of paragraph (c)(2)(ii) of this section separately to the United States source income and the foreign source income in each category. For example, unrelated person interest expense that is allocated among categories of income based upon the relative amounts of assets in a category must be allocated between United States and foreign source income within each category by applying the rules of paragraph (c)(2)(ii)(F) of this section separately to United States source and foreign source assets in the separate category.

(iii) *Example.* The following example illustrates the application of this paragraph.

Example. Controlled foreign corporation, S, is a wholly owned subsidiary of P, a domestic corporation. In 1987, S has $100 of non-Subpart F general limitation earnings and profits and $100 of shipping earnings and profits that are not attributable to Subpart F income because the taxpayer elected to exclude the income from Subpart F income under section 954(b)(4). None of the general limitation earnings and profits are from sources within the United States, and $50 of the shipping earnings and profits are from United States sources. In 1988, S earns $300 of non-Subpart F general limitation earnings and profits and $500 of non-Subpart F shipping earnings and profits. The shipping earnings and profits are attributable to income that is excluded from Subpart F under section 954(b)(4). One hundred dollars ($100) of the general limitation earnings and profits are from sources within the United States. None of the shipping earnings and profits are from United States sources. In 1988, S pays P a $500 dividend. Under paragraph (c)(4) of this section, $200 of the dividend is attributable to general limitation earnings and profits ($200=$500×$400/$1000). Under

this paragraph (1)(3), the portion of the dividend that is attributable to general limitation earnings and profits from sources within the United States is $50 ($200×$100/$400). Under paragraph (c)(4) of this section, $300 of the dividend is attributable to shipping earnings and profits ($300=$500×$600/$1000). Under this paragraph (1)(3), the portion of the dividend that is attributable to shipping earnings and profits from sources within the United States is $25 ($300×$50/$600).

(5) *Treatment of subpart F inclusions*—(i) *Rule.* Any amount included in the gross income of a United States shareholder of a controlled foreign corporation under section 951(a) shall be treated as income subject to a separate limitation that is derived from sources within the United States to the extent such amount is attributable to income of the controlled foreign corporation in the corresponding category of income from sources within the United States. In order to determine a controlled foreign corporation's taxable income and earnings and profits from sources within the United States in each separate category, the principles of paragraph (l)(4)(ii) of this section shall apply.

(ii) *Example.* The following example illustrates the application of this paragraph(l)(5).

Example. Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation, P. In 1987, S earns $100 of Subpart F foreign personal holding company income that is passive income. Of this amount, $40 is derived from sources within the United States. S also earns $50 of Subpart F general limitation income. None of this income is from sources within the United States. Assume that S pays no foreign taxes and has no expenses. P is required to include $150 in gross income under section 951(a). Of this amount, $60 will be foreign source passive income to P and $40 will be United States source passive income to P. Fifty dollars ($50) will be foreign source general limitation income to P.

(6) *Treatment of section 78 amount.* For purposes of treating taxes deemed paid by a taxpayer under section 902(a) and section 960(a)(1) as a dividend under section 78, taxes that are paid or accrued with respect to United States source income in a separate category shall be treated as United States source income in that separate category.

(7) *Coordination with treaties.* If any amount of income derived from a United States-owned foreign corporation, as defined in section 904(g)(6), would be treated as derived from sources within the United States under section 904(g), and, pursuant to an income tax convention with the United States, the taxpayer chooses to avail itself of benefits of the convention that treat such amount as arising from sources outside the United States, then such amount will be treated as foreign source income. However, section 904 (a), (b), (c), and (d), and sections 902, 907, and 960 shall be applied separately to amounts described in the preceding sentence with respect to each treaty under which the taxpayer has claimed benefits.

(m) *Order of application of sections 904 (d), (f), and (g).* In order to apply the rules of this section, section 904(d)(1) shall first be applied to the controlled foreign corporation to determine the amount of income and earnings and profits derived by the controlled foreign corporation in each separate category. The income and earnings and profits in each separate category that is from United States sources shall then be determined. Section 904(f)(5) (A) and (B) shall then be applied to the controlled foreign corporation. Sections 904(d)(3), 904(g), and this section shall then be applied for purposes of characterizing and sourcing income received, accrued, or included by a United States shareholder in the controlled foreign corporation that is attributable or allocable to income or earnings and profits of the controlled foreign corporation.

(n) *Effective date.* Section 904(d)(3) and this section apply to distributions and section 951 inclusions of earnings and profits of a controlled foreign corporation (or other entity to which this section applies) derived during the first taxable year of the controlled foreign corporation (or other entity) beginning after December 31, 1986, and thereafter, and to payments made by a controlled foreign corporation (or other entity) during such taxable years, without regard to whether the corresponding taxable year of the recipient of the distribution or payment or of one or more of the United States shareholders of the controlled foreign corporation begins after December 31, 1986.

§ 1.904–8 Allocation of taxes.

(a) *Allocation of taxes to a separate category or categories of income*—(1) *In general*—(i) *Taxes related to a separate category of income.* The amount of taxes paid or accrued with respect to a separate category of income shall include only those taxes that are related to income in that separate category. Taxes are related to income if the income is included in the base upon which the tax is imposed. If, for example, foreign law exempts certain types of income from foreign taxes, or certain types of income are exempt from foreign tax under an income tax convention, then no taxes are considered to be related to such income for purposes of this paragraph. As another example, if foreign law provides for a specific rate of tax with respect to certain types of income (*e.g.*, capital gains), or certain expenses or deductions are allowed under foreign law only with respect to a particular type of income, then such provisions shall be taken into account in determining the amount of foreign tax imposed on such income. A withholding tax (unless it is a withholding tax that is not the final tax payable on the income as described in § 1.904–6(d)) is related to the income from which it is withheld. A tax that is imposed on a base that includes more than one separate category of income is considered to be imposed on income in all such categories and, thus, the taxes are related to all such categories included within the foreign country or possession's taxable income base.

(ii) *Apportionment of taxes related to more than one separate category.* If a tax is related to more than one separate category, then, in order to determine the amount of the tax paid or accrued with respect to each separate category, the tax shall be apportioned among the separate categories on the basis of the following formula:

> Foreign tax related to more than one separate category times net income subject to that foreign tax included in a separate category divided by net income subject to that foreign tax

For purposes of this apportionment, gross income is determined under the law of the foreign country or a possession of the United States to which the foreign income taxes have been paid or accrued. The net amount of income in a separate category and the total net income are to be next determined by deducting any credits, expenses, losses, and any other deductions that are properly allocable to the gross amount of such income under the laws of that foreign country or possession. If foreign law does not provide for the direct allocation of expenses, losses, or other deductions to a particular category of income, then the principles of § 1.861–8 shall apply in allocating such expenses, losses, or other deductions to gross income as determined under foreign law. For example, the principles of § 1.861–8 apply to require definitely related expenses to be directly allocated to particular categories of gross income and provide the methods of apportioning expenses that are definitely related to more than one category of gross income or that are not definitely related to any particular category of gross income. For

purposes of this paragraph, the gross income method of allocating expenses that are not definitely related is acceptable even if the expense to be apportioned is interest expense. Also for this purpose, the apportionment of expenses required to be made under § 1.861–8 need not be made on other than a separate company basis. The rules in this paragraph apply only for purposes of the apportionment of taxes among separate categories of income and do not affect the computation of a taxpayer's foreign tax credit limitation with respect to a specific category of income.

(2) *Treatment of certain dividends from noncontrolled section 902 corporations.* If a taxpayer receives or accrues a dividend from a noncontrolled section 902 corporation, and if the Commissioner establishes that there is an agreement, express or implied, that such dividend is paid out of a designated pool of earnings of the foreign corporation, then only the foreign taxes imposed on that pool of earnings will be considered to be taxes related to the dividend.

(b) *Application of paragraph (a) to sections 902 and 960*—(1) *Determination of deemed paid credit.* If, for the taxable year, there is included in the gross income of a domestic corporation under section 951 an amount attributable to the earnings and profits of a controlled foreign corporation for any taxable year and the amount included consists of income in more than one separate category of the controlled foreign corporation, then the domestic corporation shall be deemed to have paid only a portion of the taxes paid or accrued, or deemed paid or accrued, by the controlled foreign corporation that are allocated to each separate category to which the inclusion is attributable. The portion of the taxes allocated to a particular separate category that shall be deemed paid by the United States shareholder shall be equal to the taxes allocated to that separate category multiplied by the amount of the inclusion with respect to that category (as determined under § 1.904–7(c)(1)) and divided by the earnings and profits of the controlled foreign corporation with respect to that separate category (as determined under § 1.904–7(c)(2)(ii)). The rules of this paragraph (b)(1) also apply for purposes of computing the foreign tax credit of United States shareholders of controlled foreign corporations under section 902.

(2) *Taxes on income excluded from Subpart F under section 954(b)(4).* Whether an item of income is high-taxed for purposes of section 954(b)(4) shall be determined after the allocation of taxes under paragraph (a) of this section. If a controlled foreign corporation receives or accrues income in a separate category that is excluded from the corporation's Subpart F income under section 954(b)(4) and also receives or accrues income in that category that is included in a United States shareholder's gross income under section 951(a)(1), then any foreign income taxes that are allocable to the items of income in that category that are excluded from the corporation's Subpart F income under section 954(b)(4) shall be considered to be related only to the non-Subpart F income in that category. The taxes that are related to the income that is excluded from Subpart F under section 954(b)(4) shall be deemed paid only when the related earnings and profits are distributed to the United States shareholder or otherwise included in the United States shareholder's gross income.

(3) *Distributions received from foreign corporations that are excluded from gross income under section 959(b).* The principles of this paragraph shall be applied to—

(i) Any portion of a distribution received from a first-tier corporation by a domestic corporation that is excluded from the domestic corporation's gross income under section 959(a) and § 1.959–1, and

(ii) Any portion of a distribution received from an immediately lower-tier corporation by a second- or first-tier corporation that is excluded from such foreign corporation's gross income under section 959(b) and § 1.959–2, if such distribution is treated as a dividend pursuant to § 1.960–2(a).

(4) *Application of section 78.* For purposes of treating taxes deemed paid by a taxpayer under section 902(a) and section 960(a)(1) as a dividend under section 78, taxes that were allocated to income in a separate category shall be treated as income in that same separate category.

(5) *Increase in limitation.* The amount of the increase in the foreign tax credit limitation allowed by section 960(b) and § 1.960–4 shall be determined with regard to the applicable category of income under section 904(d).

(c) *Examples.* The following examples illustrate the application of this section.

Example (1). M, a domestic corporation, conducts business in foreign country X. M earns $400 of shipping income, $200 of general limitation income and $200 of passive income as determined under foreign law. Under foreign law, none of M's expenses are directly allocable to a particular category of income. Under the principles of § 1.861–8, M allocates $75 of definitely related expenses to shipping income, $10 of expenses to general limitation income, and no expenses to passive income. M also allocates non-definitely related expenses of $40 to shipping income, $20 to general limitation income, and $20 to passive income. Therefore, for purposes of paragraph (a) of this section, M has $285 of net shipping income, $170 of net general limitation income, and $180 of net passive income. Country X imposes tax of $100 on a base that includes M's shipping income and general limitation income. Country X exempts passive income from tax. The tax paid M is related to M's shipping and general limitation income. The $100 tax is apportioned between those limitations. Thus, M is considered to have paid $63 of X tax on its shipping income ($100 × $285/$455) and $37 of tax on its general limitation income ($100 × $170/$455). None of the X tax is allocated to M's passive income.

Example (2). The facts are the same as in example (1) except that X does not exempt all passive income from tax but only exempts interest income. M's passive income consists of $100 of gross dividend income, to which $10 of non-definitely related expenses are allocated, and $100 of interest income, to which $10 of non-definitely related expenses are allocated. The $90 of net dividend income is subject to X tax, and $90 of net interest income is exempt from X tax. M pays $130 of tax to X. The $130 of tax is related to M's general, shipping, and passive income. The tax is apportioned among those limitations as follows: $68 to shipping income ($130 × $285/$545) $41 to general limitation income ($130 × $170/$545), and $21 to passive income ($130 × $90/$545).

Example (3). P, a domestic corporation, owns 100 percent of S, a controlled foreign corporation organized in country X. S owns 100 percent of T, a controlled foreign corporation that is also organized in country X. Country X grants group relief to S and T. In 1987, S earns $100 of income and T incurs an $80 loss. Under country X's group relief provisions, only $20 of S's income is subject to country X tax. Country X imposes a 30 percent tax on this income ($6). P includes $100 of S's income in gross income under section 951. Six dollars ($6) of foreign tax is related to that income for purposes of section 960.

Example (4). P, a domestic corporation, owns all the stock of S, a foreign corporation organized in country F. S is a shipping company that operates in foreign countries X, Y, and Z. Under both foreign and United States law, S earns a total of $500. The income is foreign base company shipping income. The foreign base company shipping income is subject to varying rates of foreign tax. S pays $80 of tax to X on $200 of income, $40 of tax to Y on $200 of income and no tax on $100 of income earned in Z. P excludes the $200 derived in X from foreign base company shipping income under section 954(b)(4). Under paragraph (b)(3) of this section, the $80 of taxes that are related to that income are not deemed paid under section 960 with respect to the $300 included in P's income under section 951(a)(1). Thus, only the taxes related to that income ($40) would be creditable. The $80 of taxes related to the

income excluded under section 954(b)(4) are not deemed paid by P until the income to which those taxes are related is included in P's income.

Example (5). Domestic corporation P owns all of the stock of controlled foreign corporation S, which owns all of the stock of controlled foreign corporation T. All such corporations use the calendar year as the taxable year. Assume that earnings and profits are equal to net income and that the income amounts are identical under United States and foreign law principles. In 1987, T earns $187.50 of gross passive income and $62.50 of gross general limitation income and pays $50 of foreign taxes. Assume that T incurs no other expenses. S earns no income in 1987 and pays no foreign taxes. For 1987, P is required under section 951 to include in gross income $175 attributable to the earnings and profits of T for such year. One hundred and fifty dollars ($150) of the Subpart F inclusion is attributable to passive income earned by T, and $25 of the Subpart F inclusion is attributable to general limitation income earned by T. In 1988, T earns no income and pays no foreign taxes. T pays a $200 dividend to S, consisting of $175 from its earnings and profits attributable to amounts required to be included in P's gross income with respect to T and $25 from its other earnings and profits. Assume that no withholding taxes imposed with respect to the distribution from T to S. In 1988, S earns $100 of gross general limitation income and receives a $200 dividend from T. S pays $30 of foreign taxes. Assume that S incurs no other expenses. For 1988, P is required under section 951 to include in gross income $22.50 attributable to the earnings and profits of S for such year. The entire Subpart F inclusion is attributable to general limitation income earned by S. In 1988, S pays P a dividend of $247.50, consisting of $157.50 from its earnings and profits attributable to the amount required under section 951 to be included in P's gross income with respect to T, $22.50 from its earnings and profits attributable to the amount required under section 951 to be included in P's gross income with respect to S, and $67.50 from its other earnings and profits. The foreign income taxes deemed paid by P for 1987 and 1988 under section 960(a)(1) and section 902(a) are determined as follows upon the basis of the following facts and computations.

T corporation (Second-Tier Corporation)

1. Pre-tax earnings and profits

(a) Passive income (p.i.): 187.50
Plus:
(b) General limitation income (g.l.i.): 62.50
(c) Total: 250
Less:
(d) Foreign income taxes paid on or with respect to T's earnings and profits (20%): 50
(e) Earnings and profits: 200

2. Allocation of taxes

(a) Foreign income taxes paid by T that are allocable to p.i. earned by T:
Line 1(d) taxes: 50
Multiplied by: foreign law net p.i.: 187.50
Divided by: foreign law total net income: 250
Result: 37.50
(b) Foreign income taxes paid by T that are allocable to g.l.i. earned by T:
Line 1(d) taxes: 50
Multiplied by: foreign law net g.l.i.: 62.50
Divided by: foreign law total net income: 250
Result: 12.50

3. T's earnings and profits

(a) Earnings and profits attributable to T's p.i.:
Line (1)(a) e & p: 187.50
Less: line 2(a) taxes: 37.50
Result: 150
(b) Earnings and profits attributable to T's g.l.i.:
Line (1)(b) e & p: 62.50
Less: line 2(b) taxes: 12.50
Result: 50

4. Subpart F inclusion attributable to T:

(a) Amount required to be included in P's gross income for 1987 under section 951 with respect to T that is attributable to T's p.i.: 150
(b) Amount required to be included in P's gross income for 1987 under section 951 with respect to T that is attributable to T's g.l.i.: 25

5. Foreign income taxes deemed paid by P under section 960(a)(1) with respect to T

(a) Taxes deemed paid that are attributable to T's Subpart F inclusion that are attributable to T's p.i.:
Line 2(a) taxes: 37.50
Multiplied by: line 4(a) section 951 incl.: 150
Divided by: line 3 (a) e & p: 150
Result: 37.50
(b) Taxes deemed paid that are attributable to T's Subpart F inclusion that are attributable to T's g.l.i.
Line 2(b) taxes: 12.50
Multiplied by: line 4(b) section 951 incl.: 25
Divided by: line 3 (b) e & p: 50
Result: 6.26

6. Dividends paid to S

(a) Dividends attributable to T's previously taxed p.i.: 150
Plus:
(b) Dividends attributable to T's previously taxed g.l.i.: 25
Plus:
(c) Dividends from T's non-previously taxed earnings and profits attributable to p.i.: 0
Plus:
(d) Dividends from T's non-previously taxed earnings and profits attributable to g.l.i.: 25
(e) Total dividends paid to S: 200

7. Taxes deemed paid by S

(a) Taxes of T deemed paid by S for 1987 under section 902(b)(1) with regard to T's p.i.:
Line 2(a) taxes: 37.50
Multiplied by: line 6(c) dividend: 0
Divided by: line 3(a) e & P: 150
Result: 0
(b) Taxes of T deemed paid by S for 1987 under section 902(b)(1) with regard to T's g.l.i.:
Line 2(b) taxes: 12.50
Multiplied by: line 6(d) dividend: 25
Divided by: line 3(b) e & p: 50
Result: 6.25

S Corporation (First-Tier Corporation)

8. Pre-tax earnings and profits:

(a) Dividends from T attributable to T's non-previously taxed p.i.: 0
Plus:
(b) Dividends from T attributable to T's non-previously taxed g.l.i: 25
Plus:
(c) Dividends from T attributable to T's previously taxed p.i.: 150
Plus:
(d) Dividends from T attributable to T's previously taxed g.l.i.: 25
Plus:
(e) Passive income other than dividend from T: 0
Plus:
(f) General limitation income other than dividend from T: 100
(g) Total pre-tax earnings and profits: 300
(h) Foreign income taxes paid on or with respect to S's earnings and profits (10%): 30
(i) Earnings and profits: 270

9. Allocation of Taxes

(a) Foreign income taxes paid by S that are allocable to non-previously taxed p.i. earned by S:
Line 8(h) taxes: 30
Multiplied by: foreign law line 8(a) & 8(e) p.i. amounts: 0
Divided by: foreign law total net income: 300
Result: 0
(b) Foreign income taxes paid by S that are allocable to S's previously taxed p.i. received from T:
Line 8(h) taxes: 30
Multiplied by: foreign law line 8(c) p.i. amount: 150
Divided by: foreign law total net income: 300
Result: 15
(c) Foreign income taxes paid by S that are allocable to non-previously taxed g.l.i. earned by S:
Line 8(h) taxes: 30
Multiplied by: foreign law line 8(b) & line 8(f) g.l.i. amounts: 125
Divided by: foreign law total net income: 300
Result: 12.50
(d) Foreign income taxes piad by S that are allocable to S's previously taxed g.l.i. received from T:
Line 8(h) taxes: 30
Multiplied by: foreign law line 8(d) amount: 25
Divided by: foreign law total net income: 300
Result: 2.50

10. (a) Non-previously Taxed Earnings and Profits of S

Lines 8(a), 8(b), 8(e), & 8(f) e & p: 125
Less: lines 9(a) & 9(c) taxes: 12.50
Result: 112.50
(b) Portion of result in 10(a) attributable to S's p.i.: 0
(c) Portion of result in 10(a) attributable to S's g.l.i.: 112.50

11. (a) Previously Taxed Earnings and Profits of S:

Lines 8(c) and 8(d) e & p: 175
Less: lines 9(b) & 9(d) taxes: 17.50

Result: 157.50
(b) Portion of result of 11(a) attributable to T's p.i.:
Line 8(c): 150
Less: line 9(b) taxes: 15
Result: 135
(c) Portion of result in 11(a) attributable to T's g.l.i.:
Line 8(d): 25
Less: line 9(d) taxes: 2.50
Result: 22.50

12. Subpart F Inclusion Attributable to S:

(a) Amount required to be included in P's gross income for 1988 under section 951 with respect to S that is attributable to S's p.i.: 0
(b) Amount required to be included in P's gross income for 1988 under section 951 with respect to S that is attributable to S's g.l.i.: 22.50

13. Foreign Income Taxes Deemed paid by P Under Section 960(a)(1) With Respect to S:

(a) Taxes deemed paid that are attributable to S's Subpart F inclusion that are attributable to S's p.i.:
Line 9(a) taxes: 0
Multiplied by: line 12(a) sec. 951 incl: 0
Divided by: line 10(b) e & p: 0
Result 0
(b) Taxes deemed paid that are attributable to S's Subpart F inclusion that are attributable to S's g.l.i.:
Line 9(c) taxes: 12.50
Multiplied by: line 12(b) 951 incl: 22.50
Divided by: line 10(c) e & p: 112.50
Result: 2.50
(c) Foreign income taxes deemed paid by S deemed paid by P that are allocable to S's p.i.:
Line 7(a) taxes deemed paid by S: 0
Multiplied by: line 12(a) section 951 incl 0
Divided by: line 10(b) e & p: 0
Result: 0
(d) Foreign income taxes deemed paid by S deemed paid by P that are allocable to S's g.l.i.:
Line 7(b) taxes deemed paid by S: 6.25
Multiplied by: line 12(b) section 951 incl: 22.50
Divided by: line 10(c) e & p: 112.50
Result: 1.25

14. Dividends paid to P

(a) Dividends from S attributable to S's previously taxed p.i.: 0
Plus:
(b) Dividends from S attributable to S's previously taxed g.l.i.: 22.50
Plus:
(c) Dividends to which section 902(a) applies:
(i) Consisting of S's earnings and profits attributable to T's previously taxed p.i.: 135
Plus:
(ii) Consisting of S's earnings and profits attributable to T's previously taxed g.l.i.: 22.50
Plus:
(iii) Consisting of S's other p.i. earnings and profits: 0
Plus:
(iv) Consisting of S's other g.l.i. earnings and profits: 67.50
(v) Total section 902 dividend: 225
(d) Total dividends paid to P: 247.50

15. Foreign Income Taxes Deemed Paid by P under section 902 and section 960(a)(3) with respect to S:

(a) Taxes paid by S deemed paid by P under section 902(a) with regard to S's p.i.:
Line 9(a) taxes: 0
Multiplied by: line 14(c)(iii) div.: 0
Divided by: line 10(b) e & p: 0
Result: 0
(b) Taxes paid by S deemed paid by P under section 902(a) with regard to S's g.l.i.:
Line 9(c) taxes: 12.50
Multiplied by: line 14(c)(iv) div.: 67.50
Divided by: line 10(c) e & p: 112.50
Result: 7.50
(c) Taxes deemed paid by S deemed paid by P under section 902(a) with regard to S's p.i.:
Line 7(a) deemed paid taxes: 0
Multiplied by: line 14(c)(iii) div.: 0
Divided by: line 10(b) e & p: 0
Result: 0
(d) Taxes deemed paid by S deemed paid by P under section 902(a) with regard to S's g.l.i.:
Line 7(b) deemed paid taxes: 6.25
Multiplied by: line 14(c)(iv) div.: 67.50
Divided by: line 10(c) e & p: 112.50
Result: 3.75
(e) Foreign income taxes paid by S under section 960(a)(3) deemed paid by P with regard to S's previously taxed p.i.:
Line 9(b) taxes: 15
Multiplied by: line 14(c)(i) div.: 135
Divided by: line 11(b) e & p: 135
Result: 15
(f) Foreign income taxes paid by S under section 960 (a) (3) deemed paid by P with regard to S's previously taxed g.l.i.:
Line 9(d) taxes: 2.50
Multiplied by: line 14(c)(ii) div. 22.50
Divided by: line 11(c) e & p: 22.50
Result: 2.50

Summary

Total taxes deemed paid by P under section 960 (a) (1) with respect to—
Passive income of S and T included under section 951 in income of P:
Line 5(a): 37.50
Plus:
Line 13(a): 0
Plus:
Line 13(c): 0
Result: 37.50

General limitation income of S and T included under section 951 in income of P:
Line 5(b): 6.25
Plus:
Line 13(b): 2.50
Plus:
Line 13(d): 1.25
Result: 10
Total deemed paid taxes under section 960 (a) (1): 47.50
Total taxes deemed paid by P under section 902 and section 960 (a)(3) attributable to passive income of S and T (line 15(e)): 15
Total taxes deemed paid by P under section 902 and section 960 (a) (3) Attributable to general limitation income of S and T:
Line 15(b): 7.50
Plus:
Line 15(d): 3.75
Plus:
Line 15(f): 2.50
Result: 13.75

§ 1.904–9 Transition rules.

(a) *Characterization of distributions and section 951(a)(1)(B) inclusions of earnings of a foreign corporation accumulated in taxable years beginning before January 1, 1987 during taxable years of both the payor foreign corporation and the recipient which begin after December 31, 1986*—(1) *In general.* Income derived by a foreign corporation in taxable years beginning before January 1, 1987, is characterized in the foreign corporation's hands under section 904(d)(1)(A) (separate limitation interest income), or section 904(d)(1)(E) (general limitation income) (prior to their amendment by the Tax Reform Act of 1986 (the Act)) after application of the de minimis rule of former section 904(d)(3)(C) (prior to its amendment by the Act). When, in a taxable year after the effective date of the Act, earnings and profits attributable to such income are distributed, or included in the gross income of a United State shareholder under section 951(a)(1)(B), the ordering rules of section 904(d)(3)(D) and § 1.904–7(c)(4), shall be applied in determining intitially the character of the income of the distributee or United States shareholder. Thus, a proportionate amount of a distribution described in this paragraph will be initially characterized as separate limitation interest income in the hands of the distributee based on the ratio of the separate limitation interest earnings and profits out of which the dividend was paid to the total earnings and profits out of which the dividend was paid. The distribution or section 951(a)(1)(B) inclusion must then be recharacterized in the hands of the distributee or United States shareholder on the basis of the following principles:

(i) Distributions and section 951(a)(1)(B) inclusions that are initially characterized as separate limitation interest income shall be treated as passive income;

(ii) Distributions and section 951(a)(1)(B) inclusions that are initially characterized as old general limitation income shall be treated as general limitation income, unless the taxpayer establishes to the satisfaction of the Commissioner that the distribution or section 951(a)(1)(B) inclusion is attributable to:

(A) Earnings and profits accumulated with respect to shipping income, as defined in section 904(d)(2)(D) and § 1.904–6(f), or

(B) In the case of a financial services entity, earnings and profits accumulated with respect to financial services

income, as defined in section 904(d)(2)(C)(ii) and § 1.904–6(e)(1).

(2) *Limitation on establishing the character of earnings and profits.* In order for a taxpayer to establish that distributions or section 951(a)(1)(B) inclusions that are attributable to general limitation earnings and profits of a particular taxable year beginning before January 1, 1987, are attributable to shipping or financial services earnings and profits, the taxpayer must establish the amounts of foreign taxes paid or accured with respect to income attributable to those earnings and profits that are to be treated as taxes paid or accured with respect to shipping or financial services income, as the case may be, under section 904(d)(2)(I). Conversely, in order for a taxpayer to establish the amounts of general limitation taxes paid or accrued in a taxable year beginning before January 1, 1987, that are to be treated as taxes paid or accrued with respect to shipping or financial services income, as the case may be, the taxpayer must establish the amount of any distribution or section 951(a)(1)(B) inclusions that are attributable to shipping or financial services earnings and profits. For purposes of establishing the amounts of general limitation taxes that are to be treated as taxes paid or accrued with respect to shipping or financial services income, the principles of § 1.904–8 shall be applied.

(b) *Application of look-through rules to distributions (including deemed distributions) and payments by an entity to a recipient when one's taxable year begins before January 1, 1987 and the other's taxable year begins after December 31, 1986*—(1) *In general.* This paragraph provides rules relating to the application of section 904 (d) (3) to payments made by a controlled foreign corporation or other entity to which the look-through rules apply during its taxable year beginning after December 31, 1986, but received in a taxable year of the recipient beginning before January 1, 1987. The paragraph also provides rules relating to distributions (including deemed distributions) or payments made by a controlled foreign corporation to which section 904 (d) (3) (as in effect before the Act) applies during its taxable year beginning before January 1, 1987, and received in a taxable year of the recipient beginning after December 31, 1986.

(2) *Payor of interest, rents, or royalties is subject to the Act and recipient is not subject to the Act.* If interest, rents, or royalties are paid or accured on or after the start of the payor's first taxable year beginning on or after January 1, 1987, but prior to the start of the recipient's first taxable year beginning on or after January 1, 1987, such interest, rents, or royalties shall initially be characterized in accordance with section 904(d)(3) and § 1.904–7. To the extent that interest payments in the hands of the recipient are initially characterized as passive income under these rules, they will be treated as separate limitation interest in the hands of the recipient. To the extent that rents or royalties in the hands of the recipient are initially characterized as passive income under these rules, they will be recharacterized as general limitation income in the hands of the recipient.

(3) *Recipient of interest, rents, or royalties is subject to the Act and payor is not subject to the Act.* If interest, rents, or royalties are paid or accrued before the start of the payor's first taxable year beginning on or after January 1, 1987, but on or after the start of the recipient's first taxable year beginning after January 1, 1987, the income in the recipients's hands shall be initially characterized in accordance with former section 904(d)(3) (prior to its amendment by the Act). To the extent interest income is characterized as separate limitation interest income under these rules, that income shall be recharacterized as passive income in the hands of the recipient. Rents or royalties will be characterized as general limitation income.

(4) *Recipient of dividends and Subpart F inclusions is subject to the Act and payor is not subject to the Act.* If dividends are paid or accured or section 951(a)(1) inclusions occur before the start of the first taxable year of a controlled foreign corporation beginning on or after January 1, 1987, but on or after the start of the first taxable year of the distributee or United States shareholder beginning on or after January 1, 1987, the dividends or section 951(a)(1) inclusions in the hands of the distributee or United States shareholder shall be initially characterized in accordance with former section 904(d)(3) (including the ordering rules of section 904(d)(3)(A). Therefore, under former section 904(d)(3)(A), dividends are considered to be paid or derived first from earnings attributable to separate limitation interest income. To the extent the dividend or section 951(a)(1) inclusion is initially characterized under these rules as separate limitation interest income in the hands of the distributee or United States shareholder, the dividend or section 951(a)(1) inclusion shall be recharacterized as passive income in the hands of the distributee or United States shareholder. The portion, if any, of the dividend or section 951(a)(1) inclusion that is not characterized as passive income shall be characterized according to the rules in paragraph (a) of this section. Therefore, a taxpayer may establish that income that would otherwise be characterized as general limitation income is shipping or financial services income. Rules comparable to the rules contained in section 904(d)(2)(I) shall be applied for purposes of characterizing foreign taxes deemed paid with respect to distributions and section 951(a)(1) inclusions covered by this paragraph (b)(4).

(5) *Examples.* The following examples illustrate the application of this paragraph.

Example (1). P is a domestic corporation that is a fiscal year taxpayer (July 1–June 30). S, a controlled foreign corporation, is a wholly-owned subsidiary of P and has a calendar taxable year. On June 1, 1987, S makes a $100 interest payment to P. Because the payment is made after January 1, 1987 (the first day of S's first taxable year beginning after December 31, 1986), the look-through rules of section 904(d)(3) apply to characterize the payment made by S. To the extent, however, that the interest payment to P is allocable to passive income earned by S, the payment will be included in P's separate limitation for interest as provided in former section 904(d)(1)(A).

Example (2). P is a domestic corporation that is a calendar year taxpayer. S, a controlled foreign corporation, is a wholly-owned subsidiary of P and has a July 1–June 30 taxable year. On June 1, 1987, S makes a $100 interest payment to P. Because the payment is made prior to July 1, 1987 (the first day of S's first taxable year beginning after December 31, 1986), the look-through rules of section 904(d)(3) to not apply. Assume that, under former section 904(d)(3), the interest payment would be characterized as separate limitation interest income. For purposes of determining P's foreign tax credit limitation, the interest payment will be passive income as provided in section 904(d)(1)(A).

Example (3). The facts are the same as in example (2) except that on June 1, 1987, S makes a $100 dividend distribution to P. Because the dividend is paid prior to July 1, 1987 (the first day of S's first taxable year beginning after December 3, 1986), the look-through rules of section 904(d)(3) do not apply. Assume that, under former section 904(d)(3), S's earnings and profits for the taxable year ending June 30, 1987 consist of $200 of earnings attributable to general limitation income and $75 of earnings attributable to separate limitation interest income. The portion of the dividend that is attributable to S's separate limitation interest and is treated as separate limitation interest income under former section 904(d)(3) is $75. The remaining $25 of the dividend is treated as general limitation income under former section 904(d)(3). For purposes of determining P's foreign tax credit limitation, $75 of the dividend will be recharacterized as passive

income. The remaining $25 of the dividend will be characterized as general limitation income, unless P can establish that the general limitation portion is attributable to shipping or financial services income.

(c) *Installment sales.* If income is received or accrued by any person on or after the effective date of the Act (as applied to such person) that is attributable to a disposition of property by such person with regard to which section 453 or section 453(A) applies (installment sale treatment), and the disposition occurred prior to the effective date of the Act, that income shall be characterized according to the rules of §§ 1.904–6 through 1.904–9.

(d) *Special effective date for high withholding tax interest earned by persons with respect to qualified loans described in section 1201(e)(2) of the Act.* For purposes of characterizing interest received or accrued by any person, the definition of high withholding tax interest in § 1.904–6(d) shall apply to taxable years beginning after December 31, 1986 except as provided in section 1201(e)(2) of the Act.

(e) *Treatment of certain recapture income.* Except as otherwise provided, if income is subject to recapture under section 585(c), the income shall be general limitation income. If the income is recaptured by a taxpayer that is a financial services entity, the entity may treat the income as financial services income if the taxpayer establishes to the satisfaction of the Secretary that the deduction to which the recapture amount is attributable is allocable to financial services income.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87–19436 Filed 8–20–87; 3:51 pm]

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VOL
52
ISS
165
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26
1987
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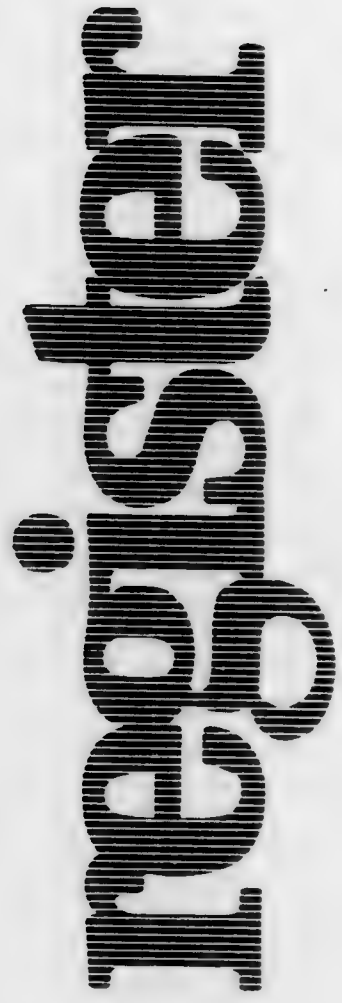

Wednesday
August 26, 1987

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 91, 121, 125, 129, and 135

Traffic Alert and Collision Avoidance System; Notice of Proposed Rulemaking

VOL 52 ISS 165 AG 26 1987 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 91, 121, 125, 129, and 135

[Docket No. 25355; NPRM No. 87-8]

Traffic Alert and Collision Avoidance System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to require the installation and use of a Traffic Alert and Collision Avoidance Systems (TCAS) in large transport type airplanes and certain turbine powered smaller airplanes. TCAS, which utilizes the signal from existing transponders, would provide for a collision avoidance capability in the cockpit independent of the ground Air Traffic Control (ATC) system, or where there is no ATC coverage. Additionally, the notice proposes that all operators of TCAS-equipped airplanes have an FAA-approved TCAS training program for flight crewmembers.

DATE: Comments must be received on or before December 24, 1987.

ADDRESSES: Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC-204), Docket No. 25355, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked Docket No. 25355. Comments may be examined in Room 915 between 8:30 a.m. and 5:00 p.m. on weekdays, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frank Rock, Aircraft Engineering Division, FAA, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-9567.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit their comments in triplicate to the address specified above. All comments received on or before the closing date for comments specified above will be considered by the Administrator before taking action on this proposed rulemaking. In addition, late comments may be accepted as long as they do not negatively impact on the timing of final action on this notice. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25355." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn.: Public Inquiry Center (APA-230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Working through the Air Transport Association, the airline industry began the search for a workable collision avoidance system in 1955. The airlines believed they needed a collision avoidance system as a backup to the FAA's ground-based air traffic control system (ATCS), and to ensure aircraft separation in airspace where surveillance coverage is not provided. Collision avoidance systems with those safety objectives in mind have been under development in the United States since 1955. Beginning in the mid-1970's, research has centered upon the use of signals from the Air Traffic Control Radar Beacon System (ATCRBS) airborne transponder as the cooperative element of collision avoidance systems. Current efforts, summarized in References 1 through 10 at the end of this preamble, have involved all relevant areas of investigation, including—

1. Surveillance techniques;
2. Collision avoidance algorithms;
3. Analysis of air traffic control (ATC) consequences;
4. Analysis of electromagnetic compatibility; and
5. Operational evaluations.

The above developments have progressed to the point that an existing system is now of sufficient technical maturity and operational effectiveness that requiring the use of a traffic alert and collision avoidance system (TCAS) in certain airplanes is considered appropriate.

System Description

The primary responsibility for avoiding an aircraft collision rests with the pilot, with the aid of the ATC system. The TCAS provides a backup to the pilot and the ATC system by alerting flightcrews to aircraft that may represent collision hazards, and, in the case of the TCAS II and III, provides the crew with the necessary maneuver to avoid the hazard. The equipment for TCAS is contained entirely onboard the equipped airplane and is not dependent on any ground-based systems. When discussed within this notice, the term "TCAS," if not followed by a numerical identifier, is generic and refers to any TCAS system.

The ATCRBS is a radar system in which the aircraft to be detected is equipped with a radio receiver/transmitter called a transponder. Radar pulses transmitted from the ground are received by the transponder and used to trigger a distinctive transmission from the transponder. The controller's radar receives this transmission and displays a distinct and amplified return on the radar scope. The Mode S transponder is an advanced version of the existing ATCRBS transponder. The Mode S transponder is completely interoperative and compatible with the current ATCRBS system. Mode S uses a discrete set of radio pulses (code) for each individual aircraft, and is not limited to the maximum 4,096 possible codes of the ATCRBS transponder. Mode S also adds the capability to provide a data link between the aircraft and the ground. Some transponders are equipped with a Mode C capability. Mode C is that function of a transponder that responds to specific ground interrogations by transmitting the aircraft's current altitude in 100-foot increments. This information is received by ground equipment and displayed on the controller's scope in the data block for the transmitting aircraft. Mode C may be used with both ATCRBS and Mode S transponders.

The TCAS equipment two classes of advisories. Traffic advisories are issued to aid visual acquisition and include the range, range rate, altitude, altitude rate and bearing of the intruding aircraft relative to the TCAS aircraft. Traffic advisories (TA's) without altitude may also be provided from nonaltitude reporting transponder Mode A equipped intruders. Advisories issued to correct a flight path or to prevent a maneuver that could cause insufficient separation are resolution advisories (RA's).

The FAA's approach to TCAS has been, first, to address a family of onboard collision avoidance systems, then to demonstrate the operational and technical feasibility of the concept, and lastly to support the development of national standards for the equipment. The TCAS Program consists of the following three categories of equipment: TCAS I provides only TA's; TCAS II provides TA'S and resolution advisories (RA's) in the vertical plane; and TCAS III provides TA's and RA's in both the vertical and horizontal planes.

The TCAS equipment in an airplane interrogates the ATC transponders of other aircraft in its vicinity. By computer analysis of the replies, the TCAS equipment determines which of these aircraft represent potential collision hazards and provides appropriate advisory information to the flightcrew to ensure separation. These aircraft are termed *intruders*.

TCAS equipment transmits periodic interrogation signals. If the nearby aircraft is equipped with a Mode A transponder, range and azimuth information will be provided to the TCAS equipped airplane. If the nearby aircraft is equipped with a Mode C transponder, altitude information will be provided in addition to range and azimuth. Nearly aircraft equipped with a Mode S transponder will reply with signals that provide range, azimuth, and altitude. This data, along with and assumed protected volume of airspace around the airplane, is used to determine if the intruding airplane is a threat. Airplanes equipped with a TCAS II or III system and a Mode S transponder must perform coordinated maneuvers to preclude conflicts that could result if each TCAS-equipped airplane were to resolve the encounter separately. Intruder airplanes so equipped are processed individually to permit selection of the appropriate RA in reliance on the predicted track data and in coordination with other TCAS II- or III-equipped airplanes. Coordination is accomplished through the Mode S transponder data link.

Principal Features of TCAS

Ground Independence

The Mode S transponder air-to-air coordination function provided for in TCAS II or TCAS III is performed by the Mode S data link between the TCAS-equipped airplanes. TCAS thus acts as an independent backup to the air traffic control system when it issues either TA's or RA's.

TCAS is designed so that its transmissions do not interfere with ATCRBS ground-to-air signaling used for ATC surveillance. The power levels and transmission rates TCAS units are automatically adjusted during operation in accordance with the number of other TCAS units operating in the local area. This process is known as *interference limiting*.

The TCAS II and III units use computer algorithms that must ensure that the rate at which alerts occur in normal traffic is acceptable and that the flightcrew response to RA's shall not be disruptive to the normal functioning of the ground-based ATC system. The algorithms in TCAS II and III units distinguish between aircraft that are potential collision threats and those that are not. These algorithms predict the future position of the TCAS-equipped airplane and the future positions of proximate intruder aircraft. Alerts are generated with respect to intruders that are predicted to be collision threats based on their tracked rates. An important optimized concept has been designed into threat detection process. If airplane positions are predicted far into the future, collisions will be anticipated with more than adequate time to accomplish collision escape maneuvers. However, this would result in a large number of potentially unnecessary and nuisance RA's. To reduce the number of alerts, a tradeoff has been made between the collision warning time available and the protection volume provided around the TCAS airplane.

To ensure that the operation of TCAS II or III does not impact the ATC system, the TCAS detection algorithms contain parameters that can be modified to adjust the collision warning times. The process of selecting these parameters is called sensitivity level control and can be accomplished in a number of ways. The sensitivity level may be selected automatically based on the pressure altitude and/or radar altitude of the TCAS airplane or manually by the pilot. The selection of sensitivity level based on the TCAS airplane altitude recognizes that, as an airplane descends into the more dense terminal area traffic, the protection volume level should be reduced to maintain the TCAS alert rate within acceptable bounds. Conversely, as the aircraft climbs to less dense traffic altitude airspace, and collision warning time, can be increased.

Altitude Data

The TCAS II- or III-equiped airplanes will generate TA's and RA's with respect to other TCAS II or III airplanes and also with respect to intruders equipped either with a Mode C or S transponder. Traffic advisories are displayed against all transponder-equipped intruders, but the altitude of the intruder is not displayed if the intruder is not reporting altitude information. For RA's to be generated, the intruder must be reporting the pressure altitude through its transponder.

Role of Mode S

TCAS II or III units use Mode S interrogation/reception techniques for surveillance of other airplanes equipped with Mode S transponders and for air-to-air coordination between TCAS units. The parity protection of Mode S messages ensures that reply garbling and multipath will not generate false targets and false alerts. In addition, surveillance reliability is improved as a result of the Mode S roll-call interrogation process that reinterrogates intruders when replies are not received during a surveillance update cycle. Two TCAS II- or III-equipped airplanes in conflict coordinate RA's with each other using the Mode S air-to-air data link. This ensures that the RA displayed in each airplane is compatible with the RA's displayed in the other TCAS II- or III-equipped airplane.

TCAS Surveillance In High Density Airspace

Both TCAS II and III use a number of interrogation and reception techniques to provide reliable surveillance in high density airspace. These techniques minimize the effects of multipath and with interfering Mode A or C transponder replies transmitted in response to interrogations from other TCAS II or III units or Mode A or C ground stations, and control the extent to which overlapping replies to the airplane TCAS II or III interrogations. The surveillance features or TCAS ensure a high probability of detecting intruding aircraft in the vicinity. In addition, the likelihood is very low that an RA would be generated as a result of signal interference or surveillance system limitation.

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Principles of Operation

TCAS I

Active TCAS I is an air-to-air interrogation device that provides TA's to alert the pilot to the presence of a nearby transponder-equipped aircraft and advising the pilot of the clock direction at which to look for the intruder aircraft. Unlike TCAS II and III, active TCAS I does not provide RA maneuvers.

A significant amount of data is available to demonstrate that if pilots are alerted to the presence of a nearby airplane and the clock direction to look for that airplane, they will locate the intruder more rapidly, even in conditions or poorer visibility, than without such information. Three or four nautical miles is a nominal range at which aircraft can normally be detected in normal visual flight conditions. The flight regime in which most near misses and midair collisions occur is the airspace below 10,000 feet. This airspace will continue to have a mix of controlled and uncontrolled aircraft operating in visual meteorological conditions. Thus, a system that can be installed on an airplane that enhances the pilot's capability of visually locating other aircraft will be useful and will result in safer operation.

It would be best if the system did not require special cooperative equipment to permit the active TCAS I to perform its function in a suitable manner. However, studies to date show that some sort of cooperative device is necessary to permit the intruding aircraft to be detected in an operationally useful manner. The logical cooperative device is the Mode A, C or S transponder. Mode C or S transponders will provide the pilot of the active TCAS I-equipped airplane with a specific altitude for the intruding aircraft, in addition to bearing and distance information.

TCAS II

Collision avoidance algorithms are the computer logic rules that, (1) determine whether or not each of the aircraft currently in track is a potential collision threat (TA), and (2) for a calculated collision threat, determine what maneuver is advisable for separation assurance (RA). Intruder tracking and air-to-air communications for coordination are also in the domain of the collision avoidance algorithms.

The processing cycle.

The TCAS II algorithms operate in a cycle repeated once per second. At the beginning of the cycle, transponder replies are used to update the tracks of all intruders and to initiate new tracks as required. Each intruder is then represented by a current estimate of its range, range rate, bearing, altitude, and altitude rate if provided by the intruder transponder. The TCAS-equipped airplane altitude and altitude rate estimates are also updated.

After the tracks have been updated, the threat detection algorithms are used to determine which intruders are potential collision threats. These algorithms are used at more than one level. The first level will determine which intruders are sufficiently close to warrant TA's while a second, more urgent, level is used to determine which intruders warrant RA's. When the threat aircraft is also equipped with a TCAS II or III with its Mode S transponder, air-to-air coordination occurs during and after the threat resolution process. Following air-to-air coordination, TA and RA displays are updated.

Threat detection. Collision threat detection is based on predicted or existing simultaneous proximity in both range and altitude. TCAS II uses range, range rate and altitude, and altitude rate data to extrapolate the relative positions of the intruder and TCAS-equipped airplane. If within a short time interval (for example, 20 seconds) the range of the intruder is projected to be "small" and the altitude separation is projected to be "small," the intruder is declared a threat. Alternately, the threat declaration may be based on current range and altitude separations that are "small." The algorithm parameters that establish how far into the future positions are extrapolated and thus establish thresholds for determining when separations are "small" are selected in accordance with the sensitivity level at which the threat detection algorithms are operating.

Each sensitivity level defines a specific set of values for the detection parameters used by the algorithms. These include threshold values for the prediction time, the minimum slant range, and the vertical separation. Through the process of sensitivity level control, these parameters are assigned different values to account for the aircraft separations expected to occur in dense terminal airspace. Sensitivity level may be selected automatically based upon the altitude of the airplane or manually by a pilot-activated switch.

The values used for threat detection parameters cannot be optimum for all situations as TCAS II is limited by its lack of knowledge of intruder intent. The result is that a balance has to be struck between the need to give adequate warning of an impending collision and the possible generation of unnecessary alerts. A feature of TCAS II that helps in this respect is the variability of the protected volume of airspace. This volume is automatically coupled in size to the relative speed between the two aircraft and is automatically aligned in a direction parallel to the relative velocity vector. Bearing measurement plays no part in this process. Each encounter gives rise to a protected volume tailored to that encounter. In a multiaircraft situation there is an individual, protected volume for the TCAS II airplane paired with each threat.

Resolution Advisory. If the threat airplane is also equipped with a TCAS II or III unit, the first step in threat resolution is to coordinate with the threat airplane to ensure that both units do not attempt independently to select RA's. If the threat airplane is not equipped with a TCAS II or III unit capable of generating resolution advisories, this step is by-passed. The next step in RA selection is to determine the sense (or direction) of the vertical avoidance maneuver. If the TCAS-equipped intruder airplane has an RA displayed for that conflict, the sense selected is the one that is opposite to the sense of the intruder's RA. The intruder would have communicated this sense by means of a coordination message over the Mode S data link. For unequipped intruders the sense selected is that which will provide the greater vertical separation at the time of closest point of approach (CPA) in range. TCAS II makes this determination by modeling a climb and a descend maneuver of the intruder TCAS II airplane. These maneuvers are modeled at a constant vertical rate (for example, 1,500 feet per minute) following delays for pilot response and vertical acceleration from the current intruder TCAS II vertical rate. The sense, climb or descend, that provides the greater separation at CPA is selected. Once a sense is selected, it is not changed for the duration of the encounter. The final step in RA selection is the determination of the strength of the advisory. Advisory strength selection is accomplished by modeling the airplane vertical trajectory to the CPA for each candidate maneuver and predicting the intruder altitude at CPA. The advisory strength is selected in accordance with the following principles:

1. The advisory must provide a specified minimum estimated vertical separation at CPA; and

2. The advisory should require the smallest possible change in the vertical trajectory of your own airplane.

Resolution advisories of different strength may be given during an encounter. For example, if the intruder maneuvers to decrease separation, or if

your own airplane aircraft responds to the original advisory more slowly than expected by the modeling equations, a stronger advisory may be required to achieve the vertical separation desired. Conversely, if either aircraft maneuvers to increase separation, an advisory of weaker magnitude may be sufficient to provide the separation desired.

The Mode S transponder performs the surveillance functions of existing Mode A/Mode C transponders but, in addition, provides air-to-air communications for coordinating the resolution of encounters between TCAS II- or III-equipped airplanes.

TCAS III

TCAS III is a more versatile system, which can provide RA's in the horizontal dimension (turn right or left) in addition to the vertical maneuvers provided by a TCAS II unit. This additional option in the choice of escape maneuvers provides increased additional operational flexibility. It should be noted that all known potential encounters can be safely and adequately resolved by a TCAS II unit providing RA's in the vertical plane.

Another difference between TCAS II and TCAS III is that TCAS III provides bearing measurements with an overall accuracy of approximately 2 degrees (standard deviation), compared to the 10 degrees provided by a TCAS II unit. The TCAS III bearing information is sufficiently accurate to permit the system to 1) provide RA's in the horizontal plane, and 2) reduce the number of RA's, based upon projected horizontal separation at the CPA. It is the intent that this bearing enhancement measurement capability, while developed for TCAS III, may be provided as an upgrade for a TCAS II unit.

The TCAS III surveillance system develops accurate estimates of the positions and velocities of nearby aircraft through a sophisticated combination of hardware and software. Precise bearing measurements are obtained through the use of a phased array antenna and an accurate monopulse processing system. To effectively use the bearing information, particularly during turns, accurate attitude data is taken from the airplane's attitude reference or navigation system. This is combined with the surveillance data, by means of a coordinate conversion process, to track all aircraft in a cartesian coordinate system. For efficiency, and also to control interference levels, the system uses adaptive steering of the antenna beam to concentrate the most interrogations on those aircraft that are most likely to be of concern.

Primarily because of the addition of horizontal RA capability, the Collision Avoidance System logic for TCAS III is more intricate in some areas than that of TCAS II. One example of this is the modeling of escape maneuvers. In TCAS III, the computer "models" all permissible escape maneuvers and uses the predicted outcomes as a criterion for selecting the best escape maneuver. To properly predict the performance of escape maneuvers for TCAS III, the logic must model the projected flight path of each maneuver in three dimensions and essentially linear flight paths. Second, the TCAS III logic is more intricate than the TCAS II logic in the advisory selection function. This complexity is necessary to take full advantage of the flexibility provided by having two resolution planes. For TCAS III, the selection of an RA is based not only upon projected separation but upon a number of other criteria as well. These include confidence in the projection for each resolution plane, the desirability of each maneuver from an operational standpoint, deviation from the intended flight path, and efficient use of resolution dimensions.

The detection, coordination, and display portions of the TCAS III logic are based primarily upon the TCAS II design. The threat detection logic does, however, use some new techniques for reducing the number of unnecessary alarms. These include horizontal miss-distance filtering and a "variable threshold" criterion for declaring new threats. Although the air-to-air coordination formats and protocols are the same for both TCAS II and TCAS III, the TCAS III system must be able to coordinate RAs in the horizontal dimension as well as the vertical. Since TCAS II cannot coordinate horizontal maneuvers, the TCAS III logic will attempt to choose a vertical RA for a TCAS II/III conflict if it is reasonable to do so.

Operational Evaluation

Piedmont Phase I

As part of the system validation, TCAS "prototype" units were installed on two Piedmont Airlines B–727 aircraft and were flown on regularly scheduled passenger flights over a 5-month period from November 1981 to March 1982 for a total of 928 flight hours. For this Piedmont Phase I evaluation, the TCAS displays were located outside the view of the flight crew and were seen only by trained observers.

The purpose of that evaluation was to examine the operational aspects of integrating TCAS into the cockpit of a commercial air carrier. Specific areas of interest included the following:

1. The potential interaction of TCAS with the current ATC system.

2. The frequency of alerts and their effect on the flight-crew.

3. The circumstances surrounding individual alerts.

4. The potential for visual acquisition of intruders using TCAS displays.

The results of the evaluation indicated that TCAS II can provide a high degree of backup protection against collisions and the alert rate is acceptable to both pilots and the ATC system (Reference 9).

Piedmont Phase II

The objective of this program is to observe and record system performance and flightcrew integration in a real-world environment. A Piedmont B–727 aircraft previously modified in Phase I testing is being used as the test vehicle to achieve this objective. The aircraft was modified with a TCAS II unit and data collection equipment manufactured for the Federal Aviation Administration by Dalmo Victor Operations, Bell Aerospace Textron. The aircraft is being routed and scheduled by Piedmont in a normal manner.

The Piedmont flightcrews involved in the test have received training on TCAS II operations. The flightcrew is responsible for operation of the TCAS II equipment for the Phase II evaluation. The equipment is only used in visual meteorological conditions.

Test data is being collected over an 7-month flight period. It is expected that approximately 33 percent of the scheduled flight time will be in terminal airspace. Traffic densities will vary with geographic location and time of day and typically will represent densities from less than 0.001 to more than 0.04 airplanes per square nautical mile.

The operational flight evaluation is primarily for data collection. It is not a controlled test, rather, the airplane will operate in a routine manner using the normal route structure.

Each time a TCAS advisory occurs, the aircraft recording system will record system data including time, sequence and type of advisory, track files of all tracked aircraft, range, range rate, altitude of own and intruder aircraft, system perceived density, and intruder bearing.

Automatically-recorded data will be correlated with pilot and observe comment forms to determine the operational utility of TCAS, flightcrew reaction, and ATCS interaction.

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TCAS–II Limited Installation Program

The objective of the TCAS II Limited Installation Program (LIP) is to permit evaluation of production quality TCAS II by a number of airlines under normal airline operations. In support of this objective, cost-sharing contracts were awarded to the Air Transport Division of Allied Bendix, Ft. Lauderdale, Fla., and Sperry Dalmo Victor (SDV) Inc., Phoenix, Az., to design, fabricate, and evaluate TCAS II units on air carrier aircraft for a period of 6 to 10 months. Bendix will provide five TCAS units to United Airlines; SDV will provide three units to Northwest Airlines and three units to Piedmont Airlines. United Airlines has submitted Supplemental Type Certificate (STC) applications for using TCAS II on their B737 and DC–8–71 fleet of aircraft. SDV has applied for TCAS II STC's for NWA MD–80 and Piedmont's B727–200 fleet of aircraft. The FAA Aircraft Certification Office at Long Beach, Ca., is currently processing each of the STC applications.

Discussion of Proposal

The FAA currently operates a complex network of facilities and subsystems designed to ensure the safe and efficient operation of the National Airspace System (NAS). Operations within the NAS and its many components are governed by an array of Federal Aviation Regulations (FAR) and procedures. Consequently, a wide variety of facilities and services are available. Nevertheless, the primary function of separating aircraft is predicated on the fundamental concepts of ground-based control and the see-and-avoid responsibility of the flightcrew.

Under the see-and-avoid concept, the level of safety is related to the ability of pilots, individually and collectively, to detect and avoid encounters with other aircraft. Although common sense and the FAR require continuous adherence to the principles of see-and-avoid, the concept does have limitations. The pilot's ability to acquire aircraft visually on collision courses is reduced under heavy workload conditions, in areas of high traffic densities, and when the aircraft is in conditions of poor visibility.

The second fundamental concept upon which the separation of aircraft is predicted is ground-based control. Through the issuance of instructions, clearances, and advisories, air traffic controllers ensure that prescribed separation standards are applied between aircraft. Since these instructions are based on known and projected flight information, this system does not rely totally on the pilot's ability to acquire traffic visually to achieve acceptable levels of safety. In some segments of the NAS, such as terminal control areas, positive control is exercised, and operations in such airspace are conducted under ATC instructions. A terminal radar service area is an example of upgrading of the see-and-avoid concept and represents a complex control environment, since both controlled and uncontrolled aircraft are operating in the area. The overall collision avoidance system design must address the unique problems of such a mixed traffic environment.

The FAA's approach to TCAS is to encourage the development of a family of onboard collision avoidance systems, to demonstrate the operational and technical feasibility of the concept, and to support the development of national/international standards for the equipment. A principal objective of the TCAS approach is to provide a range of collision avoidance equipment alternatives for the full spectrum of airspace users ranging from small airplanes to large transport category airplane. The TCAS Program consists of the following three program elements: TCAS I, which provides only traffic advisories; TCAS II, which provides TA's and RA's in the vertical plane only; and TCAS III, which provides TA's and RA's in both the vertical and the horizontal planes.

The possibility of a domino effect, when a TCAS-equipped airplane reacting to an RA then causes a second aircraft to displace from its assigned flight path, which causes a third aircraft to react, and so on, has been determined by a safety study (Mitre Report MRT–85W28, Reference 5) to be extremely remote. The nature of the Instrument Flight Rule system ensures that aircraft are well separated. Examination of locations in which aircraft are placed in close proximity also demonstrates reasons why domino effects are not expectd to occur. In a holding pattern, no set of conditions has been uncovered that would cause more than two aircraft in the pattern to be displaced from their altitudes.

Initially, it is expected that an increase in pilot-controller communications workload is likely because of TCAS II TA's and RA's, as RA's might occur after airplanes have been sequenced for approach on parallel runways. This result is not a function of ATC, but rather of the parallel runway distance separation and the TCAS II coverage.

Operators Subject to the TCAS Requirement

The operations for which TCAS installation would be required are set forth below. As a preliminary matter, however, we want to specifically invite comments on whether the scope of the proposals should be narrowed or expanded. While we believe that we have drawn the correct distinctions between categories of operators, we recognize that others may disagree, and we want to make it clear that our final rule may be broader or narrower than the current specific proposal, depending on the nature of the comments and supporting information that is submitted. For example, there might be some kinds of Part 135 operations (such as those conducted wholly outside congested areas) for which adding TCAS would not at this time significantly affect safety. Similarly, we invite comment on the scope of our proposals with respect to Part 129. Should Part 129 operators be given a different schedule for compliance? If so, why? On the other hand, we also invite comments on whether a TCAS system should also be required on piston-powerd operations under Parts 135 and 129.

The proposed rule would provide for the installation of appropriate TCAS units on airplanes used in commercial air carrier, selected air taxi/commuter operations, and on airplanes used by foreign carriers flying in the U.S. airspace. The categories of commercial aircraft for which TCAS I or II would be required have been proposed on the basis of the relative speed of the aircraft, the size of the aircraft, and the number of pasengers per aircraft who would benefit from TCAS installation.

Aircraft operating exclusively under Part 91, air traffic and general operating rules, would not be required to have installed any TCAS equipment. However, if an operator or owner elects to install a TCAS unit, the system must be FAA approved and operated according to FAA prescribed procedures. The TCAS system installed must be shown to operate in the ATC system and coordinate with other FAA approved active TCAS systems.

Part 135 commuter and air taxi operators of turbine powered airplanes with 10 to 19 passenger seats would be required to install a TCAS I system to provide TA's from other transponder-equipped aircraft. These advisories should give bearing and distance from the TCAS-equipped airplane in the case where the other aircraft have only a Mode A transponder (no altitude reporting). If the intruder aircraft is

Mode C- or Mode S-equipped, the TCAS I unit should also display altitude, which provides the pilot a sector both in the vertical as well as the horizontal plane to look for the threat aircraft. TCAS I, although not providing an RA, does provide sufficient alerting time for the pilot to visualy acquire the threat aircraft and take evasive action if necessary. Although the RTCA minimum operational performance standard (MOPS) has been approved for TCAS I, no system has been built to date. The FAA believes that development of collision avoidance equipment that can meet the TCAS I MOPS is well within the state of the art for equipment manufacturers and that adequate quantities to supply the commuter/air taxi fleet can be manufactured during the time period proposed.

Part 135 operators of 10 to 19 passenger seat turbine powered airplanes would be required to have installed a TCAS I, 5 years after the effective date of the rule. TCAS I does not require the installation of a Mode S transponder.

Part 135 operators of 20 to 30 passenger seat turbine powered airplanes would be required to have installed and operating a Mode S transponder with a TCAS II 4 years after the effective date of the rule. These airplanes are of high performance, are frequently operating in the same high density terminal airspace as the Part 121 airplanes and therefore warrant the same level of TCAS equipment performance. Additionally, applying the TCAS II requirement to aircraft with this number of seats has the beneficial effect of extending TCAS II protection to a substantial number of air passengers.

Parts 121 and 125 operators would be required to have TCAS II and Mode S installed and operating on all aircraft 3 years from the effective date of the proposed rule. These operators may wish to upgrade to TCAS III units when they become available. Much research is necessary to develop TCAS III to the point that it can be type certificated. As discussed in Reference 8, the ability to produce operational TCAS III units is several years away.

Part 129 foreign air carrier operators of turbine powered airplanes with passenger seating configurations of 10 to 19 would be required to have installed and operating a TCAS I when operating in U.S. airspace 5 years after the effective date of this rule. Foreign air carrier operators of turbine powered airplanes with passenger seating configurations of 20 to 30 seats would be required to have installed and operating a TCAS II and a Mode S transponder when operating in U.S. airspace 4 years after the effective date of this rule. Foreign air carrier operators of airplanes with more than 30 passenger seats would be required to have installed and operating a TCAS II and Mode S transponder when operating in U.S. airspace 3 years after the effective date of this rule. The FAA considers that this notice would encourage foreign airplane operators affected by this proposed rule, and their airworthiness authorities, to become familiar with the associated Technical Standard Orders (TSO's) and Radio Technical Commission for Aeronautics (RTCA) documents that will form the basis of approval and manufacture of a TCAS approved by the FAA. The TCAS systems approved by foreign airworthiness authorities would be required to be compatible and to perform with the FAA-approved TCAS, transponders, and ATC system when operating in United States airspace.

Where the rules proposed in this notice require a TCAS I or II unit, the intended minimum TCAS units are those complying with the requirements of DO–197 and DO–185 as appropriate, with the exception of Part 129 foreign air carrier operators. Where the proposed rule specifies an approved TCAS, the installer may elect TCAS I, II, or III. Where the proposed rule requires a TCAS II, the installer may elect TCAS II or III. There is no requirement, at this time, for the installation of a TCAS III system. The TCAS III system is being developed to enhance the basic TCAS II system by providing a more accurate surveillance capability and alternative escape maneuver selection in the horizontal plane. The FAA can envision that some operators may want to update their TCAS II units to TCAS III when available. The required TCAS III system design as will be defined in the applicable TSO and MOPS would permit the upgrading of a TCAS II unit to a TCAS III. In the applicable standards for TCAS II, whenever a choice exists between TCAS II and TCAS III elements (i.e., antenna, etc.), the TCAS III element would be specified in the TSO and MOPS. The FAA is committed to support the development of TCAS III. Any rulemaking concerning mandatory use of TCAS III would be handled separately from this rulemaking.

Technical Standard Order

The RTCA Special Committee SC–147 has developed RTCA Document DO–197, Minimum Operational Performance Standards (MOPS) for An Active Traffic Alert and Collision Avoidance System I (Active TCAS I). This document will form the basis of a TSO that would permit the active TCAS I to be manufactured under the TSO approval system.

RTCA Document DO–185, Volumes I and II, Changes 1 thru 4 (and MITRE Report MTR–87W00157, Reference 10), "Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment" sets forth standards for TCAS II equipment. This document will also form the basis of a TSO to permit manufacturing under the TSO approval system. The TCAS III MOPS will be a new RTCA document separate from DO–185 but will identify a system functionally compatible and interchangeable with TCAS II. The three TCAS systems I, II, and III will be identified under the TSO system by different TSO numbers. Concurrent with the publication of this NPRM the FAA is publishing for comment draft TCAS I and TCAS II TSO's defining the minimum standards for such units.

While FAA research, to date, has focused on an active TCAS I, it has been suggested by some people that a passive (listen only) device may be able to meet the same objective intended by the proposed active TCAS I units. While this regulatory proposal and parallel nonregulatory action on a TCAS I TSO presupposes an active TCAS I, the FAA wishes to go on record as not being opposed to a passive TCAS I, as long as it meets the same safety objectives of DO–197.

TCAS Training Requirements

The introduction of TCAS into revenue service need have little impact on the existing regulations regarding required crew training, and therefore should not require a change to the existing training requirements. As specified in § 121.401, a Part 121 certificate holder is required to establish, obtain the appropriate initial and final approval of, and provide a training program that meets the requirements of Part 121, Subpart N, and insure that each crewmember is adequately trained to perform his/her assigned duties. This proposal would include training on TCAS in the § 121.401 requirement. Section 121.415(g) requires that each crewmember qualify in any new equipment, including modifications to airplanes. Section 121.407(a)(3) requires that each airplane simulator and other training device be modified to conform with any modification to the airplane being simulated.

The pilot training program for TCAS should provide the flightcrew the necessary knowledge, skills and abilities to safely conduct TCAS

operations. The training program should specifically emphasize, but may not be necessarily limited to the following items:

1. A general overview of the following functions of TCAS II:

a. TCAS II is designed to detect potential collision threats and to provide the flightcrew with the information necessary to perform vertical maneuvers to safely avoid those threats.

b. TCAS II interrogates the transponders of nearby airplanes to determine range, bearing, and altitude. The results of this interrogation are used to predict the threat aircraft's flight path.

c. The TCAS II computer determines which tracks will be a threat and must be avoided. It then determines the maneuver that will give the safest separation. The appropriate displays are then activated in the cockpit to alert the flightcrew as to what action is needed.

2. A detailed discussion of the equipment, components, and modes of operation of TCAS should be discussed with the flight crew prior to the use of TCAS during line operations. This discussion should specifically emphasize, but may not be necessarily limited to, the following items:

a. TCAS control panel

b. Traffic advisory displays

c. Resolution advisory display(s) (C and F/O)

d. TCAS caution warning lights (C and F/O)

e. TCAS audible and visual warning system

3. A discussion of the limitations to the use of the TCAS.

a. Nontransponder-equipped aircraft

b. Air Traffic Control interaction

c. Procedures for returning to previous clearance after responding to a TCAS advisory

d. FAA enforcement posture

4. An overview of the operational procedures associated with the use of TCAS. The training program should include a detailed discussion of the normal and non-normal procedures associated with the use of TCAS.

a. Each feature of the TCAS TA display should be explained in sufficient detail to ensure that the flightcrew is aware of what actions, if any, are required.

b. The RA displays should be explained in sufficient detail to ensure that the flightcrew is aware of what actions, if any, are required.

c. The TCAS caution/warning lights and the aural annunciations should be explained in sufficient detail to ensure that the flightcrew is completely aware of what actions, if any, are required.

5. A capability to represent the TCAS environment in a dynamic way. Experience with this type of device has indicated a need to ensure the complete transfer of system knowledge from the classroom to the cockpit. Due to the uniqueness of this device and its associated functions and displays, the training program should include some type of real time interactive capability. This would allow the flightcrew to experience the dynamics of the TCAS displays and reinforce the classroom discussions. The technology does exist for low-cost, computer-based, interactive training devices.

6. A definitive method of ensuring that the flightcrews demonstrate a complete understanding of the operational use of TCAS.

Reference Documents

1. The Impact of a Traffic Alert and Collision Avoidance System on the Air Traffic Control radar beacon system and Mode S system in the Los Angeles Basin, May 1985, DOT/FAA/PM–84/30, Program Engineering and Maintenance Service.

2. Minimum Operational Performance Standards for Active Traffic Alert and Collision Avoidance System (TCAS I), Radio Technical Commission for Aeronautics Document No. RTCA/DO–197.

3. Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System TCAS Airborne Equipment Volume I and Volume II, Radio Technical Commission for Aeronautics Document No. RTCA/DO–185 Changes 1–4.

4. System Safety Study of Minimum TCAS II, December 1983. DOT/FAA/PM–83/36, MTR–83W241, Program Engineering & Maintenance Service Washington, DC 20591.

5. System Safety Study of Minimum TCAS II for Instrument Weather Conditions, June 1985 DOT/FAA/PM–85/12, MTR–85W28, Program Engineering & Maintenance Service, Washington, DC 20591.

6. Analysis of Active BCAS Alert Rates and Protection Based on Actual Aircraft Tracks, February 1982, the Mitre Corp, MTR–80W267, 1820 Dolley Madison Boulevard, McLean, Virginia 22102

7. Traffic Alert and Collision Avoidance System (TCAS) Massachusetts Institute of Technology Lincoln Laboratory, Quarterly Technical Letter, 42QTL–TCAS–87–DI, 6 March 1987.

8. FAA report to Congress TCAS III, March 1987.

9. In-Service Evaluation of the Sperry Dalmo Victor Active Beacon Collision Avoidance System (BCAS/TCAS), DOT/FAA/RD–82/90, Program Engineering & Maintenance Service, Washington, DC 20591.

10. Advisory Invalid Indication, MITRE Corporation, MTR–87W00157, 1820 Dolley Madison Boulevard, McLean, VA 22102.

Regulatory Evaluation

The following is a summary of the industry cost impact and benefit evaluation for the regulatory changes proposed in this notice to require the installation and use of a TCAS in large transport airplanes and certain small airplanes. TCAS, which utilizes the Mode S transponders will provide collision avoidance capability in the cockpit independent of the ATC ground system. In addition, these proposed rules would require that all operators of TCAS-equipped airplanes have an FAA-approved TCAS training program for flight crewmembers.

The NPRM is a result of the FAA's and the aviation industry's efforts to develop a workable midair collision avoidance system. The objective of the proposals in this notice, therefore, is to improve safety by reducing the risk of midair collisions. The FAA has considered several alternatives to the proposed rule. Among the options investigated were (1) requiring installation of TCAS III, and (2) measures to improve existing terminal control areas (TCA's). These are nonviable alternatives. Waiting for development of TCAS III would delay reducing collision risk for limited performance improvements. TCAS and TCAs are not mutually exclusive, but implementation of measures to enhance existing TCA's without an airborne collision avoidance system would forego significant additional safety gains. Further analysis of these options is presented in the regulatory evaluation contained in the docket.

Summary of Costs

The FAA finds that with the exception of the proposed revisions to Parts 121, 129, and 135, the proposals contained in this notice would have a negligible or no cost impact.

The FAA recognizes that there would be costs associated with the proposed amendments to Part 129. These costs are likely to be similar to those incurred by affected Part 121 and 135 certificate holders, but have not been quantified because the burden of compliance will not be directly borne by any sector of U.S. society.

The methods and assumptions used in the analyses for the revisions to Parts 121 and 135 have been developed by the FAA. Cost data were obtained from manufacturers, air carriers, and industry trade associations. Information for the estimation of benefits was obtained from the safety records of the NTSB and the FAA. The cost and benefits calculated for these proposals have been projected over 22 years to reflect the estimated useful life of the proposed equipment.

The proposed amendments to Part 121 would have an economic impact on 3,154 existing airplanes expected to be in service in 1989 and 3,678 new production and newly certificated

airplanes entering service between 1990 and 2011, because these aircraft would be required to be equipped with a TCAS II system. Carriers that install TCAS III when it becomes available would also be in compliance with the proposed rule. The estimated cost of this proposed requirement is $748 million in 1986 dollars and $396 million discounted.

The proposals to amend Part 121 also would require air carriers to develop and implement an FAA approved TCAS II training program for the flight crewmembers. The proposed training program would require that air carriers install approved TCAS II aerodynamic data programs in their flight simulators and provide an additional one and a half hours of classroom instruction during initial training for their existing and newly hired flightcrews. The estimated cost of modifying the 148 flight simulators currently in use by Part 121 certificate holders is $2.2 million in 1986 dollars and $2.0 million discounted at a present worth rate of 10 percent in the first year the rule is in effect. The estimated cost of requiring pilots and copilots of the affected 148 Part 121 certificate holders to undergo additional classroom training is $38.2 million and $16.6 million discounted over the projected time period. Finally, the one time cost of developing an FAA-approved TCAS II training program is estimated to be $3.6 million in 1986 dollars and $3.2 million discounted at a rate of 10 percent in the first year the rule is in effect. This analysis indicates that the total cost of compliance with the equipment acquisition, installation, maintenance, and flight crewmember training proposals contained in this notice is estimated to have a present value of $417 million over the 22-year projected period of 1989 to 2003. Because this total includes aircraft not now in existance, and because compliance for existing aircraft is delayed for 3 to 5 years, the total costs, discounted for present worth, that would be imposed by the proposed rule in any year are less than $100 million.

While the annual costs would not appear to exceed $100 million, we believe the total economic effect of the rule is sufficient to warrant preparation of a Regulatory Impact Analysis, as is prepared for a major rule. Therefore, prior to the adoption of a final rule, the FAA will prepare a final RIA.

Benefits

The benefits of the amendments to Part 121 would be to minimize the possibility of midair collisions involving air carrier airplanes. The safety record indicates that two catastrophic midair collisions involving large airplanes occurred over the 15-year period of 1972 to 1986. The projection of benefits over the 22-year life of the proposed equipment required the development of a mathematical model to assess the increase in collision risk that would result from the projected growth in aviation traffic activity. The FAA model indicates that the potential number of midair collisions involving air carrier airplanes could increase to as many as six in the 22-year period following 1989, unless measures are implemented to offset the effects of traffic growth. The benefit sensitivity analysis estimates that the number of fatalities in future midair collisions involving large air carrier airplanes could range from 1,032 to 1,074, depending on the size of the airplanes involved. Seventy-seven percent of the accidents are expected to be prevented as a result of the Part 121 TCAS Proposal. The loss of four to five transport category airplanes and 794 to 827 fatalities would be avoided. This would prevent fatality, injury, aircraft hull, property, and accident investigation costs of $985 to $1,103 million ($391 to $438 million present value). Thus, if the accident prevention effectiveness of the proposed equipment is 77 percent, the benefits of the Part 121 requirements would exceed its cost.

The proposed amendments to Part 135 would require that all turbine powered airplanes with 10 to 19 passenger seats operating within the airspace identified in this notice be equipped with a TCAS I unit and that all aircraft with 20 or more passenger seats operating in the same airspace be equipped with a TCAS II unit. In addition, the notice proposes that all operators of TCAS-equipped airplanes have an FAA-approved TCAS training program for flight crewmembers. These proposals would require the installation of 255 TCAS I units and 571 TCAS II units on existing, new production, and newly certificated airplanes over the 22-year projected service life of the proposed equipment. Again, carriers that implement TCAS III when it becomes available would comply with the proposed rule. Thus, the estimated cost of equipping 3,129 airplanes with TCAS units is $80.6 million in 1986 dollars and $35.2 million discounted over the subject 22-year period. The estimated cost of requiring the flightcrews of affected air taxi and commuter operators to undergo additional classroom training during the initial phase of flight training is $1.5 million in 1986 dollars and $.7 million at a 10 percent present worth rate. Finally, affected Part 135 operators required to have an FAA-approved training program will incur a one-time cost estimated to be $1.3 million in 1986 dollars and $1.2 million discounted at 10 percent the first year the rule is in effect. On the basis of the above, the aggregate impact of these proposals on affected air taxis and commuters is $83.4 million in 1986 dollars and $37.1 million when discounted at 10 percent over the 22-year period of 1989 to 2011.

The benefits of the proposed addition to Part 135 would be the reduction or prevention of midair collisions involving air taxi and commuter airplanes. A similar approach to that used in the Part 121 benefit estimate has been applied to the benefit analysis for the Part 135 requirements. The safety record reveals that seven catastrophic accidents involving air taxi and commuter operators occurred during the 15-year period of 1972 to 1986. To arrive at the potential number of midair collisions that may occur during the projected 22-year period of these proposals, the FAA has assumed that the number of accidents could increase in proportion to the number of projected air taxi and commuter operations over the same time period. This calculation indicates that, in the absence of preventive measures, the number of accidents might increase to as many as 25. The number of fatalities associated with these accidents is estimated to be 260. Forty-six percent of the catastrophic accidents are expected to be prevented as a result of the proposed Part 135 amendments. The loss of 11 to 12 air taxi or commuter airplanes and approximately 382 fatalities would be avoided. This would prevent fatality, injury, aircraft hull, and accident investigation costs of $189 million ($76 million present value). Thus, if the accident prevention effectiveness of the proposed equipment is 46 percent, the benefits of the Part 135 requirement would exceed its cost.

The performance levels necessary for the proposals to be cost effective appear to be well within reasonable expectations. The FAA believes, therefore, that enactment of these proposed amendments would significantly reduce the number of future midair accidents and incidents and that benefits will exceed costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a review of proposed rules to assess their impact on small business. In consideration of the cost information discussed under "Regulatory Evaluation," the FAA concludes that these proposed amendments to Parts 121 and 135 could have a significant economic impact on a substantial number of small entities. However, the

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FAA finds that there are no viable alternatives for small air carriers to adopt that would reduce the cost of compliance yet achieve the levels of protection sought by these proposals. A regulatory flexibility analysis discussing this issue in more detail has been placed in docket.

International Trade Impact Statement

These proposals, if adopted, would have little or no impact on trade opportunities of U.S. firms doing business overseas or for foreign firms doing business in the United States. These proposals would impose the same requirements on both domestic operators under Parts 121 and 135 of the FAR and foreign air carriers subject to Part 129. The cost of compliance with the proposed amendments to foreign carriers flying into the United States under Part 129 is likely to be very similar to the cost incurred by domestic operators. Thus, neither domestic nor foreign air carriers will be affected disproportionately by these proposals. These proposals, therefore, will not cause a competitive fare disadvantage for U.S. carriers operating overseas or for foreign carriers operating in the United States.

Conclusion

The proposed rules contained in this NPRM would assist the FAA and the aviation industry in their efforts to prevent midair collisions, and, with the exception of the proposed revisions to Parts 121 and 135, would impose a negligible cost on a minor portion of the U.S. aviation community. The FAA believes that the proposed rules, if adopted, would significantly reduce the number of future midair collisions; thus, the estimated benefits are expected to exceed the estimated cost of implementation for all operators. These proposals, if adopted, could have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is contained in the docket. For the reasons discussed under the "Cost" section of the Regulatory Evaluation above, the proposal does not involve a major rule under Executive Order 12291. Because it involves important DOT policy, the proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft regulatory evaluation for this action is contained in the regulatory docket. A copy of this may be obtained by contacting the person identified under the caption, **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 1

Air carriers, Aircraft, Airplanes, Air safety, Aviation safety, Safety.

14 CFR Part 91

Air traffic control.

14 CFR Part 121

Air carriers, Aircraft, Airspace, Air traffic control, Aviation safety, Safety.

14 CFR Part 125

Aircraft, Airplanes, Air traffic control.

14 CFR Part 129

Air carrier, Aircraft, Air traffic control

14 CFR Part 135

Aircraft, Airplanes, Airspace, Air traffic control, Aviation safety, Safety.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Parts 1, 91, 121, 125, 129, and 135 of the Federal Aviation Regulations (14 CFR Parts 1, 91, 121, 125, 129, and 135) as follows:

PART 1—DEFINITION AND ABBREVIATIONS

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f), 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By amending § 1.2 by adding new definitions to read as follows:

§ 1.2 [Amended]

* * * * *

"TCAS I" means a traffic alert and collision avoidance system I, which utilizes interrogations of, and replies from, airborne radar beacon transponders and provides at least traffic advisories to the pilot.

"TCAS II" means a traffic alert and collision avoidance system II, which utilizes interrogations of, and replies from, airborne radar beacon transponders and provides traffic advisories and resolutions advisories in the vertical plane.

"TCAS III" means a traffic alert and collision avoidance system III, which utilizes interrogation of, and replies from, airborne radar beacon transponders and provides traffic advisories and resolution advisories in the vertical and horizontal planes to the pilot.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

3. The authority citation for Part 91 continues to read as follows:

Authority: U.S.C. 1301(7), 1303, 1344, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4. By adding new § 91.26 to read as follows:

§ 91.26 Traffic alert and collision avoidance system equipment and use.

(a) *All airspace, U.S.-registered civil aircraft.* Any traffic alert and collision avoidance system installed in a U.S.-registered civil aircraft must be approved by the Administrator.

(b) *Traffic alert and collision avoidance system, operation required.*

Each person operating an aircraft equipped with an operable traffic alert and collision avoidance system shall have that system on and operating.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

5. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

6. By adding new § 121.358 to read as follows:

§ 121.358 Traffic Alert and Collision Avoidance System.

(a) After (3 years after the effective date of this amendment) no person may operate a large airplane unless it is equipped with an approved TCAS II traffic alert and collision avoidance system and the appropriate class of Mode S transponder.

(b) The airplane flight manual required by § 121.131 of this part shall contain the following information on the TCAS II System required by this section:

(1) Appropriate procedures for—

(i) The operation of the equipment; and

(ii) Proper flightcrew action with respect to the equipment.

(2) An outline of all input sources that must be operative for the TCAS to function properly.

PART 125—CERTIFICATION AND OPERATION: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6000 POUNDS OR MORE

7. The authority citation for Part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449), January 12, 1983).

8. By adding new § 125.224 to read as follows:

§ 125.224 Traffic Alert and Collision Avoidance System.

(a) After (3 years from the effective date of this amendment) no person may operate a large airplane unless it is equipped with an approved TCAS II traffic alert and collision avoidance system and the appropriate class of Mode S transponder.

(b) The manual required by § 125.71 of this part shall contain the following information on the TCAS II system required by this section.

(1) Appropriate procedures for—

(i) The operation of the equipment; and

(ii) Proper flightcrew action with respect to the equipment.

(2) An outline of all input sources that must be operating for the TCAS II to function properly.

PART 129—OPERATIONS OF FOREIGN AIR CARRIERS

9. By revising the authority citation for Part 129 to read as follows:

Authority: 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

10. By adding new § 129.18 to read as follows:

§ 129.18 Traffic Alert and Collision Avoidance System.

(a) After (5 years from the effective date of this amendment) no foreign air carrier may operate in the United States a turbine powered airplane that has a passenger seating configuration, excluding any pilot seat, of 10 to 19 seats unless it is equipped with an operating TCAS I traffic alert and collision avoidance system.

(b) After (4 years from the effective date of this amendment), no foreign air carrier may operate in the United States a turbine powered airplane that has a passenger seating configuration excluding any pilot seat, of 20 to 30 seats, or any large airplane unless it is equipped with an operating TCAS II traffic alert and collision avoidance system and the appropriate class of Mode S transponder.

(c) After (3 years from the effective date of this amendment) no foreign air carrier may operate in the United States a turbine powered airplane that has a maximum passenger seating capacity of more than 30 seats unless it is equipped with a TCAS II traffic alert and collision avoidance system and the appropriate class of Mode S transponder.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

1. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

12. By adding new § 135.180 to read as follows:

§ 135.180 Traffic Alert and Collision Avoidance System.

(a) After (5 years from the effective date of this amendment) no person may operate a turbine powered airplane that has a passenger seating configuration, excluding any pilot seat, of 10 to 19 seats unless it is equipped with a approved TCAS I traffic alert and collision avoidance system.

(b) After (4 years from the effective date of this amendment) no person may operate a turbine powered airplane that has a passenger seating configuration, excluding any pilot seat, of 20 seats or more unless it is equipped with an approved TCAS II traffic alert and collision avoidance system and the appropriate class of Mode S transponder.

(c) The airplane flight manual required by § 135.21 of this part shall contain the following information on the TCAS I or II system required by this section:

(1) Appropriate procedures for—

(i) The use of the equipment; and

(ii) Proper flightcrew action with respect to the equipment operation.

(2) An outline of all input sources that must be operating for the TCAS to function properly.

Issued in Washington, DC, on August 21, 1987

M.C. Beard,

Director of Airworthiness.

[FR Doc. 87–19496 Filed 8–24–87; 8:45 am]

BILLING CODE 4910–13–M

VOL
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federal register

Wednesday
August 26, 1987

Part IV

Federal Retirement Thrift Investment Board

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan; Interim Rule With Request for Comments

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (the Board) was established by Pub. L. 99–335 (June 6, 1986), the Federal Employees' Retirement System Act of 1986 (codified principally at 5 U.S.C. 8401 through 8479), as amended by Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986, and Pub. L. 99–556, the Federal Employees' Retirement System Technical Corrections Act of 1986, to administer the Thrift Savings Plan for Federal employees. Regulations of the Board are contained in Title 5, CFR, Chapter VI, Parts 1600–1699. The Executive Director of the Board is publishing in Part 1650, interim regulations concerning the procedures for withdrawing amounts from Plan accounts when a participant separates from Government service or dies.

DATES: Interim rules August 26, 1987; comments must be received on or before October 20, 1987.

ADDRESSES: Comments may be sent to: Robert Bloom, Federal Retirement Thrift Investment Board, Post Office Box 18899, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Robert Bloom, (202) 653–7231.

SUPPLEMENTARY INFORMATION: Subpart A defines the terms used in this Part. Subpart B provides that a separation package containing the necessary forms referred to in the regulations, with instructions, will be given to participants when they separate from Government service. This subpart summarizes the four basic methods for withdrawing a participant's vested account balance when he or she separates from service, depending upon the participant's length of service. Section 1650.6 prescribes the rules governing the participation in the Thrift Savings Plan by persons who reenter government service after having separated with a vested account balance. Sections 1650.7 and 1650.8 prescribe the methods for choosing or changing a method of withdrawl.

Subpart C contains the rules and procedures for transferring an account balance to an individual retirement account (IRA) or other eligible retirement plan or account when a participant separates from service. Section 1650.9(a) provides that a participant who separates from Government service before becoming entitled to a basic annuity under FERS or CSRS must transfer his or her account balance to an IRA or other eligible retirement plan. Section 1650.9(b) provides that if the account balance is less than $250, the participant may be paid in cash, subject to the tax law requirement that the money either be rolled over into an IRA or other qualified plan within 60 days or be subject to a penalty tax.

Subpart D prescribes the rules and procedures for withdrawing an account balance in one or more substantially equal payments of at least $25. Section 1650.10(c) provides that the dollar amount of the equal payments that the participant specifies must be at least as great as those prescribed by the Internal Revenue Service. Participants choosing payment amounts that do not meet the IRS minimums will be given an opportunity to adjust their payment amount or choose a different method of payment. Section 1650.10(d) provides that at the time a withdrawal of equal payments begins, the account balance will be transferred to the Government Securities Investment (G) Fund and thereafter the separated participant will not have the option of transferring to another investment fund.

Subpart E contains the rules and procedures under which annuities will be purchased for separating employees who choose that method of withdrawal. Section 1650.14 provides that an annuity will not be purchased if an account balance is less than $3500. This section provides that if the participant's vested account balance is less than $3500, the account shall be distributed, subject to the rights of spouses, by another method for which the participant is eligible.

Subpart F implements 5 U.S.C. 8435, 8351, and 8467 conferring on the spouse of a participant certain rights in connection with account balances. Section 1650.15 summarizes the rights of current and former spouses of participants. Section 1650.16 lists the withdrawal situations for which the law requires that a current or former spouse be notified. Section 1650.17 lists the withdrawal elections that require a spouse's consent and waiver. Section 1650.18 explains how a spouse's rights may be waived by joint action of the participant and spouse. Section 1650.19 provides that where the regulations require the Executive Director to notify a current or former spouse, this requirement is satisfied by sending a notice by certified mail to the current or former spouse's last address on file with the Plan. Section 1650.20 provides that the Executive Director may waive the requirement of notice to a spouse if the participant presents proof that the spouse's whereabouts are unknown. Section 1650.21 provides that the Executive Director may waive the requirement for a spouse's consent if it is shown that the spouse's whereabouts are unknown or that there are exceptional circumstances that warrant such a waiver. Exceptional circumstances may be established only by a judicial determination. Examples of such determinations would be that (a) the spouse and the participant have been maintaining separate residences with no financial relationship for several years, and (b) the spouse abandoned the participant but, for religious or other reasons, the parties chose not to divorce.

Subpart G prescribes the rules and procedures under which a vested account balance will be distributed to a deceased participant's beneficiaries. Section 1650.22 provides that if a participant dies while employed by the Government, his or her vested account balance will be paid to the person or persons designated by the participant on the last Designation of Beneficiary Form filed with his or her agency. In the absence of a Designation of Beneficiary Form, the balance will be paid in the order prescribed by paragraphs two through six of 5 U.S.C. 8424(d). Section 1650.23 deals with situations where a participant dies while in government service. Section 1650.24 deals with situations where a participant dies after separation from government service.

Subpart H prescribes the rules and procedures by which the Executive Director will handle court orders obtained by spouses and former spouses affecting Thrift Savings Plan accounts. Section 1650.26 provides that alimony and/or child support orders which meet Social Security Act standards will be honored. Section 1650.27 provides that court orders purporting to divide a participant's account balance (retirement benefits court orders) must refer to the Thrift Savings Plan account specifically and meet other conditions. This section also requires that the Executive Director has actually received a court order before it can be honored. Section 1650.28 prescribes the documents and information which must be submitted with a retirement benefits court order by a spouse or the spouse's representative. The remainder of

Subpart H prescribes procedures that participants and other interested parties are to follow if they wish to comment upon or to appeal a proposed course of action by the Plan with respect to a court order. The subpart permits participants and/or other aggrieved parties to appeal decisions concerning court orders to the Executive Director of the Board.

Subpart I summarizes the duties which the employing agencies have with respect to transmitting information to the Thrift Savings Plan Service Office. Further details regarding these procedures are contained in the withdrawal information package which will be available to separating employees and the personnel offices of agencies.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities since the regulations will only affect the distribution of Thrift Savings Plan account balances to separated and retired government employees, their spouses, former spouses and beneficiaries.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waive of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. These regulations are being published as interim regulations because the Thrift Savings Plan is now in operation and it is necessary to have procedures in place as soon as possible for the withdrawal of account balances for the use of participants in the Plan who separate from government service or die while in service.

List of Subjects in 5 CFR Part 1650

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

Title 5 of the Code of Federal Regulations is amended to add Part 1650 to Chapter VI to read as follows:

CHAPTER VI—FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THRIFT SAVINGS PLAN

Sec.

Subpart A—General

1650.1 Purpose and scope.
1650.2 Definitions.

Subpart B—Withdrawal Methods; Changes of Election

1650.3 Separate package.
1650.4 Short term employees.
1650.5 Longer term and disabled employees.
1650.6 Re-employed participants.
1650.7 Election of withdrawal method.
1650.8 Change of election.

Subpart C—Transfer to Other Plans

1650.9 Transfer to another eligible plan.

Subpart D—Lump Sum and Equal Payments Withdrawal

1650.10 Withdrawal by lump sum or equal payments.

Subpart E—Annuities

1650.11 Annuity option.
1650.12 Purchase of annuity; methods of payments.
1650.13 Insurable interest.
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Subpart F—Spousal Rights

1650.15 General.
1650.16 Withdrawal elections requiring notification to spouses.
1650.17 Withdrawal elections requiring spousal consent and waiver.
1650.18 Spouse's waiver of survivor annuity.
1650.19 Notice to spouse.
1650.20 Executive Director's waiver of notice to spouse.
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Subpart G—Death Benefits

1650.22 Designation of beneficiary.
1650.23 Death in service.
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Subpart H—Court Orders Affecting Thrift Savings Plan Benefits

1650.25 Purpose.
1650.26 Alimony and/or child support court orders.
1650.27 Retirement benefits court orders.
1650.28 Applications by former spouses and separated spouses.
1650.29 Processing retirement benefits court orders.
1650.30–1650.40 [Reserved]
1650.41 Termination of former spouse or separated spouse benefits.

Subpart I—Agency Duties

1650.42 Information.
1650.43 Retirement information.
1650.44 Beneficiary information.
1650.45 Forwarding of forms to the plan.

Authority: 5 U.S.C. 8351, 8434(a)(2)(E), 8434(b), 8435, 8436(b), 8467, 8474(b)(5) and 8474(c)(1).

Subpart A—General

§ 1650.1 Purpose and scope.

This part prescribes the rules and procedures under which vested account balances in the Thrift Savings Plan will be distributed upon the separation from service or death of a participant.

§ 1650.2 Definitions.

Terms used in this part shall have the following meanings:

"Account" means a participant's account in the Thrift Savings Plan.

"Account balance" means the total of employee and employer contributions in an account, earnings thereon, adjustments and expense allocations.

"Act" means the Federal Employees' Retirement System Act of 1986, Pub. L. 99–335, codified principally at 5 U.S.C. 8401–8479.

"Alimony or child support court order" means a court order which is enforceable against an account under the terms of 5 U.S.C. 8437(e)(3) and 42 U.S.C. 659.

"Assistant General Counsel" means any Assistant General Counsel of the Board.

"Basic retirement eligibility" means eligibility for an immediate or deferred annuity under the Federal Employees' Retirement System (FERS) or the Civil Service Retirement System (CSRS) or for benefits under Subchapter I of Chapter 81 of Title 5, United States Code, upon separation, or for disability benefits under Subchapters 83 or 84 of Title 5, United States Code.

"Board" means the Federal Retirement Thrift Investment Board established pursuant to 5 U.S.C. 8472.

"Court order" means any judgment or property settlement issued or approved by any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, or any Indian court, and which orders a participant to make child support and/or alimony payments or which is issued in connection with, or incident to, the divorce, annulment of marriage, or legal separation of a participant.

"Creditable service" means service described as creditable under 5 U.S.C. 8411 for FERS employees and 5 U.S.C. 8332 for CSRS employees.

"CSRS" means the retirement system established by Chapter 83 of Title 5, United States Code.

"CSRS employee" means an employee as defined in 5 U.S.C. 8331(1) or a Member as defined in 5 U.S.C. 8331(2).

Except where the context indicates otherwise, the term CSRS employee includes a former CSRS employee.

"Current spouse" means a living person who is married to an employee or retiree at the time of an event referred to in this part.

"Effective election" in this part means an election by a participant which has resulted in all or part of the participant's account balance being distributed or used to purchase an annuity.

"Eligible retirement plan" means an Individual Retirement Account (IRA) and other plans defined as eligible retirement plans by section 402(a)(5)(E)(iv) of the Internal Revenue Code.

"Employee" or "FERS employee" means an employee as defined in 5 U.S.C. 8401(1) or "Member" as defined in 5 U.S.C. 8401(20). Except where the context indicates otherwise, the term "employee" includes a former employee.

"Executive Director" means the Executive Director of the Federal Retirement Thrift Investment Board.

"FERS" means the retirement system established by Chapter 84 of Title 5, United States Code.

"Former spouse" means a living person who was married for at least 9 months to a participant who performed at least 18 months of creditable service as defined in 5 U.S.C. 8411.

"Fund mix" means the proportions in which an account is divided among the Government Securities Investment Fund, Fixed Income Investment Fund and Common Stock Index Investment Fund.

"General Counsel" means the General Counsel of the Board.

"Plan" or "TSP" means the Federal Retirement Thrift Savings Plan.

"Participant" means a person with an account in the Plan.

"Qualifying court order" means a court order that meets the requirements of § 1650.27.

"Retirement benefits court order" means a court order which purports to divide or award plan retirement benefits to a spouse or former spouse.

"Separated spouse" means a living person whose marriage to an employee is currently subject to a court order granting a legal separation.

"Short term employee" is an employee who separates from government service before attaining basic retirement eligibility.

"TSP Service Office" means the office of the Board's recordkeeper to which employing offices and separated or retired participants must submit forms or other communications required by this part.

"Transfer" means a transfer of an account balance to an eligible retirement Plan.

Subpart B—Withdrawal Methods; Changes of Election

§ 1650.3 Separation package.

At the time of separation from government service, a participant shall be given a package containing the various forms referred to in these regulations and instructions to be followed by the participant and his or her beneficiaries for filling out these forms in order to obtain payments from the paticipant's vested account balance pursuant to these regulations.

§ 1650.4 Short term employees.

Subject to the rights of spouses set forth in Subpart F, and the minimum balance provisions of § 1650.9(b), a participant who separates from government employment before having basic retirement eligibility must transfer the account balance, minus any employer contributions not vested in accordance with 5 U.S.C. 8432(g), to another eligible retirement plan designated by the participant. Non-vested amounts shall be forfeited.

§ 1650.5 Long term and disabled employees.

Subject to the rights of spouses set forth in Subpart F and the minimum balance requirements of § 1650.9(b) and § 1650.14, a participant who separates from government employment with basic retirement eligibility may at the time of separation or thereafter withdraw his or her account by one of the following methods:

(a) An immediate annuity for the life of the participant pursuant to Subpart E.

(b) A deferred annuity for the life of the participant pursuant to Subpart E, commencing on the date the participant specifies, but not later than April 1 of the year following the year in which the participant becomes 70½ years old.

(c) Withdrawal of the balance in the account in one payment or in substantially equal payments, to be made monthly and to commence no earlier than the date on which the participant is eligible to receive payment of a basic FERS or CSRS annuity and no later than April 1 of the year following the year in which the participant becomes 70½ years of age.

(d) Transfer to an eligible retirement plan.

§ 1650.6 Re-employed participants.

This section contains the rules governing the participation in TSP by persons who reenter government service after having separated with a vested account balance.

(a) Any portion of a former account balance which was forfeited at the time of initial separation remains forfeited after re-employment.

(b) Civilian service performed by a former participant during his or her first period of service will be added to civilian service performed during subsequent periods of service for the purpose of determining the vested portion of the account balance during or after any subsequent period of service.

(c) If prior to reemployment the participant had commenced withdrawing his or her account balance in equal payments pursuant to Subpart D, payments will cease upon re-employment.

(d) Annuity payments being received by a re-employed participant will continue after re-employment.

§ 1650.7 Election of withdrawal method.

At the time of separation from government service, the participant shall file with the TSP Service Office a Statement Regarding Spouses, Form TSP–6, and an Election of Benefits, Form TSP–7. If the withdrawal method selected is an annuity, the participant also shall file an Election of Annuity Benefits, Form TSP–11 and comply with the requirements of Subpart E. The employing office shall complete a Validation of Retirement Information, Form TSP–18, described in § 1650.43.

§ 1650.8 Change of election.

(a) A participant may modify the date specified in a withdrawal election, or otherwise change an election previously made, subject to the following conditions:

(1) No modification of an election may be made after the date on which a transfer to an eligible retirement plan is made, a payment is made, or an annuity is purchased.

(2) No modification may specify a transfer payment date which does not allow at least 30 days processing time by the Plan.

(3) A participant may not modify any election so as to affect the rights of a spouse or former spouse unless the modification complies with Subpart F.

Subpart C—Transfer to Other Plans

§ 1650.9 Transfer to another eligible plan.

(a) A participant who separates from government service before having basic retirement eligibility must, and a participant who separates from government service with basic retirement eligibility may, transfer his or her vested account balance to an

eligible plan, subject to the rights of spouses under Subpart F. Such a transfer is accomplished by filing with the TSP Service Office an Election of Benefits, Form TSP–7, and a Designation of Qualified Plan Form, TSP–13.

(b) If a participant's vested account balance is less than $250, he or she may choose to receive a check for that amount. In such case, a Form 1099 will be given to the participant and the Internal Revenue Service (IRS). Under applicable provisions of the Internal Revenue Code and IRS regulations, the participant will have 60 days in which to transfer the funds to an eligible retirement plan to avoid a tax penalty.

Subpart D—Lump Sum and Equal Payments Withdrawal

§ 1650.10 Withdrawal by lump sum or equal payments.

(a) A participant who separates from Government service with basic retirement eligibility may withdraw his or her account balance in one lump sum or substantially equal payments of not less than $25 chosen by the participant subject to the rights of spouses set forth in Subpart F.

(b) *Commencement Date.* The commencement date for an equal payments withdrawal cannot be earlier than the date on which the participant would become eligible to receive payment of his or her basic retirement annuity and cannot be later than April 1 of the year following the year in which the participant becomes 70½ years old.

(c) *IRS Multiple Payments Limitations.* Multiple payments also must meet certain minimum limitations imposed by the Internal Revenue Code and IRS regulations. Participants choosing payment amounts which do not meet these requirements will be notified by the TSP Service Office and given an opportunity either to adjust their selected amount to meet the required minimum or to choose another method of payment.

(d) *Investment During Equal Payments Withdrawal.* At the time of the first payment of an equal payments withdrawal the entire account balance will be transferred to the Government Securities Investment Fund, and the participant will no longer have the option of changing his or her Fund mix.

Subpart E—Annuities

§ 1650.11 Annuity option.

Participants who have separated from government service with basic retirement eligibility have the option of having an annuity contract purchased with their account balance, subject to the rights of spouses set forth in Subpart F.

§ 1650.12 Purchase of annuity; methods of payment.

(a) At the time a participant chooses to have his or her annuity commence under this part.

(1) The Executive Director shall expend the vested balance in the account to purchase an annuity contract of the type chosen by the participant from a company which meets the qualifications set forth by the Executive Director.

(2) Each annuity contract entered into pursuant to paragraph (a)(1) of this section shall be in accordance with these regulations and Subchapters III and VII of Chapter 84 of Title 5, United States Code.

(b) An eligible participant may select an annuity pursuant to this part by applying at least 30 days prior to the requested commencement date of the annuity on TSP Annuity Benefits, Form TSP–11, for one of the following methods of payment:

(1) A method which provides for the payment of a monthly annuity only to an annuitant during the life of the annuitant;

(2) A method which provides for the payment of a monthly annuity to an annuity for the joint lives of the annuitant and his or her spouse and an appropriate monthly annuity to the one of them who survives the other for the life of the survivor;

(3) A method described in paragraph (b)(1) of this section, which provides annual increases in the amount of the annuity payable;

(4) A method described in paragraph (b)(2) of this section, which provides annual increases in the amount of the annuity payable;

(5) A method which provides for the payment of a monthly annuity to the annuitant for the joint lives of the annuitant and an individual who has an insurable interest in the annuitant as defined in § 1650.13 and to the one of them who survives the other for the life of the survivor; or

(6) Such other method or methods of payment as may have been approved by the Board.

(c) The five basic types of annuities described in paragraphs (1) through (5) of paragraph (b) of this section, may be selected by participants with various optional features which will be explained to participants in literature to be supplied to them prior to the selection of an annuity.

(d) Commencement dates. A TSP annuity may commence no later than April 1 of the year following the year in which the participant becomes 70½ years old.

§ 1650.13 Insurable interest.

(a) Pursuant to 5 U.S.C. 8434(a)(2)(E)(i), the second person in a joint lives annuity with the participant may be a person who has an insurable interest in the annuitant. For this purpose an "insurable interest" is presumed to exist with—

(1) The current spouse.

(2) A blood or adopted relative closer than first cousin.

(3) A former spouse.

(4) A person with whom the participant is living in a relationship that would constitute a common-law marriage in jurisdictions recognizing common-law marriages.

(b) When an insurable interest is not presumed for a named beneficiary, the participant must submit affidavits from one or more persons with personal knowledge of the named beneficiary having an insurable interest in the participant, stating the extent to which the named beneficiary is dependent on the participant, and the reasons why the named beneficiary might reasonably expect to derive financial benefit from the continued life of the participant.

§ 1650.14 Minimum balance for annuity purchase.

Whenever the participant's vested account balance is less than $3500, notwithstanding any other provisions of this Part, an annuity shall not be purchased and the account shall be distributed, subject to the rights of spouses, by any other method of payment for which the participant is eligible.

Subpart F—Spousal Rights

§ 1650.15 General.

(a) Pursuant to 5 U.S.C. 8435, 8351, and 8467, current and former spouses of participants are entitled under certain circumstances to:

(1) Notification prior to the transfer or payment of all or part of a vested account balance in accordance with certain withdrawal elections;

(2) Payment of all or part of a vested account balance pursuant to a qualified court order; or

(3) A survivor annuity following the death of the participant.

(b) This subpart enumerates the circumstances under which such spousal rights arise and prescribes the procedures which must be followed by participants, spouses, former spouses, and the Board to implement such rights.

§ 1650.16 Withdrawal elections requiring notification to spouses.

(a) The Executive Director will transfer a vested account balance to an eligible retirement plan for CSRS and FERS participants who separate from government service before having basic retirement eligibility only after notification of the current and each former spouse of the participant prior to notification of the current spouse of the participant in accordance with § 1650.19.

(b) No election of benefits, change of election of benefits, or modification of the commencement date of an annuity can be made effective for a CSRS participant in accordance with the requirements of § 1650.19.

§ 1650.17 Withdrawal elections requiring spousal consent and waiver.

No withdrawal election may be made or changed by a FERS participant which would defeat a current spouse's entitlement to a survivor annuity unless the affected spouse and the participant have signed and filed a Joint Waiver of Spouse's Annuity, Form TSP–14.

§ 1650.18 Spouse's waiver of survivor annuity.

(a) The right of a spouse to a survivor annuity may be jointly waived in writing by the employee and the spouse on Joint Waiver of Spouse's Annuity, Form FSP–14.

(b) When required by these regulations, the joint waiver form specified in (a) shall be filed with the TSP Service Office prior to the date that an Election of Benefits, Form TSP–7, or TSP Annuity Benefits, Form TSP–11 can be made effective.

§ 1650.19 Notice to spouse.

(a) Wherever in these regulations it is required that the Executive Director provide notice of an action affecting a participant's account to a spouse or former spouse of a participant prior to taking the action, such requirements may be satisifed by the TSP Service Office's sending a notice describing the action by certified mail to the last address of said spouse or former spouse on file with the Plan.

§ 1650.20 Executive Director's waiver of notice to spouse.

Wherever in these regulations it is required that the Executive Director give notice of an action to a spouse or former spouse of a participant, the notice may be waived in cases where the participant establishes to the satisfaction of the Executive Director that the current and/or former spouse's whereabouts cannot be determined. A request for waiver on this basis must be submitted to the Executive Director accompanied by—

(a) A judicial or police determination that the current and/or former spouse's whereabouts cannot be determined; or

(b) Affidavits by the participant and two other persons, at least one of whom is not related to the participant, attesting to the inability to locate the current and/or former spouse and stating the efforts made to locate the current and/or former spouse.

§ 1650.21 Executive Director's waiver of spousal consent.

Wherever in these regulations a spousal consent or spousal waiver is required, the Executive Director may waive the requirement if the participant can show that:

(a) The spouse's whereabouts cannot be determned in accordance with the provisions of § 1650.20; or

(b) Due to exceptional circumstances, requiring the spouse's consent or waiver would otherwise be inappropriate. The spousal consent requirement will be waived based on exceptional circumstances only when the participant presents a judicial determination regarding the current spouse that would warrant waiver of the consent requirement.

Subpart G—Death Benefits

§ 1650.22 Designation of beneficiary.

(a) Each participant may at any time designate on Form TSP–3 one or more beneficiaries to receive the vested amounts due from his or her account if the participant should die without having made an effective election of benefits on Form TSP–7 (and Form TSP–11 in the case of an annuity). In the absence of an effective election of benefits, the account shall be paid in the following order of procedence:

(1) To the beneficiary or beneficiaries designated by the participant in a signed and witnessed Designation of Beneficiary, Form TSP–3, received in the employing office before the death of the participant. For this purpose, a designation change or cancellation of beneficiary not so executed and received on a Form TSP–3 has no force or effect.

(2) If there is no designated beneficiary, to the widow or widower of the participant.

(3) If none of the above, to the child or children of the participant equally and descendants of deceased children equally by representation. For the purpose of this subsection, child includes a natural child and an adopted child, but does not include a stepchild.

(4) If none of the above, to the parents of the participant equally, or the survivor of them.

(5) If none of the above, to the duly appointed executor or administrator of the estate of the participant.

(6) If none of the above, to such other next to kin of the participant as is entitled under the laws of the domicile of the participant at the date of death of the participant.

(b) If the order of precedence specified in paragraph (a) of this section, starting with paragraph (a)(2) (widow or widower) of this section, is unsatisfactory to the participant, he or she should keep a current Designation of Beneficiary, Form TSP-3, on file with his or her employing office (and after separation with the TSP Service Office) at all times. A designation of beneficiary is not effective until a complete Designation of Beneficiary, Form TSP-3, has been received by the employing office (before separation) or by the TSP Service Office (after separation).

§ 1650.23 Death in service.

(a) If a participant dies while employed by the government, the participant's vested account balance will be paid in a lump sum to the person or persons designated by the participant on the last Designation of Beneficiary, Form TSP-3, filed in accordance with § 1650.22(b) or if no Form TSP-3 has been so filed, in the order of precedence provided in § 1650.22(a) (2) through (6).

(b) Notwithstanding paragraph (a), if the participant died after performing 18 or more months of creditable civilian service, a former spouse of the deceased participant is entitled to a survivor annuity if a qualifying court order expressly providing for the survivor annuity and such additional documentation and information as the Executive Director may require under § 1650.28 is received by the Executive Director prior to any distribution's being made of the account balance. This paragraph is subject to the minimum annuity amount designated in § 1650.14

§ 1650.24 Death after separation from service.

(a) If a separated participant dies and his or her account balance with the Plan already has been withdrawn by means of one of the methods specified in § 1650.5, the Plan has no further responsibility to the participant's beneficiaries.

(b) Where the account balance has been used to purchase an annuity, the annuity contract will contain provisions preserving the rights of spouses to survivor benefits consistent with 5

U.S.C. 8435 (c)(1), (e)(1), and (e)(5) unless such rights have been waived pursuant to §1650.18.

(c) If a separated participant dies and an account balance does remain, payment will be made in a lump sum, subject to the provisions of a qualified court order, to the participant's designated beneficiary or next of kin in the order of precedence designated in § 1650.22(a) (2) through (6).

(d) If a separated participant dies while receiving his account in substantially equal payments, the remainder of the account balance will be distributed, subject to the provisions of a qualified court order, in a lump sum to the participant's designated beneficiary or next of kin in the order of precedence contained in § 1650.22(a) (2) through (6).

Subpart H—Court Orders Affecting Thrift Savings Plan Benefits

§ 1650.25 Purpose.

This subpart contains regulations prescribing the procedures which must be followed by spouses or legal guardians who have obtained court orders which either:

(a) Provide for the enforcement of a participant's child support or alimony payment obligations out of a Plan account balance (alimony or child support court order) or

(b) Award a portion of a participant's retirement benefits to a former or separated spouse (retirement benefits court order).

§ 1650.26 Alimony and/or child support court orders.

(a) Section 8437(e) (2) and (3) provide that a participant's account balance in the Plan is subject to legal process for the enforcement of court orders which direct a participant to make child support and/or alimony payments as provided in section 459 of the Social Security Act (42 U.S.C. 659). Accordingly, upon receipt of such an order enforceable against an existing account balance, the Plan will make payments in compliance with the court order until the account balance is exhausted.

(b) Alimony and/or child support court orders shall be certified by the clerk of the issuing court.

(c) Service of legal process brought for the enforcement of a participant's obligation to provide child support or make alimony payments shall be accomplished by certified or registered mail, return receipt requested, or by personal service upon the General Counsel or any Assistant General Counsel of the Board. The address for mail delivery is: Federal Retirement Thrift Investment Board, P.O. Box 18899, Washington, DC 20036. The address for personal service and hand delivery is: Federal Retirement Thrift Investment Board, Room 214, 1717 H Street NW., Washington, DC 20006. The telephone number is 202-653-7231. The legal process shall be accompanied by the name, address, social security number, and employing agency of the participant involved. Receipt by an employing agency, the TSP Service Office, or any other office of the government shall not constitute receipt by the Plan.

(d) Alimony and/or child support court orders are not subject to the procedures set forth in §§ 1650.27 through 1650.29 for Retirement Benefits Court Orders.

§ 1650.27 Retirement benefits court orders.

(a) A former spouse or separated spouse is entitled to a portion of a participant's vested account balance if the division is expressly provided for by a qualifying court order as defined in this section. The court order must divide the participant's account balance, award a payment from a participant's account balance, or award a survivor annuity.

(b) The court order must state the former or separated spouse's share as a fixed amount, as a percentage of the annuity, or by applying a formula that does not contain any variable whose value is not readily ascertainable from the face of the order or normal TSP records.

(c) For payment from a participant's vested account balance, the court order must either state the former or separated spouse's entitlement to a portion of a participant's account balance, or direct a participant to pay a portion of his or her account balance to the former spouse or separated spouse. The Plan will pay a former spouse or separated spouse directly unless the court order expressly instructs the Plan not to do so.

(d) For awarding a former spouse annuity, the court order must either state the former spouse's entitlement to a survivor annuity or direct a participant to provide a former spouse annuity.

(e) A retirement benefits court order must be received by the Federal Retirement Thrift Investment Board with accompanying information required by § 1650.28, in order to be honored. Delivery may be by ordinary, registered, certified, or overnight mail or by hand. The address for mail delivery is: Federal Retirement Thrift Investment Board, P.O. Box 18899, Washington, DC, 20036. The address for hand delivery is: Federal Retirement Thrift Investment Board, Room 214, 1717 H Street, NW., Washington, DC 20006. Receipt by an employing agency, the TSP Service Office, or any other office of the government shall not constitute receipt by the Plan. Payments made or annuities purchased by the Plan before receipt of a retirement benefits court order will not be affected by or be subject to said court order.

§ 1650.28 Applications by former spouses and separated spouses.

(a) A former spouse (personally or through a representative) or a separated spouse (personally or through a representative) must apply in writing for payments or an annuity under this Subpart. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order granting the applicant a share of a participant's account balance and/or survivor benefits;

(2) A statement that the court order has not been amended, superseded, or set aside;

(3) Identifying information concerning the participant, including his or her full name, date of birth, and social security number;

(4) The current mailing address of the former spouse or separated spouse; and

(5) If the participant is alive, the mailing address of the participant.

(c) When payments are subject to termination upon remarriage pursuant to § 1650.41, no payment will be made until the former spouse submits to the Executive Director a statement in the form prescribed by the Executive Director certifying—

(1) That a remarriage has not occurred;

(2) That the former spouse will notify the Executive Director within 15 calendar days of the occurrence of any remarriage; and

(3) That the former spouse will be personally liable for any overpayment to him or her resulting from a marriage. The Executive Director may subsequently require recertification of these statements.

§ 1650.29 Processing retirement benefits court orders.

(a) Upon receipt of a retirement benefits court order without an item of documentation required under § 1650.28, the General Counsel will notify the person submitting the order which item(s) is necessary to document the claim and that the claim cannot be processed without the missing item(s).

(b) Upon receipt of a retirement benefits court order with all the documentation required under § 1650.28,

the General Counsel will review the court order to determine whether it is a qualifying order under § 1650.27, whether the participant affected by the order has an account balance, and whether he or she is receiving or is entitled to receive benefits or has died.

(c) If the General Counsel determines that the order is not a qualifying court order, the General Counsel will send copies of his decision to the participant, if alive, and to the former spouse or representative. The decision will contain the following information:

(1) That the Board has received a court order from the former spouse, but the Board has determined that the court order is not a qualifying court order.

(2) A statement of the statute or regulations under which the court order failed to qualify; and

(3) A statement of the right to appeal the decision to the Executive Director and the procedure and time limit for submitting an appeal.

(d) If the General Counsel determines that the court order is a qualifying court order, the General Counsel will send a decision to the participant, if alive, the former spouse or representative, and any other claimant whose interest is adversely affected by the court order. The decision will contain the following information:

(1) That the Board has received a court order awarding a survivor annuity or dividing the participant's account balance and the date that the Board received the documentation required by § 1650.28.

(2) The applicable law and regulations under which the Board is required to comply with the court order.

(3) That the order is a qualifying court order under applicable law and regulations.

(4) The effect that compliance with the court order will have on the participant's account balance.

(5) How the former spouse's or separated spouse's survivor annuity or share of account balance was computed.

(6) That, except for an alimony and/or child support court order enforceable pursuant to § 1650.26, nothing is payable before the participant's TSP retirement benefits are payable to the participant; and

(7) That the order must be honored unless entitlement terminates under § 1650.41.

(8) That the participant, the former spouse, or any other affected claimant may appeal the decision to the Executive Director and the procedure and time limit for submitting an appeal.

(e) If the General Counsel has determined that the court order is a qualifying court order but that the participant is not immediately eligible to receive TSP retirement benefits, the decision, in addition to the information listed in paragraphs (d) (1) through (8), of this section, will state:

(1) The effect that compliance with the court order will have, under current law and regulations, on future participant TSP retirement benefits, when payable.

(2) How the former or separated spouse's survivor annuity or share of TSP retirement benefits would be computed under current law and regulations.

(3) That an order dividing a participant's account balance will be honored when participant's TSP retirement benefits become payable, and an order granting a survivor annuity will be honored when the participant dies, unless entitlement terminates under § 1650.41.

(f) Except as provided in this subpart, the Executive Director is not required to furnish notification to any party of the receipt of a court order, its contents, or any action taken by the Executive Director or the Plan with regard to a court order.

§ 1650.30–1650.40 [Reserved].

§ 1650.41 Termination of former spouse or separated spouse benefits.

(a) The Plan will terminate a future interest in an account balance in favor of a former spouse or separated spouse whenever—

(1) The Executive Director determines that a contemporaneous or subsequent court order supersedes or sets aside the qualifying court order or directs that the Plan stop the payments; or

(2) Termination is required by the terms of the court order awarding benefits to the former spouse or separated spouse.

(b) The Plan will terminate an interest in survivor annuity benefits in favor of a former spouse whenever—

(1) The former spouse dies;

(2) The former spouse remarries before attaining age 55;

(3) A contemporaneous or subsequent court order determines that the qualifying court order awarding the benefits is invalid; or

(4) Termination is required by the terms of the court order awarding benefits to the former spouse.

(c) The Plan will honor a qualifying court order that appears valid on its face despite a pending appeal or other attack on the validity of the qualifying court order unless the original or reviewing court has issued a stay of the qualifying court order or has ordered the Plan not to honor the qualifying court order pending the appellate or collateral review. Automatic stays under a state law will not be honored unless the original or reviewing court issues a document suspending the effect of the qualifying court order pending the review of the qualifying court order. No order described in this paragraph will be honored by the Executive Director prior to its receipt as provided in § 1650.27(e).

Subpart I—Agency Duties

§ 1650.42 Information.

Separating employees shall be provided by their employing offices with information regarding the various withdrawal options available from the Plan, along with the necessary forms and instructions for submission.

§ 1650.43 Retirement information.

At the time of a participant's separation from service, his employing office shall submit to the TSP Service Office an executed Validation of Retirement Eligibility, Form TSP–18, confirming the retirement eligibility, if any, and the date on which participant is eligible for basic retirement benefits.

§ 1650.44 Beneficiary information.

The employing office will attach the latest original Designation of Beneficiary Form from the participant's Official Personnel File to the Form TSP–18, or certify that there is no Designation of Beneficiary Form in the file.

§ 1650.45 Forwarding of forms to the plan.

Employing offices shall submit the Validation of Retirement Eligibility Form, TSP–18, and the Designation of Beneficiary, Form TSP–3, as required in §§ 1650.43 and 1650.44 to the TSP Service Office for all separating employees. As requested by the separating employee, they may also forward the remaining withdrawal forms completed by the employee to the TSP Service Office. Employing agencies shall also assist the beneficiaries of employees who die in service in completing the Application for Account Balance of Deceased Participant, Form TSP–17. The address of the TSP Service Office is Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61135, New Orleans, Louisiana 70161–1135.

[FR Doc. 87–19552 Filed 8–25–87; 8:45 am]
BILLING CODE 6760–01–M

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 313/Pub. L. 100-88

Designating the month of August 1987 as "National Child Support Enforcement Month". (Aug. 13, 1987; 101 Stat. 665; 1 page) Price: $1.00

H.R. 318/Pub. L. 100-89

Ysleta del sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act. (Aug. 18, 1987; 101 Stat. 666; 7 pages) Price: $1.00

H.R. 346/Pub. L. 100-90

To amend title 39, United States Code, to extend to certain officers and employees of the United States Postal Service the same procedural and appeal rights with respect to certain adverse personnel actions as are afforded under title 5, United States Code, to Federal employees in the competitive service. (Aug. 18, 1987; 101 Stat. 673; 1 page) Price: $1.00

H.R. 921/Pub. L. 100-91

To require the Secretary of the Interior to conduct a study to determine the appropriate minimum altitude for aircraft flying over national park system units. (Aug. 18, 1987; 101 Stat. 674; 5 pages) Price: $1.00

H.R. 1403/Pub. L. 100-92

To designate the United States Post Office Building located in St. Charles, Illinois, as the "John E. Grotberg Post Office Building". (Aug. 18, 1987; 101 Stat. 679; 1 page) Price: $1.00

H.R. 1444/Pub. L. 100-93

Medicare and Medicaid Patient and Program Protection Act of 1987. (Aug. 18, 1987; 101 Stat. 680; 20 pages) Price: $1.00

H.R. 2309/Pub. L. 100-94

To amend the Christopher Columbus Quincentenary Jubilee Act. (Aug. 18, 1987; 101 Stat. 700; 4 pages) Price: $1.00

H.R. 2855/Pub. L. 100-95

Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987. (Aug. 18, 1987; 101 Stat. 704; 7 pages) Price: $1.00

H.J. Res. 216/Pub. L. 100-96

To support a ceasefire in the Iran-Iraq war and a negotiated solution to the conflict. (Aug. 18, 1987; 101 Stat. 711; 2 pages) Price: $1.00

S. 769/Pub. L. 100-97

Excellence in Minority Health Education and Care Act. (Aug. 18, 1987; 101 Stat. 713; 2 pages) Price: $1.00

S. 1371/Pub. L. 100-98

To designate the Federal building located at 330 Independence Avenue, SW, Washington, District of Columbia, as the "Wilbur J. Cohen Federal Building". (Aug. 18, 1987; 101 Stat. 715; 1 page) Price: $1.00

S. 1577/Pub. L. 100-99

To extend certain protections under title 11 of the United States Code, the Bankruptcy Code. (Aug. 18, 1987; 101 Stat. 716; 1 page) Price: $1.00

S. 1597/Pub. L. 100-100

To amend the Farm Disaster Assistance Act of 1987 to extend the reporting date for the ethanol cost effectiveness study. (Aug. 18, 1987; 101 Stat. 717; 1 page) Price: $1.00

S.J. Res. 44/Pub. L. 100-101

To designate November 1987, as "National Diabetes Month". (Aug. 18, 1987; 101 Stat. 718; 1 page) Price: $1.00

S.J. Res. 49/Pub. L. 100-102

To designate September 18, 1987, as "National POW/MIA Recognition Day". (Aug. 18, 1987; 101 Stat. 719; 1 page) Price: $1.00

S.J. Res. 87/Pub. L. 100-103

To designate November 17, 1987, as "National Community Education Day". (Aug. 18, 1987; 101 Stat. 720; 1 page) Price: $1.00

S.J. Res. 108/Pub. L. 100-104

To designate October 6, 1987, as "German-American Day". (Aug. 18, 1987; 101 Stat. 721; 1 page) Price: $1.00

S.J. Res. 109/Pub. L. 100-105

To designate the week beginning October 4, 1987, as "National School Yearbook Week". (Aug. 18, 1987; 101 Stat. 722; 1 page) Price: $1.00

S.J. Res. 157/Pub. L. 100-106

To designate the month of October 1987, as "Lupus Awareness Month". (Aug. 18, 1987; 101 Stat. 723; 1 page) Price: $1.00

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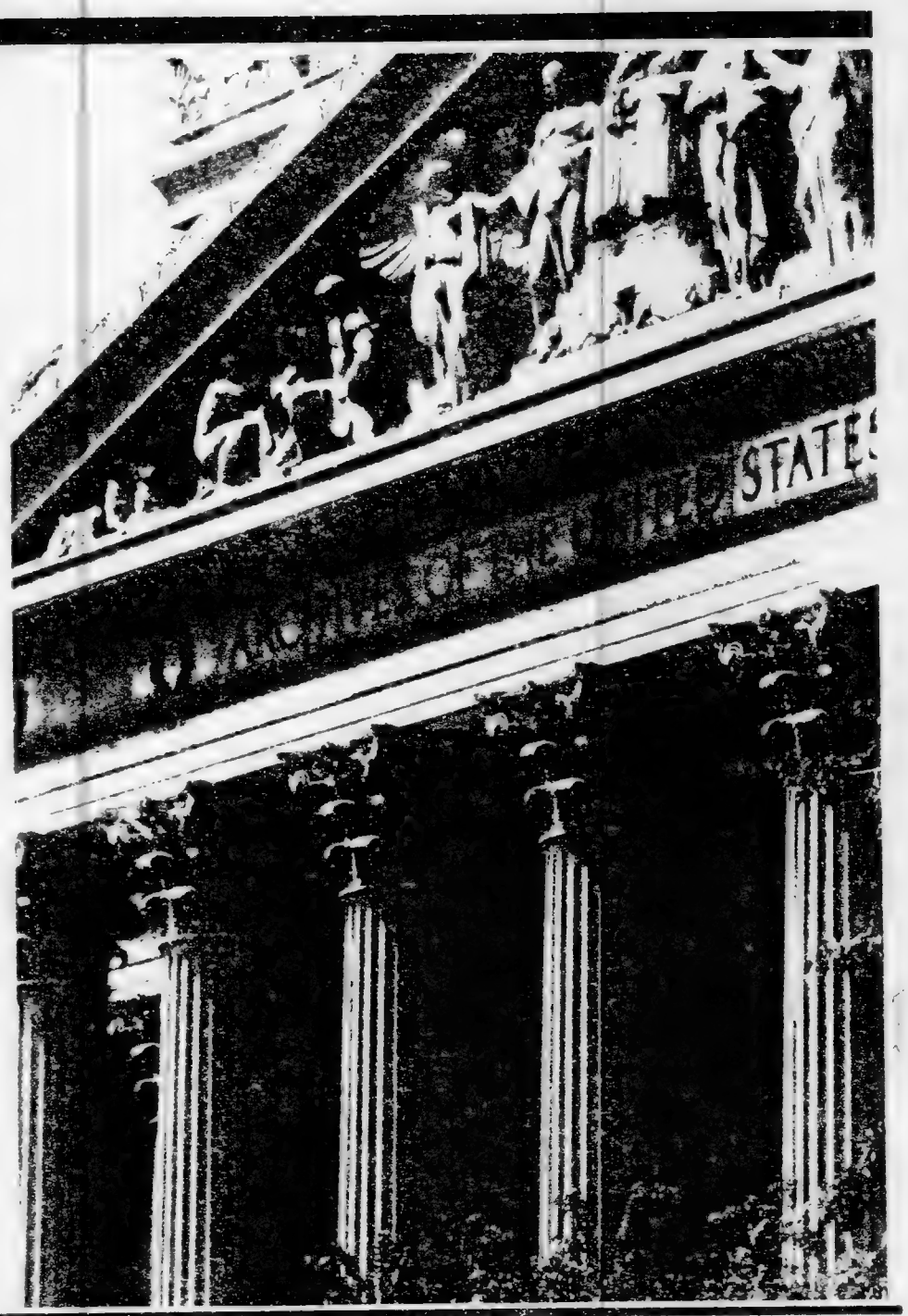

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Federal Register

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Rules and Regulations

Federal Register
Vol. 52, No. 166
Thursday, August 27, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement—Order of Precedence for Deposits and Redeposits

AGENCY: Office of Personnel Management.

ACTION: Final Regulations.

SUMMARY: The Office of Personnel Management (OPM) is amending its civil service retirement regulations to formally establish an order of precedence for applying installments paid by individuals for deposit and redeposit. OPM's administrative practice has been to apply installment payments in the order of precedence established by OPM unless otherwise requested by the employee. This revision will make OPM's practice a matter of regulation and will also serve to notify employees of their right to elect a change of the automatic order of precedence for application of installment payments.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Wanda Jordan, (202) 632–5582.

SUPPLEMENTARY INFORMATION: On May 6, 1986, we published proposed regulations in the **Federal Register** (51 FR 16701) to give public notice of the order of precedence to be applied by OPM for installment payments on deposits and redeposits.

These regulations apply only to the Civil Service Retirement System (CSRS). Subsequent regulations will be issued in the near future which will address the order of precedence for deposits and redeposits under the Federal Employees Retirement System.

The regulations specified that service credit payments would be applied (1) to redeposits for refunds paid based on applications (for refunds) received on or after October 1, 1982; (2) to redeposits for refunds paid based on applications received before October 1, 1982; (3) to deposits for nondeduction service performed on or after October 1, 1982; and (4) to deposits for nondeduction service performed before October 1, 1982. The regulations also specified that depositors can ask that their service credit payments be applied in any other specified order of precedence.

We received comments from one individual and one Federal agency. Both were greatly in favor of the proposed regulations. The agency suggested that a provision be added to allow survivors to choose an order of precedence if the deceased employee did not specifically make such a request or did not begin to make payments to the CSRS for the deposit or redeposit. We appreciate the concern expressed in this comment but would like to point out that the regulations apply only to installment payments begun by the employee. Survivors of employees are prohibited from making installment payments and must pay the deposit and/or redeposit as applicable within 30 days from the date OPM notifies them of the amount to be deposited.

The agency also suggested that we devise a method of notifying employees of the order of precedence in applying installment payments and the right to request a different order. We will consider adding this notification to the Standard Form 2803 when it becomes necessary to revise it again.

Comments from the individual suggested we change OPM's normal order of precedence. We considered this suggestion but felt that it was inappropriate to change the current practice particularly because employees are free to request any order they feel is beneficial.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Federal employees and agencies.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income tax, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 831, Subpart A, as follows:

PART 831—RETIREMENT

Subpart A—Administration and General Provisions

1. The authority citation for Subpart A of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2).

2. Section 831.105 is amended by adding paragraph (i) to read as follows:

* * * * *

§ 831.105 Computation of interest.

* * * * *

(i)(1) When an individual's civilian service involves several deposit and/or redeposit periods, OPM will normally use the following order of precedence in applying each installment payment against the full amount due:

(i) Redeposits of refunds paid on applications received by the individual's employing agency or OPM on or after October 1, 1982;

(ii) Redeposits of refunds paid on applications received by the individual's employing agency or OPM before October 1, 1982;

(iii) Deposits for noncontributory civilian service performed on or after October 1, 1982; and

(iv) Deposits for noncontributory service performed before October 1, 1982.

(2) If an individual specifically requests a different order of precedence, that request will be honored.

[FR Doc. 87–19610 Filed 8–26–87; 8:45 am]
BILLING CODE 6325–01–M

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. 87-019]

Unshu Oranges; Japan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Citrus Fruit regulations and the Unshu Oranges regulations to allow Unshu oranges (*Citrus reticulata* Blanco var. *unshu*, also known as Satsuma) grown in certain citrus canker-free zones in Japan to be imported and moved into or through all areas of the United States except Alabama, American Samoa, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, the Northern Mariana Islands, Puerto Rico, South Carolina, Texas, and the Virgin Islands of the United States. This action will relieve unnecessary restrictions on the importation and distribution of these Unshu oranges without increasing the risk of spreading citrus canker.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen Poe, Senior Plant Pathologist, Biotechnology and Environmental Coordination Staff, APHIS, USDA, Room 400, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–7602.

SUPPLEMENTARY INFORMATION:

Background

We proposed, in the **Federal Register** of August 13, 1984 (49 FR 32207–32209, Docket No. 83–333), to amend the Citrus Fruit regulations (contained in 7 CFR 319.28) and the Unshu Oranges regulations (contained in 7 CFR 301.83) to allow Unshu oranges (*Citrus reticulata* Blanco var. *unshu*, also known as Satsuma) grown in certain citrus canker-free zones in Japan to be imported and moved into or through all areas of the United States except Alabama, American Samoa, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, the Northern Mariana Islands, Puerto Rico, South Carolina, Texas, and the Virgin Islands of the United States. The Citrus Fruit regulations currently allow the importation of these oranges only into Alaska, Hawaii, Idaho, Montana, Oregon, and Washington under specified conditions. In addition, the Unshu Oranges regulations currently prohibit the interstate movement of imported Unshu oranges from these areas into or through any other area of the United States.

We regulate the importation and interstate movement of Unshu oranges grown in Japan to prevent citrus canker from Japan from being introduced into the United States. Citrus canker, a disease that affect citrus, is caused by the infectious bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The disease exists in the United States in Guam. On August 23, 1984, the disease was also detected in Florida. We are working with the State of Florida to eradicate the disease there.

The **Federal Register** of August 13, 1984, invited the submission of written comments on the proposed rule on or before October 12, 1984, and announced that a public hearing on the proposal would be held on September 18, 1984, in Washington, DC. We received 10 written comments before the close of the comment period. After the detection of citrus canker in Florida, however, we canceled the public hearing (**Federal Register** notice of September 17, 1984, 49 FR 36391, Docket No. 84–351) and postponed action on the proposal until we could learn more about the Florida outbreak.

Having found no evidence linking the infestations of citrus canker in Florida to Unshu oranges, we republished the proposed rule (with minor, nonsubstantive corrections) in the **Federal Register** of December 10, 1986 (51 FR 44481–44483, Docket No. 86–341). This document also reopened the comment period for 60 days ending February 9, 1987, and rescheduled the public hearing for January 6, 1987. Only one person spoke at the public hearing, and his remarks favored the proposed rule. We received 12 written comments between December 10, 1986, and February 9, 1987, giving us a total of 22 written comments. The comments were from state agencies, trade associations, and private individuals. Four comments support the proposal as written; 18 contain objections. All of the objections are discussed below.

Based on the reasons given in the proposal and in this document, we have determined that the proposed geographic restrictions on the movement of Unshu oranges from Japan into and within the United States, combined with the existing safeguards employed in Japan in growing, processing, and packaging the oranges, are adequate to protect citrus in the United States from exposure to citrus canker from Unshu oranges grown in Japan. Therefore, we are adopting the proposal as a final rule, with only minor, nonsubstantive changes for clarity and the addition of due process procedures for the withdrawal of permits to import Unshu oranges.

Comments

Stating that "the California Department of Food and Agriculture has intercepted diseased fruit," one commenter asked whether we are certain that Japan is exporting canker-free Unshu oranges. We have made no changes based on this comment. No interceptions of citrus canker-infected Unshu oranges from Japan have been reported by the California Department of Food and Agriculture. Furthermore, it is extremely unlikely that any Unshu oranges imported into the United States from Japan would be infected with citrus canker. Unshu oranges may be imported into the United States from Japan only in accordance with the Citrus Fruit regulations (contained in 7 CFR 319.28). These regulations impose a number of independent safeguards to ensure that citrus canker is not carried into the United States by Unshu oranges from Japan. These safeguards include growing and packing Unshu oranges in isolated citrus canker-free export areas that are surrounded by cirtus canker-free buffer zones containing no species of citrus other than *Citrus reticulata* Blanco var. *unshu*; inspecting the trees and oranges in the export area and buffer zone during growing, harvesting, and packing; washing each orange to be exported in a chlorine solution that kills surface bacteria; and visually inspecting for evidence of citrus canker each orange to be exported. The export area and surrounding buffer zone are regularly inspected for citrus canker by plant pathologists of both Japan and the United States. Any evidence of citrus canker would disqualify the fruit for export to the United States. All Unshu oranges imported into the United States in accordance with the Citrus Fruit regulations also are subject to a final examination at the port of arrival by inspectors of the United States Department of Agriculture. Citrus canker has never been found on any Unshu oranges exported from Japan under the conditions described above. We are therefore confident that Unshu oranges imported into the United States from Japan present a negligible risk of carrying citrus canker bacteria.

One commenter asserted that Unshu oranges are imported into the United States from areas in Japan that have serious infestations of citrus canker, and, once in the United States, "will spread [citrus canker] due to totally inadequate state-border inspection

procedures"; another commenter maintained that "Type A citrus canker could be transmitted on the Japanese Unshu oranges shipped to a state near our Texas citrus industry and subsequently find its way into our industry"; and a third commenter argued that "once brought into a 'safe state,' canker infected fruit could eventually be transported to a production area in the United States." Several commenters asserted that expanding the area into which Unshu oranges may be imported and distributed would cause an increase in the number of Unshu oranges "transshipped" into citrus-producing states, particularly by tourists and other individuals in private automobiles, and would therefore increase the risk of citrus canker being introduced into these states.

These comments voice two concerns: (1) That the Unshu oranges imported into the United States from Japan are contaminated with citrus canker bacteria, and (2) that the Unshu oranges will be moved into states where they are prohibited by the quarantine imposed by the Unshu Oranges regulations (contained in 7 CFR 301.83). We have made no changes based on these comments. Under the Citrus Fruit regulations, we allow Unshu oranges to be imported from Japan only under permit. The permit states that the oranges may be moved only into certain states. In addition, each box of Unshu oranges must be stamped or imprinted with a warning that Unshu oranges may be moved only into listed states, and each orange must be wrapped in tissue paper stamped or imprinted with the same information. Our experience indicates that the restricted destination permit and the marking requirements are sufficient to notify importers and shippers of the quarantine on Unshu oranges.

There may be some risk of tourists or other individuals carrying Unshu oranges into states where the fruit is prohibited. Even if some Unshu oranges were brought into citrus-producing states, it is extremely unlikely that these oranges would be the source of any citrus canker infection. First, the oranges would have to be contaminated with citrus canker bacteria. As we have already discussed, Unshu oranges may be imported into the United States only under safeguards that have been demonstrated to be effective in keeping Unshu oranges free of citrus canker bacteria. Our regulations prohibit the movement of Japanese Unshu oranges into certain states only as a precaution against the very remote possibility that citrus canker bacteria could go undetected on imported Unshu oranges.

In the event, however remote, that an Unshu orange contaminated with citrus canker bacteria should reach a citrus-producing state, these bacteria could establish a new infection only under an unlikely combination of circumstances. First, the bacteria on the skin of the fruit would have to be released without coming into contact with any of the natural juice of the fruit since citrus canker bacteria are quickly killed by contact with the acidic juice. Then the bacteria would have to settle on young, live twigs or leaves of host plants. Finally, certain conditions of temperature and humidity would have to occur for the bacteria to cause an infection in the host plant. While this combination of circumstances is theoretically possible, there is no evidence that fruit or peel of any citrus variety has ever been the cause of citrus canker infection under field conditions. Furthermore, the amounts of Unshu oranges carried into these states in this manner probably would be negligible because tourists and other individuals would expect to find plenty of citrus fruit already there. Therefore, although the quarantine on Unshu oranges is a valuable safeguard against the establishment of citrus canker in the United States, a breach of the domestic quarantine, or the failure of any other single safeguard, is unlikely to result in the spread of citrus canker.

Two commenters urged careful monitoring of the movement of Unshu oranges within the United States to prevent illegal transshipment, and one of the commenters suggested "following the movement of Unshu oranges to ensure enforcement of the total protocol." Another commenter, asserting that transshipment would increase the risk of citrus canker being introduced into citrus-producing states, asked whether there would be additional inspectors or stations to guard against transshipment and whether the Department of Agriculture would "aid producers whose trees become infected as a result of the relaxation [of the domestic quarantine on Unshu oranges]." We have made no changes based on these comments. Relying on our experience in monitoring and enforcing domestic quarantines, we have determined that adequate personnel are available in citrus-producing areas to monitor the Unshu oranges quarantine. We do not expect that additional inspectors will be required. Also, because we believe that Unshu oranges are an extremely unlikely source of any new citrus canker infections, it does not appear necessary to establish a program to aid producers.

Several commenters linked their objections to the proposed rule to the citrus canker problem in Florida. One of these commenters stated that the "U.S.D.A.'s past track record for keeping imported diseases and pests out of Florida is not good" and that "the present U.S.D.A. inspection and treatment program to prevent the introduction and spread of this disease is . . . inadequate." The others said that the proposed rule should not be adopted until more is known about the source of the citrus canker in Florida. We have made no changes based on these comments. Although the source of the two recent infestations of citrus canker in Florida have not been identified, there is no indication that either infestation can be traced to Unshu oranges from Japan. Also, the introduction of citrus canker into Florida earlier in this century is attributed to importation of infected nursery stock, not fruit. Furthermore, the safeguards employed in Japan in growing, processing, and packaging Unshu oranges have been effective in keeping Unshu oranges free from citrus canker.

One commenter contended that we should not allow importation of any "nonprocessed citrus" from any country where citrus canker exists because "that small portion of Florida that does have "A" strain canker is highly regulated and can only go to processing." We have made no changes based on this comment. Florida citrus fruit is restricted to processing only if it comes from a known canker-infected grove. Fresh fruit from certified canker-free groves in Florida can be moved interstate to noncommercial citrus-producing areas. Our policy has been to allow importation of fruit from countries where exotic plant diseases exist if we can determine that the fruit comes from an area of that country that is free of the disease. Unshu oranges imported into the United States from Japan are grown and packed in isolated, citrus canker-free export areas that are surrounded by citrus canker-free buffer zones.

One commenter maintained that the proposal should not be adopted at this time because "an interception of Unshu oranges with citrus canker at the port of Seattle raises questions about the resistance of Unshu oranges to citrus canker." The commenter also asserted that, because of this interception, "the present procedure for importing Unshu oranges must be reviewed and tightened up before any consideration is given to increased importations of Unshu

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oranges from Japan." We have made no changes based on these comments.

No Unshu oranges imported into the United States from Japan under the safeguards imposed by the Citrus Fruit regulations have been found to be infected with citrus canker. These safeguards, with only minor changes, have been in effect since 1967, when our quarantine regulations were amended to allow Unshu oranges imported into the United States from Japan to be moved into certain northwestern states. Furthermore, the history of Unshu orange importation into the United States earlier in this century confirms that Unshu oranges are highly resistant to citrus canker. From 1925 through 1940, more than 28 million pounds of Unshu oranges were imported into the United States from Japan, where citrus canker has been present since before 1899. These oranges were grown under normal orchard conditions. They were inspected and certified free of citrus canker in Japan and imported into the United States under permit, where they were again inspected. Not one imported Unshu orange was found to be infected with citrus canker. (Unshu oranges were not imported into the United States from Japan during and immediately after World War II. In 1947, we prohibited the importation of Unshu oranges from Japan because the United States was by then free of citrus canker. We amended our quarantine regulations in 1952 to allow Unshu oranges to be imported from Japan into the United States, but only into Alaska.)

One commenter declared that any permit issued for importation of Unshu oranges should be revoked if the Unshu oranges are shipped into a state where the oranges are prohibited. Under the proposed rule, one of the conditions for importation of Unshu oranges, which would be specified on the permit, is that the "importation shall not be allowed through ports of entry located in Alabama, American Samoa, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, the Northern Mariana Islands, Puerto Rico, South Carolina, Texas, or the Virgin Islands of the United States. Violation of this requirement would be cause for revoking a permit and could be grounds for other penalties as well. In response to this comment, we have added to § 319.28 a paragraph (h) describing procedures for the withdrawal of permits, and a paragraph (i) defining the term inspector.

One commenter objected to our proposal because "this procedure does not consider arrowhead scale, *Unaspis yanonensis*, which is a serious insect pest of citrus." He stated that California border stations intercepted Unshu oranges infested with arrowhead scale 24 times in 1986 and asserted that "these interceptions verify that there must be a change in the present quarantine and inspection program before any consideration for an expansion of the existing program [for importing Unshu oranges]." We have made no changes based on this comment. Unshu oranges imported into the United States from Japan in accordance with the Citrus Fruit regulations also are subject to the Fruits and Vegetables regulations (contained in 7 CFR 319.56), which prohibit the importation of any fruits or vegetables infested with arrowhead scale or other injurious insects, and the emergency provisions of the Federal Plant Pest Act (7 U.S.C. 150dd). Unshu oranges to be imported into the United States from Japan are inspected in Japan and at the port of arrival in the United States for arrowhead scale and other insects as well as for citrus canker. Any evidence of insect infestation would disqualify the fruit for importation into the United States. The Unshu oranges infested with arrowhead scale that were intercepted at the California border were not part of any shipment of fruit from the citrus canker-free export areas in Japan.

One commenter, also referring to the California interceptions of Unshu oranges infested with arrowhead scale, stated that the oranges "were in all probability fruit that had been imported into Canada where there are no quarantine restrictions against the presence of arrowhead scale or citrus canker . . . and then reached the California border by way of transshipments in commercial carriers or private vehicles." He asserted that "more secure measures" should be instituted to prevent the movement of Unshu oranges across the Canadian border into the United States. We have made no changes based on this comment. Unshu oranges imported into Canada from Japan are not eligible to be imported into the United States from Canada. Nevertheless, we recognize that some Unshu oranges imported into Canada are coming across the Canadian border into the United States. We have recently completed a study of inspection procedures at the Canadian border in an effort to resolve this problem. However, the illegal importation of Unshu oranges into the United States from Canada is unrelated to our proposal to expand the area of the United States into which Unshu oranges from the special export areas in Japan may be imported and distributed. In fact, expanding the area into which these Unshu oranges may legally be imported and moved in the United States may be the most effective way of reducing the number of potentially contaminated Unshu oranges smuggled into the United States.

The same commenter further stated that in view of the problem of Unshu oranges coming into the United States from Canada, we should not consider the "importation of presumably canker-free Unshu oranges from Japan into additional States unless, minimally, contiguous buffer areas in state-wide units are provided for added protection against the transshipment of such fruit as well as similar fruit entering the country illegally from Canada." The commenter asserted that the following states should be added to the list of states into which Unshu oranges may not be moved: Arkansas, Colorado, Idaho, Oklahoma, Oregon, Tennessee, Utah, and Virginia. One other commenter also maintained that Oregon should be added to the list of prohibited areas to give California a buffer zone to the north. We have made no changes based on these comments.

As we stated previously, Unshu oranges imported into the United States in accordance with the Citrus Fruit regulations present only a very remote risk of introducing citrus canker into the United States. Nevertheless, to protect citrus in the United States from even this risk, we proposed to continue to prohibit the movement of Unshu oranges into Alabama, American Samoa, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, the Northern Mariana Islands, Puerto Rico, South Carolina, Texas, and the Virgin Islands of the United States. This list of prohibited areas includes not only the citrus-producing areas of the United States but also areas of the United States where known hosts of the "A" strain of citrus canker can be grown. Thus, our proposal already includes buffer zones, which, around some citrus-producing areas, are quite deep. Moreover, extending the buffer zone around citrus-producing states would not in any way deter the illegal entry of Unshu oranges from Canada.

We are not adding Oregon to the list of prohibited areas because Oregon is not a citrus-producing state and its climate is unsuitable for growing hosts of the "A" strain of citrus canker. It is not necessary to give California a state-wide buffer zone to the north. No commercial citrus is grown in California within 100 miles of the California-Oregon border.

Furthermore, as explained earlier, the buffer zones are intended as one of many safeguards against the spread of citrus canker, and any breach of the domestic quarantine, or the failure of any other single safeguard, is unlikely to result in the spread of citrus canker disease. Therefore, it does not appear that prohibiting the movement of Unshu oranges into Arkansas, Colorado, Idaho, Oklahoma, Oregon, Tennessee, Utah, and Virginia would significantly increase the protection of U.S. citrus against citrus canker.

Two commenters asserted that we should not adopt the proposal because the limited acreage approved in Japan as canker-free export areas "cannot meet the needs of a 7–8 fold increase in the number of receiving states." Another commenter objected to the proposal because "the Japanese have not eased their importation restrictions." We have made no changes based on these comments. It is not our policy to base regulations on economic factors. Our policy is to impose only those restrictions necessary to prevent the spread of plant pests and diseases. In line with this policy, our proposed amendments to the Citrus Fruit and Unshu Oranges regulations are intended to relieve unnecessary restrictions while providing adequate protection against the spread of citrus canker disease.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an annual effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Specifically, Unshu oranges from Japan constitute only about three percent of the total number of tangerines imported into the United States. (Unshu oranges are listed as tangerines for gathering data about commerce.) We do not expect the volume of Unshu oranges imported into the United States under the provisions of this rule to increase significantly compared with importations of other tangerines.

Only three small entities import Unshu oranges from Japan into the United States. The Unshu orange is a premium product aimed at a luxury market. It sells at two to three times the price of tangerines and is available for distribution in the United States only during late November through December of each year. For these reasons, we do not anticipate that this rule will cause a significant increase in the number of Unshu oranges imported into the United States or have a significant economic effect on small entities in the import or domestic tangerine market.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects

7 CFR Part 301

Agricultural commodities, Citrus canker, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

7 CFR Part 319

Agricultural commodities, Citrus canker, Fruit, Imports, Plant diseases, Plant pests, Plants (Agricultural), Quarantine, Transportation.

Accordingly, we are amending 7 CFR 301.83 and 7 CFR 319.28 as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. The authority citation for Part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

PART 301—[AMENDED]

3. Section 301.83 is revised to read as follows:

§ 301.83 Prohibition and notice of quarantine.

(a) To prevent the interstate dissemination of the citrus canker bacteria, Unshu oranges (*Citrus reticulata* Blanco var. *unshu*, also known as Satsuma) grown in Japan are prohibited from being moved interstate from any quarantined area into or through any nonquarantined area of the United States.

(b) All areas of the United States, except for Alabama, American Samoa, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, the Northern Mariana Islands, Puerto Rico, South Carolina, Texas, and the Virgin Islands of the United States are quarantined.

PART 319—[AMENDED]

4. In § 319.28, the introductory text of paragraph (b), paragraph (b)(6), and paragraph (g) are revised and new paragraphs (h) and (i) are added to read as follows:

§ 319.28 Notice of quarantine.

* * * * *

(b) The prohibition does not apply to Unshu oranges (*Citrus reticulata* Blanco var. *unshu*, also known as Satsuma) grown in Japan and imported under permit into any area of the United States except for Alabama, American Samoa, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, the Northern Mariana Islands, Puerto Rico, South Carolina, Texas, and the Virgin Islands of the United States: *Provided,* that each of the following safeguards are fully carried out:

* * * * *

(6) The Unshu oranges may be imported into the United States only through a port of entry listed in § 319.37–14 of this part, except that the importation is prohibited through ports of entry located in Alabama, American Samoa, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, the Northern Mariana Islands, Puerto Rico, South Carolina, Texas, and the Virgin Islands of the United States.

* * * * *

(g) The term "United States" means the States, District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

(h) Any permit that has been issued for the importation of Unshu oranges may be withdrawn by an inspector orally or in writing, if he or she determines that the holder of the permit

has not complied with any of the conditions in the regulations. The holder of the permit shall be informed orally or in writing of the reasons for the withdrawal. If the withdrawal is oral, the decision and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn. As promptly as circumstances allow, the Deputy Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Deputy Administrator.

(i) The term "inspector" means any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, who is authorized by the Deputy Administrator to enforce the regulations in this subpart.

Done in Washington, DC, this 21st day of August, 1987.

D. Husnik,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87-19722 Filed 8-26-87; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Docket No. R-0600]

Credit by Brokers and Dealers (Regulation T); Mortgage Related Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation T by revising the definition of "OTC margin bond." The amended definition will now include any "mortgage related security," a term defined in the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA) and in section 3(a)(41) of the Securities Exchange Act of 1934. Comments have been received on this proposal which was published in the Federal Register on April 23, 1987 (52 FR 13458) and they were all supportive.

EFFECTIVE DATE: August 27, 1987.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, Division of Banking Supervision and Regulation, (202) 452-2781, or Carolyn Davis, Economist, Division of Research and Statistics, (202) 452-3633; or for any user of a Telecommunication Device for the Deaf (TDD), Ernestine Hill or Dorothea Thompson, (202) 452-3244.

SUPPLEMENTARY INFORMATION: In October of 1984 the SMMEA amended the Securities Exchange Act of 1934 and the statutes governing investments by depository institutions to provide preferential treatment for securities meeting a new legal definition, "mortgage-related securities." The amendments were designed to facilitate a liquid market in mortgage securities issued by non-governmental entities that would be competitive with the existing market in securities issued by United States government agencies such as GNMA and FNMA. The ultimate goal was to facilitate private sector participation in the secondary market for mortgages.

A vast number of "mortgage related securities" are presently eligible for "good faith" loan value in a margin account because they come within the existing definition of an "OTC margin bond." An increasing number are outside the definition of "OTC margin bond" because they are privately placed and do not meet one criterion in that definition—a requirement for Securities and Exchange Commission registration and reporting. The SMMEA, however, grants preferential treatment in many areas to any "mortgage related security" whether it is publicly offered or privately placed. This amendment will permit similar margin treatment for securities sold either way.

Final Regulatory Flexibility Analysis

The Board's Initial Regulatory Flexibility Analysis indicated that this amendment, if adopted, was not expected to have a significant economic impact on a substantial number of small entities. Comments were invited on the statement; no comments to the contrary were received. The Board, therefore, certifies for the purposes of 5 U.S.C. 605(b), that the amendment is not expected to have any adverse impact on a substantial number of small businesses. The amendment imposes no additional information collection requirements.

The requirement of 5 U.S.C. 553d with respect to deferred effective date is not being followed in connection with this amendment because the amendment relieves a restriction previously imposed.

List of Subjects in 12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under sections 3, 7, 8, 17 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q, and 78w), the Board amends 12 CFR Part 220 as follows:

PART 220—[AMENDED]

1. The authority citation for Part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 78q and 78w.

2. Section 220.2(r) is amended by removing the period and adding ";or" at the end of paragraph (r)(2)(iii) and adding a new paragraph (r)(3) as set forth below. The introductory text of paragraph (r)(3) is republished.

§ 220.2 Definitions.

* * * * *

(r) "OTC margin bond" means: * * *

(3) A "mortgage related security" as defined in section 3(a)(41) of the act.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 20, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19607 Filed 8-26-87; 8:45 am]

BILLING CODE 6210-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[OPP-300171; FRL-32526]

Updating of Pesticide Names, Diazinon; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendments.

SUMMARY: This document updates the names of three currently listed pesticides in 21 CFR Parts 193 and 561 by changing them to reflect current American National Standards Institute (ANSI) names. These are merely technical amendments that impose no new regulatory requirements; therefore, advance notice and public comment are unnecessary.

EFFECTIVE DATE: August 27, 1987.

FOR FURTHER INFORMATION CONTACT: Charles L. Trichilo, Hazard Evaluation Division (TS–769c), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 810, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–7324.

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests.

Dated: August 17, 1987.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, the following technical amendments are made to 21 CFR Chapter I:

PART 193—[AMENDED]

1. In Part 193: a. The authority citation for Part 193 continues to read as follows:

Authority: Sec. 409, 72 Stat. 1785 (21 U.S.C. 348).

§ 193.142 [Amended]

b. Section 193.142 is amended in the section heading and text by changing "*O,O*-diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phospohorothioate" to "diazinon" wherever it appears.

§ 193.430 [Amended]

b. Section 193.430 is amended in the section heading and text by changing "tricyclohexyltin hydroxide" to "cyhexatin" wherever it appears.

PART 561—[AMENDED]

2. In Part 561: a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 561.400 [Amended]

b. Section 561.400 is amended in the section heading and text by changing "trycyclohexyltin hydroxide" to "cyhexatin" wherever it appears.

§ 561.415 [Amended]

c. Section 561.415 is amended in the section heading and text by changing "*O,O*-diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate" to "diazinon" wherever it appears.

§ 561.425 [Amended]

d. Section 561.425 is amended in the section heading and text by changing "2,3-dihydro-5,6-dimethyl-1,4-dithiin 1,1,4,4-tetraoxide" to "dimethipin" wherever it appears.

[FR Doc. 87–19650 Filed 8–26–87; 8:45 am]

BILLING CODE 5560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1627

Legislative Regulation and Administrative Exemption Allowing for Non-EEOC Supervised Waivers Under the ADEA

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of final rule.

SUMMARY: The Commission hereby provides notice of a legislative regulation and administrative exemption (under section 9 of the Age Discrimination in Employment Act of 1967 (ADEA) and 29 CFR 1627.15) allowing for non-EEOC supervised waivers and releases of private rights under the ADEA.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: John K. Light at (202) 634–7643.

SUPPLEMENTARY INFORMATION: Section 9 of the ADEA, 29 U.S.C. 628, grants the Commission broad authority to promulgate interpretive guidelines and legislative regulations on both procedural and substantive matters. Section 9 also authorizes the Commission "to establish such reasonable exemptions to or from any or all provisions of [the ADEA] as [it] may find necessary and proper in the public interest." The Commission hereby promulgates a legislative regulation and administrative exemption under section 9 of the ADEA and 29 CFR 1627.15, allowing for waivers and releases of private rights under the ADEA, 29 U.S.C. 621 *et seq.*

A Notice of Proposed Rulemaking (NPRM) regarding this rule was published in the **Federal Register** of Monday, October 7, 1985 (50 FR 40870) with a sixty-day period for public comment. In all 36 written comments were received, with 23 generally supporting the NPRM and 13 generally opposing it. A substantial number of the commenters favoring and opposing the NPRM simply stated this fact without significant substantive discussion.

Because the framers of the ADEA were concerned that delay would prejudice the claims of older workers, one of their central goals was to insure expeditious resolution of disputes. *See* 113 Cong. Rec. 7076 (Remarks of Sen. Javits); *Burns v. Equitable Life Assurance Society*, 696 F.2d 21, 24 n.2 (2d Cir. 1982). The Commission believes that requiring government supervision of releases and waivers is at odds with this congressional goal. Accordingly, the Commission has determined that it is necessary and proper in the public interest to permit waivers or releases under the Act without the Commission's supervision or approval, provided that any waivers of ADEA rights in such agreements are "knowing and voluntary." But after considering the comments, the Commission believes it is also important to provide guidance on the standards for determining whether waivers are "knowing and voluntary." The final rule also makes it clear that waivers of prospective rights or claims will not be permitted and declares that a waiver of the right to file an EEOC charge is void as against public policy.

Responding to the specific request in the NPRM that comments address whether it is necessary to develop particular standards to determine whether waivers are "knowing and voluntary," commenters were about evenly divided between those who expressed opposition to the wisdom or need for any specific standards and those who believed that some standards are desirable. Those commenters against development of particular standards generally believed that whether a waiver was "knowing and voluntary" could best be determined by the courts on a case-by-case basis as under Title VII or that such standards would be difficult for the Commission to formulate and would involve the Commission in supervising waivers. Some of the commenters believed that workable standards could not be drawn because of varying factual circumstances involved in waivers.

Those comments favoring the development of standards for "knowing and voluntary" waivers generally thought that such standards would be beneficial in insuring that waivers were transacted in a "knowing and voluntary" manner and thus would avoid later controversy. Several comments in favor of establishing standards included specific suggestions as to standards that should be used. These suggestions included simply citing that the waiver or release was "knowing and voluntary" and giving the employee one week to review the document, making specific reference to the issue of "duress," and presenting multiple item lists of considerations. These latter included suggestions that, in addition to those specified above, the waiver or release be written in plain English, provide more than token consideration, not deal with a benefit to which the employee was already entitled, concern only past acts, include a statement that the agreement was not an admission of liability by the employer, and provide that the employee would not file suit.

While the Commission recognizes that the presence or absence of one or more standards would not be dispositive of whether a particular waiver is "knowing and voluntary," it does believe that relevant factors indicative of "knowing and voluntary" action can and should be articulated in the Final Rule. Thus the rule contains guidance as to what the courts have previously regarded as indicative, and what the Commission is likely to find supportive, in demonstrating that a wiaver is "knowing and voluntary."

It should be noted that the indicators or standards listed below are presented as examples, not as limitations, for assessing the validity of waivers. Other factors that are not listed may be used in evaluating "knowing and voluntary" and not all of the following indicators or standards need be present in every case for a waiver to be valid. The Commission wishes to emphasize that waivers challenged as not "knowing and voluntary" will be evaluated on a case-by-case basis and the Commission will look to the substance, not to the form of the waiver agreement.

Following the principles established under Title VII case law, the Commission would expect valid waivers to incorporate or conform with the following fundamental indicators or standards:

(1) The agreement was in writing, in understandable language, and clearly waived the employee's rights or claims under the ADEA;

(2) A reasonable period of time was provided for employee deliberation;

(3) The employee was encouraged to consult with an attorney.

Another provision in the Notice of Proposed Rulemaking that drew several comments is the sentence that states:

> No such waivers or releases, however, shall affect the Commission's rights and responsibilities to enforce the Act.

Several commenters suggested this sentence be removed or other language substituted, making it clear the Commission will not routinely evaluate waivers but will review waivers of ADEA claims only when a charge is filed or where a waiver is raised during an investigation. In addition, some commenters suggested language stating the Commission will not seek relief for individuals who have "knowingly and voluntarily" executed releases and waivers of their ADEA rights.

After careful assessment of the comments and its enforcement responsibilities, the Commission has concluded that the present language of the provision reserves the necessary maximum flexibility and discretion for the Commission in determining what best serves the public interest in the enforcement of the ADEA. *See Equal Employment Opportunity Commission v. Cosmair, Inc.*, No. 86-1806 (5th Cir. July 16, 1987).

A number of comments addressed "waivers of prospective rights" and the question of "valid or adequate consideration." In accordance with suggestions made by several commenters, the final rule has been changed to indicate clearly that release of prospective rights or claims will not be permitted nor will consideration be recognized that includes benefits to which the employee is already entitled by law or contract.

In promulgating this rule the Commission has taken into consideration the fact that courts have consistently recognized that Congress has expressed a strong preference for voluntary settlements of employment discrimination claims and that Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, permits employers and employees to settle disputes by using waiver agreements as long as the waiver of rights and release of potential liability is "knowing and voluntary." *Alexander v. Gardner-Denver Co.*, 415 U.S. 79, 88 n.14 (1981). There is a similar preference for voluntary resolution of disputes under the ADEA. *See* 29 U.S.C. 626(d) (efforts at conciliation, conference, and persuasion to be made before resort to litigation). The Supreme Court has noted that Title VII and the ADEA share a common purpose and that similar provisions should be similarly interpreted. *Oscar Mayer & Co. v. Evans*, 441 U.S. 750, 756 (1979).

This conclusion is supported by section 2(b) of the ADEA which firmly establishes the goal of encouraging "employers and workers [to] find ways of meeting problems arising from the impact of age on employment." 29 U.S.C. 621(b). Moreover, the framers of the Act were concerned that delay would prejudice the claims of older workers and one of their central goals was to insure expeditious resolution of disputes. *See* 113 Cong. Rec.7076 (Remarks of Sen. Javits) *Burns v. Equitable Life Assurance Society*, 696 F.2d 21, 24 n.2 (2d Cir. 1982).

The Commission has concluded that this exemption serves both purposes by allowing amicable resolution of disputes and releases of rights for valuable benefits, without bureaucratic oversight and delay, where such releases are in the mutual interests of both employees and employers. Requiring government supervision would delay the provision of valuable benefits or additional compensation to older employees who freely choose to release their ADEA rights or claims, and tend to discourage employers from offering such enhanced benefits to older workers. This rule is therefore intended to give older workers maximum freedom of choice. To do otherwise would perpetuate the stereotype that older workers need the protection of a paternalistic government.

The exemption does not affect the rights of victims of age discrimination who do not with to settle their claims. The Commission will ensure that individuals who decline to sign waivers receive all compensation and benefits to which they are otherwise entitled. If an individual wishes EEOC supervision of a settlement, he or she may file an EEOC charge. Furthermore, it is the Commission's position that a waiver cannot prevent an employee from filing a charge with the Commission (*see EEOC v. Cosmair, Inc.*, No. 86-1806 (5th Cir. July 16, 1987) ("A waiver of the right to file a charge is void as against public policy.")), and that older employees are protected from retaliation if they seek to challenge an executed waiver as not knowing and voluntary or otherwise invalid.

Section 7(b) of the ADEA, 29 U.S.C. 626(b), incorporates the enforcement provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.* In *Lorillard v. Pons*, 434 U.S. 575 (1978), the Supreme Court held that not only the FLSA enforcement provisions but also pre-ADEA case law dealing with enforcement of FLSA rights were incorporated into ADEA section 7(b). While the FLSA like the ADEA is silent on whether an employee can release his or her rights under the Act, the case law on contractual waivers of FLSA rights does not permit waivers of bona fide disputes as to coverage or liquidated damages without government supervision. *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697 (1945); *Schulte, Inc. v. Gangi*, 328 U.S. 108 (1946).

However, the Commission believes the enforcement provisions of the FLSA that are incorporated into the ADEA must be viewed in the context of the different policy considerations underlying the two acts. Cf. *United States v. Allegheny-Ludlum Industries, Inc.*, 517 F.2d 826, 861 (5th Cir. 1975), *cert. denied*, 425 U.S. 944 (1976) (The *O'Neil-Schulte* line of cases "were tied closely to the mandatory terms of particular statutes, the labor conditions that produced those statutes, and what the Court believed was a clearly discernible congressional intent.") The FLSA is a minimum wage statute. The factual issues in FLSA cases concern the number of hours worked and the rate of

pay and are generally "amenable to determination with some precision." (*Runyan v. National Cash Register Corp.*, 787 F.2d 1039, 1044 n.8 (6th Cir. 1986), *cert. denied*, 107 S. Ct. 178 (1986)); under the FLSA there is an absolute presumption that any unsupervised waivers of minimum wage rights would necessarily be against public policy (*see Brooklyn Savings Bank v. O'Neil, supra*). There is no such presumption under Title VII. *United States v. Allegheny-Ludlum Industries, Inc., supra; Rogers v. General Electric Co.*, 781 F.2d 452 (5th Cir. 1986) ("A general release of Title VII claims does not ordinarily violate public policy.") The substantive rights protected by the ADEA are closely analogous to the rights protected by Title VII. Moreover, as earlier noted, the ADEA and Title VII share a common purpose of encouraging the voluntary expeditious resolution of disputes. Accordingly, the Commission believes that mandatory government supervision of ADEA releases would not serve the purpose of the ADEA and that unsupervised ADEA releases, like Title VII releases, should be permitted provided they are knowing, voluntary and non-prospective, as required under the standards governing Tile VII releases.

Recently, the Sixth Circuit Court of Appeals sitting *en banc* held that an unsupervised release of an ADEA claim in a bona fide factual dispute could be valid. *Runyan v. National Cash Register Corp.*, 787 F.2d 1039, *cert. denied*, 107 S. Ct. 178 (1986). The court reasoned that where the dispute is a factual rather than a legal one, *O'Neil* and *Gangi* do not preclude an unsupervised waiver or release under FLSA or ADEA. *Accord Equal Employment Opportunity Commission v. Cosmair, Inc.*, No 86–1806 (5th Cir. July 16, 1987); *Lancaster v. Buerkle Buick Honda Co.*, 809 F.2d 539 (8th Cir. 1987); *Moore v. McGraw Edison Co.*, 804 F.2d 1026 (8th Cir. 1986).

The Commission agrees with the rationale and holding of the Sixth Circuit's *Runyan en banc* decision with regard to unsupervised waivers under the ADEA and has incorporated that approach in the final rule. The Commission believes that the reasoning of the *Runyan en banc* decision responds to those commenters who felt that the ADEA does not permit unsupervised waivers because the FLSA enforcement provisions that it largely incorporates allow no such waivers. To the extent that any circuit court decision could be read to conflict with the *Runyan en banc* decision (*see Lynn's Food Stores, Inc. v. United States Dept. of Labor*, 679 F.2d 1350, 1354–55 (11th Cir. 1982) (where supervised waivers are held to be an exclusive alternative to litigation or court-supervised settlement for all FLSA claims)) the Commission's exemption authority under section 9 of the ADEA is being utilized to permit unsupervised waivers in those jurisdictions.

The Commission has determined that the remedial purposes of the Act will be best served by allowing the use of waiver agreements to resolve claims whenever employees and employers perceive them to serve their mutual interests, provided that any waivers of ADEA rights in such agreements are "knowing and voluntary." Either a clear understanding of the nature of the rights being waived or the presence of an asserted claim satisfy an initial element of whether a waiver is knowing. It is the Commission's position that a release may be valid as to claims of which a signing party has actual knowledge and those that could have been discovered upon reasonable inquiry. *See Oglesby v. Coca-Cola Bottling Co.*, 620 F. Supp. 1336, 1342 (N.D. Ill. 1985).

The Commission will apply the same standards that are applicable under current Title VII case law to ADEA waivers. Under Title VII, waivers are deemed to be "knowing and voluntary" if they clearly provide actual notice of the nature of the rights that are waived and are fully negotiated without fraud or duress. *See Rogers v. General Electric Co.*, 781 F.2d 452 (5th Cir. 1986); *Pilon v. University of Minnesota*, 710 F.2d 466 (8th Cir. 1983); *Lyght v. Ford Motor Co.*, 643 F.2d 435 (6th Cir. 1981); *EEOC v. T.I.M.E.—D.C. Freight, Inc.*, 659 F.2d (5th Cir. 1981); *Cox v. Allied Chemical Corp.*, 538 F.2d 1094 (5th Cir. 1976), *cert. denied*, 434 U.S. 1051 (1978); *Watkins v. Scott Paper Co.*, 530 F.2d 1159 (5th Cir. 1975). Relevant factors that courts have previously regarded as indicative and that the Commission is likely to find supportive in demonstrating that a waiver was entered into in a "knowing and voluntary" manner are set forth in the final rule. Similarly, the Title VII case law prohibition against recognizing a waiver of future or prospective claims (e.g., a waiver agreement dated January 1 of a given year is not applicable to claims arising after that date) will have full application to ADEA waivers. *Alexander v. Gardner-Denver Co.*, 415 U.S. at 51; *United States v. Allegheny-Ludlum Industries, Inc.*, 517 F.2d 826, 856 (5th Cir. 1975), cert. denied, 425 U.S. 944 (1976). In addition, the Commission will require that consideration in exchange for a valid waiver under the ADEA not include employment benefits to which the employee is already entitled either by law or contract. *See Runyan v. NCR Corp.*, 573 F. Supp. 1454, 1460 (S.D. Ohio 1983), *aff'd*, 787 F.2d 1039 (6th Cir. 1986), *cert. denied*, 107 S. Ct. 178 (1986).

Further, while the Commission takes the position that a waiver, if valid, may be a defense to any claim for individual relief for the employee who signed it, such a waiver cannot be used to justify interfering with an employee's protected right to file a charge or participate in a Commission investigation. *Equal Employment Opportunity Commission v. Cosmair*, No. 86–1806, slip op. at 5145 (5th Cir. July 16, 1987). The right to file a charge and participate in a Commission investigation is absolutely protected because it is essential to the Commission's enforcement of the ADEA. *Id.* The plain language of section 4(d) of the ADEA makes it unlawful for an employer to take action against an employee because he has, *inter alia*, filed a charge. *See Id.* at 5144. The enforcement policies underlying the ADEA strongly support this position. *Equal Employment Opportunity Commission v. Cosmair*, No. 86–1806 (5th Cir. July 16, 1987); *see Pettway v. American Cast Iron Pipe Co.*, 411 F.2d 998 (5th Cir. 1969).

The Commission hereby provides notice that it is adopting a legislative rule and exemption allowing non-EEOC supervised waivers and releases of private rights as an exemption to the provisions of section 7 of the ADEA for any waiver of rights or release from liability by an employee or job applicant under the Act that is knowing, voluntary, and in conformity with the other requirements of this rule.

Impact Analysis—Classification-Executive Order 12291

The rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Similarly, the Chairman of the EEOC certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this amendment will not

result in a significant impact on a substantial number of small employers.

List of Subjects in 29 CFR Part 1627

Equal employment opportunity, Reporting and recordkeeping requirements.

Accordingly, the Commission amends 29 CFR Part 1627 as follows:

PART 1627—[AMENDED]

1. The authority citation for Part 1627 is revised to read as follows:

Authority: Sec. 7, 81 Stat. 604; 29 U.S.C. 626; sec. 9, 81 Stat. 605; 29 U.S.C. 628; sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

2. Paragraph (c) is added to § 1627.16 as follows:

§ 1627.16 Specific exemptions:

* * * * *

(c)(1) Pursuant to the authority contained in section 9 of the Act and in accordance with the procedure provided therein and in § 1627.15(b) of this part, it has been found necessary and proper in the public interest to permit waivers or releases of claims under the Act without the Commission's supervision or approval, provided that such waivers or releases are knowing and voluntary, do not provide for the release of prospective rights or claims, and are not in exchange for consideration that includes employment benefits to which the employee is already entitled.

(2) When assessing the validity of a waiver agreement, the Commission will look to, and is likely to find supportive, the following relevant factors that courts have previously identified as indicative of a knowing and voluntary waiver:

(i) The agreement was in writing, in understandable language, and clearly waived the employee's rights or claims under the ADEA;

(ii) A reasonable period of time was provided for employee deliberation;

(iii) The employee was encouraged to consult with an attorney.

These are not intended as exclusive nor must every factor necessarily be present in order for a waiver to be valid, except that a waiver must always be in writing. Moreover, even where these three factors are present, if a waiver is challenged, the Commission will look to the substance and circumstances to determine whether there was fraud or duress.

(3) No such waivers or releases shall affect the Commission's rights and responsibilities to enforce the Act. Nor shall such a waiver be used to justify interfering with an employee's protected right to file a charge or participate in a Commission investigation.

Signed this 6th Day of August at Washington, DC.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 87-19547 Filed 8-26-87; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF DEFENSE

Defense Mapping Agency

32 CFR Part 295

[DMA Instruction 5400.7]

DMA Freedom of Information Act (FOIA) Program

AGENCY: Defense Mapping Agency, DoD.

ACTION: Final rule amendment.

SUMMARY: This amendment to 32 CFR Part 295 provides a change of title to 32 CFR Part 295. It also provides the public with the names and addresses of all DMA Components, including two new Components recently established.

EFFECTIVE DATE: August 27, 1987.

ADDRESS: Defense Mapping Agency, Building 56, U.S. Naval Observatory, Washington, DC 20305-3000.

FOR FURTHER INFORMATION CONTACT: Mr. Del Malkie, (202) 653-1131.

SUPPLEMENTARY INFORMATION: In 40 FR 6336 appearing on Tuesday, February 11, 1975, the Defense Mapping Agency (DMA) published Part 295 of this title establishing the policy of the Defense Mapping Agency regarding the availability to the public of DMA information and implemented 5 U.S.C. 552. This rule states the policy of the DMA with regard to making DMA records available to members of the public and implements Department of Defense Directive 5400.7 and Department of Defense Regulation 5400.7-R, DoD Freedom of Information Act Program. (32 CFR Part 286)

List of Subjects in 32 CFR Part 295

Freedom of information.

Accordingly, 32 CFR Part 295 is amended as follows:

1. The authority citation for Part 295 continues to read as follows:

Authority: Sections 295.1 to 295.11 issued under 5 U.S.C. 301, 552, as amended by Act of Nov. 21, 1974 (Pub. L. 93-502, 88 Stat. 1-3).

2. The heading for 32 CFR Part 295 is revised to read as follows:

PART 295—DMA FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

In § 295.6 paragraphs (b) (1) through (6) are revised and (b) (7) and (8) are added to read as follows:

§ 295.6 Procedure for submission of requests for DMA records by members of the public.

* * * * *

(b) * * *

(1) Director, Defense Mapping Agency, Bldg. 56, U.S. Naval Observatory, Washington, DC 20305-3000.

(2) Director, DMA Aerospace Center, 3200 South Second Street, St. Louis, Missouri 63118-3399.

(3) Director, DMA Hydrographic/ Topographic Center, 6500 Brookes Lane, Washington, DC 20315-0030.

(4) Director, DMA Combat Support Center, 6101 MacArthur Blvd., Washington, DC 20315-0010.

(5) Director DMA Inter American Geodetic Survey, Bldg. 144, Fort Sam Houston, Texas 78234-5000.

(6) Director, DMA Systems Center, 8301 Greensboro Drive, Suite 800, McLean, Virginia 22102-3692.

(7) Director, DMA Office of Telecommunications Services, 1840 Michael Faraday Court, Reston, Virginia 22090-5304.

(8) Director, Defense Mapping School, Fort Belvoir, Virginia 22060-5828.

* * * * *

Linda M. Lawson,

Alternate OSD Federal Register Liaison, Department of Defense.

August 24, 1987.

[FR Doc. 87-19685 Filed 8-26-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

32 CFR 732

Nonnaval Medical and Dental Care

AGENCY: Naval Medical Command, Navy, DOD.

ACTION: Final rule.

SUMMARY: The Naval Medical Command has promulgated this regulation to describe and publish the policies and procedures for obtaining inpatient and outpatient maternity, medical, and dental care from nonnaval sources worldwide for active duty Navy and Marine Corps members and reservists; outpatient care in the United States for active duty naval members of North Atlantic Treaty Organization (NATO) nations other than Canada; and inpatient and outpatient care for

Canadian Navy and Marine Corps personnel who receive care in the United States on or after 3 November 1986. To provide guidelines by which claims for the costs of such care are adjudicated and paid by the Navy. It updates a Department of the Navy instruction for conformity with Department of Defense directives.

EFFECTIVE DATE: June 11, 1987.

FOR FURTHER INFORMATION CONTACT: Herbert L. Pelham, Program Analyst, Naval Medical Command, Washington, DC 20372–5120, (202) 653–1179.

SUPPLEMENTARY INFORMATION: This revision relates to internal naval management and personnel handling practices and largely reflects nonsubstantive changes adopted in NAVMED COMINST 6320.1A. It was determined that invitation of public comment on these changes prior to adoption would be impracticable and is therefore not required under public rulemaking provisions of Parts 296 and 701 of 32 CFR.

List of Subjects in 32 CFR Part 732

Emergency medical services, Health care, Health facilities.

Jane M. Virga,

LT, JAGC, USNR, Federal Register Liaison Officer.

Date: August 20, 1987.

Accordingly, 32 CFR Part 732 is revised to read as follows:

PART 732—NONNAVAL MEDICAL AND DENTAL CARE

Subpart A—General

Sec.

732.1 Background.
732.2 Action.

Subpart B—Medical and Dental Care From Nonnaval Sources

732.11 Definitions.
732.12 Eligibility.
732.13 Sources of care.
732.14 Authorized care.
732.15 Unauthorized care.
732.16 Emergency care requirements.
732.17 Nonemergency care requirements.
732.18 Notification of illness of injury.
732.19 Claims.
732.20 Adjudication authorities.
732.21 Medical Board.
732.22 Recovery of medical care payments.
732.23 Collection for subsistence.
732.24 Appeal procedures.

Subpart C—Accounting Classifications for Nonnaval Medical and Dental Care Expenses and Standard Document Numbers

732.25 Accounting classifications for nonnaval medical and dental care expenses.
732.26 Standard document numbers.

Authority: 5 U.S.C. 301; 10 U.S.C. 1071–1088, 5031, 6148, 6201–6203, and 8140; and 32 CFR 700.1202.

Subpart A—General

§ 732.1 Background.

When a United States Navy or Marine Corps member or a Canadian Navy or Marine Corps member receives authorized care from other than a Navy treatment facility, care is under the cognizance of the uniformed service medical treatment facility (USMTF) providing care, the USMTF referring the member to another treatment source, or under the provisions of this part. If such a member is not receiving care at or under the auspices of a Federal source, responsibility for health and welfare, and the adjudication of claims in connection with their care, remains within the Navy Medical Department. Part 728 of this chapter and NAVMEDCOMINST 6320.18 contain guidelines concerning care for other eligible beneficiaries, not authorized care by this part.

§ 732.2 Action.

Ensure that personnel under your cognizance are made aware of the contents of this part. Failure to comply with contents may result in delayed adjudication and payment or may result in denial of Navy financial responsibility for expenses of maternity, medical, or dental care obtained.

Subpart B—Medical and Dental Care From Nonnaval Sources

§ 732.11 Definitions.

Unless otherwise qualified in this part the following terms when used throughout are defined as follows:

(a) *Active duty.* Full-time duty in the active military service of the United States. Includes full-time training duty; annual training duty; and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(b) *Active duty for training.* A specified tour of active duty for Reserves for training under orders that provides for automatic reversion to non-active duty status when the specified period of active duty is completed. It includes annual training, special tours, and the initial tour performed by enlistees without prior military service. The period of duty includes travel to and from training duty, not in excess of the allowable constructive travel time prescribed by SECNAVINST 1770.3 and paragraphs 10242 and 10243 of DOD Military Pay and Allowances Entitlements Manual.

(c) *Constructive return.* For purposes of medical and dental care, an unathorized absentee's return to military control may be accomplished through notification of appropriate military authorities as outlined below.

(1) For members in an unauthorized absentee (UA) status, constructive return to military control for the purpose of providing medical or dental care at Navy expense is effected when one of the following has occurred:

(i) A naval activity informs a civilian provider of medical or dental care that the Navy accepts responsibility for a naval member's care. The naval activity providing this information must also provide documentation of such notification to the appropriate adjudication authority in § 732.20.

(ii) A member has been apprehended by civil authorities at the specific request of naval authorities and naval authorities have been notified that the member can be released to military custody.

(iii) A naval member has been arrested, while in a UA status, by civil authorities for a civil offense and a naval authority has been notified that the member can be released to military control.

(2) When a naval member has been arrested by civil authorities for a civil offense while in a UA status and the offense does not allow release to military control, constructive return is not accomplished. The individual is responsible for medical and dental care received prior to arrest and the incarcerating jurisdiction is responsible for care required after arrest.

(d) *Designated Uniformed Services Treatment Facilities (Designated USTFs).* Under Pub. L. 97–99, the following facilities are "designated USTFs" for the purpose of rendering medical and dental care to all categories of individuals entitled to care under this part.

(1) *Sisters of Charity of the Incarnate Word Health Care System,* 6400 Lawndale, Houston, TX 77058 (713) 928–2931 operates the following facilities:

(i) St. John Hospital, 2050 Space Park Drive, Nassau Bay, TX 77058, telephone (713) 333–5503. Inpatient and outpatient services.

(ii) St. Mary's Hospital Outpatient Clinic, 404 St Mary's Boulevard, Galveston, TX 77550, telephone (409) 763–5301. Outpatient services only.

(iii) St. Joseph Hospital Ambulatory Care Center, 1919 La Branch, Houston, TX 77002, telephone (713) 757–1000. Outpatient services only.

(iv) St Mary's Hospital Ambulatory Care Center, 3600 Gates Boulevard, Port

Arthur, TX 77640 (409) 985–7431. Outpatient services only.

(2) *Inpatient and outpatient services.* (i) Wyman Park Health System, Inc., 3100 Wyman Park Drive, Baltimore, MD 21211, telephone (301) 338–3693.

(ii) Alston-Brighton Aid and Health Group, Inc., Brighton Marine Public Health Center, 77 Warren Street, Boston, MA 02135, telephone (617) 782–3400.

(iii) Bayley Seton Hospital, Bay Street and Vanderbilt Avenue, Staten Island, NY 10304, telephone (718) 390–5547 or 6007.

(iv) Pacific Medical Center, 1200 12th Avenue South, Seattle, WA 98144, telephone (206) 326–4100.

(3) *Outpatient services only.* (i) Coastal Health Service, 331 Veranda Street, Portland, ME 04103 (207) 774–5805.

(ii) Lutheran Medical Center, Downtown Health Care Services, 1313 Superior Avenue, Cleveland, OH 44113, telephone (216) 363–2065.

(e) *Duty status.* The situation of the claimant when maternity, medical, or dental care is received. Members, including reservists, on leave or liberty are considered in a duty status. Reservists, performing active duty for training or inactive duty training, are also considered in a duty status during their allowable constructive travel time to and from training.

(f) *Emergency care.* Medical treatment of severe life threatening or potentially disabling conditions which result from accident or illness of sudden onset and necessitates immediate intervention to prevent undue pain and suffering or loss of life, limb, or eyesight and dental treatment of painful or acute conditions.

(g) *Federal facilities.* Navy, Army, Air Force, Coast Guard, Veterans Administration, and USTFs (former U.S. Public Health Service facilities listed in § 732.11(d).

(h) *Inactive duty training.* Duty prescribed for Reserves by the Secretary of the Navy under Section 206 of Title 37, United States Code, or any other provision of law. Also includes special additional duties authorized for Reserves by an authority designated by the Secretary of the Navy and performed by Reserves on a voluntary basis in connection with the prescribed training or maintenance activities of units to which they are assigned.

(i) *Maternity emergency.* A condition commencing or exacerbating during pregnancy when delay caused by referral to a uniformed services medical treatment facility (USMTF) or designated USTF would jeopardize the welfare of the mother or unborn child.

(j) *Member.* United States Navy and Marine Corps personnel, Department of National Defence of Canada Navy and Marine Corps personnel, and Navy and Marine Corps personnel of other NATO Nations meeting the requirements for care under this part.

(k) *Non-federal care.* Maternity, medical, or dental care furnished by civilian sources (includes State, local, and foreign MTFs).

(l) *Nonnaval care.* Maternity, medical, or dental care provided by other than Navy MTFs. Includes care in other USMTFs, designated USTFs, VA facilities, as well as from civilian sources.

(m) *Office of Medical Affairs (OMA) or Office of Dental Affairs (ODA).* Designated offices, under program management control of COMNAVMEDCOM and direct control of regional medical commands, responsible for administrative requirements delineated in this part. Responsibilities and functional tasks of OMAs and ODAs are outlined in NAVMEDCOMINST 6010.3.

(n) *Prior approval.* Permission granted for a specific episode of necessary but nonemergent maternity, medical, or dental care.

(o) *Reservist.* A member of the Naval or Marine Corps Reserve.

(p) *Supplemental care.*—(1) *Operation and maintenance funds, Navy.* Supplemental care of all uniformed services members, at Navy expense, encompasses only inpatient or outpatient care augmenting the capability of a naval MTF treating a member. Such care is usually obtained from civilian sources through referral by the treating naval MTF. If a member, authorized care under this part, is admitted to or is being treated on an outpatient basis at any USMTF, all supplemental care is the financial responsibility of that facility regardless of whether the facility is organized or authorized to provide needed health care. The cost of such care is chargeable to operation and maintenance funds (OM&N) available for operation of the USMTF requesting the care regardless of service affiliation of the member (see Part 728 of this chapter for such care under Navy Medical Department facilities).

(2) *Nonnaval medical and dental care program funds.* Adjudication authorities will pay claims, under this part, for care received as a result of a referral when:

(i) A United States Navy or Marine Corps member or a Canadian Navy or Marine Corps member requires care beyond the capability of the referring USMTF and care is obtained for such a member *not* admitted to or *not* being treated on an outpatient basis by a USMTF, and

(ii) The referring USMTF is not organized nor authorized to provide the needed health care.

(3) *Other uniformed services supplemental care programs.* In addition to services that augment other USMTF's capabilities, supplemental care programs of the other uniformed services include care and services comparable to those authorized by this part, e.g., emergency care and pre-approved nonemergency care.

(q) *Unauthorized absence.* Absence or departure without authority from a member's command or assigned place of duty.

(r) *Uniformed Services Medical Treatment Facilities (USMTF).* Health care facilities of the Navy, Army, Air Force, Coast Guard, and the former U.S. Public Health Service facilities listed in § 732.11(d) designated as USTFs per DOD and Department of Health and Human Services directives.

§ 732.12 Eligibility.

(a) *Regular members.* To be eligible for non-Federal medical, dental, or emergency maternity care at Government expense, Regular active duty United States naval members and Canadian Navy and Marine Corps members must be in a duty status when care is provided.

(b) *Reservists.* (1) Reservists on active duty for training and inactive duty training, including leave and liberty therefrom, are considered to be in a duty status while participating in training. Accordingly, they are entitled to care for illnesses and injuries occurring while in that status.

(2) Reservists are entitled to care for injuries and illnesses occurring during direct travel enroute to and from active duty training (ACDUTRA) and to and from inactive duty training.

(c) *NATO Naval Members.* Naval members of the NATO Status of Forces Agreement (SOFA) nations of Belgium, Denmark, Federal Republic of Germany, France, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, and the United Kingdom, are authorized *outpatient care only* under the provisions of this part when stationed in or passing through the United States in connection with official duties. Public Law 99–591 *prohibits inpatient care* of these foreign military members in the United States at the expense of the United States Government. The other NATO SOFA Nation, Canada, entered into a comparable care agreement with the United States requiring the United States to provide inpatient and outpatient care under the provisions of

this part to members of the Department of National Defence of Canada receiving care in the United States.

(d) *Absent without authority.* Naval members absent without authority during an entire episode of treatment are not eligible for non-Federal medical, dental, or emergency maternity care at Government expense. The only exception occurs when a member's illness or injury is determined to have been the direct cause of the unauthorized absentee status. In such an instance, eligibility will be:

(1) Determined to have existed from the day and hour of such injury or illness provided the member was not in an unauthorized absentee status prior to the onset of the illness or injury and initiation of treatment.

(2) Retained when the member is returned directly to military control.

(3) Terminated should the member return to an unauthorized absentee status immediately after completion of treatment. Departmental level (MEDCOM–333 for medical and MEDCOM–06 for dental) review is required before benefits may be extended.

(e) *Constructive return.* When constructive return, defined in § 732.11(c), is effected, entitlement will be determined to have existed from 0001 hours of the day of constructive return, not necessarily the day and hour care was initiated.

§ 732.13 Sources of care.

(a) *Initial application.* If a member requires maternity, medical, or dental care and naval facilities are unavailable, make initial application to other available Federal medical or dental facilities or USTFs. When members are stationed in or passing through a NATO SOFA nation and U.S. facilities are unavailable, ensure that members make initial application for emergency and nonemergency care to military facilities of the host country, or if applicable, to civilian sources under the NATO SOFA nation's health care program. When hospitalized in Hawaii, Alaska, or in a foreign medical facility, members and responsible commands will comply with OPNAVINST 6320.6.

(b) *Secondary sources.* When either emergency or nonemergency care is required and there are no Federal or NATO SOFA facilities available, care may be obtained from non-Federal sources under this part.

§ 732.14 Authorized care.

(a) *Medical.* (1) Consultation and treatment provided by physicians or at medical facilities, and procedures not involving treatment when directed by COMNAVMEDCOM, are authorized. Such care includes, but is not limited to: treatment by physicians, hospital inpatient and outpatient care, surgery, nursing, medicine, laboratory and x-ray services, physical therapy, eye examinations, etc. See § 732.17 for prior approval of these services in nonemergency situations.

(2) When transplant (including bone-marrow) is the treatment of choice, COMNAVMEDCOM approval is required. If time permits, telephone (A) 294–1102, (C) (202) 653–1102 during regular hours or (A) 294–1327, (C) 653–1327 after regular duty hours, and followup with a message. Request approval via message in nonemergency situations.

(b) *Maternity episode.* If a member authorized care under this part qualifies for care under the provisions of § 732.17(c) and delivers in a civilian hospital, routine newborn care (i.e., nursery, newborn examination, PKU test, etc.) is a part of the mother's admission expenses. Regardless of circumstances necessitating delivery in a civilian facility or how charges are separated on the bill, charges will be paid from funds available for care of the mother. If the infant becomes a patient in his or her own right—through an extension of the birthing hospital stay because of complications, transfer to another facility, or subsequent admission—the provisions of Part 728 of this chapter and NAVMEDCOMINST 6320.18 are applicable, and the sponsor becomes responsible for a part of the medical expenses incurred.

(c) *Dental.* (1) With prior approval, the following may be provided:

(i) All types of treatment (including operative, restorative, and oral surgical) to relieve pain and abort infection.

(ii) Prosthetic treatment to restore extensive loss of masticatory function or the replacement of anterior teeth for esthetic reasons.

(iii) Repair of existing dental prostheses when neglect of the repair would result in unserviceability of the appliance.

(iv) Any type of treatment adjunctive to medical or surgical care.

(v) All x-rays, drugs, etc., required for treatment or care in paragraphs (c)(1) (i) through (iv) of this section.

(2) In emergencies (no prior approval), only measures appropriate to relieve pain or abort infection are authorized.

(d) *Eye refractions and spectacles.* Includes refractions of eyes by physicians and optometrists and furnishing and repairing spectacles.

(1) *Refractions.* A refraction may be obtained from a civilian source at Government expense only when Federal facilities are not available, no suitable prescription is in the member's Health Record, and the cognizant OMA or referring USMTF has given prior approval.

(2) *Spectacles.* When a member has no suitable spectacles and the lack thereof, combined with the delay in obtaining suitable ones from a Federal source would prevent performance of duty; repair, replacement, or procurement from a civilian source may be authorized upon initiation of an after-the-fact request per § 732.17. Otherwise, the prescription from the refractionist, with proper facial measurements, must be sent for fabrication to the appropriate dispensing activity set forth in NAVMED COMINST 6810.1. See § 732.15(g) concerning contact lenses.

§ 732.15 Unauthorized care.

The following are not authorized by this part:

(a) Chiropractic services.

(b) Vasectomies.

(c) Tubal ligations.

(d) Breast augmentations or reductions.

(e) Psychiatric care, beyond the initial evaluation.

(f) Court ordered care.

(g) Contact lenses.

(h) Other elective procedures.

§ 732.16 Emergency care requirements.

Only in a bona fide emergency will medical, maternity, or dental services be obtained under this part by or on behalf of eligible personnel without prior authority as outlined below.

(a) *Medical or dental care.* A situation where the need or apparent need for medical or dental attention does not permit obtaining approval in advance.

(b) *Maternity care.* When a condition commences or exacerbates during pregnancy in a manner that a delay, caused by referral to a USMTF or USTF, would jeopardize the welfare of the mother or unborn child, the following constitutes indications for admission to or treatment at a non-Federal facility:

(1) Medical or surgical conditions which would constitute an emergency in the nonpregnant state.

(2) Spontaneous abortion, with first trimester hemorrhage.

(3) Premature or term labor with delivery.

(4) Severe pre-eclampsia.

(5) Hemorrhage, second and third trimester.

(6) Ectopic pregnancy with cardiovascular instability.

(7) Premature rupture of membrames with prolapse of the umbilical cord.

(8) Obstetric sepsis.

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(9) Any other obstetrical condition that, by definition, constitutes an emergency circumstance.

§ 732.17 Nonemergency care requirements.

Members are cautioned not to obtain nonemergency care from civilian sources without prior approval from the cognizant adjudication authority in § 732.20. Obtaining nonemergency care, other than as specified herein, without documented prior approval may result in denial by the Government of responsibility for claims arising from such care.

(a) *Individual prior approval.* (1) Submit requests for prior approval of nonemergency care (medical, dental, or maternity) from non-Federal sources to the adjudication authority (§ 732.20) serving the geographic area where care is to be obtained. When the requirements of § 732.14(d)(2) are met and spectacles have been obtained, request after-the-fact approval per this paragraph.

(2) Submit requests on a NAVMED 6320/10. Statement of Civilian Medical/Dental Care, with blocks 1 through 7 and 19 through 25 completed. Assistance in completing the NAVMED 6320/10 can be obtained from the health benefits advisor (HBA) at the nearest USMTF.

(3) Upon receipt, the adjudication authority will review the request and, if necessary, forward it to the appropriate chief of service with an explanation of non-Federal care regulations pertaining to the request. The chief of service will respond to the request within 24 hours. The adjudication authority will then complete blocks 26 and 27, and return the original of the approved/disapproved NAVMED 6320/10 to the member.

(b) *Blanket prior approval.*

(1) Recruiting offices and other activities far removed from USMTFs, uniformed services dental treatment facilities (USDTFs), designated USTFs, and VA facilities may request blanket approval for civilian medical and dental care of assigned active duty personnel. Letter requests should be submitted to the adjudication authority (§ 732.20) assigned responsibility for the geographic area of the requestor.

(2) With full realization that such blanket approval is an authorization to obligate the Government without individual prior approval, adjudication authorities will ensure that:

(i) Each blanket approval letter specifies a maximum dollar amount allowable in each instance of care.

(ii) The location of the activity receiving blanket approval authority is clearly delineated.

(iii) Travel distance and time required to reach the nearest USMTF, USDTF, designated USTF, or VA facility have been considered.

(iv) Certain conditions are specifically excluded, e.g., psychiatric care and elective surgical procedures. These conditions will continue to require individual prior approval.

(v) COMNAVMEDCOM (MEDCOM-333) is made an information addressee on each letter of authorization.

(c) *Maternity care.* (1) Pregnant active duty members residing outside Military Health Services System (MHSS) inpatent catchment areas of uniformed services facilities (including USTFs), designated in Volumes I, II, and III of MHSS Catchment Area Directories, are permitted to choose whether to deliver in a closer civilian hospital or travel to a USMTF or USTF for delivery. If the Government is to assume financial responsibility for non-Federal maternity care of any member regardless of where she resides, the member must obtain individual prior approval as outlined in § 732.17(a). Adjudication authorities should not approve requests from members residing within an inpatient MHSS catchment area unless:

(i) Capability does not (did not) exist at the USMTF or other Federal MTF serving her catchment area.

(ii) An emergency situation necessitated delivery or other treatment in a non-Federal facility (§ 732.16(b)).

(2) Normal delivery at or near the expected delivery date should not be considered an emergency for members residing within an MHSS inpatient catchment area where delivery was expected to occur and, unless provided for in this part, will not be reason for delivery in a civilian facility at Government expense.

(3) When granted leave that spans the period of an imminent delivery, the pregnant member should request a copy of her complete prenatal care records from the prenatal care physician. The physician should note in the record whether the member is clear to travel. If receiving prenatel care from a USMTF, the HBA will assist the member in obtaining a statement bearing the name of the MTF (may be an OMA) with administrative responsibility for the geographic area of her leave address, including the telephone number of the head of the patient administration department or HBA, if available. If a member is receiving prenatal care from other than a USMTF, she should avail herself of the services of the nearest HBA to effect the aforestated services. This statement should be attached to the approved leave request. In normal deliveries, requests for after-the-fact approval should be denied when members have not attempted to adhere to the provisions of this part.

(4) Upon arrival at the designated leave address, members should contact the MTF indicated on the statement attached to their leave request. The MTF will make a determination whether the member's leave address falls within the inpatient catchment area of a USMTF or USTF with the capability of providing needed care. If no such USMTF or USTF exists, the member will be given the opportunity to choose to deliver in a civilian hospital closer to her leave address or travel to the most accessible USMTF or USTF with capability for maternity care.

(5) Upon determination that civilian sources will be used for maternity care, the MTF listed on the attachment to the leave papers will inform the member that she (or someone acting in her behalf) must notify that MTF of the member's admission for delivery or other inpatient care so that medical cognizance can be initiated.

(6) Automatically grant prior or retroactive approval, as the situation warrants, to members requiring maternity care while in a travel status in the execution of permanent change of station (PCS) orders.

(d) *Nonemergency care without prior approval.* (1) If it becomes known that a member intends to seek medical or dental care (inpatient or outpatient) from a non-Federal source and prior approval has not been granted for the use of the Nonnaval Medical and Dental Care Program, the member must be counseled by, or in the presence of, a Medical Department officer. Request that the member sign a statement on an SF 600, Chronological Record of Medical Care, or an SF 603 or 603A, Health Record, Dental as appropriate, for inclusion in the member's Health Record. The statement must specify that counseling has been accomplished, and that the member understands the significance of receiving unauthorized civilian care. This must be accomplished when either personal funds or third party payor (insurance) funds are intended to be used to defray the cost of care. Counseling will include:

(i) Availability of care from a Federal source.

(ii) The requirement for prior approval if the Government may be expected to defray any of the cost of such care.

(iii) Information regarding possible compromise of disability benefits should a therapeutic misadventure occur.

(iv) Notification that should hospitalization become necessary, or other time is lost from the member's

place of duty, such lost time may be chargeable as "ordinary leave."

(v) Notification that the Government cannot be responsible for out-of-pocket expenses which may be required by the insurance carrier or when the member does not have insurance which covers the cost of contemplated care.

(vi) Direction to report to a uniformed services medical officer (preferably Navy) upon completion of treatment for determination of member's fitness for continued service.

(2) If it becomes known that a member has already received non-Federal medical care without prior authorization, refer the member to a uniformed services medical officer (preferably Navy) to determine fitness for continued service. At this time, counseling measures delineated in § 732.17(d)(1)(iii), (iv), and (v) must be taken.

§ 732.18 Notification of illness or injury.

(a) *Member's responsibility.* (1) If able, members must notify or cause their parent command, the nearest naval activity, or per OPNAVINST 6320.6, the nearest U.S. Embassy or consulate when hospitalized in a foreign medical facility to be notified as soon as possible of the circumstances requiring medical or dental attention in a non-Federal facility. The member will also assure (request the facility to make notification if unable to do so personally) that the following information is passed to the adjudication authority serving the area of the source of care (§ 732.20). This notification is in addition to the requirements of article 4210100 of the Military Personnel Command Manual (MILPERSMAN) or Marine Corps Order 6320.3B, as appropriate. The adjudication authority will then arrange for transfer of the member and, if appropriate, newborn infant(s), to a Federal facility or for such other action as is appropriate.

(i) Name, grade or rate, and social security number of patient.

(ii) Name of non-Federal medical or dental facility rendering treatment.

(iii) Date(s) of such treatment.

(iv) Nature and extent of treatment or care already furnished.

(v) Need or apparent need for further treatment (for maternity patients, need or apparent need for further care of infant(s) also).

(vi) Earliest date on which transfer to a Federal facility can be effected.

(vii) Telephone number of attending physician and patient.

(2) Should movement be delayed due to actions of the member or the member's family, payment may be denied for all care received after provision of written notification by the adjudication authority.

(3) The denial is § 732.18(a)(2) will be for care received after the member's condition has stabilized and after the cognizant adjudication authority has made a request to the attending physician and hospital administration for the member's release from the civilian facility. This notification must specify:

(i) Date and time the Navy will terminate its responsibility for payment.

(ii) That care rendered subsequent to receipt of the written notification is at the expense of the member.

(b) *Adjudication authority.* As soon as it is ascertained that a member is being treated in a nonnaval facility, adjudication authorities must make the notifications required in MILPERSMAN, article 4210100.11. See Part 728 of this chapter on message drafting and information addressees.

(1) Article 4210100.11 of the MILPERSMAN requires submission of a personnel casualty report, by priority message, to the primary and secondary next of kin (PNOK/SNOK) of Navy members seriously or very seriously ill or injured, and on those terminally ill (diagnosed and confirmed). While submission of the personnel casualty report to the PNOK and SNOK is a responsibility of the member's command, adjudication authorities must advise the member's command when such a member is being treated or diagnosed by non-Federal sources. The message will also request forwarding of the member's service and medical records to the personnel support detachment (PSD) supporting the activity in which the OMA is located. Additionally, the notification should contain a request for appropriate orders, either temporary additional duty (TEMADD) or temporary duty (TEMPDU).

(i) Request TEMADD orders if care is expected to terminate within the time constraints imposed for these orders.

(ii) Request TEMDU Under Treatment orders for members hospitalized in a NMTF within the adjudication authority's area of responsibility.

(2) Make prompt message notification to the member's commanding officer when apprised of any medical condition, including pregnancy, which will now or in the foreseeable future result in loss of a member's full duty services in excess of 72 hours. Mark the message "Commanding Officer's Eyes Only."

§ 732.19 Claims.

(a) *Member's responsibility.* Members receiving care are responsible for preparation and submission of claims to the cognizant adjudication authority identified in § 732.20. A complete claim includes:

(1) *NAVMED 6320/10, Statement of Civilian Medical/Dental Care.* In addition to its use as an authorization document, the original and three copies of a NAVMED 6320/10 are required to adjudicate claims in each instance of sickness, injury, or maternity care when treatment is received from a non-Federal source under the provisions of this part. The form should be prepared by a naval medical or dental officer, when practicable, by the senior officer present where a naval medical or dental officer is not on duty, or by the member receiving care when on detached duty where a senior officer is not present.

(i) For nonemergency care with prior approval, submit the NAVMED 6320/10 containing the prior approval, after completing blocks 8 through 18.

(ii) For emergency care (or nonemergency care without prior approval), submit a NAVMED 6320/10 after completing blocks 1 through 18. Assure that the diagnosis is listed in block 10. If prior approval was not obtained, state in block 11 circumstances necessitating use of non-Federal facilities.

(iii) Signature by the member in block 17 implies agreement for release of information to the responsible adjudication authority receiving the claim for processing. Signature by the certifying officer in block 18 will be considered certification that documentation has been entered in the member's Health Record as directed in article 16–24 of MANMED.

(2) *Itemized bills.* The original and three copies of itemized bills to show:

(i) Dates on or between which services were rendered or supplies furnished.

(ii) Nature of and charges for each item.

(iii) Diagnosis.

(iv) Acknowledgment of receipt of the services or supplies on the face of the bill or by separate certificate. The acknowledgment must include the statement. "Services were received and were satisfactory."

(3) *Claims for reimbursement.* To effect reimbursement, also submit the original and three copies of paid receipts and an SF 1164, Claim for Reimbursement for Expenditures on Official Business, completed per paragraphs 046377–2 a and b of the Naval Comptroller Manual (NAVCOMPT MAN).

(4) *Notice of Eligibility (NOE) and line of Duty (LOD) Determination.* When a reservist claims benefits for

care received totally after the completion of either an active duty or active duty for training period, the claim should also include:

(i) An NOE issued per SECNAVINST 1770.3.

(ii) An LOD determination from the member's commanding officer.

(b) *Adjudicating authority's responsibility.* Reviewing and processing properly completed claims and forwarding approved claims to the appropriate disbursing office should be completed within 30 days of receipt. Advice may be requested from COMNAVMEDCOM (MEDCOM–333 (A/V 294–1127)) for medical or MEDCOM–06 (A/V 294–1250)) for dental on unusual or questionable instances of care. Advise claimants of any delay experienced in processing claims.

(1) *Review.* The receiving adjudication authority will carefully review each claim submitted for payment or reimbursement to verify whether:

(i) Claimant was entitled to benefits (i.e., was on active duty, active duty for training, inactive duty training, was not an unauthorized absentee, etc.). As required by Part 728 of this chapter, a Defense Enrollment Eligibility Reporting System (DEERS) eligibility check must be performed on claims to all claimants required to be enrolled in DEERS.

(ii) Care rendered was due to a bona fide emergency. (**Note:** When questions arise as to the emergency nature of care, forward the claim and all supporting documentation to the appropriate clinical specialist at the nearest naval hospital for review.)

(iii) Prior approval was granted if a bona fide emergency did not exist. (**Note:** If prior approval was not obtained and the condition treated is determined to have been nonemergent, the claim may be denied.) Consideration should always be given to cases that would have received prior approval but, due to lack of knowledge of the program, the member did not submit a request.

(iv) Care rendered was authorized under the provisions of this part.

(v) Care rendered was appropriate for the specific condition treated. (NOTE: When questions arise regarding appropriateness of care, forward all documentation to a clinical specialist at the nearest naval hospital for review. If care is determined to have been inappropriate, the claim may be denied to the extent the member was negligent.)

(vi) Claimed benefits did not result from a referral by a USMTF. If the member was an inpatient or an outpatient in a USMTF immediately prior to being referred to a civilian source of care, the civilian care is supplemental and may be the responsibility of the referring USMTF. See § 732.11(p) for the definition of supplemental care.

(2) *Disppraval.* If a determination is made to disapprove a claim, provide the member (and provider of care, when applicable) a prompt and courteous letter stating the reason for the disapproval and the appropriate avenues of appeal as outlined in § 732.24.

(3) *Processing.* Subpart C contains the chargeable accounting classifications and Standard Document Numbers (SDN) to be cited on the NAVCOMPT 2277, Voucher for Disbursement and/or Collection, on an SF 1164 submitted per § 732.19(a)(3), and on supporting documents of approved claims before submission to disbursing offices.

(i) For payment to providers of care, a NAV COMPT 2277 will be prepared and certified approved for payment by the adjudicating authority. This form must accompany the NAVMED 6320/10 and supporting documentation per paragraph 046393–1 of the NAVCOMPTMAN.

(ii) Where reimbursement is requested, the SF 1164 submitted per § 732.19(a)(3) will be completed, per paragraph 046377 of the NAVCOMPTMAN, and certified approved for payment by the adjudicating authority. This form must accompany the NAVMED 6320/10 and supporting documentation.

(c) *Amount payable.* Amounts payable are those considered reasonable after taking into consideration all facts. Normally, payment should be approved at rates generally prevailing within the geographic area where services or supplies were furnished. Although rates specially established by the Veterans Administration, CHAMPUS, or those used in Medicare are not controlling, they should be considered along with other facts.

(1) *Excessive charges.* If any charge is excessive, the adjudication authority will advise the provider of care of the conclusion reached and afford the provider an opportunity to voluntarily reduce the amount of the claim. If this does not result in a proper reduction and the claim is that of a physician or dentist, refer the difference in opinions to the grievance committee of the provider's professional group for an opinion of the reasonableness of the charge. If satisfactory settlement of any claim cannot thus be made, forward all documentation to COMNAVMEDCOM (MEDCOM–333) for decision. Charges determined to be above the allowed amount or charges for unauthorized services are the responsibility of the service member.

(2) *Third party payment.* Do not withhold payment while seeking funds from health benefit plans or from insurance policies for which premiums are paid privately by service members (see § 732.22 for possible recovery of payments action).

(3) *No-fault insurance.* In States with no-fault automobile insurance requirements, adjudication authorities will notify the insurance carrier identified in item 16 of the NAVMED 6320/10 that Federal payment of the benefits in this part is secondary to any no-fault insurance coverage available to the potentially covered member.

(d) *Duplicate payments.* Adjudication authorities and disbursing activities should take precautions against duplicate payments per paragraph 046073 of the NAVCOMPTMAN.

§ 732.20 Adjudication authorities.

(a) *General.* Controlling activities for medical care in the United States are designated as "offices of medical affairs" (OMA) and for dental care, "offices of dental affairs" (ODA). NAVMEDCOMINST 6010.3 delineates responsibilities and functional tasks of OMAs and ODAs, including monthly reporting of receipt of claims and claims payment. Commanders of geographic naval medical commands must communicate with all activities in their regions to ensure that messages and medical cognizance reports are properly furnished per higher authority directives.

(b) *Within the United States (Less Hawaii).* For the 48 contiguous United States, the District of Columbia, and Alaska, the following six regions are responsible for care rendered or to be rendered within their areas of responsibility.

(1) *Northeast Region.* The States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin are served by 1 ODA and 1 OMA:

(i) Responsibility for dental matters for States in the Northeast Region is vested in: Commander, Naval Medical Command, Northeast Region, Office of Dental Affairs, Great Lakes, IL 60088, Tele: (A/V) 792–3940 or (C) (312) 688–3940.

(ii) Responsibility for medical matters for States in the Northeast Region is vested in: Commander, Naval Medical Command, Northeast Region, Office of Medical Affairs, Great Lakes, IL 60088, Tele: (A/V) 792–3950 or (C) (312) 688–3950.

(2) *National Capital Region.* For the States of Maryland and West Virginia; the Virginia counties of Arlington, Fairfax, Loudoun, and Prince William; the Virginia cities of Alexandria, Falls Church, and Fairfax; and the District of Columbia, responsibility for medical and dental matters is vested in: Commander, Naval Medical Command, National Capital Region, Office of Medical Affairs, Bethesda, MD 20814, Tele: (A/V) 295–5322 or (C) (301) 295–5322.

(3) *Mid-Atlantic Region.* For the States of North Carolina, South Carolina, and all areas of Virginia south and west of Prince William and Loudoun counties, responsibility for medical and dental matters is vested in: Commander, Naval Medical Command, Mid-Atlantic Region, 6500 Hampton Boulevard, Norfolk, VA 23502, Attn: Office of Medical/Dental Affairs, Tele: (A/V) 565–1074/1075 or (C) (804) 445–1074 or 1075.

(4) *Southeast Region.* For the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas, medical and dental responsibilities are vested in: Commanding Officer, Naval Medical Clinic, Code O1A, New Orleans, LA 70146, Tele: (A/V) 485–2406/7/8 or (C) (504) 361–2406 2407 or 2408.

(5) *Southwest Region.* For the States of Arizona and New Mexico; the counties of Kern, San Bernadino, San Luis Obispo, Santa Barbara, and all other California counties south thereof; the community of Bridgeport, California (Marine Corps cold-weather training site); and Nevada, except for NAS Fallon and its immediate area; medical and dental responsibilities are vested in: Commander, Naval Medical Command, Southwest Region, Office of Medical Affairs, San Diego, CA 92134–7000, Tele: (A/V) 987–2611 or (C) 233–2611.

(6) *Northwest Region.* The States of Alaska, Colorado, Idaho, Kansas, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming; the counties of Inyo, Kings, Tulare, and all other counties of California north thereof; and NAS Fallon, Nevada and its immediate area are served by 2 OMAs and 1 ODA:

(i) Responsibility for dental matters for the area of responsibility of the Northwest Region is vested in: Commander, Naval Medical Command, Northwest Region, Office of Dental Affairs, Oakland, CA 94267–5025, Tele: (A/V) 855–6200 or (C) (415) 633–6200.

(ii) Responsibility for medical matters for the States of Colorado, Kansas, and Utah; the California counties of Inyo, Kings, Tulare, and all other counties of California north thereof; and NAS Fallon, Nevada and its immediate area is vested in: Commander, Naval Medical Command, Northwest Region, Oakland, CA 94627–5025, Attn: Office of Medical Affairs, Tele: (A/V) 855–5705 or (C) (415) 633–5705.

(iii) Responsibility for medical matters for the States of Alaska, Idaho, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington, and Wyoming is vested in: Commanding Officer, Naval Medical Clinic, Naval Station, Seattle, WA 98115, Attn: Office of Medical Affairs, Tele: (A/V) 941–3823 or (C) (206) 526–3823.

(c) *Outside the United States (Plus Hawaii).* For all areas outside the United States plus Hawaii, the following activities are vested with responsibility for approval or disapproval of requests and claims for maternity, medical, and dental care:

(1) Executive Director, OCHAMPUSEUR, U.S. Army Medical Command, APO New York 09102, for care rendered within the U.S. European Command, Africa, the Malagasy Republic, and the Middle East.

(2) Commanding Officer, U.S. Naval Hospital, FPO San Francisco 96652–1600 (U.S. Naval Hospital, Subic Bay, Luzon, Republic of the Philippines), for care rendered in Afghanistan, Bangladesh, Hong Kong, India, Nepal Pakistan, the Philippines, Southeast Asia, Sri Lanka and Taiwan.

(3) Commanding Officer, U.S. Naval Hospital, FPO Seattle 98765–1600 (U.S. Naval Hospital, Yokosuka, Japan), for care rendered in Japan, Korea, and Okinawa.

(4) Commanding Officer, U.S. Naval Hospital, FPO San Francisco 96630–1600 (U.S. Naval Hospital, Guam, Mariana Islands), for care rendered in New Zealand and Guam.

(5) Commanding Officer, U.S. Naval Communications Station, FPO San Francisco 96680–1800 (U.S. Naval Communications Station, Harold E. Holt, Exmouth, Western Australia), for care rendered in Australia.

(6) Commanding Officer, U.S. Naval Air Station, FPO New York 09560 (U.S. Naval Air Station, Bermuda), for care rendered in Bermuda.

(7) Commanding Officer, U.S. Naval Hospital, FPO Miami 34051 (U.S. Naval Hospital, Roosevelt Roads, Puerto Rico), for maternity and medical care, and Commanding Officer, U.S. Naval Dental Clinic, FPO Miami 34051 (U.S. Naval Dental Clinic, Roosevelt Roads, PR), for dental care rendered in Puerto Rico, the Virgin Islands, and other Caribbean Islands.

(8) Commanding Officer, Naval Medical Clinic, Box 121, Pearl Harbor, HI 96860, for maternity and medical care, and Commanding Officer, Naval Dental Clinic, Box 111, Pearl Harbor, HI 96860, for dental care rendered in the State of Hawaii, Midway Island, and the Central Pacific basin.

(9) The OMA for either the Southeast Region or the Southwest Region for care rendered in Mexico to members stationed within the respective areas of responsibility of these OMAs. Forward claims for care rendered in Mexico to all other personnel to Commander, Naval Medical Command, Washington, DC 20372–5120 (MEDCOM–333).

(10) Commander, Naval Medical Command, Washington, DC 20372–5120 (MEDCOM–333) for inpatient and outpatient emergency and nonemergency care of active duty Navy and Marine Corps members in Canada and under the circumstances outlined in § 732.20(d).

(11) Outside the 50 United States, commanding officers of operational units may either approve claims and direct payment by the disbursing officer serving the command or forward claims to the appropriate naval medical command in § 732.20(b)(1) through § 732.20(c)(9). This is a local policy decision to enhance the maintenance of good public relations.

(12) The appropriate command in § 732.20(b)(1) through § 732.20(c)(9) for care rendered aboard commercial vessels en route to a location within the geographic areas listed.

(13) The commanding officer authorizing care in geographical areas not specifically delineated elsewhere in § 732.20.

(d) *The Commander, Naval Medical Command (MEDCOM–333), Navy Department, Washington, DC 20372–5120.* Under the following circumstances, responsibility is vested in COMNAVMEDCOM for adjudication of claims:

(1) For reservists who receive treatment after completion of their active duty or inactive duty training as prescribed in § 732.12(b).

(2) For care rendered in Mexico to personnel stationed outside the areas of responsibility of the Southeast and Southwest Regions.

(3) For care rendered to members stationed in or passing through countries in Central and South America.

(4) For outpatient care rendered NATO active duty members.

(5) When Departmental level review is required prior to approval, adjudication, or payment. These claims:

(i) Will be considered on appeal.

(ii) Must be forwarded by the member through the adjudication authority chain of command (In instances of unusual or controversial denial of claims, the

adjudication authority may forward claims to COMNAVMEDCOM on appeal, via the chain of command, with notification to the member.).

(6) For all inpatient and outpatient care of active duty Navy and Marine Corps members stationed in the United States who receive care in Canada.

§ 732.21 Medical board.

When adjudication authorities uncover conditions which may be chronic or otherwise potentially disabling, they should make a determination (with help from appropriate clinical specialists) as to the need for a medical board. Chapter 18 of MANMED and Medical Disposition and Physical Standards Notes, available from COMNAVMEDCOM (MEDCOM–25), provide guidance.

(a) Chronic conditions requiring a medical board include (but are not limited to):

(1) Arthritis,
(2) Asthma,
(3) Diabetes,
(4) Gout,
(5) Heart disease,
(6) Hypertension,
(7) Peptic ulcer disease,
(8) Psychiatric conditions, and
(9) Allergic conditions requiring desensitization.

(b) Other potentially disabling or chronic conditions may be referred to a medical board by the adjudication authority with the concurrence of an appropriate naval clinical specialist and the commander of the regional medical command.

§ 732.22 Recovery of medical care payments.

Adjudication authorities must submit evidence of payment to the action JAG designee per chapter 24 of the Manual of the Judge Advocate General (JAGMAN), in each instance of payment where a third party may be legally liable for causing the injury or disease treated, or when a Government claim is possible under workers compensation, no-fault insurance, or under medical payments insurance (all automobile accident cases).

(a) To assist in identifying possible third party liability cases, item 16 of each NAVMED 6320/10 must be completed whenever benefits are received in connection with a vehicle accident. Adjudication authorities should return for completion, as applicable, any claim received without item 16 completed.

(b) The front of a NAVJAG Form 5890/12 (Hospital and Medical Care, 3rd Party Liability Case) must be completed and submitted by adjudication authorities with evidence of payment. Block 4 of this form requires an appended statement of the patient or an accident report, if available. To ensure that Privacy Act procedures are accomplished and documented, the person securing such a statement from a recipient of care must show the recipient the Privacy Act statement printed at the bottom of the form prior to securing such a statement. The member should be asked to sign his or her name beneath the statement.

(c) For care rendered in States with no-fault insurance laws, comply with procedures outlined in § 732.19(c)(3).

§ 732.23 Collection for subsistence.

The Navy Pay and Personnel Procedures Manual provides guidance regarding pay account checkage procedures to liquidate subsistence charges incurred by members entitled to care under the provisions of this part. Such members must also be entitled to basic allowance for subsistence (BAS) while hospitalized at Government expense. The responsible activity (the adjudication authority or the naval MTF to which such a member is transferred) should follow procedures outlined in the Navy Pay and Personnel Procedures Manual when an eligible officer or enlisted member of the naval service is subsisted at Department of the Navy expense while hospitalized in a nonnaval treatment facility. Subpart C contains the creditable accounting classification for inpatient subsistence collections.

§ 732.24 Appeal procedures.

When a claim for care or a request for prior approval for nonemergency care is initially denied by an adjudication authority, the member may appeal the denial as outlined below. Any level in the appeal process may over-rule the previous decision and order payment of the claim in whole or in part or grant the request for prior approval of care.

(a) Level I—Reconsideration by the adjudication authority making the initial denial. The member should submit any additional information that may mitigate the initial denial.

(b) Level II—Consideration by the commander of the regional medical command having cognizance over the adjudication authority which upheld the initial denial on reconsideration.

(c) Level III—Consideration by COMNAVMEDCOM (MEDCOM–333).

Subpart C—Accounting Classifications for Nonnaval Medical and Dental Care Expenses and Standard Document Numbers

§ 732.25 Accounting classifications for nonnaval and dental care expenses.

Approp.	Sub-Head	OBJ.** Class	BCN	SA	AAA	TT	PAA	Cost Code	Purpose
17*1804	188M	000	00018	M	000179	2D	MDQ000	990010000MDQ	Outpatient Care Service Expenses.[1 2]
17*1804	188M	000	00018	M	000179	2D	MDT000	990010000MDT	Outpatient Care Supply Expenses.[1 3]
17*1804	188M	000	00018	M	000179	2D	MDE000	990010000MDE	Ambulance Expenses.[1]
17*1804	188M	000	00018	M	000179	2D	MDQI00	990020000MDQ	Inpatient Care Service Expense.[1 2]
17*1804	188M	000	00018	M	000179	2D	MDTI00	990020000MDT	Inpatient Care Supply Expenses.[1 3]
17*1804	188M	006	00018	M	000179	3C	MDZI00	990020000MDZ	Inpatient Subsistence Collections.[1]

NOTES:
*For the third digit of the appropriation, enter the last digit of the fiscal year current at the time claim is approved for payment.

**Refer to NAVCOMPT Manual par. 027003 for appropriate Expenditure Category Codes when disbursement or collection involves a foreign or U.S. Contractor abroad.

[1] Not applicable when care is procured from non-DOD sources for a patient receiving either inpatient or outpatient care at a naval medical facility. In such instances, the expenses incurred are payable from operations and maintenance funds available for support of the naval medical facility.

[2] Service expenses include: hospital, emergency room clinic, office fees; physician and dentist professional fees; laboratory, radiology, operating room, anesthesia, physical therapy, and other services provided.

[3] Supply expenses include: medications and pharmacy charges; IV solutions; whole blood and blood products; bandages; crutches; prosthetic devices; needles and syringes; and other supplies provided.

§ 732.26 Standard document numbers.

Adjudication authorities will assign to each claim approved for payment, a unique 15 position alpha/numeric standard document number (SDN). Prominently display this number on the NAVMED 6320/10, the NAVCOMPT 2277 (Voucher for Disbursement and/or Collection), NAVCOMPT 1164 (Claim for Reimbursement for Expenditures on Official Business) and on all other documentation accompanying claims. Compose SNDs per the following example: N0016887MD00001 or N0016887RV00001.

Position Entry	1	2 thru 6	7 & 8	9 & 10	11 thru 15
	N	00168	87	MD or RV	00001

Position	Data entry
1	"N" identifies Navy.
2 thru 6	Unit Identification Code of document issuing activity.
7 and 8	Last two digits of the fiscal year in which the claim is approved for payment.
9 and 10, or,	For NAVCOMPT 2277s, "MD" identifies the document as Miscellaneous Financial Document.
9 and 10	For SF 1164s, "RV" identifies the document as a Reimbursement Voucher.
11 thru 15	Consecutively assigned five digit serial number beginning with "00001" each fiscal year. Each subsequent claim will then be serially numbered "00002", "00003", etc.

[FR Doc. 87-19550 Filed 8-26-87; 8:45 am]
BILLING CODE 3810-AE-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7F3508/R903; FRL-3252-9]

Tolerance Exemption; Monourea Sulfuric Acid Adduct

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revises the exemption from the requirement of a tolerance for residues of monourea sulfuric acid adduct in or on all agricultural commodities to include desiccant uses as well as herbicidal uses. This rule to revise the exemption was requested by Unocal Chemicals Division, Unocal Corp., c/o Delta Management Group.

EFFECTIVE DATE: August 27, 1987.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone number: Rm. 412, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 13, 1987 (52 FR 18020), which announced that Unocal Corp., c/o Delta Management Group, Fenwick Professional Building, 1414 Fenwick Lane, Silver Spring, MD 20910, proposes to amend 40 CFR 180.1084 by revising the exemption to read, "Monourea sulfuric acid adduct is exempted from the requirement of a tolerance when used as a herbicide or desiccant in or on all raw agricultural commodities." Currently, 40 CFR 180.1084 only exempts monourea sulfuric acid adduct from the requirement of a tolerance when used as a herbicide on all raw agricultural commodities.

There were no comments received in response to the notice of filing.

No additional data have been submitted in the petition, nor were additional data required. It is concluded that the exemption established by amending 40 CFR Part 180 will protect the public health. Therefore, the exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-

354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement of this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 12, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. By revising § 180.1084, to read as follows:

§ 180.1084 Monourea sulfuric acid adduct; exemption from the requirements of a tolerance.

Monourea sulfuric acid adduct is exempted from the requirement of a tolerance when used as herbicide or desiccant in or on all raw agricultural commodities.

[FR Doc. 87–19647 Filed 8–26–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[OPP–300170; FRL–3252–5]

Updating of Pesticide Names, Cyhexatin; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendments.

SUMMARY: This document updates the names of 12 currently listed pesticides in 40 CFR Part 180 by changing them to reflect current American National Standards Institute (ANSI) names. These are merely technical amendments that impose no new regulatory requirements; therefore, advance notice and public comment are unnecessary.

EFFECTIVE DATE: August 27, 1987.

FOR FURTHER INFORMATION CONTACT:

Charles L. Trichilo, Hazard Evaluation Division (TS–769c), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 810, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–7324.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 17, 1987.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, the following technical amendments are made to 40 CFR Part 180:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.144 [Amended]

2. Section 180.144 is amended in the section heading and text by changing "tricyclohexyltin hydroxide" to "cyhexatin" wherever it appears.

§ 180.153 [Amended]

3. Section 180.153 is amended in the section heading and text by changing "*O,O*-diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate" to "diazinon" wherever it appears.

§ 180.170 [Amended]

4. Section 180.170 is amended in the section heading and text by changing "*O,O,O',O'*-tetramethyl *O,O'*-thiodi-*p*-phenylene phosphorothioate" to "temephos" wherever it appears.

§ 180.250 [Amended]

5. Section 180.250 is amended in the section heading and text by changing "3-(*p*-bromophenyl)-1-methoxy-1-methylurea" to "metobromuron" wherever it appears.

§ 180.255 [Amended]

6. Section 180.255 is amended in the section heading and text by changing "*m*-(1-methylbutyl) phenyl methylcarbamate and *m*-(1-ethylpropyl)phenyl methylcarbamate" to "bufencarb" wherever it appears.

§ 180.266 [Amended]

7. section 180.266 is amended in the section heading and text by changing "amiben" to "chloramben" wherever it appears.

§ 180.295 [Amended]

8. Section 180.295 is amended in the section heading and text by changing "4-*tert*-butyl-2-chlorophenyl methyl methylphosphoroamidate" to "crufomate" wherever it appears.

§ 180.308 [Amended]

9. Section 180.308 is amended in the section heading and text by changing "*O,O*-diethyl-*O*-(2-diethylamino-6-methyl-4-pyrimidinyl)phosphorothioate" to "pirimiphos-ethyl" wherever it appears.

§ 180.327 [Amended]

10. Section 180.327 is amended in the Section heading and text by changing "N^3,N^3-diethyl-2,4-dinitro-6-(trifluoromethyl)-*m*-phenylenediamine" to "dinitramine" wherever it appears.

§ 180.366 [Amended]

11. Section 180.366 is amended in the section heading and text by changing "2-*n*-octyl-4-isothiazolin-3-one" to "octhilinone" wherever it appears.

§ 180.406 [Amended]

12. Section 180.406 is amended in the section heading and text by changing "2,3-dihydro-5,6-dimethyl-l,4-dithiin-1,1,4,4-tetraoxide" to "dimethipin" wherever it appears.

§ 180.423 [Amended]

13. Section 180.423 is amended in the section heading and text by changing "potassium salt of 1-(4-chlorophenyl)-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylic acid" to "fenridazon, potassium salt" wherever is appears.

[FR Doc. 87–19651 Filed 8–26–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 70617–7148]

Atlantic Surf Claim and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of adjustment of surf clam fishing time.

SUMMARY: NOAA issues this notice to increase allowable fishing time for surf clams to 42 hours for the third quarter of 1987 for vessels harvesting surf clams in the Mid-Atlantic Area of the exclusive economic zone. This action will provide flexibility to operators in the use of fishing time during the period. The intended effect is to match fishing effort to the available quota for the area.

EFFECTIVE DATES: August 26, 1987 through October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, 617–281–3600 ext. 232.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at § 652.22(a)(3) a provision allowing the Regional Director to revise allowable fishing times to promote fishing for surf clams throughout the year with a minimum of changes. The Regional Director during the first quarter of 1987 decided, with the unanimous support of the Mid-Atlantic Fishery Management Council, to exercise his authority under § 652.22(a)(3) to allocate fishing time by quarter and allow each operator the maximum flexibility possible to schedule that time to best advantage. That program was continued in the second and third quarters.

Based on the rate of harvest and utilization of available quota during the first part of the third quarter, the Regional Director has decided to increase the allocated fishing time to 42 hours per permitted fishing vessel for the quarter. That time must be scheduled in seven fishing trips of six hours' duration each, which may be taken on any seven separate days during the normal daily and weekly fishing times established in § 652.22(a)(1), (2), and (3). The fishing trips must be scheduled with 15 days' advance written notice to the Surf Clam Coordinator, NMFS, 2 State Fish Pier, Gloucester, MA 01930.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: August 21, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–19690 Filed 8–26–87; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 52, No. 166
Thursday, August 27, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend portions of the Eastern Colorado Federal milk order for the months of September 1987 through February 1988. Provisions proposed to be suspended relate to the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February period. Suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due to later than September 3, 1987.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7311.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Department Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Eastern Colordao marketing area is being considered for September 1987 through February 1988:

In the second sentence of § 1137.7(b), the works "plant which has qualified as a", and "of March through August".

All persons who want to send written data, views or arguments about the proposed suspension should sent two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1987 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested the suspension. The suspension would remove the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February.

Mid-Am states that after two years of increasing production, producer receipts pooled under the Eastern Colordo order declined 0.4 percent during the first six months of 1987 from the same period of the previous year. The cooperative also states that the volume of producer milk used in Class I fell 2.0 percent during the first six months of 1987 from the same period of the previous year. Mid-Am expects that ample supplies of locally-produced milk will be available to the Eastern Colorado marketing area due to the relative decline in Class I use, ideal weather conditions for milk production and ample feed supplies. Without the suspension, Mid-Am would be required to move 50 percent of the producer milk receipts at its supply plants located in Kansas and Nebraska to the Denver area. In the absence of the requested suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

Signed at Washington, DC on: August 24, 1987.

J. Patrick Boyle,
Administrator.

[FR Doc. 87–19723 Filed 8–26–87; 8:45 am]
BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–57–86]

Foreign Base Company Oil Related Income

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to current taxation of foreign base company oil related income. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and by the Tax Reform Act of 1984. These regulations would provide guidance needed to comply with these changes and would affect controlled foreign corporations

with foreign oil related income and their U.S. shareholders.

DATES: The amendments are proposed to be effective for taxable years of foreign corporations beginning after December 31, 1982, and to taxable years of United States shareholders in which, or with which, those taxable years of foreign corporations end. Written comments and requests for a public hearing must be delivered or mailed by October 26, 1987.

ADDRESS: Send comments and request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [INTL–57–86], Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Richard L. Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attn: CC:LR:T). Telephone 202–566–6384, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 952, 954, and 964 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 212 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (96 Stat. 451) and to section 712(f) of the Tax Reform Act of 1984 (98 Stat. 494).

Discussion

Under present law, foreign corporations are taxed by the United States only on income effectively connected with the conduct of a trade or business in the United States and on certain other income derived from sources within the United States. As a result, the United States does not impose a tax on the foreign source income of a foreign corporation not effectively connected with the conduct of a trade or business in the United States, even though the corporation may be owned or controlled by a U.S. corporation or by individuals who are U.S. citizens or residents. These shareholders are subject to U.S. income tax on dividends when received from the foreign corporation.

Present law, however, provides under the subpart F provisions of the Code (section 951 through 964) that subpart F income, which includes foreign base company income, of controlled foreign corporations is currently taxed to certain U.S. shareholders, whether or not it currently distributed in the form of a dividend

Section 212 of TEFRA added foreign base company oil related income as a additional item to the category of foreign base company income (under the subpart F provisions). See section 954(a)(5) and (g)(1). Foreign base company oil related income is defined, with certain exceptions, as foreign oil related income (FORI) as defined in section 907(c)(2) and (3) of the Code. Initially, as enacted by TEFRA, foreign base company oil related income included only FORI as defined in section 907(c)(2). The definition of foreign base company oil related income was expanded, however, by the Tax Reform Act of 1984 to include also FORI as defined in section 907(c)(3). This change was made retroactive to the effective date of TEFRA, January 1, 1983. Section 907(c)(2), as amended by TEFRA, states that FORI means the taxable income from foreign oil related activities of processing, transportation, distribution or sales, dispositions of related assets and related services. Section 907(c)(3) states that FORI also includes other income, such as certain dividend and interest income.

A common characteristic of the various items of foreign base company income is that they include income which, generally either because of its passive nature or because it is derived from providing services or selling products outside the country in which the foreign corporation is organized or maintains its head office, is not likely to be taxed either in the country in which the transaction occurs or in the country in which the corporation is organized or maintains its head office. Income earned by a corporation in the country where it is organized or maintains its head office generally is not classified as foreign base company income. In keeping with the general foreign base company concepts, FORI is not classified as foreign base company oil related income by section 954(g)(1) if it is derived from sources within a foreign country in connection with (1) oil or gas that was extracted from a well located in that foreign country, or (2) oil or gas, or a primary product of oil or gas (collectively sometimes referred to as "fuel"), that is sold by the foreign corporation or a related party for use or consumption within that foreign country. In each of these cases, since the foreign oil related income is derived within the country in which the oil or gas is extracted or sold, it is probable that the source country exercises taxing jurisdiction over the income derived. Income derived from sources within a foreign country in connection with fuel transferred into the fuel tank of a vessel or an aircraft (*e.g.*, a bunker with respect to a vessel) for consumption by the vessel or aircraft is also excepted from foreign base company oil related income. Unless the foreign corporation can show that the fuel that is sold for use or consumption within the foreign country is fuel which was not in fact extracted from a well located in that country, it will be presumed that any oil or gas extracted within that country was the fuel sold for use or consumption within that country.

In applying the country of extraction and country of consumption exceptions the emphasis is generally on the source of income and not the place where the controlled foreign corporation is incorporated. The source of FORI is determined generally under the rules of sections 861 to 865.

An item of income which otherwise would be classified as foreign base company oil related income will, nevertheless, not be so classified unless it is income of a corporation which is a large oil producer for the taxable year. A corporation is considered a large oil producer if, for its current or immediately preceding taxable year, the average daily production of foreign crude oil and natural gas of the related group which includes the corporation equals or exceeds 1,000 barrels. Average daily production is computed under rules similar to those rules set forth in section 613A except that only oil and gas produced from wells outside the U.S. are considered.

An item of foreign base company oil related income which may also be another type of foreign base company income, generally is considered, under section 954(b)(8), to be only foreign base company oil related income. Therefore, if an item of income qualifies both as foreign base company oil related income and as another type of foreign base company income such as, for example, foreign base company services income, the income will be classified as foreign base company oil related income. An item of income which qualified both as foreign base company oil related income and foreign base company shipping income is treated, however, as foreign base company shipping income.

The exception from subpart F of the Code for certain income subject to high foreign taxes does not, under section 954 (b)(4), apply to foreign base company oil related income. Therefore, items of income which otherwise would not be classified as foreign base company income by reason of this exception will nonetheless be classified as foreign base company income (and subpart F income) if the items are within

the definition of foreign base company oil related income.

Comments and Requests for a Public Hearing

Before adopting as final regulations these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. In addition, these proposed regulations will not be adopted as final regulations before the close of the comment period of any proposed regulations defining FORI under section 907(c) (2) and (3) for post-TEFRA years. Such regulations defining FORI have not as yet been proposed. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Executive Order 12291 and Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the proposed regulations are interpretative and that the notice and public comment procedural requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major legislative regulation subject to Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Drafting Information

The principal author of these regulations is Mary Frances Pearson, formerly of the Legislative and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposed amendments to the regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are as follows:

Income Tax Regulations

Paragraph 1. The authority for Part 1 continues to read in part:

PART 1—[AMENDED]

Authority: 26 U.S.C. 7805. * * *

§ 1.952-1 [Amended]

Par. 2. Section 1.952–1 is amended by removing "1.954–7" in paragraph (a)(2) and by inserting in lieu thereof "1.954–8".

Par. 3. Section 1.952–3 (b)(3) is revised to read as follows:

§ 1.952–3 Order of foreign base company and subpart F income computations.

* * * * *

(b) *General rule.* * * *

(3) *Step 3.* Determine net foreign personal holding company income, net foreign base company sales income, net foreign base company services income, and net foreign base company oil related income as follows:

(i) *First.* Determine foreign personal holding company income under § 1.954–2, foreign base company sales income under § 1.952–1 (b) (2) or which are services income under § 1.954–4, and foreign base company oil related income under § 1.954–8;

(ii) *Second.* Exclude from each such type of income the items thereof which are excluded from subpart F income under § 1.954–1 (b) (2) or which are excluded from foreign base company income under § 1.954–1(b) (2) and (3); and

(iii) *Third.* Reduce the balance of each such type of income by the deductions allocable thereto under § 1.954–1(c).

Par. 4. Section 1.954–1 is amended as follows:

1. Paragraph (a) is amended by inserting immediately following the third sentence and immediately preceding the fourth sentence the following sentence "For taxable years beginning after December 31, 1982, the foreign base company income of a controlled foreign corporation also includes foreign base company oil related income, as defined in § 1.954–8".

2. The first sentence of paragraph (b)(3)(i) is amended by removing the first word "Foreign" and by inserting in lieu thereof the clause "Except for income which is foreign base company oil related income as defined in section 954(g) and § 1.954–8, foreign".

3. The first sentence in paragraph (c) is amended by removing the word "and" immediately before "foreign base company shipping income as defined in § 1.954–6" and by inserting ", and foreign base company oil related income as defined in § 1.954–8" between "§ 1.954–6" and "shall".

4. The introductory text of (e) is amended by removing "1.954–7," and inserting in lieu thereof "1.954–8,".

5. The introductory text of (f) is amended by removing "1.954–5," and inserting in lieu thereof "1.954–8,".

6. The first sentence of paragraph (f) (3) is amended by removing "or foreign base company services income. See section 954(b)(6)(A)." and by inserting in lieu thereof "foreign base company services income, or foreign base company oil related income. See sections 954 (b)(6)(A) and (b)(8)."

7. A new paragraph (f)(4) is added immediately after paragraph (f)(3) to read as follows:

§ 1.954–1 Foreign base company income; taxable years beginning after December 31, 1975.

* * * * *

(f) *Classification of an item of income.* * * *

(4) *Priority of foreign base company oil related income.* Foreign base company oil related income (as determined under § 1.954–8) of a controlled foreign corporation shall not also be considered foreign personal holding company income, foreign base company sales income, or foreign base company services income. See section 954 (b)(8). If an item of income qualifies both as foreign base company oil related income and foreign base company shipping income, it is treated as foreign base company shipping income.

Par. 5. A new § 1.954–8 is added immediately after § 1.954–7 to read as follows:

§ 1.954–8 Foreign base company oil related income.

(a) *Foreign base company oil related income*—(1) *In general.* Under section 954(g), the foreign base company oil related income of a controlled foreign corporation (except as provided under paragraph (b) of this section) consists of the items of foreign oil related income described in section 907(c) (2) and (3), other than such income derived from a source within a foreign country in connection with—

(i) Oil or gas which was extracted from an oil or gas well located in that foreign country, or

(ii) Oil, gas, or a primary product of oil or gas which is sold by the controlled foreign corporation or a related person for use or consumption within that

country or is loaded in that country on a vessel or aircraft as fuel for the vessel or aircraft.

For special rules for applying these exceptions, see paragraph (c) of this section.

(2) *Source of income.* The source of foreign base company oil related income is determined generally under the principles of §§ 1.861–1 to 1.863–5. See § 1.863–6. Thus, income from the performance of a service generally is sourced in the country where the service is performed. See § 1.861–4. Underwriting income from insuring a foreign oil related activity is sourced at the location of the risk. See section 861(a)(7) and § 1.953–2(b)(2).

(3) *Primary product.* The term "primary product" of oil or gas has the meaning given this term by § 1.993–3(g)(3) (i) (other than the second sentence thereof) and (ii), which relate to the denial of DISC benefits for the export of certain primary products.

(4) *Vessel.* For the definition of the term "vessel", see § 1.954–6(b)(3)(ii).

(5) *Foreign country.* For purposes of this section, the term "foreign country" has the same meaning as in section 638 (relating to continential shelf areas). Thus, for example, oil or gas extracted from a sea area will be deemed to be extracted in the country which has exclusive rights of exploitation of natural resources with respect to that area if the other conditions of section 638 are met.

(6) *Country of use or consumption.* For rules for determining the country of use or consumption, see § 1.954–3(a)(3)(ii).

(7) *Insurance income.* For purposes of this section, income derived from or attributable to insurance of section 907(c)(2) activities means taxable income as defined in section 832(a) and as modified by the principles of § 1.953–4 (other than as the section is applied to life insurance).

(8) *Fuel product.* For purposes of this section, the term "fuel product" means oil, gas or a primary product of oil or gas.

(9) *Effective date.* The provisions of section 954(g) and this section are applicable to taxable years of foreign corporations beginning on or after January 1, 1983, and to taxble years of United States shareholders in which or with which those taxable years of foreign corporations end.

(b) *Exemption for small oil producers*—(1) *In general.* Foreign base company oil related income does not include any income of a foreign corporation is not as large oil producer.

(2) *Large oil producer.* A corporation is a large oil producer (within the meaning of section 954(g)(2)) if the average daily production (extraction) of foreign crude oil and natural gas by the group which includes the corporation and related persons for the taxable year or immediately preceding taxable year is 1,000 or more barrels. The average daily production of foreign crude oil or natural gas for any taxable year (and the conversion of cubic feet of natural gas into barrels) is determined under rules similar to the rules of section 613A, except that only crude oil or natural gas from a well located outside the United States is taken into account. See proposed regulation § 1.613A–7(f) as it appeared in the **Federal Register** of May 13, 1977 (42 FR 24279).

(c) *Special rules for applying exception to foreign base company oil related income*—(1) *In general.* For purposes of paragraph (a)(1) of this section, if foreign oil related income is derived from a source within a foreign country in connection with a fuel product described in either or both subdivisions (i) and (ii) of that paragraph, then the following rules apply. A fuel product extracted within a foreign country shall be considered to be the fuel product sold within that country unless the controlled foreign corporation demonstrates that such fuel product was sold elsewhere. Similarly, a fuel product sold within a foreign country shall be considered to be the fuel product extracted within that country unless the controlled foreign corporation demonstrates that such fuel product was extracted elsewhere.

(2) *Illustrations.* The following examples illustrate the application of this paragraph.

Example (1). Controlled foreign corporation M has a refinery in foreign country A that refines 250x barrels of oil during its taxable year beginning in 1984. It is determined that 75x barrels of that oil were extracted in country A and 150x barrels of refined oil were sold by M in country A for consumption in country A. M also sold within foreign country B for consumption in country B, 50x barrels of its refined oil. M, however, cannot show that any portion of the 50x barrels sold within country B were extracted in country A. Income from refining is considered derived from the country in which the refining occurs. M has foreign base company oil related income with respect to its refining of 100x barrels of oil, determined as follows:

(1) Total number of barrels of oil refined in country A by M	250x
(2) Greater of the number of barrels of oil extracted (75x) or sold for consumption (150x) in country A	(150x)
(3) Balance	100x

Example (2). Assume the same facts as in *Example (1).* In addition, the 50x barrels sold by M within country B, a contiguous country, were transported to and from M's refinery in country A to country B by a pipeline which is owned by M. These 50x barrels can be traced to 50x of the 75x barrels extracted in country A. M has foreign base company oil related income with respect to its refining of the 50x barrels of oil, determined as follows:

(1) Total number of barrels of oil refined in country A by M		250x
(2) Greater of the number of barrels of oil extracted (75x) or sold for consumption (150x) in country A	150x	
Number of barrels of oil sold outside country A which are traced to oil extracted in country A	50x	(200x)
(3) Balance		50x

M has no foreign base company oil related income with respect to its pipeline transportation of the 50x barrels because such income was derived in part from a source within country A (where the 50x barrels were extracted) and the remaining part from country B (where the 50x barrels were sold for consumption). M has no foreign base company oil related income with respect to its sale of the 50x barrels in country B because such income was derived from the country in which the oil was sold for consumption. M has no foreign base company oil related income for its extraction activity because extraction income is excluded in all events. See section 954(g)(1)(A).

Par. 6. Section 1.964–4 is amended as follows:

1. Paragraphs (d) (4), (5), (6), (7), (8), (9), and (10) are redesignated as (d) (5), (6), (7), (8), (9), (10) and (11), respectively.

2. A new paragraph (d)(4) is added immediately following paragraph (d)(3) to read as follows:

§ 1.964–4 Verification of certain classes of income.

* * * * *

(d) *Foreign base company income and exclusions therefrom.* * * *

(4) *Foreign base company oil related income.* (i) The foreign base company oil related income described hin section 954(g) and § 1.954–8, for which purpose there must be established, with respect to each foreign country, the gross income derived from—

(A) The processing of minerals extracted (by the taxpayer or by any other person) from oil or gas wells into their primary products, as determined under section 907(c)(2)(A),

(B) The transportation of such minerals or primary products, as determined under section 907(c)(2)(B),

(C) The distribution or sale of such minerals or primary products, as determined under section 907(c)(2)(C),

(D) The disposition of assets used by the taxpayer in a trade or business described in subdivision (A), (B) or (C), as determined under section 907(c)(2)(D),

(E) Dividends, interest, partnership distributions, and other amounts, as determined under section 907(c)(3).

Where an item of income falls within more than one subdivision of this paragraph (d)(4)(i), it shall be sufficient to establish that it falls within any one of them.

(ii) If any of the foregoing items of income arising from sources within a foreign country relates to oil, gas, or a primary product thereof and is described in section 954(g)(1) (A) or (B) and § 1.954–8(a)(1) (i) or (ii) (and, hence, is not foreign base company oil related income), then there must be established facts sufficient to verify the amount of such item of income which is not foreign base company oil related income. In this regard, the total quantities of oil, gas, and primary products thereof which gave rise to such item of income and the portions of such quantities which were extracted or sold within the foreign country must be established.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87–19580 Filed 8–26–87; 8:45 am]

BILLING CODE 4830–01–W

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, and 1918

[Docket No. H–004I]

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of change of date for informal public hearing and for close of comment period.

SUMMARY: On August 3, 1987 (52 FR 28727), OHSA published a notice inviting public comment and setting the date for an informal public hearing on the feasibility of meeting the permissible exposure limit (PEL) specified in the lead standard (29 CFR 1910.1025(e)(1)) through engineering and work-practice controls in nine specified industry sectors. This notice defers the date for the hearing from September 15, 1987 to September 29, 1987. It also defers the close of the written comment period from September 2, 1987 to September 16, 1987.

DATES: Written comments must be received by September 16, 1987. An informal public hearing will begin September 29, 1987. All notices of intention to appear at the public hearing and all written testimony and documentary evidence to be introduced into the hearing record must be received by September 16, 1987.

ADDRESSES: The hearing will start at 9:30 a.m. on September 29, 1987 in the Auditorium, Frances Perkins Building, Department of Labor, Third and Constitution Avenue NW., Washington, DC. On the second day of the hearing, September 30, 1987, the proceedings will start at 9:30 a.m. and be held in Room N–5437 of the Frances Perkins Building. On subsequent days the hearing will be held in the Auditorium of the Frances Perkins Building.

Comments, in quadruplicate, should be mailed or delivered to the Docket Office, Occupational Safety and Health Administration, Docket No. H–004I, Roon N–3670, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 523–7894.

Notices of Intention to Appear, in quadruplicate, should be mailed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523–8615.

All materials submitted will be available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3641, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523–8151.

SUPPLEMENTARY INFORMATION: On August 3, 1987 (52 FR 28727), the Occupational Safety and Health Administration (OSHA) gave notice of a limited reopening of the rulemaking record for the OSHA lead standard to receive specific information relating to the feasibility of meeting the permissible exposure limit (PEL) of the lead standard (29 CFR 1910.1025(e)(1)) through engineering and work practice controls in the following nine industry sectors: lead chromate pigments (SIC 2816), lead chemicals (SIC 2816/2819), nonferrous foundries (SIC 3362/3369), brass and bronze ingot production (SIC 3341/3362), secondary copper smelting (SIC 3341), battery breaking, when not part of secondary lead smelting (SIC 5093), leaded steel (SIC 3312/3313), shipbuilding and ship repair (SIC 3731) and stevedoring (SIC 4463). The August 3, 1987 notice set September 15, 1987 as the date for beginning an informal public hearing on this issue and September 2, 1987 as the date by which written comments and notices of intention to appear at the hearing had to be received.

OSHA's action was taken in accordance with a March 31, 1987 order by the Court of Appeals for the District of Columbia, granting the Agency's earlier request that the record be remanded to OSHA for further administrative proceedings to determine the feasibility of implementing paragraph (e)(1) of the lead standard in the nine industry sectors listed above. In that order, the court mandated that OSHA return the record to the court on or before October 1, 1987.

On June 17, 1987, OSHA filed with the court a motion requesting a 90-day extention of time, from October 1, 1987 to January 1, 1988, in which to return to the court the record of the nine remand industry sectors. That motion was granted by the court on July 31, 1987.

Thereafter, on August 18, 1987, OSHA received a request from the Oxide and Chemicals Committee of the Lead Industries Association, the main trade association for the lead industries, that the dates for the public hearing and for submission of written comments be deferred for at least 30 days, or in the alternative, that the date for submission of written comments be extended beyond the September 2, 1987 deadline.

In light of the July 31, 1987 court order granting OSHA additional time to make feasibility determinations concerning the nine industry sectors and to return the record to the court, OSHA has decided that it can defer the dates for the beginning of the public hearing and the submission of written comments for two weeks. Thus, the public hearing will begin at 9:30 A.M. on September 29,

1987, in the Auditorium of the Frances Perkin's Building, U.S. Department of Labor, and written comments and notices of intention to appear at the hearing must be received by September 16, 1987. All other aspects of the rulemaking remain as indicated in OSHA's notice of August 3, 1987.

List of Subjects

29 CFR Part 1910

Hazardous materials, Health, Lead, Lead poisoning, Occupational safety and health, Protective equipment, Respiratory protection.

29 CFR Part 1915

Hazardous materials, Health, Lead, Lead poisoning, Occupational Safety and health, Protective equipment, Respiratory protection, Shipyard employment, Vessels.

29 CFR Part 1917

Hazardous materials, Health, Lead, Lead poisoning, Marine terminals, Occupational safety and health, Protective equipment, Respiratory protection, Vessels.

29 CFR Part 1918

Hazardous materials, Health, Lead, Lead poisoning, Longshoremen, Occupational safety and health, protective equipment, Respiratory protection, Vessels.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655), and section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941).

Signed at Washington, DC, this 24th day of August 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 87-19680 Filed 8-26-87; 8:45 am]

BILLING CODE 4510-26-M

Mine Safety and Health Administration

30 CFR Part 11

Respiratory Protective Devices

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposal would remove existing rules in 30 CFR Part 11 for the joint approval of respiratory protective equipment by the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH). The existing rules would be replaced by revised approval procedures and technical requirements for respirators being proposed by NIOSH in a separate rulemaking. Removal of Part 11 would be contingent upon the NIOSH rulemaking becoming final. Under the NIOSH proposal, MSHA would continue to have a consultative role regarding respirators used in mines.

DATES: Written comments must be submitted on or before October 26, 1987.

ADDRESS: Send written comments to the Mine Safety and Health Administration (MSHA), Office of Standards, Regulations and Variance, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Associate Assistant Secretary for Mine Safety and Health, Phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

The existing rules and procedures in 30 CFR Part 11 for approval of respiratory protective devices, or respirators, evolved from rules and procedures developed by the U.S. Department of the Interior, Bureau of Mines. Until 1972, the Bureau of Mines was solely responsible for testing and approving respirators. In 1972, Part 11 was published jointly by the Bureau of Mines and NIOSH. These regulations replaced the Bureau of Mines' rules and procedures, and delineated the responsibilities of the two agencies. Under these regulations, the Bureau of Mines evaluated respirator performance, and NIOSH was responsible for administration of the quality control provisions. The Bureau of Mines also tested the safety of electrical components of respirators for use in potentially explosive atmospheres in underground gassy mines (intrinsic safety) under the requirements of 30 CFR Part 18.

A Memorandum of Understanding between the two agencies of May 30, 1972, refined their respective roles and in 1973, Part 11 was amended. Under this arrangement, NIOSH undertook primary responsibility for performance testing of respirators. Although all approvals continued to be issued jointly, the Bureau of Mines primarily retained only the responsibility to test for intrinsic safety the small number of respirators which have electrical components.

In 1974, the Mining Enforcement and Safety Administration, MSHA's predecessor agency, was created and the responsibilities of the Bureau of Mines under Part 11 were transferred to that agency. Since it was created in 1978, MSHA has continued to test electrical components of respirators for intrinsic safety and has issued separate approvals for respirators meeting the requirements of 30 CFR Part 18. While MSHA currently reviews applications for respirator approvals and has conducted some product evaluations, laboratory testing, quality assurance, and product audit for certain respirators, the principal testing and certification activities specified by Part 11 are primarily conducted by NIOSH.

II. Discussion of Proposal

NIOSH is proposing, in a separate rulemaking, new requirements for the approval of respiratory protective equipment. These rules would replace Part 11 with updated and improved testing procedures and technical requirements, and would be codified at Title 42 of the Code of Federal Regulations (CFR). MSHA's rulemaking would remove Part 11 from Title 30. Removal of Part 11 would, however, be contingent on publication of the NIOSH proposal as a final rule.

MSHA anticipates that the Title 42 regulations, when final, would be consistent with the current MSHA and NIOSH respirator approval program by placing responsibility for approving respirators primarily with NIOSH. This would recognize the expertise of NIOSH in the area of respirator performance and administration of the respirator approval program. MSHA would continue to test electrical components of respirators to be used in mines and issue an MSHA approval under 30 CFR Part 18 for these components. Also, the Title 42 rules as proposed would preserve a consultative role for MSHA in the approval of respirators used in mining in order to protect the health and safety of miners. Among the types of devices for which this role would be particularly important are self-contained self-rescue devices and other rescue equipment used by miners during emergency situations. All existing MSHA respirator-use provisions would be maintained and recodified elsewhere in Title 30 of the Code of Federal Regulations.

Commenters responding to the separate NIOSH proposal to revise the administrative and technical provisions for approving respirators should direct

their comments to NIOSH so that this information can be included in the appropriate rulemaking record. The issue of MSHA's consultative role in the approval of respirators will also be the subject of the NIOSH proposal and, therefore, commenters should direct responses on this issue to that agency as well. Both rulemaking activities will be coordinated to ensure that the level of protection afforded to miners and other affected workers is maintained at all times during the development and transition period. All technical data and commenter information will be shared by the respective agencies. A new Memorandum of Understanding will be developed by the two agencies to implement the appropriate regulatory responsibilities.

III. Other Sections Affected

After the Title 42 rulemaking is completed and Part 11 is removed, MSHA anticipates that conforming nomenclature revisions would be needed in standards in Title 30 that reference the use of approved respirators.

These conforming nomenclature revisions may require that references be made to NIOSH, or that references to MSHA or the Secretary of Labor be deleted. For example, the words "the Secretary and" would be deleted from 30 CFR 70.300 after the word "approved" so that the standard would then specify that respirators be provided to miners that are "approved by the Secretary of Health and Human Services." Similar changes may be required for five other mine safety and health standards, depending on final resolution of the NIOSH rule. As indicated by the above example, however, nothing in the anticipated nomenclature revisions would change the compliance responsibility of operators, who would continue to be required to provide miners with "approved" respirators.

IV. E.O. 12291 and Regulatory Flexibility Act

This is not a major rule under Executive Order 12291. In addition, the rule would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis has not been prepared.

V. Paperwork Reduction Act

The recordkeeping and reporting requirements in 30 CFR Part 11 are addressed in NIOSH's Title 42 rulemaking proposal. Comments on these requirements should be addressed directly to NIOSH.

List of Subjects in 30 CFR Part 11

Mine safety and health, Administrative practice and procedure, Reporting and recordkeeping requirements.

Accordingly, it is proposed to amend Chapter I of Title 30, Code of Federal Regulations as set forth below.

Date: August 13, 1987.

Alan C. McMillan,

Deputy Assistant Secretary for Mine Safety and Health.

Subchapter B—[Removed and Reserved]

1. It is proposed to remove and reserve Subchapter B which consists of Part 11.

Authority: 30 U.S.C. 957.

[FR Doc. 87-18914 Filed 8-26-87; 8:45 am]
BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[86-40]

Safety Zone; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering establishing a Safety Zone in San Juan Harbor San Juan, Puerto Rico for Liquified Petroleum Gas (LPG) ships transiting the harbor, and in the Army Terminal Turning Basin when non-gas free LPG vessels are moored at the Catano Oil Dock and at the Gulf Oil Refinery Dock. This Safety Zone is necessary due to two recent marine casualties where large ships failed to negotiate the turn colliding with the adjacent dock. Such casualties would impact on the Catano Oil Dock.

DATES: Comments must be received on or before October 13, 1987.

ADDRESSES: Comments should be mailed to: Commanding Officer, U.S. Coast Guard Marine Safety Office, P.O. Box S-3666, Old San Juan, PR 00904. The comments and other materials referenced in this notice will be available for inspection and copying at the Coast Guard Marine Safety Office, located at the Coast Guard Base, San Juan at La Puntilla Final. Normal office hours are between 7:30 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR M.W. Brown, at the above address, phone number (809) 725-0857.

SUPPLEMENTARY INFORMATION: On Monday, February 9, 1987, the Coast Guard published a Notice of Proposed Rulemaking concerning the establishment of a safety zone in San Juan Harbor, San Juan, Puerto Rico (52 FR 4039). Interested persons were given until March 26, 1987 for written comments. Initially, no comments were received. On February 26, 1987 the Captain of the Port, San Juan (COTP) wrote personal letters to all parties that could be identified as being affected by the proposed rules soliciting comments.

On March 16, 1987 the COTP held a meeting with representatives from Crowley, Sealand, Navieras de Puerto Rico (Navieras), and ESSO concerning the proposed rules. Most of these companies have regularly scheduled vessels transiting the Army Terminal Turning Basin.

On March 25, 1987 in COTP met with a representative of Tropigas International Corporation (Tropigas) concerning the proposed rules. Tropigas is the corporation that will be bringing LPG into the Catano Oil Facility.

On March 26, 1987 the COTP addressed a meeting of the Propeller Club of San Juan. At this meeting, he outlined the rationale behind, and the provisions of the proposed safety zone, and discussed various aspects of the proposed rule. The COTP noted the concerns of several of the interested parties and solicited alternative proposals that would offer an equivalent level of safety. The COTP also noted that the comment period expired on that date. He informed those present, however, that upon request, additional time wold be granted to formulate comments.

On May 4, 1987 the COTP met with members of the San Juan Harbor Pilots to get advice on technical matters regarding the waterway configuration, vessel maneuverability in the Army Terminal Turning Basin, and the proposed safety zone.

The following entities provided comments as a result of the proposed rules:

A joint comment from ESSO Standard Oil (Puerto Rico), Texaco Puerto Rico Inc., and The Shell Company (Puerto Rico) Ltd. These companies are in a consortium with Tropigas and have rebuilt the Catano Oil Dock to handle petroleum and LPG products.

A combined comment from Puerto Rico Maritime Shipping Authority (PRMSA or also known as Navieras de Puerto Rico), Sealand Service Inc., Luis Ayala Colon Sucrs., Continental Shipping, Puerto Rico Electric Power Authority, and the Puerto Rico Steamship Association. These concerns are either steamship operators, shipping agents or other concerned parties shipping cargo through the Army Terminal Turning Basin.

The Puerto Rico Manufacturers Association.

Antilles Shipping Corporation.

Crowley Maritime Corporation.

The U.S. Army Corps of Engineers.

The Puerto Rico Ports Authority.

McAllister Bros. Towing Company.

There was a typographical error in the February 9, 1987 Notice of Proposed Rulemaking in the Economic Assessment and Certification Section. The first paragraph read in part "When an LPG vessel is in port, vessels requiring access to Puerto Nuevo Channel can transit the Graving Dock Channel via Army Terminal Channel." The word "vice" should have been subsituted for the "via". This error was pointed out to virtually every affected party during the preliminary meetings discussed above. In any case, based on the comments received, it appears that this typographical error did not cause any confusion.

Drafting Information

The drafters of this notice are LCDR M.W. Brown, Project Officer, and LCDR S.T. Fuger, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received indicating that there was not a safety problem at the Army Terminal Turning Basin nor were any comments received suggesting an alternative vessel movement schemes to provide an equivalent level of safety to that of the original proposed rule.

One commenter suggested making the following modification to the proposed rule: "vessels bound for facilities on the Puerto Nuevo Channel and in the Army Terminal Basin are allowed into the Army Terminal Basin if the vessel enters the safety zone at minimum maneuvering speed with at least two tugs in assistance." This suggestion would not appear to provide an increased level of safety as both vessels that were involved in casualties in the Army Terminal Turning Basin had two tugs in company.

Several commenters stated that the proposed rule, if enacted, would "paralyze and close San Juan Harbor while LPG carriers are present in San Juan Harbor." The Coast Guard believes this is not true. While the LPG vessel is in the harbor the proposed rule would establish a moving safety zone around the vessel. This relatively small envelope around the vessel would prevent meeting and overtaking situations. The maximum transit time for a LPG vessel would be approximately one hour. The Coast Guard feels that causing a one hour delay to those few vessels that would be meeting either an inbound or outbound LPG vessel is not unreasonable or onerous. Once the vessel is moored the only area in the harbor affected is the Army Terminal Turning Basin. The remainder of the harbor is unaffected and traffic can proceed as normal. The proposed rule does not dictate or require that the LPG vessel receive any preferential treatment while either waiting in any queue outside the harbor or waiting to depart. The safety zone would only take effect in the relatively narrow confines of the harbor.

Several commenters stated that "the most realistic solution is not to close the harbor off to all other traffic but to restrict the entry of LPG carriers into the port of San Juan." These commenters also questioned whether the necessary "safety infrastructure" was available and suggested that the LPG facility should not be located in a heavily populated area. LPG has been coming into San Juan Harbor at the Catano location since at least 1959. The Coast Guard's involvement in LPG facility siting is one of indirect control via vessel operational safety regulation and enforcement. Under a Memorandum of Understanding with the Department of Transportation's Material Transportation Bureau (now known as the Office of Hazardous Materials), the Coast Guard is responsible for development of regulatory requirements for Liquefied Natural Gas (LNG) and LPG facility site selection as it relates to management of vessel traffic in and around the facility. The Coast Guard may address the following items: depth of water, width of channel, aids to navigation, vessel traffic patterns, anchorage area, maneuvering area, exposure to weather, tides and currents, facility fire protection, availability of emergency response to the facility, and facility security. The physical LNG/LPG facility site is a responsibility of local and other Federal agencies. Among the other Federal agencies involved are the U.S. Army Corps of Engineers, Environmental Protection Agency, Council of Environmental Quality and Department of Interior. None of the Federal agencies have indicated the Catano Oil Dock violates any of their regulations. The Coast Guard has no authority to order any particular commodity not to enter the port of San Juan. LPG continues to enter San Juan Harbor and be off-loaded at the Gulf Oil Refinery located 300 yards from the Catano Oil Dock. The location of the Catano Oil Facility at the junction of the Army Terminal and Puerto Nuevo Channels and the recent marine casualty record have resulted in the Coast Guard's proposed rule. If all LPG is to be prohibited from being transported through San Juan Harbor that decision must be made by the Commonwealth of Puerto Rico. The Coast Guard notes that it has no accident history involving the LPG facility per se; only vessels transiting the area. The Federal infrastructure to insure safety is in place and operating. The Coast Guard believes that LPG can be safely transported and off-loaded if certain restrictions are imposed. The Commonwealth's infrastructure is beyond the scope of these proposed regulations and is a matter of concern of the Puerto Rico Public Service Commission.

One commenter stated that the Coast Guard was benefiting only one party, Tropigas, at the expense of all other shipping interests. This commenter went on to say that such action was "arbitrary and capricious". The Coast Guard does not agree. The Coast Guard believes that the proposed rule is in the public interest. Certainly the operator of the facility benefits if his facility is not damaged. But a major accident would have an affect beyond the one facility. Considering the consequences of an accident, the Coast Guard feels this proposed rulemaking is not arbitrary and capricious but prudent.

Several commenters stated that the proposed rule is only a short term solution to the problem. They state that the Army Terminal Turning Basin should be dredged to widen the basin and reduce the 122 degree turn now necessary. The Coast Guard concurs with these comments. The U.S. Army Corps of Engineers in response to questions raised by the COTP stated that the 1986 Water Resources Development Act authorized the construction of a San Juan Harbor project. Total construction cost for the project is $72.3 million. However, the 1986 law requires that the local sponsor (the Puerto Rico Ports Authority) contribute about 25% of the total construction cost. The Port Authority has expressed support for the project but no interest in entering into a cost

sharing agreement to move with it in the near future.

Several comments were received that the proposed fixed safety zone would block access to the Puerto Nuevo Channel. Some of these commenters also pointed out that certain vessels could only moor starboard side to the dock, hence they could not use the Graving Dock Channel as it would require the vessel to back down the Puerto Nuevo Channel. These commenters felt that this could not be accomplished with other vessels moored in the Puerto Nuevo Channel, especially in regards to the Navieras feeder ships which moor cross-channel. Based on conversations with the San Juan Pilots, the Coast Guard believes that it is possible to bring vessels down the Graving Dock Channel to the Puerto Nuevo Channel. The Coast Guard further believes that such vessels could be backed down the Puerto Nuevo Channel to their berth. The pilots pointed out that such operations have occurred in the past without incident. With regard to the potential disruptions of the Navieras Feeder vessels that moor cross-channel in the Puerto Nuevo Channel, the Coast Guard acknowledges that such disruptions could occur. However, the Coast Guard feels that this is not a legitimate concern as no vessel has the "right" to block a navigable channel. It is standard procedure for the various feeder vessels that moor cross-channel to move alongside the pier when a large vessel wishes to transit.

Several commenters stated "the proposed rule . . . will have a major adverse economic impact upon the operations of over forty percent of the maritime traffic within San Juan Harbor and affect some seventy-four percent of the cargo which comes into Puerto Rico." Some of these commenters went on to challenge the Coast Guard's finding of minimal impact and requested a public hearing. They contend the port would be closed and all segments of industry would not be able to receive raw materials with consequent shutdowns. The Coast Guard believes that the purported adverse economic effect is overstated. The fixed Safety Zone would only be in effect while a non-gas free LPG vessel is at the Catano Oil Dock. The data provided to the COTP by Tropigas indicates this would only occur twice a month, with a turnaround time for each vessel estimated to be 24 to 30 hours. Based on the Coast Guard's experience in vessel cargo operations, this turn around time seems reasonable. However, for analysis purposes, it was assumed that a LPG vessel will be in the harbor for 48 hours twice a month. The storage capacity of the LPG facility at Catano makes it unlikely that a LPG vessel would be calling more than twice a month. Therefore, this Safety Zone would only be in effect for four days a month, or 13% of the time. Thus only 5% of the harbor traffic and only 10% of the cargo moving through San Juan Harbor will be affected, and most, if not all of that traffic, could use the alternative Graving Dock Channel route. However, the Coast Guard does recognize that there would be inconvenience, some extra expense, and scheduling difficulties. The Coast Guard has developed an alternative proposal that is discussed further in this notice. The Coast Guard feels that this is not a major rule now, and with the alternative proposal, will have even less effect on maritime commerce. The Coast Guard does not plan to hold a public hearing because the effect of this rulemaking is not significant to the majority of industry. Those entities that it would effect have commented in some detail. The Coast Guard feels that no new information would be developed at a public hearing.

Several commenters suggested the proposed rules would substitute one unsafe operation (backing a ship down the Puerto Nuevo Channel) for a possible unsafe operation (having an LPG vessel moored at the Catano Oil Dock while large ships turn in the adjacent basin). The Coast Guard recognizes that backing a ship down a channel is inherently more dangerous than a normal transit. In addition, the Coast Guard acknowledges that there is an increased risk of damage to a ship's rudder or screw when it backs down. Of particular concern to the Coast Guard is the fact that there is no drydock in Puerto Rico that can accommodate any ship greater than 650 feet in length should a casualty affecting her rudder or screws occur. Nonetheless, the Coast Guard feels that the increased risk of an accident while backing down is less than that of any accident at the LPG facility. More importantly, the Coast Guard feels that the consequences of an accident at the LPG facility would be far more severe. The Coast Guard knows of no casualties that have occurred as a result of backing vessels down the Puerto Nuevo Channel. At the same time, there are two casualties of vessels attempting to negotiate the turn where the LPG facility is located.

Some commenters indicated that the Safety Zone encompassed some of the dock area along the Puerto Nuevo Channel and would prevent them from bringing in vessels to the dock. These comments related to the severe economic effect comment mentioned previously. The Coast Guard has changed the boundaries of the proposed safety zone so as to allow access to most berths along the Puerto Nuevo Channel. Part of Shed A will still be impacted, however. The Coast Guard understands that the Catano Oil Dock will replace most of the operations now currently conducted at Shed A. Most of the manifolds located there were established on a *temporary* basis when the old Catano Oil Dock was abandoned, with the intention that they would be removed when the new Catano Oil Dock came on line. The Coast Guard recognizes that some dredging is currently needed at the Catano Oil Dock to allow tank ship access, and in the interim, such vessels must use the manifolds at Shed A. The Puerto Rico Power Authority will be adversely affected by this rule, as vessels utilizing their manifolds at Shed A would partially be in the fixed safety zone. The general regulations concerning safety zones allow vessels to enter or remain in the safety zone if they have the permission of the COTP. Provided that they can demonstrate that they can do so safely, the COTP will grant favorable consideration on a case by case basis to allow vessels in the proposed safety zone while discharging at Shed A.

One commenter expressed concern over the effect that the safety zone would have over the Catano commuter ferry. The Coast Guard believes that there would be no significant effect. The ferries are relatively maneuverable and can easily avoid the moving safety zone by staying 100 yards away from a LPG vessel while it is transiting. As the ferries are less than 400 feet long, they would be premitted in the Safety Zone at the Army Terminal Turning Basin and could remain 100 yards away from the moored LPG vessel.

One commenter indicated that LPG vessels of 125,000 cubic meter capacity routinely transmit the Houston Ship Channel with no safety zone or other restrictions. The Coast Guard acknowledges this. The configuration of the Port of Houston is significantly different than the Port of San Juan. In addition, the Port of Houston has a Vessel Traffic Service (VTS). The Coast Guard believes it inappropriate to compare regulatory schemes in this instance. Each port is different and regulations must be tailored to suit local conditions.

One commenter pointed out establishing regulations regarding LPG

vessels at the Catano Oil Dock while not addressing similar petroleum operations at the same dock was "incongruous", as the same hazard exists for other tankers. These tankers would be larger and handle highly violatile products. LPG, however, it is a "Cargo of Particular Hazard" as defined in Title 33, Code of Federal Regulations, Part 126, and as such, the Coast Guard believes that a higher degree of safety is required. The Coast Guard acknowledges this point and will continue to evaluate this situation.

One combined commenter indicated that the Safety Zone as presently configured would have an adverse affect on them as they would not be able to use the Catano Oil Dock while an LPG vessel is in port. They also indicated that they had obtained permission to moor tankers simultaneously with LPG vessels at the Catano Oil Dock from the COTP in 1984. The Coast Guard feels that if suitable tugs are provided, large tanker traffic can approach and moor at the Catano Oil Dock safely. As a result, the proposed Safety Zone has been modified accordingly.

Discussion of Proposed Regulations

The Coast Guard feels that the Safety Zone as presently proposed is not a significant rulemaking effort. It could cause some scheduling difficulties and poses additional operational concerns. In weighing the two risks, (the consequences of an accident at the LPG facility as opposed to an accident involving a vessel backing down the Puerto Nuevo Channel) the consequences of an accident at the LPG facility are far more severe.

The Coast Guard believes that the primary hazard is the difficulty in negotiating the 122 degree turn at the Army Terminal Turning Basin, especially for large vessels. When an LPG vessel is at the Catano Oil Dock it may extend beyond the dock into the Turning Basin itself. The exact amount will vary according to the size of the LPG vessel, and its cargo manifold location. The ship could extend into the Turning Basin up to 100 feet. The width of the Turning Basis is only 825 feet so that any obstruction is critical. The two recent marine casualties involved vessels that were 695 feet and 805 feet long.

Discussions with the San Juan Harbor Pilots resulted in their recommendation that for large ships a minimum of three tugs should be required if *any* vessel moored at the Catano Oil Dock protrudes into the Basin thus reducing the available maneuvering area. The Coast Guard feels that the Pilots suggestion offers a valid alternative. However, the Coast Guard does not feel that a Safety Zone need be in effect when all vessels are at the Catano Oil Dock at this time.

Regardless of whether the vessel extends into the Turning Basin or not, the Coast Guard believes that the risk of accident to the facility is real and the consequences severe, unless some type of regulatory action is taken. The Coast Guard, in considering all the comments feels that a viable alternative has been offered to the original total exclusion proposal. That is, a specified minimum number of tugs (based on the transiting ships size) would provide sufficient maneuvering assistance to large ships to reduce the risks of loss of vessel control in the Turning Basin to acceptable levels. Consequently, the following proposal when non-gas free LPG ships are moored at the Catano Oil Dock will be made:

Vessel size	Minimum No. of tugs required
Less than 400 feet	None.
401-600 feet	Two tugs.
Greater than 600 feet	Three tugs.

Given the hazard of LPG the Coast Guard further feels that it is important that all unnecessary traffic be kept away from LPG vessels. Hence, vessels must remain at least 100 yards away. The Coast Guard notes that LPG vessels also moor at the Gulf Oil Refinery Docks also located in the Army Terminal Turning Basin. The Coast Guard does not believe that there is any navigational problem with that facility. But the Coast Guard does feel that a limited access area is desirable. Therefore the proposed regulation has been modified to include the water area in a 100 yard radius of LPG vessels moored at the Gulf Oil Refinery Docks as well as the Catano Oil Dock. No additional tugs will be required when LPG vessels are moored at the Gulf Facility only. While not specifically commented on, the Coast Guard notes that when a LPG vessel is moored at the Catano Oil Dock, the safety zone encompasses the Gulf Oil Refinery Dock and the berths at the Army Terminal. As mentioned previously, the general regulations concerning safety zones allow vessels to enter or remain in the safety zone if they have the permission of the COTP. Provided that they can demonstrate that they can do so safely, the COTP will grant favorable consideration on a case by case basis to allow vessels in the proposed safety zone while at the Gulf Oil Refinery Dock and the berths at the Army Terminal.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed under **ADDRESSES.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** Industry would have two ways to comply with this proposed regulation. They can utilize the Graving Dock Channel, or they can use tugs and proceed through the Army Terminal Turning Basin. The Coast Guard estimates that this proposed rule would cost industry a maximum of five million dollars (not adjusted for inflation) over a 20 year period on a worst case basis. This is based on the assumption that an LPG vessel will be in port 4 days a month and that 5 vessels of over 600 feet will arrive each day that the LPG vessel is in port. Vessels of this size currently use two tugs to transit the Army Terminal Turning Basin. It should be noted, however, that both of the figures are overestimates. One additional tug will cost each vessel $800 per transit for a total of $16,000 per month (4 days × 5 vessels × $800). This equates to $192,000 per year, or $3,940,000 over twenty years. Allowing over a 20% error factor, a total cost of 5 million is estimated. Based on the fact that there were two casualties in one year, the Coast Guard feels that these regulations will prevent at least one catastrophic casualty over this period. The Coast Guard envisions this catastrophic casualty to involve a large vessel colliding with a moored LPG vessel with a resulting explosion and conflagation. Using the Chemical Hazard Response Information System (CHRIS), the Coast Guard determined that the primary hazard would be the fire, and the radiant heat produced. The hazard to unprotected personnel would exceed one mile, and the hazard to buildings would be approximately 200 yards. The Coast Guard further estimates that the facility, worth $4,000,000 would be totally destroyed and both vessels worth at least 5.5 million dollars each would be constructive total losses. The total cost of such an accident would be at least 15 million dollars. This does not take into account any possible ancillary damage to the Catano Power Plant (which provides 30% of the power to the north

coast of the island of Puerto Rico), or personnel injuries and deaths. The Coast Guard has not estimated any costs for the requirement for the Navieras feeder vessels to move, as they are now required to move so as not to obstruct the channel. Based on the information in the draft evaluation, the Coast Guard certifies that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

There was some discussion at the various meetings with segments of industry as to who would have to pay for the additional tugs. The Coast Guard takes no position on this issue.

As mentioned previously, the boundaries of the Safety Zone have been decreased to allow vessels to moor at all berths along the Puerto Nuevo Channel.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 1231:s 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(q) S6.04–6 and 160.5.

2. Section 165.740 is added to read as follows:

§ 165.740 San Juan Harbor, San Juan, PR.

(a) The waters and waterfront facilities located within the following areas are established as Safety Zones during the specified conditions:

(1) For inbound non-gas free Liquefied Petroleum Gas (LPG) carriers: The waters within a 100 yard radius while the vessel transits the waters of San Juan Harbor to the LPG receiving facility commencing with its entry into the Bar Channel.

(2) For non-gas free LPG carriers maneuvering in the Army Terminal Turning Basin and when an LPG carrier is moored at the Catano Oil Dock; a line beginning at the point located at 18 Deg 26'01.0" N. Latitude, 66 Deg 6'40.5" W. Longitude, thence 050 Deg T to Army Terminal Channel bouy "7" located at 18 Deg 26'09.5" N. Latitude, 66 Deg. 6'29.0" W. Longitude; thence 150 Deg T to Army Terminal Channel Buoy "9" located at 18 Deg 26'01.0" N. Latitude, 66 Deg 6'24.0" W. Longitude; thence to NW corner of building "Shed A" 18 Deg 25.48.0" N. Latitude, 66 Deg 6'26.0" W. Longitude.

Note.—Chart #25670, 33rd Ed. Jan 7/87.

(3) For non-gas free LPG carriers moored at the Gulf Oil Refinery Dock; the water area for 100 yards around such vessel.

(4) For outbound non-gas free Liquefied Petroleum Gas (LPG) carriers; The water within a 100 yard radius while the vessel transits the waters of San Juan Harbor from the LPG receiving facility until the vessel exists the Bar Channel.

(5) The general regulations governing safety zones contained in 33 CFR 165.23 apply; with the following exceptions;

(i) Vessels of under 400 feet are allowed within the safety zone without restriction. Such vessels must remain at least 100 yards from any non-gas free LPG vessel unless they are tugs or pilot boats engaged in the assistance of the LPG vessel.

(ii) Vessels of over 400 feet in length but less than 600 feet in length are allowed to transit the safety zone while traveling between the Army Terminal and Puerto Nuevo Channels or vice versa, and/or moor at the Gulf Oil Refinery and berths on the west side of the Army Terminal, if such vessels have at least two tugs of at least 1500 horsepower each made up to the vessel.

(iii) Vessels of 600 feet in length or greater are allowed to transit the safety zone while traveling between the Army Terminal and Puerto Nuevo Channels or vice versa, if such vessels have at least three tugs of at least 1500 horsepower each made up to the vessel.

(iv) Owners or operators of LPG vessels wishing to use the Catano Oil Dock will give COTP San Juan 72 hour notice of date of arrival.

(6) The Captain of the Port will notify the maritime community of periods which this safety zone will be in effect by providing advance notice of scheduled arrivals and departures of non-gas free LPG vessels via a Marine Safety Information Broadcast.

Dated: August 6, 1987.

G.M. Williams,

Commander, U.S. Coast Guard, Captain of the Port, San Juan, Puerto Rico.

[FR Doc. 87–19668 Filed 8–26–87; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 4

Evaluations of Diplopia (Double Vision)

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration (VA) is proposing to amend its Schedule for Rating Disabilities to provide a new method for evaluating the degree of disability caused by diplopia (double vision). The amendment is necessary for compatibility between evaluation methods and new testing techniques. The effect of the amendment will be to provide VA adjudication personnel with an appropriate method for evaluating the results of the new testing techniques.

DATES: Comments must be received on or before September 28, 1987. Comments will be available for public inspection until October 13, 1987. This amendment is proposed to be effective 30 days after publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233–3005.

SUPPLEMENTARY INFORMATION: For many years, the generally accepted method of testing for visual impairment caused by diplopia has been by use of a motor field chart. This chart is composed of 20 rectangles covering an area of approximately 42 square inches. The evaluation for diplopia was based on the number of rectangles in which the veteran had double vision (diplopia). The evaluation segment on diplopia in the Schedule for Rating Disabilities (38 CFR 4.84a) is designed to conform to the findings expressed on a medical examination using the motor field chart. The Department of Medicine and Surgery has proposed a new testing method using what is referred to as a Goldmann perimeter chart. This new testing method is more sensitive in identifying the actual areas of vision in which the veteran suffers from double vision. If this new testing method is to be used by VA examining physicians, it is necessary to revise the diplopia segment of the Schedule for Rating Disabilities so that the evaluation technique is compatible with the new

testing protocol. The purpose of this proposed change is to keep pace with modern testing methods, and is not intended to increase or decrease evaluations. The proposed change, however, does provide for recognition of the principle that double vision in the Central 20 degree field produces the greatest visual impairment; that double vision in the downward field is more serious than double vision in the upward and lateral fields; and that double vision in a lateral field is more serious than in the upward field.

The Administrator hereby certifies that this proposed regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this proposed regulatory amendment would not directly affect any small entities. Only claimants for VA benefits would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed regulatory amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that this proposed regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: July 10, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 4, Schedule for Rating Disabilities is proposed to be amended as follows:

PART 4—[AMENDED]

1. The authority citation of Part 4 continues to read:

Authority: 72 Stat. 1125; 38 U.S.C. 355.

2. Section 4.77 is revised to read as follows:

§ 4.77 Examination of muscle function.

The measurement of muscle function will be undertaken only when the history and findings reflect disease or injury of the extrinsic muscles of the eye, or of the motor nerves supplying these muscles. The measurement will be performed using a Goldmann perimeter chart as in Figure 2 below. The chart identifies four major quadrants, (upward, downward, and two lateral) plus a central field (20° or less). The examiner will chart the areas in which diplopia exists, and such plotted chart will be made a part of the examination report. Muscle function is considered normal (20/40) when diplopia does not exist within 40° in the lateral or downward quadrants, or within 30° in the upward quadrant. Impairment of muscle function is to be supported in each instance by record of actual appropriate pathology. Diplopia which is only occasional or correctable is not considered a disability.

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Figure 2
(Goldmann Perimeter Chart)

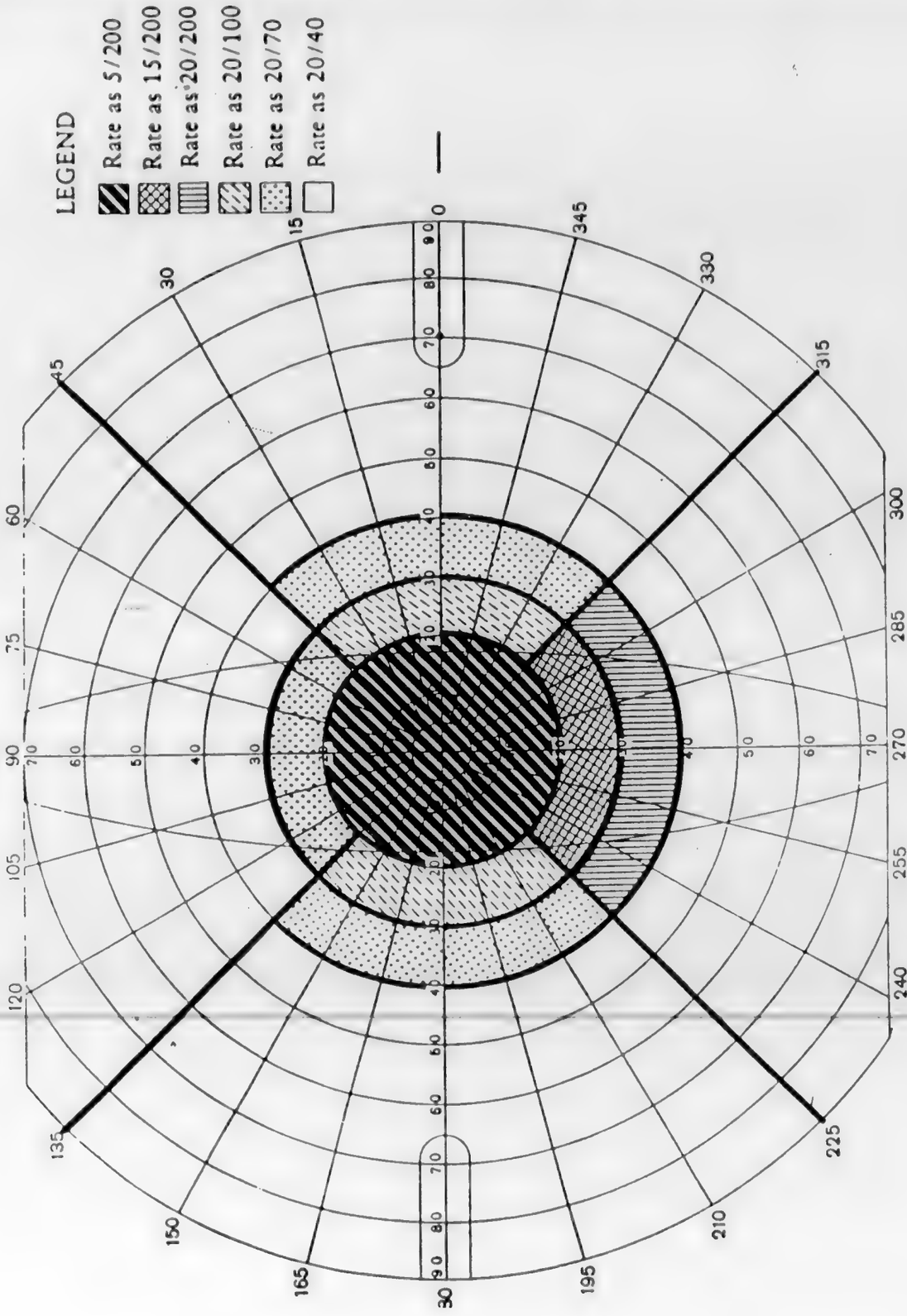

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3. In § 4.84a, the chart entitled "Ratings for Impairment of Muscle Function" is revised to read as follows:

§ 4.84a Schedule of ratings—eye.

* * * * *

Ratings for Impairment of Muscle Function.

6090 Diplopia (double vision)

	Equivalent visual acuity
Degree of diplopia:	
(a) Central 20°	5/200
(b) 21° to 30°	
(1) Down	5/200
(2) Lateral	20/100
(3) Up	20/70
(c) 31° to 40°	
(1) Down	20/200
(2) Lateral	20/70
(3) Up	20/40

Notes:

(1) Correct diagnosis reflecting disease or injury should be cited.

(2) The above ratings will be applied to only one eye. Ratings will not be applied for both diplopia and decreased visual acuity or field of vision in the same eye. When diplopia is present and there is also ratable impairment of visual acuity or field of vision of both eyes the above diplopia ratings will be applied to the poorer eye while the better eye is rated according to the best corrected visual acuity or visual field.

(3) When the diplopia field extends beyond more than one quadrant or more than one range of degrees, the evaluation for diplopia will be based on the quadrant and degree range that provide the highest evaluation.

(4) When diplopia exists in two individual and separate areas of the same eye, the equivalent visual acuity will be taken one step worse, but no worse than 5/200.

[FR Doc. 87-19602 Filed 8-26-87; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[(A-3-FRL 3246-9); Docket No. AM069MD]

Proposed Revision to the Maryland State Implementation Plan; Stack Height

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes the approval of a revision to the Maryland State Implementation Plan (SIP). The proposed revision consists of a draft amendment to Maryland's Regulation (COMAR) 10.18.01.08, Determination of Ground Level Concentrations Acceptable Techniques. EPA has reviewed this revision and has concluded that it conforms to 40 CFR Part 51, including the July 8, 1985 amendments (50 FR 29906). Therefore, EPA proposes to approve the amendment, following its final enactment by the State as a revision to the Maryland SIP.

DATES: Comments must be received on or before September 28, 1987.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, ATTN: Ms. Esther Steinberg 3AM11

Maryland Air Management Administration, 201 West Preston Street, Baltimore, Maryland 21201, ATTN: George P. Ferreri

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking proceeding by submitting written comments to: Mr. David L. Arnold, Chief, Delmarva/DC Section (3AM13) at the EPA Region III address stated above. Please reference the EPA Docket Number found at the heading of this document.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Mageer (3AM13) at the EPA Region III address above or call (215) 597-6863.

SUPPLEMENTARY INFORMATION:

Parallel Processing

The revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish a revised Notice of Proposed Rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revision. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by Maryland and Submitted to EPA for incorporation into the SIP. Parallel processing can reduce the time necessary for final approval of these SIP revisions by 3 to 4 months.

Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act. These regulations were challenged in the U.S. Court of Appeals for the D.C. circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F.2d 436 (DC Cir. 1983). On October 11, 1983, the Court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S. Ct. 3571), and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the Court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the criteria for determining Good Engineering Practice (GEP) stack height.

Pursuant to section 406(d)(2) of the Act, all states were required to (1) review and revise, as necessary, their State Implementation Plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations; and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by section 406.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, the states were to prepare inventories of stacks greater than 65 meters in height, and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP

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stack height and the *de minimis* (SO_2) emission exemption from prohibited dispersion techniques. These sources were then subject to detailed review for conformance with the revised regulations.

Regulation Description

The State of Maryland, in order to conform with the requirements of the stack height regulation amendments of July 8, 1985, made the following change. Maryland drafted an amendment to the State air pollution regulation, (COMAR) 10.18.01.08, Determination of Ground Level Concentrations Acceptable Techniques. This regulation applies to new sources or modifications in Maryland as required in 40 CFR 51.164, as well as existing sources as required in 40 CFR 51.118. This means that this rule applies to all sources that were constructed, reconstructed or modified subsequent to December 31, 1970. The amendment incorporates by reference the applicable requirements of the Federal Regulation including the July 8, 1985 revisions.

EPA Action

EPA proposes approval of the revision to the Maryland SIP. The Regional Administrator's decision to propose approval of this revision is based on a determination that the amendments meet the requirements of the Clean Air Act and 40 CFR Part 51 Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

The public is invited to submit comments on the proposed SIP revision. All comments submitted within 30 days of publication of this notice will be taken into account in the Administrator's decision to approve or disapprove the revision.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air Pollution control, Sulfur dioxide.

Authority: 42 U.S.C. 7401–7641.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 87–18486 Filed 8–26–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 7E3482, 7E3483, 7E3484/P425; FRL–3252–4]

Pesticide Tolerance for Malathion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the insecticide malathion in or on a variety of raw agricultural commodities. The proposed regulation to establish maximum permissible levels for residues of the insecticide in or on the commodities was requested in petitions submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [pp 7E3482, 7E3483, 7E3484/P425], must be received on or before September 28, 1987.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. 22202, (703) 557–1806.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions (PP) 7E3482, 7E3483, and 7E3484 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Station of Hawaii.

The petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of malathion (*O,O*-dimethyl dithiophosphate of diethyl mercaptosuccinate) in or on the raw agricultural commodity crop groups *Brassica* (cole) leafy vegetables group (7E3482), leafy vegetables (except *Brassica* vegetables) group (7E3483), and on the raw agricultural commodity chayote fruit and roots (7E3484) at 8 parts per million (ppm). Tolerances have already been established on the representative commodities and additional commodities within the *Brassica* (cole) leafy vegetables group as follows: broccoli, brussels sprouts, cabbage, cauliflower, collards, kale, kohlrabi, and mustard greens. With the establishment of the proposed crop group tolerance, tolerances would also be established for residues of the insecticide in or on Chinese broccoli (gai lon), broccoli raab (rapini), Chinese cabbage (bok choy, napa), Chinese mustard cabbage (gai choy), and rape greens at 8 ppm. Tolerances have already been established on the representative commodities and additional commodities within the leafy vegetables (except *Brassica)* group as follows: Celery, dandelions, endive (escarole), lettuce, parsley, spinach, Swiss chard, and watercress at 8 ppm. With the establishment of the proposed crop group tolerance, tolerances would also be established for residues of the insecticide in or on amaranth (leafy amaranth, Chinese spinach, tampala), arrugula (Roquette), celtuce, chervil, corn salad, edible-leaved chrysanthemum, garland chrysanthemum, dock (sorrel), Florence fennel, orach, garden purslane, winter purslane, fine spinach, New Zealand spinach and rhubarb at 8 ppm.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. A 47-day (voluntary) human feeding study with a no-observed-effect level (NOEL) of 0.2 milligram (mg/kilogram (kg) of body weight per day for cholinesterase inhibition.

2. Rat acute oral studies with LD50 values of 1,000 to 1,845 mg/kg.

3. Mouse acute oral studies with LD50 values of 700 to 3,321 mg/kg.

4. An 80-week rat feeding study with no oncogenic effects observed under the conditions of the study at dosage levels of 4,700 and 8,150 ppm (equivalent to 235 and 407.5 mg/kg/day).

5. An 80-week mouse feeding study with no oncogenic effects observed under the conditions of the study at dosage levels of 8,000 and 16,000 ppm (equivalent to 1,200 and 2,400 mg/kg/day).

6. A rabbit teratology study with a NOEL for developmental toxicity of 25 mg/kg/day and a maternal NOEL of 25 mg/kg/day.

7. A rec-assay mutagenicity study which was negative.

The provisional acceptable daily intake (PADI), based on the human feeding study (NOEL of 0.2 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.02 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 1.2 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.10244 mg/kg/day; the current action will increase the TMRC by 0.024 mg/kg/day (0.39 percent).

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography, is available in the Pesticide Analytical Manual, Volume II (PAM-II), for enforcement purposes. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered and the fact that these commodities are not considered animal feed commodities, the Agency concludes that the tolerances established by amending 40 CFR 180.111 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 7E3482, 7E3483, 7E3484/P425]. All written comments filed in response to these petitions will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects 40 in Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 14, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.111 is amended by (1) removing the already established tolerances for broccoli, Brussels sprouts, cabbage, cauliflower, celery, collards, dandelion, endive, kale, kohlrabi, lettuce, mustard greens, parsley, spinach, Swiss chard, and watercress now covered by the new crop groups, and (2) by adding and alphabetically inserting the crop groups *Brassica* (cole) leafy vegetables and leafy vegetables (except *Brassica* vegetables) and the raw agricultural commodity chayote fruit and roots to read as follows:

§ 180.111 Malathion; tolerances for residues.

* * * * *

Commodities	Parts per million
. . . . .	
Chayote fruit	8
Chayote roots	8
. . . . .	
Vegetables, leafy, *Brassica* (cole)	8
Vegetables, leafy (except *Brassica*)	8
. . . . .	

[FR Doc. 87–19652 Filed 8–26–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 233

Aid to Families With Dependent Children—Treatment of Utility Payments by Applicants or Recipients Living In Certain Federally Assisted Housing

AGENCY: Family Support Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would implement section 221 of Pub. L. 98–181 of the Domestic Housing and International Recovery and Financial Stability Act enacted November 30, 1983, as amended by section 102 of Pub. L. 98–479, the Housing and Community Development Technical Amendments Act of 1984, enacted October 17, 1984. The above legislation addresses the problem of the treatment of certain utility payments for Aid to Families with Dependent Children (hereafter referred to as AFDC) families living in dwellings assisted by the U.S. Department of Housing and Urban Development (hereafter referred to as HUD). The legislation was designed to provide these families with some money in their AFDC grant for rent. HUD requires that all those assisted pay toward their housing expenses. The categories to which the legislation applies are applicants or recipients who live in Federal housing assisted under the United States Housing Act of 1937, as amended, or section 236 of the National Housing Act. This includes all Indian and public housing, section 8 rental housing, and section 236 rental assistance housing.

DATES: Interested persons and agencies are invited to submit written comments concerning these regulations no later than September 28, 1987.

ADDRESSES: Comments should be submitted in writing to the Administrator of the Family Support Administration, Attention: Mark Ragan, Acting Director, Division of Policy, Office of Family Assistance, 2100 Second Street, SW., Washington DC

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20201 or delivered to the Office of Family Assistance, Family Support Administration, Room B–428, Transpoint Building, 2100 Second Street, SW., Washington, DC 20201, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Ragan, Room B–428, Transpoint Building, 2100 Second Street, SW., Washington, DC 20201, telephone 202–245–3290.

SUPPLEMENTARY INFORMATION:

Background

An AFDC family living in HUD-assisted housing is required to contribute an amount for the cost of its housing. If the dwelling does not include individual utility metering, the family makes its required contribution as a single payment to either the landlord or the public housing agency. That payment is considered a rental or shelter payment by AFDC. If the dwelling does include individual utility metering, HUD's determination of the family's required housing expense includes not only an amount the family is to pay the landlord or the public housing agency but also an amount (which is a reasonable estimate) that the family is expected to pay the utility company. (**Note:** Individual utility metering may be for one or more utilities. For purposes of this regulation, utility payment can mean payment to more than one utility company. In the same way, utility company may be considered plural.) In such cases, the HUD-assisted family makes its utility payment directly to the utility company and pays the remainder of its required contribution to the landlord or public housing agency. When the family's required housing contribution is less than or equal to HUD's estimate of reasonable utility costs, HUD requires the family to pay all of its required housing contribution to the utility company and not make any direct payment to the landlord or the public housing agency.

The following discussion illustrates these principles. In each case, the HUD estimate of utilities that is used in computing the family's required contribution is $110. In Case A, the family's required contribution is $120. The family pays $110 to the utility company and $10 to the landlord or housing authority. In Case B, the family's required contribution is $110. Therefore the family pays all of its $110 to utility company. In Case C, the family's required contribution is $80. In this example, the family pays all of the $80 to the utility company. In addition, HUD provides the family $30 (the difference between the $110 and the $80) to pay the utility company.

These offsets between utility estimates and required contributions are done to avoid multiple payments between recipients, HUD, and the utility companies. For HUD's purpose, the family contribution in Case B and Case C does in fact represent payment for both rent and utilities. HUD's instruction to a family to pay their contribution to a utility company is merely for HUD's convenience. HUD does not specify the portion of a family's contribution that is for rent nor the portion that is for utilities.

Under the AFDC program, financial eligibility and the amount of assistance are determined in accordance with a Statewide standard of need. The standard represents a money amount as defined by the State for those items of living costs that the State wishes to recognize as essential for applicants and recipients of the AFDC program. The money amount of the standard for these items may be expressed as one flat amount by family size, that is, a specified dollar amount for all items.

The money amount of the standard may also be expressed as flat amounts for certain groups of need items or as amounts for each individual item in the need standard or as a combination of both. Some States have elected to treat shelter costs as separate item which is included only where the family actually incurs a shelter expense. In some of these States verification of housing costs results in the inclusion of a standard shelter allowance in the AFDC grant. Others of these States include an amount for shelter on an "as paid" basis subject to a maximum. The usual terminology for this latter situation is an AFDC standard that provides for "shelter as paid to a maximum."

As stated above, for AFDC grant purposes, there are some States that provide an amount for shelter solely upon evidence that such expense is incurred by the family. In those States, a HUD-assisted AFDC family would not receive an amount in their AFDC grant for shelter if its entire "total tenant payment" (HUD's terms for the family's contribution) was made directly to the utility company. This has significantly disadvantaged some families. Payment for shelter is often the largest part of the AFDC payment. The intent of this provision and its subsequent amendment was to remedy this situation. As a result, when the total tenant payment of the AFDC family is paid to the utility company, that contribution shall be considered a shelter payment for AFDC purposes. States still have the option to count HUD subsidies as income as permitted under section 402(a)(7)(C) of the Social Security Act and to prorate shelter and utilities as permitted under section 412 of the Social Security Act.

Implementation of Section 221 of Pub. L. 98–181 as Amended by Pub. L. 98–479

As specified in the statute, only those AFDC applicants and recipients living in Federally-assisted housing under the United States Housing Act of 1937 as amended, and section 236 of the National Housing Act are to be included. Housing assisted under the United States Housing Act of 1937 and section 236 of the National Housing Act means all Federal public and Indian housing programs, section 8 rental housing, and section 236 rental assistance housing. Persons receiving HUD mortgage subsidies are not included.

The majority of States remain unaffected by the provision. This regulation does not apply to States in which all AFDC applicants or recipients already receive an AFDC grant amount which includes a portion for shelter. In addition, in the other States, this regulation will not apply to any AFDC families living in HUD-assisted housing who acutally make some direct payment to a landlord or public housing authority. In this situation, the usual AFDC rules apply.

This legislation is addressed to those States which include an amount in the grant for rent only upon evidence of that expense being incurred by the assistance unit. In some of these States, evidence has meant documentation of payment made to the landlord. Prior to this legislation, AFDC assistance units in some of these States would not have received an amount for rent in their grant because the entire total tenant payment for rent and utilities was paid to the utility company.

Now, under the provisions of this new regulation, any HUD-assisted AFDC family have all or a part of its utility payments considered a rental payment for AFDC. However, for purposes of AFDC grant calculation, only the amount HUD designates as the family's "total tenant payment" shall be considered a rental or shelter payment. Payments in excess of the amount of the total tenant contribution which the AFDC unit may make to a utility company will not be considered as rental payments. This is because the

statute provides that only those utility payments which are made in lieu of a rental payment shall be considered as shelter payments. The maximum payment that could be made to a landlord as rent is the "total tenant payment." Any remaining amount above the "total tenant payment" will be considered a payment for utilities. Of course, the amount the AFDC State agency includes in the grant for shelter can not exceed the State's AFDC maximum for shelter as authorized in the State plan.

Finally, the applicable utility payments that may be considered as rental payments are payments for gas, electricity, water, heating fuel, sewerage systems, and trash and garbage collection. Not included in this list of utilities are telephone and cable television costs. This is the same definition as is used by HUD to compute a family's required housing expense under the various HUD-assisted programs.

Regulatory Procedures

Executive Order 12291

This regulation does not meet any of the three criteria which require a regulatory impact analysis under Executive Order 12291. Specifically, this regulation will not have any annual effect on the economy of more than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have any significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The estimated Federal costs resulting from the legislative provisions which this regulation implements are $2 million per year. These program costs result from implementing the Domestic Housing and International Recovery and Financial Stability Act of 1983 (Pub. L. 98–181) as amended by the Housing and Community Development Technical Amendments of 1984 (Pub. L. 98–479) and not the result of actions taken under the discretionary latitude of the Secretary. It is expected that the additional $2 million in Federal AFDC costs will be offset by recoupments in HUD subsidies and Food Stamp allocations.

Paperwork Reduction Act

There will be no new reporting or recordkeeping requirements imposed on the public or the States which would require clearance by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

We certify that this regulation, if promulgated, will not have a significant impact on a substantial number of small entities because it primarily affects State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

This regulation is issued under the authority of the Domestic Housing and International Recovery and Financial Stability Act, section 221 of Pub. L. 98–181, as amended by section 102 of Pub. L. 98–479, and section 1102 of the Social Security Act.

Catalog of Federal Domestic Assistance Program 13.780, Assistance Payments—Maintenance Assistance.

List of Subjects in 45 CFR Part 233

Aliens, Grant programs/social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: August 14, 1987.

Wayne A. Stanton,

Administrator of Family Support Administration.

Approved: August 20, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY

Part 233 of Chapter II, Title 45 Code of Federal Regulations is amended as set forth below:

1. The Authority citation for Part 233 is revised to read as follows and all other authority citations which appear throughout Part 233 are removed:

Authority: Sections 1, 402, 406, 407, 1002, 1102, 1402, and 1602 of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352, and 1382 note), and Section 6 of Pub. L. 94–114, 89 Stat. 579 and Part XXIII of Pub. L. 97–35, 95 Stat. 843, and Pub. L. 97–248, 96 Stat. 324, and Section 221 of Pub. L. 98–181, as amended by Section 102 of Pub. L. 98–479 (42 U.S.C. 602 note).

2. Section 233.20 is amended by adding paragraph (a)(2)(ix) to read as follows:

§ 233.20 Need and amount of assistance.

(a) Requirements for State Plans.***

(2) Standards of assistance.***

(ix) For AFDC, provide that a State shall consider utility payments made in lieu of any direct rental payment to a landlord or public housing agency to the shelter costs for applicants or recipients living in housing assisted under the U.S. Housing Act of 1937, as amended, and section 236 of the National Housing Act. The amount considered as a shelter payment shall not exceed the total amount the applicant or recipient is expected to contribute for the cost of housing as determined by HUD. "Utility payments" means only those payments made directly to a utility company or supplier which are for gas, electricity, water, heating fuel, sewerage systems, and trash and garbage collection. Utility payments are made "in garbage collection. Utility payments are made "in lieu of any direct rental payment to a landlord or public housing agency" when, and only when, the AFDC family pays its entire required contribution at HUD's direction to one or more utility companies and does not make any direct payment to the landlord or the public housing agency. Housing covered by the "U.S. Housing Act of 1937 and Section 236 of National Housing Act" means Department of Housing and Urban Development assisted housing which includes Indian and public housing, section 8 new and existing rental housing, and section 236 rental housing

* * * * *

[FR Doc. 87–19628 Filed 8–26–87; 8:45 am]

BILLING CODE 4150–04–M

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Notices

Federal Register
Vol. 52, No. 166
Thursday, August 27, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting; Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 6:00 p.m., on September 17, 1987, at the Sheraton Hotel, 1400 6th Avenue, Seattle, Washington 98101. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Allen D. Israel or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 21, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–19636 Filed 8–26–87; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting; Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 1:00 p.m., on September 19, 1987, at the Downtowner Hotel, I–25 and Center Street, Casper, Wyoming 82602. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald Tolin or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 21, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–19637 Filed 8–26–87; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1987 Census of Governments—Survey of Government Employment
Form Number: Agency—E–1, E–2, E–3, E–4, E–5, E–6, E–7, E–8, and E–9; OMB–NA
Type of Request: New collection
Burden: 67,862 respondents; 74,553 reporting hours
Needs and Uses: This collection requests data on state and local government employment, gross employee pay, government costs for employee benefits, and labor-management relations. Results are used by Federal, state and local government officials and agencies, as well as by public interest groups, academic instructors and researchers and the general public
Affected Public: State or local governments
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: August 24, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–19679 Filed 8–26–87; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–588–705]

Initiation of Antidumping Duty Investigation; Bimetallic Cylinders From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of bimetallic cylinders from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 18, 1987. If that determination is affirmative, we will make a preliminary determination on or before January 11, 1988.

EFFECTIVE DATE: August 27, 1987.

FOR FURTHER INFORMATION CONTACT: Raymond Busen or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue NW., Washington, DC 20230; telephone (202) 377–3464 or 377–3965.

SUPPLEMENTARY INFORMATION:

The Petition

On August 4, 1987, we received a petition in proper form by Xaloy Incorporated and Bimex Corporation, on behalf of U.S. producers of bimetallic cylinders. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of bimetallic cylinders from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

United States purchase price was based on the sales prices of a Japanese manufacturer to its unrelated U.S. distributor. Petitioners deducted, where appropriate, ocean freight and marine insurance, handling costs, U.S. Customs duties, and U.S. inland freight.

Petitioners based foreign market value on the Japanese manufacturer's retail price quotes to a Japanese user of bimetallic cylinders.

Based upon a comparison of United States price and foreign market value, petitioners allege dumping margins of between 17.38 and 37.37 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on bimetallic cylinders from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determsine whether imports of bimetallic cylinders from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by January 11, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS) by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (*TSUSA*) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are bimetallic cylinders currently provided for under *TSUSA* item numbers 678.3570 and 678.3575 and currently classifiable under HS item numbers 84779000–0.

The bimetallic cylinder under investigation is a hollow metal cylinder which serves as part of a machine to process plastics materials, either by injection molding or by extrusion. The product consists of an outer shell of steel and an inner lining of an alloy which are metallurgically bonded, the inner lining being of a material which is resistant to a corrosive and abrasive environment.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 18, 1987, whether there is a reasonable indication that imports of bimetallic cylinders from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

August 21, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–19697 Filed 8–26–87; 8:45 am]

BILLING CODE 3510–DS–M

The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held September 14, 1987, 10:30 a.m., Herbert C. Hoover Building, Room B–841, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provide for continuing review to update the Regulations as needed.

Agenda:

Open Session

1. Opening remarks by the Chairman.
2. Introduction of Public Attendees.
3. Introduction of Invited Guests.
4. Presentation of Papers or Comments by the Public.
5. Discussion of Proposals/ Recommendations by the Technical Data task Group.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 30, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of

the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes contact Ruth D. Fitts, 202–377–2583.

Date: August 21, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87–19694 Filed 8–26–87; 8:45 am]

BILLING CODE 3510–DT–M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held September 30, 1987 at 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors and related equipment or technology.

Agenda:

General Session

1. Opening remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Public Presentations on Computer Aided Design (CAD):
   - Computervision Corporation will Discuss (CAD) Printed Circuit Boards.
   - Mentor Graphics Corporation will discuss (CAD) Microcircuits.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Date: August 21, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87–19659 Filed 8–26–87; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will convene public meetings at the Embassy Suites Hotel, 4400 West Cypress, Tampa, FL, as follows:

Council—Convene at 8:30 a.m., September 16, 1987, discuss committee reports, including actions on advisory panel selection, administrative policy, habitat protection, discussions of Mackerel Amendment 3, approve a draft Billfish FMP, conduct a hearing before taking final action to approve the Shrimp Amendment 4, and continue discussion of the reef fish amendment options paper; recess at 5 p.m., reconvene at 8:30 a.m., September 17 to continue discussion of the reef fish amendment options paper, and adjourn at noon.

Committees—Convene September 14 with the Habitat Protection Committee 1 p.m., and recess at 5 p.m., reconvene at 8 a.m., with the Administrative Policy Committee followed by Advisory Panel Selection Committee, Billfish Management Committee, Shrimp Management Committee, and Mackerel Management Committee and adjourn at 5 p.m. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: August 21, 1987.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–19691 Filed 8–26–87; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Pacific Whiting Joint Venture Policy Committee will convene September 9, 1987, at 10 a.m., at the Metro Center, Room 330, 2000 SW. First Avenue, Portland, OR, to prepare recommendations to the Pacific Council regarding objectives for the Pacific whiting fishery and means to achieve these objectives. The Committee also will recommend a list of priorities for the Pacific Council to use in judging foreign and joint venture applications, and for determining allocations in 1988 and beyond.

For further information about the public meeting, contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Dated: August 21, 1987.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–19692 Filed 8–26–87; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent to Grant Exclusive Patent License; Cancer Prognostics, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Cancer Prognostics, Inc., having a place of business at 1250 Broadway, New York, NY 10001, an exclusive right in the United States to practice the invention embodied in U.S. Patent Application S.N. 6–911,863, "Recombinant DNA Clone Encoding Laminin Receptor." The

patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87-19619 Filed 8-26-87; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes in Officials Authorized To Issue Export Visas and Exempt Certifications for Certain Textiles and Textile Products From the Republic of the Philippines

August 21, 1987.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212.

Under the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of March 4, 1987 and the export visa arrangement and exempt certification requirements, announced in the CITA directive of April 3, 1987 (52 FR 11308), the Government of the Republic of the Philippines has notified the United States Government that Gloria M. Arroyo, Zenaida G. Maglaya, Marissa G. Arzadon, Mercedita M. Pulmones and Mirabel A. Reyes have been authorized by the Government of the Republic of the Philippines to issue export visas and exempt certifications for textiles and textile products exported from the Philippines on or after September 1, 1987, subject to the terms of the bilateral agreement.

The following is a complete list of officials of the Government of the Philippines who are currently authorized to sign export visas and exempt certifications:

Lorna A. del Rosario
Gloria M. Arroyo
Zenaida G. Maglaya
Marissa G. Arzadon
Mercedita M. Pulmones
Mirabel A. Reyes

The purpose of this notice is to advise the public of these changes.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-19878 Filed 8-26-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Altered Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice of altered systems of records for public comment.

SUMMARY: The Army proposes to alter five existing systems of records notices subject to the Privacy Act of 1974.

DATES: This proposed action will be effective without further notice on September 28, 1987 unless comments are received which would result in a contrary determination.

ADDRESS: Send comments to the system manager identified in the particular system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Cliff Jones, HQ USAISC (AS-OPS-MR), Fort Huachuca, AZ 85613-5000. Telephone: 602-538-6528, Autovon: 879-6528.

SUPPLEMENTARY INFORMATION: The Army's systems of records notices inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published to date in the **Federal Register** as follows:

FR Doc. 85-10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86-14667 (51 FR 223576) June 30, 1986
FR Doc. 86-19534 (51 FR 30900) August 29, 1986
FR Doc. 86-25274 (51 FR 40479) November 7, 1986
FR Doc. 86-27580 (51 FR 44361) December 9, 1986
FR Doc. 87-8140 (52 FR 11847) April 13, 1987
FR Doc. 87-11379 (52 FR 18798) May 19, 1987
FR Doc. 87-15611 (52 FR 25905) July 9, 1987

These existing Army record systems that are being altered have been published in the **Federal Register** as follows:

A0302.03DACA—50 FR 22118, May 29, 1985
A0305.10DACA—50 FR 22122, May 29, 1985
A0306.02DACA—50 FR 22125, May 29, 1985
A0412.07DACA—50 FR 22145, May 29, 1985
A0708.03aDAPE—50 FR 22187, May 29, 1985

An altered system report as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 was submitted on August 13, 1987, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Linda M. Lawson,

Alternate Federal Register Liaision Officer, Department of Defense.

August 24, 1987.

A0302.03DACA

SYSTEM NAME:

Subsidiary Ledger Files (Accounts Receivable).

SYSTEM LOCATION:

Finance and Accounting Offices, world-wide; addresses may be obtained from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel with the Department of the Army, Department of Defense, and other Government agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual control files for services rendered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 97-365, Debt Collection Act of 1982.

PURPOSE(S):

To maintain records of charges due the Army for services provided to effect collection action, i.e., telephone, quarters, food, clothing, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; card files; magnetic tapes; computer printouts; and microfiche.

RETRIEVABILITY:

By individual's surname or SSN.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Records are destroyed 3 years after closing ledger accounts.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Finance and Accounting Center, Ft Benjamin Harrison, IN 46249.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may inquire of the System Manager or from the finance and accounting office where service was provided. Individual should provide full name, SSN, current address, and sufficient details to enable locating the record.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records pertaining to them should follow the requirements in 'Notification procedure'.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, finance and accounting offices, member's commanding officer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0305.10cDACA

SYSTEM NAME:

Joint Uniform Military Pay System-Army-Retired Pay.

SYSTEM LOCATION:

U.S. Army Finance and Accounting Center, Indianapolis, IN 46249.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Retired Army members, beneficiaries of deceased retired Army members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual retired military pay records, correspondence with individuals concerning their retired pay accounts, all documents substantiating entitlements to retired pay.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 1401.

PURPOSES:

To establish and compute pay of retirees and their beneficiaries; to produce permanent record of transactions; and to prepare financial, budgetary, and actuarial reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in this system may be disclosed to:

(1) Veterans Administration: To record the collection of premiums for National Service Life Insurance.

(2) Fiscal Agent for Veterans Group Life Insurance (VGLI): To initiate starts, stops, and changes for VGLI premium payments by allotment for retirees.

(3) Trustees/Guardians of Mental Incompetents (MI): To exercise a fiduciary responsibility on behalf of MI retirees and annuitants.

(4) States and Cities: To verify tax liability against retiree's state and city income tax returns.

(5) American Red Cross: To assist military personnel and their dependents in determining status of monthly pay, dependents' allotments, loans, and related financial transactions.

(6) Military banking facilities: Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan that, if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

(7) Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer disk files, microfiche, micro-computer hard and floppy disks.

RETRIEVABILITY:

By SSN and name.

SAFEGUARDS:

The U.S. Army Finance and Accounting Center employs security guards. An employee badge and visitor registration system is in use. Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Access to computer disk files is controlled by USERID and password. Computer equipment and files are in separate secured area.

RETENTION AND DISPOSAL:

Individual retired military pay records are converted to microfiche and retained for 56 years; destruction is by shredding. The retention periods for other records vary according to category of record, but total retention periods do not exceed 56 years after termination of the account. (Account is terminated by either death of retiree, or if the retiree has designated annuitants under Retired Servicemen's Family Protection Plan or the Survivor Benefit Plan, the subsequent death or eligibility of the annuitant.) Records are destroyed at the end of the 56 year retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Finance and Accounting Center, Indianapolis, IN 46249.

NOTIFICATION PROCEDURE:

Information may be obtained from the Director, Retired Pay Operations by calling (317) 542–2931.

RECORD ACCESS PROCEDURES:

Individuals may request access to records in this system pertaining to them by writing to the Commander, U.S. Army Finance and Accounting Center, ATTN: Department 90, Indianapolis, IN 46249. Individual should provide full name, SSN of retiree, and signature. Visits are limited to the U.S. Army Finance and Accounting Center, Indianapolis, IN.

CONTESTING RECORD PROCEDURES:

The Army's rules of access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From Department of Defense agencies, the Veteran's Administration, Social Security Administration, Department of Treasury, financial institutions and insurance companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0306.02DACA

SYSTEM NAME:

Nonappropriated Funds Central Payroll System (NAFCPS).

SYSTEM LOCATION:

System Proponent: Assistant Comptroller of the Army for Finance

and Accounting (ACOA(F&A)), ATTN: DACA-FAP-N, Indianapolis, IN 46249–1056. NAFCPS is operational at two sites: Central Nonappropriated Funds Payroll Office, P.O. Box 75, Texarkana, TX 75504–0075, and the Nonappropriated Funds Central Payroll Division, U.S. Army Finance and Accounting Center Europe (USAFACEUR), APO NY 09007–0137.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees of the Department of the Army, Defense Logistics Agency, and Panama Local Nationals who are paid from nonappropriated funds (NAF).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual records of appointment or assignment; officially authenticated time and attendance records, supported by substantiating documents; individual leave records, payroll control files, individual withholding authorization files, withholding tax exemption certificate files, withholding tax files, savings bond schedule files, other deduction type files, payroll journal and check register, earnings statement, earning records, tips received, earnings and leave statements, subsistence and quarters files, unemployment compensation data request files, health and life insurance files, income tax withheld, employer and employee Federal Insurance Contributions Act files, Employer Quarterly Federal Tax Return, state tax files, local tax files, Fair Labor Standards Act files, and total employer liability for accrued leave at separation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 2105, 5531, 5533; Pub. L. 92–203; Fair Labor Standards Act.

PURPOSE(S):

To calculate the net pay due each employee; provide a history of pay transactions, entitlements and deductions; maintain a record of leave accrued and taken; keep a schedule of bonds due and issued; record taxes paid; respond to inquiries or claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Data required by law, e.g., employees' earnings, taxes withheld, Federal Insurance Contributions Act contributions, are provided to the Treasury Department, the Social Security Administration, Internal Revenue Service, states and localities which have an agreement with the Department of the Army to receive taxable earnings information. Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f), the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3), or Title III, section 301 of Pub. L. 97–253, the 1982 Omnibus Reconciliation Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and bulk storage, magnetic tapes, discs, microfilm, microfiche, and computer printouts.

RETRIEVABILITY:

By individual's social security number (SSN) within each nonappropriated fund Standard NAF Number (Installation, fund, location, and department code).

SAFEGUARDS:

Files are maintained in areas accessible only to designated personnel who have need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

Individual pay records are permanent; they are forwarded to the National Personnel Records Center after three years. They are retained at servicing payroll office while individual is actively employed. Upon separation or termination of employment, files are placed in an inactive status and retained 18 months after close of pay year. Leave records are retained 10 years and then destroyed. Other management and accounting information reports are retained from one to three years before destruction.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Comptroller of the Army for Finance and Accounting, ATTN: DACA-FAP-N, Indianapolis, IN 46249–1056.

NOTIFICATION PROCEDURE:

Information may be obtained from the Chief, Central NAF Payroll Office, P.O. Box 75, Texarkana, TX 75504–0075, or Commander, USAFACEUR, ATTN: AEUTCF-NAF, APO NY 09007–0137. Individual should furnish full name, SSN, period and location of employment, and signature.

RECORD ACCESS PROCEDURES:

Requests for system information should be sent to the System Manager. Requests from individuals should be sent to the appropriate servicing payroll office furnishing details required by 'Notification procedures'.

CONTESTING RECORD PROCEDURES:

The Department of the Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Time and Attendance reports, former employers, Social Security Administration, Treasury Department, DOD staff agencies and field installations, Government benefit programs, servicing civilian personnel offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME:

Witness Appearance Files.

SYSTEM LOCATION:

Office of The Judge Advocate General, Headquarters, Department of the Army, Litigation Division, Washington, DC 20310–2210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Witnesses requested by the United States Attorneys for Federal Court proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of witnesses; name and address of U.S. Attorneys requesting same; name and location of trial.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To locate and provide witnesses to U.S. Attorneys conducting trials on behalf of the Department of the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and magnetic tapes/discs.

RETRIEVABILITY:

Records are accessible only to authorized personnel who are properly instructed in the permissible use thereof; buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

Destroyed after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Information may be obtained by writing to the System Manager, ATTN: Chief, Litigation Division, at the above address. Individual should provide his/her full name, current address and telephone number, case number appearing on correspondence, and any other personal identifying data that will assist in locating the record.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records in this system about themselves should submit a written request as indicated in 'Notification procedure', providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, Department of Justice, U.S. Attorneys, opposing Counsel, and similar pertinent sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0708.03aDAPE

SYSTEM NAME:

Special Review Board Appeal Case Summary File.

SYSTEM LOCATION:

Office of the Deputy Chief of Staff for Personnel, Special Review Board (DAPE–MPD–CD), Washington, DC 20310.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army officer and enlisted personnel who have submitted substantive, as opposed to administrative, appeal of Officer Evaluation Reports, Enlisted Evaluation Reports, Academic Evaluation Reports, and cases referred for promotion reconsideration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identification data on individual, date of appeal, dates of contested OER/EER/AER period, and supporting documentation; promotion reconsideration referrals including information provided by the promotion board and relevant documents from individual's OMPF, names of voting SRB member, names of persons contacted by SRB, summary of evidence considered, discussion, recommendations, conclusions, final determination of appeal, and disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012.

PURPOSE(S):

To review and adjudicate appeals of officer and noncommissioned officer ratings, academic ratings, and promotion board reconsideration cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to designated authorized persons in buildings which employ security guards.

RETENTION AND DISPOSAL:

Records are retained by the Special Review Board for 20 years; then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURES:

Information may be obtained from the System Manager, ATTN: DAPE–MPD–CD, Room 2C–749, The Pentagon, Washington, DC 20310; telephone: 202–697–7619.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records in this system of records pertaining to them should write to the System Manager, ATTN: DAPE–MPD–CD, Room 2C–749, The Pentagon, Washington, DC 20310, furnishing full name, current address and telephone number. For personal visits, individual must provide acceptable identification such as military identification card.

CONTESTING RECORD PROCEDURES:

The Army's rules for contesting contents and appealing initial determination are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, relevant Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 87–19686 Filed 8–26–87; 8:45 am]

BILLING CODE 3810–01–M

Open Meeting of the Army Science Board Ad-Hoc Panel on Army Information Management Concepts and Architecture

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Date of meeting: 17 September 1987.

Time of meeting: 1000–1100 hours.

Place: GAO Building, 441 G Street NW., Washington, DC.

Agenda: The Army Science Board Ad-Hoc Panel on Army Information Management Concepts and Architecture will meet for a briefing. The Panel will brief GAO representatives and Congressional staffers on their findings and recommendations. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–19620 Filed 8–26–87; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

Closed Meeting of the Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 16 and 17 September 1987.

Times of meeting:

0800–1700 hours, 16 September 1987.
0800–1200 hours, 17 September 1987.

Place: SAIC Corp, San Diego, CA.

Agenda: The Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On will meet to draft a report on a study which they conducted regarding the transfer of U.S. Army Strategic Defense Command technology to the Army. The material utilized for the study is classified. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 19(d). The classified and unclassified matters to be discussed are

so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner

Administrative Officer, Army Science Board.

[FR Doc. 87–19621 Filed 8–26–87; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Advisory Council on Education Statistics (ACES); Meeting

AGENCY: Education Department.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 21–22, 1987.

ADDRESS: 555 New Jersey Avenue NW., Room 326, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Iris Silverman, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, Room 400J, Washington, DC 20208, Telephone: (202) 357–6831.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the Center for Education Statistics (CES) in the Office of Educational Research and Improvement and is responsible for establishing standards to insure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence. The meeting of the Council is open to the public. The proposed agenda includes the following:

- CES: One Year After the NAS Evaluation
- 1990 NAEP/SASS:
  State-by-State comparisons
  Consensus Development
  Linkage—Merger of NAEP/SASS (rationale, design issues, 1990 time schedule, and management)
- Such old and new business as the Council membership may present.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., Room 400J, Washington, DC 20208.

Date: August 20, 1987.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary, Office of Educational Research and Improvement.

[FR Doc. 87–19689 Filed 8–26–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Floodplains/Wetlands Involvement in an Application for Presidential Permit; Westmin Resources Ltd.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Floodplain/Wetlands Involvement and Opportunity for Comment.

SUMMARY: Westmin Resources Limited (Westmin) has applied to the Economic Regulatory Administration (ERA) for a Presidential permit to construct, connect, operate and maintain electric transmission facilities at the International Border between the United States and Canada. The proposed transmission facilities will connect two locations in British Columbia and only pass through Alaska.

Pursuant to the requirements of the Department of Energy's (DOE) "Compliance with Floodplain/Wetlands Environmental Review Requirements" (10 CFR Part 1022), DOE has determined that this project would involve activities within floodplain/wetlands areas.

SUPPLEMENTARY INFORMATION: On July 17, 1987, Westmin applied to the ERA, pursuant to Executive Order 10485, as amended, for a Presidential permit to construct a 35 kilovolt transmission line which would cross the U.S. international border from British Columbia, Canada, pass through the State of Alaska, and re-enter British Columbia at a second point on the U.S. international border. This application is contained in Docket No. PP–85. The proposed facilities would be used to transmit electric energy from an existing powerplant located in Stewart, British Columbia, to a new mine to be developed by Westmin in British Columbia, about 10 miles north of Hyder, Alaska. These transmission facilities will not connect with any existing U.S. transmission lines and no electric energy will flow to or from any U.S. electric utility as a result of this project.

The proposed line would extend about 11.2 miles through Alaska, with about 2.5 miles constructed underground and about 8.7 miles constructed above ground on wooden poles. All construction in Alaska would be within the right-of-way of the existing Granduc Road.

The proposed facilities would be within the floodplain of the Salmon River for about 7.5 miles. The powerline would be constructed on the side of the road farthest from the river. The road is protected by a series of dykes, which are in turn protected by revetment.

DATE: Any comments or suggestions are due September 11, 1987.

ADDRESS: Send written comments or suggestions to: Anthony J. Como, Department of Energy, Economic Regulatory Administration (RG–22), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5935.

Issued in Washington, DC, on August 17, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–19615 Filed 8–26–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–30–NG]

Application To Extend Blanket Authorization To Import Natural Gas From Canada and Increase the Volumes Imported; Dome Petroleum Corporation

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to extend blanket authorization to import natural gas from Canada and increase the volumes imported.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on June 22, 1987, of an application from Dome Petroleum Corporation (Dome Corp.) to extend its existing import authorization from December 1, 1987, the current expiration date, to December 1, 1989, and to increase the volume from the currently authorized 50 Bcf per year, or a term maximum of 100 Bcf, to 200 Bcf over the extended two-year term.

DOE/ERA Opinion and Order No. 85 (1 ERA Para. 70,601), issued July 5, 1985, authorized Dome Corp. to import up to 50 Bcf per year of Canadian gas for short-term or spot market sales in the U.S. The blanket authorization was for a

two-year period beginning on the date of first delivery which occurred on December 1, 1985. Gas imported under the requested extension would continue to be supplied by various Canadian suppliers and sold on a short-term or spot market basis to U.S. purchasers, including industrial or agricultural users, electric utilities, pipelines, and distribution companies. Dome Corp. states that it intends to use existing facilities to transport the gas and expects that the majority of the short-term or spot market sales made to U.S. purchasers will be used to displace higher-priced energy supplies.

Dome Corp. states that it would continue to file reports with ERA within 30 days after the end of each calendar quarter. Quarterly reports filed with ERA as ordered by the existing authorization indicate that Dome Corp. has imported approximately 4.2 Bcf of natural gas under Order No. 85 through June 30, 1987.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 28, 1987.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitivenes of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., September 28, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Dome Corp.'s application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 20, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–19613 Filed 8–26–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–26–NG]

Order Granting Blanket Authorization To Import Natural Gas; Kimball Energy Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Kimball Energy Corporation (Kimball) blanket authorization to import Canadian natural gas for sale in the domestic spot market. The order issued in ERA Docket No. 87–26–NG authorizes Kimball to import up to 75 Bcf of gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 20, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–19614 Filed 8–26–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–44–NG]

Application To Export Natural Gas to Canada; Northridge Petroleum Marketing U.S., Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt

on August 14, 1987, of an application from Northridge Petroleum Marketing U.S., Inc. (Northridge), for blanket authorization to export natural gas to Canada for short-term or spot market sales to customers, including gas distribution companies, electric utilities, agriculture users, pipelines, and industrial and commercial end users. Authorization is requested to export up to 300 Bcf of natural gas over a two-year period beginning on the date of first delivery. Northridge, a wholly-owned subsidiary of Northridge Petroleum Marketing, Inc., a Canadian corporation, is currently authorized to import up to 100 Bcf of Canadian natural gas over a two-year term under an authorization issued September 27, 1985, in ERA Docket No. 85–14–NG. Northridge is a corporation registered in the State of Colorado and operates solely as a natural gas marketing company.

Northridge proposes to export natural gas either as a broker or agent on behalf of a variety of U.S. and/or Canadian suppliers and/or foreign purchasers, or as an exporter on its own behalf for sale to foreign purchasers. In the case of gas supplied by Canadian suppliers, such gas will be imported to the U.S., and exported for delivery to the Canadian purchaser. Northridge intends to use existing facilities at the border and within the United States for the transportation of the proposed exports. Northridge will advise the ERA of the date of first delivery of the export and submit quarterly reports giving details of individual transactions.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 28, 1987.

FOR FURTHER INFORMATION:

Robert M. Stronach, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9222.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6–E042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: This export application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204–111. The decision on whether the export of natural gas is in the public interest will be based upon the domestic need for the gas and on whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade arrangements. The applicant asserts that the requested authorization would promote competition and, in light of the continuing "gas bubble", would benefit the public interest. Parties, especially those that may oppose this application, should comment in their responses on these matters.

Public Comment Procedures

In responses to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed, with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., September 28, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northridge's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 20, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–19612 Filed 8–26–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP87–488–000 et al.]

Natural Gas Certificate Filings; United Gas Pipe Line Co. et al.

August 20, 1987.

Take notice that the following filings have been make with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP87–488–000]

Take notice that on August 10, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP87–488–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a firm direct industrial sales service to Georgia-Pacific Corporation (Georgia-Pacific) at a point near Wanilla, Lawrence County, Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it notified Georgia-Pacific by letter dated August 4, 1986, that its present firm industrial gas sales contract would be cancelled effective 7:00 a.m. on January 1, 1987. United

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further states that continuation of the present service is not in the public interest and it requests that the Commission permit the termination of the direct sale service to the extent required.

United is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that if such new arrangements are not made, it will file to abandon such facilities.

Comment date: September 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

[Docket No. CP87-131-001]

Take notice that on August 5, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP87-131-001 an amendment to the pending Niagara Spur Expansion application in Docket No. CP87-131-000 pursuant to section 7(c) of the Natural Gas Act to request the following additional authorizations: (1) Authorization to construct and operate a 4,500 horsepower compressor station at Lockport, New York; (2) authorization to operate, on a permanent basis, the 1,000 horsepower compressor facilities authorized for interim service in Docket No. CP86-251-000 at Station 230B, East Aurora, New York, and to construct and operate an additional 1,200 horsepower compressor unit at Station 230B, East Aurora, New York; and (3) authorization for phased construction and operation of the proposed facilities as the need for capacity evolves, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Tennessee requests authority to construct and operate additional compression for its Niagara Spur Expansion as a result of the fact that TransCanada Pipelines Ltd. (TransCanada) would deliver gas to Tennessee at the Niagara River at a pressure of 700 psig rather than 867 psig. Tennessee also requests that the construction and operation of facilities be authorized in phases as the need for capacity evolves. Tennessee states that each phase would involve the following facilities authorizations:

Phase I

(1) Authority to operate on a permanent basis the 3,500 horsepower compressor facilities authorized for interim service in Docket No. CP86-251-000 at Station 233, Livingston County, New York.

(2) Authority to operate on a permanent basis the 1,000 horsepower compressor facilities authorized for interim service in Docket No. CP86-251-000 at Station 230B, East Aurora, New York.

Phase II

(1) Authority to install check measurement and authorization facilities for approximately 300,000 Mcf of natural gas per day at the Niagara River.

(2) Authority to instruct and operate an additional 1,200 horsepower compressor unit at Station 230B, East Aurora, New York.

(3) Authority to construct and operate a 4,500 horsepower compressor station at Lockport, Niagara County, Nw York.

Tennessee states that the total estimated cost of the revised facilities is $22,783,000, an increase of $8,216,000 over the $14,567,000 estimated cost of the original facilities design. Tennessee proposes to use the expanded capacity to handle quantities of gas for Boundary Gas, Inc. (Boundary Phase 2), Canadian Gateway Pipeline System (Canadian Gateway), Ocean State Power (Ocean State), and Tennessee's own system supply. The following table shows the quantities (in Mcf per day) proposed by Tennessee for these customers in the year [1] indicated.

	1987	1988	1989	1990
Tennessee Supply	10.0	40.0	100.0	150.0
Boundary Phase 2	92.5	92.5	92.5	92.5
Canadian Gateway			50.0	50.0
Ocean State			50.0	
Total	102.5	132.5	292.5	292.5

Tennessee states that the quantities designated for its system supply are attributable to contracts between Tennessee and KannGaz Producers Ltd. (up to 125,000 Mcf per day in 1990) and Tennessee and TransCanada (up to 25,000 Mcf per day in 1990).

Tennessee proposes to delete its request to provide firm transportation service for Canadian Gateway in light of the Commission's decision to dismiss Canadian Gateway's application in Docket No. CP86-513-000. It is stated, however, that Tennessee expects Canadian Gateway to file a new application in the near future and that Tennessee would file a separate application to provide a firm transportation service for Canadian Gateway.

Tennessee states that, in the event the utilization of 500,000 Mcf per day of the proposed Niagara Spur capacity is not required by Ocean State as is now proposed for 1989, the resulting available capacity would be available for additional firm transportation service for Canadian Gateway until 1990. Tennessee further states that, to the extent firm capacity in excess of 50,000 Mcf per day is not available on the Niagara Spur as of November 1, 1989, and Canadian Gateway requests such additional firm transportation service, Tennessee would seek authorization to render that service and to construct and operate the facilities required for such service.

Tennessee states that it plans to transport 50,000 dekatherms per day for Ocean State through the expansion proposed in this docket from the date Tennessee is ready to commence firm transportation to Ocean State (estimated to be November 1, 1989) until the date that the capacity must be recalled for Tennessee's system supply (November 1, 1990, when Tennessee's firm purchase commitment for the KannGaz and TransCanada volumes reaches 150,000 Mcf per day) after which time service would be rendered as proposed by Tennessee at Docket No. CP87-132-000. Tennessee asserts that its application at Docket No. CP87-132-000 will be amended in the very near future to request authorization to use the above referenced capacity in the Niagara Spur until that capacity is needed for Tennessee's system supply.

Authorization to operate Phase I facilities is requested by November 1, 1987, when system supply and Boundary Phase 2 volumes are scheduled to flow. Tennessee states that no additional facilities construction would be required for this phase; Tennessee would only need authority to operate compression that is being constructed pursuant to its certificate authorization in Docket No. CP86-251-000. It is stated that if Phase I authorization is not received by the date on which all permanent facilities for Boundary Phase 2 transportation are in service, there would be a gap in authorization for the compression facilities due to pregranted abandonment in Docket No. CP86-251-000.

Tennessee states that Phase II facilities would be required to be ready for service on November 1, 1989, when any combination of the above-mentioned designated uses exceeds 132,500 Mcf per day.

[1] Each "year" is the twelve-month period commencing November 1 of the year indicated.

Tennessee asserts that the proposed phasing of construction and operation is desirable because it would postpone expenditures until such time as they are necessary to handle scheduled deliveries and because it would allow Phase I volumes to flow while any necessary environmental review of Phase II construction is completed.

Comment date: September 10, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.

[Docket No. CP87-483-000]

Take notice that on August 5, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP87-483-000, an application pursuant to section 7(b) of the Natural Gas Act for Authorization to abandon the following described facilities:

1. 2.7 miles of 26" pipeline from M.P. 527A-104 + 7.7 to M.P. 527A-105 + 0.000;

2. The 26" underwater Mississippi River crossing, Line No. 527A-100 from MLV 527A-105 + 0.00 to M.P. 527A-105 + 0.80,

all located in Plaquemines Parish, Louisiana, and all as more fully set forth in its request which is on file with the Commission and open to public inspection.

Tennessee proposes to remove and salvage 1,050 feet of the 26" Mississippi River crossing. The remaining .55 mile of the Mississippi River crossing and the contiguous 2.7 miles of 26" pipeline would be abandoned in place, it is stated.

Tennessee states that the facilities proposed to be abandoned constitute one of three river crossings through which gas can be moved on Tennessee's system from the South Pass gas supply areas southeast of the Mississippi River to Tennessee's facilities northeast of the Mississippi River, from whence the gas would flow to Tennessee's Compressor Station 527. Because of declining deliverability in the South Pass gas supply area, it is stated that the facilities remaining in place after abandonment as proposed herein would be adequate to move all gas available from the South Pass gas supply area into Tennessee's facilities northwest of the Mississippi River.

Tennessee estimates that the cost of removing 1,050 feet of the Mississippi River crossing and abandoning in place the remaining 0.55 mile of the Mississippi River crossing would be $420,500. Tennessee further estimates that the 1,050 feet of pipe would have a salvage value of $5,500. Cost of abandoning the contiguous 2.7 miles of pipe in place is estimated to be $40,000, it is stated.

Tennessee submits that abandonment of these facilities is in the public interest in that such abandonment would avoid the cost of replacing the 26" river crossing that would otherwise be required because of dredging operations in the Mississippi River.

Comment date: September 20, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Williams Natural Gas Co.

[Docket No. CP87-477-000]

Take notice that on August 3, 1987, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87-477-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation of compression facilities and replacement of approximately 78.6 miles of 16-inch pipeline on WNG's Cotton Valley-Saginaw 16-inch pipeline, and the abandonment of certain compression facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, WNG seeks authority to replace approximately 78.6 miles of 16-inch pipeline and appurtenant facilities between Washington County, Oklahoma and Newton County, Missouri; construct approximately 0.9 mile of 16-inch pipeline and abandon approximately 1.0 mile of 16-inch pipeline in Washington County, Oklahoma; reclaim the 4,000-horsepower Buffalo compressor station in Harper County, Oklahoma; construct the Cotton Valley compressor station in aWashington County, Oklahoma using horsepower from the Buffalo compressor station; install a 4,250-horsepower turbine compressor at the existing Saginaw compressor station in Newton County, Missouri; abandon the eight 170-horsepower compressor units at the Welch compressor station in Craig County, Oklahoma, by reclaim; reclaim ten 170- and one 660-horsepower compressor units at the Saginaw compressor station. WNG states that the proposed projects would enable WNG to more reliably serve the growing Joplin and Springfield, Missouri market areas during peak periods and to allow for automation of this portion of WNG's pipeline system.

WNG asserts that the estimated cost of the proposed facilities is $23,324,132, which will be paid from treasury cash. The total estimated reclaim cost for the porposed abandonments is $1,099,000 with a salvage value of $2,245,835, it is stated.

Comment date: September 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Wyoming-California Pipeline Co.

[Docket No. CP87-479-000]

Take notice that on August 4, 1987, Wyoming-California Pipeline Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP87-479-000 an application pursuant to section 7(c) and 7(b) of the Natural Gas Act and Subparts E and F of Part 157 of the Commission's Regulations thereunder for (A) an optional certificate of public convenience and necessity authorizing: (1) The construction and operation of facilities, (2) the transportation of natural gas in interstate commerce, and (3) conditional pregranted abandonment authority; and (B) a blanket certificate authorizing the construction and operation of facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states it is a general partnership whose partners are Coastal Western Pipeline Company and CIG Western Pipeline Company.

Applicant asserts it does not have any present operations but would, upon Commission approval of the certificate requested herein, be a natural gas company engaged in the transportation of natural gas in interstate commerce and would be subject to the Commission's jurisdiction under the NGA.

Applicant, as more fully set forth, proposes to construct and operate a major natural gas transmission system to transport natural gas to (1) serve the requirements of the enhanced oil recovery ("EOR") operations in the heavy oil fields in Kern County, California and (2) serve such other natural gas requirements which may be in the proximity of the proposed pipeline system. Applicant proposes to serve as an open access transporter as provided by Subpart G of Section 284.221 of the Commission's Regulations. Applicant asserts it does not propose to make any sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic commercial, industrial or any other use.

Applicant proposes to construct and operate approximately 1,000 miles of pipeline and ten compressor units totalling 53,000 compression

horsepower. The proposed pipeline would extend in a generally southwesterly direction from a point in the vicinity of Hams Fork, Lincoln County, Wyoming, to Piute Junction, San Bernardino County, California ("Piute Junction"), and then in a generally westerly direction to its terminus in the vicinity of Bakersfield, Kern County, California ("Bakersfield"). It is estimated that the facilities would cost $865,510,000.

Applicant states that the facilities would have an initial capacity to transport a total of up to 650 MMcf per day; up to 400 MMcf per day from the Overthrust area to Piute Junction and up to an additional 250 MMcf per day from Topock to Piute Junction, then the combined amount from Piute Junction to Bakersfield.

The subject filing includes the following provisions:

(1) Applicant proposes a facility equalization charge which would be applicable to short-term service. Applicant states that this charge is required in order to insure that short-term shippers pay their proportionate share of the depreciation expense.

(2) In Article 2.2 of the proposed General Terms and Conditions, Applicant states it reserves the right to suspend receipts or deliveries in order to reduce any out-of-balance conditions.

(3) In Article 3 of the proposed general terms and conditions, Applicant states that the requests for firm transportation service should be ranked on the basis of the term of service requested and the maximum receipt volume.

(4) In Article 3 of the proposed General Terms and Conditions, Applicant states that priority for firm service shall be based upon the economic value of the transaction to Applicant, with the transaction producing the greatest economic value having the highest priority of service.

(5) Applicant refers to Original Sheet No. 4, as attached, for proposed rates.

It is stated that the Applicant is filing concurrently and would accept a blanket transportation certificate under § 284.221 of the Commission's Regulations and would comply with the conditions set forth in Subpart A of Part 284 of such regulations.

SCHEDULE OF TRANSPORTATION RATES

Rate schedule	Rates per Mcf (Note 1)	
	Minimum	Maximum
WC–F:		
Gas Supply Area Segment—		
Reservation rate	$0	$1.83
Commodity rate	0.50	1.47
Authorized overrun rate	0.50	7.49

SCHEDULE OF TRANSPORTATION RATES—Continued

Rate schedule	Rates per Mcf (Note 1)	
	Minimum	Maximum
Unauthorized overrun rate	14.98	
Anschutz to Bakersfield Segment—		
Reservation Rate	0	17.49
Commodity rate	1.00	15.96
Authorized overrun rate	1.00	73.19
Unauthorized overrun rate	1.4638	
Topock to Bakersfield Segment—		
Reservation rate	0	6.73
Commodity rate	1.00	6.10
Authorized overrun rate	1.00	28.23
Unauthorized overrun rate	56.46	
WC–1:		
Gas Supply Area Segment—		
Commodity rate	0.50	7.49
Authorized overrun rate (Note 2)	0.50	7.49
Unauthorized overrun rate	14.98	
Anschutz to Bakersfield Segment—		
Commodity rate	1.00	73.19
Authorized overrun rate (Note 2)	1.00	73.19
Unauthorized overrun rate	1.4638	
Topock to Bakersfield Segment—		
Commodity rate	1.00	28.23
Authorized overrun rate (Note 2)	1.00	28.23
Unauthorized overrun rate	56.46	

Notes.—(1) Rates are stated in Mcf at a pressure base of 14.73 p.s.i.a.

(2) The Authorized Overrun Rate for WC–I shall be the same as the Commodity Rate stated in Exhibit B of the Transportation Service Agreement (Agreement).

Comment date: September 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Wyoming-California Pipeline Co.

[Docket No. CP87–480–000]

Take notice that on August 4, 1987, Wyoming-California Pipeline Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP87–480–000 an application pursuant to section 7(c) of the Natural Gas Act ("NGA"), 15 U.S.C. 717f(c), and § 284.221 of the Federal Energy Regulatory Commission's ("Commission") Regulations thereunder for authorization to provide open access non-discriminatory transportation service for others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Wyoming-California states it is a general partnership whose partners are Coastal Western Pipeline Company and CIG Western Pipeline Company.

It is further stated that Wyoming-California does not have any present operations but would, upon the Commission's issuance of the optional expedited certificate of public convenience and necessity requested in *Wyoming-California Pipeline Company*, Docket No. CP87–480–000, be a natural gas company engaged in the business of transporting natural gas in interstate commerce and thus subject to the Commission's jurisdiction under the NGA.

Comment date: September 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

7. Natural Gas Pipeline Co. of America

[Docket No. CP87–484–000]

Take notice that on August 5, 1987, Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard Illinois 60148, filed in Docket No. CP87–484–000 an application pursuant to section 7(b) and 7(c) and for permission and approval to abandon a portion of its firm sales service and for authority to convert the abandoned sales service to firm transportation, all as more fully set forth in the application which is on file and open to public inspection.

NGPL states that its sales, while fairly stable from 1975 to 1985, have declined dramatically since 1985. NGPL notes that its annual sales fell from 991 Bcf in 1984–1985 to 401 Bcf in 1986–1987 and that its average daily sales have slipped from a historical level of nearly 3.0 Bcf per day to only 0.1 Bcf in March and April of 1987. NGPL estimates that its sales for the next 12 months will not exceed 200 Bcf. NGPL indicates that even its winter season sales are minimal except on peak days.

NGPL asserts that the sales decline threatens its viability as a long-term supplier in its traditional market area. NGPL further asserts that it cannot afford to maintain a gas inventory necessary for a full merchant role if it continues in the role of a swing supplier for many of its customers. It is explained that NGPL's take or pay and physical take obligations to producers preclude it from continuing to develop and maintain large gas reserves in the current market environment.

To address what it regards as an untenable position, NGPL asserts that it must adjust its gas supply to the realities of current gas markets and therefore seeks to bring its sales certificates in line with current conditions. Specifically NGPL proposes to reduce the aggregate Daily Contract Quantities (DCQ's) under Rate Schedules DMQ and G–1 by 20 percent, or about 0.7 Bcf per day to a level of 2.8 Bcf per day. NGPL further proposes to reduce its customers' Daily Quantity Entitlements to the extent required to reflect the proposed new DCQ levels. NGPL also requests authority to render firm transportation service for each of its customers, corresponding to the volume of the reduction in sales DCQ's. NGPL propose that the conversion to firm transportation be subject to the terms of

NGPL's Rate Schedule FTS or successor rate schedules. NGPL notes that its DCQ adjustments, while similar to what could be done under Order No. 436, are proposed outside of Order No. 436 because NGPL cannot afford to wait until completion of the Order No. 436 transition period to begin to solve its critical problems.

It is stated that the specific proposed DCQ conversions for each customer are shown in Summary of Contract Quantities which is available from the Federal Energy Regulatory Commission, 825 N. Capitol St., NE, Washington, DC 20426.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19632 Filed 8-26-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-461-000]

Request Under Blanket Authorization, Tennessee Gas Pipeline Company

August 20, 1987.

Take notice that on July 24, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77252, filed at Docket No. CP87-461-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205 and 157.211), as supplemented on August 17, 1987, and Applicant's blanket authority granted at Docket No. CP82-413-000 on September 1, 1982, for permission to establish an additional sales tap and metering facilities for the Town of Centerville, Tennessee (Centerville), all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that the proposed additional sales point and interconnection would enable Centerville to accommodate the need for additional natural gas in a developing area northeast of Centerville.

Applicant also states that the proposed sales point would consist of a 2-inch hot tap to be placed on Tennessee's Line No. 500-1 at M.P. 559-1+5.9 in Hickman County, Tennessee, and metering facilities, including regulation, to be located on property provided by Centerville.

Applicant further states that Centerville has not provided an estimate of the quantity of gas to be delivered through the proposed facility, but Applicant states that its estimated incremental quantity, if any, delivered through the proposed facility would not exceed 150 Mcf (154 dt) during the first heating season and would not increase Centerville's maximum daily quantity.

Because Centerville's maximum daily quantity would not be increased and because of the relative proximity of Centerville delivery points (Centerville and Only), there would be no impact on Tennessee's peak day and annual deliveries as a result of the proposed facilities, it is stated.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19631 Filed 8-26-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP81-54-033, RP87-26-009, and RP85-178-016]

Rate Change Filing; Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

August 20, 1987.

Take notice that on August 17, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing revised tariff sheets in Second Revised Volume No. 1 and Original Volume No. 2 to its FERC Gas Tariff to be effective August 1, 1987.[1]

Tennessee states that it is filing these revised tariff sheets pursuant to Opinion No. 249-A and the Order Approving Uncontested Offers of Settlement in Docket Nos. RP85-178, *et al.* both issued July 31, 1987. Tennessee states that in accord with these orders it is establishing new base tariff rates to be effective August 1, 1987 and is eliminating the minimum bill charge provisions from its sales and transportation rate schedules.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. (18 CFR 385.211, 385.214.) All such motions or protests should be filed on or before August 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

[1] The revised tariff sheets are listed in the appendix.

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with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Second Revised Volume No. 1

First Revised Sheet No. 1
Third Revised Sheet No. 20
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Fourth Revised Sheet No. 21
Second Revised Sheet Nos. 22–24
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Original Sheet Nos. 40 through 45
First Revised Sheet Nos. 47–48
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First Revised Sheet Nos. 57–59
First Revised Sheet Nos. 77–81
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First Revised Sheet No. 110A
Substitute First Revised Sheet No. 115
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Original Volume No. 2

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Substitute Fourth Revised Sheet No. 5
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[FR Doc. 87–19635 Filed 8–26–87; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF–487 FRL–3252–7]

Pesticide Tolerance Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of a pesticide petition for an exemption from the requirment of a tolerance for the biological insecticide UCB–87 (codling moth granulosis technical concentrate containing at least 2×10^{12} capsules/gram). Dr. Louis A. Falcon petitioned for this exemption.

ADDRESS: By mail, submit comments identified by the document control number [PF–487] to the following address.

Information Services Section (TS–757C), Attn: Product Manager (PM) 17, Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Information Services Section (TS–757C) Room 236, CM #2 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Joseph M. Tavano, Acting Product Manager (PM) 17, Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2690.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition, PP 7G3548, from Dr. Louis A. Falcon, Professor of Entomology and Insect Pathologist, University of California, 349 Hilgrad Hall, Berkley, CA 94720, requesting an exemption from the requirement of a tolerance for the biological insecticide UCB–87 (codling moth granulosis virus technical concentrate containing at least 2×10^{12} capsules/gram) to be used on applies, pears, walnuts, plums, and prunes in connection with an experimental use permit. Residues

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would be determined by biological laboratory techniques.

Authority: 21 U.S.C. 346a.

Dated: August 19, 1987.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-19653 Filed 8-26-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180742; FRL-3253-3]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 23 States listed below and eight crisis exemptions initiated by various States. Also listed are five denials from EPA of requests for specific exemptions from the Department of Agriculture in various States. These exemptions, issued during the months of May and June, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific or crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Room 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of iprodione on rice to control sheath blight; May 29, 1987 to September 1, 1987. (Stan Austin)

2. Arkansas Plant Board for the use of bromoxynil on rice (dry seeded) to control hemp sesbania, morningglory, pale smartweed, and cocklebur; May 8, 1987 to August 1, 1987. (Jim Tompkins)

3. California Department of Food and Agriculture for the use of glyphosate on dates to control Bermudagrass; June 17, 1987 to December 1, 1987. (Stan Austin)

4. California Department of Food and Agriculture for the use of formetanate hydrochloride on strawberries to control two-spotted mites; June 30, 1987 to June 29, 1988. (Libby Pemberton)

5. California Department of Food and Agriculture for the use of carbaryl on pomegranates to control filbert moth; June 18, 1987 to August 31, 1987. (Libby Pemberton)

6. Florida Department of Agriculture and Consumer Services for the use of cyromazine on tomatoes grown for fresh market only to control leafminers; May 27, 1987 to December 31, 1987. Florida had initiated a crisis exemption for this use. (Gene Asbury)

7. Georgia Department of Agriculture for the use of permethrin on southern peas to control cowpea curculio; June 30, 1987 to October 31, 1987. Georgia had intiated a crisis exemption for this use. (Libby Pemberton)

8. Idaho Department of Agriculture for the use of fluvalinate on alfalfa grown for seed to control aphids, weevils, and grasshoppers; June 9, 1987 to August 31, 1987. (Gene Asbury)

9. Idaho Department of Agriculture for the use of iprodione on irrigated potatoes to control Sclerotinia stem rot; June 2, 1987 to July 31, 1987. (Jim Tompkins)

10. Idaho Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 18, 1987 to September 15, 1987. (Stan Austin)

11. Illinois Department of Agriculture for the use of sethoxydim on snap beans to control Johnsongrass; June 17, 1987 to August 31, 1987. (Jim Tompkins)

12. Louisiana Department of Agriculture for the use of iprodione on rice to control sheath blight; May 29, 1987 to September 1, 1987. (Stan Austin)

13. Louisiana Department of Agriculture for the use of bromoxynil on rice to control hemp sesbania, morningglory, and cocklebur; May 12, 1987 to August 1, 1987. (Jim Tompkins)

14. Maine Department of Agriculture, Food, and Rural Resources for the use of iprodione on potatoes to control Sclerotinia; June 10, 1987 to July 31, 1987. (Jim Tompkins)

15. Massachusetts Department of Food and Agriculture for the use of metalaxyl on cranberries to control Phytophthora; June 5, 1987 to December 1, 1987. (Jim Tompkins)

16. Michigan Department of Agriculture for the use of fluazifop-butyl on celery to control grassy weeds; May 13, 1987 to September 1, 1987. (Libby Pemberton)

17. Michigan Department of Agriculture for the use of Pro-Gro (50% thiram/30% carboxin) on onion seedlings to control onion smut; May 1, 1987 to April 30, 1988. (Stan Austin)

18. Minnesota Department of Agriculture for the use of sethoxydim on snap beans to control wild proso millet; June 10, 1987 to August 31, 1987. (Jim Tompkins)

19. Minnesota Department of Agriculture for the use of (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1-H-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid on soybeans to control Jerusalem artichokes; May 22, 1987 to June 30, 1987. Solicitation of public comment was published in the **Federal Register** of May 27, 1987 (52 FR 19775), no comments were received. The exemption was granted based on the finding that there are no registered alternative pesticides which will provide adequate control of this pest is soybeans. A significant economic loss may result if an effective pesticide is not made available to those soybean growers with fields infested with Jerusalem artichokes. Residues of imazethapyr will not exceed 0.1 ppm in soybeans. This residue level can be toxicologically supported and will not pose a threat to the public health. The percent PADI occupied by all current uses is 0.023 percent. The proposed use should not pose an unreasonable hazard to the environment. (Libby Pemberton)

20. Mississippi Department of Agriculture for the use of iprodione on rice to control sheath blight; May 29, 1987 to September 1, 1987. (Stan Austin)

21. Mississippi Department of Agriculture and Commerce for the use of bromoxynil on rice (dry seeded) to control hemp sesbania, morningglory, and cocklebur; May 8, 1987 to August 1, 1987. (Jim Tompkins)

22. Montana Department of Agriculture for the use of fluvalinate on alfalfa grown for seed to control grasshoppers; June 9, 1987 to August 31, 1987. (Gene Asbury)

23. Nebraska Department of Agriculture for the use of fluazifop-butyl on bulb onions to control grasses; June 18, 1987 to August 15, 1987. (Jim Tompkins)

24. Nevada Department of Agriculture for the use of fluvalinate on alfalfa grown for seed to control lygus bugs and aphids; June 1, 1987 to August 31, 1987. (Gene Asbury)

25. New Mexico Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 18, 1987 to September 1, 1987. (Stan Austin)

26. New York Department of Environmental Conservation for the use of vinclozolin on snap beans to control gray mold; June 1, 1987 to September 15, 1987. (Gene Asbury)

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27. New York Department of Environmental Conservation for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; May 18, 1987 to September 30, 1987. (Gene Asbury)

28. New York Department of Environmental Conservation for the use of permethrin on dry bulb onions to control onion thrips; May 20, 1987 to November 30, 1987. (Jim Tompkins)

29. Ohio Department of Agriculture for the use of sodium chlorate on navy beans as a desiccant to aid in harvesting; May 27, 1987 to October 31, 1987. (Jim Tompkins)

30. Ohio Department of Agriculture for the use of fluazifop-butyl on lettuce, and endive (escarole) to control fall panicum, large crabgrass, and barnyard grass; June 4, 1987 to September 30, 1987. (Libby Pemberton)

31. Oregon Department of Agriculture for the use of glyphosate on wheat to control volunteer rye grain; May 21, 1987 to July 1, 1987. (Stan Austin)

32. Oregon Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 18, 1987 to September 1, 1987. (Stan Austin)

33. Oregon Department of Agriculture for the use of iprodione on irrigated potatoes to control Sclerotinia stem rot; June 2, 1987 to July 31, 1987. (Jim Tompkins)

34. Oregon Department of Agriculture for the use of iprodione on craneberries to control botrytis fruit rot; May 29, 1987 to September 30, 1987. (Jim Tompkins)

35. Oregon Department of Agriculture for the use of fluvalinate on alfalfa grown on seed to control aphids and weevils; June 9, 1987 to August 31, 1987. (Gene Asbury)

36. Oregon Department of Agriculture for the use of fluazifopbutyl on onions and garlic to control grasses; May 13, 1987 to October 30, 1987. (Donald Stubbs)

37. Pennsylvania Department of Agriculture for the use of anilazine on watercress to control leaf spot; May 22, 1987 to October 31, 1987. (Libby Pemberton)

38. Texas Department of Agriculture for the use of sodium chlorate on wheat as a desiccant to aid in harvest; June 26, 1987 to July 21, 1987. (Jim Tompkins)

39. Washington Department of Agriculture for the use of iprodione on irrigated potatoes to control Sclerotinia stem rot; June 2, 1987 to July 31, 1987. (Jim Tompkins)

40. Washington Department of Agriculture for the use of vinclozolin on snap beans to control gray mold; June 1, 1987 to September 30, 1987. (Gene Asbury)

41. Washington Department of Agriculture for the use of fluvalinate on alfalfa grown for seed to control lygus bugs and aphids; June 1, 1987 to August 31, 1987. (Gene Asbury)

42. Washington Department of Agriculture for the use of glyphosate on wheat to control volunteer rye grain; May 21, 1987 to July 1, 1987. (Stan Austin)

43. Washington Department of Agriculture for the use of iprodione on raspberries to control fruit rot; May 13, 1987 to July 31, 1987. (Jim Tompkins)

44. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of fluazifop-butyl on celery to control grassy weeds; May 13, 1987 to September 1, 1987. (Libby Pemberton)

45. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of sodium chlorate on dry edible beans as a desiccant to aid in harvest; May 27, 1987 to October 31 1987. (Jim Tompkins)

Crisis exemptions were initiated by the:

1. Georgia Department of Agriculture on May 28, 1987 for the use of permethrin on southern peas to control the cowpea curculio. The need for this program is expected to last until October 31, 1987. (Libby Pemberton)

2. Massachusetts Department of Food and Agriculture on June 30, 1987 for the use of sodium fluoaluminate on potatoes to control the Colorado potato beetle. The need for this program is expected to last until September 30, 1987. (Gene Asbury)

3. North Carolina Department of Agriculture on May 13, 1987 for the use of sethoxydim on Irish potatoes to control Johnsongrass. This program has ended. (Jim Tompkins)

4. North Dakota Office of the Governor on June 2, 1987 for the use of metribuzin (4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4*H*)-one) on lentils to control wild mustard. This program has ended. (Libby Pemberton)

5. Oregon Department of Agriculture on June 18, 1987 for the use of sethoxydim on snap beans to control wild proso millet. This program has ended. (Jim Tompkins)

6. Oregon Department of Agriculture on May 11, 1987 for the use of sethoxydim on green peas to control annual ryegrass and barnyard grass. This program has ended. (Jim Tompkins)

7. Texas Department of Agriculture on June 12, 1987 for the use of iprodione on rice to control sheath blight. This program has ended. (Stan Austin)

8. Wisconsin Department of Agriculture, Trade, and Consumer Protection on May 13, 1987 for the use of metalaxyl on cultivated ginseng to control phytophthora cactorum. This program is expected to last until May 12, 1988. (Jim Tompkins)

EPA has denied requests from the:

1. Michigan Department of Agriculture for the use of clofentezine on apples to control European red mites.

2. Ohio Department of Agriculture for the use of clofentezine on apples to control European red mites.

3. Oregon Department of Agriculture for the use of clofentezine on pears and pears interplanted with apples to control spider mites.

4. Virginia Department of Agriculture and Consumer Services for the use of clofentezine on apples to control European red mites.

5. West Virginia Department of Agriculture for the use of clofentezine on apples to control European red mites.

Notices of receipt and opportunity for public comment were published in the **Federal Register** for these requests listed above on April 1, 1987 (52 FR 10406 and 10407). No comments were received in connection with these notices. The basis for the denials were that the Agency has unresolved questions regarding some of the toxicological data submitted to support the establishment of permanent tolerances for clofentezine, and information submitted did not support the contention that significant economic losses were likely to result. (Jack E. Housenger)

Authority

7 U.S.C. 136.

Dated: August 18, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 87-19655 Filed 8-26-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3251-4]

Final Determination; Unconsolidated Valley—Fill Underlying Pleasant City in Guernsey County, OH

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act, the U.S. Environmental Protection Agency (EPA) Region V Administrator has determined that the Unconsolidated Valley—Fill Aquifer underlying Pleasant City in Guernsey County, Ohio, hereafter called the Pleasant City Aquifer, is the sole or principal source of drinking water for

Pleasant City and that this aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all Federal financially assisted projects constructed in the Pleasant City Aquifer area and its principal recharge zone will be subject to EPA's review to ensure that these projects are designed and constructed such that they do not create a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 P.M. Eastern time on September 10, 1987.

ADDRESSEES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Office of Ground Water 5WG–TUB9, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Wm. Turpin Ballard, Office of Ground Water, U.S. Environmental Protection Agency, Region V, at 312–886–2504.

SUPPLEMENTARY INFORMATION:

1. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300f, 300h–3(e), Pub. L. 93–523) states:

(e) If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Effective March 9, 1987, authority to make a Sole Source Aquifer Designation Determination was delegated to EPA Regional Administrators.

On August 27, 1984, EPA received a petition from the Pleasant City Council and the Honorable Clayton Short, Mayor, which petitioned EPA to designate the Pleasant City Aquifer as a Sole Source Aquifer. On January 5, 1987, EPA published a notice in the *Daily Jeffersonian*, a local newspaper, which served to reprint the petition, to announce a public comment. The public was permitted to submit comments and information on the petition until February 5, 1987.

II. Basis for Determination

Among the factors to be considered by the U.S. EPA in connection with the designation of an area under section 1424(e) are: (1) whether the Pleasant City Aquifer is the area's sole or principal source of drinking water, and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the Region V Administrator has made the following findings, which are the bases for the determination noted above:

1. The Pleasant City Aquifer currently serves as the "sole source" of drinking water for approximately 990 persons in the Pleasant City area.

2. There is no existing alternative drinking water source or combination of sources which provides 50 percent or more of the drinking water to the designated area, nor is there any available cost-effective future source capable of supplying the drinking water demands for the Pleasant City community.

3. The Pleasant City Aquifer is an unconfined aquifer consisting of water bearing layers of sand and gravel interbedded with less permeable layers of silt and clay. The upper limits of the screened interval of Pleasant City's wells are within 25 to 36 feet of the ground surface. At such depths, downward migration of surface or near-surface contaminants into the upper water producing zone could occur in a relatively short time, with little opportunity for attenuation of the contaminant. Sources for such contamination include, but are not limited to: (1) residential or commercial sewage disposal sites, (2) use and improper storage of agricultural chemicals, (3) chemical spills associated with rail and highway transport, (4) leaking underground storage tanks, (5) leachment of spoil and gob piles associated with proposed and existing coal mining operations, (6) leachment from improperly constructed landfills. Should any of the above sources of contamination enter the public water supply, there could be a significant negative effect on drinking water quality with a consequent adverse effect on public health.

III. Description of the Pleasant City Aquifer, Along With Its Recharge Zone

The Pleasant City Aquifer is an unconfined shallow aquifer composed of permeable sands and gravels interbedded with less permeable silt and clay layers. The unconsolidated sediments are of glacial or alluvial origin and reach a total thickness of up to 60 feet. Estimated areal extent of the aquifer is approximately 1.5 to 1.75 square miles.

Principal recharge of the aquifer is due mainly to precipitation and infiltration downward through the unconsolidated aquifer materials. Secondary sources of recharge may include infiltration of intermittent floodwaters and ground water underflow from upstream alluvial deposits. Due to the average amount of annual rainfall of 30–32 inches, the streams can be classified as gaining streams. Therefore, they do not contribute appreciably to aquifer recharge.

The review area for Federal financially assisted projects will be the alluvial valley occupied by Pleasant City from S.R. 313 south and west to end at the SW ¼ of Section 7, T8N, R9W Byesville, Ohio (USGS 7½ minute quadrangle). The aquifer recharge area is coincident with the aquifer boundary to a line across the valley ½ mile northeast of and downflow from the Pleasant City wellfield.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public and various technical publications. The above data are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region V, Office of Ground Water, 230 S. Dearborn (5WG–TUB9), Chicago, Illinois 60604.

V. Project Review

EPA Region V is working with the Federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures and Memoranda of Understanding will be developed through which EPA will be notified or proposed commitments by Federal agencies for projects which could contaminate the Pleasant City Aquifer, upon which Pleasant City depends for its sole source water supply. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial

assistance may be made. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be made to plan or design the project to ensure that it will not so contaminate the aquifer.

Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible on existing or future State and local control mechanisms in protecting the ground water quality of the Pleasant City Aquifer. Included in the review of any Federal financially assisted project will be the coordination with the State and local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support State and local ground water protection mechanisms.

VI. Summary and Discussion of Public Comments

None of the comments received from the public were opposed to designation. The area considered for designation was determined to meet the criteria of an area which depends upon an aquifer for its sole or principal drinking water source and which, if contaminated, would pose a serious threat to the health of the residents of Pleasant City.

VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the "small entity" shall have the same meaning as given in section 601 of the RFA. This action is only applicable to the Pleasant City area.

The only affected entities will be those area-based businesses, organizations or governmental jurisdictions that request Federal financial assistance for projects which have the potential to contaminate the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact to today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act (NEPA) as amended 42 U.S.C. 431, et seq. Integration of those related review procedures with sole source aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Pleasant City Aquifer of the Pleasant City, Ohio, area. It provides an additional review of ground water protection measures, incorporating State and local measures, whenever possible, for only those projects which request Federal financial assistance.

Dated: August 17, 1987.

Frank M. Covingtron,

Acting Regional Administrator.

[FR Doc. 87-19658 Filed 8-26-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review by the Office of Management and Budget

August 21, 1987.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR § 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Proposal to approve under OMB delegated authority the extension, with revision, of the following reports:

1. Report title: Application for Prior Approval to Become a Bank Holding Company:

Agency Form Number: FR Y-1
OMB Docket Number: 7100-0119
Frequency: Event-generated
Reporters: Corporation seeking to become a bank holding company
Annual reporting hours: 24,960 hours
Significant effect on small businesses is not expected.

General description of the report: This application provides systematic data on the structure of the proposal to acquire one or more banks, on the financial condition of the applicant, and on conpetitive and convenience factors. The information is necessary to enable the Board to fulfill its responsibilities under the Bank Holding Company Act. The proposed revisions request more information on capital instruments to reflect revisions made in the Board's capital guidelines; ask respondents to discuss any recent material changes affecting financial condition; and clarify language in the form and instructions.

This report is required in order to engage in the activity and is authorized by law [12 U.S.C. 1842 section 3(a)(1)]. Individual respondent data are available to the public except any portions granted confidential treatment at applicant request [5 U.S.C. 552(b) (4) and (8)].

2. Report title: Application for Prior Approval for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company:

Agency Form Number: FR Y-2
OMB Docket Number: 7100-0171
Frequency: Event-generated
Reporters: Registered bank holding companies
Annual reporting hours: 35,743 hours
Significant effect on small businesses is not expected.

General description of report: This report is an application for prior approval of the acquisition of direct or indirect ownership, control, or power to vote a certain percentage of the voting shares of a bank, and requests financial and managerial information on the applicant, and data on competition, public convenience and needs. The proposed revisions include a request for separate information on goodwill and other intangibles, and for additional information on debt instruments, loan commitments and other data affecting capital ratios, and a request for

discussion of material recent changes affecting financial condition.

This report is required and is authorized by law [12 U.S.C. 1842 section 3(a)(3)]. Individual respondent data are available to the public except any portions which have been granted confidential treatment at applicant request [5 U.S.C. 552(b) (4) and (8)].

3. Report title: Application for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities:

Agency Form Number: FR Y–4
OMB Docket Number: 7100–0121
Frequency: Event-generated
Reporters: Bank holding companies
Annual reporting hours: 550 hours
Significant effect on small businesses is not expected.

General description of the report: This form is completed by a bank holding company seeking prior approval to acquire or retain the assets or shares of a nonbank company. The proposed revisions request more information on debt instruments and intangible assets, on any debt incurred in connection with the proposed transaction, and the source of funding for any proposed leveraged activity.

This report is required and authorized by law [12 U.S.C. 1843 section 4(c)(8)]. Individual respondent data are available to the public except any portions granted confidential treatment at applicant request (5 U.S.C. 552(b) (4) and (8)].

4. Report title: Application for Prior Approval to Become a Bank Holding Company by Any Company Organized Under the Laws of a Foreign Country and Seeking Initial Entry into the United States Through Acquisition of a U.S. Subsidiary Bank:

Agency Form Number: FR Y–lF
OMB Docket Number: 7100–0119
Frequency: Event-generated
Reporters: Companies organized under the laws of a foreign country and proposing to become a U.S. bank holding company.
Annual reporting hours: 616 hours
Significant effect on small businesses is not expected.

General description of the report: This application provides systematic data on the structure of the proposal, on the financial condition of the applicant and its proposed subsidiary (ies), and on competition, public convenience and needs. The information is required to enable the Federal Reserve to fulfill its responsibilities under the Bank Holding Company Act. The proposed revisions involve clarifications and item changes to conform the application to the FR Y–1 application filed by domestic bank holding companies (including proposed revisions to that application), and elimination of certain items requesting information obtainable elsewhere.

This application is required and authorized by law [12 U.S.C. 1842 section 3(a)(1)]. Individual respondent information is available to the public except those portions granted confidential treatment at applicant request [5 U.S.C. 552(b)(4)].

Proposal to approve under OMB delegated authority the extension, without revision, of the following report:

1. Report Title: OTC Margin Stock Report
Agency Form Number: FR 2048
OMB Docket Number: 7100–0004
Frequency: quarterly
Reporters: Corporations with over-the-counter stock
Annual reporting hours: 100
Small businesses are not affected.

General description of the report: This information collection is voluntary [15 U.S.C. 78g, 78w] and is not given confidential treatment.

This report is used to gather information on certain corporations which have stock trading over-the-counter and that are being considered for inclusion on the Board's List of OTC Margin Stocks.

Board of Governors of the Federal Reserve System, August 21, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–19604 Filed 8–26–87; 8:45 am]

BILLING CODE 6210–01–M

Agency Forms Under Review by the Office of Management and Budget

August 21, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register**.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below:

Federal Reserve Board Clearance Officer Nancy Steele, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. Report title: Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer:

Agency Form Number: FR MSD–5
OMB Docket Number: 7100–0101
Frequency: On occasion
Reporters: Banks who engage in activities as a municipal securities dealer and persons designated as municipal securities principals and representatives

Annual Reporting Hours: 47
Significant effect on small businesses is not expected.

General description of report: This information collection is mandatory [15 U.S.C. 78o–4(c)(5), 78q and 78w] and is given confidential treatment [5 U.S.C. 552(b)(6)].

This notice must be filed within 30 days after a person associated in a professional capacity with a bank municipal securities dealer terminates employment. The notice is a compliance vehicle for rules of the Municipal Securities Rulemaking Board and for related securities and banking laws. It is also a source document for updating information on interagency computer system of records.

2. Report title: Uniform Form for Registration as a Transfer Agent and for Amendment to Registration:
Agency Form Number: FR TA–1
OMB Docket Number: 7100–0099
Frequency: On occasion
Reporters: State number banks, bank holding companies, and nondeposit trust company subsidiaries of bank holding companies.
Annual Reporting Hours: 80
Significant effect on small businesses is not expected.

General description of report: This information collection is mandatory [Section 17A(c) of the Securities Exchange Act of 1934; and 12 CFR 208.8(f)(2)] and is not given confidential treatment.

This interagency form fulfills the statutory registration requirements for entities acting as transfer agents and enables certain basic information changes concerning the transfer agents to become known by the supervisory agencies.

3. Report title: Notice Claiming Status as an Exempt Transfer Agent:
Agency Form Number: FR 4013
OMB Docket Number: 7100–0137
Frequency: On occasion
Reporters: Banks, bank holding companies, and trust companies
Annual Reporting Hours: 16
Significant effect on small businesses is not expected.

General description of report: This information collection is mandatory [15 U.S.C. 78q–1(c)(1)] and is not given confidential treatment.

This notice provides a method for banks, bank holding companies, and trust companies who are subject to Federal Reserve Board supervision and who are engaged as a transfer agent on behalf of an issuer of securities to claim exemption from several of the Securities and Exchange Commission's rules applicable to registered transfer agents.

Board of Governors of the Federal Reserve System, August 21, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87–19605 Filed 8–26–87; 8:45 am]
BILLING CODE 6210–01–M

Agency Forms Under Review by the Office of Management and Budget

August 21, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below:

Federal Reserve Board Clearance Officer Nancy Steele, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

Proposal to approve under OMB delegated authority the extension, with revision, of the following reports:

1. Report title: Application for Prior Written Consent to Effect a Merger:
Agency Form Number: FR 2070
OMB Docket Number: 7100–0045
Frequency: On occasion
Reporters: State chartered banks that are members of the Federal Reserve System
Annual reporting hours: 1,540
Significant effect on small businesses is not expected.

General description of the report: This form provides information on the pro forma financial condition of the applicant, a description of the proposed merger and the advantages it offers to the public's needs and convenience. The form is used by the Federal Reserve to evaluate the proposed merger as to financial soundness, competitive acceptability and consistency with the public interest. The proposed revisions include clarifications, changes to conform with recent revisions of bank holding company application forms (FR Y–1, FR Y–2), and requests for certain financial data in accord with changes in the Board's capital guidelines.

This report is required by law [12 U.S.C. 1828 (c)]. Parts may be given confidential treatment at applicant's request [5 U.S.C. 552(b)(4)].

2. Report title: Change in Bank Control Form:
Agency Form Number: FR 2081
OMB Docket Number: OMB No. 7100–0134
Frequency: On occasion
Reporters: Persons proposing to acquire control of a bank holding company or State member bank
Annual Reporting Hours: 11,067
Significant effect on small businesses is not expected.

General description of report: This form is mandatory under the Change in

Bank Control Act, which seeks to maintain public confidence in the banking system by preventing anti-competitive or otherwise adverse combinations of banks. The form requests information regarding the factors that must be considered by the Board under the statute, including a description of the proposal, and financial and employment data concerning the acquiring party. The proposed revisions include certain additional information and publication requirements pursuant to the Anti-Drug Abuse Act of 1986.

This information collection is required by law [12 U.S.C. 1817(j)]. Parts may be given confidential treatment at applicant's request [5 U.S.C. 552(b)(4)].

3. Report title: Applications for Membership in the Federal Reserve System:

Agency Form Number: FR 2083, 2083A–2083E
OMB Docket Number: 7100–0046
Frequency: On occasion
Reporters: Commercial banks and certain mutual savings banks
Annual Reporting Hours: 3,071
Significant effect on small businesses is not expected.

General description of the report: This application provides managerial, financial and structural data necessary for the Federal Reserve Board to evaluate a new or existing bank's application for admission to the Federal Reserve System pursuant to criteria established by statute and regulation (Regulation H). The proposed revisions would standardize the format of certain information and request certain additional information usually developed in the normal course of business in opening a new bank.

This information collection is authorized by law [12 U.S.C. 321–328]. Parts may be given confidential treatment at applicant's request [5 U.S.C. 552(b)(4)].

4. Report title: Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer:

Agency Form Number: FR MSD–4
OMB Docket Number: 7100–0100
Frequency: On occasion
Reporters: Banks who engage in activities as a municipal securities dealer and persons designated as municipal securities principals and representatives
Annual reporting hours: 773
Significant effect on small businesses is not expected.

General description of report: This information collection is mandatory [15 U.S.C. 78o–4(c)(5), 78q and 78w] and is given confidential treatment [5 U.S.C. 552(b)(6)]. The filing of this application is required of a Municipal Securities Dealer Bank (MSD) and a person associated with a MSD, prior to such person functioning in a professional capacity. This application serves to verify compliance with the rules of the Municipal Securities Rulemaking Board and with related securities and banking laws. It is also used as a source document for entry into an interagency computer system of records. The proposed revisions are deletion of certain spaces for notations by receiving agency personnel, since these items are rarely used; and changing the requested record of residential addresses from the past ten years to the past five, corresponding to changes in MSRB rule G–7.

Board of Governors of the Federal Reserve System, August 21, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87–19606 Filed 8–26–87; 8:45 am]
BILLING CODE 6210–01–M

Formation of, Acquisition by, or Merger of Bank Holding Companies; Alaska Mutual Bancorp.

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 4, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Alaska Mutual Bancorporation,* Anchorage, Alaska; to merge with United Bancorporation Alaska, Inc., Anchorage, Alaska, and thereby indirectly acquire United Bank Alaska, Anchorage, Alaska, and United Bank Alaska Southeastern, Juneau, Alaska.

Board of Governors of the Federal Reserve System, August 24, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87–19701 Filed 8–26–87; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Project Grants for Health Services to the Homeless Population

AGENCY: Public Health Service, HHS.
ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications are being accepted for a program of grants to provide primary health care services and substance abuse services to homeless populations. These grants will be administered under the provisions of Pub. L. 100–77, the "Stewart B. McKinney Homeless Assistance Act." A "homeless individual" is defined as one who lacks housing, including those persons in emergency shelters or in transition housing. The grants will be available to public or nonprofit private entities. HRSA will consider applications only in areas with sufficient concentration of homeless individuals to insure efficiency in the deployment of health care resources. Applications that can demonstrate broad based community support and linkages with other providers of critical support needs of this population such as the provision of emergency shelter and food will be given priority. The application must have a written plan and written commitment of active support of local resources. The application must contain the agreements required by statute.

DATE: To receive consideration as being on time, mailed applications must be postmarked on or before October 5, 1987. Hand delivered applications must be received by 5:00 PM on October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Application kits (Form PHS 5161–1 with

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revised factsheet DHHS Form 424 as approved by the Office of Management and Budget under control number 0348–0006) and additional information (including a complete copy of the applicable statutory provisions) may be obtained from, and completed applications should be mailed to, the appropriate Regional Health Administrator (See appendix).

SUPPLEMENTARY INFORMATION: Pub. L. 100–77 adds a new section 340 to the Public Health Service Act to authorize the Secretary, acting through the Administrator of HRSA, to award grants for the purpose of enabling grantees, directly or through contracts, to provide for the delivery of health care services, including primary care services, alcohol and substance abuse services, and mental health services, for homeless persons. The Fiscal Year 1987 Supplemental Appropriations Act (Pub. L. 100–71) provides $46 million for such grants, to remain available through September 30, 1988. Grantees must meet the following minimum qualifications: be a public or nonprofit private entity; have the capacity to efficiently administer the grant; and, for services provided under the grant that are covered by the approved State Medicaid plan, the entity must: (1) Have entered into a participation agreement under the State plan and be qualified to receive payments under the plan, or (2) the entity must have contracted for the provision of services with an organization which can meet these participation requirements. Under the statute, preference in the award of grants was given to applicants which: (1) Are experienced in the direct delivery of primary health care services to homeless individuals or medically underserved populations or are experienced in the treatment of substance abuse and in the provision of substance abuse services to homeless individuals or medically underserved populations; and (2) agree to provide health care services to homeless individuals through both public entities and private organizations. The purpose of the latter preference criterion is to encourage applicants to use a broad cross-section of community providers and to obtain maximum community support and participation.

Grantees will be required to provide the following services: primary health care services at locations assessible to homeless persons; substance abuse services, which may include detoxification and residential treatment for substance abuse provided in settings other than hospitals; 24-hour emergency health services; a system for referrals to mental health services; and a system for inpatient referral, outreach, and aid in establishing eligibility for and obtaining services under entitlement programs. A grantee may choose, in lieu of mental health referral services, to provide mental health services to homeless individuals either directly or through contract.

Grant funds may not be expended for the following: inpatient care except for residential treatment for substance abuse provided in settings other than hospitals; cash payments to recipients of services; or purchase or improvement of real property (other than minor remodeling) or purchase of major medical equipment unless waived by the Secretary under the provisions of the statute. Federal grant funds may not supplant existing public or private resources that are currently allocated to assist the homeless populations. Under section 340(e), the amount of federal grant funds may not exceed 75 percent of the cost of providing health care services under the grant. The applicant must make available non-Federal contributions equal to the remaining portion of providing health care services. Non-Federal contributions may be in cash or in-kind, fairly evaluated, including plant, equipment or services. Funds currently provided by the Federal Government, under this or other programs, or services assisted to any significant extent by the Federal Government, may not be counted toward the non-Federal contribution requirement. Any cash or in-kind contributions that, prior to February 26, 1987, were made available by any public or private entity for the purpose of assisting homeless individuals, including the provision of health services for the homeless, may not be counted in meeting the non-Federal matching requirement. The Secretary may waive the 25 percent contribution requirement if the applicant is a private nonprofit community health center (CHC) as defined under section 330 of PHS Act and the Secretary determines that it is not feasible for the applicant to comply with that requirement.

Application Evaluation Criteria

Each grant application will be evaluated based upon the following criteria:

(1) The documented number of homeless persons to be served and the extent of the unmet need for the provision of health care services.

(2) The adequacy and feasibility of the applicant's proposed delivery system.

(3) The extent to which the project plan has received written commitments for active participation from community health care providers.

(4) The qualifications and experience of the proposed project staff.

(5) The adequacy of the proposed budget and the feasibility of the proposed plans for continuation without Federal assistance after the project period.

Administration

To receive an award, the applicant must demonstrate an ability to follow all administrative requirements contained in the authorizing statute and must submit a Statement of Agreement in which the applicant agrees to comply with requirements of the statute concerning the provision of matching funds; the provision of specified health services; restrictions on the use of funds; limitations on charges for services; administration of grants; and limitation on administrative expenses. With regard to charges for services grantees must provide health care, regardless of the patient's ability to pay. The fees, if any, will be set according to a schedule of charges that are made available to the public and will be adjusted to reflect the income and resources of the homeless person, and the charges may not be imposed on any homeless individual with an income below the Federal poverty income level.

Grantees may not spend more than 10 percent of grant awards on administrative expenses. Because of the newness of the program, no predetermined or average grant award level can be projected until the size of the population groups to be served is determined.

Other Award Information

This program is considered to be subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs and 45 CFR Part 100. Executive Order 12372 allows States/territories the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available by DHHS (Form PHS–5161 with revised facesheet DHHS 424) will contain a listing of States which have chosen to set up a review system and will provide a point of contact in the States for that review. Since 60 days are allowed for this review, applicants are advised to discuss projects with and provide copies of their applications to contact points as early as possible. At the latest, an applicant should provide the application to the State for review at

the same time it is submitted to the Regional Office.

HRSA has applied for a listing for this program in the OMB Catalog of Federal Domestic Assistance.

Dated: August 24, 1987.

David N. Sundwall,

Administrator.

Appendix

Regional Health Administrators

Edward J. Montminy, Regional Health Administrator, DHHS Region I., John F. Kennedy Federal Building, Boston, Massachusetts 02203, (617) 565–1426

Vivian Chang, M.D., Regional Health Administrator, DHHS Region II, 26 Federal Plaza, New York, New York 10278, (212) 264–2560

William Lassek, M.D., Regional Health Administrator, DHHS Region III, P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596–6637

John Whitney, Regional Health Administrator, DHHS Region IV, 101 Marietta Tower, Suite 1202, Atlanta, Georgia 30323, (404) 331–2316

E. Frank Ellis, M.D., Regional Health Administrator, DHHS Region V, 300 South Wacker Drive, Chicago, Illinois 60606, (312) 353–1385

John M. Dyer, M.D., Regional Health Administrator, DHHS Region VI, 1200 Main Tower Building, Dallas, Texas 75202, (214) 767–3879

Mr. Youn Bock Rhee, Regional Health Administrator, DHHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374–3291

Audrey H. Nora, M.D., Regional Health Administrator, DHHS Region VIII, 1961 Stout Street, Denver, Colorado 30294, (303) 844–6163

Sheridan L. Weinstein, M.D., Regional Health Administrator, DHHS Region IX, 50 United Nations Plaza, San Francisco, California 34102, (415) 556–5810

Ms. Dorothy H. Mann, Regional Health Administrator, DHHS Region X, 2901 Third Avenue, Mail Stop 405, Seattle, Washington 98121, (206) 442–0430.

[FR Doc. 87–19676 Filed 8–26–87; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; National Institutes of Health

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently in pertinent part at 52 FR 16457, May 5, 1987) is amended to reflect the following changes within the National Cancer Institute (HNC): (1) Abolish the Office of Program Planning and Analysis (HNC12) in the Office of the Director (HNC1); (2) establish the Office of Program Operations and Planning (HNC16) in the Office of the Director (HNC1); and (3) revise the functional statement of the Office of Administrative Management (HNC13) in the Office of the Director (HNC1).

The proposed changes will: (1) Clarify, realign, and reconstitute the functions and responsibilities of designated organizational entities within the Office of the Director of the National Cancer Institute in order to achieve a more accurate, efficient, and effective assignment of functions; and (2) provide adequate leadership and recognition for important Institute activities.

Sec. HN–B, Organizations and Functions is amended as follows: (1) Under the heading *National Cancer Institute (HNC), Office of the Director (HCN1),* delete the title and statement for the *Office of Program Planning and Analysis (HNC12)* and the statement for the *Office of Administrative Management (HNC13)* in their entirety.

(2) Under the heading *National Cancer Institute (HNC), Office of the Director (HNC1),* insert the statement for the *Office of Administrative Management (HNC13)* and the title and statement for the *Office of Program Operations and Planning (HNC16)* as follows:

Office of Administrative Management (HNC13). (1) Plans, directs, and coordinates the administrative management activities of the Institute. Areas of responsibility include grants management; contracts management; finance and budget; personnel; management analysis; financial data and statistics; office automation, automatic data processing, and management information systems; and other areas related to the general administration of the Institute; (2) advises the Institute Director and senior staff on the administrative management of the Institute and its programs; (3) develops and promulgates policies, guidelines and procedures on matters relating to the administrative management of the Institute; and (4) formulates and executes action plans in response to administrative problems or initiatives, directives, regulations, legislation, or anything else that might require administrative action or have administrative implications.

Office of Program Operations and Planning (HNC16). (1) Provides advice, guidance, and assistance in the preparation, analysis, implementation, and monitoring of Institute-wide and Divisional plans including plans for specific programs or projects; (2) provides direct support in the form of analysis, advice, and assistance to the Director, NCI, in both the decision-making process and in the development, documentation, implementation, and monitoring of policy and operating decisions; (3) provides professional advice, technical assistance, and guidance in implementing the planning decisions made by senior Institute officials; (4) prepares or coordinates the preparation of regular, periodic reports to higher echelons on Institute activities (e.g., Biennial Report) as well as special reports, documents, and speeches; (5) serves as the Institute focal point for legislative analysis, planning, implementation, and liaison activities; and (6) provides advice on and assistance with the Institute's program evaluation and assessment efforts including coordination and preparation of required evaluation reports and plans and the provision of instruction and advice to Institute staff on evaluative methods and techniques.

Dated: August 17, 1987.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 87–19629 Filed 8–26–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–040–07–4322–02]

Cedar City District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 992–463 that a meeting of the Cedar City District Grazing Advisory Board will be held on Thursday, October 1, 1987. The meeting will begin at 9:30 a.m. in the Escalante Area Office located on State Highway 12 approximatley one mile west of Escalante, Utah.

The meeting will consist of a short discussion at the Area Office followed by a field tour of the Lower Cattle Allotment. The purpose of the tour is to discuss the Allotment Management Plan and proposed use adjustments needed following an evaluation of monitoring data. Those planning on going on the tour should provide their own transportation and a lunch.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written

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statements for the Board's consideration. Oral statements will be received at 9:30 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, UT 84720, phone 801–586–2401, by September 28, 1987. Depending on the number of persons wishing to make statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meetings will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: August 21, 1987.

Morgan S. Jensen,

District Manager.

[FR Doc. 87–19702 Filed 8–26–87; 8:45 am]

BILLING CODE 4310-DQ-M

[OR120–6310–01: GP7–275]

Meeting of the Coos Bay District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of Coos Bay District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR, Part 1780 that a meeting of the Coos Bay District Advisory Council will be held on Tuesday, September 29, 1987, beginning at 9:00 a.m. The meeting will be held in the conference room of the BLM Coos Bay District Office, 333 South Fourth Street, Coos Bay, Ore.

Agenda: The agenda for the meeting will include:

1. Election of Officers.
2. Discussion of the background and current state of BLM's western Oregon planning process, leading up to the Proposed State Director Guidance Topics listed in the recent mailer to the general public. Deliberations should result in a Council recommendation to the District Manager, which will be entered as public comment to the proposed guidance.
3. Discussion of the current state of management of the Dean Creek Elk Viewing Area.
4. Arrangements for the next meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the council from 10:00 a.m. to 10:30 a.m. on Tuesday, September 29, or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager by close of business on Monday, September 28, 1987 (Telephone 503–269–5880).

ADDRESS: Bureau of Land Management, Coos Bay District Office, 333 South Fourth Street, Coos Bay, OR 97420.

Minutes of the meeting will be maintained at the District Office and made available during regular business hours (7:45 a.m. to 4:30 p.m.) for public inspection or reproduction at the cost of duplication.

Dated: August 18, 1987.

Robert T. Dale,

District Manager.

[FR Doc. 87–19638 Filed 8–26–87; 8:45 am]

BILLING CODE 4310-33-M

[UT–060–4322–02]

Meeting of the Moab District Grazing Advisory Board

August 20, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Moab District Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Moab District Grazing Advisory Board will be held on October 1, 1987. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management District Office at 82 East Dogwood, Moab, Utah 84532.

The agenda for the meeting will include:

1. Proposed Grazing Regulations Changes.
2. Shrub Die-off Update.
3. Grand Change-of-Class RMP Amendment.
4. Grazing Decision Status, Grand RMP.
5. RMP Status (San Juan and San Rafael).
6. Indian Creek Riparian Demonstration Area.
7. Range Improvement Prioritization.
8. San Rafael Grazing Management Problems.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 p.m. and 4:00 p.m. on October 1, 1987 or file written statements for the Board's consideration.

Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532, by September 25, 1987.

Summary minutes of the Board meeeting will be maintained in the District Office and will be available within thirty (30) days following the meeting.

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 87–19639 Filed 8–26–87; 8:45 am]

BILLING CODE 4310-DQ-M

[CO–010–07–4332–09]

Craig, Colorado Advisory Council Meeting

Time and date: October 7, 1987 at 10:00 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado.

Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters to be considered:

1. Role of the Advisory Council.
2. Grazing Regulations.
3. Toxic Waste.
4. Land Disposal, Exchanges, and Access.
5. Riparian Management.
6. BLM's Role in Developing Sections of the Yampa River for Recreation.

Contact person for more information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, Phone: (303) 824–8261.

Dated: August 17, 1987.

Robyn Shoop,

Acting Associate District Manager.

[FR Doc. 87–19623 Filed 8–26–87; 8:45 am]

BILLING CODE 4310-JB-M

[Alaska AA–48539–AF]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Fairbanks Meridian, AK

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48539–AF has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 21 S., R. 7 E.,
Sec. 3, NW¼SW¼.
(40 acres.)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from March 1,

1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48539–AF as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective March 1, 1985, subject to the terms and conditions cited above.

Dated: August 19, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87–19640 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–JA

[WY–920–07–4111–15; W–62396]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–62396 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–62396 effective March 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Fred O'Ferrall,

Acting Chief, Leasing Section.

[FR Doc. 87–19704 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–22–M

[MT–930–07–4212–11; M–9415–A]

Order Providing for Opening of Public Lands; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order restores 40 acres of public land to the operation of the public land and mining laws. The land has been and will remain open to mineral leasing. The lands affected reverted to the United States under the provisions of the Recreation and Public Purposes Act.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6090.

The segregation created by the classification of May 7, 1969, and continued on issuance of patent number 33–71–0014 to Golden Valley County, North Dakota on September 15, 1970, has terminated pursuant to the reversionary provisions of the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 et seq. (1982). Under the reversion, full title to the following-described land was restored to the United States:

Fifth Principal Meridian

T. 139 N., R. 104 W.,
Sec. 6, SE¼SE¼.

The area described contains 40 acres in Golden Valley County.

At 9 a.m. on September 28, 1987, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on September 28, 1987, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 9 a.m. on September 28, 1987, the land will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. § 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

John A. Kwiatkowski,

Deputy State Director, Division Lands and Renewable Resources.

August 19, 1987.

[FR Doc. 87–19624 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–DN–M

[AZ–020–7–4212–13; A–18968]

Public Land Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of continuation.

SUMMARY: Notice is hereby given that the segregative effect of the Notice of Realty Action published in the **Federal Register** on September 20, 1985 at 50 FR 38,214, for public land exchange case A–18968 is to be continued for an additional two (2) years.

SUPPLEMENTARY INFORMATION: Private exchange case A–18968 is under appeal to the Department's Interior Board of Land Appeals. The Bureau of Land Management does not anticipate completing action on the case prior to September 19, 1987. The Notice of Realty Action published on September 20, 1985, segregated the public lands involved from entry under the public land and mining laws but not from entry under the mineral leasing laws.

DATES: The effective date of this action is September 19, 1987.

FOR FURTHER INFORMATION CONTACT: Mike Berch, Realty Specialist, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona 86401, (602) 757–3161.

Dated: August 18, 1987.

Henri R. Bisson,

District Manager.

[FR Doc. 87–19641 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–32–M

[AZ–050–07–4212–13: A–22677]

Realty Action, Land Exchange with Private Party; La Paz and Mohave Counties, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—land exchange with private party, La Paz and Mohave Counties, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal for exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 3 N., R. 15 W.,
Sec. 2, lots 1–4,
Sec. 2, remainder of section north of I–10.
T. 4 N., R. 15 W.,
Sec. 25, S½,
Sec. 36, W½.

Containing 879.2 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from Crowder Investments, an Arizona corporation.

Gila and Salt River Meridian, Arizona

T. 12 N., R. 19 W.,
Sec. 11, SW¼SW¼,
T. 14 N., R. 18 W.,
Sec. 1, lots 3 and 4, N½SW¼,
Sec. 5, lots 1–4, S½, S½NE¼, S½NW¼,
Sec. 9, NW¼, S½, N½NE¼, SE¼NE¼, E½SW¼NE¼, SW¼SW¼NE¼,
Sec. 11, E½,
Sec. 15, all,
Sec. 23, all,
T. 15 N., R. 19 W.,
Sec. 19, W½NE¼,
Sec. 21, N½SE¼, NE¼NW¼, SW¼NE¼, SE¼SW¼,
Sec. 25, S½, NW¼NE¼, SE¼NW¼, W½SW¼NW¼,
Sec. 29, E½NE¼SE¼,
Sec. 31, N½SE¼SE¼, N½NE¼SW¼, NW¼NW¼SE¼,
Sec. 33, S½SW¼NE¼, N½NW¼SE¼, S½SE¼SW¼,
Sec. 35, NW¼, W½SW¼, SE¼NE¼SW¼,
T. 19 N., R. 19 W.,
Sec. 23, SW¼.

Containing 4,313.81 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States: (a) Right-of-way for ditches and canals pursuant to the act of August 30, 1890; (b) all the oil and gas in S½, sec. 25, T. 4 N., R. 15 W., and with it the right to prospect for, mine, and remove same.

2. Subject to: (a) Those rights for a telephone line granted to Southwestern Telephone Company by right-of-way No. A–9595; (b) those rights for a 12 kV electrical line granted to Arizona Public Service Company by rights-of-way No. A–19095 and A–7979; (c) those rights for a road granted to Vicksburg Land Association by right-of-way No. A–18959; (d) those rights for public highways under R.S. 2477 and to Arizona Department of Transportation by right-of-way No. AR–031625; and (e) the lands in sec. 2, T. 3 N., R. 15 W., and sec. 36, T. 4 N., R. 15 W., are subject to a reservation of all minerals.

Private lands to be acquired by the United States will be subject to a reservation of all minerals.

The value of the lands to be exchanged is approximately equal. The acreages will be adjusted or money will be used to equalize the values after the final appraisal is received.

Publication of this Notice will supersede and cancel that portion of the NORA published October 10, 1985, Vol. 50, No. 197, pertaining to property in T. 3 N., R. 15 W., and NORA published December 18, 1986, Vol. 51, NO. 222, as to property in T. 4 N., R. 15 W., and will segregate the subject lands from all appropriations under the public land laws (only affects S½, sec. 25, T. 4 N., R. 15 W.). This segregation will terminate upon the issuance of a document conveying such lands, 2 years from the date of this publication, or upon publication of a Notice of Termination.

DATES: For a period up to October 13, 1987, interested parties may submit comments to Mike Ford, Area Manager, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, or Bill Childress, Area Manager, Lower Gila Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602–855–8017.

Dated: August 20, 1987.

Robert Moody,

Acting District Manager.

[FR Doc. 87–19642 Filed 8–26–87; 8:45 am]

BILLING CODE 4310-32-M

[CA–060–07–4212–11; CA20057]

Classification of Public Lands for Recreation and Public Purposes: San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, CA 20057.

SUMMARY: The following described public land has been examined and found suitable for recreation and public purposes. The land is hereby classified as suitable for recreation and public purposes under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869 et. seq.) and the regulations thereunder (43 CFR 2710; 2912):

San Bernardino Meridian, California

T.5N., R.14E.

Section 15: NW¼SW¼, Within and more specifically described as:

Beginning at NW corner of SW quarter of Section 15, T5N, R14E, SBM, being westerly line of Section 15, thence southerly along said Section line 15, a distance of 240.6 feet, thence S 84 34'E 1000 feet plus or minus to point of beginning of said lease, thence N 5 26'E a distance of 300 feet, thence S 84 34'E a distance of 1000 feet, thence S 5 25'W, a distance of 300 feet, thence N 84 34'W to the point of beginning, an area of 299,692.8 sq. ft. or 6.88 acres.

DATE: For a period up to October 13, 1987, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Objections will be reviewed by the State Director, Bureau of Land Management, who may sustain, vacate or modify this realty action. In the absence of any objection, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Ronald Morrison, Needles Resource Area, (619) 326–3896. Information relating to this action, including the environmental assessment and land report, is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

SUPPLEMENTARY INFORMATION: The Cadiz Community Improvement Association, a non-profit organization, has filled an application to lease the above described public land under authority of the Act of June 14, 1926, as amended. The proposed public use is for the lands to be utilized as a playground, ball park and rest area for the unincorporated community of Cadiz, California.

The classification is consistent with the regulations set forth in 43 CFR 2410. The land is located between Cadiz and County Road 199050 and is physically suitable for the proposed use.

The lease, when issued, will be subject to the provisions of the R&PP Act, applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. All mineral deposits in the land so leased and/or sold, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and regulations as the Secretary of the Interior may proscribe.

2. A right-of-way therein for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

3. An existing distribution line right-of-way granted by the United States to Southern California Edison, its successors and assigns by right-of-way grant LA–0166523, under authority of the Act of March 4, 1911, (43 U.S.C. 961).

The land is not required for any federal purposes. The lease is consistent with the objectives and recommendations of the California Desert Plan.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of other public land laws, and the mining laws, except for mineral leasing. The segregative effect will end either upon issuance of patent, or, failing the consummation of a lease, 18 months from the date of publication, whichever occurs first.

Date: August 17, 1987.

Gerald E. Hillier

District Manager.

[FR Doc. 87–19643 Filed 8–26–87; 8:45 am]

BILLING CODE 4310-40-M

[CO-070-07-212-13; C-43116]

Exchange of Lands in Eagle County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of lands.

SUMMARY: Pursuant to sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Glenwood Springs Resource Area, has identified parcels of public and private land as preliminarily suitable for exchange.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this proposed exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 & 24, P.O. Box 1009, Glenwood, Springs, Colorado 81602.

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The following-described lands have been determined to be preliminarily suitable for exchange under Sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Disposal Parcel 175—40.00 Acres

T. 2 S., R. 83 W.,
Sec. 31: SE¼NW¼.

Disposal Parcel 174—42.36 Acres

T. 3 S., R. 83 W.,
Sec. 5: Lot 1.

Disposal Parcel 200—282.57 Acres

T. 3 S., R. 83 W.,
Sec. 4: Lot 2, SW¼NE¼, S½NW¼, N½SW¼, NW¼SE¼.

Disposal Parcel 303—320.00 Acres

T. 3 S., R. 83 W.,
Sec. 2: S½NW¼, N½SW¼, SW¼SW¼;
Sec. 3: N½SE¼, SW¼SE¼.

Offered Private Land

Parcel A—Approximately 129.80 Acres

T. 3 S., R. 83 W.,
Sec. 1: Portion of Lots 3 & 4 west of Highway 131;
Sec. 2: Lots 1 & 2.

Parcel B—400.00 Acres

T. 2 S., R. 83 W.,
Sec. 28: S½S½;
Sec. 33: NE¼NE¼;
Sec. 34: SW¼NE¼, NW¼.

Parcel C—160.00 Acres

T. 2 S., R. 83 W.,
Sec. 31: N½NE¼, NE¼NW¼;
Sec. 32: NW¼NW¼.

Any adjustments to offered private land to equalize values would be made in T. 2 S., R. 83 W., Sec. 32, N½NW¼.

These 684.93 acres of public land under the jurisdiction of the Bureau of Land Management have been identified as preliminarily suitable for exchange. The determination has been made in response to a Bureau-benefiting exchange proposal developed cooperatively between the Bureau and J. Perry Olsen.

In the proposal, 689.80 acres of offered private land with public values would be exchanged for 684.93 acres of public land which have been identified for disposal. The exchange proposal has been made to facilitate the consolidation of public land holdings. The consolidation would increase managerial efficiency and provide public access to natural resources on public lands being managed by the Bureau.

The values of the lands to be exchanged have been determined to be approximately equal. Upon completion of the final appraisal of the lands, the acreages will be adjusted or money will be used to equalize the exchange values.

Terms and Conditions

The following reservations would be made in a patent issued for public land:

For All Parcels

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the Untied States of all mineral deposits of known value.

3. A reservation for all existing and valid land uses, including grazing leases, unless waived.

For Parcel 174

1. The reservation of oil and gas lease C–29265.

For Parcel 175

1. The reservation of oil and gas lease C–34921.

For Parcel 200

1. The reservation of oil and gas lease C–29265.

For Parcel 303

1. The reservation of highway rights-of-way C–0138 and C–03118.

2. The reservation of telephone line right-of-way C–15148.

3. The reservation of oil and gas lease C–44356.

The publication of the notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant.

Bruce Conrad,

District Manager, Grand Junction District.

[FR Doc. 87–19708 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–JB–M

[OR-010-07-4212-13:GP7-265]

Realty Action; Exchange of Public and Private Lands in Lake and Harney Counties, OR

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 30 S., R. 23 E., W.M., Oregon

Section 34: Lots 1 and 2, NE¼, N½SE¼.

T. 30 S., R. 23 E., W.M., Oregon

Section 3: Lots 1, 2, 3 and 4, S½ NE¼, S½ NW¼.

comprising 653.24 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Leehman & Sons, Inc.

T. 28 S., R. 24 E., W.M., Oregon

Section 22: SE¼ NW¼, NE¼SW¼, S½SW¼.
Section 27: S½NE¼, NW¼, N½SW¼, SE¼.

comprising 640 acres of private land.

The purpose of this exchange is to acquire the non-Federal land which have high public values for recreation and wildlife habitat. The land to be acquired lies within an area heavily used by outdoor recreationists and is in a designated Bighorn sheep range. The pubic interest will be served by completing the exchange.

The value of the lands to be exchanged are considered equal; however, if equalization of value is necessary it will be achieved by payment to the United States by Leehmann & Sons, Inc. of funds in an

amount not to exceed 25% of the total value of the lands to be transferred out of Federal ownership.

The land to be transferred from the United States will be subject to the following reservations, terms and conditions.

Reservations:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945;

2. All minerals in the lands subject to this exchange including, without limitation, substances subject to disposition under the general mining laws, the general mineral leasing laws, the Materials Act and the Geothermal Steam Act.

Subject to:

1. Those rights for road purposes pursuant to BLM right-of-way OR 42903, 60 feet in width, issued under section 507 of the Federal Land Policy and Management Act of 1976; and

2. Those rights for road purposes granted to the State of Oregon, pursuant to highway right-of-way OR 017183, 100 feet in width, issued under the Act of November 9, 1921, (42 Stat. 212); and

3. Those rights for powerline purposes granted to Harney Electric Coop., Inc., pursuant to powerline right-of-way OR 4004, 20 feet in width, issued under the Act of March 4, 1911, (43 U.S.C. 9).

Publication of this notice segregates the public lands from operation under the public land and mining laws for a period of two (2) years from the date of first publication. The segregative effect of the notice of realty action on the public lands shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation or two (2) years from the date of its publication, whichever occurs first.

Further information concerning the exchange, including the Environmental Assessment is available for review at the Bureau of Land Management, Warner Lakes Resource Area Office, 1000 South 9th Street, Lakeview, Oregon 97630, telephone (503) 947–2177.

For a period of forty-five days from the date of first publication, interested parties may submit comments to the Lakeview District Manager, Bureau of Land Management at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: August 18, 1987.

Dick Harlow,

Associate District Manager.

[FR Doc. 87–19730 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–060–07–4410–08]

Availability of Draft Environmental Impact Statements and Resource Management Plan; Central Artic Management Area Wilderness Study Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Draft Utility Corridor Resource Management Plan/Environmental Impact Statement (RMP/EIS): and Draft Environmental Impact Statement on the Preliminary Wilderness Recommendations for the Central Arctic Management Area Wilderness Study Area (CAMA WSA), Arctic District Office, Alaska.

The Bureau of Land Management announces the availability of the Utility Corridor Draft RMP/EIS and Draft EIS on preliminary CAMA WSA wilderness recommendations for public comment and review. This document analyzes and reviews land use planning options for approximately 6,080,000 acres of federal land located in and near the Utility Corridor north of Fairbanks, Alaska. This land area includes the Central Arctic Management Area (CAMA). Section 1001 of the Alaska National Interest Lands Conservation Act of December 2, 1980, directs the Secretary of the Interior to review CAMA lands for their oil and gas resources, wildlife resources and wilderness characteristics and to make recommendations for wilderness designation. This wilderness review has been conducted as a component of the RMP and wilderness recommendations have been integrated into the RMP land use options. The BLM also recommends the designation of 13 new Areas of Critical Environmental Concern (ACEC).

A copy of the Draft RMP/EIS with the Draft EIS on preliminary wilderness recommendations will be sent to all individuals, government agencies and groups who have expressed an interest in the Utility Corridor RMP planning effort and requested copies. Comments on the Draft RMP/EIS, preliminary wilderness recommendations and recommended ACECs will be accepted until November 30, 1987. All comments must be sent to: M. Thomas Dean, Arctic District Manager, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99703.

Public meetings on the Draft RMP/EIS and/or hearings on wilderness and subsistence aspects of the plan will be held during the 90 day comment period at times and places to be announced later. The schedule for the public hearings addressing the wilderness aspects of the plan is as follows:

September 29, 1987—Barrow, Alaska. North Slope Borough Chambers. 1:00 p.m. to 4:00 p.m.

October 7, 1987—Fairbanks, Alaska. Noel Wien Library, 1215 Cowles Street. 1:00 p.m. to 4:00 p.m.

October 9, 1987—Anchorage, Alaska. Anchorage Museum of History and Art, 121 W. 7th Ave. 1:30 p.m. to 4:30 p.m.

Thirty days notice shall be provided to attendees of meetings or hearings to submit or further clarify views expressed.

SUMMARY: Five alternatives for managing BLM administered lands in the Utility Corridor planning area are proposed in the Draft RMP/EIS. Each alternative recognizes the transportation of energy resources as the primary function of the Utility Corridor and discusses the following issues:

1. Mineral and Commercial (Node) Development.
2. Land Disposals and Acquisitions.
3. Recreation.
4. Access.
5. Subsistence.
6. Wilderness.
7. Wildlife Resources.

The preferred alternative emphasizes development of the recreational opportunities within the Utility Corridor. Alternative A is the "no action" alternative; it proposes continuation of present management throughout the planning area. Alternative B represents a program of environmental protection and enhancement; this alternative emphasizes wilderness recommendations. Alternative C focuses on the development of economic opportunities in the planning area by maximizing land available for mineral development; it also provides at least as many opportunities for recreational development as in the preferred alternative. Alternative D is a land disposal option. All currently withdrawn lands would be opened to state selection and present management would continue on remaining 1ands.

Wilderness

The Draft Wilderness EIS included as an appendix to the RMP/EIS is a draft for both a Final EIS on the plan and a Final legislative EIS on the wilderness element of the plan. The Draft Wilderness EIS assesses the impacts of managing CAMA WSA lands (3,680,000 acres) as wilderness or non-wilderness. The alternatives analyzed include: (1) A no wilderness alternative, (2) an all wilderness alternative, (3) a partial wilderness alternative and (4) a preferred wilderness alternative. A no action alternative was considered, but not analyzed in detail because there is no existing land use plan for CAMA WSA lands. The preferred wilderness alternative was incorporated with the RMP preferred alternative.

The acreages considered suitable and unsuitable for wilderness recommendation under each wilderness alternative are as follows:

Alternative	Suitable acres	Unsuitable acres
No	0	3,680,000
All	3,365,000	316,000
Partial	486,000	3,194,000
Preferred	41,000	3,369,000

All wilderness recommendations at this time are preliminary recommendations subject to change during administrative review. The BLM recommendations will be forwarded to the Secretary of the Interior and ultimately, from the Secretary to the President and the Congress. The final decision on wilderness designation rests with Congress.

Areas of Critical Environmental Concern

Thirteen Areas of Critical Environmental Concern (ACES) including one Research Natural Area (RNA) would be designated under the preferred alternative. The ACECs and use limitations are listed below:

1. Galbraith Lake ACEC (115,000 acres). This area has the highest concentration of historic and prehistoric resources of any area yet surveyed within the Utility Corridor. Particular care will be exercised in permitting activities within the area; no campgrounds, other recreational facilities or FLPMA leases for guiding services will be allowed.

2. Ivishak River ACEC (5,120 acres). The lower Ivishak River contains the highest concentration of overwintering arctic char in the central arctic management area. The area will be closed to mineral entry, no gravel extraction will be allowed, nonoccupancy stipulations will apply to mineral leases. Only temporary and casual use permits will be issued.

3. Jim River ACEC (200,320 acres). The Jim River drainage is an excellent sport fishery, contains a rich concentration of archaeological sites, is of high scenic quality and contains known raptor nesting sites including peregrine falcon. The area's resources are threatened by present and potential developments and activities including placer mining, gravel extraction, roads and related facilities and recreational use. A designated area of the Jim River floodplain will be closed to gravel extraction, the Jim River streambed will be closed to mineral entry to the upstream limit of anadromous fish spawning, nonoccupancy stipulations will apply for mineral leasing, and mining plans of operation will be required prior to surface-disturbing activities.

4. Kanuti Hot Springs ACEC (640 acres). This is an undeveloped hot springs about 12 miles from the Dalton Highway. Most hot springs in Interior Alaska are developed for commercial or recreational uses and there is interest in developing this hot spring. Undeveloped hot springs are important habitat for wildlife and rare plant species. This hot springs area will be closed to FLPMA Leases at least until such time as intensive inventory of the area can be completed to determine what level of development (if any) is appropriate.

5. Nigu-Iteriak ACEC (64,062 acres). This area contains known archaeological resources, including two potential national register sites; contains unique geological resources, including ice-cored kame terraces and a collapsed pingo; and exhibits high scenic quality. The southern (upper Nigu) portion of the area is also bordered by two park system wilderness areas. The upper Nigu portion of this ACEC would be closed to mineral entry and leasing. Particular care will be exercised in authorizing any activities within the ACEC.

6. Nugget Creek ACEC (3,300 acres). This is a Dall's sheep lambing area and contains a natural salt lick. The area immediately surrounding the lick site (up to ¼ square mile) will be closed to mineral entry and location. Particular care will be exercised in authorizing any activities in the ACEC to avoid undue disturbance of habitat or hindrance of access to that habitat. Plans of operation will be required prior to any surface-disturbing mining activities taking place.

7. Poss Mountain ACEC (600 acres). This is a Dall's sheep lambing area and contains a natural salt lick. The area immediately surrounding the lick site (up to ¼ square mile) will be closed to mineral entry and location. Particular care will be exercised in authorizing any activities in the ACEC to avoid undue disturbance of habitat or hindrance of access to that habitat. Plans of operation will be required prior to any surface-disturbing mining activities taking place.

8. Sagwon Bluffs ACEC (42,240 acres). This is habitat for several species of raptors, including peregrine falcon, and contains at least one sensitive plant species. Due to its proximity to the Dalton Highway, this area is potentially threatened by surface-disturbing activities. Protective measures for peregrine falcon will be those contained in the Peregrine Falcon Recovery Plan (September 1982).

9. Slope Mountain ACEC (2,600 acres). This is a Dall's sheep lambing area and contains a natural salt lick. The area immediately surrounding the lick site (up to ¼ square mile) will be closed to mineral entry and location. Particular care will be exercised in authorizing any activities in the ACEC to avoid undue disturbance of habitat or hindrance of

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access to that habitat. Plans of operation will be required prior to any surface-disturbing mining activities taking place.

10. Snowden Mountain ACEC (19,520 acres). This area exhibits important geologic and associated paleontological resources including excellent exposures of Devonian and lower Paleozoic rocks, Devonian corals and Cambrian trilobites. This area also contains two natural salt lick sites used by Dall's sheep. The area immediately surrounding the lick sites (up to ¼ square mile each) will be closed to mineral entry and location. Particular care will be exercised in permitting the sale of mineral materials and in authorizing any activities to ensure no undue disturbance of sheep habitat or hindrance of access to lick sites.

11. Sukakpak Mountain ACEC (2,944 acres). This mountain exhibits unique geologic structures, folds and faults and is in an excellent location for public viewing. The area is also the site of a rare plant species and offers one of the more outstanding scenic views along the Dalton Highway. This area also is a potential source of gravel. Mineral material sales will not be allowed on the slopes of this mountain. In all permitted activities the emphasis will be on preservation of the ACEC's scenic qualities.

12. Toolik Lake ACEC and RNA (34,560 acres). This area is representative of a north slope lake and tundra biome. A large number of research projects have been based in and around this lake area and the University of Alaska maintains a research facility at this site. Recreational camping and guiding operations will be restricted to the northeastern portion of the lake and any campsite development will carefully assess the impacts to ongoing research. Special consideration will be given to scientific research in progress in the area.

13. West Fork Atigun ACEC (4,700 acres). This is a Dall's sheep lambing area and contains a natural salt lick. The area immediately surrounding the lick site (up to ¼ square mile) will be closed to mineral entry and location. Particular care will be exercised in authorizing any activities in the ACEC to avoid undue disturbance of habitat or hindrance of access to that habitat. Plans of operation will be required prior to any surface-disturbing mining activities.

DATE: Comments will be accepted until November 30, 1987.

ADDRESS: Comments should be sent to: M. Thomas Dean, Arctic District Manager, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99703.

FOR FURTHER INFORMATION OR COPIES CONTACT: Dave Ruppert, Project Manager, Bureau of Land Management, Arctic District Office, 1541 Gaffney Road, Fairbanks, Alaska 99703. Telephone Number: (907) 356–5182.

Dated: August 18, 1987.

Michael J. Penfold,

State Director.

[FR Doc. 87–19601 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–84–M

[ID–040–4322–09]

Salmon District, Availability of the Rangeland Program Summary (RPS) on the Lemhi Resource Area Environmental Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of Interior has prepared a Rangeland Program Summary (RPS) on the Lemhi Resource Area Environmental Statement.

The Rangeland Program Summary (RPS) summarizes the grazing decisions reached as a result of the Lemhi Resource Management Plan/Environmental Impact Statement (RMP/EIS) and for the 8 grazing allotments from the Ellis-Pahsimeroi EIS area which are now part of the Lemhi Resource Area. These decisions, based on the information provided from the planning and consultation process, will give direction for range management, in the Lemhi Resource Area, towards the improvement and maintenance of the range resource according to a multiple-use and sustained yield concept. The decisions include: (1) The kind of livestock; (2) the period of grazing use; (3) the level of grazing use; and (4) the allotments within which grazing use will occur. The RPS also summarizes the rangeland monitoring and evaluation efforts to be made.

Copies of the Rangeland Program Summary are available for review at the following location.

FOR FURTHER INFORMATION CONTACT: Jerry Wilfong, Bureau of Land Management, P.O. Box 430, Salmon, ID 83467; telephone (208) 756–5400.

Dated: August 17, 1987.

Robert W. Heidemann,

Associate District Manager.

[FR Doc. 87–19622 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–22–M

[OR–943–07–4520–12: GP7–276]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dates hereinafter stated:

Willamette Meridian

Oregon

T. 7 S., R. 10 W.
T. 19 S., R. 12 W.

The above-listed plats were accepted April 24, 1987 and officially filed May 1, 1987.

T. 21 S., R. 3 E.
T. 21 S., R. 2 E.

The above-listed plats were accepted June 5, 1987 and officially filed June 8, 1987.

T. 22 S., R. 7 W., accepted May 1, 1987.
T. 2 S., R. 6 E., accepted May 1, 1987.
T. 2 N., R. 3 W., accepted May 8, 1987.
T. 21 S., R. 3 W., accepted May 8, 1987.
T. 15 S., R. 10 W., accepted May 15, 1987.
T. 16 E., R. 16 E., accepted May 15, 1987.

The above-listed plats were officially filed June 2, 1987.

T. 3 S., R. 7 W., accepted June 5, 1987 and officially filed June 15, 1987.
T. 23 S., R. 8 W., accepted June 19, 1987.
T. 28 S., R. 10 W., accepted June 19, 1987.
T. 21 S., R. 2 W., accepted June 26, 1987.
T. 1 S., R. 35 E., accepted July 2, 1987.

The above-listed plats were officially filed July 9, 1987.

T. 1 N., R. 36 E.,
T. 1 S., R. 36 E.,

The above-listed plats were accepted July 2, 1987 and officially filed July 23, 1987.

Washington

T. 8 N., R. 13 E., accepted June 12, 1987 and officially filed June 15, 1987.
T. 30 N., R. 8 W., accepted June 26, 1987 and officially filed July 9, 1987.
T. 38 N., R. 33 E., Suppl. Plat.
T. 30 N., R. 7 W.

The above-listed plats were accepted July 10, 1987 and officially filed July 23, 1987.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 21, 1987.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–19703 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–33–M

Minerals Management Service

Royalty Management Advisory Committee Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that the Royalty Management Advisory Committee will hold a meeting in Lakewood, Colorado, at the location and on the dates indicated below to review a report of the Systems Improvement Working Panel. The Advisory Committee will make recommendations to the Secretary of the Interior, as appropriate.

Location and Dates: The "Systems Improvement" meeting of the Royalty Management Advisory Committee will be held at the Sheraton Hotel, 360 Union Boulevard, Lakewood, Colorado, on September 21, 22, and 23, 1987, from 8:00 a.m. to 5:00 p.m. each day, except that the meeting on September 23 will adjourn at noon.

In addition, evening sessions may be held on September 21 and 22 if considered necessary. These meetings will be open to the public. Public attendance may be limited by the space available. Questions and answers from the public will be addressed at a designated time during each meeting. Written statements should be submitted by September 15, 1987, to the address listed below. Minutes of this meeting will be available for public inspection and copying by November 30, 1987, at the same address.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 651, Denver, Colorado 80225, telephone number (303) 231–3360, (FTS) 326–3360.

SUPPLEMENTARY INFORMATION: The Systems Improvement Working Panel was established by the Royalty Management Advisory Committee. The panel is composed of both Advisory Committee members and non-Committee members and was established to provide the Advisory Committee with analysis of specific issues and proposed recommendations. Panel recommendations will be reviewed by the Advisory Committee which will then decide what advice and recommendations to give to the Department of the Interior and MMS.

Date: August 19, 1987.

David W. Crow,

Acting Director, Minerals Management Service.

[FR Doc. 87–19705 Filed 8–26–87; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[No. MC–F–17934]

Intention To File Application for Acquisition of Control of Motor Carrier; Norfolk Southern Corporation and North American Van Lines, Inc.[1]

On July 31, 1987, pursuant to 49 CFR 1180.4(b), Norfolk Southern Corporation (NS) and North American Van Lines, Inc. (NAVL) have notified the Commission of their intent to file an application seeking Commission approval for NAVL's acquisition of control of motor carrier Tran-Star, Inc. (Tran-Star) through stock ownership.

NS is a noncarrier holding company that owns all of the stock of motor carrier NAVL, as well as Norfolk and Western Railway Company and Southern Railway Company, each of which is a class I railroad. NAVL's principal business is the domestic transportation of household goods and general commodities. Tran-Star specializes in the temperature controlled transportation of processed foods, dairy products and frozen vegetables. Its operations are focussed in the upper Midwest.

Under the terms of an agreement dated August 18, 1986, NAVL contracted to purchase 80.1 percent of the stock of Tran-Star. Applicants filed a petition for exemption of the proposed acquisition on October 31, 1986. On December 23, 1986, Tran-Star's stock was acquired and placed in an independent voting trust pending disposition of the exemption. Notice of the proposed exemption was published in the *ICC Register* and the **Federal Register** on February 17, 1987, in accordance with the procedural guidelines established in *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982). A number of persons filed comments.

In their notice of intent, applicants now request that the proceeding instead be processed as an application under its present docket number and that the evidentiary record in the exemption proceeding be made part of the application. By decision served August 26, 1987, the Commission granted these requests and denied motions filed by the Regular Common Carrier Conference, a party in the exemption proceeding, for oral hearing and discovery.

The Commission's regulations at 49 CFR Part 1180, Subpart A do not specifically apply to intermodal transactions involving the acquisition of motor carriers by railroads or rail affiliates. Nevertheless, the Commission has previously found these regulations, subject to appropriate notification, to be a suitable procedural means of processing such transactions. *See* Finance Docket No. 31000, *Union Pacific Corporation and BTMC Corporation—Control—Overnite Transportation Company* (Notice of Intent published at 51 FR 37666, October 23, 1986).

Pursuant to 49 CFR 1180.4(b)(1), applicants state that they intend to file an application on or about September 1, 1987. We find, under 49 CFR 1180.4(b)(2), that the proposed acquisition is a minor transaction that does not involve a matter of regional or national transportation importance. Accordingly, applicants need not furnish market impact analyses required under 49 CFR 1180.7 for major or significant transactions. We find that the transaction should be processed under the procedural requirements of 49 U.S.C. 11345(d) and be considered under the substantive decisional standards of 49 U.S.C. 11344 (c) and (d). Applicants must comply with the informational requirements of 49 CFR Part 1180, Subpart A relating to minor transactions, subject to such modifications as may be ordered by the Commission in response to appropriate requests or on our own motion. An order calling for submission of additional information on specific issues may be issued subsequent to the publication of this notice and accompanying decision.

Dated: August 18, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19671 Filed 8–26–87; 8:45 am]

BILLING CODE 7035–01–M

[1] Reentitled from *Norfolk Southern Corporation and North American Van Lines, Inc.—Control Exemption—Tran-Star, Inc.*

[Finance Docket No. 31072]

Acquisition and Operation of Rail Lines; The Indiana and Ohio Central Railroad, Inc.; Correction

The notice of exemption published at

52 FR 27863 (July 24, 1987) indicated that The Indiana & Ohio Central Railroad, Inc. (IOCR), a noncarrier, had filed a notice of exemption to acquire and operate approximately 43.5 miles of rail line from milepost 9.1, near Valley Crossing, OH, to milepost 52.56 at Logan, OH, presently owned by CSX Transportation, Inc. (CSX). The notice should be corrected to reflect The Chesapeake and Ohio Railway Company (C&O) as the transferor. The notice of exemption should also be corrected to indicate that incidental trackage rights also will be granted over the lines of the C&O (rather than CSX) from milepost 9.1 at Valley Crossing, OH, to milepost 6.0 at Parsons Yard, near Columbus, OH, solely for purposes of interchange between IOCR and the C&O at the latter point.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19672 Filed 8-26-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31073]

Filing of Exemption to Continue in Control; Indiana & Ohio Rail Corp.; Correction

The notice of exemption published at 52 FR 27864 (July 24, 1987) indicated that Indiana & Ohio Rail Corp. (IORC), a non-carrier, had filed a notice of exemption to continue in control of The Indiana & Ohio Central Railroad, Inc. (IOCR), a corporation organized for the purpose of acquiring and operating approximately 43.5 miles of rail line presently owned by CSX Transportation, Inc. (CSX). The notice should be corrected to reflect The Chesapeake and Ohio Railway Company (C&0) as the transferor. The notice of exemption should also be corrected to indicate that incidental trackage rights also will be granted to IOCR over the lines of the C&0 (rather than CSX) from milepost 9.1 at Valley Crossing, OH, to milepost 6.0 at Parsons Yard, near Columbus, OH, solely for purposes of interchange between IOCR and the C&0 at the latter point.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19673 Filed 8-26-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Notice of Certification; Third Circuit

The Attorney General pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Pub. L. 99-554, hereby certifies to the United States Court of Appeals for the Third Circuit on this date that, in the region specified in paragraph 581(a)(21) of title 28, United States Code, composed of the federal judicial districts for the states of Florida and Georgia, the Commonwealth of Puerto Rico, and the Virgin Islands, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 of title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

The amendments cited above implement the United States Trustee system in the region and also impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee to be appointed for that region is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Dated: August 18, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87-19683 Filed 8-26-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 87-34]

Revocation of Registration; Eusebio Hernandez-Samper, M.D.

On March 6, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Eusebio Hernandez-Samper, M.D. (Respondent), of 536 S.W. 18th Avenue, Miami, Florida, proposing to revoke DEA Certificate of Registration AH8205735, and to deny his pending application for renewal of said registration, executed on September 11, 1986. The grounds for the proposed revocation were that: (1) On January 10, 1986, the Florida Department of Professional Regulation restricted Respondent's medical license in that state by prohibiting him from handling any controlled substances; consequently, Respondent is not authorized to handle controlled substances in the state in which he is registered with the Drug Enforcement Administration, (2) On March 10, 1986, in the Circuit Court for the Seventeenth Judicial Circuit of Florida, in and for Broward County, Respondent was convicted, after entering pleas of nolo contendere, of two counts of bad-faith delivery of a controlled substance by prescription; both offenses constituted felony convictions relating to controlled substances, (3) Respondent falsified the application for renewal of his DEA Certificate of Registration, executed on September 11, 1986, by failing to indicate that he had been convicted of two felony offenses relating to controlled substances, and (4) Respondent's continued registration is inconsistent with the public interest, as evidenced by, but not limited to, the fact that during 1985, Respondent issued numerous prescriptions for controlled substances to various persons for other than a legitimate medical purpose.

In a letter dated April 1, 1987, Respondent, through counsel, requested a hearing on issues raised in the Order to Show Cause. On April 14, 1987, Government counsel filed a Motion for Summary Disposition based upon Respondents's lack of state authorization to handle controlled substances. Subsequently, Respondent's counsel filed a response to the Government's Motion for Summary Disposition, admitting that Respondent was no longer authorized to handle controlled substances in Florida, but claiming that he wished to maintain a DEA registration number to enable him to participate in Federally funded programs such as Medicaid and Medicare.

After reviewing the filings in this matter, the Administrative Law Judge recommended that Respondent's DEA Certificate of Registration be revoked and his application for renewal be denied on the basis of his lack of state authorization to handle controlled

substances. No other issues were considered in the proceedings.

The Administrator agrees with the Administrative Law Judge's recommendation. The Drug Enforcement Administration does not have statutory authority to maintain an individual's registration unless he is authorized to handle controlled substances in the state in which he maintains his practice. See 21 U.S.C. 823(f) and 824(a)(3); *Emerson Emory, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985), and *Agostino Carlucci, M.D.*, Docket No. 82–20, 49 FR 33184 (1984). In this matter, Respondent is no longer authorized to handle controlled substances in the state in which he is registered with the Drug Enforcement Administration. Therefore, the Administrator cannot maintain his registration in that state, nor can he grant Respondent's pending application for renewal of that registration.

In this matter, a Motion for Summary Disposition is properly entertained and should be granted. It is well-settled that when no question of fact is involved, or when the parties agree upon the substantive factual matters, there is no need to conduct an evidentiary hearing. Instead, only a legal determination need be made based upon the agreed facts. See *United States v. Consolidated Mines and Smelting Co. Ltd.* 445 F.2d 432, 453 (9th Cir. 1971); *NLRB v. Int. Assoc. of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *Philip E. Kirk, M.D.*, Docket No. 82–36, 48 FR 32887 (1983), aff'd *sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

With respect to Respondent's request to maintain a DEA Certificate of Registration for identification purposes so that he can participate in Federally funded programs, there is no provision in the Controlled Substances Act which would allow the Administrator to grant such a request. The only purpose for granting a practitioner a DEA Certificate of Registration is to give him authority to handle controlled substances. See 21 U.S.C. 801 et seq. Therefore, the Administrator cannot allow Respondent to maintain his DEA Certificate of Registration for the reason requested.

The Administrator concludes that, based upon Respondent's lack of state authorization to handle controlled substances, his DEA Certificate of Registration must be revoked, and his pending application for renewal must be denied. Having concluded that, under the facts and circumstances presented in this matter, Respondent's registration must be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AH8205735 be, and it hereby is, revoked, and that Respondent's pending application for renewal, executed on September 11, 1986, be, and it hereby is, denied.

This order is effective August 27, 1987.

John C. Lawn,

Administrator.

Dated: August 24, 1987.

[FR Doc. 87–19674 Filed 8–26–87; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 87–18]

Revocation of Registration; Nicetown Pharmacy

On January 20, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued to Nicetown Pharmacy (Respondent) of 4201 Germantown Avenue, Philadelphia, Pennsylvania 19140, an Order to Show Cause proposing to revoke the pharmacy's DEA Certificate of Registration AN2013693 and to deny any pending applications for registration as a retail pharmacy under 21 U.S.C. 823(f). The statutory predicate for the Order to Show Cause was that the pharmacy's continued registration would be inconsistent with the public interest as defined in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4). This was evidenced by the fact that: (1) An accountability audit of controlled substances conducted at the pharmacy for the period June 3, 1984, to June 3, 1986, revealed substantial shortages of the controlled substances glutethimide and Bromany1; (2) The pharmacy failed to maintain complete and accurate records of transactions involving the acquisition, dispensing and inventory of controlled substances; and (3) Bernard Orkin, pharmacist at Nicetown Pharmacy, dispensed Schedule IV controlled substances without a prescription or order of a physician.

Respondent, proceeding through counsel, requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. Judge Young issued an Order for Prehearing Statements to be filed by Government Counsel and by Counsel for Respondent. These statements were filed, and a hearing was scheduled for July 16, 1987.

In a letter dated July 10, 1987, Respondent's counsel advised Judge Young that neither Respondent nor his attorney would appear for the hearing set for July 16, 1987. Therefore, the Administrator finds that Nicetown Pharmacy has waived its opportunity for a hearing and enters this final order based on the record as it appears. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that an accountability investigation of Nicetown Pharmacy was initiated in response to the pharmacy's purchase of excessive quantities of Bromanyl liquid (Schedule V) and gultehimide 500 mg. (Schedule III). Codeine-based cough syrups and glutethimide in combination are widely abuse in Philadelphia where it is known as "pancakes and syrup." This combination is sold in the illicit market as a substitute for heroin.

The accountability audit revealed numerous violations of regulations involving order forms, receipt invoices, and prescription forms. Fourteen controlled substances were audited, including Bromanyl liquid and gluthethimide 500 mg. Records provided by Respondent pharmacy revealed overages and shortages of the controlled substances audited. Another audit, conducted using records obtained from pharmaceutical wholesalers, revealed even larger diviations including substantial shortages of Bromanyl and glutethimide 500 mg. These shortages prompted investigators to conduct verification investigations of various pharmaceutical suppliers. The names of most of these suppliers were not disclosed by Respondent. It was discovered that Respondent pharmacy had purchased 249,880 ounces (1952 gallons) of Bromanyl liquid and 260,500 tablets of glutethimide 500 mg. during the twenty-four month audit period. The pharmacy could not account for 99% of these controlled substances.

The Administrator further finds that in 1984 an agent from the State of Pennsylvania went to Nicetown Pharmacy in an undercover capacity possessing only a piece of white paper written by Nicetown Medical Center's receptionist. Although the paper was not a valid prescription form and was not issued by a physician, Bernard Orkin, Respondent's managing pharmacist, dispensed phentermine 30 tablets (a Schedule IV stimulant drug) and Lasix 30 tablets (a diuretic). Bernard Orkin dispensed phentermine on subsequent occasions to undercover agents without valid prescriptions. These controlled substances were dispensed in envelopes which were not properly labelled.

The Administrator is charged with protecting the public health and safety from the illicit diversion of controlled substances. Respondent's actions, as set forth in the record, clearly indicate that

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Nicetown Pharmacy lacks the ability to handle the requisite responsibilities attendant to a DEA registration. The large scale shortages of controlled susbtances which are widely abused in the area can only lead to the conclusion that these substances are not being dispensed pursuant to a valid prescription or for a legitimate medical purpose.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AN2013693, previously issued to Nicetown Pharmacy be, and it hereby is, revoked. The Administrator further orders that any pending applications for registration, be, and they hereby are, denied. This order is effective September 28, 1987.

John C. Lawn,

Administrator.

Date: August 24, 1987.

[FR Doc. 87-19675 Filed 8-26-87; 8:45 am]

BILLING CODE 4401-09-M

Office of Juvenile Justice and Delinquency Prevention

Youth Drug and Alcohol Abuse: The Introduction of Effective Strategies Systemwide; Extension of Deadline Data for Demonstration Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of extension of deadline date.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 224(b)(1) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, announces the extension of the deadline date for the demonstration program entitled Youth Drug and Alcohol Abuse: The Introduction of Effective Strategies Systemwide, **Federal Register**, Vol. 52. No. 161, Thursday, August 20, 1987 from September 14, 1987 to September 21, 1987.

Other information published in the **Federal Register** on August 20, 1987 regarding this solicitation is current and applicable. For further information, contact John E. Dawson, Jr., at (202) 724-8491.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87-19729 Filed 8-26-87; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Wednesday, September 16, 1987, in Room N-3437C, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC.

The purpose of the meeting, which will begin at 9:30 a.m., is to consider items listed below and to invite public comment on any aspect of the administration of ERISA.

1. General business of the Advisory Council
2. Report of the Advisory Council Work Group on Individual Benefit Statements
3. Report of the Advisory Council Work Group on ESOP
4. Statements from the Public

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before September 11, 1987, to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Individuals wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202/523-8753). Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record.

Signed at Washington, DC, this 24th day of August 1987.

David M. Walker, CPA,

Assistant Secretary-Designate for Pension and Welfare Benefits Administration.

[FR Doc. 87-19698 Filed 8-26-87; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Retiree Health of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:00 a.m., Friday, September 25, 1987, at the American Association of Retired Persons, (AARP), 1909 K Street, NW., Room 830, Washington, DC 20049.

This eight-member work group was formed by the Advisory Council to study issues relating to retiree health benefit programs for employee welfare plans covered by ERISA.

The purpose of the September 25 meeting is to hear from several experts in the field of Retiree Health who have been invited to participate in a round-table discussion of the following issues:

1. How secure are retiree health insurance promises in general, and how do they vary across companies and industries?

2. Are there changes in the law that should be made to make retiree health benefits more secure? If so, what are those changes?

3. Were changes in the law made to allow retiree health benefits to be advance funded, would bargaining parties and non-bargaining employers be likely to advance fund?

4. What are the relative advantages and disadvantages of using the now common "defined benefit" approach to provision of retiree health versus moving towards "defined contribution" accumulations that retirees could then use to pay retiree health expenses? Would one approach or the other make it more likely that retiree health protection will continue to be provided?

5. What impact would FASB standards that required booking of liabilities likely have on the decision to provide retiree health benefits?

In addition, the work group will take testimony from employee representatives, employer representatives and other interested individuals and groups regarding subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before September 21, 1987 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to 10 minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 21, 1987.

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Signed at Washington, DC this 24th day of August 1987.

David M. Walker, CPA,

Assistant Secretary-Designate for Pension and Welfare Benefits Administration.

[FR Doc. 87-19699 Filed 8-26-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel (Dance Presenters Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance Presenters Section) to the National Council on the Arts will be held on September 15, 1987 from 9:00 a.m.-8:00 p.m. and on September 16, 1987 from 9:00 a.m.-6:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

If time permits, a portion of this meeting will be open to the public on September 16, 1987 from 4:00 p.m.-6:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on September 15, 1987 from 9:00 a.m.-8:00 p.m. and September 16, 1987 from 9:00 a.m.-4:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disabililty, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: August 24, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-19725 Filed 8-26-87; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel (Services to the Field Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on September 17, 1987 from 9:00 a.m.—8:00 p.m. and on September 18, 1987 from 9:00 a.m.—6:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

If time permits, a portion of this meeting will be open to the public on September 18, 1987 from 4:00 p.m.—6:00 p.m. The topic for discussion will be policy issues.

The remaining sessions of this meeting on September 17, 1987 from 9:00 a.m.—8:00 p.m. and September 18, 1987 from 9:00 a.m.—4:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: August 24, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 87-19726 Filed 8-26-87; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel (Presenting Organizations Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Presenting Organizations Section) to the National Council on the Arts will be held on September 14-17, 1987 from 9:00 a.m.-7:30 p.m. and on September 18, 1987 from 9:00-5:00 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 18, 1987 from 9:00 a.m.-1:00 p.m. The topics for discussion will include guidelines and other policy issues.

The remaining sessions of this meeting on September 14-17, 1987 from 9:00 a.m.-7:30 p.m. and September 18, 1987 from 1:00-5:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-19727 Filed 8-26-87; 8:45 am]

BILLING CODE 7537-01-M

Partnership Advisory Panel (Locals Program Section); Meeting

Pursuant to section 10(a)(2) of the Federal advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office for Partnership Advisory Panel (Locals Program Section) to the National Council on the Arts will be held on September 11, 1987 from 9:00 a.m.-5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 11, 1987 from 1:00 p.m.-5:30 p.m. The topics for discussion will be Service Organizations, Local Government Incentive Program, Local Arts Agency Development Program, FY 89 Initiatives, and FY 89 Guidelines.

The remaining sessions of this meeting on September 11, 1987 from 9:00 a.m.-1:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to

subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506 or call 202/682-5433.

Dated: August 24, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-19728 Filed 8-26-87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 21, 1987. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 24, 1987.

The applications received are as follows:

1. Applicant

Mark A. Chappell, Biology Department, University of California, Riverside, California 92521

Activity for Which Permit Requested

Taking, Import into U.S.A. The applicant is conducting physiological studies of Antarctic birds. He proposes to take the following:

Species	Number	Age	Condition
Adelie penguin	[illegible]	Chick	Sacrificed.
	25	Chick	Studied/released
	5	Adult	Studied/released.
Antarctic tern	10	Eggs	Sacrificed.
Southern black-backed gull	10	Eggs	Sacrificed.
	[illegible]	Adults	Studied/released.
	18	Young	Studied/released.
Southern giant petrel	[illegible]	Adults	Studied/released.
	18	Young	Studied/released.
	50	Young	Banded/released.
Wilson's storm petrel	6	Adults	Studied/released.
	18	Young	Studied/released.
South Polar skua	[illegible]	Adults	Studied/released.
	18	Young	Studied/released.
	10	Eggs	Sacrificed.
Blue-eyed shag	[illegible]	Adults	Studied/released.
	18	Young	Studied/released.
	2	Adults	Sacrificed.
	4	Young	Sacrificed.

Location

Vicinity of Palmer Station, Antarctic Peninsula.

Dates

November 1987—March 1988.

2. Applicant

G. Richard Harbison, Harbor Branch Oceanographic Institution, Inc., Fort Pierce, Florida 34946

Activity for Which Permit Requested

Enter site of Special Scientific Interest. The applicant proposes to conduct a study of systematics and feeding behavior of gelatinous zooplankton in Antarctic waters. The applicant proposes to dive in the vicinity of Cape Royds and may enter the protected area incidental to the diving activity.

Location

Cape Royds, Ross Island, Antarctica.

Dates

October—December 1987.

Charles E. Myers,

Permit Office.

[FR Doc. 87-19644 Filed 8-26-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 55-60402; ASLBP No. 87-552-03-SP]

Senior Operator License for Beaver Valley Power Station, Unit 1; Designation of Presiding Officer for Hearing of David Held

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972) and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a presiding officer is designated in the following proceeding: David W. Held, Senior Operator License for Beaver Valley Power Station, Unit 1.

By letter dated September 1, 1986, David W. Held, an applicant for a senior operator license for the Beaver Valley Nuclear Power Station, Unit 1, was informed by NRC's Region I office that he had failed the simulator examination administered in late July, 1986, and that his license application was thus denied. In accordance with directions contained in the letter of denial dated September 16, 1986, Mr. Held requested a hearing on the denial.

The presiding officer is being designated pursuant to the provisions of an Order issued by the Commission on August 7, 1987 granting a request for a hearing filed by Mr. Held on March 6, 1987, with the Director, Operator Licensing Branch, Division of Human

Factors Technology, Office of Nuclear Reactor Regulation.

The presiding officer in this proceeding is Administrative Judge Peter B. Bloch.

All correspondence, documents and other materials shall be filed with Judge Bloch in accordance with 10 CFR 2.701. His address is: Administrative Judge Peter B. Bloch, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 18th day of August 1987.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc 87-19719 Filed 8-26-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Issuance of Interim Director's Decision; Boston Edison Co., Pilgrim Nuclear Power Station

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued an interim decision concerning a request filed pursuant to 10 CFR 2.206 by the Honorable William B. Golden which requested that the Pilgrim Nuclear Power Station remain shut down or have its license suspended because of (1) deficiencies in the licensee management, (2) inadequacies in the emergency radiological plan, and (3) inherent deficiencies in the containment structure.

The Director of the Office of Nuclear Reactor Regulation has determined that the Petition, with the exception of the license management issue, should be denied. The reasons for this decision are explained in the "Interim Director's Decision Under 10 CFR 2.206," DD-87-14, which is available for public inspection in the Commission's Public Document Room, 1717 H Street, W., Washington, DC and at the Local Public Document Room at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360. That portion of the Petition concerning licensee management will be addressed in a subsequent response.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Bethesda, Maryland, this 21st day of August 1987.

For the Nuclear Regulatory Commission.

Vernon Rooney,

Acting Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 87-19716 Filed 8-26-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-498]

Issuance of Facility Operating License to Houston Lighting & Power Co. et al.; South Texas Project, Unit 1

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-71 to Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company and City of Austin, Texas, (the licensees) which authorizes operation of the South Texas Project, Unit 1 (the facility) at reactor core power levels not in excess of 3800 megawatts thermal in accordance with the provisions of the license, the Technical Specifications and the Evironmental Protection Plan with a condition currently limiting operation to five percent of full power (190 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

The South Texas Project, Unit 1 is a pressurized water reactor located in Matagorda County, Texas, west of the Colorado River, 8 miles north-northwest of the town of Matagorda and about 89 miles southwest of Houston. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license for the South Texas Project was published in the **Federal Register** on December 20, 1977 (42 FR 63826).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement and the Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement of the South Texas Project, Unit 1 (dated August 1986) since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.52, the Commission has determined that the granting of relief and issuance of the exemptions included in this license will have no significant impact on the environment. These determinations were published in the **Federal Register** on June 18, 1987 (52 FR 23217) and July 2, 1987 (52 FR 25094 and 52 FR 25095).

For further details with respect to this section, see (1) Facility and Operating License No. NPF-71, with Technical Specifications (NUREG-1255) and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated June 10, 1986; (3) the Commission's Safety Evaluation Report, dated April 1986 (NUREG-0781), and Supplements 1, 2, 3 and 4; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement, dated August 1986 (NUREG-1711).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Rooms in the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and in the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701. A copy of the Facility Operating License No. NPF-71 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Division of Reactor Projects—III, IV, V and Special Projects. Copies of the Safety Evaluation Report and Supplements 1, 2, 3 and 4 (NUREG-0781) and the Final Environmental Statement (NUREG-1171) may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7982 or by calling (202) 275-2060 or (202) 275-2171.

Dated at Bethesda, Maryland, this 21st day of August, 1987.

For the Nuclear Regulatory Commission.

N. Prasad Kadambi,

Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87-19720 Filed 8-26-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-237 and 50-249]

Exemption; Commonwealth Edison Co., Dresden Nuclear Power Station Unit Nos. 2 and 3

I

The Commonwealth Edison Company (CECo, the licensee) is the holder of Provisional Operating License No. DPR-19, which authorizes operation of Dresden Nuclear Power Station Unit No. 2, and Facility Operating License No. DPR-25, which authorizes operation of Unit No. 3. These licenses provide, among other things, that Dresden Nuclear Power Station Unit Nos. 2 and 3 are subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The station comprises two boiling water reactors at the licensee's site located in Grundy County, Illinois.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R.

By letters dated March 1, 1985 and December 4, 1985, the licensee requested schedular exemptions for the completion of the installation of the following fire protection items in both Dresden Units Nos. 2 and 3:

- Fire Detection and Suppression: Installation complete except for documentation (August 1987)
- Fire Barrier Pipe and Conduct Penetration: Seals complete — verification (August 1987)
- Emergency Lighting: Complete except for hand held fluorescent light fixture (August 1987)
- Fire Wrap: Turbine Building Center Corridor (August 1987)

By letters dated March 12, April 18, May 30, and August 18, 1986 and January 30 and April 14, 1987, the licensee provided additional information.

III

Reasonable interim compensatory measures for fire protection and post-fire safe shutdown capability must be provided in order to grant schedular exemptions from the implementation schedules defined in 10 CFR 50.48.

The licensee has implemented compensatory measures as detailed in the May 30, 1986 letter, which include roving fire watches until completion of the fire protection work identified in the exemption. The roving watch enters each area where compensatory measures are required *every 20 minutes*.

All procedures and training required for the fire watches for each area identified in the exemption have been completed. The fire watches will identify any indication of fire, smoke or burning odor and will immediately notify the control room; in addition, the watches have been trained in the use of portable fire extinguishers.

If a fire should occur within any fire area monitored by the roving fire watch patrols, there is reasonable assurance that the fire will be detected in its incipient stage before significant flame propagation or temperature rise occurs. Upon discovery of a fire, the control room will be immediately notified and a fire brigade response initiated. The fire patrols and watches will be capable of controlling or suppressing the fire to minimize damage pending arrival of the fire brigade.

The status for completion of Appendix R fire protection work for Dresden Unit Nos. 2 and 3 is as follows:

- Fire Detection and Suppression: Installation complete except for documentation (August 1987)
- Fire Barrier Pipe and Conduct Penetration: Seals complete — verification (August 1987)
- Emergency Lighting: Complete except for hand held fluorescent light fixture (August 1987)
- Fire Wrap: Turbine Building Center Corridor (August 1987)

All other Appendix R related items are complete.

The above schedule represents a best effort under the circumstances by the utility. Since 1980, the utility has spent over 25 million dollars in Appendix R modifications and has proceeded expeditiously to resolve technical open items and in completing modifications. The licensee is currently over 95 percent complete with Appendix R modifications. The licensee has been delayed in completing all modifications because of the industry-wide concerns regarding the proper interpretation of Appendix R requirements. NRC issued Generic Letter 83-33 to provide clarification. The licensee participated in a number of meetings and workshops in 1983 held by the NRC concerning Appendix R and as a result initiated a major re-verification effort to assure compliance with the clarified intent of Appendix R. This effort resulted in additional modifications. It is this situation which in spite of best efforts, prevented the licensee from achieving compliance with the schedular requirements of 10 CFR 50.48. These delays were beyond the control of the licensee.

IV

Based on the considerations and current status of the fire protection related work discussed above, the staff has concluded that the licensee has provided a sound rationale for the need of schedular relief; a best effort is being expended to complete the Appendix R related work; the utility has proceeded expeditiously to meet the Commission's requirements; delays were caused by circumstances beyond the utilities control; and reasonable and acceptable interim measures for fire protection and alternate shutdown capability to support the requested schedular exemption have been provided. Therefore, based on our evaluation, the staff has concluded that the requested schedular exemption from the requirements of 10 CFR 50.48, section (c)(4) should be granted.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the schedular exemption requested by the licensee's letter of March 1, 1985 and December 4, 1985 as supplemented is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption, namely that the exemption provides temporary relief from the schedular requirements of 10 CFR 50.48(c) and the licensee has made good faith efforts to comply with the schedules in 10 CFR 50.48(c).

The Commission hereby grants the licensee exemption from the schedular requirements of 10 CFR 50.48 section (c)(4) for the following items and duration:

- Fire Detection and Suppression: Installation complete except for documentation (August 1987)
- Fire Barrier Pipe and Conduct Penetration: Seals complete— verification (August 1987)
- Emergency Lighting: Complete except for hand held fluorescent light fixture (August 1987)
- Fire Wrap: Turbine Building Center Corridor (August 1987)

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (51 FR 10954 dated March 31, 1986, renoticed 52 FR 31100 dated August 19, 1987).

For further details with respect to this action, see the requests for exemption dated March 1, 1985 as supplemented

December 4, 1985, March 12, April 18, May 30 and August 18, 1986, and January 30 and April 14, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland this 21 day of August 1987.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87-19717 Filed 8-26-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing; Duke Power Co. et al.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF-35 and Facility Operating License No. NPF-52, to Duke Power Company, et al., (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendments requested in the licensee's letter dated June 12, 1987 and supplemented June 23 and August 12, 1987, would change the Technical Specifications (TS) to allow operation at up to 100% rated power with the Upper Head Injection (UHI) system removed. It is the licensee's intent to remove the UHI system from Units 1 and 2 during their upcoming refueling outages. Catawba Unit 1 is currently scheduled to enter its second refueling outage in October 1987 and Unit 2 is scheduled to enter its first refueling outage in December 1987. Similar changes to allow either or both McGuire Units to operate with the UHI system installed and functionally disabled (i.e., with UHI isolation valves closed and gagged) as well as with the system physically removed have been reviewed and approved by the NRC staff on May 13, 1986, through the issuance of license amendments 57 for McGuire Unit 1 and 38 for Unit 2.

The TS changes associated with the removal of the UHI system are discussed below.

(1) *3/4.3.3.8—Fire Detection Instrumentation*

The fire detection instruments in the UHI buildings, Table 3.3-11, will no longer be required to be in the TSs because they will not be needed to provide protection for Safety-Related equipment.

(2) *3/4.4.6—Reactor Coolant System Leakage*

The deletion of the UHI System will involve capping of the reactor vessel upper head pentrations as close as practicable to the upper head. Associated piping and valves are thus removed from the Reactor Coolant System and leakage verification is no longer applicable for the UHI related equipment in Table 3.4-1.

(3) *3/4.5.1.—ECCS, Cold Leg Injection*

The following changes would be accomplished by renumbering the existing TS 3/4.5.1.1 and including appropriate changes to the APPLICABILITY Section.

The contained water volume will be revised to reflect the volume assumed in the new analyses. The nitrogen cover pressure will be increased to a minimum value of 585 psig (from a previous value of 385 psig) in order to enhance cold leg injection water delivery during LOCA scenarios. Other TSs related to the accumulators remain unchanged.

(4) *3/4.5.1.2—ECCS, Upper Head Injection*

The TSs associated with the maintenance of the UHI System within specified tolerances will be deleted.

(5) *3/4.6.1—Primary Containment*

Table 3.6-1 will be revised to reflect the sealing of UHI related containment penetrations.

(6) *3/4.6.3—Containment Isolation Valves*

Table 3.6-2 will be revised to reflect the removal of containment isolation valves associated with UHI containment penetrations.

(7) *3/4.8.4—Electrical Equipment Protective Devices*

Tables 3.8-1A and 3.8-1B will be revised to reflect the deletion of the UHI System and related containment penetration conductor overcurrent protective devices.

The proposed amendments would also supplement Bases 3/4.5.1 to acknowledge the analyses that demonstrate the UHI system is not required provided minor changes to Cold Leg Accumulator parameters and discharge paths are implemented. They also discuss the applicability of these TSs in terms of two proposed UHI modes (i.e., operable and disconnected).

By letter dated August 12, 1987, the licensee updated the previously transmitted information concerning the radiological aspects of UHI removal and related radiological impacts on plant operations. This information further supports the licensee's proposed amendments, and does not alter the specific changes requested nor the bases thereto.

The significant differences between Catawba and McGuire are: (1) Catawba analyses utilize the improved BASH computer code while McGuire utilized WREFLOOD and BART; and (2) Catawba utilizes the optimized fuel assemblies while McGuire utilized the mixed standard and optimized fuel assemblies.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended, (the Act) and the Commission's regulations.

By September 28, 1987, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceedings, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reason why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the

petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification 3737 and the following message addressed to D.S. Hood, Acting Director, PHII–3: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 282842, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated June 12, 1987 and its supplements dated June 23 and August 12, 1987. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the York County Library, 138 East Black Street, Rock Hill, South Carolina, 29730.

Dated at Bethesda, Maryland, this 21st day of August 1987.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Project Manager, Project Directorate II–3, Division of Reactor Projects I/II.

[FR Doc. 87–19718 Filed 8–26–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C. Chapter 35), this notice announces a request to extend a public information collection. Civil service annuitants who marry, divorce or remarry after retirement may provide a survivor annuity benefit for their spouse and/or former spouse. Depending on the circumstances of the marriage or divorce, the annuitant would complete one of the following forms for electing a reduced annuity with survivor benefits: RI 20–63, Election of Reduced Annuity with Survivor Benefit for a Post-Retirement Spouse; RI 20–64, Post-Retirement Election of Reduced Annuity with Survivor Benefit for a Former Spouse; and RI 20–65, Election of Reduced Annuity with Survivor Benefit for a Post-Retirement Spouse. It is estimated that 5400 individuals will respond annually for a total burden of 630 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–19808 Filed 8–26–87; 8:45 am]

BILLING CODE 6325–01–M

Information Collection Submitted to CMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, Chapter 35), this notice announces a request to extend a public information collection. RI 30–2, Annuitant's Report of Income, is used to identify Civil Service Retirement System disability annuitants (under 60 years of age) whose incomes have been restored. If the annuitant's income exceeds more than 80 percent of the current rate of pay of the position occupied immediately before retirement, the Office of Personnel Management discontinues the annuity. It is estimated that 150,000 individuals will respond annually for a total burden of 10,000 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415

and

Richard Eisinger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, NW., Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–19609 Filed 8–26–87; 8:45 am]

BILLING CODE 6325–01–M

Civil Service Retirement System; Alternative Forms of Annuity Factors

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of adjusted present value factors applicable to employees who elect the alternative form of annuity under section 8343a of title 5, United States Code. This notice is necessary to conform the present value factors to changes in economic assumptions approved by the Board of Actuaries.

EFFECTIVE DATE: Revised present value factors will apply to anyone whose annuity commences October 1, 1987, or later.

ADDRESS: Send requests for actuarial assumptions and data to the Office of the Actuary, Room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Robert Rosenblatt, (202) 632–4682.

SUPPLEMENTARY INFORMATION: Section 831.2205(a) of Title 5, Code of Federal Regulations, prescribes the method for computing the reduction in the beginning rate of annuity payable to a retiree who elects an alternative form of annuity under 5. U.S.C. 8343a. That reduction is required in order to produce an annuity that is actuarially equivalent to the annuity of a retiree who does not elect an alternative form of annuity. The present value factors currently used to compute the reduction were published by OPM (51 FR 42988) on November 28, 1986.

On June 18, 1987, OPM published (52 FR 23222) a notice in the **Federal Register** to revise the normal cost percentages under the FERS Act of 1986, Pub. L. 99–335, bsed on changed economic assumptions approved by the Board of Actuaries. Those changed economic assumptions require corresponding changes in the present value factors used to compute an alternative form of annuity. OPM is, therefore, revising the table of present value factors to read to follows:

PRESENT VALUE FACTORS

Age at retirement	Present value of a monthly annuity
40	317.4
41	312.1
42	306.7
43	301.3
44	295.6
45	288.5
46	280.8
47	271.7
48	264.3
49	258.3
50	251.3
51	245.1
52	239.9
53	234.2
54	228.5
55	222.2
56	216.2
57	210.5
58	204.9
59	199.0
60	194.1
61	189.5
62	182.3
63	176.4
64	169.9
65	163.6
66	157.5
67	152.2
68	146.5
69	140.7
70	135.5
71	129.7
72	124.9
73	119.5
74	114.2
75	108.1
76	103.9
77	99.6
78	93.9
79	87.9
80	82.5
81	78.0
82	74.2
83	70.8
84	67.7
85	64.8
86	61.2
87	57.7
88	54.3
89	51.0
90	48.0

Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–19569 Filed 8–25–87; 8:45 am]

BILLING CODE 6325–01–M

Federal Employees Retirement System; Alternative Forms of Annuity Factors

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of adjusted present value factors applicable to employees who elect the alternative form of annuity under section 8420a of title 5, United States Code. This notice is necessary to conform the present value factors to changes in economic assumptions approved by the Board of Actuaries.

EFFECTIVE DATE: Revised present value factors will apply to anyone whose annuity commences October 1, 1987, or later.

ADDRESS: Send requests for actuarial assumptions and data to the Office of the Actuary, Room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Robert Rosenblatt (202) 632–4682.

SUPPLEMENTARY INFORMATION: Section 842.706(a) of Title 5, Code of Federal Regulations, prescribes the method for computing annuity payable to a retiree who elects an alternative form of annuity under 5 U.S.C. 8420a. That reduction is required in order to produce an annuity that is actuarially equivalent to the annuity of a retiree who does not elect an alternative form of annuity. The present value factors currently used to compute the reduction were published by OPM (52 FR 2066) on January 16, 1987.

On June 18, 1987, OPM published (52 FR 23222) a notice in the **Federal Register** to revise the normal cost percentages under the FERS Act of 1986, Pub. L. 99–335, based on changed economic assumptions approved by the Board of Actuaries. Those changed economic assumptions require corresponding changes in the present value factors used to compute an alternative form of annuity. OPM is, therefore, revising the tables of present value factors to read as follows:

TABLE I—PRESENT VALUE FACTORS (APPLICABLE TO RETIREES LISTED IN 5 U.S.C. 8462(c)(3)(B)(ii) EXCEPT 62 AND OVER

Age at retirement	Present value of a monthly annuity
40	262.2
41	258.2
42	254.2
43	250.0
44	245.6
45	241.2
46	236.7
47	232.3
48	228.0
49	223.7
50	219.3
51	214.8
52	210.2
53	205.6
54	200.7
55	195.7
56	190.7
57	185.6
58	180.5
59	175.4
60	170.2
61	165.1
62	160.0
63	154.9
64	149.7
65	144.5
66	139.4
67	134.4
68	129.4

TABLE I—PRESENT VALUE FACTORS (APPLICABLE TO RETIREES LISTED IN 5 U.S.C. 8462(c)(3)(B)(ii) EXCEPT 62 AND OVER—Continued

Age at retirement	Present value of a monthly annuity
69	124.5
70	119.6
71	114.8
72	110.1
73	105.5
74	100.9
75	96.4
76	92.1
77	87.9
78	83.8
79	79.7
80	75.8
81	72.1
82	68.4
83	64.9
84	61.6
85	58.3
86	55.1
87	52.1
88	49.3
89	46.5
90	43.9

TABLE II—PRESENT VALUE FACTORS (APPLICABLE TO RETIREES NOT LISTED IN 5 U.S.C. 8462(c)(3)(B)(ii)

Age at retirement	Present value of a monthly annuity
40	170.0
41	169.8
42	169.6
43	169.3
44	168.7
45	167.7
46	166.3
47	164.8
48	164.0
49	163.4
50	162.8
51	162.8
52	162.8
53	162.8
54	162.8
55	162.8
56	163.0
57	163.6
58	164.2
59	165.3
60	167.2
61	168.4
62	166.1
63	160.9
64	155.5
65	150.2
66	145.3
67	140.6
68	135.7
69	130.9
70	126.0
71	121.4
72	116.9
73	112.1
74	107.0
75	102.3
76	98.5
77	93.9
78	88.6
79	83.3
80	78.8
81	74.9
82	71.5
83	68.4
84	65.6
85	62.5
86	59.1
87	55.8
88	52.6
89	49.6

TABLE II—PRESENT VALUE FACTORS (APPLICABLE TO RETIREES NOT LISTED IN 5 U.S.C. 8462(c)(3)(B)(ii)—Continued

Age at retirement	Present value of a monthly annuity
90	46.7

Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87-19568 Filed 8-25-87; 8:45 am]

BILLING CODE 6325-01-M

PRESIDENT'S COMMISSION ON COMPENSATION OR CAREER FEDERAL EXECUTIVES

Meeting

The President's Commission on Compensation of Career Federal Executives will hold its first meeting Thursday, September 17, 1987 from 12:00 noon until 3:00 p.m. in room 4830 of the Department of Commerce located at 14th and Constitution Avenue NW., Washington, DC.

Waiver has been sought under 5 U.S.C. 552b(c)(2) to close the first hour of the meeting for administrative purposes. The Commission has also requested waiver of the rule requiring that such request be lodged 30 days in advance of the meeting scheduled September 17, 1987, pursuant to 41 CFR 101-6.10, due to the short term of the Commission. The open portion of the meeting, beginning at 1:15 p.m., will consist of a brief review of the Senior Executive Service and review of the mandate and objectives of the Commission.

Organizations and individuals are invited to submit for consideration written views or recommendations which are relevant to the mandate of the Commission as authorized by Executive Order 12592 of April 10, 1987. A limited amount of time is available for verbal testimony, amounting to five minutes per organization or individual. Those organizations and individuals wishing to testify should submit a written request no later than Friday, September 11, 1987 to the following address:

President's Commission on Compensation of Career Federal Executives, Office of Personnel Management, 1900 E Street NW., Room 5554, Washington, DC 20415.

Written recommendations or views for consideration by the Commission should also be addressed as noted above. These submissions should be made at the earliest date possible, but no later than November 2, 1987. For further information, please contact Steve Gleason at (202) 632-8703.

Note. The Commission originally authorized was due to report its findings no later than August 1, 1987, however, approval has been obtained to extend to February 28, 1988 and this approval will be published shortly.

Steve Gleason,

Executive Director.

August 24, 1987.

[FR Doc. 87-19700 Filed 8-26-87; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24831; File No. SR-AMEX-87-10]

On April 6, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a propose rule change to request Commission approval of a Memorandum of Understanding ("Surveillance Memorandum") that the Exchange proposes to enter into with the European Options Exchange ("EOE") providing for the exchange of surveillance information.

The proposed rule change was noticed in Securities Exchange Act Release No. 24462 (May 15, 1987), 52 FR 19943 (May 28, 1987). No comments were received by the Commission on the proposed rule change.

I. Background

The Amex has developed a broad-based market index, known as the Major Market Index ("XMI"), that is based on the values of 20 well-known, highly-capitalized U.S. stocks traded on the New York Stock Exchange ("NYSE"). The XMI is a price-weighted stock index designed to measure the market performance of major U.S. industrial corporations.[3] The stocks comprising the XMI represent a broad spectrum of industries, including merchandising, computer technology, oil and gas, communications, chemicals, pharmaceuticals, manufacturing, and

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1986).

[3] In a price-weighted index, an issue's relative weight in the total index value is based on its price rather than its total capitalization. A price-weighted index is calculated by adding the prices of one share of each of the companies in the index and dividing that sum by a pre-established divisor.

consumer products. The Amex currently trades cash-settled options based on the XMI. Such options are issued by, and cleared and settled through, the Options Clearing Corporation ("OCC").[4]

The Amex and the EOE have proposed to enter into a licensing agreement that will atuhorize the EOE to trade XMI options and to use the names "Major Market Index" and "XMI" in connection with options traded on the EOE and based on the XMI. The EOE is located in Amsterdam, the Netherlands. It trades options on individual Dutch stocks, Dutch government bonds, foreign currencies, and gold and silver.

XMI options traded on the EOE will have the same terms and conditions as XMI options traded on the Amex. In addition, XMI options traded on the EOE will be issued by and cleared and settled through the facilities of the OCC. Because EOE-traded XMI options will be issued, cleared, and settled by OCC, OCC rules generally will be applicable to EOE-traded XMI options. More specifically, EOE-traded XMI options will be identical to and fungible with the XMI options traded on the Amex. Consequently, positions in XMI options established in transactions effected on the EOE may be liquidated in transactions effected on the Amex, and vice versa. For example, a short XMI position established on the Amex may receive an assignment notice based on transactions effected on the EOE.

The EOE will commence trading XMI options on its trading floor each business day several hours prior to the opening of trading on the Amex. XMI options will trade on the EOE from 6 a.m. to 10:30 a.m., New York time, corresponding to noon to 4:30 p.m. Amsterdam time. There will be a one hour overlap of trading in XMI options on both exchanges starting at 9:30 a.m. New York time. The EOE will trade XMI options during all business days on which the EOE is open for trading. This will include certain U.S. holidays, when the Amex may be closed.

All exercises of XMI options on a given day, whether purchased in transactions on the EOE or the Amex, will be settled on the basis of the closing XMI index value as computed at the close of the Amex. In cases where the EOE is open for trading and the Amex is closed, any XMI exercises will be based on the XMI closing index value of the next U.S. trading day.

[4] The OCC has filed a proposed rule change (File No. SR–OCC–87–09) enabling it to issue, clear, and settle XMI options traded on the EOE. That proposal is being approved contemporaneously with the Amex proposal.

No official XMI index value will be calculated or published by the Amex or the EOE prior to the opening of the securities markets in New York. All of the stocks comprising the XMI are, however, to varying extents traded in one or more European markets during the hours the EOE is open for trading. The Amex and the EOE have agreed to cooperate in efforts to collect and disseminate European pricing information regarding such stocks and to display such information in a manner that will reflect the impact of current European prices on the previous day's closing level of the XMI. During the initial three and one-half hours of XMI trading on the EOE (6:00 to 9:30 a.m. New York time), prior to the opening of the New York securities markets, quotation for all the XMI component stocks will be available through the Stock Exchange Automatic Quotation International System ("SEAQ International") [5]. The Amex and EOE are negotiating with private vendors to calculate the index prior to the Amex opening based on the SEAQ International quotations, but it is unlikely that an agreement will be reached before trading begins on August 24. As soon as the New York markets open each day and the Amex commences to calculate the XMI, the index valuations will be displayed on the EOE trading floor and will be available through vendors servicing European business centers.

XMI options will trade in U.S. dollars on the EOE. Trading increments of eights (for premiums over $3) and sixteenths (for premiums less than $3) will be used on the EOE as is the case on the Amex. The EOE will disseminate to vendors real-time quotation and trade reports for XMI options. While the Amex and EOE will not provide one another directly real-time quotations and reports from their markets for the XMI options, each exchange will have access to this information from private vendors and will display it on their floors.

The EOE will introduce for trading only those series of XMI options as the Amex has determined to introduce. To the extent possible, all new series will commence trading on both exchanges on the same day. Because of EPE's earlier start of trading, it is likely that new series announced by the Amex will be introduced first on the EOE. Limit order books will not be passed between the Amex and the EOE or vice versa. Therefore, limit orders entered on one exchange cannot be guaranteed execution if the limit order's price is bettered at the other market.

The EOE will adopt rules and requirements relating to index options that are similar to the Amex's rules and requirements for index options. Among other things, these rules will provide for position and exercise limits, procedures that govern the allocation of exercise notices and option exercises, including the time for submission of exercise notices, margin requirements and disclosure document delivery requirements (limited to the EOE's own disclosure documents.[6]

[5] The SEAQ International System is a screen-based quotation dissemination system for non-United Kingdom international equities operated by the International Stock Exchange of the United Kingdom and the Republic of Ireland Ltd., formerly the Stock Exchange, London, England. For the XMI component stocks, SEAQ International will display firm quotations in U.S. dollars.

[6] For purposes of compliance with Rule 9b–1 under the Act, 17 CFR 240.9b–1 (1986), the Commission believes that, in view of the similarity of trading procedures between the Amex and EOE and the provisions for surveillance information sharing described herein, as well as the fact that these procedures do not involve a direct trading link, the current Options Disclosure Document ("ODD"), as approved by the Commission on September 17, 1985 (*see* Securities Exchange Act Release No. 22418, September 24, 1985, 50 FR 38732) adequately describes the risks of buying and writing index options including the internationally-traded XMI options contemplated by the Amex/EOE licensure agreement. In this regard, the Commission notes that the preparers of the ODD plan within the near future to revise the ODD and, in that context, anticipate adding further expository material to the ODD regarding internationally-traded options. In addition, because OCC will issue and guarantee the internationally-traded XMI options, which are identical to, and fungible with, XMI options traded on the Amex and covered by the ODD, the Commission does not believe it is necessary for EOE, or its affiliated clearing organization, the Associate Clearing House Amsterdam, B.C., to become a preparer of the ODD.

This is not to say, however, that sales and marketing literature, as well as customer recommendations, directed to U.S. customers regarding XMI options traded on the EOE should not be tailored to reflect any special risks involved in such trading. Apart from the general antifraud provisions of the federal securities laws (*i.e.*, Section 17(a) of the Securities Act of 1933 ("1933 Act") and Section 10(b) of the Act), Rule 134a under the 1933 Act, 17 CFR 230.134a (1986), specifically states that "written materials relating to standardized options . . . shall not be deemed to be a prospectus" only in so far as "[t]he potential risks related to options trading generally and to each strategy addressed are explained" in those materials. Similarly, Amex rules separately cover advertising by Amex members regarding standardized options (see Amex Rule 991: Communications to Customers) and set forth specific suitability requirements (*see* Amex Rule 923: Suitability). For example, the EOE will trade XMI options for a substantial period of time when the relevant U.S. underlying markets are not open, although the exercise of such XMI options will be based on U.S. prices. Accordingly, the Commission expects that sales and marketing literature, as well as recommendations to U.S. customers, will highlight the fact that premiums for XMI options may not reflect the U.S. market prices for the underlying securities. In this regard, the

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II. Description of Surveillance Memorandum

The purpose of the Surveillance Memorandum is to provide for the exchange of surveillance information as needed by the two exchanges to carry out their respective surveillance functions. Paragraph 1 of the Surveillance Memorandum provides for each exchange to conduct routine surveillance of trading in XMI options in its own marketplace and, to the best of its ability, assure compliance by its members with all rules and requirements applicable to options trading in such marketplace. Paragraph 2 requires each exchange to report all transactions in XMI options and to grant the other exchange access to such information. Paragraph 3 further calls for the daily delivery by OCC to each exchange of the combined clearing information regarding the previous day's activity in XMI options on both exchanges. This constitutes the bulk of the information needed to carry out routine market surveillance.

Paragraph 4 of the Memorandum generally provides that the Amex and EOE may request the assistance of the other exchange with regard to investigating a complaint or other question relating to or arising from transactions in XMI options. Upon receipt of such a request, the Amex or EOE would be obligated, using its best efforts and in accordance with its respective rules, to cooperate in the investigation and provide the requested information. Pursuant to paragraph 5 of the Surveillance Memorandum, the results of any such investigation generally shall be made available promptly to the exchange making the request ("requesting exchange"). However, when the inquiry involves details concerning the identity and trading activity of specific customers of member firms ("client information"), the exchange to whom the request is directed ("requested exchange") may decline to furnish the information in certain limited circumstances. An exchange only may refuse to provide the information if it determines disclosure of such client information: (1) Would not necessarily serve the interests of maintaining fair and orderly securities markets and options markets and/or protecting the investing public, or (2) would be inconsistent with the laws applicable to such exchange or with its rules and regulations. Even in cases where one of the exchanges determines that, in accordance with the above standards, it is precluded from turning over specific customer information, it is nevertheless required by paragraph 6 to make full inquiry into the matter and furnish such of the information as it is not prohibited from disclosing. In addition, under paragraph 7, each exchange agrees to notify the other of any disciplinary action taken against its members with respect to activities that could affect the markets on both exchanges. Finally, at the request of either exchange, a joint task force will be established to promptly review unusual or disruptive market conditions in XMI options or in the markets for the stocks comprising the XMI.

To further clarify the procedures to be followed by the Amex and the EOE in exchanging surveillance information concerning trading in XMI options pursuant to the Surveillance Memorandum, the Amex sent a letter to the EOE on June 17, 1987.[7] This letter sets forth the particular circumstances under which either exchange might fail to provide client information requested by the other exchange in reliance on clauses (1) and (2) of paragraph 5 of the Surveillance Memorandum. The Amex stated in the letter that it understands that any request for information by one exchange from the other must, pursuant to paragraph 4 of the Surveillance Memorandum, be accompanied by a statement of the reasons underlying such request. If the request is in proper form, the requested exchange will inquire into the matter, using its best efforts and in accordance with its rules, and furnish the relevant information promptly to the requesting exchange. The only exception would be where the requested information involves details concerning the identity and trading activity of specific clients of members of the requested exchange and even then, only if the requested exchange shall have made a good faith determination that the furnishing of such client information would not necessarily serve the interests of maintaining fair and orderly markets and protecting the investing public, or would be inconsistent with applicable law (including the rules of the requested exchange).

The Amex stated that it expected that any request made by either exchange for information pursuant to these provisions of the Surveillance Memorandum would be consistent with the exchange's obligation to fulfill its regulatory responsibilities. Further, the Amex stated that it expected that the reasons accompanying such request would explain the need for the information. Accordingly, the Amex noted that it seems unlikely that circumstances would arise justifying a determination that the furnishing of such requested information, including client information, would be inconsistent with the interests of maintaining fair and orderly markets or protecting the investing public. The Amex stated also that its outside counsel had indicated that it was not aware of any applicable law or rule that would preclude the furnishings of information by the Amex to the EOE for surveillance purposes, and futher noted it understanding that the EOE's counsel had opined [8] that it was unaware of any Dutch Law or rule that would preclude the furnishing of information by the EOE to the Amex for surveillance purposes.

The Amex further indicated that information requests normally would be directed to surveillance personnel at each exchange. If Amex surveillance personnel should have questions concerning the furnishing of specific information as requested by the EOE, the Amex indicated that it would expect that such questions would first be addressed to persons with supervisory responsibility at the Amex for surveillance activities. If the question of providing the information could not be resolved at that level, the Amex would further expect the matter to be referred to the exchange's top executives, who then would contact EOE management to discuss the nature, scope, and intent of the request before there would ever be a refusal to furnish information relevant to an EOE inquiry. The Amex stated that because of its belief that both exchanges will confine their requests for information to those instances where the data is necessary to carry out an appropriate inquiry in fulfilling

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Commission notes that it traditionally has been concerned about the pricing problems which may exist when a derivative product is trading in absence of reliable real-time information regarding the underlying instrument (*see* Securities Exchange Act Release No. 21580 (December 18, 1984), 49 FR 50342 [approving a proposal by the Chicago Board Options Exchange, Inc. to allow opening rotations for index options to be held at 9:00 a.m., Chicago time]). Here, however, the very purpose of the licensure arrangement is to facilitate such trading and it is physically impossible both to extend the time period when XMI options are available for trading and still ensure the availability of real-time information on the underlying securities. Accordingly, in view of the Amex's and EOE's efforts to make available such information as is obtainable (*e.g.*, SEAQ International quotations), if appropriate disclosure is made, the Commission does not believe it would be inappropriate for a broker-dealer to recommend the purchase or sale of XMI options on the EOE to U.S. customers.

[7] Leter from Howard A. Baker, Senior Vice President, Amex, to the EOE, dated June 17, 1987.

[8] *See* Letter from Maxim Lauman, Legal Counsel, EOE, to T.E. Westerterp Esq., President, EOE, dated April 16, 1987.

regulatory responsibilities, it would find it very unlikely that these procedures would ever have to be invoked or that circumstances would arise justifying the Amex to refuse furnishing relevant information to the EOE.

The EOE confirmed that it would be subject to the same understandings and procedures as noted in the Amex letter in regard to the above matters by signing and returning a copy of the letter on June 24, 1987.

In addition, the EOE has eliminated any concerns that Dutch law or the EOE's Articles of Association might impede the sharing of information contemplated by the above surveillance memorandum. For example, in contemplation of the licensure agreement, the EOE adopted a new rule that requires EOE members to inform their customers that by trading the XMI index option on the EOE they consent to the EOE's providing information concerning customer accounts to other regulatory organizations, including those of a foreign regulatory organization with whom the EOE has entered into a surveillance agreement.[9] Accordingly, EOE's counsel has concluded that a customer who decides to trade the XMI index option on the EOE waives any rights he may have with regard to confidentiality of information regarding his XMI transactions.[10] The Dutch Ministry of Finance has indicated that such a waiver is legally valid under Dutch law.[11]

III. Discussion

The Commission generally views agreements between American and foreign securities exchanges as positive developments in the increasing internationalization of the world's securities markets. Such agreements serve to facilitiate the flow of capital and financial services across national borders. Before approving these trading links, however, the Commission must be satisfied that adequate safeguards and procedures have been established and implemented to protect investors and detect fraudulent or manipulative acts or practices.[12] In this regard, the Commission believes that an effective surveillance program is critical, especially the coordination of surveillance activities between the U.S. and foreign exchanges.

The purpose of the Surveillance Memorandum is to ensure adequate surveillance of XMI index option trading on both exchanges. In an environment where XMI index options will be traded in more than one market, effective surveillance requires routine review of the trading in all markets where the option is traded, as well as trading in the underlying stocks. In addition, where specific questions arise from these routine trade reviews, the Commission believes that each market must be able to obtain additional detailed information, where appropriate, from the other marketplaces trading the security and their members. The Commission believes this is particularly so where the markets trading the security are located in different countries and subject to different regulatory oversight.

Because the XMI option traded on the EOE will be identical to and fungible with the XMI option traded on the Amex, positions established in these options on one exchange may be offset by transactions on the other exchange. Consequently, the Amex needs the ability to obtain access to information concerning XMI option trading on the EOE. Without access to this information, where appropriate, the Amex would not be able to ensure that its members were complying with Amex rules or the securities laws. More specifically, the Amex would not be able to detect possible fraudulent or manipulative acts or practices involving the XMI index. In addition, because the XMI is comprised of U.S. securities, it is essential that the appropriate U.S. exchanges or regulatory authorities be able to investigate international intermarket manipulations involving XMI options traded on the EOE and stocks traded in the U.S. Similarly, the EOE will benefit from access to information concerning trading of XMI options on the Amex and trading in the underlying stocks in carrying out its surveillance and compliance functions under Dutch law.

The Amex believes that the statutory basis for the proposed rule change is sections 6(b)(1), (5), and (6) of the Act.[13] The Amex believes that mutual access to surveillance information, pursuant to the Surveillance Memorandum, and the ability of one exchange to request the other exchange to conduct specific inquiries, will foster cooperation and coordination with persons engaged in regulating, clearing, settling, and facilitating transactions in securities. Such cooperation helps perfect the mechanism of a free and open market and, in general, protects investors.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[14] and the rules and regulations thereunder. As discussed above, trading of XMI options on the EOE will be subject to rules and disclosure requirements generally parallel to those in the United States.[15]

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[9] *See* Letter from P.C. Maas, Chairman, and T.E. Westerterp, President, EOE, to Amex, dated February 11, 1987, and Letter from Gordon L. Nash, Lord, Day & Lord, counsel to Amex, to Howard Kramer, Assistant Director, Division of Market Regulation, dated March 6, 1987.

[10] *See* Letter from Maxim L. Lauman, Legal Counsel, EOE, to T.E. Westerterp, Esq., President, EOE, dated April 16, 1987.

[11] *See* Letter from Dr. Marius J.L. Jonkhart, Director, Domestic Monetary Affairs, Financial Markets and Institutions Division, Ministry of Finance, to Richard G. Ketchum, Director, Division of Market Regulation and Gary G. Lynch, Director, Division of Enforcement, dated May 19, 1987 ("As the customer must authorize the member of EOE to provide information about him for the sake of exchange of information, he will waiver in this context possible rights in a way which I regard as legally acceptable.").

[12] *See* Securities Exchange Act Release No. 21449 (November 1, 1984), 49 FR 44575 (approving the trading link between the Montreal Stock Exchange ("ME") and the Boston Stock Exchange ("BSE")); Securities Exchange Act Release No. 22442 (September 20, 1985), 50 FR 39201 (approving the link between the Toronto Stock Exchange ("TSE") and the Amex); and Securities Exchange Act Release No. 23075 (March 28, 1986), 51 FR 11854 (approving a two-way trading link between the Midwest Stock Exchange ("MSE") and the TSE).

[13] 15 U.S.C. 78f(b)(1), (5), and (6) (1982).

[14] 15 U.S.C. 78f (1982).

[15] The Commission notes, however, that while there is consolidated trade and quote information among domestic standardized options markets, there is generally no consolidation of foreign and domestic trade and quote information for U.S. securities. With the growth of foreign markets for U.S. securities, some of which, like the XMI options here, have overlapping trading hours with U.S. markets and U.S. dollar denominated trade and quote reports, and the continuing development of international trading mechanisms, it may be desirable to develop consolidated U.S. displays of information for such internationally-traded securities. Thus, although the Commission does not believe it is necessary for the Amex and EOE to develop such consolidation facilities to commence simultaneous trading of XMI options, the Commission may revisit the need for consolidated information, at least during overlapping trading hours, if circumstances indicate that such consolidation is appropriate and necessary for the protection of investors. At a minimum, where two markets contemplate creating a direct trading link it would seem essential for these two markets to have access to each other's trade and quote information. For example, the Amex's trading link with the TSE specifically provides for the display of trade and quote information regarding linkage-eligible securities on each respective floor. Indeed, even the Amex-EOE arrangement contemplates that as soon as the New York markets open each day and the Amex commences to calculate the XMI index value, such value will be displayed on the EOE trading floor and will be available through vendors servicing European business centers. Furthermore, the Commission expects that U.S. broker-dealers handling customer orders would consider the liquidity of the EOE market in recommending that their U.S. customers execute their orders in that market.

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Moreover, the Commission believes that the Amex and the EOE have made adequate arrangements to provide for the exchange of surveillance information. The Surveillance Memorandum sets forth the mutual undertakings by the parties to conduct surveillance and to furnish each other with surveillance information. The June 17, 1987 letter written by the Amex and signed by the EOE on June 24, 1987 clarifies the circumstances under which either exchange might fail to provide information requested by the other exchange and states that it is unlikely that circumstances would arise justifying one exchange to refuse to furnish relevant information to the other exchange, and that such refusal would occur only after top executives at both exchanges have had an opportunity to discuss the nature, scope, and intent of the request.

The Commission believes that the circumstances under which either exchange would fail to provide requested information concerning the identity and trading activity of specific customers or clients of member firms are sufficiently narrow so as to make their occurrence unlikely.[16] Most surveillance information, such as transaction and clearance information, will be routinely available to each exchange. In regard to client information, the Commission agrees with the Amex and EOE that it is difficult to imagine situations where either exchange's failure to provide requested customer identity and trading activity would serve the interests of maintaining fair and orderly securities and options market and/or protect the investing public.[17] Ordinarily, investor protection would be furthered to the extent an exchange is better able to surveil its market. Investor protection in turn creates investor confidence in the markets' integrity and facilitates the development of liquid, fair, and orderly markets.

The Commission also believes that legal barriers to establishing the identity of customers of foreign brokers or banks are absent here. The EOE, by rule,[18] requires EOE members to obtain from their customers signed forms acknowledging that by trading XMI options on the EOE they consent to the EOE's provision of client and trading information to other regulatory organizations, including those of a foreign country, with whom the EOE has entered into a surveillance agreement. The Commission also notes that the Dutch Ministry of Finance has indicated that such a waiver is valid under Dutch law.[19] Finally, the Commission notes that counsel to both the EOE and Amex have indicated that they are unaware of any U.S. or Dutch law that would prohibit either exchange from providing information concerning the identity and trading activity of specific customers or clients of member firms where specific requests are made in accordance with the provisions of the Surveillance Memorandum.[20]

The Commission also believes that the Surveillance Memorandum adequately provides for surveillance of intermarket manipulation involving XMI options traded on the EOE and underlying stocks traded on the NYSE. Both the Amex and NYSE are members of the Intermarket Surveillance Group ("ISG"). The ISG maintains a facility for the routine exchange of essential surveillance information and provides a mechanism for coordinating intermarket investigations regarding securities traded in either market. Through the ISG, the Amex would have access to information regarding transactions in the component securities of the XMI traded on the NYSE, and the NYSE would have access to information regarding transactions in XMI options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Dated: August 21, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19659 Filed 8-26-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24800; File No. SR-PSE-87-19]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval to Amendment 1 to Proposed Rule Change by the Pacific Stock Exchange Inc. Relating to the Adoption of Its Pilot Program for the Appointment and Evaluation of Specialists as a Permanent Part of Its Rules of the Board of Governors

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on June 18, 1987 and July 28, 1987, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities Exchanges Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE originally filed its pilot program for the Appointment and Evaluation of Specialists and the Creation of New Specialist Posts ("Pilot Program") with the Commission on March 13, 1981.[2] The pilot program expired on June 30, 1987. In order to adopt the structure of the pilot program as a permanent part of the PSE Rules, the Board of Governors ("Board") is submitting this proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

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[16] If either market refuses to divulge such information pursuant to a bona fide request, the Commission should be promptly informed of the nature of the request and the reasons for its refusal. If the refusal called into question the ability of the Amex to maintain the integrity of its options market, the ability of the NYSE to police stock-related options trading or the ability of the Commission to oversee those markets, the Commission would consider taking steps to terminate the arrangement.

[17] In addition, both the Amex and EOE have exchanged letters stating that a party making an information request pursuant to the Surveillance Memorandum need not demonstrate that the conduct being investigated is an offense under the other exchange's rules or its country's laws. *See* Letter from Gordon L. Nash, Lord, Day & Lord, counsel to Amex, to Howard Baker, Senior Vice President, Amex, dated August 3, 1987 and Letter from Maxim L. Laumen, Legal Counsel, EOE, to Howard Baker, Senior Vice President, Amex, dated August 4, 1987.

[18] *See* Letter from Maxim L. Laumen, Legal Counsel, EOE, to T.E. Westerterp Esq., President, EOE, dated April 16, 1987.

[19] *See* Letter from Dr. Marius J.L. Jonkhart, Director, Domestic Monetary Affairs, Ministry of Finance, to Richard G. Ketchum, Director, Division of Market Regulation and Gary G. Lynch, Director, Division of Enforcement, Securities and Exchange Commission, dated May 19, 1987.

[20] *See* Letter from Howard A. Baker, Senior Vice President, Amex, to the EOE, dated June 17, 1987.

[21] 15 U.S.C. 78s(b)(1) (1982).

[22] 17 U.S.C. 200.30-3(a)(12) (1986).

[1] The PSE filed Amendment No. 1 to its proposed rule change extend the effectiveness of the Exchange's current pilot program for an additional three months and was submitted in response to a Commission staff request.

[2] See Securities Exchange Act Release Nos. 17647 (March 20, 1981) 46 FR 19372 and 17818 (May 27, 1981) 46 FR 30016. The PSE filed an amendment to the original filing on May 4, 1981.

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE's pilot program for the Appointment and Evaluation of Specialists and Creation of New Specialist Posts was originally filed with the Commission on March 13, 1981. The then and still current purpose of the pilot program is to establish an effective procedure and criteria for (a) the appointment of new specialists, and (b) the evaluation of the performance of PSE specialists. In 1982 and 1986, the pilot program was amended to provide for changes in the specialist evaluation system.[3] Since its original adoption the pilot has been reviewed on a continual basis.

The pilot program has been based upon a system that provides that PSE specialists will be judged on a quarterly basis in three distinct categories: (1) National Market System Quota Performance, (2) Specialist Evaluation Questionnaire Survey, and (3) SCOREX Limit Order Acceptance Performance. Each of these criteria forms the basis for rating the specialist on a total scale of 100%. Currently, the market system quote performance and evaluation questionnaire are each 45% of the total score. The SCOREX portion is equal to 10%.

At the end of each quarter each specialist is ranked with the other specialists on his trading floor and specialists who fall into the bottom 10% of all specialists for that quarter as determined by the overall evaluation score are asked to meet on an informal basis with the Equity Allocation Committee ("Committee").

The purpose behind this informal meeting with the Committee is to allow the Committee to review with the specialist his individual scores and determine if any remedial measures are needed.

Under provisions of the current pilot program, should a specialist fall into the bottom 10% of all specialists in any two of four consecutive quarters, the Committee has the discretion to either commence formal reallocation proceedings or require a second informal meeting with the specialist to discuss his performance.[4] The formal reallocation proceedings are designed to allow the specialist the opportunity to present his case before the Committee, or designated panel, to explain his situation. Under the provisions of the program, the Committee or panel is empowered to impose sanctions which can range from the reallocation of a stock or stocks to the withdrawal of approval of act as a specialist. A key factor in determining whether or not to impose such sanction is whether mitigating circumstances exist which would account for the specialist's substandard performance in the preceding quarters.

It is important to understand that the program satisfies due process requirements since notice, and opportunity for a hearing, and the ability to appeal Committee decisions to the Board are included within its provisions.

What is also crucial to the program is that it is considered and administered as a remedial program rather than a disciplinary program. The goal is to provide an effective means to measure and evaluate the performance of PSE specialists in order to help maintain their ability to adequately function within the market system.

The PSE program for the Appointment and Evaluation of Specialists has been shown to be an effective and useful tool during its existence at the PSE. It plays an important part in the maintenance of high standards of performance for PSE specialists as well as a means to help determine which specialist unit will be allocated new securities. It is on this basis that the Board voted to adopt the structure of the pilot program as a permanent part of the PSE rules.

The proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it helps to promote just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, removes impediments to, and perfects the mechanics of a free and open market, and protects investors and the public interest by allowing for an adequate and effective measurement of specialist performance.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that Amendment 1 to the proposed rule change be given accelerated effectiveness pursuant to section 19(B)(2) of the Act. Amendment 1 seeks to extend the pilot program for an additional three months to provide the Commission with sufficient time to thoroughly analyze all aspects of the PSE's pilot program [5] and determine whether the pilot program should be approved on a permanent basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of the PSE. All

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[3] See, Securities Exchange Act Rel. Nos. 19555 (March 1, 1983), 48 FR 9722; and 22895 (February 12, 1986), 51 FR 6190.

[4] If the Committee elects to meet with the specialist for a second time, the burden is on the specialst to prove the existence of mitigating circumstances. If the Committee determines that mitigating circumstances contributed to the specialist's poor performance for the quarters at issue, formal reallocation proceedings will not be commenced. If, however, the specialist fails to prove the existence of mitigating circumstances as the underlying reason for his poor performance, formal reallocation proceedings will be commenced. We note that the Committee has the discretion to waive the second informal meeting with the specialist and immediately commence formal reallocation proceedings when the Exchange determines that the specialist has fallen into the bottom 10% for two consecutive quarters.

[5] As noted above, the Exchange requested approval of its pilot program on a permanent basis. The Commission, however, requested the PSE to amend its filing for the purpose of extending the effectiveness of the pilot program for an additional three months while it considered permanent approval.

submissions should refer to the file number in the caption above and should be submitted by September 17, 1987.

V. Conclusion

The Commission finds that Amendment 1 to the proposed rule change that would extend the pilot temporarily is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder. In this regard, we note that the extension of the pilot furthers the protection of investors and the public interest by allowing for the continued evaluation of specialist performance while the Commission considers permanent approval.

The Commission finds good cause for approving Amendment 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in that the current pilot program expired on June 30, 1987. The Commission believes it is appropriate to permit the program to remain in effect for an additional three months while the Commission considers the Exchange's proposal to approve the pilot program on a permanent basis. The Commission believes, therefore, that accelerated effectiveness of the extension of the pilot program until September 30, 1987 is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that Amendment 1 to the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

Dated: August 14, 1987.

[FR Doc. 87-19660 Filed 8-26-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 21, 1987.

The above named national security exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Zenith National Insurance Corp.

Common Stock, $1.00 Par Value (File No. 7-0364)

Helvetia Fund, Inc.

Common Stock, $0.001 Par Value (File No. 7-0365)

Placer Dome Inc.

Common Stock, No Par Value (File No. 7-0366)

Neiman-Marcus Group Inc. (The)

Common Stock, $.01 Par Value (File No. 7-0367)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 14, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19661 Filed 8-26-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24833; File No. SR-MBS-87-7]

Self-Regulatory Organizations; Proposed Rule Change by MBS Clearing Corp. Relating to the Depository Division Rules Regarding Guarantees and Representation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1987 the MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is a proposed rule change to the Depository Division ("Depository Division") rules of MBS Clearing Corporation (the "Corporation") which, among other things, make revisions and modifications to the Depository Division rules in connection with warranties Participants give regarding Securities transferred to their Proprietary Accounts, assumptions made by the Corporation in computing a Participant's Net Free Equity, and the corporation filing of claims for payment under any guarantee, as agent for Participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule changes clarify and revise certain Depository Division rules applicable to Depository Transactions, Depository Services and Depository Participants. Capitalized terms used herein have the same meanings ascribed to them in the Depository Division Rules.

Article II, Rule 1 section 2(a) has been modified to limit the warranty Participants give with respect to Securities transferred to their Proprietary Accounts. Participants' ownership, free from adverse claims, of securities transferred to their Proprietary Accounts results from the making of appropriate entries on the books of the Corporation, as a clearing corporation within the meaning of the New York Uniform Commercial Code. While Participants are not required to warrant that the Corporation is a clearing corporation or that it has made appropriate entries in its books, the proposed rule change requires Participants to warrant that once Securities have been transferred to their Proprietary Accounts, such Participants have not subjected the Securities to any liens other than those granted to the Corporation pursuant to the Depository Division rules.

Article II, Rule 1, section 2(c) has been amended to indicate, consistent with

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[6] 17 CFR 200.30-3.

Article II, Rule 13, that funds are transferrable from Agency Cash Balances to Agency Transfer Cash Balances, not *vice versa*.

In Article II, Rule 3, Section 3, a new subparagraph (c) is added to reflect the Corporation's ability to make an intra-day transfer of Securities from one Transfer Account to another Transfer Account in a transaction Versus Payment. In section 4, the proposed rule change now provides that the Corporation warrants that, except as otherwise provided in the Rules, it will not have created any lien or encumbrance on Securities transferred from a Transfer Account to the Depository Account with which it is associated. Otherwise, as previously provided, the Corporation makes no independent warranty of title.

Article I, Rule 11, section 1, subparagraphs (c)(11)(C) (1), (2) and (3) have been amended to make clear that the Corporation, when making a *pro forma* computation of a receiving Participant's Net Free Equity before effecting a requested Account Transfer of Securities, assumes the crediting of the Securities to the Transfer Account associated with the Receiving Participant's Proprietary, Agency or Pledgee Account, as the case may be.

Proposed new Article III, Rule 2, section 6 addresses the concerns raised by Participants that the Corporation may be "appropriating" a Government National Mortgage Association (GNMA) or other similar guarantee for its own purposes. These concerns are based in part on the fact that since GNMA securities are registered in the name of the Corporation's nominee, only the Corporation can file appropriate claims for payment under the GNMA guarantee. The proposed rule change is intended to resolve these concerns by making clear that the Corporation, in filing claims for payment under any guarantee, will be acting solely as agent for its Participants except to the extent that (i) the Corporation has made a principal and interest advance or has pledged principal and interest to a third party lender to fund a principal and interest advance, or (ii) the Securities with respect to which principal and interest are payable have been pledged in connection with a Participants failure to pay its Debit Balance.

The proposed rule changes are consistent with the Securities Exchange Act of 1934 in that it facilitates the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change have not yet been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 17, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: August 21, 1987.

Exhibit A—MBS Depository Division Rule Changes

Article II—Depository Transactions

Note.—Italics Denote Addition, [ ] Denotes Deletion.

Rule 1. Depository Accounts

Sec. 3. Representations and Warranties of Participants Regarding Depository Accounts. Each Participant maintaining a Depository Account shall be deemed to represent and warrant that such Depository Account is maintained in accordance with applicable law and:

(a) In the case of a Proprietary Account, that all Securities deposited in [or transferred to/from] such Proprietary Account [(except for Securities credited to the associated MBSCC Proprietary Transfer Account pursuant to Section 2 of Rule 3 of this Article II)] are owned by such Participant *and that the Participant has not subjected any Securities deposited in or transferred to such Proprietary Account to any lien other than the lien of the Corporation pursuant to these Rules.*

* * * * *

(c) In the case of an Agency Account, that all funds transferred from the Agency [Transfer] Cash Balance to the Agency *Transfer* Cash Balance pursuant to Rule 13 of this Article II, and all Securities permitted to remain in the associated Agency Transfer Account by reason of an Instruction submitted pursuant to the last paragraph of Section 3 of Rule 3 of this Article III, are so transferred or permitted to remain in conformity with the terms of any applicable customer agreement.

* * * * *

Rule 3. Transfer of Securities

Sec. 3. Corporation's Transfer of Securities. Any Security credited to an MBSCC Transfer Account *of a Receiving Participant* shall be transferred by the Corporation from such Account upon the first to occur of the following:

* * * * *

(b) the transfer of such Security by such Receiving Participant to another Depository Account (including an associated Seg Account) *of such Participant or another Participant* in any [other] transaction not Versus Payment which satisfies the requirements of Section 1(b) of Rule 11 of this Article II; [or]

(c) *the transfer of such Security by such Receiving Participant to the MBSCC Transfer Account associated with another Depository Account of such Participant or another Participant*

in any transaction Versus Payment which satisfies the requirements of Sections 1(b) and 1(e) of Rule 11 of this Article II; or

[(c)] (*d*) satisfaction by the Receiving Participant of all cash settlement obligation with respect to the Depository Account with which such MBSCC Transfer Account is associated pursuant to Section 3 of Rule 2 of this Article II (including any adjustment of such cash settlement obligation pursuant to Section 1(c) of Rule 5 of this Article II) or determination by the Corporation that no cash settlement obligation exists with respect to such Depository Account (after such adjustment, if any).

At the end of each Business Day, upon satisfaction of the requirements of clause [(c)] (*d*) above, the Corporation shall transfer all Securities then held in an MBSCC Transfer Account to the Depository Account with which such MBSCC Transfer Account is associated, except for Securities in an MBSCC Agency Transfer Account which the Participant has directed the Corporation, in accordance with the Procedures, not to transfer.

Sec. 4. Warranties. The Corporation *warrants that, except as otherwise provided in these Rules, it shall not have created any lien or encumbrance on* [expressly disclaims any independent warranty with respect to] Securities transferred from the Corporation to any Receiving Participant *pursuant to Section 3 of this Rule 3. The Corporation otherwise expressly disclaims any independent warranty of title with respect to such Securities.* However, notwithstanding any intervening transfers of Securities to MBSCC Transfer Accounts, all Receiving Participants shall be entitled to rely upon the representations and warranties made by Delivering Participants in connection with the transfer of Securities to the MBSCC Transfer Accounts including those pursuant to Section [2] *3* of Rule 1 and Section 1(c) of Rule 10 of this Article II.

* * * * *

Rule 10. Physical Deposit and Withdrawal of Securities

Sec. 1. Deposits of Securities

* * * * *

(d) All deposits of Securities acceptable in form and substance as prescribed by Section 1(c) of this Rule 10 initially shall be credited to the Corporation's Internal Control Account. After a predetermined processing interval, Securities that have been credited to the Internal Control Account automatically will be transferred to a Participant's Proprietary Account or Agency Account, as specified on the deposit ticket and subject to the Receipt Mode the Participant has elected for Account Transfers in which it is both the Delivering and the Receiving Participant, whereupon the Participant's Proprietary Account or Agency Account, as the case may be, will be given Face Value credit for the deposited Securities. No crediting of Securities to the Corporation's Internal Control Account pursuant to this subparagraph (d) shall give the Corporation any lien or other interest in such Securities. *Deposited Securities credited to Participant's Depository Accounts shall be registered in the name of the Corporation's nominee.*

* * * * *

Rule 11. Account Transfers

Sec. 1. Permitted Transfers

* * * * *

(c) If a requested Account Transfer meets the requirements of subparagraph (b) of this Section 1, the Corporation shall proceed with the following steps:

* * * * *

(ii) If the Account Transfer is Versus Payment:

* * * * *

(C) Third:

(1) If the Securities are to be transferred to the Proprietary Account of the Receiving Participant and automatically can be credited to the associated MBSCC Proprietary Transfer Account in accordance with the Receipt Mode elected by the Receiving Participant, or the Securities have been placed on an Await Match List and the transfer is approved, the Corporation shall determine whether, after giving effect to a debit to the Receiving Participant's Proprietary Cash Balance equal to the Contract Value *and a credit of the Securities to the MBSCC Proprietary Transfer Account associated with the Receiving Participant's Proprietary Account,* the Receiving Participant will have negative Proprietary Net Free Equity which is not offset by the Collateral Value of the Participant's Collateral in the Proprietary Participants Fund and the Participant's Excess Market Margin Differential (to the extent not used to offset negative Agency Net Free Equity or Pledgee Net Free Equity). If the Receiving Participant has sufficient Proprietary Net Free Equity and/or Collateral Value, the Securities will be credited to the MBSCC Proprietary Transfer Account associated with the Proprietary Account of the Receiving Participant and the Receiving Participant's Proprietary Cash Balance will be debited. If not, the Corporation, if it determines in its discretion that time permits, shall advise the Receiving Participant of the deficiency in Proprietary Net Free Equity and/or Collateral and afford the Receiving Participant an opportunity to cure the deficiency. If the deficiency is cured by the time specified by the Corporation, the Corporation shall proceed in the manner described in the preceding sentence. If not, the debit to the Delivering Participant's Depository Account or the associated MBSCC Transfer Account and the credit to its Cash Balance shall be reversed.

(2) If the Securities are to be transferred to the Agency Account of the Receiving Participant and automatically can be credited to the associated MBSCC Agency Transfer Account in accordance with the Receipt Mode elected by the Receiving Participant, or the Securities have been placed on an Await Match List and the transfer is approved, the Corporation shall determine whether, after giving effect to a debit to the Receiving Participant's Agency Transfer Cash Balance equal to the Contract Value *and a credit of the Securities to the MBSCC Agency Transfer Account associated with the Receiving Participant's Agency Account,* the Receiving Participant will have negative Agency Net Free Equity which is not offset by the Collateral Value of the Participant's Collateral in the Agency Participants Fund, the Applicable Percentage of the Market Value of the Securities which the Participant has pledged to the MBSCC Depository Pledgee Account and the Participant's Excess Market Margin Differential (to the extent not used to offset negative Proprietary Net Free Equity or Pledgee Net Free Equity). If the Receiving Participant has sufficient Agency Net Free Equity, Collateral Value and/or Market Value, the Securities will be credited to the MBSCC Agency Transfer Account associated with the Agency Account of the Receiving Participant and the Receiving Participant's Agency Transfer Cash Balance will be debited. If not, the Corporation, if it determines in its discretion that time permits, shall advise the Receiving Participant of the deficiency in Agency Net Free Equity, Collateral Value and/or Market Value and afford the Receiving Participant an opportunity to cure the deficiency. If the deficiency is cured by the time specified by the Corporation, the Corporation shall proceed in the manner described in the preceding sentence. If not, the debit to the Delivering Participant's Depository Account or the associated

MBSCC Transfer Account and the credit to its Cash Balance shall be reversed.

(3) If the Securities are to be transferred to the Pledgee Account of the Receiving Participant and automatically can be credited to the associated MBSCC Pledgee Transfer Account in accordance with the Receipt Mode elected by the Receiving Participant, or the Securities have been placed on an Await Match List and the transfer is approved, the Corporation shall determine whether, after giving effect to a debit to the Receiving Participant's Pledgee Cash Balance equal to the Contract Value *and a credit of the Securities to the MBSCC Pledgee Transfer Account associated with the Receiving Participant's Pledgee Account,* the Receiving Participant will have negative Pledgee Net Free Equity which is not offset by the Collateral Value of the Participant's Collateral in the Pledgee Participants Fund and the Participant's Excess Market Margin Differential (to the extent not used to offset negative Proprietary Net Free Equity or Agency Net Free Equity). If the Receiving Participant has sufficient Pledgee Net Free Equity and/or Collateral Value, the Securities will be credited to the MBSCC Transfer Account associated with the Pledgee Account of the Receiving Participant and the Receiving Participant's Pledgee Cash Balance will be debited. If not, the Corporation, if it determines in its discretion that time permits, shall advise the Receiving Participant of the deficiency in Pledgee Net Free Equity and/or Collateral and afford the Receiving Participant an opportunity to cure the deficiency. If the deficiency is cured by the time specified by the Corporation, the Corporation shall proceed in the manner described in the preceding sentence. If not, the debit to the Delivering Participant's Depository Account or the associated MBSCC Transfer Account and the credit to its Cash Balance shall be reversed.

* * * * *

Article III—Depository Services

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Sec. 6. Enforcement of Guarantees. To the extent entitled or permitted to do so, the Corporation shall, in the event that any issuer or paying agent fails to timely pay principal or interest on any deposited Securities registered in the name of MBSCC's nominee, file appropriate claims for payment under any guarantee by FHLMC, FNMA or GNMA, as the case may be. Except to the extent that (i) the Corporation has made a principal and interest advance to a Participant with the Corporation's own funds pursuant to Section 2(a) of this Rule 2 and is entitled to retain the subject principal and interest payment or has borrowed funds to make a principal and interest advance from a third-party lender pursuant to Section 2(b) of this Rule 2 and the subject principal and interest payment has been assigned to the third-party lender or (ii) the Securities with respect to which principal and interest have been pledged pursuant to Section 1 of Rule 5 of Article II, the Corporation, in filing such claim for payment and in receiving, holding and disbursing any funds received pursuant to such claim, shall be deemed to be acting solely as agent for the benefit of the Participant entitled to crediting of principal and interest under Section 1 of this Rule 2.

[FR Doc. 87-19710 Filed 8-26-87; 8:45 a.m.]

BILLING CODE 8010-01-M

[Release No. 34-24832; File No. SR-OCC-87-9]

Self-Regulatory Organizations; Options Clearing Corp.; Order Approving Proposed Rule Change Enabling the Options Clearing Corp. to Clear "Major Market Index" Options To Be Traded on the European Options Exchange

On April 14, 1987, the Options Clearing Corporation ("OCC"), filed a proposed rule change (File No. SR-OCC-87-9) under section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder.[2] The proposal would enable OCC to issue, clear and settle options on the "Major Market Index" ("XMI options") to be traded on the European Options Exchange ("EOE") that are identical to and fungible with XMI options currently traded on the American Stock Exchange ("Amex"). The Commission published notice of the proposal in the **Federal Register** on May 5, 1987.[3] OCC amended the proposed rule change on May 6, 1987. No comments were received. For the reasons discussed below, the Commission has determined to approve the proposed rule change.[4]

I. Description of the Proposal

The proposal will enable OCC to issue and clear XMI options traded on the EOE that are identical to and fungible with XMI options currently traded on the Amex. The proposal would amend OCC's By-Laws and Rules to establish procedures for the clearance of transactions in XMI options in the EOE. The proposal also contains a proposed International Market Agreement ("IMA") to be signed by OCC, Amex and EOE. The IMA will govern the relationship among those three entities for the trading and clearance of transactions in XMI options. In addition, the proposal contains an Associate Clearinghouse Agreement ("Clearing Agreement") to be signed by OCC and the ACHA Associate Clearing House Amsterdam, B.C. ("ACHA"), a wholly owned subsidiary of the European Stock Options Clearing Corporation B.V. ("ESCC") (the clearing organization for EOE). Under the agreement, ACHA will act as an associate clearinghouse of OCC. Finally, the proposal contains amendments to OCC's Participant Exchange Agreement ("PEA") designed to identify additional responsibilities for OCC participant exchanges that form a link with a non-U.S. market.

A. Issuance, Trading and Clearance of XMI Options

Under the proposal, XMI options will continue to be issued, cleared and settled by OCC in accordance with its By-Laws and Rules with some changes and modifications to account for the inclusion of EOE and ACHA. OCC anticipates that trading of XMI options will occur on EOE between the hours of 12 noon and 4:30 p.m., Amsterdam time [6:00 a.m. and 10:30 a.m. Eastern Standard Time ("EST")]. Trading in XMI options on Amex is conducted between 9:30 a.m. and 4:15 p.m. (EST). Therefore, from 9:30 a.m. to 10:30 a.m. (EST) XMI options will be available for trading on both the Amex and EOE at the same time.

Each market, at the end of its trading day, will submit to OCC a report of matched trades. OCC will then open or close positions in XMI options in the accounts of OCC members based upon the matched trade reports, the same as it does not. When EOE is open for trading on a day on which Amex is closed, EOE will transmit matched trade reports resulting from such trading on the next business day, although OCC member reports will show the actual date on which the trade was effected. Positions in XMI options arising from trades on EOE will be identical to and fungible with positions arising from trades on Amex. Thus, a position in XMI options

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Securities Exchange Act Release No. 24404 (April 29, 1987), 52 FR 16469.

[4] The Commission today also has approved a related rule filing SR-AMEX-87-10, whereby the Amex will enter into a Surveillance Sharing Memorandum with the EOE providing for the exchange of surveillance information.

may be opened on one market and closed out in the other.[5]

A U.S. investor may effect a transaction in XMI options on EOE through its broker. The broker, if it is a member of EOE, will effect the transaction at EOE and, if the broker is also an OCC member, the resulting position ultimately will be carried in the broker's customer account at OCC. If the broker is not a member of OCC, the position will be carried in the customer account of the OCC member through which the broker clears its XMI options transactions. If neither the broker nor its clearing firm are members of OCC, the trade would be executed for the broker by an EOE member, cleared by the EOE member through ACHA, and could be held by the ACHA and EOE member.

B. The IMA

The relationship among OCC, Amex and EOE will be governed by the IMA. The IMA is similar to the Restated Participant Exchange Agreement, which governs the relationship among OCC and the U.S. options exchanges. The IMA, however, is applicable only to the XMI option and contains provisions referring to its issuance, disclosure, expiration months, exercise prices, units of trading, margin, comparison, clearing and settlement.

The IMA also governs information sharing among Amex, OCC and EOE. For example, the IMA would require EOE to notify OCC of (1) any determination by EOE's management authority that an OCC member that is also an EOE member is not in compliance with EOE's financial responsibility standards; and (2) any action or proposed action concerning the financial condition of any such OCC member taken or to be taken by EOE managing authority. OCC also will be required to notify EOE if a similar situation occurs with an OCC member that is also an EOE member.[6]

C. The Clearing Agreement

Under the proposal, ACHA will act as an associate clearing house to OCC. The proposal defines the term "associate clearing house" and sets forth the relationship between OCC and ACHA. Under that definition, ACHA is deemed to be an OCC member except to the extent provided otherwise in the Clearing Agreement. ACHA was established by ESCC for the limited purpose of clearing, settling and holding member positions in XMI options and to act as an associate clearinghouse to OCC.[7] ACHA only will process XMI options for EOE members and, if they so desire, OCC members. An ACHA participant [8] also may apply to become an OCC member.[9]

OCC will maintain separate subaccounts for each ACHA participant, similar to those that it maintains for OCC members. OCC will maintain: (1) A firm subaccount for proprietary activity, (2) a separate market professional's subaccount for XMI options transactions of the market professional for whom the account is held, (3) a combined market professional's account, for XMI options transactions of the market professionals for whom the account is held, and (4) a customer's subaccount for XMI options transactions of the ACHA participant's customers.[10]

Similar to the provisions for other OCC members, the Clearing Agreement will provide OCC security interests in certain positions in ACHA's accounts. OCC will have a lien on and a security interest in all long positions and all other securities margin and other funds in each ACHA subaccount, except segregated customer long positions, for which OCC will not hold a lien or other security interest. In the event that Dutch law, and not Delaware law, is held applicable in a dispute over a security interest, the Clearing Agreement provides that, where necessary to protect OCC, the positions in ACHA's account will be transferred to OCC.

The Clearing Agreement requires ACHA to maintain margin in accordance with OCC Rules and at the same levels required of all other OCC members. In addition, ACHA must make an initial $100,000 contribution to OCC's Non-Equity Securities Clearing Fund and additional contributions as required by OCC Rule 1001. ACHA will be required to maintain minimum shareholders' equity of at least 10% of its aggregated daily OCC margin requirement, subject to a $250,000 minimum. ACHA also must maintain liquid net current assets of at least 10% of aggregate daily OCC margin requirements with a $150,000 minimum.[11] In addition, ACHA covenants not to incur obligations, other than in respect of XMI options positions, in the aggregate in excess of $50,000 without OCC's consent.

ACHA and its participants also will maintain a clearing fund at ACHA that is separate from ACHA's contribution to OCC's clearing fund.[12] Under ACHA rules, that clearing fund would be available to ACHA to satisfy its obligations to OCC in the event of (1) ACHA participant default, or (2) assessment of ACHA by OCC under OCC's rules.[13] ACHA, like OCC, also is authorized to assess its participants in an amount equal to 100% of each participant's required contribution to ACHA's clearing fund.

The Clearing Agreement requires ACHA to provide specific financial information to OCC. ACHA must provide OCC annual audited financial statements and monthly unaudited financial statements, which must be in accordance with generally accepted accounting principles in the Netherlands.[14] Finally, ACHA must

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[5] The proposal treats the XMI option as the first of a new category of OCC options known as "international options." International options are defined as options issued by OCC pursuant to an international market agreement or otherwise designated by OCC as such. Any new international market agreement would be required to be filed by OCC with the Commission under Rule 19b-4 of the Act. The proposal also enables OCC to designate options that are not the subject of an international market agreement as fungible with options that are subject to such an agreement. The proposal defines transactions in international options as "international transactions."

[6] *See* Section 18 of IMA.

[7] ESCC is a subsidiary of, and the clearing organization for EOE. OCC expects ACHA's participants initially will include of the nine clearing members of ESCC.

[8] The Commission understands that ACHA's participants currently include six Dutch banks and three subsidiaries of Dutch banks. Those participants are regulated by the Dutch central bank, which is regulated by the Dutch Ministry of Finance. OCC's By-Laws and Rules do not provide applicant and membership standards for participants other than broker-dealers. *See* Securities Exchange Act Release No. 20221 (September 23, 1983). Accordingly, the Commission expects OCC to develop such standards for Commission review and approval, before or concurrent with, developing standards for admission of non-U.S. bank clearing members.

[9] *See* OCC By-Laws, Article I Section 1.

[10] OCC will not enter into agreements with ACHA participants, market-makers, or professionals. Instead, the Clearing Agreement specifies that neither it nor OCC's Rules provide any ACHA participant or any market professional any right or claim against OCC with respect to XMI options. ACHA will obtain acknowledgements from each ACHA participant granting OCC liens, as appropriate, in options positions in lien accounts and recognizing that the rights of the ACHA participant are against ACHA and not OCC.

[11] The Commission understands that ACHA has arranged an initial $5 million line of credit with its U.S. clearing bank as overdraft protection for ACHA's obligations to OCC.

[12] OCC represents that ACHA's clearing fund will be maintained at an amount equal to 25% of ACHA's required contribution to OCC's clearing fund. Accordingly, the size of ACHA's aggregate clearing fund will vary directly with ACHA member trading activity in XMI options.

[13] OCC is authorized to assess its members' clearing fund contributions, and can further assess each member (including ACHA) in an amount equal to 100% of that member's required OCC clearing fund contribution, in the event of OCC member or clearing bank default.

[14] OCC represents that it has retained a reputable major U.S. accounting firm with offices in the Netherlands to assist OCC in reviewing ACHA's financial reports.

immediately notify OCC of a number of events which may indicate to OCC potential financial problems of ACHA.[15]

D. The PEA

The proposal would amend the PEA to clarify exchange responsibilities for compliance with disclosure requirements under federal and state securities laws. In general, the amendments will require a participating exchange that has entered into an international market agreement to furnish to OCC any information regarding the international market agreement that is required to be included in the federal or state disclosure documents.

II. OCC's Rationale for the Proposal

OCC believes the proposal is consistent with section 17A of the Act. OCC believes that the proposal will promote the prompt and accurate clearance and settlement of securities transactions, consistent with section 17A(b)(3) of the Act, particularly for XMI options traded on the EOE. OCC also believes that its proposed clearing arrangements are consistent with its obligation to safeguard securities and funds, among other things, because it incorporates the same basic safeguards and procedures applicable to other option transactions cleared by OCC.

III. Discussion

For the reasons discussed below, the Commission is approving OCC's proposal. The Commission believes that OCC's proposal is consistent with section 17A of the Act because it should promote the prompt and accurate clearance and settlement of options transactions while safeguarding funds and securities in OCC's custody and control, or for which it is responsible.

The Commission believes that the proposal provides a structure for prompt, accurate, and safe clearance and settlement of fungible U.S.-issued options traded on a U.S. registered securities exchange and a non-U.S. exchange. Clearance and settlement of those options is effected through OCC and the ACHA, a subsidiary created for that purpose by ESCC. ACHA acts as a clearing facility for its participants to clear and settle XMI options and enables those participants to use OCC's centralized processing services for XMI options. ACHA acts as the principal in relation to OCC on all its participants' XMI options transactions.

OCC's proposal and Amex's related rule filing (SR–AMEX–87–10) mark the first time that a U.S. option product has been made available for trading on a non-U.S. overseas exchange. It is also the first instance where a U.S. registered clearing agency will issue and clear securities traded on a non-U.S. overseas exchange. The Amex/EOE/OCC proposals evidence the increasing internationalization of securities markets and the growing relationships among exchanges and clearing entities in different markets and countries.

As the only issuer and guarantor of XMI options under the proposal, OCC will receive data and maintain records to enable prompt processing of opening and closing transactions in MXI options. OCC also will conduct centralized processing of exercise notices and randomly assign those exercises to OCC members and the ACHA. Net cash settlement will be made in U.S. dollars between OCC and its members and between OCC and ACHA. In the Commission's view, the proposal provides procedures for communications, dissemination of OCC reports, tendering of exercise notices, and settlement timing that should permit smooth processing of XMI options transactions on the EOE and Amex.

ACHA's relationship with OCC under the Clearing Agreement will be similar to that of other OCC members with two principal exceptions concerning financial and reporting requirements. Like other OCC members, ACHA will receive daily position, margin and other reports. ACHA separately must list the positions carried in each participant subaccount and must provide OCC with the information necessary to prepare the daily reports. ACHA also will be required to maintain sufficient margin with OCC for each of its participant subaccounts and must make an initial clearing fund contribution of $100,000 and additional contributions as necessary, under OCC's Rules. Unlike OCC clearing members, however, ACHA will not be required to meet OCC's financial requirements for clearing members, such as initial and continuous net capital levels. ACHA also will not be required to file certain financial reports with OCC, such as FOCUS reports on Form X–17A–5. Instead, ACHA, under the Clearing Agreement, will have its own financial requirements and will file its own financial reports as mentioned in the description section above.

Although the proposal allows ACHA to operate essentially as a regular OCC member (with certain modifications) without requiring it to adhere to OCC's financial responsibility and recordkeeping requirements, the Commission believes that the difference in treatment, on balance, is consistent with the Act. The Act requires a registered clearing agency to balance several competing interests. First, under section 17A(b)(3)(B), a clearing agency must provide National Clearance and Settlement System services to a broad community of participants. Second, under section 17A(b)(3)(F) of the Act, a clearing agency may not create rules that permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency. Finally, section 17A(b)(4) of the Act allows the clearing agency to limit or deny admission, under appropriate standards concerning for example, financial responsibility, operational capability standards, experience and competence.

The Commission believes that OCC's proposal has met these statutory objectives. Although ACHA generally will act as an OCC member, it has a limited purpose. ACHA's sole function is to provide access to OCC clearing services for transactions in XMI options.[16] ACHA will not itself invest in securities, and will not clear securities options or investment products other than XMI options. ACHA nevertheless must post the same clearing fund and margin deposits applicable to all other OCC members.[17]

The Commission believes that OCC has developed appropriate additional standards that apply specifically to ACHA. First, as mentioned above,

[15] The events upon the occurrence or belief of occurrence which ACHA must report to OCC are: (1) ACHA has incurred pre-tax losses during any month that are in excess of either 10%, 20% or 30% (notice to be required when each successive limit is exceeded) of ACHA's shareholders' equity as set forth on the most recent financial statement furnished to OCC ("Most Recent Financial Statement"); (2) ACHA's shareholders' equity (after deduction from assets of all contingent liabilities) is less than 75% of the shareholders' equity set forth in the Most Recent Financial Statement; (3) ACHA is unable to pay its debts as they mature; (4) ACHA is unable to meet any obligation under this Agreement; (5) any participant of or debtor to ACHA has defaulted in any material obligation to ACHA; (6) any material litigation has been filed or threatened against ACHA; (7) any resolution is proposed or petition presented for the winding up of ACHA; or (8) any scheduled capital withdrawals or maturing obligations within the next 90 days will cause ACHA's shareholders' equity to decline by 25% or more.

[16] The Commission views ACHA's relationship to OCC to be a unique accommodation to facilitate clearance and settlement of XMI transactions on the EOE. As a general matter, the Commission believes that OCC-issued options should be cleared through full OCC clearing members and not through intermediaries created only for clearing purposes.

[17] Of course, notwithstanding the limited nature of the proposed arrangement, the Commission expects OCC to monitor trading activity in connection with the arrangement and to evaluate, periodically, whether additional refinements are necessary.

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ACHA will be subject to its own special financial responsibility and reporting requirements.[18] Second, ACHA has agreed not to incur obligations greater than $50,000 in the aggregrate other than to its participants or OCC with respect to XMI options positions, without OCC's consent. That condition should prevent ACHA from assuming obligations not necessary to its clearing functions or that would threaten its financial position. Third, ACHA must notify OCC on the occurrence of one of a number of "early warning" events. That requirement should provide OCC early notice of possible financial difficulties at ACHA and allow OCC to act accordingly. Finally, under the Clearing Agreement, OCC will hold a security interest over all long options positions in ACHA's participants' subaccounts, except segregated long customer positions. In the event of a default or insolvency by ACHA, OCC could liquidate ACHA's long unsegregated options in order to cover any unpaid debits.

The Commission believes that the proposal should promote the prompt and accurate clearance and settlement of XMI options transactions both in the U.S. and in Europe. OCC's and Amex's proposal are designed to afford investors in XMI Options greater opportunity and flexibility while extending the proven benefits of OCC's options clearing systems to XMI options transactions executed on the EOE.

IV. Conclusion

For the foregoing reasons, the Commission believes that OCC's proposal is consistent with the Act and section 17A in that it is designed to promote the prompt and accurate clearance and settlement of options transactions and the safeguarding of funds and options related thereto.

It is therefore ordered, pursuant to section 19(b) of the Act, that OCC's proposed rule change (File No. SR–OCC–87–9) be, and hereby is, approved.

[18] As described above, those standards include maintenance of a minimum level of shareholder equity and liquid net assets. In addition, and as described above, ACHA will maintain its own clearing fund and also will be able to assess its participants up to the amount of their contributions to that fund if the fund is needed to cover a default by an ACHA participant.

As a practical matter, the Commission notes that ACHA represents, in effect, a consortium of Dutch banks, each of which is subject to oversight by EOE, Dutch banking authorities and the Dutch Ministry of Finance. Thus, in view of the diversified activities of these banks, the Commission considers it unlikely that such institutions will present a significant risk of financial loss to OCC solely as a result of their limited trading activity in XMI options.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: August 21, 1987.

[FR Doc. 87–19711 Filed 8–26–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24827; File No. SR–PSE–87–22]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to Transaction and Order Book Charges In Certain Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 28, 1987, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the Schedule of Rates and Charges published by the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") the Exchange will waive the transactions charges for all orders sent to the floor, and all Order Book charges, for trades executed in two dually-listed options: Microsoft Corporation and Mentor Corporation. These charges will be waived from July 20, 1987 through September 18, 1987.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The waiver of Order Book and transaction charges in these classes of options traded on over-the-counter ("OTC") stocks is a competitive response to Securities and Exchange Commission Release No. 34–22026, which permits the multiple trading of OTC options. Although the Exchange believes that its Market Makers will provide excellent markets in these options, the Exchange is of the opinion that a waiver of certain fees is necessary to remain on a competitive footing with other option exchanges. This waiver of Order Book and transaction fees will encourage decisions regarding where to trade given options to be made on the basis of the strength of the marketplace.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934, in that it will increase competition and the quality of markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that a waiver of certain transaction and Book fees will increase competition between marketplaces.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of section

6 and the Rules and regulations thereunder.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secrertary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 17, 1987.

It is therefore ordered, pursuant to section 19(b)(3) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: August 20, 1987.

[FR Doc. 87-19712 Filed 8-26-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Order of Suspension of Trading; American Assurance Underwriters Group, Inc.

August 24, 1987.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of American Assurance Underwriters Group, Inc., ("American Assurance") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, American Assurance's financial condition, securities transactions, and other matters, and the Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of American Assurance.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of American Assurance over-the-counter or otherwise, is suspended for the period from 10:00 a.m., August 24, 1987, through 10:00 a.m. (EDT) on September 3, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19713 Filed 8-26-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Order of Suspension of Trading; International Communications, Inc.

August 24, 1987.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of International Communications, Inc. ("ICOM") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, ICOM's financial condition, assets, business operations, securities transactions, and other matters, and the Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of ICOM.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in ICOM over-the-counter or otherwise, is suspended for the period from 10:00 a.m., August 24, 1987, through 10:00 a.m. (EDT) on September 3, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19714 Filed 8-26-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15947; File No. 812-6671]

Application for Exemption; Travelers Insurance Co.

August 21, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Travelers Insurance Company ("Travelers"), The Travelers Fund U for Variable Annuities ("Account U"), The Travelers Growth Stock Account for Variable Annuities ("Account GS"), The Travelers Money Market Account for Variable Annuities ("Account MM"), The Aggressive Stock Trust, the High Yield Bond Trust, The Travelers Timed Growth Stock Account for Variable Annuities ("Account TGS"), The Travelers Timed Money Market Account for Variable Annuities ("Account TMM"), The Travelers Timed Aggressive Stock Account for Variable Annuities ("Account TAS"), The Travelers Timed Bond Account for Variable Annuities ("Account TB"), and the Fiduciary Investment Company, Inc. (collectively, "Applicants").

Relevant 1940 Act Sections and Rule: Exemption requested *under* section 17(b) *from* section 17(a), and *under* section 6(c) *from* sections 26(a)(2) and 27(a)(2), and approval requested *under* section 17(d) and Rule 17d-1.

Summary of Application: Applicants seek an order to permit Account GS and Account MM (the "original Managed Accounts") to transfer a pro rata portion of their portfolio assets representing the interests of the holders of the Annuity who are participants in certain market timing programs ("Timed Annuity Holders") to Account TGS and Account TMM in return for the cancellation of the accumulation units of the Timed Annuity Holders in the Original Managed Accounts concurrently with the crediting of accumulation units in Account TGS and Account TMM to the Timed Annuity Holders, and to permit certain sub accounts of Account U (the "UIT Sub-Accounts") to surrender a portion of their shares in the Aggressive Stock Trust and the High Yield Bond Trust ("Underlying Funds") and to transfer the funds received to Account TAS and Account TB in return for the cancellation of the accumulation units of the Timed Annuity Holders in the UIT Sub-Accounts concurrently with the sale of a pro rata portion of the portfolio assets of the Underlying Funds to Account TAS and Account TB, and the crediting of accumulation units in Account TAS and Account TB to the Timed Annuity Holders; and for exemptions to permit the deduction of a mortality and expense risk charge from the assets of Accounts TGS, TMM, TAS, and TB (collectively, the "New Managed Accounts").

Filing Date: The application was filed on March 31, 1987 and amended on July 28, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must

be received by the SEC by 5:30 p.m. on September 15, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, The Travelers Insurance Company, One Tower Square, Hartford, Connecticut 06183.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, at (202) 272–3027 or Lewis B. Reich, Special Counsel, at (202) 272–2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicants' Representations

1. The Travelers is a stock insurance company chartered in 1864 in Connecticut and licensed to do a life insurance business in all states of the United States. The Travelers is a wholly-owned subsidiary of The Travelers Corporation, the publicly-held parent of The Travelers group of companies.

2. Account GS (formerly The Travelers Fund A for Variable Annuities) and Account MM (formerly The Travelers Fund MM for Variable Annuities) (together "Original Managed Accounts") were established on September 22, 1967 and December 29, 1981, respectively, under the provisions of the Connecticut General Statutes. These Original Managed Accounts are registered as open-end diversified management investment companies with the Commission.

3. Account U was established on September 2, 1982 under the provisions of the Connecticut General statutes as a unit investment trust under the 1940 Act. Account U is a separate investment account to which assets are allocated to support benefits payable under variable annuity contracts. Annuity purchase payments allocated to Account U are invested in certain mutual funds, including the Aggressive Stock Trust and the High Yield Bond Trust which are registered as open-end diversified management investment companies. The Fiduciary Investment Company, Inc. is the principal underwriter for the underlying funds.

4. Each Original Managed Account receives investment advice from The Travelers Investment Management Company ("TIMCO") pursuant to an investment advisory agreement among the Account, TIMCO and The Travelers. TIMCO is an affiliate of The Travelers, whose parent company, The Travelers Corporation, owns all of the outstanding voting stock of TIMCO. TIMCO supervises the day-to-day investment operations of each Account and the composition of its portfolio, and furnishes advice and recommendations with respect to investments, investment strategies and the purchase and sale of securities. TIMCO receives compensation for its services to the Accounts at a rate of .3233% on an annual basis of the current value of the assets of each of the Accounts. Accounts TGS and TMM will receive investment management and advisory services from TIMCO nearly identical to those currently received by the Original Managed Accounts under an identical fee structure.

5. Keystone Custodian Funds, Inc. ("Keystone") furnishes investment management and advisory services to the Aggressive Stock Trust and the High Yield Bond Trust. Keystone is a wholly-owned subsidiary of The Travelers Corporation. For its services to the Aggressive Stock Trust, Keystone receives variable fees beginning at an effective annual rate of .70% of the Trust's average daily net assets and declining as assets increase. For its services to the High Yield Bond Trust, Keystone receives variable fees beginning at an effective annual rate of .50% of the Trust's average daily net assets and declining as assets increase. In addition, Keystone receives 2% of the gross dividend and interest income of the High Yield Bond Trust. Accounts TAS and TB will receive investment management and advisory services from Keystone identical to those currently received by the Original Underlying Funds under an identical fee structure.

6. The Travelers will deduct a semi-annual administrative charge of $15. In addition to the semi-annual assessments, a prorated charge will be assessed upon the maturity date, the death of the annuitant, or upon surrender of the contract. The administrative charge will be made to compensate The Travelers for the administrative services provided to the annuity holders. A contingent deferred sales charge of 5% will be assessed if an amount is surrendered within five years of its payment date. The Travelers deducts from the daily net asset value of each of the managed accounts an amount, computed daily, which is equal to an annual rate of 1.25% to compensate The Travelers for its assumption of certain risks. This charge is allocable approximately 0.50% to mortality risks, 0.15% to administrative expense risks, and 0.60% to distribution expense risks.

7. Travelers Equity Sales, Inc. ("TESI") and H.C. Copeland Financial Services, Inc. ("Copeland") (together "Timers") both registered investment advisers affiliated with The Travelers, provide market timing services to investors in the Original Manage Accounts and Account U (the "Timed Annuity Holders"). These services are rendered pursuant to individual investment advisory agreements between the Timers and the Timed Annuity Holders authorizing the Timers to transfer the Timed Annuity Holder's accumulation units from one investment alternative to another in accordance with timing strategies described in the advisory contracts. In return for this service, the Timed Annuity Holders pay the Timers a fee, calculated as a percentage of the assets that are timed. The effective annual rate for TESI is variable and declines as assets increase. The TESI rate is 2.0% on amounts of $1 million or less, 1.5% on amounts of $1 to $5 million, and 1.0% on amounts of more than $5 million. Copeland charges a $30 application fee and 1.25% of the average daily net assets that it times. It is anticipated that Copeland's fee will be increased to 1.67% in the future. One-fourth of the annual market timing fee is due each quarter. The fee for the market timing service is not an asset charge imposed against trust (separate account) assets, nor is it a contract charge taken out of trust (separate account) assets; owners electing this service can discontinue it at any time. The fee is paid only by those contract owners who elect the market timing service, who pay the Timers directly by check or by credit card. Alternatively, as a convenience offered to contract owners electing the timing service, the contract owner can pay the fee by arranging for quarterly partial surrenders of contract value, and The Travelers will remit the fee to the market timing service. Such partial surrenders are treated like all other partial surrenders: they are reported to the Internal Revenue Service, they may be taxable as income to the policy owner, and they may be subject to the 10% tax penalty for early withdrawal.

8. "Timed Annuity Holders," refers to those annuity holders who receive market timing services from TESI and Copeland. There may be other annuity holders who utilize a market timing

strategy, and these annuity holders would remain in the Original Managed Accounts and the Underlying Funds at the time of the transaction. In the future, The Travelers may direct other annuity holders who utilize market timing strategy to the New Managed Accounts.

9. Travelers proposes to separate the assets allocable to the Timed Annuity Holders from the assets allocable to the other investors in the Original Managed Accounts and Account U ("Non-Timed Annuity Holders") in order to avoid any possibility that switches by the Timers adversely effect the interests of Non-Timed Annuity Holders. Travelers proposes to create the four New Manged Accounts, which will be substantially identical to the accounts and funds to which the Timed Annuity Holders currently allocate their cash value, and to require those Annuity Holders who wish to utilize the timing programs offered by TESI and Copeland to allocate their cash values to these new accounts.

10. At least 30 days before the proposed transactions will be consummated, The Travelers will notify all Annuity Holders in writing of the Company's intention to effect the proposed transactions. Timed Annuity Holders will be informed that at any time prior to a specified date, they may notify The Travelers that they do not wish to have their cash value in the Original Managed Accounts or the UIT Sub-Accounts transferred to the New Managed Accounts. The Timed Annuity Holders will be informed that any such notification will serve to terminate their timing agreement with either TESI or Copeland. If no such notification is received by the specified date, their cash value in the Original Managed Accounts or the UIT Sub-Accounts will be transferred to the New Managed Accounts. All transfers will be made at net asset value. The letter of notification to the Annuity Holders will be accompanied by new prospectuses describing the New Managed Accounts in addition to the investment alternatives currently available to Annuity Holders.

11. The contract owners will be permitted to transfer back and forth between the Original and Timed Accounts. They may do so by submitting a transfer form or by telephone transfer. There are no contract charges for these transfers; however, if a contract owner transfers from a market timed account to an untimed account this terminates the market timing agreement, and he would have to execute another market timing agreement to become market timed again. There is no deferred sales load on transfers.

12. The Travelers (or affiliates) will assume all costs to be incurred in effecting these transactions, including the expenses of establishing the New Managed Accounts. The transactions will not have any adverse economic impact on the interests of Annuity Holders (either Timed Annuity Holders or Non-Timed Annuity Holders) in the Annuity. The transactions will have no immediate effect on the total amount of fees and charges assessed, directly or indirectly, under either timed or non-timed annuity contracts. However, for certain accounts there could be an adverse impact on the amount of advisory fees actually paid, as a result of the breakpoints in certain of the advisory fee structures. Accounts GS and MM do not have breakpoints in their advisory fees. The Aggressive Stock Trust ("AST") and High-Yield Bond Trust ("HYBT") do have breakpoints in their advisory fee structure, but their asset levels have not yet reached the first breakpoint. Accordingly, separating the assets will have no immediate effect on the actual amount of the advisory fees. Applicants submit that the potential delay in the decrease in what the advisory fee would be without separating the timers and non-timers is outweighed by the immediate benefit to both the current Timed and Non-Timed Annuity Holders and all future Timed and Non-Timed Annuity Holders by enabling The Travelers to continue to make available the timing services offered by TESI and Copeland while avoiding any possibility that switches by the Timers would have an adverse or prejudicial impact on the interests of the Non-Timed Annuity Holders.

13. Each Applicant may be deemed to be an affiliated person of each other or an affiliated person of an affiliated person under section 2(a)(3) of the Act, and the proposed transactions may be deemed to entail one or more purchases or sales of securities or property between and among certain Applicants. Therefore, the proposed transactions may require an exemption from section 17(a) of the 1940 Act pursuant to section 17(b) of the Act.

14. Applicants submit that the terms of the proposed transactions, including the consideration to be paid and received, are reasonable and fair, do not involve overreaching, are consistent with the investment policies of each separate account and of each of the underlying funds, and are consistent with the general purposes of the 1940 Act.

15. The transactions will be effected in conformity with section 22(c) of the 1940 Act and rule 22c-1 thereunder, so there will be no dilution of value for any of the accounts, funds, or contract holders.

16. The proposed transactions will benefit both the current Timed and Non-Timed Annuity Holders and all future Timed and Non-Timed Annuity Holders by enabling The Travelers to continue to make available the timing services offered by TESI and Copeland while avoiding any possibility that switches by the Timers would have any adverse or prejudicial impact on the interests of the Non-Timed Annuity Holders. This benefit is created at no cost to existing interests under the Annuity because The Travelers (or affiliates) will assume all costs relating to the proposed transactions.

17. The proposed transactions will result in Annuity Holder interests which, in economic terms, are identical to such interests immediately prior to the proposed transactions. The proposed transactions will not generate any extraordinary cots such as brokerage commissions because no assets will be sold in the open market. The Travelers believes, based on its review of existing federal income tax laws and regulations, that the transactions will not have adverse tax consequences.

18. The investment objectives of the New Managed Accounts will be nearly identical to those of the Original Managed Accounts and the Underlying Funds. Furthermore, Annuity Holders will be fully informed of the terms of the proposed transactions through the letter notifying them of the transactions and thorugh the prospectus that will accompany that letter.

19. The proposed transaction may also be deemed to be a transaction that is prohibited under section 17(d). The proposed transactions would involve simultaneous purchase and sale transactions by a number of registered companies, and each such purchase and sale transaction is dependent on the others. Thus, each purchase and sale transaction is an essential aspect of a more comprehensive plan, and in this sense such transaction may be deemed to be in connection with a joint participation within the meaning of section 17(d) and Rule 17d–1. Accordingly, Applicants request an order pursuant to Rule 17d–1 to eliminate any question of compliance with section 17(d) and Rule 17d–1.

20. Applicants believe that the participation of the Original Managed Accounts, the Underlying Funds, the New Managed Accounts, and Account U

will be on an equal basis and will not result in advantages to any one of these investment companies to the detriment of any other of these investment companies. As noted above, the proposed transactions will not involve the liquidation of the assets of the Original Managed Accounts or of the Underlying Funds since a pro rata portion of the assets of the Original Managed Accounts and the Underlying Funds representing the interests of the Timed Annuity Holders will be transferred to the New Managed Accounts. Thus, none of the investment companies involved in the proposed transactions will incur any extraordinary costs, such as brokrage commissions, in effecting the transfer of assets. Further, none of the investment companies will bear any of the costs of the proposed transactions. Therefore, there are no disparate results created by these transactions.

21. The sale of portfolio securities from the Underlying Funds to Accounts TAS and TB will be at price equal to the aggregate net asset value of the shares of the underlying Funds representing the interests of the Timed Annuity Holders that are cancelled (or redeemed) and to the aggregate net asset value of the accumulation units issued by Accounts TAS and TB. Similarly, the aggregate net asset value of the accumulation units of the Original Managed Accounts that are cancelled (or redeemed) will equal the value of the assets transferred to Accounts TGS and TMM and the aggregate net asset value of the accumulation units issued by Accounts TGS and TMM. Thus, there will be no dilution of value for any of the investment companies involved in the proposed transactions.

22. Applicants believed that the proposed transactions will result in benefits to the investment companies involved, and that no benefits will inure to The Travelers to the detriment of the investment companies. The proposed transactions will permit The Travelers to continue to make available the timing services offered by TESI and Copeland while avoiding any possibility that switches by the Timers would have any adverse or prejudicial impact on the interests of the Non-Timed Annuity Holders. Thus, the Timed Annuity Holders will be able to continue to take advantage of the timing services, and the Non-Timed Annuity Holders will not be exposed to any adverse or prejudicial impact as a result of switches by the Timers. Moreover, the interests of Annuity Holders will not be adversely affected because there should be no tax liabilities stemming from the proposed transactions and because The Travelers will assume all costs relating to the proposed transactions. Accordingly, no benefits will inure to any party to the detriment of any other, and no party will participate in the transactions on a basis different from or less advantageous than that of any other party.

23. Therefore, Applicants submit that the terms of the proposed transactions meet all of the requirements of section 17(d) of the 1940 Act and Rule 17d–1 thereunder and that an Order should be granted permitting the proposed transactions pursuant to those provisions.

24. Applicants seek an order pursuant to section 6(c) of the 1940 Act granting exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act to permit the deduction of a mortality and expense risk charge from the assets of Accounts TGS, TMM, TAS, and TB (collectively, the "New Managed Accounts").

25. Applicants submit that The Travelers is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge of 1.25% under the contracts made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. In return for this amount The Travelers guarantees certain risks in the contracts. The mortality and expense risk charge is a resonable charge to compensate The Travelers for the risk that annuitants under the contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the contracts, for the risk that administrative expenses will be greater than amounts derived from the administrative charge, and for the risk that the amounts realized from the contingent deferred sales charge will be insufficient to cover actual distribution expenses.

26. The Travelers represents that the charge of 1.25% for mortality and expense risks assumed by The Travelers is within the range of industry practice with respect to comparable annuity products. This representation is based upon The Travelers analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. The Travelers will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products of, its comparative survey.

27. Applicants acknowledge that the surrender charge may be insufficient to cover all costs relating to the distribution of the contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the sales charge. Notwithstanding the foregoing, The Travelers has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the New Managed Accounts and the Timed Annuity Holders. The basis for that conclusion is set forth in a memorandum which will be maintained by The Travelers at its administrative offices and will be available to the Commission. The Travelers represents that each of the New Managed Accounts will have a board of directors, a majority of whom are not interested persons of the separate account, approve any plan under Rule 12b–1 to finance distribution expenses.

28. Applicants request exemptions from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit the daily deduction from the assets of the New Managed Accounts of the 1.25% charge described herein. For the reasons set forth above, Applicants believe that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority,

Jonathan G. Katz,

Secretary.

[FR Doc. 87–19715 File 8–26–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–6037]

Issuer Delisting; Application to Withdraw From Listing and Registration; Guardian Industries Corp.

August 21, 1987.

Guardian Industries Corp. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw its 11¾% Notes due March 1, 1993, from listing and registration on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing this security from

listing and registration include the following:

As of January 1, 1987, $50 million principal amount of the Notes were beneficially owned by approximately 30 persons. In a letter dated June 2, 1987, the Company made an offer to the holders of the Notes to purchase the Notes. In response to this offer, $34.39 million of the $50 million principal amount of Notes originally outstanding were purchased by the Company and are no longer outstanding. After completion of the purchases made by the Company pursuant to the offer to purchase, 12 persons beneficially owned and continued to own the $15.61 million principal amount of Notes that remain outstanding. Trading in the Notes has been virtually nonexistent, based on no reports of trading activity in the Notes over the New York Stock Exchange since the issuance of the Notes in 1983 and apparently no inter-dealer trades since at least the end of 1986.

The current Noteholders did not respond to the offer to purchase their Notes, and more than 99% of the principal amount of the outstanding Notes are held by four institutions. The heavy concentration of the Notes in the hands of these four institutions makes it highly unlikely that an active market in the Notes could develop. Because of the small number of holders of the Notes, the lack of any recorded trading activity in the Notes in the past several years, the high concentration of Note holdings in the hands of four institutions, the relatively small principal amount of the Notes outstanding and the assumed disinclination of the current holders of the Notes to trade, the Company believes that it is extremely unlikely that any significant trading in the Notes will occur in the future.

The Company has been advised by Shearson Lehman Brothers that they are prepared to continue to make a market in the Notes regardless of any delisting of the Notes to the extent that a holder intends to dispose of the Notes. Thus the delisting of the Notes should not result in holders of the Notes being "locked into" their investment.

Any interested person may, on or before September 14, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19662 Filed 8-26-87; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on September 17 and 18, 1987 in Room 5104, New Executive Office Building, Washington, DC. The meeting will begin at 6:00 p.m. on Setpember 17, recess and reconvene at 8:00 a.m. on September 18, 1987. Following is the proposed agenda for the meeting:

(1) Briefing of the council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The September 17 session and a portion of the September 18 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552 b.(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552 b.(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Barbara J. Diering, at (202) 456-7740, prior to 3:00 p.m. on September 16, 1987. Mrs. Diering is also available to provide specific information regarding time, place and agenda for the open session.

Jonathan F. Thompson,

Executive Assistant, Office of Science and Technology Policy.

August 13, 1987.

[FR Doc. 87-19611 Filed 8-26-87; 8:45 am]

BILLING CODE 3170-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 87-059]

Meeting of the Coast Guard Academy Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Coast Guard Academy Advisory Committee to be held in Hamilton Hall at the U.S. Coast Guard Academy, New London, CT, on Monday and Tuesday, October 5 and 6, 1987. The open sessions on Monday will be held from 10:30 a.m. to 11:45 a.m. and 1:45 p.m. to 3:15 p.m. Open sessions will be held on Tuesday from 9:00 a.m. to 10:30 a.m. and 3:30 p.m. to 4:30 p.m. The agenda for this meeting will include:

1. Faculty
2. Curricula

The Coast Guard Academy Advisory Committee was established in 1937 by Pub. L. 75-38 to advise on the course of instruction at the Academy and to make recommendations as necessary.

Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting.

Persons wishing to attend or present oral statements at the meeting should notify the U.S. Coast Guard Academy not later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: CAPT David A. Sandell, USCG, Dean of Academics/Executive Secretary of the Academy Advisory Committee, U.S. Coast Guard Academy, New London, CT 06320, phone (203) 444-8275.

Issued in Washington, DC on August 24, 1987.

T.T. Matteson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel.

[FR Doc. 87-19669 Filed 8-26-87; 8:45 am]

BILLING CODE 4910-14-M

[CGD87-061]

Meeting; Eighth Coast Guard District Industry Day

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: On 14 October 1987, the Commander, Eighth Coast Guard District will sponsor an Industry Day program to provide for an exchange of ideas, opinions and information concerning developments affecting the Coast Guard and the maritime community as well as related industries. The Industry Day program will be held at the Holiday Inn Crowne Plaza in Houston, Texas.

The format for the day will be as follows:

7:15 am Registration begins.
8:00 am General session; greeting, opening remarks.
8:45 am Group discussions; four separate, small group discussions focusing on the Deep Sea Industry, Offshore Oil/Support Industry, Towing Industry and Shore Side Facilities.
11:15 am No host cocktails.
12:00 pm No host lunch (cost $15.00).
2:00 pm Resume small group discussions.
3:00 pm General session; closing remarks, adjournment.

Tentative topics of discussion for the small groups are:

a. Status of Berwick Bay High Water regulations
b. Port Security Card program
c. Coast Guard reorganization Marine Safety Office New Orleans/Marine Safety Office Morgan City
d. Port Readiness Committees
e. Tank Barge Navigation Lights, use of portable cable
f. MARPOL Annex II
g. Port Access Route Study, Freeport, TX
h. Vessel Traffic Service New Orleans Surveillance Expansion Project
i. Certificates of Alternative Compliance
j. Special Purpose Vessels (i.e., liftboats, dive boats, etc.)

Persons desiring to attend the program are encouraged to provide additional topics for consideration. Preregistration for the program is required. Contact the below named officer to submit topics for discussion and to obtain registration forms. Topic suggestions and lunch reservations must be received by 1 October 1987.

DATE: 14 October 1987, 8:00 am to 5:00 pm.

FOR FURTHER INFORMATION CONTACT: LCDR Dean W. Kutz, USCG, c/o Commander (mvs), Eighth Coast Guard District, Hale Boggs Federal Building, Room 1341, 500 Camp Street, New Orleans, LA 70130-3396; telephone number (504) 589-6271.

Dated: August 20, 1987.

J.D. Sipes,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 87-19670 Filed 8-26-87; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Tippecanoe County, IN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement has been prepared for the proposed relocation of US 231 in and around the cities of Lafayette and West Lafayette, Tippecanoe County, Indiana.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Threlkeld, District Engineer, Federal Highway Administration, Federal Office Building, 575 North Pennsylvania Street, Room 254, Indianapolis, Indiana 46204. Telephone: 317/269-7494.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Highways, has prepared an environmental impact statement (EIS) on a proposal to relocate US 231 and construct a new bridge over the Wabash River. The new roadway will be a major arterial with two 12-foot lanes and 10 foot paved shoulders. Certain segments of the roadway will have a 26 foot median. The typical right-of-way will be 300 feet. The proposed bridge across the Wabash River will be approximately 2000 feet long and approximately 100 feet wide.

The proposed action has a total of 5 "build" alternatives under consideration. Three of the five alternatives compose the southern portion of the overall project. These are A, B and C while the other two (Line 1 and 2) consist of the northern portion.

Line A—5.5 miles
Line B—3.4 miles
Line C—3.5 miles
Line 1—4.7 miles
Line 2—4.2 miles

All of the southern three alternates begin at either CR 350S or CR 550S and end at the South River Road. The two alternatives north of the river begin at South River Road and terminate at US 52 and Cumberland Avenue.

The project has been coordinated with the following: U.S. Department of Interior, Indiana Department of Natural Resources, U.S. Fish and Wildlife Service, U.S. Soil Conservation Service, Indiana Aeronautics Commission, Indiana Geological Survey, Department of Environmental Management, Glenn A. Black Laboratory of Archaeology, Department of Anthropology of Ball State University, city of West Lafayette, city of Lafayette, Tippecanoe County Area Plan Commission, Division of Aeronautics. Public information meetings were held on March 24, 25 & 26, 1987. In addition, the opportunity for a public hearing will be advertised. Public notice will be given of the time and place of the public hearing. The draft EIS is available for public and agency review and comment. At this point in the planning process, it is not expected that a formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Agencies, organizations, and individuals interested in submitting comments and/or questions should direct them to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 18, 1987.

James E. Threlkeld,

District Engineer.

[FR Doc. 87-19707 Filed 8-26-87; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Petitions for Exemptions From the Vehicle Theft Prevention Standard; General Motors

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition to modify an exemption.

SUMMARY: This notice grants the petition by General Motors (GM) to modify an existing exemption from the marking requirements of the vehicle theft prevention standard for the Cadillac

Allante car line. The agency has determined that the antitheft device that was the subject of this petition is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements of the standard.

DATE: The modification granted by this notice becomes effective August 27, 1987. This means that GM may install the antitheft devices that were the subject of this modification petition in its 1988 model year Allantes.

SUPPLEMENTARY INFORMATION: On November 5, 1985, General Motors (GM) petitioned the agency for an exemption from the parts marking requirements of the vehicle theft prevention standard (49 CFR Part 541), under section 605 of the Motor Vehicle Information and Cost Savings Act. On January 7, 1986, (51 FR 706), NHTSA published an interim final rule establishing procedures for manufacturers petitioning to exempt their high-theft carlines from the parts-marking standard, and to modify existing exemptions. On February 7, 1986, in response to the interim rule, GM submitted supplemental information in connection with its petition. On June 16, 1986, NHTSA published a notice granting GM's exemption petition; 51 FR 21823.

On October 3, 1986, GM requested a modification of the exemption grant with respect to the Allante car line. The company supplemented its modification petition through a letter dated January 19, 1987. NHTSA reviewed GM's submissions and determined that the petition contained all the information required under § 543.9, and met the form required under § 543.5(b) of the antitheft exemption regulations.

The Modification Petition

The Allante is a convertible two-seater with a removable hardtop. GM currently installs an optional antitheft system on certain Buick, Cadillac, and Oldsmobile models. The company installed the same system as standard equipment on the 1981 through 1985 Chevrolet Corvette, and the 1984 through 1985 Cadillac Eldorado convertible. The company calls that system the Theft Deterrent System (or TDS). For the Allante carline, GM requests NHTSA's approval to substitute TDS for the Forced Entry/VATS system that was the subject of the June, 1986 exemption grant.

According to GM's modification petition, a driver arms TDS by removing the ignition key, locking either door with the power lock switch, and closing the doors. Locking the door by using the key or the mechanical door lock does *not* arm the system. TDS also has a flashing light on the instrument panel to remind a driver to begin the arming sequence. The TDS light burns steadily between the time the driver starts to arm the system until "shortly after" the last door is closed. A driver may disarm TDS by unlocking either of Allante's doors from the outside with the proper key.

If a person attempts to enter a TDS-equipped vehicle without the proper key, the horn sounds "intermittently and (the vehicle's) exterior lights flash." After two-to-four minutes, the audible and visual warning sequence stops automatically. If someone disturbs the door or door lock assembly again before the system is properly disarmed, the warning sequence begins again. Even if a person were to make an unauthorized entry into the TDS-equipped Allante, the starter circuit remains inoperative until the system is properly disarmed.

The system for which the Allante has previously been granted an exemption consisted of this TDS system and a starter-interrupt feature. This starter-interrupt feature was activated by a coded pellet in the ignition key. This starter-interrupt could only be overridden if a key with a properly coded pellet was inserted in the ignition.

NCIC/NATB Theft Data

The 1985 Corvette has the same theft deterrent system that GM plans to install on the Allante carline under this modification petition. The National Crime Information Center (NCIC) is the data base from which NHTSA draws motor vehicle theft data for the purpose of determining theft rates. For thefts of the model year 1985 Corvette in calendar year 1985, NCIC data show a theft rate of 14.7%, compared with a theft rate for the 1984 Corvette of 12.7%. Based on this data, there appears to be an increase in the Corvette theft rate from 1984 to 1985 of 14%. The National Automobile Theft Bureau (NATB) data also show an increase in that carline's theft rate from 8.3% for model year 1984 Corvettes to 9.1% for model year 1985, an increase of 9.6%.

GM states that in assessing continuing theft rates, both NCIC and NATB used a calculation method Congress set out for making an initial determination whether a carline is a high-theft line. That method requires the agency to combine theft data for 1983/84, and to use model year thefts occurring in the calendar year that is equivalent to the model year. GM argues that this is not the best method for comparing theft rates after NHTSA has made the initial high-theft determination. The company states that a better method is to calculate theft rates from a period beginning with the day on which a manufacturer introduces the high-theft carline through December 31 of the calendar year corresponding to the model year. GM argues that if NHTSA were to accept that period from which to draw its data, the data would show that the theft rate for model year 1985 Corvettes decreased 4% from 1984.

First, if NHTSA were to adopt GM's method for calculating a line's continuing susceptibility to theft, consistency would necessitate using that method for calculating all theft rates related to the exemption proceedings. Second, the statutory method for calculating theft rates for the purpose of determining whether vehicles are high theft provides the agency and the industry with a defined period for which data respecting theft rates will be collected. This definition makes the process of assessing theft rates a predictable and an administratively efficient one for the industry, NHTSA, and the various entities that examine theft data. Therefore, NHTSA declines GM's suggestion to assess theft data based on the date a manufacturer introduces a given model.

The agency notes that in its review of GM's initial exemption petition for the Allante and Corvette, NHTSA reviewed a study of the antitheft system which is the subject of this modification petition. NHTSA's evaluation of that study and of other available theft data showed effectiveness varying from 7.8% to 54.4% for this system when it was installed in Buick, Cadillac, and Oldsmobile models. On the other hand, the theft rate rose when the system was installed in the Corvette. Such data reasonably suggest that, at least between the first and second model years of the current Corvette, factors other than the theft deterrence and reduction properties of this system played a larger role in determining the theft rate for the Corvette.

The parts-marking/ATS program is new, and because of limited experience with antitheft systems, NHTSA continues to assert that proper assessment of the theft deterrence and reduction properties of a system depends on the accumulation of several years of data on the vehicle theft standard and antitheft devices.

Agency Determinations

Based on substantial evidence, the agency has determined that installing GM's device in this new car line is likely to be as effective in reducing and deterring vehicle theft as are the Part 541 marking requirements. This determination is based on the information GM submitted with its

modification petition and on other available information. The agency believes that the modified device will provide the types of performance listed in § 543.6(a)(2), i.e., promote activation, attract attention to unauthorized entries, prevent defeating or circumventing of the device by unauthorized persons, prevent operation of the vehicle by unauthorized entrants, and ensure the reliability and durability of the device.

As required by §§ 543.6 and 543.9(b), the agency also finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided on its device. The agency notes also that methods of encouraging use and preventing defeat of the GM antitheft device are similar to the methods employed in the 1984 Nissan 300 ZX device. NCIC data which the agency reviewed in connection with the interim final rule and discussed in the preamble to that document revealed that the theft rate for the 1984 300 ZX was 50% less than that of the 1983 280 ZX models which had no such device.

While the agency can make no prediction that the GM antitheft system will reduce and deter theft to the same extent as the Nissan device, NHTSA believes that TDS will be effective in accomplishing these goals. GM stated in its modification petition that it believes its antitheft device will reduce and deter theft at least to the same extent as complying with Part 541 would.

The agency reiterates that the limited data on the effectiveness of the pre-standard parts marking programs make it difficult at this early stage of the theft standard's implementation to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly requires such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(c) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this Part and equipped with the antitheft device on which the line's exemption was based. Further, § 543.9(b)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(b)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend that Part 543 require the submission of a modification petition for any and every change in the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if GM contemplates making any changes the effects of which might be characterized as *de minimis*, then the company should consult the agency before preparing and submitting a petition to modify.

(15 U.S.C. 2025, delegation of authority at 49 CFR 1.50)

Issued on: August 24, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-19693 Filed 8-26-87; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP 87-04; Notice 2]

Grant of Petition for Determination of Inconsequential Noncompliance; Michelin Tire Corp.

This notice grants the petition by Michelin Tire Corporation, of Woodbury, New York, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.109, *New Pneumatic Tires*. The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Paragraph S4.3(f) of Standard No. 109, requires the words "tubeless" or "tube type" as applicable to be permanently molded into or onto both sidewalls of tires. During the period June 27, 1986, to January 9, 1987, Michelin Tire Corporation manufactured and shipped 145,627 P185/70R13 MXL tubeless tires that either lacked the word "tubeless" on both sidewalls or had the word "tubeless" molded on only one sidewall. The P185/7013 MXL is manufactured only as a tubeless tire; therefore, Michelin believes these tires will be sold and used as tubeless tires.

No comments were received on the petition.

NHTSA concurs with Michelin's view that when the tires are purchased as replacements they will in all likelihood be used as tubeless tires. Furthermore, were a tube inserted, the tire will perform satisfactorily providing proper rim sizes are used. Improper combinations may result in premature wear to the inner tube, but the result would be a slow-leak deflation.

Accordingly, it is hereby found that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102. Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued: August 21, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-19617 Filed 8-26-87; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP 87-1; Notice 2]

Grant of Petition for Determination of Inconsequential Noncompliance; Nissan Motor Corp.

This notice grants the petition by Nissan Motor Corporation of Carson, California, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act. (15 U.S.C. 1381 *et seq.*) for any apparent noncompliance with 49 CFR 571.120. *Tire Selection and Rims for Motor Vehicle other than Passenger Cars*. The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on March 12, 1987 and an opportunity afforded for comment (52 FR 7738).

Paragraphs S5.3.2 through S5.3.5 of Standard No. 120 give the label information requirements for vehicles other than passenger cars. Each vehicle shall show the following:

S5.3.3. "The size designation of tires (not necessarily those on the vehicle) appropriate (as specified in S5.1.2) for the GAWR."

S5.3.4. "The size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for those tires."

S5.3.5. "Cold inflation pressure for those tires."

Pursuant to S5.3.2, this information shall appear either—

(a) After each GAWR listed on the certification required by 49 CFR 567.4, *Requirements for Manufacturers of Motor Vehicles* or 49 CFR 567.5, *Requirements for Manufacturers of Vehicles Manufactured in two or More Stages* or, at the option of the manufacturer,

(b) On a tire information label affixed to the vehicle in the manner, location and form described in 49 CFR 567.4, (b) through (f).

Nissan Motor Corporation reported that 8,123 Nissan Stanza 4-wheel drive wagons manufactured from March 1985 through July 1986 do not comply with Standard No. 120. Specifically, the information lacking from the certification label is the size designation of tires, the size designation of rims, and the cold inflation pressure of the tires. These vehicles have tire information labels located inside the glove boxes, however.

Nissan argued that these specific noncompliances will have no effect on motor vehicle safety and supported its petition with the following:

1. Tire size designation and cold pressure inflation are listed on the tire placard located in the glove box.

2. The rim size designation is stamped on the original equipment rims.

3. The owner's manual contains the correct tire size designation, and rim size designation.

No comments were received on the petition.

The two Federal motor vehicle safety standards applicable to tires each require the manufacturer to install a placard providing certain information. On passenger cars, the label must be placed on the glove compartment door or an equally accessible location. On vehicles other than passenger cars the information is required to be either part of the certification label or placed on the driver's side door. Nissan has omitted three items of information from the certification label, but two of these appear on a tire information placard. That placard is in a location approved for passenger cars even though it is not specified for multipurpose passenger vehicles such as the Stanza wagon. The third item of information (rim size designation) appears on the rims, and in the Operator's Manual. Under these facts the noncompliances appear technical in nature.

Accordingly it is hereby found that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on August 21, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-19618 Filed 8-26-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 23-87]

Treasury Notes of August 31, 1989, Series AC-1989

Washington, August 20, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of August 31, 1989, Series AC-1989 (CUSIP No. 912827 VF 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated August 31, 1987, and will accrue interest from that date, payable on a semiannual basis on February 29, 1988, and each subsequent 6 months on August 31 and February 28 through the date that the principal becomes payable. They will mature August 31, 1989, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving Time, Wednesday, August 26, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 25, 1987, and received no later than Monday, August 31, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from

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commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, August 31, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, August 27, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, August 31, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of their circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-19777 Filed 8-25-87; 3:31 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 24-87]

Treasury Notes of November 15, 1992, Series L-1992

Washington, August 20, 1987.

1. Invitation for Tenders

1.1. The secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,750,000,000 of United States securities, designated Treasury Notes of November 15, 1992, Series L-1992 (CUSIP No. 912827 VG 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated September 3, 1987, and will accrue

interest from that date, payable on a semiannual basis on May 15, 1988, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. they will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Thursday, August 27, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, August 26, 1987, and received no later than Thursday, September 3, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own accounts will be received without deposits from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 5, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitve tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, September 3, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash: in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than

Tuesday, September 1, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Thursday, September 3, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURE DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, services, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-19778 Filed 8-25-87; 3:31 pm]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Meeting of the Veterans' Advisory Committee on Environmental Hazards

The Veterans Administration gives notice under Pub. L. 92-463, section 10(a)(2), that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held at the Lafayette Building, 811 Vermont Avenue NW., Washington, DC 20420 on October 15 and 16, 1987. The purposes of the Committee are to review the scientific and medical literature relating to the possible health effects resulting from exposure to dioxin and ionizing radiation and to assist in the development of Agency policy with respect to veterans' claims for compensation based upon exposure.

The meeting will convene at 9:00 a.m. both days in the Office of Facilities Conference Room 442. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Sylvia Arrington, Veterans Administration Central Office (phone 202/233-2115) prior to October 7, 1987.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Special Assistant to the General Counsel, Room 1034, Veterans Administration Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: August 19, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87-19603 Filed 8-26-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 166
Thursday, August 27, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 4, 1987.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–19752 Filed 8–25–87; 10:41 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 11, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–19753 Filed 8–25–87; 10:41 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 18, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–19754 Filed 8–25–87; 10:41 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 25, 1987.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–19755 Filed 8–25–87; 10:41 am]

BILLING CODE 6351–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, September 2, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 25, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–19805 Filed 4–25–87; 4:03 pm]

BILLING CODE 6210–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 24, 31, September 7, and 14, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 24

No Commission Meetings

Week of August 31—Tentative

Wednesday, September 2

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Revision to the General Statement of Policy and Procedures for Enforcement Action (Tentative)
b. Shoreham—Intervenor Motion to Admit New Contention on Medical Services for Contaminated Injured Individuals (Tentative)

Thursday, September 3

2:00 p.m.
Briefing on Status of Decommissioning Activities (Public Meeting)

Week of September 7—Tentative

Wednesday, September 9

2:00 p.m.
Briefing on Performance of Sandia Containment Tests (Public Meeting)

Thursday, September 10

2:00 p.m.
Discussion of Integration of AEOD Reports into the Regulatory Process (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 14—Tentative

Monday, September 14

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Briefing on the Status of Peach Bottom (Public Meeting)

Thursday, September 17

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

August 20, 1987.

[FR Doc. 87–19709 Filed 8–24–87; 4:25 pm]

BILLING CODE 7590–01–M

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Corrections

Federal Register
Vol. 52, No. 166
Thursday, August 27, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Meeting

Correction

In Sunshine notice document 87-19466 appearing on page 31844 in the issue of Monday, August 24, 1987, make the following correction:

On page 31844, in the first column, in the file line at the end of the document, the file time should read "4:03 pm".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87N-0078]

Denial of Hearing and Withdrawal of Approval of New Drug Applications and New Animal Drug Applications for Sterile Injectable Products; Final Order; J.D. Copanos and Sons, Inc. and Kanasco Ltd.

Correction

In notice document 87-17828 beginning on page 29274 in the issue of Thursday, August 6, 1987, make the following corrections:

1. On page 29286, in the first column, in paragraph 16, in the seventh line, insert "and falsified" after "records)".

2. On page 29296, in the second column, in paragraph h., in the third line, insert "containers of components were identified both as" after "same".

3. On page 29299, in the second column, in the second complete paragraph, in the last line, "211.66(b)(3)" should read "211.67(b)(3)".

4. On page 29301, in the first column, in the first complete paragraph, in the 18th line, insert "would be, failed to use the actual cold spot to calculate the performance of that autoclave," after "autoclave,".

BILLING CODE 1505-01-D

Federal Register

Thursday
August 27, 1987

Part II

Department of Health and Human Services

Public Health Service

42 CFR Part 84

National Institute for Occupational Safety and Health; Revision of Tests and Requirements for Certification of Permissibility of Respiratory Protective Devices Used in Mines and Mining; Notice of Proposed Rulemaking

BEST COPY AVAILABLE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 84

National Institute for Occupational Safety and Health (NIOSH) Revision of Tests and Requirements for Certification of Permissibility of Respiratory Protective Devices Used in Mines and Mining

AGENCIES: National Institute for Occupational Safety and Health, Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice proposes regulations at Part 84 of Title 42 of the Code of Federal Regulations (42 CFR Part 84) for certifying respirators. Upon promulgation, 42 CFR Part 84 will replace Part 11 of Title 30 of the Code of Federal Regulations (30 CFR Part 11). 30 CFR Part 11 is the existing regulation under which the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) test and certify respirators for use in mines and mining. Elsewhere in this issue of the **Federal Register**, MSHA is proposing to revoke 30 CFR Part 11. NIOSH is proposing extensive changes in the requirements and tests for certifying respirators which were originally promulgated in 1972 and periodically amended since that date. The revisions are in accordance with the Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 842(h), 844 and 957).

Requirements and tests are included for new types of respirators used in mines and mining; new and revised requirements and tests are incorporated which more completely address mine and mining conditions and their effects on respirators; and administrative changes are included which will generally improve the respirator testing and certification program.

Interested parties are invited to participate in this proposed rulemaking by submitting such written views or arguments as they may desire. All communications received before the specific closing date will be considered before taking action on the proposed rule. All comments received will be available for examination in the Office of the Director, Division of Safety Research, NIOSH. The proposal contained in this notice may be changed in light of the comments received.

DATE: Comments must be received on or before October 26, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

FOR FURTHER INFORMATION CONTACT: John Moran, Director, Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, telephone (304) 291–4595.

SUPPLEMENTARY INFORMATION: Following promulgation of 30 CFR Part 11 in 1972, NIOSH began conducting research in several areas of respiratory protection. Concurrently, NIOSH began to receive public input concerning the respirator certification program.

In December 1977, NIOSH conducted a public meeting to obtain comments on changes needed in 30 CFR Part 11. In 1979, a group of outside consultants conducted a thorough review of the program. The report received from those consultants was published by NIOSH for further consideration by other interested persons, and a public meeting was held in July 1980, to obtain their comments on the program. In December 1981, the American National Standards Institute Z88 Committee on Respiratory Protection commented on 30 CFR Part 11. In January 1982, the Mine Health Research Advisory Committee transmitted its recommendations to NIOSH for further changes in the program. Since 1982, NIOSH has solicited and investigated reports of problems with NIOSH/MSHA-certified respirators, with the purpose of obtaining direct public input into the certification program.

Investigations, research, comments, and analyses were considered by NIOSH in preparation of this proposed revision that was transmitted to MSHA in September 1983. After meeting with MSHA and considering MSHA comments, the present revision was prepared and is published as a Notice of Proposed Rulemaking. In accordance with the Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 842(h), 844 and 957) which has been enacted for the purpose, in part, of developing and promulgating improved mandatory health or safety standards to protect the health and safety of the Nation's coal or other miners, the issuance of certificates of approval for respirators is limited to only those respirators used in coal or other mines.

This revision includes new requirements and tests and changes in existing requirements and tests which NIOSH has determined will provide greater safety and reliability for respirators used in mines and mining.

The most significant of the new requirements in the proposed 42 CFR Part 84 is the proposed requirement for workplace or simulated workplace tests (§ 84.32) to be performed before certification of a respirator. These tests, which would be performed in real or simulated use environments, are designed and intended to resolve a major problem which exists under the present requirements of 30 CFR Part 11. NIOSH has repeatedly observed and been advised by mining personnel and others, of hazardous problems existing in the design and/or performance of respirators that have been certified for approval by MSHA and NIOSH, but have not been used under field conditions. These problems, which the performance requirements of the present 30 CFR Part 11 often cannot identify, may become apparent only after the certified respirator is put into actual use in strenuous mine and other operations. NIOSH believes that earlier recognition and correction of such problems are necessary, and NIOSH has included a requirement that the manufacturer perform a workplace or simulated workplace trial test, as specified in this revision, prior to issuance of a certificate of approval by NIOSH.

Workplace or simulated workplace test requirements are included to provide for certification of respirators to either a minimum performance level or to a higher performance level.

NIOSH has detailed protocols for the conduct of laboratory tests. These protocols have been made available to all certification applicants and, indeed, serve as the basis for correlation between such tests conducted by the manufacturer/applicant and the NIOSH certification tests. The NIOSH laboratory serves not only as the testing authority but as the test procedure reference laboratory. Under the proposed revisions, NIOSH will similarly provide detailed model laboratory test protocols to applicants upon request and will continue to serve as the reference laboratory for quality assurance and laboratory correlation purposes.

In these proposed regulations, NIOSH requires the conduct of workplace or simulated workplace testing. NIOSH and others have conducted such "field" studies to determine the performance of respirators in the workplace setting. NIOSH has experience in and is expanding workplace testing of respirators and has begun to develop model protocols for performing such tests in a proven and reliable manner. These field test protocols establish the criteria for the conduct of such tests to

meet the minimum protection factor (PF) criteria proposed in these regulations. These field test protocols would be too voluminous to include in the **Federal Register** Notice; however, it is the intent of NIOSH to make them available upon request at the time of final rulemaking. As NIOSH's and other field studies continue, any improvements to this protocol will, as in the past laboratory test protocols, be made available to applicants/manufacturers. NIOSH is, similarly, planning to conduct simulated workplace testing. Detailed model protocols will be developed for such testing when correlation has been established with the workplace testing and will, at that time, be made available to applicants/manufacturers. NIOSH solicits comments on this approach which is intended to assure reliability and reproducibility of workplace and simulated workplace test results. NIOSH also solicits comments and suggestions regarding alternative approaches such as the need for a requirement in the final rule for prior approval by NIOSH of workplace or simulated workplace test protocols based upon minimum protocol criteria established by NIOSH. For example, such minimum protocol criteria might include such matters as the requirement for the calibration of test equipment according to established standards.

Protocols for the conduct of workplace or simulated workplace testing for certification of protection factors exceeding the minimum requirements will similarly be developed and made available. These protocols will differ, generally, from the minimum protection factor tests with regard to the number of tests required in order to establish a higher degree of confidence in the protection factor achieved.

The following new non-testing requirements are included in this revision to assure flexibility in the certification process and greater safety and reliability of certified respirators.

Section 84.20. The requirement for applicants to submit quality assurance documentation has been deleted and the requirement that the applicant perform certain basic quality assurance functions has replaced it. These requirements include inspecting and testing critical characteristics of the respirator, calibrating instruments used for inspections, and controlling drawings and inspections.

In addition, the manufacturer shall allow NIOSH to select, at no cost, a reasonable number of certified respirators from a site mutually agreed upon by the manufacturer and NIOSH. At present, NIOSH must purchase those respirators on the open market.

Sections 84.21–84.25 are new requirements and are included to assure that the manufacturer can rapidly and effectively disseminate reports of respirator failure to users and to assure that manufacturers inform NIOSH of corrective measures.

Section 84.21. Any manufacturer who discovers that his certified respirator fails to meet the applicable requirements of this part, shall promptly notify NIOSH, and if so directed by NIOSH, its dealers, distributors, and purchasers.

Section 84.22. The notification to NIOSH from the manufacturer required in § 84.21 shall include, inter alia, the identification and number of respirators involved, a description of the defect and hazards reasonably related thereto, and the measures to be taken by the manufacturer to correct the defect or bring the respirator into compliance.

Section 84.23. The notification by the manufacturer to affected persons shall include, inter alia, a clear evaluation in non-technical terms of the hazards reasonably related to the defect and instructions with respect to the use of the respirator pending correction of the defect.

Section 84.24. The manufacturer shall furnish to NIOSH a copy of any communication sent to dealers, distributors or purchasers regarding any defect in or failure of its respirator to comply with applicable standards.

Section 84.25. If NIOSH discovers, through its own research or testing that a certified respirator does not comply with requirements in this Part, NIOSH shall, within 24 hours, so notify the manufacturer of the respirator, and the manufacturer shall notify the persons specified in § 84.21(c).

Section 84.30. The manufacturer shall conduct all tests and meet all requirements of the revised 42 CFR Part 84, and shall provide NIOSH with a written report. This report may be used as the basis for issuance of a certificate of approval, or, NIOSH may conduct any test or tests it deems necessary, following receipt of the report, in its own laboratories before issuing the certificate of approval. Presently, NIOSH tests all respirators submitted for certification. After successful completion of laboratory testing, the applicant will be given interim certification for the conduct of workplace or simulated workplace testing.

Section 84.40. The certification label shall indicate the effective date of the revision to or amendment of 42 CFR Part 84 under which the certification was issued, and shall bear a notice advising users who wish to complain about a problem with the performance of the respirator to advise both the manufacturer and NIOSH of the problem. These requirements are added to the present requirements for the certification label and are included to assure that NIOSH is advised of all problems involving use of NIOSH-certified respirators.

Section 84.60. Only major modifications of respirators, made following issuance of a certificate of approval for that respirator, shall be submitted to NIOSH for approval before the respirator as modified may be sold or distributed as certified. At present, any change in a certified respirator must be submitted to NIOSH for approval before the respirator as modified may be sold or distributed as certified.

Section 84.70. Full and complete stipulation of causes for and procedures for withdrawal of certification for cause, by NIOSH, are prescribed. This is a new requirement included at the request of respirator manufacturers.

Section 84.80. Procedures for manufacturers to appeal decision by NIOSH not to issue certifications, are prescribed. This is a new requirement.

The following new performance test requirements are included in this revision of 42 CFR Part 84, to cover criteria not considered in the present requirements or to make the present requirements more severe and comprehensive, as necessary:

Section 84.223(c). A test requirement for melting of self-contained breathing apparatus harnesses has been added to assure the safety of such apparatus.

Section 84.229. A procedure is included for sequential statistical analysis of performance test results, to assure logical and repeatable analysis of test data.

Subpart R. A procedure for sizing respirator facepieces and for determining the fit of variable-sized respirators, is included to assure the availability of respirators in sizes to fit all wearers.

Subpart S. New test requirements are included for positive-pressure closed circuit self-contained breathing apparatus to provide for approval of these new devices.

Subpart T. The requirements and tests for air supply lines which appear in table 8 of the present 30 CFR Part 11 appear in the text of this part as §§ 84.251 through 84.251–8.

Section 84.248–12. New shock and vibration test requirements are designed to simulate the rough conditions that

self-contained breathing apparatus are exposed to in mining use.

Section 84.248–17. Flammability tests are included to simulate the exposure of self-contained breathing apparatus to heat and flames during mine use.

Section 84.248–18. A regulator over-pressurization test is included to simulate use of self-contained breathing apparatus in mines and mining.

Subpart U. New requirements are included for certification of powered air-purifying respirators, updating and revising the present requirements where necessary.

Subpart V. To provide a more severe test of respirator efficiency, the tests against various particulate matter, such as silica and lead, are replaced with a test against sodium chloride aerosol. Aerosol experts have assured NIOSH that the sodium chloride test, which provides efficiency data throughout the test as well as providing an aerosol more difficult to filter out, is superior to the present silica and lead aerosol tests.

Subpart W. Changes in the humidity and air flow of canister and cartridge tests are included to provide test conditions more nearly like those encountered in mines and mining.

NIOSH invites public comment on the appropriateness of continuing the use of carbon tetrachloride as a challenge vapor for evaluating and certifying organic vapor canister/chemical cartridge respirators. If appropriate, commenters should recommend a replacement or replacement vapor(s) and provide any available data to support their recommendation.

The classifications of air-purifying respirators which may be certified are changed to make their selection by wearers more realistic and easier. For example, instead of classifying dust respirators according to the toxicity of the materials they are designed to protect against, they are classified in this revision according to their relative efficiencies against any particulate matter.

To reflect MSHA's experience with issues of miner safety and health, the proposed rule provides for the two Agencies to consult on approval applications for respirators designed for mine rescue or other mine emergencies. MSHA would review these applications to determine the suitability of the respirators for the mining environment. Under the proposal, any use limitation related to miner safety or health would be included as a condition for approval of the respirators. The proposal would not affect MSHA's testing of electrical components of respirators in potentially explosive atmospheres (intrinsic safety) under the existing requirements of 30 CFR Part 18.

In implementing the proposed revisions, NIOSH and MSHA plan to develop a new Memorandum of Understanding which would, among other things, define the consultative role for MSHA in respirator approvals.

Both MSHA and NIOSH intend that the proposed certification program improve the quality and reliability of respirator performance in the workplace. These improvements will lead to better protective equipment against exposures from toxic substances and other airborne health hazards.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule will not constitute a "major" rule, in that it is not likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U. S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule will not have significant impact on small businesses; therefore, preparation of a regulatory flexibility analysis is not required.

Paperwork Reduction Act

Sections of this proposed rule contain information collections which are subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980. We have submitted a copy of this proposed rule to OMB for its review of these information collections. Other organizations and individuals desiring to submit comments on the information collections should direct them to the agency official designated for this purpose whose name appear in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN: Desk Officer for HHS/PHS/CDC/NIOSH.

List of Subjects in 42 CFR Part 84

Mine safety and health, Occupational safety and health respirators, Miners, Personal protective equipment.

For the reasons set out in the preamble, Part 84 of Chapter 1 of Title 42 of the Code of Federal Regulations is proposed to be added as set forth below.

Dated: July 10, 1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: July 29, 1987.

Otis R. Brown,

Secretary.

Subchapter G—Occupational Safety and Health Research and Related Activities

PART 84—RESPIRATORY PROTECTIVE DEVICES; TESTS FOR PERMISSIBILITY

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Appendix A—Assumed Conditions of Use

Authority: 30 U.S.C. 842(h), 844 and 957, [Pub. L. 91–173 as amended by Pub. L. 95–164].

Subpart A—General Provisions

§ 84.1 Purpose.

The purpose of this part is to prescribe procedures and requirements for the certification of respirators for use in mines and mining.

§ 84.2 Certified respirators.

(a) A respirator is certified if the respirator meets the requirements set forth in this part. NIOSH will determine if a respirator meets these requirements by reviewing the test reports described in §§ 84.30, 84.32, and 84.33.

(b) *Expiration of manufacturers' certificates and recertification.* (1) Manufacturers' certificates granted prior to the effective date of this part by NIOSH, MSHA and the Bureau of Mines for respirators certified as meeting previous performance requirements shall expire five years from the effective date of these regulations unless certification is withdrawn prior to that time pursuant to the provisions of Subpart H of this part.

(2) A manufacturer may obtain certification of a respirator with an expired manufacturers' certificate by submission of a new application for certification as specified in § 84.10.

(3) A respirator submitted to NIOSH for an original certification or a

respirator with an expired manufacturers' certificate which is submitted to NIOSH for recertification shall meet all relevant performance requirements in effect on the date of application.

(4) A certification granted by NIOSH after the effective date of these regulations shall remain in effect for the time period specified in the subsequent revision of the performance requirement applicable to that type or class of respirator unless certification is withdrawn prior to that time pursuant to the provisions of Subpart H of this part.

§ 84.3 Definitions.

"Applicant" means an individual, partnership, company, corporation, association or other organization which manufactures, assembles, or controls the assembly of a complete respirator and who applies to NIOSH for certification of such respirator or for certification of a modification of a certified respirator.

"Major Modification" is a modification or set of modifications not listed or otherwise provided for in the certified respirator specifications that (1) might appreciably affect the weight, balance, structural strength, performance, or other qualities affecting respirator use, or (2) is not done according to accepted practices or cannot be done by elementary operations.

"Manufacturer" means an individual, partnership, company, corporation, association or other organization which manufactures, assembles, or controls the assembly of a complete respirator and has been granted a NIOSH certification for such respirator.

"Minor Modification" is other than a major modification.

"MSHA" means the Mine Safety and Health Administration, U.S. Department of Labor.

"NIOSH" means the National Institute for Occupational Safety and Health, Centers for Disease Control, Public Health Service, U.S. Department of Health and Human Services.

"NIOSH certification label" is a label described in Subpart E of this part.

"Respirator" means any device worn by an individual engaged in mining and designed to provide the wearer with respiratory protection against inhalation of a hazardous atmosphere.

"Simulated workplace" means a simulated environment that is a reasonable representation of mines or mining work sites with regard to contaminant exposures for which a respirator is intended to protect.

"Workplace" means any mine or mining work site with regard to contaminant exposures for which a respirator is intended to provide protection.

Subpart B—Application Procedure

§ 84.10 Submission of an application.

(a) An application to NIOSH for certification of a respirator or certification of a major modification of a certified respirator shall be submitted in writing to: Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

(b) An application to MSHA for certification of an electrical component of a respirator that is required to be permissible, shall be tested in accordance with Part 18 of this chapter and shall be submitted in writing to: Approval and Certification Center, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059.

§ 84.11 Required contents of an application to NIOSH for certification.

An application to NIOSH for certification of a respirator or certification of a major modification of a certified respirator shall be written in English and shall contain:

(a) A letter of transmittal from the applicant to NIOSH requesting certification of a respirator or certification of a major modification of a certified respirator;

(b) A test report as described in § 84.30;

(c) Written assurance that the applicant will, prior to commencement of production, implement, and thereafter maintain, a program to assure the continued quality of certified respirators which will meet both the minimum requirements and the objectives set forth in § 84.20;

(d) A minimum of two respirators which are made on regular production tooling with no operation included which was not included on the respirators tested by the applicant or his agent and which will not be incorporated in regular production processing;

(e) A copy of the applicant's proposed user maintenance, informational and instructional materials and a sample of the packaging materials;

(f) Engineering drawings of the respirator for which certification is sought;

(g) A complete parts list, including all components or parts which may be replaced during the useful life of the respirator;

(h) Marking of all documents submitted under paragraphs (f) and (g) of this section indicating their confidential or trade secret nature;

(i) A required fee of $200 to cover the cost of NIOSH documentation review, plus any additional costs to cover verification testing, determined in accordance with the provisions in Subpart J;

(j) Written assurance that the applicant will, during any testing required by these regulations which involves human subjects, comply with the requirements in 45 CFR Part 46, Subpart A-Basic HHS Policy for Protection of Human Research Subjects.

§ 84.12 Withdrawal of an application for certification.

(a) An applicant may, by written notification to NIOSH, withdraw its application for certification of a respirator.

(b) Upon request, NIOSH will return to the applicant the respirators submitted for certification. The return of the respirator shall be at the applicant's expense.

(c) Any balance of the paid fee will be refunded to the applicant.

§ 84.13 Evaluation of an application for certification.

If NIOSH determines that the applicant has failed to satisfy the requirements set forth in § 84.11 of this part, NIOSH will so inform the applicant and describe the basis for the NIOSH determination. No additional application fee will be charged.

Subpart C—Quality Assurance

§ 84.20 Quality assurance.

Applicants granted a certification under this part shall—

(a) Inspect or test, or both, the critical characteristics identified in the appropriate subpart of this part;

(b) Calibrate instruments used for the inspection and testing of critical characteristics at least as frequently as, and according to, the instrument manufacturer's specifications, using calibration standards traceable to those set by the National Bureau of Standards, U.S. Department of Commerce or other nationally recognized standards;

(c) Control drawings and specifications so that the product is manufactured as certified;

(d) Report to NIOSH any knowledge of a product distributed with critical characteristics not in accordance with the certification specifications;

(e) Permit a representative(s) of NIOSH to conduct an in-plant audit of the inspection and tests, instrument calibration, and drawing and specification control, if NIOSH has reason to believe a certified respirator is

in nonconformance with the requirements of the part;

(f) Make certified products available for audit, upon request by NIOSH but not more than once a year except for cause, at no cost and at a mutually agreeable site and time.

§ 84.21 Discovery of defect or failure of compliance by manufacturer; notice requirements.

Any manufacturer who discovers that any respirator produced or assembled by him fails to comply with an applicable requirement contained in this part shall:

(a) In accordance with § 84.22, notify NIOSH within one work day of discovery of the failure to comply, if such failure poses an immediate and significant threat of serious injury or death, or

(b) If such failure to comply does not pose an immediate and significant threat of serious injury or death, notify NIOSH within a reasonable time after discovery in accordance with § 84.22, and

(c) Furnish notification if so directed by NIOSH, in accordance with § 84.23, to the following persons:

(1) The dealers or distributors to whom such respirator was delivered by the manufacturer; and

(2) The purchaser of such respirator and any subsequent transferee of such respirator (where known to the manufacturer or where the manufacturer upon inquiry to dealers, distributors, or purchasers can identify the present user).

§ 84.22 Notification by the manufacturer to NIOSH.

The notification to NIOSH required by § 84.21 shall be by telephone or telegram which shall be confirmed in writing by letter, and shall include the following information:

(a) Identification of the respirator or respirators involved;

(b) The total number of such respirators so produced, and the approximate number of such respirators which have left the place of manufacture;

(c) The expected usage for the respirator if known to the manufacturer;

(d) A description of the defect in the respirator or the manner in which the respirator fails to comply with any applicable requirement contained in this part;

(e) An evaluation of the hazards reasonably related to the defect or the failure to comply with the applicable requirement;

(f) The date and circumstances under which the defect or noncompliance was discovered; and

(g) The identification of any trade secret information which the manufacturer desires kept confidential; and

(h) Any other relevant information which NIOSH may require.

§ 84.23 Notification by the manufacturer to affected persons.

(a) The notification by the manufacturer to the persons specified in § 84.21 (c) shall be made within 14 days from the receipt of such directive from NIOSH and shall include the following:

(1) In clear and nontechnical terms, the information prescribed in § 84.22, paragraphs (a), (d), (e), and (h) and instructions with respect to use of the respirator pending the correction of the defect; and;

(2) The following statement:

The manufacturer will remedy the defect or bring the respirator into compliance with each applicable requirement contained in respirator certification regulations in accordance with a plan to be approved by NIOSH, the details of which will be included in a subsequent communication to you.

Provided, That if at the time the notification is sent, NIOSH has approved a plan for the repair, replacement or refund of the respirator, the notification may include the details of the approved plan in lieu of the above statement.

(b) The notification shall be sent—

(1) By certified mail to purchasers of the respirator and to subsequent transferees; and

(2) By certified mail or other more expeditious means to dealers and distributors.

§ 84.24 Copies of communications sent to purchasers, dealers, or distributors.

(a) Every manufacturer of respirators shall furnish to NIOSH a copy of all notices, bulletins, or other communications sent to the dealers or distributors of such manufacturers or to purchasers (or subsequent transferees) of respirators of such manufacturer regarding any defect in such respirator or any failure of such respirator to comply with an applicable requirement contained in this part; and

(b) In the event NIOSH deems the content of such notices to be insufficient to protect the public health and safety, NIOSH may require additional notice to such recipients, or may elect to make or cause to be made such notification by whatever means it deems appropriate.

§ 84.25 Determination by NIOSH that a respirator fails to comply or has a defect.

(a) If NIOSH, through testing, inspection, research, or examination of reports or other data, determines that any respirator does not comply with an applicable requirement contained in this part, NIOSH shall within one work day notify the manufacturer of the respirator in writing specifying:

(1) The respirator or respirators involved;

(2) The defect in the respirator or the manner in which the respirator fails to comply with the applicable requirements contained in this part;

(3) NIOSH's findings, with reference to the tests, inspections, studies, or reports upon which such findings are based; and

(4) A reasonable period of time during which the manufacturer may present his views and evidence to establish that there is no failure of compliance or that the alleged defect does not exist or does not relate to health or safety of the user of the respirator.

(b) Every manufacturer who receives a notice under paragraph (a) of this section shall reply to NIOSH in writing in accordance with § 84.22 of this part, paragraphs (b), (c), (e), and (g). If such failure appears to pose an immediate and significant threat of serious injury or death, reply shall be made within 24 hours. If such failure to comply does not pose an immediate and significant threat of serious injury or death, the reply shall be made to NIOSH within a reasonable time.

(c) If, after the expiration of the period of time contained in the notice, from NIOSH specified in paragraph (a) of this section, NIOSH determines that the respirator does not comply with an applicable requirement contained in this part, NIOSH shall direct the manufacturer to furnish the notification to the persons specified in § 84.21(b) in the manner specified in § 84.23. The manufacturer shall furnish the required notification within 14 days from the date of receipt of such directive.

Subpart D—Respirator Testing by Applicant

§ 84.30 Laboratory testing by applicant and interim certification.

(a) The applicant shall conduct the laboratory tests necessary to determine if the applicant's respirator meets the relevant performance standards set forth in Subparts 0 through Z of this part. In addition, the applicant shall test the respirator to determine if the respirator performs as expected and is free from characteristics or defects which may make it unsafe for its anticipated use.

(b) The applicant shall submit a written laboratory test report to NIOSH which shall include:

(1) The results of the tests described in paragraph (a) of this section;

(2) A detailed description of the test procedures employed in producing the test results;

(3) A detailed description of the data and method of data analysis used in obtaining the test results.

(c) NIOSH may, at its discretion, undertake its own testing and/or evaluation of applicant's respirator for the purpose of verifying the test results or conclusions included in applicant's test report.

(d) In addition to the requirements of this part, NIOSH may require, as a further condition of certification, additional tests reasonably necessary to evaluate the quality, effectiveness, or safety of the respirator submitted to NIOSH for certification. NIOSH will notify the applicant in writing of these additional requirements, stating generally the reasons for such requirements.

(e) NIOSH will review the applicant's laboratory test report to determine if the report provides substantial evidence that the applicant's respirator:

(1) Meets the relevant performance requirements set forth in Subparts O through Z of this part;

(2) Performs as expected;

(3) Is free from defects or characteristics that may make it unsafe for its anticipated use.

(f) Within 90 days of the acceptance by NIOSH of the applicant's laboratory test report, NIOSH will issue a notification letter to the applicant indicating whether the laboratory test report provides substantial evidence that the applicant's respirator complies with the requirements of paragraph (e) of this section.

(1) If NIOSH concludes that the applicant's report does provide sufficient evidence of such compliance, the notification letter will constitute an interim certification of the respirator pending a decision by NIOSH on final certification which is contingent upon satisfactory results from workplace or simulated workplace testing.

(2) If NIOSH concludes that the applicant's report does not provide sufficient evidence of such compliance, NIOSH will inform the applicant in writing of its intention to deny interim certification. The letter shall inform the applicant of the basis for the denial and of the applicant's right to appeal the denial in accordance with the provisions in Subpart I.

§ 84.31 Guidelines for workplace or simulated workplace testing.

In conducting workplace or simulated workplace testing the applicant shall conform to the following general guidelines:

(a) The applicant shall utilize a methodology and research design which can be expected to adequately determine if the respirator will perform as required by this part and is free from defects or characteristics which may make it unsafe for its anticipated use;

(b) The applicant shall provide for testing of the applicant's respirator in actual and/or simulated workplace conditions that are reasonably representative of those in which the applicant anticipates the respirator will be used;

(c) The applicant shall provide for testing of applicant's respirator by experts qualified by training and experience to evaluate the effectiveness and safety of the respirator.

§ 84.32 Workplace or simulated workplace testing by applicant; Certification of minimum performance level.

(a) *Workplace or simulated workplace test report.* The applicant shall provide NIOSH with a test report that provides substantial evidence that the applicant's respirator will provide a workplace or simulated workplace protection factor at least equal to that assigned to that category of respirators in paragraph (b) of this section. In addition, the applicant's test report shall provide:

(1) Substantial evidence that the applicant's respirator performs as is expected and is free from defects or characteristics which may make it unsafe for its anticipated use; and

(2) An explanation of the method of observation and recording results, including the variables measured, quantitative assessment of subject response and steps to be taken to minimize bias on the part of the subject and the observer.

(b) Workplace or simulated workplace evaluation of respirator performance shall be conducted so as to determine the distribution of workplace protection factors or simulated workplace protection factors that are measured in workplaces or in simulated workplaces and in work conditions that are reasonably representative of the places and conditions in which it is anticipated the respirator will be used.

(1) The workplace protection factor, WPF, or simulated workplace protection factor, SPF, is a measure of the effectiveness of a respirator that is being properly worn and used during normal work activities by a person who has been properly fitted. The WPF or SPF as appropriate can be determined by: WPF or $SPF = C_o/C_i$ where C_o is the time-weighted average (TWA) contaminant concentration outside the facepiece which would be inhaled if the respirator were not used, and C_i is TWA contaminant concentration inside the respirator facepiece which is inhaled by the respirator wearer.

(2) The assigned protection factor is that above which 95 percent of the workplace protection factors would be expected to exceed at a confidence level of 95 percent. The assigned protection factor, PF_a, can be calculated by the following general formula as explained by Natrella[2] for one-sided tolerance limits: $PF_a = PF_a(\lambda, P)$, where $\lambda = 0.95$ and $P = 0.95$. For example, a class of respirators with a $PF_a = 50$ would be expected to provide workplace protection factors or simulated workplace protection factors in excess of 50 for at least 95 percent of users.

Minimum Assigned Protection Factors

Respirator Class	Minimum PFa
Air Purifying	
negative pressure	
full facepiece	50
half or quarter facepiece	10
with low efficiency filter	5
powered	
tight fitting facepiece	50
loose fitting helmet	25
Atmosphere Supplying	
self-contained (SCBA)	
negative pressure	50
positive pressure	10,000
air-line	
negative pressure	
full facepiece	50
half facepiece	10
positive pressure	
full facepiece	2,000
half facepiece	1,000
continuous flow	
half facepiece	50
full facepiece	50
hood or helmet	25
combination positive pressure SCBA with air-line	
half facepiece	1,000
full facepiece	10,000

(c) At the conclusion of the workplace or simulated workplace tests, the applicant shall report the workplace or simulated workplace test results to NIOSH.

(1) If, after completing its review, NIOSH is satisfied that the respirator meets the minimum assigned protection factor requirements of this section and is free from defects or characteristics which may make it unsafe for its anticipated use, NIOSH will issue the applicant a certificate indicating NIOSH certification of the respirator.

(2) If applicant's workplace or simulated workplace test results do not provide substantial evidence that the respirator meets the aforementioned requirements, NIOSH will inform the applicant in writing of its intention to deny certification. The letter shall inform the applicant of the basis for the denial and of the applicant's right to appeal the denial in accordance with the provisions in Subpart I.

(d) NIOSH will issue a certificate to the applicant or send a notification of denial to the applicant within 90 days of acceptance by NIOSH of the applicant's workplace or simulated workplace test results.

§ 84.33 Workplace or simulated workplace testing by applicant; Certification of higher performance level.

In lieu of conformance to the requirements of § 84.32 of this part, the applicant may perform workplace or simulated workplace testing, designed to demonstrate a higher level of performance, i.e. protection factor, than those specified in § 84.32.

(a) Where an applicant intends to submit for certification at a higher level of performance than those specified in § 84.32, the applicant shall advise NIOSH of that intent, prior to initiation of the workplace or simulated workplace testing. NIOSH reserves the right to review the statistical protocol for the study and to observe the conduct of the workplace or simulated workplace tests.

(b) Workplace or simulated workplace evaluation of respirator performance shall be conducted so as to determine the distribution of workplace protection factors or simulated workplace protection factors that are measured in workplaces or in simulated workplaces and in work conditions that are reasonably representative of the places and conditions in which it is anticipated the respirator will be used.

(c) The workplace protection factor, WPF, or simulated workplace protection factor, SPF, is a measure of the effectiveness of a respirator that is being properly worn and used during normal work activities by a person who has been properly fitted. The WPF or SPF as appropriate can be determined by: WPF or $SPF = C_o/C_i$ where C_o is the time-weighted average (TWA) contaminant concentration outside the facepiece which would be inhaled if the respirator were not used, and C_i is TWA

contaminant concentration inside the respirator facepiece which is inhaled by the respirator wearer.

(d) The applicant shall provide NIOSH with a test report that provides substantial evidence that the applicant's respirator will provide an assigned protection factor greater than that assigned to that category of respirators in paragraph (c) of § 84.32. The applicant's test report shall provide:

(1) Data that statistically demonstrates that 95 percent of the workplace protection factors would be expected to exceed the higher protection factor at a confidence level of 95 percent. The higher assigned protection factor, PF_a, can be calculated by the following general formula as explained by Natrella[2]: $PF_a = PF_a(\lambda, P)$, where $\lambda = 0.95$ and $P = 0.95$;

(2) Evidence that the respirator is free from defects or characteristics which may make it unsafe for its anticipated use; and

(3) An explanation of the method of observation and recording results, including the variables measured, quantitative assessment of subject response and steps to be taken to minimize bias on the part of the subject and the observer.

(e) If NIOSH finds that the data support the assignment of a higher protection factor than the minimum level of protection factor specified in § 84.32(c), NIOSH will certify the higher protection factor as part of the respirator certification. If NIOSH determines that the data do not support the higher protection factor, NIOSH may require further testing and/or may choose to conduct validation testing of the applicant's respirator or may deny the application. NIOSH will inform the applicant in writing of its intention to deny certification. The letter shall inform the applicant of the basis for the denial and of the applicant's right to appeal the denial in accordance with the provisions in Subpart I.

§ 84.34 Availability of respirator test results and protocols.

NIOSH will make available, for public review, all laboratory and workplace or simulated workplace test results and test protocols utilized in tests conducted under the provisions of this part.

Subpart E.—NIOSH Certification Label

§ 84.40 Required contents of a certification label.

(a) A NIOSH certification label shall contain:

(1) The name and address of the manufacturer;

(2) The name and letters or numbers by which the respirator or respirator component is designated for trade purposes;

(3) The lot number or other appropriate designation of date of manufacture;

(4) The NIOSH logo and the words, "Certified by the U.S. Government";

(5) The certification number assigned by NIOSH;

(6) The effective date of the NIOSH performance standard against which the respirator was tested and certified;

(7) Any conditions or limitations specified by NIOSH; and

(8) The following statement:

Complaints concerning the performance of this respirator should be forwarded to the manufacturer and a copy should be sent to Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, WV 26505

(9) Manufacturers shall have the completely assembled and fully charged weight and completely assembled and fully discharged weight permanently and legibly marked on all self-contained breathing apparatus.

(b) In addition to the requirements set forth in paragraph (a) of this section, the certification labels for mine rescue and emergency respirators as defined in Subpart K shall contain the MSHA logo and any conditions or limitations specified by MSHA.

§ 84.41 General label and marking requirements.

(a) Legible reproductions or abbreviated forms of the certification label acceptable to NIOSH for use on each respirator or respirator component shall be attached to or printed on the following locations:

Respirator Type	Label Type	Location
Self-contained breathing apparatus	Entire	Harness assembly and canister (where applicable).
Gas and vapor air purifying canister respirator	Entire	Respirator container and canister.
Air-line respirator	Entire	Respirator container or instruction card.
Particulate air purifying respirator	Entire	Respirator container and filter container.
	Abbreviated	Filters.
Gas and vapor air purifying cartridge respirator	Entire	Respirator container, cartridge container, and filter containers (where applicable).
	Abbreviated	Cartridges and filters

(b) Each respirator, major respirator component, and respirator container shall be labeled distinctly to show the name of the manufacturer, the name and letters or numbers by which the respirator or respirator component is designated for trade purposes, and the lot number, serial number, or date of manufacture.

(c) Pursuant to a request from the manufacturer of a certified respirator, NIOSH will provide prior review of the contents of a proposed certification label.

Subpart F--Maintenance, Informational and Instructional Materials

§ 84.50 Operation and maintenance manuals.

(a) Operation and maintenance manuals shall be provided with each respirator and shall contain the following as minimum requirements:

(1) Operation manuals shall include principles of operation, procedures for fitting to the wearer, a description of parts, operation and use, limitations of use, operation testing, trouble-shooting guidance, and hazards.

(2) Maintenance manuals shall include preventive maintenance procedures, routine repair procedures, test procedures, suggested spare parts, parts lists, and storage recommendations.

(b) The applicant's operation and maintenance manuals shall be written so as to be easily comprehensible to the user.

Subpart G—Modification of Certified Respirators

§ 84.60 Major modification of certified respirators.

(a) Manufacturers of respirators certified by NIOSH who wish to make major modifications to such respirators shall submit applications for certification of such major modifications to NIOSH as set forth in Subpart B of this part.

(b) If an applicant submits to NIOSH a proposed major modification of a respirator which holds a current NIOSH/MSHA certification, the proposed major modification shall meet the performance standards in effect on the date of the original certification of the respirator. NIOSH, at its discretion, may test or evaluate the respirator and verify the applicant's data.

(c) If the respirator as modified fails to meet the relevant NIOSH performance standards in effect on the date of the original certification, NIOSH will inform the applicant in writing of its intention to deny certification of the modified respirator. The letter shall inform the applicant of the basis for the denial and of the applicant's right to appeal the denial in accordance with the provisions of Subpart I.

§ 84.61 Minor modification of certified respirators.

(a) Manufacturers of respirators certified by NIOSH who make minor modifications to such respirators, shall maintain a record of such minor modifications for the duration of the certification.

(b) The record of such minor modifications shall be made available to NIOSH, upon request, within 1 week. The record of such minor modifications shall be made available for inspection by NIOSH personnel during the in-plant audit prescribed in § 84.20(e).

Subpart H—Withdrawal of Certification

§ 84.70 Withdrawal of certification for cause.

NIOSH may withdraw its certification of a respirator for cause. Cause includes, but is not limited to:

(a) Failure of a manufacturer to consistently and effectively implement a quality assurance program which meets the objectives and requirements set forth in § 84.20;

(b) Failure of a manufacturer to promptly allow NIOSH to contact or enter its facility for the purpose of verifying the manufacturer's quality assurance program as provided for in § 84.20(e);

(c) Failure of a manufacturer to provide the notifications required in §§ 84.21 through 84.25;

(d) Placement by a manufacturer on a certified respirator of a NIOSH label not as prescribed in § 84.40;

(e) Failure of a manufacturer to maintain the records required in § 84.61 and/or to provide them to NIOSH in a timely fashion upon request;

(f) The subjection by a manufacturer of a respirator certified by NIOSH to major modification and the selling or advertising for sale of such modified respirator as NIOSH certified without having obtained NIOSH certification of the modification;

(g) Failure of a manufacturer to consistently produce a respirator that is reliable and free from defects or characteristics which may make it unsafe for its anticipated use;

(h) A determination by NIOSH that a test upon which certification depends does not provide reasonable protection to the user of a respirator which has been certified based entirely or in part upon satisfactory performance during such test;

(i) A determination by NIOSH that a certified respirator is so defective as to be dangerous to the health or safety of the user; and

(j) Failure of a manufacturer to permit NIOSH to select a reasonable number of respirators for audit testing as provided for in § 84.20(f).

§ 84.71 Procedure for withdrawal of certification for cause and manufacturer's right to appeal.

(a) If NIOSH determines that cause exists to warrant withdrawal of NIOSH certification of a respirator, NIOSH will notify the manufacturer of the NIOSH intent to withdraw certification, and inform the manufacturer of the reasons for the proposed withdrawal of certification and of the manufacturer's right to appeal the proposed withdrawal of certification.

(b) The manufacturer shall have 30 working days from the date of receipt from NIOSH of the notice of proposed withdrawal of certification to file a written notice of appeal with the Director of NIOSH.

(c) If, within 30 working days, the manufacturer fails to notify the Director of NIOSH of the manufacturer's intent to appeal the proposed withdrawal or certification, the Director of NIOSH shall notify the manufacturer that certification is withdrawn.

(d) If, within 30 working days, the manufacturer notifies the Director of NIOSH of the manufacturer's intent to appeal the proposed withdrawal of certification, the manufacturer will be granted a hearing as provided for in Subpart I of this part.

Subpart I—Appeals

§ 84.80 Appeal procedure.

Appeals by an applicant or manufacturer shall be to the Director of NIOSH. Upon receipt of a notice of appeal, the Director of NIOSH will refer the matter to an Administrative Law Judge who shall hear the appeal. The Administrative Law Judge will make a recommendation to the Director of NIOSH based upon relevant material and reliable evidence of record. Within 30 days of the rendering of the recommendation by the Administrative Law Judge, the Director of NIOSH will revise, reverse or affirm the original NIOSH determination.

Subpart J—Fee Determination

§ 84.90 Fees.

(a) In addition to the application fee prescribed in § 84.11(i), NIOSH will charge fees for services it provides in testing and evaluating products for which certification or related action is requested.

(b) NIOSH will compute fees on the basis of cost to the government to provide these services using the following methodology. For each service provided for a group of related products, NIOSH will determine a flat fee to cover the direct and indirect costs. Products are grouped based on function, construction or technology in accordance with certification requirements applicable to the product. Direct costs are based on current compensation costs for technical and support personnel, allocated according to the staff time spent in the previous fiscal year for each service for a product group. Indirect costs include a proportionate share of management personnel compensation costs, other administrative support costs and facility costs for the previous fiscal year, and depreciation of buildings and equipment. For product groups with insufficient data upon which to calculate a fee, NIOSH will charge an hourly rate based on the actual technical and support staff time spent on the action plus an appropriate share of indirect costs. Costs related to travel and transportation for certification of products tested or evaluated at the manufacturing or installation site are in addition to these flat or hourly fees and will be charged on an actual cost basis.

(c) NIOSH will publish a notice in the Federal Register announcing the availability of the current fee schedule by January of each year.

Subpart K—Mine Rescue and Emergency Respirators

§ 84.100 MSHA Review.

NIOSH will consult with the Mine Safety and Health Administration (MSHA) when an application for approval is submitted for a respirator designed for mine rescue or other mine emergencies. MSHA will review the application to determine the suitability of the respirator for the mining environment. Any use limitation related to mine safety or health shall be included as a condition for respirator approval. No respirator intended for emergency use in mines shall be approved without concurrence by MSHA.

Subparts L–N [Reserved]

Subpart O—Technical Definitions

§ 84.200 Definitions as used in this part.

"Adequate Oxygen" means an atmosphere which contains at least an oxygen partial pressure of 148 millimeters of mercury (19.5 percent oxygen by volume at sea level).

"Air-Purifying Respirator" means a respirator which protects the wearer by removing contaminants from the ambient air.

"Atmosphere Supplying Respirator" means a respirator which provides the wearer with air or oxygen from a source independent of the ambient atmosphere.

"Breathing Tube" means a tube at or near ambient pressure through which respirable air is intended to be supplied to the wearer's breathing zone.

"Canister" or "Cartridge" means the active element of a gas and vapor air-purifying respirator which contains the sorbent and/or catalyst which removes specific contaminants from the air drawn through it.

"Compressed Breathing Gas" means oxygen or air stored in a compressed state and supplied to the wearer in gaseous form.

"Contaminant" means a harmful material in the normal respirable atmosphere.

"dBA" means sound pressure levels in decibels, as measured with the A-weighted network of a standard sound level meter using slow response.

"End-of-Service-Life Indicator" means an indicator or warning device on a respirator which warns the wearer that the end of the service life of the device is approaching.

"Exhalation Valve" means a one-way valve that allows exhaled air to exhaust from the respirator and prevents outside air from entering.

"Eyepiece" means a gas-tight, transparent window in a facepiece through which the wearer may see.

"Facepiece" means a respirator component that serves to interface the respirator and the wearer and includes tight fitting facepieces, loose fitting facepieces, and mouthpieces.

"Face Seal Leakage" means the inward leakage that occurs at the interface of the wearer and the respirator plus all other sources of inward leakage except leakage due to air purifying element penetration. When there is no air purifying element penetration, face seal leakage is given by C_i/C_o where C_i is the inhaled concentration and where C_o is the concentration of challenge aerosol outside the facepiece. It may also be expressed as a percentage, if so indicated.

"Filter" means a media component used in respirators to remove solid and/or liquid particles from the inspired air.

"Filter Efficiency" means $1-(C_p/C_c)$, where C_c is the concentration of challenge aerosol and where C_p is the concentration of aerosol penetrating the filter. It may also be expressed as a percentage, if so indicated.

"Filter Penetration" means C_p/C_c where C_c is the concentration of challenge aerosol and where C_p is the concentration of aerosol penetrating the filter. It may also be expressed as a percentage, if so indicated.

"Gas" means an aeriform fluid which is in a gaseous state at standard temperature and pressure.

"Gas and Vapor Respirator" means an air-purifying respirator which provides air to the wearer by removing specific gases and vapors from the ambient air.

"Head Harness" means a device for holding the facepiece securely in place on the wearer's face.

A "Hood" or "Helmet" is a respirator component which covers the wearer's head, and possibly also the neck and shoulders, and is supplied with incoming respirable air for the wearer to breathe. It may include a head harness and connection for a breathing tube.

"Immediately Dangerous to Life or Health" (IDLH): Respiratory exposures which:

(1) Pose an immediate threat of loss of life or of irreversible or delayed effects on health or;

(2) Eye exposures which would prevent an escape from such an atmosphere.

"Liquefied Breathing Gas" means oxygen or air stored in liquid form and supplied to the wearer in a gaseous form.

"Loose Fitting Facepiece" means a facepiece which is not designed to provide a gas-tight seal with the wearer's face, but which prevents the inward contamination of the breathing zone by an outward flow of air.

"Mouthpiece" is that portion of a respirator that is designed to provide a gas tight seal with the wearer's lips when the mouthpiece is inserted into the mouth.

"Negative Pressure Respirator" means any respirator which relies on negative pressure in the facepiece due to wearer's inspiration to provide respirable air.

"Non-Powered Air-Purifying Respirator" means an air-purifying respirator which relies on negative pressure in the facepiece due to the wearer's inspiration to draw air through the air-purifying element.

"Noseclamp" is a device which provides a gas-tight seal of the nostrils.

"Oxygen Deficient Atmosphere" means an atmosphere which contains an oxygen partial pressure of less than 148 millimeters of mercury (19.5 percent by volume at sea level).

"Particulate Respirator" means an air-purifying respirator which removes solid and liquid particulates from the ambient air.

"Positive Pressure Respirator" means any atmosphere supplying respirator which maintains a positive facepiece pressure at work rates less than or equal to those specified in this part.

"Powered Air-Purifying Respirator" means an air-purifying respirator which uses a blower to deliver air through the air purifying element to the wearer's breathing zone at the flow rates specified in this part.

"Resistance" means opposition to the flow of gas, as through a cartridge, canister, filter, orifice or valve.

"Self-Contained Breathing Apparatus" means an atmosphere supplying respirator in which the source of air or oxygen is contained within the respirator independent of any other source.

"Service Time (Service Life)" is the period of time that a respirator provides protection to the wearer, such as the period of time that an air-purifying device is effective for removing a harmful substance from inhaled air.

"Tight Fitting Facepiece" means a facepiece which is designed to provide a gas tight seal with the wearer's face.

"Vapor" means the gaseous state of a substance that is solid or liquid at ordinary temperature and pressure.

Subpart P—Classification

§ 84.210 Classification of certified respirators.

Respirators certified under the provisions of this part are first classified as either air-purifying respirators or atmosphere supplying respirators.

(a) Air-purifying respirators are further classified as either gas and vapor respirators or particulate respirators.

(1) Gas and vapor respirators are further classified as cartridge respirators or canister respirators.

(i) Cartridge respirators are further classified as either non-powered cartridge respirators or powered cartridge respirators. Both are further classified according to the specific gas or vapor or class of gas and vapor for which the respirator is certified.

(ii) Canister respirators are further classified as either low capacity non-powered canister or low capacity powered canister respirators or high capacity non-powered canister or high capacity powered canister respirators depending on the capacity of the sorbent or catalyst.

(2) Particulate respirators are classified as either non-powered particulate respirators or powered particulate respirators. Particulate respirators are further classified in terms of the efficiency of their filter elements as either high efficiency, medium efficiency or low efficiency.

(b) Atmosphere supplying respirators are classified as either self-contained breathing apparatus or air-line respirators.

(1) Self-contained breathing apparatus are classified as either open-circuit self-contained breathing apparatus or closed-circuit self-contained breathing apparatus.

(i) Open-circuit self-contained breathing apparatus are further classified as either positive pressure open-circuit self-contained breathing apparatus (P) or negative pressure open-circuit self-contained breathing apparatus (N).

(ii) Closed-circuit self-contained breathing apparatus are further classified as either positive pressure closed-circuit self-contained breathing

apparatus (P) or negative pressure closed-circuit self-contained breathing apparatus (N).

(iii) All classifications of self-contained breathing apparatus are further classified as "escape only" (Es) or "entry and escape" (En).

(iv) All classifications of self-contained breathing apparatus are further classified in terms of service life as either 3 minutes, 5 minutes, 10 minutes, 15 minutes, 30 minutes, 45 minutes, 1 hour, 2 hours, 3 hours, 4 hours, or other service times as may be prescribed by NIOSH.

(2) Air-line respirators are further classified in terms of the regulator type as either positive pressure air-line respirators, negative pressure air-line respirators, or continuous flow air-line respirators.

(c) The classification described above in this section is indicated schematically as follows:

Air-Purifying Respirators

Gas and Vapor Respirators

Cartridge Respirator
- Powered Cartridge
- Non-Powered Cartridge

Canister Respirators
- Non-Powered Low Capacity Canister
- Powered Low Capacity Canister
- Non-Powered High Capacity Canister
- Powered High Capacity Canister

Particulate Respirators

Non-Powered Particulate
- Low Efficiency
- Medium Efficiency
- High Efficiency

Powered Particulate
- Medium Efficiency
- High Efficiency

Atmosphere Supplying Respirators

Self-Contained Breathing Apparatus
- Open Circuit SCBA (P or N) (Es or En)
- Closed Circuit SCBA (P or N) (Es or En)

Air-line Respirators

- Positive Pressure Air-line
- Negative Pressure Air-line
- Continuous Flow Air-line

§ 84.211 Combination respirators.

Respirators which are combinations of any two or more of the basic classifications described in § 84.210 may be certified under the provisions of this part. Unless specifically indicated otherwise in this part, such combination respirators shall comply with the requirements of each basic respirator classification of which it is composed. For example, a combination particulate respirator and cartridge respirator shall meet the requirements for a particulate respirator and the requirements for a cartridge respirator.

Subpart Q—General Construction and Performance Requirements

§ 84.220 General construction requirements.

(a) Respirators shall be designed and constructed to ensure against creation of any hazard to the wearer.

(b) Respirators shall be constructed of materials which are durable and cannot be damaged by normal handling.

(c) Respirators and components thereof, except those not intended to be reused, shall be constructed of materials which will withstand repeated cleaning and disinfection as recommended by the manufacturer as part of the instructions for use and maintenance.

(d) Respirators shall be designed, constructed, and assembled to permit easy access for inspection, cleaning, and repair or replacement of functional parts without adversely affecting the performance of the respirator.

(e) All respirators incorporating an eyepiece(s) or window(s), such as a full facepiece respirator or a helmeted powered air-purifying respirator, shall provide impact and penetration resistance equal to or greater than that specified in paragraphs 5.2.8.1 and 5.2.8.2 of the ANSI Z87.1–1979 standard.

(f) All respirators shall permit the wearer adequate vision and be designed to permit the wearing of safety glasses meeting the requirements of the ANSI Z87.1–1979 standard without adversely affecting the performance of the respirator. Temple bars of such safety glasses may be removed for use in full facepieces.

(g) Respirators with mouthpieces shall be equipped with noseclips which are securely attached to the mouthpiece or respirator and provide an airtight seal at the nostrils.

(h) Facepieces, hoods, and helmets shall be designed and constructed to minimize integral eyepiece, spectacle, and window(s) fogging.

(i) Respirators shall be resistant to corrosion and deterioration from chemical and physical agents to which they are likely to be exposed in the workplace.

(j) Respirator components which come into contact with the wearer's skin shall be made of materials which are non-irritating to skin of normal sensitivity.

(k) The components of each respirator for use in mines where permissibility is required shall meet the requirements for permissibility and intrinsic safety set forth in Title 30, Code of Federal Regulations, Part 18, Schedule 2G.

§ 84.221 Test requirements; General.

Where a combination respirator is assembled from two or more types of respirators, as described in § 84.211, each of the individual respirator types which have been combined shall, as applicable, meet the minimum requirements for such respirators set forth in this part.

§ 84.222 Breathing tubes.

Breathing tubes used in conjunction with respirators shall be designed and constructed to prevent:

(a) Restriction of free head movement;

(b) Disturbance of the fit of facepieces, mouthpieces/noseclamps, hoods, or helmets;

(c) Interference with the wearer's activities; and

(d) Shutoff of airflow due to kinking, or from body, chin or arm pressure.

§ 84.223 Body harnesses.

(a) If a respirator is equipped with a body harness such harness shall be designed and constructed to hold the components of the respirator in position against the wearer's body.

(b) Body harnesses shall be designed and constructed to permit easy donning and removal of the respirator, to hold the respirator securely in place during use, to permit easy removal and replacement of respirator parts, and, where applicable, to provide for holding a full facepiece in the ready position when not in use.

(c) Body harnesses for self-contained breathing apparatus shall not melt when exposed to temperatures of 400 °F for 30 minutes.

§ 84.224 Respirator containers.

(a) Respirators shall be packaged for shipment and sale in a durable container bearing markings which show the manufacturer's name, the type and commercial designation of the respirator it contains, and all appropriate labels.

(b) Containers may provide for storage of more than one respirator; however, such containers shall prevent contamination of respirators which are not removed, and prevent damage to respirators during transit.

(c) Containers for gas and vapor air-purifying canister respirators and self-contained breathing apparatus shall permit rapid removal of the respirator.

(d) Containers supplied by the applicant for carrying or storing self-contained breathing apparatus will be inspected, examined, and tested as components of the respirator for which certification is sought.

§ 84.225 Head harnesses.

(a) Tight fitting facepieces shall be equipped with head harnesses designed and constructed to provide adequate tension during use and an even

distribution of pressure over the entire area in contact with the face.

(b) Mouthpiece/noseclamps shall be equipped, where applicable, with adjustable and replaceable harnesses designed and constructed to hold the mouthpiece in place.

(c) Facepiece head harnesses shall be adjustable and, where applicable, replaceable.

§ 84.226 Inhalation and exhalation valves.

(a) Inhalation and exhalation valves shall be protected against distortion.

(b) If air-purifying respirators are equipped with inhalation valves, such valves shall prevent exhaled air from entering and adversely affecting cartridges, canisters, and filters.

(c) If a respirator is equipped with an exhalation valve, such valve shall be:

(1) Protected against damage and external influence; and

(2) Designed and constructed to prevent inward leakage of contaminated air.

§ 84.227 Exhalation valve leakage test.

(a) Dry exhalation valves and valve seats shall be subjected to a suction of 25 mm water-column height while in a normal operating position.

(b) Leakage between the valve and valve seat shall not exceed 30 ml per minute.

§ 84.228 Air velocity and noise levels; Hoods and helmets.

Noise levels generated by the respirator, except as indicated below, shall be measured inside the hood or helmet at maximum obtainable airflow and within pressure and hose length requirements and shall not exceed 80 dBA when worn in accordance with the manufacturer's instructions. Where the respirator is an escape self-contained breathing apparatus with a hood or helmet, and the rated service time does not exceed 10 minutes, the noise level shall not exceed 100 dBA when the apparatus is worn in accordance with the manufacturer's instructions.

§ 84.229 Procedure for sequential analysis of performance test results using one-sided tolerance limits.

(a) Unless otherwise specified in this part, all performance tests which produce quantitative results shall at a minimum be analyzed for compliance with the relevant performance specification using one-sided normal tolerance limits at the 95 percent confidence level for 95 percent of the target population represented by the tested samples.

(b) For a performance specification that represents an upper acceptable limit for some measured performance characteristic, a one-sided upper tolerance limit (UTL) will be calculated, which must equal or lie below the performance specification for the samples to demonstrate acceptable performance.

(c) For a performance specification that represents a lower acceptable limit for some measured performance characteristic, a one-sided lower tolerance limit (LTL) will be calculated, which must equal or exceed the performance specification for the samples to demonstrate acceptable performance.

(d) The performance of three (3) samples shall first be measured by procedures of the relevant performance test. Calculate either a UTL or LTL using: $UTL=(m+Ks)$ and $LTL=(m-Ks)$, where (m) is the sample arithmetic mean, (s) is the sample standard deviation (with an $(n-1)$ divisor), and (K) is the tolerance limit factor 6.158. If the three (3) samples demonstrate acceptable performance at the 95 percent confidence level, the performance test may be terminated.

(e) If the initial sample of three (3) fails to demonstrate performance at the required level of confidence, three (3) additional samples shall be tested and m, s, and UTL or LTL shall be recalculated for the total sample of six (6) using a K of 3.006. If the six (6) samples fail to demonstrate acceptable performance at the 95 percent confidence level, the respirator under evaluation shall be considered unacceptable.

Subpart R—Face Seal Leakage

§ 84.230 Applicability.

All respirators shall be tested and evaluated for face seal leakage in accordance with the provisions of this subpart. The term "face seal leakage" refers to the inward leakage that occurs at the interface between the wearer and the respirator even though for some respirators the sealing may not actually occur on the wearer's face.

§ 84.231 General.

(a) In this subpart it is assumed that the only two sources of inward leakage of contaminant into the respirator wearer's breathing zone are face seal leakage and, where applicable, filter penetration. That is, it is assumed that for a well designed respirator all other sources of leakage (such as hose couplings, exhalation valves, lens seals, etc.) are negligible. If these other sources are not negligible, the tests of this subpart are intended to include them as if they were face seal leakage. Subtracting the effect of these additional sources shall not be permitted in the analysis of data.

(b) Face seal leakage and filter penetration are measured separately and limitations are placed on each separately in this part. Face seal leakage is addressed in this subpart while filter penetration is addressed in other subparts. Accordingly, this subpart defines face seal leakage to include all sources of leakage except filter penetration. Therefore, when air-purifying respirators are tested for face seal leakage, the highest efficiency particulate filters compatible with the respirator shall be fitted. If the use of the highest efficiency filter available does not reduce the effects of filter penetration to negligible levels, the effect of filter penetration on the face fit test may be eliminated analytically in the analysis of data.

(c) Gas and vapor respirators shall be evaluated for face seal leakage with high efficiency particulate filters in place.

§ 84.232 Negative pressure respirators, either air-purifying or atmosphere supplying respirators.

(a) *Sizing.* The manufacturer shall specify to NIOSH as part of its application the range of facial sizes which the respirator is intended to fit. Such size specifications shall be in terms of face length (Menton-Nasal Root Depression Length) and face width (Bizygomatic Breadth). The applicant shall specify one or more contiguous cells of the Los Alamos panel structure shown in Figure 1.[1] The tests outlined in this subpart are intended to verify the ability of the respirator to accommodate the variety of facial shapes within the specified size range by panel testing.

(b) *Panel Selection.* Each facepiece shall be tested on a panel of 25 adult individuals having facial dimensions within the range of dimensions specified by the applicant. The distribution of facial sizes within a panel so constructed shall approximate the distribution of facial sizes of the general adult population having facial dimensions within the specified range. To achieve this end, the number of individuals in each panel cell shall be in approximate proportion to the distribution of the Los Alamos panel. Individuals having unshaven facial hair, deep scars, unusually deep wrinkles, or unusual facial deformity that would be positioned between the facepiece and the wearer's face, shall not be included in the panel.

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[1] Hack, A., et al., Selection of Respirator Test Panel Representative of U.S. Adult Facial Sizes. Los Alamos Report No. LA-5488, issued March, 1974.

Figure 1

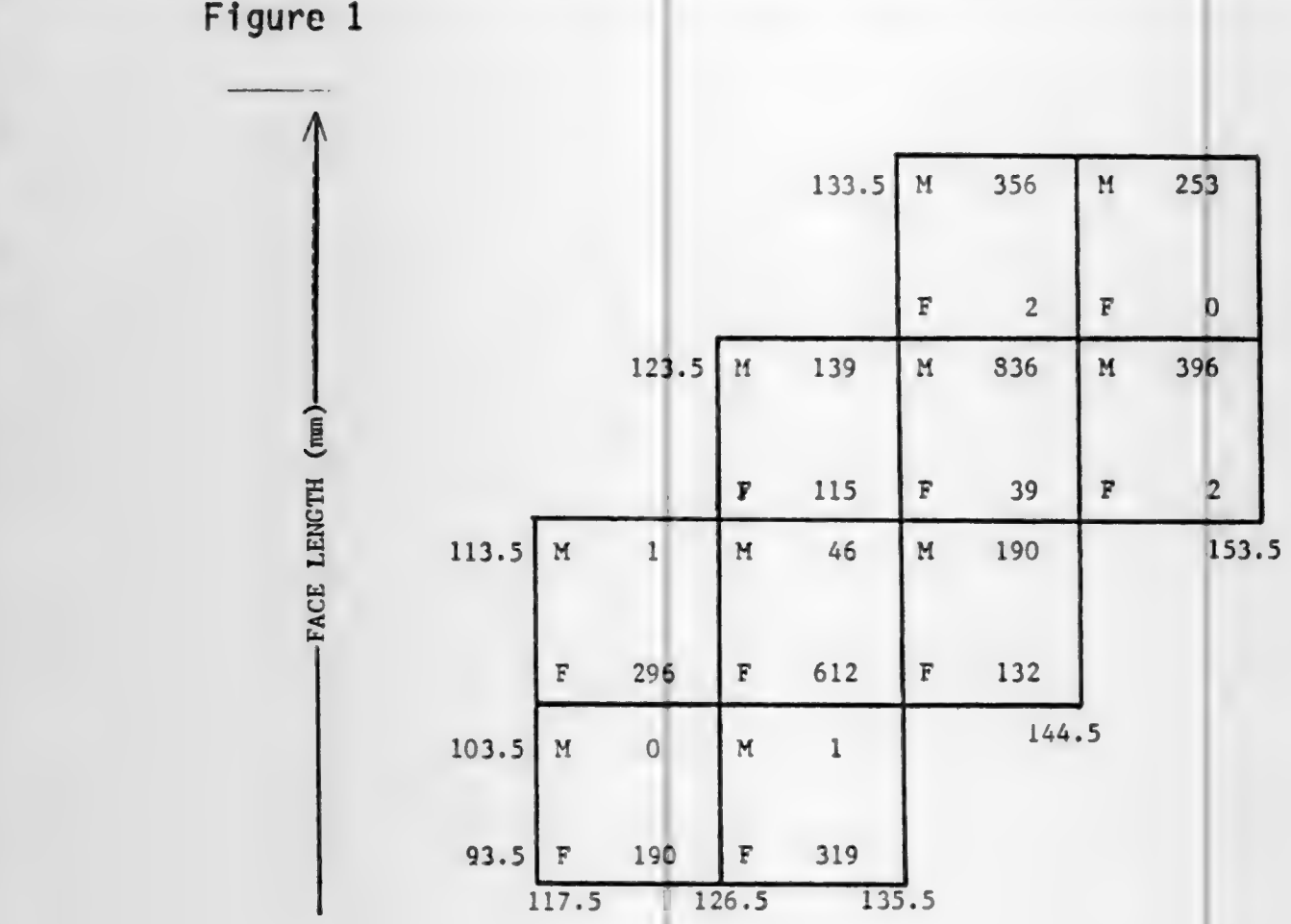

(c) *Pretest Fitting.* Each test subject shall be asked to follow the written donning and fitting instructions recommended by the applicant and included as part of the application. The test supervisor shall monitor the fitting activities to ensure—

(1) that the instructions are adequate and clear, and

(2) that the test subject follows the written instructions of the applicant.

If, in the judgment of the test supervisor, the fitting procedures have not been followed, the test supervisor shall intervene and assist in fitting the respirator in accordance with the applicant's written instructions. The test subject shall then wear the respirator for at least 15 minutes prior to beginning face seal leakage tests. During that waiting period the test subject may readjust the respirator to improve comfort or stability if the readjustments are provided for by the applicant's written instructions. The waiting period may be reduced or eliminated for short duration respirators.

(d) *Spectacles.* To ensure that respirators are compatible with the use of industrial safety spectacles, all half- and quarter-facepiece respirators shall be evaluated with the test subject properly fitted with safety spectacles that comply with requirements of ANSI Z87.1–1979 standard.

(e) *Test Hardware.* Facepieces shall be leak tested on each panel member using an appropriate aerosol of low toxicity such as crystalline sodium chloride or oil mist. The aerosol shall have a mass median aerodynamic diameter of 0.6 ± 0.2 micrometers with a geometric standard deviation less than 2.2. The challenge aerosol concentration should not vary more than ± 5 percent as a function of spatial position in the vicinity of the respirator being tested. The challenge aerosol concentration should not vary as a function of time more than ± 10 percent. The aerosol detector shall be linear within 10 percent throughout its range of operation. All facepieces shall be probed or modified to obtain aerosol samples which can be used to determine the inhaled aerosol concentration.

(f) *Exercise Regimen.* During the quantitative leak testing, the test subject shall perform each of the following exercises for a minimum period of one minute in the following sequence:

(1) Normal breathing,

(2) Deep breathing,

(3) Turning head from side to side,

(4) Nodding head up and down,

(5) Repeatedly raising arms upward and simultaneously looking upward,

(6) Bending forward at waist and simultaneously extending arms downward toward toes,

(7) Talking, reading from prepared text,

(8) Grimacing or frowning, and

(9) Normal breathing.

(g) *Data.* The time averaged face seal leakage for each exercise shall be recorded. The average face seal leakage for the nine exercises, L, will be computed. In addition, a strip chart recording that shows the instantaneous leakage as a function of time for the entire test shall be retained for reference purposes.

(h) *Analysis.* Once the face seal leakage rate, L, has been determined for each test subject, the following analysis shall be used to determine if the facepiece under evaluation has a high probability of providing the required level of protection to that portion of the user population designated by the facial size range specified by the applicant.

(1) The analysis begins by tabulating the average face seal leakage, L, for each test subject.

(2) The inward leakage ratio $R=(1/L)-1$ is calculated for each value of L and tabulated. The leakage ratio, R, can be shown to correspond to the ratio between the volumetric flow rate through the face seal leak and the flow rate through the respirator filter.

(3) Assume that the values of log R are normally distributed and compute the mean and standard deviation.

(4) Compute the one sided tolerance limit, $X_L=X-ks$, the value above which there is 95 percent confidence that 95 percent of the values of log R will lie,[2] where X and s are the mean and standard deviation computed above and $k=1.838$.

(5) Compute the upper leakage limit, L_u, the value of L corresponding to X_L.

$L_u=1/(1+10^{X}L)$

As a result of this analysis it can be inferred with 95 percent confidence that 95 percent of the population represented by the test panel can achieve leakage values that are less than the upper leakage limit, L_u.

(i) *Marking.* Each facepiece shall be marked to indicate the range of facial sizes for which it is intended. The marking scheme shall be based on the panel structure of § 84.232(a).

(j) *Performance Criteria.* If the upper leakage limit, L_u, is less than the maximum face seal leakage allowed for the particular type of respirator under evaluation, the performance of the facepiece is considered acceptable. If it is greater than the maximum allowed leakage the performance of the facepiece is unacceptable. The maximum allowed face seal leakage for all full-facepiece respirators is 0.01 (or 1 percent, if expressed as a percentage). The maximum allowed face seal leakage for half- and quarter-facepieces on an air-purifying respirator is determined by which of the three filter classes is incorporated in the respirator. Filter elements are classified as low efficiency, medium efficiency and high efficiency filters, that is, having efficiencies of 95 percent, 99 percent and 99.97 percent, respectively. Half- and quarter-facepiece respirators employing low efficiency filters will have a maximum allowed face seal leakage of 0.05. Half- and quarter-facepieces having medium or high efficiency filters will have a maximum allowed face seal leakage of 0.02. The maximum allowed face seal leakage for half- and quarter-facepieces incorporated into atmosphere supplying respirators and gas and vapor respirators is 0.02. These performance criteria are summarized below:

Facepiece Type	Maximum Allowed Face Seal Leakage for Particulate Respirators		
	Low Efficiency	Medium Efficiency	High[d] Efficiency
Quarter	0.05	0.02	0.02
Half	0.05	0.02	0.02
Full/ Mouthpiece	0.01	0.01	0.01

[d] Applies also to atmosphere supplying and gas and vapor respirators.

§ 84.233 Positive pressure atmosphere supplying respirators.

(a) Facepieces used in positive pressure atmosphere supplying respirators shall be tested in both a negative pressure mode and a positive pressure mode. The negative pressure test may be eliminated if the facepiece is also incorporated into a negative pressure respirator which has been successfully tested under the provisions of this Subpart and found to have an upper leakage limit less than 0.01 for full-facepieces or less than 0.02 for half- and quarter-facepieces. The negative pressure test shall not be eliminated when the facepiece weight or balance has been significantly changed in the conversion from a negative pressure to a positive pressure respirator.

(b) If testing in the negative mode is necessary, such testing shall be conducted on the full panel of test subjects in accordance with the provision of § 84.232. The maximum allowable leakage will be 0.01 for full

[2] Natrella, M.G., Experimental Statistics, National Bureau of Standards Handbook 91, Issued August 1, 1963.

facepieces and 0.02 for half- and quarter-facepieces.

(c) Testing in the positive pressure mode shall be conducted for the purpose of evaluating total respirator performance. Three complete respirators shall each be evaluated. Each shall be tested in accordance with the provisions of § 84.232 (c) through (g) to evaluate applicants donning and use instruction and to determine that there is no unacceptable inward leakage. Inward leakage greater than 0.0001 in any of the three respirators is unacceptable. The statistical analysis prescribed in § 84.229 shall not apply.

§ 84.234 Continuous flow atmosphere supplying respirators.

Continuous flow atmosphere supplying respirators shall be tested in their normal operating mode (at the lowest specified flow rate) by the full 25 member panel in accordance with the procedures of § 84.232 (a) through (h). The maximum allowable face seal leakage shall be 0.0003.

§ 84.235 Powered air-purifying respirators.

Powered air-purifying respirators shall be tested in their normal operating mode by the full 25 member panel in accordance with the procedures outlined in § 84.232 (a) through (h). The maximum allowable face seal leakage shall be 0.0003 for powered particulate respirators equipped with high efficiency filters and powered gas and vapor respirators. The maximum allowable face seal leakage shall be 0.01 for powered particulate respirators equipped with either medium or low efficiency filters.

§ 84.236 Mouthpiece respirators.

Respirators having a mouthpiece/noseclamp shall be tested as appropriate for the particular respirator under evaluation, to demonstrate that the total inboard leakage is either not significantly above that permitted for filter penetration, where applicable.

§ 84.237 Reduced panel size.

For respirators designed to fit only the extreme facial sizes, it may be quite difficult to construct the full 25 member panel. In those cases, it may be judged that a reduced panel size is appropriate. The number of panel members may be reduced to as low as 10 provided the method of data analysis is adjusted accordingly. For example, if the panel is reduced to 10 members, the value of k used in § 84.232(h)(4) must be adjusted to $k = 2.355$.

§ 84.238 Regulator preconditioning.

All open circuit self-contained breathing apparatus shall be preconditioned with the regulator overpressurization procedure of § 84.248–18 prior to conducting the face fit testing of this subpart.

Subpart S—Self-Contained Breathing Apparatus

§ 84.240 Self-contained breathing apparatus; Description.

(a) Self-contained breathing apparatus, as used herein, are distinguished by a supply of breathing air, oxygen, or oxygen generating material, that is contained in the apparatus for providing breathing air or oxygen, depending on design. This apparatus may be configured as either an open or closed-circuit system that will provide either positive or negative facepiece pressure relative to the ambient environment. Self-contained breathing apparatus may be configured and so designated as follows:

(1) *Closed circuit apparatus.* A recirculation breathing apparatus in which exhaled carbon dioxide has been removed from the exhalation and the oxygen content within the system has been replenished from sources composed of:

(i) Compressed oxygen;
(ii) Chemical oxygen; or
(iii) Liquid oxygen.

(2) *Open-circuit apparatus.* A breathing apparatus in which the exhalation is exhausted to the atmosphere without recirculation and the oxygen content within the system has been replenished from sources composed of:

(i) Compressed air; or
(ii) Liquid air.

(3) *Positive pressure or negative pressure apparatus.* A self-contained breathing apparatus may be designed such that open-circuit or closed-circuit apparatus may operate with positive or negative pressure within the facepiece relative to the ambient environment. Self-contained breathing apparatus may be certified for use in the following categories:

(i) Closed-circuit, negative pressure;
(ii) Closed-circuit, positive pressure;
(iii) Open-circuit, negative pressure; or
(iv) Open-circuit, positive pressure.

§ 84.241 Reserved.

§ 84.242 Interchangeability of oxygen and air prohibited; use of 100 percent oxygen in open flames and high heat.

(a) Certifications shall not be issued for any respirator which permits the interchangeable use of oxygen and air.

(b) Certifications may be issued for use of self-contained breathing apparatus using oxygen as described in Informational Appendix A paragraph (j) of this part. Use of such apparatus near open flames or high heat is not recommended.

§ 84.243 Compressed breathing gas and liquefied breathing gas containers.

(a) Compressed breathing gas and liquefied breathing gas containers shall meet the minimum requirements of the Department of Transportation for Interstate shipment of such containers when fully charged as specified in Title 49, Code of Federal Regulations, Parts 100 through 178.

(b) Such containers shall be permanently and legibly marked to identify their contents: e.g., compressed breathing air, compressed breathing oxygen, liquefied breathing air, or liquefied breathing oxygen.

(c) Containers normally removed from apparatus for refilling shall be equipped with an indicating gauge which shows the pressure in the container.

(d) Compressed breathing gas container valves or a separate charging system or adapter provided with each apparatus shall be equipped with outlet threads specified for the service by the American National Standard for Compressed Gas Cylinder Valve Outlet and Inlet Connections, ANSI B57.1–1965 standard, obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

§ 84.244 Pressure indicators.

(a) Gas pressure gauges employed on compressed breathing gas containers shall be marked in force per unit area.

(b) Liquid-level gauges shall be marked in fractions of total container capacity, or in units of liquid volume.

(c) Gas pressure gauges other than those specified in paragraphs (a) and (b) of this section shall be marked in:

(1) Force per unit area,

(2) Fractions of total container capacity, or

(3) Both in force per unit area and fractions of total container capacity.

(d) (1) Dial-indicating gauges shall be reliable to within ±5 percent of full scale when tested both up and down the scale at each of 5 equal intervals.

(2) The full scale graduation of dial-indicating gauges shall not exceed 150 percent of the maximum rated cylinder pressures specified for the container in applicable Department of Transportation specifications or permits or 150 percent of the maximum pressure specified by the manufacturer's instructions, whichever is less.

(e) (1) Stem-type gauges shall be readable by sight and by touch and shall have a stem travel distance of not less

than one-fourth inch between each graduation.

(2) A minimum of five graduations shall be engraved on the stem of each gauge and these graduations shall include readings for empty, one-quarter, one-half, three-quarters, and full.

(3) Stem gauge readings shall not vary from true readings by more than one-sixteenth inch per inch of stem travel.

(f) Where the apparatus is equipped with a manual shut-off valve between the high pressure outlet and the pressure gauge, the loss of breathing gas through the broken gauge or severed gauge connection shall not exceed 70 liters per minute when the cylinder pressure is 6,900 kN/m^2 (1,000 pounds per square inch) gauge or when the liquid level is at one-half.

(g) Where the apparatus is of open-circuit design and is not equipped with a manual or automatic shut-off valve, the volume of breathing gas escaping through the broken gauge or severed gauge connection shall not exceed 5 percent of the full rated breathing gas volume, when measured at 25 percent of the service pressure to the end of the rated service time of the apparatus. Where the apparatus is of closed-circuit design and is not equipped with a manual or automatic shut-off valve, the total volume of breathing gas (Z) permitted to escape through the broken gauge or severed gauge connection shall not exceed the following, where X equals the total volume of breathing gas, in liters, in the cylinder at full pressure and Y equals the duration of the apparatus in minutes:

$$Z = X - 1.75Y$$

Z shall be measured at 20 percent of the service pressure to the end of the rated service time of the apparatus.

(h) Oxygen pressure gauges shall have the words, "Oxygen" and "Use No Oil," marked prominently on the gauge.

(i) (1) Apparatus using compressed breathing gas, except apparatus classified for escape only, shall be equipped with gauges visible to the wearer which indicate the amount of gas content remaining in the container.

(2) Apparatus using liquefied breathing gas, except apparatus classified for escape only, shall be equipped with gauges visible to the wearer which indicate the remaining liquid content in the container; however, where the liquid content cannot be rapidly vented, and the service time of the device begins immediately after filling, a timer shall be provided in place of a visible gauge.

§ 84.245 Timers; Elapsed time indicators; Remaining service life indicators.

(a) Elapsed time indicators shall be provided for apparatus with a chemical oxygen source, except:

(1) Apparatus classified for escape only; or,

(2) Liquefied breathing gas apparatus equipped with gauges visible to the wearer which indicate the remaining liquid content in the container.

(b) The timer or other indicator shall be accurately calibrated to indicate remaining service life.

(c) Timers shall be readable by sight and by touch during use by the wearer.

(d) Timers shall be equipped with automatically preset alarms which will warn the wearer for a period of 7 seconds or more after the preset time has elapsed.

(e) Remaining service-life indicators or warning devices shall be provided in addition to a pressure gauge on compressed gas self-contained breathing apparatus, except apparatus used for escape only, and shall operate automatically without preadjustment by the wearer.

(f) Each remaining service life indicator or warning device shall give an alarm before the remaining service life or cylinder pressure of the apparatus is reduced to between 20–30 percent of the rated service time or full cylinder pressure. There shall be no degrading of performance at 20–30 percent of full cylinder pressure.

(g) If a manual shutoff is not used for a remote gage, then the alarm should activate at 20–30 percent of rated service pressure or time.

(h) Remaining service life indicators shall be clearly and distinctly detectable by a wearer having normal hearing in the presence of a noise background of 100 dBA of "pink noise," a noise spectrum which is composed of equal sound pressure levels for all octave bands.

(i) Remaining service life indicators or warning devices must warn the wearer for a period of seven seconds or more after the alarm is initiated.

§ 84.246 Hand-operated valves.

(a) Hand-operated valves shall be designed and constructed to prevent removal of the stem from the valve body during normal usage to ensure against a sudden release of the full pressure of the container when the valve is opened.

(b) Valves shall be designed or positioned to prevent accidental opening and closing and damage from external forces.

(c) Valves operated during use of the apparatus shall be installed in locations where they can be readily adjusted by the wearer.

(d) Main-line valves, designed and constructed to conserve gas in the event of a regulator or demand valve failure, shall be provided in addition to gas container valves, except when such failure will not affect performance.

(e) Hand-operated bypass systems designed and constructed to permit the wearer to breathe and to conserve his gas supply in the event of a regulator or demand valve failure, shall be provided where necessary.

(f) Valves installed on apparatus shall be clearly distinguishable from one another by sight and touch.

(g) The manually operated bypass system valve control shall be colored red. For closed circuit apparatus, the bypass valve shall be designed to close automatically if not being held open by the wearer.

(h) A main-line or bypass valve or system will not be required on apparatus for escape only.

(i) Safety relief valves or systems, designed and constructed to release excess pressure in the breathing circuit, shall be provided on closed-circuit apparatus, and shall meet the following requirements:

(1) The relief valve or system shall operate automatically when the pressure in the facepiece or mouthpiece reaches 13 mm±5 mm (one-half inch water-column height) of pressure above the minimum pressure required to fill the breathing bag, within the breathing resistance requirements for the apparatus. With the mask or mouthpiece attached in a normal manner to the breathing machine, and operated as described in § 84.248–3, the mask or mouthpiece pressure shall not exceed 540 mm (21 inches water-column height) when tested in each of the following modes:

Mode 1—With the regulator in a "failed open" mode; i.e., with the pneumatic system subjected to the pressure of a fully charged bottle;

Mode 2—With the bypass valve in a locked open position; and

Mode 3—With the demand valve, if any, in a locked open position.

(2) The relief valve or system shall be designed to prevent external atmospheres from entering the breathing circuit.

(3) The relief valve or system shall be designed to permit overriding for test purposes and in the event of a failure in the valve or system, except for escape only.

§ 84.247 Breathing bags.

(a) Breathing bags shall have sufficient volume to prevent gas waste during exhalation and to provide an adequate reserve for inhalation.

(b) Breathing bags shall be constructed of materials which are flexible and resistant to gasoline vapors.

(c) Breathing bags shall be installed in a location which will protect them from damage or collapse by external forces, except on apparatus classified for escape only.

§ 84.248 Self-contained breathing apparatus; Performance requirements; General.

Self-contained breathing apparatus and the individual components of each such device shall as applicable meet the requirements specified in §§ 84.248–1 through 84.248–18.

§ 84.248–1 Component parts exposed to oxygen pressures.

Each applicant shall certify that the materials employed in the construction of component parts exposed to oxygen pressures above atmospheric pressure are safe and compatible for their intended use.

§ 84.248–2 Compressed gas filters.

All self-contained breathing apparatus using compressed gas shall have a filter downstream of the gas source to effectively remove particles from the gas stream.

§ 84.248–3 Breathing bag test.

(a) Breathing bags shall be tested in an air atmosphere saturated with gasoline vapor at room temperature (24–30 °C) for a continuous period of twice the rated time of the apparatus (except for apparatus for escape only where the test period shall be the rated time of the apparatus).

(b) The bag shall be operated during this test by a breathing machine with 24 respirations per minute and a minute-volume of 40 liters.

(c) A breathing machine cam with a work rate of 100 watts (622 kp-m/min)[1] shall be used.

(d) The air within the bag(s) shall not contain more than 100 parts per million of gasoline vapor at the end of the test.

§ 84.248–4 Weight markings.

All self-contained breathing apparatus shall have the completely assembled and fully charged weight and the completely assembled and fully discharged weight permanently and legibly marked on the apparatus.

§ 84.248–5 Breathing resistance test.

(a) *Inhalation resistance.* (1) Resistance to inhalation airflow shall be measured in the facepiece or mouthpiece while the apparatus is operated by a breathing machine at a work rate of 100 watts (622 kp-m/min).[3]

(2) The face mask pressure of positive pressure closed circuit equipment shall remain positive during the entire inhalation cycle, while the breathing apparatus is operated in the breathing machine as described in § 84.248–3.

(3) Inhalation resistance for open or closed circuit apparatus with positive or negative pressure shall comply with the requirements as specified in the chart in § 84.248–5(c).

(b) *Exhalation resistance.* (1) For open-circuit apparatus, resistance to exhalation airflow shall be measured in the facepiece or mouthpiece with air flowing at a continuous rate of 85 liters per minute.

(2) For closed-circuit apparatus, resistance to exhalation air flow shall be measured in the facepiece or mouthpiece with a breathing machine at a work rate of 100 watts (622 kp-m/min).

(3) Exhalation resistance for open or closed circuit apparatus with positive or negative pressure shall comply with the requirement as specified in the chart in § 84.248–5(c).

(c) Breathing resistance performance requirement chart.

[3] Silverman, L., G. Lee, T. Plotkin, L. Amory, and A.R. Yancey, Fundamental Factors in Design of Protective Equipment, O.S.R.D. Report No. 5732, issued Apr. 1, 1945. The dimensions of the breathing machine cam are available from MSHA upon request.

Apparatus is:	Maximum Allowable Breathing Resistance: Inhalation (mm of water column height)	Exhalation (mm of water column height)
Open circuit		
Negative pressure	32	25
Positive pressure (above static)	≥0	51
Positive pressure (including static pressure)	≥0	89[b]
Static pressure (no flow)	NA	38
Closed circuit		
Negative pressure	100 - MER[a]	64[b]
Positive pressure	≥0	89[b]

[a] MER - Measured exhalation resistance in mm of water column height.
[b] Including the pressure required to fully open the relief valve, if applicable.

§ 84.248–6 Gas flow test.

(a) *Open-circuit apparatus.* (1) A static-flow test shall be performed on all open-circuit apparatus.

(2) The flow from the apparatus shall be greater than 300 liters per minute when the pressure in the facepiece of negative pressure apparatus is lowered by 51 mm (2 inches) water column height when full container pressure is applied.

(3) Where positive pressure apparatus are tested, the flow shall be measured at zero gauge pressure in the facepiece and shall be greater than 300 liters per minute.

(4) Where apparatus with compressed breathing gas containers are tested, the flow test shall also be made with 25 percent of full container pressure.

(b) *Closed-circuit apparatus.* Oxygen concentrations measured in the facepiece during machine or human subjects testing shall be maintained above 19.5 percent. This may be accomplished by various methods. Where a strictly mechanical flow method is used, the following requirements must be achieved:

(1) For constant flow devices, the rate of flow shall be at least three liters per minute for the entire rated service time of the apparatus.

(2) All negative pressure devices shall provide at least 60 liters of breathing gas per minute when the regulator (admission valve) is in the fully open position at 4 inches of water column height.

(3) All positive pressure devices shall provide at least 30 liters of breathing gas per minute when the regulator (admission valve) is in the fully open position and shall maintain equal to or greater than ambient pressure.

(4) When constant flow is used in conjunction with negative pressure flow, the constant flow shall be greater than 1.5 liters per minute for the entire rated service time. For positive pressure apparatus, the constant flow shall be greater than 1 liter per minute for the entire rated service time.

§ 84.248–7 Bypass gas flow test.

(a) *Open-circuit apparatus.* (1) The bypass gas flow test shall be performed on two samples of each open-circuit apparatus equipped with a bypass valve as prescribed in § 84.246 of this part.

(2) The apparatus breathing gas container shall be fully pressurized to the service pressure, the facepiece of the apparatus shall be attached to an anthropometric head form, and the bypass valve shall be fully opened.

(3) The breathing gas container valve shall be fully opened and the airflow shall be measured at 500 psig decreasing increments until 25 percent of the service pressure remains.

(4) Except as prescribed in paragraph (e) of this section, at any pressure, an adjustable bypass valve shall provide a minimum flowrate of 85 Lpm and a maximum flowrate not greater than 130 Lpm.

(5) Any bypass valve on a self-contained breathing apparatus for escape only shall provide a minimum flowrate of 85 Lpm.

(6) Any constant flow bypass valve shall provide a minimum flow rate of 85 Lpm and a maximum flow rate of 130 Lpm.

(b) *Closed-circuit apparatus.* (1) The bypass gas flow test shall be performed on two samples of each closed-circuit apparatus equipped with a bypass valve as prescribed in § 84.246 of this part.

(2) The apparatus breathing gas container shall be fully pressurized to the service pressure, the facepiece of the apparatus shall be attached to an anthropometric head form, the bypass valve shall be fully opened, and the pressure relief valve shall be overridden as prescribed by the manufacturer.

(3) The breathing gas container valve shall be fully opened and the oxygen flow shall be measured at 500 psig decreasing increments until 25 percent of the service pressure remains.

(4) At any pressure, the bypass valve shall provide a minimum airflow of 30 Lpm.

§ 84.248–8 Service time test; Open-circuit apparatus.

(a) Service time shall be measured with a breathing machine operated as described in § 84.248–3.

(b) The open-circuit apparatus shall be classified according to the length of time it supplies air or oxygen to the breathing machine.

(c) The service time obtained on this test shall be used to classify the open-circuit apparatus in accordance with the provisions of Subpart P.

§ 84.248–9 Service time test; Closed-circuit apparatus.

(a) The closed-circuit apparatus shall be classified according to the length of time it supplies adequate breathing gas to the wearer during use test No. 4 described in Table 4 in § 84.248–14.

(b) The service time obtained on use test No. 4 shall be used to classify the closed-circuit apparatus in accordance with the provisions of Subpart P.

§ 84.248–10 Test for carbon dioxide in inspired gas; Open- and closed-circuit apparatus; Maximum allowable limits.

(a) The concentration of carbon dioxide in inspired gas in open-circuit apparatus shall be measured at the mouth while the apparatus mounted on a dummy head is operated by a breathing machine.[4]

(1) The breathing rate shall be 14.5 respirations per minute with a minute-volume of 10.5 liters.

(2) A sedentary breathing machine cam shall be used.

(3) The apparatus shall be tested at a temperature of 27±2° C.

(4) A concentration of 5 percent carbon dioxide in air shall be exhaled into the facepiece.

(b) The concentration of carbon dioxide in inspired gas in closed-circuit apparatus shall be measured at the mouth while the parts of the apparatus contributing to dead-air space are mounted on a dummy head and operated by the breathing machine as described in paragraphs (a) (1) through (4) of this section.

(c) During the testing required by paragraphs (a) and (b) of this section, the concentration of carbon dioxide in inspired gas at the mouth shall be continuously recorded, and the maximum average concentration during the inhalation portion of the breathing cycle shall not exceed the following limits:

[4] Kloos, E.J., and J. Lamonica. A Machine-Test Method for Measuring Carbon Dioxide in the Inspired Air of Self-Contained Breathing Apparatus. Bureau of Mines Report of Investigations 6885, 1966. 11 pp.

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Where the service time is	Maximum allowable average concentration of carbon dioxide in inspired air percent by volume
Not more than 30 minutes	2.5
1 hour	2.0
2 hours	1.5
3 hours	1.0
4 hours	1.0

(d) In addition to the test requirements for closed-circuit apparatus set forth in paragraph (b) of this section, gas samples shall be taken during the course of the use tests described in Tables 1, 2, 3, and 4 in § 84.248–14. These gas samples shall be taken from the closed-circuit apparatus at a point downstream of the carbon dioxide sorbent, and they shall not contain more than 0.5 percent carbon dioxide at any time, except on apparatus for escape only, using a mouthpiece only, the sample shall not contain more than 1.5 percent carbon dioxide at any time.

§ 84.248–11 Tests during low temperature operation.

(a) The manufacturer shall specify the minimum temperature for safe operation and two persons shall perform the tests described in paragraphs (c) and (d) of this section, wearing the apparatus according to applicant's directions. At the specified temperature, the apparatus shall meet all the requirements described in paragraph (e) of this section.

(b) The apparatus shall be cold soaked at the applicant's specified minimum temperature for 16 hours.

(c) The apparatus shall be worn in the low temperature chamber for 30 minutes, or for the service time of the apparatus, whichever is less.

(d) During the test period, alternate 1-minute periods of exercise and rest shall be required with the exercise periods consisting of stepping onto and off a box of 21.5 cm (8½ inches) high at a rate of 30 cycles per minute.

(e) *Requirements.* (1) The apparatus shall function satisfactorily at the specified minimum temperature on duplicate tests.

(2) The wearer shall have sufficient unobscured vision to perform the work.

(3) The wearer shall not experience undue discomfort because of airflow restriction or other physical or chemical changes in the operation of the apparatus.

(4) For evaluating the escape apparatus portion of air-line supplied respirators, the air-line shall be briefly connected to determine proper functioning, then disconnected.

(f) Auxiliary low-temperature parts which are commercially available to the user may be used on the apparatus to meet the requirements described in paragraph (e) of this section.

§ 84.248–12 Shock and vibration tests.

Shock and vibration tests shall be conducted prior to the use tests described in §§ 84.248–13 through 84.248–16.

(a) A vibration test shall be conducted in accordance with the Military Standard MIL–STD 810C test for equipment installed on rubber tire vehicles. The device shall be machine tested at 60 liters/minute and must maintain a positive facepiece pressure. The low air-supply warning device shall function within 10 percent of the normal range. Apparatus shall be secured to the vibration table or confined in an insecure fashion consistent with manufacturers' recommendations to users for storage. The apparatus shall be independently monitored for vibration during the test to ensure the test equipment was functioning properly.

(b) A shock test shall also be performed on the apparatus subjected to vibration testing. The shock shall consist of a 1-meter free drop to a concrete floor on each axis.

(c) For apparatus sealed against moisture, the leak test recommended by the manufacturer shall be performed following the vibration and shock tests.

(d) These tests shall be performed on four apparatus. One apparatus shall be disassembled and inspected for significant damage which is likely to cause the apparatus to fail to provide the required protection to the user. The other apparatus shall be tested on human subjects according to the use tests described in §§ 84.248–13 through 84.248–16, if no serious damage was noted upon disassembly.

§ 84.248–13 Use tests; Purpose and requirements; General.

(a) The use tests described in Tables 1, 2, 3, and 4 in § 84.248–14 are designed to represent the workload performed in the mining, mineral, or allied industries by a person wearing the apparatus tested.

(b) The apparatus tested shall be worn by personnel trained in the use of self-contained breathing apparatus.

(c) Breathing resistance shall be measured within the facepiece or mouthpiece and the wearer's pulse and respiration rate shall be recorded during each 2-minute sample period prescribed in tests 1, 2, 3, and 4.

(d) Use tests 1, 2, 3, 4, and 5 shall be conducted on each of three respirators.

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Each respirator shall be worn by a different subject.

§ 84.248–14 Use tests 1, 2, 3, 4, and 5; Purpose.

(a) *Use tests 1, 2, 3, and 4; Purpose.* Use tests 1, 2, 3, and 4, set forth in Tables 1, 2, 3, and 4, respectively, prescribe the duration and sequence of specific activities. These tests shall be conducted to:

(1) Familiarize the wearer with the apparatus during use;

(2) Provide for a gradual increase in activity;

(3) Evaluate the apparatus under different types of work and physical orientation; and

(4) Provide information on the operating and breathing characteristics of the apparatus during actual use.

(b) *Use test 5; Purpose and description.* (1) Use test 5 shall be conducted with respect to liquefied breathing gas apparatus only.

(2) This test shall be conducted to evaluate operation of the apparatus in other than vertical positions.

(3) The wearer shall lie face downward for one-fourth the service life of the apparatus with a full charge of liquefied breathing gas, and then a one-quarter full charge of liquefied breathing gas.

(4) The test shall be repeated with the wearer lying on each side and on his back.

(5) The oxygen content of the gas supplied to the wearer by the apparatus shall be continuously measured.

§ 84.248–15 Use transfer test.

(a) Three test subjects shall perform the use transfer test five times each, using not less than two combination respirators.

(b) Each test subject shall don the complete combination respirator after reading the manufacturer's instructions for use of the combination respirator, and shall operate the combination respirator in the supplied-air mode from the external air supply.

(c) The external air supply shall be turned off by an observer, without warning to the test subject, and the test subject shall operate the combination respirator until reduction or loss of external air supply alerts the test subject that the external air supply has been terminated.

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TABLE 1--DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 1, IN MINUTES

(42 CFR Part 84, Subpart S, 84.248-14, et. seq.)

Activity	Service Time in Minutes[a]						
	3	5	10	15	30	45	60
Sampling and readings				2	2	2	2
Walks at 4.8 km. (3 miles) per hour	3	5	3	4	8	12	18
Sampling and readings			2	2	2	2	2
Walks at 4.8 km. (3 miles) per hour			3	5	8	12	18
Sampling and readings			2	2	2	2	2
Walks at 4.8 km. (3 miles) per hour					6	13	16
Sampling and readings					2	2	2

[a] Repeat 1 hour test for 2, 3, and 4 hour service times.

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TABLE 2--DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 2, IN MINUTES

(42 CFR Part 84, Subpart S, 84.148-14, et. seq.)

Activity	Service time in Minutes							
	3	5	10 minutes	15 minutes	30 minutes	45 minutes	60 minutes	2, 3, and 4 hours[a]
Sampling and readings				2	2	2	2	2
Walks at 4.8 km. (3 miles) per hour			1	1	3	4	6	10
Carries 23 kg. (50 pound) mass over overcast			1 time in 2 minutes	1 time in 2 minutes	2 times in 4 minutes	3 times in 6 minutes	4 times in 8 minutes	5 times in 10 minutes
Walks at 4.8 km. (3 miles) per hour				1	3	3	3	5
Climbs vertical treadmill [b] or equivalent)	1	1	1	1	1	1	1	1
Walks at 4.8 (3 miles) km. per hour	1		1			2	3	5
Climbs vertical treadmill (or equivalent)	1					1	1	1
Sampling and readings					2	2	2	2
Walks at 4.8 km. (3 miles) per hour				2	2	3	5	11
Climbs vertical treadmill (or equivalent)				1	1	1	1	1
Carries 23 kg. (50 pound) mass over overcast				1 time in 2 minutes	3 times in 6 minutes	4 times in 8 minutes	5 times in 10 minutes	5 times in 10 minutes
Sampling and readings			2			2	2	2
Walks at 4.8 km. (3 miles) per hour				1	3	3	3	
Climbs vertical treadmill (or equivalent)			1		1	1	1	Then repeat above activities once
Walks at 4.8 (3 miles) km per hour			2			2	3	
Climbs vertical treadmill (or equivalent)						1	1	
Carries 20 kg. (45 pound) mass and walks at 4.8 (3 miles) km. per hour	1						2	
Walks at 4.8 (3 miles) km. per hour	1	2				1	4	
Sampling and readings				2	2	2	2	

[a] Total test time for Test 2 for 2-hour, 3-hour, and 4-hour apparatus is 2 hours.
[b] Treadmill shall be inclined 15° from vertical and operated at a speed of 1 foot per second.

TABLE 3--DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 3, IN MINUTES

(42 CFR Part 84, Subpart S, 84.248-14, et. seq.)

Activity	Service time--							
	3 minutes	5 minutes	10 minutes	15 minutes	30 minutes	45 minutes	1 hour	2, 3, and 4 hours
Sampling and readings				2	2	2	2	(a)
Walks at 4.8 km. (3 miles) per hour			1	1	2	2	3	
Runs at 9.7 km. (6 miles) per hour	1	1	1	1	1	1	1	
Pulls 20 kg. (45 pounds) mass to 5 feet		15 times in 1 minute		30 times in 2 minutes	30 times in 2 minutes	30 times in 2 minutes	60 times in 6 minutes	
Lies on side	1/2	1	1	2	3	4	5	
Lies on back	1/2	1	1	2	2	3	3	
Crawls on hands and knees	1	1	1	2	2	2	2	
Sampling and readings			2		2	2	2	
Runs at 9.7 km. (6 miles) per hour				1	1	1	1	
Walks at 4.8 km. (3 miles) per hour					2	8	10	
Pulls 20 kg. (45 pounds) mass to 5 feet			30 times in 2 minutes		60 times in 6 minutes	60 times in 6 minutes	60 times in 6 minutes	
Sampling and readings				2		2	2	
Walks at 4.8 km. (3 miles) per hour			1		3	4	10	
Lies on side						2	4	
Lies on back						2	1	
Sampling and readings					2	2	2	

[a] For two-hour, 3-hour, and 4-hour apparatus, perform test No. 3 for 1-hour apparatus, then test No. 1 for 1-hour apparatus (total test time is 2 hours).

TABLE 4--DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 4, IN MINUTES

(42 CFR Part 84, Subpart S, 84.148-14, et. seq.)

Activity	Service time-- 3 minutes	5 minutes	10 minutes	15 minutes	30 minutes	45 minutes	1 hour	2 hours	3 hours	4 hours
Sampling and readings				2	2	2	2	(b)	(c)	(d)
Walks at 4.8 km. (3 miles) per hour				1	2	2	2			
Climbs vertical treadmill[a] or equivalent	1	1	1	1	1	1	1			
Walks at 4.8 km. (3 miles) per hour		1	1	1	2	2	2			
Pulls 20 kg. (45 pound) mass to 5 feet		30 times in 2 minutes	30 times in 2 minutes	30 times in 2 minutes	60 times in 5 minutes	60 times in 5 minutes	60 times in 5 minutes			
Walks at 4.8 km. (3 miles) per hour			1	1	1	2	3			
Carries 23 kg. (50 pound) mass over overcast				1 time in 1 minute	1 time in 1 minute	2 times in 3 minutes	4 times in 8 minutes			
Sampling and readings			2		2	2	2			
Walks at 4.8 km. (3 miles) per hour				1	3	3	4			
Runs at 9.7 km. (6 miles) per hour		1	1	1	1	1	1			
Carries 23 kg. (50 pound) mass over overcast			1 time in 1 minute	1 time in 1 minute	2 times in 3 minutes	4 times in 6 minutes	6 times in 9 minutes			
Pulls 20 kg. mass to 5 feet	5 times in 1 minute			15 times in 1 minute	60 times in 5 minutes	30 times in 2 minutes	36 times in 3 minutes			
Sampling and readings				2	2	2	2			
Walks at 4.8 km. (3 miles) per hour	1		1			2	6			
Pulls 20 kg. (45 pound) mass to 5 feet						60 times in 5 minutes	60 times in 5 minutes			
Carries 20 kg. (45 pound) mass and walks at 4.8 km. (3 miles) per hour.						3	3			
Sampling and readings						2	2			

[a]Treadmill shall be inclined 15' from vertical and operated at a speed of 30 cm. (1 foot) per second.
[b]Perform Test No. 1 for 30-minute apparatus; then perform Test No. 4 for 1-hour apparatus; then perform Test No. 1 for 30-minute apparatus.
[c]Perform Test No. 1 for 1-hour apparatus; then perform Test No. 4 for 1-hour apparatus; then perform Test No. 1 for 1-hour apparatus.
[d]Perform Test No. 1 for 1-hour apparatus; then perform Test No. 4 for 1-hour apparatus; then perform Test No. 1 for 1-hour apparatus twice (i.e., two one-hour tests).

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(d) When the test subject becomes aware that the external air supply is terminated, the test subject shall so advise the observer and the observer shall start a timer.

(e) The test subject shall then proceed to transfer to the self-contained air supply, using whatever procedure is specified by the manufacturer, and shall disconnect the respirator from the external air supply.

(f) Transfer shall be effected when air is supplied to the combination respirator from the self-contained air supply and the respirator is disconnected from the external air supply. The observer shall stop the timer when transfer is effected.

(g) Transfer shall be effected in not more than 15 seconds.

§ 84.248-16 Use tests; Requirements.

(a) The apparatus shall satisfy the respiratory requirements of the wearer for the classified service time.

(b) Fogging of the eyepiece shall not obscure the wearer's vision, and the wearer shall not experience undue discomfort because of fit or other characteristics of the apparatus.

(c) When the ambient temperature during testing is 24±6 °C, the maximum temperature of inspired air recorded during use tests shall not exceed the following, after correction for deviation from 24 °C:

Where service life of apparatus is --	Where percent relative humidity of inspired air is --	Maximum permissible temperature of inspired air shall not exceed	
		°F	°C
1/4 hour or less	0 - 100	135	57
1/2 hour to 3/4 hour	0 - 50	125	52
	50 - 100	110[a]	43[a]
1 to 2 hours	0 - 50	115	46
	50 - 100	105[a]	41[a]
3 hours	0 - 50	110	43
	50 - 100	100[a]	38[a]
4 hours	0 - 50	105	41
	50 - 100	95[a]	35[a]

[a] Where percent relative humidity is 50 - 100 and apparatus is designed for escape only, these maximum permissible temperatures will be increased by 5 °C.

§ 84.248-17 Flammability.

(a) Three facepieces shall be tested for flammability for a short period with a test rig as shown on Figure 2, and Details 1 and 2. This test rig consists mainly of a propane storage tank with control device and fine pressure gauge, flash back arresters, 6 propane burners being adjustable in height, and a metal dummy head which pivots vertically and horizontally.

(b) The test rig shall be adjusted as follows: The distance between facepiece and burner tips shall be 250 mm. The pressure reducer shall be adjusted to a flow of 60 liters/min using air at 1.25×10^{1} Newtons/cm² (1.81×10^{1} pounds per square inch) gauge.

(c) On the propane burners, the control device for the propane gas supply shall be fully opened, while the control device for the air shall be adjusted to the optimum. The temperature of the flame shall be 950±50 °C.

(d) For the test, the facepiece shall be put on the dummy head. After it has undergone the test for tightness, the facepiece shall be exposed to the flames for a period of 5 seconds. When components like valve(s), speech diaphragm(s) etc. are arranged on other parts of the face blank, the test is repeated with other samples in the appropriate position.

(e) For comparing the tightness of the full mask before and after the flammability test the same dummy head shall be used and a pressure of -1.0×10^{-1} N/cm² (-1.45×10^{-1} pounds per square inch) gauge shall be created in the cavity of the mask.

(f) The test results are positive if no portion of the mask continues to burn with its own flame after the 5 second exposure period ends, and if the rise in pressure from -1.0×10^{-1} N/cm² (-1.45×10^{-1} pounds per square inch) gauge initial pressure within the cavity of the mask does not exceed 1.0×10^{-2} N/cm² (1.45×10^{-2} pounds per square inch) gauge per 60 seconds.

§ 84.248-18 Regulator overpressurization.

(a) Open-circuit self-contained breathing apparatus regulators shall be tested and evaluated in such a way as to simulate overpressurization of the regulator by the user prior to evaluating

the respirator in the face fit test of Subpart R.

(b) The regulator shall be preconditioned to simulate intentional overpressurization by the user. The regulator shall be subjected to a 1 to 2 second simulated attempt to block the regulator flow with the regulator bypass valve set at maximum flow. Such simulation shall be either manual or mechanical as appropriate to the respirator being evaluated. Each regulator shall be subjected to 20 simulated blocking attempts. Following the simulation blocking cycles, the regulator diaphragm shall be inspected and must be found free of damage.

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Figure 2. SCHEME OF THE TEST RIG FOR FLAMMABILITY OF A FULL FACE MASK

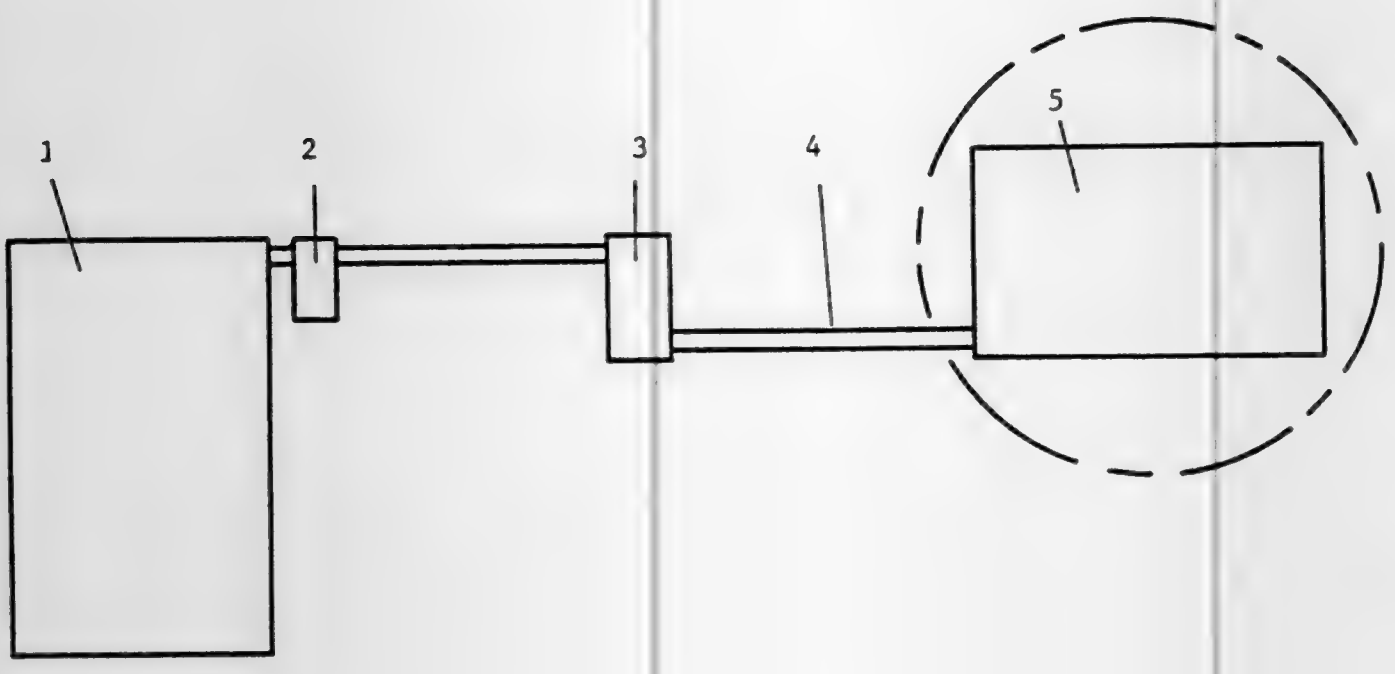

1. Propane storage tank
2. Fine pressure gauge and control device
3. Flash back arrester
4. Connecting hoses (of same length) leading to the 6 propane burners.
5. Propane burner.

Detail 1:

Top view of arrangement of the six propane burners (dimensions in mm).

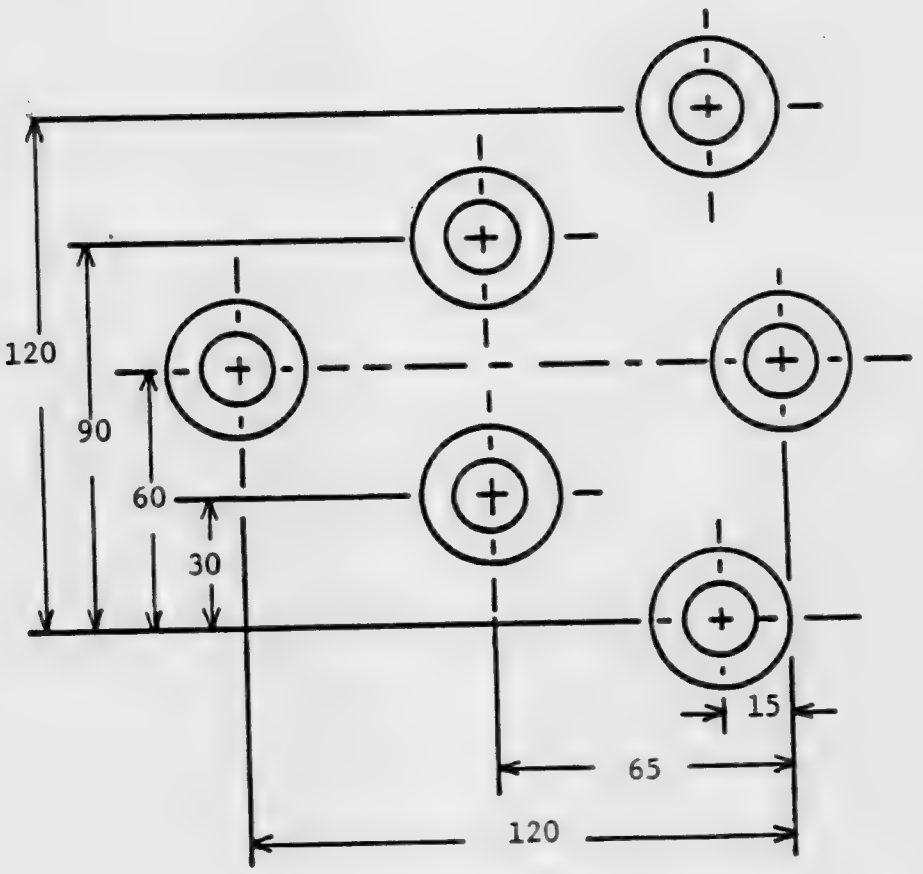

Detail 2:

Lateral view of arrangement of the six propane burners (dimensions in mm).

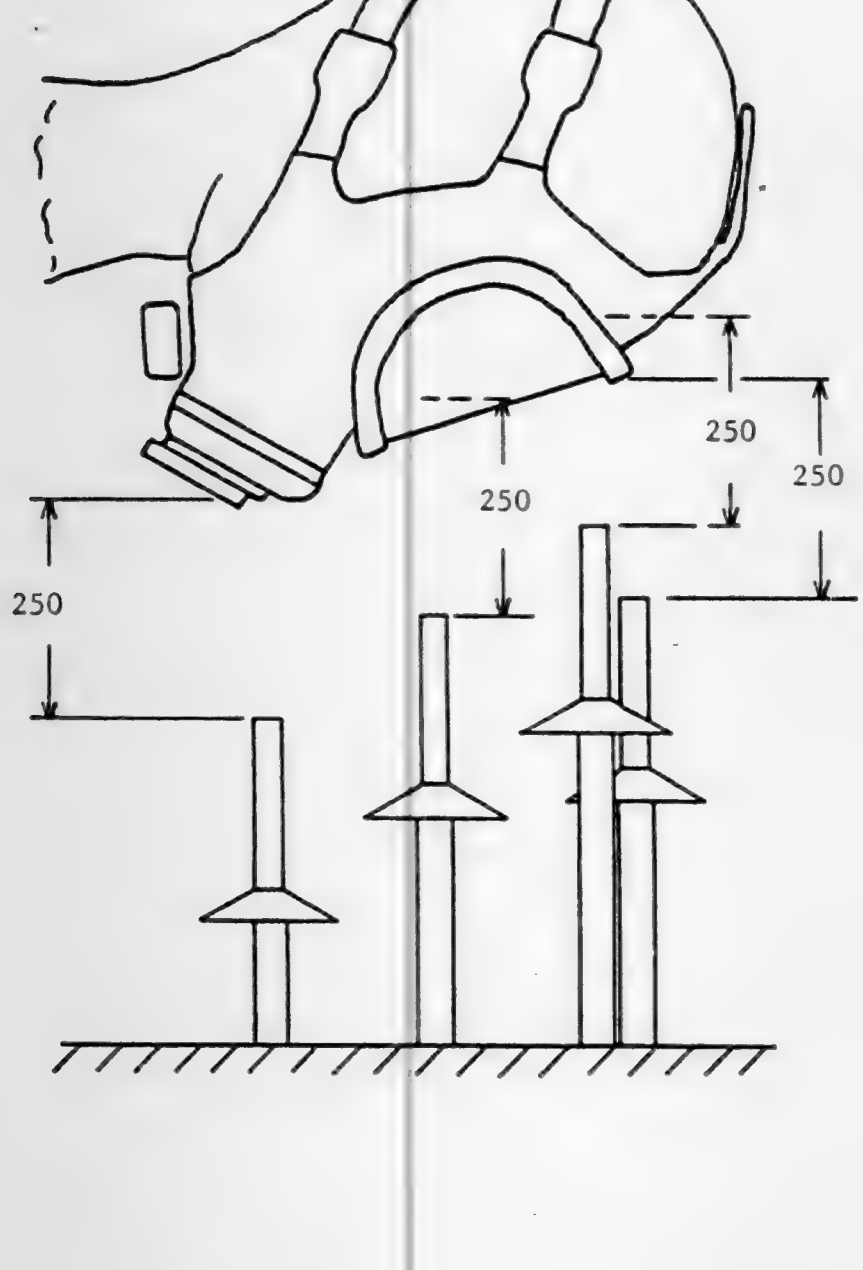

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Subpart T—Air-Line Respirators

§ 84.250 Air-line respirators; Description.

Air-line respirators are atmosphere supplying respirators that use a stationary source of compressed air delivered through a high pressure hose. Air-line respirators are available as negative and positive pressure, regulated, and continuous flow configurations. "Regulator" type air-line respirators operate with a single stage regulator and a maximum airline pressure of 863 kN/m² (125 pounds per square inch) gauge. "Continuous flow" respirators operate with an air flow control valve or orifice and maintain air flow at all times.

§ 84.251 Air-line respirators; Performance requirements; General.

Air-line respirators and the individual components of each such device shall, as appropriate, meet the requirements for performance and protection specified in the tests described in §§ 84.251–1 through 84.251–8.

§ 84.251–1 Air-line respirators; Regulated flow.

(a) The manufacturer shall specify the range of air pressure at the point of attachment of the air supply system, and the range of hose length for the respirator.

(b) The specified air pressure at the point of attachment of the hose to the air supply system shall not exceed 863 kN/m² (125 pounds per souare inch) gauge.

§ 84.251–2 Air-line respirators; Continuous flow.

(a) The pressure at the inlet of the hose connection shall not exceed 863 kN/m² (125 pounds per square inch) gauge.

(b) Where the pressure at any point in the supply system exceeds 863 kN/m² (125 pounds per square inch) gauge, the respirator shall be equipped with a pressure-release mechanism that will prevent the pressure at the hose connection from exceeding 863 kN/m² (125 pounds per square inch) gauge under any conditions.

§ 84.251–3 Air-supply line tests.

Air-supply lines employed on air-line respirators shall meet the following minimum test requirements.

(a) *Length of hose.* A maximum of 91 m. (300 feet) in multiples of 7.6 m. (25 feet) will be supplied. It will be permissible for the applicant to supply hose of the certified type of shorter length than 7.6 m. (25 feet) provided it meets the requirements of this part.

(b) *Air flow.* (1) The air-supply hose with air-regulating valve or orifice shall permit a flow of not less than 115 liters per minute to tightfitting facepieces and 170 liters per minute to loose-fitting facepieces through the maximum length of hose for which approval is granted and at the minimum specified air-supply pressure. The maximum flow shall not exceed 425 liters (15 cubic feet) per minute at the maximum specified air-supply pressure with the minimum length of hose specified by the applicant.

(2) The air-supply hose, detachable coupling, and the negative pressure or positive pressure demand valves for air-line respirators shall be capable of delivering respirable air at a rate of not less than 115 liters per minute to the facepiece and at an inhalation resistance not exceeding 5 millimeters (2 inches) of water-column height, as measured in the facepiece, with any combination of air-supply pressure and length of hose within the applicant's specified range of pressure and hose length. The air-flow rate and resistance to inhalation shall be measured while the negative or positive pressure demand valve is actuated 20 times per minute by a source of intermittent suction. The maximum rate of flow to the facepiece shall not exceed 425 liters (15 cubic feet) per minute under the specified operating conditions.

(c) *Air-control valve.* If an air-control valve is provided for a continuous flow respirator, it shall be so designed that it will remain at a specific adjustment, which will not be affected by the ordinary movement of the wearer. The valve must be so constructed that the air supply, with the maximum length of hose and at the minimum specified air-supply pressure, will not be less than 115 liters of air per minute to tight-fitting facepieces and 170 liters of air per minute to loose-fitting facepieces for any adjustment of the valve. If a negative or positive pressure regulator replaces the air-control valve, it shall be connected to the air-supply at the maximum air pressure specified by the applicant by means of the minimum length of air-supply hose specified by the applicant. The outlet of the negative or positive pressure regulator shall be connected to a source of intermittent suction so that the negative or positive pressure regulator is actuated approximately 20 times per minute for a total of 100,000 inhalations. To expedite this test, the rate of actuation may be increased if mutually agreeable to the applicant and to NIOSH. During this test, the valve shall function without failure and without excessive wear of the moving parts. The negative or positive pressure regulator shall not be damaged in any way when subjected at the outlet to a pressure or suction of 25 cm. (10 inches) of water column height for 2 minutes.

(d) *Non-kinkability.* A 7.6 m. (25 foot) section of the hose shall be placed on a horizontal-plane surface and shaped into a one-loop coil with one end of the hose connected to an airflow meter and the other end of the hose supplied with air at the minimum specified supply pressure. The connection shall be in the plane of the loop. The other end of the hose shall be pulled tangentially to the loop and in the plane of the loop until the hose straightens. To meet the requirements of this test the loop shall maintain a uniform near-circular shape and ultimately unfold as a spiral, without any localized deformation that decreases the flow of air to less than 90 percent of the flow when the hose is tested while remaining in a straight line.

(e) *Strength of hose and couplings.* Hose and couplings shall not exhibit any separation or failure when tested with a pull of 445 newtons (100 pounds) for 5 minutes and when tested by subjection, with blocked outlet, to an internal air pressure of 2 times the maximum respiratory-supply pressure that is specified by the applicant or at 173 kN/m² (25 pounds per square inch) gauge, whichever is higher.

(f) Tightness. Leakage of air exceeding 50 cc. per minute at each coupling shall not be permitted when the hose and couplings are joined, immersed in water, and the respirator is under an air pressure of 173 kN/m² (25 pounds per square inch) gauge applied to the inlet end of the air-supply hose, or under an air pressure of twice the maximum respirator-supply pressure that is specified by the manufacturer, whichever is higher.

(g) *Detachable coupling.* A hand-operated detachable coupling by which the wearer can readily attach or detach the connecting hose shall be provided at a convenient location. This coupling shall be durable, remain connected under all conditions of normal respirator use, and meet the prescribed tests for strength and tightness of hose and couplings.

§ 84.251–4 Harness test.

(a) Belts, rings, and attachments for life lines must withstand a pull of 1334 newtons (300 pounds) for 30 minutes without failure.

(b) The arrangement and suitability of all harness accessories and fittings shall be considered.

(c) The harness shall be easily adjustable to various sizes.

(d) The hose shall be attached to the harness in a manner that will withstand a pull of 445 newtons (100 pounds) for 30

minutes without separating or showing signs of failure.

(e) The design of the harness and attachment of the line shall permit dragging the maximum length of hose considered for certification over a concrete floor without disarranging the harness or exerting a pull on the facepiece.

(f) The harness employed on air-line respirators shall not be uncomfortable, disturbing, or interfere with the movements of the wearer. The harness shall consist of a simple arrangement for attaching the hose to a part of the wearer's clothing in a practical manner that prevents a pull being exerted upon the respiratory-inlet covering equivalent to dragging the maximum length of hose over a concrete floor.

(g) Where air-line respirators have a rigid or partly rigid head covering, a suitable harness shall be required to assist in holding this covering in place.

§ 84.251-5 Breathing tube test.

(a) The breathing tubes employed on air-line respirators shall permit free head movement, ensure against closing off by kinking or by chin or arm pressure, and shall not create a pull that will loosen the facepiece or disturb the wearer.

(b) Air-line respirators of the continuous flow class shall employ one or two flexible breathing tubes of the non-kinking type which extend from the facepiece to a connecting hose coupling attached to the belt or harness; however, an extension of the connecting hose may be employed in lieu of the breathing tubes required.

(c) Air-line respirators of the positive and negative pressure classes shall employ a flexible, non-kinking type breathing tube which extends from the facepiece to the positive or negative pressure regulator, except where the regulator is attached directly to the facepiece.

§ 84.251-6 Airflow resistance test; Air-line respirator, continuous flow class.

The resistance to air flowing from the respirator shall not exceed 25 mm. (1 inch) of water-column height when the air flow into the facepiece is 115 liters per minute.

§ 84.251-7 Airflow resistance test; Air-line respirator, negative pressure class.

(a) Inhalation resistance shall not exceed 50 mm (2 inches) of water column height at an air flow of 115 liters per minute.

(b) The exhalation resistance to a flow of air at a rate of 85 liters per minute shall not exceed 25 mm (1 inch) of water column height.

§ 84.251-8 Airflow resistance test; Air-line respirator, positive pressure class.

(a) The static pressure in the facepiece shall not exceed 38 mm. (1.5 inches) of water-column height.

(b) The pressure in the facepiece shall not fall below atmospheric at inhalation airflows less than 115 liters per minute.

(c) The exhalation resistance to a flow of air at a rate of 85 liters per minute shall not exceed the static pressure in the facepiece by more than 51 mm. (2 inches) of water-column height.

Subpart U—Air-Purifying Respirators; General Requirements

§ 84.260 Air-purifying respirators; Description.

Air-purifying respirators are respirators with air-purifying elements such as cartridges, canisters, or filters, which protect wearers by removing contaminants from the ambient air.

§ 84.261 Cartridges, canisters and filters in parallel; Resistance requirements.

Where two or more cartridges, canisters or filters are used in parallel, their resistance to air flow shall be essentially equal.

§ 84.262 Filters used with canisters and cartridges; Location; Replacement.

(a) Particulate filters used in conjunction with a gas and vapor canister or cartridge shall be located on the inlet side of the canister or cartridge.

(b) Filters shall be incorporated into or firmly attached to the canister or cartridge, and each filter assembly shall, where applicable, be designed to permit its easy removal from and replacement on the canister or cartridge.

§ 84.263 Powered air-purifying respirator flow requirements.

Powered air-purifying respirators shall be classified as tight fitting powered air-purifying respirators or loose fitting powered air-purifying respirators depending on their design. The minimum air flow for each is as follows:

(a) Tight fitting air-purifying respirators shall maintain an air flow rate of at least 115 liters per minute for a period of at least 4 hours unless otherwise specified.

(b) Loose fitting air-purifying respirators shall maintain an air flow rate of at least 170 liters per minute for a period of at least 4 hours unless otherwise specified.

(c) Powered air-purifying respirators shall be provided with an acceptable mechanism and appropriate instructions whereby the user can routinely and simply determine that the minimum air flow is maintained.

Subpart V—Particulate Air-Purifying Respirators

§ 84.270 Particulate air-purifying respirators; Description.

(a) Particulate air-purifying respirators, are respirators which employ filters to remove solid and liquid particulates from the ambient air. They are designed for use as respiratory protection from particulate environments (dusts, fume, mists) which are non-IDLH and which contain adequate oxygen to support life.

(b) Particulate air-purifying respirators are classified as Non-powered and Powered, according to their design.

(c) Non-powered particulate air-purifying respirators are classified according to the efficiency of the filter element(s). Low efficiency filters have a minimum efficiency of 95 percent; medium efficiency filters have a minimum efficiency of 99 percent; high efficiency filters have a minimum efficiency of 99.97 percent; as tested according to the requirements of this part.

(d) Particulate powered air-purifying respirators are classified according to the efficiency of the filter element(s). Medium efficiency filters have a minimum efficiency of 99 percent; High efficiency filters have a minimum efficiency of 99.97 percent; as tested according to the requirements of this part.

§ 84.271 Particulate air-purifying respirators; Performance requirements; General.

(a) Each particulate air-purifying respirator shall, as appropriate, meet the minimum construction requirements set forth in Subpart Q, the face seal leakage tests and requirements in Subpart R, the general requirements for particulate air-purifying respirators in Subpart U and the requirements for performance and protection specified in the tests described in § 84.273.

(b) The manufacturer, as part of the application for certification, shall specify the filter efficiency classification (≥95, ≥99, or ≥99.97 percent efficiency) for which certification is being sought.

§ 84.272 Airflow resistance tests.

(a) Resistance to airflow shall be measured in the facepiece, mouthpiece, hood, or helmet of a particulate respirator (complete respirator) mounted on a test fixture with air flowing at a continuous rate of 85 liters per minute, before each test conducted in accordance with § 84.273.

(b) The maximum allowable resistance requirements for particulate

respirators in mm water-column height are as follows:

Initial Inhalation	30
Exhalation	20

§ 84.273 Particulate instantaneous penetration filter test.

Filters of particulate respirators shall be tested for instantaneous penetration filter efficiency against both solid and oil liquid particles in the following manner:

(a) Air-purifying elements of the respirators along with the element's holders and gaskets; where separable, shall be tested for instantaneous filter efficiency as mounted on a test fixture which incorporates the connector in the manner as used on the respirator.

(b) Prior to testing, all air-purifying elements of particulate filter respirators shall be taken out of their packaging and placed in an environment of 85 percent relative humidity at 38±2.5 °C for 24 hours. All tests shall be performed immediately after conditioning.

(c) Where the elements are not separable, the exhalation valves shall be blocked so as to ensure that leakage, if present, is not included in the efficiency evaluation.

(d) Filters shall be tested, each at a continuous airflow rate of 32 and 85 liters per minute for air-purifying respirators with a single filter (where filters are to be used in pairs the flow rate shall be 16 and 42.5 liters per minute, respectively through each filter).

(e) Powered particulate air-purifying respirators shall be tested while operating in their normal operational mode (with fully charged batteries if they possess battery packs). The air flow shall be as follows:

(1) Airflow shall be cycled through the respirator by a breathing machine at the rate of 24 respirations per minute with a minute volume of 40 liters; a breathing machine cam with a work rate of 100 watts (622 Kp-m/min) shall be used.

(2) Air inhaled through the respirator shall be sampled and analyzed for penetration.

(f) *Challenge aerosol.* (1) When testing for penetration of solid particulates, each respirator filter unit shall be challenged with an appropriate neutralized solid aerosol at 25±5 °C and at a relative humidity of less than 30 percent which contains no more than 200 mg/m³ until at least 100±5 mg of the aerosol has contacted the filter unit.

(2) When testing for penetration of oil liquid particulates, each respirator filter unit shall be challenged with an appropriate oil liquid aerosol at 25±5 °C which contains no more than 200 mg/m³ until at least 100±5 mg of the aerosol has contacted the filter unit.

(g) The particle size distribution of the test aerosol shall have an aerodynamic mean diameter of 0.2–0.3 micrometer and the standard geometric deviation shall not exceed 1.6 at the specified flowrate.

(h) The instantaneous penetration shall be monitored and recorded throughout the test period by a suitable light scattering photometer or equivalent instrumentation. If filter penetration is increasing when the 100±5 mg challenge point is reached, the test shall be continued until there is no further increase in penetration.

(i) Throughout the entire test the instantaneous penetration shall never exceed the level specified by the applicant.

Subpart W—Gas and Vapor Air-Purifying Cartridge Respirators

§ 84.280 Gas and vapor air-purifying cartridge respirators; Description.

(a) Gas and vapor air-purifying cartridge respirators (previously called chemical-cartridge respirators) are respirators with cartridge(s) designed to remove a single gas or vapor, a single class of gases or vapors, or a combination of two or more classes of gases or vapors as specified below from air. These respirators are designed for use as respiratory protection during entry into or escape from atmospheres not immediately dangerous to life and health and which contain adequate oxygen to support life. They are described according to the specific gases and vapors against which they are designed to provide respiratory protection, as follows:

Type of gas and vapor cartridge respirator	Maximum use concentration ppm
Ammonia	300
Chlorine	10
Hydrogen chloride	50
Methyl amine	75
Sulfur dioxide	50

(b) Gas and vapor air-purifying cartridge respirators are further classified as Powered, or Non-powered, according to their design.

(c) Gas and vapor air-purifying cartridge respirators are not intended for use against any gases or vapors with poor warning properties unless MSHA approves administrative controls, or the respirator is equipped with an effective, reliable end-of-service-life indicator. Also, they are not for use against gases or vapors which generate high heats of reaction with sorbent material in the cartridges.

(d) Gas and vapor air-purifying cartridge respirators for respiratory protection against gases or vapors which are not specifically listed with their maximum use concentration may be certified according to the requirements set forth in Subpart Z.

§ 84.281 Cartridges; Color and marking requirements.

The color and markings of all cartridges or labels shall conform to the requirements of the American National Standard for Identification of Gas Mask Canisters, ANSI K13.1–1973 standard obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

§ 84.282 Gas and vapor air-purifying cartridge respirators; General performance requirements.

Gas and vapor cartridge respirators and the individual components of each such device shall, as appropriate, meet the minimum construction requirements set forth in Subpart Q, the face seal leakage tests and requirements in Subpart R, the general requirements for air-purifying respirators in Subpart U, and the minimum requirements for performance and protection specified in the tests described in §§ 84.283 and 84.284.

§ 84.283 Breathing resistance test.

(a) Resistance to airflow shall be measured in the facepiece of a gas and vapor air-purifying cartridge respirator mounted on a test fixture with air flowing at a continuous rate of 85 liters per minute, both before and after each test conducted in accordance with § 84.284.

(b) The maximum allowable resistance requirements for gas and vapor air-purifying cartridge respirators are as follows:

MAXIMUM RESISTANCE

(mm water column height)

Type of vapor and gas cartridge respirator	Inhalation		Exhalation
	Initial	Final[a]	
For gases, vapors, or gases and vapors	40	45	20
For gases, vapors, or gases and vapors, and particulates	50	70	20

[a] Measured at end of service life specified in Table 5.

(c) Combination gas and vapor and particulate air-purifying cartridge respirators shall meet the provisions of § 84.211 except that the maximum allowable resistance of such respirators shall not exceed the maximum allowable limits set forth in this § (84.283).

§ 84.284 Gas and vapor cartridge service life test.

(a) The service life of all gas and vapor cartridges shall be determined by continually passing a test atmosphere of known concentration and flow rate through the cartridge while monitoring the downstream concentration.

(b) Cartridges or pairs of cartridges shall be tested as follows:

(1) Units shall be tested at 50±3 percent relative humidity. (2) Units conditioned at 25±2.5° C by passing 25±3 percent relative humidity air through them for 6 hours at the following flow rates—

Type of cartridge	Airflow rate lpm
Air-purifying	25
Powered air-purifying with tight-fitting facepiece	115
Powered air-purifying with loose-fitting hood or helmet	170

--shall be tested at 25 ± 3 percent relative humidity.

(3) Units conditioned at 25±2.5° C by passing 85±3 percent relative humidity air through them for 6 hours at the flow rates stated in paragraph (b)(2) of this section shall be tested at 85±3 percent relative humidity.

(c) The test atmosphere shall be maintained at 25±2.5° C.

(d) The flow rate through the cartridge(s) being tested are as follows:

(1) Non-powered single gas or vapor cartridge air-purifying respirators with exhalation valves shall be tested each at a continuous air flow rate of 64 liters per minute. Where cartridges are to be used in pairs, the flow rate shall be 32 liters per minute through each filter.

(2) Non-powered air-purifying respirators without exhalation valves shall be tested by the same regimen as in § 84.284(b) except that a breathing machine operating according to § 84.273(e) (1), (2), and (3) will be employed instead of continuous flow.

(3) Powered air-purifying respirators with tight-fitting facepieces will each be tested at a flow rate of not less than 115 liters per minute.

(4) Powered air-purifying respirators with loose-fitting facepieces will each be tested at a flow rate of not less than 170 liters per minute.

(e) All conditioned cartridges shall be resealed, kept in an upright position at room temperature, and tested within 8 hours.

(f) Cartridges shall be tested and shall meet the minimum service life requirements set forth in Table 5.

TABLE 5--CARTRIDGE SERVICE LIFE TESTS AND REQUIREMENTS
(42 CFR Part 84, Subpart H, 84.294)

Cartridge	Test atmosphere: Gas or Vapor	Concentration (ppm)	Penetration[a] (ppm)	Minimum life[b] (min.)
Ammonia	NH_3	1,000	50	50
Chlorine	Cl_2	500	5	35
Hydrogen chloride	HCl	500	5	50
Methylamine	CH_3NH_2	1,000	10	25
Sulfur dioxide	SO_2	500	5	30

[a] Minimum life shall be determined at the indicated penetration.
[b] Where a respirator is designed for respiratory protection against more than one type of gas or vapor, as for use in ammonia and in chlorine or hydrogen chloride and organic vapors (84.308(b)), the minimum life shall be one-half that shown for each type of gas or vapor. Where a respirator is designed for respiratory protection against more than one gas of a type, as for use in chlorine and sulfur dioxide, the stated minimal life shall apply.

Subpart X—Gas and Vapor Air-Purifying Canister Respirators

§ 84.290 Description and classification.

(a) Gas and vapor air-purifying canister respirators (previously called gas masks) are respirators with canister(s) designed to remove a single gas or vapor, a single class of gases or vapors, or a combination of two or more classes of gases or vapors as specified below from air. Such respirators which contain a full facepiece are designed for use as respiratory protection in atmospheres which contain adequate oxygen to support life as follows: Entry into and escape from non-IDLH atmospheres, and escape from IDLH atmospheres. However, such respirators which do not contain full facepieces but

contain a half facepiece or mouthpiece/noseclamps may only be used for escape.

(b) Gas and vapor air-purifying canister respirators are classified according to their sorbent capacity as follows:

(1) *High capacity.* A gas and vapor air-purifying canister respirator which consists of a full facepiece, canister(s) (previously front or back mounted), and associated harness and connections.

(2) *Low capacity.* A gas and vapor air-purifying canister respirator which consists of a facepiece, canister(s) (previously chin-style or escape), and associated harness and connections.

(c) Gas and vapor air-purifying canister respirators shall be further classified according to the types of gases or vapors against which they are designed to provide respiratory protection, as follows:

Ammonia
Carbon Monoxide
Chlorine
Sulfur Dioxide

Combination of two or more of the above.

(d) Gas and vapor air-purifying canister respirators are not intended for use against any gases or vapors with poor warning properties unless MSHA approves such use or the respirator is equipped with an effective, reliable end-of-service-life indicator. Also, they are not for use against gases or vapors which generate high heats of reaction with sorbent materials in the canisters.

§ 84.291 Canisters; Color and marking requirements.

The color and markings of all canisters or labels shall conform with the requirements of the American National Standard for Identification of Air-Purifying Respirator Canisters and Cartridges, ANSI K13.1–1973 standard, obtainable from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

§ 84.292 Performance requirements; General.

Gas and vapor air-purifying canister respirators shall meet the minimum construction requirements set forth in Subpart Q, the face seal leakage tests and requirements in Subpart R, the general requirements for air-purifying respirators in Subpart U, and the requirements for performance and protection specified in the tests described in §§ 84.293 through 84.295.

§ 84.293 Breathing resistance test.

(a) Resistance to airflow shall be measured in the facepiece of a gas and vapor air-purifying canister respirator mounted on a head form both before and after each test conducted in accordance with § 84.295 with air flowing at a continuous rate of 85 liters per minute.

(b) The maximum allowable resistance requirements for gas and vapor air-purifying canister respirators are as follows:

MAXIMUM RESISTANCE
(mm water column height)

Type of gas mask	Inhalation		Exhalation
	Initial	Final[a]	
High capacity			
(w/o particulate filter)	60	75	20
(w/certified particulate filter)	70	85	20
Low capacity			
(without particulate filter)	50	65	20
(w/certified particulate filter)	65	80	20

[a]Measured at end of the service life specified in Tables 6, and 7 in section 84.295.

§ 84.294 Particulate tests; Canisters containing filters.

Gas and vapor air-purifying canister respirators in combination with particulate filter media shall meet the requirements set forth in § 84.211 except that the maximum allowable resistance of complete particulate, and gas, vapor, or gas and vapor canister respirators shall not exceed the maximum allowable limits set forth in § 84.293.

§ 84.295 Canister service life test.

(a) The service life of all gas and vapor canisters, except for carbon monoxide tests, shall be determined by continually passing a test atmosphere of 25±2.5 °C, and known concentration and flow rate through the canisters while monitoring the downstream concentration (see Tables 6 and 7).

(b) Canisters or pairs of canisters, except for carbon monoxide tests, shall be tested as follows:

(1) Units shall be tested at 50±3

(2) Units conditioned at 25±2.5 °C by passing 25±3 percent relative humidity air through them for 6 hours at 64 at the following flow rates:

Type of Respirator	Airflow rate Lpm
Air-purifying	64
Powered air-purifying with tight-fitting facepiece	115
Powered air-purifying with loose-fitting hood or helmet	170

--shall be tested at 25 ± 3 percent relative humidity.

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TABLE 6--CANISTER SERVICE LIFE TESTS AND REQUIREMENTS FOR HIGH CAPACITY GAS AND VAPOR AIR-PURIFYING CANISTERS
(42 CFR Part 84, Subpart X, 84.295)

Canister Type	Test atmosphere: Gas or Vapor	Test atmosphere: Concentration (ppm)	Test atmosphere: Flowrate (Lpm) Nonpowered	Test atmosphere: Flowrate (Lpm) Powered Tight	Test atmosphere: Flowrate (Lpm) Powered Loose	Maximum allowable penetration (ppm)	Minimum service life (min.)
Chlorine. . . .	Cl_2	20,000	64	115	170	5	12
Sulfur Dioxide.	SO_2	20,000	64	115	170	5	12
Ammonia	NH_3	30,000	64	115	170	50	12
Carbon monoxide	CO	20,000	64[b]			(c)	60[d]
	CO	5,000	32[d]			(c)	60
	CO	3,000	32[b]			(c)	60
Combination of 2 or 3 of above types[e]							
Combination of all of above types plus organic vapor (84.308(a)[f]							

[a]Minimum life shall be determined at the indicated penetration.
[b]Relative humidity of test atmosphere shall be 95 ± 3 percent; temperature of test atmosphere shall be 25 ± 2.5 °C.
[c]Maximum allowable CO penetration shall be 385 cm^3 during the minimum life. The penetration shall not exceed 500 p/m during this time.
[d]Relative humidity of test atmosphere will be 95 ± 3 percent; temperature of test atmosphere entering the test fixture shall be between 0 °C and +2.5 °C.
[e]Test conditions and requirements shall be applicable as shown above.
[f]Test conditions and requirements shall be applicable as shown above, except the minimum service lives for Cl_2, SO_2, organic vapor, and ammonia shall be 6 min. instead of 12 min.

TABLE 7--CANISTER SERVICE LIFE TESTS AND REQUIREMENTS FOR LOW CAPACITY GAS AND VAPOR AIR-PURIFYING CANISTERS
(42 CFR Part 84, Subpart X, 84.295)

Canister Type	Test atmosphere: Gas or Vapor	Concentration (ppm)	Flowrate (Lpm): Nonpowered	Powered: Tight	Powered: Loose	Maximum allowable penetration (ppm)	Minimum service life (min.)
Chlorine	Cl_2	5,000	64	115	170	5	12
Sulfur Dioxide	SO_2	5,000	64	115	170	5	12
Ammonia	NH_3	5,000	64	115	170	50	12
Carbon monoxide	CO	20,000[h]	64[b]			(c)	60
	CO	10,000[i]	64[b]			(c)	60[g]
	CO	5,000	32[d]			(c)	60
	CO	3,000	32[b]			(c)	60
Combination of 2 or 3 of above types[e]							
Combination of all of above types plus organic vapor (84.308 (a)[f]							

[a]Minimum life will be determined at the indicated penetration.

[b]Relative humidity of test atmosphere shall be 95 ± 3 percent temperature of test atmosphere shall be 25 ± 2.5 °C.

[c]Maximum allowable CO penetration shall be 385 cm^3 during the minimum life. The penetration shall not exceed 500 p/m during this time.

[d]Relative humidity of test atmosphere shall be 95 ± 3 percent; temperature of test atmosphere entering the test fixture shall be between 0 °C and +2.5 °C.

[e]Test conditions and requirements shall be applicable as shown above.

[f]Test conditions and requirements shall be applicable as shown above, except the minimum service lives for Cl_2, SO_2, organic vapor, and ammonia shall be 6 min. instead of 12 min.

[g]If effluent temperature exceeds 100 °C during this test for a gas mask for escape only, it shall be equipped with an effective heat exchanger.

[h]Low capacity full facepiece devices for entry into and escape from appropriate non-IDLH atmospheres.

[i]Low capacity mouthpiece/noseclamp devices for escape only from appropriate non-IDLH atmospheres.

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(3) Units conditioned at 25±2.5 °C by passing 85±3 percent relative humidity air through them for 6 hours at the flowrates stated in (b)(2) of this section shall be tested at 85±3 percent relative humidity.

(c) The conditioned canisters shall be resealed, kept in an upright position at room temperature, and tested within 8 hours.

(d) High capacity gas and vapor canisters shall be tested according to and shall meet the minimum requirements set forth in Table 6.

(e) Low capacity gas and vapor canisters will be tested according to and shall meet the minimum requirements set forth in Table 7.

(f) (1) Since carbon monoxide does not have adequate warning properties, all gas and vapor canisters, except those with mouthpieces/noseclamps, designated as providing respiratory protection against carbon monoxide shall have a window or other indicator to warn the wearer at 80±10 percent of the total service life.

(2) Other canisters may also be equipped with a window or other indicator to warn of imminent leakage of other gases or vapors.

(3) The window indicator canisters shall be tested as regular canisters, but shall show a satisfactory indicator change or other warning at 80±10 percent of the total service life.

Subpart Y—Organic Gas and Vapor Air-Purifying Cartridge and Canister Respirators

§ 84.300 Description and limitations.

(a) Organic gas and vapor air-purifying respirators are respirators which have cartridges or canisters which are designed to remove gases and vapors from air. They are for use only in environments which contain adequate oxygen to support life and are not intended for use against any organic gases or vapors with poor warning properties unless MSHA approves such use controls, or where the respirator is equipped with an effective, reliable end-of-service-life indicator. Also, they are not for use against gases or vapors which generate high heats of reaction with sorbent material.

(b) Organic gas and vapor air-purifying respirators for protection against organic gases or vapors which do not have adequate warning properties may be certified according to the requirements as set forth in Subpart Z.

§ 84.301 Organic gas and vapor air-purifying cartridge respirators.

(a) Organic gas and vapor air-purifying cartridge respirators (previously called chemical-cartridge respirators) are designed for use as respiratory protection during entry into and escape from non-IDLH atmospheres. They may be used in a concentration of organic gas and vapor which is non-IDLH, or up to a maximum concentration of 1,000 ppm of the organic vapor or gas, whichever concentration is lower.

(b) Organic gas and vapor air-purifying cartridge respirators are further classified as Powered or Non-powered according to their design.

§ 84.302 Organic gas and vapor air-purifying canister respirators.

(a) Organic gas and vapor air-purifying canister respirators (previously called gas masks) which contain a full facepiece are designed for use as respiratory protection in atmospheres which contain adequate oxygen to support life as follows:

(1) Entry into and escape from non-IDLH atmospheres, and

(2) Escape from IDLH atmospheres. However, those respirators which do not contain full facepieces but contain a half facepiece or mouthpiece/noseclamps may only be used for escape.

(b) Organic gas and vapor air-purifying canister respirators are classified according to their sorbent capacity as follows:

(1) *High capacity.* A gas and vapor air-purifying canister respirator which consists of a full facepiece, canister(s) (previously front or back mounted), and associated harness and connections.

(2) *Low capacity.* A gas and vapor air-purifying canister respirator which consists of a facepiece, canister(s) (previously chin-style or escape), and associated harness and connections.

§ 84.303 Labeling requirements.

(a) The manufacturer shall provide as part of the labeling a list of organic vapor(s) and gas(es) which have adequate warning properties and against which their respirators provide adequate protection for the wearer.

(b) A warning shall be placed on the labeling or instructions of each organic gas and vapor air purifying cartridge and canister respirator, and on the label of each canister and cartridge respirator, alerting the wearer that they do not provide protection against all organic vapor and gas air contaminants and that they are not intended to be used against substances with inadequate warning properties, except as indicated in § 84.300.

§ 84.304 Color and marking requirements.

The color and markings of all canisters and cartridges or labels shall conform with the requirements of the American National Standard for Identification of Air-Purifying Respirator Canisters and Cartridges, ANSI, K13.1–1973 standard, obtainable from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

§ 84.305 Performance requirements; General.

Organic gas and vapor air-purifying canister and cartridge respirators, and the individual components of each device shall, as appropriate, meet the minimum construction requirements set forth in Subpart Q, the face seal leakage tests and requirements in Subpart R, the general requirements for air-purifying respirators in Subpart U, and the requirements for performance and protection specified in the tests described in §§ 84.306 through 84.308.

§ 84.306 Breathing resistance test.

(a) Organic gas and vapor air-purifying cartridge respirators shall meet the breathing resistances set forth in § 84.283 except that the resistance shall be measured at the end of service life specified in § 84.308(b).

(b) Organic gas and vapor air purifying canister respirators shall meet the breathing resistances set forth in § 84.293 except that the resistance shall be measured at the end of service life specified in § 84.308(a).

§ 84.307 Particulate tests; Canisters and cartridges containing filters.

Organic gas and vapor air-purifying respirators in combination with particulate filter media shall meet the requirements set forth in § 84.211 except that the maximum allowable resistance of complete particulate and gas, vapor, or gas and vapor respirators shall not exceed the maximum allowable limits required under § 84.306.

§ 84.308 Service life test.

(a) The service life of all organic gas and vapor canisters shall be determined by continually passing a $CC1_4$ test atmosphere of 25±2.5° C, known concentration and flow rate through the canister while monitoring the downstream concentration. The canisters will be tested as described in Subpart X § 84.295 except that the service life test shall be as follows:

Canister Type	Test atmosphere: Gas or Vapor	Concentration (ppm)	Flowrate (Lpm): Nonpowered	Powered: Tight	Powered: Loose	Maximum allowable penetration (ppm)	Minimum service life (min.)
High capacity.....	CCl_4	20,000	64	115	170	5	12
Low capacity.....	CCl_4	5,000	64	115	170	5	12

(b) The service life of all organic gas and vapor cartridges shall be determined by continually passing a CCl_4 test atmosphere at 25±2.5° C, known concentration, and flow rate through the cartridge while monitoring the downstream concentration. The cartridge shall be tested as described in Subpart W § 84.284 except that the service life test shall be as follows:

Cartridge	Test atmosphere: Gas or Vapor	Concentration (ppm)	Penetration (ppm)	Minimum life (min.)
OV cartridge	CCl_4	1000	5	50

Where a respirator is designed for respiratory protection against more than just organic vapor(s) and gas(es) (also ammonia, chlorine, hydrogen chloride, methylamine, or sulfur dioxide), the minimum service life shall be one-half that for each type as listed above or in § 84.284 Table 5.

Subpart Z—Gas and Vapor Air-Purifying Respirators for Unlisted Contaminants

§ 84.310 Description.

Some gas and vapor air-purifying respirators are designed for respiratory protection against a specific vapor or gas contaminant which was not addressed in Subpart W, Subpart X, or Subpart Y of this part. Such respirators are designed for protection from atmospheres containing the specific contaminant and containing adequate oxygen to support life. They are described according to their construction as follows:

(a) High capacity gas and vapor air-purifying canister respirators;

(b) Low capacity gas and vapor air-purifying canister respirators;

(c) Gas and vapor air-purifying cartridge respirators;

(d) Powered gas and vapor air-purifying respirators; and

(e) Other devices, including combination respirators.

§ 84.311 Application for certification.

Each such respirator may be certified if the applicant submits a request for such certification to NIOSH. NIOSH shall consider each such application and accept or reject the application after a review of the application's scientific merit and supporting data, and/or appropriate testing, and/or a review of the effects on the wearer's health and safety, and in light of any field experience in use of gas and vapor air-purifying respirators as protection against such hazards.

§ 84.312 General test requirements.

(a) All applications for certification of such respirators designed as respiratory protection against substances not specifically set forth in Part 84 shall contain but not be limited to the following information and supporting data:

(1) Data on desorption of gases and vapors from the sorbent including a flow-temperature study at low and high temperatures and humidities: Data shall be sufficient to demonstrate that the desorbed level of gases and vapors will not be harmful to the wearer.

(2) Data on desorption of impregnating agents used in the cartridge/canister including a flow-temperature study at low and high temperatures and humidities: Data shall be sufficient to demonstrate safe levels of desorbed agents.

(3) A list of catalytic products produced in the reaction of the sorbent with the contaminant gases and vapors, their concentrations and their toxicities.

(4) Data on the toxicity of the impregnating agent(s) sufficient to ensure that there is no creation of hazard to the wearer.

(5) A family of breakthrough time curves at low and high temperatures, humidities and concentrations.

(6) Data on the effects of the commonly found interferences which could impair the ability of the respirator to protect the wearer (i.e., decreased service life). Studies and/or data demonstrating that the unlisted substance has "adequate warning properties" for those respirators that are not equipped with end-of-service-life indicators.

(b) NIOSH reserves the right to require additional pertinent data needed in order to determine the intrinsic safety of the respirator.

§ 84.313 Performance requirements.

Such respirators and the individual components of each device shall, as appropriate, meet the minimum construction requirements set forth in Subpart Q, the quantitative leakage tests and requirements set forth in Subpart R, the general requirements for air-purifying respirators set forth in Subpart U, and the minimum requirements for performance as established by NIOSH on a case by case basis considering factors such as the contaminant's PEL, normal environmental concentration ranges, the contaminant's inherent toxicity, work exposure time requirements, normal environmental use conditions, and effects on the wearer's health and safety.

§ 84.314 Requirements for end-of-service-life indicators.

(a) Each canister or cartridge respirator submitted for testing and certification in accordance with this subpart shall be equipped with an end-of-service-life indicator (ESLI) (except for those respirators intended for use against substances having adequate warning properties) which shows a satisfactory indicator change or other obvious warning before the NIOSH established limit is reached. The

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indicator shall show such change or afford such warning less than or equal to 90 percent of the total service life.

(b) The applicant shall provide the following data:

(1) Data demonstrating that the ESLI is a reliable indicator of sorbent depletion (less than or equal to 90 percent of service life). These data shall include the results of a flow-temperature study at low and high temperatures, humidities, and contaminant concentrations which are reasonably representative of actual workplace conditions where it is anticipated that a given respirator will be used. A minimum of 2 contaminant levels must be utilized for each study, including the limit level (threshold limit value, etc.) and the limit level times the assigned protection factor for the respirator type.

(2) Data on desorption of any impregnating agents used in the indicator. These data shall include the results of a flow-temperature study at low and high temperatures and humidities which are reasonably representative of actual workplace conditions where it is anticipated that a given respirator will be used. Data shall be sufficient to demonstrate safe levels of desorbed agents.

(3) Data on the effects of interferences which are commonly found in the kinds of workplaces where it is anticipated that a given respirator will be used. Data should be sufficient to show which interferences could impair the effectiveness of the indicator and the degree of impairment and to show which substances will not affect the indicator.

(4) Data on any reaction products produced in the reaction between the sorbent and the contaminant gases and vapors against which it is designed to protect, including the concentrations and toxicities of such products.

(5) Data which predicts the storage life of the indicator. Simulated aging tests will be acceptable.

(c) All passive ESLI shall be visible to the wearer and shall be detectable to people with physical impairments such as color blindness.

(d) If color change is utilized, reference colors for the initial color of the indicator and final color of the indicator shall be placed adjacent to the indicator.

(e) For all active and passive indicators:

(1) The ESLI shall not interfere with the effectiveness of the face seal.

(2) The ESLI shall not change the weight distribution of the respirator to the detriment of the facepiece fit.

(3) The ESLI shall not interfere with required lines of sight.

(4) Any ESLI that is permanently installed in the respirator facepiece shall be capable of withstanding cleaning and a drop from a 6-foot height. Replaceable ESLI must be capable of being easily removed and shall also be capable of withstanding a drop from a 6-foot height.

(5) A respirator with an ESLI shall still meet all other applicable requirements set forth in 42 CFR Part 84.

(6) Any electrical components utilized in an ESLI shall conform to the provisions of the National Electrical Code and be "intrinsically safe." Where permissibility is required, the respirator shall meet the requirements for permissibility and intrinsic safety set forth in 30 CFR Part 18, Subpart D, § 18.82, Permit to use experimental electric face equipment in a gassy mine or tunnel. Also, the electrical system shall include an automatic warning mechanism that indicates a loss of power.

(7) Effects of interferences for substances which are commonly found in workplaces where it is anticipated that a given respirator will be used must be determined and those substances which hinder ESLI performance shall be identified. Substances which are commonly found where the respirator is to be used must be investigated. Data sufficient to indicate whether the performance is affected must be submitted to NIOSH. Manufacturers of respirators equipped with ESLI shall label the respirator in such a manner to make the user aware of use conditions that could cause false positive and negative ESLI responses.

(8) The ESLI shall not create any hazard to the wearer's health or safety.

(9) Consideration shall be given to the potential impact of common human physical impairments on the effectiveness of the ESLI.

(f) A cartridge or canister respirator without an ESLI may be certified for use but usage will be strictly limited to the environmental conditions and use situations which shall be prominently displayed on the label.

Appendix A.—Assumed Conditions of Use

The use of respirators referenced to in this part are governed by MSHA. However, for the purpose of certifying respirators under the provisions of this part, the following general assumptions are made about the conditions in which respirators are to be used:

(a) Cartridge respirators, canister respirators, particulate respirators, and air-line respirators will only be used in atmospheres which are not immediately dangerous to life and health (IDLH) except that canister respirators may be used to escape from, but not entry into, IDLH atmospheres which have adequate oxygen.

(b) Positive pressure self-contained breathing apparatus will be used in all hazardous atmospheres including IDLH atmospheres, provided appropriate use practices are followed. Negative pressure long duration (over 1 hour), closed-circuit devices may be used where IDLH and flammable or explosive atmospheres are present, such as for mine rescue, where the applicable regulatory agency so approves.

(c) Respirators incorporating a mouthpiece will be used only for emergency escape and will not be used for entry into any hazardous atmosphere.

(d) Gas and vapor respirators without end-of-service-life indicators will not be used for protection against gases and vapors that do not have adequate warning properties unless MSHA approves such use.

(e) Gas and vapor respirators will be used only when adequate warning properties of the contaminant exist to warn the wearer of sorbent breakthrough; such warning properties shall not be compromised by the presence of additional substances or situations which interfere with the odor or irritation threshold of the wearer. Adequate warning properties means that a gas or vapor has a reliable and persistent odor or irritation threshold which is less than three times its threshold limit value level and, if a ceiling limit is established, less than one-third its ceiling level.

(f) Gas and vapor cartridge respirators will be used in concentrations in excess of the maximum use concentrations specified in this part.

(g) Atmosphere supplying respirators will only be used when supplied with breathing gas that meets the following standards, as applicable:

(1) Compressed, gaseous breathing air shall meet the applicable minimum requirements for Type I, Grade D of ANSI Z86.1–1973 standard.

(2) Compressed, liquefied breathing air shall meet the applicable minimum requirements of Type II, Grade D of ANSI Z86.1–1973 standard.

(3) Oxygen, including liquid oxygen, shall meet the minimum requirements for medical or breathing oxygen set forth in the U.S. Pharmacopoeia, 20th revision, 15th edition of the National Formulary (USP20NF15) dated July 1, 1980, and chemically generated oxygen shall meet the requirements of Military Specification MIL–O–83252, dated 1972, or Military Specification MIL–O–15633, dated 1964, whichever is applicable.

(h) Airline respirators are used only in non-IDLH atmospheres.

(i) Respirators certified under the provisions of this part will only be used as part of a complete respirator program which encompasses all aspects of respirator use including: hazard definition, selection, fitting, training, maintenance, storage, monitoring, use supervision, and administration.

(j) The breathing gas contained in self-contained breathing apparatus shall meet the following requirements as applicable:

(1) Oxygen, including liquid oxygen, shall meet the minimum requirements for medical or breathing oxygen set forth in the U.S. Pharmacopoeia, 20th revision, 15th edition of

the National Formulary (USP20NF15) dated July 1, 1980, and chemically generated oxygen shall meet the requirements of Military Specification MIL–O–83252, dated 1972, or Military Specification MIL–O–15633, dated 1964, whichever is applicable.

(2) Except as prescribed in paragraph (c) of this section, compressed gaseous breathing air shall meet the requirements for Type I, Grade D of ANSI Z86.1–1973 standard.

(3) Where necessary to assure a concentration of 19.5 percent oxygen in the wearer's breathing zone with a closed- or open-circuit self-contained breathing apparatus, the concentration of oxygen may exceed the 23 percent maximum concentration prescribed in ANSI Z86.1–1973 standard for Type I, Grade D in mixed compressed gaseous breathing air, but shall not exceed 30 percent maximum concentration.

[FR Doc. 87–18016 Filed 8–26–87; 8:45 am]

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VOL
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federal register

Thursday
August 27, 1987

Part III

Environmental Protection Agency

40 CFR Parts 124, 144, 146, and 148
Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Amendments to Technical Requirements for Class I Hazardous Waste Injection Wells; and Additional Monitoring Requirements Applicable to All Class I Wells; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124, 144, 146 and 148

[FRL-3220-3]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Amendments to Technical Requirements for Class I Hazardous Waste Injection Wells; and Additional Monitoring Requirements Applicable to All Class I Wells

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing its approach to implementing the Congressionally mandated prohibitions on the underground injection of hazardous waste. This proposed action is being taken in response to amendments to the Resource Conservation And Recovery Act (RCRA) enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA). In addition, the Agency is proposing amendments to the existing Underground Injection Control (UIC) Regulations as they pertain to hazardous waste injection.

Proposed 40 CFR Part 148 would codify, for those hazardous wastes that are disposed in Class I hazardous waste injection wells, the directly applicable sections of Part 268, the Agency's regulatory framework for implementing the land disposal restrictions (51 FR 40572 et seq. November 7, 1986).

Part 148, would also specify the effective date of the restrictions on injection of specific hazardous wastes. Today's proposal includes proposed effective dates for the restrictions on injection of solvent wastes and of dioxin containing wastes. Further proposals will specify effective dates for "California List" wastes (as defined by section 3004(d) of RCRA) and for the wastes prohibited under section 3004(g) of RCRA. Finally, Part 148 would define the two circumstances under which a waste otherwise prohibited from injection may be injected: (1) When the waste has been treated in accordance with the requirements of Part 268 pursuant to Part 3004(m) of RCRA; or (2) when an applicant has demonstrated to the satisfaction of the Administrator that there will be no migration of hazardous constituents from the injection zone for as long as the wastes remain hazardous. Under this proposal, an applicant would submit a petition to the Administrator containing the demonstration. A showing of no-migration would be made based on either an absence of fluid movement out of the injection zone or an active process of waste reduction, transformation, or immobilization within the injection zone. Upon a sucessful showing the applicant would be granted an exemption from the prohibition.

Today's proposal also contains changes to 40 CFR Part 146, the Class I injection well regulations. These proposed amendments to Part 146 apply to owners and operators of all Class I hazardous waste wells, including: Those injecting wastes not yet subject to a prohibition, those injecting wastes which meet the treatment standards promulgated pursuant to section 3004(m) of RCRA, and those whose wastes have been banned and who have received an exemption under Part 148. The changes being proposed today in §§ 124.10 and 146.13 pertain to all owners and operators of Class I wells.

DATES: Comments must be received on or before October 26, 1987; the public hearing will be held on September 21, 1987, from 9:30 a.m. to 4:30 p.m. EDT; requests to present oral testimony must be received on or before September 7, 1987.

ADDRESSES: Comments (in duplicate), requests to testify, and inquiries concerning the Public Docket should be addressed to Eric J. Callisto, EPA, Office of Drinking Water (WH-550), 401 M St. SW., Washington, DC 20460. The hearing will be held in the Auditorium of the EPA Training Center, Waterside Mall, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Atcheson, Office of Drinking Water, EPA, (202) 382-5508.

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I. Background

A. Statutory Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial

new responsibilities on those who handle hazardous waste.

The amendments prohibit the continued land disposal of untreated hazardous waste beyond specified dates, unless the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the wastes remain hazardous (RCRA sections 3004 (d)(1), (e)(1), (f)(2), (g)(5)). Congress established a separate schedule in section 3004(f) for making determinations regarding the disposal of dioxins and solvents and the list of wastes specified in 3004(d)(2), termed the California list, in injection wells.

Wastes treated in accordance with treatment standards set by EPA under section 3004(m) of RCRA are not subject to the prohibition and may be land disposed. The statute requires EPA to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1)).

Land disposal prohibitions are effective immediately upon promulgation unless the Agency sets another effective date based on the earliest date that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment will be available (RCRA sections 3004(h) (1) and (2)). However, these effective date variances may not exceed 2 years beyond the otherwise applicable effective date. In addition, two 1-year case-by-case extensions of the effective date may be granted under certain circumstances (RCRA section 3004(h)(3)).

For the purposes of the land disposal restrictions program, the legislation specifically defines land disposal to include, but not be limited to, any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave (RCRA section 3004(k)). The legislation also sets forth a series of deadlines for Agency action. For a full explanation of the statutory framework the reader is referred to the preamble for the regulations that EPA has already proposed or promulgated under the statute particularly 51 FR 1602 *et seq.*, January 14, 1986; 51 FR 19300 *et seq.*, May 28, 1986; 51 FR 40572 *et seq.*, November 7, 1986; 51 FR 44714, *et seq.*, December 11, 1986; 52 FR 22356 *et seq.*, June 11, 1987; 52 FR 21010 *et seq.*, June 4, 1987; and 52 FR 25760 *et seq.*, July 8, 1987. The following discussion describes more specifically the statutory framework for injection wells.

1. Section 3004(f)

Section 3004(f) addresses the disposal by injection of solvents, dioxins, and California list wastes. Specifically, this section requires the Administrator to promulgate rules prohibiting the disposal of such wastes into wells if it may "reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remains hazardous . . .". If EPA does not determine those instances where disposal would meet this standard, the injection of these wastes is prohibited under section 3004(f)(3).

2. Section 3004(g)

Section 3004(g) of RCRA is the same for all methods of land disposal. It requires the Agency to set a schedule for making land disposal restriction decisions for all hazardous wastes listed in 40 CFR Part 261 under RCRA section 3001(c) as of November 8, 1984, other than the wastes referred to in section 3004 (d) and (e). EPA submitted this schedule to Congress on May 28, 1986 (51 FR 19300 *et seq.*).

Section 3004(g)(5) provides that the regulation promulgated by the Administrator must prohibit methods of land disposal except for methods "which the Administrator determines will be protective of human health and the environment for as long as the waste remain hazardous."

Further, the section provides that, except for wastes which have been treated to the standards expressed in section 3004(m), a method of land disposal may not be determined to be protective of human health and the environment, "unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous"

RCRA section 3004(g)(6) provides that if EPA fails to take action under 3004(g)(5) by the statutory deadlines for any hazardous waste according to the schedule, such hazardous waste may be disposed of in landfills or surface impoundments only if such facilities are in compliance with the minimum technological requirements set forth in RCRA section 3004(o). In this situation, placement of such wastes in other types of land disposal units (e.g., deep injection wells) would not be precluded by section 3004(g)(6). See 130, Cong. Rec. S9192 (daily ed., July 25, 1984). If EPA fails to set treatment standards, grant a petition or grant a variance under section 3004(h) for any of the scheduled listed wastes by May 8, 1990, then the particular wastes involved will be prohibited from land disposal.

The land disposal prohibitions apply to all hazardous wastes identified or listed under RCRA section 3001 as of November 8, 1984, the date of enactment of HSWA. For any hazardous waste identified or listed under RCRA section 3001 after November 8, 1984, EPA is required to make land disposal restriction determinations within 6 months of the date of identification or listing (RCRA section 3004(g)(4)). However, the statute does not impose an automatic prohibition on land disposal if EPA misses a deadline for any newly listed or identified waste.

3. Proposed Standard for Demonstrating Protection of Human Health and the Environment

Even though section 3004 (f) and (g) do not use the same language, they both require a demonstration that injection is protective of human health and the environment. Under (g) it is clear that such a demonstration must include a showing of no-migration from the injection zone. EPA believes that the no migration standard of section 3004(g) helps define what is protective of human health and the environment under section 3004(f). Section 3004(g), by its terms, restricts the injection of certain hazardous wastes into injection wells. Since the wastes covered under section 3004(f) are just as hazardous to human health and the environment as those under section 3004(g), EPA believes that injection of either set of wastes should be subject to the same standard. Thus, the Agency believes that the demonstration should be similar for all injection wells regardless of the type of injected waste and that the no-migration standard should apply to all.

For this reason, the Agency is proposing to use a petition process and standard that is the same for all banned hazardous wastes that are injected whether they fall under section (f) or (g). The Agency is specifically seeking comment on this approach.

B. The Regulatory Negotiation Process

The Agency developed much of this proposal via a process called regulatory negotiation. This is a process where, under the aegis of a formally chartered Federal Advisory Committee, a balance and mix of individuals and groups

directly affected by a proposed rulemaking, including EPA, work together openly and collaboratively in an attempt to develop a consensus which EPA can use as the basis of the proposed rulemaking.

Representatives from industry, environmental and public interest groups, and State underground injection control agencies joined with EPA in an attempt to reach consensus on a proposed Underground Injection Rule. For over six months they worked on reaching agreement on a broad range of technical and procedural requirements relating to 40 CFR Part 146 and Part 148.

Despite substantial agreement on a number of issues and approaches, the group was unsuccessful in generating a draft rule which they all could agree should be used as the basis of the proposal.

Notwithstanding this lack of full consensus, as EPA felt they represented the soundest approach, many of the provisions of this proposal reflect the thinking of the negotiating Committee; and today's proposal is substantially similar to the Committee's last draft in many regards.

C. Effect on State Primacy

The requirements being proposed today could affect the status of States with primary enforcement authority for the UIC program. Specifically, a State would have 270 days from the date new regulations at Parts 124, 144 and 146 become final to amend its program to conform with the new regulations (section 1422(b)(1) of the SDWA). Of course, a State which now prohibits Class I wells in general or injection of hazardous waste would not be required to make such a demonstration, since such a program would be more stringent than either existing or new UIC requirements.

The Agency notes that the proposed requirements would remove the existing "shield" for hazardous waste well permits. That is, under the current regulations, permits may not be modified, revoked or reissued to require compliance with new regulations unless the permittee requests or agrees. Under the proposed amendment to Part 144, new regulations would be grounds for initiating permit modification. The Agency expects that part of a State's demonstration that its program conforms with the amended regulations would be an amendment to the Memorandum of Agreement where the state would agree on a schedule to modify existing permits as necessary to incorporate the new regulations.

States need not seek authorization to administer Part 148 to maintain UIC primacy. However, the Agency also expects that State agencies which have primacy for the UIC program will wish to implement Part 148, and receive authorization to grant exemptions from land disposal restrictions. However, before such authorization can be granted the State would have to demonstrate that it has authorization to implement section 3004 (f) and (g) of RCRA. A thorough discussion of the conditions under which such authorization can take place can be found in 50 FR 28728 *et seq.*, July 15, 1985. In addition, where jurisdiction for UIC and RCRA do not reside in the same State Agency, EPA will require a Memorandum of Understanding between the two entities, clearly outlining responsibility for granting exemptions.

II. Summary of Today's Proposal—New Part 148

A. General Approach

The Agency has promulgated in 40 CFR Part 268 the regulatory framework for implementing the land disposal restrictions. (51 FR 40572 *et seq.*, Nov. 7, 1986). Proposed Part 148 would codify the sections of Part 268 that are directly applicable to injection wells. In addition, the proposal specifies effective dates for restrictions on certain injected hazardous wastes. Proposed Part 148 would also provide the standard and procedures by which petitions to dispose of an otherwise restricted waste by injection would be reviewed and exemptions pursuant to these petitions would be granted or denied.

Part 148 is similar in approach to Part 268. The Agency believes, however, that it is useful to the regulated community and to the State regulators to have requirements regarding injection wells located in the same portion of the Code of Federal Regulations as are other requirements pertaining to these wells. Hazardous waste injection wells are regulated under the authority of both the Safe Drinking Water Act (SDWA) and RCRA. These regulations have been codified along with other regulations under SDWA in Parts 144, 145, 146 and 147 of the Code of Federal Regulations.

We expect that eventually the Part 148 standards will be implemented by the same State agencies that currently have primacy for the UIC program.

The framework under which the Agency is implementing the land disposal restrictions is as follows: For each waste that the Agency prohibits from land disposal, the Agency intends to promulgate treatment standards under Part 268, Subpart D that meet the requirements of section 3004(m) of RCRA. After the standards are effective, wastes may be disposed of in a RCRA Subtitle C facility (e.g. a UIC Class I hazardous waste well) if they meet the treatment standard.

Upon the effective dates of the prohibitions, wastes that do not comply with the applicable treatment standards or are not subject to a national capacity variance, or are not placed in a facility satisfying the requirements of section 3004(o), or that do not have a case-by-case variance under § 268.5 are prohibited from placement in land disposal units unless an exemption has been granted by the Administrator under § 268.6 pursuant to a petition demonstrating that such disposal units will not allow migration of hazardous constituents for as long as the wastes remain hazardous.

For injection wells, EPA is proposing that the same treatment standards that have been promulgated in Part 268 Subpart D be applied to injected wastes as provided in Part 148 Subpart B. In some cases, however, the statutory effective dates for the prohibitions may be different for the following reasons. First, the statute provides separate statutory deadlines for underground injection of solvents and dioxins and the California list wastes in section 3004(f). Effective dates may also differ if EPA fails to promulgate prohibitions for the first two deadlines for scheduled wastes under section 3004(g). The statutory ban that would go into effect in these circumstances would prohibit only disposal in landfills and unlined surface impoundments, not injection wells. Finally, even for the final deadline for scheduled wastes, which applies to all types of land disposal units, including underground injection, EPA may grant different capacity extensions for different types of units. After the effective date of a prohibition in Part 148 Subpart B, untreated wastes can only be injected if an exemption has been granted by the Administrator pursuant to a petition under Part 148 Subpart C. The Agency notes, however, that such a petition need not be submitted on a well-by-well basis or even on a facility basis. As provided in the legislative history: "This demonstration could be made either by an individual applicant for a particular facility, or alternatively, it could be made for a class of facilities with like containment mechanisms and natural hydrogeological conditions. Such a demonstration could be made by a State with an approved underground injection control program for injection wells under such program which meet the test of new section 3004(b)(2)" (See Senate Report 98-284, S 757, p.15). The

Agency believes that such broad petitions may be feasible in the context of injection wells. For example, the Agency is aware that both in Texas and in the Great Lakes area many wells inject into one formation, and that in some cases injected wastes would behave similarly. The Agency is soliciting comments on whether such petitions are being contemplated by the regulated community, whether any State is intending to submit a petition, and whether today's proposed regulations do (as the Agency believes) contain enough flexibility to make such a petition a viable option.

B. Applicability

1. Scope of the Hazardous Waste Injection Restrictions

Proposed Part 148 would codify the land disposal restrictions for those hazardous wastes that are disposed in Class I hazardous waste injection wells. Injection wells include by current regulatory definition any "bored, drilled or driven shaft, or a dug hole, whose depth is larger than the largest surface dimension" that is used for the subsurface emplacement of fluids. Class I wells are wells used to dispose of wastes that are fluids, in geologic formations that are located beneath all underground sources of drinking water.

2. Relationship of these Rules to Restrictions in section 3004(b)(1)

The regulations in Parts 124, 144, 146, and 148 would apply regardless of the type of formation into which injection was taking place. Even though the current inventory of Class I hazardous waste injection wells indicates that all currently active Class I hazardous waste wells use elastic or carbonate sedimentary strata as injection zones, other types of geologic formations, such as evaporites, may also be suitable for injection.

These regulations, however, do not in and of themselves address the prohibition on emplacement of noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave imposed by section 3004(b)(1) of RCRA. This section prohibits the placement of such wastes in such formations until: (1) The Administrator has determined after notice of opportunity for hearings on the record in the affected areas, that such placement is protective of human health and the environment (section 3004(b)(1)(A)); (2) the Administrator has promulgated performance and permitting standards for such facility under Subtitle C (section 3004(b)(1)(B); and (3) a permit has been issued under section 3005(c).

The Agency is proposing that the regulations promulgated for disposal of hazardous fluids into wells in Part 146, as they would be amended in this proposal, constitute performance and permitting standards for such facilities as required by section 3004(b)(1)(B). In addition, EPA believes a UIC permit which qualifies as a RCRA permit-by-rule under 40 CFR 270.60 would satisfy the permit requirement of section 3004(b)(1)(C). Finally a hearing on the record as required by section 3004(b)(1)(A) could be held jointly with a hearing on a petition under this subpart. The Agency is asking for comment on this approach.

The Agency believes that even with the proposed amendments, the UIC regulations retain sufficient flexibility to handle the somewhat different requirements (particularly with regard to monitoring and closure/post closure care) that would be imposed on injection of fluids in salt domes, salt beds or underground mines or caves. The regulations as they now stand have been used to issue permits for storage of hydrocarbons in salt domes, sand backfill operations in mines, and for one facility which proposes to emplace non-liquid hazardous waste in a salt dome. The Agency also believes that the proposed requirements for demonstrating no-migration would be appropriate for wastes emplaced in such formations.

In the Final Rule on Land Disposal Restrictions published November 7, 1986, the Agency made some determinations regarding the scope of the land disposal restrictions which are applicable to injection. These are simply repeated in this proposal for the convenience of injection well owners and operators and of the regulators of these practices.

The Agency has determined that the restrictions limit the injection of wastes after the restriction deadlines, but do not apply to wastes injected prior to the applicable dates. Thus, wastes injected prior to the statutory deadlines for restriction need not be withdrawn from the injection zone for treatment. The restrictions do not apply to wastes produced by conditionally exempt small quantity generators as defined under 40 CFR 261.5, but they do apply to wastes produced by small generators of 100 to 1000 kilograms of hazardous wastes in a calendar month, or to generators of more than 1 kilogram per month of acute hazardous waste.

The restrictions apply both to wells authorized by rule and to permitted wells. All permitted wells are subject to the restrictions regardless of existing permit conditions, because the provisions of RCRA require compliance by all facilities even though the requirements are not specifically referenced in the permit conditions.

3. CERCLA Response Action and RCRA Corrective Action Wastes

Under section 3004(e)(3), Congress provided an exemption from the land disposal restriction provisions for disposal of contaminated soil and debris from CERCLA 104 and 106 response actions and RCRA corrective actions until November 1988. CERCLA and RCRA soil and debris wastes include, but are not limited to soils, dirt and rock as well as materials such as contaminated wood, stumps, clothing, equipment, building materials, storage containers and liners. In many cases soils and debris will be mixed with liquids or sludges. The Agency will determine on a case-by-case basis whether all or portions of such mixtures should be considered soil or debris. It is, therefore, possible that some of these wastes could be candidates for injection and today's proposal repeats the statutory exemption. All other CERCLA response action wastes and RCRA corrective action wastes are subject to the land disposal rule codified in Part 268 and proposed today in Part 148.

C. General Requirements

1. Definitions

New Part 148, as proposed, uses two terms which have not previously been defined in the UIC program. The first, "injection interval", is used to distinguish that part of the injection zone into which fluids are actively emplaced, from the remaining portions of the injection zone which are authorized to receive fluids. The second, "transmissive fault" (or transmissive fracture), refers to a fault or fracture which has sufficient permeability to allow fluids to move between formations.

2. Dilution Prohibition

The proposed rule adopts the prohibition on dilution by reference to § 268.3. This section prohibits dilution of restricted wastes as a substitute for treatment to achieve compliance with either a treatment standard or in the case of the California List to bring the waste below the statutory restriction level. In addition, § 268.3 also prohibits dilution of wastes to circumvent the effective date of a prohibition. Section 268.3 is intended to prohibit dilution as a means of circumventing the

requirements imposed by the land disposal prohibitions. The Agency does not intend to prohibit dilution which is necessary to facilitate proper treatment (51 FR 40592).

3. Case-by-Case Extensions

The proposed rule adopts the framework for granting case-by-case extensions to the effective date of a prohibition by reference to § 268.5. Briefly, this section provides that the Agency will consider granting up to a one-year extension (renewable once) if the applicant demonstrates that a binding contract has been entered into to construct or otherwise provide alternative capacity that cannot reasonably be made available by the applicable effective date due to circumstances beyond that applicant's control. It is important to note that the Administrator of EPA will be solely responsible for granting these variances, because these determinations must be made on a national basis. In addition, it is clear that section 3004(h)(3) of RCRA intends for the Administrator to grant case-by-case extensions after consulting the affected States on the basis of national concerns which only the Administrator can evaluate. Therefore, States cannot be authorized for this aspect of the program (51 FR 40618).

4. Waste Analysis and Records

The proposed rule adopts the waste analysis and record-keeping requirements of Part 268, by reference to § 268.7. This section is intended to provide the information necessary to determine whether a waste is subject to the provisions of this Part and whether it meets the treatment requirements and to follow prohibited wastes from point of generation or point of common aggregation through treatment to disposal. For further explanation the reader is referred to 51 FR 40619 *et seq.*

D. Waste Specific Prohibitions—F001 through F005 Solvent Wastes

As provided for in section 3004(m) of RCRA, the Agency identified on November 7, 1986, rule treatment standards applicable to spent solvent wastes (including solvent mixtures) F001, F002, F003, F004 and F005 based on what levels of treatment could be achieved by Best Demonstrated Available Technologies (BDAT) for those solvents. We are proposing that the treatment standards be the same for solvent wastes that are currently injected and are requesting comment from the regulated community on this approach. Particularly, we are interested in any data that would indicate whether some waste streams are currently handled solely by injection and whether some waste streams could not be treated to the specified levels. Today's rule proposes effective dates for these spent solvent wastes based on the availability of alternative capacity to treat the volumes that are currently injected.

Today's proposal does not propose effective dates for the commercial chemical products, manufacturing chemical intermediates, and off-specification commercial chemical products (P and U wastes) listed at § 261.33 that would otherwise be listed as F001–F005 spent solvent wastes. These wastes will be addressed simultaneously for all forms of land disposal according to the schedule promulgated on May 28, 1986 (51 FR 19300). This proposal also does not cover the four newly listed solvents in the F001–F005 listing which were added after the date of enactment of the 1984 amendments to RCRA: benzene, 2-ethoxyethanol, 2-nitropropane, and 1,1,2-trichloroethane (51 FR 6538). The Agency is currently gathering data to characterize and evaluate these wastes. Decisions on these additional solvents will be included with the first group of scheduled wastes.

Treatment standards were promulgated in the November 7, 1986 rule for the following F001–F005 constituents:

Acetone
n-Butyl alcohol
Carbon disulfide
Carbon tetrachloride
Chlorobenzene
Cresols (and cresylic acid)
Cyclohexanone
1,2-Dichlorobenzene
Ethyl Acetate
Ethylbenzene
Ethyl ether
Isobutanol
Methanol
Methylene chloride
Methyl ethyl ketone
Methyl isobutyl ketone
Nitrobenzene
Pyridine
Tetrachloroethylene
Toluene
1,1,1-Trichloroethane
1,1,2-Trichloro-1,1,2-trifluoroethane
Trichloroethylene
Trichlorofluoromethane
Xylene.

In the November 7, 1986 rule, the Agency estimated that a total quantity of 2,481 million gallons of low concentration (less than one percent) solvent wastes which were not injected at that time would require some form of wastewater treatment. The Agency also estimated that only 2,102 million gallons wastewater treatment capacity was available and, therefore, granted a two-year national variance for spent solvent wastewaters. Data available to the Agency indicates that approximately 909 million gallons of spent F001–F005 solvents were injected in 1986. Of these, approximately 885 million gallons contain solvents in excess of the concentrations in § 268.41 and would require wastewater treatment to meet the standard.

The Agency expects that wastes from corrective action activities mandated by section 3004(u) will place substantially increased demands on available treatment capacity, although it is difficult to quantify these demands. Nevertheless, the Agency currently anticipates final rules under section 3004(u) to be published in the later half of 1988, and expects the additional quantity of wastes resulting from this to overwhelm existing capacity, even considering any increased treatment capacity that might become available as facilities meet the minimum technology requirements of 3004(o). Based on these data, EPA is proposing a two-year national variance for injected spent solvent wastes, as initially generated, containing less than one percent total F001–F005 solvent constituents which are disposed of by injection in Class I wells. The Agency is currently in the process of reviewing data on available capacity and this two-year variance is subject to revision based on updated capacity determinations. In this proposal, EPA is also requesting comment on its estimate of currently injected volumes.

At this time, EPA has no information indicating that other types of solvent-containing wastes are injected. Therefore, restricting these wastes from injection should not have a significant effect on the need for treatment capacity, and the Agency is proposing that the restrictions become effective for all other wastes containing F001–F005 constituents on August 8, 1988. The Agency is soliciting information from the regulated community on whether such wastes are, in fact, injected and, if so, in what volumes. If available data warrants, EPA will revise the effective date accordingly.

E. Waste Specific Prohibitions—Dioxin-Containing Wastes

The Agency identified in the November 7, 1986 rule treatment standards applicable to wastes identified by the hazardous waste codes F020, F021, F022, F023, F026, F027, and F028. The Agency has granted a two-

year variance to the effective date of the restrictions for these wastes based on lack of capacity. Current data available to the Agency show that no dioxin-containing wastes are currently being injected. Restricting the injection of these wastes would have a negligible effect on availability of treatment capacity. Therefore, EPA is not proposing to grant a national variance to the effective date of the ban for injection of these wastes. The effective date of the restrictions is proposed to be August 8, 1988. We are soliciting comment from the regulated community on whether such wastes are in fact injected.

F. Other Wastes With an August 8, 1988, Statutory Deadline

Solvents and dioxins are not the only wastes for which the statute establishes an August 8, 1988, deadline. RCRA section 3004(f) also addresses injection of wastes known as "California List" wastes. The Agency proposed an approach for handling restrictions of these wastes on December 11, 1986 (51 FR 44714 *et seq.*). A Notice of Data Availability and Request for Comment was published on June 11, 1987 (52 FR 22356 *et seq.*). This notice announced some changes to the proposal and requested comment on the issue of whether the liquid hazardous wastes prohibited under section 3004(d) of RCRA are determined to be liquids or nonliquids at the point of disposal or at the point of generation or common aggregation. The notice also indicated that the Agency did not believe that national 2-year variances would be necessary for Halogenated Organic Compounds (HOCs) because the Agency's estimates are that these wastes are generated in low volumes and most of these wastes are believed to contain less than the statutory HOC prohibition level.

The Agency also believes that there is some commercial capacity available to treat these wastes (51 FR 40614). These assumptions are based on the volume of HOC wastewaters currently handled in surface facilities. However, data available to the Agency indicated that approximately 85 million gallons of HOC-containing wastes are injected yearly. The Agency is soliciting comments on these data in order to make a determination of availability of alternative capacity for injected wastes. Similarly the notice indicated that the Agency does not believe that it is necessary to grant a national capacity variance for the California List, metal, cyanide, and corrosive wastes, given the relative ease with which treatment can be conducted and tank capacity can be installed. The notice did indicate concern that certain large volume flows might pose a capacity problem. Data available to the Agency indicates that approximately 3 billion gallons of these wastes are injected yearly at concentrations above the statutory level. The Agency solicits comments on these data and on availability of alternative capacity. A final regulation restricting these wastes from disposal in facilities other than injection wells was promulgated on July 8, 1987 (52 FR 25760 *et seq.*). This final regulation affects the way in which restrictions on injection of these wastes are handled and we are hereby requesting comment on its appropriateness for deep wells. The Agency is also planning to publish a Notice of Data Availability regarding the California List metals in August 1987, which discusses BDAT for these metals. The Agency will develop a proposal for dealing with injection of California List wastes based on these forthcoming documents and comments on this proposal, and will propose treatment levels and effective dates for California List wastes as expeditiously as possible. In addition, decisions on the first third of wastes listed pursuant to section 3004(g) must also be made by August 8, 1988. The Agency is currently working on determining BDAT for these wastes and examining availability of alternative capacity. A proposal, including determinations for injection wells should be published by the end of this year.

G. Petition Standard and Procedures

The statute provides that after each prohibition deadline, untreated hazardous waste can be injected only if such injection has been determined to be protective of human health and the environment. Under section 3004(g), the statute further specifies that such a determination can only be made upon a demonstration that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

1. Implementation of the No-Migration Standard

This proposal considers how this standard should be applied in the narrow context of injection wells where both the technology and the setting are radically different from other forms of land disposal. It also takes into consideration the fact that injection wells are also governed by the Safe Drinking Water Act (SDWA). Regulations under SDWA prohibit the migration not only of the injected wastes, but also of naturally-occurring fluids, such as brines, into underground sources of drinking water.

(a) *Background.* Deep-well injection uses geologic formations as both repositories and containment systems for injected wastes. The containment system must protect ground water and surface water resources. Neither lateral

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movement within the intended repository nor downward movement is a concern to the UIC program.

The legislative history of the 1984 HSWA amendments states that "[i]n determining appropriate confinement from which migration shall not be allowed to occur the terms disposal unit or injection zone should be construed . . . in terms of the overall environmental integrity of the disposal practice, keeping in mind, in particular, the potential for contamination of ground water or surface water resource" (S. Rept. 284 98th Cong. 1st Sess. at 15). The legislative history further indicates that Congress intended the statutory term "injection zone" to match the regulatory definition in 40 CFR 146.3. That regulatory definition is very broad: "a geological formation, group of formations or part of a formation receiving fluids through a well." The current UIC regulations place very few limits on the specific portion of the subsurface that can be included in the injection zone. Hazardous waste injection can only take place below the lowermost formation containing within one-quarter mile of the well bore an underground source of drinking water (USDW) (40 CFR 144.3). The regulations also implicitly require a confining zone, defined as "a geological formation, group of formations or part of a formation that is capable of limiting fluid movement above an injection zone." Under the UIC regulations this confining zone could include only the formation directly below the USDWs and all formations below that could be considered part of the injection zone. The term formation, itself, may refer to large portions of the subsurface. Thus, the permit writer has considerable latitude in designating an injection zone. As explained below, this flexibility arises from the nature of geologic formations.

Geologic formations, such as the ones encountered in the Gulf Coast Basin are often several hundred feet thick (Refs. 1, 2, 3). Over such thicknesses, variations in the properties of the formation usually occur, particularly variations in lithology such as the interfingering of sands and shales. Accompanying the lithological changes are variations in permeability, porosity and hydraulic conductivities (Refs. 4, 5, 6).

The UIC permits usually identify one ~~or more~~ discrete intervals within these formations into which the well can be completed, *i.e.*, intervals or strata into which the fluids will exit from the well through screens or casing perforations. These intervals usually are the ones exhibiting the greatest hydraulic conductivity and will allow fluids to move easily out of the well. However, by also identifying entire geologic formations as the injection zone (rather than the smaller injection intervals), many permits include within their designation of injection zone sufficient material above the highly permeable injection interval to more than contain the fluid flow from upward movement due to the gradient created by the pressures of injection.

During the regulatory negotiation process, environmental groups were concerned that a permit writer could include the entire subsurface within the current regulatory definition of confining zone. As discussed below under "Proposed Additional Siting Requirements," these proposed regulations address these concerns through a provision which says that for every foot of upward movement allowed within the injection zone itself, there would be four feet of additional confining material above the injection zone and ten feet of distance from the top of the injection zone to the base of any USDW. Thus, a permit writer, in addition to using his best professional judgment of the geologic features, would be constrained from defining areas of the subsurface as injection zone unless they were sufficiently deep. The rationale for this approach and the specifics are outlined below. Under today's proposal, the injection zone itself must be comprised of materials that will be appropriate to contain the injected wastes.

Flow and transport mechanisms. In determining the potential for movement of injected fluids, one must consider what will happen during and after injection. During and immediately after injection, injection pressures create a gradient in the injection zone which will tend to move the waste upward. The magnitude of this movement is influenced by the amount of pressure build-up which in turn is dependent principally on the permeability, thickness and porosity of the injection zone, particularly of the injection interval. In order for the waste to move upward the pressure build-up must overcome the forces that would tend to keep the fluids down, principally the hydrostatic pressure of the overlying formations and the resistance to flow of the confining zone which is a function of its permeability and thickness. In other words, given two injection formations with equal pressure build-ups but different confining zones, the magnitude of movement within the injection zone above the injection interval will be greater where the confining zone is thinner or more permeable. The Agency estimates that in appropriate hydrogeologic settings the magnitude of this pressure induced movement should be in the order of tens of feet at the well bore, where pressure is the greatest, and becomes insignificant within a few hundred feet from the well bore.

Another avenue for upward movement during the pressurized phase would be through vertical conduits linking the injection zone with overlying formations. This movement through conduits is one of EPA's major concerns with regard to possible migration from injection zones. Accordingly, EPA is proposing strengthened area of review and corrective action requirements for improperly plugged or completed wells at §§ 146.63 and 146.64 as conditions for an exemption from the land disposal restrictions.

After injection is terminated, natural conditions are reestablished in a matter of a few years. Once the pressure drive is removed, the injected fluids will behave in the same manner as the in-place fluids. This naturally-occurring fluid flow in deep reservoirs is usually extremely slow, and can only be measured in geologic time-frames. This slow movement of fluids is evidenced by the composition of the fluids contained in these formations (Ref. 7, 8, 9). The upward movement is practically non-existent. Lateral movement within the injection zone itself is also very slow and should be of no concern. Any near-well point of discharge from the injection zone such as a large displacement fault or an outcrop of the injection zone should be readily identifiable by analysis of regional geology. The Agency believes that in most cases deep wells will be able to contain the wastes from points of discharge for geologic times. For example, the United States Geological Survey (USGS) estimated potential travel time of wastes injected near Pensacola, Florida (Ref. 10). In that study, USGS modeled travel time, assuming indefinite injection, of displaced saline water and injection fluids to three points of "hydrogeologic interest": a major fault, a point where water in the injection zone becomes brackish, and a point where the injection zone underlies a major water supply, but is separated from it by a clay confining zone.

The report's findings are grossly over-estimated since they assume indefinite injection. They show, however, that even under such unlikely circumstances it would take between 1,800 and 5,800 years for the displaced injection fluids, preceding the waste front to reach these

potential points of discharge. If a more realistic assumption of a 30 to 60 years injection period had been used, travel time would have exceeded 10,000 years. If this were not the case, these facilities could not make a demonstration of no fluid movement. In most cases, however, the Agency believes that there is no point of discharge for these deep formations. This can be demonstrated by such evidence as pressure gradients in the formations, presence of oil traps along major faults, and the age or composition of injected fluids.

Another transport mechanism, molecular diffusion, is not pressure related and will occur regardless of the pressure gradient. During the pressure-driven phase of fluid movement molecular diffusion is negligible. However, after injection pressure dissipates under the almost static conditions that prevail in deep formations, molecular diffusion becomes the dominant force for transport of molecules. The Agency believes, however, that the amount of transport caused by molecular diffusion would be negligible in most cases. First, there would be a concurrent diminution in concentrations. Second, the types of strata that need to be present in the injection zone in order to stop pressure driven movement have very low molecular diffusion coefficients and would considerably slow down molecular diffusion giving time for other degradation phenomena to take place. Consequently EPA believes that injection zones which properly contain wastes from pressurized fluid movement will also not allow hazardous levels of wastes to migrate beyond the injection zone due to molecular diffusion. Accordingly, in the petition demonstrations proposed below an applicant would not need to address molecular diffusion. EPA is thus proposing a regulatory determination that migration of hazardous levels of constituents would not leave an injection zone due to molecular diffusion. The Agency solicits comment on this approach.

Waste transformation mechanisms. The Agency has reviewed the literature and found good evidence that wastes get transformed in the injection zones (Ref. 11, 12). This evidence includes some field data from wells where injected fluids were back-flushed or reached monitoring wells.

For example, in a case of injection of organic nitrile compounds and nitrate, chemical analyses from backflow of the injection wells and from a nearby monitor well indicated that organic carbon compounds were converted to carbon dioxide, and the nitrate was reduced to elemental nitrogen. These microbiological transformations were virtually complete within a short distance from the injection wells and took place in a matter of a few months to a few years. In another case of relatively shallow injection, waste-aquifer interactions were determined by using observation wells located 1,500 and 2,000 feet from the injection wells. These showed that organic acids in the waste precipitated out of solution by complexing with iron and manganese oxides present in the host formation. In addition, the aquifer mineral constituents sorbed most organic compounds. The study also showed that biochemical waste transformation occurred.

The Agency has reviewed and analyzed the literature on the subject. There is evidence of chemical transformation by hydrolysis which shows that the half-life of many organics is in the order of days to tens or hundreds of years (Ref. 13, 14). There is also evidence of anaerobic bacterial degradation of many organics (Ref. 15, 16, 17, 18, 19). Metals and some organics will be adsorbed to clays (Ref. 20, 21, 22) and others will form insoluble salts (Ref. 23, 24,) and be immobilized in the injection zone. The Agency is conducting several studies to better characterize the extent of waste transformation in typical injection settings. The results of these studies should be available for the Agency's consideration before promulgation of these regulations. At this time, although the rates and pathways for these waste transformations are not well established, the Agency believes that sufficient evidence exists that wastes will be immobilized or transformed within periods of days to hundreds of years to give confidence that a 10,000 year residence time in the injection zone would be sufficient to render the waste non-hazardous.

(b) *Proposed petition standard.* EPA considers the appropriate petition standard to require that, to a reasonable degree of certainty, an applicant demonstrate that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the waste remains hazardous (RCRA section 3004 (d), (e), and (g)). The Agency is proposing that a no migration petition for injection wells can satisfy the statutory and regulatory requirements in either of two ways.

(1) The applicant could demonstrate that waste constituents would not migrate from the injection zone in hazardous concentrations. In taking this position, the Agency is equating the statutory reference to waste remaining hazardous in RCRA section 3004 (d), (e) and (g) with the levels and nature of constituents migrating from the unit. The alternative construction of the statutory language is that EPA must not allow any molecule of hazardous constituents to migrate from the unit while the waste within the unit remains hazardous. Under this interpretation, when the waste constituents within the unit diminish in concentration to levels below what EPA considers hazardous, all of the waste may migrate beyond the unit boundary. EPA believes the first interpretation is the most logical reading of the statute, given that the environmental concern is whether hazardous levels of constituents leave the unit and not whether hazardous levels remain in the unit.

Ordinarily the term "hazardous constituents" has no regulatory effect unless concentrations are also considered. Thus, the use of the term "hazardous constituents" under EPA's interpretation of RCRA sections 3004 (d), (e), and (g) is consistent with EPA's rules and policies for listing and delisting hazardous wastes as well as cleanup standards. The listing procedures, for example, make clear that solid waste containing any of the hazardous constituents listed in 40 CFR 261 Appendix VIII might be termed hazardous considering, among other factors, the concentration of the constituent in the waste (40 CFR 261.11) (See also the delisting rules at 40 CFR 260.22; the Clean Closure rule (52 FR 8704, March 19, 1987); and the groundwater cleanup rules at 40 CFR 264.94(a) (2) and (3)).

EPA is today proposing that applicants must show that before any injected fluids leave the injection zone the wastes would not be considered hazardous and would not contain hazardous constituents which would result in a threat to human health or the environment. Accordingly, attenuation due to fate and transport outside the injection zone could not be part of a demonstration. The Agency is proposing to grant an exemption only if the petitioner showed that any hazardous constituents would not leave the injection zone in concentrations higher than Agency-recommended health-based limits which have undergone peer review by the Agency and are used in delisting decisions and for clean closure demonstrations (52 FR 8704, March 19, 1987). At the present time these include Maximum Contaminant Levels (promulgated pursuant to the Safe Drinking Water Act), water quality

standards and criteria (Ambient Water Quality Criteria 45 FR 79318, November 28, 1980; 49 FR 5831, February 15, 1984; 50 FR 30784, July 29, 1985), health-based limits based on verified reference doses (RfDs) developed by the Agency's Risk Assessment Forum (Verified Reference Doses of USEPA, ECAO–CIN–475, January 1986) and Carcinogenic Potency Factors (CPF) developed by the Agency's Carcinogenic Assessment Group to be used to determine exposure at a given risk (Table 9–11, Health Assessment Document for Tetrachloroethylene (Perchlorethylene) USEPA, OHEA/600/8–82/005F, July 1985) or site-specific Agency-approved public health advisories issued by the Agency for the Toxic Substance and Disease Registry of the Center for Disease Control, Department of Health and Human Services.

The Agency is currently compiling toxicity information on many of the hazardous constituents contained in Appendix VIII to Part 261. An applicant would be required to check with the Office of Solid Waste, Characterization and Assessment Division, Technical Assessment Branch (202) 382–4761 for the latest toxicity information. However, for some hazardous constituents, formally recommended exposure limits do not yet exist. If no Agency recommended exposure limits exists for a hazardous constituent, EPA is proposing that an applicant show that the concentration of that constituent would be reduced to at least three orders of magnitude below detection levels at the edge of the injection zone.

The Agency recognizes that three orders of magnitude below detection is a very conservative cutoff for determining when a constituent that lacks a formal exposure limit is no longer hazardous. The Agency chose such a conservative cutoff in recognition of the difficulties associated with effectively monitoring for releases from injection wells, instituting corrective action to control releases should they occur, and modeling the exact behavior of contaminants in injection zones. These difficulties in predicting, detecting, and responding to releases from injection wells, particularly when compared to surface disposal facilities, justify the use of conservative safeguards. Accordingly, the Agency is adopting a highly conservative approach for ensuring protectiveness at underground injection facilities.

Consistent with EPA's March 19, 1987, rule for clean closure (52 FR 8704), an applicant would also need to demonstrate that wastes deemed hazardous due to the characteristic of extraction procedure (EP) toxicity would not migrate beyond the injection zone at concentrations above Agency recommended limits. In addition to the above demonstrations an applicant would also be required to show that waste deemed hazardous due to the characteristics of ignitability under 40 CFR 261.21, corrosivity under 40 CFR 261.22, or reactivity under 40 CFR 261.23 would not display these characteristics beyond the injection zone. For example, acid wastes may be neutralized by the formation with which they come in contact or buffered by the native brines. Such neutralization occurring at well sites have been reported in the literature (Refs. 25, 26, 27, 28, 29, 30).

All of the above demonstrations could, under this proposal, be accomplished by demonstrating that the constituents would be transformed to non-hazardous by-products, or that concentrations would be reduced by retardation, partition or other physical mechanism within the injection zone itself. For the purposes of making the demonstration an applicant need not account for constituents which were present in the formation fluid prior to injection.

(2) Alternatively, the applicant could attempt to demonstrate, using flow and transport models, that the site conditions are such that injected fluids would not migrate vertically upward out of the injection zone or migrate within the injection zone to a point of discharge over a time span of 10,000 years.

The Agency is proposing this approach because of its belief that demonstrations based on fluid-flow can be more readily prepared and reviewed since fluid-flow in deep formations is fairly well understood, and can be reasonably estimated using models which have been developed for the petroleum industry or the Department of Energy nuclear waste isolation programs. On the other hand demonstrations of waste transformation would, in most cases, be more difficult to make and review because the state of knowledge in that area is not as advanced.

However, in determining the absence of fluid movement, EPA believes that it is necessary to set some limits for running the analyses. As stated above, naturally-occurring fluid flow in deep reservoirs is extremely slow if not negligible, and is measured in geologic timeframes (*i.e.*, millions of years), but it does occur. In most cases, the only significant movement will be that due to the pressure gradient caused by the facility. Post-closure, injected fluids will move at the same rate as the native brines, that is at barely perceptible velocities. The Agency considered limiting the demonstration to a showing of no movement out of the injection zone due to the injection-induced pressure, based on the fact that fluid movement out of these deep formations is negligible and that whatever natural movement is taking place is not endangering human health regardless of the quality of the native brines. However, because of those few cases where a natural vertical gradient may exist, the Agency believes that it is more prudent to require that the demonstration include some analysis of post-injection movement. There is a need, however, to limit this analysis in time, since modeling for geologic times would not provide additional protection, given the limitations outlined below.

The Agency is proposing to use a 10,000 year time frame for these analyses for two reasons. First, EPA believes that, with a reasonable degree of certainty, formations which contain injected fluids for such a time period will, in fact, provide containment over the very long term (Ref. 31). Using data available to the Agency and an analytical model described in the support document entitled "Modeling of Representative Injection Sites," EPA has examined sites currently used for injection of hazardous wastes (Ref. 32). This analysis has shown, using reasonable worst case assumptions where data were not available, that it is not atypical for the injected fluids to move only a few tens of feet above the injection stratum during the pressurized phase of fluid flow. Post-closure upward movement would be dominated by molecular diffusion as long as the vertical pressure gradient was smaller than 0.1 psi/ft.

In promulgating the high-level radioactive waste disposal regulations under the Nuclear Waste Policy Act, the Agency stated its belief that "a 10,000 year period is long enough to encourage use of disposal sites with natural characteristics that enhance long-term isolation" (50 FR 38073) and that "a disposal system capable of meeting the proposed containment requirements for 10,000 years would continue to protect people and the environment well beyond 10,000 years." (50 FR 38076.) Similarly, EPA believes that injection zones that contain fluids for 10,000 years are likely to contain them for much longer. In developing the high-level radioactive waste regulations the Agency took comment on the 10,000-year period and had a special panel of the Science Advisory Board (SAB) review the proposed time frame (Ref.

33). The SAB endorsed EPA's choice stating that "Modeling for the time periods involved . . . required extension of such . . . techniques well beyond usual extrapolation, however, the extension for 10,000 years can be made with reasonable confidence. Also, the period 10,000 years is likely to be free of major geologic changes such as volcanism or renewed glaciation." The degree of confidence in modeling much longer time periods becomes much less and modeling the subsurface environment without regard to probable major surface changes becomes pointless.

In addition, as stated under the discussion of work transformation mechanisms, EPA has evidence that the long residence time of the waste in the injection zone will give a reasonable degree of certainty that the waste is no longer hazardous. Therefore, EPA believes that a demonstration that wastes will be contained for 10,000 years in the injection zone constitutes a demonstration of no-migration under the HSWA standard. The Agency is requesting comment on this alternative for demonstrating no-migration particularly on the appropriateness of the 10,000 year time frame for hazardous waste.

The Agency anticipates that most applicants will first try to make the demonstration under the 10,000 year containment provision. They would first determine the area over which the waste front would travel over 10,000 years using the velocities from the pressure of injection and the natural velocity of the formation fluid. Over this area, the applicant would analyze the geology to demonstrate that the waste would not leave the injection zone through a point of discharge. Conduits which penetrate the injection zone would only be considered transmissive if there was a sufficient pressure differential to drive injected fluid from the injection zone. Thus, the applicant would need to consider factors relevant to characterizing regional geology, including an analysis of sedimentary basins and a detailed structural analysis of the area.

For wells unable to meet the 10,000 year containment standard, it may be possible by a conservative analysis of waste transformation, immobilization or other physical process, to show that no Appendix VIII constituents would leave the injection zone in hazardous levels. As discussed above, the burden would be on the applicant to show the reasonableness of assumptions or modeling used in such a demonstration.

Proposed additional safeguards. When dealing with surface disposal units, certain mechanisms such as leachate collection systems, or monitoring can give reasonably good indication of whether migration is occurring and give the necessary assurances that the containment system is working properly. While it is reasonable to expect that under certain conditions wastes will remain within the injection zone for as long as they are hazardous, and while sufficient site-specific data can be collected to demonstrate that these conditions exist, the actual monitoring to ascertain that migration is not occurring would be problematic.

The nature of injection is such that the demonstrations will have to rely on modeling to a great extent and direct verification of the absence of migration would be very difficult. The wastes are emplaced at intervals ranging from 1,500 to over 5,000 feet below the ground surface which makes direct monitoring impractical. Even a poorly performing injection zone would be very unlikely to allow any measurable releases into overlying aquifers for several hundreds of years or more. Therefore, surrogates have to be used, such as reservoir analysis through pressure build-up as indications that the site is behaving as predicted and that migration is not occurring. For this reason, EPA is proposing to be very conservative and to require redundant protective features in order to compensate for the lack of direct confirmation that no-migration is occurring.

Additionally, as noted above, during the regulatory negotiation process environmental groups were concerned that a permit writer could include the entire subsurface within the current regulatory definition of injection zone. Thus, there is a need to limit the permit writers' discretion by requiring injection zones to have vertical limitations related to their distance to underground sources of drinking water. Similarly, confining zones would also be proportionately larger where upward movement within the injection zone could be significant. To address these concerns EPA is proposing two requirements. First, the thickness of the confining zone above the injection zone would have to be at least four times greater than the total estimated amount of upward vertical movement within the injection zone. This assures that the confining zone is adequately thick. It should be noted that under this approach, the confining zone may be composed of one or more relatively impermeable strata. The existing definition of confining zone in § 146.03 refers to "... a geologic formation, group of formations or part of a formation that is capable of limiting fluid movement above an injection zone." Thus, the confining material could be composed of a single relatively impermeable layer or part of a layer, or several smaller layers bounded by more permeable layers. The Agency's key concern is that the cumulative vertical thickness of the layer or layers be at least four times the estimated vertical distance which a fluid is predicted to move in the injection zone. In cases where the confining zone is composed of smaller layers, the intervening permeable zones would provide additional protection by serving as alternative pathways if fluid were to migrate out of the injection zone.

Second, the injection zone would have to be separated from the base of the lowermost USDW by a distance at least ten times that of the total estimated amount of upward vertical movement within the injection zone. This would assure that a petitioner would not attempt to use the entire stratigraphic column to meet the requirement of having a confining zone four times thicker than the distance which waste might permeate through the injection zone. Taken together, these requirements would result in sites with thick confining zones, and very deep injection zones. Both factors would add additional protection against movement through faults or fractures. The likelihood that a fault or fracture would remain open diminishes with depth since the lithostatic pressures tend to close such structural features at greater depths. Similarly, a fault or fracture will be less likely to cross a thick formation, particularly if bedding planes and other discontinuities in structure or sedimentation are present.

(c) *Alternative procedural approaches for determination(s) under section 3004(f).* One of the major concerns during the regulatory negotiation was the ability of EPA to process no migration petitions and determine which wells meet the statutory standards prior to the first restriction deadline of August 8, 1988, for wastes under section 3004(f). EPA encourages applicants to begin the petition process at this time since most of the fundamental information, listed in this proposal at § 148.21, is likely to be necessary under any reasonable option for the no migration standard. This demonstration process is likely to be an iterative one so early coordination with the Agency will be useful.

EPA also has reason to believe that the several billions of gallons of section 3004(f) wastes injected annually may warrant national variances for all or some of the wastes due to lack of alternative treatment capacity. As

discussed above, we are proposing a two year extension of the restriction deadline for solvent wastes containing less than one percent F001–F005 wastes. The Agency will be addressing the issue of treatment capacity for injected California list wastes in an upcoming notice when EPA will have better estimates of treatment capacity and demand.

The regulatory negotiation committee also explored several alternative procedural approaches for the determination(s) under subsection 3004(f). The Agency would like to outline these approaches and solicit comment on whether they are appropriate. One approach is that the Administrator make a broad determination about underground injection as a technology for the purposes of section 3004(f). Under this scheme, the Administrator would examine the practice with regard to particular wastes and particular technologies. Based on his analysis, he could make one of three findings. First, the Administrator could find that the practice as whole or some subset of the practice—determined, perhaps, by the waste or general geologic setting—meets the standards of section 3004(f). Second, he could establish a regulatory standard and any other additional regulations necessary to meet that standard. Owners and operators would be required to comply with the standard and the regulations. Finally, he could find that the practice of hazardous waste injection could not be protective as defined in section 3004(f). Under either of the first two determinations injection could continue beyond the section 3004(f) restriction deadline and operators would be required to comply with any more stringent requirements promulgated as part of the determination.

Under this approach EPA's administrative record would need to provide support for two basic regulatory findings. First, EPA would determine that, to a reasonable degree of certainty injection wells properly deliver hazardous fluid to an injection zone. Second, EPA would find to a reasonable degree of certainty, that an injection zone, reasonably defined and limited by a permit writer and EPA regulations, would not allow migration under the statutory standard by either molecular diffusion, pressure-driven penetration through the confining material, or fluid flow through transecting conduits. Under this approach, the Agency would need to show that existing wells are not located near points of discharge and that regulations would preclude siting new wells near points of discharge in the future. The effectiveness of the regulation requiring that the operator locate and address abandoned wells in the area of review would be an important consideration in the Administrator's finding. The Agency solicits both comments on and record support for this approach.

The key difference between this approach and the approach outlined earlier is that there need not be a petition. However, EPA regulations could require a proof from well owners or operators that their facilities meet any requirements specified as part of the Administrator's determination.

As outlined in section II A, several negotiators also suggested that under section 3004(f) the Agency could accept generic petitions, to the extent that the sites shared similar geologies and injected wastes which behaved similarly. Under this scenario, operators injecting the same waste into a single formation could submit one petition seeking an exemption from the ban. Others suggested that a single state could petition for a waiver from the ban for injection facilities within that State, perhaps describing the range of geologic settings found in areas where injection is occuring, and characterizing existing state technical requirements and demonstrating that requirements and geologic settings meet the standards being proposed today. The Agency specifically requests comments on these alternative approaches.

2. Application of Certain New Part 146 Requirements in the Context of the Petition

Today's proposal contains amendments to the existing permit requirements governing injection of hazardous waste. The Agency believes that most of these requirements are a necessary first step in order to assure that wastes will reach the injection zone from which the no-migration demonstration required by the statute can be applied, and remain in this zone. It is the Agency's intent that these new requirements will be incorporated in revised permits and enforced as permit requirements by the UIC program Directors. However, these requirements may not be effective in Primacy States by the time the first petitions are granted. It is also possible that the permit modification process will not be concurrent with the petition. For these reasons, we are proposing to require as part of the petition process, a certification by the owner-operator that the well will be in compliance upon granting of the exemption, with two of the requirements of Part 146 as amended by this proposal which we believe are essential to ensure that the no-migration standard is met. These requirements are those concerning the well's mechanical integrity, since in the absence of mechanical integrity there can be no assurance that the wastes will reach the injection zone and the expanded area of review, and since a no-migration demonstration could be negated in the presence of unplugged or improperly plugged wells in the area of review. This certification will only be necessary if the operator has not received either a new or modified permit pursuant to revised Part 146.

3. Information Requirements

The Agency is proposing in § 148.21 the standards for the type and quality of information to be submitted in support of petitions. The Agency intends to issue more specific guidance addressing these issues as soon as possible.

Models are the only tools available to predict waste and fluid behavior over the time-frames discussed in the proposal. However, the Agency is concerned that models could be misused, principally through bad choice or improper use of computer codes and lack of site-specific data, leading to poor assumptions. Therefore, if possible, EPA intends to issue guidance on this subject prior to promulgation of the final regulations. Similarly, EPA is currently finishing a series of Quality Control/Quality Assurance documents for the UIC program, which should be available in time for development of petitions. Procedures outlined in these documents should be followed by petitioners in order to expedite petition review.

4. Procedural Requirements

In order that the fullest opportunity be given to local interests to participate in the decision process, we believe that the petition review should be the responsibility of the EPA Regional Offices or authorized States. However, as explained in Section I.C., above, delegation of authority to States to grant exemptions may be a complex process. It is unlikely that all necessary steps will have been taken before the first petitions have to be reviewed. During that interim period, however, EPA and States may enter into agreements making States responsible for such activities as reviewing the petitions, and assisting with the public participation process, while the decision authority would remain with EPA.

5. Review and Termination of Exemptions

Finally, EPA is proposing to include specific requirements for review and, where appropriate, termination of exemptions. The Agency is proposing that approved exemptions should be reviewed at least once every ten years concurrently with permit reissuance to investigate whether any new information would render the original information invalid. In addition, EPA believes that it is appropriate for the Director to review an exemption whenever information indicates that the basis for approval of the petition may no longer be valid. The exemption granted by the petition would remain in effect during this review process.

Where circumstances indicate that the basis for granting the exemption is no longer valid, or there is evidence of migration in violation of § 148.20, the Director may proceed to terminate the exemption using the procedures for termination of permits specified in § 124.5. We are also proposing that the Director be authorized to terminate the exemption where a petitioner has willfully withheld relevant information.

III. Summary of Today's Proposal—Amendments to Part 146, Subpart G

A. Basis of Proposed Amendments

The Agency is proposing to amend technical requirements found in 40 CFR Part 146 which are applicable to owners or operators of hazardous waste injection wells. These proposed amendments are part of an ongoing Agency effort to revise the UIC program where experience warrants such revisions.

Today's proposals are based on several considerations. First, since the regulations were last amended, the Agency has gained expertise and collected additional operating data. Second, section 701 of the Hazardous and Solid Waste Amendments of 1984 required the Agency to conduct a survey of Class I hazardous waste injection wells. As a result of the survey, the Agency identified requirements that could be improved and others that could be added (Ref. 1). Third, section 1426(e) of the Safe Drinking Water Act as amended on June 19, 1986, requires the Administrator to evaluate monitoring technologies which might be appropriate to use in conjunction with Class I injection wells and to promulgate a list of such alternatives.

Finally, as outlined in Section I, B of this preamble, the Agency attempted to develop this rule through regulatory negotiation. Although the Advisory Committee was unable to reach a consensus, there were substantial areas of agreement and the Agency learned a great deal from the various participants. Many of the amendments are a result of the additional information, concerns, or interests raised during the course of the negotiations.

Based on these considerations, the Agency is proposing to amend requirements pertaining to Class I hazardous waste wells by:

(a) Increasing the frequency of mechanical integrity tests, and requiring the use of radioactive tracer surveys in addition to the tests specified in § 146.8;

(b) Adding specificity to existing compatibility requirements;

(c) Applying more specific siting requirements;

(d) Expanding the area of review;

(e) Applying operational controls, including:

(i) Automatic shutoff or alarm devices;

(ii) Controls on wells injecting fluid which could generate gas in the subsurface;

(iii) Limitations on the use of fluid seals;

(iv) A requirement that annulus pressures exceed injection pressures in most instances; and

(f) Listing methods for monitoring Class I injection activities.

B. Scope and Structure of the Amendments

These proposed amendments would apply to owners and operators of all Class I hazardous waste wells; those injecting wastes which are not yet prohibited, those injecting waste which meet treatment standards promulgated pursuant to section 3004(m) of RCRA, those whose waste has been banned and who have obtained an exemption under Part 148. With the exception of the monitoring amendments, they do not apply to Class I wells which do not handle hazardous waste as defined by RCRA. The monitoring amendments are being promulgated pursuant to section 1426 of the SDWA and will apply to all Class I wells. These rules are being proposed in both § 146.13 and § 146.68.

In order to provide a discrete section applicable to hazardous waste injectors, the Agency is creating a new Subpart G. Within Subpart G the Agency is consolidating certain requirements that are currently contained in various areas of 40 CFR Parts 144 and 146. In the discussions which follow, we have tried to note when the language merely consolidates existing requirements and when it represents a new proposal. It should be noted that the *general* requirements in current 40 CFR Parts 124 and 144 still apply to owners and operators of hazardous waste injection wells. The Agency is specifically soliciting comments on those portions of Parts 124, 144, and 146 which are being amended. To the extent that proposed Subpart G merely reiterates or restates existing requirements in 40 CFR Part 144 or 146, however, EPA is not seeking comment.

C. Additional Definitions

In the proposed amendments, EPA is defining new terms and clarifying the definitions of several existing terms. The definitions being added are "transmissive fault" and "cone of influence." A "transmissive fault" refers to a fracture which allows a measurable amount of fluid to flow through it. "Cone of influence" is used in the amended area of review requirements, and its effect will be discussed in that section. The EPA is proposing to revise the definitions of "new" and "existing" wells to address specifically the unique regulatory framework applicable to Class I hazardous waste injection wells. Under existing regulations, a "new well" is defined as "one which begins injection after a UIC program is approved (or in the case of federally-implemented programs, promulgated)." An "existing well" is defined as "a well which is not a new well." During the negotiations several members were concerned that such a definition was imprecise, and—to the extent that existing wells are not subject to certain construction and other requirements—represented a potential loophole.

In addition, the current definitions are not restricted with respect to well class, making the status of wells converted from one class to another unclear. For example, a Class II salt water disposal well which holds a valid UIC permit could presumably be considered an existing well for purposes of Class I injection (although § 144.39(a)(1) gives the Director the authority to modify or revoke a permit when "material or substantial alterations or additions" occur after the permit is issued).

In order to clarify the relationship between new, existing, and converted wells, EPA is proposing to change the definitions as follows. An "existing well", under Subpart G, would be any Class I well which is authorized to receive industrial waste under an approved UIC program at the time these regulations become effective. A "new well" would be any other well. Under this scheme, only a pre-existing Class I well could be considered an existing well for the purpose of Subpart G. All other wells would be considered new and would, therefore, be required to apply for a permit and demonstrate

compliance with Subpart G requirements.

The Agency considered restricting the definition of "existing wells" as applied to Class I to wells which inject hazardous waste at the time these rules are promulgated, but decided against it. Construction requirements for Class I wells are the same regardless of whether the industrial waste injected is hazardous or non-hazardous, and the definition of hazardous waste is likely to change, possibly triggering requirements which an existing well could not meet. Because owners or operators of existing Class I wells may be able to demonstrate that their facility has and will continue to operate safely using empirical information, the Agency believes the question of whether or not a well should be required to meet new standards in such a case is site-specific.

In order to provide this discretion, EPA is proposing to amend § 144.39(b). This section specifies the basis for modifying or revoking and reissuing a permit. The proposed amendment would allow the Director to revoke or modify the permit if the waste injected became hazardous either because the waste stream changed, or because the definitions in RCRA or Part 261 changed.

D. Siting Requirements

In the current regulations, the siting requirements are contained in several sections and in many instances are only generally stated. The most explicit statement is in § 146.12 which states that the well must inject beneath any formation which contains an underground source of drinking water within one-quarter mile. Elsewhere, in §§ 146.12 and 146.14, the regulations require the Director to consider certain information in the course of evaluating permit applications, including such factors as confining bed thickness, permeability, and mineralogy; regional and local hydrogeology; faulting and fractures in the area; location of the lowermost USDW; and relevant characteristics of the injection zone. The proposed amendments retain these requirements. However, EPA believes that it is both appropriate and necessary to propose more explicit standards against which these more generally stated factors could be weighed.

1. Options Assessed

Establishing appropriate siting standards was one of the most difficult negotiation topics the committee faced with respect to amending Part 146. Some members believed that broadly stated performance objectives were necessary. They argued that the range of appropriate sites was defined by a complex matrix of variables which could not meaningfully be represented by a set of numerical limits. Others were concerned that without specific limits the standards would not be clearly articulated. The result, they contended, would be that the Director would be required to conduct or confirm extremely sophisticated analyses merely to determine whether an application met the regulatory standard. These members noted that such expertise was not always available on many State and federal staffs. The committee evaluated a number of options in attempting to develop appropriate siting requirements and resolve the issue. The goal of these options was to balance the need for flexibility with the desire to define clearly the regulatory standard.

One option considered was to establish numerical standards with regard to the permeability, porosity, thickness, areal extent and tectonic or seismic characteristics of both the injection and confining zones. These specific requirements would have been used to define the general performance standard. Some members believed such an approach could work, but only if coupled with a provision which afforded the Director the flexibility to approve sites not meeting all of these specific standards if the owner or operator could demonstrate that the overall standard was met.

Another option considered was to establish a performance standard based on a showing that the characteristics of the confining zone were adequate to prevent the waste from migrating out of the injection zone for some period of time ranging between 500 and 10,000 years. In addition, the injection zone would have had to prevent the waste from reaching a point of discharge within that time frame. This standard would have been framed by some minimum values for key parameters applicable to both the injection and confining zone. These limits would have been used to articulate an appropriate range within which sites could have been deemed suitable.

In attempting to establish limiting site characteristics, the Agency modeled a minimally acceptable injection scenario (*i.e.*, a thin injection zone with a low permeability, associated with high injection pressures and volumes) against various assumed confining zone characteristics. Under these circumstances, injection pressures would necessarily be very high. It was hoped that the results of these somewhat informal sensitivity analyses could be used to identify appropriate end points of an algorithm which would describe the matrix of acceptable site characteristics (Ref. 2).

After extensive consideration, the Agency rejected both of these options because it believed, in nearly all cases, that considerations of a more qualitative nature would have to be incorporated into siting decisions.

Factors other than flow and chemistry may restrict the adequacy of a given site. For example, seismic and structural concerns would not be accounted for in either of the above options. The likelihood that a fracture or fault, if present, would transmit fluid depends on the depth of the confining zone, the plasticity of the rock, the thickness of the confining zone, its pore pressure, and the volume, pressure, and density of the fluid injected. These factors could not be evaluated in the strict confines of a numerical standard or a matrix of numerical values. Thus, the Agency concluded that while there are minimally acceptable values in siting considerations, they are site-specific and do not translate meaningfully to general regulations. A key issue in all the options discussed was the need to consider the uncertainties often inherent in characterizing geologic systems at depth, particularly with regard to faults, fractures, and possible man-made conduits in the confining zone.

2. Proposed Siting Requirements

Today, EPA is proposing more explicit performance standards which still retain flexibility, assure that the consequences of any uncertainties are addressed, and delineate some of the more qualitative factors which the Director must assess when reviewing an application. A brief description follows.

The proposed performance standard for the injection zone, § 146.62(c)(1), would require owners and operators of Class I hazardous waste wells to inject into a formation which has a permeability, porosity, thickness and areal extent sufficient to prevent migration of fluids into a USDW. Similarly, § 146.62(c)(2), would not allow an owner or operator to inject unless the confining zone were free of transecting, transmissive faults or fractures, and sufficiently thick, impermeable, and laterally continuous to contain the waste.

As noted, a goal in establishing siting standards was to minimize the potential problems which might arise from uncertainties inherent in characterizing geologic conditions in the subsurface. The Agency is proposing three additional safeguards designed to either eliminate uncertainty or prevent the movement of fluids into a USDW even

when the review of siting has not discovered a transmissive fault, fracture or other breach. The demonstrations required to meet these safeguards are outlined below.

Section 146.62(d) would require the owner or operator to demonstrate one of three siting alternatives to the Director's satisfaction. Under § 146.62(d)(1) the owner or operator could demonstrate that there is at least one additional sequence of permeable and confining strata between the confining zone and the USDW. Such siting would assure that there would be two confining zones between the injection zone and the USDW and, more importantly, at least one porous zone. Modeling has demonstrated that, where such conditions exist, any fluid which "leaks" vertically through a theoretical undiscovered breach in the confining zone will tend to move horizontally when it reaches the porous saline zone thereby dissipating the effects of such a leak (Ref. 2, 3, 4).

Alternatively, under § 146.62(d)(2) the owner or operator could show that the piezometric surface of the injection zone is below the piezometric surface of the lowermost USDW (assuming corrections for fluid density and operating pressures). Under such conditions a conduit in the confining zone would cause fluid from the USDW to move down into the injection zone rather than allowing formation or injected fluid to move into the USDW, since the pressure and hydrostatic head in the USDW would exert a downward force.

Finally, § 146.62(d)(3) would allow the Director to disregard the uncertainties associated with potentially undetected breaches in the confining zone when a well is located in an an area where no USDW is present.

One issue the Committee discussed extensively centered on whether the Director should have broad authority to approve sites not conforming to these requirements but which could otherwise be proven to be safe. Some argued, for example, that existing wells with extensive operating experience and data might be able to provide the same degree of certainty associated with accurately describing geologic conditions that new or relatively new sites might without providing the specific data required of new sites. Others contended that monitoring or other data could provide a degree of certainty comparable to the protection afforded by § 146.62(d) (1), (2) and (3). Finally, some objected to not providing flexibility arguing that neither EPA nor the States could identify, up front in regulation, all circumstances which describe a safe site.

In § 146.62(d)(4), the Agency is proposing specific regulatory language granting the Director the discretion to approve sites which may not meet one or more of the requirements in § 146.62(d), but which can be shown to provide a level of certainty comparable to those that could. The Agency is soliciting comment on this approach.

The Agency is investigating whether or not injection activities may cause seismic disturbances in some areas. Available literature suggests that, while such events have occurred, they have been the result of water flood or other high pressure, high volume operations in formations that are less permeable than those typically used for waste injection (Ref. 5). Nevertheless, EPA specifically solicits comment on whether seismicity monitoring should be required.

The Agency also considered how the draft ground-water classification guidelines should influence siting decisions. The Agency believes that the requirement that injection must take place below all USDWs, and must not result in any fluid movement into USDWs precludes injection taking place in any aquifer other than a Class III B. This is in perfect accord with the ground-water protection strategy. The Agency also considered whether special consideration should be given to Class I aquifers. The Agency believes, however, that in the case of injection wells the distinction between Class I and Class II aquifers blurs. The Class I definition includes the concept of vulnerability which is related to surface activities. By going through an aquifer, an injection well would pose exactly the same risk whether or not that aquifer was considered vulnerable. EPA concludes, therefore, that in the context of injection, Class I and II aquifers should be afforded the same high degree of protection which these proposed amendments are designed to achieve.

E. Area of Review

As used in the current regulations, the "area of review" (AOR) pertains to the area within which the owner or operator must identify all wells penetrating the confining zone and the injection zone and determine whether they have been properly completed or plugged and abandoned. It is defined either by a fixed radius of ¼ mile from the well bore or by a calculated "zone of endangering influence." As a result of the information gathered during the section 701 survey of hazardous waste injection wells, concerns raised by the regulatory negotiation committee, and information developed from recent research on well failures (Ref. 3, 4), EPA is proposing to amend the area of review requirements for hazardous waste injection wells by extending the area to be examined for abandoned or improperly completed wells to an area with a radius of two and one-half miles.

When the Agency initially proposed the UIC regulations (41 FR 36734, August 31, 1976), we specified a two-mile area of review for waste disposal wells, and a ¼-mile area of review for other types of injection wells. As amended, the Agency elected to reduce the fixed radius to ¼-mile for all wells. The decision was based in part ". . . because available formulae were not applicable in certain hydrogeologic conditions" (44 FR 23744, April 20, 1979). The discussion went on to note that in those circumstances where formulae were available, ¼-mile was usually a sufficient distance. Our ability to characterize the area of review has advanced. In virtually all cases where existing formulae could not describe the area of review, it exceeds ¼-mile. More importantly, recent studies on the consequences of "well failures" suggest that the single most significant potential source of contamination from injection wells is an unplugged borehole within the area of review (Ref. 3,4). As a result, the Agency intends to amend the area of review requirements as outlined below.

The Agency is proposing today to expand the fixed area of review to an area with a radius of two and one-half (2½) miles. In proposing this, EPA notes that the State of Texas, which currently specifies a two ½-mile AOR and the State of Louisiana, which specifies a two mile AOR, currently regulate over 60% of the wells injecting hazardous waste. Thus, EPA can significantly expand its area of review requirement without concurrently increasing the burden on the majority of operators. Even where there is an increase in burden the Agency believes the special characteristics of hazardous waste warrant a more stringent level of regulation.

For the calculated area of review, the proposed amendments replace "zone of endangering influence" with a new term, "cone of influence." The basic difference between the two terms is that the former—which is calculated using the Theis or equivalent equation—includes the pressure of the formation, while the latter defines the area of review as the area described by the incremental increase in pressure caused by the injection well. The Agency believes the pressure of concern should be the increment over static conditions since that is the pressure resulting from the regulated activity.

F. Corrective Action for Improperly Completed or Abandoned Wells

The current regulations contain requirements covering corrective action in several different sections. EPA is proposing both to add substantively to the corrective action requirements and to reorganize them. Current §§ 144.55, 146.07 and 146.12 address different components of corrective action. The Agency is proposing to include § 146.64 in Subpart G, to consolidate most of these requirements. The Agency believes that this will make existing requirements more easily understood. Under the new organization, the relevant requirements can be found in §§ 146.64 and 146.70. In general, § 146.64 states the requirements, and § 146.70 outlines the information required to demonstrate compliance with them.

Under the current regulations the owner operator need not submit a protocol for identifying wells within the area of review, but must submit a plan covering steps taken to address improperly completed or abandoned wells after they have been identified. The Agency is proposing to require that the owner or operator submit a protocol to the Director outlining how he intends to identify all wells within the area of review, and how he intends to determine whether wells have been adequately completed or plugged. The Director would be required to review the plan and determine whether it is adequate and either approve the plan, modify it, or deny the application.

The Agency is also proposing to expand any records search beyond "information of public record" as the current wording in § 146.14(a)(2) requires. The Agency is taking this action in response to information gained from research being conducted to reach decisions for implementing section 3004 (f) and (g). Modeling and field data have shown that one of the most critical factors governing containment is the presence of unplugged or improperly plugged or completed bore holes in the area of review (Refs. 2, 3, 4). Accordingly, we believe the methods used to identify and locate wells and the determination of whether or not such wells are properly plugged or completed warrants the same close scrutiny as the plan for properly closing them. In addition, the Agency has reviewed recent data and believes that methods beyond a records search are available and appropriate (Ref. 5).

C. Construction Requirements

The amendments being proposed today to the construction requirements generally reflect the Agency's attempt to achieve an appropriate balance between specific design standards and more general performance standards. The current regulations basically lay out a very broadly structured performance standard and list specific factors which the Director must consider when evaluating the construction of a well. Two factors have persuaded the Agency to revise this approach for hazardous waste injection wells.

First, the Agency stated the standards broadly in its original promulgation partly because of uncertainties in our ability to monitor flow and the interactions of fluids with construction materials (45 FR 42477 and 42478, June 20, 1980). We have since resolved these uncertainties. Further, section 1421 of the SDWA requires EPA to consider historical practices within a State. Thus, it seemed appropriate to frame construction requirements broadly, allowing consideration of specific factors in individual State programs. The section 701 report to Congress on hazardous waste injection, however, suggests that while there is some variety in the design and construction of hazardous waste wells, there is far less than with other classes of wells. Thus, the need to consider historical practices within a given State could be accommodated within a more specific regulatory framework. Accordingly, at least some of the original reasons for developing general standards for Class I injection wells are no longer germane.

Second, during the negotiations, several members expressed a strong preference for a set of standards which, while not inflexible, were nevertheless specific. They contended that requiring the Director to merely *consider* factors did not provide him with sufficient guidance. As a result of these considerations, the Agency is increasing the specificity of the construction requirements and adding some new requirements which go beyond merely stating requirements more precisely.

The changes being proposed today include additional criteria in the overall performance standards, more explicit compatibility requirements, and certain requirements for owners and operators injecting through a well equipped with a fluid seal.

1. General Performance Standards

The general standard for construction applicable to both new and existing wells specified in the current regulations is designed to "prevent the movement of fluids into or between underground sources of drinking water." Today's proposal would add two more. First, the well would have to be constructed in a manner that allows the use of appropriate testing and logging tools. Second, it would have to permit the use of continuous monitoring devices as required in § 146.67(f).

2. Compatibility

The issue of compatibility covers two areas: Compatibility of the well material with injected fluids and formation fluids; and compatibility of the injected fluid with formation minerals and fluids. The existing regulations handle compatibility concerns by listing relevant factors which the Director must consider such as corrosivity of the waste, design life of the well, characteristics of the formation fluid, and the characteristics of materials used to construct the well (§§ 146.12(c)(2), 146.12(e), and 146.14(b)(6)).

The proposed requirement would set a precise standard which would define compatibility for construction materials. New § 146.65(b) defines compatibility in terms of established and recognized standards such as those published by the American Petroleum Institute and the American Society for Testing Methods. In cases where an operator chooses to use an exotic material for which no published or recognized standards exist, comparable standards acceptable to the Director would have to be developed. Any such standard, whether published or approved by the Director, would then be a part of the permit. Under the proposal any time the materials in the well no longer meet or exceed the standard the operator would be in violation of a permit condition.

Proposed § 146.68(c), requires the Director to require corrosion monitoring and require the owner/operator to demonstrate the compatibility of the waste with construction materials prior to injecting. The owner or operator would have to submit to the Director a description of how the determination was made. Such a determination could be based on well known or established data on rates of corrosion exhibited by a given material exposed to a particular waste or formation fluid. This information could be used to establish a schedule of maintenance and replacement that would assure continued compatibility. Alternatively, the demonstration could be based on monitoring with corrosion loops, coupons, or similar systems. It should be noted that both the standard established in § 146.65, and the demonstration required in § 146.68, pertain to the waste, the formation fluids, and any reaction products.

3. Casing and Cementing Requirements for New Wells

This proposal would change the existing casing and cementing requirements for new wells by making them more explicit. For example, the current regulations require the Director to merely consider the location of USDWs when setting casing depths. Today's proposal would require the surface casing to be set below the base of the lowermost USDW. Similarly, the proposal would require the owner or operator to use a minimum of 120% of the calculated annular volume of cement and to recirculate to the surface, whenever possible, whereas the current regulations require only that a sufficient quantity of cement be used. Operators should have considerably more than 120% of the volume on hand when cementing. In fact, it has been suggested that up to 100% excess cement should be recirculated. The Agency is requesting comment on whether 20% recirculation is adequate or whether more should be required.

The proposal requires casing to have sufficient strength to withstand the maximum burst and collapse pressures and the maximum tensile stresses expected to occur during the design life of the well; the current requirements state that the Director must consider the injection pressure, the internal and external pressure, and axial loading. The Agency does not view these changes as major departures from its current regulations; rather, they represent a more specific statement of the existing requirements.

4. Tubing and Packer

The current regulations allow the use of an approved fluid seal. During the course of the section 701 Survey, EPA noted several instances in which operators of wells equipped with a fluid seal failed to detect operational problems. Based on that, the Agency began to consider whether the use of fluid seals should be either restricted or prohibited. Perhaps in response to EPA's research, several committee members advocated restricting or prohibiting their use. Others noted that with certain types of waste such seals may actually provide protection superior to packers. The Agency continues to believe that the simplicity of mechanical packers makes them preferrable in most cases. After careful analysis the Agency has determined, however, that the problems exhibited by fluid seals are primarily a function of inadequately trained operators and of the complexity of operating fluid seals effectively. After listening to extensive debate, the Agency decided that the most appropriate means of regulating such wells is to ensure that the operator is well trained, that the well can be accurately monitored on a continuous basis, that the permit contains appropriate pressure and volume limitations, and that the owner or operator demonstrate that the facility will provide a level of protection equal to or exceeding that which a packer-equipped well would provide. The proposed § 146.65(d)(3) contains such provisions. The Agency requests comment on this approach and particularly requests comments on the accuracy and sensitivity of fluid seal monitoring.

H. Logging, Testing and Sampling

Section 146.66, being proposed today takes requirements pertaining to logging and testing from existing §§ 146.12(d) and 146.14(b) and places them in a single section. In addition, the Agency is proposing to change the requirements in several important ways. The Agency would like to note that these requirements apply only to *new* hazardous waste wells.

Basically, the first change introduces in the regulations a description of what the goals of this section should be. A new use of the data would be the establishment of baseline data prior to injecting against which future logging and testing can be measured. The Agency believes this to be an important concept: the future utility of many logs is dependent on having a base log against which to compare. Thus, the operator's ability to demonstrate compliance at some point in the future may depend on what logs he ran when the well was first constructed. From this perspective, EPA believes that detailed logging prior to injecting can be of benefit to both the regulator and the permittee.

Another change being proposed today involves the tests required both before the casing is set and after it is in place. The wording in the existing regulations does not clearly indicate whether the tests outlined in § 146.12(d)(2) are mandatory or whether only some subset need to be run. The proposed language makes it clear that all the listed tests must be run. Some committee members were concerned that this could prevent the Director from requiring a better test or could "freeze" technology. They noted that the technologies used to test wells were evolving rapidly and urged that we allow the Director to approve an equivalent alternative. The proposed regulation reflects this concern and allows the Director to approve an alternative or additional test when he deems it appropriate.

The Agency is proposing to substantially change the mechanical integrity requirements in § 146.68(d). The initial demonstration of mechanical integrity for new wells, contained in § 146.66(a)(3) reflects this change. A detailed discussion outlining the Agency's rationale for this revision can be found in the section of the preamble addressing § 146.68, Testing and Monitoring Requirements.

Current § 146.12(a)(15), requires the Director to evaluate the operator's coring program prior to granting a permit. Some members of the committee, concerned that this provision did not place a burden on the Director to require coring, or on the operator to conduct it, urged the Agency to state the requirement more affirmatively. They also wanted to be sure the Director had authority to require coring of formations other than the injection and confining zones. Others believed that coring might not be necessary when information from a nearby source is available. After consideration, the Agency believes that the relatively inexpensive task of coring is justifiable in view of the information provided. Accordingly, the revisions being proposed today state the requirement more prescriptively and afford the Director broad authority to require cores from other formations. The Agency would like to note, however, that the situations in which the Director would want to require coring of formations other than the injection or confining zones should be few.

The Agency is also proposing to require the owner or operator to conduct pump or injectivity tests to identify the hydrogeologic properties of the injection zone through an empirical method. Such tests also have the advantage of yielding an aggregate figure which represents an entire strata or section of a strata. Again, the requirement for such a test is implicitly stated in the current regulations which require the Director to "consider" the owner or operator's formation testing program. Thus, the Agency does not see this as a substantive new requirement.

Finally, in § 146.66(f), the Agency is proposing language which would assure that the Director has the opportunity to witness logging or testing procedures by requiring the permittee to submit a schedule of testing activities at least 30 days prior to conducting the specified tests.

I. Operating Requirements

In new § 146.67, the Agency is proposing to add several operating requirements to those which are specified in § 146.13. These include:

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requirements for maintaining an annulus pressure which exceeds injection pressures; controls for wells injecting waste which could generate gases; requirements for wells handling waste from a variety of sources; use of automatic shutoff or alarm devices; and additional notification requirements when operating problems occur.

1. Annulus Pressure

New § 146.67(c) would require the owner or operator to maintain an annulus pressure which exceeds the injection pressure, unless it would damage the well. Under such operating conditions, a leak in the tubing would always result in annulus fluid moving into the tubing, not in waste moving into the annulus. Some members pointed out that with very deep wells constructed out of certain materials pressures could be sufficiently high to collapse the tubing. The committee agreed that under these circumstances it was reasonable to afford the Director some discretion in imposing the requirement. Where the Director does relax this requirement because the well is too deep, the most critical section of the well—the part adjacent to a USDW—would still be operated with a favorable pressure relationship.

2. Controls for Gas Generation

In the past, several wells injecting acidic waste into formations either composed of carbonates or having substantial carbonate cementing have suffered operational problems. Although in no such case has a USDW been affected, EPA has determined that some additional controls are appropriate. Accordingly, § 146.67(e), as proposed, would dictate that the permit limit the temperature, pH, or acidity of the waste and contain procedures for preventing pressure loss during shutdown operations—the most critical period for gas generation. Such requirements would typically prohibit the operator from shutting in the well until a buffer had been injected to remove any acid from the vicinity of the well bore. If an emergency shut-in were necessary, the operator could shift to a neutral injection stream prior to shutting in the well. Controls on the temperature, pH, or acidity of the waste would limit the rate of gas generation or prevent it from being generated near the well bore.

One option before the committee was to ban such injection altogether. Some noted that the problems, while real, had not caused contamination of USDWs and, more importantly, could have the beneficial effect of neutralizing the acid. On reflection, the Agency elected to adopt the approach outlined above.

A further concern with acid waste injection expressed by some centered on the effect the acid might have on the confining zone and the injection zone. Specifically, they were concerned that the waste might destroy the capacity of the confining zone to confine, and change the hydrologic properties of the injection zone to the extent that the modeling done to identify the area of review and to assure proper siting would no longer be valid.

The Agency has investigated the geochemical effects of acid waste injection thoroughly, and will continue to do so. At this time, there is no evidence that acid wastes can influence formations to such an extent. Indeed, available information suggests that the total amount of dissolution resulting from injection of acid wastes will not affect the structural integrity of the system (Ref. 7, 8).

3. Automatic Alarms and Shutoff Devices

In the course of administering the UIC program in States without primacy, EPA noted that several operators used automatic alarms or automatic shutoff systems. Such systems are designed to either set off an alarm or shut in the well whenever certain operating parameters go beyond a prescribed range. The Agency is proposing to require such systems for all wells injecting hazardous waste.

The Agency is also proposing in § 146.67 (g), (h), and (i) a series of measured responses to instances when monitoring is triggered. The proposal would require the operator to identify the cause of the incident, shut off the well if necessary, determine whether a leak has occurred, and notify the Director within 24 hours if one has. In cases where the well has lost mechanical integrity, the operator would have to restore and demonstrate well integrity prior to resuming injection. In cases where there has been a release into a USDW, the operator would have to develop a cleanup plan and submit it to the Director for approval. In cases where the USDW served as a source of drinking water, the operator would also be required to publish a notice in a newspaper of general circulation. The operator would also be required to notify the Director prior to conducting any well workover.

The cleanup plan developed pursuant to proposed § 146.67(i) would not relieve the operator from meeting any concurrent requirements imposed under section 3004(u) of HSWA. The Agency's intent in imposing this requirement is to assure that cleanup occurs as rapidly as possible. As a practical matter, the Director should coordinate any cleanup activities with the appropriate institution implementing the section 3004(u) requirements. Any cleanup action being considered under this proposed section should use the criteria being developed by the Agency under section 3004(u) for deciding whether cleanup is necessary, what cleanup levels are appropriate, and what financial responsibility requirements apply.

Similarly, these requirements are meant to supplement, not replace the requirements for twenty-four hour reporting in § 144.51(l)(6). These amendments are being added merely to clarify how the operator is expected to respond to an alarm or shut down triggered by the monitoring required by proposed § 146.67(f). Members of the committee pointed out that for an alarm or shutoff device to be effective, the range of values which would trigger them must be such that some false warnings would occur. For example, a temperature change in the fluid injected could reduce pressures in the annulus sufficiently to set off one of these systems. The Agency is not interested in receiving a report any time such an event occurs; nor would it want the operator to shut in the well under these circumstances. It became clear during the negotiations, that EPA would have to articulate how we would want an operator to respond when an alarm is triggered. This section outlines these expectations.

J. Testing and Monitoring Requirements

As with several of today's amendments, this section both restates existing requirements more explicitly, changes some more substantively and adds new requirements. This section would add a requirement for a waste analysis plan, establish more precise standards for hydrogeologic compatibility determinations, specify requirements for compatibility monitoring, revise mechanical integrity testing, and establish more specific ambient monitoring requirements.

1. Waste Analysis Plan

The current regulations require analysis of the injected fluid "with sufficient frequency to yield representative data of their characteristics" § 146.13(b). In the Agency's implementation of the program, numerous questions have been raised concerning how to determine a sufficient frequency and how to interpret representative data.

Members of the committee suggested that the Agency adopt the approach

specified in § 264.13(b) of the RCRA regulations. This section requires the owner or operator to develop a written plan describing how the waste will be analyzed and sampled and how the analysis will assure that the samples will be representative. The Agency believes this to be a sensible approach. Most hazardous waste injection well operators will have surface units subject to RCRA and will have developed such a plan already. The approach retains flexibility, but eliminates the ambiguity in the current regulations. Accordingly, EPA is proposing § 146.68(a), which closely parallels the RCRA requirement.

2. Hydrogeologic Compatibility

A similar approach is being proposed in § 146.68(b) to address hydrogeologic compatibility. Under the proposed approach, the operator would submit a plan which identifies anticipated reaction products and demonstrates to the Director's satisfaction that neither the waste nor the reaction products would adversely affect the injection or confining zone; *i.e.*, both the injection and confining zones must continue to satisfy siting standards in § 146.62.

The current regulations state these requirements in § 146.12 and § 146.14. As in other areas, this amendment clarifies and adds some specificity to them, but does not substantially alter them.

3. Compatibility of Well Materials

The proposed approach to assuring that the materials in the well are compatible with injected fluid is discussed in detail in Section G.2 of this preamble which outlines the proposed construction requirements. That section would mandate corrosion monitoring for corrosive wastes, and would give the Director discretion in requiring it in other cases. Essentially, corrosion monitoring devices expose the construction materials to the waste under operating conditions. The operator can then remove this material and monitor for loss of mass, cracking, or pitting. Traditionally, such monitoring has been accomplished by means of loops (actual components placed in a manifold or some other accessible area) or coupons (pieces of material placed in the waste stream).

The committee explored several other options for addressing questions regarding compatibility. Some members wanted to require corrosion monitoring in all cases. Others noted that in many cases the rates of corrosion can be accurately predicted, particularly in wells with a long operating history and in wells which inject a waste stream that remains constant in content. After extensive analysis, the Agency decided that it would be most appropriate to afford the Director some latitude in requiring monitoring. In the case of corrosive wastes, however, the Agency believes that corrosion monitoring should be mandatory and a requirement to this effect has been incorporated. The Agency requests comment on this requirement.

4. Mechanical Integrity Testing

Current mechanical integrity tests (MITs) require the operator to check for fluid movement behind the casing (including movement of formation fluids through cement channels) and for leaks in the tubing, casing or packer. The tests are to be run at least once every five years. During the initial proposal and promulgation of the UIC regulations, the question of how frequently the tests should be run was a controversial one (see 45 FR 42500 *et seq.*, June 24, 1980). For this reason, in part, EPA included § 146.15 when it promulgated the current regulations. This section was to be used to gather data to assess certain of the requirements to be sure they were adequate. Chief among these were the mechanic integrity testing requirements. After analyzing annual and quarterly reports and reviewing the results of the section 701 report, the Agency believes that the frequency of certain of the tests is inadequate. In addition, EPA believes that certain tests not currently specified in the regulations should be added. In several instances, problems developed and evolved within a five-year time period. While these problems were detected by routine monitoring, it clearly suggests that the testing frequency needs to be increased.

In view of these concerns, EPA is proposing to require annual pressure tests. The Agency is also proposing to require the operator to conduct radioactive tracer surveys (RTS) annually. This test is required in many State programs and has been approved by EPA for use in some federally-implemented programs. RTS tests are extremely effective for locating leaks in the bottom hole cement.

In addition, we are proposing to require the use of a tool to evaluate the casing prior to operating the well and at least once and every five years thereafter. This tool, which uses electro-magnetic flux to measure the thickness of the casing, has the advantage of being predictive. That is, it not only indicates whether a leak is present in the well, but can also show developing weaknesses. In addition, the test can be used to ascertain the condition of the cement behind the casing. The proposed rule affords the Director some discretion in requiring this log since it is not effective with some casing materials.

Several members of the committee suggested that tests which require the tubing to be pulled should not be required at any specific intervals, but should be run whenever the well is worked over. The Agency disagrees. The tests in question, the temperature, noise or cement bond logs, are currently required to be run at least once every five-years by existing regulations. The casing tool, which also must be run with the tubing pulled is proposed to be run at least once every five years also. Moreover, a demonstration of mechanical integrity is already required after every workover. The proposed regulations make clear that the Director may schedule the tests to coincide with workovers whenever possible

5. Ambient Monitoring

Section 1426 of the Safe Drinking Water Act requires the Administrator to identify and list by regulation methods for monitoring all Class I well sites. Thus, the proposal being made today for monitoring has a broader scope than the other amendments. The requirements in § 146.68(e) are also being proposed at § 146.13 and would apply to owners and operators of all Class I wells, not just those who inject hazardous waste.

The debate surrounding monitoring for Class I injection wells has been a protracted one. The Agency has been investigating methods which might be useful for some time and will continue to do so. While some analysis is still being performed, one fact has become clear: with one exception, there is no single technique which could provide meaningful data at all sites. The question of what might prove effective at a given site depends on the hydrogeologic setting and characteristics of the operation.

The exception involves monitoring the pressure decay in the injection zone when the well is not injecting and assessing whether the decay curve tracks predictions. Such predictions are made for siting and area of review calculations and are based on hydrogeologic data and operating parameters such as injection pressure, fluid density and volume injected. If the geology has been accurately characterized, then the pressure decay should closely track the predictions. On the other hand, if an unexpected fault or fracture is transmitting fluid it will decline at a faster rate. Conversely, if a boundary condition such as an impermeable fault is present, the decay curve will be slower than anticipated. Accordingly, the Agency is proposing to

require pressure decay monitoring of the injection zone annually.

Testing the pressure in the first porous formation above the injection zone can also be an effective method of monitoring, although its utility is not as universal as monitoring pressure decay in the injection zone itself. Pressure is distributed relatively uniformly around the well bore. If the confining zone did leak, the resulting pressure increase in the zone above would also be distributed uniformly. Thus, unlike water quality monitoring (which relies on the well or wells being placed in the path of a plume in order to detect a release), pressure monitoring is capable of detecting a leak wherever the pressure is raised sufficiently. However, modeling has shown that pressure monitoring is most useful when the overlying porous zone is relatively thin and injection pressures and volumes are high. In many cases, background perturbations in formation pressures caused by such phenomena as earth tides limit our ability to identify pressure increases attributable to the well. Nevertheless, the Agency believes that, in appropriate circumstances, pressure monitoring can be an effective tool. Because its use is not as universally applicable as monitoring of pressure decay, the EPA is allowing the Director discretion in applying it.

When a monitoring well is required in the overlying porous formation, however, the owner or operator would be required to monitor the groundwater quality in the aquifer. While the utility of using a single well or even a set of wells to monitor water quality at great depths may be questionable, once a well is installed to detect pressure changes, it adds little additional expense to sample it for water quality changes. While the absence of any change is certainly not dispositive, the presence of a change might be.

The proposal also lists several other alternatives which the Director may use when prescribing a monitoring plan. These include: geophysical techniques, water quality monitoring in the overlying aquifer, periodic water quality monitoring in the lowermost USDW, and any other monitoring which the Director believes necessary to assure the protection of USDWs or to calibrate models.

K. Reporting Requirements

The Agency is proposing to add several new reporting requirements. These include reports on changes in the relationship between injection pressure and flow rate or volume which go beyond a range specified in the permit, a description of any event which triggers an automatic alarm and the operator's response, the total volume of fluid injected, and the volume of annular fluid lost. Members of the negotiating committee unanimously criticized the reporting requirements as stated in § 146.13 of the current regulations. Some found the requirement to report monthly average and maximum injection rates or volumes and pressures to be burdensome. Others pointed out that such data does not provide the specifc information necessary to assess the operation. The Agency agrees and is amending the requirements accordingly. The reporting being proposed should give the Director the specific information he needs to review the facility, and reduce the overall burden to the operator.

L. Information to Be Evaluated by the Director

This section essentially restates the information required in § 146.14 of the existing regulations. One option the Committee considered was proposing language to establish clearly the limits and responsibilities of the Director in analysing the information submitted by the Director and the obligations of the operator. The Agency is not proposing such rules today since this, in fact, mirrors the way the program has been implemented, and is at least implicitly stated in several sections of the regulations (§§ 124.3 and 144.12).

M. Closure

This section reorganizes and consolidates requirements found in the current regulations at §§ 144.28(c), 144.51(o), 144.52(a), 146.10, and 146.14. In additon, the Agency is proposing to add three new requirements. These are detailed below.

Proposed § 146.71(d)(1) would require the operator to observe and record the pressure decay for a time specified by the Director. The Director would use this data in conjunction with the results of transient pressure monitoring conducted pursuant to § 146.68 to determine whether the operation has conformed with predicted performance. The Agency believes this information could be useful in determining whether any specific post closure care requirements would be appropriate.

We are also proposing to require the owner or operator to demonstrate mechanical integrity prior to plugging the well. As with many of the amendments today, the Agency requires this in permits in all cases, and is merely specifying existing practice in the regulations. In addition, we are clarifying that both the owner or operator, and the person performing the closure, if different, must certify that the facility was closed in accordance with the plan (§ 146.71(c)).

N. Post Closure Care and Financial Responsibility

The Agency is proposing to apply post closure care requirements to injection wells. In the original promulgation of the UIC program, no provision was made for post closure care or any associated financial responsibility demonstrations. At that time, EPA did not believe such requirements were necessary. Once a well was properly plugged and once the pressures dropped to near background, physics suggested the waste would remain in the injection zone. In support of this contention, the Agency could point to petroleum reserves which had remained in traps for tens, even hundreds of millions of years. In addition, ground water isotope data suggested that many brines remained trapped for even longer time periods.

During the negotiations, several members expressed concerns about the potential for future activities to disturb the waste. They argued that even though a properly chosen site should contain the waste indefinitely under natural conditions, it might not do so in the face of other injection activities, oil and gas related drilling activities, or other man induced forces. They also noted that pressures do not decline immediately. Indeed, in some instances, pressures may remain significantly elevated for years.

Upon consideration the Agency agrees and is proposing post closure care and associated financial responsibility requirements for owners of hazardous waste injection wells. The Agency believes the special problems associated with hazardous waste warrant such action.

The requirements being proposed track those promulgated for RCRA in 40 CFR Parts 264 and 265. These were promulgated at 47 FR 32350 *et seq.* July 26, 1982, which contains a complete discussion of the requirements. Briefly, § 146.72 would require the owner or operator to submit a survey plat indicating a permanent benchmark to the appropriate zoning authority and to the EPA Regional Office in which the activity occurred; place a notation on the deed describing the activity; notify any State and Federal agencies which regulate drilling activities; and continue any monitoring required by the Director. The July 26, 1982 **Federal Register** cited above provides a more thorough explanation of these requirements and the Agency's rationale in developing them.

The Director would predict the amount of post closure financial responsibility to be required at the permit stage by requiring the owners or operators of Class I hazardous waste injection wells to submit site-specific pressure modeling results when applying for a permit. This modeling would predict the length of time pressure would remain elevated after all injection activities have ceased. In addition, the modeling would be used to determine what monitoring, if any, would be required in the permit. Thus, prior to granting any permit, the Director would have evidence showing both what types of post closure monitoring may be necessary and how long the monitoring would need to go on. This information would aid in determining the total amount of post closure financial responsibility needed. The demonstration would be subject to the procedural and fiscal requirements outlined in 40 CFR Part 144, Subpart F. The Agency intends to modify these instruments as appropriate for Post Closure care. We specifically invite comment on what changes are appropriate.

The only significant difference between the requirements proposed under RCRA and these being proposed today is the term for which the owner must monitor the well. This proposal would require him to do so until the pressure in the injection zone reaches background.

IV. Summary of Today's Proposal—Amendments to Parts 144, 124, and § 146.13

A. Part 124

EPA is amending Part 124 to require that state agencies which regulate oil and gas activities or mineral exploration be notified of permit activities for all Class I wells. Several State regulators participating in the regulatory negotiation process indicated that this was the practice in their states and suggested that the notice could help agencies coordinate their programs and apply specific requirements when appropriate.

B. Part 144

The Agency is proposing to amend § 144.31 to clarify that a permit is needed during the entire life of the facility which includes the post-closure care period. An issue which came up in the course of revising these regulations is the extent to which EPA has authority over an operator who is no longer injecting waste and whose permit may have expired. This was perceived as a particular problem with regard to assuring that plugging and abandonment, closure and post closure requirements are met. The Agency agrees that the current regulatory structure could be subject to abuse. Accordingly, we are proposing to amend § 144.31 by adding a new section (h) which would enable the Director to require the owner or operator of a currently authorized Class I hazardous waste well to obtain a post closure permit.

Moreover, existing requirements at § 144.12 apply to all phases of injection operations, including plugging and abandonment, closure, and post closure activities. This provision does not depend upon a permit; rather it applies directly to the owner or operator. Thus, whenever an injection activity endangers a USDW or the health of persons, the Agency has authority to enforce. In addition, the Director must assure, prior to granting a permit, that the owner or operator has demonstrated financial responsibility adequate to carry out closure and post closure care.

In addition, the Agency is proposing to amend § 144.39 to broaden the reasons for which permits may be modified or revoked and reissued. Specifically, the proposal would require permit modification either when regulations change, or when the waste is changed or reclassified. The preamble to 40 CFR Part 146 outlines the basis for amending § 144.39(b). The intent of this change, briefly, is to give the Director the discretion to revise or reissue a permit when the waste becomes or is determined to be hazardous as defined in section 261.

C. Section 146.13

Proposed § 146.13 would satisfy the mandate of section 1426 of the Safe Drinking Water Act by requiring the owners or operators of *all* Class I wells to develop an ambient monitoring program. This proposed amendment differs from the other proposals made today in that it is not restricted solely to Class I hazardous waste wells, but rather is applicable to all Class I wells.

At a minimum, the Director shall require a monitoring of the pressure buildup in the injection zone. This would require an annual shut down of the well for a period of time sufficient to conduct a valid observation of the pressure fall-off curve.

At the Director's discretion, one or more of the following site-specific monitoring techniques may also be required in order to prevent the contamination of USDWs:

1. Continuous monitoring for pressure changes in the first aquifer overlying the confining zone;

2. The use of indirect, geophysical techniques to determine pertinent characteristics of the formation and injected fluids;

3. Periodic monitoring of the ground water quality in the lowermost USDW; or

4. Any other technique which the Director deems necessary to protect USDWs.

Further detail concerning these proposed ambient monitoring amendments can be found in section (III)(J)(5) of today's proposal

V. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order 12291 requires EPA to assess the effect of contemplated Agency actions during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order 12291 requires that regulatory agencies prepare an analysis of the regulatory impact of major rules. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or

2. A major increase in costs or prices for consumers or individual industries; or

3. Significant adverse effects on competition, employment, investment, innovation or international trade.

The Agency has performed an analysis of the proposed regulation to assess the economic effect of associated compliance costs. Total annualized compliance costs of the proposed regulation are estimated to total $63 million. Total capital costs are estimated to total $15 million and one-time petition costs are estimated to be $3 million. These costs indicate that the proposal does not constitute a major rule under Executive Order 12291 and EPA has not prepared a formal regulatory impact analysis of today's proposal. The Agency has, however, prepared an assessment of the cost and potential economic effects of the proposed rule.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Analysis Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small

organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have significant economic effect on a substantial number of small entities.

Owners and operators of hazardous waste injection wells are generally major chemical, petrochemical and other manufacturing companies. The Agency is not aware of any small entities that would be affected by this rule. As a result of this finding EPA has not prepared a formal Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 0370) and a copy may be obtained from Eric Strassler, Information Policy Branch; EPA; 401 M St., SW. (PM-223); Washington, DC 20460 or by calling (202) 382-2738. Submit comments on these requirements to EPA and: Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW.; Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

VI. References

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List of Subjects in 40 CFR Parts 124, 144, 146 and 148

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping requirements, Confidential business information, Waste treatment and disposal, Water supply, Water pollution control, Intergovernmental relations.

Dated: August 14, 1987.

Lee M. Thomas,

Administrator.

Therefore it is proposed that Chapter I of Title 40 be amended as follows:

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for Part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300f *et seq.;* and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Section 124.10 is amended by redesignating paragraphs (c)(1) (viii) and (ix) as paragraphs (c)(1) (ix) and (x) and by adding a new paragraph (c)(1)(viii) to read as follows:

§ 124.10 Public notice of permit actions and public comment period.

* * * * *

(c) * * *

(1) * * *

(viii) For Class I injection well UIC permits only, state and local oil and gas regulatory agencies and state agencies regulating mineral exploration and recovery;

* * * * *

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for Part 144 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*

2. Section 144.31 is amended by adding a new paragraph (h) to read as follows:

§ 144.31 Authorization for a permit; authorization by permit.

* * * * *

(h) *Scope of UIC permit requirement.* The UIC program requires a permit for the injection of fluids. Owners or operators of hazardous waste injection wells must have permits during the active life of the injection well (including the closure and post closure care periods specified in §§ 146.71 and 146.72).

3. Section 144.39 is amended by revising paragraph (a)(3) introductory text, and by adding a new paragraph (b)(3) to read as follows:

§ 144.39 Modification or revocation and reissuance of permits.

* * * * *

(a) * * *

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits other than for Class I hazardous waste injection wells, Class II, or Class III wells may be modified during their terms for this cause only as follows:

* * * * *

(b) * * *

(3) A determination that the waste being injected is a hazardous waste as defined in § 261.3 either because the definition has been revised, or because a previous determination has been changed.

* * * * *

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

1. The authority citation for Part 146 continues to read as follows:

Authority: Secs. 1421, 1422, 1423, 1431, 1445, 1447, and 1450 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.*

2. Section 146.13 is amended by adding paragraph (d) to read as follows:

§ 146.13 Operating, monitoring and reporting requirements.

* * * * *

(d) *Ambient monitoring.* (1) Based on a site-specific assessment of the potential for fluid migration from the well or injection zone that may be harmful to human health or the environment and on the potential value of monitor wells to detect such migration, the Director shall require the owner or operator to develop a monitoring program. At a minimum, the Director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(2) When prescribing a monitoring system the Director may also require:

(i) Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the Director;

(ii) The use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the Director, or to provide other site specific data;

(iii) Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(iv) Periodic monitoring of the ground water quality in the lowermost USDW; or

(v) Any additional monitoring necessary to protect USDWs.

3. A new Subpart G is added to read as follows:

Subpart G—Criteria and Standards Applicable to Class I Hazardous Waste Injection Wells

Sec.

146.61 Applicability.
146.62 Minimum criteria for siting.
146.63 Area of review.
146.64 Corrective action for wells in the area of review.
146.65 Construction requirements.
146.66 Logging, sampling, and testing prior to new well operation.
146.67 Operating requirements.
146.68 Testing and monitoring requirements.
146.69 Reporting requirements.
146.70 Information to be evaluated by the Director.
146.71 Closure.
146.72 Post-closure care.
146.73 Financial responsibility for post-closure care.

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SUBPART G—CRITERIA AND STANDARDS APPLICABLE TO CLASS I HAZARDOUS WASTE INJECTION WELLS

§ 146.61 Applicability.

(a) This subpart establishes criteria and standards for underground injection control programs to regulate Class I hazardous waste injection wells. Unless otherwise noted this Subpart supplements the requirements of Subpart A and applies instead of Subpart B to Class I hazardous waste injection wells.

(b) *Definitions.*

Cone of influence means that area around the well within which increased injection zone pressures caused by the hazardous waste injection well would be sufficient to drive fluids into an underground source of drinking water (USDW).

Existing well means a Class I well which was authorized prior to [FR insert effective date of these regulations] by an approved State program, or an EPA-administered program.

New well means any injection well which is not an existing well.

Transmissive fault or fracture is a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

§ 146.62 Minimum criteria for siting.

(a) All Class I hazardous waste wells shall be sited in such a fashion that they inject into a formation that is beneath the lowermost formation containing within one quarter mile of the well bore an underground source of drinking water.

(b) The siting of Class I hazardous waste wells shall be limited to areas that are geologically suitable. The Director shall determine geologic suitability based upon:

(1) An analysis of the structural and stratigraphic geology, the hydrogeology, and the seismicity of the region;

(2) An analysis of the local geology and hydrogeology of the well site, including, at a minimum, detailed information regarding stratigraphy, structure and rock properties, aquifer hydrodynamics and mineral resources; and

(3) A determination that the geology of the area can be described confidently and that waste fate and transport can be accurately modeled.

(c) Class I hazardous waste injection wells shall be sited in such a manner that:

(1) The injection zone has sufficient permeability, porosity, thickness and areal extent to prevent migration of fluids into USDWs.

(2) The confining zone:

(i) Is laterally continuous and free of transecting transmissive faults or fractures over an area sufficient to prevent the movement of fluids into a USDW; and

(ii) Contains at least one formation of sufficient thickness and with lithologic and stress characteristics capable of preventing vertical propagation of fractures.

(d) The owner or operator shall demonstrate to the satisfaction of the Director that:

(1) The confining zone is separated from the base of the lowermost USDW by at least one sequence of permeable and less permeable strata that will provide an added layer of protection for the USDW in the event of fluid movement in an unlocated borehole or transmissive fault; or

(2) Within the area of review, the piezometric surface of the fluid in the injection zone is less than the piezometric surface of the lowermost USDW, considering density effects, injection pressures and any significant pumping in the overlying USDW; or

(3) There is no USDW present.

(4) The Director may approve a site which does not meet the requirements in paragraph (d) (1), (2), or (3) section if the owner or operator can demonstrate to the Director that because of the geology, nature of the waste, or other considerations, abandoned boreholes or other conduits would not cause endangerment of USDWs.

§ 146.63 Area of review.

For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of § 146.6. The area of review for Class I hazardous waste injection wells shall be either:

(a) A 2½ mile radius around the well bore; or

(b) The calculated cone of influence of the well, whichever is greater.

§ 146.64 Corrective action for wells in the area of review.

For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of §§ 144.55 and 146.07.

(a) The owner or operator of a Class I hazardous waste well shall as part of the permit application submit a plan to the Director outlining the protocol used to:

(1) Identify all wells penetrating the confining zone or injection zone within the area of review; and

(2) Determine whether wells are adequately completed or plugged.

(b) The owner or operator of a Class I hazardous waste well shall identify the location of all wells within the area of review that penetrate the injection zone or the confining zone and shall submit as required in § 146.70(b)(3):

(1) A tabulation of all wells within the area of review that penetrate the injection zone or the confining zone; and

(2) A description of each well or type of well and any records of its plugging or completion.

(c) For wells that are improperly plugged, completed, or abandoned, or for which plugging or completion information is unavailable, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid from the injection zone into USDWs. Where the plan is adequate, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate (based at a minimum on the factors in paragraph (e) of this section), the Director shall:

(1) Require the applicant to revise the plan;

(2) Prescribe a plan for corrective action as a condition of the permit; or

(3) Deny the application.

(d) Requirements:

(1) Existing injection wells. Any permit issued for an existing Class I hazardous waste injection well requiring corrective action other than pressure limitations shall include a compliance schedule requiring any corrective action accepted or prescribed under paragraph (c) of this section. Any such compliance schedule shall provide for compliance no later than two years following issuance of the permit and shall require observance of appropriate pressure limitations under paragraph (d)(3) of this section until all other corrective action measures have been implemented.

(2) New injection wells. No owner or operator of a new Class I hazardous waste injection well may begin injection until all corrective actions required under this section have been taken.

(3) The Director may require pressure limitations in lieu of plugging. If pressure limitations are used in lieu of plugging, the Director shall require as a permit condition that injection pressure be so limited that pressure in the injection zone at the site of any improperly completed or abandoned well within the area of review would not be sufficient to drive fluids from the injection stratum into the lowermost USDW. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be made part of a

compliance schedule and can be required to be maintained until all other required corrective actions have been implemented.

(e) In determining the adequacy of corrective action proposed by the applicant under paragraph (c) of this section and in determining the additional steps needed to prevent fluid movement into USDWs, the following criteria and factors shall be considered by the Director:

(1) Nature and volume of injected fluid;

(2) Nature of native fluids or byproducts of injection;

(3) Geology;

(4) Hydrology;

(5) History of the injection operation;

(6) Completion and plugging records;

(7) Closure procedures in effect at the time the well was closed;

(8) Hydraulic connections with USDWs;

(9) Reliability of the procedures used to identify abandoned wells; and

(10) Any other factors which might affect the migration of injected waste or formation fluids into USDWs.

§ 146.65 Construction requirements.

(a) *General.* All existing and new Class I hazardous waste wells shall be constructed and completed to:

(1) Prevent the movement of fluids into or between USDWs or into any unauthorized zones;

(2) Permit the use of appropriate testing devices and workover tools; and

(3) Permit continuous monitoring of injection tube and long string casing as reguired pursuant to § 146.67(f).

(b) *Compatibility.* All well materials must be compatible with fluids with which the materials may be expected to come into contact. A well shall be deemed to have compatibility as long as the materials used in the construction of the well meet or exceed standards developed for such materials by the American Petroleum Institute, The American Society for Testing Materials, or comparable standards acceptable to the Director.

(c) *Casing and Cementing of new wells.* (1) Casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well, including the post-closure care period. The casing and cementing program shall be designed to isolate the injection zone from overlying aquifers, to prevent movement of fluids along the borehole and to protect USDWs from potential leaks of fluids from the well. In determining and specifying casing and cementing requirements, the following information as required by § 146.70 shall be considered:

(i) Depth to the injection zone;

(ii) Injection pressure, external pressure, internal pressure and axial loading;

(iii) Hole size;

(iv) Size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification and construction material);

(v) Corrosiveness of injected fluid, formation fluids and temperature;

(vi) Lithology of injection and confining zones;

(vii) Type or grade of cement; and

(viii) Quantity and chemical composition of the injected fluid.

(2) One surface casing string shall, at a minimum, extend into the confining bed below the lowest formation that contains a USDW and be cemented by circulating cement from the base of the casing to the surface, using a minimum of 120% of the calculated annular volume.

(3) At least one long string casing, using a sufficient number of centralizers, shall extend to the injection zone and shall be cemented by circulating cement to the surface in one or more stages:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure; and

(ii) In a quantity no less than 120% of the calculated volume necessary to fill the annular space.

(4) Circulation of cement may be accomplished by staging. The Director may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate using logs that the cement is continuous and does not allow fluid movement behind the well bore.

(5) Casings, including any casing connections, must be rated to have sufficient structural strength to withstand, for the design life of the well:

(i) The maximum burst and collapse pressures which may be experienced during the construction, operation and closure of, the well; and

(ii) The maximum tensile stress which may be experienced at any point along the length of the casing during the construction, operation, and closure of the well.

(6) At a minimum, cement and cement additives must be of sufficient quality and quantity to maintain integrity over the design life of the well.

(d) *Tubing and packer.* (1) All Class I hazardous waste injection wells shall inject fluids through tubing with a packer set above the injection zone.

(2) In determining and specifying requirements for tubing and packer, the following factors shall be considered:

(i) Depth of setting;

(ii) Characteristics of injection fluid (chemical content, corrosiveness, temperature and density);

(iii) Injection pressure;

(iv) Annular pressure;

(v) Rate (intermittent or continuous), temperature and volume of injected fluid;

(vi) Size of casing; and

(vii) Tubing tensile, burst, and collapse strengths.

(3) The Director may approve the use of a fluid seal if he determines that the following conditions are met:

(i) The operator demonstrates that the seal will provide a level of protection comparable to a packer;

(ii) The operator has demonstrated that the staff is, and will remain, adequately trained to operate and maintain the well and to identify and interpret variations in parameters of concern;

(iii) The permit contains specific limitations on variations in annular pressure and loss of annular fluid;

(iv) The design and construction of the well will allow continuous monitoring of the annular pressure and mass balance of annular fluid; and

(v) A secondary system shall be used to monitor the interface between the annulus fluid and the injection fluid and the permit shall contain requirements for testing the system every three months and recording the results.

§ 146.66 Logging, sampling, and testing prior to new well operation.

(a) During the drilling and construction of new Class I hazardous waste injection wells, appropriate logs and tests must be run to determine or verify the depth, thickness, porosity, permeability, and rock type of, and the salinity of any entrained fluids in, all relevant geologic units to assure conformance with performance standards in § 146.65, and to establish accurate baseline data against which future measurements may be compared. A descriptive report interpreting results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director.

At a minimum, such logs and tests shall include: (1) Deviation checks on all holes constructed by drilling a pilot hole which are enlarged by reaming or another method. Such checks shall be at sufficiently frequent intervals to determine the location of the borehole and to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

(2) Such other logs and tests as may be needed after taking into account the availability of similar data in the area of

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the drilling site, the construction plan, and the need for additional information, that may arise from time to time as the construction of the well progresses. At a minimum, the following logs shall be required in the following situations:

(i) Upon installation of the surface casing:

(A) Resistivity, spontaneous potential, and caliper logs before the casing is installed; and

(B) A cement bond, temperature, density log after the casing is set and cemented.

(ii) Upon installation of the long string casing:

(A) Resistivity, spontaneous potential, porosity, caliper and gamma ray logs before the casing is installed;

(B) Fracture finder logs; and

(C) A cement bond, temperature, density log after the casing is set and cemented.

(iii) The Director may allow the use of an alternative to the above logs when an alternative will provide equivalent or better information.

(3) A mechanical integrity test consisting of:

(i) A pressure test with liquid or gas;

(ii) A radioactive tracer survey;

(iii) A temperature or noise log;

(iv) A casing inspection log, if required by the Director; and

(v) Any other test required by the Director.

(b) Whole cores or sidewall cores of the confining and injection zones and formation fluid samples from the injection zone shall be taken. The Director may require the owner or operator to core other formations in the borehole.

(c) The fluid temperature, pH, conductivity, pressure and the static fluid level of the injection zone must be recorded.

(d) At a minimum, the following information concerning the injection and confining zones shall be determined or calculated for Class I hazardous waste wells:

(1) Fracture pressure;

(2) Other physical and chemical characteristics of the injection and confining zones; and

(3) Physical and chemical characteristics of the formation fluids in the injection zone.

(e) Upon completion, but prior to operation, the owner or operator shall conduct the following tests to verify hydrogeologic characteristics of the injection zone:

(1) A pump test; or

(2) Injectivity tests.

(f) The Director shall have the opportunity to witness all logging and testing required by this Subpart. The owner or operator shall submit a schedule of such activities to the Director 30 days prior to conducting the first test.

§ 146.67 Operating requirements.

(a) Except during stimulation, the owner or operator shall assure that injection pressure at the wellhead does not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. Then owner or operator shall assure that the injection pressure does not initiate fractures or propagate existing fractures in the confining zone, nor cause the movement of injection or formation fluids into a USDW.

(b) Injection between the outermost casing protecting USDWs and the well bore is prohibited.

(c) The owner or operator shall maintain an annulus pressure that exceeds the operating injection pressure, unless such a requirement might harm the integrity of the well. The fluid in the annulus shall be noncorrosive, or shall contain a corrosion inhibitor.

(d) The owner or operator shall maintain mechanical integrity in the injection well at all times.

(e) Permit requirements for owners or operators of hazardous waste wells which inject wastes which have the potential to react with the injection formation to generate gases shall include:

(1) Conditions limiting the temperature, pH or acidity of the injected waste; and

(2) Procedures necessary to assure that pressure imbalances which might cause a backflow or blowout do not occur.

(f) The owner or operator shall install and use continuous recording devices to monitor the injection pressure; the flow rate, volume, and temperature of injected fluids; and the pressure on the annulus between the tubing and the long string casing, and shall install and use:

(1) Automatic alarm and automatic shut-off systems, designed to sound and shut-in the well when pressures and flow rates exceed a range and/or gradient specified in the permit; or

(2) Automatic alarms, designed to sound when the pressures and flow rates exceed a rate and/or gradient specified in the permit, in cases where the owner or operator certifies that a trained operator will be on-site at all times when the well is operating.

(g) If an automatic alarm or shutdown is triggered, the owner or operator shall immediately investigate and identify as expeditiously as possible the cause of the alarm or shutoff. If, upon such investigation, the well appears to be lacking mechanical integrity, or if monitoring required under paragraph (f) of this section otherwise indicates that the well may be lacking mechanical integrity, the owner or operator shall:

(1) Cease injection of waste fluids unless authorized by the Director to continue or resume injection;

(2) Take all necessary steps to determine the presence or absence of a leak; and

(3) Notify the Director within 24 hours after the alarm or shutdown.

(h) If a loss of mechanical integrity is discovered pursuant to paragraph (g) of this section or during periodic mechanical integrity testing, the owner or operator shall:

(1) Immediately cease injection of waste fluids;

(2) Take all steps reasonably necessary to determine whether there may have been a release of hazardous wastes or hazardous waste constituents into any unauthorized zone;

(3) Notify the Director within 24 hours after loss of mechanical integrity is discovered;

(4) Notify the Director when injection can be expected to resume; and

(5) Restore and demonstrate mechanical integrity to the satisfaction of the Director prior to resuming injection of waste fluids.

(i) Whenever the owner or operator obtains evidence that there may have been a release of injected wastes into an unauthorized zone:

(1) The owner or operator shall immediately cease injection of waste fluids, and:

(i) Notify the Director within 24 hours of obtaining such evidence;

(ii) Take all necessary steps to identify and characterize the extent of any release;

(iii) Develop any necessary cleanup plan for approval by the Director;

(iv) Implement any cleanup plan approved by the Director; and

(v) Where such release is into a USDW currently serving as a water supply, place a notice in a newspaper of general circulation.

(2) The Director may allow the operator to resume injection prior to completing cleanup action if the owner or operator demonstrates that the injection operation will not endanger USDWs.

(j) The owner or operator shall notify the Director and obtain his approval prior to conducting any well workover.

§ 146.68 Testing and monitoring requirements.

Testing and monitoring requirements shall at a minimum include:

(a) Monitoring of the injected wastes. (1) The owner or operator must develop and follow an approved written waste analysis plan that describes the procedures to be carried out to obtain a detailed chemical and physical analysis of a representative sample of the waste, including the quality assurance procedures used. At a minimum, the plan must specify:

(i) The parameters for which the waste will be analyzed and the rationale for the selection of these parameters;

(ii) The test methods that will be used to test for these parameters; and

(iii) The sampling method that will be used to obtain a representative sample of the waste to be analyzed.

(2) The owner or operator shall repeat the analysis of the injected wastes as described in the waste analysis plan at frequencies specified in the waste analysis plan and when process or operating changes occur that may significantly alter the characteristics of the waste stream.

(3) The owner or operator shall conduct continuous or periodic monitoring of selected parameters as required by the Director.

(4) The owner or operator shall assure that the plan remains accurate and the analyses remain representative.

(b) Hydrogeologic compatibility determination. The owner or operator shall submit information demonstrating to the satisfaction of the Director that the waste stream and its anticipated reaction products will not alter the permeability, thickness or other relevant characteristics of the confining or injection zones such that they would no longer meet the requirements specified in § 146.62.

(c) Compatibility of well materials. (1) The owner or operator shall demonstrate that the waste stream will be compatible with the well materials with which the waste is expected to come into contact, and submit to the Director a description of the methodology used to make that determination. Compatibility for purposes of this requirement is established if contact with injected fluids will not cause the well materials to fail to satisfy any design requirement imposed under § 146.65(b).

(2) The Director shall require continuous corrosion monitoring of the construction materials used in the well for wells injecting corrosive waste, and may require such monitoring for other waste, by:

(i) Placing coupons of the well construction materials in contact with the waste stream; or

(ii) Routing the waste stream through a loop constructed with the material used in the well; or

(iii) Using an alternative method approved by the Director.

(3) If a corrosion monitoring program is required:

(i) The test shall use materials identical to those used in the construction of the well, and such materials must be continuously exposed to the operating pressures and temperatures (measured at the well head) and flow rates of the injection operation; and

(ii) The owner or operator shall monitor the materials for loss of mass, thickness, cracking, pitting and other signs of corrosion on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance set forth in § 146.65(b).

(d) Periodic mechanical integrity testing. In fullfilling the requirements of § 146.8, the owner or operator of a Class I hazardous waste injection well shall conduct the mechanical integrity testing as follows:

(1) The long string casing, injection tube, and annular seal must be tested by means of an approved pressure test with a liquid or gas annually and whenever there has been a well workover.

(2) The bottom-hole cement must be tested by means of an approved radioactive tracer survey annually.

(3) An approved temperature, noise, or other approved log shall be run at least once every five years to test for movement of fluid along the borehole. The Director may require such tests whenever the well is worked over.

(4) Casing inspection logs shall be run at least once every five years when the Director requires it.

(5) Any other test approved by the Director in accordance with the procedures in § 146.8(d) may also be used.

(e) *Ambient monitoring.* (1) Based on a site-specific assessment of the potential for fluid migration from the well or injection zone that may be harmful to human health or the environment and on the potential value of monitor wells to detect such migration, the Director shall require the owner or operator to develop a monitoring program. At a minimum, the Director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(2) When prescribing a monitoring system the Director may also require:

(i) Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the Director;

(ii) The use of indirect, geophysical techniques to determine the position of the waste front, the water guality in a formation designated by the Director, or to provide other site specific data;

(iii) Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(iv) Periodic monitoring of the ground water quality in the lowermost USDW; or

(v) Any additional monitoring necessary to protect USDWs.

§ 146.69 Reporting requirements.

Reporting requirements shall, at a minimum, include:

(a) Quarterly reports to the Director containing:

(1) The maximum injection pressure;

(2) Changes in the ratio between injection pressure and flow rate or volume that go beyond a range specified in the permit pursuant to § 146.67(f);

(3) A description of any event which triggers an alarm or shutdown device required pursuant to § 146.67(f) and the response taken;

(4) The total volume of fluid injected;

(5) The volume of annular fluid lost, if any;

(6) The physical, chemical and other relevant characteristics of injected fluids; and

(7) The results of monitoring prescribed under § 146.68.

(b) Reporting, within 30 days or with the next quarterly report whichever comes later, the results of:

(1) Periodic tests of mechanical integrity;

(2) Any other test of the injection well conducted by the permittee if required by the Director; and

(3) Any well workover.

§ 146.70 Information to be evaluated by the Director.

This section sets forth the information which must be evaluated by the Director in authorizing Class I hazardous waste wells. For a new Class I hazardous waste well, the owner or operator shall submit all the information listed below as part of the permit application. For an existing or converted Class I hazardous waste well, the owner or operator shall submit all information listed below as part of the permit application except for

those items of information which are current, accurate, available in the existing permit file. For both existing and new Class I hazardous waste wells, certain maps, cross-sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current, readily available to the Director (for example, in the permitting agency's files) and sufficiently identifiable to be retrieved. In cases where EPA issues the permit all the information in this section must be submitted to the Administrator or his designee.

(a) Prior to the issuance of a permit for an existing Class I hazardous waste injection well to operate or the construction or conversion of a new Class I hazardous waste injection well, the Director shall review the following to assure that the requirements of this section, Parts 144 and 146 are met.

(1) Information required in § 144.31;

(2) A map showing the injection well for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads. The map should also show faults, if known or suspected;

(3) A tabulation of all wells within the area of review which penetrate the proposed injection zone or confining zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion and any additional information the Director may require;

(4) The protocol followed to identify, locate and ascertain the condition of abandoned wells within the area of review which penetrate the injection or the confining zones;

(5) Maps and cross-sections indicating the general vertical and lateral limits of all underground sources of drinking water within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each underground source of drinking water which may be affected by the proposed injection;

(6) Maps and cross-sections detailing the geologic structure of the local area;

(7) Maps and cross-sections illustrating the regional geologic setting;

(8) Proposed operating data:

(i) Average and maximum daily rate and volume of the fluid to be injected; and

(ii) Average and maximum injection pressure.

(9) Proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the injection formation and the confining zone;

(10) Proposed stimulation program;

(11) Proposed injection procedure;

(12) Schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(13) Contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any USDW;

(14) Plans (including maps) for meeting monitoring requirements of § 146.68;

(15) For wells within the area of review which penetrate the injection zone or the confining zone but are not properly completed or plugged, the corrective action to be taken under § 146.64;

(16) Construction procedures including a cementing and casing program, well materials specifications and their life expectancy, logging procedures, deviation checks, and a drilling, testing and coring program; and

(17) A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well and for post-closure care as required by § 144.63.

(b) Prior to granting approval for the operation of a Class I hazardous waste well the owner or operator shall submit and the Director shall review the following information, which shall be included in the completion report:

(1) All available logging and testing program data on the well;

(2) A demonstration of mechanical integrity pursuant to § 146.68;

(3) The anticipated maximum pressure and flow rate at which the permittee will operate;

(4) The results of the injection zone and confining zone testing program as required in § 146.70(a)(9);

(5) The actual injection procedure;

(6) The compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone and with the materials used to construct the well;

(7) The calculated area of review based on data obtained during logging and testing of the well and the formation, and where necessary revisions to § 146.70(a) (2) and (3);

(8) The status of corrective action on wells identified in § 146.70(a)(15).

(c) Prior to granting approval for the plugging and abandonment of a Class I hazardous waste well the Director shall review the information required in § 146.71(a)(3).

(d) Any permit issued for a Class I hazardous waste injection well for disposal on the premises where the waste is generated shall contain a certification by the owner or operator that:

(1) The generator of the hazardous waste has a program to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) Injection of the waste is that practicable method of disposal currently available to the generator which minimizes the present and future threat to human health and the environment.

§ 146.71 Closure.

(a) Closure plan. The owner or operator of a Class I hazardous waste injection well shall prepare, maintain, and comply with a plan for closure of the well that meets the requirements of paragraph (d) of this section and is acceptable to the Director.

(1) The owner or operator shall submit the plan as a part of the permit application and, upon approval by the Director, such plan shall be a condition of any permit issued.

(2) The owner or operator shall submit any proposed significant revision to the method of closure reflected in the plan for approval by the Director no later than the date on which notice of closure is required to be submitted to the Director under paragraph (b) of this section.

(3) The plan shall include the following information:

(i) The type and number of plugs to be used;

(ii) The placement of each plug including the elevation of the top and bottom of each plug;

(iii) The type and grade and quantity of material to be used in plugging;

(iv) The method of placement of the plugs;

(v) Any proposed test or measure to be made;

(vi) The amount, size, and location (by depth) of casing and any other materials to be left in the well;

(vii) The method and location where casing is to be parted, if applicable;

(viii) The procedure to be used to meet the requirements of paragraph (d)(5) of this section;

(ix) The estimated cost of closure; and

(x) Any proposed test or measure to be made.

(4) An owner or operator of a Class I hazardous waste injection well who intends to cease injection temporarily, may keep the well open provided he:

(i) Receives authorization from the Director; and

(ii) Describes actions or procedures, satisfactory to the Director, that the owner or operator will take to ensure that the well will not endanger USDWs during the period of temporary disuse.

These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the Director.

(5) The owner or operator of any well that has ceased operations for more than two years shall notify the Director prior to resuming operation of the well.

(b) *Notice of intent to close.* The owner or operator shall notify the Director at least 60 days before closure of a well. At the discretion of the Director, a shorter notice period may be allowed.

(c) *Closure report.* Within 60 days after closure or at the time of the next quarterly report (whichever is less) the owner or operator shall submit a closure report to the Director. If the quarterly report is due less than 15 days after completion of closure, then the report shall be submitted within 60 days after closure.

The report shall be certified as accurate by the owner or operator and by the person who performed the closure operation (if other than the owner or operator). Such report shall consist of either:

(1) A statement by the owner or operator that the well was closed in accordance with the closure plan previously submitted and approved by the Director; or

(2) Where actual closure differed from the plan previously submitted, a written statement specifying the differences between the previous plan and the actual closure.

(d) *Standards for well closure.* (1) Prior to closing the well, the owner or operator shall observe and record the pressure decay for a time specified by the Director. The Director shall analyze the pressure decay and the transient pressure observations conducted pursuant to § 146.68(e)(1)(i) and determine whether the injection activity has conformed with predicted values.

(2) Prior to well closure, appropriate mechanical integrity testing shall be conducted to ensure the integrity of that portion of the long string casing and cement that will be left in the ground after closure.

Testing methods may include:

(i) Pressure tests with liquid or gas;

(ii) Radioactive tracer surveys; and

(iii) Noise, temperature, pipe evaluation, or cement bond logs; and

(iv) Any other test required by the Director.

(3) Prior to well closure, the well shall be flushed with a buffer fluid.

(4) Upon closure, a Class I hazardous waste well shall be plugged with cement in a manner that will not allow the movement of fluids into or between USDWs.

(5) Placement of the cement plugs shall be accomplished by one of the following:

(i) The Balance Method;

(ii) The Dump Bailer Method;

(iii) The Two-Plug Method; or

(iv) An alternate method, approved by the Director, that will reliably provide a comparable level of protection.

(6) Each plug used shall be appropriately tagged and tested for seal and stability before closure is completed.

(7) The well to be closed shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the Director, prior to the placement of the cement plug(s).

§ 146.72 Post-closure care.

(a) The owner or operator of a Class I hazardous waste well shall prepare, maintain, and comply with a plan for post-closure care that meets the requirements of paragraph (b) of this section and is acceptable to the Director.

(1) The owner or operator shall submit the plan as a part of the permit application and, upon approval by the Director, such plan shall be a condition of any permit issued.

(2) The owner or operator shall submit any proposed significant revision to the plan as appropriate over the life of the well, but no later than the date of the closure report required under § 146.71(c).

(3) The plan shall include the following information:

(i) The pressure in the injection zone before injection began;

(ii) The anticipated pressure in the injection zone at the time of closure;

(iii) The predicted time until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW;

(iv) Predicted position of the waste front at closure;

(v) The status of any cleanups required under § 146.64; and

(vi) The estimated cost of proposed post-closure care.

(b) The owner or operator shall:

(1) Continue and complete any cleanup action required under § 146.64, if applicable;

(2) Continue to conduct any groundwater monitoring required under the permit until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW. The Director may extend the period of post-closure monitoring if he determines that the well may endanger a USDW.

(3) Submit a survey plat to the local zoning authority designated by the Director. The plat shall indicate the location of the well relative to permanently surveyed benchmarks. A copy of the plat shall be submitted to the Regional Administrator of the appropriate EPA Regional Office.

(4) Provide appropriate notification and information to such State and local authorities as have cognizance over drilling activities to enable such State and local authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the well's confining or injection zone.

(5) Retain, for a period of three years following well closure, records reflecting the nature, composition and volume of all injected fluids. The Director shall require the owner or operator to deliver the records to the Director at the conclusion of the retention period, and the records shall thereafter be retained at a location designated by the Director for that purpose.

(c) Each owner of the surface or subsurface property on or in which a hazardous waste well is located must record a notation on the deed to the facility property or on some other instrument which is normally examined during title search that will in perpetuity provide any potential purchaser of the property the following information:

(1) The fact that land has been used to manage hazardous waste;

(2) The name of the State agency or local authority with which the plat was filed, as well as the address of the Regional Environmental Protection Agency Office to which it was submitted;

(3) The type and volume of waste injected, the injection interval or intervals into which it was injected, and the period over which injection occurred.

§ 146.73 Financial responsibility for post-closure care.

The owner or operator shall demonstrate and maintain financial

responsibility for post-closure by using a trust fund, surety bond, letter of credit, financial test, insurance or corporate guarantee that meets the specifications for the mechanisms and instruments revised as appropriate in 40 CFR Part 144, Subpart F. The amount of the funds available shall be no less than the amount identified in § 146.72(a)(3)(vi).

Part 148 is added to read as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

Subpart A—General

Sec.
148.1 Purpose, scope and applicability.
148.2 Definitions.
148.3 Dilution prohibited as a substitute for treatment.
148.4 Procedures for case-by-case extensions to an effective date.
148.5 Waste analysis.

Subpart B—Prohibitions on Injection

148.10 Waste specific prohibitions—solvent wastes.
148.11 Waste specific prohibitions—dioxin-containing wastes.

Subpart C—Petition Standards and Procedures

148.20 Petitions to allow injection of a waste prohibited under Subpart B.
148.21 Information to be submitted in support of petitions.
148.22 Procedures for petition submission, review and approval or denial.
148.23 Review of exemptions granted pursuant to a petition.
148.24 Termination of approved petition.

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

Subpart A—General

§ 148.1 Purpose, scope and applicability.

(a) This part identifies hazardous wastes that are restricted from disposal into Class I hazardous waste injection wells and defines those circumstances under which a waste, otherwise prohibited from injection, may be injected.

(b) The requirements of this part apply to owners or operators of Class I hazardous waste injection wells used to inject hazardous waste.

(c) Wastes otherwise prohibited from injection may continue to be injected if:

(1) An extension from the effective date of a prohibition has been granted pursuant to § 148.3 with respect to such wastes; or

(2) An exemption from a prohibition has been granted in response to a petition filed under § 148.20 to allow injection of restricted wastes with respect to those wastes and wells covered by the exemption; or

(3) The waste is generated by a conditionally exempt small quantity generator, as defined in § 261.5; or

(4) Until November 8, 1988, the waste has been determined to be contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or a corrective action required under the Resource Conservation and Recovery Act.

§ 148.2 Definitions.

Injection interval means that part of the injection zone in which the well is screened, or in which the waste is otherwise directly emplaced.

Transmissive fault or fracture is a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

§ 148.3 Dilution prohibited as a substitute for treatment.

The prohibition of § 268.3 shall apply to owners or operators of Class I hazardous waste injection wells.

§ 148.4 Procedures for case-by-case extensions to an effective date.

The owner or operator of a hazardous waste injection well may submit an application to the Administrator for an extension of the effective date of any applicable prohibition established under Subpart B of this Part according to the procedures of § 268.5.

§ 148.5 Waste analysis.

Generators of hazardous wastes that are disposed of into injection wells must comply with the applicable requirements of § 268.7 (a) and (b). Owners or operators of Class I hazardous waste injection wells must comply with the applicable requirements of § 268.7(c).

Subpart B—Prohibitions on Injection

§ 148.10 Waste specific prohibitions—solvent wastes.

(a) Effective August 8, 1988, the spent solvent wastes specified in § 261.31 as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005 are prohibited from underground injection unless the solvent waste is a solvent-water mixture or solvent-containing sludge containing less than 1 percent total F001–F005 solvent constituents listed in Table A of this part.

(b) Effective August 8, 1990, the F001–F005 solvent wastes listed in Table A of this part are prohibited from injection.

(c) The requirements of paragraphs (a) and (b) of this section do not apply:

(1) If the wastes meet or are treated to meet the standards of § 268.41; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this Part; or

(3) During the period of extension of the applicable effective date that has been granted under § 148.3 of this Part.

Table A

Acetone
n-Butyl alcohol
Carbon disulfide
Carbon tetrachloride
Chlorobenzene
Cresols and cresylic acid
Cyclohexanone
1,2-dichlorobenzene
Ethyl acetate
Ethyl benzene
Ethyl ether
Isobutanol
Methanol
Methylene chloride
Methyl ethyl ketone
Methyl isobutyl ketone
Nitrobenzene
Pyridine
Tetrachloroethylene
Toluene
1,1,1-Trichloroethane
1,2,2-Trichloro-1,2,2 trifluoroethane
Trichloroethylene
Trichlofluoromethane
Xylene

§ 148.11 Waste specific prohibitions—dioxin-containing wastes.

(a) Effective August 8, 1988, the dioxin-containing wastes specified in § 261.31 as EPA Hazardous Waste Nos. F020, F021, F023, F026, F027, and F028, are prohibited from underground injection.

(b) The requirements of paragraph (a) of this section do not apply:

(1) If the wastes meet or are treated to meet the standards of § 268.41; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this Part; or

(3) During the period of extension of the applicable effective date that has been granted under § 148.3 of this Part.

Subpart C—Petition Standards and Procedures

§ 148.20 Petitions to allow injection of a waste prohibited under Subpart B.

(a) Any person seeking an exemption from a prohibition under Subpart B of this part for the injection of a restricted hazardous waste into an injection well or wells must submit a petition to the Director demonstrating that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for

as long as the waste remains hazardous. This demonstration requires a showing that:

(1) The hydrogeological and geochemical conditions at the sites and the physiochemical nature of the waste stream(s) are such that reliable predictions can be made that:

(i) Fluid movement conditions are such that the injected fluids will not migrate within 10,000 years:

(A) Vertically upward out of the injection zone; or

(B) Laterally within the injection zone to a point of discharge or interface with a USDW; or

(ii) Before the injected fluids migrate out of the injection zone or to a point of discharge or interface with an USDW, the wastes will no longer be hazardous because the hazardous constituents will have been attenuated or immobilized within the injection zone by hydrolysis, chemical interactions or other means; and

(2) For wells authorized prior to [FR, insert the effective date of these regulations], the owner/operator shall for each well, as part of the demonstration prior to the approval of the petition:

(i) Redetermine the injection well's area of review in accordance with the requirements of § 146.63;

(ii) Locate, identify, and ascertain the condition of all wells within the injection well's redetermined area of review that penetrate the injection zone or the confining zone by use of a protocol acceptable to the Director in accordance with the requirements of § 146.64;

(iii) Submit a corrective action plan that meets the requirements of § 146.64, the implementation of which shall become a condition of petition approval; and

(iv) Submit the results of pressure and radioactive tracer tests performed within six months prior to submission of the petition demonstrating the mechanical integrity of the well's long string casing, injection tube, annular seal, and bottom hole cement.

(b) A demonstration under § 148.20(a)(1)(i) shall identify the strata within the injection zone which will arrest fluid movement above the injection interval and include a showing that the injection zone is:

(1) Overlain by a confining zone, with a thickness equal to or greater than four times that of the portion of the injection zone above the injection interval within which fluid movement will be contained; and

(2) Is separated from the base of the lowermost USDW by a total thickness equal to or greater than ten times that of the portion of the injection zone above the injection interval within which fluid movement will be contained.

(c) A demonstration under § 148.20(a)(1)(ii) shall identify the strata within the injection zone where waste transformation will be accomplished and include a showing that the injection zone is:

(1) Overlain by a confining zone, with a thickness equal to or greater than four times that of the portion of the injection zone above the injection interval within which the wastes will be transformed; and

(2) Is separated from the base of the lowermost USDW by a total thickness equal to or greater than ten times that of the portion of the injection zone above the injection interval within which the wastes will be transformed.

(d) A demonstration may include a showing that:

(1) Treatment methods, the implementation of which shall become a condition of petition approval, will be utilized that reduce the toxicity or mobility of the wastes, or

(2) A monitoring plan, the implementation of which shall become a condition of petition approval, will be utilized to enhance confidence in one or more aspects of the demonstration.

(e) Any person who has been granted an exemption pursuant to this section may submit a petition for reissuance of the exemption to include an additional waste or wastes or to modify any conditions placed on the exemption by the Director. The exemption shall be reissued if the petitioner complies with the requirements of paragraph (a) of this section.

(f) A petition to modify an exemption from a prohibition granted pursuant to paragraph (a) of this section to include an additional hazardous waste or wastes may be granted if the Director determines, to a reasonable degree of certainty, that the additional waste or wastes will behave hydraulically and chemically in a manner similar to previously included wastes and that it will not interfere with the containment capability of the injection zone.

§ 148.21 Information to be submitted in support of petitions.

(a) Information submitted in support of § 148.20 must meet the following criteria:

(1) All waste and environmental sampling, test and analysis data shall be accurate and reproducible and performed in accordance with quality assurance standards;

(2) Estimation techniques shall be appropriate, and EPA-certified tests protocols shall be used where available and appropriate;

(3) Predictive models shall have been verified and validated, shall be appropriate for the specific site, waste streams, and injection conditions of the operation, and shall be calibrated for existing sites where sufficient data are available;

(4) An approved quality assurance and quality control plan shall address all aspects of the demonstration;

(5) Reasonably conservative values shall be used whenever values taken from the literature or estimated on the basis of known information are used instead of site-specific measurements; and

(6) An analysis shall be performed to identify and assess aspects of the demonstration that contribute significantly to uncertainty. This analysis shall include an evaluation of the extent to which predictable events could have an impact on the demonstration.

(b) Any petitioner under § 148.20(a)(1)(i) shall provide sufficient site-specific information to support the demonstration, such as:

(1) Thickness, porosity, and permeability of the various strata in the injection zone;

(2) Thickness, permeability, extent, and continuity of the confining zone;

(3) Hydraulic gradient in the injection zone;

(4) Hydrostatic pressure in the injection zone; and

(5) Geochemical conditions of the site.

(c) In addition to the information in § 148.21(b), any petitioner under § 148.20(a)(1)(ii) shall provide sufficient waste-specific information to ensure reasonably reliable predictions about the waste transformation. The petitioner must provide the information necessary to support the demonstration, such as:

(1) Description of the chemical processes or other means that will lead to waste transformation; and

(2) Results of laboratory experiments verifying the waste transformation.

§ 148.22 Procedures for petition submission, review and approval or denial.

(a) Any petition submitted to the Director pursuant to § 148.20(a) must include the following components:

(1) An identification of the specific waste or wastes and the specific injection well or wells for which the demonstration will be made;

(2) A waste analysis to describe fully the chemical and physical characteristics of the subject wastes;

(3) Such additional information as is required under §§ 148.20 and 148.21 to support the petition; and

(4) This statement signed by the petitioner or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(b) The Director shall provide public notice in accordance with the procedures in § 124.10 of the intent to approve or deny a petition and provide an opportunity for public comments. The final decision on a petition will be published in the **Federal Register**.

(c) If an exemption is granted it will apply to the underground injection of the specific restricted waste or wastes identified in the petition into a Class I hazardous waste injection well or wells identified in the petition and will not apply to the disposal of any other restricted wastes into the identified injection well or wells (unless the exemption is modified or reissued pursuant to § 148.20 (d) or (e)) or to the injection of the identified specific restricted waste or wastes into any other injection well.

(d) Upon request by any petitioner who obtains an exemption for a well under this Subpart, the Director shall initiate and reasonably expedite the necessary procedures to issue or reissue a permit or permits for the hazardous waste well or wells covered by the exemption for a term not to exceed ten years.

§ 148.23 Review of exemptions granted pursuant to a petition.

(a) When considering whether to reissue a permit for the operation of a Class I hazardous waste injection well, the Director shall review any petition filed pursuant to § 148.20 and require a new demonstration if information shows that the basis for granting the exemption may no longer be valid.

(b) Whenever the Director determines that the basis for approval of a petition may no longer be valid, the Director shall require a new demonstration in accordance with § 148.20.

§ 148.24 Termination of approved petition.

(a) The Director may terminate an exemption granted in response to a petition filed under § 148.20(a) for the following causes:

(1) Noncompliance by the petitioner with any condition of the exemption;

(2) The petitioner's failure in the petition or during the review and approval to disclose fully all relevant facts, or the petitioner's misrepresentation of any relevant facts at any time; or

(3) A determination that new information shows that the basis for approval of the petition is no longer valid.

(b) The Director shall terminate an exemption granted in response to a petition filed under § 148.20(a) for the following causes:

(1) The petitioner's willful withholding during the review and approval of the petition of facts directly and materially relevant to the Director's decision on the petition;

(2) A determination that there has been migration from the injection zone or the well in violation of 40 CFR 148.20(a) (1) or (2) except that the Director may in his discretion decide not to terminate where:

(i) The migration resulted from a mechanical failure of the well that can be corrected promptly through a repair to the injection well itself or from an undetected well or conduit that can be plugged promptly; and

(ii) The requirements of § 146.67(i) are satisfied.

(c) The Director shall follow the procedures in § 124.5 in terminating any exemption under this section.

[FR Doc. 87-19317 Filed 8-26-87; 8:45 am]
BILLING CODE 6560-50-M

VOL 52 ISS 166 AG 27 1987 UMI

federal register

Thursday
August 27, 1987

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates; Inmate Discipline and Special Housing Units; Proposed Rule

VOL 52 ISS 166 AG 27 1987 UMI

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates; Inmate Discipline and Special Housing Units

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing amendments to its rule on Inmate Discipline and Special Housing Units. These amendments are primarily intended to replace the existing three-member "Institution Discipline Committee", with a single person "Discipline Hearing Officer" (DHO).

DATE: Comments must be received on or before October 13, 1987.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is given that the Bureau of Prisons intends to publish in the **Federal Register** proposed amendments to its final rule on Inmate Discipline and Special Housing Units. In addition, the Bureau of Prisons is publishing a new general section entitled "Definitions" which provides a variety of terms commonly used throughout the Inmate Discipline and Special Housing Unit rule.

The Bureau published a final rule on Inmate Discipline and Special Housing Units in the **Federal Register** June 2, 1987 (at 52 FR 20678–20693). The present amendments are intended to replace the existing three-member "Institution Discipline Committee" with a single-person "Discipline Hearing Officer" (DHO). A pilot program, using this concept, was announced in the **Federal Register** December 5, 1986 (at 51 FR 44010 *et seq.*). A further notice was published in the **Federal Register** April 23, 1987 (at 51 FR 13546). Based on the results of the pilot project, the Bureau has decided to implement the DHO concept in each of its institutions. Because this change will require numerous procedural modifications to the rule, the Bureau of Prisons has decided to publish the entire rule for ease of reading. Public comment, however, will be specifically considered and addressed in the **Federal Register** only on the DHO concept, and on the proposed amendments specifically described below. Members of the public also may submit comments concerning the remaining provisions of the policy, including those sections where, while the wording has been changed, the rule's intent is unchanged. These comments, while considered, will receive no formal response in the **Federal Register**.

In § 541.2, the Bureau is introducing a new Subpart A to Part 541, entitled "Definitions". In this section, the Bureau defines specific terms commonly used throughout the Inmate Discipline and Special Housing rule. The Bureau's intent in this section is to more clearly define, at the onset of its rule, the types of hearings and the responsibilities of key persons participating in the disciplinary process.

In § 541.11, Table 1, and throughout the rule, except as otherwise noted in this preamble, the terms "Discipline Hearing Officer" or "DHO" are substituted for "Institution Discipline Committee" or "IDC", since the major discipline process is proposed to be handled by a single-person Discipline Hearing Officer. Also, in Table 1, in § 541.14(a), and in § 541.15(e), the reference to Lieutenants or the UDC informally resolving Incident Reports in the High Severity Category is deleted. This action is taken because of the seriousness of the prohibited acts within this category. In Table 2, Item 4, the term "Discipline Hearing Officer (DHO)" is substituted for "Institution Discipline Committee hearing". This change is necessary because the existing reference to an Institution Discipline "Committee" (a three-member decision-making body) is no longer appropriate.

In §§ 541.13(a), 541.13(e), and 541.13, Table 5, the terms "appropriate committee" and "discipline committee" are replaced by "Unit Discipline Committee" or "Discipline Hearing Officer", as the reference to "committee" is no longer appropriate in all instances. In § 541.13(c), the sentence, "The DHO now has that authority for suspensions earlier imposed by the IDC", is added to allow the DHO the authority to act on prior IDC actions in this area.

In § 541.13, Table 3, Code 102, the phrase "and administrative institutions" is added to clarify the scope of the phrase "escape from a secure institution". Administrative institutions, including Metropolitan Correctional Centers, are classified by the Bureau as "secure institutions". In Code 223, the phrase "or take part in other alcohol abuse testing" is replaced with "or take part in other testing for use of alcohol". The intent of the section is unchanged. Also in Table 3, the Bureau has added a new prohibited act, Code 224, "Assaulting any person (charged with this act only when a less serious physical injury or contact has been attempted or carried out by an inmate, e.g., pushing an officer may be properly classified Code 224). This act is added to recognize that not all assaultive-type acts should be classified to the higher Code 101, assaulting any person (when more serious physical injury is attempted or carried out). In Table 4, Sanctions of the Discipline Hearing Officer, in paragraph B and again in paragraph F, the authority to restore forfeited or withheld statutory good time is changed from the Institution Discipline Committee to the Warden (cannot be delegated lower than the Associate Warden level). In paragraph F, the phrase "near the beginning of the month or at the 30-day review" is deleted from the section that directs that the DHO review an inmate who is subject to consecutive withholding actions for recurring refusal to program. This section now states, "During the running of such a withholding order, the DHO shall review the offense with the inmate on a monthly basis". Also, in paragraph G, the wording is changed to reflect that "in some cases" the loss of leisure privileges for misconduct unrelated to the abuse of that privilege may be appropiate. While the wording has changed, the intent remains the same.

In § 541.13, Table 6, the "Note" paragraph is changed to direct that when the Warden or his delegated representative denies good time restoration, the unit team (replaces the IDC) is responsible to notify the inmate of the reasons for denial and shall establish a new eligibility date.

In § 541.14, the sentence which directs that "the investigating officer should be an employee of supervisory level . . ." is moved from § 541.14(b) to § 541.2(a).

In § 541.15, the sentence which directs that the Warden shall authorize the UDC to impose minor sanctions (G through P) for violations of prohibited act(s) is moved to § 541.2(b). Section 541.15(b) and § 541.11, Table 2, are changed to reflect that an inmate so charged (with a prohibited act) is entitled to an initial hearing before the UDC, ordinarily within three work days from the time staff become aware of the inmate's involvement in the incident. This change from two to three work days provides a more realistic time period for investigation of the incident and for the parties to prepare for the hearing.

The title to existing § 541.16 is changed to delete the reference to the establishment of the Institution Discipline Committee and will now read, "Functioning of the Discipline Hearing Officer". Section 541.16(a) now describes the role of the Discipline Hearing Officer. Also included in this section is a provision which states that if an institution's DHO is not able to conduct hearings, the Warden shall arrange for another trained and certified DHO to conduct the hearings. In § 541.16(b), all references to the Institution Discipline Committee and its composition are deleted. Remaining in this section, however, is the provision which directs that, in order to insure impartiality, the DHO may not be the reporting officer, investigating officer, or UDC member, or a witness to the incident or play any significant part in having the charge(s) referred for a hearing. In § 541.16(c), the sentence that directs the IDC to conduct reviews of inmates placed in disciplinary segregation in accordance with the requirements of § 541.20 is deleted. In its place, the Bureau is adding new § 541.16(d), authorizing the Warden to designate a "Segregation Review Official" (SRO) to conduct these required reviews. The terms "Discipline Hearing Officer" and "Segregation Review Official" are defined in § 541.2 (c) and (d).

The title to existing § 541.17 is changed to delete reference to the IDC, and now reads "Procedures Before the Disciplinary Hearing Officer". Section 541.17(d) recognizes that the DHO can act on sanctions imposed by the IDC when an inmate had escaped or was otherwise absent from custody. In § 541.17(f), the reference to "committee report" is changed to "the hearing report", as this is a more appropriate term. This proposed paragraph also recognizes that the UDC chairman may be provided confidential informant information and may need to document the reliability of the information in a separate report. Section 541.18 is now entitled "Dispositions of the Discipline Hearing Officer".

In § 541.19, now entitled "Appeals from Unit Discipline Committee or Discipline Hearing Officer Actions", the Bureau is deleting its reference to filing appeals "within 15 calendar days . . ." under Administrative Remedy Procedures because there is a difference in the number of days that an inmate must file an initial appeal for decisions rendered by the UDC (to the Warden within 15 calendar days) as opposed to those rendered by the DHO (to the Regional Director within 20 calendar days). The Bureau also plans to revise its rule on the Administrative Remedy Procedure (Part 542) to state that an inmate may appeal a decision of the DHO directly to the Regional Director within 20 calendar days. While this reference is deleted from the discipline rule language, the Bureau's implementing instructions to staff specifically address the appropriate time frames for filing an appeal to UDC or DHO decisions. Section 541.19(c) is amended to read "according to the severity level of the prohibited act, and other relevant circumstances".

In § 541.20, paragraphs (c) and (d) are changed to reflect that the "Segregation Review Official" shall conduct (at appropriate intervals) a hearing and formally review the status of inmates in disciplinary segregation, and may, upon finding that continuation in disciplinary segregation is no longer necessary to regulate the inmate's behavior within acceptable limits or for fulfilling the purpose of punishment and deterrence which initially resulted in the inmate's placement in disciplinary segregation status, release an inmate earlier than the sanction initially imposed. The SRO will also conduct the review on inmates in administrative detention and notify the inmate of the reasons he is transferred to administrative detention from post-disciplinary detention (§ 541.22).

In § 541.22(c)(2), the standard for cell occupancy has been changed to reflect, with current levels of prison population, the need for higher occupancy of special housing cells other than in just temporary, emergency situations. Proposed paragraph (c)(6) now allows either the Captain or the DHO to recommend that the Warden withhold the exercise periods of an inmate in disciplinary segregation status.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 541

Prisoners.

In consideration of the foregoing, it is proposed to amend Subchapter C, Part 541, by adding a new Subpart A, and by revising Subpart B as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

* * * * *

Subpart A—General

Sec.
541.2 Definitions.

* * * * *

Subpart B—Inmate Discipline and Special Housing Units

Sec.
541.10 Purpose and scope.
541.11 Notice to inmate of Bureau of Prisons rules.
541.12 Inmate rights and responsibilities.
541.13 Prohibited acts and disciplinary severity scale.
541.14 Incident report and investigation.
541.15 Initial hearing.
541.16 Functioning of the Discipline Hearing Officer.
541.17 Procedures before the Discipline Hearing Officer.
541.18 Dispositions of the Discipline Hearing Officer.
541.19 Appeals from Unit Discipline Committee or Discipline Hearing Officer actions.
541.20 Justification for placement in disciplinary segregation and review of inmates in disciplinary segregation.
541.21 Conditions of disciplinary segregation.
541.22 Administrative detention.
541.23 Protection cases.

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Subpart A—General

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 541.2 Definitions.

(a) *Investigating Officer.* The term Investigating Officer refers to an employee of supervisory level who conducts the investigation concerning alleged charge(s) of inmate misconduct. The Investigating Officer may not be the employee reporting the incident, or one who was directly involved in the incident in question.

(b) *Unit Discipline Committee (UDC).* The term Unit Disciplinary Committee (UDC) refers to one or more institution staff members delegated by the Warden the authority and duty to hold an initial

hearing upon completion of the investigation concerning alleged charge(s) of inmate misconduct. In institutions with unit management, these staff members will ordinarily be members of the Unit Team. The Warden shall authorize these staff members to impose minor sanctions (G through P) for violation of prohibited act(s).

(c) *Discipline Hearing Officer (DHO).* This term refers to one-person, independent hearing officer who is responsible for conducting Institution Discipline Hearings, and for imposing appropriate sanctions for incidents of inmate misconduct referred for disposition following the hearing required by § 541.15 before the UDC.

(d) *Segregation Review Official (SRO).* The term Segregation Review Official refers to the individual at each Bureau of Prisons institution who is assigned to review the status of each inmate housed in disciplinary segregation and administrative detention, as required in §§ 541.20 and 541.22 of this rule.

Subpart B—Inmate Discipline and Special Housing Units

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

* * * * *

§ 541.10 Purpose and Scope.

(a) So that inmates may live in a safe and orderly environment, it is necessary for institution authorities to impose discipline on those inmates whose behavior is not in compliance with Bureau of Prisons rules. The provisions of this rule apply to all persons committed to the care, custody, and control (direct or constructive) of the Bureau of Prisons.

(b) The following general principles apply in every disciplinary action taken:

(1) Only institution staff may take disciplinary action.

(2) Staff shall take disciplinary action at such times and to the degree necessary to regulate an inmate's behavior within Bureau rules and institution guidelines and to promote a safe and orderly institution environment.

(3) Staff shall control inmate behavior in a completely impartial and consistent manner.

(4) Disciplinary action may not be capricious or retaliatory.

(5) Staff may not impose or allow imposition of corporal punishment of any kind.

(6) If it appears at any stage of the disciplinary process that an inmate is mentally ill, staff shall refer the inmate to a mental health professional for determination of whether the inmate is responsible for his conduct or is incompetent. Staff may take no disciplinary action against an inmate whom mental health staff determines to be incompetent or not responsible for his conduct.

(i) A person is not responsible for his conduct if, at the time of the conduct, the person, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. When a person is determined not responsible for his conduct, the Incident Report is to show as a finding that the person did not commit the prohibited act because that person was found not to be mentally responsible for his conduct.

(ii) A person is incompetent if that person lacks the ability to understand the nature of the disciplinary proceedings, or to assist in his defense at the proceedings. When a person is determined incompetent, the disciplinary proceedings shall be postponed until such time as the inmate is able to understand the nature of the disciplinary proceedings and to assist in his defense at those proceedings. If competency is not restored within a reasonable period of time, the Incident Report is to show as a finding that the inmate is incompetent to assist in his or her defense at the disciplinary proceedings.

§ 541.11 Notice to inmate of Bureau of Prisons rules.

Staff shall advise each inmate in writing promptly after arrival at an institution of:

(a) The types of disciplinary action which may be taken by institution staff;

(b) The disciplinary system within the institution and the time limits thereof (see Tables 1 and 2);

(c) The inmate's rights and responsibilities (see § 541.12);

(d) Prohibited acts and disciplinary severity scale (see § 541.13, Tables 3, 4, and 5); and

(e) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time (see Table 6).

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SUMMARY OF DISCIPLINARY SYSTEM

TABLE 1

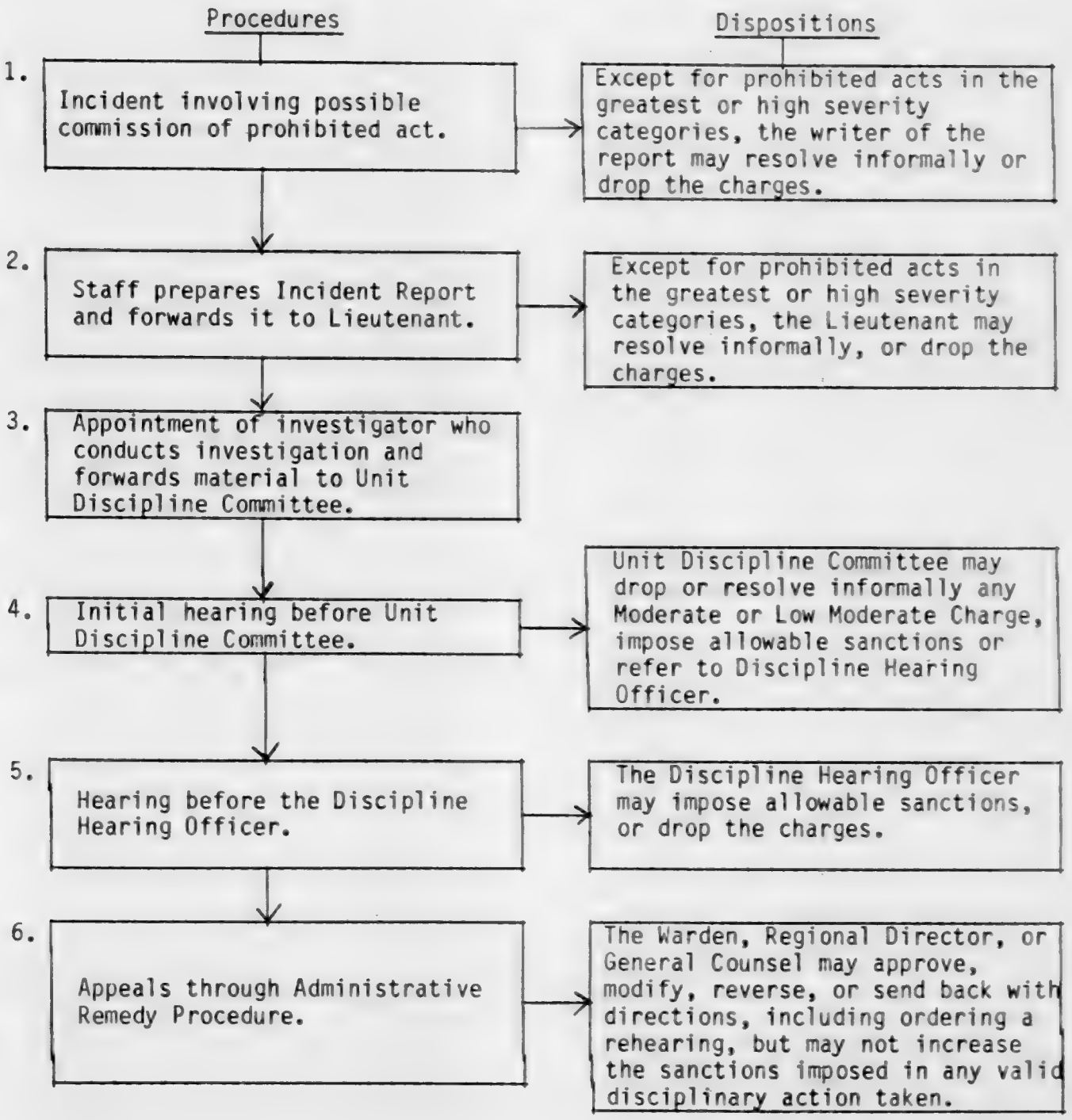

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TIME LIMITS IN DISCIPLINARY PROCESS

TABLE 2

1. Staff becomes aware of inmate's involvement in incident.

ordinarily maximum of 24 hours

2. Staff gives inmate notice of charges by delivering Incident Report.

minimum of 24 hours (unless waived)

4. Discipline Hearing Officer (DHO) Hearing.

maximum ordinarily of 3 work days from the time staff became aware of the inmate's involvement in the incident. (Excludes the day staff become aware of the inmate's involvement, weekends, and holidays.)

3. Initial hearing.

NOTE; These time limits are subject to exceptions as provided in the rules.

Staff may suspend disciplinary proceedings for a period not to exceed two calendar weeks while informal resolution is attempted. If informal resolution is unsuccessful, staff may reinstitute disciplinary proceedings at the same stage at which suspended. The time requirements then begin running again, at the same point at which they were suspended.

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§ 541.12 Inmate rights and responsibilities.

Rights	Responsibilities
1. You have the right to expect that as a human being you will be treated respectfully, impartially, and fairly by all personnel.	1. You have the responsibility to treat others, both employees and inmates, in the same manner.
2. You have the right to be informed of the rules, procedures, and schedules concerning the operation of the institution.	2. You have the responsibility to know and abide by them.
3. You have the right to freedom of religious affiliation, and voluntary religious worship.	3. You have the responsibility to recognize and respect the rights of others in this regard.
4. You have the right to health care, which includes nutritious meals, proper bedding and clothing, and a laundry schedule for cleanliness of the same, an opportunity to shower regularly, proper ventilation for warmth and fresh air, a regular exercise period, toilet articles and medical and dental treatment.	4. It is your responsibility not to waste food, to follow the laundry and shower schedule, to maintain neat and clean living quarters, to keep your area free of contraband, and to seek medical and dental care as you may need it.
5. You have the right to visit and correspond with family members, and friends, and correspond with members of the news media in keeping with Bureau rules and institution guidelines.	5. It is your responsibility to conduct yourself properly during visits, not to accept or pass contraband, and not to violate the law or Bureau rules or institution guidelines through your correspondence.
6. You have the right to unrestricted and confidential access to the courts by correspondence (on matters such as the legality of your conviction, civil matters, pending criminal cases, and conditions of your imprisonment).	6. You have the responsibility to present honestly and fairly your petitions, questions, and problems to the court.
7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence.	7. It is your responsibility to use the services of an attorney honestly and fairly.
8. You have the right to participate in the use of law library reference materials to assist you in resolving legal problems. You also have the right to receive help when it is available through a legal assistance program.	8. It is your responsibility to use these resources in keeping with the procedures and schedule prescribed and to respect the rights of other inmates to the use of the materials and assistance.
9. You have the right to a wide range of reading materials for educational purposes and for your own enjoyment. These materials may include magazines and newspapers sent from the community, with certain restrictions.	9. It is your responsibility to seek and utilize such materials for your personal benefit, without depriving others of their equal rights to the use of this material.
10. You have the right to participate in education, vocational training and employment as far as resources are available, and in keeping with your interests, needs, and abilities.	10. You have the responsibility to take advantage of activities which may help you live a successful and law-abiding life within the institution and in the community. You will be expected to abide by the regulations governing the use of such activities.
11. You have the right to use your funds for commissary and other purchases, consistent with institution security and good order, for opening bank and/or savings accounts, and for assisting your family.	11. You have the responsibility to meet your financial and legal obligations, including, but not limited to, court-imposed assessments, fines, and restitution. You also have the responsibility to make use of your funds in a manner consistent with your release plans, your family needs, and for other obligations that you may have.

§ 541.13 Prohibited acts and disciplinary severity scale.

(a) There are four categories of prohibited acts—Greatest, High, Moderate, and Low Moderate (see Table 3 for identification of the prohibited acts within each category). Specific sanctions are authorized for each category (see Table 4 for a discussion of each sanction). Imposition of a sanction requires that the inmate first is found to have committed a prohibited act.

(1) *Greatest category offenses.* The Discipline Hearing Office shall impose and execute one or more of sanctions A through E. The DHO may also suspend one or more additional sanctions A through F. The DHO may impose and execute sanction F only in addition to execution of one or more of sanctions A through E.

(2) *High category offenses.* The Unit Discipline Committee or Discipline Hearing Officer shall impose and execute one or more of sanctions A through M. They may also suspend one or more additional sanctions A through M.

(3) *Moderate category offenses.* The Unit Discipline Committee or Discipline Hearing Officer shall impose at least one sanction A through N, but may suspend any sanction or sanctions imposed.

(4) *Low moderate category offenses.* The Unit Discipline Committee shall impose at least one sanction E through P, but may suspend any sanction or sanctions imposed.

(b) *Aiding* another person to commit any of these offenses, *attempting* to commit any of these offenses, *and making plans* to commit any of these offenses, in all categories of severity, *shall be considered the same as a commission of the offense itself.* In these cases, the letter "A" is combined with the offense code. For example, planning an escape would be considered as Escape and coded 102A. Likewise, attempting the adulteration of any food or drink would be coded 209A.

(c) Suspensions of any sanction cannot exceed six months. Revocation and execution of a suspended sanction requires that the inmate first is found to have committed any subsequent prohibited act. Only the Discipline Hearing Officer (DHO) may execute, suspend, or revoke and execute suspension of sanctions A through F. The Discipline Hearing Officer (DHO) or Unit Discipline Committee (UDC) may execute, suspend, or revoke and execute suspensions of sanctions G through P. Revocations and execution of suspensions may be made only at the level (DHO or UDC) which originally imposed the sanction. The DHO now has that authority for suspensions earlier imposed by the IDC.

(d) If the Unit Discipline Committee has previously imposed a suspended sanction and subsequently refers a case to the Discipline Hearing Officer, the referral shall include an advisement to the DHO of any intent to revoke that suspension if the DHO finds that the prohibited act was committed. If the DHO then finds that the prohibited act was committed, the DHO shall so advise the Unit Discipline Committee who may then revoke the previous suspension.

(e) A Unit Discipline Committee or Discipline Hearing Officer may impose increased sanctions for repeated, frequent offenses according to the guidelines presented in Table 5.

(f) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time are presented in Table 6.

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE

[The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
	GREATEST CATEGORY	
100	Killing	A. Recommend parole date rescission or retardation.
101	Assaulting any person (includes sexual assault) or an armed assault on the institution's secure perimeter (a charge for assaulting any person is to be used only when serious physical injury has been attempted or carried out by an inmate).	B. Forfeit earned statutory good time (up to 100%) and/or terminate or disallow extra good time (an extra good time sanction may not be suspended). C. Disciplinary Transfer (recommend).
102	Escape from escort; escape from a secure institution (Security Level 2 through 6 and administrative institutions); or escape from a Security level 1 institution *with* violence.	D. Disciplinary segregation (up to 60 days). E. Make monetary restitution. F. Withhold statutory good time (Note—can be in addition to A through E—cannot be the only sanction executed).

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—CONTINUED

[The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
103	Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of Greatest Severity, e.g., in furtherance of a riot or escape; otherwise the charge is properly classified Code 218, or 329).	
104	Possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive or any ammunition.	
105	Rioting	
106	Encouraging others to riot	
107	Taking hostage(s)	
108	Possession, manufacture, or introduction of a hazardous tool (Tools most likely to be used in an escape or escape attempt or to serve as weapons capable of doing serious bodily harm to others, or those hazardous to institutional security or personal safety; e.g., hack-saw blade)	
109	Possession, introduction, or use of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff	Sanctions A–F.
110	Refusing to provide a urine sample or to take part in other drug-abuse testing	
198	Interfering with a staff member in the performance of duties. (*Conduct must be of the Greatest Severity nature.*) This charge is to be used only when another charge of greatest severity is not applicable.	
199	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the Greatest Severity nature.*) This charge is to be used only when another charge of greatest severity is not applicable	
200	Escape from unescorted Community Programs and activities and Open Institutions (Security Level 1) and from outside secure institutions—*without* violence.	A. Recommend parole date rescission or retardation. B. Forfeit earned statutory good time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended). C. Disciplinary transfer (recommend). D. Disciplinary segregation (up to 30 days).
201	Fighting with another person	
202	(Not to be used.)	
203	Threatening another with bodily harm or any other offense.	
204	Extortion, blackmail, protection: Demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing.	E. Make monetary restitution. F. Withhold statutory good time G. Loss of privileges: commissary, movies, recreation, etc H. Change housing (quarters).
205	Engaging in sexual acts	
206	Making sexual proposals or threats to another	
207	Wearing a disguise or a mask	I. Remove from program and/or group activity.
208	Possession of any unauthorized locking device, or lock pick, or tampering with or blocking any lock device (includes keys).	J. Loss of job K. Impound inmate's personal property L. Confiscate contraband
209	Adulteration of any food or drink	
210	(Not to be used.)	M. Restrict to quarters
211	Possessing any officer's or staff clothing.	
212	Engaging in, or encouraging a group demonstration.	Sanctions A–M.
213	Encouraging others to refuse to work, or to participate in a work stoppage.	
214	(Not to be used.)	
215	Introduction of alcohol into BOP facility	
216	Giving or offering an official or staff member a bribe, or anything of value.	
217	Giving money to, or receiving money from, any person for purposes of introducing contraband or for any other illegal or prohibited purposes	
218	Destroying, altering, or damaging government property, or the property of another person, having a value in excess of $100.00 or destroying, altering, or damaging life-safety devices (e.g., fire alarm) regardless of financial value	
219	Stealing (theft; this includes data obtained through the unauthorized use of a communications facility, or through the unauthorized access to disks, tapes, or computer printouts or other automated equipment on which data is stored.).	
220	Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill.	
221	Being in an unauthorized area with a person of the opposite sex without staff permission.	Sanctions A–M.
222	Making, possessing, or using intoxicants	
223	Refusing to breathe into a breathalyzer or take part in other testing for use of alcohol.	
224	Assaulting any person (charged with this act only when a less serious physical injury or contact has been attempted or carried out by an inmate, e.g., pushing an officer may be properly classified Code 224).	
298	Interfering with a staff member in the performance of duties. (*Conduct must be of the High Severity nature.*) This charge is to be used only when another charge of high severity is not applicable..	
299	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the High Severity nature.*) This charge is to be used only when another charge of high severity is not applicable.	
300	Indecent exposure	A. Recommend parole date rescission or retardation.
301	(Not to be used)	B. Forfeit earned statutory good time up to 25% or up to 30 days, whichever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended). C. Disciplinary transfer (recommend) segregation (up to 15 days). D. Disciplinary
302	Misuse of authorized medication	
303	Possession of money or currency, unless specifically authorized, or in excess of the amount authorized.	
304	Loaning of property or anything of value for profit or increased return.	
305	Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels.	E. Make monetary restitution F. Withhold statutory good time.
306	Refusing to work, or to accept a program assignment.	G. Loss of privileges: commissary, movies, recreation, etc.
307	Refusing to obey an order of any staff member (May be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed; e.g., failure to obey an order which furthers a riot would be charged as 105, Rioting; refusing to obey an order which furthers a fight would be charged as 201, Fighting; refusing to provide a urine sample when ordered would be charged as Code 110).	H. Change housing (quarters). I. Remove from program and/or group activity. J. Loss of job K. Impound inmate's personal property. L. Confiscate contraband M. Restrict to quarters.
308	Violating a condition of a furlough	
	N. Extra duty	
309	Violating a condition of a community program	

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—CONTINUED

[The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
310	Unexcused absence from work or any assignment	
311	Failing to perform work as instructed by the supervisor.	Sanctions A–N.
312	Insolence towards a staff member	
313	Lying or providing a false statement to a staff member	
314	Counterfeiting, forging or unauthorized reproduction of any document, article of identification, money, security, or official paper. (May be categorized in terms of greater severity according to the nature of the item being reproduced; e.g., counterfeiting release papers to effect escape, Code 102 or Code 200)	
315	Participating in an unauthorized meeting or gathering	
316	Being in an unauthorized area	
317	Failure to follow safety or sanitation regulations	
318	Using any equipment or machinery which is not specifically authorized.	
319	Using any equipment or machinery contrary to instructions or posted safety standards	
320	Failing to stand county	
321	Interfering with the taking of count	
322	(Not to be used.)	
323	(Not to be used.)	
324	Gambling	
325	Preparing or conducting a gambling pool	Sanctions A–N.
326	Possession of gambling paraphernalia	
327	Unauthorized contacts with the public.	
328	Giving money or anything of value to, or accepting money or anything of value from: another inmate, or any other person without staff authorization.	
329	Destroying, altering, or damaging government property, or the property of another person, having a value of $100.00 or less	
330	Being unsanitary or untidy; failing to keep one's person and one's quarters in accordance with posted standards	
331	Possession, manufacture, or introduction of a non-hazardous tool or other non-hazardous contraband (Tool not likely to be used in an escape or escape attempt, or to serve as a weapon capable of doing serious bodily harm to others, or not hazardous to institutional security or personal safety; Other non-hazardous contraband includes such items as food or cosmetics).	
398	Interfering with a staff member in the performance of duties. (*Conduct must be of the Moderate Severity nature.*) This charge is to be used only when another charge of moderate severity is not applicable.	
399	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the Moderate Severity nature.*) This charge is to be used only when another charge of moderate severity is not applicable	
400	Possession of property belonging to another person.	E. Make monetary restitution F. Withhold statutory good time
401	Possessing unauthorized amount of otherwise authorized clothing.	G. Loss of privileges, commissary, movies, recreation, etc H. Change housing (quarters) I. Remove from program and/or group activity J. Loss of job
402	Malingering, feigning illness	
403	Smoking where prohibited	
404	Using abusive or obscene language	
405	Tattooing or self-mutilation	
406	Unauthorized use of mail or telephone (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G) (May be categorized and charged in terms of greater severity, according to the nature of the unauthorized use; e.g., the telephone is used for planning, facilitating, committing an armed assault on the institution's secure perimeter, would be charged as Code 101, Assault)	K. Impound inmate's personal property. L. Confiscate contraband. M. Restrict to quarters N. Extra duty O. Reprimand. P. Warning
407	Conduct with a visitor in violation of Bureau regulations (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G)	
408	Conducting a business	
409	Unauthorized physical contact (e.g., kissing, embracing)	
498	Interfering with a staff member in the performance of duties (*Conduct must be of the Low Moderate Severity nature.*) This charge is to be used only when another charge of low moderate severity is not applicable.	Sanctions. E–P
499	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the Low Moderate Severity nature.*) This charge is to be used only when another charge of low moderate severity is not applicable	

Table 4.—Sanctions

1. *Sanctions of the Discipline Hearing Officer:* (upon finding the inmate committed the prohibited act)

(a) *Recommend parole date rescission or retardation.* The DHO may make recommendations to the U.S. Parole Commission for retardation or rescission of parole grants. This may require holding fact-finding hearings upon request of or for the use of the Commission.

(b) *Forfeit earned statutory good time and/or terminate or disallow extra good time.* The statutory good time available for forfeiture is limited to an amount computed by multiplying the number of months served at the time of the offense for which forfeiture action is taken, by the applicable monthly rate specified in 18 U.S.C. 4161 (less any previous forfeiture or withholding outstanding). Disallowance of extra good time is limited to the extra good time for the calendar month in which the violation occurs. It may not be withheld or restored. The sanction of termination or disallowance of extra good time may not be suspended. Authority to restore forfeited statutory good time is delegated to the Warden. This decision may not be delegated lower than the Associate Warden Level. Limitation on this sanction and eligibility for restoration are based on the severity scale. (See Table 6)

(c) *Recommend disciplinary transfer.* The DHO may recommend that an inmate be transferred to another institution for disciplinary reasons. Where a present or impending emergency requires immediate action, the Warden may recommend for approval of the receiving Regional Director the transfer of an inmate prior to either a UDC or DHO Hearing. Transfers for disciplinary reasons prior to a hearing before the UDC or DHO may be used only in emergency situations and only with approval of the receiving Regional Director. When an inmate is transferred under these circumstances, the sending institution shall forward copies of incident reports and other relevant materials with completed investigation to the receiving institution's Discipline Hearing Officer. The inmate shall receive a hearing at the receiving institution as soon as practicable under the circumstances to consider the factual basis of the charge of misconduct and the reasons for the emergency transfer. All procedural requirements applicable to UDC or DHO hearings contained in this rule are appropriate, except that written statements of unavailable witnesses are liberally accepted instead of live testimony.

(d) *Disciplinary segregation.* The DHO may direct that an inmate be placed or retained in disciplinary segregation pursuant to guidelines contained in this rule. Consecutive disciplinary segregation sanctions can

be imposed and executed for inmates charged with and found to have committed offenses that are part of different acts only. Specific limits on time in disciplinary segregation are based on the severity scale. (See Table 6)

(e) *Make monetary restitution.* The DHO may direct that an inmate reimburse the U.S. Treasury for any damages to U.S. Government property that the individual is determined to have caused or contributed to.

(f) *Withholding statutory good time.* The DHO may direct that an inmate's good time be withheld. Withholding of good time should not be applied as a universal punishment to all persons in disciplinary segregation status. Withholding is limited to the total amount of good time creditable for the single month during which the violation occurs.

Some offenses, such as refusal to work at an assignment, may be recurring, thereby permitting, when ordered by the DHO, consecutive withholding actions. When this is the intent, the DHO shall specify at the time of the initial DHO hearing that good time may be withheld until the inmate elects to returns to work. During the running of such a withholding order, the DHO shall review the offense with the inmate on a monthly basis. For an ongoing offense, staff need not prepare a new Incident Report or conduct another investigation or initial hearing (UDC). The DHO shall provide the inmate an opportuntiy to appear in person and to present a statement orally or in writting. The DHO shall document his action on, or by an attachment to, the initial Institution Discipline report. If further withholding is ordered, the DHO shall advise the inmate of the inmate's right to appeal through the Administrative Remedy Procedure (Part 542). Only the Warden may restore withheld statutory good time. This decision may not be delegated lower than the Associate Warden level. Restoration eligibility is based on the severity scale. (See Table 6)

2. *Sanctions of the Discipline Hearing Officer/Unit Discipline Committee:* (upon finding the inmate committed the prohibited act)

(g) *Loss of privileges: Commissary, movies, recreation, etc.* The DHO or UDC may direct that an inmate forego specific privileges for a specified period of time. Ordinarily, loss of privileges is used as a sanction in response to an abuse of that privilege; e.g., loss of telephone privileges for a specified period of time for an abuse of the telephone privilege. However, loss of leisure privileges, such as movies, television, and recreation, may also be appropriate sanctions in some cases for misconduct which is not related to the privilege.

(h) *Change housing (quarters).* The DHO or UDC may direct that an inmate be removed from current housing and placed in other housing.

(i) *Remove from program and/or group activity.* The DHO or UDC may direct that an inmate forego participating in any program or group activity for a specified period of time.

(j) *Loss of job.* The DHO or UDC may direct that an inmate be removed from present job and/or be assigned to another job.

(k) *Impound inmate's personal property.* The DHO or UDC may direct that an inmate's personal property be stored in the institution (when relevant to offense) for a specified period of time.

(l) *Confiscate contraband.* The DHO or UDC may direct that any contraband in the possession of an inmate be confiscated and disposed of appropriately.

(m) *Restrict quarters.* The DHO or UDC may direct that an inmate be confined to quarters or in its immediate area for a specified period of time.

(n) *Extra duty.* The DHO or UDC may direct that an inmate perform tasks other than those performed during regularly assigned institutional job.

(o) *Reprimand.* The DHO or UDC may reprimand an inmate either verbally or in writing.

(p) *Warning.* The DHO or UDC may verbally warn an inmate regarding committing prohibited act(s).

TABLE 5.—SANCTIONS FOR REPETITION OF PROHIBITED ACTS WITHIN SAME CATEGORY

When the Unit Discipline Committee or DHO finds that an inmate has committed a prohibited act in the Low Moderate, Moderate, or High category, and when there has been a repetition of the same offense(s) within recent months (offenses for violation of the same code), additional sanctions are authorized according to the following chart. (Note: An informal resolution may not be considered as a prior offense for purposes of this chart.)

Category	Prior offense (same code) within time period	Frequency of repeated offense	Sanction permitted
Low moderate (400 series)	6 months	2d offense	Low Moderate Sanctions, plus 1. Disciplinary segregation, up to 7 days. 2. Forfeit earned SGT up to 10% or up to 15 days, whichever is less, and/or terminate or disallow extra good time (EGT) (an EGT sanction may not be suspended)
		3d offense, or more	Any sanctions available in Moderate (300) and Low Moderate (400) series
Moderate (300 series)	12 months	2d offense	Moderate Sanctions (A,C,E-N), plus 1. Disciplinary segregation, up to 21 days 2. Forfeit earned SGT up to 37½% or up to 45 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		3d offense, or more	Any sanctions available in Moderate (300) and High (200) series.
High (200 series)	18 months	2d offense	High Sanctions (A,C,E-M), plus 1. Disciplinary segregation, up to 45 days. 2. Forfeit earned SGT up to 75% or up to 90 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		3d offense, or more	Any sanctions available in High (200) and Greatest (100) series.

TABLE 6.—SANCTIONS BY SEVERITY OF PROHIBITED ACT, WITH ELIGIBILITY FOR RESTORATION OF FORFEITED AND WITHHELD STATUTORY GOOD TIME

Severity of act	Sanctions	Max. amt. forf. SGT	Max. amt. W/hd SGT	Elig. restoration forf. SGT	Elig. restoration W/hd/SGT	Max. dis seg
Greatest	A–F	100%	Good time creditable for single month during which violation occurs. Applies to all categories.	24 mos	18 mos	60 days.
High	A–M	50% or 60 days, whichever is less.		18 mos	12 mos	30 days.
Moderate	A–N	25% or 30 days, whichever is less.		12 mos	6 mos	15 days.
Low Moderate.	E–P	N/A		N/A (1st offense) 6 mos. (2nd or 3rd offense in same category within six months).	3 mos	N/A (1st offense). 7 days (2nd offense). 15 days (3rd offense).

NOTE.—Restoration will be approved at the time of initial eligibility only when the inmate has shown a period of time with improved good behavior. When the Warden or his delegated representative denies restoration of forfeited or withheld statutory good time, the unit team shall notify the inmate of the reasons for denial. The unit team shall establish a new eligibility date, not to exceed six months from the date of denial.

An inmate with an approaching parole effective date, or an approaching mandatory release or expiration date who also has forfeited good time may be placed in a Community Treatment Center only if that inmate is otherwise eligible under Bureau policy, and if there exists a legitimate documented need for such placement. The length of stay at the Community Treatment Center is to be held to the time necessary to establish residence and employment.

§ 541.14 Incident report and investigation.

(a) *Incident report.* The Bureau of Prisons encourages informal resolution (requiring consent of both parties) of incidents involving violations of Bureau regulations. However, when staff witnesses or has a reasonable belief that a violation of Bureau regulations has been committed by an inmate, and when staff considers informal resolution of the incident inappropriate or unsuccessful, staff shall prepare an Incident Report and promptly forward it to the appropriate Lieutenant. Except for prohibited acts in the Greatest or High Severity Category, the Lieutenant may informally dispose of the Incident Report or forward the Incident Report for investigation consistent with this section. The Lieutenant shall expunge the inmate's file of the Incident Report if informal resolution is accomplished. Only the DHO may make a final disposition on a prohibited act in the Greatest Severity Category.

(b) *Investigation.* Staff shall conduct the investigation promptly unless circumstances beyond the control of the investigator intervene.

(1) When it appears likely that the incident may be the subject of criminal prosecution, the investigating officer shall suspend the investigation, and staff may not question the inmate until the Federal Bureau of Investigation or other investigative agency interviews have been completed or until the agency responsible for the criminal investigation advises that staff questioning may occur.

(2) The inmate may receive a copy of the Incident Report prior to being seen by the investigating agency. The investigating officer (Bureau of Prisons) shall give the inmate a copy of the Incident Report at the beginning of the investigation, unless there is good cause for delivery at a later date, such as absence of the inmate from the institution or a medical condition which argues against delivery. If the investigation is delayed for any reason, any employee may deliver the charge(s) to the inmate. The staff member shall note the date and time the inmate received a copy of the Incident Report. The investigator shall also read the charge(s) to the inmate and ask for the inmate's statement concerning the incident unless it appears likely that the incident may be the subject of criminal prosecution. The investigator shall advise the inmate of the right to remain silent at all stages of the disciplinary process but that the inmate's silence may be used to draw an adverse inference against the inmate at any stage of the institutional disciplinary process. The investigator shall also inform the inmate that the inmate's silence alone may not be used to support a finding that the inmate has committed a prohibited act. The investigator shall then thoroughly investigate the incident. The investigator shall record all steps and actions taken on the Incident Report and forward all relevant material to the staff holding the initial hearing. The inmate does not receive a copy of the investigation. However, if the case is ultimately forwarded to the Discipline Hearing Officer, the DHO shall give a copy of the investigation and other relevant materials to the inmate's staff representative for use in presentation on the inmate's behalf.

§ 541.15 Initial hearing.

The Warden shall delegate to one or more institution staff members the authority and duty to hold an initial hearing upon completion of the investigation. In order to ensure impartiality, the appropriate staff member(s) (hereinafter usually referred to as the Unit Discipline Committee (UDC) may not be the reporting or investigating officer or a witness to the incident, or play any significant part in having the charges referred to the UDC. However, a staff member witnessing an incident may serve on the UDC where virtually every staff member in the institution witnesses the incident in whole or in part. If the UDC finds at the initial hearing that an inmate has committed a prohibited act, the UDC may impose minor dispositions and sanctions. When an alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions, the UDC shall refer the charges to the Discipline Hearing Officer

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for further hearing. The UDC must refer all greatest category charges to the DHO. The following minimum standards apply to initial hearings in all institutions.

(a) Staff shall give each inmate charged with violating a Bureau rule a written copy of the charge(s) against the inmate, ordinarily within 24 hours of the time staff became aware of the inmate's involvement in the incident.

(b) Each inmate so charged is entitled to an initial hearing before the UDC, ordinarily held within three work days from the time staff became aware of the inmate's involvement in the incident. This three work day period excludes the day staff become aware of the inmate's involvement in the incident, weekends, and holidays.

(c) The inmate is entitled to be present at the initial hearing except during deliberations of the decision marker(s) or when institutional security would be jeopardized by the inmate's presence. The UDC shall clearly document in the record of the hearing reasons for excluding an inmate from the hearing. An inmate may waive the right to be present at this hearing, provided that the waiver is documented by staff and reviewed by the UDC. A waiver may be in writing, signed by the inmate, or if the inmate refusal to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The UDC may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the UDC shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined.

(d) The inmate is entitled to make a statement and to present documentary evidence in the inmate's own behalf.

(e) The Unit Discipline Committee may informally resolve any Moderate or Low Moderate charge. The UDC shall expunge the inmate's file of the Incident Report if informal resolution is accomplished.

(f) The Unit Discipline Committee shall consider all evidence presented at the hearing and shall make a decision based on at least some facts, and if there is conflicting evidence, it must be based on the greater weight of the evidence. The UDC shall take one of the following actions:

(1) Find that the inmate committed the prohibited act charged and/or a similar prohibited act if reflected in the Incident Report;

(2) Find that the inmate did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report; or

(3) Refer the case to the DHO for further hearing.

The UDC shall give the inmate a written copy of the decision and disposition by the close of business the next work day. Any action taken as a minor disposition is reviewable under the Administrative Remedy Procedure (see Part 542 of this Chapter).

(g) The UDC shall prepare a record of its proceedings which need not be verbatim. A record of the hearing and supporting documents are kept in the inmate's file.

(h) When the alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions (G through P), the UDC shall refer the charge(s) without indication of findings as to commission of the alleged violation to the Discipline Hearing Officer (DHO) for hearing and disposition. The UDC shall forward copies of all relevant documents to the DHO with a brief statement of reasons for the referral along with any recommendations for appropriate disposition if the DHO finds the inmate has committed the act charged and/or a similar prohibited act. The inmate whose charge is being referred to the Discipline Hearing Officer may be retained in administrative detention or other restricted status, but the UDC may not impose a final disposition if the matter is being referred to the DHO.

(i) When charges are to be referred to the Discipline Hearing Officer, the UDC shall advise the inmate of the rights afforded at a hearing before the DHO. The UDC shall ask the inmate to indicate a choice of staff representative, if any, and the names of any witnesses the inmate wishes to be called to testify at the hearing and what testimony they are expected to provide. The UDC shall advise the inmate that the inmate may waive the right to be present at the Institution Discipline hearing, but still elect to have witnesses and/or a staff representative appear in the inmate's behalf at this hearing.

(j) When the Unit Discipline Committee holds a full hearing and determines that the inmate did not commit a prohibited act of High, Moderate or Low Moderate Severity, the UDC shall expunge the inmate's file of the Incident Report and related documents. The UDC must refer to the Discipline Hearing Officer all incidents involving prohibited acts of Greatest Severity.

(k) The UDC may extend time limits imposed in this section for a good cause shown by the inmate or staff and documented in the record of the hearing.

§ 541.16 Functioning of the Discipline Hearing Officer.

(a) Each Bureau of Prison institution shall have an independent hearing officer (DHO) assigned to conduct administrative fact-finding hearings covering alleged acts of misconduct and violations of prohibited acts, including those acts which could result in criminal charges. In the event of a serious disturbance of other emergency, or if an inmate commits an offense in the presence of the DHO, an alternative Discipline Hearing Officer will be appointed to conduct hearings with approval of the appropriate Regional Director. If the institution's DHO is not able to conduct hearings, the Warden shall arrange for another DHO to conduct the hearings. This person must be trained and certified as a DHO, and meet the other requirements for DHO.

(b) In order to insure impartiality, the DHO may not be the reporting officer, investigating officer, or UDC member, or a witness to the incident or play any significant part in having the charge(s) referred to the DHO.

(c) The Discipline Hearing Officer shall conduct hearings, make findings, and impose appropriate sanctions for incidents of inmate misconduct referred to him for disposition following the hearing required by § 541.15 before the UDC. The DHO may not hear any case or impose any sanctions in a case not heard and referred by the UDC. Only the Discipline Hearing Officer shall have the authority to impose or suspend sanctions A through F.

(d) The Warden at each institution shall designate a staff member, hereinafter called the Segregation Review Officer (SRO), to conduct reviews of inmates placed in disciplinary segregation or administrative detention in accordance with the requirements of § 541.20 or § 541.22.

§ 541.17 Procedures before the Discipline Hearing Officer.

The Discipline Hearing Officer shall proceed as follows:

(a) The Warden shall give an inmate advance written notice of the charge(s) against the inmate no less than 24 hours before the inmate's appearance before the Discipline Hearing Officer unless the inmate is to be released from custody within that time. An inmate may also waive in writing the 24-hour notice requirement.

(b) The Warden shall provide an inmate the service of a full time staff member to represent the inmate at the hearing before the Discipline Hearing Officer should the inmate so desire. The

Warden, the DHO or alternate DHO, the reporting officer, investigating officer, a witness to the incident, and UDC members involved in the case may not act as staff representative. The Warden may exclude other staff from acting as staff representative in a particular case when there is a potential conflict in roles. The staff representatives shall be available to assist the inmate if the inmate desires by speaking to witnesses and by presenting favorable evidence to the DHO on the merits of the charge(s) or in extenuation of mitigation of the charge(s). The DHO shall arrange for the presence of the staff representative selected by the inmate. If the staff member selected declines or is unavailable because of absence from the institution, the inmate has the option of selecting another representative, or in the case of an absent staff member of waiting a reasonable period for the staff member's return, or of proceeding without a staff representative. When several staff members decline this role, the Warden shall promptly appoint a staff representative to assist the inmate. The DHO shall afford a staff representative adequate time to speak with the inmate and interview requested witnesses where appropriate. While it is expected that a staff member will have had ample time to prepare prior to the hearing, delays in the hearing to allow for adequate preparation may be ordered by the Discipline Hearing Officer. When it appears that the inmate is not able to properly make a presentation on his own behalf (for example, an illiterate inmate), the Warden shall appoint a staff representative for that inmate, even if one is not requested.

(c) The inmate is entitled to make a statement and to present documentary evidence in the inmate's own behalf. An inmate has the right to submit names of requested witnesses and have them called to testify and to present documents in the inmate's behalf, provided the calling of witnesses or the disclosure of documentary evidence does not jeopardize or threaten institutional or an individual's security. The DHO shall call those witnesses who have information directly relevant to the charge(s) and who are reasonably available. This may include witnesses from outside of the institution. The inmate charged may be excluded during the appearance of an outside witness. The appearance of the outside witness should be in an area of the institution in which outside visitors are usually allowed. The DHO need not call repetitive witnesses. The reporting officer and other adverse witnesses need not be called if their knowledge of the incident is adequately summarized in the Incident Report and other investigative materials supplied to the DHO. The DHO shall request submission of written statements from unavailable witnesses who have information directly relevant to the charge(s). The DHO shall document reasons for declining to call requested witnesses in the DHO report, or, if the reasons are confidential, in a separate report, not available to the inmate. The inmate's staff representative, or when the inmate waives staff representation, the DHO, shall question witnesses requested by the inmate who are called before the DHO. The inmate who has waived staff representation may submit questions for requested witnesses in writing to the DHO. The inmate may not question any witness at the hearing.

(d) An inmate has the right to be present throughout the DHO Hearing except during a period of deliberation or when institutional security would be jeopardized. The DHO must document in the record the reason(s) for excluding an inmate from the hearing. An inmate may waive the right to be present at the hearing, provided that the waiver is documented by staff and reviewed by the DHO. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The DHO may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the Discipline Hearing Officer shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined. When an inmate returns to custody following absence during which sanctions were imposed by the DHO (or the predecessor IDC), the Warden shall have the charges reheard before the Discipline Hearing Officer ordinarily within 60 days after the inmate's arrival at the institution to which the inmate is designated after return to custody, and following appearance before the Unit Discipline Committee at that institution. The UDC shall ensure that the inmate has all rights required for appearance before the Discipline Hearing Officer, including delivery of charge(s), advisement of the right to remain silent and other rights to be exercised before the Discipline Hearing Officer. All the applicable procedural requirements for hearings before the Discipline Hearing Officer apply to this rehearing, except that written statements of witnesses not readily available may be liberally used instead of in-person witnesses. The DHO upon rehearing may affirm the earlier action taken, may dismiss the charge(s), may modify the finding of the original DHO as to the offense which was committed, or may modify but may not increase the sanctions previously imposed in the inmate's absence.

(e) The DHO may refer the case back to the UDC for further information or disposition. The DHO may postpone or, at any time prior to making a decision as to whether or not a prohibited act was committed, may continue the hearing until a later date whenever further investigation or more evidence is needed. A postponement or continuance must be for good cause (determined by the DHO) shown by the inmate or staff and should be documented in the record of the hearing.

(f) The DHO shall consider all evidence presented at the hearing. The decision of the DHO shall be based on at least some facts, and if there is conflicting evidence, it must be based on the greater weight of the evidence. The DHO shall find that the inmate either:

(1) Committed the prohibited act charged and/or a similar prohibited act if reflected in the Incident Report; or

(2) Did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report.

When a disciplinary committee decision is based on confidential informant information, the UDC or DHO shall document, ordinarily in the hearing report, its finding as to the reliability of each confidential informant relied on *and the factual basis for that finding.* When it appears that this documentation in the report would reveal the confidential informant's identity, the finding as to the reliability of each confidential informant relied on and the factual basis for that finding shall be made part of the hearing record in a separate report, prepared by the UDC chairman or the DHO, not available to the inmate.

(g) The Discipline Hearing Officer shall prepare a record of the proceedings which need not be verbatim. This record must be sufficient to document the advisement of inmate rights, the DHO's findings, the DHO's decision and the specific evidence relied on by the DHO, and must include a brief statement of the reasons for the sanctions imposed. The evidence relied upon, the decision, and the reasons for the actions taken must be set out in specific terms unless doing so would jeopardize institutional security. The DHO shall give the inmate a written copy of the decision and disposition,

ordinarily within 10 days of the DHO's decision.

(h) A record of the hearing and supporting documents are to be kept in the inmate central file.

(i) The Discipline Hearing Officer shall expunge an inmate's file of the Incident Report and related documents following a DHO finding that the inmate did not commit a prohibited act. The requirement for expunging the inmate's file does not preclude maintaining for research purposes copies of disciplinary actions resulting in "not guilty" findings in a master file separate from the inmate's institution file. However, institution staff may not use or allow the use of the contents of this master file in a manner which would adversely affect the inmate. Likewise, the expungement requirement does not require the destruction of medical reports or other reports relating to a particular inmate which must be maintained to document medical or other treatment given in a special housing unit. If an inmate's conduct during one continuous incident may constitute more than one prohibited act, and if the incident is reported in a single Incident Report, and if the DHO finds the inmate has not committed every prohibited act charged, or if the DHO finds that the inmate has committed a prohibited act(s) other than the act(s) charged, then the DHO shall record those findings clearly and shall change the Incident Report to show only the incident and code references to charges which were proved. Institution staff may not use the existence of charged but unproved misconduct against the inmate.

§ 541.18 Dispositions of the Discipline Hearing Officer.

The Discipline Hearing Officer has available a broad range of sanctions and dispositions following completion of the hearing. The Discipline Hearing Officer may do any of the following:

(a) Dismiss any charge(s) upon a finding that the inmate did not commit the prohibited act(s). The DHO shall order the record of charge(s) expunged upon such finding.

(b) Impose any of sanctions A through P as provided in § 541.13.

(c) Suspend the execution of a sanction it imposes as provided in § 541.13.

§ 541.19 Appeals from Unit Discipline Committee or Discipline Hearing Officer actions.

At the time the Unit Discipline Committee or Discipline Hearing Officer gives an inmate written notice of its decision, the UDC or DHO shall also advise the inmate that the inmate may appeal the decision under Administrative Remedy Procedures (see Part 542 of this Chapter). On appeals, the appropriate reviewing official (the Warden, Regional Director, or General Counsel) may approve, modify, reverse, or send back with directions, including ordering a rehearing, any disciplinary action of the Unit Discipline Committee or Discipline Hearing Officer but may not increase any valid sanction imposed. On appeals, the Warden, Regional Director, or General Counsel shall consider:

(a) Whether the Unit Discipline Committee or the Discipline Hearing Officer substantially complied with the regulations on inmate discipline;

(b) Whether the Unit Discipline Committee or Discipline Hearing Officer based its decision on some facts, and if there was conflicting evidence, whether the decision was based on the greater weight of the evidence; and

(c) Whether an appropriate sanction was imposed according to the severity level of the prohibited act, and other relevant circumstances.

§ 541.20 Justification for placement in disciplinary segregation and review of inmates in disciplinary segregation.

(a) Except as provided in paragraph (b) of this section, an inmate may be placed in disciplinary segregation only by order of the Discipline Hearing Officer following a hearing in which the inmate has been found to have committed a prohibited act in the Greatest, High, or Moderate Category, or a repeated offense in the Low Moderate Category. The DHO may order placement in disciplinary segregation only when other available dispositions are inadequate to achieve the purpose of punishment and deterrence necessary to regulate an inmate's behavior within acceptable limits.

(b) The Warden may temporarily (not exceeding five days) move an inmate to a more secure cell (which may be in an area ordinarily set aside for disciplinary segregation and which therefore requires the withdrawal of privileges ordinarily afforded in administrative detention status, until a hearing before the DHO can be held) who (1) is causing a serious disruption (threatening life, serious bodily harm, or property) in administrative detention, (2) cannot be controlled within the physical confines of administrative detention, and (3) upon advice of appropriate medical staff, does not require confinement in the institution hospital for mental or physical treatment, or who would ordinarily be housed in the institution hospital for mental or physical treatment, but who cannot safely be housed there because the hospital does not have a room or cell with adequate security provisions. The Warden may delegate this authority no further than to the official in charge of the institution at the time the move is necessary.

(c) The Segregation Review Official (SRO) (see § 541.16(d)) shall conduct a hearing and formally review the status of each inmate who spends seven continuous days in disciplinary segregation and thereafter shall review these cases on the record in the inmate's absence each week and shall conduct a hearing and formally review these cases at least once every 30 days. The inmate appears before the SRO at the 30-day hearings, unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when disciplinary segregation continues beyond 30 days. The assessment, submitted to the SRO in a written report, shall address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals if segregation continues for this extend period.

(d) The Segregation Review Official may release an inmate from disciplinary segregation earlier than the sanction initially imposed upon finding that continuation in disciplinary segregation is no longer necessary to regulate the inmate's behavior within acceptable limits or for fulfilling the purpose of punishment and deterrence which initially resulted in the inmate's placement in disciplinary segregation status. The SRO may not increase any previously imposed sanction.

§ 541.21 Conditions of disciplinary segregation.

(a) Disciplinary segregation is the status of confinement of an inmate housed in a special housing unit in a cell either alone or with other inmates, separated from the general population. Inmates housed in disciplinary segregation have significantly fewer privileges than those housed in administrative detention.

(b) The Warden shall maintain for each segregated inmate basic living levels of decency and humane treatment, regardless of the purpose for which the inmate has been segregated.

Living conditions may not be modified for the purpose of reinforcing acceptable behavior and different levels of living arrangements will not be established. Where it is determined necessary to deprive an inmate of a usually authorized item, staff shall prepare written documentation as to the basis for this action, and this document will be signed by the Warden, indicating the Warden's review and approval.

(c) The basic living standards for segregation are as follows:

(1) *Segregation conditions.* The quarters used for segregation must be well-ventilated, adequately lighted, appropriately heated and maintained in a sanitary condition at all times. All cells must be equipped with beds. Strip cells may not be a part of the segregation unit. Any strip cells which are utilized must be a part of the medical facility and under the supervision and control of the medical staff.

(2) *Cell occupancy.* The number of inmates confined to each cell or room in Segregation should not exceed the number for which the space was designated. The Warden may approve excess occupancy if the Warden finds there is a pressing need for this action, and that other basic living standards of this subsection can still be maintained.

(3) *Clothing and bedding.* An inmate in segregation may wear normal institution clothing but may not have a belt. Staff shall furnish a mattress and bedding. Cloth or paper slippers may be substituted for shoes at the discretion of the Warden. An inmate may not be segregated without clothing, mattress, blankets and pillow, except when prescribed by the medical officer for medical or psychiatric reasons. Inmates in special housing status will be provided, as nearly as practicable, the same opportunity for the issue and exchange of clothing, bedding, and linen, and for laundry as inmates in the general population. Exceptions to this procedure may be permitted only when found necessary by the Warden or designee. Any exception, and the reasons for this, must be recorded in the unit log.

(4) *Food.* Staff shall give a segregated inmate nutritionally adequate meals, ordinarily from the menu of the day for the institution. Staff may dispense disposable utensils when necessary.

(5) *Personal hygiene.* Segregated inmates shall have the opportunity to maintain an acceptable level of personal hygiene. Staff shall provide toilet tissue, wash basin, tooth brush, eye glasses, shaving utensils, etc., as needed. Staff may issue a retrievable kit of toilet articles. Each segregated inmate shall have the opportunity to shower and shave at least three times a week, unless these procedures would present an undue security hazard. This security hazard will be documented and signed by the Warden, indicating the Warden's review and approval. Inmates in special housing will be provided, where practicable, barbering and hair care services. Exceptions to this procedure may be permitted only when found necessary by the Warden or designee.

(6) *Exercise.* Staff shall permit each segregated inmate no less than five hours exercise each week. Exercise should be provided in five one-hour periods, on five different days, but if circumstances require, one-half hour periods are acceptable if the five-hour minimum and different days schedule is maintained. These provisions must be carried out unless compelling security or safety reasons dictate otherwise. Institution staff shall document these reasons. Exercise periods, not to exceed one week, may be withheld from an inmate by order of the Warden, upon recommendation of the Discipline Hearing Officer or the Captain. This recommendation may be made only following a hearing before the DHO, the hearing to be held in accordance with the provisions of § 541.17, following those provisions which are appropriate to these circumstances, and only upon a finding by the DHO that the actions of the segregated inmate pose a threat to the safety or health conditions of the unit.

(7) *Personal property.* Institution staff shall ordinarily impound personal property.

(8) *Reading material.* Staff shall provide a reasonable amount of nonlegal reading material, not to exceed five books per inmate at any one time, on a circulating basis. Staff shall provide the inmate opportunity to possess religious scriptures of the inmate's faith. As to legal materials, see Part 543, Subpart B.

(9) *Supervision.* In addition to the direct supervision afforded by the unit officer, a member of the medical department and one or more responsible officers designated by the Warden (ordinarily a Lieutenant) shall see each segregated inmate daily, including weekends and holidays. Members of the program staff, including unit staff, shall arrange to visit inmates in special housing within a reasonable time after receiving the inmate's request.

(10) *Correspondence and visits.* As to correspondence privileges, see Part 540, Subpart B. Staff shall make reasonable effort to notify approved social visitors of any necessary restriction on ordinary visiting procedures so that they may be spared disappointment and unnecessary inconvenience. If ample time for correspondence exists, staff may place the burden of this notification to visitors on the inmate. As to general visiting and telephone privileges, see Part 540, Subpart D and Subpart I. In respect to legal, religious, and privileged out-going mail, the relevant regulations must be followed by institution staff (see Parts 540, 543, and 548 of this Chapter).

§ 541.22 Administrative detention.

Administrative detention is the status of confinement of an inmate in a special housing unit in a cell either by self or with other inmates which serves to remove the inmate from the general population.

(a) *Placement in administrative detention.* The Warden may delegate authority to place an inmate in administrative detention to Lieutenants. Prior to the inmate's placement in administrative detention, the Lieutenant is to review the available information and determine whether the inmate's placement in administrative detention is warranted. The Warden may place an inmate in administrative detention when the inmate is in holdover status (i.e., en route to a designated institution) during transfer, or is a new commitment pending classification. The Warden may also place an inmate in administrative detention when the inmate's continued presence in the general population poses a serious threat to life, property, self, staff, other inmates or to the security or orderly running of the institution and when the inmate:

(1) Is pending a hearing for a violation of Bureau regulations;

(2) Is pending an investigation of a violation of Bureau regulations;

(3) Is pending investigation or trial for a criminal act;

(4) Is pending transfer;

(5) Requests admission to administrative detention for the inmate's own protection, or staff determines that admission to or continuation in administrative detention is necessary for the inmate's own protection (see § 541.23); or

(6) Is terminating confinement in disciplinary segregation and placement in general population is not prudent. The Segregation Review Official is to advise the inmate of this determination and the reasons for such action.

(i) In Security Level 1 through 5 and in Administrative type institutions, staff ordinarily within 90 days of an inmate's placement in post-disciplinary detention, shall, except for pretrial inmates, either return the inmate to the general inmate population or request

regional level assistance to effect a transfer to a more suitable institution.

(ii) The Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate not transferred from post-disciplinary detention within the time frame specified in paragraph (i) of this section.

(iii) In Security Level 6 institutions, staff will attempt to adhere to the 90-day limit for an inmate's placement in post-disciplinary detention. Because security needs required for an inmate in a Security Level 6 institution may not be available outside of post-disciplinary detention, the Warden may approve an extension of this placement upon determining in writing that it is not practicable to release the inmate to the general inmate population or to effect a transfer to a more suitable institution.

(iv) The appropriate Regional Director and the Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate in a Security Level 6 institution not transferred from post-disciplinary detention within the 90-day time frame specified in paragraph (iii) of this section. A similar, subsequent review shall be conducted every 60–90 days if post-disciplinary detention continues for this extended period.

(b) *Memorandum detailing reasons for placement.* The Warden shall prepare a memorandum detailing the reasons for placing an inmate in administrative detention, with a copy given to the inmate, provided institutional security is not compromised thereby. Staff shall deliver this memorandum to the inmate within 24 hours of the inmate's placement in administrative detention, unless this delivery is precluded by exceptional circumstances. A memorandum is not necessary for an inmate placed in administrative detention when this placement is a direct result of the inmate's holdover status.

(c) *Review of inmates housed in administrative detention.* (1) Except as otherwise provided in paragraphs (c)(2) and (c)(3) of this section, the Segregation Review Official will review the status of inmates housed in administrative detention. The SRO shall conduct a record review within three work days of the inmate's placement in administrative detention and shall hold a hearing and formally review the status of each inmate who spends seven continuous days in administrative detention, and thereafter shall review these cases on the record (in the inmate's absence) each week, and shall hold a hearing and review these cases formally at least every 30 days. The inmate appears before the SRO at the hearing unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing.

Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when administrative detention continues beyond 30 days. The assessment, submitted to the SRO in a written report, shall address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals should detention continue for this extended period. Administrative detention is to be used only for short periods of time except where an inmate needs long-term protection (see § 541.23), or where there are exceptional circumstances, ordinarily tied to security or complex investigative concerns. An inmate may be kept in administrative detention for longer term protection only if the need for such protection is documented by the SRO. Provided institutional security is not compromised, the inmate shall receive at each formal review a written copy of SRO's decision and the basis for this finding. The SRO shall release an inmate from administrative detention when reasons for placement cease to exist.

(2) The Warden shall designate appropriate staff to meet weekly with an inmate in administrative detention when this placement is a direct result of the inmates's holdover status. Staff shall also review this type of case on the record each week.

(3) When an inmate is placed in administrative detention for protection, but not at that inmate's request, the Warden or designee is to review the inmate's status within two work days of this placement to determine if continued protective custody is necessary. A formal hearing is to be held within seven days of the inmate's placement (see § 541.23, Protection Cases).

(d) *Conditions of administrative detention.* The basic level of conditions as described in § 541.21(c) for disciplinary segregation also apply to administrative detention. If consistent with available resources and the security needs of the unit, the Warden shall give an inmate housed in administrative detention the same general privileges given to inmates in the general population. This includes, but is not limited to, providing an inmate with the opportunity for participation in an education program, library services, social services, counseling, religious guidance and recreation. Unless there are compelling reasons to the contrary, institutions shall provide commissary privileges and reasonable amounts of personal property. An inmate in administrative detention shall be permitted to have a radio, provided that the radio is equipped with ear plugs. Exercise periods, at a minimum, will meet the level established for disciplinary segregation and will exceed this level where resources are available. The Warden shall give an inmate in administrative detention visiting, telephone, and correspondence privileges in accordance with Part 540 of this Chapter.

The Warden may restrict for reasons of security, fire safety, or housekeeping the amount of personal property that an inmate may retain while in administrative detention.

§ 541.23 Protection cases.

(a) Staff may consider the following categories of inmates as protection cases:

(1) Victims of inmate assaults;

(2) Inmate informants;

(3) Inmates who have received inmate pressure to participate in sexual activity;

(4) Inmates who seek protection through detention, claiming to be former law enforcement officers, informants, or others in sensitive law enforcement positions, whether or not there is official information to verify the claim;

(5) Inmates who have previously served as inmate gun guards, dog caretakers, or in similar positions in state or local correctional facilities;

(6) Inmates who refuse to enter the general population because of alleged pressures from other unidentified inmates;

(7) Inmates who will not provide, and as to whom staff cannot determine, the reason for refusal to return to the general population; and

(8) Inmates about whom staff has good reason to believe the inmate is in serious danger of bodily harm.

(b) Inmates who are placed in administrative detention for protection, but not at their own request or beyond the time when they feel they need to be detained for their own protection, are entitled to a hearing, no later than seven days from the time of their admission (or from the time of their detention beyond their own consent). This hearing is conducted in accordance with the procedural requirements of § 541.17, as to advance written notice, staff

representation, right to make a statement and present documentary evidence, to request witnesses, to be present throughout the hearing, and advance advisement of inmate rights at the hearing, and as to making a record of the proceedings.

(c) Ordinarily, staff may place an inmate in administrative detention as provided in paragraph (a) of this rule relating to protection cases, for a period not to exceed 90 days. Staff shall clearly document in the record the reasons for any extension beyond this 90-day period.

(d) Where appropriate, staff shall first attempt to place the inmate in the general population of their particular facility. Where inappropriate, staff shall clearly document the reason(s) and refer the case, with all relevant material, to their Regional Director, who, upon review of the material, may order the transfer of a protection case.

Dated: August 24, 1987.

J. Michael Quinlan,

Director, Bureau of Prisons.

[FR Doc. 87-19687 Filed 8-26-87; 8:45 am]

BILLING CODE 4410-05-M

VOL
52
ISS
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66
AG
27
1987
UMI

federal register

Thursday
August 27, 1987

Part V

Environmental Protection Agency

Superfund Program; Interim Guidance on Compliance With Applicable or Relevant and Appropriate Requirements; Notice of Guidance

VOL 52 ISS 166 AG 27 1987 UMI

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3249-8]

Superfund Program; Interim Guidance on Compliance With Other Applicable or Relevant and Appropriate Requirements

AGENCY: Environmental Protection Agency.

ACTION: Notice of guidance.

SUMMARY: The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 *et seq.*, provides that the President may undertake actions in response to releases or threats of releases of hazardous substances or pollutants or contaminants, as may be necessary to protect human health or the environment. Section 121 of CERCLA requires that, subject to specified exceptions, remedial actions be undertaken in compliance with applicable or relevent and appropriate environmental laws, both State and Federal. Tody, EPA is publishing interim guidance on the implementation of this requirement, and solicits public comment on the guidance. The guidance is intended to assist State and Federal decisionmakers in selecting response actions under CERCLA. The Agency wishes to emphasize that the guidance is not intended to be a regulation or rule. EPA intends in the near future to propose revisions to the National Contingency Plan (NCP), which will address the § 121 requirements, as well as other matters; comments on today's guidance will be considered prior to proposal of the revised NCP.

DATES: Coments on this notice may sent to the Agency no later than October 13, 1987.

ADDRESSES: Comments should be sent to Steve Smith at the headquarters of the United States Environmental Protection Agency, 401 M Street SW., Mail Stop WH–548D, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steve Smith or Arthur B. Weissman, Office of Emergency and Remedial Response, Policy and Analysis Staff, 401 M Street SW., Mail Stop WH–548D, Washington, DC 20460, (202) 382–2182.

SUPPLEMENTARY INFORMATION: Printed below in its entirety is the Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements. This guidance is not a rule or regulation, but is intended to assist Federal and Sate decisionmakers in selecting response actions under CERCLA. The guidance describes how Federal and State requirements are generally to be indentified and applied, and in particular defines "promulgated" for the purpose of determining eligible State requirements. One of the most important features of the guidance is the direction it provides in determining the appropriate cleanup levels for surface or ground water that can be used for drinking. The Agency suggests that in most situations encountered in CERCLA actions the Agency's drinking water standards, known as Maximum Contaminant Levels (MCLs), are appropriate as cleanup levels, since there are the safe levels Americans experience everyday at the tap. In special circumstances, such as where either multiple contaminants or multiple pathways of exposure present extraordinary risks, the Agency will consider setting more stringent cleanup levels, and may consider Maximum Contaminant Level Goals (MCLGs), among other things, in setting such levels. MCLGs are used in determining MCLs but are not intended as drinking water standards. MCLs are set as close as feasible to their respective MCLGs, and in fact MCLs for many chemicals are set at the indentical level as their respective MCLGs.

Title: Interim Guidance on Compliance With Applicable or Relevant and Appropriate Requirements.

Executive Summary: The guidance addresses the requirement in CERCLA as amended by the Superfund Amendments and Reauthorization Act of 1986, that remedial actions comply with applicable or relevant and appropriate requirements (ARARs) of Federal laws and more stringent, promulgated State laws. The guidance describes how requirements are generally to be identified and applied, and discusses specifically compliance with State requirements and certain surface water and groundwater standards. "Applicable" and "relevant and appropriate" are defined, and the three types of ARARs (chemical-, location-, and action-specific) are described. Guidance is given on how and at what points ARARs are to be used in the remedial process. Eligible State requirements are defined, with particular reference to "promulgated," and direction is given on evaluating siting laws and on using the waiver regarding consistency of application. Finally, the guidance discusses the use of water standards specified in the law (MCLGs, FWQC, ACLs), and describes the use MCLs as cleanup standards for surface water or groundwater that is or may be used for drinking.

Purpose

This document provides interim guidance on compliance with other Federal and State environmental laws in conducting CERCLA remedial actions. The guidance is intended to help define the nature, scope, and use of applicable or relevant and approprate requirements. The guidance is not intended to be comprehensive or exhaustive. The Agency is currently developing a guidance manual that provides detailed information on potential ARARs in the major Federal environmental statutes.

Background

Section 121(d) of CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires that Fund-financed, enforcement, and Federal facility remedial actions comply with requirements or standards under Federal and State environmental laws. The requirements that must be complied with are those that are applicable or relevant and appropriate to the hazardous substances, pollutants, or contaminants at a site or to the circumstances of the release. Compliance is required at the completion of the remedial action for hazardous substances, pollutants, or contaminants that remain on-site. Any such requirements may be waived under six conditions provided that protection of human health and environment is still assured.

SARA essentially codified and expanded upon the Agency's Compliance Policy, which was included in the National Contingency Plan (revised November 20, 1985). The major difference between that policy and the new statutory requirement is that the latter includes more stringent, promulgated State environmental standards as potentially applicable or relevant and appropriate requirements, and Maximum Contaminant Level Goals and Federal Water Quality Criteria as potentially relevant and appropriate requirements.

General Guidance on Identifying and Using ARARs

This section defines what ARARs are, describes the different types of ARARs, and discusses how they are applied to the remedial process.

Definition of ARARs

A requirement under other environmental laws may be either "applicable" or "relevant and appropriate" to a remedial action, but not both. A two-tier test may be applied:

first, to determine whether a given requirement is applicable; then, if it is not applicable, to determine whether it is nevertheless relevant and appropriate.

"Applicable requirements" means those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site.

"Applicability" implies that the remedial action or the circumstances at the site satisfy all of the jurisdictional prerequisites of a requirement. For example, the minimum technology requirement for landfills under RCRA would apply if a new hazardous waste landfill unit (or an expansion of an existing unit) were to be built on a CERCLA site.

"Relevant and appropriate requirements" means those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that, while not "applicable" to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site.

The relevance and appropriateness of a requirement can be judged by comparing a number of factors, including the characteristics of the remedial action, the hazardous substances in question, or the physical circumstances of the site, with those addressed in the requirement. It is also helpful to look at the objective and origin of the requirement. For example, while RCRA regulations are not applicable to closing undisturbed hazardous waste in place, the RCRA regulation for closure by capping may be deemed relevant and appropriate.

A requirement that is judged to be relevant and appropriate must be complied with to the same degree as if it were applicable. However, there is more discretion in this determination: it is possible for only part of a requirement to be considered relevant and appropriate, the rest being dismissed if judged not to be relevant and appropriate in a given case.

Non-promulgated advisories or guidance documents issued by Federal or State governments do not have the status of potential ARARs. However, as described below, they may be considered in determined the necessary level of cleanup for protection of health or environment.

Types of ARARs

There are several different types of requirements that Superfund actions may have to comply with. The classification of ARARs below if offfered for illustrative purposes.

- Ambient or chemical-specific requirements set health or risk-based concentration limits or ranges in various environmental media for specific hazardous substances, pollutants, or contaminants. Examples: Maximum Contaminant Levels, National Ambient Air Quality Standards.

These requirements may set protective cleanup levels for the chemicals of concern in the designated media, or else indicate an acceptable level of discharge (e.g., air emission or wastewater discharge taking into account water quality standard) where one occurs in a remedial activity. If a chemical has more than one such requirement, the more stringent ARAR should be complied with.

There are at presents a limited number of actual ambient or chemical-specific requirements. In order to achieve remedies that are protective of health and environment, it may frequently be necessary to use chemical-specific advisory levels such as Carcinogenic Potency Factors or Reference Doses. While not actually ARARs, these chemical-specific advisory levels may factor significantly into the establishment of protective cleanup levels. Guidance for establishing such chemical-specific, health-based cleanup levels is given in the Superfund Public Health Evaluation Manual (EPA 540/1–86/060, Oct. 1986).

- Performance, design, or other action-specific requirements set controls or restrictions on particular kinds of activities related to management of hazardous substances, pollutants, or contaminants. Examples: RCRA regulations for closure of hazardous waste storage or disposal units; RCRA incineration standards; Clean Water Act pretreatment standards for discharges to POTWs.

These requirements are triggered not by the specific chemicals present at a site but rather by the particular remedial activities that are selected to accomplish a remedy. Since there are usually several alternative actions for any remedial site, very different requirements can come into play. These action-specific requirements may specify particular performance levels, actions, or technologies, as well as specific levels (or a methodology for setting specific levels) for discharged or residual chemicals.

- Locational requirements set restrictions on activities depending on the characteristics of a site or its immediate environs. Examples: Federal and State siting laws for hazardous waste facilities; sites on National Register of Historic Places.

These requirements function like action-specific requirements. Alternative remedial actions may be restricted or precluded depending on the location or characteristics of the site and the requirements that apply to it.

Using ARARs

This section explains how and where requirements may be applied in the remedial planning process.

First, actual ARARs can be identified only on a site-specific basis. They depend on the specific chemicals at a site, the particular actions proposed as a remedy, and the site characteristics. Guidance is being developed on the potential ARARs under the major Federal environmental statutes for various activities, locations, and chemicals.

Where there are no specific ARARs for a chemical or situation, or where such ARARs are not sufficient to be protective, one should identify pertinent health advisory levels (such as Reference Doses or Carcinogenic Potency Factors) as described above in order to ensure that a remedy is protective.

The different ARARs that may apply to a site and its remedial action should be identified and considered at multiple points in the remedial planning process, namely:

—During scoping of the RI/FS, chemical/specific and location-specific ARARs may be identified on a preliminary basis.

—During the site characterization phase of the Remedial Investigation, when the public health evaluation is conducted to assess risks at a site, the chemical-specific ARARs and advisories and location-specific ARARs are identified more comprehensively and used to help determine the cleanup goals.

—During development of remedial alternatives in the Feasibility Study, action-specific ARARs are identified for each of the proposed alternatives and considered along with other ARARs and advisories.

—During detailed analysis of alternatives all the ARARs and advisories for each alternative are examined as a package to determine

what is needed to comply with other laws and be protective.

—When an alternative is selected it must be able to attain all ARARs unless one of the six statutory waivers is invoked.

—During remedial design the technical specifications of construction must ensure attainment of ARARs.

Note that CERCLA § 121(e) exempts any on-site response action from having to obtain a Federal, State, or local permit.

In general, on-site actions need comply only with the substantive aspects of these requirements, not with the administrative aspects. That is, neither applications nor other administrative procedures such as permitting or administrative reviews are considered ARARs for actions conducted entirely on-site, and therefore should not be pursued during the remedial planning of the remedial action. However, the RI/FS, Record of Decision, and design documents should demonstrate full compliance with all substantive requirements that are ARARs. Also, other Federal and State program offices should be consulted as appropriate to ensure that remedies are substantively compliant with identified ARARs.

Guidance on Identifying State ARARs

This section describes the basic factors to be considered in identifying State requirements for Superfund remedial actions.

As mandated by CERCLA § 121(d)(2)(A), remedies must comply with "any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard, requirement, criteria, or limitation" if the former is applicable or relevant and appropriate to the hazardous substance or release in question.

States are required by CERCLA to identify State ARARs "in a timely manner," that is, in sufficient time to avoid inordinate delay or duplication of effort in the remedial process. Regions should expect to work closely with their States so that the appropriate ARARs are identified at critical stages in the process. At a minimum, chemical-specific and location-specific ARARs should be identified after site characterization, and action-specific ARARs should be identified after initial screening of alternatives (prior to detailed analysis) for alternatives that pass through the screening. To the extent possible, Regions and States should negotiate to try to resolve any differences of opinion about ARARs.

Eligible Requirements

The statute specifically limits the scope of potential requirements to those that are promulgated. "Promulgated" requirements are laws imposed by State legislative bodies and regulations developed by State agencies that are of general applicability and are legally enforceable.

State advisories, guidance, or other non-binding policies, as well as standards that are not of general application, cannot be treated as requirements under CERCLA. However, as with their Federal counterparts, State advisories may still be considered in determining an appropriate, protective remedy.

General State goals that are duly promulgated (such as a non-degradation law) have the same weight as explicit, numerical standards, although the former have to be interpreted in terms of a site and therefore may allow more flexibility in approach. Similarly, State laws or regulations that prescribe methods for deriving numerical standards for specific cases may also be potential requirements.

On-site actions need comply only with the substantive aspects of a State requirement, not with the administrative aspects. Where the requirement involves review by a State board based on explicit criteria, the best approach is to incorporate the substantive criteria into the RI/FS and remedy selection process and to maintain close consultation with appropriate State representatives.

Limitations on State Siting Laws

CERCLA § 121(d)(2)(C) puts special limitations on the applicability of State requirements or siting laws for hazardous waste facilities that could result in a State-wide prohibition of land disposal. Specifically, in order to be treated as potentially applicable or relevant and appropriate requirements, such laws must:

(1) Be of general applicability and be formally adopted

(2) Be based on technical (e.g., hydrogeologic) or other relevant considerations

(3) Not be intended to preclude land disposal for reasons other than protection of health or environment.

In addition, the State must arrange and pay for additional costs for out-of-State or other disposal necessitated by such a law.

The first criterion is similar to the criterion that a requirement be promulgated, as discussed above. The second criterion requires that such a law be based on sound scientific or technical considerations, such as groundwater flow, surficial geology, and engineering design. The third criterion requires some evidence that health or environmental protection motivates the prescribed restrictions; the introductory sections of a law, the nature of the technical consideration, or the legislative history can be used to make this determination.

Consistency of Application

CERCLA § 121(d)(4)(E) allows a State requirement to be waived if it has not been consistently applied by the State in similar circumstances at other remedial actions. The waiver cannot be used if the State has demonstrated the intention to consistently apply the requirement.

Consistency of application by a State may be determined by examining the following:

—Application of requirement at similar sites or in similar response circumstances (considering nature of contaminants or media affected, characteristics of waste and facility, degree of danger or risk, etc.)

—Proportion of cases (including enforcement actions) in which requirement was not applied out of total actions where it could have been applied

—Reason for non-application of requirement in past cases

—Intention to consistently apply requirement in future as shown by policy statements, legislative history, site remedial planning documents, or State responses to Federal-lead sites; newly promulgated requirements shall be presumed to embody this intention unless there is contrary evidence.

All previous actions by States since promulgation that relate to similar remedial actions may be considered in evaluating consistency.

Guidance on Applying Specified Water Standards

CERCLA § 121(d)(2)(A) and (B) explicitly mention three kinds of surface water or groundwater standards with which compliance is potentially required—Maximum Contaminant Level Goals (MCLGs), Federal Water Quality Criteria (FWQC), and alternate concentration limits (ACLs) where human exposure is to be limited. This section describes these requirements and how they may be applied to Superfund remedial actions. The guidance is based on Federal requirements and policies; more stringent, promulgated State requirements (such as a stricter classification scheme for groundwater) may result in application of even stricter standards than those specified here.

Background

These three standards or criteria each derive from separate statutes and have different purposes and uses.

MCLGs are developed under the Safe Drinking Water Act as chemical-specific health goals used in setting enforceable drinking water standards, known as Maximum Contaminant Levels (MCLs), for public water supply systems. MCLGs are based entirely on health considerations and do not take cost or feasibility into account. Moreover, as health goals MCLGs are set at levels where no known or anticipated health effects may occur, including an adequate margin of safety. MCLs are required to be set as close as feasible to the respective MCLs, taking into consideration the best technology, treatment techniques, and other factors (including cost). However, as the standard for public water supplies, MCLs are fully protective of human health and (for carcinogens) fall within the acceptable risk range of 10^{-4} to 10^{-7}. Furthermore, for non-carcinogens, which are the majority of contaminants, MCLs will nearly always be set at the same level as the respective MCLGs. Also, these standards assure that even sensitive populations will experience no adverse health effects. Thus, there will be no difference in the protectiveness of MCLGs and MCLs for most contaminants, and, as discussed above, MCLs provide a sufficient level of protectiveness even for carcinogens.

FWQC are developed under the Clean Water Act as guidelines from which States determine their water quality standards. Different FWQC are derived for protection of human health and protection of aquatic life.

ACLs are one of three possible Standards available under the Subpart F Groundwater Protection Standards of RCRA. For setting both a trigger and a cleanup level for remediating groundwater contamination, an ACL, the background concentration, or for a small group of chemicals the MCL can be selected for a given site.

Statutory Mandate

CERCLA § 121(d)(2) states that remedial actions shall attain applicable or relevant and appropriate requirements under the Safe Drinking Water Act, the Clean Water Act, and RCRA, and specifically shall attain MCLGs and FWQC where they are relevant and appropriate under the circumstances of the release or threatened release. It further states that for FWQC this determination will be based on the designated or potential use of the water, the media affected, the purposes of the criteria, and current information.

CERCLA § 121(d)(2)(B)(ii) limits the use of ACLs that are set above health-based levels based on projections that health-based levels will be achieved at a likely point of human exposure. Such a point of exposure may not be beyond the Superfund facility boundary unless the groundwater discharges into surface water and does not cause a statistically significant increase of contaminants in the surface water. To apply such an ACL outside the facility, moreover, the remedial action must include enforceable measures to prevent use of any contaminated groundwater.

Application

In determining the applicable or relevant and appropriate requirements for remedial actions involving contaminated surface water or groundwater, the most important factors to consider are the uses and potential uses of the water and the purposes for which the potential requirements are intended.

The actual or potential use of water, and the manner in which it is used, will determine what kinds of requirements may be applicable or relevant and appropriate. For Class III-type groundwater that is not suitable for drinking because of high salinity or widespread contamination and that does not affect drinkable groundwater, drinking water standards are neither applicable nor relevant and appropriate. For Class I- and Class II-type groundwater or surface water that is or may be used for drinking, drinking water standards are applicable or relevant and appropriate, and the surface water or groundwater must ultimately be cleaned up to such levels.

For water that is or may be used for drinking, the Maximum Contaminant Levels (MCLs) set under the Safe Drinking Water Act are generally the applicable or relevant and appropriate standard. MCLs are applicable at the tap where the water will be provided directly to 25 or more people or will be supplied to 15 or more service connections. Otherwise, where surface water or groundwater is or may be used for drinking, MCLs are generally relevant and appropriate as cleanup standards for the surface water or the groundwater.

A standard for drinking water for a contaminant for which there is an MCL may be more stringent than the MCL to ensure adequate protection in special circumstances, such as where either multiple contaminants in groundwater or multiple pathways of exposure present extraordinary risks. In setting a level more stringent than the MCL in such cases, a site-specific determination should be made by considering MCLGs, the Agency's policy on the use of appropriate risk ranges for carcinogens, levels of quantification, and other pertinent guidelines. Prior to consultation with Headquarters is encouraged in such cases.

When MCLs do not exist for contaminants identified at the site, cleanup levels should be set using chemical-specific advisory levels. Cleanup levels should be selected such that the total risk of all contaminants falls within the acceptable risk range of 10^{-4} to 10^{-7}. In cases where non-carcinogens are present, cleanup levels should be based on acceptable levels of exposure as determined by the Reference Dose, taking into account the effects of other contaminants at the site.

It should be noted that while MCLs are generally the cleanup standards, as described above, the treatment necessary to attain an MCL level for one chemical (or a protective level for a chemical without an MCL) may result in an actual level for another chemical that is below its respective MCL (or protective level).

A more stringent FWQC for aquatic life may be found relevant and appropriate when there are environmental factors that are being considered at a site, such as protection of aquatic organisms. The Agency is still formulating a position with respect to the use of FWQC for protection of human health.

Guidance on the use of ACLs based on limitations on exposure will be forthcoming.

Dated: August 6, 1987.

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 87-19190 Filed 8-26-87; 8:45 am]

BILLING CODE 6560-50-M

VOL
52
ISS
1
66
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27
1987
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federal register

Thursday
August 27, 1987

Part VI

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Affiliated Service Groups, Employee Leasing, and Other Arrangements; Notice of Proposed Rulemaking

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-111-82]

Affiliated Service Groups, Employee Leasing, and Other Arrangements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations prescribing rules for determining: (1) When a management organization and the organization for which the management organization performs management services constitute an affiliated service group; (2) when leased employees are treated as employees of the lessee organization for purposes of certain employee benefit provisions; and (3) when arrangements involving separate organizations, employee leasing, or other arrangements will be ignored in order to prevent the avoidance of certain employee benefit requirements.

Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982, the Tax Reform Act of 1984, and the Tax Reform Act of 1986. The regulations provide the public with guidance needed to comply with those Acts and would affect employers that maintain, and participants in, qualified plans.

DATES: Written comments and requests for a public hearing must be delivered or mailed by October 26, 1987. The regulations provided by this document are proposed to be generally effective for tax years beginning after December 31, 1983.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-111-82), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Michael Garvey of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T, (202) 566-3903, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 414(m)(5), 414(n), and 414(o) of the Internal Revenue Code. These amendments are proposed to conform the regulations to sections 246 and 248 of the Tax Equity and Fiscal Responsibility Act of 1982 (26 U.S.C. 414(m)(5), 414(n)), section 526 of the Tax Reform Act of 1984 (26 USC 414(n)(2), 414(o)), and section 1146 of the Tax Reform Act of 1986 (26 U.S.C. 414(n), 414(o)). Other sections of the Tax Reform Act of 1986 that relate to section 414(n) are not reflected in this document.

Organizations Performing Management Functions

Section 414(m)(5) of the Code expands the definition of an affiliated service group that is to be treated as a single employer under section 414(m) for purposes of certain employee benefit requirements. Pursuant to section 414(m)(5), an affiliated service group includes a management organization and a recipient organization (i.e., the organization (and related organizations) for which the management organization performs management functions). An organization is a management organization if the principal business of the organization is the performing of, on a regular and continuing basis, management functions for a recipient organization.

Employee Leasing

Section 414(n) provides that, under certain circumstances, an individual ("leased employee") who performs services for a person ("recipient") through another person ("leasing organization") shall be treated as the employee of the recipient for purposes of certain employee benefit requirements. If the services being provided by an individual to a recipient are pursuant to an agreement between the recipient and the leasing organization, and the individual performs such services for the recipient on a substantially full-time basis for a period of at least one year, and the services are of a type historically performed by employees, then the individual is a leased employee and, therefore, shall be treated as an employee of the recipient.

Section 414(n)(5) provides, however, that if the leasing organization maintains a safe-harbor plan with respect to a leased employee, such individual will generally not be treated as an employee of the recipient. Section 414(n)(5), as originally enacted, required that a safe-harbor plan must be a qualified money purchase pension plan with provision for nonintegrated employer contributions of at least 7½ percent, immediate participation, and full and immediate vesting.

The Tax Reform Act of 1986 amended several provisions relating to sections 414(n) and 414(o). These amendments include the following:

(1) The definition of a safe-harbor plan under section 414(n)(5) has been amended to require a contribution rate of 10 percent and to require that the plan must cover all employees of the leasing organization (other than employees who perform substantially all of their services for the leasing organization (and not for recipients) and employees whose compensation from the leasing organization is less than $1,000 during the plan year and during each of the 3 prior plan years).

(2) Under section 414(n)(5), a leased employee will be treated as an employee of the recipient, regardless of the existence of a safe-harbor plan, if more than 20 percent of the recipient's nonhighly compensated workforce are leased employees (as specially defined for this purpose).

(3) A recordkeeping exception from the section 414(n) employee leasing provisions is provided under section 414(o) in the case of an employer that has no section 416(g) top-heavy plans and that uses the services of nonemployees only for an insignificant percentage of the employer's total workload.

(4) The scope of the section 414(n) employee leasing provisions has been expanded to include a number of non-pension employee benefit requirements (listed under section 414(n)(3)), including group-term life insurance, accident and health plans, qualified group legal services, cafeteria plans, etc. In addition, the employee leasing provisions will apply to these non-pension employee benefit requirements regardless of the existence of a safe-harbor plan.

Except for the amendments relating to the non-pension employee benefit requirements, the proposed regulations reflect the Tax Reform Act of 1986 amendments described above. Guidance relating to the non-pension employee benefit requirements, and other relevant amendments made by the Tax Reform Act of 1986, will be forthcoming.

Avoidance of Certain Employee Benefits Requirements

Section 414(o) provides that the Secretary shall prescribe such regulations as may be necessary to prevent the avoidance of any employee benefit requirement listed in sections 414(m)(4) or 414(n)(3) through the use of separate organizations, employee leasing, or other arrangements. Specifically, the Secretary has the authority to provide rules in addition to

the rules contained in sections 414(m) and 414(n).

Pursuant to section 414(o), the proposed regulations provide rules relating to several arrangements that may result in the avoidance of the listed employee benefit requirements. These arrangements include the leasing of certain owners, the leasing of certain managers, the creation of successive organizations in time, expense sharing arrangements, plans maintained by certain corporate directors, and plans covering certain five-percent owners.

Effective Dates

The amendments made to section 414 by the Tax Equity and Fiscal Responsibility Act of 1982 are effective for tax years of a recipient or of a member of an affiliated service group that begin after December 31, 1983.

The amendments made to section 414 by the Tax Reform Act of 1984 are effective as of July 18, 1984. The regulations promulgated under section 414(o), however, are variously effective for (1) plan years beginning more than six months after this document is published in the **Federal Register**, (2) plan years beginning more than sixty days after this document is published in the **Federal Register** as a Treasury decision, and (3) plan years beginning during or after the first tax year of a recipient beginning after December 31, 1983. (To the extent that the regulations under section 414(o) aggregate plans for purposes of section 415 that were not previously aggregated, the rules of § 1.415–10 apply.)

The amendments made to section 414 by the Tax Reform Act of 1986 are generally effective with respect to services performed after December 31, 1986. The recordkeeping exception from section 414(n), provided under section 414(o), and certain clarifying amendments under section 414(n) are effective as if originally enacted as part of the section 414 amendments made by the Tax Equity and Fiscal Responsibility Act of 1982. The section 414(n)(3) amendments relating to the non-pension employee benefit requirements are generally effective when section 89 applies to such non-pension employee benefits (see section 1151(k) of the Tax Reform Act of 1986).

Special Analysis

The Commissioner of Internal Revenue has determined this rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553(b) do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner or Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Philip R. Bosco of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.401–1–1.425–1

Employee benefit plans, Pensions.

Proposed Amendments to the Regulations

The Income Tax Regulations (26 CFR Part 1) are proposed to be amended as follows:

Paragraph 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.414(n)–1 also issued under 26 U.S.C. 414(n). Section 1.414(o)–1 also issued under 26 U.S.C. 414(o).

Par. 2. The following new sections are added immediately following § 1.414(m)–4 and read as follows:

§ 1.414(m)–5 Organizations performing management functions.

(a) *In general*—(1) *Affiliated service group.* Pursuant to section 414(m)(5), an affiliated service group includes a group consisting of a management organization (as defined in paragraph (a)(3) of this section) and a recipient organization (as defined in paragraph (a)(4) of this section).

(2) *Organization.* For purposes of this section, the term "organization" means a sole proprietorship, partnership, corporation, trust, association, company, estate, or any other type of entity, regardless of its ownership format.

(3) *Management organization.* For purposes of this section, the term "management organization" means—

(i) An organization, and

(ii) All organizations aggregated (as provided in paragraph (a)(5) of this section) with the organization identified in paragraph (a)(3)(i) of this section, the principal business of which is to perform on a regular and continuing basis management functions for a recipient organization.

(4) *Recipient organization.* For purposes of this section, the term "recipient organization" means—

(i) An organization for which management functions are performed,

(ii) All organizations aggregated (as provided in paragraph (a)(5) of this section) with the organization identified in paragraph (a)(4)(i) of this section, and

(iii) All organizations related (as provided in paragraph (a)(6) of this section) to any organization identified in paragraphs (a)(4)(i) or (a)(4)(ii) of this section.

(5) *Aggregated organizations.* For purposes of this section, organizations are aggregated pursuant to section 414 (b), (c), (m), and (o).

(6) *Related organizations.* For purposes of this section, an organization ("first organization") is related to an organization identified in paragraphs (a)(4)(i) or (a)(4)(ii) of this section ("second organization") if such first organization and second organization would be related persons pursuant to section 144(a)(3) and the management organization performs management functions for the first organization.

(7) The provisions of this paragraph may be illustrated by the following examples:

Example (1). Assume that Corporations A and B constitute a controlled group of corporations under section 414(b) and that Corporations C and D constitute an affiliated service group under section 414(m)(2). Assume that C or D (or both) perform management functions and other services for A or B (or both) that satisfy the requirements of paragraph (b) of this section. C and D are treated as a single management organization and A and B are treated as a single recipient organization for purposes of section 414(m)(5). A, B, C, and D constitute an affiliated service group under section 414(m)(5).

Example (2). Assume the same facts as in example (1). In addition, assume that Corporation E is related to A or B under paragraph (a)(6) of this section (but not aggregated with A or B under paragraph (a)(5) of this section). Assume further that C or D (or both perform management functions and other services for E that satisfy the

requirements of paragraph (b) of this section. E is included with A and B as a single recipient organization. A, B, C, D, and E constitute an affiliated service group under section 414(m)(5).

Example (3). Assume the same facts as in example (2). In addition, assume that Corporation F is related to C or D under section 114(a)(3) (but not aggregated with C or D under paragraph (a)(5) of this section). F is not part of the A–B–C–D–E affiliated service group solely by virtue of its relationship to C or D, even if it provided management functions to A, B, or E. If, however, F (regardless of whether F is related to C or D) satisfies the requirements of paragraph (b) of this section as a management organization with respect to the A–B–C–D–E affiliated service group, then, A, B, C, D, E, and F constitute an affiliated service group.

(b) *Determination of principal business on a regular and continuing basis*—(1) *Two-tax-year rolling percentage.* Except as provided in paragraph (b)(2) of this section, a management organization shall exist with respect to a particular recipient organization for a tax year of the management organization during which the performance of management functions and other services for the recipient organization constitutes more than 50 percent of the management organization's business activities during the two-tax-year period that includes such tax year and the prior tax year. If the management organization was not in existence prior to the current tax year, the more-than-50-percent test shall apply only to the current tax year. Once the more-than-50-percent test is met, the management organization will continue to be a management organization with respect to a particular recipient organization for each subsequent tax year during which the performance of management functions and other services for such recipient organization constitutes more than 40 percent of the management organization's business activities during the two-tax-year period that includes such subsequent tax year and the immediately preceding tax year, unless—

(i) The performance of management functions and other services for the recipient organization constitutes less than five percent of the management organization's business activities during such subsequent tax year,

(ii) There is an intervening tax year for which the management organization and the recipient organization do not satisfy the more-than-40-percent test, or

(iii) The management organization satisfies the more-than-50-percent test with respect to a different recipient organization for such subsequent tax year and the immediately preceding tax year.

If one or more of the three exceptions described in this paragraph (b)(1) applies to a management organization and a particular recipient organization for a tax year, whether such organization is a management organization for such tax year (with respect to either the same or a different recipient organization) or whether such organization becomes a management organization for a subsequent tax year (with respect to either the particular or a different recipient organization) will be determined by reapplication of the more-than-50-percent-test of this paragraph (b)(1) to such organization for the applicable tax year.

(2) *Insubstantial management functions.* Notwithstanding anything in this paragraph (b) to the contrary, a management organization shall not exist with respect to a particular recipient organization for a tax year of the management organization during which the performance of management functions for such recipient organization, in relation to all services performed for such recipient organization, is not substantial. The performance of management functions for a recipient organization is not substantial for a tax year only if during such tax year less than 50 percent of the compensation provided by the management organization, with respect to services performed for the recipient organization [including services performed as an employee of the management organization and in any other capacity), is provided to individuals who perform a significant amount of management functions for the recipient organization. An individual performs a significant amount of management functions for the recipient organization if, during the tax year, at least 15 percent of the individual's service (including service performed as an employee of the management organization and in any other capacity) for the recipient organization (based on time) is performing management functions for the recipient organization. For purposes of this paragraph (b)(2), the term "compensation" means (i) with respect to services performed as a common-law employee, compensation reportable on Form W–2, and (ii) with respect to services performed as a self-employed individual (as defined in section 401(c)(1)), earned income as defined in section 401(c)(2).

(3) *Use of gross receipts to determine principal business.* Except as provided in paragraph (b)(4) of this section, the principal business determination under paragraph (b)(1) of this section is made on the basis of the percentage of gross receipts derived from management functions and other services performed for a recipient organization, as compared to the gross receipts derived from all business activities. In determining the two-tax-year percentage for purposes of paragraph (b)(1) of this section, gross receipts for the combined two-tax-year period are compared. Thus, it is not permissible to average the percentages determined separately for each tax year. For purposes of this paragraph (b), gross receipts derived from all business activities do not include gross receipts from the sale of any asset.

(4) *Use of facts and circumstances to determine principal business.* The Commissioner may, at his discretion, determine that the use of gross receipts is not an appropriate method for determining principal business. In that event, the determination of principal business shall be made on the basis of all relevant facts and circumstances including, for example, the amount of time actually spent by individuals in performing management functions and other services for a recipient organization. The determination that the use of gross receipts is not an appropriate method for determining principal business may not be made by the taxpayer.

(5) *Aggregated organizations with different tax years.* If management organizations aggregated pursuant to paragraph (a)(3) of this section have different tax years, any 12-month period used at any time by such organization may be used for purposes of this paragraph (b) provided that the 12-month period selected is used consistently.

(c) *Management functions*—(1) *Definition.* For purposes of this section, the term "management functions" includes only those management activities and services historically performed by employees. Management activities and services include determining, implementing, or supervising (or providing advice or assistance in accomplishing any of the foregoing)—

(i) Daily business operations (such as production, sales, marketing, purchasing, advertising, etc.),

(ii) Personnel (such as staffing, training, supervising, hiring and firing, etc.),

(iii) Employee compensation and benefits (such as salaries and wages, paid vacations and holidays, life and health insurance, pensions, etc.),

(iv) Short- and long-range business planning (such as product development,

budgeting, financing, expansion of operations, capital investment, etc.),

(v) Organizational structure and ownership (such as corporate formation, stock issues, dividends, mergers and acquisitions, etc.), and

(vi) Any other management activity or service.

Management activities and services also include professional services (as defined in § 1.414(m)-1(c)) that relate to the activities and services described in this paragraph (c)(1). In addition, professional services of the same type as the professional services performed by the recipient organization for third parties are deemed to be management activities and services, and are deemed to be management functions regardless of whether such professional services are historically performed by employees.

(2) *Historically performed by employees*—(i) *In general.* Management activities and services are historically performed by employees in a particular business field (such as the health field) if it was not unusual for management activities and services of such type to be performed by employees of organizations in that particular business field, in the United States, on September 3, 1982. To the extent that a particular business field did not exist on September 3, 1982, whether a management activity or service will be considered historically performed by employees in that particular business field will be determined by analogy to similar business fields in existence on September 3, 1982. The Commissioner may provide additional guidance as to what constitutes a business field.

(ii) *Management activity or service actually performed by employees.* Notwithstanding a determination under paragraph (c)(2)(i) of this section that it was unusual for a particular management activity or service to be performed by employees of organizations in a particular business field, if such management activity or service was ever performed by any employee of a particular organization in such business field, such management activity or service is a management activity or service historically performed by employees for purposes of applying section 414(m)(5) to that particular organization (and to organizations aggregated with such organization under paragraph (a)(5) of this section and to organizations which would be related to any of the foregoing organizations under paragraph (a)(6) of this section if such management activity or service were considered a management function for purposes of such paragraph (a)(6)), for the period beginning on the date such management activity or service was first performed by an employee of that organization and ending on the date five years after such management activity or service is no longer performed by an employee of that organization.

(d) *Treatment of self-employed individuals.* For purposes of this section, the term "employee" includes a self-employed individual (as defined in section 401(c)(1)).

(e) *Services performed means services performed directly or indirectly.* For purposes of this section, services performed for a person other than as an employee of such person means services performed directly or indirectly for such person.

§ 1.414(m)-6 Application of section 414(o) to section 414(m).

Section 414(o) provides that the Secretary shall prescribe such regulations (which may provide rules in addition to the rules contained in section 414 (m) as may be necessary to prevent the avoidance of any employee benefit requirement listed in section 414(m)(4) through the use of separate organizations, employee leasing, or other arrangements. Accordingly, the regulations under section 414(m) are promulgated, in part, pursuant to the authority granted by section 414(o). For additional rules that may relate to section 414(m), see section 414(o) and the regulations thereunder.

§ 1.414(n)–1 Employee leasing.

(a) *In general.* Section 414 (n) provides that under certain circumstances, an individual who is a leased employee shall be treated as an employee of the recipient for purposes of the employee benefit requirements listed in § 1.414(n)–3 (a).

(b) *Definitions*—(1) *Leasing organization.* The term "leasing organization" means any aggregated group (as defined in paragraph (b)(6) of this section without regard to paragraph (b)(6)(ii) of this section) which provides services to a recipient through a leased employee. An aggregated group may be both the leasing organization and the leased employee, such as where a sole proprietor performs services for a recipient as an independent contractor.

(2) *Recipient.* The term "recipient" means any aggregated group (as defined in paragraph (b)(6) of this section) which utilizes the services of a leased employee.

(3) *Person.* The term "person" means any individual, sole proprietorship, trust, estate, partnership, association, company, or corporation. Whether persons are related is determined pursuant to the rules of section 144(a)(3).

(4) *Leased employee.* The term "leased employee" means any individual who provides services to a recipient, in a capacity other than as an employee of the recipient, in accordance with each of the following three requirements:

(i) The services are provided pursuant to one or more agreements between the recipient and one or more leasing organizations.

(ii) The individual has performed such services for the recipient on a substantially full-time basis for a period of at least one year.

(iii) Such services are of a type historically performed, in the business field of the recipient, by employees.

(For purposes of this paragraph (b)(4), the terms, "recipient" and "leasing organization" mean such person or persons that would constitute a "recipient" or "leasing organization" if the individual were a leased employee.) If the three requirements of this paragraph (b) (4) are satisfied, an individual generally becomes a leased employee with respect to a recipient as of the first day immediately following the end of the one-year period specified in paragraph (b) (4) (ii) of this section. However, an individual may become a leased employee with respect to a recipient as of the beginning of the one-year period specified in paragraph (b) (4) (ii) of this section if the recipient elects such treatment with respect to all individuals who satisfy paragraph (b) (4) (i) and (iii) of this section. An individual need not be an employee of the leasing organization to be a leased employee. For example, an individual may be an independent contractor or leased employee with respect to the leasing organization.

(5) *Agreement.* For purposes of paragraph (b) (4) (i) of this section, an agreement between the recipient and the leasing organization includes any mutual understanding between the parties that the leasing organization will provide an individual or individuals to perform services for the recipient. This agreement need not be in writing. An agreement will be deemed to exist with respect to an individual if the leasing organization receives or is entitled to payment from the recipient in exchange for providing the individual to perform services for the recipient.

(6) *Aggregation of related or aggregated recipients.* For purposes of section 414(n) and the regulations thereunder, the term "aggregated group" means—

(i) All persons aggregated pursuant to section 414 (b), (c), (m), or (o), and

(ii) All persons related, in accordance with section 414 (a)(3), to any person aggregated under paragraph (b)(6)(i) of this section.

(7) *Performance of services through multiple leasing organizations.* For purposes of paragraph (b)(4)(ii) of this section, if a individual performs services for a recipient pursuant to one or more agreements between the recipient and one or more leasing organizations, all such services are included.

(8) *Performance of services prior to the effective date of section 414(n) or while covered by a safe-harbor plan.* For purposes of paragraph (b)(4)(ii) of this section, services performed by an individual prior to the effective date of section 414(n) are included. For example, assume that an individual began performing services for a recipient on June 1, 1982. If by June 1, 1983, the individual has performed the requisite number of hours of service for the recipient, and the other requirements of section 414(n)(2) are met, such individual is a leased employee of the recipient as of the first date on which section 414(n) applies with respect to the recipient. For purposes of paragraph (b)(4)(ii) of this section, services performed by an individual while covered by a safe-harbor plan (as defined in paragraphs (f) and (g) of § 1.414(n)–2) are included.

(9) *Performance of services as an employee.* For purposes of paragraph (b)(4)(ii) of this section, services performed at any time by an individual as an employee of a recipient are included.

(10) *Substantially full-time basis for a period of at least one year*—(i) *General rule.* For purposes of paragraph (b)(4)(ii) of the section, an individual is considered to have performed services or a substantially full-time basis for a period of at least one year if by the end of the individual's initial 12-month period of performing services for the recipient, or by the end of any plan year of the recipient beginning either during or after the individual's initial 12-month period of performing services for the recipient, such individual is credited with either—

(A) At least 1500 hours of service for the recipient, or

(B) At least 501 hours of service for the recipient and a number of hours of service for the recipient equal to at least 75 percent of the median number of hours of service credited during the same period to individuals who during the entire period perform similar services for the recipient as employees of the recipient. Under certain circumstances, it may be appropriate to base the determination under paragraph (b)(10)(i)(B) of this section on similar services performed by individuals other than current employees of the recipient. For example, if no individuals currently perform similar services for the recipient as employees of the recipient, it may be appropriate to determine the median based on individuals who performed similar services for the recipient as employees of the recipient in a prior plan year. If the recipient has plans with more than one plan year, the recipient may use the plan year of any plan, provided such plan year is used on a consistent basis for all determinations of whether any individual has performed services on a substantially full-time basis for a period of at least one year.

(ii) *Exceptions to the general rule.* Notwithstanding paragraph (b)(10)(i) of this section—

(A) All individuals credited with at least 501 hours of service for the recipient during a period described in paragraph (b)(10)(i) of this section may, at the option of the recipient, be considered to have performed services on a substantially full-time basis for a period of at least one year, and

(B) All individuals credited with less than 1,000 hours of service for the recipient during a period described in paragraph (b)(10)(i) of this section may, at the option of the recipient, be considered to have not performed services during such period which would cause such individual to be considered to have performed services on a substantially full-time basis for a period of at least one year.

(C) With respect to a period described in paragraph (b)(10)(i) of this section, a recipient may apply paragraph (10)(ii)(A) or (B) of this section by substituting for 501 hours of service or 1,000 hours of service (as the case may be) any specified number of hours of service between 501 and 1,000.

(iii) *Hours of service.* For purposes of this paragraph (b)(10), the term "hours of service" has the same meaning as the term "hour of service" provided by 29 CFR § 2530.200b–2 under the general method of crediting service for an employee. Hours of service for the recipient include hours of service for the leasing organization during which no services for the recipient are performed to the extent that such hours of service are attributable to the recipient. For example, if an individual performs services for the recipient totaling 900 hours, performs services for another person total 100 hours, and receives paid sick leave from the leasing organization totaling 200 hours, hours of service for the recipient includes a proportional amount of the 200 hours of paid sick leave (i.e., 180 hours). If one of the equivalencies set forth in 29 CFR 2530.200b–3 is used with respect to an individual for crediting hours of service, the selected equivalency must be identified, in writing, pursuant to a nondiscriminatory agreement between the leasing organization and the recipient. If an equivalency is used, the hour requirements in this paragraph (b)(10) must be adjusted accordingly. For example, if the equivalency in 29 CFR 2530.200b–3 (d)(1) based on hours worked is used, the 1,000 hours reference in paragraph (b)(10)(ii)(B) of this section must be adjusted to 870. If an equivalency is used with respect to an individual, then for purposes of determining whether such individual, then for purposes of determining whether such individual has performed services on a substantially full-time basis for a period of at least one year, the same equivalency must be used for determining the hours of service of employees of the recipient under paragraph (b)(10)(i)(B) of this section.

(iv) *Alteration of plan year.* For purposes of this paragraph (b)(10), rules similar to those provided under 29 CFR 2530.230–2 (c)(1) shall apply in the case of an amendment to alter the plan year.

(v) *Other rules.* For purposes of this paragraph (b)(10), the Commissioner may provide additional methods for determining hours of service and the application of paragraph (b)(10)(iv) of this section.

(11) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). On July 1, 1986, Corporation X leases Individual A from Leasing Organization Y to perform secretarial services. Y does not maintain a qualified plan. The median number of hours of service credited to secretaries who are employed by X throughout the year is 35 hours per week or 1,820 hours per year. During the 12-month period ending on June 30, 1987, A is credited with 1,450 hours of service for X. A does not meet the first test of "substantially full-time" because A was not credited with at least 1,500 hours of service. However, A does meet the second test for "substantially full-time" because A is credited with a number of hours of service equal to at least 75 percent of the median number of hours of service credited to employees of X who perform secretarial services throughout the year (.75×1,820 hours=1,365 hours). Therefore, A is a leased employee of X as of July 1, 1987.

Example (2). Individual B was an employee of Corporation X, a calendar year taxpayer, on a full-time basis from January 1, 1980 until July 1, 1982. On May 1, 1984, B is hired by and becomes an employee of Leasing Organization Z. Z is not related to X. Z enters into a contract with X to provide services to

X. On May 2, 1984, B is leased to X. B is not an employee of X. B is considered to be a leased employee of X for purposes of section 414(n) as of May 2, 1984, because service performed by B for the recipient as an employee is taken into account for purposes of determining whether an individual has performed services on a substantially full-time basis for a period of at least one year.

(12) *Historically performed by employees*—(i) *In general.* For purposes of paragraph (b)(4)(iii) of this section, services are historically performed by employees in a particular business field (such as the health field) if it was not unusual for services of such type to be performed by employees of persons in that particular business field, in the United States, On September 3, 1982. To the extend that a particular business field did not exist on September 3, 1982, whether a service will be considered historically performed by employees in that particular business field will be determined by analogy to similar business fields in existence on Septemer 3, 1982. The Commissioner may provide additional guidance as to what constitutes a business field.

(ii) *Services actually performed by employees.* Notwithstanding a determination under paragraph (b)(12)(i) of this section that it was unusual for a particular service to be performed by employees of persons in a particular business field, if such service was ever performed by any employee of a particular person in such business field, such service is a service historically performed by employees for purposes of applying section 414(n) to the aggregated group of which that particular person is a part, for the period beginning on the date such service was first performed by any employee of that person and ending on the date five years after such service is no longer performed by any employee of that person.

(iii) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). On January 1, 1987, Law Firm X contracts with Construction Company Y to renovate an existing building that will become X's new law office. By December 31, 1987, each of five employees of Y who began performing services for X on January 1, 1987, has been credited with at least 1500 hours of service for X. X has never had an employee perform construction services. None of the five employees of Y is a leased employee of X as of January 1, 1988, because it was unusual for construction services to be performed by employees of a law firm, in the United States, on September 3, 1982.

Example (2). On September 15, 1986, Corporation X, a textile manufacturer, contracts with Corporation Y, a construction firm, to build a manufacturing plant for X. By September 14, 1987, each of 15 employees of Y who began performing services for X on September 15, 1986, is credited with at least 1500 hours of service for X. X has never had an employee perform construction services. None of the 15 employees of Y is a leased employee of X as of September 15, 1987, because it was unusual for construction services to be performed by employees of a textile manufacturer, in the United States, on September 3, 1982.

(13) *Effect on substantially full-time service*—(i) An individual who at one time satisfied the requirements of paragraph (b)(4)(ii) of this section may, at the recipient's election, cease to be considered to have satisfied the requirements of such paragraph as of the end of the first year in which the individual's number of consecutive nonqualifying years equals or exceeds the greater of either five years or the aggregate number of qualifying years.

(ii) For purposes of this paragraph (b)(13), the term "year" means the period described in paragraph (b)(10)(i) of this section for determining whether an individual has performed services on a substantially full-time basis for a period of at least one year, including periods prior to the effective date of section 414(n).

(iii) For purposes of this paragraph (b)(13), the term "nonqualifying year" means a year during which an individual has less than 501 hours of service for the recipient.

(iv) For purposes of this paragraph (b)(13), the term "qualifying year" means each year other than a nonqualifying year, starting with the first year in which the individual performed services on a substantially full-time basis within the meaning of paragraph (b)(10) of this section.

(v) For purposes of this paragraph (b)(13), the definitions and rules of paragraphs (b)(10)(iii) and (b)(10)(iv) of this section shall apply.

(14) *Simplified employee pensions.* For purposes of section 414(n) and the regulations thereunder, references to a "plan" or to a "qualified plan" of the recipient or the leasing organization shall, to the extent appropriate, include simplified employee pensions under section 408(k).

(15) *Treatment of self-employed individuals.* For purposes of section 414(n) and the regulations thereunder, the term "employee" includes a "self-employed individual" (as defined in section 401(c)(1)).

(16) *Highly compensated employees, etc.* For purposes of section 414(n) and the regulations thereunder, a leased employee of a recipient may be considered an employee of the recipient who is highly compensated, an officer, or a shareholder. See § 1.414(o)–l(m). See section 414(q) for the definition of "highly compensated employee" for years beginning after December 31, 1986 or later, depending on the applicable effective date for the particular employee benefit requirement.

(17) *Services performed means services performed directly or indirectly.* For purposes of section 414(n) and the regulations thereunder, services performed for a person other than as an employee of such person mean services performed directly or indirectly for such person.

(c) *Effect of section 414(n) on other sections.* Notwithstanding that, pursuant to section 414(n), a leased employee is treated as an employee of the recipient for purposes of the employee benefit requirements provided in section 414(n)(3) and § 1.414(n)–3 (a), a leased employee may still be an employee of the leasing organization. Therefore, if a leased employee is an employee of the leasing organization, rather than being self-employed or an independent contractor with respect to the leasing organization, the leased employee may be a participant in the plans of both the leasing organization and the recipient.

(d) *Effect of section 414(n) on employee rules*—(1) *In general.* Section 414(n) operates after the application of the common-law rules relating to the determination of the employer/employee relationship. Thus, for example, an individual who is an employee of a person will continue to be an employee of that person even though the person formally "leases" the individual from a leasing organization that maintains a safe-harbor plan described in section 414(n)(5). In addition, compensation received by such an individual that is attributable to services performed for the person as an employee of the person may not be considered for purposes of determining whether any plan maintained by the leasing organization is qualified pursuant to section 401.

(2) *Determination of employer.* The determination of who is the employer of an individual for purposes of sections 3121, 3306, and 3401 (relating to employment taxes and income tax withholding) is not determinative of who is the employer for purposes of subchapter D.

(e) *Exception for certain leased employees*—(1) *In general.* For purposes of section 414(n) and the regulations thereunder, an individual who is a leased employee of a recipient shall not be treated as an employee of the recipient for a tax year of the leased employee for which each of the following conditions is satisfied:

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(i) The leased employee provides services for the recipient that require the use by the leased employee of substantial operating assets ("required operating assets"). Required operating assets are treated as substantial only if the "replacement cost" of such assets in the leased employee's taxable year of purchase of such assets equals or exceeds the "applicable amount" for the calendar year in which such taxable year of purchase begins.

(A) For purposes of this paragraph (e)(1)(i), the "applicable amount" for calendar years before 1988 is $60,000. The "applicable amount" for calendar years after 1987 shall be determined by the Commissioner by annually adjusting the applicable amount for the prior calendar year to take into account increases in the cost of living. Such increases shall be made in accordance with procedures used to adjust benefits under section 215(i)(2)(A) of the Social Security Act.

(B) The "replacement cost" of required operating assets that are new in the leased employee's year of purchase shall be the leased employee's actual cost of such assets (e.g., the amount paid in cash and other property), excluding any taxes paid with respect to such purchase.

(C) The "replacement cost" of required operating assets that are previously used as of the leased employee's year of purchase is the retail cost in such year of purchase of new required operating assets that are comparable to the previously used required operating assets actually purchased by the leased employee. Thus, for example, if a leased employee purchases a previously used required operating asset in 1987, such asset will be treated as substantial for purposes of this provision if the retail cost of a new operating asset that is comparable to the previously used required operating asset equals or exceeds the applicable amount for 1987. The comparability of a previously used asset to a new asset is to be determined by reference to all the facts and circumstances, including any standard and extra features included with the respective assets.

(D) At the election of the leased employee, the determination of whether required operating assets purchased by a leased employee prior to the leased employee's taxable year beginning in 1987 are substantial may be made as if such assets were previously used assets first purchased by the leased employee in such leased employee's taxable year beginning in 1987.

(E) The determination of whether required operating assets are substantial (i.e., whether the replacement cost of such assets equals or exceeds the applicable amount for the year of purchase) is made in the leased employee's taxable year in which the assets are acquired by the leased employee. The determination, once made, remains in effect with respect to such assets for as long as the leased employee owns the assets. Thus, if the leased employee's replacement cost of required operating assets equals or exceeds the applicable amount for the year of purchase, the required operating assets will be treated as substantial for the year of purchase and for all subsequent years that the leased employee continues to own the assets, even if the basis or value of the assets declines in subsequent years. Similarly, if required operating assets are not substantial in the year of purchase, such assets will not be treated as substantial for the year of purchase or for any subsequent year, even if the value of such assets increases.

(ii) The leased employee's actual cost of the required operating assets in the leased employee's taxable year of purchase (whether or not such assets are previously used or new) equals or exceeds the "minimum amount" for the calendar year in which such taxable year of purchase begins. For purposes of this paragraph (e)(1)(ii), the "minimum amount" for calendar years before 1988 is $10,000. The "minimum amount" for calendar years after 1987 shall be adjusted annually in accordance with paragraph (e)(1)(i)(A).

(iii) (A) The leased employee owns substantially all of the required operating assets used in the leased employee's performance of services for the recipient. For purposes of this determination, the ownership interest of a leased employee and his or her spouse shall be aggregated. However, the ownership interest of the leased employee (and the spouse of the leased employee) will not be aggregated with the ownership interest of any other person for purposes of this determination. A leased employee will be treated as owning substantially all of the required operating assets only if the leased employee (and the spouse of the leased employee) own 85 percent or more of such assets at all times during the tax year of the leased employee. A leased employee will be treated as owning the required operating assets only to the extent that such leased employee bears the full risk of loss with respect to such assets and the full responsibility for the operating expenses with respect to such assets. The leased employee will not be treated as bearing the full risk of loss with respect to such assets during a tax year if an asset acquisition loan from the recipient to the leased employee is outstanding or if the recipient is a guarantor or co-borrower of an asset acquisition loan made to the leased employee. For purposes of the preceding sentence, the recipient includes any organization aggregated with the recipient under section 414 (b), (c), (m) or (o). The leased employee will not be treated as failing to bear the full risk of loss with respect to substantial operating assets merely because the leased employee maintains insurance covering damage to, or loss of, substantial operating assets.

(B) For purpose of paragraph (e)(1)(iii)(A) of this section, an asset acquisition loan is a loan any portion of the proceeds of which is used at any time, directly or indirectly, to acquire any of the assets used by the leased employee in performing services. Whether any portion of the proceeds of a loan is used indirectly to acquire any assets used by the leased employee in performing services shall be determined from the facts and circumstances of each case.

(C) For purposes of paragraph (e)(1)(iii)(A) of this section, the leased employee will not be treated as bearing the full responsibility for payment of the operating expenses incurred in performing services for the recipient if the payment by the recipient to the leased employee is determined with reference to the amount of such operating expenses (e.g., a "cost plus" arrangement).

(iv) Less than 50 percent of the amount paid by the recipient to the leased employee is attributable to the personal services of the leased employee for the recipient. This determination will be made by comparing the amount paid by the recipient to the leased employee to the amount the recipient would pay an employee (that performs only personal services for the recipient) providing the same service to the recipient.

(v) The leased employee has no ownership interest in the recipient (or in any organization aggregated with the recipient under section 414 (b), (c), (m), or (o)) at any time during the two-tax-year period consisting of the current tax year and the preceding tax year of the leased employee. In determining the leased employee's ownership interest in the recipient (or in any organization aggregated with the recipient under section 414 (b), (c), (m) or (o)), the principles of section 318(a) shall apply.

(2) *Exception to general rule.* Notwithstanding paragraph (e)(1) of this section, the Commissioner may treat a leased employee described in that

paragraph as an employee of the recipient if the Commissioner considers such treatment to be appropriate under the facts and circumstances of the particular case.

§ 1.414(n)–2 Qualified plan coverage of leased employees.

(a) *Recipient's qualified plan*—(1) *Treatment of leased employees.*

(i) Section 414(n) requires that a leased employee be treated as an employee of the recipient. Therefore, a recipient's qualified plan must specifically provide how leased employees will be treated under the plan. If a recipient's plan does not specifically provide for the treatment of leased employees, such plan will fail to qualify under section 401(a).

(ii) If a recipient's qualified plan covers one or more leased employees, such plan must, as a condition of plan qualification, specifically provide how leased employees covered by a safe-harbor plan (as defined under paragraphs (f) and (g) of this section) will be treated under the recipient's plan.

(iii) The requirements of this paragraph (a)(1) must be satisfied whether or not the recipient utilizes the services of leased employees.

(2) *Participation.* Section 414(n) does not necessarily require that a leased employee benefit under the recipient's qualified plan. Therefore, although a leased employee must be taken into account for purposes of determining whether the recipient's plan is qualified (e.g., whether the plan meets the coverage test of section 410(b) and otherwise satisfies the requirements of section 401(a)), the leased employee is not required to benefit under the recipient's plan. For example, assume that for 1984, Company X has 500 employees who have completed one or more years of service. In addition, X maintains a qualified plan in which 400 of these employees participate. The plan requires an employee to complete one year of service before participation, but does not impose a minimum age requirement. Section 414(n) requires that, for 1984, Company X must treat 25 leased employees as its employees. Even if all of the 25 leased employees satisfy the service requirement, but none of the 25 leased employees is permitted to participate under X's plan for 1984, the plan will still benefit 76.2 percent (400/525) of X's employees and thus will satisfy section 410(b). Thus, X's plan is not required to benefit any of the 25 leased employees for 1984.

(b) *Contributions, benefits, etc., provided by a leasing organization*—(1) *General rule.* (i) For purposes of section 414(n) and the regulations thereunder, a leased employee's "interest in a leasing organization's qualified plan" (i.e., any contributions, forfeitures, or benefits of a leased employee under a qualified plan maintained by a leasing organization that are attributable to services performed for a recipient by the leased employee) is treated as provided under a qualified plan of the recipient for purposes of applying the employee benefit requirements listed in § 1.414(n)–3(a) (except for paragraph (a)(6) of that section) to any qualified plan of the recipient. In addition, the leased employee's "interest in the leasing organization" (i.e., the leased employee's interest in the factors relevant to contributions or benefits under any qualified plan of the recipient, such as, for example, compensation, service and accrued benefit, etc.) that is attributable to services performed for the recipient is treated as provided by the recipient. For purposes of this section, except as otherwise provided, the factors relevant to contributions or benefits under any qualified plan of the recipient are to be determined in a manner consistent with the definition of such factors under the recipient's plan (or plans) and with section 401(a) (4) and (5). For example, the term "compensation" means compensation determined in a manner consistent with the definition of compensation under the recipient's plan (or plans) and with section 401(a) (4) and (5). For purposes of this section, the term "compensation" includes earned income as defined in section 401(c)(2). See section 414(s) for the definition of "compensation" for years beginning after December 31, 1986. For purposes of this section, the term "maintained", when used in the context of a plan maintained by any person, means "maintained at any time".

(ii) The rules of this paragraph (b) do not apply in a converse manner to the leasing organization. For example, contributions or benefits of the leased employee under a qualified plan maintained by the recipient that are attributable to services performed for the recipient by the leased employee, are not treated as provided under a qualified plan of the leasing organization for purposes of applying the employee benefit requirements listed in § 1.414(n)–3(a) to any qualified plan maintained by the leasing organization.

(2) *Allocation of contributions, benefits, etc.* The allocation to the recipient of the leased employee's interest in the leasing organization's qualified plan (and the allocation of each item in the leased employee's interest in the leasing organization) is generally the ratable portion determined on the basis of the proportion of the leased employee's compensation received from the leasing organization attributable to services performed for the recipient to the leased employee's total compensation received from the leasing organization. However, with respect to certain items, such as service or contributions based on a factor other than compensation, an allocation based on other factors (such as hours of service with respect to service) may be appropriate, depending on the facts and circumstances.

(3) *Effect of allocation on recipient's qualified plans.* (i) Each leased employee's interest in a leasing organization's qualified plan that is treated as being provided under a recipient's qualified plan is treated as provided under a qualified plan of the recipient that is separate from any of the plans actually maintained by the recipient. Thus, for example, if a recipient has three leased employees (one each from three separate leasing organizations), the contributions, forfeitures and benefits provided to each of these leased employees under the qualified plans of their respective leasing organizations are treated as provided under three separate qualified plans of the recipient.

(ii) A separate qualified plan for a leased employee that is treated as maintained by the recipient is treated as a qualified plan to the extent that the qualified plan of the leasing organization covering the leased employee is a qualified plan. (However, see § 1.414(o)–1 (b), (c), and (g) in the case of certain leased owners, leased managers and inside corporate directors.)

(iii) If any qualified plan actually maintained by the recipient fails to satisfy any applicable employee benefit requirement (other than section 401(a)(26)), the qualified plan actually maintained by the recipient may be combined with one or more of the separate qualified plans for leased employees that are treated as maintained by the recipient for purposes of satisfying such requirements. Thus, for example, if a plan actually maintained by a recipient would satisfy section 410(b) if it covered one more employee, such plan and any separate qualified plan for a leased employee that is treated as maintained by the recipient may be treated as a single plan for purposes of applying section 410(b). The plans actually maintained by the recipient and the plans treated as maintained by the recipient must also be treated as a single plan for purposes of applying any other applicable employee

benefit requirement to a plan actually maintained by the recipient.

(iv) If a separate qualified plan is treated as maintained by the recipient with respect to a leased employee and such leased employee also participates in a qualified plan actually maintained by the recipient, or has or had accrued benefit in any plan actually maintained by the recipient, then the leased employee's interest in the leasing organization's qualified plan is to be treated as provided to the leased employee under the plan actually maintained by the recipient for purposes of determining whether a plan actually maintained by the recipient satisfies the applicable employee benefit requirements. See paragraph (b)(1)(i) of this section with respect to the term "interest in a leasing organization's qualified plan". For example, if, with respect to a leased employee, the total of the benefits provided under a leasing organization's qualified plan that are treated as provided under a separate qualified plan of the recipient and the benefits provided under a plan actually maintained by the recipient exceed the applicable section 415 limits, the plan actually maintained by the recipient will be treated as failing to satisfy section 415.

(4) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. Individual A is an employee of Leasing Organization X. X leases A to Company Y under an agreement. A performs services for Y on a substantially full-time basis for a period of more than one year. X maintains a qualified defined contribution plan that is not a safe-harbor plan. Y maintains a qualified defined contribution plan and pursuant to section 414 (n), Y must treat A as its employee. Y determines that 95 percent of A's total compensation received from or on behalf of X is attributable to the performance of services for Y. Based on the amount of A's compensation attributable to A's performance of services for Y, A is not a highly compensated employee of Y. As a result of A not participating in Y's qualified plan, Y's qualified plan does not satisfy the coverage requirements of section 410(b). For purposes of determining the contributions of benefits that Y must provide under its plan on behalf of A in order for Y's plan to satisfy section 410(b) and 401(a)(4), Y may treat 95 percent of the contributions (including employee contributions) and forfeitures on behalf of A under X's plan, as being provided under a separate plan maintained by Y. If the contributions and forfeitures treated as provided to A under a separate plan maintained by Y are comparable to the contributions and forfeitures provided to Y's employees under Y's plan, then Y's plan may satisfy section 410(b) and 401(a)(4) even though A is provided with no additional contributions of forfeitures under Y's qualified plan.

(c) *Deductions.* Compensation (as defined for purposes of section 404) of a leased employee attributable to services performed for a recipient is considered compensation for purposes of determining the recipient's deduction under section 404. The deduction for contributions shall be available, however, only to the organization that actually made the contribution. Therefore, even though contributions by the leasing organization that are attributable to services performed for the recipient are treated as provided by the recipient, the recipient may not deduct the contributions made by the leasing organization. The leasing organization and the recipient, however, may independently determine their deductions under section 404 with respect to a leased employee even though this results in the same compensation being used by both the leasing organization and the recipient.

(d) *Years of service.* For purposes of both participation and vesting, with respect to a plan of the recipient, the entire period for which an employee or a leased employee has performed servces for the recipient must be taken into account in accordance with section 414(n)(4), including periods of service before the effective date of section 414(n), periods of service during which the individual is covered by a safe-harbor plan (as defined in paragraphs (f) and (g) of this section), periods of service during which the individual is an employee of the recipient, and periods of service during which the individual would be a leased employee but for the requirements of § 1.414(n)–1(b)(4)(ii). The service of an individual who is not an employee of the recipient shall be determined under the rules of the recipient's plan for computing years of service, including any plan rules relating to the break-in-service rules of sections 410(a)(5) and 411(a)(6). For example, if a leased employee began performing services for the recipient on January 1, 1981, the leased employee's service for participation and vesting purposes will be considered to have commenced on January 1, 1981. However, because the individual does not become a leased employee until January 1, 1984 (in the case of a recipient with respect to which section 414(n) applies on January 1, 1984), such leased employee need not in any case begin to participate in the plan until January 1, 1984. Therefore, section 414(n) does not require the recipient to provide retroactive benefits for the leased employee for years of service prior to the effective date of section 414(n).

(e) *Coverage precluded for part-time individuals*—(1) *General rule.* Any individual who is not a leased employee because such individual has not met the initial service requirement of § 1.414(n)–1(b)(4)(ii), may not be treated as a leased employee of the recipient. Further, even though an individual has satisfied the initial service requirement of such paragraph, such an individual may not be treated as a leased employee of the recipient in any nonqualifying year (as defined in § 1.414(n)–(b)(13)).

(2) *Inadvertent coverage.* In a case where a recipient's plan inadvertently covers an individual who would be a leased employee but for the fact that such individual has not met the service requirement of § 1.414(n)–1(b)(4)(ii), or who would be a leased employee at the time of coverage but for the fact that the coverage occurs during a nonqualifying year, the recipient's plan will not be denied qualification merely becaue it covered a nonemployee.

(f) *Special rules for services performed after December 31, 1986*—(1) *Safe-harbor plan.* Except as otherwise provided, the rules of section 414(n) shall apply to a leased employee with respect to service provided by the leased employee as an employee of the leasing organization if the requirements of this paragraph (f)(1) are met with respect to contributions and benefits provided by the leasing organization for such leased employee as an employee of the leasing organization. In order for the requirements of this paragraph (f)(1) to be met, the leased employee must be covered by a safe-harbor plan, i.e., a qualified money purchase pension plan maintained by the leasing organization that provides the following:

(i) Except as provided in paragraph (f)(2) of this section, each employee of the leasing organization must be a plan participant on the later of the date such employee first becomes an employee of the leasing organization, or the effective date of this paragraph (f), whether or not such employee is a leased employee on that date.

(ii) Contributions to the plan on behalf of all participants must have always been and must currently be at a rate not less than 10 percent of the employee's compensation (as defined in section 414(q)(7)), whether or not such compensation is attributable to the performance of services for a recipient, whether or not such employee is an employee of the leasing organization on any specified date during the year, and regardless of the number of hours of service performed by the employee for the leasing organization. The requirement of this paragraph (f)(1)(ii) is deemed satisfied with respect to periods prior to the effective date of this

paragraph (f) if, for such periods, the requirements of paragraph (g) are satisfied. The requirement of this paragraph (f)(1)(ii) is not satisfied if either the contribution rate is reduced due to integration or any other factor below 10 percent or contributions to the plan are not made within the period provided by section 412(c)(10). Contributions must be made for all compensation without regard to any age or service requirement.

(iii) An employee's rights to, or derived from, employer contributions under the plan must be immediately nonforeitable in accordance with section 411(a). In addition, an employee's rights to, or derived from, employer contributions must be disregarded for purposes of applying section 411(a) to other contributions or benefits. The requirement or this paragraph (f)(1)(iii) is not satisfied if righs are conditioned in any manner not permitted by section 411(a) (without regard to section 411(a)(3)) with regard to amounts required to be nonforfeitable under such section, including requirements relating to either completion of a year of service or employment on a speicific date.

(iv) A safe-harbor plan must be a qualified plan pursuant to section 401(a) and, therefore, must satisfy the coverage rules of section 410(b) and the nondiscrimation rules of section 401(a)(4), taking into account all employees of the leasing organization, including employees leased to recipients. A safe-harbor plan maintained by the leasing organization must take into consideration, for purposes of section 401(a), all of the leased employee's service for the leasing organization as an employee of the leasing organization (including periods during which the employee was leased by the leasing organization to a recipient) and all compensation with respect to such services of the leased employees.

(2) *Exceptions to coverage requirements.* All employees of a leasing organization must be participants in a safe-harbor plan maintained by the leasing organization other than (i) employees who during the plan year perform substantially all of their services for the leasing organization (and not for recipients), and (ii) employees whose compensation (as deafined in section 414(q)(7)) from the leasing organization is less than $1,000 during the plan year and during each of the three prior plan years. (Employees described in paragraphs (f)(2)(i) and (f)(2)(ii) of this section may be required to be participants in the safe-harbor plan or another plan of the leasing organization under another section of Subchapter D (such as section 410).) For purposes of this paragraph (f)(2), an employee is not considered to perform substantially all of his services for the leasing organization (and not for recipients) during a plan year if during such year more than 15 percent of such employee's total service (based on hours of service, as defined in 29 CFR § 2530.200b–2) with respect to the leasing organization is either performed on the premises of one or more recipients or is performed for one or more recipients. Services performed for a leasing organization that are necessary to support the work of other individuals for recipients are considered services performed for recipients. An example of services that are not performed for any recipient is services performed to develop advertising for the leasing organization.

(3) *Application of section 414(n) to a leased employee notwithstanding the existence of a safe-harbor plan.* (i) Notwithstanding anything in this paragraph (f) to the contrary, the rules of section 414(n) (other than subsection (n)(5) shall apply to a leased employee if such leased employee is covered under any qualified plan of the recipient or if any qualified plan of the recipient relies on the participation of the leased employee in a safe-harbor plan in order to satisfy the requirements of section 410(b).

(ii) Notwithstanding anything in this paragraph (f) to the contrary, the rules of section 414(n) (other than subsection (n)(5)) shall apply, with respect to § 1.414(n)–3(a) (5) and (8), to a leased employee who has an accrued benefit under any qualified plan of the recipient.

(4) *Application of section 414(n) to a leased employee notwithstanding the existence of a safe-harbor plan where a significant percentage of recipient's workforce is comprised of leased individuals.* (i) Notwithstanding anything in this paragraph (f) to the contrary, the rules of section 414(n) (other than subsection (n)(5)) shall apply to a leased employee if leased individuals constitute more than 20 percent of the recipient's nonhighly compensated workforce for the plan year of a plan maintained by the recipient.

(ii) *Nonhighly compensated workforce.* The term "nonhighly compensated workforce" means the total number of individuals (other than highly compensated employees) who are either (A) employees of the recipient or (B) leased individuals.

(iii) *Highly compensated employee.* The term "highly compensated employee" has the meaning given such term by section 414(q).

(iv) *Leased individual.* For purposes of this paragraph (f)(4), the term "leased individual" means an individual who (A) during the plan year of a plan maintained by a recipient performs any services for a recipient other than as an employee of the recipient and (B) for such plan year would (without regard to this paragraph (f)) be a leased employee with respect to the recipient if all services performed by such individual for the recipient during the plan year and all prior years were performed other than in the capacity of an employee of the recipient. The fact that an individual may also perform services as an employee of the recipient during the plan year or a prior year does not affect his status as a leased individual.

(v) *Employee of the recipient.* For purposes of paragraph (f)(4)(ii) of this section, the term "employee of the recipient" means any individual who (A) during the plan year of a plan maintained by a recipient performs services for the recipient only in the capacity of an employee of the recipient, and (B) would be a leased individual if any of such services were performed other than in the capacity of an employee.

(vi) *Recipient.* For purposes of this paragraph (f)(4), the term "recipient" has the same meaning as in paragraphs (b)(2) and (b)(6) of § 1.414(n)–1, except that "leased individuals" is substituted for "leased employee".

(vii) *Inapplicability of certain paragraphs of § 1.414 (o)–1 to this paragraph (f)(4).* The provisions of paragraph (f)(4) of this section are to be applied without regard to the provisions of paragraphs (b), (c), and (g) of § 1.414(o)–1. Therefore, for purposes of paragraphs (f)(4)(iv) and (f)(4)(v) of this section, and notwithstanding anything to the contrary in paragraphs (b), (c), and (g) of § 1.414(o)–1, services performed by an individual other than as an employee of a recipient are not considered services performed by an employee of a recipient.

(5) *Effective dates*—(i) In general, the safe-harbor plan provisions of this paragraph (f) apply to services performed after December 31, 1986.

(ii) If a leasing organization has a safe-harbor plan that satisfies paragraph (g) of this section for a plan year beginning prior to January 1, 1987, the following rules apply. The plan must satisfy paragraph (g) of this section for plan years beginning prior to January 1, 1987. The plan must be amended by the

end of the first plan year beginning after December 31, 1988, effective for all plan years beginning after December 31, 1986, to comply with the requirements of paragraph (f) of this section. Prior to any amendment to comply with paragraph (f) of this section, the plan must in operation comply with paragraph (f) of this section for all plan years beginning after December 31, 1986.

(iii) Paragraph (f)(5)(ii) of this section shall not apply with respect to a leasing organization with a safe-harbor plan (in accordance with paragraph (g) of this section) on [Insert date this document is filed with the Federal Register] if the leasing organization, after such date, changes the plan year of its safe-harbor plan or establishes another plan so that the period that it is subject to paragraph (g) of this section would be longer.

(iv) Notwithstanding paragraph (f)(5)(ii) of this section, paragraph (f)(4) of this section applies to a recipient for plan years beginning after December 31, 1986. If a recipient maintains plans with more than one plan year, paragraph (f)(4) applies to the recipient as of the plan year beginning closest to and after December 31, 1986.

(v) For safe-harbor plan provisions that apply to services performed before the effective date of this paragraph (f), see paragraph (g) of this section.

(g) *Special rules for services performed before January 1, 1987*—(1) *Safe-harbor plan.* Except as otherwise provided, the rules of section 414(n) shall not apply to a leased employee with respect to service provided by the leased employee to a recipient as an employee of the leasing organization if the requirements of this paragraph (g)(1) are met with respect to contributions and benefits provided by the leasing organization for such leased employee as an employee of the leasing organization. In order for the requirements of this paragraph (g)(1) to be met, the leased employee must be covered by a safe-habor plan, i.e., a qualified money purchase pension plan maintained by the leasing organization that provides the following:

(i) The leased employee must become a plan participant on and after the start of the first 12-month period used to determine if the employee is a leased employee under section 414(n) with respect to the recipient.

(ii) Contributions to the plan on behalf of the leased employee must have always been (on and after the effective date of this paragraph (g)) and must currently be at a rate not less than 7½ percent of the leased employee's compensation (as defined in § 1.415–2(d)), whether or not such compensation is attributable to the performance of services for a recipient, whether or not such employee is an employee of the leasing organization on any specified date during the year, and regardless of the number of hours of service performed by the employee for the leasing organization. The requirement of this paragraph (g)(1)(ii) is not satisfied if either the contribution rate is reduced due to integration or any other factor below 7½ percent or contributions to the plan are not made within the period provided by section 412(c)(10). Contributions must be made for all compensation without regard to any age or service requirement.

(iii) The leased employee's rights to, or derived from, employer contributions under the plan must be immediately nonforfeitable in accordance with section 411(a). In addition, the leased employee's rights to, or derived from, such employer contributions must be disregarded for purposes of applying section 411(a) to other contributions or benefits. The requirements of this paragraph (g)(1)(iii) is not satisfied if rights are conditioned in any manner not permitted by section 411(a) (without regard to section 411(a)(3)) with regard to amounts required to be vested under such section, including requirements relating to either completion of a year of service or employment on a specific date.

(iv) A safe-harbor plan must be a qualified plan pursuant to section 401(a) and, therefore, must satisfy the coverage rules of section 410(b) and the nondiscrimination rules of section 401(a)(4), taking into account all employees of the leasing organization, including employees leased to recipients. A safe-harbor plan maintained by the leasing organization must take into consideration, for purposes of section 401(a), all of the leased employee's service for the leasing organization as an employee of the leasing organization (including periods during which the employee was leased by the leasing organization to a recipient) and all compensation with respect to such services of the leased employee.

(2) *Coverage of leased employees.* A safe-harbor plan maintained by a leasing organization need not cover every employee of the leasing organization or every leased employee who is an employee of the leasing organization. (Any recipient who utilizes the services of a leased employee not covered by a safe-harbor plan, however, must treat such employee as the recipient's employee for purposes of the employee benefit requirements listed in § 1.414(n)–3(a).)

(3) *Application of section 414(n) to a leased employee notwithstanding the existence of a safe-harbor plan*—(i) Notwithstanding anything in this paragraph (g) to the contrary, the rules of section 414(n) (other than subsection (n)(5)) shall apply to a leased employee if such leased employee is covered under any qualified plan of the recipient or if any qualified plan of the recipient relies on the participation of the leased employee in a safe-harbor plan in order to satisfy the requirements of section 410(b).

(ii) Notwithstanding anything in this paragraph (g) to the contrary, the rules of section 414(n) (other than subsection (n)(5)) shall apply, with respect to § 1.414(n)–3(a) (5) and (8), to a leased employee who has an accrued benefit under any qualified plan of the recipient.

(4) *Effective dates.* (i) In general, the safe-harbor plan provisions of this paragraph (g) apply to services performed after the effective date of section 414(n) (see paragraph (c) of § 1.414(n)–3). The safe harbor plan provisions of this paragraph (g) shall cease to apply as of the effective date of the safe-harbor plan provisions of paragraph (f) of this section.

(ii) In a case where a leasing organization adopts a safe-harbor plan (in accordance with this paragraph (g)) by the end of its first plan year beginning after December 31, 1983, that is effective as of the beginning of such plan year and such plan year begins before 1985, then, with respect to the leasing organization, section 414(n) will not apply to a recipient for any interim period between the beginning of the recipient's first plan year beginning in the recipient's first tax year beginning after December 31, 1983, and the beginning of such plan year of the leasing organization.

(iii) Paragraph (g)(4)(ii) of this section shall not apply to an individual if, during any interim period, the recipient covers such individual under a qualified plan and such individual would be a leased employee but for paragraph (g)(4)(ii) of this section.

(iv) Paragraph (g)(4)(ii) of this section shall not apply to an individual with respect to paragraphs (a)(5) or (a)(8) of § 1.414(n)–3 if such individual would be a leased employee but for paragraph (g)(4)(ii) of this section and such individual had, during or prior to any interim period, an accrued benefit under a qualified plan of the recipient.

§ 1.414(n)–3 Employee benefit requirements, recordkeeping, and effective dates.

(a) *In general.* Except as otherwise provided, a leased employee shall be treated as an employee of the recipient for purposes of the following employee benefit requirements:

(1) Section 401(a) (relating to the exclusive benefit rule);

(2) Sections 401(a)(3) and 410 (relating to minimum participation requirements);

(3) Section 401(a)(4) (requiring that contributions or benefits do not discriminate in favor of employees who are officers, shareholders, or highly compensated);

(4) Sections 401(a)(7) and 411 (relating to minimum vesting standards);

(5) Sections 401(a)(16) and 415 (relating to limitations on contributions and benefits);

(6) Section 404 (relating to deductions for contributions);

(7) Section 408(k) (relating to simplified employee pensions); and

(8) Section 416 (relating to top-heavy plans).

(b) *Recordkeeping requirements*—(1) *General rule.* Except as othewise provided in this paragraph (b), a recipient must maintain employment records of sufficient detail to determine whether, and to what extent, individuals who provide services to the recipient are leased employees.

(2) *Recordkeeping exception*—(i) *In general.* A recipient shall be excepted from the recordkeeping requirements described in paragraph (b)(1) of this section in a plan year if, for such plan year and each previous plan year commencing with the first plan year beginning on or after the date section 414(n) is effective with respect to the recipient, the requirements of this paragraph (b)(2) are satisfied. If a recipient maintains plans with more than one plan year, the first plan year beginning on or after the date section 414(n) is effective with respect to the recipient shall be the plan year commencing closest to the date section 414(n) is effective with respect to the recipient. Should the recipient subsequently amend such plan year or change to a different plan year for purposes of this paragraph (b)(2), rules similar to those provided under 29 CFR 2530.203–2(c)(1) shall apply.

(ii) *Exception requirements.* If the following three conditions are satisfied, a recipient will have satisfied the requirements of this paragraph (b)(2).

(A) All of the recipient's qualified plans specifically provide that leased employees are not eligible to participate in such plans.

(B) No qualified plan of the recipient is a top-heavy plan as defined in section 416 (g).

(C) The number of leased persons providing services to the recipient during the recipient's plan year is less than five percent of the number of employees (excluding leased persons and highly compensated employees within the meaning of section 414(q)) covered by a qualified plan of the recipient at any time during such plan year. An individual is a leased person for purposes of this paragraph (b)(2)(ii)(C) if—

(*1*) During the plan year the individual performs any services for a recipient other than as an employee of the recipient, with respect to which the requirements of § 1.414(n)–1 (b)(4)(i) and (b)(4)(iii) are satisfied,

(*2*) The individual is credited with at least 1500 hours of service for the recipient during the plan year, including service performed as an employee of the recipient and in any other capacity, and

(*3*) The individual either is not covered under a qualified plan of the recipient as an employee of the recipient at any time during such plan year or the individual performs at least 501 hours of service for the recipient during the plan year other than as an employee of the recipient.

For purposes of this paragraph (b)(2)(ii)(C), the term "hour of service" has the same meaning as the term "hour of service" provided by 29 CFR 2530.200b–2 under the general method of crediting service for an employee. If one of the equivalencies set forth in 29 CFR 2530.200b–3 is used with respect to an individual for crediting hours of service, such equivalency must be used on a reasonable and consistent basis and the 1500-hour and 500-hour requirements must be adjusted accordingly (as under § 1.414(n)–1(b)(10)(iii)). With respect to determining whether an individual satisfies the 1500-hour requirement, reasonable approximations may be made. For example, a recipient generally need not check whether an individual who worked less than 1500 hours at one division also worked at another geographically separate division, unless such checking would be reasonable under the circumstances (such as in the case where the recipient transfers the individual). Also, a recipient may, in determining whether an individual satisfies the 1500-hour requirement, rely on records maintained by the leasing organization or leasing organizations providing the services of such individual, except where the recipient has reason to believe that such records are not accurate. A recipient must add together all service performed for the recipient by the individual as an employee of the recipient and through all leasing organizations. In addition, if with respect to a recipient, the determination of the precise number of leased persons would be unreasonably burdensome due to the large numbers involved, the recipient may rely on a statistically valid sample performed by an independent third party to estimate the number of leased persons. The Commissioner may provide additional methods for determining the number of leased persons with respect to a recipient.

(3) *An individual's entitlement to treatment as a leased employee.* (i) At the option of the recipient, individuals will not be entitled to treatment as leased employees unless such individuals provide to the recipient satisfactory evidence of entitlement to such treatment.

(ii) This paragraph (b)(3) shall apply only with respect to an individual's period of service with a recipient prior to and during those plan years of the recipient for which the recipient qualified for the recordkeeping exception described in paragraph (b)(2) of this section.

(c) *Section 414(n) effective dates*—(1) *In general.* The provisions of section 414(n) are effective for tax years of recipients beginning after December 31, 1983. If persons included in a recipient have different tax years, the provisions of section 414(n) are effective with respect to the entire recipient for the tax year beginning closest to January 1, 1984. Therefore, the provisions of section 414(n) apply to plan years beginning during and after such first tax year of a recipient beginning after December 31, 1983. If a recipient maintains plans with more than one plan year, the provisions of section 414(n) apply to the recipient as of the plan year beginning closest to the first day of the first tax year of the recipient beginning after December 31, 1983.

(2) *Certain delayed effective dates.* Paragraphs (a)(1)(i) and (a)(1)(ii) of § 1.414(n)–2 (relating to language required in a recipient's plan regarding leased employees) and paragraph (b)(2)(ii)(A) of this section (relating to certain recordkeeping exception requirements), shall not apply until the first plan year of a recipient beginning after December 31, 1988. Paragraph (b)(2)(ii)(C) of this section shall not apply until the first plan year beginning after December 31, 1986. The first plan year of a recipient shall be determined in the same manner as under paragraph (c)(1) of this section.

(3) *Special safe-harbor plan effective dates.* For special effective dates relating to safe-harbor plans, see paragraphs (f)(5) and (g)(4) of § 1.414(n)–2.

§ 1.414(n)–4 Application of section 414(o) to section 414(n).

Section 414(o) provides that the Secretary shall prescribe such regulations (which may provide rules in addition to the rules contained in section 414(n)) as may be necessary to prevent the avoidance of any employee benefit requirement listed in section 414(n)(3) through the use of separate organizations, employee leasing, or other arrangements. Accordingly, the regulations under section 414(n) are promulgated, in part, pursuant to the authority granted by section 414(o). For additional rules that may relate to section 414(n), see section 414(o) and the regulations thereunder.

§ 1.414(o)–1 Avoidance of employee benefit requirements through the use of separate organizations, employee leasing, or other arrangements.

(a) *In general.* (1) Pursuant to section 414(o), this section provides rules, in addition to the rules contained in sections 414(m) and 414(n) and the regulations thereunder, to prevent the avoidance of any employee benefit requirement listed in either § 1.414(m)–3 or § 1.414(n)–3, through the use of separate organizations, employee leasing, or other arrangements.

(2) For the definition of the terms "person" and "leased employee", see § 1.414(n)–1(b). For the definition of the term "organization", see § 1.414(m)–5(a)(2). For the definition of the terms "management functions" and "management activities or services", see § 1.414(m)–5(c).

(3) For purposes of this section, the term "plan" means a stock bonus, pension, or profit-sharing plan qualified under section 401(a) or a simplified employee pension under section 408(k).

(4) For purposes of this section, the term "employee" includes a "self-employed individual" as defined in section 401(c)(1).

(5) For purposes of this section, the term "maintained", when used in the context of a plan maintained by any person, means "maintained at any time".

(6) For purposes of this section, services performed for a person other than as an employee of such person means services performed directly or indirectly for such person.

(b) *Services performed by leased owners*—(1) *In general.* (i) If an individual is a leased owner with respect to a recipient, then for purposes of determining whether any qualified plan actually maintained by the recipient and whether any qualified plan maintained by a leasing organization in which the leased owner is a participant (or in which the leased owner has or had an accrued benefit) satisfies the employee benefit requirements of section 1.414(n)–3(a) (except for paragraph (a)(6) of that section) for a plan year, the leased owner's interest in the leasing organization's qualified plan attributable to services performed by the leased owner for the recipient is to be treated as provided under a separate qualified plan maintained by the recipient covering only the leased owner and the leased owner is to be treated as an employee of the recipient. If a separate qualified plan is treated as maintained by the recipient with respect to a leased owner and such leased owner also participates in a qualified plan actually maintained by the recipient, the leased owner's interest in the leasing organization's qualified plan attributable to the leased owner's performance of services for the recipient that is treated as provided to the leased owner under a separate qualified plan of the recipient is to be treated as provided to the leased owner under the qualified plan actually maintained by the recipient for purposes of determining whether such qualified plan satisfies the applicable employee benefit requirements. If either the separate qualified plan for the leased owner that is treated as maintained by the recipient or any qualified plan that is actually maintained by the recipient fails to satisfy any of the applicable employee benefit requirements, then except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section, the following qualified plans shall be treated as not satisfying such requirements: any qualified plan actually maintained by the recipient in which the leased owner is a participant (or has or had an accrued benefit) and any qualified plan that is actually maintained by a leasing organization in which the leased owner has an interest that is attributable to the leased owner's performance of services for the recipient.

(ii) The Commissioner will not apply paragraph (b)(1)(i) of this section so as to disqualify a plan actually maintained by a recipient unless the Commissioner determines that, taking into account all the facts and circumstances, the disqualification of a leasing organization's plan would be ineffective as a means of securing compliance with the applicable employee benefit requirements. For example, it may be appropriate to disqualify the recipient's plan where a leasing organization's plan was terminated or substantial assets were removed therefrom in a year for which the statute of limitations has run with respect to the employer, employee, or trust.

(iii) If pursuant to paragraph (b)(1)(i) of this section, more than one leasing organization plan is subject to disqualification and at least one of the plans would not be disqualified if another plan or plans were disqualified first, all affected plan sponsors may, by agreement, elect the plan or plans subject to disqualification, provided that such election is not inconsistent with the purposes of this paragraph (b), such as where the plan or plans elected were terminated or substantial assets were removed therefrom in a year for which the statute of limitations has run with respect to the employer, employee, or trust. In the absence of such an election, the Commissioner, taking into account all the facts and circumstances, shall have the discretion to determine which plan or plans shall be disqualified.

(2) *Leased owner* (i) For purposes of this paragraph (b), an individual is a "leased owner" with respect to a recipient if during the plan year of a plan maintained by a leasing organization the individual (A) performs any services for a recipient other than as an employee of the recipient and (B) is, at the time such services are performed, a five-percent owner of the recipient. The fact that an individual may also perform services as an employee of the recipient does not affect his status as a leased owner. If an individual becomes a leased owner with respect to a recipient, such individual is from that point on always to be considered a leased owner with respect to the recipient, notwithstanding anything in this paragraph (b) to the contrary, even if subsequently all services performed by the individual for the recipient are performed as an employee of the recipient.

(ii) Except as provided in paragraph (b)(2)(iii) of this section, and notwithstanding the first sentence of paragraph (b)(2)(i) of this section to the contrary, an individual is not a leased owner with respect to a recipient for purposes of a plan year of a plan maintained by a leasing organization if, during each calendar year containing at least one day of such plan year, less than 25 percent of his total hours actually worked for substantial compensation are for all recipients with respect to which he is a leased owner (but for the application of this paragraph (b)(2)(ii)) and less than 25 percent of his total compensation is derived from

performing services for all such recipients. For purposes of this paragraph (b)(2)(ii), performing services for the recipient includes services performed as an employee of the recipient and in any other capacity. For purposes of this paragraph (b)(2)(ii), the term "compensation" means (A) with respect to services performed as a common-law employee, compensation reportable on Form W–2, and (B) with respect to services performed other than as a common-law employee, earned income as defined in section 401(c)(2). See section 414(s) for the definition of "compensation" for years beginning after December 31, 1986.

(iii) Paragraph (b)(2)(ii) of this section does not apply to an individual who (A) is a leased owner with respect to a recipient pursuant to the application of the first sentence of paragraph (b)(2)(i) of this section, and (B) performs professional services (as defined in § 1.414(m)–1(c)) for the recipient, whether or not as an employee of the recipient, during the plan year of the plan maintained by the leasing organization, of the same type as the professional services performed by the recipient for third parties.

(3) *Recipient.* For purposes of this paragraph (b), the term "recipient" has the same meaning as in paragraphs (b)(2) and (b)(6) of § 1.414(n)–1, except that "leased owner" is substituted for "leased employee".

(4) *Leasing organization.* For purposes of this paragraph (b), the term "leasing organization" has the same meaning as in § 1.414(n)–1(b)(1), except that "leased owner" is substituted for "leased employee" and that "or provided" is added after "provides".

(5) *Five-percent owner.* For purposes of this paragraph (b), an individual is a five-percent owner of a recipient if such individual is a 5-percent owner (as defined in section 416(i)) of any person included in the recipient.

(6) *Contributions, benefit, etc., provided to a leased owner.* For purposes of this paragraph (b), a leased owner's interest in a leasing organization (as defined in § 1.414(n)–2(b)(1)(ii) and in a leasing organization's qualified plan (as defined in § 1.414(n)–2(b)(1)(i)), to the extent attributable to services for the recipient by the leased owner, is, for purposes of the applicable employee benefit requirements, treated as provided by the recipient or under a plan of the recipient. For rules relating to the application of this requirement, see paragraph (b)(2) of § 1.414(n)–2.

(7) *Effect on employee rules.* To the extent that a leased owner performs services for a recipient other than in the capacity of an employee, a leased owner is not an employee of the recipient and may not be actually covered by a plan of the recipient. Such leased owner may, however, qualify as a leased employee under section 414(n) and the regulations thereunder.

(c) *Management functions performed by leased managers*—(1) *In general.* (i) If in a calendar year more than 50 percent of the management functions of a recipient are performed by leased managers, then for purposes of determining whether any qualified plan actually maintained by the recipient and whether any qualified plan maintained by a leasing organization in which one or more leased managers is a participant (or in which one or more leased managers has or had an accrued benefit) satisfies the employee benefit requirements of section 1.414(n)–3(a) (except for paragraph (a)(6) of that section) for a plan year, the leased manager's interest in the leasing organization's qualified plan attributable to services performed by the leased manager for the recipient is to be treated as provided under a separate qualified plan maintained by the recipient covering only the leased manager and the leased manager is to be treated as an employee of the recipient. If a separate qualified plan is treated as maintained by the recipient with respect to a leased manager and the leased manager also participates in a qualified plan actually maintained by the recipient, the leased manager's interest in the leasing organization's qualified plan attributable to the leased manager's performance of services for the recipient that is treated as provided to the leased manager under a separate qualified plan of the recipient is to be treated as provided to the leased manager under the qualified plan actually maintained by the recipient for purposes of determining whether such qualified plan satisfies the applicable employee benefit requirements. If either the separage qualified plan for the leased manager that is treated as maintained by the recipient or any qualified plan that is actually maintained by the recipient fails to satisfy any of the applicable employee benefit requirements, then except as provided in paragraphs (c)(1)(ii) and (c)(a1)(iii) of this section, the following qualified plans shall be treated as not satisfying such requirements: any qualified plan actually maintained by the recipient in which the leased manager is a participant (or has or had an accrued benefit) and any qualified plan that is actually maintained by a leasing organization in which the leased manager has an interest that is attributable to the leased manager's performance of services for the recipient.

(ii) The Commissioner will not apply paragraph (c)(1)(i) of this section so as to disqualify a plan actually maintained by a recipient unless the Commissioner determines that, taking into account all the facts and circumstances, the disqualification of a leasing organization's plan would be ineffective as a means of securing compliance with the applicable employee benefit requirements. For example, it may be appropriate to disqualify the recipient's plan where a leasing organization's plan was terminated or substantial assets where removed therefrom in a year for which the statute of limitations has run with respect to the employer, employee, or trust.

(iii) If pursuant to paragraph (c)(1)(i) of this section, more than one leasing organization plan is subject to disqualification, and at least one of the plans would not be disqualified if another plan or plans were disqualified first, all affected plan sponsors may, by agreement, elect the plan or plans subject to disqualification, provided that such election is not inconsistent with the purposes of this paragraph (c), such as where the plan or plans elected were terminated or substantial assets were removed therefrom in a year for which the statute of limitations has run with respect to the employer, employee, or trust. In the absence of such an election, the Commissioner, taking into account all the facts and circumstances, shall have the discretion to determine which plan or plans shall be disqualified.

(2) *Leased manager.* For purposes of this paragraph (c), the term "leased manager" means an individual who during the calendar year

(i) Performs any services for a recipient other than as an employee of the recipient,

(ii) Performs a significant amount of management activities or services for the recipient, including management functions performed as an employee of the recipient and in any other capacity, and

(iii) Is credited with at least 1,000 hours of service for the recipient, including services performed as an employee of the recipient and in any other capacity.

For rules relating to hours of service, see § 1.414(n)–1(b)(10)(iii). The fact that an individual may also perform services as an employee of the recipient does not affect his status as a leased manager. The fact that the only management activities or services performed by an individual may be performed as an employee of the recipient does not affect

his status as a leased manager. An individual performs a significant amount of management activities or services for a recipient if, during the calendar year, at least 15 percent of the individual's hours of service for the recipient are attributable to the performance of management activities or services. If an individual becomes a leased manager with respect to a recipient, such individual is from that point on always to be considered a leased manager with respect to the recipient, notwithstanding anything in this paragraph (b) to the contrary, even if subsequently all services performed by the individual for the recipient are performed as an employee of the recipient.

(3) *Recipient.* For purposes of this paragraph (c), the term "recipient" has the same meaning as in paragraphs (b)(2) and (b)(6) of § 1.414(n)–1, except that "leased manager" is substituted for "leased employee."

(4) *Leasing organization.* For purposes of this paragraph (c), the term "leasing organization" has the same meaning as in § 1.414(n)–1(b)(1), except that "leased manager" is substituted for "leased employee" and that "or provided" is added after "provides".

(5) *Contributions, benefits, etc., provided to a leased manager.* For purposes of this paragraph (c), a leased manager's interest in a leasing organization (as defined in § 1.414(n)–2(b)(1)(i)) and in a leasing organization's qualified plan (as defined in § 1.414(n)–2(b)(1)(i)), to the extent attributable to services performed for the recipient by the leased manager, is, for purposes of the applicable employee benefit requirements, treated as provided by the recipient or under a plan of the recipient. For rules relating to the application of this requirement, see paragraph (b)(2) of § 1.414(n)–2.

(6) *Effect on employee rules.* To the extent that a leased manager performs services for a recipient other than in the capacity of an employee, a leased manager is not an employee of the recipient and may not be actually covered by a plan of the recipient. Such leased manager may, however, qualify as a leased employee under section 414(n) and the regulations thereunder.

(7) *More-than-50-percent test.* The more-than-50-percent test of this paragraph (c) is applied by comparing the compensation of employees of the recipient who perform management functions for the recipient to the compensation of the leased managers. For purposes of this paragraph (c)(7), the term "compensation" means:

(i) With respect to services performed as a common-law employee of the recipient or leasing organization, compensation reportable on Form W–2, and

(ii) With respect to services performed other than as a common-law employee of the recipient or leasing organization, earned income as defined in section 401(c)(2).

For purposes of this paragraph (c)(7), the term "compensation" includes only amounts attributable to services performed for the recipient. If a leased manager performs services for the recipient both as an employee of the recipient and other than as an employee of the recipient, an appropriate allocation of compensation is required for purposes of applying the more-than-50-percent test. For purposes of applying the more-than-50-percent test, an employee of the recipient shall be disregarded unless such employee satisfies the requirements of paragraphs (c)(2)(ii) and (c)(2)(iii) of this section.

(8) *Inapplicability of section 414(n) and other paragraphs of § 1.414(o)–1 to this paragraph (c).* The provisions of paragraph (c) of this section are to be applied without regard to the provisions of paragraphs (b) and (g) of this section and the provisions of section 414(n). Therefore, for purposes of paragraphs (c)(2), (c)(6), and (c)(7) of this section, and notwithstanding anything to the contrary in paragraphs (b) and (g) of this section or in section 414(n) and the regulations thereunder, services performed by an individual other than as an employee of a recipient are not considered services performed by an employee of a recipient.

(d) [Reserved]

(e) *Successive organizations in time.* If section 414 (b) or (c) would apply to two or more organizations but for the fact that such organizations exist at different times, rather than concurrently in time, section 414 (b) and (c) shall apply to such organizations as if they existed concurrently in time. Thus, for example, section 415 would apply by aggregating all plans of such organizations.

(f) *Services performed by shared employees*—(1) *In general.* If an individual is a shared employee with respect to certain persons (sharing persons), then for purposes of determining whether any plan maintained by such sharing persons satisfies the employee benefit requirements listed in § 1.414(n)–3(a) (except for paragraph (a)(6) of that section) for any plan year of such plans, the shared employee shall be treated as working exclusively for each sharing person by treating the combined services of the shared employee for all employing persons (as defined in paragraph (f)(2)(i) of this section) as services provided to each sharing person.

(2) *Shared employee.* For purposes of this paragraph (f), an individual is a shared employee with respect to a person if during the plan year of such person's plan—

(i) Such individual performs services as an employee for such person and for one or more other persons (collectively referred to as employing persons) at one or more shared business premises of such employing persons or one or more common locations; and

(ii) The total service performed at such shared premises or locations for the employing person by all individuals (excluding any individual who performs at least 1,000 hours of service for an employing person, performs no services for any other employing person at such shared premises or locations, and is covered by the employing person's plan) who perform services of the same type performed by the individual for the employing person equals or exceeds 1,000 hours of service (determined by adding together the services of all such individuals).

For rules relating to hours of service, see § 1.414(n)–1(b)(10) (iii) and (iv). For purposes of this paragraph (f)(2), the determination of whether services have been performed at a shared business premises or some other common location will generally depend on the facts and circumstances of the situation. Examples of a shared business premises may include common, interconnecting, or adjacent offices on the same or an adjacent floor of an office building.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). Each of five doctors leases an office suite which interconnects with a common reception area. Each doctor is a sole proprietor. The doctors collectively employ five nurses who perform only nursing duties and each of whom is considered to spend one fifth of her time working for each doctor. With respect to each doctor, the total service performed by the five nurses exceeds 1,000 hours of service during the calendar year (which is also the plan year for each doctor's plan). All five of the nurses are shared employees with respect to each of the five doctors.

Example (2). Assume the same facts as in example 1. In addition, assume that the five doctors employ one receptionist who is considered to spend one fifth of her time working for each of the five doctors. The receptionist has 1500 hours of service during the calendar year. No other receptionist is employed by any of the five doctors. Because no doctor received at least 1,000 hours of service from the receptionist during the calendar year, the requirement of paragraph (f)(2)(ii) of this section is not satisfied, and

the receptionist is not a shared employee with respect to any of the five doctors.

(4) *Determination of contributions and benefits.* (i) The amount of any contribution or benefit that is to be made or accrued for a shared employee by each sharing person shall be the lesser of the contribution or benefit determined under paragraphs (f)(4)(ii) and (f)(4)(iii) of this section.

(ii) Multiply the contribution or benefit calculated under the plan as if the shared employee were employed exclusively by that person and received all compensation (i.e., all compensation paid to the shared employee by all of the employing persons) from that person by a fraction, the numerator of which is the amount of compensation paid the shared employee by that person and the denominator of which is the amount of compensation paid the shared employee by all of the sharing persons.

(iii) Multiply the contribution or benefit calculated under the plan as if the shared employee were employed exclusively by that person and received all compensation (i.e., all compensation paid to the shared employee by all of the sharing persons) from that person by a fraction, the numerator of which is the amount of compensation paid the shared employee by that person and the denominator of which is the amount of compensation paid the shared employee by all of the sharing persons. The contribution or benefit determined under the preceding sentence is increased by the contribution or benefit calculated under the plan as if the shared employee received additional compensation equal to the shared employee's proportionate share of noncovered compensation. Noncovered compensation is compensation paid by the sharing person for services at the shared premises or locations to all individuals not covered by the plan who perform services for the sharing person of the same type as those performed by the shared employee. The shared employee's proportionate share of noncovered compensation is determined by multiplying the noncovered compensation by a fraction, the numerator of which is the shared employee's compensation from all employing persons who are not sharing persons and the denominator of which is the compensation from all employing persons who are not sharing persons paid to all shared employees covered by the plan. The contribution or benefit calculated under the plan on the shared employee's proportionate share of noncovered compensation is determined for all purposes (including integration) as if such proportionate share were paid in addition to the compensation paid to the shared employee by all sharing persons.

(iv) For purposes of this paragraph (f), the term "compensation" means compensation determined in a manner consistent with the definition of compensation under the sharing person's plan and with section 401(a)(4). For purposes of this paragraph (f), compensation includes earned income as defined in section 401(c)(2).

(5) *Shared leased employees.* The requirements of this paragraph (f) also apply if two or more persons share the services of a leased employee. For purposes of determining whether an individual is a leased employee, all persons who would be employing persons if such individual performed his services as an employee of such persons are treated as a single recipient.

(g) *Inside corporate director*—(1) *In general.* (i) To the extent that contributions, forfeitures and benefits of an inside director under a qualified plan maintained by the inside director are attributable to services performed by the inside director for the recipient as a director, then for purposes of determining whether any qualified plan actually maintained by the recipient and whether any qualified plan maintained by the inside director in which the inside director is a participant (or in which the inside director has or had an accrued benefit) satisfies the employee benefit requirements of section 1.414(n)–3(a) (except for paragraph (a)(6) of that section) for a plan year, the inside director's interest in the inside director's qualified plan attributable to services performed by the inside director for the recipient is to be treated as provided under a separate qualified plan maintained by the recipient covering only the inside director and the inside director is to be treated as an employee of the recipient. If a separate qualified plan is treated as maintained by the recipient with respect to an inside director and the inside director also participates in a qualified plan actually maintained by the recipient, the inside director's interest in the inside director's qualified plan attributable to the inside director's performance of services for the recipient that is treated as provided to the inside director under a separate qualified plan of the recipient is to be treated as provided to the inside director under the qualified plan actually maintained by the recipient for purposes of determining whether such qualified plan satisfies the applicable employee benefit requirements. If either the separate qualified plan for the inside director that is treated as maintained by the recipient or any qualified plan that is actually maintained by the recipient fails to satisfy any of the applicable employee benefit requirements, then except as provided in paragraphs (g)(1)(ii) and (g)(1)(iii) of this section, the following qualified plans shall be treated as not satisfying such requirements: any qualified plan actually maintained by the recipient in which the inside director is a participant (or has or had an accrued benefit) and any qualified plan that is actually maintained by the inside director in which the inside director has an interest that is attributable to the inside director's performance of services for the recipient.

(ii) The Commissioner will not apply paragraph (g)(1)(i) of this section so as to disqualify a plan actually maintained by a recipient unless the Commissioner determines that, taking into account all the facts and circumstances, the disqualification of an inside director's plan would be ineffective as a means of securing compliance with the applicable employee benefit requirements. For example, it may be appropriate to disqualify the recipient's plan where an inside director's plan was terminated or substantial assets were removed therefrom in a year for which the statute of limitations has run with respect to the employer, employee, or trust.

(iii) If pursuant to this paragraph (g), more than one inside director plan is subject to disqualification, and at least one of the plans would not be disqualified if another plan or plans were disqualified first, all affected inside directors may, by agreement, elect the plan or plans subject to disqualification, provided that such election is not inconsistent with the purposes of this paragraph (g), such as where the plan or plans elected were terminated or substantial assets were removed therefrom in a year for which the statute of limitations has run with respect to the employer, employee, or trust. In the absence such an election, the Commissioner, taking into account all the facts and circumstances, shall have the discretion to determine which plan or plans shall be disqualified.

(2) *Inside director.* For purposes of this paragraph (g), the term "inside director" means any individual who is both an employee (determined after application of section 414(n) and paragraphs (b) and (c) of this section) of any person included in the recipient and a director of any corporation included in the recipient, regardless of whether such an individual is an employee (determined after application of section 414(n) and paragraphs (b) and (c) of this

section) and a director with respect to the same corporation. If an individual becomes an inside director with respect to the recipient, such individual is from that point on always to be considered an inside director, notwithstanding anything in this paragraph (g) to the contrary, even if such individual ceases to be an employee (determined after application of section 414(n) and paragraphs (b) and (c) of this section) or director of any person included in the recipient.

(3) *Recipient.* For purposes of this paragraph (g), the term "recipient" has the same meaning as in paragraphs (b)(2) and (b)(6) of § 1.414(n)–1, except that "inside director" is substituted for "leased employee".

(4) *Contributions, benefits, etc., provided to an inside director.* For purposes of this paragraph (g), an inside director's interest in the directorship (an interest in a directorship is defined like an interest in a leasing organization, which is defined in § 1.414(n)–2(n)(1)(i)) and in the inside director's qualified plan (as defined in § 1.414(n)–2(b)(1)(i)), to the extent attributable to services by the inside director for the recipient as a director, are, for purposes of the applicable employee benefit requirements, treated as provided by the recipient or under a plan of the recipient. For rules relating to the application of this requirement, see paragraph (b)(2) of § 1.414(n)–2.

(5) *Effect on employee rules.* To the extent that an inside director performs services for a recipient as a director, an inside director is not an employee of the recipient and may not be actually covered by a plan of the recipient. Such inside director may, however, qualify as a leased employee under section 414(n) and the regulations thereunder.

(h) *Certain five-percent owners of service organizations*—(1) *In general.* In the case of an employee who is (or was) a five-percent owner of an employer, all contributions, forfeitures, and benefits made or accrued with respect to such employee under any plan maintained by such employer shall, for purposes of section 415, be aggregated with all contributions, forfeitures, and benefits made or accrued with respect to such employee under any plan maintained by any other current (or former) employer with respect to which such employee is (or was) a five-percent owner. For purposes of this paragraph (h), the term "employer" includes only service organizations as defined in § 1.414(m)–2(f)(2). This paragraph shall be applied after the application of section 414(n) and paragraphs (b), (c), (e), (f), and (g) of this section for purposes of determining who is considered an employee of an employer and what plans are considered maintained by an employer.

(2) *Five-percent owner.* For purposes of this paragraph (h), the term "five-percent owner" has the same meaning as the term "5-percent owner" provided in section 416(i).

(3) *Determination of plan to be disqualified.* If pursuant to this paragraph (h), more than one plan is subject to disqualification, and at least one of the plans would not be disqualified if another plan or plans were disqualified first, all affected plan sponsors may, by agreement, elect the plan or plans subject to disqualification, provided that such election is not inconsistent with the purposes of this paragraph (h), such as where the plan or plans elected were terminated or substantial assets were removed therefrom in a year for which the statute of limitations has run with respect to the employer, employee, or trust. In the absence of such an election, the Commissioner, taking into account all the facts and circumstances, shall have the discretion to determine which plan or plans shall be disqualified.

(i) *Application of the section 416 top-heavy rules under section 414(o).* For purposes of paragraphs (b), (c), and (g) of this section (relating to leased owners, leased managers, and inside directors, respectively), the section 416 top-heavy rules relating to the definition of a key employee shall be applied as if—

(1) Leased owners and leased managers are employees for purposes of section 416(i), and

(2) Section 416(i)(1)(A) contains a section 416(i)(1)(A)(v) which provides "a director of any person included in the employer".

(j) *Highly compensated employees, etc.* If an individual treated as an employee of a recipient under either this section or section 414(n) and the regulations thereunder would be considered a highly compensated employee, officer, or shareholder, with respect to such recipient under Subchapter D if such individual were an employee of such recipient, such individual shall, for purposes of the nondiscrimination rules of Subchapter D, be considered an employee of the recipient who is highly compensated, an officer, or a shareholder. See section 414(q) for the definition of "highly compensated employee" for years beginning after December 31, 1986 or later, depending on the applicable effective date of the particular employee benefit requirement.

(k) *Effective dates.* (1) The provisions of paragraphs (f), (g) and (h) of this section are effective for plan years beginning after [Insert date sixty days after this document is published in the **Federal Register** as a Treasury Decision]. For purposes of applying paragraph (g) to plan years beginning after the effective date of such paragraph, contributions, forfeitures and benefits provided during the current plan year (i.e., the first plan year ending on or after [Insert date this document is published in the **Federal Register**]) and all subsequent plan years ending before the first plan year beginning after the effective date of paragraph (g), shall be taken into account if they would have been taken into account had paragraph (g) of this section been effective for such plan years.

(2) The provisions of paragraph (b) of this section are effective for tax years of recipients beginning after December 31, 1983. Therefore, the provisions of paragraph (b) apply to plan years beginning during and after the first tax year of a recipient beginning after December 31, 1983. For purposes of applying paragraph (b) of this section to plan years beginning during and after the first tax year of a recipient beginning after December 31, 1983, contributions, forfeitures and benefits provided during any plan year beginning prior to the first tax year of a recipient beginning after December 31, 1983, shall be taken into account if they would have been taken into account had paragraph (b) been effective for such prior plan year.

(3) The provisions of paragraphs (c) and (e) of this section are effective for plan years beginning after [Insert date six months after this document is published in the **Federal Register**]. For purposes of applying paragraph (c) to plan years beginning after the effective date of such paragraph, contributions, forfeitures and benefits provided during the current plan year (i.e., the first plan year ending on or after [Insert date this document is published in the **Federal Register**] and, if applicable the subsequent plan years ending before the first plan year beginning after the effective date of paragraph (c), shall be taken into account if they would have been taken into account had paragraph (c) been effective for such plan year(s).

(4) For purposes of applying the effective dates contained in this paragraph (k), rules similar to those provided in the second and fourth sentences of § 1.414(n)–3(c)(1) shall apply.

James I. Owens,

Acting Commissioner.

[FR Doc. 87–19579 Filed 8–26–87; 8:45 am]

BILLING CODE 4830–01–M

federal register

Thursday
August 27, 1987

Part VII

Office of Management and Budget

Office of Federal Procurement Policy

Proposed Circular on Value Engineering Programs; Invitation for Public Comment; Notice

VOL
52
ISS
166
AG
27
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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Proposed Circular on Value Engineering Programs; Invitation for Public Comment

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: The Office of Management and Budget (OMB) is requesting comments on a proposed new OMB circular. The proposed circular requires the heads of Executive agencies and departments to establish "value engineering programs."

SUMMARY: Value engineering is a technique used by some Federal contractors and Government activities to identify and propose changes to the product, service or process specifications used in Government contracts. The proposed changes are intended to lower the Government's cost for the goods and services being acquired and, at the same time, maintain required quality levels. Over the last several years, reports issued by the General Accounting Office (GAO) and Inspectors General (IG) have consistently concluded that wider use of value engineering would result in substantial savings. The purpose of the proposed OMB circular is to require agencies and departments to establish and use value engineering programs, where appropriate, to reduce nonessential costs and improve productivity. The circular requires agencies and departments to implement specific management and procurement practices in establishing value engineering programs.

DATE: Comments must be received on or before September 30, 1987.

ADDRESS: Comments should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, Room 9025, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Charles W. Clark, Deputy Associate Administrator for Policy Development (202) 395–6803.

Robert P. Bedell,

Administrator.

Dated: August 19, 1987.

Circular No. A–12X

September 1, 1987.

To the Heads of Executive Departments and Establishments

Subject: Valve Engineering

1. *Purpose.* The purpose of this Circular is to emphasize value engineering as a methodology for identifying and reducing nonessential procurement and program cost. The Circular requires agency heads to establish value engineering programs.

2. *Background.* Value engineering is a technique used by some Federal contractors and Government activities to identify and propose changes to the product, service or process specifications used in Government contracts. The proposed changes are intended to lower the Government's cost for the goods and services being acquired and, at the same time, maintain required quality levels. Over the last several years, reports issued by the General Accounting Office (GAO) and Inspectors General (IG) have consistently concluded that wider use of value engineering would result in substantial savings. While some agencies have programs in-place, others have not utilized value engineering. Even for agencies with established programs, the GAO and IG reports conclude that much more can and should be done to realize the benefits of value engineering. The inhibitors frequently noted in the various reports that prevent a broader use of value engineering include:

—Failure of top management to allocate necessary resources, both in effort and in funds, to establish value engineering programs;

—Absence of criteria for selecting projects and programs for value engineering studies;

—Failure to properly perform value engineering studies;

—Inadequate attention to reviewing and implementing recommendations made in value engineering studies.

Many of the problems noted in the GAO and IG reports are, in part, attitudinal in nature. A common theme in the reports is that there are few incentives to use value engineering or other cost cutting techniques to save money on fully funded programs and projects. This situation cannot continue. Programs should be developed, reviewed and administered in the most cost effective manner possible. Value engineering and other management techniques must be properly used to ensure realistic project budgets and to identify and remove unnecessary capital and operating costs.

3. *Definitions.*

a. *Agency.* As used in this Circular, agency means any department or independent establishment of the Executive Branch of the Federal Government.

b. *Value Engineering.* An organized effort directed by a person trained in value engineering techniques to analyze the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance and reliability.

c. *Value Engineering Change Proposal (VECP).* A change proposal submitted by a contractor under a value engineering incentive clause included in a contract.

d. *Value Engineering Proposal.* A specific program or contract change developed by in-house value engineering personnel employed by the agency administering the contract or program.

4. *Policy.* Agencies shall establish and use value engineering, where appropriate, to reduce nonessential costs and improve productivity. Individual agency programs shall, as a minimum, provide for the following management and procurement practices.

a. *Management Practices.* Value engineering programs must be tailored to the mission and organizational structure of individual agencies. Cost and program/project size are general indicators of the potential for value engineering. In most agencies, a relatively few programs or projects comprise the majority of costs. Value engineering efforts should be concentrated on those selected programs. In establishing and implementing value engineering programs agencies shall:

(1) Emphasize, in training and through other programs, the potential of value engineering to reduce unnecessary cost.

(2) Establish a focal point within the agency to monitor, manage and maintain data on agency value engineering programs. This function may be performed either on a full time or collateral basis. Value engineering training shall be provided to the person responsible for the value engineering function. Specific value engineering studies shall, where cost effective, be performed by contract.

(3) Ensure that funds necessary for operating agency value engineering programs are included in annual budget requests.

(4) Establish criteria and guidelines for screening programs and projects for susceptibility to value engineering studies.

(5) Establish guidelines to evaluate value engineering proposals.

(6) Establish procedures for providing recognition and awards to individuals and organizational components that

achieve exceptional value engineering savings.

(7) Consider the number of value engineering change proposals and the manner in which the proposals were processed in evaluating the performance of project and program managers.

b. *Procurement Practices.* Present procurement policy on the use of value engineering is set forth in Part 48 of the Federal Acquisition Regulation (FAR). Part 48 provides two basic approaches for using value engineering. The first is an *incentive* approach in which contractor participation is voluntary and the contractor uses its resources to develop and submit VECPs. A contract clause provides that when a VECP is accepted any savings resulting therefrom are shared with the contractor on a preestablished—usually a percentage—basis set forth in the contract. In the second approach, the Government *requires* in the contract—and pays the contractor to conduct—a specific value engineering effort, i.e., an effort to identify and submit to the Government methods for performing more economically. This effort generally is directed at the major cost items of a system or project.

The FAR presently permits agency heads to exempt their agencies from using value engineering provisions in contracts. That exemption is hereby removed and the FAR will be modified to require that contracting activities include value engineering provisions in contracts except where exemptions are granted on a case-by-case basis or for specific classes of contracts. One time agency-wide exemptions will no longer be permitted. In addition, agency contracting activities will:

(1) Actively elicit VECPs from contractors.

(2) Promote value engineering through contractor seminars, meetings and the dissemination of promotional and informational literature regarding the value engineering provisions of contracts.

(3) Consider the number of value engineering change proposals and the manner in which the proposals were processed in evaluating the performance of contracting officers.

(4) Establish guidelines for processing value engineering change proposals and require that files be documented for all change proposals requiring more than 45 days to accept or reject.

(5) Document all contract files to explain the rationale for accepting or rejecting value engineering change proposals.

(6) Document all contract files to explain why value engineering studies were not performed or required for projects or programs meeting the criteria in paragraph 4a.(4) above.

(7) Use the value engineering program requirement clause (FAR 52.248–1 alternatives I or II) in all initial production contracts for major systems acquisition programs, except where the contracting officer determines and documents the file to reflect that such use is not appropriate (See Section 102(10)(b) of Public Law 98–577 for a definition of major systems).

5. *Sunset Review.* The policies contained in this Circular will be reviewed by the Office of Management and Budget three years from the date of issuance.

6. *Inquiries.* Further information about this Circular may be obtained by contacting the Office of Federal Procurement Policy, 726 Jackson Place NW., Washington, DC 20503, Telephone (202) 395–6803.

James C. Miller III,

Director.

[FR Doc. 87–19625 Filed 8–26–87; 8:45 am]

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VOL
52
ISS
166
AG
27
1987
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Federal Register

Thursday
August 27, 1987

Part VIII

Department of Education

34 CFR Part 5

Implementation of the Freedom of Information Reform Act; Uniform Fee Schedule and Administrative Guidelines; Final Regulations With Invitation To Comment

VOL
52
ISS
166
AG
27
1987
UMI

DEPARTMENT OF EDUCATION

34 CFR Part 5

Implementation of the Freedom of Information Reform Act; Uniform Fee Schedule and Administrative Guidelines

AGENCY: Department of Education.

ACTION: Final Regulations With Invitation to Comment.

SUMMARY: The Secretary amends the Department of Education's regulations under the Freedom of Information Act (FOIA). These amendments are needed to implement the Freedom of Information Reform Act of 1986 (Reform Act), which requires agencies to establish a schedule of fees to be charged for the costs of processing requests for information under the FOIA and revises the standard for waiving or reducing a fee. The revised fee schedule is consistent with the Office of Management and Budget's (OMB) Uniform FOIA Fee Schedule and Guidelines. The regulations will provide more uniformity in assessing fees and will enable the Department to recover more of the actual costs incurred in processing requests for records for commercial use. Due to the immediate need for implementing the new fee schedule and waiver requirements, the Secretary publishes these rules as final regulations with an invitation to comment.

DATES: Comments must be received on or before October 13, 1987. Effective date: August 27, 1987.

ADDRESSES: All comments concerning these final regulations should be addressed to the U.S. Department of Education, Freedom of Information Officer, 400 Maryland Avenue, SW., Room 2089, FOB–6, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Thomas Lyon, Telephone Number: 732–4313.

SUPPLEMENTARY INFORMATION: The Reform Act established a new framework for assessing fees under the FOIA so that different categories of requesters are established, and the fees charged for processing FOIA requests vary by requester category. In accordance with the Reform Act, the amendments to the regulations revise Subpart E of the Department's current regulations on fees. The revised fee schedule sets forth the allowable direct costs for searching for and reviewing records, duplicating records, certifying or authenticating records, and other costs associated with responding to a FOIA request. Charges that are assessed vary, depending on the use to which the records will be put and the identity of the requester. Assurance of payment or payment in advance of the search for and review of records is required if the estimated fee will exceed $250.00. Advance payment is required if the requester has failed to pay the fee charged on a previous request. Interest is assessed for fees not paid within 30 days of billing. The standard for waiver or reduction of fees is revised to implement changes required under the Reform Act.

Waiver for Notice of Proposed Rulemaking

At this time the Secretary is issuing final regulations with an opportunity to comment but without prior notice, because issuing final regulations immediately is necessary in view of the statutory deadline for implementing these regulations, and delay could cause an unfair economic hardship on certain requesters. Under the existing fee schedule all requesters are subject to paying the direct costs of search and duplication of records. However, under the fee schedule revised to implement the 1986 amendments, certain noncommercial requesters are entitled to free search and the first 100 pages copied free. Failure to implement the revised fee schedule promptly could adversely affect these requesters who would be subject to fees at the current rate. The Department, as well as all other executive agencies, was required to conform the fee provisions with the 1986 statutory amendments and uniform guidelines issued by OMB. OMB's final fee guidelines were not published until March 27, 1987. Therefore, the Secretary was unable to issue these fee provisions early enough to enable him to consider comments before publishing these final regulations. Accordingly, the Secretary has determined that publication of the fee provisions as a proposed rule is impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities. Small entities may be affected by these regulations because an entity may make a request for information under the FOIA. However, no regulatory burden is imposed on small entities; only those entities that request information may be charged fees, and only requests for records to be put to commercial use are charged the full allowable direct cost of processing the request. The fees charged are required by the Reform Act.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these final regulations governing fees under the FOIA. To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

All comments submitted in response to these final regulations will be available for public inspection, during and after the comment period, in Room 2089, FOB–6, 400 Maryland Avenue SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 5

Administrative practice and procedure, Freedom of Information.

Dated: August 7, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 5 of Title 34 of the Code of Federal Regulations as follows:

PART 5—AVAILABILITY OF INFORMATION TO THE PUBLIC PURSUANT TO PUB. L. 90–23

1. The authority citation for Part 5 is revised to read as follows:

Authority: 5 U.S.C. 552.

2. Subpart A is amended by adding a new § 5.6 to read as follows:

§ 5.6 Statutory definitions.

The definitions in the Act and the Office of Management and Budget's "Uniform FOIA Fee Schedule and Guidelines," 52 FR 10012 (March 27, 1987), apply to this part.

3. Subpart E is revised to read as follows:

Subpart E—Fees and Charges

5.60 Schedule of fees.
5.61 Notification of estimated fees.
5.62 Advance payment of fees.
5.63 Payment of fees and interest.
5.64 Waiver or reduction of fees.

Subpart E—Fees and Charges

§ 5.60 Schedule of fees.

(a) Fees and charges are charged under this part as follows:

(1) *Search for records.*

(i) *General.* Full search fees are charged for records requested by commercial use requesters. For records requested by representatives of the news media or educational or noncommercial scientific institutions whose purpose is scholarly or scientific research, no search fee is charged if the records requested are not for commercial use. For other requesters, if the records requested are not for commercial use, the first two hours of search time are provided without charge, except as limited in paragraph (a)(1)(iii) of this section. Search fees are recorded and assessed to the nearest quarter hour.

(ii) *Manual search.* The charge for a manual search is calculated by determining the search time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the employee conducting the search plus 16 percent of that rate.

(iii) *Computer search.* The charge for a computer search is calculated by determining the search time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the computer operator plus 16% of that rate plus $287 per hour for computer operation. Two hours of search time on a computer search is deemed to have been spent if the cost of the search equals the equivalent of two hours of the computer operator's basic rate of pay per hour plus 16 percent of that rate.

(2) *Review of records.* Review fees are charged only for commercial use requests and only for the initial review. The review rate is calculated by determining the review time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the employee conducting the review plus 16% of that rate. If records requested under this part are stored elsewhere than the headquarters of the Department at Washington, DC., the mailing and handling costs of returning those records to the headquarters for review is added to the review costs.

(3) *Duplication of records.* No duplication fee is charged for the first 100 pages, except for commercial use requests. Duplication charges for paper copy reproduction of documents on photocopy machines is $0.10 per page.

(4) *Certification of records.* The charge for certifying records is $5 per record certified.

(5) *Other.* If no specific fee has been established for a service, or the request for a service does not fall under one of the categories in paragraphs (a)(1)–(4) of this section due to the amount or type of service, the Secretary is authorized to establish an appropriate fee, based on direct costs on a case-by-case basis as provided in the FOIA.

(b) If the Secretary awards a contract for a search or duplication of records for a FOI request, the fees charged are the actual costs under the contract.

(c) Fees are not charged if the total amount of the fee is less than $5. If the total amount of the fee is $5, or more, applicable search and review costs are charged even if no records are located or disclosed. The Secretary does not refund fees paid for services actually rendered.

(d) If the FOI Officer reasonably believes that a requester or group of requesters acting in concert is attempting to break down a request into multiple requests for the purpose of avoiding fee assessment, those requests and fees are aggregated and charged accordingly.

§ 5.61 Notification of estimated fees.

If the estimated fees under this section total more than $25, or more than the maximum amount specified in the request if that amount exceeds $25, the requester is—

(a) Notified promptly of the amount of the estimated fee or that portion of the fee as can readily be estimated; and

(b) Offered the opportunity to reformulate the request.

§ 5.62 Advance payment of fees.

(a) If the estimated fee for processing a request exceeds $250, the FOI Officer—

(1) Notifies the requester of the anticipated cost and obtains satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees; or

(2) Requires an advance payment if the requester has no history of payment.

(b) If a requester has previously failed to pay a fee in a timely fashion, the FOI Officer does not process any subsequent request until the requester pays the arrears in full, including interest, and makes an advance payment of the estimated fee for the new request.

(c) Requests under this section are not deemed to have been received for purposes of § 5.51(d) until the Department receives the satisfactory assurance or advance payment.

§ 5.63 Payment of fees and interest.

(a) If a requester does not pay a fee under this subpart within 30 days after the date the billing was sent, interest is assessed at the rate prescribed under 31 U.S.C. 3717. The Secretary may use the procedures authorized under the Debt Collection Act of 1982 to collect fees due under this subpart, including disclosure to consumer reporting or collection agencies.

(b) Fee payments must be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Fee payments must be made payable to the U.S. Department of Education and mailed to the FOI Officer, Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. A receipt for fees paid is given upon request.

§ 5.64 Waiver or reduction of fees.

(a) The Secretary may, in accordance with the FOIA, waive or reduce all or part of any fee provided for in this section if the Secretary determines that it is—

(1) In the public interest because furnishing the information can be considered as primarily benefiting the general public and is likely to contribute significantly to public understanding of the operations or activities of the government; and

(2) Is not primarily in the commercial interest of the requester.

(b) In making the determination to waive or reduce a fee under paragraph

(a) of this section, the Secretary considers the following factors:

(1) Whether the subject of the requested records concerns the operations or activities of the government.

(2) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(3) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so, whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

[FR Doc. 87-19667 Filed 8-26-87; 8:45 am]

BILLING CODE 4000-01-M

VOL 52 ISS 166 AG 27 1987 UMI

federal register

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Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Part 129

Delay of Effective Date of Maintenance Program and Minimum Equipment List Requirements for Foreign Air Carriers and Operators of Certain Large U.S.-Registered Airplanes

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No. 24856; Amendment No. 129-15]

Delay of Effective Date of Maintenance Program and Minimum Equipment List Requirements for Foreign Air Carriers and Operators of Certain Large U.S.-Registered Airplanes

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Final rule; delay of effective date.

SUMMARY: This amendment delays the effective date for the new requirements that U.S.-registered aircraft leased by foreign persons be maintained in accordance with acceptable maintenance standards. This amendment is necessary to provide additional time for the FAA to develop and publish advisory material for the content of the maintenance programs and procedures for their approval. This amendment does not delay the effective date of other amendments published in 52 FR 20028 (May 28, 1987).

EFFECTIVE DATE: This amendment delays the effective date for § 129.14 from August 25, 1987, to February 25, 1988.

FOR FURTHER INFORMATION CONTACT: David L. Catey, Manager, Project Development Branch, AFS-240, Air Transportation Division, telephone (202) 267-3747 or Wayne N. Dixon, Aircraft Maintenance Division, AFS-300, telephone (202) 267-3781, Office of Flight Standards, Federal Aviation Administration, 800 Indendence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

The FAA stated in the "Analysis of Comments" section of the preamble of the final rule for Amendments 43-28, 91-201, 121-192, 125-9, 129-14, and 135-24 (52 FR 20026; May 28, 1987) that specific requirements and guidance as to what would constitute an approvable maintenance program would be provided by an advisory circular. The FAA now finds that developing and processing an advisory circular in time for the August 25, 1987, effective date of the amendment is not possible and that an effective date of February 25, 1988, for the new maintenance program and minimum equipment list requirements, § 129.14 of the Federal Aviation Regulations, is needed to complete development of this material. Not adopting this amendment would impose a burden both on the foreign air carriers and the FAA because of the difficulty and expenditure of time involved in attempting to develop a program and obtain its approval with inadequate guidance.

Reason for No Notice and Immediate Adoption

In view of the fact that Amendment 129-14 will become effective August 25, 1987, and immediate establishment of a later effective date for the maintenance program and minimum equipment list requirements is needed to allow for development of suitable guidance to effect those requirements, I find that notice and public procedure are impracticable and good cause exists for making this amendment effective in less than 30 days.

Conclusion

This amendment will provide the time necessary for development of guidance materials for compliance with new § 129.14 of the FAR by extending the effective date 6 months. Because it will not create any additional burden on those subject to the regulation, no costs are associated with this amendment. Therefore, the FAA has determined that this amendment is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is further certified that under the criteria of the Regulatory Flexibility Act this amendment will not have a significant economic impact, positive or negative, or a substantial number of small entities because no costs are associated with the amendment. For these reasons, the FAA has determined that the expected economic impact is so minimal that a full regulatory evaluation is not warranted.

List of Subjects in 14 CFR Part 129

Aircraft, Air Carrier, Airworthiness.

The Amendment

Accordingly, the effective date for § 129.14 of the Federal Aviation Regulations (14 CFR 129.14) is delayed until February 25, 1988.

Authority

The authority citation for Part 129 continues to read as follows:

Authority: 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97-499, January 12, 1983).

Issued in Washington, DC, on August 25, 1987.

T. Allan McArtor,

Administrator.

[FR Doc. 87-19816 Filed 8-25-87; 4:38 pm]

BILLING CODE 4910-13-M

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WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 6

Section 22 Dairy Import Quotas; Adjustment of Application Period for Import Licenses for Certain Dairy Products; Correction

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This final rule amends the regulations concerning the application period for certain import licenses.

EFFECTIVE DATE: July 17, 1987.

FOR FURTHER INFORMATION CONTACT: Phillip J. Christie, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, Room 6616 South Building, Department of Agriculture, Washington, DC 20250; Telephone (202) 447-5270.

SUPPLEMENTARY INFORMATION: A notice of adjustment of the application period for certain import licenses was published in the **Federal Register** (52 FR 26937) on July 17, 1987. The supplementary information set forth in that notice is correct with respect to the application period for the 1988 quota year. However, the provision amending 7 CFR Part 6, Subpart-Section 22 Import Quotas which was also published with the Notice is inconsistent with the supplementary information in the Notice and with the agency's intention. Therefore, the Foreign Agricultural Service is publishing a corrected rule which amends 7 CFR Part 6, Subpart-Section 22 Import Quotas to provide that when the first day or days of the application period fall on a Saturday, Sunday, or Federal holiday, applications postmarked on these days and the immediately following workday will be treated the same in determining priority in the issuance of import licenses. The authority citation for 7 CFR Part 6, Subpart-Section 22 Import Quotas is also being amended to reflect the current citation to the statutory authority for the regulation.

This final rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major' since implementation of the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this rule, the Administrator, Foreign Agricultural Service, hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities since the change made by this rule is of a minor, technical nature and will have an insignificant economic impact, if any, regardless of the size of the applying firms.

This amendment to the regulations is being published as a final rule since the agency finds under 5 U.S.C. 553 that the general notice of proposed rulemaking procedure is impracticable and contrary to the public interest. It has been the agency's past practice to treat applications as this rule provides and the rule merely involves a technical change.

The effective date for this final rule is being made retroactive to July 17, 1987, since that was the date on which the notice and incorrect amendment to the regulations was published. The agency is setting forth the rule as it was correctly applied to the application period for the 1988 quota year as described in the supplementary information section of the notice.

List of Subjects in 7 CFR Part 6

Section 22, Import quotas, Dairy products.

Accordingly, 7 CFR Part 6, Subpart—Section 22 Import Quotas, is amended as follows:

PART 6—[AMENDED]

1. The authority citation for 7 CFR Part 6, Subpart—Section 22 Import Quotas, is revised to read as follows:

Authority: Sec. 3, Pub. L. 80-897, 62 Stat. 1248, as amended (7 U.S.C. 624); secs. 701, 703, Pub. L. 96-39, 93 Stat. 268, 272; Part 3 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202); sec. 501 Pub. L. 82-137, 65 Stat. 290, as amended (31 U.S.C. 9701).

2. Section 6.25 is amended by revising paragraph (b)(4) to read as follows:

§ 6.25 Eligibility.

* * * * *

(b) * * *

(4) Evidence and certification required to establish the nonhistorical eligibility of a person making application to receive a quota share for a given quota year shall not be approved by the Licensing Authority if postmarked before August 1 or later than November 1 of the year preceding the quota year for which the license to import is requested. Whenever August 1 falls on a Saturday, Sunday, Federal holiday, or other day which is not a normal full workday for the United States Postal Service, applications postmarked on August 1 and any subsequent day(s), if any, through the immediately following normal full workday for the United States Postal Service will be treated the same in determining priority in the issuance of the import licenses.

* * * * *

Signed, the 20th of August, 1987.

Thomas O. Kay,

Administrator, Foreign Agricultural Service.

[FR Doc. 87-19804 Filed 8-27-87; 8:45 am]
BILLING CODE 3410-10-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 576]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

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SUMMARY: Regulation 576 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 293,581 cartons during the period August 30 through September 5, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 576 (§ 910.876) is effective for the period August 30 through September 5, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Department Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601 through 674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on August 25, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by an 9 to 3 vote (with one abstention) a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is fair.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.876 is added to read as follows:

§ 910.876 Lemon Regulation 576.

The quantity of lemons grown in California and Arizona which may be handled during the period August 30 through September 5, 1987, is established at 293,581 cartons.

Dated: August 26, 1987.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–19981 Filed 8–27–87; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Temporary Revision of Supply Plant Shipping Percentage and Diversion Limitation Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action temporarily reduces for the months of September 1987 through March 1988 the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to maintain pool status under the Nebraska-Western Iowa order. The limits of the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order would also be revised temporarily, from 40 percent to 55 percent, for the same period. The revision is made in response to a request by a cooperative which operates pool supply plants and represents a significant number of producers whose milk is pooled under the order for the purpose of maintaining the pool status of producers historically associated with the Nebraska-Western Iowa order.

EFFECTIVE DATE: August 28, 1987.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456,(202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Temporary Revision of Supply Plant Shipping Percentage and Diversion Limitation Percentage: Issued July 15, 1987; published July 20, 1987 (52 FR 27216).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of §§ 1065.7(b)(3) and 1065.13(d)(4) of the Nebraska-Western Iowa order.

Notice of proposed rulemaking was published in the **Federal Register** (52 FR 27216) concerning a proposed reduction in the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to maintain pool status, and a proposed relaxation of the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The temporary reduction would be effective for the months of September 1987 through March 1988. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by August 4, 1987.

Statement of Consideration

After consideration of all relevant material, data, views and arguments filed and other available information, it is hereby found and determined that the supply plant shipping percentage set forth in § 1065.7(b) should be reduced by 10 percentage points from the present 40 percent to 30 percent for the months of September 1987 through March 1988. For the same period, the diversion limits on producer milk should be increased by 15 percentage points, from 40 percent to 55 percent.

Pursuant to the provisions of § 1065.7(b)(3) of the Nebraska-Western Iowa milk order, the Director of the Dairy Division may increase or decrease the supply plant shipping percentage as set forth in § 1065.7(b) by up to 20 percentage points during any month. Similarly, Section 1065.13(d) allows the Director of the Dairy Division to increase or decrease the diversion limitation percentages by up to 20 percentage points in any month. Such changes may be made to encourage additional milk shipments needed to assure an adequate supply of milk to fluid handlers, or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The supply plant shipping percentage of the Nebraska-Western Iowa milk order was reduced temporarily from 40 to 30 percent for the months of September 1986 through March 1987. In addition, the order's diversion limits were revised temporarily from 50 to 60 percent for the months of May through August 1986, from 40 to 60 percent for the months of September through December 1986, from 40 to 55 percent for the months of January through March 1987, and from 50 to 60 percent for the months of July and August 1987.

Associated Milk Producers, Inc. (AMPI), a cooperative association operating supply plants historically pooled under the Nebraska-Western Iowa order and representing producers supplying a significant portion of the producer milk pooled under the order, requested that for the months of September 1987 through March 1988, the supply plant shipping percentage requirement be reduced by 10 percentage points and the diversion limit on producer milk be increased by 15 percentage points.

The cooperative stated that producer milk pooled under the Nebraska-Western Iowa order during the first five months of 1987 was less than 1 percent below the same period of 1986 despite the effect of the Dairy Termination Program (DTP). According to AMPI, 75–80 percent of the DTP sellouts have already taken place. AMPI concluded that non-participants in the Program have increased production substantially enough to offset the volume of production lost to the DTP. The cooperative expects that since the majority of buyouts took place in the second half of 1986, the volume of producer milk pooled in late 1987 and early 1988 will increase over the same month of the previous year. AMPI estimates that its own producers' milk pooled on the Nebraska-Western Iowa order will increase 3–5 percent over the previous year in the period for which the temporary revisions are requested.

When the projected production increases are combined with a decrease of 1.5 percent in Class I sales for January through May 1987 from the same months in 1986, AMPI estimated that the percentage of producer milk used in Class I during the months of September 1987 through March 1988 will be little more than 40 percent. AMPI stated that a 40-percent level of Class I utilization would make it difficult to justify a requirement that 60 percent of producer milk be moved to pool plants. According to the cooperative, such a requirement would involve delivering milk to pool plants, then pumping it back out into trucks that would haul it to nonpool plants where the milk could be used. AMPI stated that such double pumping has a detrimental effect on milk quality.

Because of the expected relationship between milk production and the Class I needs of the market, AMPI stated that 55 percent would be a more appropriate limit on diversions of producer milk to nonpool plants than 40 percent, and that 30 percent would be a more appropriate shipping requirement for pool supply plants than 40 percent. According to the cooperative, the requested temporary revisions would allow AMPI to avoid pooling some producer milk on another Federal order or engaging in uneconomic and inefficient milk movements in order to maintain the pool status of the milk of its members who have historically supplied the fluid needs of the Nebraska-Western Iowa marketing area.

Comments opposing the temporary revision of the supply plant shipping requirement were received from Mid-America Dairymen, Inc. (Mid-Am), a cooperative association representing a substantial number of producers on the Nebraska-Western Iowa market. Mid-Am opposed the temporary revision of supply plant shipping percentages on the basis of Mid-Am's contention that AMPI's description of the Dairy Termination Program impact on the Nebraska-Western Iowa market is in error. Mid-Am's comments stated that instead of being 75–80 percent complete as of June 1, the DTP had disposed of only 55.4 percent of the dairy cattle in the State of Nebraska scheduled for slaughter or export. Mid-Am described Nebraska as the major source of fluid milk for bottlers regulated by the Nebraska-Western Iowa order, and stated that fluid milk handlers located in Omaha and Lincoln would experience a marked decline in their receipts from producers as a large number of dairy herds cease production during August 1987. As a result, the cooperative stated, regulated handlers will rely more heavily on supply plant milk to supply their fluid milk needs during and after August 1987. Mid-Am concluded that a reduction of supply plant shipping requirements by 10 percentage points could jeopardize an adequate supply of milk for fluid handlers located in Omaha and Lincoln, Nebraska.

No comments opposing the proposed relaxation of the Nebraska-Western Iowa order's diversion limits were received.

According to statistics published by USDA in the issues of Dairy Market News for March 31–April 4, 1986 (Vol. 53, No. 14) and June 22–26, 1987 (Vol. 54, No. 26), the number of cows, heifers and calves remaining in herds contracted for disposal as of June 1, 1987, represented less than 20 percent of the number originally scheduled for termination. The effect of the DTP on milk production for the Nebraska-Western Iowa market, then, apparently has already largely been felt. Although milk production pooled under the order has, according to the market administrator's published statistics, declined slightly in 1987 from 1986 levels, the amount of producer milk used in Class I has also declined. As a result, the percentage of producer milk

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used in Class I is slightly lower in most months of 1987 than in the same months of 1986. If the assumption is made that the remaining 20 percent of dairy terminations will have as little effect on the Class I utilization percentage of the market as did the first 80 percent, Class I use under the Nebraska-Western Iowa order should average approximately 40 percent for the months covered by the proposed temporary revision. During the fall months of 1986, Class I use was slightly in excess of the 40-percent level while pool supply plant percentage requirements were reduced temporarily from 40 percent to 30 percent. It appears that marketing conditions in the Nebraska-Western Iowa market during the months of September 1987 through March 1988 will be very close to those anticipated by AMPI.

Without the temporary revisions, milk would have to be moved unnecessarily and uneconomically from farms to pool plants and from supply plants to distributing plants for the sole purpose of maintaining the pool status of producers historically pooled under the Nebraska-Western Iowa order. In addition to such movements of milk being inefficient and uneconomic, the additional pumping to which the milk would be subject would be detrimental to the quality of the milk. It is concluded the reduction of the supply plant shipping percentage by 10 percentage points and the relaxation of the producer milk diversion limit by 15 points will prevent uneconomic movements of milk to pool distributing plants merely for the purpose of qualifying it as producer milk under the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of September 1987 through March 1988;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective upon publication of this notice in the **Federal Register**.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That for the months of September 1987 through March 1988 in paragraph (b) of § 1065.7, the provision "40 percent" is revised to "30 percent"; and in paragraphs (d) (2) and (3) of § 1065.13, the provision "40 percent" is revised to "55 percent".

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. The authority citation for 7 CFR Part 1065 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

§§ 1065.7 and 1065.13 [Amended]

2. In § 1065.7(b) the words "40 percent" are revised to read "30 percent" for the months of September 1987 through March 1988; in § 1065.13(d) (2) and (3) the words "40 percent" are revised to read "55 percent" for the months of September 1987 through March 1988.

Signed at Washington, DC, on: August 21, 1987.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 87–19627 Filed 8–27–87; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket 87–109]

Restrictions on Importation of Horses From the Netherlands

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations by adding the Netherlands to the list of countries in which contagious equine metritis (CEM) exists. Because the Netherlands is no longer free of CEM, we are restricting the importation of certain horses from that area to prevent the livestock of the United States from contracting the disease.

Dutch stallions and mares older than 731 days will not be permitted into the United States under standard three-day quarantine and testing procedures. Instead, they must submit to the testing and treatment procedures established to qualify stallions and mares from CEM-affected countries for importation into the United States.

DATES: Interim rule effective August 28, 1987. Consideration will be given only to comments postmarked or received on or before October 27, 1987.

ADDRESSES: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 87–109. Comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 815, Federal Building, Hyattsville, MD 20782, 301–436–8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations on animal importations in 9 CFR Part 92 (referred to below as the regulations) restrict the importation of horses that could introduce various diseases, such as contagious equine metritis (CEM), into the United States. A venereal disease, CEM affects horses' fertility and breeding.

Section 92.2(h)(i)(1) lists the countries in which CEM exists and, with certain exceptions, prohibits importation of horses from those countries. The prohibition applies to horses in any of those countries at any time during the 12 months before the detection of CEM.

In response to a telex from Dutch animal health officials, confirming their finding of CEM on July 22, 1987, we are adding the Netherlands to the list of countries in which CEM exists. We are also making nonsubstantive editorial changes.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent carriers of CEM from introducing it into the United States.

For this reason, we find upon good cause that, pursuant to the administrative procedure provisions in 5 U.S.C. 553, prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule

effective less than 30 days after publication of this document in the **Federal Register**. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographical regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Stallions and mares over 731 days of age and from the Netherlands, must undergo testing and treatment in the Netherlands and the United States more extensive than is standard during a 3-day quarantine. The extra time required for this additional testing and treatment will delay the date of the horses' permanent importation into this country; it will therefore increase the cost to importers of horses from the Netherlands. However, of the 25,742 horses imported into the United States during Fiscal Year 1986, only 418 came from the Netherlands. Of the 418 horses imported from the Netherlands, fewer than half would fall into the category of stallions and mares that this interim rule would affect. We expect this rule to have no effect on importers. Those deterred by the cost of testing and quarantining a stallion or mare affected by this interim rule could, instead, import geldings or, for breeding, horses younger than 731 days. Alternatively, they could import horses from any CEM-free country.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.2 [Amended]

2. In § 92.2, paragraph (i)(1), ". . . France, Sweden, and the United Kingdom (England, Scotland, Northern Ireland, Norway, Wales and the Isle of Man)." is amended to read, ". . . France, the Netherlands, Norway, Sweden, and the United Kingdom (England, Northern Ireland, Scotland, Wales, and the Isle of Man)."

Done in Washington, DC, this 21st day of August 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–19758 Filed 8–27–87; 8:45 am]

BILLING CODE 3410–34–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 114

Administrative Claims Under Federal Tort Claims Act

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: Existing Small Business Administration policy presently does not provide for the use of Agency funds to indemnify employees who suffer adverse money judgments or personal damage claims as a result of official acts. This proposed amendment to SBA regulations parallels recently adopted Department of Justice regulations in permitting indemnification in appropriate situations, as determined by the Administrator or his designee.

EFFECTIVE DATE: August 28, 1987.

FOR FURTHER INFORMATION CONTACT: Eric S. Benderson, Associate General Counsel, Small Business Administration, 1441 L Street NW., Room 716, Washington, DC 20416, (202) 653–6509.

SUPPLEMENTARY INFORMATION: Presently the Small Business Administration does not indemnify Agency employees who are sued in their individual capacity and who suffer an adverse judgment as a result of conduct taken within the scope of their employment, nor does it settle these claims with Agency funds. Lawsuits against Federal employees in their personal capacity have proliferated since the Supreme Court's decision in *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). As reported by the Department of Justice, since 1971, over 12,000 claims have been filed against Federal employees; nearly 3,000 actions are now pending. A growing number of such suits have been filed against SBA officials. These suits attack SBA officials performing a wide variety of functions.

While the Agency work force itself is generally well-disciplined, the risk of personal liability and the burden of defending a suit as a result of performing one's employment duties have a significant effect on Agency operations. An adverse judgment against a Federal employee has detrimental consequences for both the individual and the government. The potential for being found personally liable and the uncertainty as to what actions may culminate in a lawsuit intimidates all employees, discouraging initiative and decisiveness. As Professor Kenneth Culp Davis has stated:

> The public suffers whenever a government employee resolves doubts in order to protect his own pocketbook instead of resolving doubts in order to protect the public interest-courageous action of public employees is often essential, and it should not be discouraged by the threat of a lawsuit against the employee personally.

K. Davis, Constitutional Torts 25, 28 (1984).

On a broader scale, this fear of personal liability affects government operation, decision-making, and policy determination.

The Agency believes that lawsuits against Federal employees in their

personal capacity seriously hinder the Agency's effective functioning. A change in SBA policy to permit indemnification of its employees would help alleviate this problem and afford SBA employees the same protection now given to other Federal officials. As noted previously, the Department of Justice has recently enacted a similar amendment allowing for indemnification of Department employees. 28 CFR Part 50.

This change in SBA policy permits, but does not mandate, that the Agency indemnify an employee who suffers an adverse judgment, verdict, or monetary award. The actions which give rise to the claim or judgment must fall within the individual's scope of employment, and indemnification should be in the interest of the Small Business Administration as determined by the Administrator or his designee. In rare instances, where the Administrator deems it appropriate, an individual damage claim may be settled with Agency funds prior to entry of judgment. Absent exceptional circumstances, however, SBA will not agree to indemnify an employee or settle a claim before entry of an adverse determination. This provision is designed to discourage claims brought against Agency employees solely in order to pressure the Agency into settlement. Denial of dispositive motions or delay in deciding such motions will ordinarily not lead to settlement before trial and judgment.

These regulations are published in final form without the opportunity for public notice and comment because they relate to SBA management and personnel.

Accordingly, 13 CFR Part 114 is amended as follows:

PART 114—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND INDEMNIFICATION AND REPRESENTATION OF SBA EMPLOYEES

1. The Authority for Part 114 is revised to read as follows:

Authority: 15 U.S.C 634(b)(1); 15 U.S.C. 634(b)(6); 28 U.S.C. 2672; 28 CFR 14.11 (31 FR 16616).

2. Part 114 is amended by revising the heading; designating existing §§ 114.100 through 114.111 as Subpart A; and adding Subpart B, to read as follows:

Subpart A—Administrative Tort Claims

* * * * *

Subpart B—Indemnification and Representation of SBA Employees

Sec.
114.112 Policy.
114.113 Attorney-client privilege.

Subpart B—Indemnification and Representation of SBA Employees

§ 114.112 Policy.

(a) The Small Business Administration may indemnify an SBA employee, who is personally named as a defendant in any civil suit in state or federal court or an arbitration proceeding or other proceeding seeking damages against an SBA employee personally, for any verdict, judgment, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of his or her employment and that such indemnification is in the interest of the Small Business Administration, as determined by the Administrator or his designee.

(b) The Small Business Administration may settle or compromise a personal damage claim against an SBA employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the employee's scope of employment and that such settlement or compromise is in the interest of the Small Business Administration, as determined by the Administrator or his designee.

(c) Absent exceptional circumstances as determined by the Administrator or his designee, the Agency will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or award.

(d) An SBA employee may request indemnification to satisfy a verdict, judgment, or award entered against that employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal, in a timely manner to the General Counsel, who shall make a recommended disposition of the request. Where appropriate, the Agency shall seek the views of the Department of Justice. The General Counsel shall forward the request, the accompanying documentation, and the General Counsel's recommendation to the Administrator for decision.

(e) Any payment under this section either to indemnify a Small Business Administration employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the Small Business Administration.

§ 114.13 Attorney-client privilege.

Attorneys employed by the Small Business Administration who participate in any process utilized for the purpose of determining whether the Agency should request the Department of Justice to provide representation to an Agency employee sued, subpoenaed or charged in his individual capacity, or whether attorneys employed by the Small Business Administration should provide assistance in the representation of such an agency employee, undertake a full and traditional attorney-client relationship with the employee with respect to application of the attorney-client privilege. If representation is authorized, Small Business Administration attorneys who assist in the representation of an employee also undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. Any adverse information communicated by the client-employee to an attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside the Small Business Administration, other than attorneys responsible for representation of the employee, unless such disclosure is authorized by the employee. Such adverse information shall continue to be fully protected whether or not representation is provided, and even though representation may be denied or discontinued.

Dated: August 7, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-19590 Filed 8-27-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-100-AD; Amdt. 39-5714]

Airworthiness Directives: Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which currently requires the inspection and repair of cracks in the forward frame of the Number 3 cargo door cutout. This amendment is prompted by a reported case of one operator who did not repair

several cracks discovered during the inspection required by this AD. The cracking, if not repaired, could result in the failure of the frame and could result in rapid depressurization of the airplane. To assure continued compliance with this AD, a statement is being added to reaffirm the repair requirements.

DATES: Effective September 3, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On August 5, 1986, the FAA issued AD 86-17-05, Amendment 39-5391 (51 FR 29213; August 15, 1986), applicable to Boeing Model 727-200 series airplanes equipped with the Number 3 cargo door, to require inspection for cracks in the forward frame of the Number 3 cargo door cutout. Since issuance of that AD, there has been one report that an operator may have misinterpreted paragraph C. of the AD. The operator reportedly believed that it was acceptable to continue to reinspect the cracked forward frame instead of repairing it prior to further flight. The cracking, if not repaired, could lead to failure of the frame, which could result in rapid depressurization of the airplane.

Since this condition may exist or develop on other airplanes of this same type design, the FAA has determined that paragraph C. of AD 86-17-05 must be amended to clarify the requirement that repair of cracking must be accomplished prior to further flight. This clarification will ensure that operators cannot misinterpret the intent of the rule.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 86-17-05, Amendment 39-5391 (51 FR 29213; August 15, 1986), by revising paragraph C. to read as follows:

C. Repair, prior to further flight, any cracks detected in the forward frame of the Number 3 cargo door cutout, in accordance with paragraph G. of the Accomplishment Instructions in Boeing Alert Service Bulletin 727-53A0169, Revision 2, dated May 23, 1986, or later FAA-approved revisions. Reinspect, at intervals not to exceed 2,200 landings, all areas of the forward frame not covered by the repair, in accordance with the Accomplishment Instructions of paragraphs C., D., and E. of Boeing Alert Service Bulletin 727-53A0169, Revision 2, dated May 23, 1986, or later FAA-approved revisions.

This amends AD 86-17-05, Amendment 39-5391.

This Amendment becomes effective September 3, 1987.

Issued in Seattle, Washington, on August 10, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-19734 Filed 8-27-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-ANE-01; Amdt. 39-5695]

Airworthiness Directives; Intreprinderea De Constructii Aeronautice Model IS-28B2

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Intreprinderea De Constructii Aeronautice Model IS-28B2 gliders which requires an initial visual inspection and replacement of the aileron control levers and forks. This action was prompted by the determination that the aileron control lever and forks can fail from excessive loads induced by deformed or misrigged parts. This condition, if not corrected, could result in the glider becoming uncontrollable.

DATES: *Effective* September 3, 1987.

Compliance schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of September 3, 1987.

ADDRESSES: The technical information and modification parts specified in this AD may be obtained from Sprague Aviation Incorporated, 699 Linwood, Vacaville, California 95688. A copy of the technical note is contained in the Rules Docket, Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Munro Dearing, Brussel's Aircraft Certification Office, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 15 Rue de la Loi B-1040, Brussels, Belgium; telephone 513.38.30 ext. 2710, or John J. Maher, ANE-172, Federal Aviation Administration, New England Region, Aircraft Certification Division, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone 516-791-6221.

SUPPLEMENTARY INFORMATION: Intreprinderea De Constructii Aeronautice has determined that failure may occur in the aileron control levers and forks of their Model IS-28B2 gliders from mishandling the aileron or misrigging the aileron control system. The manufacturer has issued Service Bulletin No. IS-28B2-EO-14, dated August 20, 1985, which requires replacement of the aileron levers and

forks. The Romanian Department of Civil Aviation, which has the responsibility and authority to maintain the continuing airworthiness of these gliders in Romania, has classified Service Bulletin No. IS–28B2–EO–14 as mandatory, requiring compliance with the provisions of this service bulletin on gliders operated under Romania registration. The FAA relies upon the certification of the Romanian Department of Civil Aviation, combined with FAA review of pertinent documentation, in finding compliance of the design of these gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the avilable information related to the issuance of Intreprinderea De Constructii Aeronautice Service Bulletin No. IS–28B2–EO–14 and the mandatory classification of this service bulletin by the Romanian Department of Civil Aviation. Based on the foregoing, the FAA has detemined that the condition addressed by Intrepinderea De Constructii Aeronautice Service Bulletin No. IS–28B2–EO–14 is an unsafe condition that may exist on other products for the same type design certificated for operation in the United States.

Therefore, an AD is being issued to required initial visual inspection and replacement of the aileron control levers and forks on Intreprinderea De Constructii Aeronautice Model IS–28B2 gliders. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that his regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption, **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows;

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Intrepinderea De Constructii Aeronautice: Applies to Model IS–28B2 gliders through serial number 160 inclusive certificated in any category.

Compliance is required as indicated unless already accomplished.

To prevent the failure of the aileron control levers and forks which could result in the glider becoming uncontrollable, accomplish the following:

(a) Within the next 5 hours time-in-service after the effective date of this AD unless compliance with paragraph (c) has been accomplished, visually inspect the aileron control levers P/N 30AD.02.028 and aluminum NIA 181–2 forks using a 10 power or greater magnifying glass for cracks or deformation.

(b) If a cracked or deformed part is found during the inspection required by paragraph (a) of this AD, before further flight, replace the aileron control levers and forks with serviceable levers and forks, new design P/N 30AD.02.028 lever and steel NIA 201–2 fork, in accordance with the accomplishment instructions of Intreprinderea De Constructii Aeronautice Service Bulletin No. IS–28B2–EO–14, dated August 20, 1985.

Note.—The manufacturer has assigned the same part number to the new design aileron lever as the original design aileron lever. The new lever can be identified by measuring the length of the section which is reduced in thickness on the longer arm of the aileron lever. The new design aileron lever is reduced in thickness 42mm from the end of the longer arm whereas the old design aileron lever is reduced in thickness 27mm from the end of the longer arm.

(c) Prior to September 30, 1987, replace any aileron control system levers and forks not replaced in accordance with paragraph (b) of this AD, with serviceable levers and forks, new design P/N 30AD.02.028 lever and steel NIA 201–2 fork, in accordance with Intreprinderea De Constructii Aeronautice Service Bulletin No. IS–28B2–EO–14 dated August 20, 1985.

Note.—The aileron levers removed from service should be destroyed or disfigured to prevent reuse.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 15 Rue de la Loi B–1040, Brussels, Belgium; telephone 513.38.30 ext. 2710, or the Manager, Federal Aviation Administration, New England Region, Aircraft Certification Division, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone 516–791–6680.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office, or the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Intreprinderea De Costructii Aeronautice Service Bulletin No. IS–28B2–EO–14, dated August 20, 1985, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Sprague Aviation Incorporated, 699 Linwood, Vacaville, California 95688. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts, 01803, Rules Docket 87–ANE–01, between the hours of 8:00 a.m. and 4:30 p.m.; Monday thru Friday, except federal holidays.

This amendment becomes effective on September 3, 1987.

Issued in Burlington, Massachusetts, on July 23, 1987.

Lawrence C. Sullivan,

Acting Director, New England Region.

[FR Doc. 87–19735 Filed 8–27–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 86-ACE-04]

Alteration of Control Zone and Transition Area, Garden City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the control zone and the 700-foot transition area at Garden City, Kansas. The Holcomb Nondirectional Radio Beacon (NDB), located northwest of the Garden City Municipal Airport, has been decommissioned and the instrument approach procedure has been canceled. As a result, this proposed action is necessary to redefine controlled airspace at Garden City, Kansas.

EFFECTIVE DATE: November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Dale Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

The FAA hereby amends Subpart F, § 71.171 of the Federal Aviation Regulations (14 CFR 71.171), and Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181), by altering the control zone and 700-foot transition area at Garden City, Kansas. The Holcomb Nondirectional Radio Beacon (NDB), located northwest of the Garden City Municipal Airport, has been decommissioned and the instrument approach procedure canceled. Therefore, the control zone and transition area at this location are being redefined as set forth herein. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6C, dated January 2, 1987.

On pages 19360 and 19361 of the **Federal Register**, dated May 22, 1987, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the control zone and transition area at Garden City, Kansas. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. By amending § 71.171 as follows:

Garden City, Kansas [Revised]

Within a 5-mile radius of the Garden City Municipal Airport (lat. 37°55'36" N., long. 100°43'29" W.), and within 2½ miles each side of the 004° radial of the Garden City VORTAC extending from the 5-mile radius zone to 8 miles north of the VORTAC; and within 2½ miles each side of the 171° radial of the Garden City VORTAC extending from the 5-mile radius zone to 5 miles south of the VORTAC.

§ 71.181 [Amended]

3. Additionally, by amending § 71.181 as follows:

Garden City, Kansas [Revised]

That airspace extending upward from 700 ft. above the surface within a 7-mile radius of the Garden City Municipal Airport (lat. 37°55'36" N., long. 100°43'29" W.), and 4½ miles east and 9½ miles west of the 004° radial of the Garden City VORTAC extending from the 7-mile radius to 18½ miles north of the VORTAC.

This amendment becomes effective 0901 UTC November 19, 1987.

Issued in Kansas City, Missouri, on August 18, 1987.

Clarence E. Newbern,

Acting Manager, Air Traffic Division.

[FR Doc. 87-19737 Filed 8-27-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25354; Amdt. No. 1355]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC on August 21, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

... Effective November 19, 1987

Norwood, MA—Norwood Memorial, LOC RWY 35, Amdt. 4
Norwood, MA—Norwood Memorial, NDB RWY 35, Amdt. 4
Penn Yan, NY—Penn Yan, NDB RWY 28, Amdt. 4

... Effective October 22, 1987

Miami, FL—Opa Locka, VOR RWY 9L, Amdt. 16
Miami, FL—Opa Locka, ILS RWY 9L, Amdt. 2
Miami, FL—Opa Locka, RNAV RWY 9L, Amdt. 7
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, VOR or TACAN RWY 5, Amdt. 18
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, VOR RWY 9, Amdt. 12
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, VOR RWY 14, Amdt. 15
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, VOR or TACAN RWY 23, Amdt. 11
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, LOC BC RWY 14, Amdt. 12
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, LOC BC RWY 23, Amdt. 6
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, NDB RWY 32, Amdt. 22
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, ILS RWY 5, Amdt.10
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, ILS RWY 32, Amdt. 25
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, RADAR-1, Amdt. 22
Winchester, IN—Randolph County, VOR-A, Amdt. 8
Winchester, IN—Randolph County, NDB RWY 25, Amdt. 4
Somerset, KY—Somerset-Pulaski CTY J.T. Wilson Fld, SDF RWY 4, Amdt. 3
Somerset, KY—Somerset-Pulaski CTY J.T. Wilson Fld, NDB RWY 4, Amdt. 3
Baton Rouge, LA—Baton Rouge Metropolitian Ryan Field, LOC BC RWY 4, Amdt. 2
Marshfield, MA—Marshfield, NDB RWY 6, Amdt. 1
Roseau, MN—Roseau Muni, VOR-A, Amdt. 6
Roseau, MN—Roseau Muni, VOR RWY 16, Amdt. 5
Gulfport, MS—Gulfport-Gulfport-Biloxi Regional, LOC RWY 31, Orig. CANCELLED
Gulfport, MS—Gulfport-Gulfport-Biloxi Regional, ILS RWY 31, Orig.
Starkville, MS—George M. Bryan, RNAV RWY 36, Orig.
Altus, OK—Altus Muni, VOR-A, Amdt. 3
Altus, OK—Altus Muni, RADAR-1, Orig.
Altus, OK—Altus Muni, RNAV RWY 17, Orig.
Baker, OR—Baker Muni, VOR-A, Orig.
Baker, OR—Baker Muni, VOR/DME RWY 12, Amdt. 10
Baker, OR—Baker Muni, VOR RWY 12, Orig., CANCELLED

... Effective September 24, 1987

Pittsfield, MA—Pittsfield Muni, LOC RWY 26, Amdt. 2

Menominee, MI—Menominee-Marinette Twin County, NDB RWY 3, Orig.
Menominee, MI—Menominee-Marinette Twin County, ILS RWY 3, Orig.
Pennington Gap, VA—Lee County, NDB–A, Amdt. 2

. . . Effective August 17, 1987

Walla Walla, WA—Walla Walla City County, ILS RWY 20, Amdt. 7

[FR Doc. 87–19733 Filed 8–27–87; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 370, 371, 372, and 374

[Docket No. 70859–7159]

Switzerland: General Licenses G-COM, GCG, and G-CEU, Shorter Processing Time Frames, and Permissive Reexports From Switzerland to the People's Republic of China

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: As part of the Department of Commerce initiative to remove unnecessary export licensing requirements for countries that have established the ability to safeguard reexports of U.S.-origin strategic goods and technology, Export Administration is extending full benefits to Switzerland under section 5(k) of the Export Administration Act of 1979, as amended. Specifically, Export Administration is amending General Licenses G-COM, GCG, and G-CEU to authorize certain shipments of U.S.-origin commodities to Switzerland, revising § 370.14 to subject license applications for Switzerland to shorter processing time frames, and removing the requirement for specific U.S. reexport authorization for reexports from Switzerland to the People's Republic of China of commodities described in Advisory notes for the People's Republic of China or Country Groups Q, W, and Y.

EFFECTIVE DATE: This rule is effective August 28, 1987.

FOR FURTHER INFORMATION CONTACT: John Black, Regulations Branch, Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under Control Numbers 0625–0001 and 0625–0009.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to John Black, Office of Technology and Policy Analysis, Export Administration, International Trade Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 370, 371, 372, and 374

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 368 through 399 of the Export Administration Regulations are amended as follows:

PARTS 370 AND 374—[AMENDED]

1. The authority citation for 15 CFR Parts 370 and 374 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; and E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PARTS 371 AND 372—[AMENDED]

2. The authority citation for 15 CFR Parts 371 and 372 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 370—[AMENDED]

3. In § 370.14, paragraph (a) is amended by adding "and Switzerland" immediately after "Finland" in paragraph (3)(ii) and adding two sentences immediately following the third sentence in the introductory text to read as follows:

§ 370.14 Processing license applications for COCOM participating countries and other selected countries.

(a) * * * The procedures and time limits set forth in this section apply to applications for Switzerland received in the Office of Export Licensing on or after August 28, 1987. Applications for Switzerland received prior to that date will be processed under the previous time frames. * * *

* * * * *

PART 371—[AMENDED]

4. Section 371.8 is amended by adding ", Switzerland," immediately after "Sweden" in paragraph (a) and by adding "Switzerland," between "Sweden," and "Turkey," in paragraph (b).

§ 371.14 [Amended]

5. In § 371.14, paragraph (b) is amended by adding ", Switzerland," immediately after the word "Sweden".

§ 371.20 [Amended]

6. In § 371.20, the introductory text of paragraph (a) is amended by adding ", Switzerland," immediately after the word "Sweden".

PART 372—[AMENDED]

§ 372.11 [Amended]

7. In § 372.11, paragraph (d)(3) is amended by adding ", Switzerland," immediately after the word "Finland".

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PART 374—[AMENDED]

§ 374.2 [Amended]

8. In § 374.2, paragraph (j) is amended by adding the words "Switzerland or" immediately before the words "a COCOM".

Dated: August 25, 1987.

Daniel E. Cook,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-19789 Filed 8-27-87; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change in sponsor name from Evsco Pharmaceuticals, An Affiliate of ImmunoGenetics, Inc., to Evsco Pharmaceuticals, An Affiliate of IGI, Inc.

EFFECTIVE DATE: August 28, 1987.

FOR FURTHER INFORMATION CONTACT: John Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: IGI, Inc. has informed FDA that it has changed its name from ImmunoGenetics, Inc. and that it has changed the name of its affiliate Evsco Pharmaceuticals, An Affiliate of ImmunoGenetics, Inc., to Evsco Pharmaceuticals, An Affiliate of IGI, Inc. Evsco Pharmaceuticals, An Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310, is the sponsor of several approved new animal drug applications (NADA's). The agency is amending 21 CFR 510.600(c) (1) and (2) to reflect this change in name.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Evsco Pharmaceuticals, An Affiliate of ImmunoGenetics, Inc.," to read "Evsco Pharmaceuticals, An Affiliate of IGI, Inc.," and in paragraph (c)(2) in the entry "017080" by revising the sponsor's name to read "Evsco Pharmaceuticals, An Affiliate of IGI, Inc.," * * *.

Dated: August 21, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-19748 Filed 8-27-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 668

Emergency Relief; Technical Correction

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule; technical correction.

SUMMARY: This document corrects a rule on emergency relief that appeared at page 21945 in the **Federal Register** of Wednesday, June 10, 1987 (52 FR 21945). This action is necessary to remove "Puerto Rico" from the listing of exceptions for receipt of the Federal Share funds in a specified amount resulting from a single natural disaster or a single catastrophic failure. It was inadvertently included in the list of exceptions.

EFFECTIVE DATE: August 28, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Carney, Railroads, Utilities and Programs Branch, Office of Engineering (202) 366-4652, or Mr. Michael J. Laska, Office of the Chief Counsel (202) 366-1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

PART 668—[AMENDED]

§ 668.107 [Amended]

In FR Doc. 87-13184, in the issue of Wednesday, June 10, 1987, on page 21949, in 23 CFR 668.107(b) remove the words "Puerto Rico or" in the first sentence and "Puerto Rico," in the second sentence.

(20 U.S.C. 315; 49 CFR 1.48)

Issued on August 24, 1987.

Hugh T. O'Reilly,

Deputy Chief Counsel, Federal Highway Administration.

[FR Doc. 87-19840 Filed 8-27-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 34

Medical Examination of Aliens

AGENCY: Centers for Disease Control, Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This rule amends the Medical Examination of Aliens regulations (42 CFR Part 34) by substituting human immunodeficiency virus (HIV) infection for acquired immunodeficiency syndrome (AIDS) on the list of dangerous contagious diseases and by expanding the scope of the medical examination to include serologic testing for HIV infection. Serologic testing to identify HIV infection in applicants is to be performed as part of the medical examination conducted in the country in which the alien applies for a visa or for adjustment of status. Section 518 of Public Law (Pub. L.) 100-71, the Supplemental Appropriations Act of 1987, contains a provision requiring that HIV infection be added to the list of dangerous contagious diseases contained in 42 CFR 34.2(b).

EFFECTIVE DATE: In accordance with section 518 of Pub. L. 100-71, the amendment to § 34.2(b) is effective August 31, 1987. The amendments to § 34.4(a) are effective December 1, 1987.

FOR FURTHER INFORMATION CONTACT: Charles R. McCance, Acting Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329-2574, or FTS 236-2574.

SUPPLEMENTARY INFORMATION: Section 212(a) of the Immigration and Nationality Act (42 U.S.C. 1182(a)), lists six medical grounds for the exclusion of

aliens. The sixth ground excludes aliens with a "dangerous contagious disease." Acquired immunodeficiency syndrome (AIDS) was added to the list of dangerous contagious diseases in a Final Rule published on June 8, 1987 (52 FR 21532). Medical guidance for examining physicians has since been distributed worldwide so that those aliens with clinical signs or symptoms of AIDS may be identified and refused a visa or denied admission if a diagnosis of AIDS is suspected. Serologic testing for human immunodeficiency virus (HIV) antibody is currently called for *only* for those aliens who are suspected of having AIDS.

A Notice of Proposed Rulemaking (NPRM), also published in the **Federal Register** on June 8, 1987 (52 FR 21607), proposed that human immunodeficiency virus (HIV) infection be substituted for acquired immunodeficiency syndrome (AIDS). Sections 004.9 and 795.8 of the "International Classification of Diseases," 9th Revision, Clinical Modification, dated October 1, 1986, now classify infection due to HTLV–III/LAV (HIV) as a disease category. All persons with AIDS have HIV infection. the NPRM also proposed that the scope of the medical examination be expanded to include serologic testing for HIV. These amendments were proposed because any person infected with HIV is assumed to be capable of transmitting the virus.

To identify applicants with HIV infection, it is necessary to modify the scope of the required medical examination to include serologic testing for HIV infection. *All* aliens 15 years of age and older who are subject to the medical examination (and under 15 if indicated) would be required to be tested for HIV. The preamble to the NPRM explained fully the background and reasons for proposing these revisions, and invited comments. Since publication of the NPRM, Pub. L. 100–71, the Supplemental Appropriations Act of 1987, was signed into law by the President on July 11, 1987. Section 518 of the Act requires the President to add HIV infection to the list of dangerous contagious diseases contained in Title 42 of the Code of Federal Regulations on or before August 31, 1987.

Discussion of Comments

The NPRM proposing the addition of HIV infection to the list of dangerous contagious diseases and serologic testing for the virus provided a 60 day comment period during which comments were received from 75 sources. The majority of the commenters, many of whom were organizations representing or working with aliens, were opposed to the revisions. However, these commenters raised many of the issues and problems which were raised by those who commented on the NPRM proposing the addition of AIDS to Part 34.

Discussion of the substantive comments and the Department's response follow:

Comment: Several commenters expressed concern that a requirement by the United States for mandatory testing of immigrants for HIV infection could lead to replication and amplification by other countries, for tourists as well as other temporary international travelers, resulting in restrictive policies and disruptions and is in conflict with World Health Organization recommendations. Commenters also were concerned with the lack of capacity for serologic testing for HIV infection in many countries, the impact on many countries' health resources, the injustice of a perceived large number of false positive tests, and problems of confidentiality resulting from the testing process. Commenters also stated that since this country has the largest reservoir of AIDS, the low numbers of infected aliens that would be identified would not prove testing to be cost effective.

Many commenters stated that HIV testing in order countries should not be undertaken without mandatory followup, counseling and strict confidentiality of the results. Other commenters believed fraudulent HIV tests would become a problem, and many pointed out that the proposed revisions do not specify the tests to be used or contain guidelines for testing.

Response: The purpose of listing HIV infection as an exludable health condition is to prevent the importation and related further spread of HIV into the United States. Any person infected with HIV is assumed to be capable of transmitting the virus. HIV is transmitted through sexual contact, needle sharing, transfusion of contaminated blood and blood products, and transplacentally or perinatally from infected mother to her fetus or newborn. The spread of HIV by certain high risk sexual practices is not unlike transmission of several other diseases currently on the list of "dangerous contagious diseases."

The Department shares concerns about the capacity and quality of testing for HIV in many countries. For the few visa issuing posts that do not have local testing facilities, the Department believes that there will be regional laboratories available where sera can be transported for testing. The Department does not anticipate false positive testing to be a particular problem. False positives are extremely rare if two screening tests and a confirming supplemental test are performed and all are positive. While this regulation does not specify what test will be used, the Centers for Disease Control prepares and distributes medical screening manuals to examining physicians that will address this issue. The Department believes that these concerns do not justify further delay in providing for the excludability of infected aliens in Part 34.

In regard to concerns expressed about possibly more restrictive international measures being adopted by others, it should be noted that this rule does not conflict with the report of a World Health Organization consultation on international travel and human immodeficiency virus held in Geneva March 2–3, 1987 (WHO Weekly Epidemiologic Record, March 20, 1987). This consultation addressed issues related to international travel, but it did not address decisions individual countries might make with respect to the issuance of a visa.

The concerns by commenters about cost effectiveness are based on the expectation of low prevalence of HIV infection in the population seeking admission compared to prevalence in the United States. The cost to the Government of HIV screening of refugees overseas has been estimated by the Department of State to be four million dollars per year. However, aliens required to have a medical examination in connection with the issuance of a visa and aliens applying for adjustment of status to permanent residence already must pay the cost of the medical examinations, including any testing.

Medical screening manuals will address other issues raised by the commenters, including the following:

(a) The medical examiner will be responsible for establishing internal office procedures for conducting the medical examination which minimize the opportunity for fraud. In accordance with the Department of State's Foreign Affairs Manual (22 CFR 42.113, Procedural Notes 1.4), complete medical examination reports for all applicants should be sent directly to the consular officer by the examining physician except where such procedure is impracticable. Further, the medical examiner must ensure that the person tested is the actual applicant.

(b) Medical examiners will be expected to comply with all local disease reporting requirements.

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(c) Applicants will be informed that serologic testing for HIV is a requirement to determine admissibility to th United States and that in addition to denial of admission to the United States, a positive result could have other consequences in the country of testing. Confidentiality will be safeguarded to the extent possible. However, in a world-wide testing program, the United States Government can neither guarantee confidentiality of all HIV test results nor assume responsibility for any possible consequences of a positive test result. Applicants will be informed early in the visa application process, perhaps in the visa application packet provided to them by the United States visa issuing post, that serologic testing for HIV infection is a mandatory part of their medical examination, that the results will be provided to consular officials just as other test results are reported, that disease reporting requirements of the country will be followed, and that a classification of HIV infection will make them ineligible to receive a visa. In addition, medical examiners will be required to verify that all applicants are aware of the testing requirements, of the reporting of test results to the consular or immigration officer, and of the necessity of reporting results to the appropriate local health authorities if local law requires.

(d) Applicants will be counseled in the event of a positive test result. Becoming aware of HIV infection can have extreme psycholgoical and social implications for the individual. Medical examiners will recommend that the applicant inform his or her personal physician about the test result, and provide information as to where counseling may be obtained, and at a minimum, inform the applicant about recommended behavior changes to minimize risk of HIV infection or transmission. Considering the complexity of the many different cultures around the world, CDC will explore the feasibility of preparing training materials on posttest-counseling, such as a short video tape, for medical examiners.

(e) The Department is aware that special testing and counseling arrangements may need to be established for refugees in certain circumstances. The potential effects of testing refugees in camps in first-asylum countries and the difficulties posed by some admissions programs, such as those for Soviet Jews, Vietnamese, and Cuban political prisoners, are of particular concern. The Department will work closely with the Department of State to ensure that the testing program is implemented with respect to refugees in a way that will protect both the affected refugees and U.S. foreign and humanitarian policy interests served by the refugee admissions program.

Comment: Some commenters expressed concern about the restrictive nature of the proposed rule which requires HIV serologic testing to be performed abroad. This concern is based on the belief that unpredictable emergency situations might arise when aliens fleeing persecution and seeking admission to the United States as refugees would need to be moved promptly to the United States without having undergone all, or part, of the medical examination before arrival. The Department of State has indicated that important foreign and humanitarian policy objectives would be jeopardized by a rigid requirement that testing always be done overseas, and that such a requirement would undercut flexible admissions procedures established by the Refugee Act of 1980.

Response: The Department recognizes that unpredictable emergency circumstances have arisen in the past which have required that refugees be brought directly to the United States before receiving required medical examinations. It is further recognized that the Refugee Act of 1980 allows for flexibility in handling medical examination of refugees. Consequently, the Final Rule has been modified to provide flexibility in appropriate emergency situations as determined by the Attorney General after consultation with the Secretary of State and the Secretary of Health and Human Services.

Comment: Numerous commenters expressed concerns about the impact of HIV testing on refugees, and on illegal aliens in the United States applying for adjustment of status. Many felt it would be unfair to deny adjustment of status to refugees or to illegal aliens with HIV infection, particularly when the infection may have been acquired in the United States. Some commenters felt that the impact on local resources and facilities would be too great a burden for many local areas. Some commenters argued that potential applicants would be driven "underground" where those with HIV infection would continue to spread infection, thereby actually increasing the number of cases in the United States.

Response: In section 212(g) of the Immigration and Nationality Act (INA), there are provisions for waiver for certain health related exclusions, e.g., tuberculosis, for the following classes of aliens applying for an *immigrant* visa abroad or for routine *adjustment of status to permanent residency* in the United States: Spouses, children, parents, brothers, and sisters of United States citizens; spouses and children of aliens who are already legal permanent residents; and individuals coming here permanently on the basis of a job offer. However, there are no provisions for waiver for these classes of aliens who are infected with other diseases like HIV.

By contrast, the Refugee Act of 1980 and the Immigration Reform and Control Act of 1986 (IRCA) both give the Attorney General the discretionary authority to waive numerous ineligibility grounds for *refugees* and those illegal aliens seeking adjustment of status (1) for humanitarian purposes, (2) to assure family unity, or (3) when it is otherwise in the public interest. It should be noted that this discretionary waiver authority applies to refugees and illegal aliens as distinct from those aliens described in the previous paragraph who are seeking routine adjustment of status under the INA.

Aliens seeking temporary *nonimmigrant* visas may also seek a waiver of various ineligibilities under section 212(d)(3) of the INA. Among the grounds which may be waived in these nonimmigrant cases is ineligibility because of infection with a dangerous contagious disease.

Thus, refugees and illegal aliens seeking adjustment of status and nonimmigrants (including those seeking medical care) infected with HIV will now be able to request a waiver of ineligibility to be granted at the discretion of the Attorney General.

Section 212(d)(5) of the INA does give the Attorney General authority to *parole* an alien into the United States for emergency reasons deemed strictly in the public interest. The INS uses this parole authority sparingly, and only decides requests on a case-by-case basis. The INS generally does not use parole to overcome exclusion grounds which cannot be waived by the provisions of the INA.

As previously indicated, the Department of Justice currently has authority under IRCA to waive any excludable medical condition (including HIV infection) found in applicants for legalization. Although some applicants who have reason to believe that they are infected may go underground and not apply for legalization, such individuals will still be able to seek counseling and testing anonymously.

The Department agrees that in certain high impact areas applicants for legalization may tax the ability of local facilities to provide testing and

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counseling. Should this occur, the Department and State governments will have to deal with them on a case-by-case basis.

Comment: Some of the commenters who supported the proposed revisions suggested further changes. One was concerned about exclusion from HIV testing of applicants seeking temporary admission and of applicants under age 15. This same commenter also urged that the medical examinations be required in the United States rather than abroad. Another commenter suggested adding Hepatitis B and other sexually transmitted diseases such as herpes simplex and chlamydia.

Response. Expansion of the proposed HIV testing to include temporary visitors would create unnecessary and undesirable complexities and problems, including expenses and delays in travel. Also, routine testing of applicants under 15 years of age is not justified in view of the extremely low incidence in that age group. However, if there is reason to suspect that an applicant under age 15 could be infected, the revised rule provides that tests may be required.

With regard to the place of testing, medical examinations of visa applicants are conducted in the country of application in order to confirm admissibility and approval prior to departure. Exclusion of applicants with positive HIV testing after arrival in the U.S. would impose a more difficult burden on such individuals than to determine their eligibility before travel expenses are incurred and other plans are made. Moreover, some countries might refuse repatriation to applicants with HIV infection. Finally, any other changes in the list of dangerous contagious diseases would have to be promulgated in another proposed rule.

Comment: One commenter in support of the proposed revision pointed out that the United States admits more immigrants than the rest of the world combined; that failure to require HIV testing may lead some countries to encourage and support emigration of their infected citizens to this country; that it is not within the power and resources of the United States to assume the costs of medical care and support for the world's terminally diseased; and that the exclusion of those with HIV infection is entirely justified in the national interest on public health grounds, based on both medical and economic considerations.

Response: With our current state of knowledge about HIV infection, the Department agrees that the exclusion of applicants with HIV infection is justified.

Comment: The Department of State has expressed concern about the implementation date of the Final Rule in view of the tremendous tasks involved in implementing HIV testing worldwide. For example, medical screening manuals must be prepared, translated into several languages, printed, and distributed to examining physicians; logistical arrangements must be developed and put in place to ship sera from those visa posts that do not have local laboratory facilities to perform HIV testing; and visa applicant interview scheduling procedures will have to be altered to accommodate the extended period of time the medical examination will take with the addition of HIV testing to the examination process.

Response: The Department shares the Department of State's concerns on this issue and, after consultation with the Department of State and the Department of Justice, has decided to establish an implementation date for the amendments to § 34.4(a) of December 1, 1987. It is expected that this will provide sufficient time to develop and have in place the procedures to initiate HIV testing on an essentially worldwide basis.

Regulatory Impact

The Secretary has determined that the revisions will not have a significant impact on a substantial number of small entities and, therefore, does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act, Pub. L. 96–354.

The Secretary also has determined that the revisions do not constitute a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required because it will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Impose a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or

(3) Result in significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 42 CFR Part 34

Human Immunodeficiency Virus (HIV), Medical examination of aliens, Immigration.

Several changes in the regulatory text which were not in the NPRM are of a technical nature to clarify the intended meaning. These technical modifications are: Changing "serologic test" to "serologic testing" in § 34.4(a)(1), § 34.4(a)(1)(iii), § 34.4(a)(2), § 34.4(a)(3)(i), § 34.4(a)(3)(ii), and § 34.4(a)(5); adding "; and" in § 34.4(a)(1)(iii); and adding "for syphilis" in § 34.4(a)(3)(ii). In this same § 34.4(a)(3)(ii), the Department is making a change in response to comments received on the NPRM by replacing the "*Exception*" provision of this Section with the following: "For aliens examined abroad, the serologic testing for HIV must be completed abroad, except that the Attorney General after consultation with the Secretary of State and the Secretary of Health and Human Services may in emergency circumstances permit the serologic testing of refugees for HIV to be completed in the United States." Finally, the **Authority** reference is modified to include a citation to section 518 of Pub. L. 100–71, which was enacted during the comment period. Accordingly, Part 34 of Title 42, Code of Federal Regulations, is amended as set forth below.

Dated: August 18, 1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: August 25, 1987.

Otis R. Bowen,

Secretary.

PART 34—MEDICAL EXAMINATION OF ALIENS

1. The authority citation for 42 CFR Part 34 is revised to read as follows:

Authority: Sec. 215, 58 Stat. 690, as amended, sec. 234, 66 Stat. 198; 42 U.S.C. 216, 8 U.S.C. 1224; secs. 322, 325, 58 Stat. 696, as amended, 697 as amended, secs. 212, 326, 66 Stat. 182, as amended, 200; 42 U.S.C. 249, 252, 8 U.S.C. 1182, 1226; sec. 518 of Pub. L. 100–71.

2. Section 34.2(b) of Part 34 is revised to read as follows:

§ 34.2 Definitions.

* * * * *

(b) Dangerous contagious disease. Any of the following diseases:

(1) Chancroid.

(2) Gonorrhea.

(3) Granuloma inguinale.

(4) Human immunodeficiency virus (HIV) infection.

(5) Leprosy, infectious.

(6) Lymphogranuloma venereum.

(7) Syphilis, infectious stage.

(8) Tuberculosis, active.

* * * * *

3. Paragraphs (a)(1) introductory text, and (iii), the first sentence of (2), (3), and (5) of § 34.4 are revised to read as follows:

§ 34.4 Scope of examinations.

(a) * * *

(1) *Persons subject to requirement for chest X-ray examination and serologic testing.* Except as provided in paragraph (a)(2) of this section, a chest X-ray examination for tuberculosis and serologic test for syphilis and serologic testing for HIV shall be required as part of the examination of:

* * * * *

(iii) All other applicants for a nonimmigrant visa who are required by a consular authority to have a medical examination if such X-ray examination and serologic testing are considered necessary by the medical examiner; and

* * * * *

(2) *Exceptions.* Neither a chest X-ray examination nor serologic testing for syphilis and HIV shall be required if the alien is under the age of 15: *Provided,* That a tuberculin test may be required where there is evidence of contact with a known case of tuberculosis or other reason to suspect infection with tuberculosis and a chest X-ray examination required in the event of a positive reaction, and serologic testing where there is reason to suspect infection with syphilis or HIV. * * *

(3) *How and where performed.* All X-ray films used in medical examinations performed under the regulations in this part shall be at least 70mm. In case of abnormal findings in the lungs, a full-sized film (approximately 14 x 17 inches; 35.6 x 43.2 cm.) shall be used on which to base the diagnosis. Serologic testing for HIV shall be a sensitive and specific test, confirmed when positive by a test such as the Western blot blood test or an equally reliable test.

(ii) When necessary X-ray and laboratory facilities are not available to the medical examiner, the applicant shall furnish a chest X-ray film, a reading thereof, and a report of serologic testing for syphilis in order that the medical examination may be completed. If X-ray or serologic testing facilities for syphilis necessary for the completion of the examination of a visa applicant or of an applicant for entry are not available in the community where the examination is made, the medical examiner shall so state on the medical examination form and the procedures will be completed at the time of examination at the U.S. port of entry. For aliens examined abroad, the serologic testing for HIV must be completed abroad, except that the Attorney General after consultation with the Secretary of State and the Secretary of Health and Human Services may in emergency circumstances permit the serologic testing of refugees for HIV to be completed in the United States.

(iii) The X-ray reading and reports of serologic testing for syphilis and HIV shall be included in the medical examination report. When the medical examiner's conclusions are based on a study of more than one X-ray film, the medical examination report shall include at least a summary statement of findings in the earlier films, followed by a complete reading of the last film, and dates and details of any laboratory tests for tuberculosis.

* * * * *

(5) *Failure to present records.* If, on examination at the time determination of admissibility is to be made at the U.S. port of entry, no X-ray film or medical examination report, including X-ray reading and serologic testing results for syphilis and HIV, is presented in accordance with the provisions of this paragraph, a medical hold shall be issued pending completion of any necessary examination procedures.

[FR Doc. 87-19796 Filed 8-27-87; 8:45 am]

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Health Care Financing Administration

42 CFR Parts 441 and 442

[BQC-045-F]

Medicaid Program; FFP for Services of Long-Term Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule revises and clarifies policy on Federal financial participation (FFP) in State Medicaid payments to a long-term care (LTC) facility after the State agency has terminated the provider agreement or failed to renew the agreement when it expires.

These amendments are necessary to establish Medicaid policy that is consistent with sound administrative practice.

EFFECTIVE DATE: These rules are effective September 28, 1987.

FOR FURTHER INFORMATION, CONTACT: Gilda Martin, (301) 597-1399.

SUPPLEMENTARY INFORMATION:

Background

Statutory Provisions

Title XIX of the Social Security Act (the Act) provides for FFP in State Medicaid payments to any LTC facility that has a valid provider agreement (PA) in effect. In order to have a PA, the facility must be certified by the State survey agency as meeting the Federal requirements for participation in the program. (These provisions are in a 42 CFR 440.40(a)(1)(ii), 440.150(a)(2), and 442.30 of the Medicaid rules.)

Medicaid agreements with skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) are limited to terms of not more than 12 months by § 442.15 of the Medicaid rules. These time-limited agreements, which contain an expiration date, may be terminated or not renewed, as explained below.

1. An agreement may be terminated before the expiration date, in any of the following circumstances:

- The State survey agency certifies that the facility no longer meets the requirements for participation in the program.
- HCFA terminates the Medicare agreement with a SNF that participated in both programs.
- HCFA, in validating State survey agency determinations (under sections 1902(a)(33)(B) and 1910(c) of the Act), finds that a SNF or ICF does not meet the requirements for participation and specifies a termination date.

2. The agency may decide not to renew an agreement that has continued in effect until its expiration date, if the State survey agency finds that it cannot certify the facility as continuing to be in compliance with the Federal requirements.

Section 1902(a)(33)(B) of theAct (commonly referred to as the "look-behind" provision) authorizes the Secretary to make an independent determination with respect to a facility's compliance with Federal requirements for participation in the program. However, that provision does not override the State's authority to terminate a PA. In orther words, if, during the HCFA "look-behind" process, the State decides to terminate the agreement, it may do so.

FFP Rules

As a basic rule, FFP is not available in State Medicaid payments made to a facility after its PA has been terminated or has expired and not been renewed. As an exception to the basic rule, FFP may be continued for up to 30 days after termination or expiration, on an individual patient basis, in order to allow time for transfer of residents to other facilities or to alternate care (§ 441.11 of the Medicaid rules). A related rule, in § 442.16, provides that the Medicaid agency may extend a PA for up to 2 months beyond its original expiration date if the State survey

agency gives it written notice, before the agreement expires, that—

• Extension will not jeopardize patients' health and safety; and

• Extension is necessary either to prevent irreparable harm to the facility or hardship to the residents, or because it is impracticable to determine, before the expiration date, whether the facility meets the requirements for participation.

(Since under § 442.16 the agreement would continue in effect, continuation of FFP for the period of up to 2 months does not contravene the basic rule.)

FFP During Appeals

Sections 431.153 and 431.154 of the Medicaid rules set forth the appeals requirements when a Medicaid agency denies, terminates, or does not renew a PA. The Medicaid agency must provide a full evidentiary hearing, either before or after the effective date of the adverse agency action.

If the agency chooses to provide the full hearing after the effective date, it must—

• Provide an informal reconsideration before the effective date; and

• Complete the evidentiary hearing within 120 days after the effective date of the adverse action.

Those rules do not speak to FFP during appeals. However, a Program Regulation Guide (MSA–PRG–11) issued on December 20, 1971, did address the issue. MSA–PRG–11 amended the Medicaid Manual. The amendment reiterated the basic rule to deny FFP during appeals after termination, but permitted FFP to continue when State law provided for the continued validity of the PA during appeal, or the facility was upheld on appeal and State law provided for retroactive reinstatement of the facility.

Problems arose because either State law or State court orders have required Medicaid agencies to continue payments to facilities for long periods of time pending action on administrative or judicial appeals, and State claims for FFP in such payments were disallowed by HCFA. The Departmental Grant Appeals Board (the Board) ruled that the provisions of MSA–PRG–11 apply to State court orders, and that, under 42 CFR 431.250(b)(2), FFP is available in expenditures that are for services provided within the scope of the Federal Medicaid program and are made under a State court order. However, the Board has also held that the "within the scope of the Medicaid program" language limits FFP under MSA–PRG–11 to 12 months after the termination or expiration date of the agreement (since 12 months is the maximum term for an agreement with a SNF or ICF), or the date of the next survey, whichever is earlier.

Notice of Proposed Rulemaking

On October 18, 1985, at 50 FR 42192, we published a proposal to rescind MSA–PRG–11 explicitly and to conform Medicaid policy to Medicare policy, which provides no payment for services during appeals from termination or nonrenewal of a Medicare PA. Under the proposed policy, FFP would not have been available in Medicaid payments for services furnished by a LTC facility after the date the facility's PA was terminated or expired. This policy would have applied even if State law or Federal or State court orders required the State to continue payments to the facility after that date.

The proposed changes would not have affected FFP under §§ 441.11 and 442.16 of the Medicaid rules, which allow continued FFP for up to 30 days for transfer of patients, and permit a single 2-month extension if the specified conditions are met. In addition to revoking MSA–PRG–11, we proposed to add new §§ 442.40 and 442.42—

• To specify that FFP is not available during appeals that are initiated or continued after termination or expiration of a PA;

• To make clear that court-ordered extension of a PA will no longer constitute a basis for FFP; and

• To retain the PRG–11 provision for FFP in a retroactive PA issued by the Medicaid agency when a facility is upheld on administrative appeal or judicial review, but make clear that the agreement must meet the requirements for a valid agreement, as set forth in § 442.30 of the Medicaid rules.

We also proposed to revise § 442.16 to make inescapably clear that it permits extension of an agreement for only one period of up to 2 months.

Discussion of Comments

During the 60 days provided for public comment, we received 18 letters representing 12 States, one county, 4 advocacy groups, and one corporation that owns or administers 120 facilities in 17 States.

The vast majority of comments (at least one in each letter) were concerned with the principal proposed changes, i.e., that FFP (1) would end as of the effective date of termination or expiration of the PA, and (2) would not be available during appeals even if State law or Federal or State court orders required the State to extend the agreement or continue payment to the appellant facility.

Since the changes in the current regulations were minimal (the problem was created by MSA–PRG–11), comments were often addressed to statements made in the preamble regarding the benefits to be derived from the changes and how any undesirable impact on the States could be minimized.

There were also a few comments on—

• The rules for FFP under retroactive agreements issued when the outcome of a hearing or of judicial review is favorable to the facility; and

• Two sections for which no changes were proposed.

Several of the comments discussed below, taken together, convinced us that an alternative considered and rejected while the NPRM was under development is preferable to the proposed total elimination of FFP during appeals. Accordingly, this final rule incorporates the alternative policy and provides for continuation of FFP for up to the 120 days allowed for completion of the administrative appeals procedures. If a hearing decision adverse to the facility were issued before the 120th day, FFP would end as of that date except as available under § 441.11 for up to 30 days for the orderly transfer of patients.

I. Comments on Statements Made in the Preamble to the NPRM

Statement 1: This rule would clarify policy on Federal financial participation in Medicaid payments.

Comment: This is not a clarification. It is a rescission of a long-standing HCFA policy, expressed in MSA–PRG–11.

Response: We believe that MSA–PRG–11, issued December 20, 1971, was revoked by subsequent regulations. The Board ruled otherwise, saying that the PRG remained in effect because we had not taken appropriate steps to revoke it. This final rule explicitly revokes MSA–PRG–11 and by so doing—

• Clarifies policy by resolving the conflict between differing interpretations espoused by HCFA and by the Board; and

• Reduces the need for litigation before the Board, because a "different" interpretation is no longer possible.

Statement 2: The proposed regulations will replace MSA–PRG–11, ensure uniform understanding and application, reduce the need for litigation before the Board and the courts, and facilitate the processing of Medicaid claims.

Comment: The change will not reduce the need for litigation. On the contrary, since court orders will have no effect on HCFA, the State may be forced to seek an injunction or the joinder of HHS in judicial review proceedings in order to

protect itself against the effect of the court's stay of the State's action.

Response: We expect litigation to decrease with policy clearly stated in this final rule and with the States' vigorous enforcement of the hearing requirements, including the 120-day time limit specified in 42 CFR 431.153. Less than vigorous enforcement of the time limit will result in the loss of FFP to the State.

We believe that, in addition, this final rule—

• By allowing FFP for up to 120 days during an administrative appeal, encourages States to expedite and complete administrative hearings within the required period.

• By limiting continuation of FFP to a maximum of 120 days, will discourage State legislatures and courts from requiring State Medicaid agencies to continue payments during long-drawn-out appeals by facilities that might better use their resources and energies to correct the cited deficiencies. (One commenter observed that in his State, appeals could take years.)

Statement 3: Since States know in advance when a provider agreement will be terminated, or when it will not be renewed, we believe they can adequately protect themselves against loss of FFP during provider appeals. They can do so by ensuring that the appeals required by 42 CFR Part 431, Subpart D of the Medicaid rules are provided in a timely manner.

Comments

• The recertification survey of a participating facility should not be started earlier than 90 days before expiration of the PA. It is unreasonable to expect appeals, including judicial review, to be completed within 90 days.

• Appeals cannot be completed before the expiration of an agreement because the length of each step of the appeal and hearings process varies considerably with each situation.

• The policy allows no way for a State to protect itself against loss of FFP.

• The prospect of loss of FFP could discourage States from taking enforcement action.

• A State agency must: (a) Conduct a full survey; (b) document all deficiencies; (c) send the provider written notice of deficiencies; (d) obtain an acceptable plan of correction; (e) conduct follow-up inspections if warranted; (f) develop an agency decertification notice; and (g) provide a full evidentiary hearing.

Response: These comments, and further consideration of the time needed for required procedures, contributed to our decision to continue FFP for up to the 120 days specified in the Medicaid rules for completion of the post-termination evidentiary hearing.

Statement 4: As noted earlier in this preamble, we anticipate several program benefits from this proposed change to current policy. First, we believe that, by discontinuing FFP when the provider agreement is terminated or not renewed, we would encourage more prompt resolution of appeals at the State level and more timely removal of beneficiaries from substandard facilities.

Comments

• The new rules will cause States to bow to political pressures and be less likely to find nursing homes out of compliance rather than motivate them to provide timely and speedy appeals. A hearing can take months and the longer it is dragged out, the more Federal dollars HCFA saves at the State's expense.

• Marginal facilities which might otherwise have been terminated will be allowed to remain in business.

• States will be reluctant to terminate a facility, notwithstanding HCFA's look-behind authority which would allow HCFA to make its own determination of compliance. Furthermore, once the termination is effected by the State, the proposed rule offers no incentive for the State to argue for court validation. If the State is upheld, FFP is disallowed for the appeal period, which may be substantial.

• The proposed policy would discourage aggressive reviews and decertification actions and provide an incentive for States to "settle" all cases in order to avoid lengthy court action.

• The proposed regulation does not give patients additional protections against substandard care because States will be required by court order to continue payments and to delay moving patients. It may, in fact, work to provide less protection. The State will act to protect its citizens, with or without FFP, if there is jeopardy to health and safety. However, in cases which are not clear-cut, States who fear court orders may be reluctant to terminate agreements.

• Financial consequences will become another factor to be considered in determining whether to renew a PA.

• Denial of FFP during the Federally mandated appeals process would have no effect on encouraging a prompt resolution of the appeal.

Response: These comments also contributed to our decision to continue FFP during administrative appeals. We do not believe States will falsify survey reports, or certify deficient facilities as being in compliance even if the deficiencies are not an immediate threat to patient's health and safety. We believe that States wish to ensure quality care and will act to protect the well being of their citizens. The change made in the final rule will—

• Continue FFP for a reasonable period of time to permit States to aggressively enforce the requirements for quality care (rather than bow to political pressures); and

• Encourage them to expedite administrative hearings.

We believe States can and should employ the hearing period to put pressure on substandard facilities to correct deficiencies in order to avoid being excluded from the program.

II. Comments on Regulations

A. Proposed Denial of FFP During Appeals

Comments

• It is unfair to expect States to bear the full burden if payment must be continued during administrative or judicial appeals.

• The real purpose of the amendments is to save Federal funds by shifting costs to the States.

• This is a "penalty" clause that is likely to lead to retention of substandard facilities to prevent loss of FFP.

• State agencies have no control over the time it takes to initiate and complete administrative hearings or judicial reviews.

• The regulation should allow some reasonable time after the date of the proposed termination within which to provide the facility with the due process required by Federal regulations, State laws, and the State and Federal constitutions.

• To allow a minimum of 120 days for a State to hold an evidentiary hearing would be far preferable to total discontinuation of FFP. It could be presumed that a court would be less likely to order continued payments, if the State were upheld in an administrative hearing. It seems quite clear that the motivation behind this rule is purely financial. While the OMB and HCFA have a legitimate and compelling interest in eliminating unjustified Federal expenditures, the countervailing consideration should have sway.

Response: Cost containment is certainly a legitimate goal in the administration of any program. However, this must not obscure the chief goal, which is to improve the quality of care. For that purpose, we need to have deficiencies corrected

promptly, not delayed while appeals drag on for months, occasionally for years. As one State observed, "HCFA should not be paying for substandard care, and neither should the States."

We agree that a court is less likely to order continued payments when the State has been upheld in an evidentiary hearing. For this reason and those stated elsewhere in this preamble, the revised final rule allows FFP to continue during appeals for up to 120 days after the effective date of termination or expiration.

Comment:

• One State reported a high success rate (49 out of 50 cases) in completing administrative appeal proceedings within 120 days after the effective date of termination, as required by current rules. All their determinations were upheld on appeal. That State prohibits *all* new admissions during appeals and bars appellant facilities from participation in rate incentive programs. This State recommended modifying the proposed regulation to permit payment of FFP during the 120 day appeal period, but had no major objection to denial of FFP if the provider carried its appeal to the courts.

Response: We find this comment very encouraging because it shows the feasibility of carrying out the administrative appeals process within a reasonable period of time. It would be counterproductive to punish States that are conducting aggressive compliance reviews and decertification acts by denying FFP during administrative appeals. We believe this State's use of the evidentiary hearing period to compel correction of deficiencies is responsible for this successful policy.

Comments: The proposal ignores—

• The fact that there may not be sufficient State funds to cover full payments; and

• That time would be needed to amend State laws that prohibit payment when FFP is not available.

Response: These comments would apply to any termination of FFP, no matter how much time we afforded to complete appeals. Therefore, we do not believe these comments are valid. The purpose of termination is to enforce the requirements for quality care within a reasonable time. To achieve this goal, some incentive is necessary. We believe that, in addition to the general concerns for the well-being of recipients, the prospect of loss of FFP is a strong incentive.

Comments.

• Greater consideration should be given to the traumatic effect that transfer may have on SNF patients and the additional cost of illness that may result from such trauma.

Congress showed its concern for transfer trauma by enacting the alternative sanction. (This is a statutory amendment that authorizes denial of payment for new admissions as an alternative to terminating the PA when there is not immediate jeopardy to patient health and safety. It is being implemented by other regulations.)

• Present policy outlined in MSA–PRG–11 should be followed in order to meet the Secretary's duty and responsibility to assure that residents receive appropriate, high quality services as required by Public Law 96–360 and the Tenth Circuit Court of Appeals decision in Smith v. Heckler.

Response: We share the commenter's concern regarding mass transfers and published standards for relocating patients displaced by terminations in the Regional Office Manual in November 1979. (These instructions are now found in the Regional Office Manual, Standards and Certification, Part 4, section 4220.) However, we are also concerned with the adverse effect of continuing care in substandard facilities. We must not lose sight of the fact that it is the facility's deficiencies, rather than the lack of FFP, that requires the transfer. When surveyors find deficiencies that lead them to certify noncompliance, we may need to ensure better quality care by subjecting the recipient to a one-time relocation rather than expose him or her to substandard care for the length of an appeal that may drag on for months. Even temporary placement in hospitals approved to provide SNF care, although it may be more costly, may be preferable to allowing the recipient to languish in a substandard facility while the owner continues to receive full payment pending resolution of an appeal.

Comment: Under section 1910(c) of the Act, the Secretary has the power to terminate the participation of LTC facilities found out of compliance. When that happens, unless there is a finding of jeopardy to health and safety, the law and regulations provide for the PA to remain in effect until the facility has had an opportunity to contest the Secretarty's determination. (If the PA remains in effect, FFP is assumed.) A rule denying FFP when the State makes the same determination is inconsistent with the spirit and perhaps the letter of the law covering a termination by the Secretary.

Response: A termination under section 1910(c) of the Act is the Secretary's finding of noncompliance in the face of a State finding of compliance. Thus, if the facility appeals HCFA's finding, HCFA is defending its finding of noncompliance in opposition to the facility and to the State survey agency finding. Congress saw fit to specifically provide that the PA remain in effect pending a provider's administrative appeal in that situation. There is no similar statutory requirement for Federal matching when the State itself finds a facility out of compliance and continues payment after the effective date of termination or expiration.

Comment: One State suggested that LTC providers be given the option of receiving payment during appeals and be required to refund such payments if the hearing decision is adverse to the facility.

Response: States are free to take this action but should consider recovery problems. A facility that receives an adverse decision after a lengthy appeal could be forced into bankruptcy when it is required to refund a large sum of money. The Consolidated Omnibus Budget Reconciliation Act (COBRA, Pub. L. 99–272, enacted April 7, 1986) precluded recovery of the Federal share of State expenditures if the State is unable to recover from a bankrupt provider. Therefore, HCFA will not match State expenditures beyond 120 days if a State adopts the suggested procedure. (If the State chooses to continue payments to a provider subject to recovery if the decision is adverse to the facility, the Federal share of any recovery of expenditures must be returned to HCFA for the period during which FFP was provided.)

B. FFP Not Available in Post-Termination Payment Even When Ordered by a Court

Comments 1 and 2

• FFP should be continued during the period of a Federal or State court order that requires either the continuation of the agreement or continuation of payments.

• FFP should be available as long as the State is making a good faith effort to keep litigation moving.

Response: This is the position of PRG–11, issued in 1971. As discussed above, it has not worked to improve quality of care because State administrative and judicial procedures have permitted protracted appeals. We must have time limits on appeals to force the providers to come into compliance quickly or be terminated from the program. If the State provides a high quality administrative appeal under § 431.153, we expect any subsequent court procedures will be of short duration. We believe that State legislatures and courts

will be less likely to require continuation of payments if the State has been upheld in an evidentiary hearing and if they know that there will be no FFP beyond the 120 days of an administrative appeal. If courts do not continue payments, a deficient facility will have an additional incentive to correct instead of litigate.

Comments 3 and 4:

• The commenter questioned whether the Secretary has the authority to disallow continuation of FFP where a court orders extension of a PA or requires a State to continue payments.

• This rule appears to be inconsistent with other Medicaid regulations which recognize the precedence of judicial decisions.

Response: A court cannot order compliance by an entity that is not a party to the suit. The commenter apparently did not realize that this rule applies only to suits in which HHS is not a party. As pointed out in the preamble to the NPRM, one of the purposes of the proposed rule was to change the meaning of "within the scope of the Federal Medicaid program" as it appears in § 431.250(b). The effect of this final rule is to change the meaning to "up to 120 days" instead of "up to 12 months" as it was under the Board's interpretation, or an unlimited period, as MSA–PRG–11 appeared to permit. The new § 442.40 clarifies the meaning of § 431.250(b) when providers appeal the termination or nonrenewal of a PA.

Comment 5: Residents may sue the State so that they may continue to stay in a facility (even though it is decertified) and have their care paid through Medicaid funds. If ordered by a court the State may have to pay the States' share of Medicaid funds and possibly the Federal share.

Response: The U.S. Supreme Court has held that Medicaid recipients do not have the right to care in a specific facility [O'Bannon v. Town Court Nursing Center, 447 U.S. 773 (1980)]. The Court stated that the Medicaid Act does not confer a right on a recipient to continue to receive benefits for care in a facility that has been decertified. Moreover, although the regulations protect patients by limiting the circumstances under which a facility may transfer or discharge a Medicaid recipient, they do not limit the Government's right to make transfer necessary by decertifying a facility. The Court viewed the imposition of minimum standards of care as conferring an indirect benefit on patients which outweighed any adverse impact that might result from having to relocate.

Comment 6: Courts may enjoin HHS from terminating reimbursement to the State pending appeal, particularly if enforcement by the State has been stayed because there is no other action that will prevent irreparable harm to the State. (*Maxwell* v. *Wyman*, 478 F. 2d 1329, 2d Circuit, 1973).

Response: We do not believe that case limits the Department's authority to set reasonable limits for the availability of FFP during provider appeals. Rather, it interpreted and applied MSA–PRG–11 as providing FFP during the pendency (no matter how long) of provider appeals under specified circumstances.

Comment 7: When HCFA is the agency responsible for granting and terminating PAs, as it is for Medicare SNFs, and is enjoined from terminating Medicare participation for services furnished by a SNF, FFP should continue for Medicaid payments to the facility.

Response: If HCFA is a party to the suit (as it necessarily would be in this situation) and a Federal court enjoins HCFA from terminating the PA of a Medicare SNF, HCFA would obey the order. FFP in the Medicaid SNF payments, even if not specifically ordered by the court, would continue under 42 CFR 442.20(a), which requires that a Medicaid PA with a SNF that participates in both programs be for the same duration as the Medicare PA. However, if a facility that is also an ICF has appealed its Medicare SNF termination and its Medicaid ICF termination, FFP would not be available in Medicaid payment for ICF services unless the Federal court specifically ordered HCFA to continue FFP in those payments. There is no regulation corresponding to 42 CFR 442.20 for ICF facilities because ICF services are not offered under the Medicare program.

Comment 8: All decertification actions should be filed in Federal courts so that Federal and State officials could work together for a speedy resolution. State court actions require the State to bring the Federal agency into the case as an indispensable party. Double litigation could be avoided. Federal matching would be continued until the court action is resolved.

Response: This rule pertains only to decertification by the State of its own volition, not to terminations a State is required to make when HCFA terminates a SNF's Medicare agreement. Although we believe that the proper appeal of a State administrative decision is to a State court, the Federal government cannot regulate this matter. Accordingly, the rule specifies only that FFP is not available during judicial appeals.

Comment 9: HCFA should add language to the regulations stating the FFP will continue if HCFA is enjoined by a Federal court from stopping payment.

Response: A regulation is not needed to require that HCFA obey the order of a Federal court when HCFA is a party to the suit. It is sufficient to say that FFP is not available if a State or Federal court only orders the State to continue payments.

C. FFP in Retroactive Provider Agreements

Comment 1

• The rule should be modified to make retroactive FFP available if the facility comes into compliance during the appeal even if it is not upheld. Many facilities are recertified during or at the end of the 120-day appeal period because they have come into compliance by significantly improving their operations but have not been upheld on appeal.

Response: Under the final rule, there will be no break in FFP for a facility that appeals before termination of its PA is effective, and comes into compliance during the 120-day appeal period. The new PA will be effective on the day the facility meets all requirements or submits an approvable plan of correction, as provided in § 442.13 of the Medicaid rules. If the facility comes into compliance after the end of the 120-day period allowed for appeal, no FFP is available from the end of that period until the effective date of the new PA.

Comments 2 and 3

• Under the proposed rule, FFP would be denied for a facility that receives a favorable resolution of its appeal and a retroactive reinstatement of its PA under court order.

• The proposed rule appears to allow HCFA broad discretion to allow or deny FFP in a retroactive PA issued when the outcome of the appeal is favorable to the provider.

Response: Generally, FFP will be available in retroactive PAs. However, the look-behind authority specified in § 442.30 of the Medicaid rules is not narrowed by these rules, as is made clear by new § 442.42(b).

Whenever a decision is made to reinstate a PA retroactively, HCFA can apply the "look behind" authority under § 442.30 to decide whether Federal certification requirements have been met. This authority extends to any reinstatement decision, whether made by the State survey agency, a hearing officer, or State or Federal court. For example, if a hearing officer orders

retroactive reinstatement based on the facility's coming into compliance during the 120-day hearing period, HCFA may "look behind" to confirm whether the facility has met all Federal requirements, or submitted an approvable plan of correction, within the 120-day period. FFP will be available if the hearing officer has ordered retroactive reinstatement of the PA and properly set the effective date within the hearing period. FFP will not be available if HCFA finds that it was not proper to set the effective date within the hearing period because the facility had not met the basic requirements of 42 CFR 442.13 at that time.

Note.—"Look-behind" under § 442.30 of the Medicaid rules determines whether a State survey and certification decision met Federal requirements. If it did not, a provider agreement based on that survey and certification decision is invalid, and FFP is not available for services furnished under that agreement. The "look-behind" authority of this provision does not address whether a facility actually met the substantive requirements for certification. It only examines the procedures used by the States.

Comment 4: It is inconsistent for HCFA to require appeals and remain free to ignore the outcome. If HCFA does not follow the appeal decision and States refuse to pay providers because HCFA is withholding FFP, the provider has been denied due process. If the States comply with an administrative decision, even though the HCFA has chosen to withhold FFP, the required appeal becomes a penalty provision and a cost containment measure for HCFA. Since HCFA imposed the hearing requirements, HCFA should be bound by a hearing decision.

Response: HCFA is not free to ignore the outcome of a hearing and will match payments made under a retroactive agreement if the agreement was properly ordered. As noted by another State, many facilities are recertified at the end of the evidentiary hearing not because they win their appeals but because they substantially improve their operations. Thus, HCFA must and will use its look-behind authority to deny FFP for a retroactive agreement made effective prior to the date compliance is established. To allow FFP under a retroactive agreement for a period when compliance has not been established would be a neglect of HCFA's duty. Under the final rule, if the facility comes into compliance within the 120-day appeal period, there would be no break in FFP.

Comment 5: It is not clear if HCFA will be exercising substantive "look-behind" authority in refusing to honor administrative or court decisions. If it is, then the procedural protections of section 1910(c) of the Act should be triggered and FFP should continue.

Response: These regulations do not address situations in which HCFA terminates participation because it finds that the facility does not meet Federal requirements. They apply only when a State has terminated a facility of its own volition. HCFA can apply the look-behind authority of 42 CFR 442.30 as explained above in the response to comments 2 and 3.

D. Miscellaneous Comments

Some of the comments dealt not with the proposed changes in the regulations, but with a definition, and with other rules for which no change was proposed.

1. Definition of "Effective date of termination."

Comment: The new rule leaves the point at which termination occurs unanswered because under this State's law, termination is not final until the provider has had a full evidentiary hearing and if that decision is stayed by a court, termination does not take effect.

Response: The effective date of "termination" (and of "expiration"), as defined in § 442.40(a), establishes a uniform point from which the 120-day period prescribed for completing the administrative hearing is counted. This provision applies uniformly in all States for determining the availability of FFP during a facility's appeal of the State's finding of noncompliance.

The following comments were addressed to §§ 441.11 and 442.16, explained earlier in this preamble under the topic "FFP rules". In the preamble to the proposed rule, we discussed these sections to show how adverse effects on recipients could be mitigated by proper use of the two-month extension of the PA and the 30 day continuation of FFP for relocation of patients. We proposed no changes in these sections.

Comment 1: Two months following decertification is needed to relocate a large number of nursing home residents.

Response: As noted above, the regulation section providing time for the relocation of patients is § 441.11. Since no change was proposed with respect to this section, we are unable to address the commenter's concerns at this time.

Comment 2: States should be allowed to implement 42 CFR 442.16 and 441.11 without the need to request these exceptions from the HCFA regional office. With a 94 percent occupancy rate, we find 60 days adequate for orderly relocation of patients when necessary, but believe the time lost in requesting these exceptions is unnecessary.

Response: There is nothing in § 441.11 or § 442.16 that requires requesting exceptions from the HCFA regional office for Medicaid-only SNFs or ICFs. For a SNF that participates in both programs, HCFA regional staff makes the determination for the extension of the Medicare PA, and this, under § 442.20, applies equally to the Medicaid PA. The State Medicaid agency determines the allowability of a 60 day extension under § 442.16 of agreements with ICFs and Medicaid-only SNFs. The continuation of FFP for up to 30 days under § 441.11 is to be used for patient transfers and is available as long as the requirements of that section are met.

Provisions of the Final Rule

As indicated in the discussion of comments, this final rule differs from the proposed rule in that it provides for FFP to continue, after the effective date of termination or expiration, for up to the 120 days allowed for completion of the administrative hearing. We have also made two additional changes.

1. We have revised paragraph (b) of § 441.11 to make clear that, if the facility appeals the termination or nonrenewal, the 30-day period would begin when there is a hearing decision that upholds that agency action. (It would be unreasonable to expect the facility to initiate transfer while its appeal is pending.)

2. We have added, to proposed § 442.40, a new paragraph (b) to make clear that §§ 442.40 and 442.42—

- Apply only to termination and nonrenewal actions that the State takes of its own volition, not to such actions when it is required to take them with respect to a SNF that has had its Medicare provider agreement terminated or not renewed by HCFA; and
- Apply to terminations and nonrenewals that are effective on or after the effective date of the final rule, with a special adaptation for termination or nonrenewal actions that were effective before that date.

In summary, under the final rule, FFP could continue for not more than 150 days after the effective date of termination or expiration of the provider agreement. (The 120 days allowed for the administrative appeals process, plus the 30 days allowed for transfer of the patients or residents to other facilities or to alternate care, equal 150 days.)

MSA–PRG–11 is revoked.

Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are

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likely to meet criteria for a "major rule". A major rule is one that would result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 through 612), we prepare and publish a regulatory flexibility analysis unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we treat all providers as small entities; States and individuals are not considered small entities.

Our proposed rule of October 18, 1985 did not include an economic impact analysis or a regulatory flexibility analysis. We considered that the economic effect would not reach $100 million and that the proposed rules would have a generally favorable impact, since they would—

- Encourage more prompt resolution of appeals at the State level and more timely removal of beneficiaries from substandard facilities;
- Ensure uniform understanding and application of the rules among States and providers and thus reduce the need for litigation before the Board and the courts;
- Facilitate the processing of Medicaid claims so that the workload would be reduced and there would be greater consistency in our determination of payments to States for SNF and ICF services; and
- Ensure that we do not continue to share in payments to facilities that have serious deficiencies.

One State noted that the proposal would have a substantial impact on States because it would deny FFP even during the 120-day period allowed for administrative appeal of terminations. We believe that this final rule, by providing FFP for up to the 120 days allowed for administrative appeals, will indeed encourage States to speed up their hearing procedures. State costs will increase and corresponding Federal savings will result only if State law or State court orders require the State Medicaid agency to continue payments during judicial appeals or administrative hearings which are allowed to continue beyond 120 days. If the hearing decision is reached during the 120 days upholding the facility, it will be reinstated and FFP will continue. If the hearing decision upholds the agency's termination action, the patients will be moved to other complying facilities and FFP will be available for those services. In summary—

- Under the old rules the FFP would have been available for up to 12 months.
- Under the new rules FFP is available for up to 120 days.
- To the extent that payment to a facility extends beyond 120 days, State law or State court orders may require States to pay the full cost of services for any patients remaining in facilities after termination of FFP. However, we believe there will be no major increase in costs for State agencies, because States will be able to expedite administrative and judicial appeals procedures.

In a recent year, our records indicate that States terminated only 39 facilities. An unknown number came into compliance during the course of their appeal. With the added incentive of FFP for up to 120 days for administrative appeals, rather than 12 months for administrative and judicial appeals, we believe that virtually all States will conform State law and appeal procedures to enable compliance with the time limit for administrative appeals and that judicial hearings will be speedily concluded after quality administrative appeals. Several State commenters viewed 120 days as a reasonable and adequate time limit for appeals. It is impossible to predict a definitive amount of Federal savings and the corresponding State costs. However, based on recent terminations, we believe the amount cannot be in excess of $100 million annually.

Only by expediting appeals procedures (judicial review as well as administrative hearings) can any real "savings" be achieved and, even more important, beneficiaries be protected against remaining too long in substandard facilities.

From the above discussion, it is clear that the effect of these rules on the general economy is not such as to require an economic impact analysis. Since the effect of the new rules is to require the State to pay full costs after FFP is discontinued, we have determined, and the Secretary certifies that these final rules will not have a substantial impact on a significant number of small entities. Therefore, we have not prepared either an impact analysis under E.O. 12291, or a regulatory flexibility analysis.

Paperwork Reduction Act

These regulations will impose no new reporting or recordkeeping requirements that are subject to clearance by the Office of Management and Budget.

List of Subjects

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Chapter IV is amended as set forth below.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302) unless otherwise noted.

2. Section 441.11 is revised to read as follows:

§ 441.11 Continuation of FFP for institutional services.

(a) *Basic conditions for continuation of FFP.* FFP may be continued for up to 30 days after the effective date of termination or expiration of a provider agreement, or after an administrative hearing decision that upholds the agency's termination or nonrenewal action, if the following conditions are met:

(1) The Medicaid payments are for recipients admitted to the facility before the effective date of termination or expiration.

(2) The Medicaid agency is making reasonable efforts to transfer those recipients to other facilities or to alternate care.

(b) *When the 30-day period begins.* The 30-day period begins on either of the following:

(1) The effective date of termination or nonrenewal of the facility's Medicare provider agreement by HCFA, or of its Medicaid provider agreement as instructed by HCFA.

(2) The later of—

(i) The effective date of termination or nonrenewal of the facility's Medicaid provider agreement by the Medicaid agency on is own volition; or

(ii) The date of issuance of an administrative hearing decision that

upholds the agency's termination or nonrenewal action.

(c) *Services for which FFP may be continued.* FFP may be continued for any of the following services, as defined in Subpart A of Part 440 of this chapter:

(1) Inpatient hospital services.

(2) Inpatient hospital services for individuals age 65 or older in an institution for mental diseases.

(3) Skilled nursing facility services for individuals age 21 or older.

(4) Skilled nursing facility services for individuals age 65 or older in an institution for mental diseases.

(5) Intermediate care facility services.

(6) Intermediate care facility services for individuals age 65 or over in an institution for mental diseases.

(7) Inpatient psychiatric services for individuals under age 21.

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

3. The authority citation for Part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

4. In § 442.16, the introductory statement is revised to make clear that only one extension is permitted, to read as follows:

§ 442.16 Extension of agreement.

A Medicaid agency may extend a provider agreement for a single period of up to 2 months beyond the original expiration date specified in the agreement if it receives written notice from the survey agency, before the expiration date of the agreement, that extension will not jeopardize the patients' health and safety, and—

5. New §§ 442.40 and 442.42 are added, to read as follows:

§ 442.40 Availability of FFP during appeals.

(a) *Definitions.* As used in this section—"*Effective date of expiration*" means the date of expiration originally specified in the provider agreement, or the later date specified if the agreement is extended under § 442.16; and "*Effective date of termination*" means a date earlier than the expiration date, set by the Medicaid agency when continuing participation until the expiration date is not justified, because the facility no longer meets the requirements for participation.

(b) *Scope, applicability, and effective date*—(1) *Scope.* This section sets forth the extent of FFP in State Medicaid payments to a SNF or ICF after its provider agreement has been terminated or has expired and not been renewed.

(2) *Applicability.* (i) This section and § 442.42 apply only when the Medicaid agency, of its own volition, terminates or des not renew a provider agreement, and only when the survey agency certifies that there is no jeopardy to recipient health and safety. When the survey agency certifies that there is jeopardy to recipient health and safety, or when it fails to certify that there is no jeopardy, FFP ends on the effective date of termination or expiration.

(ii) When the State acts under instructions from HCFA, FFP ends on the date specified by HCFA (HCFA instructs the State to terminate the Medicaid provider agreement when HCFA (A) terminates the Medicare provider agreement with a SNF, or, (B) in validating a State survey agency certification, determines that a SNF or ICF does not meet the requirements for participation.)

(3) *Effective date.* This section and § 442.42 apply to terminations or expirations that are effective on or after September 28, 1987. For terminations or nonrenewals that were effective before that date, FFP may continue for up to 120 days from September 28, 1987, or 12 months from the effective date of termination or nonrenewal, whichever is earlier.

(c) *Basic rules.* (1) Except as provided in paragraphs (d) and (e) of this section, FFP in payments to a SNF or ICF ends on the effective date of termination of the facility's provider agreement, or if the agreement is not terminated, on the effective date of expiration.

(2) If State law, or a Federal or State court order or injunction, requires the agency to extend the provider agreement or continue payments to a facility after the dates specified in paragraph (d) of this section, FFP is not available in those payments.

(d) *Exception: Continuation of FFP after termination or expiration of provider agreement*—(1) *Conditions for continuation.* FFP is available after the effective date of termination or expiration only if—

(i) The evidentiary hearing required under § 431.153 of this chapter is provided by the State agency after the effective date of termination or expiration (or, if begun before termination or expiration, is not completed until after that date); and

(ii) Termination or nonrenewal action is based on a survey agency certification that there is no jeopardy to recipients' health and safety.

(2) *Extent of continuation.* FFP is available only through the earlier of the following:

(i) The date of issuance of an administrative hearing decision that upholds the agency's termination or nonrenewal action.

(ii) The 120th day after the effective date of termination of the facility's provider agreement or, if the agreement is not terminated, the 120th day after the effective date of expiration. (If a hearing decision that upholds the facility is issued after the end of the 120-day period, when FFP has already been discontinued, the rules of § 442.42 on retroactive agreements apply).

(e) *Applicability of § 441.11.* If FFP is continued during appeal under paragraph (d) of this section, the 30-day period provided by § 441.11 of this chapter would not begin to run until issuance of a hearing decision that upholds the agency's termination or nonrenewal action.

§ 442.42 FFP under a retroactive provider agreement following appeal.

(a) *Basic rule.* Except as specified in paragraph (b) of this section, if a SNF or ICF is upheld on appeal from termination or nonrenewal of a provider agreement, and the State issues a retroactive agreement, FFP is available beginning with the retroactive effective date, which must be determined in accordance with § 442.13.

(b) *Exception.* This rule does not apply if HCFA determines, under § 442.30, that the agreement is not valid evidence that the facility meets the requirements for participation. This exclusion applies even if the State issues the new agreement as the result of an administrative hearing decision favorable to the facility or under a Federal or State court order.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: February 3, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: July 28, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87–19795 Filed 8–27–87; 8:45 am]

BILLING CODE 4120–01–M

Proposed Rules

Federal Register
Vol. 52, No. 167
Friday, August 28, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 208, 236, 242, and 253

[Order No. 1211-87]

Aliens and Nationality; Asylum and Withholding of Deportation Procedures

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the procedures to be used in determining asylum under section 208 and withholding of deportation under section 243(h) of the Immigration and Nationality Act, as amended by the Refugee Act of 1980. The rule modifies the interim rule published on June 2, 1980 (45 FR 37392). These changes are proposed in response to comments received on the interim rule and in light of experience gained in administering the provisions of the Refugee Act of 1980 over approximately a six year period.

The proposed rule is intended to enhance uniformity and efficiency in the process for determining eligibility for asylum or withholding of deportation. The rule recognizes that the decision to grant asylum or withholding of deportation to an alien is inherently a humanitarian act by the United States, distinct from the normal operation and administration of the immigration laws. The procedures for adjudicating asylum and withholding of deportation cases are therefore structured in a nonadversarial manner and are designed to elicit and take into account all relevant information in light of the legal structure set forth in the Refugee Act of 1980.

The rule proposes to place authority for asylum and withholding of deportation decisions in a corps of specially trained Immigration and Naturalization Service (INS) Asylum Officers under the direct supervision of the Assistant Commissioner, Office of Refugee, Asylum, and Parole.

Applicants for asylum or withholding of deportation would have a nonadversarial interview by an Asylum Officer within INS. In evaluating the application, the Asylum Officer would have the benefit of comments provided by the Bureau of Human Rights and Humanitarian Affairs of the Department of State as well as information provided by the Department of Justice.

Under the interim rule published on June 2, 1980, asylum and withholding of deportation decisions are made by District Directors of the Immigration and Naturalization Service and are not appealable. Under the proposed rule, asylum and withholding of deportation decisions by an Asylum Officer will also not be directly appealable, except in certain unusual circumstances. As under current regulations, however, individuals denied asylum or withholding of deportation will still be able to have their claims of persecution reviewed if they appeal any subsequent exclusion or deportation order to the Board of Immigration Appeals.

The rule clearly articulates the burden of proof that an applicant for asylum or withholding of deportation must meet to establish eligibility for such a grant. Certain evidentiary considerations are established for purposes of administrative convenience and consistency in assessing the claims of persons seeking asylum or withholding of deportation.

DATE: Written comments must be submitted on or before October 27, 1987.

ADDRESS: Please submit written comments in duplicate to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 Eye Street NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Richard A. Sloan, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 Eye Street NW., Washington, DC 20536. Telephone: (202) 633–3048.

For Specific Information: Ralph Thomas, Deputy Assistant Commissioner, Refugee, Asylum, and Parole, Immigration and Naturalization Service, 425 Eye Street NW., Washington, DC 20536. Telephone: (202) 633–5463; or

Robert C. Hill, Deputy Director and Counsel, Asylum Policy and Review Unit, Department of Justice, 10th and Constitution Ave., NW., Room 6213, Washington, DC 20530. Telephone: (202) 633–2415; or

Gerald Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 2 Skyline, 5203 Leesburg Pike, Falls Church, Virginia 22041. Telephone: (703) 756–6470.

SUPPLEMENTARY INFORMATION: The Refugee Act of 1980 created a statutory basis for asylum in the United States and made withholding of deportation for those who qualify mandatory rather than discretionary. Eligibility for asylum requires a showing of actual persecution or a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." Entitlement to withholding of deportation requires a showing that the life or freedom of the applicant would be threatened in the country of proposed deportation on account of race, religion, nationality, membership in a particular social group, or political opinion. Interim regulations establishing procedures and standards governing applications under the provisions of the Refugee Act of 1980 were published on June 2, 1980.

The interim regulations provide that an advisory opinion must be obtained from the Bureau of Human Rights and Humanitarian Affairs of the Department of State prior to a decision on the applicant's claim. Other provisions of the interim regulations deal with filing the application, the place of filing, employment authorization, burden of proof, interview of the applicant, the form and content of a decision on an asylum or withholding of deportation application, extension or renewal of asylum status, definitions of "firmly resettled" and "country of habitual residence," termination of asylum status, and procedures and standards governing applications made during or subsequent to deportation proceedings.

To assist individuals or organizations wishing to comment on the proposed rule, the following outline of significant changes made in the interim rule is provided:

(1) The proposed rule would create the position of Asylum Officer within the Office of Refugee, Asylum, and Parole in INS. Applications for asylum

or withholding of deportation would be referred to an Asylum Officer who would conduct an interview and render a decision.

(2) The proposed rule requires the Assistant Commissioner, Office of Refugee, Asylum, and Parole, to assist the Asylum Policy and Review Unit to compile and disseminate to Asylum Officers information concerning the persecution of persons in other countries. With notice to an applicant, Asylum Officers could rely on such information in deciding an asylum or withholding of deportation application. This collection and dissemination of information about country conditions will increase the accuracy and consistency of asylum and withholding of deportation decisions.

(3) The proposed rule provides for confidentiality of applications by prohibiting disclosure of information submitted by the applicant. Exceptions to this rule would lie where the applicant consents to disclosure, where it is determined that certain national or international agencies or courts need to examine the information in connection with adjudication of a claim, in legal proceedings of certain types, or in United States Government investigations.

(4) The proposed rule requires that an applicant for asylum establish that he is a refugee under section 101(a)(42) of the Immigration and Nationality Act. That burden is met when the applicant establishes by a preponderance of the evidence that he has suffered actual persecution or that he has a well-founded fear of persecution in that there is a reasonable possibility that a person in the applicant's position would be persecuted if returned to his country of nationality or last habitual residence.

The section on burden of proof reflects the Supreme Court's recent decision in the case of *Immigration and Naturalization Service* v. *Cardoza-Fonseca*, _____U.S._____, 107 S. Ct. 1207 (1987). The section is drafted to recognize that the flight or defection of a bona fide refugee from a country that engages in widespread persecution may leave him in a difficult position to corroborate his claim. Accordingly, under the proposed statement of the burden of proof, an applicant may show that a person in his position, as opposed to himself specifically, could be subject to persecution. Moreover, the proposed regulations provide that the applicant's uncorroborated testimony, if credible, may satisfy the burden of proof.

In evaluating whether an applicant has sustained the burden of proof, the proposed rule requires the Asylum Officer to give due consideration to evidence establishing that the government of the applicant's country of nationality or habitual residence persecutes groups of persons similarly situated to the applicant or persecutes its nationals or residents who attempt to leave the country or to seek asylum in another country.

(5) The proposed rule requires Asylum Officers to grant employment authorization to asylum or withholding of deportation applicants whose applications are not frivolous or filed primarily for the purpose of delay.

(6) The proposed rule would make comments by the Bureau of Human Rights and Humanitarian Affairs optional in asylum or withholding of deportation cases, at the option of the Department of State in each case.

(7) The proposed rule includes provisions for admission of an asylee's spouse and children, either accompanying or following to join. The provisions address application, eligibility, relationship, procedures, denial, burden of proof, and duration of asylum status.

(8) The new procedures apply only to applications for asylum or withholding of deportation filed on or after the date the proposed rule becomes final.

(9) The proposed rule provides for review of selected asylum decisions by the Office of the Deputy Attorney General, assisted by the Asylum Policy and Review Unit in the Office of Legal Policy, and by the Assistant Commissioner, Office of Refugee, Asylum and Parole.

(10) Decisions by Asylum Officers will be binding upon Immigration Judges in related exclusion or deportation proceedings and will be incorporated into Immigration Judge's decisions in such cases. Except in certain unusual circumstances, appeal from an asylum or withholding of deportation decision will lie with the Board of Immigration Appeals only after the decision has been incorporated into an Immigration Judge's decision in an exclusion or deportation proceeding.

Other provisions would be revised to make them consistent with changes outlined above.

The proposed rule would facilitate the asylum and withholding of deportation process in a manner consistent with the language and intended effect of the Refugee Act of 1980.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule, if promulgated, will not be a major rule within the meaning of section 1(b) of E.O. 12291. The information collections in this rule have been approved under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 3

Administrative practice and procedures.

8 CFR Part 208

Administrative practice and procedures, Aliens, Asylum, Immigration, Jurisdiction.

8 CFR Part 236

Administrative practice and procedures, Aliens, Immigration.

8 CFR Part 242

Administrative practice and procedures, Aliens, Detention, Deportation.

8 CFR Part 253

Aliens, Asylum, Crewmen, Parole.

Accordingly, it is proposed to amend Chapter I of Title 8 of the Code of Federal Regulations as follows:

1. The authority citation for Part 3 continues to read as follows:

Authority: Secs.103, 292, 66 Stat. 173, 235, 8 U.S.C. 1103, 1362, sec. 2, Reorg. Plan No. 2 of 1950, 15 FR 3173, 3 CFR 1949–1953 Comp., p. 1003, unless otherwise noted.

PART 3—[AMENDED]

1A. In Part 3, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, § 3.14 is amended to remove "(a)" before the first paragraph and to remove paragraph (b) .

2. Part 208, ASYLUM PROCEDURES, is revised to read as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

Sec.

208.1 General; jurisdiction.
208.2 Form of application.
208.3 Filing the application.
208.4 Special duties toward aliens in custody of INS.
208.5 Disclosure to third parties.
208.6 Interim employment authorization.
208.7 Limitations on travel outside the United States.
208.8 Interview and procedure.
208.9 Failure to appear.
208.10 Comments from the Bureau of Human Rights and Humanitarian Affairs.
208.11 Reliance on information compiled by other sources.
208.12 Establishing refugee status; burden of proof.
208.13 Approval or denial of application.
208.14 Definition of "Firm Resettlement".
208.15 Entitlement to withholding of deportation.
208.16 Decision.
208.17 Review of decisions and appeal.

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208.18 Motion to reopen or reconsider.
208.19 Approval and employment authorization.
208.20 Admission of asylee's spouse and children.
208.21 Effect on deportation proceedings.
208.22 Restoration of status.
208.23 Revocation of asylum or withholding of deportation.

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1253, and 1283.

§ 208.1 General; jurisdiction.

(a) This Part shall apply to all applications for asylum or withholding of deportation that are filed on or after the effective date of this rule. No application for asylum or withholding of deportation that has been filed with a District Director or Immigration Judge prior to the effective date of this rule may be reopened or otherwise reconsidered under this rule except by motion of an Asylum Officer. The adoption of this rule shall not affect the finality or validity of any prior decision by District Directors and Immigration Judges in any asylum or withholding of deportation case.

(b) The Office of Refugee, Asylum, and Parole shall have exclusive jurisdiction over applications for asylum and withholding of deportation. All such applications shall be decided by Asylum Officers under this rule.

(c) Asylum Officers shall be supervised by the Assistant Commissioner, Office of Refugee, Asylum, and Parole. There shall be attached to the Office of Refugee, Asylum, and Parole such number of employees as the Commissioner, upon recommendation from the Assistant Commissioner, shall direct. The Assistant Commissioner shall be responsible for general supervision and direction in the conduct of the asylum program, including evaluation of the performance of the employees attached to the Office.

(d) The Assistant Commissioner shall assist the Deputy Attorney General and the Asylum Policy and Review Unit of the Department of Justice, in coordination with the Department of State, to compile and disseminate to Asylum Officers information concerning the persecution of persons in other countries on account of race, religion, nationality, membership in a particular social group, or political opinion. The *Country Reports on Human Rights Practices* prepared annually by the Department of State shall be the principal source of such information and may be supplemented by additional reports on country conditions provided by the Department of State on request, as well as any other information relevant to the legal determination of eligibility for asylum.

§ 208.2 Form of application.

(a) An application for asylum or withholding of deportation shall be made on Form I–589 (Request for Asylum in the United States). The applicant's spouse and children as defined in section 101 of the Act may be included on the application if they are in the United States. An application shall be accompanied by one completed Form G–325A (Biographical Information) and one completed Form FD–258 (Fingerprint Card) for every individual included on the application who is fourteen years of age or older; additional supporting material may also accompany the application. Forms I–589, G325A, and FD–258 shall be available from the Office of Refugee, Asylum, and Parole, each District Director, and the Offices of Immigration Judges.

(b) An application for asylum shall be deemed to constitute at the same time an application for withholding of deportation, pursuant to §§ 208.15, 236.3, and 242.17 of this chapter.

§ 208.3 Filing the application.

(a) *With the District Director.* Except as provided in paragraphs (b), (d), and (e) of this section, applications for asylum or withholding of deportation shall be filed with the District Director having jurisdiction over the place of the applicant's residence or over the port of entry from which the applicant seeks admission to the United States. The District Director shall immediately forward the application to an Asylum Officer with jurisdiction in his district. The Asylum Officer shall forward a copy of the completed application, including any supporting material subsequently received pursuant to § 208.6(d), to the Office of Refugee Asylum and Parole, the Asylum Policy and Review Unit of the Department of Justice, and the Bureau of Human Rights and Humanitarian Affairs of the Department of State.

(b) *Applications pending completion of exclusion or deportation proceedings.* If exclusion or deportation proceedings have been commenced against an alien, any application for asylum or withholding of deportation from that alien shall be filed with the Office of the Immigration Judge. That Office shall refer such application to an Asylum Officer who shall process the application pursuant to paragraph (a) of this section. No final decision shall be rendered by the Immigration Judge in such a proceeding until a decision has been rendered by the Asylum Officer on the asylum or withholding of deportation application and that decision, together with the record, has been returned to the Immigration Judge to be incorporated into the exclusion or deportation decision pursuant to § 208.17(b).

(c) *Applications after completion of exclusion or deportation proceedings.* If exclusion or deportation proceedings before an Immigration Judge have been completed and a final exclusion or deportation order has been entered pursuant to 8 CFR 3.37, an alien so ordered may file an application for asylum or withholding of deportation, provided no such original application has previously been filed with the Service or with an Immigration Judge and provided the application reasonably explains the alien's failure to file an application previously. Such application shall be filed with the District Director charged with executing the order, who shall immediately forward the application to an Asylum Officer with jurisdiction in his district. The Asylum Officer shall immediately determine whether the application is frivolous and whether it reasonably explains the applicant's failure to file previously. If the application is not frivolous and does reasonably explain the failure to file previously, the Asylum Officer shall so notify the District Director who shall stay the execution of the exclusion or deportation order. The Asylum Officer shall then process the application pursuant to paragraph (a) of this section. If asylum or withholding of deportation is granted, the Service shall file a motion with the Immigration Judge to reopen the exclusion or deportation proceeding and to vacate or amend the original order as appropriate. If the application is frivolous or does not reasonably explain the failure to file previously, or if asylum and withholding of deportation are denied, the District Director may execute the exclusion or deportation order, unless an appeal of the asylum or withholding of deportation decision is taken to the Board of Immigration Appeals. Such appeal shall be filed with the District Director within ten (10) days of the asylum or withholding of deportation decision. The District Director shall then forward the complete asylum or withholding of deportation record to the Office of the Immigration Judge having administrative control over the exclusion or deportation proceeding, which shall forward that record, together with the exclusion or deportation record, to the Board. Upon receiving such appeal, the Board shall be deemed to be reopening the exclusion or deportation proceeding for the sole purpose of reviewing the asylum or

withholding of deportation decision. No other aspect of the exclusion or deportation proceeding may be reviewed by the Board.

(d) *Applications in the course of an appeal to BIA.* If an alien appeals an exclusion or deportation order to the Board of Immigration Appeals, that alien may file an application for asylum or withholding of deportation with the Board, provided no such original application has previously been filed with the Service or with an Immigration Judge and provided the application reasonably explains the alien's failure to file an application previously. If the application is not frivolous and does reasonably explain the alien's failure to file previously, as determined by the Board, the Board shall refer the application to the Assistant Commissioner, Office of Refugee, Asylum, and Parole, who shall process the application pursuant to paragraph (a) of this section. If the Board so refers the application, no final decision shall be rendered by the Board on the appeal until a decision has been rendered by an Asylum Officer on the asylum or withholding of deportation application and that decision has been returned to the Board, together with the record, for review in conjunction with the Board's review of the exclusion or deportation order.

(e) *Applications after exclusion or deportation is affirmed by BIA.* If an exclusion or deportation order has been affirmed by the Board of Immigration Appeals, an alien so ordered may file an application for asylum or withholding of deportation, provided no such original application has previously been filed with the Service, with an Immigration Judge, or with the Board and provided the application reasonably explains the alien's failure to file previously. Such application shall be filed with the Assistant Commissioner, Office of Refugee, Asylum, and Parole, who shall immediately determine whether the application is frivolous and whether it reasonably explains the failure to file previously. If the application is not frivolous and does reasonably explain the failure to file previously, the Assistant Commissioner shall notify the District Director charged with executing the exclusion or deportation order who shall stay the execution of the order until a decision on the merits of the asylum or withholding of deportation application has been reached. The Assistant Commissioner shall then process the application pursuant to paragraph (a) of this section. If asylum or withholding of deportation is granted, the Service shall file a motion with the Board to reopen the appeal and to vacate or amend the original order as appropriate. If the application is frivolous or does not reasonably explain the failure to file previously, or if asylum and withholding of deportation are denied, the District Director may execute the exclusion or deportation order, unless the applicant files an appeal to the Board for review of the asylum or withholding of deportation decision. Such appeal shall be filed with the District Director within ten (10) days of the asylum or withholding of deportation decision. The District Director shall then forward the complete asylum or withholding of deportation record to the Office of the Immigration Judge having administrative control over the exclusion or deportation proceeding, which shall forward that record, together with the exclusion or deportation record, to the Board. Upon receiving such appeal, the Board shall be deemed to be reopening the exclusion or deportation proceeding for the sole purpose of reviewing the asylum or withholding of deportation decision. No other aspect of the exclusion or deportation proceeding may be reviewed by the Board.

§ 208.4 Special duties toward aliens in custody of INS.

When an alien in the custody of the Service requests asylum or withholding of deportation or expresses fear of persecution or harm upon return to his country of origin or to agents thereof, the Service shall make available the appropriate application forms for asylum or withholding of deportation and shall provide the applicant with a list, if available, of persons or private agencies that can assist in preparation of the application. Such alien shall not be deported or excluded before a decision is rendered on his initial asylum or withholding of deportation application.

§ 208.5 Disclosure to third parties.

(a) An application for asylum or withholding of deportation shall not be disclosed, except as permitted by this section, without the written consent of the applicant. Names and other identifying details shall be deleted from copies of asylum or withholding of deportation decisions maintained in public reading rooms under § 103.9 of this chapter.

(b) The confidentiality of other records kept by the Service (including G–325A forms) that indicate that a specific alien has applied for asylum or withholding of deportation shall also be protected from disclosure. The Service will coordinate with the Department of State to ensure that the confidentiality of these records is maintained when they are transmitted to State Department offices in other countries.

(c) This section shall not apply to any disclosure to:

(1) Any United States Government official or contractor having a need to examine information in connection with:

(i) Adjudication of the asylum or withholding of deportation application;

(ii) The defense of any legal action arising from the adjudication of or failure to adjudicate the asylum or withholding of deportation application;

(iii) The defense of any legal action of which the asylum or withholding of deportation application is a part; or

(iv) Any United States Government investigation concerning any criminal or civil matter;

(2) A representative of the United Nations High Commissioner for Refugees when the Attorney General or his representative, in consultation with the Secretary of State or his representative, determines that examination by the High Commissioner is appropriate; or

(3) Any Federal, state, or local court of the United States considering any legal action:

(i) Arising from the adjudication of or failure to adjudicate the asylum or withholding of deportation application; or

(ii) Arising from the proceedings of which the asylum or withholding of deportation application is a part.

§ 208.6 Interim employment authorization.

(a) The Asylum Officer to whom an asylum or withholding of deportation case is referred shall authorize employment for applicants who are not under detention and whose applications he determines are not frivolous.

(b) Employment authorization shall be for a period of time necessary for the Asylum Officer to decide the application and, if necessary, for final adjudication of any administrative or judicial review. If the application is denied by the Asylum Officer, the employment authorization shall automatically terminate thirty days after the denial by an Asylum Officer or affirmation of denial by appellate authority.

(c) Upon the denied applicant's request, the District Director, in his discretion, may grant further employment authorization pursuant to 8 CFR 274a.12(c)(12).

§ 208.7 Limitations on travel outside the United States.

An applicant who leaves the United States pursuant to advance parole

granted under 8 CFR 212.5(e) shall be deemed to have abandoned his application under this section if he returns to the country of claimed persecution.

§ 208.8 Interview and Procedure.

(a) For each non-frivolous application for asylum or withholding of deportation, an interview shall be conducted by an Asylum Officer, either at the time of application or at a later date to be determined by the Officer in consultation with the applicant. The interview shall be conducted in a nonadversarial manner and out of hearing and view of the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for the form of relief sought. The applicant may have counsel or a representative present and may submit affidavits of witnesses. The entire interview shall be recorded verbatim.

(b) The Asylum Officer shall have authority to administer oaths, present and receive evidence, and question the applicant and any witnesses, if necessary.

(c) Upon completion of the interview, the applicant or his representative shall have an opportunity to make a statement or comment on the evidence presented. The Asylum Officer, in his discretion, may limit the length of such comments or statement and may require their submission in writing.

(d) Following the interview the applicant may be given a period not to exceed 30 days to submit evidence in support of his application, unless, in the discretion of the Asylum Officer, a longer period is required.

(e) The application, all supporting information provided by the applicant, any comments submitted by the Bureau of Human Rights and Humanitarian Affairs of the Department of State, the Asylum Policy and Review Unit of the Department of Justice, or by the Service, the verbatim recording of any interviews and, if there is an appeal, the transcripts thereof, and any other information submitted to the Asylum Officer shall comprise the record.

(f) Where possible, the Asylum Officer shall give expedited consideration to applications of aliens detained under 8 CFR Part 235 or 242.

§ 208.9 Failure to appear.

The unexcused failure of an applicant to appear for a scheduled interview may be deemed an abandonment of the application. Failure to appear shall be excused if the notice of the interview was not mailed to the applicant's current address and such address had been provided to the Office of Refugee, Asylum, and Parole by the applicant prior to the date of mailing in accordance with 8 U.S.C. 1305 and regulations promulgated thereunder, unless the Asylum Officer determines that the applicant received reasonable notice of the interview.

§ 208.10 Comments from the Bureau of Human Rights and Humanitarian Affairs.

(a) At its option, the Bureau of Human Rights and Humanitarian Affairs (BHRHA) of the Department of State may comment on an application it receives pursuant to § 208.3(a) by providing (1) an assessment of the accuracy of the applicant's assertions about conditions in his country of nationality or habitual residence and his own experiences, (2) an assessment of his likely treatment were he to return to his country of nationality or habitual residence, (3) information about whether persons who are similarly-situated to the applicant are persecuted in his country of nationality or habitual residence and the frequency of such persecution, (4) information about whether one of the grounds for denial specified in § 208.13 may apply, or (5) such other information or views as it deems relevant to deciding whether to grant or deny the application.

(b) In all cases, BHRHA shall respond within 45 days of receiving a completed application by either (1) providing comments, (2) requesting additional time in which to comment, or (3) indicating that it does not wish to comment. If BHRHA requests additional time in which to provide comments, the Asylum Officer may grant BHRHA up to 30 additional days when this is necessary to gather information pertinent to the application or may proceed without BHRHA's comments. Failure to receive BHRHA's response shall not preclude final decision by the Asylum Officer if at least 60 days have elapsed since mailing the completed application to BHRHA or if the Deputy Attorney General determines that an expedited decision is necessary or appropriate.

(c) When an Asylum Officer receives an application from an alien in detention under 8 CFR Part 235 or 242, the Officer shall so notify BHRHA and request an expedited comment on the application.

(d) Any Department of State comments provided under this section shall be made a part of the asylum record unless they are classified under Executive Order 12356, 3 CFR Part 166 (1982 Comp.). Unless the comments are classified, the Asylum Officer shall give the applicant a copy of such comments and provide an opportunity for the applicant to respond prior to the issuance of an adverse decision.

§ 208.11 Reliance on information compiled by other sources.

(a) In deciding applications for asylum or withholding of deportation, the Asylum Officer may rely on material provided by the Asylum Policy and Review Unit, the Office of Refugee, Asylum, and Parole, the District Director having jurisdiction over the place of the applicant's residence or the port of entry from which the applicant seeks admission to the United States, or other sources. Prior to the issuance of an adverse decision made in reliance upon such material, that material must be identified and the applicant must be provided with an opportunity to inspect, explain, and rebut the material, unless the material is classified under Executive Order No. 12356.

(b) Nothing in this Part shall be construed to entitle the applicant to conduct discovery directed toward the records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State.

§ 208.12 Establishing refugee status; burden of proof.

(a) The burden of proof is on the applicant for asylum to establish by a preponderance of the evidence that he is a refugee as defined in section 101(a)(42) of the Act. The testimony of the applicant, if credible in light of general conditions in the applicant's country of nationality or habitual residence, may be sufficient to sustain the burden of proof without corroboration.

(b) The applicant may qualify as a refugee either because he has suffered actual past persecution or because he has a well-founded fear of future persecution.

(1) *Past persecution.*

(i) An applicant shall be found to be a refugee on the basis of past persecution if he (A) has suffered persecution in the past in his country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion and (B) is unable or unwilling to return to or avail himself of the protection of that country owing to such persecution.

(ii) If the Asylum Officer determines that the applicant qualifies as a refugee on the basis of past persecution, the Officer shall also determine whether the applicant has a well-founded fear of persecution under paragraph (b)(2) of this section.

(2) *Well-founded fear of persecution.*

(i) An applicant shall be found to be a refugee on the basis of having a well-founded fear of persecution if (A) he has a fear of persecution in his country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion, (B) there is a reasonable possibility of the applicant actually suffering such persecution if he were to return to that country, and (C) he is unable or unwilling to return to or avail himself of the protection of that country because of such fear.

(ii) In evaluating whether the applicant has sustained his burden of proving that he has a well-founded fear of persecution, the Asylum Officer:

(A) Shall not require the applicant to provide evidence that he would be singled out individually for persecution if he establishes that there is a pattern or practice in his country of nationality or last habitual residence of persecution of groups or categories of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(B) Shall give due consideration to evidence that the government of the applicant's country of nationality or habitual residence persecutes its nationals or residents if they leave the country without authorization or seek asylum in another country.

(iii) If the applicant is determined under paragraph (b)(1) of this section to have suffered past persecution, he shall be presumed to have a well-founded fear of persecution unless a preponderance of the evidence establishes that since the time the persecution occurred conditions in the applicant's country of nationality or habitual residence have changed to such an extent that the applicant no longer has a well-founded fear of being persecuted if he were to return.

(c) An applicant shall not qualify as a refugee if he ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. If the evidence raises the possibility that the applicant engaged in such conduct, he shall have the burden of proving by a preponderance of the evidence that he did not so act.

§ 208.13 Approval or denial of application.

(a) The Asylum Officer shall exercise discretion to grant or deny asylum to an applicant who qualifies as a refugee under section 101(a)(42) of the Act.

(b) If the evidence raises the possibility that one or more of the grounds for denial of asylum enumerated in paragraph (c) apply, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(c) *Mandatory denials:* An application for asylum shall be denied if:

(1) The alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community;

(2) There are serious reasons for considering that the alien has committed a serious non-political crime outside the United States prior to arrival in the United States;

(3) The applicant has been firmly resettled within the meaning of § 208.14; or

(4) There are reasonable grounds for regarding the alien as a danger to the security of the United States.

(d) *Discretionary grants or denials.* (1) An application for asylum may otherwise be granted or denied in the exercise of discretion. In deciding whether to grant or deny an application, the Asylum Officer shall consider as favoring a grant of asylum such factors as the applicant's family and other ties to the United States and the fundamentally humanitarian purposes of asylum. Accordingly, maintaining or facilitating family unity should be given appropriate consideration in deciding all asylum applications.

(2) An application may be denied on the ground that the applicant destroyed his immigration documents, attempted to use fraudulent documents to obtain lawful status in the United States, or otherwise attempted to defraud the U.S. Government especially if such fraud was committed primarily to avoid normal refugee admissions procedures available to the applicant and was not necessary to exit the country of persecution or temporary transit. However, an application shall not be denied on the ground that the applicant entered or attempted to enter the United States without inspection, without documentation, through the use of fraudulent documentation, or in some other unlawful manner if the applicant establishes (i) such entry or attempted entry was necessary because the applicant came directly from a country of persecution or from a country through which it was necessary to briefly transit on his route of flight, and (ii) the applicant presented himself to U.S. immigration authorities promptly after his arrival in the United States.

(3) An application for asylum shall be denied in the exercise of discretion if the applicant qualifies for refugee status on the basis of past persecution under § 208.12(b)(1) but is determined not to have a well-founded fear of future persecution under § 208.12(b)(2), unless the Asylum Officer determines that the applicant has demonstrated compelling reasons for being unwilling to return to his country of nationality or last habitual residence arising out of the severity of the past persecution; if the applicant demonstrates such compelling reasons, he shall be granted asylum and permitted to remain in the United States.

§ 208.14 Definition of "Firm Resettlement".

An alien is considered to be firmly resettled if he was offered permanent resident status, citizenship, or some other type of permanent resettlement by another nation and he accepted that offer, unless he establishes to the satisfaction of the Asylum Officer reviewing the case:

(a) That his entry into that nation was a necessary consequence of his flight from persecution, that he remained in that nation only as long as was necessary to arrange onward travel, and that he did not establish significant ties in that nation, or

(b) That the conditions of his residence in that nation were so substantially and consciously restricted by the authority of the country of refuge that he was not in fact resettled. In making his determination, the Asylum Officer shall consider the conditions under which other residents of the country live, the type of housing made available to the refugee, whether permanent or temporary, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation, education, public relief, or naturalization, ordinarily available to others resident in the country.

§ 208.15 Entitlement to withholding of deportation.

(a) *Consideration of application for withholding of deportation.* If the Asylum Officer denies an alien's application for asylum, he shall also decide whether the alien is entitled to withholding of deportation under section 243(h) of the Act. If the application for asylum is granted, no decision on withholding of deportation will be made unless and until the grant of asylum is later revoked or terminated and deportation proceedings are commenced.

(b) *Eligibility for withholding of deportation; burden of proof.* (1) The burden of proof is on the applicant for withholding of deportation to establish

by a preponderance of the evidence that his life or freedom would be threatened in the proposed country of deportation on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant may be sufficient to sustain the burden of proof without corroboration.

(2)(i) The applicant's life or freedom shall be found to be threatened if it is more likely than not that he would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion.

(ii) If the applicant is determined to have suffered persecution in the past in the proposed country of deportation on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that his life or freedom would be threatened on return to that country unless a preponderance of the evidence establishes that conditions in the country have changed since the persecution occurred to such an extent that it is no longer more likely than not that the applicant would be persecuted there.

(iii) In evaluating whether the applicant has sustained the burden of proving that his life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the Asylum Officer:

(A) Shall not require the applicant to provide evidence that he would be singled out individually for persecution if he establishes that it is more likely than not that a similarly-situated person would be persecuted in the country of proposed deportation on account of race, religion, nationality, membership in a particular social group, or political opinion;

(B) Shall give due consideration to evidence that the government of the country persecutes its nationals or residents if they leave the country without authorization or seek asylum in another country.

(c) *Approval of application.* (1) Subject to paragraph (2) below, an application for withholding of deportation to a country of proposed deportation shall be granted if the applicant's eligibility for withholding is established pursuant to subsection (b) above.

(2)(i) An application for withholding of deportation shall be denied if:

(A) The alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(B) The alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(C) There are serious reasons for considering that the alien has committed a serious nonpolitical crime outside the United States prior to arrival in the United States; or

(D) There are reasonable grounds for regarding the alien as a danger to the security of the United States.

(ii) The applicant shall have the burden of rebutting by a preponderance of the evidence any evidence that raises the possibility that he is ineligible for withholding of deportation under paragraph (c)(2)(i) of this section.

(d) In the event that asylum is denied solely in the exercise of discretion, pursuant to § 208.13(d), but the applicant is subsequently granted withholding of deportation under this section, thereby effectively precluding admission of the applicant's spouse or minor children following to join him, the denial of asylum shall be reconsidered. Factors to be so considered will include the reasons for the denial and reasonable alternatives available to the applicant such as reunification with his spouse or minor children in a third country.

§ 208.16 Decision.

The decision of the Asylum Officer to grant or deny asylum or withholding of deportation shall be communicated in writing to the applicant, the District Director having jurisdiction over the place of the applicant's residence or over the port of entry from which he sought admission to the United States, the Assistant Commissioner, Refugee, Asylum, and Parole, and the Asylum Policy and Review Unit of the Department of Justice. An adverse decision will state why asylum or withholding of deportation was denied and will contain an assessment of the applicant's credibility.

§ 208.17 Review of decisions and appeal.

(a) The Assistant Commissioner, Office of Refugee, Asylum, and Parole, shall have authority to review decisions by Asylum Officers, before they become effective, in any cases he shall designate. The Office of the Deputy Attorney General, assisted by the Asylum Policy and Review Unit, shall have authority to review decisions by Asylum Officers, before they become effective, in any cases designated pursuant to 28 CFR 0.15(f)(3). There shall be no right of appeal to the Office of Refugee, Asylum, and Parole, to the Office of the Deputy Attorney General, or to the Asylum Policy and Review Unit, and parties shall have no right to appear before such offices in the course of such review.

(b) The decisions of Asylum Officers shall be binding upon Immigration Judges in exclusion and deportation cases in which an applicant raises a claim of asylum or withholding of deportation as a bar to exclusion or deportation. In such a case, the Immigration Judge shall incorporate the Asylum Officer's decision into the exclusion or deportation decision.

(c) Except as provided in § 208.3 (c) and (e) and in § 253.1(f) of this chapter, appeals from asylum or withholding of deportation decisions may be taken only after such decisions have been incorporated into an exclusion or deportation decision by an Immigration Judge and exclusion or deportation has been ordered. The Notice of Appeal (Form I–290(a)) shall be submitted to the Office of the Immigration Judge where the exclusion or deportation decision was rendered, as provided in 8 CFR 3.36. Upon receipt of the Notice of Appeal, the record of the asylum or withholding of deportation proceeding shall be incorporated into the record of the exclusion or deportation proceeding by the Office of the Immigration Judge and forwarded to the Board of Immigration Appeals for review.

§ 208.18 Motion to reopen or reconsider.

(a) *With the District Director.* (1) An asylum or withholding of deportation proceeding may be reopened or a decision from such a proceeding reconsidered for proper cause upon motion. The motion shall state new facts to be proved or errors in the original decision and shall be supported by affidavits or other evidentiary material that establishes those facts or demonstrates those errors and makes a prima facie showing of eligibility for asylum or withholding of deportation. (2) Except as provided by paragraphs (b), (d), and (e) of this section, a motion to reopen or reconsider shall be filed with the District Director having jurisdiction over the location at which the original determination was made, who shall immediately forward the motion to an Asylum Officer with jurisdiction in his district. The Asylum Officer shall grant the motion only if the evidence offered is material and was not available or could not have been discovered or presented at the original proceeding and the applicant has made a prima facie showing of eligibility for asylum or withholding of deportation.

(b) *Motions pending completion of exclusion or deportation proceedings.* If exclusion or deportation proceedings have been commenced against a person,

any motion to reopen an original asylum or withholding of deportation proceeding or to reconsider the decision in such an original proceeding shall be filed with the Office of the Immigration Judge. That Office shall refer such motion to an Asylum Officer who shall immediately determine whether to grant the motion pursuant to subsection (a) above. If the motion is granted, the Asylum Officer shall so notify the Immigration Judge with administrative control over the exclusion or deportation proceeding, who shall render no final decision in that proceeding until a decision on the merits of the asylum or withholding of deportation claim has been rendered by the Asylum Officer and returned to the Immigration Judge together with the record. If the motion is not granted, the Asylum Officer shall so notify the Immigration Judge who shall conclude the exclusion or deportation proceedings.

(c) *Motions after completion of exclusion or deportation proceedings.* If exclusion or deportation proceedings before an Immigration Judge have been completed and a final exclusion or deportation order has been entered, pursuant to 8 CFR 3.37, any motion to reopen an original asylum or withholding of deportation proceeding or to reconsider the decision in such an original proceeding shall be filed with the District Director charged with executing the order, who shall immediately forward the motion to an Asylum Officer with jurisdiction in his district. The Asylum Officer shall immediately determine whether to grant the motion pursuant to paragraph (a) of this section. If the motion is granted, the Asylum Officer shall so notify the District Director who shall stay execution of the exclusion or deportation order until a decision on the merits of the asylum or withholding of deportation claim has been rendered by the Asylum Officer. If asylum or withholding of deportation is granted, the Asylum Officer shall so notify the District Director who shall file a motion with the Immigration Judge to reopen the exclusion or deportation proceeding and to vacate or amend the original order as appropriate. If the motion is not granted, or if asylum and withholding of deportation are denied, the Asylum Officer shall so notify the District Director who may then execute the exclusion or deportation order, unless an appeal of the asylum or withholding of deportation decision is taken to the Board of Immigration Appeals pursuant to § 208.3(c).

(d) *Motions in the course of an appeal to BIA.* If an exclusion or deportation order has been appealed to the Board of Immigration Appeals, a motion to reopen an original asylum or withholding of deportation proceeding or to reconsider the decision in such an original proceeding shall be filed with the Board, which shall immediately determine whether to grant such motion pursuant to the standard set forth in paragraph (a) of this section. If the motion is granted, the Board shall refer the case to the Assistant Commissioner, Office of Refugee, Asylum, and Parole, who shall assign it in turn to an Asylum Officer. If the Board so refers the case upon granting the motion, it shall render no final decision on the appeal until a decision on the merits of the asylum or withholding of deportation claim has been rendered by the Asylum Officer and returned to the Board for review in conjunction with its review of the exclusion or deportation order.

(e) *Motions after exclusion or deportation is affirmed by BIA.* If an exclusion or deportation order has been affirmed by the Board of Immigration Appeals, any motion to reopen an original asylum or withholding of deportation proceeding or to reconsider the decision in such an original proceeding shall be filed with the Board, which shall immediately determine whether to grant such motion pursuant to the standard set forth in paragraph (a) of this section. If the motion is granted, the Board shall reopen the appeal before it and shall notify the District Director charged with executing the exclusion or deportation order, who shall stay the execution of the order until a decision on the merits of the asylum or withholding of deportation claim has been reached. The Board shall then refer the case to the Assistant Commissioner, Office of Refugee, Asylum, and Parole, who shall assign it to an Asylum Officer. The appeal so reopened by the Board shall remain before it until a decision on the merits of the asylum or withholding of deportation claim has been rendered by the Asylum Officer and that decision, together with the record, has been returned to the Board for review.

(f) When considering a motion to reopen or reconsider, an Asylum Officer, in his discretion, may grant the applicant an interview.

§ 208.19 Approval and employment authorization.

When an alien's application for asylum is granted, he is granted asylum status for an indefinite period. Employment authorization is automatically granted or continued for persons granted asylum or withholding of deportation.

§ 208.20 Admission of asylee's spouse and children.

(a) *Eligibility.* A spouse, as defined in section 101(a)(35) of the Act, or child, as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of the Act, may also be granted asylum if accompanying or following to join the principal alien, unless it is determined that (1) the spouse or child ordered, incited, assisted, or otherwise participated in the persecution of any persons on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) the spouse or child, having been convicted by a final judgment of a particularly serious crime in the United States, constitutes a danger to the community of the United States; (3) there are serious reasons for considering that the spouse or child has committed a serious, non-political crime outside the United States; or (4) there are reasonable grounds for regarding the spouse or child a danger to the security of the United States.

(b) *Relationship.* The relationship of spouse and child as defined in section 101(b)(1) of the Act must have existed at the time the principal alien's asylum application was approved, except for children born to or legally adopted by the principal alien and spouse after approval of the principal alien's asylum application.

(c) *Spouse or child in the United States.* When a spouse or child of an alien granted asylum is in the United States but was not included in the principal alien's application, the principal alien may request asylum for the spouse or child by filing Form I–730 with the District Director having jurisdiction over his place of residence, regardless of the status of that spouse or child in the United States.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the alien may request asylum for the spouse or child by filing form I–730 with the District Director, setting forth the full name, relationship, date and place of birth, and current location of each such person. Upon approval of the request, the District Director shall notify the Department of State, which will send an authorization cable to the American Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or children are located.

(e) *Denial.* If the spouse or child is found to be ineligible for the status accorded under section 208(c) of the Act,

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a written notice explaining the basis for denial shall be forwarded to the principal asylee. No appeal shall lie from this decision.

(f) *Burden of proof.* To establish the claim of relationship of spouse or child as defined in section 101(b)(1) of the Act, evidence must be submitted with the request as set forth in Part 204 of this chapter. Where possible this will consist of the documents specified in 8 CFR 204.2(c) (2) and (3). The burden of proof is on the principal alien to establish by a preponderance of the evidence that any person on whose behalf he is making a request under this section is an eligible spouse or child.

(g) *Duration.* The spouse or child qualifying under section 208(c) of the Act shall be granted asylum for an indefinite period unless the principal's status is revoked.

§ 208.21 Effect on deportation proceedings.

(a) An alien who has been granted asylum may not be excluded or deported unless his asylum status is revoked pursuant to § 208.23. An alien in exclusion or deportation proceedings who is granted withholding of deportation may not be deported to the country as to which his deportation is ordered withheld unless withholding of deportation is revoked pursuant to § 208.23.

(b) When an alien's asylum status or withholding of deportation is terminated under this chapter, he shall be placed in deportation proceedings. Deportation proceedings may be conducted concurrently with a revocation hearing scheduled under § 208.23.

§ 208.22 Restoration of status.

An alien who was maintaining his nonimmigrant status at the time of filing an application for asylum or withholding of deportation shall continue or be restored to that status, if it has not expired, notwithstanding the denial of asylum or withholding of deportation.

§ 208.23 Revocation of asylum or withholding of deportation.

(a) Upon motion by the Assistant Commissioner, Office of Refugee, Asylum, and Parole, and following a hearing before an Asylum Officer, the grant to an alien of asylum may be revoked if, by a preponderance of the evidence, the Service establishes that:

(1) The alien is no longer a refugee due to a change of conditions in the alien's country of nationality or habitual residence;

(2) There is a clear showing of fraud in the alien's application such that he was not eligible for asylum at the time it was granted; or

(3) The alien has committed any act that would have been grounds for denial of asylum under section 208.13(c).

(b) Upon motion by the Assistant Commissioner, Office of Refugee, Asylum, and Parole, and following a hearing before an Asylum Officer, the grant to an alien of withholding of deportation may be revoked if, by clear and convincing evidence, the Service establishes that:

(1) The alien is no longer entitled to withholding of deportation due to a change of conditions in the country to which deportation was withheld;

(2) There is a clear showing of fraud in the alien's application such that he was not eligible for withholding of deportation at the time it was granted;

(3) The alien has committed any other act that would have been grounds for denial of withholding of deportation under § 208.15(c)(2).

(c) Upon motion by the Assistant Commissioner to revoke asylum status or withholding of deportation, the alien shall be given notice of intent to revoke, with the reason therefore, at least thirty days before the hearing by the Asylum Officer. The alien shall be provided the opportunity to present evidence tending to show that he is still eligible for asylum or withholding of deportation. If the Asylum Officer determines that the alien is no longer eligible for asylum or withholding of deportation, the alien shall be given written notice that asylum status or withholding of deportation along with employment authorization are revoked.

(d) The termination of asylum status for a person who was the principal applicant shall result in termination of the asylum status of a spouse or children whose status was based on the asylum application of the principal.

(e) The Office of the Deputy Attorney General, assisted by the Asylum Policy and Review Unit, shall have authority to review decisions to revoke asylum or withholding of deportation, before they become effective, in any cases designated pursuant to 28 CFR 0.15(f)(3). There shall be no right of appeal to the Office of the Deputy Attorney General or to the Asylum Policy and Review Unit and parties shall have no right to appear before such offices in the course of such review.

PART 236—[AMENDED]

3. The authority citation for Part 236 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1362.

4. In PART 236, EXCLUSION OF ALIENS, § 236.3 is revised to read as follows:

§ 236.3 Applications for asylum or withholding of deportation.

(a) If an alien expresses fear of persecution or harm upon return to his country of origin or to a country to which he may be deported after exclusion from the United States pursuant to Part 237 of this chapter, the Immigration Judge shall (1) advise the alien that he may apply for asylum in the United States or withholding of deportation to that other country, and (2) make available the appropriate application forms.

(b) An application for asylum or withholding of deportation must be filed with the Office of the Immigration Judge, pursuant to § 208.3(b) of this chapter.

(c) Applications for asylum or withholding of deportation so filed will be decided by an Asylum Officer pursuant to Part 208 of this chapter.

PART 242—[AMENDED]

5. The authority citation of Part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1252, 1254, 1362.

6. In PART 242, PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING AND APPEAL, § 242.17 (c), is revised to read as follows:

§ 242.17 [Amended]

* * * * *

(c) *Applications for asylum or withholding of deportation.* (1) The Immigration Judge shall notify the respondent that if he is finally ordered deported his deportation will in the first instance be directed pursuant to section 243(a) of the Act to the country designated by the respondent and shall afford him an opportunity then and there to make such designation. The Immigration Judge shall then specify and state for the record the country, or countries in the alternative, to which respondent's deportation will be directed pursuant to section 243(a) of the Act if the country of his designation will not accept him into its territory, or fails to furnish timely notice of acceptance, or if the respondent declines to designate a country.

(2) If the alien expresses fear of persecution or harm in any of the countries to which he might be deported pursuant to paragraph (1) of this section, the Immigration Judge shall (i) advise the alien that he may apply for asylum in the United States or withholding of

deportation to those countries, and (ii) make available the appropriate forms.

(3) An application for asylum or withholding of deportation must be filed with the Office of the Immigration Judge, pursuant to § 208.3(b) of this chapter.

(4) Applications for asylum or withholding of deportation so filed will be decided by an Asylum Officer pursuant to Part 208 of this chapter.

PART 253—[AMENDED]

7. The authority citation for Part 253 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1282, 1283, 1285.

8. In PART 253, PAROLE OF ALIEN CREWMAN, § 253.1(f) is revised to read as follows:

§ 253.1 [Amended]

* * * * *

(f) *Crewman, stowaway, or alien temporarily excluded under section 235(c) alleging persecution.* Any alien crewman, stowaway, or alien temporarily excluded under section 235(c) of the Act who alleges that he cannot return to his country of nationality or habitual residence (if not a national of any country) because of fear of persecution in that country on account of race, religion, nationality, membership in a particular social group, or political opinion, is eligible to apply for asylum or withholding of deportation under Part 208 of this chapter. If the alien is on a vessel or other conveyance and makes such fear known to an immigration inspector or other official making an examination on the conveyance, he shall be promptly removed from the conveyance in accordance with § 233.1 of this chapter. If the alien makes his fear known to an official while off such conveyance, he shall not be returned to the conveyance but shall be retained in or transferred to the custody of the Service. In either case, the alien shall be provided the appropriate application forms and such other information as is required by § 208.4 of this chapter and may then have ten (10) days within which to file an application for such relief with the District Director having jurisdiction over the port of entry from which the applicant seeks entry into the United States. The District Director, pursuant to § 208.3(a) of this chapter, shall immediately forward any such application to an Asylum Officer with jurisdiction over his district. Pending adjudication of the application by the Asylum Officer, the applicant shall be detained by the Service, or paroled into the custody of the ship's agent or otherwise paroled in accordance with § 212.5 of this chapter and shall not be excluded or deported before a decision is rendered by the Asylum Officer on his asylum application. A decision denying asylum to an alien crewman or stowaway, but not an alien temporarily excluded under section 235(c), may be appealed directly to the Board of Immigration Appeals. Such appeal must be filed within ten (10) days of the Asylum Officer's decision by filing a notice of appeal on Form I-290A with the District Director, who shall immediately forward the notice to the Asylum Officer. The Asylum Officer shall transmit the notice of appeal, his decision, and the record on which that decision was based, to the Board of Immigration Appeals. The filing of a notice of appeal shall stay the exclusion or deportation of the applicant pending decision on the appeal by the Board.

* * * * *

Dated: August 21, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87-19682 Filed 8-27-87; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 87-006]

Cattle From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation into the United States of cattle from Canada by designating Yukon Territory and Northwest Territories as brucellosis certified free territories. The adoption of this proposal would relieve restrictions on the importation of certain cattle from Canada since we have determined that all provinces and territories of Canada are free of brucellosis.

DATE: Consideration will be given only to comments postmarked or received on or before October 27, 1987.

ADDRESS: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-006. Comments received may be inspected in Room 728 of the Federal Building between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Bowen, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations), regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases. Section 92.20(c) of the regulations states that cattle from Canada six months of age or older, except steers and all cattle for immediate slaughter, may be imported only if they are accompanied by a brucellosis test certificate or brucellosis vaccination certificate.

To qualify for a brucellosis test certificate or brucellosis vaccination certificate, cattle from Canada must meet one of the alternate sets of requirements set forth in § 92.20(c) of the regulations. One alternative allows cattle to qualify for a brucellosis test certificate if they originated from brucellosis certified free provinces of Canada (known in Canada as a brucellosis accredited free province or territory), if they have been tested for brucellosis with negative results within 30 days before their date of entry, and if they had originated from a herd that had been maintained as a herd unit for at least one year before their exportation.

Under Canadian law, as a condition to maintain status as a brucellosis accredited free province or territory, dairy herds in the province or territory must be subjected to a minimum of three milk ring tests for brucellosis each year. Also, nondairy herds must have had a rate of at least 5 percent market cattle tests conducted each year or a complete herd test at the end of each 3-year period. Further, cattle for breeding purposes originating from provinces or territories of Canada, other than those that are brucellosis accredited free, must comply with testing requirements for movement into the brucellosis accredited free provinces and territories.

Our proposal would add Yukon Territory and Northwest Territories to the regulations as brucellosis certified free. Nevertheless, since these are territories and not provinces, we cannot add them to the list of brucellosis

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certified free provinces of Canada. Therefore, we are proposing to revise the definition heading of "Brucellosis certified free provinces of Canada" to read "Brucellosis certified free provinces and territories of Canada." We are also proposing to eliminate nonsubstantive language from the definition.

The regulations in § 92.20(c) state that under certain conditions cattle from Canada may qualify for a brucellosis test certificate if they originate from brucellosis certified free provinces of Canada. Because we are proposing to add territories as brucellosis certified free, cattle from Canada may qualify for a brucellosis test certificate, if they originate from brucellosis certified free provinces or territories of Canada. Therefore, we are also proposing to revise § 92.20(c) by changing brucellosis certified free provinces to brucellosis certified free provinces and territories wherever it appears. If this proposal is adopted as a final rule, all of Canada will be designated as brucellosis certified free.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We are proposing to recognize all provinces and territories of Canada as brucellosis certified free. We anticipate that if the proposed rule is adopted, there will be no significant change in the number of cattle imported into the United States from Canada and that there will be no significant change with respect to the cost of importing cattle into the United States from Canada. This amendment would directly affect very few, if any, cattlemen since the cattle population in Yukon Territories and Northwest Territories is small, and few cattle are expected to the United States from those territories.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act.

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMALS AND POULTRY PRODUCTS: INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 would be amended as follows:

1. The authority citation for Part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.1 [Amended]

2. In § 92.1, the definition of "Brucellosis certified free provinces of Canada" would be revised to read as follows:

* * * * * *

Brucellosis certified free provinces and territories of Canada. Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, (including Labrador), Northwest Territories, Nova Scotia, Ontario, Quebec, Prince Edward Island, Saskatchewan, and Yukon Territory.

* * * * * *

§ 92.20 [Amended]

3. Section 92.20, paragraph (c) would be amended by changing "brucellosis certified free provinces" to read "brucellosis certified free provinces and territories" wherever it appears in the paragraph and by changing "brucellosis certified free province" to read "brucellosis certified free province or territory" wherever it appears in the paragraph.

Done in Washington, DC, this 24th day of August 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–19759 Filed 8–27–87; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–ASW–33]

Proposed Establishment of Transition Area; Berclair, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a transition area at Berclair, TX. The intended effect of the proposed action is to provide adequate controlled airspace for aircraft executing a standard instrument approach procedure (SIAP), developed by the Department of Navy, to the Navy Auxiliary Landing Field (NALF), Goliad Airport, Berclair, TX. This action is necessary to ensure segregation of aircraft operating to and from the airport under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR). This proposed action will change the airport status from VFR to IFR.

DATES: Comments must be received on or before September 30, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87–ASW–33, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ASW–33." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating a 700-foot transition area at NALF Goliad Airport, Berclair, TX. The development of an instrument approach procedure to NALF Goliad Airport by the Department of Navy entails the designation of a transition area at Berclair, TX, at and above 700 feet above ground level within which aircraft are provided air traffic control services. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under IFR and other aircraft operating under VFR. This proposed action will change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Berclair, TX [New]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the NALF Goliad Airport (latitude 28°36'30" N., longitude 97°36'33" W.) within 4 miles each side of the 315° radial of the Goliad TACAN (latitude 28°37'25" N., longitude 97°37'30" W.) extending from the 8.5-mile radius area to 11.5 miles northwest of the airport; excluding that portion that coincides with the Beeville, TX Transition Area.

Issued in Fort Worth, TX on August 14, 1987.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 87–19736 Filed 8–27–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 942

[Docket No.]

Cordell Bank National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce (DOC).

ACTION: Proposed rule; notice of proposed designation; summary of draft management plan; and notice of public availability of draft management plan and draft environmental impact statement.

SUMMARY: The National Oceanic and Atmospheric Administration, by the proposed Designation Document contained in this notice, proposes to designate an area of marine waters encompassing a total of 101.10 square nautical miles surrounding Cordell Bank, which is located approximately 50 nautical miles west-northwest of San Francisco, California, as the Cordell Bank National Marine Sanctuary. By this notice, NOAA also proposes to issue regulations to implement the proposed designation and regulate activities in the sanctuary consistent with the provisions in the proposed Designation Document. The notice also summarizes the draft management plan prepared for the proposed sanctuary which details the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance, activities for the area. Finally, the notice announces the public availability of the draft management plan and the draft environmental impact statement prepared for the proposed designation, the proposed implementing regulations, and the draft management plan.

Before an area may be designated as a national marine sanctuary, section 303 of the Marine Protection, Research, and Sanctuaries Act, as amended (16 U.S.C.

1433) ("Act") requires that the Secretary of Commerce make a number of statutory findings and section 304 (16 U.S.C. 1634) requires that this subject notice be published in the **Federal Register** and that a variety of other actions to be taken.

The purpose of this notice is to comply with the provisions of section 304 with respect to a proposal to designate an area as a national marine sanctuary and to invite public comments on the proposal and the proposed rules, and to announce the availability of, and to request public comments on, the draft management plan and the draft environmental impact statement.

After the close of the comment period and consideration of the comments received, and review by the Congress and the consultations specified in section 304, the findings specified in section 303 will be made and the other actions specified in section 304 will be taken including the publication of a notice of designation together with final regulations implementing the designation, or a notice withdrawing the proposed designation will be published.

DATE: Comments will be considered if received by October 27, 1987.

ADDRESSES: Send comments to Vickie A. Allin, Acting Chief, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. Copies of the draft management plan and the draft environmental impact statement are available upon request to the Office of Ocean and Coastal Resource Management.

FOR FURTHER INFORMATION CONTACT: William W. Windom, 202/673–5122.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research, and Sanctuaries Act, as amended (16 U.S.C. 1431 *et seq.*) ("Act"), authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries if, as required by section 303 of the Act (16 U.S.C. 1433), the Secretary finds, in consultation with the Congress, a variety of specified officials, and other interested persons, that the designation will fulfill the purposes and policies of Title III (set forth in section 301(b) of the Act (16 U.S.C 1431(b)) and: (1) The area proposed for designation is of special national significance due to its resource or human-use values; (2) existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; (3) designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and (4) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

Before the Secretary may designate an area as a national marine sanctuary, section 303 (16 U.S.C. 1433) requires him to make the above described statutory findings and section 304 (16 U.S.C 1434) requires him to issue this subject notice in the **Federal Register** and take a variety of other actions including preparation of a draft management plan for the sanctuary and a draft environmental impact statement.

The authority of the Secretary to designate national marine sanctuaries and administer the other provisions of the Act have been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management in the National Oceanic and Atmospheric Administration (DOC/DOO 25–5A, section 301(z), August 25, 1985).

The waters surrounding Cordell Bank were nominated for status as a national marine sanctuary in July 1981. On June 30, 1983, NOAA declared the area an active candidate for further consideration as a national marine sanctuary. A public scoping meeting to gather information to determine the range and significance of issues related to sanctuary designation and management was held on April 25, 1984.

Cordell Bank and its surrounding waters, because of a rare combination of oceanic conditions and undersea topography, provide a highly productive marine environment in a discrete, well defined area. The prevailing California Current flows southward along the coast bringing nutrients to the upper levels of the Bank, while the upwelling of nutrient-rich, bottom waters stimulates the growth of planktonic organisms. These nutrients suport the entire food chain from small crustaceans to the fish, marine mammals and seabirds that form the exceptionally vigorous, ecological community flourishing at Cordell Bank. Designation of the area as a national marine sanctuary is proposed for the purposes of protecting and conserving this special ecological community.

With regard to a proposal to designate an area as a national marine sanctuary, section 304(a)(4) requires that the proposed designation include the geographic area proposed to be included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational or esthetic value; and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. As specified in section 304(a)(4), the terms of the designation may be modified only by the same procedures by which the original designation was made. Thus the designation serves as a constitution for the sanctuary.

The following proposed Designation Document, proposes to designate a 101.10 square nautical mile portion of the waters surrounding Cordell Bank, which is located approximately 50 nautical miles west-northwest of San Francisco, California, as the Cordell Bank National Marine Sanctuary.

Proposed Designation Document for The Cordell Bank National Marine Sanctuary

Under the authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. 1431 *et seq.*, the Cordell Bank and its surrounding waters offshore northern California, as described in Article 2, are hereby designated as a National Marine Sanctuary for the purposes of protecting and conserving the special ecological community residing therein.

Article 1. Effect of Designation

Within the area designated as the Cordell Bank National Marine Sanctuary (the Sanctuary) described in Article 2, the Act authorizes the promulgation of such regulations as are necessary and reasonable to protect the conservation, recreational, ecological, historical, research, educational, or esthetic values of the Sanctuary. Article 4 of this Designation Document lists those activities which have been identified as activities that may require regulation now or in the future in order to protect sanctuary resources. Listing, however, does not by itself imply that an activity will be regulated. Such restrictions may be imposed only by specific regulation. Activities not already listed may be regulated only by amending Article 4 by the same procedures through which the original Designation was made.

Article 2. Description of the Area

The Sanctuary consists of the Cordell Bank and the area of waters within 3 nautical miles beyond the 50 fathom depth contour surrounding The Bank. the Sanctuary encompasses 101.10 square nautical miles. The precise boundaries are defined by regulation.

Article 3. Characteristics of the Area that Give it Particular Value

Cordell Bank is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive environment in a discrete, well-defined area. The Bank consists of a series of steep-sided ridges and narrow pinnacles rising from the edge of the continental shelf. It lies on a plateau 300–400 feet (91 to 122 meters) deep and ascends to within about 115 feet (35 meters) of the surface. The prevailing California Current flows southward along the coast bringing nutrients to the upper levels of the Bank, while the upwelling of nutrient-rich, bottom waters stimulates the growth of planktonic organisms. These nutrients, combined with high light penetration in Bank waters and wide depth ranges in the vicinity, have led to a unique association of subtidal and oceanic species. The vigorous, biological community flourishing at Cordell Bank includes an exceptional assortment of algaes, invertebrates, fish, marine mammals and seabirds.

Article 4. Scope of Regulation

Section 1.—Activities Subject to Regulation

To protect the Sanctuary's distinctive values, the following activities may be regulated within the Sanctuary and adjacent waters to the extent necessary and reasonable to ensure the protection of the Sanctuary's conservation, recreational, ecological, historical, research, education or esthetic values:

a. Depositing or discharging any material or substance;

b. Removing or damaging hydrocoral and other resources; and

c. Hydrocarbon (oil and gas) activities will not be subject to regulation at this time but may be regulated in the future if deemed necessary for resource protection.

Section 2.—Consistency with International Law

The regulations governing activities listed in Section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

Section 3.—Emergency Regulations

Where essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities, including those not listed in Section 1 of this Article, may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article will be proposed in accordance with the procedures specified in Article 6.

Article 5. Relation to Other Regulatory Programs

Section 1.—Fishing

The regulation of fishing is not authorized under Article 4. Fishing vessels, however, may be regulated with respect to discharges in accordance with Article 4, Section 1, paragraph (b). All regulatory programs pertaining to fishing, including Fishery Management Plans promulgated under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, will remain in effect. All permits, licenses, and other authorizations issued pursuant to the Magnuson Act shall be valid within the Sanctuary subject only to the activity regulations issued pursuant to Article 4.

Section 2.—Defense Activities

The regulation of activities listed in Article 4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. All activities currently carried out by the Department of Defense within the area of the proposed Sanctuary are necessary for the national defense and, therefore, are not subject to Sanctuary prohibitions. Additional activities having the potential for significant environmental impact may be exempted after consultation between the Department of Commerce and the Department of Defense.

Section 3.—Other Programs

All applicable regulatory programs shall remain in effect, and all permits, licenses, and other authorizations issued pursuant to those authorities shall be valid, subject only to the regulation of activities pursuant to Article 4.

Article 6. Alterations to this Designation

This designation may be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the Pacific Fishery Management Council, review by the appropriate Congressional committees, and approval by the Secretary of Commerce or his designee.

End of Designation Document.

Additional Information

Section 304 requires the Secretary to submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, on the same day as this notice is published, a prospectus on the proposal which must contain, among other things, the terms of the proposed designation, the proposed regulations, a draft managment plan detailing the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities, for the area, and a draft environmental impact statement. In accordance with section 304, the required prospectus has been submitted to the Congressional committees and the required draft management plan is summerized below. Copies of the draft management plan are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

Summary of Draft Management Plan

The draft management plan for the proposed sanctuary sets forth the sanctuary's location and provides details on the important resources and uses of the sanctuary. An action plan describes the resource protection, research, and interpretive programs and details the specific activities to be taken in each program. The administrative section of the plan includes a detailed breakdown, by program area, of agency roles and responsibilities. The sanctuary goals and objectives are:

Resource Protection

The highest priority management goal is to protect the marine environment and resources of the Cordell Bank National Marine Sanctuary. The specific objectives of resource protection efforts are to:

- Prevent injury to the resources by promulgating regulations to protect them from the adverse effects of harmful effluents and solid wastes and from being damaged or taken by divers;
- Establish cooperative agreements and other mechanisms for coordination among the agencies participating with NOAA in sanctuary management;
- Develop an effective and coordinated program for the enforcement of sanctuary regulations;
- Promote public awareness of, and voluntary user compliance with, regulations through an interpretive program stressing resource sensitivity and wise use; and
- Reduce threats to sanctuary resources raised by major emergencies through contingency and emergency-response planning.

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Research

The purpose of sanctuary research activities is to improve understanding of the Cordell Bank environment and resources and to resolve specific management problems, some of which may involve resources common to both the Bank and the nearby Point Reyes-Farallon Islands National Marine Sanctuary. Research results will be used in interpretive programs for visitors and others interested in the sanctuary, as well as for resource protection. Specific objectives for the research program are to:

- Establish a framework and procedures for administering research to ensure that research projects are responsive to management concerns and that results contribute to improved management of the sanctuary;
- Gather baseline data on the physical, chemical and biological oceanography of the sanctuary;
- Initiate a monitoring program to assess environmental changes as they occur;
- Identify the range of effects on the environment that would result from predicted changes in human activity;
- Incorporate research results into the interpretive program in a format useful for the general public; and
- Encourage information exchange among all the organizations and agencies undertaking research in the sanctuary to promote more informed management.

Interpretation

The goal for interpretive programs is to improve public awareness and understanding of the significance of the sanctuary and the need to protect its resources. The management objectives designed to meet this goal are to:

- Provide the public with information on the sanctuary, its goals and objectives, with an emphasis on the need to use these resources wisely to ensure their long-term viability;
- Broaden support for the sanctuary and sanctuary management by offering programs suited to visitors with a range of diverse interests;
- Provide for public involvement by encouraging feedback on the effectiveness of interpretive programs, collaboration with sanctuary management staff in extension and outreach programs, and participation in other volunteer programs; and
- Collaborate with other organizations to provide interpretive services complementary to the sanctuary program.

Visitor Use

The sanctuary goal for visitor management is to encourage commercial and recreational use of the sanctuary compatible with resource protection. Specific management objectives are to:

- Provide relevant information about sanctuary regulations, use policies and standards;
- Collaborate with public and private organizations in promoting compatible use of the sanctuary by exchanging information concerning the commercial and recreational potential of the sanctuary; and
- Assess the current levels of use and monitor use over time to identify and control potential degradation of resources and minimize potential user conflicts.

Executive Order 12291

Under Executive Order 12291, the Department must judge whether the regulations proposed in this notice are "major" within the meaning of section 1 of Order, and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. The Assistant Administrator has determined that the regulations proposed in this notice are not major because, if adopted, they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The regulations proposed in this notice would prohibit only a narrow range of activities (depositing or discharging materials or substances in or near the proposed sanctuary which could injure the sanctuary and removing or damaging benthic organisms on the ridges and peaks of Cordell Bank) in a relatively small portion of the seas, would establish procedures whereby permits to conduct an otherwise prohibited activity could be applied for and obtained for a narrow range of purposes, and set forth the maximum per day penalty for conducting a prohibited activity. Thus, the proposed regulations, if adopted, are expected to have little or no direct or indirect economic impact and no adverse direct or indirect environmental effects.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed rules, if adopted, will not have a significant economic impact on a substantial number of small entities because the proposed regulations would have no effect on small business or small government jurisdictions. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the requirements of the Paperwork Reduction Act (Pub. L. 96-511). The collection of information is necessary for the effective management of the proposed sanctuary. The collection of information requirement contained in the proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Comments from the public on the collection of information requirement are specifically invited and should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530, Attention: Desk Officer for the Department of Commerce, NOAA.

National Environmental Policy Act

In accordance with section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 through 4370(a)), a draft environmental impact statement has been prepared for the proposed designation and the proposed regulations. As required by section 304(a)(2), the draft environmental impact statement includes the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1434(b)(3)), maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area. Copies of the draft environmental impact statement are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

List of Subjects in 15 CFR Part 942

Administrative practice and procedure, Environmental protection, Marine resources, Natural resources.

(Federal Domestic Assistance Catalog Number 11.429 National Marine Sanctuary Program)

Date: August 19, 1987.

Paul M. Wolff,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR is proposed to be amended as follows:

1. Part 942 is added to read as follows:

PART 942—CORDELL BANK NATIONAL MARINE SANCTUARY

Sec.

942.1 Authority.
942.2 Purpose.
942.3 Boundary.
942.4 Definitions.
942.5 Allowed activities.
942.6 Prohibited activities.
942.7 Penalties.
942.8 Permit applications—procedures and criteria.
942.9 Appeals of administrative action.
942.10 Other authorities.

Appendix I—Cordell Bank National Marine Sanctuary Boundary Coordinates

Authority: Secs. 303, 304, 305, and 307 of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

§ 942.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* (the Act). The regulations in this part are issued pursuant to the authority of sections 303(a), 304, 305, and 307 of the Act.

§ 942.2. Purpose.

The purpose of designating the Sanctuary is to protect and conserve the discrete, highly productive marine area of the Cordell Bank and its surrounding waters and to ensure the continued avialability of the area as an ecological, research and recreational resource.

§ 942.3. Boundary.

The Sanctuary consists of an area of marine waters 50 miles west-nothwest of San Francisco, California. The boundary, encompassing 101.10 square nautical miles, follows a line that includes all waters within three nautical miles beyond the fifty fathom depth contour surrounding Cordell Bank. The boundary coordinates are listed in the appendix following § 942.10.

§ 942.4. Definitions.

(a) "Act" means Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

(b) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, or his/her successor or designee.

(c) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, NOAA or designee.

(d) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, or any state, local or regional unit of government.

(e) "The Sanctuary" means the Cordell Bank National Marine Sanctuary.

(f) "Injure" means to adversely change, either in the long- or short-term, a chemical or physical quality of, or the viability of, a sanctuary resource.

§ 942.5 Allowed activities.

All activities except those specifically prohibited by § 942.6 may be conducted within the Sanctuary subject to all other prohibitions, restrictions, and conditions imposed by any other authority.

§ 942.6 Prohibited activities.

(a) Except as may be necessary for national defense, in accordance with Article 5, Section 2 of the Designation Document, or as may be necessary to respond to an emergency threatening life, property or the environment, the following activities are prohibited unless permitted by the Assistant Administrator in accordance with § 942.8.

(1) *Depositing or discharging materials or substances.*

(i) Depositing or discharging, from any location within the boundary of the Sanctuary, of materials or substances of any kind except:

(A) Fish or parts of chumming materials (bait); and

(B) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the Sanctuary generated by:

(1) Marine sanitation devices;

(2) Routine vessel maintenance, e.g., deck wash down;

(3) Engine exhaust; or

(4) Meals on board vessels.

(ii) Depositing or discharging, from any location beyond the boundary of the Sanctuary, materials or substances of any kind which may resonably be expected to enter the Sanctuary and injuire Sanctuary resources.

(2) *Removing or damaging resources.* Attempting to damage or damaging, or attempting to remove or removing, benthic organisms on the ridges and peaks of Cordell Bank.

(b) Any activity currently being carried out by the Department of Defense within the Sanctuary is exempt from the prohibitions of this section. Additional activities of the Department of Defense may be exempted by the Assistant Administrator after consultation between the Department of Commerce and the Department of Defense.

(c) The prohibitions in this section will be applied to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other international agreements to which the United States is a party

§ 942.7 Penalties.

(a) Section 307(b) of the Act authorizes the assessment of a civil penalty of not more than $50,000 for each violation of any regulation issued pursuant to the Act. Each day of a continuing violation shall constitute a separate violation. Section 307(b)(3) further authorizes a proceeding in *rem* against any vessel used in violation of any regulation and for which a civil penalty has been assessed.

(b) Regulations setting forth the administrative procedures governing the assessment of civil penalties for violating the regulations in this part, hearings and appeals, permit sanctions and denials, and the issuance of written warnings appear at 15 CFR Part 904. Regulations setting forth the administrative procedures applicable to seizures, forfeitures, and disposals appear at 50 CFR Part 219.

(c) For violations of § 942.6(a)(1)(ii) of these regulations, a penalty may be assessed for those materials or substances discharged which enter the Sanctuary and injure Sanctuary resources.

§ 942.8 Permit applications—procedures and criteria.

(a) If a person wishes to conduct an activity prohibited under § 942.6, that person must apply for, receive, and be in possession of a valid permit issued pursuant to this Part authorizing that person to conduct that activity.

(b) Permit applications shall be addressed to the Assistant Administrator, Ocean Services and Coastal Zone Management; ATTN: Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. An application shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant

experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) Upon receipt of a complete application, the Assistant Administrator may seek the views of any person or entity, within or outside the Federal Government, and may hold a public hearing, in his or her discretion.

(d) The Assistant Administrator, in his or her discretion, may issue a permit subject to such conditions as deemed appropriate, to conduct an activity otherwise prohibited by § 942.6, if the Assistant Administrator finds that the activity will: Further research related to Sanctuary resources; further the educational value of the Sanctuary; further the recovery of archeological artifacts from or near the Sanctuary; or assist NOAA in managing the Sanctuary. In deciding whether to issue a permit, the Assistant Administrator may consider such factors as: The professional qualifications and financial ability of the applicant as related to the proposed activity; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance the values for which the Sanctuary was designed; and the end value of the applicant's overall activity.

(e) A permit issued pursuant to this section is nontransferrable.

(f) The Assistant Administrator may amend, suspend or revoke a permit issued pursuant to this section, in whole or in part, if the Assistant Administrator determines that the permittee has acted in violation of the terms of the permit or of these regulations or that other good cause exists for amending, suspending or revoking the permit. Any such action shall be communicated in writing to the permittee, and shall set forth the reason(s) for the action taken.

§ 942.9 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, an applicant for a permit, a permittee, or any other interested person (hereinafter appellant) may appeal the grant, denial, conditioning or suspension of any permit under § 940.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed and the reason(s) therefor, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Administrator, in his or her discretion, may hold an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator may request the appellant, the permit applicant or permittee, if other than the appellant, or any person or entity, within or outside the Federal Government, to submit such information as the Administrator may deem appropriate in order to decide the appeal. The Administrator shall decide the appeal based on the record before the Assistant Administrator and the record of the appeal. The Administrator will notify the appellant of the final decision and the reason(s) therefor in writing, normally within 30 days of the date of the receipt of adequate information to make the decision.

(c) If the Administrator determines that an informal hearing should be held, the Administrator may designate an officer before whom the hearing shall be held. Notice of the time, place, and subject matter of the hearing shall be published in the **Federal Register**. Such hearing shall be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant or permittee and other interested persons may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the hearing officer. Within 30 days of the conclusion of the hearing, the hearing officer shall recommend a decision in writing to the Administrator.

(d) The Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify the appellant and other interested persons of his/her decision, and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's decision shall constitute a final agency action for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this section may be extended by the Administrator for good cause for a period not to exceed 30 days, either upon his/her own motion or upon written request from the appellant, permit applicant or permittee, stating the reason(s) therefor.

§ 942.10 Other authorities.

(a) All permits, licenses, and other authorizations issued pursuant to any other authority are valid within the Sanctuary subject only to the activity restrictions set forth in § 942.6.

APPENDIX I—CORDELL BANK NATIONAL MARINE SANCTUARY BOUNDARY CO-ORDINATES

Point No.	Latitude	Longitude
1	37°58'1678"	123°19'0126"
2	37°59'5988"	123°18'5801"
3	38°00'5453"	123°19'2220"
4	38°02'1971"	123°19'5129"
5	38°03'2099"	123°20'1780"
6	38°03'5204"	123°20'4616"
7	38°04'4802"	123°21'3862"
8	38°05'3092"	123°23'2611"
9	38°06'0713"	123°24'0221"
10	38°06'4362"	123°25'1593"
11	38°07'2385"	123°26'4822"
12	38°07'3434"	123°27'5375"
13	38°07'1286"	123°29'4704"
14	38°06'2381"	123°31'1138"
15	38°04'3460"	123°32'5298"
16	38°03'3861"	123°33'1585"
17	38°01'5683"	123°32'5877"
18	38°00'5402"	123°32'3439"
19	38°00'0592"	123°31'2512"
20	37°59'0238"	123°31'1289"
21	37°57'2470"	123°29'4215"
22	37°56'3979"	123°28'4083"
23	37°55'4343"	123°27'5149"
24	37°54'4914"	123°26'0927"
25	37°54'3846"	123°24'0940"
26	37°55'0103"	123°22'2934"
27	37°57'1773"	123°19'4460"

[FR Doc. 87-19681 Filed 8-27-87; 8:45 am]
BILLING CODE 3510-08-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Activities of Self-Regulatory Organization Governing Members Who Possess Material, Nonpublic Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing amendments to Regulation 1.59, § 1.59(a) (9) and (c), which would require self-regulatory organizations to adopt rules prohibiting, in accordance with the standards contained in the regulation, disclosure or other improper use of material, non-public information by members of self-regulatory organization governing boards or committees, and which would require contract markets and clearing organizations to adopt rules requiring the immediate publication, except for good cause shown, of final decisions of contract market and clearing

organization governing boards and committees.

DATES: Comments must be received on or before September 28, 1987.

ADDRESS: Comments on the proposed regulation should be sent to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: De'Ana Hamilton-Brown, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 11, 1985, the Commission published proposed Regulation 1.59, relating to the activities of self-regulatory organization employees and governing members in the possession of material, non-public information. 50 FR 24533. This proposal was prompted by concerns with respect to "the potential for abuse and the appearance of impropriety" created by the ability of employees and governing members of self-regulatory organizations with possession of or access to material, non-public information as the result of performing their official duties to use confidential information "obtained in their official capacity for their personal benefit." 50 FR 24533. As such conduct could undermine the concept of industry self-regulation and diminish public confidence in self-regulatory organizations, the Commission's proposal was designed to eliminate or minimize the potential that such conduct would occur. 50 FR 24533–34. With respect to self-regulatory organization employees, the proposed rule prohibited the disclosure of material, non-public information obtained as a result of such employment and required that self-regulatory organizations adopt rules proscribing such disclosures and barring employees from trading in commodity interests on the employing contract market, related commodity interests, or in commodity interests traded on other exchanges where the employee has access to material, non-public information. These provisions applicable to self-regulatory organization employees were adopted as a final rule on November 25, 1986.

With respect to contract market and clearing organization governing members, the proposed rule would have prohibited such members having knowledge of certain final or imminent decisions of a governing board or committee from trading the contract affected by such decision or related contracts and from disclosing information concerning the decision, prior to its publication. In addition, the proposed governing members provision would have required each contract market and clearing organization to adopt rules requiring that final decisions of governing boards or committees be announced publicly before the opening of the next trading session in the affected contract. These provisions were intended to prevent the misuse of information concerning decisions that could alter materially the futures trading environment, such as decisions to revise margin levels substantially, limit trading to liquidation only, compel liquidation of positions held by major market participants, and other rule changes that could affect the prices of particular futures or option contracts. 51 FR at 44868.

Commenters voiced considerable opposition to Regulation 1.59(c) as initially proposed. Objections to the proposal included concerns relating to the scope and operation of the proposed trading prohibition, which some commenters claimed would prohibit far more trading than necessary to preserve the integrity of contract markets and could impair the ability, or diminish the willingness, of knowledgeable self-regulatory organization members who are also active traders to serve on a self-regulatory organization board of directors or its major policy and disciplinary committees.[1] Based upon its review of these and other comments, the Commission determined that the proposed restrictions upon the activities of governing members merited further consideration and possible amendment, deleted the governing member provision from Regulation 1.59 as adopted, and by **Federal Register** release of December 12, 1986 invited comment "on how best to revise the governing members provision" to address the concerns raised by the comments previously received.[2]

Nine comment letters were received in response to the Commission's December 12, 1986 request for comment.[3] Based upon these comments, the Commission has revised Regulations 1.59(a) and (c) as originally proposed and is reissuing the proposed rules for further comment. Essentially, as reformulated, proposed Regulation 1.59(c) will require self-regulatory organizations to maintain in effect rules prohibiting the disclosure or misuse of material, non-public information obtained by governing members as a result of their participation on self-regulatory organization boards or committees and rules requiring the immediate publication, except for good cause shown, of final decisions of contract market or clearing organization governing boards and committees. As revised, the proposed rule addresses the possibility of misuse of a potentially broader category of material, non-public information than the original proposal, which concerned only situations in which a governing member has knowledge of a final or imminent board or committee decision. At the same time, the revised proposed rule does not create a prohibition against trading by governing members who possess or have access to material, non-public information but, rather, requires case-by-case enforcement by the self-regulatory organizations. That process is to include surveillance of trading activity and other affirmative enforcement measures to ensure the detection and deterrence of trading activity based upon material, non-public information and other misuse of such information. In addition, the immediate publication provision has been modified such that a contract market or clearing organization may delay publication of a final decision based upon documented good cause with prompt notice thereafter to the Commission.[4]

II. Proposed ¶1.59(c)—Activities of Self-Regulatory Organization Governing Members who Possess Material, Nonpublic Information

The comments received by the Commission in response to its December 12, 1986 request for comment on the

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[1] As the Commission previously has noted, the rule was intended to have a far more limited effect and was in fact formulated "so as to confirm existing policies and to provide uniform standards that clearly identify those special instances when the board members should not trade." 51 FR 44868.

[2] 51 FR 44866 (December 12, 1986).

[3] This request elicited comment from: (1) Chicago Board of Trade; (2) Coffee, Sugar & Cocoa Exchange, Inc.; (3) Comex Clearing Association; (4) Commodity Exchange, Inc.; (5) Minneapolis Grain Exchange; (6) National Futures Association; (7) National Grain and Feed Association; (8) National Grain Trade Council; and (9) New York Mercantile Exchange.

[4] The previously proposed governing member rule would have applied only to contract markets and clearing organizations. As revised, proposed Regulation 1.59(c)(1) would apply to self-regulatory organizations, as defined in § 1.59((a)(1), thereby including the National Futures Association, reflecting reformulation of the rule to apply to the use of material, non-public information as opposed to trading activities in the context of knowledge of final or imminent decisions relevant to such trading. As previously, the final decision publication provisions of proposed Regulation 1.59(c)(2) would apply only to contract markets and clearing organizations.

governing members provision of Regulation 1.59 generally supported the view that governing members must maintain the confidentiality of sensitive information received in the performance of their official duties. Some commenters, however, questioned the necessity for Commission rulemaking to achieve that end and a substantial number questioned the specific formulation of the proposed rule. With respect to the appropriateness of Commission rulemaking, a number of commenters expressed the view that self-regulatory organizations heretofore have achieved the objective of protecting confidential information without the existence of a Commission regulation and that a history of past abuses that would be remedied by the proposed rule has not been shown to exist. As the Commission concluded in the parallel context of the potential misuse of material, non-public information by self-regulatory organization employees, however, "the prudent course of action is to take reasonable precautions to prevent any such abuses before they occur." 50 FR 24537. This is particularly true in the context of a regulatory system that contemplates significant industry self-regulation and therefore depends upon "the perceived integrity of self-regulatory organizations." 51 FR 44866.

To the extent that the self-regulatory organizations previously have established effective safeguards to assure that their governing members maintain the confidentiality of non-public information, compliance with the Commission's proposed rule should not require a material change in conduct and therefore should not be burdensome. In this connection, several commenters contended that existing exchange and clearing organization conflict of interest rules and policies that require the recusal of governing members from deliberations concerning matters in which they have personal or pecuniary interests are sufficient to achieve the objectives of the proposed rule. However, although the Commission agrees that such rules constitute important protections of the integrity of self-regulatory organization decisionmaking, they do not address all situations in which material, non-public information may be subject to misuse. For example, such provisions would not address situations when information is received by a governing member that is unrelated to a pre-existing pecuniary interest of that governing member of a governing member could not anticipate and thus recuse himself from deliberations in which he received material, non-public information concerning a matter in which he holds a substantial personal interest.

Comments concerning the formulation of Regulation 1.59(c) as originally proposed principally addressed the scope and operation of the proposed prohibition against trading by governing members in commodity interests affected by final or imminent board or committee decisions that have not yet been publicly announced. Commenters criticized the proposed rule's definition of "final decision," knowledge of which could disqualify a governing member from trading in the affected commodity, as excessively broad in that it could reach decisions unlikely to have significant price, effects, such as disciplinary actions and routine margin adjustments. Conversely, some noted that the "final decision" standard could be too limited in that confidential information received during board or committee deliberations might be exploited for personal profit during periods in which a board or committee had deferred final action. Others objected to the rule insofar as it would preclude trading in an affected commodity by governing members having "a reasonable expectation that a final decison is imminent" on the ground that the time at which a final decison will be reached may not always be precisely determinable in advance and governing members, therefore, may be uncertain as to whether they must restrict their trading activities. In addition, several commenters objected to the proposed trading prohibition as inherently inconsistent with the service of active traders on exchange governing boards or committees or as likely to interfere significantly with legitimate trading activities and there by deter participation on boards or committees. These objections generally centered upon the potential impact of the proposed trading prohibition upon the ability of governing members to adjust or liquidate pre-existing positions, for example to liquidate hedge positions upon disposition of the hedged physical commodity, and to conduct brokerage business for customers.

The immediate publication requirement, as proposed initially, was also a subject of concern to several commenters, given the procedural requirements with which the self-regulatory organizations had to comply in the event of delayed publication. Generally, the commenters stated that the public announcement requirements were overboard and were likely to restrict the flexibility of the board and committees.[5]

Alternative rules or regulatory approaches were suggested by several commenters. Several commenters urged replacement of the proposed trading prohibition with a general proscription against misuse of material, non-public information or a "performance standard" requiring each exchange to prevent the misuse of material, non-public information by developing its own rules, subject to minimum standards, to govern the disclosure or use of material, non-public information. One commenter stated that the proposed trading prohibition should be unnecessary if public announcement of final decisions were made, as required by previously proposed Regulation 1.59(c)(2), prior to the opening of the next trading session in the affected contract on that contract market or any linked exchange. Finally, two self-regulatory organizations proposed alternate rules pursuant to which governing members having knowledge of material, non-public information would be prohibited from trading in the affected contract; in one such proposal, this trading ban would not preclude the liquidation of positions established prior to the governing member's receipt of non-public, material information.

Based upon its review of the comments received to date, the Commission has determined to revise the proposed rule in several respects. First, the Commission finds merit in the view, expressed in a number of comments, that the formulation of a single uniform standard that prohibits certain trading by governing members having knowledge of a final or imminent decision of a board or committee without curtailing or inhibiting legitimate trading activity may be impracticable in the context of self-regulatory organizations in which decisionmakers are also, in many instances, active traders. The comments

[5] Other commenters voiced objections to § 1.59(c) as proposed on the grounds that: (1) The concept of a board of directors seeking to sanction a board member for violating his or her duties as a board member seems unworkable, especially for an organization, *e.g.*, clearing organization, which does not have individual members, and if a director violates his or her duties of confidentiality, the appropriate response is to seek that director's resignation or removal for cause; (2) the Commission should exclude rules adopted pursuant to Regulation 1.59 from the procedural requirements contained in self-regulatory organization rulebooks and Parts 8 and 9 of the Commission's regulations; (3) the rule should employ the "material information" standard of section 9(e) of the Commodity Exchange Act in place of the "final decision" standard of the securities law formulation of materiality.

reflect significant uncertainty as to both the kinds of decisions that could give rise to a trading ban as well as the circumstances in which a decision is sufficiently "imminent" within the meaning of the rule to give rise to a trading restriction. Although some commenters in fact advocated alternative formulations of the rule that also entailed trading bans, the Commission is of the view that the significant definitional uncertainties expressed concerning the Commission's proposed rule would apply also to the rules proposed by those commenters. In assessing potential methods of reformulating the proposed rule to define its scope more specifically so as to eliminate such uncertainties, the Commission has concluded that attainment of a satisfactory degree of specificity is likely to limit unduly the ambit of the proposed rule and thus its utility as a meaningful protection against potential abuses of confidential information.

Mindful that a trading prohibition is only one means of protecting against the abuse of confidential information, the Commission has determined that a prohibition against misuse of confidential information that does not automatically require that governing members' trading activity in affected contracts be halted is a more appropriate regulatory approach at this time. Such a standard will avoid the potential hardships associated with a trading ban but will establish a prohibition against the misuse of all material, non-public information without limitation to the originally proposed "final decision" standard.

The Commission also finds merit in the suggestions of some commenters that the Commission afford the self-regulatory organizations an opportunity to fashion their own rules, subject to minimum standards established by Commission regulation, to effectuate the goal of assuring that material, non-public information is not misused. Consequently, the Commission is proposing as revised Regulation 1.59(c)(1) a requirement that each self-regulatory organization maintain rules submitted to the Commission pursuant to section 5a(12) of the Commodity Exchange Act and Commission Regulation 1.41 (or pursuant to section 17(j) of the Act in the case of a registered futures association) that prohibit members of such self-regulatory organization's governing boards or committees from disclosing or using material, non-public information for any purposes other than the performance of such member's duties as a board or committee member. While it no longer would automatically ban trading in commodity interests as to which a governing member has material, non-public information, reformulated Regulation 1.59(c) nonetheless is intended to prohibit the use of such information as a basis for trading as well as to prohibit the disclosure or other use of such information for any purpose other than the purpose for which it was received, *i.e.*, the performance of such member's official duties as a member of a self-regulatory organization governing board or committee. Consequently, disclosure of such information to others that is not pursuant to a governing member's official duties, including to persons employed by, holding joint ownership interests with or otherwise affiliated with a governing member or such governing member's affiliated firm, as well as the use of such information by such governing member in his own trading or on behalf of others would be required to be prohibited.[6]

In determining to propose a rule which substitutes a broad prohibition against the misuse of material non-public information for a more specific prohibition relating to trading in commodity interests affected by unannounced board or committee decisions, the Commission has elected to allow the SROs, subject to Commission oversight, to give specific content to that proscription on a case-by-case basis. Thus, while § 1.59(a) (3) and (4) define material, non-public information, under the proposed rule the SROs will, in the first instance, determine the application of that standard in specific factual contexts, a process that will refine the definition of information that may not be disclosed. This approach has the benefits of affording general guidance to those affected by the rule while avoiding a degree of specificity that could unintentionally exclude improper conduct from the prohibition and permitting appropriate variations based upon the size and other particular circumstances of self-regulatory organizations.

Similarly, the minimum standard against improper use of material, non-public information that would be established by the proposed rule is intended to prohibit the use of such information in trading as well as other misuses, without the mechanism of a rigid trading ban that commenters feared could curtail *bona fide* trading activity. Trading activity by governing members following their receipt of material, non-public information would be subject to especially close scrutiny by the relevant SROs, but the precise methods by which the SROs ensure that such improper trading does not occur would, in the first instance, be open to the SROs to determine. Such methods would not necessarily include a trading prohibition or an across-the-board presumption that trading by governing members while in the possession of material, non-public information is improper, but would presumably entail, at a minimum, that SROs have adequate access to governing members' trading records, review and investigate complaints of improper trading, and maintain programs for the review of trading by governing members sufficient to detect and deter abuses of material, non-public information. Each self-regulatory organization must develop and administer a program for detecting possible violations of its rule that is sufficient to deter and detect violations, so as to provide a meaningful foundation for public confidence in the fairness of the futures markets. Those programs, of course, would be subject to oversight by the Commission. The Commission contemplates that rules complying with Regulation 1.59(c)(1) as revised must clearly permit the maximum sanctions assessable by self-regulatory organizations to be applicable in the event of a violation of such rules.

The Commission specifically invites comment as to whether in order to ensure efficacious enforcement of self-regulatory organization rules implemented pursuant to proposed Regulation 1.59(c)(1), it should adopt rules designed to facilitate self-regulatory enforcement efforts. Such rules could include, as proposed by one commenter, a requirement that self-regulatory organizations adopt rules permitting them to obtain upon request, in specified circumstances, documents related to trading in affected commodities by governing board members, or require that specific disclosures be made by board or committee members of open positions in the contract market under discussion held by the governing member and such member's affiliated firm.

Commenters generally agreed in principle with the immediate publication requirement in previously proposed Regulation 1.59(c)(2) and one exchange commenter noted that it is a current

[6] Self-regulatory organization rules implemented pursuant to proposed Regulation 1.59(c)(1) as revised would not be required to prohibit such conduct expressly but could instead state a standard for the conduct to be prohibited and provide specificity consistent therewith through the application of an affirmative compliance program.

practice on that exchange to announce final decisions prior to the commencement of the next trading session. Commenters did, however, object to the procedural requirements attendant upon a board or committee decision to delay publication, particularly the requirement of notice to the Commission by the fastest available means of communication followed promptly by a written explanation to the Commission of the reasons for such delay. One commenter contended that the approach previously proposed was too mechanistic and suggested simplification of the rule by requiring that the final decision be made public prior to the next trading session unless for good cause shown the exchange decides to delay publication and provides notice of such decision to the Commission. The Commission has reassessed the publication provision in light of the comments received, and has determined to simplify § 1.59(c)(2) such that publication of a final decision of a contract market or clearing organization governing board or committee [7] could be delayed for good cause shown provided the Commission is notified promptly in writing of such decision.[8]

Regulatory Flexibility Act

The Commission previously has determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act (5 U.S.C. 605) and that the requirements of the Act do not, therefore, apply to contract markets. 47 FR 18618 (April 30, 1982). Furthermore, the Chairman of the Commission has certified previously on behalf of the Commission that comparable rule proposals, if adopted, would not have a significant economic impact on a substantial number of small entities. *See, e.g.,* 48 FR 32835, 32836 (July 19, 1983). For the reasons set forth above, and pursuant to Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman hereby certifies, on behalf of the Commission, that the following § 1.59 (a)(8) and (c) will not have a significant economic impact on a substantial number of small entities.

[7] The definition of "final decision" appears in proposed Regulation 1.59 (a)(9), which had been proposed previously as § 1.59(a)(6).

[8] "Good cause," while not defined in the rule, refers to such circumstances as would constitute a reasonable basis for a contract market or clearing organization governing board or committee to conclude that delaying publication would avoid otherwise likely adverse market impacts or would serve another important self-regulatory purpose. Such good cause should be recorded with particularity at the time of the decision to delay publication.

Paperwork Reduction Act

The Paperwork Reduction act of 1980, Pub. L. 96–511, 94 Stat. 2812 *et seq.*, imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA, 44 U.S.C. 3501 *et seq.* The Commission does not believe that § 1.59 (a)(9) and (c) will change materially the amount of information the Commission will collect from self-regulatory organizations. Any information required by the self-regulatory organization rules would be submitted to the Commission, if at all, for review pursuant to section 5a(12) of the Act and § 1.41 of the regulations, or section 17(j) of the Act or otherwise submitted under § 1.31. The Commission has notified previously and received approval of the Office of Management and Budget for the information collection which could be expected under these provisions this year. The Commission does not expect proposed § 1.59 (a)(9) and (c) to alter significantly this expectation.

List of Subjects in 17 CFR Part 1

Self-regulatory organizations, Contract markets, Clearing organizations, Registered futures associations, Contract market members, Exchange employees, Directors of contract markets and clearing organizations.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, sections 3, 4b, 5, 5a, 6, 6b, 8, 8a, 9, 17, and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 13, 21, and 26(b) the Commission is proposing to amend Title 17, Chapter I, Part 1 of the Code of Federal Regulations by adopting new §§ 1.59 (a)(9) and (c) as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise rated.

2. Section 1.59 is amended by revising the section heading and by adding paragraphs (a)(9) and (c) to read as follows:

§ 1.59 Activities of self-regulatory organization employees and governing members who possess material, non-public information.

(a) * * *

(9) "Final decision of a contract market or clearing organization" means a decision made by the governing board or a committee of the contract market or clearing organization of the contract market which cannot be appealed to another body within the contract market or clearing organization and which, without further action, alters the rules of the contract market or clearing organization, or results in a member responsibility action under Commission regulation § 8.25.

* * * * *

(c) *Members of self-regulatory organization governing boards and committees.* (1) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(12) of the Act and Commission Regulation 1.41 (or pursuant to section 17(j) of the Act in the case of a registered futures association) which provide that no member of such self-regulatory organization governing board or of a committee of such self-regulatory organization shall use or disclose, for any purpose other than the performance of such member's official duties as a governing board or committee member material, non-public information obtained as a result of such member's participation on any committee or governing board of such self-regulatory organization.

(2) Each contract market and clearing organization of a contract market must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(12) of the Act and Commission Regulation 1.41 which require that a final decision of a contract market or clearing organization governing board or committee be announced publicly prior to the opening of the next trading session in the affected contract on that contract market and prior to the opening of the next trading session in a contract based on the same commodity as that contract traded on any linked exchange; *Provided, however,* That the contract market or clearing organization may determine to delay publication of the final decision for good cause shown and with prompt written notification of the reasons for such delay to the Commission.

Issued in Washington, DC on August 24, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–19688 Filed 8–27–87; 8:45 am]

BILLING CODE 6351–01–M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revisions of Freedom of Information Act (FOIA) Regulations

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Proposed rule.

SUMMARY: TVA proposes to revise one exemption from disclosure under the FOIA set out in its regulations in order to conform that exemption with changes made by the Freedom of Information Reform Act of 1986. TVA also proposes to redesignate the positions responsible for handling and determining initial requests and administrative appeals under the FOIA to reflect TVA organizational changes.

DATE: Comments must be received by September 28, 1987.

ADDRESS: Comments should be sent to Craven Crowell, Manager, Office of Governmental and Public Affairs, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Gilbert D. Francis, Jr., (615) 632–6000.

SUPPLEMENTARY INFORMATION: This proposed rule is not a major rule for the purpose of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy, and Sunshine Acts.

For the reasons set forth in the preamble, TVA proposes to amend Title 18, Chapter XIII of the Code of Federal Regulations as follows:

PART 1301—PROCEDURES

1. The authority citation for Part 1301 continues to read as follows:

Authority: 16 U.S.C. 831–831dd, 5 U.S.C. 552, 18 U.S.C. 208(b).

2. Section 1301.1 is amended by revising paragraph (a)(7), the first sentence of paragraph (b) introductory text, the second sentence of paragraph (c)(1)(i), the first sentence of paragraph (c)(1)(ii), the third sentence of paragraph (c)(2)(ii), the second sentence of paragraph (c)(3)(i), the fourth sentence of paragraph (c)(3)(ii), and the third sentence of paragraph (e) as follows:

§ 1301.1 Records.

(a) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

* * * * *

(b) *Requests.* Requests to inspect and copy TVA records shall be directed to the Manager, Office of Governmental and Public Affairs, Tennessee Valley Authority, Knoxville, Tennessee 37902. * * *

* * * * *

(c) * * *

(1) * * *

(i) * * * Initial determinations shall be made by the Manager, Office of Governmental and Public Affairs, or the Director of Information. * * *

(ii) For purposes of this paragraph, a request is deemed to be received by TVA only when it is physically delivered to the Office of Governmental and Public Affairs and meets all the requirements of paragraph (b) of this section. * * *

(2) * * *

(ii) * * * Determinations of appeals under this section shall be made by the General Manager or the General Manager's designee. * * *

(3) * * *

(i) * * * Such extension may not exceed 10 working days, and a decision to make such extension shall be made by the Manager, Office of Governmental and Public Affairs, or the Director of Information.

(iii) * * * A decision to make an extension under this paragraph shall be made by the General Manager or the General Manager's designee.

* * * * *

(e) * * * A price list and order form for some of the most frequently asked for TVA publications and reports is contained in TVA Form 3077, which may be obtained by writing the Manager, Office of Governmental and Public Affairs, Tennessee Valley Authority, Knoxville, Tennessee 37902. * * *

W.F. Willis,

General Manager.

[FR Doc. 87–19706 Filed 8–27–87; 8:45 am]

BILLING CODE 8120–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1007, 1103, 1150, 1160, 1162, 1169, 1171, 1177, 1180 and 1182

[Ex Parte No. 246 (Sub-No. 5)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1987 Update

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this decision the Commission proposes to modify its costing and update formulas for calculating user fees. This decision also proposes the Commission's 1987 user fee update. The Commission is required by its regulations in 49 CFR 1002.3 to update user fees annually. We are also proposing to recalculate our fee for self-insurance applications at 49 CFR 1002.2(f)(77) and to add a new fee for petitions for substitution of applicant at 49 CFR 1002.2(f)(15).

DATE: Comments are due on September 28, 1987.

ADDRESS: An original and 15 copies of comments must be sent to: Ex Parte No. 246 (Sub-No. 5), Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Kathleen M. King, 202–275–7428

For costing information: William W. England, 202–275–7472. (TDD for hearing impaired: (202) 275–1721)

SUPPLEMENTARY INFORMATION: The Commission is required by its regulations in 49 CFR 1002.3 to update user fees annually. Based on our review

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of the user fee program, we conclude that revisions of the costing formula and the update formula are necessary to insure that the Commission recovers all costs for providing services which lawfully can be recovered under the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701.

We are proposing to modify the original costing formula adopted in *Regulations Governing Fees For Services*, 1 I.C.C. 2d 60 (1984) [hereafter called 1984 Fee Decision] aff'd, in part, *Central & Southern Motor Freight Tariff Ass'n* v. *United States*, 777 F.2d 722, (D.C. Cir. 1985), modified in *Regulations Governing Fees for Services*, —— I.C.C. 2d — (1987), by adding the cost of fee receipts processing to the original direct labor calculation and by adding a new overhead factor for office general and administrative expenses to reflect the Commission's cost of providing space, heat and other essential services for employees who handle fee-related items.

Based on our review of the update formula in 49 CFR 1002.3, we believe that it is necessary to modify that formula to insure that the updated fees are properly calculated. Therefore, we are proposing to modify the update formula to recognize that the operations overhead factor is subject to annual change. Also, since the only "other costs" that we capture are *ICC Register* and **Federal Register** costs, we believe that it is more appropriate to calculate that factor by using the actual changes in costs for these publications rather than the change in the Consumer Price Index. Accordingly, we are proposing to change that factor to reflect actual publication cost charges.

We also are proposing to make two changes in individual items in our fee schedule in 49 CFR 1002.2(f). A new Fee Item (15) relating to petitions to substitute applicant in an operating rights proceeding is proposed. Also, our cost data and the resulting fee for existing Fee Item (77) relating to self-insurance applications are proposed to be revised to reflect charges in handling such applications.

Finally, all the costs will be revised to reflect the 1987 Government-wide general salary increase that took effect January 1, 1987. We will also modify our calculation of the Government overhead factor to reflect changes that the Office of Management and Budget has made in its current update to Circular A-76 "Cost Comparison Handbook" in the area of fringe benefits and other wage related costs. This decision should not have a significant impact upon the quality of the human environment or conservation of energy resources. Nor should it have a significant effect on a substantial number of small entities.

A copy of the Commission's full decision in this matter is available from the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423 (202-275-7428).

List of Subjects in 49 CFR Parts 1002, 1007, 1103, 1150, 1160, 1162, 1169, 1171, 1177, 1180 and 1182

Administrative practice and Procedure.

It is ordered:

1. Title 49 of the Code of Federal Regulations is proposed to be amended as set forth below.

2. An original and 15 copies of comments on these proposed changes are due September 28, 1987.

Decided: August 11, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre and Simmons. Commissioner Sterrett dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1002—FEES

1. The authority citation for this part is proposed to continue to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321

§ 1002.1 [Amended]

2. In § 1002.1, the dollar amount of "$3.00" in paragraph (a) would be revised to read "$5.00".

3. In § 1002.1, the dollar amount of "$11.00" in paragraph (c) would be revised to read "$12.00".

4. In § 1002.1, the table in paragraph (f)(6) would be revised to read as follows:

GS–1	$5.22
GS–2	5.69
GS–3	6.41
GS–4	7.20
GS–5	8.05
GS–6	8.97
GS–7	9.97
GS–8	11.04
GS–9	12.20
GS–10	13.43
GS–11	14.76
GS–12	17.69
GS–13	21.03
GS–14	24.85
GS–15 and above	29.23

5. In § 1002.2, paragraph (f) would be revised to read:

§ 1002.2 Filing fees.

* * * * *

(f) Schedule of filing fees.

Type of proceedings	Fees
Part 1: Non-Rail Applications for Operating Authority or Exemptions	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority	$200
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products	100
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.64	2,000
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plantsite or the change of a highway name or number	30
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923	30
(6) An application to remove restriction or broaden unduly narrow authority under 49 CFR Part 1165	200
(7) An application for authority to deviate from authorized regular route authority 49 U.S.C. 10923	100
(8) An application for motor carrier or water carry temporary authority under 49 U.S.C. 10928(b)	90
(9) An application for motor carrier temporary authority under 49 U.S.C. 10928(c)(1)	70
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue	17
(11) Request for name change of carrier, broker, or household goods freight forwarder	7
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1167.4	60
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10526(a)(5)	60
(14) [Reserved]	
(15) A joint petition to substitute applicant in a pending operating rights proceedings	20
(16) [Reserved]	
Part II: Non-Rail Applications To Discontinue Transportation	
(17) A notice or petition to discontinue ferry service 49 U.S.C. 10908	8,100
(18) A petition to discontinue motor carrier of passenger transportation in one State	500
(19) [Reserved]	
Part III: Non-Rail Applications To Enter Upon a Particular Financial Transaction or Joint Arrangement	
(20) An application for the pooling or division of traffic	1,500
(21) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343	750
(22) An application for approval of a non-rail rate association agreement. 49 U.S.C. 10706	9,900
(23) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant Amendment	4,700
(ii) Minor Amendment	30
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349	150
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker license or change of control of companies holding broker's license 49 U.S.C 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544	200
(26) An application for approval of a motor vehicle rental contract. 49 CFR 1057.41(d)	150

Type of proceedings	Fees
(27) A petition for exemption under 49 U.S.C. 11343(e)	200
(28)–(32) [Reserved]	
Part IV: Rail Applications for Operating Authority	
(33) (a) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901	2,600
(b) Exempt transaction under 49 C.F.R. 10901	550
(34) Feeder Line Development Program application filed under 49 U.S.C. 10910 (b)(1)(A)(i)	3,200
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(ii)	1,800
(36)—(37) [Reserved]	
Part V: Rail Applications to Discontinue Transportation Services	
(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act, bankrupt railroads or exempt abandonments under 49 CFR 1152.50)	2,100
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act	150
(40) Abandonments filed by bankrupt railroads. 49 CFR 1152.40	650
(41) Exempt abandonments. 49 CFR 1152.50	750
(42) A notice or petition to discontinue passenger train service	8,100
(43) [Reserved]	
Part VI: Rail Applications To Enter Upon a Particular Financial Transaction or Joint Arrangement	
(44) An application for use of terminal facilities or other application. 49 U.S.C. 11103	6,800
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342	4,700
(46) An application for two or more carriers to consolidate or merge their properties or franchises or a part thereof, into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343.	
(i) Major transaction	100,000
(ii) Significant transaction	20,000
(iii) Minor transaction	2,200
(iv) Exempt transaction [49 CFR 1080.2(d)]	550
(v) Responsive application	2,200
(47) An application of a noncarrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343.	
(i) Major transaction	100,000
(ii) Significant transaction	20,000
(iii) Minor transaction	2,200
(iv) Exempt transaction [49 CFR 1080.2(d)]	550
(v) Responsive application	2,200
(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental to thereto. 49 U.S.C. 11343.	
(i) Major transaction	100,000
(ii) Significant transaction	20,000
(iii) Minor transaction	2,200
(iv) Exempt transaction [49 CFR 1080.2(d)]	500
(v) Responsive application	2,200
(49) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343.	
(i) Major transaction	100,000
(ii) Significant transaction	20,000
(iii) Minor transaction	2,200
(iv) Exempt transaction [49 CFR 1080.2(d)]	550
(v) Responsive application	2,200
(50) An application for a determination of fact of competition. 49 U.S.C. 11321(a)(2) or (b)	20,000
(51) An application for approval of, or to amend, a rail rate association agreement. 49 U.S.C. 10706	25,100
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706	
(i) Significant Amendment	4,700
(ii) Minor Amendment	30
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322	250
(54) (a) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization, or an application for exemption for competitive bidding requirements of Ex Parte No. 158, 49 CFR 1175.10. 49 U.S.C. 11301	1,200
(b) An exempt transaction under 49 CFR 1175	550
(55) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505	550
(56) An application for forced sale of bankrupt railroad lines. 49 CFR 1180. 40–49, 45 U.S.C. 915	1,400
(57)–(58) [Reserved]	
Part VII: Formal Proceedings	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers or freight forwarders of household goods	500
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares or charges. 49 U.S.C. 10705(f)(1)(A)	1,500
(62) A petition for declaratory order:	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding	500
(ii) All other petitions for declaratory order	850
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increase	5,500
(64) A petition for exemption from filing tariffs by water and bus carriers	150
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	2,500
(66) Petition for review of state regulations of intrastate rates, rules or practices filed by interstate rail carriers. 49 U.S.C. 11501	500
(67) Petition for review of state regulations of intrastate rates, rules or practices filed by interstate bus carriers. 49 U.S.C. 11501	500
(68)–(71) [Reserved]	
Parte VII: Informal Proceedings	
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (Except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster)	400
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements	40
(74) The filing of tariffs, rate schedules and contracts including supplements (per series transmitted)	7
(75) Special docket application from rail and water carriers. (There is no fee for requests involving sums of $5,000 or less)	50
(76) Informal complaint about rail rate application	100
(77) An application for original qualification as self-insurer	250
(78) A service fee for insurer, surety or self-insurer accepted certificate of insurance or surety bond The fee is based on a formula of $10 per accepted certificate of insurance or surety bond as indication of ICC insurance activity. (There is a $50 annual minimum.) (per accepted certificate)	10
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR Part 1057	500
(80) A petition for reinstatement of revoked operating authority	40
(81)–(82)	
(83) Petition for reinstatement of a dismissed operating rights application	200
(84) Filing of documents for recordation. 49 U.S.C 11303 and 49 CFR 1177.3(c) (per document)	13
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceedings	1,000
(86) Informal opinions about rate applications (all modes)	40
(87)–(95) [Reserved]	
Part IX: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent (per delivery)	10
(97) Request for service list for proceedings (per list)	7
(98) Requests for copies of the one-percent carload waybill sample	100
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation (per movement verified)	14
(100) Application fee for Interstate Commerce Commission Practitioners' Exam	50

6. In § 1002.3, paragraphs (d) (2) through (4) would be revised as follows:

§ 1002.3 Updating user fees.

* * * * *

(d) * * *

(2) Operations overhead shall be developed each year on the basis of current relationships existing on a weighted basis, for indirect labor applicable to the first supervisory work centers directly associated with user fee activity. Actual updating of operations overhead will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead costs.

(3)(i) Office general and administrative costs shall be developed each year on the basis of current level costs, i.e., dividing actual office general and administrative costs for the current fiscal year by total office costs for the Offices and Bureaus directly associated with user fee activity. Actual updating of office general and administrative costs will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead and current operations overhead costs.

(ii) Commission general and administrative costs shall be developed each year on the basis of current level costs, i.e., dividing actual Commission general and administrative costs for the current fiscal year by total agency expenses for the current fiscal year. Actual updating of Commission general and administrative costs will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead, operations overhead and office general and administrative costs.

(4) Publication costs shall be adjusted on the basis of known changes in the costs applicable to publication of material in the **Federal Register** or *ICC Register.*

* * * * *

PART 1007—RECORDS CONTAINING INFORMATION ABOUT INDIVIDUALS

7. In Part 1007, the authority citation would be revised to read:

Authority: 5 U.S.C. 552, 553, and 559.

§ 1007.5 [Amended]

8. In § 1007.5 paragraph (f), the phrase "of 10 cents per letter size or legal size exposure duplicated electrostatically" would be revised to read "set forth in 49 CFR 1002.1(d)".

PART 1103—PRACTITIONERS

9. The authority citation for Part 1103 would continue to read:

Authority: 49 U.S.C. 10308 and 10321; 5 U.S.C. 559.

10. In § 1103.3 paragraphs (d), (k), (l), and (m) are proposed to be revised to read:

§ 1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Commission.

* * * * *

(d) *Application fee.* Each application filed pursuant to this rule must be accompanied by the non-refundable fee in the amount set forth in 49 CFR 1002.2(f)(100). Payment must be made either by check or money order payable to the Interstate Commerce Commission. Cash payment will not be accepted.

* * * * *

(k) *Failing or postponing the examination.* Applicants who fail the examination may reapply by submitting a request in writing with an additional filing fee in the amount set forth in 49 CFR 1002.2(f)(100). Applicants who postpone taking the examination three times without showing good cause will have their applications returned.

(l) The filing fee in the amount set forth in 49 CFR 1002.2(f)(100) is not refundable.

(m) Any application resubmitted to the Commission after being returned must be accompanied by a filing fee in the amount set forth in 49 CFR 1002.2(f)(100).

* * * * *

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE OR OPERATE RAILROAD LINES

11. The authority citation for Part 1150 would be revised to read:

Authority: 49 U.S.C. 10321, 10326, 10901, 10903, 10505; 5 U.S.C. 553 and 559.

§ 1150.10 [Amended]

12. In § 1150.10, paragraph (b) would be amended by removing the sentence "A $700 fee is required to file an application (49 CFR 1002.2(d)(1))." and substituting in its place "A filing fee in the amount set forth in 49 CFR 1002.2(f)(33) is required to file an application.".

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

13. The authority citation for Part 1160 would continue to read:

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10924, and 11102; 5 U.S.C. 553; 16 U.S.C. 1456.

14. In § 1160.64, paragraph (b) would be revised to read:

§ 1160.64 Petition to clarify or interpret formally an operating authority.

* * * * *

(b) No application form need be used. Petitioner shall file its entire argument with the petition, with the fee in the amount set forth in 49 CFR 1002.2(f)(3). The petition shall be sent to the Office of the Secretary.

* * * * *

PART 1162—TEMPORARY AUTHORITY (TA) AND EMERGENCY TEMPORARY AUTHORITY (ETA) PROCEDURES UNDER 49 U.S.C. 10928

15. The authority citation for Part 1162 would continue to read:

Authority: 49 U.S.C. 10321, 10928; 5 U.S.C. 559.

16. In § 1162.2 paragraph (c) would be revised to read:

§ 1162.2 Filing of applications.

* * * * *

(c) *Filing fees.* A filing fee in the amount set forth in 49 CFR 1002.2(f)(8) shall accompany each temporary authority application. The filing fee for ETA applications is set forth in 49 CFR 1002.2(f)(9). If applicant seeks any extension of the ETA, a filing fee in the amount set forth in 49 CFR 1002.2(f)(10) is required.

* * * * *

§ 116.2.2 [Amended]

17. In § 1162.2 paragraph (e)(4)(ii), the first sentence of that paragraph would be revised to read: "Any request for extension of ETA, not conforming to the rules in paragraph (e)(4)(i) of this section shall be made by filing an original and two (2) copies of form OCCA–19 and shall be accompanied by the fee set forth in 49 CFR 1002.2(f)(10).". The rest of the text of the paragraph would remain unchanged.

PART 1169—RULES GOVERNING DISCONTINUING BUS TRANSPORTATION IN ONE STATE

18. In Part 1169, the authority citation would continue to read:

Authority: 49 U.S.C. 10321 and 10935; 5 U.S.C. 553.

§ 1169.3 [Amended]

19. In § 1169.3, the last sentence of the section would be revised to read "The filing fee is set forth in 49 CFR 1002.2(f)(67).".

PART 1171—RULES GOVERNING APPLICATIONS FOR CERTIFICATES OF REGISTRATION BY FOREIGN MOTOR CARRIERS AND FOREIGN MOTOR PRIVATE CARRIERS UNDER 49 U.S.C. 10530

20. In Part 1171, the authority citation would continue to read:

Authority: 49 U.S.C. 10922 and 10530; 5 U.S.C. 553.

21. In § 1171.5 paragraph (a) would be revised to read:

§ 1171.5 Where to send the application.

(a) The original and one copy shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, with the filing fee set forth in 49 CFR 1002.2(f)(1). A check or money order for that amount payable to the Interstate Commerce Commission in United States dollars must be submitted.

* * * * *

PART 1177—RECORDATION OF DOCUMENTS

22. The authority citation in Part 1177 would continue to read:

Authority: 49 U.S.C. 10321 and 11303; 5 U.S.C. 559.

23. In § 1177.3, paragraph (c) would be revised to read:

§ 1177.3 Requirements for submission.

* * * * *

(c) Be accompanied by the fee set forth in 49 CFR 1002.2(f)(84). However, assignments which are executed prior to the filing of the primary document and which are submitted concurrently will be treated along with the primary document as one for fee purposes and will be assessed only one fee. A lease and agreement (Philadelphia Plan) shall be similarly treated.

* * * * *

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

24. The authority citation in Part 1180 would continue to read:

Authority: 49 U.S.C. 10321, 10505, 10903–10906, 11341, 11343–11346; 5 U.S.C. 553 and 599; 45 U.S.C. 904 and 915.

25. In § 1180.4, paragraph (c)(1) would be revised to read:

§ 1180.4 Procedures.

* * * * *

(c) * * *

(1) The fee to file a primary application with the Commission under these procedures is set forth at 49 CFR 1002.2(f)(46) through (49). There is no filing fee for a directly related application filed by a party that filed the primary application. The fee for a directly related or responsive application filed by another party is set forth in 49 CFR 1002.2(f)(46) through (49). For a finance-related exemption filed by a party, the fee is set forth in 49 CFR 1002.2(f)(46) through (49).

* * * * *

26. In 49 CFR 1180.41, paragraph (d) would be revised to read:

§ 1180.41 Submission and contents of offers.

* * * * *

(d) Applications shall be accompanied by a filing fee in the amount set forth in 49 CFR 1002.2(56).

PART 1182—MOTOR CARRIER OF PASSENGERS APPLICATIONS TO CONSOLIDATE, MERGE OR ACQUIRE CONTROL UNDER 49 U.S.C. 11343–11344

27. The authority citation in Part 1182 would continue to read:

Authority: 49 U.S.C. 10321 and 11343, 11344 and 11345a; 5 U.S.C. 559.

§ 1182.1 [Amended]

28. In § 1182.1, paragraph (b), the third sentence beginning with the words "The filing fee" and ending with the words "Interstate Commerce Commission" would be removed and the following sentence substituted in its palce "The filing fee set forth at 49 CFR 1002.2(f)(21) must be paid at the time and place of application with a check or money order made payable to the Interstate Commerce Commission.".

29. In § 1182.5, paragraph (c)(1) would be revised to read:

§ 1182.5 Processing temporary authority application filed under 49 U.S.C. 11349 corresponding to application filed under 49 U.S.C. 11343 through 11344 or 10926.

* * * * *

(c) *Starting the application process.* (1) Persons seeking temporary authority under this section shall properly complete application form OP–F–46. The application fee is set forth in 49 CFR 1002.2(f)(26).

* * * * *

[FR Doc. 87–19917 Filed 8–27–87; 8:45 am]
BILLING CODE 7035–01–M

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49 CFR Part 1084

[Ex Parte No. MC–181]

Elimination of Cargo Liability Security Requirements for Freight Forwarders of Non-Household Goods

AGENCY: Interstate Commerce Commission.

ACTION: Discontinuance of proposed rulemaking proceeding.

SUMMARY: By decision served December 8, 1986, the Commission requested comments on a proposal to amend the regulations at 49 CFR Part 1084 to eliminate cargo liability security requirements for non-household goods freight forwarders and to make conforming changes in rules governing surety bonds and policies of insurance. 51 FR 44318 (December 9, 1986). The proposed rule revisions followed enactment of the Surface Freight Forwarder Deregulation Act of 1986, Pub. L. 99–521, 100 Stat. 2293, effective December 21, 1986. The Act substantially removed the Commission's regulatory jurisdiction over the non-household goods segment of the surface freight forwarding industry, but preserved its discretion to impose cargo liability security requirements on all forwarders. The Commission has determined to defer action on the proposed revision until it has had an opportunity to evaluate the experiences of forwarders and transportation consumers in the newly deregulated environment. Accordingly, it is discontinuing this proceeding.

EFFECTIVE DATE: This decision will be effective August 28, 1987.

FOR FURTHER INFORMATION CONTACT:

Suzanne Higgins, (202) 275–7203

or

Andrew Lyon, (202) 275–7691.

(TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: The Commission's decision contains additional information. To purchase a copy of the decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357 (assistance for the hearing impaired is available through TDD services (202) 275–1721) or through pickup from TSI in Room 2229 at Commission headquarters.

This action will not affect significantly the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1084

Freight forwarders, Insurance, Surety bonds.

Authority: Pub. L. 99–521, 49 U.S.C. 10321 and 10927, and 5 U.S.C. 553.

Decided: August 17, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Lamboley. Chairman Gradison, joined by Commissioner Andre dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19784 Filed 8–27–87; 8:45 am]
BILLING CODE 7035–01–M

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Notices

Federal Register
Vol. 52, No. 167
Friday, August 28, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

National Bureau of Standards

[Docket No. 51295-7138]

Approval of Federal Information Processing Standards Publication 68-2, BASIC

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved Federal Information Processing Standards Publication (FIPS PUB) 68-2, BASIC. This standard will replace FIPS PUB 68-1, Minimal BASIC.

SUMMARY: On January 13, 1986, notice was published in the **Federal Register** (51 FR 1418) that a revised Federal Information Processing Standard for BASIC was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS) and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

This approved revised standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice.

DATE: This standard is effective March 1, 1988. Immediate use by Federal agencies is strongly recommended when the use of FIPS BASIC would contribute to operational benefits, efficiency, or economy.

ADDRESS: Interested parties may purchase copies of this revised standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies section of the announcement portion of the FIPS PUB.

FOR FURTHER INFORMATION CONTACT: Ms. Mabel Vickers, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 975-3277.

Ernest Ambler,
Director.

Date: August 19, 1987.

Federal Information Processing Standard Publication 68-2

(date)

Announcing the Standard for BASIC

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to Section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. Name of Standard

Basic (FIPS PUB 68-2).

2. Category of Standard.

Software Standard, Programming Language.

3. Explanation

This publication announces the adoption of American National Standard for BASIC, ANSI X3.113-1987, as a Federal Information Processing Standard (FIPS). This FIPS supersedes FIPS PUB 68-1, Minimal BASIC, and reflects major changes, improvements, and additions to the BASIC specifications. The American National Standard for BASIC, ANSI X3.113-1987, specifies the form and establishes the interpretation of programs expressed in the BASIC programming language. The purpose of the standard is to promote portability of BASIC programs for use on a variety of data processing systems. The standard is for use by implementors as the reference authority in developing compilers, interpreters, or other forms of high level language processors; and by other computer professionals who need to know the precise syntactic and semantic rules adopted by ANSI.

4. Approving Authority

Secretary of Commerce.

5. Maintenance Agency

Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. Cross index

American National Standard ANSI X3.113-1987, BASIC.

7. Related Documents

a. Federal Information Resources Management Regulation 201-8.1, Federal ADP and Telecommunications Standards.

b. Federal Information Processing Standards Publication 29 (current version), Interpretation Procedures for Federal Information Processing Standard Programming Languages.

c. NBS Special Publication 500-117, Selection and Use of General-Purpose Programming languages.

8. Objectives

Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—To encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—To reduce the cost of program development by achieving the increased programmer productivity

that is inherent in the use of high level programming languages;
—To reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems;
—To protect the existing software assets of the Federal Government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. Applicability

a. Federal standards for high level programming languages should be used for computer applications and programs that are either developed or acquired for Government use. FIPS BASIC is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS BASIC is suitable for use in relatively simple applications, especially those with a high degree of user interaction. The features of BASIC support use by non-professional programmers, i.e., those whose primary skill is not programming, who may need to write their own programs.

b. The use of FIPS high level programming languages is strongly recommended when one or more of the following situations exists:
—It is anticipated that the life of a program will be longer than the life of the presently utilized equipment
—The application or program is under constant review for updating of the specifications, and changes may result frequently
—The application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models, and configurations
—The program will or might be run on equipment other than that for which the program is initially written
—The program is to be understood and maintained by programmers other than the original ones
—The advantages of improved program design, debugging, documentation, and intelligibility can be obtained through the use of this high level language regardless of interchange potential
—The program is or is likely to be used by organizations outside the the Federal Government (i.e., State and local governments, and others)

c. Nonstandard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of application-oriented software package. The use of any facility should be considered in the context of system life, system cost, data integrity, and the potential for data sharing.

e. Programmatic requirements may be also more economically and efficiently satisfied by the use of automatic program generators. However, if the final output of a program generator is a BASIC source program, then the resulting program should conform to the conditions and specifications of FIPS BASIC.

10. Specifications

FIPS BASIC specifications are the language specifications contained in American National Standard for BASIC, ANSI X3.113–1987.

The ANSI X3.113–1987 document defines the syntax and semantics of the BASIC language by specifying requirements for a conforming processor and program, the formats of data (including range and precision of numbers, and length of character strings) which can be manipulate by a BASIC program, and the syntactic errors and run-time exceptions which must be detected by a conforming implementation.

The standard does not specify a minimum for the size or complexity of programs which must be acceptable to an implementation.

11. Implementation

The implementation of FIPS BASIC involves three areas of consideration: acquisition of BASIC processors, interpretation of FIPS BASIC, and validation of BASIC processor.

11.1 *Acquisition of BASIC Processors*

This publication is effective March 1, 1988. BASIC processors acquired for Federal government use after this date should implement this standard. Conformance to FIPS BASIC should be considered whether BASIC processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition time period provides time for industry to produce BASIC processors conforming to the standard. The transition period begins on the effective date and continues for one (1) year thereafter. The following apply during the transition period:

a. The provisions of FIPS PUB 68–1 apply to processors ordered before the effective date of this publication but delivered subsequent to the effective date.

b. The provisions of this publication apply to orders placed after the effective date; however, a processor conforming to FIPS PUB 68–1 may be acquired for interim use until the conforming processor is available.

11.2 *Interpretation of FIPS BASIC*

NBS provides for the resolution of questions regarding FIPS BASIC specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of FIPS BASIC should be addressed to: Director, Institute for Computer Sciences and Technology, Attn: BASIC Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

11.3 *Validation of BASIC Processor*

The National Bureau of Standards, Institute for Computer Sciences and Technology, provides a service for the purpose of validating the conformance of processors to FIPS languages offered for Federal procurement. This service is offered on a reimbursable basis. Further information about the validation service can be obtained from the National Bureau of Standards, Institute for Computer Sciences and Technology, Software Standards Validation Group, Gaithersburg, MD 20899, (301) 975–3247.

12. Where to Obtain Copies

Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 68–2 (FIPSPUB68–2), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 87–19803 Filed 8–27–87; 8:45 am]
BILLING CODE 3510–CN–M

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[Modification No. 1 to Permit No. 504]

National Oceanic and Atmospheric Administration

Marine Mammals Permit Modification; Sea World, Inc.

Notice is hereby given that pursuant to the provisions of § 216.33 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and section C.4 of Public Display Permit No. 504 issued to Sea World, Inc., 1720 South Shores Road, San Diego, California 92109 on June 6, 1985 (50 FR 25113, June 17, 1985), that Permit is modified as follows:

Section A is modified by adding: "2. The Permit Holder is authorized to take a seventh false killer whale *(Pseudorca crassidens)* by the means described in the application."

This modification became effective on August 21, 1987.

The Permit, as modified, and documentation pertaining to the modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, Room 805, Washington, DC; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: August 21, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-19764 Filed 8-27-87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; The North Gulf Oceanic Society (P351B)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531 through 1544) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217 through 222).

1. Applicant:

a. Name: The North Gulf Oceanic Society.

b. Address: P.O. Box 156, Cordova, Alaska 99574.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Humpback whales *(Megaptera novaeangliae)* 300.

4. Type of Take: To inadvertently harass humpback whales during photo identification research in Prince William Sound, Alaska and the Kona coast of the Island of Hawaii.

5. Location of Activity: Prince William Sound, Alaska and the Kona coast of the Island of Hawaii.

6. Period of Activity: 3 Years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC;

Director, National Marine Fisheries Service, Alaska Region, 709 West 9th Street, Federal Building, Juneau, Alaska 99802;

Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115; and

Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: August 21, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-19765 Filed 8-27-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENT

Deduction in Charges of Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Haiti

August 24, 1987.

The Chairman of the Committee for the Implementaion of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, and pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986) and 52 FR 26057 (July 10. 1987), has issued the directive published below to the Commissioner of Customs to be effective on August 31, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Summary

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to deduct 75,000 dozen from the restraint limit established for Category 347/348 and 19,578 dozen from Category 341/641 for the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. Subsequently, these same amounts will be charged to the guaranteed access levels established for properly certified textile products in Categories 347/348 and 341/641 which are assembled in Haiti from fabric formed and cut in the United States and exported from Haiti during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Background

On January 13, 1987 a notice was published in the **Federal Register** (52 FR 1371) announcing import restraint limits for certain cotton and man-made fiber textile products, including Categories 347/348 and 341/641, produced or manufactured in Haiti and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

A further notice was published in the **Federal Register** on February 27, 1987 (52 FR 6053) which announced guaranteed access levels for properly

certified textile products assembled in Haiti from fabric formed and cut in the United States, including products in Categories 347/348 and 341/641.

During consultations held on May 11 and 12, 1987 between the Governments of the United States and Haiti, the United States agreed to deduct 75,000 dozen from charges made to the designated consultation level established for Category 347/348 for the period which began on January 1, 1987 and extends through December 31, 1987. These goods were charged to the designated consultation level because of the unavailability of proper documentation (CBI Export Declaration (Form ITA-370P)) required for entry under TSUSA 807.0010. Subsequent to the consultations, documentation was provided to the U.S. Government establishing that goods in Category 341/641 were assembled exclusively from U.S. formed and cut fabric and qualified for entry under the guaranteed access level. Based on this documenation, the U.S. Government has agreed to deduct 19,578 dozen from the designated consultation level for Category 341/641. Consequently, charges will be made to the guaranteed access levels established for Categories 347/348 and 341/641, in the amounts of 75,000 dozen and 19,578 dozen, respectively.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

August 24, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of December 18, 1986 between the Governments of the United States and Haiti, I request that, effective on August 31, 1987 you deduct the following amounts from the charges made to the import restraints limits established in the directive of December 31, 1986 for Categories 341/641 and 347/348, produced or manufactured in Haiti and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Category	Amount to be deducted
341	19,578 doz
347	31,540 doz
348	43,460 doz.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

This letter will be published in the **Federal Register**.

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-19802 Filed 8-27-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1987 commodities produced by and services provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 28, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 1, 1986, June 5, and June 26, 1987, the Committee for Purchase for the Blind and Other Severely Handicapped published notices (52 FR 21344, 24048, and 24049) of additions to and deletions from Procurement List 1987, November 3, 1986 (51 FR 39945).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46 through 48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity and services listed.

c. The action will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1987:

Commodity

Firing Attachment, Blank
1005-00-118-6192

Services

Commissary Shelf Stocking

Custodial and Warehousing
Hill Air Force Base, Utah

Janitorial/Custodial
Hale Boggs Federal Building and U.S. Courthouse, 500 Camp Street, New Orleans, LA

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Commodities

Mat, Floor
7220-00-151-6517

Wood Container (with skids)
8115-L1-599-7820
8115-L1-599-8120
8115-L1-465-0920
8115-L1-466-4120

Service

Commissary Shelf Stocking
Naval Air Station, Fallon, NV

C.W. Fletcher,

Executive Director.

[FR Doc. 87-19781 Filed 8-27-87; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1987; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

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SUMMARY: The Committee has received proposals to add to Procurement List 1987 a commodity to be produced by and services to be provided by the workshops for the blind or other severely handicapped.

DATES: Comments Must Be Received on or Before: September 28, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commodity

Buckle, Belt

8315-00-598-6278

Services

Janitorial Service

Federal Building, U.S. Post Office and Courthouse, 211 West Ferguson Avenue, Tyler, TX

Sorting of Hardware and Small Hand Tools

Robins Air Force Base, GA

C.W. Fletcher,

Executive Director.

[FR Doc. 87-19782 Filed 8-27-87; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF ENERGY

Proposed Finding of No Significant Impact; Fuel Processing Restoration Project, Idaho National Engineering Laboratory

AGENCY: Department of Energy.

ACTION: Proposed finding of no significant impact.

SUMMARY: The Department of Energy (DOE) has prepared an environmental assessment (EA) on the proposed Fuel Processing Restoration (FPR) project at the Idaho Chemical Processing Plant (ICPP) at the Idaho National Engineering Laboratory (INEL). The FPR project includes two proposed actions: (1) To construct and operate a replacement facility, the Fuels Processing Facility (FPF), which will process recoverable irradiated naval and research reactor fuel and recover uranium for reuse in defense programs; and (2) to install and operate a new liquid low-level waste (LLW) treatment and disposal system to improve ICPP waste management practices. New facilities are needed because the existing ICPP facilities are not expected to be able to process anticipated increases in recoverable irradiated naval fuel receipts.

The EA examined and compared the environmental impacts of the proposed FPR project and reasonable alternatives. Based on the analyses in the EA the DOE believes that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, and, as such, proposes to issue a finding of no significant impact (FONSI). The proposed FONSI and the supporting EA are being made available for public review for a period of 30 days following the date of this notice. Following completion of the public review period, DOE will make its final determination on whether to issue a FONSI or to prepare an environmental impact statement (EIS) for the proposed FPR project.

ADDRESSES: Copies of the EA are available from: Mr. Peter Mygatt, U.S. Department of Energy, Idaho Operations Office, Office of External Affairs, 785 DOE Place, Idaho Falls, ID 83402, (208) 526-1318.

FOR FURTHER INFORMATION CONTACT: Carol Borgstrom, U.S. Department of Energy, Office of NEPA Project Assistance, 1000 Independence Avenue, SW., Room 3D-080, Washington, DC 20585, (202) 586-4600.

Comments

Comments on the proposed FONSI may be sent to Mr. P. Mygatt at the address above. Comments must be received within 30 days of the date of this notice to assure consideration.

Background

The Idaho Chemical Processing Plant (ICPP) is located in the south central portion of the 890-square mile Idaho National Engineering Laboratory (INEL) reservation, on the eastern Snake River Plain in southeastern Idaho. The ICPP began operation in 1951 to support the Atomic Energy Commission's (DOE's predecessor) reactor testing program. Today, the ICPP primarily supports naval reactor programs. As part of the nuclear fuel cycle, nuclear fuels produced under contract to DOE are utilized by naval reactors and research reactors. Recoverable irradiated reactor fuels are returned to the ICPP and revert to DOE control. These recoverable irradiated fuel cells are processed to produce solid uranium trioxide. This recovered uranium is recycled to other DOE facilities for final processing and utilization in fuel fabrication.

I. Processing Requirements

The primary mission of the ICPP is to process recoverable irradiated naval reactor fuels. Recent ICPP fuel-receiving projections show the facility operating mission extending to at least the year 2030. The projections identify major increases in future fuel-processing requirements, with the facility's second 40-year (1990-2030) throughput expected to be up to four times greater than the throughput of the first 40 years (1950-1990). Detailed studies of the current ICPP maximum processing capacity indicate a capability less than 50% of future requirements, with the existing fuel storage basin capacity being exhausted by 1994, necessitating construction of additional storage basins if the FPF is not constructed.

In response to the increased fuel processing requirements, the Fuels Processing Facility (FPF) is proposed to replace the existing ICPP uranium recovery process (i.e., extraction and denitration) equipment that is housed in building 601 of the Chemical Processing Plant (CPP-601). The FPF processing would take place in sequence between the ICPP headend process [Fluorinel Dissolution Process and Fuel Storage Facility (FAST)], and the waste management activities provided by the recently commissioned New Waste Calcining Facility (NWCF).

In addition to timely processing of recoverable irradiated reactor fuels, the FPF would also facilitate a higher rate of recycle of uranium-235 to DOE's production reactors. The needed uranium, if not provided by reprocessing at the ICPP, must be derived from alternative sources, such as mining and milling, or reprocessing elsewhere. The ICPP is the only facility in the U.S. currently capable of reprocessing highly enriched uranium fuels.

Another factor that could limit the ability of the ICPP to fulfill its future mission requirement centers on design codes, standards and safety design philosophy. Because safety design philosophy has changed significantly

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since the CPP–601 facility was constructed in the 1950s, the environmental, security, and radiological safety features of the CPP–601 facility would need extensive upgrading in order to support the future mission requirements. The FPF would be constructed and operated in compliance with all updated applicable codes and standards.

II. Effluent Treatment Upgrades

Another major factor that could limit the ability of the ICPP to fulfill its future mission requirements centers on the currrent liquid effluent treatment and disposal practices. Depending on the facilities in operation, the ICPP liquid waste comprises 1 to 2 million gallons/day (gal/day) of service waste, which is a combination of many liquid streams resulting from the process of fuel recovery. Until February 1984, this service waste containing trade quantities of radionuclides and heavy metals was discharged to the Snake River Plain aquifer via the ICPP injection well. The State of Idaho objected to the injection practice. The DOE and the State have agreed to the use of a percolation pond as an interim service waste disposal method. One of the streams that is combined in the service waste is the process equipment waste (PEW) evaporator condensate [referred to as low-level waste (LLW) in the FPR EA]. This LLW stream is the only contributor of radioactivity and periodically contains hazardous levels of mercury and acidity. A proposed long-tem solution for LLW management is to separate the LLW from the service waste, reduce the volume by recycling, reduce contaminants through other process improvements and treatment, and evaporate the treated effluent.

Releases to the percolation pond from the existing service waste system are within the DOE limits for discharge to uncontrolled areas, and, although drinking water regulations do not currently apply to percolation ponds, they may become applicable in the future because of increasing concerns for protection of groundwater. If these regulations become applicable, continued use of the existing ICPP facilities at anticipated increases in future fuel processing rates could result in LLW discharges that exceed the regulatory limits. Therefore, LLW treatment system modifications are prudent to ensure that the ICPP liquid waste will meet possible future, more restrictive regulations.

Proposed Action

The proposed action would provide for new uranium extraction and LLW treatment systems to operate in conjunction with FAST, NWCF, and other existing ICPP facilities. Two actions are proposed as part of the FPR project. The first is to construct and operate a new facility at the ICPP, to be called the Fuels Processing Facility (FPF), which would house most of the uranium recovery activities currently performed in CPP–601. The FPF would begin operations in 1995 and extend through approximately 2030. The second action is to install improved LLW treatment and disposal systems at the ICPP to reduce waste volumes. The purposes of the proposed FPR project are to: (a) Fulfill the ICPP mission of processing increased throughout requirements in the most economical manner; (b) reduce environmental releases, criticality risks, and radiation exposure per unit of uranium throughout; and (c) improve security and radiological safety systems.

I. Fuels Processing Facility

The proposed FPF would be constructed within the ICPP complex in a fully-developed industrial area. The building will be approximately 66 meters by 76 meters, with five levels: Three below grade and two above.

The FPF would enable the ICPP to meet future reactor uranium fuel processing requirements by increasing its processing capacity from 1030 kg U–235/yr to 3200 kg U–235/yr. In addition, the improvements would (a) reduce personnel radiation exposures to as low as reasonably achievable (ALARA) levels; (b) impart physical, rather than administrative, methods of criticality control; (c) administer better cleanup and control of effluent releases; (d) improve security and product accountability measures; and (e) upgrade structures, systems, and equipment to meet applicable standards, codes, and safety criteria to protect against destructive natural phenomena.

The FPF would perform all solvent extraction and product denitration functions currently performed in the CPP–601 facility. Specifically, the FPF will: (1) Receive dissolver product solutions from FAST; (2) process the dissolver product solutions through three cycles of solvent extraction and product denitration to produce purified solid uranium trioxide (UO_3); (3) temporarily store the solid UO_3 product; (4) recover and clean solvent for recycle or disposal; (5) receive and store process chemicals; (6) control and monitor all radioactive liquid waster streams; and (7) provide for the collection, packaging, interim storage, and handling of radioactive solid wastes.

II. Low Level Waste Treatment

The proposed LLW Treatment and Disposal System will either be located in an existing facility or a new facility for which construction will be required. The location of a new facility would most likely be southeast of building CPP–604, with some of the equipment being housed in that building.

Under the proposed action, the nonhazardous, nonradioactive portion of the service waste (1 to 2 million gal/day) will continue to be disposed of via a percolation pond. The LLW stream will be removed from the service waste stream for treatment and will either be recycled to the extraction processes, i.e. FPF, or disposed of by an evaporation process.

The treatment system, as currently conceived, will consist of an acid fractionation process, followed by evaporation and filtration with high efficiency particulate air (HEPA) filters prior to discharge. This treatment system would remove most of the heavy metals and radionuclides and reduce the acidity of the LLW system. Two parallel treatment systems would be installed to ensure process reliability.

Contaminants removed during treatment would be combined with PEW evaporator bottoms (from the existing process) and would be routed along with high-level waste (HLW) generated by the FPF process to the HLW tank farm and, subsequently, to the New Waste Calcining Facility. The aqueous HLW streams contain most of the fission products from the dissolved fuel, and are routed, as an interim processing step, to existing stainless steel tanks contained in below-grade reinforced concrete vaults. The liquid HLW would be calcined (soldified into granular solids) in the NWCF. The calcined solids would then be stored in stainless steel bins enclosed in reinforced concrete vaults at the INEL site, as is currently practiced.

Alternatives Considered

Several alternatives considered were: (1) No action; (2) complete renovation of the CPP–601 facility and processes; and (3) limited construction of new first-cycle extraction facilities to be used in conjunction with upgraded downstream systems. The four LLW system alternatives considered consisted of: (1) No action, which examined the possibility of continued use of the existing U–235 extraction process in tandem with the existing liquid LLW treatment and disposal system; (2) evaluation of the existing LLW system in conjunction with the proposed FPF;

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(3) implementation of the proposed LLW system with the exception that all of the treated liquids would be disposed of in the percolation pond; and (4) implementation of the proposed LLW system with the treated liquid waste to be disposed of in a solar pond.

Environmental Considerations

The potential environmental effects were evaluated in the EA for the proposed actions and alternatives. The EA analyzed the effects from the proposed new facilities as well as the cumulative effects resulting from operations of the proposed new facilities and all other ICPP facilities. No significant environmental impacts associated with the proposed FPR project are anticipated. The proposed finding of no significant impact for the proposed action is based on the following factors, which are supported by the information and analyses in the EA.

I. Relative Comparison of Environmental Impacts

The potential environmental impacts from the alternative actions were evaluated in the EA and compared to the environmental effects projected for the proposed action. In summary, FPF Alternatives 2 and 3 would satisfy the projected ICPP mission requirements, while Alternative 1 would fall short of projected demands. Since the FPF proposed action and Alternatives 2 and 3 process larger volumes of material, the estimated environmental impacts of those options are slightly greater than those for Alternative 1. However, the impacts of all actions evaluated were found to be several orders of magnitude below regulatory requirements. The proposed action would ensure the greatest safety to both workers and the public for the following reasons:

- Improved criticality control;
- Product accountability measures; and
- Structure, systems, and equipment designed to meet natural phenomena standards.

The smallest environmental impacts associated with LLW management are from the LLW proposed action and LLW Alternative 4, although alternative 4 would result in the accumulation of hazardous sludges. More importantly, the LLW proposed action completely eliminates potentially adverse effects on the aquifer, while LLW Alternatives 1, 2, and 3 would result in discharges of trace quantities of heavy metals to percolation ponds; thus, these options could result in groundwater contamination. The following sections describe the environmental consequences of the proposed action.

II. Release of Radioactivity

Potential radiological impacts were analyzed for both routine operations and abnormal events (e.g., fire and tornado). Radiological effects are estimated by projecting radiation dose commitments to ICPP workers, maximum individual members of the general public and the population living in the study area and by estimating health effects (latent cancer deaths) to exposed populations.

A. Routine Operations

The maximum individual effective does equivalent (EDE) (5.0×10^{-7} rem) for the proposed action from one year of FPF operation would be 0.002% of the annual EPA standard for the airborne pathway (0.025 rem). The maximum individual EDE from one year of operation of the proposed LLW treatment and disposal system (4.2×10^{-6} rem) and the maximum individual EDE from total ICPP airborne emissions (2.7×10^{-4} rem) are 0.02% and 1%, respectively, of the standard. The population cumulative dose from all ICPP operations (1.4 man–rem) would be indistinguishable from the effects of background radiation (43,500 man–rem).

These doses are primarily due to elevated iodine–129 and tritium releases from the FAST and NWCF facilities because of projected increased throughput rates. The maximum number of health effects estimated to occur to the exposed population from routine releases of the FPF proposed action would be 1.3×10^{-6} per year. The maximum number of health effects projected to occur due to routine releases from the LLW proposed action are 3.9×10^{-5} per year. For comparison, 3 to 10 health effects per year are estimated to occur to the exposed population due to background radiation.

One of the main objectives of the FPF project is to reduce occupational exposure during reprocessing. To achieve this objective, the FPF will increase shielding and include more remote operational capabilities. As an operational practice, all radiation worker doses will be kept as low as reasonably achievable (ALARA) through the training of radiation workers in the proper use of equipment and protective clothing, and through sufficient planning of employee's job procedures. The facility will also be designed to reduce the total worker radiation doses to below one-fifth (1 rem/yr) the DOE occupational exposure limit of 5 rem/yr, established by DOE Order 5480.1B, Chapter 11.

B. Abnormal Events

Radiological effects caused by abnormal events were also estimated for the FPF and LLW proposed actions, and it was determined that these effects would be very small and would not be detectable in the exposed population. For the FPF, the greatest number of health effects (0.10) would result from the design basis tornado, having winds in excess of 175 mph. The design basis tornado is also estimated to cause the greatest number of health effects resulting from damage to the LLW system, 1.7×10^{-6}. The event with the highest probability of occurrence (7.7×10^{-3}/yr) was a fire with HEPA filter failure, wherein, the first of three stages of HEPA filters is damaged but the separate, downstream second and third stages remain intact. The health effects caused by such an occurrence are also very small (3.0×10^{-4} for FPF and 2.0×10^{-7} for the LLW), and would not be detectable in the exposed population.

All FPF and LLW gaseous effluents will be monitored by stack monitors which will continuously measure gaseous and particulate radioactivity. HEPA filters will be monitored to ensure maintenance of filter integrity. Alarms will be provided to alert operators of off-normal conditions in the heating, ventilation and air-conditioning systems, and technical specifications/standards, Quality Assurance requirements and operating procedures will be established for administrative control.

III. Air Quality

Air quality will not be significantly affected by the proposed action. The principal sources of nonradioactive emissions (NO_x and SO_2) at the ICPP are the FPF, the NWCF, and the Coal-Fired Steam Generation Facility (CFSGF). (The CFSGF produces process steam for ICPP facilities and is the dominant current and projected source of SO_2 emissions. The CFSGF SO_2 releases are not expected to increase with increased throughput at the ICPP). Calculated increases of concentrations of NO_x and SO_2 at the site boundary are factors of 10^{-1} to 10^{-3} below applicable air quality standards for NO_x and SO_2, respectively.

However, operation of the FPF will result in annual net emission increases of NO_x from the ICPP due to the higher processing rate at the NWCF. Although the increases are well within the State of Idaho's regulatory requirements, the increases would be significant as defined by the State of Idaho for purposes of air permitting. Therefore, a

construction permit from the State of Idaho has been requested and an operating permit may also be required at the State's discretion. (The DOE has recently initiated a research and development program to remove NO_x from the ICPP main stack. A bench-scale technology demonstration unit will be installed in fiscal year 1988.)

IV. Water Quality

There is minimal potential for degradation of water quality at the INEL from the FPF proposed action. There are no permanent surface waters at the INEL. All surface waters entering the INEL site evaporate or infiltrate and recharge the Snake River Plain aquifer, which flows through fractured and porous basalt about 450 ft beneath the surface at the ICPP.

Waste handling systems within the FPF will process liquid wastes to minimize discharge of radioactive and toxic materials to the environment. A gamma monitoring and diversion system will prevent discharge of radioactivity in excess of release limits. The nonradioactive, nonhazardous service wastes will be monitored to ensure pollutant concentrations are below applicable release limits before being discharged to an existing percolation pond. No significant environmental impacts associated with liquid wastes are anticipated.

Increased throughput at the ICPP will require additional water which will be pumped from the Snake River Plain aquifer. Pumping will have a very limited and localized effect on annual water-level changes in the aquifer in the vicinity of the ICPP because the amount which will be pumped is a small portion of the total storage and recharge.

V. Solid Waste

Solid waste generated as a result of the FPR project will be segregated into radioactive and nonradioactive components. Nonradioactive nonhazardous solid waste will be disposed of at an existing INEL sanitary landfill. Radioactive solid waste will be disposed of according to the type of radioactive contamination. Low-level radioactive waste will be disposed of in an existing shallow-land burial site at the Radioactive Waste Management Complex (RWMC) at the INEL. Solid waste contaminated with transuranic (TRU) radionuclides will be stored at the RWMC during an interim period until shipped for offsite disposal. Radioactive hazardous (mixed) waste will be stored at the INEL mixed waste storage facility pending evaluation of treatment/disposal options. Nonradioactive hazardous wastes will be packaged in accordance with Department of Transportation (DOT) regulations (49 CFR Parts 171, 172, and 173) and shipped to a permitted hazardous waste disposal facility.

Existing facilities at the INEL are adequate for handling solid waste generated by the proposed FPR project. Standard procedures are in place at INEL for safely carrying out waste handling activities. No significant impacts to the environment are projected from the result of handling solid wastes at the INEL.

VI. Seismicity

INEL is located in Seismic Zone 2, defined by the Uniform Building Code, October 1981, as an area where destructive earthquakes may occur. However, none of the events recorded to date have caused damage to ICPP facilities. Pipelines laid in concrete-lined trenches and other FPF facilities are designed to withstand the effects of a design basis earthquake (DBE) (0.24-g horizontal acceleration). Estimated potential environmental impacts due to DBE earthquakes on the proposed facilities are minimal, and no significant impacts would occur.

VII. Cultural and Biological Resources

The FPF facilities would occupy about 0.5 hectares (1 acre) of land inside the fences of the ICPP. Because the proposed site is presently in a highly developed area, no significant impacts on natural resources of the area are anticipated. There are no significant cultural or biological resources at the FPR site. No known threatened or endangered species or critical habitat are likely to be affected by the project. No impacts to archaeological sites are anticipated as a result of FPR.

VIII. Floodplains and Wetlands

The proposed FPF location is about 0.5 miles from Big Lost River and is 11 ft above the river bed. An existing flood control system is designed to contain a flood in excess of one with an average return period of 300 years, and therefore, the proposed project would not impact the floodplain.

IX. Socioeconomic Resources

A small work force is required for construction (120 workers) and operations (19 additional people); based on the availability of a local labor pool, socioeconomic effects associated with the FPR project are expected to be insignificant.

X. Soils

Clearing of the construction site will result in minimal soil erosion. The use of existing roads for access and the site location on previously disturbed ground will limit the erosion potential. Clearing of vegetation will be minimized and, after construction activities have concluded, the site will be upgraded and revegetated where feasible. If excavated soil is found to be radioactively contaminated above background levels, that soil will be disposed according to applicable DOE orders.

Proposed Determination

Based on the information and analyses in the EA, the Department believes that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Thus, DOE proposes to issue a finding of no significant impact and, therefore, not require the preparation of an environmental impact statement. DOE will make a final determination following the 30-day public review period.

Issued at Washington, DC, August 25, 1987.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 87-19769 Filed 8-27-87; 8:45 am]

BILLING CODE 6560-50-M

Economic Regulatory Administration

[ERA Docket No. 87-42-LNG]

Application To Amend Authorization To Export Liquefied Natural Gas; Phillips 66 Natural Gas Co. and Marathon Oil Co.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application to amend authorization to import liquefied natural gas to Japan.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 29, 1987, of a joint application filed by Phillips 66 Natural Gas Company (Phillips 66) and Marathon Oil Company (Marathon) requesting the ERA to amend their existing liquefied natural gas (LNG) export authorization to permit them to charge more market responsive prices to their two Japanese customers.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, or notices of intervention, and written comments are invited.

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DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 28, 1987.

FOR FURTHER INFORMATION:

John Glynn, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9482

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: By their application, Phillips 66 and Marathon are requesting the ERA to amend their LNG export authorization granted by DOE/ERA Opinion and Order No. 49 (Opinion 49) on December 14, 1982. Specially, the applicants want the ERA to modify the requirement in ordering paragraph C of Opinion 49 that requires them to adhere to certain very specific terms in the pricing of LNG under this export authorization. The applicants state that the present pricing formula for LNG is primarily based on the volume-weighted average of the government selling prices for the top twenty crude oils imported into Japan. The applicants maintain that this forumla has not worked properly since early 1986, because various governments have been selling their oil for prices far below those published as their official selling prices.

Since the formula no longer reflected actual LNG market prices, the applicants and their two Japanese purchasers have had discussions over the past year regarding possible changes to the price provision and agreed to utilize provisional prices pending the outcome of these discussions. The result of these negotiations was the Seventeenth Amendatory Agreement dated April 16, 1987, whch sets forth market-oriented prices from March 1986 through March 1987, and obligates the applicants to make refunds to its two purchasers to the extent that the provisional prices exceeded firm settlement prices during this time period.

The applicants state that they would strongly prefer that the ERA amend Opinion 49 by replacing the old price adjustment formula with a more market sensitive pricing forumla as outlined in their application; however, if the ERA is not willing to grant its request, the applicants alternatively request the ERA to modify Opinion 49 to permit the collection of the prices set forth in the Seventeenth Amendatory Agreement.

In support of their application, the applicants state that the requested amendment would permit them to respond quickly to changes in the marketplace without the "necessity of seeking ERA approval for each market-driven refinement of the old LNG pricing forumla." The applicants maintain that ERA failure to grant their amendment request would cause their LNG prices to be above market levels and could result in the termination of the export arrangement.

This application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204–111.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., September 28, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Phillips 66 and Marathon's joint application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 21, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–19770 Filed 8–27–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 3410–005 et al.]

Hydroelectric Applications Filed With the Commission; Woods Lake Hydro Co. et al.

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Amendment of License
b. Project No.: 3410–005
c. Date Filed: January 28, 1987
d. Applicant: Woods Lake Hydro Company
e. Name of Project: Woods Lake
f. Location: On Lime Creek in Eagle County, Colorado
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)
h. Applicant Contact: Kenneth M. Knight, 4100 East Mississippi Avenue, Suite 1313, Denver, CO 80222, (202) 376–1669
i. FERC Contact: Hector M. Perez, (202) 376–1669
j. Comment Date: September 23, 1987

k. Description of Project: The existing project has been in operation since 1937 with a rated capacity of 30 kW. The licensee proposes to upgrade and modify the project to consist of: (1) An existing 6-foot-high, 37.3-foot-long reinforced concrete overflow-type dam with a spillway crest elevation of 9,588.50 feet; (2) a reservoir having a surface area of 0.018 acre and negligible storage capacity: (3) an existing gated and screened intake structure and a sluiceway; (4) a new 15-inch-diameter, 630-foot-long PVC penstock; (5) an existing powerhouse with a new turbine-generator unit with a rated capacity of 45 kW; (6) a short 24-inch-diameter corrugated metal pipe tailrace; (7) a 2.4–kV, 1.02-mile-long transmission line; and (8) other appurtenances. The licensee estimates an average annual generation of 183,600 kWh after modifications. The project is located within the White River National Forest.

l. Purpose of Project: Project energy is used for residential consumption solely by the owners of Woods Lake.

m. This notice also consists of the following standard paragraphs: B, C, and D1.

2a. Type of Application: Transfer of License

b. Project No: 4900–003

c. Date Filed: July 20, 1987

d. Applicant: Lawrence R. Taft and Trafalgar Power, Inc.

e. Name of Project: Forestport

f. Location: On the Black River in the Towns of Forestport and Boonville, Oneida County, New York

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r)

h. Applicant Contact: Mr. Lawrence R. Taft, 10315 Caughdenoy Road, Central Square, NY 13036, (315) 668–8219

i. FERC Contact: Cheryl Phillips, (202) 376–9821

j. Comment Date: September 21, 1987

k. Description of Transfer: On March 20, 1987, a major license was issued to Lawrence R. Taft to construct, operate and maintain the Forestport Project 4900. Lawrence R. Taft intends to sell its interest in the project to Trafalgar Power, Inc., and therefore Lawrence R. Taft and Trafalgar Power, Inc request that the license be transferred to Trafalgar Power, Inc.

l. This notice also consists of the following standard paragraphs: B, C.

3a. Type of Application: Transfer of License

b. Project No: 7887–004

c. Date Filed: July 21, 1987

d. Applicant: ESI Hydropower Company, Inc. and Minnewawa Hydro Company, Inc.

e. Name of Project: Minnewawa Project

f. Location: on the Minnewawa Brook in Cheshire County, New Hampshire

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Applicant Contact: Mr. Michael R. Peisner, Curtis, Thaxter, Stevens, Broder, Micoleau, One Canal Plaza, Portland, ME 04112

i. FERC Contact: Robert Bell, (202) 376–5706

j. Comment Date: September 21, 1987

k. Description of Project: On July 14, 1986, a license was issued to ESI Hydropower Company, Inc. (licensee), to construct, operate, and maintain the Minnewawa Project No. 7887. The licensee intends to transfer the license to Minnewawa Hydro Company, Inc. (Transferee) which will purchase, build, and operate the project.

l. This notice also consists of the following standard paragraph: B and C.

4a. Type of Application: Preliminary Permit

b. Project No.: P–10445–000

c. Date Filed: July 17, 1987

d. Applicant: City of Utica, New York

e. Name of Project: Utica Water Line

f. Location: Hinckley-Utica Water Transmission System in Oneida County, New York

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r)

h. Applicant Contact: Mr. Russell S. LoGalbo, City of Utica, One Kennedy Plaza, Utica, NY 13503, (315) 792–0301

i. FERC Contact: Cheryl Phillips, (202) 376–9821

j. Comment Date: September 21, 1987

k. Competing Application: Project No. 10340. Date Filed: March 6, 1987.

l. Description of Project: The proposed project would consist of: (1) An existing intake structure; (2) two existing adjacent water transmission pipes, 36 inches in diameter of ductile iron pipe and 24 inches in diameter of cast iron pipe; (3) a proposed 30-foot-wide and 36-foot-long powerhouse to contain one turbine/generator with an installed capacity of 490 kW; (4) a proposed water line bypass system; (5) a proposed switchyard; (6) a new three phase 13.2–kV transmission line; and (7) appurtenant facilities. The existing facilities are owned by the City of Utica and the New York State Department of Transportation. The estimated average annual energy produced by the project would be 3,490 MWh operating under a net hydraulic head of 186 feet. The applicant estimates that the cost of work to be performed under the preliminary permit would be $39,000.

m. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

n. This notice also consists of the following standard paragraphs; A8, B, C, and D2.

5a. Type of Application: Surrender of License

b. Project No.: 4800–008

c. Date Filed: July 7, 1987

d. Applicant: City of Bountiful, Utah

e. Name of Project: Moon Lake Hydro Project

f. Location: On Lake Fork River in Duchesne County, Utah

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Applicant Contact: William J. Madden, Jr., McNeill Watkins II, Bishop, Cook, Purcell & Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036

i. FERC Contact: Jesse W. Short, (202) 376–9818

j. Comment Date: September 25, 1987

k. Description of the proposed surrender: The licensee requests the surrender of its license for Project No. 4800 stating that under present circumstances it cannot invest the necessary capital. Construction at the project has not begun. The project would have utilized the existing Bureau of Reclamation's Moon Lake Dam and Reservoir and would have consisted of: (1) Two steel penstocks, one 48-inches in diameter and 7,500 feet long (no. 1), and the other 24-inches in diameter and 300 feet long (no. 2)—both utilizing the outlet works near the left dam abutment, with no. 1 leading to: (2) a lower powerhouse containing a turbine-generator unit having a rated capacity of 4,250 kW, and with no. 2 leading to; (3) and upper powerhouse containing a turbine-generator unit having a rated capacity of 475 kW; (4) two tailraces; (5) 12.5–kV transmission lines and an interconnection to a 69–kV transmission system; and (6) appurtenant facilities. The total capacity of the two powerplants would have been 4,725 kW.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

6a. Type of Application: Exemption (5MW or Less)

b. Project No.: 10428–000

c. Date Filed: June 8, 1987

d. Applicant: Kevin T. and Pamela G. Duncan

e. Name of Project: Ebey Hill Hydroelectric Project

f. Location: On an unnamed tributary to the North Fork Stillaguamish River near the city Arlington, in Snohomish County, Washington.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.
h. Applicant Contact: Kevin T. and Pamela G. Duncan, 7019 Lake Ballinger Way, Edmonds, WA 98020, (206) 778–8783
i. FERC Contact: Thomas A. Dean, (202) 376–9275
j. Comment Date: September 21, 1987
k. Description of Project: The proposed project would consist of: (1) An earth-fill and concrete dam approximately 9 feet high and 338 feet long; (2) a 4.2-acre reservoir having a storage capacity of 27 acre-feet with a water surface elevation of 1,523.56 feet msl; (3) a 3,331-foot-long, 6 and 8-inch diameter penstock leading to: (4) a powerplant containing a single generating unit with a capacity of 100 kW operating at 1,148 feet of hydraulic head; (5) a 300-foot-long, 10-inch diameter tailrace; and (6) a 50-foot-long, 460-volt transmission line. The applicant estimates the average annual energy production to be 613,620 kWh.
l. Purpose of Project: The applicant intends to sell the power generated from the proposed facility to Snohomish County PUD No. 1.
m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, an competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice

A competing license application must conform with 18 CFR 4.30(b) (10) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS" "NOTICE OF INTENT TO FILE COMPETING APPLICATION" "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825/(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. It an agency does not file terms and conditions within this time period,

that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 24, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19738 Filed 8-27-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-32-000]

Proposed Change in Rates Under Proposed Gas Adjustment Clause Provision; Colorado Interstate Gas Co.

August 24, 1987.

Take notice that Colorado Interstate Gas Company (CIG) on August 14, 1987, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1987.

CIG states that its proposed gas sales rates reflect an annual reduction in its jurisdictional cost of purchased gas of approximately $6.0 million below the level of purchased gas in base rates the CIG made effective, subject to refund, on July 14, 1987 in Docket No. RP87-30, which incorporates the PGA change effective June 1, 1987, in Docket No. TA87-3-32.

Copies of the filing have been served upon CIG's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 31, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19741 Filed 8-27-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-55-000]

Filing; Holyoke Gas and Electric Department et al.

August 21, 1987.

In the matter of City of Holyoke Gas and Electric Department, City of Westfield Gas and Electric Light Department, Marblehead Municipal Light Department, Middleborough Municipal Gas and Electric Department, North Attlebore Electric Department, Peabody Municipal Light Plant, Shrewbury Electric Light Department, Templeton Municipal Light Plant, Town of Boylston Municipal Light Department, Town of Hudson Light and Power Department, Town of Littleton Municipal Light and Water Department, Town of Wakefield Municipal Light Department, and West Boylston Municipal Lighting Plant v. Boston Edison Company

Take notice that on July 31, 1987, the City of Holyoke Gas and Electric Department, *et al.* (entities listed above) filed a petition for a declaratory order and motion for summary judgment regarding a dispute between them and Boston Edison over the interruption of certain provisions in unit power purchase contracts that are on file with this Commission as jurisdictional rate schedules.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests shall be filed on or before September 4, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19740 Filed 8-27-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-86-000]

Proposed Changes in FERC Gas Tariff; KN Energy, Inc.

August 24, 1987.

Take notice that KN Energy, Inc., on August 14, 1987, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1. The proposed change would increase revenues from jurisdictional sales and service by $4,656,578 based on the twelve-month period ending April 30, 1987, as adjusted for known and measurable changes.

KN Energy, Inc., states that the jurisdictional rates filed herewith are designed to enable KN Energy, Inc. to recover increases in its jurisdictional cost-of-service resulting from:

(1) Additional facilities required to maintain deliverability;

(2) Increased operating costs and higher costs of material and supplies;

(3) Increased revenues needed to provide a rate of return of 11.33% on its utility investment;

(4) Increased costs for the transportation of KN's system supply gas by others, as priced at rates in effect as of the date of filing; and

(5) Reduced systemwide sales volumes.

KN Energy, Inc. requests that the tendered sheet by accepted for filing and be permitted to become effective September 14, 1987.

KN also has filed revised tariff provisions which would modify Rate Schedules IOR-1 and IOR-2 so as to permit selective discount authority. KN states that copies of the filing were served upon its jurisdictional customers and interested public bodies.

Any person desiring to be heard or make any protest with reference to this filing, should, on or before August 31, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 87-19742 Filed 8-27-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-37-000]

Change in Sales Rates Pursuant to Purchased Gas Cost Adjustment; Northwest Pipeline Corp.

August 24, 1987.

Take notice that on August 17, 1987, Northwest Pipeline Corporation ("Northwest") submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by the subject to Article 16, Purchased Gas Cost Adjustment Provisions ("PGA"), of its FERC Gas Tariff, First Revised Volume No. 1. Such change in rates is for the purpose of (1) reflecting changes in Northwest's estimated cost of purchased gas; and (2) projecting incremental surcharges to be assessed Northwest's affected direct and sales for resales customers pursuant to Order No. 49.

The current PGA adjustment, for which notice is given herein, aggregates to an increase of 1.600¢ per therm in the commodity rate for all rate schedules affected by and subject to the PGA. There is no change in the demand rate. The annual jurisdictional change in Northwest's rates is an increase of approximately $31,685,953. The proposed rate changes have been reflected on Thirty-Sixth Revised Sheet No. 10.

Northwest also tendered for filing and acceptance Fifteenth Revised Sheet No. 10-B reflecting revised projected incremental surcharges.

Northwest requests an effective date of October 1, 1987, for all tendered tariff sheets.

A copy of this filing has been mailed to all parties of record in Docket No. RP72-154-000, to all jurisdictional customers, and to affected state regulatory commissions.

On August 18, 1987, Northwest filed a replacement page 1 of Schedule B-1, Volume No. 1 to correct a typographical error.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 31, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19747 Filed 8-27-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-13-005 and RP87-69-002]

Tariff Filing; South Georgia Gas Co.

August 24, 1987.

Take notice that South Georgia Natural Gas Company (South Georgia) on August 14, 1987 tendered for filing the following tariff sheets:

Proposed Tariff Sheets To Be Effective May 1, 1987

First Revised Volume No. 1

Forty-Second Revised Sheet No. 4
Second Revised Sheet No. 5
First Revised Sheet No. 6
Second Revised Sheet No. 9
First Revised Sheet No. 12
Third Revised Sheet No. 28
Second Revised Sheet No. 29
Ninth Revised Sheet No. 30
Fourth Revised Sheet No. 43
First Revised Sheet No. 43A

First Revised Volume No. 2

Second Revised Sheet No. 130
Second Revised Sheet No. 156
Second Revised Sheet No. 182
Second Revised Sheet No. 209
Second Revised Sheet No. 235

Proposed Tariff Sheets To Be Effective July 1, 1987

First Revised Volume No. 1

Forty-Third Revised Sheet No. 4
Tenth Revised Sheet No. 30

First Revised Volume No. 2

Third Revised Sheet No. 130
Third Revised Sheet No. 156
Third Revised Sheet No. 182
Third Revised Sheet No. 209
Third Revised Sheet No. 235

On June 11, 1987 South Georgia filed a joint settlement offer in the above-captioned proceeding which, if approved, South Georgia states, will resolve all the issues in these proceedings. South Georgia states that these tariff sheets are filed in accordance with the terms of the settlement in order to permit South Georgia's customers to have the benefit of the reduced settlement rates while the settlement offer is pending before the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 31, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19744 Filed 8-27-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-67-003 and RP87-15-017]

Proposed Change in FERC Gas Tariff; Trunkline Gas Co.

August 24, 1987.

Take notice that Trunkline Gas Company (Trunkline) on August 17, 1987 tendered for filing the following sheet to its FERC Gas Tariff, Original Volume No. 2:

First Substitute First Revised Sheet No. 4268

Trunkline proposes that this sheet become effective May 1, 1987.

Truckline states that such change is made to amend Rate Schedule LT-7 for the transportation of natural gas on behalf of Champlin Petroleum Company (Champlin) as authorized in the subject proceeding by Commission Order dated January 27, 1987 and to reflect the currently effective transportation rate as approved by the Commission in Docket Nos. RP87-15, *et al.*

A copy of this filing has been served on Champlin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before August 31, 1987. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19743 Filed 8-27-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA87-1-11-009 and TA87-2-11-004]

Filing of Revised Tariff Sheets; United Gas Pipe Line Co.

August 24, 1987.

Take notice that on August 13, 1987, United Gas Pipe Line Company (United) tendered for filing to its Federal Energy Regulatory Commission (FERC or Commission) Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Revised Substitute Revised Seventy-Sixth Revised Sheet No. 4

United states that the Tariff Sheet is being filed pursuant to the requirements of the Commission's August 10, 1987 order in the captioned dockets.

United reports that it mailed copies of the Tariff Sheet to its jurisdictional customers, interested state commissions, and intervenors in the above-captioned dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of this chapter. All such motion or protests should be filed on or before August 31, 1987. Protests will be considered by the Commission in determining the appropriate actin to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19745 Filed 8-27-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-11-003]

Filing of Revised Tariff Sheets; United Gas Pipe Line Co.

August 24, 1987.

Take notice that on August 17, 1987, United Gas Pipe Line Company (United) tendered for filing to its Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Substitute Revised Seventy-Sixth Revised Sheet No. 4

United States that the Tariff Sheet is being filed pursuant to the requirements of the Commission's June 30, 1987, order in Docket No. TA87-2-11-000, *et al.*

United reports that in mailed copies of the proposed Tariff Sheet to its jurisdictional customers, interested state commissions, and intervenors.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions of protests should be filed on or before August 31, 1987. Once the date is filled in, the notice is ready to go up. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19746 Filed 8-27-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-820-000 et al.]

Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates; [1] Pennzoil Co. et al.

August 25, 1987.

Take notice that each of the Applicants listed herein has filed an applicationor petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 8, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-820-000, F, Aug. 12, 1987.	Pennzoil Company, P.O. Box 2967, Houston, Texas 77252-2967.	United Gas Pipe Line Company, Dulac Field, Terrebonne Parish, Louisiana.	(1)	
CI87-821-000, (CI67-1638), B, Aug. 13, 1987.	Texaco Inc., P.O. Box 52332 Houston, Texas 77052.	United Gas Pipe Line Company, Cypress Island Field, Lafayette and St. Martin Parishes, Louisiana.	(2)	
CI70-1079-002, D, Aug 13, 1987	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	ANR Pipeline Company, Eugene Island Block 266 Field, Offshore Louisiana.	(3)	
CI73-2-003, D, Aug. 13, 1987	.....do.....	.....do.....	(3)	

[1] This notice does not provide for consolidation for hearing of the several matters covered herein

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-18630-002, D, Aug. 17, 1987.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	ANR Pipeline Company, Mocane-Laverne Field, Harper County, Oklahoma.	(4)	
CI64-543-000, D, Aug. 17, 1987.	.....do.....	Northern Natural Gas Company, Division of Enron Corp., S. E. Como Field, Beaver County, Oklahoma.	(5)	
CI87-783-000, B, July 22, 1987.	Winchester Production Company, 300 West Austin Street, Marshall, Texas 75670.	Northern Natural Gas Company, Division of Exxon Corp., Serio-Clayton Lease Well #1, Canyon Field, Crockett County, Texas.	(6)	
CI79-374-001, D, Aug. 12, 1987.	Multistate Oil Properties, NV, P.O. Box 2511, Houston, Texas 77001.	Northern National Gas Company, Division of Exxon Corp., Gage S.E. Field, Ellis County, Oklahoma.	(7)	
CI87-822-000, (CI77-517-003), B, Aug. 13, 1987.	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125.	Transcontinental Gas Pipe Line Corp., High Island Area, Block A-508, South Addition, OSC-G-3245, Offshore Texas.	(8)	
CI87-824-000, (G-18131), B, Aug. 14, 1987.	George R. Brown, 4700 First City Tower Bldg., 10001 Fannin Street, Houston, Texas 77002-6708.	Transcontinental Gas Pipe Line Corp., Sorrento Field, Ascension Parish, Louisiana.	(9)	
CI67-851-000, D, Aug. 17, 1987.	Amoco Production Company, P.O. Box 3092, Houston, Texas 77253.	El Paso Natural Gas Company, Gomez Field, Pecos County, Texas.	(10)	
G-6686-005, F, Aug. 14, 1987.	Union Texas Petroleum, P.O. Box 2120, Houston, Texas 77252-2120.	El Paso Natural Gas Company, Oil rights below 3500 feet in S/2 NE/4 of Sec. 35-T25S-R37E, Lea County, New Mexico.	(11)	
CI61-310-000, D, Aug. 14, 1987.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309.	Texas Gas Transmission Corporation, Calhoun Field, Lincoln Parish, Louisiana.	(12)	
CI18142-001, D, Aug. 17, 1987.	Sun Exploration & Production Co.	Transwestern Pipeline Company, Mocane-Laverne Field, Beaver County, Oklahoma.	(13)	

[1] Effective 6-1-86, Pennzoil Producing Company (predecessor-in-interst to Pennzoil Company) acquired certain assets and property rights of ARCO Oil and Gas Company, Division of Atlantic Richfield Company.

[2] Contract will expire by its own terms on 8-23-87. The acreage is non-productive and all leases committed to the contract have expired. Continuation of service is unwarranted.

[3] Effective 2-15-83, Texaco Producing Inc. assigned to Samedan Oil Corporation its interest in a portion of OCS-G-1888, Block 247, S/2, Eugene Island Area.

[4] Sun assigned its interest in Property No. 875433, Robertson 1-34 to Sugarland Oil Company.

[5] Sun assigned its interest in Property No. 875531, J. R. Robins to Prentice, Napier, and Green.

[6] Applicant requests consideration of its application to permanently abandon sales to Northern because the sales contract expired and the subject well has not produced natural gas in the last two years. Applicant also requests pregranted abandonment for period of three years for sales made under its small producer certificate to other interested purchasers.

[7] Assignment of dedicated acreage.

[8] All production from the covered properties has ceased.

[9] Brown has made no gas sales under the Gas Purchase Contract since March, 1979, all leases have been assigned or have expired for lack of production and the Gas Purchase Contract has expired by its own terms and Buyer and Seller have agreed to terminate the contract.

[10] Amoco's interest in the Butz Gas Unit Well No. 1 is dedicated to El Paso Natural Gas Company and authorized in Docket No. CI67-851. In 1985 El Paso's line blew up and as a result no gas has been delivered to El Paso since May, 1985. Amoco desires abandonment authorization for the Butz Gas Unit Well No. 1 so that deliveries can commence to another purchaser. Amoco wil temporarily dispose of its share of gas production under its Limited-Term Abandonment Certificate in Docket No CI86-19-004.

[11] Union Texas requests that its certificate and FERC Gas Rate Schedule No. 28 to be amended to authorize Union Texas to sell and deliver gas to El Paso from acreage which was assigned to Union Texas on February 1, 1987, by Amoco Production Company and previously sold to El Paso under Amoco's FERC Gas Rate Schedule No. 168.

[12] Applicant is filing to include an additional point of delivery.

[13] Sun assigned its interest in Property No. 831414, Etheyl Fry Unit Well #1 to Prentice, Napier and Green.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 87-19806 Filed 8-27-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS84-109-001, et al.]

Applications for Small Producer Certificates; [1] Plains Resources Inc., et al.

August 25, 1987.

In the matter of Plains Resources Inc., PRI Producing Inc., Hiawatha Oil Company, Inc., PRI Property Management, Inc. and PRI Royalty Holdings Inc. (Plains Resources Inc., PRI Producing Inc. and Hiawatha Oil Company, Inc.), et al.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Any person desiring to be heard or to make a protest with reference to said applications should on or before September 8, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No.	Date filed	Applicant
CS84-109-001	[1] 8-14-87	Plains Resources Inc., PRI Producing Inc., Hiawatha Oil Company, Inc., PRI Property Management, Inc., and PRI Royalty Holdings Inc. (Plains Resources Inc., PRI Producing Inc. and Hiawatha Oil Company, Inc.) 1601 N.W. Expressway, Oklahoma City, Oklahoma 73118
CS86-30-000	[2] 7-31-87	Total Minatome Corporation (Minatome Corporation), Suite 400, One Allen Center, Houston, Texas 77002
CS87-89-000	8-3-87	Byars Oil & Gas, Inc., 95 Olde Main Plaza, St. Albans, West Virginia 25177
CS87-90-000	8-3-87	Midstates Pipeline Company, 5000 N.W. Expressway, Oklahoma City, Oklahoma 73132
CS87-91-000	8-10-87	M M Resources, Inc., P.O. Box 384, Enid, Oklahoma 73702
CS87-92-000	8-10-87	Desana Development Corporation, 310 W. Texas, Suite 600, Midland, Texas 79701

[1] By letter dated August 4, 1987, received August 14, 1987, Applicant requests to add PRI Property Management, Inc., and PRI Royalty Holdings Inc. as co-holders of the small producer certificate in Docket No. CS84-109. In addition Applicant states that on April 22, 1987, Houston Oil Fields Company, small producer certificate holder in Docket No. CS79-470-001, was merged into Applicant, and the small producer certificate in Docket No. CS79-470-001 is no longer necessary.

[2] Letter dated July 27, 1987, received July 31, 1987, as supplemented by letter dated August 10, 1987, received August 14, 1987, requesting redesignation of small producer certificate.

[FR Doc. 87-19807 Filed 8-27-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of July 20 Through July 24, 1987

During the week of July 20 through July 24, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Nuclearfuel, 7/23/87; KFA-0104

NuclearFuel, a newsletter, filed an Appeal from a partial denial by the Director of the DOE Office of International Security Affairs of a request for information which the firm had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the Office of Hearings and Appeals found that the Director failed to provide a sufficient justification for withholding the requested material under FOIA Exemption 4. Accordingly, the matter was remanded to the Director, who was instructed to make a specific determination as to whether the material is confidential or privileged commercial or financial information withholdable under Exemption 4.

Steptoe & Johnson, 7/24/87, KFA-0103

Steptoe & Johnson, a law firm, filed an Appeal from a denial by the Director of the Management Systems Division, Office of Management and Information Systems of the Economic Regulatory Administration of the Department of Energy (DOE) of a Request for Information which the firm submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that a portion of the documents at issue contained commercially sensitive confidential information and therefore were properly withheld under Exemption 4 of the FOIA. However, a portion of the information was found to be releasable under the FOIA. Therefore, the Appeal was granted in part and denied in all other respects. Important issues considered in the Decision and Order were the adequacy of the determination below and the effect of age on the commercial sensitivity of data.

Motion for Discovery

Cities Service Oil and Gas Corp., 7/24/87; KRD-0025

Cities Service Oil and Gas Corporation (Cities) filed a Motion for Discovery in connection with an evidentiary hearing that will be held in an enforcement proceeding pending before the Office of Hearings and Appeals. In considering the discovery motion, the DOE determined that a limited amount of discovery was warranted in order for Cities to adequately prepare for the evidentiary hearing. Accordingly, Cities' Motion for Discovery was granted in part.

Refund Applications

Alter Barge Lines, Inc., Alter Trucking & Terminal Corp., 7/21/87; RF271-51, RF270-462

Alter Barge Line, Inc. (ABL), a Rail and Water Transporter (RWT), filed an Application for Refund from the RWT Escrow. ABL's affiliate, Alter Trucking and Terminal Corporation (ATT) filed a separate Application for Refund from the Surface Transporters (ST) Escrow. The Office of Hearings and Appeals determined that the waivers in the two applications rendered them mutually exclusive, and thus that only one of the applictions could be considered. ABL's claim was the larger of the two. Consequently, OHA considered the application filed by ABL, and dismissed the one filed by ATT.

In considering ABL's application, OHA determined that ABL had established itself as a member of the RWT class, and had substantiated the volume of U.S. petroleum products it claimed to have purchased during the audit period. Accordingly, OHA granted ABL a refund based on the firm's consumption of 50,765,936 gallons of petroleum products.

American Trading Transportation Company, Inc., et al., 7/24/87; RF271-88 et al.

The Department of Energy (DOE) issued a Decision and Order approving applications submitted by six water transporters for refunds from the Rail and Water Transporters Escrow established as a result of the Stripper Well Settlement Agreement. Three of the applicants arrived at their gallonage claims from purchase records, while the other three applicants divided their total purchases for each year by the average price per gallon for that year. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Rail and Water claims.

Armellini Express Lines, Inc., 7/24/87; RF270-1132

The DOE issued a Decision approving a trucking company for a Surface Transporter refund based on its verified consumption of 16,933,858 gallons of diesel fuel. The DOE will determine a per gallon refund amount and establish the amount of the applicant's refund after it completes its analysis of all Surface Transporter claims.

Boehmer Transportation Corp., et al., 7/21/87; RF270-1255 et al.

The Department of Energy (DOE) issued a Decision and Order approving the volumes claimed in 32 Applications for Refund from the Surface Transporters Escrow established as the result of the Stripper Well Settlement Agreement. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Surface Transporter claims.

Coline Gasoline Corp./Florida et al., 7/24/87; RM3-66 et al.

The DOE issued a Decision approving Motions for Modification filed by the States of Florida and New Jersey and approving in part an application for second-stage refund filed by New Jersey. In its Motion for Modification, Florida proposed to spend $43,179 of Coline Gasoline Corp. and Charter Co. funds originally earmarked for a ridesharing marketing campaign directed

towards large employers for other marketing and publicity efforts associated with ridesharing. In New Jersey's Motion for Modification, the State proposed to use its allocable shares of Belridge Oil Co. and Palo Pinto Oil and Gas second-stage monies to expand an existing ridesharing program. In its refund application, New Jersey proposed to spend 90% of its Standard Oil Co. (Indiana) monies on traffic light synchronization, 5% on seminars on traffic-related issues, and 5% on administrative expenses. The DOE found that Florida's and New Jersey's modified plans would encourage ridesharing within the States, thereby reducing injured motorists' expenditures on motor gasoline. In reviewing New Jersey's application, the DOE found that the State's proposed traffic light synchronization project would reduce motorists' consumption of motor gasoline, thereby providing indirect restitution to injured consumers of refined petroleum products. Accordingly, New Jersey was granted $474,744 ($439,578 principal plus $35,166 interest) for the program. However, the DOE did not approve New Jersey's proposal to use second-stage monies for the seminar series because the seminars did not promise immediate, tangible benefits to New Jersey consumers of refined petroleum products.

Dixie Gas, Inc., 7/22/87; RF270–1123

The DOE issued a Decision evaluating a Surface Transporter claim filed by a reseller of propane. The company did not file a claim in the Stripper Well escrow for Resellers and did not include any resale volumes in its Surface Transporter claim. The DOE approved the company's claim based on the diesel fuel consumption of its trucks.

Dorchester Gas Corporation/Ramey & Company, Kerr-McGee Corporation, 7/22/87; RF253–12, RF253–23

The DOE issued a Decision and Order granting Applications for Refund submitted by two resellers, Ramey & Company and Kerr-McGee Corporation, in connection with the Dorchester Gas Corporation special refund proceeding. Neither applicant claimed a refund exceeding the $5,000 small claims threshold for resellers. Therefore, the DOE did not require a detailed showing of injury. The refunds granted the firms total $9,419, representing $7,285 in principal and $2,134 in interest.

Good Hope Refineries/Kerr-McGee Corporation, 7/23/87; RR189–1

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Kerr-McGee Corporation. The applicant requested that the DOE reconsider a Decision that denied Kerr-McGee a refund for purchases of petroleum products covered by a consent order with Good Hope Refineries on the grounds that the firm was a spot purchaser. *Good Hope Refineries/Kerr-McGee's Corporation,* 15 DOE ¶ 85,177 (1986). In considering Kerr-McGee's Motion, the DOE found that Kerr-McGee had not successfully rebutted the presumption that firms making spot purchases did not suffer injury. Therefore, the DOE determined that Kerr-McGee's Motion for Reconsideration be denied.

Gulf Oil Corporation/Puerto Rico Electric Power Authority, 7/22/87; RF40–769

The DOE issued a Decision and Order concerning an Application for Refund filed by the Puerto Rico Electric Power Authority (PREPA), an end-user of Gulf refined petroleum products. PREPA applied for a refund based upon the procedures outlined in *Gulf Oil Corp.,* 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, PREPA provided documentation of its purchases of Gulf refined petroleum products during the consent order period. In addition, because PREPA is a public utility, the DOE determined that PREPA's refund is contingent upon its certification that it will pass the refund is contingent upon its certification that it will pass the refund through to its customers on a dollar-for-dollar basis. The total refund approved was $838,524, representing $661,909 in principal and $173,615 in interest.

Leaseway Purchasing Corp., 7/23/87; RF270–937

Leaseway Purchasing Corporation, a subsidiary of Leaseway Transportation Corporation, filed an Application for Refund, seeking funds from the Surface Transporters Escrow established pursuant to the Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation,* M.D.L. 378. Leaseway claimed 1,134,988,219 gallons of motor fuel consumed by its parent company and its affiliated trucking companies. The DOE examined certain documents which substantiated Leaseway's claim, and approved the firm's application.

Marathon Petroleum Company/Bell Fuels, Inc., RF250–2400, RF250–2401, RF250–2402

The DOE issued a Decision and Order concerning an Application for Refund filed by Bell Fuels, Inc. (Bell), a reseller, in connection with the Marathon Petroleum Company special refund proceeding. Bell purchased Marathon product throughout the consent order period, but attempted to demonstrate injury for only a portion of that period. The DOE found that it could not determine from the partial showing of "banked" products costs submitted by Bell whether the firm had been injured. The DOE therefore calculated Bell's refund share according to the 35% presumption level established for reseller applicants in the Marathon proceeding. Bell was granted a total refund of $37,162, representing $33,494 in principal and $3,668 in interest.

Mobil Oil Corporation, 7/21/87; RF271–214

The Department of Energy (DOE) issued a Decision and Order dismissing an application submitted by Mobil Oil Corporation (Mobil) for a refund from the Rail and Water Transporters Escrow (RWT) established as a result of the Stripper Well Settlement Agreement. The DOE found that Mobil, a refiner, had previously received a refund from the Refiners Escrow established by the Settlement Agreement. The DOE found that one of the prerequisites for an RWT refund is the waiver of payment from any of the seven other escrow accounts created by the Settlement Agreement. Thus, the DOE found that Mobil was ineligible for an RWT refund.

Senn Trucking Company, et al., 7/21/87; RF270–1799 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the purchase volumes of refined petroleum products claimed by 60 trucking companies and will use those gallonages as a basis for the refunds that will ultimately be issued to these firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the 60 firms' refunds will be determined at a later date.

Timber By-Products, Inc., et al., 7/24/87; RF270–987, et al.

The DOE issued a Decision and Order concerning 45 Applications for Refund from the $10.75 million Surface Transporters Escrow fund established pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. Each applicant demonstrated that it operated motor vehicles during the Settlement Period and that it was a "for hire" carrier for the purposes of this proceeding. In addition, each applicant demonstrated that it purchased a certain volume of eligible petroleum products above the 250,000 gallon minimum prescribed in the Order establishing the Surface Transporters Escrow. Accordingly, all 45 Applications were approved, and the respective volumes will be used to calculate each company's final refund. The total number of gallons approved in this Decision is 113,587,386.

TLC Lines Inc., et al., 7/21/87; RF270–1799 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the purchase volumes of refined petroleum products claimed by 24 trucking companies and will use those gallonages as a basis for the refunds that will ultimately be issued to these firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the 24 firms' refunds will be determined at a later date.

Dismissals

The following submissions were dismissed:

Name and Case No.

Bottle Gas Service—RF208–19
Dennis Green—RF270–1610

Kane-Scott Corp.—RF225–4344 thru 4348
New York State Dept. of Transportation—RF225–5724, RF225–5725
New York State Office of Parks, Recreation & Historic Preservation—RF225–5726, RF225–5727
New York State Parks & Recreation, Allegany State Park—RF225–8895, RF225–8896
New York State Police—RF225–5480 thru 5483; RF225–5728 thru 5739
Payless Cashways, Inc.—RF225–6859
Richard Lee Brown—RF225–10570
State University of New York at Buffalo—RF225–6234
W.F. Lawless—KFA–0107

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

August 21, 1987.

[FR Doc. 87–19771 Filed 8–27–87; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–51,689; FRL–3253–1]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-one such PMNs and provides a summary of each.

DATES:

Close of Review Period:

P 87–1550 and 87–1551—November 4, 1987.
P 87–1552, 87–1553, 87–1554, 87–1555, 87–1556, 87–1557, 87–1559, and 87–1560—November 7, 1987.
P 87–1561, 87–1562, 87–1563, 87–1564, 87–1565, and 87–1566—November 8, 1987.
P 87–1567, 87–1568, and 87–1569—November 9, 1987.
P 87–1570 and 87–1571—November 10, 1987.

Written comments by:

P 87–1550 and 87–1551—October 5, 1987.
P 87–1552, 87–1553, 87–1554, 87–1555, 87–1556, 87–1557, 87–1559, and 87–1560—October 8, 1987
P 87–1561, 87–1562, 87–1563, 87–1564, 87–1565, and 87–1566—October 9, 1987.
P 87–1567, 87–1568, and 87–1569—October 10, 1987.
P 87–1570 and 87–1571—October 11, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS–51689]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room L–100, 401 M Street SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87–1550

Importer. Confidential.

Chemical. (G) Polyalkenyl polyethers (mixed).

Use/Import. (G) Contained use cross-linking agent in closed process. Import range: Confidential.

P 87–1551

Manufacturer. Confidential.

Chemical. (G) (Nitroaromatic alkyl) substituted heterocyclic, thioester.

Use/Production. (G) Site-limited chemical intermediate. Prod. range: 2,500 to 25,000 kg/yr.

P 87–1552

Manufacturer. Confidential.

Chemical. (G) Substituted triphenylmethane leuco.

Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.

P 87–1553

Manufacturer. Confidential.

Chemical. (G) Substituted triphenylmethane.

Use/Production. (G) Water colorant used as minor component in industrial, commercial and consumer application. Prod. range: Confidential.

P 87–1554

Importer. Confidential.

Chemical. (G) Polyfluorinated copolymers.

Use Import. (G) Water and soil repellent for leather and textile. Import range: Confidential.

Toxicity Data. Acute oral: 4,500 mg/kg; Irritation: Skin—Non-irritant, Eye—Irritant.

P 87–1555

Importer. Confidential.

Chemical. (G) Polyfluorinated copolymers.

Use/Import. (G) Water and soil repellent for leather and textiles. Import range: Confidential.

Toxicity Data. Acute oral: 4,950 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

P 87–1556

Importer. Hodogaya Chemical (USA), Incorporated.

Chemical. (S) Methanaminium, N-[4-[amino[4-(dimethylamino)phenyl] methylene]-2,5-cyclohexadien-1-ylidene]-N-methyl-, salt with dodecyl(sulfophenoxy) benzenesulfonic acid (2:1).

Use/Import. (S) Industrial, commercial and consumer ingredient of ballpoint pen ink and colorant for toner. Import range: 1,000 to 1,500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Eye—Irritant, Skin—Non-irritant; Ames test: Non-mutagenic.

P 87–1557

Importer. Fairmount Chemical Company, Incorporated.

Chemical. (S) 1,1,3-Tris(2-methyl-4-hydroxy-5-cyclohexyl phenyl) butane.

Use/Import. (G) Dispersive use. Import range: 1,000 to 3,000 kg/yr.

P 87–1559

Importer. Confidential.

Chemical. (G) Polymer of aliphatic diisocyanate and a diol.

Use/Import. (S) Industrial and commercial aliphatic polyisocyanate prepolymer. Import range: 14,740 to 72,320 kg/yr.

P 87–1560

Manufacturer. Air Products and Chemicals, Incorporated.

Chemical. (G) Poly (propylene carbonate).

Use/Production. (G) Industrial fugitive binder product, impact modifier. Prod. range: Confidential.

P 87-1561

Importer. Castrol Incorporated.
Chemical. (G) Poly glycol ester of dimethyl silane.
Use/Import. (S) Primary component of hydraulic fluids designed for racing car brake operations. Import range: 10,000 to 30,000 kg/yr.
Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant, Skin sensitization: Non-sensitizing.

P 87-1562

Importer. Confidential.
Chemical. (G) Polyamide resin.
Use/Import. (S) Printing ink component used to disperse pigment and to provide gloss, adhesion and resistance properties when printed on paper, plastic and metal substrates. Import range: Confidential.

P 87-1563

Manufacturer. Confidential.
Chemical. (G) Mixed metal oxide compound.
Use/Production. (G) Impurity removal. Prod. range: Confidential.

P 87-1564

Manufacturer. Confidential.
Chemical. (S) (−)-Menthyl chloroformate.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 87-1565

Importer. Degussa Corporation.
Chemical. (S) 1,1-Dimethoxy-2-propen.
Use/Import. (S) Industrial organic intermediate. Import range: 10,000 kg/yr.
Toxicity Data. Acute oral: 81 mg/kg; Acute dermal: 22 mg/kg; Irritation: Skin—Irritant, Eye—Non-irritant.

P 87-1566

Importer. Degussa Corporated.
Chemical. (S) 4,4-Dimethoxybutanal.
Use/Import. (S) Industrial organic intermediate. Import range: 10,000 kg/yr.
Toxicity Data. Acute oral: 453 mg/kg; Acute dermal: 633 mg/kg; Irritation: Skin—Moderate, Eye—Severe; Ames Test: Non-mutagenic; Skin sensitization: Positive.

P 87-1567

Manufacturer. Confidential.
Chemical. (G) Polyether diamine.
Use/Production. (S) Curing agent. Prod. range: Confidential.

P 87-1568

Manufacturer. Confidential.
Chemical. (G) (Alkyl substituted bicycloalkenyl) substituted pyridine.
Use/Production. (G) Fine fragrance components; functional products fragrance component; and aroma chemical. Prod. range: Confidential.
Toxicity Data. Acute oral: 1.4 g/kg; Acute dermal: 1.3 g/kg; Irritation: Skin—Slight, Eye—Irritant; Ames test: Non-mutagenic; Skin sensitization: Mild; LC_{50} 24 hr. (Rainbow Trout): 6.1 mg/l, LC_{50} 48–96 hr. (Rainbow Trout): 4.2 mg/l, EL_{50} 24 hr. (Daphnia Magna): 1.4 mg/l, EL_{50} 48 hr. (Daphnia Magna): 0.35 mg/l.

P 87-1569

Importer. Marubeni America Corporation.
Chemical. (S) Copolymer of acrylamide, 2-hydroxy propyl methacrylate, N-methylol acrylamide methyl methacrylate, ammonium persulfate and triethanol amine.
Use/Import. (S) Industrial thermal paper coating. Import range: 400,000 to 1,000,000 kg/yr.

P 87-1570

Importer. Confidential.
Chemical. (G) Blocked aliphatic urethane.
Use/Import. (S) Textile finish. Import range: Confidential.

P 87-1571

Importer. Confidential.
Chemical. (G) Trisubstituted unsaturated aldehyde.
Use/Import. (G) Highly dispersive use. Import range: Confidential.

Dated: August 17, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-19656 Filed 8-27-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59828; FRL-3252-8]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of four such PMNs and provides the summary.

DATES:

Close of Review Period:

Y 87-214, 87-215 and 87-216—August 30, 1987.

Y 87-217—September 2, 1987.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-GO04 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-214

Manufacturer. General Electric Company.
Chemical. (G) Aryl alkylarylcopolyamide resin.
Use/Production. (S) Thermoplastic resin for sheet and film. Prod. range: Confidential.

Y 87-215

Manufacturer. General Electric Company.
Chemical. (G) Aryl alkylaryl polyamide resin.
Use/Production. (G) Thermoplastic resin for sheet film. Prod. range: Confidential.

Y 87-216

Manufacturer. General Electric Company.
Chemical. (G) Aryl alkylaryl polyamide resin.
Use/Production. (G) Thermoplastic resin for sheet film. Prod. range: Confidential.

Y 87-217

Manufacturer. General Electric Company.
Chemical. (G) Alkylester functionalized colloidal silica.

Use/Production. (S) Abrasion resistance enhancing for thermoplastic resins. Prod. range: Confidential.

Dated: August 17, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-19657 Filed 8-27-87; 8:45 am]

BILLING CODE 6560-50-M

Assessment of Zinc and Zinc Oxide as Potentially Toxic Air Pollutants

[AD-FRL-3253-6]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of zinc and zinc oxide assessment (Zn/ZnO) results and solicitation of information.

SUMMARY: This notice announces the results of EPA's assessment of Zn/ZnO as candidates for regulation under the Clean Air Act (CAA). The Agency has concluded that the health date for Zn/ZnO is insufficient to determine their carcinogenic, mutagenic, or teratogenic potential following inhalation exposures. Adverse respiratory effects have been associated with inhalation exposure to Zn/ZnO fumes and dusts. Similarly, exposure to total particulate matter, which may contain Zn/ZnO, has been associated with adverse respiratory effects. Primary national ambient air quality standards (NAAQS) for particles having diameters of less than or equal to 10 microns (PM_{10}) have been established to protect the general public from such adverse respiratory effects. Therefore, no regulation under the CAA directed specifically at controlling emissions of Zn/ZnO is appropriate at this time.

Given the limited opportunity for prior public review of the health and exposure information incorporated in this notice, the Agency is soliciting comment and information pertinent to the determination made today. A further notice will be published only if public comments or additional information suggest a need to revise EPA's conclusion. This finding has no effect on the regulation of Zn/ZnO as particulate matter to attain the NAAQS for particulate matter. In addition, this notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of Zn/ZnO.

DATES: Written comments pertaining to this notice must be received on or before November 27, 1987.

ADDRESSES: Submit comments (duplicate copies are preferred) to: Central Docket Section (A-130), Environmental Protection Agency, Attn: Docket No. A-87-09, 401 M Street SW., Washington, DC 20460.

Availability of related information: Information on the availability of the documents "Summary Review of the Health Effects Associated with Zinc and Zinc Oxide: Health Issue Assessment," EPA 600/8-87/021F, and "Zinc/Zinc Oxide Preliminary Source Assessment," EPA 450/3-87-008, can be obtained from ORD Publications, CERI-FR, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, OH 45268 (Telephone: 513-569-7562). The above document and other information on the sources, emissions, and environmental fate of Zn/ZnO are summarized in several reports which are found in Docket No. A-87-09, located in the Central Docket Section of the U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD-12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 (Telephone: 919-541-5519 commercial; 629-5519 FTS).

SUPPLEMENTARY INFORMATION: The EPA initiated an assessment of Zn/ZnO based on the large production volume and the potential for adverse health effects associated with exposure to Zn/ZnO in ambient air. In the course of this assessment, the Agency collected relevant information currently available and today's notice provides a summary of this information on the following topics: production and uses, sources and emissions, health effects, monitored ambient air concentrations, exposure and risk estimates and existing regulations.

Production and Uses

Zinc is used extensively to galvanize iron and steel. The element also readily combines with other metals, imparting the characteristics of workability at low temperatures; corrosion resistance; and finishes for use in die-casting alloys, brass, and other common alloys. Zinc displays a vigorous reducing power, liberating hydrogen from sulfuric and hydrochloric acid. This property is the basis for the use of zinc dust or mossy zinc in many commercial organic chemical processes (EPA, 1987a).

Zinc oxide is principally used to activate the vulcanization of rubber. It also helps protect rubber by its opaqueness to ultraviolet light and its high thermal conductivity. A newer use of zinc oxide utilizes its photoconductive and electrostatic properties in office photocopying applications. One of the oldest uses of zinc oxide is in the treatment of burns, infections, and skin diseases. It is also used to give white paints good concealing power, in the manufacture of opaque and certain types of transparent glass, and in the manufacture of porcelain enamels for sheet iron and vitreous enamels for cast iron (EPA, 1987a).

Sources and Emissions

Zinc is the 24th most abundant element and represents about 0.02% of the earth's crust. Zinc blende or sphalerite (ZnS) is the most important ore, yielding about 90% of the metallic zinc produced (Merck, 1976). Natural sources of zinc (e.g., windblown soil, volcanic emissions) have been estimated to constitute about 13% of the total emissions to the atmosphere (Nriagu, 1979).

Anthropogenic Zn/ZnO are emitted to the ambient air from a variety of sources. Table 1 presents a summary of general source categories which emit Zn/ZnO and their estimated emissions (EPA, 1987b; Vandenberg, 1987). Table 1 also lists the number of facilities and maximum annual facility emissions estimates for each source category, where available. Based on the available information, primary zinc and zinc oxide smelters appear to be the largest individual sources of anthropogenic air emissions of Zn/ZnO.

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TABLE 1.—SOURCES AND EMISSIONS OF ATMOSPHERIC ZINC AND ZINC OXIDE [a]

Source category	Number of facilities	Estimated emissions to the atmosphere (Mg/yr)		Highest Annual Emissions per Facility (Mg/yr)	
		Zn	ZnO	Zn	ZnO
Primary Zn/ZnO Production	5	49.9	198	25.2	139
Iron and Steel Production	319	600	2400	15.8	36.7
Metallurgy [b]	NA [c]	NA	NA	16.2	NA
Miscellaneous [d]	NA	NA	NA	0.1	0.8

[a] EPA, 1987b, Vandenberg, 1987.
[b] Includes secondary zinc/zinc oxide industry, brass and bronze production, plating, etc.
[c] Not available.
[d] Includes pigments/paints, semiconductors, business machines, glass/ceramics, detergents, etc.

Health Effects

The available health effects information summarized in the document "Summary Review of the Health Effects Associated with Zinc and Zinc Oxide: Health Issue Assessment" (EPA, 1987a), are reviewed in this section. General statements made in this notice regarding zinc usually pertain to inorganic zinc compounds. Reference is made to specific zinc compounds when only compound-specific information is available.

Zinc is an essential element necessary for the growth and development of all animals, including humans. The essential nature of zinc is based on its role as an integral part of some metalloenzymes, a cofactor in regulating the activity of zinc dependent enzymes, and as a structural and functional component of biomembranes. In addition, zinc plays an important role in the metabolism of proteins and nucleic acids, is essential for the synthesis of deoxyribonucleic acid and ribonucleic acid, and it may control metabolic processes through the formation and/or regulation of the activity of zinc-dependent enzymes. Recommended dietary allowances have been established, with a greater concern generally associated with zinc deficiencies, rather than with less often seen toxic effects associated with excessive zinc intake.

Inhaled zinc can be absorbed across the alveolocapillary membrane, depending on the particle size, solubility, and functional state of the lungs. Similarly, orally administered zinc can be absorbed across the gut mucosa. Zinc may also be absorbed across the skin.

Numerous studies indicate that the body attempts to control the zinc balance homeostatically according to need by regulating the extent of absorption of dietary zinc and the rate of fecal excretion of stable zinc. Absorbed zinc is distributed to muscle, bone, liver, kidney, hair and some endocrine glands. In humans the highest concentrations of zinc are found in the male reproductive system. Zinc is mainly excreted by the gastrointestinal tract.

Zinc oxide has been shown to cause chromosomal damage in the form of an increased frequency of hyperdiploid cells in the bone marrow of noninbred white rats at concentrations of 0.1 and 0.5 mg/m ^{3}. An increase in the frequency of structural aberrations of the chromosomes and hyperdiploid cells was seen when human lymphocytes were exposed *in vitro* to zinc acetate at concentrations of 7.0 to 20.0 μg/ml. An interpretation of this report is difficult because the category of aberrations referred to as hyperdiploid cells is not one generally used by cytogeneticists in discussing this type of study. Additionally, the frequency of structural aberrations at 20 μg/ml was slightly less than the frequency at 7 μg/ml. Zinc oxide was not mutagenic at levels of 100 to 5000 μg/plate in the *Salmonella* reversion assay.

There are no data which suggest that a zinc level over that required for normal growth and development is teratogenic. A greater risk of malformations is expected in regard to zinc deficiency. Zinc also appears to offer a degree of protection against the teratogenic effect of cadmium. There are several animal studies and one human study which suggest that the ingestion of high levels of zinc may have an adverse impact on reproduction. Three premature births and one stillbirth occurred in a small group of women ingesting 40.5 mg zinc/day during the third trimester of pregnancy. However, because of the small sample size and lack of a control group, the results from this study are difficult to interpret. No adverse effects on the outcome of pregnancies were observed in a group of seven women supplemented with 81 mg zinc/day during the third trimester of pregnancy. Also, adverse effects on the outcome of pregnancies were not reported in a group of women supplemented with 8.1 mg zinc/day in addition to dietary zinc intakes of from 9.3 to 11.3 mg/day.

A positive carcinogenic response resulting from zinc administration has been only observed following injection of zinc salts into the testes of fowl and rats. Tumors always developed near the site of injection, with some authors doubting the usefulness of the technique employed if only injection site tumors developed. The injection route of exposure is unlikely to be encountered by man, thus one could conclude that testicular tumors in fowl and rats resulting from the injection of zinc salts into the testes are of limited predictive value.

There is no evidence that the inhalation, ingestion or parenteral administration of zinc induces the formation of tumors. There is, however, a considerable amount of information which indicates that the administration of zinc is indirectly involved in tumor formation as a growth promoter or inhibitor. In some animal studies, zinc deficient diets have been found to promote the development of chemically-induced cancers, whereas zinc-adequate and zinc-supplemented diets provided a protective barier against tumor formation. In other animal studies, zinc-adequate or zinc-supplemented diets facilitated the development of chemically-induced cancers. Also, examinations of cancerous tissues in humans have shown that the zinc level deviates from that found in noncancerous tissue. The EPA's Carcinogen Assessment Group (CAG) has concluded that the overall weight-of-evidence for zinc and its inorganic salts suggests that data are not sufficient to determine its carcinogenic potential for humans. Therefore, based on EPA's Guidelines for Carcinogen Risk Assessment (EPA, 1986a), CAG has classified zinc in Group D (not

classifiable as to human carcinogenicity) (EPA, 1987a).

Adverse health effects associated with occupational exposures to airborne zinc oxide fumes and/or dust are primarily manifested by respiratory symptoms. Zinc oxide fumes, as well as fumes of many other heavy metals, have been shown to cause an acute illness called metal fume fever in workers exposed to high concentrations in confined occupational settings. This condition is typically characterized by influenza-like symptoms (e.g., headache, fever, nausea, sensations of chills or warmth, and general aches and pains) that occur within a few hours after exposure and may persist for one to two days.

While data are limited, it has been estimated that metal fume fever generally does not occur at zinc oxide levels below 15 mg/m ^{3}. Some eastern European literature report the occurrence of metal fume fever in workers repeatedly exposed to zinc oxide levels averaging as low as 5 mg/m ^{3}.

The Occupational Safety and Health Administration (OSHA) adopted an 8-hour time weighted average permissible exposure limit of 5 mg zinc oxide/m ^{3}, and the American Conference of Governmental Industrial Hygienists (ACGIH) has established an 8-hour time weighted average threshold limit value (TWA–TLV) of 5 mg/m ^{3} for zinc oxide fumes and a TWA–TLV of 10 mg/m ^{3} for zinc and zinc oxide dusts to protect against nuisance effects at high dust concentrations in the work environment (ACGIH, 986).

Monitored Ambient Concentrations

Data contained in the EPA's National Aerometric Data Bank indicate the highest monitored annual average ambient concentraiton of zinc is approximately 2.65 μg/m ^{3} (Hunt et al., 1984). Additional information in the literature show annual atmospheric zinc concentrations range from 0.03–27 ng/m ^{3} in remote locations and from 0.1 to 1.7 μg/m ^{3} in urban areas (EPA, 1987a). The highest available ambient air concentration of zinc measured for a 24-hour period was approximately 115 μg/m ^{3} located near a point source (Faoro, 1986). Ambient monitoring data specifically for zinc oxide was unavailable.

Exposure Estimates

Estimates of long-term (annual average) human exposure to atmospheric Zn/ZnO emitted from specific or representative facilities for each source category identified in EPA's source assessment for Zn/ZnO (EPA, 1987b) were calculated using the Human Exposure Model (HEM). The HEM estimated concentrations to which populations living within 50 kilometers of specific sources may be exposed. For sources in the primary Zn/ZnO production source category and for several production facilities in the iron and steel source category, site-specific modeling was conducted. Model sources representative of the other facilities within the iron and steel, matallurgy and miscellaneous source categories were used, with maximum reported emission estimates used in the modeling exercise. The results of these modeling analyses indicated a maximum annual zinc concentration of 10.7 μg/m ^{3} and a maximum annual zinc oxide concentration of 3.0 μg/m ^{3} (Vandenberg, 1987).

In order to assess the potential for adverse noncancer health effects from short-term exposure to Zn/ZnO, a conservative screening modeling analysis was performed using time-adjusted annual emission rates for facilities likely to have emissions resulting in the highest short-term exposures. These facilities included primary Zn/ZnO smelters, a steel producer, two model iron and steel manufacturing furnaces and a facility from the miscellaneous source category (Doll, 1987a, 1987b). Worst case assumptions for source configuration, location, meteorological conditions and terrain effects were applied.

The highest predicted concentrations exceed the 24-hour primary PM_{10} NAAQS for particulate matter by an order of magnitude. While available monitoring data for particulate matter indicate that there are exceedances of this standard in the vicinity of some primary Zn/ZnO smelters, actual total particulate matter measured (containing zinc as well as other particulates) do not confirm ambient concentrations as high as those predicted by the screening technique (Vandenberg, 1987). In addition, fractionation of particulate matter from monitoring sites in close proximity to a source having high predicted concentrations of zinc demonstrate zinc concentrations as high as approximately 10 μg/m ^{3}, a concentration that is lower than the 24-hour PM_{10} NAAQS for a particulate matter (Pezze and Albert, 1987).

Existing Regulations

Particulate matter, which may or may not contain Zn/ZnO, has been associated with an increased incidence of adverse respiratory effects in both occupationally-exposed people and in the general public. An analysis of the health effects associated with exposure to particulate matter and the concentrations required to elicit these effects is contained in the EPA staff paper (EPA, 1986b) and the criteria document on particulate matter (EPA, 1986c). Primary NAAQS have been established under section 109 of the CAA to protect the general public from adverse respiratory effects for both short-term (24-hours) and long-term (annual) exposure periods. These levels are 150 μg/m ^{3} and 50 μg/m ^{3}, respectively, measured as PM_{10} (i.e., particles having diameters of less than or equal to 10 microns)(EPA, 1987c).

The National Institute for Occupational Safety and Health, OSHA and ACGIH have adopted regulations or have made recommendations for an occupational 8-hour time weighted average level of 5 mg/m ^{3} for zinc oxide fumes and 10 mg/m ^{3} for dusts. These levels are designed to protect the average healthy worker that may be repeatedly exposed to zinc or zinc oxide fumes or dusts, day after day, from adverse health effects (ACGIH, 1986).

The Office of Drinking Water has adopted a secondary drinking water standard of 5 mg/liter for organoleptic reasons (EPA, 1985). Zinc and some zinc compounds are currently listed as hazardous substances under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Further, under section 101(14) of CERCLA, Reportable Quatities (RQs) are established for substances specified in the CERCLA, as well as substances listed or designated under certain sections of the Clean Water Act, CAA (section 112), the Resource Conservation and Recovery Act and the Toxics Substances Control Act (EPA, 1986d). Section 103(a) of the CERCLA requires that any release to the environment (including the air) in any 24-hour period that is equal to or greater than 1000 pounds of zinc must be reported to the National Response Center (telephone 800–242–8802 or 202–426–2675 for the Washington, DC metropolitan area). The 24-hour period refers to the period within which a reportable quantity of a hazardous substance is released in order for the release to be considered reportable; it does not refer to the time available for a person to report a release. Such reporting must occur immediately.

Conclusions

The Agency concludes that the data available at this time are insufficient to indicate health concerns that require further regulation of Zn/ZnO emissions under the CAA. The target levels

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identified for protection against adverse respiratory effects associated with exposure to Zn/ZnO were the primary PM_{10} NAAQS for particulate matter. These levels were selected on the basis that the respiratory effects elicited by particulate matter containing or not containing Zn/ZnO are equivalent. Available data on the ambient particle size distribution of zinc indicate that the mass median diameter is 1.13 μm (Milford and Davidson, 1985). Therefore, the PM_{10} levels identified to protect public health are appropriate for protecting against adverse effects associated with exposure to Zn/ZnO.

Protective levels were not identified for metal fume fever. Available information indicates that metal fume fever is an acute occupational hazard confined to the immediate work place. It is associated with exposure to fumes or fine dusts of many heavy metals (e.g., zinc, copper, manganese) which are generated during certain work practices (e.g., welding or cutting metals, galvanizing iron). Metal fume fever is a transitory acute effect and appears to be more a function of the physical form(s) of a metal rather than a specific metal. As noted above, the most appropriate benchmark for this decision on Zn/ZnO was judged to be the PM_{10} NAAQS for particulate matter.

Given the findings presented here, the long-term (annual) Zn/ZnO concentrations measured or estimated to be present in the ambient air are below the health effects levels associated with exposure to Zn/ZnO. In contrast, the concentrations predicted from the short-term modeling exercise indicate a potential cause for concern, since these concentrations exceed the 24-hour primary PM_{10} NAAQS for particulate matter. Criteria air pollution control programs have been established, or will be revised if needed, to control particulate matter emissions in order to attain the NAAQS for particulate matter in all areas. Zinc and zinc oxide, as particulate matter, are controlled under these efforts. Therefore, Federal regulatory activity specifically directed at regulating Zn/ZnO under the CAA is not warranted at this time. The EPA's decision not to separately regulate Zn/ZnO under the CAA has no effect on the regulation of particulate matter, which may include Zn/ZnO.

The EPA invites comments and submission of information pertinent to the determination made today. A further notice will be published if public comments or other additional information suggest a need to reevaluate today's findings and revise EPA's present conclusions.

Date: July 31, 1987.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

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[FR Doc. 87–19773 Filed 8–27–87: 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59246A FRL# 3254–1]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–87–20. The test marketing conditions are described below.

FOR FURTHER INFORMATION CONTACT: Robert Wright, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202–382–7800).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test

marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–87–20. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–87–20. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and the date of manufacture.

2. The applicant must maintain records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T87–20

Date of Receipt: July 10, 1987.

Notice of Receipt: July 31, 1987 (52 FR 28601).

Applicant: Confidential.

Chemical: (G) Polyalkylsiloxane resin with alkoxy and hydroxy groups.

Use: (G) Industrial applications.

Production of Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Nine months from commencement of manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore the test market substance will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 20, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87–19774 Filed 8–27–87; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3253–7]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075, EPA.

Availability of Environmental Impact Statements Filed August 17, 1987 Through August 21, 1987

EIS No. 870285, Final, COE, NY, Shinnecock Inlet Navigation Project, Erosion Control and Water Quality Improvement, Suffolk County, Due: September 28, 1987, Contact: Karen Gustina (212) 264–4662.

EIS No. 870286, Draft, COE, NY, Cattagarus Creek Watershed Flood Control Plan, Wyoming, Erie and Cattagarus Counties, Due: October 15, 1987, Contact: Tim Daly (716) 876–5454.

EIS No. 870287, Draft, FHW, NC, NC–90 Replacement, NC–90 at Taylorsville to I–40 at Stateville, Alexander and Tredell Counties, Due: October 13, 1987, Contact: Ken Bellamy (919) 856–4346.

EIS No. 870288, Final, AFS, AZ, Coconino National Forest, Land and Resource Management Plan, Coconino, Gila and Yavapai Counties, Due: September 28, 1987, Contact: Neal Paulson (602) 527–7400.

EIS No. 870289, Final, AFS, CO, East Fork Ski Area Development, Special Use Permit, Four Season Resort, Valley of the East Fork of the San Juan River, San Juan National Forest Due: September 28, 1987, Contact: Sam Scanga (303) 264–2268.

EIS No. 870290, Draft, AFS, CA, OR, Siskiyou National Forest, Land and Resource Management Plan, Due: November 27, 1987, Contact: Ronald McCormick (503) 479–5301.

EIS No. 870291, Draft, BLM, AK, Utility Corridor Planning Area, Resource Management Plan and Central Arctic Management Wilderness Study Area Recommendations, Due: October 12, 1987, Contact: David Ruppert (907) 356–5130.

EIS No. 870292, Final, BLM, AZ, Upper Sonoran Wilderness Study Areas, Wilderness Designation or Nondesignation, Recommendations, Due: September 28, 1987, Contact: Bill Carter (602) 863–4464.

EIS No. 870293, Final, BLM, NV, Lahontan Resource Area, Wilderness Study Area, Wilderness Designation or Nondesignation, Recommendations, Churchill County, Due: September 28, 1987, Contact: James Elliott (702) 882–1631.

EIS No. 870294, Draft, NOA, PAC, CA, Cordell Bank National Marine Sanctuary, Designation and Management Plan, Pacific Continental Shelf, Due: October 12, 1987, Contact: Phil Williams (202) 673–5126.

EIS No. 870295, FSuppl, BLM, NV, Shoshone-Eureka Resource Area, Resource Management Plan Amendment, Livestock Use and Wildlife Habitat Impacts, Due: September 28, 1987, Contact: Terry Plummer (702) 635–5181.

Amended Notices

EIS No. 870275, Adoption, Final, FHA, ME, Jonesport Harbor Navigation Improvement Project, Due: September 28, 1987, Published FR 8–14–87—Review period reestablished.

EIS No. 870284, Draft, AFS, UT, Escalante Known Geological Structure (KGS), Oil and Gas Leasing and Development, Dixie National Forest, Garfield County, Due: October 20, 1987, Contact: Calvin Bird (801) 586–2421, Published FR 08–14–87—Incorrect accession number.

Dated: August 25, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–19845 Filed 8–27–87; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3253–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared August 10 Through 14, 1987

Availability of EPA comments prepared August 10, 1987 through August 14, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D–AFS–L65105–OR, Rating EO2, Siuslaw Nat'l. Forest, Land and Resource Mgmt. Plan, OR. SUMMARY

BEST COPY AVAILABLE

EPA objections stem from a concern that the level of timber harvesting and road building, in the preferred alternative, needs to be reduced to adequately protect fish and water quality. There is no justification for proposing to exceed historical levels of harvesting and road building given the known adverse effects associated with those levels. EPA is also requesting additional information on landslide effects; water supply cooperative agreements; and refinements to descriptions of the forest management process, standards, guidelines, and monitoring questions.

ERP No. D–COE–G36139–TX, Rating LO, El Paso Southeast Area Local Flood Control Plan, 404 Permit, TX. SUMMARY: EPA has no objections to the proposed project.

ERP No. DS–COE–H34009–IA, Rating LO, Red Rock Dam and Lake Red Rock, Operation and Maintenance, Des Moines River, Lake Red Rock Conservation Pool Evaluation, IA. SUMMARY: EPA generally concurs with the COE selection of alternate Plan 3. EPA believes that insufficient information was presented on the possibility that the proposed modifications to the recreational facilities would require cost sharing and requested that this issue be discussed in the final EIS.

ERP No. D–FAA–E51041–TN, Rating EC2, Nashville Metropolitan Airport Runway Improvements, Site Grading and Construction, TN. SUMMARY: EPA's primary concern was the uncertainty of mitigation for unavoidable noise impacts. It was requested that the final EIS provide good assurance that noise mitigation occur down to the 65Ldn level. Avoidance, minimization, mitigation, and/or greater documentation concerning the relocation of McCrory Creek and ozone and carbon monoxide issue were also requested.

Final EISs

ERP No. F–SFW–K99021–00. Southern Sea Otters Translocation Plan, Recovery Research, San Nicolas Island, CA and OR. SUMMARY: EPA made no formal comments. EPA received the final EIS and had no comments to offer on the sea otter population relocation proposal.

Dated: August 25, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–19846 Filed 8–27–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Application for Federal Deposit Insurance—Proposed Bank (OMB No. 3064–0001).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

COMMENTS: Comments on this collection of information should be submitted on or before September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898–3810.

SUMMARY: The FDIC is requesting OMB to extend, for a three-year period, the expiration date of the form FDIC 6200/05 (OMB No. 3064–0001) used by a proposed state nonmember bank to apply for FDIC deposit insurance. The application form, which expires on November 30, 1987, contains information relating to the factors which the FDIC is required to consider under section 6 of the FDI Act (12 U.S.C. 1816) before acting on the application. There is no change in the method or substance of the collection. The aggregate annual burden for this collection is estimated to be 28,500 hours.

Dated: August 24, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–19762 Filed 8–27–87; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Application for Consent to Effect a Merger-Type Transaction (OMB No. 3064–0016).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB reivew for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

COMMENTS: Comments on this collection of information should be submitted on or before September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898–3810.

SUMMARY: The FDIC is requesting OMB to extend, for a three-year period, the expiration date of the form FDIC 6200/01 (OMB No. 3064-0016) used by an insured bank to apply for consent to merge or consolidate with another bank or institution or, either directly or indirectly, acquire the assets of or assume the liability to pay any deposits made in any other institution. The application form is submitted to the FDIC if the institution resulting from the merger or consolidation is an insured state nonmember bank. The application form, which expires on November 30, 1987, contains information relating to the factors which the FDIC is required to consider under section 18(c) of the FDI Act before acting on the application. There is no change in the method or substance of the collection. The aggregate annual burden for this collection is estimated to be 13,900 hours.

Dated: August 24, 1987.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 87-19763 Filed 8-27-87; 8:45 am]
BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Trans Freight Lines, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-011132-001.

Title: North Europe-United States Pacific Voluntary Rate Agreement.

Parties:

Trans Freight Lines

Nedlloyd Lines BV

Synopsis: The proposed amendment would delete U.S. Atlantic ports of interchange from the scope of the agreement and would add inland points in the Western United States via Pacific and Gulf ports. The parties have requested a shortened review period.

Agreement No.: 207-011144.

Title: Australia-New Zealand Direct Line Service Agreement.

Parties:

Pacific Australia Direct Line

The Shipping Corporation of New Zealand Limited

Synopsis: The proposed agreement would permit the parties to operate a joint service for the carriage of containerized cargoes in the trade between ports and inland and coastal points in Australia, New Zealand and various Pacific Islands; and ports and inland and coastal points in the North American Continent, Central America, Hawaii and the Caribbean. The joint service may also charter space to the component parties under the agreement.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Dated: August 25, 1987.
[FR Doc. 87-19780 Filed 8-27-87; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under OMB Review

August 24, 1987.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202-452-3822).

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503, (202-395-7340).

Proposal To Approve Under OMB Delegated Authority The Extension, With Revision, of The Following Reports

1. Report title: Report of Intercompany Transactions for Foreign Banking Organizations and Their U.S. Bank Subsidiaries
Agency form number: FR Y-8F
OMB Docket number: 7100-0127
Frequency: Semiannual
Reporters: Foreign banking organizations
Annual reporting hours: 1170 hours
Small businesses are not affected.
General description of the report:
This report provides the Federal Reserve with information on intercompany transactions between foreign banking organizations and their U.S. bank subsidiaries. It enables the System to monitor and supervise intercompany flows of funds to ensure that the U.S. subsidiary banks are not engaging in any unsafe and unsound practices with their foreign owners. The proposed revisions include certain changes in terminology and an increase in the size criteria for interim reporting of certain large asset transfers and for separate reporting and explanation of large asset transfers that were "delinquent, nonperforming, or renegotiated."

This report is mandatory and authorized by law (12 U.S.C. 1844(5)(c)) and (12 CFR 225.5(b)). Individual respondent data are given confidential treatment (5 U.S.C. 552(b)(8)).

2. Report title: Report of Bank Holding Company Intercompany Transactions and Balances
Agency form number: FR Y-8
OMB Docket number: 7100-0126
Frequency: semiannual
Reporters: Bank holding companies
Annual reporting hours: 8,550 hours
Significant effect on small businesses is not expected.
General description of report:
This report collects data on the movement of funds between a domestic bank holding company and its subsidiaries, in order to identify broad categories of funds flows, internal transactions and balances that may have an adverse impact on the financial condition of the subsidiary bank(s). The proposed revisions will delete certain items, increase the size criteria for reporting of certain transactions, and revise terminology.

This report is required by law (12 U.S.C. 1844), and is given confidential treatment (5 U.S.C. 552(b)(8)).

Proposal To Approve Under OMB Delegated Authority The Revision of The Following Report

1. Report title: Consolidated Bank Holding Company Financial Statements
Agency form number: FR Y-9C
OMB Docket number: 7100-0128
Frequency: quarterly
Reporters: Bank holding companies
Annual reporting hours: 113,392 hours
Significant effect on small businesses is not expected.
General description of the report:
This report is a primary source of information for the Federal Reserve System's bank holding company (BHC) surveillance and is important in monitoring the financal condition of these institutions. The proposed revisions would add or delete certain items to reflect changes in the Board's capital adequacy guidelines and changes required by the 1986 Tax Reform Act, and to maintain comparability with the call report for insured banks in reflecting changes in reporting requirements for banks adopted by the Federal Financial Institutions Examination Council.

The information collection is required by law (12 U.S.C. 18445(c)).

Board of Governors of the Federal Reserve System, August 24, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87-19834 Filed 8-27-87; 8:45 am]
BILLING CODE 6210-01-M

Applications To Engage de Novo in Permissible Nonbanking Activities; Affiliated Bankshares of Colorado, Inc. et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 18, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Affiliated Bankshares of Colorado, Inc.*, Denver, Colorado; to engage *de novo* in underwriting and dealing in government general obligation securities and to deal in mutual funds whose sole investments are government general obligation securities under § 225.25(b)(16) and to provide financial advice to state and local governments under § 225.25(b)(4)(v) of the Board's Regulation Y.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Central Banking System, Inc.*, San Francisco, California; to expand the geographic area served by its subsidiary, Central Banking System Credit Corporation, Walnut Creek, California, to include the United States pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 24, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87-19829 Filed 8-27-87; 8:45 am]
BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Financial Trust Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 18, 1987.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Financial Trust Corp.*, Carlisle, Pennsylvania; to merge with Firstway Financial, Inc., Waynesboro, Pennsylvania, and thereby indirectly acquire First National Bank and Trust Company, Waynesboro, Pennsylvania.

2. *Phoenix Bancorp, Inc.*, Minersville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Minerville Safe Deposit Bank and Trust Company, Minersville, Branch Twp., Pennsylvania.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *The Citizens and Southern Corporation*, Atlanta, Georgia, and Citizens and Southern Florida Corporation, Fort Lauderdale, Florida; to acquire 100 percent of the voting shares of Southern Bank Corp., Inc., Tallahassee, Florida, and thereby indirectly acquire The Southern Bank of Tallahassee, Tallahassee, Florida.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Financial Corporation Employee Stock Ownership Plan and Trust*, Fort Atkinson, Wisconsin; to become a bank holding company by acquiring 30 percent of the voting shares of Citizens Financial Corporation, Fort Atkinson, Wisconsin, and thereby indirectly acquire Citizens State Bank, Fort Atkinson, Wisconsin.

2. *Keeco, Inc.*, Chicago, Illinois; to acquire 7.38 percent of the voting shares of Selin Corporation, Chicago, Illinois. Comments on this application must be received by September 14, 1987.

3. *Northland Insurance Agency, Inc.*, Chicago, Illinois; to acquire 7.58 percent of the voting shares of Selin Corporation, Chicago, Illinois. Comments on this application must be received by September 14, 1987.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers Bancshares, Inc.*, Valmeyer, Illinois; to acquire at least 60.5 percent of the voting shares of Ramsey National Bank, Ramsey, Illinois.

2. *Mid-Mo Bancshares, Inc.*, Auxvasse, Missouri; to become a bank holding company by acquiring at least 94.78 percent of the voting shares of Security Bank of Auxvasse, Auxvasse, Missouri.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First National Bank of Sauk Centre Profit Sharing Trust No. 1*, Sauk Centre,

Minnesota; to become a bank holding company by acquiring 26.88 percent of the voting shares of Sauk Centre Financial Services, Inc., Sauk Centre, Minnesota, which proposes to acquire 100 percent of the voting shares of First National Bank of Sauk Centre, Sauk Centre, Minnesota.

2. *Newberry Bancorp, Inc.*, Newberry, Michigan; to become a bank holding company by acquiring at least 100 percent of the voting shares of The Newberry State Bank, Newberry, Michigan.

3. *Sauk Centre Financial Services, Inc.*, Sauk Centre, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Sauk Centre, Sauk Centre, Minnesota.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Berthoud Bancorp, Inc. Employee Stock Ownership Plan*, Berthoud, Colorado; to become a bank holding company by acquiring 30 percent of the voting shares of Berthoud Bancorp, Inc., Berthoud, Colorado, and thereby indirectly acquire The Berthoud National Bank, Berthoud, Colorado. Comments on this application must be received by September 17, 1987.

G. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Myers Bancorp*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Myers Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire Continental State Bank, Boyd, Texas; and also The First National Bank of Bridgeport, Bridgeport, Texas; and Woodhaven National Bank, Fort Worth, Texas.

H. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Family Bancorp*, Grants Pass, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Family Bank of Commerce, Grants Pass, Oregon.

2. *Yardlong Investment Trust*, Geneva, Switzerland; Pastock Holdings Limited, Geneva, Switzerland; and International Capital Trust Limited, Geneva, Switzerland; to become bank holding companies by acquiring 85 percent of the voting shares of Western United National Bank, Los Angeles, California Comments on this application must be received by September 8, 1987.

Board of Governors of the Federal Reserve System, August 24, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19830 Filed 8-27-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Marshall & Ilsley Corp., et al.

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 11, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; to acquire First American Investment, Inc., Wausau, Wisconsin, and thereby engage as broker or dealer retailing corporate securities over the counter; mutual funds retailer; put and call broker or dealer or option writer; underwriter or selling group participant; broker or dealer selling tax shelters or limited partnerships; broker or dealer selling oil and gas interests pursuant to § 225.25(b)(15) of the Board's Regulation Y.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Signal Bancshares, Inc.*, West St. Paul, Minnesota; to acquire the assets of Hampton Agency, Inc., Hampton, Minnesota, and thereby engage in any insurance agency activities in a place that has a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in The City of Hampton, Hampton Township, City of Randolph, Randolph Township, City of Miesville, Douglas Township and Marshan Township. Comments on this application must be received by September 18, 1987.

Board of Governors of the Federal Reserve System, August 24, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19831 Filed 8-27-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; Selin Corp.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such

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an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 14, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Selin Corporation,* Chicago, Illinois; to acquire 100 percent of the voting shares of Wauconda National Bank and Trust Company, Wauconda, Illinois; American National Bank, South Chicago Heights, Illinois; American National Bank & Trust Company of Waukegan, Waukegan, Illinois; First National Bank of Crystal Lake, Crystal Lake, Illinois; and Gurnee National Bank, Gurnee, Illinois.

In connection with this application, Applicant also proposes to acquire NIF Data, Inc., Chicago, Illinois, and thereby engage in data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 24, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19832 Filed 8-27-87; 8:45 am]

BILLING CODE 6210-01-M

Proposal to Underwrite and Deal in Certain Securities to a Limited Extent; First Interstate Bancorp

August 25, 1987.

First Interstate Bancorp, Los Angeles, California, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through its wholly owned subsidiary, First Interstate Capital Markets, Inc., Los Angeles, California ("FICMI"), in the activities of underwriting and dealing in, to a limited degree, commercial paper, municipal revenue bonds (including "public ownership" industrial development bonds) and 1–4 family mortgage-related securities. These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

FICMI currently underwrites and deals in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("eligible securities") (U.S. government securities, general obligations of states and municipalities and certain money market instruments), as permitted by § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)). FICMI would conduct the proposed activities in addition to the previously approved activities on a nationwide basis.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." First Interstate has applied to conduct the proposed activities in accordance with the limitations set forth in the Board's Order approving the applications of Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation to underwrite and deal in the above securities. *Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation,* 73 Federal Reserve Bulletin 473 (1987) ("*Citicorp/Morgan/Bankers Trust*"). In its *Citicorp/Morgan/Bankers Trust* Order, the Board authorized the foregoing bank holding companies to engage through subsidiaries in underwriting and dealing in commercial paper, 1–4 family mortgage-related securities and municipal revenue bonds (including certain "public ownership" industrial development bonds) within a prudential framework of conditions and subject to 5 percent gross revenue and market limitations.

The application presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as First Interstate Bank of California, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. First Interstate states that it would not be "engaged principally" in such activities on the basis of the restrictions on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary and relative to the total market in such activity previously approved by the Board.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than September 21, 1987.

Board of Governors of the Federal Reserve System, August 24, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19833 Filed 8-27-87; 8:45 am]

BILLING CODE 6210-01-M

Applications; Correction; NBS Bancorp

This notice corrects a previous **Federal Register** notice (FR Doc. 87-18824) published at page 30958 of the issue for Tuesday, August 18, 1987.

Under the Federal Reserve Bank of New York, the entry for NBS Bancorp is revised to read as follows:

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *NBS Bancorp,* New Brunswick, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of New Brunswick Savings Bank, New Brunswick, New Jersey, a mutual savings bank which will be converted to stock form. Bank operates a subsidiary that engages in the sale of life insurance and annuities.

Comments on this application must be received by September 10, 1987.

Board of Governors of the Federal Reserve System, August 24, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19835 Filed 8-27-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 21, 1987.

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

1. Student Reporting Form—0960-0088—This form is submitted to the Social Security Administration by a student whenever a change occurs which would affect his or her entitlement to benefits as a student. Respondents: Individuals or households. Number of Respondents: 75,000; Frequency of Response: Occasionally; Estimated Annual Burden: 7,500 hours.

2. Recapitulation of State's Report of Wages Paid—0960-0042—The information collected by use of the form SSA-3962 is needed to summarize information on State wage reports for periods prior to 1982. It also serves to control and verify wage totals on forms SSA-3963 and SSA-3964 and to control deposit information on form SSA-3961. The affected public is comprised of State agencies responsible for reporting wage paid to State employees and to employees of State political subdivisions whose agencies are covered under the agreement. Respondents: State or local governments. Number of Respondents: 1508; Frequency of Response: Occasionally; Estimated Annual Burden: 301 hours.

3. Activities of Daily Living and Socialization—NEW—The information will be used to document the severity of mental disorders assessed in terms of the functional limitations which are incompatible with the ability to work. The affected public is comprised of individuals filing for disability benefits based on mental impairment. Respondents: Individuals or households. Number of Respondents: 13,090; Frequency of Response: Single-time; Estimated Annual Burden: 4,363 hours.

4. Disability Report and Vocational Report—NEW—These pilot tests forms will be used to determined whether they are effective in simplifying the claims-taking process and warrant national implementation. The affected public is comprised of individuals who file for disability benefits. Respondents: Individuals or households. Number of Respondents: 56,000; Frequency of Response: Single-time; Estimated Annual Burden: 25,000 hours.

OMB Desk Officer: Elana Norden.

Health Care Finance Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of package)

1. Medicare Uniform Institutional Provider Bill—0938-0279—This form is used by all institutional providers to seek reimbursement from intermediaries for Medicare inpatient and outpatient services. Respondents: Business or other for-profit. Number of Respondents: 43,185,665; Frequency of Response: Occasionally; Estimated Annual Burden: 3,847,880 hours.

2. Organ Procurement Organization Request for Certification—NEW—This form is a facility identification form used to initiate the certification or recertification procedure to determine if the provider is in compliance with the conditions of participation. Respondents: State or local governments. Number of Respondents: 300; Frequency of Response: Annually; Estimated Annual Burden: 600 hours.

OMB Desk Officer: Allison Herron.

Family Support Administration

(Call Reports Clearance Officer on 202-245-0652 for copies of package)

1. Statistical/Financial Reporting Form—0970-0057—This information will be used to report state OCSE activities to Congress; to assist OCSE in monitoring and evaluating state OCSE programs. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Quarterly; Estimated Annual Burden: 594 hours.

OMB Desk Officer: Elana Norden.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Centers for Disease Control

1. Regulation—42 CFR 37.204 National Coal Workers Autopsy Program—0920-0021—At the death of any miner, HHS is authorized to provide for an autopsy to be performed on such miner, with the consent of his surviving next-of-kin. Data is collected on the occupational and smoking history of the deceased miner to be correlated with pathologic and x-ray findings. Respondents: Individuals or households. Number of Respondents: 600; Frequency of Response: Occasionally; Estimated Annual Burden: 123 hours.

2. National Disease Surveillance Program—II. Disease Summaries—0920-0004—Surveillance data are essential to measure trends in disease incidence and evaluate effectiveness of prevention efforts. State and territorial health departments compile these summaries from data collected during disease investigations and from data furnished by local health departments. Respondents: State or local governments. Number of Respondents: 64; Frequency of Response: Annually; Estimated Annual Burden: 5,168 hours.

Food and Drug Administration

1. Intraocular Lens Investigational Device Exemption Application—0910-0067—The Intraocular Lens Investigational Device Exemption Application exempts devices from several provisions of the Federal Food, Drug, and Cosmetic Act. The application contains information necessary to evaluate the potential and continuing safety of the lenses during the investigational stage. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 18; Frequency of Response: Occasionally; Estimated Annual Burden: 18,000 hours.

2. Joint FDA/NHLBI/NCI Health and Diet Survey, Cycle IV—NEW—The three sponsoring agencies have major public information programs underway in the area of relationships between diet and health, especially coronary heart disease, hypercholesterolemia, hypertension, and cancer. The survey of households provides data needed to evaluate the progress of these programs and to redefine their objectives or approaches as necessary. Respondents: Individuals or households: Number of Respondents: 4,000; Frequency of Response: One-time; Estimated Annual Burden: 1,867 hours.

3. Radioactive Drug Research Committee Report on Research Use of Radioactive Drugs; Membership Summary and Study Summary—0910-0053—Radioactive Research Committee are required to provide a report of their current membership and a summary of the studies approved by the committee both on an annual basis and whenever

specified limits on studies are exceeded. Respondents: Non-profit institutions. Number of Respondents: 130; Frequency of Response: Annually; Estimated Annual Burden: 1,280 hours.

OMB Desk Officer: Shanna Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–594–8650
SSA: 301–594–5706
FSA: 202–245–0652

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer)

Date: August 24, 1987.

Raffie Shahrigian,

Acting Deputy Assistant Secretary, Office of Administrative and Management Services.

[FR Doc. 87–19767 Filed 8–27–87; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Breast Cancer Screening Program Evaluation Project; Program Announcement and Notice of Availability of Funds for Fiscal Year 1987

Introduction

The Centers for Disease Control (CDC), announces the availability of funds in Fiscal Year 1987 to support the Department of Health, State of Rhode Island, in the establishment of a breast cancer screening program evaluation project.

Assistance will be provided only to the State of Rhode Island Department of Health; no other applications are solicited.

Authority

This program is authorized under section 301 of the Public Health Service Act. The Catalog of Federal Domestic Assistance number is 13.283.

Background

Breast cancer is the leading cause of cancer mortality among women between the ages of 35 and 54. The American Cancer Society (ACS) estimates that one in ten women in the Untied States will develop breast cancer. At present, the etiology of breast cancer is poorly understood, although numerous studies have repeatedly documented certain risk factors. Although all women should be considered to be at "appreciable risk," there is more than sufficient evidence to demonstrate that screening for breast cancer through combined regimens of breast self examination (BSE), annual physical exam, and mammography can significantly reduce the morbidity and mortality through early detection. For women over age 50, it has been estimated that these regimens could reduce breast cancer mortality by more than 30 percent. Despite the demonstrated value of physical exams and mammography, surveys of physicians indicate that a significant proportion (59%) do not fully endorse ACS guidelines for breast cancer screening. In addition, it is estimated that only 10–15 percent of women are currently following recommended guidelines for the early detection of breast cancer through mammography.

The establishment of a successful breast cancer screening program requires the following components: An educational outreach program, the participation of primary-care physicians and radiologists, the availability of a low-cost screening mammogram and radiologic consultation, the surveillance of incidence and mortality, and an evaluation of the overall effectiveness of the project.

Availability of Funds

Approximately $80,000 will be available in Fiscal Year 1987 to fund this Grant. It is expected that the Grant will begin on or about September 15, 1987, and will be funded with an 18-month budget and project period. The funding estimate outlined above may vary and is subject to change.

Other Submissions and Review Requirements

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Program.

Reasons for Proposing the State of Rhode Island Department of Health as the Recipient of This Grant Program

It is proposed that this grant for a breast cancer screening program evaluation project be awarded to the State of Rhode Island Department of Health for the following reasons:

A. The Rhode Island Department of Health initiated this program, and with the exception of the evaluation component, it is entirely supported by the State. It is scheduled to begin late summer, 1987, and thus provides a unique and timely opportunity to evaluate the effectiveness of an intervention of this type.

B. The program is State-wide and targets a specific group of women, i.e., asymptomatic women over the age of 40 who have not had a mammogram within the previous 12 months, and who are not pregnant or breastfeeding. They hope to have the participation of more than 150,000 women during the period of the program (5 years).

C. The Rhode Island Department of Health has formally requested support from CDC for an evaluation of their breast cancer screening program. Specifically, assistance is desired in the areas of technical support and funds to support planning and evaluation.

D. This request represents a unique and timely opportunity for CDC not only to assist the State of Rhode Island in the evaluation of their breast cancer screening program, but also, to develop a model program which could be utilized in other States.

Information

Information may be obtained from Mr. Luther DeWeese, Grants Maangement Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 262–6575. Technical assistance may be obtained from Robert Smith, Ph.D., Project Officer, Program Development and Implementation Branch, Division of Chronic Disease Control, Center for Environmental Health, Centers for Disease Control MS F11, 1600 Clifton Road, Atlanta, GA 30333, Telephone (404) 454–4390.

Dated: August 21, 1987.

Glenda S. Cowart,

Acting Director, Office of Program Support Centers for Disease Control.

Date: August 21, 1987.

[FR Doc. 87–19739 Filed 8–27–87; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 75N–0184; DESI 10837]

T.C.M.-200 and -400 Tablets; Trihexamate; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the abbreviated new drug

applications for T.C.M.–200 and –400 Tablets and declaring the drug Trihexamate unlawful. The products contain a fixed combination of tridihexethyl chloride and meprobamate. The basis for this action is that the products lack substantial evidence of effectiveness. The products have been used to treat various gastrointestinal disorders.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 16, 1981 (46 FR 3977), the Director of the Bureau of Drugs (now the Center for Drugs and Biologics) evaluated fixed-combination drug products containing tridihexethyl chloride and meprobamate as lacking substantial evidence of effectiveness for their labeled indications. The Director also proposed to withdraw approval of the new drug applications and conditionally approved abbreviated new drug applications for these products and offered an opportunity for a hearing on the proposal.

In response, hearing requests were submitted for the following products but were subsequently withdrawn: T.C.M.–200 Tablets containing 25 milligrams (mg) of tridihexethyl chloride and 200 mg of meprobamate; ANDA 86–791; Zenith Laboratories, Inc., 140 LeGrand Ave., Northvale, NJ 07647.

T.C.M.–400 Tablets containing 25 mg of tridihexethyl chloride and 400 mg of meprobamate; ANDA 86–792; Zenith Laboratories, Inc.

Trihexamate containing 25 mg of tridihexethyl chloride and 200 or 400 mg of meprobamate; no NDA; Cord Laboratories, Inc., 2555 West Midway Blvd. Broomfield, CO 80020.

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (section 505, 52 Stat. 1051 through 1053 as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the products, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of ANDA's 86–791 and 86–792 and all amendments and supplements thereto is withdrawn and the drug product Trihexamate is declared unlawful effective September 28, 1987. Shipment in interstate commerce of T.M.C.–200 and –400 Tablets and Trihexamate will then be unlawful.

Dated: August 24, 1987.

Gerald F. Meyer

Acting Deputy Director, Center for Drugs and Biologics.

[FR Doc. 87–19749 Filed 8–27–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–07–4332–09; FES 87–35]

Availability of Final Environmental Impact Statement for Lahontan Wilderness, NV

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of final Environmental Impact Statement (EIS) on the Wilderness Recommendations for the Lahontan Resource Area, Carson City District, Nevada.

SUMMARY: This EIS assesses the environmental consequences of managing four Wilderness Study Areas (WSAs) as wilderness or nonwilderness. The alternatives analyzed included: (1) A No Wilderness/No Action alternative for each WSA, (2) an All Wilderness alternative for each WSA, and (3) at least one Partial Wilderness alternative for each WSA.

The names of the WSAs analyzed in the EIS, their total acreage, and the proposed action for each are as follows:

WSA	Acres suitable	Acres nonsuitable
Clan Alpine Mountains WSA	68,458	127,670
Stillwater Range WSA	0	94,607
Desatoya Mountains WSA	[1] 43,053	8,260
Job Peak WSA	0	90,209

[1] Includes 51 acres of BLM lands outside the original WSA boundary.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to the Congress. The final decision on wilderness designation rests with Congress. In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.l0B(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Manager, Lahontan Resource Area, 1535 Hot Springs Road, Suite 300, Carson City, NV 89701, or call (702) 882–1631. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th & C Street, NW., Washington, DC 20240

Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520

Bureau of Land Management, Carson City District, 1535 Hot Springs Rd., Ste. 300, Carson City, NV 89701.

FOR FURTHER INFORMATION CONTACT: Terry F. Knight, EIS Team Leader, or the Carson City District, 1535 Hot Springs Road, Suit 300, Carson City, NV 89701.

Dated: August 17, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87–19415 Filed 8–27–87; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–020–4332–09; FES 87–36]

Availability of Final Environmental Impact Statement; Upper Sonoran Final Wilderness Studies

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Upper Sonoran Final Wilderness environmental impact statement.

SUMMARY: The Final Upper Sonoran Wilderness Environmental Impact Statement assesses the environmental consequences of managing 17 wilderness study areas as wilderness or non-wilderness. The alternatives assessed include: (1) An "All Wilderness Alternative" for each wilderness study area; (2) a "No Wilderness Alternative" for each wilderness study area; (3) "Partial Wilderness Alternative" for nine wilderness study areas.

The names of the wilderness study areas, their total acreage, and the acreage recommended suitable and nonsuitable under the Proposed Action are as follows:

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52
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WSA	Total acres	Acres recommended	
		Suitable	Nonsuitable
Wabayuma Peak	38,940	38,940	0
Planet	12,765	0	12,765
Aubrey Peak	16,550	16,550	0
Black Mesa	18,575	0	18,575
Rawhide Mountains	58,850	40,025	18,825
Arrastra Mountain	123,930	109,523	14,407
Lower Burro Creek	22,300	21,660	640
Upper Burro Creek	27,390	0	27,390
Buckskin Mountains	43,798	0	43,798
Harcuvar Mountains	74,778	25,287	49,491
Hassayampa River Canyon	21,900	0	21,900
Harquahala Mountains	73,275	22,865	50,410
Big Horn Mountains	22,337	21,150	1,187
Hummingbird Springs	67,680	0	67,680
Saddle Mountain	5,500	0	5,500
Black Mt./Ives Peak	9,665	0	9,665
Tres Alamos	8,910	0	8,910
Total	647,143	296,000	351,143

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and the President to Congress. The final decision on wilderness designation rests with Congress.

FOR FURTHER INFORMATION CONTACT: Henri R. Bisson, District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, Telephone (602) 863–4464.

SUPPLEMENTARY INFORMATION: Copies of the environmental impact statement may be obtained from the District Manager, Phoenix District, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Copies are also available for inspection at the following locations:

Bureau of Land Management, Office of Public Affairs Interior Building, 18th and C Streets NW., Washington, DC 20240

Bureau of Land Management, Arizona State Office, 3707 North 7th Avenue, Phoenix, Arizona 85014

Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401

Date: August 17, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87–19416 Filed 8–27–87; 8:45 am]

BILLING CODE 4310-32-M

[OR-030-07-4212-17; GP7-272]

Realty Action; Availability of Permits (Temporary Authorizations) for Agricultural use in Trespass on Public Land in Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union and Wallowa County, OR; Asotin and Garfield County, WA

The Bureau of Land Management is accepting temporary permit applications for unauthorized agricultural use of public land in the Vale District. Permits will be issued noncompetitively under section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) for the same or similar use of the public land in trespass. The issuance of the permit will provide an opportunity for the users of the public land and the Bureau to resolve the unauthorized use in a manner that is fair and equitable. Significant changes in use and/or long-term leases will be considered on a case-by-case basis under section 202 of the Federal Land Policy and Management Act.

The purpose of the temporary authorization program is to abate existing and prevent future unauthorized uses of public land on the Vale District in Oregon and Washington in a non-punitive and cost effective manner. In order to participate in BLM's agricultural trespass resolution efforts, a trespasser who applies for a temporary use permit must show that his/her use occurred prior to January 1, 1987 and that he/she acknowledges Federal ownership of the land. Permit applications must be submitted prior to December 31, 1987. Unauthorized uses discovered subsequent to that date may be subject to immediate eviction and reclamation requirements, in addition to damages and full cost recovery. Maps showing the public lands open to permit and an inventory of known agricultural trespasses is available at the Vale District Office and the Baker Resource Area Office.

Permit applications and additional information are available from the Vale District Office and the Baker Resource Area Office. There is no application fee. However, agricultural use of public land is subject to fair market rental, and the reimbursement of costs, in accordance with 43 CFR 2920.6.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 100 Oregon Street, Vale, Oregon 97918, or the Baker Resource Area Manager, P.O. Box 987, Baker, Oregon 97814. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

William C. Calkins,

District Manager.

[FR Doc. 87–19837 Filed 8–27–87; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

Intention to Negotiate Concession Contract; Evelyn Hill, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Evelyn Hill, Inc., authorizing it to continue to provide food and gift facilities and services for the public at Liberty Island, Statue of Liberty National Monument for a period of fifteen (15) years from January 1, 1988, through December 31, 2003.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the office of the Superintendent, Statue of Liberty National Monument.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1984, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, North Atlantic Region, 15 State Street, Boston, Massachusetts 02109, for information as to the requirements of the proposed contract.

Herbert S. Cables, Jr.

Regional Director, North Atlantic Region.

[FR Doc. 87–19824 Filed 8–27–87; 8:45 am]

BILLING CODE 4310-70-M

Intention to Negotiate Concession Contract; Jerman and Mangum Enterprises, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Jerman and Mangum Enterprises, Inc. authorizing it to continue to provide saddle horse and mule rental, guide and related facilities and services for the public at the North Rim of Grand Canyon National Park, Arizona for a period of ten (10) years from January 1, 1988, through December 31, 1997.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1987, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: July 28, 1987.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 87-19825 Filed 8-27-87; 8:45 am]

BILLING CODE 4310-70-M

Intention to Negotiate Concession Contract; Verkamps, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Verkamp's, Inc. authorizing it to continue to provide souvenir, Indian handcrafts, and related facilities and services for the public at the South Rim of Grand Canyon National Park, Arizona for a period of ten (10) years from January 1, 1988, through December 31, 1997.

This contract renewal has been determined to be categorically excluded form the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1987, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

W. Lowell White,

Acting Regional Director, Western Region.

Date: July 28, 1987.

[FR Doc. 87-19826 Filed 8-27-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Amdt. No. 12 to Special Tariff Authority No. 80-1748, and Amdt. No. 5 to Special Tariff Authority No. 84-8933]

Extension of Expiration Date of Master Tariff Increases

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed procedure for incorporation of master tariff increases in basic tariffs.

SUMMARY: The Commission is requesting comments on its proposal to implement procedures that will expedite the restructuring and updating of basic rates to incorporate selective increases in Master Tariffs ICC TCFB 9500-B and ICC TEA 9000-D. Pending our evaluation of comments received in response to this proposal, we will hold in abeyance the joint application of the railroad tariff publishing agents, requesting an extension of the involved master tariffs' expiration date from September 30, 1988 to September 30, 1991.

COMMENTS: Comments are due on September 28, 1987.

ADDRESS: Please send (an original and 10 copies if possible) to: Special Tariff Authority No. 80-1748, Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Robert Swedien, (202) 275-6436

or

Joseph H. Dettmar, (202) 275-7245.

(TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION:

Applicants' [1] master tariffs provide selective increases for commodity rates published in basic tariffs of rate bureaus and individual rail carriers. Under the Special Tariff Authorities noted above, applicants have received permission, pursuant to 49 U.S.C. 10762(d)(2), to delay incorporating the increases contained in various master tariffs into the basic tariffs.[2] Applicants again seek an extension to September 30, 1991, of the current expiration date of September 30, 1988, for these master tariffs because assertedly they will be unable to complete the process of updating the basic rates by September 30, 1988.

The selective increases in these master tariffs are initiated by individual carriers for their single-line rates and for joint-line rates with concurring carriers,

[1] Trans-Continental Freight Bureau, Southwestern Freight Bureau, Rail Publication Services (Southern Freight Association and Traffic Executive Association—Eastern Railroads, Agents), Western Trunk Line Committee, North Pacific Coast Freight Bureau, and Pacific Southcoast Freight Bureau, Agents.

[2] 49 U.S.C. 10762(d)(2) states in relevant part:

[T]he Commission shall require that all rates of rail carriers and rail rate-making associations be incorporated in their individual tariffs by the end of the 2nd year after initial publication of the rate, or by the end of the 2nd year after a change in a rate becomes effective, whichever is later. The Commission may extend those periods if cause exists, but if it does it must send a notice of the extension and a statement of the reasons for the extension to Congress. A rate not incorporated in an individual tariff as required by the Commission is void.

The specific increases for a given commodity can vary considerably, depending upon the carrier, points, and routes involved. The applicants have encountered problems incorporating the selective increases into group and scale rates. Under these rates, a single rate may apply from and to many points, often via hundreds of routes. Group and scale rates are a legacy of the collective ratemaking era. In the prevailing ratemaking environment, rates of this kind with broad, uniform applicability have become obsolete and are inherently incompatible with individually established selective increases. As a result, the applicants have found it virtually impossible to update group and scale rates in an efficient manner.

In response to difficulties encountered in incorporating the selective increases into group and scale rates, applicants implemented a major updating and restructuring program in 1985. The program eventually will eliminate all collectively set group and scale rates, replacing them with a simplified rate publication format consisting of point-to-point rates. This system will be adaptable to electronic rate retrieval programs and other technological advances.

The current tariff restructuring program, borne entirely by the railroads, involves conversion of all "active" group and scale rates and routes to a point-to-point direct connector rate format and republication in self-contained individual rate items. Concurrently with conversion to the new format, the rates are being updated to reflect selective increases. However, applicants' program is encumbered by the fact that, before they can treat the rates as obsolete and subject to cancellation, they must engage in the exhaustive and time-consuming task of identifying the universe of active rates, *i.e.*, those actually involved in the movement of traffic. For example, one of the bureaus' difficulties is that they must await notification from individual carriers who, in turn, must review their operations and identify the "active" rates.

We endorse applicants' tariff simplification goal as one that promotes the interests of the entire transportation community. However, we are not persuaded that, as the program is presently structured, the process will be completed even by the requested extended date. Under 49 U.S.C. 10762(d)(2), Congress intended that the Commission oversee the timely incorporation of the increases into the basic rates. Accordingly, we are proposing an alternative approach for incorporating the master tariff increases that we believe will refine, simplify, and expedite applicants' restructuring and updating goals. Our intent here is to assist the bureaus in expediting the process with the resulting benefits to shippers and carriers.

In contrast to applicants' approach, our recommended program entails a cooperative effort by the railroads, shippers, and the Commission to accelerate the combined restructuring and updating agenda. Under this approach, it would be incumbent upon shippers to inform the railroads of active rates and, upon this advice, only those rates actually moving traffic would be converted.

To allow prompt identification of such rates, applicants' tariff publishing officers would issue complete lists of all tariff provisions containing group or scale rates as proposed for cancellation. The lists would be compiled and announced within 30 days of our issuance of a final decision in response to the comments received in this proceeding. They would be furnished to the Commission and all tariff subscribers, and, in addition, would be given as broad a public dissemination as possible. Publication of the list in the **Federal Register** may be possible, although alternative means of publication may be suggested in comments. Shippers would then have a period of 90 days to advise the origin carriers and the tariff publishing officers of the group and scale rates that they actually are using to move traffic. In order to permit expeditious conversion of the group and scale rates, this advice would have to be point-to-point, route specific.

With such information, the applicants would be able to determine the full extent of the conversion updating task remaining. The applicants would be required to notify the Commission on or before June 30, 1988 of the status of the conversion process. If the Commission determines on the basis of such information that the republication task cannot be completed by September 30, 1988, we would establish a new time frame for completion of the project and grant a corresponding extension of the master tariffs.

Under the proposed program, there are likely to be oversights where active group or scale rates are not directed to the attention of the carriers within the established time frames. In such instances, the railroads would be expected to use the short notice provisions of 49 CFR 1312.4(e)(1)(i)(E) to reinstate any rates that may be canceled inadvertently. If a shipment moves after a group or scale rate has been canceled, the participating carriers would be expected to apply promptly to the Commission on the special docket for authority to award reparations on the basis of the rate that would have applied had there been no cancellation. The carriers would be required to take such action only on shipments that move within 1 year of the cancellation or some other reasonable period that the parties might suggest and justify in their comments.

Because we are proposing a considerably shorter schedule for this process, and one that requires active participation by shippers, we specifically invite the comments of interested persons on this proposed approach to master tariff restructuring and updating. In addition, we encourage commenting parties to suggest alternative approaches and program features that similarly might expedite the necessary tariff republishing.

We will hold applicants' joint extension request in abeyance pending our evaluation of the comments received to the extent it seeks an extension for Master Tariffs ICC TCFB 9500–B and ICC TEA 9000–D.

Finally, the joint application offers no justification for an extension of the current expiration date in connection with other rates. Therefore, we do not intend to extend the September 30, 1988 expiration date for any other tariffs unless applicants present reasons for such an extension.

Environmental and Energy Considerations

Implementation of the proposed tariff restructuring approach will not affect significantly the quality of the human environment or conservation of energy resources.

Regulatory Flexibility Analysis

We preliminarily certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The recommended alternative approach to master tariff updating and restructuring will allow for tariff simplification on an expedited agenda and ultimately will render master tariffs more simplified, useful, and readily accessible to shippers, as well as carriers. To the extent that this proposal will have any effect on the economic interests of small transportation consumers or providers, the impact is expected to be positive. However, we encourage parties to comment specifically on this matter.

Authority: 49 U.S.C. 10321 and 10762.

Decided: August 19, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19783 Filed 8-27-87; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 290 (Sub-Nos. 2 and 5)]

Railroad Cost Recovery Procedures; Quarterly Rail Cost Adjustment Factor; Creation of New Docket and Updated Service Tests

AGENCY: Interstate Commerce Commission.

ACTION: Notice to create a new docket and two updated service lists.

SUMMARY: The Commission is creating a new docket and two new service lists for the future: Ex Parte No. 290 (Sub-No. 5) for all parties interested in receiving the decision setting the quarterly rail cost adjustment factor (RCAF); and Ex Parte No. 290 (Sub-No. 2) for parties interested in receiving pleadings in all other matters. A request to be included in either (or both) service lists must be filed with the Commission. In the future, all pleadings and statements submitted in Ex Parte No. 290 (Sub-Nos. 2 and 5), other than the Association of American Railroads' quarterly submission of its railroad cost index, must be served on all parties indicating a desire to be on these service lists.

DATES: This decision is effective on August 27, 1987. A request to be included on either service list (or both) must be filed by September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245

or

William T. Bono, (202) 275-7354.

(TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357, or assistance for the hearing impaired is available through TDD services (202) 275-1721, or by pickup from TSI in Room 2229 at Commission headquarters.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: August 19, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19785 Filed 8-27-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31092]

Railroad Acquisition Operation; Norfolk and Western Railroad Co. and Wabash Railroad Co.; City of Columbia, MO

The City of Columbia, MO, has filed a notice of exemption to acquire and operate certain properties owned by the Wabash Railroad Company and operated under lease by the Norfolk and Western Railway Company (collectively referred to as Railway). The properties consist of: The line of railroad between milepost 124.38 at or near Centralia, MO, and milepost 145.78, at or near Columbia, MO (a distance of approximately 21.40 miles), and incidental trackage rights over Railway. Any comments must be filed with the Commission and served on Mr. Henry C. Stoltz, Assistant City Counselor, P.O. Box N, Columbia, MO 65205, telephone (314) 874-7223.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 10, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19786 Filed 8-27-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

August 25, 1987.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Department's Clearance Officer from whom a copy of the form and/or supporting documentation is available; (2) the office, board or division of the Department of Justice issuing the form or administering the collection; (3) the title of the form/collection; (4) the agency form number, if any; (5) how often the report must be filled out or the information is to be collected; (6) who will be asked or required to respond, as well as a brief abstract; (7) an estimate of the total number of respondents; (8) an estimate of the total public burden hours associated with the collection; (9) an indication of whether Section 3504(h) of Pub. L. 96-511 applies; and, (10) the name and telephone number of the person or office responsible for the OMB review. Comments and/or questions regarding the item(s) contained in this notice should be directed to the OMB reviewer listed at the end of each entry *AND* to the Department's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so advise the OMB reviewer *AND* the Department's Clearance Officer of your intent as early as possible.

The Department of Justice Clearance Officer is: LARRY E. MIESSE and can be reached on (202) 633-4312.

New Collection

(1) Larry E. Miesse, (202) 633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) I-94T Arrival and Departure Record
(4) I-94T
(5) On occasion
(6) Individuals or households. The I-94 Arrival and Departure form has been modified with the I-94T to facilitate the efficient implementation and operation of the new TWOV (Transit Without Visa) procedure. The modified form incorporates the data gathering information presently gathered via wet stamp
(7) 280,000 annual responses
(8) 18,480 estimated total public burden hours (40 hours per response)
(9) Not applicable under 3504(h)
(10) Robert Fishman, (202) 395-7340.

Larry E. Miesse,

Clearance Officer.

[FR Doc. 87-19844 Filed 8-27-87; 8:45 am]

BILLING CODE 4410-10-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 2, 1987, Applied Science Laboratories, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
D-lysergic acid methylpropylamide (7328)	I
Tetrahydrocannabinols (7370)	I
Mescaline HCL (7387)	I
3, 4 Methylenenedioxyamphetamine HCL (7402)	I
3, 4 Methylenedioxymethamphetamine HCL (7406)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Cyclohexaine (PCE) HCL (7456)	I
1-phenylcyclohexylpyrrolidine HCL (7461)	I
Thophene Analog of PCP (HCL salt) (7469)	I
Dihydromorphine (9145)	I
Phencyclidine HCL (7472)	II
1-phenylcyclohexylamine (7460)	II
1-pipendinocyclohexanecarbonitrile (PCC) (8603)	II
Codeine-6-glucuronide (9069)	II
Acetylcodeine (9105)	II
Norcodeine HCL (9115)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9187)	II
Ecgonine methyl ester (9185)	II
Ecgonine HCL (9189)	II
Methadone HCL (9251)	II
Normorphine HCL (9360)	II

Manufacturing quotas will range from less than 100 grams of each compound per year with the majority of manufacturing under 10 grams per year. These materials are produced solely to be used in the standardization of test procedures with analytical instruments.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than September 28, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: August 24, 1987.

[FR Doc. 87-19776 Filed 8-27-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-19,538]

Dismissal of Application for Reconsideration; A.P. Green Refractories, Philadelphia, PA

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at A.P. Green Refractories, Philadelphia, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-19,538; A.P. Green Refractories, Philadelphia, Pennsylvania (August 19, 1987).

Signed at Washington, DC, this 19th day of August 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-19808 Filed 8-27-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,739]

Determinations on Reconsideration; AT&T Technologies, Inc., AT&T Technology Systems, Reading, PA

On May 8, 1987, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of AT&T Technologies, Inc., AT&T Technology Systems, Reading, Pennsylvania. The affirmed notice regarding application for reconsideration was published in the **Federal Register** on May 15, 1987 (52 FR 18465).

Counsel for the International Brotherhood of Electrical Workers, Local 1898, claims that the Department (1) did not investigate the Regional Bell Operating Companies and (2) did not consider increased imports of telephone sets entering the U.S. market. Counsel does not agree with the Department's negative findings concerning the outsourcing of component production to offshore facilities in 1986. Counsel claims that the company in numerous instances used components from its offshore plants.

Workers at the Reading plant of AT&T Technology Systems produce components for telecommunication systems and equipment including integrated circuits, custom logic devices, microprocessors, thin film devices, metal oxide semiconductors, LED and optoelectronic devices, plasma display products and linear integrated circuits. All of these components are integrated into the production of telecommunication systems and equipment at other plants of AT&T Technologies, Inc.

Intergration of production between the Reading plant and other plants of AT&T Technologies would permit workers at the Reading plant to be certified for trade adjustment assistance only if there is a reduced demand for components originating at the facilities producing the finished article (telecommunication systems) whose workers meet the statutory criteria for certification. This condition has not been met. None of AT&T Technologies' facilities which manufacture telecommunication systems are currently certified as eligible to apply for adjustment assistance benefits.

Findings on reconsideration, show workers in the LED and Optoelectronic Devices Department at the Reading, Pennsylvania plant met all of the group criteria of section 222 of the Trade Act. A substantial amount of LED and optoelectronic device production was outsourced in 1986 to foreign facilities and returned to AT&T. Substantial worker separations occurred in the LED and Optoelectronic Devices Department in 1986. Other findings on reconsideration show that none of the plasma display production and only an insignificant amount of linear integrated circuit production from the Reading plant were outsourced to foreign facilities during the period applicable to the petition. Company imports of other telecommunication components produced at the Reading plant are negligible.

A review of the investigative files shows that workers at the Reading plant who produced components and assemblies for telephone systems and apparatus were certified eligible to apply for adjustment assistance from January 1, 1985 through May 1, 1986 under certification TA-W-16,548, as amended. Reading's telephone

component production was integrated into the production of telephone sets at the Shreveport, Louisiana plant of AT&T Information Systems whose workers were certified for trade adjustment assistance (TA-W-16,313). Beginning in the third quarter of 1985, the Shreveport plant started a phaseout of production of residential telephone equipment. By the end of 1985 all of Shreveport's residential telephone production was transferred to the Orient. Likewise, all telephone component production at Reading ceased in 1985.

Counsel's claim concerning increased imports of telephone sets is not germane to the subject petition since workers at Reading produce only components for telecommunication systems and equipment and all workers at Reading producing telephone components were certified earlier under TA-W-16,548, as amended.

Counsel's claim concerning the Department's failure to investigate the Regional Bell Operating Companies would not be applicable for workers producing components for telecommunication systems and equipment. When there are no increased imports of like or directly competitive components, certification of workers producing components has been a derivative of certification of workers producing articles incorporating the components produced by a corporation also producing the import impacted article. Under such conditions, the Department has, where it has been legally possible, expanded investigations to cover workers in facilities producing components. The Department's practice has not been to follow the reverse practice. Further, the Department did conduct a customer survey of the Regional Bell Operating Companies for telecommunication transmission equipment in connection with other investigations (AT&T Network Systems, Winston-Salem, North Carolina, TA-W-16,508 and AT&T Technology Systems, Radford, Virginia TA-W-16,509) and found virtually all of the companies surveyed do not import telecommunication transmission equipment. The one customer who imported telecommunication transmission equipment had insignificant imports compared to its total sales.

Conclusion.

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of LED and optoelectronic devices produced at the Reading, Pennsylvania plant of AT&T Technology Systems contributed importantly to the decline in production and to the total or partial separation of workers and former workers in the LED and Optoelectronic Devices Department of the Reading, Pennsylvania plant of AT&T Technology Systems. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of the LED and Optoelectronic Devices Department of the Reading, Pennsylvania plant of AT&T Technology Systems, AT&T Technologies, Inc., who became totally or partially separated from employment on or after May 1, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

I further determine that all other workers at the Reading, Pennsylvania plant of AT&T Technology Systems, AT&T Technologies, Inc., are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of August 1987

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-19809 Filed 8-27-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19, 617 et al.]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; CNG Producing Co. et al.

In the matter of CNG Producing Co., New Orleans, Louisiana and all other locations of the CNG Producing Company in the following states, Louisiana TA-W-19,617A, Oklahoma TA-W-19,617B, Texas TA-W-19,617C, Wyoming TA-W-19,617D, Colorado TA-W-19,617E, Nevada TA-W-19,617F, Utah TA-W-19,617G, New Mexico TA-W-19,617H, Arkansas TA-W-19,617I, Montana TA-W-19,617J, and Kansas TA-W-19,617K.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 5, 1987 applicable to all workers of the CNG Producing Company, New Orleans, Louisiana.

The company furnished new information to the Department which showed additional States where worker separations occurred in 1986. Accordingly, the certification is amended to include the following states: Louisiana, Oklahoma, Texas, Wyoming, Colorado, Nevada, Utah, New Mexico, Arkansas, Montana and Kansas.

The intent of the certification is to cover all workers of CNG Producing Company headquartered in New Orleans, Louisiana who were affected by increased imports of crude oil. The amended notice applicable to TA-W-19,617 is hereby issued as follows:

All workers of CNG Producing Company, New Orleans, Louisiana and all other workers of the CNG Producing Company operating in the states of Louisiana, Oklahoma, Texas, Wyoming, Colorado, Nevada, Utah, New Mexico, Arkansas, Montana and Kansas who became totally or partially separated from employment on or after April 22, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of August, 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-19810 Filed 8-27-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,522]

Dismissal of Application for Reconsideration; General Electric Co., Consumer Electronics Business Operations, Portsmouth, VA

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at General Electric Company, Consumer Electronics Business Operations, Portsmouth, Virginia. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-19,522; General Electric Company, Consumer Electronics Business Operations, Portsmouth, Virginia (August 4, 1987).

Signed at Washington, DC, this 19th day of August 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-19811 Filed 8-27-87; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-186-C]

Petition for Modification of Application of Mandatory Safety Standard; AMAX Coal Co.

AMAX Coal Company, 251 North Illinois Street, P.O. Box 967, Indianapolis, Indiana 46206-0967 has

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filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Harco Mine (I.D. No. 11-02484) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that portable trailing cables on shuttle cars not exceed 500 feet in length.

2. As an alternate method, petitioner proposes to use 700 feet of No. 6 3/C G-GC portable trailing cables on shuttle cars. In support of this request, petitioner states that—

(a) The proposed addition of 200 feet of cable on shuttle cars will reduce the number of power moves thereby decreasing the potential for injury to miners due to strains caused by lifting and pulling;

(b) The cable impedance in the case of AC current increases with the length of the cable. If too much resistance is introduced into the system under short circuit conditions, the impedance may be so great that the amount of current flow would not be sufficient to trip the circuit breaker for the cable. The result would be a heat buildup on the cable which could result in an electrical fire hazard; and

(c) Electrical calculations establish that the current flow at the circuit breaker under worse case conditions would provide an adequate amount of current flow sufficient to trip the circuit breaker on the shuttle car machine.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. these comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1987. Copies of the petition are available for inspection at that address.

Date: August 21, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-19812 Filed 8-27-87; 8:45 am]

BILLING CODE 4510-43-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or government agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:	
AL87-3 (Jan 2, 1987)	p. 6.
New Jersey:	
NJ87-3 (Jan. 2, 1987)	p. 637.
West Virginia:	
WV87-3 (Jan. 2, 1987)	pp. 1223-1224.

Volume II

Arkansas:	
AR87-4 (Jan. 2, 1987)	p. 12.
Illinois:	
IL87-1 (Jan. 2, 1987)	pp. 68-71, pp. 74-75, 77, pp.79-94.
IL87-2 (Jan. 2, 1987)	pp. 96-102.
IL87-3 (Jan. 2, 1987)	pp. 114-115.
IL87-4 (Jan. 2, 1987)	pp. 120-121.
IL87-5 (Jan. 2, 1987)	pp. 126-127.
IL87-6 (Jan. 2, 1987)	pp. 132-133.
IL87-7 (Jan. 2, 1987)	pp. 136-138.
IL87-8 (Jan. 2, 1987)	pp. 142-146.
IL87-9 (Jan. 2, 1987)	pp. 148-149.
IL87-11 (Jan. 2, 1987)	pp. 158-159.
IL87-12 (Jan. 2, 1987)	pp. 164-166.

	IL87-13 (Jan. 2, 1987)	pp. 176-178.
	IL87-14 (Jan. 2, 1987)	pp. 186-188.
	IL87-15 (Jan. 2, 1987)	pp. 196-198.
	IL87-16 (Jan. 2, 1987)	pp. 206-209.
	IL87-17 (Jan. 2, 1987)	pp. 216-222.
Indiana:		
	IN87-1 (Jan. 2, 1987)	pp. 236-240.
Kansas:		
	KS87-9 (Jan. 2, 1987)	p. 364.
Oklahoma:		
	OK87-19 (Jan. 2, 1987)	p. 9121.
	Volume III	
Montana:		
	MT87-1 (Jan. 2, 1987)	p. 168, pp. 179-180.
	MT87-2 (Jan. 2, 1987)	pp. 198-199.
Utah:		
	UT87-1 (Jan. 2, 1987)	pp. 306-314.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed At Washington, DC this 21st day of August 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-19600 Filed 8-27-87; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-87-30-M]

Petition for Modification of Application of Mandatory Safety Standard; Andesite Rock Co.

Andesite Rock Company, 3955 Youngfield Svc. Road, Golden, Colorado 80401 has filed a petition to modify the application of 30 CFR 56.3130 (wall, bank, and slope stability) to its Lyons Quarry (I.D. No. 05-01437) located in Boulder County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that mining methods be used that will maintain wall, bank, and slope stability in places where persons work or travel in performing their assigned tasks. when benching is necessary, the width and height shall be based on the type of equipment used for cleaning of benches or for scaling of walls, banks, and slopes.

2. Petitioner states that the physical layout of the quarry is such that benching is prohibitive in terms of production.

3. As an alternate method, petitioner proposes to install a high-density polyethylene fence in a 100-foot wide "curtain" on that area of the pit wall where miners are working. In support of this request, petitioner states that—

(a) The curtain would effectively trap any loose material from the face of from above the wall crest, preventing injury to miners working on the bench below; and

(b) The curtain can be moved along the pit wall as work below progresses.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before Spetember 28, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 21, 1987.

[FR Doc. 87-19813 Filed 8-27-87; 8:45 am]

BILLING CODE 4510-43-W

[Docket No. M-87-27-M]

Petition for Modification of Application of Mandatory Safety Standard; General Chemical Corp.

General Chemical Corporation, Green River Soda Ash Operations, P.O. Box 551, Green River, Wyoming 82935-0551 has filed a petition to modify the application of 30 CFR 57.21065(c) (examination for hazardous conditions and testing for methane) to its General Chemical Mine (I.D. No. 48-00155) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that the mine be examined weekly by a qualified person for hazardous conditions, for compliance with health and safety standards, and to test for methane and carbon monoxide.

2. As an alternative method, petitioner proposes to establish seal check points at every split of air that sweeps sealed areas of the mine.

3. In support of this request, petitioner states that—(a) There are 250 seals and they are all built in the return airways and are not against fresh air used for ventilation of active workings;

(b) Approximately 140 of these seals are inaccessible due to ground conditions and would pose a severe hazard to personnel charged with the responsibility of inspection of these seals;

(c) The product mined, trona, is a noncombustible material and whether there was in-gassing or out-gassing of the seals there would be no danger of spontaneous combustion;

(d) If a leak were to develop in a seal, the atmosphere behind the seal would leak directly into the return air and no contamination of the fresh air environment would occur; and

(e) By establishing seal check points downwind of the seals, if a problem were to develop, it would be detected and a systematic approach could be taken to alleviate the problem. Action levels of .5% of methane and 10 ppm of carbon monoxide would warrant investigation of the areas and seals upwind of the seal checkpoint.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1987. Copies of the

petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 19, 1987.

[FR Doc. 87-19814 Filed 8-27-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-181-C]

Petition for Modification of Application of Mandatory Safety Standard; Interstate Mining Corp.

Interstate Mining Corporation, Rt. 1, Box 265-A, Danville, West Virginia 25053 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 2 Mine (I.D. No. 46-07248) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety to the miners affected because the area actively being mined has undulating floors, which causes the canopies to rub the roof and occasionally damage roof bolts. The canopies also limit the equipment operator's visibility.

3. The canopy legs have become bent due to the canopy contacting the roof, and in some cases have been knocked loose to the extent that the canopy has hit the operator.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 21, 1987.

[FR Doc. 87-19815 Filed 8-27-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-17-M]

Petition for Modification of Application of Mandatory Safety Standard; Homestake Mining Co.

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754 has filed a petition to modify the application of 30 CFR 57.19021 (minimum rope strength) to its Homestake Gold Mine (I.D. No. 39-00055) located in Lawrence County, South Dakota. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that at installation the nominal strength (manufacturer's published catalog strength) of wire ropes used for hoisting meet the minimum rope strength values.

2. As an alternate method, petitioner proposes to use Phillystran (an Aramid fiber) ropes in lieu of wire ropes. In support of this request, petitioner states that—

(a) The extreme light weight of the Aramid fiber ropes allows an increase in the payload of each skipload of ore, which allows fewer trips up the shaft to hoist the same number of tons and thereby increases available shifts for shaft maintenance; and

(b) The minimum rope strength will be five times the static load. This is an increase in the safety factor. The Aramid fiber ropes will not be used as guide ropes, friction drum ropes or on cage hoists.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 21, 1987.

[FR Doc. 87-19817 Filed 8-27-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-19-M]

Petition for Modification of Application of Mandatory Safety Standard; Homestake Mining Co.

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754 has filed a petition to modify the application of 30 CFR 57.19023 (examinations) to its Homestake Gold Mine (I.D. No. 39-00055) located in Lawrence County, South Dakota. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the procedural requirements for wire rope examinations.

2. In a separate petition for modification, (M-87-17-M), petitioner proposes to use Phillystran (an Aramid fiber) in lieu of wire ropes.

3. As an alternate method, petitioner proposes that—

a) At least once every fourteen calendar days, each Phillystran rope in service will be visually examined along its entire active length for visible structural damage. In addition, visual examination for wear will be made at stress points, including the area near attachments, where the rope rests on sheaves, where the rope leaves the drum, at drum crossovers, and at change-of-layer regions. When any visible condition exists which may result in a reduction of rope strength, the affected portion of the rope will be examined on a daily basis;

b) Before any person is hoisted with a newly installed Phillystran rope or any rope that has not been examined in the previous fourteen calendar days, the Phillystran rope will be examined in accordance with paragraph (a) of this section; and

c) At the completion of each examination, the person making the examination will certify, by signature and date, that the examination has been made. If any condition listed in paragraph (a) exists, the person conducting the examination will make a record of the condition and the date. Certifications and records of examinations will be retained for one year.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All

comments must be postmarked or received in that office on or before September 28, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 21, 1987.

[FR Doc. 87-19818 Filed 8-27-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-20-M]

Petition for Modification of Application of Mandatory Safety Standard; Homestake Mining Co.

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754 has filed a petition to modify the application of 30 CFR 57.19024 (retirement criteria) to its Homestake Gold Mine (I.D. No. 39-00055) located in Lawrence County, South Dakota. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that unless damage or deterioration is removed by cutoff, wire ropes shall be removed when certain specific conditions occur.

2. In a separate petition (M-87-17-M), petitioner proposes to use Phillystran fiber ropes in lieu of wire ropes. These ropes are covered by a heavy polyester braided jacket. The jacket is to be used as the indicator of potential inner rope abnormalities.

3. As an alternate method, petitioner proposes that—

(a) Rope wear sufficient to cause possible rope failure should be easily identified during routine visual inspections. Exposure of rope core, although caused by severe localized wear, may not necessitate rope retirement. Closer examination of rope will be required. The factory will be consulted for proper jacket repair procedures; and

(b) Immediate rope section retirement will take place if any of the following occurs:

(1) Bulging, or rippling which will indicate a broken strand;

(2) Area of drastic rope diameter reductions caused by separation of rope core; and

(3) Cuts of any core fiber.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (September 28, 1987). Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 21, 1987.

[FR Doc. 87-19819 Filed 8-27-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-21-M]

Petition for Modification of Application of Mandatory Safety Standard; Homestake Mining Co.

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754 has filed a petition to modify the application of 30 CFR 57.19025 (load end attachments) to its Homestake Gold Mine (I.D. No. 39-00055) located in Lawrence County, South Dakota. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that wire ropes be attached to the load by a method that develops at least 80 percent of the nominal strength of the rope, and that except for terminations where use of other materials is a design feature, zinc (spelter) shall be used for socketing wire ropes.

2. In a separate petition for modification (M-87-17-M), petitioner proposes to use Phillystran (an Aramid fiber) ropes in lieu of wire ropes.

3. As an alternate method, petitioner proposes to attach the Phillystran rope to the load by resin socketing which develops at least 80 percent of the minimum rated breaking strength. The terminations will be employed using United Ropeworks (U.S.A.) Inc. authorized supplies and procedures only.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 21, 1987.

[FR Doc. 87-19820 Filed 8-27-87; 8:45am]

BILLING CODE 4510-43-M

[Docket No. M-87-22-M]

Petition for Modification of Application of Mandatory Safety Standard; Homestake Mining Co.

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754 has filed a petition to modify the application of 30 CFR 57.19026 (drum end attachment) to its Homestake Gold Mine (I.D. No. 39-00055) located in Lawrence County, South Dakota. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the procedural requirements for drum end attachments.

2. In a separate petition for modification (M-87-17-M), petitioner proposes to use Phillystran (an Aramid fiber) in lieu of wire ropes.

3. As an alternate method, petitioner proposes that Phillystran ropes will be attached:

(a) Securely by four clips after making one full turn around the drum spoke;

(b) Securely by four clips after making one full turn around the shaft, if the drum is fixed to the shaft.

4. In addition, a minimum of five full turns of Phillystran rope will be on the drum when the rope is extended to its maximum working length.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 21, 1987.

[FR Doc. 87-19821 Filed 8-27-87; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-87-23-M]

Petition for Modification of Application of Mandatory Safety Standard; Homestake Mining Co.

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754 has filed a petition to modify the application of 30 CFR 57.19027 (end attachment retermination) to its Homestake Gold Mine (I.D. No. 39–00055) located in Lawrence County, South Dakota. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that damaged or deteriorated wire rope be removed by cutoff and the rope reterminated where there is more than one broken wire at an attachment; improper installation of an attachment; slippage at an attachment; or evidence of deterioration from corrosion at an attachment.

2. In a separate petition for modification (M–87–17–M), petitioner proposes to use Phillystran (an Aramid fiber) in lieu of wire ropes.

3. As an alternate method, petitioner proposes that rope retermination will be performed if any signs of rope fatigue or wear in close proximity to end termination are detected, including but not limited to the following:

(a) Jacket wear, tear or cutting;

(b) Rope bulges or rippling;

(c) Rope axis out of line with termination axis;

(d) Cracked, chipped or broken hardware; or

(e) Cracked, chipped or broken resin socket plug.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1987. Copies of the petition are available for inspection at that address

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 21, 1986.

[FR Doc. 87–19822 Filed 8–27–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M-87-24-M]

Petition for Modification of Application of Mandatory Safety Standard; Homestake Mining Co.

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754 has filed a petition to modify the application of 30 CFR 57.19028 (end attachment replacement) to its Homestake Gold Mine (I.D. No. 39–00055) located in Lawrence County, South Dakota. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that wire rope attachments be replaced when cracked, deformed, or excessively worn.

2. In a separate petition for modification (M–87–17–M), petitioner proposes to use Phillystran (an Aramid fiber) in lieu of wire ropes.

3. As an alternate method, petitioner proposes that damaged or deteriorated Phillystran rope will be removed by cutoff and the rope reterminated where there is any broken strand at an attachment; improper installation of end attachment; slippage at end attachment; or evidence of deterioration from corrosion of attaching hardware.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 21, 1987.

[FR Doc. 87–19823 Filed 8–27–87; 8:45 am]

BILLING CODE 4510–43–M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health Full Committee Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH) will meet on September 1 and 2, 1987, at 9:00 am in Room C–2318 ABC at the Frances Perkins Department of Labor Building, 200 Constitutional Avenue NW., Washington, DC.

NACOSH was established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

The public is invited to attend these meetings. The committee will receive reports from the subgroups on worksite safety and health programs, future OSHA activities and standard-setting that were formed at the May 21, 1987 meeting. A detailed agenda will be prepared, made publicly available and sent to members prior to the meeting. Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Oral presentations will be scheduled at the discretion of the Committee chairperson to the extent to which time permits.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N–3647, Third Street and Constitutional Avenue NW., Washington, DC 20210. Telephone: 202–523–8615.

Official records of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC, this 25th day of August 1987.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 87–19788 Filed 8–25–87; 4:29 pm]

BILLING CODE 4510–26–M

MERIT SYSTEMS PROTECTION BOARD

Information Collection To Obtain Information From Certain Appellants Before the Merit Systems Protection Board

AGENCY: Merit Systems Protection Board.

ACTION: Information collection request submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, Pub. L. 96–511, 5 U.S.C. Chapter 35, for review.

SUMMARY: Under the provisions of 5 CFR 1320.12, the Merit Systems Protection Board (MSPB) has requested

OMB review of a questionnaire to be used to collect information from appellants who did not have an attorney or other representative when making an appeal to MSPB. The questionnaire will seek information concerning the potential release of those appellants' names and addresses under the Freedom of Information Act. This information would be used to assist the MSPB in making an information determination whether under the provisions of the Freedom of Information Act, 5 U.S.C. 552(b)(6), release of the names and addresses of appellants would constitute "* * * a clearly unwarranted invasion of personal privacy," and thus, should be denied.

DATE: Comments concerning this information collection must be submitted on or before September 28, 1987.

ADDRESSES: Copies of the submission to OMB may be obtained from Paul D. Mahoney, Director, Policy and Evaluation, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419; telephone (202) 653–8900. Comments on the submission should be addressed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Katie Lewin, Desk Officer for MSPB; telephone (202) 395–7321.

FOR FURTHER INFORMATION CONTACT: Keith Bell, Office of Policy and Evaluation, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419; telephone (202) 653–7208.

Date: August 24, 1987.

Shannon McCarthy,

Deputy Clerk of the Board.

[FR Doc. 87–19828 Filed 8–27–87; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before October 13, 1987. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules indentified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force, (N1–AFU–87–33). Procurement authorizations for materiel procurement program.

2. Department of the Navy, Chief of Naval Operations, Naval Medical Command (N1–NU–87–2). Pharmacy records including completed prescription forms, locally prepared formularies and drug lists, and narcotics, alcohol, and controlled drug accounting records.

3. Department of Commerce, Bureau of the Census (N1–29–87–2). Machine-readable records from the Income Survey Development Program.

4. Department of the Interior, Bureau of Mines (N1–70–87–2). Records relating to personnel and classified documents security.

5. Agency for International Development (N1–286–86–3). Comprehensive schedule for records in electronic form.

6. The Japan-United States Friendship Commission (N1–220–87–5). Grant case files, index logs, and rejected grant applications.

7. National Archives and Records Administration, Office of Records Administration, Records Appraisal and Disposition Division (N1–GRS–87–17). Addition to General Records Schedule 16, Administrative Management Records, of documents published in the **Federal Register.**

8. National Archives and Records Administration, Office of Records Administration, Records Appraisal and Disposition Division (N1–GRS–87–19). Changes and additions to General Records Schedule 23, Records Common to Most Offices.

9. National Archives and Records Administration, Office of Management and Administration, Program Policy and Evaluation Division (N1–64–87–1). Comprehensive records disposition schedule for administrative and program records.

10. Office of Personnel Management, Office of Information Management (N1–146–87–2). Form RI 25–14, Self-certification of Full-time School Attendance, and Form RI 25–15, Survey of Student's Eligibility to Receive Benefits, or equivalents.

11. Tennessee Valley Authority, Division of Property and Services (N1–

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142–86–1). Comprehensive records schedule.

Dated: August 24, 1987.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 87–19750 Filed 8–27–87; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974; New System of Records

AGENCY: National Science Foundation.

ACTION: Notice of new system of records and routine uses.

This document provides notice of the existence and character of a proposed new system of records, NSF–49, that is designated "Frequent Traveler Profile". This system will be established and maintained by the NSF, enabling it to collect and use information relating to its employees who travel frequently. The information will be solicited in accordance with the Privacy Act of 1974 and will be used to facilitate traveler reservations and ticket requests.

EFFECTIVE DATE: The new system of records and its routine uses will become effective 30 days after publication of this notice, unless comments are received on or before that date that would result in a contrary determination. In this case a notice will be published to that effect.

Comments: Comments should be addressed to the NSF Privacy Act Officer, Division of Personnel and Management, National Science Foundation, Room 208, 1800 G Street NW., Washington, DC 20550. Written comments will be available for public inspection in Room 208, at the above address between the hours of 9:00 am and 4:00 pm.

NSF–49

SYSTEM NAME:

Frequent Traveler Profile.

SYSTEM LOCATION:

National Science Foundation, Division of Administrative Services, 1800 G. Street NW, Washington, DC 20550

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Science Foundation frequent travelers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Home telephone numbers, credit card information, special handicap requirements, passport numbers and issue dates, and travel preference information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information will be given to airlines for contacting traveler after hours or on weekends when there are schedule changes. Special requirements (wheelchair, etc.) will be given to airlines and hotels as appropriate. Credit card information will be given to hotels to guarantee room reservations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in NSF files. Information is also maintained in a computer system at American Airlines.

RETRIEVABILITY:

Records are filed alphabetically by last name.

SAFEGUARDS:

NSF employs a security guard and the building is locked during non-business hours when the guard is not on duty. Rooms in which records are kept are locked during non-business hours.

RETENTION AND DISPOSAL:

Credit cards and passposts expire and must be renewed periodically. Profiles are destroyed when employees retire or leave the Foundation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Administrative Services, National Science Foundation, 1800 G Street NW., Washington, DC 20550

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR Part 613.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Information is received from individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: August 25, 1987.

Herman G. Fleming,

NSF Privacy Act Officer.

[FR Doc. 87–19792 Filed 8–27–87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–14697; License No. 35–18229–01; EA 87–99]

Confirmatory Order Modifying License; Well Logging, Inc.

I

Well Logging, Inc. (Licensee), P.O. Box 506, Nowata, Oklahoma 74048 holds Byproduct Material License No. 35–18229–01, which authorizes the Licensee to possess and use sealed sources for down-hole logging. The license was issued on June 18, 1985.

II

On May 14, 1987, a routine unannounced radiation safety inspection was conducted of the Licensee's facilities. As a result of the inspection, eleven violations of NRC requirements have been identified. The violations include: (a) Failure to survey storage locations, (b) failure to survey job sites, (c) failure to survey transportation vehicles, (d) failure to maintain records of utilization of licensed material, (e) use of a survey instrument not in calibration, (f) unauthorized use of radioactive material, (g) failure to leak test sealed sources at the required interval, (h) failure to maintain complete records of personnel monitoring results, (i) failure to properly label containers used to transport radioactive materials, (j) failure to maintain documentation showing the results of special form material testing, and (k) failure to perform physical inventories. The NRC is concerned that the circumstances surrounding the above violations collectively reflect a significant breakdown in management oversight and inadequate control over the safe use of licensed material. On June 19, 1987, Region IV issued a Confirmation of Action Letter documenting the Licensee's commitments to retain a consultant to: audit the Licensee's operations, review procedures, reexamine license requirements, develop management controls, and provide additional on-the-job training for those individuals using licensed material. The consultant shall further conduct a follow-up audit within 6 months of the initial audit with the report findings fowarded to NRC Region IV. In addition, the Licensee agreed to maintain the sealed sources in secure stroage until the license is amended authorizing a designated user. Because of the importance of these commitments to the safe and appropriate use of

licensed material, I have determined that the public health and safety require that the Licensee's commitments should be confirmed by an immediately effective Order.

III

In view of the foregoing and pursuant to sections 81, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended (Act), and the Commission's regulations in 10 CFR 2.204 and Part 30, it is hereby ordered that:

1. The Licensee shall obtain the services of a consultant who is trained and experienced in the radiation protection aspects of sealed source use in oil/gas wells. The Licensee shall submit the name and qualifications of the consultant to the Region IV office and the date of first visit to the Licensee's facility within one month of receipt of this letter.

2. The Licensee shall engage this consultant to audit operations, review procedures and license requirements, develop management controls to ensure compliance with license requirements, and prepare a report of findings, which the Licensee will forward to NRC Region IV within 20 days of the completion of the audit.

3. The Licensee shall engage this consultant to provide additional on-the-job training for any individuals who will use licensed material during oil or gas well logging techniques under field conditions. This training will include source handling and survey techniques under field conditions.

4. The Licensee shall engage this consultant to perform a follow up audit within 6 months of the first audit and report those findings to NRC Region IV within 20 days of the completion of the audit. The consultant would be expected to state that operations are in compliance with NRC requirements, personnel have been adequately trained, and management controls are in place.

5. The Licensee shall keep the sealed sources in secure storage until the license is amended authorizing a designated user of licensed material.

The Regional Administrator, Region IV, or his designee may relax or rescind any of the above provisions after a period of one year and upon demonstration by the licensee of good cause shown and petition for amendment to the license.

The licensee or any other person adversely affected by this Order may request a hearing within 20 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the Licensee or any person who has an interest adversely affected by this Order, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issues to be considered at such hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Bethesda, Maryland, this 24th day of August 1987.

[FR Doc. 87-19798 Filed 8-27-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-01391; License No. 12-01087-07; EA 87-150]

Order to Show Cause Why License Should Not Be Modified, Effective Immediately; Edward Hines, Jr. Medical Center

I

Edward Hines, Jr. Medical Center (Veterans Administration) Hines, Illinois, (licensee/hospital) is the holder of specific byproduct material license of broad scope No. 12-01087-07 (the license) issued by the Nuclear Regulatory Commission (Commission/NRC) pursuant to 10 CFR Parts 30, 33 and 35. The license authorizes the licensee to use: (1) byproduct material listed in Groups I through VI of Schedule A, § 35.100 of 10 CFR Part 35 (under the new revised 10 CFR Part 35 this material is identified in Subparts D, E, F, and G) for diagnostic and therapeutic procedures; (2) any byproduct material between Atomic Nos. 1 and 83, inclusive, and (3) xenon-133 for blood flow and pulmonary function studies. The license was originally issued on October 15, 1958, was most recently renewed on September 24, 1985, and expires on September 30, 1990.

II

From December 16, 1986 through January 22, 1987, and April 16 through June 30, 1987, NRC inspections and investigations were conducted at Edward Hines, Jr. Medical Center, Hines, Illinois. As a result of these inspections and investigations, violations of NRC requirements were identified. The NRC has established that three misadministrations occurred during the week of August 4–8, 1986. The first and third misadministrations (Paragraphs C. and E., below) were not reported to the NRC as required. The second misadministration (Paragraph D., below) occurred, but was not required to be reported to the NRC because the material involved, gallium-67, is not regulated by the NRC. However, it appears that, with regard to the first and second misadministrations, the Assistant Chief, Nuclear Medicine Service (NMS) was informed that these misadministrations had occurred, and took actions to conceal the fact that the misadministrations had occurred and to impede the NRC investigation into whether misadministrations had occurred during that time frame.

Specifically, based on sworn interviews conducted by the NRC's Office of Investigations (OI) between April 16 and June 30, 1987, and on interviews during a special inspection by NRC Region III inspectors conducted December 16, 1986 through January 22, 1987, it appears that the following occurred:

A. On August 14, 1986, NRC Region III received an anonymous allegation that three diagnostic misadministrations occurred at Edward Hines, Jr. Medical Center during the week of August 4–8, 1986, and were not reported to the NRC as required by 10 CFR 35.43.[1] It was further alleged that Dr. Maynard L. Freeman, Assistant Chief, NMS, was notified of the three misadministrations by the Acting Chief Technologist for that week (the Assistant Chief Technologist), but took no action to ensure that those events were reported. It has been established that Dr. Freeman was aware of the reporting requirements for diagnostic misadministration. The NRC subsequently verified that these misadministrations did occur, and at least two of the misadministrations were made known to Dr. Freeman shortly after they occurred.

B. On October 29, 1986, the Director, Edward Hines, Jr. Medical Center, ordered an investigation into the three alleged misadministrations. The V.A. Investigatory Board concluded that only

[1] The Commission's regulations have since been revised. The requirements for reporting misadministration are presently set forth in 10 CFR 35.33.

one of the three events may have involved a misadministration but that a definite conclusion could not be drawn in that case. A subsequent NRC investigation determined that the V.A. investigation reached erroneous conclusions because, among other matters, a nuclear medicine technologist subsequently admitted to NRC investigators, under oath, that he had made a false statement to the V.A. Investigatory Board.

C. On August 4, 1986, a patient who was scheduled for a bone scan was injected with a brain scanning agent. The patient was subsequently injected with the bone scanning agent. Although Dr. Freeman was informed by the Assistant Chief Technologist that a misadministration may have occurred, he failed to take the steps necessary to have the misadministration reported to the NRC as was then required by 10 CFR 35.43. When questioned about the event by the V.A. Investigatory Board and by NRC investigators, Dr. Freeman stated that the event did not involve a misadministration because he had verbally instructed the nuclear medicine technologist who administered the injection to inject a brain scanning agent rather than a bone scanning agent. The NRC investigation determined that this was a false statement, as no such instruction was actually given. The Assistant Chief Technologist testified that there was no discussion of a brain scan being appropriate before the injection was given. The attending physician testified that he had originally requested a non-specified scan, that during a telephone discussion with the nuclear medicine department it was determined that a bone scan would be performed, and that when the attending physician received the results of the scan he assumed that a bone scan had been performed. The nuclear medicine technologist testified that a brain scanning agent was injected by mistake and, when he realized that a mistake had been made, a bone scanning agent was then injected. The nuclear medicine technologist further testified that he had never been instructed by Dr. Freeman to perform a brain scan rather than a bone scan. In addition, the nuclear medicine technologist further testified that he had falsely stated to the V.A. Investigatory Board that he remembered Dr. Freeman telling him to inject a brain scanning agent because Dr. Freeman had previously stated to the Chief of the Nuclear Medicine Department in the presence of the technologist that he had given such an instruction, and the technologist feared to contradict Dr. Freeman. Dr. Freeman also falsely stated to the V.A. Investigatory Board that he had ordered the technologist to perform a brain scan. Finally, the Chief Technologist testified that in his presence Dr. Freeman removed and destroyed a dose calibration ticket indicating that a bone scan had been given.

D. On August 4, 1986, a patient received a gallium–67 dose which had been intended for another patient. Dr. Freeman was informed by the Assistant Chief Technologist that a misadministration had occurred. Dr. Freeman subsequently obtained a written prescription to perform a gallium scan on the misadministered patient from a physician who was acting in the place of the patient's attending physician without informing the acting physician that the injection had already been administered. Both the acting physician and the attending physician indicated that the normal practice of the hospital would be to request that approval prior to, not following, the injection. The attending physician testified that she could not find any evidence in the patient's file that she had ordered a gallium injection to be administered to this patient on August 4. While this misadministration did not require reporting under to 10 CFR 35.43 because gallium–67 is not regulated by the NRC, these events indicate that Dr. Freeman attempted to conceal the fact that a misadministration had occurred, and shed doubt on Dr. Freeman's credibility and ability to ensure the safe conduct of licensed activities.

E. On August 6, 1986, a patient scheduled for a gallium–67 scan received a bone scan that was scheduled for another patient. This constituted a misadministration which was not reported to the NRC as required.

F. Following these events, prior to the NRC investigation, it appears that Dr. Freeman attempted to influence the testimony of a witness. Specifically, in November 1986, Dr. Freeman telephoned the Assistant Chief Technologist and suggested that she respond to the questions of NRC investigators by saying that she could not recall what had occurred.

G. Previous NRC inspections and this investigation have shown that greater management attention was required to correct recurring violations, such as failure to properly maintain records, perform surveys, and train employees. On January 12, 1987, the NRC issued a Confirmatory Action Letter that addressed these violations of procedures. By accepting the Confirmatory Action Letter, the licensee has committed to complying with the requirements of that Letter. These requirements are incorporated in paragraph IV B–E of this Order, with an expansion of the requirement for a periodic audit program.

III

Licensees must adhere strictly to radiation safety requirements so that the medical use of NRC-licensed material does not create a radiation hazard to workers and members of the public. The proper and competent performance of licensee employees is essential to ensuring the safe conduct of licensed activities. 10 CFR Part 35 of the Commission's regulations establishes requirements applicable to human use of byproduct materials, including, at the time of these occurrences, the reporting of diagnostic misadministrations under 10 CFR 35.43.

Dr. Freeman testified that he had approved reports for previous misadministrations, and that he knew of the reporting requirements. The evidence indicates that Dr. Freman was aware that diagnostic misadministrations had occurred on at least two occasions and that he was required to ensure that one of these misadministrations was reported to the NRC. However, he failed to ensure that that misadministration was reported. In addition, it appears that Dr. Freeman made a false statement to the V.A. Investigatory Board and NRC investigators, destroyed evidence, improperly obtained additional evidence, and attempted to impede the NRC investigation by influencing the testimony of a witness, all in order to conceal the fact that these misadministrations had occurred. These actions demonstrate that there is no longer reasonable assurance that Dr. Freeman can be relied on to comply with Commission requirements in the performance or supervision of licensed activities or that the licensee will comply with Commission requirements while Dr. Freeman is conducting or supervising licensed activities as an authorized user at Edward Hines, Jr. Medical Center.

In addition, NRC inspections over the last several years and this investigation disclosed that licensee's management and staff failed to implement and adequately control the licensee's program for administration of radiopharmaceuticals to patients. Specifically, the licensee failed to: (1) Report misadministrations; (2) properly control dose administration records; (3) effectively train nuclear medicine staff; (4) verify procedure orders; and (5)

provide accurate information to the V.A. Investigatory Board and the NRC.

Therefore, I am issuing this Order. I have determined pursuant to 10 CFR 2.201(c) that no prior notice is required and pursuant to 10 CFR 2.202(f) and 2.204 that the public health, safety and interest require that this Order should be immediately effective.

Accordingly, pursuant to sections 81, 161(b), (i), and (o), 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 2.204 and 10 CFR Parts 30 and 35, *it is hereby ordered effective immediately that:*

A. License No. 12–01087–07 is amended by adding the following condition: On receipt of this Order, Dr. Maynard L. Freeman shall be removed from all licensed activities and shall thereafter not serve in any position involving the performance or supervision of any licensed activities (e.g., as an authorized user) including the supervision of any nuclear medicine technologists.

B. The licensee shall hold in-service classes at least annually for all Nuclear Medicine Service personnel to asure a complete understanding of regulations, policies, and procedures relating to misadministration reporting procedures. The licensee shall keep records of this training.

C. The licensee shall use and maintain records to provide precise tracking and comprehensive documentation of dosage measurement and administration.

D. The licensee shall assure that all prescriptions for nuclear medicine procedures are: (1) In writing; (2) reviewed by a nuclear medicine physician; and (3) verified by the technologist prior to administration of the dose to a patient, except where this would jeopardize emergency patient care.

E. Within 30 days of the date of this Order, the licensee shall: (1) Retain an independent organization to perform quarterly audits of the nuclear medicine department, and (2) submit to the Regional Administrator, NRC Region III, for approval, a description of the organization retained, including the name(s) and resume(s) of the individual(s) who will perform the audits. The requirement for independence of the organization may be satisfied by use of VA personnel who have not been associated in any way with V.A. Edward Hines, Jr. Medical Center.

These audits shall be conducted to evaluate the effectiveness of the radiation safety program in assuring adherence to NRC requirements and safe performance of licensed activities. These audits shall include as a minimum:

1. Assessment of management control and oversight of the program;

2. Evaluation of the adequacy of staffing levels, training and qualification of personnel involved in licensed activities, understanding of the procedures concerning misadministrations and reporting, and implementation of the program;

3. Observation and evaluation of the performance of personnel engaged in licensed activities; and

4. Assessment of the quality and accuracy of records required to be maintained concerning licensed activities.

The first independent audit shall be conducted within one month of the date of this Order. The results of each audit shall be simultaneously provided to the Hospital Director and the Director, Division of Radiation Safety and Safeguards (DRSS), NRC Region III, within two weeks of completion of the audit. Within 30 days of receipt of the results of each audit, the hospital shall provide to the Director, DRSS, NRC Region III, a description of the corrective actions taken for each recommendation by the independent party and justification for any recommendation not accepted.

The Regional Administrator, Region III, may relax or terminate any of these conditions for good cause shown.

V

Dr. Freeman may show cause why Condition A of this Order should not have been issued and should be vacated by filing a written answer under oath or affirmation within 30 days of the date of this Order which sets forth the matters of fact and law on which he relies. Dr. Freeman may answer as provided in 10 CFR 2.202(b) by consenting to Condition A of this Order. If Dr. Freeman fails to answer within the specified time, Condition A of this Order shall be final without further proceedings, unless the licensee shows cause why Condition A should not have been issued or requests a hearing as to Condition A.

The licensee may show cause why this Order should not have been issued and should be vacated by filing a written answer under oath or affirmation within 30 days of the date of this Order which sets forth the matters of fact and law on which the licensee relies. The licensee may answer as provided in 10 CFR 2.202(b) by consenting to this Order. If the licensee fails to answer within the specified time, this Order shall be final with respect to Conditions B-E without further proceedings and shall be final with respect to Condition A unless Dr. Freeman shows cause why Condition A should not have been issued or requests a hearing.

The licensee or any other person adversely affected by this Order may request a hearing within 30 days after issuance of this Order. Any answer to this Order or any request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by the Order and should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee and any other person adversely affected by this Order to answer or request a hearing within the specified time, this Order shall be final without further proceedings. An answer to this order or a request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 24th day of August 1987.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 87–19799 Filed, 8–27–87; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Power Reactor Operating Licenses; Annual License Fee for Fiscal Year 1988

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notification of amount of FY 1988 annual fee for nuclear power reactor operating licenses.

SUMMARY: The Nuclear Regulatory Commission is hereby publishing the amount of the annual fee to be assessed

during FY 1988 for nuclear power reactor operating licenses.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Chief, License Fee Management Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301/492–7225.

Background and Notice of Amount

On September 18, 1986, the Nuclear Regulatory Commission published a finan new regulation, 10 CFR Part 171, on Annual Fee for Power Reactor Operating Licenses. This regulation became effective on October 20, 1986, and imposed an annual fee on companies with NRC operating licenses for nuclear power reactors. Under the provisions of 10 CFR 171.13, notice of the amount of the annual fee for each fiscal year is to be published in the **Federal Register** on or before September 1 of each year. The formula for computing fees as set forth in 10 CFR 171.15(c) has been used to determine the amount of fees for FY 1988. Based on this formula, notice is hereby given, pursuant to 10 CFR 171.13, that the annual fee to be assessed in FY 1988 for each nuclear power reactor operating license will be $936,000. This fee is applicable beginning October 1, 1987, and will be collected in accordance with 10 CFR Part 171. The analysis used for determining the annual fee is available in the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

Dated at Bethesda, Maryland, this 25th day of August 1987.

For the Nuclear Regulatory Commission.

Ronald M. Scroggins,

Controller.

[FR Doc. 87–19800 Filed 8–27–87; 8:45 am]

BILLING CODE 7590–01–M

Standard Review Plan; Public Comment Solicited

The Nuclear Regulatory Commission (NRC) is issuing for comment a new Standard Review Plan (SRP) Section which is published in its entirety below. The new SRP Section will be used by the NRC staff to evaluate all submittals from licensees and applicants dealing with implementation of leak-before-break technology under the broad scope amendment to General Design Criterion 4 (GDC–4) of Appendix A, 10 CFR Part 50. This amendment is expected to be published as a final rule in November or December of 1987. The new SRP section 3.6.3 had its genesis in the USNRC Piping Review Committee Report, NUREG–1061, Volume 3, dated November 1984, but has undergone substantial revision as a result of the efforts of the NRC staff, NRC contractors and consultants, the Committee to Review Generic Requirements (CRGR), and the Advisory Committee on Reactor Safeguards (ACRS). Additionally, nuclear industry comments on the proposed broad scope amendment to GDC–4 (51 FR 26393) have also had major impacts on the present version of SRP 3.6.3. The CRGR endorsed publication of this notice at their 119th meeting on July 22, 1987, and the ACRS endorsed publication of this notice at their 328th meeting on August 7, 1987.

While the entire SRP 3.6.3 is open to public comment, the staff particularly invites remarks on the following:

1. With respect to the evaluation of structures protecting essential equipment as stated in V. *Implementation* below, comment is requested on the need to assume "pressurizations associated with an area equivalent to the cross section of the controlling pipe and a linear release time of three seconds" in piping which qualifies for leak-before-break.

2. With respect to corrosion resistance of piping as stated in III. *Review Procedures*, item 6., below, comment is requested on the statement that piping susceptible to IGSCC may qualify for leak-before-break if two mitigating methods are applied "within the first two years of service".

3. Regarding the statement in V. *Implementation* that "Requirements for containment design * * * are not affected", the staff's current position is that the cited requirements include pressurizations, pipe whip effects and jet impingement effects from pipe ruptures on containment pressure boundaries and primary structures, and in the case of containments with pressure suppression design features, the effects of pipe ruptures on those features. The proposed amendment to General Design Criterion 4 (51 FR 26393) mentioned that the Commission recognizes the need to address whether and to what extent leak-before-break can be applied to containment design bases. Comments are requested on how containment design bases might be modified together with the associated technical justifications for the proposed modification, particularly with respect to pipe whip effects and jet impingement effects. Commenters may wish to differentiate between existing plants and new design concepts not yet constructed.

The full text of SRP 3.6.3 is as follows:

3.6.3 Leak-Before-Break Evaluation Procedures

Review Responsibilities

Primary—Materials Engineering Branch, NRR

Secondary—Mechanical Engineering Branch, NRR

I. Areas of Review

General Design Criterion 4 (GDC–4) of Appendix A to 10 CFR Part 50 allows the use of analyses reviewed and approved by the Commission to eliminate from the design basis the dynamic effects of the pipe ruptures postulated in SRP section 3.6.2. The staff reviews and approves each plant specific and fluid piping system specific submittal from licensees and applicants to eliminate these dynamic effects. Approval of these "leak-before-break" analyses by the staff permits the case-by-case removal of protective hardware such as pipe whip restraints and jet impingement barriers, the redesign of pipe connected components, their supports and their internals, and other related changes in operating plants. Likewise, requirements in plants under construction or to be designed in the future are similarly relaxed. The staff review assures that adequate consideration has been given to direct and indirect pipe failure mechanisms and other degradation sources which could challenge the integrity of piping. The staff review of direct pipe failure mechanisms comprises the following elements:

1. An evaluation over the entire life of the plant of the following:
   a. Water Hammer,
   b. Creep Damage,
   c. Erosion,
   d. Corrosion,
   e. Fatigue,
   f. Environmental Conditions.
2. A deterministic fracture mechanics and leak are evaluation.

The staff reviews the factors which contribute to the initial quality of the piping and the provisions adopted to maintain this quality. In addition, leak detection methods are examined to assure that adequate detection margins exist for the postulated throughwall flaw used in the deterministic fracture mechanics evaluation.

Indirect failure mechanisms as defined in the plant FSAR which could lead to pipe rupture are investigated. These include seismic events and system overpressurizations due to accidents resulting from human error, fires, or flooding which cause electrical and mechanical control systems to

malfunction. Missiles from equipment, damage from moving equipment and failures of structures, systems or components in close proximity to the piping are investigated as well. However, the results of prior analyses conducted to show compliance with Commission regulations can be applicable to potential sources of indirect pipe rupture.

II. Acceptance Criteria

Acceptance criteria are based on meeting the requirements of General Design Criterion 4 as it relates to the exclusion of dynamic effects of the pipe ruptures postulated in SRP section 3.6.2. Analyses reviewed and approved by the staff must demonstrate that the probability of fluid system piping rupture is extremely low under conditions consistent with the design basis of the piping. The design basis for the piping means those conditions specified in the FSAR, as amended, and may include 10 CFR Part 50, applicable sections of the Standard Review Plan, Regulatory Guides, and industry standards such as the ASME Boiler and Pressure Vessel Code. A deterministic evaluation that demonstrates sufficient margins against failure, and that includes verified design and fabrication in addition to an adequate inservice inspection program, can be assumed to satisfy the extremely low probability criterion.

Leak-before-break should only be applied to ASME Code Class 1 and 2 piping or the equivalent. Applications to other high energy piping will be considered based on an evaluation of the proposed design and inservice inspection requirements as compared to ASME Code Class 1 and 2 requirements.

Approval of the elimination of dynamic effects from postulated pipe ruptures is obtained individually for particular piping systems at specific nuclear power units. Leak-before-break cannot be applied to individual welded joints or other discrete locations. Leak-before-break is applicable only to an entire piping system or anlayzable portion thereof. Analyzable portions are typically segments located between anchor points. When leak-before-break technology is applied, all potential pipe rupture locations are examined; the examination is not limited to those postulated pipe rupture locations determined from SRP Section 3.6.2.

III. Review Procedures

The reviewer verifies compliance with the following factors necessary for an acceptable submittal to utilize leak-before-break technology.

1. The leak-before-break evaluation uses design basis loads and is based on the as-built configuration as opposed to the design configuration. Correct location of supports and their characteristics (such as gaps) are verified, as are the weights and locations of components such as valves. Particular attention is given to the reliability of snubbers whose failure could invalidate the stresses used in the fracture mechanics evaluations. Compliance with the technical specifications can be used to demonsrtrate that snubber failure rates are maintained at a low level. Leak-before-break technology cannot be applied to piping supported by masonry block walls unless compliance with Multi-Plant Action B–59 is achieved.

2. Degradation by erosion, erosion/corrosion, and erosion/cavitation due to unfavorable flow conditions and water chemistry is examined. Industry experience for specific piping systems plays a major role in the evaluation of these degradation mechanisms. Additionally, an evaluation of fabrication wall thinning of elbows and other fittings is undertaken to assure that Code minimum wall requirements are met. These evaluations must demonstrate that these mechanisms are not potential sources of pipe rupture.

3. Determination of leakage from a system under pressure involves uncertainties and, therefore, margins are needed. Sources of uncertainties include plugging of the leakage crack with particulate material over time, leakage prediction, measurement techniques, personnel, and frequency of monitoring. Leakage detection systems are evaluated to determine that they are sufficiently reliable, redundant, and sensitive so that margin on detection of unidentified leakage exists for the throughwall flaws used in the deterministic fracture mechanics evaluation. Leak detection systems equivalent to Regulatory Guide 1.45 are required for the piping under evaluation inside the containment. The sensitivity and reliability of leakage detection systems used outside the containment must be demonstrated to be equivalent to Regulatory Guide 1.45 systems. Methods that have been shown to be acceptable include local leak detection, for example, visual observation or instrumentation. Administrative controls can be required to enforce adequate implementation of leakage detection and monitoring.

Unless a detailed justification can be presented that accounts for the effects of these sources of uncertainties, a margin of 10 on the leakage prediction will be required for determining the leakage size flaw.

4. A systems evaluation of potential water hammer is made to assure that pipe rupture due to this mechanism is unlikely. Water hammer is a generic term including various unanticipated high frequency hydrodynamic events such as steam hammer and water slugging. To demonstrate that water hammer is not a significant contributor to pipe rupture, reliance on historical frequency of water hammer events in specific piping systems coupled with a review of operating procedures and conditions may be used for this evaluation. Alternatively, design changes such as the use of J-tubes, vacuum breakers and jockey pumps coupled with improved procedures can be used to reduce concerns with water hammer. The reviewer establishes that any measures needed to abate water hammer frequency and magnitude will be effective for the life of the plant.

5. A review of creep and creep-fatigue is required. Operation below 700°F in ferritic steel piping and below 800°F in austenitic steel piping can satisfy concerns with creep.

6. The requirement that corrosion resistance of piping be demonstrated can rely on investigations of the frequency and degree of corrosion in the specific piping systems under review. Modification to operating conditions (as for example, controlling water chemistry) or design changes (as for example, replacing piping material) are measures that can be taken to improve corrosion resistance in piping. The staff recognizes that remedial residual stress improvement treatments are effective in reducing damage from intergranular stress corrosion cracking (IGSCC). However, remedial stress improvement treatments of materials susceptible to IGSCC alone do not provide a sufficient basis to support leak-before-break evaluations. The staff would, however, review such evaluations on a case-by-case basis if hydrogen water chemistry were used as an adjunctive measure with the remedial stress improvement treatments. The licensees' practices with regard to facility water chemistry would be an additional factor considered in the review. Piping susceptible to IGSCC with any planar flaws in excess of the standards in IWB 3514.3 of section XI of the ASME Code, would not be permitted to use leak-before-break analyses. However, piping susceptible to IGSCC that has been treated by two mitigating methods within the first two years of service may qualify for leak-before-break if the piping contains no flaws larger than those permitted by IWB

3514.3 of section XI of the ASME Code. Piping repaired by weld overlays cannot apply leak-before-break technology.

7. An assessment of potential indirect sources of pipe ruptures is required to demonstrate that indirect failure mechanisms defined in the plant FSAR are remote causes of pipe rupture. Compliance with the snubber surveillance requirements of the technical specifications assures that snubber failure rates are acceptably low.

8. The reviewer determines that the piping material is not susceptible to brittle cleavage-type failure over the full range of system operating temperatures (that is, the material is on the upper shelf).

9. The reviewer determines that the system(s) under evaluation do not have a history of fatigue cracking or failure. An evaluation is performed to assure that the potential for pipe rupture due to thermal and mechanical induced fatigue is extremely low. Licensees and applicants must demonstrate that there is adequate mixing of high and low temperature fluids so that there is no potential for significant cyclic thermal stresses. In addition, it must also be demonstrated that there is no significant potential for vibration induced fatigue cracking or failure.

10. The following steps constitute an acceptable deterministic leak-before-break evaluation procedure:

a. Demonstrate the accuracy of both the fracture mechanics and the leak rate computational methods by comparison with other acceptable computational procedures or with experimental data.

b. Identify the types of materials and materials specifications used for base metal, weldments and safe ends, and provide the materials properties including toughness and tensile data, long-term effects such as thermal aging, and other limitations.

c. Specify the type and magnitude of the loads applied (forces, bending and torsional moments), their source(s) and method of combination. For each pipe size in the functional system, identify the locations(s) which have the least favorable combination of stress and material properties for base metal, weldments and safe ends.

d. Postulate a throughwall flaw at the location(s) specified in (c.) above. The size of the flaw should be large enough so that the leakage is assured of detection with the margin specified in III.3 above using the installed leak detection capability when the pipes are subjected to normal operating loads. If auxiliary leak detection systems are relied on, they should be described. For the estimation of leakage, the normal operating loads (i.e., deadweight, thermal expansion, and pressure) are to be combined based on the algebraic sum of individual values.

e. Using fracture mechanics stability analysis or limit load analysis based on (1.) below, and normal plus SSE loads, determine the critical crack size for the postulated throughwall crack. Determine crack size margin by comparing the selected leakage size crack to the critical crack size. Demonstrate that there is a margin of 2 between the leakage and critical crack sizes. The same load combination method selected in (f.) below must be used to determine the critical crack size.

f. Determine margin in terms of applied loads by a crack stability analysis. Demonstrate that the leakage size cracks will not experience unstable crack growth if 1.4 times the normal plus SSE loads are applied. Demonstrate that crack growth is stable and the final crack is limited such that a double-ended pipe break will not occur. However, the 1.4 margin can be reduced to 1.0 if the deadweight, thermal expansion, pressure, SSE (inertial), and seismic anchor motion (SAM) loads are combined based on individual absolute values as follows:

$$F_{Combined} = |F_{Deadweight}| + |F_{Thermal}| + |F_{Pressure}| + |F_{SSE}| + |F_{SAM}|$$

$$(M_i)_{Combined} = |(M_i)_{Deadweight}| + |(M_i)_{Thermal}| + |(M_i)_{Pressure}| + |(M_i)_{SSE}| + |(M_i)_{SAM}|$$

$$(M)_{Combined} = \sqrt{(M_1)^2_{Combined} + (M_2)^2_{Combined} + (M_3)^2_{Combined}}$$

where F denotes the axial force, M_i denotes the i-th component of moment (i = 1, 2, 3), M denotes the total moment, and the subscripts denote the load. An evaluation of seismic anchor motion loads at SSE conditions may be omitted when these are shown to be small at OBE conditions.

g. The piping materials toughness (J–R curves) and tensile (stress-strain curves) properties should be determined at temperatures near the upper range of normal plant operation.

h. The specimen used to generate J–R curves should be large enough to provide crack extensions up to an amount consistent with J/T condition determined by analysis for the application. Because practical specimen size limitations exist, the ability to obtain the desired amount of experimental crack extension may be restricted. In this case, extrapolation techniques may be used as described in NUREG–1061, Volume 3, or in NUREG/CR–4575. Other techniques can be used if adequately justified.

i. The stress-strain curves should be obtained over the range from the proportional limit to maximum load.

j. Preferably, the materials tests should be conducted using archival material for the pipe being evaluated. If archival material is not available, plant specific or industry wide generic material data bases can be assembled and used to define the required material tensile and toughness properties. Test material should include base and weld metals.

k. To provide an acceptable level of reliability, plant specific generic data bases must be reasonable lower bounds for compatible sets of material tensile and toughness properties associated with materials at the plant. To assure that the plant specific generic data base is adequate, a determination must be made to demonstrate that the generic data base represents the range of plant materials to be evaluated. This determination is based on a comparison of the plant material properties identified in (b.) above with those of the materials used to develop the generic data base. The number of material heats and weld procedures tested must be adequate to cover the strength and toughness range of the actual plant materials. Reasonable lower bound tensile and toughness properties from the plant specific generic data base are to be used for the stability analysis of individual materials, unless otherwise justified.

Industry generic data bases must provide a reasonable lower bound for the population of material tensile and toughness properties associated with any individual specification (e.g., A106, Grade B), material type (e.g., austenitic steel) or welding procedures.

The number of material heats and weld procedures tested must be adequate to cover the range of the strength and tensile properties expected for specific material specifications or types. Reasonable lower bound tensile and toughness properties from the industry generic data base are to be used for the stability analysis of individual materials.

If the data are being developed from an archival heat of material, three stress-strain curves and three J–resistance curves from that one heat of material is sufficient. Tests should be conducted at temperatures near the upper range of normal plant operation. Tests should also be conducted at a lower temperature, which may represent a plant condition (e.g., hot standby) where pipe break would present safety concerns similar to normal operation. These tests are intended only to determine if there is any significant dependence of toughness on temperature over the temperature range of interest. The lower toughness should be used in the fracture mechanics evaluation. One J–R curve and one stress-strain curve for one base metal and weld metal are considered adequate to determine temperature dependence.

l. There are certain limitations that currently preclude generic use of limit load analyses to evaluate leak-before-break conditions for elimination pipe restraints. However, a modified limit-load analysis can be used for austenitic steel piping to demonstrate acceptable margins as indicated below:

Construct a master curve where a stress index, SI, given by

$$SI = S + M P_m \qquad (1)$$

is plotted as a function of postulated total circumferential through-wall flaw length, L, defined by

$$L = 2 \theta R \qquad (2)$$

where

$$S = \frac{2 \sigma_f}{\pi} [\, 2 \sin \beta - \sin \theta \,], \qquad (3)$$

$$\beta = 0.5\,[(\pi - \theta) - \pi(P_m/\sigma_f)], \qquad (4)$$

θ = half angle in radians of the postulated throughwall circumferential flaw,

R = pipe mean radius, that is, the average between the inner and outer radius,

P_m = the combined membrane stress, including pressure, deadweight, and seismic components,

M = the margin associated with the load combination method (that is, absolute or algebraic sum) selected for the analysis,

σ_f = flow stress for austenitic steel pipe material categories.

If $\theta + \beta$ from Eqs. (2) and (4) is greater than π, then

$$S = \frac{2\sigma_f}{\pi}\,[\sin\beta\,], \qquad (5)$$

where

$$\beta = -\pi(P_m/\sigma_f). \qquad (6)$$

When the master curve is constructed using Eqs. (1), (2), and (3) or (5), the allowable circumferential throughwall flaw length can be determined by entering the master curve at a stress index (SI) value determined from the loads and austenitic steel piping material of interest. The allowable flaw size determined from the master curve at the appropriate SI value can then be used to determine if the required margins are met. Allowable values of θ are those that result in S being greater than zero from Eqs. (3) and (5). The flow stress used to construct the master curve and the definition of SI used to enter the master curve are defined for each material category as follows:

Base Metal and TIG Welds:

The flow stress used to construct the master curve is

$$\sigma_f = 0.5\ (\sigma_y + \sigma_u)$$

when the yield strength, σ_y, and the ultimate strength, σ_u, at temperature are known.

If the yield and ultimate strengths at temperature are not known, then Code minimum values at temperature can be used, or alternatively if

$$\frac{(SI)}{17M} < 2.5, \text{ then}$$

$$\sigma_f = 51 \text{ ksi, or}$$

if

$$\frac{(SI)}{17M} \geq 2.5, \text{ then}$$

$$\sigma_f = 45 \text{ ksi,}$$

The value of SI used to enter the master curve for base metal and TIG welds is

$$SI = M\ (P_m + P_b) \qquad (7)$$

where

P_b = the combined primary bending stress, including deadweight and seismic components.

Shielded Metal Arc (SMAW) and Submerged Arc (SAW) Welds:

The flow stress used to construct the master curve must be 51 ksi.

The value of SI used to enter the master curve for SMAW and SAW is

$$SI = M (P_m + P_b + P_e) Z \quad (8)$$

where

P_e = combined expansion stress at normal operation,

$$Z = 1.15 [1.0 + 0.013 (OD-4)] \text{ for SMAW,} \quad (9)$$

$$Z = 1.30 [1.0 + 0.010 (OD-4)] \text{ for SAW,} \quad (10)$$

and

OD = pipe outer diameter in inches.

When the allowable flaw length is determined from the master curve at the appropriate SI value, it can be used to determine if the required margins on load and flaw size are met using the following procedure:

For an absolute sum load combination method, M=1.0, and if the allowable flaw length from the master curve is equal to at least twice the leakage size flaw, then the margins on load and flaw size are met.

For the algebraic sum method of loan combinaiton, first let M=1.4, and if the allowable flaw length from the master curve is at least equal to the leakage size flaw, then the margin on load is met. Second, let M=1.0 and if the allowable flaw length from the master curve is at least twice the leakage size flaw, then the margin on flaw size is met.

Additional guidance on the fracture mechanics evaluation can be found in NUREG–1061, Volume 3, Chapter 5, dated November 1984, and entitled "Report of the U.S. Nuclear Regulatory Commission Piping Review Committee" and subtitled "Evaluation of Potential for Pipe Breaks".

IV. Evaluation Findings

The reviewer verifies that sufficient information has been provided and that his review supports conclusions of the following type, to be included in the staff's safety evaluation report:

The staff evaluation determines on a plant specific and piping system specific basis that the acceptance criteria are satisfied and, therefore that dynamic effects of pipe rupture may be eliminated from design consideration. When dynamic effects of pipe rupture are eliminated, protective devices such as pipe whip restraints and jet impingement barriers are no longer needed, and other related design changes can take place. The staff determination is based on the following:

1. That water hammer, corrosion, creep, fatigue, erosion, environmental conditions and indirect sources are remote causes of pipe rupture.

2. That a deterministic fracture mechanics evaluation has been completed and approved by the staff.

3. That leak detection systems are sufficiently reliable, redundant, diverse and sensitive, and that margin exists to detect the throughwall flaw used in the deterministic fracture mechanics evaluation.

V. Implementation

The following is intended to provide guidance to applicants and licensees regarding the NRC staff's plans for using this SRP section.

Except in those cases in which the applicant proposes an acceptable alternative method for complying with specific portions of the Commission's regulations, the methods described herein will be used by the staff in its evaluation of conformance with Commission regulations.

Only dynamic effects of postulated pipe ruptures may be eliminated when leak-before-break technology is shown

to be applicable. Requirements for containment design, emergency core cooling system performance and environmental qualification of electrical and mechanical equipment are not affected. (See the Supplementary Information to the final broad scope GDC–4 amendment which permits an exception to this statement for equipment qualification under certain conditions).

Applicants for operating licenses seeking to modify design features to take advantage of leak-before-break technology are required to reflect the revised design in an amendment to the pending FSAR. If the design change modifies design criteria set forth in the PSAR, an amendment to the applicable construction permit may also be necessary.

After leak-before-break technology results are accepted for specific piping systems at specific plants, any proposed future plant modifications in operating conditions or plant features may require an assessment of the impacts on the original conclusions from the initial leak-before-break evaluation.

When leak-before-break is successfully demonstrated, all postulated pipe ruptures are eliminated in the specific piping system under review. Ruptures in branch connections to the piping system under review are still postulated, unless these lines also qualify for leak-before-break. An evaluation of dynamic effects at these branch connections is required, as for example, in heavy component support design or redesign.

When dynamic effects of pipe rupture are eliminated from the design basis, current NRC criteria and industry codes, such as the ASME Code, may be required for calculating the seismic loads in the heavy component support redesign of operating plants or plants under construction (for example, when snubbers are reduced in number or capacity in older operating plants; on the other hand, changing high strength fastener material would not require the use of current codes or NRC criteria). In heavy component support redesign, the already existing SSE may be used, and improved functional reliability must be demonstrated for any changes implemented. Structural capacity associated with the original steel and concrete, including struts, columns, pedestals, hangers, trusses and skirts cannot be diminished in the support system of operating plants or plants under construction. Redesign will be limited to replacing high strength fastener material and reducing the number and capacity of snubbers. Applicants and licensees undertaking heavy component support redesign, with dynamic effects of pipe rupture eliminated, should use independent design and fabrication verification procedures to minimize the potential for design and construction errors. Displacements and rotations resulting from potential failure of redesigned lateral (horizontal) supports should not lead to the rupture of piping connected to the reactor coolant loop heavy components.

Plant design and arrangement considerations to assure protection against fluid system failures are discussed in SRP 3.6.1. SRP 3.6.2 covers the size and location of postulated breaks, postulated leakage cracks and how postulated breaks and leakage cracks affect structural design and equipment qualification.

When leak-before-break has been demonstrated to be applicable as provided for in this section, designers are cautioned that safety related equipment locations should continue to be chosen with care as discussed in B.1 of ASB 3–1 of SRP 3.6.1. Safety related equipment should not be concentrated in the vicinity of high energy lines irrespective of whether leak-before-break is applicable. Routing of high energy lines in the vicinity of control rooms is not acceptable.

When leak-before-break has been demonstrated to be applicable as provided for in this section, the following provisions of SRP 3.6.2 remain applicable:

1. Postulation of leakage cracks in piping qualifying for leak-before-break is still required (see B.3.c of MEB 3–1 of SRP 3.6.2). Leakage cracks in high and moderate energy piping not qualifying for leak-before-break are also required.

2. Evaluation of structures protecting essential equipment is still required (see B.1.c.(4) of MEB 3–1). Design of these structures includes all dynamic effects of high energy piping not qualifying for leak-before-break; however, for piping which does qualify for leak-before-break, only the pressurizations associated with an area equivalent to the cross section of the controlling pipe and linear release time of 3 seconds should be assumed, unless justification is provided for alternative leakage conditions from an evaluation of other potential sources, such as flanges, bolted covers and values.

3. Environmental qualification of safety-related equipment is specified in B.1.c(5) of MEB 3–1.Other requirements are defined by 10 CFR 50.49 and further amplified by Regulatory Guide 1.89, Revision 2. Relaxations in these requirements when leak-before-break is acceptably demonstrated can be authorized as discussed in the Supplementary Information of the final broad scope amendment to GDC–4. The authorization is expected to be a case-by-case action, and will require the licensee or applicant to seek exemption(s) to the existing requirements.

VI. References

1. 10 CFR Part 50, Appendix A, General Design Criterion 4, "Environmental and Dynamic Effects Design Bases".

2. NUREG–1061, Volume 3, "Report of the U.S. Nuclear Regulatory Commission Piping Review Committee, Evaluation of Potential for Pipe Breaks", November 1984.

3. Regulatory Guide 1.45, "Reactor Coolant Pressure Boundary Leakage Detection Systems".

4. EPRI Report NT–4690–SR, "Evaluation of Flaws in Austenitic Steel Piping", April, 1986.

Public comment letters should be sent to: David L. Meyer, Chief, Rules and Procedures Branch, Division of Rules and Records, U.S. Nuclear Regulatory Commission, Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, 20014. Comment period expires October 13, 1987.

Comments received after this date will be considered if it is practical to do so, but assurance of consideration can only be given to comments received on or before this date. Telephone inquiries pertaining to SRP 3.6.3 should be directed to: John O'Brien, (301) 443–7854.

Dated at Rockville, Maryland, this 19 day of August 1987.

For the Nuclear Regulatory Commission.

Themis P. Speis,

Deputy Director for Generic Issues, Office of Nuclear Regulatory Research.

[FR Doc. 87–19801 Filed 8–27–87; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act of Information Collection Request; Interim Procedures for Single-Employer Plan Termination Under the Single-Employer Pension Plan Amendments Act of 1986

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB extension of approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) has requested approval by the Office of Management and Budget (OMB) for an extension of the expiration date of a

currently approved information collection request (1212–0036) without any change in the substance or in the method of collection. Current approval of the information collection is scheduled to expire on September 30, 1987. The information collection covers the information that must be submitted to the PBGC to effect either a standard or distress termination under the Single-Employer Pension Plan Amendments Act of 1986, as set forth in the PBGC's Notice of Interim Procedures, 51 FR 12491 (April 10, 1986). The effect of this notice is to advise the public of the PBGC's request for OMB approval of this extension.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202– 778–8859 for TTY and TDD). (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Single-Employer Pension Plan Amendments Act of 1986 (SEPPAA) imposed new restrictions on and rules governing the voluntary termination of single-employer plans. Among these rules are those prescribing various notices that must be filed with the PBGC in advance of a proposed plan termination. The PBGC's Notice of Interim Procedures on voluntary terminations under SEPPAA (51 FR 12491 (April 10, 1986)) provides plan administrators with detailed guidance on complying with these notice requirements.

The information submitted to the PBGC is used by it to make the several statutorily mandated determinations it must make relative to a proposed termination. For both standard and distress terminations, the PBGC must determine whether the statutory requirements therefore have been satisfied. For distress terminations, the PBGC must also determine the level of plan funding.

These notices are filed by the plan administrator of a terminating plan. Since in the normal case plan ermination is only initiated once, these notices are typically filed only once per plan. Moreover, the notice requirements themselves constitute a relatively minor burden on plan administrators because virtually all of the information/data that must be submitted is information or data that must be collected or created in order to carry out the plan termination. The PBGC, therefore, estimates that the aggregate annual burden imposed on plan administrators in filing these notices is 4660 hours. This reflects an assumptions, for fiscal year 1988, of 9,000 voluntary plan terminations.

Issued at Washington, DC, this 21th day of August 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87–19836 Filed 8–27–87; 8:45 am]

BILLING CODE 7708–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission and Coding Subcommittee; Public Meetings

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public meetings.

SUMMARY: The Physician Payment Review Commission will hold a public meeting of the full Commission on Thursday, September 10, 1987 from 9:00 a.m. to 5:00 p.m. and on Friday, September 11 from 8:30 a.m. to 12:00 noon. The meeting will be held in the 8th floor Conference Room of the DHHS Hubert Humphrey Building, 200 Independence Avenue SW. The agenda for September 10 will include discussion of the Commission's analysis of geographic variation in physician charges, development of cost of practice indices, and policy options to address geographic variation. The afternoon session on September 10 will be devoted to a background briefing on utilization trends under Medicare Part B, government utilization and medical review programs, and the use of data on medical practice patterns in the development of programs to limit inappropriate service use. The agenda for September 11 will include discussion of Commission plans to test consensus panels in the area of procedure coding, issues related to capitation, and plans for the Commission's March 1988 report to Congress.

The Commission's Subcommittee on Coding also will hold a public meeting on Wednesday, September 9, 1987. The meeting will begin at 8:00 p.m. in the Concord Room of the Hyatt Regency Hotel, 400 New Jersey Avenue NW. The Commission was established by section 9305 of Pub. L. 99–272.

ADDRESS: The Commission is located at Suite 510, 2120 L Street NW., Washington, DC. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653–7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 87–19766 Filed 8–27–87; 8:45 am]

BILLING CODE 6820–SE–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–15946; 812–6518]

Hidden Strength Funds Application; et al.

August 21, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for approval under the Investment Company Act of 1940 ("1940 Act") of certain offers of exchange.

Applicants: Hidden Strength Funds ("Trust") and Global Capital Investors Corporation ("Global") (Trust and Global together, "Applicants").

Summary of Application: Applicants seek an order approving certain exchange offers to be made between existing series of the Trust, or which may be made between future such series, or future investment companies distributed by Global, on a basis other than the relative net asset values of the shares to be exchanged.

Relevant 1940 Act Sections: Approval of exchange offers requested under section 11(a).

Filing Dates: The application was filed on October 31, 1986, and amended on April 23, 1987, and June 12, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 10, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 1270 Avenue of the Americas, 9th Floor, Rockefeller Center, New York, NY 10020. Attention: Paul T. Summer.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Carson G. Frailey, (202) 272–3015, or Special Counsel Karen L. Skidmore (202) 272–3023 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier, which can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Trust is a Massachusetts business trust registered under the 1940 Act as an open-end, diversified, management investment company. The Trust currently consists of five series: the Money Market Portfolio ("Money Market"), the Growth Portfolio, the Quality Income Portfolio, the Total Return Portfolio and the U.S. Government High Yield Portfolio (the "Load Funds"). In view of the nature of the proposed transactions, Applicants have requested that any order issued by the Commission also extend to future series of the Trust, and to other investment companies ("Additional Funds") for which Global may in the future serve as distributor, provided that the shares of such Additional Funds are subject to exchange offers, and have the load characteristics, described herein.

2. The principal underwriter for the Trust is Global, which is a wholly-owned subsidiary of Southmark Corporation. Southmark Corporation owns 50% of Sass Southmark Investment Corporation, the registered investment adviser to the Trust.

3. Global maintains a continuous public offering of shares of Money Market at their current net asset value without a sales charge, and a continuous public offering of shares of the Load Funds at their respective current net asset values, plus a maximum sales charge of 4.75% of the public offering price (4.99% of the net amount invested). As set forth in the Trust's prospectus, this sales charge is subject to reductions in accordance with the size and type of the investment. Such reductions in the sales charge are made in accordance with the conditions of Rule 22d–1 promulgated under the 1940 Act.

4. Under the Trust's exchange program, shares of a Load Fund (including shares acquired through reinvestment of dividends and capital gain distributions) may be exchanged for shares of any other Load Fund at net asset value. Also, shares of any Load Fund may be exchanged for shares of Money Market at net asset value. After the first exchange of shares from a Load Fund to Money Market, the Money Market shares (i.e., those representing the proceeds of the shares originally exchanged, and shares acquired through reinvestment of dividends and capital gain distributions) may be exchanged back into any Load Fund at net asset value, i.e., without a sales charge.

5. Shareholders of the Trust may make four free exchanges per calendar year. Applicants propose to assess a nominal administrative charge of up to $10 for each additional exchange made by a shareholder during any calendar year. Applicants wish to reserve the right to modify the exchange program to impose the administrative fee on all exchanges made by a shareholder during the calendar year if Mellon Financial Services, the Trust's transfer agent, so requests the Trust.

6. Applicants further propose to allow shares of Money Market that were acquired by direct purchase (as well as shares representing reinvestment of dividends or capital gain distributions on the shares purchased) to be exchanged for shares of any Load Fund on the basis of the relative current net asset values of the shares to be exchanged, plus the payment of the sales charge which would be payable if the Load Fund shares were being acquired directly. With respect to these transactions, all applicable provisions for reduced sales charges on purchases of Load Fund shares will be considered in determining the sales charge applicable to the exchange, and these reductions in the sales charge will be made in accordance with the conditions of Rule 22d–1 of the 1940 Act.

7. Dealers and others who distribute the Trust's shares will receive the same commission upon the exchange of shares of Money Market acquired by direct purchase for shares of a Load Fund, as they would for distributing shares of such Load Fund directly; they will not receive a commission for any other exchange transaction. Global acknowledges that the payment of the sales charge to a dealer in the exchange of Money Market shares for shares of a Load Fund may provide sufficient economic incentive for dealers to initiate such exchanges for their own benefit. However, while dealers will be notified of the availability of the exchange program, dealers or other persons involved in the distribution of the Trust's shares will not receive advice from Global as to the suitability of an investment in the Trust, will not actively solicit exchanges, and will not notify investors by telephone of the exchange privilege. Moreover, Global has established adequate internal monitoring and review procedures to insure that such exchanges are made at the request of investors, and not for the dealers' personal gain.

8. Shareholders of the Trust will be notified of the Trust's exchange program, including any administrative fee which may be imposed on exchange transactions, by means of the Trust's prospectus, and by means of other communications, including sales literature and other advertising. Any such communication describing the Trust's exchange program will include notification of any administrative fee related thereto. In the event that Applicants determine no longer to provide the exchange privilege, no notice of the termination will be provided to the shareholders of the Trust, other than in the next subsequent effective prospectus of the Trust.

Applicants' Legal Conclusions

1. The purposes of the proposed administrative fee are to keep the asset base of each series of the Trust stable by discouraging excessive exchanges, and to defray the Trust's administrative expenses incurred in exchange transactions.

2. The purpose of Applicant's proposed exchange program is to permit Trust shareholders who change their investment objectives to exchange, in a simple transaction, their shares in one series of the Funds for those of another on an equitable basis. If, for example, an exchange from Money Market to a Load Fund could be made at relative net asset values, the distribution system of the Load Fund would be disrupted, because an investor could easily avoid the sales charge of the Load Fund by first purchasing Money Market shares and then exchanging those shares for the Load Fund shares, that otherwise would be sold with a sales charge. Applicants believe that the terms of their proposed Money Market exchange offer would avoid this problem, and that it would be equitable to all shareholders and consonant with the practices in effect in virtually all load-fund complexes which also offer "money market", or other types of no-load funds.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

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1. The administrative fee or any scheduled variation will be uniformly applied to all shareholders participating in the exchange program.

2. Any variations in sales charges on sales of shares of series of the Trust, by means of exchanges or otherwise, will be effectuated in accordance with Rule 22d–1 under the 1940 Act.

3. Applicants will comply with the terms and conditions of proposed Rule 11a–3 under the 1940 Act if and when the proposed rule is adopted.

4. Any future offers of exchange involving any Additional Funds will be subject to the representations and conditions described in this application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–19761 Filed 8–27–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–16772]

Application and Opportunity for Hearing; Southern Natural Gas Co.

August 25, 1987.

Notice is hereby given that Southern Natural Gas Company (a Delaware corporation) ("Southern") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of Manufacturers Hanover Trust Company ("Manufacturers") under the indenture referred to in paragraph 1 below, which has been qualified under the Act, and under the trust indenture referred to in paragraph 2 below, which does not require qualification under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers from acting as Trustee under either of such indentures.

Section 310(b) of the Act provides, *inter alia*, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. However, pursuant to clause (ii) of such subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing thereon, that trusteeships under the indentures are not so likely to involve a material conflict of interest as to make it necessary to disqualify such trustee from acting as trustee under any such indentures.

Southern alleges that:

1. On March 20, 1987, Southern filed with the Commission a Registration Statement (File No. 33–12784) and an indenture, to be dated as of June 1, 1987, between Southern and Manufacturers, as Trustee (the "Southern Indenture"), pursuant to which Southern may issue from time to time in one or more series its unsecured debentures, notes or other evidences of indebtedness.

2. Bear Creek Capital Corporation ("Bear Creek Capital"), a Delaware corporation formed and wholly owned by Bear Creek Storage Company ("Bear Creek Storage"), a Louisiana partnership composed of Southern Gas Storage Company, a Delaware corporation and a wholly owned subsidiary of Southern, and Tennessee Storage Company, a Delaware corporation, has entered into a Trust Indenture, dated as of September 15, 1981 (the "Bear Creek Capital Indenture"), with Manufacturers, as Trustee, and T. C. Crane, as Co-Trustee, pursuant to which Bear Creek Capital issued an aggregate principal amount of $135,000,000 of its 9–7/8% Secured Notes, Series A due November 1, 2000 and $30,000,000 of its 14–7/8% Secured Notes, Series B due November 1, 2000 (collectively, the "Notes"). The Bear Creek Capital Indenture was not qualified under the Trust Indenture Act of 1939. The Notes are secured, *inter alia*, by an assignment to the Trustees by Bear Creek Capital of its rights under a Service Agreement, dated June 1, 1981, between Bear Creek Storage and Southern (the "Service Agreement"), assigned by Bear Creek Storage to Bear Creek Capital pursuant to a Pledge and Assignment of Rights Under Service Agreement, dated as of September 15, 1981, between Bear Creek Capital and Bear Creek Storage, consented to by Southern in a Consent and Agreement to Pledge and Assignment, dated as of September 15, 1981, executed by Southern and Tennessee Gas Pipeline Company (the "Consent"). The Consent provides that the obligation of Southern to pay the charges due under the Service Agreement is absolute and unconditional. The obligations of Southern under the Service Agreement and under the Consent are unsecured. Such obligations rank equally and on a par with the obligations of Southern in respect of its Securities under the Southern Indenture.

3. The Southern Indenture contains the provisions required by section 310(b) of the Act.

Southern has waived notice of hearing, and waives hearing, in connection with the matter referred to herein.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, File No. 22–17146, which is a public document on file in the offices of the Commission at the Public Reference Room, Judiciary Plaza, 450 Fifth Street, NW., Washington, DC.

Notice is further given that any interested person may, not later than September 11, 1987, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–19827 Filed 8–27–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 87–17]

Senior Executive Service Performance Review Boards (PRB); Membership

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental Performance Review Boards (PRB) established by DOT under the Civil Service Reform Act (CSRA).

FOR FURTHER INFORMATION CONTACT: Diana L. Zeidel, Director of Personnel,

and Executive Secretary, DOT Executive Resources Board, (202) 366–4088.

SUPPLEMENTARY INFORMATION: The CSRA of 1978, which created the Senior Executive Service, requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, CSRA requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on August 24, 1987.

Jon H. Seymour,

Assistant Secretary for Administration.

Department of Transportation, Senior Executive Service, Performance Review Boards

Office of the Secretary

Barclay W. Webber
Assistant General Counsel for Environmental, Civil Rights and General Law
Diane R. Liff
Assistant General Counsel for Litigation
Samuel Podberesky
Assistant General Counsel for Aviation Enforcement and Proceedings
William H. FitzGerald, Jr.
Director, Office of Budget
Glenda M. Tate
Director, Office of Management Planning
Patrick V. Murphy
Director, Special Programs Staff
Vance Fort
Deputy Assistant Secretary for Policy and Program Development
John V. Coleman
Director, Office of Aviation Analysis
Erika Z. Jones
Chief Counsel, National Highway Traffic Safety Administration
Gregory S. Dole
Chief Counsel, Maritime Administration

Office of the Inspector General

Paul A. Adams
Inspector General, Department of Housing and Urban Development
John C. Layton
Inspector General, Department of Energy
Jack Kroll
Assistant Inspector General for Policy, Planning, and Resources, Veterans Administration
Raymond F. Randolph
Assistant Inspector General for Audit, Small Business Administration
Richard D. Morgan
Executive Director, Federal Highway Administration
Marshall Jacks, Jr.
Associate Administrator for Safety and Operations, Federal Highway Administration
Rosalind A. Knapp
Deputy General Counsel, Office of the Secretary
Don H. Clausen
Special Assistant to the Administrator, Federal Aviation Administration
William H. FitzGerald, Jr.
Director, Office of Budget, Office of the Secretary
Elaine L. Chao
Deputy Administrator, Maritime Administration

Urban Mass Transportation Administration

Amparo B. Bouchey
Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary
Edward V. Curran
Director, Office of Personnel and Technical Training, Federal Aviation Administration
William T. Hudson
Director, Office of Civil Rights, Office of the Secretary
Rosalind A. Knapp
Deputy General Counsel, Office of the Secretary
Marilyn S. Marton
Deputy Director, Office of Personnel, Office of the Secretary
Philip Olekszyk
Deputy Associate Administrator for Safety, Federal Railroad Administration
Hugh T. O'Reilly
Deputy Chief Counsel, Federal Highway Administration

United States Coast Guard

RADM T. T. Matteson
Chief, Office of Personnel
JoAnn C. Collins
Coordinator of Minority Affairs, Office of the Secretary
Rosalind A. Knapp
Deputy General Counsel, Office of the Secretary
Leon C. Watkins
Director, Office of Civil Rights, Federal Aviation Administration
Erika Z. Jones
Chief Counsel, National Highway Traffic Safety Administration
Michael M. Finkelstein
Associate Administrator for Research and Development, National Highway Traffic Safety Administration
Rex C. Leathers
Associate Administrator for Engineering and Program Development, Federal Highway Administration
C. Shannon Roberts
Deputy Director, Office of Management Planning, Office of the Secretary

Research and Special Programs Administration

George Tenley
Chief Counsel
Louis W. Roberts
Director, Transportation Systems Center
Richard R. John
Deputy Director, Transportation Systems Center
Melissa J. Allen
Deputy Assistant Secretary for Administration, Office of the Secretary
Michael M. Finkelstein
Associate Administrator for Research and Development, National Highway Traffic Safety Administration
Robert L. Krick
Director, Office of Research and Development, Federal Railroad Administration
Robert R. Collins
Special Assistant to the Administrator, Federal Railroad Administration

Maritime Administration

Reginald A. Bourdon
Associate Administrator for Policy and International Affairs
Richard E. Bowman
Associate Administrator for Maritime Aids
Gregory S. Dole
Chief Counsel
Earnest Hawkins
Associate Administrator for Administration
Gary S. Misch
Associate Administrator for Marketing and Domestic Enterprise
JoAnn C. Collins
Coordinator of Minority Affairs, Office of the Secretary
William T. Hudson
Director, Office of Civil Rights, Office of the Secretary
Joseph A. LaSala
Chief Counsel, Urban Mass Transportation Administration

National Highway Traffic Safety Administration

Howard M. Smolkin
Managing Director
Erika Z. Jones
Chief Counsel
Barry I. Felrice
Associate Administrator for Rulemaking
George Parker
Associate Administrator for Enforcement
Carolina L. Mederos
Director, Office of Programs and Evaluation, Office of the Secretary
Matthew Wirgau
Special Assistant to the Deputy Secretary, Office of the Secretary

Federal Highway Administration

Rex C. Leathers
Associate Administrator for Engineering and Program Development
Richard P. Landis
Associate Administrator for Motor Carriers
Daniel Markoff
Associate Administrator for Administration
David K. Phillips
Associate Administrator for Research, Development and Technology
George R. Turner, Jr.
Regional Administrator, Region 3
Marshall Jacks, Jr.
Associate Administrator for Safety and Operations
Wesley S. Mendenhall, Jr.
Regional Administrator, Region 6
Shirley J. Ybarra
Special Assistant, Office of the Secretary
Melissa J. Allen
Deputy Assistant Secretary for Administration, Office of the Secretary
Carolina L. Mederos
Director, Office of Programs and Evaluation, Office of the Secretary

Federal Aviation Administration

Wayne J. Barlow
Director, Northwest Mountain Region
Albert W. Blackburn
Associate Administrator for Policy and International Aviation
Paul K. Bohr
Director, Central Region
Anthony J. Broderick, Jr.
Associate Administrator for Aviation Standards
Garland P. Castleberry
Director, Southern Region
Franklin L. Cunningham
Director, Alaskan Region
Joseph M. Del Balzo
Director, Eastern Region
Robert L. Donahue
Associate Administrator for Airports
E. Tazewell Ellett
Chief Counsel
Brooks C. Goldman
Associate Administrator for Administration
Edwin S. Harris, Jr.
Associate Administrator for Development and Logistics
Homer C. McClure
Director, Western-Pacific Region
Dale E. McDaniel
Deputy Associate Administrator for Policy and International Aviation
Clarence R. Melugin, Jr.
Director, Southwest Region
William H. Pollard
Director, Great Lakes Region
Byron K. Potts
Associate Administrator for Air Traffic
James E. Richardson, Jr.
Director, Aeronautical Center
Leon C. Watkins
Director, Office of Civil Rights
Charles E. Weithoner
Associate Administrator for Human Resources
Robert E. Whittington
Director, New England Region
Arlene Feldman
Deputy Director, Western-Pacific Region
JoAnn C. Collins
Coordinator of Minority Affairs, Office of the Secretary
Carolina L. Mederos
Director, Office of Programs and Evaluation, Office of the Secretary
Melinda Sidak
Special Counsel to the Secretary, Office of the Secretary

Federal Railroad Administration

Joseph W. Walsh
Associate Administrator for Safety
Raymond J. Rogers
Associate Administrator for Administration
Philip Olekszyk
Deputy Associate Administrator for Safety
Rosalind A. Knapp
Deputy General Counsel, Office of the Secretary
Earnest Hawkins
Associate Administrator for Administration, Maritime Administration
Jeffrey R. Miller
Deputy Administrator, National Highway Traffic Safety Administration.

[FR Doc. 87-19039 Filed 8-27-87; 8:45 am]
BILLING CODE 4910-62-M

Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending August 21, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45101

Date filed: August 18, 1987.

Due date for answers, conforming applications, or motion to modify scope: September 15, 1987.

Description: Application of Milam International, Inc. d/b/a International Jet Airlines, pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests authority to engage in interstate and overseas charter air transportation of persons, property, and mail: Between any point in any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

Docket No. 45102

Date filed: August 18, 1987.

Due date for answers, conforming applications, or motions to modify scope: September 15, 1987.

Description: Application of Milam International, Inc. d/b/a International Jet Airlines, pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests authority to engage in foreign charter air transportation of persons, property, and mail.

Docket No. 45103

Date filed: August 19, 1987.

Due date for answers, conforming applications, or motions to modify scope: September 16, 1987.

Description: Application of United Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity in order to provide scheduled non-stop foreign air transportation of persons, property, and

mail between Denver, Colorado, and Vancouver, British Columbia, Canada.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-19838 Filed 8-27-87; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

Technical Hazardous-Liquid Pipeline Safety Standards Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1), notice is hereby given of a meeting of the Technical Hazardous-Liquid Pipeline Safety Standards Committee on September 24, 1987, at 9:00 a.m., in Room 4234, Nassif Building, 400 Seventh Street, SW., Washington, DC, 20590.

The primary purpose for the meeting is to discuss and develop a report on the technical feasibility, reasonableness, and practicability of the following proposed amendment to the safety standards:

1. Reporting Unsafe Conditions on Gas and Hazardous Liquid Pipelines and Liquefied Natural Gas Facilities.

The Committee also will discuss the following rulemaking issues:

1. Should the gas pipeline damage prevention program standards be applied to hazardous liquid pipelines?

2. Should product pipelines be required to meet hydrostatic test requirements applicable to highly volatile liquid pipelines?

3. Should breakout tank inspections include checks for leaks, particularly leakage from tank bottoms? What technology is available to check for leaks?

4. To what extent are the hazardous liquid pipeline safety standards appropriate for carbon dioxide pipelines? Should any additional standards be adopted?

Attendance is open to the public, but limited to the space available. With approval of the chair of the Committee, members of the public may present oral statements on any items scheduled for discussion. Due to the limited time available, each person who wants to make an oral statement is requested to notify Rebecca Key, Room 8417, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, telephone 202-366-2392, of the topics to be addressed and the time requested to address each topic. The chair may deny any request to present an oral statement and may limnit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any session of the meeting.

Dated: August 25, 1987.

Cesar De Leon,

Assistant Director for Regulation, Office of Pipeline Safety.

[FR Doc. 87-19841 Filed 8-27-87; 8:45 am]

BILLING CODE 4910-60-M

Technical Pipeline Safety Standards Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1), notice is hereby given of a meeting of the Technical Pipeline Safety Standards Committee on September 22, 1987, at 9:00 a.m. in Room 4234, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The primary purpose of the meeting is to discuss and develop a report on the technical feasibility, reasonableness, and practicability of the following proposed amendments to safety standards:

1. Reporting Unsafe Conditions on Gas and Hazardous Liquid Pipelines and Liquefied Natural Gas Facilities.

2. Definition of Gas Gathering Line.

3. Confirmation or Revision of Maximum Allowable Operating Pressure; Alternative Method.

4. Exception from Pressure Testing Non-welded Tie-in Joints.

5. Transportation of Gas by Pipeline; Miscellaneous Amendments.

The Committee also will discuss the following rulemaking projects:

1. Deletion of Standards Incorporated by Reference.

2. Operation and Maintenance Procedures for Gas Pipelines.

3. Elimination of "Grandfathered" Operating Pressures that Exceed the Level Allowed for New Pipelines in Class 1 Locations.

Attendance is open to the public, but limited to the space available. With approval of the chair of the Committee, members of the public may present oral statements on any items scheduled for discussion. Due to the limited time available, each person who wants to make an oral statement is requested to notify Rebecca Key, Room 8417, Nassif Building, 400 Seventh Street, SW. Washington, DC 20590, telephone 202-366-2392, of the topics to be addressed and the time requested to address each topic. The chair may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any session of the meeting.

Dated: August 25, 1987.

Cesar De Leon,

Assistant Director for Regulation Office of Pipeline Safety.

[FR Doc. 87-19842 Filed 8-27-87; 8:45 am]

BILLING CODE 4910-60-M

Technical Pipeline Safety Standards Committee/Technical Hazardous Liquid Pipeline Safety Standards Committee Joint Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92-463, 5 U.S.C. App. 1), notice is hereby given of a joint meeting of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee on September 23, 1987, at 9:00 a.m. in Room 4234 Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The purpose of the meeting is to obtain the joint Committee's review of and comments on the results of two advance notices of proposed rulemaking: Proposals for Pipeline Safety (PS-93) and Pipeline Operator Qualifications (PS-94).

Attendance is open to the public, but limited to the space available. With approval of the Executive Director of the Committees, members of the public may present oral statements on the subjects. Due to the limited time available, each person who wants to make an oral statement is requested to notify Rebecca Key, Room 8417, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, telephone 202-366-2392, of the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any session of the meeting.

Dated: August 25, 1987.

Cesar De Leon,

Assistant Director for Regulation Office of Pipeline Safety.

[FR Doc. 87-19843 Filed 8-28-87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 24, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to

OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 7018–C
Type of Review: New Collection
Title: Order Blank for Forms

Description: Form 7018–C allows taxpayers who must file information returns a systematic way to order information tax forms materials.

Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 25,000 hours
OMB Number: 1545–0894
Form Number: Publication 1030
Type of Review: Extension
Title: IRS Film Brochure

Description: This brochure describes the various informational and educational films and videotapes that are available for loan without charge to interested organizations. It also contains an order form for these groups to request the materials from their local IRS offices.

Respondents: Individuals or households, Non-profit institutions, Small businesses or organizations
Estimated Burden: 2,000 hours
OMB Number: 1545–0938
Form Number: 1120–IC–DISC, Schedule K and Schedule P
Type of Review: Revision
Title: Interest Charge Domestic International Sales Corporation Return—1987, and its Related Schedules K and P

Description: U.S. Corporations that have elected to be an interest charge domestic international sales corporation (IC–DISC) file Form 1120–IC–DISC to report their income and reductions. The IC–DISC is not taxed but IC–DISC shareholders are taxed on their share of IC–DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report its dealings with related suppliers, etc. Schedule K (Form 1120–IC–DISC) is used to report income to shareholders.

Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 85,162 hours

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–19757 Filed 8–27–87; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 25, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0008.
Form Number: None.
Type of Review: Extension.
Title: Pools and Associations—Annual Letter.

Description: The information is collected for the determination of an acceptable percentage for each Pool and Association to allow Treasury certified companies credit on their Schedule F for authorized ceded reinsurance in determining the companies' underwriting limitations.

Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 89 hours.

OMB Number: 1510–0012.
Form Number: TFS Form 6314.
Type of Review: Extension.
Title: Schedule F.

Description: Information is used to compute amount of unauthorized reinsurance in determining Treasury Certified companies' underwriting limitations to be published in Treasury Circular 570 for use by Federal bond approving officers.

Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 14,912 hours.

Clearance Officer: Douglas C. Lewis (202) 436–5300, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–19797 Filed 8–27–87; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department of staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Officer on or before October 27, 1987.

Dated: August 24, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. Request for Determination of Loan Guaranty Eligibility—Unmarried Surviving Spouses
3. VA Form 26–1817

4. This information is needed to determine unmarried surviving spouses' eligibility for VA home loan benefits.
5. On occasion
6. Individuals or households
7. 900 responses
8. 225 hours
9. Not applicable

1. Department of Veterans Benefits
2. Request to Creditor Regarding Applicant's Indebtedness
3. VA Form Letter 26–250
4. This information is used to obtain credit data from landlords and other creditors of veteran-applicants for guaranteed and direct loans, prospective purchasers of VA-acquired properties, and prospective assumers of loans in release of liability and substitution of entitlement cases.
5. On occasion
6. Individual or households; Businesses or other for-profit; and Small businesses or organizations
7. 32,000 responses
8. 5,333 hours
9. Not applicable

1. Department of Veterans Benefits
2. Request for Determination of Reasonable Value (Used Manufactured Home)
3. VA Form 26–8728
4. This information is obtained from buyers, owners/sellers, and manufactured home dealers to obtain an appraisal to establish the reasonable value of such units proposed for guaranteed financing.
5. On occasion
6. Individuals or households; Businesses or other for-profit; and Small businesses or organizations
7. 4,800 responses
8. 800 hours
9. Not applicable

[FR Doc. 87–19779 Filed 8–27–87; 8:45 am]
BILLING CODE 8320–01–M

BEST COPY AVAILABLE

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 167
Friday, August 28, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (Eastern time) Tuesday, September 8, 1987.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Building, 2401 E Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Pension Rulemaking under section 4(f)(2) of the Age Discrimination in Employment Act
4. Proposed section 629 of Volume II of EEOC's Compliance Manual, Institutions of Higher Education

Closed

Litigation Authorizations: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.

Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer on (202) 634–6748.

Date: August 26, 1987.

Johnnie L. Johnson, Jr.,

Attorney Advisor, Executive Secretariat.

This Notice Issued August 26, 1987.

[FR Doc. 87–19887 Filed 8–26–87; 11:42 am]

BILLING CODE 6750–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, September 1, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of Minutes of Previous Meetings:

Application For Consent To Purchase Assets and Assume Liabilities:

The Suffolk County National Bank of Riverhead, Riverhead, New York, for consent to purchase certain assets of and assume the liability to pay deposits made in the 10900 Main Road at Bay Avenue, Mattituck, New York, branch of First Nationwide Bank, A Federal Savings Bank, San Francisco, California.

Application For Consent To Purchase Assets and Assume Liabilities and Establish One Branch:

The Farmers' Bank of Willards, Willards, Maryland, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Salisbury, Maryland, branch of Augusta Savings and Loan Association, Baltimore, Maryland, a non-FDIC-insured institution, and for consent to establish that branch as a branch of The Farmers' Bank of Willards.

Application For Consent To Merge and Establish Seven Branches:

Citizens Bank & Trust Company, Thibodaux, Louisiana, an insured State nonmember bank, for consent to merge, under its charter and title, with Lafourche National Bank of Thibodaux, Thibodaux, Louisiana, and for consent to establish the seven offices of Lafourche National Bank of Thibodaux as branches of the resultant bank.

Recommendation Regarding The Liquidation of a Bank's Assets Acquired By The Corporation in its Capacity as Receiver, Liquidator, or Liquidating Agent of Those Assets:

Case No. 47,074
The Bowery Savings Bank, New York City (Manhattan), New York

Memorandum and Resolution re: Final amendment to Part 346 of the Corporation's rules and regulations, entitled "Foreign Banks," which amendment permits FDIC-insured branches of foreign banks to pledge obligations of the African Development Bank as collateral to meet FDIC deposit insurance requirements.

Memorandum and Resolution re:

(1) Final Amendments to Part 310 of the Corporation's rules and regulations, entitled "Safeguarding Personal Information in Federal Deposit Insurance Corporation Records," which would (a) retitle the heading of Part 310 to read "Privacy Act Regulations" in order to provide a better description of the contents of that part, (b) delegate to the FDIC's General Counsel authority to make final determinations with respect to an appeal of a system manager's denial of an individual's request for access to or amendment of a record pertaining to the individual requester, and (c) delete the Legal Compliance and Enforcement System of Records from the list of systems of records exempt by regulation from certain provisions of the Privacy Act;

(2) Establishment of the Telephone Call Detail System of Records, pursuant to the Privacy Act of 1974, which system of records relates to individuals assigned telephone numbers by the FDIC, including current and former FDIC employees, and other individuals provided telephone services by the FDIC, who make long distance and local calls placed from FDIC telephones;

(3) Amendment to the Consumer Complaint and Inquiry System of Records which would reflect certain nonsubstantive administrative changes to that system of records; and

(4) Withdrawal of the Legal Compliance and Enforcement System of Records which has become obsolete and no longer exists.

Reports of the actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum re: Petition requesting the Corporation to issue a regulation establishing criteria for determining when a bank being considered for open bank assistance under section 13(c) of the Federal Deposit Insurance Act has met the "essentiality test" of that statute.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 — 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: August 25, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-19898 Filed 8-26-87; 12:06 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, September 1, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Personnel Actions Regarding Appointments, Promotions, Administrative Pay Increases, Reassignments, Retirements, Separations, Removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters Relating To The Possible Closing of Certain Insured Banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: August 25, 1987

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-19899 Filed 8-26-87; 12:06 pm]

BILLING CODE 6714-01-M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 2:00 p.m., Tuesday, August 25, 1987.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. section 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, August 25, 1987.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 87-19878 Filed 8-26-87; 11:10 am]

BILLING CODE 7545-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: [52 FR 31475 August 20, 1987]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Monday, August 17, 1987.

CHANGE IN THE MEETING: Additional meeting.

The following item will be considered at a closed meeting for Thursday, August 27, 1987, following the 10:00 a.m. open meeting.

Consideration of amicus participation.

Commissioner Peters, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Judith Axe at (202) 272-2092.

Jonathan G. Katz,

Secretary.

August 25, 1987.

[FR Doc. 87-19941 Filed 8-26-87; 3:12 pm]

BILLING CODE 8010-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 55b(e)(3)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for September 1, 1987.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 1, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Elizabeth Kirby, Acting Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 2210-5090 (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

1. Summary Prior Approval Items
2. Final Regulations:
   Part 611—Director Compensation
3. Examination, Supervision and Enforcement Matters.[1]

Dated: August 26, 1987.

Elizabeth Kirby,

Acting Secretary, Farm Credit Administration.

[FR Doc. 87-19901 Filed 8-26-87; 8:45 am]

BILLING CODE 6705-01-M

[1] Session closed to the public-exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9).

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Corrections

Federal Register
Vol. 52, No. 167
Friday, August 28, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 86C-0495]

Mica; Addition of Listing for Use in Dentifrices That are Drugs as Well as Cosmetics; Change in Specification for Fineness

Correction

In rule document 87-18206 beginning on page 29664 in the issue of Tuesday, August 11, 1987, make the following correction:

On page 29664, in the second column, under **SUPPLEMENTARY INFORMATION**, in the ninth line, the formula should read "$(K_2Al_4(Al_2Si_6O_{20})(OH)_4$".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-07-4212-11; N-43030]

Realty Action; Lease/Purchase for Recreation and Public Purposes, Clark County, NV

Correction

In notice document 87-8709 appearing on page 12618 in the issue of Friday, April 17, 1987, make the following correction:

In the first column, under "T. 19 S., R. 60 E.," in the first line, insert "NE¼", at the end of the line.

BILLING CODE 1505-01-D

federal register

Friday
August 28, 1987

Part II

Department of Transportation

Federal Highway Administration
Urban Mass Transportation Administration

23 CFR Parts 635, 640, 650, 712, 771, and 790

49 CFR Part 622

Environmental Impact and Related Procedures; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Parts 635, 640, 650, 712, 771, and 790

49 CFR Part 622

[FHWA Docket Nos. 85-12 and 83-20]

Environmental Impact and Related Procedures

AGENCIES: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FHWA and the UMTA are issuing a joint final regulation governing the preparation of environmental impact statements (EISs) and related documents under grant programs administered by FHWA and UMTA. The amendments contained in this final rule will streamline the project-development process and provide increased decisionmaking authority to agency field offices. The amendments are consistent with the directives of the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations, and other Federal statutes and incorporate the requirements of DOT Order 5610.1C, "Procedures for Considering Environmental Impacts." The documents and actions to which this regulation applies are described more fully in § 771.109 of the regulation. By this final rule, the FHWA is also eliminating duplication in its public involvement regulations by rescinding 23 Code of Federal Regulations (CFR) Part 790 and amending a section of 23 CFR Part 771 to make it the agency's single public involvement regulation. This action will contribute to the establishment of a streamlined, one-stop environmental process in which public involvement is fully integrated with the other project development and environmental procedures.

EFFECTIVE DATES: The amendments to 23 CFR Parts 640, 712 (see the amendatory instruction number 4), and 771 are effective on November 27, 1987. The amendment to Subpart A of Part 622 of 49 CFR is effective on November 27, 1987. The amendments to 23 CFR Parts 635, 650, 712 (see the amendatory instruction number 8), and 790 are effective August 29, 1988, in order to allow States which conduct public hearings under Part 790 to adopt public involvement/public hearing procedures that satisfy the requirements of Part 771.

ADDRESSES: Copies of comments received, together with the regulatory evaluation required by DOT policies and procedures, are available for public inspection in the public docket room of FHWA, Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590, between the hours of 8:30 a.m. and 3:30 p.m. EST, Monday through Friday. These materials are filed under FHWA Docket Nos. 83-20 and 85-12.

FOR FURTHER INFORMATION CONTACT: (1) For FHWA: Mr. Frederick Skaer, Office of Environmental Policy (HEV-10), (202) 366-0106, or Mr. Edward Kussy, Office of the Chief Counsel (HCC-40), (202) 366-0791, FHWA, 400 Seventh Street SW., Washington, DC 20590, between the hours of 7:45 a.m. and 4:15 p.m., EST, Monday through Friday; (2) For UMTA: Mr. A. Joseph Ossi, Office of Planning Assistance (UGM-22), (202) 366-0096, or Mr. Scott A. Biehl, Office of the Chief Counsel (UCC-5), (202) 366-4063, UMTA, 400 Seventh Street SW., Washington, DC 20590, between the hours of 8:30 a.m. and 5:00 p.m., EST, Monday through Friday.

SUPPLEMENTARY INFORMATION: The regulation being issued today applies to both FHWA and UMTA actions. Thus, it will amend Part 771 of Title 23 of the CFR with a cross reference at Part 622 of Title 49 of the CFR.

Introduction

This final rule amends the regulations utilized by FHWA and UMTA to comply with the CEQ's regulations and other environmental requirements. The FHWA and the UMTA first published regulations implementing CEQ requirements in 1980. (See 45 FR 71968; October 30, 1980.) On August 1, 1983, FHWA and UMTA published changes to their joint environmental regulation (48 FR 34894) as a part of the departmental effort to streamline regulations and reduce red tape. In response to that Notice of Proposed Rulemaking (NPRM), Docket 83-20, 51 comments were received from various Federal, State, and local agencies. Twenty-six of these comments were from State highway agencies (SHAs) or State DOTs. Eleven comments were received from transit or planning agencies. Seven comments were received from interested cities or counties. Two comments were received from State Historic Preservation Officers (SHPOs). The National Trust for Historic Preservation provided comments as did the following Federal agencies: The Environmental Protection Agency, the Department of the Interior, the Advisory Council on Historic Preservation, and the U.S. Coast Guard. On January 31, 1985, the FHWA published another NPRM to rescind 23 CFR 790 and to amend 23 CFR 771.111(h). (See 50 FR 4526, Docket No. 85-12). This final notice combines both rulemakings. Comments on Docket No. 85-12 are discussed below as the last item under the heading "Section-by-Section Analysis."

General Comments

The majority of comments received in Docket No. 83-20 were generally supportive of the streamling proposals made in the NPRM. This is especially true of the greater flexibility built into the categorical exclusion (CE) process. Many of the comments requested more flexibility, but, as will be discussed below, we were unable to make major changes given current statutory constraints. Another major source of comments was a proposal in the NPRM to require written reevaluations before each major project step. Substantial changes to that proposal have been made here. These are addressed in greater detail below.

It should be noted that most sections of the regulation have been renumbered from the NPRM, although the section headings have been retained. Section 771.127 of the NPRM has been subdivided into two sections (771.129, Reevaluations, and 771.130, Supplemental Environmental Impact Statements).

As with the 1980 regulation, this regulation has been approved by the Office of the Secretary of Transportation as being consistent with DOT Order 5610.1C. Applicants and Administration field offices should not normally need to consult DOT Order 5610.1C.

There were a number of editorial changes made throughout the document to make it more readable. Only the major changes made to each section of the regulation are discussed in this preamble.

Section-by-Section Analysis

Section 771.101. Purpose. This section has been amended to include a reference to 23 U.S.C. 128. Section 128 contains the FHWA public hearing requirements and describes the environmental report needed as a part of the public hearing requirements.

Section 771.105. Policy. This section sets forth basic Administration policy regarding the consideration of environmental impacts of Administration actions. Sections 109 and 128 of Title 23 and sections 3, 5, and

14 of the Urban Mass Transportation Act (UMT Act), 49 U.S.C. 1602, 1604, and 1610 require both FHWA and UMTA to consider social, economic, and environmental impacts of proposed projects. The documentation developed pursuant to this regulation is intended to satisfy both NEPA and the above sections.

It is the policy of FHWA and UMTA to make the process set forth in the regulation the primary vehicle for all environmental approvals of Administration actions by all Federal agencies. This can only be accomplished if both applicants and Federal agencies are committed to the development of procedures and cooperative arrangements which take advantage of the opportunities presented here to create as complete an environmental record as possible.

Administration policy on the funding of efforts to mitigate the impacts of Administration actions remains the same. The intent is that Federal funds be available to assist in complying with Federal requirements, as well as State and local requirements which do not conflict with Federal requirements. However, in those situations where State or local requirements differ from Federal requirements, the decision to use Federal funds will be made on a case-by-case basic, after considering the reasonableness of the applicant's request and the costs and benefits of Federal participation in the request.

Several commenters questioned the "status" of FHWA's Technical Advisory T6640.8 and requested clarification. The Technical Advisory was developed by FHWA for the purpose of providing the best available guidance to its field offices and applicants regarding the types of information needed to comply with NEPA, section 4(f) of the DOT Act of 1966, and other environmental requirements, such as Executive Order 11990, "Protection of Wetlands." The Technical Advisory is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. The FHWA expects the Technical Advisory to be used to the fullest extent possible. However, FHWA also recognizes that each project must be evaluated on its individual issues and merits. When circumstances dictate, there is sufficient flexibility to tailor the content of the environmental document to the needs of the individual situation. A revised Technical Advisory has been prepared and will be issued as T6640.8A on October 30, 1987.

The UMTA also has developed supplementary guidance on the NEPA process for applicants. UMTA Circular C5620.1, "Guidelines for the Environmental Protection Process", provides information on the assessment of environmental impacts for major transit projects, and the preparation and processing of environmental documents. This circular is available from UMTA Headquarters and field offices.

Section 771.107. Definitions. In the 1980 regulation, the term "action" was defined as the Federal approval of construction of highway and transit projects. The CEQ regulations use the term "proposed action" in a broader context. There, actions include projects and programs that are proposed for Federal assistance as well as proposed plans, policies, and legislation. For consistency with the CEQ regulations, a new definition for "action" has been added. As used throughout the regulation, actions are highway or transit projects proposed for Federal funding or activities such as joint and multiple use permits which require Federal approvals. The actual Federal approval of the construction of a highway or transit project or of a permit is now covered in the new definition of "Administration action." The difference between an "action" and an "Administration action" as defined under the regulation is the difference between a proposed project and an actual Federal commitment to fund construction of the project.

The DOT Act of 1966 included specific provisions providing special protection to publicly owned parks, recreational areas, wildlife and waterfowl refuges, and all historic sites. This provision was set forth at section 4(f) of the DOT Act, and printed in the United States Code (U.S.C.) at 49 U.S.C. 1653(f). A similar provision is found at 23 U.S.C. 138. In 1983, as part of a general codification of the DOT Act, 49 U.S.C., 1653(f), was formally repealed and recodified with slightly different language in 49 U.S.C. 303. However, the substantive requirements remain unchanged. Given that over the years, the whole body of provisions, policies, case law, etc., has been collectively referenced as "section 4(f)" matters, we have continued this reference in this regulation, even though section 4(f) of the 1966 DOT Act has been technically amended. To change the popular reference to "section 4(f)" would confuse needlessly the public and the Federal, State, and local agencies that participate in "section 4(f)" matters on a recurring basis.

The only other changes to this section were minor editorial changes to make it more readable.

Section 771.109. Applicability and responsibilities. This section deals with the documents and actions to which this regulation applies, the status of prior approvals, and the responsibilities of both the Administration and grant applicants for the preparation of the documents required by this regulation.

Paragraph (b) deals with the responsibility for carrying out mitigation measures that have been described in the Administration's environmental documents. One commenter suggested that language be added to the regulation to specify that the Administration monitor projects during and after construction to ensure that mitigation measures that have been described in the Administration's environmental documents are implemented. The Administration meets its responsibility set forth in paragraph 1505.2(c) of the CEQ regulations (40 CFR Parts 1500–1508), and the regulation has been modified to make this clear. Paragraph (b) now states that mitigation measures will be incorporated by reference in the grant document and UMTA will follow up with reviews of designs and on-site inspections to ensure that mitigation measures are implemented as called for in environmental documents and grant agreements. It should be noted that the mitigation measures referenced in an executed grant agreement become contractual obligations on the part of the applicant and cannot be changed without the express written approval of UMTA. FHWA assures that mitigation measures are implemented by reviewing and approving the plans and specifications for the project and by conducting periodic construction inspections. On projects processed under an approved certification in accordance with 23 CFR 640, FHWA ensures the implementation of mitigation measures by conducting program management reviews and a final construction inspection.

In paragraph (c), different levels of responsibility for applicants preparing EISs are defined depending on whether section 102(2)(D) of NEPA or a State law comparable to NEPA applies. Several local transit agencies asked what role they would assume if a State requirement comparable to NEPA applies. In such cases, the transit agencies will have a joint lead responsibility with UMTA and will take a substantial role in preparing the environmental document. It is intended that a single document satisfy all Federal and State requirements.

Section 771.111. Early coordination, public involvement and project development. The FHWA and the UMTA regard early coordination and public involvement as critical to the successful completion of the processes required by this regulation. Scoping, a

major innovation of the CEQ regulations, is accomplished in this phase. Many potential difficulties confronting particular actions can be most conveniently identified and, in many instances, resolved at this stage.

Public involvement as discussed in this regulation, may mean not only public hearings, but a series of less formal informational meetings which begin after the planning phase and help affected persons and local governments learn about agency actions and identify potential difficulties at the earliest possible time. Very often, the persons most affected are those who must be relocated from their homes or businesses by the agency action. Appropriate relocation planning and studies should be done as part of initial project planning, usually during the course of preparing documents required by this regulation, to ensure that the rights and concerns of potentially affected residents and businesses are fully addressed and considered in the development and timing of agency actions. Very often, project location, design, and right-of-way problems are particularly sensitive where certain ethnic, social, or economic groups are affected to unusual or disproportionate degrees. Where this might be the case, these issues should be considered very early in the process. Notification of any project related hearings, meetings, or opportunities for public involvement should be placed in newspapers or publications most likely to be read by affected groups. This would include minority or foreign language newspapers where appropriate.

One commenter asked that paragraph (b) be dropped. This paragraph identifies an early point in project development, the Transportation Improvement Program (TIP) review, where the Administration will consult with an applicant on environmental requirements. This was done in response to paragraph 1505.1(b) of the CEQ regulations which requires Federal agencies to designate major decision points in their programs and ensure that the NEPA process corresponds with them. The TIP is a local planning document identifying projects to be implemented over a 3–5 year time frame. Not all listed projects are subsequently constructed, but inclusion in the TIP is an early indication that Federal funding may be pursued. It is expected that applicants will initiate environmental impact work first on the high-priority projects in the TIP. When adequate site-specific information is available at the TIP review stage, FHWA and UMTA will determine whether an EIS, EA, or CE is appropriate and whether other environmental requirements apply. The 3–5 year time frame of the TIP will allow ample lead time for document preparation, public involvement, and agency review. This provision has been retained because it supports early consultation in the environmental review process without placing unnecessary burden on prospective applicants. However, this paragraph was modified to indicate that FHWA would, where appropriate, indicate the possible class of action at the later, formal 105 program approval stage. This technical change was necessary since FHWA reviews, but does not approve, the TIP.

Paragraph (d) adopts the suggestion to change the word "should" to "must" in the second sentence.

Paragraph (g) describes the tiering of EISs as an optional approach which may have benefits when considering large, complex transportation projects. This paragraph stimulated a mix of comments. Several commenters expressed the concern that two sets of EISs do not lead to improved decisionmaking regarding major projects and are not justified considering the additional cost and time involved. Others supported the tiering concept and noted that it had been used successfully when incorporated with early planning at the local level. Tiering of EISs may be beneficial under certain limited circumstances, but a tiered approach can only be effective if the initial EIS is prepared very early in the planning process. The focus would be on a broad comparison of key environmental factors which may have a bearing on early decisions concerning, for example, the type of project, the general location, and major design features. This approach is consistent with the CEQ regulations which encourage agencies to consider environmental effects at an early stage before decisions on major alternatives are foreclosed. A second-tier EIS (or EA where no new significant impacts are expected) would be appropriate at the stage where a preferred alternative has been identified and project details have been developed.

Commenters asked for clarification as to how the Administration determines the need for tiered EISs. The decision to use tiering will be made in consultation with the applicant and will depend on the scope and complexity of the alternatives under consideration, the status of planning, and the need to address environmental considerations at an early stage in the local planning process. Generally, the Administration would not direct an applicant to prepare tiered EISs but, instead, would employ tiering to accommodate an applicant's planning or environmental review requirements.

It should be noted that this progressively, more focused look at a project embodied in the concept of tiering may also be accomplished with a supplemental draft EIS. If project details are developed before a final EIS has been issued (e.g., during preliminary engineering), site-specific environmental effects can be addressed in a supplemental draft EIS. In this case, the process would be concluded with a final EIS responding to comments on both the general and the site-specific draft EISs. Thus, the process of tiering EISs is most appropriate where a project concept is still in the formative stages and the applicant is actively seeking information from agencies and the public in helping to reach early decisions. Tiering is accomplished with two complete EISs; however, alternatives and environmental concerns fully considered in the first-tier statement need not be restudied in the second-tier EIS.

Paragraph (h), which discusses the FHWA public hearing requirements, has been addressed in a separate NPRM (50 FR 4525, January 31, 1985). A discussion of final revisions as well as comments submitted to the public docket appears later in this document as the last item in the section-by-section discussion.

A new paragraph (i) has been added discussing public involvement for UMTA's projects. No new requirements have been established; however, coordination of any public hearings with NEPA process is emphasized with special reference to the preparation of EAs and environmental studies. It should be noted that although these hearings and the FHWA hearings are coordinated with the NEPA process, they are not required by NEPA itself; the requirement for public hearings is found in FHWA and UMTA legislation. Under these statutes, questions such as the need to hold hearings during the preparation of a NEPA document and the type and scope of those hearings are within the Federal agency's discretion.

This new paragraph also refers to the scoping process as a means of inviting public and agency comments on a project proposal. Providing this opportunity for input at an early stage frequently helps the applicant and UMTA to focus on important environmental effects and to determine whether reasonable alternatives exist to avoid or mitigate those effects. For example, in regard to sections 9 and 9A of the UMT Act, UMTA intends that the

new paragraph (i) will generally apply to the program of projects proposed for Federal funding. If practicable, EAs should be prepared, where required by this regulation, before the notice of an opportunity for a public hearing on the program of projects. At a minimum, the notice announcing the opportunity for a hearing should indicate those projects requiring EAs, the timetable for preparing those documents, and how copies may be obtained. If, after releasing the EA, UMTA or the applicant becomes aware of strong community concerns or controversy on environmental grounds, or if UMTA determines that an EIS is necessary, the applicant will hold a separate hearing on the project to receive public comment. The UMTA will continue to require early contacts with affected agencies and the public in defining the scope of environmental documents.

Section 771.113. Timing of Administration Activities. This section describes the timing of various project development activities in relation to the completion of the environmental process. It places limits on the actions which the Administration and the applicant may take to develop a project prior to the completion of the NEPA process.

The language in paragraph (a) supports, and should be read in conjunction with, section 1506.1 of the CEQ regulations, "Limitations on actions during NEPA Process." These provisions ensure that the Administration's decision whether to implement an alternative under consideration in the environmental document will not be influenced by a previous commitment to a particular course of action. As such, the strictures apply not only to the Administration and applicants, but also third parties acting under a contractual agreement. Furthermore, the Administration or the applicant cannot prematurely enter into a contract which irrevocably binds it to the future performance of this work. This limitation on actions supports one of the primary purposes of NEPA—that Federal agencies consider environmental effects fully, including alternative courses of action, before reaching a decision to proceed with major Federal actions.

The wording in this paragraph has been revised to make clear the kinds of activities that will be allowed prior to the completion of the NEPA process. This will include any impact studies and engineering work needed to complete the environmental document. Normally, preliminary design will provide all the project information needed to satisfy environmental requirements. In certain cases, more detailed design work will be needed to satisfy a specific environmental requirement and this additional design work is allowed. This paragraph has also been changed to expand on the kinds of activities which may not occur prior to completion of the NEPA process.

It is important to note that the limitations on premature commitments in the CEQ regulations and this regulation apply to projects or activities that may be proposed entirely for local funding by an applicant or prospective applicant. If the action in question is an integral part of a larger project which is the subject of an environmental document, that action cannot be "segmented" from the overall proposal and funded separately before the environmental process is completed. Segmentation of a project might involve the early acquisition of property or the purchasing of rolling stock, construction materials, or other equipment needed during the construction phase. Segmentation could also entail separate development by the applicant of an entire portion of a project, e.g., a segment of highway or transit guideway that should be considered as part of a larger project for which Federal assistance is being sought.

A number of commenters suggested revisions to this section to permit the applicant to proceed with final design activities after the receipt and evaluation of comments on the draft EIS and prior to approval of the final EIS. The commenters contended that the EIS approval process delayed the start of final design work and, therefore, induced delays in all subsequent phases of the project development process. They suggested that if no environmental concern were raised during the draft EIS circulation period, final design of the preferred alternative should be allowed to proceed. The Administration has carefully considered these comments and continues to believe the environmental process must be completed and the EIS approval made before it is in a position to permit the applicant to proceed with final design activities. We recognize the need to develop preliminary designs in order to more accurately assess impacts in the environmental document. However, granting approval to proceed with final design at this stage would be a premature commitment to one alternative at a time when other alternatives, including the alternative of taking no action, are still being actively considered by the Administration in the environmental process.

However, the Administration recognizes the need to proceed with detailed design activities where such work is necessary to permit the full evaluation of environmental impacts and to permit the consideration of appropriate mitigation measures, e.g., impacts to wetlands, section 4(f) areas and resources covered by section 106 of the National Historic Preservation Act (section 106). The regulation provides for those situations by allowing the applicant to complete all necessary design work needed to complete the EIS or to comply with other environmental laws during the NEPA process. This should not be construed as an authorization to proceed with final design for the entire project, but only for those aspects of the project necessary to consider specific environmental concerns.

The possibility of acquisition of land for a project before completion of the NEPA process was raised by several commenters. The UMTA received comments in favor of both expanding and restricting the scope of advance land acquisition allowed under the regulation. Several commenters suggested that UMTA expand the scope of advance land acquisition because the Surface Transportation Assistance Act of 1982 (STAA) amended section 3(a)(1)(A) of the UMT Act by adding a provision specifically addressing UMTA's discretion to make grants or loans for the acquisition of rights-of-way and relocation for fixed guideway corridor development for projects in advanced stages of alternatives analysis or preliminary engineering. On the other hand, one commenter expressed the opinion that "no acquisition should be allowed prior to completion of the NEPA, process," arguing that hardship or protective buying cannot be accomplished without influencing or limiting the choice of reasonable alternatives.

In weighing the arguments, UMTA considered how to implement the STAA amendment consistently with the agency's responsibilities under NEPA and with the results of pertinent case law governing advance land acquisition. *National Wildlife Federation vs. Snow*, 561 F.2d 227 (D.C. Cir. 1976). The UMTA has concluded, in light of these considerations and a review of the pertinent legislative history, that this amendment was not intended to override the requirements of NEPA.

For UMTA's major fixed guideway projects, the draft and final EISs are developed during alternatives analysis and preliminary engineering. Any authorization for advance land

acquisition during alternatives analysis or preliminary engineering would create a conflict with NEPA if the acquisition could result in a substantial commitment to a particular course of action before the NEPA process was completed. In addition, since UMTA's major investment procedures are integrated with the NEPA process, this would also prejudice the major investment decisionmaking process.

After careful review, FHWA and UMTA still believe that some advance land acquisition may take place on a case-by-case basis without resulting in a substantial commitment to a particular course of action before completion of the NEPA process. Therefore, in this regulation, FHWA and UMTA are maintaining the current practice: that is, the only types of advance land acquisition that FHWA and UMTA will approve before the completion of the NEPA process are "hardship" and "protective" acquisitions. These terms are defined in § 771.117(d)(12) of this regulation.

As in the past, this type of land acquisition is reserved for extraordinary or emergency situations involving a particular parcel or a limited number of parcels within the proposed transportation corridor. It has been FHWA's and UMTA's recent experience that the number of hardship and protective acquisitions on a given project are so few as to not result in a substantial commitment to a particular course of action. The purpose of protective acquisition is to preserve the status quo. Since it serves to protect valuable property and can be easily undone, such acquisition generally will not tilt the balance toward a particular alternative.

Another question is whether acquiring an option to purchase land before completing the environmental process would be an acceptable alternative to assure the availability of land for project purposes. It would be less costly and arguably would constitute a smaller commitment than the actual purchase of land. Generally, UMTA and FHWA maintain that acquiring options to purchase land for a project would tend to bias fair consideration of other project alternatives and violate basic principles of Federal environmental law. Therefore, the same standards apply to options to purchase as to outright purchase of land: before completing the environmental process, only acquisitions for hardship and protective purposes are acceptable.

To obtain approval for hardship or protective acquisition, the applicant should apply for a CE under paragraph 771.117(d)(12). In addition, for FHWA actions, hardship and protective acquisition activities must be processed in accordance with 23 CFR 712.204(d). It should be noted that a CE for advance land acquisition applies only to the purchase of property and does not permit further project development. The restrictions of paragraph 771.113(a) will apply until the Administration completes the NEPA process for the entire proposed action. The FHWA has issued guidelines and UMTA is preparing similar guidance describing the documentation needed to support requests for hardship and protective buying. Documentation supporting these claims will continue to be reviewed in the field offices of FHWA and UMTA.

One commenter suggested that any advance land acquisition be noted in the subsequent EIS or EA. The FHWA and the UMTA have no objection to noting this information in environmental documents, but do not believe it is appropriate to require it under the regulation.

Paragraph (a)(3) has been added to emphasize that in addition to environmental requirements, certain programming requirements must be satisfied prior to the initiation of FHWA funded final design, acquisition, and construction activities. This paragraph is a cross reference to 23 CFR Part 450 and 23 CFR Part 630 and does not create any additional requirements.

Paragraph (b) has been revised to indicate that FHWA approval of the final environmental document is considered acceptance of the general project location and project concepts such as type of facility, interchange locations, and other major features which may be indicated in the environmental document. This paragraph is an indication that FHWA normally will approve for Federal funding a project of the type noted in the final environmental document. However, it does not commit the Administration to fund any specific project or any features identified therein. Final approval of the EIS does not constitute a commitment to fund the project, as noted in this paragraph and in § 771.125(e) of this regulation.

Section 771.115 Classes of actions. Actions treated under this regulation fall in one of the classes outlined in this section. Class I actions are those which typically require an EIS. Class II actions are those which typically are classified as CEs. If it is uncertain whether a particular action requires an EIS, and it requires an EA to establish the significance of the impacts, the action is grouped under Class III. A change in this section was the shifting of the list of examples of CE activities to § 771.117. This has been done in order to group all activities related to CEs in § 771.117.

One commenter suggested deleting the list of Class I actions that remains in § 771.115(a) and, instead, focusing on the definition of significance as applied to environmental impacts in the CEQ regulations. Examples of specific Class I actions are included in the regulation in accordance with § 1507.3(b)(2) of the CEQ regulations. We have referenced the section of the CEQ regulations that addresses the significance of impacts rather than repeating it.

One commenter suggested that the wording be changed in paragraph (a) to indicate that the projects listed under Class I may not in all cases require EISs. The CEQ regulations require that Federal agency procedures include specific criteria for and identification of those typical classes of action which normally require EISs. While there may be individual projects listed in Class I that because of unusual circumstances would not require an EIS, such projects are exceptions to the rule. The wording in paragraph (a) has been changed to parallel the CEQ regulations (40 CFR 1507.3(b)(2)). The intent of dividing projects by class is to provide guidance on the environmental review process that will be followed normally for projects in the class. The FHWA and the UMTA will continue to review individual cases whenever applicants describe circumstances which may have a bearing on the choice of environmental process. The final decision on class of action will be made by the Administration.

In the NPRM, UMTA proposed eliminating exclusive busways as Class I actions because of the potential to construct and operate a busway on or within an existing highway without significant environmental impacts. A number of commenters supported this change. Busways are frequently established by dedicating an existing highway lane for exclusive bus and high occupancy vehicle use and the regulation affords the flexibility to handle such projects with an EA instead of an EIS. The NPRM noted UMTA's intention to continue to require an EIS for construction of a new roadway for buses which is not integrated in an existing highway. This type of project is now listed in the regulation as a Class I action. Other types of busway projects will be reviewed individually to determine the appropriate environmental document, e.g., busways on existing lanes or medians which have off-line facilities such as stations, park-and-ride lots, transfer points, etc.

The UMTA also proposed eliminating "major transportation-related developments" as Class I actions. These were joint public/private urban development projects that were tied into transit terminals or stations. These types of projects normally required an EIS. They were dropped from the list of Class I actions because they are no longer a significant part of the UMTA program.

Several commenters who supported the proposal to remove busways constructed on existing highways from the Class I list suggested that rail lines built in highway medians should be accorded the same treatment. However, the environmental effects associated with the fixed facilities of a rail line—stations, parking lots or structures, storage and maintenance yards—and the changes in travel patterns and land use associated with such projects are normally significant and warrant evaluation in an EIS. Greater variability exists in constructing a busway on an existing highway. Thus, the regulation provides the flexibility to handle the simpler busway projects with a simpler environmental process, while mandating an EIS if the EA shows significant impacts.

Another commenter, noting the change proposed for busway projects on existing highway facilities, argued that the initiation or increase of rail passenger service on rail lines already in use was analogous and should, therefore, not require an EIS. Reference was made to an exemption from State environmental requirements for such projects in California. The UMTA recognizes there may be some cases where a rail rapid transit project proposed on an existing railroad right-of-way can be built and operated with minimal environmental impact. In such cases, the fact that displacement of residences and businesses is avoided or minimized alleviates one potentially significant concern. However, these projects are exceptions which would not warrant a change in emphasis in the regulation. Sometimes rail projects are proposed on railroad rights-of-way that are abandoned or lightly used for freight. In these situations, the rapid transit project may intensify some effects associated with existing railroad operations, e.g., wayside noise, and could introduce new impacts at proposed station locations, such as traffic congestion and parking demand. It should be noted that listing as a Class I action does not preclude the handling of specific cases with EAs. The FHWA and the UMTA will continue to review individual project proposals to establish the appropriate environmental document and level of environmental analysis.

Section 771.117. Categorical Exclusions. CEs are tyes of actions which in the Administration's experience have normally been found not to have significant environmental effects. Designation as a CE speeds the Administration's approval process by eliminating the need for an EIS or EA on an activity proposed for Federal funding. The FHWA and the UMTA proposed several important changes to the process of classifying and approving CEs in the NPRM and many comments were made on the changes. It is important to note that these changes have been made in response to the CEQ's latest guidance to Federal agencies on this subject (48 FR 34263, July 28, 1983). Agencies were encouraged to add the flexibility to their implementing procedures to allow new types of actions to be classified as CEs with minimal documentation required. They were to do this by developing more broadly defined criteria as well as providing examples of typical CEs, rather than a comprehensive list, so that specific actions not previously listed by an agency could be considered for CE status on a case-by-case basis. This regulation generally adopts this approach.

We have amended §§ 771.115 and 771.117 to clasify FHWA's and UMTA's role in reviewing CE designations for proposed projects. These amendments are designed to speed the approval of many smaller projects while focusing attention on projects with particular environmental concerns. This change in procedures is one of the several steps taken by FHWA to comply with the requirements of section 129 of the STAA of 1982.

The FHWA and the UMTA have examined the existing list of categorically excluded actions and separated it into two groups. The first group includes actions which experience has shown almost never involve significant impacts. The second group contains examples of projects which usually have been found appropriate for CE classification but may, depending upon the circumstances, have significant adverse effects (e.g., increased noise, wetlands encroachment, historic site impacts) which would preclude the use of the CE classification. Site location and the surrounding land use are often key factors. Thus, the Administration will require all appropriae information on the area immediately surrounding the proposed project site and any specific impact studies which may be needed to determine whether CE status is appropriate

It should be noted that projects approved on an individual basis will not be added to the list or examples in the regulation. Reviews of individual projects for CE status on a case-by-case basis will be at the field office level, although there will be coordination with Headquarters. Where a pattern emerges of granting CE status for a new type of project, rulemaking will be initiated to determine whether to add such projects to the list of CE examples in the regulation. Section 771.117(e) has been added to the regulation to describe these procedures.

Some commenters objected to the intent of splitting the original CE list into two groups and suggested that the Administration give a one-time designation to all CEs with no further review. This view contrasts sharply with the comments of others who felt the one-time designation for certain CEs would allow some projcts with adverse consequences to escape scrutiny. The FHWA and the UMTA believe that this regulation strikes the proper balance. Only those actions which normally have no effect or minimal effect on the environment are included in the first group of CEs. Furthermore, in unusual circumstances, even these actions must undergo an environmental review if an EIS could be required, as provided in § 771.117(b).

Several commenters expressed the concern that specific environmental laws and administrative requirements might be overlooked if a project qualified as a CE in the NEPA compliance process, particularly in the first group of CE projects, which do not require individual Administration approval. One commenter noted that many of the actions listed in the second group of CEs could have significant effects depending on the location of the activity, thus, they should be subject to the more thorough analysis of an EA.

The final regulation is an effort to strike a reasonable balance between environmental concerns and the reduction of excessive procedures and paperwork. In adopting this approach, it is not the intention to exempt the first group of actions from any appropriate Administration review. Experience has shown that the actions placed in the first group almost never cause significant impacts to the environment and, from the standpoint of NEPA, are properly classified as CEs.

This prior approval with respect to NEPA compliance in no way implies that a project is exempt from the requirements of other laws. All other

laws and procedures still apply. For example, minor modifications to a historic building may require a review pursuant to section 106 or the proposed use of a minimal amount of land protected by section 4(f) may require review under that statute. We believe that these cases will be identified from information in the grant application and in other pertinent planning and programming documents available to the Administration. If there is any doubt over the applicability of a related environmental law or regulation, the Administration will request additional information to help determine whether such requirements apply. These determinations can usually be made with only a brief description of the area immediately surrounding the proposed project site.

The second group of CEs is composed of projects which normally do not involve significant environmental effects when carried out under the conditions or criteria set forth. They generally involve more construction than projects in the first CE group, and their designation as CEs is more dependent on proper siting. Projects in the second group will require documentation from the applicant to clearly establish that there are no significant impacts.

Several commenters expressed concern that the documentation required for the second group of categorically excluded projects defeats the purpose of the CE concept. We believe that this documentation, focused on particular areas of concern, is the only way to proceed while ensuring that federally assisted projects do not cause environmental harm. We expect that the documentation will be briefer that an EA since it will be focused on a limited number of environmental concerns and usually will not include and evaluation of alternatives as is often contained in an EA. Under this approach, projects which appear to meet the general criteria for CEs in paragraph (a) but are not specifically mentioned in the regulation may be approved on a case-by-case basis as provided in § 771.117(d).

Also with respect to CEs, there were numerous suggestions to: (1) Delete certain actions from the CE lists altogether, thus requiring preparation of EAs at a minimum, and (2) move certain CEs from the first group to the second group, requiring some level of supporting documentation, and move some from the second group to the first group. As a result, FHWA and UMTA reassessed all the CEs to determine if their present status was appropriate. Certain refinements are reflected in this final regulation.

One commenter requested that CE status be given to all projects funded under sections 16 and 18 of the UMT Act which deal with elderly and handicapped access to transportation facilities and assistance for non-urban areas, respectively. A new CE has been added to cover modifications to facilities or vehicles for the express purpose of elderly and handicapped accessibility. Many of the projects funded with grants under section 18 are covered by existing CEs, e.g., new bus maintenance facilities, reconstruction of existing buildings, and vehicle purchases. However, a blanket CE for any project that might be proposed under section 18 is inappropriate.

A number of commenters asked for changes to clarify the description of certain CEs. One suggestion dealt with the CE for rehabilitation of rail or bus buildings in which "only minor amounts of additional land are required." We agree with the commenter that the ultimate concern is not the amount of additional land but whether significant environmental effects are involved. However, limiting this CE to situations where only minor amounts of additional land are needed draws a distinction between a rehabilitation or renovation-type project and a major expansion of an existing facility generally requiring more land. We have retained the existing language because there is greater confidence that the project as described would qualify as a CE.

A number of commenters suggested that weigh-station and rest-area construction should be in the first group of CEs. After considering these comments, it was decided to divide weigh-station and rest-area activities into two groups. The reconstruction and/or rehabilitation of existing facilities were added to the first group of CEs. However, because of the issues likely to be involved in the case of new rest areas or weigh stations, it was decided to leave these types of activities in the second group of CEs which requires approval on a case-by-case basis.

A number of commenters also suggested that traffic control devices be moved to the first group of CEs. Because of the wide range of activities that may take place under the broad category of "traffic control devices," the Administration has decided to divide those activities into two groups: (1) Traffic signals in the first group of CEs and (2) ramp metering controls in the second group (which requires Administration approval).

On commenter questioned whether the proposal to categorically exclude the promulgation of rules, regulations and directives which require a regulatory impact analysis was properly conceived, since the need for regulatory impact analysis seems to have little bearing on the possible environmental effects of the rule, regulation, or directive. The Administration agrees and has removed the phrase that refers to an regulatory impact analysis. Furthermore, because the vast majority of Administrative rules, regulations, and directives have not had significant environmental impacts, this action was moved from the second group to the first group of CEs. However, in unusual cases an environmental review will be conducted as required by § 771.117(b).

One commenter objected to removing the prohibition, that is in the 1980 regulation, against categorically excluding bridges on or eligible for the National Register of Historic Places and bridges providing access to barriers islands. This prohibition was removed because it is too general. Projects involving historic bridges or bridges to barrier islands may be properly categorically excluded or may require the preparation of an environmental assessment or an environmental impact statement depending on the severity of the anticipated impacts. The criteria for categorical exclusions presented in § 771.117(b) and the procedure for evaluating "unusual circumstances" in § 771.117(b) provide a suitable mechanism for determining whether, based on specific information regarding project impacts, a categorical exclusion in proper. In addition, since bridges are in the second CE category, historic bridges would always require some documentation that should reveal whether further environmental review is needed. The commenter's concern that historic bridges be adequately protected is addressed by § 771.117(b)(3), that relates to properties protected by section 4(f) or section 106. The barrier island issue is addressed by § 771.117(b)(4), that focuses on inconsistencies with environmental laws and requirements, such as the statutes that protect barrier islands.

In the proposed rule, § 771.117(b) limited the need for further environmental review to "extraordinary" cases. The historic bridge example illustrates that actions on the CE list may sometimes require a full environmental review, depending upon the circumstances. Such cases are unusual, but are not necessarily extraordinary. The indicate the need for environmental review in these and other

similar cases, § 771.117(b) has been revised to describe them as "unusual," rather than extraordinary.

Several comments concerned advance land acquisitions. We believe advance land acquisitions require more documentation than a project description. Therefore, this CE has been included under the second group of CEs in paragraph (d).

Clarification was requested as to whether construction could occur after the land was acquired. This CE is intended to cover the very limited cases where advance land acquisition as set forth in § 771.113(a) is appropriate. The CE does not cover the entire project. Thus, in these cases, even though the land is acquired early, project development cannot occur until the NEPA process is completed and the Administration reaches a decision on whether to implement the proposed project. The CE for advance land acquisition has been modified to clarify this point.

In the 1980 regulation, the CE for advance land acquisition covered hardship and protective acquisitions, as defined in 23 CFR 712.204(d), and acquisitions under section 3(b) of the UMT Act. However, because hardship and protective acquisitions were not specifically referenced in the CE, some applicants have interpreted it as establishing a category of advance land acquisition in addition to hardship and protective acquisitions. The CE has been modified to clarify this point. Thus, the CE for advance land acquisition in the final regulation continues the Administration's existing practice for advance land acquisition. A definition of these terms has been added to the regulation.

It should be noted that the number of acquisitions under section 3(b) of the Urban Mass Transportation Act to date has been very limited and is expected to remain so. The purpose of section 3(b) is to allow the acquisition of land that may or may not be used for mass transit in order to preserve that land before land speculation caused by transit development inflates the price of the land. The UMTA will approve loans under section 3(b) only for unique circumstances, such as acquisition of abandoned rail right-of-way and only where there are no immediate plans for a project. UMTA will review each case separately to determine whether the action requires and environmental review. Where the grantee has definitely planned a mass transit project, section 3(a) is the appropriate section of the UMT Act under which to proceed. Under section 3(a), any major land acquisition requires full compliance with NEPA.

Another commenter asked UMTA to distinguish more clearly the difference between small passenger shelters and bus transfer facilities. The CE for bus shelters covers the separate small shelters typically found throughout a transit system. The bus transfer facility CE refers to focal points of bus activity where several bus routes connect. It includes construction of passenger shelters, loading bays, layover areas, and related street improvements. The primary environmental concerns are the noise, traffic, and safety consequences of frequent bus movements in a new area. However, this CE does not apply to the construction of new bus terminal buildings.

In the NPRM, comments were invited on the specific conditions or criteria which should apply to a CE for rail car storage and maintenance facilities. One commenter recommended against establishing specific criteria for new rail yards since they are typically constructed in areas with compatible land uses and zoning. It was suggested that a project-by-project review would be satisfactory to identify those infrequent cases where a CE may not be appropriate. We agree that rail yards are usually located in areas characterized by industrial or transportation use. However, land-use compatibility, increased traffic, and noise have been issues where non-conforming residential land use is close by. These concerns have arisen with new facilities as well as the expansion of established rail yards. The existing wording has, therefore, been retained to describe the conditions under which approval as a CE is most likely.

There were other suggestions for new types of projects that should be categorically excluded. If, in the Administration's view, the proposal would have insignificant effects on the environment in the great majority of cases, the proposal was adopted. For this reason, as noted earlier, a CE has been added for alterations to make buildings and vehicles accessible to elderly and handicapped patrons. Other suggestions for CEs were not added as examples in the regulation because it was difficult to describe specific conditions or criteria which would provide assurance of no significant environmental effects. However, applicants may still submit new projects that they believe meet the criteria of § 771.117(a) accompanied by documentation supporting the CE designation. If the applicant's proposal for a CE involves new technology or presents environmental impacts with which the Administration has little or no experience, it is likely that an EA will be required to examine the full range of environmental effects from such an action. In introducing flexibility in the CE process, the goal has been to speed the process for projects where there is the greatest confidence as to the insignificance of the impacts. However, this approach also requires a careful look, in the form of an EA, where greater uncertainty exists concerning environmental effects. Under paragraph (d), the Administration has the discretion to review all proposals for categorical exclusions on a case-by-case basis.

A number of comments were also received on paragraph (b) which sets forth the instances when unusual circumstances make it appropriate to require further studies to determine if the CE classification is appropriate. The level of additional study required by this paragraph will vary. In the occasional or rare case where significant impacts are caused by a normally excluded action, an EIS is required. In some cases, only a minor environmental review would be necessary and, in other cases, a full EA may be needed.

One commenter objected to the statement that "substantial controversy on environmental grounds" should trigger the requirement for an environmental study. Both the CEQ regulations and DOT Order 5610.1c list "substantial controversy" as a circumstance when a CE may not be appropriate for a normally excluded action. Substantial environmental controversy over a minor project may indeed indicate the presence of problems requiring further study.

Another commenter objected to the inclusion of significant impacts on properties protected by section 4(f) and section 106 as an example of "unusual circumstances." The point was made that some projects do not involve significant environmental impacts but may still cause effects which must be considered under section 4(f) and section 106. The commenter felt that the applicability of those laws should not automatically trigger a requirement for further NEPA documentation. The proposed language has been retained. Significant impacts on these statutorily protected sites are a clear indication of impacts not appropriately considered as a CE. This mandates a review of impacts better accomplished in an EIS or an EA rather than a separate section 4(f) evaluation. The requirement for an environmental document also underscores the importance the DOT

places on the protection of section 4(f) lands. A provision similar to paragraph (b) is contained in the DOT Order 5610.1c.

Section 771.119. Environmental Assessments. An EA must be prepared for all actions which do not qualify as a CE and do not clearly require an EIS. Studies undertaken solely to determine whether a project qualifies as a CE are not EAs. The purpose of an EA is two-fold. First, an EA should resolve any uncertainty as to whether an EIS is needed. Should the need become evident at any time in the course of the EA process, an EIS should be started. If no EIS is required, the EA process is completed with a finding of no significant impact (FONSI) (§ 771.121). Secondly, to the extent practicable, the EA should contain sufficient information to serve as the record for all environmental approvals and consultations required by law for the action and should include approvals by and consultations with other agencies, as well as those of the Administration. The EA must be made available to the public, although circulation requirements are considerably simpler than those required for an EIS.

One commenter suggested that the notification/distribution requirements for EAs be modified so that interested Federal agencies can be notified directly of the availability of EAs. Our aim is to streamline the environmental review process, particularly for those highway and transit projects that typically do not involve significant environmental impacts and are processed with EAs or as CEs. The EA is a public document, available on request from the applicant or Administration field offices. The applicant must publish a notice of its availability to ensure proper notification to the public. Notice of availability of the EA shall also be sent by the applicant to affected units of Federal, State and local government. The State agency responsible for intergovernmental coordination pursuant to Executive Order 12372 will also be notified. Beyond such notification, we do not intend to require a formal distribution process for EAs. Those agencies and interested parties participating in the early coordination/scoping process should be notified of the availability of an EA and a subsequent FONSI, should either be approved. Projects normally requiring EISs which are processed with EAs will be subject to the full, early coordination and public involvement requirements described in § 771.119.

On commenter raised a question about § 771.117(e) of the NPRM under which the Adminstration encouraged applicants to prepare the EA and make it available prior to any public hearing that was required to be held on a proposed project. The concern was that the applicant must shoulder the cost of preparing an EA to satisfy a Federal requirement and would not be reimbursed for the cost of preparing the document if the grant application was subsequently disapproved. Environmental analysis is frequently funded in grants for planning or preliminary engineering which precede any Federal decision on construction funding. Thus, the possibility exists that an applicant may receive Federal funding for environmental analysis on a proposed project which, for a variety of reasons, does not advance to construction. Acceptance or approval of an EA by the Administration should not be construed as a conditional approval of the project. Lacking an earlier grant for planning or design, the applicant may have to bear the cost of preparing an EA. In most cases, however, preparation of an EA, in contrast to an EIS, does not entail a major investment of staff time and money.

When a public hearing is to be held, the EA should be prepared and made available for a reasonable period of time prior to the hearing. We will continue to encourage applicants to coordinate the EA and public hearing requirements in order to meet our responsibilities under section 1506.6 of the CEQ regulations. The preamble discussion for paragraph 771.111(i) treats the coordination of public hearings and EA preparation for transit projects funded under Sections 9 and 9A of the UMT Act.

One commenter suggested that the regulation be amended to give the Administration the option to hold a public hearing upon request. This comment has not been adopted because making this decision optional would fall short of the requirements of FHWA and UMTA statutes which mandate that an opportunity for a public hearing be afforded (see paragraphs 771.111 (h) and (i) of this regulation).

In paragraph (f), the former reference to a "shorter" time period than 30 days for comments has been changed to a "different" time period. This change was made to cover the situations where the State or local applicant or the Administration may feel a longer time period is appropriate.

The NPRM required that after any public review period for an EA, the applicant provide the Administration with a summary of any comments received. The final rule provides, instead, that the actual comments be transmitted. This change eliminates the need to prepare a summary and avoids any possibility of misinterpreting comments.

Paragraph (g) also states that an EA, like an EIS, should be the vehicle for compliance with all applicable environmental laws and regulations. This addition merely restates in the EA section the long-standing DOT policy of a "one-stop" environmental process.

Section 771.121. Findings of no significant impact. This section remains unchanged from the NPRM except for some minor editing to improve the readability of the section.

Section 771.123. Draft environmental impact statements.

Paragraph (a) of this section and § 771.119(i) have been clarified to underscore the fact that an environmental impact statement need only be prepared when significant impacts on the environment will be or are likely to be caused by the proposed action. The environmental studies defined in § 771.107(a) or the EA discussed in § 771.119 would provide the basis for an informed judgment if there is any doubt about the magnitude of the environmental impact.

Paragraph (d) has been revised to clarify the requirements when a consultant is involved in the EIS process. This paragraph is now consistent with the definitions contained in paragraph 771.109(c) of this regulation. The FHWA deals only with SHAs and State Departments of Transportation. Accordingly, all FHWA applicants qualify as "Statewide agencies." The FHWA approval of consultants is needed only when Federal funds will be used to reimburse the consultant. In those situations, other FHWA regulations govern the consultant selection process. In the case of UMTA-funded activities, UMTA should be apprised of the possible use of consultants before work is undertaken. Although UMTA will not normally participate in the consultant selection, staff will advise applicants if there is a need for interdisciplinary capability in preparing an environmental document and will, when necessary, jointly evaluate consultants' qualifications. The UMTA will apprise applicants of paragraph 1506.5(c) of the CEQ regulations, governing work by consultants and possible conflict of interest.

Paragraph (h) has been amended to indicate that the draft EIS shall be available at the public hearing as well as a minimum of 15 days in advance of the public hearing. As expected, there were comments favoring the shortening

of the minimum period to 15 days and comments objecting that this is unreasonably short. The statutes governing FHWA and UMTA programs require only that adequate notice of any public hearings be given. The change was made to be consistent with the CEQ regulations (section 1506.6(c)). We recognize, however, that the typical EIS with a 45-day circulation period would allow a 30-day notice for a public hearing with no delay in the environmental review process. We will encourage applicants to give greater than 15-day notice whenever possible in order to foster public involvement in the NEPA process.

One commenter asked that FHWA and UMTA specify in the regulation their time for reviewing EISs. Setting time limits for the major steps in the EIS process is a task accomplished in the scoping process. The time periods will vary from project-to-project depending on the size and complexity of the project and other factors set forth in section 1501.8 of the CEQ regulations dealing with time limits.

Section 771.125. Final environmental impact statements. As with the section dealing with draft EISs, few changes were proposed to our final EIS procedures. There was support for the proposed change in paragraph (a) eliminating the requirement to describe in the final EIS the procedures to be followed to assure that all environmental mitigation measures are implemented. The FHWA and the UMTA's general approach to ensure that mitigation is carried out has been outlined in paragraph 771.109(b). Any further details would be developed on an individual project basis by the applicant and Administration. This does not represent a change in the Administration's commitment to take all practicable steps to mitigate any adverse environmental consequences caused by transportation projects.

There also was support for the proposed change to identify, rather than describe, mitigation measures. However, UMTA and FHWA have decided that the requirement of describing mitigation measures should be retained. Accordingly, the final regulation continues the existing practice of a full description of mitigation measures in the final environmental document, to the extent permitted by the level of design. When details on mitigation measures have not been developed at the time the final EIS is being prepared, the final EIS should describe the measures in as much detail as possible and give an assessment of the effectiveness of such measures in reducing environmental harm. When there is uncertainty over the choice of mitigation measures, the range of measures under consideration should be fully described, and the final EIS should address mitigation in terms of the results that will be achieved, e.g., conforming to governmental standards or plans or meeting criteria developed for specific projects. These measures will be summarized in the Record of Decision (ROD) for projects requiring EISs.

Many commenters supported the change eliminating the need for prior concurrence by the Administration Headquarters on certain EISs. There was a dissenting view that Headquarters oversight was needed to ensure that DOT environmental protection responsibilities were being fully met. The delegation of greater EIS responsibility to field offices is an important change from the standpoint of streamlining the environmental review process. This provision allows routine EISs to be completed more quickly. Internal procedures in the FHWA and the UMTA will ensure that EISs for projects with major unresolved issues are reviewed by Headquarters. The regulation specifies those circumstances in which Headquarters' concurrence will normally be required.

The provision for legal review of final EISs has been retained. Experience has shown this to be an important requirement.

Paragraph 771.123(d)(2) of the NPRM which deals with FHWA actions on programmatic documents has been dropped from the final rule. The FHWA has issued internal operating instructions that all programmatic environmental documents will be sent to the Administration Headquarters for action. Since this is an internal Administration practice, not a requirement imposed by the Administration on its applicants, it was decided to eliminate that provision from the regulation.

Paragraph (e) concerning the significance of the Administration's approval of the final EIS has also been modified to better emphasize that approval does not constitute a present or future commitment of funds to the preferred alternative.

Section 771.127. Record of decision. The basic mechanism for the ROD remains unchanged. The ROD lays out the basis for the decision as specified in 40 CFR 1505.2 and summarizes the mitigation measures that will be incorporated in the project. The last sentence of paragraph (a) of the NPRM has been eliminated. That sentence indicated a ROD was not required for projects where the draft EIS was filed with EPA prior to July 30, 1979. We believe that this "grandfather" clause is no longer appropriate and have eliminated it in response to comments.

The ROD is a public document and will be made available to the public on request. However, FHWA and UMTA will not routinely distribute RODs to all those who received the final EIS, nor will we distribute RODs on all projects to an individual agency. One commenter asked that we seek outside consultation and review whenever the Administration changes the proposed action and a revised ROD has to be prepared. If the proposed action changes to an alternative fully evaluated in the final EIS, but not identified as the preferred alternative in that document, the Administration will issue a new ROD and distribute it to everyone who received the final EIS. The regulation states that this distribution will be made to the extent practicable, meaning that documents will be sent to the addresses of record, but the Administration cannot ensure that people who have changed addresses will be reached.

Section 771.129. Reevaluations. This section directs the applicant to consult with the Administration prior to proceeding with major project activities, such as land acquisition and construction, to assess any changes that have occurred and their effect on the validity of the environmental document.

After the environmental process has been completed, the Administration is free to make a funding decision and proceed with construction of a project. The decision to implement a project may occur soon after the final environmental document is approved and circulated or it may be deferred for various reasons. Where a substantial period of time has elapsed since the initial environmental review process, the Administration needs to determine whether existing environmental documents and findings remain valid before moving ahead with construction. The Administration must also ensure that mitigation measures stated as commitments in environmental documents have been incorporated in appropriate contract documents, plans, specifications, and estimates.

Many commenters objected to the proposal in the NPRM for a written evaluation, required in all cases, to assess whether the final EIS was still current. Based on these comments, the Administration has agreed that a written evaluation of the final EIS should not be required before every major project approval or filing for a Federal permit. Instead, the Administration has substituted two

paragraphs. One of these requires a written evaluation of the final EIS if major steps to advance a project have not been taken within 3 years of final EIS approval or the last major Administration approval or grant. The purpose of this paragraph is to require a careful look at proposed projects which have not gone to construction and have been inactive for a relatively long time since the final EIS or last major step in project development. A similar paragraph appeared in the 1980 regulation but was deleted in the NPRM.

The second paragraph, paragraph (c) in the final regulation, requires consultation in all cases not covered by paragraphs (a) and (b), but leaves discretion to determine on a case-by-case basis whether a written report is required. The Administration will determine whether the changes are significant enough to warrant a supplemental EIS (as outlined in § 771.130). The Administration believes the fixed time period of paragraph (b) and the flexibility of paragraph (c) would accomplish the purpose of the NPRM, without imposing the burdens objected to by the commenters.

Normally, the reevaluation requirements apply at the right-of-way authorization stage and at the construction stage. However, on the more complex projects, the Administration may identify additional points at which it would be appropriate to reevaluate the status of the previously approved environmental document. The regulation is structured to ensure that the Administration has a current and valid environmental document on file prior to permitting the applicant to proceed with any subsequent phase of the pending project.

Section 771.130. Supplemental environmental impact statements. Paragraph (a) retains the provisions in the 1980 regulation that a draft or final EIS may be supplemented at any time. This provision had been included in § 771.127(a) of the NPRM. In addition, it makes clear that a supplemental EIS may be supplemented at any time.

Paragraph (a) also identifies those situations in which a supplemental EIS must be prepared. A supplemental EIS is required where changes in the proposed action or new information or circumstances relevant to environmental concerns and bearing on the proposed action would result in significant environmental impacts not already evaluated in the EIS. The language in paragraph (a) was changed to more closely parallel the CEQ regulations. It replaces § 771.129(b) of the 1980 regulation which required a supplemental EIS when there had been "significant changes in the proposed action, the affected environment, the anticipated impacts, or the proposed mitigation measures." The word "change" in the regulation is no longer limited to the four categories set forth in the 1980 regulation. Instead, this paragraph focuses the determination of whether a change or new information is "significant" to the anticipated impacts of the proposed action. The regulation is intended to distinguish, for example, between new information that may be very important or interesting, and thus, significant in one context, such as to the scientific community, and yet should not be considered "significant" so as to trigger preparation of a supplemental EIS because the information does not result in a significant change in the anticipated environmental impacts of the proposed action.

Paragraph (b) identifies two circumstances in which a supplemental EIS is not required. Paragraph (b)(1) provides that no supplemental EIS is required where changes or new information would mitigate or lessen adverse impacts that have already been evaluated in the EIS and do not cause any other environmental impacts that are significant and which were not evaluated in the EIS. This provision is intended to cover primarily the situation where a proposed action is down scaled or additional mitigation measures are incorporated in a project. Changes or new information that only reduce impacts and are of the same character as those discused in the EIS could include, for example, less right-of-way taken, fewer relocations, or reduced noise levels as a result of additional noise walls. This section only applies where the change or new information does not cause any other impacts that are significant. If the change or new information results in impacts that were not evaluated, a supplemental EIS would be required if the new impacts are significant. Thus, in response to comments on the NPRM, the regulation recognizes that even beneficial changes may be significant and require a supplement if they result in a type of impact that was not evaluated in the original EIS. Further, if previously evaluated impacts become significantly worse, so that the environmental impacts of the action are greater than thought initially, a supplemental EIS would also be required. For example, a supplemental EIS would continue to be required where mitigation measures, presented as commitments in the final EIS, are changed or withdrawn, thereby creating new and significant environmental effects.

Paragraph (b)(2) indicates that a supplemental EIS will not be necessary if a decision is made to fund an alternative fully evaluated in a previous EIS but not identified therein as the preferred alternative. In those situations, a revised ROD must be prepared and provided to all parties that received a copy of the final EIS. A supplemental EIS would be required if the impacts from the alternative now designed as the preferred alternative were not fully evaluated and appropriate mitigation measures included in the original EIS. After a revised ROD is prepared, public and agency notification of the change in the recommended alternative is essential. The specific methods used to notify the public of the change will be determined by the Administration on a case-by-case basis.

Paragraph (c) is new paragraph that expresses in slightly different terms a provision contained both in the 1980 rule and the NPRM. If the Administration is uncertain whether the proposed changes to the project would result in significant environmental impacts, it may require the applicant to prepare an EA or environmental studies to aid in determining the significance of the effects. An EA would be appropriate where a number of different environmental effects need to be assessed and, in the Administration's view, there is uncertainty as to the significance of these effects. Also, an EA is warranted if the Administration feels that an examination of alternative routes, sites, or designs (beyond the normal consideration of design options as the project is being refined) might identify ways to avoid or mitigate probable adverse effects. If these effective are found to be not significant, the Administration will document its decision with a notation to the files for projects where environmental studies were prepared and with a FONSI for projects where an EA was prepared.

Several commenters objected to the paragraph in the NPRM which described circumstances under which supplemental EISs may be needed for UMTA's major investment projects. The concern was that this would add to an already lengthy EIS process. This provision has been modified and retained as paragraph (e). It does not require that supplements be prepared in all cases; it gives UMTA the discretion to prepare such a document in those cases where a substantial body of new information relevant to environmental concerns has been developed.

Although it is similar to tiering in that the environmental focus is sharpened as project details are developed, a

supplement eliminates the need to prepare two separate draft and final EISs as in tiering. The UMTA will continue to require a draft EIS at an early stage of project planning for major investments (i.e., alternative analyses); thus, we want to preserve the option of preparing a supplemental draft EIS when circumstances dictate.

Section 771.129(b) of the 1980 regulation stated that a decision to prepare a supplemental EIS does not require withdrawal of the previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information. While the 1980 regulation was silent on whether activities already in progress under the prior approval should be suspended, it has generally been held that such activities need not be suspended. In addition, it has been held that new approvals of activities outside the scope of the supplemental EIS may be granted while a supplemental EIS is being processed.

Provisions have been added to paragraph (f) specifically to permit these practices. These provisions apply only to supplemental EISs of limited scope. Where the supplemental EIS requires a comprehensive reexamination of the entire project or more than a limited portion of the project, then the Administration would suspend any activities that may have an adverse environmental impact or prejudice the selection of reasonable alternatives.

Section 771.131. Emergency action procedures. This section is unchanged from the NPRM.

Section 771.133. Compliance with other requirements. This section is unchanged from the NPRM.

Section 771.135. Section 4(f) (49 U.S.C. 303). This section sets forth the procedures for applying section 4(f). There have been few substantive changes made from the 1980 regulation. Those that have been made are designed to give the Administration more flexibility in dealing with particular actions or to clarify existing requirements. We do not believe that any of the changes diminish the substantive protection provided section 4(f) sites.

Numerous comments were received on this section. To a large extent, these comments urged the Administration to narrow the situations in which section 4(f) would apply. For example, some commenters expressed frustration with the application for section 4(f) requirements to acquisition of minor amounts of land resulting in little or no impact on the site. The legislative history of section 4(f) makes clear that the "nibbling away" of section 4(f) lands by repeated minor acquisition was of primary concern to Congress. As a result, the DOT and the courts have always taken the position that even minor takings require the preparation of a section 4(f) document.

Paragraph (c) has been revised to emphasize that the "entire resoure" must be found to be not significant before the Administration can determine that section 4(f) requirements are not applicable. Furthermore, determination that an entire area is not significant is subject to review by the Administration prior to a determination that section 4(f) requirements are not applicable. This has been a longstanding Administration practice and the change in the regulation states existing practice.

Paragraph (d) addresses the application of section 4(f) to publicly owned lands managed for multiple use. Typically, multiple use management is applied to the natural resources on large tracts of land where such resources can serve a variety of needs. Section 4(f) will apply only to those parts designated or being used for park, recreation, or wildlife refuge purposes. It should be noted that the multiple-use concept does not apply within areas which have been designated as parks, recreation areas, or wildlife and waterfowl refuges. Section 4(f) applies throughout such areas. Historic sites were included in this paragraph in the NPRM but have been eliminated in the final regulation because it was felt that this was inconsistent with the approach for identifying historic sites in paragraph (e). In addition, paragraph (d) has been revised from the NPRM to state more clearly the procedures for applying section 4(f) to multiple use lands

Paragraph (f) clarifies existing FHWA and UMTA practices on the application of section 4(f) to existing transportation facilities. Examples include highway bridges, railroad stations, and terminal buildings which are on or eligible for the National Register Historic Places and proposed for improvement with Federal funds. Most of the commenters on this paragraph favored the proposed provision. The NPRM indicated that section 4(f) requirements did not apply to "work" on transportation facilities under certain circumstances. The final regulation clarifies those circumstances and substitutes for "work" the term "restoration, rehabilitation or maintenance" of transportation facilities. The intention of this change is to better define the key concept "use."

The overriding purpose of section 4(f) was to protect certain publicly owned lands and historic sites from road building and other projects, except in extraordinary circumstances. Toward that end, section 4(f) restricts the approval of projects which require the "use" of certain publicly owned parks and recreation areas and any historic sites. The applicability of section 4(f) in the first instance, therefore, turns on whether a project requires "use" of the land in question. Courts construing the term "use" under section 4(f) have focused on whether the proposed project actually takes or significantly adversely affects the site in question. Accordingly, UMTA and FHWA believe that if a project involves a facility that is already dedicated to transportation purposes (so there is no taking), and does not adversely affect the historic qualities of that facility, then the project does not "use" the facility within the meaning of section 4(f). If there is no use under section 4(f), its requirements do not apply. This construction is consistent with the purpose of section 4(f) and with case law on this issue. Accordingly, the Administration will evaluate any proposed restoration, rehabilitation or maintenance activities of transportation facilities that are on or eligible for the National Register to determine if the criteria of paragraph (f) are met. If those criteria are met, then the work may proceed without a section 4(f) evaluation.

One commenter described paragraph (f) as having alternative criteria. This is incorrect. Both criteria must be met in order for the paragraph to apply.

Some commenters thought paragraph (f) confused the responsibilities of UMTA and FHWA under section 4(f) with our responsibilities under section 106 of the National Historic Preservation Act. The UMTA and FHWA are well aware that section 4(f) and section 106 have distinct requirements. However, in our experience, there is overlap between the analyses necessary to meet the requirements of sections 4(f) and 106. The UMTA and the FHWA's objective is to use a coordinated approach while retaining the distinct requirements of sections 4(f) and 106. If a project will adversely affect the historic qualities of the transportation facility, then the project will require the use of the facility under section 4(f), and the requirements of that provision will apply, i.e. the Administration will evaluate avoidance alternatives and measures to minimize harm to the degree necessary to make the deteminations required by paragraph (a). At the same time the Administration will also comply with the separate, consultation requirements of Section 106.

One commenter suggested that paragraph (f) should apply to all section 4(f) properties, not just transportation

facilities. However, the rationale for paragraph (f) only applies to transportation facilities. Therefore, the application of paragraph (f) remains limited to transportation facilities.

Paragraph (g) deals with the application of section 4(f) to archeological resources. Whether or not section 4(f) applies to such resources will depend primarily on whether the value of the resource can best be realized through a data recovery program. The degree to which the value of the resource is tied to a particular site must also be considered. These determinations are always made in consultation with the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP).

If it is decided, after consulting the SHPO and the ACHP, that data recovery is appropriate and there is no need to preserve the resource in place, section 4(f) will not apply. However, section 4(f) will apply in case where date recovery is deemed appropriate, and, in addition, there is an overriding concern to preserve a major portion of the resource in place, e.g., for the purpose of public interpretation.

If data recovery is determined to be inappropriate, the application of section 4(f) will depend on the reason underlying this determination. If preservation in place is the paramount concern or if it is determined that there are not adequate techniques to properly recover the resource, section 4(f) will apply. However, if a data recovery program is deemed inappropriate becasue the site has minimal value in terms of scientific research, section 4(f) would not apply. This latter situation often arises when a proposed transportation project would affect a number of sites all of which will reveal the same information. Where an adequate data recovery program focuses on a representative site or sites, it may be determined that the remaining sites would yield no further values. Thus section 4(f) would not apply.

In reaching judgments on the value of the archeological resource, the desirability and feasibility of a data recovery plan, and the need for preservation in place, the views of the SHPO and the ACHP will be given substantial deference. The intent of this provision is not to unnecessarily narrow the application of section 4(f) when dealing with archeological sites, but, rather, to apply the protections of section 4(f) to the situations for which they were originally intended. Frequently, the greatest value of the resource can be realized through data recovery. In those cases the primary mandate of section 4(f)—to investigate every feasible and prudent alternative to avoid the site—would serve no useful purpose.

Paragraph (g) on archeological properties also retains a provision in the 1980 regulation concerning the discovery of archeological resources during project construction. Where section 4(f) applies, the section 4(f) process will be expedited. Noting that late designation of historically significant properties has posed problems in the past by invoking section 4(f) protection late in project development, several commenters proposed cut-off points after which a property newly designated for the National Register of Historic Places would not be afforded section 4(f) protection. Paragraph (h) deals with late designations of parks, recreational areas, and historic sites. With respect to historic and cultural properties, the regulation establishes an affirmative responsibility of the Administration and the applicant to identify historic properties on or eligible for the National Register of Historic Places. This is to be done early in the NEPA compliance process; thus, it is not expected that there will be late identification of historic buildings or structures. However, unidentified archeological resources do pose problems and paragraph (g) sets forth an expedited approach for these cases.

Another commenter found the regulation unclear as to how properties "on or eligible for the National Register" would be identified, and questioned whether only those properties known to the SHPO would be considered. Particularly where large projects are concerned, FHWA and UMTA, in cooperation with the applicant, will undertake a survey to identify properties which are potentially eligible for the National Register. The Administration or the applicant will seek assistance from the SHPO in this identification effort but a State register or list of historic properties provided by State and local officials does not relieve FHWA or UMTA from the need to undertake a comprehensive inventory. If the SHPO indicates that an adequate inventory of the area has already been completed, this will normally satisfy Federal requirements.

A sentence has been added to paragraph (i) in recognition of FHWA's use of programmatic section 4(f) evaluations. In such cases, coordination and documentation are usually accomplished in two phases. The first phase, the development of the programmatic section 4(f) evaluation, entails coordination with interested agencies and organizations, and culminates in the issuance of a document (the programmatic section 4(f) evaluation) which defines the criteria and procedures for its use and contains requisite legal findings. The second phase, the use of the programmatic evaluation on a specific project, involves coordination with the officials with jurisdiction over the section 4(f) resource in question and documentation sufficient to demonstrate that the procedures set up by the programmatic evaluation has been followed. The UMTA currently has no plans to issue any programmatic section 4(f) evaluations.

Paragraph (n) adopts a provision set forth at § 771.133(m) of the NPRM. It emphasizes that the decision to prepare a supplemental environmental document must be made pursuant to § 771.130 of this regulation, independent of any decision to prepare new or separate section 4(f) documentation. The mere change in legal status of an area to which section 4(f) applies does not require such a supplemental document if the environmental impacts of the action on the area or the site have already been evaluated. Similarly, changes in the action which may generate additional section 4(f) requirements would not also require supplemental environmental documentation if the changes were not environmentally significant.

Paragraph (n) has also been modified to clarify that project activities need not be suspended and that new project approvals may be granted during the preparation of a separate section 4(f) evaluation when it is prepared late in project development. The Adminstration will hold in abeyance those aspects of the project that may prejudice the consideration of avoidance alternatives or measures to minimize harm, but may proceed with other elements of the project.

Section 771.137. International actions. This portion of the regulation has been taken from DOT Order 5610.1C. The Administration did not receive any comments on this section. However, certain editorial changes were made to clarify the application of this section to FHWA and UMTA programs.

Section 771.111(h) Public Involvement. On January 31, 1985, the FHWA published at 50 FR 4526, Docket No. 85–12, a NPRM; amendment and rescission of public involvement regulations. The purpose of this proposal was to eliminate confusing regulatory duplication as part of FHWA's overall efforts to institute a streamlined environmental process in which public involvement is fully integrated with

other project development and environmental procedures.

The FHWA has had two major regulations which pertain to public involvement. Detailed requirements for public hearings and location and design approval appear in 23 CFR Part 790. Beginning in 1974, the FHWA provided an alternative process for public involvement/public hearings and project location approval. This alternative process has given the States more flexibility in developing public involvement programs which are better integrated into the States' project development processes.

In order to avoid the confusion and inefficiency of two separate, but duplicative public involvement regulations, this final rule rescinds 23 CFR Part 790 and consolidates in 23 CFR 771.111(h) all regulatory requirements for public involvement in the development of Federal-aid highway projects. To allow the fewer than 10 States still conducting public hearings under 23 CFR Part 790 time to adopt new public involvement/public hearing procedures which satisfy the requirements of 23 CFR 771.111(h), the effective date of the rescission of Part 790 has been delayed 1 year after the publication of this notice in the **Federal Register.**

In addition, individual public involvement requirements appear at 23 CFR 650.109. The FHWA is consolidating all public involvement requirements in 23 CFR 771.111(h). Thus, § 650.109 is rescinded as a technical amendment in this final notice. This will remove the specific requirement by FHWA that significant floodplain encroachments be identified in public hearing notices. Section 771.111(h)(2)(iv) has been modified to require that public hearing notices provide information required to comply with public involvement requirements of other laws, Executive Orders and regulations. This would cover the requirement for a public notice of encroachments as required by Executive Order 11988, "Floodplain Management." In addition, FHWA plans to issue technical guidance to ensure that notice of encroachment is provided as part of the public notice.

The FHWA believes that 23 CFR 771.111(h), as amended in this final rule, will result in better public involvement. It more clearly encourages early identification of issues, early consultation and continuing coordination with concerned members of the public, and early resolution of issues.

No major changes are being made in existing programs, policies, and procedures with respect to public involvement or design approval. The rescission of 23 CFR Part 790 does not in any manner eliminate the requirements for design approvals under 23 U.S.C. 106, 109, and 112. Design submissions and approvals to meet these requirements are carried out according to procedures developed by the FHWA and the State highway agencies. These procedures have been tailored to fit the specific project-development processes of each State highway agency.

Eight comments, all from State highway agencies, were received on the NPRM. The FHWA has given the following consideration to these comments.

Three commenters supported the rescission of 23 CFR Part 790 and the simplification of FHWA's regulations concerning public involvement.

In the NPRM, the FHWA proposed linking the conditions triggering a required public hearing to the classification of projects according to their environmental documentation. However, two commenters correctly pointed out that one of the proposed public hearing criteria (Class II and III projects with significant environmental effects) in 23 CFR 771.111(h)(2) was inconsistent with the definitions of Class II and Class III projects found in 23 CFR 771.115. The FHWA had decided to return the wording of the criteria triggering a required public hearing to the four criteria previously found in 23 CFR 771.111(h). This will assure that there is no change in the opportunities for a public hearing as a result of the present rulemaking.

Two SHAs observed that the criteria for public hearings on Class III projects are less stringent than their current procedures which require a public hearing for all Class III projects. This final rule states minimum Federal criteria for public involvement on Federal-aid highway projects. If, in its public involvement/public hearing procedures, a State chooses to exceed these Federal requirements, that is the State's prerogative. Thus, in their public involvement/public hearing procedures States may require public hearings for all Class III projects.

One western State highway agency expressed concern that public hearings for Class II and III projects requiring substantial amounts of right-of-way resulted in some hearings of little or no public interest, since the projects involved only one or two landowners. The commenter asked that "substantial" right-of-way acquisition be replaced by "sensitive" right-of-way acquisition. The FHWA believes the regulation provides for this situation through the public hearing opportunity. The State highway agency may advertise an opportunity for a public hearing. Except to the extent required by 23 U.S.C. 128, if a project does not arouse public interest, a public hearing need not be held.

It was suggested by two commenters that requiring submission to the FHWA of a written, verbatim transcript is unnecessary for some public hearings. The revised regulation simply retains and repeats the statutory requirements of 23 U.S.C. 128 for transcripts.

One commenter expressed concern that the reevaluation of a project's public involvement activities not become a separate procedural reevaluation in addition to the substantive reevaluation of the project's environmental document under 23 CFR 771.129. The NPRM may not have been clear that the reevaluation of public involvement is intended to be based on the project reevaluation. The wording of the regulation has been changed to make this relationship clearer.

In addition, the FHWA has clarified wording at several points and deleted reference to the inclusion of other agencies and governmental jurisdictions in public involvement/public hearing procedures and to other agencies receiving notices of public hearings (23 CFR 771.111(h)(2) (ii) and (iv)). Coordination with other agencies and governmental jurisdictions is addressed in 23 CFR 771.111(a), 771.119, and 771.123 (c) and (g). Written statements from the public to accompany the public hearing transcript have been more clearly defined in 23 CFR 771.111(h)(2)(vi). Publication in the **Federal Register** of notices of availability of new public involvement/public hearing procedures has been eliminated as not being an effective way to reach residents of specific States. The FHWA encourages States to use appropriate ways of communicating the provisions of their public involvement/public hearing procedures to residents. Separate reference to mitigation measures as an element of the public hearing presentation has also been deleted (23 CFR 771.111(h)(2)(v)(D)) because the beneficial impacts of mitigation measures are included in the required discussion of impacts.

As a result of the rescission of 23 CFR Part 790 and amendments to 23 CFR 771.111(h), those few States currently under 23 CFR 790 must submit procedures for approval under Section 771.111(h); however, these States will at the same time have the opportunity to gain flexibility to conduct public hearings in a way which is compatible with the State's own project development process. The remaining

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States for which alternate public involvement/public hearing procedures already have been approved pursuant to 23 CFR 771 are not required to adopt new public involvement/public hearing procedures.

The public involvement procedures developed pursuant to this section must be sufficient to meet the public hearing and other public involvement requirements imposed by law or regulation on FHWA. Furthermore, in implementing this section, the FHWA urges the States, including States with procedures already approved by FHWA, to consider the public involvement needs of other State and Federal agencies with approval, permitting or consultation responsibilities for highway actions. The FHWA has engaged in extensive discussion with Federal agencies having such responsibilities in an effort to find ways to expedite the highway approval process. One of the most effective ways of accomplishing this goal is to avoid multiple and other duplicative public hearings or other public meetings. Section 771.111(h)(2)(i) should be read broadly to encourage the States to adopt public involvement proceudres which accommodate the needs of as many other involved State and Federal agencies as practicable.

Implementation

Other Federal agencies are often involved in reviewing the environmental effects of UMTA and FHWA actions. It is important that these agencies have an opportunity to provide feedback on how well they perceive that interagency coordination is working under the new regulation. To give them this opportunity, FHWA will sponsor a series of meetings, region by region, to air issues of mutual concern pertaining to this regulation. FHWA plans to hold these meetings about a year to a year and a half after this regulation becomes effective.

Regulatory Impacts

The Administrators of FHWA and UMTA have determined that this document does not contain a major rule as defined by Executive Order 12291. However, it is a significant rulemaking action under Department of Transportation regulatory policies and procedures because important departmental policy as implemented by FHWA and UMTA is involved.

A regulatory evaluation has been prepared and is available for inspection in the FHWA docket room. A copy may be obtained from Mr. Frederick Skaer or Mr. A. Joseph Ossi at the addresses provided under the heading "For Further Information Contact."

The amendments impose no additional requirements. The anticipated impacts include the elimination of duplicative requirements and the increase in decisionmaking authority for the Administration's field offices. By streamlining the project development process, the amendments should reduce project development time and costs. Economic savings will be realized through changes which permit more efficient processing of legally required documentation.

With regard to the public involvement requirements which were the subject of a separate NPRM (50 FR 4526), since there will be no substantial change in the approach FHWA has traditionally employed in dealing with public involvement, it is anticipated that this action will not have a significant economic impact. The economic impacts, if any, would result in administrative savings caused by the elimination of procedural duplication.

The impact of the other amendments will fall primarily on Federal and State and local governments. It is possible that application of this rule could have an adverse economic impact on small governmental jurisdictions that must prepare environmental documents. However, the potential impacts derive primarily from NEPA and not from the procedures contained in this rule. For these reasons and under the criteria of the Regulatory Flexibility Act, FHWA and UMTA hereby certify that this document will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the information collection requirements contained in this document are being submitted for approval to the Office of Management and Budget (OMB).

List of Subjects in 23 CFR 771 and 790 and 49 CFR 622

Environmental impact statements, Grant programs—transportation, Highways and roads, Highway location and design, Public hearings, Reporting and recordkeeping requirements, Mass transportation, Historic Preservation, Parks, Public lands—multiple use, Recreation areas, Wildlife refuges.

(Catalog of Federal Domestic Assistance Program Numbers: 20.205, Highway Research, Planning and Construction; 20.500, Urban Mass Transportation Capital Grants; 20.501, Urban Mass Transportation Capital Improvement Loans; 20.504, Urban Mass Transportation Technology; 20.505, Urban Mass Transportation Technical Studies Grants; 20.506, Urban Mass Transportation Demonstration Grants; 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants; 20.509, Public Transportation for Rural and Small Urban Areas; 20.510, Urban Mass Transportation Planning Methods, Research and Development; 23.003, Appalachian Development Highway Systems; 23.008, Appalachian Local Access Roads. The regulation implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

In consideration of the foregoing, Chapter VI of Title 49 and Chapter I of Title 23, Code of Federal Regulations, are amended as set forth below.

Issued on August 21, 1987.

Robert E. Farris,

Deputy Federal Highway Administrator.

Alfred A. DelliBovi,

Deputy Administrator, Urban Mass Transportation, Administration.

1. Subpart A of Part 622 of 49 CFR is revised to read as follows:

TITLE 49—TRANSPORTATION

CHAPTER VI—URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Subpart A—Environmental Procedures

Sec.

622.101 Cross-reference to procedures.

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 1601 *et seq.*; 49 CFR 1.51.

Subpart A—Environmental Procedures

§ 622.101 Cross-reference to procedures.

The procedures for complying with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and related statutes, regulations, and orders are set forth in Part 771 of Title 23 of the Code of Federal Regulations.

2. Part 771 of 23 CFR is revised to read as follows:

TITLE 23—HIGHWAY

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Sec.

771.101 Purpose.
771.103 [Reserved]
771.105 Policy.
771.107 Definitions.
771.109 Applicability and responsibilities.
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771.113 Timing of Administration activities.

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771.115 Classes of actions.
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771.119 Environmental assessments.
771.121 Findings of no significant impact.
771.123 Draft environmental impact statements.
771.125 Final environmental impact statements.
771.127 Record of decision.
771.129 Reevaluations.
771.130 Supplemental environmental impact statements.
771.131 Emergency action procedures.
771.133 Compliance with other requirements.
771.135 Section 4(f) (49 U.S.C. 303).
771.137 International actions.

Authority: 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 109, 128, 138 and 315; 49 U.S.C. 303(c), 1602(d), 1604(h), 1604(i), and 1610; 40 CFR Part 1500 *et seq.*; 49 CFR 1.48(b) and 1.51.

§ 771.101 Purpose.

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) for implementing the National Environmental Policy Act of 1969 as amended (NEPA), and the regulation of the Council on Environmental Quality (CEQ), 40 CFR Parts 1500–1508. This regulation sets forth all FHWA, UMTA, and Department of Transportation (DOT) requirements under NEPA for the processing of highway and urban mass transportation projects. This regulation also sets forth procedures to comply with 23 U.S.C. 109(h), 128, 138, and 49 U.S.C. 303, 1602(d), 1604(h), 1604(i), 1607a, 1607a–1 and 1610.

§ 771.103 [Reserved]

§ 771.105 Policy.

It is the policy of the Administration that:

(a) To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental document required by this regulation.[1]

(b) Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals.

(c) Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions.

(d) Measures necessary to mitigate adverse impacts be incorporated into the action. Measures necessary to mitigate adverse impacts are eligible for Federal funding when the Administration determines that:

(1) The impacts for which the mitigation is proposed actually result from the Administration action; and

(2) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. In making this determination, the Administration will consider, among other factors, the extent to which the proposed measures would assist in complying with a Federal statute, Executive Order, or Administration regulation or policy.

(e) Costs incurred the applicant for the preparation of environmental documents requested by the Administration be eligible for Federal assistance.

(f) No person, because of handicap, age, race, color, sex, or national origin, be excluded from participating in, or denied benefits of, or be subject to discrimination under any Administration program or procedural activity required by or developed pursuant to this regulation.

§ 771.107 Definitions.

The definitions contained in the CEQ regulation and in Titles 23 and 49 of the United States Code are applicable. In addition, the following definitions apply.

(a) *Environmental studies*—The investigations of potential environmental impacts to determine the environmental process to be followed and to assist in the preparation of the environmental document.

(b) *Action*—A highway or transit project proposed for FHWA or UMTA funding. It also includes activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.

(c) *Administration action*—The approval by FHWA or UMTA of the applicant's request for Federal funds for construction. It also includes approval of activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.

(d) *Administration*—FHWA or UMTA, whichever is the designated lead agency for the proposed action.

(e) *Section 4(f)*—Refers to 49 U.S.C. 303 and 23 U.S.C. 138.[2]

§ 771.109 Applicability and responsibilities.

(a)(1) The provisions of this regulation and the CEQ regulation apply to actions where the Administration exercises sufficient control to condition the permit or project approval. Actions taken by the applicant which do not require Federal approvals, such as preparation of a regional transportation plan are not subject to this regulation.

(2) This regulation does not apply to, or alter approvals by the Administration made prior to the effective date of this regulation.

(3) Environmental documents accepted or prepared by the Administration after the effective date of this regulation shall be developed in accordance with this regulation.

(b) It shall be the responsibility of the applicant, in cooperation with the Administration to implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation. The FHWA will assure that this is accomplished as a part of its program management responsibilities that include reviews of designs, plans, specifications, and estimates (PS&E), and construction inspections. The UMTA will assure implementation of committed mitigation measures through incorporation by reference in the grant agreement, followed by reviews of designs and contruction inspections.

(c) The Administration, in cooperation with the applicant, has the responsibility to manage the preparation of the appropriate environmental document. The role of the applicant will be determined by the Administration accordance with the CEQ regulation:

(1) *Statewide agency.* If the applicant is a public agency that has statewide jurisdiction (for example, a State highway agency or a State department of transportation) or is a local unit of government acting through a statewide agency, and meets the requirements of section 102(2)(D) of NEPA, the applicant may prepare the environmental impact statement (EIS) and other environmental documents with the Administration furnishing guidance, participating in the

[1] FHWA and UMTA have supplementary guidance on the format and content of NEPA documents for their programs. This includes a list of various environmental laws, regulations, and Executive Orders which may be applicable to projects. The FHWA Technical Advisory T6640.8A, October 30, 1987, and the UMTA supplementary guidance are available from the respective FHWA and UMTA headquarters and field offices as prescribed in 49 CFR Part 7, Appendices D and G.

[2] Section 4(f), which protected certain public lands and all historic sites, technically was repealed in 1983 when it was codified, without substantive change, as 49 U.S.C. 303. This regulation continues to refer to section 4(f) because it would create needless confusion to do otherwise; the policies section 4(f) engendered are widely referred to as "section 4(f)" matters. A provision with the same meaning is found at 23 U.S.C. 138 and applies only to FHWA actions.

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preparation, and independently evaluating the document. All FHWA applicants qualify under this paragraph.

(2) *Joint lead agency.* If the applicant is a public agency and is subject to State or local requirements comparable to NEPA, then the Administration and the applicant may prepare the EIS and other environmental documents as joint lead agencies. The applicant shall initially develop substantive portions of the environmental document, although the Administration will be responsible for its scope and content.

(3) *Cooperating Agency.* Local public agenices with special expertise in the proposed action may be cooperating agencies in the preparation of an environmental document. An applicant for capital assistance under the Urban Mass Transportation Act of 1964, as amended (UMT Act), is presumed to be a cooperating agency if the conditions in paragraph (c) (1) or (2) of this section do not apply. During the environmental process, the Administration will determine the scope and content of the environmental document and will direct the applicant, acting as a cooperating agency, to develop information and prepare those portions of the document concerning which it has special expertise.

(4) *Other.* In all other cases, the role of the applicant is limited to providing environmental studies and commenting on environmental documents. All private institutions or firms are limited to this role.

§ 771.111 Early coordination, public involvement, and project development.

(a) Early coordination with appropriate agencies and the public aids in determining the type of environmental document an action requires, the scope of the document, the level of analysis, and related environmental requirements. This involves the exchange of information from the inception of a proposal for action to preparation of the environmental document. Applicants intending to apply for funds should notify the Administration at the time that a project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action and related environmental laws and requirements and of the need for specific studies and findings which would normally be developed concurrently with the environmental document.

(b) The Administration will identify the probable class of action as soon as sufficient information is available to identify the probable impacts of the action. For UMTA, this is normally no later than the review of the transportation improvement program (TIP) and for FHWA, the approval of the 105 program (23 U.S.C. 105).

(c) When FHWA and UMTA are involved in the development of joint projects, or when FHWA or UMTA acts as a joint lead agency with another Federal agency, a mutually acceptable process will be established on a case-by-case basis.

(d) During the early coordination process, the Administration, in cooperation with the applicant, may request other agencies having special interest or expertise to become cooperating agencies. Agencies with jurisdiction by law must be requested to become cooperating agencies.

(e) Other States, and Federal land management entities, that may be significantly affected by the action or by any of the alternatives shall be notified early and their views solicited by the applicant in cooperation with the Administration. The Administration will prepare a written evaluation of any significant unresolved issues and furnish it to the applicant for incorporation into the environmental assessment (EA) or draft EIS.

(f) In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the action evaluated in each EIS or finding of no significant impact (FONSI) shall:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(g) For major transportation actions, the tiering of EISs as discussed in the CEQ regulation (40 CFR 1502.20) may be appropriate. The first tier EIS would focus on broad issues such as general location, mode choice, and areawide air quality and land use implications of the major alternatives. The second tier would address site-specific details on project impacts, costs, and mitigation measures.

(h) For the Federal-aid highway program:

(1) Each State must have procedures approved by the FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 40 CFR Parts 1500–1508.

(2) State public involvement/public hearing procedures must provide for:

(i) Coordination of public involvement activities and public hearings with the entire NEPA process.

(ii) Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions.

(iii) One or more public hearings or the opportunity for hearing(s) to be held by the State highway agency at a convenient time and place for any Federal-aid project which requires significant amounts of right-of-way, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which the FHWA determines that a public hearing is in the public interest.

(iv) Reasonable notice to the public of either a public hearing or the opportunity for a public hearing. Such notice will indicate the availability of explanatory information. The notice shall also provide information required to comply with public involvement requirements of other laws, Executive Orders, and regulations.

(v) Explanation at the public hearing of the following information, as appropriate:

(A) The project's purpose, need, and consistency with the goals and objectives of any local urban planning,

(B) The project's alternatives, and major design features,

(C) The social, economic, environmental, and other impacts of the project,

(D) The relocation assistance program and the right-of-way acquisition process.

(E) The State highway agency's procedures for receiving both oral and written statements from the public.

(vi) Submission to the FHWA of a transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered. The transcript will be accompanied by copies of all written statements from the public, both submitted at the public hearing or during an announced period after the public hearing.

(3) Based on the reevaluation of project environmental documents required by § 771.129, the FHWA and the State highway agency will determine whether changes in the project or new information warrant additional public involvement.

(4) Approvals or acceptances of public involvement/public hearing procedures prior to the publication date of this regulation remain valid.

(i) Applicants for capital assistance in the UMTA program achieve public participation on proposed projects by holding public hearings and seeking input from the public through the scoping process for environmental documents. For projects requiring EISs, a public hearing will be held during the circulation period of the draft EIS. For all other projects, an opportunity for public hearings will be afforded with adequate prior notice pursuant to 49 U.S.C. 1602(d), 1604(i), 1607a(f) and 1607a–1(d), and such hearings will be held when anyone with a significant social, economic, or environmental interest in the matter requests it. Any hearing on the action must be coordinated with the NEPA process to the fullest extent possible.

(j) Information on the UMTA environmental process may be obtained from: Director, Office of Planning Assistance, Urban Mass Transportation Administration, Washington, DC 20590. Information on the FHWA environmental process may be obtained from: Director, Office of Environmental Policy, Federal Highway Administration, Washington, DC 20590.

§ 771.113 Timing of Administration activities.

(a) The Administration in cooperation with the applicant will perform the work necessary to complete a FONSI or an EIS and comply with other related environmental laws and regulations to the maximum extent possible during the NEPA process. This work includes environmental studies, related engineering studies, agency coordination and public involvement. However, final design activities, property acquisition (with the exception of hardship and protective buying, as defined in § 771.117(d)), purchase of construction materials or rolling stock, or project construction shall not proceed until the following have been completed:

(1)(i) The action has been classified as a categorical exclusion (CE), or

(ii) A FONSI has been approved, or

(iii) A final EIS has been approved and available for the prescribed period of time and a record of decision has been signed;

(2) For actions proposed for FHWA funding, the FHWA Division Administrator has received and accepted the certifications and any required public hearing transcripts required by 23 U.S.C. 128;

(3) For activities proposed for FHWA funding, the programming requirements of 23 CFR Part 450, Subpart B, and 23 CFR Part 630, Subpart A, have been met.

(b) For FHWA, the completion of the requirements set forh in paragraph (a)(1) and (a)(2) of this section is considered acceptance of the general project location and concepts described in the environmental document unless otherwise specified by the approving official. However, such approval does not commit the Administration to approve any future grant request of fund the preferred alternative.

(c) Letters of Intent issued under the authority of section 3(a)(4) of the UMT Act are used by UMTA to indicate an intention to obligate future funds for multi-year capital transit projects. Letters of Intent will not be issued by UMTA until the NEPA process is completed.

§ 771.115 Classes of actions

There are three classes of actions which prescribe the level of documentation required in the NEPA process.

(a) *Class I (EISs).* Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions that normally required an EIS:

(1) A new controlled access freeway.

(2) A highway project of four or more lanes on a new location.

(3) New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated guideway transit).

(4) New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

(b) *Class II (CEs).* Actions that do not individually or cumulative have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in § 771.117(c). When appropriately documented, additional projects may also qualify as CEs pursuant to § 771.117(d).

(c) *Class III (EAs).* Actions in which the significance of the environmental impact is not clearly estabilished. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required.

§ 771.117 Categorical exclusions.

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significnt environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require the Administration, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Significant environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) The following actions meet the criteria for CEs in the CEQ regulation (section 1508.4) and § 771.117(a) of this regulation and normally do not require any further NEPA approvals by the Administration:

(1) Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR Part 630; approval of project concepts under 23 CFR Part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(3) Construction of bicycle and pedestrian lanes, paths, and facilities.

(4) Activities included in the State's "highway safety plan" under 23 U.S.C. 402.

(5) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

(7) Landscaping.

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(9) Emergency repairs under 23 U.S.C. 125.

(10) Acquisition of scenic easements.

(11) Determination of payback under 23 CFR Part 480 for property previously acquired with Federal-aid participation.

(12) Improvements to existing rest areas and truck weigh stations.

(13) Ridesharing activities.

(14) Bus and rail car rehabilitation.

(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

(16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations, and directives. (d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).

(2) Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.

(3) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes; advance land acquisition loans under section 3(b) of the UMT Act.[3] Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition quality for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(e) Where a pattern emerges of granting CE status for a particular type of action, the Administration will initiate rulemaking proposing to add this type of action to the lsit of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.

§ 771.119 Environmental assessments.

(a) An EA shall be prepared by the applicant in consultation with the Administration for each action that is not a CE and does not clearly require the preparation of an EIS, or where the Administration believes an EA would assist in determining the need for an EIS.

(b) For actions that require an EA, the applicant, in consultation with the Administration, shall, at the earliest appropriate time, begin consultation with interested agencies and others to advise them of the scope of the project and to achieve the following objectives: determine which aspects of the proposed action have potential for social, economic, or environmental impact; identify alternatives and measures which might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements which should be performed concurrently with the EA. The applicant shall accomplish this through an early coordination process (i.e., procedures under § 771.111) or through a scoping process. Public involvement shall be summarized and the results of agency coordination shall be included in the EA.

(c) The EA is subject to Administration approval before it is made available to the public as an Administration document. The UMTA applicants may circulate the EA prior to Administration approval provided that the document is clearly labeled as the applicant's document.

(d) The EA need not be circulated for comment but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices in accordance with paragraphs (e) and (f) of this section. Notice of availability of the EA, briefly describing the action and its impacts, shall be sent by the

[3] Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to thers, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

Protective acquisition is done to prevent imminent development of a parcel which is needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

applicant to the affected units of Federal, State and local government. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(e) When a public hearing is held as part of the application for Federal funds, the EA shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The notice of the public hearing in local newspapers shall announce the availability of the EA and where it may be obtained or reviewed. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the availability of the EA unless the Administration determines, for good cause, that a different period is warranted. Public hearing requirements are as described in § 771.111.

(f) When a public hearing is not held, the applicant shall place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action, advising the public of the availability of the EA and where information concerning the action may be obtained. The notice shall invite comments from all interested parties. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the publication of the notice unless the Administration determines, for good cause, that a different period is warranted.

(g) If no significant impacts are identified, the applicant shall furnish the administration a copy of the revised EA, as appropriate; the public hearing transcript, where applicable; copies of any comments received and responses thereto; and recommend a FONSI. The EA should also document compliance, to the extent possible, with all applicable environmental laws and Executive Orders, or provide reasonable assurance that their requirements can be met.

(h) When the Administration expects to issue a FONSI for an action described in § 771.115(a), copies of the EA shall be made available for public review (including the affected units of government) for a minimum of 30 days before the Administration makes its final decision (See 40 CFR 1501.4(e)(2).) This public availability shall be announced by a notice similar to a public hearing notice.

(i) If, at any point in the EA process, the Administration determines that the action is likely to have a significant impact on the environment, the preparation of an EIS will be required.

§ 771.121 Findings of no significant impact.

(a) The Administration will review the EA and any public hearing comments and other comments received regarding the EA. If the Administration agrees with the applicant's recommendations pursuant to § 771.119(g), it will make a separate written FONSI incorporating by reference the EA and any other appropriate environmental documents.

(b) After a FONSI has been made by the Administration, a notice of availability of the FONSI shall be sent by the applicant to the affected units of Federal, State and local government and the document shall be available from the applicant and the Administration upon request by the public. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(c) If another Federal agency has issued a FONSI on an action which includes an element proposed for Administration funding, the Administration will evaluate the other agency's FONSI. If the Administration determines that this element of the project and its environmental impacts have been adequately identified and assessed, and concurs in the decision to issue a FONSI, the Administration will issue its own FONSI incorporating the other agency's FONSI. If environmental issues have not been adequately identified and assessed, the Administration will require appropriate environmental studies.

§ 771.123 Draft environmental impact statements.

(a) A draft EIS shall be prepared when the Administration determines that the action is likely to cause significant impacts on the environment. When the decision has been made by the Administration to prepare an EIS, the Administration will issue a Notice of Intent (40 CFR 1508.22) for publication in the **Federal Register.** Applicants are encouraged to announce the intent to prepare an EIS by apprpriate means at the local level.

(b) After publication of the Notice of Intent, the Administration, in cooperation with the applicant, will begin a scoping process. The scoping process will be used to identify the range of alternatives and impacts and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. For FHWA, scoping is normally achieved through public and agency involvement procedures required by § 771.111. For UMTA, scoping is achieved by soliciting agency and public responses to the action by letter or by holding scoping meetings. If a scoping meeting is to be held, it should be announced in the Administration's Notice of Intent and by appropriate means at the local level.

(c) The draft EIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the Administration. The draft EIS shall evaluate all reasonable alternatives to the action and discuss the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The draft EIS shall also summarize the studies, reviews, consultations, and coordination required by environmental laws or Executive Orders to the extent appropriate at this stage in the environmental process.

(d) An applicant which is a "statewide agency" may select a consultant to assist in the preparation of an EIS in accordance with applicable contracting procedures. Where the applicant is a "joint lead" or "cooperating" agency, the applicant may select a consultant, after coordination with the Administration to assure compliance with 40 CFR 1506.5(c). The Administration will select any such consultant for "other" applicants. (See § 771.109(c) for definitions of these terms.)

(e) The Administration, when satisfied that the draft EIS complies with NEPA requirements, will approve the draft EIS for circulation by signing and dating the cover sheet.

(f) A lead, joint lead, or a cooperating agency shall be responsible for printing the EIS. The initial printing of the draft EIS shall be in sufficient quantity to meet requirements for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the draft EIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(g) The draft EIS shall be circulated for comment by the applicant on behalf of the Administration. The draft EIS shall be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the Environmental Protection Agency in accordance with 40 CFR 1506.9. The draft EIS shall be transmitted to:

(1) Public officials, interest groups, and members of the public known to have an interest in the proposed action or the draft EIS;

(2) Federal, State and local government agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the action. Copies shall be provided directly to appropriate State and local agencies, and to the State intergovernmental review contacts established under Executive Order 12372; and

(3) States and Federal land management entities which may be significantly affected by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such State or entity advise the Administration in writing of any disagreement with the evaluation of impacts in the statement. The Administration will furnish the comments received to the applicant along with a written assessment of any disagreements for incorporation into the final EIS.

(h) The UMTA requires a public hearing during the circulation period of all draft EISs. FHWA public hearing requirements are as described in § 771.111(h). Whenever a public hearing is held, the draft EIS shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The availability of the draft EIS shall be mentioned, and public comments requested, in any public hearing notice and at any public hearing presentation. If a public hearing on an action proposed for FHWA funding is not held, a notice shall be placed in a newspaper similar to a public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where the comments should be sent.

(i) The **Federal Register** public availability notice (40 CFR 1506.10) shall establish a period of not less than 45 days for the return of comments on the draft EIS. The notice and the draft EIS transmittal letter shall identify where comments are to be sent.

(j) For UMTA funded major urban mass transportation investments, the applicant shall prepare a report identifying a locally preferred alternative at the conclusion of the Draft EIS circulation period. Approval may be given to begin preliminary engineering on the principal alternative(s) under consideration. During the course of such preliminary engineering, the applicant will refine project costs, effectiveness, and impact information with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures. These studies will be used to prepare the final EIS or, where appropriate, a supplemental draft EIS.

§ 771.125 Final environmental impact statements.

(a)(1) After circulation of a draft EIS and consideration of comments received, a final EIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the Administration. The final EIS shall identify the preferred alternative and evaluate all reasonable alternatives considered. It shall also discuss substantive comments received on the draft EIS and responses thereto, summarize public involvement, and describe the mitigation measures that are to be incorporated into the proposed action. Mitigation measures presented as commitments in the final EIS will be incorporated into the project as specified in § 771.109(b). The final EIS should also document compliance, to the extent possible, with all applicable environmental laws and Executive Orders, or provide reasonable assurance that their requirements can be met.

(2) Every reasonable effort shall be made to resolve interagency disagreements on actions before processing the final EIS. If significant issues remain unresolved, the final EIS shall identify those issues and the consultations and other efforts made to resolve them.

(b) The final EIS will be reviewed for legal sufficiency prior to Administration approval.

(c) The Administration will indicate approval of the EIS for an action by signing and dating the cover page. Final EISs prepared for actions in the following categories will be submitted to the Administration's Headquarters for prior concurrence:

(1) Any action for which the Administration determines that the final EIS should be reviewed at the Headquarters office. This would typically occur when the Headquarters office determines that (i) additional coordination with other Federal, State or local governmental agencies is needed; (ii) the social, economic, or environmental impacts of the action may need to be more fully explored; (iii) the impacts of the proposed action are unusually great; (iv) major issues remain unresolved; or (v) the action involves national policy issues.

(2) Any action to which a Federal, State or local government agency has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the objecting agency).

(3) Major urban mass transportation investments as defined by UMTA's policy on major investments (49 FR 21284; May 18, 1984).

(d) The signature of the UMTA approving official on the cover sheet also indicates compliance with section 14 of the UMT Act and fulfillment of the grant application requirements of sections 3(d)(1) and (2), 5(h), and 5(i) of the UMT Act.

(e) Approval of the final EIS is not an Administration Action (as defined in § 771.107(c)) and does not commit the Administration to approve any future grant request to fund the preferred alternative.

(f) The initial printing of the final EIS shall be in sufficient quantity to meet the request for copies which can be reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the final EIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(g) The final EIS shall be transmitted to any persons, organizations, or agencies that made substantive comments on the draft EIS or requested a copy, no later than the time the document is filed with EPA. In the case of lengthy documents, the agency may provide alternative circulation processes in accordance with 40 CFR 1502.19. The applicant shall also publish a notice of availability in local newspapers and make the final EIS available through the mechanism established pursuant to DOT Order 4600.13 which implements Executive Order 12372. When filed with EPA, the final EIS shall be available for public review at the applicant's offices and at appropriate Administration offices. A copy should also be made available for public review at institutions such as local government offices, libraries, and schools, as appropriate.

§ 771.127 Record of decision.

(a) The Administration will complete and sign a record of decision (ROD) no sooner than 30 days after publication of the final EIS notice in the **Federal Register** or 90 days after publication of a notice for the draft EIS, whichever is later. The ROD will present the basis for the decision as specified in 40 CFR 1505.2, summarize any mitigation measures that will be incorporated in the project and document any required section 4(f) approval in accordance with § 771.135(l). Until any required ROD has been signed, no further approvals may be given except for administrative

activities taken to secure further project funding and other activities consistent with 40 CFR 1506.1.

(b) If the Administration subsequently wishes to approve an alternative which was not identified as the preferred alternative but was fully evaluated in the final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the ROD, a revised ROD shall be subject to review by those Administration offices which reviewed the final EIS under § 771.125(c). To the extent practicable the approved revised ROD shall be provided to all persons, organizations, and agencies that received a copy of the final EIS pursuant to § 771.125(g).

§ 771.129 Re-evaluations.

(a) A written evaluation of the draft EIS shall be prepared by the applicant in cooperation with the Administration if an acceptable final EIS is not submitted to the Administration within 3 years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether a supplement to the draft EIS or a new draft EIS is needed.

(b) A written evaluation of the final EIS will be required before further approvals may be granted if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications and estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major Administration approval or grant.

(c) After approval of the EIS, FONSI, or CE designation, the applicant shall consult with the Administration prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested Administration action. These consultations will be documented when determined necessary by the Administration.

§ 771.130 Supplemental environmental impact statements.

(a) A draft EIS, final EIS, or supplemental EIS may be supplemented at any time. An EIS shall be supplemented whenever the Administration determines that:

(1) Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS; or

(2) New information or circumstances relevant to environmental concerns and bearings on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

(b) However, a supplemental EIS will not be necessary where:

(1) The changes to the proposed action, new information, or new circumstances result in a lessening of adverse environmental impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS; or

(2) The Administration decides to approve an alternative fully evaluated in an approved final EIS but not identified as the preferred alternative. In such a case, a revised ROD shall be prepared and circulated in accordance with § 771.127(b).

(c) Where the Administration is uncertain of the significance of the new impacts, the applicant will develop appropriate environmental studies or, if the Administration deems appropriate, an EA to assess the impacts of the changes, new information, or new circumstances. If, based upon the studies, the Administration determines that a supplemental EIS is not necessary, the Administration shall so indicate in the project file.

(d) A supplement is to be developed using the same process and format (i.e., draft EIS, final EIS, and ROD) as an original EIS, except that scoping is not required.

(e) A supplemental draft EIS may be necessary for UMTA major urban mass transportation investments if there is a substantial change in the level of detail on project impacts during project planning and development. The supplement will address site-specific impacts and refined cost estimates that have been developed since the original draft EIS.

(f) In some cases, a supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation or the evaluation of location or design variations for a limited portion of the overall project. Where this is the case, the preparation of a supplemental EIS shall not necessarily:

(i) Prevent the granting of new approvals;

(ii) Require the withdrawal of previous approvals; or

(iii) Require the suspension of project activities; for any activity not directly affected by the supplement. If the changes in question are of such magnitude to require a reassessment of the entire action, or more than a limited portion of the overall action, the Administration shall suspend any activities which would have an adverse environmental impact or limit the choice of reasonable alternatives, until the supplemental EIS is completed.

§ 771.131 Emergency action procedures.

Requests for deviations from the procedures in this regulation because of emergency circumstances (40 CFR 1506.11) shall be referred to the Administration's headquarters for evaluation and decision after consultation with CEQ.

§ 771.133 Compliance with other requirements.

The final EIS or FONSI should document compliance with requirements of all applicable environmental laws, Executive Orders, and other related requirements. If full compliance is not possible by the time the final EIS or FONSI is prepared, the final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document constitutes adoption of any Administration findings and determinations that are contained therein. The FHWA approval of the appropriate NEPA document will constitute its finding of compliance with the report requirements of 23 U.S.C. 128.

§ 771.135 Section 4(f) (49 U.S.C. 303).

(a)(l) The Administration may not approve the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:

(i) There is no feasible and prudent alternative to the use of land from the property; and

(ii) The action includes all possible planning to minimize harm to the property resulting from such use.

(2) Supporting information must demonstrate that there are unique problems or unusual factors involved in the use of alternatives that avoid these properties or that the cost, social, economic, and environmental impacts, or community disruption resulting from such alternatives reach extraordinary magnitudes.

(b) The Administration will determine the application of section 4(f). Any use of lands from a section 4(f) property shall be evaluated early in the development of the action when alternatives to the proposed action are under study.

(c) Consideration under section 4(f) is not required when the Federal, State, or local officials having jurisdiction over a park, recreation area or refuge determine that the entire site is not

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significant. In the absence of such a determination, the section 4(f) land will be presumed to be significant. The Administration will review the significance determination to assure its reasonableness.

(d) Where Federal lands or other public land holdings (e.g., State forests) are administered under statutes permitting management for multiple uses, and, in fact, are managed for multiple uses, section 4(f) applies only to those portions of such lands which function for, or are designated in the plans of the administering agency as being for, significant park, recreation, or wildlife and waterfowl purposes. The determination as to which lands so function or are so designated, and the significance of those lands, shall be made by the officials having jurisdiction over the lands. The Administration will review this determination to assure its reasonableness. The determination of significance shall apply to the entire area of such park, recreation, or wildlife and waterfowl refuge sites.

(e) In determining the application of section 4(f) to historic sites, the Administration, in cooperation with the applicant, will consult with the State Historic Preservation Officer (SHPO) and appropriate local officials to identify all properties on or eligible for the National Register of Historic Places (National Register). The section 4(f) requirements apply only to sites on or eligible for the National Register unless the Administration determines that the application of section 4(f) is otherwise appropriate.

(f) The Administration may determine that section 4(f) requirements do not apply to restoration, rehabilitation, or maintenance of transportation facilities that are on or eligible for the National Register when:

(1) Such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and

(2) The SHPO and the Advisory Council on Historic Preservation (ACHP) have been consulted and have not objected to the Administration finding in paragraph (f)(l) of this section.

(g)(l) Section 4(f) applies to all archeological sites on or eligible for inclusion on the National Register, including those discovered during construction except as set forth in paragraph (g)(2) of this section. Where section 4(f) applies to archeological sites discovered during construction, the section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take account of the level of investment already made. The review process, including the consultation with other agencies, will be shortened as appropriate.

(2) Section 4(f) does not apply to archeological sites where the Administration, after consultation with the SHPO and the ACHP, determines that the archeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken or where the Administration decides, with agreement of the SHPO and, where applicable, the ACHP not to recover the resource.

(h) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made and determinations of significance changed late in the development of a proposed action. With the exception of the treatment of archeological resources in paragraph (g) of this section, the Administration may permit a project to proceed without consideration under section 4(f) if the property interest in the section 4(f) lands was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by section 4(f) prior to acquisition.

(i) The evaluations of alternatives to avoid the use of section 4(f) land and of possible measures to minimize harm to such lands shall be developed by the applicant in cooperation with the Administration. This information should be presented in the draft EIS, EA, or, for a project classified as a CE in a separate document. The section 4(f) evaluation shall be provided for coordination and comment to the officials having jurisdiction over the section 4(f) property and to the Department of the Interior, and as appropriate to the Department of Agriculture and the Department of Housing and Urban Development. A minimum of 45 days shall be established by the Administration for receipt of comments. Uses of section 4(f) land covered by a programmatic section 4(f) evaluation shall be documented and coordinated as specified in the programmatic section 4(f) evaluation.

(j) When adequate support exists for a section 4(f) determination, the discussion in the final EIS, FONSI, or separate section 4(f) evaluation shall specifically address:

(1) The reasons why the alternatives to avoid a section 4(f) property are not feasible and prudent; and

(2) All measures which will be taken to minimize harm to the section 4(f) property.

(k) The final Section 4(f) evaluation will be reviewed for legal sufficiency.

(l) For actions processed with EISs, the Administration will make the section 4(f) approval either in its approval of the final EIS or in the ROD. Where the section 4(f) approval is documented in the final EIS, the Administration will summarize the basis for its section 4(f) approval in the ROD. Actions requiring the use of section 4(f) property, and proposed to be processed with a FONSI or classified as a CE, shall not proceed until notified by the Administration of section 4(f) approval. For these actions, any required section 4(f) approval will be documented separately.

(m) Circulation of a separate section 4(f) evaluation will be required when:

(l) A proposed modification of the alignment or design would require the use of section 4(f) property after the CE, FONSI, draft EIS, of final EIS has been processed;

(2) The Administration determines, after processing the CE, FONSI, draft EIS, or final EIS that section 4(f) applies to a property;

(3) A proposed modification of the alignment, design, or measures to minimize harm (after the original section 4(f) approval) would result in a substantial increase in the amount of section 4(f) land used, a substantial increase in the adverse impacts to section 4(f) land, or a substantial reduction in mitigation measures; or

(4) Another agency is the lead agency for the NEPA process, unless another DOT element is preparing the section 4(f) evaluation.

(n) If the Administration determines under section 771.135(m) or otherwise, that section 4(f) is applicable after the CE, FONSI, or final EIS has been processed, the decision to prepare and circulate a section 4(f) evaluation will not necessarily require the preparation of a new or supplemental environmental document. Where a separately circulated section 4(f) evaluation is prepared, such evaluation does not necessarily:

(i) Prevent the granting of new approvals;

(ii) Require the withdrawal of previous approvals; or

(iii) Require the suspension of project activities; for any activity not affected by the section 4(f) evaluation.

(o) An analysis required by section 4(f) may involve different levels of detail where the section 4(f) involvement is addressed in a tiered EIS.

(1) When the first-tier, broad-scale EIS is prepared, the detailed information necessary to complete the section 4(f) evaluation may not be available at that stage in the development of the action. In such cases, an evaluation should be made on the potential impacts that a proposed action will have on section 4(f) land and whether those impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible and prudent locations or alternatives for the action to avoid the use of section 4(f) land. This preliminary determination shall consider all possible planning to minimize harm to the extent that the level of detail available at the first-tier EIS stage allows. It is recognized that such planning at this stage will normally be limited to ensuring that opportunities to minimize harm at subsequent stages in the development process have not been precluded by decisions made at the first-tier stage. This preliminary determination is then incorporated into the first-tier EIS.

(2) A section 4(f) approval made when additional design details are available will include a determination that:

(i) The preliminary section 4(f) determination made pursuant to paragraph (o)(1) of this section is still valid; and

(ii) The criteria of paragraph (a) of this section have been met.

§ 771.137 International actions.

(a) The requirements of this part apply to:

(1) Administration actions significantly affecting the environment of a foreign nation not participating in the action or not otherwise involved in the action.

(2) Administration actions outside the U.S., its territories, and possessions which significantly affect natural resources of global importance designated for protection by the President or by international agreement.

(b) If communication with a foreign government concerning environmental studies or documentation is anticipated, the Administration shall coordinate such communication with the Department of State through the Office of the Secretary of Transportation.

Due to the revision of 23 CFR Part 771, the following technical amendments are necessary to correct references and certain phrases found in Parts 640 and 712. These technical amendments are effective on the same date as the rule for Part 771.

PART 640—[AMENDED]

§ 640.107 [Amended]

3. In § 640.107, paragraph (d) is amended by removing the words "a nonmajor action" and "23 CFR 771.9" and inserting in their place "categorical exclusions" and "23 CFR Part 771" respectively.

PART 712—[AMENDED]

§ 712.204 [Amended]

4. In § 712.204, paragraph (c)(1) is amended by removing the words "negative declaration" and inserting in their place "environmental assessment;" paragraph (c)(3)(ii) is amended by removing the reference "§ 771.5" and the words "negative declarations" and inserting in their place "23 CFR Part 771" and "findings of no significant impact," respectively; and paragraph (c)(3)(iii) is amended by removing the reference "§ 771.19" and the word "statements" and inserting in their place "23 CFR Part 771" and "evaluations," respectively.

PART 790—[REMOVED]

5. Part 790, Public Hearings and Location/Design Approval is removed from Chapter I of 23 CFR, effective one year after publication in the **Federal Register.**

Due to the rescission of 23 CFR Part 790, the following technical amendments are necessary to correct references found in other parts of Title 23, Code of Federal Regulations, as set forth below. These technical amendments are effective on the same date as the rescission of 23 CFR Part 790.

PART 635—[AMENDED]

§ 635.309 [Amended]

6. In § 635.309, paragraph (d) is amended by removing "has satisfied the requirements of 23 CFR Part 790 where applicable or, under alternate procedures which have been accepted by FHWA" and inserting in its place "in accord with 23 CFR 771.111(h)."

PART 650—[AMENDED]

§ 650.109 [Removed]

7. Part 650, Subpart A, is amended by removing § 650.109, Public Involvement, in its entirety.

PART 712—[AMENDED]

§ 712.204 [Amended]

8. In § 712.204, paragraphs (c)(3) (iii) and (iv) are amended by removing, "and" and inserting a period at the end of paragraph (c)(3)(iii), and removing paragraph (c)(3)(iv) entirely.

[FR Doc. 87-19530 Filed 8-27-87; 8:45 am]
BILLING CODE 4910-22-M

VOL
52
ISS
1
67
AG
28
1987
UMI

federal register

Friday
August 28, 1987

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 888

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program; Proposed Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-87-1712; FR-2377]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Markets Rents periodically, but not less frequently than annually. The Department's regulations at 24 CFR Part 888 provide for notice and comment process for developing Fair Market Rents, and today's document proposes new Fair Market Rents. The proposal would amend Fair Market Rents schedules for the Section 8 Existing Housing Certificate Program (Part 882, Subparts A and B) including space rentals by owners of manufactured homes the Section 8 Existing Housing Certificate Program (Part 882, Subpart F), the Section 8 Moderate Rehabilitation Program (Part 882, Subparts D and E), and Section 8 existing housing assisted under Part 886, Subpart A and C (Section 8 loan management and property disposition programs). In addition, FMRs are used to determine payment Standard schedules in the Housing Voucher Program.

DATE: Comments are due October 27, 1987.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Each comment should include the commenter's name and address and must refer to the docket number indicated in the heading of this notice. Each commenter should simultaneously submit a copy its comments to the Economic and Market Analysis Staff in the appropriate HUD Field Office. A copy of each comment submitted to the Rule Docket Clerk will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Cecelia D. Livingston, Housing Voucher Division, Office of Elderly and Assisted Housing, telephone (202) 755-6477. For technical information on the development of schedules for specific areas or the methods used for the rent calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 755-5577. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes a housing assistance program to aid lower families in renting decent, safe, and sanitary, housing. Assistance payments are limited by Fair Market Rents (FMRs) (or payment standards based on FMRs in the Housing Voucher Program) established by HUD for different areas.

In general, the FMR for an area is the amount that would be needed to rent privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

II. Development of FMRs

Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. The Department's regulations provide that HUD will develop FMRs by publishing proposed FMRs for public comment, analyzing the public comment, and publishing final FMRs. (See 24 CFR 888.115.)

Last year, HUD announced proposed FMRs for all areas on December 8, 1986 (51 FR 44198), and announced final FMRs on April 29, 1987 (52 15630) and on June 30, 1987 (52 FR 24381). Today's annoucement of proposed FMRs comes less than a year after the annoucement of proposed FY-1987 FMRs. HUD is attempting by this publication to make FMRs effective as early as possible in the applicable fiscal year.

As noted above, HUD announced final FY-1987 FMRs in two publications. The first publication announced final FMRs for those market areas for which no public comment was received or for which all public comments received supported the proposed FMRs. The second publication issued final FMRs for the remaining market areas and contained an analysis and response to public comments.

HUD is concerned that last year's procedure may have discouraged some interested parties from submitting comments in opposition to proposed FMRs. (E.g. An interested party may have believed that a proposed FMR, while increased over the prior year's FMR, was not high enough. Under the FY-1987 procedure, such a commenter might not have submitted a comment supporting a higher FMR because the comment would have delayed the effective date of the proposed smaller increase.)

To avoid the "chilling" of public comment, HUD intends to use the following procedure for the publication of final FY-1988 FMRs: Shortly after the close of the 60-day public comment period, HUD will, following an initial review of the public comments, publish FMRs for effect in all areas. The FMRs published for effect will either be at the proposed or the existing FMR level.

In making the determination whether to publish at the proposed or existing FMR level, HUD consider only those comments that are accompanied by supporting data as described in section VI. of this notice, below. HUD will publish FMRs at the proposed level, unless (1) HUD has proposed an increase to an FMR and a comment is considered that supports an FMR that is less than the proposed FMR, or (2) HUD has proposed a decrease to an FMR and comment is considered that supports an FMR that exceeds the proposed FMR. Under these two circumstances, HUD will publish the FMR at the existing, rather than the proposed, level.

Following the publication of this effective FMR schedule, HUD will review all public comments, including those comments that did not include adequate supporting data. Based on the information contained in the comments, as supplemented by information collected from the field offices, HUD will publish a second announcement making necessary revisions to the FMR schedules and including an analysis and response to the comments.

III. Applicability of FMRs

These FMRs are used for a variety of programs. They apply to the Section 8 Existing Housing Certificate Program under Part 882, (Subparts A and B), including space rentals by owners of manufactured homes (Subpart F), the Moderate Rehabilitation Program under Part 882 (Subparts D and E), the Section 8 Housing Assistance Program for Projects with HUD-insured or HUD-held Mortgages under Part 886 (Subpart A), as well as for existing housing under the Section 8 Housing Assistance Program for the Disposition without Substantial Rehabilitation of HUD-owned projects

under Part 886 (Subpart C). In addition, FMRs are used to establish payment standards for the Housing Voucher Program.

IV. Fair Market Rent Schedules

This document proposes revised Fair Market Rents, which reflect estimated rent levels as of April 1, 1988. Schedules at the end of this document list the FMR levels for Existing Housing (Schedule B) and Manufactured Home Spaces in the Section 8 Certificate Program (Shedule D). FMRs for the Moderate Rehabilitation Program are 120 percent of the Schedule B Existing Housing Fair Market Rents (see 24 CFR 882.408(a) and 888.113(e)(1)). The FMR for a Single Room Occupancy (SRO) unit in the Existing Housing Certificate program is 75 percent of the zero-bedroom FMR listed in Schedule B. The FMR limitation for an SRO unit in the Moderate Rehabilitation program is 75 percent of the Moderate Rehabilitation FMR for a zero-bedroom unit. For an SRO in the Housing Voucher Program, the PHA may request HUD approval of an applicable standard for SRO units within the range of 75 to 100 percent of the zero-bedroom FMR listed in Schedule B or the HUD approved community-wide exception rent.

V. Method Used to Develop FMRs

The elements used by HUD in developing the FMRs are: (1) The 45th percentile rent (that is, the rent below which 45 percent of the standard quality rental housing units are distributed); (2) Rents based on units occupied by recent movers (households who moved within two years before the date of the survey data used in these calculations); and (3) Exclusion from the data base of public housing units and recently completed housing (units built within two years of the survey dates). (See 24 CFR 888.113.)

In establishing the proposed FMRs, HUD uses the most accurate data available. Data used to compute the FY–1988 FMRs include the 1980 Census data, post-1980 American Housing Survey (AHS) data and reliable area specific data submitted by public commenters in the development of the FY–1986 and FY–1987 FMRs. (In 1986, area specific data were accepted in 224 FMR areas of the 386 FMR areas subject to public comment. In 1987, specific data were accepted for 46 of 115 FMR areas subject to public comment.)

This year's proposed FMRs were calculated by updating last year's final FMRs one additional year to April 1, 1988 based on the most recent CPI data available on average annual changes for rents and utilities. The FMRs have been calculated for each Primary Metropolitan Statistical Area (PMSA), Metropolitan Statistical Area (MSA), and nonmetropolitan county.

The following areas are being proposed for no increase, based on no change in the CPI data. Brazoria, TX PMSA; Galveston-Texas City, TX PMSA; and the Houston, TX PMSA. The Owenboro, Kentucky MSA is also being proposed for no change based on a followup of the request made in last year's comment from the local PHA.

In developing proposed FMRs for the State of Alaska, the Department has determined that the recent CPI data for the Anchorage area more accurately represents Alaska market conditions than do CPI data from the West Census Region. Also, the Department has requested information from the HUD Carribean Field Office concerning the possibility that the FMRs had previously been overestimated in Puerto Rico and the Virgin Islands. Based on the information submitted, we continue to believe that the current FMRs are adequate. Accordingly, the proposed rents for these areas reflect no change from last year.

The special circumstances of these areas are consistent with the Department's efforts to "use the most accurate data available" and to describe the additional data in the publication of proposed FMRs. (See 24 CFR 88.113(d).)

This year's proposed FMRs for manufactured homes spaces were calculated by updating last year's FMRs to April 1, 1988, using the most current average annual change in the CPI residential rent index (with hearing costs included in the rent factored out). The FMRs for 15 nonmetropolitan counties were held at last year's levels as a result of previous definitional changes of metropolitan areas.

VI. Request for Comments

The Department seeks public comment on FMR levels for specific areas. Comments of FMR levels should include sufficient information (including a full description on local data and methodology used) to justify any proposed changes. Changes may be proposed in all or any of the unit sizes on the schedule. Recommendations and supporting data must reflect the rent levels that exist within the entire market area (Metropolitan Statisticial Area, Primary Metropolitan Statistical Area, or nonmetropolitan county).

Local housing market studies, rental market surveys or other comprehensive rental market data may be submitted to show the 45th percentile rent levels for standard quality rental housing units. To be representative, the local data must exclude units built within the last two years of the PHAs' survey, should not be drawn solely from vacant units, and should approximate the same proportion of units by structure type (for example, highrise or single family detached) and date of construction as exists in the total local inventory. A weighted sample may be used to obtain appropriate coverage. Since the Department's data base includes only recent movers, where possible, commenters may wish to submit surveys based only on recent movers.

Local rental market surveys may be conducted to cover all bedroom sizes, or only selected bedroom sizes. Surveys that cover only two-bedroom units are acceptable if rent proposals for other size units are consistent with established HUD differentials by bedroom size, or if other pertinent data are supplied to support the proposals for other size units. When three- and four-bedroom units are surveyed, the following procedure must be used to determine appropriate FMR proposals: (1) Determine the 45th percentile rents for the three- and four-bedroom units surveyed, (2) multiply the 45th percential three-bedroom rent by 1.087 to determine the three-bedroom FMR, and (3) multiply the four-bedroom rent by 1.007 to determine the four-bedroom FMR. The use of these factors will produce the same upward adjustments in the rent differentials by bedroom size as those applied to the rent differentials for three- and four-bedroom units in the HUD methodology.

For areas where gross rents have increased significantly as a result of taxes or the costs of fuel and utilities applicable to a major portion of the FMR area, data relating to these increased costs may be submitted to justify revision of the FMRs. Data must be adequately described to facilitate evaluation and comparison with tax, fuel and utility costs data used in the Department's FMR calculations, and must be representative of the rental inventory.

VII. Other Matters

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Existing Housing Program is categorically excluded from the Department's National Environment Policy Act procedures under 24 CFR 50.20(d).

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this Notice does not have a significant economic impact on a

substantial number of small entities because FMRs reflect the rents for similar quality units in the area. Therefore, FMRs do not change the rent from that which would be charged if the project were not in the Section 8 program.

This document does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the document indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (Section 8).

Accordingly, the Fair Market Rent Schedules are proposed to be amended as follows:

Date: August 19, 1987.

Thomas T. Demery,

Assistant Secretary for Housing, Federal Housing Commissioner.

Section 8 Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program Schedules B & D—General Explanatory Notes

1. Geographic Coverage

a. FMRs for Existing Housing (Schedule B) are established for all Metropolitan Statistical Areas (MSAs), Primary Metropolitan Statistical Areas (PMSAs), nonmetropolitan counties, and county equivalents in the United States, District of Columbia, Puerto Rico, the Virgin Islands, and Guam. FMRs also are established for nonmetropolitan parts of counties in the New England States.

b. FMRs for Manufactured Home spaces in the Section 8 Certificate Program (Schedule D) are established for all MSAs, PMSAs, selected nonmetropolitan counties, and the residual nonmetropolitan portion of each State.

c. The current 338 MSAs and PMSAs are those established by the Office of Management and Budget effective October 18, 1986.

2. Arrangement of FMR Areas and Identification of Constitutent Parts

a. The FMR areas in Schedules B and D are listed alphabetically by MSA–PMSA and nonmetropolitan county within each State.

b. The constituent counties (and New England towns and cities) included in each MSA and PMSA are listed immediately following the MSA–PMSA names in each State listed in Schedule B. All of the constituent parts of an MSA that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

e. The FMRs are listed by dollar amount on the first line beginning with the FMR area name.

BILLING CODE 4210-27-M

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: ALABAMA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ANNISTON, AL MSA COUNTY(IES): CALHOUN	229	277	326	409	458
BIRMINGHAM, AL MSA COUNTY(IES): BLOUNT, JEFFERSON, ST CLAIR, SHELBY, WALKER	268	325	383	478	535
COLUMBUS, GA-AL MSA COUNTY(IES): RUSSELL	237	285	337	422	474
DOTHAN, AL MSA COUNTY(IES): DALE, HOUSTON	267	323	381	475	533
FLORENCE, AL MSA COUNTY(IES): COLBERT, LAUDERDALE	242	295	348	431	483
GADSDEN, AL MSA COUNTY(IES): ETOWAH	210	256	302	378	423
HUNTSVILLE, AL MSA COUNTY(IES): MADISON	269	326	384	480	537
MOBILE, AL MSA COUNTY(IES): BALDWIN, MOBILE	278	337	396	496	557
MONTGOMERY, AL MSA COUNTY(IES): AUTAUGA, ELMORE, MONTGOMERY	246	300	352	441	494
TUSCALOOSA, AL MSA COUNTY(IES): TUSCALOOSA	258	314	370	462	518

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BARBOUR	194	235	277	346	388	BIBB	188	229	270	337	377
BULLOCK	198	240	282	353	395	BUTLER	182	222	261	326	366
CHAMBERS	192	233	274	343	384	CHEROKEE	192	233	274	343	384
CHILTON	188	229	270	337	377	CHOCTAN	210	256	302	378	423
CLARKE	210	256	302	378	423	CLAY	192	233	274	343	384
CLEBURNE	192	233	274	343	384	COFFEE	194	235	277	346	388
CONECUH	210	256	302	378	423	COOSA	192	233	274	343	384
COVINGTON	194	235	277	346	388	CRENSHAW	198	240	282	353	395
CULLMAN	234	284	335	419	469	DALLAS	210	256	302	378	423
DE KALB	221	268	315	393	442	ESCAMBIA	178	217	254	319	356
FAYETTE	188	229	270	337	377	FRANKLIN	188	228	268	335	375
GENEVA	194	235	277	346	388	GREENE	188	229	270	337	377
HALE	188	229	270	337	377	HENRY	194	235	277	346	388
JACKSON	221	268	315	393	442	LAMAR	188	229	270	337	377
LAWRENCE	234	284	335	419	469	LEE	240	291	343	429	481
LIMESTONE	199	242	285	356	399	LOWNDES	198	240	282	353	395
MACON	210	255	301	376	421	MARENGO	210	256	302	378	423
MARION	188	228	268	335	375	MARSHALL	206	251	294	365	408
MONROE	210	256	302	378	423	MORGAN	234	284	335	419	469
PERRY	210	256	302	378	423	PICKENS	188	229	270	337	377
PIKE	210	255	301	376	421	RANDOLPH	192	233	274	343	384
SUMTER	210	256	302	378	423	TALLADEGA	192	233	274	343	384
TALLAPOOSA	192	233	274	343	384	WASHINGTON	210	256	302	378	423
WILCOX	210	256	302	378	423	WINSTON	188	228	268	335	375

S T A T E: ALASKA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ANCHORAGE, AK MSA COUNTY(IES): ANCHORAGE	448	545	641	801	897

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALEUTIAN I.	532	646	760	950	1064	BETHEL	532	646	760	950	1064
BRISTOL BAY	532	646	760	950	1064	DILLINGHAM	532	646	760	950	1064
FAIRBKS-N.ST	438	532	626	783	877	HAINES	532	646	760	950	1064
JUNEAU	532	646	760	950	1064	KENAI-PENIN	438	532	626	783	877
KETCH-GATEWY	532	646	760	950	1064	KOBUK	532	646	760	950	1064
KODIAK ISLND	532	646	760	950	1064	MATANUSKA-SU	438	532	626	783	877
NOME	532	646	760	950	1064	NORTH SLOPE	532	646	760	950	1064
P.WLS-O.KTCH	532	646	760	950	1064	SITKA	532	646	760	950	1064
SKGWY-YKT-AN	532	646	760	950	1064	SE FAIRBANKS	438	532	626	783	877
VALDEZ-CORDO	438	532	626	783	877	WADE HAMPTON	532	646	760	950	1064
WRNGLL-PTRBR	532	646	760	950	1064	YKN-KOYKK	532	646	760	950	1064

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: ARIZONA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
PHOENIX, AZ MSA COUNTY(IES): MARICOPA	379	457	539	677	754
TUCSON, AZ MSA COUNTY(IES): PIMA	359	438	515	644	721

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
APACHE	263	319	376	470	526
COCONINO	333	405	476	596	667
GRAHAM	268	326	382	479	537
LAPAZ	338	412	484	605	678
NAUAJO	263	319	376	470	526
SANTA CRUZ	268	326	382	479	537
YUMA	338	412	484	605	678

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
COCHISE	268	326	382	479	537
GILA	270	329	388	484	541
GREENLEE	268	326	382	479	537
MOHAUE	338	412	484	605	678
PINAL	270	329	388	484	541
YAVAPAI	333	405	476	596	667

S T A T E: ARKANSAS

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
FAYETTEVILLE-SPRINGDALE, AR MSA COUNTY(IES): WASHINGTON	251	304	358	447	501
FORT SMITH, AR-OK MSA COUNTY(IES): CRAWFORD, SEBASTIAN	243	296	348	436	488
LITTLE ROCK-NORTH LITTLE ROCK, AR MSA COUNTY(IES): FAULKNER, LONOKE, PULASKI, SALINE	290	351	413	517	579
MEMPHIS, TN-AR-MS MSA COUNTY(IES): CRITTENDEN	258	317	374	464	522
PINE BLUFF, AR MSA COUNTY(IES): JEFFERSON	240	293	345	432	483
TEXARKANA, TX-TEXARKANA, AR MSA COUNTY(IES): MILLER	240	292	344	430	481

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ARKANSAS	204	247	292	364	408
BAXTER	231	281	332	414	465
BOONE	231	281	332	414	465
CALHOUN	195	240	280	351	392
CHICOT	194	235	277	347	389
CLAY	217	264	310	388	435
CLEVELAND	201	244	288	359	402
CONWAY	200	243	287	358	400
CROSS	205	251	296	365	408
DESHA	194	235	277	347	389
FRANKLIN	181	219	258	322	361
GARLAND	214	260	305	382	429
GREENE	217	264	310	388	435
HOTSPRING	214	260	305	382	429
INDEPENDENCE	227	276	325	406	455
JACKSON	227	276	325	406	455
LAFAYETTE	199	240	284	356	398
LEE	205	251	296	365	408
LITTLE RIVER	199	240	284	356	398
MADISON	231	281	332	414	465
MISSISSIPPI	235	287	337	421	472
MONTGOMERY	214	260	305	382	429
NEWTON	231	281	332	414	465
PERRY	200	243	287	358	400
PIKE	214	260	305	382	429
POLK	216	262	308	385	432
PRAIRIE	175	213	251	313	350
ST FRANCIS	205	251	296	365	408
SEARCY	231	281	332	414	465
SHARP	227	276	325	406	455
UNION	195	240	280	351	392
WHITE	227	276	325	406	455
YELL	200	243	287	358	400

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ASHLEY	194	235	277	347	389
BENTON	240	291	339	417	465
BRADLEY	194	235	277	347	389
CARROLL	231	281	332	414	465
CLARK	214	260	305	382	429
CLEBURNE	227	276	325	406	455
COLUMBIA	195	240	280	351	392
CRAIGHEAD	255	308	363	453	509
DALLAS	195	240	280	351	392
DREW	194	235	277	347	389
FULTON	227	276	325	406	455
GRANT	201	244	288	359	402
HEMPSTEAD	199	240	284	356	398
HOWARD	199	240	284	356	398
IZARD	227	276	325	406	455
JOHNSON	200	243	287	358	400
LAWRENCE	217	264	310	388	435
LINCOLN	194	235	277	347	389
LOGAN	181	219	258	322	361
MARION	231	281	332	414	465
MONROE	175	213	251	313	350
NEVADA	199	240	284	356	398
OUACHITA	195	237	278	349	392
PHILLIPS	205	251	296	365	408
POINSETT	217	264	310	388	435
POPE	200	243	287	358	400
RANDOLPH	217	264	310	388	435
SCOTT	181	219	258	322	361
SEVIER	199	240	284	356	398
STONE	227	276	325	406	455
VAN BUREN	227	276	325	406	455
WOODRUFF	227	276	325	406	455

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: CALIFORNIA	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ANAHEIM-SANTA ANA, CA PMSA COUNTY(IES): ORANGE	530	643	757	946	1060
BAKERSFIELD, CA MSA COUNTY(IES): KERN	367	445	524	655	734
CHICO, CA MSA COUNTY(IES): BUTTE	322	391	460	575	644
FRESNO, CA MSA COUNTY(IES): FRESNO	334	407	479	598	670
LOS ANGELES-LONG BEACH, CA PMSA COUNTY(IES): LOS ANGELES	471	564	656	840	949
MERCED, CA MSA COUNTY(IES): MERCED	315	383	451	580	657
MODESTO, CA MSA COUNTY(IES): STANISLAUS	352	427	504	630	705
OAKLAND, CA PMSA COUNTY(IES): ALAMEDA, CONTRA COSTA	520	631	744	930	1041
OXNARD-VENTURA, CA PMSA COUNTY(IES): VENTURA	453	550	647	809	907
REDDING, CA MSA COUNTY(IES): SHASTA	334	407	479	598	670
RIVERSIDE-SAN BERNARDINO, CA PMSA COUNTY(IES): RIVERSIDE, SAN BERNADIN	385	454	529	684	771
SACRAMENTO, CA MSA COUNTY(IES): EL DORADO, PLACER, SACRAMENTO, YOLO	354	421	504	732	776
SALINAS-SEASIDE-MONTEREY, CA MSA COUNTY(IES): MONTEREY	401	487	572	717	803
SAN DIEGO, CA MSA COUNTY(IES): SAN DIEGO	435	534	626	783	876
SAN FRANCISCO, CA PMSA COUNTY(IES): MARIN, SAN FRANCISC, SAN MATEO	569	690	817	1018	1139
SAN JOSE, CA PMSA COUNTY(IES): SANTA CLARA	559	632	738	963	1057
SANTA BARBARA-SANTA MARIA-LOMPOC, CA MSA COUNTY(IES): SANTA BARBAR	453	550	648	811	908
SANTA CRUZ, CA PMSA COUNTY(IES): SANTA CRUZ	509	618	729	910	1020
SANTA ROSA-PETALUMA, CA PMSA COUNTY(IES): SONOMA	448	544	641	801	897
STOCKTON, CA MSA COUNTY(IES): SAN JOAQUIN	311	375	442	565	659
VALLEJO-FAIRFIELD-NAPA, CA PMSA COUNTY(IES): NAPA, SOLANO	417	475	559	807	870
VISALIA-TULARE-PORTERVILLE, CA MSA COUNTY(IES): TULARE	312	380	447	647	709
YUBA CITY, CA MSA COUNTY(IES): SUTTER, YUBA	276	336	395	520	583

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALPINE	367	445	524	655	734	AMADOR	367	445	524	655	734
CALAVERAS	367	445	524	655	734	COLUSA	277	337	397	498	558
DEL NORTE	334	407	479	598	670	GLENN	277	337	397	498	558
HUMBOLDT	345	419	493	616	691	IMPERIAL	348	422	497	621	695
INYO	367	445	524	655	734	KINGS	303	368	432	541	606
LAKE	334	407	479	598	670	LASSEN	307	372	438	547	614
MADERA	303	368	432	543	606	MARIPOSA	367	445	524	655	734
MENDOCINO	334	407	517	654	670	MODOC	307	372	438	547	614
MONO	367	445	524	655	734	NEVADA	411	500	587	735	822
PLUMAS	307	372	438	547	614	SAN BENITO	303	368	463	595	667
SAN LUIS OBI	415	504	594	742	831	SIERRA	411	500	587	735	822
SISKIYOU	307	372	438	547	614	TEHAMA	307	372	438	547	614
TRINITY	334	407	479	598	670	TUOLUMNE	367	445	524	655	734

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: COLORADO

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BOULDER-LONGMONT, CO PMSA COUNTY(IES): BOULDER	378	460	542	677	758
COLORADO SPRINGS, CO MSA COUNTY(IES): EL PASO	299	362	427	534	598
DENVER, CO PMSA COUNTY(IES): ADAMS, ARAPAHOE, DENVER, DOUGLAS, JEFFERSON	360	426	502	624	700
FORT COLLINS-LOVELAND, CO MSA COUNTY(IES): LARIMER	344	418	491	615	689
GREELEY, CO MSA COUNTY(IES): WELD	298	361	425	532	596
PUEBLO, CO MSA COUNTY(IES): PUEBLO	297	359	423	530	594

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALAMOSA	297	359	423	530	594
BACA	259	312	362	453	509
CHAFFEE	329	399	469	587	657
CLEAR CREEK	329	399	469	587	657
COSTILLA	297	359	423	530	594
CUSTER	329	399	469	587	657
DELORES	297	359	423	530	594
ELBERT	254	309	362	453	509
GARFIELD	373	452	533	667	746
GRAND	392	474	558	698	783
HINSDALE	392	474	558	698	783
JACKSON	392	474	558	698	783
KIT CARSON	254	309	362	453	509
LA PLATA	330	396	467	583	654
LINCOLN	259	312	362	453	509
MESA	373	452	533	667	746
MOFFAT	373	452	533	667	746
MONTROSE	392	474	558	698	783
OTERO	259	312	362	453	509
PARK	329	399	469	587	657
PITKIN	392	474	558	698	783
RIO BLANCO	373	452	533	667	746
ROUTT	392	474	558	698	783
SAN JUAN	297	359	423	530	594
SEDGWICK	254	309	362	453	509
TELLER	329	399	469	587	657
YUMA	254	309	362	453	509

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ARCHULETA	297	359	423	530	594
BENT	259	312	362	453	509
CHEYENNE	254	309	362	453	509
CONEJOS	297	359	423	530	594
CROWLEY	259	312	362	453	509
DELTA	392	474	558	698	783
EAGLE	392	474	558	698	783
FREMONT	329	399	469	587	657
GILPIN	329	399	469	587	657
GUNNISON	392	474	558	698	783
HUERFANO	297	359	423	530	594
KIOWA	259	312	362	453	509
LAKE	329	399	469	587	657
LAS ANIMAS	297	359	423	530	594
LOGAN	254	309	362	453	509
MINERAL	297	359	423	530	594
MONTEZUMA	297	359	423	530	594
MORGAN	254	309	362	453	509
OURAY	392	474	558	698	783
PHILLIPS	254	309	362	453	509
PROWERS	259	312	362	453	509
RIO GRANDE	297	359	423	530	594
SAGUACHE	297	359	423	530	594
SAN MIGUEL	392	474	558	698	783
SUMMIT	392	474	558	698	783
WASHINGTON	254	309	362	453	509

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: CONNECTICUT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BRIDGEPORT-MILFORD, CT PMSA COUNTY: FAIRFIELD TOWNS OF BRIDGEPORT, EASTON, FAIRFIELD, MONROE, SHELTON, STRATFORD, TRUMBULL COUNTY: NEW HAVEN TOWNS OF ANSONIA, BEACON FALLS, DERBY, MILFORD, OXFORD, SEYMOUR	403	489	577	720	808
BRISTOL, CT PMSA COUNTY: HARTFORD TOWNS OF BRISTOL, BURLINGTON COUNTY: LITCHFIELD TOWNS OF PLYMOUTH	337	409	481	602	675
DANBURY, CT PMSA COUNTY: FAIRFIELD TOWNS OF BETHEL, BROOKFIELD, DANBURY, NEW FAIRFIEL, NEWTOWN, REDDING, RIDGEFIELD, SHERMAN COUNTY: LITCHFIELD TOWNS OF BRIDGEWATER, NEW MILFORD	436	531	625	781	875
HARTFORD, CT PMSA COUNTY: HARTFORD TOWNS OF AVON, BLOOMFIELD, CANTON, EAST GRANBY, EAST HARTFOR, EAST WINDSOR, ENFIELD, FARMINGTON GLASTONBURY, GRANBY, HARTFORD, MANCHESTER, MARLBOROUGH, NEWINGTON, ROCKY HILL, SIMSBURY, SOUTH WINDSO SUFFIELD, WEST HARTFOR, WETHERSFIELD, WINDSOR, WINDSOR LOCK COUNTY: LITCHFIELD TOWNS OF BARKHAMSTED, NEW HARTFORD COUNTY: MIDDLESEX TOWNS OF EAST HADDAM COUNTY: NEW LONDON TOWNS OF COLCHESTER COUNTY: TOLLAND TOWNS OF ANDOVER, BOLTON, COLUMBIA, COVENTRY, ELLINGTON, HEBRON, SOMERS, STAFFORD, TOLLAND, VERNON WILLINGTON	405	494	577	727	810
MIDDLETOWN, CT PMSA COUNTY: MIDDLESEX TOWNS OF CROMWELL, DURHAM, EAST HAMPTON, HADDAM, MIDDLEFIELD, MIDDLETOWN, PORTLAND	341	415	489	612	685
NEW BRITAIN, CT PMSA COUNTY: HARTFORD TOWNS OF BERLIN, NEW BRITAIN, PLAINVILLE, SOUTHINGTON	361	438	516	645	723
NEW HAVEN-MERIDEN, CT MSA COUNTY: MIDDLESEX TOWNS OF CLINTON, KILLINGWORTH COUNTY: NEW HAVEN TOWNS OF BETHANY, BRANFORD, CHESHIRE, EAST HAVEN, GUILFORD, HAMDEN, MADISON, MERIDEN, NEW HAVEN NORTH BRANFO, NORTH HAVEN, ORANGE, WALLINGFORD, WEST HAVEN, WOODBRIDGE	436	531	625	782	875
NEW LONDON-NORWICH, CT-RI MSA COUNTY: NEW LONDON TOWNS OF BOZRAH, EAST LYME, FRANKLIN, GRISWOLD, GROTON, LEDYARD, LISBON, MONTVILLE, NEW LONDON NORTH STONIN, NORWICH, OLD LYME, PRESTON, SALEM, SPRAGUE, STONINGTON, WATERFORD COUNTY: WINDHAM TOWNS OF CANTERBURY	388	472	554	693	777
NORWALK, CT PMSA COUNTY: FAIRFIELD TOWNS OF NORWALK, WESTON, WESTPORT, WILTON	464	564	664	829	929
STAMFORD, CT PMSA COUNTY: FAIRFIELD TOWNS OF DARIEN, GREENWICH, NEW CANAAN, STAMFORD	485	590	695	868	972
WATERBURY, CT MSA COUNTY: LITCHFIELD TOWNS OF BETHLEHEM, THOMASTON, WATERTOWN, WOODBURY COUNTY: NEW HAVEN TOWNS OF MIDDLEBURY, NAUGATUCK, PROSPECT, SOUTHBURY, WATERBURY, WOLCOTT	351	426	501	627	702

NONMETROPOLITAN COUNTIES OR PARTS OF COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
HARTFORD COUNTY TOWNS OF HARTLAND	337	409	481	602	675
LITCHFIELD COUNTY TOWNS OF CANAAN, COLEBROOK, CORNWALL, GOSHEN HARWINTON, KENT, LITCHFIELD, MORRIS, NORFOLK, NORTH CANAAN, ROXBURY, SALISBURY, SHARON, TORRINGTON, WARREN WASHINGTON, WINCHESTER	373	453	532	666	746
MIDDLESEX COUNTY TOWNS OF CHESTER, DEEP RIVER, ESSEX, OLD SAYBROOK WESTBROOK	418	506	596	745	834
NEW LONDON COUNTY TOWNS OF LEBANON, LYME, VOLUNTOWN	299	364	428	536	600
TOLLAND COUNTY TOWNS OF MANSFIELD, UNION	404	491	577	722	809
WINDHAM COUNTY TOWNS OF ASHFORD, BROOKLYN, CHAPLIN, EASTFORD, HAMPTON KILLINGLY, PLAINFIELD, POMFRET, PUTNAM, SCOTLAND, STERLING, THOMPSON, WINDHAM, WOODSTOCK	357	434	511	638	716

S T A T E: DELAWARE	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
WILMINGTON, DE-NJ-MD PMSA COUNTY(IES): NEW CASTLE	367	439	522	652	776

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
KENT	269	326	384	485	537	SUSSEX	269	326	384	485	537

S T A T E: DIST. OF COLUMBIA	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
WASHINGTON, DC-MD-VA MSA COUNTY(IES): WASHINGTON	412	501	590	741	830

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: FLORIDA	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BRADENTON, FL MSA COUNTY(IES): MANATEE	336	409	482	602	674
DAYTONA BEACH, FL MSA COUNTY(IES): VOLUSIA	326	394	464	581	651
FORT LAUDERDALE-HOLLYWOOD-POMPANO BEACH, FL PMSA COUNTY(IES): BROWARD	369	447	526	658	737
FORT MYERS-CAPE CORAL, FL MSA COUNTY(IES): LEE	346	420	494	618	693
FORT PIERCE, FL MSA COUNTY(IES): MARTIN, ST LUCIE	346	420	494	618	693
FORT WALTON BEACH, FL MSA COUNTY(IES): OKALOOSA	231	280	330	413	462
GAINESVILLE, FL MSA COUNTY(IES): ALACHUA, BRADFORD	293	356	419	524	586
JACKSONVILLE, FL MSA COUNTY(IES): CLAY, DUVAL, NASSAU, ST JOHNS	306	372	439	548	614
LAKELAND-WINTER HAVEN, FL MSA COUNTY(IES): POLK	276	336	395	495	555
MELBOURNE-TITUSVILLE-PALM BAY, FL MSA COUNTY(IES): BREVARD	317	380	447	559	627
MIAMI-HIALEAH, FL PMSA COUNTY(IES): DADE	376	449	525	662	738
NAPLES, FL MSA COUNTY(IES): COLLIER	355	430	507	635	711
OCALA, FL MSA COUNTY(IES): MARION	256	311	365	456	511
ORLANDO, FL MSA COUNTY(IES): ORANGE, OSCEOLA, SEMINOLE	338	412	484	589	658
PANAMA CITY, FL MSA COUNTY(IES): BAY	245	299	352	441	492
PENSACOLA, FL MSA COUNTY(IES): ESCAMBIA, SANTA ROSA	274	334	392	491	550
SARASOTA, FL MSA COUNTY(IES): SARASOTA	364	443	521	650	729
TALLAHASSEE, FL MSA COUNTY(IES): GADSDEN, LEON	289	350	413	516	577
TAMPA-ST. PETERSBURG-CLEARWATER, FL MSA COUNTY(IES): HERNANDO, HILLSBOROUGH, PASCO, PINELLAS	303	368	433	542	608
WEST PALM BEACH-BOCA RATON-DELRAY BEACH, FL MSA COUNTY(IES): PALM BEACH	353	422	491	600	661

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BAKER	223	270	318	397	446
CHARLOTTE	334	407	479	598	670
COLUMBIA	205	251	295	368	413
DIXIE	205	251	295	368	413
FRANKLIN	189	229	269	337	378
GLADES	334	407	479	598	670
HAMILTON	205	251	295	368	413
HENDRY	334	407	479	598	670
HOLMES	220	266	314	392	440
JACKSON	197	238	280	351	393
LAFAYETTE	205	251	295	368	413
LEVY	256	311	365	456	511
MADISON	205	251	295	368	413
OKEECHOBEE	240	292	343	429	482
SUMTER	256	309	365	456	511
TAYLOR	205	251	295	368	413
WAKULLA	189	229	269	337	378
WASHINGTON	189	229	269	337	378

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CALHOUN	189	229	269	337	378
CITRUS	256	309	365	456	511
DE SOTO	240	292	343	429	482
FLAGLER	258	312	368	460	516
GILCHRIST	205	251	295	368	413
GULF	189	229	269	337	378
HARDEE	240	292	343	429	482
HIGHLANDS	240	292	343	429	482
INDIAN RIVER	346	420	494	618	693
JEFFERSON	189	229	269	337	378
LAKE	269	327	384	481	539
LIBERTY	189	229	269	337	378
MONROE	392	476	630	753	818
PUTNAM	258	312	368	460	516
SUWANNEE	205	251	295	368	413
UNION	205	251	295	368	413
WALTON	257	311	367	459	514

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

BEST COPY AVAILABLE

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: GEORGIA	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALBANY, GA MSA COUNTY(IES): DOUGHERTY, LEE	254	307	363	454	508
ATHENS, GA MSA COUNTY(IES): CLARKE, JACKSON, MADISON, OCONEE	262	320	376	470	526
ATLANTA, GA MSA COUNTY(IES): BARROW, BUTTS, CHEROKEE, CLAYTON, COBB, COWETA, DE KALB, DOUGLAS, FAYETTE, FORSYTH, FULTON, GWINNETT, HENRY, NEWTON, PAULDING, ROCKDALE, SPALDING, WALTON	355	430	504	631	705
AUGUSTA, GA-SC MSA COUNTY(IES): COLUMBIA, MCDUFFIE, RICHMOND	267	322	376	470	526
CHATTANOOGA, TN-GA MSA COUNTY(IES): CATOOSA, DADE, WALKER	285	346	407	509	571
COLUMBUS, GA-AL MSA COUNTY(IES): CHATTAHOOCHE, COLUMBUS	237	285	337	422	474
MACON-WARNER ROBINS, GA MSA COUNTY(IES): BIBB, HOUSTON, JONES, PEACH	263	322	380	474	528
SAVANNAH, GA MSA COUNTY(IES): CHATHAM, EFFINGHAM	267	325	383	478	536

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
APPLING	219	266	314	392	439	ATKINSON	206	250	294	368	413
BACON	206	250	294	368	413	BAKER	214	260	302	379	424
BALDWIN	209	254	299	374	419	BANKS	197	241	283	353	395
BARTON	222	270	319	398	447	BEN HILL	217	263	310	388	434
BERRIEN	217	263	310	388	434	BLECKLEY	214	260	302	379	419
BRANTLEY	206	250	294	368	413	BROOKS	217	263	310	388	434
BRYAN	253	294	347	433	486	BULLOCH	219	266	314	392	439
BURKE	210	255	300	376	421	CALHOUN	214	260	302	379	424
CAMDEN	243	294	347	433	486	CANDLER	219	266	314	392	439
CARROLL	253	305	359	449	501	CHARLTON	214	259	302	373	413
CHATTOOGA	222	270	319	398	447	CLAY	214	260	302	379	424
CLINCH	206	250	294	368	413	COFFEE	206	250	294	368	413
COLQUITT	212	257	302	378	424	COOK	217	263	310	388	434
CRAWFORD	178	216	254	318	355	CRISP	212	257	302	378	424
DAWSON	200	247	287	356	395	DECATUR	214	260	302	379	424
DODGE	214	260	302	379	419	DOOLY	214	260	302	379	424
EARLY	214	260	302	379	424	ECHOLS	217	263	310	388	434
ELBERT	202	246	289	362	405	EMANUEL	210	255	300	376	421
EVANS	219	266	314	392	439	FANNIN	238	289	339	425	476
FLOYD	222	270	319	398	447	FRANKLIN	197	241	283	353	395
GILMER	238	289	339	425	476	GLASCOCK	210	255	300	376	421
GLYNN	243	294	347	433	486	GORDON	222	270	319	398	447
GRADY	214	260	302	379	424	GREENE	200	243	286	357	399
HABERSHAM	221	268	317	395	443	HALL	285	342	406	506	570
HANCOCK	214	260	302	379	419	HARALSON	222	270	319	398	447
HARRIS	216	263	305	380	424	HART	197	241	283	353	395
HEARD	235	286	336	421	471	IRWIN	217	263	310	388	434
JASPER	214	260	302	379	419	JEFF DAVIS	219	266	314	392	439
JEFFERSON	210	255	300	376	421	JENKINS	210	255	300	376	421
JOHNSON	214	260	302	379	419	LAMAR	196	238	281	351	392
LANIER	217	263	310	388	434	LAURENS	209	254	299	374	419
LIBERTY	243	294	347	433	486	LINCOLN	210	255	300	376	421
LONG	243	294	347	433	486	LOWNDES	217	263	310	388	434
LUMPKIN	200	247	287	356	395	MCINTOSH	243	294	347	433	486
MACON	214	260	302	379	424	MARION	216	263	305	380	424
MERIWETHER	235	286	336	421	471	MILLER	214	260	302	379	424
MITCHELL	214	260	302	379	424	MONROE	178	216	254	318	355
MONTGOMERY	216	264	310	382	424	MORGAN	200	243	286	357	399
MURRAY	238	289	339	425	476	OGLETHORPE	200	243	286	357	399
PICKENS	238	289	339	425	476	PIERCE	206	250	294	368	413
PIKE	196	238	281	351	392	POLK	222	272	319	398	447
PULASKI	214	260	302	379	419	PUTNAM	214	260	302	379	419
QUITMAN	212	257	302	378	424	RABUN	200	247	287	356	395
RANDOLPH	214	260	302	379	424	SCHLEY	216	263	305	380	424
SCREVEN	216	264	310	382	424	SEMINOLE	214	260	302	379	424
STEPHENS	232	285	332	417	464	STEWART	216	263	305	380	424
SUMTER	237	290	342	427	479	TALBOT	212	257	302	378	424
TALIAFERRO	210	255	300	376	421	TATTNALL	219	266	314	392	439
TAYLOR	214	260	302	379	424	TELFAIR	214	260	302	379	419
TERRELL	214	260	302	379	424	THOMAS	248	300	353	443	496
TIFT	217	263	310	388	434	TOOMBS	219	266	314	392	439
TOWNS	200	247	287	356	395	TREUTLEN	214	260	302	379	419
TROUP	241	290	340	424	472	TURNER	217	263	310	388	434
TWIGGS	178	216	254	318	355	UNION	200	247	287	356	395
UPSON	196	238	281	351	392	WARE	206	250	294	368	413
WARREN	210	255	300	376	421	WASHINGTON	214	260	302	379	419

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

STATE: GEORGIA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
WAYNE	219	266	314	392	439
WHEELER	214	260	302	379	419
WHITFIELD	238	289	339	425	476
WILKES	210	255	300	376	421
WORTH	214	260	302	379	424
WEBSTER	216	263	305	380	424
WHITE	200	247	287	356	395
WILCOX	214	260	302	379	419
WILKINSON	214	260	302	379	419

S T A T E: HAWAII

HONOLULU, HI MSA
COUNTY(IES): HONOLULU

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
	416	506	585	748	838

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
HAWAII	408	495	581	728	815
MAUI	408	495	581	728	815
KAUAI	408	495	581	728	815

S T A T E: IDAHO

BOISE CITY, ID MSA
COUNTY(IES): ADA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
	347	422	497	620	695

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ADAMS	270	329	387	483	542
BEAR LAKE	281	341	401	502	563
BINGHAM	283	344	401	502	563
BOISE	270	329	387	483	542
BONNEVILLE	303	367	433	541	607
BUTTE	303	367	433	541	607
CANYON	270	329	387	483	542
CASSIA	287	349	411	513	575
CLEARWATER	281	341	401	502	563
ELMORE	270	329	387	483	542
FREMONT	303	367	433	541	607
GOODING	287	349	411	513	575
JEFFERSON	303	367	433	541	607
KOOTENAI	281	341	401	502	563
LEMHI	303	367	433	541	607
LINCOLN	287	349	411	513	575
MINIDOKA	287	349	411	513	575
ONEIDA	281	341	401	502	563
PAYETTE	270	329	387	483	542
SHOSHONE	281	341	401	502	563
TWIN FALLS	287	349	411	513	575
WASHINGTON	270	329	387	483	542
BANNOCK	283	344	401	502	563
BENEWAH	281	341	401	502	563
BLAINE	287	349	411	513	575
BONNER	281	341	401	502	563
BOUNDARY	281	341	401	502	563
CAMAS	287	349	411	513	575
CARIBOU	283	344	401	502	563
CLARK	303	367	433	541	607
CUSTER	303	367	433	541	607
FRANKLIN	281	341	401	502	563
GEM	270	329	387	483	542
IDAHO	281	341	401	502	563
JEROME	287	349	411	513	575
LATAH	281	341	401	502	563
LEWIS	281	341	401	502	563
MADISON	303	367	433	541	607
NEZ PERCE	281	341	401	502	563
OWYHEE	270	329	387	483	542
POWER	283	344	401	502	563
TETON	303	367	433	541	607
VALLEY	270	329	387	483	542

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: ILLINOIS

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
AURORA-ELGIN, IL PMSA COUNTY(IES): KANE, KENDALL	398	486	573	715	803
BLOOMINGTON-NORMAL, IL MSA COUNTY(IES): MCLEAN	297	362	426	532	596
CHAMPAIGN-URBANA-RANTOUL, IL MSA COUNTY(IES): CHAMPAIGN	289	351	414	519	579
CHICAGO, IL PMSA COUNTY(IES): COOK, DU PAGE, MCHENRY	388	477	558	701	783
DAVENPORT-ROCK ISLAND-MOLINE, IA-IL MSA COUNTY(IES): HENRY, ROCK ISLAND	318	386	455	568	636
DECATUR, IL MSA COUNTY(IES): MACON	289	351	414	519	579
JOLIET, IL PMSA COUNTY(IES): GRUNDY, WILL	400	487	575	717	805
KANKAKEE, IL MSA COUNTY(IES): KANKAKEE	286	347	409	511	573
LAKE COUNTY, IL PMSA COUNTY(IES): LAKE	410	498	585	734	822
PEORIA, IL MSA COUNTY(IES): PEORIA, TAZEWELL, WOODFORD	335	407	478	599	670
ROCKFORD, IL MSA COUNTY(IES): BOONE, WINNEBAGO	304	370	435	543	608
ST. LOUIS, MO-IL MSA COUNTY(IES): CLINTON, JERSEY, MADISON, MONROE, ST CLAIR	303	369	435	546	611
SPRINGFIELD, IL MSA COUNTY(IES): MENARD, SANGAMON	305	371	436	545	610

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ADAMS	227	275	324	405	454
BOND	249	304	357	446	500
BUREAU	276	336	396	495	554
CARROLL	256	311	367	459	513
CHRISTIAN	262	318	374	468	525
CLAY	234	284	335	418	469
CRAWFORD	234	284	335	418	469
DE KALB	299	363	427	534	598
DOUGLAS	249	304	357	446	500
EDWARDS	227	275	324	405	454
FAYETTE	234	284	335	418	469
FRANKLIN	265	321	379	474	531
GALLATIN	210	254	301	375	420
HAMILTON	227	275	324	405	454
HARDIN	210	254	301	375	420
IROQUOIS	260	315	371	465	521
JASPER	234	284	335	418	469
JO DAVIESS	256	311	367	459	513
KNOX	269	326	383	480	538
LAWRENCE	234	284	335	418	469
LIVINGSTON	260	315	371	465	521
MCDONOUGH	249	303	353	439	488
MARION	234	284	335	418	469
MASON	260	312	369	456	507
MERCER	243	295	347	435	488
MORGAN	260	312	369	456	507
OGLE	256	311	367	459	513
PIATT	249	304	357	446	500
POPE	210	254	301	375	420
PUTNAM	276	336	396	495	554
RICHLAND	234	284	335	418	469
SCHUYLER	227	275	324	405	454
SHELBY	262	318	374	468	525
STEPHENSON	256	311	367	459	513
VERMILION	260	315	371	465	521
WARREN	249	303	353	439	488
WAYNE	227	275	324	405	454
WHITESIDE	313	380	447	560	627

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALEXANDER	210	254	301	375	420
BROWN	227	275	324	405	454
CALHOUN	253	308	363	453	507
CASS	260	312	369	456	507
CLARK	249	304	357	446	500
COLES	249	304	357	446	500
CUMBERLAND	249	304	357	446	500
DE WITT	249	304	357	446	500
EDGAR	249	304	357	446	500
EFFINGHAM	234	284	335	418	469
FORD	260	315	371	465	521
FULTON	276	336	396	495	554
GREENE	253	308	363	453	507
HANCOCK	243	295	347	435	488
HENDERSON	243	295	347	435	488
JACKSON	265	321	379	474	531
JEFFERSON	255	309	368	459	511
JOHNSON	210	254	301	375	420
LA SALLE	313	380	447	560	627
LEE	313	380	447	560	627
LOGAN	260	312	369	456	507
MACOUPIN	262	318	374	468	525
MARSHALL	276	336	396	495	554
MASSAC	210	254	301	375	420
MONTGOMERY	262	318	374	468	525
MOULTRIE	262	318	374	468	525
PERRY	249	304	357	446	500
PIKE	227	275	324	405	454
PULASKI	210	254	301	375	420
RANDOLPH	249	304	357	446	500
SALINE	210	254	301	375	420
SCOTT	260	312	369	456	507
STARK	276	336	396	495	554
UNION	210	254	301	375	420
WABASH	227	275	324	405	454
WASHINGTON	249	304	357	446	500
WHITE	227	275	324	405	454
WILLIAMSON	265	321	379	474	531

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: INDIANA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ANDERSON, IN MSA COUNTY(IES): MADISON	248	303	355	445	499
BLOOMINGTON, IN MSA COUNTY(IES): MONROE	269	326	384	481	538
CINCINNATI, OH-KY-IN PMSA COUNTY(IES): DEARBORN	260	318	375	469	522
ELKHART-GOSHEN, IN MSA COUNTY(IES): ELKHART	263	318	375	469	525
EVANSVILLE, IN-KY MSA COUNTY(IES): POSEY, VANDERBURGH, WARRICK	277	328	385	483	540
FORT WAYNE, IN MSA COUNTY(IES): ALLEN, DE KALB, WHITLEY	277	333	388	487	540
GARY-HAMMOND, IN PMSA COUNTY(IES): LAKE, PORTER	320	388	456	571	640
INDIANAPOLIS, IN MSA COUNTY(IES): BOONE, HAMILTON, HANCOCK, HENDRICKS, JOHNSON, MARION, MORGAN, SHELBY	270	328	386	482	540
KOKOMO, IN MSA COUNTY(IES): HOWARD, TIPTON	274	334	391	490	549
LAFAYETTE-WEST LAFAYETTE, IN MSA COUNTY(IES): TIPPECANOE	289	352	414	518	580
LOUISVILLE, KY-IN MSA COUNTY(IES): CLARK, FLOYD, HARRISON	254	308	361	450	504
MUNCIE, IN MSA COUNTY(IES): DELAWARE	239	287	338	419	469
SOUTH BEND-MISHAWAKA, IN MSA COUNTY(IES): ST JOSEPH	271	327	382	474	527
TERRE HAUTE, IN MSA COUNTY(IES): CLAY, VIGO	245	299	349	433	481

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ADAMS	244	296	345	431	483
BENTON	234	284	336	419	469
BROWN	276	336	395	494	554
CASS	242	295	347	433	486
CRAWFORD	202	245	288	362	406
DECATUR	276	336	395	494	554
FAYETTE	238	286	336	419	469
FRANKLIN	238	286	336	419	469
GIBSON	263	318	375	469	525
GREENE	228	276	326	408	456
HUNTINGTON	241	294	345	431	483
JASPER	244	297	349	437	489
JEFFERSON	263	318	375	469	525
KNOX	234	280	326	408	456
LAGRANGE	250	304	357	447	501
LAWRENCE	253	309	363	454	508
MARTIN	228	276	326	408	456
MONTGOMERY	234	284	336	419	469
NOBLE	249	304	357	447	501
ORANGE	202	245	288	362	406
PARKE	234	284	336	419	469
PIKE	263	318	375	469	525
PUTNAM	242	295	346	433	485
RIPLEY	263	318	375	469	525
SCOTT	250	305	359	449	503
STARKE	244	297	349	437	489
SULLIVAN	234	284	336	419	469
UNION	238	286	336	419	469
WABASH	227	275	323	406	454
WASHINGTON	271	329	387	485	543
WELLS	246	297	346	433	483

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BARTHOLOMEW	276	336	395	494	554
BLACKFORD	221	269	316	395	443
CARROLL	234	284	336	419	469
CLINTON	234	284	336	419	469
DAVIESS	228	276	326	408	456
DUBOIS	202	245	288	362	406
FOUNTAIN	234	284	336	419	469
FULTON	227	275	323	406	454
GRANT	221	269	316	395	443
HENRY	221	269	316	395	443
JACKSON	276	336	395	494	554
JAY	221	269	316	395	443
JENNINGS	276	336	395	494	554
KOSCIUSKO	250	303	356	439	489
LA PORTE	266	322	379	474	532
MARSHALL	244	297	349	437	489
MIAMI	242	295	347	433	486
NEWTON	244	297	349	437	489
OHIO	263	318	375	469	525
OWEN	268	325	382	479	536
PERRY	202	245	288	362	406
PULASKI	244	297	349	437	489
RANDOLPH	221	269	316	395	443
RUSH	234	284	336	419	469
SPENCER	202	245	288	362	406
STEUBEN	249	304	357	447	501
SWITZERLAND	263	318	375	469	525
VERMILLION	242	294	343	426	472
WARREN	234	284	336	419	469
WAYNE	239	287	338	419	469
WHITE	234	284	336	419	469

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: IOWA	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CEDAR RAPIDS, IA MSA COUNTY(IES): LINN	309	374	440	552	619
DAVENPORT-ROCK ISLAND-MOLINE, IA-IL MSA COUNTY(IES): SCOTT	318	386	455	568	636
DES MOINES, IA MSA COUNTY(IES): DALLAS, POLK, WARREN	307	373	439	551	616
DUBUQUE, IA MSA COUNTY(IES): DUBUQUE	286	346	407	509	571
IOWA CITY, IA MSA COUNTY(IES): JOHNSON	324	394	463	579	649
OMAHA, NE-IA MSA COUNTY(IES): POTTAWATTAMI	281	340	401	502	563
SIOUX CITY, IA-NE MSA COUNTY(IES): WOODBURY	278	338	398	498	558
WATERLOO-CEDAR FALLS, IA MSA COUNTY(IES): BLACK HAWK, BREMER	310	375	442	554	621

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ADAIR	234	285	335	420	469	ADAMS	234	285	335	420	469
ALLAMAKEE	247	300	354	442	496	APPANOOSE	234	285	335	420	469
AUDUBON	248	302	356	444	498	BENTON	242	294	346	433	485
BOONE	283	342	403	504	565	BUCHANAN	247	300	354	442	496
BUENA VISTA	243	295	347	434	488	BUTLER	247	300	354	442	496
CALHOUN	248	302	356	444	498	CARROLL	248	302	356	444	498
CASS	255	309	363	455	509	CEDAR	276	335	395	494	554
CERRO GORDO	245	298	351	438	492	CHEROKEE	248	302	356	444	498
CHICKASAW	247	300	354	442	496	CLARKE	234	285	335	420	469
CLAY	243	295	347	434	488	CLAYTON	247	300	354	442	496
CLINTON	276	335	395	494	554	CRAWFORD	248	302	356	444	498
DAVIS	234	285	335	420	469	DECATUR	234	285	335	420	469
DELAWARE	276	335	395	494	554	DES MOINES	260	316	371	464	521
DICKINSON	243	295	347	434	488	EMMET	243	295	347	434	488
FAYETTE	247	300	354	442	496	FLOYD	245	298	351	438	492
FRANKLIN	245	298	351	438	492	FREMONT	255	309	363	455	509
GREENE	248	302	356	444	498	GRUNDY	247	300	354	442	496
GUTHRIE	248	302	356	444	498	HAMILTON	248	302	356	444	498
HANCOCK	245	298	351	438	492	HARDIN	258	313	368	461	517
HARRISON	255	309	363	455	509	HENRY	260	316	371	464	521
HOWARD	247	300	354	442	496	HUMBOLDT	248	302	356	444	498
IDA	248	302	356	444	498	IOWA	242	294	346	433	485
JACKSON	276	335	395	494	554	JASPER	262	319	374	468	525
JEFFERSON	259	314	369	462	518	JONES	242	294	346	433	485
KEOKUK	243	295	347	434	487	KOSSUTH	245	298	351	438	492
LEE	260	316	371	464	521	LOUISA	260	316	371	464	521
LUCAS	234	285	335	420	469	LYON	243	295	347	434	488
MADISON	262	319	374	468	525	MAHASKA	234	285	335	420	469
MARION	262	319	374	468	525	MARSHALL	258	313	368	461	517
MILLS	255	309	363	455	509	MITCHELL	245	298	351	438	492
MONONA	248	302	356	444	498	MONROE	234	285	335	420	469
MONTGOMERY	255	309	363	455	509	MUSCATINE	260	316	371	464	521
O BRIEN	243	295	347	434	488	OSCEOLA	243	295	347	434	488
PAGE	255	309	363	455	509	PALO ALTO	243	295	347	434	488
PLYMOUTH	248	302	356	444	498	POCAHONTAS	248	302	356	444	498
POWESHIEK	258	313	368	461	517	RINGGOLD	234	285	335	420	469
SAC	248	302	356	444	498	SHELBY	255	309	363	455	509
SIOUX	243	295	347	434	488	STORY	283	342	403	504	565
TAMA	258	313	368	461	517	TAYLOR	234	285	335	420	469
UNION	234	285	335	420	469	VAN BUREN	234	285	335	420	469
WAPELLO	276	334	394	493	552	WASHINGTON	242	294	346	433	485
WAYNE	234	285	335	420	469	WEBSTER	248	302	356	444	498
WINNEBAGO	245	298	351	438	492	WINNESHIEK	247	300	354	442	496
WORTH	245	298	351	438	492	WRIGHT	248	302	356	444	498

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: KANSAS	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
KANSAS CITY, MO-KS MSA COUNTY(IES): JOHNSON, LEAVENWORTH, MIAMI, WYANDOTTE	292	354	416	520	582
LAWRENCE, KS MSA COUNTY(IES): DOUGLAS	311	377	444	555	622
TOPEKA, KS MSA COUNTY(IES): SHAWNEE	282	343	402	504	564
WICHITA, KS MSA COUNTY(IES): BUTLER, HARVEY, SEDGWICK	300	364	433	538	601

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALLEN	197	238	281	351	394	ANDERSON	197	238	281	351	394
ATCHISON	227	275	324	405	454	BARBER	228	277	326	407	456
BARTON	228	277	326	407	456	BOURBON	197	238	281	351	394
BROWN	227	275	324	405	454	CHASE	248	302	356	444	497
CHAUTAUQUA	197	238	281	351	394	CHEROKEE	208	253	298	373	418
CHEYENNE	199	241	284	356	398	CLARK	234	284	334	418	469
CLAY	248	302	356	444	497	CLOUD	246	299	352	441	493
COFFEY	248	302	356	444	497	COMANCHE	228	277	326	407	456
COWLEY	197	238	281	351	394	CRAWFORD	208	253	298	373	418
DECATUR	199	241	284	356	398	DICKINSON	248	302	356	444	497
DONIPHAN	227	275	324	405	454	EDWARDS	228	277	326	407	456
ELK	197	238	281	351	394	ELLIS	199	241	284	356	398
ELLSWORTH	246	299	352	441	493	FINNEY	234	284	334	418	469
FORD	234	284	334	418	469	FRANKLIN	215	261	307	383	429
GEARY	248	302	356	444	497	GOVE	199	241	284	356	398
GRAHAM	199	241	284	356	398	GRANT	234	284	334	418	469
GRAY	234	284	334	418	469	GREELEY	234	284	334	418	469
GREENWOOD	248	302	356	444	497	HAMILTON	234	284	334	418	469
HARPER	228	277	326	407	456	HASKELL	234	284	334	418	469
HODGEMAN	234	284	334	418	469	JACKSON	227	275	324	405	454
JEFFERSON	215	262	308	384	431	JEWELL	246	299	352	441	493
KEARNY	234	284	334	418	469	KINGMAN	228	277	326	407	456
KIOWA	228	277	326	407	456	LABETTE	208	253	298	373	418
LANE	234	284	334	418	469	LINCOLN	246	299	352	441	493
LINN	197	238	281	351	394	LOGAN	199	241	284	356	398
LYON	248	302	356	444	497	MCPHERSON	262	318	375	469	524
MARION	248	302	356	444	497	MARSHALL	248	302	356	444	497
MEADE	234	284	334	418	469	MITCHELL	246	299	352	441	493
MONTGOMERY	208	253	298	373	418	MORRIS	248	302	356	444	497
MORTON	234	284	334	418	469	NEMAHA	227	275	324	405	454
NEOSHO	208	253	298	373	418	NESS	234	284	334	418	469
NORTON	199	241	284	356	398	OSAGE	215	262	308	384	431
OSBORNE	199	241	284	356	398	OTTAWA	246	299	352	441	493
PAWNEE	228	277	326	407	456	PHILLIPS	199	241	284	356	398
POTTAWATOMIE	248	302	356	444	497	PRATT	228	277	326	407	456
RAWLINS	199	241	284	356	398	RENO	262	318	375	469	524
REPUBLIC	246	299	352	441	493	RICE	262	318	375	469	524
RILEY	248	302	356	444	497	ROOKS	199	241	284	356	398
RUSH	228	277	326	407	456	RUSSELL	199	241	284	356	398
SALINE	246	299	352	441	493	SCOTT	234	284	334	418	469
SEWARD	234	284	334	418	469	SHERIDAN	199	241	284	356	398
SHERMAN	199	241	284	356	398	SMITH	199	241	284	356	398
STAFFORD	228	277	326	407	456	STANTON	234	284	334	418	469
STEVENS	234	284	334	418	469	SUMNER	228	277	326	407	456
THOMAS	199	241	284	356	398	TREGO	199	241	284	356	398
WABAUNSEE	248	302	356	444	497	WALLACE	199	241	284	356	398
WASHINGTON	246	299	352	441	493	WICHITA	234	284	334	418	469
WILSON	197	238	281	351	394	WOODSON	197	238	281	351	394

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: KENTUCKY	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CINCINNATI, OH-KY-IN PMSA					
COUNTY(IES): BOONE, CAMPBELL, KENTON	260	318	375	469	522
CLARKSVILLE-HOPKINSVILLE, TN-KY MSA					
COUNTY(IES): CHRISTIAN	263	331	415	503	559
EVANSVILLE, IN-KY MSA					
COUNTY(IES): HENDERSON	277	328	385	483	540
HUNTINGTON-ASHLAND, WV-KY-OH MSA					
COUNTY(IES): BOYD, CARTER, GREENUP	282	342	403	504	566
LEXINGTON-FAYETTE, KY MSA					
COUNTY(IES): BOURBON, CLARK, FAYETTE, JESSAMINE, SCOTT, WOODFORD	295	358	421	527	590
LOUISVILLE, KY-IN MSA					
COUNTY(IES): BULLITT, JEFFERSON, OLDHAM, SHELBY	254	308	361	450	504
OWENSBORO, KY MSA					
COUNTY(IES): DAVIESS	231	280	330	412	462

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ADAIR	217	264	308	380	426	ALLEN	183	222	261	326	366
ANDERSON	270	330	387	484	542	BALLARD	222	269	316	396	444
BARREN	231	280	331	412	464	BATH	217	263	310	388	435
BELL	235	287	337	421	472	BOYLE	263	318	376	470	526
BRACKEN	217	263	310	388	435	BREATHITT	223	270	318	398	446
BRECKINRIDGE	214	260	305	382	428	BUTLER	183	222	261	326	366
CALDWELL	232	282	334	417	467	CALLOWAY	222	269	316	396	444
CARLISLE	222	269	316	396	444	CARROLL	223	271	318	399	446
CASEY	213	258	304	380	426	CLAY	200	243	286	357	400
CLINTON	217	264	308	380	426	CRITTENDON	232	282	334	417	467
CUMBERLAND	217	264	308	380	426	EDMONSON	183	222	261	326	366
ELLIOTT	200	243	287	358	401	ESTILL	263	318	376	470	526
FLEMING	217	263	310	388	435	FLOYD	236	288	338	423	474
FRANKLIN	270	330	387	484	542	FULTON	222	269	316	396	444
GALLATIN	223	271	318	399	446	GARRARD	263	318	376	470	526
GRANT	223	271	318	399	446	GRAVES	222	269	316	396	444
GRAYSON	214	260	305	382	428	GREEN	217	264	308	380	426
HANCOCK	225	273	322	403	450	HARDIN	242	295	346	433	485
HARLAN	235	287	337	421	472	HARRISON	196	238	280	351	394
HART	183	222	261	326	366	HENRY	199	242	284	356	398
HICKMAN	222	269	316	396	444	HOPKINS	232	282	334	417	467
JACKSON	200	243	286	357	400	JOHNSON	236	288	338	423	474
KNOTT	223	270	318	398	446	KNOX	206	251	295	383	412
LARUE	214	260	305	382	428	LAUREL	200	279	351	365	400
LAWRENCE	200	243	287	358	401	LEE	223	270	318	398	446
LESLIE	223	270	318	398	446	LETCHER	223	270	318	398	446
LEWIS	217	263	310	388	435	LINCOLN	263	318	376	470	526
LIVINGSTON	201	244	288	359	402	LOGAN	233	284	335	419	469
LYON	201	244	288	359	402	MCCRACKEN	232	272	321	396	444
MCCREARY	217	264	308	380	426	MCLEAN	225	273	322	403	450
MADISON	263	318	379	470	526	MAGOFFIN	236	288	338	423	474
MARION	214	260	305	382	428	MARSHALL	232	272	321	396	444
MARTIN	236	288	338	423	474	MASON	217	263	310	388	435
MEADE	242	295	346	433	485	MENIFEE	217	264	310	388	435
MERCER	270	330	387	484	542	METCALFE	183	222	261	326	366
MONROE	183	222	261	326	366	MONTGOMERY	217	263	310	388	435
MORGAN	217	264	310	388	435	MUHLENBERG	232	282	334	417	467
NELSON	214	260	305	382	428	NICHOLAS	196	238	280	351	394
OHIO	225	273	322	403	450	OWEN	223	271	318	399	446
OWSLEY	223	270	318	398	446	PENDLETON	223	271	318	399	446
PERRY	223	270	318	398	446	PIKE	236	288	338	423	474
POWELL	196	238	280	351	394	PULASKI	217	264	308	380	426
ROBERTSON	217	263	310	388	435	ROCKCASTLE	200	243	286	357	400
ROWAN	217	263	310	388	435	RUSSELL	213	258	304	380	426
SIMPSON	233	284	335	419	469	SPENCER	199	242	284	356	398
TAYLOR	217	264	308	380	426	TODD	201	244	288	359	402
TRIGG	201	244	288	359	402	TRIMBLE	199	242	284	356	398
UNION	225	273	322	403	450	WARREN	233	284	335	419	469
WASHINGTON	214	260	305	382	428	WAYNE	217	264	308	380	426
WEBSTER	225	273	322	403	450	WHITLEY	235	287	337	421	472
WOLFE	223	270	318	398	446						

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: LOUISIANA	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALEXANDRIA, LA MSA COUNTY(IES): RAPIDES	248	301	355	444	496
BATON ROUGE, LA MSA COUNTY(IES): ASCENSION, E BATON ROUG, LIVINGSTON, W BATON ROUG	312	378	445	556	623
HOUMA-THIBODAUX, LA MSA COUNTY(IES): LAFOURCHE, TERREBONNE	276	335	394	492	552
LAFAYETTE, LA MSA COUNTY(IES): LAFAYETTE, ST MARTIN	312	378	445	556	623
LAKE CHARLES, LA MSA COUNTY(IES): CALCASIEU	251	302	353	440	492
MONROE, LA MSA COUNTY(IES): OUACHITA	247	300	353	442	494
NEW ORLEANS, LA MSA COUNTY(IES): JEFFERSON, ORLEANS, ST BERNARD, ST CHARLES, ST JOHN THE, ST TAMMANY	343	417	491	613	687
SHREVEPORT, LA MSA COUNTY(IES): BOSSIER, CADDO	281	341	403	503	563

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ACADIA	214	260	306	382	428	ALLEN	171	208	245	307	343
ASSUMPTION	185	225	263	330	370	AVOYELLES	211	256	302	378	423
BEAUREGARD	171	208	245	307	343	BIENVILLE	220	269	316	394	442
CALDWELL	170	207	243	304	340	CAMERON	171	208	245	307	343
CATAHOULA	211	256	302	378	423	CLAIBORNE	220	269	316	394	442
CONCORDIA	211	256	302	378	423	DE SOTO	220	269	316	394	442
EAST CARROLL	170	207	243	304	340	E FELICIANA	177	215	253	317	355
EVANGELINE	205	248	292	366	410	FRANKLIN	170	207	243	304	340
GRANT	211	256	302	378	423	IBERIA	252	308	361	452	506
IBERVILLE	177	215	253	317	355	JACKSON	170	207	243	304	340
JEFFERSON DA	171	208	245	307	343	LA SALLE	211	256	302	378	423
LINCOLN	220	269	316	394	442	MADISON	170	207	243	304	340
MOREHOUSE	170	207	243	304	340	NATCHITOCHES	220	269	316	394	442
PLAQUEMINES	310	375	442	553	618	POINTE COUPE	177	215	253	317	355
RED RIVER	220	269	316	394	442	RICHLAND	170	207	243	304	340
SABINE	220	269	316	394	442	ST HELENA	177	215	253	317	355
ST JAMES	185	225	263	330	370	ST LANDRY	205	248	292	366	410
ST MARY	252	308	361	452	506	TANGIPAHOA	200	243	286	357	401
TENSAS	170	207	243	304	340	UNION	170	207	243	304	340
VERMILION	214	260	306	382	428	VERNON	211	256	302	378	423
WASHINGTON	200	243	286	357	401	WEBSTER	191	233	274	342	383
WEST CARROLL	170	207	243	304	340	W FELICIANA	177	215	253	317	355
WINN	211	256	302	378	423						

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

STATE: MAINE	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BANGOR, ME MSA	300	365	429	537	602
COUNTY: PENOBSCOT TOWNS OF BANGOR, BREWER, EDDINGTON GLENBURN, HAMPDEN, HERMON, HOLDEN, KENDUSKEAG, OLD TOWN, ORONO ORRINGTON, PENOBSCOT IN, VEAZIE					
COUNTY: WALDO TOWNS OF WINTERPORT					
LEWISTON-AUBURN, ME MSA	316	376	425	475	540
COUNTY: ANDROSCOGGIN TOWNS OF AUBURN, GREENE, LEWISTON, LISBON, MECHANIC FAL, POLAND, SABATTUS					
PORTLAND, ME MSA	368	469	592	664	798
COUNTY: CUMBERLAND TOWNS OF CAPE ELIZABE, CUMBERLAND, FALMOUTH, FREEPORT, GORHAM, GRAY, NORTH YARMOU, PORTLAND, RAYMOND SCARBOROUGH, SOUTH PORTLA, STANDISH, WESTBROOK, WINDHAM, YARMOUTH					
COUNTY: YORK TOWNS OF BUXTON, HOLLIS, OLD ORCHARD					
PORTSMOUTH-DOVER-ROCHESTER, NH-ME MSA	395	481	565	706	791
COUNTY: YORK TOWNS OF BERWICK, ELIOT, KITTERY, NORTH BERWIC, SOUTH BERWIC, WELLS, YORK					

NONMETROPOLITAN COUNTIES OR PARTS OF COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ANDROSCOGGIN COUNTY TOWNS OF DURHAM, LEEDS, LIVERMORE, LIVERMORE FA MINOT, TURNER, WALES	274	324	383	469	518
AROOSTOOK COUNTY	279	339	400	499	559
CUMBERLAND COUNTY TOWNS OF BALDWIN, BRIDGTON, BRUNSWICK, CASCO HARPSWELL, HARRISON, NAPLES, NEW GLOUCEST, POWNAL, SEBAGO	309	375	441	548	610
FRANKLIN COUNTY	291	329	391	463	525
HANCOCK COUNTY	293	348	408	509	568
KENNEBEC COUNTY	293	356	419	525	587
KNOX COUNTY	283	344	405	507	568
LINCOLN COUNTY	279	338	399	499	558
OXFORD COUNTY	291	329	391	463	525
PENOBSCOT COUNTY TOWNS OF ALTON, ARGYLE, BRADFORD, BRADLEY, BURLINGTON CARMEL, CARROLL, CHARLESTON, CHESTER, CLIFTON, CORINNA, CORINTH, DEXTER, DIXMONT, DREW, EAST MILLINO, EDINBURG ENFIELD, ETNA, EXETER, GARLAND, GRAND FALLS, GREENBUSH, GREENFIELD, HOWLAND, HUDSON, KINGMAN, LAGRANGE, LAKEVILLE LEE, LEVANT, LINCOLN, LOWELL, MATTAWAMKEAG, MAXFIELD, MEDWAY, MILFORD, MILLINOCKET, MOUNT CHASE, NEWBURGH, NEWPORT NORTH PENOBS, PASSADUMKEAG, PATTEN, PLYMOUTH, PRENTISS, SEBOEIS, SPRINGFIELD, STACYVILLE, STETSON, SUMMIT, TWOMBLY WEBSTER, WHITNEY, WINN, WOODVILLE	288	348	405	507	568
PISCATAQUIS COUNTY	241	293	345	433	484
SAGADAHOC COUNTY	319	430	463	540	633
SOMERSET COUNTY	279	338	399	499	558
WALDO COUNTY TOWNS OF BELFAST, BELMONT, BROOKS, BURNHAM, FRANKFORT FREEDOM, ISLESBORO, JACKSON, KNOX, LIBERTY, LINCOLNVILLE, MONROE, MONTVILLE, MORRILL, NORTHPORT, PALERMO, PROSPECT SEARSMONT, SEARSPORT, STOCKTON SPR, SWANVILLE, THORNDIKE, TROY, UNITY, WALDO	283	344	405	507	568
WASHINGTON COUNTY	283	344	405	507	568
YORK COUNTY TOWNS OF ACTON, ALFRED, ARUNDEL, BIDDEFORD, CORNISH, DAYTON KENNEBUNK, KENNEBUNKPOR, LEBANON, LIMERICK, LIMINGTON, LYMAN, NEWFIELD, PARSONSFIELD, SACO, SANFORD, SHAPLEIGH WATERBORO	353	416	525	540	655

STATE: MARYLAND	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BALTIMORE, MD MSA	349	424	499	624	699
COUNTY(IES): ANNE ARUNDEL, BALTIMORE, CARROLL, HARFORD, HOWARD, QUEEN ANNES, BALTIMORE					
COLUMBIA, MD MSA	444	539	635	792	888
COUNTY(IES): COLUMBIA					
CUMBERLAND, MD-WV MSA	258	307	359	444	496
COUNTY(IES): ALLEGANY					
HAGERSTOWN, MD MSA	289	351	413	517	578
COUNTY(IES): WASHINGTON					
WASHINGTON, DC-MD-VA MSA	412	501	590	741	830
COUNTY(IES): CALVERT CHARLES, FREDERICK, MONTGOMERY, PRINCE GEORG					
WILMINGTON, DE-NJ-MD PMSA	367	439	522	652	776
COUNTY(IES): CECIL					

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CAROLINE	273	327	385	482	540
GARRETT	259	315	371	463	519
ST MARYS	359	434	507	635	703
TALBOT	312	379	446	558	624
WORCESTER	282	344	401	501	561
DORCHESTER	280	340	401	501	561
KENT	285	347	408	511	571
SOMERSET	280	340	401	501	561
WICOMICO	333	407	476	502	561

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: MASSACHUSETTS	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BOSTON, MA PMSA	530	644	759	948	1062
COUNTY: BRISTOL TOWNS OF MANSFIELD, NORTON, RAYNHAM					
COUNTY: ESSEX TOWNS OF LYNN, LYNNFIELD, NAHANT, SAUGUS					
COUNTY: MIDDLESEX TOWNS OF ACTON, ARLINGTON, ASHLAND, AYER, BEDFORD, BELMONT, BOXBOROUGH, BURLINGTON, CAMBRIDGE, CARLISLE CONCORD, EVERETT, FRAMINGHAM, GROTON, HOLLISTON, HOPKINTON, HUDSON, LEXINGTON, LINCOLN, LITTLETON, MALDEN MARLBOROUGH, MAYNARD, MEDFORD, MELROSE, NATICK, NEWTON, NORTH READIN, READING, SHERBORN, SHIRLEY SOMERVILLE, STONEHAM, STOW, SUDBURY, TOWNSEND, WAKEFIELD, WALTHAM, WATERTOWN, WAYLAND, WESTON, WILMINGTON WINCHESTER, WOBURN					
COUNTY: NORFOLK TOWNS OF BELLINGHAM, BRAINTREE, BROOKLINE, CANTON, COHASSET, DEDHAM, DOVER, FOXBOROUGH, FRANKLIN, HOLBROOK MEDFIELD, MEDWAY, MILLIS, MILTON, NEEDHAM, NORFOLK, NORWOOD, QUINCY, RANDOLPH, SHARON, STOUGHTON, WALPOLE WELLESLEY, WESTWOOD, WEYMOUTH, WRENTHAM					
COUNTY: PLYMOUTH TOWNS OF CARVER, DUXBURY, HANOVER, HANSON, HINGHAM, HULL, KINGSTON, LAKEVILLE, MARSHFIELD, MIDDLEBOROUG NORWELL, PEMBROKE, PLYMOUTH, PLYMPTON, ROCKLAND, SCITUATE					
COUNTY: SUFFOLK TOWNS OF BOSTON, CHELSEA, REVERE, WINTHROP					
COUNTY: WORCESTER TOWNS OF BERLIN, BOLTON, HARVARD, HOPEDALE, LANCASTER, MENDON, MILFORD, SOUTHBOROUGH, UPTON					
BROCKTON, MA PMSA	396	478	599	726	814
COUNTY: BRISTOL TOWNS OF EASTON					
COUNTY: NORFOLK TOWNS OF AVON					
COUNTY: PLYMOUTH TOWNS OF ABINGTON, BRIDGEWATER, BROCKTON, EAST BRIDGEW, HALIFAX, WEST BRIDGEW, WHITMAN					
FALL RIVER, MA-RI PMSA	350	417	501	580	640
COUNTY: BRISTOL TOWNS OF FALL RIVER, SOMERSET, SWANSEA, WESTPORT					
FITCHBURG-LEOMINSTER, MA MSA	383	464	547	683	766
COUNTY: MIDDLESEX TOWNS OF ASHBY					
COUNTY: WORCESTER TOWNS OF ASHBURNHAM, FITCHBURG, LEOMINSTER, LUNENBURG, WESTMINSTER					
LAWRENCE-HAVERHILL, MA-NH PMSA	423	518	617	705	784
COUNTY: ESSEX TOWNS OF AMESBURY, ANDOVER, BOXFORD, GEORGETOWN, GROVELAND, HAVERHILL, LAWRENCE, MERRIMAC, METHUEN, NEWBURY NEWBURYPORT, NORTH ANDOVE, SALISBURY, WEST NEWBURY					
LOWELL, MA-NH PMSA	407	495	577	699	797
COUNTY: MIDDLESEX TOWNS OF BILLERICA, CHELMSFORD, DRACUT, DUNSTABLE, LOWELL, PEPPERELL, TEWKSBURY, TYNGSBOROUGH, WESTFORD					
NEW BEDFORD, MA MSA	357	401	474	580	640
COUNTY: BRISTOL TOWNS OF ACUSHNET, DARTMOUTH, FAIRHAVEN, FREETOWN, NEW BEDFORD					
COUNTY: PLYMOUTH TOWNS OF MARION, MATTAPOISETT, ROCHESTER					
PAWTUCKET-WOONSOCKET-ATTLEBORO, RI-MA PMSA	340	412	485	595	679
COUNTY: BRISTOL TOWNS OF ATTLEBORO, NORTH ATTLEB, REHOBOTH, SEEKONK					
COUNTY: NORFOLK TOWNS OF PLAINVILLE					
COUNTY: WORCESTER TOWNS OF BLACKSTONE, MILLVILLE					
PITTSFIELD, MA MSA	354	429	502	624	703
COUNTY: BERKSHIRE TOWNS OF CHESHIRE, DALTON, HINSDALE, LANESBOROUGH, LEE, LENOX, PITTSFIELD, RICHMOND, STOCKBRIDGE					
SALEM-GLOUCESTER, MA PMSA	472	572	674	842	943
COUNTY: ESSEX TOWNS OF BEVERLY, DANVERS, ESSEX, GLOUCESTER, HAMILTON, IPSWICH, MANCHESTER, MARBLEHEAD, MIDDLETON, PEABODY ROCKPORT, ROWLEY, SALEM, SWAMPSCOTT, TOPSFIELD, WENHAM					
SPRINGFIELD, MA MSA	362	440	513	640	719
COUNTY: HAMPDEN TOWNS OF AGAWAM, CHICOPEE, EAST LONGMEA, HAMPDEN, HOLYOKE, LONGMEADOW, LUDLOW, MONSON, MONTGOMERY, PALMER RUSSELL, SOUTHWICK, SPRINGFIELD, WESTFIELD, WEST SPRINGF, WILBRAHAM					
COUNTY: HAMPSHIRE TOWNS OF BELCHERTOWN, EASTHAMPTON, GRANBY, HUNTINGTON, NORTHAMPTON, SOUTHAMPTON, SOUTH HADLEY					
WORCESTER, MA MSA	367	451	529	663	741
COUNTY: WORCESTER TOWNS OF AUBURN, BARRE, BOYLSTON, BROOKFIELD, CHARLTON, CLINTON, DOUGLAS, DUDLEY, EAST BROOKFI, GRAFTON HOLDEN, LEICESTER, MILLBURY, NORTHBOROUGH, NORTHBRIDGE, NORTH BROOKF, OXFORD, PAXTON, PRINCETON, RUTLAND SHREWSBURY, SPENCER, STERLING, SUTTON, UXBRIDGE, WEBSTER, WESTBOROUGH, WEST BOYLSTO, WORCESTER					

NONMETROPOLITAN COUNTIES OR PARTS OF COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BARNSTABLE COUNTY	474	585	669	838	937
BERKSHIRE COUNTY TOWNS OF ADAMS, ALFORD, BECKET, CLARKSBURG, EGREMONT FLORIDA, GREAT BARRIN, HANCOCK, MONTEREY, MOUNT WASHIN, NEW ASHFORD, NEW MARLBORO, NORTH ADAMS, OTIS, PERU SANDISFIELD, SAVOY, SHEFFIELD, TYRINGHAM, WASHINGTON, WEST STOCKBR, WILLIAMSTOWN, WINDSOR	312	379	446	557	624
BRISTOL COUNTY TOWNS OF BERKLEY, DIGHTON, TAUNTON	345	417	491	590	657
DUKES COUNTY	474	585	669	836	937
FRANKLIN COUNTY	362	429	501	630	702
HAMPDEN COUNTY TOWNS OF BLANDFORD, BRIMFIELD, CHESTER, GRANVILLE HOLLAND, TOLLAND, WALES	326	396	466	583	653
HAMPSHIRE COUNTY TOWNS OF AMHERST, CHESTERFIELD, CUMMINGTON, GOSHEN HADLEY, HATFIELD, MIDDLEFIELD, PELHAM, PLAINFIELD, WARE, WESTHAMPTON, WILLIAMSBURG, WORTHINGTON	424	491	602	724	841
NANTUCKET COUNTY	474	585	669	836	937
PLYMOUTH COUNTY TOWNS OF WAREHAM	345	408	479	592	659
WORCESTER COUNTY TOWNS OF ATHOL, GARDNER, HARDWICK, HUBBARDSTON NEW BRAINTRE, OAKHAM, PETERSHAM, PHILLIPSTON, ROYALSTON, SOUTHBRIDGE, STURBRIDGE, TEMPLETON WARREN, WEST BROOKFI WINCHENDON	345	407	491	602	669

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: MICHIGAN	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ANN ARBOR, MI PMSA COUNTY(IES): WASHTENAW	382	464	547	683	765
BATTLE CREEK, MI MSA COUNTY(IES): CALHOUN	259	314	369	463	519
BENTON HARBOR, MI MSA COUNTY(IES): BERRIEN	288	350	410	513	575
DETROIT, MI PMSA COUNTY(IES): LAPEER, LIVINGSTON, MACOMB, MONROE, OAKLAND, ST CLAIR, WAYNE	355	427	498	621	692
FLINT, MI MSA COUNTY(IES) GENESEE	272	331	391	489	546
GRAND RAPIDS, MI MSA COUNTY(IES): KENT, OTTAWA	255	313	366	457	516
JACKSON, MI MSA COUNTY(IES): JACKSON	285	345	406	507	569
KALAMAZOO, MI MSA COUNTY(IES): KALAMAZOO	297	357	420	516	575
LANSING-EAST LANSING, MI MSA COUNTY(IES): CLINTON EATON, INGHAM	311	373	437	542	606
MUSKEGON, MI MSA COUNTY(IES): MUSKEGON	253	307	362	453	506
SAGINAW-BAY CITY-MIDLAND, MI MSA COUNTY(IES): BAY, MIDLAND, SAGINAW	281	339	398	499	558

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALCONA	226	275	324	405	454
ALLEGAN	262	319	374	468	525
ANTRIM	283	342	403	504	565
BARAGA	231	280	330	413	463
BENZIE	283	342	403	504	565
CASS	257	311	366	459	513
CHEBOYGAN	226	275	324	405	454
CLARE	248	302	356	444	498
DELTA	223	270	320	399	447
EMMET	283	342	403	504	565
GOGEBIC	231	280	330	413	463
GRATIOT	284	344	404	506	567
HOUGHTON	231	280	330	413	463
IONIA	265	320	376	469	525
IRON	231	280	330	413	463
KALKASKA	283	342	403	504	565
LAKE	260	316	371	464	521
LENAWEE	281	340	401	502	563
MACKINAC	223	270	320	399	447
MARQUETTE	283	342	403	504	565
MECOSTA	260	316	371	464	521
MISSAUKEE	283	342	403	504	565
MONTMORENCY	226	275	324	405	454
OCEANA	252	305	360	451	504
ONTONAGON	231	280	330	413	463
OSCODA	226	275	324	405	454
PRESQUE ISLE	226	275	324	405	454
ST JOSEPH	264	321	378	472	529
SCHOOLCRAFT	223	270	320	399	447
TUSCOLA	255	309	363	455	509
WEXFORD	283	342	403	504	565

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALGER	223	270	320	399	447
ALPENA	226	275	324	405	454
ARENAC	248	302	356	444	498
BARRY	264	321	378	472	529
BRANCH	264	321	378	472	529
CHARLEVOIX	283	342	403	504	565
CHIPPEWA	223	270	320	399	447
CRAWFORD	226	275	324	405	454
DICKINSON	231	293	345	431	484
GLADWIN	248	302	356	444	498
GRD TRAVERSE	283	342	403	504	565
HILLSDALE	281	340	401	502	563
HURON	255	309	363	455	509
IOSCO	248	302	356	444	498
ISABELLA	284	344	404	506	567
KEWEENAW	231	280	330	413	463
LEELANAU	283	342	403	504	565
LUCE	223	270	320	399	447
MANISTEE	283	342	403	504	565
MASON	260	316	371	464	521
MENOMINEE	283	342	403	504	565
MONTCALM	262	319	374	468	525
NEWAYGO	260	316	371	464	521
OGEMAW	248	302	356	444	498
OSCEOLA	260	316	371	464	521
OTSEWO	226	275	324	405	454
ROSCOMMON	248	302	356	444	498
SANILAC	255	309	363	455	509
SHIAWASSEE	280	339	400	500	561
VAN BUREN	257	311	366	459	513

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: MINNESOTA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
DULUTH, MN-WI MSA COUNTY(IES): ST LOUIS	288	343	404	506	567
FARGO-MOORHEAD, ND-MN MSA COUNTY(IES): CLAY	289	351	413	518	580
MINNEAPOLIS-ST. PAUL, MN-WI MSA COUNTY(IES): ANOKA, CARVER, CHISAGO, DAKOTA, HENNEPIN, ISANTI, RAMSEY, SCOTT, WASHINGTON, WRIGHT	359	435	516	645	720
ROCHESTER, MN MSA COUNTY(IES): OLMSTED	305	370	436	545	610
ST. CLOUD, MN MSA COUNTY(IES): BENTON, SHERBURNE, STEARNS	291	353	415	520	582

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
AITKIN	261	318	374	468	524
BELTRAMI	251	305	358	448	503
BLUE EARTH	291	352	408	504	557
CARLTON	263	320	374	468	524
CHIPPEWA	232	283	333	417	466
COOK	261	318	374	468	524
CROW WING	245	297	372	460	512
DOUGLAS	260	317	372	466	522
FILLMORE	241	292	345	431	482
GOODHUE	251	305	356	443	495
HOUSTON	241	292	345	431	482
ITASCA	263	320	374	468	524
KANABEC	261	318	374	468	524
KITTSON	251	305	358	448	503
LAC QUI PARL	232	283	333	417	466
LAKE OF WOOD	251	305	358	448	503
LINCOLN	240	289	338	420	467
MCLEOD	274	333	391	490	548
MARSHALL	251	305	358	448	503
MEEKER	274	333	391	490	548
MORRISON	245	297	351	439	491
MURRAY	240	289	338	420	467
NOBLES	240	289	338	420	467
OTTER TAIL	260	317	372	466	522
PINE	261	318	374	468	524
POLK	251	305	358	448	503
RED LAKE	251	305	358	448	503
RENVILLE	274	333	391	490	548
ROCK	240	289	338	420	467
SIBLEY	272	331	388	485	544
STEVENS	260	317	372	466	522
TODD	245	297	351	439	491
WABASHA	251	305	356	443	495
WASECA	247	301	354	443	495
WILKIN	260	317	372	466	522
YELLOW MEDIC	232	283	333	417	466
BECKER	260	317	372	466	522
BIG STONE	232	283	333	417	466
BROWN	247	301	354	443	495
CASS	245	297	351	439	491
CLEARWATER	251	305	358	448	503
COTTONWOOD	232	283	333	417	466
DODGE	236	286	336	420	471
FARIBAULT	247	301	354	443	495
FREEBORN	284	345	407	508	569
GRANT	260	317	372	466	522
HUBBARD	251	305	358	448	503
JACKSON	240	289	338	420	467
KANDIYOHI	274	333	391	490	548
KOOCHICHING	261	318	374	468	524
LAKE	261	318	374	468	524
LE SUEUR	272	331	388	485	544
LYON	240	289	338	420	467
MAHNOMEN	251	305	358	448	503
MARTIN	247	301	354	443	495
MILLE LACS	261	318	374	468	524
MOWER	241	292	345	431	482
NICOLLET	272	331	388	485	544
NORMAN	251	305	358	448	503
PENNINGTON	251	305	358	448	503
PIPESTONE	240	289	338	420	467
POPE	260	317	372	466	522
REDWOOD	232	283	333	417	466
RICE	284	345	407	508	569
ROSEAU	251	305	358	448	503
STEELE	284	345	407	508	569
SWIFT	232	283	333	417	466
TRAVERSE	260	317	372	466	522
WADENA	245	297	351	439	491
WATONWAN	247	301	354	443	495
WINONA	242	292	345	431	482

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: MISSISSIPPI	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BILOXI-GULFPORT, MS MSA COUNTY(IES): HANCOCK HARRISON	246	300	353	442	494
JACKSON, MS MSA COUNTY(IES): HINDS, MADISON, RANKIN	313	380	448	560	628
MEMPHIS, TN-AR-MS MSA COUNTY(IES): DE SOTO	258	317	374	464	522
PASCAGOULA, MS MSA COUNTY(IES): JACKSON	269	326	383	481	539

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ADAMS	216	251	295	391	423	ALCORN	215	261	307	383	430
AMITE	180	218	257	321	360	ATTALA	181	220	258	323	362
BENTON	201	245	289	362	405	BOLIVAR	208	253	298	372	416
CALHOUN	236	287	338	422	477	CARROLL	181	220	258	323	362
CHICKASAW	243	287	338	426	474	CHOCTAW	233	271	318	399	447
CLAIBORNE	180	218	257	321	360	CLARKE	234	284	332	415	465
CLAY	233	271	318	399	447	COAHOMA	218	264	310	387	436
COPIAH	190	231	272	340	381	COVINGTON	183	222	262	327	366
FORREST	234	285	335	418	469	FRANKLIN	180	218	257	321	360
GEORGE	183	222	262	327	366	GREENE	183	222	262	327	366
GRENADA	181	220	258	323	362	HOLMES	181	220	258	323	362
HUMPHREYS	208	253	298	372	416	ISSAQUENA	208	253	298	372	416
ITAWAMBA	222	269	317	397	444	JASPER	234	284	332	415	465
JEFFERSON	180	218	257	321	360	JEFFERSON DA	183	222	262	327	366
JONES	236	274	309	351	391	KEMPER	234	284	332	415	465
LAFAYETTE	236	287	338	422	474	LAMAR	234	285	335	418	469
LAUDERDALE	232	281	332	415	465	LAWRENCE	180	218	257	321	360
LEAKE	199	242	286	358	401	LEE	235	287	336	420	469
LEFLORE	236	262	308	401	432	LINCOLN	180	218	257	321	360
LOWNDES	257	318	365	488	509	MARION	234	285	335	418	469
MARSHALL	201	245	289	362	405	MONROE	222	269	317	397	444
MONTGOMERY	181	220	258	323	362	NESHOBA	199	242	286	358	401
NEWTON	199	242	286	358	401	NOXUBEE	223	271	318	399	447
OKTIBBEHA	223	271	318	399	447	PANOLA	218	264	310	387	436
PEARL RIVER	234	285	335	418	469	PERRY	183	222	262	327	366
PIKE	216	251	295	391	423	PONTOTOC	243	287	338	426	474
PRENTISS	201	245	289	362	405	QUITMAN	218	264	310	387	436
SCOTT	199	242	286	358	401	SHARKEY	208	253	298	372	416
SIMPSON	190	231	272	340	381	SMITH	199	242	286	358	401
STONE	234	285	335	418	469	SUNFLOWER	208	253	298	372	416
TALLAHATCHIE	218	264	310	387	436	TATE	218	264	310	387	436
TIPPAH	201	245	289	362	405	TISHOMIGO	201	245	289	362	405
TUNICA	218	264	310	387	436	UNION	243	287	338	426	474
WALTHALL	180	218	257	321	360	WARREN	264	321	377	472	529
WASHINGTON	208	253	298	372	416	WAYNE	183	222	262	327	366
WEBSTER	233	271	318	399	447	WILKINSON	180	218	257	321	360
WINSTON	233	271	318	399	447	YALOBUSHA	181	220	258	323	362
YAZOO	264	321	377	472	529						

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STATE MISSOURI	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
COLUMBIA, MO MSA COUNTY(IES): BOONE	282	343	405	506	568
JOPLIN, MO MSA COUNTY(IES): JASPER, NEWTON	218	266	312	391	438
KANSAS CITY, MO-KS MSA COUNTY(IES): CASS, CLAY, JACKSON, LAFAYETTE, PLATTE, RAY	292	354	416	520	582
ST JOSEPH, MO MSA COUNTY(IES): BUCHANEN	232	281	332	414	465
ST LOUIS, MO-IL MSA COUNTY(IES): FRANKLIN, JEFFERSON, ST CHARLES, ST LOUIS, ST. LOUIS	303	369	435	546	611
SPRINGFIELD, MO MSA COUNTY(IES): CHRISTIAN, GREENE	242	296	347	435	486

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ADAIR	221	268	315	396	443	ANDREW	232	281	332	414	465
ATCHISON	209	255	300	375	420	AUDRAIN	245	298	350	439	491
BARRY	204	247	293	366	409	BARTON	199	241	284	355	399
BATES	199	241	284	355	399	BENTON	199	241	284	355	399
BOLLINGER	234	285	335	418	470	BUTLER	193	235	279	348	389
CALDWELL	209	255	301	375	420	CALLAWAY	245	298	350	439	491
CAMDEN	224	271	318	399	447	CAPE GIRARDE	234	285	335	418	470
CARROLL	215	262	308	384	432	CARTER	193	235	279	348	389
CEDAR	199	241	284	355	399	CHARITON	215	262	308	384	432
CLARK	221	268	315	396	443	CLINTON	209	255	300	375	420
COLE	245	298	350	439	491	COOPER	245	298	350	439	491
CRAWFORD	214	261	306	383	430	DADE	204	247	293	366	409
DALLAS	204	247	293	366	409	DAVIESS	209	255	301	375	420
DE KALB	209	255	300	375	420	DENT	214	261	306	383	430
DOUGLAS	193	235	276	345	386	DUNKLIN	193	235	276	345	386
GASCONADE	214	261	306	383	430	GENTRY	209	255	300	375	420
GRUNDY	221	268	315	396	443	HARRISON	209	255	301	375	420
HENRY	199	241	284	355	399	HICKORY	199	241	284	355	399
HOLT	209	255	300	375	420	HOWARD	245	298	350	439	491
HOWELL	193	235	276	345	386	IRON	234	285	335	418	470
JOHNSON	224	272	320	401	448	KNOX	221	268	315	396	443
LACLEDE	224	271	318	399	447	LAWRENCE	204	247	293	366	409
LEWIS	219	265	312	389	433	LINCOLN	214	261	306	383	430
LINN	221	268	315	396	443	LIVINGSTON	221	268	315	396	443
MCDONALD	204	247	293	366	409	MACON	214	261	306	383	430
MADISON	234	285	335	418	470	MARIES	214	261	306	383	430
MARION	219	265	312	389	433	MERCER	209	255	301	375	420
MILLER	224	271	318	399	447	MISSISSIPPI	193	235	276	345	386
MONITEAU	245	298	350	439	491	MONROE	214	261	306	383	430
MONTGOMERY	214	261	306	383	430	MORGAN	224	271	318	399	447
NEW MADRID	193	235	276	345	386	NODAWAY	217	255	308	375	420
OREGON	193	235	276	345	386	OSAGE	245	298	350	439	491
OZARK	193	235	276	345	386	PEMISCOT	193	235	276	345	386
PERRY	234	285	335	418	470	PETTIS	215	262	308	384	432
PHELPS	249	302	355	450	504	PIKE	214	261	306	383	430
POLK	204	247	293	366	409	PULASKI	224	271	318	399	447
PUTNAM	221	268	315	396	443	RALLS	219	265	312	389	433
RANDOLPH	214	261	306	383	430	REYNOLDS	193	235	276	345	386
RIPLEY	193	235	279	348	389	ST CLAIR	199	241	284	355	399
STE GENEVIEV	234	285	335	418	470	ST FRANCOIS	234	285	335	418	470
SALINE	215	262	308	384	432	SCHUYLER	221	268	315	396	443
SCOTLAND	221	268	315	396	443	SCOTT	234	285	335	418	470
SHANNON	193	235	276	345	386	SHELBY	214	261	306	383	430
STODDARD	193	235	276	345	386	STONE	204	247	293	366	409
SULLIVAN	221	268	315	396	443	TANEY	204	247	293	366	409
TEXAS	193	235	276	345	386	VERNON	199	241	284	355	399
WARREN	214	261	306	383	430	WASHINGTON	214	261	306	383	430
WAYNE	193	235	279	348	389	WEBSTER	204	247	293	366	409
WORTH	209	255	300	375	420	WRIGHT	193	235	276	345	386

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: MONTANA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BILLINGS, MT MSA COUNTY(IES): YELLOWSTONE	334	407	479	598	670
GREAT FALLS, MT MSA COUNTY(IES): CASCADE	288	350	413	516	577

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BEAVERHEAD	287	349	411	513	575
BLAINE	268	325	383	479	536
CARBON	270	328	387	484	542
CHOUTEAU	268	325	383	479	536
DANIELS	268	325	383	479	536
DEER LODGE	287	349	411	513	575
FERGUS	270	328	387	484	542
GALLATIN	317	389	460	570	641
GLACIER	268	325	383	479	536
GRANITE	287	349	411	513	575
JEFFERSON	287	349	411	513	575
LAKE	293	357	419	525	588
LIBERTY	268	325	383	479	536
MCCONE	270	328	387	484	542
MEAGHER	287	349	411	513	575
MISSOULA	293	357	419	525	588
PARK	287	349	411	513	575
PHILLIPS	268	325	383	479	536
POWDER RIVER	270	328	387	484	542
PRAIRIE	270	328	387	484	542
RICHLAND	270	328	387	484	542
ROSEBUD	270	328	387	484	542
SHERIDAN	268	325	383	479	536
STILLWATER	270	328	387	484	542
TETON	268	325	383	479	536
TREASURE	270	328	387	484	542
WHEATLAND	270	328	387	484	542
YL-ST-NT-PK	287	349	411	513	575

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BIG HORN	270	328	387	484	542
BROADWATER	287	349	411	513	575
CARTER	270	328	387	484	542
CUSTER	270	328	387	484	542
DAWSON	270	328	387	484	542
FALLON	270	328	387	484	542
FLATHEAD	293	357	419	525	588
GARFIELD	270	328	387	484	542
GOLDEN VALLE	270	328	387	484	542
HILL	268	325	383	479	536
JUDITH BASIN	270	328	387	484	542
LEWIS+ CLARK	328	405	477	591	668
LINCOLN	293	357	419	525	588
MADISON	287	349	411	513	575
MINERAL	293	357	419	525	588
MUSSELSHELL	270	328	387	484	542
PETROLEUM	270	328	387	484	542
PONDERA	268	325	383	479	536
POWELL	287	349	411	513	575
RAVALLI	293	357	419	525	588
ROOSEVELT	268	325	383	479	536
SANDERS	293	357	419	525	588
SILVER BOW	287	349	411	513	575
SWEET GRASS	270	328	387	484	542
TOOLE	268	325	383	479	536
VALLEY	268	325	383	479	536
WIBAUX	270	328	387	484	542

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

STATE: NEBRASKA	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LINCOLN, NE MSA COUNTY(IES): LANCASTER	286	347	408	511	572
OMAHA, NE-IA MSA COUNTY(IES): DOUGLAS, SARPY, WASHINGTON	281	340	401	502	563
SIOUX CITY, IA-NE MSA COUNTY(IES): DAKOTA	278	338	398	498	558

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ADAMS	256	311	366	458	512
ANTELOPE	248	301	356	443	498
ARTHUR	217	263	309	387	433
BANNER	210	255	299	374	421
BLAINE	210	255	299	374	421
BOONE	229	279	328	410	460
BOX BUTTE	238	291	341	427	478
BOYD	210	255	299	374	421
BROWN	210	255	299	374	421
BUFFALO	256	311	366	458	512
BURT	229	279	328	410	460
BUTLER	226	275	324	404	454
CASS	226	275	324	404	454
CEDAR	248	301	356	443	498
CHASE	217	263	309	387	433
CHERRY	210	255	299	374	421
CHEYENNE	210	255	299	374	421
CLAY	256	311	366	458	512
COLFAX	229	279	328	410	460
CUMING	229	279	328	410	460
CUSTER	210	255	299	374	421
DAWES	210	255	299	374	421
DAWSON	217	263	309	387	433
DEUEL	210	255	299	374	421
DIXON	248	301	356	443	498
DODGE	229	279	328	410	460
DUNDY	217	263	309	387	433
FILLMORE	226	275	324	404	454
FRANKLIN	256	311	366	458	512
FRONTIER	217	263	309	387	433
FURNAS	217	263	309	387	433
GAGE	251	303	358	447	501
GARDEN	210	255	299	374	421
GARFIELD	210	255	299	374	421
GOSPER	217	263	309	387	433
GRANT	217	263	309	387	433
GREELEY	210	255	299	374	421
HALL	256	311	366	458	512
HAMILTON	256	311	366	458	512
HARLAN	256	311	366	458	512
HAYES	217	263	309	387	433
HITCHCOCK	217	263	309	387	433
HOLT	214	262	307	383	427
HOOKER	217	263	309	387	433
HOWARD	256	311	366	458	512
JEFFERSON	226	275	324	404	454
JOHNSON	226	275	324	404	454
KEARNEY	256	311	366	458	512
KEITH	217	263	309	387	433
KEYA PAHA	214	262	307	383	427
KIMBALL	210	255	299	374	421
KNOX	248	301	356	443	498
LINCOLN	217	263	309	387	433
LOGAN	217	263	309	387	433
LOUP	210	255	299	374	421
MCPHERSON	217	263	309	387	433
MADISON	248	301	356	443	498
MERRICK	256	311	366	458	512
MORRILL	210	255	299	374	421
NANCE	229	279	328	410	460
NEMAHA	226	275	324	404	454
NUCKOLLS	256	311	366	458	512
OTOE	226	275	324	404	454
PAWNEE	226	275	324	404	454
PERKINS	217	263	309	387	433
PHELPS	256	311	366	458	512
PIERCE	248	301	356	443	498
PLATTE	229	279	328	410	460
POLK	226	275	324	404	454
RED WILLOW	217	263	309	387	433
RICHARDSON	226	275	324	404	454
ROCK	214	262	307	383	427
SALINE	226	275	324	404	454
SAUNDERS	226	275	324	404	454
SCOTTS BLUFF	244	294	341	424	472
SEWARD	226	275	324	404	454
SHERIDAN	210	255	299	374	421
SHERMAN	210	255	299	374	421
SIOUX	210	255	299	374	421
STANTON	248	301	356	443	498
THAYER	226	275	324	404	454
THOMAS	217	263	309	387	433
THURSTON	229	279	328	410	460
VALLEY	210	255	299	374	421
WAYNE	248	301	356	443	498
WEBSTER	256	311	366	458	512
WHEELER	210	255	299	374	421
YORK	226	275	324	404	454

STATE: NEVADA	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LAS VEGAS, NV MSA COUNTY(IES): CLARK	405	491	579	724	811
RENO, NV MSA COUNTY(IES): WASHOE	499	606	714	892	1000

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CHURCHILL	356	428	504	629	706
DOUGLAS	356	428	504	629	706
ELKO	356	428	504	629	706
ESMERALDA	353	428	504	629	706
EUREKA	353	428	504	629	706
HUMBOLDT	356	428	504	629	706
LANDER	356	428	504	629	706
LINCOLN	353	428	504	629	706
LYON	356	428	504	629	706
MINERAL	356	428	504	629	706
NYE	353	428	504	629	706
PERSHING	356	428	504	629	706
STOREY	356	428	504	629	706
WHITE PINE	353	428	504	629	706
CARSON CITY	356	428	504	629	706

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: NEW HAMPSHIRE	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LAWRENCE-HAVERHILL, MA-NH PMSA	423	515	617	705	784
COUNTY: ROCKINGHAM TOWNS OF ATKINSON, BRENTWOOD, DANVILLE, DERRY, EAST KINGSTO, HAMPSTEAD, KINGSTON, NEWTON, PLAISTOW SALEM, SANDOWN, SEABROOK, WINDHAM					
LOWELL, MA-NH PMSA	407	495	577	699	797
COUNTY: HILLSBOROUGH TOWNS OF PELHAM					
MANCHESTER, NH MSA	381	463	544	680	763
COUNTY: HILLSBOROUGH TOWNS OF BEDFORD, GOFFSTOWN, MANCHESTER					
COUNTY: MERRIMACK TOWNS OF ALLENSTOWN, HOOKSETT					
COUNTY: ROCKINGHAM TOWNS OF AUBURN, CANDIA					
NASHUA, NH PMSA	425	516	607	760	851
COUNTY: HILLSBOROUGH TOWNS OF AMHERST, BROOKLINE, HOLLIS, HUDSON, LITCHFIELD, MERRIMACK, MILFORD, MONT VERNON, NASHUA WILTON					
COUNTY: ROCKINGHAM TOWNS OF LONDONDERRY					
PORTSMOUTH-DOVER-ROCHESTER, NH-ME MSA	395	481	565	706	791
COUNTY: ROCKINGHAM TOWNS OF EXETER, GREENLAND, HAMPTON, NEW CASTLE, NEWFIELDS, NEWINGTON, NEWMARKET, NORTH HAMPTO PORTSMOUTH, RYE, STRATHAM					
COUNTY: STRAFFORD TOWNS OF BARRINGTON, DOVER, DURHAM, FARMINGTON, LEE, MADBURY, MILTON, ROCHESTER, ROLLINSFORD SOMERSWORTH					

NONMETROPOLITAN COUNTIES OR PARTS OF COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BELKNAP COUNTY	331	399	465	576	645
CARROLL COUNTY	327	397	467	584	654
CHESHIRE COUNTY	371	449	530	662	732
COOS COUNTY	305	370	436	544	610
GRAFTON COUNTY	340	414	487	608	681
HILLSBOROUGH COUNTY TOWNS OF ANTRIM, BENNINGTON, DEERING, FRANCESTOWN GREENFIELD, GREENVILLE, HANCOCK, HILLSBOROUGH, LYNDEBOROUGH, MASON, NEW BOSTON, NEW IPSWICH, PETERBOROUGH, SHARON TEMPLE, WEARE, WINDSOR	418	508	597	746	826
MERRIMACK COUNTY TOWNS OF ANDOVER, BOSCAWEN, BOW, BRADFORD, CANTERBURY CHICHESTER, CONCORD, DANBURY, DUNBARTON, EPSOM, FRANKLIN, HENNIKER, HILL, HOPKINTON, LOUDON, NEWBURY, NEW LONDON NORTHFIELD, PEMBROKE, PITTSFIELD, SALISBURY, SUTTON, WARNER, WEBSTER, WILMOT	408	495	583	730	816
ROCKINGHAM COUNTY TOWNS OF CHESTER, DEERFIELD, EPPING, FREMONT HAMPTON FALL, KENSINGTON, NORTHWOOD, NOTTINGHAM, RAYMOND, SOUTH HAMPTO	418	508	597	746	826
STRAFFORD COUNTY TOWNS OF MIDDLETON, NEW DURHAM, STRAFFORD	370	452	532	666	735
SULLIVAN COUNTY	331	399	466	581	652

S T A T E: NEW JERSEY	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALLENTOWN-BETHLEHEM, PA-NJ MSA	303	368	430	542	604
COUNTY(IES): WARREN					
ATLANTIC CITY, NJ MSA	363	442	518	648	727
COUNTY(IES): ATLANTIC, CAPE MAY					
BERGEN-PASSAIC, NJ PMSA	506	614	728	910	1019
COUNTY(IES): BERGEN, PASSAIC					
JERSEY CITY, NJ PMSA	350	425	500	625	700
COUNTY(IES): HUDSON					
MIDDLESEX-SOMERSET-HUNTERDON, NJ PMSA	469	570	670	839	939
COUNTY(IES): HUNTERDON, MIDDLESEX, SOMERSET					
MONMOUTH-OCEAN, NJ PMSA	422	511	602	753	844
COUNTY(IES): MONMOUTH, OCEAN					
NEWARK, NJ PMSA	394	478	563	703	788
COUNTY(IES): ESSEX, MORRIS, SUSSEX, UNION					
PHILADELPHIA, PA-NJ PMSA	347	419	492	615	687
COUNTY(IES): BURLINGTON, CAMDEN, GLOUCESTER					
TRENTON, NJ PMSA	436	529	623	779	872
COUNTY(IES): MERCER					
VINELAND-MILLVILLE-BRIDGETON, NJ PMSA	350	425	500	625	700
COUNTY(IES): CUMBERLAND					
WILMINGTON, DE-NJ-MD PMSA	367	439	522	652	776
COUNTY(IES): SALEM					

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

STATE: NEW MEXICO	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALBUQUERQUE, NM MSA COUNTY(IES): BERNALILLO	336	408	480	600	673
LAS CRUCES, NM MSA COUNTY(IES): DONA ANA	267	324	381	477	534
SANTA FE, NM MSA COUNTY(IES): LOS ALAMOS, SANTE FE	391	475	560	699	783

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CATRON	241	293	345	431	482	CHAVES	262	318	374	468	524
CIBOLA	241	293	345	431	482	COLFAX	249	302	356	445	498
CURRY	249	302	356	445	498	DE BACA	249	302	356	445	498
EDDY	288	350	413	516	577	GRANT	241	293	345	431	482
GUADALUPE	249	302	356	445	498	HARDING	249	302	356	445	498
HIDALGO	241	293	345	431	482	LEA	288	350	413	516	577
LINCOLN	262	318	374	468	524	LUNA	241	293	345	431	482
MCKINLEY	334	406	478	598	669	MORA	249	302	356	445	498
OTERO	262	318	374	468	524	QUAY	249	302	356	445	498
RIO ARRIBA	224	272	320	400	448	ROOSEVELT	249	302	356	445	498
SANDOVAL	283	344	405	506	567	SAN JUAN	334	406	478	598	669
SAN MIGUEL	249	302	356	445	498	SIERRA	262	318	374	468	524
SOCORRO	262	318	374	468	524	TAOS	268	325	382	478	536
TORRANCE	249	302	356	445	498	UNION	249	302	356	445	498
VALENCIA	241	293	345	431	482						

STATE: NEW YORK	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALBANY-SCHENECTADY-TROY, NY MSA COUNTY(IES): ALBANY, GREENE, MONTGOMERY, RENSSELAER, SARATOGA, SCHENECTADY	309	371	438	551	613
BINGHAMTON, NY MSA COUNTY(IES): BROOME, TIOGA	279	335	396	499	549
BUFFALO, NY PMSA COUNTY(IES): ERIE	282	342	403	504	563
ELMIRA, NY MSA COUNTY(IES): CHEMUNG	281	342	403	504	565
GLENS FALLS, NY MSA COUNTY(IES): WARREN, WASHINGTON	291	354	416	520	583
NASSAU-SUFFOLK, NY PMSA COUNTY(IES): NASSAU, SUFFOLK	499	605	712	891	996
NEW YORK, NY PMSA COUNTY(IES): BRONX, KINGS, NEW YORK, PUTNAM, QUEENS, RICHMOND, ROCKLAND, WESTCHESTER	375	455	535	671	751
NIAGARA FALLS, NY PMSA COUNTY(IES): NIAGARA	271	328	386	483	541
ORANGE COUNTY, NY PMSA COUNTY(IES): ORANGE	372	452	531	664	744
POUGHKEEPSIE, NY MSA COUNTY(IES): DUTCHESS	422	513	604	755	846
ROCHESTER, NY MSA COUNTY(IES): LIVINGSTON, MONROE, ONTARIO, ORLEANS, WAYNE	331	405	477	596	663
SYRACUSE, NY MSA COUNTY(IES): MADISON, ONONDAGA, OSWEGO	292	349	409	511	573
UTICA-ROME, NY MSA COUNTY(IES): HERKIMER, ONEIDA	254	309	363	455	509

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALLEGANY	249	298	349	437	490	CATTARAUGUS	245	297	349	437	490
CAYUGA	291	354	416	520	583	CHAUTAUQUA	261	318	374	468	523
CHENANGO	288	349	411	514	575	CLINTON	278	331	389	483	531
COLUMBIA	274	332	392	490	549	CORTLAND	298	362	427	534	598
DELAWARE	267	326	383	478	536	ESSEX	265	321	377	472	529
FRANKLIN	264	321	377	472	529	FULTON	237	289	339	425	475
GENESEE	271	328	387	483	541	HAMILTON	264	321	377	472	529
JEFFERSON	284	345	406	507	569	LEWIS	284	345	406	507	569
OTSEGO	267	326	383	478	536	ST LAWRENCE	271	328	387	483	541
SCHOHARIE	267	326	383	478	536	SCHUYLER	274	332	392	490	549
SENECA	291	354	416	520	583	STEUBEN	274	332	392	490	549
SULLIVAN	288	352	414	506	578	TOMPKINS	298	362	427	534	598
ULSTER	341	414	488	609	683	WYOMING	272	328	387	483	541
YATES	272	330	389	487	543						

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: NORTH CAROLINA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ASHEVILLE, NC MSA COUNTY(IES): BUNCOMBE	255	310	365	455	510
BURLINGTON, NC MSA COUNTY(IES): ALAMANCE	253	307	361	451	506
CHARLOTTE-GASTONIA-ROCK HILL, NC-SC MSA COUNTY(IES): CABARRUS, GASTON, LINCOLN, MECKLENBURG, ROWAN, UNION	284	342	401	501	560
FAYETTEVILLE, NC MSA COUNTY(IES): CUMBERLAND	243	295	348	436	488
GREENSBORO--WINSTON-SALEM--HIGH POINT, NC MSA COUNTY(IES): DAVIDSON, DAVIE, FORSYTH, GUILFORD, RANDOLPH, STOKES, YADKIN	266	324	380	476	534
HICKORY, NC MSA COUNTY(IES): ALEXANDER, BURKE, CATAWBA	233	282	333	416	467
JACKSONVILLE, NC MSA COUNTY(IES): ONSLOW	241	294	346	433	485
RALEIGH-DURHAM, NC MSA COUNTY(IES): DURHAM, FRANKLIN, ORANGE, WAKE	305	371	437	546	611
WILMINGTON, NC MSA COUNTY(IES): NEW HANOVER	255	310	365	455	510

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALLEGHANY	230	277	325	406	446
ASHE	230	277	325	406	446
BEAUFORT	255	310	365	455	510
BLADEN	246	300	352	441	493
CALDWELL	230	278	328	411	459
CARTERET	239	291	342	429	481
CHATHAM	305	371	437	546	611
CHOWAN	246	295	344	428	476
CLEVELAND	230	277	325	406	446
CRAVEN	239	291	342	429	481
DARE	246	295	344	428	476
EDGECOMBE	239	291	342	429	481
GRAHAM	199	242	286	358	401
GREENE	223	270	318	399	446
HARNETT	223	270	318	399	446
HENDERSON	251	306	360	450	504
HOKE	216	262	308	384	431
IREDELL	231	280	330	409	457
JOHNSTON	236	287	338	422	474
LEE	236	287	338	422	474
MCDOWELL	230	277	325	406	446
MADISON	251	306	360	450	504
MITCHELL	230	277	325	406	446
MOORE	232	278	325	407	455
NORTHAMPTON	239	291	342	429	481
PASQUOTANK	246	295	344	428	476
PERQUIMANS	246	295	344	428	476
PITT	255	310	365	455	510
RICHMOND	232	278	325	407	455
ROCKINGHAM	231	280	330	413	463
SAMPSON	223	270	318	399	446
STANLY	228	277	327	409	457
SWAIN	199	242	286	358	401
TYRRELL	246	295	344	428	476
WARREN	221	268	315	395	442
WATAUGA	230	277	325	406	446
WILKES	230	277	325	406	446
YANCEY	230	277	325	406	446

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ANSON	232	278	325	407	455
AVERY	230	277	325	406	446
BERTIE	255	310	365	455	510
BRUNSWICK	231	281	331	414	464
CAMDEN	246	295	344	428	476
CASWELL	231	280	330	413	463
CHEROKEE	199	242	286	358	401
CLAY	199	242	286	358	401
COLUMBUS	241	293	345	431	483
CURRITUCK	280	336	386	478	528
DUPLIN	216	262	308	384	431
GATES	246	295	344	428	476
GRANVILLE	221	268	315	395	442
HALIFAX	239	291	342	429	481
HAYWOOD	231	281	332	415	466
HERTFORD	255	310	365	455	510
HYDE	246	295	344	428	476
JACKSON	239	291	342	429	479
JONES	239	291	342	429	481
LENOIR	239	291	342	429	481
MACON	251	305	360	450	505
MARTIN	255	310	365	455	510
MONTGOMERY	232	278	325	407	455
NASH	245	299	351	440	492
PAMLICO	239	291	342	429	481
PENDER	211	257	302	377	423
PERSON	221	268	315	395	442
POLK	230	277	325	406	446
ROBESON	206	250	294	368	412
RUTHERFORD	230	277	325	406	446
SCOTLAND	206	250	295	368	412
SURRY	218	265	311	389	436
TRANSYLVANIA	251	306	360	450	504
VANCE	221	268	315	395	442
WASHINGTON	246	295	344	428	476
WAYNE	223	270	318	399	446
WILSON	245	299	351	440	492

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

STATE: NORTH DAKOTA	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BISMARCK, ND MSA					
COUNTY(IES): BURLEIGH, MORTON	289	351	414	517	580
FARGO-MOORHEAD, ND-MN MSA					
COUNTY(IES): CASS	289	351	413	518	580
GRAND FORKS, ND MSA					
COUNTY(IES): GRAND FORKS	275	334	394	491	551

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ADAMS	244	298	350	439	490
BENSON	251	305	358	448	503
BOTTINEAU	244	298	350	439	490
BURKE	244	298	350	439	490
DICKEY	251	305	358	448	503
DUNN	244	298	350	439	490
EMMONS	221	268	315	396	442
GOLDEN VALLY	244	298	350	439	490
GRIGGS	251	305	358	448	503
KIDDER	221	268	315	396	442
LOGAN	251	305	358	448	503
MCINTOSH	251	305	358	448	503
MCLEAN	221	268	315	396	442
MOUNTRAIL	244	298	350	439	490
OLIVER	221	268	315	396	442
PIERCE	244	298	350	439	490
RANSOM	228	276	325	407	455
RICHLAND	228	276	326	407	455
SARGENT	228	276	326	407	455
SIOUX	221	268	315	396	442
STARK	244	298	350	439	490
STUTSMAN	251	305	358	448	503
TRAILL	228	276	326	407	455
WARD	244	298	350	439	490
WILLIAMS	244	298	350	439	490
BARNES	251	305	358	448	503
BILLINGS	244	298	350	439	490
BOWMAN	244	298	350	439	490
CAVALIER	251	305	358	448	503
DIVIDE	244	298	350	439	490
EDDY	251	305	358	448	503
FOSTER	251	305	358	448	503
GRANT	221	268	315	396	442
HETTINGER	244	298	350	439	490
LA MOORE	251	305	358	448	503
MCHENRY	244	298	350	439	490
MCKENZIE	244	298	350	439	490
MERCER	221	268	315	396	442
NELSON	251	305	358	448	503
PEMBINA	251	305	358	448	503
RAMSEY	251	305	358	448	503
RENVILLE	244	298	350	439	490
ROLETTE	251	305	358	448	503
SHERIDAN	221	268	315	396	442
SLOPE	244	298	350	439	490
STEELE	228	276	326	407	455
TOWNER	251	305	358	448	503
WALSH	251	305	358	448	503
WELLS	251	305	358	448	503

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: OHIO	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
AKRON, OH PMSA COUNTY(IES): PORTAGE, SUMMIT	287	349	411	514	575
CANTON, OH MSA COUNTY(IES): CARROLL, STARK	251	305	358	448	503
CINCINNATI, OH-KY-IN PMSA COUNTY(IES): CLERMONT, HAMILTON, WARREN	260	318	375	469	522
CLEVELAND, OH PMSA COUNTY(IES): CUYAHOGA, GEAUGA, LAKE, MEDINA	300	365	428	535	600
COLUMBUS, OH MSA COUNTY(IES): DELAWARE, FAIRFIELD, FRANKLIN, LICKING, MADISON, PICKAWAY, UNION	286	344	408	509	573
DAYTON-SPRINGFIELD, OH MSA COUNTY(IES): CLARK, GREENE, MIAMI, MONTGOMERY	265	323	376	472	524
HAMILTON-MIDDLETOWN, OH PMSA COUNTY(IES): BUTLER	292	356	418	523	585
HUNTINGTON-ASHLAND, WV-KY-OH MSA COUNTY(IES): LAWRENCE	282	342	403	504	566
LIMA, OH MSA COUNTY(IES): ALLEN, AUGLAIZE	266	323	380	476	534
LORAIN-ELYRIA, OH PMSA COUNTY(IES): LORAIN	282	344	405	506	567
MANSFIELD, OH MSA COUNTY(IES): RICHLAND	240	294	344	431	482
PARKERSBURG-MARIETTA, WV-OH MSA COUNTY(IES): WASHINGTON	262	317	374	469	524
STEUBENVILLE-WEIRTON, OH-WV MSA COUNTY(IES): JEFFERSON	269	327	383	480	539
TOLEDO, OH MSA COUNTY(IES): FULTON, LUCAS, WOOD	305	371	437	546	612
WHEELING, WV-OH MSA COUNTY(IES): BELMONT	265	322	380	475	532
YOUNGSTOWN-WARREN, OH MSA COUNTY(IES): MAHONING, TRUMBULL	266	323	380	476	534

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ADAMS	238	287	336	418	470
ASHTABULA	280	341	402	503	562
BROWN	238	287	336	418	470
CLINTON	242	296	347	435	486
COSHOCTON	217	265	312	386	435
DARKE	242	296	347	435	486
ERIE	274	333	392	489	549
GALLIA	262	317	374	469	524
HANCOCK	258	312	368	459	516
HARRISON	241	294	346	433	484
HIGHLAND	238	287	336	418	470
HOLMES	255	310	365	456	511
JACKSON	234	285	335	418	470
LOGAN	258	312	368	459	516
MEIGS	231	280	331	413	463
MONROE	260	315	371	465	520
MORROW	234	285	335	418	470
NOBLE	260	315	371	465	520
PAULDING	271	329	386	484	543
PIKE	234	285	335	418	470
PUTNAM	262	317	374	469	524
SANDUSKY	274	333	392	489	549
SENECA	241	294	346	433	484
TUSCARAWAS	255	310	365	456	511
VINTON	262	317	374	469	524
WILLIAMS	271	329	386	484	543

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ASHLAND	263	320	376	471	526
ATHENS	249	307	361	450	504
CHAMPAIGN	254	308	364	454	509
COLUMBIANA	249	302	356	445	499
CRAWFORD	241	294	346	433	484
DEFIANCE	271	329	386	484	543
FAYETTE	242	296	347	435	486
GUERNSEY	257	311	367	458	514
HARDIN	258	312	368	459	516
HENRY	271	329	386	484	543
HOCKING	231	280	331	413	463
HURON	241	294	346	433	484
KNOX	234	285	335	418	470
MARION	234	285	335	418	470
MERCER	242	296	347	435	486
MORGAN	260	315	371	465	520
MUSKINGUM	242	294	346	433	484
OTTAWA	274	333	392	489	549
PERRY	231	280	331	413	463
PREBLE	264	321	377	473	529
ROSS	242	296	347	435	486
SCIOTO	234	285	335	418	470
SHELBY	242	296	347	435	486
VAN WERT	262	317	374	469	524
WAYNE	263	320	376	471	526
WYANDOT	241	294	346	433	484

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BEST COPY AVAILABLE

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: OKLAHOMA	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ENID, OK MSA COUNTY(IES): GARFIELD	292	355	418	523	586
FORT SMITH, AR-OK MSA COUNTY(IES): SEQUOYAH	243	296	348	436	488
LAWTON, OK MSA COUNTY(IES): COMANCHE	251	305	360	450	504
OKLAHOMA CITY, OK MSA COUNTY(IES): CANADIAN, CLEVELAND, LOGAN, MCCLAIN, OKLAHOMA, POTTAWATOMIE	317	381	448	543	618
TULSA, OK MSA COUNTY(IES): CREEK, OSAGE, ROGERS, TULSA, WAGONER	318	386	455	568	637

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ADAIR	196	240	281	350	389
ATOKA	172	210	247	308	345
BECKHAM	217	263	310	388	435
BRYAN	207	251	295	370	414
CARTER	207	251	295	370	414
CHOCTAW	172	210	247	308	345
COAL	172	210	247	308	345
CRAIG	249	303	356	446	500
DELAWARE	194	237	278	347	389
ELLIS	222	271	319	397	447
GRADY	206	250	294	368	412
GREER	217	263	310	388	435
HARPER	222	271	319	397	447
HUGHES	200	243	286	357	400
JEFFERSON	206	250	294	368	412
KAY	257	312	368	460	515
KIOWA	217	263	310	388	435
LE FLORE	172	210	247	308	345
LOVE	207	251	295	370	414
MCINTOSH	200	243	286	357	400
MARSHALL	207	251	295	370	414
MURRAY	207	251	295	370	414
NOBLE	257	312	368	460	515
OKFUSKEE	200	243	286	357	400
OTTAWA	249	303	356	446	500
PAYNE	246	298	351	439	492
PONTOTOC	207	251	295	370	414
ROGER MILLS	217	263	310	388	435
STEPHENS	206	250	294	368	412
TILLMAN	206	250	294	368	412
WASHITA	217	263	310	388	435
WOODWARD	222	271	319	397	447
ALFALFA	222	271	319	397	447
BEAVER	222	271	319	397	447
BLAINE	222	271	319	397	447
CADDO	206	250	294	368	412
CHEROKEE	196	240	281	350	389
CIMARRON	222	271	319	397	447
COTTON	206	250	294	368	412
CUSTER	217	263	310	388	435
DEWEY	222	271	319	397	447
GARVIN	207	251	295	370	414
GRANT	257	312	368	460	515
HARMON	217	263	310	388	435
HASKELL	172	210	247	308	345
JACKSON	217	263	310	388	435
JOHNSTON	207	251	295	370	414
KINGFISHER	257	312	368	460	515
LATIMER	172	210	247	308	345
LINCOLN	246	298	351	439	492
MCCURTAIN	172	210	247	308	345
MAJOR	222	271	319	397	447
MAYES	258	313	370	462	517
MUSKOGEE	200	243	286	357	400
NOWATA	249	303	356	446	500
OKMULGEE	200	243	286	357	400
PAWNEE	246	298	351	439	492
PITTSBURG	172	210	247	308	345
PUSHMATAHA	172	210	247	308	345
SEMINOLE	205	249	294	363	404
TEXAS	222	271	319	397	447
WASHINGTON	249	303	356	446	500
WOODS	222	271	319	397	447

S T A T E: OREGON	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
EUGENE-SPRINGFIELD, OR MSA COUNTY(IES): LANE	353	430	506	633	708
MEDFORD, OR MSA COUNTY(IES): JACKSON	351	427	502	628	703
PORTLAND, OR PMSA COUNTY(IES): CLACKAMAS, MULTNOMAH, WASHINGTON, YAMHILL	301	367	441	570	631
SALEM, OR MSA COUNTY(IES): MARION, POLK	330	402	473	591	662

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BAKER	322	391	460	575	644
CLATSOP	313	381	448	559	627
COOS	336	408	481	600	673
CURRY	336	408	481	600	673
DOUGLAS	336	408	481	600	673
GRANT	322	391	460	575	644
HOOD RIVER	341	414	487	610	682
JOSEPHINE	336	408	481	600	673
LAKE	307	373	440	550	616
LINN	328	399	470	587	657
MORROW	322	391	460	575	644
TILLAMOOK	313	381	448	559	627
UNION	322	391	460	575	644
WASCO	341	414	487	610	682
BENTON	328	399	470	587	657
COLUMBIA	313	381	448	559	627
CROOK	341	414	487	610	682
DESCHUTES	341	414	487	610	682
GILLIAM	322	391	460	575	644
HARNEY	307	373	440	550	616
JEFFERSON	341	414	487	610	682
KLAMATH	307	373	440	550	616
LINCOLN	313	381	448	559	627
MALHEUR	307	373	440	550	616
SHERMAN	341	414	487	610	682
UMATILLA	322	391	460	575	644
WALLOWA	322	391	460	575	644
WHEELER	322	391	460	575	644

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: PENNSYLVANIA	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALLENTOWN-BETHLEHEM, PA-NJ MSA COUNTY(IES): CARBON, LEHIGH, NORTHAMPTON	303	368	430	542	604
ALTOONA, PA MSA COUNTY(IES): BLAIR	270	327	385	481	539
BEAVER COUNTY, PA PMSA COUNTY(IES): BEAVER	288	347	408	511	572
ERIE, PA MSA COUNTY(IES): ERIE	310	377	443	554	621
HARRISBURG-LEBANON-CARLISLE, PA MSA COUNTY(IES): CUMBERLAND, DAUPHIN, LEBANON, PERRY	321	385	455	568	636
JOHNSTOWN, PA MSA COUNTY(IES): CAMBRIA, SOMERSET	261	319	374	468	525
LANCASTER, PA MSA COUNTY(IES): LANCASTER	324	394	463	580	649
PHILADELPHIA, PA-NJ PMSA COUNTY(IES): BUCKS, CHESTER, DELAWARE, MONTGOMERY, PHILADELPHIA	347	419	492	615	687
PITTSBURGH, PA PMSA COUNTY(IES): ALLEGHANY, FAYETTE, WASHINGTON, WESTMORELAND	302	367	431	539	604
READING, PA MSA COUNTY(IES): BERKS	303	369	433	542	607
SCRANTON--WILKES-BARRE, PA MSA COUNTY(IES): COLUMBIA, LACKAWANNA, LUZERNE, MONROE, WYOMING	246	303	353	435	493
SHARON, PA MSA COUNTY(IES): MERCER	287	348	411	514	576
STATE COLLEGE, PA MSA COUNTY(IES): CENTRE	346	421	496	619	694
WILLIAMSPORT, PA MSA COUNTY(IES): LYCOMING	261	319	374	468	525
YORK, PA MSA COUNTY(IES): ADAMS, YORK	292	355	417	522	585

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ARMSTRONG	301	365	430	538	603	BEDFORD	243	296	348	435	487
BRADFORD	250	304	358	447	500	BUTLER	299	364	428	536	599
CAMERON	254	308	362	453	508	CLARION	247	301	354	442	496
CLEARFIELD	258	314	370	462	517	CLINTON	254	306	360	449	502
CRAWFORD	256	310	366	458	513	ELK	254	308	362	453	508
FOREST	247	301	354	442	496	FRANKLIN	277	338	396	497	555
FULTON	243	296	348	435	487	GREENE	258	314	370	462	517
HUNTINGDON	243	296	348	435	487	INDIANA	301	365	430	538	603
JEFFERSON	258	314	370	462	517	JUNIATA	251	305	359	449	502
LAWRENCE	256	310	366	458	513	MCKEAN	254	308	362	453	508
MIFFLIN	251	305	365	449	502	MONTOUR	258	314	370	462	517
NORTHUMBRLND	270	314	370	462	517	PIKE	290	339	418	519	565
POTTER	254	308	362	453	508	SCHUYLKILL	280	329	399	483	526
SNYDER	251	305	359	449	502	SULLIVAN	250	304	358	447	500
SUSQUEHANNA	250	304	358	447	500	TIOGA	250	304	358	447	500
UNION	290	340	418	519	565	VENANGO	247	301	354	442	496
WARREN	256	310	366	458	513	WAYNE	278	339	398	499	559

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: RHODE ISLAND	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
FALL RIVER, MA-RI PMSA COUNTY: NEWPORT TOWNS OF LITTLE COMPT, TIVERTON	350	417	501	580	640
NEW LONDON-NORWICH, CT-RI MSA COUNTY: WASHINGTON TOWNS OF HOPKINTON, WESTERLY	388	472	554	693	777
PAWTUCKET-WOONSOCKET-ATTLEBORO, RI-MA PMSA COUNTY: PROVIDENCE TOWNS OF BURRILLVILLE, CENTRAL FALL, CUMBERLAND, LINCOLN, NORTH SMITHF, PAWTUCKET, SMITHFIELD WOONSOCKET	340	412	485	595	679
PROVIDENCE, RI PMSA COUNTY: BRISTOL TOWNS OF BARRINGTON, BRISTOL, WARREN COUNTY: KENT TOWNS OF COVENTRY, EAST GREENWI, WARWICK, WEST WARWICK COUNTY: NEWPORT TOWNS OF JAMESTOWN COUNTY: PROVIDENCE TOWNS OF CRANSTON, EAST PROVIDE, FOSTER, GLOCESTER, JOHNSTON, NORTH PROVID, PROVIDENCE, SCITUATE COUNTY: WASHINGTON TOWNS OF EXETER, NARRAGANSETT, NORTH KINGST, RICHMOND, SOUTH KINGST	360	429	503	630	702

NONMETROPOLITAN COUNTIES OR PARTS OF COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
KENT COUNTY TOWNS OF WEST GREENWI	324	394	464	579	649
NEWPORT COUNTY TOWNS OF MIDDLETOWN, NEWPORT, PORTSMOUTH	423	514	605	756	847
WASHINGTON COUNTY TOWNS OF CHARLESTOWN, NEW SHOREHAM	324	394	464	579	649

S T A T E: SOUTH CAROLINA	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ANDERSON, SC MSA COUNTY(IES): ANDERSON	231	280	329	413	462
AUGUSTA, GA-SC MSA COUNTY(IES): AIKEN	267	322	376	470	526
CHARLESTON, SC MSA COUNTY(IES): BERKELEY, CHARLESTON, DORCHESTER	285	347	409	510	572
CHARLOTTE-GASTONIA-ROCK HILL, NC-SC MSA COUNTY(IES): YORK	284	342	401	501	560
COLUMBIA, SC MSA COUNTY(IES): LEXINGTON, RICHLAND	288	351	414	517	578
FLORENCE, SC MSA COUNTY(IES): FLORENCE	234	284	335	419	469
GREENVILLE-SPARTANBURG, SC MSA COUNTY(IES): GREENVILLE, PICKENS, SPARTANBURG	252	306	361	451	506

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ABBEVILLE	203	247	292	361	400
BAMBERG	211	258	303	380	425
BEAUFORT	262	319	376	469	526
CHEROKEE	203	246	290	363	408
CHESTERFIELD	202	245	288	361	405
COLLETON	262	319	376	469	526
DILLON	202	245	288	361	405
FAIRFIELD	199	242	285	356	399
GREENWOOD	203	247	292	361	400
HORRY	245	298	350	438	491
KERSHAW	229	277	326	409	458
LAURENS	203	247	292	361	400
MCCORMICK	199	242	285	356	399
MARLBORO	202	245	288	361	405
OCONEE	250	305	359	449	503
SALUDA	199	242	285	356	399
UNION	203	246	290	363	408

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALLENDALE	211	258	303	380	425
BARNWELL	211	258	303	380	425
CALHOUN	217	265	314	384	429
CHESTER	203	246	290	363	408
CLARENDON	229	277	326	409	458
DARLINGTON	202	245	288	361	405
EDGEFIELD	199	242	285	356	399
GEORGETOWN	245	298	350	438	491
HAMPTON	262	319	376	469	526
JASPER	262	319	376	469	526
LANCASTER	218	267	315	389	434
LEE	229	277	326	409	458
MARION	202	245	288	361	405
NEWBERRY	199	242	285	356	399
ORANGEBURG	211	258	303	380	425
SUMTER	229	277	326	409	458
WILLIAMSBURG	245	298	350	438	491

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

STATE: SOUTH DAKOTA	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
RAPID CITY, SD MSA					
COUNTY(IES): PENNINGTON	264	318	370	459	514
SIOUX FALLS, SD MSA					
COUNTY(IES): MINNEHAHA	279	338	398	498	558

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
AURORA	238	286	335	419	469
BENNETT	215	261	308	385	431
BROOKINGS	233	280	327	407	460
BRULE	235	284	335	419	469
BUTTE	256	312	366	459	514
CHARLES MIX	235	284	335	419	469
CLAY	235	284	335	419	469
CORSON	215	261	308	385	431
DAVISON	238	286	335	419	469
DEUEL	210	252	301	373	414
DOUGLAS	235	284	335	419	469
FALL RIVER	256	312	366	459	514
GRANT	233	280	327	407	460
HAAKON	215	261	308	385	431
HAND	238	286	335	416	463
HARDING	256	312	366	459	514
HUTCHINSON	235	284	335	419	469
JACKSON	215	261	308	385	431
JONES	215	261	308	385	431
LAKE	204	248	291	365	409
LINCOLN	238	286	335	419	469
MCCOOK	204	248	291	365	409
MARSHALL	227	278	326	409	458
MELLETTE	215	261	308	385	431
MOODY	204	248	291	365	409
POTTER	215	261	308	385	431
SANBORN	238	286	335	419	469
SPINK	227	278	326	409	458
SULLY	215	261	308	385	431
TRIPP	215	261	308	385	431
UNION	235	284	335	419	469
YANKTON	235	284	335	419	469
BEADLE	238	286	335	416	463
BON HOMME	235	284	335	419	469
BROWN	253	307	359	449	502
BUFFALO	215	261	308	385	431
CAMPBELL	215	261	308	385	431
CLARK	210	252	301	373	414
CODINGTON	233	280	327	407	460
CUSTER	256	312	366	459	514
DAY	227	278	326	409	458
DEWEY	215	261	308	385	431
EDMUNDS	227	278	326	409	458
FAULK	227	278	326	409	458
GREGORY	215	261	308	385	431
HAMLIN	210	252	301	373	414
HANSON	238	286	335	419	469
HUGHES	280	344	401	502	560
HYDE	215	261	308	385	431
JERAULD	238	286	335	419	469
KINGSBURY	204	248	291	365	409
LAWRENCE	262	312	366	459	514
LYMAN	215	261	308	385	431
MCPHERSON	227	278	326	409	458
MEADE	264	318	370	459	514
MINER	204	248	291	365	409
PERKINS	215	261	308	385	431
ROBERTS	227	278	326	409	458
SHANNON	215	261	308	385	431
STANLEY	280	344	401	502	560
TODD	215	261	308	385	431
TURNER	238	286	335	419	469
WALWORTH	215	261	308	385	431
ZIEBACH	215	261	308	385	431

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

STATE: TENNESSEE

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CHATTANOOGA, TN-GA MSA COUNTY(IES): HAMILTON, MARION, SEQUATCHIE	285	346	407	509	571
CLARKSVILLE-HOPKINSVILLE, TN-KY MSA COUNTY(IES): MONTGOMERY	263	331	415	503	559
JACKSON, TN MSA COUNTY(IES): MADISON	258	311	369	459	517
JOHNSON CITY-KINGSPORT-BRISTOL, TN-VA MSA COUNTY(IES): CARTER, HAWKINS, SULLIVAN, UNICOI, WASHINGTON	239	290	341	427	478
KNOXVILLE, TN MSA COUNTY(IES): ANDERSON, BLOUNT, GRAINGER, JEFFERSON, KNOX, SEVIER, UNION	262	320	375	470	526
MEMPHIS, TN-AR-MS MSA COUNTY(IES): SHELBY, TIPTON	258	317	374	464	522
NASHVILLE, TN MSA COUNTY(IES): CHEATHAM, DAVIDSON, DICKSON, ROBERTSON, RUTHERFORD, SUMNER, WILLIAMSON, WILSON	312	380	447	558	626

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BEDFORD	224	280	320	398	447
BLEDSOE	234	295	335	419	469
CAMPBELL	190	232	275	342	380
CARROLL	211	256	302	378	423
CLAIBORNE	190	232	275	342	380
COCKE	213	258	303	380	426
CROCKETT	215	260	306	384	430
DECATUR	230	281	330	413	462
DYER	215	260	306	384	430
FENTRESS	211	258	305	380	427
GIBSON	215	260	306	384	430
GREENE	209	254	298	373	419
HAMBLEN	221	268	317	395	443
HARDEMAN	230	281	330	413	462
HAYWOOD	220	276	315	394	441
HENRY	211	256	302	378	423
HOUSTON	194	236	278	347	388
JACKSON	183	225	266	333	370
LAKE	215	260	306	384	430
LAWRENCE	224	282	320	398	447
LINCOLN	253	305	359	449	501
MCMINN	234	285	335	419	469
MACON	211	258	305	380	427
MAURY	224	282	320	398	447
MONROE	224	276	322	403	451
MORGAN	190	232	275	342	380
OVERTON	211	258	305	380	427
PICKETT	211	258	305	380	427
PUTNAM	217	263	310	388	434
ROANE	224	276	322	403	451
SMITH	211	258	305	380	427
TROUSDALE	211	258	305	380	427
WARREN	217	263	310	388	434
WEAKLEY	211	256	302	378	423
BENTON	211	256	302	378	423
BRADLEY	234	285	335	419	469
CANNON	211	258	305	380	427
CHESTER	230	281	330	413	462
CLAY	183	225	266	333	370
COFFEE	224	282	320	398	447
CUMBERLAND	211	258	305	380	427
DE KALB	211	258	305	380	427
FAYETTE	220	268	315	394	441
FRANKLIN	253	305	359	449	501
GILES	224	282	320	398	447
GRUNDY	234	285	335	419	469
HANCOCK	209	254	298	373	419
HARDIN	230	281	330	413	462
HENDERSON	230	281	330	413	462
HICKMAN	224	282	320	398	447
HUMPHREYS	194	236	278	347	388
JOHNSON	203	248	291	364	407
LAUDERDALE	220	276	315	394	441
LEWIS	222	270	319	398	447
LOUDON	224	276	322	403	451
MCNAIRY	230	281	330	413	462
MARSHALL	224	282	320	398	447
MEIGS	234	285	335	419	469
MOORE	224	282	320	398	447
OBION	218	268	306	386	430
PERRY	222	270	319	398	447
POLK	234	285	335	419	469
RHEA	234	285	335	419	469
SCOTT	190	232	275	342	380
STEWART	194	236	278	347	388
VAN BUREN	217	263	310	388	434
WAYNE	222	270	319	398	447
WHITE	217	263	310	388	434

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: TEXAS	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ABILENE, TX MSA COUNTY(IES): TAYLOR	284	346	407	509	571
AMARILLO, TX MSA COUNTY(IES): POTTER, RANDALL	262	318	375	468	524
AUSTIN, TX MSA COUNTY(IES): HAYS, TRAVIS, WILLIAMSON	336	403	474	593	664
BEAUMONT-PORT ARTHUR, TX MSA COUNTY(IES): HARDIN JEFFERSON, ORANGE	301	365	430	538	602
BRAZORIA, TX PMSA COUNTY(IES): BRAZORIA	314	381	449	561	628
BROWNSVILLE-HARLINGEN, TX MSA COUNTY(IES): CAMERON	267	324	381	476	534
BRYAN-COLLEGE STATION, TX MSA COUNTY(IES): BRAZOS	353	430	505	632	708
CORPUS CHRISTI, TX MSA COUNTY(IES): NUECES, SAN PATRICIO	308	374	440	551	617
DALLAS, TX PMSA COUNTY(IES): COLLIN, DALLAS, DENTON, ELLIS, KAUFMAN, ROCKWALL	298	364	427	535	598
EL PASO, TX MSA COUNTY(IES): EL PASO	264	319	376	470	527
FORT WORTH-ARLINGTON, TX PMSA COUNTY(IES): JOHNSON, PARKER, TARRANT	298	364	427	535	598
GALVESTON-TEXAS CITY, TX PMSA COUNTY(IES): GALVESTON	293	356	419	524	587
HOUSTON, TX PMSA COUNTY(IES): FORT BEND, HARRIS, LIBERTY, MONTGOMERY, WALLER	280	340	400	500	560
KILLEEN-TEMPLE, TX MSA COUNTY(IES): BELL, CORYELL	260	318	371	464	520
LAREDO, TX MSA COUNTY(IES): WEBB	245	299	351	439	493
LONGVIEW-MARSHALL, TX MSA COUNTY(IES): GREGG, HARRISON	297	360	424	529	593
LUBBOCK, TX MSA COUNTY(IES): LUBBOCK	221	277	362	460	507
MC ALLEN-EDINBURG-MISSION, TX MSA COUNTY(IES): HIDALGO	268	323	379	474	532
MIDLAND, TX MSA COUNTY(IES): MIDLAND	341	414	487	610	683
ODESSA, TX MSA COUNTY(IES): ECTOR	339	412	484	605	678
SAN ANGELO, TX MSA COUNTY(IES): TOM GREEN	286	348	410	513	575
SAN ANTONIO, TX MSA COUNTY(IES): BEXAR, COMAL, GUADALUPE	291	349	413	513	577
SHERMAN-DENISON, TX MSA COUNTY(IES): GRAYSON	261	316	373	466	522
TEXARKANA, TX-TEXARKANA, AR MSA COUNTY(IES): BOWIE	240	292	344	430	481
TYLER, TX MSA COUNTY(IES): SMITH	300	364	429	536	600
VICTORIA, TX MSA COUNTY(IES): VICTORIA	366	444	523	655	733
WACO, TX MSA COUNTY(IES): MCLENNAN	248	297	349	433	482
WICHITA FALLS, TX MSA COUNTY(IES): WICHITA	270	325	387	482	541

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ANDERSON	228	276	325	406	456	ANDREWS	195	236	277	347	390
ANGELINA	265	320	378	472	529	ARANSAS	251	306	360	449	504
ARCHER	218	266	312	391	437	ARMSTRONG	237	287	339	424	474
ATASCOSA	234	284	336	420	469	AUSTIN	269	326	384	480	538
BAILEY	220	269	317	393	438	BANDERA	234	284	336	420	469
BASTROP	232	281	331	415	465	BAYLOR	218	266	312	391	437
BEE	251	306	360	449	504	BLANCO	214	262	307	384	431
BORDEN	214	262	307	384	430	BOSQUE	200	243	285	358	400
BREWSTER	195	236	277	347	390	BRISCOE	237	287	339	424	474
BROOKS	251	306	360	449	504	BROWN	220	269	317	393	438
BURLESON	234	283	334	417	467	BURNET	214	262	307	384	431
CALDWELL	232	281	331	415	465	CALHOUN	245	299	351	439	493
CALLAHAN	226	274	321	402	452	CAMP	209	253	300	374	420
CARSON	237	287	339	424	474	CASS	240	292	343	430	480
CASTRO	237	287	339	424	474	CHAMBERS	278	338	397	497	556
CHEROKEE	228	276	325	406	456	CHILDRESS	218	266	312	391	437
CLAY	218	266	312	391	437	COCHRAN	220	269	317	393	438

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

STATE: TEXAS

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
COKE	204	248	292	365	408
COLLINGSWORT	237	287	339	424	474
COMANCHE	226	274	321	402	452
COOKE	250	304	358	447	502
CRANE	195	236	277	347	390
CROSBY	220	269	317	393	438
DALLAM	237	287	339	424	474
DEAF SMITH	237	287	339	424	474
DE WITT	245	299	351	439	493
DIMMIT	211	258	303	378	424
DUVAL	251	306	360	449	504
EDWARDS	217	266	311	383	426
FALLS	200	243	285	358	400
FAYETTE	232	281	331	415	465
FLOYD	220	269	317	393	438
FRANKLIN	240	292	343	430	480
FRIO	234	284	336	420	469
GARZA	220	269	317	393	438
GLASSCOCK	214	262	307	384	430
GONZALES	245	299	351	439	493
GRIMES	234	283	334	417	467
HALL	237	287	339	424	474
HANSFORD	237	287	339	424	474
HARTLEY	237	287	339	424	474
HEMPHILL	237	287	339	424	474
HILL	248	298	349	437	489
HOOD	269	326	384	480	538
HOUSTON	236	286	338	423	473
HUDSPETH	195	236	277	347	390
HUTCHINSON	237	287	339	424	474
JACK	218	266	312	391	437
JASPER	251	306	360	449	504
JIM HOGG	239	289	342	428	478
JONES	226	274	321	402	452
KENDALL	234	284	336	420	469
KENT	226	274	321	402	452
KIMBLE	204	248	292	365	408
KINNEY	217	266	311	383	426
KNOX	220	269	317	393	438
LAMB	220	269	317	393	438
LA SALLE	211	258	303	378	424
LEE	232	281	331	415	465
LIMESTONE	200	243	285	358	400
LIVE OAK	251	306	360	449	504
LOVING	195	236	277	347	390
MCCULLOCH	204	248	292	365	408
MADISON	241	292	344	430	481
MARTIN	214	262	307	384	430
MATAGORDA	269	326	384	480	538
MEDINA	234	284	336	420	469
MILAM	232	281	331	415	465
MITCHELL	226	274	321	402	452
MOORE	237	287	339	424	474
MOTLEY	220	269	317	393	438
NAVARRO	200	243	285	358	400
NOLAN	226	274	321	402	452
OLDHAM	237	287	339	424	474
PANOLA	228	276	325	406	456
PECOS	195	236	277	347	390
PRESIDIO	195	236	277	347	390
REAGAN	204	248	292	365	408
RED RIVER	240	292	343	430	480
REFUGIO	251	306	360	449	504
ROBERTSON	234	283	334	417	467
RUSK	228	276	325	406	456
SAN AUGUSTIN	208	253	299	374	418
SAN SABA	220	269	317	393	438
SCURRY	226	274	321	402	452
SHELBY	208	253	299	374	418
SOMERVELL	200	243	285	358	400
STEPHENS	226	274	321	402	452
STONEWALL	226	274	321	402	452
SWISHER	237	287	339	424	474
TERRY	220	269	317	393	438
TITUS	240	292	343	430	480
COLEMAN	220	269	317	393	438
COLORADO	269	326	384	480	538
CONCHO	204	248	292	365	408
COTTLE	218	266	312	391	437
CROCKETT	204	248	292	365	408
CULBERSON	195	236	277	347	390
DAWSON	214	262	307	384	430
DELTA	240	292	343	430	480
DICKENS	220	269	317	393	438
DONLEY	237	287	339	424	474
EASTLAND	226	274	321	402	452
ERATH	226	274	321	402	452
FANNIN	250	304	358	447	502
FISHER	226	274	321	402	452
FOARD	218	266	312	391	437
FREESTONE	200	243	285	358	400
GAINES	195	236	277	347	390
GILLESPIE	234	284	336	420	469
GOLIAD	245	299	351	439	493
GRAY	237	287	339	424	474
HALE	220	269	317	393	438
HAMILTON	214	262	307	384	431
HARDEMAN	218	266	312	391	437
HASKELL	226	274	321	402	452
HENDERSON	228	276	325	406	456
HOCKLEY	218	266	312	391	437
HOPKINS	240	292	343	430	480
HOWARD	214	262	307	384	430
HUNT	250	304	358	447	502
IRION	204	248	292	365	408
JACKSON	245	299	351	439	493
JEFF DAVIS	195	236	277	347	390
JIM WELLS	251	306	360	449	504
KARNES	192	234	275	344	385
KENEDY	251	306	360	449	504
KERR	234	284	336	420	469
KING	220	269	317	393	438
KLEBERG	251	306	360	449	504
LAMAR	240	292	343	430	480
LAMPASAS	214	262	307	384	431
LAVACA	245	299	351	439	493
LEON	241	292	344	430	481
LIPSCOMB	237	287	339	424	474
LLANO	214	262	307	384	431
LYNN	220	269	317	393	438
MCMULLEN	251	306	360	449	504
MARION	209	253	300	374	420
MASON	204	248	292	365	408
MAVERICK	217	266	311	383	426
MENARD	204	248	292	365	408
MILLS	220	269	317	393	438
MONTAGUE	218	266	312	391	437
MORRIS	240	292	343	430	480
NACOGDOCHES	265	320	378	472	529
NEWTON	251	306	360	449	504
OCHILTREE	237	287	339	424	474
PALO PINTO	226	274	321	402	452
PARMER	237	287	339	424	474
POLK	265	320	378	472	529
RAINS	216	265	309	382	422
REAL	217	266	311	383	426
REEVES	195	236	277	347	390
ROBERTS	237	287	339	424	474
RUNNELS	220	269	317	393	438
SABINE	208	253	299	374	418
SAN JACINTO	265	320	378	472	529
SCHLEICHER	204	248	292	365	408
SHACKLEFORD	226	274	321	402	452
SHERMAN	237	287	339	424	474
STARR	208	252	298	371	416
STERLING	204	248	292	365	408
SUTTON	204	248	292	365	408
TERRELL	195	236	277	347	390
THROCKMORTON	226	274	321	402	452
TRINITY	241	303	357	445	500

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

STATE: TEXAS

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
TYLER	241	292	344	430	481
UPTON	214	262	307	384	430
VAL VERDE	217	266	311	383	426
WALKER	274	334	393	492	550
WASHINGTON	241	292	344	430	481
WHEELER	237	287	339	424	474
WILLACY	251	306	360	449	504
WINKLER	195	236	277	347	390
WOOD	209	253	300	374	420
YOUNG	218	266	312	391	437
ZAVALA	217	266	311	383	426

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
UPSHUR	209	253	300	374	420
UVALDE	217	266	311	383	426
VAN ZANDT	216	265	309	382	422
WARD	195	236	277	347	390
WHARTON	269	326	384	480	538
WILBARGER	218	266	312	391	437
WILSON	192	234	275	344	385
WISE	269	326	384	480	538
YOAKUM	220	269	317	393	438
ZAPATA	208	252	298	371	416

STATE: UTAH

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
PROVO-OREM, UT MSA COUNTY(IES): UTAH	275	334	392	490	550
SALT LAKE CITY-OGDEN, UT MSA COUNTY(IES): DAVIS, SALT LAKE, WEBER	321	383	455	564	635

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BEAVER	300	365	430	536	601
CACHE	277	336	396	495	555
DAGGETT	343	416	489	612	685
EMERY	343	416	489	612	685
GRAND	343	416	489	612	685
JUAB	300	365	430	536	601
MILLARD	300	365	430	536	601
PIUTE	300	365	430	536	601
SAN JUAN	343	416	489	612	685
SEVIER	300	365	430	536	601
TOOELE	277	336	396	495	555
WASATCH	343	416	489	612	685
WAYNE	300	365	430	536	601

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BOX ELDER	277	336	396	495	555
CARBON	343	416	489	612	685
DUCHESNE	343	416	489	612	685
GARFIELD	300	365	430	536	601
IRON	300	365	430	536	601
KANE	300	365	430	536	601
MORGAN	343	416	489	612	685
RICH	277	336	396	495	555
SANPETE	300	365	430	536	601
SUMMIT	343	416	489	612	685
UINTAH	343	416	489	612	685
WASHINGTON	328	394	465	580	652

STATE: VERMONT

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BURLINGTON, VT MSA COUNTY: CHITTENDEN TOWNS OF BURLINGTON, CHARLOTTE, COLCHESTER, ESSEX, HINESBURG, JERICHO, MILTON, RICHMOND, ST. GEORGE SHELBURNE, SOUTH BURLIN, WILLISTON, WINOOSKI COUNTY: FRANKLIN TOWNS OF GEORGIA COUNTY: GRAND ISLE TOWNS OF GRAND ISLE, SOUTH HERO	388	472	554	693	777

NONMETROPOLITAN COUNTIES OR PARTS OF COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ADDISON COUNTY	311	377	444	554	621
BENNINGTON COUNTY	316	388	455	566	638
CALEDONIA COUNTY	265	321	378	473	530
CHITTENDEN COUNTY TOWNS OF BOLTON, BUELS, HUNTINGTON, UNDERHILL WESTFORD	359	437	515	644	721
ESSEX COUNTY	265	321	378	473	530
FRANKLIN COUNTY TOWNS OF BAKERSFIELD, BERKSHIRE, ENOSBURG, FAIRFAX FAIRFIELD, FLETCHER, FRANKLIN, HIGHGATE, MONTGOMERY, RICHFORD, ST. ALBANS, ST. ALBANS, SHELDON, SWANTON	288	350	410	511	571
GRAND ISLE COUNTY TOWNS OF ALBURG, ISLE LA MOTT, NORTH HERO	265	321	378	473	530
LAMOILLE COUNTY	265	321	378	473	530
ORANGE COUNTY	288	350	410	511	571
ORLEANS COUNTY	265	321	378	473	530
RUTLAND COUNTY	300	375	430	539	602
WASHINGTON COUNTY	316	388	455	566	638
WINDHAM COUNTY	300	365	430	539	602
WINDSOR COUNTY	300	365	430	539	602

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: VIRGINIA	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CHARLOTTESVILLE, VA MSA COUNTY(IES): ALBEMARLE, FLUVANNA, GREENE, CHARLOTTESVI	330	402	472	591	661
DANVILLE, VA MSA COUNTY(IES): PITTSYLVANIA, DANVILLE	253	307	361	451	505
JOHNSON CITY-KINGSPORT-BRISTOL, TN-VA MSA COUNTY(IES): SCOTT, WASHINGTON, BRISTOL	239	290	341	427	478
LYNCHBURG, VA MSA COUNTY(IES): AMHERST, CAMPBELL, LYNCHBURG	272	338	389	475	545
NORFOLK-VIRGINIA BEACH-NEWPORT NEWS, VA MSA COUNTY(IES): GLOUCESTER, JAMES CITY, YORK, CHESAPEAKE, HAMPTON, NEWPORT NEWS, NORFOLK, POQUOSON, PORTSMOUTH, SUFFOLK VIRGINIA BEA, WILLIAMSBURG	316	379	437	538	601
RICHMOND-PETERSBURG, VA MSA COUNTY(IES): CHARLES CITY, CHESTERFIELD, DINWIDDIE, GOOCHLAND, HANOVER, HENRICO, NEW KENT, POWHATAN, PRINCEGEORGE COLONIAL HGT, HOPEWELL, PETERSBURG, RICHMOND	302	363	424	531	595
ROANOKE, VA MSA COUNTY(IES): BOTETOURT, ROANOKE, ROANOKE, SALEM	265	322	378	474	531
WASHINGTON, DC-MD-VA MSA COUNTY(IES): ARLINGTON, FAIRFAX, LOUDOUN, PRINCEWILLIA, STAFFORD, ALEXANDRIA, FAIRFAX, FALLS CHURCH, MANASSAS MANASSAS PRK	412	501	590	741	830

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ACCOMACK	250	301	350	432	483
AMELIA	219	265	312	391	438
AUGUSTA	264	321	377	472	529
BEDFORD	228	277	327	408	457
BRUNSWICK	207	251	295	370	414
BUCKINGHAM	219	265	312	391	438
CARROLL	223	270	318	399	446
CLARKE	265	322	378	474	531
CULPEPER	275	334	394	492	551
DICKENSON	236	274	324	405	453
FAUQUIER	275	334	394	492	551
FRANKLIN	228	277	327	408	457
GILES	263	320	375	470	526
GREENSVILLE	207	251	295	370	414
HENRY	265	322	378	473	530
ISLE OFWIGHT	214	260	302	377	414
KING GEORGE	312	379	446	557	625
LANCASTER	240	293	345	431	483
LOUISA	279	337	394	492	551
MADISON	279	337	394	492	551
MECKLENBURG	207	251	295	370	414
MONTGOMERY	321	389	457	574	641
NORTHAMPTON	250	301	350	432	483
NOTTOWAY	219	265	312	391	438
PAGE	265	322	378	474	531
PRINCEEDWARD	219	265	312	391	438
RAPPAHANNOCK	275	334	394	492	551
ROCKBRIDGE	264	321	377	472	529
RUSSELL	233	307	361	451	506
SMYTH	223	270	318	399	446
SPOTSLYVANIA	312	379	446	557	625
SUSSEX	207	251	295	370	414
WARREN	265	322	378	474	531
WISE	255	308	363	453	508
BEDFORD	228	277	327	408	457
CLIFTON FORG	264	321	377	472	529
EMPORIA	207	251	295	370	414
FREDERICKBUR	312	379	446	557	625
HARRISONBURG	264	321	377	472	529
MARTINSVILLE	265	322	378	473	530
RADFORD	321	389	457	574	641
STAUNTON	264	321	377	472	529
WINCHESTER	265	322	378	474	531
ALLEGHANY	264	321	377	472	529
APPOMATTOX	267	321	375	470	526
BATH	264	321	377	472	529
BLAND	223	270	318	399	446
BUCHANAN	253	307	361	451	506
CAROLINE	312	379	446	557	625
CHARLOTTE	219	265	312	391	438
CRAIG	207	251	295	369	413
CUMBERLAND	219	265	312	391	438
ESSEX	240	293	345	431	483
FLOYD	263	320	375	470	526
FREDERICK	265	322	378	474	531
GRAYSON	223	270	318	399	446
HALIFAX	219	265	312	391	438
HIGHLAND	264	321	377	472	529
KING + QUEEN	240	293	345	431	483
KING WILLIAM	240	293	345	431	483
LEE	226	274	324	405	453
LUNENBURG	219	265	312	391	438
MATHEWS	240	293	345	431	483
MIDDLESEX	240	293	345	431	483
NELSON	232	281	331	414	464
NORTHUMBERLD	240	293	345	431	483
ORANGE	279	337	394	492	551
PATRICK	228	277	327	408	457
PULASKI	263	320	375	470	526
RICHMOND	240	293	345	431	483
ROCKINGHAM	264	321	377	472	529
SHENANDOAH	265	322	378	474	531
SOUTHAMPTON	214	260	302	377	414
SURRY	214	260	302	377	414
TAZEWELL	253	307	361	451	506
WESTMORELAND	240	293	345	431	483
WYTHE	242	294	341	422	471
BUENA VISTA	264	321	377	472	529
COVINGTON	264	321	377	472	529
FRANKLIN	207	251	295	370	414
GALAX	223	270	318	399	446
LEXINGTON	264	321	377	472	529
NORTON	254	307	362	452	507
SOUTH BOSTON	219	265	312	391	438
WAYNESBORO	264	321	377	472	529

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: WASHINGTON

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BELLINGHAM, WA MSA					
COUNTY(IES): WHATCOM	333	406	477	609	670
BREMERTON, WA MSA					
COUNTY(IES): KITSAP	335	408	479	599	672
OLYMPIA, WA MSA					
COUNTY(IES): THURSTON	347	421	496	620	695
RICHLAND-KENNEWICK-PASCO, WA MSA					
COUNTY(IES): BENTON, FRANKLIN	391	476	560	700	784
SEATTLE, WA PMSA					
COUNTY(IES): KING, SNOHOMISH	335	408	476	615	677
SPOKANE, WA MSA					
COUNTY(IES): SPOKANE	293	347	409	523	578
TACOMA, WA PMSA					
COUNTY(IES): PIERCE	289	351	413	537	599
VANCOUVER, WA PMSA					
COUNTY(IES): CLARK	258	314	391	509	571
YAKIMA, WA MSA					
COUNTY(IES): YAKIMA	305	370	435	545	611

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ADAMS	249	302	354	444	498
CHELAN	300	364	430	535	600
COLUMBIA	322	390	460	574	644
DOUGLAS	300	364	430	535	600
GARFIELD	322	390	460	574	644
GRAYS HARBOR	324	393	463	578	649
JEFFERSON	324	393	463	578	649
KLICKITAT	301	366	430	538	604
LINCOLN	249	302	354	444	498
OKANOGAN	274	332	392	491	549
PEND OREILLE	249	302	354	444	498
SKAGIT	330	402	472	591	661
STEVENS	249	302	354	444	498
WALLA WALLA	322	390	460	574	644

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ASOTIN	322	390	460	574	644
CLALLAM	324	393	463	578	649
COWLITZ	301	366	430	538	604
FERRY	249	302	354	444	498
GRANT	249	302	354	444	498
ISLAND	330	402	472	591	661
KITTITAS	274	332	392	491	549
LEWIS	301	366	430	538	604
MASON	324	393	463	578	649
PACIFIC	324	393	463	578	649
SAN JUAN	330	402	472	591	661
SKAMANIA	301	366	430	538	604
WAHKIAKUM	301	366	430	538	604
WHITMAN	322	390	460	574	644

S T A T E: WEST VIRGINIA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CHARLESTON, WV MSA					
COUNTY(IES): KANAWHA, PUTNAM	342	415	489	611	685
CUMBERLAND, MD-WV MSA					
COUNTY(IES): MINERAL	258	307	359	444	496
HUNTINGTON-ASHLAND, WV-KY-OH MSA					
COUNTY(IES): CABELL, WAYNE	282	342	403	504	566
PARKERSBURG-MARIETTA, WV-OH MSA					
COUNTY(IES): WOOD	262	317	374	469	524
STEUBENVILLE-WEIRTON, OH-WV MSA					
COUNTY(IES): BROOKE, HANCOCK	269	327	383	480	539
WHEELING, WV-OH MSA					
COUNTY(IES): MARSHALL, OHIO	265	322	380	475	532

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BARBOUR	215	261	307	385	431
BOONE	245	296	349	436	488
CALHOUN	284	332	385	500	552
DODDRIDGE	239	292	344	429	481
GILMER	261	313	380	471	518
GREENBRIER	225	273	322	402	451
HARDY	235	287	337	422	472
JACKSON	284	332	385	500	552
LEWIS	215	261	307	385	431
LOGAN	236	287	337	422	472
MARION	290	352	414	518	579
MERCER	231	282	332	415	465
MONONGALIA	290	352	414	518	579
MORGAN	235	287	337	422	472
PENDLETON	235	287	337	422	472
POCAHONTAS	225	273	322	402	451
RALEIGH	236	284	327	408	458
RITCHIE	208	252	296	369	414
SUMMERS	236	284	332	415	465
TUCKER	215	261	307	385	431
UPSHUR	215	261	307	385	431
WETZEL	249	301	355	443	497
WYOMING	236	284	327	408	458

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BERKELEY	235	287	337	422	472
BRAXTON	215	261	307	385	431
CLAY	245	296	349	436	488
FAYETTE	225	273	322	402	451
GRANT	235	287	337	422	472
HAMPSHIRE	235	287	337	422	472
HARRISON	284	332	385	500	552
JEFFERSON	235	287	337	422	472
LINCOLN	236	287	337	422	472
MCDOWELL	228	278	326	408	458
MASON	236	287	337	422	472
MINGO	236	287	337	422	472
MONROE	236	284	332	415	465
NICHOLAS	225	273	322	402	451
PLEASANTS	208	252	296	369	414
PRESTON	290	352	414	518	579
RANDOLPH	215	261	307	385	431
ROANE	284	332	385	500	552
TAYLOR	239	292	344	429	481
TYLER	208	252	296	369	414
WEBSTER	225	273	322	402	451
WIRT	208	252	296	369	414

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: WISCONSIN

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
APPLETON-OSHKOSH-NEENAH, WI MSA COUNTY(IES): CALUMET, OUTAGAMIE, WINNEBAGO	261	318	375	469	524
DULUTH, MN-WI MSA COUNTY(IES): DOUGLAS	288	343	404	506	567
EAU CLAIRE, WI MSA COUNTY(IES): CHIPPEWA, EAU CLAIRE	259	316	372	464	520
GREEN BAY, WI MSA COUNTY(IES): BROWN	261	318	377	469	524
JANESVILLE-BELOIT, WI MSA COUNTY(IES): ROCK	289	352	414	518	580
KENOSHA, WI PMSA COUNTY(IES): KENOSHA	310	378	444	556	622
LA CROSSE, WI MSA COUNTY(IES): LA CROSSE	309	375	442	552	618
MADISON, WI MSA COUNTY(IES): DANE	309	377	449	545	628
MILWAUKEE, WI PMSA COUNTY(IES): MILWAUKEE, OZAUKEE, WASHINGTON, WAUKESHA	306	371	437	546	612
MINNEAPOLIS-ST. PAUL, MN-WI MSA COUNTY(IES): ST CROIX	359	435	516	645	720
RACINE, WI PMSA COUNTY(IES): RACINE	290	352	415	519	581
SHEBOYGAN, WI MSA COUNTY(IES): SHEBOYGAN	268	325	383	479	537
WAUSAU, WI MSA COUNTY(IES): MARATHON	261	318	375	469	524

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ADAMS	267	323	381	477	535
BARRON	254	309	363	454	510
BUFFALO	241	292	345	430	483
CLARK	254	309	363	454	510
CRAWFORD	229	280	328	411	460
DOOR	240	289	340	419	469
FLORENCE	229	280	328	411	460
FOREST	249	302	355	445	497
GREEN	249	302	353	439	486
IOWA	240	291	343	428	481
JACKSON	241	292	345	430	483
JUNEAU	267	323	381	477	535
LAFAYETTE	240	291	343	428	481
LINCOLN	249	302	355	445	497
MARINETTE	234	282	330	413	460
MENOMINEE	234	285	335	419	470
OCONTO	229	280	328	411	460
PEPIN	241	292	345	430	483
POLK	254	309	363	454	510
PRICE	234	285	335	419	470
RUSK	234	285	335	419	470
SAWYER	234	285	335	419	470
TAYLOR	234	285	335	419	470
VERNON	229	280	328	411	460
WALWORTH	279	338	398	497	558
WAUPACA	234	285	335	419	470
WOOD	267	323	381	477	535

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ASHLAND	234	285	335	419	470
BAYFIELD	234	285	335	419	470
BURNETT	234	285	335	419	470
COLUMBIA	244	295	348	435	487
DODGE	244	295	348	435	487
DUNN	254	309	363	454	510
FOND DU LAC	287	346	393	489	535
GRANT	240	291	343	428	481
GREEN LAKE	261	318	375	469	524
IRON	234	285	335	419	470
JEFFERSON	279	338	398	497	558
KEWAUNEE	240	289	340	419	469
LANGLADE	249	302	355	445	497
MANITOWOC	240	289	340	419	469
MARQUETTE	234	285	335	419	470
MONROE	241	292	345	430	483
ONEIDA	249	302	355	445	497
PIERCE	241	292	345	430	483
PORTAGE	267	323	381	477	535
RICHLAND	240	291	343	428	481
SAUK	244	295	348	435	487
SHAWANO	234	285	335	419	470
TREMPEALEAU	241	292	345	430	483
VILAS	249	302	355	445	497
WASHBURN	234	285	335	419	470
WAUSHARA	234	285	335	419	470

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING :INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 082487

S T A T E: WYOMING	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CASPER, WY MSA COUNTY(IES): NATRONA	384	467	548	686	769
CHEYENNE, WY MSA COUNTY(IES): LARAMIE	318	384	455	571	637

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALBANY	246	302	357	445	494	BIG HORN	252	307	362	450	504
CAMPBELL	246	302	357	445	494	CARBON	246	302	357	445	494
CONVERSE	246	302	357	445	494	CROOK	246	307	362	450	504
FREMONT	246	302	357	445	494	GOSHEN	246	302	357	445	494
HOT SPRINGS	252	307	362	450	504	JOHNSON	246	302	357	445	494
LINCOLN	246	302	357	445	494	NIOBRARA	246	302	357	445	494
PARK	252	307	362	450	504	PLATTE	246	302	357	445	494
SHERIDAN	340	416	489	609	686	SUBLETTE	246	302	357	445	494
SWEETWATER	246	302	357	445	494	TETON	323	389	460	576	647
UINTA	246	302	357	445	494	WASHAKIE	252	307	362	450	504
WESTON	252	307	362	450	504						

STATE: GUAM

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
GUAM	399	480	567	709	797					

S T A T E PUERTO RICO	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
AGUADILLA, PR MSA COUNTY(IES): AQUADELLA	225	275	325	405	455
ARECIBO, PR MSA COUNTY(IES): ARECIBO	330	400	470	590	660
CAGUAS, PR PMSA COUNTY(IES): CAGUAS	275	330	390	490	545
MAYAGUEZ, PR MSA COUNTY(IES): MAYAGUEZ	225	275	325	405	455
PONCE, PR MSA COUNTY(IES): PONCE	320	390	460	575	645
SAN JUAN, PR PMSA COUNTY(IES): SAN JUAN	320	390	460	575	645

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALL OTHER	215	265	310	390	435					

STATE: VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
-CHAR.AMALIE	355	435	510	640	715	ST. CROIX	300	365	430	540	600
ST. THOMAS	335	410	480	600	670						

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 082187

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: ALABAMA	66	76
MSA: ANNISTON, AL	69	77
MSA: BIRMINGHAM, AL	97	107
MSA: COLUMBUS, GA-AL	88	97
MSA: DOTHAN, AL	64	73
MSA: FLORENCE, AL	77	83
MSA: GADSDEN, AL	69	77
MSA: HUNTSVILLE, AL	97	107
MSA: MOBILE, AL	78	84
MSA: MONTGOMERY, AL	78	83
MSA: TUSCALOOSA, AL	90	103
EXCEPTION COUNTY: LIMESTONE	81	89
EXCEPTION COUNTY: MARSHALL	81	89
NON METRO STATE: ALASKA	202	202
MSA: ANCHORAGE, AK	224	224
EXCEPTION COUNTY: KETCHIKAN	202	214
NON METRO STATE: ARIZONA	93	118
MSA: PHOENIX, AZ	129	153
MSA: TUCSON, AZ	93	129
NON METRO STATE: ARKANSAS	38	42
MSA: FAYETTEVILLE-SPRINGDALE, AR	61	65
MSA: FORT SMITH, AR-OK	35	38
MSA: LITTLE ROCK-NORTH LITTLE ROCK, AR	52	54
MSA: MEMPHIS, TN-AR-MS	89	89
MSA: PINE BLUFF, AR	28	30
MSA: TEXARKANA, TX-TEXARKANA, AR	106	119
EXCEPTION COUNTY: BENTON	53	55
EXCEPTION COUNTY: LITTLE RIVER	88	99
NON METRO STATE: CALIFORNIA	145	190
PMSA: ANAHEIM-SANTA ANA, CA	339	339
MSA: BAKERSFIELD, CA	136	207
MSA: CHICO, CA	145	190
MSA: FRESNO, CA	207	233
PMSA: LOS ANGELES-LONG BEACH, CA	165	276
MSA: MERCED, CA	145	190
MSA: MODESTO, CA	216	233
PMSA: OAKLAND, CA	235	307

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 082187

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
PMSA: OXNARD-VENTURA, CA	212	319
MSA: REDDING, CA	145	190
PMSA: RIVERSIDE-SAN BERNARDINO, CA	140	221
MSA: SACRAMENTO, CA	167	199
MSA: SALINAS-SEASIDE-MONTEREY, CA	207	260
MSA: SAN DIEGO, CA	217	273
PMSA: SAN FRANCISCO, CA	252	328
PMSA: SAN JOSE, CA	299	349
MSA: SANTA BARBARA-SANTA MARIA-LOMPOC, CA	171	260
PMSA: SANTA CRUZ, CA	219	274
PMSA: SANTA ROSA-PETALUMA, CA	219	263
MSA: STOCKTON, CA	216	233
PMSA: VALLEJO-FAIRFIELD-NAPA, CA	228	260
MSA: VISALIA-TULARE-PORTERVILLE, CA	145	190
MSA: YUBA CITY, CA	145	190
EXCEPTION COUNTY: SAN LUIS OBI	198	233
NON METRO STATE: COLORADO	N/A	N/A
PMSA: BOULDER-LONGMONT, CO	222	243
MSA: COLORADO SPRINGS, CO	136	153
PMSA: DENVER, CO	253	273
MSA: FORT COLLINS-LOVELAND, CO	129	145
MSA: GREELEY, CO	129	145
MSA: PUEBLO, CO	129	145
EXCEPTION COUNTY: ALAMOSA	108	129
EXCEPTION COUNTY: ARCHULETA	129	145
EXCEPTION COUNTY: BACA	108	129
EXCEPTION COUNTY: BENT	108	129
EXCEPTION COUNTY: CHAFFEE	129	145
EXCEPTION COUNTY: CHEYENNE	108	129
EXCEPTION COUNTY: CLEAR CREEK	129	145
EXCEPTION COUNTY: CONEJOS	108	129
EXCEPTION COUNTY: COSTILLA	108	129
EXCEPTION COUNTY: CROWLEY	108	129
EXCEPTION COUNTY: CUSTER	129	145
EXCEPTION COUNTY: DELTA	129	145
EXCEPTION COUNTY: DELORES	129	145
EXCEPTION COUNTY: EAGLE	208	233
EXCEPTION COUNTY: ELBERT	108	129
EXCEPTION COUNTY: FREMONT	129	145
EXCEPTION COUNTY: GARFIELD	208	233
EXCEPTION COUNTY: GILPIN	164	189
EXCEPTION COUNTY: GRAND	129	145
EXCEPTION COUNTY: GUNNISON	129	145
EXCEPTION COUNTY: HINSDALE	129	145

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 082187

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: HUERFANO	108	129
EXCEPTION COUNTY: JACKSON	129	145
EXCEPTION COUNTY: KIOWA	108	129
EXCEPTION COUNTY: KIT CARSON	108	129
EXCEPTION COUNTY: LAKE	129	145
EXCEPTION COUNTY: LA PLATA	129	145
EXCEPTION COUNTY: LAS ANIMAS	108	129
EXCEPTION COUNTY: LINCOLN	108	129
EXCEPTION COUNTY: LOGAN	108	129
EXCEPTION COUNTY: MESA	129	145
EXCEPTION COUNTY: MINERAL	108	129
EXCEPTION COUNTY: MOFFAT	208	233
EXCEPTION COUNTY: MONTEZUMA	129	145
EXCEPTION COUNTY: MONTROSE	129	145
EXCEPTION COUNTY: MORGAN	108	129
EXCEPTION COUNTY: OTERO	108	129
EXCEPTION COUNTY: OURAY	129	145
EXCEPTION COUNTY: PARK	129	145
EXCEPTION COUNTY: PHILLIPS	108	129
EXCEPTION COUNTY: PITKIN	208	233
EXCEPTION COUNTY: PROWERS	108	129
EXCEPTION COUNTY: RIO BLANCO	208	233
EXCEPTION COUNTY: RIO GRANDE	108	129
EXCEPTION COUNTY: ROUTT	208	233
EXCEPTION COUNTY: SAGUACHE	108	129
EXCEPTION COUNTY: SAN JUAN	129	145
EXCEPTION COUNTY: SAN MIGUEL	129	145
EXCEPTION COUNTY: SEDGWICK	108	129
EXCEPTION COUNTY: SUMMIT	208	233
EXCEPTION COUNTY: TELLER	108	129
EXCEPTION COUNTY: WASHINGTON	108	129
EXCEPTION COUNTY: YUMA	108	129
NON METRO STATE: CONNECTICUT	134	134
PMSA: BRIDGEPORT-MILFORD, CT	172	172
PMSA: BRISTOL, CT	134	134
PMSA: DANBURY, CT	131	131
PMSA: HARTFORD, CT	146	146
PMSA: MIDDLETOWN, CT	146	146
PMSA: NEW BRITAIN, CT	146	146
MSA: NEW HAVEN-MERIDEN, CT	131	131
MSA: NEW LONDON-NORWICH, CT-RI	125	125
PMSA: NORWALK, CT	161	161
PMSA: STAMFORD, CT	161	161
MSA: WATERBURY, CT	134	134

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 082187

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: DELAWARE	67	67
PMSA: WILMINGTON, DE-NJ-MD	120	120
NON METRO STATE: DIST. OF COLUMBIA	155	155
MSA: WASHINGTON, DC-MD-VA	162	162
NON METRO STATE: FLORIDA	83	83
MSA: BRADENTON, FL	119	119
MSA: DAYTONA BEACH, FL	106	106
PMSA: FORT LAUDERDALE-HOLLYWOOD-POMPANO BEACH, FL	171	171
MSA: FORT MYERS-CAPE CORAL, FL	111	111
MSA: FORT PIERCE, FL	81	81
MSA: FORT WALTON BEACH, FL	83	83
MSA: GAINESVILLE, FL	83	83
MSA: JACKSONVILLE, FL	77	89
MSA: LAKELAND-WINTER HAVEN, FL	83	83
MSA: MELBOURNE-TITUSVILLE-PALM BAY, FL	97	97
PMSA: MIAMI-HIALEAH, FL	135	135
MSA: NAPLES, FL	83	83
MSA: OCALA, FL	83	83
MSA: ORLANDO, FL	97	97
MSA: PANAMA CITY, FL	83	83
MSA: PENSACOLA, FL	83	83
MSA: SARASOTA, FL	111	111
MSA: TALLAHASSEE, FL	77	77
MSA: TAMPA-ST. PETERSBURG-CLEARWATER, FL	111	111
MSA, WEST PALM BEACH-BOCA RATON-DELRAY BEACH, FL	140	140
EXCEPTION COUNTY: BAKER	75	87
EXCEPTION COUNTY: WAKULLA	75	87
NON METRO STATE: GEORGIA	60	60
MSA: ALBANY, GA	53	56
MSA: ATHENS, GA	60	60
MSA: ATLANTA, GA	93	99
MSA: AUGUSTA, GA-SC	81	83
MSA: CHATTANOOGA, TN-GA	53	77
MSA: COLUMBUS, GA-AL	88	97
MSA: MACON-WARNER ROBINS, GA	54	59
MSA: SAVANNAH, GA	67	77
EXCEPTION COUNTY: BRYAN	60	64
EXCEPTION COUNTY: TWIGGS	53	58
NON METRO STATE: HAWAII	N/A	N/A

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 082187

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: HONOLULU, HI	N/A	N/A
NON METRO STATE: IDAHO	108	108
MSA: BOISE CITY, ID	116	135
NON METRO STATE: ILLINOIS	102	110
PMSA: AURORA-ELGIN, IL	196	211
MSA: BLOOMINGTON-NORMAL, IL	115	115
MSA: CHAMPAIGN-URBANA-RANTOUL, IL	94	94
PMSA: CHICAGO, IL	207	222
MSA: DAVENPORT-ROCK ISLAND-MOLINE, IA-IL	126	132
MSA: DECATUR, IL	126	126
PMSA: JOLIET, IL	207	222
MSA: KANKAKEE, IL	92	92
PMSA: LAKE COUNTY, IL	196	211
MSA: PEORIA, IL	170	187
MSA: ROCKFORD, IL	167	178
MSA: ST. LOUIS, MO-IL	96	111
MSA: SPRINGFIELD, IL	110	117
NON METRO STATE: INDIANA	56	73
MSA: ANDERSON, IN	63	63
MSA: BLOOMINGTON, IN	59	59
PMSA: CINCINNATI, OH-KY-IN	108	113
MSA: ELKHART-GOSHEN, IN	81	81
MSA: EVANSVILLE, IN-KY	74	79
MSA: FORT WAYNE, IN	70	94
PMSA: GARY-HAMMOND, IN	100	115
MSA: INDIANAPOLIS, IN	88	100
MSA: KOKOMO, IN	81	93
MSA: LAFAYETTE-WEST LAFAYETTE, IN	75	111
MSA: LOUISVILLE, KY-IN	79	87
MSA: MUNCIE, IN	60	68
MSA: SOUTH BEND-MISHAWAKA, IN	93	97
MSA: TERRE HAUTE, IN	59	73
EXCEPTION COUNTY: ADAMS	57	75
EXCEPTION COUNTY: BLACKFORD	64	73
EXCEPTION COUNTY: GIBSON	60	73
EXCEPTION COUNTY: GRANT	64	73
EXCEPTION COUNTY: HENRY	64	73
EXCEPTION COUNTY: JAY	64	73
EXCEPTION COUNTY: MARSHALL	74	78
EXCEPTION COUNTY: RANDOLPH	64	73

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 082187

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: SULLIVAN	57	69
EXCEPTION COUNTY: VERMILLION	57	69
EXCEPTION COUNTY: WAYNE	64	73
EXCEPTION COUNTY: WELLS	57	75
NON METRO STATE: IOWA	88	95
MSA: CEDAR RAPIDS, IA	100	117
MSA: DAVENPORT-ROCK ISLAND-MOLINE, IA-IL	126	132
MSA: DES MOINES, IA	108	115
MSA: DUBUQUE, IA	100	124
MSA: IOWA CITY, IA	100	115
MSA: OMAHA, NE-IA	95	110
MSA: SIOUX CITY, IA-NE	97	97
MSA: WATERLOO-CEDAR FALLS, IA	100	117
NON METRO STATE: KANSAS	77	88
MSA: KANSAS CITY, MO-KS	95	116
MSA: LAWRENCE, KS	79	91
MSA: TOPEKA, KS	77	88
MSA: WICHITA, KS	91	96
EXCEPTION COUNTY: JEFFERSON	74	85
EXCEPTION COUNTY: OSAGE	74	85
NON METRO STATE: KENTUCKY	73	80
PMSA: CINCINNATI, OH-KY-IN	108	113
MSA: CLARKSVILLE-HOPKINSVILLE, TN-KY	77	83
MSA: EVANSVILLE, IN-KY	73	79
MSA: HUNTINGTON-ASHLAND, WV-KY-OH	83	83
MSA: LEXINGTON-FAYETTE, KY	90	104
MSA: LOUISVILLE, KY-IN	79	86
MSA: OWENSBORO, KY	84	100
NON METRO STATE: LOUISIANA	78	90
MSA: ALEXANDRIA, LA	77	89
MSA: BATON ROUGE, LA	89	106
MSA: HOUMA-THIBODAUX, LA	76	88
MSA: LAFAYETTE, LA	83	97
MSA: LAKE CHARLES, LA	88	104
MSA: MONROE, LA	77	89
MSA: NEW ORLEANS, LA	94	109
MSA: SHREVEPORT, LA	83	97
EXCEPTION COUNTY: GRANT	75	87

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 082187

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: WEBSTER	78	90
NON METRO STATE: MAINE	119	137
MSA: BANGOR, ME	119	137
MSA: LEWISTON-AUBURN, ME	91	91
MSA: PORTLAND, ME	148	168
MSA: PORTSMOUTH-DOVER-ROCHESTER, NH-ME	119	137
NON METRO STATE: MARYLAND	120	120
MSA: BALTIMORE, MD	180	180
MSA: CUMBERLAND, MD-WV	120	120
MSA: HAGERSTOWN, MD	151	151
MSA: WASHINGTON, DC-MD-VA	162	162
PMSA: WILMINGTON, DE-NJ-MD	120	120
EXCEPTION COUNTY: ST MARYS	164	164
NON METRO STATE: MASSACHUSETTS	146	146
PMSA: BOSTON, MA	139	150
PMSA: BROCKTON, MA	139	139
PMSA: FALL RIVER, MA-RI	91	91
MSA: FITCHBURG-LEOMINSTER, MA	109	109
PMSA: LAWRENCE-HAVERHILL, MA-NH	131	140
PMSA: LOWELL, MA-NH	131	140
MSA: NEW BEDFORD, MA	126	126
PMSA: PAWTUCKET-WOONSOCKET-ATTLEBORO, RI-MA	125	125
MSA: PITTSFIELD, MA	135	135
PMSA: SALEM-GLOUCESTER, MA	139	150
MSA: SPRINGFIELD, MA	107	107
MSA: WORCESTER, MA	94	94
NON METRO STATE: MICHIGAN	110	122
PMSA: ANN ARBOR, MI	157	170
MSA: BATTLE CREEK, MI	95	110
MSA: BENTON HARBOR, MI	110	122
PMSA: DETROIT, MI	154	164
MSA: FLINT, MI	134	134
MSA: GRAND RAPIDS, MI	100	109
MSA: JACKSON, MI	110	110
MSA: KALAMAZOO, MI	116	119
MSA: LANSING-EAST LANSING, MI	129	149
MSA: MUSKEGON, MI	100	102
MSA: SAGINAW-BAY CITY-MIDLAND, MI	117	117

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 082187

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: BARRY	91	105
EXCEPTION COUNTY: IONIA	110	122
EXCEPTION COUNTY: OCEANA	96	98
EXCEPTION COUNTY: SHIAWASSEE	128	128
EXCEPTION COUNTY: VAN BUREN	110	114
NON METRO STATE: MINNESOTA	79	79
MSA: DULUTH, MN-WI	81	92
MSA: FARGO-MOORHEAD, ND-MN	123	140
MSA: MINNEAPOLIS-ST. PAUL, MN-WI	157	157
MSA: ROCHESTER, MN	114	114
MSA: ST. CLOUD, MN	100	100
EXCEPTION COUNTY: POLK	121	137
NON METRO STATE: MISSISSIPPI	78	90
MSA: BILOXI-GULFPORT, MS	89	106
MSA: JACKSON, MS	97	119
MSA: MEMPHIS, TN-AR-MS	89	89
MSA: PASCAGOULA, MS	77	89
EXCEPTION COUNTY: STONE	78	90
NON METRO STATE: MISSOURI	62	69
MSA: COLUMBIA, MO	88	95
MSA: JOPLIN, MO	62	69
MSA: KANSAS CITY, MO-KS	95	116
MSA: ST. JOSEPH, MO	91	97
MSA: ST. LOUIS, MO-IL	96	111
MSA: SPRINGFIELD, MO	64	70
EXCEPTION COUNTY: ANDREW	86	93
NON METRO STATE: MONTANA	N/A	N/A
MSA: BILLINGS, MT	161	179
MSA: GREAT FALLS, MT	136	153
EXCEPTION COUNTY: BEAVERHEAD	129	145
EXCEPTION COUNTY: BIG HORN	129	145
EXCEPTION COUNTY: BLAINE	93	108
EXCEPTION COUNTY: BROADWATER	129	145
EXCEPTION COUNTY: CARBON	129	145
EXCEPTION COUNTY: CARTER	93	108
EXCEPTION COUNTY: CHOUTEAU	93	108
EXCEPTION COUNTY: CUSTER	129	145
EXCEPTION COUNTY: DANIELS	93	108

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 082187

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: DAWSON	129	145
EXCEPTION COUNTY: DEER LODGE	129	145
EXCEPTION COUNTY: FALLON	93	108
EXCEPTION COUNTY: FERGUS	93	108
EXCEPTION COUNTY: FLATHEAD	129	145
EXCEPTION COUNTY: GALLATIN	129	145
EXCEPTION COUNTY: GARFIELD	93	108
EXCEPTION COUNTY: GLACIER	93	108
EXCEPTION COUNTY: GOLDEN VALLE	93	108
EXCEPTION COUNTY: GRANITE	129	145
EXCEPTION COUNTY: HILL	93	108
EXCEPTION COUNTY: JEFFERSON	129	145
EXCEPTION COUNTY: JUDITH BASIN	93	108
EXCEPTION COUNTY: LAKE	129	145
EXCEPTION COUNTY: LEWIS+ CLARK	129	145
EXCEPTION COUNTY: LIBERTY	93	108
EXCEPTION COUNTY: LINCOLN	129	145
EXCEPTION COUNTY: MCCONE	93	108
EXCEPTION COUNTY: MADISON	129	145
EXCEPTION COUNTY: MEAGHER	129	145
EXCEPTION COUNTY: MINERAL	129	145
EXCEPTION COUNTY: MISSOULA	129	145
EXCEPTION COUNTY: MUSSELSHELL	129	145
EXCEPTION COUNTY: PARK	129	145
EXCEPTION COUNTY: PETROLEUM	93	108
EXCEPTION COUNTY: PHILLIPS	93	108
EXCEPTION COUNTY: PONDERA	93	108
EXCEPTION COUNTY: POWDER RIVER	129	145
EXCEPTION COUNTY: POWELL	129	145
EXCEPTION COUNTY: PRAIRIE	93	108
EXCEPTION COUNTY: RAVALLI	129	145
EXCEPTION COUNTY: RICHLAND	93	108
EXCEPTION COUNTY: ROOSEVELT	93	108
EXCEPTION COUNTY: ROSEBUD	129	145
EXCEPTION COUNTY: SANDERS	129	145
EXCEPTION COUNTY: SHERIDAN	93	108
EXCEPTION COUNTY: SILVER BOW	129	145
EXCEPTION COUNTY: STILLWATER	93	108
EXCEPTION COUNTY: SWEET GRASS	93	108
EXCEPTION COUNTY: TETON	93	108
EXCEPTION COUNTY: TOOLE	93	108
EXCEPTION COUNTY: TREASURE	129	145
EXCEPTION COUNTY: VALLEY	93	108
EXCEPTION COUNTY: WHEATLAND	93	108
EXCEPTION COUNTY: WIBAUX	93	108
EXCEPTION COUNTY: YL-ST-NT-PK	129	145

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 082187

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: NEBRASKA	80	98
MSA: LINCOLN, NE	109	115
MSA: OMAHA, NE-IA	95	110
MSA: SIOUX CITY, IA-NE	97	97
NON METRO STATE: NEVADA	102	118
MSA: LAS VEGAS, NV	216	241
MSA: RENO, NV	216	241
NON METRO STATE: NEW HAMPSHIRE	108	119
PMSA: LAWRENCE-HAVERHILL, MA-NH	131	140
PMSA: LOWELL, MA-NH	131	140
MSA: MANCHESTER, NH	123	134
PMSA: NASHUA, NH	150	150
MSA: PORTSMOUTH-DOVER-ROCHESTER, NH-ME	119	136
NON METRO STATE: NEW JERSEY	111	111
MSA: ALLENTOWN-BETHLEHEM, PA-NJ	109	109
MSA: ATLANTIC CITY, NJ	170	170
PMSA: BERGEN-PASSAIC, NJ	228	229
PMSA: JERSEY CITY, NJ	221	221
PMSA: MIDDLESEX-SOMERSET-HUNTERDON, NJ	259	259
PMSA: MONMOUTH-OCEAN, NJ	199	240
PMSA: NEWARK, NJ	214	221
PMSA: PHILADELPHIA, PA-NJ	189	189
PMSA: TRENTON, NJ	167	167
PMSA: VINELAND-MILLVILLE-BRIDGETON, NJ	147	147
PMSA: WILMINGTON, DE-NJ-MD	120	120
NON METRO STATE: NEW MEXICO	97	111
MSA: LAS CRUCES, NM	97	111
MSA: ALBUQUERQUE, NM	108	125
MSA: SANTA FE, NM	97	111
EXCEPTION COUNTY: SANDOVAL	102	116
NON METRO STATE: NEW YORK	129	129
MSA: ALBANY-SCHENECTADY-TROY, NY	160	160
MSA: BINGHAMTON, NY	96	96
PMSA: BUFFALO, NY	117	117
MSA: ELMIRA, NY	103	103

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 082187

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: GLENS FALLS, NY	129	129
PMSA: NASSAU-SUFFOLK, NY	174	225
PMSA: NEW YORK, NY	181	181
PMSA: NIAGARA FALLS, NY	113	113
PMSA: ORANGE COUNTY, NY	125	125
MSA: POUGHKEEPSIE, NY	166	166
MSA: ROCHESTER, NY	146	146
MSA: SYRACUSE, NY	119	119
MSA: UTICA-ROME, NY	109	109
NON METRO STATE: NORTH CAROLINA	54	67
MSA: ASHEVILLE, NC	77	89
MSA: BURLINGTON, NC	77	89
MSA: CHARLOTTE-GASTONIA-ROCK HILL, NC-SC	77	89
MSA: FAYETTEVILLE, NC	77	89
MSA: GREENSBORO--WINSTON-SALEM--HIGH POINT, NC	77	89
MSA: HICKORY, NC	54	67
MSA: JACKSONVILLE, NC	54	67
MSA: RALEIGH-DURHAM, NC	77	89
MSA: WILMINGTON, NC	77	89
EXCEPTION COUNTY: BRUNSWICK	64	76
EXCEPTION COUNTY: CURRITUCK	101	101
EXCEPTION COUNTY: MADISON	64	76
NON METRO STATE: NORTH DAKOTA	99	115
MSA: BISMARCK, ND	141	156
MSA: FARGO-MOORHEAD, ND-MN	124	140
MSA: GRAND FORKS, ND	108	133
NON METRO STATE: OHIO	72	72
PMSA: AKRON, OH	108	108
MSA: CANTON, OH	77	77
PMSA: CINCINNATI, OH-KY-IN	108	113
PMSA: CLEVELAND, OH	116	116
MSA: COLUMBUS, OH	100	117
MSA: DAYTON-SPRINGFIELD, OH	77	77
PMSA: HAMILTON-MIDDLETOWN, OH	87	90
MSA: HUNTINGTON-ASHLAND, WV-KY-OH	84	84
MSA: LIMA, OH	100	100
PMSA: LORAIN-ELYRIA, OH	124	124
MSA: MANSFIELD, OH	95	95
MSA: PARKERSBURG-MARIETTA, WV-OH	84	84
MSA: STEUBENVILLE-WEIRTON, OH-WV	75	75

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 082187

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: TOLEDO, OH	126	170
MSA: WHEELING, WV-OH	77	77
MSA: YOUNGSTOWN-WARREN, OH	95	95
EXCEPTION COUNTY: CHAMPAIGN	72	78
EXCEPTION COUNTY: OTTAWA	100	134
EXCEPTION COUNTY: PREBLE	72	72
EXCEPTION COUNTY: PUTNAM	81	81
EXCEPTION COUNTY: VAN WERT	81	81
NON METRO STATE: OKLAHOMA	75	81
MSA: ENID, OK	75	81
MSA: FORT SMITH, AR-OK	35	38
MSA: LAWTON, OK	76	83
MSA: OKLAHOMA CITY, OK	78	86
MSA: TULSA, OK	83	89
EXCEPTION COUNTY: LE FLORE	34	37
EXCEPTION COUNTY: MAYES	75	81
NON METRO STATE: OREGON	137	145
MSA: EUGENE-SPRINGFIELD, OR	161	166
MSA: MEDFORD, OR	137	145
PMSA: PORTLAND, OR	180	200
MSA: SALEM, OR	161	166
NON METRO STATE: PENNSYLVANIA	77	77
MSA: ALLENTOWN-BETHLEHEM, PA-NJ	109	109
MSA: ALTOONA, PA	100	100
PMSA: BEAVER COUNTY, PA	88	88
MSA: ERIE, PA	100	100
MSA: HARRISBURG-LEBANON-CARLISLE, PA	113	113
MSA: JOHNSTOWN, PA	100	100
MSA: LANCASTER, PA	104	104
PMSA: PHILADELPHIA, PA-NJ	189	189
PMSA: PITTSBURGH, PA	91	91
MSA: READING, PA	104	104
MSA: SCRANTON--WILKES-BARRE, PA	92	92
MSA: SHARON, PA	77	77
MSA: STATE COLLEGE, PA	77	77
MSA: WILLIAMSPORT, PA	77	77
MSA: YORK, PA	104	104
EXCEPTION COUNTY: SUSQUEHANNA	77	77
NON METRO STATE: RHODE ISLAND	119	119

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 082187

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
PMSA: FALL RIVER, MA-RI	91	91
MSA: NEW LONDON-NORWICH, CT-RI	125	125
PMSA: PAWTUCKET-WOONSOCKET-ATTLEBORO, RI-MA	125	125
PMSA: PROVIDENCE, RI	125	125
NON METRO STATE: SOUTH CAROLINA	60	60
MSA: ANDERSON, SC	60	60
MSA: AUGUSTA, GA-SC	81	83
MSA: CHARLESTON, SC	77	77
MSA: CHARLOTTE-GASTONIA-ROCK HILL, NC-SC	77	89
MSA: COLUMBIA, SC	67	77
MSA: FLORENCE, SC	60	60
MSA: GREENVILLE-SPARTANBURG, SC	67	67
NON METRO STATE: SOUTH DAKOTA	85	99
MSA: RAPID CITY, SD	85	99
MSA: SIOUX FALLS, SD	119	134
NON METRO STATE: TENNESSEE	60	60
MSA: CHATTANOOGA, TN-GA	53	77
MSA: CLARKSVILLE-HOPKINSVILLE, TN-KY	77	83
MSA: JACKSON, TN	60	60
MSA: JOHNSON CITY-KINGSPORT-BRISTOL, TN-VA	83	83
MSA: KNOXVILLE, TN	67	67
MSA: MEMPHIS, TN-AR-MS	89	89
MSA: NASHVILLE, TN	89	106
NON METRO STATE: TEXAS	65	81
NON METRO STATE: TEXAS	65	81
MSA: ABILENE, TX	56	63
MSA: AMARILLO, TX	104	109
MSA: AUSTIN, TX	94	111
MSA: BEAUMONT-PORT ARTHUR, TX	97	111
PMSA: BRAZORIA, TX	108	126
MSA: BROWNSVILLE-HARLINGEN, TX	77	89
MSA: BRYAN-COLLEGE STATION, TX	94	106
MSA: CORPUS CHRISTI, TX	81	106
PMSA: DALLAS, TX	83	106
MSA: EL PASO, TX	108	122
PMSA: FORT WORTH-ARLINGTON, TX	83	106

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 082187

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
PMSA: GALVESTON-TEXAS CITY, TX	105	118
PMSA: HOUSTON, TX	112	131
MSA: KILLEEN-TEMPLE, TX	97	106
MSA: LAREDO, TX	67	83
MSA: LONGVIEW-MARSHALL, TX	89	103
MSA: LUBBOCK, TX	103	106
MSA: MC ALLEN-EDINBURG-MISSION, TX	88	106
MSA: MIDLAND, TX	106	111
MSA: ODESSA, TX	106	111
MSA: SAN ANGELO, TX	89	97
MSA: SAN ANTONIO, TX	77	89
MSA: SHERMAN-DENISON, TX	83	97
MSA: TEXARKANA, TX-TEXARKANA, AR	106	119
MSA: TYLER, TX	83	87
MSA: VICTORIA, TX	65	81
MSA: WACO, TX	86	97
MSA: WICHITA FALLS, TX	60	67
EXCEPTION COUNTY: CALLAHAN	55	61
EXCEPTION COUNTY: CLAY	59	65
EXCEPTION COUNTY: HOOD	70	88
EXCEPTION COUNTY: JONES	55	61
EXCEPTION COUNTY: WISE	70	88
NON METRO STATE: UTAH	N/A	N/A
MSA: PROVO-OREM, UT	129	145
MSA: SALT LAKE CITY-OGDEN, UT	145	161
EXCEPTION COUNTY: BEAVER	93	108
EXCEPTION COUNTY: BOX ELDER	93	108
EXCEPTION COUNTY: CACHE	93	108
EXCEPTION COUNTY: CARBON	129	145
EXCEPTION COUNTY: DAGGETT	93	108
EXCEPTION COUNTY: DUCHESNE	93	108
EXCEPTION COUNTY: EMERY	129	145
EXCEPTION COUNTY: GARFIELD	93	108
EXCEPTION COUNTY: GRAND	129	145
EXCEPTION COUNTY: IRON	93	108
EXCEPTION COUNTY: JUAB	93	108
EXCEPTION COUNTY: KANE	93	108
EXCEPTION COUNTY: MILLARD	93	108
EXCEPTION COUNTY: MORGAN	93	108
EXCEPTION COUNTY: PIUTE	93	108
EXCEPTION COUNTY: RICH	93	108
EXCEPTION COUNTY: SAN JUAN	93	108
EXCEPTION COUNTY: SANPETE	93	108
EXCEPTION COUNTY: SEVIER	93	108

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: SUMMIT	93	108
EXCEPTION COUNTY: TOOELE	108	120
EXCEPTION COUNTY: UINTAH	129	145
EXCEPTION COUNTY: WASATCH	93	108
EXCEPTION COUNTY: WASHINGTON	93	108
EXCEPTION COUNTY: WAYNE	93	108
NON METRO STATE: VERMONT	112	129
MSA: BURLINGTON, VT	112	129
NON METRO STATE: VIRGINIA	86	86
MSA: CHARLOTTESVILLE, VA	86	86
MSA: DANVILLE, VA	86	86
MSA: JOHNSON CITY-KINGSPORT-BRISTOL, TN-VA	83	83
MSA: LYNCHBURG, VA	77	77
MSA: NORFOLK-VIRGINIA BEACH-NEWPORT NEWS, VA	121	121
MSA: RICHMOND-PETERSBURG, VA	119	119
MSA: ROANOKE, VA	83	83
MSA: WASHINGTON, DC-MD-VA	162	162
EXCEPTION COUNTY: APPOMATTOX	75	75
EXCEPTION COUNTY: CRAIG	81	81
NON METRO STATE: WASHINGTON	118	137
MSA: BELLINGHAM, WA	118	152
MSA: BREMERTON, WA	118	152
MSA: OLYMPIA, WA	118	152
MSA: RICHLAND-KENNEWICK-PASCO, WA	161	161
PMSA: SEATTLE, WA	150	211
MSA: SPOKANE, WA	129	145
PMSA: TACOMA, WA	134	158
PMSA: VANCOUVER, WA	168	185
MSA: YAKIMA, WA	129	136
NON METRO STATE: WEST VIRGINIA	83	83
MSA: CHARLESTON, WV	89	89
MSA: CUMBERLAND, MD-WV	120	120
MSA: HUNTINGTON-ASHLAND, WV-KY-OH	83	83
MSA: PARKERSBURG-MARIETTA, WV-OH	83	83
MSA: STEUBENVILLE-WEIRTON, OH-WV	75	75
MSA: WHEELING, WV-OH	77	77
EXCEPTION COUNTY: WIRT	81	81
NON METRO STATE: WISCONSIN	88	95

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 082187

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: APPLETON-OSHKOSH-NEENAH, WI	110	117
MSA: DULUTH, MN-WI	81	92
MSA: EAU CLAIRE, WI	102	111
MSA: GREEN BAY, WI	108	115
MSA: JANESVILLE-BELOIT, WI	108	115
PMSA: KENOSHA, WI	114	122
MSA: LA CROSSE, WI	97	106
MSA: MADISON, WI	162	169
PMSA: MILWAUKEE, WI	125	132
MSA: MINNEAPOLIS-ST. PAUL, MN-WI	157	157
PMSA: RACINE, WI	117	124
MSA: SHEBOYGAN, WI	88	95
MSA: WAUSAU, WI	88	95
NON METRO STATE: WYOMING	N/A	N/A
MSA: CASPER, WY	216	233
MSA: CHEYENNE, WY	129	154
EXCEPTION COUNTY: ALBANY	129	154
EXCEPTION COUNTY: BIG HORN	129	154
EXCEPTION COUNTY: CAMPBELL	216	233
EXCEPTION COUNTY: CARBON	216	233
EXCEPTION COUNTY: CONVERSE	216	233
EXCEPTION COUNTY: CROOK	129	154
EXCEPTION COUNTY: FREMONT	216	233
EXCEPTION COUNTY: GOSHEN	129	154
EXCEPTION COUNTY: HOT SPRINGS	129	154
EXCEPTION COUNTY: JOHNSON	129	154
EXCEPTION COUNTY: LARAMIE	129	154
EXCEPTION COUNTY: LINCOLN	129	154
EXCEPTION COUNTY: PARK	129	154
EXCEPTION COUNTY: PLATTE	129	154
EXCEPTION COUNTY: SHERIDAN	216	233
EXCEPTION COUNTY: SUBLETTE	129	154
EXCEPTION COUNTY: SWEETWATER	216	233
EXCEPTION COUNTY: TETON	129	154
EXCEPTION COUNTY: UINTA	129	154
EXCEPTION COUNTY: WASHAKIE	129	154
EXCEPTION COUNTY: WESTON	129	154

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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[FR Doc. 87-19732 Filed 8-27-87; 8:45 am]
BILLING CODE 4210-27-C

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federal register

Friday
August 28, 1987

Part IV

Commission on Education of the Deaf

Educational Programs for the Deaf; Draft Recommendations; Notice

VOL
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COMMISSION OF EDUCATION OF THE DEAF

Educational Programs for the Deaf; Draft Recommendations

AGENCY: Commission on Education of the Deaf.

ACTION: Notice of draft recommendations.

SUMMARY: The U.S. Commission on Education of the Deaf solicits written comments on its first set of draft recommendations to Congress and the President. This first set of draft recommendations addresses the topics of "appropriate education" under the Education of the Handicapped Act, parents, right to be informed about educational options, early identification of hearing impairment in infants and young children, Regional Postsecondary Education Programs for the Deaf, student admission policies at Gallaudet University and the National Technical Institute for the Deaf, federally funded research activities, and television captioning services.

DATE: To be accepted for consideration, written comments should be received on or before October 15, 1987.

ADDRESS: Written comments should be sent to the Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets, SW., Washington, DC 20407. For further information, contact Pat Johanson, Staff Director or Robert J. Mather, Staff Counsel, (202) 453–4353 (TDD) or (202) 453–4684 (Voice). These are not toll free numbers.

SUPPLEMENTARY INFORMATION: We, the Commission on Education of the Deaf (Commission), solicit written comments on the first of two sets of draft recommendations. It should be emphasized that these are recommendations, *not* proposed regulations. The Commission is not engaged in rule-making. The second set of draft recommendations is scheduled for publication in October and will include recommendations on other areas of interest such as the Model Secondary School for the Deaf and the Kendall Demonstration Elementary School, educational interpreting, teacher training, programs for low-achieving persons, captioned films, and technological advances in education. We will solicit public comments on those draft recommendations as well.

Established by the Education of the Deaf Act of 1986,[1] the Commission is directed to study infant, early childhood, elementary, secondary, postsecondary, adult, and continuing education programs for persons who are deaf. It must also study federally assisted programs relating to instructional media and captioning services. It must submit to Congress and to the President, not later than February 4, 1988, a final report of its study together with recommendations, including specific proposals for legislation, as the Commission deems advisable.

To receive input on the status of educational programs from the public to the fullest extent possible, we held five public meetings in geographically diverse locations (Washington D.C.; Clarkston, Georgia; Minneapolis, Minnesota; Seattle, Washington; and Santa Fe, New Mexico). We also published a list of questions to which we solicited written responses and recommendations. See Notice of Inquiry, 52 FR 10722 (April 2, 1987). Over 4,000 responses were received from over 450 organizations, parents, educators, specialists, consumers, and other interested individuals who participated in the public meetings or responded to the Notice. Among participating organizations were the American Society for Deaf Children, Conference of Educational Administrators Serving the Deaf, National Association of the Deaf, Alexander Graham Bell Association for the Deaf, Council of State Administrators of Vocational Rehabilitation, Council on Exceptional Children, National Cued Speech Association, Listen Inc., Gallaudet University, National Technical Institute for the Deaf, National Captioning Institute, and other institutions. We considered all the responses and testimonies in preparing the draft recommendations.

A major theme shaping many of the draft recommendations is that of improving quality and reducing costs through competition. We have incorporated the idea of competition into the recommendations for the regional postsecondary programs, for federally funded research activities, and for captioned television services. We believe that the quality of the regional programs, research activities, and captioning services would improve through the initiation, continuation, or expansion of competition.

We request all interested persons and organizations to submit written comments on the draft recommendations listed below. Counterproposals are welcome. Comments and counterproposals must be received in the Commission office by October 15, 1987.

[1] Pub. L. 99–371, 100 Stat. 781, 786–789 (20 U.S.C. 4341–4344).

I. Part B of the Education of the Handicapped Act (Act)

A. Appropriate Education and "Least Restrictive Environment (LRE)"

Discussion: Determining what comprises an appropriate education for a child who is deaf is one issue on which we received a substantially large number of responses. We have heard from numerous parents and educators that the unique needs of the individual child who is deaf have often been overlooked, that placement decisions are sometimes made without careful consideration of individual needs, and that the Act has been misinterpreted by placing emphasis on the "least restrictive environment" concept. Although they acknowledge that the intent of the Act has been to ensure an appropriate education, the emphasis on LRE has been more damaging than beneficial to many children who are deaf.

Certain things related to the concepts of appropriate education and LRE under the Act need to be clarified. One of its purposes is to assure that each handicapped child be provided with "a free appropriate public education" which emphasizes special education and related services designed to meet his/her unique needs.[2] The education must be tailored to the needs of each handicapped child by means of an individualized education program (IEP).[3]

The Act's "least restrictive environment" provision mandates that in order to be eligible for funds, states establish procedures to ensure that, to the maximum extent appropriate, handicapped children are educated with nonhandicapped children, and that special classes, separate schools, or other removal of handicapped children from the regular educational environment occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.[4] This provision "indicates a very strong congressional preference" for educating handicapped children in the regular classroom. See *Rockner* v. *Walter*, 700 F.2d 1058, 1063 (6th Cir.), *cert. denied*, 464 U.S. 864 (1983). Despite this preference, the Supreme Court in *Hendrick Hudson Dist. Educ.* v. *Rowley* stated that Congress recognized that regular classrooms were not suitable settings for the education of many handicapped children.[5] In fact, the Act

[2] 20 U.S.C. 1400(c).
[3] *See id.* at § 1401(18).
[4] *Id.* at § 1412(5).
[5] 458 U.S. 176, 181 n. 4 (1982).

specifically authorizes funding for special education in a classroom, hospital, institutional setting, or at the child's home.[6] Although LRE creates a strong preference in favor of regular school placement, it remains secondary to the Act's primary provision of an appropriate education for each handicapped child.

Some respondents expressed concern that emphasis on LRE engenders an approach which indiscriminately lumps the needs of persons with impaired hearing together with those of all other handicapped persons when determining placement goals. They recommended that we define and emphasize the unique ramifications of deafness which make the appropriate education for a deaf child different from that of any other child. Unlike most other disabilities, the major barriers associated with deafness relate to communication and language. The extensive educational needs created by the language barrier inherent in deafness require that the child be provided with an appropriate opportunity for language acquisition and healthy social and emotional development. Based on the numerous responses and statements, we find a compelling need for minimum requirements to ensure that an educational program meets the unique needs of a child who is deaf.

Draft Recommendation 1: Federal policy should require that determination of an "appropriate" special educational program for a child who is deaf take into consideration the following factors:

(a) Severity of hearing loss.
(b) Academic level.
(c) Communicative needs.
(d) Social needs.
(e) Emotional needs.
(f) Linguistic needs.

This list should *not* be considered an exhaustive summary of all relevant factors which warrant examination; neither does the order in which these factors are listed reflect the relative importance of each component. These factors, among others, should be considered relative to the child. We solicit comments on the draft recommendation and ask if other factors should be added to the list.

B. Parents' Right To Be Informed

Discussion: We received a number of responses and statements relating to the rights of parents under the Act in developing an IEP. The IEP is the mechanism whereby an educational and special services program is developed and implemented to meet the needs of a child. The contents of the IEP must be detailed and specific, including a statement of the degree to which the child will be able to participate in a regular educational program.

A number of parents expressed frustration that they were not informed on a periodic basis by school personnel about all educational options available to their children in the continuum of alternative placements. In a policy letter on a similar issue, the Department of Education's Office of Special Education Programs (OSEP) stated that during an IEP meeting, school personnel are not required to do so. OSEP explained that when the child is initially referred, the school district must provide written notice to the parents regarding the continuum of alternative placements, ranging from placement in the regular classroom with supplementary aids to placement in an institution. Since the parents should have already been informed, as OSEP stated, it would not be necessary for school personnel to initiate discussion about alternative placements during an IEP meeting. In this letter, OSEP stated that during the meeting the school district was not required to initiate discussion about residential placement if appropriate education would be provided in the regular educational setting.[7]

Although parents would have been initially informed about the placement options, we find it necessary for the school personnel to *again* inform parents, during each IEP meeting, about the availability of alternative placements for their child. We recognize that school personnel must legally specify the placement which provides maximum, appropriate education with nonhandicapped children; however, we wish to ensure that parents remain aware of other options within the continuum of alternative placements and that they understand how consideration of the individual needs of the child resulted in the particular placement decision. We emphasize that the following draft recommendation would apply to personnel in all school settings, including those in residential schools.

Draft Recommendation 2: Federal policy should be established to require that school personnel inform parents of all options in the continuum of alternative placements during each IEP meeting.

II. Early Identification of Hearing Impairment in Infants and Toddlers

Discussion: Early detection of hearing impairment in affected infants is important for medical treatment and subsequent educational intervention to assure development of communication skills. Despite sophisticated medical and audiological diagnostic techniques, a significant number of children with hearing impairments go undiagnosed and untreated for as long as three to six years. Although part H of the 1986 Amendments to the Education of the Handicapped Act authorizes federal financial assistance for states to develop and to implement a statewide system providing appropriate early intervention services to all handicapped toddlers and their families, and although a number of states have implemented various procedures for identifying children with hearing losses, no federal standards for identification procedures have been established.

Data were provided which suggested that the widespread use of a questionnaire examining the newborn's family history, the pregnancy or delivery, and the medical status of the newborn itself would increase the likelihood of identifying infants likely to be at risk for hearing loss. Subsequent follow-up assessment could then be conducted on these children to increase the likelihood of identifying adventitious or progressive hearing loss. In addition, respondents advocated strong public relations campaigns to medical professionals and the implementation of public awareness programs.

Draft Recommendation 3: Federal policy should mandate that states establish guidelines to implement improved screening procedures for each live birth using a high-risk registry and subsequent screening procedures for infants and young children considered to be at risk.

In addition to this recommendation, we advocate supplementary initiatives designed to disseminate information about hearing impairment recognition to health professionals, obstetricians, pediatricians, and family practitioners. Public awareness programs should also be implemented to advise educators and other professionals who have contact with young children about the signs and impact of hearing loss. One initiative discussed was the inclusion of a reminder about hearing loss in conjunction with the closed-caption television program logo. We request public input on how the federal government can promote greater awareness of hearing impairment among health professionals, educators, and the general public.

[6] 20 U.S.C. at § 1401(16).

[7] 1986 EHLR 211:383–4

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III. Regional Postsecondary Education Programs (RPEPDs)

A. Strengthening and Expanding the Number of RPEPDs.

Discussion: The RPEPDs are currently located at California State University at Northridge, Seattle Central Community College, St. Paul Technical Vocational Institute, and the University of Tennessee Consortium. Federal funding for these programs comes in three-year competitive grants, with the amount of funding fluctuating from year to year, and from grant to grant.

Many comments pointed out that students in certain parts of the country do not have the same educational options as do students in other parts of the country. For example, a student living in Vermont who wishes to obtain vocational training may have to attend the St. Paul Technical Vocational Institute, some 2,000 miles away. Similarly, if a student from Iowa wants to attend a four-year baccalaureate program, that student may have to travel 1,500 miles to attend California State University at Northridge. To alleviate this situation, we are recommending that additional funding go to each RPEPD to enter into agreements with other universities and community colleges to provide a full range of educational choices within each region of the country. In other words, each RPEPD would provide a continuum of programs, from vocational training to baccalaureate degrees, in cooperation with established university and community college programs. We wish to emphasize that this recommendation does not absolve any university or college of the responsibility to provide support services to any deaf student, as required by section 504 of the Rehabilitation Act, nor does it diminish in any way the vital roles of Gallaudet University and the National Technical Institute for the Deaf.

Draft Recommendation 4:

(a) Each RPEPD should be strengthened to provide a broader range of educational options, including vocational and technical training, two year junior college and baccalaureate programs. Additional funding should be allocated.

(b) The number of RPEPDs should be increased to five. The additional program should be established in the southwest region of the United States to provide greater geographical coverage of the nation.

(c) Selection criteria for the RPEPDs should include:

(1) High quality programs.

(2) Adequate support services.

(3) Balanced and qualified faculty.

(4) A general policy to ensure greater accessibility for all deaf students attending the RPEPDs, including a waiver of increased tuition charge for out-of-state students.

In regard to the last criterion (4), we believe that a student should be able to attend a federally-funded regional program without incurring a financial penalty because the student may not reside in the state where the regional program is located.

We have not made any recommendations with respect to a specific amount of funding to implement these draft recommendations, but they entail additional funding. We have recognized that funding for these RPEPDs is currently rather limited (the appropriation for the current fiscal year is about $2 million). Only about two percent of federal money designated for deaf education is currently allocated to the RPEPDs with the rest ($89 million) distributed to Gallaudet University and the National Technical Institute for the Deaf.

B. Funding Cycles for the RPEPDs

Discussion: We received many comments about the problems inherent in the current three-year funding cycle for the RPEPDs, such as a lack of continuity, little opportunity for long-range planning, and difficulty in retaining quality staff. We noted that these comments were of legitimate concern, but felt that it was best to preserve some competition in the funding cycle so that an ineffectual regional program would not be funded indefinitely. Therefore, the funding period should be extended to five years with periodic oversight provided by a review panel of professionals in the field of education of the deaf.

Draft Recommendation 5: A five-year competitive funding cycle should be established with oversight provided by a peer review committee composed of professionals in the field of deaf education. The peer review process should be conducted every two-and-a-half years.

IV. Admission Policies at Gallaudet University and the National Technical Institute for the Deaf

At the time of passage of the Education of the Deaf Act in the House of Representatives, Representative Jeffords, one of the co-sponsors of the bill, requested that the Commission study and make a recommendation on admitting hearing students to Gallaudet University as well as foreign students to Gallaudet and the National Technical Institute for the Deaf.

A. Admittance of Hearing Students to Gallaudet University Undergraduate Programs and Cost Implications

Discussion: Gallaudet has admitted hearing students to its graduate programs since before the turn of the century. More recently, it has admitted hearing students to the associate degree program in interpreting. Since 1985, Gallaudet has allowed up to 8 percent of the undergraduate population to be hearing students. One of the admission policies require hearing applicants to demonstrate interest in a deafness-related career. At present, there are three hearing undergraduate students, pursuing baccalaureate degrees, who are enrolled as part-time students. Several other students have applied for admission for the fall of 1987; one has been accepted.

After careful deliberation, we propose that the policy of admitting hearing students should be discontinued. The basic rationale for this proposal is that deaf persons, whose educational needs are not being met and whose opportunities for a college education are limited, should be given priority over hearing persons. Although we considered the option of admitting hearing students who were willing to pay the full cost of the program, we acknowledged that this option was tantamount to saying that Gallaudet should not admit hearing students since the actual cost per deaf student at Gallaudet is about $25,000 per year. However, the cost of educating a hearing student can only be estimated and would be somewhat lower because the student might not require special services.

With the draft recommendation, we are requesting that Congress reaffirm Gallaudet University as an institution for persons who are deaf, at least at the undergraduate level, and that hearing persons who wish to make careers in deafness attend the graduate level programs at Gallaudet. We emphasize that the draft recommendation should not adversely affect any exchange or consortium programs between Gallaudet and other universities, nor should it affect the interpreter training programs where hearing students participate.

We should note that we did not have a consensus on this issue. Two Commission members believe that Gallaudet should be permitted to continue to admit hearing students to its undergraduate programs.

Draft Recommendation 6: Gallaudet University should not accept hearing students to its baccalaureate programs.

B. Cost Implications of Admitting Foreign Students to Gallaudet and the National Technical Institute for the Deaf

Discussion: Gallaudet University is permitted to admit foreign students and presently has about 200 foreign students. Rather than imposing a surcharge which covers the actual cost (tuition plus support and unigue services) of educating non-taxpaying foreign students, Gallaudet recently reduced its tuition surcharge for international students from 50 percent to 20 percent, which was approximately 20 percent of the total educational cost per deaf student. The remaining 80 percent continues to be subsidized by the Federal Government. NTID has thus far not been allowed to admit foreign students.

Several respondents recommended that the cost of education and related services for foreign students attending Gallaudet and NTID should not be subsidized by the Federal Government.

Although we saw some value in allowing this significant subsidy to foreign students, we felt that the need to provide additional federal funding to other areas of deaf education outweighed this consideration. According to a Department of Education estimate, the total federal subsidy for approximately 200 foreign students at Gallaudet in fiscal year 1985 amounted to approximately $3,800,000 or nearly $19,000 per student. (This figure is based on the additional 50% surcharge.)

A second concern centered around making sure that qualified deaf American students not be denied admittance resulting from deaf foreign student admission. We would expect that both institutions would establish guidelines to ensure that such a situation would never occur.

Draft Recommendation 7: Gallaudet University's policy of admitting foreign students should be continued. The National Technical Institute for the Deaf should be permitted to admit foreign students. However, the number of foreign students should be limited to 10% of the deaf student body. Tuition should be increased to the foreign students to cover 75% of the average per student cost at these institutions.

VI. The Role and Impact of Research, Development, Dissemination, and Outreach Activities at Gallaudet University and the National Technical Institute for the Deaf.

Discussion: We examined several related questions concerning the role and impact of research, development, dissemination and outreach activities conducted by Gallaudet University and the National Technical Institute for the Deaf. We will continue to investigate these issues at the next full Commission meeting in September as it relates to the Kendall Demonstration Elementary School and the Model Secondary School for the Deaf. Additional recommendations on research will be drafted during that meeting.

We wish to emphasize that we have not attempted to evaluate the quality of research at Gallaudet and NTID; however, we have considered how research and development priorities should be established, whether there has been adequate oversight to ensure cost-effectiveness and quality, and whether research and development projects should be funded through Congressional appropriations, competitive grants, or both.

A. Funding of Research Projects

Discussion: Gallaudet and NTID are authorized by law to conduct research. Gallaudet receives both direct appropriation from Congress and federal grants, while NTID receives only direct appropriation. There is significant value in having extensive and high quality research programs at Gallaudet and NTID. We commend the valuable contribution to the field made by the Annual Survey of Hearing Impaired Children and Youth and we expressed interest in exploring ways in which the Survey might provide important data about specific groups, such as the rural student populace. However, we recognized that other research centers are also conducting a significant amount of research on deafness and deaf education. These centers would benefit from increased opportunities to compete for larger amounts of funding. Similarly, requiring Gallaudet and NTID to participate in more competition for funding could be expected to enhance the quality of Gallaudet's and NTID's research and development activities.

Our recommendations are intended to encourage competition, innovation, and diversity in research on deafness. We certainly do not recommend any reduction of funding for deafness-related research.

Draft Recommendation 8: Only a base level of Congressionally appropriated line-item funding should continue to be allocated to Gallaudet and NTID for research, development, and evaluation projects. Specifically, funding should be adequate to provide a robust research agenda which would include the Annual Survey of Hearing Impaired Children and Youth conducted by Gallaudet. An overall reduction in the current funding provided to these two institutions should be made and the remaining monies should then be set aside and used for competitive grants for deafness-related research. Any research center with adequate capacity in the field, including Gallaudet and NTID, could compete for the funds on a multi-year basis.

We welcome comments on how to set the "base level" for Gallaudet and NTID: one-third, one-half, two-thirds, or some other proportion of what Congress now appropriates to them for research. The current appropriation is approximately $3 million annually.

B. Setting Research Priorities

Discussion: Information received by the Commission indicated that Gallaudet and, to a lesser extent, NTID lack an oversight procedure for selecting, conducting, and monitoring research and development activities. Although these institutions set general research priorities, decisions on research projects occur within the organizations with little outside scrutiny. Developing a research plan for comment by consumers of products and by experts in the field, and utilizing a peer review system to aid Gallaudet and NTID in making their decisions, could be expected to result in research that is more relevant to the needs of the field and of higher quality.

Although we were asked to examine specific research priorities, we believe that such a task is beyond our ability to accomplish with the time and resources available. Therefore, we have concentrated on the process for setting priorities and selecting research agendas which should have long-term, positive dividends. A wealth of testimony has convinced us, however, that the acquisition of language by children who are deaf should be one of the top priorities for research.

Draft Recommendation 9: Gallaudet University and NTID should develop concrete research plans and provide them for public comment by consumers and researchers. The projects should then be selected in conjunction with a peer review process involving (principally) the best researchers in the field.

Draft Recommendation 10: The study of language acquisition in children who are deaf should be a primary consideration when setting research priorities.

C. Dissemination of Products and Outreach Activities

Discussion: In reviewing information supplied to the Commission, it was noted that some of the products and

outreach activities at Gallaudet tended to be promotional in nature and did not supply enough explanation about the products to allow educators to make informed decisions when purchasing the materials. In some cases, products could not be previewed before they were purchased. In addition, educators expressed the need for materials geared toward low-achieving students.

Draft Recommendation 11: Products and outreach activities from Gallaudet should be clearly customer oriented.

VII. Captioned Television

A. Closed captioning service

Discussion: 1. Brief history. In the early 1970s open-captioned programs became nationally available when the Caption Center at television station WGBH in Boston started to provide a few open-captioned programs to local stations affiliated with the Public Broadcasting Service (PBS). In 1981, the National Captioning Institute (NCI) was established with private and federal support to provide the captioning services to American Broadcasting Company (ABC), National Broadcasting Company (NBC), and the PBS. (At the time, the Columbia Broadcasting System, Inc. (CBS) declined participation and then agreed in 1984 to provide closed captioned programs using line 21 along with its teletext service.)

Due to the continued cooperative efforts among NCI, Congress, the Department of Education, the private sector and many others, the number of hours of captioned programming per week increased from only five hours in 1981 to nearly 150 hours today.

2. The Federal Communications Commission's (FCC) Efforts. Since 1970, the FCC has recognized the needs of persons with impaired hearing for television, and has continued its efforts to encourage licensees to make television accessible to them. In 1970, the FCC issued a public notice advising all licensees that television's capacity to "to alert, assist and entertain persons with impaired hearing" should be utilized to the "fullest extent."[8] The FCC explained that its public notice was "advisory in nature," but warned that mandatory requirements may be imposed if voluntary efforts are not satisfactory.[9] Six years later, the FCC issued a regulation requiring that all emergency announcements be broadcast visually.[10] In 1976, the FCC reserved line 21 of the television broadcast signal for transmitting "closed" captions, but did not impose mandatory requirements due to technological and economic factors.[11] Since that time, the FCC has continued to rely on voluntary initiatives rather than mandatory requirements to make television accessible to persons with impaired hearing.[12] In short, except with respect to emergency announcements, the FCC has not imposed any minimum requirements upon licensees to make their programming close captioned.

3. Ongoing federal funds for captioned services. The Department of Education has provided funds for the captioning of news, public affairs, and some prime time commercial network movies and television series. The commercial networks themselves pay for the captioning of some of their prime time programs as do various program producers, advertisers, foundations and viewers who contribute to NCI's Caption Club, ABC is the leading funder. The Corporation for Public Broadcasting and the public TV stations jointly share the cost of captioning numerous broadcast public TV programs. In the pay cable TV area, Showtime, Home Box Office and the Disney Channel cover part of the cost of captioning their programs. Many of the home video distributors, (*e.g.*, CBS/Fox and RCA Columbia) have their major movie releases captioned by NCI.

Federal funding provides about 40% of the support for closed-captioned television. The networks provide another 30% and corporate advertisers, foundations, and contributions account for the remaining 30%. For this fiscal year, the Department of Education provided to NCI funds of $5 million with $1 million earmarked specifically for children's programs.

4. Issues. With respect to captioned services, we find two major issues of concern: first, the cost of captioned services; and second, adverse effects of federal subsidies for captioned services upon providers who do not receive them.

The efforts on the part of the Federal Government including the Department of Education, commercial and public broadcasters, as well as NCI and others, deserve commendation for the increase in the number of hours of captioned programs.

One consumer, however, expressed dissatisfaction that the cost of captioning service has been picked up on an ad hoc, rather than a systematic basis:

> Simply stated, there is no mechanism today that has an iron-clad guarantee that the deaf person can access TV, because the costs are garnered through a process of both negotiation and charitable pursuits. Every year, the networks review their budgets and determine the allocation of their share of captioning (the formula varies among the three major networks: ABC, CBS and NBC). The Public Broadcasting Service also makes an annual determination. The U.S. government's allocation is determined through annual budget reviews in Congress. In addition, the major captioning service providers, the National Captioning Institute and the Caption Center has to approach, from time to time, the advertisers, the business community, the TV producers and in certain cases, the deaf community to "plead" for support in order to foot the bill to caption programs. In this case, the deaf person is again treated on an inequitable basis when compared to his hearing neighbor who does not have to plead for support from the networks, the U.S. Congress, the advertisers and all those parties identified above to allow him to have sound on his TV. Why should the deaf people of America be subject to the whims and wherefores of the various resources that he has very little control of, while his hearing neighbor does not need to be subjected to those.

We propose that certain broadcasters should assume responsibility for making their programming closed captioned without relying on federal subsidies. It should be noted that with improved technology, the cost of captioning can be reduced from the current rate of $2,500 per hour of programming to $1,000 or even less. While we recognize the continuing need for federal subsidies for captioned services, we believe that these subsidies would be better invested if they were used to assist broadcasters, especially those with low budgets, to develop technically and financially feasible means of captioning their programs.

We are, however, concerned that current priorities in and uses of federal funds should not be changed, especially in the absence of a duty by the FCC imposed upon broadcasters to maintain or increase current number of hours of their captioned programs.

Unless the FCC defines duties of broadcasters to make their programming captioned, we consider a legislative recommendation to require the FCC to do so. In the rulemaking process to implement the TV captioned programming requirement, the FCC would consider the costs and benefits to all television viewers, including persons with and without impaired hearing. It is our intent that the implementing regulation should be developed so as to encourage the use of current available captioned technology without discouraging or impairing the

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[8] 26 F.C.C. 2d 917 (1970).

[9] *Id.* at 918–19.

[10] 61 F.C.C. 2d 18 (1976), *reconsid.*, 62 F.C.C. 2d 565 (1977).

[11] 63 F.C.C. 2d 378 (1976).

[12] 46 FR 60851 (1981).

development of new or improved technology. We are also considering that Congress require that broadcasting of government proceedings, including House and Senate floor activity, be captioned.

Draft Recommendation 12: Congress should enact legislation to mandate the Federal Communications Commission to issue regulations as it deems necessary to require that broadcasting licensees caption their programming.

Draft Recommendation 13: Congress should require that broadcasting of government proceedings, including House and Senate floor activity, be captioned.

The number of closed captioning vendors seems to be increasing. Prices among captioning vendors varies from $1,050 to $2,500 per hour. One closed-captioning company complained that the present federal process discourages competition among the vendors. It stated that with federal subsidies, corporate contributions, and other donations, one vendor has been able to reduce its charges to producers. The process places the other vendors at a disadvantage despite the fact that their fees may be less than the federally subsidized vendor's.

To ensure fair and equal competition among the closed captioning companies, we propose that the Department of Education review and revise its funding mechanism.

Draft Recommendation 14: The Department of Education should revise its funding mechanism in the area of closed captioning to ensure fair and equal competition among closed captioning companies without jeopardizing quality, captioning services.

B. Decoders

Discussion: In order to make captions visible on a television set, one has to purchase a separate decoder, (Telecaption II) costing about $200 (or $160 with federal subsidy), or use an earlier-generation decoder.

In 1980, Sears Roebuck and Company contracted with the federal government to manufacture and sell the Sears TV with a built-in decoder and an external decoder (TeleCaption I). The Telecaption I units were sold at $260.00. It was projected that at least 100,000 decoders would be sold each year to television viewers.

Unfortunately, for a variety of reasons, decoder sales did not come close to projections. One of the reasons was that when the decoders first came out, only 10–14 hours of closed captioned programs were available per week, and people were hesitant to purchase a unit at a high cost of $260.00. Then NCI developed a more modern unit (TeleCaption II) without outside funding assistance, but obtained a federal subsidy for the unit such that it retailed for less than $200.00, and, in some instances, for as low as $160.00. After the introduction of TeleCaption II, the national audience for the closed captioned service increased to at least 500,000 people in approximately 140,000 homes.

Currently, the Department of Education has made available $1,500,000 for decoder subsidies ($30 per unit for 50,000 units). Congress has appropriated $500,000 for development of a lower priced decoder (the third-generation decoder). Since Sears stopped manufacturing televisions with a built-in decoder in the early 1980s, virtually no TV manufacturer has offered a captioning decoder as a standard feature on any model.

According to NCI, the future of the closed captioned television service is "inextricably tied to the number of households who access it," and in order to eliminate the need for ongoing federal funds and to make the captioned service economically viable and self-sustaining, the service must reach into at least 500,000 homes and ideally 1,000,000 homes by 1990.

Several organizations and consumers stated that one of the impediments to the goal of viable and self-sustaining captioned service is the additional cost of purchasing an external decoding adaptor to use with the television set. Even with a federal subsidy, the unit cost of today's decoders remain expensive to a large number of persons, especially low-income individuals and families. One national organization, along with other respondents, pushed for a recommendation to require that decoder chips be placed into new television sets as standard equipment. They explained that adding a built-in decoder to a television would add a minimal cost due to large scale distribution to expanded markets. At the same time, this action would benefit millions of viewers including those with English as a second language.

We find that to reduce the long-term need for federal subsidies for decoder development and manufacture, as well as to increase the number of households with decoders, TV manufacturers should be required to incorporate a decoder chip into new television sets as standard equipment. In doing so, we are considering a legislative recommendation to amend the Communications Act to require the FCC to establish and implement the requirement of accessibility of new TV sets marketed in the United States. Also we view current federal subsidies for the design, development, and manufacturing of new lower cost decoders as a delay in achieving these goals. Thus, we consider that these funds may be better invested by distributing current decoders to persons with impaired hearing at no cost.

Draft Recommendation 15: Congress should enact legislation to require the Federal Communications Commission to issue rules as it deems necessary to make most new television sets capable of decoding closed captions.

Draft Recommendation 16: Until such television sets become widely available, federal funds for decoder development and manufacturing should be made available to provide free decoders to persons who are deaf.

C. Research on the Effects of Captioning

Discussion: We discussed the extensive and diverse impact closed captioning would have in the United States, not only for persons with impaired hearing, but also for elderly people and for persons who are learning English as their second language.

We find a critical need for additional research in the areas of TV captioning as it relates to speech recognition and illiteracy among persons who are deaf.

Draft Recommendation 17: Federal funds should be provided for research on speech recognition and captioning for use in educational settings.

Draft Recommendation 18: Federal funds should be provided for research on the impact of captioning on illiteracy among persons who are deaf.

Records of the comments received will be available for public inspection at the office of the Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets, SW., Washington, D.C.

Frank G. Bowe,

Chairperson, Commission on Education of the Deaf.

August 24, 1987.

[FR Doc. 87–19731 Filed 8–27–87; 8:45 am]

BILLING CODE 6820-SD-M

VOL
52
ISS
1
6
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AG
28
1987
UMI

federal register

Friday
August 28, 1987

Part V

Department of the Interior

National Park Service

36 CFR Part 79

Curation of Federally-Owned and Administered Archeological Collections; Proposed Rule

VOL 52 ISS 167 AG 28 1987 UMI

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 79

Curation of Federally-Owned and Administered Archeological Collections

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Historic Preservation Act of 1966 (as amended) and the Archaeological Resources Protection Act of 1979 both direct the Secretary of the Interior to issue regulations for the curation and exchange of prehistoric and historic archeological collections recovered under certain Federal statutes. This proposed rule establishes standards and guidelines to be followed by Federal agencies to preserve material remains and associated records recovered in conjunction with Federal projects and programs. This action should ensure that those collections are deposited in repositories with adequate long-term curatorial capabilities.

DATES: Comments must be received on or before October 27, 1987.

ADDRESSES: Comments on this proposed rule should be addressed to Dr. Bennie C. Keel, Departmental Consulting Archeologist, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127, or delivered to Room 4127C, 1100 L Street, NW., Washington, DC, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Michele C. Aubry, Office of the Departmental Consulting Archeologist, National Park Service, at (202) 343–1879 or FTS 343–1879.

SUPPLEMENTARY INFORMATION:

Background

Authority. This proposed rule is being issued under the authority of section 101(a)(7)(A) of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) and section 5 of the Archaeological Resources Protection Act (16 U.S.C. 470*aa–ll*). Both statutes direct the Secretary of the Department of the Interior to issue regulations ensuring that significant archeological artifacts and associated records recovered under the authorities of section 110 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), the Archeological and Historic Preservation Act[1] (16 U.S.C. 469–469*c*), the Antiquities Act (16 U.S.C. 431–433) and the Archaeological Resources Protection Act (16 U.S.C. 470*aa-11*) are deposited in an institution with adequate long-term curatorial capability. They also direct the Secretary to address the exchange of collections between suitable universities, museums or other scientific or educational institutions, and to ensure that the disposition of collections recovered from Indian lands are subject to the consent of the Indian or Indian tribe that owns or has jurisdiction over the said lands.

Applicability. Federal agencies are required by law to consider the effects of their projects and programs on the natural and cultural environment. During the planning phase of a project, most Federal agencies conduct surveys of project lands to identify and evaluate significant historic and archeological properties that may be impacted by the project. After these impacts have been considered, agencies ordinarily conduct some sort of data recovery at significant properties that cannot be avoided by the project.

The majority of federally funded or authorized archeological studies are conducted in connection with a Federal undertaking on public (Federal) lands. They usually are conducted either by Federal employees or by non-Federal personnel under a permit or contract with the agency. The material remains and associated records (referred to herein as archeological collections) generated by those studies generally belong to the United States Government and are held by the Federal land managing agency that has jurisdiction over the said lands. This proposed rule establishes standards and guidelines to be followed by Federal agencies to ensure that those collections are deposited in repositories that have the capability to adequately care for and maintain the collections.

Other federally funded or authorized archeological studies are conducted in connection with a Federal undertaking on Indian lands, State or local lands, or privately owned lands. They usually are conducted by non-Federal personnel under a contract with the agency. The archeological collections generated by those studies generally belong to the individual Indian or Indian tribe, State or local agency, or person or institution that owns or has jurisdiction over the said lands.

This proposed rule does not apply to those collections that are not in the possession of Federal agencies. However, the rule does require Federal agencies to retain copies of records that document the federally funded or authorized survey, testing and data recovery activities. This rule does apply if a non-Federal collection is donated or transferred to a Federal agency or if a non-Federal collection is being cared for and maintained (administered) by a Federal agency on behalf of the non-Federal owner.

Prior to initiating archeological studies on lands other than Federal lands, Federal agencies should consult with the respective landowner regarding the disposition of the archeological collection. If the landowner is unable or unwilling to properly care for the collection, then the Federal agency should request that the owner donate or otherwise transfer the collection to a Federal, State or local Government agency, or a museum or other educational institution or organization for preservation. Title to donated materials should be free and clear, without restrictions as to use or future disposition.

An owner who donates artifacts and other materials may be eligible for tax deductions authorized under various Federal and State laws and regulations. Donors should consult with a tax attorney and the Internal Revenue Service regarding their eligiblity for a charitable donation. An owner also may enter into agreements with an agency, museum or other educational institution or organization to care for and maintain the collection on behalf of the owner.

Unless otherwise negotiated with non-Federal owners, archeological collections recovered from non-Federal lands generally are returned to the landowner following necessary analyses. Since there may not be another opportunity for scientists to examine the collection, the Federal Agency Official should ensure that the study, analysis and report are completed satisfactorily prior to relinquishing the collection to the owner. The Federal Agency Official also should ensure that the research questions addressed in the study and analysis are pertinent to the significance of the archeological property.

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[1] The Archeological and Historic Preservation Act (Pub. L. 93–291, May 24, 1974) amended the Reservoir Salvage Act (Pub. L. 86–523, June 27, 1960). It was further amended by Pub. L. 95–625 (Nov. 10, 1978). The Archeological and Historic Preservation Act sometimes is referred to as the Archeological Recovery Act or the Moss-Bennett Act. Both titles are merely descriptive names, and are not official short titles. The Archeological and Historic Preservation Act has no official short title. The Archeological and Historic Preservation Act, rather than the Reservoir Salvage Act, is being cited in this proposed rule because its amendments expanded the application of the Reservoir Salvage Act beyond Federal reservoir projects to include any Federal construction project or federally licensed or funded activity or program.

Capability requirements. Section 79.5 of this proposed rule sets forth what the Department of the Interior believes should be the minimum capability requirements for repositories that house and maintain archeological collections that are owned or administered by Federal agencies.

Most Federal agencies that conduct or authorize archeological projects already provide for some sort of long-term care and maintenance of the resulting collections. The majority of repositories used are Federal and State facilities and museums and departments of anthropology affiliated with State universities. In addition, a smaller number of privately-owned and operated, nonprofit institutions of higher learning and museums house federally-owned or administered collections.

Many of those repositories have invested considerable time and money to develop facilities and formal curation policies and operating procedures that enable them to adequately care for and maintain archeological collections. Prior to preparing this proposed rule, the Department of the Interior examined policy and procedural documents issued by a number of Federal, State and private repositories.

Although some repositories already meet the minimum capability requirements set forth in this proposed rule, many do not, including some Federal repositories. This is to be expected given that, until now, repositories have had to rely on a variety of disparate standards, guidelines and manuals issued by a number of Federal and State agencies and private institutions.

Federal agencies should not expect those repositories that do not meet the minimum capability requirements to be able to correct problems overnight, especially in light of fiscal constraints we all often operate under. Federal agencies should work with those repositories that currently house collections under each agency's jurisdiction to make a concerted, systematic effort toward eliminating any deficiencies over a period of several years. For example, if a repository does not have the capability to adequately conserve an agency's collections, the agency and the repository should explore options for obtaining that capability. If a repository's facilities are inadequate to care for an agency's collections, the repository might apply for grant funds from the Institute of Museum Services to modernize its facilities.

The Institute of Museum Services is an independent Federal agency that awards grants to support the efforts of museums to conserve the Nation's historic, scientific, and cultural heritage; to maintain and expand their educational role; and to ease the financial burden borne by museums as a result of their increasing use by the public. Many other Federal agencies and private foundations also award grants and provide training to museums for research, conservation, and collections care and maintenance. Many private firms and individuals also have provided funds to museums.

Implementation. Since the enactment of the Antiquities Act (16 U.S.C. 431–433) in 1906, millions of Federal dollars have been, and continue to be, spent under that Act, the Archeological Resources Protection Act (16 U.S.C 470*aa-11*), section 110 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) and the Archeological and Historic Preservation Act (16 U.S.C. 469–469*c*) to identify, evaluate and recover important archeological, historic, cultural and scientific data and material remains. The thousands of collections generated by those studies are invaluable resources for scientists, scholars, educators and the public, as well as Federal, State and local Government agencies. The vast majority of the collections are the property of the United States Government and are maintained by Federal agencies for the benefit of the public. Some of the collections are not federally-owned, but are administered by Federal agencies on behalf of the non-Federal owners. This regulation applies to all federally-owned and administered archeological collections recovered under the cited laws.

As discussed above, some repositories that currently house and maintain federally-owned or administered collections do not meet the minimum capability requirements set forth in this proposed regulation. Each Federal agency should examine repositories, including its own repositories, that house and maintain collections generated from studies conducted from 1906 to the present, and determine if those repositories meet the minimum capability requirements set forth in this regulation. If not, the agency should work with those repositories in developing plans to eliminate the deficiencies within a reasonable amount of time. If a repository is unable to substantially comply with the minimum capability requirements within the agreed upon time, then the Federal agency should remove its collections from the repository, and deposit the collections in another repository that is able to meet the minimum capability requirements.

Religious and sacred objects. This proposed regulation takes into consideration provisions of the American Indian Religious Freedom Act (42 U.S.C. 1996) and the First Amendment to the United States Constitution by establishing guidelines for access to, loan and use of reasonably acknowledged religious and sacred objects contained in archeological collections by qualified persons in religious and spiritual ceremonies and rituals. The Department of the Interior recognizes that many, if not most, religious and sacred objects housed in repositories are ethnological in nature, having been collected during historic times by researchers and explorers who were studying specific, living indigenous and immigrant populations. This proposed rule does not apply to those collections. This rule applies only to objects contained in archeological collections.

It usually is not difficult to ascertain the sacredness or religious nature of objects that were used during historic times by ethnic, social and religious groups, especially if a contemporary group can demonstrate that the group has historic ties to the earlier group that used the archeologically recovered objects. This proposed rule provides for access and use of those objects.

It is difficult to ascertain the sacredness or religious nature of objects that were used during prehistoric times. Modern day American Indian tribes are separated from those prehistoric cultures by a hiatus of hundreds if not thousands of years during which time the objects have been buried. The function of artifacts, including those that are thought to be sacred or religious objects, frequently is based upon conjecture rather than fact by using modern day analogues and studying wear patterns on the objects themselves. Nevertheless, there may be instances when a contemporary Indian tribe or other Native American group can demonstrate that the group is directly descendant from the earlier prehistoric cultural group that used the archeologically recovered objects. This proposed rule also provides for access and use of those objects.

Human remains. The Archaeological Resources Protection Act (16 U.S.C. 470*aa–ll*) and its final uniform rules (43 CFR Part 7,36 CFR Part 296, 18 CFR Part 1312, 32 CFR Part 229) define archeological resources to include human remains. This proposed regulation adopts that definition.

This regulation does not address the question of whether human remains uncovered in an archeological context

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should be left *in situ* or excavated and either reburied or stored in a repository. That determination should be made by each Federal Agency Official in accordance with the respective agency's policies, guidelines and procedures on the disposition of human remains recovered from archeological contexts. If the Federal Agency Official determines that the human remains should be excavated and stored in a curatorial facility, then this rule would apply.

Contracts and agreements. Section 79.7 of this proposed rule provides guidance for Federal agencies on entering into contracts and agreements with repositories and other parties. Appendices A and B to this rule are examples of how a short-term loan agreement and a memorandum of understanding for long-term curatorial services might be written. They should be revised according to the nature and content of each collection, and according to the type of legal instrument being entered into. For example, all contracts would have to include general provisions required under the Federal Acquisition Regulations (Title 48 of the Code of Federal Regulations). In addition, Federal agencies should be cognizant of the fact that many repositories have developed standard agreement such as for loaning artifacts on a short-term basis. If those agreements are consistent with the intent of this proposed regulation, they should be used in lieu of developing new ones.

Federal Agency Officials should consider curatorial needs early during project planning, pior to authorizing any surface collection, subsurface testing or excavation of archeological resources. For example, prior to issuing any permit under the Archaeological Resources Protection Act (16 U.S.C. 470*aa–ll*) and its uniform regulations (43 CFR Part 7; 36 CFR Part 296; 18 CFR Part 1312; 32 CFR Part 229), each Federal land manager must specify the repository in which any collected material remains and associated records must be deposited.

Federal Agency Officials should instruct agency archeologists and non-Federal archeologists under permit or contract to consult with curators and collections managers from the specified repository regarding procedures for cleaning, labeling, cataloging, documenting and packaging the collection prior to being deposited in the repository. They also should consult with conservators regarding the conservation of material remains that may be recovered in the field so that the materials will be handled in the field in a manner that will maintain their integrity prior to being deposited in the repository.

Federal Agency Officials should ensure that archeological contractors, permittees and agency archeologists adequately documents, clean and stabilize collections prior to depositing them in repositories. Federal Agency Officials also should review research designs that call for the removal or recovery of material remains during any survey, subsurface testing or excavation of archeological resources to ensure that the amount of redundant data collected is reduced.

Disposition. Given that archeological collections excavated or removed from public lands generally are the property of the United States Government, agencies must comply with the Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulation (41 CFR Part 101) and any agency-specific supplemental regulations, policies and procedures on the management of Federal property. Section 79.8 of this proposed rule sets forth guidance and describes a variety of methods by which a Federal agency can ensure that a collection is adequately cared for and maintained. For example, an agency may place a collection in one of its own repositories, place curatorial requirements in permits or contracts, enter into agreements with Federal and non-Federal repositories, enter into contracts and purchase orders with non-Federal repositories, and transfer a collection to another Federal agency.

An agency also may transfer a collection to certain non-Federal agencies or educational institutions or organizations by following the procedures set forth in 41 CFR Part 101–44. The rule enables Federal agencies to donate personal property to State and local agencies, Indian tribes, and nonprofit, tax-exempt educational institutions or organizations such as colleges, universities and museums attended by the public. The rule specifies that donations must be for authorized public purposes such as conservation, education, parks and recreation. The rule also requires that the General Services Administration approve both the donation and the recipient agency, tribe, institution or organization.

Some Federal agencies may have additional legal authorities regarding disposal of museum objects. For example, the Management of Museum Properties Act of 1955 (16 U.S.C. 18f) authorizes the National Park Service to exchange museum property under its administrative jurisdiction that is no longer needed or that may be held in duplicate. Federal Agency Officials should consult with property management officials within their respective agencies regarding any agency-specific authorities and requirements regarding the management of museum objects.

Periodic inspections. As noted above, archeological collections excavated or removed from public lands generally are the property of the United States Government. Government property must be inspected and inventoried in accordance with the Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulation (41 CFR Part 101) and any agency-specific supplemental regulations, policies and procedures. For property management purposes, the Federal Agency Official should maintain a catalog list of the contents of each collection deposited in the repository and a list of any Government-owned personal property such as a specimen cabinet or exhibit case that is furnished to the repository as a part of the curatorial services agreement or contract. In addition, the repository should maintain complete and accurate records on loans and other uses of each collection.

After depositing a collection in a repository, the Federal agency is not absolved of its responsibility to ensure that the collection and any Government-furnished personal property in the possession of the repository are adequately maintained and accounted for. Proper care requires that the repository periodically inspect its facilities for monitoring the physical security and environmental control measures. In addition, it requires that the repository periodically inspect and inventory the collection for assessing its condition and verifying its location. It also requires that the repository annually inventory any Government-furnished personal property that is in its possession.

Section 79.9 of this proposed rule sets forth procedures and guidance for repositories and Federal agencies for conducting routine, periodic inspections of facilities, inventories of collections and any Government-furnished personal property, and investigating reports of lost, stolen, damaged or destroyed Government property. It also sets forth procedures and guidance for Federal agencies for conducting periodic inspections of repositories to determine whether the repositories still meet the minimum capability requirements set forth in § 79.5 of this proposed rule and

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to evaluate the performance of repositories in properly managing collections.

In those instances where a repository is housing and caring for several collections that are owned or administered by several Federal agencies, it would be more cost-effective and a more efficient use of personnel to coordinate, to the extent possible, inspections and inventories. Recognizing that schedules for inspections and inventories are based on the nature and content of each collection, the pertinent Federal Agency Officials should direct the repository to coordinate, as much as possible, the periodic inspections and inventories conducted by the repository's staff. In addition, the Federal Agency Officials should cooperate amongst themselves, to the extent permitted by law, by designating one or more qualified agency professionals to conduct inspections on behalf of the other agencies, and prepare and distribute to each Federal Agency Official a written report of findings and recommendations to correct or resolve any problems identified.

The precedent for coordinating inspections and assigning one agency the responsibility for conducting inspections on behalf of other agencies is in the Single Audit Act (31 U.S.C. 75), which was enacted in 1984. Prior to that time, Federal grants were audited individually. Studies by the General Accounting Office and the Joint Financial Management Improvement Program found that auditing individual grants was an ineffective use of audit resources. In 1979, the Office of Management and Budget changed the audit focus from individual grants to grant recipients. However, most Federal agencies still conducted their own audits. The result was that recipients of grants from more than one Federal agency were audited by several agencies.

The Single Audit Act (31 U.S.C. 75) was enacted to authorize Federal agencies to designate one Federal agency as a "cognizant agency" that was then assigned the responsibility for coordinating audits of State and local agencies that receive Federal funds. The result was that the number of audits conducted by Federal agencies was reduced. To the extent permitted by law, Federal agencies should adopt a similar approach for coordinating inspections and inventories of federally-owned and administered archeological collections.

Staff Professional Qualifications. It is essential that federally-owned and administered archeological collections be cared for and maintained by suitably qualified key professional personnel such as curators, collections managers, conservators, archivists, archeologists and historians. Basic minimum qualifications for the types of personnel who most often serve in entry level professional positions, equivalent to the GS–9, in repositories are available from the Office of Personnel Management. For mid-level or senior level professional positions, equivalent to the GS–11 to GS–15, personnel should have additional experience, training or education, such as that required for membership as a fellow conservator in the American Institute for Conservation or for certification as an archeologist with museological emphasis by the Society of Professional Archeologists. The additional experience, training or education should be commensurate with the duties and responsibilities of the position.

This proposed regulation requires that federally-owned and administered archeological collections be cared for and maintained by individuals whose expertise is appropriate to the particular material remains and associated records, and who meet pertinent professional qualifications. Those individuals may be employees of the repository or consultants who advise repository staff who do not meet the minimum professional qualifications. In instances where a repository assigns curatorial duties to a technician or aid who does not possess the minimum qualifications, the person should be supervised or otherwise directed by another person who does possess the appropriate minimum professional qualifications. For example, a technician in a national park or wildlife refuge should receive direction from appropriate personnel such as a curator or a collections manager who is duty stationed in a regional office or archeological center.

A Federal agency that maintains collections using its own employess should ensure that the pertinent professional qualifications are possessed by its employess in a manner consistent with applicable Office of Personnel Management requirements. Individuals who inspect and inventory collections also should meet pertinent professional qualifications appropriate to the nature and content of the particular collections.

Funding. Section 79.10 of the proposed rule describes a variety of methods used by Federal agencies to ensure that sufficient funds are available for curatorial services. The proposed rule does not recommend any one method over another. It also does not recommend methods or mathematical formulas for calculating or estimating costs for curatorial services since they will vary from repository to repository.

Many repositories have developed standard fee schedules for calculating both the initial processing of a collection into the repository and the long-term curation of a collection. Some repositories may charge fees annually or for a specified number of years, subject to renewal, while others may charge a single fee for storage *in perpetuity*, usually meaning the life of the repository. Other repositories may house collections at no charge as a condition of a permit or grant, or as a public service since they would then possess the collection for study by researchers employed at the repository.

Preparation of the Rulemaking

On October 11, 1985, the National Park Service published a notice of intent to propose rulemaking and a request for comments in the **Federal Register** (50 FR 41527). The notice identified major topics being considered and requested public comments and suggestions on the proposed rulemaking and topics. In addition, the notice requested public comments on the environmental impact and the economic impact, including the impact to small entities (small businesses, organizations and governmental jurisdictions) of the suggested regulation.

Thirty-seven comments were received in response to the notice. Of those, 10 were from museums and departments of anthropology affiliated with State universities; 9 were from State agencies; 8 were from Federal agencies; 3 were from professional museum and archeological organizations; 2 were from private, nonprofit museums; and 1 each were from a museum affiliated with a private university, a Native American organization, a public utility, an archeological contracting firm, and an individual. All of the commenters were supportive of the proposed regulation and the topics identified.

The National Park Service drafted the proposed regulation and distributed it for comment on September 26, 1986, to all Federal Historic Preservtion Officers, State Historic Preservation Officers, Federal Agency Chief Archeologists, State Archeologists, national professional archeological and museum organizations, national Native American organizations, all repositories listed in the American Anthropological Association's "Guide to Departments of Anthropology, 1985–86," and all repositories holding permits issued in 1984 and 1985 under the Archaeological

Resources Protection Act (16 U.S.C. 470*aa–ll*).

Fifty-six comments were received, including 18 from Federal agencies, 15 from State agencies, 5 from professional societies, 5 from private, nonprofit museums, 7 from museums and departments of anthropology affiliated with State universities, 3 from Native American organizations, and 1 each from a local Government agency, an archeological contracting firm, and an individual.

All comments were considered in revising the draft for publication as a proposed rule. Valid concerns were addressed to the extent of the National Park Service's legal authorities. Some suggestions were not included because they were either beyond the scope of this regulation or inconsistent with Federal historic preservation and property management statutes and regulations. Some comments pointed out vague and unclear language so clarifying and explanatory language was added to the rule and the preamble.

The National Park Service seeks comments and suggestions from Federal, State and local agencies, museums, professional organizations, Native American and other social and ethnic groups, and the public on this proposed rule. In your comments, refer to the appropriate section and paragraph and, if possible, offer suggested regulatory language that would effectively implement the changes you desire.

Drafting Information

The author of this rulemaking is Michele C. Aubry, Archeological Program Specialist, in the Office of the Departmental Consulting Archeologist, National Park Service, Washington, DC.

Compliance with Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Compliance with the Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with the National Environmental Policy Act

Federal agencies who conduct or authorize archeological investigations are required by law to care for and maintain the resulting collections of artifacts, specimens and associated records. Issuance of this document will result in more consistent, systematic and professional care of those collections. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321–4347). In addition, the National Park Service has determined that this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act by Departmental regulations in 516 DM 2. As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 79

Archeology, Archives and records, Historic preservation, Indians-lands, Museums, Public lands.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

Dated: June 1, 1987.

For the reasons set forth in the preamble, the Department of the Interior proposes to amend Title 36, Chapter I of the Code of Federal Regulations by adding a new Part 79 as follows:

PART 79—CURATION OF FEDERALLY OWNED AND ADMINISTERED ARCHEOLOGICAL COLLECTIONS

Sec.

79.1 Purpose.
79.2 Authority.
79.3 Applicability.
79.4 Definitions.
79.5 Minimum capability requirements for Depositories.
79.6 Use of collections.
79.7 Contracts and agreements.
79.8 Disposition of collections.
79.9 Periodic inspections.
79.10 Funding.
Appendix A to Part 79—Example of a Short-term Loan Agreement
Appendix B to Part 79—Example of a Memorandum of Understanding for Curatorial Services

Authority: 16 U.S.C. 470*aa–ll*, 16 U.S.C. 470 *et seq.*

§ 79.1 Purpose.

(a) The regulations in this part establish definitions, standards and guidelines to be followed by Federal agencies in preserving federally-owned and administered collections of prehistoric and historic material remains and associated records recovered under the authority of the Antiquities Act (16 U.S.C. 431–433), the Archeological and Historic Preservation Act (16 U.S.C. 469–469*c*), section 110 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) or the Archeological Resources Protection Act (16 U.S.C. 470*aa–ll*). They establish:

(1) Minimum standards for repositories that provide long-term curatorial services;

(2) Guidelines for Federal agencies for entering into contracts and agreements with repositories and other parties for the care and management of collections;

(3) Guidelines for access to, loan of and use of collections; and

(4) Guidelines for the exchange and ultimate disposition of collections.

(b) The regulations in this part contain two appendices that provide additional guidance for use by the Federal Agency Official.

(1) Appendix A to these regulations contains an example of an agreement between a repository and a third party for a short-term loan of a collection or a part of it.

(2) Appendix B to these regulations contains an example of a memorandum of understanding between a Federal agency and a repository for long-term curatorial services.

(3) Appendices A and B are meant to illustrate how two agreements might appear. They should be revised according to the nature and content of each collection or group of collections, and according to the type of agreement, memorandum, contract or other legal instrument being used.

§ 79.2 Authority.

(a) The regulations in this part are promulgated pursuant to section 101(a)(7)(A) of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), which requires that the Secretary of the Interior issue regulations ensuring that significant prehistoric and historic artifacts and associated records recovered under the authority of section 110 of that Act, the Archeological and Historic Preservation Act (16 U.S.C. 469–469*c*) and the Archaeological Resources Protection Act (16 U.S.C. 470*aa–ll*) are deposited in an institution with adequate long-term curatorial capabilities.

(b) In addition, the regulations in this part are promulgated pursuant to section 5 of the Archaeological Resources Protection Act (16 U.S.C. 470*aa–ll*), which gives the Secretary of the Interior discretionary authority to promulgate regulations for the (1) exchange, where appropriate, of archeological resources recovered from public and Indian lands under that Act and (2) ultimate disposition of archeological resources recovered under that Act, the Antiquities Act (16 U.S.C. 431–433) and

the Archeological and Historic Preservation Act (16 U.S.C. 469–469*c*). Section 5 states that the exchange be between suitable universities, museums or other scientific or educational institutions. It further states that any exchange or ultimate disposition of resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe that owns or has jurisdiction over such lands.

§ 79.3 Applicability.

(a) The regulations in this part apply to collections, as defined in § 79.4 of this part, recovered or removed under the authority of the Antiquities Act (16 U.S.C. 431–433), the Archeological and Historic Preservation Act (16 U.S.C. 469–469*c*), section 110 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) or the Archeological Resources Protection Act (16 U.S.C. 470*aa–ll*) that are federally-owned or are being administered by Federal agencies on behalf of non-Federal owners.

(b) Material remains recovered from archeological resources generally are the property of the respective landowner. Unless a non-Federal owner has donated or otherwise transferred title of material remains to the United States Government, or has entered into an agreement with a Federal agency for the agency to care for and maintain the remains, the regulations in this part do not apply to material remains and associated records recovered from archeological resources located on lands other than public lands. However, the Federal agency must retain copies of associated records that document the federally authorized excavation or removal of the archeological resources.

§ 79.4 Definitions.

As used for purposes of this part:

(a) "Archeological resource" means any surface, subsurface or submerged location such as a site, building, structure, shipwreck, cave, rockshelter, midden or feature which contains material remains of prehistoric and historic human life or activities that are at least 100 years of age and are of archeological interests.

(1) "Of archeological interest" means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(2) "Material remains" means physical evidence of prehistoric and historic human habitation, occupation, use, or activity. Classes of material remains (and illustrative examples) include, but are not limited to:

(i) Whole or fragmentary pieces of prehistoric and historic structures and features such as houses, mills, piers, fortifications, raceways, earthworks and mounds.

(ii) Whole or fragmentary prehistoric and historic artifacts of human manufacture and natural objects used by humans such as tools, weapons, porcelain, basketry, rock crystals, feathers and pigments;

(iii) Prehistoric and historic by-products, waste products or debris resulting from manufacture or use of man-made or natural materials such as slag, dumps, cores and debitage.

(iv) Prehistoric and historic organic material such as vegetable and animal remains and coprolites;

(v) Prehistoric and historic human remains such as bone, teeth, mummified flesh, burials and cremations;

(vi) Whole or fragmentary pieces of petroglyphs, pictographs, intaglios and other works of artistic or symbolic representation;

(vii) Whole or fragmentary pieces of shipwrecks such as pieces of the ship's hull, rigging, armaments, apparel, tackle, contents and cargo; and

(viii) Environmental specimens such as pollen, soil, burnt clay and tree core samples.

(b) "Collection" means material remains recovered from a prehistoric or historic archeological resources as well as associated records documenting the resource.

(1) "Associated records" means any records that were generated or copied during the course of federally authorized archeological work to document a prehistoric or historic archeological resource. Some records such as field notes, artifact inventories or oral histories may be originals that were generated as a result of the archeological field work, analysis and report preparation while others such as deeds, survey plats, historical maps or diaries may be copies of original public or archival documents that were studied and duplicated as a result of historical research in connection with the federally authorized work. Classes of associated records (and illustrative examples) include, but are not limited to:

(i) Records relating to the survey, testing, excavation, recording and analysis of a resource such as site forms, field notes, drawings, maps, photographs, slides and negatives, films, video and audio cassette tapes, oral histories, artifact inventories, laboratory reports, computer cards, tapes, disks, diskettes and printouts, antiquities permits, reports, and accession, catalog and inventory records;

(ii) Records relating to the identification of a resource using remote sensing data such as aerial and satellite photographs and images, magnetometers, side scan sonar, subbottom profilers, radar, and fathometers;

(iii) Copies of public records relating to the resource such as deeds, survey plats, military and census records, birth, marriage and death certificates, immigration and naturalization papers, tax forms and reports; and

(iv) Copies of archival records relating to the resource such as historical maps, drawings and photographs, manuscripts, architectural and landscape plans, diaries, ledgers, catalogs and receipts.

(c) "Curation" means the management and care of collections according to common, professional museum practices, including, but not limited to:

(1) Inventorying, accessioning, labeling and cataloging collections;

(2) Identifying, evaluating and documenting collections;

(3) Storing and maintaining collections under appropriate environmental conditions and physically secure controls;

(4) Periodically inspecting collections and taking any necessary actions as may be necessary to preserve them;

(5) Providing access to and facilities for studying collections; and

(6) Cleaning, stabilizing and conserving collections.

(d) "Federal Agency Official" means any officer, employee, or agent officially designated to represent the secretary of the department or the head of any other agency or instrumentality of the United States, having primary management authority over the collection.

(e) "Indian lands" means lands of Indian tribes or Indian individuals that are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian or an Indian individual.

(f) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688). In order to clarify this statutory definition for purposes of this part, "Indian tribe" means:

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(1) Any tribal entity that is included in the annual list of recognized tribes published in the Federal Register by the Secretary of the Interior pursuant to 25 CFR Part 54;

(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR Part 54 since the most recent publication of the annual list; and

(3) Any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and any Alaska Native village or tribe that is recognized by the Secretary of the Interior as eligible for services provided by the Bureau of Indian Affairs.

(g) 'Professional qualifications" means educational, training and experience qualification standards established by the Office of Personnel Management for entry level positions. Mid-level and senior level positions should have additional education, training and experience that is commensurate with the duties and responsibilities of the position. For purposes of this part, repository staff, consultants and Federal agency professionals must meet pertinent professional qualifications and have expertise appropriate to the nature and content of the collection.

(h) "Public lands" means:

(1) Lands, including submerged lands, that are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and

(2) All other lands, including submerged lands, the fee title to which is held by the United States, other than submerged lands on the Outer Continental Shelf and lands that are under the jurisdiction of the Smithsonian Institution.

(i) "Religious or sacred object" means archeologically recovered material remains that have been historically, habitually or exclusively used in religious or spiritual activities.

(j) "Repository" means a facility such as a museum, archeological center, laboratory or storage facility managed by a university, museum or other educational or scientific institution, or a Federal, State or local Government agency, that can provide professional, systematic and accountable curation and preservation on a long-term basis and can provide access to archeological collections and attendant records. For purposes of this part, repositories must have staff or consultants who meet pertinent professional qualifications and whose expertise is appropriate to the nature and content of the collection.

(k) "Tribal Official" means the chief executive officer or any officer, employee, or agent officially designated to represent the Indian tribe.

§ 79.5 Minimum capability requirements for repositories.

(a) Federal agencies must deposit, or instruct contractors, permittees, licensees or other pertinent parties to deposit, federally-owned and administered collections only in repositories with adequate long-term curatorial capabilities, appropriate to the nature and content of the collections. This requirement applies to repositories owned, leased or otherwise operated by Federal agencies as well as to non-Federal repositories.

(b) In evaluating a repository's capabilities to house a particular collection, the Federal Agency Official should:

(1) Consult with persons having expertise in the curation of collections. Persons who should be able to provide technical assistance include the agency's Historic Preservation Officer, archeologists, curators and other cultural resource specialists; the State Historic Preservation Officer; the State Archeologist; the State museum; the American Association of Museums; the Smithsonian Institution; and the National Park Service; and

(2) Examine the repository's facilities and formally written curation policies and operating procedures.

(c) A collection may be deposited at a repository only after the Federal Agency Official determines that the repository has the capabilities to accession, lable, catalog, store, maintain, inventory and conserve the particular collection on a long-term basis using common museum practices, and substantially complies with the following:

(1) Maintain complete and accurate records of the collection, including:

(i) Records on acquisitions;

(ii) Catalog lists;

(iii) Descriptive information;

(iv) Photographs;

(v) Locational information;

(vi) Information on the condition of the collection, including any completed conservation treatments;

(vii) Approved loans and other uses;

(viii) Periodic inventory and inspection records;

(ix) Records on lost, damaged or destroyed Government property; and

(x) Records on any deaccessions and subsequent transfers, exchanges or donations;

(2) At a minimum, store site forms, field notes, artifact inventory lists, catalog forms and a copy of the final report in a manner that will protect them from theft and fire such as:

(i) Storing the records in an insulated, fire resistant, locking cabinet, safe, vault or other container in a location with a fire suppression system;

(ii) Storing a duplicate set of records in a separate location; and

(iii) Providing the State Historic Preservation Officer and the State Archeologist with copies of records such as site forms and final reports.

(3) Dedicate the requisite facilities, equipment and space in the physical plant to properly store, study and conserve the collection. Space used for storage, study, conservation and, if exhibited, any exhibition must not be used for non-curatorial purposes that would endanger or damage the collection;

(4) Keep the collection under physically secure conditions within storage, laboratory, study and any exhibition areas by:

(i) Having the physical plant meet local electrical, fire, building, health and safety codes;

(ii) Having an appropriate and operational fire detection and suppression system;

(iii) Having an appropriate and operational intrusion detection and deterrent system;

(iv) Having an adequate emergency management plan to cover fires, floods, natural disasters, civil unrest, acts of violence, structural failures and failures of mechanical systems within the physical plant;

(v) Providing fragile or valuable items in a collection with additional security such as locking the items in a safe, vault or museum specimen cabinet, as appropriate;

(vi) Limiting and controlling access to keys, the collections and the physical plant; and

(vii) Inspecting the physical plant regularly in accordance with § 79.9 of this part for possible security weaknesses, and taking necessary actions to maintain the integrity of the collection;

(5) Require staff or consultants who are responsible for caring for the collection to have expertise appropriate to the particular material remains and associated records, and meet pertinent professional qualifications;

(6) Handle, store, clean, conserve and, if displayed, display the material remains and associated records in a manner that protects them from breakage and possible deterioration from adverse temperature and relative humidity, visible light and ultraviolet radiation, dust, soot, gases, mold,

fungus, insects and rodents, and general neglect;

(7) If material remains in a collection are to be treated with chemical solutions or preservatives that will permanently alter the remains, retain samples of each artifact type, environmental specimen or other category of material remains represented in the collection without any conservation treatment beyond dry brushing for future analytical purposes;

(8) Inspect the collection regularly in accordance with § 79.9 of this part for possible deterioration and damage, and perform only those actions as are absolutely necessary to stabilize the collection and rid it of any agents of deterioration;

(9) Conduct inventories periodically in accordance with § 79.9 of this part in order to verify the location of the material remains, associated records and any Government-furnished personal property in the possession of the repository; and

(10) Provide access to the collection in accordance with section 79.6 of this part.

§ 79.6 Use of collections.

(a) Federally-owned and administered archeological collections should be made available for legitimate study and use, consistent with the condition, value and uniqueness of the collection and with the mission of the Federal agency responsible for the collection.

(b) Guidelines for use.

(1) A collection should be available to qualified persons for study and for loan, to be used for public interpretation, educational and scholarly purposes such as in-house and traveling exhibits, teaching, scientific study and research. Qualified persons should include researchers, scholars, archeological contractors, educators and students. Any resulting exhibits and publications should acknowledge and credit the repository, the responsible Federal agency and, if the collection is from Indian lands, the Indian or Indian tribe that owns or has jurisdiction over the said lands.

(2) Religious or sacred objects in an archeological collection should be available to qualified persons for use in religious or spiritual ceremonies or rituals. Generally those objects would be of interest to Indian tribes, Alaskan Native corporations and other indigenous and immigrant ethnic, social and religious groups that have historically, habitually or exclusively used the specific objects or class of objects in religious or spiritual activities.

(3) Restrictions should be placed on the display, study or loan of any part of the collection if such use would damage or destroy the material remains or associated records. In those instances when a proposed use of an object would damage or destroy it, such use should be limited or denied. For example, educational programs involving frequent handling of certain objects may damage the objects. In such instances, use should be limited to unprovenienced, nonunique, nonfragile objects or to a sample of objects drawn from a larger collection of similar objects. Certain laboratory analyses also may damage or even destroy an object. In such instances, the decision to allow the analysis to be conducted should be made only after fully considering the potential gain in scientific information and the potential loss of the object.

(4) Human remains and religious and sacred objects should be handled with special care. Restrictions should be placed on the display, study or loan of those remains and objects if such use would not be in keeping with the dignitiy and respect accorded all human remains and religious objects.

(5) Under the Freedom of Information Act (5 U.S.C. 552), data in the form of associated records documenting an archeological resource is public information unless otherwise excluded. Under the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) and the Archaeological Resources Protection Act (16 U.S.C. 470*aa–ll*) the Federal Agency Official must restrict access to information relating to the location and character of the resource if the Official determines that such disclosure may create a substantial risk of harm, theft or destruction to such resources or to the area or place where the resources are located. Access to such information should not be withheld from archeological contractors, researchers, scholars, students, tribal representatives, Federal, State or local agency personnel or other qualified persons for legitimate purposes.

(6) Repositories should not loan an object to a third party without a written agreement between the repository and the third party that specifies the terms of the loan. Appendix A to the regulations in this part contains an example of a loan agreement. At a minimum, an agreement should:

(i) State the purpose of the loan;

(ii) Stipulate the length of the loan; and

(iii) State that the object being loaned will be handled with care so as not to damage or reduce its scholarly or scientific value.

(7) Repositories should maintain records documenting approved loans, exhibits, studies and other uses of the collection.

(8) Repositories may charge reasonable fees to persons studying or borrowing the collection or a part of it to cover costs for handling, packing, shipping and insuring material remains, for photocopying associated records, and for any other incidental costs related to the use or loan. Fees should be determined in consultation with the Federal Agency Official.

§ 79.7 Contracts and agreements.

(a) Prior to authorizing any surface collection, subsurface testing or excavation of an archeological resource, the Federal Agency Official should instruct agency archeologists and non-Federal archeologists under contract or permit to consult with curators, collections managers and conservators from the specified repository regarding procedures for cleaning, labeling, cataloging, documenting, conserving and packaging material remains in the field.

(b) Any contract, agreement or other written instrument entered into by a Federal Agency Official, a repository and any other party for the care and maintenance of a collection should:

(1) Contain any special instructions for handling, storing, cleaning and conserving the collection;

(2) Specify procedures to be used by the repository for reviewing and approving or denying requests for study, loan, display, public interpretation and other uses; contain instructions on authorized and restricted uses; and specify methods for documenting approved uses. This will enable the repository to fully manage the collections placed under its care without involving the Federal Agency Official and the owner, if the owner is other than the United States Government, in the routine management of a collection. If the repository has existing operating procedures and criteria, which are consistent with the regulations in this part, for evaluating requests to use collections, those procedures and criteria should be used, after making any necessary modifications, in lieu of developing new ones.

(3) Contain instructions on restricted access to site locational information such as that contained in site record forms;

(4) Specify the time interval within which the physical plant is to be periodically inspected, the intervals within which the collection and any Government-furnished personal property in the possession of the repository are to be inspected and inventoried, and methods for documenting such inspections and inventories;

(5) Specify the term and any associated costs of the agreement and the process to modify, suspend, extend and terminate the agreement;

(6) Contain a statement identifying who owns or has jurisdiction over the collection;

(7) Contain a statement that the collection will not be transferred or exchanged without the written permission of the Federal Agency Official and the owner, if the owner is other than the United States Government;

(8) Contain a statement that the collection will not be sold;

(9) Contain a statement that the collection will be administered in accordance with the regulations in this part; and

(10) If the collection is from Indian lands, contain a statement that the individual Indian or Indian Tribe having jurisdiction or ownership rights over the said lands consents to the disposition.

§ 79.8 Disposition of collections.

(a) Consistent with the Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulations (41 CFR Part 101) on Federal property management, and any agency-specific statutes and regulations on the management of museum collections, the Federal Agency Official should deposit a collection in a repository only after:

(1) Consulting with persons having expertise in curation matters such as those listed in paragraph (c) of this section;

(2) If the collection is from Indian lands, consulting with the Indian Tribal Official to obtain the tribe's or individual Indian's consent, in writing, for depositing the Indian-owned collection in the said repository;

(3) Determining that the repository meets the capability requirements set forth in § 79.5 of this part;

(4) The repository agrees in writing that the collection will be cared for and maintained in a manner consistent with this part;

(5) Determining that the archeological contractor, grantee, permittee or other person who surveyed or excavated the archeological resource has completed initial processing (such as cleaning, sorting, labeling and packaging) and documentation (such as analysis and report writing) of the collection; and

(6) Notifying the State Historic Preservation Officer and the owner, if the owner is other than the United States Government, of the name and location of the repository for record-keeping purposes. If the repository is located in a State other than the State in which the archeological resource is located, the Federal Agency Official should notify the State Historic Preservation Officers in both States.

(b) Location of collections. (1) When possible, the Federal Agency Official should deposit the collection in a repository that is geographically near the site or project location or in the State of origin so that the collection may be readily accessible to local citizens and researchers.

(2) When possible, the Federal Agency Official should deposit the collection in a repository that stores and maintains other collections from the same site or project location, thereby reducing the agency's and the repository's costs for storing, maintaining and studying the various collections.

(3) When an archeological center or regional repository is used, the Federal Agency Official should deposit the collection in a center or regional repository that houses collections from a similar geographic region or cultural area.

(4) The Federal Agency Official should not subdivide and store the collection at more than a single repository unless such subdivision is necessary to meet special storage, conservation or research needs.

(5) Material remains and associated records documenting the excavation of an archeological resource should be deposited in the same repository to maintain the integrity and research value of the collection.

(c) Sources for technical assistance. The Federal Agency Official should consult with persons having expertise in the curation of collections in order to make informed decisions on the qualifications and appropriateness of a repository to care for and maintain a collection. Persons who should be able to provide technical assistance include the agency's Historic Preservation Officer and archeologists, curators and other cultural resource specialists in the agency; the State Historic Preservation Officer and the State Archeologist; departments of anthropology at the State museum or State university; the American Association of Museums; the Smithsonian Institution; and the National Park Service.

(d) Consistent with applicable Federal procurement and property management statutes and regulations, examples of methods used by Federal agencies to adequately care for and maintain a collection include but are not limited to:

(1) Placing the collection in a repository owned, leased or otherwise operated by the Federal agency;

(2) Including curatorial requirements in an initial permit or contract for archeological surface collection, subsurface testing or data recovery;

(3) Entering into a cooperative agreement, a memorandum of understanding or a memorandum of agreement, as appropriate, with a State, local or tribal repository, or a university, museum or other scientific or educational institution that operates or manages a repository, for curatorial services;

(4) Entering into a contract or purchase order with a repository for curatorial services;

(5) Entering into an interagency agreement with another Federal agency for:

(i) Curatorial services;

(ii) Transferring the collection to the other Federal agency; or

(iii) Exchanging the collection for another collection that is owned by the other Federal agency;

(6) Exchanging the collection for another collection that is owned by a State, local or tribal repository, or a university, museum or other scientific or educational institution, for public purposes such as conservation and education; and

(7) Transferring the collection by donation to a State, local or tribal repository, or a university, museum or other scientific or educational institution, for public purposes such as conservation and education.

(e) Prohibitions. The Federal Agency Official shall not sell or discard a collection or any part of it if the collection was removed or recovered from a prehistoric or historic archeological resource under the authority of, or in violation of, the Antiquities Act (16 U.S.C. 431–433), the Archeological and Historic Preservation Act (16 U.S.C. 469–469*c*), section 110 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), or the Archaeological Resources Protection Act (16 U.S.C. 470*aa–ll*).

(f) The Federal Agency Official shall maintain records on the disposition of each collection and any Government-furnished personal property, inlcuding but not limited to:

(1) A catalog list of the contents of the collection;

(2) A list of any Government-furnished personal property in the possession of the repository;

(3) Reports documenting periodic inspections and inventories;

(4) Reports documenting investigations of loss, damage or destruction;

(5) The name and location of the repository; and

(6) Any subsequent transfer and exchange.

§ 79.9 Periodic inspections.

(a) Consistent with the Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulations (41 CFR Part 101) on Federal property management, and any agency-specific statutes and regulations on the management of museum collections, repositories that house and care for federally-owned or administered collections shall:

(1) Provide the Federal Agency Official with a copy of the catalog list of the contents of the collection deposited in the repository and a list of any Government-furnished personal property in the possession of the repository;

(2) Periodically inspect the physical plant for the purpose of monitoring the physical security and environmental control measures;

(3) Periodically inspect the collection for the purpose of assessing the condition of the material remains and associated records and monitoring those remains and records for possible deterioration and damage;

(4) Periodically inventory the collection by accession, lot or catalog record for the purpose of verifying the location of the material remains and associated records;

(5) Annually inventory any Government-furnished personal property such as specimen cabinets and exhibit cases in the possession of the repository;

(6) Have qualified professionals conduct the inspections and inventories;

(7) Following each inspection and inventory, notify the Federal Agency Official, in writing, concerning the results of the inspection and inventory, the status of the collection, treatments completed and recommendations for additional treatments;

(8) Within five (5) days of the discovery of any loss of, damage to or destruction of the collection or any Government-furnished personal property, notify the Federal Agency Official, in writing, concerning circumstances surrounding the lost, stolen, damaged or destroyed collection or personal property; and

(9) Make the collection available for periodic inspection by the Federal Agency Official or designated representative.

(b) The Federal Agency Official or designated representative shall periodically inspect the repository, the collection and any Government-furnished personal property for the purposes of:

(1) Inventorying Government property;

(2) Investigating reports of lost, stolen, damaged or destroyed Government property;

(3) Determining whether the repository still meets the minimum capability requirements set forth in this part; and

(4) Evaluating the performance of the repository in properly managing the collections.

(c) The period of and methods for documenting inspections and inventories shall be mutually agreed to, in writing, between the Federal Agency Official and the repository, and be appropriate to the nature and content of the collection. Material remains and records of a fragile, perishable or valuable nature should be inspected and inventoried on a more frequent basis than other remains or records.

(d) In those instances where a repository is housing and caring for several collections that are owned or administered by several Federal agencies, the pertinent Federal Agency Officials should, to the extent possible:

(1) Direct the repository to coordinate the periodic inspections and inventories stipulated in paragraphs (a)(2)–(a)(5) of this section for each of the collections; and

(2) Cooperate with the other Federal Agency Officials by designating one or more qualified Federal agency professionals to conduct inspections pursuant to paragraphs (b)(1) through (b)(4) of this section on behalf of the other agencies, and prepare and distribute to each Federal Agency Official a written report of findings and recommendations to correct or resolve any problems identified.

§ 79.10 Funding.

Subject to appropriations by the Congress for such purposes, a variety of approaches are used by Federal agencies to ensure that sufficient funds are available for adequate, long-term care and maintenance of collections. Those approaches include but are not limited to the following:

(a) Including curatorial costs in requests for annual appropriations for the:

(1) Purchase, construction and/or operation and maintenance of a repository owned, leased or otherwise operated by the Federal agency;

(2) Maintenance of any cooperative agreement, memorandum of understanding, memorandum of agreement, contract or interagency agreement with a repository for long-term curatorial services;

(b) Directing licensees and permittees to pay repositories for reasonable curatorial costs as a condition to the issuance of a Federal license or permit;

(c) Ensuring that a repository has sufficient operating funds to pay for reasonable curatorial costs as a condition to entering into any cooperative agreement, memorandum of understanding, memorandum of agreement, or interagency agreement giving the repository the right to possess, use and study the federally owned or administered collection;

(d) Including curatorial costs paid by any grantee as project costs eligible for reimbursement by the Federal agency as a part of the grant project;

(e) Including curatorial costs paid by any State agency to carry out the Federal agency's preservation responsibilities as project costs eligible for reimbursement by the Federal agency as a part of the project;

(f) Including curatorial costs for resources recovered during identification and evaluation surveys in project planning budgets rather than in mitigation budgets;

(g) Including curatorial costs for resources excavated during data recovery operations in project mitigation budgets; and

(h) Waiving the 1 percent limitation on mitigation costs contained in the Archeological and Historic Preservation Act (16 U.S.C. 469–469c) after obtaining the concurrence of the Secretary of the Interior and after notifying the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

Appendix A to Part 79—Example of a Short-term Loan Agreement

Short-Term Loan Agreement Between the

_____
(Repository)
and the

_____
(Borrower)

The _____, hereinafter called the Repository, agrees to loan to the _____, hereinafter called the Borrower, certain artifacts, specimens and associated records, listed in Attachment A, which were collected from the _____ archeological site(s), assigned _____ site number(s), and recovered in connection with the _____ project, located in _____, _____ county, in the State of _____. The Collection is the property of the United States Government. The artifacts, specimens and associated records are being loaned for the purpose(s) of _____, beginning on _____, 19 _____ and ending on _____, 19____.

During the term of the loan, the Borrower agrees to handle, package and ship or

transport the Collection in a manner that protects it from breakage, loss, deterioration and contamination, in conformance with the regulation (36 CFR Part 79) for the curation of federally-owned and administered archeological collections and the Secretary of the Interior's Guidelines for Historic and Archeological Resource Management. The Borrower also agrees to assume full responsibility for insuring the Collection during transit and while in its custody. Within five (5) days of discovery, the Borrower will notify the Repository of instances and circumstances surrounding any loss of, damage to, or destruction of the Collection and will, at the direction of the Repository, take steps to conserve damaged materials.

The Borrower agrees to acknowledge and credit the United States Government and the Repository in any exhibits or publications resulting from the loan. The credit line shall read as follows: "Courtesy of the _____."

Upon termination of this agreement, the Borrower agrees to properly package and ship or transport the Collection to the Repository.

Either party may terminate this agreement, effective not less than _____ days after receipt by the other party of written notice, without further liability to either party.

Signed:— _____
Date:— _____
Signed:— _____
Date:— _____

Attachment A: Inventory of the Objects being Loaned

Appendix B to Part 79—Example of a Memorandum of Understanding for Curatorial Services

Memorandum of Understanding for Curatorial Services between the

_____

(Federal Agency)

and the

_____

(Repository)

This Memorandum of Understanding is entered into this _____ day of _____, 19____, between the United States of America, acting by and through the _____, hereinafter called the Depositor, and the _____, hereinafter called the Repository, in the State of _____.

The Parties do witnesseth that,

Whereas, the Depositor has the responsibility under Federal law to preserve for future use certain archeological collections of artifacts, specimens and associated records, herein called the Collection, listed in Attachment A which is attached hereto and made a part hereof, and is desirous of obtaining curatorial services; and

Whereas, the Repository is desirous of obtaining, housing, and caring for the Collection, and recognizes the benefits which will accrue to it, to the public, and to scientific interests by housing and caring for the Collection for study and other educational purposes; and

Whereas, the Parties hereto recognize the Federal Government's continued ownership or control of the Collection and its responsibility to ensure that the Collection is suitably preserved and maintained for the public good; and

Whereas, the Parties hereto recognize the mutual benefits to be derived by having the Collection suitably housed and cared for by the Repository;

Now therefore, the Parties do mutually agree as follows:

1. The Repository shall:

a. Provide for the professional care and management of the Collection from the _____ archeological site(s), assigned _____ site number(s), collected in connection with the _____ project, located in _____, _____ county, in the State of _____.

b. Perform all work necessary to protect the Collection in accordance with the regulation (36 CFR Part 79) for the curation of federally-owned and administered archeological collections, the Secretary of the Interior's Guidelines for Historic and Archeological Resource Management, and the stipulations listed in Attachment B to this Memorandum on the use of the Collection.

c. Assign _____ as the Curator, _____ as the Collections Manager and _____ as the Conservator for this work.

These designations shall not be changed without prior written permission of the Depositor.

d. Begin all work on or about _____ and continue for a period of _____ years or until sooner terminated or revoked in accordance with the terms set forth herein.

e. Not mortgage, pledge, assign, transfer, exchange, give, sublet or part with possession of any of the Collection in any manner to any third party either directly or indirectly without the prior written permission of the Depositor and not do or suffer anything to be done whereby any of the Collection shall or may be encumbered, seized, taken in execution, sold, attached, lost, stolen, destroyed, or damaged.

f. Not in any way adversely alter or deface any of the Collection except as may be absolutely necessary in the course of scientific study, analysis, and research. Any study that will involve the intentional destruction of any of the Collection must be approved in advance and in writing by the Depositor.

g. Provide and maintain a repository facility having requisite equipment and space, and adequate safeguards for the physical security and controlled environment for the Collection and the Government-furnished personal property, listed in Attachment C, in the possession of the Repository.

h. Annually inventory the Government-furnished personal property and inspect the facilities and the Collection. Every _____ years, inventory the Collection. Perform only those conservation treatments as are absolutely necessary to ensure the physical stability and integrity of the Collection, and report the results of all inventories, inspections and treatments to the Depositor.

i. Within five (5) days of discovery, report all instances of and circumstances surrounding loss of, damage to, or destruction of the Collection and the Government-furnished personal property to the Depositor, and those actions taken to stabilize the Collection and to correct any deficiencies in the physical plant or operating procedures that may have contributed to the loss of damage. Any actions that will involve the repair and restoration of any of the Collection and the Government-furnished personal property must be approved in advance and in writing by the Depositor.

j. Review and approve or deny requests for access to, short-term loan, study and other uses of the Collection in accordance with the regulation (36 CFR Part 79) for the curation of federally-owned and administered archeological collections and the stipulations on use (Attachment B) required by the Depositor.

2. The Depositor shall:

a. On or about _____, deliver or cause to be delivered to the Repository the Collection, as described in Attachment A, and the Government-furnished personal property, as described in Attachment C.

b. Designate _____, having expertise in the care and management of archeological collections, as the Depositor's Representative to exercise full authority with regard to this Memorandum.

c. Every _____ years, have the Depositor's Representative inspect and inventory the Collection and inspect the repository facility jointly with the Repository's designated representatives.

3. Removal of all or any portion of the Collection from the premises of the Repository for use in interpretive displays, for educational or scholarly purposes, or for use in religious or spiritual ceremonies, may be allowed only in accordance with the regulation (36 CFR Part 79) for the curation of federally-owned and administered archeological collections, the stipulations on use in Attachment B, and any conditions of handling, packaging, transporting, and other conditions specified by the Repository to prevent breakage, deterioration or contamination.

4. The Collection or portions thereof may be exhibited, photographed or otherwise reproduced and studied in accordance with the stipulations on use in Attachment B. All exhibits, reproductions and studies must credit the Depositor and the Repository, and read as follows: "Courtesy of the _____."

5. The Repository shall maintain complete and accurate records of the Collection and the Government-furnished personal property, including information on the study, use, loan and location of said Collection which has been removed from the premises of the Repository.

6. Upon execution by both parties, this Memorandum of Understanding shall be effective on this _____ date of _____, 19____, and shall remain in effect for _____ years, at which time it will be reviewed, revised, as necessary, and reaffirmed or terminated. This Memorandum may be revised or extended by mutual consent of both parties, or by issuance of a written amendment signed and dated by both parties. Either party may terminate this Memorandum by providing 90 days written notice. Upon termination, the Repository shall return such Collection to the destination directed by the Depositor and in such manner to preclude breakage, loss, deterioration and

contamination during handling, packaging and shipping, and in accordance with other conditions specified in writing by the Depositor. If the Repository terminates or is in default of this Memorandum, the Repository shall fund the packaging and transportation costs. If the Depositor terminates this Memorandum, the Depositor shall fund the packaging and transportation costs.

7. Title to the Collection being cared for and maintained under this Memorandum lies with the Federal Government.

In Witness Whereof, the Parties hereto have executed this Memorandum.

Signed:— _____

Date:— _____

Signed:— _____

Date:— _____

Attachment A: Inventory of the Collection

Attachment B: Stipulations on Use of the Collection Required by the Depositor

Attachment C: Inventory of the Government-furnished Personal Property

[FR Doc. 87–19751 Filed 8–27–87; 8:45 am]

BILLING CODE 4310–70–M

VOL
52
ISS
1
67
AG
28
1987
UMI

Federal Register

Friday
August 28, 1987

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 234
Termination of Section 245(b) GPM Program; Final Rule

VOL 52 ISS 167 AG 28 1987 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 234

[Docket No. R-87-1317; FR-2266]

Termination of Section 245(b) GPM Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule terminates the section 245(b) Modified Graduated Payment Mortgage (GPM) program. In the Department's view, termination of the program is warranted (as discussed in the proposed rule initiating this action) because of the program's disproportionately high claim rate and because of the availability of less risky and often less expensive substitute programs.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: John Coonts, Office of Insured Single Family Housing, Room 9266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone number (202) 755–3046. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Summary of the Proposed Rule

The Department published in the **Federal Register** of March 26, 1987 (52 FR 9666) a rule that proposed the termination of the section 245(b) Modified Graduated Payment Mortgage (GPM) program. The preamble to the proposed rule described the GPM program and discussed in some detail the history of section 245(b), pointing out that—

> the modified GPM program under section 245(b) was approved in an effort to make single family housing more affordable, especially to first-time homebuyers. The legislative history indicated that Congress was concerned that the increasing cost of housing at that time made the achievement of the goal of homeownership less possible for this class of homebuyer.

The March 26, 1987 rule also pointed out that the Department had had reservations about the soundness of the modified GPM program, and has so testified to the congressional committees considering the enabling legislation. The Department was concerned that since "the program [was] designed to take advantage of inflation, it necessarily *requires* significant inflation in order for borrowers to meet their mortgage obligations." 52 FR at 9667.

The regulations at paragraph (f) of §§ 203.46 and 234.76, implementing section 245(b), provided in part that "The sum of the payments to principal and/or interest shall increase annually for a period of ten years at a rate of 4.9 percent per year or for a period of 5 years at a rate of 7½ percent per year." As stated in the proposed rule "This provision requires that a borrower's income increase annually by an amount sufficient to meet the increased mortgage payments if the initial payment-to-income underwriting ratios are to be maintained." 52 FR at 9667–8.

The proposed rule also drew attention to the increased likelihood of default in programs where borrowers have little or no equity in their homes. It stated that in the modified GPM program—

> the borrower's equity is eroded through negative amortization throughout the early years of the mortgage, since the interest shortfall between initial GPM payments and initial level mortgage payments over the first 5 years is added to the mortgage balance. Paragraph (b) §§ 203.46 and 234.76 specifically recognizes the possibility of this occurring by providing that
>
> The mortage may provide that any interest which accrues and which is unpaid pursuant to a financing plan approved by the Secretary shall be added to the principal obligation of the mortgage.
>
> Also under paragraph (b)(2)(i) of §§ 203.46 and 234.76, the accrued mortgage interest plus the outstanding mortgage balance may be equal to "113 percent of the appraised value of the property." . . . Hence, GPM borrowers in weak markets with little inflation in home prices would have substantial incentive to default.
>
> 52 FR at 9668.

The Department provided further justification in the proposed rule for the elimination of the section 245(b) modified GPM program by citing claims data for mortgages endorsed over the last six years under this program. The data compared the claim rate in the section 245(b) modified GPM program with that of the section 203(b) and 245(a) programs. The data showed that, especially after the first two years of endorsement of mortgages under these programs, the disparity in the claim rate (comparing endorsements for the period 1981–1985) between the section 245(b) program and the other two programs becomes very pronounced.

Data cited in the proposed rule show

> That the section 245(b) GPMs requiring the least equity after five years have a cumulative claim rate of 20.53 percent compared to a claim rate, for the period from endorsement to mid-1986, of 9.91 percent for the section 203(b) program (excluding investor and low-downpayment mortgages. When all section 203(b) mortgages are considered, including investor and low-downpayment mortgages, the claim rate rises to 13.82 percent for the section 203(b) program.). The section 245(b) claim rate for 1981 endorsements is 143 percent higher than that of the 245(a) GPM program. (The 245(a) program requires a substantial initial equity contribution to keep the mortgage balance, inclusive of deferred interest, from exceeding 97 percent of the original appraised value.)
>
> For mortgages endorsed for insurance in 1982, the cumulative claim rate for the section 245(b) program was 14.92 percent compared to a claim rate of 9.50 percent for all mortgages insured under section 203(b) (the latter figure decreases to 6.89 percent when claims filed for investor and low-downpayment mortgages are excluded from the total of all claims filed for mortgages insured under section 203(b)).
>
> The claim rate for mortgages endorsed in 1982 for the section 245(a) program was almost [two-thirds] less (5.33 percent) than that of the 245(b) program. The comparable figures among the three programs (*i.e.*, 203(b), 245(a), and 245(b)) and 1983 are less dramatic, but nonetheless still show a higher incidence of default in the 245(b) program than in the other two programs, except in 1984 when the claim rate for the section 245(b) program was 2.50 percent compared to a claim rate of 2.70 percent for all section 203(b) mortgages. (This seeming aberration is explained by the historical fact that the claim rate in the section 245(b) program is low in the first two years, increasing in later years, compared to the claim rate in the section 203(b) program.)
>
> For mortgages endorsed in 1983, the cumulative claim rate for the section 245(b) program was more than double that of the rate for the section 245(a) program (4.61 percent versus 2.02 percent) and almost 2½ times that of the section 203(b) program (excluding investor and low-downpayment mortgages). When investor and low-downpayment mortgages are included, the section 203(b) rate increases to 3.56 percent—still lower than the 4.61 percent rate for the section 245(b) program. In 1984, the claim rate percentages were 2.50, 1.66, and 1.38 for the sections 245(b), 203(b) (excluding investor and low-downpayment mortgages), and 245(a), respectively.

Other data that the Department found instructive in its decision to terminate this program were Department of Labor income figures for the period 1980–1985, and statistics on the sales prices of existing homes for a comparable period. These data show that non-supervisory workers' earnings increased about 27 percent for the years 1980–1985, compared to the 44 percent mortgage payment increase over a 5-year period that would be required to keep pace with the 7½ percent increase in mortgage payments compounded annually. Statistics on housing prices show that for a like period the median sales prices of existing homes increased

by 21.4 percent. The Department acknowledged in the proposed rule that this increase exceeded the annual 3 percent increase needed to maintain a rough comparability between the value of a house and the outstanding mortgage balance. The rule cautioned, however, that the 21.4 percent increase was a national average that masked the fact that, in some areas of the country, home prices increased by less than 3 percent annually.

These data, including those showing the comparatively high claim rate in the section 245(b) modified GPM program, along with the Department's belief that good substitutes for the section 245(b) program now existed, e.g., the adjustable rate mortgage (ARM) (see 24 CFR 203.49), that did not exist in 1981, persuaded the Department that the modified GPM program should be terminated. The Department also stated as a further justification for eliminating this program, and thus removing the implementing regulations at 24 CFR 203.46 and 234.76, that "with the current low rate of inflation (translating into lower inflationary equity in single family homes and smaller increases in wages) the basis on which the program was founded, *i.e.*, reliance upon continuing substantial inflationary increases in home sales prices and family income, no longer exists."

Public Comments

The proposed rule invited public comment for a 60-day period ending May 26, 1987. Eight comments were received. Four commenters opposed elimination of the program while three commenters favored its elimination; the remaining commenter expressed no opinion, but sought information on the data relied on by HUD for discontinuing the GPM program. A summary of the comments, along with the Department's responses, follows:

One commenter, in arguing against termination of the section 245(b) program, contended that the low downpayment and low initial payments under the program have helped thousands of moderate-income buyers to own a home. Another commenter raised a similar argument, asserting that the section 245(b) program is now a major financing tool for many builders who try to provide a new home for families who were limited to renting or buying unacceptable resale properties.

In the Department's view, the issue goes beyond the program's making homeownership opportunities available to a certain class of buyers. The real issue is the ability of these homeowners to avoid losing their homes because they are unable to meet the escalating payments in the early years of the mortgage. Thus, to the extent that many section 245(b) mortgages, as the statistics cited above indicate, are foreclosed, it neither advances the goal of homeownership nor, contrary to a commenter's argument, acts as the only possible source of tax shelter for low- to middle-income homebuyers.

Two commenters disagreed that the FHA Adjustable Rate Mortgage (ARM) is a good substitute for the section 245(b) GPM program. According to these commenters, the limitations on seller financing concessions along with the annual cap on both total commitments and commitments per lender in the ARM program result in its not being a good substitute for the section 245(b) GPM program.

The Department recognizes that the ARM program may have certain imposed limitations, both statutory and regulatory—as does the modified GPM program. For example, § 203.46(j) limits to a maximum of 50,000 the number of modified GPMs that can be insured in any fiscal year. However, the Department reaffirms its position, set forth in the proposed rule (see 52 FR at 9668–69) that

> the FHA adjustable rate mortgage (ARM) allows a borrower, including first-time homebuyers, to achieve the same end as the section 245(b) GPM—lower initial payments than for a fixed-rate mortgage—but at lower cost to the borrower and significantly less risk to the Department. See 24 CFR 203.49.
>
> The initial section 245(b) GPM payment is similar to the payment on the same mortgage with an interest rate about 3 percentage points below the section 203(b) current market rate. The FHA ARM initial payment is based on an interest rate that is generally (though not always) lower than the section 203(b) market rate. The GPM payment will increase over 5 years to a payment consistent with an interest rate increase of about 1 percentage point over the [initial 203(b)] market rate, with no change thereafter. The FHA ARM interest rate cannot increase by more than one percentage point annually with a maximum increase over the life of the loan of 5 percentage points. See 203.49(e)(1)(iii). The ARM payment, however, unlike those of the GPM which *must* rise, could remain at initial levels or fall in later years without creating any negative amortization risks for FHA or for the borrower.

Commenters suggested that if HUD were to modify the program to reduce the amount of allowable negative amortization or adopt more stringent underwriting standards, the modified GPM program could continue to function as a useful vehicle for first-time homebuyers. One commenter, while expressing understanding for HUD's attempt to reduce "the financial burden on the government" by eliminating the program, posited that HUD's mandate, as he saw it, of providing "affordable home financing for . . . a high risk class of buyers" was at odds with its goal of eliminating costly programs.

Other suggestions offered by a commenter to make the section 245(b) modified GPM program less risky included a five percent increase in the MIP, along with collecting it monthly, but not including it in the mortgage loan; a requirement that housing values and income increase, on the average, by a minimum of 2 percent and 3.5 percent, respectively, over the three-year period *preceding* purchase of a home insured under section 245(b); a limit on the annual endorsements for insurance under section 245(b) to five percent of the number of section 203(b) endorsements made in the previous year; and a requirement of one additional payment each year for the second through the sixth year of the mortgage.

In the Department's judgment, modification of the program, or the adoption of stringent underwriting standards would justify most of the applicant class that commenters are trying to protect. Indeed, the Department considered modifications to the program short of termination in formulating the proposed rule. This alternative was rejected then because more stringent standards would result in a program that was virtually moribund, insuring only a few mortgages—largely those involving mortgagors who, because of the new standards, could just as easily have qualified under a less risky program, e.g., section 203(b). For this reason, among others, the Department decided to eliminate the section 245(b) modified GPM program rather than have a little-used program that would still be risky.

The other suggestions referred to above are not being adopted in this rule because the Department considers them impracticable as a solution (e.g., the requirement of a past increase in housing values and income); or because their predictive value, irrespective of recent trends, is too uncertain to reduce the risk associated with this program; or their adoption would require legislative action (e.g., a significant MIP increase, or a requirement of additional mortgage payments); or the suggested provision is already in effect (e.g., the limit on the number of mortgages insurable under section 245(b)).

With respect to a commenter's point regarding conflict between HUD's "mandate" and its "goal", the Department recognizes that it does have

a responsibility to provide affordable housing. However, when a program proves disproportionately costly, the Department must meet its obligation of protecting the insurance fund. Elimination of this program, which has insured a comparatively miniscule number of all the mortages insured by FHA over the last five years, could hardly be said to be tantamount to HUD's ignoring or abdicating the so-called "mandate." Furthermore, from the point of view of mortgagors the program is intended to benefit, the high rate of default would suggest that the housing being provided under section 245(b) was, in fact, too often not "affordable".

One commenter argued against the program's elimination because, as his data indicate, some regions showed a higher claim rate than the rest of the country. According to the commenter "[n]ot every program must work in all areas of the country to measure its success" and the problem may have been that in the program's initial years "deep buydowns, unrealistic appraisals and [a] too optimistic approach to continued employment and [high] inflation" resulted in a high rate of default in some regions.

The Department will not follow the implied recommendation of the comment that the program should be continued in those regions that have a low section 245(b) default rate. In the first place, unless a statute so requires or permits, the Department has no basis for discriminating in the implementation of this or any other program against certain regions that are economically disadvantaged. Second, this program has nothing to do with regional usage, but with individual mortgage applicants, no matter their geographic location. Thus, HUD would be exposing itself to legal attack were it to declare particular regions ineligible under this program, notwithstanding that there might be individual applicants in those regions who met all the underwriting criteria applicable to mortgagors in eligible areas. Additionally, if the implication is that a low default rate is associated with high employment, incomes, and inflation (factors on which the program was predicated, as mentioned above), and that HUD should monitor these factors by region to determine where the program should be operative, the Department would have to reject this implied recommendation too, because HUD is not generally equipped to monitor economic trends by areas and periodically modify a program affected by regional economic trends.

Accordingly, the Department amends 24 CFR Chapter II by removing §§ 203.46 and 234.76 "Eligibility of modified graduated payment mortgages." As stated in the proposed rule, HUD will honor applications for mortgage insurance pending under these sections if received before October 13, 1987. Thereafter, no application for section 245(b) modified GPM insurance will be accepted for processing. With respect to the direct endorsement program, HUD will endorse the loan for insurance (if FHA requirements are otherwise satisfied) where the mortgage credit approval of the applicant (Form HUD–92900) was signed by the direct endorsement underwriter before October 13, 1987.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule terminates a program that is costly, but leaves adequate substitutes in the form of other programs that are avai able to mortgagors and mortgagees.

This rule was listed as Item No. 924 in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 Fr 14380) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.117, 14.133, and 14.159.

List of Subjects

24 CFR Part 203

Home improvement, Loan programs: Housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

Accordingly, the Department amends 24 CFR Parts 203 and 234 as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for Part 203 continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C also is issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

§ 203.46 [Removed]

2. Section 203.46 is removed.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

3. The authority citation for Part 234 continues to read as follows:

Authority: Secs. 211, 224, National Housing Act (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 234.76 [Removed]

4. Section 234.76 is removed.

Dated: August 19, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87–19768 Filed 8–27–87; 8:45 am]

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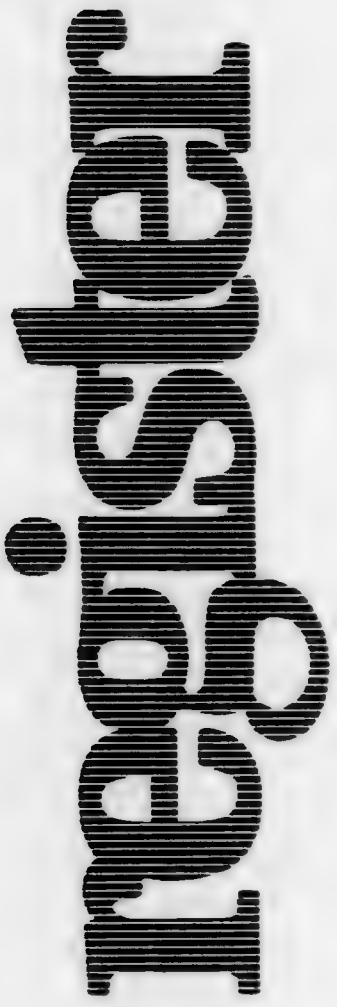

Friday
August 28, 1987

Part VII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840 and 842

Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs; Abandoned Sites; Proposed Rule

VOL 52 ISS 167 AG 28 1987 UMI

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840 and 842

Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs; Abandoned Sites

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) proposes to amend its regulations to define "abandoned site" and to change the inspection frequency for such sites. These revisions would enable regulatory authorities to eliminate numerous ineffective inspections, and thus transfer inspectors to operations where enforcement would achieve the intended results.

DATES: *Written Comments:* OSMRE will accept written comments on the proposed rule until 5:00 p.m. Eastern time November 6, 1987.

Public hearings: Upon request, OSMRE will hold a public hearing on the proposed rule in Washington, D.C. The hearing will be held on October 30, 1987. Upon request, OSMRE will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 5:00 p.m. Eastern time on September 28, 1987.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L St NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

Request for public hearings: Submit orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Daniel Stocker, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–5385 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters
V. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period or delivered to addresses other than those listed above (see "**DATES**") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The time, date, and address scheduled for the hearing in Washington, DC are (see "**DATES**" and "**ADDRESSES**"). The times, dates, and addresses for any hearings at other locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at those locations.

Any person interested in attending or participating at a hearing at a particular location should inform Mr. Stocker (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing of the desired hearing location by 5:00 p.m. Eastern time September 28, 1987. If no one has contacted Mr. Stocker to express an interest in participating in a hearing at a given location by that date, no hearing will be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act) requires State regulatory authorities and OSMRE, where it is the regulatory authority, to inspect surface coal mining and reclamation operations. 30 U.S.C. 1267(a). To implement the Act's inspection requirements, OSMRE first promulgated rules at 30 CFR Part 840 for State regulatory authority inspection and enforcement, and at 30 CFR Part 842 for Federal inspections. *44 FR 15455 (March 13, 1979)* These rules applied to permitted and unpermitted sites, and to initial and permanent program operations. They required regulatory authorities to inspect all surface coal mining and reclamation operations on an average of not less than one partial inspection per month and not less than one complete inspection per calendar quarter.

The rules were revised on August 16, 1982. *47 FR 35620.* The 1982 rules defined "inactive" surface coal mining and reclamation operations, and reduced the partial inspection frequency requirement for these operations to "as necessary to ensure effective enforcement" of the regulatory program, while retaining the same frequency for complete inspections.

Abandoned sites are incompletely reclaimed surface coal mining and reclamation operations where mining has ceased and is unlikely to resume. In many instances the operators at these sites are bankupt or have disappeared. They either will not or cannot comply with corrective measures directed in notices of violation or cessation orders which inspectors have issued to abate violations of environmental performance standards. OSMRE believed in 1982 that "(T)he fact that a mine has been abandoned does not mean that it is in compliance or that there is no one against whom enforcement action can be taken. Thus a reduction in inspection frequency would be inappropriate." *47 FR 35627.* Several years experience in implementing the 1982 rules has led OSMRE to re-evaluate this position. OSMRE also explained in the preamble to the 1982 rule that it had rejected a proposal to reduce the inspection frequency for abandoned sites. Furthermore, nothing in sections 517 (c) and (h) of the Act or in their legislative history suggests that Congress intended the useless act of perpetual inspections of abandoned sites long after the enforcement measures available to the inspector have proven ineffective. OSMRE now concludes that repeated inspections at abandoned sites are an

ineffective expenditure of resources and that fewer inspections would not result in increased harm to the environment or reduce in any way the likelihood of ultimate compliance. This conclusion is based on the following considerations.

(1) There is still a significant number of abandoned sites which must be inspected 12 times per year under present regulations. *30 CFR 840.11, 842.11.* While abandoned sites are not in compliance, many, because of their age, have become reasonably stabilized through natural settlement and revegetation processes or where partially reclaimed before they were abandoned. OSMRE believes that few of these sites constitute a danger to the environment or to the public health or safety beyond that which has already been observed in prior inspections. For example, in approximately 6,000 inspections conducted at abandoned sites in Tennessee, OSMRE inspectors have not observed any conditions which constituted an imminent danger to the public health and safety or imminent environmental harm to land, air, or water resources.

(2) Inspectors have normally cited all violations in the first few months after a site has been abandoned. Repeated inspections and subsequent issuance of new notices of violation or cessation orders fail to compel correction of violations or completion of reclamation because the operators responsible for these sites are typically bankrupt or have disappeared.

(3) Current inspection frequency requirements for abandoned sites do nothing to further protect the environment. Enforcement action at the inspector level has already proven ineffective to compel abatement of violations or to achieve reclamation. As a result, manpower is wasted which could be applied to operations where enforcement would achieve the intended results. For example, OSMRE conducts approximately 2,900 inspections per year at 236 abandoned sites in Tennessee comprising approximately 32 percent of all required inspections. Yet, few if any abandoned sites are reclaimed because of these inspections.

For the above reasons, OSMRE proposes to amend its rules on the inspection of abandoned sites.

III. Discussion of Proposed Rule

Section 840.11

Proposed § 840.11(g) would define an "abandoned site" as a surface coal mining and reclamation operation for which the regulatory authority has found in writing that all the following criteria apply. The written finding would have to include sufficient detail to support the conclusions reached.

(1) Proposed § 840.11(g)(1) would require that all surface and underground coal mining and reclamation activities at the site have ceased and are unlikely to resume. The regulatory authority would have to explain in its written finding the basis for its determination that a site has been abandoned. That basis may include a series of inspections; discussions with the operator; affidavits based on personal knowledge; the regulatory authority's inability to serve citations; legal notices of bankruptcy, auctions, etc.; or other available information.

(2) Proposed § 840.11(g)(2) would ensure that the regulatory authority has tried to compel correction of violations through enforcement at the inspector level. Before classifying a site as abandoned, the proposed rule would require the regulatory authority or OSMRE to have issued at least one notice of violation or the initial program equivalent and have been unable to serve it, despite diligent efforts, or, if the notice of violation was served, it has progressed to a failure to abate cessation order requiring the operation to cease and reclamation to commence.

(3) Proposed § 840.11(g)(3) would require the regulatory authority to consider all viable alternative enforcement options in cases where the failure to abate cessation order remains unabated for more than 30 days, and to take those appropriate to compel compliance before classifying the site as abandoned. *See 30 CFR 845.15(b)(2).* When the regulatory authority could not serve the notice of violation, and therefore no failure to abate cessation order could be issued, there would be no requirement under the proposed rule to have considered alternative enforcement options, because lacking a failure to abate cessation order, there would be no basis under 30 CFR 845.15(b)(2) for doing so.

Such alternative enforcement options may include a suit for injunctive relief, a criminal prosecution, suspension or revocation of a subsequent erroneously issued permit, assessment of individual civil penalties, or performance bond forfeiture, and in all cases must include blocking new permits. Where the regulatory authority concludes that alternative enforcement would offer little or no likelihood of compelling abatement or recovering reclamation costs, and documents the basis for that finding, it would not have to have pursued such efforts, other than to continue blocking new permits to related entities. Examples of alternative enforcement efforts which may be futile include cases where the regulatory authority has diligently tried and failed to locate the operator, or where, after reviewing his assets, including the potential distributions from bankruptcy, it determines that further actions would be ineffective.

(4) To be classified as an abandoned site, proposed § 840.11((g)(4) would require that the permit have expired or have been revoked. If such is the case, the operator no longer can mine legally at the site. The proposed rule would require the regulatory authority to diligently seek forfeiture of any performance bond or to have forfeited the performance bond before classifying a site as abandoned. Forfeiture of the performance bond is intended to ensure that money will be available for reclamation. OSMRE expects that the regulatory authority will promptly initiate formal bond forfeiture proceedings under the applicable program as soon as it is aware that a site has been abandoned, and that it will diligently pursue each stage of that proceeding to completion.

When the regulatory authority determines in writing that a site meets all the above criteria, proposed § 840.11(h) would require inspection of those sites only as is necessary to monitor for changes of environmental conditions or operational status at the site. Thus the inspection frequences established in § § 840.11 (a) and (b) would not apply to abandoned sites. OSMRE considered annual and other periodic inspection alternatives, but tentatively has rejected them because no periodic frequency would appear to be effective toward compelling the operator to reclaim the site. OSMRE believes that the regulatory authority should have discretion to determine the inspection frequency for each abandoned site, based on particular environmental conditions.

As pointed out elsewhere in this preamble, continued enforcement actions taken at the inspector level are ineffective to compel correction of violations or to achieve reclamation at abandoned sites. Such enforcement actions often lead to unabated cessation orders for which civil penalties must be assessed, collection actions undertaken and, all too frequently, delinquent debt accrues. OSMRE questions the utility of further enforcement actions after the State regulatory authority has classified a site as abandoned. Once a site met all the criteria of the proposed rule, the regulatory authority would be doing all that it could under the alternative enforcement provisions of the State program to compel compliance.

Therefore, OSMRE proposes not to require further enforcement actions be taken while a site remains in abandoned status, so long as abatement of any newly observed violation may be required as part of the abatement of the notice of violation or cessation order already issued. For instance, if the original violation cited was for a general reclamation failure, such as a failure to restore the site to a condition capable of supporting pre-mining or higher or better uses, then abatement of a later observed violation could be subsumed within the abatement of the original violation. Public comments are specifically solicited with respect to this enforcement approach.

Section 842.11

Proposed § 842.11 would make the same changes for OSMRE as regulatory authority as it would make for the States as regulatory authorities, for the same reasons given in the discussion of § 840.11.

IV. Procedural Matters

Effect in Federal Program States and on Indian Lands

Proposed § 842.11 would apply through cross-referencing in those States with Federal programs. These include Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 respectively. The proposed rule would also apply through cross-referencing to Indian lands under Federal programs as provided in 30 CFR Part 750. Comments are specifically solicited as to whether unique conditions exist in any of these States or on Indian lands which should be reflected as changes to the national rules or as specific amendments to any or all of the Federal programs or the Indian lands program.

Federal Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and has determined that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. This determination is based on the findings that the regulatory additions proposed by this rule would serve to reduce the costs potentially incurred by OSMRE and State regulatory authorities in making routine inspections of abandoned sites. Therefore, the rule should not add to the cost of operating a mine in compliance with an approved regulatory program.

National Environmental Policy Act

OSMRE has prepared a draft environmental assessment (EA) of the proposed rule and has made a tentative finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft EA is on file in the OSMRE Administrative Record at the address previously specified (see "**ADDRESSES**"). A final EA will be completed and a final findings made on the significance of any resulting impacts prior to the promulgation of a final rule.

Author

The principal authors of this rule are Daniel Stocker, assisted by Betty Buxton, Division of Regulatory Programs; and Hugo Fleischman, Regulatory Development and Issues Management Staff, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone 202–343–5385. (Commercial or FTS)

List of Subjects

30 CFR Part 840

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 842

Law enforcement, Surface mining, Underground mining. Accordingly, OSMRE proposes to amend 30 CFR Parts 840 and 842 as set forth below:

Dated: July 21, 1987.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 840—STATE REGULATORY AUTHORITY—INSPECTION AND ENFORCEMENT

1. The authority citation for Part 840 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34, unless otherwise noted.

2. Section 840.11 is amended by adding the following new paragraphs (g) and (h) to read as follows:

§ 840.11 Inspections by State regulatory authority.

* * * * *

(g) *Abandoned site* means a surface coal mining and reclamation operation for which the regulatory authority has found in writing that all of the following criteria apply:

(1) All surface and underground coal mining and reclamation activities at the site have ceased and are unlikely to resume;

(2) The regulatory authority or the Office has issued at least one notice of violation or the initial program equivalent, and either (i) is unable to serve the notice despite diligent efforts to do so, or (ii) the notice was served and has progressed to a failure to abate cessation order or the initial program equivalent;

(2) The regulatory authority is pursuing alternative enforcement measures provided under the regulatory program except where, after evaluating the circumstances, it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site was permitted and bonded, the permit has expired or been revoked and the regulatory authority is diligently pursuing forfeiture of the performance bond or has forfeited the performance bond.

(h) In lieu of the inspection frequency established in paragraphs (a) and (b) of this section, the regulatory authority shall inspect each abandoned site as necessary to monitor for changes of environmental conditions or operational status at the site.

PART 842—FEDERAL INSPECTIONS AND MONITORING

1. The authority citation for Part 842 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34, unless otherwise noted.

2. Section 842.11 is amended by adding the following new paragraphs (e) and (f) to read as follows:

§ 842.11 Federal inspections and monitoring.

* * * * *

(e) *Abandoned site* means a surface coal mining and reclamation operation for which the Office has found in writing that all of the following criteria apply:

(1) All surface and underground coal mining and reclamation activities at the site have ceased and are unlikely to resume;

(2) The Office has issued at least one notice of violation or the initial program equivalent, and either (i) is unable to serve the notice despite diligent efforts to do so, or (ii) the notice was served and has progressed to a failure to abate cessation order or the initial program equivalent;

(3) The Office is pursuing alternative enforcement measures provided under the regulatory program except where, after evaluating the circumstances, it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site was permitted and bonded, the permit has expired or been revoked and the Office is diligently pursuing forfeiture of the performance bond or has forfeited the performance bond.

(f) In lieu of the inspection frequencies established in paragraph (c) of this section, the Office shall inspect each abandoned site as necessary to monitor conditions or changes of status at the site.

[FR Doc. 87-19793 Filed 8-27-87; 8:45 am]

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Friday
August 28, 1987

Part VIII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 780 and 784

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Surface Mining Permit Applications; Underground Mining Permit Applications; Proposed Rule

DEPARTMENT OF THE INTERIOR

30 CFR Parts 780 and 784

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Surface Mining Permit Applications; Underground Mining Permit Applications

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) is proposing new regulations to define the content and scope of probable hydrologic consequences (PHC) determinations for surface and underground coal mining permit applications. The regulations are being proposed to provide guidance to regulatory authorities and operators regarding the extent of hydrologic information and findings required in permit applications. The effect of the rules will be to establish a standard for the protection of hydrologic resources that is consistent with the provisions of section 507(b)(11) of the Surface Mining Control and Reclamation Act of 1977.

DATES:

Written comments: OSMRE will accept written comments on the proposed rule until 5:00 p.m. Eastern time on November 6, 1987.

Public hearings: Upon request, OSMRE will hold public hearings on the proposed rule in Washington, DC; Denver, Colorado; and Knoxville, Tennessee at 9:30 a.m. local time on October 30, 1987. Upon request, OSMRE will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 5:00 p.m. Eastern time on September 28, 1987. Individuals wishing to attend but not testify at any hearings should contact the person identified under "**FOR FURTHER INFORMATION CONTACT**" beforehand to verify that the hearing will be held.

ADDRESSES:

Written comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L St., NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131A–L, 1915 Constitution Avenue, NW., Washington, DC 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th St., Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

Request for public hearings: Submit orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Douglas Growitz, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1507 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period or delivered to addresses other than those listed above (see "**DATES**") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The times, dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see "**DATES**" and "**ADDRESSES**"). The times, dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Growitz (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing of the desire hearing location by 5:00 p.m. Eastern time, September 28, 1987. If no one has contacted Mr. Growitz to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

II. Background

Statutory Provisions

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), provides for the submission of specific hydrologic information and findings in permit applications for both surface and underground proposed mining operations. Specifically, section 507(b)(11) of the Act, 30 U.S.C. 1257(b)(11), requires that each application contain, among other things, "a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the regulatory authority of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability: *Provided, however,* that this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate Federal or state agency: *Provided further,* that the permit shall not be approved until such information is available and is incorporated into the application * * *."

The two requirements embodied in section 507(b)(11) include an assessment of the probable hydrologic consequences (PHC) prepared by the applicant and sufficient data so that the regulatory authority (RA) would be able to prepare a cumulative hydrologic

impact assessment (CHIA). The purpose of these provisions is to ensure that the applicant has evaluated the impact of the proposed operation on existing hydrologic conditions, both on and off the mine site, and that the regulatory authority has sufficient information to perform an assessment of the probable cumulative hydrologic impacts of all anticipated mining in the area.

History of the Rule

OSMRE has promulgated rules for this section of the Act on two separate occasions. Permanent program rules for PHC determinations were first promulgated on March 13, 1979 (44 FR 15360 and 15367). OSMRE used the term "mine plan area" in defining the areal scope of the PHC determination. The rules required the reclamation plan to contain a description of the determination of the PHC on the proposed mine plan area and adjacent area at 30 CFR 780.21(c) for proposed surface mining activities and at 30 CFR 784.14(c) for proposed underground mining activities.

In *In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144 (D.D.C. 1980), the use of the term "mine plan area" in § 780.21(c) was challenged on the basis that it required mining companies to supply information for areas outside of the permit area and to cover the entire life of the mining area whereas the Act only requires this type of expansive information in limited situations.

The district court concluded that section 507 of the Act consistently referred to "specific land mined or the immediate permit area" and thus did not require information from outside the permit area. *In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144 (D.D.C. Feb. 26, 1980). The court remanded the definition of *mine plan area*, suspended the term as found in Parts 779, 780, 783 and 784, and directed the Secretary to revise the term in accordance with the informational requirements of the Act.

The Secretary sought clarification of the court's February 26, 1980, opinion with respect to whether the suspension of the term *mine plan area* affected those provisions of the rules containing informational requirements whose statutory basis requires information about areas both on and off the mine site; or over the estimated life of the mining operation. The court noted in its May 16, 1980, opinion that some of the provisions in Parts 779, 780, 783, and 784 using the term *mine plan area* may properly derive expansive information requirements from other sections of the Act. However, the court referred the question to further rulemaking and the process of public notice and comment. *In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, slip op. at 57-58 (D.D.C. May 16, 1980).

To comply with the court's decision and to reorganize and consolidate hydrologic requirements scattered throughout the rules, OSMRE proposed new hydrology rules for surface and underground operations (47 FR 27712, June 25, 1982). The rules for PHC proposed at § 780.21 for surface mining permit applications and at § 784.14 for underground mining permit applications used the term "permit area," defined in the Act, in lieu of the suspended term "mine plan area." The Secretary's final regulations on PHC were published in the **Federal Register** on September 26, 1983. The final rule at 30 CFR 780.21(f) for surface mining permits and at 30 CFR 784.14(e) for underground mining permits retained the term "permit area" within the context of the phrase "permit and adjacent areas" in defining the areal scope of the PHC determination.

Plaintiffs in *In Re: Permanent Surface Mining Regulation Litigation (II), Round III*, No. 79-1144 (D.D.C. July 15, 1985) (hereafter *In Re: Permanent II)* challenged the Secretary's 1983 rules on PHC contending that they wrongly limited the operator's information and analysis requirements regarding hydrologic impacts to activities conducted during the "life of the permit" as opposed to the "life of the mine." The plaintiffs further contended that unless the PHC contained a life of mine analysis as opposed to what they perceived as a life of permit analysis, the RA would be unable to develop an adequate CHIA.

The court remanded the rules on procedural grounds (*In Re: Permanent II* at 16). In its decision, the court stated that (1) the plain language of the Act does not require the operator's PHC determination to be limited to activities conducted during the permit period; and (2) the preamble to the final rule did not explain why a life-of-mine analysis was not required. The court found that including a life-of-mine analysis in the PHC was not precluded by the Act, and invited the Secretary to explain why the life-of-mine analysis should be in the CHIA as opposed to the PHC.

As a result of the court's decision, OSMRE suspended the PHC rules at 30 CFR 780.21(f) for surface mining permit applications and at 30 CFR 784.14(e) for underground mining permit applications (51 FR 41957, November 20, 1986). OSMRE has reexamined the rules in light of the court's decision, as well as the legislative history of the Act, the administrative history of these rules, and comments on rule options from citizen and environmental groups, industry trade associations, and State regulatory authorities. As a result, OSMRE proposes to amend §§ 780.21 and 784.14 of its permanent program rules, as discussed below.

III. Discussion of Proposed Rule

A. Sections 780.21 and 784.14 Hydrologic Information

OSMRE is proposing rules on the content and scope of PHC determinations required in permit applications for surface and underground mining operations. The rules proposed at 30 CFR 780.21(f) for surface mining permit applications and at § 784.14(e) for underground mining permit applications are identical to the final rules promulgated on September 26, 1983, and subsequently suspended. OSMRE has reviewed the legislative history of the Act, the administrative record of the rule, and the opinions of the court, and proposes that these rules are the best method for implementing the requirements of section 507(b)(11) of the Act, for the reasons discussed below.

Scope of PHC

The Act at section 507(b)(11) sets out the extent of the PHC determination in terms of land area, not duration. In defining the area for which the applicant for a surface or underground mining permit will provide the PHC determination, section 507 uses the phrase "on and off the mine site." OSMRE proposes to limit the scope of the PHC determination to the "permit and adjacent areas," as defined at 30 CFR 701.5 of the permanent program regulations, to define the areal scope of the PHC. This phrase has a spatial significance equivalent to the language of the Act. On the other hand, the phrases "life of permit" or "life of mine," as used by the plaintiffs in *In Re: Permanent II*, have temporal significance and are inappropriate in implementing the PHC requirements of section 507(b)(11) of the Act.

Although the boundaries of the permit area are designated in the permit application and are fixed for each proposed mining operation, the boundaries of the adjacent area, by design, remain flexible and can expand or contract in response to the need to evaluate adverse hydrologic impacts resulting from or reasonably expected to result from the proposed mining operation. There are no restrictions or limitations on the areal scope of the PHC determination. This approach

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would provide for detailed and technically sound evaluations of the hydrologic impacts of the proposed mining operation based on site-specific conditions.

Relationship Between PHC and CHIA

The linkage between the PHC determination and CHIA articulated by Congress in section 507(b)(11) of the Act is based specifically on data, and not on findings or interpretations. Congress requested the "collection of sufficient data" so that the RA could develop the assessment of cumulative hydrologic impacts (CHIA), but directed that the data would not be required from the applicant until "hydrologic information on the general area" was available from appropriate Federal or State agencies. Congress also directed that the permit application incorporate this hydrologic information before it could be approved. The language of this section clearly distinguishes the responsibilities of the applicant, which are to assess the PHC on the permit and adjacent areas and provide data on the mine site and surrounding areas, from the responsibility of the RA, which is to utilize these and other hydrologic data to assess cumulative impacts of all anticipated mining in the area.

The Act is relatively specific regarding what must be evaluated by the applicant in the PHC determination (quality, quantity, surface water, ground water, dissolved and suspended solids, seasonal flow). Furthermore, the PHC findings are highly site specific and are based upon the proposed operation and reclamation plan. The purpose of the PHC could actually be severely compromised or even defeated if impacts not resulting from the proposed operation and reclamation plan must also be considered.

The application for a mining permit does not contain detailed information and mining plans for areas of possible future mining beyond the permit area. Lack of information about potential mining operations beyond the permit area dilutes the precision of technical predictions needed for an adequate PHC. OSMRE does not believe it to be reasonable or technically sound to require an applicant to evaluate impacts on the hydrologic balance of possible future extensions to the proposed operation in the detail required for a PHC determination. Instead, such an analysis must be conducted before such areas can be mined and included in a future permit application for those areas.

In contrast to hydrologic parameters specified for PHC, the Act is general in its guidance to RAs regarding parameters to be evaluated in the CHIA. This is a strong indication that Congress envisioned the two hydrologic evaluations to be fundamentally different. As a result, the RA has the prerogative of "defining" the content of the CHIA according to the hydrologic concerns within its jurisdiction. This approach reflects the flexibility that Congress granted RAs in protecting water resources.

OSMRE believes that the collection of sufficient hydrologic data by the applicant, as required by the Act, is implemented appropriately by these proposed rules and the rules on CHIAs already in place at 30 CFR 780.21 (c) and (g) and 784.14 (c) and (f). This information, together with information from Federal and State agencies, will be sufficient to allow the RA to conduct the required CHIA. For example, as noted in the preamble to the 1979 final rules, hydrologic studies are being done by the U.S. Geological Survey (USGS) (44 FR 15029). Indeed, Congress has appropriated funds for the USGS to "be used to assemble hydrologic data required by the Surface Mining Control and Reclamation Act of 1977" for seven years beginning in Fiscal Year 1979. Over this period approximately 40 million dollars has been appropriated and used by the USGS to collect hydrologic data and develop reports for coal mining areas.

In sum, OSMRE believes that these proposed rules, along with existing rules for CHIA (§§ 780.21 (c) and (g) and 784.14 (c) and (f)) adequately provide for the applicant to collect sufficient data for the mine site and surrounding areas, and provide the RA with the flexibility to ensure that there are sufficient data to allow an assessment of cumulative impact on the hydrology of all anticipated mining in the area. The rules do not preclude the collection of area-wide information by the applicant. They allow the RA to determine the areal scope of the PHC and to require more information from the applicant as needed prior to permit issuance and whenever the permit is revised. OSMRE believes that these rules provide a reasonable and effective approach to the implementation of section 507(b)(11) of the Act.

IV. Procedural Matters

Effect in Federal Program States and on Indian Lands

The proposed rules apply through cross-referencing in those States with Federal Programs. This includes Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal Programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947 respectively. The proposed rules also apply through cross-referencing to Indians lands under Federal programs for Indian lands as provided in 30 CFR Part 750. Comments are specifically solicited as to whether unique conditions exist in any of these States relating to this proposal which should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal program.

Federal Paperwork Reduction Act

The information collection requirements in the proposed rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget. The information is needed to meet the requirements of section 507(b)(11) of Pub. L. 95–87, and will be used by the regulatory authority to establish a sufficient baseline and to assess the impact of the proposed mining operation during the permanent regulatory program. The obligation to respond is mandatory.

Executive Order 12291

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not a major rule and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The DOI has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule is expected to ease the regulatory burden on small coal operators by giving the State regulatory authorities the discretion of adjusting the amount of information that will have to accompany a permit application on a case-by-case basis.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) of the impacts and the cumulative impacts on the human environment of this rulemaking and related rulemakings under the Act. Based on this EA, OSMRE has made a finding that this rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National

Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C).

Author

The principal author of this rule is Douglas Growitz, Division of Permit and Environmental Analysis, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1507.

List of Subjects

30 CFR Part 780

Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 784

Reporting and recordkeeping requirements, Underground mining.

Accordingly, it is proposed to amend 30 CFR Parts 780 and 784 as set forth below.

Date: July 27, 1987.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

1. The authority citation for Part 780 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; Pub. L. 100–34; and 16 U.S.C. 470 *et seq.*

2. Section 780.21 is amended by revising paragraph (f) to read as follows:

§ 780.21 Hydrologic information.

* * * * *

(f) *Probable hydrologic consequences determination.* (1) The application shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

(2) The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

(3) The PHC determination shall include findings on:

(i) Whether adverse impacts may occur to the hydrologic balance;

(ii) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground-water supplies;

(iii) Whether the proposed operation may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purpose; and

(iv) What impact the proposed operation will have on:

(A) Sediment yield from the disturbed area;

(B) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) Flooding or streamflow alteration;

(D) Ground-water and surface-water availability; and

(E) Other characteristics as required by the regulatory authority.

(4) An application for a permit revision shall be reviewed by the regulatory authority to determine whether a new or updated PHC determination shall be required.

* * * * *

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

3. The authority citation for Part 784 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; Pub. L. 100–34; and 16 U.S.C. 470 *et seq.*

4. Section 784.14 is amended by revising paragraph (e) to read as follows:

§ 784.14 Hydrologic information.

* * * * *

(e) *Probable hydrologic consequences determination.* (1) The application shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

(2) The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

(3) The PHC determination shall include findings on:

(i) Whether adverse impacts may occur to the hydrologic balance;

(ii) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground-water supplies; and

(iii) What impact the proposed operation will have on:

(A) Sediment yield from the disturbed area;

(B) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) Flooding or streamflow alteration;

(D) Ground-water and surface-water availability; and

(E) Other characteristics as required by the regulatory authority.

(4) An application for a permit revision shall be reviewed by the regulatory authority to determine whether a new or updated PHC shall be required.

* * * * *

[FR Doc. 87–19794 Filed 8–27–87; 8:45 am]

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Friday
August 28, 1987

Part IX

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Final Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation and Importation of Wildlife and Plants; Final Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special migratory bird hunting regulations to be established for certain tribes on Federal Indian reservations, including Indian Territory, and ceded lands, for the 1987–88 hunting season. This season begins as early as September 1.

EFFECTIVE DATE: This rule takes effect on September 1, 1987.

ADDRESSES: Comments received on the proposed special hunting regulations and tribal proposals are available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC. Communications regarding the documents should be addressed to Director (FWS/MBMO), Room 536, Matomic Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (202) 254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the July 7, 1987 **Federal Register** (52 FR 25419), the U.S. Fish and Wildlife Service (hereinafter the Service) proposed special migratory bird hunting regulations for the 1987–88 hunting season for certain Indian tribes, under the interim guidelines published for this purpose on September 3, 1985 (at 50 FR 35767). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their full wildlife management authority to regulate all hunting by both tribal and nontribal members on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the closed season requirement mandated by the 1916 Migratory Bird Treaty with Canada. Tribes that desired special hunting regulations in the 1987–88 hunting season were requested in the January 16, 1987 **Federal Register** (52 FR 1942) to submit a proposal that included details on: (1) Requested season dates and other regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations. No action is required if a tribe wishes to observe the hunting regulations that are established by the State(s) in which an Indian reservation is located.

Comments and Issues Concerning Tribal Proposals

1. Klamath Tribe, Chiloquim, Oregon

In a July 31, 1987 telephone conversation, Craig Bienz, tribal biologist, stated that the Klamath Tribe had decided to defer the request for special waterfowl hunting regulations for tribal members for the 1987–88 hunting season pending further planning and consultation. The Service had initiated consultation with the tribe regarding hunting by tribal members on lands within the boundaries of their former reservation, and other aspects of the tribal proposal described in the July 7, 1987 **Federal Register** (52 FR 25419).

2. Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

As described in 52 FR 25421, the Great Lakes Indian Fish and Wildlife Commission (which represents various Chippewa Indian Tribes) again requested special off-reservation hunting regulations for tribal members in Michigan and Wisconsin, and for the first time, requested special regulations for tribal members on ceded lands in Minnesota. The proposed regulations in Michigan would permit tribal members a daily bag limit of one more Canada goose than is usually permitted by Federal and State regulations, but other tribal regulations would be the same as established by Michigan. The State and Service concurred with the request, and it is made final in this rule.

The Wisconsin Department of Natural Resources raised some objections to the proposed regulations. The chief concern related to the adverse effects that the early season might have on the State's program to establish breeding populations of Canada geese, particularly on the Powell Marsh, where tribal members have hunted in the past. The Service has consulted further with both parties, and believes that the final regulations now adopted in this rule are a reasonable compromise that will permit tribal members to exercise their off-reservation hunting rights while providing appropriate safeguards against excessive harvest or displacement of resident geese. The Service notes that, if requested by Wisconsin officials, the Great Lakes Indian Fish and Wildlife Commission will provide technical assistance in daily censusing of geese on the Powell Marsh.

In an April 30, 1987 letter, the Minnesota Department of Natural Resources stressed that Minnesota is not bound by the *Voigt* decision that recognized off-reservation hunting rights in Wisconsin, and indicated that the State will not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of the rights involved. On May 28, 1987, Service representatives met jointly with officials from the Great Lakes Indian Fish and Wildlife Commission and the State in an effort to reach an agreement for special regulations that would apply to ceded lands in Minnesota. However, in a letter received by the Service on June 25, 1987, Minnesota reaffirmed its opposition to the special season. In a July 23, 1987 letter, the Mille Lacs Band of Chippewa Indians urged the Service to recognize

specific off-reservation regulations for Chippewa Indians in Minnesota. In his letter, Don Wedll, Mille Lacs Commissioner of Natural Resources, agreed with the Service's position that there was no biological reason to oppose the special season. Mr. Wedll also stated his belief that even though the State of Minnesota has authority under the 1918 Migratory Bird Treaty Act, tribal treaty rights were not explicitly placed under State authority within the Act and therefore remain separate and distinct.

As noted in 52 FR 25421, the United States Government has recognized the Indian hunting rights decided in the *Voigt* case, and the Service has negotiated acceptable hunting regulations in both Michigan and Wisconsin, even though the *Voigt* decision did not specifically address ceded lands outside Wisconsin. The Service views this as appropriate because the treaties construed by the Seventh Circuit Court of Appeals in *Voigt* cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. The Service has concluded that the tribal harvest in Minnesota likely will be too small to have an adverse effect on the migratory bird resource, and in view of this and the *Voigt* decision, has established final Federal regulations in this rule to allow for a special season for Chippewa Tribal members on certain ceded lands in Minnesota. However, the Service realizes that this issue is complex and that Minnesota may choose to consider whether a conservation need exists for more restrictive measures under State law.

3. Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho

Prior to the 1986–87 hunting season, and following consultation with tribal and Idaho officials, the Service established duck hunting regulations in a zone that included the Fort Hall Indian Reservation and surrounding off-reservation lands. The hunting season dates were different from those in the remainder of the State and were established at the request of the tribes and with the concurrence of the State. The Service approved the request because it seemed likely that the delayed opening date and continuous season requested by the tribes would provide some additional protection to pintails and mallards, whose numbers have declined markedly in recent years. The tribes have again asked for a delayed opening of the duck season and requested that the goose season also open on the same date. The Service has no objection to this request, and the regulations are made final in this rule. It should be noted, however, that Idaho may wish to establish hunting regulations in the same surrounding off-reservation portion of the zone that was approved for the 1986–87 hunting season. The Service has no objection to the continued use of this zone, provided that waterfowl hunting season dates are the same as on the Fort Hall Indian Reservation.

4. Confederated Salish-Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana

Since publication of 52 FR 25419, the Service has been in communication with the Confederated Salish-Kootenai Tribes and the Montana Department of Fish, Wildlife and Parks regarding migratory bird hunting regulations for nontribal members on the Flathead Indian Reservation. The tribes have requested the same waterfowl regulations as will be established by Montana in the Pacific Flyway portion of the State but do not wish to permit hunting of common snipe and mourning doves in the upcoming season. In an August 14, 1987 letter, the Montana Department of Fish, Wildlife and Parks, did not concur with the tribes' request to close the reservation to hunting of snipe and doves, stressing that there is no conservation need to do so. In his letter, James W. Flynn, Director, indicated that both the State of Montana and the Confederated Tribes assert jurisdiction in regard to fish and wildlife regulation within the boundaries of the reservation. He stated that this issue has yet to be finally resolved, either by judicial decision or by other means.

The interim guidelines employed by the Service to evaluate tribal requests for special migratory bird hunting seasons make it clear that, in the absence of a court decision, agreement, or other authority, State concurrence is required before the Service can approve a tribal request for regulations that would permit nontribal members to hunt on an Indian reservation on dates that differ from those established by the State in which the reservation is located. There is a particular need for tribal and State agreement on reservations where large acreages are owned by non-Indians (as is the case on the Flathead Indian Reservation). In light of the 1981 Supreme Court decision (*Montana* v. *United States*), which casts substantial doubt upon whether the Salish-Kootenai Tribes have full wildlife management authority on a significant portion of their reservation, and in the absence of State concurrence with the tribes' request, the Service finds that special regulations for nontribal hunters on the Flathead Reservation should not be adopted for the 1987–88 hunting season. Nevertheless, recognizing the complexity of the issue, the Service will, if requested, consult further with tribal and State officials with the aim of reaching a mutually acceptable agreement on migratory bird hunting issues. In the meantime, in the August 24, 1987 **Federal Register** (52 FR 31773) the Service has announced mourning dove season dates and bag limits selected by the State of Montana, and a later final rule will announce the regulations established by Montana under final Federal frameworks for snipe and waterfowl hunting seasons in the State. Whether or not mourning doves and snipe will be hunted on the reservation should be decided by the tribes and State. The Service notes that they were not hunted on the reservation last year, even though Federal regulations permitted a season.

Nontoxic Shot Regulations

On January 15, 1987 (52 FR 1636), the Service proposed nontoxic shot zones for the 1987–88 waterfowl hunting season. This proposed rule was sent to all affected tribes and to Indian organizations for comment. The final rule on nontoxic shot zones was published in the July 21, 1987 **Federal Register** (52 FR 27352), and it was effective on that date. Waterfowl hunters are advised to become familiar with tribal regulations regarding the use of nontoxic shot for hunting of waterfowl, coots, and certain other species in the 1987–88 hunting season. Attention is also directed to the July 21, 1987 **Federal Register** (52 FR 27352) which gave notice that if nontoxic shot zones are not approved when current Service guidelines and criteria indicate such zones are necessary to protect migratory birds, the Secretary of the Interior, acting through the Service, will not open those areas to hunting of waterfowl, coots, and certain other species.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

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Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and shall] "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *." Consequently, the Service initiated Section 7 Consultation under the Endangered Species Act for the proposed hunting season on Federal Indian reservations and ceded lands.

On August 3, 1987, the Office of Endangered Species notified the Office of Migratory Bird Management of its concurrence with the finding that the proposed action will not affect any listed or any critical habitat.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the **Federal Register** dated March 13, 1987 (52 FR 7900), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated August 3, 1987 (52 FR 28719).

Authorship

The primary author of this final rule is Fant W. Martin, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed hunting regulations for certain tribes were published on July 7, 1987, the Service established the longest period possible for public comment. In doing this, the Service recognized that time would be of the essence. The comment period provided the maximum amount of time possible while ensuring that a final rule was published before the beginning of the hunting season on September 1, 1987.

Therefore, under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), the Service prescribes final hunting regulations for certain tribes on Federal Indian reservations (including Indian Territory), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds other than waterfowl. However, final Federal framework for the waterfowl hunting season (opening and closing framework dates, daily bag and possession limits, etc.) are planned for publication on September 8, 1987. Because it was necessary to publish this document by September 1, 1987, most waterfowl regulations for the tribes listed here are shown as "within final Federal framework to be established."

The Service finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this final rule will therefore, take effect on September 1, 1987.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, 50 CFR Part 20 is amended as follows:

For the reasons set out in the preamble, Title 50, Chapter I, Subchapter B, Part 20, Subpart K, is amended as set forth below.

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103–1104.

[**Editorial Note.**—The following annual hunting regulations provided for by § 20.110 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature].

2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Penobscot Indian Nation, Penobscot Indian Territory, Old Town, Maine (tribal members and nonmembers).

(1) *Ducks.*[1] Same season dates, season length, and daily bag and possession limits as regular duck season in Maine.

(2) *Geese.*[2] Same season dates, season length, and daily bag and possession limits as regular duck season in Maine.

(3) *General conditions.* (i) Tribal members may hunt waterfowl (ducks and geese) on Penobscot Indian Territory under special sustenance regulations during the 1987–88 hunting season. Sustenance season dates are September 19 through November 30). Daily bag limits for ducks in the sustenance season are 4, of which no more than 1 can be black duck and no more than 2 can be wood ducks. Where sustenance and the regular State hunting seasons overlap, daily bag limits for tribal members shall be only the larger of the two bag limits. Daily bag limits for geese during the sustenance season shall be 3 Canada geese, 3 snow geese, or 3 in the aggregate.

(ii) Possession of ducks and geese during the tribal sustenance season are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's residence.

(iii) Tribal members shall comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking, except that during the sustenance season, tribal members shall be permitted to hunt from ½ hour before sunrise to ½ hour after sunset.

(iv) All tribal and nontribal waterfowl hunters 16 years of age or over must possess and carry on their persons a valid Migratory Bird Hunting and Conservation Stamp, or duck stamp, signed in ink across the face.

(v) Nontribal members hunting waterfowl on Penobscot Indian Territory shall comply with all Federal and State migratory bird hunting regulations. Special regulations established by the Penobscot Indian

[1] Final Federal framework to be established.

[2] See footnote 1 to paragraph (a)(1).

Nation also apply on Penobscot Indian Territory.

(b) Navajo Indian Reservation, Window Rock, Arizona (tribal members and nonmembers).

(1) *Ducks (including Mergansers).*[3]

Season dates: October 10 through December 6.

Daily bag and possession limits: Same as permitted Pacific Flyway States under final Federal frameworks.

(2) *Canada geese (season closed on other geese).*[4]

Season dates: December 26 through January 10.

Daily bag and possession limits: Same as permitted Arizona, New Mexico, and Utah under final Federal frameworks.

(3) *Other migratory game birds.*

(i) *Coots and Common Moorhens (Gallinule).*[5]

Season dates: October 10 through December 6.

Daily bag and possession limits: Same as permitted Pacific Flyway States under final Federal frameworks.

(ii) *Mourning doves.*

Season dates: September 1 through September 30.

Daily bag and possession limits: 10 daily. Possession limit 20.

(iii) *Band-tailed Pigeons.*

Season dates: September 1 through September 30.

Daily bag and possession limits: 5 daily. Possession limit 10.

(4) *General conditions.* Tribal and nontribal members will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his person a valid Migratory Bird Hunting and Conservation Stamp, or duck stamp, signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(c) Jicarilla Indian Reservation, Dulce, New Mexico (tribal members and nonmembers).

(1) *Ducks (including Mergansers).*[6]

Season Dates: Earliest opening date permitted Pacific Flyway States under final

Federal frameworks—November 30.

Daily bag and possession limits: Same as permitted Pacific Flyway States under final Federal frameworks.

(2) *Goose season closed on all species.*

(3) *General conditions.* Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his person a valid Migratory Bird Hunting and Conservation Stamp, or duck stamp, signed in ink across the face. Special regulations established by the Jicarilla Apache Tribe also apply on the reservation.

(d) *Colorado River Indian Reservation, Parker, Arizona (tribal members and nonmembers).*

(1) *Ducks (including Mergansers).*[7]

Season dates: Same as Colorado River Zone in California.

Daily bag and possession limits: Same as Colorado River Zone in California.

(2) *Geese.*[8]

Season dates: Same as Colorado River Zone in California.

Daily bag and possession limits: Same as Colorado River Zone in California.

(3) *Other migratory game birds.*

(i) *Coots and Common Moorhens (Gallinule).*[9]

Season dates: Same as for ducks in Colorado River Zone in California.

Daily bag and possession limits: Same as Colorado River Zone in California.

(ii) Common (Wilson's) Snipe.[10]

Season dates: Same as for ducks in Colorado River Zone in California.

Daily bag and possession limits: Same as Colorado River Zone in California.

(iii) *Mourning Doves and White-winged Doves.*[11]

Season dates: Same as Colorado River Zone in California.

Daily bag and possession limits: Daily bag limit is 10 and possession limit is 20, singly or in the aggregate of the two species.

(4) *General conditions.* Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his person a valid Migratory Bird Hunting and Conservation Stamp, or duck stamp, signed in ink across the face. Special regulations established by the Colorado River Indian Tribes also apply on the reservation.

(e) Fort Apache Indian Reservation, Whiteriver, Arizona (tribal members and nonmembers).

(1) *Ducks (including Mergansers).*[12]

Season dates: Latest closing date and longest season permitted Pacific Flyway States under final Federal frameworks.

Daily bag and possession limits: Same as permitted Pacific Flyway States under final Federal frameworks.

(2) *Geese.*[13]

Season dates: Latest closing date and longest season permitted Arizona under final Federal frameworks.

Daily bag and possession limits: Same as permitted Arizona under final Federal frameworks.

(3) *Other migratory game birds.*

(i) *Coots and Common Moorhens (Gallinule).*[14]

Season dates: Same as for ducks.

Daily bag and possession limits: Same as permitted Pacific Flyway States under final Federal frameworks.

(ii) *Common (Wilson's) Snipe.*

Season dates: Same as for ducks.

Daily bag and possession limits: 8 daily. Possession limit 16.

(iii) *Mourning Doves.*

Season dates: September 1–13 and November 27 through December 28.

Daily bag and possession limits:

September 1–13: Daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. Possession limit is 20, of which no more than 12 may be white-winged doves.

November 27 through December 28: 10 mourning doves only daily possession limit 20.

(iv) *White-winged Doves.*

Season dates: September 1–13.

Daily bag and possession limits: 6 daily. Possession limit 12.

(v) Band-tailed Pigeons.

Season dates: October 9 through November 7.

Daily bag and possession limits: 5 daily. Possession limit 10.

(4) *General conditions.* Tribal and nontribal members will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his person a valid Migratory Bird Hunting and Conservation Stamp, or duck stamp, signed in ink across the face. Special regulations established by the White Mountain Apache Tribe also apply on the reservation.

(f) Fort Hall Indian Reservation, Fort Hall, Idaho (nontribal members only).

(1) *Ducks (including Mergansers).*[15]

Season dates: Begin continuous season on October 10, with same season length as permitted Pacific Flyway States under final Federal frameworks.

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[3] See footnote 1 to paragraph (a)(1).
[4] See footnote 1 to paragraph (a)(1).
[5] See footnote 1 to paragraph (a)(1).
[6] See footnote 1 to paragraph (a)(1).
[7] See footnote 1 to paragraph (a)(1).
[8] See footnote 1 to paragraph (a)(1).
[9] See footnote 1 to paragraph (a)(1).
[10] See footnote 1 to paragraph (a)(1).
[11] See footnote 1 to paragraph (a)(1).
[12] See footnote 1 to paragraph (a)(1).
[13] See footnote 1 to paragraph (a)(1).
[14] See footnote 1 to paragraph (a)(1).
[15] See footnote (1) to paragraph (a)(1).

Daily bag and possession limits: Same as permitted Pacific Flyway States under final Federal frameworks.

(2) *Geese (Canada, Blue, Snow, White-fronted Geese, Black Brant).*

Season dates: Begin continuous season on October 10, with same season length permitted Idaho under final Federal frameworks.

Daily bag and possession limits: Same as permitted Idaho under final Federal frameworks.

(3) *Other migratory game birds.*[16]

(i) *Coots and Common Moorhen (Gallinule).*

Season dates: Same as for ducks.

Daily bag and possession limits: Same as permitted Pacific Flyway States under final Federal frameworks.

(ii) *Common (Wilson's) Snipe.*[17]

Season dates: Same as for ducks.

Daily bag and possession limits: 8 daily. Possession Limit 16.

(4) *General conditions:* Nontribal hunters will comply with all basic Federal Migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his person a valid Migratory Bird Hunting and Conservation Stamp, or duck stamp, signed in ink across the face. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(g) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (tribal members only).

(1) *Ducks (including Mergansers)*[18]

Wisconsin zone.

Season dates: Begin September 19. End with Closure of State duck season.

Daily bag and possession limits: Same as permitted Wisconsin under final Federal frameworks.

Michigan zone. Same dates, season length, and daily bag and possession limits established by Michigan under final Federal frameworks.

Minnesota zone. Same dates, season length, and daily bag and possession limits as permitted in Wisconsin Zone under final Federal frameworks.

(2) *Special Scaup-only season* [19]

Wisconsin and Minnesota zones. Same dates, season length, and daily bag and possession limits permitted Wisconsin under final Federal frameworks.

Michigan zone. Same dates, season length, and daily bag and possession limits established by Michigan under final Federal frameworks.

(3) *Canada Geese* [20]

Wisconsin and Minnesota zones.

Season dates: September 19-October 31.

Daily bag and possession limits: 3 daily. Possession Limit 6.

Michigan zone.

Season dates: Same opening date and season length established by the State in the Michigan Zone under final Federal frameworks.

Daily bag and possession limits: 3 daily. Possession Limit 6.

(4) *Other Geese (Blue, Snow, and White-fronted Geese).*[21]

Wisconsin and Minnesota zones. Same dates, season length, and daily bag and possession limits permitted Wisconsin under final Federal framworks.

Michigan zone. Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks.

(5) *Other migratory game birds*

(i) *Coots, Common Moorhens (Gallinule), and Purple Gallinules.*

Wisconsin and Minnesota zones.

Season dates: Begin September 19. End with closure of Wisconsin duck season.

Daily bag and possession limits: 15 daily, singly or in the aggregate. Possession limit 30.

Michigan zone. Same dates, season length, and daily bag and possession limits as established by Michigan under final Federal frameworks.

(ii) *Sora and Virginia Rails.*

Wisconsin and Minnesota zones.

Season dates: September 15 through November 19.

Daily bag and possession limits: 25 daily, singly or in the aggregate. Possession limit 25.

Michigan zone. Same date, season length, and daily bag and possession limits established by Michigan under final Federal frameworks.

(iii) *Common (Wilson's) Snipe.*

Wisconsin and Minnesota zones.

Season dates: September 15 through November 19.

Daily bag and possession limits: 8 daily. Possession limit 16.

Michigan zone. Same dates, season length, and daily bag and possession limits established by Michigan under final Federal frameworks.

(iv) *Woodcock.*

Wisconsin and Minnesota zones:

Season dates: September 15 through November 19.

Daily bag and possession limits: 5 daily. Possession limit 10.

Michigan zone.

Same dates, season length, and daily bag and possession limits established by Michigan under final Federal frameworks.

(6) *General conditions.*

(i) While hunting waterfowl, a tribal member must carry on his person a valid tribal waterfowl hunting permit.

(ii) Tribal members will comply with all basic Federal migratory bird hunting regulations. 50 CFR Part 20, and shooting hour regulations, 50 CFR Part 20, Subpart K.

(iii) Nontoxic shot will be required for all off-reservation hunting by tribal members of waterfowl coots, moorhens and gallinules.

(iv) Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

(v) *Wisconsin zone.*

Tribal members will comply with NR 10.09 (1)(a) (2) and (3), Wis. Adm. Code (shotshells), sec. NR 10.12 (1)(C), Wis. Adm. Code (shooting from structures), section NR 10.12 (1)(g), Wis. Adm. Code (decoys), and section 29.27 Wis. Stats. (duck blinds). Tribal members may hunt Canada geese at the Powell marsh from September 19 until a tribal quota of 25 Canada geese has been reached, at which time the Canada goose season will close. The season will reopen on September 25, or when daily censusing indicates that 300 Canada geese are in the area, whichever comes first. Thereafter, the tribal season will resume without a quota and with a daily bag limit of 3 Canada geese but will be closed from September 28–30. The season will reopen again on October 1 and end on October 31.

(vi) *Minnesota zone.* Tribal members will comply with M.S. 100.29, Subd. 18 (duck blinds and decoys).

(vii) Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with sec. NR 19.12, Wis. Adm. Code. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

Date: August 25, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-19886 Filed 8-27-87; 8:45 am]

BILLING CODE 4310-55-M

[16] See footnote (1) to paragraph (a)(1).
[17] See footnote (1) to paragraph (a)(1).
[18] See footnote (1) to paragraph (a)(1).
[19] See footnote (1) to paragraph (a)(1).
[20] See footnote (1) to paragraph (a)(1).
[21] See footnote (1) to paragraph (a)(1).

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WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Amendment to the Maturity Dockage System for Certain Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the maturity dockage system for Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins. Currently, handlers may acquire as standard raisins any lot of these raisins containing 40.0 percent to 49.9 percent Grade B or better raisins, by weight, under a maturity dockage system. This action will lower the minimum allowable percentage of Grade B or better raisins that handlers may acquire under a maturity dockage system, and will change the dockage factor applicable to raisin lots containing certain maturity levels.

EFFECTIVE DATE: August 31, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this final action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601–674), as amended, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 21 handlers and 5,000 producers of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins during the 1986–87 crop year. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having average annual gross revenues for the last three years of less than $100,000 and agricultural service firms, which would include handlers, are defined as those whose gross annual receipts are less than $3,500,000. The majority of California raisin producers and handlers may be characterized as small producers and handlers. This regulation will apply to all handlers of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins.

Handlers acquire and producers are paid according to the creditable fruit weight of raisins delivered. Lots of raisins containing 50.0 percent or more Grade B or better raisins are the most desirable. This amendment will lower the minimum allowable percentage of Grade B or better raisins that handlers may acquire from producers from 40.0 percent to 35.0 percent and change the weight dockage factor for lots below the 50.0 percent Grade B or better maturity level. If handlers acquire lots of raisins which contain amounts of Grade B or better raisins less than 50.0 percent, by weight, the delivery weight of such lots will be docked, thereby decreasing the payment to producers for that lot. Raisin lots delivered below the 35.0 percent Grade B or better level would be off-grade and require reconditioning. Producers would incur the reconditioning costs necessary to bring such lots within acceptable requirements. Currently, raisin lots delivered below the 40.0 percent Grade B or better level require such reconditioning.

The reporting and recordkeeping requirements under the raisin marketing order are incurred by handlers. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements are likely passed on to producers. Since reporting and recordkeeping functions are already used in connection with this quality requirement, there will not likely be an increase in these burdens. Department of Agriculture inspectors currently determine the percent of Grade B or better raisins in a lot. Thus, no additional costs of this type are expected.

Based on available information, the Administrator of the Agricultural Marketing Service has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

A proposed rule on this amendment was published in the **Federal Register** on July 16, 1987 (52 FR 26690) inviting written comments through July 27, 1987. No comments were received.

Raisin lots containing 50.0 percent or higher Grade B or better raisins are accepted by handlers as standard raisins. The maturity dockage system currently permits handlers to acquire as standard raisins lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins even though the lot has been determined to be off-grade because it contains fewer than 50.0 percent, by weight, of well-matured or reasonably well-matured raisins. Raisin lots containing less than 49.9 percent, by weight, of Grade B or better raisins are subject to a dockage factor. This factor reduces the weight of the lot by an amount approximating the weight of raisins needed to be removed in order for the balance of the lot to meet grade standards. Raisin lots containing 40.0 percent to 49.9 percent Grade B or better raisins are docked a 0.2 percent weight reduction for each 0.1 percent below 50.0

percent of Grade B or better raisins down to 40.0 percent.

The industry feels that the current maturity dockage system is too restrictive. Handlers can easily process raisin lots that have fewer Grade B or better raisins by blending them with a better quality lot to bring the combined lots up to acceptable quality standards. Also, the industry feels that the air stream sorter used for determining Grade B or better maturity is not an extremely accurate tool of measurement. The industry feels that the air stream sorter does not give a consistently accurate reading of the amount of Grade B or better raisins in a lot, especially when raisins are exposed to moisture. The Committee is currently conducting research to find a more accurate device for Grade B or better determination. The Committee has recommended these revisions in the maturity dockage system until another method of determination is developed.

The Committee has recommended that the minimum allowable percentage of Grade B or better raisins be lowered and three maturity levels be established for the purpose of applying an increasing dockage factor for lots containing fewer amounts of Grade B or better raisins. Raisins of these varietal types containing between 49.9 percent to 45.0 percent Grade B or better would be docked a 0.1 percent weight reduction for each 0.1 percent of Grade B or better raisins below 50.0 percent down to 45.0 percent. Producers delivering raisins between 44.9 percent to 40.0 percent Grade B or better would be docked an additional 0.2 percent weight reduction for each 0.1 percent of Grade B or better raisins below 45.0 percent down to 40.0 percent. Producers delivering raisins between 39.9 percent to 35.0 percent Grade B or better would be docked an additional 0.3 percent weight reduction for each 0.1 percent of Grade B or better raisins below 40.0 percent down to 35.0 percent. Lots containing 34.9 percent or less Grade B or better raisins would be off-grade and require reconditioning before they could be acquired as standard raisins by handlers.

This final rule is issued under Marketing Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The order is effective under the Act.

After consideration of all relevant matter presented (the information and recommendation submitted by the Committee and other available information), it is found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers will begin receiving the 1987–88 crop in mid-September. This final rule should apply to such shipments. Both handlers and producers need to plan their activities as soon as possible in view of these shipments of raisins. No useful purpose would be served by delaying the effective date of this action until 30 days after publication.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, California.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Paragraphs (a) and (b) of § 989.213 are revised, and paragraphs (c) and (d) are added to read as follows:

Subpart—Supplementary Regulations

* * * * *

§ 989.213 Maturity dockage.

(a) Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins containing from 35.0 percent through 49.9 percent, by weight, of well-matured or reasonably well-matured raisins may be acquired by a handler under a weight dockage system. The creditable weight of each lot of raisins acquired under the maturity dockage system shall be obtained by multiplying the applicable net weight or creditable weight (weight determined by applying the applicable weight adjustment factor for moisture) of the lot of raisins by the applicable dockage factor from the dockage table prescribed in paragraphs (b), (c) and (d) of this section.

(b) *Maturity dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins with 45.0 percent through 49.9 percent Grade B or better.*

Percent well-matured or reasonably well-matured	Dockage factor
50.0 or more	(1)
49.9	.999
49.8	.998
49.7	.997
49.6	.996
49.5	.995

[1] No dockage.

Note.—Percentages less than the last percentage shown in the table, down to 45.0 percent, shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment.

(c) *Maturity dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins with 40.0 percent through 44.9 percent Grade B or better:*

Percent well-matured or reasonably well-matured	Dockage factor
44.9	.948
44.8	.946
44.7	.944
44.6	.942
44.5	.940
44.4	.938

Note.—Percentages less than the last percentage shown in the table, down to 40.0 percent, shall be expressed in the same increments as the foregoing, and the dockage factor for each increment shall be .002 less than the dockage factor for the preceding increment.

(d) *Maturity dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins with 35.0 percent through 39.9 percent Grade B or better:*

Percent well-matured or reasonably well-matured	Dockage factor
39.9	.847
39.8	.844
39.7	.841
39.6	.838
39.5	.835
39.4	.832

Note.—Percentages less than the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .003 less than the dockage factor for the preceding increment. No dockage shall apply to lots of raisins containing 34.9 percent or less of well-matured or reasonably well-matured raisins.

Dated: August 25, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87-19888 Filed 8-28-87; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

NRC Reporting Requirements for Safeguards Events; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The NRC staff will conduct a meeting to assist affected licensees in their implementation of recently issued revisions to 10 CFR 73.71, "Changes to Safeguards Reporting Requirements," which become effective on October 8, 1987.

DATE: September 14, 1987.

ADDRESS: Holiday Inn of Bethesda (Versailles Rooms I and II), 8120 Wisconsin Avenue, Bethesda, MD 20014.

FOR FURTHER INFORMATION CONTACT: For reactor licensees: Nancy Ervin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-7855; or, for all other affected licensees: Priscilla A. Dwyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427-4773.

SUPPLEMENTARY INFORMATION: The primary purpose of this workshop is to further affected licensees' understanding of the NRC requirements regarding the reporting of safeguards events as described in the recently revised 10 CFR 73.71 (June 9, 1987; 52 FR 21651) and supporting guidance. Licensees most affected by the revision to 10 CFR 73.71 are those subject to §§ 73.20, 73.37, 73.50, 73.55, 73.60 or those possessing strategic special nuclear material and subject to § 73.67. The workshop will serve as a mechanism to address industry concerns and questions on the subject.

In order to allow more efficient use of question sessions, licensees are requested to submit questions of general interest in advance of the workshop to the appropriate contact noted above. In addition, licensees are requested to notify appropriate contacts of plans to attend as seating is limited to 300. The tentative agenda is shown below:

Morning Session

9:30 am Introductory Remarks
10:00-11:00 Revised Reporting Requirements: History, Purpose, and Comparison with Previous Requirements
11:00-11:15 Break
11:15-11:45 Generic Trend Analysis
11:45-1:00 Lunch

Afternoon Session

1:00-2:15 Determining Reportability—One Hour Events (Panel Discussion)
2:15-2:30 Break
2:30-4:00 Determining Reportability—Log Items (Panel Discussion)
4:00-4:15 Closing Remarks.

Persons other than NRC Staff and Licensee Representatives may observe the proceedings but will be permitted to participate in the discussions only as time will allow. Registration will be conducted prior to the meeting. It is anticipated the proceedings of the workshop will be published some time in the future as a guidance document for licensees. Copies of the supporting regulatory guide for this revised rule, Regulatory Guide 5.62, "Reporting of Safeguards Events," are being placed in NRC's Public Document Room, 1717 H Street NW., Washington, DC, and each Local Public Document Room throughout the United States for review by interested persons.

Dated at Bethesda, Maryland, this 26th day of August, 1987.

For the Nuclear Regulatory Commission.

Robert A. Erickson,

Chief, Reactor Safeguards Branch, Division of Reactor Inspection and Safeguards, Office of Nuclear Reactor Regulation.

[FR Doc. 87-19949 Filed 8-28-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 17929, Special Conditions No. 23-83-EA-11A]

Special Conditions; Aviation Safety Release Corp., Modified Univair Model 108-2 Airplane To Incorporate the Aviation Safety Release (ASR) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; amendment to special conditions.

SUMMARY: This final rule action amends Special Conditions No. 23-83-EA-11, issued on May 19, 1978, for the supplemental type certification of the Aviation Safety Release Corporation modifications to the Univair Model 108-2 Airplane. The FAA has determined that Special Conditions No. 23-83-EA-11, issued on May 19, 1978, do not adequately set forth requirements to assure the necessary level of safety for the installation, operation, and maintenance of the ASR System. The ASR System will have novel and unusual design features when compared to the state of technology envisioned in the original type certification regulations applied to the Univair Model 108-2 Airplane. This amendment assures that Special Conditions No. 23-83-EA-11 contain the airworthiness standards which the Administrator finds necessary to establish a level of safety equivalent to that provided by the airworthiness standards applicable to the Univair Model 108-2 Airplanes.

EFFECTIVE DATE: September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald K. Rathgeber, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Type Certification Basis

The type certification basis for the Univair Model 108-2 Airplane is Civil Air Regulations (CAR) Part 03, effective December 15, 1946, as amended by Amendments 03-1 through 03-3; and Special Conditions No. 23-83-AE-11, as amended by this action.

Background

On June 24, 1976, Mr. Dario J. Manfredi filed an application for a supplemental type certificate (STC) for the Univair Model 108-2 Airplane to install the Aviation Safety Release (ASR) System. The ASR System operates to jettison the wings and then parachute the rest of the airplane to the ground. The ASR System is intended for use as a last resort for the survival of the occupants and only in a situation where the airplane is disabled or there is no suitable landing site available.

The Univair Model 108-2 is a small, four-place, single-engine, high-wing airplane with a maximum certificated weight of 2,235 pounds.

To accommodate the ASR System, the necessary type design changes for the Univair Model 108-2 Airplane contain unusual design features for an airplane originally certificated to the requirements of Part 03 of the CAR. In

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view of these unusual design features, the applicable airworthiness requirements do not contain adequate or appropriate airworthiness standards, and special conditions are necessary to provide a level of safety equal to that established by the regulations incorporated by reference in the type design.

Special conditions may be issued and amended as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated, in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

On May 19, 1978, Special Conditions No. 23–83–EA–11 were issued after the applicant and interested persons were given an opportunity to participate in the rulemaking process. However, the applicant did not pursue supplemental type certification of the Univair Model 108–2 with the ASR System in accordance with § 21.17(b) of the Federal Aviation Regulations.

As a result of a similar project in which special conditions were issued in 1984, and a review of special conditions No. 23–83–EA–11, the FAA identified additional issues that needed to be addressed in the ASR special conditions to assure an acceptable level of safety. Therefore, the FAA issued a Notice of Proposed Amendment to Special Conditions No. 23–83–EA–11 in the **Federal Register** (52 FR 18573, dated May 18, 1987), which proposed substantive and format changes to the original special conditions.

The FAA proposed to add requirements addressing the inadvertent jettisoning of the parachute after it has been deployed to assure that inadvertent jettisoning of the parachute, which could result in a catastrophic situation for the occupants, is extremely improbable. This special condition does not mandate the use of a numerical analysis to determine that inadvertent jettisoning is extremely improbable. The applicant may use a numerical analysis to assist in a showing of compliance; however, adequate data may not be available for preparing a stand-alone numerical analysis. The applicant may use a rational analysis based on the identification of failure modes and the resulting consequences.

The FAA proposed that the applicant provide a seat belt and shoulder harness restraint system at each seat position to protect the occupants from serious head or upper torso injury due to flailing during parachute deployment or ground impact.

Since the ASR System incorporates the use of explosive charges as a part of the system design, the FAA proposed that the applicant properly label these charges and assure that safe handling, installation, and maintenance procedures for these charges are established.

The FAA proposed to add requirements for the establishment of a sequence for the operation of the ASR System to assure that the system will not be inadvertently activated. Inadvertent operation subjects the occupants of the airplane to a situation that is intended to occur only under the most extreme circumstances when no other alternatives for a safe landing exist.

The FAA proposed to require that the ASR System have the capability of being disarmed after being armed at any time prior to final system activation. This requirement is necessary to assure that the pilot has the alternative to safely continue the flight after arming the system, and to remove the final activation step from possible inadvertent operation when the pilot decides to continue the flight.

The FAA proposed that the applicant show that the parachute can be jettisoned after impact under various weather conditions, including high winds. This requirement is considered necessary to assure that the occupants in the fuselage are not endangered after the successful completion of the descent, as a result of the inflated parachute dragging the fuselage through a hostile terrain.

The FAA proposed that the applicant develop instructions for continued airworthiness for the ASR System which meet the requirements of § 23.1529. This special condition will assure that the unique maintenance inspection procedures for this system are detailed by the applicant.

Since the issuance of the original Special Conditions No. 23–83–EA–11, the FAA Small Airplane Certification Directorate standardized a new format for special conditions. In the notice, the FAA presented the proposed amended Special Conditions No. 23–83–EA–11 in this format.

In addition to the proposed amended special conditions, the FAA asked for commenters to reply to the following questions:

1. Are there hazards posed to the general public from the ASR System as a result of possible falling objects?

2. Does an airplane with an ASR System pose a hazard to other aircraft as a result of possible uncontrolled flight?

3. Should special operating rules and/or pilot training be required for operators of an airplane with an ASR System?

4. Should special ground handling procedures be developed for an airplane with an ASR System?

Discussion of Comments

Public participation in this rulemaking action was invited by Notice No. 23–ACE–32, which was published in the **Federal Register** (52 FR 18573, dated May 18, 1987), and one comment was received. The commenter, who is the applicant, responded to all four questions as well as taking issue with two of the proposed special conditions.

In response to the first question, which addressed the possibility of hazards posed to the general public by the ASR System from falling objects, the commenter notes that ASR claims that, in their system, the wings are released and permitted to fall free. The commenter contends that the ASR System is not to be employed except in an emergency when all conventional means of recovery have been exhausted; and, at that time, the choice is between having the entire airplane plummet downward or having the bulk of the airplane float downward by parachute with only the wings free to fall. The commenter also states that the wings do not fall freely, but achieve a certain amount of aerodynamic retardation when falling. The commenter contends that the hazard cannot be judged in absolute terms, but in relative terms; and, when viewed this way, concludes that, with the ASR System, the general public is in much less danger than it would be from an airplane not equipped with the ASR System where the entire weight of the airplane would be falling.

In response to the second question as to whether an airplane equipped with an ASR System poses a hazard to other aircraft as a result of possible uncontrolled flight, the commenter contends that uncontrolled flight arises out of an emergency condition and, in such a case, an airplane equipped with the ASR System is much less hazardous to other aircraft not equipped with the ASR System.

In response to the third question regarding the need for special operating rules and/or pilot training for operators of an airplane with the ASR System, the

commenter contends that an airplane equipped with the ASR System should not be considered significantly different from a pilot (or passenger) with a parachute strapped to the individual's back. The commenter notes that, in each case, under an emergency situation, a parachute is released; however, in the one case, a pilot or passenger floats earthward supported by a parachute, while in the other case, a fuselage with occupants floats earthward supported by a parachute. The commenter contends that the ASR System is designed so that the descent velocity of the fuselage and occupants is no greater than the descent velocity of one person supported by a parachute.

In response to the fourth question concerning the need to develop special ground handling procedures for an airplane with the ASR System, the commenter contends that there does not appear to be a necessity for such procedures. The commenter argues that, unless there is an inadvertent deployment of the ASR System, an airplane equipped with such a system is indistinguishable from an airplane without the system. The commenter notes that the applicant is required to show that the inadvertent deployment is virtually impossible.

The commenter disagrees with Special Condition 2, *Occupant Restraint*, which, as proposed, would require that each seat in the airplane be equipped with a seat belt and shoulder harness to protect the occupants from serious head or upper torso injury due to flailing during the parachute deployment or ground impact. The commenter contends that, in an emergency condition, the occupants in an airplane not having the ASR System would be subjected to more severe loads than they would if the ASR System were available. The FAA agrees that, when properly utilized, the loads on the occupants during an emergency deployment of the ASR System and the subsequent ground impact would be less severe than the results of an uncontrolled crash. However, this does not relieve the applicant from providing the means to protect the occupants from serious injury during parachute deployment and ground impact when the system is activated.

The deployment of a large emergency parachute will result in a rapid change in forward momentum of the airplane. The rapid deceleration of the airframe will result in unrestrained occupants being thrown forward in the airplane cabin. This unrestrained flailing of occupants in the cabin has the potential to result in serious injuries which are unacceptable to the FAA. As a result of an extensive crashworthiness program conducted in recent years, the FAA has developed data on the injury mechanisms associated with flailing during events of rapid deceleration. These data show the importance of seat belts and shoulder harnesses to protect occupants of small airplanes from severe head and upper torso injury during emergency conditions involving rapid changes in the airplane forward momentum.

The FAA disagrees with the commenter's contention that seat belts and shoulder harnesses are not necessary with the ASR System since occupants in an airplane not having the ASR System would be subject to more severe loads than they would in an airplane having the ASR System. In either case, the occupants may be subjected to conditions resulting in severe or fatal injuries unless the occupants are protected from severe impact with the cabin structure. For the ASR System to provide its intended safety functions, protecting occupants from serious or fatal flailing injuries is essential; therefore, Special Condition 2 is adopted, as proposed.

The commenter disagrees with Special Condition 1, *Flight Test Demonstration*, which would require that the ASR System be demonstrated in flight to satisfactorily perform its intended function, for both normal and inadvertent deployment at the critical flight conditions. The commenter contends that the ASR System should be viewed as equivalent, in principal, to an occupant or passenger having a personal parachute. To this extent, the commenter contends that the parachute manufacturer did not have to demonstrate that a passenger with a parachute should be able to bail out of an airplane safely under all flight conditions within the airplane flight envelope. The commenter states that ASR will demonstrate system reliability on the ground so that, in an emergency condition, the deployment of the parachute will enable the fuselage and occupants to contact the ground without serious injury. The commenter states that the design of the parachute will ensure that the descent velocity of the ASR System will be no greater than the descent velocity of a parachute supporting one person. The commenter further states that ground contact with the ASR System should involve less chance for serious injury than the use of a personal parachute since the fuselage will provide a certain amount of energy absorption. The commenter contends that the ASR System should not be judged in and of itself, but only in relation to an airplane not having an ASR System; and, since the occupants are safe with the ASR System installed, in comparison with the occupants in an airplane without the system, the question of the safety of occupants during ground contact should be withdrawn.

The FAA does not agree with the commenter's comparison of the ASR System to a personal parachute. The ASR System, when installed, will be a component of the airplane and must provide a level of safety compatible with the level of safety associated with the airplane. Therefore, the ASR System must be viewed as a new system being added to an airplane which is certificated in the normal category and approved for various flight operations, and the level of safety associated with the ASR System must be compatible with the other systems on the airplane. Because the ASR System utilizes unique components, such as a large emergency parachute and explosive devices to remove the wings, for which very little operating or reliability information is available, the FAA considers actual flight demonstrations an essential part of the data necessary for assuring an adequate level of safety for the ASR System. However, the wording of this special condition has been changed to require flight demonstration of the ASR System only within the flight envelope approved for the ASR System.

The FAA disagrees with the commenter's contention that the system can be adequately demonstrated by deployment on the ground. Ground testing will not include the aerodynamic and inertia forces present in actual flight operations. These forces may significantly affect the deployment of the parachute and the separation of the wings from the fuselage. Therefore, the modified Special Condition 1, *Flight Test Demonstration*, is retained. The flight test demonstration should be limited to that deemed necessary by the FAA to assure that the ASR System will safely perform its intended function.

The FAA disagrees with the commenter's suggestion that the safety of the ASR System deployment should be judged only in comparison with the condition of uncontrolled crash impact. Any system added to an airplane certificated in the normal category should provide a level of safety and reliability equal to the level of safety provided by the original certification basis of the airplane. This requires an evaluation of the function and reliability of that system with the objective of assuring this level of safety and not just better than would be expected in an

uncontrolled crash. In considering comparative safety, the commenter did not consider the hazards of inadvertent or accidental activation of the ASR System, which adds new failure modes to the airframe and must be considered in an overall assessment of safety.

Whenever the airworthiness regulations in the original certification basis for an airplane do not contain adequate or appropriate safety standards because of novel or unusual design features of the proposed modification, special conditions are prescribed for the supplemental type certification of the modified airplane. The FAA has carefully reviewed Special Conditions No. 23–83–EA–11, issued on May 19, 1978, and has concluded that they must be modified in order to maintain the necessary level of safety for installation, operation, and maintenance of the ASR System installed on the Univair Model 108–2 Airplane.

Conclusion

This action affects only the Univair Model 108–2 Airplanes incorporating the Aviation Safety Release (ASR) Emergency Parachute System. Special Conditions No. 23–83–11, as amended by this action are not rules of general applicability and apply only to the series and model of airplane identified in these final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

Citation

The authority citation for these Special Conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of the Amended Special Conditions

In consideration of the foregoing, Special Conditions No. 23–83–AE–11, issued May 19, 1978, for the type certification of the Univair Model 108–2 Airplane are amended to read as follows:

1. *Flight Test Demonstration.* The Aviation Safety Release (ASR) System must be demonstrated in flight to satisfactorily perform its intended function at the critical conditions within the flight envelope approved for the ASR System.

2. *Occupant Restraint.* Each seat in the airplane must be equipped with a restraint system, consisting of a seat belt and shoulder harness, which will protect the occupant from head and upper torso injury during the ASR System deployment and subsequent ground impact at the critical conditions.

3. *System Protection.* All components of the ASR System must be designed, suitably protected, or both, against deterioration due to weathering, corrosion, abrasion, or other causes. In addition, adequate provisions must be made for ventilation and drainage of the parachute compartment (and associated structure) to ensure the sound condition of the parachute.

4. *System Inspection Provisions.* (a) Instructions for continued airworthiness must be prepared for the ASR System which meet the requirements of § 23.1529 of this chapter.

(b) Adequate means must be provided to permit the close examination of the parachute and the ASR System components to ensure proper function, alignment, lubrication, and adjustment during all required inspections of the parachute and system components.

5. *Parachute Performance.* (a) The fuselage parachute must meet the applicable requirements of TSO–C23 for the critical airplane weights.

(b) It must be shown that, although the structure may be damaged, the fuselage impact with the ground will result in an occupant environment that will give each occupant every reasonable chance of escaping serious injury.

6. *Fuel Containment.* Each line that carries flammable fluid and that will be separated during operation of the ASR System must incorporate the means to prevent leakage of the fluid unless an acceptable fuel jettisoning system is installed.

7. *Lightning Strike Protection.* It must be shown by analysis and test, including tests under simulated or actual lightning strike, that inadvertent activation of the ASR System which can be catastrophic is extremely improbable.

8. *System Functions and Operations.* (a) The ASR System must be shown to function reliably, to perform adequately the functions for which it is used, and to function properly when installed. It must be adequately labeled as to its identification, function, and operating limitations, as applicable.

(b) It must be shown that the inadvertent jettisoning of the parachute, after it has been deployed, is extremely improbable.

(c) It must be shown that the explosive charges used in the ASR System are properly labeled and the handling, installation, and maintenance procedures for these components are safe.

(d) It must be shown that arming the system, activating the system, and jettisoning the parachute can only be accomplished in a sequence which would make inadvertent pilot operation extremely improbable.

(e) It must be shown that the system, after arming, may be disarmed at any time prior to final system activation.

(f) It must be shown that, after impact, the parachute can be jettisoned under various adverse weather conditions, including high winds.

9. *Operating Limitations.* An operating limitation must be prescribed that requires the fuselage parachute to be repacked at intervals no greater than 120 days. The parachute must be considered an auxiliary parachute in the context of § 105.43(a)(2) of this chapter.

Issued in Kansas City, Missouri on July 29, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–19869 Filed 8–28–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 21 and 23

[Docket No. 032CE, Special Condition No. 23–ACE–30]

Special Conditions; Fairchild Models SA227–AT and SA227–TT Airplanes (Type Certificate No. A5SW), Incorporating Emergency Lighting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for the Fairchild Aircraft Corporation Models SA227–AT and SA227–TT Airplanes incorporating an emergency lighting system as an aid for emergency evacuation. The applicable requirements for these airplanes do not contain adequate or appropriate safety standards for these systems. These special conditions contain the additional airworthiness standards which the Administrator finds necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1986, Fairchild Aircraft Corporation, Post Office Box 32486, San Antonio, Texas 78284, made application to the FAA for approval of type design changes necessary to incorporate an emergency lighting system on the Fairchild Aircraft Corporation Model SA227 Series Airplane.

Fairchild Aircraft Corporation has certified a 19-place airplane which complies with SFAR 41 and incorporates three window exits and a main cabin door for egress from the airplane. Their proposal is to change the interior configuration such that one window emergency exit is eliminated, to

decrease the passenger capacity from 19 to 10–12, and to install an emergency lighting system for use during emergency evacuation. Since the airplane type certification basis includes SFAR–41, an emergency evacuation demonstration is required, but an emergency lighting system is not required.

Past emergency evacuation demonstrations on these airplanes have shown that the most critical aspect of the evacuation is for the passengers to find the location of emergency exits. The passenger cabin length is approximately 25 feet with the entrance door at one end of the cabin and the window exits about in the middle of the cabin.

Since the installation of emergency lighting systems was not envisioned when the applicable requirements for the subject airplanes were promulgated, special conditions are being issued. Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

For the affected airplane, an emergency evacuation demonstration is required by the applicable regulations, but it does not contain a requirement or design criteria for emergency lighting systems to aid in emergency evacuation. If Fairchild Aircraft Corporation chooses to install and to use emergency lighting systems in the Model SA227 Series Airplane to aid the required emergency evacuation demonstration, these appropriate standards must be adopted to assure that the lighting used to qualify the airplane design during certification testing is available in survivable crashes and that future changes to the airplane design do not adversely affect the emergency lighting system.

Because the emergency lighting is not required, when an applicant chooses to provide such lighting, the FAA must evaluate such lighting relative to its intended function. If that intended function would affect the showing of compliance with an existing requirement, the FAA must assure that the additional system performs its intended function when the critical event occurs, in this case, an actual emergency evacuation. The FAA concluded that specific criteria is necessary.

Type Certification Basis

The type certification basis for the Fairchild Aircraft Corporation Model SA227–AT Airplane is as follows: Part 3 of the Civil Air Regulations, effective May 15, 1956, as amended by Amendments 3–1 through 3–6; § 23.511 as amended by Amendment 23–7, effective September 14, 1969; § 23.175(d) as amended by Amendment 23–14, effective December 20, 1973; special conditions outlined in FAA letters dated November 19, 1965, August 19, 1967, February 5, 1968, and April 4, 1968; Amendment C of SFAR No. 41, including paragraph 4(c) and the compartment interior requirements of § 25.853 (a), (b), (b–1), (b–2), and (b–3) effective September 26, 1978; Part 36, Appendix F, effective December 1, 1969, as amended by Amendments 36–1 through 36–6; special conditions number 23–ACE–12, effective September 8, 1986 and these special conditions.

The type certification basis for the Fairchild Aircraft Corporation Model SA227–TT Airplane is as follows: Part 3 of the Civil Air Regulations (CAR), effective May 15, 1956, as amended by Amendments 3–1 through 3–8; § 23.903(b) as amended by Amendment 23–17 effective February 1, 1977; special conditions outlined in FAA letters dated November 19, 1965, August 22, 1967, February 5, 1968, and April 4, 1968; SFAR No. 23.27; Amendment B of SFAR 41, including paragraph 4(c) and the compartment interior requirements of § 25.853 (a), (b), (b–1), (b–2), and (b–3) effective September 26, 1978; Part 36, Appendix F effective December 1, 1969, as amended by Amendments 36–1 through 36–6; special condition number 23–ACE–12, effective September 8, 1986 and these special conditions.

Discussion of Comments

Notice No. 23–ACE–30, was published in the **Federal Register** on March 30, 1987 (52 FR 10109). The comment period closed on April 30, 1987. Comments were received from Fairchild Aircraft Corporation and the Aerospatiale Helicopter Corporation, which were substantively equivalent to comments received in response to Notice No. 23–ACE–31, concerning emergency lighting in Fairchild Aircraft Corporation Model SA–227–AC Airplanes published in the **Federal Register** on March 30, 1987 (52 FR 10111).

The comments were disposed of in the final action on Notice No. 23–ACE–31 and are not being readdressed in this final action on special condition for the Fairchild Aircraft Corporation Model SA227–AT and Model SA227–TT Airplanes incorporating an emergency lighting system as an aid for emergency evacuation. The special conditions proposed in Notices No. 23–ACE–30 and No. 23–ACE–31 were substantively equivalent, as were the comments received. Therefore, changes to the special conditions resulting from the two notices are substantively equivalent.

Conclusion

This action affects only the Fairchild Models SA227–AT and SA227–TT Airplanes incorporating an emergency lighting system as an aid for emergency evacuation. It is not a rule of general applicability and applies only to the series and models of airplane identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these Special Conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for the Fairchild Aircraft Corporation Models SA227–AT and SA227–TT Airplanes when equipped with an emergency lighting system intended for use during emergency evacuation of the affected airplanes.

Emergency Lighting

1. If an emergency lighting system is installed and used as an aid in showing compliance with any applicable regulatory requirement, including emergency evacuation demonstrations, the following special conditions apply:

(a) The source of illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(b) There must be a caution light which illuminates in the cockpit when power is on in the airplane and the emergency lighting control device is not armed.

(c) The emergency lights must be operable manually from the flightcrew station and be provided with automatic activation. The cockpit control device must have an "on", "off", and "armed" position so that, when armed in the cockpit, the lights will operate by automatic activation. The emergency light must be armed or turned on during taxiing, takeoff, and landing. For automatic activation of the system, the sensor must—

(1) Activate when airplane's normal electrical power is lost, or

(2) Activate when subjected to a force of 5.0, +2, −0 g. and greater for a duration of 11, +5, −0 milliseconds and greater in the direction of the longitudinal axis of the airplane; must not be activated under conditions less severe; and, after activation, must remain activated when subsequently subjected to shock forces in any direction of up to 50 g and having durations up to 11, +5, −0 milliseconds; or

(3) Activate when subjected to alternate crash forces approved by the FAA; and

(4) Regardless of sensor type, must be capable of being reset by the flightcrew if activated by any occurrence other than a survivable crash.

(d) The energy supply to each emergency lighting unit must provide the required level of illumination for at least 10 minutes at the critical ambient condition after emergency landing.

(e) If rechargeable batteries are used as the energy supply for the emergency lighting system, the charging circuit must be designed to preclude inadvertent battery discharge into charging circuit faults. If the emergency lighting system does not include a charging circuit, then battery condition monitors are required.

(f) Components of the emergency lighting system, including batteries, wiring relays, lamps, and switches must be capable of normal operation after having been subjected to the inertia forces listed in § 23.561(b).

(g) The emergency lighting system must be designed so that a single probable failure, or probable system damage following a survivable crash, will not render the entire emergency lighting system inoperative. Single transverse vertical separation of the fuselage is considered a probable event during a survivable crash. The minimum emergency illumination, after a single probable failure, must be specified by the applicant and, during an emergency evacuation demonstration, the maximum emergency illumination must be equal to or less than the specified level.

Issued in Kansas City, Missouri on July 29, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-19868 Filed 8-28-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

Foreign Trade Statistics

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Foreign Trade Statistics Regulations (FTSR) to raise the present exemption for filing Shipper's Export Declarations (SEDs) (except for shipments requiring a validated export license) from $1000 to $1500. The exemption for shipments through the U.S. Postal Service will remain at $500.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Don L. Adams, Chief, Foreign Trade Division, Bureau of the Census, (301) 763-5342.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking, published in the **Federal Register** on April 24, 1987 (13714-13715), proposed amending the FTSR to raise the value limit for the exemption from SED filing requirements. Because this amendment affected the reporting requirements, interested persons were given 60 days from the date of publication in the **Federal Register** (April 24, 1987 to June 23, 1987) to submit their comments regarding the notice.

Discussion of Major Comments

The Census Bureau received 12 comments regarding the proposed amendment to the FTSR. Nine responded favorably in that the loss of statistical detail is offset significantly by the savings in paperwork. Three of the comments objected to the amendment on the basis of losing data for air cargo shipments that are generally "small value/weight shipments." However, one small package carrier "strongly supports" the amendment in that it significantly reduces the amount of documentation necessary with a minimal loss of statistical detail.

Two of the respondents suggested that levels of $2000 and $2500 be adopted, stating that these higher levels would generate additional savings for the business community and would more than offset the data loss. Additionally, the $1500 exemption level will affect a small percentage of commodities due to rising costs.

One respondent suggested that the amendment be made effective on the first of the given month to accommodate those using automated means of filing and preparing the SED.

Regulatory Impact Analysis and Information Collection

This is not a major rule in accordance with the criteria set forth in Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. Pursuant to the provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), the General Counsel of the Department of Commerce certified to the Small Business Administration that this amendment will not have a significant economic effect on a substantial number of small entities because it raises the exemption level, thereby reducing the reporting requirements of smaller entities. The collection of this information has been approved by the Office of Management and Budget under control numbers 0607-0001, 0607-0018, 0607-0150, and 0607-0152. Moreover, this amendment imposes no additional burden on the public, thus satisfying the requirements of the Paperwork Reduction Act of 1980.

This Final Rule is being made effective immediately because it raises the value limit for the exemption for SED requirements from $1,000 to $1,500.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Reporting and recordkeeping requirements.

Amendment to the Regulations

The Foreign Trade Statistics Regulations (15 CFR Part 30) are amended as set forth below.

PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for 15 CFR Part 30 continues to read as follows:

Authority: Secs. 30.1 to 30.95 issued under R.S.161:(5 U.S.C. 301); Reorganization Plan No. 5 of 1950, 15 FR 3174, 64 Stat. 1263; Department of Commerce Order No. 85, June 21, 1962, 27 FR 6397. Interpret or apply 76 Stat. 951.77A Stat. (13 U.S.C. 301-307; 19 U.S.C. 1202, 1484(e)), unless otherwise noted.

2. Section 30.55(h) is amended by changing "$1000" wherever it appears in this section to "$1,500," so that as revised, § 30.55(h) reads as follows:

§ 30.55 Miscellaneous exemptions.

* * * * *

(h) Shipments (except shipments requiring a validated export license and excluding shipments through the U.S. Postal Service) between the United States and Puerto Rico, to the Virgin Islands of the United States, and to all countries except countries prohibited by the Export Administration Regulations of the Office of Export Administration (15 CFR Parts 368-399) [8] where the value of the commodities classified under a single Schedule B number and shipped on the same exporting carrier from one exporter to one importer is $1,500 or under: *Provided, however,* That this exemption shall be conditioned upon the filing of such reports as the Bureau of the Census shall periodically require to

[8] County groups are established and maintained by the Office of Export Administration. See Export Administration Regulations (15 CFR Parts 368-399) for lists of countries included in each country group.

compile statistics on $1,500-and-under shipments.

* * * * *

Dated: August 10, 1987.

John G. Keane,

Director, Bureau of the Census.

I concur:

Francis A. Keating II,

Assistant Secretary, Department of the Treasury.

[FR Doc. 87-19775 Filed 8-28-87; 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-256; Ref. Notice No. 619]

Ozark Highlands Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has decided to establish a viticultural area in south central Missouri, to be known as "Ozark Highlands." This decision is the result of petition from the Ozark Highland Vintners, an association of seven bonded wineries in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising enables winemakers to label wines more precisely and helps consumers to better identify the wines they purchase.

EFFECTIVE DATE: September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW, Washington, DC 20226; (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

Establishment of the "Ozark Highlands" viticultural area was proposed to ATF in a petition prepared by Mr. Laurence R. Carver of the Carver Wine Cellar, Rolla, Missouri. Mr. Carver submitted the petition on behalf of the Ozark Highland Vintners, an association of seven Missouri wineries, of which the Carver Wine Cellar is one. All seven of the bonded wineries forming the Ozark Highland Vintners are located in the viticultural area. An eighth winery in the area is not a member of that association. The "Ozark Highlands" area includes portions of eleven Missouri counties, namely, Phelps, Maries, Osage, Gasconade, Franklin, Crawford, Texas, Shannon, Dent, Reynolds, and Pulaski. The area contains an estimated 2,000 square miles, within which there are approximately 500 acres planted to winegrapes. (Another 500 acres are in table grapes.) Grapes have been grown in the area since 1898, and commercial winemaking dates from the 1930's. The new viticultural area is located entirely within the boundaries of the approved "Ozark Mountain" viticultural area.

Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 619, in the **Federal Register** on February 9, 1987 (52 FR 4036). That notice proposed establishment of the "Ozark Highlands" viticultural area with boundaries approximately as stated in the petition. The notice also solicited public comment concerning the proposed viticultural area.

Public Comment

In response to the notice of proposed rulemaking, ATF received one public comment. That comment, from Mr. Mario A. Pertici of St. Louis, Missouri, expressed full approval of the "Ozark Highlands" area as proposed in Notice No. 619. Accordingly, this Treasury decision establishes the "Ozark Highlands" viticultural area with the name and boundaries proposed in that notice.

Name of the Area

On occasion, the name "Ozark Highlands" has been used synonymously with "Ozark Mountains" to refer to the entire Ozark region, encompassing most of southern Missouri and northern Arkansas. Examples of this usage can be seen in *The Geography of the Ozark Highland of Missouri* by Carl O. Sauer, University of Chicago Press, 1920, and *Early History of the Northern Ozarks* by Gerard Schultz, M.A., Midland Printing Company, 1937.

In recent years, however, the name "Ozark Highlands" has developed an additional meaning. Due to the efforts of the Ozark Highland Vintners, this name has come to refer specifically to the more limited area being established as a viticultural area by this Treasury decision. To demonstrate the prevalence of this narrower meaning, the petitioner submitted more than a dozen newspaper clippings and magazine articles relating to wine production in the "Ozark Highlands" area. In each instance, the name "Ozark Highlands" refers to the viticultural area established by this Treasury decision, not to the entire Ozark region.

One such article even included a map, pinpointing the location of the viticultural area within the State of Missouri. The articles were taken from well-known local and national publications, including the *St. Louis Post-Dispatch* and *Wines and Vines.*

Under 27 CFR 4.30(a) and 4.64(a)(1), no wine label or advertisement may be misleading. Notice No. 619, while requesting public comment generally concerning the name of the proposed area, also inquired specifically as to whether the name "Ozark Highlands" would be misleading or confusing, in view of the fact that a viticultural area has already been established in the Ozark region under the name "Ozark Mountain" (T.D. ATF-231, 51 FR 24142). The sole commenter expressed his opinion that "Ozark Highlands" would be the "perfect" name for the area proposed in Notice No. 619.

ATF agrees that the name "Ozark Highlands" will not be misleading, when used in wine labeling and advertising to refer to the area established by this Treasury decision. The evidence indicates that this name will not be likely to confuse a typical consumer of "Ozark Highlands" wines. The broad meaning of "Ozark Highlands" (having reference to the entire Ozark region) seems to be found primarily in geological and geographical treatises; whereas the narrower meaning is found in publications having wide popular distribution (e.g. newspapers), and in contexts relating to wine and viticulture. Moreover, the precise delimitation of "Ozark Mountain" and "Ozark Highlands" in regulations, as separate and distinct viticultural areas, will undoubtedly alleviate any remaining

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possibility of confusion. (This is one of the purposes for the establishment of American viticultural areas with boundaries defined by regulation.)

Therefore, ATF believes that the regulatory requirement for evidence supporting the name "Ozark Highlands" has been met, and that the use of this name in wine labeling and advertising will not be misleading.

Geography of the Area

Geographically, the "Ozark Highlands" viticultural area constitutes "the region formed by the undissected northern uplands of the Ozark plateau" (to quote the petition). This region has several distinguishing geographical features, the most striking of which is its topography. Topographically, the new viticultural area consists of an elevated plateau, which is surrounded by highly dissected river and stream valleys. Relative to surrounding areas, therefore, the "Ozark Highlands" are flat. They are also higher in elevation than their immediate surroundings. One effect of this topography on the viticulture of the area has been described by the petitioner as follows:

"The higher elevations are often in the form of flat to rolling 'ridge tops' producing prominent and completely unshaded hilltops that are excellent sites for vineyards." To demonstrate this topographical distinction, the petitioner submitted a map titled "Topography of Missouri," prepared in 1978 by the Geology and Land Survey of the Missouri Department of Natural Resources. This map shows the "Ozark Highlands" area to be "Isolated Rolling Plains," which are surrounded by "Highly Dissected Plateaus." The topographical distinction is also apparent by examination of contour lines of the U.S.G.S. maps on which the area appears. (Those maps are listed in § 9.115, as added by this Treasury decision.)

The "Ozark Highlands" can also be distinguished from surrounding areas by soil. To demonstrate this distinction, the petitioner submitted a publication of the U.S. Department of Agriculture's Soil Conservation Service, entitled *Missouri General Soil Map & Soil Association Descriptions.* This publication shows that the soils of the Lebanon-Hobson-Clarksville series are especially distinctive of the "Ozark Highlands" area. This soil series occurs extensively within the viticultural area, but is found in only a few isolated spots outside of it. Other soils in the area include the Gerald-Union-Goss series and the Hobson-Coulstone-Clarksville series. The latter series occurs to a limited extent within the area, but it becomes predominant immediately outside of the area. Distinctive soil patterns often reflect distinctive underlying geologic structures. That this is so in the "Ozark Highlands" is demonstrated by a map called "Geologic Map of Missouri," published in 1979 by the Missouri Geological Society. A copy of this map was submitted by the petitioner. It shows that the soil of the proposed viticultural area is predominantly derived from the Roubidoux Formation, with some Smithville Formation and Pennsylvanian Undifferentiated. That pattern contrasts with the Gasconade Dolomite soil in many of the immediately surrounding areas.

Finally, the "Ozark Highlands" are also distinguished from surrounding areas on the basis of climate. The petition states: "These upper portions are relatively frost-free for longer periods of the year. The cooler frost-causing air in the Spring and Fall of the year flows down the hillsides from the higher to the lower elevations, especially into the deeply trenched river valleys. This leaves the . . . Highlands relatively frost free as compared to the lower elevations."

Boundaries of the Area

The natural boundaries of the "Ozark Highlands" viticultural area are extremely convoluted. It would be impossible to define those boundaries precisely and functionally by features that appear on the applicable U.S.G.S. maps. Accordingly, this Treasury decision prescribes boundaries that define the area as closely as practicable on those maps. The boundaries reflect the location of the "Ozark Highlands" on land generally over 1,000 feet in elevation, between a number of major rivers and streams. Those rivers and streams are: The Big Piney, Gasconade, Bourbeuse, Meramec, and Current Rivers, and Jack's Fork. The boundaries include all land associated with the geographical features distinguishing the area, as discussed above under GEOGRAPHY OF THE AREA. See § 9.115, added to regulations by this Treasury decision, for a complete description of the boundaries. These boundaries place the "Ozark Highlands" viticultural area entirely within the approved "Ozark Mountain" viticultural area. In establishing a viticultural area based on geographical features that affect viticultural features, ATF recognizes that the distinctions between a smaller area and its surroundings are more refined than the differences between a larger area and its surroundings. It is possible for a large viticultural area to contain smaller approved viticultural areas, if each area fulfills the requirements for establishment of a viticultural area.

Miscellaneous

ATF does not want to give the impression by approving "Ozark Highlands" as a viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct but not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage can only come from consumer acceptance of "Ozark Highlands" wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule, because it will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of Feb. 17, 1981, the Bureau has determined that this final rule is not a major rule, since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule, because no

requirement to collect information is imposed.

Drafting Information

The principal author of this document is Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Issuance

Accordingly, 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph A. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. B. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.115, to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.115 Ozark Highlands.

* * * * *

Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.115, which reads as follows:

§ 9.115 Ozark Highlands.

(a) *Name.* The name of the viticultural area described in this section is "Ozark Highlands."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Ozark Highlands viticultural area are three U.S.G.S. maps of the 1:250,000 series. They are titled:

(1) Rolla, Missouri; Illinois, 1954 (revised 1969).

(2) St. Louis, Missouri; Illinois, 1963 (revised 1969).

(3) Springfield, Missouri, 1954 (revised 1969).

(c) *Boundary*—(1) *General.* The Ozark Highlands viticultural area is located in south central Missouri. The area comprises portions of the following counties: Phelps, Maries, Osage, Gasconade, Franklin, Crawford, Texas, Shannon, Dent, Reynolds, and Pulaski. The beginning point of the following boundary description is the junction of Little Piney Creek and the Gasconade River, near Jerome, Missouri (in the northwest corner of the Rolla map).

(2) *Boundary Description*—(i) From the beginning point, the boundary goes northward along the Gasconade River to the latitude line 38°00′ (the dividing line between the Rolla and St. Louis maps);

(ii) Then eastward along that latitude line to U.S. Highway 63;

(iii) Then northward along U.S. 63 to Spring Creek;

(iv) Then north-northwestward along Spring Creek to the Gasconade River;

(v) Then northward along the Gasconade River to a power transmission line (less than 1 mile north of Buck Elk Creek);

(vi) Then eastward and east-northeastward along that power transmission line to Missouri Route 19;

(vii) Then southward along Route 19 to the Bourbeuse River;

(viii) Then east-northeastward along the Bourbeuse River to the range line dividing R. 2 W. and R. 1 W.;

(ix) Then southward along that range line to the Meramec River;

(x) Then southwestward along the Meramec River to Huzzah Creek;

(xi) Then southward along Huzzah Creek to Dry Creek (on the Rolla map, where Missouri Route 8 crosses Huzzah Creek);

(xii) Then southward along Dry Creek to Cherry Valley Creek;

(xiii) Then south-southwestward along Cherry Valley Creek to Missouri Route 19;

(xiv) Then southward and southwestward along Route 19 to Crooked Creek;

(xv) Then northwestward along Crooked Creek to the Meramec River;

(xvi) Then southward along the Meramec River to Hutchins Creek;

(xvii) The southeastward along Hutchins Creek to its source near Missouri Route 32, across from the Howes Mill Post Office;

(xviii) Then in a straight line toward the Howes Mill Post Office to Route 32;

(xix) Then eastward along Route 32 to the range line dividing R. 3 W. and R. 2 W.;

(xx) Then southward along that range line to the township line dividing T. 33 N. and T. 32 N.;

(xxi) Then westward along that township line (which coincides, in R. 3 W., with the Reynolds County/Dent County line) to the boundary of Clark National Forest;

(xxii) Then generally southward along that national forest boundary to the Dent County/Shannon County line;

(xxiii) Then westward along that county line to the Current River;

(xxiv) Then southeastward along the Current River to Missouri Route 19;

(xxv) Then southward along Route 19 to Jack's Fork;

(xxvi) Then westward, southwestward and northwestward along Jack's Fork, taking the North Prong, to its northwesternmost source;

(xxvii) Then in a straight line northwestward to the southeasternmost source of Hog Creek;

(xxviii) Then northwestward along Hog Creek to the Big Piney River (on the Springfield map);

(xxix) Then northward along the Big Piney River to the township line dividing T. 35 N. and T. 36 N.;

(xxx) Then eastward along that township line to Little Piney Creek (on the Rolla map);

(xxxi) Then northward and westward along Little Piney Creek to the beginning point.

Signed: August 10, 1987.

W. T. Drake,

Acting Director.

Approved: August 13, 1987.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Trade, and Tariff Enforcement).

[FR Doc. 87-19790 Filed 8-28-87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 9

[Order No. 1210-87]

Revision of Regulations Governing the Remission or Mitigation of Civil and Criminal Forfeitures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order revises the regulations applicable to the handling of petitions for remission or mitigation of forfeitures by the Criminal Division, the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the United States Marshals Service. It consolidates and clarifies the standards and procedures used in handling such petitions in judicial and administrative forfeitures, and it incorporates the use of the recently established Department of Justice Assets Forfeiture Fund as the repository for amounts realized from forfeitures under statutes enforced or administered by the Department of Justice. This revision also will permit payment of post-seizure interest to innocent petitioners holding liens on property forfeited, and, under certain limited circumstances, will permit payments to innocent general creditors whose debts relate to property forfeited.

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DATES: This order is effective August 31, 1987, but shall apply only to petitions for remission or mitigation of forfeiture submitted pursuant to 28 CFR 9.3(a) or 9.4(a) on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Brad Cates, Director, Asset Forfeiture Office, Criminal Division, Department of Justice, Washington, DC 20530. Telephone: (202) 786–4950.

SUPPLEMENTARY INFORMATION: This order is not a rule within the meaning of either Executive Order 12291, section 1(a), or the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Lists of Subjects in 28 CFR Part 9

Administrative practice and procedure, Seizures and forfeitures.

By virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509, 510, and 524, Title 28 of the Code of Federal Regulations is hereby amended to revise Part 9 as follows:

PART 9—REMISSION OR MITIGATION OF CIVIL AND CRIMINAL FORFEITURES

Sec.

9.1 Purpose and scope.
9.2 Definitions.
9.3 Procedure relating to petitions in judicial forfeitures.
9.4 Procedure relating to petitions in administrative forfeitures.
9.5 Criteria governing remission and mitigation.
9.6 Provisions applicable to particular situations.
9.7 Terms and conditions of remission of judicial and administrative forfeiture.

Authority: 28 U.S.C. 509, 510, and 524. 5 U.S.C. 301; Reorganization Plan No. 1 of 1968.

§ 9.1 Purpose and scope.

The following definitions, regulations and criteria are designed to reflect the intent of Congress relative to the remission or mitigation of forfeiture of certain property as set out in section 1618 of Title 19, United States Code, and are applicable only to those civil and criminal forfeitures which arise under statutes in relation to which the Attorney General has assigned remission or mitigation functions to the Criminal Division, the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, or the United States Marshals Service (§§ 0.55(d), 0.85, 0.100, 0.105, and 0.111 of this title).

§ 9.2 Definitions.

As used in this part:

(a) The term "appraised value" means the estimated price at the time and place of seizure if such or similar property were freely offered for sale.

(b) The term "Attorney General" means the Attorney General of the United States or the designee of the Attorney General of the United States.

(c) The term "beneficial owner" means a person with actual use of, as well as an interest in, the property subject to forfeiture.

(d) The term "determining official" means the official who has the authority to grant or deny petitions for remission or mitigation of forfeitures of property incurred under the laws referred to in § 9.1.

(e) Whenever the term "Director, Asset Forfeiture Office" is used in these regulations, the power or responsibility referred to may be exercised by the Attorney General, the Deputy Attorney General, the Associate Attorney General, the Assistant Attorney General of the Criminal Division, any Deputy Assistant Attorney General of the Criminal Division, or any duly authorized Acting Director, Asset Forfeiture Office.

(f) The term "general creditor" means one whose claim or debt is not secured by a specific right to obtain satisfaction against the particular property subject to forfeiture.

(g) The term "lienholder" means a creditor whose claim or debt is secured by a specific right to obtain satisfaction against the particular property subject to forfeiture.

(h) The term "net equity" means the amount of a lien-holder's monetary interest in property subject to forfeiture. Net equity is to be computed by determining the amount of unpaid principal and unpaid interest at the time of seizure, and by adding to that sum unpaid interest calculated from the date of seizure through the last full month prior to the date of the notification granting the petition. The rate of interest to be used in this computation will be the annual percentage rate specified in the security agreement which is the basis of the lienholder's interest. In this computation, however, there shall be no allowances for unearned extended warranty, insurance, or service contract charges incurred after the date of seizure, nor allowances for dealer's reserve, attorney's fees, or other similar charges.

(i) The term "owner" means the person who holds primary and direct title to the property seized for forfeiture. However, even though a person may be an "owner" of property, such person may not have sufficient actual beneficial interest in the property to support a petition if the facts indicate that another person had dominion and control over the property. The mere existence of a community property interest without proof of financial contributions to the purchase of the property will not be deemed a sufficient interest to support a petition.

(j) The term "person" means an individual, partnership, corporation, joint business enterprise, or other entity capable of owning property.

(k) The term "petition" means the petition for remission or mitigation of forfeiture. This includes a petition for restoration of the proceeds of sale of forfeited property and a petition for value of the forfeited property placed into official use.

(l) The term "petitioner" means the person applying for remission or mitigation of the forfeiture of seized property.

(m) The term "property" means property of any kind capable of being owned or possessed.

(n) The term "record" means: A series of arrests for related crime (unless the user was acquitted or charges were dismissed for lack of evidence); a conviction for related crime or completion of sentence within ten years of the acquisition of the property; or two convictions for related crime at any time in the past.

(o) The term "related crime" means any crime similar in nature to that which gives rise to the seizure of property for forfeiture, for example, where property is seized for a violation of the Federal laws relating to drugs, a "related crime" would be any previous offense involving a violation of the Federal laws relating to drugs or the laws of any State or political subdivision thereof relating to drugs.

(p) The term "violator" means the person whose use of the property in violation of the law subjected such property to seizure for forfeiture.

§ 9.3 Procedure Relating to Petitions in Judicial Forfeitures.

(a) A petition for remission or mitigation of judicial forfeiture shall be addressed to the Attorney General, and shall be sworn to by the petitioner, or by petitioner's counsel upon information and belief, and shall be submitted in triplicate to the United States Attorney for the judicial district where the forfeiture proceedings are brought.

(b) Petitions shall be sworn and shall include the following information in clear and concise terms:

(1) A complete description of the property, including model and serial numbers, if any, and the date and place of seizure;

(2) The interest of the petitioner in the property, as owner, mortgagee or otherwise, to be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(3) The facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify remission or mitigation.

(c) Upon receipt of a petition, the United States Attorney shall direct the seizing agency to investigate the merits of the petition and to submit a report thereon. Upon receipt of such report, the United States Attorney shall forward a copy thereof together with the petition and a recommendation as to allowance or denial of the petition to the Director, Asset Forfeiture Office, Criminal Division.

(d) Upon receipt of a petition and report thereon, the Asset Forfeiture Office of the Criminal Division shall prepare a report based upon the allegations of the petition and the report of the seizing agency. No hearing shall be held. Upon the basis of the report prepared in this Office, the Director of the Office shall either grant the petition by remission or mitigation of the forfeiture or shall deny it.

(e) If the Director, Asset Forfeiture Office, grants a petition or otherwise mitigates the forfeiture, appropriate notices of such action shall be mailed to the petitioner or petitioner's attorney, to the appropriate United States Attorney, the United States Marshals Service, and the appropriate seizing agency. The United States Attorney shall be advised of the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures to be followed in order for the petitioner to obtain a release of the property, or, in the case of a chattel mortgagee, and at the petitioner's option, to obtain his net equity in said property. The Director of the Office shall advise the petitioner or petitioner's attorney to confer with the United States Attorney as to such terms and conditions. The United States Attorney shall confer with the office of the agency which submitted the report on the petition regarding the release and shall coordinate disposition of the property with that office and the United States Marshals Service.

(f) If the Director, Asset Forfeiture Office, denies a petition, appropriate notices of such action shall be mailed to the petitioner or petitioner's attorney, to the appropriate United States Attorney, and to the appropriate seizing agency. Such notice shall specify the reason that the petition was denied. The notice also shall advise the petitioner or petitioner's attorney that a request for reconsideration of the denial of the petition may be submitted to the Director, Asset Forfeiture Office, in accordance with paragraphs (k) through (n) of this section.

(g) A petition for remission of the proceeds from the sale of forfeited property or for the appraised value of forfeited property, when the forfeited property has been retained or delivered for official use of a government agency, may be submitted in cases in which the petitioner: (1) Did not know of the seizure prior to the entry of a final order of forfeiture; and (2) was in such circumstances as prevented petitioner from knowing thereof. Such a petition must be submitted pursuant to paragraph (a) of this section and within ninety (90) days from the date the property is sold or otherwise disposed of.

(h) The Director, Asset Forfeiture Office, shall not accept a petition in any case in which a similar petition has been administratively denied by the seizing agency prior to the referral of the case to the United States Attorney for the institution of forfeiture proceedings.

(i) The Director, Asset Forfeiture Office, shall accept and consider petitions submitted in judicial forfeiture proceedings under the Internal Revenue liquor laws only prior to the time a decree of forfeiture is entered. Thereafter, District Courts have exclusive jurisdiction.

(j) In all other forfeiture cases, the Director, Asset Forfeiture Office, shall accept and consider petitions until the property is sold or placed in official use or otherwise disposed of according to law. The notice of seizure of and intent to forfeit the property will advise prospective petitioners that they should submit their petitions within 30 days after they receive the notice.

(k) Within 10 days from the receipt of the denial of a petition for remission or mitigation, a request for reconsideration of the denial, based on evidence recently developed or not previously considered, may be submitted to the Director, Asset Forfeiture Office. The applicant shall simultaneously submit a copy to the appropriate United States Attorney.

(l) Upon receipt of a copy of a request for reconsideration of the denial of a petition, the United States Attorney shall withhold further action in the case pending advice of the action taken on the request by the Director, Asset Forfeiture Office.

(m) If the United States Attorney does not receive a copy of a request for reconsideration within the prescribed period, the United States Attorney shall proceed with the forfeiture.

(n) Only one request for reconsideration of a denial of a petition shall be considered.

§ 9.4 Procedure Relating to Petitions in Administrative Forfeitures.

(a) A petition for remission or mitigation of forfeiture of property that is subject to administrative forfeiture shall be addressed to the Director of the Federal Bureau of Investigation (FBI) or to the Administrator of the Drug Enforcement Administration (DEA), or to the Regional Commissioner of the Immigration and Naturalization Service (INS) depending upon which agency seized the property. Such a petition shall be filed in triplicate with the local or regional office of the seizing agency that covers the judicial district in which the seizure occurred except in DEA cases where the petition shall be filed with DEA headquarters, Office of Chief Counsel.

(b) The agency which seized the property shall accept and consider petitions until the property is sold or placed in official use or otherwise disposed of according to law. The notice of seizure of and intent to forfeit the property will advise prospective petitioners that they should submit their petitions within 30 days after they receive the notice.

(c) Petitions shall be sworn and shall include the following information in clear and concise terms:

(1) A complete description of the property, including model and serial numbers, if any, and the date and place of seizure;

(2) The interest of the petitioner in the property, as owner, mortgagee or otherwise, to be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(3) The facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify remission or mitigation.

(d) A petition for restoration of the proceeds of sale or for the appraised value of forfeited property, when the forfeited property has been retained or delivered for official use of a government agency, may be submitted in cases in which the petitioner: (1) Did not know of the seizure prior to the entry of a declaration of forfeiture; and (2) was in such circumstances as prevented the petitioner from knowing thereof. Such a petition shall be submitted pursuant to paragraph (a) of this section and within ninety (90) days from the date the property is sold or otherwise disposed of.

(e) Upon receipt of a petition for property subject to administrative

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forfeiture, the Special Agent-in-Charge of the FBI or the DEA or the Regional Commissioner of the INS, depending upon which agency seized the property, shall have an investigation of the petition conducted. For property seized by the FBI or DEA the completed petition investigation and the recommendation of the Special Agent-in-Charge of the FBI or the DEA, depending upon which agency seized the property, shall be forwarded to their respective headquarters in Washington, DC for a ruling. For property seized by INS, the Regional Commissioner's Office rules on the petition.

(f) Upon the receipt of a petition and a report thereon, the Director of the FBI or the Administrator of the DEA shall assign it within the agency to the FBI Legal Counsel Division, or to the DEA Office of Chief Counsel, as appropriate, where a ruling shall be recommended based on the petition and the report of investigation. No hearing shall be held. The ruling on a petition properly addressed to the Director of the FBI shall be made by the Director of the FBI or his designee. The ruling on a petition properly addressed to the Administrator of the DEA shall be made by the Administrator of the DEA or his designee.

(g) Upon receipt of a petition for property subject to administrative forfeiture seized by INS, the Regional Commissioner of the INS or his designee shall conduct an investigation of the merits of the petition. No hearing shall be held. The Regional Commissioner of the INS or his designee shall make a determination based upon the petition and the investigation thereon.

(h) Notice of the granting or the denial of a petition for property subject to administrative forfeiture shall be mailed to the petitioner or petitioner's attorney, and to the United States Marshals Service. If the petition is granted, the conditions of relief and the procedure to be followed in order to obtain the release of the property or a monetary interest shall be set forth. If the petition is denied, the petitioner shall be advised of the reasons for such denial.

(i) A request for reconsideration of the denial must be submitted within 10 days from the receipt of the letter denying the petition. Such request shall be addressed, depending upon which agency seized the property, to the Director of the FBI for referral to the FBI Legal Counsel Division, or the Administrator of the DEA for referral to the Office of the Chief Counsel, or to the Regional Commissioner of the INS, and shall be based on evidence recently developed or not previously considered. Only one request for reconsideration of a denial of a petition shall be considered.

(j) Additional information concerning property subject to seizure for narcotic violations is contained in 21 CFR 1316.71 through 1316.81, and 28 CFR 0.101(c). Additional information concerning nondrug-related forfeitures is found in 28 CFR Part 8 and 8 CFR Part 274.

§ 9.5 Criteria governing remission and mitigation.

(a) The Determining Official shall not consider whether the evidence is sufficient to support the forfeiture but shall presume a valid forfeiture.

(b) Remission. The Determining Official shall not remit a forfeiture unless the petitioner establishes:

(1) That petitioner has a valid, good faith interest in the seized property as owner or otherwise; and

(2) That petitioner had no knowledge that the property in which petitioner claims an interest was or would be involved in any violation of the law; and

(3) That petitioner had no knowledge of the particular violation which subjected the property to seizure and forfeiture; and

(4) That petitioner had no knowledge that the user of the property had any record for violating laws of the United States or of any State for a related crime; and

(5) That petitioner had taken all reasonable steps to prevent the illegal use of the property.

(c) Mitigation. In addition to having the discretionary authority to grant relief by way of complete remission of forfeiture, the determining official may, in the exercise of discretion, mitigate forfeitures of seized property. This authority may be exercised in those cases where the petitioner has not met the minimum conditions precedent to remission but where there are present other extenuating circumstances indicating that some relief should be granted to avoid extreme hardship. Mitigation may also be granted where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the determining official, complete relief is not warranted. Mitigation shall take the form of a money penalty imposed upon the petitioner in addition to any other sums chargeable as a condition to remission. This penalty is considered as an item of cost payable by the petitioner, and shall be deposited as an amount realized from forfeiture in accordance with 28 U.S.C. 524(c).

§ 9.6 Provisions applicable to particular situations.

(a) General creditors. (1) A general creditor may be granted remission or mitigation of forfeiture provided that, in addition to satisfying the requirements for remission or mitigation set forth herein, the general creditor also:

(i) Provides a sworn statement that there are no known alternative assets available for satisfaction of the debt;

(ii) Satisfactorily establishes a reasonable, good faith connection between the debt and the property subjected to forfeiture other than the ownership of such property by the debtor; and

(iii) Satisfactorily establishes that the debt is for services or goods provided within four months prior to the seizure of the property subjected to forfeiture or that the circumstances of the transaction reasonably justify the failure to collect in a more timely manner.

(2) Any grant of remission or mitigation to general creditors shall not exceed the net amount realized from the forfeiture of the property after payment, in the following order of priority, of:

(i) The expenses of seizure and forfeiture of the property;

(ii) The recognized net equity of lienholders; and

(iii) The recognized claims of victims of the related criminal activity.

In the exercise of his discretion, the Determining Official may establish priorities or apportionments among general creditors.

(b) The United States Marshals Service generally may not pay the claims of general creditors from the Department of Justice Assets Forfeiture Fund if such payment may jeopardize the legitimate claims of existing lienholders. However, if the United States Marshals Service determines that it is necessary to recognize and satisfy the legitimate claims of general creditors for debts incurred within thirty (30) days before seizure in order to preserve the continued operation of a seized business, it may do so for the following debts:

(1) Payment of reasonable salaries and benefits of employees not believed to have been involved in the unlawful activities giving rise to forfeiture and not having an ownership interest in the firm;

(2) Payments to third party contractors for goods or services essential to carry on the business of the firm and who continue to provide those goods or services as a regular matter; and

(3) Utilities.

All other claims of general creditors shall be determined by the determining

official under these regulations and/or by the court.

(c) Rival claimants: If the beneficial owner of property and the owner of a security interest in the same property each files a petition, and if both petitions are found to be meritorious, the claims of the beneficial owner shall take precedence where there is a conflict.

(d) Leasing agreements. (1) A person engaged in the business of renting property shall not be excused from meeting the requirements of § 9.5.

(2) A lessor who leases property on a long term basis with the right to sublease shall not be entitled to remission or mitigation of a forfeiture of such property unless the lessee would be entitled to such relief.

(e) Voluntary bailments. A petitioner who allows another to use property without cost and who is not in the business of lending money secured by property or of renting property for profit, shall be granted remission or mitigation of forfeiture in accordance with the provisions of § 9.5.

(f) Straw purchase transactions. If a person purchases or owns property for another who has a record for related crimes, and if a lienholder knows or has reason to believe that the purchaser or owner of record is not the real purchaser or owner, a petition filed by such a lienholder shall be denied unless the petitioner meets the requirements of § 9.5 as to both the purchaser or owner of record and the real purchaser or owner.

§ 9.7 Terms and Conditions of Remission of Judicial and Administrative Forfeiture.

(a) Owners. (1) Where remission of forfeiture is granted for an owner, the owner can, within 20 days after notice of the granting of the petition is received, pay the costs and expenses of the seizure and forfeiture and obtain possession of the property. If a civil judicial forfeiture action against the property is pending, release of the property must await an appropriate court order.

(2) Where the owner does not comply with the conditions imposed upon release of the property, the property is to be sold after forfeiture. Following the sale, the proceeds shall be used to pay all costs of the seizure and forfeiture and any remaining balance shall be paid to the owner.

(b) Lienholders. (1) Where remission of the forfeiture is granted for a lienholder, the determining official shall remit the property or, if the property is to be retained for official use, an amount equal to the petitioner's net equity.

(2) If the property is not retained for official use, the lienholder shall have the option of obtaining possession of the property or a monetary amount up to the lienholder's net equity following the sale of the property. Within 20 days following the granting of the petition, the petitioner can obtain possession of the property after paying the costs and expenses incident to the seizure and forfeiture or an amount by which the appraised value exceeds the petitioner's net equity, whichever is greater.

(3) Where the lienholder does not comply with the conditions imposed upon the release of the property, the property is to be sold after forfeiture. From the proceeds of the sale all costs incident to the seizure, forfeiture and sale shall first be deducted, and the balance up to the net equity shall be paid to the petitioner.

(c) Where a complaint for forfeiture has been filed with the District Court, but no judgment of forfeiture has been ordered, a lienholder shall also be required to furnish the United States Attorney with:

(1) An instrument executed by the registered owner and any other known claimant of an interest in the property, if they are not in default, releasing their interest in such property, or

(2) If the registered owner or any other known claimant is in default, an agreement to save the government, its agents and employees harmless from any and all claims which might result from the grant of remission.

(d) Alternatively, a lienholder may elect to permit the litigation to proceed to judgment. In that event, the court shall be advised that the Department has granted the petition for remission of the forfeiture and shall be requested to recognize the granting of the petition in its order of forfeiture. Alternatively, in administrative forfeitures, or where a judicial forfeiture judgment has been rendered, the lienholder may elect to have the property sold at public sale. Pursuant to either alternative, the proceeds of such sales will be distributed as follows:

(1) Payment to the petitioner of an amount up to his net equity if the proceeds are sufficient after deducting from the gross sales proceeds an amount equal to the government's costs and expenses incident to the seizure, forfeiture and sale, including court costs and storage charges, if any;

(2) Payment of such costs and expenses;

(3) Payment of the balance remaining, if any, to the Department of Justice Assets Forfeiture Fund.

(e) If a complaint for forfeiture has not been filed, a petitioner who is a lienholder, in addition to paying an amount equal to all costs and expenses incident to the seizure, including any court costs and accrued storage charges, or an amount by which the appraised value of the property exceeds the net equity therein, whichever is greater, shall:

(1) Furnish an instrument executed by the registered owner and any other known claimant of an interest in the property releasing their interest in such property, or

(2) Furnish an agreement to hold the government, its agents and employees harmless from any and all claims which might result from the grant of remission.

(f) The determining official may impose such other terms and conditions as may be appropriate.

(g) Upon compliance with the terms and conditions of remission or mitigation in cases subject to judicial forfeiture proceedings, the United States Attorney shall take appropriate action to effect the release to the petition of the property involved and to dismiss the complaint if one has been filed or otherwise dispose of the matter by forfeiture, sale and distribution of the proceeds therefrom as set forth herein.

(h) In any case, if the owner of record or any other claimant wishes to contest the forfeiture, judicial condemnation of the property shall be consummated, the court shall be apprised of the granting and terms of the remission or mitigation by the Attorney General, and the court shall be requested to frame its decree of forfeiture accordingly.

Dated: August 7, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-19864 Filed 8-28-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-87-21]

Special Local Regulations; 1987 Cleveland National Air Show, Cleveland, OH, Lake Erie

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Cleveland National Air Show which is to be conducted over the eastern portion of Cleveland Harbor for the 04th of September through the 07th of September, 1987. The regulations are needed to provide for the safety of life

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and property on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 04 September and terminate on 07 September, 1987.

FOR FURTHER INFORMATION CONTACT: CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-3982.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until 22 June, 1987, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

This has been an annual event for many years and no negative comments concerning it have been received.

Drafting Information

The drafters of this regulation are CWO Gerald M. Trackim, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The 1987 Cleveland National Air Show will be conducted over the eastern portion of Cleveland Harbor from the 04th of September through the 07th of September, 1987. This event will have low flying aircraft demonstrations, high performance aircraft aerobatics, parachutists, and other events which could pose hazards to navigation in the area. Vessels desiring to transit the area may do so only with prior approval of the Patrol Commander (Officer-in-Charge, U.S. Coast Guard Station, Cleveland, Ohio).

Economic Assessment and Certification

These regulations are considered to be non-major Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0921 to read as follows:

§ 100.35–0921 Cleveland National Air Show, Cleveland, OH—Lake Erie.

The following area will be closed to vessel navigation or anchorage from 8:30 a.m. (local time) until 3:30 p.m. on 04 September, 7:30 A.M. until 6:00 P.M. on 05, 06 and 07 September, 1987.

(a) *Restricted area.* That portion of Lake Erie and Cleveland Harbor enclosed by a line running from the northwest corner of Dock No. 24 northwest to a point on the east breakwall at 41 degrees 30 minutes 36.0 seconds North, 81 degrees 42 minutes 34.2 seconds West; thence, northeastward along the breakwall to 41 degrees 30 minutes 51.7 seconds North, 81 degrees 42 minutes 07.6 seconds West; then, northwestward to 41 degrees 31 minutes 08.1 seconds North, 81 degrees 42 minutes 22.2 seconds West; thence, eastward to 41 degrees 32 minutes 18.1 seconds North, 81 degrees 40 minutes 17.0 seconds West; then, southeastward to a point on the east breakwall at 41 degrees 32 minutes 02.5 seconds North, 81 degrees 40 minutes 03.4 seconds West; continuing east along the breakwall to 41 degrees 32 minutes 13.2 North, 81 degrees 39 minutes 44.0 seconds West; then, southeast to a point on the shoreline at position 41 degrees 31 minutes 49.8 seconds North, 81 degrees 39 minutes 20.5 seconds West; thence, shoreline to the northeast corner of Dock No. 24.

(b) *Special local regulations.* (1) Vessels desiring to transit the restricted area may do so only with the prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants, or vessels of the patrol in the performance of their assigned duties.

(2) No vessel shall anchor or drift in the area restricted to navigation.

(3) A succession of sharp, short, signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) All persons in charge of, or operating vessels in the area covered by the above Special Local Regulations are required to promptly obey the directions of the Patrol Commander and the men acting under his instructions in connection with the enforcement of these Special Local Regulations.

(5) This section is effective from 8:30 a.m. (local time) on 04 September 1987 until 6:00 p.m. (local time) 07 September 1987.

Dated: August 19, 1987.

A.M. Danielsen,

RADM, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 87-19943 Filed 8-28-87; 8:45 am]

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33 CFR Part 100

[CGD 09-87-24]

Special Local Regulations; Downriver River Roar Thunderboat Race, Detroit River, Detroit, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Downriver River Roar Thunderboat Race. This event will be held on the Detriot River, Trenton Channel, on the 23, 24, 25 and 27 September 1987. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 23 September 1987 and terminate on 27 September 1987.

FOR FURTHER INFORMATION CONTACT: CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-3982.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until 06 August 1987, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 111034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The drafters of this regulation are CWO Gerald M. Trackim, project officer, Office of Search and Rescue and LCDR C. V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Downriver River Roar Thunderboat Race will be conducted on the Detroit River, Trenton Channel, on 23, 24, 25 and 27 September 1987. This event will have an estimated 35 powerboats which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commander, U.S. Coast Guard Group, Detroit, MI).

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0924 to read as follows:

§ 100.35–0924 Downriver River Roar Thunderboat Race—Detroit River, Trenton Channel.

(a) *Regulated area.* That portion of the Detroit River, Trenton Channel, enclosed by a line from the west shoreline at position 43 degrees 13 minutes 06.5 seconds North to a point at 42 degrees 13 minutes 06.5 seconds North 83 degrees 08 minutes 01 seconds West to a point 42 degrees 12 minutes 07 seconds North 83 degrees 08 minutes 10 seconds West to the west shoreline at postion 42 degrees 12 minutes 07 seconds North, then North along shoreline to point of origin.

(b) *Special local regulations.* (1) The above area will be closed to vessel navigation or anchorage from 1:00 p.m. (EDT) until 6:00 p.m. on 23 and 24 September 1987 and from 9:00 a.m. until 6:00 p.m. on 25 and 27 September 1987.

(2) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(3) A succession of sharp, short signals by whistle or horn from vessels patroling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) This section is effective from 1:00 p.m. (EDT) on 23 September 1987 until 6:00 p.m. on 27 September 1987.

Dated: August 19, 1987.

A.M. Danielsen,

RADM, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 87–19942 Filed 8–28–87; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–3250–4]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Control of Volatile Organic Compound Emissions From the Manufacture of Polystyrene Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts on February 21, February 25, and June 23, 1986. This action approves a regulation to reduce volatile organic compound (VOC) emissions from the manufacture of polystyrene resins. The intended effect of this action is to approve this regulation adopted by Massachusetts in accordance with commitments made in its federally-approved ozone attainment plan. This action is being taken under section 110 of the Clean Air Act.

EPA is also codifying the certification submitted on November 8, 1985 by the Commonwealth of Massachusetts that no polypropylene and polyethylene manufacturing sources are located in the State. The intended effect of this action is to provide this information in 40 CFR Part 52.

EFFECTIVE DATE: This rule will become effective on September 30, 1987.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA Region I office, JFK Federal Building, Room 2313, Boston, MA 02203; the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th floor, Boston, MA 02108; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu, (617) 565–3250; FTS 835–3250.

SUPPLEMENTARY INFORMATION:

Regulation for Manufacture of Polystyrene Resins

On February 25, 1987 (52 FR 5552), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed to approve revisions which included: (1) The addition of two

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new definitions, "continuous process polystyrene resins manufacturing plant" and "material recovery section," to 310 CMR 7.00; (2) an amendment to the SIP definition of "VOC" in 310 CMR 7.00; and (3) the addition of a regulation to control the emissions of VOCs from the manufacture of polystyrene resins adopted at 310 CMR 7.18(18). A more detailed description of these revisions and EPA's rationale for approving them were provided in the NPR and will not be restated here. No public comments were received on the NPR.

Negative Declarations

States with areas which could not attain the National Ambient Air Quality Standard (NAAQS) for ozone by 1982 must require Reasonably Available Control Technology (RACT) on all sources of VOCs covered by EPA's Control Techniques Guidelines (CTGs). EPA published a Group III CTG which defines RACT for "Control of Volatile Organic Compound Emissions from the Manufacture of High Density Polyethylene, Polypropylene, and Polystyrene Resins" (EPA–450/3–83–008) in November 1983. On November 8, 1985, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a certification that there are no polypropylene and polyethylene manufacturing sources located in the Commonwealth of Massachusetts. EPA is accepting the DEQE's certification and is codifying this information at 40 CFR 52.1168.

Final Action

1. EPA is approving revisions to the Massachusetts SIP which amend Regulation 310 CMR 7.00 and add Regulation 310 CMR 7.18(18) for the control of volatile organic compound emissions from the manufacture of polystyrene resins, including the implementation guidance adopted pursuant to that regulation, submitted by the DEQE on February 21, February 25, and June 23, 1986.

2. EPA is codifying at 40 CFR 52.1168 a certification that there are no polypropylene and polyethylene manufacturing sources located in the Commonwealth of Massachusetts submitted by the DEQE on November 8, 1985.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 1987. This action may not be challenged later in proceedings to enforce its requirements. (see section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Date: August 17, 1987.

A. James Barnes,

Acting Administrator.

Subpart W, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart W—Massachusetts

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1120 is amended by adding paragraph (c)(73) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(73) Revisions to the State Implementation Plan submitted by the Commonwealth of Massachusetts on February 21, February 25, and June 23, 1986.

(i) Incorporation by Reference.

(A) A letter from the Commonwealth of Massachusetts Department of Environmental Quality Engineering dated February 21, 1986 and amendments to 310 CMR 7.00 and 310 CMR 7.18 of the Regulations for the control of Air Pollution in the Berkshire, Central Massachusetts, Merrimack Valley, Metropolitan Boston, Pioneer Valley and Southeastern Massachusetts Air Pollution Control Districts.

(B) A letter from the Commonwealth of Massachusetts Department of Environmental Quality Engineering (DEQE), dated June 23, 1986 and the Implementation Guidance, 310 CMR 7.18(18), Polystyrene Resin Manufacturing, dated February 1986.

(C) A Regulation Filing and Publication document from the Commonwealth of Massachusetts Department of Environmental Quality Engineering, dated February 25, 1986.

(ii) Additional Materials.

(A) Nonregulatory portions of the state submittals.

3. In § 52.1167, the Table 52.1167 is amended by adding the following entries in numerical order by State citation. The date approved by EPA and the Federal Register citation will be the publication date and citation of today's FR document.

§ 52.1167 EPA-Approved Massachusetts state regulations.

* * * * *

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	FR citation	52.1120 (c)	Comments/unapproved sections
310 CMR 7.00	Definitions	2/21/86; 2/25/86; 6/23/86.	8/31/87	52 FR —	73	Two new definitions and one amended definition.
310 CMR 7.18(18)	Polystyrene Resin Manufacture.	2/21/86; 2/25/86; 6/23/86.	8/31/87	52 FR —	73	Regulation pursuant to Group III CTG, "Control of VOC Emissions from the Manufacture of Polystyrene Resins".

4. Section 52.1168 is revised to read as follows:

§ 52.1168 Certification of no sources.

The Commonwealth of Massachusetts has certified to the satisfaction of EPA that no sources are located in the Commonwealth which are covered by the following Control Techniques Guidelines:

(a) Large Petroleum Dry Cleaners.

(b) Natural Gas/Gasoline Processing Plants.

(c) Air Oxidation Processes/SOCMI.

(d) Polypropylene/Polyethylene Manufacturing.

[FR Doc. 87–19431 Filed 8–28–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A-1-FRL-3249-5]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Reasonably Available Control Technology for Keene Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision provides a final compliance date extension to control organic solvent emissions from six paper coating lines at Keene Corporation in East Providence, Rhode Island. The intended effect of this action is to approve a revision submitted by the Rhode Island Department of Environmental Management under section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on September 30, 1987.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at EPA Region I, JFK Federal Building, Room 2311, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, DC 20460; and the Department of Environmental Management, 75 Davis Street, Cannon Building, Room 204, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565–3252, FTS 835–3252; or Robert C. Judge, (617) 565–3248, FTS 835–3248.

SUPPLEMENTARY INFORMATION: On January 16, 1987 (52 FR 1934), EPA published a Notice of Proposed Rulemaking (NPR) to approve an administrative consent agreement between the Rhode Island Department of Environmental Management (DEM) and Keene Corporation (Keene). The consent agreement between the DEM and Keene requires Keene to implement alternative control technologies to meet emission limitations in subsection 19.3.1 of Rhode Island Regulation No. 19, "Control of Volatile Organic Compounds from Surface Coating Operations," by December 1, 1989.

On July 6, 1983 (48 FR 31026), EPA approved Rhode Island's Ozone Attainment Plan and incorporated it into the SIP. As part of Rhode Island's Ozone Attainment Plan, Rhode Island adopted Regulation No. 19. This regulation applies to facilities which emit more than 100 tons per year (TPY) of volatile organic compound (VOC) emissions from paper, fabric, or vinyl surface coating operations. Rhode Island's definition of VOC (subsection 19.1.1) does not exempt any of the photochemically nonreactive solvents, including methylene chloride, which EPA allows to be exempted from VOC control. Since this definition does not exempt any of these solvents, Regulation No. 19 is more stringent than EPA's requirements for the control of VOC. A source subject to this regulation is required under subsection 19.3.1 to apply reasonably available control technology (RACT) to its VOC emitting processes by July 1, 1985. The RACT limitations specified in subsection 19.3.1 are equivalent to those specified in EPA's applicable Group I control techniques guideline (CTG) document.

On November 5, 1985, the Rhode Island DEM submitted a revision to its SIP. This revision consists of a consent agreement between the DEM's Division of Air and Hazardous Materials and Keene of East Providence, Rhode Island. This consent agreement was issued pursuant to provisions found in Rhode Island's Regulation No. 19, subsection 19.3.3. The provisions found in subsection 19.3.3 allow the DEM to impose alternative compliance dates and emission limitations to those set forth in subsection 19.3.1 on a case-by-case basis.

Amendments to Rhode Island Regulation No. 19 which included subsection 19.3.3 were submitted to EPA by Rhode Island on May 14, 1982. EPA approved these amendments on July 6, 1983 (48 FR 31026) as part of Rhode Island's Ozone Attainment Plan. It was EPA's intention when approving subsection 19.3.3 that all compliance date extensions and emission limitation relaxations granted pursuant to this subsection by the DEM would be submitted to EPA as SIP revisions.

Keene operates six existing paper coating lines in East Providence, Rhode Island. Due to the nature of substrates coated, Keene is subject to the control requirements of Rhode Island SIP Regulation No. 19, subsection 19.3.1 which requires that the VOC content of each coating employed at Keene be at or below 2.9 lbs VOC/gallon of coating (minus water) by July 1, 1985 except as provided in subsection 19.3.3.

Keene has primarily employed solvent based coatings in its coating lines. Keene's emissions are primarily methylene chloride. Although EPA has stated that methylene chloride, because of negligible photochemical reactivity, can be exempted from VOC control in any SIP (44 FR 32042 and 45 FR 32424), the State of Rhode Island did not include methylene chloride as an exempt solvent in its approved Ozone Attainment Plan. Therefore, a surface coating source in Rhode Island which uses methylene chloride is subject to the same control requirements as those emitting photochemically reactive VOC. Under this consent agreement, Keene will be required to implement alternative control technologies (i.e., hot melt application, aqueous coating and high solids coatings) to meet the emission limitations in subsection 19.3.1 by December 1, 1989. This strategy should reduce approximately 90% of the emissions from this facility.

EPA realizes that the time frame Keene needs to implement these alternative control technologies generally exceeds what is considered to be expeditious under the Clean Air Act. However, as noted above, EPA has determined that methylene chloride has negligible photochemical reactivity and does not appreciably affect ambient ozone levels. Therefore, this compliance date extension will not interfere with continued maintenance of the National Ambient Air Quality Standard (NAAQS) for ozone in Rhode Island. In addition, Keene emits less than 100 tons per year (TPY) of photochemically reactive VOC. Pursuant to EPA's VOC control policy for states that have demonstrated attainment of the NAAQS for ozone by December 31, 1982, Rhode Island is not required to adopt regulations which require the control of VOC emissions from facilities that emit less than 100 TPY. Hence, Rhode Island Regulation No. 19 does not require controls from surface coating sources which emit less than 100 TPY. Had Rhode Island exempted methylene chloride from VOC control as allowed by EPA policy, this source would emit less than 100 TPY of VOC and would be exempted from meeting the emission limits contained in Regulation No. 19. This compliance date extension is actually more stringent than EPA's policies for the control of VOCs. Therefore, it is EPA position that the time frame outlined in the consent agreement is expeditious. This rationale for EPA's proposed action was explained in the NPR and no public comments were received on that NPR.

Final Action

EPA is approving an administrative consent agreement between the Rhode Island DEM and Keene Corporation as a

revision to the Rhode Island SIP. EPA has determined that the consent agreement establishes a final compliance date extension for control of organic solvent emissions from six paper coating lines at Keene Corporation in East Providence, Rhode Island.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Rhode Island was approved by the Director of the Federal Register on July 1, 1982.

Date: August 13, 1987.

Lee M. Thomas,

Administrator.

Subpart 00, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart 00—Rhode Island

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2070 is amended by adding paragraph (c)(28) to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

(28) Revision submitted on November 5, 1985 by the Rhode Island Department of Environmental Management consisting of an administrative consent agreement granting a final compliance date extension for the control of organic solvent emissions from six paper coating lines at Keene Corporation in East Providence, Rhode Island.

(i) Incorporation by Reference.

(A) Letter from the Rhode Island Department of Environmental Management dated November 5, 1985 submitting revisions to the Rhode Island State Implementation Plan.

(B) An administrative consent agreement between the Rhode Island Department of Environmental Management and Keene Corporation, effective on September 12, 1985.

3. In § 52.2081, the Table 52.2081 is amended by adding the following entry to No. 19. The date approved by EPA and the **Federal Register** citation will be the publication date and citation of today's document.

§ 52.2081 EPA-Approved EPA Rhode Island State regulations.

* * * * *

TABLE 52.2081—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/unapproved sections
.	.	.	.	.	.	.
No. 19	Control of VOCs from surface coating operations	9/12/85	8/31/87	52 FR—	(c)(28)	Compliance date extension for Keene Corporation under 19.3.
.	.	.	.	.	.	.

[FR Doc. 87-19313 Filed 8-27-87; 4:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-217; RM-5237]

Radio Broadcasting Services; Lowell, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 270C2 to Lowell, Arkansas, as that community's first local FM service, in response to a petition filed by Marsha M. Walker and Kenneth G. Eklund. With this action, this proceeding is terminated.

DATES: Effective October 5, 1987; The window period for filing applications will open on October 6, 1987, and close on November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530, regarding the allocation. For information related to the application process contact Audio Services Division, FM Branch, (202) 632–6908.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–217, adopted August 3, 1987, and released August 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Lowell, Channel 270C2, under Arkansas.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19923 Filed 8-28-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-271; RM-5275]

Radio Broadcasting Services; Malvern, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 227A to Malvern, Arkansas, as that community's second local FM service, in response to a petition filed by Tom Hohrine.

With the action, this proceeding is terminated.

DATES: Effective October 5, 1987; The window period for filing applications will open on October 6, 1987, and close on November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530 concerning the allotment. For information related to the window application filing process, contact Audio Services Division, FM Branch, (202) 632–6908.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–271, adopted August 3, 1987, and released August 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The Authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Malvern, Arkansas, Channel 227A is added.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–19924 Filed 8–28–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket Nos. 86–154; RM–4968, RM–5068, RM–5360, RM–5439, RM–5483, RM–5495]

Radio Broadcasting Services; Wrightsville, Perryville and Maumelle, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 299A to Wrightsville, AR, Channel 290C2 to Perryville, AR and Channel 245A to Maumelle, AR, as a first local service to each, as requested by Wrightsville Communications Company, Deborah Lee Vaile and LRW, Inc., respectively. Mutually-exclusive proposals are denied at Conway, Hot Springs, and Fairfield Bay, AR, as proposed by KCON Broadcasting, Inc. Noalmark Broadcasting Corporation, and Robert W. and Rosemary Holiday, respectively. With this action, this proceeding is terminated.

DATES: Effective October 8, 1987; The window period for filing applications for Channel 299A at Wrightsville, AR, Channel 290C2 at Perryville, AR, and 245A at Maumelle, AR, will open on October 9, 1987, and close on November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process should be addressed to Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–6908.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–154, adopted July 29, 1987, and released August 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Six mutually-exclusive petitions were filed in this proceeding as follows: (1) KCON Broadcasting, Inc., licensee of Station KCON(AM), Conway, AR, seeking the allotment of Channel 290A to that community as its third commercial FM service (RM–4968); (2) Noalmark Boradcasting Corporation, licensee of Station KLAZ(FM) (Channel 292A), Hot Springs, AR, requested the substitution of Channel 290C1 for Channel 292A and modification of its license to specify operation on the higher class channel to provide that community with its second wide-coverage area FM service (RM–5069); (3) Wrightsville Communications Company requested the allotment of Channel 290A to Wrightsville, AR, as that community's first local broadcast service (RM–5360); (4) Robert W. and Rosemary Holiday, licensee of Station KFFB(FM) (Channel 292A), Fairfield Bay, AR, requested the substitution of Channel 291C2 for Channel 292A and modification of its license to expand its coverage area (RM–5439); (5) Deborah Lee Vaile requested the allotment of Channel 290C2 to Perryville, AR, as that community's first local broadcast service (RM–5483); and (6) LRW, Inc. requested the allotment of Channel 290A to Maumelle, AR, as that community's first local broadcast service (RM–5495). Since each request for Channel 290 and Channel 291 conflicted with each other proposed use of those channels, our decision was based on the availability of alternate channels for Wrightsville and Maumelle and the Commission's comparative evaluation process to determine which of the remaining communities could prevail. As a result, the population to receive new primary service, as afforded by the Perryville proposal, was favored over a showing of an insubstantial second aural service inherent in the Hot Springs modification proposal. The Conway and Fairfield Bay proposals were ranked lower in priority pursuant to our allotment criteria, and thus could not succeed on the merits in this proceeding. Moreover, no other channels were found available to accommodate either of those proposals.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Wrightsville, Channel 299A; Perryville, Channel 290C2; and Maumelle, Channel 245A, under Arkansas.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–19925 Filed 8–28–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–479; RM–5505]

Radio Broadcasting Services; Bismarck, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Class C Channel 254 to Bismarck, North Dakota, as the community's fourth local FM service, at the request of BDF Broadcasting, Inc. Channel 254 can be allocated to Bismarck in compliance with the Commission's minimum distance separation requirements

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without the imposition of a site restriction. Canadian concurrence has been received since Bismarck is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective October 8, 1987; The window period for filing applications will open on October 9, 1987 and close on November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–479, adopted July 29, 1987, and released August 25, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Bismarck, North Dakota, is amended by adding Channel 254.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–19926 Filed 8–28–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–486; RM–5536]

Radio Broadcasting Services; Delta, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 239C1 to Delta, Utah, as that community's first FM service, at the request of Glen S. Gardner. With this action, this proceeding is terminated.

DATES: Effective October 5, 1987; The window period for filing applications will open on October 6, 1987 and close on November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–486, adopted July 28, 1987, and released August 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., Suite 140 Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Delta, Utah, Channel 239C1 is added.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–19927 Filed 8–28–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF JUSTICE

48 CFR Part 2801

[Justice Acquisition Circular 87–1]

Amendments to the Justice Acquisition Regulation (JAR) Implementing a Contracting Officer Standards Program

AGENCY: Justice Management Division, Office of the Procurement Executive, Justice.

ACTION: Final rule.

SUMMARY: The Justice Acquisition Regulation, Part 2801, is revised to implement a contracting officer standards program. This program will provide Departmentwide standards for education, training and experience for appointing contracting officers in Justice.

EFFECTIVE DATE: August 31, 1987.

FOR FURTHER INFORMATION CONTACT: W.L. Vann, Procurement Executive, Office of the Procurement Executive, (202) 272–8354.

SUPPLEMENTARY INFORMATION:

The Contracting Officer Standards Program is issued in accordance with the initiatives outlined in Executive Order 12352 and the DOJ's Procurement Executive charter to enhance the professionalism of the procurement work force. The revisions to the JAR were not published for public comment because they do not have an effect beyond the internal operating procedures of the agency. The revisions have been reviewed and commented upon by the several procurement components of the Department. As a result of this review the proposed program was changed in significant aspects to address Bureau concerns. The Director, Office of Management and Budget (OMB) by memorandum dated December 14, 1986 exempted agency procurement regulations from review under Executive Order 12291 except for selected areas. The exemption applies to this rule. The Department of Justice certifies that this document will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 60 et seq.)

List of Subjects in 48 CFR Part 2801

Government procurement.

Harry H. Flickinger,

Assistant Attorney General for Administration.

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR Part 2801 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2801.6—Contracting Authority and Responsibilities

§ 2801.601 [Amended]

2. Section 2801.601, paragraph (c)(1)(i) is amended by removing the semi-colon and the word "or" and adding the words "and have been determined eligible for a delegation of authority in accordance with the standards in Subpart 2801.603; or,". Section 2801.601 is further amended by revising paragraph (c)(1)(i)(A) to read as follows:

"(A) That the office(s) they serve would otherwise be without supply support for their immediate needs or the individuals are being authorized to place task orders or similar instruments against established DOJ or other agency contracts; and".

3. Section 2801.603 is added to read as follows:

§ 2801.603 Selection, appointment and termination.

(a) *Contracting officer standards.* This subpart set forth policies and procedures for establishing standards for contracting officers in DOJ. The program sets forth minimum requirements for procurement related training and experience to be eligible for a delegation of authority as a contracting officer. The purpose of this program is to assure that DOJ procurement activities appoint qualified individuals as contracting officers.

(b) *Applicability.* (1) The eligibility requirements of this subpart apply to all personnel in the GS or GM 1102 series, or to other personnel, who award contracts in excess of $25,000. It is not applicable to management officials of the Department and its components who have contracting officer authority by virture of their organizational placement at a level above the Chief of the Contracting activity as defined in JAR 2802.102(f) or to the following:

(i) Individuals authorized to award procurement actions equal to or less than the small purchase threshold established in FAR Part 13.

(ii) Individuals authorized to place orders under Federal Supply Schedule Contracts or other agency (including DOJ) established source contracts; or

(iii) Personnel authorized to conduct or issue imprest fund transactions, training authorizations, travel documents, printing and duplicating services, placement of newspaper advertisements, or procurement of similar services.

(2) *Other limitations on applicability.* A determination by a Bureau official having the authority to redelegate procurement authority that an individual meets the prescribed standards as stated herein does not affect established Office of Personnel Management and DOJ qualifications for hiring, promotion or other personnel actions. There is no direct relationship between a determination that a candidate meets the standards and an individual's grade level or eligibility for promotion. Bureaus, however, may establish relationships between grade level, experience, and training and the dollar amount or other limitations when issuing delegations of authority. Any established relationship, however, may not be inconsistent with, or lower the qualification requirements of this section.

(c) *Delegation of authority requirements.* To be determined eligible for a delegation of authority as a DOJ contracting officer the candidate must meet the following minimum standards:

(1) Level I Purchasing agent—Signature authority to award contracts not exceeding the small purchase threshold as set forth in FAR Part 13. A determination of eligibility in accordance with Department-wide standards is not required for level I appointments (see other exceptions at 2801.601(c)). Bureaus shall establish standards for Level I appointments in accordance with their needs and policies.

(2) Level II Contracting Officer—Signature authority to award contracts not exceeding $100,000.

(i) Two years of procurement experience as a contract specialist, contract administrator or purchasing agent that demonstrated the ability to perform as a contracting officer at Level II.

(ii) Completion of 120 hours of procurement training from the subject areas listed in 2801.601(f).

(3) Level III Contracting Officer—Signature authority to award contracts not exceeding $500,000.

(i) Three years combination of procurement experience as a contract specialist or contract administrator, including six months as a contracting officer equivalent to Level II responsibilities, that demonstrated the ability to perform as a contracting officer at Level III.

(ii) Completion of an additional 80 hours of training (cumulative total of 200 hours) from the subject areas listed in 2801.601(f).

(4) Level IV Contracting Officer—Signature authority to award contracts exceeding $500,000.

(i) Four years combination of procurement experience as a contract specialist or contract administrator including one year of experience as a contracting officer equivalent to the Level III responsibilities that demonstrated the ability to perform at Level IV.

(ii) Completion of an additional 80 hours of training (cumulative total of 280 hours) from the subject areas listed in 2801.601(f).

(d) *Equivalencies.* (1) Completion of an undergraduate degree (baccalaureate) from an institution of higher education regardless of the major field of study may be substituted for one year of procurement experience.

(2) Completion of an undergraduate degree (baccalaureate) from an institution of higher education with a major in business, economics, accounting or procurement may be substituted for two years of procurement experience and 40 hours of classroom training.

(3) Completion of a graduate degree from an institution of higher education regardless of major field of study may be substituted for two years of procurement experience.

(4) Completion of a graduate degree from an institution of higher education with a major in business, economics, accounting, or procurement may be substituted for two years of procurement experience and 120 hours of classroom training.

(5) Completion of a Juris Doctor (J.D.) degree from an American Bar Association accredited law school may be substituted for three years of procurement experience and 180 hours of training. If the J.D. degree is combined with state bar membership in any state or U.S. territory an additional six months experience and 20 hours of training will be credited.

(6) Passing of an examination or certification by a nationally recognized professional contract or procurement organization and which has been approved by the Procurement Executive may be substituted for experience requirements and prescribed training courses.

(e) *Training subject areas.* (1) It is understood that the following are meant to be general subject areas, not course titles. The Bureau in determining the acceptability of a particular course will make a determination based on what is generally understood in the procurement field to be procurement or procurement related training. Training may be accomplished in-house or obtained from outside sources.

(i) Basic Procurement
(ii) Sealed Bids
(iii) Negotiated Procurements
(iv) Cost and Price Analysis (recommended 40 hrs)
(v) Contact Law
(vi) Negotiation Techniques (recommended 40 hrs)
(vii) Contract Administration (recommended 40 hrs)
(viii) ADP Procurement
(ix) A & E Contracting
(x) Construction Contracting
(xi) Small Purchase/Federal Supply Schedules
(xii) Contract Termination and Negotiation Settlements

(2) In addition the candidate should have taken or scheduled to take at least 40 hours classroom training in a specialized area applicable to his or her assigned workload. For example, a candidate for certification who primarily works with ADP or construction contracting would be expected to have training in those areas as part of the minimum hours.

(f) *Eligibility applications/delegation of procurement authority.* Bureau officials authorized to redelegate procurement authority shall make a written determination that the individual meets the standards set forth in this Subpart prior to granting the redelegation of authority. Eligibility determinations shall be based on documentation provided by the candidate. Applications shall include at a minimum a completed and signed SF 171 or equivalent that demonstrates training, experience, and education and a copy of the applicant's existing delegation of authority, if applicable, and the proposed delegation of authority. Applicants shall be responsible for submitting adequate documentation concerning education, training, and experience to enable the Bureau official to make a determination regarding the candidates' eligibility for a delegation of authority. Once approved, a copy of the redelegation and supporting documents shall be sent to the Office of the Procurement Executive for review (See JAR 2801.601(g)).

(g) *Existing delegations of authority.* Contracting officers having an existing redelegation of procurement authority on the effective date of this rule shall submit an application for review by the Bureau official within six months of the effective date of this regulation. Individuals holding existing redelegations of procurement authority who are ineligible for a delegation of authority based on the standards in this subpart may retain their existing redelegation for a period of two years from the effective date of this regulation while qualifying under the standards. If the individual fails to qualify for a delegation of authority during the two year period the delegation of authority shall be terminated by the procurement activity.

Existing redelegation shall not be changed to increase the dollar authority or remove other limitations until the individual is determine eligible under the prescribed standards.

(h) *Waivers.* It is recognized that implementation of a standards program may cause, particularly in its initial implementation, significant problems. Circumstances may exist beyond the individual's control that prevent a candidate from achieving training goals or agencies established staffing practices, particularly in field installations, may conflict, and not be subject to immediate practical resolution. To address these situations a waiver may be granted on an individual basis in accordance with the following procedures:

(1) Waivers may only be granted by the Procurement Executive.

(2) The request for a waiver must be in writing and contain a complete justification for the action requested. In addition, a plan must be submitted with the request setting forth a schedule of training if the lack of classroom training is the deficiency factor.

(3) Waiver requests shall be submitted by the individual authorized to grant the delegation of procurement authority.

(4) Waiver requests should be viewed as exceptional and only be made where no other practical solution can be found. In addition to the above requirements, a waiver request must demonstrate that the individual on whose behalf the request is made is, except for the specific deficiencies under the standards, qualified to perform as a contracting officer at the level requested.

[FR Doc. 87-19862 Filed 8-28-87; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-88; Amdt. 192-57]

Gas Pipeline Damage Prevention Programs

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTON: Final rule.

SUMMARY: One part of the current damage prevention rule requires operators, when advised of intended excavation, to give the excavator notice of whether there is or is not a buried pipeline in the area of excavation. This amendment deletes the requirement to give such notice when the operator does not have a pipeline in the area of intended excavation. This final rule will reduce the burdens and costs to pipeline operators, particularly those who comply with the current rule by participating in "one-call" systems. The amendment will enhance the effectiveness of established "one-call" systems by providing uniformity of response procedures for all utility participants.

EFFECTIVE DATE: The effective date of this final rule is September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Paul J. Cory, (202) 366-4561, regarding the content of this final rule or the Dockets Branch, (202) 366-5046, regarding other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

Beginning April 1, 1983, operators of gas pipelines were required to conduct or participate in damage prevention programs to reduce the risk of excavation damage to buried pipelines in populated areas (47 FR 13818, April 1, 1982). Section 192.614(b) sets forth key elements of the programs, some of which are: Receiving notice about pending excavations, advising persons giving notice whether there are piplines in the areas of excavation, and temporarily marking any pipelines in those areas.

To publicize the program and provide a means for receiving notices of planned excavation, most gas pipeline operators participate in "one-call" systems. These systems, which may be run by governmental or private entities, advertise a single telephone number for all excavators in a region to call to tell pipeline and other underground utility operators of the time and place of intended excavations. Information received by the "one-call" system is then relayed to participating utility operators. Operators who do not participate in "one-call" systems are required to publicize their individual damage prevention programs and provide for receipt of notices on their own.

Following implementation of new damage prevention program rule, RSPA noted problems with the program requirement in § 192.614(b)(4) that operators call (or otherwise actually notify) the persons giving notice to let them know whether a pipeline is located in the area of excavation activity. When "one-call" systems use grids that cover large land areas to identify participating utilities, pipeline operators have to return many calls for excavations that do not affect and are far away from their pipelines. In these cases, such negative "call-backs" can take the full time of several employees and be costly. For these reasons, some operators have avoided joining "one-call" systems, choosing instead to conduct independent programs. However, even independent program operators can be faced with having to make numerous negative "call-backs" when their pipelines traverse wide regions and all incoming notices are funneled to a central receiving station. In most "one-call" systems other utilities are not required to make negative "call-backs" but they still have effective damage prevention programs.

Another significant problem is that some excavators who have received negative "call-backs" from one, but not the only, gas pipeline operator or company division (i.e., transmission and distribution) in an area have erroneously assumed that there were not any gas pipelines near the excavation site. Fortunately, these errors are not known to have led to any reported accidents, but RSPA considers the accident potential serious enough to warrant modification of the existing rule.

The theory behind the "call-back" feature a § 192.614(b)(4) is that preliminary communication from operators to excavators prevents excavators from becoming impatient and digging before any utilities, including pipelines, in the area are marked. The benefit of preliminary communication as a deterrent to impromptu digging is obvious when pipelines are in the area of intended excavation. But, if no pipelines are in the area, the call-back imposes an undue burden on the pipeline operator without serving any safety purpose.

Lacking any hard evidence to substantiate the benefits of negative "call-backs," RSPA examined the issue as part of a wider study titled "An Examination of Outside Forces Damage and Damage Prevention," completed in April 1986. This study was unable to attach any direct benefit to making negative "call-backs."

Before the results of the study were published, RSPA issued a Notice of Proposed Rulemaking (Notice 1) (50 FR 49575; December 3, 1985), proposing to delete the requirement of § 192.614(b)(4) that gas pipeline operators respond to notices of intended excavation in areas that do not contain buried gas pipelines.

Favorable comments on the proposal were received from 21 respondents, consisting of eleven gas distribution pipeline operators, four gas transmission pipeline operators, three industry organizations, one "one-call" system operator and two State pipeline safety regulatory agencies (Michigan and Oregon). The commenters favoring the proposal concurred that requiring gas pipeline operators to respond to notices of proposed excavation in areas that do not contain buried gas pipelines was costly and provided negligible safety benefits. Eight of these commenters argued that the excavator could easily be confused by one gas pipeline operator indicating that it did not have gas pipelines in the excavation area when pipelines of another operator were present. This is particularly confusing to excavators because in most "one-call" systems it is only the pipeline operators who are required to make negative "call-backs."

Comments opposing the proposal were received from seven respondents, consisting of three distribution pipeline operators, one trade organization (The American Congress on Surveying and Mapping (ACSM)), and three State pipeline safety regulatory agencies (Arizona, Maryland and Montana).

(Note: The three State agencies and one distribution pipeline operator are in States having negative "call-back" requirements by law other than the Federal pipeline safety regulations.)

The comments from those respondents opposing the proposal and the RSPA responses are as follows:

Comment: Six comments indicated that the present negative "call-back" requirement assures the excavator that the pipeline operator has properly received a notice of intent to dig made through a "one-call" system and that the notice is not lost or misplaced. Without the communication of a negative "call-back," the excavator cannot be sure there are no pipelines in the area.

Response: Notices forwarded to utilities by "one-call" systems most often are on a teletype or similar "hard copy." This procedure reduces to a minimum the probability of a notice of intent to dig not reaching the pipeline operator or being lost. RSPA has not found and no commenter supplied information indicating, that lost or misplaced notices are a problem in the operation of "one-call" systems.

In the Notice of Proposed Rulemaking, RSPA noted that the potential benefit to excavators of negative "call-backs" is diminished by their knowledge of a time frame within which operators must mark their underground pipelines after receiving notice of an intent to excavate. If pipelines are not marked, excavators can assume none exist in the area. "One-call" systems normally require participants to mark their utilities within a specified time after they receive notice and callers to the systems are advised of this time. The 1986–1987 "Directory of One-Call Systems," published by the American Public Works Association, Utility Location and Coordination Council, lists all "one-call" systems that were known to exist in the U.S. on January 1, 1985. With one exception, each "one-call" system has a specified response time listed in the directory that varies between systems (1, 2 or 3 days). The "one-call" system that does not have a specified time for marking advises each excavator of the time that can be expected for marking underground facilities on a case by case basis. Because "one-call" systems advise excavators of the time required to temporarily mark underground facilities, RSPA believes the marginal benefits of negative "call-backs" for gas pipelines do not outweigh the actual burdens and costs of compliance. Thus, the negative "call-back" feature of the current rule is deleted as proposed to provide the least burdensome effective rule.

Comment: One State agency and four other respondents stated that the proposed rule change would have no effect in those States where a negative response is required by State law, would provide very little cost savings, and would reduce a desirable communications link with excavators.

Response: As a result of this comment RSPA contacted each State having a pipeline safety program and determined that 31 States now have laws relating to "one-call" systems. Thirteen of these States have laws, other than the requirements of Part 192, that would require gas operators to continue responding to excavators who give notice of intended excavations in areas that do not contain buried pipelines. Under the Natural Gas Pipeline Safety Act of 1968, as amended, the authority of these and other States to require a negative "call-back" by intrastate operators subject to State pipeline safety regulations would not be affected by the final rule.

RSPA disagrees that costs would not be reduced by eliminating the negative "call-back" requirement. For example, a study by Michigan Consolidated Gas Company indicated it would have saved $221,000 in 1983 if negative "call-back" had not been required. Another study, done by Southern Natural Gas Company summarized the calls they received from the "one-call" systems in which they participate in two States during the 5-month period of September 1986 through January 1987. In Alabama, there was a total of 3,247 notices received with only 85 of these having a potential effect on their pipeline. Similarly, in Georgia there was a total of 3,647 notices received with only 10 of these requiring marking of the pipeline. Under the current requirements, Southern not only was required to contact the 95 excavators who were potentially effected by their pipeline but also the 6,799 excavators who were not close to the pipeline. This data is only for two States out of the seven States in which Southern participates in "one-call" systems.

As to the Communication link, RSPA believes that a sufficient link is maintained through the requirement that operators communicate with excavators who plan to dig in areas where pipelines

are located. This requirement would not be altered by this final rule.

Comment: In response to RSPA's point that excavators can reasonably assume that pipelines are not in an area when marking has not been done within 1–3 days after notice, one commenter stated that in many cases notice is given only a few hours before digging begins. This commenter said that an excavator is unlikely to wait 1–3 days to hear from an operator, having heard from all other operators on the first day, especially if that operator does not normally call-back with a negative response.

Response: If an excavator gives very short notice, "one-call" systems expedite the notification of all utility participants. OPS believes that in order to protect their pipelines the operators will expeditiously respond and mark any pipelines in the area before excavation begins. (§ 192.614(b)(5)). If no gas pipelines exist in the area, an excavator's hasty action in the absence of a negative "call-back" from operators should not cause any gas pipeline problems.

Comment: The ACSM stated that "If a surveyor does not have access to the most accurate information possible, he not only risks his own professional liability, but the safety of the public as well."

Response: The concern about professional liability and public safety by ACSM assumes that pipelines will not be marked. The remaining portion of § 192.614(b)(4) is not affected by this final rule, because pipeline operators are still required to notify persons who give notice of their intent to excavate if there are buried pipelines in the area of excavation activity.

Technical Pipeline Safety Standards Committee

Notice 1 was presented to the Technical Pipeline Safety Standards Committee on December 10, 1985. The Committee found the proposed rule to be technically feasible, reasonable, and practicable. A copy of the Committee report is available in the docket.

Classification

Since this final rule will have a positive effect on the economy of less than $100 million a year, will result in cost savings to consumers, industry, and government agencies, and no adverse impacts are anticipated; the proposed rule is not "major" under Executive Order 12291. Also it is not "significant" under Department of Transportation procedures (44 FR 11034). RSPA believes that the final rule will reduce the costs of damage prevention programs by reducing the number of telephone calls required by the current rule and the records of those calls. However, this savings is not expected to be large enough to warrant preparation of a Regulatory Evaluation.

Based on the facts available concerning the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Damage Prevention Program.

In view of the above, RSPA amends Part 192 to Title 49 of the Code of Federal Regulations as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 is revised to read as set forth below:

Authority: 49 App. U.S.C. 1672 and 1804; and 49 CFR 1.53.

2. Section 192.614(b)(4) is revised to read as follows:

§ 192.614 Damage Prevention Program

* * * * *

(b) * * *

(4) If the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings.

* * * * *

Issued in Washington, DC, on August 26, 1987.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 87-19908 Filed 8-28-87; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1132

Technical Amendment to CFR Regarding Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Technical amendment.

SUMMARY: In § 1132.1(b), three cross references regarding definitions of household goods that appear in sections in Parts 1056 and 1040 are incorrect. This notice revises those cross references.

EFFECTIVE DATE: August 31, 1987.

FOR FURTHER INFORMATION CONTACT: Ann Guthridge, (202) 275-6796.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1132

Administrative practice and procedure.

Title 49 of the CFR, Part 1132 is amended as follows:

PART 1132—PROTESTS AGAINST TARIFFS; PROCEDURES IN CERTAIN SUSPENSION AND LONG AND SHORT HAUL RESTRICTION MATTERS

1. The authority citation for Part 1132 continues to read as follows:

Authority: 49 U.S.C. 10321, 10707, 10708, and 10726; 5 U.S.C. 553 and 559.

§ 1132.1 [Amended]

2. In the sixth sentence of § 1132.1(b), the references to "49 CFR 1056.1(a)" and "49 CFR 1040.2(b)" are revised to read "49 CFR 1056.1(b)(1)."

Noreta R. McGee,

Secretary.

[FR Doc. 19918 Filed 8-28-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845-7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA announces the closure of the treaty Indian salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Point Chehalis, Washington, at 1 p.m., Pacific Daylight Time, August 26, 1987, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS, has determined in consultation with the Pacific Fishery Management Council (Council), the Oregon Department of Fish and Wildlife (ODFW), the Washington Department of Fisheries (WDF), and representatives of the treaty Indian tribes, that the ocean quota for the treaty Indian fisheries will be reached by that time and date. The closure is necessary to conform to the preseason announcement of 1987 management measures. This action is intended to ensure conservation of coho salmon.

EFFECTIVE DATE: Closure of the EEZ from the U.S.-Canada border to Point Chehalis, Washington, to treaty Indian salmon fishing is effective at 1 p.m., Pacific Daylight Time, August 26, 1987. Comments on this notice will be received until September 10, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director) at 206–526–6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached." The regulations further specify at § 661.10 that: "Except as otherwise provided in this part, treaty Indian fishing in any part of the fishery management area is subject to the provisions of this part, the Magnuson Act, and any other regulations issued under the Magnuson Act."

Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The treaty Indian ocean fishery for all salmon species except coho salmon extended from May 1 to the earlier of either June 22 or attainment of the chinook quota. The treaty Indian ocean fishery for all salmon species was scheduled to open on June 23, and extend until the earliest of September 30 or attainment of the chinook or coho quota. Treaty Indian quotas are 15,800 chinook and 86,000 coho salmon.

Several inseason adjustments to the season were imposed by treaty Indian tribal regulations to slow their harvest of chinook salmon and increase the opportunity for harvest of their coho quota, including a 26-day delay in the opening of the all species season.

Based on the best available information, the treaty Indian ocean fishery is projected to reach its 86,000 coho salmon quota by 1300 hours, local time, August 26, 1987. The Regional Director consulted with the Chairman of the Council, and representatives of ODFW, WDF, and affected treaty Indian tribes, regarding a closure of the treaty Indian fishery between the U.S.-Canada border and Point Chehalis, Washington. The tribal and WDF representatives confirmed their intent to close tribal fisheries in waters adjacent to this area of the EEZ at the time and date of projected attainment of the coho quota.

Therefore, NOAA issues this notice to close the treaty Indian salmon fishery in the EEZ from the U.S.-Canada border to Point Chehalis, Washington, effective 1 p.m., Pacific Daylight Time, Wednesday, August 26, 1987. Actual notice of this closure will be given by tribal officials to affected tribal members. This notice does not apply to other fisheries which may be operating in other areas.

Pursuant to § 661.21(a) of the framework salmon regulations, the Regional Director will consider reopening the treaty Indian ocean salmon fisheries if he finds that the actual catch has been overestimated and that part of the tribal quota remains, that reopening of the fishery is consistent with the management objectives for the affected species, and that the additional open period is no less than 24 hours.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: August 26, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–19974 Filed 8–26–87; 4:28 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 52, No. 168
Monday, August 31, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 304, 305, 306, 308, 309, 310, 313, 317, 318, 320, 325, 329, 335, 350, 351, 352, 354, 355, 362, and 381

[Docket No. 87-004N]

Regulatory Review of Enforcement-Related Regulations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments; regulatory review.

SUMMARY: Pursuant to Executive Order 12291 and the Regulatory Flexibility Act, FSIS is undertaking a review of its enforcement-related regulations promulgated under the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Agricultural Marketing Act of 1946. This Notice requests the submission of comments to assist Agency personnel in completing this review.

DATE: Comments must be received on or before October 30, 1987.

ADDRESS: Written comments should be sent in duplicate to the Policy Office, Attn: Ms. Linda Carey, FSIS Hearing Clerk, Room 3168, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC, 20250. Any person desiring an opportunity for an oral presentation of views should make such request to Mr. G. Edward McEvoy, Director, Planning Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington DC, 20250, (202) 447-3317, so that arrangements may be made for such views to be presented. A transcript will be made of all oral presentations.

FOR FURTHER INFORMATION CONTACT: Mr. G. Edward McEvoy, Director, Planning Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3317.

SUPPLEMENTARY INFORMATION: The Food Safety and Inspection Service (FSIS) carries out a mandatory inspection program for meat and poultry products under the Federal Meat Inspection Act and the Polultry Products Inspection Act; and, a voluntary inspection program for related species and products (e.g., rabbit, reindeer, buffalo, and game birds) under the Agricultural Marketing Act of 1946. FSIS is authorized to exercise a number of legal authorities to deal with violations, including criminal actions against individuals and business units (prosecutions for felonies and misdemeanors) and actions against products (condemnations, detentions, and judicial seizures). Civil injunctions and administrative actions to withdraw or deny inspection services are other examples of the enforcement authority granted to FSIS under the meat and poultry laws.

FSIS is currently undertaking a regulatory review, pursuant to Executive order 12291 and the Regulatory Flexibility Act (5 U.S.C. 601 note), of its existing enforcement-related regulations, which have been adopted to implement the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), and the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.).

Enforcement-related regulations are defined, for purposes of this Notice, as those pertaining to criminal actions and the acts of retention; condemnation; detention; seizure; the grant, denial, or withdrawal of inspection service; and appeals from any of these listed actions. The FSIS regulations identified for inclusion in this review are listed in the Appendix to this Notice.

It should be noted that enforcement-related requirements under the transportation regulations contained in 9 CFR Parts 325 and 381, Subpart S, are included in this review because of their close relationship to FSIS enforcement-related requirements. However, the enforcement regulations relating to the importation of meat food products and poultry products contained in 9 CFR Part 327 and 9 CFR Part 381, Subpart T, are not included, but will be reviewed at a later time.

The review of regulations outlined in this document is not related to the Agency's adoption of regulations to implement the Processed Products Inspection Imporvement Act of 1986, adopted as Title IV of the Futures Trading Act of 1986, Pub. L. 99-641. That regulatory action will be the subject of separate rulemaking.

FSIS is requesting public comments on which to base future improvements in current regulations. Interested members of the public and the affected industries are requested to submit suggestions for improving the clarity, understandability, andf completeness of FSIS' enforcement-related regulations. The FSIS is interested in obtaining information that might be included in its regulations which would improve their usefulness to the public and the affected industries in understanding how the FSIS administers its enforcement-related regulations.

Done at Washington, DC, on August 26, 1987.

Donald. L Houston,

Administrator, Food Safety and Inspection Service.

Appendix—List of Regulations Under Review

AREA OF REVIEW: ENFORCEMENT-RELATED REGULATIONS

9 CFR—CHAPTER III, FOOD SAFETY AND INSPECTION SERVICE MEAT AND POULTRY INSPECTION DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—MANDATORY MEAT INSPECTION

1. 9 CFR 304.2 ..... Drawings, information to be furnished; grant or refusal of inspection.
2. 9 CFR 305.5 ..... Withdrawal of inspection; statement of policy.
3. 9 CFR 305.6 ..... Reports of violations.
4. 9 CFR 306.5 ..... Appeals.
5. 9 CFR 308.15 ..... Tagging insanitary (sic) equipment, utensils, rooms or compartments.
6. 9 CFR 309.2 ..... Livestock suspected of being diseased or affected with certain conditions; identifying suspects; disposition on post-mortem inspection or otherwise.
7. 9 CFR 309.3 ..... Dead, dying, disabled, or diseased and similar livestock.

8. 9 CFR 309.13 ..... Disposition of condemned livestock.
9. 9 CFR 310.3 ..... Carcasses and parts in certain instances to be retained.
10. 9 CFR 310.4 ..... Identification of carcasses and parts; tagging.
11. 9 CFR 310.5 ..... Condemned carcasses and parts to be so marked; tanking; separation.
12. 9 CFR 313.50 ..... Tagging of equipment, alleyways, pens, or compartments to prevent inhumane slaughter or handling in connection with slaughter.
13. 9 CFR 317.11 ..... Labeling, filling of containers, handling of labeled products to be only in compliance with regulations.
14. 9 CFR 317.12 ..... Relabeling products; requirements.
15. 9 CFR 318.2 ..... Reinspection, retention, and disposal of meat and poultry products at official establishments.
16. 9 CFR 318.4 (a), (b) ..... Preparation of products to be officially supervised; responsibilities of official establishments.
17. 9 CFR 318.15 ..... Tagging chemicals, preservatives, cereals, spices, etc., "U.S. retained.".
18. 9 CFR 320 ..... Records, Registration, and Reports..
19. 9 CFR 325 ..... Transportation.
20. 9 CFR 329 ..... Detention; Seizure and Condemnation; Criminal Offenses.
21. 9 CFR 335 ..... Rules of Practice Governing Proceedings under the Federal Meat Inspection Act.

SUBCHAPTER B—VOLUNTARY INSPECTION AND CERTIFICATION SERVICE

PART 350. SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS

1. 9 CFR 350.6 ..... Denial or refusal of (voluntary inspection and certification) service.

PART 351. CERTIFICATION OF TECHNICAL ANIMAL FATS FOR EXPORTS

1. 9 CFR 351.15 ..... Reports of violations.
2. 9 CFR 351.20 ..... Withdrawal of service from certified plants.
3. 9 CFR 351.21 ..... Appeals.

PART 352. BUFFALO; VOLUNTARY INSPECTION

(adopted within last 5 years—not included in review)

PART 354. VOLUNTARY INSPECTION OF RABBITS AND EDIBLE PRODUCTS THEREOF

1. 9 CFR 354.38 ..... Suspension of plant approval.
2. 9 CFR 354.45 ..... Denial of service.
3. 9 CFR 354.46 ..... Misrepresentation; deceptive or fradulent acts or practices.
4. 9 CFR 354.47 ..... Use of facsimile forms.
5. 9 CFR 354.48 ..... Willful violation of the regulations.
6. 9 CFR 354.49 ..... Interfering with an inspector or employee of service.
7. 9 CFR 354.51 ..... Miscellaneous.
8. 9 CFR 354.53 ..... Other applicable regulations.
9. 9 CFR 354.60 ..... Approval of official identification.
10. 9 CFR 354.92 ..... Reports of violation.
11. 9 CFR 354.122 ..... Condemnation on ante-mortem inspection.
12. 9 CFR 354.127 ..... Condemnation and treatment of carcasses.
13. 9 CFR 354.248 ..... Scope and applicability of rules of practice.

PART 355. CERTIFIED PRODUCTS FOR DOGS, CATS, AND OTHER CARNIVORA; INSPECTION, CERTIFICATION, AND IDENTIFICATION AS TO CLASS, QUALITY, QUANTITY, AND CONDITION

1. 9 CFR 355.17 ..... Tagging equipment "U.S. rejected.".
2. 9 CFR 355.23 ..... Tagging products "U.S. retained.".
3. 9 CFR 355.24 ..... Processes to be supervised.
4. 9 CFR 355.25(i) ..... Canning (lack of suitable incubation facilities, retention).
5. 9 CFR 355.27 ..... Reports of violations of regulations.
6. 9 CFR 355.31 ..... Supervision by inspector.
7. 9 CFR 355.38 ..... Withdrawal of service.
8. 9 CFR 355.39 ..... Appeals from decisions made under this part.

PART 362. VOLUNTARY POULTRY INSPECTION REGULATIONS

1. 9 CFR 362.4 ..... Denial or withdrawal of service.

SUBCHAPTER C—MANDATORY POULTRY PRODUCTS INSPECTION

PART 381. POULTRY PRODUCTS INSPECTION REGULATIONS

1. 9 CFR 381.20 ..... Survey and grant of inspection..
2. 9 CFR 381.21 ..... Refusal of inspection.
3. 9 CFR 381.28 ..... Report of violations.
4. 9 CFR 381.29 ..... Suspension or other withdrawal of inspection service.
5. 9 CFR 381.35 ..... Appeal inspections; how made.
6. 9 CFR 381.71 ..... Condemnation on ante mortem inspection.
7. 9 CFR 381.78 ..... Condemnation of carcasses and parts: separation of poultry suspected of containing biological residues.
8. 9 CFR 381.79 ..... Passing of carcasses and parts.
9. 9 CFR 381.129 ..... False or misleading labeling or containers.
10. 9 CFR 381.130 ..... False or misleading labeling or containers; orders to withhold from use.
11. 9 CFR 381.145 (a,)(b) ..... Poultry products and other articles entering or at official establishments; examination and other requirements.
12. 9 CFR 381, Subpart Q ..... Records, Registration, and Reports.
13. 9 CFR 381, Subpart S ..... Transportation; Exportation; or Sale of Poultry or Poultry Products.
14. 9 CFR 381, Subpart U ..... Detention; Seizure and Condemnation; Criminal Offenses.
15. 9 CFR 381, Subpart W ..... Rules of Practice Governing Porceedings Under the Poultry Products Inspection Act.

[FR Doc. 87-19889 Filed 8-28-87; 8:45 am]

BILLING CODE 3410-DM-M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 018CE, Special Conditions No. 23-ACE-18A]

Special Conditions; Petersen Aviation, Inc., Modified Beech Model 33 Series, Model 35 Series, and Model 36 Series Airplanes, To Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions; amendment to Special Conditions No. 23–ACE–18.

SUMMARY: This notice proposes to amend Special Conditions No. 23–ACE–18, for Petersen Aviation, Inc., modified Beech Model 33 Series, Model 35 Series, and Model 36 Series Airplanes, to incorporate ADI system provisions which was published in the **Federal Register** on April 10, 1987 (52 FR 11627). One special condition paragraph on the ADI fluid quantity indicator was inadvertently omitted when these special conditions were originally proposed and adopted. This supplemental notice presents the omitted paragraph for public comment prior to adoption into final special conditions.

DATES: Comments must be received by September 30, 1987.

ADDRESS: Comments on this proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE–7, Attn: Rules Docket Clerk, Docket No. 018CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 018CE. Comments may be inspected in the Docket File between 7:30 a.m. and 4:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office, ACE–110, Federal Aviation Administration, Room 1656, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed based on comments received. All comments submitted will be available both before and after closing date in the Rules Docket for examination by interested persons.

Type Certification Basis

The certification basis for the Beech Aircraft Corporation Model 33 Series, Model 35 Series, and Model 36 Series Airplanes (TC 3A15) is Part 3 of the Civil Air Regulations, as amended to May 15, 1956, and Amendment 3-8; in addition, for the Models A36TC and B36TC only, §§ 23.909, 23.1043, 23.1527(b), and 23.1583(a), as amended by Amendment 23–7 and §§ 23.959, 23.967(a)(5), and 23.1121(b) as amended by Amendment 23–18 of the Federal Aviation Regulations, Part 23, dated February 1, 1965, and for the Model B36TC only, § 23.1545(a) as amended by Amendment 23–23.

For Model/Serial Numbers F33A (S/N CE–891 and after), V35B (S/N D–10313 and after), F33C (S/N CJ–156 and after), A36 (S/N E–1609 and after), A36TC (S/N EA–1 through EA–241 and EA–243 through EA–272), and B36TC (S/N EA–242, EA–273 and after), Part 36 through Amendment 36–10 of the Federal Aviation Regulations is applicable.

For Model V35B (S/N D–9948 and after), A36 (S/N E–927 and after), F33A (S/N CE–674 and after), F33C (S/N CJ–129 and after), A36TC (all serials) findings of equivalent level of safety for CAR 3.664 and CAR 3.757 are applicable.

For Model V35B (all serials), A36 (all serials), F33A (all serials), F33C (all serials), A36TC (all serials), and B36TC (all serials), findings of equivalent level of safety for CAR 3.387 are applicable.

For all models, Special Conditions No. 23–ACE–18 and this proposed amendment, are applicable when Petersen ADI systems are installed.

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Beech Bonanza Series Airplanes. This installation incorporates ADI tanks, pumps, and associated control systems to supply ADI fluid to the engine in measured quantities to allow the engine to be operated on automobile gasoline (autogas).

Special conditions for the certification of this ADI system were proposed in Notice No. 23–ACE–18, published in the **Federal Register** on August 21, 1986. The closing date for comments was September 22, 1986. Two comments were received. The special conditions were adopted as proposed on April 1, 1987 and published in the **Federal Register** on April 10, 1987 (52 FR 11627) to be effective May 11, 1987.

Subsequent certification activity revealed that one special condition paragraph previously coordinated between the FAA and the applicant had inadvertently been omitted from the special condition's package. The purpose of this proposal is to correct that omission.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following amendment to Special Conditions No. 23–ACE–18 to become a part of the type certification basis for Beech Model 33 Series, Model 35 Series, and Model 36 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System.

Special Condition 2 is proposed to be amended by adding a new paragraph (1) to read as follows:

(1) In § 23.1337(b), for ADI systems, replace the lead-in paragraph with "There must be means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds, and clearly marked to indicate which scale is being used, may be used. In addition, . . ."

Issued in Kansas City, Missouri, on August 6, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–19875 Filed 8–28–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 23

[Docket No. 025CE, Notice No. 23-ACE-25A]

Special Conditions; Petersen Aviation, Inc., Modified Bellanca Model 17-30 Airplanes to Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed special conditions.

SUMMARY: This supplemental notice proposes to adopt an additional special condition for Petersen Aviation, Inc., modified Bellanca Model 17-30 Airplanes to incorporate ADI system provisions, which was published in the **Federal Register** on August 28, 1986 (51 FR 30669). This special condition, on ADI fluid quantity indicators, was inadvertently omitted from the original Notice of Proposed Special Conditions No. 23-ACE-25. This supplemental notice presents this proposed special condition for public comment and completes the proposed special conditions for the ADI system installation.

DATE: Comments must be received on or before September 30, 1987.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 025CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 025CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office, ACE-110, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified in this notice. All communications received on or before the closing date for comments specified in this notice will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested parties both before and after the closing date for submission of comments.

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Bellanca Model 17-30 Airplanes. This installation incorporates ADI tanks, pumps, lines, and associated control systems to supply ADI fluid to the engine in measured quantities to allow the engine to be operated on automobile gasoline (autogas). The engine will be previously certificated for use of autogas with ADI independently of the airplane installation certification.

ADI systems are considered novel and unusual design features; therefore, to enable the certification of such systems, special conditions were developed and published in the **Federal Register** as a Notice of Proposed Special Conditions on August 28, 1986 (51 FR 30669). Subsequently, it was discovered that one paragraph of the proposed special conditions had inadvertently been omitted from the notice. This supplemental notice presents that omitted paragraph for public comment.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g). (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

The Proposed Additional Special Conditions

Accordingly, the Federal Aviation Administration proposes the following additional special condition as part of the type certification basis for Bellanca Model 17-30 Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System.

Proposed Special Condition 2 is revised by adding a new paragraph (k) to read as follows:

(k) In § 23.1337(b), for ADI systems, replace the lead-in paragraph with "There must be a means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds, and clearly marked to indicate which scale is being used, may be used. In addition. . . ."

Issued in Kansas City, Missouri on July 29, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-19872 Filed 8-28-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 21 and 23

[Docket No. 020CE, Notice No. 23-ACE-20A]

Special Conditions; Petersen Aviation, Inc., Modified Cessna Model 185 Series Airplanes to Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed special conditions.

SUMMARY: This supplemental notice proposes to adopt an additional special condition for Petersen Aviation, Inc., modified Cessna Model 185 Series Airplanes to incorporate ADI system provisions. This special condition, on ADI fluid quantity indicators, was inadvertently omitted from the original Notice of Proposed Special Conditions which was published in the **Federal Register** on August 21, 1986 (51 FR 29941). This supplemental notice presents this proposed special condition for public comment and completes the proposed special conditions for the ADI system installation.

DATE: Comments must be received on or before September 30, 1987.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 020CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 020CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office, ACE-110, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these

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special conditions by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified in this notice. All communications received on or before the closing date for comments specified in this notice will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested parties both before and after the closing date for submission of comments.

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Cessna Model 185 Series Airplanes. This installation incorporates ADI tanks, pumps, lines, and associated control systems to supply ADI fluid to the engine in measured quantities to allow the engine to be operated on automobile gasoline (autogas). The engine will be previously certificated for use of autogas with ADI independently of the airplane installation certification.

ADI systems are considered novel and unusual design features; therefore, to enable the certification of such systems, special conditions were developed and published in the **Federal Register** as a Notice of Proposed Special Conditions on August 21, 1986 (51 FR 29941). Subsequently, it was discovered that one paragraph of the proposed special conditions had inadvertently been omitted from the notice. This supplemental notice presents that omitted paragraph for public comment.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g). (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

The Proposed Additional Special Conditions

Accordingly, the Federal Aviation Administration proposes the following additional special condition as part of the type certification basis for Cessna Model 185 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System.

Proposed Special Condition 2 is revised by adding a new paragraph (k) to read as follows:

(k) In § 23.1337(b), for ADI systems, replace the lead-in paragraph with "There must be a means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds, and clearly marked to indicate which scale is being used, may be used. In addition, * * *"

Issued in Kansas City, Missouri on July 29, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–19873 Filed 8–28–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 21 and 23

[Docket No. 017CE, Special Conditions No. 23–ACE–16A]

Special Conditions; Petersen Aviation, Inc., Modified Cessna Model 188 Series Airplanes, to Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions; amendment to Special Conditions No. 23–ACE–16.

SUMMARY: This notice proposes to amend Special Conditions No. 23–ACE–16, for Petersen Aviation, Inc., modified Cessna Model 188 Series Airplanes, to incorporate ADI system provisions which was published in the **Federal Register** on August 25, 1986 (52 FR 30207). One special condition paragraph, on the ADI fluid quantity indicator, was inadvertently omitted when these special conditions were originally proposed and adopted. This supplemental notice presents the omitted paragraph for public comment prior to adoption into final special conditions.

DATES: Comments must be received by September 30, 1987.

ADDRESS: Comments on this proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE–7, Attn: Rules Docket Clerk, Docket No. 017CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 017CE. Comments may be inspected in the Docket File between 7:30 a.m. and 4:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office, ACE–110, Federal Aviation Administration, Room 1656, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed based on comments received. All comments submitted will be available both before and after closing date in the Rules Docket for examination by interested persons.

Type Certification Basis

The certification basis (TC A9CE) for the Cessna Aircraft Company Model 188 Series Airplanes is, for Restricted Category, Part 21 of the Federal Aviation Regulations, dated February 1, 1965; for Normal Category, Part 23 of the Federal Aviation Regulations, dated February 1, 1965; and, in addition, for S/N 18803297 and on, in Normal Category, § 23.1559, effective March 1, 1978.

For the Model T188C only, the certification basis is Part 21 of the Federal Aviation Regulations dated February 1, 1965, Part 23 of the Federal Aviation Regulations dated February 1, 1965, with exception to § 23.221, per § 21.25(a)(1), and, in addition, § 23.1559, effective March 1, 1978.

Equivalent Safety Findings were made on S/N 678T, 18802349 and on, S/N T18803307T, T18803308T, T18803325T and on, relative to Airspeed Indicator § 23.1545 (see Note 7 on TCDS on use of IAS), and Airspeed Limitations § 23.1583(a)(1).

Special Conditions No. 23–ACE–16, and any additional special conditions that may result from this proposal are applicable to all Model 188 Series Airplanes modified to incorporate the Petersen Aviation, Inc. ADI System.

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application to the FAA for a supplemental type certificate

(STC) approval of the design changes necessary to incorporate an ADI system on the Cessna Model 188 Series Airplanes. This installation incorporates ADI tanks, pumps, and associated control systems to supply ADI fluid to the engine in measured quantities to allow the engine to be operated on automobile gasoline (autogas).

Special conditions for the certification of this ADI system were proposed in Notice No. 23–ACE–16 which was published in the **Federal Register** on June 13, 1986. The closing date for comments was July 14, 1986. One comment was received. The special conditions were adopted as proposed on August 8, 1986, and published in the **Federal Register** on August 25, 1986 [51 FR 30207] to be effective September 24, 1986.

Subsequent certification activity revealed that one special condition paragraph, previously coordinated between the FAA and the applicant, had inadvertently been omitted from the special conditions package. The purpose of this proposal is to correct that omission.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g). (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following amendment to Special Conditions No. 23–ACE–16 to be a part of the type certification basis for Cessna Model 188 Series Airplanes modified. to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System.

Special Condition 2 is proposed to be amended by adding a new paragraph (k) to read as follows:

(k) In § 23.1337(b), for ADI systems, replace the lead-in paragraph with "There must be means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds, and clearly marked to indicate which scale is being used, may be used. In addition . . ."

Issued in Kansas City, Missouri on August 6, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–19876 Filed 8–28–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 23

[Docket No. 021CE, Notice No. 23–ACE–21A]

Special Conditions; Petersen Aviation, Inc., Modified Cessna Model 206 Series Airplanes to Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Special Conditions.

SUMMARY: This supplemental notice proposes to adopt an additional special condition for Petersen Aviation, Inc., modified Cessna Model 206 Series Airplanes to incorporate ADI system provisions which were published in the **Federal Register** on August 28, 1986 (51 FR 30667). This special condition, on ADI fluid quantity indicators, was inadvertently omitted from the original Notice of Proposed Special Conditions No. 23–ACE–21. This supplemental notice presents this proposed special condition for public comment and completes the proposed special conditions for the ADI system installation.

DATE: Comments must be received on or before September 30, 1987.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE–7, Attn: Rules Docket Clerk, Docket No. 021CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 021CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office, ACE–110, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified in this notice. All communications received on or before the closing date for comments specified in this notice will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested parties both before and after the closing date for submission of comments.

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Cessna Model 206 Series Airplanes. This installation incorporates ADI tanks, pumps, lines, and associated control systems to supply ADI fluid to the engine in measured quantities to allow the engine to be operated on automobile gasoline (autogas). The engine will be previously certificated for use of autogas with ADI independently of the airplane installation certification.

ADI systems are considered novel and unusual design features; therefore, to enable the certification of such systems, special conditions were developed and published in the **Federal Register** as a Notice of Proposed Special Conditions on August 28, 1986 (51 FR 30667). Subsequently, it was discovered that one paragraph of the proposed special conditions had inadvertently been omitted from the notice. This supplemental notice presents that omitted paragraph for public comment.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g). (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

The Proposed Additional Special Conditions

Accordingly, the Federal Aviation Administration proposes the following additional special condition as part of the type certification basis for Cessna Model 206 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System.

Proposed Special Condition 2 is revised by adding a new paragraph (k) to read as follows:

(k) In § 23.1337(b), for ADI systems, replace the lead-in paragraph with "There must be a means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an

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indicator, calibrated in either gallons or pounds, and clearly marked to indicate which scale is being used, may be used. In addition, * * *"

Issued in Kansas City, Missouri on July 29, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-19867 Filed 8-28-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 21 and 23

[Docket No. 022CE, Notice No. 23-ACE-22A]

Special Conditions; Petersen Aviation, Inc., Modified Cessna Model 207 Series Airplanes to Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed special conditions.

SUMMARY: This supplemental notice proposes to adopt an additional special condition for Petersen Aviation, Inc., modified Cessna Model 207 Series Airplanes to incorporate ADI system provisions. This special condition, on ADI fluid quantity indicators, was inadvertently omitted from the original Notice of Proposed Special Conditions, which was published in the **Federal Register** on August 21, 1986 (51 FR 29940). This supplemental notice presents this proposed special condition for public comment and completes the proposed special conditions for the ADI system installation.

DATE: Comments must be received on or before September 30, 1987.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 022CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 022CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office, ACE-110, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified in this notice. All communications received on or before the closing date for comments specified in this notice will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested parties both before and after the closing date for submission of comments.

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Cessna Model 207 Series Airplanes. This installation incorporates ADI tanks, pumps, lines, and associated control systems to supply ADI fluid to the engine in measured quantities to allow the engine to be operated on automobile gasoline (autogas). The engine will be previously certificated for use of autogas with ADI independently of the airplane installation certification.

ADI systems are considered novel and unusual design features; therefore, to enable the certification of such systems, special conditions were developed and published in the **Federal Register** as a Notice of Proposed Special Conditions on August 21, 1986 (51 FR 29940). Subsequently, it was discovered that one paragraph of the proposed special conditions had inadvertently been omitted from the notice. This supplemental notice presents that omitted paragraph for public comment.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g). (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

The Proposed Additional Special Conditions

Accordingly, the Federal Aviation Administration proposes the following additional special condition as part of the type certification basis for Cessna Model 207 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System.

Proposed Special Condition 2 is revised by adding a new paragraph (k) to read:

(k) In § 23.1337(b), for ADI systems, replace the lead-in paragraph with "There must be a means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds, and clearly marked to indicate which scale is being used, may be used. In addition, * * *"

Issued in Kansas City, Missouri, on July 29, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-19870 Filed 8-28-87; 8:45 am]

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14 CFR Parts 21 and 23

[Docket No. 019CE, Notice No. 23-ACE-19A]

Special Conditions; Petersen Aviation, Inc., Modified Cessna Model 310 Series Airplanes to Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed special conditions.

SUMMARY: This supplemental notice proposes to adopt an additional special condition for Petersen Aviation, Inc., modified Cessna Model 310 Series Airplanes to incorporate ADI system provisions. This special condition, on ADI fluid quantity indicators, was inadvertently omitted from the original Notice of Proposed Special Conditions 23-ACE-19, which was published in the **Federal Register** on August 28, 1986 (51 FR 30666). This supplemental notice presents this proposed special condition for public comment and completes the proposed special conditions for the ADI system installation.

DATE: Comments must be received on or before September 30, 1987.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 019CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 019CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office, ACE-110, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified in this notice. All communications received on or before the closing date for comments specified in this notice will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested parties both before and after the closing date for submission of comments.

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Cessna Model 310 Series Airplanes. This installation incorporates ADI tanks, pumps, lines, and associated control systems to supply ADI fluid to the engines in measured quantities to allow the engines to be operated on automobile gasoline (autogas). The engines will be previously certificated for use of autogas with ADI independently of the airplane installation certification.

ADI systems are considered novel and unusual design features; therefore, to enable the certification of such systems, special conditions were developed and published in the **Federal Register** as a Notice of Proposed Special Conditions on August 28, 1986 (51 FR 30666). Subsequently, it was discovered that one paragraph of the proposed special conditions had inadvertently been omitted from the notice. This supplemental notice presents that omitted paragraph for public comment.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g). (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

The Proposed Additional Special Conditions

Accordingly, the Federal Aviation Administration proposes the following additional special condition as part of the type certification basis for Cessna Model 310 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System.

Proposed Special Condition 2 is revised by adding a new paragraph (k) to read as follows:

(k) In § 23.1337(b), for ADI systems, replace the lead-in paragraph with "There must be a means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds, and clearly marked to indicate which scale is being used, may be used. In addition, . . ."

Issued in Kansas City, Missouri on July 29, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-19874 Filed 8-28-87; 8:45 am]

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14 CFR Parts 21 and 23

[Docket No. 024CE, Notice No. 23-ACE-24A]

Special Conditions; Petersen Aviation, Inc., Modified Cessna Model 320 Series, Model 340 Series, and Model 335 Series Airplanes to Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed special conditions.

SUMMARY: This supplemental notice proposes to adopt an additional special condition for Petersen Aviation, Inc., modified Cessna Model 320 Series, Model 340 Series, and Model 335 Series Airplanes to incorporate ADI system provisions. This special condition, on ADI fluid quantity indicators, was inadvertently omitted from the original Notice of Proposed Special Conditions, which was published in the **Federal Register** on September 17, 1986 (51 FR 32927). This supplemental notice presents this proposed special condition for public comment and completes the proposed special conditions for the ADI system installation.

DATE: Comments must be received on or before September 30, 1987.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 024CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 024CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office, ACE-110, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified in this notice. All communications received on or before the closing date for comments specified in this notice will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested parties both before and after the closing date for submission of comments.

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Cessna Model 320 Series Airplanes. This installation incorporates ADI tanks, pumps, lines, and associated control systems to supply ADI fluid to the engines in measured quantities to allow the engines to be operated on automobile gasoline (autogas). The engines will be previously certificated for use of autogas with ADI independently of the airplane installation certification.

ADI systems are considered novel and unusual design features; therefore, to enable the certification of such systems, special conditions were developed and published in the **Federal Register** as a

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Notice of Proposed Special Conditions on September 17, 1986 (51 FR 32927). Subsequently, it was discovered that one paragraph of the proposed special conditions had inadvertently been omitted from the notice. This supplemental notice presents that omitted paragraph for public comment.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g). (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

The Proposed Additional Special Conditions

Accordingly, the Federal Aviation Administration proposes the following additional special condition as part of the type certification basis for Cessna Model 320 Series, Model 340 Series, and Model 335 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System.

Proposed Special Condition 2 is revised by adding a new paragraph (k) to read:

(k) In § 23.1337(b), for ADI systems, replace the lead-in paragraph with "There must be a means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds, and clearly marked to indicate which scale is being used, may be used. In addition, * * *"

Issued in Kansas City, Missouri, on July 29, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–19865 Filed 8–28–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 21 and 23

[Docket No. 026CE, Notice No. 23–ACE–28A]

Special Conditions; Petersen Aviation, Inc., Modified Gulfstream Aerospace Model 500 Series Airplanes to Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed special conditions.

SUMMARY: This supplemental notice proposes to adopt an additional special condition for Petersen Aviation, Inc., modified Gulfstream Aerospace Model 500 Series Airplanes to incorporate ADI system provisions which was published in the **Federal Register** on August 21, 1986 (51 FR 29944). This special condition, on ADI fluid quantity indicators, was inadvertently omitted from the original Notice of Proposed Special Conditions No. 23–ACE–26. This supplemental notice presents this proposed special condition for public comment and completes the proposed special conditions for the ADI system installation.

DATE: Comments must be received on or before September 30, 1987.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE–7, Attn: Rules Docket Clerk, Docket No. 026CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 026CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office, ACE–110, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified in this notice. All communications received on or before the closing date for comments specified in this notice will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested parties both before and after the closing date for submission of comments.

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Gulfstream Aerospace Model 500 Series Airplanes. This installation incorporates ADI tanks, pumps, lines, and associated control systems to supply ADI fluid to the engines in measured quantities to allow the engines to be operated on automobile gasoline (autogas). The engines will be previously certificated for use of autogas with ADI independently of the airplane installation certification.

ADI systems are considered novel and unusual design features; therefore, to enable the certification of such systems, special conditions were developed and published in the **Federal Register** s a Notice of Proposed Special Conditions on August 21, 1986 (51 FR 29944). Subsequently, it was discovered that one paragraph of the proposed special conditions had inadvertently been omitted from the notice. This supplemental notice presents that omitted paragraph for public comment.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g). (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

The Proposed Additional Special Conditions

Accordingly, the Federal Aviation Administration proposes the following additional special condition as part of the type certification basis for Gulfstream Aerospace Model 500 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System.

Proposed Special Condition 2 is revised by adding a new paragraph (k) to read as follows:

(k) In § 23.1337(b), for ADI systems, replace the lead-in paragraph with "There must be a means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds, and clearly marked to indicate which scale is being used, may be used. In addition, * * *"

Issued in Kansas City, Missouri on July 29, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–19871 Filed 8–28–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 23

[Docket No. 031CE, Notice No. 23–ACE–29]

Special Conditions; Piaggio Model P–180 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Piaggio Model P–180 airplane. The airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness requirements in Part 23 of the Federal Aviation Regulations (FAR). The novel and unusual design features are associated with the use of advanced composite materials for primary flight structure, the location of the propellers, forward wing (canard) configuration, and an outward opening, main entry door in the pressurized cabin for which the regulations do not contain adequate or appropriate safety standards. This notice contains the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that envisioned in the applicable regulations.

DATE: Comments must be received on or before September 30, 1987.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 031CE, 601 East 12th Street, Kansas City, Missouri 64106; or delivered in duplicate to: Room 1558, 601 East 12th Street, Kansas City, MO. All comments must be marked: Docket No. 031CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oscar E. Ball, Aerospace Engineer, Standards Office, ACE–110, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, MO 64106, telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on this proposal. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date in the Rules Docket for examination by interested persons.

Type Certification Basis

The certification basis for the Piaggio Model P–180 airplane is 14 CFR, Part 21, Section 21.29; 14 CFR, Part 23, effective February 1, 1965, including amendments 23–1 through 23–30; Special Federal Aviation Regulations No. 27, effective February 1, 1974, including amendments 27–1 through 27–5; 14 CFR, Part 36, effective December 1, 1969, including amendments 36–1 through amendment effective on the date of type certification; exemptions, if any; and any special conditions resulting from this notice.

Background

On December 29, 1983, Rinaldo Piaggio, S.p.A. made application for a type certificate through Registro Aeronautico Italiano (RAI) to the FAA Brussels Office for the Model GP–180, and submitted a revised application changing the model designation to Model P–180 on November 12, 1986.

The Model P–180 is a small, normal category, 9-passenger airplane with a partially composite-structure airframe, forward wing (canard) with aft-mounted, T-tail configuration, laminar flow wing and twin turboprop engines that are main-wing-mounted with pusher propellers aft of the main wing trailing edge.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, will be adopted and issued after public notice, in accordance with §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, in accordance with § 21.17(a)(2).

The proposed type design of the Model P–180 airplane contains a number of novel or unusual design features with respect to the state of technology not envisaged by the applicable Part 23 airworthiness standards for an airplane to be type certificated under Part 23 requirements. Special conditions are necessary because the airworthiness requirements do not contain adequate or appropriate safety standards for the novel and unusual design features for the Model P–180 airplane.

The Model P–180 will be operated at high altitudes where stall-Mach buffet encounters are likely to occur which are not presently addressed in Part 23. A special condition is proposed which will require buffet onset tests and the inclusion of information in the Airplane Flight Manual/Pilot's Operation Handbook (AFM/POH) to provide guidance to the flightcrew. This information will enable the flightcrew to plan flight operations that will maximize the maneuvering capability during high altitude cruise flight and preclude inadvertent operations exceeding the boundary of perceptible buffet.

The proposed operating envelope for the Model P–180 airplane includes areas in which Mach effects (e.g., buffet, changes in pressure distribution over the main wing and forward wing causing reduction in control authority) may be significant. The anticipated low drag of the airplane, coupled with the unusual design features associated with the forward aerodynamic surface, and the proposed operating envelope are conditions not envisioned by the existing Part 23 regulations. These conditions may degrade the ability of the flightcrew to promptly recover from inadvertent excursions beyond maximum operating speeds. The ability to pull at least 1.5g positive load factor is needed to assure that, during recovery from upset, the airplane speed does not continue to increase to a value where recovery may not be achievable by the average pilot or flightcrew. Accordingly, a special condition is proposed to require demonstration of the ability to recover from inadvertent speed excursions beyond V_{MO}/M_{MO} and up to V_D/M_D.

Piaggio has selected airfoil designs for the Model P–180 having airfoil pressure gradient characteristics and smooth aerodynamic surfaces which may be capable of supporting natural laminar flow. Changes in flying qualities and performances may occur due to the loss of natural laminar flow caused by rain, insects, ice or other contamination adhering to aerodynamic surfaces.

Airfoil sections whose performance and flying qualities are substantially degraded by contamination, which would normally be encountered in service, were not envisaged by the existing Part 23 requirements. A special condition is proposed to require that the airplane comply with the requirements of §§ 23.141 through 23.253 with any contamination on the aerodynamic surfaces normally encountered in service and to require that information

relating to any resulting performance degradations be provided to the pilot.

The Model P–180 primary structure is to be partially constructed of composite material which requires damage tolerance methods for a thorough fatigue-type evaluation. Composite materials in existence and commonly used in aircraft airframes at this time are typically more susceptible to different types of damage from intrinsic and discrete sources that might adversely influence strength properties (more than commonly used aluminum structure). Because of this, and other factors, it is generally agreed that damage tolerance criteria should be used to show that composite material structure can withstand the repeated loads of variable magnitude expected in service. Furthermore, because of the lack of service experience base for these new materials and their mechanical properties characteristics, there is a need to apply special requirements such as (a) limit load residual strength with large area manufacturing defects (e.g., weak bonds) and impact damage from discrete sources, and (b) ability to carry ultimate load with realistic impact damage at the threshold of detectability and material environmental exposure effects. A special condition is proposed to require that composite structural components critical to safe flight be evaluated by damage tolerance criteria. When damage tolerance is shown to be impractical, the proposed special condition is worded to permit approval based on safe-life testing.

Part 23 does not address loads on the canard (forward horizontal) stabilizing surface. Although it has been generally accepted that the regulations applicable to the main wing are also applicable to the Model P–180 forward wing, Part 23 has not been amended to include appropriate requirements. A special condition is proposed to clarify and broaden the existing Part 23 requirements to account for the airplane loads associated with a forward lifting surface.

This special condition will differ from previous special conditions on this subject issued on canard-configured airplanes. The differences are associated with the unique configuration of the P–180 airframe and the design approach taken by the applicant. The P–180 airplane has both a canard surface forward and a horizontal stabilizing surface aft.

The FAA anticipates loads analysis of the P–180 airplane will show it to be a gust critical design. Gust critical design means simply that the loads on the airplane that result from applying gusts of the shape and velocity set forth in the requirements are higher than loads that result from maneuvers.

A canard configured airplane responds differently than a conventional airplane in vertical gusts. The forward wing penetrates the gust first, and causes the airplane to pitch up. This results in an increase in the main wing angle of attack and wing airload, when compared with a conventional airplane. FAA considers the 1-cosine shape and the gust criteria of § 23.333 to be adequate for certification of canard and tandem wing configurations. However, this requires a time history analysis to determine the loads on the lifting surfaces, as the maximum airloads on the forward (canard) and main wings occur at different times, and neither occur at the time of maximum airplane vertical loads.

The applicant may want to avoid running time histories for all critical conditions. A simplified method may be proposed, however, it must be shown to be conservative when compared with the 1-cosine gust.

The Model P–180 cabin entrance door opens outward, has multiple latches, and has a seal that is pressurized with cabin air. If this type door is not properly closed and locked, or if a failure in the door or its locking mechanism occurs, the pressure in the cabin can blow the door open, resulting in explosive decompression of the cabin and possible injury to its occupants. The high cabin differential pressure and outward opening doors are novel and unusual design features when compared to the state of technology envisaged in the applicable Part 23 rules because the rules do not contain any airworthiness standards for the door latching and locking mechanism and for a means to warn the crew when the doors are not properly closed and locked. A special condition is proposed to apply appropriate design standards to the door latching and locking mechanism and to require a means to warn the crew when the doors are not fully closed and locked.

The Model P–180 utilizes a T-tail empennage and small forward wing (canard) to provide the necessary balancing forces. When the wing flaps are actuated, the large pitching moment changes are countered by movement of flaps on the forward wing, resulting in little trim change during takeoff and landing. However, if movement of the forward wing flaps is not in harmony (synchronized) with the main wing flap, excessive stick forces will result or airplane control may be degraded.

Section 23.701 addresses designs where flaps on opposite sides of the airplane must be synchronized by a mechanical interconnection, unless the airplane has safe flight characteristics with the flaps retracted on one side and extended on the other. Part 23 does not envision a system where flaps are incorporated both on the forward wing and the main wing as on the Model P–180. The operating mechanism for the main wing flaps are synchronized by a mechanical interconnect. Synchronization between these surfaces, and between each forward wing flap, is achieved electrically, but no indicator or monitoring system is planned to detect any unsynchronized condition or prevent flap runaway. For the level of safety intended by § 23.701, continued safe flight to landing must be demonstrated for each combination of synchronized and unsynchronized positions between the main and forward wing flaps. A special condition is proposed to require that the airplane demonstrate continued safe flight characteristics for each combination of synchronized or unsynchronized positions of the main wing flaps and the forward wing flaps.

The Model P–180 rear-mounted pusher propellers may be susceptible to contact with the runway surface at the maximum pitch attitude attainable during takeoffs and landings. A special condition is proposed to provide adequate ground clearance. If a tail skid is provided to show compliance with the special condition, that special condition will also require that (1) suitable design loads must be established for the skid and (2) the skid and its supporting structure must be designed to support those loads.

Since the aft location of the Model P–180 propellers is an unconventional design feature, passengers and ground personnel may be less aware of the proximity of the propeller blades. A special condition is proposed to require the necessary visibility of the propeller discs corresponding to similar requirements of Parts 27 and 29 concerning conspicuity of the tail rotor.

Because of the aft propeller location, ice shed from the wing leading edges, engine air inlet duct inertial separator, and other parts of the airplane may impact the propeller blades. Impact with shed ice fragments may have an adverse effect on the strength and fatigue characteristics of the propeller. To ensure propeller integrity and continued availability of power, a special condition is proposed to either prevent ice from accumulating on the airplane forward of the propellers, or to assure that ice shed into the propellers will not create a hazardous condition. Such protection is necessary during all

operating conditions, including unanticipated encounters with icing conditions. Also, to ensure propeller integrity, exhaust gases discharging into the plane of the propeller, not covered by § 23.1121, must be considered.

Small airplanes have typically been unpressurized where smoke or toxic fumes could be evacuated by opening windows or, if pressurized, have had maximum operating altitudes such that the airplane could be readily depressurized to evacuate smoke or toxic fumes without creating an unsafe condition. Thus, the small airplane envisioned in the Part 23 airworthiness standards inherently had smoke evacuation provisions. The Model P–180 will not have the inherent smoke evacuation provisions due to the higher differential pressures, longer times needed to depressurize and ventilate the cockpit, and the need for immediate supplemental oxygen at the maximum operating altitudes. Accordingly, a special condition is proposed to require cockpit ventilation requirements corresponding to the level of safety intended by the airworthiness standards applicable to the Model P–180 airplane.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for the Piaggio Model P–180 airplanes and future changes to the airplanes:

1. Buffet Onset Envelope. In addition to the requirements of §§ 23.251 and 23.1585, with the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or Mach number, weight, and altitude for which the airplane is to be certificated. The buffet onset envelopes determined must be furnished as information in the Airplane Flight Manual. This information must include envelopes of load factor, speed, weight, and altitude which provide a sufficient range for normal operations. The buffet onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

2. Inadvertent Excursions Beyond Maximum Operating Speeds. In addition to the requirements of § 23.251, it must be possible to achieve a positive load factor of 1.5 for recovery from inadvertent speed excursions beyond V_{MO}/M_{MO} and up to V_{DF}/M_{DF}, for each combination of weight, altitude and center of gravity.

3. Effects of Contamination on Laminar Flow Airfoils. In the absence of specific requirements for airfoil contamination, airplane airfoil designs which have airfoil pressure gradient characteristics and smooth aerodynamic surfaces which may be capable of supporting natural laminar flow must comply with the following:

(a) It must be shown by tests or analysis supported by tests that the airplane complies with the requirements of §§ 23.141 through 23.253 with any airfoil contamination which would normally be encountered in service and which would cause significant adverse effects on the handling qualities of the airplanes resulting from the loss of laminar flow.

(b) Significant performance degradations identified as resulting from the loss of laminar flow must be provided as part of the information required by §§ 23.1585 and 23.1587.

4. Evaluation of Composite Structure. In addition to complying with § 23.572, all composite structure, the failure of which would result in catastrophic loss of the airplane, including the tail section, each forward wing and its attaching structure, and each movable control surface, must be evaluated to the damage tolerance criteria prescribed in paragraphs (a) through (h) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (j) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (i) of this special condition.

(a) It must be demonstrated, by test or by analysis supported by test evidence, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program for application by operations and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the result of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection methods specified the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) The empennage, tail cone, forward wing, forward wing attaching structure and each movable control surface, must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(g) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(h) The structure must be shown by analysis to be free from flutter to V_D with the extent of damage for which residual strength is demonstrated.

(i) In lieu of a non-destructive inspection technique which assures ultimate load carrying capability of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraph (f) of this special condition must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article which will apply the critical limit design load to each critical bonded joint.

(j) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Impact damage in composite material components which may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

5. Loads. (a) In addition to the requirements of paragraph 23.301(b), the following shall be required: Methods used to determine load intensities and distribution over the various aerodynamic lifting and control surfaces must be validated by flight test measurement unless the methods used for determining those loads are shown to be reliable or conservative for the configuration under consideration.

(b) In lieu of paragraph 23.301(d), the following applies: The forward lifting surface

of a canard or a tandem wing configuration must meet all the requirements of Part 23, Subpart C, "Structure", applicable to a wing.

(c) In lieu of § 23.331 the following apply:

(1) The appropriate balancing loads must be accounted for in a rational or conservative manner when determining forward and main wing loads and linear inertia loads corresponding to any of the symmetrical flight conditions specified in §§ 23.333 through 23.341.

(2) The incremental forward wing and horizontal tail loads due to maneuvering and gusts must be reacted by the angular inertia of the airplane in a rational or conservative manner.

(3) Mutual influence of the aerodynamic surfaces must be taken into account when determining flight loads.

(d) In addition to the gust load requirements of § 23.341 the following applies:

The gust loads for a canard or a tandem wing configuration must be computed using a rational analysis considering the gust criteria of § 23.333(c) or may be computed in accordance with § 23.341 provided the resulting loads are shown to be conservative with respect to the gust criteria of § 23.333(c).

(e) In lieu of the balancing loads requirements of § 23.421, the following apply:

(1) A horizontal surface balancing load is a load necessary to maintain equilibrium in any specified flight condition with no pitching acceleration.

(2) Horizontal balancing surfaces must be designed for the balancing loads occurring at any point on the limit maneuvering envelope and in the flap conditions specified in § 23.345. The distribution in figure B6 of Appendix B of Part 23 may be used only on aft-mounted horizontal stabilizing surfaces unless its use elsewhere is shown to be conservative.

(f) In addition to other applicable requirements, for gust loads on each horizontal surface forward of the main wing, the following apply:

(1) Each horizontal surface, other than the main wing, must be designed for loads resulting from—

(i) Gust criteria specified in § 23.333(c) with flaps retracted; and

(ii) Positive and negative gusts of 25 f.p.s. nominal intensity at V_F corresponding to the flight conditions specified in § 23.345(a)(2).

(2) When determining the total load on the horizontal surfaces for the conditions specified in paragraph (f)(1) of this special condition, the initial balancing loads for steady unaccelerated flight at the pertinent design speeds, V_F, V_C, and V_D must first be determined. The incremental load resulting from the gusts must be added to the initial balancing load to obtain the total load.

(g) In addition to the requirements of § 23.425, for gust loads on the horizontal tail surface of a canard or tandem wing configuration, the loads computed in accordance with § 23.425 must be shown to be conservative with respect to the gust criteria of § 23.333(c).

6. Outward Opening Doors and Exits in the Pressure Cabin or Compartments. In addition to the requirements of §§ 23.783 and 23.807, each outward opening external door and exit must comply with the following:

(a) There must be a means to lock and safeguard each external door and exit against opening in flight, either inadvertently by persons or as a result of a mechanical failure or failure of a single structural element, either during or after closure.

(b) There must be a provision for direct visual inspection of the locking mechanism by a crewmember to determine, under operational lighting conditions, or by using a flashlight or equivalent lighting source, that all external doors and exits are fully closed and locked.

(c) There must be a visual warning means to signal flight crewmembers if any external door or exit is not fully closed and locked. The means must be designed such that any failure or combination of failures that would result in an erroneous closed and locked indication is improbable.

7. Forward and Main Wing Flap Interconnection. In lieu of § 23.701(a):

(a) The main wing flaps and the related moveable surfaces as a system must:

(1) Be synchronized by mechanical connection; or

(2) Maintain synchronization so that the occurrence of an unsafe condition has been shown to be extremely improbable; or

(b) The airplane must be shown to have safe flight characteristics with any combination of extreme positions of individual moveable surfaces; however, mechanically inter-connected surfaces are to be considered as a single surface.

8. Propeller Ground Clearance. In addition to the propeller clearance requirements of § 23.925, the following apply:

(a) The airplane must be designed such that the propellers will not contact the runway surface when the airplane is in the maximum pitch attitude attainable during normal takeoffs and landings; and

(b) If a tail bumper or an energy absorption device is provided to show compliance with paragraph (a) of this special condition, the following apply:

(1) Suitable design loads must be established for the tail bumper or energy absorption device; and

(2) The supporting structure of the tail bumper or energy absorption device must be designed to withstand the loads established in paragraph (b)(1) of this special condition and inspection/replacement criteria must be established for the tail bumper or energy absorbing device and provided as part of the information required by § 23.1529.

9. Propeller Marking. In the absence of specific regulations, the propellers must be marked so that their discs are conspicuous under normal daylight ground conditions.

10. Propeller Ice and Exhaust Gas Impingement Protection. In the absence of protection requirements for pusher propellers, the following shall apply:

(a) Ice impingement on the propeller: All areas of the airplane forward of the propellers that are likely to accumulate and shed ice into the propeller disc during any operating condition must be suitably protected to prevent ice formation, or it must be shown that any ice shed into the propeller disc will not create a hazardous condition.

(b) Exhaust gas impingement on propeller: If the engine exhaust gases are discharged into the propeller disc, it must be shown by tests or analysis supported by tests that the propeller material is capable of continuous safe operation.

11. Cockpit Smoke Evacuation. In the absence of specific requirements for smoke evacuation, the following apply:

If accumulation of hazardous quantities of smoke in the cockpit area is reasonably probable, smoke evacuation must be readily accomplished starting with full pressurization and without depressurization beyond safe limits.

Issued in Kansas City, Missouri, on August 13, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87-19866 Filed 8-28-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 25

[Notice No. 637]

Operation of a Tavern at a Brewery

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing to establish criteria and procedures for operating a retail beer dealership for on-premises consumption (a tavern) on brewery premises. This proposal is the result of a petition submitted by Mr. Bill Owens, proprietor of Buffalo Bill's Brewery, located in Hayward, California.

DATE: Written comments must be received by October 30, 1987.

ADDRESSES: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, (Notice No. 637).

Copies of written comments received in response to this notice will be available during normal business hours at: ATF Disclosure Branch, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

Several newly established breweries operate contiguous taverns as their only sales outlet. ATF believes that more breweries will establish such taverns in the future. This trend presents two

problems under existing regulations. First, the tavern must be segregated from brewery premises, since regulations prohibit the retention of tax-determined beer on brewery premises. Second, by law beer must be physically removed in portable containers from the brewery to the tavern. ATF has some latitude in determining the size and portability of the container, but physical removal is required by law. Taverns are thus forced to use portable packaging, including physically removing a small tank which ATF has determined to be a "suitable consumer container". Although they would prefer to dispense beer through pipelines from the brewery, removal of beer by pipeline is only permitted to a contiguous distilled spirits plant, under 26 U.S.C. 5412.

In general, the law permits beer to be consumed at a brewery by employees and visitors without payment of tax. However, the sale and transfer of possession of beer for consumption at a brewery is a taxable event (26 U.S.C. 5052(c)(1)).

Proposal

ATF is reconsidering its position of precluding the retention of tax-determined beer on brewery premises, so that a brewer may establish a tavern on such premises, and utilize portable packages or dispense beer through pipelines. It is also necessary to establish certain controls and procedures to protect the revenue. These controls and procedures are considered to be the minimum controls which are necessary to protect the revenue.

The proposed regulations will amend § 25.23 to specifically provide for the operation of a tavern on brewery premises which has been approved pursuant to the procedures set forth in a new regulation, § 25.25. The new regulation provides that a brewer desiring to operate a tavern on brewery premises shall submit a Brewer's Notice, ATF F 5130.10, to the regional director (compliance) for approval prior to engaging in the operation. This notice will be approved if it is found that the operation of the tavern will not jeopardize the revenue or impede the effective administration of the beer regulations, and is not contrary to the law. The proposed regulation requires that the Brewer's Notice submitted for approval contain information on (1) the boundaries of the tavern and the security measures used to segregate public areas from non-public areas, (2) the method to be used for measuring beer for the purposes of tax determination, and (3) the identification of all tanks which will periodically contain tax-determined beer.

In addition to the information required in the Brewer's Notice, any brewer operating a tavern will have to follow certain procedures deemed necessary to protect the revenue. These procedures require the brewer to (1) determine the tax on the beer, whether in bulk or packaged, prior to the time it is dispensed for consumption and record such tax determination in the brewer's records, (2) identify each tank used for tax determination, and (3) determine the taxes each time beer is added to a tax-determination tank. Finally, the proposed regulation provides an exception to § 25.24 which will allow the retention of tax-determined beer on brewery premises when it is intended for sale at a tavern operated on such premises.

Public Participation—Written Comments

Based on the above discussion, ATF is issuing this notice of proposed rulemaking to request comments concerning the proposed amendments of 27 CFR Part 25. ATF is particularly interested in receiving comments on the proposed criteria or procedures. Any alternatives to the proposed criteria or procedures will be carefully considered, and weighed against the need to provide adequate controls to protect the revenue. ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure. Comments received after the close of the comment period will be given careful consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 60 day comment period. The request should include reasons why the respondent believes a public hearing is necessary. The Director reserves the right to determine whether a public hearing should be held.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse affect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirements to collect information proposed in this notice have previously been approved by the Office of Management and Budget under control numbers 1512–0045 (Brewer's Notice) and 1512–0333 (record of tax determination). Comments relating to ATF's compliance with the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320—Controlling Paperwork Burdens on the Public, should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, DC 20503.

Drafting Information

The principal author of this document is John Linthicum of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping

requirements, Research, Surety bonds, Transportation.

Issuance.

Title 27 CFR is amended as follows:

PART 25—[AMENDED]

1. The authority citation for Part 25 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

2. The table of sections in Part 25 is amended to add the heading of § 25.25, as follows:

Sec.

* * * * *

25.25 Operation of a tavern on brewery premises.

* * * * *

3. Section 25.23 is amended by making conforming changes in the punctuation and continuity of paragraphs (b)(4) and (b)(5), by adding a new paragraph (b)(6), and by revising paragraph (c), to read as follows:

§ 25.23 Restrictions on use.

* * * * *

(b) *Other authorized uses.* * * *

* * * * *

(4) Are in the public interest because of emergency conditions;

(5) Involve experiments or research projects related to equipment, materials, processes, products, by-products, or waste of the brewery; or

(6) Involve operation of a tavern on brewery premises in accordance with § 25.25.

(c) *Application.* Except as provided in § 25.25 for operation of a tavern on brewery premises, a brewer desiring to use a brewery for other purposes shall submit to the Director through the appropriate regional director (compliance), an application listing the purposes. The Director will approve the application if the use for other purposes will not jeopardize the revenue or impede the effective administration of this part and is not contrary to specific provisions of law.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

§ 25.24 [Amended]

4. Paragraph (a) of § 25.24 is amended by replacing "§ 25.213" with "§ 25.25 or § 25.213".

5. In Subpart C, immediately after § 25.24, the following new § 25.25 is added to read as follows:

§ 25.25 Operation of a tavern on brewery premises.

(a) *General.* A brewer desiring to operate a tavern as an alternate use of brewery premises, shall submit a Brewer's Notice, ATF F 5130.10, containing the information required by paragraph (b) of this section. If the regional director (compliance) finds that the operation of the tavern on brewery premises will not jeopardize the revenue or impede the effective administration of this part and is not contrary to specific provisions of law, the approval of the Brewer's Notice, ATF F 5130.10, shall constitute approval of the alternate use of brewery premises, in lieu of the application required by § 25.23. As used in this section, "tavern" means a portion of brewery premises where beer is sold to consumers.

(b) *Brewer's notice.* In preparing the Brewer's Notice, ATF F 5130.10, the applicant shall show the following information, in addition to the information required by the form:

(1) The applicant shall identify the portion of the brewery which will be operated as a tavern by providing a diagram or narrative description of the boundaries of the tavern. The diagram or description shall identify areas of the brewery which are accessible to the public and areas which are not. The applicant shall describe security measures to be used to segregate public areas from non-public areas.

(2) The applicant shall describe in detail the method to be used for measuring beer for the purposes of tax determination.

(3) The applicant shall identify the tanks which will periodically contain tax-determined beer, and any other areas where tax-determined beer will be stored.

(c) *Procedures.* The following procedures shall apply to operation of a tavern on brewery premises:

(1) The brewery shall have a suitable method for measurement of the beer, such as a meter or gauge glass. Tax determination shall consist of the measurement of the beer and the preparation of the brewer's record of tax determination, required by § 25.292(a)(8). The taxes shall be determined prior to the time that the beer is dispensed into a container for consumption.

(2) If the brewer uses one or more tanks for tax determination, the following procedures shall apply:

(i) Each such tank shall be durably marked with the words "tax-determination tank";

(ii) The taxes shall be determined each time beer is added to a tax-determination tank; and

(iii) The brewer may never simultaneously pump into and out of a tax-determination tank.

(3) A brewer qualified under this section may store, on brewery premises, tax-determined beer which is intended for sale at a tavern operated on brewery premises, in accordance with this section. The prohibition of § 25.24 shall not apply to such tax-determined beer.

(4) Beer consumed by employees and visitors in the brewery's tavern shall be beer on which the tax has been paid or determined.

Dated: July 21, 1987.

Stephen E. Higgins,

Director.

Approved: August 14, 1987.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 87–19791 Filed 8–28–87; 8:45 am]

BILLING CODE 4810–31–M

POSTAL SERVICE

39 CFR Part 266

Privacy Act of Information; Schedule of Fees

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend its Privacy Act regulations relating to fees that may be charged in connection with Privacy Act requests for records to make them consistent with the changes made in its FOIA fee schedule pursuant to the guidelines recently issued by the Office of Management and Budget (52 FR 10012 of March 27, 1987) implementing the fee provisions of the Freedom of Information Reform Act of 1986, and to reflect the increase in the direct cost to the Postal Service of duplicating records (from 10 cents to 15 cents per page).

DATE: Comments concerning the proposed fee provisions should be received on or before September 30, 1987.

ADDRESS: Written comments should be addressed to Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5010. Copies of written comments received will be available for public inspection and photocopying between 9:00 a.m. and 4:00 p.m. in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Program Manager, Records Office (202) 268–2931.

SUPPLEMENTARY INFORMATION: The fee schedule included in this proposal, i.e., to cover requests for information about

an individual (made by the subject individual or authorized representative) would amend 39 CFR 266.8 to conform the fees charged for duplication of records under the Privacy Act to the duplication fees reflected in 39 CFR 265.8(c)(4), Freedom of Information Act (FOIA) fee regulations (52 FR 13667 of April 24, 1987). In effect, the duplication fee assessed for processing a request for information maintained within a privacy system of records would be consistent with the fee charged for processing a request for information about an individual made by the subject of the information pursuant to the FOIA.

List of Subjects in 39 CFR Part 266

Postal Service, Privacy.

Accordingly, Part 266 of 39 CFR is amended as follows:

PART 266—PRIVACY OF INFORMATION

1. The authority citation for Part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

2. Section 266.8 is revised to read as follows:

§ 266.8 Schedule of fees.

(a) *Policy.* The purpose of this section is to establish fair and equitable fees to permit duplication of records for subject individuals (or authorized representatives) while recovering the full allowable direct costs incurred by the Postal Service.

(b) *Duplication.* (1) For duplicating any paper or micrographic record or publication or computer report, the fee is $.15 per page, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. See paragraph (d) of this section for fee limitations.

(2) The Postal Service may at its discretion make coin-operated copy machines available at any location. In that event, requesters will be given the opportunity to make copies at their own expense.

(3) The Postal Service normally will not furnish more than one copy of any record.

(c) *Aggregating requests.* When the custodian reasonably believes that a requester is attempting to break a request for similar types of records down into a series of requests in order to evade the assessment of fees, the custodian may aggregate the requests and charge accordingly.

(d) *Limitations.* No fee will be charged an individual for the process of retrieving, reviewing, or amending a record pertaining to that individual.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-19879 Filed 8-28-87; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-329, RM-5699]

Radio Broadcasting Services; Wickenburg, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Consolidated Communications Network, Inc., seeking the substitution of FM Channel 287C2 for Channel 288A at Wickenburg, Arizona, and modification of the license of Station KUUK(FM) accordingly, to provide that community with its first wide coverage area FM service.

DATES: Comments must be filed on on before October 16, 1987, and reply comments on or before November 2, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Joel Rothstein Wolfson, Esq., 1815 H Street, NW., Suite 600, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-329, adopted August 3, 1987, and released August 25, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19929 Filed 8-28-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-311, RM-5858 and RM-5859]

Radio Broadcasting Services; Virden and Rushville, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed petitions. The first, submitted by Virden Broadcasting Corporation, licensee of Station WRVI-FM, Virden, Illinois, proposes to substitute Channel 259B1 for Channel 244A and to modify its Class A license accordingly. The second petition, was filed by Berry-Price Communications, licensee of Station WKXQ(FM), Rushville, Illinois, proposing to modify its license to a Class B1 facility by substituting Channel 244B1 for Channel 244A at Rushville. This proposal in contingent on WRVI(FM) moving from its current channel (244A).

DATES: Comments must be filed on on before October 13, 1987, and reply comments on or before October 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Randall J. Miller, President, Virden Broadcasting Corporation, 815 West Dean, Box 68, Virden, Illinois 62690

L.K. "Bud" Price, President, Berry-Price Communications, P.O. Box 396, Rushville, Illinois 62681

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–311, adopted July 27, 1987, and released August 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, Suite 140, Washington, DC 20037.

Provisions of the Regulation Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–19930 Filed 8–28–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–328, RM–5740]

Radio Broadcasting Services; Senatobia, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Christian Impact, Inc., requesting the allocation of FM Channel 229A to Senatobia, Mississippi.

DATES: Comments must be filed on or before October 16, 1987, and reply comments on or before November 2, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William Ray Ingram, Christian Impact, Inc., 359 West Cherry Circle, Memphis, Tennessee 38117.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–328, adopted August 3, 1987, and released August 25, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commisson.

Mark N. Lipp,

Chief, Allocation Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–19931 Filed 8–28–87; 8:45 am]

BILLING CODE 6712–02–M

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47 CFR Part 73

[MM Docket No. 87–320, RM–5906]

Television Broadcasting Services; Albuquerque, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Exponential Broadcasting Association proposing the allocation of UHF TV Channel 50 to Albuquerque, New Mexico, as the community's ninth local television service. Channel 50 can be allocated to Albuquerque in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.

DATES: Comments must be filed on or before October 13, 1987, and reply comments on or before October 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert J. DeMattia, President, Exponential Broadcasting Association, 4721 Danube Drive, N.E., Albuquerque, New Mexico 87111 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Lesile K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–320, adopted July 29, 1987, and released August 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–19934 Filed 8–28–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-318, RM-5825]

Radio Broadcasting Services; Tri-City, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Robert W. Larson d/b/a Gee Jay Broadcasting, seeking the allocation of Channel 288A to Tri-City, Oregon, as the community's first local FM service. Channel 288A can be allocated to Tri-City in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.2 kilometers (4.5 miles) northwest to avoid a short-spacing to the construction permit of Station KHUG–FM, Channel 286C1, Phoenix, Oregon. The allocation is also contingent upon the licensing of Station KYNG–FM, Coos Bay, Oregon, on Channel 293C2 as specified in its outstanding construction permit (BMPH–861007IA) in lieu of its present Channel 288A. Petitioner is requested to state its intention to apply for the channel if allocated since it failed to do so in its petition.

DATES: Comments must be filed on or before October 13, 1987, and reply comments on or before October 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert W. Larson, Gee Jay Broadcasting, P.O. Box 1555, 916 Douglas Street, Myrtle Creek, Oregon 97457 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–318, adopted July 29, 1987, and released August 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW.; Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW.; Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–19932 Filed 8–28–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-319, RM-5755]

Radio Broadcasting Services; Watertown, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Lake Region Broadcasting Company to allocate Channel 225C1 to Watertown, SD, as the community's third local FM service. Channel 225C1 can be allocated to Watertown in compliance with the Commission's minimum distance separation requirements without a site restriction.

DATES: Comments must be filed on or before October 13, 1987, and reply comments on or before October 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard F. Swift, Esq., Tierney & Swift, 1200–18th Street, NW., Suite 210, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–319, adopted July 29, 1987, and released August 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–19933 Filed 8–28–87; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Chapter X

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments and replies to notice of proposed rules.

SUMMARY: In the **Federal Register** Notice of August 14, 1987 (52 FR 30393) the Commission established September 14, 1987 as the due date for comments and 15 days thereafter as the due date for replies concerning the proposal to release to the public all non-proprietary data used in calculating the all inclusive index of railroad input prices. The index is used to calculate the quarterly rail cost adjustment factor. At the request of the Association of American Railroads the due dates have been postponed to September 30, 1987 for filing comments and to October 15, 1987 for filing replies.

DATES: Comments are due September 30, 1987 and replies are due October 15, 1987.

FOR FURTHER INFORMATION CONTACT:
William T. Bono (202) 275–7354
or
Robert C. Hasek (202) 275–0938
TDD for hearing impaired (202) 275–1721

By the Commission, Paul H. Lamboley, Acting Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19920 Filed 8–28–87; 8:45 am]
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AGENCY:

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Notices

Federal Register
Vol. 52, No. 168
Monday, August 31, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Energy

National Panel on Cost Effectiveness of Fuel Ethanol Production; Meetings

AGENCY: Office of Energy, USDA.

ACTION: Notice of meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act. Pub. L. 92–463, as amended, the Office of Energy, USDA announces two forthcoming meetings of the National Panel on Cost Effectiveness of Fuel Ethanol Production.

September meetings: September 23, 1987, 1:00 p.m. to 7:00 p.m., and September 24, 1987 8:00 a.m. to 2:30 p.m. at American Farm Bureau Federation, 600 Maryland Avenue SW., Suite 800, Washington, DC.

October meeting: October 14, 1987, 8:30 a.m. to 4:30 p.m. at Room 3056–S, South Building, USDA, 14th and Independence Avenue SW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Earle E. Gavett, Office of Energy, USDA, Washington, DC 20250–2600, 202–447–2634.

SUPPLEMENTARY INFORMATION: The USDA National Panel on Cost Effectiveness of Fuel Ethanol Production was established under section 13 of the Farm Disaster Assistance Act of 1987 (Pub. L. 100–45) to conduct a study of the cost effectiveness of fuel ethanol production for Congress and the Secretary of Agriculture. The Panel is comprised of seven members representing various agricultural, fuel ethanol and government interests. The meetings will be open to the public.

Agenda

September 23, 1987

1:00 p.m.
—Review draft report.
—Preliminary discussion of findings.
7:00 p.m.—Adjourn.

September 24, 1987

8:30 a.m.
—Review draft report.
—Preliminary discussion of findings.
2:30 p.m.—Adjourn.

October 14, 1987

8:30 a.m.—Review and approve Final Report.
4:30 p.m.—Adjourn.

Earle E. Gavett,
Director, Office of Energy.

[FR Doc. 87–19982 Filed 8–28–87; 8:45 am]
BILLING CODE 3410–73–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Manufacturers' Shipments, Inventories, and Orders.

Form Number: Agency—M–3 (SD), M–3 (MD); OMB—0607–0008.

Type of Request: Revision of a currently approved collection.

Burden: 4,900 respondents; 19,600 reporting hours.

Needs and Uses: This is the only survey that provides monthly statistical information to Government and industry on the entire manufacturing sector of the economy. These statistics are an essential part of the development of the gross national product accounts, and the survey is designated a "principal Federal economic indicator" by the Office of Information and Regulatory Affairs.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: August 25, 1987.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–19956 Filed 8–28–87; 8:45 am]
BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Docket No. 11–87]

Foreign-Trade Zone 70, Detroit, Michigan; Application for Subzones by General Motors Auto Assembly Plants in Detroit, and Orion Township, MI

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign-Trade Zone, Inc. (GDFTZ), grantee of Foreign-Trade Zone 70, requesting special-purpose subzone status for two General Motors Corporation (GM) auto assembly plants, one in the City of Detroit, the other in Orion Township, Michigan, adjacent to the Detroit Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 17, 1987.

The proposed subzones would involve GM's Detroit/Hamtramck (D/H) and Orion assembly plants. The D/H plant occupies 362 acres at 250 East General Motors Boulevard, Detroit, a portion of the plant being within the adjacent community of Hamtramck. The Orion plant covers 492 acres at 4555 Giddings Road, Orion Township.

Both plants are in the B–O–C group, which produce Buick, Oldsmobile, and Cadillac products. The D/H plant employs 4,900 workers and the Orion plant employs 7,000. GM plants use mostly domestic components, with some 2 percent being sourced abroad. The foreign items include radios, cassettes, wiring harnesses, instrument panel pads and steering wheels.

Zone procedures will exempt GM from paying duties on foreign components used in exports. On domestic sales, the company will be able to defer duty and take advantage of the same duty rate that is available to

importers of finished automobiles. The average duty rate on the foreign parts used by GM is 4.3 percent, whereas the duty rate for automobiles is 2.5 percent. These savings are part of GM's overall cost-reduction efforts designed to make the company's U.S. plants more competitive with auto assembly facilities abroad.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; William L. Morandini, District Director, U.S. Customs Service, North Central Region, 477 Michigan Avenue, Detroit, Michigan 48226–2568; and Colonel Robert F. Harris, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, Michigan 48231–1027.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 9, 1987.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 1140 McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48226

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Room 1529, Washington, DC 20230

Dated: August 24, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87–19959 Filed 8–28–87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 12–87]

Foreign-Trade Zone 70, Detroit, MI; Application for Subzone by General Motors Auto Manufacturing Complex in Lansing, MI

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign-Trade Zone, Inc. (GDFTZ), grantee of Foreign-Trade Zone 70, requesting special-purpose subzone status for the General Motors Corporation (GM) auto manufacturing complex in Lansing, Michigan, adjacent to the Detroit Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 18, 1987.

The proposed subzone would involve 4 plants comprising GM's Lansing manufacturing complex, which covers a total of 714 acres. The facilities produce autos and components for GM's B–O–C Group, employing 24,000 persons. The Townsend Plant, located at 920 Townsend Street, and the Body Assembly Plant, located at 401 North Verlindon Avenue, assemble Buick, Oldsmobile, and Cadillac automobiles. The Fabricating Plant, located at 2800 West Saginaw Street produces interior and exterior parts, and machines engine parts. The Engine Plant, located at 2901 South Canal Road, produces 4-, 6-, and 8-cylinder engines for B–O–C and other GM autos.

GM plants use mostly domestic components, with some 2 percent being sourced aboard. These include radios, radio-cassettes, wire harnesses, instrument panel pads, steering wheels and transaxles.

Zone procedures will exempt GM from paying duties on foreign components used in its exports. On domestic sales, the company will be able to defer duty and take advantage of the same duty rate that is available to importers of finished automobiles. The average duty rate on the foreign parts used by GM is 4.3 percent, whereas the duty rate for automobiles is 2.5 percent. These savings are part of GM's overall cost-reduction program designed to help it become more competitive with auto assembly facilities abroad.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; William L. Morandini, District Director, U.S. Customs Service, North Central Region, 477 Michigan Avenue, Detroit, Michigan 48226–2586; and Colonel Robert F. Harris, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, Michigan 48231–1027.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 14, 1987.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 1140 McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48226

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Room 1529, Washington, DC 20230

Dated: August 24, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87–19960 Filed 8–28–87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-401-056]

Antidumping; Viscose Rayon Staple Fiber From Sweden; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 18, 1987, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden. The review covers the period October 1, 1983 through December 31, 1985 and three programs. We determine the net subsidy to be 5.40 percent *ad valorem* for the period of October 1, 1983 through December 31, 1983, 6.50 percent *ad valorem* for the period January 1, 1984 through December 31, 1984, and 5.78 percent *ad valorem* for the period January 1, 1985 through December 31, 1985.

EFFECTIVE DATE: August 31, 1987.

FOR FURTHER INFORMATION CONTACT: Cynthia Gozigian Sewell or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 23194) the preliminary results of its administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden (44 FR 28319; May 15, 1979). The Department has now completed this administrative

review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act")

Scope of Review

Imports covered by the review are shipments of Swedish regular viscose rayon staple fiber and high-wet modulus ("modal") viscose rayon staple fiber, currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated. These products are currently classifiable under items 5504.10.00—2 and 5504.90.00—2 of the Harmonized System.

The review covers the period October 1, 1983 through December 31, 1985 and three programs: (1) Loans/Grants for Plant Creation; (2) Elderly Employment Compensation Program; and (3) Grant for Manpower Reduction and a Conditional Loan

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. However, because of a clerical error in our preliminary calculations for the Conditional Loan program we revised the subsidy rates for that program from 1.90 percent to 1.64 percent *ad valorem* in 1984 and from 1.74 percent to 1.10 percent *ad valorem* in 1985.

As a result of our review, we determine the net subsidy to be 5.40 percent *ad valorem* for the period October 1, 1983 through December 31, 1983, 6.50 percent *ad valorem* for the period January 1, 1984 through December 31, 1984, and 5.78 percent *ad valorem* for the period January 1, 1985 through December 31, 1985.

The Department will instruct the Customs Service to assess countervailing duties of 5.40 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after October 1, 1983 and on or before December 31, 1983, 6.50 percent on all shipments of this merchandise exported on or after January 1, 1984 and on or before December 31, 1984, and 5.78 percent on all shipments of this merchandise exported on or after January 1, 1985 and on or before December 31, 1985.

Further, the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 5.78 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 355.10 of the Commerce Regulations 19 CFR 355.10.

Joseph A. Spetrin,

Acting Deputy Assistant Secretary, Import Administration.

Date: August 24, 1987.

[FR Doc. 87-19961 Filed 8-28-87; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Washington et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-220. Applicant: University of Washington, Department of Geological Science AJ-20. Seattle, WA 98195. Instrument: Thermal Ionization Mass Spectrometer, Model VG Sector. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended Use: Measure the isotopic composition of elements in rocks, minerals and other natural materials. The objectives of the research include investigating the age and origin of the earth's crust, the chemical composition of the earth's crust, the chemical composition of the earth's mantle through time and the characteristics and time constants of various geochemical cycles. The instrument will also be used to train graduate students to understand and use a state-of-the-art mass spectrometer, so that they may conduct scientific research. Application Received by Commissioner of Customs: June 5, 1987.

Docket Number: 87-251. Applicant: University of California, Los Angeles, 900 Veteran Avenue, Los Angeles, CA 90024-1786. Instrument: Mass Spectrometer, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Intended Use: The instrument will be used to measure the concentrations of oxygen-18 and deutrium in the water in blood or urine or saliva from wild animals that have been injected with enriched, doubly-labeled water ($H^2H^{18}O$). Investigations will be conducted to answer a variety of basic and applied questions related to the resource requirements of wild and domestic animals and man. These studies will bear on the following:

1. Endangered species: food needs, habitat size requirements;

2. Domestic species: which breeds produce the most marketable product with the least food (or water, or space);

3. Humans: energy metabolism in space, in primitive peoples, in different disease states, in different work roles; obesity and overeating; polar survival.

Application Received by Commissioner of Customs: July 16, 1987.

Docket Number: 87-255. Applicant: Haverford College, Haverford, PA 10041. Instrument: Electron Microscope, Model H-600-3. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: Studies of the development of the non-parasitic nematode *Caenorhabditis elegans*, specifically investigation of mutants affecting formation of the cuticle, which is the external extracellular structure that surrounds the worm. The instrument will also be used to train students in the skills useful in many fields of cellular and organismic biology. They will learn the fundamentals of optical theory as well as a number of advanced techniques in electron microscopy. Application Received by Commissioner of Customs: July 20, 1987.

Docket Number: 87-256. Applicant: Yale University, Physics Department, 217 Prospect Street, P.O. Box 6666, New Haven, CT 06511. Instrument: Wavemeter. Manufacturer: Centre National de la Recherche Scientifique, France. Intended Use: Studies of the atom-radiation interaction involving basic tests of fundamental physics and the education of Ph.D.'s. Application Received by Commissioner of Customs: July 20, 1987.

Docket Number: 87-257. Applicant: University of Miami, Department of Civil and Architectural Engineering, P.O. Box 248294, Coral Gables, FL 33124. Instrument: Digital Controllers. Manufacturer: GDS Instruments, Ltd., United Kingdom. Intended Use: Investigations of soils to evaluate the soil behavior under a variety of conditions and develop a unique constitutive model of soil behavior. In addition, the instrument will be used to acquaint undergraduate students with the state-of-the-art procedures for

performing advanced tests. Application Received by Commissioner of Customs: July 22, 1987.

Docket Number: 87–258. Applicant: University of California, San Diego, 3175 Miramar Road, Bldg. 509, La Jolla, CA 92093. Instrument: Photomicroscope III. Manufacturer: Carl Zeiss, West Germany. Intended Use: The instrument will be used to characterize the morphology and microenvironment of growth cones at different stages of development during the study of axonal pathfinding in the embryonic vertebrate brain of the frog *Xeonopus laevis*. Application Received by Commissioner of Customs: July 23, 1987.

Docket Number: 87–259. Applicant: University of Wisconsin-Madison, 1513 University Avenue, Madison, WI 53706–1572. Instrument: Demonstration Model of Measuring Machine. Manufacturer: Institut fur Werkzeugmaschinenbau und Fertigungstechnik, Switzerland. Intended Use: The instrument will be used for educational purposes in the course Mechanical Engineering 601: Precision Engineering which places emphasis on the design, development and manufacture of machines, instruments and computer control systems of the highest precision. The device will be demonstrated to the students who will then use the device on their own to perform learning experiments that demonstrate precision engineering concepts. Application Received by Commissioner of Customs: July 24, 1987.

Docket Number: 87–260. Applicant: Brown University, Division of Engineering, Providence, RI 02912. Instrument: Optical Fiber Draw Facility. Manufacturer: Special Gas Control, United Kingdom. Intended Use: Studies involving the basic properties of optical lightguides and how they may be employed as both passive and active sensors. Silica optical fiber preforms will be drawn into optical fibers with the draw tow. Experiments will be performed to determine what are the specific criteria that can maximize the sensitivity of an optical fiber sensor to a particular external parameter, i.e, pressure, temperature, electromagnetic field. In addition, the instrument will be used for educational purposes in various engineeering courses. Application Received by Commissioner of Customs: July 24, 1987.

Docket Numbers: 87–261 and 87–262. Applicant: University of Alaska, Petroleum Development Laboratory, 437 Duckerring Building, Fairbanks, AK 99775–1260. Instruments: JEFRI High Pressure Recombination Apparatus and High Temperature High Pressure Miscibility Apparatus. Manufacturer: D.B. Robinson & Associates, Canada. Intended Use: The instruments will be used for the following research purposes:

1. Study phase behavior and miscibility of solvent saturated oil systems.

2. Recombine reservoir oil with solution gas to attain the original reservoir fluid composition or a fluid mixture at a specified bubble point pressure.

3. Gather experimental data such as separation of phases, measurement of volumes to each phase and determination of phase properties.

Application Received by Commissioner of Customs: July 28, 1987.

Docket Number: 87–263. Applicant: University of Alaska—Fairbanks, Fairbanks, AK 99775–1260. Instrument: Phase Behavior PVT System. Manufacturer: D.B. Robinson & Associates, Canada. Intended Use: The instrument will be used for the measurement of PVT behavior and phase behavior of Alaskan north slope crudes and mixtures of solvents and the measurement of asphaten precipitation conditions. The collection of these data is necessary for development of computer models of phase behavior of Alaskan crudes. Application Received by Commissioner of Customs: July 28, 1987.

Docket Number: 87–264. Applicant: Robert Parker Hospital, Guthrie Square, Sayre, PA 18840. Instrument: Lithotripter. Manufacturer: Dornier Medizintechnik GmbH, West Germany. Intended Use: Studies of the short and long term effects of extracorporeal shock wave therapy. Comparative studies will be made with respect to the treatment rendered patients suffering from kidney urinary tract stone disease in order to make the most effective treatment available to the patient. Application Received by Commissioner of Customs: July 28, 1987.

Docket Number: 87–265. Applicant: U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory, Research Triangle Park, NC 27711. Tunable Diode Laser Spectrometer. Manufacturer: Unisearch Associates, Inc., Canada. Intended Use: The instrument is intended to be used for studying small molecule atmospheric gases such as NO_2, HNO_3, HNO_2 and H_2O_2 to determine the nature of and the extent to which they contribute to the phenomenon called rain. The gas nitric acid, will be studied initially with the following questions in mind: (1) Does atmospheric nitric acid have waters of hydration chemically associated with it? (2) Does the aerosol ammonium nitrate sublimate to nitric acid when the chemical equilibrium is disturbed? (3) What parameters of nitric acid must be measured by routine monitoring devices if accurate and defensible measurements are to be obtained? Application Received by Commissioner of Customs: July 30, 1987.

Docket Number: 87–266. Applicant: Williams College, Chemistry Department, Williamstown, MA 01267. Instrument: Rapid Kinetics Accessory, Model SFA–11. Manufacturer: Hi-Tech Scientific Instrument Division, United Kingdom. Intended Use: The instrument is an accessory to an existing spectrophotometer which will be used for studies of the rate of chemical reactions to learn about the nature of fast chemical reactions. In addition, the instrument will be used for educational purposes in the course Rate Processes; Chem 302. Application Received by Commissioner of Customs: July 30, 1987.

Docket Number: 87–267. Applicant: Hawaii Institute of Geophysics, 2525 Correa Road, Honolulu, HI 96818. Instrument: Field Portable Remote Radar, Model Alphameter. Manufacturer: Alpha Nuclear Corporation, Canada. Intended Use: The instrument is intended to be used for the study of the radioactive gas radon to determine where short term changes in radon activities can be used in the forecasting of earthquakes or volcanoes and to define the mechanisms responsible for the association already observed between radon and earthquakes. Application Received by Commissioner of Customs: July 30, 1987.

Docket Number: 87–268. Applicant: U.S Department of the Interior, U.S Geological Survey, 521 West Seneca Street, Ithaca, NY 14850–4094. Instrument: Drill-Hole Pipe Assembly and Data Collection Equipment. Manufacturer: Westbay Instruments, LTC, Canada. Intended Use: The instruments will be used in a hydrogeologic study to determine ground-water flow and ground-water quality characteristics of upper bedrock stratigraphy in the Niagara Falls area. The objective in using this system is to collect consistent ground-water flow and quality data throughout the bedrock stratigraphy and correlate this information with existing data to satisfy the data needs of the primary modeling objective. Application Received by Commissioner of Customs: August 4, 1987.

Docket Number: 87–269. Applicant: Saint Mary's College, Notre Dame, IN 46556. Instrument: Electron Microscope, Model H–300 with Accessories. Manufacturer: Nissei Sangyo, Japan. Intended Use: The instrument will be

used to provide hands-on use in a new course in electron microscopy and in the following biology courses:

1. Bio 103–104: Biology and Human Values.
2. Bio 151–152: Concepts of Biology.
3. Biology 302: Plant Morphology.
4. Biology 304: Plant Morphology.
5. Biology 320: Parasitology.
6. Biology 328: Physiology.
7. Bio 382: Introduction to Research.
8. Bio 481: Research in Biology.

Application Received by Commissioner of Customs: August 5, 1987.

Docket Number: 87–270. Applicant: New York State College of Ceramics at Alfred University, Alfred, NY 14802. Instrument: Scanning Transmission Electron Microscope, Mode JEM 2000 FX/SIP/DP. Manufacturer. JEOL, Japan. Intended Use: Structural, chemical and morphological analyses of individual samples of silicates, oxides, nitrides, carbides, borides, metals, alloys and composites. Experiments will be conducted with the aim of understanding the structure of ceramic materials on an atomic scale. In addition, the instrument will be used as an integral part of graduate level instruction and research. Application Received by Commissioner of Customs: August 5, 1987.

Docket Number: 87–270. Applicant: Massachusetts Institute of Technology, Clinical Research Center, E17–445, 40 Ames Street, Cambridge, MA 02142. Instrument: Gas Isotope Ratio Mass Spectrometer. Manufacturer. Finnigan, MAT, West Germany. Intended Use: Study of human metabolism; specifically amino acid metabolism and amino acid requirements during childhood, adulthood and old age; the interactions among amino acid metabolism, carbohydrate metabolism. In addition to the above research application, the instrument will be used to study human energy metabolism by the use of tracer water labeled with ^{2}H and ^{18}O. The objectives of this research are better to understand the relationship of dietary intake to human protein and energy metabolism; how the body metabolism adapts to a change intake of both essential and nonessential nutrients; and how various disease states affect the interaction between dietary intake and metabolism. The instrument will also be used for training undergraduate and graduate students and postdoctoral fellows. Application Received by Commissioner of Cutoms: August 5, 1987.

Docket Number: 87–272. Applicant: University of Michigan, 503 Thompson Street, Ann Arbor, MI 48109. Instrument: Multiple Function X-Ray Diffraction System, Model D/MAS–RBX. Manufacturer: Rigaku Corporation, Japan. Intended Use: The instrument will be used for two major research projects on advanced ceramic materials: (1) A fundamental study of structure-property relationships in silicon nitride ceramics for the purpose of developing a better understanding of the factors that control the properties of this important class of ceramic materials and (2) development of transformation toughened ceramic material with properties superior to those of zirconia toughened alumina (ZTA) and partially stabilized zirconia (PSZ) for use in light duty diesel engines and similar applications. Other research will involve the following:

1. The use of transient liquid-phase sintering in the fabrication of ceramic-ceramic composites.
2. Phase equilibria and crystal chemistry studies.
3. Ultrasonic-small electronics research.
4. Microelectronics gas sensors.
5. Studies of magnesium oxide surfaces.

Application Received by Commissioner of Customs: August 6, 1987.

Docket Number: 87–274. Applicant: University of Illinois, Purchasing Division, 207 Administration Building, 506 S. Wright Street, Urbana, IL 61801. Instrument: 3-Axis X-Ray Spectrometer. Manufacturer: Riso National Laboratory, Denmark. Intended Use: Studies of epitaxially grown thin films and superlattices. High resolution x-ray scattering at glancing angles for the study of these films will be conducted in order to monitor advanced crystal growth techniques via molecular beam epitaxy and to study novel semiconductor and metal structures. Application Received by Commissioner of Customs: August 10, 1987.

Docket Number: 87–275. Applicant: Florida State University, EM Center Biological Sciences, Tallahassee, FL 32306–3050. Instrument: Electron Microscope, Model JEM 1200 EX/DP/DP. Manufacturer: JEOL Ltd., Japan. Intended Use: Study of a number of different animal and plant tissues and cellular components. Most specimens studies will be of biological origin, both invertebrates and vertebrates. Some of the studies will be mainly descriptive in nature such as:

1. The comparative morphology of the gill structures of the crustacean order Decapoda.
2. The ultrastructure of the hepatopancreas of the anchialine shrimp *Procaris ascensionis*.
3. Fine structure studies of the Antarctic cryptoendolithic microbial community.

The instrument will also be use on a one-to-one basis in the training of graduate students, postdoctoral fellows, faculty and staff as the need arises. In addition, the instrument will be used to teach graduate students how to utilize the electron microscope as an important tool of scientific research. Application received by Commissioner of Customs: August 10, 1987.

Docket Number: 87–276. Applicant: University of Wisconsin, Met. & Min. Engineering, 1509 University Avenue, Madison, WI 53706. Instrument: Ultra Rapid Quenching Apparatus. Manufacturer: Edmund Buhler GmbH, West Germany. Intended use: The instrument is intended to be used for investigation of the microstructure of metallic alloys and solutions of non-metallics as related to their physical and mechanical properties. In addition the instrument will be used to educate students in solidification and heat treatment. Application received by Commissioner of Customs: August 11, 1987.

Docket Number: 87–277. Applicant: Vanderbilt University, School of Medicine, 21st and Garland, Nashville, TN 37232. Instrument: Dental Implants. Manufacturer: Nobelpharma, Sweden. Intended use: The instruments will be used as part of a multi-center study in this country and Europe testing the long-term use of these implants to anchor overdentures. The implants will be used in specific predefined clinical situations involving overdentures of the upper and lower jaws. Patients will be closely monitored for five years and several parameters will be evaluated and such parameters will indicate the success or failure of the implants when used in this specific situation. Application received by Commissoner of Customs: August 11, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–19958 Filed 8–28–87; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing a Guaranteed Access Level and an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

August 26, 1987.

The Chairman of the Committee for the Implementation of Textile

Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986) and 52 FR 26057 (July 10, 1987), has issued the directive published below to the Commissioner of Customs to be effective on September 1, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re–openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the guaranteed access level and import restraint limit for cotton and man-made fiber textile product in Category 352/652, exported during the seven-month periods which began on June 1, 1987 and extend through December 31, 1987, at the designated levels.

Background

On April 22 and 27, 1987, notices were published in the **Federal Register** (52 FR 13281 and 52 FR 13858, respectively) which announced a guaranteed access level and import restraint limit for certain cotton and man-made fiber textile products in Category 352/652, among others, exported from Jamaica during the seven-month periods which began on June 1, 1987 and extend through December 31, 1987.

During consultations held on July 8, 1987 between the Governments of the United States and Jamaica, agreement was reached to amend the bilateral textile agreement of August 27, 1986 to increase the guaranteed access level for properly certified cotton and man-made fiber textile products assembled in Jamaica from fabric formed and cut in the United States and exported from Jamaica during the period June 1 1987 through December 31, 1987. The designated consultation level for cotton and man-made fiber textile products in Category 352/652, produced or manufactured in Jamaica and exported during the period which began on June 1, 1987 and extends through December 31, 1987, is also being increased.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

August 26, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs.
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of April 16, 1987 which was issued to you by the Chairman, Committee for the Implementation of Textile Agreements concerning guaranteed access levels for certain cotton and man-made fiber textile products, assembled in Jamaica from fabric formed and cut in the United States and exported from Jamaica during the seven-month period which began on June 1, 1987 and extends through December 31, 1987.

Effective on September 1, 1987 the directive of April 16, 1987 is hereby amended to increase the guaranteed access level for cotton and man-made fiber textile products in the following category, under the terms of the bilateral textile agreement of August 27, 1986 [1]:

Category	Guaranteed access level
352/652	750,000 dozen.

This directive amends, but does not cancel, the directive of April 21, 1987 concerning import limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Jamaica and exported during the seven-month period which began on June 1, 1987 and extends through December 31, 1987.

Effective on September 1, 1987 the directive of April 21, 1987 is hereby amended to increase the import restraint limit for cotton and man-made fiber textile products in the following category, under the terms of the bilateral textile agreement of August 27, 1986 [1]:

Category	Guaranteed access level
352/652	200,000 dozen.

[1] The limit has not been adjusted to account for any imports exported after May 31, 1987.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–19957 Filed 8–28–87; 8:45 am]

BILLING CODE 3510–DR–M

Establishment of New Import Limits and Cancellation of Staged Entry for Certain Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

August 26, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 1, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 545–9481. For information on embargoes and quota re-openings, please call (202) 377–3715. For information on categories on which consultations have been requested call (202) 377–3740.

Summary

In the letter published below, the Chairman of the Committee for the

[1] The agreement provides that (1) specific limits may be exceeded by swing, carryover or carryforward; no carryover shall be available in the first agreement year; no carryforward shall be available in the final agreement period.

Implementation of Textile Agreements directs the Commissioner of Customs to cancel the current import restraint limit for lightweight, plainweave polyester/cotton fabric in Category 613–C, and to establish limits for the following newly created part category designations for man-made fiber fabrics in Category 613—613–B (man-made fiber fabrics made with yarn of different colors, cheesecloth, batistes, lawns and voiles), 613–P (man-made fiber printcloth) and 613–S (man-made fiber sheeting, poplin and broadcloth), produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. Overshipments of the 1986–1987 limit for Category 613–C will be charged to Categories 613–P and 613–S each year over a five-year period, starting with the 1987 agreement year. The Commissioner of Customs is directed to cancel the phased entry procedures for goods which are exported in Category 613–C from Pakistan during the period April 27, 1986 through April 26, 1987.

Background

A CITA directive dated April 22, 1987 (52 FR 13744) continued the import restraint limit for lightweight, plainweave polyester/cotton fabric in Category 613–C for an additional twelve-month period which began on April 27, 1987 and extends through April 26, 1988. The directive also established phased entry procedures for goods exported in Category 613–C during the previous twelve-month restraint period.

A further directive dated July 24, 1987 (52 FR 28325) established import restraint limits for certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported to the United States during the period which began on January 1, 1987 and extends through December 31, 1987.

During consultations held July 13–15, 1987 under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 20 and June 11, 1987, between the Governments of the United States and Pakistan, agreement was reached to amend the bilateral agreement to create new part category designations for man-made fiber fabric in Category 613. The new part category designations are as follows:

613–B Man-made fiber fabrics made with yarn of different colors, cheesecloth, batistes, lawns and voiles,
613–P Man-made fiber printcloth
613–S Man-made fiber sheeting, poplin and broadcloth
613–O All others man-made fiber fabrics in Category 613.

The agreement establishes, among other things, specific limits for man-made fiber textile products in Categories 613–P and 613–S and a designated consultation level for Category 613–B, produced or manufactured in Pakistan and exported during the period May 1, 1986 through December 31, 1987.

In addition, the two governments agreed that overshipment charges of the 1986–1987 limit for goods shipped in Category 613–C will be charged to the levels established for Category 613–S, in the amount of 1,444,025 square yards, and Category 613–P, in the amount of 2,000,000 square yards, each year over a five–year period, starting with the agreement year which begins on January 1, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26682), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

The Directive published below and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

August 26, 1987

Committee For The Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive of April 22, 1987 issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which established a limit for man-made fiber textile products in Category 613–C,[1] produced or manufactured in Pakistan and exported during the twelve-month period which began on April 27, 1987 and extends through April 26, 1988. That directive also directed you to stage entry of goods in Catagory 613–C which were exported during the control period April 27, 1986 through April 26, 1988.

This directive amends, but does not cancel, the directive of July 24, 1987 concerning import restraint limits for certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on September 1, 1987, the directive of July 24, 1987 is amended to include new part category designations 613–B, 613–P, 613–S and 613–O for man-made fiber textile products in Category 613. The following new limits are established for man-made fiber textile products in Categories 613–B, 613–P and 613–S, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Category	New 12-mo limits [1] (sq. yds.)
613–B [2]	2,000,000
613–P [3]	15,000,000
613–S [4]	14,100,000

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[2] In Category 613–B, only TSUSA numbers 338.5039, 338.5042, 338.5047, 338.5053, 338.5058, 338.5059, 338.5060, 338.5067, 338.5081 and 338.5089.

[3] In Category 613–P, only TSUSA numbers 338.5048, 338.5049 and 338.5050.

[4] In Category 613–S, only TSUSA numbers 338.5043, 338.5044, 338.5054, 338.5055, 338.5077, 338.5078, 338.5082 and 338.5083.

In addition, you are directed to charge the following amount sin overshipments to the limits established in this letter for goods exported in excess of the previous restraint period.

Category	Amount to be charged (sq. yds)
613–P	2,000,000
613–S	1,444,025

There are no other imports to be charged for the January 1–May 31, 1987 period for Categories 613–P, 613–B and 613–S.

The Committee for Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

[1] In Category 613–C, only TSUSA numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058 and 338.5059.

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exception to the rule-making provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-19980 Filed 8-28-87; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Export Visa Arrangement and Exempt Certification for Textiles and Textile Articles of Cotton, Man-Made and Other Vegetable Fibers and Silk Blends Produced or Manufactured in Pakistan

August 26, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 1, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated May 27, 1983 (48 FR 2527), as amended on June 2, 1987 (52 FR 21611) established an export visa arrangement and exempt certification for certain cotton, man-made fiber, silk blends and other vegetable fiber textiles and textile articles, produced or manufactured in Pakistan.

The Governments of the United States and Pakistan have agreed to further amend the existing export visa arrangement and exempt certification requirement to include the following amended list of part-category designations:

Category	Description
613-B	Man-made fiber fabrics made with yarn of different colors, cheesecloth, batistes, lawns and voiles.
613-P	Man-made fiber printcloth.
613-S	Man-made fiber sheeting, poplin and broadcloth.
613-O	All other man-made fiber fabric in Category 613.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

August 26, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 27, 1983, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, which established an export visa requirement for certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan.

Effective on September 1, 1987 and until further notice, the existing export visa arrangement and exempt certification requirement established by the directive of May 27, 1983, as amended, are hereby further amended to include the following amended list of part-category designations:

613-B
613-P
613-S
613-O

Accordingly, you are directed to prohibit, effective for shipments of man-made fiber textile products entered for consumption or withdrawn from warehouse for consumption into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) on or after September 1, 1987, which have been produced or manufactured in Pakistan and exported on and after September 1, 1987 from Pakistan for which the Government of Pakistan has not issued an appropriate visa with the correct subpart category designation (e.g., 613-B). The part-category designations are as follows:

Category	TSUSA Nos
613-B	TSUSA numbers 338.5039, 338.5042, 338.5047, 338.5053, 338.5058, 338.5059, 338.5060, 338.5067, 338.5081 and 338.5089.
613-P	TSUSA numbers 338.5048, 338.5049 and 338.5050.
613-S	TSUSA numbers 338.5043, 338.5044, 338.5054, 338.5055, 338.5077, 338.5078, 338.5082 and 338.5083.
613-O	All remaining TSUSAs in Category 613.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisons of 5 U.S.C. 553.

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-19976 Filed 8-28-87; 8:45 am]

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 87-2-85CD]

Further Partial Distribution of 1985 Cable Copyright Royalty Fund

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of further partial distribution of 1985 cable copyright royalty fund.

SUMMARY: The Tribunal gives notice of a distribution of 96 percent of the Devotional Claimants' share of the 1985 cable copyright royalty fund to the Christian Broadcasting Network, Inc., Old Time Gospel Hour, and PTL Television Network. Four percent of the Devotional Claimants' share will be retained to satisfy the controversy between CBN, Old Time Gospel Hour and PTL, and In Touch Ministries, Inc. and Christian Television Corporation.

DATES: The distribution will take place on September 3, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036, (202) 653-5175.

SUPPLEMENTARY INFORMATION: On August 17, 1987, the Christian Broadcasting Network, Inc., Old Time Gospel Hour, and PTL Television Network (Devotional Claimants) moved for a 98 percent distribution of the Devotional Claimants' share of the 1985 cable copyright royalty fund. In support of its motion, the Devotional Claimants represented that all potential Phase II controversies have been resolved except the controversy between the Devotional Claimants and In Touch Ministries, Inc. (ITM) and Christian Television Corporation (CTC). With respect to that controversy, the Devotional Claimants assert that a two percent reserve would be more than sufficient to satisfy the claims of ITM and CTC. Further, the Devotional Claimants agreed to reimburse ITM and CTC in the event that a final determination by the Tribunal should be in excess of the funds held in reserve.

On August 21, 1987, ITM and CTC responded that at least six percent of the Devotional Claimants' share of the 1985 cable copyright royalty fund should be retained. ITM and CTC filed six exhibits containing broadcast, distant

signal carriage, and viewing data to justify its view that six percent should be held in reserve.

The Tribunal has two obligations—to distribute funds as fully and as quickly as possible, yet to retain sufficient funds to satisfy any existing controversies. The Tribunal has stated previously that the extent of a controversy is not determined simply by the maximum claims asserted by the claimants. *See, Order Directing Further Partial Distribution of 1979 Cable Royalty Fees*, 48 FR 54679 (December 6, 1983); *Declaration of Controversy and Partial Distribution of Jukebox Royalty Fees*, 51 FR 44331 (December 9, 1986). If that were the case, the mere putting forward of a large percentage figure by a claimant would frustrate the Tribunal's first goal of full and early distribution. The Tribunal has traditionally tempered its view of a claimant's percentage claims with the knowledge the Tribunal has of the claimant based on previous proceedings. However, in this case, ITM and CTC are new to the Tribunal as claimants. The exhibits filed in conjunction with their response to the Devotional Claimants' motion have not been previously weighed by the Tribunal. Consequently, the Tribunal has chosen not to consider these exhibits to any extent other than to add weight to ITM and CTC's argument that retaining two percent of the fund is insufficient. The exhibits have no precedential value, and if they are to be considered by the Tribunal in the final determination, they must be introduced in the proceeding.

The Tribunal, in its discretion, will distribute 96 percent of the Devotional Claimants' share of the 1985 cable royalty funds to the Devotional Claimants on September 3, 1987. Four percent will be retained to satisfy the Devotional Claimants' controversy with ITM and CTC. The decision to retain four percent has no precedential value and does not represent the Tribunal's ultimate view of the value of the claims of ITM and CTC. In the event that a final determination by the Tribunal in favor of ITM and CTC is in excess of the funds held in reserve, the Devotional Claimants shall reimburse the difference to ITM and CTC plus the interest that would have accrued had the excess amounts remained in the 1985 cable copyright royalty funds.

J.C. Argetsinger,

Chairman.

Dated: August 25, 1987.

[FR Doc. 87-19921 Filed 8-28-87; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Tactical Directed Energy Weapons; Meeting Change

ACTION: Change in dates of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Tactical Directed Energy Weapons scheduled for September 23–24, and October 6–7, 1987 as published in the **Federal Register** (Vol. 52, No. 136, Page 26720, Thursday, July 16, 1987, FR Doc. 87-16147) will be held on September 22–23, and November 4–5, 1987.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 25, 1987.

[FR Doc. 87-19897 Filed 8-28-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 22 September 1987.

Time of Meeting: 0900–1630 hours.

Place: HQ, Army Materiel Command, Alexandria, VA.

Agenda: The Army Science Board Ad Hoc Subgroup for Army Analysis will meet to review the reorganization as it affects the acquisition process, and review the analytical support to the acquisition process. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-19909 Filed 8-28-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection extension concerning Novation/Change of Name Requirements.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy (202) 523–3775 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose.* When a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts; or (2) a name change, the contractor must submit certain documentation to the Government. The information is used to justify the Government's recognition of a third party as successor in interest, since 41 U.S.C. 15 prohibits transfer of Government contracts.

b. *Annual reporting burden.* The annual reporting burden is estimated as follows: Respondents, *1,000;* responses per respondent, *1;* total annual responses *1,000;* hours per response, *.5;* and total burden hours, *500.*

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0076, Novation/Change of Name Requirements.

Dated: August 21, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87-19858 Filed 8-28-87; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 30, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above:

Dated: August 24, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Special Education and Rehabilitative Services

Type of Review: Revision
Title: Application for Grants Under Disability and Rehabilitation Research
Agency Form Number: ED 792
Frequency: Annually
Affected Public: Individual or households; state or local governments; businesses or other for profit; federal agencies or employees; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 800; Burden Hours: 16,000
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0
Abstract: This application is used by institutions and organizations to apply for grants that support research and related activities for the rehabilitation of individuals with disabilities. The Department uses the information collected to make grant awards.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for Grants Under the Patricia Roberts Harris Public Service Education Fellowships Program
Agency Form Number: ED 404
Frequency: Annually
Affected Public: Business or other for profit institutions; non-profit institutions
Reporting Burden:
Responses: 109 Burden Hours: 2180
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0
Abstract: This application is used by institutions of higher education to apply for grants under the Patricia Roberts Harris Fellowship Program. The Department uses the information collected to make grant awards.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Extenison
Title: Application for the Bilingual Education State Educational Agency Program
Agency Form Number: T85–2P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 57; Burden Hours: 2,280
Recordkeeping Burden:
Recordkeepers: 0 Burden Hours: 0
Abstract: This form will be used by State educational agencies to apply for funding under the Bilingual Education State Educational Agency Program. The Department uses this information to make grant awards.

[FR Doc. 87–19945 Filed 8–28–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.062A]

Applications for New Awards Under the Indian Education Act of 1972, as amended, Part C, Educational Services Projects for Fiscal Year 1988

Purpose: Provides grants for Indian tribes, Indian organizations, and Indian institutions for educational service projects designed to improve educational opportunities for Indian adults.

Deadline for Transmittal of Applications: September 30, 1987.

Applications Available: November 16, 1987.

Available Funds: The President's budget request for this program for fiscal year 1988 is for $3,000,000, which would provide approximately $1,055,970 for new awards. The remaining funds would be used for continuation awards. The Congress has not yet completed action on the fiscal year 1988 appropriation. The estimates below assume congressional passage of the President's request.

Estimated Range of Awards: $57,000–$289,000.

Estimated Average Size of Awards: $117,330.

Estimated Number of Awards: 9.

Project Period: 12 or 24 months. It is anticipated that approximately 50 percent of the awards will be approved for 24 months.

Applicable Regulations: (a) The Indian Education Program Regulations, 34 CFR Parts 250 and 257, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Elsie Janifer, U.S. Department, 400 Maryland Avenue, SW., Room 2166, Washington, DC 20202. Telephone: (202) 732–1918.

Program Authority: 20 U.S.C. 1211a (b).

Dated: August 25, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87–19952 Filed 8–28–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.061A]

Applications for New Awards Under the Indian Education Act of 1972, as Amended, Part B, Educational Services Projects for Fiscal Year 1988

Purpose: Provides grants to serve Indian children through (1) educational services that are not available in sufficient quantity or quality and (2) innovative and exemplary approaches, methods, and techniques.

Deadline for Transmittal of Applications: September 30, 1987.

Deadline for Intergovernmental Review Comments: January 15, 1988.

Applications Available: November 16, 1987.

Available Funds: The President's budget request for this program for fiscal year 1988 is $3,710,000, which would provide approximately $1,153,000 for new awards. The remaining funds would be used for continuation awards. The Congress has not yet passed the fiscal year 1988 appropriation for this program. The estimates below assume congressional passage of the President's request.

Estimated Range of Awards: $43,000–$289,000.

Estimated Average Size of Awards: $115,300.

Estimated Number of Awards: 10.

Project Period: 12 or 24 months. It is anticipated that approximately 50 percent of the awards will be approved for 24 months.

Applicable Regulations: (a) The Indian Education Program Regulations, 34 CFR Parts 250 and 254, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Application or Information Contact: Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue SW., Room 2166, Washington, DC 20202. Telephone: (202) 732–1918.

Program Authority: 20 U.S.C. 3385 (a), (c).

Dated: August 25, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87–19953 Filed 8–28–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.061C–E]

Applications for New Awards Under the Indian Education Act of 1972, as Amended, Part B, Planning, Pilot and Demonstration Projects for Fiscal Year 1988

Purpose: Provides grants to State and local educational agencies, Indian tribes, organizations, and institutions, and federally-supported elementary and secondary schools for Indian children, for projects designed to create, test, and demonstrate programs for improving educational opportunities for Indian children.

Deadline for Transmittal of Applications: September 30, 1987.

Deadline for Intergovernmental Review Comments: January 15, 1988.

Applications Available: November 16, 1987.

Available Funds: The President's budget request for fiscal year 1988 is $1,935,000, which would provide approximately $424,099 for new planning projects, approximately $210,700 for new pilot projects and approximately $344,850 for new demonstration projects. The remaining funds would be used for continuation awards. The Congress has not yet passed the fiscal year 1988 appropriation for this program. The estimates below assume passage of the President's request.

Estimated Range of Awards: Planning—$58,000–$132,000; Pilot—$93,000–$153,000; Demonstration—$70,000–$145,000.

Estimated Average Size of Awards: Planning—$84,820; Pilot—$105,350; Demonstration—$114,950.

Estimated Number of Awards: Planning—5, Pilot—2, Demonstration—3.

Project Period: Planning—12 months. Pilot and Demonstration—12 or 24 months. It is anticipated that approximately 50 percent of the awards will be approved for 24 months.

Applicable Regulations: (a) The Indian Education Program Regulations, 34 CFR Parts 250 and 255, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2166, Washington, DC 20202. Telephone: (202) 732–1918.

Program Authority: 20 U.S.C. 3385(a)(1), (b).

Dated: August 25, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education

[FR Doc. 87–19954 Filed 8–28–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.072A]

Applications for New Awards Under the Indian Education Act of 1972, as Amended, Part A, Indian-Controlled Schools for Fiscal Year 1988

Purpose: Provides educational enrichment grants to meet the special educational and culturally related academic needs of Indian children in Indian-controlled elementary and secondary schools or local educational agencies.

Deadline for Transmittal of Applications: September 30, 1987.

Applications Available: November 16, 1987.

Available Funds: The President's budget request for this program for fiscal year 1988 is $2,860,000, which would provide approximately $529,000 for new awards. The remaining funds would be used for continuation awards. The Congress has not yet passed the fiscal year 1988 appropriation of this program. The estimates below assume passage of the President's request.

Estimated Range of Awards: $30,000–$252,000.

Estimated Average Size of Awards: $105,800.

Estimated Number of Awards: 5.

Project Period: 12 or 24 months. It is anticipated that approximately 50 percent of the awards will be approved for 24 months.

Applicable Regulations: (a) The Indian Education Program Regulations, 34 CFR Parts 250 and 253, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77 and 78.

For Applications or Information Contact: Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue SW., Room 2166, Washington, DC 20202. Telephone: (202) 732–1918.

Program Authority: 20 U.S.C. 241bb(b).

Dated: August 25, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc 87–19955 Filed 8–28–87; 8:45 am]

BILLING CODE 4000–01–M

National Council on Vocational Education; Meeting

AGENCY: National Council on Vocational Education.

ACTION: Notice of public meeting of the council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming

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meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a) (2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: September 14, 1987.

ADDRESS: Griswold's Hotel, 1500 S. Raymond Avenue, Fullerton, California 92631, (714) 635–9000.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90–576.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

Agenda: The proposed agenda will include: Part I: General Council business. Part II: This Council meeting this will be held in conjunction with the first of the four issues forum. The issues will consist of four major concerns facing vocational education. For additional information pertaining to these issues contact the following:

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Winterton, Executive Director, 2000 L Street, NW., Suite 580, Washington, DC 20036, (202) 634–6110.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 a.m. to 4:30 p.m.

Signed at Washington, DC August 25, 1987.

Joyce Winterton,

Executive Director.

[FR Doc. 87–19857 Filed 8–28–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Agency Collection Under Review by the Office of Management and Budget

AGENCY: Department of Energy.

ACTION: Notice of request submitted for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the information collection listed at the end of this notice of the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor energy information requirements collected by the Energy Information Administration (EIA).

This entry contains the following information: (1) The sponsor of the collection (the DOE component); (2) Collection number; (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and, (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before September 30, 1987.

ADDRESSES: Address comments to Mr. Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should should be addressed to the Office of Organization and Management Systems, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS, CONTACT: William A. Hambley, Organization and Management Systems, Mail Stop MA–21 Room 4D–035, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9383.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible.

The information collection submitted to OMB for review was:

1. Pittsburgh Energy Technology Center (PETC), Office of the Assistant Secretary for Fossil Energy.
2. Program Management 126.
3. N/A.
4. Duct Injection Technology Data Base.
5. New.
6. One-time. Surveys will be conducted in FY 1988 and is expected to be completed by March 1988.
7. Voluntary.
8. Public Utilities having Pre-NSPS coal fired electric power plants.
9. 200 respondents.
10. 200 respondents.
11. 1,200 hours (Fiscal Year 1988 only).
12. This is a survey of Pre-NSPS coal fired electric power plants to determine flue gas duct goemetries and configurations. This information will be used by the DOE's flue gas cleanup program in guiding its future research and development activities in the area of duct injection technology.

Issued in Washington, DC, August 26, 1987.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 87–19975 Filed 8–28–87; 8:45 am]

BILLING CODE 6450–01–M

Procurement and Assistance Management Directorate

Restricted Eligibility for Grant Award; Virginia Coal Council

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: DOE announces that it plans to award a grant to the Virginia Coal Council in the amount of $15,000 in partial support of the Virginia Coal Council's Ninth Annual Conference and Exhibition. Pursuant to § 600.7 (b) of the DOE Financial Assistance Rules, 10 CFR Part 600, DOE has determined the eligibility for this grant award shall be limited to the Virginia Coal Council.

Procurement Request Number: 01–87FE61384.000.

Project Scope: The Virginia Coal Council is hosting a conference and exhibition entitled, "Appalachian Coal, Meeting International Energy Needs". This conference is being held October 27, 28, & 29, 1987 in Roanoke, Virginia.

The specific focus of this meeting is on the issue of developing new markets for U.S. Coal and greater

competitiveness on the part of the U.S. Coal industry. The conference will deal with potentials and pitfalls faced by Appalachian coal producers and consumers for competitively meeting international energy needs.

The conference is to treat a number of significant issues of vital interest for the United States coal industry. Involvement as a co-sponsor and provision of financial support by the Department of Energy is deemed crucial for the success of the conference. The Department of Energy has determined that this award to the Virginia Coal Council on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Shirley A. Jones, MA-452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on August 25, 1987.

Edward T. Lovett,

Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 87-19883 Filed 8-28-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-35-NG]

Application To Export Natural Gas to Mexico; Valero Industrial Gas, L.P.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on June 30, 1987, of an application from Valero Industrial Gas, L.P. (Vigas) and a supplement to this application, filed on August 6, 1987, for blanket authorization to export natural gas to Mexico for spot market sales, primarily to Petroleos Mexicanos (Pemex). Authorization is requested to export up to 4.38 Bcf of natural gas over a two-year period beginning on the date of first delivery. Valero Transmission Company, now Valero Transmission, L.P., is currently authorized to export up to 6,000 Mcf per day to Pemex under an authorization (Order No. 55-A) issued November 28, 1984, in ERA Docket No. 84-04-NG. Pemex has given a required 90-day notice that its contract with Valero Transmission Company will expire November 1, 1987, and, in accordance with the terms of Order No. 55-A, the current authorization will expire on the same date. Vigas, a Delaware limited partnership with its principal place of business in San Antonio, Texas, is authorized to do business in the States of Texas and Louisiana. Vigas proposes to purchase natural gas from various individual producers. Vigas intends to use existing facilities at the border and within the United States for the transportation of the proposed exports. Vigas will advise the ERA of the date of first delivery of the export and submit quarterly reports giving details of individual transactions.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 30, 1987.

FOR FURTHER INFORMATION:

Robert M. Stronach, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9622

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6-E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: This export application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0.204-111. The decision on whether the export of natural gas is in the public interest will be based upon the domestic need for the gas and on whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade arrangements. The applicant asserts that available gas supplies are more than adequate to provide the proposed export, and that the export arrangement will be competitive and in the public interest. Parties, especially those that may oppose this application, should comment in their responses on these matters.

Public Comment Procedures

In responses to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., September 30, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Vigas' application is

available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 21, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–19884 Filed 8–28–87; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

[Notice 87–6]

Special Research Grant Program; Health Effects Research

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Energy Research of the Department of Energy (DOE) announces its interest in receiving applications for Special Research Grants that will support a coordinated multidisciplinary research effort aimed at creating the resources and technologies which would lead to a detailed understanding of human inheritance at the molecular level. Several research goals are encompassed in this Notice: (1) Research will be supported to develop technologies and resources necessary for large-scale physical mapping of deoxyribonucleic acid (DNA), i.e., establishing the original linear order of DNA fragments. This includes development of improved, standardized and automated technologies for the required DNA manipulations. It also includes development of genetic markers, human chromosomes-specific DNA fragments and better DNA sources in the form of purified chromosomes or chromsome fragments; (2) research will be supported for the development of innovative and cost-effective technologies leading to rapid and accurate large-scale DNA sequencing; (3) research will be supported to develop data management systems, data structures, retrieval schemes and user interfaces to support DNA mapping and sequencing. Also desired are improved algorithms for analyzing DNA sequences, including identification of homologies, regulatory sites, protein coding regions and the prediction of protein structures and functions. The research topics described above are not meant to limit the types of proposals that this Notice encourages but to illustrate the range of work needed at this stage of the research.

This will be a coordinated research effort to create technologies and resources which will define the primary structure of the human genome and which can be applied to a wide variety of applications in biological research and biotechnology. Although detailed coordination mechanisms will be defined later, successful applicants will participate as part of an organized effort to develop and apply technology to the ends listed above.

DATES: To permit timely consideration for award in Fiscal Year 1988, applications submitted in response to this Notice should be received by the Division of Acquisition and Assistance Management by November 2, 1987.

ADDRESS: Applications should be forwarded to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, Room G–236, Washington, DC 20545, ATTN: Program Notice 87–6.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Smith, Office of Health and Environmental Research, ER–72, Washington, DC 20545, (301) 353–5468.

SUPPLEMENTARY INFORMATION: It is anticipated that approximately $6M will be available for grant awards during FY 1988. Additionally, multiple year funding of awards is expected, subject to the availability of future funds. Information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures may be found at 10 CFR Part 605. The Office of Energy Research (ER), as part of its grant regulations, requires at 10 CFR 605.11(b) that any grantee funded by ER and performing research that involves recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules; May 7, 1986" (51 FR 16957, May 7, 1986). Application kits and copies of 10 CFR Part 605 are available from the U.S. Department of Energy, Division of Acquisition and Assistance Management (see above address). Telephone requests may be made by calling (301) 353–5468. Instructions for preparation of an application are included in the kit. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on August 13, 1987.

Ira M. Adler,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 87–19885 Filed 8–28–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER87–568–000 et al.]

Electric Rate and Corporate Regulation Filings; Arkansas Power and Light Company et al.

August 26, 1987.

Take notice that the following filings have been made with the Commission:

1. Arkansas Power and Light Co.

[Docket No. ER87–568–000]

Take notice that on July 31, 1987, Arkansas Power and Light Company (the Company) tendered for filing updated Rate Schedules M33 and M33A for the period beginning September 1, 1987.

The Company states that Rates Schedules M33 and M33A require the filing of annual updates to reflect the true-up to actual costs for the preceding year and also to reflect estimated charges for the period beginning September 1 of the current year.

Copies of this filing have been sent to the wholesale customers affected by the filing and the public Service Commissions of Arkansas, Louisiana, Missouri and Tennessee.

Comment date: September 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Co.

[Docket No. ER87–564–000]

Take notice that on August 17, 1987, Arizona Public Service Company (APS) tendered as a supplement to its earlier filed Westwing Switchyard Amended Interconnection Agreement a Certificate of Concurrence by Tucson Electric Power Company (Tucson).

APS states that Tucson consents to the Agreement becoming effective as of August 14, 1987, and waives any notice requirements under 18 CFR 35.11.

Comment date: September 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Corp.

[Docket No. ER87–593–000]

Take notice that on August 20, 1987, Central Hudson Gas & Electric Corporation (Central Hudson) tendered

for filing pursuant to section 35.12 of the Regulations under the Federal Power Act, a rate schedule and an agreement between Central Hudson and the County of Dutchess, New York, for the distribution of New York Power Authority's (NYPA) "Preference Power" and "Non Preference Power" by the Dutchess County Municipal Distribution Agency (MDA).

Service under enclosed Agreement will commence upon approval by the Federal Energy Regulatory Commission.

A copy of this filing has been served upon all parties affected by this filing.

Comment date: September 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Co.

[Docket No. ER87-590-000]

Take notice that on August 20, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing five identical economy energy agreements and rate schedules for sales to the Cities of Anaheim, Azusa, Banning, Colton, and Riverside (Cities).

The five economy energy agreements provide for PGandE to sell economy energy to the Cities at the Midway substation. The rates for economy energy transactions under this agreements shall be one of the following: (a) The average of the Purchaser's Decremental Energy Cost and Seller's Incremental Energy Cost for each hour of the transaction; (b) 115 percent of the Seller's Incremental Energy Cost for each hour of the transaction; or (c) a mutually agreed upon price, not to exceed the Seller's cost per megawatt-hour of the highest fully allocated cost of the units deemed to provide energy for the sale. This last methods allows a rate equal to PGandE's fuel cost plus an amount up to 16.2890 mills per kilowatt-hour, the fully allocated fixed costs of the units deemed to provide energy for the sale.

Comment date: September 9, 1987, in accordance with Standard Paragraph E at the end of this document.

5. Public Service Electric and Gas Co.

[Docket No. ER87-591-000]

Take notice that on August 20, 1987, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial Rate Schedule to provide transmission service to Prime Energy Limited Partnership (Prime Energy). The Rate Schedule provides for a monthly transmission service charge of $.99 per kilowatt plus $.00038 per kilowatthour for the delivery of the net electric power output of Prime Energy's qualifying cogeneration facility to be located in the Boro of Elmwood Park, Bergen County, New Jersey to Jersey Central Power and Light Company.

PSE&G requests, with the customer's consent, a waiver of the Notice Requirements of § 35.3(a) of the Commission's Regulations so that the Rate Schedule can be submitted for filing at this time and PSE&G further requests that the filing be made effective within sixty (60) days of the date of this filing.

PSE&G states that a copy of this filing has been served by mail upon the customer and the New Jersey Board of Public Utilities.

Comment date: September 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Utilicorp United Inc.

[Docket No. ES87-37-000]

Take notice that on August 10, 1987, Utilicorp United Inc. ("Applicant") filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue up to and including 2,000,000 shares of common stock, without par value, and for exemption from competitive bidding requirements.

Comment date: September 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Indiana Gas and Electric Company.

[Docket No. ER87-594-000]

Take notice that on August 20, 1987, Southern Indiana Gas and Electric Company (Southern Indiana) tendered for filing, proposed changes in its FPC Electric Service Tariff by Modification No. 6 to its November 27, 1972 Interconnection Agreement with the City of Jasper, Indiana, which Modification No. 6 is proposed to take effect immediately upon acceptance by this Commission.

Southern Indiana indicates that the purpose of this filing is to revise Service Schedule A—Contract Power—and Schedule B—Emergency Power—and Schedule C—Maintenance Power. Under Modification No. 6 the Capacity Charge for Contract power is proposed to be increased from $7.12 to $9.14 per Kw per month of Scheduled and Unscheduled demand and the Capacity Charge for Emergency Service and Maintenance Power in Service Schedules B and C, is proposed to be increased from $1.64 to $2.11 per week and/or $0.35 per Kw per day for each day of less than a calendar week. The contract term is extended to ten (10) years from the date of Modification No. 6.

The proposed revisions reflect a desire on the part of both parties to provide for present and anticipated future increases in costs and to attain the maximum benefit from the interconnection of their systems.

Southern Indiana requests waiver of the notice requirements of section 205(d) of the Federal Power Act.

Southern Indiana states that copies of the filing were served upon City of Jasper, Indiana who has filed its Certificate of Concurrence to Modification No. 6.

Comment date: September 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Wheelabrator Millbury Inc.

[Docket No. ER87-592-000]

Take notice that on August 20, 1987, Wheelabrator Millbury Inc., a Delaware corporation (WMI), having its principal place of business at P.O. Box 740, Millbury, Massachusetts 01527, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Succession of Ownership pursuant to 18 CFR 35.16 of the Commission's Regulations. In the Notice of Succession of Ownership, WMI adopts, ratifies and makes its own, in every respect all applicable rate schedules and supplements thereto, listed below, heretofore filed with the Commission by SES Millbury Company, L.P., effective June 30, 1987.

SES Millbury Company, L.P./Rate Schedule FERC No. 1

WMI has requested that such rate schedule be renamed:

Wheelabrator Millbury Inc./Rate Schedule FERC No. 1

Comment date: September 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Wheelabrator Millbury Inc.

[Docket No. EL87-59-000]

Take notice that on August 20, 1987, Wheelabrator Millbury Inc. (WMI) tendered for filing a Petition for Declaratory Order. WMI states that the Petition arises out of a decision to enter into a sale and leaseback financing transaction with respect to its 45 megawatt solid waste fueled small power production facility (the Facility) in Millbury, Massachusetts. WMI also states that the Petition requests the Commission to declare that (1) it will not exercise Federal Power Act jurisdiction over the transaction, the "owner trustee" (Connecticut Bank and Trust Company) or the "owner trustee" (Connecticut Bank and Trust Company)

or the "owner participant" (Ford Motor Credit Company), (2) the transaction will not affect the Facility's rate schedule currently on file with the Commission, and (3) the transaction will not result in a loss of the Facility's status as a qualifying facility under PURPA.

Comment date: September 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19963 Filed 8-28-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-581-000 et al.]

Electric Rate and Corporate Regulation Findings; Boston Edison Company et al.

August 25, 1987.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Co.

[Docket No. ER87-581-000]

Take notice that on August 10, 1987, Boston Edison Company (Boston Edison) tendered for filing revised Exhibit Bs to its Rate Schedule FPC Nos. 47 and 51 for service to the Towns of Concord and Wellesley, Massachusetts, to reflect the direct cost of service effects on the S-8/PR Rate charged the two Towns of the reduction in the federal income tax rate from 46% to 34%, pursuant to the Tax Reform Act of 1986. Boston Edison asks that the rate schedule changes be made effectively as of July 1, 1987.

Boston Edison states that this filing has been posted and that copies of the filing have been served upon the two Towns and the Massachusetts Department of Public Utilities.

Comment date: September 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Co., West Penn Power Co. (The APS Companies)

[Docket No. ER87-586-000]

Take notice that on August 18, 1987, Allegheny Power Service Corporation tendered for filing an initial rate schedule on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (The APS Companies). The rate schedule provides for the sale of up to 300 MW of capacity and energy by the APS Companies to Old Dominion Electric Cooperative (ODEC) for a period to begin as soon as practicable after FERC acceptance and to end no later than December 31, 1994.

Charges for the proposed service were negotiated at arms'-length in a competitive environment and are mutually advantageous. The APS Companies and ODEC wish to begin the proposed service as soon as practicable and, therefore, request waiver of the Commission's notice requirements.

Copies of the filing were served upon ODEC, the Maryland Public Service Commission, the Ohio Public Utilities Commission, the Pennsylvania Public Utility Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: September 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Co.

[Docket No. ER87-408-000]

Take notice that on July 24, 1987, Boston Edison Company (Edison) tendered for filing Amendment No. 1 to the agreement for the exchange of power between itself and Montaup Electric Company of Boston, Massachusetts (Buyer) which was filed with the Commission on April 29, 1987.

Under the agreement, the parties may negotiate daily power exchanges involving Edison units and entitlements and Buyer's facilities. The parties state that the purpose of the power exchange is to attain greater efficiencies of operation.

Edison requests waiver of the Commission's notice requirements to permit the Agreement to become effective August 29, 1983.

Copies of the filing have been served upon Buyer and on the Department of Public Utilities of the Commonwealth of Massachusetts.

Comment date: September 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Central Illinois Public Service Co.

[Docket No. ER87-579-000]

Take notice that on August 17, 1987 Central Illinois Public Service Company (CIPS) tendered for filing Addenda to 12 interchange agreements between CIPS and other utilities.

The tendered Addenda provide downward flexibility from the currently effective rate for certain energy charges under the pertinent interconnection agreements, in the situation where CIPS is supplying energy purchased from a third party to a receiving party.

CIPS requests an effective date of August 1, 1987, and therefore request a waiver of the Commission's notice requirements.

Comment date: September 8, 1987, in accordance with Standard Paragraph E at the end of this document.

5. Central Power and Light Co.

[Docket No. ER87-583-000]

Take notice that on August 17, 1987, Central Power and Light Company (CPL) tendered for filing a letter agreement, dated June 19, 1987, between CPL and TU Electric Company (TU). The TU Agreement provided for CPL to furnish transmission service to TU, during the period June 1, 1985 to December 31, 1986, for various periods of time from three cogenerators in the state of Texas. CPL also tendered a Notice of Cancellation with respect to the TU Agreement.

CPL requests an effective date of June 1, 1985 for the TU Agreement and an effective date of December 31, 1986 for the Notice of Cancellation. Accordingly, CPL requests waiver of the Commission's notice requirements.

Copies of this filing have been sent to the Public Utility Commission of Texas and TU Electric Company.

Comment date: September 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Cincinnati Gas & Electric Co.

[Docket No. ER87-580-000]

Take notice that on August 7, 1987, Cincinnati Gas & Electric Company (CG&E) tendered for filing, pursuant to Part 35 of the Commission's Regulations governing the Filing of Rate Schedules, section 205(d) of the Federal Power Act and Order No. 475 issued June 26, 1987, proposed changes in its FERC Electric Tariff, First Revised Volume No. 1, which cancel and supersede the rate

schedules in tariff applicable to the full requirements electric service to the Villages of Bethel, Blanchester, Georgetown, Hamersville, and Ripley, municipalities in the State of Ohio (municipalities); The Union Light, Heat and Power Company (Union Light), a wholly-owned subsidiary of CG&E which ultimately serves retail consumers and one wholesale customer within the Commonwealth of Kentucky; and The West Harrison Gas & Electric Company (West Harrison), a wholly-owned subsidiary of CG&E which ultimately serve retail consumers in the State of Indiana.

Copies of this filing were served upon each party designated on the official service list in this proceeding.

Comment date: September 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Northern Indiana Public Service Co.

[Docket No. ER87-585-000]

Take notice that on August 18, 1987, Northern Indiana Public Service Company (NIPSCO) tendered for filing of changes in rate schedules pursuant to § 35.13 of the Federal Energy Regulatory Commission's regulations under the Federal Power Act an original and six copies of the Service Agreements with the Towns of Argos, Bremen, Brookston, Chalmers, Etna Green, Kingsford Heights, Walkerton, and Winamac, all in Indiana.

The Service Agreements are the result of recently concluded negotiations for a ten (10) year full requirements contract for each Town which is to take effect October 1, 1987, and the initial term will terminate on January 31, 1998, and continue from year to year thereafter until terminated by either party by two years' notice.

NIPSCO respectfully request waiver of the Commission's filing requirements, and requests this filing be made effective October 1, 1987, as these rates will not become effective until after final approval by the Federal Energy Regulatory Commission.

Copies of the filing were served upon the indicated towns and the Indiana Utility Regulatory Commission.

Comment date: September 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Oklahoma Gas and Electric Co.

[Docket No. ER87-589-000]

Take notice that on August 19, 1987, Oklahoma Gas and Electric Company (OG&E) tendered for filing revisions to its TEGR Rate Schedule (Trade Electricity for Gas Rider) and its LC-1 Rate Schedule (Rider for Load Curtailment) applicable to rural electric cooperatives and municipalities to whom the Company supplies electric service under the WC-1 or WM-1 Rate Schedules that are a part of the *Oklahoma Gas and Electric Company FERC Electric Tariff*, 1st Revised Volume No. 1.

These revisions will (1) permit additional customers to be eligible for the TEGR program and (2) relax the eligibility criteria under the Load Curtailment Rider, all of which will result in savings to the participating customers. Savings to non-participating customers will also be a result due to a reallocation of generation sources.

Copies of this filing have been served on Arkansas Valley Electric Cooperative, KAMO Electric Cooperative, each wholesale municipality to whom the Company supplies electric service, the Oklahoma Corporation Commission and the Arkansas Public Services Commission.

Comment date; September 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Oklahoma Gas and Electric Co.

[Docket No. EC87-21-000]

Take notice that on August 19, 1987, Oklahoma Gas and Electric Company (Applicant), an Oklahoma Corporation with its principal office at 321 N. Harvey, P.O. Box 321, Oklahoma City, Oklahoma, 73101, tendered for filing an application pursuant to section 203 of the Federal Power Act and Part 33 of the Commission's Regulations thereunder, for authorization to sell certain transmission facilities to Oklahoma Municipal Power Authority (OMPA).

The Company states it is engaged primarily in the generation, transmission, distribution and sale of electric energy in Oklahoma and western Arkansas. The facilities being sold and purchased will be devoted to supplying service to OMPA Participants only.

Comment date: September 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Power & Light Co., an assumed business name of PacifiCorp

[Docket No. ER87-588-000]

Take notice that on August 19, 1987, Pacific Power & Light Company, an assumed business name of PacifiCorp, tendered for filing, in accordance with Section 35.12 of the Commission's Regulations, a Reserve Capacity Integration Agreement dated May 5, 1987, between Pacific and Black Hills Power and Light Company.

Pacific requests waiver of the Commission's Notice requirements to permit this rate schedule to become effective July 1, 1987, this date being the date on which service commenced.

Comment date: September 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Co. of Indiana, Inc.

[Docket No. ER87-587-000]

Take notice that on August 18, 1987, Public Service Company of Indiana, Inc. tendered for filing pursuant to the Interconnection Agreement between Public Service Company of Indiana, Inc. and Indianapolis Power & Light Company a Eighth Supplemental Agreement to become effective June 1, 1987, pursuant to Part 35 of the Commission's Regulations.

The Eighth Supplemental Agreement modifies the Agreement as follows:

1. Deletes reference to the 106th Street Tap Point.

2. Extends service to the Service Company at the Carmel Tap Point beyond June 1, 1987, the date presently specified as the date of termination.

Copies of the filing were served upon Indianapolis Power & Light Company and the Indiana Utility Regulatory Commission.

Public Service Company of Indiana, Inc. has requested waiver of the Commission's notice requirement to permit an effective date of June 1, 1987.

Comment date: September 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Co. of New Mexico

[Docket No. ER87-582-000]

Take notice that on August 17, 1987, Public Service Company of New Mexico (PNM) tendered for filing a Service Schedule dated July 15, 1987, to the PNM-Incorporated County of Los Alamos, New Mexico (County) Interconnection Agreement (Service Schedule). The Service Schedule provides that PNM will provide interruptible transmission service to County from the Shiprock 345 kV Switching Station to the 115 kV bus at the Norton 115 kV/345 kV Switching Station at an initial rate of three (3) mills per kWh. PNM requests that notice requirements be waived and that the Service Schedule be effective as of August 14, 1987.

Copies of the filing have been served upon County and the New Mexico Public Service Commission.

Comment date: September 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

13. Signal Shasta Energy Co., Inc.

[Docket No. ER87-575-000]

Take notice that on August 13, 1987, Signal Shasta Energy Company Inc. (Signal Shasta) tendered for filing, pursuant to 18 CFR 35.1 and 35.12, proposed Signal Shasta Rate Schedule No. 1, applicable to the sale of energy by Signal Shasta to Pacific Gas & Electric Company (PG&E) from a 49.9 net megawatt biomassfueled small power production facility currently under construction at a site located at Cottonwood and Locust Roads in Shasta County, California (Facility). Signal Shasta has given notice to the Federal Energy Regulatory Commission (Commission or FERC) stating that the Facility is a qualifying small power production facility within the meaning of section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA).

The proposed initial rate is set forth in that certain "Power Purchase Agreement for Long-Term Energy and Capacity," dated October 22, 1984, between Valley Power Associates and PG&E (Power Purchase Agreement).[1] The Power Purchase Agreement is an unmodified "standard offer" pre-approved by the California Public Utility Commission. It establishes that the rate for sales to PG&E for the first ten years shall be the state-forecasted energy prices as set forth in the Power Purchase Agreement. Thereafter, rates for sale shall equal PG&E's full short-run avoided operating costs.

Signal Shasta requests waiver of the Commission's rule requiring that rate schedules be filed no more than one-hundred-twenty (120) days prior to the date on which service is to commence under an initial rate schedule. This requirement is intended to prevent the use of stale data in developing the test period for cost-of-service based rates. Section 35.3(b) of the Commission's regulations allows the Commission to waiver the one-hundred-twenty (120) day notice period in appropriate circumstances. Since the rates are formula rates based on state forecasts and the buyer's costs, and do not involve Signal Shasta's costs for a particular test period, this requirement is not applicable.

Signal Shasta seeks waiver of the Commission's regulations regarding cost-of-service documentation. The Commission has recognized, in other cases,[2] that the cost-of-service data requirements contained in § 35.12(b)(5) of its regulations are irrelevant insofar as they would require a small power producer to substantiate its cost-of-service. Signal Shasta requests this waiver on the grounds that this information is not relevant because rates are initially based on state-forecasted rates and then on the buyer's costs, and are not dependent upon the seller's costs.

Signal Shasta seeks waiver of the Commission's regulations regarding the Uniform Systems of Accounts prescribed for Public Utilities and Licensees subject to the provisions of the Federal Power Act specified by 18 CFR Parts 101 and 104. Since rates are initially based upon state-forecasted rates and then upon the buyer's costs, this information and need for uniformity in the seller's accounting systems are irrelevant. Moreover, this requirement imposes substantial hardship and undue burden upon Signal Shasta as it requires more detailed accounting than Signal Shasta would other wise undertake.

Signal Shasta seeks waiver of the Commission's regulations regarding certain accounts and reports required by 18 CFR Parts 41, 50, and 141. Signal Shasta seeks this waiver on the basis that such information and reports are irrelevant because the rates under the contract are not to be determined by Signal Shasta's costs. Moreover, Signal Shasta will sell to only one buyer, PG&E. Therefore, it is not necessary to protect the public in general by requiring strict compliance with these sections.

Comment date: September 8, 1987, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be field on or before the comment date. Protests will be considered by the Commission indetermining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19964 Filed 8-28-87; 8:45 am]

BILLING CODE 6717-01-M

[1] Under section 14-A of the Agreement, VPA may assign its rights under the Agreement, subject to PG&E's written consent. VPA assigned the Agreement to Signal Energy System, Inc. (Signal Energy) pursuant to that certain "Assignment Agreement," dated July 1, 1985. PG&E gave its written consent to the assignment pursuant to that certain "Consent to Assignment and Agreement," dated August 16, 1985. Signal Energy assigned the contact to Signal Shasta pursuant to that certain "Assignment Agreement, dated April 24, 1987. PG&E gave its written consent to the assignment pursuant to that certain "Consent to Assignment and Agreement," dated April 24, 1987.

[2] "Wheelabrator-Frye, Inc. Declaratory Order," Docket Nos. EL82-7-000 and EL82-12-000, issued June 15, 1982.

[Docket No. EL85-19-114]

Technical Meeting Regarding Ohio River Basin Environmental Impact Statement, Ohio River Basin

August 26, 1987.

As referenced in the April 29, 1987, Notice of Intent to Prepare Environmental Impact Statement (EIS), the staff of the Federal Energy Regulatory Commission has determined that issuance of licenses for the development of 24 proposed hydropower projects in the Ohio River Basin would constitute a major Federal action significantly affecting the quality of the human environment. Site-specific and cumulative environmental impacts will be evaluated in the EIS and possible alternatives to the proposed actions will be addressed.

Applicants, Federal, State, and local agencies, and interested persons are invited to attend a technical meeting to discuss the progress on the Ohio River Basin EIS, FERC Docket No. EL85-19-114. The meeting will be held on Thursday, September 17, 1987, from 10:00 a.m. to 4:30 p.m., at the William S. Moorhead Federal Building (in Room 200), 1000 Liberty Avenue in Pittsburgh, Pennsylvania.

An update of the progress on the EIS and studies in support of the analysis for the proposed development of the 24 hydropower applications on the Ohio, Allegheny, Monongahela, Tygart, and Muskingum Rivers will be provided. Analytical procedures planned for the EIS will be presented, and comments on the approach and inputs will be solicited. Progress on the collection of field data required to support the water quality analysis will be presented; the presentation will, however, be limited to a discussion on the studies under way, not a review of the data collected to date. A discussion of the use of the support studies and the EIS in the development of mitigative measures for the proposed hydropower projects will follow.

For further information on the technical meeting, contact project managers George Taylor at (202) 376–9288 or Brian Romanek at (202) 376–1730.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–19965 Filed 8–28–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86–168–013]

Withdrawal of Tariff Sheets and Filing of Proposed Changes in FERC Gas Tariff; Columbia Gas Transmission Corp.

August 26, 1987.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 24, 1987, withdrew Seventh Revised Sheet No. 17 and Fifth Revised Sheet No. 26 submitted with its July 31, 1987 compliance filing, and tendered for filing a new Seventh Revised Sheet No. 17 and a new Fifth Revised Sheet No. 26 to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1987.

Columbia states that it has agreed with Commission Staff to delete certain language in section 1(b) of the CDS and G Rate Schedules (which contain identical language) in order to more fully comply with the Commission's orders issued March 31, 1987 and July 16, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed on or before September 2, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–19966 Filed 8–28–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87–87–000]

Changes in Rates and Tariff Provisions; Granite State Gas Transmission, Inc.

August 26, 1987.

Take notice that on August 20, 1987, Granite State Gas Transmission, Inc. (Granite State), 120 Royal Street, Canton, Massachusetts 02021, tendered for filing with the Commission the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 proposing changes in rates and other tariff provisions for effectiveness on September 21, 1987:

First Revised Volume No. 1

First Revised Sheet No. 2
First Revised Sheet No. 3
Original Sheet No. 3–A
Original Sheet No. 3–B
Twenty-First Revised Sheet No. 7
Original Sheet No. 7–B
Second Revised Sheet No. 14
Second Revised Sheet No. 51
Fifth Revised Sheet No. 68
Fourth Revised Sheet No. 70
Third Revised Sheet No. 71
Third Revised Sheet No. 72
Fourth Revised Sheet No. 75
Second Revised Sheet No. 75–A
First Revised Sheet No. 75–B
Original Sheet No. 75–C
Second Revised Sheet No. 82
First Revised Sheet No. 83
Original Sheet No. 84
Original Sheet No. 85
Original Sheet No. 86
Third Revised Sheet No. 112
First Revised Sheet No. 116

Original Volume No. 2

Seventh Revise Sheet No. 27
First Revised Sheet No. 31

According to Granite State, the filing is made primarily to reflect the increased cost of service for the expanded operations authorized by the Commission in the certificates issued August 4, 1987 in Docket No. CP87–39–000 for the Portland Gas Pipeline Project. Granite State states that the Project involves (1) the lease and conversion to natural gas service of 166 miles of an existing oil pipeline extending from the vicinity of Portland, Maine, to the U.S.-Canadian border near North Troy, Vermont; (2) the acquisition and operation of an existing 8-inch pipeline in Maine; (3) the construction and operation of an interconnection between the coverted 18-inch pipeline and the 8-inch pipeline near Portland and other appurtenant facilities. The facilities will be utilized to import gas from Canada delivered by Shell Canada Limited, and to increase service to its markets, according to Granite State.

Granite State states that the proposed rates in its filing are based on a cost of service for actual operations for the 12 months ended April 30, 1987, adjusted for known and measurable changes expected to occur by January 31, 1988. According to Granite State, the test period cost of service includes the cost of the capital investment in the new delivery system, costs for the operating and maintenance expenses on the new plant as well as the existing system, increased ad valorem and income taxes. An overall rate of return of 12.65 percent is claimed on the adjusted rate base which includes a return of 14.5 percent on the equity portion of the investment.

Granite state further states that its proposed rates are applicable to wholesale sales to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc. According to Granite State, the effect of the proposed rates in its filing is an increase of approximately $2,466,889 annually in its rates for sales to Bay State and $587,865 annually for sales to Northern Utilities, exclusive of gas costs.

According to Granite State, the projected date for the completion of the conversion of the oil pipeline to natural gas service and the construction of all related facilities to import gas is December 1, 1987. Granite State has requested a shortened suspension period for the revised rates in its filing to permit them to become effective as of the date its expanded system is completed and ready for service.

Granite State further states that copies of the filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 2, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–19967 Filed 8–28–87; 8:45 am]

BILLING CODE 6717-01-M

VOL 52 ISS 168 AG 31 1987 UMI

[Docket No. EL87-58-000]

Filing; Cities of Newark, New Castle, Seaford, and Milford, Delaware, and the Towns of Smyrna, Clayton, Middletown and Lewes, DE v. Delmarva Power & Light Co.

August 24, 1987.

Take notice that on August 4, 1987, Cities of Newark, New Castle, Seaford, and Milford, Delaware, and the Towns of Smyrna, Clayton, Middletown and Lewes, Delaware pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 tendered for filing a Complaint against Delmarva Power & Light Company (DP&L).

The Delaware Municipalities state that DP&L includes in its fuel adjustment clause costs associated with its fuel and purchased power. To the extent that fuel and purchased power costs are imprudently incurred, DP&L should not be allowed to collect such costs from customers, and customers should be given refunds of overcharges connected with such imprudently incurred costs.

The Delaware Municipalities also states that they request the Commission to institute an investigation into DP&L's nuclear powerplant outages and DP&L's coal purchases and to order refunds to the Delaware Municipalities based upon any findings of imprudence in either those outages or DP&L's coal purchases.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 23, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall also be due on or before September 23, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19968 Filed 8-28-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-59-009]

Change in Rates and Tariff Revisions; Northern Natural Gas Co. Division of Enron Corp.

August 25, 1987.

Take notice that on August 14, 1987, Northern Natural Gas Company, Division of Eron Corp. (Northern), tendered for filing with the Commission to be effective September 1, 1987 the following tariff sheets:

Third Revised Volume No. 1

Forty-Fifth Revised Sheet No. 4a
Forty-Fifth Revised Sheet No. 4b
Thirteenth Revised Sheet No. 4b.1

Original Volume No. 2

Fifty-Second Revised Sheet No. 1c

Northern states that the purpose of the revised tariff sheets is to adjust its jurisdictional natural gas sales rates to reflect its purchased gas cost from Canadian suppliers in a manner consistent with Commission Opinion Nos. 256 and 256-A.

In accordance with the terms established in Northern's Stipulation and Agreement in Docket No. TA86-3-59 and approved by the Commission on January 30, 1987, Northern will file to adjust its market area sales commodity and demand rates within 30 days of a final non-appealable order in the Natural Gas Pipeline Company (NGPL) proceeding in Docket No. TA85-1-26-004 if the outcome of that proceeding is different than Northern's current treatment.

Accordingly, Northern files to adjust its Canadian purchase costs to a Modified Fixed-Variable allocation consistent with Opinion Nos. 256 and 256-A. The effect of this treatment will be to transfer approximately $4.4 million from Northern's demand rates to its commodity rates and will increase the Company's commodity PGA rate by $.0108 per Mcf. The decrease in Northern's D-1 rate will be $.073 per Mcf and D-2 rate will decrease by $.0025 per Mcf.

Copies of the filing were served on all of Northern's jurisdictional customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 1, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-19969 Filed 8-28-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-495-000]

Application; Southern Natural Gas Co.

August 26, 1987.

Take notice that on August 13, 1987, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-495-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Citizens Gas Supply Corporation (Citizens), as agent for G. Heileman Brewing Company, Inc. (Heileman), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport on an interruptible basis up to 2,750 MMBtu of natural gas per day which Heileman has arranged to purchase from Citizens. Applicant further proposes that this transportation be authorized for a term expiring on October 31, 1988. It is stated that Citizens has agreed to sell gas to Heileman and that Citizens would deliver the gas to Applicant at various specified existing receipt points on Applicant's pipeline system. It is claimed Applicant would deliver the gas for the account of Heileman to the City of Warner Robins, Georgia (Warner Robins) at existing interconnections between Applicant and Warner Robins in Bibb and Twiggs Counties, Georgia. It is indicated Applicant would deliver an equivalent quantity of gas less 3.25 percent of the volume transported for fuel use.

Applicant proposes to charge Citizens the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Applicant on any day to Warner Robins under any and all transportation agreements with Applicant, when added to the volumes of gas delivered under

Rate Schedule OCD of Applicant's FERC Gas Tariff on such day to Warner Robins does not exceed the daily contract demand of Warner Robins, the transportation rate would be 48.2 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Applicant on any day to Warner Robins exceeds the daily contract demand of Warner Robins, the transportation rate for the excess volumes shall be 77.6 cents per MMBtu.

In addition, Applicant proposes to collect the appropriate GRI surcharge.

Applicant also proposes to transport sales gas for Heileman in those instances when Heileman takes quantities of gas from Applicant in excess of quantities of gas actually delivered to Applicant.

Applicant states that the transportation arrangement will enable Heileman to diversify its natural gas supply sources and to obtain gas at competitive prices.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 16, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (10 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19970 Filed 8-28-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-7-021]

Proposed Changes in FERC Gas Tariff; Transcontinental Gas Pipe Line Corp.

August 26, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on August 21, 1987, tendered for filing certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The purpose of the instant filing is to revise Transco's sales, transportation and storage rates to reflect a change in the statutory federal corporate income tax rate from 46% to 34% effective July 1, 1987 in accordance with Ordering Paragraph (B) of the Commission's July 23, 1987 Order in this proceeding. The proposed effective date of the revised tariff sheets is July 1, 1987.

In addition, Transco has also included in the instant filing a reduction in its Rate Schedule LSS rates effective July 1, 1987, to reflect a "tracking" rate decrease pursuant to section 4 of Rate Schedule LSS contained in Second Revised Volume No. 1 of Transco's tariff. The purpose of this "tracking" rate decrease is to reflect a reduction in the rate for storage service purchased from Penn York Energy Corporation (Penn-York) under its Rate Schedule SS-1 which Transco utilizes to render service under its Rate Schedule LSS. The reduction to Penn-York's SS-1 rate was the result of its May 29, 1987 filing in Docket No. RP85-69-005 wherein it reflected a reduction in its various rates to reflect lower federal corporate income taxes effective July 1, 1987.

Transco further states that in accordance with § 154.16 of the Commission's Regulations, copies of the filing were mailed to all parties to this proceeding and to all persons upon whom the original filing herein was made.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 2, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19971 Filed 8-28-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-35-000]

Rate Change Pursuant to Purchased Gas Cost Adjustment Provision; West Texas Gas, Inc.

August 26, 1987.

Take notice that on August 17, 1987, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

Eighth Revised Sheet No. 3a

Eighth Revised Sheet No. 3a was filed by WTG in order to place into effect its annual purchased gas adjustment (PGA) on October 1, 1987. The implementation of this PGA will result in a rate reduction to its customers served under Rate Schedules GS-1, IS-1, and I-1.

Copies of the filing were served upon the WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 2, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19972 Filed 8-28-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TA87-4-43-000]

Proposed Changes in FERC Gas Tariff; Williams Natural Gas Co.

August 26, 1987.

Take notice that Williams Natural Gas Company (WNG) on August 21, 1987 tendered for filing Second Revised Sheet No. 6 and Original Sheet No. 97 to its FERC Gas Tariff, Original Volume No. 1 and First Revised Sheet Nos. 5 and 17 to its FERC Gas Tariff, Original Volume No. 2. These tariff sheets are being filed in compliance with Commission Order No. 472, issued May 29, 1987.

Second Revised Sheet No. 6 to WNG's FERC Gas Tariff, Original Volume No. 1 reflects an increase in the Current Effectiveness Rates of .21¢ per Mcf to include the FERC Annual Charge Adjustment per Order No. 472.

Original Sheet No. 97 to WNG's FERC Gas Tariff, Original Volume No. 1 reflects the addition of section 25 to the General Terms and Conditions. Section 25 includes provision for the FERC Annual Charge Adjustment.

First Revised Sheet Nos. 5 and 17 to WNG's FERC Gas Tariff, Original Volume No. 2 reflect an addition in section 3 of Rate Schedules FTS and ITS to include provision for the FERC Annual Charge Adjustment.

WNG states that copies of this filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and § 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 2, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19973 Filed 8-28-87; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

August 21, 1987.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4814. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0019
Title: Application for Radio Station License or Modification Thereof Under Part 23 or 25
Form No.: FCC 403
Action: Extension (renewal)
Respondents: Wireline and radio common carriers
Frequency of Response: On occasion
Estimated Annual Burden: 6,000 Responses; 30,000 Hours.
Needs and Uses: Filing is required to apply for a radio station license upon completion of construction, or to modify particulars of an existing license. The data provides a means of monitoring the construction of radio facilities authorized by the Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-19935 Filed 8-28-87; 8:45 am]

BILLING CODE 6712-01-M

Announcement of Closed Circuit Test of the Emergency Broadcast System During the Week of September 14, 1987

August 25, 1987.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of September 14, 1987. Only ABC, AP Radio, CBS, MBS, NBC, NPR, United Stations and UPI Audio Radio Network affiliates will receive the Test Program for the Closed Circuit Test. The ABC, CBS, NBC, and PBS television networks and the national cable program supplier networks are not participating in the test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 25 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

This is a closed circuit test and will not be broadcast over the air.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-19936 Filed 8-28-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-797-DR]

Amendment to Notice of a Major-Disaster Declaration; Minnesota

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA-797-DR), dated August 6, 1987, and related determinations.

DATED: August 21, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of Minnesota, dated August 6, 1987, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 6, 1987:

Anoka County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 87-19890 Filed 8-28-87; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-797-DR]

Amendment to Notice of a Major-Disaster Declaration; Minnesota

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA-797-DR), dated August 6, 1987, and related determinations.

DATED: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

NOTICE: The notice of a major disaster for the State of Minnesota, dated August 6, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 6, 1987:

Beltrami, Dakota, Norman, and Polk Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 87-19891 Filed 8-28-87; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-655]

Final Action; Approval of Conversion Application; Crestline Building & Loan Association, Crestline, OH

Date: August 21, 1987.

Notice is hereby given that on August 13, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Crestline Building and Loan Association, Crestline, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium Two, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-19847 Filed 8-28-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-652]

Final Action; Approval of Conversion Application; Fellowship Savings & Loan Association, Bergenfield, NJ

Date: August 19, 1987.

Notice is hereby given that on August 13, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Fellowship Savings and Loan Association, Bergenfield, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-19848 Filed 8-28-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-654]

Final Action; Approval of Conversion Application; First Atlantic Savings & Loan Association, South Plainfield, NJ

Date: August 21, 1987.

Notice is hereby given that on August 17, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Atlantic Savings and Loan Association, South Plainfield, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-19849 Filed 8-28-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-651]

Final Action; Approval of Conversion Application; First Federal Savings & Loan Association of Charlotte County, Punta Gorda, FL

Date: August 19, 1987.

Notice is hereby given that on August 13, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Charlotte County, Punta Gorda, Florida, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-19850 Filed 8-28-87; 8:45 am]

BILLING CODE 6720-01-M

Appointment as Liquidator; First Savings of Louisiana, La Place, LA

Notice is hereby given that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended (12 U.S.C. 1729(c)(1) (1982), the Federal Savings and Loan Insurance Corporation, on August 20, 1987, accepted appointment by the Commissioner of Financial Institutions for the State of Louisiana, pursuant to sections 6:873 and 6:880 of the Louisiana Revised Statutes Annotated, as liquidator for First Savings of Louisiana, for the purpose of liquidation.

Dated: August 21, 1987.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-19853 Filed 8-28-87; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; First Savings of Louisiana, La Place, LA

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(1982), the Federal Savings and Loan Insurance Corporation as sole receiver for First Savings of Louisiana, La Place, Louisiana, on August 20, 1987.

Dated: August 21, 1987.

By the Federal Home Loan Bank Board.

John F. Chizzoni,

Assistant Secretary.

[FR Doc. 87-19854 Filed 8-28-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-650]

Final Action; Approval of Conversion Application; Landis Savings & Loan Association, Vineland, NJ

Date: August 19, 1987.

Notice is hereby given that on August 13, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Landis Savings and Loan Association, Vineland, New Jersey for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-19851 Filed 8-28-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-653]

Final Action; Approval of Conversion Application; McKinley Federal Savings & Loan Association, Niles, OH

Date: August 19, 1987.

Notice is hereby given that on August 13, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of McKinley Federal Savings and Loan Association, Niles, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium TWO, Cincinnati, Ohio 45201.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-19852 Filed 8-28-87; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Sunbelt Federal Savings & Loan Association, Watonga, OK

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Sunbelt Federal Savings and Loan Association, Watonga, Oklahoma, on August 20, 1987.

Dated: August 21, 1987.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-19855 Filed 8-28-87; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Twin City Savings Bank, FSB, West Monroe, LA

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Twin City Savings Bank, FSB, West Monroe, Louisiana, on August 20, 1987.

Dated: August 21, 1987.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-19856 Filed 8-28-87; 8:45 am]

BILLING CODE 6720-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The agency is requesting that the Office of Management and Budget renew GSA's authority to require guard contractors to submit sign-in, sign-out logs as evidence of employee hours worked.

AGENCY: Contract Policy Division, GSA.

ACTION: Notifies the public that GSA wants this information collection renewed.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jewell Wilson, 202-566-1811. Reporting Burden: Respondents, 220; responses, 52 each; 11,440 total responses; average time to file response, one-half hour. Copy of Proposal. Readers may obtain a copy of the proposal by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning 202-566-0668.

Dated: August 21, 1987.

Rodney P. Lantier,

Acting Director, Information Management Division.

[FR Doc. 87-19913 Filed 8-28-87; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service, National Vaccine Program; Delegation of Authority

By the authority vested in me as Secretary, I hereby delegate to the Assistant Secretary for Health, with authority to redelegate, authorities under Pub. L. 99-660, subtitle 1, National Vaccine Program, Title XXI of the Public Health Service Act, as amended, (42 U.S.C. 300aa-1). This delegation excludes the authorities to publish regulations and submit reports to Congress. It is effective immediately. In addition, I hereby ratify and affirm any actions taken by the Assistant Secretary for Health or other PHS officials which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

Dated: August 11, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-19902 Filed 8-28-87; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

[Docket No. 85-0131]

Denial of Request for Hearing; Globe Blood Plasma Center, Inc.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs is announcing the denial of a request for a hearing by Globe Blood Plasma Center, Inc., on the agency's denial of the firm's applications for an establishment license and product license for the manufacture of Source Plasma. The firm requested a hearing in response to the publication in the **Federal Register** of the Food and Drug Administration's (FDA's) notice of opportunity for hearing (NOOH).

ADDRESS: Background information related to this notice is on file with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph G. Wilczek, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION: On January 28, 1985, FDA issued a letter under 21 CFR 601.4(b) to Globe Blood Plasma Center, Inc. (Globe), 2239 West Fond du Lac Ave., Milwaukee, WI 53206, informing the firm that it did not meet the standards for licensure established by the regulations and that FDA was, therefore, denying the firm's applications for an establishment license and product license for the manufacture of Source Plasma. The reasons for the denial as set forth in the January 28, 1985, letter included: (1) The responsible head's failure to exercise control of the establishment in all matters relating to compliance with the provisions of the establishment and product license applications; (2) the failure of the responsible head to take corrective actions as promised, demonstrating an inadequate understanding of the scientific principles and techniques involved in the plasmapheresis operation; and (3) the prelicense inspection of December 1984, which revealed significant deviations from the applicable standards that represented an unwarranted health risk to donors.

The letter advised the firm that, if the firm so requested, the Commissioner would issue a notice of opportunity for a hearing. Under 21 CFR 12.21(b) and 601.4(b), at the firm's request, FDA issued a notice of opportunity for a hearing on the denial of licensure in the **Federal Register** of August 19, 1985 (50 FR 33415). The NOOH noted the deficiencies in the initial and ensuing license applications, subsequent correspondence, and prelicense inspections performed in August, October, November, and December 1984. The NOOH stated that the FDA inspections revealed numerous deviations from the regulations, that these deviations demonstrated that Globe failed to provide assurance that the health and safety of donors would be protected, and that the managerial personnel lacked the training and expertise necessary to safely operate a plasmapheresis center. The NOOH described many of the significant deviations found during the December 1984 prelicensure inspection.

Applicable Regulations

FDA procedures and requirements governing a notice of opportunity for hearing, notice of appearance and request for hearing, grant or denial of hearing, and submission of data and information to justify a hearing are contained in 21 CFR Parts 12 and 601 and 21 CFR 314.200. As stated in the NOOH, the firm, in order to request a hearing, was required to submit to FDA's Dockets Management Branch a written request for a hearing by September 18, 1985, and any data justifying a hearing by October 18, 1985. A request for a hearing may not rest upon mere allegations or denials, but must set forth a genuine and substantial issue of fact that requires a hearing. When it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact the requires a hearing on the denial of the license, the Commissioner of Food and Drugs will enter summary judgment against the applicant requesting the hearing, making findings and conclusions that justify denying a hearing.

Request for Hearing and FDA's Findings

For the reasons set forth below, the Commissioner denies Globe's request for a hearing, and finds that there is no genuine and substantial issue of fact justifying a hearing. In addition, the Commissioner finds that the firm's request for a hearing and supporting data did not comply with the requirements set forth in 21 CFR Part 12.

Following publication of the August 19, 1985, NOOH, FDA's Dockets Management Branch received two letters, dated September 9, 1985, and September 13, 1985, signed by the firm's president. These letters requested a hearing on the denial of the license; however, they contained no data or information in support of the request. Thus, these letters raise no issue of fact to justify a hearing.

Globe addressed two other letters, dated September 9, 1985, to FDA's Associate Commissioner for Regulatory Affairs. These letters responded to FDA's January 28, 1985, letter denying the firm's license applications. One of the letters was unsigned, and expressed the hope that FDA would reevaluate its position on the license denials. The other letter addressed to the Associate Commissioner was signed by the responsible head but contained no request for a reevaluation or hearing.

The two September 9, 1985, letters sent to the Associate Commissioner for Regulatory Affairs are the only letters submitted following the publication of the NOOH that address any of the issues involved in the denial of licensure. These letters fail to comply with the requirements of 21 CFR 12.22 that requests for a hearing and descriptions and analyses of the factual information in support of objections to hearing request denials be submitted to the Dockets Management Branch. In addition to this procedural error, neither letter demonstrates that there is a genuine and substantial issue of fact for resolution at the hearing. (*See* 21 CFR 12.24(b).) The responsible head did not dispute the vast majority of the deficiencies noted in FDA's January 28, 1985, letter. Instead, the responsible head admitted that many of the deficiencies occurred and merely alleged that he intended to correct them.

In responding to some deficiencies noted by FDA, the responsible head stated that Globe's personnel performed procedures or used criteria copied from its competitors. No more substantive reason than this was given for some of the firm's practices. Although the responsible head stated that he disagreed with FDA regarding his familiarity with plasmapheresis procedures, he did not present any evidence in support of his position. Thus, these mere allegations and denials do not justify a hearing. (*See* 21 CFR 12.24(b)(2).)

Rather than supporting Globe's hearing request, these letters provide additional support for the license denials. The letters reveal that Globe's responsible head remained unfamiliar with the scientific principles and techniques involved in the manufacture of Source Plasma. Such familiarity is necessary so that the responsible head can ensure that employees are trained in, and have a thorough understanding

of the relevant functions involved in a plasmapheresis operation. These functions include, among others: Proper calibration of equipment, recognition of improper storage temperatures, and accurate calculations of plasma volumes and whole blood weights. Functions such as calculating whole blood weights and plasma volumes are essential to ensure that no more than the maximum permissible amount of blood is removed from donors and that plasma volume is correctly measured and labeled.

The September 9, 1985, letters also indicate that the responsible head still did not understand that he is required by 21 CFR 601.12 to notify FDA of, and receive its approval for, important proposed changes in such areas as manufacturing methods, which include the use of new or different test laboratories.

Furthermore, the responsible head acknowledged that serum protein electrophoresis (SPE) tests had not been performed on some new donors. He also demonstrated his lack of knowledge of 21 CFR 640.65(b) (1) and (2), which set forth requirements regarding SPE tests, by asking what section in the Federal regulations required immediate SPE testing. The responsible head clearly is not familiar with the applicable requirements for SPE tests or the scientific grounds on which they are based.

The September 9, 1985, letters further reveal that the responsible head is not familiar with the method described in his firm's written standard operating procedures (SOP) manual to remove air from blood collection equipment in order to prevent circulatory embolism and is not familiar with, or knowledgeable of the terminology associated with, the test for hepatitis B surface antigen (HBsAg).

The firm's letters dated September 9, 1985 and September 13, 1985, present no genuine or substantial issue of fact to support granting the hearing request. More importantly, they provide further evidence of the significant lack of understanding on the part of Globe's responsible personnel of the applicable regulations and the scientific principles and techniques involved in the production of Source Plasma. These facts provide additional support for the agency's decision to deny the firm a license based on its inability to meet established standards.

Conclusion

Because of the reasons stated above, the Commissioner finds that Globe Blood Plasma Center, Inc., has failed to show that there is a genuine and substantial issue of fact requiring a hearing. Therefore, under section 351 of the Public Health Service Act (42 U.S.C. 262) and under 21 CFR 12.28, 601.4, and 601.7, the request for a hearing is denied and the denial of license stands.

Dated: August 18, 1987.

John A. Norris,

Acting Commissioner of Food and Drugs.

[FR Doc. 87-19881 Filed 8-28-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82P-0007 et al.]

Approved Variances for Laser Light Shows; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for 12 organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variance are listed in the table below.

ADDRESS: The applications and all correspondence on the applications have been placed on display in the—Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sally Friedman, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the 12 organizations listed in the table below a variance from the requirements of § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical design and by warnings in the user manual and on the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by a letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer or the product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date, termination date
82P-0007 (renewal)	Memphis Pink Palace Museum, 3050 Central Avenue, Memphis Tennessee 38111	Memphis Pink Palace Museum Laser Light Shows using the Pink Palace 265 projector with argon, krypton, and helium-neon lasers.	May 29, 1987 to Jan. 19, 1987
82P-0141 (renewal)	Fiske Planetarium University of Colorado, Box 408, Boulder, Colorador 80309.	Fiske Planetarium laser light show which incorporates Class IV argon and HeNe laser projection systems, manufactured, assembled, and produced by Fiske Planetarium, University of Colorado.	June 2, 1987 to June 8, 1989.
82P-0296 (amendment)	Walt Disney World Company, P.O. Box 10,000, Lake Buena Vista, Florida 32830.	EPCOT Center Transportation Laser Display containing a Class IIIb helium-cadmium laser projection system; the EPCOT Center Imagination Light Writer containing Class IIIb helium-neon, argon ion, and helium-cadmium laser projection systems; and the EPCOT Center Imagination Laser Display Scene 7 containing a Class IV krypton ion and a Class IIIb argon ion laser projection system.	June 3, 1987 to Sept. 20, 1992.
85v-0284 (renewal)	Starlasers, 13156 Leadwell Street, North Hollywood, California 91605.	Class IV Starlight Series One laser projectors and laser light shows assembled and produced by Starlasers incorporating these projectors.	June 29, 2987 to June 20, 1989.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date, termination date
85V-0287 (renewal)	Centrak Corporation, 171 Merwin Avenue, Cleveland, Ohio 44113.	Laser light shows and the incorporated Class IIIb or Class IV argon, krypton, and/or helium-neon laser projectors manufactured, assembled, and produced by CENTRAK Corporation	June 29, 1987 to June 14, 1989
85V-0437 (amendment and renewal)	Ion Images 222 Colony, Kinsley, Kansas 67547	Ion Images laser light shows incorporating the LaserMedia Model LM3, Laser Fantasy Model 25356, Laser System Development laser projection systems, and/or an Image Engineering 4-color scanning optical head with a Class IV argon/krypton laser from the Kansas Cosmosphere.	June 2, 1987 to Sept 12, 1989
86V-0222 (renewal)	Briarcrest Baptist Church, 6000 Briarcrest Avenue, Memphis, Tennessee 38119.	Laser light shows manufactured, assembled and produced by Briarcrest Baptist Church with the Laser Systems Development Model C-4 Class IV laser projector.	June 9, 1987 to May 23, 1989
86V-0476	Stone Mountain Lasers, Incorporated, 4076 Jami Lane, Lithonia, Georgia 30058.	Stone Mountain Lasers, Incorporated production of the Stone Mountain Park "Night on Stone Mountain" laser light show and other laser light shows assembled and produced by this firm incorporating Class IV Laser Media models LM, LMS, or ChromaRay projection systems with argon, krypton, or argon/krypton lasers.	June 11, 1987 to June 11, 1989
87V-0007	C.L.S. Metro, Incorporated, 133-18 Oak Street, Tallahassee, Florida 32301.	C.L.S. Metro, Incorporated laser light show incorporating a Lighting Systems Design PM3000DD laser projector and a Class IV krypton laser system	June 3, 1987 to June 3, 1989
84V-0092	The Red Onion, 1139 East Dominguez Street, Suite H, Carson, California 90746.	Red Onion laser light shows using the Entertainment Technology Industries Class IV Chorus Master Model One argon laser projection system	June 29, 1987 to June 29, 1989
87V-0142	Six Flags-Astroworld, 9001 Kirby, Houston, Texas 77054.	Astroworld laserlight shows, such as "Fantasy of Fire," incorporating the Image Engineering Model 350W Class IV ion laser projector.	May 29, 1987 to May 29, 1989
87V-0209	Laser FX, 1554 Kingston Drive, Escondido, California 92027	Laser FX Model FX-1 Class IV laser projector with argon laser systems and the "California Dream" laser light show assembled and produced by Laser FX incorporating this projector.	June 29, 1987 to June 29, 1987

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket numbers in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: August 18, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87-19880 Filed 8-28-87; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Center for Health Services Research and Health Care Technology Assessment; Assessment of Guidelines for Home Air-Fluidized Bed (Clinitron) Therapy

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), has been requested by the Health Care Financing Administration (HCFA) to review and provide input on the proposed guidelines for the home use of air-fluidized bed therapy.

The air-fluidized bed contains small ceramic beads that are enclosed by a closely woven polyester sheet. Warm pressured air is forced through the beads which then take on the characteristics of a fluid medium. The bed is stated to provide a floatation environment for the patent which avoids excessive pressure over bony prominences. An air-fluidized bed (Clinitron) has been available since 1969 for the hospital management of patients with decubitus ulcers and burns. This therapy is currently available beyond institutional use, but home use is not covered under existing Medicare policy.

The manufacturer of the Clinitron bed has proposed the following guidelines for home use:

Suggested Patient Selection Criteria

All of the following must be met to obtain approval for home therapy.

1. A physician has ordered home Clinitron therapy as an alternative to hospitalization and has determined that the patient meets the additional patient selection criteria delineated below.

2. The patient has had a previous hospitalization(s) for flap surgery for the treatment of decubitus ulcer.

3. The patient has had a hospital admission for decubitus ulcer treatment within the last 9 months.

4. The patient currently has a stage 3 or stage 4 decubitus ulcer.

5. The patient is afebrile, non-septic, and does not have any other known contradindications to home therapy.

6. The patient has limited mobility due to one of the following diagnosis:

Parkinson's Disease
Multiple Sclerosis
Paraplegia/Quadriplegia
Spina Bifida

7. The patient will be compliant with home care regimen.

8. The patient has adequate home support (family or other caregiver) to use home Clinitron therapy effectively.

Treatment Protocol

1. The physician conducts an initial assessment and evaluates the patient for home Clinitron therapy.

2. The home Clinitron treatment regimen must be carried out under the direct supervision of an attending physician.

3. The patient is seen monthly by the physician, and as needed.

4. The Clinitron therapy nurse consultant provides training for the patient and caregiver and reports on the status of the patient to the attending physician.

5. Following the initial prescription, the patient must be recertified for home Clinitron therapy on a monthly basis following a physician examination.

The PHS invites public input in the evaluation of these guidelines. Questions to be answered by this assessment include: (1) Are there issues of safety and efficacy not addressed by the above guidelines that relate to the therapeutic value of the air-fluidized bed? (2) Are there conditions for use not covered by these guidelines? (3) Are there specific circumstances under which use of this device would be absolutely or relatively contraindicated? (4) Under which conditions is this therapy deemed most appropriate? (5) To what extent is home support or nursing assistance necessary for effective use of the therapy? (6) Should use be limited to a specified period. If so, why?

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector and from PHS and other agencies in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a

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technology. Based on this assessment, a PHS recommendation will be formulated to assist HCFA in establishing coverage policy for Medicare. The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit from it, suitable home settings as well as on the clinical acceptability, effectiveness and safety of this technology is also being sought. Proprietary information is not being sought. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing not later than November 30, 1987.

Written material should be submitted to: Kesinee C. Nimit, M.D., Office of Health Technology Assessment, 5600 Fishers Lane, Room 18A–27, Rockville, MD 20857, Tel: (301) 443–4990.

Date: August 19, 1987.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 87–19904 Filed 8–28–87; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–87–1727]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to:

John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the toal number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Title I Lender Approval Forms and Associated Recordkeeping.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: HUD programs under Title I of the National Housing Act insure eligibile lenders against losses which they may sustain as a result of property improvement and manufactured housing loans. These forms are used to verify lender information in connection with reviewing or monitoring their approval status.

Form Number: HUD–92001–L, 92001–LB, 92001–LC, 92001–LK, and 92001–LV.

Respondents: State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations.

Frequency of Response: Annually.

Estimated Burden Hours: 10,350.

Status: Reinstatement.

Contact: Sandra L. Allison, HUD (202) 755–6924; John Allison, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Notice of Submission of Proposed Information Collection to OMB

Proposal: Affirmative Fair Housing Marketing Results Sample Survey Form.

Office: Fair Housing and Equal Opportunity.

Description of the Need for the Information and Its Proposed Use: Participants in HUD's housing programs who are subject to Affirmative Fair Housing Marketing (AFHM) requirements submit data which is needed to identify successful and unsuccessful marketing strategies. The data helps HUD assess and modify, if necessary, policy guidelines for sponsors and developers on implementing AFHM requirements.

Form Number: HUD–935.6.

Respondents: Individuals or Households and Businesses or Other For-Profit.

Frequency of Respondents: Annually.

Estimated Burden Hours: 653.

Status: New.

Contact: Joan W. Brackett, HUD, (202) 755–6540; John Allison, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Moderate Rehabilitation, Section 8 Housing Assistance Payments Program.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Housing and Community Development Act authorizes the submission of this form by Public Housing Agencies (PHAs) applying for an allocation of Section 8 Moderate Rehabilitation units. It is needed by HUD to make a funding decision based on a determination of consistency with housing needs and evidence of PHA capabilities.

Form Number: HUD–52515A.

Respondents: State or Local Governments.

Frequency of Respondents: On occasion.

Estimated Burden Hours: 1,000.

Status: Extension.

Contact: Alfonso M. Bell, HUD, (202) 755–6550; John Allison, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Title X Land Development Mortgage Insurance.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: This form serves as the initial application from a private developer for mortgage insurance for land acquisition and development under Title X of the National Housing Act. HUD uses the information provided on the form as a basic element of their feasibility analysis of the project.
Form Number: HUD–3551.
Respondents: Businesses or Other For-Profit.
Frequency of Respondents: On occasion.
Estimated Burden Hours: 550.
Status: Extension.
Contact: Edwin W. Baker, HUD, (202) 755–6540; John Allison, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Notice of Submission of Proposed Information Collection to OMB

Proposal: Comprehensive Homeless Assistance Plan.
Office: Community Planning and Development.
Description of the Need for the Information and Its Proposed Use: Under Title IV of the Homeless Assistance Act, states, metropolitan cities, and urban counties are required to submit a comprehensive assistance plan and annual progress report in order to receive assistance. In order for other eligible applicants and recipients to receive assistance, they have to be in a jurisdiction covered by an approved plan.
Form Number: None.
Respondents: State or Local Governments and Non-Profit Institutions.
Frequency of Respondents: Annually.
Estimated Burden Hours: 16,800.
Status: New.
Contact: James R. Broughman HUD, (202) 755–5977; John Allison, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Notice of Submission of Proposed Information Collection to OMB

Proposal: Supplement to Subscription Agreement for Cooperative Housing Applicants under Sections 213 and 221(d)(3).
Office: Housing.
Description of the Need for the Information and Its Proposed Use: The information collection is used to determine capability and capacity of the applicant to meet the financial requirements of the project. HUD needs this information to determine if the mortgage could be amortized.
Form Number: HUD–93232A.
Respondents: Individuals or Households.
Frequency of Respondents: On occasion.
Estimated Burden Hours: 7,000.
Status: Extension.
Contact: William H. Bornscheuer, HUD, (202) 755–6223; John Allison, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: August 10, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87–19903 Filed 8–28–87; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–940–07–4212–12; A–22448]

Realty Action; Reconveyed Land; Mohave County, AZ

August 24, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Reconveyed Land Opened to Entry in Mohave County.

SUMMARY: Pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716), the United States recently acquired the following described land from the State of Arizona:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 12 N., R. 14 W.,
Sec. 16, W½;
Sec. 32, NW¼, W½SW¼, NE¼SW¼, N½SE¼, SE¼SE¼.
T. 13 N., R. 13 W.,
Sec. 16, W½;
Sec. 22, all;
T. 13 N., R. 14 W.,
Sec. 16, all;
Sec. 32, W½E½, NW¼;
Sec. 36, N½, SE¼.
T. 13 N., R. 15 W.,
Sec. 16, all;
T. 13 N., R. 16 W.,
Sec. 36, all.
T. 14 N., R. 12 W.,
Sec. 16, all.
T. 15 N., R. 13 W.,
Sec. 12, NW¼NW¼;
Sec. 16, S½N½;
Sec. 32, all.
T. 16 N., R. 13 W.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 32, all.
T. 16½ N., R. 12 W.,
Sec. 32, all.
T. 17 N., R. 12 W.,
Sec. 4, lots 1–4, incl., S½N½, S½;
Sec. 6, lots 1–7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8, all;
Sec. 16, all;
Sec. 18, lots 1–4, incl., E½W½, E½;
Sec. 20, all;
Sec. 22, all;
Sec. 28, all;
Sec. 30, lots 1–4, incl., E½, E½W½;
Sec. 32, all;
Sec. 34, all.
T. 17 N., R. 13 W.,
Sec. 2, lots 1 and 2, S½NE¼.
T. 17 N., R. 14 W.,
Sec. 36, NE¼NW¼, E½SW¼.
T. 18 N., R. 13 W.,
Sec. 26, W½SW¼;
Sec. 34, all.
T. 19 N., R. 19 W.,
Sec. 16, N½SW¼, SW¼SW¼, SE¼.
T. 21 N., R. 17 W.,
T. 32, E½NW¼, NE¼SW¼, NW¼SE¼.
T. 21 N., R. 20 W.,
Sec. 2, lot 4;
Sec. 36, W½E½, W½, excepting patented MS 4213.
T. 22 N., R. 19 W.,
Sec. 2, lots 1–4, incl., S½N½, S½.
T. 22 N., R. 20 W.,
Sec. 2, lots 1 and 2, S½NE¼, SE¼;
Sec. 32, NW¼SW¼, S½SW¼;
Sec. 36, E½SE¼, SW¼SE¼.
T. 23 N., R. 17 W.,
Sec. 3, SE¼;
Sec. 4, lots 1–4, incl., S½N½, W½SW¼, SE¼SW¼, SE¼;
Sec. 10, all;
Sec. 15, S½N½;
Sec. 22, all;
Sec. 23, SW¼NW¼, N½SW¼, SW¼SW¼;
Sec. 26, W½NW¼.
T. 23 N., R. 20 W.,
Sec. 36, all.
T. 24 N., R. 16 W.,
Sec. 2, lots 2–4, incl., S½NW¼, NW¼SW¼.
T. 24 N., R. 17 W.,
Sec. 2, lot 3.
T. 24 N., R. 21 W.,
Sec. 2, lots 1–3, incl., S½NE¼.
T. 25 N., R. 15 W.,
Sec. 2, lot 4.
T. 25 N., R. 16 W.,
Sec. 32, W½NW¼, SE¼NW¼.
T. 25 N., R. 21 W.,
Sec. 12, all (Surface Only).
T. 26 N., R. 18 W.,
Sec. 24, all.
T. 26 N., R. 21 W.,
Sec. 2, NE¼SE¼, S½SE¼.
T. 27 N., R. 17 W.,
Sec. 2, E½SE¼.
T. 27 N., R. 19 W.,

Sec. 14, all;
Sec. 30, lots 1–4, incl., E½, E½W½.
T. 27 N., R. 21 W.,
Sec. 32, S½SE¼.
T. 28 N., R. 17 W.,
Sec. 32, S½S½;
Sec. 36, S½S½.
T. 28 N., R. 18 W.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 36, all.
T. 28 N., R. 20 W.,
Sec. 16, SE¼;
Sec. 32, S½SE¼;
Sec. 36, all.

The areas described comprise 27,863.72 acres in Mohave County.

Upon the effective date, the reconveyed land described above will be open to operation of the public land laws generally subject to valid existing rights and requirements of applicable law.

The mineral estate in all of sec. 12, T. 25 N., R. 21 W., was already in Federal ownership and has been and presently remains open to the operation of the mining and mineral leasing laws. The remaining conveyed land described above, upon the effective date, will be open to applications under the general mining laws and mineral leasing laws, subject to existing State-issued leases. All applications and offers received prior to the effective date, will be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2–3, if necessary. Applications and offers received thereafter shall be considered in the order of filing.

EFFECTIVE DATE: 9:00 a.m., September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Angela Mogel, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241–5534.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–19912 Filed 8–28–87; 8:45 am]

BILLING CODE 4310–32–M

INTERSTATE COMMERCE COMMISSION

[Docket No. 38676]

Changes in Routing Provisions; Conrail; July, 1981

AGENCY: Interstate Commerce Commission.

ACTION: Notice of procedure for re-establishment of joint rates.

SUMMARY: Any shipper or carrier that has been affected by Conrail's 1981 joint rate cancellations and is interested in establishing joint rates or other alternative rates must submit to Conrail concrete, specific rate proposals concerning particular rate levels on particular points (or groups of points) and commodities in which they are interested. If a settlement is not reached, the party seeking relief must file a petition with the Commission seeking a rate prescription. If the parties seeking relief do not comply with these procedures and the deadlines below, the procedures of this docket will not be available. All parties are required to negotiate in good faith as a condition to obtaining relief.

DATES: Parties must submit proposals to Conrail by October 30, 1987. If a settlement is not reached by 120 days following a timely submission of a proposal, a party must file its petition with the Commission no later than 30 days thereafter.

ADDRESSES: Send petitions referring to Docket No. 38676 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Conrail's representative: Cheryl A. Cook, 1138 Six Penn Center Plaza, Philadelphia, PA 19103

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. TDD for hearing impaired: (202) 275–1721

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357, (assistance for the hearing impaired is available through TDD services (202) 275–1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: August 18, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred with a separate expression.

Noreta R. McGee,

Secretary

[FR Doc. 87–19919 Filed 8–28–87; 8:45 am]

BILLING CODE 7035–01–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Acturial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at 1211 Avenue of the Americas, 38th Floor, Conference Room A, New York City, New York on September 29, 1987, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been made, that the subject of the meeting falls within the exceptions to the open meeting requirements set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Date: August 25, 1987.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 87–19859 Filed 8–28–87; 8:45 pm]

BILLING CODE 4810–25–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Alcan Aluminum Corp. et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on August 18, 1987, a proposed partial consent decree in *United States and the State of New York v. Alcan Aluminum Corp. et al.*, Civ. No. 87–CV–920, was lodged with the United States District Court for the Northern District of New York. That action was brought pursuant to the Comprehensive Environmental Response, Compensation and Recovery Act for the recovery of costs expended by the United States and the state of New York in connection with the Pollution Abatement Services of Oswego, Inc. site located in Oswego, New York.

The partial consent decree is entered into between the United States, the state of New York and eighty-one of the potentially responsible parties who contributed waste to the PAS site. The decree provides for the payment by those parties of $8,514,018.34 to the United States and $591,361.83 to the state of New York for costs expended by the government entities in conducting investigatory, removal and remedial activities at the PAS site. The partial consent decree does not resolve the liability of all defendants named in the complaint filed by the United States and

the state of New York in this action on July 10, 1987.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC. All comments should refer to *United States and the State of New York v. Alcan Aluminum Corp. et al.*, D.O.J. Ref. 90–11–2–2.

The proposed consent decree may be examined at the office of the United States Attorney, 369 United States Courthouse, 100 S. Clinton Street, Syracuse, New York 13260 and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the proposed partial consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW. Washington, DC 20530. A copy of the proposed decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the decree should be accompanied by a check in the amount of $1.50 for copying costs payable to the "United States Treasurer."

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–19863 Filed 8–28–87; 8:45 am]

BILLING CODE 4410–01–M

Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by The Superfund Reauthorization Act; Ottati & Gross et al.

In accordance with section 122(d)(2)(A) of CERCLA as amended by SARA, notice is hereby given that a proposed Consent Decree in *United States, et al.* v. *Ottati & Goss, et al.*, Civil Action No. 80–225–L, has been lodged with the United States District Court for the District of New Hampshire, on August 21, 1987. The Consent Decree resolves an action brought by the United States under section 106 and 107 of CERCLA as amended and 7003 of the Resources Conservation and Recovery Act and common law nuisance against General Electric, Solvents Recovery Service of New England and Lilly Industrial Coatings and the State of New Hampshire against the same defendants under section 107(a) of CERCLA, the Hazardous Waste Management Act, statutory nuisance and common law nuisance. The decree resolves only the liability of the above-named defendants.

The Consent Decree requires defendants to perform the soil remediation activities associated with the Ottati & Goss portion of the Ottati & Goss (O&G)/Great Lakes Container Corp. (GLCC) portion of the O&G/GLCC National Priorities List site as set forth in the Record of Decision issued by Region I on January 16, 1987 and to contribute towards the groundwater remedial action for the Ottati & Goss portion of the Site.

The Consent Decree also requires defendants to pay to plaintiffs $390,000 for reimbursement of past costs.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States, et al.* v. *Ottati & Goss, et al.*, D.J. Ref. No. 90–7–1–79.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire, Federal Building, 55 Pleasant Street, Concord, New Hampshire 03301; at the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $4.20 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–19860 Filed 8–28–87; 8:45 pm]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Air Act; SANCAP Abrasives Inc. Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 18, 1987, a proposed consent decree in *United States* v. *SANCAP Abrasives, Inc., Corporation*, Civ. No. C85–322A, was lodged with the United States District Court for the Northern District of Ohio. This agreement resolves a judicial enforcement action brought by the United States against SANCAP Abrasives, Inc. for violations of the Clean Air Act at SANCAP's facility in Alliance, Ohio.

The proposed Consent Order provides that SANCAP will install high solids coating equipment at its capline manufacturing plant. SANCAP has already completed installation of the equipment. SANCAP is required to achieve compliance with the VOC emission limitations of the Ohio SIP by April 15, 1987. The Decree also establishes monitoring and reporting requirements and provides for stipulated penalties for violations of its provisions. Finally, the settlement provides for the payment of a civil penalty of $30,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *SANCAP Abrasives, Inc.*, D.J. Ref. 90–5–2–1–745.

The proposed consent decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney

U.S. Attorney, Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114

EPA

Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement

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Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Divisions.

[FR Doc. 87-19861 Filed 8-28-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Ciba-Geigy Corp.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 3, 1987, Pharmaceuticals Division, Ciba-Geigy Corporation, Regulatory Compliance SEF1030G, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Methylphenidate (1724).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than September 30, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: August 24, 1987.

[FR Doc. 87-19944 Filed 8-28-87; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Presenters Section) to the National Council on the Arts will be held on September 16-18, 1987 from 9:00 a.m.-5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 18, 1987 from 1:00 p.m.-3:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on September 16-17, 1987 from 9:00 a.m.-5:00 p.m. and September 18, 1987 from 9:00 a.m.-1:00 p.m. and 3:00 p.m.-5:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (d)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accomodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

August 25, 1987.

[FR Doc. 87-19910 Filed 8-28-87; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 17-18, 1987 from 9:00 a.m. - 5:30 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics of discussion will include guidelines and other policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682/5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine. Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

August 25, 1987.

[FR Doc. 87-19911 Filed 8-28-87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-335]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing; Florida Power and Light Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP-67, issued to Florida Power and Light Company (the licensee), for operation of the St. Lucie Plant, Unit No 1, located in St. Lucie County, Florida.

The amendment would authorize the licensee to increase the spent fuel pool storage capacity from 728 to 1706 fuel assemblies. The proposed expansion is to be achieved by reracking the spent fuel pool into two discrete regions. New, high-density storage racks will be used. The existing storage racks will be removed, cleaned of loose contamination, packaged and shipped off-site.

Region 1 of the spent fuel pool includes 4 modules having a total of 342 storage cells. The cell pitch is 10.12 inches. All cells can be utilized for storage and each cell can accept new fuel assemblies with enrichments up to 4.5 weight percent U-235 or spent fuel assemblies that have not achieved adequate burnup for Region 2. Region 2 includes 13 modules having a total of 1364 storage cells. The cell pitch is 8.86 inches. All cells can be utilized for storage and each cell can accept spent fuel assemblies with various initial enrichments which have accumulated minimum burnups. Each cell in each region can accommodate a single Combustion Engineering or Advanced Nuclear Fuel Corporation (formerly Exxon) PWR fuel assembly or equivalent, from either St. Lucie Unit 1, or Unit 2.

The new racks are not double-tiered and all racks will sit on the spent fuel pool floor. The amendment application does not involve rod consolidation. The k_{eff} of the pool will be maintained at less than or equal to 0.95. Neutron absorbers in the form of Boraflex will also be used

for criticality control. The rack vendor has licensed at least 10 other racks of the same design. The construction process and analytical techniques remain substantially the same as the previous 10 racks. Thus, no new or improved technology is utilized in the construction or analysis of the proposed racks.

This amendment was requested in the licensee's application dated June 12, 1987.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves a significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability of consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application, as restated below.

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

In the course of the analysis, FPL has considered the following potential accident scenarios:

1. A spent fuel assembly drop in the spent fuel pool.
2. Loss of spent fuel pool cooling system flow.
3. A seismic event.
4. A spent fuel cask drop.
5. A construction accident.

The probability of any of the first four accidents is not affected by the racks themselves; thus the modification cannot increase the probability of these accidents. As for the construction accident, FPL does not intend to carry any rack directly over the stored spent fuel assemblies. All work in the spent fuel pool area will be controlled and performed in strick accordance with specific written procedures. The crane which will be used to bring the racks into the Fuel Handling Building has been evaluated and meets the requirements of Section 5.1.1 of NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants." In addition, the temporary construction crane which will be used to move racks within the spent fuel pool area will meet the design, inspection, testing, and operation requirements of Section 5.1.1 of NUREG–0612. This program provides for the safe handling of heavy loads in the vicinity of the spent fuel pool.

Accordingly, the proposed modification does not involve a significant increase in the probability of an accident previously evaluated.

FPL evaluated the consequences of a spent fuel assembly drop in the spent fuel pool (scenario 1) and found that the criticality acceptance criterion, K_{eff} less than or equal to 0.95, is not violated. In addition FPL found that the radiological consequences of a fuel assembly drop are not changed from the previous analysis. The NRC also conducted an evaluation of the potential consequences of a fuel handling accident. Both FPL and NRC analyses found that the calculated doses are less than 10 CFR Part 100 guidelines. The results of an analysis show that a dropped spent fuel assembly on the racks will not distort the racks such that they would not perform their safety function. Thus, the consequences of this type accident are not changed from the previously evaluated spent fuel assembly drops which have been found acceptable by the NRC.

The consequences of a loss of spent fuel pool cooling system flow (scenario 2) have been evaluated and it was found that sufficient time is availabe to provide an alternate means for cooling (i.e., the fire hose stations) in the event of a failure in the cooling system. Thus, the consequences of this type accident are not significantly increased from previously evaluated loss of cooling system flow accidents.

The consequences of a seismic event (scenario 3) have been evaluated and are acceptable. The new racks will be designed and fabricated to meet the requirements of applicable portions of the NRC Regulatory Guides and published standards. The new free-standing racks are designed, as are the existing free-standing racks, so that the floor loading from racks completely filled with spent fuel assemblies, partially filled, or empty at the time of the incident, do not exceed the structural capability of the spent fuel pool. The Fuel Handling Building and spent fuel pool structure have been evaluated for the increased loading from the spent fuel racks in accordance with the criteria previously evaluated by the NRC and found acceptable. Thus, the consequences of a seismic event are not significantly increased from previously evaluated events.

The consequences of a spent fuel cask drop (scenario 4) have been evaluated. The radiological consequences of the cask drop are well within the guidelines of 10 CFR 100 and the doses are not increased as compared to the doses analyzed for the presently installed racks. The cask drop analysis is based on administrative and Technical Specification controls which ensure that minimum requirements for decay of irradiated fuel assemblies in the entire spent fuel pool are met prior to movement of the cask into the cask area of the spent fuel pool. Analyses also demonstrate that k_{eff} will always be less than the NRC acceptance criterion. In addition[,] leakage from a cask drop will not exceed the makeup capabilities of the spent fuel pool. Thus, the consequences of a cask drop accident will not increase from previously evaluated accident [analyses].

The consequences of a construction accident (scenario 5) are enveloped by the spent fuel cask drop analysis previously performed by FPL. In addition, all movement of heavy loads handled during the rerack operation will comply with the NRC guidelines presented in NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants." The consequences of a construction accident are not increased from previously evaluated accident [analyses].

Therefore, it is concluded that the proposed amendment to replace the spent fuel racks in the spent fuel pool will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

FPL has evaluated the proposed modification in accordance with the guidance of the NRC position paper entitled, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," appropriate NRC Regulatory Guides, appropriate NRC Standard Review Plans, and appropriate industry codes and standards. In addition, FPL has reviewed several previous NRC Safety Evaluation Reports for rerack applications similar to [its] proposal. As a result of this evaluation and these reviews, FPL finds that the proposed modification does not, in any way, create the possibility of a new or different kind of accident from any accident previously evaluated for the St. Lucie spent fuel storage facility.

(3) Involve a significant reduction in a margin of safety[.]

The NRC Staff Safety Evaluation review process has established that the issue of margin of safety, when applied to a reracking modification, should address the following areas:

1. Nuclear criticality considerations.
2. Thermal-hydraulic considerations.
3. Mechanical, material and structural considerations.

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The established acceptance criterion for criticality is that the neutron multiplication factor in spent fuel pools shall be less than or equal to 0.95, including all uncertainties, under all conditions. This margin of safety has been adhered to in the criticality analysis methods for the new rack design.

The methods used in the criticality analysis conform with the applicable portions of the appropriate NRC guidance and industry codes, standards, and specifications. In meeting the acceptance criteria for criticality in the spent fuel pool, such that k_{eff} is always less than 0.95, including uncertainties at a 95%/95% probability confidence level, the proposed amendment to rerack the spent fuel pool does not involve a significant reduction in a margin of safety for nuclear criticality.

Conservative methods are used to calculate the maximum fuel temperature and the increase in temperature of the water in the spent fuel pool. The thermal-hydraulic evaluation uses the methods used for evaluations of the present spent fuel racks in demonstrating that temperature margins of safety are maintained. The proposed modification will increase the heat load in the spent fuel pool. The evaluation shows that the existing spent fuel cooling system will maintain the bulk pool water temperature at or below 150.8° F. Thus a margin of safety exists such that the maximum allowable temperature of 217° F is not exceeded for the calculated increase in pool heat load. The evaluation also shows that maximum local water temperatures along the hottest fuel assembly are well below the nucleate boiling condition values. Thus, there is no significant reduction in the margin of safety for thermal-hydraulic or spent fuel cooling concerns.

The main safety function of the spent fuel pool and the racks is to maintain the spent fuel assemblies in a safe configuration through all normal or abnormal loadings, such as an earthquake, impact due to a spent fuel cask drop, drop of a spent fuel assembly, or drop of any other heavy object. The mechanical, material, and structural design of the new spent fuel racks is in accordance with applicable portions of the "NRC Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," dated April 14, 1978, as modified January 18, 1979; Standard Review Plan 3.8.4; and other applicable NRC guidance and industry codes. The rack materials used are compatible with the spent fuel pool and the spent fuel assemblies. The structural considerations of the new racks address margins of safety against tilting and deflection or movement, such that the racks are not damaged during impact. In addition the spent fuel assemblies remain intact and no criticality concerns exists. Thus, the margins of safety are not significantly reduced by the proposed rerack.

The staff has reviewed the licensee's no significant hazards consideration determination analysis and agrees with their conclusions. However, the staff believes that the licensee's no significant hazards consideration (NSHC) analysis could have been more explicit in a number of areas. These areas are (1) pool water temperature under normal and abnormal conditions, (2) recent boraflex problems, and (3) construction accidents.

The licensee states in the NSHC analysis that the safety evaluation shows that the existing spent fuel cooling system will maintain the bulk pool water temperature at or below 150.8° F, and that a margin of safety exists such that the maximum allowable temperature of 217° is not exceeded. This statement addresses the abnormal maximum heat load (full core unload) case; the staff's Standard Review Plan (SRP) for full core unload calls for the pool water temperature to be kept below boiling. Thus, the licensee's analysis and results for this case meet the SRP. The licensee did not address the maximum normal heat load case in the NSHC analysis. The staff's review of the licensee's associated safety evaluation concludes that the maximum normal heat load case was also evaluated. The licensee calculated a maximum pool water temperature of 133.3° F. The SRP states that the pool should be kept at or below 140° F in this case. Thus, the licensee's analysis and results for this case meet the SRP.

The licensee's NSHC analysis did not address the recent operational problems associated with boraflex, a neutron absorbing material that is utilized in many racks to maintain the k_{eff} of the pool less than or equal to 0.95. Although some shrinkage of the boraflex is assumed and accounted for, cracking of the boraflex and the forming of significant axial gaps has not been postulated to occur. It is believed that cracking occurred in some applications because of the rack design and fabrication process which did not allow the boraflex to shrink without cracking. The staff has reviewed the licensee's associated safety evaluation with particular focus on the method that the boraflex will be installed. In Region I, full-length strips of boraflex will be placed between the cell walls and a stainless steel coverplate. In Region 2, full-length boraflex strips will be placed between the adjacent cell walls.

The licensee's specification for the handling and installation of the boraflex requires that it will not be installed in a stretched condition. The specification precludes the use of adhesives in the attachment of the boraflex to the rack cell walls. FP&L will require that the manufacturing process avoid techniques which could pinch the boraflex. The design of the racks requires that additional lengths of boraflex, i.e., greater than the active length of a fuel assembly, be installed to account for anticipated shrinkage of the boraflex. Based upon the above, the staff does not envision that the proposed racks will experience the boraflex cracking problems experienced elsewhere. Thus, the k_{eff} of the pool will be maintained less than or equal to 0.95.

The most limiting construction accident postulated for the spent fuel pool by the licensee is a 25 ton cask drop accident. This is the most limiting accident postulated at this time and it will remain the most limited as a result of the proposed rerack. This appears reasonable because no existing rack or proposed rack weighs more than 25 tons. In practice, the technical specifications prohibit any load in excess of 2 tons to be carried over irradiated fuel in the storage pool and also prohibit the cask crane from picking up any load over 25 tons. Nevertheless, the licensee's updated safety analysis report for Unit No. 1 analyzed this postulated accident in section 9.1.4, entitled "Fuel Handling System." The licensee evaluated the radiological consequences of the postulated accident. The licensee determined that the radiological consequences were within 10 CFR Part 100 guidelines. The licensee reevaluated the postulated 25 ton cask drop accident in the safety evaluation supporting the amendment request. This was necessary because the proposed amendment allows more spent fuel to be placed in the spent fuel pool; the results are contained in Section 5.3.1.2. The results indicate that the radiological consequences remain within 10 CFR Part 100 guidelines. The licensee also states that the proposed spent fuel pool modifications do not increase the radiological consequences of the cask drop accident previously evaluated.

Since the licensee's request to expand the St. Lucie 1 spent fuel storage pool capacity satisfies the following conditions: (1) The storage expansion method consists of replacing existing

racks with a design that allows closer spacing between stored spent fuel assemblies; (2) the storage expansion method does not involve rod consolidation or double-tiering; (3) the k_{eff} of the pool is maintained less than or equal to 0.95; and (4) no new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion, the Commission concludes that the request does not involve a significant hazards consideration in that it: (1) does not involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) does not create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) does not involve a significant reduction in a margin of safety.

Because the submittal and the above discussion by the licensee appear to demonstrate that the standards specified in 10 CFR 50.92 are met, and because reracking technology has been well-developed and demonstrated, the Commission proposes to determine that operation of the facility in accordance with the proposed amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 30, 1987 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene.

Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, is authorized to use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662, October 15, 1985) 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions). The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, subpart G apply.

Subject to the above requirements and any limitations in the order granting leave to intervene, those permitted to intervene become parties to the

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proceeding and have the opportunity to participate fully in the conduct of any hearing which is held, including the opportunity to present evidence and cross-examine witnesses at such hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert Berkow: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, and to Harold F. Reis, Esq., Newman & Holtzinger, 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filing of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.74(d).

For further details with respect to this action, see the application for amendment dated June 12, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Dated at Bethesda, Maryland, this 25th day of August, 1987.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects–I/II.

[FR Doc. 87–19951 Filed 8–28–87; 8:45 a.m.]

BILLING CODE 7590–01–M

[Docket Nos. 50–321 and 50–366]

Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing; Georgia Power Co. et al.

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensee for amendments to Facility Operating Licenses Nos. DPR–57 and NPF–5, issued to the Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia and City of Dalton, Georgia (the license) for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2 (the facility) located in Appling County, Georgia.

The denied amendments, as proposed by the licensee, would modify the Unit 1 and Unit 2 Technical Specifications (TS) to extend from 2 to 24 hours, the time allowed to restore operability of one of two inoperable diesel generators; and would modify the Unit 2 TS to allow the diesel generator two hour overload test to be performed following the 22 hour continuous rating load test instead of before 22 hour test as currently required.

The licensee's application for the amendments was dated March 31, 1986. Notice of consideration of issuance of these amendments was published in the **Federal Register** on June 18, 1986 (51 FR 22237). Other changes requested in that letter were approved in license amendments 147 and 83 dated August 25, 1987, to Facility Operating Licenses DPR–57 and NPF–5.

The proposed change to extend from 2 hours to 24 hours the time within which one diesel generator must be returned to operable status when two diesel generators are inoperable was found to be unacceptable because it would leave the nuclear unit inadequately protected against a loss of offsite power for a 24-hour period, and it is not in accordance with the guidelines of Generic Letter 84–15 or the staff position on Generic Issue B–56.

The proposed change to perform the overload test prior to the 22 hour continuous rating load test was found to be unacceptable because it does not conform with Regulatory Position C.14 of Regulatory Guide 1.9 "Selection of Diesel Generator Set Capacity for Standby Power Supplies" and because it does not accomplish the purpose of the test which is to demonstrate the capability to immediately assume the full LOCA load and then carry the long-term load for the remainder of the 24-hour period.

Accordingly the requests were denied. The licensee was notified of the Commission's denial of this request by letter dated.

By September 30, 1987, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by the proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC. 20555 and to Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated March 31, 1986, and (2) the Commission's letter to Georgia Power Company dated August 25, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Bethesda, Maryland, this 25th day of August 1987.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Acting Director Project Directorate II–3I, Division of Reactor Projects, I/II.

[FR Doc. 87–79950 Filed 8–28–87; 8:45 am]

BILLING CODE 7590–0–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 10–12, 1987, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on August 17, 1987.

Thursday, September 10, 1987

8:30 A.M.–8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.–10:45 A.M.: Emergency Core Cooling (Open)—Review aspects of the proposed revision of 10 CFR 50.46 regarding use of "best-estimate" models in the evaluation of ECCS performance.

11:00 A.M.–12:00 Noon: Meeting with Director, NRR (Open)—Discuss items of mutual interest regarding NRR activities.

1:00 P.M.–3:00 P.M.: Management and Disposal of Nuclear Waste (Open)—Discuss proposed research activities related to the management and disposal of high- and low-level radioactive waste.

3:15 P.M.–5:15 P.M.: Auxiliary Feedwater System (Open)—Consider aspects of nuclear power plant auxiliary feedwater system design and operation that impact on system reliability.

5:15 P.M.–6:30 P.M.: ACRS Reports to NRC (Open)—Discuss proposed ACRS reports to the NRC regarding matters noted above.

Friday, September 11, 1987

8:30 A.M.–10:00 A.M.: Emergency Planning (Open)—Discuss proposed ACRS recommendations regarding emergency planning provisions in the vicinity of nuclear facilities.

10:15 A.M.–11:30 A.M.: Management Allocation of Resources for Technical Advice on Nuclear Waste Activities (Closed)—Discuss management alternatives for internal allocation of resources and personnel needed to provide technical advice related to the regulation of nuclear waste.

This session will be closed to discuss the internal personnel rules and practices of NRC and to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

11:30 A.M.–12:00 Noon: Future ACRS Activities (Open)—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

1:00 P.M.–2:00 P.M.: Storage of Spent Nuclear Power Plant Fuel (Open)—Consider proposed changes to 10 CFR Part 72, Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation (ISFSI) to define regulatory requirements for a monitored retrievable storage facility (MRS) for spent nuclear power plant fuel.

2:00 P.M.–3:00 P.M.: Trojan Nuclear Power Plant (Open)—Briefing regarding excessive pipe thinning in the main feedwater system.

3:00 P.M.–4:45 P.M.: Seismic Qualification of Equipment (Open)—Briefing regarding results of seismic walk-through of the Zion Nuclear Station.

4:45 P.M.–6:00 P.M.: Improved Safety Features for Future Light-Water Reactors (Open/Closed)—Discuss proposed ACRS comments regarding the cost effectiveness, feasibility, and benefit of safety-related systems and features noted in its report of January 15, 1987.

Portions of this session may be closed as required to discuss information provided in confidence by a foreign source.

Saturday, September 12, 1987

8:30 A.M.–11:00 A.M.: Preparation of ACRS Reports to the NRC (Open/Closed)—Discuss proposed reports to the NRC regarding items considered during this meeting.

Portions of this session may be closed as required to discuss information provided in confidence by a foreign source.

11:00 A.M.–12:00 Noon: ACRS Subcommittee Activities (Open/Closed)—Hear and discuss reports of designated ACRS subcommittees regarding safety related and regulatory matters including activities of NRC regional offices, and foreign regulatory policies and practices.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

1:00 P.M.–2:00 P.M.: Preparation of ACRS Reports to the NRC (Open/Closed)—Discuss proposed reports to the NRC regarding items considered during this meeting.

Portions of this session may be closed as required to discuss information provided in confidence by a foreign source.

2:00 P.M.–3:00 P.M.: Miscellaneous (Open)—Complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 20, 1986 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d), Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), information related to the internal personnel rules and practices of

the agency (5 U.S.C. 552b(c)(2)), and information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3265), between 8:15 A.M. and 5:00 P.M.

Date: August 26, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87-19948 Filed 8-28-87; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program; Proposed Amendments Regarding Umatilla Fish Hatchery; Hearings and Public Comment Period

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Notice of proposed amendments, hearings and opportunity to comment.

SUMMARY: On November 15, 1982, the Pacific Northwest Electric Power and Conservation Planning Council (the Council) adopted a Columbia River Basin Fish and Wildlife Program (fish and wildlife program). The fish and wildlife program has been amended on several occasions since then. The Council is proposing again to amend the fish and wildlife program, to allow testing of oxygen supplementation at the Umatilla hatchery. The proposed amendment of the fish and wildlife program is being released for public review and comment and public hearings will be held. This notice describes the proposed amendments; provides information on how to obtain additional information, including copies of the draft amendment document; and outlines the process for submitting written comments and participating in the hearings.

DATES AND ADDRESSES: The public comment period regarding the proposed amendments closes at 5 p.m., September 30, 1987. Public hearings on the proposed amendments will be held:

- September 10, 1987 at 1:30 p.m., City Council Chambers, the Electric Building, 140 S. Capital, Idaho Falls, Idaho;
- September 15, 1987 at 9:00 a.m., Towne Plaza Motor Inn, Veranda Room, N. 7th Street and E. Yakima Avenue, Yakima, Washington;
- September 21, 1987 at 10:00 a.m., Northwest Power Planning Council, 1301 Lockey Street, First Floor, Helena, Montana; and
- September 25, 1987 at 9:00 a.m., Northwest Power Planning Council, Central Office, 850 SW. Broadway, Suite 1100, Portland, Oregon.

Instructions for Oral Comment at Hearings

1. Requests for time slots must be made at least five days prior to the hearings. Contact Ruth Curtis, information coordinator, at the Council's central office, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205 or (503) 222-5161 (toll free 1-800-222-3355 in Idaho, Montana and Washington or 1-800-452-2324 in Oregon).

2. Those who do not sign up for time slots will be permitted to testify as time permits.

3. Hearings should be used to summarize written comments. Comments should not be read. Comments should be limited to the draft amendment document.

4. If possible, ten copies of hearing testimony should be submitted to the Council recorder at the hearings. This person will be sitting at a table near the Council members. (See instructions for written comment.)

5. Those persons officially representing an organization will have 15 minutes to summarize their written testimony. (Organizations may have only one official representative.) All other individuals will be limited to five minutes. These time limits will be observed strictly in order to allow parties to testify.

6. The Council may ask questions for clarification. If so, this will be over and above the time limits imposed above.

7. A written record of each hearing will be made. Appearance at more than one hearing is unnecessary. Scheduling preference will be given to individuals and groups which have not testified at other hearings.

Instructions for Written Comment

1. Comments should be limited to the proposed amendment and must be received in the Council's central office, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205 by 5 p.m. on September 30, 1987. Comments received after that time will not be considered.

2. Written comments should be marked "Umatilla Hatchery Comments."

3. Comments should be specific and concise. Alternative language should be submitted if a change is being proposed.

4. All comments should be typed, if possible, and double spaced. It would also be helpful if a separate page were prepared for comments on each proposed amendment or rejection. Provide ten copies of all comments, if possible.

FOR FURTHER INFORMATION CONTACT: Dulcy Mahar, director of public information and involvement, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205 (toll-free 1-800-222-3355 in Idaho, Montana and Washington; toll-free 1-800-452-2324 in Oregon; or 503-222-5161).

SUPPLEMENTARY INFORMATION: On November 15, 1982, as required by the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501, 94 Stat. 2697, 16 U.S.C. 839 *et seq.* (the Act), the Council adopted a Columbia River Basin Fish and Wildlife Program. The Act allows the Council to amend its program from time to time.

In 1984, the Council called on Bonneville to fund the development of a hatchery at Umatilla, Oregon, to produce 200,000 summer steelhead (40,000 pounds). At its October 1986 meeting, the Council approved siting, feasibility and preliminary design of the hatchery, and directed that the design should allow for future expanded capacity up to 160,000 pounds. The Council noted that an amendment would be needed prior to expanded construction. At its February 1987 meeting, the Council approved such an amendment, and called for development of a facility master plan.

A hatchery master plan is being prepared, which will describe the production profile, smolt release sites, etc., and explain how the hatchery operations will respond to the program goal of doubling salmon and steelhead run sizes, and other Council policies (see Program Section 204). The Council expects the master plan to be submitted in October 1987, with Council action in December 1987, and construction beginning in mid-1988.

During the early phases of master plan development it became apparent that the Umatilla hatchery would be a good place to test a new method of fish production using supplemental oxygen. In the existing hatchery design, half of the ponds would use a standard double-pass water system, in which a given volume of water is used twice. Oxygen supplementation involves re-aerating oxygen-depleted water so that a given volume of water can be used three

times. Oxygen supplementation has been tested in the Great Lakes with trout and steelhead with good success. Evaluation of production releases for sea-run salmon and steelhead is necessary to validate oxygen use as a production strategy for the Columbia River Basin. The Umatilla hatchery is a good candidate for evaluating this technique because the hatchery would rely entirely on groundwater, and avoid potential disease probelms.

It successful, it appears that the supplemental oxygen technique could result in significantly increased smolt production, up to 290,000 pounds of salmon and steelhead smolts. The increased production would contribute to meeting fish agency and tribal objectives in the Umatilla basin and to meeting the Council's goal of doubling basinwide production in a biologically sound manner.

The estimate capital cost (design and construction) for the 160,000 pound capacity hatchery using standard techniques (without oxygen supplementation) is estimated at $7 million. The estimated capital cost for the 290,000 pound capacity hatchery using oxygen supplementation is about $8 million. Additional costs would be incurred for monitoring and evaluation. If oxygen supplementation is not successful, the hatchery can be operated using standard techniques and would still result in a capacity of 160,000 pounds. Preliminary estimates for operations and maintenance are $550,000 per year for the 160,000 pound capacity hatchery and $800,000 per year for the 290,000 pound capacity hatchery.

Increasing the capacity of the hatchery through use of supplemental oxygen could yield economies of scale. For example, the capital cost of producing a pound of fish is $43.75 for the 160,000 pound capacity hatchery, and $27.60 for the 290,000 pound capacity hatchery. The capital cost for the 290,000 capacity hatchery ($27.60 per pound in 1987 dollars) is low when compared to the average cost for hatcheries in the region of similar capacity ($38.00 per pound in 1987 dollars). The economies of scale for capital costs are partially offset by the larger annual costs for operation and maintenance when oxygen supplementation is used.

Text of Proposed Amendment

Amend Program Section 730(f)(1)(A) to read:

(f) Construction of Major Production Facilities. (1) Bonneville shall fund the Confederated Tribes of the Umatilla Reservation of Oregon to operate and maintain the Bonifer and Minthorn juvenile release and adult collection and holding facilities on the reservation. Bonneville also shall fund the construction of a facility to test the efficacy of oxygen supplementation hatchery techniques to produce up to 290,000 pounds of summer steelhead and chinook salmon smolts. These smolts shall be for release in the Umatilla juvenile release and adult collection holding facilities and for outplanting in the upper Umatilla River to enhance natural and hatchery production.

(A) Prior to construction of this facility, the Oregon Department of Fish and Wildlife and the Confederated Tribes of the Umatilla Reservation of Oregon will develop a facility master plan for Council approval. The master plan will include for each species:

(i) Rearing schedule and release sites and schedules;

(ii) A detailed production profile that includes the brood stock source, numbers of fish to be released, and the expected annual adult returns;

(iii) A description of related harvest plans;

(iv) Proposed management policies and hatchery practices to ensure that hatchery releases protect genetic integrity of native stocks, are disease-free, and are coordinated with other fish and wildlife agencies and tribes in the Columbia River Basin;

(v) A proposal for biological monitoring and evaluation studies to assess the effectiveness of outplanting facilities in supplementing natural production in a biologically sound manner; to assess the effects of the outplanting on resident fish populations; and to assess the effectiveness of oxygen supplementation hatchery techniques; and

(vi) Evidence of coordination with system planning described in Section 205; System Planning.

Edward Sheets,

Executive Director.

[FR Doc. 87-19905 Filed 8-28-87; 8:45 am]

BILLING CODE 0000-00-M

Northwest Power Planning Council; Columbia River Basin Fish and Wildlife Program; Final Amendments

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final amendments.

SUMMARY: On February 11, 1987, the Pacific Northwest Electric Power and Conservation Planning Council (the Council) amended its Columbia River Basin Fish and Wildlife Program (Fish and Wildlife Program). The amended Fish and Wildlife Program has been reprinted and is now ready for distribution.

FOR FURTHER INFORMATION CONTACT: Copies of the final Fish and Wildlife Program (including responses to comments) may be obtained by contacting Ms. Dulcy Mahar, Director of Public Information and Involvement, Suite 1100, 850 SW. Broadway, Portland, Oregon 97205 (Toll-free 1-800-222-452-3355 in Montana, Idaho, and Washington: Toll-free 1-800-452-2324 in Oregon; or 503-222-5161). Those who earlier received copies of the draft Fish and Wildlife Program amendments will automatically be sent a copy of the final amended version.

SUPPLEMENTARY INFORMATION: As required by the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501, 94 Stat. 2697, 16 U.S.C. 839 *et seq.* (the Act), the Council adopted a Fish and Wildlife Program and a Power Plan. The Act allows the Council to amend its Plan or Program from time to time, and requires the Council to review those documents at least once every five years

Amended Fish and Wildlife Program

The final Fish and Wildlife Program amendments are the result of a process that began July 1, 1985, when the Council (as required by the Act) called for recommendations for amendments to the Program. Over 90 amendment applications were received by the February 18, 1986 deadline. A summary of the amendment applications and their complete text were made available to all interested parties. At its June and July, 1986 meetings, the Council reviewed selected amendment applications, and solicited public comments. Informal consultations regarding all amendment applications also were held with the groups and individuals submitting amendments or significantly affected by them. At its August, 1986 meeting, the Council voted to release proposed Fish and Wildlife Program amendments in the form of a Draft Amendment Document, for further public comment. Subsequently, the Council:

- Announced the proposed amendments, public hearings and public comment period through the **Federal Register**, the Council's mailing list, and the Council's newsletters;

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• Held public hearings in Spokane, Washington (October 2); Portland, Oregon (October 8); Boise, Idaho (October 21); Kalispell, Montana (October 22); and Missoula, Montana (October 23);

• Accepted and reviewed written comments through December 15, 1986; and on selected issues (bypass, transportation and wildlife issues) in January, 1987;

• Consulted with state and federal fish and wildlife agencies, Indian tribes, Bonneville Power Administration, Bonneville customers, hydropower project operators and others, and:

• Compiled an extensive administrative record of public comments from groups and individuals.

At its February 11, 1987 meeting in Spokane, Washington, the Council adopted final amendments to its Fish and Wildlife Program. Among the highlights of the amendments are:

• The amendments set an interim goal of rebuilding the current run of 2.5 million to 5 million adult salmon and steelhead.

• Under a coordinated, systemwide planning approach, each subbasin in the Columbia system will be evaluated for its potential to produce salmon and steelhead in order to contribute to the goal for the overall system. The planning will emphasize the interaction of mainstem fish passage, harvest regulation and production. Emphasis will be put on areas above Bonneville dam, where the greatest losses have occurred.

• The Council endorsed a sliding scale approach to spill, which would provide higher fish protection in years when water is above a critically low level. The program continues to call for enough spill to guarantee 90 percent juvenile fish survival at mainstem dams in critical water years. An annual spill plan is to be worked out between the Corps of Engineers and the fish and wildlife agencies and tribes, with the Council facilitating consensus.

• New schedules have been set for the Corps of Engineers to complete mechanical bypass systems (such as submersible screens) for juvenile fish traveling downstream. The final date for a bypass installation is 1994.

• The program has been modified to encourage experimentation with an evaluation of alternatives for implementing the water budget. Water budget testing and analysis is to take place at least through 1988.

• New or expanded artificial production of salmon and steelhead has been authorized in the northeastern Oregon, Deschutes and Umatilla subbasins. Projects include: 1) a Northeast Oregon hatchery emphasizing low-cost, small-scale technologies; 2) partitioning the Pelton Dam fish ladder to create juvenile rearing ponds in the Deschutes River for use as a holding facility for young salmon from the Round Butte Hatchery; and 3) expansion of the planned Umatilla hatchery to allow about 160,000 pounds of steelhead and chinook salmon.

• Four priority salmon and steelhead research areas have been identified for Bonneville funding. The program calls for work groups to develop five-year research work plans. Two priority areas are identified for research conducted by the U.S. Army Corps of Engineers.

• Wildlife mitigation plans have been adopted for Hungry Horse and Libby dams in Montana. The action calls for Bonneville to fund projects that address the impacts on wildlife and wildlife habitat caused by the construction of the two dams. The plans address elk, mule and white-tailed deer, black and grizzly bears, waterfowl, Columbian sharp-tailed grouse, bighorn sheep and terrestrial furbearers.

• The program now includes a policy for substituting resident fish in those areas which are permanently blocked to anadromous (ocean migrating) fish. Six resident fish projects were approved above Chief Joseph Dam, and eight projects above Hells Canyon Dam.

The revised Program has particular significance for certain federal agencies. The Act requires the Bonneville Power Administration, in the U.S. Department of Energy, to use its funding and legal authorities to protect, mitigate and enhance fish and wildlife affected by hydropower projects in the Columbia River Basin in a manner consistent with the Program (16 U.S.C. 839b(h)(10)(A)). It also requires Bonneville and "other federal agencies responsible for managing, operating or regulating" Columbia River Basin hydropower facilities (i.e., the Bureau of Reclamation, U.S. Army Corps of Engineers and the Federal Energy Regulatory Commission) to take the Program into account at each relevant stage of their decisionmaking processes to the fullest extent practicable (16 U.S.C. 839b(h)(11)(A)). Accordingly, various provisions of the revised Program call on those federal agencies to implement and/or fund specific fish and wildlife projects.

Edward Sheets,

Executive Director.

[FR Doc. 87-19906 Filed 8-28-87; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24836; File No. SRN-NYSE-87-24]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Extension of the Effectiveness of NYSE Rule 103A From July 31, 1987 to September 30, 1987

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 29, 1987, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would extend the effectiveness of NYSE Rule 103A until September 30, 1987. The intent of Rule 103A is to encourage a high level of market quality and performance in Exchange listed securities. Rule 103A authorizes the Market Performance Committee of the NYSE to withdraw NYSE approval of a member's registration as specialist in one or more stock(s) if the specialist has consistently received evaluations by Floor brokers on the quarterly Specialist Performance Evaluation Questionnaire ("SPEQ") which are below a level of acceptable performance as specified in the Rule.The proposed rule change also concerns revisions to the Options "SPEQ" [1] to reflect editorial changes in the form used to administer Rule 103A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of

[1] In its filing, the NYSE included copies of its revised Options SPEQ. Copies of the revised options SPEQ are available from the Commission at the address noted in Section IV below and from the NYSE.

these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to extend the effectiveness of Rule 103A to September 30, 1987.

As described in more detail in File No. SR–NYSE–81–11, Rule 103A authorizes the Market Performance Committee of the NYSE to withdraw NYSE approval of a member's registration as specialist in one or more stocks if the specialist has consistently received evaluations by Floor brokers on the quarterly SPEQ which are below a level of acceptable performance as specified in the Rule.

As described in File No. SR–NYSE–85–14, and File No. SR–NYSE–86–19, the Exchange conducted a pilot program to test revisions to the current SPEQ and its associated processes.

The Market Performance Committee's Subcommittee on Performance Measures and Procedures (the "Subcommittee") has concluded its analysis of data produced by the revised SPEQ, and has developed additional measures and standards of specialist performance, such as DOT turnaround performance, to be incorporated into a revised Rule 103A. In a companion filing to this one, the Exchange requests Commission approval to commence a two year pilot program to test the revisions to Rule 103A developed by the Subcommittee.[2]

The Exchange is requesting this two-month extension of current Rule 103A so that the Rule may remain in effect while the Commission considers the proposed revisions to Rule 103A. The Exchange also requests this extension because it continues to review the current Rule as providing a basis for ongoing performance improvement initiatives, such as counseling of specialist units by the Market Performance Committee, which has proven to be effective in improving both individual and overall specialist performance on the Exchange. The Exchange intends that the market Performance Committee will continue its counseling procedures during the period of the Commission's consideration of the Exchange's filing requesting Commission approval to begin a pilot program to test the proposed revisions to Rule 103A.

In addition, the Exchange requests that the Commission continue the applicability of Rule 103A to the Options SPEQ. The questionnaire will be graded on the seven-point scoring and analysis method defined in existing Rule 103A.10. As a result, the current standards of acceptable performance described in the Rule will continue to be applicable to options specialists as determined by their SPEQ scores and will provide a basis for the Exchange to initiate reallocation proceedings against an option specialist unit under Rule 103A

Revisions to the Options "SPEQ" as submitted herein are editorial in nature, such as the listing and delisting of options classes, additional options specialist units and name changes to several options specialist units. The Exchange expects that, prior to September 30, 1987, it will file with the Commission a separate rule that will be applicable to options specialists.

(2) Basis Under the Act for Proposed Rule Change

The statutory basis for the proposed rule change in section 6(b)(5) of the Act as amended which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trades, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

Since Rule 103A has proven to be an effective means of improving specialist performance, thereby adding to the overall quality of the NYSE market, the Exchange requests that the Commission find good cause to approve the proposed rule change on an accelerated basis, and in any event prior to July 31, 1987, the date on which Rule 103A expires.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by September 21, 1987.

V. Conclusion

The Commission finds that the proposed rule change is consistent with requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the current pilot program expired on July 31, 1987. An extension of the effectiveness of Rule 103A until September 30, 1987 will allow the current pilot program to remain in effect while the Commission considers for approval the NYSE's proposal to substantially revise Rule 103A for a two year pilot period. The Commission, therefore, believes that accelerated effectiveness of the proposed rule change is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

[2] *See* NYSE File No. SR–NYSE–87–25.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

Dated: August 21, 1987.

[FR Doc. 87-19979 Filed 8-28-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15949; (812-6644)]

L&N CMO Funding Corp. Application;

August 25, 1987.

AGENCY: Securities and Exchange Commission ("SEC")

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: L&N CMO Funding Corporation (the "Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks a conditional order exempting it and certain trusts that it has formed or may form from all provisions of the 1940 Act in connection with the trusts' proposed issuance of collateralized mortgage obligations and the sale of beneficial ownership interests in such trusts.

Filing Date: The application was filed on March 9, 1987, and amended on June 26, 1987 and August 20, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on September 18, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 2001 Bryan Tower, Suite 3600, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney, (202) 272-3046, or Curtis R. Hilliard, Special Counsel, (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

[3] 17 CFR 200.30-3.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant is an indirect, wholly-owned limited purpose financing subsidiary of Lomas & Nettleton Financial Corporation.

2. The Applicant has formed and will form separate trusts ("Trusts") for the limited purpose of issuing one or more series ("Series") of collateralized mortgage obligations ("Bonds") and investing in certain Agency Certificates (described in Condition A.2. below) which will be used to collateralize such Bonds. The requested order will apply only to Trusts that have not issued any bonds as of the date of the order.

3. Each Trust has been or will be formed pursuant to a separate deposit trust agreement ("Agreement") between the Applicant, acting as depositor, and a bank or trust company or other fiduciary acting as owner-trustee ("Owner Trustee"). Each Trust will issue one or more Series of Bonds under the terms of an indenture ("Indenture") between the Owner Trustee and an independent trustee ("Indenture Trustee"), as supplemented by one or more series supplements. The Indenture will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

4. In the case of such Series of Bonds: (a) Each Trust will hold no substantial assets other than the Agency Certificates and cash; (b) the Bonds will be secured by Agency Certificates or cash having a collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) distributions of principal and interest received on the Agency Certificates securing the Bonds and any applicable reserve funds, plus reinvestment income thereon, will be sufficient to pay all interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the Agency Certificates will be assigned by the Owner Trustee to the Indenture Trustee and will be subject to the lien of the related Indenture. Applicant does not intend to deposit in any Trust Agency Certificates with a collateral value which exceeds 120% of the aggregate principal amount of the related Bonds.

5. The beneficial in each Trust will be initially held by the Applicant which may in turn sell or assign all or a portion of its beneficial interests in each Trust to a limited number, in no event more than one hundred, of sophisticated institutional investors ("Equity Investors").

6. Neither the Equity Investors of any of the Trusts, the Owner Trustee nor the Indenture Trustee will be able to impair the security afforded by the Agency Certificates to the holders of the Bonds. That is, without the consent of each Bondholder to be affected, neither the Equity Investors of any of the Trusts, the Owner Trustee nor the Indenture Trustee will be able to: (1) Change the stated maturity on any Bonds; (2) reduce the principal amount or the rate of interest (or the formula by which such rate is computed) on any Bonds; (3) change the priority of payment on any class of any Series of Bonds; (4) impair or adversely affect the Agency Certificates securing a Series of Bonds; (5) permit the creation of a lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Agency Certificates; or (6) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

7. The sale of the beneficial interests in each Trust will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created pursuant to the Indenture to support payments of principal and interest on the Bonds.

8. The interest of the Bondholders will not be compromised or impaired by the ability of the Applicant to sell beneficial interests in each Trust, and there will not be a conflict of interest between the Bondholders and the holders of the beneficial interests.

Applicant's Legal Conclusions

The requested order is necessary and appropriate in the public interest because: (a) The Trusts should not be deemed to be entities to which the provisions of the 1940 Act were intended to be applied; (b) the Trusts may be unable to proceed with their proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) the Trusts' activities are intended to serve a recognized and critical public need; (d) granting of the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the Securities Act of 1933 (the "1933 Act") and thereafter by the Indenture Trustee representing their interests under the

Indenture; and (e) the beneficial interests in the Trusts will be held entirely by the Applicant or offered only to a limited number of sophisticated institutional investors through private placements.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following:

A. Conditions Relating to the Bonds

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) thereof.

2. The Bonds will be "mortgage-related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. In addition, the mortgage collateral underlying the Bonds will be limited to GNMA Certificates, FNMA Certificates, or FHLMC Certificates ("Agency Certificates").

3. If new Agency Certificates are substituted, the substitute certificates will: (i) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collateral replaced; (iii) be insured or guaranteed to the same extent as the collateral replaced; and (iv) meet the conditions set forth in paragraphs (2) and (4). In addition, new collateral may not be substituted for more than 40% of the aggregate face amount of the Agency Certificates initially pledged as collateral. In no event may any new Agency Certificate collateral be substituted for any substitute Agency Certificate collateral.

4. All Agency Certificates, funds, accounts or other collateral securing a Series of Bonds will be held by an Indenture Trustee, or on behalf of the Indenture Trustee by an independent custodian. Neither the Indenture Trustee nor the custodian may be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant. The Indenture Trustee will be provided with a first priority perfected security or lien interest in and to all bond collateral.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

6. No less often than annually, an independent public accountant will audit the books and records of the Trust and, in addition, will report on whether the anticipated payments of principal and interest on the Agency Certificate Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Indenture Trustee.

B. Additional Conditions Relating To Variable-Rate Bonds

1. The interest rate for each class of variable-rate bonds will be subject to maximum interest rates ("Interest rate caps") which may vary from period to period, and always will be specified in the related prospectus supplement for a Series of Bonds.

2. The Bonds will be structured so that the collateral deposited with the Indenture Trustee will at all time be sufficient to support all payments of principal and interest on the Bond of such Series under the assumption that the interest rate on each such class is the maximum rate for each specified period.[1]

[1] In the case of a Series of Bonds that contains a class or classes of adjustable or floating rate Bonds, a number of mechanisms exist to ensure that this representation will be valid notwithstanding subsequent potential increases in the interest rate applicable to the adjustable or floating rate Bonds. Procedures that have been identified to date for achieving this result include the use of (i) interest rate caps for the adjustable or floating rate Bonds; (ii) "inverse" floating rate Bonds (which pay a lower rate of interest as the rate increases on the corresponding "normal" floating rate Bonds); (iii) floating rate collateral (such as adjustable rate GNMA Certificates) to secure the Bonds; (iv) interest rate swap agreements (under which the issuer of the Bonds would make periodic payments to a counterparty at a fixed rate of interest based on a stated principal amount, such as the principal amount of Bonds in the floating rate class, in exchange for receiving corresponding periodic payments from the counterparty at a floating rate of interest based on the same principal amount) and (v) hedge agreements (including interest rate futures and option contracts, under which the issuer of the Bonds would realize gains during periods of rising interest rates sufficient to cover the higher interest payments that would become due during such periods on the floating rate class of Bonds). It is expected that other mechanisms may be identified in the future. Applicant will give the Staff of Investment Management (the "Staff") notice by letter of any such additional mechanisms before they are utilized, in order to give the Staff an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

3. No Agency Certificates may be released from the lien of the Indenture prior to retirement in full of all Bonds of any Series except to the extent permitted by the limited right to substitute collateral as described herein.

C. Conditions Relating to the Sale of Equity Interests

1. Applicant may sell or assign its beneficial interests in each Trust to a limited number, in no event more than one hundred, of sophisticated institutional, investors in transactions exempt from the registration requirements of the 1933 Act under section 4(2) thereof. Such institutional investors may include one or more banks, savings and loan associations, insurance companies, and pension plans or other investors that would have prior experience in making investments in mortgage related securities or real estate.

2. Each Equity Investor will be required to represent that it is purchasing such beneficial interests for investment purposes and not for distribution and that it will hold such beneficial interests in its own name and not as nominee for undisclosed investors. In addition, the Deposit Trust Agreement relating to each Trust will further prohibit the transfer of any certificates for such beneficial interests if there would be more than one hundred Equity Investors at any time.

3. No holder of a controlling interest in a Trust (as the term "control" is defined in Rule 405 under the 1933 Act), will be affiliated with either the custodian or any nationally recognized statistical rating agency rating the Bonds. At the time of its purchase of an equity certification, none of the Equity Investors of the Trust will be affiliated with the Indenture Trustee.

D. Condition Relating to REMICs

The election by any Trust to be treated as a REMIC will have no effect on the level of the expenses that would be incurred by any such Trust. Any Trust that elects to be treated as a REMIC will provide that all administrative fees and expenses in connection with the administration of the Trust will be paid or provided for as set forth in the application, in a manner satisfactory to the agency or agencies rating the Bonds. Each Trust will ensure that the anticipated level of fees and expenses will be more than adequately provided for, regardless of the method which is selected by such Trust to provide for the payment of such fees and expenses.

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For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19978 Filed 8-28-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

National Airspace Review Enhancement Program Rotorcraft Subcommittee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the Rotorcraft Subcommittee of the National Airspace Review Enhancement Advisory Committee. The agenda for this meeting is as follows:

Opening Remarks
Review of Priority Rotorcraft Issues
Selection of Study Areas
Appointment of Work Group(s)
Summary

DATE: September 15, to convene at 9:00 a.m. and adjourn at 4:00 p.m.

ADDRESS: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave. SW., Room 1010, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Department of Transportation, Federal Aviation Administration, National Airspace Review Enhancement Program, 400 7th St. SW., Room 5103, ATO-20, Washington, DC 20590, (202) 366-1300. Attendance is open to the interested public, but limited to the space available. To ensure consideration, persons desiring to make statements at the meeting should submit them in writing to the Program Manager, National Airspace Review Enhancement Program, at the above address by September 8. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, DC on August 14, 1987.

Brooks C. Goldman,

Executive Director, NAREAC.

[FR Doc. 87-19939 Filed 8-28-87; 8:45 am]

BILLING CODE 4910-13-M

National Airspace Review Enhancement Program Weather Subcommittee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the National Airspace Review Enhancement Program Weather Subcommittee. The agenda for this meeting is as follows:

Opening Remarks
Review of Priority Weather Issues
Selection of Study Areas
Appointment of Work Group(s)
Summary

DATE: September 18, to convene at 9:00 a.m. and adjourn at 4:00 p.m.

ADDRESS: The meeting will be held at the Federal Aviation Administration, room 1010, 800 Independence Ave. SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Department of Transportation, Federal Aviation Administration, National Airspace Review Program Management Staff, 400 7th St., SW., Room 5103a, ATO-20, Washington, DC 20590, (202) 366-4172. Attendance is open to the interested public, but limited to the space available. To ensure consideration, persons desiring to make statements at the meeting should submit them in writing to the Program Manager, National Airspace Review Program, at the above address by September 8. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, DC on August 14, 1987.

Brooks C. Goldman,

Executive Director, NAREAC.

[FR Doc. 87-19940 Filed 8-28-87; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP 97-05; Notice 02]

BMW of North America; Grant of Petition for Determination of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

SUMMARY: This notice grants the petition by BMW of North America, Inc. of Montvale, New Jersey, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.), for an apparent noncompliance with 49 CFR 571.106, Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.* The basis of the grant is that the noncompliance is inconsequental as it relates to motor vehicle safety.

Notice of the petition was published on May 14, 1987, and an opportunity afforded for comment (52 FR 18317).

Paragraphs S4.1.1.36(f)(4)(ii) and S4.1.1.38(c) of Standard No. 108 require that the lens of each upper beam headlamp with a replaceable light source (other than an HB1 used alone) be permanently marked with the letter "U" and bear the Type Designation(s) for its light sources. BMW of North America manufactured 1,400 735i passenger cars from January 10, 1987 to February 17, 1987, that did not comply with the above paragraphs. The lens of each upper beam headlamp was not permanently marked "U" and "HB3" as required.

BMW considered these noncompliances to be inconsequential as they related to motor vehicle safety because:

1. Mechanics will always be able to determine and obtain the correct replacement bulbs and headlamps, and will install them correctly.

2. BMW replaceable bulb headlamps are vehicle-specific and left/right-specific. These provisions make incorrect positioning of the upper and lower beam headlamps physically impossible.

3. The HB3 bulbs only fit HB3 connectors and only HB3 bulbs fit into BMW upper beam headlamps. Also, the wires to the upper beam bulb are to short to reach to lower beam headlamp.

One comment was received in response to the Notice: General Motors supported the petition. In its opinion, the lack of interchangeability between replaceable light sources and the location of the upper beam headlamp are sufficient to prevent a mistaken use of an HB4 light source.

The agency has decided to grant BMW's petition. It has found especially convincing the argument that HB3 light sources fit only connectors designed for them, and are the only light sources that will fit into the BMW upper beam headlamps. The fact that the headlamps are intended only for BMW cars also reduce the likelihood of improper bulb or headlamp replacement. Accordingly, in consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described in inconsequential as it relates to motor

vehicle safety, and its petition is granted.

(Sec 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: August 25, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87–19900 Filed 8–28–87; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 26, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8621
Type of Review: Resubmission
Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund

Description: Form 8621 is used by shareholders of foreign investment companies. Shareholders of passive investment companies use Form 8621 to report distributions from the fund, and a deferred tax amount when an excess distribution is made. Shareholders of qualified electing funds are taxed on current income from the fund. The IRS uses Form 8621 to verify that shareholders have included the correct amount of income from these entities.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Burden: 8,173 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Department Reports Management Officer.

[FR Doc. 87–19946 Filed 8–28–87; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 26, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub.L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505–0001
Form Number: Treasury International Capital Form S
Type of Review: Extension
Title: Purchases and Sales of "Long-Term" Securities by "Foreigners"

Description: This form is filed by banks, other depository institutions, brokers and dealers, and other firms or intermediaries in the U.S., who deal directly with foreign residents (or their U.S. nominees) in transacting foreigners' purchases and sales of long-term U.S. or foreign securities.

Respondents: Businesses or other for-profit.

Estimated Burden: 16,200 hours.

Clearance Officer: Dale A. Morgan (202) 343–0263, Department of the Treasury, Room 2224, 15th & Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

U.S. Customs Service

OMB Number: 1515–0075
Form Number: 7512–C and 7512–D
Type of Review: Reinstatement
Title: Transportation Entry and Manifest of Goods, In-Bond Control Report

Description: Customs Forms 7512–C and D are control cards used by importers, customshouse brokers, and carriers to show proof of delivery of merchandise entering the United States and being transported in-bond to another port of destination in the United States.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Burden: 8,340 hours.

Clearance Officer: B. J. Simpson (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB Number: New
Form Number: 8453–S
Type of Review: New Collection
Title: S Corporation Declaration for Magnetic Media/Electronic Filing

Description: This form will be used to secure the corporate officer's signature and declaration in conjunction with the Magnetic Media/Electronic Filing Pilot. This form, together with the magnetic media/electronic transmission, will comprise the S corporation tax return.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Burden: 150 hours.

OMB Number: 1545–0014
Form Number: 637
Type of Review: Revision
Title: Registration for Tax-Free Transactions Under Chapters 31, 32, and 38 of the Internal Revenue Code

Description: Certain manufacturers, refiners, importers, and purchasers are exempt from excise tax on taxable articles including gasoline if they use this form to register with IRS for tax-free transactions. The data is used to determine if the applicant qualified for the exemption.

Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Burden: 11,886 hours.

OMB Number: 1545–0935
Form Number: 1120–FSC and Schedule P
Type of Review: Revision
Title: U.S. Income Tax Return of a Foreign Sales Corporation and Related Schedules. Schedule P—Computation of Transfer Price or Commission

Description: Form 1120–FSC is filed by foreign corporations that have elected to be Foreign Sales Corporations (FSCs) or small FSCs. The FSC uses Form 1120–FSC to report income and expenses and to figure its tax liability. IRS uses Form 1120–FSC, and Schedule P (Form 1120–FSC) to determine whether the FSC has correctly reported its

income and expenses and figured its tax liability correctly.

Respondents: Businesses or other for-profit.

Estimated Burden: 52,491 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 87–19947 Filed 8–28–87; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 87–98]

Reimbursable Service; Excess Cost of Preclearance Operation

Date: August 5, 1987.

Notice is hereby given that pursuant to § 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning August 30, 1987.

Installation	Bi-weekly excess cost
Montreal, Canada	$20,531
Toronto, Canada	33,223
Kindley Field, Bermuda	13,541
Nassau, Bahama Islands	23,428
Vancouver, Canada	14,671
Winnipeg, Canada	3,096
Freeport, Bahama Islands	14,737
Calgary, Canada	8,779
Edmonton, Canada	5,465

William F. Riley,

Acting Comptroller.

[FR Doc. 87–19962 Filed 8–28–87; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

1988–89 Fulbright Teacher Exchange Program

The United States Information Agency announces the 1988–89 Fulbright Teacher Exchange Program. Applications are invited from elementary and secondary school teachers and administrators and college faculty to teach in schools or colleges, or to attend seminars abroad under the Mutual Educational and Cultural Exchange (Fulbright) Act of 1961. Not all categories of applicants are eligible for exchange or seminar positions with all countries.

Eligibility requirements include: (1) U.S. citizenship; (2) bachelor's degree; (3) three years of full-time teaching experience for teaching positions; two years full-time teaching experience for seminar positions; (4) current full-time employment in appropriate subject areas and at appropriate teaching level for which application is made; and, (5) fluency in foreign languages for certain non-English speaking countries. Participating countries are announced on a tentative basis: Argentina; Australia; Belgium/Luxembourg; Brazil; Canada; Chile; Colombia; Cyprus; Denmark; Federal Republic of Germany; Finland; France; Hungary; Iceland; Italy; Mexico; the Netherlands; Norway; Panama; the Philippines; South Africa; Switzerland, and the United Kingdom.

Usually, U.S. and foreign teachers exchange teaching positions for one academic year. U.S. and foreign teachers continue to receive salaries from their home institutions.

A limited number of one-way teaching assignments are also available. In addition, seminars are presently planned in Italy and the Netherlands.

Participants in seminars may be provided with transportation, room, board, and/or tutition, depending upon the program. Applications for the 1988–89 competition must be submitted by October 15, 1987. The application packet is disseminated in August and September. Further information should be requested from the: Fulbright Teacher Exchange Program E/ASX, United States Information Agency, 301 Fourth Street SW., Washington, DC 20547, (202) 485–2555.

Dated: August 21, 1987.

Jeanne J. Smoot,

Director, Office of Academic Programs.

[FR Doc. 87–19877 Filed 8–28–87; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 52. No. 168
Monday, August 31, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 26, 1987.

TIME AND DATE: 10:00 a.m., Thursday, August 27, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10).

MATTERS TO BE CONSIDERED: In addition to the previously announced items, the Commission will consider and act upon the following:

5. *Rushton Mining Company*, Docket Nos. PENN 85-253-R, and PENN 86-1. (Issues include consideration of Rushton's petition for discretionary review.)

It was determined by a unanimous vote of Commissioners that this item be included on the agenda, and that no earlier announcement of the addition was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87-20026 Filed 8-27-87; 12:57 p.m.]

BILLING CODE 6735-01-M

POSTAL SERVICE BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 32094, August 25, 1987.

PREVIOUSLY ANNOUNCED DATE: September 1, 1987.

CHANGES IN THE MEETING: Addition of the following agenda item:

Officer Compensation.

CONTACT PERSON FOR MORE INFORMATION: Mr. David F. Harris, Secretary of the Board, (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 87-20043 Filed 8-27-87; 3:23 pm]

BILLING CODE 7710-12-M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 2:30 p.m., Wednesday, September 2, 1987.

PLACE: Eighth Floor, 1120 Vernont Avenue, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED. Adjudication of cases with issues of jurisdiction and questions of the timeliness of the petitions for appeal and petitions for review.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Shannon McCarthy, Deputy Clerk of the Board, (202) 653-7200.

Date: August 27, 1987.

Shannon McCarthy,

Deputy Clerk of the Board.

[FR Doc. 87-20065 Filed 8-27-87; 3:56 pm]

BILING CODE 7400-01-M

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Corrections

Federal Register
Vol. 52, No. 168
Monday, August 31, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance, Postsecondary Education; Appeal Procedures for Audit Determinations and Program Review Determinations

Correction

In rule document 87-18352 beginning on page 30114 in the issue of Wednesday, August 12, 1987, make the following corrections:

§ 668.93 [Corrected]

1. On page 30115, in the third column, in § 668.93(a), in the second line, "ficial" should read "official".

§ 668.95 [Corrected]

2. On page 30116, in the first column, in § 668.95(e)(1)(v), in the fourth line, "3" should read "30".

BILLING CODE 1505-01-D

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan

Correction

In rule document 87-19552 beginning on page 32280 in the issue of Wednesday, August 26, 1987, make the following correction:

On page 32280, in the first column, under **DATES**, the first line should read "Interim rules effective August 26, 1987;".

BILLING CODE 1505-01-D

federal register

Monday
August 31, 1987

Part II

Small Business Administration

13 CFR Part 121

Small Business Size Standards; Proposed Rule

VOL
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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration today proposes regulations governing the procedural rules relative to SBA's size determination program. Revision to these rules has been under review for more than one year. The proposed rule would improve the conceptual framework of small business size standards by reorganizing the current rules to obtain a more logical progression, by clarifying existing ambiguities in the current rules, by conforming these rules to present SBA policies and precedents, and by providing slight substantive modifications where necessary. The reorganized rules would be easier to utilize and should make more sense to the public. The proposed rule would specifically identify how a business entity can be considered small for each of SBA's programs and would separate the size eligibility requirements for each program into separate sections for ease of use. The proposed rule would incorporate several changes made to the Small Business Act by the Continuing Resolution for Fiscal Year 1987, Pub. L. 99–591, and the National Defense Authorization Act for Fiscal Year 1987, Pub. L. 99–661, and would make the procedures for small business size protests and size appeals more understandable. This proposal would not, however, change the specific size standards which apply to particular industries and Standard Industrial Classification Codes. SBA published a complete revision to the substantive size standards themselves on February 9, 1984, 49 FR 5024, and a rule which conformed the size standards to the newly revised SIC system on January 8, 1987, 52 FR 397.

DATE: Written comments must be submitted on or before October 30, 1987.

ADDRESS: Written comments should be addressed to David R. Kohler, Associate General Counsel for General Law, Small Business Administration, 1441 L Street, NW., Room 706, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: John W. Klein, Attorney Advisor, Office of General Law, (202) 653–6377.

SUPPLEMENTARY INFORMATION: Pursuant to subsection 3(a) of the Small Business Act, 15 U.S.C. 632(a), the Small Business Administration is charged with the responsibility of setting size standards by which a business entity may be judged to be small. This proposed rule would not change the substantive (numerical) size standards which are applicable to particular industries or Standard Industrial Classification (SIC) Codes. Comments concerning individual size standards should not be made in response to this proposed rule. SBA published a major revision to its substantive size standards in the **Federal Register** on February 9, 1984, 49 FR 5024. That revision indicated that SBA planned to revise the regulatory language of the procedural rules relative to the size standards in Part 121 of Title 13 of the Code of Federal Regulations for purposes of clarity. Since 1984, SBA has made, and will continue to make, changes in individual industry size standards on a case-by-case basis. In addition, on January 8, 1987, SBA modified its size standards to conform with the newly revised SIC system developed by the Office of Management and Budget, 52 FR 397. This proposed rule would reorganize the current procedural size rules to obtain a more logical progression, clarify existing ambiguities in the current rules, conform these rules to present SBA policies and precedents, and provide slight substantive modifications where necessary. The current regulations combine multiple rules and concepts in a single section. The proposed rule would provide separate regulatory sections for each rule, for ease in citation and finding.

The proposed rule would also provide a new numbering system for SBA's size regulations. The new numbering system is designed to: (1) Provide greater ease in locating rules; (2) provide a more accurate system for citation and reference to specific provisions; (3) rearrange substantive provisions in a more logical sequence; (4) eliminate single regulatory sections containing a multiplicity of rules; (5) eliminate large paragraph provisions in which significant rules run consecutively, making citation and location of such rules difficult; and (6) provide a numbering system that is more adaptable to future expansion and amendments.

Section 121.1 of the current size regulations includes only the introductory statutory reference to the size function (section 2(a) of the Small Business Act, 15 U.S.C. 631(a)). For completeness, Subpart 121.100 of the proposed rule would include all size related provisions of the Small Business Act.

Proposed § 121.201 would state the purpose of the SBA size program. It is derived from §§ 121.1(a) and 121.1(e) of the current regulations and has been clarified for easier use. The concept of "cradle to the grave" in the current regulation has been removed from this proposed rule to avoid the inference that trying to remain small is something illicit.

Proposed § 121.202 is a new section setting forth a general outline of SBA's size program and is designed to provide a better understanding of the size program for the general public.

The requirement in proposed § 121.203 that a concern which has received a negative size determination, and has already self certified as a small business for pending small business assistance, must notify contracting officers/other officials of such adverse determination would be expanded to include all assistance programs. The current rules confine this requirement to procurement and sales/lease programs. Since it would now apply uniformly in all programs, it is deleted from the procurement and sales/lease sections and placed in the general section.

Proposed § 121.204 would specify the effect of an adverse size determination and would make a cross reference to proposed § 121.1607, which would set forth the procedures by which a firm could be recertified to be small. The recertification and effect of an adverse size determination provisions are currently contained within the section relating to size determinations (current § 121.8(d)). For continuity and ease of use, this general provision concerning the effect of an adverse size determination would be repeated within the proposed provisions relating to formal size determinations (proposed § 121.1606(h), "Results of an SBA Size Determination").

Proposed Subpart 121.300 would set forth the functions and responsibilities of SBA offices as they relate to the size program. The current regulation combines the functions of many offices into § 121.10. Separate sections would exist in the proposed rule for the Office of Size Standards Staff, Office of General Counsel, the Size Policy Board, the Office of Hearings and Appeals (OHA), and the SBA Regional Offices for ease in citation and finding. The proposed provisions would more fully explain the functions of the Office of General Counsel in the size process. The proposed provisions would also specify the membership of the Size Policy Board in the regulations. A description of the functions and responsibilities of the SBA Regional Offices would be added to the regulations in proposed § 121.305. This proposal would consolidate into one

provision the references to Regional Office functions scattered throughout the current regulations. The proposed rule would also clarify to which Regional Office a size protest should be made, and would permit the SBA Regional Administrator to request a size determination whenever appropriate.

Proposed Subpart 121.400 would contain definitions of various terms used throughout the size regulations. Within these definitions would be included substantive provisions of size eligibility. Definitions of the following terms would be included in this Subpart: Affiliation; annual receipts; business concern or concern; employees; key employees; not dominant in field of operations; number of employees; and revenue. Proposed § 121.401(a)(1) is a new introductory provision to the detailed rules on affiliation in § 121.401. The proposed rule would separate out different rules and concepts into individual subsections. The current regulation combines rules and concepts in a single paragraph. The basic concept of affiliation arising out of "control" in the current regulations would be expanded in § 121.401(a)(2) of the proposed rule to add affiliation arising out of an "identity of interest" resulting in presumptive affiliation. This reflects Agency administrative size decisions and clarifies the conceptual basis of the rule. The exclusions from the affiliation rule would be broken out from the general paragraph in the current regulations (§ 121.3(a)) and made a separate § 121.401(b) in the proposed rule. The exclusion relating to Small Business Investment Companies (SBICs) is identical to the current regulation and is based on 13 CFR 107.801(a)–(d) which prohibit SBICs from controlling the small businesses which they help finance. The limitation in the current exclusionary rule to "state" development companies is deleted. Proposed § 121.401(b) would include both state and local development companies within the exclusion because there is no substantive reason to limit the exclusion to state development companies only. In addition, concerns owned by Indian tribes or Alaska Regional or Village Corporations would be added to the exclusion in the proposed rule. This is consistent with the statutory preferences accorded Indian tribes.

The rule concerning Nature of Control would be repeated in the proposed rule from §§ 121.3(a)(i) and 121.3(a)(iii)(C) of the current regulations, with clarifying language. The concept in § 121.3(b) of the current regulations would be revised in § 121.401(d) of the proposed rule to emphasize "Identity of Interest" as a basis of "control" and "affiliation." Subsection 121.401(e) of the proposed rule would make the current rule concerning affiliation through stock ownership a "presumption." This should assist in the legal interpretation and application of the rule by the Agency and interested parties. In addition, the proposed rule would break the two rules relating to affiliation through stock ownership in the current regulations (§ 121.3(a)(iii)) into separate paragraphs for ease in citation and finding. Pursuant to proposed § 121.401(e)(2), a person would be presumed to control or have the power to control a concern if the block of stock he/she owns or controls is large as compared with any other outstanding block of stock. For example, where a concern's stock is widely distributed and stockholder "X" owns 10% of the outstanding shares of the concern, "X" would be presumed to have the power to control the concern if the 10% holding by "X" is the largest single block of stock and such holding is large as compared with any other outstanding block of stock. Where the next largest block of stock is small in comparison to "X's" holding (e.g., 2–3%), "X" would be presumed to have the power to control the concern; however, where the next largest block of stock is relatively comparable with "X's" holding, say 8–9%, then "X" would not be presumed to control the concern absent other indications of control.

The concept of the current rule would also be revised by requiring minority interest holders owning holdings which are large as compared with any other stock holding to have an "identity of interest" in order to presume that each has the power to control the concern. This would make the rule more workable and would better reflect Agency case decisions in this area.

Proposed § 121.401(f) would add agreements in principle to merge as a basis for affiliation to the current regulation (§ 121.3(a)(iv)). In addition, a provision would be added so that stock options and convertible debentures could not be used by a concern so as to appear to terminate control over another concern. The proposed rule clarifies affiliation under voting trusts. The current regulation (§ 121.3(a)(v)) relates to whether the "purpose" of a voting trust is to meet Part 121 size standards and business reasons are not otherwise persuasively established. It is unclear whether this provision would exclude the use of any voting trusts whenever they had a tangential effect of allowing the concern to meet size standards. The proposed revision would limit the proscription of voting trusts only where the "primary" purpose is to avoid Part 121 size standards. In addition, the current rules concerning affiliation through common management, through common facilities, and with a newly organized concern (§ 121.3(a)(vi)) would be separated into distinct subsections, with minor technical changes, in the proposed rule. Proposed § 121.401(k) (affiliation through contractual relationships) is a new provision which would be added to reflect issues that have arisen in prior agency size cases.

The provision concerning affiliation under joint venture arrangements in the current regulations (§ 121.3(a)(vii)) would be expanded for better understanding of the issue. The proposed rule would delete reference to a joint venture as an association of "persons" and would confine the concept of "joint venture" to an association of "concerns." The purpose of this change is to eliminate the possibility that some members of the joint venture could be "persons" which could not individually qualify as an eligible entity for small business assistance; for example, a foreign national or foreign corporation. The definition of "concern" in proposed § 121.403 would limit membership in eligible joint ventures to entities which are at least 51% owned and controlled by citizens of the United States, lawfully admitted permanent resident aliens, or by other domestic business entities.

Proposed § 121.401(m) would combine the rules pertaining to affiliation under franchise and license agreements into a single section from what are essentially the same provisions in two separate sections of the current regulations (§§ 121.3(a) and 121.3(a)(vii)(E)).

Proposed § 121.402 would amend the definition of "annual receipts" from that contained in § 121.2(c)(1) of the current regulations to make it easier to understand and use. Annual receipts of a concern which has been in business for 3 or more completed fiscal years would be the arithmetic average annual revenue of the concern over its last 3 completed fiscal years. Annual receipts of a concern which has been in business for less than 3 fiscal years would be the arithmetic annual average revenue of the concern over the time period the concern has been in business. The rule would indicate how to calculate the annual receipts of a concern which has been in business for either more than or less than 3 fiscal years in easily understandable terms. The term "revenue" would be substituted for the term "gross revenue" in the proposed rule. The definition of revenue would be

clarifed to exclude receipts collected as an agent for another, such as gross bookings on which a commission is earned (e.g., only the commission earned by a travel agent would constitute revenue and not the value of gross bookings). In addition, revenue shown on the regular books of account or the Federal Income Tax return of a concern on a basis other than accrual would be required to be restated to show revenue on an accrual basis.

Proposed § 121.402(e) would add new provisions dealing with affiliates acquired or divested during the period of computing annual receipts. Such provisions were previously included in the size regulations and, presumably, their deletion in a subsequent revision was inadvertent. The provisions are consistent with similar provisions in the current "number of employees" rules (current § 121.2(b)).

The proposed revision to the definition of the term "concern" (proposed § 121.403) would eliminate eligibility for profit-making subsidiaries of nonprofit parents, recognizing that regular profit-making concerns are at a significant competitive disadvantage to such concerns. The proposed rule would expand the restrictions in the current regulations (§ 121.3(b)) so that the entity in question must not only contribute to the U.S. economy, but must also be at least 51% owned and controlled by U.S. citizens, lawfully admitted permanent resident aliens in the United States, or other domestic business entities. To be eligible as a small business for a Governmemt contract, a business entity would also have to incur more than 50% of the direct material, direct labor, and applied overhead of the contract in the United States, unless the procuring activity requires otherwise. For example, construction on a military base overseas could be performed overseas since that is required by the procuring activity, but more than 49% of the manufacture of a widget needed by a Federal agency could not be performed outside the United States where the agency does not specify that the foreign manufacture is required.

The term "employees" would be defined in § 121.404 of the proposed rule. This definition would be separated from the definition of "number of employees" where it appears in the current regulations (§ 121.2(b)). The term employees means all individuals employed on a full-time, part-time, temporary, or other basis. The proposed rule would specify that such "other basis" may exist where individuals are provided by an independent employment contractor in an apparent effort to circumvent the size regulations. The interpretation given to the term "other basis" by SBA's Statement of General Policy, SBA Size Policy Statement No. 1, published in the **Federal Register** on February 20, 1986, 51 FR 6101, would remain in effect and would not be altered by the proposed rule. Individuals supplied by an independent contractor to a concern whose size is at issue would not necessarily be considered "individuals employed [by the concern whose size is at issue] on [an] other basis." The totality of the circumstances would have to be considered in every case to determine whether the concern attempted to circumvent the size regulations and/or the spirit of the Small Business Act. Under the Small Business Act, 15 U.S.C. 631, contracts are intended to be provided to firms which are genuinely small—or small in fact—and not merely small on paper. SBA's regulations are intended to determine the size of a concern, with reference to number of employees, based on the effective workforce available to the concern by counting those individuals whose labors are available to and utilized by the business in carrying out its day-to-day activities. Proposed § 121.405 would define the term "key employee" for the first time.

Pursuant to proposed § 121.406, a business concern falling within SBA's size standards would be deemed to be "not dominant in its field of operation." The provision in the current regulations (§ 121.3(c)) which attempts to define what the term "not dominant in its field of operation" means has been deleted from the proposed rule. The size standards themselves would be used to gauge whether a business entity is considered dominant in its field of operation for purposes of small business assistance.

The four rules concerning size eligibility based on "number of employees" contained in § 121.2(b) of the current regulations would be revised into separate subsections in § 121.407 of the proposed rule. In computing average employment, part-time and temporary employees would be counted as full-time employees for each applicable pay period.

Size standards are established following the Standard Industrial Classification (SIC) System devised and maintained by the Office of Management and Budget. Specific size standards correspond to specific SIC Codes so that a concern which performs contracts under several SIC Codes may be subject to varying size standards depending on the contract to be performed. In fact, it is possible for a particular concern to be considered small for contracts with one SIC Code and other than small for contracts with a different SIC Code. Size standards follow the SIC System for two reasons; it is a uniform and widely accepted classification scheme, and economic data for industries are collected on this basis. The Office of Management and Budget published a revision to the SIC System in the **Federal Register** on October 1, 1986, 51 FR 35170, that took effect January 1, 1987. On January 8, 1987, SBA modified its size standards to conform with this newly revised SIC system, 52 FR 397, by adding a Table of Size Standards corresponding to the new SIC Codes in addition to the Table of 1972 SIC Codes and corresponding size standards which already appeared in the regulations. The industry data used in researching size standards are collected by various organizations, including the Census Bureau, the Internal Revenue Service, Dun & Bradstreet, and others. (*See* proposed § 121.503). SBA uses both published and specially prepared compilations of economic data from these sources, as well as other available sources.

Proposed § 121.501 would require the SBA to describe the factors considered, including the weights given to the various factors, when publishing a proposal to change a specific size standard. SBA would also identify, where possible, the number of businesses affected by the proposed change.

Proposed § 121.502 would specify how size standards for the following four industry categories are to be set: (1) Construction; (2) architectural and engineering services (including surveying and mapping services); (3) ship building and ship repair; and (4) refuse systems and related services. The specific SIC Codes which would be affected by this provision are spelled out in the proposed rule. The special treatment in the setting of size standards for these four industry categories was statutorily mandated by both the Continuing Resolution for Fiscal Year 1987, Pub. L. 99–591, and the National Defense Authorization Act for Fiscal Year 1987, Pub. L. 99–661. After reviewing the Federal procurement statistics of the four enumerated industry categories, the Administrator would determine whether the combined number of small business set aside contracts and section 8(a) awards exceeds 30 percent of the dollar value of the total Federal contract awards for any such industry category. Where the 30 percent level is exceeded, the

Administrator would be required to adjust the size standard(s) corresponding to the SIC Code(s) to a size that would likely reduce the combined number of such set aside contracts and section 8(a) awards to approximately 30 percent of the total value of Federal contracts awarded for that industry category.

Proposed Subpart 121.600 contains the actual size standards by SIC industry. The proposed rule would not change any of the standards from the current regulations. The introductory language to this section of the proposed rule is taken from § 121.2(a) of the current regulations. The table of size standards by SIC industry will follow this introductory language exactly as it appears in the current regulations.

Proposed Subpart 121.700 would set forth the procedures to petition for a review of size standard adjustments which were made pursuant to § 121.502 in order to reduce the percentage of small business set-aside contracts awarded under a given SIC Code to approximately 30 percent of the dollar value of the total Federal contract awards for that SIC Code. A petitioner would be required to submit credible evidence that the adjustment to the size standard is not likely to so reduce the percentage of small business set-asides under the SIC Code corresponding to such size standard and that the adjustment has caused the petitioner to suffer a severe financial loss. The procedures for petitioning for a review of an industry category designation (SIC Code) for the purpose of dividing that designation into several sub-designations (or adding additional designations) with corresponding differing size standards would also be set forth in proposed § 121.700. The petitioner would be required to show that the segmentation or the addition of an industry category designation was required due to (1) special capital equipment needs, (2) special labor needs, (3) special geographic requirements, or (4) to recognize a new industry. The petitioner would be required to submit credible evidence that the current industry category designation is not likely to assure that a fair proportion of the total purchases and contracts for property or services for the Government in that industry category are placed with small business concerns and that the current designation has caused the petitioner to suffer a severe financial loss. These procedures were added to the Small Business Act by section 921(f) of the National Defense Authorization Act for Fiscal Year 1987, Pub. L. 99–661, and by section 921(f) of the Continuing Resolution for Fiscal Year 1987, Pub. L. 99–591.

Proposed Subparts 121.800 through 121.1500 would set forth the size eligibility requirements for the various small business assistance programs. Each program would have its own subpart covering the size eligibility requirements of that program. SBA believes that having all of the size eligibility requirements for a particular program in one place would facilitate the use of the size regulations and would make them easier to understand for the public. The same format would be followed in the rules for each program. Each subpart of the proposed revision would be introduced by a section explaining what is covered in the subpart. The current regulations are inconsistent in this respect. For example, the financial assistance section of the current regulation has such an introductory provision (current § 121.4(a)), whereas the procurement assistance section (current § 121.5) does not. Each subpart would also describe the establishment of a size standard for the programs covered and the time at which size is determined for that program. All programs except SBA's financial assistance programs and programs of other agencies would also have a self-certification procedure section.

Proposed Subpart 121.800 would specify the size eligibility requirements for SBA's financial assistance programs. The specification of programs covered would be removed from the broad "all-purpose" provision in current regulations (§ 121.4(a)) and made a separate section for ease in understanding and citation. The reference to SBA's section 8(a) program in the current regulations would be removed from the proposed rule. Size eligibility for the section 8(a) program would be made a separate subpart 121.1100 in this revision. SBA believes that the section 8(a) program is a program that in some respects deserves differentiation from the traditional financial assistance programs, and is sufficiently different from SBA's procurement programs to warrant its own size provisions.

Proposed § 121.802 would explain the establishment of the size standard for SBA's financial assistance programs. The specific rule would be removed from the "all purpose" provision in the current regulations and made a separate section for ease in understanding and citation. A dual size standard (must meet the size standard for the primary business of the applicant concern including its affiliates *and* for the applicant concern alone) would be substituted for the current rule (must meet the size standard only for the applicant, including affiliates). SBA is concerned with the inequity which arises under the current regulation where a concern, without affiliates, would not qualify for assistance under its primary business size standard, whereas another applicant, in the same industry category, would qualify for the assistance because it has affiliates which place it in a different primary business category with a higher size standard. Proposed § 121.802(a)(2) sets forth the alternate size standard for Small Business Investment and Development Companies that is in § 121.4(f) of the current regulations. The Pollution Control Guaranty Program is part of this alternate size standard provision in the current regulation. It would be removed from the alternate size standard provision in the proposed rule and placed in the single size standard provision (§ 121.802(a)(1)). The alternate size standard provision is intended for situations where private organizations (e.g. SBIC's) make the original size determination and added flexibility is needed. The administration of the Pollution Guaranty program is primarily with SBA and thus this flexibility is not needed. Thus, the simpler single primary business rule would be more appropriate for the Pollution Control Guaranty Program. Proposed § 121.802(a)(3) would substitute a single size standard of $3.5 million in annual receipts for the current triparte standard in the Surety Bond program (current § 121.4(h)). The current more complex standard is unnecessary.

Proposed § 121.802(b) removes the specific provision explaining how to determine the primary industry of a concern applying for financial assistance from the "all purpose" provision in the current regulation for ease in understanding and citation. The rule would also be repositioned in the proposed revision for more logical order. Proposed § 121.802(c) would be a new provision that would clarify issues that have arisen in size appeal cases. Specifically, the number of employees or annual receipts of all operations of the applicant concern must be aggregated in determining its size, not just the operations of its primary business. Proposed § 121.802(d) repeats the labor surplus area and redevelopment area differentials found in § 121.4(e) of the current regulations, with minor technical changes.

Proposed § 121.803 would set the time at which size is determined for financial

assistance programs at the date of the application for financial assistance. The rule would be removed from a broader provision in the current regulation (current § 121.4(d)) and made a separate provision for ease in understanding and citation. A provision would be added requiring agreements to merge, stock options, and convertible securities to be considered executed as of the date of the application. This provision would be added to the proposed regulations in response to recent situations in which concerns literally qualified as small at the time of the self certification, although a merger or similar action, carrying the concern well over the size standard, was pending. Although there is a similar provision in the Definitions section of the current regulations (and of the proposed rule), it is often overlooked when the issue presented related to the time for determining size. Proposed § 121.803(c) would be added to specify the time size is determined for applicable disaster loan assistance. This provision would be consistent with current § 123.41(b)(1) of the Disaster Loan regulations.

Pursuant to proposed § 121.804, an applicant for SBA financial assistance would be deemed to assert that it is small as part of its application. The processing official would then make a program size eligibility determination (separate and distinct from a formal size determination made by an SBA Regional Office pursuant to § 121.1600). The SBA program official in the District Office with authority to take final action on the assistance requested could request that a formal size determination be performed if he or she deems it appropriate. In addition, an applicant which has been denied assistance because the SBA program official has found it to be other than small would be able to request a formal size determination. No change is proposed in § 121.805 concerning business loans to refinance an existing loan from the current regulation (§ 121.4(c)).

Proposed Subpart 121.900 would specify the rules concerning size eligibility for Government procurement programs, including the small business set aside program, SBA's Certificate of Competency program, and the Small Business Subcontracting Program authorized under section 8(d) of the Small Business Act, 15 U.S.C. 637(d). These rules are basically the same as those contained in § 121.5 of the current regulations, with clarifying language. The specific rules would be separated from the multipurpose provisions of the current regulations and made independent sections for ease in finding and citation. The rules would also be repositioned to reflect a more orderly regulatory sequence.

Proposed §§ 121.902(b) and 121.908 would clarify the apparent inconsistency between §§ 121.5(b)(1) and 121.5(c) of the current regulations. The apparent conflict stems from the wording in current § 121.5(b)(1) which considers "the relative value of items in the procurement" as a factor in determining the appropriate SIC Code for a procurement, whereas current § 121.5(c) makes the "size standard for the item accounting for the greatest percentage of the contract value" in a multiple item procurement the appropriate size standard. In one instance, value is merely one of several factors to consider, while in the second it is the only factor.

Proposed § 121.908 (derived from current § 121.5(c)) would clarify that it applies only where there is more than one end item being procured (e.g., military shirts and military boots). It would have no application where the Government requires only one specific end item, which may or may not be comprised of more than one component. In a situation where only one end item is being procured (e.g., the procurement of a specific type of defense weapon made up of many parts, the construction of a building, or even 1000 military coats), proposed § 121.902(b) (derived from current § 121.5(b)(1)) would apply. In each of the examples, one end item is being procured (i.e., a specific weapon in the first example, a finished building in the second, and coats as specified in the third). The purpose of proposed § 121.902(b) is to characterize or classify the nature of the procurement as either being one for services, supplies, or construction. The contracting officer must have the flexibility to consider the "principal nature of the procurement" and what the Government is really purchasing in determining the proper SIC Code for such a procurement. SBA did not intend contracting officers to use the rigid "greatest percentage of contract value" requirement of current § 121.5(c), by looking only at the value of various components comprising a given end item, in selecting a SIC Code for single end item procurements. Thus, while the value of the components is an important factor in determining the "principal nature" of a single end item procurement, it is not the controlling factor in all cases. However, the contracting officer must have a good reason to classify a single end item procurement in a way that is inconsistent with the item accounting for the greatest percentage of the contract value.

Thus, proposed § 121.908 would not apply to true service contracts or construction contracts since the Government is really only purchasing one end item in such instances. The same clarifying language of proposed §§ 121.902(b) and 121.908 has also been added to proposed §§ 121.1102(b) and 121.1107, respectively, for application to section 8(a) awards.

Proposed § 121.902(d) would permit SBA, in connection with a formal size determination or size appeal, to not only clarify or complete an unclear or incomplete SIC Code designation (as permitted under current § 121.5(d)), but to also supply a missing SIC Code designation and to correct an incorrect designation in such context. Before SBA could correct an incorrect SIC Code designation, the contracting officer would be given an opportunity to submit information relating to the designation to be "corrected." In the context of determining whether a concern is small, SBA should have the right to change a SIC Code designation that is inappropriate for the particular procurement so that its size determination has meaning. Proposed § 121.903 would clarify the time at which size is determined for Government procurement programs. Size would still be determined as of the date of the concern's written self-certification as a small business, but the concern would be required to certify that it is small for a particular contract at the time that it submits its initial offer including price to the procuring activity for that contract. As in the financial assistance Subpart noted above, a provision would be added requiring agreements to merge, stock options, and convertible securities to be considered executed as of the date of the concern's certification unless the effect would be to render a large concern small. The same rationale for its inclusion in the financial assistance Subpart applies here also. Proposed § 121.905 would clarify the self-certification provision contained in the current regulation (§ 121.5(e)) and separate it into its own section for ease in citation and finding. The proposed rule would modify the language concerning protests by expressly connecting the protest procedure to the self-certification procedure; thus, each step in the size procedure would be connected to its preceding and subsequent steps, resulting in a more cohesive and easily implemented process.

Proposed § 121.906 would set forth limitations on subcontracting by

requiring a firm to perform a certain percentage of a set-aside contract with its own employees in order to qualify as a small business for that set-aside contract. These limitations were added to the Small Business Act by section 921(c) of both the Continuing Resolution for Fiscal Year 1987 and the National Defense Authorization Act for Fiscal Year 1987. The provisions relating to contracts for services (except construction) and contracts for supplies or products are repeated directly from this authorization. SBA is authorized to deviate from the 50 percent requirement for service and supply contracts where it is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category. SBA invites comments concerning specific industry practices that would support any deviation. At the direction of this authority, SBA has added limitations on subcontracting for general and specialty construction contracts. The proposed rule would require both general and specialty construction contractors to perform at least 50% of the cost of the contract, excluding the cost of materials, with their own labor force. The SBA invites comments concerning the praticality of the 50% requirement on construction contractors.

Proposed § 121.907 would amend the provisions relating to manufactured products under small business set-aside procurements. The proposed rule would remove the provision from the current multi-purpose section and make it a separate section for ease in finding and citation. The format of the current "non-manufacturer" rule would be significantly revised for clarity and better understanding. For example, the negative format of the current rule (i.e., the bidder as a "non-manufacturer"—§ 121.5(b)(2)) would be replaced in the proposed rule by a positive format (i.e., the procurement of manufactured products). The proposed rule would specify that in order to qualify as a small business for the procurement of manufactured products, an offeror must first be a "manufacturer" or a "regular dealer" within the meaning of the Walsh-Healey Act. Once a concern qualifies under the Walsh-Healey Act for a Government procurement, it would also have to be the manufacturer of the end item being procured, or provide products manufactured by other concerns which would meet the size standard of the product acquired. This clarification concerning the Walsh-Healey Act was added to clear up the confusion that was caused by § 121.5(b)(2) of the current regulations. The current provision provides: "Whether a bidder on a particular procurement is the manufacturer or a nonmanufacturer for the purpose of a size determination need not be consistent with whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act." This provision intended that a concern would not automatically qualify as a small business manufacturer simply because it qualified as a manufacturer under the Walsh-Healey Act. The concern would have to meet the requirements of SBA's size regulations in addition to the Walsh-Healey Act. However, the "need not be consistent * * * with the Walsh-Healey Act" language was interpreted by some concerns to override the Walsh-Healey Act. That was never, and could never be, SBA's intention. The proposed rule would correct this misinterpretation.

The proposed rule would add a limited exception to the requirement of the current regulations that a nonmanufacturer must supply the products of a small business manufacturer in order for the nonmanufacturer itself to qualify as a small business concern for a small business set aside contract. Pursuant to proposed § 121.907(a)(iii), a nonmanufacturer need not provide the product of a small business manufacturer where it is determined that there are fewer than two small manufacturers of the specific end product being procured. This same exception would be added to proposed § 121.1106(a)(iii) for application to section 8(a) awards. In order to ensure consistency in the application of this exception across SBA regional office lines and between the small business set-aside program and the section 8(a) program, the determination as to which product(s) is(are) not manufactured by at least two small business concerns would be made by SBA's Administrator, and not by the respective program heads.

Proposed § 121.907(c) would add clarifying language to the definition of the term "manufacturer." SBA invites comments on suggested improvements concerning this definition. Two factors would be evaluated in determining whether a concern is a manufacturer or is performing only minimal operations for the procurement under the proposed definition: (1) The proportion of total monetary value in the end product added by the efforts of the concern, excluding costs of overhead, testing, quality control, and profit; and (2) the importance of the elements added by the concern to the function of the end product, regardless of their relative monetary value. In either case, the costs added by a concern due to overhead, testing, quality control, and profit would not assist a firm in qualifying as a manufacturer because such functions do not add any value or importance to the end product being procured. Neither of the factors listed in the proposed rule would necessarily have more weight than the other. The circumstances of each case would dictate which factor is more important in that particular instance. For example, a solicitation requires a widget with a safety switch, large manufacturer A makes the widget without such a switch, and small concern B puts the switch on the widget. The end product is the widget with a safety switch. Even though the value added by concern B to the end product may be a very small proportion of its total value, concern B may still be considered the "manufacturer" of the end product (i.e., widget with safety switch) because the safety switch is so important to the function of the end product.

Proposed § 121.907(d) would add clarifying language to the rule concerning the acquisition of kits. Where the Government has specified an item for a kit which is not produced by small business concerns, then the proposed rule would not count this item in the determination of total value under the subsection (i.e., more than 50% of the total value of the contents of the kit must be manufactured by small businesses—brand items or items produced only by large businesses would be excluded from the total value determination and would not count against the 50% requirement).

Proposed § 121.908 would apply to determine the correct size standard to use for a procurement where the procurement requires that more than one end item be supplied to the Government. (See the discussion above relating to proposed § 121.902(b).) Where an offeror is required to submit an offer on all end items in a multiple item Procurement, the offeror would qualify as a small business under proposed § 121.908 if it meets the size standard of the end items having the numerical standard which accounts for the greatest percentage of the total contract value (e.g., two end items each having a size standard of 500 employees together account for the greatest percentage of the total contract value).

Proposed § 121.909 would add a provision that would relate only to SBA's Certificate of Competency program. This proposed section would

not make any substantive changes in the size procedures affecting the COC program, but would, for the first time, specifically spell them out in the size regulations. Proposed section 121.910 would add clarifying language to the provision concerning manufactured products in an unrestricted procurement for COC purposes (current § 121.5(b)(2)(iv)), and would place it in its own section for ease in citation and use.

The proposed rule would also place the rules relating to size standards and size procedures under SBA's section 8(d) subcontracting program (current § 121.5(g)) into two separate sections (proposed §§ 121.911 and 121.912).

Proposed Subpart 121.1000 would set forth the size eligibility requirements for the sale or lease of Government property, including the Timber Sales Program, the Special Salvage Timber Sales Program, and the sale of Government petroleum, coal and uranium. The proposed rule would not make any substantive changes from the present regulations (§ 121.6). It would conform the current substance to the new format, with clarifying changes.

Proposed Subpart 121.1100 would describe the size eligibility requirements for SBA's section 8(a) Program. The rules governing size eligibility for the section 8(a) Program would be placed into a separate subpart. Currently, such rules are located within the size eligibility rules governing SBA's financial assistance programs (current § 121.4(g)) because funding for both the section 8(a) and the financial assistance programs comes from the same budgetary account. SBA believes that the section 8(a) Program is a unique program which should be separate from SBA's financial assistance programs. The proposed rule would keep the dual size determination of § 121.4(g) of the current regulations (i.e., an initial determination at the time of admission to the program based upon the primary business of the applicant, and a second determination for the award of each section 8(a) contract). The rules pertaining to size eligibility for the award of section 8(a) contracts would be as similar to the rules relating to size eligibility for SBA's procurement assistance programs (proposed § 121.900) as possible. The proposed rules covering the proper SIC Code designation for the goods or services being procured and the clarification, completion, supply, or correction of unclear, incomplete, missing, or incorrect SIC Code designations (proposed §§ 121.1102 (b)(2), (c) and (d)) would be identical to those rules in the procurement assistance subpart (proposed §§ 121.902 (b), (c) and (d)). The rules governing the time at which size is determined for individual section 8(a) contracts and the self-certification and verification procedures for the section 8(a) program would be the same as those first enunciated as an interim final rule published by SBA in the **Federal Register** on April 7, 1986, 51 FR 11705. These procedures appeared as a final rule in the **Federal Register** on December 17, 1986, 51 FR 45102.

Where the selected section 8(a) concern has merged with or been acquired by another business concern between the date of its certification and the date of the section 8(a) award, proposed § 121.1104(b)(2) would require the concern to recertify its size before award can occur. This provision has been included in the section 8(a) size eligibility subpart, but in no other program's size eligibility rules. The provision was included in the size eligibility rules for SBA's financial assistance programs in the interim final rule, noted above. The reason for such inclusion was to make the size rules for all financial assistance programs (the section 8(a) Program was considered a financial assistance program for size eligibility purposes) the same. Since the intent of the interim final rule was to apply this rule to the section 8(a) program and because the section 8(a) Program would now be separated from the financial assistance programs in the proposed rule, this provision would be removed from the financial assistance subpart in the proposed rule. The section 8(a) Program is a program designed to enhance the business development of section 8(a) participants. Restricting the acquisition by or merger with another business concern of the section 8(a) concern would be entirely consistent with that developmental purpose. SBA is contemplating the implementation of such a provision in all of its programs (in procurement assistance as well as financial assistance programs) and specifically requests comments relating to the extension of this rule.

Proposed § 121.1105 would set forth limitations on subcontracting, by requiring a firm to perform a certain percentage of a section 8(a) award with its own employees, in order to qualify as a small business for that section 8(a) award. These limitations were added to the Small Business Act by section 921(c) of both the Continuing Resolution for Fiscal Year 1987 and the National Defense Authorization Act for Fiscal Year 1987 and are the same as those added to proposed § 121.906 for the small business set aside program. The percentage of a contract which a concern would be required to perform with its own work force for general and special trade construction would be the same as those specified in § 124.302 of SBA's section 8(a) program regulations (i.e., 15% of the cost of the contract for general construction, and 25% of the cost of the contract for specialty construction). The 50 percent requirement for service contracts is a size eligibility requirement and would be separate from the subcontracting limitations imposed on service contracts as a section 8(a) contract requirement by § 124.302 of the section 8(a) program regulations. SBA is authorized to deviate from this 50 percent requirement where it is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category. SBA invites comments concerning specific industry practices that would support any deviation.

The language contained in proposed §§ 121.1106 and 121.1107 regarding manufactured products (the non-manufacturer rule) and multiple item procurements would be similar to that contained in the procurement assistance subpart (proposed §§ 121.907 and 121.908).

Proposed § 121.1108, "Eligibility of section 8(a) Concern For Other SBA Assistance," would be a new provision. This proposed provision would confer automatic eligibility for other SBA assistance (e.g., business loans) to an section 8(a) concern which qualifies as a small business for a particular procurement where the assistance directly and primarily relates to the performance of the section 8(a) contract. This provision would be added to the section 8(a) size eligibility rules because it supports one of the primary purposes of the section 8(a) Program (i.e., business development). SBA also believes that an section 8(a) contractor should be given the tools necessary to effect proper contract performance.

Proposed Subpart 121.1200 would set forth the size eligibility requirements for SBA's Small Business Innovation Research (SBIR) Program. The order and language of the current regulations (current § 121.7) are altered somewhat for clarity and conformance to the new proposed format. Proposed § 121.1204 would codify the time of size policy of the SBIR Program. The SBIR Policy Directive, published in the **Federal Register** on January 8, 1985, 50 FR 917, specifies that the size of a concern for the purpose of a funding agreement

under Phase I and Phase II of the SBIR Program is determined as of the date of the award. The reason for the departure from the time of self-certification (with the offer) applicable to other programs is the concern that potential SBIR offerors often are affiliated with large concerns or non-profit institutions (e.g., universities) at the time of their initial proposal and, thus, would be precluded from the SBIR Program by a "time of offer" rule. These offerors typically leave their position with the affiliated entity upon approval of their proposal and prior to award. However, the current size regulations were never updated to take this policy into account. The proposed rule would make the date of award the time at which size is determined for both Phase I and Phase II. A concern having more than 500 employees at the date of award would be ineligible for award. Proposed § 121.1205 would incorporate the self-certification and protest procedures into the SBIR Program.

Proposed Subpart 121.1300 would set forth the size eligibility requirements for paying reduced patent fees. The order and language of the current regulation (current § 121.12) would be changed for clarity and conformance to the new proposed format. The rules pertaining to binding size determinations, time of size, and self certification would be added to make this subpart comparable to similar proposed rules for other programs. The self certification procedure would be adapted to the unique circumstances of the patent fee program. In addition, the definitions of "affiliates" and "number of employees" in the current regulation would be omitted in the proposed rule. The extensive rules dealing with both these concepts would be set forth in proposed § 121.400 and should be used for all size determinations. To repeat part of these definitions in connection with patent size cases would only result in ambiguity. Moreover, there is no statutory or other apparent reason why the definition of "number of employees" in the current rule should be different than the rule for other size determinations.

Proposed Subpart 121.1400 would set forth the size eligibility requirements for financial institutions for purposes of sections 8(d) and 15(g) of the Small Business Act. The proposed rule would make minor changes to the current regulations (current § 121.13) for added clarity. The size standard would be changed from $100 million "for the preceding fiscal year" to $100 million "at the end of its preceding completed fiscal year" to resolve a possible ambiguity. The proposed rule would conform the size eligibility rules for these programs to the format of the proposed rules of other programs by adding comparable provisions regarding binding size determinations, time at which size is determined, and self-certification.

Proposed Subpart 121.1500 would set forth the size eligibility requirements for compliance with programs of other agencies. The proposed rules would clarify that size determinations for other agencies are made under SBA standards, rules and procedures (except where noted otherwise) and that the binding effect of such determinations depends upon the rules of the other agencies. Proposed § 121.1503 would state that the size standards for the SBA programs which are most comparable to the programs of the other agencies would be applicable. Proposed § 121.1504 would permit the requesting agency to select the time at which size is determined for a particular program.

Proposed Subpart 121.1600 would set forth the procedures for formal size determinations. These procedures would be the same regardless of the program for which the size determination would be made (i.e., once a protest or a request for a formal size determination is made, be it in the section 8(a) Program or SBA's financial assistance programs, Subpart 121.1600 would describe how the appropriate SBA Regional Office would determine the size of the relevant concern).

Proposed § 121.1601 would specify who may initiate (either by protest or request) a formal size determination for all small business assistance programs. This section would tie each of the program assistance subparts into this procedural subpart dealing with size determinations. SBA would be given express authority to protest or request formal size determinations in each small business assistance program (except paying reduced patent fees and programs of other Government agencies).

Proposed § 121.1602 would identify the SBA Regional Office which would make the size determination for a protest or a request for a formal size determination. For protests, the appropriate Regional Office would be the one serving the geographical area of the headquarters of the offeror, regardless of the location of parent companies or affiliates. In cases of a request for a formal size determination, the appropriate Regional Office would be the one in which the principal office of the applicant for assistance or potential recipient of the Government program benefits involved, excluding parent companies and affiliates, is located.

Proposed § 121.1603 would separate the protest procedures into subsections concerning filing a protest, timeliness of a protest, and referral by a contracting officer to the appropriate SBA Regional Office. The language and order of the current regulations (current § 121.9) would be revised for clarity. A provision would be added to proposed § 121.1603(a) that would treat SBA in the same manner as the contracting officer where SBA protests the size of a concern in connection with a Government procurement or sale (i.e., there would be no time limitation for such protest—a protest by SBA would always be timely and would apply to the procurement or sale in question). In addition, a provision would be added to proposed paragraph 121.1603(b)(5) that would treat any protest filed before bid opening or notification of intended award as premature. Such premature protests would be automatically dismissed.

Proposed § 121.1604 would indicate the required form for a protest. A provision would be added which would explicitly authorize SBA to dismiss protests which do not contain sufficient specificity concerning the basis of the protest. For example, the mere allegation that a concern exceeds the applicable size standard would not be sufficient (need more than rumor in the industry); a protestor would be required to set forth the basis for such belief. Six examples of what is and what is not sufficient specificity in a protest (three showing sufficient specificity, three lacking it) would be added to the proposed rule by this section. Protests could not be supplemented if not specific in the first instance. If not specific, they would be dismissed. However, a protestor would be able to appeal a dismissal of a protest for lack of specificity to SBA's Office of Hearings and Appeals pursuant to § 121.1700 of these proposed regulations.

Proposed § 121.1605 would make the procedures relating to notification of the contracting officer, the protestor, and the protested concern and the filing of SBA Form 355 separate subsections for ease of citation and use. The language of the current regulations (current § 121.9(b)) would also be slightly clarified.

The details of the size determination procedures (current §§ 121.8 (a), (b) and (c)) would be separated into individual subsections in proposed § 121.1606 and would be clarified and made more precise for better understanding. Once the protest or request is found to be

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sufficiently specific, a formal size determination could be based on other grounds or information not raised in the protest/request. Even if the allegation in a protest is found to be false, a concern would still be determined to be other than small if SBA learns that the concern was not in fact small. For example, concern A would be found to be other than small in the following situation even though the basis raised in the protest was in error: (a) A protest alleges that concern A is affiliated with concern B because concern A was listed as an asset of concern B in magazine Y; (b) in fact, concern A had been sold by concern B two years earlier; but (c) SBA's review of concern A's financial reports indicates that concern A had annual receipts in excess of the applicable size standard.

Proposed § 121.1607 would set forth the procedures by which a concern may be recertified as small after a determination has been made finding the concern to be other than small. The substance of the procedures is basically the same as that specified in § 121.8(d) of the current regulations, with minor technical changes. The provision permitting the Office of Hearings and Appeals to make original decisions relating to recertification if good cause is shown in extraordinary circumstances has been deleted from the proposed rule. SBA believes that all applications for recertification should be decided in the first instance by the SBA Regional Office which made the initial adverse size determination.

Proposed Subpart 121.1700 would set forth the procedures for size and SIC Code appeals. As under the current regulations (current § 121.11), SBA's Office of Hearings and Appeals would have jurisdiction over appeals of formal size determinations and SIC Code designations and make decisions affirming, reversing or modifying such determinations and designations. In addition, the language of the current regulations would be reordered and clarified where necessary to make the appeals procedures easier to use.

The term "participant" (defined at § 121.11(b)(2) of the current regulations) would no longer be specifically defined in the proposed rule. Proposed § 121.1702(b) would make SBA a party to a size appeal as of right in section 8(a) size appeals (where only the selected section 8(a) concern which was determined to be other than small could appeal) and in other size appeals in which there is initially no other adverse party to the concern whose size is at issue (e.g., a size appeal by a concern which applied for financial assistance). The word "initially" would be added to this provision so that SBA would not automatically be a party in situations where a protestor appeals a formal size determination to the Office of Hearings and Appeals and then withdraws from the appeal.

Proposed § 121.1705 would clarify the time limits for appeals (current § 121.11(e)) by replacing the word "filed" within a specific time with "sent by certified mail, return receipt requested," within the same specified time. The date of mailing would be determined by the postmark indicated on the envelope of the appeal. Notwithstanding this certified mail requirement, a Notice of Appeal could be personally delivered to the Office of Hearings and Appeals within the same time period specified for the mailing. Proposed § 121.1706 would repeat, with clarifying language, the current "Initiation of Appeal" and "Notification of Filing of Appeal" procedures (current §§ 121.11 (f) and (g)). An appellant would be required to send a copy of the Notice of Appeal to SBA's Office of General Counsel. This would permit SBA program officials to be informed of important policy questions raised by a Notice of Appeal which might warrant the intervention of SBA to properly resolve. Proposed § 121.1707 would repeat the "Scope of Appeal and Burden of Proof" provision of the current regulations (current § 121.11(h)). The proposed provision would clarify that the appellant's burden of proof is by a preponderance of the evidence.

Proposed § 121.1708, "Response to Notice of Appeal," would be a revision to current § 121.11(i), "Statements of Interested Persons." This would be the provision by which interested persons would file responses to a Notice of Appeal. The time limit for such a response would be clarified from that in the current regulation. The proposed rule would require a Response to a Notice of Appeal to be received by the Office of Hearings and Appeals within 15 calendar days after such Office's issuance of the notification of the filing of an Appeal. The proposal would permit the Presiding Judge to set an alternative date where he or she deems it appropriate. For example, if there is no procurement pending the outcome of the appeal or if there are highly complex issues, the Presiding Judge could extend the 15-day period, as appropriate. The current provision requires a filing to be made no later than 5 days, exclusive of Saturdays, Sundays and holidays, after the receipt of a copy of the Notice of Appeal. The proposed rule would also permit the appellant, in the discretion of the Presiding Judge, to reply to any such response submitted.

Proposed § 121.1709 would be a new provision which would specifically authorize SBA and interested persons to move to intervene in a size appeal before the Office of Hearings and Appeals. This right was presumed under the current regulations, but has not heretofore been explicitly set forth.

Proposed § 121.1710 would combine the provisions of current §§ 121.11(k), "Docket File," and (1), "Public Access to Docket File," into a single section. The proposed rule would clarify the information not subject to public inspection or copying. Current § 121.11(1)(2)(i)—"information subject to a protective order"—would be replaced by "information subject to an *in camera* order." (A new § 121.1717 dealing with *in camera* orders would be added by the proposed rule.) In addition, a provision would be added which would prohibit disclosure of information which cannot be disclosed according to law (e.g., according to the Freedom of Information Act or the Privacy Act).

Proposed §§ 121.1711 and 121.1712 would repeat the current provisions relating to the assignment of a three judge panel (current § 121.11(m)) and the filing and service of pleadings (current § 121.11(n)). The provision of the current regulations concerning enforcement and extensions of time limitations (current § 121.11(j)) would be made part of the proposed section relating to the filing and service of pleadings. The proposed rule would permit the time limitations for the filing of a Notice of Appeal to be waived in extraordinary circumstances. For example, where a procurement is cancelled at or about the same time as the formal size determination, the 30-day period to appeal passes, and the procurement is then reinstated, a concern would be able to file a Notice of Appeal, in the discretion of the Presiding Judge. A provision would be added to proposed § 121.1712(c) that would require a party to petition for an *in camera* order to withhold proprietary information from the public and from other parties if such information is offered into evidence.

Proposed § 121.1713 would clarify the language of the provisions relating to the authority and functions of a Presiding Judge in a size appeal (current § 121.11(o)). Proposed § 121.1613(d) would explicitly authorize the Presiding Judge to permit discovery upon motion. This provision would expand current § 121.11(o)(6) (which authorizes the Presiding Judge to take or cause depositions to be taken) by explicitly allowing discovery other than

depositions. Proposed § 121.1613(e) would authorize the Presiding Judge to issue protective orders in the context of discovery (e.g., to limit the harassment of one party by another party). This deviates from current § 121.11(o)(2) which authorizes protective orders without any guidance. Proposed § 121.1713(g) would authorize the Presiding Judge to issue *in camera* orders, pursuant to § 121.1717, to protect documents or oral testimony offered in evidence from general disclosure. Proposed § 121.1713(j) would amend current § 121.11(o)(8) by expressly authorizing oral argument in all size appeals proceedings.

Proposed § 121.1714 would specify the rules that apply to oral hearings and telephone conferences. These rules are currently set forth in § 121.11(p). Size appeals will generally be decided by the Presiding Judge based on the written record, without an oral hearing. As under the current regulations, oral hearings will only be authorized where there is a genuine dispute as to a material fact which cannot be resolved except by confrontation of witnesses. Proposed § 121.1715 would repeat the prohibition against *ex parte* communications currently contained in § 121.11(q).

Proposed § 121.1716 would set forth the rules relating to subpoenas. These rules are, for the most part, the same as those contained in current § 121.11(w). The proposed rule would clarify that only parties to the proceeding may request that a subpoena be issued. Current § 121.11(w)(1) authorizes the use of subpoenas only with respect to oral hearings. The proposed rule would not contain this limitation on the use of subpoenas. In addition, this section of the proposed rule would limit the use of protective orders in the context of subpoenas to protect against harassment, undue expense or breach of confidentiality (the same limitations currently contained in § 121.11(w)(15)).

Upon motion and a showing of good cause, proposed § 121.1717 would give the Presiding Judge the authority to order documents or oral testimony to be received *in camera*. Any person seeking disclosure of *in camera* documents or access to testimony could make a written request to the Presiding Judge who issued the *in camera* order. The Presiding Judge could grant or deny the request in whole or in part. Where a request for disclosure has been denied in whole or in part, an appeal could be taken to the Assistant Administrator for the Office of Hearings and Appeals. An appeal could also be taken to the Assistant Administrator for the Office of Hearings and Appeals where the original motion for an *in camera* order was denied in whole or in part. *In camera* materials would be segregated from the docket file and protected from public disclosure until the termination of the *in camera* treatment, either by expiration of the order or a successful appeal seeking disclosure of the *in camera* materials.

Proposed § 121.1718 would set forth the rules applicable to the record compiled in a size appeal. These rules are basically the same as those contained in current § 121.11(r). The date that the record is closed when no oral hearing is held would be changed by the proposed rule to 20 calendar days after the Office of Hearings and Appeal's issuance of the notification of the filing of an appeal. The Presiding Judge would be able to amend the date that the record is closed upon notice to all parties to the proceeding. This change would provide greater certainty than the language of § 121.11(r)(2) of the current regulation. The post-hearing procedures of proposed § 121.1719, specifying the rules which apply to proposed findings and conclusions, are the same as those contained in current § 121.11(s).

Proposed § 121.1720 would combine the provisions of current § 121.11(t) ("Decision") and (u) ("Notice of Decision") into one section. The decision of the Office of Hearings and Appeals is the final decision of SBA concerning the concern's size. It is effective immediately and binds all parties to a proceeding. Since the term "party" is defined by § 121.1702(b) of the proposed rule (as well as by § 121.11(b)(3) of the current regulations) to include all alleged affiliates of the concern whose size is at issue that participate in or are specifically afforded the opportunity to participate in the proceeding by the Presiding Judge, a decision finding concern X to be large because it is affiliated with concern Y and together their annual receipts exceeds the applicable size standard would bind concern Y if the Presiding Judge asked concern Y to participate even if concern Y declined (i.e., concern Y would necessarily be large because of such decision).

Proposed § 121.1721 would set forth the procedures by which a decision by the Office of Hearings and Appeals could be reconsidered. Upon notice to all parties to the proceeding, the three-judge panel could reopen the proceeding on its own initiative at any time after a written decision has been issued and enter a new decision. This proposed section would replace current § 121.11(v), "Termination of Jurisdiction." In order to be able to reopen a proceeding on its own initiative, the authority of the three-judge panel could not cease upon the issuance of a decision (as per the current regulations). The proposed rule would permit a party to file a petition for reconsideration of the decision in lieu of a motion to reopen the proceeding. The sole ground upon which a petition for reconsideration could be based would be new questions raised by the decision concerning which the petitioner had no previous opportunity to present evidence or argument. In addition, in cases where SBA has not previously appeared, and was not so asked to appear by the Presiding Judge, SBA could file a petition for reconsideration where the decision allegedly presents significant issues of precedential importance. In order for SBA to file such a petition, the decision would have to have a significant impact on the program area involved. A decision which affects only the concerns involved in the appeal, without impacting upon the program area under which the appeal was brought, would not warrant SBA to file a petition for reconsideration. Regardless of who files a petition for reconsideration, the Office of Hearings and Appeals could grant or deny the petition in its discretion. The proposed rule would permit any party to oppose a petition for reconsideration. The filing of a petition for reconsideration would not stay the immediate effect of a decision by the Office of Hearings and Appeals, unless explicitly ordered by the panel.

Proposed § 121.1722 would repeat the provision of current § 121.11(x) concerning the delegation of authority to another Judge in the Office of Hearings and Appeals to participate in rendering a final decision where a Judge on the three-judge panel is unavailable. The proposed rule would make a slight clarification in the language of this provision from the current regulations.

This proposed rule, if promulgated in final form, could be considered a major rule within the meaning of Executive Order 12291 because it contains several substantive provisions which determine whether a concern in any industry may be considered small for purposes of Federal assistance. In addition, this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Consequently, SBA offers the following regulatory impact analysis and initial regulatory flexibility analysis for the purpose of compliance with the

pertinent requirements of those two measures:

(1) *Description of potential benefits of the rule:* This revision taken as a whole would provide SBA, other Federal agencies, and concerns seeking Federal assistance as small businesses with size procedures which are easier to use and understand. The restructured Part 121 would clearly identify all the applicable size rules for each specific small business assistance program. Confusion as to whether a general rule applies to a specific program will be eliminated. The revision would also provide clearer guidance concerning the procedures by which a concern may protest the size of another concern and appeal the decision in a formal size determination. The rule would clarify how the size procedures, established over time, will be applied. It is our belief that SBA would benefit by the revision since its purpose is to clarify the regulatory framework governing the size program and thus provide for more efficient administration.

(2) *Description of potential costs of the rule:* There should be no costs inherent in the revision which are not presently involved in the administration of the size program. The procedures contained in the proposed rule are basically the same rules currently contained in Part 121 of SBA's regulations. The proposed rule would be, for the most part, a reorganization of the current rules into a format which is easier to use and understand. The rule would not impose monetary or other types of costs upon SBA, other Federal agencies, or those entities seeking small business status. The rule would not change the specific size standards which apply to particular industries and SIC Codes and, thus, would not determine who is and who is not eligible for specific assistance programs.

(3) *Description of the net benefits of the rule:* This revision, taken as a whole, should clarify existing ambiguities in and provide a more logical progression to SBA's size regulations.

(4) *Description of reasons why this action is being considered and objectives of the rule:* The reasons why this rule is being proposed and its objectives are contained above in the Supplementary Information to this proposed rule.

(5) *Legal basis for proposed rule:* The legal basis of this proposed rule is sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6).

(6) *Description of entities to which the rule would apply:* The proposed rule would clarify the methodology of establishing size standards, clarify the procedures by which a concern may protest the size of another concern to or request that a formal size determination be performed by SBA, and amend certain provisions having substantive effect on whether a concern is considered small. Any entity wishing to be considered small or to so protest or request a formal size determination would be affected by the rule.

(7) *Federal rules:* There are no Federal rules which duplicate, overlap or conflict with the proposed rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards. These procedures are part of that exclusive jurisdiction.

(8) *Significant alternatives to the proposed rule:* The changes set forth in these proposed regulations from the current size regulations would clarify existing ambiguities and conform the size regulations to SBA policies and precedents. Thus, there are no significant alternatives which would accomplish the stated objectives of this proposed rule.

SBA certifies that this proposed rule would not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. Ch 35. SBA form 355, appearing in §§ 121.1605 and 121.1607 of this proposed rule, has been approved by the Office of Management and Budget under number 3245–0101. SBA Form 723, appearing in § 121.1006(d) of this proposed rule, has been approved by the Office of Management and Budget under number 0596–0021.

List of Subjects in 13 CFR Part 121

Small businesses, Standard Industrial Classification Codes.

Accordingly, pursuant to the authority set forth in sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6), SBA hereby proposes to amend Title 13 of the Code of Federal Regulations by redesignating the table in § 121.2 into a new § 121.600 and revising the table heading, and revising the remainder of Part 121 to read as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

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Authority: Sections 3(a) and 5(b)(6) of the Small Business Act, as amended (15 U.S.C. 632(a), 634(b)(6)).

§ 121.100 Statutory provisions.

§ 121.101 Congressional policy.

Section 2(a)of the Small Business Act, 15 U.S.C. 631(a), sets forth the Congressional policy that the Government should ensure that a fair proportion of the Government's procurement needs be placed with small business enterprises.

§ 121.102 Authority to set size standards.

Sections 3(a) and 8(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 637(b)(6), authorize the Small Business Administration (SBA) to determine which business enterprises are to be designated "small business concerns" within any industry.

§ 121.200 General provisions.

§ 121.201 Purpose of the SBA size program.

(a) To implement statutory policy, Congress established the Small Business Administration (SBA) in 1953 and gave it the responsibility to administer a range of programs designed to achieve specified socio-economic goals. Generally, eligibility for assistance under SBA programs requires that a firm be "small." In addition, other Federal agencies may implement programs for which a "small" size is an eligibility criterion. Both the actual setting of size standards (i.e., the size specification of "small") and the determination of which concerns fall within these standards and accordingly qualify as "small" are powers delegated to the Administrator of the SBA.

(b) Federal assistance should not be regarded as permanent nor as the primary source of a firm's receipts. It should be used to assist a firm to compete in the regular business world, without becoming dependent on continuing Government aid. Small businesses should plan for the day when they can compete without assistance.

§ 121.202 General outline of SBA's size program.

The basic operation of SBA's Size Program is as follows: (a) SBA establishes the appropriate size standards applicable to particular standard industrial classification codes (see § 121.600 of this part).

(b) SBA determines which concerns qualify as "small" under the appropriate size standard. This process often includes a self-certification procedure by which a concern certifies its size eligibility and may involve a protest or request for a formal size determination (see § 121.1600 of this part for the procedures concerning size protests and requests for formal size determinations). This process is separately explained for each assistance program (see §§ 121.800 through 121.1500 of this part).

(c) An adversely affected concern or other interested parties may obtain a review of the size determination by SBA's Office of Hearings and Appeals (see § 121.1700 of this part).

§ 121.203 Notification by concern of adverse size determination.

If a concern has been determined by SBA to be ineligible as a small business under a particular size standard, and it has already certified itself to be a small business on a pending Government procurement or on another assistance application, subject to the same or a lower size standard, it shall immediately notify the contracting officer or the appropriate Government official of such adverse size determination. (See § 121.1607 of these regulations for the Recertification Procedure.)

§ 121.204 Effect of adverse size determination and recertification.

If SBA has made a formal size determination that a particular concern is not small, the concern will be deemed ineligible within such applicable size standard for any assistance under the Small Business Act, the Small Business Investment Act of 1958 or other applicable law, unless it is thereafter recertified by SBA as a small business. A change in circumstances may provide a basis for an application for recertification. (See §§ 121.1606(h) and 121.1607 of this part for specific provisions as to the effect of and procedures for recertification.)

§ 121.300 Functions and responsibilities of SBA offices.

§ 121.301 Office of size standards staff.

(a) SBA's Office of Size Standards Staff shall: (1) Develop and recommend small business size standards:

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(2) Consider and take appropriate action on written requests to change existing size standards or establish new size standards;

(3) Conduct industry hearings pertaining to size standards, when necessary;

(4) Conduct reviews of industry size standards, pursuant to § 121.700 of these regulations, where credible evidence is submitted by a petitioner that such a review is warranted;

(5) Perform other related functions (e.g., industry studies) as may be appropriate to administer the SBA size standards program.

(b) Requests to change the existing or establish new size standards should be addressed to the Director, Size Standards Staff, 1441 L Street NW., Washington DC 20416. These requests should include information relative to the economic conditions and structure of the entire national industry, as well as specific reasons and justifications for the change or new size standard. Any request to change an existing size standard should provide information concerning the effect such a change would have on the Federal procurement process.

(c) If no size standard for an industry has been established in this part, then SBA, upon request, may issue a temporary size standard for the industry in question by publishing an interim emergency rule in the **Federal Register** with an opportunity for public comment in accordance with the Administrative Procedure Act.

§ 121.302 Office of General Counsel.

The Office of General Counsel shall: (a) Develop, coordinate, and recommend regulations and procedures to assist in implementing the size standards;

(b) Upon motion or other appropriate pleadings, represent the agency in proceedings before the Office of Hearings and Appeals in order to present the position of the SBA;

(c) Represent the agency in connection with any matter arising out of this Part 121 before the Comptroller General, other agencies and the courts.

§ 121.303 The Size Policy Board.

(a) The SBA Size Policy Board considers and makes recommendations relating to improvements in SBA regulations, procedures and directives concerning size matters, including size standards.

(b) The members of the SBA Size Policy Board are: (1) The Associate Administrator for Procurement (Chairperson);

(2) The Associate Administrator for Finance and Investment;

(3) The Associate Administrator for Minority Small Business/Capital Ownership Development;

(4) The Assistant Administrator for Innovation, Research & Technology;

(5) The Director of the Size Standards Staff;

(6) The Chief Counsel for Advocacy;

(7) One Regional Administrator, designated by the Administrator;

(8) The General Counsel (non-voting, advisory member);

(9) The Assistant Administrator for Hearings and Appeals (non-voting, advisory member);

§ 121.304 The Office of Hearings & Appeals.

Pursuant to the provisions of § 121.1700 of this Part, SBA's Office of Hearings and Appeals will review appeals and make final decisions affirming, reversing or modifying:

(a) Determinations by the SBA Regional Offices, made pursuant to § 121.1600 of this part, as to a concern's small business size status (size status determinations);

(b) Designations by contracting officers, protested to SBA pursuant to § 121.1600 of this Part or changed by SBA pursuant to § 121.902(d) or § 121.1102(d) of this Part, as to the Standard Industrial Classification (SIC) Code into which the product or service is classified and/or as to the Small Business Administration size standard applicable thereto (product or service classifications).

§ 121.305 Regional offices.

(a) The Regional Offices of SBA shall make: (1) Formal size determinations pursuant to a protest (under § 121.1600 of this part) against the self-certification of a concern in connection with eligibility for government set asides (§ 121.900 of this part), eligibility for sales or leases of government property (§ 121.1000 of this part), or eligibility for SBA's Small Business Innovation and Research Program (§ 121.1200 of this part).

(2) Where necessary in connection with a size determination or size appeal, product or service classifications and/or size standard designations where an unclear, incomplete, incorrect or missing classification/designation has been made by the contracting officer.

(3) Formal size determinations (under § 121.1600 of this part) pursuant to a request by a section 8(a) participant whose status as a small business is not verified by SBA in connection with a particular section 8(a) procurement (§ 121.1100 of this part). Formal determinations shall also be made by the Regional Offices in connection with such applications for section 8(a) assistance upon request by an SBA official.

(4) Formal size determinations (under § 121.1600 of this part) pursuant to a request therefore by an applicant for any assistance program of SBA not otherwise provided for, adversely affected by a size status finding made by an official of SBA, or by a size status finding made by a participating financial institution or a small business investment company in connection with an application for financial assistance (§ 121.800 of this part). Formal size determinations shall also be made by the Regional Office in connection with applications for program assistance upon request by the appropriate program official of SBA, a participating financial institution or a small business investment company.

(b) Except for SBA's small business set aside program and SBA's Small Business Innovation and Research program, formal size determinations shall be made by the SBA Regional Office serving the geographical area in which the principal office of the protested concern or applicant concern, excluding its affiliates, is located. Formal size determinations in the small business set aside program and SBA's Small Business Innovation Research program shall be made by the SBA Regional Office serving the geographical area of the headquarters of the offeror, regardless of the location of parent companies or affiliates.

(c) The Regional Administrator may request a formal size determination whenever he/she deems it appropriate.

§ 121.400 Definitions.

§ 121.401 Affiliation.

(a) *General rule.* (1) Except as otherwise noted, size determinations shall include the applicant concern and all its domestic and foreign affiliates. Moreover, all affiliates, regardless of whether organized for profit, must be included.

(2) Except as otherwise provided in this section, concerns are affiliates of each other when either directly or indirectly

(i) One concern controls or has the power to control the other, or

(ii) A third party or parties controls or has the power to control both, or

(iii) Such an "identity of interest" between or among parties exists so that affiliation may be presumed.

(3) In determining whether affiliation exists, consideration shall be given to all appropriate factors, including common

ownership, common management, and contractual relationships.

(b) *Exclusion from affiliation coverage.* Portfolio or client concerns owned in whole or substantial part by investment companies licensed, or development companies qualifying under the Small Business Investment Act of 1958, as amended, or by Investment Companies registered under the Investment Company Act of 1940, as amended, concerns wholly owned by Indian Tribes and incorporated as economic instrumentalities of such tribes, or concerns wholly owned by Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*) are not considered affiliates of such investment companies, development companies, tribes or Alaska Regional or Village Corporations.

(c) *Nature of control in determining affiliation.* (1) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example. A party owning 50 percent of the voting stock of a concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders. Affiliation exists when one or more parties have the power to control a concern while at the same time another party, or other parties, may be in control of the concern at the will of the party with the power to control.

(2) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors.

(3) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example. In a corporation where the officers and directors own various size blocks of stock totalling 40 percent of a concern's voting stock, but no officer or director has a block sufficient to give him control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control.

(d) *Identity of interest between and among persons as an affiliation determinant.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(e) *Affiliation through stock ownership.* (1) A person is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(2) A person is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(3) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, the persons have an "identity of interest" (see paragraph (d) of this section); and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each such person controls or has the power to control the concern.

(f) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1. If company "A" holds an option to purchase a controlling interest in company "B," the situation is treated as though company "A" had exercised its rights and had become owner of a controlling interest in company "B." The employees or annual receipts, as the case may be, of both concerns must be taken into account in determining size.

Example 2. If large company "A" holds 70% (70 of 100 outstanding shares) of the voting stock of company "B" and gives a third party an option to purchase 25 shares of concern "B", company "B" will be deemed to be an affiliate of company "A" until the third party actually exercises its option to purchase such shares. In order to prevent large company "A" from circumventing the intent of the regulation which gives present effect to stock options, the option is not considered to have present effect in this case.

Example 3. If company "A" has entered into an agreement to merge with company "B" in the future, the situation is treated as though the merger has taken place.

(g) *Affiliation under voting trusts.* If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction. However, if a voting trust is primarily entered into for a legitimate purpose other than that described above, and it is recognized within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination.

(h) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another concern.

(i) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated.

(j) *Affiliation with a newly organized concern.* Affiliation generally arises where former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and the one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, bid or performance bond indemnification, and/or other facilities, whether for a fee or otherwise.

(k) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that its economic viability would be in jeopardy without such contracts/business.

(l) *Affiliation under joint venture arrangements.* (1) A joint venture for size determination purposes is an association of concerns, with interests

in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/ losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(2) For the purpose of financial assistance to a joint venture, the parties thereto are considered to be affiliated with each other. Where the financial assistance, however, is to a concern for its own use, outside the joint venture, an affiliation determination shall not automatically arise from the existence of the joint venture arrangement. In this latter situation, the existence of affiliation shall be determined under these regulations.

(3) Concerns bidding on a particular procurement or property sale as joint venturers are affiliated with each other with regard to performance of the contract. This determination of affiliation does not extend to other contracts or business outside the joint venture arrangement.

(4) An ostensible subcontractor which performs or is to perform primary or vital requirements of a contract may have such a controlling role that it must be considered a joint venturer affiliated on the contract with the prime contractor. In determining whether subcontracting rises to the level of affiliation as a joint venture, SBA considers whether the prime contractor has unusual reliance on the subcontractor.

(5) Even though a concern might not be an affiliate of its joint venturers for the purpose of operations apart from the joint venture, it nevertheless must include its proportionate share of the joint venture receipts in determining its eligibility under the size standards.

(m) *Affiliation under franchise and license agreements.* In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints, relating to standardized quality, advertising, accounting format and other provisions, imposed on a franchisee by its franchise agreement shall generally not be considered, provided that the franchisee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee may not be controlled by the franchisor by virtue of such provisions in the franchise agreement, control and, thus, affiliation could arise through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

§ 121.402 Annual receipts.

(a) In size determinations where the standard is "annual receipts," size eligibility requires that the concern may not exceed the "annual receipts" in that standard.

(b) *Definitions.* For the purpose of determining annual receipts of a concern:

(1) "Accrual basis" means a method of accounting in which accounts and notes receivable are recorded in the regular books of account for the period in which the firm first has a claim of right to them. "Claim of right" has the meaning attributed to it by the U.S. Internal Revenue Service (IRS).

(2) "Receipts" is defined to include all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. However, the term "receipts" excludes proceeds from sales of capital assets and investments, proceeds from transactions between a concern and its domestic and foreign affiliates, proceeds from payments of notes receivable and accounts receivable, and amounts collected as an agent for another, such as gross bookings on which a commission is earned (in which case only the commission earned would constitute revenue) or such as taxes collected for remittance to a taxing authority.

(3) "Regular books of account" means the general ledger or other book of final entry and, if used, the journals or other books of original entry.

(4) "Completed fiscal year" means a taxable year not including any short period. "Taxable year" and "short period" have the meaning attributed to them by the IRS.

(5) Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.

(c) *Period of measurement.* "Annual Receipts" of a concern which has been in business for 3 or more completed fiscal years means the arithmetic annual average revenue of the concern over its last 3 completed fiscal years (total revenue compiled over the entire 3-year period would be divided by three). "Annual Receipts" of a concern which has been in business for less than 3 fiscal years means the arithmetic annual average revenue over the time period the concern has been in business. (Total revenues compiled over the period the concern has been in business, divided by the number of weeks, including fractions of a week, the concern has been in business, multiplied by 52).

(d) *Method of determining annual receipts.* (1) Revenue may be taken from the regular books of account of the concern. If the concern so elects, or has not kept regular books of account, or the IRS has found such records to be inadequate and has reconstructed income of the concern, then revenue as shown on the Federal Income Tax return of the concern may be used in determining annual receipts, *Provided;* that subject to the exception in paragraph (d)(2) of this section, revenue shown on the regular books of account or the Federal Income Tax return on a basis other than accrual must be restated to show revenue on an accrual basis. Further, where the completed contract method of determining income has been used, revenue must be restated to a percentage of completion method prior to determining annual receipts.

(2) Where the Federal Income tax return of a concern, restated if necessary pursuant to paragraph (d)(1) of this section to reflect the percentage of completion method, shows its annual receipts to be less than 75% of the applicable size standard, the concern need not restate its revenue to an accrual basis prior to determining annual receipts.

(e) *Annual receipts of affiliates.* (1) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period, the "annual receipts" in determining size status include the receipts of both the applicant and the affiliate. Furthermore, this aggregation of the receipts of both the applicant and its affiliate applies during the entire period used in computing size (usually the preceding three complete fiscal years) rather than only for the period after the affiliation arose.

(2) The "annual receipts" of a concern which had been an affiliate of the applicant during part of the period used in determining size (usually the preceding three completed fiscal years), but was not an affiliate at the time of self-certification for the assistance in question, are not included within the computation of "annual receipts" in making size determinations. This exclusion of "annual receipts" of a former affiliate applies during the entire

period used in computing size, rather than only for the period after which the affiliation ceased.

§ 121.403 Business concern or concern.

A business concern eligible for assistance as a small business is a business entity, including its affiliates, organized for profit, with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, materials and/or labor. Such business entity must be at least 51 percent owned and controlled by an individual(s) who is(are) citizens of or lawfully admitted permanent resident aliens in the United States, or by another business entity (or entities) eligible for assistance under this section.

(a) To be eligible as a small business for a Government procurement, a business entity must incur more than 50 percent of the direct material, direct labor, and applied overhead of the contract in the United States, unless the procuring activity requires otherwise.

(b) Such business entity may be in the legal form of an individual proprietorship, partnership, corporation, joint venture, association, trust or a cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.

§ 121.404 Employees.

The term "employees" means all individuals employed on a full-time, part-time, temporary, or other basis. Such other basis may exist, for example, where individuals are provided by an independent employment contractor in an apparent effort to circumvent these regulations.

§ 121.405 Key employee.

A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

§ 121.406 Not dominant in field of operation.

A business concern falling within SBA's size standards (set forth in § 121.600 of this Part) is deemed not dominant in its industry or field of operation.

§ 121.407 Number of employees.

In size determinations where the standard is "number of employees," size eligibility requires that the concern may not exceed the number of employees in that standard.

(a) "Number of employees" means the average employment of the concern, including the employees of its domestic and foreign affiliates, based upon employment during each of the pay periods for the preceding completed 12 calendar months.

(b) In computing average employment, part-time and temporary employees are counted as full time employees for each applicable pay period.

(c) If a concern has not been in business for 12 months, "number of employees" means the average employment of the concern, including its affiliates, during each of the pay periods during which it has been in business.

(d) If a concern has acquired an affiliate or has been acquired as an affiliate during the applicable averaging period, the "number of employees" in determining size status includes both the employees of the applicant and the affiliate. Furthermore, this aggregation of the employees of both the applicant and its affiliate applies during the entire period used in computing size (usually, the preceding 12 months) rather than only for the period after the affiliation arose.

(e) The employees of a concern which had been an affiliate of the applicant during part of the period used in determining size (usually the preceding 12 months), but was no longer an affiliate at the time of self-certification for the assistance in question, are not included within the computation of "number of employees" in making size determinations. This exclusion of employees of a former affiliate applies during the entire period used in computing size.

§ 121.500 Changes in size standards.

§ 121.501 General.

Any proposed size standard change will be published in the **Federal Register** and will include a description of the various factors considered in devising the size standard. Such proposal will also identify the number of small businesses which would be affected by the change in the size standard.

§ 121.502 Methodology for enumerated industries.

(a) Where the Administrator determines that, for any of the four industry categories specified below, the combined number of small business set aside contracts and section 8(a) awards exceeds an average of 30 percent of the dollar value of the total Federal contract awards for that industry category for the most recently completed three Federal fiscal years, the Administrator shall adjust the size standard(s) corresponding to the SIC Code(s) for such industry category to a size that will likely reduce the combined number of such set aside contracts and section 8(a) awards to approximately 30 percent of the total value of Federal contracts to be awarded for that industry category. This section applies only to the size standards for the following industry categories:

(1) Construction (All SIC Codes in Major Groups 15, 16 and 17 of the SIC System);

(2) Architectural and engineering services, including surveying and mapping services (SIC Codes 8711, 8712 and 8713);

(3) Ship building and ship repair (SIC Code 3731); and

(4) Refuse systems and related services (SIC Code 4953).

(b) Any adjustment made to a size standard pursuant to this subsection may be petitioned as set forth in § 121.700 of these regulations.

§ 121.503 Sources of data.

The basic sources of data used in establishing size standards include: *The Standard Industrial Classification Manual*, which is used as a guide in defining industries; U.S. Bureau of the Census, Economic Censuses including *Concentration Ratios in Manufacturing* and *Enterprise Statistics;* special tabulations of the *Enterprise Statistics* (prepared for SBA by the U.S. Bureau of the Census); *Annual Survey of Manufactures;* U.S. Department of Commerce, *U.S. Industrial Outlook, Survey of Current Business*, and *County Business Patterns;* Internal Revenue Service, *Statistics of Income;* Dun and Bradstreet, *DMI Market Profile;* and SBA's small business data base (USEEM tabulations); *Federal Procurement Data System* statistics; SBA's own extensive files of articles and correspondence; information provided by trade associations; and other appropriate sources.

§ 121.600 Standard Industrial Classification Codes and size standards.

The following industry size standards apply to all SBA programs except the sales of Government property (§ 121.1000); physical disaster loans (no size standards); non-physical disaster loans, Small Business Investment Companies, Development Companies, and Pollution Control Bonds (see § 121.800). The Standard Industrial Classification (SIC) Codes and corresponding industry size standards are set forth in the table following this section. Their relationship to the various SBA programs is set forth in §§ 121.800, 121.900, 121.1100, 121.1200 and 121.1400 of these regulations. The table column labeled "SIC" follows the standard

industrial classification codes as published by the U.S. Government respectively in the current version of the *Standard Industrial Classification Manual*, Office of Management and Budget, Executive Office of the President. The *Standard Industrial Classification Manual* is intended to cover the entire field of economic activities. It classifies and defines activities by industry categories and is the source used by SBA as a guide in defining industries for size standards. (It is available for sale from the U.S. Government Printing Office [1] and is in the reference room of most libraries.) The number of employees or annual receipts indicates the maximum allowed for a concern (including its affiliates) to be considered small.

Size Standards by SIC Industry

* * * * *

[Size Standard Table is redesignated from old § 121.2].

§ 121.700 Petitions for review of size standard adjustments and industry category designations.

(a) Any person may petition the Administrator at any time to review an adjustment to a size standard which was made pursuant to § 121.502 of these regulations in order to reduce the percentage of small business set-aside contracts awarded under the SIC Code corresponding to such size standard to approximately 30 percent of the dollar value of the total Federal contract awards for that SIC Code if the petitioner presents evidence that the adjustment to the size standard:

(1) Is not likely to achieve that purpose, and

(2) Has caused the petitioner to suffer severe financial loss.

(b) Any person may petition the Administrator at any time to review any designation of an industry category for the purpose of possible further segmentation of such designation due to special capital equipment needs or special labor or geographic requirements or to recognize a new industry if the petitioner presents evidence that the designation:

(1) Is not likely to assure that a fair proportion of the total purchases and contracts for property or services for the Government in that industry category are placed with small business concerns, and

(2) Has caused the petitioner to suffer severe financial loss.

(c) Within 30 days of receipt of the petition, the Administrator shall render a final determination as to whether credible evidence has been presented to require SBA to conduct an in-depth review of the size standard adjustment or industry category designation in question.

(d) Where a review of the adjustment or designation is warranted, SBA will perform an in-depth examination of the entire industry relating to the size standard adjustment or industry category designation in question. SBA will publish its findings concerning the review in the **Federal Register** at the completion of the review. Any proposed change in a size standard or segmentation of an industry category designation will follow the normal notice and public comment rule-making procedures.

§ 121.800 Small business eligibility for SBA financial assistance.

§ 121.801 Programs covered.

These sections apply to small size determinations for the purpose of SBA financial assistance, including assistance under the Business Loan Programs, the Disaster Loan Programs (except physical disaster assistance), the Small Business Investment Company Program, the Development Company Programs, the Surety Bond Guaranty Program and the Pollution Guaranty Program.

§ 121.802 Establishment of the size standard.

(a)(1) An applicant concern for an SBA Business Loan, Disaster Loan (other than physical disaster loans), and Pollution Control Guaranty assistance must meet a two-fold size standard. It must meet the size standard designated for the industry/classification in which the applicant, including its affiliates, is primarily engaged *and* the size standard that the applicant concern, not including its affiliates, is primarily engaged. These size standards are set forth in § 121.600 of this regulation.

(2) For financial and/or management/technical assistance under the Small Business Investment Company program and the Development Company programs, an applicant concern must meet one of the following standards:

(i) Together with its affiliates, it does not have net worth in excess of $6 million, and does not have average net income after Federal income taxes (excluding any carry-over losses) for the preceding 2 completed fiscal years in excess of $2 million; or

(ii) Together with its affiliates, it meets the size standard for the industry/classification in which it is primarily engaged and, excluding its affiliates, meets the size standard for the industry/classification in which it is primarily engaged. These size standards are set forth in § 121.600 of these regulations.

(3) An applicant, including its affiliates, for Surety Bond Guaranty assistance must not have average annual receipts for its preceding three completed fiscal years in excess of $3.5 million.

(b) In determining what is the primary industry in which a concern applying for financial assistance is engaged, primary consideration shall be given to the distribution of receipts, employees and costs of doing business among differing industries in which a concern is operating for the most recently completed fiscal year of the concern. Other factors (e.g., patents, contract awards, assets) may be considered.

(c) Where the size standard relates to the applicant and its affiliates, the determination of the appropriate primary business and accordingly, the appropriate size standard of the applicant, must include the aggregates for the concern and its affiliates. Furthermore, the application of size criteria (i.e. number of employees or annual receipts) to the size standard is not confined to the operations of the primary business of the concern, but must measure all operations of the concern.

(d) Labor Surplus Area & Redevelopment Area Differentials: The applicable size standards for the purpose of all SBA financial programs, excluding the Surety Bond Guarantee Program, are increased by 25 percent whenever the concern agrees to use the assistance within a "labor surplus area," or "redevelopment area." "Redevelopment area" is defined in the Public Works Economic Development Act of 1965 (Pub. L. 89–136, 79 Stat. 570, 42 U.S.C. 3211), "Labor surplus areas" are listed monthly in the Department of Labor publication "Area Trends."

§ 121.803 Time at which size is determined.

(a) Except in the case of Disaster Loan assistance, the size of an applicant for SBA financial assistance is determined as of the date of its application for such financial assistance. Subsequent changes in size between the date of application and the extension of SBA financial assistance will not affect a firm's size status.

(b) Agreements to merge, including agreements in principle, stock options, or convertible securities and other business arrangements affecting possible future affiliation of the concern with another concern or change of control of the concern are considered as

[1] Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

executed as of the date of the application.

(c) In the case of applicable disaster loan assistance (i.e., disaster assistance other than physical disaster loans), the size status and the relevant size standards are determined as of the time the disaster commenced, as set forth in the Disaster Declaration.

§ 121.804 Procedures prior to a formal size determination.

(a) An applicant for SBA financial assistance shall be deemed to assert as part of its application that it is small under the applicable SBA size standard.

(b) In processing such application, SBA shall consider the size of the applicant in determining eligibility. Where applications with accompanying materials contain credible information indicating that the applicant may not be small, the processing official shall cause a determination to be made as to program size eligibility based on information supplied in the application and any other information requested.

(c) In the absence of credible information indicating otherwise, a participating financial institution, a small business investment company, a development company, a surety bond company, or a pollution control guaranty issuing authority may accept at face value the information provided by the applicant for the particular financial assistance involved.

(d) The SBA program official with authority to take final action on the assistance requested has the authority to make a program size eligibility determination, except that such a determination is not a formal size determination as described in § 121.1600 of these regulations. Where he or she deems it appropriate, such a formal size determination may be requested prior to a determination to deny eligibility for such assistance on the grounds of size.

(e) When an applicant has been denied assistance for size ineligibility because the SBA program official has found it to be other than small, the applicant may request a formal size determination (pursuant to § 121.1600 of these regulations) with the SBA Regional Office serving the geographical area in which the SBA office denying the assistance is located.

(f) When requested pursuant to paragraph (d) or (e) of this section, the SBA Regional Office shall make a formal size determination in accordance with the procedures set forth in § 121.1600 of these regulations, except that the time limitations shall not apply and notification of the request and the formal size determination shall be provided to requesting officials and/or SBA program officials interested in the matter.

§ 121.805 Business loan to refinance existing loan.

A concern which applies for an SBA loan or guarantee to refinance an existing SBA loan or guarantee but which, since the date of the original financing, has by natural growth (as distinguished from e.g., merger or acquisition) grown to a size which exceeds the applicable size standard, is considered as small for the purpose of refinancing, if SBA determines administratively that refinancing is necessary to protect the Government's financial interest.

§ 121.900 Size eligibility for government procurement.

§ 121.901 Programs covered.

These sections apply to size for the purpose of government procurement programs, including government procurement reserved for small business (i.e. the small business set aside program), SBA's Certificate of Competency Program and the Small Business Subcontracting Program authorized under section 8(d) of the Small Business Act. The contracting aspects of SBA's Minority Enterprise Program (The section 8(a) Program) are separately covered under § 121.1100 of this Part.

§ 121.902 Establishment of the size standard.

(a) Except as provided in § 121.912(a) of these regulations, a concern which submits an offer on a Government procurement must meet the size standard determined by reference to the SIC Code as specified in the solicitation or as clarified, completed, supplied or corrected by SBA pursuant to paragraph (d) of this section. These standards are set forth in § 121.600 of these regulations.

(b) The proper SIC Code designation for the goods or services being procured is that which best describes the nature of the procurement, giving primary consideration to the industry descriptions in the SIC Manual, the product or service description in the solicitation and attachments thereto, the relative value of each of the components in the procurement (if in fact there is more than one component which makes up the end item being procured) and the function of the goods or services being purchased. Consideration may also be given to previous Government procurement classifications of the same or similar products or services, additional information on the industries and on the product or service procured, and to evaluations on which industry classification would best serve the purposes of the Small Business Act.

(c) The determination of the appropriate SIC Code designation shall be made by the contracting officer of the procuring agency or his authorized representative. Both the SIC Code designation and the applicable size standard (i.e., number of employees or annual receipts) shall be set forth in the solicitation and such determination of the contracting officer shall be final unless appealed to SBA's Office of Hearings and Appeals in the manner provided in § 121.1700 of this Part or changed by SBA pursuant to paragraph (d) of this section.

(d) An unclear, incomplete or missing SIC Code designation and/or size standard by the contracting officer or his representative in the solicitation may be clarified, completed or supplied by SBA, if necessary, in connection with a formal size determination or size appeal. As part of a formal size determination or size appeal, SBA may also correct an incorrect SIC Code designation and/or size standard designation made by the contracting officer in the solicitation, after giving the contracting officer an opportunity to comment on or submit information relating to such designation to SBA.

(e) Any offeror or other interested party adversely affected by a SIC Code designation and/or size standard designation by the contracting officer or the appropriate SBA official may appeal such designation to SBA's Office of Hearings and Appeals under the procedures set forth in § 121.1700.

§ 121.903 Binding size determinations.

Size and SIC Code determinations are formal actions by the appropriate SBA officials, pursuant to §§ 121.1600 and 121.1700 of this part, based upon a specific Government procurement and are binding upon the parties. Opinions provided by SBA to contracting officers or others, not relating to a specific government procurement and not given pursuant to §§ 121.1600 or 121.1700 of this part, are advisory in nature and not binding size determinations under these sections, and are not appealable.

§ 121.904 Time at which size is determined.

(a) The size status of a concern (including its affiliates) is determined as of the date of its written self-certification as a small business. The concern shall certify that it is a small business for the purpose of performing a particular contract at the time it submits

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its initial offer including price to the procuring agency for that contract.

(b) Agreements to merge, including agreements in principle, stock options, convertible securities and other business arrangements affecting possible future affiliation of the concern with another concern or change of control of the concern are considered executed as of the date of the certification.

(c) Where a solicitation is modified so that initial offers are no longer responsive to the solicitation, the concern must recertify that it is a small business at the time it submits a responsive offer to the modified solicitation.

§ 121.905 Self-certification.

(a) A concern must self-certify itself to be small under the appropriate size standard as specified in the solicitation or as clarified, completed, supplied or corrected by SBA pursuant to § 121.902(d) of these regulations (i.e., number of employees or average annual receipts) in the submission of its initial offer including price relating to a Government procurement.

(b) In the absence of a written protest by other offerors or other credible information which would cause a contracting officer or SBA to question the veracity of the self-certification, a contracting officer may accept the self-certification at face value for the particular procurement involved.

(c) Protests against the self-certification of an offeror by another offeror, the contracting officer, SBA, or other interested parties shall be made under the procedures set forth in § 121.1600 of this part.

§ 121.906 Limitation on subcontracting.

A concern may not be awarded a contract for a Government procurement as a small business concern under this subpart unless the concern agrees that—

(a) In the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract with its own employees;

(b) In the case of a contract for supplies or products (other than procurement from a regular dealer in such supplies or products), the concern will perform at least 50 percent of the cost of the manufacturing the supplies or products (not including the cost of materials);

(c) In the case of a contract for general construction, the concern will perform at least 50 percent of the cost of the contract, not including the cost of materials, with its own employees; and

(d) In the case of a contract for construction by special trade contractors, the concern will perform at least 50 percent of the cost of the contract, not including the cost of materials, with its own employees.

§ 121.907 Manufactured products under small business set aside procurements.

(a) In order to qualify as a small concern in Government contracts reserved for small business (i.e., small business set asides) for the procurement of manufactured products, an offeror must be a "manufacturer" or a "regular dealer" within the meaning of the Walsh-Healey Act, and must:

(1) Be the manufacturer of the end item being produced; or

(2) Except as noted in paragraphs (d) and (e) of this section, provide products manufactured by other concerns which would qualify as small concerns under the procurement (i.e., meet the size standard for the product acquired).

(i) The applicable size standard for such small business nonmanufacturer is that of the wholesale industry of the item being procured.

(ii) Any nonmanufacturer must also furnish, in the performance of the contract, the end product of a small business manufacturer or producer that was manufactured or produced in the United States.

(iii) Where it is determined by SBA's Administrator that there are fewer than two small manufacturers of the specific end product being procured, a nonmanufacturer need not provide the product of a small business manufacturer.

(b) For size determination purposes, there can be only one manufacturer of the end item being acquired.

(c) The manufacturer for the purposes of this provision is the concern which, with its own facilities, performs the primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being acquired. The product of a manufacturer possesses characteristics which, as a result of mechanical, chemical, or human action, it did not possess before the original substances, parts, or components were acquired by the concern. The product of a manufacturer may be finished in the sense that it is ready for utilization or consumption, or it may be semifinished to become a raw material for a concern engaged in further manufacturing. Firms which perform only minimal operations upon the item being procured do not qualify as manufacturers. The following factors are evaluated in determining whether a concern is a manufacturer or is performing only minimal operations for the procurement:

(1) The proportion of total value in the end product added by the efforts of the concern, excluding costs of overhead, testing, quality control, and profit;

(2) The importance of the elements added by the concern to the function of the end product, regardless of their relative value.

(d) Where the manufactured item being acquired is a kit of supplies or other goods, provided by the offeror for a special purpose, the offeror is an eligible small business for the purposes of this section if it meets the size standard for the SIC Code of the product acquired and if more than 50% of the total value of the contents of the kit was manufactured by concerns which would also qualify as small businesses under the size standard for this procurement. Under this provision, the offeror need not itself be the manufacturer of any of the items acquired. Where the Government has specified an item (or items) for the kit which is (are) not produced by small business concerns, then such item(s) shall be excluded from the determination of total value for the purposes of this subsection.

(e) Where the procurement of a manufactured item is processed under Small Purchase Procedures, as defined in the Federal Acquisition Regulations (FAR), the offeror is an eligible small business, regardless of the size status of the manufacturers of the end product so long as the products acquired are domestically manufactured and the offeror meets the size standard for the wholesale industry of the item being procured. Under this provision, the offeror need not itself be the manufacturer of any of the items acquired.

§ 121.908 Multiple item procurements.

If a procurement calls for two or more specific end items with different size standards and the offeror may submit an offer on any or all end items, the offeror must meet the size standard for each end item for which it submits an offer. If the procurement calls for more than one specific end item and an offeror is required to submit an offer on all end items, the offeror may qualify as a small business for such procurement if it meets the size standard of the end item(s) having the same numerical standard which account(s) for the greatest percentage of the total contract value.

Example. A solicitation requires an item costing $2 million with a SIC Code of 3613 (750 employee size standard), an item costing $4 million with a SIC Code of 3621 (1,000

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employee size standard), and an item costing $3 million with a SIC Code of 3622 (750 employee size standard). In order to qualify as a small business for the procurement, an offeror must meet the 750 employee size standard because the greatest percentage of the total contract value has a 750 employee size standard ($5 million out of the $9 million contract), despite the fact that the largest single item has a 1,000 employee size standard.

§ 121.909 Size procedures under SBA's certificate of competency program.

(a) Upon receipt of a referral for a Certificate of Competency (COC) from a procuring agency contracting officer, SBA shall initiate a formal size determination at the time it supplies the COC application materials to the concern for which the COC referral was made.

(b) If such concern applies for a COC, a formal size determination shall be made in accordance with the procedures set forth in § 121.1600 of these regulations. Such formal size determination must be made prior to the issuance of a COC.

(c) Pursuant to § 121.904(a) of these regulations, the size of such concern is determined as of the date of its written certification that it is a small business for the purpose of performing a particular contract. Size is not determined as of the date of such concern's application for a COC.

§ 121.910 Manufactured products in an unrestricted procurement for certificate of competency purposes.

In the case of a Certificate of Competency in an unrestricted procurement for a manufactured product, a concern is a qualified small business if it meets the size standard for the SIC Code designated for the wholesale industry of the product being acquired, regardless of the size status of the manufacturer thereof. Under this provision the offeror need not be the manufacturer of any of the items acquired.

§ 121.911 Size standards under SBA's section 8(d) subcontracting program.

For subcontracting purposes pursuant to section 8(d) of the Small Business Act, a concern is small:

(a) In connection with subcontracts of $10,000 or less which relate to Government procurements, if its number of employees (including its affiliates) does not exceed 500 persons; and

(b) In connection with subcontracts exceeding $10,000 which relate to Government procurements, if its number of employees or average annual receipts, (including its affiliates), does not exceed the size standard for the product or service it is providing on the subcontract as set forth in § 121.600 of these regulations.

(Subcontracting for financial services under section 8(d) of the Small Business Act is covered by § 121.1400 of these regulations).

§ 121.912 Size procedures under SBA's section 8(d) subcontracting program.

(a) A concern must self-certify its small size as a section 8(d) subcontractor. The basis for such self-certification is set forth in § 121.905(a) of these regulations.

(b) The self-certification of a concern proposing to subcontract or subcontracting under section 8(d) of the Small Business Act may be protested pursuant to § 121.1600 of this part by the contracting officer, the prime contractor, the appropriate SBA official or any other interested party.

§ 121.1000 Size eligibility for sales or lease of Government property.

§ 121.1001 Programs covered.

These provisions apply to size status for the purpose of the sale or lease of Government property. This includes the Timber Sales Program, the Special Salvage Timber Sales Program and the sale of Government petroleum, coal and uranium.

§ 121.1002 Establishment of the size standard.

(a) Size status for the purposes of Government sales and leases under these sections is determined by reference to the primary industry of the applicant business concern: Except, (1) for the lease of Government land for the purpose of coal mining or uranium prospecting and mining where the nature of the sales contract is controlling (See §§ 121.1008 and 121.1009). (2) In the case of sales of Government timber, in addition to the business characteristics of the applicant business concern, there are further conditions relating to the implementation of the executed contract that must be met (See §§ 121.1006 and 121.1007).

(b) In determining what is the primary industry in which a concern applying for financial assistance is engaged, primary consideration shall be given to the distribution of receipts, employees and costs of doing business among differing industries in which a concern is operating for the most recently completed fiscal year of the concern. All other relevant factors (e.g., patents, contract awards, assets) will be considered.

§ 121.1003 Binding size determinations.

Size determinations for the purpose of Government sales and leases are formal actions by the appropriate SBA officials pursuant to §§ 121.1600 and 121.1700 of these regulations, based upon a specific Government sales or lease and are binding upon the parties thereto, as provided by law. Opinions provided by SBA to contracting officers or others not relating to a specific sale or lease and not given pursuant to § 121.1600 or § 121.1700 are advisory in nature and not binding size determinations under these sections, and are not appealable.

§ 121.1004 Time at which size is determined.

(a) The size status of a concern, including its affiliates, is determined as of the date of its written self-certification as a small business as part of the concern's submission of an offer.

(b) Agreements to merge, including agreements in principle, stock options, convertible securities and other business arrangements affecting possible future affiliation of the concern with another concern or change of control of the concern are considered executed as of the date of the self-certification.

§ 121.1005 Self-certification.

(a) A concern shall, as and when required by the sale solicitation, self-certify itself to be small in the submission of an offer to purchase or lease Government property, based upon its reasonable, good faith application of the size criteria set forth in these sections and the absence of a previous, still outstanding determination by SBA that the concern is ineligible under the same or a lower size standard. This self-certification includes both the measurement criteria (i.e., number of employees or average annual receipts) and acceptance of the restrictions upon the resale or exchange of the property purchased, as contained in these regulations.

(b) In absence of a written protest by other offerors or other credible information which would cause a contracting officer to question the veracity of a concern's self-certification as a small business, a contracting officer may accept the self-certification at face value.

(c) Protests against the self-certification of an offeror as a small business by another offeror, by the contracting officer or by SBA shall be made under the procedures set forth in § 121.1600 of these regulations. In addition, requests for formal size determinations may be made (pursuant

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to § 121.1600 of these regulations) by SBA or another Federal agency, in accordance with § 121.1500 of these regulations, for the purpose of the administration of a Federal property sales program.

§ 121.1006 Sales of Government owned timber other than special salvage timber sales (SSTS).

(a) A concern which submits an offer as a small business for the purchase of Government owned timber, other than SSTS timber, qualifies as small when it:

(1) Is primarily engaged in the logging or forest products industry. "Forest Products Industry" means logging, wood preserving, and the manufacture of lumber and wood related products such as veneer, plywood, hardboard, particle board, or wood pulp, and of products of which lumber or wood related products are the principal raw materials; and

(2) Together with its affiliates, does not have over 500 employees.

(The rules for determining number of employees are set forth in § 121.407 of these regulations.)

(b) In addition to the requirements of paragraph (a) of this section, where the sale of the Government timber is pursuant to a small business set-aside and the offeror does not intend at the time of the offer to resell the timber, a concern qualifies as small when:

(1) It agrees that, in manufacturing sawlogs cut from the Government timber, it will do so only with its own facilities or those of concerns that qualify under paragraph (a) of this section as a small business. Manufacture of logs means, at a minimum, a breakdown of the log into a rough cut of the finished product; and

(2) It agrees, if standing timber or sawlogs acquired in good faith from the small business set-aside sale is to be resold, not to sell more than 30% of the advertised sawtimber volume, whether in the form of standing timber or sawlogs, therefrom, to other concerns which do not qualify as small business under paragraph (a) of this section (The term "sell" includes but is not limited to the exchange of sawlogs for sawlogs on a product-for-product basis, with or without monetary adjustment, and an indirect transfer, such as the sale of the assets of a concern after it has been awarded one or more set-aside sales of timber); and,

(3) It agrees that if, after award of a set-aside sale(s), the small business concern sells out to, becomes controlled by, or merges with a large business, the resulting entity shall sell an amount of sawtimber volume from each of the set-aside sales to one or more small businesses to comply with the (30%) volume distribution rule. Any agreement for return, directly or indirectly, of logs from small to large concerns which exceeds the distribution rule shall constitute noncompliance. The sawtimber volume distribution restriction shall not apply to the manufacture of preferential timber by a small business concern that purchases the set-aside sale, and at a later date exceeds the applicable small business size standard due to internal growth. Internal growth includes an internal increase in number of employees without change of control. Also, the distribution restriction shall not apply to a concern which certified itself to be a small business at the time of sale award, but was later determined to be other than small. This applies, provided that a large business did not purchase, assume control of, or merge with the small business after sale award date.

(c) In addition to the requirements of paragraph (a) of this section, where the sale of the Government timber is pursuant to a small business set-aside and the offeror intends to resell the timber, a concern qualifies as small when:

(1) It agrees that it will not sell to a concern which is not a small business within the meaning of paragraph (a) of this section more than 30 percent (50 percent in Alaska) of such timber. The term "sell" includes but is not limited to the exchange of sawlogs for sawlogs on a product-for-product basis with or without monetary adjustment, and an indirect transfer, such as the sale of the assets of a concern after it has been awarded one or more set-aside sales of timber; and

(2) It agrees that if, after award of a set-aside sale(s), the small business concern sells out to, becomes controlled by, or merges with a large business, the resulting entity shall sell an amount of sawtimber volume from each of the set-aside sales to one or more small businesses to comply with the (30%) volume distribution rule. Any agreement for return, directly or indirectly, of logs from small to large concerns which exceeds the distribution rule shall constitute noncompliance.

(d) In order to monitor compliance with the resale restrictions of this section, the offeror must maintain, for a period of 3 years, the name, address, and size status of each concern to which the timber or sawlogs were sold and the log species, grades and volumes involved. Such concern, and any subsequent small business concern that acquires the sawlogs, also shall require its small business purchasers to maintain similar records for a period of 3 years. Further, if the timber purchased is not to be resold in the form of sawlogs, but is to be manufactured into lumber or timber by a concern other than the offeror, the offeror must maintain records to show the name, address, and the size of the concern manufacturing the sawlogs into lumber or timber.

§ 121.1007 Special salvage timber sales (SSTS).

(a) A concern which submits an offer as a small concern for the purchase of Government owned special salvage timber from the United States Forest Service or the Bureau of Land Management qualifies as small when it:

(1) Is primarily engaged in the logging or forest product industry (See § 121.1006(a) for definition of "Forest Product Industry"); and

(2) Together with its affiliates, does not have over 25 employees during any pay period for the last 12 months.

(b) In addition to the requirements of paragraph (a) of this section, where the sale of the special salvage timber is pursuant to a small business set aside and the offeror does not intend at the time of the offer to resell the timber, a concern qualifies as small when:

(1) It agrees that it will manufacture a significant portion of the logs with its own employees. Manufacture of logs means, at the minimum, a breakdown of the log into the rough cut of the finished product; and

(2) It further agrees that, it will accomplish the logging of SSTS timber, exclusive of hauling, with its own employees, or will subcontract such logging only to concerns eligible for preferential award of an SSTS. Logging means felling and bucking, yarding, loading.

(c) In addition to the requirements of paragraph (a) of this section, where the sale of the special salvage timber is pursuant to a small business set aside and the offeror intends to resell the timber, a concern qualifies as small when it agrees that it will accomplish a significant portion of the logging operation, exclusive of hauling, with its own employees. Significant logging of timber means using its own employees to accomplish two or more of the following elements: Felling and bucking, yarding, loading. It further agrees that such SSTS logging elements not accomplished with its own employees will be subcontracted only to concerns eligible for preferential award of an SSTS.

§ 121.1008 Leasing Government land for coal mining.

A concern which submits an offer as a small business for the lease of Government land for the purpose of mining coal qualifies as small when it:

(a) Together with its affiliates, does not have over 250 employees (number of employees is defined in § 121.407 of these regulations); and

(b) Maintains management and control of the actual mining operations at the tract; and

(c) Agrees that any transfer of the lease from the holder of the original set aside must be to another small business within the meaning of this subpart.

§ 121.1009 Leasing of Government land for uranium mining.

A concern which submits an offer as a small concern for the lease of Government land for the purpose of prospecting for or mining uranium qualifies as small when it, together with its affiliates, does not have over 100 employees (number of employees is defined in § 121.407 of these regulations).

§ 121.1010 Sales of Government owned petroleum.

A concern which submits an offer as a small business for the purchase of Government owned petroleum qualifies as small when it:

(a) Together with its affiliates, does not have over 1,500 employees (number of employees is defined in § 121.407 of these regulations);

(b) Is primarily engaged in petroleum refining (SIC Industry 2911); and

(c) Does not have more than 50,000 barrels per day crude oil or bona fide feed stock capacity from owned and/or leased facilities, or from facilities made available to such concern under an agreement such as, but not limited to, an exchange agreement (except one on a refined-product-for-refined-product basis) or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased.

§ 121.1011 Stockpile purchases.

Any concern primarily engaged in the purchase of materials which are not domestic products is small if its average annual receipts for its preceding three fiscal years do not exceed $42 million.

§ 121.1012 Sales or lease of Government property other than property subject to § 121.1006 thru § 121.1011.

A concern which submits an offer as a small business for the purchase or lease of Government property other than property subject to § 121.1006 thru § 121.1010 of this subpart qualifies as small when it:

(a) Together with its affiliates, does not have over 500 employees (rules for determining "number of employees" are set forth in § 121.407 of these regulations), if it is primarily engaged in manufacturing;

(b) Together with its affiliates, have average annual receipts for its preceding three completed fiscal years not exceeding $2 million (rules for determining "annual receipts" are set forth in § 121.402 of these regulations), if it is primarily engaged in an industry other than manufacturing.

§ 121.1100 Size eligibility for the Minority Small Business and Capital Ownership Development (Section 8(a)) Program.

§ 121.1101 Programs covered.

These sections apply to small size status for the purpose of contract assistance pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and management/technical assistance available to section 8(a) concerns pursuant to section 7(j) of the Small Business Act (15 U.S.C. 636(j)).

§ 121.1102 Establishment of the size standard.

(a) For purposes of the Minority Small Business and Capital Ownership Development Assistance (section 8(a)) program:

(1) In order to be eligible to participate in the section 8(a) program, an applicant concern must qualify as a small business concern as defined for purposes of Government procurement in § 121.600 of these rules. The particular size standard to be applied will be based on the primary industry classification of the applicant concern.

(2) In order to obtain section 8(a) contracts once a concern is admitted to the section 8(a) program, the concern must certify to SBA that it is a small business for the purpose of performing each individual contract. SBA, in turn, must verify each such certification.

(b) (1) In determining what is the primary industry in which an applicant, including its affiliates, is engaged, primary consideration shall be given to the distribution of receipts, employees and costs of doing business among differing industry areas in which a concern is operating for the most recently completed fiscal year of the concern. Other factors (e.g., patents, contract awards, assets) may be considered.

(2) The proper SIC Code designation for the goods or services being procured is that which best describes the nature of the procurement, giving primary consideration to the industry descriptions in the SIC Manual, the product or service description in the solicitation and attachments thereto, the relative value of each of the components in the procurement (if in fact there is more than one component which makes up the end item being procured), and the function of the goods or services being purchased. Consideration may also be given to previous government procurement classifications of the same or similar products or services, additional information on the industries and on the product or service procured, and to evaluations on which industry classification would best serve the purposes of the Small Business Act.

(c) The determination of the appropriate SIC Code designation for the product or service being procured under a section 8(a) contract shall initially be made by the procuring agency contracting officer. Such designation shall be final unless appealed to SBA's Office of Hearings and Appeals in the manner provided in § 121.1700 of this part or changed by SBA pursuant to paragraph (d) of this section.

(d) An unclear, incomplete or missing SIC Code designation and/or size standard by the contracting officer or his representative may be clarified, completed or supplied by SBA, if necessary, in connection with a formal size determination or size appeal. As part of a formal size determination or size appeal, SBA may also correct an incorrect SIC Code designation and/or size standard designation made by the contracting officer, after giving the contracting officer an opportunity to comment on or submit information relating to such designation to SBA.

§ 121.1103 Time at which size is determined.

The size of a concern, including its affiliates, for section 8(a) and section 7(j) assistance is determined:

(a) As of the date of the application for program eligibility for the purposes of general program eligibility. (This determination will not confer subsequent size eligibility for the award of section 8(a) contracts or of section 7(j) assistance);

(b) As of the date of the concern's written self-certification as a small business as part of its initial offer including price to the procuring agency for a particular section 8(a) contract.

(c) As of the date of application for section 7(j) management or technical assistance. (Such a section 7(j) application may be in the form of a letter to the appropriate SBA officer or

as otherwise directed by the proper SBA official.)

§ 121.1104 Section 8(a) self-certification.

(a) After SBA has notified a procuring agency in writing that it has accepted a procurement for the section 8(a) program in support of the approved business plan of a particular section 8(a) concern, the section 8(a) concern shall certify that it is a small business for the purpose of performing that particular contract (by certifying that it is small for a particular SIC Code or Codes) at the time it submits its initial offer including price to the procuring agency for that contract. A copy of the section 8(a) concern's offer, including its self-certification as to size, shall be provided to the appropriate SBA district office upon submission to the procuring agency.

(b) The SBA district office involved with the procurement shall verify, within 30 days of its receipt of the selected section 8(a) concern's self-certification of size, if possible, that the selected concern is small.

(1) In verifying the selected section 8(a) concern's size, SBA will review the annual financial statements and other relevant material regarding the number of employees submitted by the concern to SBA pursuant to Part 124 of these regulations. Such financial statements and materials should be present in the section 8(a) concern's business plan file. Verification cannot occur unless these financial statements and materials are available to and reviewed by SBA.

(2) Where SBA verifies that the selected section 8(a) concern is small for a particular procurement, subsequent changes in size up to the date of award, except those due to merger with or acquisition by another business concern, will not affect the firm's size status as it relates to that procurement.

(i) Where the selected section 8(a) concern has merged with or been acquired by another business concern between the date of its certification and the date of award, the concern must recertify its size status, and SBA must verify that new certification, before award can occur.

(ii) An award of a section 8(a) contract will be voidable where the selected section 8(a) concern does not so recertify its size status.

(c) SBA may, in its discretion, request a formal size determination (pursuant to § 121.1600 of this part) with the SBA regional office serving the geographical area in which the principal office of the selected section 8(a) concern is located.

(d) Where SBA cannot verify that the selected section 8(a) concern is small for a particular procurement, the concern will be ineligible for that procurement, unless a formal size determination is made in favor of the section 8(a) concern.

(e) The selected section 8(a) concern may request a formal size determination (pursuant to § 121.1600 of this part) with the SBA regional office serving the geographical area in which the principal office of the section 8(a) concern is located within 5 working days of its receipt of SBA's denial of verification.

(f) Where the selected section 8(a) concern does not timely request a formal size determination, SBA may accept the procurement in support of another section 8(a) concern, or may return the procurement from the section 8(a) program, as appropriate.

§ 121.1105 Limitation on subcontracting.

A concern may not be awarded a contract for a Government procurement as a small business concern under this subpart unless the concern agrees that—

(a) In the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract with its own employees;

(b) In the case of a contract for supplies or products (other than procurement from a regular dealer in such supplies or products), the concern will perform at least 50 percent of the cost of the manufacturing the supplies or products (not including the cost of materials);

(c) In the case of a contract for general construction, the concern will perform at least 50 percent of the cost of the contract, not including the cost of materials, with its own employees; and

(d) In the case of a contract for construction by special trade contractors, the concern will perform at least 50 percent of the cost of the contract, not including the cost of materials, with its own employees.

§ 121.1106 Manufactured products under Section 8(a) contracts.

(a) In section 8(a) contracts for the procurement of manufactured products, in order to qualify as a small concern, the section 8(a) concern must be a "manufacturer" or a "regular dealer" within the meaning of the Walsh-Healey Act, and must:

(1) Be the manufacturer of the end item being procured; or

(2) Except as noted in paragraph (d) of this section, provide products manufactured by other concerns which would qualify as small businesses under this procurement (i.e., meet the size standard for the product acquired).

(i) The applicable size standard for such small business nonmanufacturer is that of the wholesale industry of the item being procured.

(ii) Any nonmanufacturer must also furnish, in the performance of the contract, the end product of a small business manufacturer or producer that was manufactured or produced in the United States.

(iii) Where it is determined by SBA's Administrator that there are fewer than two small manufacturers of the specific end product being procured, a nonmanufacturer need not provide the product of a small business manufacturer.

(b) For size determination purposes, there can be only one manufacturer of the end item being acquired.

(c) The manufacturer for the purposes of this provision is the concern which, with its own facilities, performs the primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being acquired. The product of a manufacturer possesses characteristics which, as a result of mechanical, chemical or human labor, it did not possess before the original substances, parts, or components were acquired by the concern. The product of a manufacturer may be finished in the sense that it is ready for utilization or consumption, or it may be semifinished to become a raw material for a concern engaged in further manufacturing. Firms which perform only minimal operations upon the item being procured do not qualify as manufacturers. The following factors are evaluated in determining whether a concern is a manufacturer or is performing only minimal operations for the procurement:

(1) The proportion of total value in the end product added by the efforts of the concern, excluding costs of overhead, testing, quality control, and profit;

(2) The importance of the elements added by the concern to the function of the end product, regardless of their relative value.

(d) Where the manufactured item being acquired is a kit of supplies or other goods, provided by the section 8(a) concern for a special purpose, the section 8(a) concern is an eligible small business for the purposes of this section, if it meets the size standard for the SIC Code of the product acquired and if more than 50 percent of the total value of the contents of the kit was manufactured by concerns which would also qualify as small businesses under the size standard for this procurement. Under this provision, the offeror need not itself be the manufacturer of any of the items acquired. Where the

Government has specified an item (or items) for the kit which is (are) not produced by small business concerns, then such item(s) shall be excluded from the determination of total value for the purposes of this paragraph.

§ 121.1107 Multiple item procurements.

If a procurement calls for two or more specific end items with different size standards and the section 8(a) concern may submit an offer on any or all end items, the section 8(a) concern must meet the size standard for each end item for which it contracts with SBA. If a procurement, calling for two or more specific end items with different size standards, requires performance by a single contractor, the section 8(a) concern qualifies as a small business if it meets the size standard of the end item(s) having the same numerical standard which account(s) for the greatest percentage of total contract value.

§ 121.1108 Eligibility of Section 8(a) concern for other SBA assistance.

A concern which is eligible under these size regulations for the award of a section 8(a) contract, shall be deemed eligible under the size regulations for assistance, as described in § 121.800, § 121.1000, and § 121.1300 of these regulations, where the latter assistance directly and primarily relates to the performance of the section 8(a) contract in question.

§ 121.1200 Size eligibility for the Small Business Innovation Research Program.

§ 121.1201 Program covered.

(a) These sections apply to size status for the purpose of award of a "funding agreement" pursuant to the Small Business Innovation Development Act of 1982 , (Pub. L. 97–219, 15 U.S.C. 638 (e) thru (k)).

(b) The term "funding agreement officer" for purposes of this subpart 121.1200 is defined to include a contracting officer, a grants officer, or a cooperative agreement officer.

§ 121.1202 Establishment of the size standard.

(a) To be eligible to compete for award of funding agreements in SBA's Small Business Innovation and Research (SBIR) program, a business concern, including affiliates, may not have more than 500 employees. The rules for determining "number of employees" are set forth in § 121.407 of these regulations.

(b) A "funding agreement" is any contract, grant or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such work is defined in the SBIR legislation as any ". . . activity which is (1) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied; (2) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (3) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements"—15 U.S.C. 638, as amended by 96 Stat. 218 section 4(e)(5).

§ 121.1203 Binding size determinations.

Size determinations are formal actions by SBA officials, pursuant to § 121.1600 and § 121.1700 of these regulations, based upon a specific "funding agreement", as described herein, and are binding upon the parties thereto. Opinions provided by SBA to funding agreement officers or others not relating to a specific "funding agreement" and not given pursuant to § 121.1600 or § 121.1700 are advisory in nature and not binding size determinations under these sections, and are not appealable.

§ 121.1204 Time at which size is determined.

The size status of a concern for the purpose of a "funding agreement" under the SBIR program is determined as of the date of the award for both Phase I and Phase II SBIR awards. A concern having more than 500 employees at the date of award (as determined pursuant to § 121.407 of these regulations) is ineligible for award.

§ 121.1205 Self-certification.

(a) A firm submitting a proposal for award of an SBIR funding agreement must certify itself to be a small business as part of its proposal.

(b) In the absence of a written protest by other offerors or other credible information which would cause the funding agreement officer or SBA to question the veracity of the self-certification, the funding agreement officer may accept the self-certification at face value for the "funding agreement" in question.

(c) Protests against the self-certification of an offeror by another offeror or prospective offeror, by the funding agreement officer or by SBA shall be made under the procedures set forth in § 121.1600 of these regulations.

§ 121.1300 Size eligibility for paying reduced patent fees.

§ 121.1301 Program covered.

These sections apply to size status for the purpose of paying reduced patent fees pursuant to Pub. L. 97–247. This statute provides for the payment of reduced patent fees "by independent inventors and nonprofit organizations as defined in regulations established by the Commissioner of Patents and Trademarks, and by small business concerns as defined in section 3 of the Small Business Act and by regulations established by the Small Business Administration." These regulations deal with eligibility for the latter category, that is, small business concerns. Eligibility for the former categories, that is, independent inventors and nonprofit organizations, is set forth in the regulations of Patent and Trademark Office, Department of Commerce, 37 CFR 1.9, 1.27, 1.28.

§ 121.1302 Establishment of the size standard.

A concern eligible for reduced patent fees is one (a) Whose number of employees, including those of its affiliates, does not exceed 500 persons (the rules for determining "number of employees" are set forth in § 121.406 of these regulations); and

(b) Which has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey or license, any rights in the invention to any person who could not be classified as an independent inventor, if that person had made the invention, or to any concern which would not qualify as a non-profit organization or as a small business concern under this section.

§ 121.1303 Binding size determinations.

Size determinations are formal actions by SBA officials pursuant to § 121.1600 and § 121.1700 of these regulations, based upon a specific patent application pursuant to the rules of the Patent and Trademark Office, Department of Commerce, and are binding upon the parties thereto. Opinions provided by SBA to patent applicants or others not relating to a specific patent application and not given pursuant to § 121.1600 or § 121.1700 are advisory in nature and not binding size determinations under this section, and are not appealable.

§ 121.1304 Time at which size is determined.

The size status of a concern, including its affiliates, for the purpose of reduced patent fees is determined as of the date of the written verification as a small

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business as part of the patent application pursuant to 37 CFR 1.27 of the regulations of the Patent and Trademark Office of the Department of Commerce.

§ 121.1305 Self-certification.

(a) A concern may verify its small size in the submission of a patent application to the Patent and Trademark Office pursuant to 37 CFR 1.27 of the regulations of that office.

(b) Any attempt to improperly establish small size status—fraudulently, through gross negligence or otherwise—could result in remedial action by the Patent and Trademark Office. (*See* 37 CFR 1.28, 1.56(d) and 1.555 of the regulations of that office).

(c) In the absence of credible information indicating otherwise, the Patent & Trademark Office may accept the verification by the concern as a small business at face value for the patent application in question.

(d) Questions concerning the verification by a concern as a small business in connection with a patent application shall be resolved, in the first instance, by the Patent and Trademark Office. In the event that the Patent and Trademark Office does not verify that the applicant is small, the applicant for the patent may request a formal SBA size determination pursuant to § 121.1600 of this part.

§ 121.1400 Size eligibility of financial institutions for purposes of Sections 8(d) and 15(g) of the Small Business Act.

§ 121.1401 Programs covered.

The statutory directives of section 8(d) and 15(g) of the Small Business Act, 15 U.S.C. 637(d) and 644(g), include subcontracting opportunities in connection with Government Procurements for "small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals." These sections of this regulation apply to size status for the purpose of subcontracting requirements for financial services to commercial banks and savings and loan associations.

§ 121.1402 Establishment of the size standard.

(a) For the purposes of financial services subcontracting under sections 8(d) and 15(g) of the Small Business Act, a small business, including its affiliates, is a commercial bank or savings and loan association, the assets of which, at the end of its preceding completed fiscal year, do not exceed $100 million.

(b) "Assets" for the purposes of this regulation means the assets defined according to the Federal Financial Institutions Examination Council 034 call report form.

§ 121.1403 Binding size determinations.

Size determinations are formal actions by SBA officials, pursuant to § 121.1600 and § 121.1700 of these regulations based upon specific subcontracts and are binding upon the parties thereto. Opinions provided by SBA to prime contractors, contracting officers or others, not relating to a specific subcontract and not given pursuant to § 121.1600 or § 121.1700, are advisory in nature and not binding size determinations under these sections, and are not appealable.

§ 121.1404 Time at which size is determined.

The size status of a concern for the purpose of financial services subcontracting is determined as of the date of the written self-certification as a small business as part of the subcontractor's initial offer including price.

§ 121.1405 Self-Certification.

(a) The financial services subcontractor will self-certify its small size status in the submission of its offer to the prime contractor.

(b) In the absence of a written protest by offerors for the prime contract or for the subcontract or other credible information which would cause the prime contractor, the government contracting officer or SBA to question the veracity of the self-certification, the prime contractor and the government contracting officer may accept the self-certification at face value for the subcontract in question.

(c) Protests against the self-certification of a subcontractor or an offeror or other interested parties for a subcontract by other offerors for the prime contract or the subcontract, by the prime contractor, by the government contracting officer or by SBA shall be made under the procedures set forth in § 121.1600 of this Part.

§ 121.1500 Size eligibility for compliance with programs of other agencies.

§ 121.1501 Programs covered.

SBA will provide size determinations, under its rules, standards and procedures, for the purpose of compliance with small business requirements of statutes, regulations or programs of other government agencies. These size determinations are provided upon request by the other agencies and have binding effect to the extent determined by the relevant statute, regulation or program of such other agencies. SBA size determinations under these regulations are solely findings regarding the size status of a concern and do not affect other regulatory, compliance, contractual or administrative matters.

§ 121.1502 Size standards of other agencies.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., Federal agencies considering and promulgating regulations relating to small businesses generally utilize small business size criteria developed pursuant to the Small Business Act. However, SBA size standards sometimes may not be appropriate for the particular regulation involved. In such cases where a Federal agency decides the SBA size standard is not appropriate, the agency may, after consultation with the SBA Office of Advocacy, establish a small business definition which is more appropriate to the activities of the agency.

§ 121.1503 Establishment of the size standard.

For purposes of size determinations made pursuant to this section, the size standards for compliance with programs of other agencies are those set forth in these regulations for SBA programs which are most comparable to the programs of such other agencies, unless otherwise agreed by the agency and SBA.

§ 121.1504 Time at which size is determined.

SBA will make size determinations for the purpose of compliance with programs of other agencies as of a definite time set forth in the request of such other agency.

§ 121.1505 Procedures for SBA size determinations.

SBA size determinations for other Government agencies will be made under the procedures set forth in § 121.1600 of this Part. Appeals from these SBA determinations, pursuant to § 121.1700 of this part, are available to the concern whose size is in issue, the Government agency requesting the size determination or other interested parties only upon the request of the other Government agency.

§ 121.1600 Procedures for formal size determinations.

§ 121.1601 Who may initiate.

(a) *Protests of small business status.* Entities may protest the size of a concern with respect to designated SBA programs as identified below.

(1) With respect to SBA's Small Business Set Aside Program, to include the Property Sales Program, the following entities may protest:

(i) Any offeror;

(ii) The contracting officer;

(iii) The SBA Regional Administrator in the region serving the geographical area of the headquarters of the offeror, regardless of the location of parent companies or affiliates, or the Associate Administrator for Procurement Assistance;

(iv) Other interested parties.

(2) With respect to SBA's Subcontracting Program (including the Minority Bank Subcontracting Program), the following entities may protest:

(i) The prime contractor;

(ii) The contracting officer;

(iii) Other potential subcontractors;

(iv) The SBA Regional Administrator of the region serving the geographical area of the headquarters of the offeror, regardless of the location of parent companies or affiliates, or the Associate Administrator for Procurement Assistance;

(v) Other interested parties.

(3) With respect to SBA's Small Business Innovation and Research Program, the following entities may Protest:

(i) A prospective offeror;

(ii) The funding agreement officer;

(iii) The SBA Regional Administrator in the region serving the geographical area of the headquarters of the offeror, regardless of the location of parent companies or affiliates, or the Assistant Administrator for Innovation, Research and Technology;

(iv) Other interested parties.

(b) *Requests for size determinations.* Entities may request a formal size determination for a concern with respect to designated SBA programs as identified below. In making a formal size determination, the procedures of §§ 121.1602, 121.1605, and 121.1606 of these regulations shall apply.

(1) With respect to SBA's Financial Assistance Programs, the following entities may request a formal size determination:

(i) The applicant for assistance;

(ii) The SBA program official in the relevant SBA District Office with authority to take final action on the assistance requested;

(iii) The SBA Regional Administrator of the region serving the geographical area in which the principal office of the applicant concern, excluding parent companies and affiliates, is located, or the Associate Administrator for Finance and Investment.

(2) With respect to SBA's section 8(a) Program, for purposes of individual contract awards, the following entities may request a formal size determination:

(i) The section 8(a) concern nominated by SBA for the particular procurement;

(ii) The SBA program official in the relevant SBA District Office with authority to take final action on the award of the section 8(a) contract;

(iii) The SBA Regional Administrator of the region serving the geographical area in which the principal office of the offeror, excluding parent companies and affiliates, is located, or the Associate Administrator for Minority Small Business and Capital Ownership Development.

(3) With respect to SBA's Certificate of Competency Program, the following entities may request a formal size determination:

(i) The offeror who has applied for a Certificate of Competency;

(ii) The SBA Regional Administrator in the region serving the geographical area in which the principal office of the offeror, excluding parent companies and affiliates, is located, or the Associate Administrator for Procurement Assistance.

(4) With respect to SBA's sale or lease of government property, the following entities may request a formal size determination:

(i) The SBA Regional Administrator in the region serving the geographical area in which the principal office of the offeror, excluding parent companies and affiliates, is located, or the Associate Administrator for Procurement Assistance;

(ii) Other Federal agencies for the purpose of administration of a property sales program.

(5) With respect to eligibility for paying reduced patent fees, the following entities may request a formal size determination:

(i) The applicant for the reduced patent fees;

(ii) The Patent and Trademark Office.

(6) Additionally, SBA will make a formal size determination when requested by another Government agency for purposes of eligibility for a non-SBA program.

§ 121.1602 Who makes formal size determinations.

(a) In response to either a protest or a request for a formal size determination, the Regional Administrator or his or her delegatee shall make all formal size determinations under this Part. (Size determinations for purposes of section 8(a) Program eligibility, as distinct from size determinations in connection with a particular procurement, shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development pursuant to Part 124 of these regulations.)

(b) For protest purposes, the appropriate Regional Administrator shall be the one in the SBA region serving the geographical area of the headquarters of the offeror, regardless of the location of parent companies or affiliates.

(c) In cases of a request for a formal size determination, the Regional Administrator determining size shall be the one in the SBA region serving the geographical area in which the principal office of the applicant for assistance or potential recipient of the Government program benefits involved, excluding parent companies and affiliates, is located.

§ 121.1603 Protest procedures.

(a) *Filing.* (1) A protest in connection with a government procurement or sale shall be directed to the contracting officer responsible for the particular procurement or sale involved. Except as provided below with respect to contracting officers or SBA, in order to apply to the procurement or sale in question, such protest must be filed prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after bid or proposal opening.

(2) With respect to negotiated procurements, a protest must be filed within 5 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt from the contracting officer of notification of the identity of the prospective awardee being protested, except as provided below with respect to protests made by contracting officers or SBA.

(3) Such protest must be delivered to the contracting officer by hand, telegram, or mail within the 5-day period allotted; However, a protest shall be considered timely if made by telephone to the contracting officer within the 5-day period allotted and the contracting officer thereafter receives a confirming letter either within such 5-day period or postmarked no later than one day after the date of such telephone protest.

(4) At any time after bid opening a contracting officer may question the size of any offeror for the purpose of a particular procurement or sale by filing a protest with the SBA Regional Office serving the area in which the headquarters of the offeror is located, regardless of the location of parent companies or affiliates.

(b) *Timeliness of protest.* (1) A protest received after the time limits set forth above shall not apply to the

procurement or sale in question. A concern determined other than small as a result of such late protest, however, shall be precluded from self-certifying in any other procurement or sale in which the size standard is the same or lower than the standard in the procurement or sale in question.

(2) A protest by a contracting officer shall be timely for the purpose of the procurement or sale in question whether filed before or after award.

(3) A protest by SBA shall be timely for the purpose of the procurement or sale in question whether filed before or after award. SBA protests, like other protests, must initially be filed with the contracting officer.

(4) On a multiple award schedule procurement set aside for small business, protests will be deemed timely if received by SBA at any time prior to the expiration of the contract period (including renewals).

(5) Protests filed by any person before bid opening or notification of intended award shall be considered premature and shall be dismissed.

(c) *Referral to regional office.* (1) Any contracting officer who receives a protest shall promptly forward such protest to the Regional Office serving the geographical area in which the headquarters of the offeror is located, regardless of the location of parent companies or affiliates.

(2) When a contracting officer receives a protest and refers it to the SBA, such referral shall contain the following:

(i) The protest and any accompanying materials;

(ii) A copy of the self-certification as to size;

(iii) Identification of the applicable size standard;

(iv) A copy of the solicitation;

(v) Identification of the date of bid opening; and

(vi) The date on which the protest was received.

§ 121.1604 Form of protest.

(a) *Required specificity.* No specific form is required for a protest. However, a protest must be sufficiently specific to provide reasonable notice as to the grounds upon which the protested concern's size is questioned. A protest merely alleging that the protested concern is not small or is affiliated with unspecified other concerns will not be deemed to specify adequate grounds for the protest. Some basis for the belief stated in the protest must be given. For the purpose of illustrating required specificity, set forth below are 3 examples which provide sufficient specificity and 3 examples which lack sufficient specificity.

Example 1: An allegation that firm X is large because it employs more than 500 employees (where 500 employees is the applicable size standard) without setting forth a basis for the allegation is unspecific.

Example 2: An allegation that firm X is large because it exceeds the 500 employee size standard (where 500 employees is the applicable size standard) because a higher employment figure was published in publication Y is sufficiently specific.

Example 3: An allegation that firm X is affiliated with firm Y without setting forth any basis for the allegation is unspecific.

Example 4: An allegation that firm X is affiliated with firm Y because officer A is an officer of both companies is sufficiently specific.

Example 5: An allegation that firm X has revenues in excess of $2 million (where the applicable size standard is $2 million) without setting forth a basis for the allegation is unspecific.

Example 6: An allegation that firm X exceeds the size standard (where the applicable size standard is $2 million) because it received Government contracts in excess of $2 million last year is sufficiently specific.

The examples given above in this subsection are stated in the briefest possible fashion, but protestors should provide as much detail as is available to them in order to facilitate making expeditious and accurate size determinations. Materials supporting the protest should be submitted where possible.

(b) *Non-specific protests.* Protests which do not contain sufficient specificity shall be dismissed by SBA.

(c) *Appeal of dismissals.* A dismissal by the applicable SBA Regional Office of a protest for lack of specificity may be appealed to SBA's Office of Hearings and Appeals pursuant to § 121.1700 of these regulations.

§ 121.1605 Notification of protest and filing of Form 355.

(a) Upon receipt of the protest, the SBA Regional Administrator or his or her delegatee shall immediately notify the contracting officer and the protestor of the date such protest was received and whether it will be processed or dismissed for lack of specificity. Where a protest is filed pertaining to SBA's Small Business Innovation Research Program, notification shall also be made to SBA's Assistant Administrator for Innovation, Research and Technology. In cases where the protest is sufficiently specific, the Regional Administrator or his or her delegatee shall also advise the protested offeror of the receipt of the protest and shall forward to the protested offeror a copy of the protest and a blank SBA Form 355, Application for Small Business Size Determination (OMB No. 3245–0101), by certified mail, return receipt requested.

(b) Such offeror must file the completed Form 355 within 3 working days as directed by SBA, and must attach thereto its answers to the allegations contained in the protest, together with any supporting material.

(c) If such offeror does not submit the completed SBA Form 355 and its answers to the allegations within 3 working days, or within any additional period of time provided by SBA for good cause, SBA may assume that disclosure of the form or any missing part thereof or any missing answer to the allegations would be contrary to the interests of the protested concern, and SBA may determine that the protested concern is other than a small business.

§ 121.1606 Making the size determination.

(a) *General.* After receipt of a protest or a request for a formal size determination and responses thereto, SBA shall make a formal size determination within 10 working days, if possible.

(b) *Withdrawal of request for formal size determination or protest.* Once properly instituted by the filing of a request for a formal size determination or a protest, the size determination may be completed by SBA, even if the particular application, proposal, or offer is withdrawn or the Government procurement or sale is cancelled or awarded. This continuation of the size determination process is discretionary with SBA and will be used to prevent the misuse of small business assistance programs and this Part 121.

(c) *Basis for determination.* Once the protest or request for a formal size determination is found to be sufficiently specific, such size determination may be based on other grounds not raised in the protest/request. The size determination shall be based primarily on facts and allegations supplied by the protestor and protested concern (or by the entity requesting the size determination). If deemed necessary or appropriate, SBA may utilize other information in its files and may make inquiries including requests to the protestor, the protested concern and any alleged affiliates, or other persons for additional specific information.

(d) *Burden of persuasion.* The burden of establishing its small business size by submitting full information to SBA shall be upon the concern whose size is under consideration.

(e) *Weight of evidence.* Specific signed factual evidence will be weighed more heavily by SBA than general

unsupported allegations or opinions. In the case of refusal or failure to furnish requested information within a required time period, SBA may assume that disclosure would be contrary to the interests of the party failing to make disclosure.

(f) *Formal size determination.* The SBA shall base its formal size determination upon the record, including reasonable inferences therefrom, and shall state in writing the basis for its findings and conclusions.

(g) *Notification of determination.* After making its determination, SBA shall immediately notify the contracting officer, the protestor and the protested offeror and each affiliate or alleged affiliate of its determination. Such notification shall be by certified mail, return receipt requested.

(h) *Results of an SBA size determination.* (1) A formal size determination becomes effective immediately and remains in full force and effect unless and until reversed upon appeal to SBA's Office of Hearings and Appeals pursuant to § 121.1700 of these regulations, or unless the concern is recertified as a small business pursuant to § 121.1607 of these regulations.

(2) After SBA has determined that a protested concern is other than small for purposes of a particular procurement, such concern cannot thereafter become eligible for such procurement by affirmatively reducing its size.

(3) If SBA has made a formal size determination that a particular concern is not small, the concern will be deemed ineligible within such applicable size standard for any assistance under the Small Business Act or the Small Business Investment Act of 1958, unless it is thereafter recertified by SBA as a small business as provided below. After such an adverse size determination, the concern shall not self-certify as small within the same or a lower employee or annual receipts size standard (whichever is applicable) unless it is recertified.

§ 121.1607 Recertifications.

(a) An application for recertification may be made at any time to the SBA Regional Office which made the original size determination. Such application must be accompanied by a current completed Form 355 (OMB control number 3245–0101) and any other information sufficient to show a significant change in its ownership, management, contractual relations, or in other factors bearing on its status as a small concern.

(b) Recertification shall not be required nor will the prohibition against future self-certification apply if the adverse SBA size determination is based solely on a finding of affiliation due to a joint venture (e.g., ostensible subcontracting) limited to a particular Government procurement or property sale, or is based on an ineligible non-manufacturer size determination on a particular Government procurement.

(c) If SBA denies an application for recertification, such denial shall be deemed a formal size determination. Except as to timber sales size determinations, denials are appealable only by the concern in question to the SBA Office of Hearings and Appeals pursuant to § 121.1700 of these regulations. With respect to timber sales size determinations, SBA may also appeal a denial to the Office of Hearings and Appeals. (However, the concern's later self-certification on subsequent small business assistance applications may be protested in the usual manner.)

(d) The granting of an application for recertification shall have future effect only and shall be deemed a formal size determination, except that the notice requirements of § 121.1606(g) to entities other than the applicant shall not apply.

§ 121.1608 SIC appeals.

The Office of Hearings and Appeals exclusively shall determine all SIC Code Appeals. Procedures for filing appeals from SIC Code designations are set forth in § 121.1700 of these regulations.

§ 121.1700 Procedures for size and SIC Code Appeals.

§ 121.1701 Jurisdiction of Office of Hearings and Appeals.

The jurisdiction of the Office of Hearings and Appeals under this part shall be limited, as specified in paragraphs (a) and (b) of this section to appeals from formal size determinations and appeals from SIC Code designations. No appeal will be permitted from an informal or advisory size opinion. The Office of Hearings and Appeals will review appeals and make final decisions pursuant to the provisions of this subpart, affirming, reversing or modifying:

(a) Formal size determinations made by SBA Regional Offices, pursuant to § 121.1600, as to a concern's small business size status; and

(b) Designations by contracting officers, as made by the contracting officer or as changed by SBA pursuant to § 121.902(d) or § 121.1102(d) of this part, regarding classifications of the Standard Industrial Classification (SIC) Code and/or the Small Business Administration size standard applicable to a product or service for the purpose of Government procurements and sales.

§ 121.1702 Definitions.

The following definitions shall apply to this subpart 121.1700:

(a) "Person" means an individual, partnership, corporation, association, or other business entity.

(b) "Party" means the appellant, the concern whose size is at issue and all alleged affiliates of such concern that participate or are specifically afforded the opportunity to participate in the proceeding by the Presiding Judge, the contracting officer in a SIC Code designation appeal, the SBA in section 8(a) size appeals and other size appeals in which there is initially no other adverse party to the concern whose size is at issue in the case or where admitted by motion, and any other person so designated by the Presiding Judge. Parties have full rights of participation in the proceeding and are bound by the decision of the panel.

§ 121.1703 Who may appeal.

Appeals from size determinations and SIC Code designations may be filed with the Office of Hearings and Appeals by any of the following:

(a) Any interested person who was a party to or has been adversely affected by a formal size determination made pursuant to § 121.1600 of this part;

(b) Any interested person who has been adversely affected by a SIC Code designation; however, with respect to a particular section 8(a) contract, only SBA, or the contracting officer where SBA has changed a SIC Code designation pursuant to § 121.1102(d), may appeal a SIC Code designation;

(c) The Small Business Administration Associate or Assistant Administrator for the Small Business Administration program involved or the SBA Regional Administrator in the region which made the formal size determination, through the SBA's Office of General Counsel.

§ 121.1704 Where to appeal.

Written Notices of Appeal conforming to § 121.1706 may be mailed to the Office of Hearings and Appeals, Small Business Administration, Washington, DC 20416, or may be personally delivered to the Office of Hearings and Appeals at 2100 K Street, NW., Washington, DC.

§ 121.1705 Time limits for appeals.

(a)(1) Except as provided in paragraph (a)(2) of this section, a written appeal from a size determination must be sent by certified mail, return receipt requested, to the Office of Hearings and Appeals no later than thirty (30) calendar days after the date of receipt of such determination;

(2) A written appeal from a size determination in a pending procurement or a pending Government property sale must be sent by certified mail, return receipt requested, no later than five (5) days (exclusive of Saturdays, Sundays, and legal holidays) after the date of receipt of such determination. Unless written notice of such an appeal is mailed within the prescribed time limit, the appellant will be deemed to have waived all rights of appeal regarding size insofar as the pending procurement or sale is concerned; however, an appeal which is untimely under this paragraph (a)(2) may, if timely under paragraph (a)(1) of this section, proceed to final determination and shall apply to future procurements and sales.

(b)(1) Except as provided in paragraph (b)(2) of this section, an appeal from a SIC Code designation must be sent by certified mail, return receipt requested, to the Office of Hearings and Appeals no later than 10 days (exclusive of Saturdays, Sundays, and legal holidays) before the bid opening day or deadline for submitting proposals or quotations as specified in the solicitation, taking into account any modifications to such dates.

(2) Where the bid opening day or deadline for submitting proposals or quotations is less than 30 days after the issuance of the invitation for bids or request for proposals or quotations, the appeal must be sent by certified mail, return receipt requested, to the Office of Hearings and Appeals no later than 5 days (exclusive of Saturdays, Sundays, and legal holidays) before the bid opening day or deadline for submitting proposals or quotations.

(3) An untimely appeal of a SIC Code designation will be dismissed.

(c) The date of mailing will be determined by reference to the postmark indicated on the Notice of Appeal.

(d) A Notice of Appeal may be personally delivered to the Office of Hearings and Appeals within the time limits specified in this section in lieu of sending it by certified mail.

§ 121.1706 Initiation of appeal.

(a) The appeal is initiated by filing the Notice of Appeal. No particular form is prescribed for the Notice of Appeal. The appellant shall file the Notice of Appeal with the Office of Hearings and Appeals, in writing. A telegraphic notice shall be confirmed by next day mailing of a written Notice. In accordance with § 121.1712, the Notice of Appeal shall be certified and a copy shall be concurrently served by the appellant upon those parties and persons specified in paragraph (a)(6) of this section. The Notice of Appeal shall include the following information:

(1) Name, address and telephone number of the party filing the appeal, identification of the person to be contacted for service of correspondence, notices, orders, pleadings and requests for information pertaining to the appeal;

(2) The substance and date of the size determination or SIC Code designation from which the appeal is taken, including identification of the concern whose size is being determined, or the SIC or SBA size standard being applied;

(3) If applicable, the solicitation or contract number and date, and the name, address and telephone number of the contracting officer;

(4) A full and specific statement of the reasons why the size determination or SIC Code designation appealed is alleged to be erroneous;

(5) Presentation of arguments in support of such allegations; and

(6) A statement certifying that copies of the Notice of Appeal have been served upon the following, as applicable:

(i) The contracting officer where a procurement or sale is involved;

(ii) The Small Business Administration official whose formal size determination is appealed;

(iii) The concern whose size status is at issue;

(iv) All persons, other than the appellant, who filed protests at the SBA Regional Office level; and

(v) Each concern alleged to be affiliated with the concern whose size is at issue, to the extent that the address of such a concern is reasonably identifiable;

(vi) SBA's Office of General Counsel, attention: Associate General Counsel for General Law.

(b) Upon receipt of a copy of the Notice of Appeal, the SBA Regional Office shall immediately, by express mail or other appropriate next day delivery, send the entire case file to the Office of Hearings and Appeals.

(c) The Office of Hearings and Appeals will notify the parties and persons specified in paragraph (a)(6) of this section, and any other interested persons as determined by the Presiding Judge, of the date it received the Notice of Appeal and the docket number assigned.

§ 121.1707 Scope of appeal and burden of proof.

The Office of Hearings and Appeals will not consider issues not previously presented to the Small Business Administration official who made the size determination appealed unless such consideration is determined to be necessary to prevent manifest injustice to a party and such omission was not due to the fault of such party. The appellant shall have the burden of proof, by a preponderance of the evidence, in both size and SIC Code appeals.

§ 121.1708 Response to notice of appeal.

After a Notice of Appeal has been filed, any interested person may file a signed statement supporting or opposing the appeal and presenting argument and evidence with the Office of Hearings and Appeals. Such statement must be received by the Office of Hearings and Appeals no later than fifteen (15) calendar days after such Office's issuance of the notification of the filing of an Appeal (pursuant to § 121.1706(c)), unless otherwise specified by the Presiding Judge. Such statement shall also, in accordance with § 121.1712, be certified and concurrently served upon all parties and persons specified in § 121.1706(a)(6), and upon other persons determined to be interested by the Presiding Judge. In the discretion of the Presiding Judge, the appellant may be permitted to reply to any such response submitted.

§ 121.1709 Intervention.

(a) *Intervention by SBA.* The SBA may, upon motion and for good cause, intervene in any proceeding covered under this part. Such motion shall be filed on behalf of the SBA by SBA's Office of the General Counsel. Such motion shall be concurrently served on all parties and persons specified in § 121.1706(a)(6), and upon other persons determined to be interested by the Presiding Judge.

(b) *Intervention by interested persons.* Other persons may move to intervene in an appeal before the Office of Hearings and Appeals by filing a motion containing a brief statement of the movant's interest in the proceeding. Such motion shall be concurrently served on all parties and persons specified in § 121.1706(a)(6), and upon other persons determined to be interested by the Presiding Judge. The Presiding Judge may permit a person to intervene to such extent and upon such terms as appropriate, if:

(1) The movant's interest will not be adequately represented by the existing parties;

(2) The movant's participation in the appeal may reasonably be expected to assist in the development of a proper record; and

(3) The movant's participation will not broaden the issues, resulting in prejudicial delay of the proceeding.

§ 121.1710 Docket file.

(a) *Contents.* Upon the receipt of a Notice of Appeal, the case is assigned a docket number. The docket file will consist, as applicable, of the Notice of Appeal, any responses thereto, the case file submitted by the Small Business Administration Regional Office, any materials submitted by the contracting officer, including the related written determination of the official or officer, any additional pleadings, motions and other documents submitted pursuant to these sections, unless expressly excluded from the docket file or not received into evidence by the Presiding Judge, the transcript or recording of any oral hearing or telephone conference, and any orders and decisions issued in the proceeding.

(b) *Public access to docket file.* The following rules apply regarding public access to the docket file for a proceeding:

(1) Except as provided in paragraph (b)(2) of this section, the docket file is available for public inspection in the Office of Hearings and Appeals during normal business hours and copies of such material may be obtained upon payment of the applicable charges.

(2) The following information in the docket file shall not be subject to public inspection or copying:

(i) Information which cannot be disclosed according to law;

(ii) Information subject to an in camera order issued pursuant to § 121.1717 of these regulations; and

(iii) Any proprietary information the withholding of which is provided pursuant to § 121.1712 of these regulations or which is identified and contained in the case file submitted by the Small Business Administration official or the contracting officer.

(3) The case file submitted by the Small Business Administration Regional Office shall be returned to such office upon termination of the proceeding. The remainder of the docket file shall be retained and disposed of in accordance with general principles of Government records management.

§ 121.1711 Assignment of three judge panel.

Upon receipt of a Notice of Appeal, the Assistant Administrator for the Office of Hearings and Appeals will assign the appeal to a panel of three Judges, one of whom (the Presiding Judge) will be designated to preside over the panel. The panel will have jurisdiction to conduct proceedings relative to and to decide the controversy and to take such further appropriate action as may be necessary to issue a decision in the matter in accordance with applicable agency policy, precedent and law. A decision agreed upon by a majority of the panel will be the final decision of the Small Business Administration.

§ 121.1712 Filing and service of pleadings.

The following rules apply to all pleadings, motions, responses, and other documents filed pursuant to these sections.

(a) Except as provided in paragraph (b) of this section, all pleadings, motions, and other documents filed with the Office of Hearings and Appeals pursuant to these sections shall be served upon all parties to the proceeding or their respective counsel or other representative in the proceeding, personally or by registered or certified mail, and shall be accompanied by certification of such service.

(b) Any pleading, motion, response, and other document filed with the Office of Hearings and Appeals shall include a signed certificate which states how and when service was made.

(c) Tax returns, confidential data on SBA Form 355 and any other document that constitutes proprietary information need not initially be served, so long as such deletions are identified and described in the copies served upon all parties to the proceeding pursuant to paragraph (a) of this section. In addition, if such proprietary information is received in evidence by the Presiding Judge, the offering party must petition for an *in camera* order, pursuant to § 121.1717, in order to withhold such information from the public and from other parties.

(d) Any pleading, motion, response, or other document filed pursuant to these sections shall be signed by an authorized person, who shall certify as follows:

> I have read this document and, under penalty of perjury and the sanctions imposed under 18 U.S.C. 1001, of which I am aware, I certify that, to the best of my knowledge, the statements made herein are true and correct, and that this document is not being filed for the purpose of delay or harassment.

(e) Time limitations on all filings are strictly enforced. Unless authorized by the Office of Hearings and Appeals, late filings, and filings not specifically provided for in this subpart, may be disregarded to avoid delay in disposing of the appeal. In the exercise of discretion and for good cause, the Presiding Judge may waive, after notice to all parties, any time limit set forth in this section, other than the time limit for appeal set forth in § 121.1705(a), provided that in the most extraordinary situations the limitations of § 121.1705(a) may be waived in order to prevent manifest injustice. A motion for an extension of time must be filed within the time period to which it applies.

§ 121.1713 Authority and functions of presiding judge.

The Presiding Judge of the panel to which the appeal is assigned is authorized to act upon and to dispose of all relevant motions, petitions, responses, and other pleadings; to obtain such competent and relevant facts as the Presiding Judge may deem necessary to a proper and just determination of the matters at issue, including, for example, by oral hearing or telephone conferences, through judge's interrogatories, or by other appropriate means; and to fix the time and place of any oral hearing or telephone conference. The Presiding Judge is also authorized to:

(a) Administer oaths and affirmations;

(b) Request the attendance of Small Business Administration employees;

(c) Examine witnesses;

(d) Permit discovery upon motion;

(e) Issue protective orders in the context of discovery and, as specified in § 121.1716, in the context of subpoenas;

(f) Issue subpoenas as provided in § 121.1716;

(g) Issue *in camera* orders pursuant to § 121.1717;

(h) Rule upon questions of procedure, evidence, policy and law, including the designation of party status in a proceeding and the nature and extent of participation for all other participants;

(i) Regulate the course of any oral hearing, maintain decorum, and exclude from such hearing any person engaging in disruptive conduct;

(j) Require the filing of memoranda and the presentation of oral argument with respect to any question upon which the Presiding Judge is required to rule during the course of the proceeding;

(k) Hold conferences for the settlement, explanation or simplification of the issues or for other appropriate purposes;

(l) Dispose of procedural requests and similar matters;

(m) Take action and make decisions in conformity with applicable law, policy, and procedures of the Small Business Administration;

(n) Act on motions to enlarge, modify, or delete issues in the proceedings;

(o) Extend the time limits for filing pleadings for good cause, except the time limit for appeal set forth in § 121.1705(a); and

(p) Impose appropriate sanctions if any party fails to comply with an order of the Presiding Judge to produce certain information, including but not limited to:

(1) Drawing an inference against the party who has failed to comply with the order as to facts in dispute;

(2) Prohibiting the party who has failed to comply with the order from introducing, or otherwise relying upon, evidence relating to the information sought;

(3) Permitting any opposing party to introduce secondary evidence concerning the information sought;

(4) Striking any part of the pleadings of the party failing to comply with such order; or

(5) Taking such other appropriate action in accordance with applicable law, policy, and procedures of the Small Business Administration.

§ 121.1714 Oral hearings and telephone conferences.

The following rules apply to oral hearings and telephone conferences:

(a) The Presiding Judge generally decides the appeal upon the written record, without an oral hearing or oral argument. An oral hearing shall be held only when the Presiding Judge determines, upon examination of the docket file and consideration of such additional facts as may be acquired on notice to the parties, that there is a genuine dispute as to any material fact of decisional significance which cannot be resolved except by confrontation of witnesses.

(b) If the Presiding Judge determines that there is a matter that cannot be resolved other than by a telephone conference or an oral hearing, he or she will fix a time and place for such conference or hearing to resolve such matter.

(c) Any oral hearing will be set at a site reasonably convenient to the parties and notice thereof will set forth:

(1) A statement as to the purpose of the oral hearing; and

(2) A statement as to the matters of fact and law involved and the issues that will be heard.

(d) The Office of Hearings and Appeals will provide a means for recording oral hearings and telephone conferences at which evidence is taken. A transcript or record, as applicable, may be obtained upon payment of the applicable charges.

§ 121.1715 Prohibited ex parte communications.

Except to the extent required for the disposition of *ex parte* matters as authorized by law or regulation, no person may consult a Judge on a question of fact or law at issue in an appeal except on notice and opportunity for all parties to participate.

§ 121.1716 Subpoenas.

The following rules apply to subpoenas:

(a) Subpoenas are authorized at the discretion of the Presiding Judge. Only parties to the proceeding may request subpoenas. No subpoenas may be issued against Small Business Administration personnel or for documents in the custody or control of the Small Business Administration.

(b) Subpoenas requiring the attendance and testimony of witnesses, and subpoenas requiring the production of any books, papers, records, contracts, agreements, and other documents relating to an appeal under this section shall be signed and issued by the Presiding Judge.

(c) Unless submitted on the record while an oral hearing is in progress, requests for a subpoena *ad testificandum* shall be submitted in writing, under oath, identifying the person to be subpoenaed and showing the relevance, materiality, and the basis for requiring the testimony of such person.

(d) Requests for a subpoena *duces tecum* shall be submitted in writing, under oath, and shall specify with particularity the books, papers and documents desired and the facts expected to be proved thereby. A showing shall also be made as to the relevance and materiality of the evidence sought.

(e) Requests for subpoenas shall be submitted by a party in triplicate and may be made *ex parte*.

(f) Any person or entity against whom a subpoena is directed may, prior to the return date, file with the Presiding Judge a motion to quash or limit the subpoena, setting forth the reasons the subpoena should not be complied with or should be limited in scope. Notwithstanding the requirements of § 121.1712(a) of this subpart, such motion need only be served upon the party requesting the subpoena.

(g) Notice, including a brief statement of the reasons therefor, will be given for the denial, in whole or in part, of a request for subpoena or of a motion to quash.

(h) A subpoena may be served by any person who is not a party to or participant in the proceeding and who is not less than 18 years of age.

(i) Service of a subpoena upon the person named therein shall be made by exhibiting the original subpoena to such person, by reading the original subpoena if such person is unable to read, by delivering a duplicate of the subpoena to such person, and by tendering the fees for one day's attendance at the proceeding to which such person is summoned and the mileage allowed by law. If the subpoena is issued on behalf of the United States or an officer or agency thereof, attendance fees and mileage need not be tendered, but will be paid upon filing of an appropriate claim therefor.

(j) The person effecting service of a subpoena shall sign an affidavit thereof, stating the date, time, and manner of service.

(k) In case of failure to make service, the reasons for the failure shall be stated on the original subpoena by the person who attempted to make service.

(l) The original subpoena, bearing or accompanied by the required affidavit or statement, shall be returned immediately to the Office of Hearings and Appeals.

(m) The attendance of witnesses and the production of documentary evidence may be required from any place in the United States to any designated place of hearing. In case of disobedience of a subpoena, the Small Business Administration may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(n) Witnesses who are subpoenaed and respond thereto are entitled to the same fees, including mileage, as are paid for like service in the courts of the United States. Fees shall be paid by party at whose instance the subpoena is issued.

(o) In the exercise of discretion, the Presiding Judge authorizing and issuing any subpoena may, upon request or upon his or her own motion, devise and provide such protective order(s) as may be necessary and appropriate to protect against harassment, undue expense or breach of confidentiality of information and data reasonably concluded to require protection from general disclosure.

§ 121.1717 In camera orders.

(a) *Definition. In camera* materials are documents, testimony, or other data which by order of the Presiding Judge are kept confidential and excluded from disclosure to any person except as provided in this section.

(b) *In camera treatment of documents and testimony.* Upon motion and a showing of good cause, the Presiding Judge shall have the authority to order documents or oral testimony to be received *in camera*. The order will specify the date on which *in camera* treatment is expected to expire and will include:

(1) A description of the documents and/or testimony, or portion(s) thereof, being received *in camera;*

(2) A full statement of the reasons for granting *in camera* treatment; and

(3) The terms and conditions imposed by the Presiding Judge limiting access to or use of the *in camera* material.

(c) *Access and disclosure to parties.* (1) Administrative Judges, their designated staffs and other Office of Hearings and Appeals personnel, as appropriate, shall have complete access to *in camera* materials. Any party to the proceedings may seek access only in accordance with paragraph (c)(2) of this section.

(2) Any person seeking disclosure of *in camera* documents or access to testimony shall make a written request to the Presiding Judge who issued the *in camera* order. The Presiding Judge may grant or deny the request in whole or in part. The Presiding Judge will examine the *in camera* materials and may excise any portions prior to disclosure of the materials to the requester consistent with his or her ruling on the request.

(3) *Appeals.* (i) In cases where a motion for an *in camera* order has been denied in whole or in part by the Presiding Judge, an appeal may be taken to the Assistant Administrator for the Office of Hearings and Appeals.

(ii) In cases where a request for disclosure of materials already subject to an *in camera* order has been denied in whole or in part by the Presiding Judge, an appeal may be taken to the Assistant Administrator for the Office of Hearings and Appeals. To the extent practicable, the submitter of the information sought on appeal shall be afforded an opportunity to provide written comments on the appeal.

(d) *In camera* materials shall be segregated from the docket file and protected from public disclosure until the termination of *in camera* treatment, either by expiration of the order or a successful appeal. After the termination of such *in camera* treatment, the materials shall be open to the public to the extent permitted by law.

(e) Proposed findings, conclusions, briefs, or other documents may not include specific details of *in camera* materials. However, general references to such materials may be made. To the extent that parties consider necessary the inclusion of specific details of *in camera* materials, those references shall be segregated and marked and shall become part of the *in camera* record. Those documents shall be served only on parties accorded access to the *in camera* material by the Presiding Judge.

§ 121.1718 The record.

The following rules apply to the record compiled in the proceeding:

(a) A transcript or recording of any testimony and exhibits, and any other documents included in the docket file pursuant to this provision shall constitute the exclusive record for decision. Where the decision is based on official notice of a material fact not appearing in the record, any party may file a petition for reconsideration no later than 20 calendar days following the issuance of the decision served pursuant to § 121.1721(b) advocating a contrary factual proposition and setting forth the factual or legal basis for the challenge.

(b) The record in a proceeding in which an oral hearing has been held will be closed by an announcement to that effect at such hearing by the Presiding Judge, when the taking of testimony has been concluded. When no oral hearing has been held, the record shall be closed 20 calendar days after the issuance of the notification of the filing of an appeal (§ 121.1706(a)). However, upon notice to all parties to the proceeding, the Presiding Judge, in his or her discretion, may amend the date that the record is closed. In any case where an evidentiary transcript has been prepared following an oral hearing, the transcript, together with all exhibits, will be certified by the Presiding Judge and filed in the docket file in the Office of Hearings and Appeals. A copy of such certification will be served on all parties to the proceeding.

(c) At any time during the course of the proceeding, or as directed by the Presiding Judge, but no later than ten (10) calendar days after the issuance of notice of certification of the record made pursuant to paragraph (b) of this section, any party to the proceeding may file with the Presiding Judge a motion requesting the correction of a transcript, if any, which shall be accompanied by proof of service thereof upon all other parties to the proceeding. No later than five (5) calendar days after the receipt of such a motion, other parties may file a response in support of, or in opposition to, such motion. Thereafter, the Presiding Judge will issue an order specifying the corrections, if any, to be made in the transcript. A copy of the order shall be served upon all parties and will be made a part of the record. The Presiding Judge may, on his or her own motion, specify on notice to the parties corrections to be made in the transcript. Objection to any such proposed correction(s) shall be filed within three (3) days after receipt of such notice and such objection(s) will be the subject of appropriate rulings by the Presiding Judge.

§ 121.1719 Post-hearing procedures.

The following rules will apply to proposed findings and conclusions:

(a) After the conclusion of any oral hearing, any party may, with the concurrence of the Presiding Judge, file proposed findings of fact and conclusions, briefs and memoranda of law; Provided, that the Presiding Judge may, in any proceeding, direct any party to file proposed findings of fact and conclusions, briefs and memoranda of law. Any proposed findings of fact, conclusions, briefs, and memoranda of law shall be filed within fifteen (15) calendar days after the issuance of notice of certification of the record pursuant to paragraph (b) of this section unless the Presiding Judge specifies otherwise.

(b) Proposed findings of fact shall be set forth in serially numbered paragraphs and shall set out with particularity all decisionally significant evidentiary facts developed on the record that are deemed to support the findings proposed, with citations to the transcript, where appropriate, and to other portions of the record relied on for each evidentiary fact. Proposed conclusions shall also be separately stated in serially numbered paragraphs. Proposed findings and conclusions may be limited to those issues that affect the interests of their proponent and may be accompanied by supporting briefs.

(c) In the absence of a showing of good cause therefor, the failure to file proposed findings of fact, conclusions, briefs and memoranda of law when directed to do so by the Presiding Judge, will be deemed to constitute a waiver of the right to object to the findings and conclusions of the panel.

§ 121.1720 Decision.

(a) Following receipt of proposed findings and conclusions authorized or directed pursuant to § 121.1719 or default in the making of such filings, or upon closing the record when such filings have not been authorized or directed, the Presiding Judge will prepare a proposed decision containing findings of fact and conclusions, as well as the reasons therefor, with respect to all the decisionally significant material issues of fact and law presented on the record. The proposed decision will be circulated among the panel members for consideration and concurrence. Upon approval of that decision or a different decision by a majority of the panel, the decision will be issued.

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(b) The decision is the final decision of the Small Business Administration, becomes effective immediately, and binds all parties to the proceeding. However, a party may petition for reconsideration pursuant to § 121.1721 of this subpart.

(c) The Office of Hearings and Appeals shall serve the decision upon all parties to the proceeding by certified mail. Where time is of the essence, notice of the ultimate determination may be communicated in a telegram or by telephone to the parties, to be followed by service of the full text.

§ 121.1721 Reconsideration of decision.

(a) At any time after a written decision has been issued and upon notice to all parties and persons specified in § 121.1706(a)(6), and upon other persons determined to be interested by the Presiding Judge, the panel may, on its own initiative, reopen the proceeding and enter a new decision confirming, modifying, or setting aside the decision in whole or in part.

(b) Within 20 calendar days after issuance of a written decision and upon notice to all parties and persons specified in § 121.1706(a)(6), and upon other persons determined to be interested by the Presiding Judge, any party may file a petition for reconsideration of such decision, setting forth the relief sought and the grounds in support of the petition. Such grounds must be confined to new questions raised by the decision concerning which the petitioner had no previous opportunity to present evidence or argument.

(c) In cases where SBA has not previously appeared in the case as a party, and was not so asked to appear by the Presiding Judge, SBA's Office of the General Counsel may, within 20 calendar days after issuance of a written decision and upon notice to all parties and persons specified in § 121.1706(a)(6), and upon other persons determined to be interested by the Presiding Judge, file a petition for reconsideration where the decision presents significant issues of precedential importance.

(d) Any party may oppose the petition filed pursuant to paragraph (b) or (c) of this section by filing an answer thereto within 10 days after receipt of service of the petition upon such party.

(e) The filing of a petition for reconsideration shall not stay the effect of the decision unless explicitly ordered by the panel.

§ 121.1722 Delegation of authority when judge not available.

In the event of the absence or unavailability of the Presiding Judge or other member of the panel to which the appeal is assigned, where such action is necessary, any Judge in the Office of Hearings and Appeals may be authorized by the Assistant Administrator of the Office of Hearings and Appeals to participate in rendering a final decision and to dispose of any motions or other interlocutory matters, as appropriate, pertaining to such appeal.

Date: August 19, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-19470 Filed 8-28-87; 8:45 am]

BILLING CODE 8025-01-M

federal register

Monday
August 31, 1987

Part III

The President

Proclamation 5696—9-1-1 Emergency Number Day, 1987

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Presidential Documents

Title 3—

The President

Proclamation 5696 of August 26, 1987

9–1–1 Emergency Number Day, 1987

By the President of the United States of America

A Proclamation

Protecting the lives and property of citizens is one of government's fundamental responsibilities. In times of emergency, citizens must have a quick and easy way to summon police and other rescue services. The 9–1–1 emergency telephone number fulfills this need and proves its value hundreds of times every day throughout our country.

In 1968, 9–1–1 was designated the universal emergency telephone number in North America. Today we can see with satisfaction that much has been done to implement this system. Thousands of municipalities have established the 9–1–1 telephone system, making it possible to save more lives and to increase the public's confidence in local emergency response systems. The 9–1–1 system has enabled communities to respond to a greater number of emergency calls with added efficiency and lower costs to the public.

State and local governments have made a commitment to implement the 9–1–1 telephone system across our Nation as soon as possible. Some States have mandated that the system be operational by a certain date, while others have made much progress on a voluntary basis. These efforts to enhance the welfare and safety of our citizens deserve public recognition and every commendation.

The Congress, by Public Law 99–448, has designated September 11, 1987, as "9–1–1 Emergency Number Day" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim September 11, 1987, as 9–1–1 Emergency Number Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87–20116
Filed 8–28–87; 11:23 am]
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H.R. 812/Pub. L. 100-107
Malcolm Baldrige National Quality Improvement Act of 1987. (Aug. 20, 1987; 101 Stat. 724; 4 pages) Price: $1.00

H.R. 2971/Pub. L. 100-108
Uniform Cotton Classing Fees Act of 1987. (Aug. 20, 1987; 101 Stat. 728; 2 pages) Price: $1.00

H.R. 3085/Pub. L. 100-109
To amend the Water Resources Development Act of 1986 relating to the level of flood protection provided by the flood control project for Lock Haven, Pennsylvania. (Aug. 20, 1987; 101 Stat. 730; 1 page) Price: $1.00

H.J. Res. 335/Pub.L. 100-110
Designating the week of September 13 through September 19, 1987, as "National Reye's Syndrome Awareness Week." (Aug. 20, 1987; 101 Stat. 731; 2 pages) Price: $1.00

S. 1591/Pub. L. 100-111
To temporarily restrict the ability to document foreign-built fish processing vessels under the laws of the United States. (Aug. 20, 1987; 101 Stat. 733; 1 page) Price: $1.00

S.J. Res. 175/Pub.L. 100-112
To recognize the efforts of the United States Soccer Federation in bringing the World Cup to the United States in 1994. (Aug. 20, 1987; 101 Stat. 734; 1 page) Price: $1.00

S. 1550/Pub. L. 100-113
Federal Triangle Development Act. (Aug. 21, 1987; 101 Stat. 735; 13 pages) Price: $1.00

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[6] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

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**Animal and
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7 CFR Part

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Federal Register
Vol. 52, No. 169
Tuesday, September 1, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 87-077]

Imported Fire Ant Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the list of generally infested areas under the imported fire ant quarantine and regulations by adding areas in 6 counties in Alabama, 2 counties in Arkansas, 11 counties in Georgia, 2 counties in Mississippi, 11 counties in North Carolina, and 42 counties in Texas.

We are also amending the imported fire ant quarantine and regulations by quarantining the state of Oklahoma, and by designating areas in three counties in Oklahoma as generally infested areas.

In addition, we are making nonsubstantive, editorial changes.

This action imposes certain restrictions on the interstate movement of regulated articles and expands the regulated area. It is necessary to prevent the artificial spread of the imported fire ant.

DATE: Interim rule effective September 1, 1987. Consideration will be given only to comments postmarked or received on or before November 2, 1987.

ADDRESSES: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-077. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Charles H. Bare, Staff Officer, Field Operations Support Staff, PPQ, APHIS, USDA, Room 663, Federal Building, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant quarantine and regulations contained in 7 CFR 301.81, *et. seq.*, and (referred to below as the regulations) restrict the interstate movement of regulated articles from regulated areas in designated states to prevent the artificial spread of the imported fire ant. The improted fire ant (*Solenopsis* spp.) is an insect that interferes with farming operations, can cause damage to certain crops, and is a pest of livestock, pets, and people in rural and urban areas. The quarantined states are: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, and Texas.

Under the regulations, an area is designated as a regulated area if the imported fire ant has been found there, or if reason exists to believe the imported fire ant is present there.

Regulated areas are designated as either generally infested areas or suppressive areas. Suppressive areas are those areas where eradication of the imported fire ant is being undertaken as an objective. Generally infested areas are all other regulated areas.

Restrictions are imposed on the interstate movement of regulated articles from regulated areas to prevent the artificial movement of imported fire ant into noninfested areas, and to prevent further infestation of suppressive areas.

Designation of Areas as Generally Infested Areas

We are amending § 301.81(a) of the regulations by adding Oklahoma to the list of quarantined states. We are also amending § 301.81-2a by designating portions of 3 Oklahoma counties as generally infested areas.

We are also amending the list of generally infested areas in § 301.81-2a of the regulations by adding areas in quarantined states as follows: Cherokee, De Kalb, Jackson, Madison, Marshall, and Morgan Counties in Alabama; Dallas and Howard Counties in Arkansas; Banks, Barrow, Clarke, Elbert, Gordon, Jackson, Lincoln, Madison, Oglethorpe, Whitfield, and Wilkes Counties in Georgia; Marshall and Tippah Counties in Mississippi; Beaufort, Bladen, Craven, Duplin, Hyde, Lenoir, Richmond, Robeson, Sampson, Scotland, and Union Counties in North Carolina; and Bandera, Bee, Bosque, Bowie, Burnet, Camp, Cass, Comanche, Cooke, Coryell, Duval, Eastland, Erath, Fannin, Franklin, Frio, Grayson, Henderson, Hood, Hunt, Jim Wells, Karnes, Kaufman, Kimble, Lampasas, Llano, Medina, Morris, Parker, Rains, Somervell, Taylor, Titus, Tom Green, Uvalde, Van Zandt, Wharton, Wichita, Williamson, Wilson, Wise, and Young Counties in Texas.

See the rule portion of this document for specific descriptions of newly infested areas.

These actions are necessary because surveys conducted by inspectors of the United States Department of Agriculture and officials of state agencies establish that the imported fire ant has spread to these areas. Eradication of the imported fire ant is not being undertaken as an objective in these areas, and therefore—as an emergency measure—we are adding them to the list of imported fire ant generally infested areas.

Emergency Action

William F. Helms, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Because the imported fire ant could be spread artificially to noninfested areas of the United States, it is necessary to act immediately to control its spread.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553(d)(3) for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the

Federal Register as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an estimated annual effect on the economy of approximately $37,500; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in Alabama, Arkansas, Georgia, Mississippi, North Carolina, Oklahoma, and Texas. Thousands of small entities move these articles interstate from the above mentioned States, and many more thousands of small entities move these articles interstate from other States.

However, based on information compiled by the Department, we have determined that approximately 896 small entities move these articles interstate from the specified areas in those States. Further, the overall economic impact from this action is estimated to be approximately $37,500.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Imported fire ant, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR Part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.81 [Amended]

2. Section 301.81, paragraph (a), is amended by adding "Oklahoma" immediately before "Puerto Rico."

3. Section 301.81–2a is revised to read as follows:

§ 301.81–2a Regulated areas; suppressive and generally infested areas.

The civil divisions and parts of civil divisions described below are designated as imported fire ant regulated areas within the meaning of the provisions of this subpart; and these regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below:

Alabama

(1) *Generally infested areas.*
Autauga County. The entire county.
Baldwin County. The entire county.
Barbour County. The entire county.
Bibb County. The entire county.
Blount County. The entire county.
Bullock County. The entire county.
Butler County. The entire county.
Calhoun County. The entire county.
Chambers County. The entire county.
Cherokee County. The entire county.
Chilton County. The entire county.
Choctaw County. The entire county.
Clarke County. The entire county.
Clay County. The entire county.
Cleburne County. The entire county.
Coffee County. The entire county.
Colbert County. The entire county.
Conecuh County. The entire county.
Coosa County. The entire county.
Covington County. The entire county.
Crenshaw County. The entire county.
Cullman County. The entire county.
Dale County. The entire county.
Dallas County. The entire county.
De Kalb County. T. 8 and 9 S., R. 5 E.; W. 1/2 T. 8 and 9 S., R. 6 E.; secs. 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, T. 9 S., R. 6 E.; T. 8 and 9 S., R. 7 E.; T. 8 and 9 S., R. 8 E.; T. 7 and 8 S., R. 9 E.; T. 7 S., R. 10 E.; secs. 26 and 35, T. 7 S., R. 7 E.; secs. 9, 10, 15, and 16, T. 7 S., R. 8 E.
Elmore County. The entire county.
Escambia County. The entire county.
Etowah County. The entire county.
Fayette County. The entire county.
Franklin County. The entire county.
Geneva County. The entire county.
Greene County. The entire county.
Hale County. The entire county.
Henry County. The entire county.
Houston County. The entire county.
Jackson County. Secs. 11, 12, 13, and 14, T. 5 S., R. 4 E.; secs. 7, 8, 17, and 18, T. 5 S., R. 5 E.
Jefferson County. The entire county.
Lamar County. The entire county.
Lauderdale County. T. 2 S., R. 10, 11, 12, 13, 14, and 15 W.; T. 3 S., R. 9, 10, 11, 12, and 13 W.
Lawrence County. The entire county.
Lee County. The entire county.
Limestone County. S. ½ T. 3 S., R. 6 W.; W. ½ T. 4 S., R. 5 W.; T. 4 S., R. 6 W.; T. 5 S., R. 4 W.
Lowndes County. The entire county.
Macon County. The entire county.
Madison County. That portion of the county south of the north line of T. 5 S.
Marengo County. The entire county.
Marion County. The entire county.
Marshall County. The entire county.
Mobile County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Morgan County. The entire county.
Perry County. The entire county.
Pickens County. The entire county.
Pike County. The entire county.
Randolph County. The entire county.
Russell County. The entire county.
St. Clair County. The entire county
Shelby County. The entire county.
Sumter County. The entire county.
Talladega County. The entire county.
Tallapoosa County. The entire county.
Tuscaloosa County. The entire county.
Walker County. The entire county.
Washington County. The entire county.
Wilcox County. The entire county.
Winston County. The entire county.
(2) *Suppressive areas.* None.

Arkansas

(1) *Generally infested areas.*
Ashley County. The entire county.
Bradley County. The entire county.
Calhoun County. The entire county.
Chicot County. The entire county.
Cleveland County. The entire county.
Columbia County. The entire county.
Dallas County. The entire county.
Desha County. That portion of the county south of the south line of T. 10 S.
Drew County. The entire county.
Hempstead County. That portion of the county south of Interstate 30 including all of the incorporated city limits of Hope.
Howard County. T. 9 and 10 S., R. 27 W.
Jefferson County. Secs. 30, 31, and that part of secs. 29, 32, and 33 south and east of the Arkansas River of T. 5 S., R. 8 W.; secs. 25 and 36 of T. 5 S., R. 9 W.; secs. 8, 9, 10, 11, 14, 15, 16, and 17 of T. 6 S., R. 8 W.
Lafayette County. The entire county.
Lincoln County. That portion of the county south of State Road 114 and west of State Road 81, including all of the incorporated city limits of Palmyra and Star City.

Little River County. The entire county.
Miller County. The entire county.
Nevada County. That portion of the county south of the south line of T. 10 S., and the Little Missouri River.
Quachita County. The entire county.
Union County. The entire county.
(2) *Suppressive areas.* None.

Florida

(1) *Generally infested areas.* The entire state.
(2) *Suppressive areas.* None.

Georgia

(1) *Generally infested areas.*
Appling County. The entire county.
Atkinson County. The entire county.
Bacon County. The entire county.
Baker County. The entire county.
Baldwin County. The entire county.
Banks County. That portion of the county within Georgia Military Districts 208, 265, 448, 468, 912, 1206, 1210, and 1464.
Barrow County. The entire county.
Bartow County. The entire county.
Ben Hill County. The entire county.
Berrien County. The entire county.
Bibb County. The entire county.
Bleckley County. The entire county.
Brantley County. The entire county.
Brooks County. The entire county.
Bryan County. The entire county.
Bulloch County. The entire county.
Burke County. The entire county.
Butts County. The entire county.
Calhoun County. The entire county.
Camden County. The entire county.
Candler County. The entire county.
Carroll County. The entire county.
Charlton County. The entire county.
Chatham County. The entire county.
Chattachoochee County. The entire county.
Chattooga County. That portion of the county within Georgia Militia Districts 925, 961, 968, 1083, 1216, and 1484.
Cherokee County. That portion of the county within Georgia Militia District 817.
Clarke County. The entire county.
Clay County. The entire county.
Clayton County. The entire county.
Clinch County. The entire county.
Cobb County. The entire county.
Coffee County. The entire county.
Colquitt County. The entire county.
Columbia County. The entire county.
Cook County. The entire county.
Coweta County. The entire county.
Crawford County. The entire county.
Crisp County. The entire county.
Decatur County. The entire county.
De Kalb County. The entire county.
Dodge County. The entire county.
Dooly County. The entire county.
Dougherty County. The entire county.
Douglas County. The entire county.
Early County. The entire county.
Echols County. The entire county.
Effingham County. The entire county.
Elbert County. That portion of the county within Georgia Militia Districts 190, 191, 192, and 193.
Emanuel County. The entire county.
Evans County. The entire county.
Fayette County. The entire county.
Floyd County. That portion of the county within Georgia Militia Districts 829, 855, 859, 919, 923, 924, 962, 1048, 1059, 1120, 1453, 1478, 1504, 1562, 1688, 1719, and 1822.
Forsyth County. That portion of the county within Georgia Militia Districts 879, 1276, and 795.
Fulton County. The entire county.
Glascock County. The entire county.
Glynn County. The entire county.
Gordon County. That portion of the county within Georgia Militia Districts 849, 856, 973, 980, 1054, 1055, 1056, 1064, and 1595.
Grady County. The entire county.
Greene County. The entire county.
Gwinnett County. The entire county.
Hall County. That portion of the county within Georgia Militia Districts 413, 1270, and 1419.
Hancock County. The entire county.
Haralson County. The entire county.
Harris County. The entire county.
Heard County. The entire county.
Henry County. The entire county.
Houston County. The entire county.
Irwin County. The entire county.
Jackson County. The entire county.
Jasper County. The entire county.
Jeff Davis County. The entire county.
Jefferson County. The entire county.
Jenkins County. The entire county.
Johnson County. The entire county.
Jones County. The entire county.
Lamar County. The entire county.
Lanier County. The entire county.
Laurens County. The entire county.
Lee County. The entire county.
Liberty County. The entire county.
Lincoln County. The entire county.
Long County. The entire county.
Lowndes County. The entire county.
Macon County. The entire county.
Madison County. The entire county.
Marion County. The entire county.
McDuffie County. The entire county.
McIntosh County. The entire county.
Meriwether County. The entire county.
Miller County. The entire county.
Mitchell County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Morgan County. The entire county.
Muscogee County. The entire county.
Newton County. The entire county.
Oconee County. The entire county.
Oglethorpe County. The entire county.
Paulding County. The entire county.
Peach County. The entire county.
Pierce County. The entire county.
Pike County. The entire county.
Polk County. The entire county.
Pulaski County. The entire county.
Putnam County. The entire county.
Quitman County. The entire county.
Randolph County. The entire county.
Richmond County. The entire county.
Rockdale County. The entire county.
Schley County. The entire county.
Screven County. The entire county.
Seminole County. The entire county.
Spalding County. The entire county.
Stewart County. The entire county.
Sumter County. The entire county.
Talbot County. The entire county.
Taliaferro County. The entire county.
Tattnall County. The entire county.
Taylor County. The entire county.
Telfair County. The entire county.
Terrell County. The entire county.
Thomas County. The entire county.
Tift County. The entire county.
Toombs County. The entire county.
Treutlen County. The entire county.
Troup County. The entire county.
Turner County. The entire county.
Twiggs County. The entire county.
Upson County. The entire county.
Walton County. The entire county.
Ware County. The entire county.
Warren County. The entire county.
Washington County. The entire county.
Wayne County. The entire county.
Webster County. The entire county.
Wheeler County. The entire county.
Whitfield County. That portion of the county within Georgia Militia Districts 627, 872, 1233, 1298, 1305, and 1433.
Wilcox County. The entire county.
Wilkes County. The entire county.
Wilkinson County. The entire county.
Worth County. The entire county.
(2) *Suppressive areas.* None.

Louisiana

(1) *Generally infested areas.* The entire state.
(2) *Suppressive areas.* None.

Mississippi

(1) *Generally infested areas.*
Adams County. The entire county.
Alcorn County. The entire county.
Amite County. The entire county.
Attala County. The entire county.
Benton County. That portion of the county south of the north line of T. 4 S.
Bolivar County. T. 20 N., R. 6, 7, and 8 W.; T. 21 N., R. 5, 6, and 7 W., and S. ½ T. 22 N., R. 6 W.
Carroll County. The entire county.
Calhoun County. The entire county.
Chickasaw County. The entire county.
Choctaw County. The entire county.
Claiborne County. The entire county.
Clarke County. The entire county.
Clay County. The entire county.
Copiah County. The entire county.
Covington County. The entire county.
Forrest County. The entire county.
Franklin County. The entire county.
George County. The entire county.
Greene County. The entire county.
Grenada County. The entire county.
Hancock County. The entire county.
Harrison County. The entire county.
Hinds County. The entire county.
Holmes County. The entire county.
Humphreys County. The entire county.
Issaquena County. The entire county.
Itawamba County. The entire county.
Jackson County. The entire county.
Jasper County. The entire county.
Jefferson County. The entire county.
Jefferson Davis County. The entire county.
Jones County. The entire county.
Kemper County. The entire county.
Lafayette County. That portion of the county south of the north line of T. 10 S.; T. 9 S., R. 1, 2, 3, and 4, W.; T. 8 S., R. 1, 2, and 3, W.; T. 7 S., R. 1 W., and S.E. ¼, T. 6 S., R. 3 W.
Lamar County. The entire county.
Lauderdale County. The entire county.
Lawrence County. The entire county.

Leake County. The entire county.
Lee County. The entire county.
Leflore County. That portion of the county south of the north line of T. 19 N.; S. ½ of T. 20 N., R. 1 E.; and that portion of T. 20 and 21 N., R. 2 E. within the county.
Lincoln County. The entire county.
Lowndes County. The entire county.
Madison County. The entire county.
Marion County. The entire county.
Marshall County. That portion of T. 7 S., R. 1 W. and T. 6 S., R. 1 W. within the county.
Monroe County. The entire county.
Montgomery County. The entire county.
Neshoba County. The entire county.
Newton County. The entire county.
Noxubee County. The entire county.
Oktibeha County. The entire county.
Panola County. That portion of T. 10 S., R. 5 W. within the county and T. 10 S., R. 6 and 7 W.
Pearl River County. The entire county.
Perry County. The entire county.
Pike County. The entire county.
Pontotoc County. The entire county.
Prentiss County. The entire county.
Rankin County. The entire county.
Scott County. The entire county.
Sharkey County. The entire county.
Simpson County. The entire county.
Smith County. The entire county.
Stone County. The entire county.
Sunflower County. That portion of the county south of the north line of T. 19 and 20 N., R. 5 W.
Tallahatchie County. That portion of the county south of the north line of T. 24 N., and east of the west line of R. 2 E., and T. 25 N., R. 3 E.
Tippah County. The entire county.
Tishomingo County. The entire county.
Union County. The entire county.
Walthall County. The entire county.
Warren County. The entire county.
Washington County. The entire county.
Wayne County. The entire county.
Webster County. The entire county.
Wilkinson County. The entire county.
Winston County. The entire county.
Yalobusha County. The entire county.
Yazoo County. The entire county.
(2) *Suppressive areas.* None.

North Carolina

(1) *Generally infested areas.*
Anson County. That portion of the county bounded by a line beginning at the intersection of State Secondary Road 1756 and the Pee Dee River; then southwesterly along this road to its intersection with State Secondary Road 1744; then southerly along this road to its intersection with State Secondary Road 1730; then west along this road to its intersection with State Secondary Road 1801; then southeasterly along this road to its intersection with State Highway 145; then northeasterly along this highway to its intersection with U.S. Highway 74; then east along this highway to its intersection with State Secondary Road 1748; then north along this road to its intersection with the Pee Dee River; then northwesterly along this river to the point of beginning.
Beaufort County. The entire county.
Bladen County. The entire county.
Brunswick County. The entire county.
Carteret County. The entire county.
Columbus County. The entire county.
Craven County. The entire county.
Duplin County. That area bounded by a line beginning at the intersection of State Secondary Road 1130 and the Duplin-Sampson County line; then north along this county line to its intersection with State Secondary Road 1108; then northeasterly along this road to its junction with State Secondary Road 1112; then easterly along this road to its junction with State Secondary Road 1105; then north along this road to its junction with State Secondary Road 1113; then easterly along this road to its junction with State Secondary Road 1106; then south and east along this road to its junction with U.S. Highway 117 and State Secondary Road 1107; then northeast along State Secondary Road 1107 to its intersection with State Secondary Road 1900; then southeast along this road to its junction with State Secondary Road 1003; then east along this road to its intersection with State Highway 11; then northerly along this highway to its junction with State Highway 111; then northerly along this highway to its intersection with State Secondary Road 1555; then northeast along this road to its intersection with State Secondary Road 1553; then southeasterly along this road to its intersection with State Secondary Road 1551; then east along this road to its intersection with State Secondary Road 1549; then southerly along this road to its intersection with State Highway 11; then east along this highway to its intersection with the Duplin-Lenoir County line; then southerly along this county line to its intersection with the Duplin-Jones County line; then southeast along this county line to its intersection with the Duplin-Onslow County line; then southerly along this county line to its intersection with the Duplin-Pender County line; then west along this county line to its intersection with the Duplin-Sampson County line; then westerly along this county line to the point of beginning.
Hyde County. That portion of the county bounded by a line beginning at a point where Scranton Creek intersects U.S. Highway 264; then north along this highway to its junction with State Secondary Road 1302; then north along this road to its junction with State Secondary Road 1303; then northeast along this road to its intersection with the northwest fork of New Lake Fork Creek; then east along this creek to its junction with Alligator River; then east along this river to its intersection with State Highway 94; then south along this highway to its junction with State Secondary Road 1311; then easterly along this road to its junction with U.S. Highway 264; then southwest along this highway to its junction with State Secondary Road 1164; then southeast along this road to its junction with the Pamlico Sound; then westerly along the mainland Hyde County-Pamlico Sound shoreline to its junction with the Pungo River; then northerly along this river to its junction with Scranton Creek; then southeasterly along this creek to the point of beginning.
Jones County. The entire county.
Lenoir County. That portion of the county bounded by a line beginning at a point where State Secondary Road 1165 intersects the Duplin-Lenoir County line; then east along this road to its junction with State Highway 11; then northerly along this highway to its intersection with U.S. Highway 70 (bypass); then easterly along this highway to its intersection with the Jones-Lenoir County line; then southerly along this county line to the Duplin-Lenoir County line; then northerly along this county line to the point of beginning.
New Hanover County. The entire county.
Onslow County. The entire county.
Pamlico County. The entire county.
Pender County. The entire county.
Richmond County. Beginning at the junction of the Pee Dee River and U.S. Highway 74, then east to the junction of State Road 1140 and U.S. Highway 74; then northeast along State Road 1140 to its junction with State Road 1141; then northwest along this road to its junction with State Road 1144; then northeast along this road to its junction with State Road 1146; then northwest along this road to its junction with State Road 1148; then west along this road to Mountain Creek; then southwest along this creek to the Pee Dee River; then south along this river to the point of beginning.
Robeson County. That portion of the county bounded by a line beginning at the junction of Robeson County and Scotland County at the North Carolina-South Carolina State line; then northeast along the Scotland-Robeson County line to its junction with the Seaboard Coastline Railroad at Maxton, North Carolina; then southeast along this railroad to its intersection of the North-South Seaboard Coastline Railroad at Pembroke, North Carolina; then northeast along this railroad to its junction with North Carolina Highway 211; then southeast along this highway to its junction with State Secondary Road 1529; then northeast along this road to its intersection of U.S. Highway 301; then northeast along this highway to its junction with State Secondary Road 1935; then east by southeast along this road to its intersection of State Secondary Road 1935 and State Secondary Road 1004; then northeast along State Secondary Road 1004 to its junction with the Bladen-Robeson County line; then east and southeast along this county line to the junction of the Bladen-Columbus-Robeson County lines; then south and southwest along the Columbus-Robeson County line to its junction with the North Carolina-South Carolina State line; then northwest along this state line to the point of beginning.
Sampson County. That portion of the county bounded by a line beginning at a point where State Secondary Road 1208 intersects the Sampson-Bladen County line; then northeast along this road to its junction with State Secondary Road 1210; then north along this road to its junction with State Highway 411; then north along this highway to its intersection with State Secondary Road 1214; then northeast along this road to its junction with State Secondary Road 1219; then easterly along this road to its junction with U.S. Highway 701; then south along this highway to its junction with State Secondary Road 1145; then easterly along this road to its junction with State Secondary Road 1147;

then north and east along this road to its junction with State Secondary Road 1938; then easterly along this road to its junction with State Secondary Road 1004; then northeasterly along this road to its intersection with State Secondary Road 1926; then east along this road to its intersection with the Sampson-Duplin County line; then southerly and easterly along this county line to the Sampson-Pender County line; then southwesterly along this county line to the Sampson-Bladen County line; then northwesterly along this county line to the point of beginning.

Scotland County. Beginning at the junction of the North Carolina-South Carolina State line and State Road 1619; then northeast along this road to its junction with U.S. Highway 501; then northwest along this highway to its junction with U.S. 401 Business; then northeast along this highway to the Hoke-Scotland County line and junction with the Lumber River; then southeast along this river to its junction with the Robeson-Scotland County line; then southwest along this county line to the North Carolina-South Carolina State line; then northwest along this state line to the point of beginning.

Union County. Beginning at a point where U.S. Highway 74 intersects the Union-Anson County line; then south along this county line to its junction with the North Carolina-South Carolina State line; then west along this state line to its junction with the Lancaster County line; then north and northwest along this county line to its intersection with the Mecklenburg-Union County line; then northeast along this county line to its intersection with U.S. Highway 74; then northeast along this county line to its intersection with U.S. Highway 74; then southeast and east along this highway to the point of beginning.

(2) *Suppressive areas.* None.

Oklahoma

(1) *Generally infested areas.*

Bryan County. That portion of the county south of the north line of T. 5 S., R. 7, 8, and 9 E.

Marshall County. That portion of the county south of the north line of T. 6 S., R. 6, and 7 E.

McCurtain County. That portion of the county south of the north line of T. 7 S., R. 21, 22, 23, 24, 25, 26, and 27 E.

(2) *Suppressive areas.* None.

South Carolina

(1) *Generally infested areas.*

Aiken County. The entire county.

Allendale County. The entire county.

Bamberg County. The entire county.

Barnwell County. The entire county.

Beaufort County. The entire county.

Berkeley County. The entire county.

Calhoun County. The entire county.

Charleston County. The entire county.

Chesterfield County. The entire county.

Clarendon County. The entire county.

Chester County. That portion of the county bounded by a line beginning at a point where State Primary Highway 72 intersects with the Chester-Union County line; then northeast along this highway to its junction with State Primary Highway 9; then easterly along this highway to its intersection with the Chester-Lancaster County line; then south along this county line to its junction with the Chester-Fairfield County line; then west along this county line to the Union County line; then north along this county line to the point of beginning.

Colleton County. The entire county.

Darlington County. The entire county.

Dillon County. The entire county.

Dorchester County. The entire county.

Edgefield County. The entire county.

Fairfield County. The entire county.

Florence County. The entire county.

Georgetown County. The entire county.

Hampton County. The entire county.

Horry County. The entire county.

Jasper County. The entire county.

Kershaw County. The entire county.

Lancaster County. The entire county.

Lee County. The entire county.

Lexington County. The entire county.

Marion County. The entire county.

Marlboro County. The entire county.

McCormick County. That portion of the county bounded by a line beginning at a point where U.S. Highway 378 junctions with the Clark Hill Reservoir; then northeast along this highway to its intersection with the McCormick-Edgefield County line; then southerly along this county line to its junction with the Savannah River; then northwesterly along this river and Clark Hill Reservoir to the point of beginning.

Newberry County. That portion of the county bounded by a line beginning at a point where U.S. Highway 76 intersects with the Newberry-Laurens County line; then northeasterly, easterly, southerly, and westerly along the Newberry County line to its intersection with State Primary Highway 121; then north along this highway to its junction with State Primary Highway 34; then northeast along this highway to its junction with U.S. Highway 76; then northwest along this highway to the point of beginning.

Orangeburg County. The entire county.

Richland County. The entire county.

Saluda County. The entire county.

Sumter County. The entire county.

Union County. That portion of the county bounded by a line beginning at a point where State Primary Highway 72 intersects with the Union-Newberry County line; then northeast along this highway to its junction with the Broad River; then south along this river to its junction with the Newberry County line; then west and north along this county line to the point of beginning.

Williamsburg County. The entire county.

(2) *Suppressive areas.* None.

Texas

(1) *Generally infested areas.*

Anderson County. The entire county.

Angelina County. The entire county.

Aransas County. The entire county.

Atascosa County. The entire county.

Austin County. The entire county.

Bandera County. The entire county.

Bastrop County. The entire county.

Bee County. The entire county.

Bell County. The entire county.

Bexar County. The entire county.

Blanco County. The entire county.

Bosque County. The entire county.

Bowie County. The entire county.

Brazoria County. The entire county.

Brazos County. The entire county.

Burleson County. The entire county.

Burnet County. The entire county.

Caldwell County. The entire county.

Calhoun County. The entire county.

Camp County. The entire county.

Cass County. The entire county.

Chambers County. The entire county.

Cherokee County. The entire county.

Collin County. The entire county.

Colorado County. The entire county.

Comal County. The entire county.

Comanche County. The entire county.

Cooke County. The entire county.

Coryell County. The entire county.

Dallas County. The entire county.

Denton County. The entire county.

De Witt County. The entire county.

Duval County. That portion of the county within a 3 mile radius of the intersection of state highway 44 and state highway 359.

Eastland County. The entire county.

Ellis County. The entire county.

Erath County. The entire county.

Falls County. The entire county.

Fannin County. The entire county.

Fayette County. The entire county.

Fort Bend County. The entire county.

Franklin County. The entire county.

Freestone County. The entire county.

Frio County. The entire county.

Galveston County. The entire county.

Gillespie County. The entire county.

Goliad County. The entire county.

Gonzales County. The entire county.

Grayson County. The entire county.

Gregg County. The entire county.

Grimes County. The entire county.

Guadalupe County. The entire county.

Hardin County. The entire county.

Harris County. The entire county.

Harrison County. The entire county.

Hays County. The entire county.

Henderson County. The entire county.

Hill County. The entire county.

Hood County. The entire county.

Houston County. The entire county.

Hunt County. The entire county.

Jackson County. The entire county.

Jasper County. The entire county.

Jefferson County. The entire county.

Jim Wells County. The entire county.

Johnson County. The entire county.

Karnes County. The entire county.

Kaufman County. The entire county.

Kendall County. The entire county.

Kerr County. The entire county.

Kimble County. The portion of the county bounded by a line beginning at a point where Texas Ranch Road 479 intersects the Kerr-Kimble County line, then northerly along this road to its junction with U.S. Highway 290, then easterly along this highway to its intersection with the Gillespie-Kimble County line, then southerly along this county line to its intersection with the Kerr-Gillespie County line; then westerly along this county line to the point of beginning.

Kleberg County. The entire county.

Lampasas County. The entire county.

Lavaca County. The entire county.

Lee County. The entire county.

Leon County. The entire county.

Liberty County. The entire county.

Limestone County. The entire county.
Live Oak County. The entire county.
Llano County. The portion of the county bounded by a line beginning where Texas Ranch 965 intersects the Llano-Gillespie County line; then northeasterly along this road to its intersection with Texas Highway 16; then northerly along this highway to its intersection with Texas Highway 71; then southeasterly along this highway to its intersection with Texas Ranch Road 2233; then northeasterly along this road to its intersection with the Burnet-Llano County line; then southeasterly along this county line to its junction with the Blanco-Burnet-Llano County line; then westerly along this county line to the point of beginning.
Madison County. The entire county.
Marion County. The entire county.
Matagorda County. The entire county.
McLennan County. The entire county.
Medina County. The entire county.
Milan County. The entire county.
Montgomery County. The entire county.
Morris County. The entire county.
Nacogdoches County. The entire county.
Navarro County. The entire county.
Newton County. The entire county.
Nueces County. The entire county.
Orange County. The entire county.
Panola County. The entire county.
Parker County. The entire county.
Polk County. The entire county.
Rains County. The entire county.
Refugio County. The entire county.
Robertson County. The entire county.
Rockwall County. The entire county.
Rusk County. The entire county.
Sabine County. The entire county.
San Augustine County. The entire county.
San Jacinto County. The entire county.
San Patricio County. The entire county.
Shelby County. The entire county.
Smith County. The entire county.
Somervell County. The entire county.
Tarrant County. The entire county.
Taylor County. The entire county.
Titus County. The entire county.
Tom Green County. The entire county.
Travis County. The entire county.
Trinity County. The entire county.
Tyler County. The entire county.
Upshur County. The entire county.
Uvalde County. The portion of the county bounded by a line beginning at a point where U.S. Highway 90 intersects the Medina-Uvalde County line; then westerly along this highway to its intersection with Texas Ranch Road 2730; then northeasterly along this road to its intersection with Texas Highway 127; then northwesterly along this highway to its intersection with U.S. Highway 83; then northerly along this highway to its junction with the Real-Uvalde County line; then easterly along this county line to its junction with the Bandera-Uvalde County line; then easterly along this county line to its junction with the Medina-Uvalde County line; then southerly along this county line to the point of beginning.
Van Zandt County. The entire county.
Victoria County. The entire county.
Walker County. The entire county.
Waller County. The entire county.
Washington County. The entire county.
Wharton County. The entire county.
Wichita County. The entire county.
Williamson County. The entire county.
Wilson County. The entire county.
Wise County. The entire county.
Wood County. The entire county.
Young County. Those portions of the county within a 3 mile radius from the intersection of Farm to Market Road 1287 and state highway 16, and within a 3 mile radius from the intersection of Farm to Market Road 210 and state highway Spur 132.

(2) *Suppressive areas.* None.

Done at Washington, DC, this 26th day of August, 1987.

D. Husnik,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87-20078 Filed 8-31-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-26-AD; Amdt. 39-5709]

Airworthiness Directives; Beech Aircraft Corporation Model 58 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Beech Aircraft Corporation Model 58 airplanes which are approved for flight in icing conditions. The FAA has determined that the heating circuitry for the stall warning vane on these airplanes will not provide sufficient heat for flight in icing conditions. This AD requires installation of a placard, "Flight into Known Icing Conditions Prohibited," and a copy of the AD placed in the Limitations Section of Pilot's Operating Handbook and FAA Approved Airplane Flight Manual, unless it is determined by an inspection that a relay is installed in the stall warning vane heater circuit. The placard and limitation may be removed after the relay is installed. The actions of this AD are necessary to preclude loss of stall warning capability in icing conditions.

DATES: *Effective Date:* September 1, 1987

Compliance: As prescribed in the body of the AD.

ADDRESSES: Beechcraft Mandatory Service Bulletin (MSB) No. 2180 dated June 1987, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085.

This information may be examined at the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Dale A. Vassalli, Aerospace Engineer, ACE-130W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION: Beech has made a production change on certain Model 58 airplanes, which included relocation and use of a different relay in the stall warning vane heater circuit. This production change, on airplanes which are approved for flight in icing conditions, provides sufficient heat for the stall warning vane for correct operation in icing conditions. It has been subsequently determined that some of these airplanes did not have the relay installed during production. Without the installation of the relay, sufficient heat will not be applied to the stall warning vane, thereby jeopardizing its stall warning capability and creating a potentially unsafe condition.

As a result, Beech issued MSB No. 2180, dated June 1987, which defines a procedure for determining if the relay is installed, and instructions for installation of the relay if it is missing. Beech has recommended compliance with the Service Bulletin within the next 100 hours time-in-service. The FAA is in agreement with the inspection and modification compliance time; however, since a heated stall warning system is required for flight in icing conditions, the affected airplanes will be prohibited from flight into icing conditions until the actions specified in MSB No. 2180 have been accomplished.

Since the FAA has determined that the unsafe condition described herein is likely to exist in other airplanes of the same type design, an AD is being issued, applicable to certain Beech Model 58 airplanes, which prohibits operation in icing conditions until the airplane is inspected and modified as required. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow

the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe conditions in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption *"Addresses"* at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Beech Aircraft Corporation: Applies to Model 58 (S/N's TH–1389, TH–1396, TH–1397, TH–1403, TH–1407 through TH–1410, TH–1412, TH–1414, TH–1416, TH–1420 through TH–1423, TH–1425, TH–1427, TH–1430, TH–1434, TH–1438, TH–1440, TH–1442, TH–1443, TH–1445, TH–1447, TH–1451, TH–1452, TH–1456, TH–1457, TH–1459, TH–1462, TH–1463, TH–1466, TH–1468, TH–1472 through TH–1474, TH–1477, TH–1478, TH–1481, TH–1483, TH–1485, TH–1490, TH–1492, TH–1495 through TH–1497, TH–1499, TH–1500, TH–1502 and TH–1506) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless previously accomplished.

To preclude the loss of stall warning capability in icing conditions, accomplish the following:

(a) Within the next 25 hours time-in-service (unless the inspection and relay installation requirements of paragraph (c) have been accomplished):

(1) Fabricate and install on the instrument panel in clear view of the pilot the following placard using letters of a minimum of 0.10 inch in height:

"FLIGHT INTO KNOWN ICING CONDITIONS IS PROHIBITED".

(2) Place a copy of this AD in the Limitation Section of Pilot's Operating Handbook (POH) and FAA Approved Airplane Flight Manual (AFM).

(3) Cover the airplane operating placard statement, "This airplane approved for flight in icing conditions" with opaque tape.

(4) Operate the airplane in accordance with this limitation.

(b) The requirements of paragraph (a) of this AD may be accomplished by the owner/operator on any airplanes which are not used under FAR Part 121 or 135. The person accomplishing these actions must make the appropriate airplane maintenance record entry per FAR 43.9 and 91.173.

(c) Within the next 100 hours time-in-service after the effective date of this AD, inspect and, if necessary, modify the stall warning heater circuit in accordance with the instructions in Beechcraft Mandatory Service Bulletin No. 2180, dated June 1987.

(d) The requirements and limitations of paragraph (a) of this AD do not apply to airplanes that have been inspected and modified as required per paragraph (c) of this AD.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4400.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on September 1, 1987.

Issued in Kansas City, Missouri, on August 7, 1987.

Berry D. Clements,

Acting Director, Central Region.

[FR Doc. 87–19997 Filed 8–31–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–ASW–24; Amdt. 39–5678]

Airworthiness Directives; McDonnell Douglas Helicopter Company, Model 369D, E, F, and FF Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection of the main rotor transmission tail rotor output drive pinion shaft and removal from service of all unairworthy shafts on McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF helicopters. The AD is prompted by reports that main rotor transmission tail rotor output drive shafts have failed in flight, which could result in loss of power to the tail rotor and loss of control of the helicopter.

DATES: September 1, 1987.

Effective Date: The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 1, 1987.

Compliance: As indicated in the body of this AD.

ADDRESSES: The applicable service information notice may be obtained from McDonnell Douglas Helicopter Company, 500 E. McDowell Road, Mesa, Arizona 85205

A copy of each document supporting the AD is contained in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Twa, Jr., Aerospace Engineer, Propulsion Section, ANM–174W, Western Aircraft Certification Office, Northwest Mountain Region, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007; telephone (213) 297–1128.

SUPPLEMENTARY INFORMATION: There have been six reported cases of forward bearing journal failures of the main rotor transmission tail rotor output drive shaft (P/N's 369D25125–BSC and –11) due to fatigue in an area between the forward bearing journal and the toothed gear section. Contributory causes of the fatigue have been traced to the need for a relief radius, omission of shotpeening of the area, improper surface finish, and no plating on the inside diameter of the shaft. All failures have occurred during flight and were detected by a loud noise and vibrations. The currently acceptable nondestructive test method for verifying the integrity of the shaft is a magnetic particle and visual inspection of the affected area. MDHC has issued Mandatory Service Information Notice (SIN) DN–147/EN–35/FN–24, dated April 23, 1987. Since this condition is likely to exist or develop in other helicopters of the same type design, an airworthiness directive is being issued which requires a magnetic particle and visual inspection of the main rotor

transmission tail rotor output drive pinion shaft (P/N's 369D25125–BSC and –11), and removal of unairworthy pinion shafts from service on MDHC Model 369D, E, F, and FF helicopters.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

McDonnell Douglas Helicopter Company (MDHC) (Hughes Helicopters, Inc.): Applies to all Model 369D, E, F, and FF helicopters, certificated in any category, equipped with MDHC main transmission (P/N 369D25100–BSC or –501) which has tail rotor output drive pinion shaft (P/N 369D25125–BSC or –11) installed.

Compliance is required as indicated, unless previously accomplished.

To prevent possible loss of tail rotor control, accomplish the following: (a) Within the next 25 hours' time in service after the effective date of this AD, perform a one-time magnetic particle and visual inspection on the main transmission tail rotor output drive pinion shaft (P/N 369D25125–BSC or –11) on helicopters with the following serialized main rotor transmission in accordance with procedures detailed in paragraphs (c) through (f) of this AD.

Transmission Serial Number
1989
1992 and 1993
1998 through 2000
2002 through 2082
2084 and 2085

If the tail rotor output drive pinion shaft serial number is contained in the list below, remove the shaft from service prior to further flight.

Tail Roter Output Drive Pinion Shaft Serial Numbers
1474 through 1502
1504 through 1547
1549 through 1561
1563 and 1564
1666

(b) Within the next 100 hours' time in service after the effective date of this AD, perform a one-time magnetic particle and visual inspection on the main transmission tail rotor output drive pinion shaft (P/N 369D25125–BSC or –11) on all affected helicopters with transmission serial numbers other than those listed above in accordance with procedures detailed in paragraphs (c) through (f) of this AD.

(c) Verify that the tail rotor output drive pinion shaft has an undercut style fillet radius as shown in Figure 1 of MDHC Mandatory SIN DN–147/EN–35/FN–24, dated April 23, 1987, or FAA-approved equivalent. Remove parts which do not have the undercut from service prior to further flight.

Note.—Tail rotor output drive pinion shafts removed from service in accordance with paragraph (c) may be returned to MDHC for rework if a magnetic particle inspection of the part does not show any crack indications.

(d) Perform a magnetic particle inspection of the tail rotor output drive pinion shaft. Remove parts which show indications of cracking found during magnetic particle inspection from service prior to further flight.

(e) Inspect the tail rotor output drive pinion shafts for scratches, tooling marks, corrosion, or other minor surface defects in the fillet radius or elsewhere on the shaft in accordance with paragraphs c.(4), c.(5), and c.(6) of MDHC Mandatory SIN DN–147/EN–35/FN–24, dated April 23, 1987. Prior to further flight, rework discrepant shafts that show no indication of cracks in accordance with procedures stated in paragraph d. of MDHC Mandatory SIN DN–147/EN–35/FN–24, dated April 23, 1987.

(f) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

The procedure shall be done in accordance with MDHC SIN DN–147/EN–35/FN–24, dated April 23, 1987. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)(1). Copies may be obtained from MDHC, 500 E. McDowell Road, Mesa, Arizona. Copies may be inspected at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment becomes effective September 1, 1987.

Issued in Fort Worth, Texas, on July 9, 1987.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 87–19996 Filed 8–31–87; 8:45 am]

BILLING CODE 4910–13–W

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14 CFR Part 71

[Airspace Docket No. 87–ANM–9]

Establish Transition Area, Gooding, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action etablishes a 700 foot transition area at Gooding, Idaho, to provide controlled airspace for a nondirectional beacon (NDB) instrument approach procedure for Runway 25 at Gooding, Idaho, Municipal Airport.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 87–ANM–9, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2535.

SUPPLEMENTARY INFORMATION:

History

On June 22, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700 foot transition area at Gooding, Idaho (52 FR 23468).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal at the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation

Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a 700 foot transition area to provide controlled airspace for aircraft executing a new standard instrument approach procedure to the Gooding Municipal Airport.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Gooding, Idaho, Transition Area [New]

That airspace extending upward from 700 feet above the surface within a 9.5 mile radius of the Gooding, Idaho, Municipal Airport (lat. 42°54'45" W., long. 114°45'50" W.

Issued in Seattle, Washington, on August 17, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region

[FR Doc. 87-19992 Filed 8-31-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ANM-13]

Alteration of Transition Area, Glendive, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Glendive, Montana, transition area by adding 1,200 foot transition airspace to the existing transition area description. This change has no effect on the existing 700 foot transition area.

EFFECTIVE DATE: 0901 UTC, October 10, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 87-ANM-13, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

History

On June 22, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Glendive, Montana, 1,200 foot transition area (52 FR 23467).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the Glendive, Montana, 1,200 foot transition area. This change permits the routing of arriving aircraft to the NDB from both Miles City and Williston VORTAC's below 14,500 feet AMSL and allows departures to utilize diverse departure procedures directly to both Williston and Miles City.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E. O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Glendive, Montana, Transition Area [Amended]

After the words . . ."to 18½ miles northwest of the airport"; add the words, "and that airspace extending upward from 1,200 feet above the surface bounded on the east and southeast by the west edge of V-545 and on the northwest by the east edge of V-465."

Issued in Seattle, Washington, on August 17, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87-19993 Filed 8-31-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ANM-7]

Alteration of Transition Area, Rock Springs, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will alter the Rock Springs, Wyoming, transition area to provide additional controlled airspace east of Rock Springs.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 87-ANM-7, 17900 Pacific Highway South,

C–68966, Seattle, Washington 98168, Telephone: (206) 431–2535.

SUPPLEMENTARY INFORMATON:

History

On June 22, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Rock Springs, Wyoming, transition area (52 FR 23470).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will extend controlled airspace east of Rock Springs, Wyoming, to enable air traffic controllers to radar vector aircraft to the ILS/DME Runway 27 approach to the Sweetwater County Airport. Currently, available airspace is insufficient for this purpose.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Rock Springs, Wyoming, Transition Area [Amended]

Change 1,200 foot transition area to read as follows: "* * * to 19 miles east of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within a 23-mile radius of the Rock Springs VORTAC, including that airspace bounded by 4.5 miles south of the Rock Springs 099° radial between 23 miles and 42.5 miles, and 4.5 miles east of the Cherokee VORTAC 198° radial between the VORTAC and 56.5 miles, and 4.5 miles northwest of the Rock Springs 051° radial between 23 miles and the Cherokee VORTAC, excluding that airspace included in the Rawlins, Wyoming, transition area."

Issued in Seattle, Washington, on August 17, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87–19991 Filed 8–31–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 86F–0154]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene terephthalate-isophthalate copolymers that contain at least 97 weight percent of polymer units derived from ethylene terephthalate. This action responds to a petition filed by The Goodyear Tire & Rubber Co.

DATES: Effective September 1, 1987; objections by October 1, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center For Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of May 7, 1986 (51 FR 16897), FDA announced that a petition (FAP 5B3684) had been filed by The Goodyear Tire & Rubber Co., 130 Johns Avenue, Akron, OH 44316–0001, proposing that § 177.1630 *Polyethylene phthalate polymers* (21 CFR 177.1630) be amended to provide for the safe use of ethylene terephthalate-isophthalate copolymers containing a minimum of 97 weight percent of polymer units derived from ethylene terephthalate for use as components of food-contact articles.

FDA has evaluated data in the petition and other relevant materials. The agency concludes that the proposed use of the food additive is safe and that 21 CFR 177.1630(e)(4)(i) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) betwen 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before October 1, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is

requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director and Deputy Director of the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 177.1630(e)(4)(i) by revising the entry for "Ethylene terephthalate-isophthalate copolymers" to read as follows:

§ 177.1630 Polyethylene phthalate polymers.

* * * * *

(e) * * *
(4) * * *

List of Substances and Limitations

(i) Base sheet:

* * * * *

Ethylene terephthalate-isophthalate copolymers: Prepared by the condensation of dimethyl terephthalate or terephthalic acid and dimethyl isophthalate or isophthalic acid with ethylene glycol. The finished copolymers contain either

(*a*) 77 to 83 weight percent or

(*b*) At least 97 weight percent of polymer units derived from ethylene terephthalate.

* * * * *

Dated: August 24, 1987.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-20011 Filed 8-31-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 540

Animal Drugs, Feeds, and Related Products; Sterile Procaine Penicillin G Aqueous Suspension (Injectable)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by G.C. Hanford Manufacturing Co., Inc., providing for a reduction of the milk withholding period after use of sterile injectable procaine penicillin G aqueous suspension for treating cattle. In addition, FDA is amending the firm's mailing address in the list of sponsors of approved NADA's to reflect the current post office box number.

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: G.C. Hanford Manufacturing Co., Inc., P.O. Box 1017, Syracuse, NY 13201, is sponsor of NADA 65-493 which provides for injectable use of sterile procaine penicillin G aqueous suspension to treat cattle, sheep, swine, and horses. The supplement provides for a reduction of the milk withholding period for treating lactating cattle to 48 hours (4 milkings) from 72 hours (6 milkings). The supplement is approved and 21 CFR 540.274b(c) is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, the mailing address for the firm in 21 CFR 510.600(c) is amended to reflect the current post office box number.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 540 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) for the entry "G.C. Hanford Manufacturing Co., Inc." and in paragraph (c)(2) for the entry "010515" by revising the post office box number to read "P.O. Box 1017."

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

3. The authority citation for 21 CFR Part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

4. § 540.274b is amended in paragraph (c)(3)(ii) by removing the number "010515" and by adding new paragraph (c)(5) to read as follows:

§ 540.274b Procaine penicillin G aqueous suspension.

* * * * *

(c) * * *

(5)(i) *Sponsor.* See No. 010515 in § 510.600(c) of this chapter.

(ii) See paragraph (c)(3) of this section for specifications, tolerances, and conditions of use of this drug, except that milk taken during treatment and for 48 hours (four milkings) after the latest treatment shall not be used for food.

Dated: August 26, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-20012 Filed 8-31-87; 8:45 am]

BILLING CODE 4160-01-M

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-3254-4; GA-014]

Approval and Promulgation of Implementation Plans; Georgia; PSD Modeling Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today, EPA approves a State Implementation Plan revision submitted by the State of Georgia. This revision incorporates regulations promulgated by the Administrator to specify models to be used to comply with the Clean Air Act's requirements for the prevention of significant deterioration (PSD) (sections 165 through 169).

DATES: This action will be effective on November 2, 1987, unless notice is received by October 1, 1987 that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch 345 Courtland Street, NE., Atlanta, GA 30365

Georgia Department of Natural Resources, 205 Butler Street, SE., Floyd Towers East, Atlanta, GA 30334.

FOR FURTHER INFORMATION CONTACT: Gregg M. Worley, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION:

Section 165(e)(3)(D) of the Clean Air Act requires the Administrator to promulgate regulations specifying with reasonable particularity models to be used to comply with the Act's PSD requirements. To carry out the requirements, the 1978 "Guideline on Air Quality Models" was incorporated by reference in 40 CFR 51.24 (now renumbered § 51.166) and 40 CFR § 52.21. On September 9, 1986 (51 FR 32176), EPA promulgated amendments to 40 CFR 51.24 (now § 51.166) and 52.21 to substitute by reference the "Guideline on Air Quality Models (Revised)," EPA 450/2-78-027R, in these regulations. This change became effective October 9, 1986. The Clean Air Act, however, gives states nine months (until July 9, 1987 to make the necessary changes in their programs. A review of Georgia's regulations categorized the State as one that does not specifically preclude the use of the revised modeling guideline since 40 CFR 52.21(1) *as amended* is adopted in the Georgia regulations. The options open to Georgia, therefore, were either to revise their PSD regulation to explicitly include the revised modeling guideline or submit an enforceable letter of commitment in lieu of a regulatory revision. If a letter of commitment is chosen, the letter must mention that the generalized language now means that all PSD permit applicants must use the revised guideline models or models otherwise approved by EPA. Subsequently, Georgia submitted such a letter of commitment on May 11, 1987, with the understanding that it would be processed as a SIP revision.

Final Action

Since Georgia's letter of commitment is consistent with EPA requirements, it is hereby approved. FPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 2, 1987.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for appropriate circuit by November 2, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations.

Date: August 25, 1987.

A. James Barnes,

Acting Administrator.

Subpart L, Part 52 of Chapter I, Title 40, of the Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart L—Georgia

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.581 is amended by redesignating paragraph (c) as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 52.581 Significant deterioration of air quality.

* * * * *

(b) A letter of commitment concerning the incorporation of EPA's revised modeling guidelines for PSD into the Georgia regulations was submitted to EPA on May 11, 1987, by the Georgia Department of Natural Resources.

[FR Doc. 87-19914 Filed 8-31-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1-FRL-3253-9]

Approval and Promulgation of Implementation Plans; Rhode Island; Adoption of EPA Approved Test Methods

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rulemaking.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Rhode Island. These revisions specify EPA-approved test methods to be used for compliance determinations with Rhode Island Air Pollution Control Regulations No. 11, No. 19, and No. 21 which regulate sources of volatile organic compounds (VOCs). These SIP revisions are necessary because Regulation No. 11 does n specify a test method to be used to determine compliance, and Regulations No. 19 and No. 21 require test methods which are outdated. The intended effect of this action is to include current EPA-approved testing methods in these Rhode Island Air Pollution Control Regulations of the SIP. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will be effective on November 2, 1987, unless notice is received by October 1, 1987, that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, EPA Region I, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, EPA Region I, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; and the Department of Environmental Management, 75 Davis Street, Cannon Building, Room 204, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 565–3248; FTS 835–3248.

SUPPLEMENTARY INFORMATION: On February 27, 1987, the Rhode Island Department of Environmental Management (DEM) submitted revisions to the Rhode Island SIP. These revisions specify EPA-approved test methods to be used for compliance determinations with Rhode Island Air Pollution Control Regulation Nos. 11, 19, and 21 which regulate VOC sources. For Regulation No. 11, the DEM is including a method for testing of leaks from bulk gasoline plants. Previously, that regulation contained no such method. For Regulations No. 19 and No. 21, which deal with volatile organic compound emissions from surface coating and printing operations, respectively, the DEM is replacing the test methods previously specified for use in compliance determinations with the test methods that are currently recommended by EPA.

For Regulation No. 11, subsection 11.4.5, the DEM is requiring the use of the test methods in Appendixes B and C of EPA publication Number 450/2–78–051 entitled *Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems.*

For Regulation No. 19, subsection 19.7.1, and Regulation No. 21, subsection 21.6.1, the DEM is requiring that Methods 24, 24A, and 25 found in Appendix A of 40 CFR Part 60 be used for compliance determinations. The amendments to Regulations No. 19 and No. 21 are written in such a way as to allow modification of the method or the use of another method as long as they are accepted by the DEM and approved by EPA. These methods are consistent with the recommended methods of the September 14, 1984 memorandum entitled "Volatile Organic Compound (VOC) Test Methods or Procedures for Source Categories in Groups I, II, and III Control Techniques Guidelines (CTGs)."

Final Action

EPA is approving revisions to Rhode Island SIP Regulations Nos. 11, 19, and 21 which specify the current EPA-approved test methods to be used to determine compliance with the requirements of these regulations.

EPA is approving these SIP revisions without prior proposal because the Agency views them as noncontroversial amendments and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 2, 1987.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 2, 1987. This action may not be challenged later in proceedings to enforce its requirements (See 307 section (b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Rhode Island was approved by the Director of the Federal Register on July 1, 1982.

Date: August 21, 1987.

A. James Barnes,

Acting Administrator.

Subpart 00, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart 00—Rhode Island

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2070, is amended by adding paragraph (c)(30) to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

(30) Revisions to the State Implementation Plan were submitted by Rhode Island Department of Environmental Management on February 27, 1987. These revisions were effective as of January 20, 1987 in the State of Rhode Island.

(i) *Incorporation by reference.* (a) Letter from the Rhode Island Department of Environmental Management dated February 27, 1987 submitting revisions to the Rhode Island State Implementation Plan.

(b) Amendment to Air Pollution Control Regulation No. 11, at subsection 11.4.5 adopted on January 20, 1987 in Rhode Island.

(c) Amendment to Air Pollution Control Regulation No. 19, at subsection 19.7.1 adopted on January 20, 1987 in Rhode Island.

(d) Amendment to Air Pollution Control Regulation No. 21, at subsection 21.6.1 adopted on January 20, 1987 in Rhode Island.

3. In § 52.2081, the Table 52.2081 is amended by adding the following entrees. The date approved by EPA and the **Federal Register** Citation will be the publication date and citation of today's document.

§ 52.2081 EPA-Approved EPA Rhode Island State regulations.

* * * * *

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Table 52.2081—EPA-APPROVED RULES AND REGULATIONS.

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/unapproved sections
No. 11	Petroleum liquids marketing and storage	1/20/87	9/1/87	52 FR	(c)(30)	Amended Regulation No. 11, Subsection 11.4.5.
No. 19	Control of VOCs from Surface Coating Operations.	1/20/87	9/1/87	52 FR	(c)(30)	Amended Regulation No. 19, Subsection 19.7.1.
No. 21	Control of VOCs from Printing Operations	1/20/87	9/1/87	52 FR	(c)(30)	Amended Regulation No. 21, Subsection 21.6.1.

[FR Doc. 87-19772 Filed 8-31-87; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BERC-435-F]

Medicare Program; Changes to the Return on Equity Capital Provisions for Outpatient Hospital Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are eliminating the allowance for a return on equity capital for outpatient services furnished by proprietary hospitals because it is inappropriate to continue payment of return on equity capital for outpatient hospital services while the payment for inpatient hospital services is being phased out.

EFFECTIVE DATE: For cost reporting periods beginning on or after October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Anthony Coates (301) 597-2886.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v) of the Social Security Act (the Act) defines "reasonable cost" for Medicare purposes and provides that the necessary costs incurred by a provider (both direct and indirect) in the delivery of covered health care services are included in this definition. Currently, a return on equity capital is paid as an allowance in addition to the reasonable cost of covered services furnished to beneficiaries by proprietary skilled nursing facilities (SNFs) and proprietary hospitals, although the return on equity capital for inpatient hospital services is being phased out under section 1886(g)(2) of the Act. This section of the Act, as amended by section 9107(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) (enacted on April 7, 1986) requires a phase-down and eventual elimination of payments for return on equity capital for inpatient hospital services. (We implemented this provision in a final rule with comment period published on June 4, 1987 (52 FR 21216).)

II. Proposed Elimination of Return on Equity Capital for Outpatient Hospital Services

On June 5, 1987, we proposed to amend 42 CFR 413.157 (at 52 FR 21330) to eliminate the allowance for a return on equity capital from payment for outpatient hospital services. In doing so, we reasoned that the allowance is unnecessary to maintain the availability of hospital outpatient services. In addition, in view of the statutory phase-out of the equity capital allowance for inpatient services as provided for under section 1886(g)(2) of the Act, we stated that continuation of the allowance for hospital outpatient services is inappropriate. We proposed that the elimination be effective for cost reporting periods beginning on or after October 1, 1987.

In that hospital capital supports inpatient and outpatient services, we stated in the proposed rule that it is inappropriate to continue payment of return on equity capital for outpatient hospital services while the payment for inpatient hospital services is being phased out. We further stated that investors in hospitals should not receive return on equity payments based upon the setting in which the hospital services are provided (that is, inpatient versus outpatient) and that the level of other Medicare payments for hospital outpatient services is adequate to maintain the availability of services to beneficiaries without an allowance for return on equity capital. In addition, hospital operating margins under the prospective payment system should encourage private investment even when payments are reduced through the elimination of return on equity capital for outpatient services. Accordingly, we concluded that the elimination of return on equity capital for outpatient hospital services is appropriate.

III. Public Comments and Response

During the public comment period, we received only one item of correspondence concerning the proposed rule. The comment was submitted by a certified public accountant and included a lengthy paper that did not deal specifically with the proposed elimination of the return on equity capital for hospital outpatient services. We have considered this commenter's arguments, but we have decided not to make any changes to the proposed rule.

Comment: The commenter stated that the allowance for a return on equity capital should not be considered to stand alone; instead, the allowance should be thought of as one part of the overall Medicare payment mechanism. The commenter maintained that eliminating the allowance for a return on equity capital as an allowable cost for the outpatient portion of proprietary hospitals would be a long term mistake. The commenter stated that the proposed rule would perpetuate a problem he believes to exist; that is, that hospitals have "no incentives to seek efficient financing arrangements" and also that the proposal might tend to discourage equity build-up. He stated that eliminating the allowance for a return on equity capital would remove yet another incentive available to encourage cost containment.

Response: Return on equity capital has been paid as an allowance in addition to the reasonable cost of covered services furnished to beneficiaries by proprietary providers. For Federal fiscal year (FY) 1988, the projected reduction in payments caused by elimination of the allowance for return on equity capital for outpatient services will represent about one-fifth of one percent of total Medicare payments to proprietary hospitals. Accordingly, the termination of payment of return on equity capital for proprietary hospital outpatient services will not adversely affect either the provider operations or beneficiary access to care.

With regard to the loss of incentive to seek efficient financing, we do not believe that the elimination of return on

equity capital for hospital outpatient services creates an incentive to exercise less prudence in securing loans. When the provider finds it necessary and proper to borrow money, the Medicare program recognizes interest paid on provider debts, subject to well-established policies.

We also do not believe that the elimination of a return on equity capital for hospital outpatient services would tend to discourage equity build-up, especially since the return one quity represents only about one-fifth of one percent of total Medicare payments to proprietary hospitals. In fact, elimination of the return on equity capital places proprietary and non-proprietary hospitals on a more equal basis for Medicare payment purposes.

We believe that the elimination of Medicare payment of a return on equity capital may serve as an incentive to contain costs. Whereas payment for a return on equity capital used to provide an added source of income, its removal creates an added incentive to increase operational efficiency.

IV. Public Comments on the June 1987 Final Rule

In the final rule published on June 4, 1987, which we noted above, we described the phase-out of Medicare payments for a return on equity capital for inpatient hospital services that is mandated by section 1886(g)(2) of the Act, as amended by section 9107(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272). We also stated, however, that under section 9321(c) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-599) we were precluded from issuing final rules dealing with capital-related costs for inpatient hospital services until September 1, 1987. Consequently, we were unable to describe in regulations text the percent reductions imposed by section 1886(g)(2) of the Act. Therefore, in this final rule, we are adding § 413.157(b)(2) to conform the regulations to the mandate of the law.

We also want to note that, in the June 4, 1987 final rule, we provided for a 60-day public comment period on the provision that reduces the return on equity capital for all proprietary providers other than hospitals and SNFs for cost reporting periods beginning on or after October 1, 1985 (as directed by section 1861 (v)(1)(P) of the Act, as enacted by section 9107(b)(1) of Pub. L. 99-272) and before July 6, 1987 (the effective date of that final rule). We stated that we would consider all timely comments about this provision, and that if further rulemaking was necessary, we would publish a final rule and respond to comments in that final rule. However, we received no comments concerning this matter. Therefore, further rulemaking is unnecessary.

V. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a final regulatory impact analysis for regulations that are likely to have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices, or result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals as small entities.

Currently, approximately sixteen percent of all hospitals participating in Medicare are classified as proprietary hospitals. Although a significant number of hospitals will be affected by this rule, we do not believe that this rule will have a substantial economic impact on individual hospitals. We expect that the reduction in payments to proprietary hospitals for outpatient services will range from $15 million in FY 1988 to about $45 million in FY 1992. While some hospitals may be more severely affected than others, we estimate that the average reduction in Medicare revenue for each proprietary hospital will represent about two percent of total payments to proprietary hospitals for outpatient services. We generally do not regard a change in payments of less than five percent as having a substantial impact on the target population.

We do not expect that beneficiary access will be affected, since most hospital outpatient departments are not located in proprietary settings. Furthermore, we believe that any incentives to limit access by proprietary outpatient departments will be more than countered by the more generalized pressures on hospitals to increase the availability of outpatient services in order to maximize the productive capability of their facilities and to provide care in the most cost-effective setting. For example, both the use of outpatient surgical services by Medicare beneficiaries and payments for these services have increased more since the start of the prospective payment system than before.

For these reasons, we have determined that a final regulatory impact analysis is not required for this rule. In addition, we have determined, and the Secretary certifies, that this rule will not result in a significant economic impact on a substantial number of small entities. Therefore, we have not prepared a regulatory flexibility analysis.

Also, we do not expect this rule to produce an impact that will exceed the limit for reductions in payment to hospitals or physicians established by section 9321(d) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509). That provision prohibits the Secretary from issuing any final rule or notice between October 21, 1986 and September 1, 1987 that will result in a $50 million or greater reduction in payments to hospitals or physicians in FY 1988.

VI. Other Required Information

Paperwork Reduction Act

These changes will not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

List of Subjects in 42 CFR Part 413

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

Title 42 CFR Part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a-1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

B. Section 413.157 is amended by adding new paragraph (b)(2) (previously reserved), revising paragraph (b)(3), redesignating paragraph (b)(4) as new paragraph (b)(5), and adding a new paragraph (b)(4), to read as follows:

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§ 413.157 Return on equity capital of proprietary providers.

* * * * *

(b) *General rule.* * * *

(2) *Rate of return for inpatient hospital services furnished by proprietary hospitals.* The rate used in determining the return for inpatient hospital services is a percentage of the average of the rates of interest described in paragraph (b)(1) of this section. The percentages applicable to inpatient hospital services are as follows:

(i) 150 percent for cost reporting periods beginning before April 20, 1983.

(ii) 100 percent for cost reporting periods beginning on or after April 20, 1983 and before October 1, 1986.

(iii) 75 percent for cost reporting periods beginning on or after October 1, 1986 and before October 1, 1987.

(iv) 50 percent for cost reporting periods beginning on or after October 1, 1987 and before October 1, 1988.

(v) 25 percent for cost reporting periods beginning on or after October 1, 1988 and before October 1, 1989.

(vi) Zero percent for cost reporting periods beginning on or after October 1, 1989.

(3) *Rate of return related to proprietary SNFs.* For cost reporting periods beginning on or after October 1, 1985, the rate used in determining the return for SNF's is a percentage equal to the average of the rates of interest described in paragraph (b)(1) of this section.

(4) *Rate of return related to outpatient hospital services.* (i) For cost reporting periods beginning on or after October 1, 1985 but before October 1, 1987, the rate used in determining the return for outpatient hospital services is a percentage equal to the average of the rates of interest described in paragraph (b)(1) of this section.

(ii) For cost reporting periods beginning on or after October 1, 1987, there is no allowance for return for outpatient hospital services.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: August 20, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: August 24, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-19987 Filed 8-27-87; 12:15 pm]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 67

[CC Docket Nos. 78-72, 80-286 and 86-297; 87-272]

Common Carrier Services; MTS and WATS Market Structure; Amendment of the Commission's Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission grants, in part, reconsideration of its decision to adopt revisions of the Separations Manual, new Part 36 of its rules, recently recommended by the Federal-State Joint Board. The Commission decided to reconsider its decision to exclude access revenues from the allocation factor for marketing expenses. Thus, in the new § 36.372 of the Commission's rules (effective January 1, 1988) marketing expenses will be allocated on the basis of current billings. The Commission did not act, at this time on other reconsideration issues. The Commission has also issued a Supplemental Notice of Proposed Rulemaking, summarized elsewhere in this volume, seeking comment and data on the appropriate allocation method and recovery mechanism for marketing expenses.

EFFECTIVE DATE: January 1, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cindy Schonhaut, Special Counsel Federal-State Joint Board Matters, Accounting and Audits Division, Common Carrier Bureau, at (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, CC Docket Nos. 78-72, 80-286 and 86-297, FCC 87-272, adopted August 14, 1987 and released August 18, 1987.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Summary of Memorandum Opinion and Order on Reconsideration

1. The Joint Board in CC Docket No. 86-297 recommended that the Commission adopt a new separations manual intended to conform separations procedures to the recently revised Uniform System of Accounts (USOA) and to simplify the separations process.[1] The Commission adopted the new Separations Manual in April 1987 which will be codified as the new Part 36 of its rules and which will become effective January 1, 1988.[2]

2. Under the current separations procedures of Part 67 of the Commission's rules, the advertising and sales expenses in the current USOA Accounts 642 and 643 are allocated between the jurisdictions on the basis of current billing for local and toll services (excluding certain billings for non-affiliated companies and those in connection with intercompany settlements.)[3] Those expenses will be included in the new Account 6610 in the revised USOA. Under new separations procedures recommended by the Joint Board and adopted by the Commission, billings for access charges will be excluded from the allocation factor for Account 6610 marketing expenses.

3. Several parties, including the National Association of Regulatory Utility Commissioners and the state commissioners on the Joint Board at the time the *Recommended Decision and Order* was adopted, urged the Commission to reconsider its decision to exclude access revenues from the allocation factor for marketing for the following reasons: (1) The Joint Board and the Commission incorrectly assumed that local exchange carriers do not actively market access services; (2) the exclusion of access revenues from the allocation factor for marketing expenses will cause a shift of $475 million in revenue requirements to the state jurisdiction; (3) this shift in revenue requirements contravenes the stated goal of the Joint Board and the Commission to minimize the revenue requirement impact of the new Separations Manual; and, (4) the Joint Board and the Commission did not

[1] Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, CC Docket No. 86-297, FCC 87J-4, released April 8, 1987, 2 FCC Rcd 2,582 (1987) (*Recommended Decision and Order*).

[2] MTS and WATS Market Structure, Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of Federal-State Joint Board, CC Docket Nos. 78-72, 80-286 and 86-297, FCC 87-134, released May 1, 1987, 2 FCC Rcd 2,639 (1987) (*Report and Order*).

[3] 47 CFR 67.363.

provide parties with an opportunity to comment on the proposed revision of the current separations rules, thus violating the Administrative Procedure Act and applicable case law.

4. The Commission decided to reconsider its decision to exclude access revenues from the allocation factor for marketing expenses. As an interim measure, the Commission adopted a new § 36.372 of its rules which will allocate Account 6610 marketing expenses on the basis of current billings. The Commission referred a permanent resolution of this issue to the Joint Board in CC Docket No. 80-286. The Commission specified certain question for comment and requested data regarding the allocation of marketing expenses. The Commission did not address, at this time, other issues raised in the petitions for reconsideration.

Regulatory Flexibility Act

5. We certify that the Regulatory Flexibility Act [4] is not applicable to the rule changes we are adopting in this proceeding. In accordance with the provisions of section 605 of the Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of a summary of this Order and Notice in the **Federal Register**.

Paperwork Reduction Act

6. We have analyzed the rules adopted and proposed herein with respect to the Paperwork Reduction Act of 1980 [5] and have concluded that they will not impose new or modified information collection requirements on the public. Therefore, implementation of the requirements adopted and proposed herein will not be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

7. *Accordingly, it is ordered,* That the petitions for reconsideration regarding the issue of the inclusion of access revenues in the allocation factor for marketing expense in granted to the extent indicated above.[6]

8. *It is further ordered,* That § 36.372 of this Commission's Rules, as set forth below, is adopted effective January 1, 1988.

[4] 5 U.S.C. 603.

[5] 44 U.S.C. 501.

[6] This action is taken pursuant to 47 U.S.C. 154(i) and (j), 201, 202, 205, 218, 221(c), 403 and 410.

List of Subjects in 47 CFR Parts 36 and 67

Communications common carrier, Telephone, Uniform System of Accounts, Reporting and recordkeeping requirements, Jurisdictional separations procedures.

Federal Communications Commiasion.

William J. Tricarico,

Secretary.

Part 36 of Title 47 of the Code of Federal Regulations, effective January 1, 1988, is amended as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 47 U.S.C. secs. 151, 154(i) and (j), 205, 221(c), 403 and 410.

2. Section 36.372 is amended by revising paragraph (a) to read as follows:

§ 36.372 Marketing—Account 6610.

(a) The expenses in this account are apportioned among the operations on the basis of an analysis of current billing for a representative period, excluding current billing on behalf of others and billing in connection with intercompany setttlements.

* * * * *

[FR Doc. 87-19922 Filed 8-31-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 76

[MM Docket No. 85-349]

Carriage of Television Broadcast Stations on Cable Television Systems; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule published in proceeding concerning carriage of television broadcast stations on cable television systems published on May 11, 1987, 52 FR 17574.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Errotum* in MM Docket No. 85-349, released August 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 1919 M Street, NW., Room 246, Washington, DC 20554.

List of Subjects in 47 CFR Part 76

Cable television.

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—[AMENDED]

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 521.

2. Section 76.5 is amended by revising paragraphs (d)(1) introductory text and (d)(1)(ii) to read as follows:

§ 76.5 Definitions.

* * * * *

(d) *Qualified station.* (1) Any television broadcast station, as defined in § 76.5(b), except where such station would be considered a distant signal for copyright purposes, that with respect to a particular cable system:

* * * * *

(ii) If a commercial station receives an average share of total viewing hours of at least two percent and a net weekly circulation of at least five percent, as defined in § 76.5(k), in noncable households in the county served by the cable system or has been operational less than one full year. For purposes of this section, a station is considered operational as of the date it initially commences operation under program test authority. Changes in station operations, for example, upgrade of facilities, transfer or assignment of license, or recommencement after operations have ceased, are not considered initial commencement of operations under this paragraph. The viewing standards of this paragraph shall not apply for one full year from June 10, 1987, to otherwise qualified stations that commenced operation on or after July 19, 1985, but before June 10, 1987 (the effective date of these rules). Once a commercial station has demonstrated that, on the basis of a full one-year survey season, it meets the viewing standard, it will be considered to have satisfied this standard for the remainder of the period until June 10, 1982; Provided, however, that at any time after the viewing standard, a cable system may nullify the station's mandatory signal carriage eligibility if it demonstrates that it meets the viewing standard, a cable system may nullify the

station's mandatory signal carriage eligibility if it demonstrates, using the methodology specified in § 76.5 of this part, that the station no longer meets the viewing standard.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-19928 Filed 8-31-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-84, Amdt. 192-56]

Transportation of Natural and Other Gas by Pipeline; Confirmation or Revision of Maximum Allowable Operating Pressure Near Certain Occupied Buildings and Outside Areas

AGENCY: Research and Special Program Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the criteria used to classify pipelines located near certain buildings and outside areas that are occupied infrequently. The effect is to relieve the undue burdens imposed by the current rules when pipelines are near these buildings or areas. Considering the risk, an acceptable level of safety will still be provided by the revised criteria and applicable safety standards.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Paul J. Cory, (202) 366-4561 regarding the content of this amendment or Ms. Sandra Cureton, Dockets Unit, Office of Hazardous Materials (202) 366-5046 regarding copies of the amendment or other information in this docket.

SUPPLEMENTARY INFORMATION:

Background

Notice 1 of this proceeding (50 FR 36116, September 5, 1985) (ANPRM) explained that this rulemaking is a result of requests from five pipeline operators for waiver of § 192.611 as it pertains to pipelines that have been reclassified according to criteria under § 192.5(d)(2). Section 192.611 requires confirmation or revision of maximum allowable operating pressure (MAOP) in areas where there has been population growth as represented by an increase in class location under the criteria of § 192.5. The waiver requests involved pipelines built to class location 1 standards which had under gone a class location jump from 1 to 3. This normally involves replacement of the line section, although reduction in operating pressure is also a permissible remedy.

The criteria of § 192.5(d)(2) are:

§ 192.5 Class locations.

(d) A Class 3 location is:

(2) An area where the pipeline lies within 100 yards of any of the following:

(i) A building that is occupied by 20 or more persons during normal use.

(ii) A small, well-defined outside area that is occupied by 20 or more persons during normal use, such as a playground, recreation area, outdoor theater, or other place of public assembly.

The waiver petitions cited the high costs of confirming or revising the MAOP for short segments of pipeline (approximately 600 feet each), the small number of occupants of the buildings or outside areas, and the infrequency of occupancy (such as once or twice a week) to argue that the required confirmation or revision in MAOP was not justified. The requests were not granted, however, because none of the operators demonstrated that public safety would not be adversely affected if the MAOP of the pipeline segment or segments involved were not confirmed or revised as required by § 192.611. Nevertheless, RSPA observed that § 192.5(d)(2) may be too conservative when compared to other class location criteria, and some softening of the criteria might be accomplished without a reduction in safety.

In the ANPRM RSPA requested comments on six alternative that were seen as possible courses of action, and asked eight questions relating to the application of § 192.611 under the class location 3 described in § 192.5(d)(2).

An analysis of available information and comments to the ANPRM was published in Notice 3 (NPRM) (51 FR 29504, August 18, 1986). In the NPRM, RSPA proposed to amend § 192.5(d)(2) by deleting the phrase "during normal use" for both buildings and outside areas that are occupied by 20 or more persons and by replacing the deleted phrase with "on at least 5 days a week during at least 26 weeks a year." This proposal was designed to quantify the risk exposure represented by § 192.5(d)(2), and to set the level of exposure high enough that occasional usages, such as 1-week county fairs or rural churches, would not, by themselves, trigger class 3 responses under Part 192, either under § 192.611 or other rules.

Discussion of Comments to the NPRM

Twenty nine commenters responded to the NPRM. Summarized comments and RSPA responses are:

Comment #1: Fourteen comments agreed with the wording proposed in the NPRM for § 192.5(d)(2).

RSPA Response: None.

Comment #2: Six comments agreed in principle with the proposal but pointed out that for clarity the regulations should state that neither the days nor the weeks have to run consecutively. They also said that a year should be any 12-month period beginning with the date of the first known occupancy by more than 20 or more persons.

RSPA Response: For the most part, RSPA agrees with these comments. Since the exposure is the same, the days and weeks do not have to run consecutively and a year need not be a calendar year. Appropriate changes have been made in the final rule to make this clear. Although RSPA also agrees that the 12-month period starts with the time that 20 or more people are known to have been in occupancy, it would not be reasonable to apply the criteria otherwise, and so we see no need to specify the beginning point of the 12-month period.

Comment #3: Four comments agreed with the proposal but recommended that "20 or more persons" be increased to some larger number of persons. One of these did not mention a number, however, the other two comments recommended changing 20 to 100 persons. One commenter suggested that we consider an additional class location 3 designation that would apply where pipelines lay within 100 yards of an area where 500 or more persons assemble at least 10 days per year.

RSPA Response: The idea of raising the number of persons from 20 to some greater number was discussed as an alternative in the ANPRM. Sixty-five percent of the comments to that notice did not believe it would alleviate the problem. It would also expose more people to risk. Therefore, RSPA did not propose to change the number in the NPRM. Rather, we proposed to quantify the frequency of use, or length of exposure of 20 or more persons to the pipeline, as the best way to resolve the problem of infrequent usage, while minimizing undesired effects on safety.

The comment regarding 500 or more persons for at least 10 days a year was not adopted because the high occupancy type of usage this commenter had in mind nevertheless falls in the realm of occasional exposure to risk to which the NPRM was directed. The overall

exposure of 500 people for 10 days probably would be no greater than that of a county fair. County fairs, which involve large congregations of people for about a week, were mentioned in the NPRM as a type of occasional usage that does not deserve the more stringent Class 3 treatment. No comments were voiced in opposition to excluding county fairs from Class 3 designations.

Comment #4: One commenter agreed with the proposal but recommended that the 26 weeks per year be changed to 13 weeks because most schools observe a variety of holidays that could result in their not having 26 weeks with 5 days per week.

RSPA Response: As a result of this comment on schools and comment #5, RSPA has reduced the occupancy period to 10 weeks, which appears sufficient to satisfy the need to protect schools as well as the objections discussed in comment #5.

Comment #5: Two commenters pointed out that 5 days per week and 26 weeks per year would exclude resort areas such as theme parks, summer camps, camp grounds, public swimming pools, etc., that would be occupied in many areas from ¼ to ⅓ of the year.

RSPA Response: We agree that areas or buildings such as these that are normally occupied by a large number of persons during a few months of the year warrant additional consideration. Such facilities as theme parks, summer camps, camp grounds, and public swimming facilities, etc., in most areas of the U.S., are open by the last week in June or the first week of July and remain open at least until Labor Day. This is a period of 10 weeks and may be 11 weeks. They usually are open at least 5 days a week. A few summer camps may be in session for only eight or nine weeks. OPS intends to include these summer camps within the rules protection. We have drafted the rule in terms of 10 weeks, rather than 8 or 9 because we believe that these full-length summer camps usually will have 20 or more staff and/or other persons present in the weeks before and after the weeks when the camps are in session to prepare for or shut down the camp. The reduction from 26 to 10 weeks should not affect the objective of excluding occasionally used facilities since usually they are not in session 5 days a week or for 10 weeks. As a result of this comment and comment #4, the final rule reduces the number of weeks from 26 to 10.

Comment #6: One comment recommended that the present wording of § 192.5(d)(2) be retained, but that the requirement of § 192.611 to confirm or revise the MAOP be waived for such Class 3 areas. Thus, the pressure would not have to be reduced or the pipe replaced, but all other monitoring and maintenance requirements applicable to that Class 3 location would remain.

RSPA Response: This also was one of the six alternatives mentioned in the ANPRM. Two thirds of the commentors to the ANPRM rejected the idea. RSPA did not propose it in the NPRM because of the uncertain effect on safety of excepting all § 192.5(d)(2) Class 3 locations from the requirements of § 192.611.

Comment #7: Three commenters recommended adopting the appropriate provisions from the American Society of Mechanical Engineers B31.8 Code—(1984a edition), a voluntary code of standards for gas piping systems.

RSPA Response: Although the B31.8 wording provides good guidelines for dealing with the subject conditions, this comment was not adopted because the vague B31.8 language would allow wide variations in the level of safety provided in similar locations and reduce the enforceability and effectiveness of the § 192.5(d)(2) criteria.

Comment #8: One commenter recommended no change in the present rule but a more liberal use of waivers based on the specifics of each case and the recommendations of the regulatory agency responsible for pipeline safety in the State involved.

RSPA Response: This concept was discussed in the NPRM in response to ANPRM alternate #1. It was rejected because the problem areas are too numerous to handle on a waiver, or case by case, basis.

Advisory Committee Review

Section 4(b) of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1673(b)), requires that each proposed amendment to a safety standard established under this statute be submitted to a 15-member advisory committee for its consideration. The Technical Pipeline Safety Standards Committee, composed of persons knowledgeable about transportation of gas by pipeline discussed the proposed rule at a meeting held June 10, 1986. The Committee unanimously voted that the proposal was technically feasible, reasonable and practicable. The Committee's official report for the meeting is in the docket.

Classification

This final rule is considered to be nonmajor under Executive Order 12291 and is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The economic impact of this final rule will amount to about 24 million dollars average annual savings for the industry and consumers.

Since the impact of this final rule is expected to affect primarily operators of transmission pipelines, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Class location, Maximum allowable operating pressure.

In view of the foregoing RSPA amends 49 CFR Part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 1672; 49 U.S.C. 1804; 49 CFR 1.53 and Appendix A of Part 1.

2. In § 192.5 paragraph (d)(2) is revised to read as follows:

§ 192.5 Class locations.

* * * * *

(d) * * *

(2) An area where the pipeline lies within 100 yards of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. (The days and weeks need not be consecutive.)

* * * * *

Issued in Washington, DC, on August 26, 1987.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 87-19907 Filed 8-31-87; 8:45 am]

BILLING CODE 4910-60-M

Federal Highway Administration

49 CFR Part 383

Commercial Driver's License Standards; Technical Correction

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule; technical correction.

SUMMARY: This document corrects a rule on commercial driver's license standards that appeared at page 20574 in the **Federal Register** of Monday, June 1, 1987 (52 FR 20574). This action is necessary to correct a typographical error in § 383.37, Employer responsibilities.

EFFECTIVE DATE: September 1, 1987.

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FOR FURTHER INFORMATION CONTACT: Mr. Michael F. Trentacoste, Office of Motor Carrier Standards (202) 366–4009, or Mr. Michael J. Laska, Office of the Chief Counsel (202) 366–1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

§ 383.37 [Corrected]

In FR Doc. 87–12467, in the issue of Monday, June 1, 1987, on page 20588, in 49 CFR 383.37, substitute the word "employer" for the word "employee" in the introductory paragraph of the section.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: August 25, 1987.

Hugh T. O'Reilly,

Deputy Chief Counsel, Federal Highway Administration.

[FR Doc. 87–20000 Filed 8–31–87; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildife and Plants; Final Rule to Determine Penstemon Haydenii (Blowout Penstemon) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Penstemon haydenii* (blowout penstemon), to be an endangered species under the authority of the Endangered Species Act of 1973, as amended. Critical habitat is not being designated. The blowout penstemon is known from small populations in Cherry (3 populations), Hooker (1 population), Garden (3 populations), Box Butte (2 populations), and Sheridan (1 population) Counties, Nebraska. The number of plants estimated in 1986 in all populations was 2,100±200. The number of plants varies considerably from year to year.

Approximately 40 to 45 percent of the populations are located on private and State lands, and 55 to 60 percent are located on Service lands. The stablization of blowout complexes leads to declining numbers of the species. The low probabilities of seed fertilization, maturation, and dispersal and seedling establishment may also contribute to the decline of the species. This determination that *Penstemon haydenii* is endangered implements the protection provided by the Act.

DATES: The effective date of this rule is October 1, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Nebraska Field Office, U.S. Fish and Wildlife Service, 2604 St. Patrick, Suite 7, Grand Island, Nebraska 68803.

FOR FURTHER INFORMATION CONTACT: Mr. Wally Jobman, Staff Biologist, Fish and Wildlife Enhancement Division, Endangered Species Office, at the above address (308/381–5571 or FTS 541–6571).

SUPPLEMENTARY INFORMATION: .

Background

Penstemon haydenii (blowout penstemon) was described by Sereno Watson (1891), based on a collection by H. L. Webber near Dismal River in Thomas County, Nebraska. The plant was also found there in 1889 by Webber and perhaps earlier by F.V. Hayden.

Penstemon haydenii, a member of the snapdragon family, is a hairless perennial that grows 1 to 2 feet high. The stems are often decumbent, simple or branched, and very leafy. The stem leaves are linear to lanceolate, entire, 3 to 5 inches long by 1 to 3 inches wide, sessile and clasping. The inflorescence is a compactly crowded thyrse. Floral bracts are ovate to lanceolate, nearly equalling the flowers. The corolla is blue and 1.5 to 2 inches long. *Penstemon haydenii* can be distinguished from *P. angustifolius* by its larger and lighter blue flowers. The species flowers from mid-May to late June. The flowers have a strong, persistent fragrance that lures seveal kinds of bees and other pollinators.

Historically, *Penstemon haydenii* probably was widely scattered throughout the central part of the Sandhills of Nebraska. All herbarium specimens and most literature citations indicate that it has never been collected outside of Nebraska. A purported Wyoming collection by Hayden was reported as being from Nebraska (Pennell 1935, p. 269), and reports of the species from Kansas are believed to be misidentifications (Craig Freeman, University of Connecticut, personal communication) and are not accepted in the Atlas of the Flora of the Great Plains (Barkley 1977).

The species is restricted to active blowouts in the sandhills of Cherry, Hooker, Box Butte, Sheridan, and Garden Counties, Nebraska, and many historic locations do not support the species today because of elimination of the habitat due to stablization of the sand dunes as a range management practice.

All know sites are well-developed blowouts in dune complexes with active sand and accompanying environmental extremes in wind, temperature, evapotranspiration, and soil moisture stress. *Penstemon haydenii* is found most frequently in microsites that are, or recently have been, zones of sand accumulation. The plant apparently is successional and is a primary invader that does not persist when a blowout becomes completely vegetated (Pool 1914). The species survives burial in sand by sending off shoots at successively higher nodes. It withstands initial erosion but does not have the rhizomatous system or extensive lateral roots to survive erosion that uncovers much more than a few inches of root length.

In the December 15, 1980, **Federal Register** (45 FR 82480), the Service published a notice of review for plants under consideration for listing as endangered or threatened, including *Penstemon haydenii.* A second notice of review for plants was published September 27, 1985, in the **Federal Register** (50 FR 39526) and included *Penstemon haydenii* as a category 1 species. All candidate taxa in the 1985 notice are treated as under petition (48 FR 53641).

On February 15, 1983, the Service published a notice (48 FR 6752) of its prior finding that substantial scientific information had been presented that indicates that the petitioned action on this species may be warranted in accordance with section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (the Act). On October 13, 1983, October 12, 1984, and October 11, 1985, petition findings were made that listing *Penstemon haydenii* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Endangered Species Act. Such finding requires a recycling of the petition pursuant to a section 4(b)(3)(C)(i) of the Act. On April 29, 1986, the Service published a proposed rule (51 FR 15929) to list *Penstemon haydenii* as an endangered species, constituting the next required 1-year finding.

Summary of Comments and Recommendations

In the April 29, 1986, proposed rule (51 FR 15929) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State

agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices that invited general public comment were published in the *Omaha World Herald* (May 29–31 and June 1) and in the *Valentine Newspaper, Garden County News,* and *Hooker County Tribune* on May 29 and on June 5, 12, and 19, 1986. Seven comments were received and are discussed below. No public hearing was requested or held.

The Ainsworth Irrigation District expressed concern that landowners will not be allowed to repair and control blowouts if this species is listed as endangered. The Service responds that private landowners are not subject to any taking prohibitions for plants listed under the Endangered Species Act. However, any Federal agency that funds, authorizes, or carries out an action in the area where the blowout penstemon may be present must ensure under section 7 of the Endangered Species Act that its action is not likely to jeopardize the continued existence of the species. Species management activities may be needed to protect and recover the species which may affect some local actions that receive Federal funds for land stabilization activities.

The Nebraska Game and Parks Commission supported the listing and agreed that designation of critical habitat would not be prudent. The Commission brought to our attention that the statement, under the Summary of Factors Affecting the Species, that *Penstemon haydenii* is not protected by any State laws or regulations, was in error. On January 8, 1986, the Commission took formal action and listed the blowout penstemon as an endangered species under the authority of the Nebraska Nongame and Endangered Species Conservation Act. The Commission suggested Box Butte County be added to the list of county occurrences and that only 55–60 percent of the populations occur on Federal lands. According to the Commission, justifying listing on the basis of the number of individuals may not be appropriate because of the large fluctuation in plant numbers from year-to-year. The Service has considered these corrections and suggestions and has made appropriate changes in this final rule.

A professor at the University of Nebraska, Department of Agronomy, supported the listing and submitted his estimate of 2,100 ± 200 plants as being the 1986 population. He estimated the population percentage on Federal land to be between 25 and 50 percent. He also commented that population numbers tend to fluctuate greatly from year to year. The Service has incorporated these comments into the final listing.

Whiskey Basin Consultants commented that currently available information supports listing this species as endangered, but that additional surveys are needed to further document the occurrence of blowout penstemon. The Soil Conservation Service (SCS) questioned the advisability of listing the species without further survey of its range and pointed out that *Penstemon haydenii* is now listed as a State endangered species. However, no supporting biological information was received from these commenters, and the Service's decision to list the species is based on the best information currently available, which indicates a small number of populations.

A former part-owner of a site supporting *Penstemon haydenii* concurred that the species' numbers have decreased in the past 50 years and recommended methods to increase the blowout habitat.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Penstemon haydenii* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Penstemon haydenii* Watson (blowout penstemon) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Successful control of unstable sand dunes has resulted in restriction of the required blowout habitats of *Penstemon haydenii*. The blowouts where the species grow are conical or irregularly-shaped craters that are scooped out of sand by the swirling action of prevailing westerly winds. Because of successful dune stabilization programs that protect farmlands in the sandhills, the species does not have adequate habitat to invade. The decrease in extent of blowouts also has made dispersal to the fewer remaining natural blowouts more difficult.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The species is attractive and has been cultivated. Horticultural collecting is a potential threat for such a species known from so few individuals.

C. Disease or Predation

None known.

D. The Inadequacy of Existing Regulatory Mechanisms

Penstemon haydenii is listed as endangered under the Nebraska Nongame and Endangered Species Conservation Act (sections 37–430 to 37–438, Nebraska Revised Statutes), which regulates possession, transportation, exportation from the State, processing, sale or offer for sale, or shipment of the species within the State. Under the provisions of 50 CFR Parts 25 through 28, the Service provides some protection for the species on refuge lands. Approximately 55–60 percent of known populations are on Service refuge land and 40–45 percent are on State and private lands. The Endangered Species Act will provide additional protection of this species through section 7 (interagency cooperation) requirements and through section 9, which, among other things, prohibits removal and reduction to possession of listed plants on areas under Federal jurisdiction.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Penstemon haydenii comprises nine small populations that consist of a total of approximately 2,100 individuals. The small population size makes the species vulnerable to localized environmental changes. In addition, the species occupies a successional niche in the development and eventual revegetation of blowout habitats. As the vegetational cover in these areas increases, *P. haydenii* undergoes local extirpation. The species is not only rare, but does not appear vigorous at the known localities, possibly because these blowouts have reached a stage of revegetation that exceeds the optimum habitat conditions for the species, and the number of new blowouts is decreasing.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Penstemon haydenii* as endangered. With only about 2,100 individuals known and stabilization of blowout complexes

causing further declines, endangered status seems an accurate assessment of the species' condition. For the reasons stated below, no critical habitat designation is included in this rule.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Penstemon haydenii* at this time. This species depends on early successional stages in the revegetation of sandhill blowouts for its habitat. Such blowouts are transient features of the sandhill topography, and a critical habitat designation reflecting the present habitat occupied by the species would quickly become inappropriate as present blowouts become stabilized and new ones develop. Even supposing that critical habitat could be kept in a state of revision to reflect the varying range of the species, such public identification of habitat would be inadvisable for such an attractive and conspicuous flowering plant, which could easily be exposed to vandalism or horticultural collecting. All involved parties and landowners will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Thus, the Service concludes that designation of critical habitat for this species would be neither practical nor beneficial to its conservation and therefore is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provided for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against collecting and trade are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if it is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Some management actions, such as stabilization of sand dunes by the U.S. Fish and Wildlife Service and the Soil Conservation Service, might adversely impact this species, since stabilization deprives the plant of suitable habitat for growth and reproduction. There may be a need for consultation under section 7 regarding the Soil Conservation Service's partial funding of private erosion-control activities. The Fish and Wildlife Service will be responsible for assuring that management of the two National Wildlife Refuges on which this species occurs is consistent with maintaining its continued survival. The Service will also seek voluntary cooperation with private landowners in managing habitat suitable for this species, and may undertake re-establishment of populations within former range on Federal or other lands.

The Endangered Species Act and its implementing regulations found at 50 CFR 17.61 and 17.62 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. With respect to *P. haydenii*, few permits are expected to be sought or issued, since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Barkley, T.M., editor. 1977. Atlas of the Flora of the Great Plains. The Iowa State University Press. 578 pages.

Pennell, F.W. 1935. Scrophulariaceae of East Temperate North America. Academy of Natural Sciences of Philadelphia Monographs, 1:267–269.

Pool, R.J. 1914. A study of the vegetation of the Sandhills of Nebraska. Minnesota Botanical Studies, 3(4):189.

Smyth, B. 1899. Additons to the Flora of Kansas. Proceedings and Transactions of the Kansas Academy of Science, 6:158–167.

Watson, S. 1891. Penstemon haydenii, n. sp. Botanical Gazette, 16:311.

Author

The primary author of this final rule is Mr. Wally Jobman, Nebraska Field Office, U.S. Fish and Wildlife Service, 2604 St. Patrick, Suite 7, Grand Island, Nebraska 68803. A status report was prepared by Mr. Robert W. Lichvar of Whiskey Basin Consultants, Cheyenne, Wyoming. Dr. James L. Miller of the Denver Regional Endangered Species Office served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*		
Scrophulariaceae—Snapdragon family:						
Penstemon haydenii	Blowout penstemon	U.S.A. (NE)	E		NA	NA
*	*	*	*	*		

Dated: August 3, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–20021 Filed 8–31–87; 8:45 am]

BILLING CODE 4310–55–M

VOL 52 ISS 169 SE 1 1987 UMI

Proposed Rules

Federal Register
Vol. 52, No. 169
Tuesday, September 1, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

Revision of Contract Duration for Food Service Management Company Contracts

AGENCY: Food and Nurition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposed to amend Part 210, National School Lunch Program, to increase the number of allowable annual renewals of contracts between school food authorities and food service management companies from 2 to 4. This proposal responds to a number of comments on this matter which were received by the Department in connection with the interim rule that revised and reorganized Part 210 (51 FR 34864, September 30, 1986). Since the proposal that preceded the interim rule contained no change to existing contract duration requirements, the Department wishes to provide more specific notice of its intent to address that issue than was provided in that particular rulemaking. The Department is proposing this rule to provide a potentially more stable environment for school food service operations that are conducted in whole or in part under contracts with food service management companies and to decrease the paperwork and administrative burden of school food authorities that have such contracts.

DATE: To be assured of consideration, comments must be postmarked no later than November 2, 1987.

ADDRESS: Comments should be sent to Lou Pastura, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public inspection in Room 509, 3101 Park Center Drive, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Pastura at the address listed above or call (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an impact on the economy of more than $100 million. No major increase in costs or prices for program participants, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. The proposal is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The National School Lunch Program is listed in the catalog of Federal Domestic Assistance under No. 10.555 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

This proposal has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. The Acting Administrator of FNS has certified that this proposal will not have a significant economic impact on a substantial number of small entities.

This proposed action would impose no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520).

Background

Prior to 1970, school food authorities were prohibited from contracting with food service management companies to provide meals under the National School Lunch Program (NSLP). In 1970, the NSLP regulations were amended to authorize any school food authority to contract with a food service management company to conduct all or part of its feeding operation under the Program. No restrictions were imposed on the duration of such contracts.

The NSLP regulations were again amended in 1978 to address food service management companies. Under that amendment, additional requirements and controls were imposed upon school food authorities contracting with food service management companies. These provisions have remained essentially unchanged to date (7 CFR 210.16). Among the requirements imposed by the amendment was a contract duration period of 1 year with option for 2 renewals of 1 year each. As a result, the bidding cycle for food service management company contracts cannot exceed 3 years. In the 1978 rulemaking, the Department originally proposed that contracts be for 1 year only with no option for renewal. However, in response to substantial commenter concern over such a restrictive contract period, the Department provided the renewal option in the final rule.

On February 12, 1985, the Department published a proposed rewrite of Part 210 in the **Federal Register** (50 FR 5950). This proposal was intended to reorganize and clarify the NSLP regulations as well as to make several substantive policy changes. No change was proposed in the duration of food service management company contracts and only one comment was received on this provision (7 CFR 210.16(d). Consequently, no change to the provision was made in the interim rewrite of Part 210 which was published on September 30, 1986 (51 FR 34864). After the interim rule was published, 82 commenters addressed the duration of contract provision. Seventy-nine of these recommended change to the provision; 10 recommended a 1 year contract with an option for up to four yearly renewals (i.e. a maximum 5-year bidding cycle) and 69 recommended that the restriction on contract renewals be eliminated entirely so that each school food authority could determine the contract duration best suited to its own circumstances. However, as previously indicated, this issue will not be resolved in the final rewrite of Part 210 since the Department wishes to provide more specific notice to all members of the affected public of its intent to address the issue.

The concerns of commenters who recommended that the contract duration provision be lengthened or eliminated fall into two general categories. First, commenters indicated that the maximum 3-year duration of

management company contracts worked against the overall stability of school food service operations.They cited the adverse impact on food service employees of frequent potential or actual changes in management, the inability of companies to provide capital equipment to enhance food service operations in the absence of a suitable contract period over which to amortize such equipment, and the large amount of management company resources expended on developing proposals and responding to bid requests which could be better spent on Program operations. Secondly, commenters complained of the paperwork and administrative burden on school food authorities which results from the current 3-year maximum bidding cycle.

The Department is sensitive to commenter concerns on this issue, particularly those dealing with excessive administrative burden and paperwork. However, the Department is also committed to ensuring that the procurement of services from food service management companies is conducted in a manner that provides appropriate open and free competition consistent with the objectives and requirements of the NSLP. This commitment is in keeping with the procurement standards established for Federal grant programs under Office of Management and Budget Circular A–102. The Department believes there is sufficient merit in commenter concerns to warrant extending the maximum contract duration period from 3 to 5 years. The Department, therefore, is proposing to allow up to four annual renewals of food service management company contracts rather than the current two. This action would provide administrative relief to school food authorities and food service management companies alike and would contribute to a more stable food service environment in those school food authorities contracting with food service management companies. The Department believes that the maximum 5-year bidding cycle resulting from this proposal coupled with the current termination provision which allows a school food authority to cancel a food service management company contract for cause with 60-day notification, will continue to provide a climate conducive to free and open competition and satisfactory contract performance. The Department intends that this proposed provision would apply to contracts with food service management companies signed after the effective date of any final rule change.

List of Subjects in 7 CFR Part 210

Food assistance programs, National School Lunch Program, Commodity School Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Part 210 is amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Secs. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779, unless otherwise noted.

§ 210.16 [Amended]

2. In § 210.16, paragraph (d) is amended by removing the number "2" and adding, in its place, the number "4".

Date: August 19, 1987.

Anna Kondratas,

Administrator.

[FR Doc. 87–20053 Filed 8–31–87; 8:45 am]

BILLING CODE 3410–30–M

Federal Crop Insurance Corporation

7 CFR Part 423

[Amdt. No. 1 (Doc. No. 4645S)]

Flaxseed Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Flaxseed Crop Insurance Regulations (7 CFR Part 423), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Flaxseed Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations as § 401.116, Flaxseed Endorsement, effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgations of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 1, 1987, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this section is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary. FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 423 will be effective only through the end of the 1987 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Flaxseed Endorsement will be published as an endorsement to 7 CFR Part 401 (§ 401.116, Flaxseed Endorsement), and become effective for the 1988 and succeeding crop years. Upon final publication, the provisions of the Flaxseed Crop Insurance Regulations, now contained in 7 CFR Part 423, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 423 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 423

Crop insurance, Flaxseed.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby passes to amend the Subpart heading to the Flaxseed Crop Insurance Regulations (7 CFR Part 423), as follows:

PART 423—[AMENDED]

1. The Authority citation for 7 CFR Part 423 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The subpart heading in 7 CFR Part 423 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years.

Done in Washington, DC, on July 24 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–20044 Filed 8–31–87; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 431

[Amdt. No. 1; (Doc. No. 4646S)]

Soybean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Soybean Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this part will be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations as § 401.117, Soybean Endorsement, effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 1, 1987, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review data established for these regulations is October 1, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this section will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40

different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary. FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 431 will be effective only through the end of the 1987 crop year. FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Soybean Endorsement will be published as an endorsement to 7 CFR Part 401 (§ 401.117, Soybean Endorsement), and become effective for the 1988 and succeeding crop years. Upon final publication, the provisions of the Soybean Crop Insurance Regulations, now contained in 7 CFR Part 431, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 431 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 431

Crop insurance, Soybean.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the subpart heading to the Soybean Crop Insurance Regulations (7 CFR Part 431), as follows:

PART 431—[AMENDED]

1. The authority citation for 7 CFR Part 431 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The subpart heading in 7 CFR Part 431 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC, on July 24, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–20025 Filed 8–31–87; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Parts 1136 and 1139

[Docket Nos. AO–309–A27 and AO–374–A11)]

Milk in the Great Basin and Lake Mead Marketing Areas; Extension of Time for Filing Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rule.

SUMMARY: This notice extends the time for filing exceptions to a recommended decision issued July 14, 1987, concerning proposed amendments to the Great Basin and Lake Mead milk marketing orders. The Holstein-Friesian Association of America requested additional time to complete exceptions to the recommended decision.

DATE: Exceptions now are due on or before September 4, 1987.

ADDRESS: Exceptions (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 447–(7183).

SUPPLEMENTARY INFORMATION: *Prior documents in the proceeding:*

Notice of Hearing: Issued February 6, 1986; published February 11, 1986 (51 FR 5070).

Proposed Suspension: Issued July 29, 1986; published August 4, 1986 (51 FR 27866).

Suspension Order: Issued September 2, 1986; published September 5, 1986 (51 FR 31759).

Recommended Decision: Issued July 14, 1987; published July 21, 1987 (52 FR 27372).

Notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Great Basin and Lake Mead marketing areas which was issued July 14, 1987, is hereby extended to September 4, 1987.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Parts 1136 and 1139

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Parts 1136 and 1139 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on August 26, 1987.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 87–20020 Filed 8–31–87; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1942, 1951, and 1955

Revision of Procedure to Service Community Program Loans Sold to the Private Sector With Servicing To Be Performed in the Private Sector

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulation to exclude the servicing of loans sold without insurance by FmHA to the private sector with servicing to be performed in the private sector. This action is necessary to clearly establish servicing responsibilities for such loans.

DATE: Comments must be received on or before September 16, 1987.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, South Building, Room 6348, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection on weekdays between the hours of 8:15 a.m. and 4:45 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Bonnie S. Justice, Loan Officer,

Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6304, South Agriculture Building, Washington, DC 20250; telephone (202) 382–1490.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or Local Government agencies; or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program". FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969 Pub. L. 91–190, an Environmental Impact Statement is not required.

The Administrator, Farmers Home Administration, has determined that because of the limited scope of this action, and the requirements of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) (OBRA) and the Joint Resolution Making Continuing Appropriations for 1987 (Pub. L. 99–591), a fifteen-day comment period is necessary and adequate. The Farmers Home Administration is required to complete the sale of part of its Community Programs loan portfolio to the private sector no later than September 30, 1987. Loans will be sold to the private sector with servicing to be performed in the private sector as provided by OBRA. After the sale they will not be serviced by the Farmers Home Administration as Agency held loans. Pursuant to OBRA the Secretary of Agriculture will determine prior to sale that the private servicing arrangements will meet statutory requirements. The fifteen-day comment period will allow sufficient time for interested and affected persons to provide comments.

This change affects the following FmHA programs as listed in the Catalog of Federal Domestic Assistance and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 38 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985):

Sec.
10.418 Water and Waste Disposal Systems for Rural Communities.
10.423 Community Facilities Loans.

Discussion

FmHA is authorized by the Omnibus Budget Reconciliation Act to sell loans to the private sector with servicing to be performed in the private sector. This proposed action is to clearly establish servicing responsibilities for such loans and to clarify in FmHA's servicing regulations to show that those loans will be serviced in the private sector. This proposed action will provide that future changes to FmHA regulations will not be applicable to such loans.

List of Subjects

7 CFR Part 1942

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

7 CFR Part 1951

Account servicing; Grant programs—Housing and community development; Reporting requirements; Rural areas; Subsidies.

7 CFR Part 1955

Foreclosure; Government acquired property; Government property management.

Accordingly, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

2. § 1942.1 is amended by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) to read as follows:

§ 1942.1 *General.*

* * * * * *

(c) Loans sold without insurance by FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

* * * * * *

PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Servicing of Community Program Loans and Grants

4. § 1951.201 is revised to read as follows:

§ 1951.201 Purpose.

This subpart prescribes the policies, authorizations, and procedures for servicing Community Water and Waste Disposal System loans and grants, Community Facility Loans, Industrial Development grants, loans for Grazing and other shift-in-land use projects, Association Recreation loans, Association Irrigation and Drainage loans, Watershed loans and advances, Resource Conservation and Development loans, Economic Opportunity Cooperative loans, loans to Indian Tribes and Tribal Corporations, loans to Timer Development Organizations, Rural Renewal loans and Energy Impacted Area Development Assistance Program grants. Loans sold without insurance by the Farmers Home Administration to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

Subpart O—Servicing Cases Where Unauthorized Loans(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

5. § 1951.701 is revised to read as follows:

§ 1951.701 Purpose.

This subpart prescribes the policies and procedures for servicing Community and Business Program loans and/or grants made by Farmers Home Administration (FmHA) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. It does not apply to guaranteed loans. Loans sold without insurance by the FmHA to the private sector will be serviced in the private sector and will

not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

PART 1955—PROPERTY MANAGEMENT

6. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

7. § 1955.1 is revised to read as follows:

§ 1955.1 Purpose.

This subpart delegates authority and prescribes procedures for the liquidation of Farmers Home Administration (FmHA) loans identified in § 1955.3 (d) and (e) of this subpart and acquisition of property by voluntary conveyance to the Government, by foreclosure of security instruments, by exercise of the Government's redemption rights, and certain other actions which result in acquisition of property by the Government. When FmHA elects to liquidate a guaranteed loan *other than Business and Industrial (B&I)* under the contract of guarantee, the liquidation will be completed according to this Subpart. Liquidations of guaranteed B&I loans will be effected upon direction from the Assistant Administrator, Community and Business Programs. For Community Programs and insured B&I actions involving loans secured by other than real or chattel property, the case will be forwarded to the National Office for prior review and guidance. Community Program loans sold without insurance by the FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

Subpart B—Management of Property

8. § 1955.51 is amended by adding a new paragraph (d) to read as follows:

§ 1955.51 Purpose.

* * * * *

(d) Community Program loans sold without insurance by the FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

Date: August 26, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87-20079 Filed 8-31-87; 8:45 am]

BILLING CODE 3410-07-M

7 CFR Parts 1951 and 1965

Security Servicing for Single Family Housing (SFH) Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: Farmers Home Administration (FmHA) proposes to amend its regulations regarding the sale of FmHA financed property by a borrower when the FmHA debt and authorized selling expenses exceeds the market value of the property. This action is being taken to expand the Agency's regulations on security servicing. The intended effect is to provide FmHA borrowers with the opportunity to voluntarily sell the property if necessary, while assisting the Agency in reducing the number of properties acquired into inventory through voluntary conveyance.

DATE: Comments must be submitted on or before November 2, 1987.

ADDRESSES: Submit written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Senior Realty Specialist, Single Family Housing, Servicing and Property Management Division, FmHA, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, Telephone (202) 382-1452.

SUPPLEMENTARY INFORMATION: This proposed rulemaking has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291 and has been classified as "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets

The SFH program is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans and No. 10.417—Very Low Income Housing Repair Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, *Environmental Program*. It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-90, an Environmental Impact Statement is not required.

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act [5 U.S.C. 601 through 612]. The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities.

Current FmHA regulations [7 CFR Part 1965, Subpart C, § 1965.125(a)(2)] authorize FmHA officials to consent to the sale of SFH security property for less than the debt if the proposed selling price is at least equal to the current market value of the property as determined by FmHA. Where the purchaser is buying the property with personal funds or is obtaining credit from a source other than FmHA, and cash proceeds are available at closing, FmHA regulations further permit costs "* * * which the seller customarily or legally must pay to convey title and include but are not limited to: A real estate broker's commission, no more than three discount points to enable the buyer to obtain credit from another lender provided they are not being paid to reduce the purchaser's interest rate, real estate taxes, preparation of the deed, abstract fees, termite inspection, and deed or other revenue stamps." to be deducted from the (cash) sales proceeds before applying the remainder to the FmHA debt.

Said authority provides FmHA borrowers with an incentive to sell their house when there is no equity in the

property. Due to the poor economy in many of the rural areas in which FmHA finances, property values have declined causing the FmHA debt to exceed market value. This authority has assisted many borrowers to sell their FmHA financed property where they have needed or desired to sell same due to employment, health, or other reasons.

A problem arises, however, when a FmHA borrower proposes to sell the property and an FmHA applicant desires to purchase the house and assume the existing FmHA debt. Where the FmHA debt exceeds market value, current FmHA regulations authorize the debt to be assumed at the market value. In these cases, there are no cash proceeds available at closing for the FmHA borrower/seller to pay necessary closing costs such as attorney fees, a real estate broker's commission, etc. This lack of cash proceeds generally precludes any such sales of an FmHA financed property to an FmHA program applicant, which is contrary to Agency policy.

If borrowers cannot sell their property, the next method to voluntarily liquidate their FmHA indebtedness is voluntary conveyance. In a voluntary conveyance, a borrower conveys title to the FmHA financed property to FmHA in exchange for a full or partial satisfaction of the debt. In most cases, FmHA will accept the voluntary conveyance and take title to the property. The agency is then responsible for making the property readily marketable through repairs, selling the property, and then paying all expenses incident to the sale such as transfer costs and a real estate broker's commission. This process is very lengthy and costly to the Government. Since FmHA eventually pays the selling expenses incident to the sale, we believe it would be proper, reasonable, rational, and in the Government's best interest to authorize payment of necessary selling expenses when the borrower proposes to sell the property and there are insufficient funds at the closing to pay same. Such a policy would be consistent with existing regulations which, as previously mentioned, authorize the Government to accept less than market value for payment of the indebtedness when cash proceeds are available.

Due to the aforementioned reasons, FmHA has determined that payment by the Agency of authorized selling expenses when necessary to consummate a sale is reasonable and proper. Additionally, said action is necessary and rational as the Agency would be assisting its borrowers in furthering the objectives of the program while reducing the number of properties acquired into inventory and the high costs associated with same.

Accordingly, FmHA proposes to expand and clarify its existing regulations to permit the Agency to pay for expenses on behalf of the borrower incident to the sale of their house when sufficient funds are not available to pay same. Further, consistent with existing Agency regulations regarding voluntary conveyances [See 7 CFR Part 1955, Subpart A, § 1955.10(c)(2)], settlement of a junior lien(s) is also authorized when determined to be in the Government's best financial interest.

List of Subjects

7 CFR Part 1951

Account servicing, Rent subsidies, Subsidies.

7 CFR Part 1965

Administrative practice and procedure, Loan programs, Housing and community development, Low and moderate income housing—Rental, Rural areas.

Therefore, as proposed, Chapter XVII of Title 7, Code of Federal Regulations, is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.SC. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

§ 1951.612 [Amended]

2. In § 1951.612(a)(1)(iii), the first sentence is amended by changing the reference "§ 1965.125(a)(4)" to "§ 1965.125(a)(3)."

PART 1965—REAL PROPERTY

3. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 41 U.S.C. 2942; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70; 29 FR 14764; 33 FR 9850.

Subpart C—Security Servicing for Single Family Rural Housing Loans

4. In § 1965.125, paragraph (a)(3) is removed, paragraph (a)(4) is redesignated as (a)(3), and paragraph (a)(2) is revised to read as follows:

§ 1965.125 Liquidation

(a) * * *

(2) *Consent to sale when the FmHA debt and authorized selling expenses exceed market value.* If a borrower proposes to sell the property for an amount which will be insufficient to pay the FmHA debt, prior lien(s), if any, and authorized selling expenses, the County Supervisor will take a financial statement from the borrower on Form FmHA 431–3 "Household Financial Statement and Budget" to determine if they have reasonable ability to pay all or a substantial portion of the authorized selling expenses. In making this determination, consideration will be given to the borrower's moving and relocation expenses and the Government's prospects of acquisition of the property by voluntary conveyance or foreclosure and related costs of same. The County Supervisor will appraise the property and may consent to the sale if the proposed sale price is not less than the market value.

(i) *Authorized selling expenses.* Authorized selling expenses are those which the seller customarily or legally must pay to convey title and include but are not limited to: A real estate broker's commission which does not exceed the prevailing rate for the sale of similar property in the area, no more than three points to enable the buyer to obtain credit from another lender provided they are not being paid to reduce the purchaser's interest rate, real estate taxes, junior liens in the same manner as outlined in § 1955.10(c)(2) of Subpart A of Part 1955 of this chapter, preparation of the deed, abstract fees, termite inspection, and deed or other revenue stamps.

(ii) *Closing the transaction.* In no case will the borrower (seller) receive any cash proceeds from the sale. Distribution of funds will be handled as follows:

(A) Where there are sufficient cash proceeds at closing, the entire sales proceeds, minus prior liens, if any, and authorized selling expenses, must be applied to the FmHA debt.

(B) Where cash proceeds are not available (such as in the case of an assumption) or are insufficient to pay authorized selling expenses, FmHA may pay said expenses necessary to consummate the transaction by preparation of Standard Form 1034, "Public Voucher For Purchases And Expenses Other Than Personal," and submission of Form FmHA 2024–1, "Miscellaneous Payment System," according to FmHA Instruction 2024–P (available in any FmHA office) and the respective Forms Manual Insert (FMI). Expenses so vouchered will be charged

to the borrower's (seller's) account as a recoverable cost item.

(iii) *Release from liability.* When consent under this paragraph is given, the County Supervisor is authorized to release the FmHA security instrument(s). When necessary to comply with State law, a State Supplement approved by OGC will prescribe procedures for releasing security instruments when the debt evidenced therein is not satisfied in full. Release of the borrower from liability for the deficiency is covered in § 1965.127(a)(4) and (b) of this subpart.

* * * * *

Dated: June 9, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87-19584 Filed 8-31-87; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-14-AD]

Petition of the Aircraft Owners and Pilots Association (AOPA) For Recision of Airworthiness Directive 87-08-08

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Petition for rulemaking.

SUMMARY: This notice publishes for public comment a summary of the Aircraft Owners and Pilots Association (AOPA) petition dated may 28, 1987, as amended by their letter of August 3, 1987. This petition seeks the modification of Airworthiness Directive (AD) 87-08-08. The AD requires a wing spar inspection of certain Piper Aircraft Corporation Models PA-28 and PA-32 airplanes, and was issued as a result of a spar failure which occurred March 30, 1987. The petitioner contends that the service histories of the identified airplanes having spar cracks played an integral part in the development of the fatigue and the FAA should consider requiring compliance only on airplanes with a history of extensive low-level flight or other abnormal flight conditions. The petitioner further requests that the AD compliance times be modified or adjusted to reduce scheduling conflicts since no cracks have been reported on airplanes with less than 6100 hours.

Publication of this notice is not intended to affect the legal status of the petition or its final disposition.

DATE: Comments must be received on or before October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Raymond Boice, Aerospace Engineer, Aircraft Certification Division, 601 East 12th Street, 1656 Federal Building, Kansas City, Missouri 64106, Telephone (816) 374-5934.

ADDRESSES: Sent comments on this petition in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket, Docket No. 87-CE-14-AD, 601 East 12th Street, 1558 Federal Building, Kansas City, Missouri 64106. Comments may be inspected in Room 1558 weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be inspected in Room 915G weekdays, except Federal holidays, between the hours of 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments on the petition as they may desire. Communications should identify the docket and petition number and be submitted in triplicate to the Office of Regional Counsel, Kansas City, Missouri, at the above address. All communications received on or before the closing date for comments will be considered before taking action on the petition. All comments will be available for examination in the FAA docket.

Interested persons may obtain a copy of the petition by contacting the person listed above in the paragraph entitled "**FOR FURTHER INFORMATION CONTACT:**."

Although this notice refers to the contents of the petition as received by the FAA, it should be understood that the purpose of the reference is to receive public comments in accordance with FAA procedures governing petitions for rulemaking, and it does not propose a regulatory rule for adoption or recision, represent an FAA position, or otherwise commit the FAA on the merits of the petition. The FAA intends to consider the merits of the proposal after it has had an opportunity to evaluate the petition matters presented and all comments received from the public.

The Petition

Accordingly, the Federal Aviation Administration publishes this notice for public comment on the AOPA petition for recision of AD 87-08-08.

Issued in Kansas City, Missouri on August 14, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87-19995 Filed 8-31-87; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 67

[CC Docket Nos. 78-72, 80-286 and 86-297; FCC 87-272]

Common Carrier Services; MTS and WATS Market Structure; Amendment of the Commission's Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Commission has issued a Supplemental Notice of Proposed Rulemaking seeking comment and data on the appropriate allocation method and recovery mechanism for marketing expenses (See 45 FR 41459, June 19, 1980). In a Memorandum Opinion and Order on Reconsideration, summarized elsewhere in this volume, the Commission granted, in part petitions for reconsideration of its decision to exclude access revenues from the allocation factor for marketing expenses. The Commission adopted a new § 36.372 of its rules, which will allocate marketing expenses on the basis of current billings, effective January 1, 1988.

DATES: Comments and data must be filed on or before September 28, 1987, and reply comments on or before October 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cindy Schonhaut, Special Counsel Federal-State Joint Board Matters, Accounting and Audits Division, Common Carrier Bureau, at (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Supplemental Notice of Proposed Rulemaking, CC Docket Nos. 78-72, 80-286 and 86-297, FCC 87-272; adopted August 14, 1987, and released August 18, 1987.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The

complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Supplemental Notice of Proposed Rulemaking

1. The Joint Board in CC Docket No. 86–297 recommended that the Commission adopt a new separations manual intended to conform separations procedures to the recently revised Uniform System of Accounts (USOA) and to simplify the separations process.[1] The Commission adopted the new Separations Manual in April 1987 which will be codified as the new Part 36 of its rules and which will become effective January 1, 1988.[2]

2. Under the current separations procedures of Part 67 of the Commission's rules, the advertising and sales expenses in the current USOA Accounts 642 and 643 are allocated between the jurisdictions on the basis of current billing for local and toll services (excluding certain billings for non-affiliated companies and those in connection with intercompany settlements).[3] Those expenses will be included in the new Account 6610 in the revised USOA. Under new separations procedures recommended by the Joint Board and adopted by the Commission, billings for access charges will be excluded from the allocation factor for Account 6610 marketing expenses.

3. The Federal Communications Commission granted, in part, reconsideration of its decision to adopt revisions of the Separations Manual, new Part 36 of its rules, recently recommended by the Federal-State Joint Board. The Commission decided to reconsider its decision to exclude access revenues from the allocation factor for marketing expenses. Thus, as an interim measure, in the new § 36.372 of the Commission's rules (effective January 1, 1988) marketing expenses will be allocated on the basis of current billings. The Commission did not act, at this time on other reconsideration issues.

4. The Commission referred a permanent resolution of this issue to the Joint Board in CC Docket No. 80–286. The Commission specified certain question for comment and requested data regarding the allocation of marketing expenses. The Commission asked the Joint Board to recommend a permanent resolution of this issue by April 1, 1988. The Commission also proposed to revise the Part 69 access apportionment rules for Account 6610 expenses to conform to any separations rule that may be adopted and invited the Joint Board in CC Docket No. 80–286 to recommend an appropriate rule.

5. The Commission requested that LECs submit data, as specified in Appendix B of the Notice, to aid the Joint Board and the Commission in the evaluation of alternative allocation methods. It also requested that LECs specifically identify their Account 6610 marketing activities that are related to a specific jurisdiction. The Commission requested that parties comment on the need for changes in the procedures for the allocation and recovery of expenses in Account 6610, including the desirability of excluding all or some portion of access revenues from the allocation factor or factors (*e.g.*, subscriber line or carrier common line charge revenues,) and the ability of carriers to directly assign some portion of Account 6610 expenses to the state or interstate jurisdictions. It also sought specific proposals for alternative allocation factors and cost recovery mechanisms that, for example, may not be revenue-based, or may incorporate a weighting factor or phase-in approach.

Comments

6. Interested parties may file comments and data on the issues discussed above on or before September 28, 1987, and reply comments on or before October 13, 1987.[4]

Regulatory Flexibility Act

7. We certify that the Regulatory Flexibility Act [5] is not applicable to the rule changes we are proposing in this proceeding. In accordance with the provisions of section 605 of the Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of a summary of this Order and Notice in the **Federal Register.** As part of our analysis of the proposals received in response to the Notice, however, the Commission will consider the impact of proposals on small telephone companies, *i.e.*, these serving 50,000 or fewer lines.[6]

Paperwork Reduction Act

8. We have analyzed the rules adopted and proposed herein with respect to the Paperwork Reduction Act of 1980 [7] and have concluded (tentatively with respect to the proposals) that they will not impose new or modified information collection requirements on the public. In addition, the Notice presented herein is a general solicitation of comments from the public and, as such, does not constitute a collection of information.[8] All comments will be considered in this proceeding. Parties need not specifically respond to the data request for their comments to be considered. Therefore, implementation of the requirements adopted and proposed herein will not be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ex Parte Contacts

9. For purposes of the non-restricted notice and comment rulemaking proceeding which we are hereby initiating, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments, pleadings and oral arguments) between a person outside the Commission and a Commissioner, Joint Board member, or a member of the staff of the Commission or the Joint Board, that addresses the merits or outcome of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation presenting data or

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[1] Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of Federal-State Joint Board, CC Docket No. 86–297, FCC 87J–4, released April 8, 1987, 2 FCC Rcd 2.582 (1987) (*Recommended Decision and Order*).

[2] MTS and WATS Market Structure, Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, CC Docket Nos. 78–72, 80–286 and 86–297, FCC 87–134, released May 1, 1987, 2 FCC Rcd 2.639 (1987) (*Report and Order*).

[3] 47 CFR 67.383.

[4] *See* 47 CFR 1.415 and 1.419.

[5] 5 U.S.C. 603.

[6] Because of the nature of local exchange and access service, this Commission concluded that small telephone companies are dominant in their fields of operation and, therefore, are not small entities as defined by the Regulatory Flexibility Act. *See* MTS and WATS Market Structure, 93 FCC 2d 241, 338–39 (1983). Thus, this Commission is not required by the terms of the Act to apply the formal procedures set forth therein. This Commission and the Joint Board are nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with our other public interest responsibilities. Accordingly, we have chosen to utilize, on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of the proposed regulations on small telephone companies.

[7] 44 U.S.C. 501.

[8] *See* 5 CFR 1320.7(k)(4).

arguments not already reflected in that person's written comments, memoranda, or other previous filings in this proceeding, shall provide, on the day of the oral presentation, a written memorandum to the Secretary of the Commission (with a copy to the Commissioner, Joint Board member, or staff member involved), which summarizes the data and arguments in the *ex parte* presentation. Each such written memorandum must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates.[9]

10. In reaching their decisions, this Commission and the Joint Board may consider information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public record and providing that the reliance of this Commission or the Joint Board on such information is noted in the *Recommended Decision and Order* or the *Report and Order*.

11. For Joint Board actions, special *ex parte* rules apply.[10] For Joint Board actions, all written materials which are not filed in accordance with a pleading cycle established by the Joint Board shall be accompanied by a Petition for Leave to File showing cause why the material should be considered by the Joint Board. The Joint Board will not consider any filing made outside the authorized pleading cycle and received by the Commission less than fifteen days [11] in advance of a Joint Board meeting at which the Joint Board is to consider the subject matter of that filing. Written *ex parte* presentations, as defined by the Commission's rules, need not be accompanied by a Petition for Leave to File and may be received in the discretion of the Joint Board member or staff personnel involved. No written *ex parte* presentations, however, shall be made during the fifteen day period immediately preceding a Joint Board meeting except in response to an inquiry initiated by a member of the Joint Board or its staff.

Ordering Clause

12. *Accordingly, it is ordered,* That the Joint Board in CC Docket No. 80–286 shall review the comments, proposals and data and prepare recommendations to this Commission on the issues raised herein.

List of Subjects in 47 CFR Parts 36 and 67

Communications common carrier, Telephone, Uniform system of accounts, Reporting and recordkeeping requirements, Jurisdictional separations procedures.

This action is taken pursuant to 47 U.S.C. 154 (i) and (j), 201, 202, 205, 218, 221(c), 403 and 410.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–19260 Filed 8–31–87; 8:45 am]

BILLING CODE 6712–01–M

[9] *See generally* Amendment of Subpart H, Part 1 of the Commission's Rules and Regulations Concerning Ex Parte Communications and Persentations in Commission Proceedings, GEN. Docket No. 86–225, 2 FCC Rcd 3.011 (1987).

[10] Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80–286, 89 FCC 2d 36 (1982).

[11] In calculating this fifteen day period, neither the day on which the material is filed nor the day on which the Joint Board meeting is scheduled shall be counted.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the James Spinymussel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for the James spinymussel (*Pleurobema collina*). Critical habitat is not proposed. This species survives only in a few headwater streams of the James River in Virginia and West Virginia. This action is being taken because: (1) The range and numbers of this freshwater mussel have been drastically reduced to about 5–10% of historic levels, and (2) the few drainages that continue to support the species are subject to threats including invasion of essential habitats by the exotic Asiatic clam (*Corbicula fluminea*) and potential water quality degradation by agricultural and silvicultural runoff, effluent from sewage treatment plants, and chemical spills. This proposal, if made final, would implement Federal protection provided by the Endangered Species Act of 1973, as amended. The Service is requesting data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by November 2, 1987. Public hearing requests must be received by October 16, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825B Virginia Street, Annapolis, Maryland 21401. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. G. Andrew Moser at the above address (301/269–6324).

SUPPLEMENTARY INFORMATION:

Background

The James spinymussel was first discovered in the Calfpasture River, Rockbridge County, Virginia, by T. A. Conrad in 1836 (Conrad 1846). The species was orginally described by Conrad (1837) as *Unio collinus*. It has been subsequently placed in different genera by various workers. Names that refer to this species are listed in the following abbreviated synonymy:

Unio collinus Conrad, 1936: Plate 36, Figure 2.

Margaron (Unio) collinus (Conrad).—Lea 1852:23.

Alasmidonta collina (Conrad).—Simpson 1900:669.

Canthyria collina (Conrad).—Frierson 1927:1946; Stansberry 1971:14; Clarke and Neves 1984; Zeto and Schmidt 1984:147.

Elliptio (Canthyria) collina (Conrad).—Morrison 1955:20.

Pleurobema collina (Conrad).—Boss and Clench 1967:45; Heard 1970:27; Burch 1975:12.

Pleurobema (Lexingtonia) collina (Conrad).—Johnson 1970:300.

Fusconaia (Lexingtonia) collina (Conrad).—Johnson and Clarke 1983:296.

The Service recognized the James spinymussel under the name *Fusconaia collina* in the Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species (49 FR 21675; May 22, 1984). Clarke and Neves (1984) subsequently determined that the James spinymussel uses only its outer gills to brood glochidia and is therefore not a *Fusconaia*, which are currently understood to use all four gills to brood glochidia. Clarke and Neves (1984) suggested placement of the species in the genus Canthyria, because of the presence of spines on the shell and some characters of the soft anatomy. The Service believes that until further review and evaluation clarifies the taxonomic significance of these characters, the James spinymussel should be recognized under the more established name *Pleurobema collina*.

The Service's Review of Invertebrate Wildlife included this species under the common name "Virginia spiny mussel."

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The Service is following the list of common names by Turgeon *et al.* (in press) in now using the name James spinymussel.

The shells of juvenile James spinymussels usually bear one to three short but prominent spines on each valve. The shells of adults usually lack spines. The foot and mantle of the adult are conspicuously orange and the mantle is darkly pigmented in a narrow band around and within the edges of the branchial and anal openings.

Aside from the James spinymussel, only two other freshwater spined mussels are known to exist: *Elliptio (Canthyria) spinosa*, a large-shelled and long-spined species know only from the Altamaha River system in Georgia, and *Eliptio (Canthyria) steinstansana*, a species with intermediate shell size and spine length found only in the Tar River in North Carolina. The latter species was listed as endangered on June 27, 1985 (50 FR 26575). The James spinymussel has a smaller shell and shorter spines than these other two species.

The James spinymussel has been collected on sand and mixed sand and gravel substrates, generally in areas of slow to moderate current and relatively hard water. Like other freshwater mussels, it feeds by filtering food particles from the water, a characteristic that makes it particularly susceptible to detrimental effects of water-borne pollutants. *P. collina* also shares with other freshwater mussels a complex reproductive cycle in which the mussel larvae attach for a short time to a fish host. The life span, time of spawning, host fish species, and many other aspects of the life history of *P. collina* are still unknown.

Collection records indicate that the James spinymussel was once widely distributed in the James River drainage upstream of Richmond. All pre-1983 records for the species are from Virginia (Clarke and Neves 1984). They include: the James River, main stem, in Rockbridge, Botetourt, Fluvanna, Buckingham, Goochland and Cumberland Counties; the Rivanna River in Fluvanna County; Mill Creek in Bath County; the Calfpasture River in Rockbridge County, and Johns Creek in Craig County. The James spinymussel was first reported from West Virginia in 1984 (Zeto and Schmidt 1984). According to a recent Service-funded survey of the James River drainage, this mussel is now restricted to Craig and Johns Creeks in Craig and Botetourt Counties, Virginia, and Potts Creek in Monroe County, West Virginia (Clarke and Neves 1984).

Although it is probable that the decline of the James spinymussel began with municipal growth and industrialization of cities and towns in the James River watershed, much of the decline has occurred in the last 20 years. The species remained in much of its historic range through the mid-1960's, but has since disappeared from the majority of known sites. It now appears to be extirpated from 90–95% of its historic range, with survival documented only in three headwater creeks in the James River drainage. This restricted distribution makes the species vulnerable to threats including water quality perturbations, disease, and displacement by expanding populations of the exotic Asiatic clam (*Corbicula fluminea*).

In the **Federal Register** on May 22, 1984 (49 FR 21675), the James spinymussel was included in category 2 of the Service's Review of Invertebrate Wildlife. Category 2 comprises those taxa for which proposed listing is possibly appropriate but for which conclusive data on biological vulnerability are not available to support a proposed rule. Additional data, including a Service-funded status survey (Clarke and Neves 1984) have provided the data needed to support a listing proposal.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the James spinymussel (*Pleurobema collina*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Results of a recent Service-funded survey of the James River drainage (Clarke and Neves 1984) indicate that the James spinymussel exists only in Craig and Johns Creeks in Craig and Botetourt Counties, Virginia, and a short reach of Potts Creek in Monroe County, West Virginia. This represents a very significant reduction (90–95%) in known range, as historic records indicate that the species was once found throughout much of the James River drainage upstream of Richmond.

Habitat modification has been a major factor in the James spinymussel's abrupt decline. Adverse habitat changes including dam construction, industrial pollution, chemical spills, channelization, and sewage discharges have occurred at various locations within the species' historic range in the James River drainage. Current threats to habitat in the Craig/Johns Creek and Potts Creek watersheds include the following:

(1) Effluent discharges and accidental discharges of chlorine or raw sewage from the sewage treatment plant at New Castle, Virginia;

(2) Erosion and siltation resulting from logging operations in the upper Craig Creek Watershed;

(3) Toxic chemical spills;

(4) Agricultural runoff including pesticides and fertilizers;

(5) Channelization.

B. Overutilization of Commercial, Recreational, Scientific, or Educational Purposes

Although collection was probably an insignificant factor in this species' decline, it is becoming a problem now that the species is rare. Because additional interest in the spinymussel is expected to be generated by the listing process, the Service is concerned that this problem may worsen in the future.

C. Disease or Predation

There is no evidence that disease or predation has been a problem for the James spinymussel. However, extensive mussel dieoffs, possibly caused by a yet unknown disease, have occurred recently in the rivers of southwest Virginia, in the Tar River in North Carolina, and in numerous other locations. The Tar River dieoff, discovered in May 1986, was particularly severe, killing an estimated 75% of all mussels in the affected beds (R. Neves personal communication). Should such an outbreak occur in the Craig Creek or Potts Creek drainages, it would pose a very serious threat to the James spinymussel because of the species' restricted range.

D. The Inadequacy of Existing Regulatory Mechanisms

Virginia State law (section 29–113) requires a permit for the scientific collection of freshwater mussels. However, this State law is difficult to enforce and does not protect the species' habitat from the potential impacts of Federal projects. Federal listing would provide protection for the species under the Endangered Species Act by requiring a Federal permit to take the species and requiring Federal agencies to consult with the Service when projects they

fund, authorize, or carry out may affect the species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Much of the James River drainage has become infested by the Asiatic clam (*Corbicula fluminea*), a species introduced accidentally from Asia. Competition from this non-native species may be a principal cause of the James spinymussel's decline. Population densities of *C. fluminea* in excess of 1000 individuals per square meter (about 93 per square foot) have been reported in the James River downstream of Richmond (Diaz 1974). Because of the Asiatic clam's high population densities, its feeding activity may significantly reduce the availability of phytoplankton needed by the spinymussel for food and may interfere with reproduction of the spinymussel by filtering its sperm from the water column (Clarke 1981). Clarke and Neves (1984) consider the temporal correlation between the disappearance of downstream populations of the James spinymussel and the appearance and proliferation of the Asiatic clam to be clear evidence that the spread of *Corbicula* is one of the chief causes of the spinymussel's decline.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the James spinymussel as endangered. The mussel's small population and restricted distribution make it vulnerable to pollution events, disease, and competition from exotic species; its range has greatly narrowed within the immediate past; therefore, threatened status would not be appropriate. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the James spinymussel at this time. This rare mussel is very unusual, being one of only three known species of spined freshwater mussels. There is a small but significant demand by collectors for this species. Because of this, the Service believes a detailed description of the species' habitat, required as part of any critical habitat designation, could increase the species' vulnerability to illegal taking and increase law enforcement problems. Therefore, it would not be prudent to designate critical habitat for this species. Doing so would draw attention to the habitats supporting the James spinymussel and risk depletion of an already limited population.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local governments and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact the James spinymussel and its habitat in the future include, but are not limited to, the following: issuance of permits for mineral exploration, timber sales, recreational development, stream alterations, road and bridge construction and maintenance, and implementation of forest management plans. It has been the experience of the Service that the large majority of section 7 consultations are resolved so that the species is protected and the project can continue.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It also is illegal to possess, sell, delivery, carry, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Applicable regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the James spinymussel;

(2) The location of any additional populations of the James spinymussel and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on the James spinymussel.

Final promulgation of the regulations on the James spinymussel will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if

requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is G. Andrew Moser, Annapolis Field Office, U.S. Fish and Wildlife Service, 1825B Virginia Street, Annapolis, Maryland 21401 (301/269–6324).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under *Clams*, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
CLAMS							
Spinymussel, James (= Virginia spiny mussel).	*Pleurobema* (= *Fusconaia*) *collina*	U.S.A. (VA,WV)	NA	E		NA	NA

Dated: August 3, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–20022 Filed 8–31–87; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 70878–7178]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement Amendment 11 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP) which is pending approval by the Secretary of Commerce (Secretary). The amendment would (1) establish a split season apportionment of pollock for U.S. vessels working in joint ventures with foreign processing vessels (JVP), and (2) change the definition of prohibited species. These measures are intended to respond to biological, economic and administrative problems identified by the North Pacific Fishery Management Council (Council)

In addition, NOAA is proposing to change the defintion of directed fishing.

The proposed regulations to implement Amendment 11 and the additional proposed regulatory change are necessary for conservation and management of the groundfish resources in the Bering Sea and Aleutian Islands (BSAI) area and for the orderly conduct of the groundfish fisheries

DATE: Comments on the amendment, proposed rule and supporting documents, especially the environmental assessment and regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA), are invited until October 15, 1987.

ADDRESS: Comments should be addressed to Robert W. McVey, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668. Individual copies of the amendment and the EA/RIR/IRFA may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99501 (telephone 907–274–4563).

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI area are managed in accordance with the FMP. The FMP was developed by the Council under autority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations appearing at 50 CFR 611.93 and Part 675.

The Council solicits management proposals annually from the general public, other agencies, and staff between September and December. The Council set a deadline of December 12, 1986, for receiving proposals for inclusion in Amendment 11. At its meeting on January 21–23, 1987, the Council reviewed ten amendment proposals and selected seven for tentative inclusion in Amendment 11.

The Council's Plan Team prepared a draft EA/RIR/IRFA (dated March 11, 1987) of the seven proposals for public comment as required by the National Environmental Policy Act of 1969, Executive Order 12291, and NOAA policy. The Council reviewed these documents at its March 18–20, 1987, meeting and decided to release for public comment the draft EA/RIR/IRFA (dated April 15, 1987) for six of the seven proposals. At its May 20–22, 1987, meeting, the Council considered public testimony and the recommendations of its Advisory Panel (AP), Scientific and Statistical Committee (SSC), and the Plan Team. Public testimony included presentation of an industry-negotiated compromise supporting a split season apportionment of pollock to the JVP fishery which was perceived to address several controversial management issues. The Council approved three management proposals for inclusion in Amendment 11 and recommended them to the Secretary for approval and implementation. The Plan Team revised the EA/RIR/IRFA accordingly for Secretarial review (dated July 1987). If approved, this proposed rule would implement two of the three proposals. The third proposal revises the FMP definition of "acceptable biological catch" and does not require implementation by regulation.

A description of and the reasons for the two management proposals that would be implemented by this proposed rule are as follows:

1. Split Season Apportionment of JVP.

Under this management proposal, the amount of the total allowable catch (TAC) of pollock apportioned to JVP would be divided into two parts. Part one would be equivalent to 40 percent of the sum of the initial JVP for pollock plus 15 percent of the TAC for pollock. Part one would be made available to the JVP fishery for pollock during the period January 15 through April 15. Part two would be equivalent to the remaining JVP for pollock and would be available during the period April 16 through December 31. Amendment 11 and this proposed rule would split the annual apportionment of pollock to the JVP fishery into two parts for separate time periods only during the 1988 and 1989 fishing years.

Although the specific split season management proposal adopted by the Council was not among the original proposals considered by the Council at its March, 1987 meeting, it is similar to other split-season altrnatives that address priority access to vessels that fish for domestic processors (DAP) and roe-stripping issues and that are analyzed in the draft EA/RIR/IRFA distributed for public comment. This propsoal was presented to the Council at its May 1987 meeting as an industry-negotiated compromise among JVP and DAP fishing industry representatives. The compromise reconciled conflicting views concerning two aspects of managing the BSAI pollock fishery: access to the resource and risk of biological harm.

Access

The pollock fishery in the BSAI area has evolved since 1977 from an entirely foreign-harvested fishery to a predominantly U.S.-harvested fishery. In 1987, the TAC of pollock in the BSAI area was reserved for domestic fishermen for the first time, except for small incidental catch allowances to foreign fisheries for other species. However, of the two component parts of the domestic annual harvest (DAH), the volume of fish harvested by the JVP fishery exceeds the DAP fishery by a large margin. In 1986, the landed tonnage of pollock harvested by the JVP fishery was about 17 times that of the DAP fishery, or nearly 95 percent of the total 886,000 metric ton DAH.

A variety of economic conditions may account for this current disparity between the DAP and JVP pollock harvests. These conditions are believed by some to result in an economic incentive for domestic fishermen to make deliveries of pollock to the foreign floating processors involved in joint ventures instead of to domestic shore-based processors. Shore-based processors in Dutch Harbor and Akutan, Alaska, arguing a competitive disadvantage relative to the JVP pollock fishery, proposed an FMP amendment that would establish a 100-mile zone around these communities in which JVP operations would be prohibited. This proposal would have provided the DAP fishery with exclusive access to a substantial share of the pollock resource. The argument in favor of this action was based on the priority granted to domestic processors under the processor-preference amendments to the Magnuson Act. The Council's analysis of this action (draft EA/RIR/IRFA dated April 15, 1987), however, showed that it would have had a significantly negative economic impact on domestic fishermen delivering pollock to foreign processors in joint venture operations.

Biological Risk

The transition from foreign to domestic domination of the overall pollock harvest has been accompanied by a trend toward harvesting a larger portion of the pollock TAC earlier in the fishing year than was previously done by the foreign and early JVP fisheries. Prior to the advent of JVP fisheries in the BSAI area in 1980, generally less than 25 percent of the annual total pollock harvest was taken in the period January through April. In 1986, the JVP catch of pollock through April had increased to 40 percent of the pollock TAC. By May 2, 1987, 73 percent of the initial pollock TAC had been harvested by the JVP fishery.

One reason for this trend to an intensive early-year harvest is that pollock are aggregated in spawning

concentrations in February and March. Fishing aggregated populations of fish when the catch per unit of effort is highest is more profitable than fishing when populatiosn are dispersed. In addition, spawning aggregations of pollock contain valuable quantities of roe. At times, catch rates are so high and pollock roe is so valuable that it becomes physically necessary and economically feasible to retain only the roe and discard whole male and female carcasses, a practice known as roe stripping.

A second reason is that the JVP pollock fishery, like other groundfish fisheries, is prosecuted on an open acces, first-come, first-served basis. Fishermen who begin fishing as soon as possible will likely catch more than those who wait. A predictable result is a race for fish with each fisherman attempting to maximize his catch before the TAC is reached.

One management measure initially proposed for inclusion in Amendment 11 would have prohibited the practice of roe stripping in the JVP fishery. Advocates of this proposal argued that such a prohibition would slow the race for fish and reduce the wastage of pollock meat which is valuable later in the year, particularly for production of surimi. Discussions of this proposal by the Council and its advisory groups raised the additional concern that intensive harvesting during the spawning period ultimately may reduce pollock reproductive success, biomass, and harvests. Although there are no biological data that indicate a definite relationship between the spawning biomass of pollock and the amount of young fish that first become available to the fishery, such a relationship could exist under certain conditions or population sizes. Prudent management predicates a cautious policy against removal of too many spawning fish to protect the long-term health of the pollock resource.

Based on current trends, it is likely that the entire JVP harvest of pollock would occur during the first four months of 1988, almost entirely from spawning aggregations, and even more intensively in future years. The Council adopted the split-season proposal in part as a conservative measure to mitigate any adverse effects of concentrated harvesting on spawning pollock aggregations. The split-season proposal will reduce the amount of pollock harvested by the JVP fishery during the spawning season. In addition, while not preventing an efficient fishery for the highly valued pollock roe, it will provide a part of the pollock resource for meat and surimi production after the primary spawning season. Finally, the split-season apportionment proposal will provide two years of relative protection during which the biological risk of an intensive roe-pollock fishery can be assessed.

During the two-year effective period of this proposal, the DAP pollock fishery in the BSAI area is expected to continue its development. In addition, more biological information likely will become available. The Council will be reconsidering the effectiveness of this management measure in light of these changes.

2. Definition of Prohibited Species

This proposal would change the prohibited species definition in the FMP and its implementing regulations to list those species or species groups which must be avoided while fishing for groundfish and, if caught incidentally, must be immediately returned to the sea with minimum injury. Listed species will include the traditional prohibited species of salmon, steelhead, halibut, herring, and king and Tanner crabs for domestic and foreign groundfish fisheries plus other non-groundfish species for the foreign fishery only. Retention of any of these species would not be allowed unless authorized by other applicable law. Such authorization would allow, for example, groundfish fishermen to retain halibut caught with hook-and-line gear during an open season for halibut specified by the International Pacific Halibut Commission.

The reason for this proposed change is that the original FMP anticipated other fishery management plans for king crab, Tanner crab, and Pacific herring. The prohibited species definition in the FMP specifically exempts species that are harvested under authorization by other FMPs, PMPs, or Federal regulations.

However, the anticipated FMPs for king crab, Tanner crab, and Pacific herring ultimately failed to be implemented or were subsequently withdrawn. This led the Council to question whether these species are correctly included in the prohibited species listing. The FMP does not attempt to manage fishing for non-groundfish species but does try to limit injury to these species by the groundfish fisheries. The problem is that the current definition, at best, does not clearly state this intent and, at worst, may in fact not protect species thought to be protected as prohibited species.

An example of this problem is king crab. In the prohibited species definition under section 14.2 of the FMP, an exception is made for species "when * * * their retention by United States vessels is not prohibited under other FMPs or Federal regulations." Section 14.4.2.A of the FMP reinforces this exception when it states that "United States vessels must minimize their incidental harvest of* * * any * * * species the fishery for which * * * is governed by another FMP * * *." Presently, there is no operative FMP for king crab or Federal regulation prohibiting the retention of king crab by domestic vessels. Hence, king crab is a species that fits the exception and is not prohibited. By this reading of the definition, literally all the species listed in the definition are not prohibited except for salmonids and Pacific halibut for which there are other FMPs or Federal regulations. Although there are other parts of the FMP that indicate prohibited species status for non-groundfish species, the current prohibited species definition is at fault for not clearly stating this intent.

In summary, the current definition of prohibited species in the FMP is flawed. As a result, regulations implementing the FMP, pertaining to prohibited species, contain confusing and imprecise language that may not be legally enforceable against every vessel fishing for groundfish in the EEZ off Alaska. This is especially true for Tanner and king crab species since anticipated FMPs for these species are not now in effect. This problem extends also to other non-groundfish species for which other applicable law does not exist. The proposed management measure would correct this problem.

Proposed Regulatory Amendment

NOAA proposed to make a change to the regulations implementing the FMP in addition to those proposed by the Council. This change would not implement Amendment 11, but is a modification under existing authority in the FMP. A description of and reason for this change follows.

Definition of Directed Fishing

Under Amendment 10 to the FMP, a definition of directed fishing was added to the regulations governing foreign fisheries at § 611.93(b)(1)(iii). The intention of this definition (proposed at 51 FR 45349, December 18, 1986; made final at 52 FR 8592) was to enable enforcement of directed fishing prohibitions after a prohibited species catch limit had been reached. In addition, NOAA intended that the definition of directed fishing governing foreign fisheries be consistent with that governing domestic fisheries. However,

the first occurrence of the phrase "20 percent or more of the catch, take, or harvest or to" was inadvertantly omitted from both the proposed and final rules for Amendment 10. Hence, the definition in the foreign fishery regulations is proposed to be changed to indicate that this 20 percent or more of the catch, take, or harvest at any time also will be considered in determining whether directed fishing in occurring. this change would make the BSAI area foreign fishery regulations consistent with the domestic fishery regulations pertaining to the BSAI area and the Gulf of Alaska.

Classification

This proposed rule is published under section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 99–659, which requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time the Secretary has not determined that the amendment these regulations would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making these determinations, will take into account the data and comments received during the comment period.

The Council prepared and environmental assessment (EA) for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA may be obtained from the Council at the address above and comments on it are requested. The change in the definition of directed fishing is intended to enhance compliance with directed fishing prohibitions by indicating that the catch, take, or harvest at any time will be considered, in addition to the amount of fish on board, in determining whether directed fishing is occurring. this change will not affect the amount of groundfish harvested, the species taken or the location of fishing activity. As such, the Assistant Administrator has determined that this change is categorically excluded from the requirement to prepare an environmental document, as provided by NOAA Directive 02–10.

The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) prepared by the Council. A copy of the RIR/IRFA may be obtained from the Council at the address above.

The Council prepared an initial regulatory flexibility analysis as part of the regulatory impact review of this proposed rule. The Administrator of NOAA concludes that this proposed rule, if adopted, would have significant effects on small entities. these effects have been discussed earlier in this document relative to each specific action and in the RIR/IRFA. A copy of this analysis may be obtained from the Council at the address listed above.

This rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: August 26, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR Parts 611 and 675 are proposed to be amended as follows:

PART 611—[AMENDED]

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. Section 611.93 is amended by removing paragraph (b)(1)(ii)(E) and revising paragraphs (b)(1)(ii) introductory text, (b)(1)(ii)(A), and (b)(1)(iii) to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(1) * * *

(ii) *Categories of species.* Four categories of species are recognized for regulatory purposes and they are set forth in Table 1. The term "groundfish" means species in all categories except the "prohibited species" category.

* * * * *

(A) The term "prohibited species" means for purposes of this section: Pacific herring (*Clupea harengus pallasi*); salmonids (*Salmonidae*); Pacific halibut (*Hippoglossus stenolepis*); king crab (*Paralithodes* spp. and *Lithodes* spp.); Tanner crab (*Chionoecetes* spp.). Except to the extent that their harvest is authorized under other applicable law, the catch or receipt of these species must be minimized and, if caught or received, they must be returned to the sea immediately in accordance with § 611.11 of this part. Records must be maintained as required by §§ 611.9, 611.90(e)(2), and this section. Any species of fish for which there is no foreign allocation must be treated in the same manner as "prohibited species" and records must be maintained of any catches or receipts of these species, except for "non-specified species". Catches or receipts of "non-specified species" must be treated in the same manner as "prohibited species" but records are not required of catches or receipts of these species.

* * * * *

(iii) *Directed fishing,* with respect to any species, stock or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of such fish that amount to 20 percent or more of the catch, take, or harvest, or to 20 percent or more of the total amount of fish or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock, or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed fishing for such fish.

* * * * *

3. In § 611.93(B0(1)(ii) Table 1 is amended by changing the column heading "Unallocated Species" to "Prohibited Species"; revising the list of species in the column to read: "Pacific halibut, Pacific herring, salmonids, king crab, Tanner crab, and other species for which there is no allocation, except non-specified species"; removing the column headed by "Groundfish"; and revising footnote 4 to read as follows:

Table 1.* * *

[4] Must be treated in the same manner as 'prohibited species' but no records are required.

PART 675—[AMENDED]

5. The authority citation for 50 CFR Part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. Section 675.20 is amended by revising the heading of paragraph (b).

adding a new paragraph (b)(3), and revising paragraph (c)(1) to read as follows:

§ 675.20 General limitations.

* * * * *

(b) *Apportioning the reserve, surplus DAH, and JVP.*

* * * * *

(3) *Seasonal apportionment of JVP pollock.* The initial amount of pollock apportioned to JVP for each subarea in accordance with paragraph (a)(4) of this section will be divided into two parts.

(i) Part One will be 40 percent of the following sum: initial JVP plus 15 percent of the TAC for pollock. The JVP pollock harvest during the first period (defined in paragraph (b)(3)(iii) of this section) resulting from directed fishing and bycatch in fisheries for other groundfish species will be counted against Part One. When the Regional Director determines that the unharvested amount of Part One is necessary for bycatch in JVP fisheries for other groundfish species during the first period, the Secretary will publish a notice in the **Federal Register** prohibiting directed fishing for pollock for the remainder of the first period. Any amount of pollock in addition to Part One necessary for bycatch in JVP fisheries for other groundfish species during the first period will be counted against Part Two.

(ii) Part Two will be any unharvested portion of Part One plus the pollock JVP remaining after the first period and as adjusted by reapportionments from reserve and DAP in accordance with paragraphs (b) (1) and (2) of this section. When the Regional Director determines that the unharvested amount of Part Two is necessary for bycatch in JVP fisheries for other groundfish species during the second period, the Secretary will publish a notice in the **Federal Register** prohibiting directed fishing for pollock for the remainder of the second period.

(iii) *JVP pollock season.* For purposes of this paragraph, the first period is that portion of the fishing year beginning January 15 and ending April 15. The second period is that portion of the fishing year beginning April 16 and ending December 31.

(c) * * *

(1) Prohibited species, for the purpose of this part, means any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Salmo gairdneri* or *Parasalmo mykiss*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasi*), king crab (*Paralithodes* spp. and *Lithodes* spp.), and Tanner crab (*Chionoecetes* spp.) caught by a vessel regulated under this part while fishing for groundfish in the Bering Sea and Aleutian Islands management area, unless retention is authorized by other applicable law, including the regulations of the International Pacific Halibut Commission.

* * * * *

[FR Doc. 87-19977 Filed 8-31-87; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 169
Tuesday, September 1, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Plant Variety Protection Advisory Board; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Plant Variety Protection Advisory Board.

DATE: Tuesday, September 22, 1987, 8:00 a.m. to 4:00 p.m., open to the public.

ADDRESS: The meeting will be held at the National Agricultural Library Building, Conference Room 1400, Beltsville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth H. Evans, Executive Secretary, Plant Variety Protection Advisory Board, Room 500, National Agricultural Library Building, Beltsville, Maryland 20705 (301/344-2518).

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of sec. 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), this notice is given concerning a Plant Variety Protection Advisory Board meeting. The agenda for the meeting will include discussions of: (1) The minimum difference accepted for novelty between varieties, (2) plant variety protection fees, and (3) other related topics.

The meeting is open to the public. Persons, other than members, who wish to address the Board at the meeting should contact Dr. Kenneth Evans at the above address and telephone number, prior to the meeting. Written statements may be submitted to the Board prior to or at the meeting.

(Secs. 1-145, 84 Stat. 1542, as amended (7 U.S.C. 2321 *et seq.*))

Done at Washington, DC, on August 25, 1987.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 87-20019 Filed 8-31-87; 8:45 am]

BILLING CODE 3410-02-M

Federal Grain Inspection Service

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the State of Alabama

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of one agency will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agency. The official agency is the Alabama Department of Agriculture and Industries.

DATE: Applications to be postmarked on or before October 1, 1987.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at this address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Alabama Department of Agriculture and Industries (Alabama), Beard Building, P.O. Box 3336, 1445 Federal Drive Montgomery, AL 36193, was designated under the Act as an official agency to provide inspection and weighing functions on March 1, 1985.

The official agency's designation terminates on Fedruary 28, 1988. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Alabama, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows: The entire State of Alabama, except those export port locations within the State.

Interested parties, including Alabama, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning March 1, 1988, and ending February 28, 1991. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Date: August 24, 1987.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 87-19892 Filed 8-31-87; 8:45 am]

BILLING CODE 3410-EN-M

Designation Renewal of the State of Oregon and Southern Illinois Agency (IL)

AGENCY: Federal Grain Inspection Service (Service); USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Oregon Department of Agriculture (Oregon) and Southern Illinois Grain Inspection Service, Inc. (Southern Illinois), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: October 1, 1987.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Oregon's and Southern Illinois' designations terminate on September 30, 1987, and requested applications for official agency designation to provide official services within specified geographic areas in the April 1, 1987, **Federal Register** (52 FR 10391). Applications were to be postmarked by May 1, 1987. Oregon was the only applicant for designation in its geographic area and applied for designation renewal in the area currently assigned to that agency. There were two applicants for designation in the Southern Illinois geographic area. Southern Illinois applied for designation renewal in the area currently assigned to that agency. A new corporation, Mid-America Grain Inspection Service, Inc. (Mid-America), to be located in Granite City, Illinois, was established by Scott D. Deatherage, Villa Ridge, Missouri, and Donald B. Reynolds, Rock Port, Missouri, and applied for designation in the area currently assigned to Southern Illinois.

The Service announced the applicant names in the June 1, 1987, **Federal Register** (52 FR 20434) and requested comments on the designation renewal of Oregon and the designation renewal of Southern Illinois or the designation of Mid-America. Comments were to be postmarked by July 16, 1987. No comments were received regarding the designation renewal of Oregon.

A total of 17 comments were received regarding the applicants for designation in the Southern Illinois geographic area. Fourteen comments supported the designation renewal of Southern Illinois. These comments generally specified favorable qualifications concerning Southern Illinois. One of these supporting commenters referenced a boundary dispute between Southern Illinois and a neighboring official agency. This matter is discussed below. These commenters included several country elevators, grain merchandisers, farm bureaus, and an official agency.

Three commenters supported the designation of Mid-America. One commenter was a trade association. Two comments were received from an official agency, a State department of agriculture. Both of these comments supported the designation of Mid-America. One of the comments included a chronology of events concerning a boundary dispute between Southern Illinois and the State agency. Geographic areas are assigned to designated agencies pursuant to section 7(f)(2) of the Act. In addition, the Act provides that except as otherwise authorized by the Administrator official agencies can only officially inspect grain that is physically located within the geographic area assigned to the agency. The boundary at issue is a river boundary between the two agencies. The commenter concluded that based upon information submitted with its comment, it would not be advisable to renew the designation of Southern Illinois.

The Service is aware of this boundary dispute between the commenter and Southern Illinois and has been actively involved in resolving this matter in cooperation with the two agencies involved. In recent discussions with both agencies, the Service believes that a workable resolution to this matter has been achieved. The Service has and will continue to monitor the situation between the agencies but does not consider that it affects the status of either official agency at this time.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Oregon is able and Southern Illinois is better able than any other applicant to provide official services in the geographic area for which the Service is renewing their designations. Effective October 1, 1987, and terminating September 30, 1990, Oregon and Southern Illinois will provide official inspection services in their entire specified geographic area, previously described in the April 1 **Federal Register.**

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or the agencies at the following addresses: Oregon Department of Agriculture, Agriculture Building, 635 Capitol Street, NE., Salem, OR 97310–0110; and Southern Illinois Grain Inspection Service, Inc., 101 South Cherry Street, P.O. Box 630, O'Fallon, IL 62269.

[Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)]

Date: August 26, 1987.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 87–19893 Filed 8–31–87; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Decatur Agency (IL), and State of South Carolina

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to Decatur Grain Inspection, Inc. (Decatur), and the South Carolina Department of Agriculture (South Carolina).

DATE: Comments to be postmarked on or before October 16, 1987.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail. *Telex* users may respond as follows: To: Lewis Lebakken, TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the July 1, 1987, **Federal Register** (52 FR 24490). Applications were to be postmarked by July 31, 1987. Decatur and South Carolina were the only applicants for designation in their geographic area; and each applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation of the applicants. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Date: August 24, 1987.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 87–19894 Filed 8–31–87; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants to Provide Official Services, in the Geographic Area Currently Assigned to Agricultural Seed, Laboratories, Inc. (AZ)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces that there were no timely applicants for official agency designation in the geographic area currently assigned to Agricultural Seed Laboratories, Inc. (Agri Seed), pursuant to the July 1 **Federal Register** notice requesting such applicants. The Service is again requesting applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to Agri Seed.

DATE: Applications to be postmarked on or before October 1, 1987.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at this address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the July 1, 1987, **Federal Register** (52 FR 24490). Applications were to be postmarked by July 31, 1987; we received no applications for the Agri Seed designation postmarked by that date. As a result, we are again asking for applications for designation in the Agri Seed geographic area.

Agri Seed's designation terminates on December 31, 1988. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The georgraphic area presently assigned to Agri Seed, in the State of Arizona, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows: Maricopa, Pinal, and Yuma Counties.

Interested parties, including Agri Seed, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning January 1, 1988, and ending December 31, 1990. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: August 24, 1987.

J.T. Abshier

Director, Compliance Division.

[FR Doc. 87–19895 Filed 8–31–87; 8:45 am]

BILLING CODE 3410–EN–M

Designation of Mid-Iowa Grain Inspection, Inc. (IA), in the Cedar Rapids, IA, Geographic Area

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation of Mid-Iowa Grain Inspection, Inc. (Mid-Iowa), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act), in the Cedar Rapids, Iowa, geographic area.

EFFECTIVE DATE: October 1, 1987.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced the cancellation of designation of Cedar Rapids Grain Service, Inc., effective September 30, 1987, and requested applications for official agency designation to provide official services within a specified geographic area in the April 1, 1987 **Federal Register** (52 FR

10392). Applications were to be postmarked by May 1, 1987. Florian E. Polaski and Jeffrey Polaski, Cedar Rapids, Iowa, proposed to establish Mid-Iowa Grain Inspection, Inc., and applied for designation in the entire area available for assignment.

The Service announced the applicant name in the June 1, 1987, **Federal Register** (52 FR 20435) and requested comments on the designation of Mid-Iowa. Comments were to be postmarked by June 15, 1987; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Mid-Iowa is able to provide official services in the geographic area for which the Service is designating it. Effective October 1, 1987, and terminating September 30, 1990, Mid-Iowa will provide official inspection services in the entire specified geographic area, previously described in the April 1 **Federal Register.**

A specified service point, for the purpose of this notice, is a city, town, or other location specified by a agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geograhic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listingof the agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or the agency at the following address: Mid-Iowa Grain Inspection, Inc., 1114–55th Avenue, S.W., Cedar Rapids, IA 52404.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.)

Dated: August 24, 1987.

J.T. Abshier

Director Compliance Division.

[FR Doc. 87–19896 Filed 8–31–87; 8:45 am]

BILLING CODE 3410-EN-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting; California Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commisison will convene at 10:00 a.m. and adjourn at 5:00 p.m., on September 11, 1987, at Centro Maravilla, 4716 East Brooklyn Avenue, Los Angeles, California 90022. The purpose of the meeting is to conduct a community forum on the impact of the implementation of the Immigration Reform Act.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Helen Hernandex or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–20027 Filed 8–31–87; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting; Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 3:00 p.m., on September 16, 1987, at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, Hawaii 96814. The purpose of the meeting is to obtain information on the status of affirmative action and equal employment opportunities within the State Department of Education. A brief planning session will be convened in the afternoon.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Andre S. Tatibouet, or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 24, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–20028 Filed 8–31–87; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting; Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:30 p.m., on September 18, 1987, at the Hilton Hotel, 921 Southwest 6th Avenue, Portland, Oregon 97204. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Huffman or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 21, 1987

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–20029 Filed 8–31–87; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Traffic Act of 1930 may request, in accordance with § 353.53a or § 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administratiave review of that antidumping or countervailing duty

order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than September 30, 1987, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

	Period
Antidumping Duty Proceeding	
Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada	09/01/86–08/31/87
Steel Jacks from Canada	09/01/86–08/31/87
Metal-Walled Above Ground Swimming Pools from Japan	09/01/86–08/31/87
Carbon Steel Bars and Structural Shapes from Canada	09/01/86–08/31/87
Greige Polyester/Cotton Printcloth from the People's Republic of China	
Countervailing Duty Proceeding	
Portland Hydraulic Cement and Cement Clinker form Mexico	01/01/86–12/31/87
Lamb Meat from New Zealand	04/01/86–03/31/87
Lime from Mexico	01/01/86–12/31/86
Fresh Cut Roses from Israel	01/01/86–09/30/86
Steel Wire from New Zealand	09/02/86–12/31/86
Carbon Steel Wire Rod from Argentina	01/01/86–12/31/86
Shop Towels from Peru	01/01/86–12/31/86

Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by September 30, 1987.

If the Department does not receive by September 30, 1987 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary For Import Administration.

Date: August 24, 1987.

[FR Doc. 87–20058 Filed 8–31–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–412–602]

Final Determination of Sales at Less Than Fair Value, Certain Forged Steel Crankshafts From the United Kingdom

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain forged steel crankshafts (CFSC) from the United Kingdom (U.K.) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of CFSC from the U.K. that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated weighted-average dumping margins as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Loc Nguyen, Ms. Lori Cooper, or Ms. Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 377–0167, 377–8320, or 377–2438.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that imports of CFSC from the U.K. are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) [19 USC 1673d(a)]. We made fair value comparisons on sales of CFSC to the United States by the respondent during the period of investigation (October 1, 1985, through October 31, 1986). The estimated weighted-average dumping margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the last **Federal Register** publication pertaining to this case [the preliminary determination of sales at less than fair value (52 FR 18000, May 13, 1987)], the following events have occurred. We conducted verification from May 13–22, and on June 11, 1987, of the questionnaire responses of United Engineering & Forging (UEF). A public hearing was held on July 16, 1987. Petitioner and respondent filed pre-hearing briefs on July 13, and post-hearing briefs, including comments on the verification report, on July 24, 1987.

Scope of Investigation

The products covered by this investigation are forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. These products are currently classified under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127, and 660.7147 of the *Tariff Schedules of the United States Annotated* (TSUSA). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject to this investigation.

Period of Investigation

CFSC are normally sold to the United States on the basis of long-term requirements contracts. Therefore, in order to capture the most recent sales of CFSC to the United States, we extended the period of investigation (POI) to encompass the 13 months from October 1, 1985, to October 31, 1986, as permitted by § 353.38(a) of our regulations.

Fair Value Comparisons

To determine whether sales of CFSC in the United States were made at less than fair value, we compared the United States price to the foreign market value for the company under investigation, as specified below. We made comparisons on virtually all of the sales of CFSC to the United States during the POI.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of CFSC to represent the United States price for sales by UEF, because the merchandise was sold directly to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the c.i.f. delivered, duty-paid price to unrelated purchasers. We made deductions, where appropriate, for foreign inland, ocean and U.S. inland freight, marine insurance, U.S. customs duties, and brokerage and handling fees.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value for CFSC based on delivered prices in the home market. We made deductions for foreign inland freight. Since no packing costs were incurred in the home market, we have only added U.S. packing costs. Pursuant to § 353.15(a) of our regulations, we

made circumstances of sale adjustments for differences in warranty and credit expenses. We made an adjustment to account for differences in physical characteristics of the merchandise in accordance with § 353.16 of our regulations.

In our preliminary determination, we made no adjustment for what respondent reported as technical services expenses, because we did not consider them to be directly related expenses within the meaning of § 353.15 of our regulations. At verification, we confirmed that these expenses were not directly related to the sales under consideration. On this basis, we have not made a circumstances of sale adjustment for these expenses.

In our preliminary determination, based on information provided in UEF's response, we made an adjustment for what we believed were after-sale warehousing expenses. During verification, we found that one shipment of crankshafts was held in UEF's rental facilities in the U.S. as buffer stock, to dampen fluctuations in shipping time and customer schedules. We also found that two other shipments of crankshafts were held in the customer's warehouse. Because the factual situation pertaining to these three transactions was not established until the verification, and because they comprise less than four percent of the total value of crankshafts sold to the United States during the POI, we have not included these three transactions in our fair value comparisons.

Currency Conversion

When calculating foreign market value, we made currency conversions from British pound sterling to U.S. dollars in accordance with § 353.56(a) of our regulations, using certified exchange rates furnished by the Federal Reserve Bank of New York.

Petitioner's Comments

Comment 1: Petitioner argues that, contrary to respondent's arguments, the Department should not enlarge the POI to cover sales of certain die numbers that took place prior to October 1, 1985.

Petitioner argues that, given the prevalence of long-term contracts in this industry, it is recent "sales * * * that are the appropriate focus of DOC's inquiry."

DOC Position: We agree. We believe that the 13-month POI, October 1, 1985, through October 31, 1986, set at the beginning of this investigation captures the most recent sales, allowing us to do a meaningful analysis of this case.

Comment 2: Petitioner argues that the "date of sale" should be the "date of price determination" and not the effective date as respondent argues. Furthermore, petitioner argues that "the date of sale" should be the date on which agreement is reached as to firm price and quantity terms and not the date of the purchase order, or the date of written confirmation of an agreement.

DOC Position: We agree that the "date of sale" is the date on which all basic terms of the sale are agreed to, including the determination of price. We believe that, in this case, the date of sale is the date the price is confirmed in writing since that is the first date the price is finalized.

Comment 3: Petitioner argues that weight ought to be a primary criterion of similarity and that only crankshafts within a 15 percent weight range should be compared. Although this 15 percent rule is not recognized in the industry as based upon any principle of forged crankshaft production, petitioner argues that "there is an obvious need to draw the line somewhere," in order to minimize the size of the physical difference adjustments. Petitioner cites several cases to support its argument about the use of a range within which "similar" products are grouped including, among others: *Color Picture Tubes from Canada,* 52 FR 24316, 28317 (1987) and *Certain Electric Motors from Japan,* 49 FR 32627 (1984).

DOC Position: We disagree. Petitioner has not provided us with any evidence supporting a cut-off point of plus or minus 15 percent. However, we have used weight as one of the major criteria by which we determined appropriate comparisons. In the cases cited above, the products covered by those investigations are sold in specific sizes; therefore, it is appropriate to use a range of sizes within which to group similar products. Crankshafts, on the other hand, are made to each customer's specifications. Therefore, although weight is a factor in choosing the most similar merchandise, the weight range itself is not the basis for establishing categories of such or similar merchandise.

Comment 4: Petitioner contends that UEF's argument that section 771(16) of the Act requires the Department to take into consideration both physical (such as "complexity of crankshaft design") and non-physical (such as "sales" or "planning volume") characteristics in determining product "similarity" is a misinterpretation of the statute. Petitioner admits that section 771(16) does refer to such non-physical characteristics as end-use and commercial value; however, when it comes to determining what is "*most* similar", the statute clearly makes physical characteristics the primary criteria. Petitioner further argues that "twisting" is not a physical characteristic, and that the physical characteristics of the home market models used by the Department in its preliminary determination are wholly unrelated to the fact that they are produced using different manufacturing techniques. Petitioner argues that "conceptually, it would appear more appropriate to consider twisting, like production volume, as a cost issue cognizable, if at all, under the commercial value criterion of the statute and therefore of much less importance than physical characteristics such as configuration and weight."

DOC Position: We disagree. Based on the evidence produced during this proceeding, we consider twisting to be as much of a physical characteristic as configuration and weight; therefore, it is one of the primary criteria in determining "most similar" products. We agree, however, that such non-physical characteristics as sales and planning volume are not relevant for the purpose of selecting "most similar" products. See *DOC Position* on *Respondent's Comment 2.*

Comment 5: Petitioner argues that the Department should reject respondent's argument that twisted and non-twisted crankshafts are not comparable, because: (1) Petitioner has been prejudiced by UEF's untimely submission of "voluminous arguments" in support of this change in the Department's analysis this late in the investigation; (2) these arguments are unverifiable; (3) petitioner is further prejudiced by its inability to respond fully to the highly technical arguments offered by UEF; (4) UEF was unable to provide the Department with actual cost data showing that twisted crankshafts have higher costs or higher prices because they are twisted; (5) contrary to respondent's claim that it has not calculated many of the costs that go into the making of a twisted crankshaft, these cost differences have already, in fact, been quantified and furnished to the Department; and (6) judging from photographs provided, the two twisted crankshafts involved could be produced using the forged-in-position process and, therefore, are no more "complex" in shape than the two "stepped" crankshafts shown in the photographs. Finally, petitioner argues that the additional cost of twisting is not a material factor in total manufacturing costs and that the small cost discrepancy is irrelevant to a pricing decision.

DOC Position: We disagree. The issue of twisted crankshafts versus non-

twisted crankshafts was raised early on in this investigation. Petitioner had ample opportunity to comment on this issue. Furthermore, while it is true that UEF was unable to provide actual cost data, the issue is whether a twisted crankshaft is sufficiently physically similar to a non-twisted crankshaft to allow comparison. Costs relating to physical differences are relevant only once we have determined that the crankshafts are similar. Since we determined that other, non-twisted crankshafts were more similar to non-twisted crankshafts for comparison purposes, the cost of producing a twisted crankshaft is irrelevant, as is the actual production process used. Furthermore, we verified that the crankshafts were actually "twisted" rather than "forged-in-position". Thus, we determined not to compare with non-twisted crankshafts.

Comment 6: Petitioner argues that the Department should adhere to the product comparisons made in the preliminary determination, because the home market comparisons selected by the Department were "more similar" to the U.S. crankshafts than those preferred by UEF. Should the Department conclude that UEF's choices are more similar, petitioner argues that the weighted average of all home market crankshafts with the same number of throws and falling within the 15 percent weight range should be used for comparison purposes. While petitioner believes it is reasonable to compare two crankshafts similar in configuration and weight, deciding which one of two or more home market crankshafts meeting this general description is "most similar" to the U.S. crankshaft may well be a difficult, if not an impossible, task.

DOC Position: In selecting comparable products for the preliminary determination, we took into account the criteria of number of throws, weight, and forging method. In light of the evidence produced during these proceedings, we have determined that it is appropriate to take into account the additional criterion of twisting. It is our policy to use the most similar home market product for comparison purposes and not to average a number of similar home market products. We do not find that the number of adjustments to price resulting from our selection of comparable models in this case is so large as to require resorting to an averaging technique such as that proposed by petitioner, nor is there any evidence that petitioner's proposal would lead to a more accurate comparison than the models we have chosen.

Comment 7: Petitioner argues that UEF has misconstrued and misapplied the "end-use" criterion of similarity. Section 771(16)(B) of the Act includes similar end-use as a criterion of comparability. Petitioner argues that the subject crankshafts and their proposed comparison models have the same over end-use and that UEF's argument regarding "end-use" pertains to the engines into which the crankshafts are incorporated, and not to the "end-use" of the crankshafts themselves. Petitioner further argues that even if the engines were sold into different markets, the Department should not examine marketplace dynamics in deciding whether certain crankshafts are "such or similar" to one another.

DOC Position: We agree. It is the end-use of the product under investigation itself that we consider in making "similar" merchandise selections, not the end-use of other products into which the product under investigation is incorporated. See *DOC Position* on *Respondent's Comments 1* and *2*.

Comment 8: Petitioner argues that the Department should continue to convert currencies using the daily exchange rate prevailing on the date of sale, rather than the six-month forward rate. Petitioner contends that UEF's discussion of forward exchange rates is no more than a description of how UEF allegedly deals with the exchange rate risk that is inherent in virtually all international sales by foreign companies. Petitioner argues that because of regualtory prescription and the Department's consistent practice of making currency conversion calculations on the basis of the exchange rate in effect on the date of sale, there is absolutely no risk of UEF being prejudiced in an antidumping investigation by reason of exchange rate movements after the date of sale, whether the sales contract lasts for one day or for five years. Since UEF knows the pound sterling prices of its sales in the home market, and since it knows the applicable exchange rate on the date of price agreement with the U.S. buyer, if it agrees to a price that is less than fair value, it has made a conscious decision to do so and cannot blame subsequent exchange rate movements for creating a dumping margin.

DOC Position: We converted currencies using the quarterly rates certified by the Federal Reserve in accordance with § 353.56(a) of the Commerce Regulations, except where the exchange rate on the date of sale varied from the quarterly rate by five percent or more. On the one date for which there was a change greater than five percent, we used the actual daily rate, as required. See also *DOC Position* on *Respondent's Comment 7*.

Comment 9: Petitioner argues that the Department should reject UEF's "volatility" argument because UEF based its argument on rates appearing on one particular day at the beginning of each month, thereby making the movement in exchange rates appear more dramatic than if measured based on monthly average rates. Futhermore, since exchange rates in most quarters within the POI seemed just as volatile as exchange rates in the next quarter, it seems illogical to substitute one "volatile" rate for another "volatile" rate.

DOC Position: We find that evidence does not support a conclusion that respondent reacted within a reasonable period of time to "sustained" exchange rate changes. We also find that exchange rates in this case were not "temporary" or "volatile". For these reasons, we have used the certified Federal Reserve rate in effect on the date of each sale. See *DOC Position* on *Respondent's Comments 7* and *8*.

Comment 10: Petitioner and respondent make several arguments on issues relating to credit expense calculations and the allocation of after-sale warehousing expenses on three shipments which were warehoused in the United States.

DOC Position: As discussed in the *Foreign Market Value* section of the notice, these three shipments of crankshafts have not been included in our fair value comparisons. Therefore, the issues of credit expense calculation and the allocation of after-sale warehousing expenses are moot.

Respondent's Comments

Comment 1: Respondent contends that the home market models chosen as comparators by the Department in the preliminary determination improperly took into account only two criteria: Number of throws and weight. The Department should consider all relevant factors in making model selections, including non-physical differences. Respondent states that, in numerous other investigations, the Department has focused on non-physical differences in identifying such or similar merchandise where identical merchandise is not sold in the home market. Respondent further contends that section 771(16)(B) expressly directs the department to consider non-physical characteristics in selecting such or similar merchandise, including the purposes for which the merchandise is used and the commercial value of the merchandise. Respondent

contends that section 771(16)(C) covers an even broader grouping, *i.e.*, "the same general class or kind" of merchandise, thereby inviting a wide-ranging consideration of all relevant factors. Respondent cites the following in support of its position: *Malleable Cast Iron Pipe Fittings, Other than Grooved, from Brazil (Pipe Fittings)*, 51 FR 10897 (March 31, 1986); *Carlisle Tire & Rubber Co. v. United States (Carlisle)*, 9 C.I.T. ————, 622 F. Supp. 1071 (1985); *Lightweight Polyester Filament Fabric from Japan (Polyester)*, 49 FR 472 (January 4, 1984); *Lightweight Polyster Filament Fabric from the Republic of Korea (Polyester)*, 48 FR 49679 (October 27, 1983), *Large Power Transformers from Japan (Power Transformers)*, 51 FR 21197 (June 11, 1986); and *J. Pattison, Antidumping and Countervailing Duty Laws (1987)* 5.05(1) and 5–28.

DOC Position: In light of evidence produced during this proceeding, we have selected comparable models based on the criteria used in arriving at the preliminary determination, namely number of throws, weight, and forging method, with the addition of twisting. We believe these criteria enable us to select merchandise meeting the statutory requirements for most similar merchandise.

Respondent's arguments concerning commercial value and end-use have described the end-use of the machines in which the crankshafts are used, rather than the end-use of the crankshafts themselves. The cases cited by respondent may be distinguished on this basis and on the facts of the different industries involved. In the *Polyester* cases, the fabric industry had well-established designations for various types of merchandise, which reflected primarily physical characteristics of the merchandise, and which were agreed upon by experts in the field. There are no well-established designations for types of merchandise in the crankshaft industry. In *Carlisle* and *Pipe Fittings*, comparability decisions included consideration of the end-use of the products under investigation, but not of the products into which they were later incorporated. Finally, *Power Transformers* were found to be complex products which differed in unusual features, not necessarily obvious from a reading of specifications, for which price information was deemed necessary to assist in distinguishing the various products.

Comment 2: Respondent states that, under § 353.16, once comparison models are chosen, any remaining physical differences between products are subject to adjustment for cost differences. On this basis, respondent argues that the most appropriate methodology in this investigation is to first match factors which affect physical and commercial comparability but which cannot be accounted for with a high degree of accuracy, and then to make adjustments to account for any differences due to any remaining, more readily quantifiable factors which do not match precisely. Specifically, respondent suggests matching non-twisted with non-twisted crankshafts, crankshafts with comparable volumes of sales, and crankshafts sold for incorporaton into engines with similar end-uses. In support of this proposed methodology respondent cites *Certain Electric Motors from Japan*, 45 FR 73723 (November 6, 1980) and *Brass Sheet and Strip from the Republic of Korea (Korean Brass Sheet)*, 51 FR 40833 (November 10, 1986), in which the "Department concluded that the higher production costs associated with smaller production runs of one possible home market product disqualified that product from use as the comparator—*even though it was physically closer to the U.S. product.*" Instead, the Department chose as the home market comparator a product produced in similar volumes to the one sold in the U.S. Respondent argues that the cost of production (COP) of twisted crankshafts is substantially higher than the non-twisted crankshafts and that not all of these incremental costs are captured in its cost accounting system. Respondent also contends that volume and end-use have a direct impact on production cost and price but are factors which are not equalized by the adjustment process. Respondent contends that the Department's own regulations expressly recognize the relevance of volume in making price-to-price comparisons, citing § 353.14, which instructs that home market and U.S. price comparisons "usually will be made on sales of comparable quantities of the merchandise under consideration."

DOC Position: While we have determined that it is inappropriate to compare non-twisted to twisted crankshafts, since twisting does indicate a physical difference in merchandise, we do not consider end-use and volume to be factors in the selection of similar merchandise in this case. Under section 771(16) of the Act, which defines "such or similar" merchandise, end-use is a factor only when the end-use pertains to the product under investigation itself, not to the product into which it is incorporated. In this case, the subject crankshafts and the proposed comparison models have the same end-use, *i.e.*, incorporation into engines. Therefore, it is not appropriate to use the end-use of the engines themselves as a basis for comparison. As for volume, the regulation respondent cites, § 353.14, refers to appropriate comparisons made after the selection of similar merchandise. The definition of such or similar merchandise under section 771(16), does not specify volume as a criterion for choosing the most similar merchandise. Therefore, we have not considered volume in making our selection of most similar merchandise. In *Korean Brass Sheet*, the case cited by respondent, the Department first determined that two home market products were equally similar to the U.S. product. Comparisons were then made to the home market product for which the production run was closest to that of the U.S. product. In that case, volume was only considered after the similar merchandise selection had been made. See also *DOC Position* on *Petitioner's Comments 4, 5, 6*, and *7*.

Comment 3: Respondent argues that the factors of end-use and volume support one of its proposed comparison models, because both its comparison choice and the U.S. model are used primarily for agricultural/industrial applications and in nearly identical quantities, whereas the comparator chosen by the Department for the preliminary determination is sold in smaller volumes into a high-priced, "niche", truck market.

DOC Position: We disagree. See *DOC Position* on *Respondent's Comments 1* and *2* and on *Petitioner's Comment 7*.

Comment 4: Respondent suggests that the Department should question "widely disparate margins resulting from the use of basically similar home market models as comparators." Where the different margins are attributable to identifiable, distinguishing factors that affect the commercial value of the merchandise, respondent argues that the Department must eliminate the differences, either by quantifying them and making an adjustment or by identifying a more similar home market model.

DOC Position: "Widely disparate margins which result from the use of basically similar home market models as comparators" are not necessarily an indication of inappropriate comparisons but rather could be an indication of actual dumping margins. However, if those margins are solely attributable to identifiable, distinguishing factors, then the Department will attempt to eliminate the differences, either by quantifying them and making an adjustment or by identifying a more similar home market

model. In this case, we have selected a more similar home market model.

Comment 5: Respondent argues that the plus or minus 15 percent weight range proposed by petitioner as a basis for selecting crankshaft comparison models is arbitrary, has no technical or commercial basis, and overstates the importance of similarity in weight in the process of model selection.

DOC Position: We agree that petitioner has not provided any evidence other than conclusory statements to support the proposed weight limit of plus or minus 15 percent in making our product comparisons. Therefore, where appropriate, we have gone outside that weight range in selecting the most similar home market crankshaft for comparison purposes. See *DOC Position* on *Petitioner's Comment 3.*

Comment 6: Should the Department adhere to its preliminary comparison model choices, respondent urges that the Department weight-average the two home market models (*i.e.*, the Department's proposed comparator and respondent's proposed comparator). Respondent argues that this approach would reduce the distortion inherent in comparing models which differ in non-adjustable respects. Finally, respondent argues that weight-averaging would be consistent with petitioner's own preference.

DOC Position: See *DOC Position* on *Petitioner's Comment 6.*

Comment 7: Respondent argues that the Department should use the six-month forward exchange rates for currency conversions. It contends that it is common practice in the U.K. to hedge against the effect of exchange rate fluctuation by selling forward foreign currency receipts and that this has been actual UEF policy for several years. UEF argues that it would be perverse and unfair, if the company's "sound commercial practice were ignored in determining fair value, producing exchange rate dumping", the very result sought to be avoided when applying the antidumping laws in an economic environment characterized by volatile exchange rates. Respondent further argues that nothing is said in the Department's regulations barring the use of a forward exchange rate, citing 19 CFR 353.56(a), which merely requires that the conversion be made "as of the date of the purchase or agreement to purchase". Respondent argues that the regulation does not specify a daily, quarterly, or a forward rate, and that the Department has discretion as to which rate to use.

DOC Position: Section 353.56(a) requires that currency conversions be made "in accordance with the provisions of section 522 of the Tariff Act of 1930, as amended" (31 U.S.C. 5151), which provides that "[t]he Federal Reserve Bank of New York shall decide the buying rate" [31 U.S.C. 5151(e)]. The Tariff Act also directs that conversions be made at quarterly rates, unless the rate on any given day varies from the quarterly rate by five percent or more, in which case the actual daily rate is to be used [31 U.S.C. 5151(c), (d)]. Therefore, contrary to Respondent's contention, we are obliged to use quarterly rates absent the five percent variance provided for in the Tariff Act, or absent circumstances which would permit us to apply the "special rule" of § 353.56(b) of the regulations. Even if the "special rule" could be applied in this case, UEF has not provided sufficient evidence to support its assertion that its pricing is directly linked to, or based on, the six-month forward exchange rate.

Comment 8: Respondent argues that if forward exchange rates are not used, the Department should apply the lag rate, *i.e.*, use the exchange rate prevailing in the calendar quarter preceding the sales date. Respondent contends that in previous cases such as *Melamine Chemicals, Inc.* v. *United States* (*Melamine*), 732 F.2d 924, 931 (Fed. Cir. 1984), the Court of Appeals has upheld the Department's application of the exchange rate prevailing in the quarter preceding the sales in question to prevent the imposition of antidumping duties resulting solely from temporary currency fluctuations.

Respondent states that it renegotiated its prices with one U.S. customer to take account of the strengthening of the pound, and that this is evidence of UEF's attempt to do what the statute wants foreign producers to do—to raise U.S. prices when the dollar weakens. In *Brass Sheet and Strip from the Federal Republic of Germany* (*German Brass Sheet*), 52 FR 822, 826 (January 9, 1987), the Department specifies two tests, one of which must be met before the Department will consider lagging the exchange rates in less than fair value (LTFV) investigations: (1) There has been a sustained change in exchange rates and respondents can show that they have acted within a reasonable period of time to adjust their prices to the change, or (2) dumping m argins are due solely to a temporary fluctuation in exchange rates. Respondent contends that it has met these tests.

DOC Position: We disagree. If exchange rates in this case are considered to have been characterized by "sustained" changes, respondent's evidence has not shown price readjustment or other reaction to such changes within a reasonable period of time as required by *Melamine.* Nor does the evidence support a finding of "temporary" exchange rate changes, so that the second test cited by respondent is inapplicable.

Comment 9: Respondent argues that U.S. interest rates should be used in determining the cost of credit for U.S. sales, because the U.S. rate would reflect the actual credit costs incurred by UEF had the company borrowed to finance its U.S. receivables. Respondent cites *Certain Welded Pipe and Tube Products from Turkey* (*Welded Pipe*), 51 FR 13044 (April 17, 1986), in which the Department calculated interest expense in the U.S. market based on the relevant U.S. rates.

DOC Position: We disagree. It is the Department's policy to use the home market interest rate to compute the respondent's credit expense for U.S. purchase price sales where, as in the present investigation, the respondent has not received any foreign financing. In *Welded Pipe,* U.S. sales were actually financed with short-term dollar-denominated financing, so the use of the weighted-average dollar interest rate was applied.

Comment 10: Respondent argues that the Department should calculate credit adjustments based on the interest rate prevailing on the date of each shipment, the rate UEF would have had to pay had it actually borrowed to finance its receivables.

DOC Position: We agree and have done so.

Comment 11: Respondent argues that the per diem cost of credit should be calculated on the basis of a 365-day year rather than a 360-day year.

DOC Position: We agree. We found that the bank used by the respondent based its interest calculations on 365 and not 360 days.

Comment 12: Respondent argues that shipments made after October 31, 1986, should not be included in fair value calculations since these shipments are no more relevant than sales prior to October 1, 1985, or subsequent to October 31, 1986.

DOC Position: We disagree. Because of contractual practice in this industry, there is a significant difference between "sales" and "shipments" in this case. A "sale" of the product is made at the time when a price agreement is reached. "Shipments" directly related to these "sales" are subsequently sent to the customer over a period of months or even years. In order for the "sale" to be included in the dumping calculation for purposes of this final determination, the date of sale, *i.e.*, the date of written

confirmation of the price agreement, has to be within the POI, *i.e.*, October 1, 1985, through October 31, 1986. "Shipments", however, are not limited to the POI. As long as the "shipments" are pursuant to a "sale" made within the POI, they should be included in the calculation for purposes of the investigation. We agree, however, that *sales* prior to October 1, 1985, and subsequent to October 31, 1986, are irrelevant to the calculation of fair value since they are outside the POI.

Comment 13: Respondent argues that any future dumping order issued in this case should be limited only to those sales which were actually investigated. Since the Department excludes sales to some customers from the investigation because they occurred prior to October 1, 1985, it should exclude from the scope of any order which might ultimately be issued, UEF's shipments to those customers. Otherwise, some of UEF's customers would be burdened by the requirement to deposit duties on sales which were never investigated and which the Department has no basis whatever to assume were made at less than fair value. Since sales to customers whose imports were not investigated cannot be identified by tariff classification, respondent proposes that such models be identified by means of a certification mechanism similar to that used in other areas of customs law where the need arises because the rate of duty varies depending on the actual use of the imported merchandise. Such a procedure could be adopted here to permit imports of crankshafts by these customers without the deposit of duties based on unfounded and arbitrary assumptions, rather than findings based on facts.

DOC Position: We disagree. Respondent misunderstands the statutory scheme applicable to dumping investigations and orders. The result of a dumping investigation is an estimated margin which is to be applied to future entries. The Department has not actually made a determination that such future entries were dumped, since an investigation can only evaluate practices which have already occurred. Should respondent believe that the estimated margin provided in an order does not accurately reflect the actual dumping margin for future entries, its remedy is to request a review under section 751 of the Act and § 353.53(a) of our regulations.

Comment 14: Respondent argues that a circumstances of sale adjustment must be made for the cost of tooling for one die number for which the U.S. customer paid part of the cost of tooling, since the U.K. customer for the comparison model did not pay for tooling. UEF submits that the different treatment of tooling costs in the two markets warrants an adjustment for different circumstances of sale. Respondent cites as an example, *Certain Forged Steel Crankshafts from the Federal Republic of Germany (German Crankshafts)*, 52 FR 18002, 18003 (1987).

DOC Position: Since this issue was first brought up after verification, we were unable to verify either the cost paid by the U.S. customer, or the fact that the U.K. customer did not pay for tooling for the comparison model. We therefore determined not to make a circumstances of sale adjustment. In *German Crankshafts*, the Department did not make a circumstances of sale adjustment between the home and the U.S. markets. Rather, we found that there was insufficient information on the home market side for us to consider an adjustment. Therefore, we did not make a determination on whether a circumstances of sale adjustment for tooling costs was appropriate.

Comment 15: Respondent states that it agrees with petitioner's argument that differences in the costs of inspection should be disregarded in calculating the difference in merchandise adjustment because these costs are not related to physical differences in merchandise.

DOC Position: We disagree. Since each crankshaft requires a different type and a different level of inspection, we consider inspection costs to be variable costs directly related to the differences in the physical characteristics of the merchandise. Therefore, these costs have been included in the calculation of the difference in merchandise adjustment.

Verification: We verified all information used in making our final determination in accordance with section 776(a) of the Act and followed standard verification procedures, including examination of relevant sales and financial records of the company under investigation.

Suspension of Liquidation: In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of CFSC from the U.K. that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of CFSC from the U.K. exceeds the United States price, as shown in the table below. The cash deposit or bonding rate established in the preliminary determination shall remain in effect with respect to entries or withdrawals from warehouse made prior to the date of publication of this notice in the **Federal Register.** This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
United Engineering & Forging	14.67
All others	14.67

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing the U.S. Customs Service to assess an antidumping duty on CSFC from the U.K., entered or withdrawn from warehouse, for consumption on or after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act [19 U.S.C. 1673d(d)].

Dated: August 26, 1987.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 87-20056 Filed 8-31-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-006]

Final Results of Antidumping Duty Administrative Review; Steel Jacks From Canada

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

On September 23, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on steel jacks from Canada. The review covers the only known manufacturer of this merchandise covered by the finding, J.C. Hallman Manufacturing Co., Ltd., and the period September 1, 1983 through August 31, 1985.

We gave interested parties an opportunity to comment on our preliminary results. We received comments from the petitioner and the respondent. Based on our analysis of the comments received, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5222/2923.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1986, the Department of Commerce ("the Department") published in the Federal Register (51 FR 33795) the preliminary results of its administrative review of the antidumping finding on steel jacks from Canada (31 FR 11974, September 13, 1966). We began this review under our old regulations. After the promulgation of our new regulations, the petitioner and the respondent requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States* ("TSUS") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval.

As with the TSUS, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUS item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultations in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of assembled and unassembled steel jacks, semi-assembled jacks, disassembled jacks including jack parts from Canada, currently classifiable under item numbers 664.1057 and 664.1081 of the Tariff Schedules of the United States Annotated. These products are currently classifiable under HS item number 8425.49.00. The review covers the only known manufacturer of this merchandise to the United States covered by the finding, and the period September 1, 1983 through August 31, 1985.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the petitioner and the respondent.

Comment 1: Hallman argues that it has presented a compelling reason for Commerce to accept the questionnaire response filed after the preliminary results of review, because Hallman changed counsel after the questionnaire was mailed by the Department. Hallman asserts that Commerce has the authority to accept its late response. Hallman maintains that the Commerce Department is authorized to, and must accept its late response to avoid a manifest injustice. The information contained in that response should be considered in the final results of review.

Department's Position: We disagree. The preliminary results of review were based on the best information available since Hallman did not provide a timely response to our questionnaire which was transmitted to Hallman on April 31, 1986. The Department sent Hallman a follow-up letter on June 20, 1986 stating that unless it responded within an additional fifteen days, the Department would use the best information available.

The fact that Hallman changed counsel on September 5, 1986, long after the due date to respond to the questionnaire, is no excuse for untimely filing of information. Section 353.46 of the Commerce Regulations states that "Except in situations where it would be manifestly unjust, any information or written views submitted in connection with a proceeding shall be considered only if received within the time established by these regulations or by specific instructions applicable to any request for information; and information or written views received after such time shall not be considered in the proceeding." In this case, the Department's refusal to consider the response which was submitted long after the due date and after the publication of the preliminary results is not manifestly unjust. Moreover, it would be unjust to accept the response so late in the course of the proceeding and thereby deprive the other parties of an effective opportunity to comment.

Comment 2: Bloomfield Manufacturing Co., Inc., the petitioner, contends that the final results of review must be made on the basis of best information otherwise available. Further, the petitioner argues that the rate established in a previous review should be considered as a minimum. The petitioner has submitted constructed value data which it contends the Department should use as best information otherwise available.

Department's Position: As stated in our response to Comment 1, we agree that use of best information available is appropriate in this case. Consistent with Department policy, we determined that a previous rate constitutes the best information available in this case.

Selection of the best information available is made on a case-by-case basis. It is our policy to evaluate the nature of the information available and the degree of cooperation received in exercising our discretion to choose the appropriate information to use in such situations. We did not select the most adverse of all available alternate sources of information. We believe that the previous rate selected is both sufficient to ensure timely submissions in future administrative reviews and is in compliance with the Department's regulations and established policy.

Comment 3: Bloomfield contends that this finding should not be limited to steel jacks manufactured by Hallman only but should be considered a country-wide finding according to the current practice of the Department, which is consistent

with this order as amended by the Treasury Department.

Bloomfield argues that when administered by the Treasury Department, the issuance of an antidumping finding entailed amending the Customs Regulations to include the latest finding. In this case the Customs Regulations were amended to include "steel jacks from Canada" without reference to Hallman exclusively. Bloomfield contends that since Hallman was mentioned only in the preambular language of the amendment to the Customs Regulations and not in the body of the amended language, the finding of dumping is a country-wide finding.

Department's Position: We agree. The Department has reviewed the petition and all notices published during the investigatory period with respect to steel jacks from Canada. The original petition and all notices describe the scope of the investigation to include steel jacks from Canada manufactured by J.C. Hallman Manufacturing Co., Ltd., the only known manufacturer at that time. The Department has no evidence to indicate that the Treasury Department's intent was to limit this finding of dumping to J.C. Hallman Manufacturing Co., Ltd. to the exclusion of other exporters of the subject merchandise from Canada. The reference to Hallman as a sole known manufacturer of the subject merchandise is, therefore, descriptive rather than exclusionary in nature. We will instruct the Customs Service to collect the estimated duty from all other importers.

Comment 4: Bloomfield contends that the Department should clarify the scope to include assembled steel jacks, semi-assembled jacks, disassembled jacks (kits) and jack parts. Bloomfield contends that the administration of this finding is subject to circumvention, unless the Department clarifies these parts to be specifically covered by the scope of the finding.

Department's Position: Since this order already covers steel jacks (assembled or unassembled) (50 FR 42577, October 21, 1985), the only issue before us is whether the order also includes jack parts. We agree that separately imported parts of steel jacks are properly included in the scope of the subject order when these parts, taken together, constitute the complete jack. This determination is based on a consideration of the following criteria: (1) General physical characteristics, (2) the expectations of the ultimate purchasers, (3) the channels of trade in which the product is sold, (4) the manner in which the product is advertised and displayed, and (5) the ultimate use of the merchandise in question. The Court of International Trade has endorsed these criteria as the appropriate ones to use in determining whether a product is within the "class or kind" of merchandise described in a prior antidumping finding. *See, Kyowa Gas Chemical Industry Co., Ltd. v. United States*, 582 F. Supp. 887 (C.I.T. 1984); *Diversified Products Corp., v. United States*, 572 F. Supp. 863 (C.I.T. 1983).

The Department has learned from the Customs Service that, in addition to shipping assembled and unassembled jacks to the United States, Hallman is also shipping jack parts separately to its subsidiary, J.C. Hallman, Inc. These parts include: large runner, small runner, steel standard, steel handle, top clamp clevis, handle socket, pitman, reversing switch and latch, and base plate. These parts are fully manufactured prior to importation, and require only painting, assembly, labeling, and deburring operations after being received by J.C. Hallman, Inc. in the United States. These are relatively minor finishing operations which do not add substantial value.

These parts are apparently not separately sold to unrelated purchasers, and there is no indication that such jack parts have any channels of trade or use other than for assembly into steel jacks. Indeed, these jack parts are not sold to unrelated purchasers until they are assembled into complete steel jacks. Since there is no separate channel of trade for jack parts we determine that the third criterion noted above is met. Similarly, we determine that both the ultimate use and the ultimate purchasers of jack parts and complete jacks are the same, because jack parts are not used in any other device. Thus, the second and the fifth criteria outlined above are met. The fourth criterion is also met because, since there is no separate channel of trade for jack parts, the only respect in which they are advertised and displayed is in the form of complete steel jacks.

Finally, with respect to the first criterion, the Department does not believe that the fact that jack parts have, in some respect, different physical characteristics from complete jacks should be controlling in this instance. They only difference between the two is that complete steel jacks are, essentially, assembled jack parts. Since the parts are imported by a related subsidiary for the sole purpose of being assembled to become complete steel jacks, these differences become nonexistent as soon as the parts are assembled.

Furthermore, the Department has broad authority to ensure that domestic industries receive the protection that our antidumping duty orders are intended to provide. An important component of this broad enforcement authority is vigorous monitoring of compliance with antidumping duty orders under section 751 of the Tariff Act. Our responsibility to enforce antidumping duty orders includes the requirement to ensure that those orders are not circumvented through their narrow and mechanical interpretation without considering the intended purpose and substantive reach of these orders.

The Department may not allow for separate importation of jack parts which, after minor finishing operations, are sold in the United States as complete jacks in circumvention of the order. Such a limited interpretation of the scope of the order would be in violation of the Department's enforcement responsibility under the antidumping laws.

Therefore, we conclude that steel jack parts are the same "class or kind" of merchandise as steel jacks and are properly included in the scope of the order when, shortly after importation, these parts are assembled to constitute complete steel jacks.

Final Results of Review

Based on our analysis of the comments received, the final results of review are the same as those presented in the preliminary results of review and we determine that the following margin exists for the period September 1, 1983 through August 31, 1985:

Manufacturer/exporter	Margin (percent)
J.C. Hallman Manufacturing Co., Ltd.	23.35

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided in section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to collect a cash deposit of estimated antidumping duties based upon the above margin.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after August 31, 1985, and who is unrelated to any reviewed firm, or any previously reviewed firm, a cash deposit of 28.35 percent shall be required.

This deposit requirement is effective for all shipments of Canadian steel jacks

or parts of steel jacks, entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administration review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: August 24, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-20057 Filed 8-31-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Public Meeting; Mid-Atlantic/New England Fishery Management Councils

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic and New England Fishery Management Councils will convene a joint public meeting, September 16, 1987, at 9 a.m., at the Holiday Inn 1776, U.S. 60 Bypass Road, Williamsburg, VA (telephone: 804-220-1776), for the purpose of holding panel discussions on joint ventures, the Americanization of the Atlantic mackerel fishery, cost effective law enforcement, and ecosystem management. The public meeting may be lengthened or shortened depending upon progress of the agenda. The Councils may go into closed session (not open to the public) to discuss personnel and/or national security matters.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Driector, Mid-Atlantic Fishery Management Council, Federal Building, 300 South New Street, Room 2115, Dover, DE 19901; telephone: (302) 674-2331.

Date: August 27, 1987.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-20044 Filed 8-31-87; 8:45 a.m.]

BILLING CODE 3510-22-M

Public Meetings; North Pacific Fishery Management Council

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled separate public meetings for its Gulf of Alaska Groundfish Plan Team and the Bering Sea/Aleutian Islands Groundfish Plan Team. Both Plan Teams will be discussing development of resource assessment documents, deriving estimates of acceptable biological catch for commercial groundfish species, and reviewing public proposals for management of the sablefish fishery.

The public meetings will be held at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way, NE., Building 4, Seattle, WA. The Gulf of Alaska Plan Team will convene September 8 at 9 a.m. and proceed as necessary through the following day. The Bering Sea/Aleutian Islands Plan Team will convene September 10 at 9 a.m. and continue as necessary through September 11.

FOR FURTHER INFORMATION CONTACT: The North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

Date: August 27, 1987.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-20045 Filed 8-31-87; 8:45 am]

BILLING CODE 3510-22-M

Public Meetings North Pacific Fishery Management Council

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council will meet September 23-25, 1987, at the Hilton Hotel in Anchorage, AK. Council members will elect officers for the coming year. They also will receive status of stocks reports for groundfish in the Gulf of Alaska and the Bering Sea/Aleutian Islands, and make initial apportionments for domestic and foreign fisheries for 1988. Final approval of harvest levels will be made in December. For Gulf of Alaska pollock, the Council will review U.S. processor needs for 1987 to determine if surpluses exist for reapportionment to the joint venture industry.

The Council, also will consider final approval of Amendment 16 to the Gulf of Alaska Groundfish Fishery Management Plan (FMP), review a draft FMP for king and Tanner crab in the Bering Sea/Aleutian Islands, and review a revised Salmon FMP.

Industry proposals for management of the sablefish fishery will be reviewed and the Council will approve an options package to go out for public review. The Council also will review and approve a halibut allocations policy and review halibut allocation proposals from industry before sending them out for public review.

The Council will hear Committee reports on the domestic observer program, joint venture permit review, by one word catch management and reporting requirement, and will review a revised draft of the Secretary's proposed uniform standards. Recommendations on two-tier fees for foreign fishing in 1988 also may be on the agenda.

The Council's Scientific and Statistical Committee and Advisory Panel will begin at 10 a.m. on September 21 at the Hilton and continue at least through September 22. The Council will begin at 9 a.m. on September 23 and continue through September 25.

Other meetings scheduled throughout the week include the Council's Crab Management Committee on the evening of September 21, the Reporting Requirements Workgroup on the evening of September 22, and the Bycatch Committee following the close of the Council's meeting on September 25. All public meetings will be held at the hotel unless otherwise announced; times and rooms will be available on the first day of Council week. Other plan team and workgroup meetings may be held on short notice during the week. The Council will meet in executive session (not open to the public) at least once during the week to review ongoing litigation and other appropriate matters.

FOR FURTHER INFORMATION CONTACT: the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

Date: August 27, 1987.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

FR Doc. 87-20046 Filed 8-31-87; 8:45 am]

BILLING CODE 3510-22-M

Public Meetings; Pacific Fishery Management Council

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will convene separate public meetings, September 14-17, 1987, at the Pony Village Lodge, Pony Village Shopping Center, North Bend, OR, as follows:

Council

On September 16 the Council will convene at 9 a.m., with a closed session (not open to the public) to discuss litigation, personnel, and other appropriate matters. At 10 a.m. the Council will commence its open session to consider administrative matters and

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groundfish management. After comments from its advisory entities and the public, the Council will affirm or revise the 1987 sablefish acceptable biological catch/optimum yield, adopt groundfish management adjustments for the last trimester, consider recommendations from its Limited Entry Committee, adopt groundfish Amendment 3 for public review, adopt preliminary groundfish management specifications for 1988, conduct a scoping session for future groundfish amendments, and other groundfish matters. There will be a public comment period at 4 p.m.

On September 17 the Council will reconvene at 9 a.m. to complete any unfinished groundfish business and address halibut allocation and salmon management. After comment from its advisory entities and the public, the Council will adopt a halibut allocation process and hear a status report on initial allocation discussions. For salmon, the Council will adopt an amendment to the fishery management plan for public review, conduct a scoping session for future amendments to the fishery management plan, and consider other salmon matters.

Scientific and Statistical Committee

On September 14 will convene at 1 p.m. to consider matters on the Council's agenda, and reconvene September 15 at 8 a.m. to meet with the Groundfish Management Team to review stock assessments for 1988.

Groundfish Select Group

On September 15 will meet at 3 p.m. to formulate a recommendation to the Council on third trimester management adjustments and other matters.

Budget Committeee

On September 16 will meet at 8 a.m. to reivew the status of the budget for the remainder of the calendar year.

Detailed agendas for all of the above meetings will be available to public after August 28. For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221–6352.

Date: August 27, 1987.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–20047 Filed 8–31–87; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Changes in Meeting of the Defense Science Board Task Force on B–1B Defensive Avionics

ACTION: Change in date/location of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on B–1B Defensive Avionics scheduled for September 17–18, 1987 as published in the **Federal Register** (Vol. 52, No. 129, Page 25458, Tuesday, July 7, 1987, FR Doc. 87–15410) will be held on September 16–18, 1987 at Wright Patterson AFB, Dayton, Ohio.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

August 27, 1987.

[FR Doc. 87–20063 Filed 8–31–87; 8:45 am]

BILLING CODE 3810–01–M

Cancellation of Meeting; Defense Science Board Task Force on B–1B Defensive Avionics

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on B–1B Defensive Avionics for August 18–19, 1987 as published in the **Federal Register** (Vol. 52, No. 129, Page 25458, Tuesday, July 7, 1987, FR Doc. 87–15410.) has been cancelled.

August 27, 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87–20064 Filed 8–31–87; 8:45 am]

BILLING CODE 3810–01–M

Department of The Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 21 and 22 September 1987.

Times of meeting: 0800–1600 hours each day.

Place: Science Applications International Corporation McLean, Virginia.

Agenda: The ASB Ad Hoc Subgroup on U.S. Army CECOM RD&E Center Effectiveness Review will meet to review draft report material covering the review. This meeting will be open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–20030 Filed 8–31–87; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Invitation for Applications for New State Grant Awards for Fiscal Year 1988; Education of the Handicapped

Title program: Training Personnel for the Education of the Handicapped.

CFDA no: 84.029H.

Purpose: To increase the quantity and improve the quality of personnel to educate handicapped children and youth. Applications for State grants may be submitted by State educational agencies (SEAs). SEAs that apply for a continuation grant for fiscal year 1988 are not eligible for a new State grant in fiscal year 1988.

Deadline for transmittal of applications: December 18, 1987.

Applications available: September 8, 1987.

Estimated range of awards: $50,000–$85,000.

Estimated average size of awards: $75,000.

Estimated number of awards: 13.

Average project period: 36 months.

Applicable regulations: (a) The Training Personnel for the Education of the Handicapped Program, 34 CFR Part 319, 52 FR 25830 *et seq.;* and (b) the Education Department General Administration Regulations, 34 CFR Parts 74, 75, 77, and 78.

For applications or information contact: Norman D. Howe, U.S. Department of Education, Office of Special Education Programs, Division of Personnel Preparation, 400 Maryland Avenue, SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1068.

Program authority: 20 U.S.C. 1432.

(Catalog of Federal Domestic Assistance No. 84.029: Training Personnel for the Education of the Handicapped)

Dated: August 26, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education.

[FR Doc. 87-20066 Filed 8-31-87; 8:45 am]

BILLING CODE 4000-01-M

Invitation for Applications for New Awards for Fiscal Year 1988; Education of the Handicapped

Title of program: Training Personnel for the Education of the Handicapped. CFDA No: 84.029.

Purpose: To increase the quantity and improve the quality of personnel available to educate children and youth with handicaps.

Applications available

Applicable regulations: (a) The Training Personnel for the Education of the Handicapped Program, 34 CFR Part 318; and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

Priorities

The Secretary announces, pursuant to 34 CFR 75.105(c)(3) and 318.11 the following priorities for fiscal year 1988. The Secretary will give an absolute preference to applications that meet any of the priorities.

Preparation of Special Educators (84.029B)

This priority supports projects designed to provide preservice training of personnel for careers in special education of handicapped children and youth. The priority includes the preparation of special educators of the handicapped, including personnel trained in speech, language, and hearing impairments, and adaptive physical educators.

Preparation of Leadership Personnel (84.029D)

This priority supports doctoral and post-doctoral preservice preparation of professional personnel to conduct training of teacher trainers, researchers, administrators, and other specialists.

Preparation of Personnel for Minority Handicapped Children (84.029E)

This priority supports the preservice preparation of special education and related services personnel to educate minority and underserved populations, and provides training for members of groups which have been traditionally underrepresented in these fields.

Preparation of Related Services Personnel (84.029F)

This priority supports the preservice preparation of individuals who provide developmental, corrective, and other supportive services as may be required to assist a handicapped child or youth to benefit from special education. The priority supports the preparation of paraprofessional personnel, career educators, recreation specialists, health services personnel, school psychologists, social service providers, counselors, physical therapists, occupational therapists, volunteers, and other personnel providing special services.

Preparation of Personnel for Transition of Handicapped Youth to Adult and Working Life (84.029G)

This priority supports the preservice preparation of special education and related services personnel, including secondary school teachers, who will prepare handicapped youth to meet adult roles. Personnel may be prepared to provide either short-term transitional services, or to aid in the placement of handicapped youth in long-term employment, or both. Projects supported under this priority should prepare personnel for employment in programs dsigned to prepare handicapped youth for community placement and adjustment to the community setting.

Preparation of Personnel to Work in Rural Areas (84.029J)

This priority supports preservice training of personnel for rural areas. Particular attention must be given to preservice training related to the unique aspects of providing services to special populations in rural areas. Projects supported under this priority must prepare special education personnel to fill a variety of rural specific roles with handicapped students, parents, peers, and administrators.

Special Projects (84.029K)

This priority supports projects to develop and demonstrate new approaches for the preservice training purposes set forth in § 318.10(a), for preservice training of regular educators and for the inservice training of special education personnel, including classroom aides, related services personnel, and regular education personnel who serve handicapped children and youth. Project activities assisted under this priority include development, evaluation, and distribution of imaginative or innovative approaches to personnel preparation, and development of materials to prepare personnel to educate handicapped children and youth.

Parent Organization Projects (84.029M)

This priority supports grants to parent organizations as defined in 34 CFR 318.2(b), for the purpose of providing training and information to parents of handicapped children and youth, and to volunteers who work with parents to enable those individuals to participate more effectively with professionals in meeting the educational needs of handicapped children and youth.

Preparation of Personnel to Provide Special Education and Related Services to Newborn and Infant Children with Handicaps (84.029Q)

This priority supports the preservice preparation of personnel who will serve newborn and infant children with handicaps, or newborn and infant children who are determined to be at high risk of being handicapped, or both. Personnel may be prepared to provide short-term special education and related services as necessary in an intensive care nursery, or long-term special education and related services which extend into a preschool program. Projects supported under this priority prepare personnel for employment in programs characterized by strong interaction of the medical, educational, and related services communities, and by involvement of parents and guardians who are the primary care givers for their children.

For applications or information contact: Normal D. Howe, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732-1068.

Program authority: 20 U.S.C. 1431.

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: August 26, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

APPLICATION NOTICES FOR FISCAL YEAR 1988

Title and CFDA number	Deadline for transmittal of applications	Available funds [1]	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Preparation of Special Educators (84.029B)	10/23/87	$8,500,000	$60,000–$80,000	$80,000	106	Up to 60.
Preparation of Leadership Personnel (84.029D)	11/27/87	1,000,000	70,000–90,000	90,000	11	Up to 60.
Preparation of Personnel for Minority Handicapped Children (84.029E)	04/06/88	500,000	60,000–75,000	75,000	7	Up to 60.
Preparation of Related Services Personnel (84.029F)	12/11/87	1,400,000	50,000–70,000	70,000	20	Up to 60.
Preparation of Personnel for Transition of Handicapped Youth to Adult and Working Life (84.029G)	11/20/87	500,000	60,000–80,000	80,000	6	Up to 60.
Preparation of Personnel to Work in Rural Areas (84.029J)	04/06/87	500,000	60,000–75,000	75,000	7	Up to 60.
Special Projects (84.029K)	12/18/87	900,000	65,000–85,000	85,000	10	Up to 60.
Parent Organization Projects (84.029M)	12/04/87	1,000,000	80,000–110,000	110,000	9	Up to 60.
Preparation of Personnel to Provide Special Education and Related Services to Newborn and Infant Children with Handicaps (84.029Q)	01/08/88	750,000	60,000–75,000	75,000	10	Up to 60.

[1] The funding levels are estimated projections of available Federal resources and may be subject to revision pending changes in Congressional appropriations.

[FR Doc. 87–20067 Filed 8–31–87; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER87–597–000 et al.]

Electric Rate and Corporate Regulation Filings; Arizona Public Service Co. et al.

August 27, 1987.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Co.

[Docket No. ER87–597–000]

Take notice that on August 24, 1987, Arizona Public Service Company (APS) tendered for filing an Economy Energy Interchange Agreement between Arizona Public Service Company (APS) and Rocky Mountain Generation Cooperative (RMGC) executed March 30, 1987.

APS requested that this Agreement become effective 60 days from the date of filing with FERC.

This Agreement provides that Economy Energy sales by APS to RMGC shall be priced at one of the following rates: (a) A ceiling rate concept based in part on the fixed costs associated with facilities used to produce the required energy; (b) a "split-the-savings" concept; or (c) a selling price based on 120 percent of cost to produce such energy.

Copies of this filing are being served upon RMGC and the Arizona Corporation Commission.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Co.

[Docket No. ER88–405–004]

Take notice that on August 3, 1987 Boston Edison Company tendered for filing pursuant to Commission's Order dated June 18, 1987 approving the settlement agreement in these dockets, its compliance report.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

Southwestern Public Service Co. and Black Mesa Power Co.

[Docket Nos. EC87–19–000 and ER87–584–000]

Take notice that on August 13, 1987, Southwestern Public Service Company (Southwestern) and Black Mesa Power Company (Black Mesa), tendered for filing a joint application seeking an order pursuant to section 203 of the Federal Power Act (FPA) and Part 33 of the Commission's regulations authorizing the sale by Southwestern of its electric facilities located in the States of Oklahoma and Kansas to Black Mesa in exchange for approximately 626,088 shares of the Common Stock of Black Mesa (Common Stock) and cash in the amount of $953,067.

Southwestern is an operating public utility engaged in the generation, transmission, distribution and sale of electricity for wholesale and retail uses in the States of Texas, New Mexico, Oklahoma and Kansas. Southwestern currently provides electric service in Oklahoma to communities of Beaver, Boise City, Goodwell, Guymon, Keyes, and Texhoma and surrounding areas. Southwestern also provides electric service in Kansas to the community of Elkhart and its surrounding area.

In the interest of improving administrative efficiency and reducing cost, Southwestern has formed Black Mesa, which will be a wholly-owned subsidiary upon the closing of the transaction described herein, to own and operate the electric service transmission, distribution, and general plant facilities (except for wholesale metering equipment) currently owned and operated by Southwestern in the States of Oklahoma and Kansas.

Upon consummation of the sale, Black Mesa will become a full requirements wholesale customer of Southwestern. It will continue to provide electric utility service to retail customers who reside

within the affected area presently served by Southwestern.

Southwestern also tendered for filing, pursuant to section 205 of the FPA and Part 35 of the Commission's regulations, an agreement with Black Mesa for primary electric power service. The agreement provides for service under rate levels currently filed and allowed by the Commission for service by Southwestern to its existing full requirements customers.

Black Mesa has requested a determination from the Commission whether Black Mesa will be a jurisdictional utility as defined under section 201 of the FPA. If the Commission makes a determination that Black Mesa is a jurisdictional utility, Black Mesa requests, pursuant to section 205 of the FPA and Part 35 of the Commission's regulations, that the Commission accept the initial rate schedule for the provision of system access to Southwestern. The System Access Agreement to be entered into between Black Mesa and Southwestern will allow Southwestern access to Black Mesa's electric transmission and distribution facilities for the delivery of electric energy to Southwestern's wholesale customers in the States of Oklahoma, Kansas, and Texas, and for the delivery of electric energy to certain of Southwestern's retail customers located in the State of Texas.

In addition, if the Commission makes a determination that Black Mesa is a jurisdictional utility, Southwestern and Black Mesa request, pursuant to section 203 of the FPA and Part 33 of the Commission's regulations and section 204 of the FPA and Part 34 of the Commission's regulations, respectively, an order approving the acquisition by Southwestern of Black Mesa's Common Stock and the issuance by Black Mesa of its Common Stock to Southeastern, each in connection with the transaction described herein. The effective date of this transaction is expected to be September 1, 1987.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Montana Power Co.

[Docket No. ER87-596-000]

Take notice that on August 21, 1987, Montana Power Company (MPC) tendered for filing pursuant to section 205 of the Federal Power Act an agreement executed on July 17, 1987 (as amended) for the sale of firm energy to the Western Area Power Administration during the period from June 15, 1987 through November 30, 1987.

MPC has requested waiver of the notice provisions of § 35.3 of the Commission's regulations in order to permit the agreement to become effective as of June 15, 1987 in accordance with its terms.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Ogden Martin System of San Bernardino, Inc.

[Docket No. ER87-595-000]

Take notice that on August 20, 1987, Odgen Martin Systems of San Bernardino, Inc. (OMS) tendered for filing with the Federal Energy Regulatory Commission its initial rate schedule supporting documentation. The rate schedule consists of a power purchase contract between OMS and Southern California Edison Company (Edison). The power purchase contract provides for the sale of the capacity and corresponding energy of a new resource recovery and electric generating facility to be constructed in Ontario, California.

OMS has requested a waiver of notice requirements to permit filing of the rate schedule more than 120 days prior to its proposed effective date and a petition for waiver of the Commission's regulations inappropriate to qualifying small power producers including cost of service data.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Metropolitan Edison Co.

[Docket No. ER87-34-002]

Take notice that on July 20, 1987, Metropolitan Edison Company tendered for filing pursuant to Commission's Order dated June 18, 1987 a compliance report with refunds of excess revenue amounts and interest computed in accordance with Section 35.19a of the Commission Regulations.

The compliance report consists of:

Schedule 1—Summary of refunds including interest.

Schedule 2—Monthly billing determinants and revenues including prior, present and settlement rates.

Schedule 3—Details of monthly revenue refund and associated interest.

Copies of the filing were served upon each person designated on the official service list in this proceeding.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Yankee Atomic Power Co.

[Docket No. ER84-344-005]

Take notice that on August 14, 1987, Maine Yankee Atomic Power Company, tendered for filing pursuant to Commission's order dated July 21, 1987, two items as FPC rate schedules. The first reflects the modification of the return on common equity to 13.60%, to be effective June 1, 1987. The second contains the change in decommissioning expense, also effective June 1, 1987. That schedule further reflects proposed charges resulting from the change to decommissioning expense by wholesale customer rate group. This schedule updates Supplement No. 1 to Supplement No. 8 of Maine Yankee Rate Schedule FPC No. 1.

Copies of this filing have been served upon all parties affected by this filing.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. The Borough of Ellwood City, Pennsylvania and Pennsylvania Power Co., Applicants

[Docket No. EC87-18-000]

Take notice that on July 30, 1987 Ellwood City Borough, Pennsylvania (Borough), and Pennsylvania Power Company (Company) tendered for filing a Joint Application under section 203 of the Federal Power Act seeking authorization for the sale of certain substation and distribution facilities by the Company to the Borough. The Ellwood City Substation facilities to be sold will enable the Borough to receive electric service from the Company at 69,000 volts rather than the current 4,160 volt level. The other facility, a distribution substation and lines, will enable the Borough to serve certain commercial customers now being served by the Company. The consideration for the facilities is $102,734.35. A petition by the Borough for waiver from the filing fee and a petition by both parties for waiver from filing certain exhibits under § 33.3 of the Commission's Rules and Regulations were submitted with the Joint Application. The Company has also submitted an application to the Pennsylvania Public Utility Commission for approval of the transaction.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Public Service Co.

[Docket No. EL87-60-000]

Take notice that on August 24, 1987, Central Illinois Public Service Company (CIPS) tendered for filing a petition for a

declaratory order disclaiming jurisdiction over a planned corporate reorganization.

CIPS is a corporation organized and existing under the laws of the State of Illinois, and is engaged in the sale of electricity which it generates, transmits, and distributes to the public in Illinois. CIPS also sells natural gas to, and transports natural gas for, the public in Illinois. CIPS owns 20 percent of the common stock of Electric Energy, Inc. (EEI), which owns a generating station at Joppa, Illinois. The remaining ownership of EEI is as follows: Union Electric Company, 40%; Illinois Power Company, 20%; and Kentucky Utilities Company 20% (together with CIPS, the "Sponsoring Companies"). EEI supplies electrical energy requirements to an installation of the Department of Energy (DOE) at Paducah, Kentucky. All of the electricity sold by EEI is sold either to the DOE or to the Sponsoring Companies. CIPS proposes to reorganize by causing the creation of a holding company (Company) which will become the owner of all the common stock of CIPS. Under CIPS' reorganization plan, CIPS will retain the whole of its facilities, as well as its ownership interest in EEI.

CIPS states that the corporate reorganization does not involve any of the elements required for Federal Energy Regulatory Commission (Commission) jurisdiction under section 203 of the Federal Power Act (Act), because there will be no disposition by CIPS of its jurisdictional facilities, no merger or consolidation of jurisdictional facilities with those of another person, and no acquisition by CIPS of the securities of another public utility. CIPS further states that, even if its proposed reorganization did constitute a transaction covered by section 203, section 318 of the Act operates to deprive the Commission of jurisdiction. CIPS also states that the Commission has no jurisdiction over its proposed reorganization under section 204(a) of the Act, because no issuance of securities will be involved in the proposed reorganization. Moreover, because any issuance of securities by CIPS, in connection with the proposed reorganization, is subject to regulation by the Illinois Commerce Commission, the Commission is deprived of jurisdiction by operation of section 204(f) of the Act.

CIPS states that its proposed corporate reorganization is consistent with the public interest.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20080 Filed 8-31-87; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 86-484]

Reexamination of the Commission's Comparative Licensing, Distress Sale and Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry; further extension of reply comment deadline.

SUMMARY: This action grants a motion for a further extension of time for filing reply comments in response to comments on the *Notice of Inquiry* in MM Docket No. 86-484 (Reexamination of the Commission's Comparative Licensing, Distress Sale and Classifications), 52 FR 596 (January 7, 1987). The initial comment filing deadline in this proceeding was originally May 7, 1987; it was later extended to June 11, 1987. The reply comment filing deadline in this proceeding was originally July 6, 1987; it was later extended to August 20, 1987. The National Black Media Coalition and other interested parties ("NBMC") filed a request for a further two-week extension of time, or until September 3, 1987. NBMC stated that a two-week extension is necessary because it is still completing its supplemental comments and legal appendices, and that the additional time will help insure that the widest possible spectrum of organizations will participate in this proceeding. Since the Commission was persuaded that the requested extension was reasonably necessary, the Commission is again extending the reply comment date in this proceeding. Consequently, a further extension of time for filing comments until September 3, 1987, was granted.

DATES: Reply comments are now due by September 3, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Terry L. Haines, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

[FR Doc. 87-19937 Filed 8-31-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-798-DR]

Major Disaster and Related Determinations; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois, (FEMA-798-DR), dated August 21, 1987, and related determinations.

DATED: August 21, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

NOTICE: Notice is hereby given that, in a letter of August 21, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 et seq., Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Illinois resulting from severe storms and flooding beginning on

August 13, 1987, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93–288. I therefore declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 408(b) of PL 93–288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Ronald Buddecke of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster: Elk Grove, Hanover, Leyden, Lyons, Maine, Norwood Park, Palatine, Proviso, River Forest, Riverside, Schaumburg, and Wheeling Townships in Cook County; and Addison, Bloomingdale, Downers Grove, Wayne, and York Townships in DuPage County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director.

[FR Doc. 87–20016 Filed 8–31–87; 8:45 am]

BILLING CODE 6718–02–M

[FEMA REP–2, Rev. 1]

Guidance on Offsite Emergency Radiation Measurement Systems; Phase 1—Airborne Release

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Extension of due date for submittal of comments.

SUMMARY: The document, Guidance on Offsite Emergency Radiation Measurement Systems, Phase 1—Airborne Release, FEMA REP–2, Rev. 1, dated July 1987, was available for public distribution and comment on July 20, 1987, as indicated in the notice of availability of FR Vol. 52, No. 117, page 23210.

The due date for the receipt of comments has been extended. Comments on this document will be accepted through September 30, 1987, and should be addressed to: Rules Docket Clerk, Federal Emergency Management Agency, Room 835, 500 C Street Southwest, Washington, DC 20472.

Dated: August 26, 1987.

For the Federal Emergency Management Agency

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 87–20017 Filed 8–31–87; 8:45 am]

BILLING CODE 6718–20–M

FEDERAL HOME LOAN BANK BOARD

[No. AC–657]

Final Action; Approval of Conversion Application; Capital Savings Bank, FSB, Olympia, WA

Date: August 25, 1987.

Notice is hereby given that on August 13, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Capital Savings Bank, FSB, Olympia, Washington, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of San Francisco, 600 California Street, San Francisco, California 94120, and at the Office of Supervisory Agent at the Federal Home Loan Bank of Seattle, 1501 4th Avenue, 19th Floor, Seattle, Washington 98101–1693.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–20037 Filed 8–31–87; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–656]

Final Action; Approval of Conversion Application; First Federal Savings and Loan Association of Lacrosse, Lacrosse, WI

Date: August 25, 1987.

Notice is hereby given that on August 21, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of LaCrosse, LaCrosse, Wisconsin, for permission to covnert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–20038 Filed 8–31–87; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87C–0253]

Filing of Color Additive Petition; CooperVision, Inc.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that CooperVision, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of chromium-cobalt-aluminum oxide to color contact lenses.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–473–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 706(d)(1), 74 Stat. 402 through 403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 7C0209) has

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been filed by CooperVision, Inc., 2610 Orchard Parkway, San Jose, CA 95134, Proposing that Part 73 of the color additive regulations be amended to provide for the safe use of chromium-cobalt-aluminum oxide to color contact lenses.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmenal impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 24, 1987.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-20013 Filed 8-31-87; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Meeting of the Sickle cell Disease Advisory Committee; National Heart, Lung, and Blood Institute

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, Division of Blodd Diseases and Resources, National Heart, Lung, and Blood Institute, October 2, 1987. The meeting will be held at the National Institutes of Health, Bethesda, Maryland 20892, Building 31, Conference Room 8, C-Wing.

The entire meeting will be open to the public from 9 a.m. to 5 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 26, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-20051 Filed 8-31-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting of Pulmonary Diseases Advisory Committee; National Heart, Lung, and Blood Institute

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, October 29-30, 1987, at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 8, Bethesda, Maryland 20892.

The entire meeting, from 8:30 a.m. on October 29 to adjournment on October 30, will be open to the public. The Committee will discuss the current status of the Division of Lung Diseases' programs and Committee plans for fiscal year 1988. Attendance by the public will be limited to the space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A-21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health)

Dated: August 26, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-20052 Filed 8-31-87; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Assessment of Medical Technology Implantable Pumps for Morphine

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, and indications for the use of an implanted infusion pump to administer morphine or other narcotic or non-narcotic analgesics for the treatment of intractable cancer pain.

The use of oral and parenteral analgesics is established for the treatment of patients with intractable pain due to cancer. The development of implantable pumps has permitted the continuous administration of parenteral analgesics on an ambulatory basis. This assessment seeks to identify those clinical situations in which use of an implantable pump for analgesia would be the appropriate treatment for a patient with intractable pain due to cancer. The assessment further seeks to determine what is known about the advantages and risks of this mode of treatment compared to other approaches. This assessment also seeks to determine whether there are categories of patients for whom this mode of therapy is the treatment of choice.

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector and from PHS and other agencies in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit from it, as well as on the clinical acceptability and effectiveness of this technology and extent of use is also being sought. Proprietary information is not being sought. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than November 30, 1987.

Written material should be submitted to: Diane L. Adams, M.D., M.P.H., Office of Health Technology Assessment, 5600 Fishers Lane, Room 18A-27, Rockville, MD 20857, (301) 443-4990.

Date: August 20, 1987.

Morgan N. Jackson,

Acting Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 87-20018 Filed 8-31-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

National Strategic Materials and Minerals Program Advisory Committee; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that the National Strategic Materials and Minerals Program Advisory Committee (NSMMPAC) will meet on Tuesday, September 29, 1987 from 9:30 a.m. until 12:30 p.m. or until business is concluded. The meeting will convene in Rooms 7000 A&B at the Department of the Interior, 18th & C Streets, NW., Washington, DC. It will be open to the public, subject to the availability of space.

The agenda will include: reports of task force activities, presentation of briefing on mine waste regulatory issues, and any recommendations for possible action by the Committee.

Statements are invited from groups and members of the general public who have an interest in mining, minerals or materials issues. The Committee is particularly interested in hearing any comments or suggestions regarding advanced materials and technology issues which fall within the purview of the Committee. To ensure that time will be available to hear such statements, prospective witnesses are requested to notify the Executive Director (see below) of their intention to appear.

FOR FURTHER INFORMATION CONTACT: Gully Walter, Department of the Interior, Washington, DC, Room 6650 (202) 343–2136.

Dated: August 27, 1987.

Gully Walter,

Executive Director.

[FR Doc. 87–20059 Filed 8–31–87; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection and related forms and explantory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: 25 CFR Part 271, Contracts under Indian Self-Determination Act—Subpart H.

Abstract: Any tribe or tribal organization is eligible to contract education programs from the Bureau of Indian Affairs. These rules establish criteria under which a tribe may apply for a new school start or program expansion. The information collected will be in addition to that required under 25 CFR 271.14.

Bureau Form Number: Not applicable.

Frequency: Upon initial application.

Description of Respondents: Tribes and tribal organizations.

Annual Responses: 2.

Annual Burden Hours: 112 hours.

Bureau Clearance Officer: Cathie Martin, (202) 343–3577.

Ronal D. Eden,

Acting Deputy to the Assistant Secretary/ Director—Indian Affairs (Indian Education Programs).

[FR Doc. 87–2003 Filed 8–31–87; 8:45 am]

BILLING CODE 4310–02–M

Information Collection Submitted for Review to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days to the Bureau clearance officer and to the Office of Management and Budget Interior Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Subchapter E—Education, Adult Education Needs Assessment, 25 CFR Part 46.

Abstract: The Office of Indian Education Programs needs and uses this form as a tool for information gathering and accountability for program integrity while performing its mission of advancing educational opportunities for Native American Indian Adults. Respondents are individuals who seek educational opportunities below the college level.

Bureau Form Number: BIA 62124.

Frequency: Annually.

Description of Respondents: Indian/ Alaskan Native students applying for benefits from the Adult Education Program.

Annual Responses: 70.

Annual Burden Hours: 140.

Bureau Clearance Officer: Cathie Martin, (202) 343–3577.

Mary Widenhouse,

Acting Deputy to the Assistant Secretary/ Director—Indian Affairs (Indian Education Programs).

[FR Doc. 87–20032 Filed 8–31–87; 8:45 am]

BILLING CODE 4310–02–M

Information Collection Submitted for Review to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days to the Bureau clearance officer and to the Office of Management and Budget Interior Desk Officer, Washington, DC 20503, telephone (202) 395–7340. Title: Subchapter E—Education, Adult Education Annual Report, 25 CFR Part 46.

Abstract: The Office of Indian Education Programs needs and uses this form as a tool for information gathering and accountability for program integrity while performing its mission of advancing educational opportunities for Native American Indian Adults. Respondents are individuals who seek educational opportunities below the college level.

Bureau Form Number: BIA 62123.

Frequency: Annually.

Description of Respondents: Indian/ Alaskan Native students applying for benefits from the Adult Education Program.

Annual Responses: 70.

Annual Burden Hours: 140.

Bureau Clearance Officer: Cathie Martin, (202) 343–3577.

Mary Widenhouse,

Acting Deputy to the Assistant Secretary/ Director—Indian Affairs (Indian Education Programs).

[FR Doc. 87–20033 Filed 8–31–87; 8:45 am]

BILLING CODE 4310–02–M

Information Collection Submitted for Review to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days to the Bureau clearance officer and to the Office of Management and Budget Interior Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Subchapter E—Education, Adult Education Application Form, 25 CFR Part 46.

Abstract: The Office of Indian Education Programs needs and uses this form as a tool for information gathering and accountability for program integrity while performing its mission of advancing educational opportunities for Native American Indian Adults. Respondents are individuals who seek educational opportunities below the college level.

Bureau Form Number: BIA 6243.

Frequency: Annually.

Description of Respondents: Indian/Alaskan Native students applying for benefits from the Adult Education Program.

Annual Responses: 12,000.

Annual Burden Hours: 720.

Bureau Clearance Officer: Cathie Martin, (202) 343–3577.

Mary Widenhouse,

Acting Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs).

[FR Doc. 87–20034 Filed 8–31–87; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[NV–930–07–4212–24 (N–33613)]

Airport Lease; Termination of Segregative Effect, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Termination of Segregative Effect, Nevada.

SUMMARY: This notice terminates the segregative effect of airport lease application, N–33613.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Ben Collins, District Manager, Las Vegas District Office, P.O. Box 26569, Las Vegas, NV 89126, (702) 388–6403.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2091.3–2(b), the Bureau of Land Management hereby terminates the segregative effect as it pertains to the following described lands:

Mount Diablo Meridian, Nevada

T. 13 S., R. 71 E.,
Sec. 10, lots 7, 8 and 9.

The airport lease application was filed on June 24, 1981, at which time the lands became segregated from all forms of appropriation. A 20-year lease was subsequently issued to Vincent Silvestri for public airport purposes pursuant to the Act of May 24, 1928 (49 U.S.C. 211 through 214). The facilities were not developed in accordance with section 2(C) of the lease. Furthermore, the Federal Aviation Administration has determined that the site would only support a private use facility. Therefore, Public Airport Lease N–33613 has been cancelled.

At 10:00 a.m., on October 1, 1987, the land will be open to the operation of the public land laws, subject to valid existing rights. All valid applications received prior to or at 10:00 a.m., on October 1, 1987, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10:00 a.m., on October 1, 1987, the land will also be open to the operation of the mining laws.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C., 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

The land reimains open to mineral leasing and material sale laws.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87–20003 Filed 8–31–87; 8:45 am]

BILLING CODE 4310–JC–My

[OR–100–84–6310–02: GP–259]

Roseburg District: Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management's Roseburg District Advisory Council will tour the Red Pond area in the North Umpqua Resource Area where they will discuss various land management alternatives.

DATE: September 25, 1987 at 8:15 a.m.

ADDRESS: Bureau of Land Management, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470.

FOR FURTHER INFORMATION CONTACT: Larry Lee, BLM Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470. (Telephone (503) 672–4491, Ext. 230.)

SUPPLEMENTARY INFORMATION: The tour is opened to the public and time will be provided for public comment. Members of the public are responsible for their own transportation..

Summary minutes of the meeting will be maintained at the District Office and wil be available for public inspection and reproduction within 30 days following meeting.

M.D. Berg,

District Manager.

Date: August 24, 1987.

[FR Doc. 87–20002 Filed 8–31–87; 8:45 am]

BILLING CODE 4310–33–M

[OR080 6310–12 GP7–273]

Salem District; Advisory Council Meeting

ACTION: Notice of Salem District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Salem District Advisory Council will be held September 28, 1987, at 1:00 p.m. at the Bureau of Land Management, Salem District Office, 1717 Fabry Road SE., Salem, Oregon.

Agenda for the meeting will include:

1. Input into proposed State Director guidance elements in the Bureau of Land Management 1990's Planning for the Public Lands in Western Oregon.

2. Program reports (limited to three minutes each) on:

a. Table Rock Wilderness Management Plan.

b. Walker Creek Water Supply Project.

c. Yaquina Head Outstanding Natural Area Management Plan.

d. Spotted Owl Management.

e. Vegetative Management.

f. Miscellaneous Reports.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306 by September 24, 1987. Written comments will also be received for the Council's consideration. Summary minutes will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: August 20, 1987.

Van W. Manning,

District Manager.

[FR Doc. 87-20001 Filed 8-31-87; 8:45 am]

BILLING CODE 4310-33-M

[AZ-020-07-4212-13; A-22792]

Realty Action; Exchange of Public Lands, Maricopa and Cochise Counties, AZ

The following described Federal lands have been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, AZ

Township 5 North, Range 1 East,

Section 27, S½SW¼, NW¼SW¼, S½NE¼SW¼, NW¼NE¼SW¼;
Section 33, N½NE¼;
Section 34, NW¼, NW¼SW¼, NW¼NE¼SW¼, NW¼NW¼NE¼.

Containing 450 acres.

In exchange for the above described public lands, the United States will acquire private lands described below from Deputy Partners, an Arizona General Partnership.

GILA AND SALT RIVER MERIDIAN COCHISE COUNTY, AZ

Parcel A

Parcel A (1)

That portion of section 17, Township 24 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona. Lying northwesterly of the San Pedro River as it ran on February 23, 1982.

Parcel A (2)

The southeast quarter and the east half of the southwest quarter of section 18, Township 24 South, Range 22 East of Gila and Salt River Base and Meridian. Cochise County, Arizona, lying north and west of the San Pedro River, as it ran on February 23, 1982.

Parcel A (3)

All of Lot 3 and any portion of Lot 2 of section 19, Township 24 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, lying west of the San Pedro River, as it ran on February 23, 1982.

Parcel B

That portion of the northeast quarter of section 4, Township 24 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

Beginning at the north quarter corner of said section 4;

Thence along the west line of the northeast quarter south 0 degrees 00 minutes 21 seconds west, a distance of 1,321.48 feet;

Thence south 89 degrees 58 minutes 38 seconds east, a distance of 660.00 feet;

Thence north 8 degrees 11 minutes 10 seconds east, a distance of 1,335.35 feet to the north line of said section 4;

Thence along said north line west, a distance of 850.00 feet to the point of beginning.

Except therefrom the north 100.00 feet; and except the west 165.00 feet thereof.

Parcel C

Parcel C (1)

All of the following described property in Township 24 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona:

Section 3: The west half of the northwest quarter, except the north 100.00 feet.

Section 4: The northeast quarter; the southeast quarter of the northwest quarter; the southwest quarter; the west half of the southeast quarter, except the north 100.00 feet of said northeast quarter.

Section 8: The northeast quarter and the south half;

Section 9: The west half.

Except the following described parcels (A) and (B), from said sections, 3, 4, 8 and 9;

(A) Beginning at the north one-quarter corner of said section 4;

Thence along the west line of the northeast quarter south 0 degrees 00 minutes 21 seconds west, a distance of 1,321.48 feet;

Thence south 89 degrees 58 minutes 38 seconds east, a distance of 660.00 feet;

Thence 8 degrees 11 minutes 10 seconds east, a distance of 1,335.35 feet to the north line of said section 4;

Thence along said north line west, a distance of 850.00 feet to the point of beginning.

Except therefrom the north 100.00 feet as dedicated for road purposes.

(B) Beginning at the north one-quarter corner of said section 4;

Thence south 0 degrees 00 minutes 21 seconds west along the west line of the east one-half of section 4, a distance of 1,321.48 feet;

Thence south 89 degrees 58 minutes 38 seconds east, a distance of 660.00 feet;

Thence south, a distance of 330.00 feet;

Thence south 40 degrees 38 minutes 47 seconds west, a distance of 3,045.97 feet to the southeast corner of the northwest quarter of the southwest quarter of section 4;

Thence south 26 degrees 38 minutes 20 seconds west, a distance of 1,476.64 feet to a point on the south line of section 4, said point being south 89 degrees 54 minutes 30 seconds east, a distance of 660.00 feet from the corner of sections 4, 5, 8 and 9;

Thence south 63 degrees 32 minutes 46 seconds west, a distance of 738.40 feet to a point on the east line of section 8, said point being south 0 degrees 11 minutes 19 seconds west, a distance of 330.00 feet from the corner of sections 4, 5, 8 and 9;

Thence south 0 degrees 11 minutes 19 seconds west along the east line of section 8, a distance of 990.43 feet to the southeast corner of the northeast quarter of the nrotheast quarter of section 8;

Thence south 37 degrees 19 minutes 09 seconds west, a distance of 1,659.60 feet;

Thence south 51 degrees 25 minutes 26 seconds west, a distance of 550.00 feet;

Thence north 74 degrees 15 minutes 25 seconds west, a distance of 1,267.56 feet to the center of section 8;

Thence north 0 degrees 11 minutes 25 seconds east, a distance of 2,641.05 feet to the north quarter corner of section 8;

Thence south 89 degrees 57 minutes 44 seconds east, a distance of 1,325.86 feet to the southwest corner of the southeast quarter of the southeast quarter of section 5;

Thence north 0 degrees 03 minutes 00 seconds west, a distance of 1,320.47 feet to the northwest corner of the southeast quarter of the southeast quarter of section 5;

Thence south 89 degrees 57 minutes 37 seconds east, a distance of 1,325.25 feet to the northeast corner of the southeast quarter of the southeast quarter;

Thence north 0 degrees 04 seconds west, a distance of 1,320.42 feet to the east one-quarter corner of section 5;

Thence south 89 degrees 57 minutes 15 seconds east, a distance of 1,324.79 feet to the southwest corner of the southeast quarter of the northwest quarter of section 4;

Thence north 0 degrees 02 minutes 07 seconds west, a distance of 1,320.96 feet to the northwest corner of the southeast quarter of the northwest quarter of section 4;

Thence south 89 degrees 58 minutes 38 seconds east, a distance of 1,325.74 feet to the northeast corner of the southeast quarter of the northwest quarter of section 4;

Thence north 0 degrees 00 minutes 21 seconds east, a distance of 1,321.48 feet to the point of beginning.

Section 17: The north half of the northeast quarter; the southwest quarter of the northeast quarter; the west half, expecting that portion lying west of the San Pedro River.

Section 18: The southeast quarter; the east half of the southwest quarter, excepting that portion lying north and west of the San Pedro River.

Section 19: Lots 1, 2, and 3, excepting that portion lying west of the San Pedro River.

Section 20: Lots 3 and 4.

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Parcel C (2)

Parcels 28, 37, 62, 63, 64, 65 and 66, as shown on survey entitled "Amended Plat Palominas Ranches, Unit II," in sections 3, 4, 9, 10, 17 and 20, Township 24 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, and recorded in Book 3 of Surveys at pages 19, 19A, 19B and 19C, Cochise County Records.

Parcel D

Parcel D(1)

That portion of the southeast quarter of the southeast quarter of section 29, Township 18 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, described as follows:

Beginning 55 rods west of the northeast corner of the southeast quarter;

Thence west 25 rods;

Thense south 80 rods;

Thence east 25 rods;

Thence northeasterly to the Point of Beginning.

Parcel D (2)

That portion of the northeast quarter of the southeast quarter of section 29, Township 18 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona described as follows:

Beginning 45 rods west of the northeast corner of the southeast quarter;

Thence west 35 rods;

Thence south 80 rods;

Thence east 25 rods;

Thence northeasterly to the Point of Beginning.

Parcel D (3)

Lot 8 in the southeast quarter of the northeast quarter of section 32, Township 18 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

Parcel D (4)

That portion of Lot 1, or the northeast quarter of the northeast quarter of section 32, Township 18 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, described as follows:

Beginning at the southeast corner of the south half of the northeast quarter of the northeast quarter;

Thence north 630.90 feet;

Thence north 72° 06● west, 94.08 feet;

Thence west 1229.99 feet;

Thence south 40 rods;

Thence east 80 rods to the POINT OF BEGINNING.

Parcel D (5)

That portion of the northwest quarter of the northeast quarter of the northeast quarter of section 32, Township 18 South, Range 21 West of the Gila and Salt River Base and Meridian, Cochise County, Arizona, described as follows:

Beginning at the northwest corner of the northeast quarter of the northeast quarter;

Thence south 40 rods;

Thence east 25 rods;

Thence north 263.95 feet;

Thence north 72° 06' west, 393.94 feet;

Thence north 17° 54' east, 120 feet;

Thence south 72° 06' east, 355.18 feet;

Thence north 269.95 feet;

Thence west 25 rods to the Point of Beginning;

Except that portion, if any, lying within the following:

A portion of the northeast quarter of the northeast quarter of section 32, Township 18 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

Beginning at the northeast corner, whence the northeast corner of section 32 bears north 73° 26' east, 946.8 feet,

Thence south 63.05 feet to intersect the center line of bridge at north 72° 06' west, 28.98 feet from the center line of West Main Pier;

Thence south 63.05 feet to the southeast corner of this parcel;

Thence north 72° 06' west, 393.94 feet to the southwest corner of this parcel;

Thence north 17° 54' east, 120.0 feet to the northwest corner of this parcel;

Thence south 72° 06' east, 355.18 feet to the Place of Beginning.

Parcel D (6)

Lots 5, 6, 9 and 10, section 33, Township 18 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona; Except the northern 264.32 feet and a 60° by 60' wellsite.

Parcel D (7)

Lots 1, 2, 7 and 8, section 33, Township 18 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, according to G.L.O. Survey dated March 15, 1900 in the records of the Bureau of Land Management, being the same as Patents recorded in Book 16 of Deeds of Real Estate, page 483 and Book 69 of Deeds of Real Estate, page 157, records of Cochise County, Arizona, which described said land as the northwest quarter of the northeast quarter, the northeast quarter of the northeast quarter, and Lots 1 and 2;

Except the north 825 feet thereof.

Parcel E

Township 23 South, Range 22 East,
Section 21, E½NE¼, SW¼NE¼.

Parcel F

Township 23 South, Range 22 East,
Section 21, NW¼.

Comprising 2,675 acres, more or less.

The exchange proposal involves all of the exchange proponent's interest in the surface and mineral estate of the private lands and the surface and mineral estate of the public lands. The exchange is consistent with the Bureau's land use planning objectives.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Right-of-way AR–024000 to Arizona Public Service Company for electric transmission line purposes.

3. Right-of-way AR–010913 to El Paso Natural Gas Company for natural gas pipeline purposes.

4. Right-of-way PHX–086584 to Maricopa County Municipal Water Conservation District.

5. All valid existing rights.

The lands to be acquired by the United States from Deputy Partners shall be subject to certain easements, permits, and other encumbrances detailed in Schedule B of the following TransAmerica Title Insurance Policies: F–830286, F–830287, F–830307, F–830514, F–830515, and F–830516.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice shall segregate the affected public lands from appropriation under the public land laws, including the mining law, and from any subsequent land exchange proposals filed by any proponent other than Deputy Partners or their nominee.

This Notice shall also, inaccordance with 43 CFR 2201.1(b), segregate any and all reserved Federal interest in the offered (non-federal surface) lands from appropriation under the mining laws. This segregation shall terminate two years from the date of this publication or as of the date specified in an opening order published in the **Federal Register**.

The segregation of the described selected lands shall terminate upon inssuance of a document conveying title to such lands or upon publication in the **Federal Register** of a notice of termination of the segregation, or the expiration of two years from the date of publication, whichever occurs first.

The appraised value of the offered and selected lands are not equal. A cash equalization payment shall be made by Deputy Partners in accordance with 43 CFR 2201.5(c)(2).

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Phoenix District Manager, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Paul J. Buff,

Acting District Manager.

Date: August 26, 1987.

[FR Doc. 87–19999 Filed 8–31–87; 8:45 am]

BILLING CODE 4310–32–M

[NM-010-07-4112-01]

District Advisory Council Meeting; Albuquerque District, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of district advisory council meeting.

SUMMARY: The Bureau of Land Management's Albuquerque District Advisory Council will meet on September 21 and September 22, 1987.

On September 21, the Council will meet at 10:00 a.m. at the Post Office in Lindreth, New Mexico to begin a field tour of BLM roads in the Lindreth and Largo Canyon Areas. The tour will conclude in Farmington, New Mexico at 5:00 p.m.

On September 22, the Council will meet at San Juan College in Farmington in the Sun Dining Hall at 8:30 a.m. Topics to be discussed include possible recommendations on the BLM's road policy and review the Wild Rivers Recreation Area Management Plan.

Members of the public wishing to accompany the Council on the tour must provide their own transportation. Time will be made available for public comments at the September 22 meeting.

The Albuquerque District Advisory Council is managed in accordance with the Federal Land Policy and Management Act of 1979. Minutes of the meeting will be made available for review within 30 days following the meeting. For additional information, contact Alan Hoffmeister, Public Affairs Specialist, 435 Montano NE., Albuquerque, New Mexico 87107, (505) 766-4504.

Michael Reitz,

Acting District Manager.

[FR Doc. 87-20035 Filed 8-31-87; 8:45 am]

BILLING CODE 4310-FB-M

[UT-920-07-4121-10]

Uinta Southwestern Utah Regional Coal Team Meeting; Utah and Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Regional Coal Team Meeting and availability of long range coal market analysis for the Uinta Southwestern Utah Coal Region.

SUMMARY: In accordance with the responsibility outlined in the Federal Coal Management regulations (43 CFR Part 3400), the Regional Coal Team for the Uinta Southwestern Utah Federal Coal Production Region will hold a meeting to review and discuss the status and need for new Federal Coal Leasing and method of leasing, long range coal market analysis for the Region, draft data adequacy standards, and to discuss other related matters, if any.

The Regional Coal Team is also requesting public comment on subjects to be discussed at the meeting. A copy of the Uinta Southwestern Utah Region Long Range Coal Market Analysis is available from the BLM State Office, Public Room in Utah (Salt Lake City) and Colorado (Denver).

DATE: The Regional Coal Team will meet on October 27, 1987, at 9:00 am.

ADDRESS: The meeting will be held at the Salt Lake Sheraton Hotel, Salon I, 255 South West Temple, Salt Lake City, Utah. Any written comments on the subject to be covered should be provided the BLM State Director, Utah, by October 20, 1987.

FOR FURTHER INFORMATION CONTACT: Max Nielson, Uinta Southwestern Utah Project Manager, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111-2303, telephone (801-524-3004).

SUPPLEMENTARY INFORMATION: The meeting will introduce new members of the recently chartered Regional Coal Team and will discuss recent trends in the region concerning coal leasing and focus on effectively meeting future leasing needs.

Ronald G. Robison,

State Director, Utah.

[FR Doc. 87-19998 Filed 8-31-87; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 22, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 16, 1987.

Amy Schlagel,

Acting Chief of Registration, National Register.

FLORIDA

Leon County

Tallahassee, *Johnson—Carter House*, 800 N. Calhoun St.

Pinellas County

Largo, *Johnson, Louis, Building*, 161 First St., SW.

IDAHO

Adams County

Council, *Adams County Courthouse (County Courthouses in Idaho MPS)*, Michigan St.

Jerome County

Jerome, *Jerome County Courthouse (County Courthouses in Idaho MPS)*, N. Lincoln

Power County

American Falls, *Power County Courthouse (County Courthouses in Idaho MPS)*, Bannock Ave.

Washington County

Weiser, *Washington County Courthouse (County Courthouses in Idaho MPS)*, E. Court St.

IOWA

Dallas County

Earlham vicinity, *Wilson, John, House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, S side I-80

Madison County

Earlham vicinity, *Early, John and Elizabeth McMurn, House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, 1 mi. S of G31 between P53 & P57

Earlham vicinity, *Ford, W. T., House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, 2½ mi. S of Earlham

Earlham vicinity, *Henderson, Daniel and Nancy Swaford, House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, 8 mi. S of Earlham on P57

Earlham vicinity, *McQuie, Peter and Isabelle McCulloch, Milkhouse (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, SW of Earlham

Earlham vicinity, *Seerley, William, Stone Building (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, SE of Earlham

Earlham vicinity, *Stone, James Allen, Barn (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, 2½ mi. SE of Earlham

Earlham vicinity, *Wilson, Seth and Elizabeth, House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, SE of Earlham

Peru vicinity, *Ogburn, William, House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, 1½ mi. N of E. Peru

Peru, *Reed Quarry (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, CR G68, W city limits of Peru

St. Charles vicinity, *Holmes, John S. and Elizabeth Beem, Barn (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, CR G50, 1 mi. S.

St. Charles vicinity, *Queen, Hogan and Martha A. Runkle, House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, 5 mi. W of St. Charles on CR G50

Winterset vicinity, *Armstrong, George and Susan Guiberson, House (Legacy in Stone:*

The Settlement Era of Madison County, Iowa TR), 2½ mi. N of Winterset on G4R
Winterset vicinity, *Bevington, C. D. and Eliza Heath, Privy (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, 805 S. Second Ave.
Winterset vicinity, *Drake, John and Amanda Bigler, House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, 11 mi. W of Winterset on IA 92
Winterset vicinity, *Duff Barn (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, N of Winterset on US 169
Winterset vicinity, *Duncan, John E., House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, ½ mi. S of Winterset of P69
Winterset vicinity, *Evans, Henry and Elizabeth Adkinson, House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, ½ mi. E of US 169 on CR G50
Winterset vicinity, *Macumber, John Andrew and Sara, Ice House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, On G53 1½ mi. E of jct. with P69
Winterset vicinity, *McDonald House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, W of Winterset off IA 92
Winterset vicinity, *Nichols, William Anzi, House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, E of Winterset of IA 92
Winterset vicinity, *Schnellbacher, John and Fredericka, House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, G47, 1½ mi. E of jct. with P53
Winterset vicinity, *Seymour Church House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, US 169
Winterset vicinity, *Smith, Hiram C., House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, 6 mi. W of Winterset on IA 92
Winterset vicinity, *Smith, Hiram C., Milking Shed (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, 6 mi. W of Winterset on IA 92
Winterset, *Hornback, Emily, House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, 605 N. First St.
Winterset, *Shriver, William R. and Martha Foster, House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, 616 E. Court Ave.
Winterset, *Sprague, Brown, and Knowlton Store (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, First & Court
Winterset, *Vawter, J. G. and Elizabeth S., House (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, 223 S. First St.
Winterset, *White, Munger and Co. Store (Legacy in Stone: The Settlement Era of Madison County, Iowa TR)*, 102 W. Court

NEVADA

Carson (Independent City)

Buildings (DeLongchamps, Frederick J., Architecture TR), Carson St.

Clark County

Las Vegas, *Railroad Cottage Historic District (Properties Associated with the San Pedro, Los Angeles, and Salt Lake Railroad TR)*, 601–629 S. Casino Center

NORTH CAROLINA

Cumberland County

Fayetteville, *Orange Street School*, 500 blk. of Orange St., jct. of Orange & Chance Sts.

NORTHERN MARIANA ISLANDS

Island of Saipan

Chalan Galaide

OHIO

Cuyahoga County

Cleveland, *Cleveland Municipal Stadium*, Erieview Dr.

Ottawa County

Marblehead, *Clemons, Alexander, House*, 133 Clemons St.

Stark County

East Canton, *Werner Inn*, 131 E. Nassau St.

Summit County

Akron, *Barder, Byron R., House*, 1041 W. Market St.

TEXAS

Brazos County

Bryan, *Allen Academy Memorial Hall (Bryan MRA)*, 1100 blk. Ursuline
Bryan, *Allen Block (Bryan MRA)*, 400–422 N. Main
Bryan, *Allen, R.O., House-Allen Academy (Bryan MRA)*, 1120 Ursuline
Bryan, *Armstrong House-Allen Academy (Bryan MRA)*, 1200 Ursuline
Bryan, *Astin, R.Q., House (Bryan MRA)*, 508 W. Twenty-sixth
Bryan, *Blazek, W.J., House (Bryan MRA)*, 409 W. Thirtieth
Bryan, *Bryan Compress and Warehouse (Bryan MRA)*, 911 N. Bryan
Bryan, *Bryan Ice House (Bryan MRA)*, 107 E. Martin Luther King
Bryan, *CSPS Lodge-Griesser Bakery (Bryan MRA)*, 304 N. Logan
Bryan, *Chance, James O., House (Bryan MRA)*, 102 S. Parker
Bryan, *East Side Historic District (Bryan MRA)*, Roughly bounded by Houston, Twenty-ninth, Haswell, and E. Thirtieth Sts.
Bryan, *Edge, Eugene, House (Bryan MRA)*, 609 S. Ennis
Bryan, *English-Dansby House (Bryan MRA)*, 204 W. Twenty-eighth
Bryan, *English-Poindexter House (Bryan MRA)*, 206 W. Twenty-eighth
Bryan, *First Baptist Church (Bryan MRA)*, 201 S. Washington
Bryan, *First National Bank and Trust Building (Bryan MRA)*, 120 N. Main
Bryan, *First State Bank and Trust Building (Bryan MRA)*, 100 W. Twenty-fifth
Bryan, *Higgs, Walter J., House (Bryan MRA)*, 609 N. Tabor
Bryan, *House At 1401 Baker (Bryan MRA)*, 1401 Baker
Bryan, *House at 109 N. Sterling (Bryan MRA)*, 109 N. Sterling
Bryan, *House at 407 N. Parker (Bryan MRA)*, 407 N. Parker
Bryan, *House at 600 N. Washington (Bryan MRA)*, 600 N. Washington
Bryan, *House at 603 E. Thirty-first (Bryan MRA)*, 603 E. Thirty-first
Bryan, *House at 604 E. Twenty-seventh (Bryan MRA)*, 604 E. Twenty-seventh
Bryan, *Humpty Dumpty Store (Bryan MRA)*, 218 Bryan
Bryan, *Jenkins, Edward J., House (Bryan MRA)*, 607 E. Twenty-seventh
Bryan, *Jones, J.M., House (Bryan MRA)*, 812 S. Ennis
Bryan, *Kemp, E.A., House (Bryan MRA)*, 606 W. Seventeenth
Bryan, *McDougal-Jones House (Bryan MRA)*, 600 E. Twenty-seventh
Bryan, *Moore House (Bryan MRA)*, 500 E. Twenty-fifth
Bryan, *Noto House (Bryan MRA)*, 900 N. Parker
Bryan, *Oliver, Dr. William Holt, House (Bryan MRA)*, 602 W. Twenty-sixth
Bryan, *Parker Lumber Company Complex (Bryan MRA)*, 419 N. Main
Bryan, *Parker, Milton, House (Bryan MRA)*, 200 S. Congress
Bryan, *Sausley House (Bryan MRA)*, 700 N. Washington
Bryan, *Sinclair Station, (Old) (Bryan MRA)*, 507 S. Texas
Bryan, *Smith-Barron House (Bryan MRA)*, 100 S. Congress
Bryan, *St. Andrew's Episcopal Church (Bryan MRA)*, 217 W. Twenty-sixth
Bryan, *St. Anthony's Catholic Church (Bryan MRA)*, 306 S. Parker
Bryan, *Stone, Roy C., House (Bryan MRA)*, 715 E. Thirty-first
Bryan, *Zimmerman, Minnie Zulch, House (Bryan MRA)*, 308 N. Washington

The 15-day commenting period for the following property has been waived in order to assist in the buildings preservation.

NEW YORK

New York County

New York, *United States Courthouse*, 40 Foley Square

[FR Doc. 87–19938 Filed 8–31–87; 8:45 am]
BILLING CODE 4310–70–M

Intent To Negotiate Concession Permit; Teton Boating Co., Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Teton Boating Company, Inc. authorizing it to provide boat transportation and boat rental services for the public at Grand Teton National Park, Wyoming for a period of five (5) years from January 1, 1987, through December 31, 1991.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and

no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225, for information as to the requirements of the proposed permit.

Jack W. Neckels,

Acting Regional Director, Rocky Mountain Region.

Date July 9, 1987.

[FR Doc. 87-20009 Filed 8-31-87; 8:45 am]

BILLING CODE 4310-70-M

[A18 (GUIS-S)]

Gulf Islands National Seashore; Advisory Committee Meeting

July 29, 1987

AGENCY: National Park Service, Gulf Islands National Seashore, Interior.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Gulf Islands National Seashore Advisory Commission will be held at 2:00 p.m., at the following location and date.

DATE: September 22, 1987.

ADDRESS: William Colmer Visitor Center, Davis Bayou, Ocean Springs, Mississippi.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Eubanks, Superintendent, Gulf Islands National Seashore, P.O. Box 100, Gulf Breeze, Florida 32561, Telephone: (904) 932-6316.

SUPPLEMENTARY INFORMATION:

The purpose of the Gulf Islands National Seashore Advisory Commission is to consult and advise with the Secretary of the Interior or his designee on matters of planning and development of Gulf Islands National Seashore. The members of the Advisory Commission are as follows:

Mrs. Courtney Blossman, Chairman (Mississippi)
Mr. Gorden D. Allen (Mississippi)
Mr. George Byars (Mississippi)
Mr. Lloyd Caillavet (Mississippi)
Dr. Ed Cake (Mississippi)
Mr. William H. Creel, Sr. (Mississippi)
Mr. Bill Davis (Mississippi)
Mr. Paul Delcambre, Sr. (Mississippi)
Ms. Betty S. Goodwin (Mississippi)
Mrs. Leewynn Hodges (Mississippi)
Mrs. Sara McGehee (Mississippi)
Mr. James E. Walker, Sr. (Mississippi)
Mrs. Lois Anderson (Florida)
Mr. Sherman Barnes (Florida)
Mr. J. Earle Bowden (Florida)
Mr. Lamar B. Cobb (Florida)
Mr. Paul A. Daniel (Florida)
Mrs. Betty Gerritz (Florida)
Mr. Michael Mitchell (Florida)
Mrs. Dianne Rittenhouse (Florida)
Mr. Roger Taylor Robinson (Florida)
Mr. Walter Francis Spence (Florida)
Mr. Britton Stamps (Florida)
Mr. Vince Whibbs (Florida)

The matters to be discussed at this meeting will include:

(1) The status of Park development plans.

(2) Resource Management and Research Projects update.

(3) Channel maintenance projects.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and it is expected that not more than 25 persons will be able to attend. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Robert M. Baker,

Regional Director, Southeast Region.

Date: August 13, 1987.

[FR Doc. 87-20010 Filed 8-31-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-30038]

Petition for Declaratory Order; Extension of Time to File Comments; American Coach Lines, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments.

SUMMARY: By a decision served August 5, 1987, the Commission instituted a proceeding to determine whether incidental charter rights authorize service entirely within the Washington, DC, Metropolitan Area. Notice of the action was published August 6, 1987, in the **Federal Register** at 52 FR 29317, and in the *ICC Register*. The due date for comments was set as September 8, 1987. Pursuant to the request of the Washington Metropolitan Area Transit Commission, the time for filing comments has been extended until October 14, 1987.

DATE: Comments may be filed on or before October 14, 1987.

ADDRESSES: Send an original and 10 copies of comments referring to No. MC-C-30038 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to each of petitioner's representatives:

Leonard A. Jaskiewicz, 1730 M Street, NW., Suite 501, Washington, DC 20036
Lawrence E. Lindeman, 805 King Street, Suite 400, Alexandria, VA 22314

FOR FURTHER INFORMATION CONTACT:

James L. Brown, (202) 275-7898

or

Andrew L. Lyon, (202) 275-7691

By the Commission, Paul H. Lamboley, Acting Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20068 Filed 8-31-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Office of Administrative Law Judges, Amended Procedures for Internal Handling of Complaints of Misconduct or Disability

AGENCY: Office of Administrative Law Judges, Office of the Secretary, Labor.

ACTION: Notice of revision of amended procedures for internal handling of complaints of misconduct or disability.

SUMMARY: Notice is given of revision of the amended procedures for the internal handling of complaints of judicial misconduct or disability on the part of Department of Labor Administrative Law Judges through the establishment of an Advisory Committee. Notice was originally published in the **Federal Register** on May 22, 1981 (46 FR 28050); and as amended on July 5, 1983 (48 FR 30843).

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Vittone, Associate Chief Judge, Office of Administrative Law Judges, 1111 20th Street, NW., Washington, DC 20036, Phone 202–653–5057.

SUPPLEMENTARY INFORMATION: The Amended Procedures for Internal Handling of Complaints of Misconduct or Disability on the part of Department of Labor Administrative Law Judges are revised in order to accommodate the protocol to changes in the number, size and location of our regional or satellite offices. The revision is set forth below.

Subsection 1. of the Procedures section is revised to read as follows:

1. On receipt of one or more written complaints of misconduct or disability of any DOL Administrative Law Judge, or upon his own written charge of misconduct or disability, the Chief Judge shall refer such complaint(s) or charge for limited informal inquiry to an Advisory Committee of three members appointed by him for the particular inquiry from a panel of six judges elected for a term of one year by the DOL Administrative Law Judges other than those who may elect panels in regional offices as hereinafter provided. The judge complained of or charged shall have the right to object to any one or more members of the Committee, in which case such member(s) shall be replaced by one or more judges selected by the Chief Judge from the elected panel.

The Judges in each Regional Office having on its roster ten (10) or more judges in addition to its District Chief Judge (e.g., San Francisco, Cincinnati, and Fort Lauderdale), shall elect a panel of three (3) of its judges from which the Chief Judge shall, in appropriate circumstances and in the manner described above, appoint two (2) judges to serve as a Regional Advisory Committee to function with respect to complaints or charges of misconduct or disability of Administrative Law Judges in such office. A judge elected to any panel (Headquarters or Regional) shall serve thereon for one (1) year or until his/her successor is elected. No District Chief Judge may serve on any panel.

Complaints or charges of misconduct or disability on the part of any Administrative Law Judge employed in a regional or satellite office having less than ten (10) judges (other than the District Chief Judge) on its roster shall be referred, as appropriate, to the (Headquarters) Advisory Committee.

Publication in Final

Notice of proposed rule making has not been published in the **Federal Register** as the procedure established herein is a rule of agency practice for which notice and comment is not required. See 5 U.S.C. 553(b)(A).

For the reasons set out in the preamble, the Amended Procedures for Internal Handling of Complaints of Judicial Misconduct are revised as hereinabove set forth.

Signed at Washington, DC on this 19th day of August, 1987.

Nahum Litt,

Chief Judge.

[FR Doc. 87–20071 Filed 8–31–87; 8:45 am]

BILLING CODE 4510–20–M

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing the recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirement.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Bureau of Labor Statistics

Permanent Mass Layoff and Plant Closing Program

Reports 1–3 and Supplemental Employer Information Report 1220–0090; BLS 428

Quarterly

State or local governments: businesses or other for-profit organizations; Federal agencies or employees; non-profit institutions.

15,504 responses; 168,055.2 hours; 4 forms

Section 462(e) of the Job Training Partnership Act states that the Secretary of Labor develop and maintain statistical data on permanent mass layoffs and plant closings, and publish a report annually. These data will be used to study the causes and effects of worker dislocations.

Employment and Training Administration

Interstate Arrangement for Combining Employment and Wages 1205–0029; ETA 586

Quarterly

State or local governments

53 respondents; 636 hours; 1 form

3304(a)(9)(B) of the I.R.C. of 1954 requires States to participate in arrangement, as prescribed by the Secretary of Labor, which provide for the payment of UI benefits on the basis of combining employment and wages earned in two or more states. This report is needed to measure the scope and monitor the operation of this program.

Occupational Safety and Health Administration

Ethylene Oxide
1218–0108
Recordkeeping; on occasion
Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations
6453 respondents; 215,036 burden hours; 0 forms
This regulation requires employers to establish and maintain accurate records of exposure monitoring and medical surveillance for employees exposed to ethylene oxide (EtO). These records will be used by employers, employees, physicians and the Government to ensure that workplace exposure to EtO does not adversely affect the health of employees.

Signed at Washington, DC this 27th day of August, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87–20070 Filed 8–31–87; 8:45 am]

BILLING CODE 4510–26–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Al Tech Specialty Steel Corp., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 11, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 11, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 24th day of August 1987.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition	Articles produced
Al Tech Specialty Steel Corp. (USOA)	Perrysburg, OH	8/24/87	7/29/87	20,026	Steel.
Anchor Hocking/Newell Co. (AFGWU)	Lancaster, OH	8/24/87	8/17/87	20,027	Tableware
Dee Cee Apparel (Workers)	Hohenwald, TN	8/24/87	8/11/87	20,028	Pants.
Grace Shoe Mfg. Co., Inc. (Workers)	Somersworth, NH	8/24/87	8/6/87	20,029	Shoes
Holley Auto Div.-Colt Industries (Workers)	Paris, TN	8/24/87	8/10/87	20,030	Carburetors.
Imperial Knife Div. (Company)	Providence, RI	8/24/87	8/12/87	20,031	Tableware
Nicor Drilling Co. (Workers)	Lafayette, LA	8/24/87	8/13/87	20,032	Oil and gas
Srico Industries (Company)	Byesville, OH	8/24/87	8/10/87	20,033	Yokes and gears.
Switches, Inc. (Workers)	Leters Ford, IN	8/24/87	8/14/87	20,034	Auto. switches
TMBR/Sharp Drilling (Workers)	Midland, TX	8/24/87	8/12/87	20,035	Oil and gas
True-Weld Grating, Inc. (IUMSWSA)	Pittsburgh, PA	8/21/87	8/11/87	20,036	Steel Grating

[FR Doc. 87–20072 Filed 8–31–87; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–19,671]

Affirmed Determination Regarding Application for Reconsideration; Hobart Corp., Dayton, OH

By an application dated July 27, 1987, the International Union of Electronic and Electrical Workers (IUE) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of former workers of Hobart Corporation, Dayton, Ohio. The determination was published in the **Federal Register** on July 21, 1987 (52 FR 27479).

The union claims that Hobart Corporation is transferring the production of food weighing scales from Dayton to Taiwan. According to the union, the transferred production will be sold to Hobart's domestic customers.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 21st day of August, 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[TA–W–19,629]

Dismissal of Application for Reconsideration; J.E. Carter Energy & Development Corp., Houston, TX

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at J.E. Carter Energy & Development Corporation, Houston, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–19,629; J.E. Carter Energy & Development Corp., Houston, TX (August 25, 1987)

Signed at Washington, DC this 25th day of August 1987.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 87–20014 Filed 8–31–87; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-19, 961]

Termination of Investigation; Omnisport Inc. Woonsocket, RI

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 27, 1987 in response to a worker petition received on July 27, 1987 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers producing nylon and wool athletic and award jackets at Omnisport Incorporated, Woonsocket, Rhode Island.

The petitioner, Mr. Steve Stycos, union representative for workers at Omnisport Incorporated, Woonsocket, Rhode Island has requested that the petition be withdrawn by letter, received August 12, 1987. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 17th day of August 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-20075 Filed 8-31-87; am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Butler Livestock Systems, et al

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 17, 1987—August 21, 1987

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,842; Butler Livestock Systems, A Division of Butler Manufacturing Co., Fort Atkinson, WI

TA-W-19,832; Midwest Carbide Corp., Keokuk, IA

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-19,950; Federal Ore and Chemical, Inc., (Formerly Federal Bentonite Div. of Aurora Industries), Culver, MN

U.S. imports of bentonite are negligible.

TA-W-20,005; Double E. Well Service, St. Louis, MO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,888; Central Oilfied Supply Co., Wooster, OH

U.S. imports of pipe and tubing declined absolutely in 1986 compared to 1985 and in the January through March period of 1987 compared to the corresponding 1986 period.

TA-W-19,911; American Acceptance Corp., Norristown, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,886; Arco Oil and Gas Co., Div. of Arco Healdton Suboffice, Healdton, OK

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,962; Port Clyde Foods, Inc., Maine Container Div., Rockland, ME

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certifications.

TA-W-20,000; Texas Gas Corp., Corpus Christi

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,920; Simpson Timber Co., Columbia Door Div., Vancouver, WA

U.S. imports of flush type wood doors declined absolutely and relative to domestic shipments in 1986 compared to 1985 and declined absolutely in the first quarter of 1987 to the first quarter 1986.

TA-W-19,915; Eureka Pipe Line Co., Parkersburg, WV

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,024; San Antonio Data Processing, Inc., San Antonio, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-19,869; W.E. Stephens, Watertown, TN

A certification was issued covering all workers of the firm separated on or after June 22, 1986.

TA-W-19,851; Gent J. Manufacturing, Inc., Plymouth, PA

A certification was issued covering all workers of the firm separated on or after June 24, 1986.

TA-W-19,817; Par Microsystems Corp., New Hartford, NY

A certification was issued covering all workers of the firm separated on or after June 4, 1986.

TA-W-19,960; Mobil Exploration and Producing, Denver Division, Denver, CO

A certification was issued covering all workers of the firm separated on or after June 25, 1986.

TA-W-19,819; Samco Sportswear, Crosby, MN

A certification was issued covering all workers of the firm separated on or after June 1, 1986 and before June 15, 1987.

TA-W-19,823; Brookevale Manufacturing Co., Belle Vernon, PA

A certification was issued covering all workers of the firm separated on or after March 1, 1987.

TA-W-19,848; E.F. Johnson Co., Waseca, WI

A certification was issued covering all workers of the firm separated on or after June 19, 1986.

TA-W-19,853; Holly Dress Co., Nanticoke, PA

A certification was issued covering all workers of the firm separated on or after June 22, 1986.

TA-W-19,893; FPCO Oil and Gas Co., Houston, TX

A certification was issued covering all workers of the firm separated on or after July 1, 1986.

TA-W-19,893A; FPCO Oil and Gas Co., Bakersfield, CA

A certification was issued covering all workers of the firm separated on or after July 1, 1986.

TA-W-19,893B; FPCO Oil and Gas Co., Denver, CO

A certification was issued covering all workers of the firm separated on or after July 1, 1986.

I hereby certify that the aforementioned determinations were issued during the period August 17, 1987–August 21, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 25, 1987.

Glenn M. Zech,

Acting Director Office of Trade Adjustment Assistance.

[FR Doc. 87-20076 Filed 8-31-87; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act; Debt Collection; Guidance to States

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of method of repayment to recover misexpenditures.

SUMMARY: The Employment and Training Administration of the Department of Labor has issued instructions to the States on the recovery of misexpenditures under the Job Training Partnership Act. The notice is given to interested persons in order that they may familiarize themselves with the types of misexpenditures requiring repayment in non-Federal funds and the disposition of recoveries from other less serious misexpenditures. This guidance was provided in a Training and Employment Guidance Letter issued August 11, 1987 and published at the end of this document.

EFFECTIVE DATE: August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Linda D. Kontnier, Chief, or James Mac Donald, Division of Debt Management, Office of Grants and Contracts Management, Employment and Training Administration, Department of Labor, Room N4671, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535-0704.

SUPPLEMENTARY INFORMATION: On May 12, 1987, the Employment and Training Administration of the Department of Labor published in the **Federal Register** a notice of a proposed Training and Employment Guidance Letter on the disposition of misexpended funds recovered under the Job Training Partnership Act. Interested parties were invited to submit comments unitl June 11, 1987. This notice summarizes the comments received and announces the issuance of the Training and Employment Guidance Letter.

Discussion of Comments

A total of eight replies were received. They contained numerous comments in response to the May 12, 1987, **Federal Register** notice of the proposed guidance letter. In their letters, recipients expressed concerns about the policy and the impact of its implementation.

The comments have been grouped into six categories for purposes of analysis and resolution:

(1) A number of recipients requested additional guidance definition to enable them to identify more precisely those instances in which it is necessary to remit misexpenditures to the Department.

At this early stage of the JTPA program, it is not possible to identify every circumstance for which recovered misexpenditures must be returned to the Department. Recipients are referred to sections 164(a) to 164(e)(1) of the Act, the implementing regulations at 20 CFR 629.44, TEGL No. 6-84, and OMB Circular A-128. These guidance materials should be read within the context of DOL's objectives as stated in the background section. First, DOL is committed to vigorous corrective action in instances of *serious violations* or *illegal acts.* At the same time, DOL is equally committed to a conservation of funds for program use. While there may appear to be a dichotomy between the two objectives, the long term prospects of achieving the second objective is enhanced by the enforcement of sanctions in those instances in which misexpenditures are due to serious violations or illegal acts.

It will be the responsibility of recipients to exercise judgment in determining if the misexpenditure in question should be categorized as a serious violation or illegal act. While the nature of some cases may be obvious, others may require the recipient's best judgment based on the available facts. Such a judgment should reflect the interests of responsible public policy that is concerned with the integrity of the recipient's employment and training delivery system as a whole. While the practical effect of a repayment on the integrity of the delivery system may be difficult to measure quantitatively, experience has shown that it has both an immediate and longterm effect.

There are no changes in the TEGL as a result of these comments.

(2) Other commenters complained that the net result of the policy will be to reduce the resources available to provide job training services. Relatedly, one commenter argued that the policy acts as a *de facto* reduction of the JTPA grant which should be effectuated (only) through legislative action. Section 164 of the Act directs the repayment of misexpenditures so that no further legislative action is necessary.

When non-Federal funds are remitted to the Department in settlement of a debt, there is no reduction of JTPA funds and therefore no reduction of the funds available to provide job training services. Only if JTPA funds are remitted to the Department or if the Secretary effects an allocations offset is there a reduction of the resources available to provide job training services.

There are no changes in the TEGL as a result of these comments.

(3) Some commenters suggested that the three year limitation for reprogramming be eliminated or extended.

Section 161(b) of the Act states that, "Funds obligated for any program year may be expended by each recipient during that program year and the two succeeding program years * * *."

This is a standard limitation that the Congress imposes on appropriations in order to maintain control of public funds. Short of amending the legislation, there is no possibility of changing this limitation.

There are no changes in the TEGL as a result of these comments.

(4) A few commenters asked the question whether there will be any provision for repayment of misexpenditures by a method other than non-Federal funds.

The proposed TEGL directs recipients to collect and repay only those amounts associated with misexpenditures which relate to the Department's first objective of vigorous corrective action: serious violations or illegal acts. There are no provisions for repayment of these misexpenditures by a method other than non-Federal funds.

With respect to misexpenditures which are not in the category of "serious violations or illegal acts," the proposed TEGL addresses only those situations in which the subrecipient actually remits non-Federal funds to the recipient. In those instances, the recipient is to reprogram the funds, subject to the 3 year expenditure limitation.

A phrase has been inserted in paragraph seven to make clear that, in

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instances where the liability does not arise under one of the serious categories, the TEGL addresses only those situations in which the recipient has recovered non-Federal funds.

(5) One commenter complained that the proposed policy requiring repayment of non-Federal funds was more restrictive than the law and the regulations which the commenter said "permit the use of other Federal funds to repay debts."

In reference to repayment, section 164(e)(1) uses the phrase, "from funds other than funds received under this Act." Such a phrase does not make the affirmative statement that other Federal funds can be used to repay a JTPA misexpenditure. It is the policy of ETA not to accept other Federal funds in payment of debts. To do otherwise would be to encourage, or at least condone, a type of offset that would defeat the purposes of other Federal programs.

There are no changes in the TEGL as a result of this comment.

(6) One commenter asked if there was a relationship between the consideration of the four waiver factors at 164(e)(2)(A–D) of the Act and the determination that a misexpenditure is in the category of "serious violations or illegal acts." There is no relationship between the two. In the process of responding to a request for waiver of the recipient's liability for a subrecipient misexpenditure, the Secretary reviews the four factors in order to determine if the *recipient* has demonstrated substantial compliance with the factors.

In determining whether a misexpenditure is in the category of "serious violation or illegal act," a recipient reviews the relevant information available, using as background guidance the references in the TEGL, including sections 164(a) to 164(e)(1) of the Act, but not section 164(e)(2) which contains the four factors that the Secretary uses in his determination.

There are no changes in the TEGL as a result of this comment.

Signed at Washington, DC, this 25th day of August 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

Date: August 11, 1987.

[Training and Employment Guidance Letter No. 2–87]

From: Roger D. Semerad, Assistant Secretary of Labor.

Subject: Debt Collection Under the Job Training Partnership Act (JTPA).

1. Purpose

To provide States with instructions on the method of repayment to recover misexpenditures under the Job Training Partnership Act.

2. References

Debt Collection Act of 1982 (31 U.S.C. 3701 *et seq.*); Federal Claims Collection Standards (4 CFR Chapter II); Training and Employment Guidance Letter (TEGL) No. 6–84; OMB Circular A–128; Training and Employment Information Notice (TEIN) No. 7–86.

3. Background

Training and Employment Information Notice (TEIN) No. 7–86 was issued on August 14, 1986, to address a very narrow concern: Insuring consistency in the Employment and Training Administration's (ETA) response to States' inquiries on how to handle misspent JTPA funds recovered from sub-recipients. Since the issuance of TEIN No. 7–86, further consideration has been given to two additional objectives: (1) The reinforcement of the Department of Labor's commitment to vigorous corrective action in relation to instances of serious violations or illegal acts, and (2) the conserving of funds for program use.

4. Method of Repayment

Section 164(e)(1) of the Job Training Partnership Act requires repayment from non-JTPA funds where the misexpenditure was due to "willful disregard of the requirements of the Act, gross negligence, or failure to observe accepted standards of administration."

For those misexpenditures where the liability arises from:

(1) "Willful disregard," "gross negligence," or "failure to observe accepted standards of administration," under section 164(e)(1);

(2) "Incidents of fraud, malfeasance, misapplication of funds" or other serious violations as defined in TEGL No. 6–84; or

(3) "Illegal acts or irregularities" which are required to be reported in accordance with paragraphs 11.b.(4) and 12. of OMB Circular A–128,

it is ETA policy that non-Federal funds must be remitted to the Department of Labor and these amounts will not be available for reprogramming; such funds will revert to the U.S. Treasury. This policy applies whether the misexpenditure occurs at the recipient or at any sub-recipient level. These funds are to be remitted to:

U.S. Department of Labor, Employment and Training Administration, Office of Financial and Administrative Management, Room N 4671, 200 Constitution Avenue, NW., Washington, DC 20210.

The letter of transmittal should provide the following identifying information:

Governor/Secretary Agreement Number (Grant No.), program title, program year to which the repayment applies, sub-recipient name, sub-recipient grant or contract number.

In those instances where the liability does not arise under the above categories and there has been a repayment of non-Federal funds to the recipient, the funds shall be reprogrammed into the same JTPA program and title, provided this reprogramming takes place during the program year the funds were obligated by DOL, or the two succeeding program years.

Any funds remitted to ETA because the three year availability period has expired, must be remitted to the Department of Labor at the above address. Such funds will not be available to the State for subsequent drawdown or expenditure.

In those cases where non-Federal funds are reprogrammed, documentation relating to the repayment of the liability and the reprogramming of the funds should be maintained and available for review during the compliance review process.

5. Effective Date

This Training and Employment Guidance Letter shall be effective as of the date of issuance.

6. Rescission.

Training and Employment Information Notice No. 7–86 is cancelled as of the above effective date of this issuance.

7. Promulgation

The guidance contained in this letter will be published in the **Federal Register.** Copies of the TEGL are being sent to State JTPA liaisons.

8. Inquiries

Questions concerning this guidance letter should be directed to Linda Kontnier or James MacDonald on (202) 535–0704.

Expiration date: August 31, 1988.

[FR Doc. 87–20077 Filed 8–31–87; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Environmental Assessment and Finding of No Significant Impact; Boston Edison Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from certain requirements of 10 CFR Part 50, Appendix R, to the Boston Edison Company (BECo/licensee) for the Pilgrim Nuclear Power Station located at the licensee's site in Plymouth County, Massachusetts.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant exemptions from certain specific requirements of Appendix R of 10 CFR Part 50. Specifically exemptions were requested from section III.J to the extent that, "Emergency lighting units with at least an 8-hour battery power supply shall be provided in all areas needed for operation of safety shutdown equipment and in access and egress routes thereto."

The exemption is responsive to the licensees request dated April 1, 1987.

The Need for the Proposed Action

The proposed exemption is needed because the features described in the licensee's request regarding the existing yard security lighting are the most practical method for meeting the fire protection emergency lighting requirements of Appendix R. Literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemption will provide a degree of fire protection such that there is no increase in the risk of fires at the facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with its proposed exemption.

The proposed exemptions do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are on significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement for the Pilgrim Nuclear Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated April 1, 1987. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the Plymouth Public Library, 11 North Street, Plymouth County, Massachusetts, 02360.

Dated at Bethesda, Maryland this 26th day of August, 1987.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Acting Director, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 87-20062 Filed 8-31-87; 8:45 am]

BILLNG CODE 7590-01-M

[Docket No. 50-255]

Environmental Assessment and Finding of No Significant Impact; Consumers Power Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirements of Appendix J to 10 CFR Part 50 to Consumers Power Company [the licensee], for the Palisades Plant, located in Van Buren County, Michigan.

Environmental Assessment

Identification of Proposed Action

The exemption would provide an alternative to the requirement of 10 CFR Part 50, Appendix J, section III.A.6(b), to perform at each plant shutdown for refueling or approximately every 13 months, whichever occurs first, a Type A Containment Integrated Leak Rate Test until two consecutive tests meet the acceptance criteria, if two consecutive Type A tests performed in accordance with the normal schedule fail to meet the criteria. At Palisades, the containment has failed the last three Type A tests because of excess leakage penalties applied from the Type B and C tests for locally testable penetrations. The alternative that the licensee has proposed for the accelerated Type A testing is an accelerated Type B and C testing program, along with aggressive maintenance of these penetrations based on trending information and engineering evaluations of any problems encountered, since the previous Type A failures have always been attributable to the penetrations associated with the local Type B and C tests.

The Need for the Proposed Action

The proposed exemption is needed because the licensee's proposed "Local Leak Rate Testing—Corrective Action Plan" described in the licensee's request is the most practical method of meeting the intent of Appendix J and literal compliance would not serve the underlying purpose of Appendix J and is not necessary to achieve the underlying purpose of Appendix J.

Environmental Impacts of Proposed Action

The proposed exemption would provide a degree of assurance of containment integrity equivalent to that required by Appendix J. Consequently, the probability of accidents has not been increased by this administrative change and the post-accident radiological releases would not be greater than previously determined. Neither does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves a change in surveillance or inspection requirements. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This

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would not reduce the environmental impacts attributable to this facility and would result in a larger expenditure of licensee resources to comply with the Commission's regulations.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement related to operation of the Palisades Plant.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated August 22, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Bethesda, Maryland, this 25th day of August 1987.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Acting Director, Project Directorate III–1, Division of Reactor Projects, III, IV, V and Special Projects.

[FR Doc. 87–20061 Filed 8–31–87; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, EE 108–5 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 2 to Regulatory Guide 1.100, "Seismic Qualification of Electric and Mechanical Equipment for Nuclear Power Plants." This guide is being revised to provide guidance on a method acceptable to the NRC staff for complying with NRC's regulations with respect to seismic qualification of mechanical as well as electric equipment. This guide endorses, with certain exceptions, the revised IEEE Std 344–1987, "Recommend Practice for Seismic Qualification of Class 1E Equipment for Nuclear Power Generating Stations."

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both the guide (including any implementation schedule) and the value/impact statement. Comments on the draft value/impact statement should be accomplished by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Comments will be most helpful if received by October 30, 1987.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 26th day of August 1987.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 87–20060 Filed 8–31–87; 8:45 am]

BILLING CODE 7590–01–M

Reactor Risk Reference Document (NUREG–1150); Meeting of the Peer Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The draft Reactor Risk Reference Document (NUREG–1150) is currently undergoing a detailed peer review by a fourteen member committee chaired by Dr. William E. Kastenberg of the University of California, Los Angeles. Administrative and technical support is being provided by the Lawrence Livermore National Laboratory (LLNL), funded by the Nuclear Regulatory Commission (NRC). The peer review committee met during June 24–25, 1987 at the LLNL and July 15–17, 1987 at Albuquerque, NM. Three additional meetings are scheduled before the end of the year.

DATES AND TIMES: The third meeting will be held during September 15–17, 1987, from 8:30 am to 5:00 pm on September 15 and 16, and from 8:30 am to 12 noon on September 17.

The fourth and the fifth meetings are scheduled to be held November 9–11 and December 10–11, 1987, respectively.

ADDRESS: The September meeting will be at the Holiday Inn, 10740 Wilshire Blvd., Los Angeles, CA 90024.

The location of the November and December meetings will be announced at a later date.

FOR FURTHER INFORMATION CONTACT: Dr. Pradyot K. Niyogi, Division of Reactor Accident Analysis, Office of Nuclear Regulatory Research, Washington, DC 20555, (301) 443–7611.

SUPPLEMENTARY INFORMATION: Active participation in the meeting will be limited to the members of the committee, but the meeting will be open to the public to attend as observers. Members of the public may submit written comments on topics related to the meeting discussion. Limited verbal comment by the public will be permitted during the meeting at specified times. Prospective attendees should notify Dr. Sergio Guarro (LLNL) at (415) 422–7503 of their intention to attend at least a

week before the meeting dates to facilitate planning for accommodation.

Minutes of the meeting will be prepared and placed in the NRC Public Document Room. At the end of the peer review process, individual members of the committee will submit their comments to the committee chairman. The chairman will prepare his personal comments in the form of a report to the NRC, and will enclose all comments from the individual members. The review will be done in two phases. In the first phase, the review will be limited to the draft NUREG–1150, and will be completed in December 1987. The changes and improvements to the draft NUREG–1150 that are being performed currently will be reviewed in the second phase and will be completed in July, 1988.

Dated at Rockville, Maryland, this 27th day of August, 1987.

For the Nuclear Regulatory Commission.

R. Wayne Houston,

Acting Director, Division of Reactor Accident Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 87–20219 Filed 8–31–87; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Power Plan; Columbia River Fish and Wildlife Program Amendment

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Notice of final amendments.

SUMMARY: On November 15, 1982, pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act, 16 U.S.C. 839 *et seq.*), the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (Program). The Program has been amended on several occasions since then. On May 29, 1987 certain parties submitted applications to the Council asking that the Program be amended to incorporate certain terms of a settlement agreement regarding fish protection and mitigation measures at Rock Island Dam, located in the State of Washington. In a public meeting on June 10, 1987 the Council authorized issuance of a notice of proposed amendments. The notice was duly published in the **Federal Register** (52 FR 23223, June 18, 1987). Hearings on the proposed amendments were held in Portland, Oregon on June 23, in Boise, Idaho on June 30, and in Helena, Montana and Seattle, Washington on July 1, 1987. In addition, a consultation with interested parties was held in Wenatchee, Washington on June 17, 1987, and opportunity for oral and written public comment was provided through July 15, 1987. Written comment was received from five (5) entities and individuals.

Final Amendments

The Council has considered fully the issues and public comment in this rulemaking, and has evaluated the proposed alternatives under the standards for Program measures stated in section 4(h) of the Northwest Power Act. The Council hereby amends the Columbia River Basin Fish and Wildlife Program as follows:

1. In section 402, the second paragraph is amended to read as follows:

In 1982, the Council called for development of mechanical bypass systems at five public utility district dams regulated by FERC in the mid-Columbia area. In 1984, operators of four of the five dams agreed to develop bypass systems as part of a settlement with fish and wildlife agencies and tribes, which had petitioned FERC to make bypass a condition of license renewals for the dams. Spill, which is to be used to protect fish until the bypass systems are operating, is to be shaped in coordination with the fish and wildlife agencies and tribes. At Priest Rapids Dam, the Council called for the study of a short-haul fish transportation program, while a prototype bypass system is being tested at the project. In 1987, the Council amended section 404(a) of the program to incorporate provisions of a settlement agreement concerning fish protection measures at Rock Island Dam. The settlement capped several years of litigation over the advisability of mechanical bypass systems for juvenile fish, whether a hatchery would be a reasonable substitute, what level of spill would be appropriate to protect juvenile fish, and other issues. The settlement agreement calls for the development of juvenile bypass systems, and installation of the systems if certain critieria are satisfied. The agreement also provides for the creation of an innovative "Fisheries Conservation Account," which the joint fishery parties who have signed the agreement may use for bypass studies, bypass development, or to purchase spill. The agreement specifies spill levels and provides for studies of summer spill. A hatchery and satellite facilities will be constructed promptly, and habitat and other studies will be conducted to help determine the proper use of the fish produced. Changes were also made in section 604(b)(1) of the program, concerning adult fishway operating criteria and modifications.

2. In section 403, sections 403(a)(2) (A) and (B), and 403(a)(10) are amended to read:

403—Measures

(a) Mid Columbia River Passage

* * * * *

(2) *The FERC shall require Chelan County PUD to:* (A) Complete testing and evaluation of prototype collection and bypass systems at Rocky Reach and Rock Island dams and report the results of such tests and evaluation to the Council. The evaluation shall compare the effectiveness of the prototype collection and bypass systems with the best available system. If the Council determines that the systems tested at Rocky Reach are not the best available, the FERC shall require the PUD to evaluate alternative collection and bypass systems. Prototype collection and bypass systems for Rock Island dam shall be tested and evaluated in accordance with Section B "Juvenile Fish Bypass Systems" or Section C "Fisheries Conservation Account" of the Settlement dated April 24, 1987, filed in the relicensing proceeding for Project No. 943 and FERC Docket Nos. E–9569, et al.

(B) Complete installation of collection and bypass systems which have been approved by the Council at Rocky Reach Dam. Complete installation of collection and bypass systems at Rock Island Dam in accordance with Section B "Juvenile Fish Bypass Systems" or Section C "Fisheries Conservation Account" of the Settlement Agreement dated April 24, 1987, filed in the relicensing proceeding for Project No. 943 and FERC Docket Nos. E–9569, et al.

* * * * *

(10) The FERC shall require Douglas, Chelan, and Grant County PUDs, in consultation with the fish and wildlife agencies and tribes, to develop plans for spills at their respective projects. These plans shall be developed by March 1 of each year. The FERC shall require the PUDs to use their best efforts to provide spills which will achieve smolt survival comparable to that achievable by the best available collection and bypass systems. In the case of Wells, Rocky Reach, Wanapum and Priest Rapids dams, the FERC shall require the PUDs to provide spills of at least 20 percent of the average daily flow at each project for any 30 out of 60 days when the smolts are present. Such spills may be used during the early nighttime hours for maximum effectiveness and such spill

shall be provided for the period from April 15 through June 15 of each year. During the 30 days when smolts are present, a PUD may be allowed to spill less than 20 percent of the average daily flow only if the PUD can demonstrate to the satisfaction of the Council that at least 90 percent smolt survival at a particular project can be achieved by such reduced spills. In the case of Wells, Rocky Reach, and Wanapum dams, the FERC shall require the operating PUD to implement such plans for spills at each project until a collection and bypass system is in operation. At Priest Rapids Dam, the FERC shall require Grant County PUD to implement such plans until a collection and bypass system is in operation, or until the Council has determined that the short-haul transportation program is likely to be as effective as a collection and bypass system. At Rock Island Dam, FERC shall require spill in accordance with Section C "Fisheries Conservation Account" or Section D "Spill Program" of the Settlement Agreement dated April 24, 1987, filed in the relicensing proceeding for Project No. 943 and Docket Nos. E–9569, et al.

Section 604

3. In section 604, section 604(a)(b)(4) is amended to read:

(b) Operation and Maintenance of Adult Fishways

* * * * *

(4) At Rock Island Project, FERC shall direct Chelan PUD to implement the operating criteria and adult fishway modifications provided in Section F, "Adult Fish Ladders" of the Settlement Agreement dated April 24, 1987, filed in the relicensing proceeding for Project No. 943 and FERC Docket Nos. E–9569, et al.

4. In section 703, section 703(f)(6) is amended to read:

703—Measures

* * * * *

(f) Construction of Major Hatchery Facilities

* * * * *

(6) FERC shall direct Chelan County PUD to fund design, construction, operation and maintenance of a hatchery program, including satellite facilities, for Rock Island Project in accordance with Section E "Hatchery-Based Compensation" of the Settlement Agreement dated April 24, 1987, filed in the relicensing proceeding for Project No. 943 and Docket Nos. E–9569, et al.

Response to Comments

Summary of Comments

Comments favoring the proposed amendment were received from the Columbia Basin Fish and Wildlife Authority, the Icicle Valley Chapter of Trout Unlimited (Leavenworth, Washington), the Washington Department of Fisheries, and a fisheries biologist of the United States Bureau of Indian Affairs. In addition, at a June 17, 1987 consultation representatives of parties to the settlement agreement expressed support for the proposed amendments. In response to the Council's request, the parties to the settlement agreement indicated that they would cooperate in the Council's system planning process as they design and implement their production facilities. No adverse comments were received.

The Bonneville Power Administration supported the agreement in general terms, and also noted its understanding that the settlement "does not conflict with, and will not abrogate, the mid-Columbia hourly coordination contract, the Pacific Northwest Coordination Agreement, and any other agreements affecting the operation of the Rock Island Project."

Council Response

The Council appreciates these expressions of support and cooperation. The Council agrees with Bonneville's understanding, and does not intend that the Program amendment supplant or modify any existing obligations under other contracts or agreements.

Edward Sheets,

Executive Director.

[FR Doc. 87–20023 Filed 8–31–87; 8:45 am]

BILLING CODE 0000–00–M

SMALL BUSINESS ADMINISTRATION

[Disaster Loan Area #2288]

Declaration of Disaster Loan Area; Illinois

As a result of the President's major disaster declaration on August 21, 1987, I find that the following areas in the State of Illinois constitute a disaster loan area as a result of severe storms and flooding beginning on August 13, 1987: Elk Grove, Hanover, Leyden, Lyons, Maine, Norwood Park, Palatine, Proviso, River Forest, Riverside, Schaumburg and Wheeling Townships in Cook county, and Addison, Bloomingdale, Downers Grove, Wayne and York Townships in DuPage County.

Eligible persons, firms and organizations may file application for physical damage until the close of business on October 22, 1987, and for economic injury until the close of business on May 23, 1988, at: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, Georgia 30308, or other locally announced locations.

The interest rates are:

	(Percent)
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.500

The number assigned to this disaster is 228806 for physical damage and for economic injury the number is 654500.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: August 25, 1987.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 87–19983 Filed 8–31–87; 8:45 am]

BILLING CODE 8025–01–M

[Disaster Loan Area #2286, Amdt. #1]

Declaration of Disaster Loan Area; Minnesota

The above-numbered Declaration (52 FR 30757) is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated August 21, 1987, to include Anoka County in the State of Minnesota because of damage from severe storms, tornadoes and flooding beginning on or about July 20, 1987. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on October 5, 1987, and for economic injury until the close of business on May 6, 1988.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: August 25, 1987.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 87-19984 Filed 8-31-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0182]

Surrender of License; First SBIC of Arkansas, Inc.

Notice is hereby given that First SBIC of Arkansas, 700 Worthen Bank Building, Little Rock, Arkansas 72201 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). First SBIC of Arkansas was licensed by the Small Business Administration on September 7, 1976. Under the authority vested by the Act and pursuant to the Regulation promulgated thereunder, the surrender was accepted on August 19, 1987, and accordingly, all rights, privileges, and franchises therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: August 24, 1987.

[FR Doc 87-19985 Filed 8-31-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/12-0075]

Filing of an Application for Exemption Under the Conflict of Interest Regulation; Ritter Partners

Notice is hereby given that Ritter Partners, 3000 Sand Hill Road, Building 2, Suite 215, Menlo Park, California 94025, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b) of the Regulations governing small business investment companies (13 CFR 107.903(b) (1987)) for an exemption from the provisions of the cited Regulation.

The transaction falls within the purview of the cited regulation because Ritter Partners proposes to add a General Partner, Mr. William C. Edwards, 3000 Sand Hill Road, Bldg. 2, Suite 215, Menlo Park, California to the Board of Directors of a portfolio concern, Natural Language, Inc., 1786 Fifth Street, Berkeley, California 94710.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed action to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Berkeley California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: August 24, 1987.

[FR Doc. 87-19986 Filed 8-31-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1105]

Joint Working Party of The U.S. Organization For The International Telegraph and Telephone Consultative Committee (CCITT); Notice of Meeting

The Department of State announces that Study Group JWP of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on September 25, 1987 at the Claremont Hotel, Oakland, California at 8:30 a.m.

The purpose of the meeting will be to review results of the meeting of CCITT Study Group XI and prepare and approve ISDN related U.S. contributions to the upcoming meeting of CCITT Study Group XVII, in Geneva.

Member of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should so advise the office of Mr. W.F. Utlaut, NTIA/ITS.D, 325 Broadway, Boulder, CO 80303, telephone (303) 497-3500.

Date: August 20, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 87-20006 Filed 8-31-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1107]

Closed Meeting; Overseas Security Advisory Council

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Friday, October 2, 1987 at 08:30 a.m. in the Westin Hotel, O'Hare, 6100 River Road, Rosemont, Illinois. Pursuant to section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(4), it has been determined the meeting will be closed to the public. Matters relative to privileged commercial information will be discussed. The agenda calls for the discussion of private sector physical security policies, bomb threat statistics, and security programs at sensitive U.S. Government and private sector locations overseas.

Date: August 24, 1987.

Louis Schwartz, Jr.,

Director of the Diplomatic Security Service, and Chairman of the Overseas Security Advisory Council.

[FR Doc. 87-20007 Filed 8-31-87; 8:45 am]

BILLING CODE 4710-24-M

Meeting; Fine Arts Committee

The Fine Arts Committee of the Department of State will meet on Friday, September 25, 1987 at 2:30 p.m. in the John Quincy Adams State Drawing Room. The meeting will last approximately until 4:00 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in March 1987, the announcement of gifts, loans and financial contributions since January 1, 1987, and a report on the architectural work to be done in the office of the Deputy Secretary of State.

Public access to the Department of State is controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Monday, September 21, 1987, telephone (202) 647-1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Date: August 19, 1987.

Clement E. Conger,

Chairman, Fine Arts Committee.

[FR Doc. 87-20008 Filed 8-31-87; 8:45 am]

BILLING CODE 4710-38

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on August 26, 1987

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on August 26, 1987, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that ACT. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Furthr Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on August 26, 1987.

DOT No.: 2967
OMB No.: 2115–0139
Administration: U.S. Coast Guard
Title: Hazardous Materials Used as Ships' Stores Aboard Ships
Need for Information: This information collection requirement is needed to regulate the transportation, stowage and use of ships' stores and dangerous supplies.
Proposed Use of Information: Coast Guard uses the information to: (1) Determine whether a product meets definitions of hazardous materials and to properly classify it; (2) make certain that the instructions on the label are adequate to protect users on the vessel from bodily harm; and, (3) provide proper safeguards in case of excessive exposure or accident.
Frequency: On occasion
Burden Estimate: 569 hours
Respondents: Manufacturers of dangerous products used on ships
Form(s): None.

DOT No.: 2968
OMB No.: 2125–0028
Administration: Federal Highway Administration
Title: Highway Performance Monitoring System (HPMS)
Need for Information: For FHWA to obtain information in evaluating the effectiveness of Federal-aid and highway safety programs.
Proposed Use of Information: For the development and implementation of legislation and in resolution of inquiries, including those from Congress.
Frequency: Annually
Burden Estimate: 82,820 hours
Respondents: State highway agencies
Form(s): None

DOT No.: 2969
OMB No.: 2115–0545
Administration: U.S. Coast Guard
Title: Deepwater Port Liability Fund Administration
Need for Information: Coast Guard needs this collection of information to administer and manage the Deepwater Port Liability Fund per 33 USC 1517.
Proposed Use of Information: The Coast Guard uses this information to ensure that the owner, operator or guarantor of vessels using deepwater ports have financial responsibility coverage sufficient to meet their pollution liability. It is further used to process and settle any claim made against the "Fund" for cleanup costs or damages resulting from oil pollution.
Frequency: On occasion
Burden Estimate: 143 Hours
Respondents: Owners and operators of vessels using deepwater ports
Form(s): None

DOT No.: 2970
OMB No.: New
Administration: Maritime Administration
Title: Tug Operators Report
Need for Information: Defense/ Emergency Mobilization Planning
Proposed Use of Information: To determine the characteristics and availability of tug boats to move Ready Reserve Force (RRF) cargo vessels.
Frequency: On occasion
Burden Estimate: 120 hours
Respondents: Tug owners/operators
Form(s): None

DOT No.: 2971
OMB No.: 2120–0001
Administration: Federal Aviation Administration
Title: Notice of Proposed (Actual) Construction or Alteration
Need for Information: This information collection requirement is needed to ensure that any construction or alteration of a structure does not interfere with the safe and efficient use of navigable airspace by aircraft.
Proposed Use of Information: The information is used to establish minimum flight altitudes and procedures, to protect electronic air navigational aids from electro-magnetic interference, and provide accurate charting and other notification to airmen.
Frequency: On occasion
Burden Estimate: 15,110 hours
Respondents: All (Anyone proposing to construct or alter a structure)
Form(s): FAA Form 7460–1, 7460–2, 7460–11

DOT No.: 2972
OMB No.: New
Administration: Office of the Secretary
Title: Drug Testing Control Form
Need for Information: To provide information needed to establish and maintain a chain of custody.
Proposed Use of Information: Control form for chain of custody, with affidavit and other pertinent information.
Frequency: Once per collection
Burden Estimate: 5,050 hours/year @ 30,000 samples/year

Respondents: Individuals undergoing testing, collectors, and lab staff
Form(s): None

DOT No.: 2973
OMB No.: 2120–0015
Administration: Federal Aviation Administration
Title: FAA Airport Master Record
Need for Information: The information is needed to keep the Airport Master Record up to date on the name, address, phone number and physical layout of existing airports.
Proposed Use of Information: The data is the basic source of information for private, state and Federal aeronautical charts and publications.
Frequency: On occasion/Annually
Burden Estimate: 4,000 hours
Respondents: State and local governments, businesses (anyone who has a landing area)
Form(s): FAA Forms 5010–1, –2, –3, –5

Issued in Washington, DC, on August 26, 1987.

Richard B. Chapman,

Acting Director of Information Resource Management.

[FR Doc. 87–20048 Filed 8–31–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

FAA Approval of Noise Compatibility Program; Tampa International Airport, Tampa, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA announces its findings on the noise compatibility program submitted by the Hillsborough County Aviation Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980). On January 21, 1987, the FAA determined that the noise exposure maps submitted by the Hillsborough County Aviation Authority under Part 150 were in compliance with applicable requirements. On July 15, 1987, the Administrator approved the Tampa International Airport noise compatibility program.

EFFECTIVE DATE: The effective date of the FAA's approval of the Tampa International Airport noise compatibility program is July 15, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, Plans and Programs Metro Area Manager, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827, (305) 648–6583. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Tampa International Airport, effective July 15, 1987.

Under section 104(a) of the Aviation Safety and Noise Abatement Act (ASNA) of 1979, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agenices, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with the Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures would be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government.

Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of the airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The Hillsborough County Aviation Authority submitted to the FAA on November 5, 1986, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from February 6, 1985, through November 4, 1985. The Tampa International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 21, 1987. Notice of this determination was published in the **Federal Register** on February 10, 1987.

The Tampa International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1992. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on January 21, 1987, and was required by a provision of the Act to approve or disapprove the program within 180 days other than the use of new flight procedures for noise control. Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twelve proposed actions for noise

mitigation, on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective July 15, 1987.

Outright approval was granted for all of the specific program elements. The approval action was for the following program elements:

A. Measure No. 2/3—Use southerly traffic flows whenever possible
B. Measure No. 13—Encourage operations of turbojet aircraft to use ATA-recommended noise abatement arrival procedures
C. Measure No. 14—Designate engine run-up areas
D. Measure No. 15—Augment vegetation noise barrier along the western perimeter of the airport
E. Measure No. 26/27—Establish a helipad on the east side of the airport
F. Measure No. 33—Zoning for compatible use
G. Measure No. 34—Overlay zoning
H. Measure No. 38—Purchase of undeveloped land
I. Measure No. 40—Soundproofing new construction (building code amendment)
J. Measure No. 42—Public information program
K. Measure No. 46—Acquisition of developed property, and
L. Measure No. 47—Purchase of navigation easements.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on July 15, 1987. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Hillsborough County Aviation Authority.

Issued in Orlando, Florida, on August 17, 1987.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 87-19994 Filed 8-31-87; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Approval of Applicant as Trustee; Bank of Delaware

Notice is hereby given that the Bank of Delaware, Wilmington, Delaware, with offices at 300 Delaware Avenue, Wilmington, Delaware, has been approved as Trustee pursuant to Pub. L. 89-346 and 46 CFR 221.21 through 221.30.

Dated: August 25, 1987.

By Order of the Maritime Administrator.

James E. Saarl,

Secretary.

[FR Doc. 87-20036 Filed 8-31-87; 8:45 am]

BILLING CODE 4901-81-M

Research and Special Programs Administration

[Docket No. 87-3W; Notice 1]

Transportation of Natural and Other Gas by Pipeline; Petition for Waiver; Southern Natural Gas Co.

The Southern Natural Gas Company (Southern) has petitioned the Office of Pipeline Safety for a waiver from compliance with 49 CFR 192.553(d), which prohibits, when uprating a pipeline, the establishment of a maximum allowable operating pressure (MAOP) greater than would be permitted for a new pipeline segment constructed of the same materials in the same location. Anticipating increased demand for gas, Southern has requested a waiver to permit the MAOP of 7 pipeline segments to be uprated from 500 to 650 psig. The alternative is replacement of the segments at a cost of $1.6 million. The seven segments are all in Class 3 locations, which are generally characterized as areas with 46 or more occupied buildings per mile of pipeline (see § 192.5). The segments are located in St. Clair and Talladega Counties of Alabama, and they are shown on vicinity plat drawing MD-472-1, site plat drawing MD-472, and class location surveys O-NSE-34, 35, and 36, which are available in the docket.

The segments are part of Southern's 24-inch Second North Main Line. Five of the segments were constructed in 1953; the other two were constructed in 1963. The pipe in all segments is 24 inches in diameter, with 0.250-inch wall thickness. It was manufactured to API Standard 5LX, grade 52, and the pipeline was constructed in accordance with the "USAS B31.8 Standard Code for Pressure Piping. Gas Transmission and Distribution systems." The 1953 segments were pressure tested in place with gas to 750 psig, and the 1963 segments were tested with gas to 585 psig.

The MAOP's on the Second North Main Line are 750 and 650 psig, moving west to east (MP 0.0 to MP 231.0) and 500 psig in the remaining 6 miles. They were established in 1970 under § 192.619(a)(3) as the highest actual operating pressure in the preceding five years. The segments in question are located in the last six miles (MP 231.795 to MP 236.646) and comprise a total of 3.4 miles. The construction of these segments is substantially the same as the rest of the Second North Main Line, which operates at a higher MAOP.

Southern states that the Second North Main Line is coated, and the coating is in good condition. They also state that there have been no leaks or failures, no operating or maintenance problems, and no shorted casings. The line has minimum cover of 36 inches.

The sections of this pipeline that were operated at 650 psig in the five years prior to November 1970 have been able to continue to operate at that pressure in Class 3 locations, after suitable hydrostatic testing under § 192.611(c)(2). Because construction of the entire pipeline is substantially the same, had the 7 segments in question been operated at 650 psig during the 1965-1970 period, they too could be qualified for continued operation at 650 psig after hydrostatic testing.

In summary, the Second North Main Line is 237 miles long. The MAOP is at least 650 psig for 231 miles, including segments in Class 3. Southern plans to uprate the remaining 6 miles to a 650-psig MAOP and has requested that § 192.553(d) be waived to permit them to uprate 3.4 miles of pipeline currently limited by that section.

Because the length of the pipeline segments for which the waiver has been requested is short and because there are similarly constructed pipeline segments already qualified for 650 psig in Class 3 locations along the Second North Main Line, it seems reasonable to waive § 192.553(d) for these segments. There is no reason to anticipate a lesser level of safe performance for the segments for which the waiver has been requested than has been demonstrated by the other similar Class 3 segments. Thus, granting of this waiver would provide uniform treatment for the Second North Main Line taken as a unit and would not impair the safety of that line. In addition, there do not appear to be any unusual risks associated with the populations in proximity to the segments in question. In view of the foregoing, OPS proposes to grant the requested waiver.

Interested parties are invited to comment on the proposed waiver by submitting in duplicate such data, views, or arguments as they may desire. Comments should identify the Docket and Notice numbers and be submitted to: Dockets Unit, Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Room 8426, Washington, DC 20590.

All comments received before October 1, 1987 will be considered before final action is taken. Late filed comments will be considered so far as practicable. All comments will be available for inspection at the Dockets Unit, Room 8426, Research and Special Programs Administration, between the hours of 8:30 a.m. and 5:00 p.m., before and after the closing date. No public hearing is contemplated, but one may be held at a time and place set in a Notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Issued in Washington, DC, on August 26, 1987.

Richard L. Beam,

Director, Office of Pipeline Safety Research and Special Programs Administration.

[FR Doc. 87-19990 Filed 8-31-87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 27, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: 1545-0922
Form number: 8329 and 8330
Type of review: Extension
Title: Lender's Information Return for Mortgage Credit Certificates (MCCs); Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs)
Description: These forms will be used by lending institutions who issued qualified indebtedness amounts based on mortgage credit certificates. The information on this form will be matched with the information supplied by the issuers of MCCs.
Respondents: State or local governments, Businesses or other for-profit
Estimated burden: 27,500 hours
Clearance officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208 New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc 87-20054 Filed 8-31-87; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review.

Date: August 27, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: 1545-0085
Form number: 1040A
Type of review: Resubmission
Title: U.S. Individual Income Tax Return
Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data is used to verify that the income reported on the form is correct. The data is also used for statistical purposes.
Respondents: Individuals or households
Estimated burden: 21,805,522 hours

OMB number: 1545-0099
Form number: 1065 and Schedules D and K-1
Type of review: Resubmission
Title: U.S. Partnership Return of Income, Capital Gains and Losses, Partner's Share of Income, Credits, Deductions, etc.
Description: Internal Revenue Code section 6031 requires partnerships to file returns that show gross income items allowable deductions, partners' names, addresses, and distribution shares, and other information. This information is used to verify correct reporting of partnership items and for general statistics.
Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated burden: 17,930,209 hours

OMB number: 1545-0675
Form number: 1040EZ
Type of review: Resubmission
Title: Income Tax Return for Single Filers with No Dependents
Description: This form is used by certain single individuals to report their income subject to income tax and to compute their correct tax liability. The data is also used to verify that the items reported on the form are correct and are also for general statistics use.
Respondents: Individuals or households
Estimated burden: 9,152,703 hours
Clearance Officer: Garrick Shear (202) 535-4297, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Department Reports Management Officer.

[FR Doc. 87-20055 Filed 8-31-87; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the

OMB Desk Officer on or before November 2, 1987.

Dated: August 26, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Reinstatement

1. Board of Veterans Appeals
2. Statement of Accredited Representative in Appealed Cases
3. VA Form 1–646
4. This form is used to ensure that the appellant's rights are protected. This information is used in the final stages of the claims process or appellate review.
5. On occasion
6. Individuals or households
7. 36,975 responses
8. 36,975 hours
9. Not applicable

[FR Doc. 87–20039 Filed 8–31–87; 8:45 am]

BILLING CODE 8320–01–M

Meeting; Career Development Committee

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101, will be held in the State Room of the Governor's House, Rhode Island Avenue at 17th Street, NW., Washington, DC, October 4 through 6, 1987, starting at 7 p.m., October 4. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration. The committee advises the Director, Medical Research Service on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, and Senior Medical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 7 p.m. to 7:30 p.m. on October 4, 1987, to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Veterans Administration Central Office, Washington, DC 20420 (Phone 202–233–2317) prior to September 30, 1987.

The meeting will be closed from 7:30 p.m. to 10 p.m., October 4 and from 8 a.m. to 5 p.m. on October 5 and October 6, for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualification, competence, and potential of the several candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of Pub. L. 92–463 as amended, in accordance with subsection (c)(6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from Mr. David D. Thomas, Chief, Career Development Program, Medical Research Service (151J), Veterans Administration, Washington, DC 20420 (Phone 202–233–2317).

Dated: August 25, 1987.

By direction of the Administrator.

Rosa Marie Fontanez,

Committee Management Officer.

[FR Doc. 87–20040 Filed 8–31–87; 8:45 am]

BILLING CODE 8320–01–M

Meeting; Cooperative Studies Evaluation Committee

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held at the Vista International Hotel, 1400 M Street, NW., Washington, DC, on October 22, 1987. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects. The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program on its findings.

The meeting will be open to the public up to the seating capacity of the room from 7:30 a.m. to 8 a.m. on October 22, 1987, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping Huang, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202–233–2861), prior to October 8, 1987.

The meeting will be closed from 8 a.m. to 3:30 p.m. on October 22, for consideration of specific proposals in accordance with provisions set forth in subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(6) and (9)(B). During this portion of the meeting discussions and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of the Committee's recommendations would likely frustrate implementation of final proposed actions.

Dated: August 25, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87–20041 Filed 8–31–87; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 169
Tuesday, September 1, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, September 8, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-20213 Filed 8-28-87; 3:59 pm]

BILLING CODE 6210-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 26, 1987.

TIME AND DATE: 10:00 a.m., Wednesday, September 2, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor on behalf of Bushnell v. Cannelton Industries, Inc.*, Docket No. WEVA 85-273-D. (Issues include whether the judge erred in finding the operator discriminated against the complainant for engaging in rights protected by section 105(c)(1) of the Mine Act. 30 U.S.C. 815(c)(1).)

2. *Martha Perando v. Mettiki Coal Corporation*, Docket No. YORK 85-12-D. (Issues include whether the judge erred in finding that the operator disciminated against the complainant in violation of section 105(c)(1) of the Mine Act. 30 CFR part 815(c)(1).)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87-20093 Filed 8-28-87; 10:34 am]

BILLING CODE 6735-01-M

Corrections

Federal Register
Vol. 52, No. 169
Tuesday, September 1, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42076A; FRL-3213-5]

Anthraquinone; Final Reporting and Recordkeeping Requirements and Test Rule

Correction

In rule document 87-12724 beginning on page 21018 in the issue of Thursday, June 4, 1987, make the following corrections:

§ 795.45 [Corrected]

1. On page 21027, in § 795.45(b)(1)(ii), in Table 1, in the first entry of the first column, "14-" should read "4-"

§ 799.500 [Corrected]

2. On page 21030, in the first column, in § 799.500(d)(2)(i), in the 28th line, "(b)" should read "(B)".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42089; FRL-3221-7]

Testing Consent Order on 3,4-Dichlorobenzotrifluoride and Response to the Interagency Testing Committee

Correction

In rule document 87-14231 beginning on page 23547 in the issue of Tuesday, June 23, 1987, make the following corrections on that page:

1. In the second column, under **III. Use and Exposure**, in the third paragraph, in the fourth line, "Rone-Poulence" should read "Rhone-Poulenc".

2. In the third column, in the first complete paragraph, in the eighth line, "Manufactures" should read "Manufacturers".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6653

[NM-940-07-4220-10; NM NM 52805]

Partial Revocation of Public Land Order No. 6525; New Mexico

Correction

In rule document 87-18041 beginning on page 29525 in the issue of Monday, August 10, 1987, make the following correction:

On page 29526, in the first column, in paragraph 3., in the first line, "1981" should read "1987".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-940-07-4220-11; NM NM 023643]

Continuation of Withdrawal and Reservation of Lands; New Mexico

Correction

In notice document 87-15026 beginning on page 25087 in the issue of Thursday, July 2, 1987, make the following correction:

On page 25088, in the first column, the fifth line should read "T. 10 S., R. 18W.,".

BILLING CODE 1505-01-D

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Federal Register

Tuesday
September 1, 1987

Part II

Department of Defense

Office of the Secretary

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Implementation of CHAMPUS DRG-Based Payment System; Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Implementation of a CHAMPUS DRG-Based Payment System

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. DoD Regulation 6010.8–R was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

This final rule amends the comprehensive CHAMPUS regulations, DoD 6010.8–R (32 CFR Part 199), pertaining to payment for inpatient hospital services. This final rule implements a DRG-based payment system, which is modeled on the Medicare Prospective Payment System. This final rule also revises the cost-sharing requirements for beneficiaries other than dependents of active duty members. This cost-sharing change is necessary under a DRG-based payment system to ensure that cost-sharing amounts are equitable. This final rule also establishes an admission and quality review system for CHAMPUS inpatient hospital claims.

EFFECTIVE DATE: October 1, 1987. This final rule is effective for inpatient hospital admissions occurring on or after that date.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Policy Branch, OCHAMPUS, telephone (303) 361–4005.

SUPPLEMENTARY INFORMATION: On June 3, 1987, we published a proposed rule to implement a CHAMPUS DRG-based payment system. This rule proposed to change the method of payment for inpatient hospital services under CHAMPUS from a billed charge, retrospective system to a prospective payment system based on diagnosis-related groups (DRGs). We refer the reader to the proposed rule for more detailed explanations of the proposed changes to the reimbursement procedures and the implementing regulations in 32 CFR Part 199.

We provided a 30-day comment period of the proposed rule. This final rule announces our decisions on the issues raised by commenters in response to our proposed rule.

To assist the reader in reviewing this document, we are providing the Table of Contents below.

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Regulations Text

32 CFR Part 199

Table 1—CHAMPUS Weight and Threshold Summary

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Addendum 1—Health Program Benefit Agreement

I. Synopsis

A. Background

Paying on the basis of a fixed, prospective rate, appropriate to the particular diagnosis involved, has been shown to be an equitable, effective method of paying for hospital care. Instead of paying on the basis of billed charges, CHAMPUS is now implementing a Diagnosis Related Groups (DRG) based payment system which will assure fair payments to hospitals, reduce cost sharing requirements for beneficiaries and the government and provide for new procedures to monitor the quality of care.

B. Improvements Upon the Proposed Rule

Based on public comments, several changes are being made to improve upon the proposed rule, issued in June. Among these is an exemption for children's hospitals until a method can be incorporated that will better reflect the unique kind of care these specialty hospitals provide. Another change is authority to exempt states, such as Maryland, that are exempted by Medicare and have equally effective payment methods. Further, to assure reasonable payment amounts to hospitals in areas of generally higher costs, a wage adjustment and an urban/rural differentiation, as is used under Medicare, will be made. Also, the beneficiary cost-sharing provisions have been revised to assure that no beneficiary will pay more under the new system that under the old method of paying billed charges, and most beneficiaries will pay much less.

C. CHAMPUS DRG System Modeled After Medicare's

Established System Consistent with the Congressional intent, the proposed CHAMPUS system is modeled closely on the Medicare system. The similarities are exemplified by the fact that even though the CHAMPUS population is younger the average CHAMPUS payment amounts are roughly equal to those under Medicare. The costs of capital and indirect and direct medical education will receive the same special treatment under CHAMPUS that they receive under Medicare. Like Medicare, long-stay or unusually costly cases will receive additional outlier payments. To assure fair payments, amounts have been calculated on the basis of actual CHAMPUS hospital claims during a recent 12-month period.

D. Fiscal Year 1988 Implementation on Schedule

Four years after Medicare's similar system was adopted, CHAMPUS is now ready to proceed with its DRG-based payment system. This interim period has given hospitals time to adjust to the DRG-based system under the government program that is some 40 times larger than CHAMPUS. During this time, CHAMPUS tested a DRG system in South Carolina and learned valuable lessons. CHAMPUS also had the opportunity to compile and analyze extensive data relating exclusively to charges for care under CHAMPUS. Also, the CHAMPUS fiscal intermediaries have had time to put in place the systems to assure smooth administration under the new payment method. In view of all of these activities, there is no need for CHAMPUS to slow down implementation. Nor is there a need to phase in national rates as Medicare did. Phasing is unnecessary because hospital operations have adjusted to the DRG payment method, now fully implemented under Medicare, and CHAMPUS, unlike Medicare, is typically a very small portion of the hospital's income.

E. Reduced Cost Shares for Beneficiaries

From the beneficiary's standpoint, the new CHAMPUS payment system will have a very positive impact. By reducing the payment amount for hospitals, the 25% cost share retired members and their dependents must pay will now be applied to a much lower amount. As a result, the average cost share per hospital stay will be reduced from about $1135 to about $760. To assure that cost sharing fairly reflected the value of hospital services provided to the beneficiary, the proposed rule included a new method of calculating cost sharing based on a per deim amount. The final rule continues this more equitable method, and makes a further adjustment: beneficiary cost shares will be *the lesser of* the per diem calculation method (the new system) or 25% of billed charges (the old system). This assures that while most beneficiaries will pay less under the new system than the old, additionally, no beneficiaries will pay more.

F. Assuring the Quality of Care

To assist in assuring the quality, reasonableness, and appropriateness of care provided CHAMPUS beneficiaries under the DRG based payment system, a new quality review requirement is being established. CHAMPUS is pursuing appropriate arrangements with the Department of Health and Human Services to undertake this important activity in conjunction with current Peer Review Organization program under Medicare. This will enable CHAMPUS to join HCFA In guarding against premature discharges and effectively monitoring the quality of care.

G. Conclusion

In accord with Congressional intent, spiraling costs will be curtailed by a CHAMPUS DRG-based payment system modeled very closely on the Medicare system. With improvements upon the proposed rule, the final rule provides for fair payments to hospitals and reduced outlays and new quality monitoring for beneficiaries. This payment system, carefully developed, will be fully implemented October 1, 1987.

II. Background

A. CHAMPUS Reimbursement—Current Procedures

Paragraph 199.6(e) of DoD 6010.8–R provides for reimbursement of hospitals and skilled nursing facilities on the basis of billed charges/set rates, cost-related reimbursement similar to that used under Title XVIII of the Social Security Act (Medicare), or prospective reimbursement. CHAMPUS has traditionally reimbursed these providers of care based on the providers' billed charges. Largely because of these procedures, CHAMPUS has been subject to rapidly increasing costs, far in excess of the general rate of inflation. This resulted not only from increases in hospitals' charges, but also from the shifting of costs as other third-party payers implemented cost-controlling reimbursement procedures.

B. Summary of Legislation

1. Department of Defense Authorization Act, 1984

The Department of Defense Authorization Act, 1984, Pub. L. 98–94 amended Title 10, section 1079(j)(2)(A) of the United States Code and provided CHAMPUS with the statutory authority to reimburse institutional providers based on diagnosis-related groups (DRGs). Specifically, it provides that payments "shall be determined to the extent practicable in accordance with the same reimbursement rules as apply

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to payments to providers of services of the same type under title XVIII of the Social Security Act."

2. Consolidated Omnibus Budget Reconciliation Act, 1986

On April 7, 1986, the President signed the Consolidated Omnibus Budget Reconciliation Act, Pub. L. 99–272, which contained a provision requiring hospitals which participate in Medicare also to participate in CHAMPUS for inpatient services (see Section 1866(a)(1)(J) of the Social Security Act, 42 U.S.C. 1395cc(a)(1)(J)). Because of questions regarding the effect of this provision, the effective date in section 9122(b) of Pub. L. 99–272, which enacted section 1866(a)(1)(J), was amended by Pub. L. 99–514, section 1895(b)(6), which was signed by the President on October 22, 1986. Section 1866(a)(1)(J) requires all providers participating in Medicare also to participate in CHAMPUS for inpatient hospital services provided pursuant to admissions to hospitals occurring on or after January 1, 1987.

C. Summary of Proposed Amendment to Rule

In the proposed amendment to rule, we set forth new regulations for the CHAMPUS DRG-based payment system intended to apply to inpatient hospital admissions occurring on or after October 1, 1987. We described how the CHAMPUS system is modeled after the Medicare Prospective Payment System; the applicability of the system, both in terms of services and of hospitals affected; how the DRG weighting factors are calculated; how the adjusted standardized amount is calculated; how adjustments for capital and medical education costs are to be made; and how unusual cases (outliers) are to be handled. We also described changes to the cost-sharing requirements for beneficiaries other than dependents of active duty members. Additionally, we set forth procedures for an admission and quality review system for CHAMPUS inpatient hospital claims.

D. Number and Types of Public Comment

We received a total of 34 individual comments which raised a number of issues. The types and volume of commenters were as follows:

—Hospital Associations—11
—Hospitals—12
—Medical Associations—5
—Medical Review Organizations—3
—Third-party payers—1
—State Governments and Organizations—2

We received a number of general comments which do not relate to any particular provision of the CHAMPUS DRG-based payment system, but relate to the system as a whole and our implementation plans. We will address those comments here before we respond to the comments regarding specific sections of our proposed rule.

A number of commenters suggested we delay implementation of the DRG system until at least October 1988 in order to allow hospitals time to prepare for the changes and to ensure that OCHAMPUS has adequate time to develop a comprehensive database and to consider the public comments.

We think delay in the implementation of the DRG system is unnecessary for two main reasons: first, hospitals have already adjusted to prospective payment under Medicare, and second, OCHAMPUS has developed a comprehensive database with which to develop final weights and rates.

We think that hospitals have adjusted to prospective payment under the Medicare system. As a result, the inclusion of prospective payment for CHAMPUS patients should have a minimal effect on hospital operations. The CHAMPUS prospective payment system merely will result in a marginal increase in workload for existing prospective payment-related activities in hospitals such as medical records, billing, and utilization review activities already conducted for Medicare patients. For many hospitals, the net effect of CHAMPUS DRGs on hospital operations will be positive. Instead of managing two radically different payment systems for government beneficiaries (i.e., Medicare and CHAMPUS), in many ways hospitals will have an opportunity to consolidate patient management, billing, and medical records activities to include both CHAMPUS and Medicare patients.

We disagree with the assertion that CHAMPUS has not had adequate time to develop a comprehensive database. The database used for final weight and rate calculations includes over 300,000 records of all CHAMPUS claims processed from July 1, 1986 to June 30, 1987. This represents a full-year sample of claims from the most recent period. We think that this database will provide the most accurate representation of CHAMPUS utilization. The required calculation methods necessary to derive weights and rates have been developed over the past year and tested on a smaller database. Final calculations merely required the application of these methods to the larger database.

In addition to being unnecessary, delaying implementation of the DRG-based payment system would contravene clear Congressional intent that CHAMPUS adopt a payment method similar to that used by Medicare, an intent repeatedly and consistently expressed by Congress since Medicare's system was adopted four years ago.

Some commenters suggested that 30 days was not sufficient time to comment on the proposed rule. The comment period conforms to statutory requirements. Because of years of experience with the Medicare system, the matters discussed in the proposed rule are quite familiar to the health care community. Thus, a 30-day comment period was quite adequate to permit interested parties to consider the proposed rule and provide substantive comments. The many detailed and thorough comments we actually received confirm this. Also, we received no indication that additional comments would have been received, or additional issues raised, had the comment period been longer.

Some commenters mistakenly believe that CHAMPUS will not pay the full DRG-based amount in those cases where a hospital's charges are less than the DRG-based payment amount. Since this is a basic tenet of DRG-based reimbursement, we want to be sure that this misunderstanding is clarified. Except for those few cases which are classified as short-stay outliers, a hospital will always receive the full DRG-based payment regardless of its costs or charges.

In the proposed rule we stated that "we anticipate few, if any, changes in hospital operations as a result of our implementation of the CHAMPUS DRG-based payment system." One commenter stated that the DRG-based payment system would, indeed, affect operations, since hospitals would need more extensive internal concurrent review, additional discharge planning, and more emphasis on claims coding. We recognize these activities may increase as a result of our DRG-based payment system, but they are not required by the system. Rather they are a reaction to the system, and, more importantly, will help to ensure hospital efficiency, which is a major goal of the existing Medicare system and the new CHAMPUS system.

Several commenters expressed a concern that there could be a disruption in services to CHAMPUS patients if CHAMPUS is unable to begin the timely processing of claims on October 1. A primary concern of OCHAMPUS is that we want a smooth transition to DRG-based payments with no adverse impact on providers or benefifciaries.

We think that all CHAMPUS fiscal intermediaries are adequately prepared to process CHAMPUS claims under DRGs. Since CHAMPUS began exploring the potential for a prospective payment system, the CHAMPUS fiscal intermediaries have been consulted periodically regarding the impact of prospective payment on their current claims payment procedures. Moreover, all but one of the CHAMPUS fiscal intermediaries currently process Medicare claims, making the transition to CHAMPUS prospective payment relatively simple. And finally, since the release of the proposed rule, CHAMPUS has submitted preliminary weights, rates, cutoff thresholds, and other necessary payment procedures to the intermediaries so that they could begin revision of their payment systems. In short, we and the CHAMPUS fiscal intermediaries are confident that there will be a smooth transition from payment based on billed charges to DRGs.

One commenter suggested we allow our fiscal intermediaries to automate remittance schedules on a weekly basis rather than issuing individual checks and explanation of benefits for every claim. Under current procedures, the fiscal intermediary can combine multiple claims from the same hospital into a single remittance. This procedure will not change under the DRG-based payment system and should resolve the concern of the commenter.

Below we briefly summarize each of the major provisions of the proposed amendment of rule on which we received comments and provide an analysis of the comments and our responses. We have also provided a reference to each provision's designation in the proposed rule. Section VI of this preamble summarizes the changes we are making to the regulation as a result of the comments we received.

III. General Description of CHAMPUS DRG-Based Payment System

A. Modeled on Medicare's Prospective Payment System (PPS)

1. DRGs Used (§ 199.14(a)(1)(i)(A))

The CHAMPUS DRG-based payment system will use the same DRGs used in the most recently available grouper for the Medicare PPS.

Comment—The age breakdown in the Medicare DRG system is only shown as 17 and below. For children's hospitals it is necessary to have a more specific breakdown in ages, as the difference in levels of care between a one-year-old and a 12-year-old will vary significantly.

Response—We realize this problem may be acute for children's hospitals and, as Medicare, we have decided to exempt children's hospitals from the CHAMPUS DRG system at this time. We intend to study the issue further and bring these hospitals into the system at a later date.

2. Assignment of Discharges to DRGs (§ 199.14(a)(1)(i)(B))

CHAMPUS will use the Health Care Financing Administration (HCFA) FY 1987 "Grouper" program to classify specific hospital discharges within DRGs, so that each discharge is assigned to a DRG based on the patient's age, sex, principal diagnosis, secondary diagnoses, procedures performed and discharge status. In addition, when the discharge data submitted by a hospital show a surgical procedure unrelated to a patient's principal diagnosis, the bill will be returned to the hospital for validation and verification.

Comment—The CHAMPUS DRG-based payment system should always use the Grouper program which is currently used under the PPS.

Response—In general, CHAMPUS intends to use the most recently available HCFA Grouper program. Currently, the most recently available program is the FY 1987 Grouper which we are using for FY 1988. For future years, HCFA revisions to its Grouper will be adopted by CHAMPUS as soon as practicable following availability of the Grouper.

Comment—It is unnecessary to verify the diagnosis and procedure codes for claims grouped into DRG 468 (unrelated operating room procedure), especially since these claims are later reviewed by the Peer Review Organization (PRO).

Response—We do not believe this is unnecessary. Since, by definition, there is something unusual about the claim data for a DRG 468, we believe it is prudent to verify the data initially to avoid payment errors. However, we have modified this requirement to make it less of a burden on hospitals. We will require only that the fiscal intermediary review such claims.

B. Beneficiary Eligibility

If a beneficiary is eligible for CHAMPUS coverage during any part of his/her inpatient confinement, the claim shall be processed as if the beneficiary were eligible for the entire stay. The beneficiary's cost-sharing status is to be determined based on his/her sponsor's status at the time of admission.

Comment—The rule should specify whether the fiscal intermediary of the PRO is responsible for determining a beneficiary's status.

Response—This determination is always the responsibility of the FI and must be made prior to payment of the claim.

C. Basis of Payment

1. Payment on a Per Discharge Basis (§ 199.14(a)(1)(i)(C)(*2*))

Under the CHAMPUS DRG-based payment system, hospitals are paid a predetermined amount per discharge for inpatient hospital services.

Comment—OCHAMPUS should have a provision which permits interim payments on long lengths-of-stay.

Response—In general, we have modeled the CHAMPUS DRG-based payment system on the Medicare system. Medicare intends to eliminate interim payments on long stay outliers. Therefore, we intend to follow this policy.

2. Discharges and Transfers

a. *Discharges (§ 199.14(a)(1)(i)(C)(6)(i)).* In this section we listed those actions which qualify as discharges and are eligible for full DRG-based payment.

Comment—A transfer from the care of a hospital included under the CHAMPUS DRG-based payment system to a hospital or unit that is excluded from the system is classified as a transfer, but it should be a discharge.

Response—We agree. This is a discharge under the Medicare PPS, and this was an error in our proposed rule. We have made the change to classify such actions as discharges.

b. *Payment to a hospital transferring an inpatient to another hospital (§ 199.14(a)(1)(i)(C)(6)(iv)).* In the case of a transfer, the transferring hospital is to be paid a per diem rate not to exceed the DRG-based payment that would have been paid if the patient had been discharged to another setting.

Comment—The method of reimbursement for transfers has not been addressed in a manner to assure adequate payment in the case of multiple transfers of a patient among various hospitals.

Response—We have revised the language to specifically indicate that transferring hospitals can receive additional payment for cases which meet the criteria for long-stay or cost outliners.

Comment—Transfers to military treatment facilities (MTFs) should be classified as discharges rather than as transfers.

Response—MTFs have the primary responsibility and statutory requirement to provide care to CHAMPUS

beneficiaries when space is available. Transfers to hospitals excluded from the CHAMPUS DRG-based payment system are considered discharges because the transferred patient receives subsequent care in a facility that is organized for treatment of conditions distinctly unlike treatment provided in the non-exempt acute care facility. In the case of a transfer to an MTF, however, the patient will receive continuing care comparable to that received in the non-exempt acute care transferring hospital. Therefore, transfers of this nature will be treated just as if the hospital transferred the patient to another non-exempt acute care facility. That is, the transferring hospital will be paid a DRG-specific per diem amount.

Comment—Currently, emergency room physicians must contact the MTF for permission to admit all patients in distress, but not in a life threatening status. Will there be any consideration given to reducing these emergency room transfers under DRG payment?

Response—All CHAMPUS beneficiaries who live within catchment areas of MTFs are required to first seek inpatient care in the MTF before going to a civilian hospital. That is the purpose of the requirement cited in this comment, and it will not change as a result of DRG-based reimbursement. Thus, if the MTF can treat the patient, the patient will be required to go to the MTF for inpatient services, and the civilian hospital will be reimbursed only for the emergency room services on an outpatient basis.

3. Applicability of the DRG System

a. Areas affected (§ 199.14(a)(1)(ii)(A)). The CHAMPUS DRG-based payment system shall apply to hospitals' services in the fifty states, the District of Columbia, and Puerto Rico. There are no exemptions for services in states which have implemented a separate DRG-based payment system or similar payment system in order to control costs.

Comment—The proposed rule states that the CHAMPUS DRG-based payment system will be applicable to the six CHAMPUS Reform Initiative (CRI) demonstration states. The CRI request for proposals allows contractors to use their own reimbursement system for CHAMPUS Prime.

Response—DRG-based reimbursement will still be required in the demonstration states for all claims which are not CHAMPUS Prime, as it will apply to all standard CHAMPUS claims nationwide. Within CHAMPUS Prime, contractors can use the CHAMPUS DRG system or any other reimbursement system, subject to the requirements of the CRI contracts.

Comment—Any state payment system granted a federal waiver for the purposes of Medicare reimbursement should be automatically exempt from the CHAMPUS system.

Response—The intent of not granting waivers to individual states was to ensure uniformity of payments throughout the country and to ensure that payments in all states would be adequately controlled. The comments we received argued persuasively that the cost controls in those states exempt from the Medicare PPS are adequate to ensure savings comparable to the CHAMPUS DRG-based payment system. Moreover, it would be disruptive if a single payer, particularly a major Federal payer, chose to exempt their beneficiaries from the state system. As a result, we have revised our position to allow states to be exempt from the CHAMPUS DRG-based payment system under the following circumstances:

1. The State must be exempt from the Medicare PPS;

2. The State must request, in writing, that it be exempt from the CHAMPUS DRG-based payment system; and

3. Payments in the State must continue to be at a level to maintain savings comparable to those which would be achieved under the CHAMPUS DRG-based payment system. This exemption is based on savings achieved under Medicare, but because of the differences in beneficiary populations between Medicare and CHAMPUS, savings under Medicare might not accrue to CHAMPUS. Thus, while a State may be initially exempt from the CHAMPUS system, we will continue to monitor reimbursement levels in the state to ensure that they do not exceed those under the CHAMPUS DRG-based payment system. If they do exceed that level, we will work with the State to resolve the problem. However, if a satisfactory solution cannot be found, OCHAMPUS will terminate the exemption after due notice has been given to the state.

At this time, it appears that at least one State, Maryland, seeks such an exemption. Such a request will be considered based on these criteria and will likely be approved.

b. Services exempt from the CHAMPUS DRG-based payment system (§ 199.14(a)(1)(ii)(C). In this section we provided a list of specific services which, even if provided in a hospital subject to the CHAMPUS DRG-based payment system, are exempt from the DRG system.

Comment—There is no distinction between the extremely low birth weight patient and those with a higher birth weight but who are still classified as premature. The neonatal DRGs do not have the ability to accommodate the wide variations in case mix severity.

Response—We believe that any significant classification problem with the neonate DRGs occurs primarily at Children's Hospitals which we are exempting from the CHAMPUS DRG-based payment system at this time. Neonates at other hospitals will be included in the system. We have examined the CHAMPUS data and found that the impact of neonate DRGs on hospitals other than children's hospitals is no greater, and maybe even less, than that of other DRGs. For large teaching hospitals, which have only ten percent of the CHAMPUS neonate cases outside children's hospitals, the impact is not significantly greater than for other DRGs. We will pay particular attention to the neonate issue as we analyze CHAMPUS experience under this system.

Comment—Medicare intends to implement alcohol/drug abuse DRGs and stop exempting such hospitals and units. Will OCHAMPUS do likewise?

Response—We are aware of Medicare's proposed change. However, we believe it would be premature for CHAMPUS to also implement these DRGs at this time because unlike other diagnostic categories we cannot be certain that the nature of alcohol and drug abuse treatment, and its classification, is comparable for both the CHAMPUS and Medicare beneficiary groups. Over the next few months we intend to examine the Medicare changes and evaluate them in terms of CHAMPUS beneficiaries and determine whether it would be appropriate to adopt the Medicare classification changes for the CHAMPUS population or develop a CHAMPUS-specific DRG approach.

Comment—The proposed rule implies that only hospitals may bill for services of hospital-based physicians, but it should depend on the financial arrangement between the physician and the hospital.

Response—A hospital is required to bill for services of hospital-based physicians if the physician is employed by or under contract to the hospital. This requires that the hospital pay the physician. However, if the hospital-based physician merely has an agreement with the hospital to provide services with no requirement that the hospital reimburse the physician, the physician may bill CHAMPUS for his or

her services. We will reword this section to ensure that this is clear.

Comment—The proposed rule apparently includes nurse anesthesia services within the DRG amount. This is a significant departure from the way they are reimbursed under Medicare. The rule should be amended to provide for payment for nurse anesthesia services outside of the DRG system.

Response—When we prepared the proposed rule we were unaware that Medicare had changed from its initial intention to include nurse anesthetists in the DRG payment. We will include a new section which exempts nurse anesthetists from our DRG system and permits hospitals to bill separately for their services. We are aware that Medicare intends to reimburse them as a cost passthrough until October 1989, but CHAMPUS has no comparable cost-reporting system. Therefore, we are allowing hospitals to bill separately which conforms to the procedures Medicare will use beginning in 1989.

Comment—Bone marrow transplantation and AIDs should be exempt from the CHAMPUS DRG-based payment system.

Response—Bone marrow transplantation has been an accepted medical practice for sufficient time so that procedures and charges are stablized. Therefore, DRG-based payment amounts accurately reflect average costs. Most admissions of AIDs patients are not for treatment of AIDs itself, but rather such patients are generally admitted for a complication of AIDs which would be identifiable in our DRG system. Thus, for the present time the DRG system appears able to deal fairly and appropriately with medical care for AIDs and AIDS-related conditions. However, we will continue to monitor developments in this regard and will be ready to make revisions in the future, if appropriate.

c. Hospitals subject to the CHAMPUS DRG-based payment system (§ 199.14(a)(1)(ii)(D)). All hospitals within the fifty states, the District of Columbia, and Puerto Rico which are certified to provide services to CHAMPUS beneficiaries are subject to the DRG-based payment system except for certain types of hospitals or units which are identified.

Comment—Children's hospitals were specifically excluded from the Medicare DRG-based system due to the inadequacies of DRGs for classifying children's conditions. The DRG classification system does not distinguish the more complex and resource intensive children's conditions which are treated by children's and/or large teaching hospitals. Therefore, including them would seriously underfund costs for treating these children. They should be exempt.

Response—We have examined CHAMPUS data relating to the charges of children's hospitals, large teaching hospitals and other short-term acute-care hospitals. Our analysis showed that when charges are adjusted for wage, teaching activity, and case mix differences, the average charge per pediatric case for children's hospitals is significantly higher than the national average. Large teaching hospitals and other acute-care hospitals' average charges, however, did not significantly vary from the national average charge per pediatric case. Therefore, we will exempt chidren's hospitals from the CHAMPUS DRG-based payment system because of their unique circumstances.

In order to be exempt, the hospital must be exempt under the Medicare PPS, or if it is not a Medicare provider, it must meet the same criteria required for exemption under the Medicare PPS. However, we believe the CHAMPUS DRG-based payment system can be modified to accommodate children's hospitals, and we intend to review this area so that children's hosptials can be incorporated into our DRG system in the future. We will also welcome any input from interested organizations in this regard.

Comment—How will exempt facilities be reimbursed?

Response—Hospitals or units which are exempt from the CHAMPUS DRG-based payment system will be reimbursed just as they have been in the past—that is, based on their billed charges.

IV. Determination of Payment Amounts (§ 199.14(a)(1)(iii))

The actual payment for an individual claim under the CHAMPUS DRG-based payment system is calculated by multiplying the adjusted standardized amount by a weighting factor specific to each DRG. The adjusted standardized amounts and the DRG weights shall be calculated from a database of CHAMPUS claims covering at least twelve (12) months.

We used the following procedures to develop the database. CHAMPUS used the same database to calculate both the DRG weights and the adjusted standardized amounts (ASA). The data consisted of all CHAMPUS inpatient claims processed during a 12-month period from July 1, 1986, through June 30, 1987. The data are in UB–82 record format submitted by CHAMPUS fiscal intermediaries.

The database includes only those services and hospitals that will be subject to DRG reimbursement. Moreover, data errors were removed from the database.

Comment—It is necessary to have the final weights and rates in order to evaluate the impact of the system.

Response—In order to ensure that the final weights and rates are based on the most recent possible data, we are using a database covering July 1, 1986, through June 30, 1987. As a result, the final weights and rates were not available when the proposed rule was published. However, we did calculate preliminary weights and rates from an earlier and more abbreviated database, and we included the resultant adjusted standardized amount and a sample of weights in the proposed rule. This was certainly sufficient to give interested parties a good understanding of the impact of the proposed rule on actual payment amounts, providing additional perspective to aid in consideration of the methodology described in the rule. We also provided a complete list of the preliminary weights to anyone who requested it. The final weights and rates are attached to this final rule for information (Tables 1 and 2). Subsequent changes to the weights and rates will be published as a notice in the **Federal Register.**

Comment—Several commenters questioned if the data used in the database are reliable.

Response—In our view, there are three components of data reliability: The technical adequacy of the sample, the accuracy of diagnosis and procedure coding, and the reliability of the billed charge amounts on the bill.

We think that the database is technically adequate, because it consists of all CHAMPUS claims processed from July 1, 1986, through June 30, 1987.

The database used for the final weight and adjusted standardized amount (ASA) calculations also has been edited for duplicate records, total charge errors, interim bills, combined bills for mother and newborn services, and admission and discharge date errors. Moreover, all records without valid diagnoses and procedure codes were eliminated from the database. In short, the final database represents a "clean" set of records for the most recently available full year period of CHAMPUS claims. We feel that a dataset of this type will result in reliable and accurate weights and ASA.

We think that the diagnosis and procedure codes are accurate, because they are completed by medical record tehnicians that conduct the same coding for Medicare discharges.

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Finally, we are confident that the amount recorded on the bill is the actual billed charges, because the data reflect amounts paid to hospitals, including claims adjustments.

Comment—The proposed October 1 effective date does not permit CHAMPUS to develop a comprehensive database for use in the calculation of weights and the adjusted standardized amount (ASA). Moreover, there isn't sufficient time between the end of the database period and the effective date to calculate the weights and rates.

Response—OCHAMPUS has been working on development of a DRG-based payment system since early 1984. A significant part of this effort has been to develop a comprehensive and accurate database from CHAMPUS claims which could be used to calculate the weights and ASA. We have also previously developed the programming necessary to calculate the weights and ASA. Therefore, the October 1 effective date will have no detrimental effect on the comprehensiveness of the database nor on the ability to timely calculate the weights and ASA.

Comment—Since CHAMPUS is ending the database with June 30, the database will not contain adequate data on long lengths-of-stay.

Response—The database is comprised of claims processed during the subject period and includes final bills. While long stays which are not completed as of June 30 will not be included in the database, any stays which began prior to July 1, 1986, but finished during the database period will be included. There is no reason to believe these will not be comparable. Thus, long stays will be adequately represented in the database.

A. DRG Weighting Factors

1. Calculation of DRG Weights (§ 199.14(a)(1)(iii)(A))

The CHAMPUS DRG weights will be discharge-weighted. Specifically, the denominator used to calculate each weight represents the national average charge per discharge for the average patient. If there are any DRGs which have fewer than ten occurrences in the database, we will use the Medicare weight until we are able to develop a weight based on CHAMPUS data.

Comment—Use of a national average charge per discharge for the weighting denominator, rather than working on a regional or per hospital basis, will have an adverse effect.

Response—In response to the inequities resulting from other weighting methodologies, Congress required Medicare to adopt the discharge-weighted weights and rates in FY 1988 (section 1886(d)(3)(A) of the Social Security Act, as amended by section 9302(c) of Pub. L. 99–509). Similarly, CHAMPUS will discharge weight its weights and rates.

Comment—Several commenters questioned whether CHAMPUS would be able to calculate accurate weights for all DRGs, or if some DRGs would have insufficient data from which to develop a weight.

Response—We recognize this as a potential problem. In the proposed rule we proposed using the Medicare weight in those cases where there were no occurrences of a DRG in the database, and in the preliminary database this occurred only twice. However, we realize that a weight for a DRG with only a very few occurrences could be skewed. Therefore, in the calculation of the final weights we have elected to use the Medicare weight for any DRG with fewer than ten occurrences in the database. We believe this action is justified. First, it will ensure that all DRG weights are calculated from an adequate database. Second, our analysis of CHAMPUS weights compared to Medicare weights indicates that on average they are very similar. Third, we expect very few, if any, DRGs to be affected by this.

B. Calculation of the Adjusted Standardized Amount (§ 199.14(a)(1)(iii)(C))

The adjusted standardized amount (ASA) represents the adjusted average operating cost for treating all CHAMPUS beneficiaries in all DRGs during the database period. The ASA does not include any regional or hospital-specific operating cost elements, nor does it contain an urban/rural distinction.

Comment—Unlike the Medicare PPS, CHAMPUS payment amounts will not be adjusted for differences in prevailing wage levels. This is inappropriate. Wages differ significantly across Metropolitan Statistical Areas (MSAs) and states, reflecting a variety of factors beyond the control of the individual hospital.

Response—This was one of the most frequent comments. We believe that a DRG-based payment system, whose central premise is payment based on averages, should contain few, if any, adjustments to the payment amounts. Nevertheless, we recognize that wages, although by no means completely beyond the control of hospitals, constitute a large part of hospital costs and vary considerably from area to area. The final rule, therefore, in a significant change from the proposed rule, provides for use of the Medicare area wage indexes in the CHAMPUS DRG-based payment system.

Medicare finds that after adjusting payments for differences in area wage levels, significant differences in payments still exist between urban and rural hospitals. Our analysis of CHAMPUS claims shows that after adjusting CHAMPUS DRG payments for area wages, the gap between urban and rural payments is substantially narrowed by still warrants an urban/rural differentiation in the payment system. We have, therefore, included the use of separate urban and rural adjusted standardized amounts in the final rule.

1. Apply the Cost to Charge Ratio (§ 199.14(a)(1)(iii)(C)(1))

Each charge used in the calculation of the ASA is to be reduced to a representative cost by using the Medicare cost to charge ratio which was published in the **Federal Register** on September 3, 1986 (p. 31523).

Comment—CHAMPUS patients will probably have a different utilization pattern than Medicare patients. Therefore, the ratio is not applicable to CHAMPUS.

Response—CHAMPUS patients have a different distribution of diagnoses than Medicare patients. CHAMPUS patients, however, due to the fact that they are a younger and healthier population than Medicare patients, require less resource intensity for the same services provided to Medicare patients. For example, hospitals generally post the same room charge for all patients. some of the services provided in this charge include general nursing care and supervision unrelated to specific procedures. In this instance, CHAMPUS patients would require less general nursing care than a more elderly Medicare patient. Therefore, the actual cost or labor intensity required per CHAMPUS patient would be lower than that required of a Medicare patient.

The Medicare cost-to-charge ratio has been derived from extensive research and analysis of actual hospital cost reports. Additionally, diagnosis-specific cost for the CHAMPUS population are not available. We think the Medicare cost-to-charge ratio is the best measure of the relation of hospital costs to charges that is currently available.

2. Increase for Bad Debts (§ 199.14(a)(1)(iii)(C)(2))

The base standardized amount shall be increased by .01 in order to reimburse hospitals for bad debt expenses attributable to CHAMPUS beneficiaries.

Comment—Bad debt on required copayments is not uniformly distributed.

some hospitals have higher bad debt levels which should be recognized by CHAMPUS. CHAMPUS should pay actual costs or collect cost-shares themselves.

Response—In the past, CHAMPUS has not reimbursed hospitals for bad debt on beneficiary cost-sharing and deductibles. We think that the inclusion of the same add-on for bad debt to every DRG payment is generous given our past policy. Under this policy, hospitals will be paid *prospectively* for bad debt expenses for every CHAMPUS discharge through a 1 percentage point add-on to the cost-to-charge ratio. Moreover, since the large majority of our retiree beneficiaries have either other insurance which is primary or supplemental insurance, we are confident that the allowance is fair and reasonable. Collection of beneficiary cost-shares and deductibles has traditionally been a hospital function and is done for nearly all third-party payers.

3. Preliminary Teaching Standardized Amounts (§ 199.14(a)(1)(iii)(C)(5))

A separate standardized amount shall be calculated for each teaching hospital to reimburse for indirect medical education expenses. This will be done by using a hospital-specific indirect medical education factor calculated in accordance with Medicare procedures.

Although we received no written comments on this, we believe a change from our proposed rule is warranted. Medicare has changed its indirect medical education formula to account for an adjustment for disproportionate share hospitals. This adjustment is scheduled to end September 30, 1989. Since CHAMPUS has no disproportionate share provision, we believe immediate use of the following revised formula is proper.

$$1.5\times\left[\left\{1.0+\frac{\text{number of interns + residents}}{\text{number of beds}}\right\}.5795-1.0\right]$$

Medicare has proposed that Congress reduce the indirect medical education factor in recognition of the fact that the current formula significantly overcompensates hospitals for these costs. CHAMPUS is in agreement with the Medicare proposal, but in order to remain consisent with the current Medicare program, CHAMPUS will use the above formula at this time. Should Congress adopt the Medicare proposal, CHAMPUS will revise its formula accordingly.

4. Updating the Adjusted Standardized Amount (§ 199.14(a)(1)(iii)(C)(7))

Beginning in FY 1989, the ASA will be updated by the Medicare annual update factor, unless the adjusted standardized amount is recalculated.

Comment—It is inappropriate to use the Medicare update factor. CHAMPUS should use the market basket rate of increase.

Response—We think it is important that the government promulgate a uniform DRG update factor for both DRG systems. Medicare and CHAMPUS. Congress establishes this factor each year after considering input from PROPAC, the health care industry, and HCFA. We will comply with the Congressionally-approved update factor.

C. Adjustments to the DRG-Based Payment Amounts (§ 199.14(a)(1)(iv))

Any hospital subject to the CHAMPUS DRG-based payment system can be reimbursed for allowed capital and direct medical education costs upon request. Payment for these costs will be made annually based on the ratio of CHAMPUS inpatient days to total inpatient days.

We have revised this provision in the final rule. In order to conform to the current statutory requirements for Medicare, the calculated payment for capital costs will be reduced by 7% for FY 1988. If Medicare changes this reduction percentage in the future, CHAMPUS reserves the right to conform to the Medicare change.

Comment—Payment of capital and direct medical education costs annually is inequitable and will hurt hospitals' cash flow, since they must service their debt and pay operating bills timely.

Response—The payments for these items will be sufficiently small, particularly relative to total hospital revenues, that the administrative cost of more frequent payments is not justified. Moreover, CHAMPUS does not have hospital cost information with which to formulate accurate estimates of interim payments for capital and direct medical education.

1. Information Necessary for Payment of Capital and Direct Medical Education Costs (§ 199.14(a)(1)(iv)(C))

In order to be reimbursed for allowed capital and direct medical education costs, a hospital must submit a report of its incurred costs to the CHAMPUS fiscal intermediary. The report must cover the same period as the hospital's Medicare cost-reporting period and must be submitted within three months of the end of that period.

Comment—The CHAMPUS DRG-based payment system adds additional reporting requirements. The last thing hospitals need is a separate data gathering-monitoring-reporting system for CHAMPUS beneficiaries.

Response—Without this report there is no way for CHAMPUS to determine what capital and direct medical education costs a hospital has incurred for CHAMPUS beneficiaries. The report itself is extremely simple nd, in addition to readily available CHAMPUS demographic information, requires only a few other items which are all available from the hospital's Medicare cost report. The CHAMPUS method for reimbursing hospitals for capital and direct medical education results in equitable payments based on hospital-specific CHAMPUS information. Moreover, the reporting requirements of this method are minimal when compared to other capital payment mechanisms such as a cost-finding method.

Comment—All data reported to the FI must agree with the Medicare cost report, and the provider must report any changes. Presently, the Medicare intermediaries supply HCFA with computer tapes/diskettes of all filed cost-reports. Why not have OCHAMPUS and HCFA exchange data?

Response—This would be an enormous administrative task to identify a few changes to the capital and direct medical education payments CHAMPUS makes. In addition, we believe it is the hospital's responsibility to report accurate information to OCHAMPUS.

Comment—CHAMPUS should allow hospitals to use either the Medicare cost-finding method or the aggregate ratio of CHAMPUS PPS-related charges to total charges. A flat per diem is not sensitive to differences in the percentage of operating costs from one ancillary service to another.

Response—The proposed per diem capital payment policy provides reasonable payments for capital costs consistent with the current Medicare per diem payment methodology and results in minimal reporting requirements for hospitals. A cost-finding method similar to Medicare's cost reporting mechanism

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is not in hospitals' interest, because it will burden them with extensive reporting requirements for CHAMPUS patients, a payer that generally accounts for a small percentage of each hospital's total revenues. The second alternative, capital payments based on the ratio of CHAMPUS charges to total charges is inadequate. If implemented, this policy would not be consistent with Medicare's current per diem calculation of capital costs. We recognize the fact that Medicare is proposing a revision to their current capital payment policy. CHAMPUS supports this proposal, but due to its reporting requirements on hospitals, it would be administratively infeasible for CHAMPUS to implement at this time. When the Medicare proposal is finally implemented in the Medicare system, CHAMPUS will consider it for inclusion in the CHAMPUS DRG-based payment system.

2. Outliers (§ 199.14(a)(1)(iii)(D))

CHAMPUS will adjust DRG-based payments for atypical cases. These outliers are those cases that have either an unusually short length-of-stay or extremely long length-of-stay or that involve extraordinarily high costs when compared to most discharges classified in the same DRG.

Comment—There is no mention of a target outlier pool.

Response—The CHAMPUS DRG-based payment system does not have an outlier pool. Under the Medicare PPS, an estimated percentage of total DRG-based payments is set aside as an outlier pool, thus actually reducing the non-outlier DRG-based payments. Under the CHAMPUS DRG-based payment system, outlier payments are made over and above the basic DRG payments.

Comment—Medicare is changing their outlier policy to recognize the most expensive cases. Will CHAMPUS make similar changes?

Response—We do not intend to adopt the proposed changes until we can fully assess their impact on CHAMPUS claims and whether they produce more equitable payments.

Comment—Under the CHAMPUS DRG system, providers are at unlimited risk for extremely ill patients.

Response—Providers will not be at unlimited risk, because our system includes payments for outliers, and we believe the outlier payments are reasonable.

Comment—Will the outlier thresholds be revised to coincide with the Medicare outlier thresholds?

Response—There is no intent that the thresholds be the same. While our methodology for determining the thresholds is the same, the actual thresholds will be derived from the CHAMPUS database and will be different. Our intent is that the thresholds reflect the service patterns for CHAMPUS beneficiaries.

a. *Short-stay outliers (§ 199.14(a)(1)(iii)(D)(1)(i))*. Any discharge with a length-of-stay (LOS) less than 1.94 standard deviations from the DRG's geometric LOS shall be classified as a short-stay outlier. Short-stay outliers will be reimbursed at 200 percent of the per diem rate for the DRG for each covered day of the hospital stay.

Comment—Several commenters objected to our inclusion of short-stay outliers in the CHAMPUS DRG-based payment system.

Response—Short-stay outliers are fully justified. Just as an exceptionally long length-of-stay should not be considered typical for a given DRG and deserves additional payment, an exceptionally short stay should also not be considered typical and payment should be reduced. Nevertheless, we recognize that the initial days of a hospital stay are generally more expensive, so we have set the short-stay reimbursement at 200 percent of the per diem.

Comment—Many patients will have lengths-of-stay just over the short-stay outlier cutoff. This will make the process of medical review extremely expensive for both CHAMPUS and the provider.

Response—Since DRG-based payment is based on averages, we expect many stays to be shorter than the average. The short-stay outlier policy is intended to isolate those cases with a length-of-stay which is so different from the norm (in this case extraordinarily short) that it is not representative of cases within that DRG. However, the fact that cases exceed the short-stay cutoff but still are less than average will not affect the amount or extent of review to be performed.

Comment—It was indicated an average payment amount was used because some cases will cost more than others, but it will even out in total. Short-stay outliers eliminate that possibility.

Response—This is not correct. The short-stay outlier policy only eliminates those cases with such unusually short lengths-of-stay, that they are not representative of cases within the DRG. However, many cases will exceed the short-stay cutoff and still be less than the average length-of-stay. It is these cases which will allow the averaging effect. The short-stay policy is simply a counterbalance to the long-stay policy which is well accepted.

Comment—The short-stay outlier policy could result in significant financial losses in cases where a patient dies soon after admission.

Response—We recognize the fact that the initial days of a hospital stay are relatively more costly than the final days of a stay. Therefore, we will pay hospitals 200 percent of a DRG-specific per diem for short stay outlier cases. We think that this level of payment is reasonable.

V. Charges to Beneficiaries

A. Inpatient Cost-Sharing

1. Services Subject to the CHAMPUS DRG-Based Payment System (§ 199.4(f)(3)(ii)(A))

Under the proposed rule, for beneficiaries other than dependents of active-duty members the cost-share would have been a per diem amount for each day of the hospital stay, except that the day of discharge would not be counted. The per diem amount would be calculated so that total cost-sharing amounts for these beneficiaries is equivalent to 25 percent of the CHAMPUS-determined allowable costs for hospital services.

Within the Department of Defense there has been some concern that the proposed cost-sharing policy could result in some beneficiaries paying more cost-share than they would pay under current procedures. We therefore examined data which projected cost-shares under both the current and proposed procedures, and we found that approximately 30% of these beneficiaries would have greater cost-shares, although in most cases the actual increase was quite small. Even so, we found this to be an unacceptable consequence for our beneficiaries.

In order to correct this situation, the final rule modifies the cost-sharing provisions for these beneficiaries. The cost-share will be calculated at the lesser of the per diem-based amount or 25 percent of the hospital's billed charges. In this way no beneficiary will be responsible for a larger cost-share than currently required, and most will have smaller cost-shares. As a result of this change, the per diem amount has been increased slightly so that total cost-sharing amounts still equal 25% of the CHAMPUS-determined allowable amounts as required by the CHAMPUS statute.

This change in policy from the proposed rule does not in any way reduce the overall substantial cost-savings for beneficiaries as a whole. Non-active duty dependent beneficiaries will pay significantly less than they do

now. The change in policy means that none of these beneficiaries will pay any more than they do now; most will pay less; and that about half of the time they will save over $100 per hospital stay.

Comment—What is the beneficiary cost-share if the patient dies on the day of admission?

Response—In any case in which the length-of-stay is less than 24 hours, but the stay qualifies as an inpatient stay under CHAMPUS rules, the beneficiary cost-share is to be calculated based on a one-day stay.

Comment—It will be cumbersome to calculate beneficiary cost-shares when the actual charges are less than the DRG-based payment.

Response—We have been very careful to ensure that the cost-sharing methodology would be easy for hospitals to calculate at the time of discharge. Since both length-of-stay and actual charges are known at discharge, the hospital should have no trouble calculating the beneficiary's cost-share.

B. Hospital Days Beyond that Deemed Medically Necessary (§ 199.4(f)(6))

Under current CHAMPUS procedures, as required by law, no CHAMPUS payments may be made for care provided which is not medically necessary. Although it does not occur frequently, application of this rule may result in beneficiaries being responsible for payments they hoped CHAMPUS would cover. Some media reports after publication of the proposed rule created confusion regarding application of this requirement under the DRG system.

Under the DRG-based payment system, this requirement is unchanged. In the usual case, the DRG amount will be considered full payment for all days of care. However, in the unusual cases in which the length of stay exceeds the long-stay outlier standard, additional payments will generally be made to the hospital. In these cases, it is possible that applying the requirement of medically necessary care could result in some or all of the additional payment being disallowed. In addition, as in the current program, an entire hospital admission could be determined not medically necessary, resulting in the claim being disallowed.

These possibilities, however, do not represent any change from currently required procedures. Moreover, implementation of the DRG-based payment system is not expected to result in any increase in the frequency of disallowed claims based on a lack of medical necessity.

VI. Quality of Care Review (§ 199.14(a)(1)(v))

Implementation of the Medicare DRG system generated concerns about the quality of care. In response to these concerns Congress established a Peer Review Organization (PRO) system to determine adequacy and appropriateness of care. Congressional hearings continued to be held that focused on complaints of premature discharge. Medicare revised its PRO system to concentrate further on quality of care issues. As a result of these efforts, the state of the art of process, structure, and outcome measures of the quality of care has evolved to the point where both nationally and locally developed peer review systems are widely recognized as effectively monitoring the quality of care provided.

In connection with implementing the CHAMPUS DRG system, we will piggyback on the established Federal system for monitoring the quality and appropriateness of civilian inpatient care for its beneficiaries.

CHAMPUS will implement a quality of care review program which will assure the appropriateness of care provided to beneficiaries. Every case reimbursed under the DRG system will be subject to generic quality screen reviews, admission and discharge reviews, and DRG validation. One of the objectives of these multiple reviews is to guard against episodes of premature discharge or inappropriate admission. A peer review system will use criteria which has been developed on both national and local levels to determine the adequacy and appropriateness of care. This system, which is modeled on the Medicare PRO system, will be specific to the CHAMPUS population.

Comment—The current CHAMPUS system for reviewing psychiatric and substance abuse treatment works well and ensures adequate and qualified review. Therefore, psychiatric and substance abuse services should be excluded from PRO review.

Response—The admission and quality review system set forth in this rule applies only to those services reimbursed under the CHAMPUS DRG-based payment system. Therefore, psychiatric and substance abuse services, which are exempt from DRG-based payment, will be excluded from the review system.

Comment—What are the procedures to be followed in conducting the admission and quality review?

Response—There will be two phases of review under the CHAMPUS DRG-based payment system. The permanent review system is being coordinated with the Health Care Financing Administration. HCFA is currently in the process of recomputing its PRO contracts and the new contracts will be phased in between July and December 1988. Quality assurance reviews of CHAMPUS claims and services may be included in future PRO contracts. In the interim, CHAMPUS will conduct quality of care reviews under a separate contract. The admission and quality review section of this rule provides the basis for these review functions. Information regarding the detailed procedures will be found in the RFPs and resulting contracts for both the interim an proposed permanent review systems.

A. Areas of Review

1. Admissions (§ 199.14(a)(1)(v)(C)(*1*))

This section sets forth the areas which are to be reviewed to determine whether inpatient care is medically necessary and whether services are delivered in the most appropriate setting.

Comment—All transfers of CHAMPUS beneficiaries from a hospital or hospital unit subject to the CHAMPUS DRG-based payment system to another hospital or hospital unit are to be reviewed. Does this include transfers from a hospital or unit subject to the DRG system to a hospital or unit exempt from the system?

Response—We have clarified in this final rule that these cases are to be classified as discharges.This particular section applies only to those actions which are classified as transfers, so a transfer to a hospital or unit exempt from the DRG system would not be reviewed under this provision.

Comment—All CHAMPUS admissions to a hospital or unit subject to the DRG system which occur within seven calendar days of discharge from a hospital or unit subject to the DRG system are to be reviewed. Will the time periods involved in this provision be changed to coincide with Medicare's review requirement?

Response—To the extent possible, we want hospitals and PROs to be subject to only a single set of review procedures. Therefore, we will use the same time periods.

Comment—If the number of unnecessary CHAMPUS admissions for a hospital is more than 2.5 percent of the review sample or three cases (whichever is greater) for any quarter, all CHAMPUS admissions for that hospital must be reviewed during the following quarter. Will this threshold for intensified review be changed to coincide with Medicare? Can the review

organization focus on identified subsets rather than intensify an entire provider?

Response—The requirements will duplicate Medicare's.

Comment—Prepayment review is required for all CHAMPUS admissions in any DRGs which have been specifically identified by OCHAMPUS. Has OCHAMPUS identified any such DRGs?

Response—None have been identified to date. The selection of the DRGs for pre-admission or pre-procedure review will be based on data which targets known or suspected high risk topics.

2. Admission Pattern Monitoring (§ 199.14(a)(1)(v)(C)(*2*))

In order to ensure that discharges are appropriate, admissions for those hospitals identified as having significant increases in quarterly discharges shall be reviewed.

Comment—Medicare has determined that admission pattern monitoring was nonproductive and has eliminated it. Will CHAMPUS?

Response—As for other areas of review, we will duplicate Medicare in this respect.

3. Procedure Review (§ 199.14(a)(1)(v)(C)(5))

All claims for procedures identified by OCHAMPUS as subject to a pattern of abuse shall be reviewed.

Comment—Has OCHAMPUS identified any procedures subject to this review?

Response—Not yet. This type of review will not be implemented until the permanent review system has begun.

B. Fiscal Intermediary Actions as a Result of Review (§ 199.14(a)(1)(v)(D))

CHAMPUS intends for the FI, not the PRO, to institute corrective actions by the hospital. Therefore, this section enumerates those actions which a fiscal intermediary may take if the PRO determines that a hospital has misrepresented admission, discharge, or billing information, or has taken an action that results in the unnecessary admission of an individual entitled to benefits, unnecessary multiple admissions of an individual, or other inappropriate medical or other practices. This finding may be with regard to an individual claim or a pattern of inappropriate practices.

Comment—What procedures have been developed for this process—how is the fiscal intermediary to be notified, etc.

Response—As for other detailed information on these procedures, it will be found in the RFPs and resulting contracts for both the interim and permanent review systems. OCHAMPUS also will issue guidance in the future on the review systems which will provide additional information.

VII. Summary of Regulations Changes

For the convenience of the reader, we are summarizing the changes we are making to the proposed rule as a result of public comments. The reader is referred to the detailed discussions above for a complete explanation of the rationale for these changes.

A. Urban/Rural Differentiation

There will be separate adjusted amounts (ASAs) calculated for urban and for rural areas. The same urban/rural designations used in the Medicare PPS will be used in the CHAMPUS DRG payment system.

B. Wage Index

Each adjusted standardized amount (ASA) which will be divided into labor and nonlabor portions. The wage index adjustments used by Medicare will be applied to the labor portions of each ASA. This amount will then be added to the nonlabor portion, and the sum will be multiplied by the DRG weight to arrive at the DRG-based payment amount.

C. State Waivers

Any state which has been exempted from the Medicare PPS can request an exemption from the CHAMPUS system.

D. Children's Hospitals

Any children's hospital which is exempt from the Medicare PPS will be exempt from the CHAMPUS system.

E. Cost-Shares

The cost-share for beneficiaries other than dependents of active duty members will be the lesser of (a) the amount based on the per diem as described in the proposed rule, or (b) 25% of the *billed* charge, but it can never exceed the DRG-based amount.

F. Grouper Program

The CHAMPUS system will use the most recently available Medicare Grouper program.

G. Nurse Anesthetists

Hospitals will be allowed to bill separately for nurse anesthetists' services just as they may for hospital-based physicians.

H. Capital and Direct Medical Education Payments

The capital payment for FY 1988 is to be reduced by 7% in accordance with Medicare procedures.

I. Discharges/Transfers

It is to be considered a discharge if the patient is transferred from the care of a hospital included under the CHAMPUS DRG-based payment system to a hospital or unit that is excluded from the DRG system, except for transfers to uniformed services treatment facilities.

VIII. Summary of Differences from the Medicare PPS

Although the CHAMPUS DRG-based payment system is modeled on the Medicare PPS, there are several differences. Below we have summarized the significant differences which are not addressed in the summary of public comments.

A. Services Subject to the CHAMPUS DRG-Based Payment System

The CHAMPUS DRG-based payment system exempts some services which are included in the Medicare PPS. They are: Psychiatric services in short-term hospitals; heart transplantation services; and liver transplantation services. We have exempted psychiatric services, because research has shown that psychiatric DRGs may not be a reliable measure of cost variability for psychiatric cases under CHAMPUS. We have also exempted heart and liver transplantation services for much the same reason—that is, we are concerned that the DRG-based amounts also may not be a reliable measure of their cost variability, since they occur infrequently and involve significant costs.

B. Hospitals Subject to the CHAMPUS DRG-Based Payment System

CHAMPUS has exempted certain types of hospitals from our DRG system which are subject to the Medicare PPS. Sole community hospitals are paid under special provisions under the Medicare PPS based in part on hospital-specific costs which are unavailable to CHAMPUS. Therefore, we have exempted them. Christian Science Sanitoriums are paid a predetermined fixed amount per discharge under Medicare. However, since they involve such a small number of providers and CHAMPUS claims and since some may qualify under the long-term hospital exemption anyway, we have elected to exempt all of them.

C. Updating DRG Weights

Medicare is required to update their weights annually. We plan to recalculate CHAMPUS weights annually based on a charge sample from the most recent period under CHAMPUS prospective payment. Notice of the

revised weights will be published in the **Federal Register**.

D. Inclusion of Puerto Rico

Although Puerto Rico is included in the Medicare PPS beginning in October 1987, hospitals there will be reimbursed using a blend of the national rate and the Puerto Rico discharge-weighted urban or rural standardized rate. The CHAMPUS DRG-based payment system makes no distinction for Puerto Rican hospitals.

E. Capital and Direct Medical Education Payments

These items are reimbursed as a cost passthrough under the Medicare PPS. CHAMPUS will pay for these items upon written request. CHAMPUS has no cost-reporting mechanism, but the report of these costs which is submitted to the CHAMPUS fiscal intermediary must correspond to the Medicare cost-report. We support the current Medicare proposals that revise the payment methodologies for capital and direct medical education. CHAMPUS' implementation of these proposals at this time would be administratively infeasible. However, once Medicare adopts the new methodologies, CHAMPUS will consider them for inclusion in the CHAMPUS system.

F. Bad Debt Adjustment

The adjusted standardized amount used in the CHAMPUS DRG-based payment system contains a factor to reimburse hospitals for CHAMPUS' share of their bad debts. Under the Medicare PPS, bad debts are reimbursed as a cost passthrough.

IX. Impact Analysis

A. Executive Order 12291 and the Regulatory Flexibility Act

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would:

Result in annual effect on the national economy of $100 million or more;

Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or

Have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The Regulatory Flexibility Act requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we consider small entities to include all nonprofit and most for-profit hospitals.

Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, examine regulatory alternatives which minimize unnecessary burden or otherwise assure that regulations are cost-effective.

We are treating this final rule as a major rule under Executive Order 12291, since we anticipate that the changed reimbursement procedures required by this final rule will result in annual program savings exceeding $100 million. The Department of Defense Authorization Act, 1984, which provides the authority for CHAMPUS to use a DRG-based payment system, allows some administrative discretion in the implementation of such a reimbursement system. Therefore, this analysis examines the major features of the system and the rationale for each.

Because of the extensive changes this final rule will cause in our methods for paying for inpatient hospital services, we are providing the following discussion which, when combined with the rest of this preamble, constitutes a regulatory impact analysis and a voluntary regulatory impact/flexibility analysis.

B. The Problem of Increased CHAMPUS Costs

The rapidly rising costs of health care have been the focus of numerous studies and have resulted in many efforts to curb the rise. Most notable of these efforts is the implementation of the Medicare Prospective Payment System (PPS) which was implemented in October 1983. Although the PPS was required to be "budget neutral" during its early years, it has had a significant impact, not only on Medicare, but also on the delivery of health care services to the public as a whole. CHAMPUS has unquestionably benefited from this in certain respects, but nevertheless our costs continue to rise at an unacceptable rate. For example, a comparison of CHAMPUS data for FY 1985 to FY 1983 shows that, while the number of admissions and the average length-of-stay have decreased, the cost per admission has increased 19.4 percent, the cost per inpatient day has increased 26.2 percent and total CHAMPUS expenditures for inpatient care increased 11.1 percent. This trend continued into FY 1986 with total hospital costs increasing 19.0 percent from FY 1985, although admissions during that year also increased by 9 percent. Average length-of-stay remained the same.

We attribute these increases to several factors. The first is inflation, but since inflation in the economy as a whole has slowed considerably, its role in the increases is minor. A second contributing factor is the absence of traditional supply and demand forces operating to curb excessive expenditures, although, like inflation, this has been checked somewhat in recent years, particularly by the Medicare PPS and other similar programs. A third factor which is significant is CHAMPUS' practice of reimbursing hospitals based on their billed charges. This creates no incentive for hospitals to control costs, and, in fact, creates the opposite incentive. This ties into the fourth factor, which is cost-shifting to billed charge payers such as CHAMPUS from other third-party payers which have placed limitations on payments.

C. A DRG-Based Payment System Represents the Best Resolution of the Problem of Increasing Costs

There can be no doubt that the Medicare PPS has significantly affected the delivery of hospital services in the United States. The CHAMPUS DRG-based payment system closely resembles the Medicare system and will benefit from the same advantages. Of particular importance, it will enable us to set our reimbursement levels to more closely equal hospitals' costs of providing services to our beneficiaries, and it will enable us to avoid the increases in charges resulting from cost-shifting which results in CHAMPUS subsidizing non-CHAMPUS patients. We fully intend to reimburse hospitals the reasonable costs of providing care to our beneficiaries, but in order to maintain the level of benefits offered by CHAMPUS under increasing budgetary constraints, it is incumbent upon us to implement steps to control our costs.

D. Quantification of Impact

In our initial impact analysis in the proposed amendment of rule we described the impacts we expect the CHAMPUS DRG-based payment system to have on hospitals, beneficiaries, and fiscal intermediaries. We also solicited comments and factual information that would enable us to describe and quantify in greater detail the effects of our DRG system. Although we received numerous comments regarding specific provisions which we have addressed earlier in this preamble, we received no specific information with regard to the economic impact.

Subsequent to publication of the proposed rule we have completed a further analysis of the impact of this change. This analysis resulted in an estimate of $200 million savings to CHAMPUS for inpatient services provided during FY 1988. However, the effects of DRG-based payments will not actually begin until perhaps three months after implementation of the system because of actual service time, time to submit claims, and the time to process the claims. Therefore, actual CHAMPUS savings during FY 1988 would be approximately $150 million.

E. Economic Impacts

In this section we will discuss the impact on hospitals, on our beneficiaries, and on CHAMPUS operations.

1. Hospital Impact

Since the Medicare PPS has been in operation for nearly four years, we believe hospitals have adjusted their operations to accommodate it. Therefore, we anticipate few, if any, changes in hospital operations as a result of our implementation of the CHAMPUS DRG-based payment system. Possible operational changes could be in hospitals' billing practices (if they have not already adopted Medicare billing requirements for CHAMPUS), in the need for additional medical records personnel, and perhaps in increased hospital utilization review activities. For the most part, however, these impacts should be negligible, since CHAMPUS beneficiaries constitute such a small part of most hospitals' patient loads. There may be some hospitals which serve a large number of CHAMPUS beneficiaries and relatively few Medicare beneficiaries, and the impact on these hospitals' operations may be greater, but we expect such hospitals to be very few.

Moreover, we believe some of the distinctions used during the Medicare PPS transition period, such as hospital-specific and regional differentiations, are not necessary for the CHAMPUS DRG-based payment system, because CHAMPUS charges generally represent a small percentage of each hospital's total revenues and because hospitals have already adjusted their operating practices in response to the Medicare PPS. Moreover, the end of Medicare's phase-in period which recognized the regional and hospital-specific distinctions will approximately coincide with the effective date of the CHAMPUS DRG-based payment system. However, as noted earlier in this preamble, we have included an urban/rural differentiation and a wage index provision in the final rule in order to recognize these differences.

The primary impact of the CHAMPUS DRG-based payment system will be in the immediate reduction of total CHAMPUS payments to hospitals. It will also give us the ability to control increases in costs in the future. Because the CHAMPUS DRG-based payment system is modeled on the Medicare PPS, CHAMPUS payments for our beneficiaries will be more proportionate to Medicare payment for Medicare beneficiaries. In addition, CHAMPUS will no longer pay those amounts which have been shifted to charge payers because of payment limitations imposed by various states and other third-party payers.

The CHAMPUS DRG-based payment system includes a number of provisions and procedures which we believe help to mitigate its impact on hospitals. These include:

a. Use of Medicare cost to charge ratio. The base from which the standardized amounts are calculated is 66 percent of charges. This is the Medicare cost to charge ratio which was published in the **Federal Register** on September 3, 1986. This ratio excludes capital costs and direct medical education costs. Because hospitals' posted charges to third-party payers are generally consistent, this ratio provides a reasonable estimate of CHAMPUS costs relative to charges. Moreover, it represents those costs which have been identified, through statute and regulation, as reimbursable under the major government program. At the same time, this ratio is derived from claims for Medicare beneficiaries. Since our beneficiaries are considerably younger and generally healthier on average, we believe that an average CHAMPUS beneficiary would use fewer hospital resources than an average Medicare beneficiary classified under the same DRG.

b. Bad debts. In order to recognize our share of hospitals' bad debts for CHAMPUS patients (that is, unpaid cost-sharing amounts), we have increased the base amount for the standardized amounts from .66 to .67. This is an increase of about 1.5 percent which is actually more than our share of CHAMPUS bad debts.

c. Use of CHAMPUS-specific weights. We recognize that, because of the differences between our beneficiaries and Medicare's beneficiaries, their relative resource consumption in the various DRGs will be different. In order to ensure that the payment amounts used in the CHAMPUS DRG-based payment system are reasonable for our beneficiaries, we will calculate DRG weights form CHAMPUS claims data only.

d. Wage index. We recognize that wages, although by no means completely beyond the control of hospitals, constitute a large part of hospital costs and vary considerably from area to area. We have, therefore, provided for use of the Medicare area wage indexes in the CHAMPUS DRG-based payment system. This provision is essentially budget neutral for CHAMPUS, since it will not directly affect the total amounts paid. However, it will redistribute those payments so that, rather than all hospitals being paid the same amount for the same DRG, those hospitals in high wage areas will be paid more than the average and those hospitals in low wage areas will be paid less.

e. Urban/rural differentiation. CHAMPUS data indicate that significant differences in the impact of DRG-based payments exist between urban and rural hospitals even after adjusting for area wage differences. We have, therefore, provided for development of separate urban and rural ASAs based on claims data specific to each. As for the use of wage indexes, this provision will be budget neutral.

f. Capital and direct medical education costs. In one CHAMPUS study of the largest inpatient CHAMPUS hospitals, we found that, as a percentage of total expenses, capital costs ranged from 2.4 percent to 20.5 percent. In the same study we found that direct medical education costs vary from 0 percent to 6.1 percent of total expenses. We recognize these are expenses which apply to our beneficiaries. Moreover, at present there is no equitable way to reimburse hospitals for these costs on a uniform basis which would not unduly penalize certain hospitals. The CHAMPUS DRG-based payment system, therefore, includes procedures for hospitals to report their total capital and direct medical education costs to CHAMPUS and be reimbursed CHAMPUS' share based on the ration of CHAMPUS inpatient days to total inpatient days.

g. Phychiatric services. Most psychiatric services are exempt from DRGs under Medicare with the exception of psychiatric services provided in some acute care facilities that do not qualify for an exemption. Initially, all psychiatric services are exempt from the CHAMPUS DRG-based payment system, but OCHAMPUS is currently studying whether other prospective payment methodologies are appropriate for the provision of

psychiatric services to CHAMPUS patients.

h. Substance abuse services. Although Medicare has developed a DRG classification system for substance abuse services adequate for its beneficiary population, at this time we think that it is unclear whether this system should be applied to CHAMPUS patients because of the distinct characteristics of the CHAMPUS population. Therefore, we have elected to conduct further study on this issue. In the meantime, we will exempt substance abuse services from the CHAMPUS DRG-based payment system and continue to pay for them according to billed charges.

i. Children's hospitals. Both the comments we received, and CHAMPUS data we have examined, indicate that children's hospitals have higher costs, on average, than other hospitals. As a result, we have exempted children's hospitals from the CHAMPUS DRG-based payment system.

2. Beneficiary Impact

The CHAMPUS DRG-based payment system will benefit our beneficiaries and the procedures in this final rule contain various provisions to protect them.

a. Cost-sharing amounts. The cost-sharing provisions under the CHAMPUS DRG-based payment system are structured so that beneficiaries are still responsible on average for the same proportion of allowed costs. There will be no effect on dependents of active duty members in this regard, but on average all other beneficiaries will be required to pay smaller cost-sharing amounts, since the allowed amounts will be reduced.

b. Calculation of cost-shares for beneficiaries other than dependents of active duty members. We conducted a test of DRG-based reimbursement in South Carolina from September 1, 1984, through August 31, 1985. One of the most significant findings of that test was that the calculation of cost-shares for beneficiaries other than dependents of active duty members must be revised. Currently these beneficiaries' cost-share is 25 percent of the allowed amount which is generally nearly equal to the billed amount. During the test we found that under a DRG-based payment system the DRG-based amount sometimes greatly exceeded the hospital's billed charge, resulting in a cost-share equal to, and sometimes exceeding, the billed charge. In order to prevent this inequity, we revised the cost-sharing procedures for these beneficiaries in the proposed rule to require a standard per diem amount for services provided by hospitals subject to the CHAMPUS DRG-based payment system. This did not entirely correct the problem, however, and some beneficiaries would still be required to pay cost-shares exceeding what would be required under current procedures. Thus, this final rule further modifies the cost-sharing requirements for these beneficiaries. The cost-share will now be the lesser of the per diem-based amount or 25 percent of the hospital's billed charges. In this way no beneficiary's cost-share will increase as a result of DRG-based payment (see Section IV.A. of this preamble).

3. Operational Impact

Fiscal intermediaries will have to make significant changes to their existing claims processing systems in order to implement the CHAMPUS DRG-based payment system. An OCHAMPUS negotiation team has been established to negotiate reimbursement of costs with the fiscal intermediaries.

F. Conclusion

We believe that this final rule meets the objectives of the Regulatory Flexibility Act.

X. Other Required Information

A. Effective Date

The procedures contained in this final rule are to be applicable to all admissions occurring on or after October 1, 1987. In the proposed amendment of rule we stated that implementation of DRG-based reimbursement in Hawaii would be delayed until April 1988. This was based on potential delays in making administrative adjustments for fiscal intermediary activities in Hawaii. These issues have now been resolved and there is no administrative reason for a delay. Thus, we no longer intend to postpone implementation in Hawaii, and DRG-based reimbursement will be implemented there on October 1, 1987.

B. Paperwork Reduction Act

This final rule contains a reporting requirement for capital and direct medical education costs which is subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). As required by that Act, OCHAMPUS has requested Office of Management and Budget (OMB) approval of this requirement.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.2(b) is amended by adding the following definitions in alphabetical order:

§ 199.2 Definitions.

* * * * *

CHAMPUS DRG-Based Payment System. A reimbursement system for hospitals which assigns prospectively-determined payment levels to each DRG based on the average cost of treating all CHAMPUS patients in a given DRG.

* * * * *

Diagnosis-Related Groups (DRGs). Diagnosis-related groups (DRGs) are a method of dividing hospital patients into clinically coherent groups based on the consumption of resources. Patients are assigned to the groups based on their principal diagnosis (the reason for admission, determined after study), secondary diagnoses, procedures performed, and the patient's age, sex, and discharge status.

* * * * *

3. § 199.4 is amended by revising paragraphs (d)(2), (f)(3)(ii), (f)(4)(ii), (f)(5), (g)(10), and (g)(11) and by adding paragraph (f)(6) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(d) * * *

(2) *Billing practices.* To be considered for benefits under this paragraph (d), covered services and supplies must be provided and billed for by an authorized provider as set forth in § 199.6 of this part. Such billing must be itemized fully and described sufficiently, even when CHAMPUS payment is determined under the CHAMPUS DRG-based payment system, so that CHAMPUS can determine whether benefits are authorized by this part. Except for claims subject to the CHAMPUS DRG-based payment system, whenever continuing charges are involved, claims should be submitted to the appropriate CHAMPUS fiscal intermediary at least every 30 days (monthly) either by the beneficiary or sponsor or directly by the provider. For claims subject to the CHAMPUS DRG-based payment system, claims may be submitted only after the beneficiary has been discharged or transferred from the hospital.

* * * * *

(f) * * *

(3) * * *

(ii) *Inpatient cost-sharing.* Cost-sharing amounts for inpatient services shall be as follows:

(A) *Services subject to the CHAMPUS DRG-based payment system.* The cost-share shall be the lesser of: an amount calculated by multiplying a per diem amount by the total number of days in the hospital stay except the day of discharge; or 25 percent of the hospital's billed charges. The per diem amount shall be calculated so that, in the aggregate, the total cost-sharing amounts for these beneficiaries is equivalent to 25 percent of the CHAMPUS-determined allowable costs for covered services or supplies provided on an inpatient basis by authorized providers. The per diem amount shall be published annually by OCHAMPUS.

(B) *Services exempt from the CHAMPUS DRG-based payment system and services provided by hospitals and parts of hospitals exempt from the CHAMPUS DRG-based payment system and by institutions other than hospitals.* The cost-share shall be 25 percent of the CHAMPUS-determined allowable costs or charges for otherwise covered services or supplies provided on an inpatient basis by an authorized provider.

* * * * *

(4) * * *

(ii) *Inpatient cost-sharing.* Eligible former spouses are responsible for the payment of cost-sharing amounts the same as those required for retirees, dependents of retirees, dependents of deceased active duty members, and dependents of deceased retirees.

* * * * *

(5) *Amounts over CHAMPUS-determined allowable costs or charges.* It is the responsibility of the CHAMPUS fiscal intermediary to determine allowable costs for services and supplies provided by hospitals and other institutions and allowable charges for services and supplies provided by physicians, other individual professional providers, and other providers. Such CHAMPUS-determined allowable costs or charges are made in accordance with the provisions of § 199.14. All CHAMPUS benefits, including calculation of the CHAMPUS or beneficiary cost-sharing amounts, are based on such CHAMPUS-determined allowable costs or charges. The effect on the beneficiary when the billed cost or charge is over the CHAMPUS-determined allowable amount is dependent upon whether or not the applicable claim was submitted on a participating basis on behalf of the beneficiary or submitted directly by the beneficiary on a nonparticipating basis and on whether the claim is for inpatient hospital services subject to the CHAMPUS DRG-based payment system. This provision applies to all classes of CHAMPUS beneficiaries.

Note.—When the provider "forgives" or "waives" any beneficiary liability, such as amounts applicable to the annual fiscal year deductible for outpatient services or supplies, or the inpatient or outpatient cost-sharing as previously set forth in this section, the CHAMPUS-determined allowable charge or cost allowance (whether payable to the CHAMPUS beneficiary or sponsor, or to a participating provider) shall be reduced by the same amount.

(i) *Participating provider.* Under CHAMPUS, authorized professional providers and institutional providers other than hospitals have the option of participating on a claim-by-claim basis. Participation is required for inpatient claims only for hospitals which are Medicare-participating providers. Hospitals which are not Medicare-participating providers but which are subject to the CHAMPUS DRG-based payment system in paragraph (a)(1) of § 199.14 must sign agreements to participate on all CHAMPUS inpatient claims in order to be authorized providers under CHAMPUS. All other hospitals may elect to participate on a claim-by-claim basis. Participating providers must indicate participation by signing the appropriate space on the applicable CHAMPUS claim form and submitting it to the appropriate CHAMPUS fiscal intermediary. In the case of an institution or medical supplier, the claim must be signed by an official having such authority. This signature certifies that the provider has agreed to accept the CHAMPUS-determined allowable charge or cost as payment in full for the medical services and supplies listed on the specific claim form, and further has agreed to accept the amount paid by CHAMPUS or the CHAMPUS payment combined with the cost-sharing amount paid by or on behalf of the beneficiary as full payment for the covered medical services or supplies. Therefore, when costs or charges are submitted on a participating basis, the patient is not obligated to pay any amounts disallowed as being over the CHAMPUS-determined allowable cost or charge for authorized medical services or supplies.

(ii) *Nonparticipating providers.* Nonparticipating providers are those providers who do not agree on the CHAMPUS claim form to participate and thereby do not agree to accept the CHAMPUS-determined allowable costs or charges as the full charge. For otherwise covered services and supplies provided by such nonparticipating CHAMPUS providers, payment is made directly to the beneficiary or sponsor and the beneficiary is liable under applicable law for any amounts over the CHAMPUS-determined allowable costs or charges. CHAMPUS shall have no responsibility for any amounts over allowable costs or charges as determined by CHAMPUS.

(6) *Hospital days beyond that deemed medically necessary.* Under the CHAMPUS DRG-based payment system, the DRG amount is considered full payment for any hospital stay up to the long-stay outlier cutoff as described in paragraph (a)(1)(iv)(D)(1)(ii) of § 199.14. Any charges for days beyond the long-stay outlier cutoff which are deemed not medically necessary shall be the responsibility of the beneficiary.

* * * * *

(g) * * *

(10) *Amounts above allowable costs or charges.* Costs of services and supplies to the extent amounts billed are over the CHAMPUS determined allowable cost or charge, as provided for in § 199.14.

(11) *No legal obligation to pay, no charge would be made.* Services or supplies for which the beneficiary or sponsor has no legal obligation to pay; or for which no charge would be made if the beneficiary or sponsor was not eligible under CHAMPUS, except claims subject to the CHAMPUS DRG-based payment system where the DRG-based amount is greater than the hospital's billed charge which has been paid in full by a double coverage plan.

* * * * *

4. Section 199.6 is amended by revising paragraphs (a)(8) and (b)(1)(ii), by adding a new paragraph (b)(3)(v), and by removing paragraph (e) and redesignating paragraph (f) as paragraph (e) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(a) * * *

(8) *Participating provider.* Under CHAMPUS, authorized professional providers and institutional providers other than hospitals have the option of participating on a claim-by-claim basis. Participation is required for inpatient claims only for hospitals which are Medicare-participating providers. Hospitals which are not Medicare-participating providers but which are subject to the CHAMPUS DRG-based payment system in paragraph (a)(1)(ii)(D) of § 199.14 must sign agreements to participate on all CHAMPUS inpatient claims in order to

be authorized providers under CHAMPUS. All other hospitals may elect to participate on a claim-by-claim basis. Participating providers must indicate participation by signing the appropriate space on the applicable CHAMPUS claim form and submitting it to the appropriate CHAMPUS fiscal intermediary on behalf of the beneficiary. In the case of an institution or medical supplier, the claim must be signed by an official having such authority. This certifies that the provider has agreed to accept the CHAMPUS-determined allowable charge or cost as payment in full for the medical services and supplies listed on the specific claim form; and has agreed to accept the amount paid by CHAMPUS or the CHAMPUS payment combined with the cost-sharing and deductible amounts paid by, or on behalf of, the beneficiary as full payment for the covered medical services and supplies.

* * * * *

(b) * * *

(1) * * *

(ii) *Billing practices.* Institutional billings must be itemized fully and sufficiently descriptive, even when CHAMPUS payment is determined under the CHAMPUS DRG-based payment system, so that CHAMPUS can make a determination of benefits. Except for claims subject to the CHAMPUS DRG-based payment system, whenever continuing charges are involved, claims should be submitted to the appropriate CHAMPUS fiscal intermediary at least every 30 days (monthly) either by the beneficiary or sponsor or directly by the provider on behalf of the beneficiary. For claims subject to the CHAMPUS DRG-based payment system, claims may be submitted only after the beneficiary has been discharged or transferred from the hospital.

* * * * *

(3) * * *

(v) *Participation agreements required for some hospitals which are not Medicare-participating.* Notwithstanding the provisions of this paragraph (B)(3), a hospital which is subject to the CHAMPUS DRG-based payment system but which is not a Medicare-particpating hospital must request and sign an agreement with OCHAMPUS. By signing the agreement, the hospital agrees to participate on all CHAMPUS inpatient claims and accept the requirements for a participating provider as contained in paragraph (a)(8) of § 199.6. Failure to sign such an agreement shall disqualify such hospital as a CHAMPUS-approved institutional provider.

* * * * *

5. Section 199.7 is amended by revising paragraphs (B)(2)(i), (c)(2), (e)(1), and (g) and by adding a new paragraph (b)(2)(x)(C) to read as follows:

§ 199.7 Claims submissions, review, and payment.

* * * * *

(b) * * *

(2) * * *

(i) *Diagnosis.* All applicable diagnoses are required; standard nomenclature is acceptable. In the absence of a diagnosis, a narrative description of the definitive set of symptoms for which the medical care was rendered must be provided.

* * * * *

(x) * * *

(C) For hospitals subject to the CHAMPUS DRG-based payment system (see paragraph (a)(1)(ii)(D) of § 199.14), the following information is also required:

(*1*) The principal diagnosis (the diagnosis established, after study, to be chiefly responsible for causing the patient's admission to the hospital).

(*2*) All secondary diagnoses.

(*3*) All significant procedures performed.

(*4*) The discharge status of the beneficiary.

(*5*) The hospital's Medicare provider number.

(*6*) The source of the admission.

* * * * *

(c) * * *

(2) *Provider's signature.* A participating provider (see paragraph (a)(8) of § 199.6) is required to sign the CHAMPUS claim form.

* * * * *

(e) * * *

(1) *Continuing care.* Except for claims subject to the CHAMPUS DRG-based payment system, whenever medical services and supplies are being rendered on a continuing basis, an appropriate claim or claims should be submitted every 30 days (monthly) whether submitted directly by the beneficiary or sponsor or by the provider on behalf of the beneficiary. Such claims may be submitted more frequently if the beneficiary or provider so elects. The Director, OCHAMPUS, or a designee, also may require more frequent claims submission based on dollars. Examples of care that may be rendered on a continuing basis are outpatient physical therapy, private duty (special) nursing, or inpatient stays. For claims subject to the CHAMPUS DRG-based payment system, claims may be submitted only after the beneficiary has been discharged or transferred from the hospital.

* * * * *

(g) *Claims review.* It is the responsibility of the CHAMPUS fiscal intermediary (or OCHAMPUS, including OCHAMPUSEUR) to review each CHAMPUS claim submitted for benefit consideration to ensure compliance with all applicable definitions, conditions, limitations, or exclusions specified or enumerated in this part. It is also required that before any CHAMPUS benefits may be extended, claims for medical services and supplies will be subject to utilization review and quality assurance standards, norms, and criteria issued by the Director, OCHAMPUS, or a designee (see paragraph (a)(1)(v) of § 199.14 for review standards for claims subject to the CHAMPUS DRG-based payment system).

* * * * *

6. Section 199.10 is amended by redesignating paragraph (a)(5)(iii) as paragraph (a)(5)(iv) and adding a new paragraph (a)(5)(iii) to read as follows:

§ 199.10 Appeal and hearing procedures.

(a) * * *

(5) * * *

(iii) The establishment of diagnosis-related groups (DRGs), or the methodology for the classification of inpatient discharges within the DRGs, or the weighting factors that reflect the relative hospital resources used with respect to discharges within each DRG, since each of these is established by this part.

* * * * *

7. A new § 199.14 is added to read as follows:

§ 199.14 Provider reimbursement methods.

(a) *Hospitals.* The CHAMPUS-determined allowable cost for reimbursement of a hospital shall be determined on the basis of one of the following methodologies.

(1) *CHAMPUS DRG-based payment system.* Under the CHAMPUS DRG-based payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system (generally short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis using Diagnosis Related Groups (DRGs). Payments under this system will include an urban/rural differentiation and an adjustment for area wage differences and indirect medical education costs. Additional payments will be made for

capital costs, direct medical education costs and outlier cases.

(i) *General*—(A) *DRGs used.* The CHAMPUS DRG-based payment system will use the same DRGs used in the most recently available grouper for the Medicare Prospective Payment System.

(B) *Assignment of discharges to DRGs. (1)* The classification of a particular discharge shall be based on the patient's age, sex, principal diagnosis (that is, the diagnosis established, after study, to be chiefly responsible for causing the patient's admission to the hospital), secondary diagnoses, procedures performed and discharge status.

(*2*) Each discharge shall be assigned to only one DRG regardless of the number of conditions treated or services furnished during the patient's stay.

(C) *Basis of payment*—(*1*) *Hospital billing.* Under the CHAMPUS DRG-based payment system, hospitals are required to submit claims (including itemized charges) in accordance with paragraph (b) of § 199.7. The CHAMPUS fiscal intermediary will assign the appropriate DRG to the claim based on the information contained on the claim.

(*2*) *Payment on a per discharge basis.* Under the CHAMPUS DRG-based payment system, hospitals are paid a predetermined amount per discharge for inpatient hospital services furnished to CHAMPUS beneficiaries.

(*3*) *Claims priced as of date of discharge.* All claims reimbursed under the CHAMPUS DRG-based payment system are to be priced as of the date of discharge, regardless of when the claim is submitted.

(*4*) *Payment in full.* The DRG-based amount paid for inpatient hospital services is the total CHAMPUS payment for the inpatient operating costs (as described in paragraph (a)(1)(i)(C)(*5*) of this section) incurred in furnishing services covered by the CHAMPUS. The full prospective payment amount is payable for each stay during which there is at least one covered day of care, except as provided in paragraph (a)(1)(iv)(D)(*1*)(*i*) of this section.

(*5*) *Inpatient operating costs.* The CHAMPUS DRG-based payment system provides a payment amount for inpatient operating costs, including:

(*i*) Operating costs for routine services; such as the costs of room, board, and routine nursing services;

(*ii*) Operating costs for ancillary services, such as hospital radiology and laboratory services (other than physicians' services) furnished to hospital inpatients;

(*iii*) Special care unit operating costs; and

(*iv*) Malpractice insurance costs related to services furnished to inpatients.

(*6*) *Discharges and transfers*—(*i*) *Discharges.* A hospital inpatient is discharged when:

(*aa*) The patient is formally released from the hospital (release of the patient to another hospital as described in paragraph (a)(1)(i)(C)(*6*)(*i*) (ii) of this section, or a leave of absence from the hospital, will not be recognized as a discharge for the purpose of determining payment under the CHAMPUS DRG-based payment system);

(*bb*) The patient dies in the hospital; or

(*cc*) The patient is tranferred from the care of a hospital included under the CHAMPUS DRG-based payment system to a hospital or unit that is excluded from the prospective payment system.

(*ii*) *Transfers.* Except as provided under paragraph (a)(1)(i)(C)(*6*)(*i*) of this section, a discharge of a hospital inpatient is not counted for purposes of the CHAMPUS DRG-based payment system when the patient is transferred:

(*aa*) From one patient area or unit of the hospital to another area or unit of the same hospital;

(*bb*) From the care of a hospital included under the CHAMPUS DRG-based payment system to the care of another hospital paid under this system;

(*cc*) From the care of a hospital included under the CHAMPUS DRG-based payment system to the care of another hospital that is excluded from the CHAMPUS DRG-based payment system because of participation in a statewide cost control program which is exempt from the CHAMPUS DRG-based payment system under paragraph (a)(1)(ii)(A) of this section; or

(*dd*) From the care of a hospital included under the CHAMPUS DRG-based payment system to the care of a uniformed services treatment facility.

(*iii*) *Payment in full to the discharging hospital.* The hospital discharging an inpatient shall be paid in full under the CHAMPUS DRG-based payment system.

(*iv*) *Payment to a hospital transferring an inpatient to another hospital.* If a hospital subject to the CHAMPUS DRG-based payment system transfers an inpatient to another such hospital, the transferring hospital shall be paid a per diem rate, as determined under instructions issued by OCHAMPUS, for each day of the patient's stay in that hospital, not to exceed the DRG-based payment that would have been paid if the patient had been discharged to another setting. However, if a discharge is classified into DRG No. 385 (Neonates, died or transferred) or DRG No. 456 (Burns, transferred to another acute care facility), the transferring hospital shall be paid in full.

(*v*) *Additional payments to transferring hospitals.* A transferring hospital may qualify for an additional payment for extraordinary cases that meet the criteria for long-stay or cost outliers.

(ii) *Applicability of the DRG system*—(A) *Areas affected.* The CHAMPUS DRG-based payment system shall apply to hospitals' services in the fifty states, the District of Columbia, and Puerto Rico, except that any State which has implemented a separate DRG-based payment system or similar payment system in order to control costs and is exempt from the Medicare Prospective Payment System may be exempt from the CHAMPUS DRG-based payment system if it requests exemption in writing, and provided payment under such system does not exceed payment which would otherwise be made under the CHAMPUS DRG-based payment system.

(B) *Services subject to the DRG-based payment system.* All normally covered inpatient hospital services furnished to CHAMPUS beneficiaries by hospitals are subject to the CHAMPUS DRG-based payment system.

(C) *Services exempt from the DRG-based payment system.* The following hospital services, even when provided in a hospital subject to the CHAMPUS DRG-based payment system, are exempt from the CHAMPUS DRG-based payment system and shall be reimbursed under the procedures in paragraph (a)(2) of this section.

(*1*) Services provided by hospitals exempt from the DRG-based payment system.

(*2*) All services which would otherwise be paid under one of the psychiatric DRGs which are numbers 424–432.

(*3*) All services which would otherwise be paid under one of the substance abuse DRGs which are numbers 433–438.

(*4*) All services related to kidney acquisition by Renal Transplantation Centers.

(*5*) All services related to a heart transplantation which would otherwise be paid under DRG 103.

(*6*) All services related to liver transplantation when the transplant is performed in a CHAMPUS-authorized liver transplantation center.

(*7*) All professional services provided by hospital-based physicians.

(*8*) All services provided by nurse anesthetists.

(D) *Hospitals subject to the CHAMPUS DRG-based payment system.* All hospitals within the fifty States, the District of Columbia, and Puerto Rico which are certified to provide services to CHAMPUS beneficiaries are subject to the DRG-based payment system except for the following hospitals or hospital units which are exempt.

(*1*) *Psychiatric hospitals.* A psychiatric hospital which is exempt from the Medicare Prospective Payment System is also exempt from the CHAMPUS DRG-based payment system. In order for a psychiatric hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.23 of Title 42 CFR.

(*2*) *Rehabilitation hospitals.* A rehabilitation hospital which is exempt from the Medicare Prospective Payment System is also exempt from the CHAMPUS DRG-based payment system. In order for a rehabilitation hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.23 of Title 42 CFR.

(*3*) *Alcohol/Drug hospitals.* An alcohol/drug hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for an alcohol/drug hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.23 of Title 42 CFR.

(*4*) *Psychiatric, rehabilitation and alcohol/drug units (distinct parts).* A psychiatric, rehabilitation or alcohol/drug unit which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a distinct unit which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.23 of Title 42 CFR.

(*5*) *Long-term hospitals.* A long-term hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a long-term hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must have an average length of inpatient stay greater than 25 days:

(*i*) As computed by dividing the number of total inpatient days (less leave or pass days) by the total number of discharges for the hospital's most recent fiscal year; or

(*ii*) As computed by the same method for the immediately preceding six-month period, if a change in the hospital's average length of stay is indicated.

(*6*) *Sole community hospitals.* Any hospital which has qualified for special treatment under the Medicare prospective payment system as a sole community hospital and has not given up that classification is exempt from the CHAMPUS DRG-based payment system. (See Subpart G of 42 CFR Part 412.)

(*7*) *Christian Science sanitoriums.* All Christian Science sanitoriums (as defined in paragraph (b)(4)(vii) of § 199.6) are exempt from the CHAMPUS DRG-based payment system.

(*8*) *Cancer hospitals.* Any hospital which qualifies as a cancer hospital under the Medicare standards and has elected to be exempt from the Medicare prospective payment system is exempt from the CHAMPUS DRG-based payment system. (See 42 CFR 412.94.)

(*9*) *Children's hospitals.* A children's hospital which is exempt from the Medicare Prospective Payment System is also exempt from the CHAMPUS DRG-based payment system. In order for a children's hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in 42 CFR 412.23.

(*10*) *Hospitals outside the 50 states, the District of Columbia, and Puerto Rico.* A hospital is excluded from the CHAMPUS DRG-based payment system if it is not located in one of the fifty States, the District of Columbia, or Puerto Rico.

(E) *Hospitals which do not participate in Medicare.* It is not required that a hospital be a Medicare-participating provider in order to be an authorized CHAMPUS provider. However, any hospital which is subject to the CHAMPUS DRG-based payment system and which otherwise meets CHAMPUS requirements but which is not a Medicare-participating provider (having completed a form HCFA–1514, Hospital Request for Certification in the Medicare/Medicaid Program and a form HCFA–1561, Health Insurance Benefit Agreement) must complete a participation agreement with OCHAMPUS. By completing the participation agreement, the hospital agrees to participate on all CHAMPUS inpatient claims and to accept the CHAMPUS-determined allowable amount as payment in full for these claims. Any hospital which does not participate in Medicare and does not complete a participation agreement with OCHAMPUS will not be authorized to provide services to CHAMPUS beneficiaries.

(iii) *Determination of payment amounts.* The actual payment for an individual claim under the CHAMPUS DRG-based payment system is calculated by multiplying the urban or rural adjusted standardized amounts (adjusted to account for area wage differences using the wage indexes used in the Medicare program) by a weighting factor specific to each DRG.

(A) *Calculation of DRG Weights.*

(*1*) *Grouping of charges.* All discharge records in the database shall be grouped by DRG.

(*2*) *Remove DRGs 469 and 470.* Records from DRGs 469 and 470 shall be removed from the database.

(*3*) *Indirect medical education standardization.* To standardize the charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$1.5\times\left[\left\{E1.0+\frac{\text{number of interns+residents}}{\text{number of beds}}\right\}.5795-1.0\right]$$

(4) *Wage level standardization.* To standardize the charge records for area wage differences, each charge record will be divided into labor-related and nonlabor-related portions, and the labor-related portion shall be divided by the most recently available Medicare wage index for the area. The labor-related and nonlabor-related portions will then be added together.

(5) *Elimination of statistical outliers.* All unusually high or low charges shall be removed from the database.

(6) *Calculation of DRG average charge.* After the standardization for indirect medical education, and area wage differences, an average charge for each DRG shall be computed by summing charges in a DRG and dividing that sum by the number of records in the DRG.

(7) *Calculation of national average charge per discharge.* A national average charge per discharge shall be calculated by summing all charges and dividing that sum by the total number of records from all DRG categories.

(8) *DRG relative weights.* DRG relative weights shall be calculated for each DRG category by dividing each DRG average charge by the national average charge.

(B) *Empty and low-volume DRGs.* The Medicare weight shall be used for any DRG with less than ten (10) occurrences in the CHAMPUS database. The short-stay thresholds shall be set at one day for these DRGs and the long-stay thresholds shall be set at the FY 87 Medicare thresholds.

(C) *Updating DRG weights.* The CHAMPUS DRG weights shall be updated or adjusted as follows:

(1) DRG weights shall be recalculated annually using CHAMPUS charge data and the methodology described in paragraph (a)(1)(iii)(A) of this section.

(2) When a new DRG is created, CHAMPUS will, if practical, calculate a weight for it using an appropriate charge sample (if available) and the methodology described in paragraph (a)(1)(iii)(A) of this section.

(3) In the case of any other change under Medicare to an existing DRG weight (such as in connection with technology changes), CHAMPUS shall adjust its weight for that DRG in a manner comparable to the change made by Medicare.

(D) *Calculation of the adjusted standardized amounts.* The following procedures shall be followed in calculating the CHAMPUS adjusted standardized amount.

(1) *Differentiate urban and rural charges.* All charges in the database shall be sorted into urban and rural groups. The following procedures will be applied to each group.

(2) *Indirect medical education standardization.* To standardize the charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$1.5X\left[\left\{1.0+\frac{\text{number of interns + residents}}{\text{number of beds}}\right\}.5795-1.0\right]$$

(3) *Wage level standardization.* To standardize the charge records for area wage differences, each charge record will be divided into labor-related and nonlabor-related portions, and the labor-related portion shall be divided by the most recently available Medicare wage index for the area. The labor-related and nonlabor-related portions will then be added together.

(4) *Apply the cost to charge ratio.* Each charge is to be reduced to a representative cost by using the Medicare cost to charge ratio increased by 1 percentage point in order to reimburse hospitals for bad debt expenses attributable to CHAMPUS beneficiaries. This results in an effective cost-to-charge ratio (adjusted for bad debt) of 0.67.

(5) *Preliminary base year standardized amount.* A preliminary base year standardized amount shall be calculated by summing all costs in the database applicable to the urban or rural group and dividing by the total number of discharges in the urban or rural group.

(6) *Update for inflation.* The preliminary base year standardized amounts shall be updated using an annual update factor equal to 1.07 to produce fiscal year 1988 preliminary standardized amounts. Thereafter, development of a new standardized amount will use an inflation factor equal to the hospital market basket index used by the Health Care Financing Administration in their Prospective Payment System.

(7) The preliminary standardized amounts, updated for inflation, shall be divided by a system standardization factor so that total DRG outlays, given the database distribution across hospitals and diagnoses, are equal to the total charges reduced to costs.

(8) *Labor and nonlabor portions of the adjusted standardized amounts.* The adjusted standardized amounts shall be divided into labor and nonlabor portions in accordance with the Medicare division of labor and nonlabor portions.

(E) *Adjustments to the DRG-based payment amounts.* The following adjustments to the DRG-based amounts (the weight multiplied by the adjusted standardized amount) will be made.

(1) *Outliers.* CHAMPUS shall adjust the DRG-based payment to a hospital for atypical cases. These outliers are those cases that have either an unusually short length-of-stay or extremely long length-of-stay or that involve extraordinarily high costs when compared to most discharges classified in the same DRG.

(i) *Length-of-stay outliers.* Length-of-stay outliers shall be identified and paid by the fiscal intermediary when the claims are processed.

(aa) *Short-stay outliers.* Any discharge with a length-of-stay (LOS) less than 1.94 standard deviations from the DRG's geometric LOS shall be classified as a short-stay outlier. Short-stay outliers shall be reimbursed at 200 percent of the per diem rate for the DRG for each covered day of the hospital stay, not to exceed the DRG amount.

The per diem rate shall equal the DRG amount divided by the geometric mean length-of-stay for the DRG.

(*bb*) *Long-stay outliers.* Any discharge which has a length-of-stay (LOS) exceeding the lesser of 1.94 standard deviations or 17 days from the DRG's geometric LOS shall be classified as a long-stay outlier. Long-stay outliers shall be reimbursed the DRG-based amount plus 60 percent of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier cutoff. The per diem rate shall equal the DRG amount divided by the geometric mean length-of-stay for the DRG.

(*ii*) *Cost outliers.* Any discharge which does not qualify as a length-of-stay outlier and which has standardized costs that exceed a threshold of the greater of two times the DRG-based amount or $13,500 may be classified as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by .67 and adjusting this amount for indirect medical education costs. Cost outliers shall be reimbursed the DRG-based amount plus 60 percent of all costs exceeding the threshold. Additional payment for cost outliers can be made only upon request by the hospital.

(2) Wage Adjustment. CHAMPUS will adjust the labor portion of the standardized amounts according to the hospital's area wage index.

(*3*) *Indirect Medical Education Adjustment.* The wage adjusted DRG payment will also be multiplied by 1.0 plus the hospital's indirect medical education ratio.

(F) *Updating the adjusted standardized amounts.* Beginning in FY 1989, the adjusted standardized amounts will be updated by the Medicare annual update factor, unless the adjusted standardized amounts are recalculated.

(G) *Annual Cost Pass-Throughs.*

(*1*) *Capital costs.* When requested in writing by a hospital, CHAMPUS shall reimburse the hospital its share of actual capital costs as reported annually to the CHAMPUS fiscal intermediary. Payment for capital costs shall be made annually based on the ratio of CHAMPUS inpatient days for those beneficiaries subject to the CHAMPUS DRG-based payment system to total inpatient days applied to the hospital's total allowable capital costs. Reductions in payments for capital costs which are required under Medicare shall also be applied to payments for capital costs under CHAMPUS.

(*i*) *Costs included as capital costs.* Allowable capital costs are those specified in Medicare Regulation § 413.130, as modified by § 412.72.

(*ii*) *Services, facilities, or supplies provided by supplying organizations.* If services, facilities, or supplies are provided to the hospital by a supplying organization related to the hospital within the meaning of Medicare Regulation § 413.17, then the hospital must include in its capital-related costs, the capital-related costs of the supplying organization. However, if the supplying organization is not related to the provider within the meaning of § 413.17, no part of the charge to the provider may be considered a capital-related cost unless the services, facilities, or supplies are capital-related in nature and:

(*aa*) The capital-related equipment is leased or rented by the provider;

(*bb*) The capital-related equipment is located on the provider's premises; and

(*cc*) The capital-related portion of the charge is separately specified in the charge to the provider.

(*2*) *Direct medical education costs.* When requested in writing by a hospital, CHAMPUS shall reimburse the hospital its actual direct medical education costs as reported annually to the CHAMPUS fiscal intermediary. Such teaching costs must be for a teaching program approved under Medicare Regulation § 413.85. Payment for direct medical education costs shall be made annually based on the ratio of CHAMPUS inpatient days for those beneficiaries subject to the CHAMPUS DRG-based payment system to total inpatient days applied to the hospital's total allowable direct medical education costs. Allowable direct medical education costs are those specified in Medicare Regulation § 413.85.

(*3*) *Information necessary for payment of capital and direct medical education costs.* Any hospital subject to the CHAMPUS DRG-based payment system which wishes to be reimbursed for allowed capital and direct medical education costs must submit a report to the CHAMPUS fiscal intermediary. Such report is to be submitted within three months of the end of the hospital's Medicare cost-reporting period and shall cover the one-year period corresponding to the hospital's Medicare cost-reporting period. The first such report may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS fiscal intermediary must correspond to the costs reported on the hospital's Medicare cost report. (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to CHAMPUS within 30 days of the date the hospital is notified of the change.) The report must be signed by the hospital official responsible for verifying the amounts and shall contain the following information.

(*i*) The hospital's name.

(*ii*) The hospital's address.

(*iii*) The hospital's CHAMPUS provider number.

(*iv*) The hospital's Medicare provider number.

(*v*) The period covered—this must correspond to the hospital's Medicare cost-reporting period.

(*vi*) Total inpatient days provided.

(*vii*) Total CHAMPUS inpatient days for those beneficiaries subject to the CHAMPUS DRG-based payment system provided.

(*viii*) Total allowable capital costs.

(*ix*) Total allowable direct medical education costs.

(*x*) Total full-time equivalents for:

(*aa*) Residents.

(*bb*) Interns.

(*xi*) Total inpatient beds as of the end of the cost-reporting period. If this has changed during the reporting period, an explanation of the change must be provided.

(*xii*) Title of official signing the report.

(*xiii*) Reporting date.

(*xiv*) The report shall contain a certification statement that any changes to the items in paragraphs (a)(1)(iii)(G)(*3*) (*vi*), (*vii*), (*viii*), (*ix*), or (*x*), which are a result of an audit of the hospital's Medicare cost-report, shall be reported to CHAMPUS within thirty (30) days of the date the hospital is notified of the change.

(*iv*) *Quality of care reviews.*

(A) *Objectives of review system.* There are four required functions:

(*1*) A review of the completeness, adequacy and quality of care provided;

(*2*) A review of the reasonableness, necessity and appropriateness of hospital admissions under CHAMPUS DRG reimbursement;

(*3*) A validation of diagnoses and procedural information that determines CHAMPUS reimbursement; and

(*4*) A review of the necessity and appropriateness of care for which payment is sought on an outlier basis.

(B) *Hospital cooperation.* All hospitals which participate in CHAMPUS and submit CHAMPUS claims are required to provide all information necessary for CHAMPUS to properly process the claims. In order for CHAMPUS to be assured that services for which claims are submitted meet quality of care standards, hospitals are required to provide the peer review organization (PRO) responsible for quality review with all the information, within timeframes to be established by

OCHAMPUS, it needs to perform the review functions required by this paragraph. Additionally, all participating hospitals shall provide CHAMPUS beneficiaries, upon admission, with information about the admission and quality review system including their appeal rights. A hospital which does not cooperate in this activity shall be subject to termination as a CHAMPUS-authorized provider.

(C) *Areas of review— (1) Admissions.* The following areas shall be subject to review to determine whether inpatient care was medically appropriate and necessary, was delivered in the most appropriate setting and met acceptable standards of quality. This review may include preadmission or prepayment review when appropriate.

(*i*) Transfers of CHAMPUS beneficiaries from a hospital or hospital unit subject to the CHAMPUS DRG-based payment system to another hospital or hospital unit.

(*ii*) CHAMPUS admissions to a hospital or hospital unit subject to the CHAMPUS DRG-based payment system which occur within a certain period (specified by OCHAMPUS) of discharge from a hospital or hospital unit subject to the CHAMPUS DRG-based payment system.

(*iii*) A random sample of other CHAMPUS admissions for each hospital subject to the CHAMPUS DRG-based payment system.

(*iv*) CHAMPUS admissions in any DRGs which have been specifically identified by OCHAMPUS for review or which are under review for any other reason.

(*2*) *DRG validation.* The review organization responsible for quality of care reviews shall be responsible for ensuring that the diagnostic and procedural information reported by hospitals on CHAMPUS claims which is used by the fiscal intermediary to assign claims to DRGs is correct and matches the information contained in the medical records. In order to accomplish this, the following review activities shall be done.

(*i*) Perform DRG validation reviews of each case under review.

(*ii*) Review of claim adjustments submitted by hospitals which result in the assignment of a higher weighted DRG.

(*iii*) Review for physician certification as to the major diagnoses and procedures and the physician's acknowledgment of annual receipt of the penalty statement as contained in the Medicare regulations at 42 CFR 412.40 and 412.46.

(*iv*) Review of a sample of claims for each hospital reimbursed under the CHAMPUS DRG-based payment system. Sample size shall be determined based upon the volume of claims submitted.

(*3*) *Outlier review.* Claims which qualify for additional payment as a long-stay outlier or as a cost-outlier shall be subject to review to ensure that the additional days or costs were medically necessary and appropriate and met all other requirements for CHAMPUS coverage. In addition, claims which qualify as short-stay outliers shall be reviewed to ensure that the admission was medically necessary and appropriate and that the discharge was not premature.

(*4*) *Procedure review.* Claims for procedures identified by OCHAMPUS as subject to a pattern of abuse shall be the subject of intensified quality assurance review.

(*5*) *Other review.* Any other cases or types of cases identified by OCHAMPUS shall be subject to focused review.

(D) *Actions as a result of review.—(1) Findings related to individual claims.* If it is determined, based upon information obtained during reviews, that a hospital has misrepresented admission, discharge, or billing information, or is found to have quality of care defects, or has taken an action that results in the unnecessary admissions of an individual entitled to benefits, unnecessary multiple admission of an individual, or other inappropriate medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries, the entity responsible for admission and quality review in conjunction with the fiscal intermediary, shall, as appropriate:

(*i*) Recoup (in whole or in part) any amounts paid for the inpatient hospital services related to such an unnecessary admission or subsequent readmission and provide the hospital with a notice of appeal rights; or

(*ii*) Require the hospital to take other corrective action necessary to prevent or correct the inappropriate practice.

(*iii*) Advise the hospital and beneficiary of appeal rights, as required by § 199.10 of this part.

(*iv*) Notify OCHAMPUS of all such actions.

(*2*) *Findings related to a pattern of inappropriate practices.* In all cases where a pattern of inappropriate admissions and billing practices that have the effect of circumventing the CHAMPUS DRG-based payment system is identified, OCHAMPUS shall be notified of the hospital and practice involved.

(*3*) *Billed charges and set rates.* The allowable costs for authorized care in all hospitals not subject to the CHAMPUS DRG-based payment system shall be determined on the basis of billed charges or set rates. Under this procedure the allowable costs may not exceed the lower of:

(*i*) The actual charge for such service made to the general public; or

(*ii*) The allowed charge applicable to the policyholders or subscribers of the CHAMPUS fiscal intermediary for comparable services under comparable circumstances, when extended to CHAMPUS beneficiaries by consent or agreement; or

(*iii*) The allowed charge applicable to the citizens of the community or state as established by local or state regulatory authority, excluding Title XIX of the Social Security Act or other welfare program, when extended to CHAMPUS beneficiaries by consent or agreement.

(b) *Skilled Nursing Facilities (SNFs).* The CHAMPUS-determined allowable cost for reimbursement of a SNF shall be determined on the same basis as for hospitals which are not subject to the CHAMPUS DRG-based payment system.

(c) *Reimbursement for Other Than Hospitals and SNFs.* The Director, OCHAMPUS, or a designee, shall establish such other methods of determining allowable cost or charge reimbursement for those institutions, other than hospitals and SNFs, as may be required.

(d) *Reimbursement of Freestanding Ambulatory Surgical Centers.* Authorized care furnished by freestanding ambulatory surgical centers shall be reimbursed on the basis of the CHAMPUS-determined reasonable cost.

(e) *Reimbursement of Individual Health-Care Professionals and Other Non-Institutional Health-Care Providers.* The CHAMPUS-determined reasonable charge (the amount allowed by CHAMPUS) for the services of an individual health-care professional or other noninstitutional health-care provider (even if employed by or under contract to an institutional provider) shall be determined by one of the following methodologies, that is, whichever is in effect in the specific geographic location at the time covered services and supplies are provided to a CHAMPUS beneficiary.

(1) *Allowable charge method.* The allowable charge method is the preferred and primary method for reimbursement of individual health-care professionals and other noninstitutional health-care providers.

(i) The allowable charge for authorized care shall be the lower of:

(A) The billed charge for the service;

(B) The prevailing charge level that does not exceed the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period.

Note.—Public Law 97–86 provides that prevailing charges are to be determined at the 90th percentile. However, DOD Appropriation Acts have limited this to the 80th percentile. Prevailing charges shall continue to be calculated in accordance with any limitations set forth in the DOD Appropriation Acts, as implemented in instructions issued by the Director, OCHAMPUS.

(*1*) the 80th percentile of charges shall be determined on the basis of statistical data and methodology acceptable to the Director, OCHAMPUS, or a designee.

(*2*) The base period shall be a period of 12 calendar months and shall be adjusted at least once a year.

(ii) A charge that exceeds the prevailing charge can be determined to be allowable only when unusual circumstances or medical complications justify the higher charge. The allowable charge may not exceed the billed charge under any circumstances.

(2) *Alternative method.* The Director, OCHAMPUS, or a designee, may, subject to the approval of the ASD(HA), establish an alternative method of reimbursement designed to produce reasonable control over health care costs and to ensure a high level of acceptance of the CHAMPUS-determined charge by the individual health-care professionals or other noninstitutional health-care providers furnishing services and supplies to CHAMPUS beneficiaries. Alternative methods may not result in reimbursement greater than the allowable charge method above.

(f) *Outside the United States.* The Director, OCHAMPUS, or a designee, shall determine the appropriate reimbursement method or methods to be used in the extension of CHAMPUS benefits for otherwise covered medical services or supplies provided by hospitals or other institutional providers, physicians or other individual professional providers, or other providers outside the United States.

(g) *Implementing Instructions.* The Director, OCHAMPUS, or a designee, shall issue CHAMPUS policies, instructions, procedures, and guidelines, as may be necessary to implement the intent of this section.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 24, 1987.

Table 1—CHAMPUS Weight and Threshold Summary

[**Editorial Note:** This table will not appear in the Code of Federal Regulations]

The following summary shows the final CHAMPUS DRG weights as well as arithmetic mean lengths of stay, geometric mean lengths of stay, and outlier thresholds. For those DRGs marked with an asterisk (i.e., the low volume DRGs), we substituted Medicare weights, length of stay values, and long stay thresholds. The short stay thresholds were set at one day for these DRGs.

BILLING CODE 3810-01-M

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
1	CRANIOTOMY AGE >=18 EXCEPT FOR TRAUMA	3.6060	13.3	10.2	2	27
2	CRANIOTOMY FOR TRAUMA AGE >=18	4.4477	14.2	9.9	1	26
3	CRANIOTOMY AGE <18	2.3836	9.5	6.2	1	23
4	SPINAL PROCEDURES	2.1411	10.7	8.7	2	25
5	EXTRACRANIAL VASCULAR PROCEDURES	1.7049	6.3	5.5	2	14
6	CARPAL TUNNEL RELEASE	0.5402	2.3	1.8	1	6
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC AGE >=70 &/OR C.C.	2.8290	11.4	7.1	1	24
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC AGE <70 W/O C.C.	0.8608	3.8	2.8	1	12
9	SPINAL DISORDERS & INJURIES	2.0299	11.4	6.4	1	23
10	NERVOUS SYSTEM NEOPLASMS AGE >=70 AND/OR C.C.	1.2225	8.2	5.3	1	22
11	NERVOUS SYSTEM NEOPLASMS AGE <70 W/O C.C.	0.8829	5.9	3.8	1	20
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.6168	12.1	6.7	1	23
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.9771	7.6	5.0	1	21
14	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.4611	8.2	5.7	1	22
15	TRANSIENT ISCHEMIC ATTACKS AND PRECEREBRAL OCCLUSIONS	0.7454	4.1	3.2	1	12
16	NONSPECIFIC CEREBROVASCULAR DISORDERS WITH C.C.	1.2609	6.9	4.9	1	21
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O C.C.	0.7707	5.1	3.0	1	17
18	CRANIAL & PERIPHERAL NERVE DISORDERS AGE >=70 AND/OR C.C.	1.2039	7.9	5.5	1	22
19	CRANIAL & PERIPHERAL NERVE DISORDERS AGE <70 W/O C.C.	0.7152	5.4	3.8	1	19
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.3990	8.5	6.0	1	22
21	VIRAL MENINGITIS	0.5790	4.1	3.5	1	11
22	HYPERTENSIVE ENCEPHALOPATHY	0.7426	4.4	3.4	1	12
23	NONTRAUMATIC STUPOR & COMA	0.9647	5.5	4.0	1	18
24	SEIZURE & HEADACHE AGE >=70 AND/OR C.C.	0.9220	5.5	3.9	1	18
25	SEIZURE & HEADACHE AGE 18-69 W/O C.C.	0.5673	4.1	3.1	1	12
26	SEIZURE & HEADACHE AGE 0-17	0.4713	3.2	2.4	1	9
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.8402	7.2	3.9	1	20
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >=70 AND/OR C.C.	1.2596	6.1	3.5	1	20
29	TRAUMATIC STUPOR & COMA <1 HR AGE 18-69 W/O C.C.	0.6282	4.1	2.5	1	13

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
30	TRAUMATIC STUPOR & COMA <1 HR AGE 0-17	0.4042	2.6	1.8	1	7
31	CONCUSSION AGE >=70 AND/OR C.C.	0.7241	4.1	2.6	1	15
32	CONCUSSION AGE 18-69 W/O C.C.	0.3965	2.4	1.9	1	6
33	CONCUSSION AGE 0-17	0.2338	1.6	1.3	1	3
34	OTHER DISORDERS OF NERVOUS SYSTEM AGE >=70 AND/OR C.C.	1.7484	7.9	5.0	1	21
35	OTHER DISORDERS OF NERVOUS SYSTEM AGE <70 W/O C.C.	0.6492	4.2	2.8	1	14
36	RETINAL PROCEDURES	0.8106	3.4	2.9	1	8
37	ORBITAL PROCEDURES	0.8111	3.1	2.5	1	9
38	PRIMARY IRIS PROCEDURES	0.4459	2.2	2.0	1	5
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.6959	2.0	1.7	1	4
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >=18	0.4851	1.9	1.6	1	4
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.4295	1.7	1.4	1	3
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.7921	3.0	2.5	1	7
43	HYPHEMA	0.3083	4.2	3.6	1	11
44	ACUTE MAJOR EYE INFECTIONS	0.4713	4.3	3.8	1	10
45	NEUROLOGICAL EYE DISORDERS	0.5503	3.1	2.6	1	8
46	OTHER DISORDERS OF THE EYE AGE >=18 WITH C.C.	0.6808	5.4	3.7	1	20
47	OTHER DISORDERS OF THE EYE AGE >=18 W/O C.C.	0.5982	4.4	3.0	1	15
48	OTHER DISORDERS OF THE EYE AGE 0-17	0.5002	3.8	2.6	1	12
49	MAJOR HEAD & NECK PROCEDURES	2.7560	11.6	8.6	1	25
50	SIALOADENECTOMY	0.7656	2.6	2.1	1	6
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.6647	2.9	2.3	1	9
52	CLEFT LIP & PALATE REPAIR	0.6944	3.4	2.9	1	8
53	SINUS & MASTOID PROCEDURES AGE >=18	0.7476	2.5	1.9	1	7
54	SINUS & MASTOID PROCEDURES AGE 0-17	0.6684	2.1	1.7	1	5
55	MISCELLANEOUS EAR, NOSE & THROAT PROCEDURES	0.4973	1.6	1.4	1	3
56	RHINOPLASTY	0.4822	1.6	1.4	1	3
57	T&A PROC EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY AGE >=18	0.5202	2.5	2.0	1	6
58	T&A PROC EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY AGE 0-17	0.3662	1.3	1.2	1	2

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
59	TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE >=18	0.3713	1.4	1.2	1	2
60	TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE 0-17	0.3357	1.3	1.2	1	2
61	MYRINGOTOMY WITH TUBE INSERTION AGE >=18	0.8733	2.8	1.9	1	10
62	MYRINGOTOMY WITH TUBE INSERTION AGE 0-17	0.3938	1.9	1.4	1	4
63	OTHER EAR, NOSE & THROAT O.R. PROCEDURES	0.9214	3.8	2.8	1	13
64	EAR, NOSE & THROAT MALIGNANCY	1.1117	6.2	3.9	1	20
65	DYSEQUILIBRIUM	0.5023	3.5	2.8	1	9
66	EPISTAXIS	0.5123	3.7	3.0	1	11
67	EPIGLOTTITIS	1.1043	4.3	3.6	1	12
68	OTITIS MEDIA & URI AGE >=70 AND/OR C.C.	0.6849	4.3	3.6	1	12
69	OTITIS MEDIA & URI AGE 18-69 W/O C.C.	0.4817	3.3	2.8	1	8
70	OTITIS MEDIA & URI AGE 0-17	0.4016	3.2	2.7	1	8
71	LARYNGOTRACHEITIS	0.3583	2.6	2.2	1	6
72	NASAL TRAUMA & DEFORMITY	0.3922	2.0	1.5	1	5
73	OTHER EAR, NOSE & THROAT DIAGNOSES AGE >=18	0.6875	3.7	2.6	1	12
74	OTHER EAR, NOSE & THROAT DIAGNOSES AGE 0-17	0.4760	3.0	2.1	1	9
75	MAJOR CHEST PROCEDURES	3.0582	11.4	9.6	3	26
76	OTHER RESP SYSTEM O.R.PROCEDURES WITH C.C.	3.2224	12.0	7.9	1	24
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O C.C.	1.7591	7.3	5.0	1	22
78	PULMONARY EMBOLISM	1.6485	9.2	7.5	1	24
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >=70 AND/OR C.C.	2.8086	11.0	8.6	1	25
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 18-69 W/O C.C.	1.6726	9.2	7.0	1	24
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.3621	8.0	6.5	1	23
82	RESPIRATORY NEOPLASMS	1.3537	7.4	4.9	1	21
83	MAJOR CHEST TRAUMA AGE >=70 AND/OR C.C.	2.8879	9.4	6.4	1	23
84	MAJOR CHEST TRAUMA AGE <70 W/O C.C.	0.6126	4.4	3.5	1	13
85	PLEURAL EFFUSION AGE >=70 AND/OR C.C.	1.3375	7.4	5.5	1	22
86	PLEURAL EFFUSION AGE <70 W/O C.C.	0.9337	6.1	4.1	1	21
87	PULMONARY EDEMA & RESPIRATORY FAILURE	2.6726	9.2	6.6	1	23

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.3593	6.9	5.4	1	21
89	SIMPLE PNEUMONIA & PLEURISY AGE >=70 AND/OR C.C.	1.5290	7.5	6.3	1	20
90	SIMPLE PNEUMONIA & PLEURISY AGE 18-69 W/O C.C.	0.9350	5.5	4.7	1	14
91	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.6261	4.3	3.6	1	10
92	INTERSTITIAL LUNG DISEASE AGE >=70 AND/OR C.C.	1.5426	8.5	5.3	1	22
93	INTERSTITIAL LUNG DISEASE AGE <70 W/O C.C.	0.8010	4.7	3.7	1	15
94	PNEUMOTHORAX AGE >=70 AND/OR C.C.	1.5808	8.6	6.1	1	23
95	PNEUMOTHORAX AGE <70 W/O C.C.	0.6552	5.0	4.1	1	14
96	BRONCHITIS & ASTHMA AGE >=70 AND/OR C.C.	1.1797	6.2	5.2	1	16
97	BRONCHITIS & ASTHMA AGE 18-69 W/O C.C.	0.8014	4.8	4.1	1	12
98	BRONCHITIS & ASTHMA AGE 0-17	0.5031	3.4	2.9	1	8
99	RESPIRATORY SIGNS & SYMPTOMS AGE >=70 AND/OR C.C.	0.9411	4.8	3.7	1	15
100	RESPIRATORY SIGNS & SYMPTOMS AGE <70 W/O C.C.	0.5788	3.3	2.5	1	9
101	OTHER RESPIRATORY DIAGNOSES AGE >=70 AND/OR C.C.	1.3947	6.2	4.5	1	21
102	OTHER RESPIRATORY DIAGNOSES AGE <70 WITHOUT C.C.	0.7468	3.9	2.8	1	13
103	HEART TRANSPLANT	-	-	-	-	-
104	CARDIAC VALVE PROCEDURE WITH PUMP & WITH CARDIAC CATH	6.7946	12.9	11.3	3	28
105	CARDIAC VALVE PROCEDURE WITH PUMP & W/O CARDIAC CATH	5.8168	10.7	9.5	3	26
106	CORONARY BYPASS WITH CARDIAC CATH	5.8104	12.0	11.0	4	24
107	CORONARY BYPASS W/O CARDIAC CATH	4.8904	10.0	9.2	4	21
108	OTHER CARDIOTHOR OR VASCULAR PROC WITH PUMP	3.7739	10.3	8.6	2	25
109	OTHER CARDIOTHORACIC PROCEDURES W/O PUMP	4.0747	10.7	8.6	2	25
110	MAJOR RECONSTRUCTIVE VASCULAR PROCEDURES W/O PUMP AGE >=70 AND/O	3.7060	11.7	9.9	3	26
111	MAJOR RECONSTRUCTIVE VASCULAR PROCEDURES W/O PUMP AGE <70 W/O C.	2.7987	9.3	8.4	3	20
112	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	2.3117	6.8	5.1	1	21
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	3.6268	19.8	15.1	3	32
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	2.0505	11.5	8.8	1	25
115	PERMANENT CARDIAC PACEMAKER IMPLANT WITH AMI,HEART FAILURE OR SH	4.7176	11.4	9.1	1	26
116	PERMANENT CARDIAC PACEMAKER IMPLANT W/O AMI,HEART FAILURE OR SHO	3.1991	6.0	5.0	1	16

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
117	CARDIAC PACEMAKER REPLACE & REVIS EXC PULSE GEN REPL	1.4970	6.2	4.1	1	21
118	CARDIAC PACEMAKER PULSE GENERATOR REPLACEMENT	2.1962	2.7	2.3	1	7
119	VEIN LIGATION & STRIPPING	0.7846	3.7	3.0	1	10
120	OTHER O.R. PROCEDURES ON THE CIRCULATORY SYSTEM	2.8012	12.5	7.1	1	24
121	CIRCULATORY DISORDERS WITH AMI & C.V. COMP. DISCH. ALIVE	2.1709	8.8	6.9	1	23
122	CIRCULATORY DISORDERS WITH AMI W/O C.V. COMP. DISCH. ALIVE	1.5068	6.5	5.2	1	22
123	CIRCULATORY DISORDERS WITH AMI, EXPIRED	2.3655	4.2	2.6	1	16
124	CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH & COMPLEX DIAG	1.4518	4.8	3.7	1	15
125	CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH W/O COMPLEX DIAG	0.8694	3.0	2.3	1	8
126	ACUTE & SUBACUTE ENDOCARDITIS	3.7074	17.8	12.7	2	29
127	HEART FAILURE & SHOCK	1.2739	6.5	5.1	1	20
128	DEEP VEIN THROMBOPHLEBITIS	0.9339	7.8	6.7	2	20
129	CARDIAC ARREST, UNEXPLAINED	3.5298	10.4	4.7	1	21
130	PERIPHERAL VASCULAR DISORDERS AGE >=70 AND/OR C.C.	1.1482	7.0	4.9	1	21
131	PERIPHERAL VASCULAR DISORDERS AGE <70 W/O C.C.	0.7643	5.2	3.7	1	19
132	ATHEROSCLEROSIS AGE >=70 AND/OR C.C.	1.0702	3.6	2.8	1	10
133	ATHEROSCLEROSIS AGE <70 W/O C.C.	0.9704	3.2	2.6	1	9
134	HYPERTENSION	0.6540	4.3	3.4	1	12
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >=70 AND/OR C.C.	0.9561	3.9	3.1	1	11
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 18-69 W/O C.C.	0.7412	3.2	2.5	1	9
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	0.7581	3.1	2.1	1	9
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS AGE >=70 AND/OR C.C.	0.8866	4.4	3.4	1	13
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS AGE <70 W/O C.C.	0.6432	3.4	2.7	1	10
140	ANGINA PECTORIS	0.8099	3.6	3.0	1	10
141	SYNCOPE & COLLAPSE AGE >=70 AND/OR C.C.	0.6900	4.0	3.1	1	12
142	SYNCOPE & COLLAPSE AGE <70 W/O C.C.	0.5358	3.0	2.4	1	8
143	CHEST PAIN	0.6394	2.9	2.4	1	7
144	OTHER CIRCULATORY DIAGNOSES WITH C.C.	1.3249	6.3	4.5	1	21
145	OTHER CIRCULATORY DIAGNOSES W/O C.C.	0.8308	4.1	3.1	1	13

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
146	RECTAL RESECTION AGE >=70 AND/OR C.C.	3.2885	14.4	13.0	5	29
147	RECTAL RESECTION AGE <70 W/O C.C.	2.3506	10.8	10.3	5	18
148	MAJOR SMALL & LARGE BOWEL PROCEDURES AGE >=70 AND/OR C.C.	3.5614	13.9	11.9	4	28
149	MAJOR SMALL & LARGE BOWEL PROCEDURES AGE <70 W/O C.C.	2.0799	10.1	8.8	3	24
150	PERITONEAL ADHESIOLYSIS AGE >=70 AND/OR C.C.	2.3009	11.1	9.8	3	25
151	PERITONEAL ADHESIOLYSIS AGE <70 W/O C.C.	1.5484	8.2	7.2	2	20
152	MINOR SMALL & LARGE BOWEL PROCEDURES AGE >=70 AND/OR C.C.	2.2572	10.0	7.9	2	24
153	MINOR SMALL & LARGE BOWEL PROCEDURES AGE <70 W/O C.C.	1.3399	7.5	6.2	1	21
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >=70 AND/OR C.C.	3.4536	12.3	10.0	2	26
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 18-69 W/O C.C.	2.0912	9.1	7.6	2	24
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	1.0770	5.6	4.3	1	16
157	ANAL AND STOMAL PROCEDURES AGE >=70 AND/OR C.C.	0.9817	5.6	4.5	1	17
158	ANAL AND STOMAL PROCEDURES AGE <70 W/O C.C.	0.6166	3.7	3.1	1	10
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >=70 AND/OR C.C.	1.2607	6.0	5.0	1	16
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE 18-69 W/O C.C.	0.8122	4.0	3.3	1	11
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >=70 AND/OR C.C.	0.8475	3.9	3.2	1	11
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE 18-69 W/O C.C.	0.5421	2.4	2.0	1	6
163	HERNIA PROCEDURES AGE 0-17	0.4304	1.8	1.5	1	4
164	APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE>=70 AND/OR C.C.	2.3864	10.1	9.3	4	20
165	APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE <70 W/O C.C.	1.2534	6.3	5.6	2	15
166	APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE >=70 AND/OR C.C.	1.2428	5.9	5.1	1	14
167	APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE <70 W/O C.C.	0.6998	3.6	3.2	1	7
168	PROCEDURES ON THE MOUTH AGE >=70 AND/OR C.C.	1.8458	6.4	4.6	1	21
169	PROCEDURES ON THE MOUTH AGE <70 W/O C.C.	0.9303	3.2	2.7	1	8
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES AGE >=70 AND/OR C.C.	2.9384	13.6	9.9	1	26
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES AGE <70 W/O C.C.	1.2247	6.0	4.4	1	21
172	DIGESTIVE MALIGNANCY AGE >=70 AND/OR C.C.	1.4151	8.6	5.6	1	22
173	DIGESTIVE MALIGNANCY AGE <70 W/O C.C.	1.0248	6.2	4.1	1	21
174	G.I. HEMORRHAGE AGE >=70 AND/OR C.C.	1.1540	5.7	4.4	1	17

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CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
175	G.I. HEMORRHAGE AGE <70 W/O C.C.	0.7029	4.2	3.5	1	11
176	COMPLICATED PEPTIC ULCER	0.9471	5.3	4.2	1	16
177	UNCOMPLICATED PEPTIC ULCER >=70 AND/OR C.C.	0.8815	5.4	4.6	1	13
178	UNCOMPLICATED PEPTIC ULCER <70 W/O C.C.	0.6263	4.2	3.5	1	11
179	INFLAMMATORY BOWEL DISEASE	1.0332	7.0	5.3	1	22
180	G.I. OBSTRUCTION AGE >=70 AND/OR C.C.	1.0272	6.6	4.9	1	21
181	G.I. OBSTRUCTION AGE <70 W/O C.C.	0.5976	4.3	3.5	1	12
182	ESOPHAGITIS,GASTROENT.& MISC. DIGEST. DIS AGE >=70 &/OR C.C.	0.7497	4.8	3.8	1	14
183	ESOPHAGITIS,GASTROENT.& MISC. DIGEST. DIS AGE 18-69 W/O C.C.	0.5574	3.8	3.0	1	11
184	ESOPHAGITIS, GASTROENTERITIS & MISC. DIGEST. DISORDERS AGE 0-17	0.3297	2.9	2.4	1	7
185	DENTAL & ORAL DIS. EXC EXTRACTIONS & RESTORATIONS,AGE >=18	0.8997	4.8	3.3	1	17
186	DENTAL & ORAL DIS. EXC EXTRACTIONS & RESTORATIONS,AGE 0-17	0.4184	3.0	2.5	1	8
187	DENTAL EXTRACTIONS & RESTORATIONS	0.4942	2.1	1.7	1	5
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >=70 AND/OR C.C.	1.0015	5.4	4.1	1	17
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 18-69 W/O C.C.	0.6098	4.0	2.8	1	13
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.4015	2.6	1.9	1	7
191	MAJOR PANCREAS, LIVER & SHUNT PROCEDURES	5.0848	16.4	13.3	3	30
192	MINOR PANCREAS, LIVER & SHUNT PROCEDURES	5.2655	18.7	12.6	2	29
193	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE >=70 &/OR C.C.	3.3429	13.7	10.7	2	27
194	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE <70 W/O C.C.	2.0402	9.6	8.4	2	24
195	TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE >=70 AND/OR C.C.	2.0491	9.4	8.7	4	18
196	TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE <70 W/O C.C.	1.4977	7.9	7.3	3	15
197	TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE >=70 AND/OR C.C.	1.4689	7.4	6.7	2	15
198	TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE <70 W/O C.C.	1.0987	5.8	5.4	2	11
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	1.9111	10.9	9.7	3	26
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.4732	10.0	6.8	1	23
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.7311	10.2	7.0	1	24
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3853	7.7	5.5	1	22
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.2989	7.9	5.3	1	22

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.0126	6.5	5.2	1	18
205	DISORDERS OF LIVER EXC MALIG,CIRR,ALC HEPA AGE >=70 AND/OR C.C.	1.7588	8.7	6.0	1	23
206	DISORDERS OF LIVER EXC MALIG,CIRR,ALC HEPA AGE <70 W/O C.C.	0.7416	5.0	3.5	1	18
207	DISORDERS OF THE BILIARY TRACT AGE >=70 AND/OR C.C.	0.9392	5.3	4.0	1	17
208	DISORDERS OF THE BILIARY TRACT AGE <70 W/O C.C.	0.6001	3.5	2.7	1	10
209	MAJOR JOINT AND LIMB REATTACHMENT PROCEDURES	2.9943	11.4	10.6	5	22
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >=70 AND/OR C.C.	3.2031	14.6	11.9	3	28
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 18-69 W/O C.C.	1.9295	9.8	8.3	2	25
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.4129	8.7	5.9	1	22
213	AMPUTATIONS FOR MUSCULOSKELETAL SYSTEM & CONN. TISSUE DISORDERS	1.7263	10.7	7.8	1	24
214	BACK & NECK PROCEDURES AGE >=70 AND/OR C.C.	2.4274	11.1	9.3	3	26
215	BACK & NECK PROCEDURES AGE <70 W/O C.C.	1.5126	7.9	6.8	2	19
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.3089	6.6	4.4	1	21
217	WND DEBRID & SKN GRFT EXC HAND,FOR MUSCSKELETAL & CONN.TISS.DIS	2.0273	9.9	5.5	1	22
218	LOWER EXTREM & HUMER PROC EXC HIP,FOOT,FEMUR AGE >=70 &/OR C.C.	1.8658	8.8	7.1	1	24
219	LOWER EXTREM & HUMER PROC EXC HIP,FOOT,FEMUR AGE 18-69 W/O C.C.	1.0855	5.1	4.2	1	14
220	LOWER EXTREM & HUMER PROC EXC HIP,FOOT,FEMUR AGE 0-17	0.8099	3.6	2.6	1	11
221	KNEE PROCEDURES AGE >=70 AND/OR C.C.	1.9419	9.9	4.1	1	21
222	KNEE PROCEDURES AGE <70 W/O C.C.	0.8425	3.4	2.7	1	9
223	MAJOR SHOULDER/ELBOW PROC.	1.1151	4.5	3.4	1	14
224	SHOULDER,ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC	0.7700	2.9	2.4	1	7
225	FOOT PROCEDURES	0.7177	3.0	2.5	1	8
226	SOFT TISSUE PROCEDURES AGE >=70 AND/OR C.C.	1.0876	6.4	4.3	1	21
227	SOFT TISSUE PROCEDURES AGE <70 W/O C.C.	0.7236	3.4	2.5	1	9
228	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	0.8723	3.2	2.6	1	9
229	HAND OR WRIST PROC,EXCEPT MAJOR JOINT PROC W/O C.C	0.6455	2.3	1.8	1	6
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	0.7155	3.6	2.3	1	11
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	0.8753	3.8	2.6	1	12
232	ARTHROSCOPY	0.6393	2.3	1.8	1	6

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC AGE >=70 &/OR C.C.	2.4202	9.7	7.2	1	24
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC AGE <70 W/O C.C.	0.9855	4.7	3.7	1	13
235	FRACTURES OF FEMUR	1.2545	13.7	7.9	1	24
236	FRACTURES OF HIP & PELVIS	0.9995	8.8	6.0	1	23
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.6421	5.0	3.9	1	16
238	OSTEOMYELITIS	1.6239	11.9	8.6	1	25
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN.TISS.MALIGNANCY	1.1907	8.7	6.0	1	23
240	CONNECTIVE TISSUE DISORDERS AGE >=70 AND/OR C.C.	1.4885	8.4	6.3	1	23
241	CONNECTIVE TISSUE DISORDERS AGE <70 W/O C.C.	0.8490	6.5	4.7	1	21
242	SEPTIC ARTHRITIS	1.2112	9.6	7.7	2	24
243	MEDICAL BACK PROBLEMS	0.7425	5.6	4.2	1	20
244	BONE DISEASES & SPECIFIC ARTHROPATHY AGE >=70 AND/OR C.C.	0.8232	6.0	4.6	1	21
245	BONE DISEASES & SPECIFIC ARTHROPATHY AGE <70 W/O C.C.	0.6544	4.8	3.5	1	17
246	NON-SPECIFIC ARTHROPATHIES	0.5751	3.8	3.2	1	10
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.6729	5.2	3.5	1	19
248	TENDONITIS, MYOSITIS & BURSITIS	0.6042	4.3	3.3	1	13
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.7924	5.4	3.1	1	20
250	FX,SPRNS,STRNS & DISL OF FOREARM,HAND,FOOT AGE >=70 &/OR C.C.	0.7355	5.1	3.9	1	17
251	FX,SPRNS,STRNS & DISL OF FOREARM,HAND,FOOT AGE 18-69 W/O C.C.	0.4550	2.7	2.0	1	7
252	FX,SPRNS,STRNS & DISL OF FOREARM,HAND,FOOT AGE 0-17	0.3186	1.4	1.2	1	2
253	FX,SPRNS,STRNS & DISL OF UPARM,LOWLEG EX FOOT AGE >=70 &/OR C.C.	0.8188	5.5	4.0	1	18
254	FX,SPRNS,STRNS & DISL OF UPARM,LOWLEG EX FOOT AGE 18-69 W/O C.C.	0.4732	3.4	2.6	1	10
255	FX,SPRNS,STRNS & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	0.3709	2.5	1.8	1	6
256	OTHER DIAGNOSES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.6606	4.1	2.9	1	13
257	TOTAL MASTECTOMY FOR MALIGNANCY AGE >=70 AND/OR C.C.	1.2098	6.1	5.5	2	13
258	TOTAL MASTECTOMY FOR MALIGNANCY AGE <70 W/O C.C.	1.0060	5.0	4.5	1	11
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE >=70 AND/OR C.C.	1.1880	7.0	4.4	1	21
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE <70 W/O C.C	0.7876	3.2	2.4	1	9
261	BREAST PROC FOR NON-MALIG EXCEPT BIOPSY & LOC EXC	0.9072	3.2	2.7	1	8

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.5166	2.1	1.8	1	5
263	SKIN GRAFTS &/OR DEBRID FOR SKIN ULCER OR CELLULITIS AGE>=70 &/O	2.9552	16.5	12.0	2	28
264	SKIN GRAFTS &/OR DEBRID FOR SKIN ULCER OR CELLULITIS AGE <70 W/O	1.8731	12.0	9.0	1	25
265	SKIN GRAFTS &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS WITH	1.7366	9.7	6.9	1	23
266	SKIN GRAFTS &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O	0.9241	4.7	3.3	1	16
267	PERIANAL & PILONIDAL PROCEDURES	0.4913	2.4	2.0	1	6
268	SKIN,SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	0.7085	2.9	2.4	1	8
269	OTHER SKIN, SUBCUT TISS & BREAST O.R. PROC AGE >=70 &/OR C.C.	1.5437	7.7	5.5	1	22
270	OTHER SKIN, SUBCUT TISS & BREAST O.R. PROC AGE <70 W/O C.C.	0.7451	3.6	2.5	1	12
271	SKIN ULCERS	1.1258	8.3	6.5	1	23
272	MAJOR SKIN DISORDERS AGE >=70 AND/OR C.C.	1.1249	8.3	5.7	1	22
273	MAJOR SKIN DISORDERS AGE <70 W/O C.C.	0.7077	6.1	4.4	1	21
274	MALIGNANT BREAST DISORDERS AGE >=70 AND/OR C.C.	1.2667	8.8	6.0	1	22
275	MALIGNANT BREAST DISORDERS AGE <70 W/O C.C.	0.7625	5.4	3.7	1	20
276	NON-MALIGANT BREAST DISORDERS	0.5332	3.1	2.6	1	8
277	CELLULITIS AGE >=70 AND/OR C.C.	1.0255	6.8	5.7	1	17
278	CELLULITIS AGE 18-69 W/O C.C.	0.7518	5.3	4.5	1	14
279	CELLULITIS AGE 0-17	0.5277	4.3	3.5	1	11
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >=70 &/OR C.C.	0.5775	3.7	2.7	1	12
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 18-69 W/O C.C.	0.4130	2.8	2.2	1	8
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.3181	2.2	1.7	1	5
283	MINOR SKIN DISORDERS AGE >=70 AND/OR C.C.	0.7153	4.9	4.1	1	13
284	MINOR SKIN DISORDERS AGE <70 W/O C.C.	0.5054	3.8	2.9	1	11
285	AMPUTATION OF LOWER LIMB FOR ENDOCRINE,NUTRITIONAL & METABOLIC D	2.3351	15.4	14.0	5	30
286	ADRENAL & PITUITARY PROCEDURES	2.8083	10.6	8.9	2	25
287	SKIN GRAFTS & WOUND DEBRIDE FOR ENDOC,NUTRIT & METAB DISORDERS	1.9411	12.4	10.0	2	27
288	O.R. PROCEDURES FOR OBESITY	1.8201	6.5	6.1	2	12
289	PARATHYROID PROCEDURES	0.9714	4.6	4.0	1	10
290	THYROID PROCEDURES	0.7745	3.2	2.8	1	7

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
291	THYROGLOSSAL PROCEDURES	0.4241	1.6	1.4	1	3
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC AGE >70 &/OR C.C.	2.0491	9.0	7.6	2	24
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC AGE <70 W/O C.C.	1.5269	6.4	4.9	1	21
294	DIABETES AGE >=36	0.7556	5.9	5.0	1	15
295	DIABETES AGE 0-35	0.6385	4.7	3.9	1	13
296	NUTRITIONAL & MISC. METABOLIC DISORDERS AGE >=70 AND/OR C.C.	1.0660	6.4	4.8	1	21
297	NUTRITIONAL & MISC. METABOLIC DISORDERS AGE 18-69 W/O C.C.	0.7334	5.2	3.7	1	17
298	NUTRITIONAL & MISC. METABOLIC DISORDERS AGE 0-17	0.6039	4.8	3.4	1	16
299	INBORN ERRORS OF METABOLISM	1.0303	5.6	3.9	1	19
300	ENDOCRINE DISORDERS AGE >=70 AND/OR C.C.	1.0597	6.2	4.8	1	20
301	ENDOCRINE DISORDERS AGE <70 W/O C.C.	0.6648	4.6	3.1	1	15
302	KIDNEY TRANSPLANT	3.7135	17.5	15.2	5	32
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURE FOR NEOPLASM	2.3414	10.3	9.5	4	21
304	KIDNEY,URETER & MAJ BLDR PROC FOR NON-NEOPL AGE >=70 &/OR C.C.	2.1561	9.0	7.2	1	24
305	KIDNEY,URETER & MAJ BLDR PROC FOR NON-NEOPL AGE <70 W/O C.C.	1.3649	5.8	4.4	1	20
306	PROSTATECTOMY AGE >=70 AND/OR C.C.	2.0958	12.4	7.5	1	24
307	PROSTATECTOMY AGE <70 W/O C.C.	1.0308	6.0	4.8	1	16
308	MINOR BLADDER PROCEDURES AGE >=70 AND/OR C.C.	1.4545	7.1	4.8	1	21
309	MINOR BLADDER PROCEDURES AGE <70 W/O C.C.	1.1876	5.9	4.2	1	21
310	TRANSURETHRAL PROCEDURES AGE >=70 AND/OR C.C.	1.0370	4.4	3.3	1	14
311	TRANSURETHRAL PROCEDURES AGE <70 W/O C.C.	0.7452	3.3	2.7	1	9
312	URETHRAL PROCEDURES, AGE >=70 AND/OR C.C.	0.7844	4.4	3.6	1	14
313	URETHRAL PROCEDURES, AGE 18-69 W/O C.C.	0.6461	3.5	2.4	1	11
314	URETHRAL PROCEDURES, AGE 0-17	0.5325	2.8	2.2	1	8
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.6432	10.7	7.3	1	24
316	RENAL FAILURE	1.9126	8.4	5.9	1	22
317	ADMIT FOR RENAL DIALYSIS	0.4907*	3.4	2.3	1	10
318	KIDNEY & URINARY TRACT NEOPLASMS AGE >=70 AND/OR C.C.	1.3748	8.1	5.2	1	22
319	KIDNEY & URINARY TRACT NEOPLASMS AGE <70 W/O C.C.	0.6935	4.3	3.1	1	15

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
320	KIDNEY & URINARY TRACT INFECTIONS AGE >=70 AND/OR C.C.	0.9528	5.9	5.0	1	15
321	KIDNEY & URINARY TRACT INFECTIONS AGE 18-69 W/O C.C.	0.6524	4.4	3.7	1	11
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.5497	4.3	3.6	1	11
323	URINARY STONES AGE >=70 AND/OR CC,&/OR ESW LITHOTRIPSY	0.9396	3.6	2.6	1	11
324	URINARY STONES AGE <70 W/O C.C.	0.5417	2.4	1.9	1	6
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >=70 AND/OR C.C.	0.8738	5.4	4.0	1	19
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 18-69 W/O C.C.	0.6338	3.6	2.7	1	11
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.5118	3.8	2.9	1	11
328	URETHRAL STRICTURE AGE >=70 AND/OR C.C.	0.6042	3.7	3.0	1	11
329	URETHRAL STRICTURE AGE 18-69 W/O C.C.	0.5086	3.3	2.4	1	10
330	URETHRAL STRICTURE AGE 0-17	0.2788*	0.0	1.6	1	5
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >=70 AND/OR C.C.	1.0961	6.8	4.6	1	21
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 18-69 W/O C.C.	0.6032	3.7	2.8	1	11
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.5760	3.8	2.6	1	12
334	MAJOR MALE PELVIC PROCEDURES WITH C.C.	2.0361	11.1	10.1	4	24
335	MAJOR MALE PELVIC PROCEDURES W/O C.C.	1.7552	8.5	8.0	4	15
336	TRANSURETHRAL PROSTATECTOMY AGE >=70 AND/OR C.C.	0.9604	5.1	4.6	2	10
337	TRANSURETHRAL PROSTATECTOMY AGE <70 W/O C.C.	0.7762	4.3	4.1	2	7
338	TESTES PROCEDURES, FOR MALIGNANCY	0.7460	3.8	2.7	1	13
339	TESTES PROCEDURES, NON-MALIGNANT AGE >=18	0.5773	2.5	1.9	1	7
340	TESTES PROCEDURES, NON-MALIGNANT AGE 0-17	0.4925	1.9	1.6	1	4
341	PENIS PROCEDURES	0.9421	4.1	3.2	1	13
342	CIRCUMCISION AGE >=18	0.4662	1.7	1.4	1	4
343	CIRCUMCISION AGE 0-17	0.6514	4.9	2.2	1	19
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.0783	4.8	3.9	1	15
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIG	0.8772	5.0	3.5	1	19
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE >=70 AND/OR C.C.	1.3703	9.3	5.0	1	22
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE <70 W/O C.C.	0.6337	4.1	3.0	1	13
348	BENIGN PROSTATIC HYPERTROPHY AGE >=70 AND/OR C.C.	0.6458	3.8	2.8	1	13

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
349	BENIGN PROSTATIC HYPERTROPHY AGE <70 W/O C.C.	0.5316	2.4	2.0	1	5
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.6710	4.5	3.8	1	11
351	STERILIZATION, MALE	0.3333*	1.9	1.6	1	5
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.5645	3.6	2.5	1	12
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & VULVECTOMY	1.9489	9.1	8.4	3	17
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG AGE >69 OR CC	1.5556	7.7	6.9	2	16
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG AGE <70 W/O CC	1.0703	5.7	5.3	2	10
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	0.9374	5.6	5.0	1	12
357	UTERUS & ADENEXA PROCEDURES, FOR OVARIAN OR ADNEXAL MALIGNANCY	2.0570	9.0	8.0	3	20
358	UTERUS & ADENEXA PROC FOR NON-MALIGNANCY AGE > 69 OR CC	1.3064	6.4	5.9	2	12
359	UTERINE AND ADNEXA PROC FOR NON-MALIGNANCY < 70 W/O CC	0.9826	5.1	4.8	2	9
360	VAGINA, CERVIX & VULVA PROCEDURES	0.6131	2.9	2.3	1	8
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	0.6894	3.0	2.3	1	9
362	ENDOSCOPIC TUBAL INTERRUPTION	0.3483	1.4	1.2	1	2
363	D&C,CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.6366	3.2	2.6	1	9
364	D&C,CONIZATION EXCEPT FOR MALIGNANCY	0.4863	2.1	1.7	1	5
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.2070	6.0	5.1	1	16
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE >=70 AND/OR C.C.	1.1986	7.5	5.0	1	22
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE <70 W/O C.C.	0.6089	3.3	2.2	1	11
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	0.6357	4.0	3.5	1	9
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	0.4241	2.8	2.2	1	7
370	CESAREAN SECTION WITH C.C.	1.0878	6.0	5.4	2	11
371	CESAREAN SECTION W/O C.C.	0.9012	4.8	4.6	2	8
372	VAGINAL DELIVERY WITH COMPLICATING DIAGNOSES	0.8102	4.4	3.6	1	11
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.4666	2.7	2.4	1	5
374	VAGINAL DELIVERY WITH STERILIZATION AND/OR D&C	0.6730	3.0	2.8	1	5
375	VAGINAL DELIVERY WITH O.R. PROC EXCEPT STERIL AND/OR D&C	0.6817*	0.0	4.4	1	15
376	POSTPARTUM AND POSTABORTION DIAGNOSES W/O O.R. PROCEDURE	0.4692	3.1	2.5	1	8
377	POSTPARTUM AND POSTABORTION DIAGNOSES WITH O.R. PROCEDURE	0.6218	2.5	1.9	1	6

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
378	ECTOPIC PREGNANCY	0.8096	3.9	3.7	1	7
379	THREATENED ABORTION	0.3214	2.6	2.0	1	7
380	ABORTION W/O D&C	0.3211	1.8	1.5	1	4
381	ABORTION WITH D&C, ASPIRATION CURETTAGE,OR HYSTEROTOMY	0.3652	1.4	1.2	1	2
382	FALSE LABOR	0.1479	1.3	1.2	1	2
383	OTHER ANTEPARTUM DIAGNOSES WITH MEDICAL COMPLICATIONS	0.3560	3.2	2.6	1	9
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.3615	2.9	2.0	1	8
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	0.8322	5.1	2.9	1	18
386	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	3.3194	16.8	10.6	1	27
387	PREMATURITY WITH MAJOR PROBLEMS	1.6986	11.9	8.5	1	25
388	PREMATURITY W/O MAJOR PROBLEMS	0.7994	7.6	5.3	1	22
389	FULL TERM NEONATE WITH MAJOR PROBLEMS	0.5024	4.6	3.7	1	12
390	NEONATES WITH OTHER SIGNIFICANT PROBLEMS	0.2257	3.3	2.9	1	8
391	NORMAL NEWBORNS	0.1390	2.7	2.4	1	6
392	SPLENECTOMY AGE >=18	3.0019	10.3	8.5	2	25
393	SPLENECTOMY AGE 0-17	1.8160	8.4	7.6	3	16
394	OTHER O.R. PROCEDURES OF THE BLOOD & BLOOD FORMING ORGANS	1.1131	5.3	3.2	1	20
395	RED BLOOD CELL DISORDERS AGE >=18	0.9470	5.5	4.0	1	19
396	RED BLOOD CELL DISORDERS AGE 0-17	0.6575	4.3	3.2	1	14
397	COAGULATION DISORDERS	0.7945	4.5	3.3	1	15
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS AGE >=70 AND/OR C.C.	1.3348	6.7	5.3	1	20
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS AGE <70 W/O C.C.	0.7116	4.8	3.6	1	16
400	LYMPHOMA OR LEUKEMIA WITH MAJOR O.R. PROCEDURE	3.6784	11.3	8.6	2	25
401	LYMPHOMA AND NON-ACUTE LEUKEMIA WITH O.R. PROC WITH C.C.	2.0607	9.7	6.0	1	23
402	LYMPHOMA AND NON-ACUTE LEUKEMIA WITH O.R. PROCEDURE W/O C.C.	1.2718	5.7	4.1	1	20
403	LYMPHOMA AND NON-ACUTE LEUKEMIA WITH C.C.	1.7645	8.8	5.8	1	22
404	LYMPHOMA AND NON-ACUTE LEUKEMIA W/O C.C.	1.0364	5.7	3.8	1	20
405	ACUTE LEUKEMIA WITHOUT MAJOR O.R.PROCEDURE, AGE 0-17	1.6238	8.0	5.0	1	21
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPLASM W MAJ O.R.PROC & C.C.	2.7904	12.4	9.5	2	26

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O C.C.	1.3771	6.9	5.7	1	22
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL WITH OTHER O.R.PROC	1.0734	5.1	3.6	1	15
409	RADIOTHERAPY	0.8893	6.2	4.3	1	21
410	CHEMOTHERAPY	0.6178	2.9	2.3	1	8
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	1.0036	7.0	3.0	1	20
412	HISTORY OF MALIGNANCY WITH ENDOSCOPY	0.3388*	2.4	1.9	1	6
413	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE>=70 &/OR C.C	1.2413	8.2	5.1	1	22
414	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE<70 W/O C.C.	0.9064	6.6	3.7	1	20
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.2853	13.4	9.3	1	26
416	SEPTECEMIA AGE >=18	1.9711	9.0	6.8	1	23
417	SEPTECEMIA AGE 0-17	0.7178	5.4	4.2	1	15
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.1579	7.4	5.4	1	22
419	FEVER OF UNKNOWN ORIGIN AGE >=70 AND/OR C.C.	1.1611	6.5	5.5	1	17
420	FEVER OF UNKNOWN ORIGIN AGE 18-69 W/O C.C.	0.9760	6.0	4.7	1	18
421	VIRAL ILLNESS AGE >=18	0.5359	3.6	3.0	1	9
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.4118	3.3	2.8	1	8
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.0385	6.4	4.2	1	21
424	O.R. PROCEDURES WITH PRINCIPAL DIAGNOSIS OF MENTAL ILLNESS	-	-	-	-	-
425	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	-	-	-	-	-
426	DEPRESSIVE NEUROSES	-	-	-	-	-
427	NEUROSES EXCEPT DEPRESSIVE	-	-	-	-	-
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	-	-	-	-	-
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	-	-	-	-	-
430	PSYCHOSES	-	-	-	-	-
431	CHILDHOOD MENTAL DISORDERS	-	-	-	-	-
432	OTHER DIAGNOSES OF MENTAL DISORDERS	-	-	-	-	-
433	ALCHOHOL/DRUG USE AND INDUCED ORGANIC MENTAL DISORDERS, LEFT AMA	-	-	-	-	-
434	ALC/DRUG ABUSE,INTOX INDUCD MNTL SYN EXC DEPEND &/OR OTH SYMPT T	-	-	-	-	-
435	ALCOHOL/DRUG DEPEND, DETOX AND/OR OTH SYMPTOMATIC TREATMENT	-	-	-	-	-

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
436	ALCOHOL/DRUG DEPENDENCE WITH REHABILITATION THERAPY	.	.	.	.	.
437	ALCOHOL/DRUG DEPENDENCE, COMBINED REHAB AND DETOX THERAPY	.	.	.	.	.
438	NO LONGER VALID	.	.	.	.	.
439	SKIN GRAFTS FOR INJURIES	1.4983	7.9	4.7	1	21
440	WOUND DEBRIDEMENTS FOR INJURIES	1.5195	8.2	5.2	1	22
441	HAND PROCEDURES FOR INJURIES	0.9523	3.4	2.3	1	10
442	OTHER O.R. PROCEDURES FOR INJURIES AGE >=70 AND/OR C.C.	2.5787	9.5	6.3	1	23
443	OTHER O.R. PROCEDURES FOR INJURIES AGE <70 W/O C.C.	1.3343	5.8	3.5	1	20
444	MULTIPLE TRAUMA AGE >=70 AND/OR C.C.	0.9972	5.4	4.2	1	17
445	MULTIPLE TRAUMA AGE 18-69 W/O C.C.	0.8053	4.5	2.9	1	15
446	MULTIPLE TRAUMA AGE 0-17	0.6391	4.6	2.6	1	16
447	ALLERGIC REACTIONS AGE >=18	0.4913	2.9	2.2	1	8
448	ALLERGIC REACTIONS AGE 0-17	0.2952	2.3	1.8	1	6
449	POISONING AND TOXIC EFFECTS OF DRUGS AGE >=70 AND/OR C.C.	0.9045	5.4	3.3	1	20
450	POISONING AND TOXIC EFFECTS OF DRUGS AGE 18-69 W/O C.C.	0.4673	2.9	2.0	1	8
451	POISONING AND TOXIC EFFECTS OF DRUGS AGE 0-17	0.3600	2.3	1.7	1	6
452	COMPLICATIONS OF TREATMENT AGE >=70 AND/OR C.C.	1.0734	6.5	4.2	1	21
453	COMPLICATIONS OF TREATMENT AGE <70 W/O C.C.	0.4458	3.2	2.2	1	10
454	OTHER INJURIES, POISONINGS & TOXIC EFF DIAG AGE >=70 AND/OR C.C.	1.3881	4.1	2.6	1	14
455	OTHER INJURIES, POISONINGS & TOXIC EFF DIAG AGE <70 W/O C.C.	0.4340	2.0	1.6	1	5
456	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	0.9577	8.2	5.3	1	22
457	EXTENSIVE BURNS W/O O.R. PROCEDURE	3.2280*	9.5	4.0	1	21
458	NON-EXTENSIVE BURNS WITH SKIN GRAFTS	3.0929	15.0	10.6	1	27
459	NON-EXTENSIVE BURNS WITH WOUND DEBRIDEMENT & OTHER O.R. PROC	1.7401	8.7	6.2	1	23
460	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	0.8706	5.9	3.7	1	20
461	O.R. PROC WITH DIAGNOSES OF OTHER CONTACT WITH HEALTH SERVICES	0.9335	4.6	2.8	1	16
462	REHABILITATION	3.1150	25.4	18.7	3	35
463	SIGNS & SYMPTOMS WITH C.C.	0.9359	6.4	4.7	1	21
464	SIGNS & SYMPTOMS W/O C.C.	0.6013	4.5	3.4	1	14

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
465	AFTERCARE WITH HISTORY OF MALIGNANCY AS SECONDARY DX	0.3885	1.6	1.4	1	3
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DX	0.4627	2.8	1.9	1	8
467	OTHER FACTORS INFLUENCING HEALTH STATUS	0.3429	2.7	2.0	1	7
468	UNRELATED OR PROC	1.6778	7.5	4.7	1	21
469	PDX INVALID AS DISCHARGE DIAGNOSIS	.	.	.	.	.
470	UNGROUPABLE	.	.	.	.	.
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCEDURES OF THE LOWER EXTREM	4.3939	10.5	9.4	3	26
472	EXTENSIVE BURNS WITH O.R.PROCEDURE	12.3234*	35.4	23.1	1	40
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE > 17	4.7101	17.4	10.2	1	27

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Table 2—National Urban and Rural Adjusted Standardized Amounts, Labor/Nonlabor, Cost-Share Per Diem, and Area Wage Indexes

[**Editorial Note:** This table will not appear in the Code of Federal Regulations]

The following standardized amounts are approximations. Revised amounts are being developed and the actual amounts will be published in the **Federal Register** in about one week.

National urban adjusted standardized amount	$2,835.94
Labor portion	2,061.16
Nonlabor portion	774.78
National rural adjusted standardized amount	2,518.41
Labor portion	1,942.45
Nonlabor portion	575.96
Cost-share per diem for beneficiaries other than dependents of active duty members	175.00

Area Wage Indexes

The area wage indexes used under the CHAMPUS DRG-based payment system are those used under the Medicare PPS as published in the **Federal Register** on June 10, 1987 (52 FR 22135).

Addendum 1—Health Program Benefit Agreement

[**Editorial Note:** This addendum will not appear in the Code of Federal Regulations.]

In order to receive payment under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

_____

dba _____

_____ as the provider of services agrees:

(a) To accept as payment for inpatient services provided to eligible beneficiaries, the CHAMPUS-determined allowable amount. This amount will be determined in accordance with the requirements of DoD 6010.8–R as published in the *Federal Register* on (insert date of publication).

(b) To refrain from billing the CHAMPUS-eligible beneficiary for amounts which exceed the CHAMPUS-determined allowable amount except for services not covered by CHAMPUS as described in DoD 6010.8–R and for amounts which constitute the CHAMPUS beneficiary's liability for cost-share and deductible.

OCHAMPUS agrees:

(a) To pay the hospital the full allowable amount less any applicable cost-share and deductible amounts.

This agreement shall be binding on the provider and OCHAMPUS upon submission by the provider of acceptable assurance of compliance with Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 as amended, and upon acceptance by the Director, OCHAMPUS, or his designee.

This agreement shall be effective until terminated by either party. The effective date shall be the date the agreement is signed by OCHAMPUS.

The agreement may be terminated by either party by giving the other party written notice of termination. Such notice of termination is to be received by the other party no later than 30 days prior to the date of termination. In the event of transfer of ownership, this agreement is terminated.

FOR PROVIDER OF SERVICES BY:

_____

Name

_____

Title

_____

Date

FOR OCHAMPUS BY:

_____

Name

_____

Title

_____

Date

[FR Doc. 87–19684 Filed 8–31–87; 8:45 am]

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federal register

Tuesday
September 1, 1987

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405, 412, 413, and 466 Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1988 Rates; Final Rule

Medicare Program: Changes to the DRG Classification System; Final Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 412, 413, and 466

[BERC-400-F]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1988 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are revising the Medicare inpatient hospital prospective payment system to implement necessary changes arising from legislation and our continuing experience with the system. One of these changes is the inclusion in the prospective payment system of hospitals located in Puerto Rico.

In addition, in the addendum to this rule, we describe changes in the methods, amounts, and factors necessary to determine prospective payment rates for Medicare inpatient hospital services. In general, these changes are applicable to discharges occurring on or after October 1, 1987. We also set forth the rate-of-increase limits for hospitals and hospital units excluded from the prospective payment system.

EFFECTIVE DATE: This final rule is effective on October 1, 1987. We refer the reader to section VII.A. of this preamble for a discussion of specific provisions that apply to specific periods.

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 594-9343.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, a system for payment of inpatient hospital services under Medicare Part A (Hospital Insurance) based on prospectively-set rates was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). The regulations governing the inpatient hospital prospective payment system are located in 42 CFR Part 412.

Sections 1886(d)(1) (A), (C), and (D) of the Act provide for the implementation of the prospective payment system over a four-year transition period. During the transition period, payment to hospitals is based on a combination of the Federal prospective payment rates and hospital-specific rates, the proportions of which change with the hospital's cost reporting period. In addition, during that period, the Federal rate is a combination of regional and national rates, the proportions of which change with the Federal fiscal year.

B. Summary of the Provisions of the June 10, 1987 Proposed Rule

On June 10, 1987, we published a proposed rule in the **Federal Register** (52 FR 22080) to further amend the prospective payment system, as follows:

- We proposed to restructure the alcohol and drug abuse DRGs. We also proposed to reorder the surgical hierarchies in several Major Diagnostic Categories (MDCs). In addition, as required by section 1886(d)(4)(C) of the Act, as amended by section 9302(e)(1) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), we proposed to adjust the DRG weighting factors for discharges in FY 1988.
- We proposed to change the methodology we use for computing the national average hourly wage that serves as the basis for indexing the area wage levels. We also proposed to update the wage index based on more recent wage data.
- Under the authority of section 1886(d)(9)(A) of the Act, which was added by section 9304(a) of Pub. L. 99-509, we proposed that inpatient hospital services furnished by hospitals located in Puerto Rico are to be paid for under the prospective payment system beginning with discharges on or after October 1, 1987.
- We discussed several current provisions of the regulations in 42 CFR Parts 405, 412, 413, and 466 and set forth certain proposed changes concerning—

—Review of DRG assignments;
—An increase in the prospective payment rates and rate-of-increase limits;
—Payment for outlier cases;
—Payments to sole community hospitals;
—Referral center criteria and basis of payment; and
—Payment for services of nonphysician anesthetists.

- In the addendum to the proposed rule, we set forth proposed changes to the methods, amounts, and factors for determining the FY 1988 prospective payment rates. We also proposed new target rate percentages for determining the rate-of-increase limits for FY 1988 for hosptials and hospital units excluded from the prospective payment system.

In addition, the proposed rule discussed in detail the April 1, 1987 recommendations made by the Prospective Payment Assessment Commission (ProPAC). ProPAC is directed by section 1886(d)(4)(D) of the Act to make recommendations to the Secretary with respect to adjustments to the DRG classification and weighting factors and to report to Congress with respect to its evaluation of any adjustments made by the Secretary.

ProPAC is also directed, by the provisions of sections 1886(e)(2) and (e)(3) of the Act, to make recommendations to the Secretary on the appropriate percentage change factor to be used in updating the average standardized amounts beginning with FY 1986 and thereafter. We printed ProPAC's report, which includes its recommendations, as Appendix C to the proposed rule (52 FR 22167).

C. Number and Types of Public Comments

A total of 204 letters containing comments on the proposed regulations were received timely. More than half of the letters we received were protesting the end of the exclusion for alcohol/drug hospitals and units and the revised DRGs for alcohol and drug cases. Of the remaining letters, the only subject that was addressed by a majority of the commenters was the changes we proposed to make to the rural referral center regulations.

The contents of the proposed rule, the public comments, and our responses to the comments are discussed through this document in the appropriate sections. As discussed below in section II of this preamble, the comments concerning the restructuring of the alcohol and drug abuse DRGs and the changes made to the surgical hierarchies are addressed in a separate notice concerning changes to the DRG classification system published elsewhere in this issue of the **Federal Register**.

In addition, we note that, in this document, we are not responding to comments that raised issues not specific to the proposals we made. These issues include the criteria for receiving periodic interim payments, the general prospective payment methodology (which is, for the most part, set by law), and the level of care permitted to be furnished in inpatient hospital beds.

There is one general comment that we are responding to here rather than in one of the more issue-specific areas below.

Comment: A number of commenters, particularly major associations and organizations, stated that we did not make available to the public sufficient information and documentation that would provide the hospital industry a basis on which to respond appropriately to the provisions of the proposed rule.

Response: As we have stated in previous final rules on the prospective payment system in response to similar comments (see 50 FR 35657 and 51 FR 31491), all of the disclosable data files used in computing the prospective payment rates, DRG weighting factors, and impact analyses are available to the public upon request under the Freedom of Information Act (5 U.S.C. 552). In fact, many institutions and organizations have requested and received these files. If we were to publish data from these files in the **Federal Register**, along with the detailed computations used in deriving factors such as the DRG weights, the proposed notice and comment procedure would be unnecessarily complicated because many potential commenters would be inundated with material that might be of little or no interest to them.

However, each year, while we are developing the policies and changes in current policies that we will be presenting in the next proposed rule, we meet with interested parties when necessary. Also, ProPAC has open meeting about many of the same issues that concern us. Thus, the hospital industry, through attendance at these meetings, can become knowledgeable about the issues that we are examining.

We believe that these opportunities, coupled with the statutory requirement for the 60-day public comment period (section 1871(b)(1) of the Act), provide the hospital industry with ample opportunity to obtain sufficient data and information on which to base their comments.

II. Changes to DRG Classifications and Weighting Factors

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies according to the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's average payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for a case in that particular DRG relative to the national average of resources consumed per case. Thus, cases in a DRG with a weight of 2.0 would, on average, require twice as many resources as the average case.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act, as originally added to the Act by Pub. L. 98–21, required that the Secretary adjust the DRG classifications and weighting factors effective for discharges occurring in FY 1986 and at least every four fiscal years thereafter. These adjustments were to be made to reflect changes in resource consumption, treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

Section 9302(e) of Pub. L. 99–509 revised section 1886(d)(4)(C) of the Act to require that we adjust the DRG classifications and weighting factors annually beginning with discharges occurring in FY 1988. The majority of the proposed changes to the DRG classification system for discharges occurring in FY 1988 were discussed in a notice published in the **Federal Register** on May 19, 1987 (52 FR 18877). However, as a part of the proposed rule, we addressed two of the reclassification issues; that is, the alcohol and drug abuse DRGs and surgical hierarchies. The comments we received on the restructuring of the alcohol and drug abuse DRGs and the revisions to the surgical hierarchies as well as any other changes we are making to the DRG classification system are discussed in a separate notice published elsewhere in this issue of the **Federal Register**. However, in section II.B, below, we discuss the comments received on the alcohol and drug abuse DRGs that conern issues other than the restructuring.

We are recalibrating the DRG weights as discussed below. In addition, we have revised § 412.60(d), which describes how often we revise the DRG classification and weighting factors, so that it conforms to the law as amended by Pub. L. 99–509.

Recalibration of DRG Weights

One of the basic issues in recalibration is the choice of a data base that allows us to construct relative DRG weights that most accurately reflect current relative resource use. The previous recalibration of DRG weights, which was published as a part of the FY 1986 prospective payment final rule, used hospital charge information from the central office enrollment file and the FY 1984 Part A Tape Bill (PATBILL) data set to create the MEDPAR file. For a discussion of the options we considered and the reasons why we chose to use charge data for the FY 1986 recalibration, we refer the reader to the June 10, 1985 proposed rule (50 FR 24372) and the September 3, 1985 final rule (50 FR 35652).

We proposed to use the same methodology for the FY 1988 recalibration as we did for FY 1986. That is, we recalibrated the weights based on charge data for Medicare discharges occurring in FY 1986. However, we used the FY 1986 Medicare provider analysis and review (MEDPAR) file rather than the PATBILL data used in the DRG recalibration that was effective for discharges occurring in FY 1986. The MEDPAR file contains the same data as the PATBILL file but is in a simplified, reformatted record layout. MEDPAR is now based on fully-coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills rather than for a 20-percent sample of beneficiaries as was the case in the FY 1986 recalibration. In addition, because the DRG weights are to be used to calculate prospective payments to hospitals in Puerto Rico beginning with discharges on or after October 1, 1987 and to alcohol/drug hospitals and units effective with cost reporting periods beginning on or after October 1, 1987, bills from these hospitals were included in the data set used to recalibrate the weights.

The proposed recalibrated DRG relative weights were constructed from FY 1986 MEDPAR data received by HCFA through February 1987 and were based on almost 90 percent of all Medicare discharges occurring in FY 1986 from those hospitals that will be subject to the prospective payment system in FY 1988. The MEDPAR file data included approximately 9.4 million Medicare discharges (erroneously indicated as 9.5 million in the proposed rule). The MEDPAR file thorugh June 1987 includes 9.7 million or more than 90 percent of FY 1986 discharges, and this is the file used to calculate the weights set forth in Table 5 of this final rule.

The methodology used to calculate the DRG weights from the MEDPAR file is as follows:

- All the claims were regrouped using the revised DRG classifications set forth in a notice published elsewhere in this issue of the **Federal Register**.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education payments, disproportionate share payments and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.

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• The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.

• We then eliminated statistical outliers using the same criterion as was used in computing the current weights. That is, all cases outside of 3.0 standard deviations from the mean of the log distribution of charges per case for each DRG were eliminated.

• The average charge for each DRG was then recomputed excluding the statistical outliers and divided by the national average standardized charge per case to determine the weighting factor.

• In establishing the weighting factor for heart transplants (DRG 103), we used data for the 46 heart transplant cases (from 20 hospitals) in the FY 1986 MEDPAR file consistently with the methodology for all other DRGs. After removing statistical outliers, there were 45 cases on which the weight was based. Because heart transplants were not a Medicare covered service in FY 1986, we verified that the 20 hospitals whose cases were used to establish the weight were in fact hospitals that perform heart transplants.

• No adjustments were made to the charges to remove capital-related and direct medical education costs, as hospitals do not make discrete charges for these components of inpatient hospital services.

• Kidney acquisition costs continue to be paid on a reasonable cost basis but, unlike other excluded costs, kidney acquisition costs are concentrated in a single DRG (DRG 302, Kidney Transplantation). For this reason, it was necessary to make an adjustment to prevent the relative weight for DRG 302 from including the effect of kidney acquisition costs, since these costs are paid separately from the prospective payment rate. Kidney acquisition charges were subtracted from the total charges for each case in DRG 302 prior to computing the average charge for the DRG and prior to eliminating statistical outliers.

The weights developed according to the methodology described above, using the revised GROUPER program, result in an average case weight that is slightly different from the average case weight before recalibration. Therefore, the new weights were normalized by an adjustment factor so that the average case weight after recalibration is equal to the average case weight prior to recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

When we recalibrated the DRG weights for FY 1986, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. At that time, there were 30 DRGs that contained no cases or fewer than 10 cases. We proposed to use that same case threshold in recalibrating the DRG weights for FY 1988. In addition, in the FY 1986 recalibration, we computed the weight for the 30 low-volume DRGs by adjusting the original weights of these DRGs by the percent change in the weight of the average case in the remaining DRGs. We proposed to use this same methodology for the FY 1988 recalibration.

Using the FY 1986 MEDPAR data set, there were 32 DRGs that contain fewer than 10 cases. Since we have no new data upon which to base the weights for these DRGs, we proposed to hold their current weight constant. This preserves the relationship between the weighting factor for each low-volume DRG and the average case weight for all Medicare cases.

In accordance with our September 3, 1986 final rule concerning changes to the inpatient hospital prospective payment system and FY 1987 rates (51 FR 31454), the exclusion of alcohol/drug treatment hospitals and units was extended through cost reporting periods beginning before October 1, 1987. The extension was intended to permit completion of analyses of a record reabstraction study conducted by the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) in concert with the National Institute of Mental Health, the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism, the Office of the Assistant Secretary for Planning and Evaluation, and HCFA.

The record reabstraction study was designed to evaluate the current structure of the alcohol/drug DRGs (MDC 20) and to identify variables not currently included in the DRG logic for MDC 20, such as patient age, disability status, complications and comorbidities (CC) and polysubstance use, that might account for additional variation in patient resource use. Based on the analyses and recommendations of ADAMHA, and our own analyses of the FY 1985 and FY 1986 MEDPAR records for all Medicare discharges in MDC 20, we proposed to reconfigure the alcohol/drug DRGs as described in the June 10, 1987 proposed rule.

We received over 100 comments regarding the proposed reconfiguration of the alcohol/drug DRGs, the need for an impact analysis estimating the effect of paying alcohol/drug hospitals and units under the prospective payment system, and the proposed recalibrated weights and outlier thresholds for the alcohol/drug DRGs. Comments on the proposed restructuring of the alcohol/drug DRGs are addressed in the final notice of DRG classification changes published elsewhere in this issue of the **Federal Register.** The remaining comments are addressed here, along with the other comments we received on our proposed recalibration.

Comment: Several commenters urged that we refine the DRG system to reflect more accurately the severity of a patient's illness or condition within any given DRG. The commenters urged that we make every effort to comply with section 9305(a) of Pub. L. 99–509, which directs the Secretary, by October 1988, to develop a legislative proposal to improve the DRG system and, in particular, to account for variations in severity of illness and case complexity as a part of that proposal.

Response: We are currently evaluating a number of different severity of illness measures. There is no agreement within either the government or the hospital industry as to which of these systems, if any, is the most appropriate for use in a national payment program such as Medicare. In the meantime, we are continuing to develop our proposal.

Comment: One commenter expressed concern about the proposed weighting factor assigned to DRG 103 (heart transplant). Based on a study, the commenter maintained that the proposed weight (13.9614) is too low because it does not adequately account for the higher cost-to-charge ratio in heart transplant cases compared to average cost-to-charge ratios. That is, the commenter believes that the charges for heart transplant patients represent greater resource intensity (a higher cost-to-charge ratio) than is the case in charges for nontransplant patients. In this connection, another commenter suggested that the appropriateness of recalibrating the DRG weights using charge data alone should be reevaluated.

Response: As we stated in the proposed rule, the weighting factor for heart transplants was developed in a manner similar to that used to develop the weighting factors for all other DRGs. To the extent that the weighting factors for all DRGs are developed from FY 1986 charge information from Medicare patient bills, it is appropriate that the weighting factor for heart transplants be developed in the same way. Otherwise, the weighting factors will not be a

consistent measure of the relative resource use among DRGs. We note that the 55 heart transplant cases used to construct the final weighting factor for DRG 103 include many cases from several of the hospitals already approved to furnish Medicare-covered heart transplants, as well as those hospitals that we anticipate will receive approval in the near future.

We believe that the commenter's real concern is the same as the second commenter's, that the current method of determining the DRG weights based on charge data alone needs to be reviewed based on more recent data. We will be evaluating whether any changes may be appropriate with respect to recalibrating the DRG weighting factors. As indicated above, we are also evaluating a number of severity-of-illness adjustments to determine whether such an adjustment should be adopted.

We note that when we originally adopted charge-based DRG weighting factors as a part of the FY 1986 recalibration, we did explore what effect, if any, the different cost-to-charge ratios across hospital departments would have on these weights. Our analysis demonstrated that, contrary to expectation, DRGs with high proportions of cost in "undercharged" services do not, in fact, have uniformly lower charge-based weights. Moreover, as we indicated in the September 3, 1985 final rule (50 FR 35655), the effects of a hospital subsidizing "undercharged" services with high-charge services are more complicated than might at first appear, and, in fact, we believe that the effects will, in many cases, offset one another.

Comment: One commenter observed that the proposed rule was silent with respect to the treatment of heart acquisition costs in the establishment of the heart transplant weight.

Response: As indicated in the April 6, 1987 notice of HCFA ruling extending coverage to heart transplantations (52 FR 10935), heart acquisition costs will be paid separately, as a pass-through, for the time being. Accordingly, for the 55 heart transplant cases in the updated MEDPAR file used for recalibration, we subtracted from the total charges of each case an estimate of heart acquisition charges prior to computing the average charge for the DRG and prior to eliminating statistical outliers. This adjustment is identical to that used for removing kidney acquisition charges from cases in DRG 302 (Kidney Transplant).

Because current MEDPAR data do not separately identify heart acquisition charges, it was necessary to estimate such charges. Limited data available to us from two hospitals that have already been approved as heart transplant centers revealed a range from $2,500 at one facility to $10,000 at another. One hospital in a State under waiver from the prospective payment system charges $11,000 for heart acquisition. We also considered using the mean charge for kidney acquisition based on MEDPAR records for FY 1986, which was $11,800. In light of limited data, we decided to use the mode charge for kidney acquisition in FY 1986, or $7,000, as our best estimate of heart acquisition charges. We believe this figure is a reasonable estimate of charges associated with heart acquisition since it is within the range of the limited data available to us from three hospitals furnishing heart transplants under the Medicare program.

Comment: One commenter asked for reassurance that the renormalization of the DRG weights has been performed and that budget neutrality based on the changes to the DRGs has been maintained.

Response: In renormalizing the DRG weights as we described above, we maintained budget neutrality

Comment: A number of commenters, predominantly alcohol/drug treatment facilities and the National Association of Addiction Treatment Providers (NAATP), expressed concern that the proposed weighting factors and lengths of stay for the alcohol/drug DRGs are based on the combined experience of both excluded alcohol/drug treatment facilities and short-stay hospitals furnishing services in "scatter beds," that is, in medical-surgical beds rather than in units organized exclusively around the provision of comprehensive alcohol/drug rehabilitative services. These commenters allege that the averaging effects work systematically to their disadvantage and that the resulting payments will force them to reduce services inappropriately to Medicare beneficiaries, especially in the DRGs for rehabilitation.

Response: The weighting factors for all DRGs are based on the average standardized charges of Medicare cases in each DRG relative to the average standardized charge for all Medicare cases in all DRGs. We use Medicare billing records from all hospitals and units subject to the prospective payment system under section 1886(d) of the Act. This policy has been in effect since the beginning of the Medicare prospective payment system. We have no reason to limit the Medicare cases used in recalibration to a subset of hospitals, particularly when coverage of all medically necessary items and services is not thus limited to that same subset of hospitals. We note that about 70 percent of all Medicare discharges in MDC 20 are from short-stay hospitals already subject to the prospective payment system.

As to the commenters' concerns that the lengths of stay published in Table 5 of the proposed notice are too low to reflect appropriate treatment patterns of patients receiving rehabilitation services, we reiterate that the length-of-stay figures published in the table of DRG relative weights are illustrative only and reflect historical lengths of stay for Medicare beneficiaries classified within each DRG. They represent neither treatment norms nor limitations on Medicare coverage or benefits. In addition, they do not represent expectations regarding future lengths of stay. In short, the lengths of stay are published for information purposes only and, except for the use of the geometric mean length of stay in calculating day outlier and transfer payments, have no bearing whatsoever on Medicare payment for inpatient hospital services.

For additional information on the distribution of Medicare lengths of stay by DRG, we refer the reader to Tables 7a and 7b in the Addendum to this final rule.

Both tables display the lengths of stay by DRG for cases at the 10th, 25th, 50th, 75th and 90th percentiles of the distribution of all cases within that DRG. Table 7a shows the distribution of cases classified in accordance with the current DRG definitions while table 7b shows the distribution of cases regrouped in accordance with the DRG classifications that will be in effect for FY 1988. Both tables are based on the MEDPAR file of FY 1986 Medicare discharges from hospitals subject to the prospective payment system received in HCFA central office through June 1987. (For further information on the FY 1988 DRG classifications, see the final notice of changes to the DRG classification system, published elsewhere in this issue of the **Federal Register**.)

With respect to the comparative lengths of stay between short-stay hospitals and excluded alcohol/drug hospitals and units, we note that the Medicare average length of stay for discharges paid under the prospective payment system has declined by about 17 percent since the inception of that system. We believe that this drop contributes significantly to the differences that exist between the average lengths of stay in short-stay hospitals, which have now been paid subject to the prospective payment system for nearly four years, and

alcohol/drug hospitals and units that have been excluded from prospective payment system. We anticipate that once these excluded hospitals and units are brought into the prospective payment system, they would respond to its incentives, similarly to all other hospitals, by changing practice patterns, increasing productivity, and substituting lower-cost for higher-cost inputs.

In addition, many of the comments appear to reflect an unfounded assumption that all alcohol/drug cases paid under the prospective payment system represent treatment in scatter beds of hospitals that, in the words of one commenter, "lack the necessary program and staffing components to provide a comprehensive continuum of care." We believe the evidence does not support this conclusion. In point of fact, some hospitals certified and participating in Medicare as short-stay general hospitals identify themselves in the annual survey of the American Hospital Association as either alcohol specialty hospitals or general hospitals with organized alcoholism/chemical dependency inpatient units. Futhermore, under §§ 412.23 and 412.32, which specify requirements governing this exclusion, an alcohol/drug hospital or unit not excluded for its cost reporting period beginning during FY 1985 may not be excluded for subsequent cost reporting periods. Hence, facilities that first met the requirements as excluded alcohol/drug hospitals or units during their cost reporting period beginning on or after October 1, 1985, could not be excluded and would appear as short-stay hospitals in Medicare program files. Finally, we have found that of all alcohol/drug cases from short-stay hospitals, some 10 percent are cases billed under the prospective payment system from hospitals that have an excluded alcohol/drug unit.

If we are to assume that these hospitals do not deliberately treat some types of patients in their excluded units and other types of cases under the prospective payment system, and that they consistently furnish all necessary and appropriate care regardless of whether a patient is treated in an included or excluded bed, the data suggest that such hospitals have already made adjustments to respond to the incentives of the prospective payment system. The resource intensity of prospective payment cases from hospitals with excluded units, in terms of both standardized charges and mean length of stay, is more similar to that of other prospective payment cases in MDC 20 than to that of cases from excluded alcohol/drug units.

Comment: A few commenters observed that the proposed weighting factors are "biased" toward detoxification services compared to rehabilitation services.

Response: We believe that these commenters' concerns reflect a misunderstanding of the composition of DRGs 434 and 435, either as currently structured or as revised for FY 1988. These two DRGs include patients receiving detoxification services and/or symptomatic treatment. Detoxification therapy (code 94.25) is reported in fewer than 60 percent of the cases in these two DRGs. Other symptomatic treatment encompasses any other services furnished to a patient with a principle diagnosis in MDC 20 and may include medical management of other conditions aggravated by a patient's alcohol/drug abuse, such as dehydration and gastro-intestinal bleeding, as well as occasional surgical intervention.

We believe that it is the range of services under the rubric "other symptomatic treatment" that contribute to a weighting factor that is higher than commenters appear to have expected. This inference is bolstered by our finding that presence or absence of detoxification therapy contributed insignificantly to explaining differences in resource use. Based on extensive review of these cases and evaluation of several alternative configurations, we concluded that the presence or absence of non-MDC 20 CCs was the strongest distinguishing characteristic among these patients. Further, in terms of the number of diagnoses and procedures reported on their Medicare bills, patients who would be assigned to DRG 434 as revised appear to be sicker and more complex to treat, on average, than most other patients in MDC 20.

Comment: A number of the commenters argued that the treatment practices of their specialized units and facilities are more comprehensive than the practices of prospective payment hospitals and that additional payments ought to be made to reflect this difference in treatment. In addition, it was suggested that treatments for alcohol and drug abuse patients provided by nonexcluded hospitals are inadequate and ought not to be covered under the Medicare program at all. The implicit assumption underlying these comments is that the average length of stay for rehabilitation cases in prospective payments hospitals is too short to constitute rehabilitation therapy as defined by Medicare program instructions.

Response: We do not agree with these commenters. Comments we have received on this issue in response to previous proposed rules, most notably in the June 10, 1985 proposed rule, made it clear that there is considerable diversity of opinion in the field of alcohol and drug abuse treatment. As we noted in the final rule published on September 3, 1985 (50 FR 35651), we recognize that there are a variety of settings in which detoxification and rehabilitation can take place. We have not attempted to specify the explicit comments of such services or expected lengths of stay associated with particular modes of treatment nor do we believe that this would be appropriate, especially given the diversity of medical opinion in the field. Although commenters have tended to argue strongly in support of the efficacy of the treatment practices to which they adhere, we do not believe that any of them have presented evidence that such treatments are the optimum or preferred modes of treatment or, conversely, that other treatment modalities are conclusively ineffective and, therefore, should be deemed noncovered. Thus, we believe that the detoxification and rehabilitation services performed in nonexcluded prospective payment hospitals (nearly 70 percent of these services) must be given due weight in determining payment for the hospitals in question under the prospective payment system.

As to expectations of the commenters regarding appropriate lengths of stay for rehabilitation therapy based on their own facilities, we compared the average length of stay for cases in DRG 436 (Alcohol/Drug Dependence with Rehabilitation Therapy) from excluded alcohol/drug hospitals and hospitals already subject to the prospective payment system. In both FY 1985 and FY 1986, rehabilitation cases from hospitals under the prospective payment system have higher average lengths of stay than rehabilitation cases from excluded alcohol/drug hospitals, although both types of hospitals have shorter lengths of stay than rehabilitation cases from excluded alcohol/drug units. This finding holds regardless of whether cases are grouped in accordance with the current DRG 436 definition or with the revised structure for DRG 436. This comparison confirms our belief that there is as much diversity in treatment patterns and modalities among the excluded alcohol/drug hospitals and units as there is between prospective payment hospitals and excluded specialized facilites and that, in the face of such diversity, it is neither necessary nor appropriate to preserve the current payment distinction (the exclusion of alcohol/drug hospitals and units) or to

establish a new payment distinction within the prospective payment system based on provider type.

Comment: At least one commenter referenced a study by the National Institute of Mental Health (NIMH), which analyzed psychiatric, alcohol, and drug Medicare inpatient admissions. The commenter expressed concern that the DRG recalibration does not take into account the fact "that all providers rendering care to individuals with these conditions are not similar with respect to the program of care provided," and there would be "a negative differential impact on those hospitals and distinct part units which specialize in the treatment of alcoholism and drug dependency cases." The NIMH study was quoted as documenting that "DRG payments to exempt hospitals and units would have in most cases been less than their historical costs for treating alcoholism and drug dependency admissions, while for the vast majority of non-exempt hospitals the DRG based payment would exceed historical costs." A second NIMH study was cited, addressing the differential in average costs for alcohol and drug discharges from specialty hospitals and general hospitals.

Response: NIMH did conduct a study of Medicare alcohol, drug, and psychiatric inpatient admissions in four States analyzing the impact of a variety of patient classifications on payment to hospitals with and without excluded units. The finding quoted by the commenter refers to all of these admissions and, as such, is inappropriate for application to alcohol/drug admissions only. The study did not distinguish from psychiatric cases; furthermore, the study used the original DRG constructions and weight and, therefore, cannot be construed to reflect the impact of the revised DRGs.

In addition to being invalid to extrapolate the findings of the study exclusively to alcohol/drug cases, the project looked at 1982 and 1983 data, at which time there was no distinction made between detoxification and rehabilitation protocols. For those hospitals under analysis, there was no distinction made between types of treatment.

The second NIMH study cited by commenters is currently in progress; all findings are preliminary. This study also uses the original DRGs for alcohol/drug cases, and since the study data base consists of Medicare records from FY 1984 and FY 1985, a substantial number of cases predate the Medicare billing instructions that required explicit coding of detoxification and rehabilitation services for alcohol/drug cases.

Comment: Many commenters contended that the Medicare intermediary guidelines defining rehabilitation therapy and detoxification procedures need to be clarified and made "stringent enough to assure that only those providers capable of delivering said procedures in fact be reimbursed for doing so." Specifically, these commenters recommended that the guidelines incorporate into the definition of rehabilitation treatment the requirement that these services be furnished only in identifiable hospitals and units that meet the current criteria for exclusion as an alcohol/drug hospital and unit.

Response: With respect to the commenters' intimations that short-stay hospitals are not capable of furnishing alcohol/drug rehabilitation services and that the quality of such services is suspect, we note that during FYs 1984 through 1986, PROs reviewed more than 40 percent of all inpatient hospital stays through a combination of targeted reviews and random sampling. We have no evidence to suggest that there were problems in either the quality of services furnished to patients with alcohol/drug diagnoses or the validity of the DRG assigned based on review of the medical record.

For the reasons stated in response to previous comments, we believe that it is inappropriate for the Medicare program to specify the types of settings, or the organizational structure thereof, in which alcohol/drug rehabilitation services may be furnished. To do so would either impose organizational and staffing requirements on a significant number of short-stay hospitals currently furnishing these services or severely limit beneficiary access to alcohol/drug rehabilitation services, 40 to 50 percent of which are furnished in short stay general hospitals. There is no conclusive evidence that such organizational and structural changes would produce improved treatment outcomes.

We believe the commenters are misinterpreting the ability of a facility to meet the exclusion criteria as assessments of the efficacy of the treatment they furnish, drawing the erroneous conclusion that certain services should then be covered only in facilities that meet said criteria. We note, however, that the exclusion criteria were tightly constructed in order to ensure that the alcohol/drug exclusion would not serve merely as a vehicle for an across-the-board exclusion of alcohol/drug cases from the prospective payment system.

When the prospective payment system was implemented, the clear purpose was to base payment for care on the actual experience of most hospitals, and the DRG system included all the types of care these hospitals furnished. Only four types of specialty hospitals were specifically excluded by Congress from the prospective payment system: Rehabilitation hospitals and units, psychiatric hospitals and units, childrens' hospitals, and long-term care hospitals. These exclusions were put in the law as a result of a Congressional belief that these types of hospitals were sufficiently different from short-stay general hospitals as to warrant further study and separate treatment. In particular, the diagnoses and procedures associated with the patients of those institutions were perceived as inadequate to explain significant variations in patient resource utilization.

No such exclusion was granted for alcohol and drug hospitals and units (although such hospitals and units did and do have the option of qualifying under the psychiatric hospital and unit provision). We established the current exclusion relating to alcohol and drug abuse hospitals and units in recognition of the fact that the original MDC 20 DRGs failed to distinguish between detoxification and rehabilitation and the resource differences associated therewith. We have completed this task and, in addition to distinguishing between detoxification and rehabilitation, have made other modifications to the alcohol/drug DRGs. Accordingly, we believe there is no longer a basis or need for maintaining the alcohol/drug hospital and unit exclusion.

Comment: Virtually all commenters urged us to perform an impact analysis on the effect of paying currently excluded alcohol/drug hospitals and units under the prospective payment system.

Response: We refer readers to Appendix A of this final rule for the requested impact analysis.

III. Changes to the Hospital Wage Index Methodology

Section 1886(d)(2)(C)(ii) of the Act required, as a part of the process of developing separate urban and rural standardized amounts for FY 1984, that we standardize the average cost per case of each hospital for differences in area wage levels. Section 1886(d)(2)(H) of the Act requires that the standardized urban and rural amounts be adjusted for area variations in hospital wage levels as part of the methodology for determining prospective payments to hospitals. To fulfill both requirements, we constructed an index that reflects average hospital wages in each urban or

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rural area relative to a national average hospital wage.

For purposes of determining the prospective payments to hospitals in FY 1984 and FY 1985, we constructed the wage index using calendar year 1981 hospital wage and employment data obtained from the Bureau of Labor Statistics' ES 202 Employment, Wages and Contributions file for hospital workers. Subsequently, for FY 1986, the September 3, 1985 final rule set forth a revised hospital wage index that was based on an HCFA survey of 1982 hospital wage and salary data as well as data on paid hours in hospitals. That wage index was developed in an attempt to overcome the limitation of the BLS data with regard to full-time and part-time employment. As a result of the provisions of section 9103(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), application of the revised wage index was postponed from discharges occurring on or after October 1, 1985 to discharges occurring on or after May 1, 1986. The method used to compute the current HCFA wage index was set forth in detail in the September 3, 1985 final rule (50 FR 35661). In the September 3, 1986 final rule, we stated that we were collecting data as part of the audit of cost reports for the first year of the prospective payment system (FY 1984) in order to update the HCFA wage index (51 FR 31499).

Under the authority of section 9103(a) of Pub. L. 99–272, we proposed to make a change in the methodology for computing the national average hourly wage, which serves as the basis for indexing the area wage levels. We also proposed to adopt a blended wage index that incorporates the wage index based on 1982 data but computed using the proposed revised methodology discussed below and a new wage index based on 1984 data and also computed using the proposed methodology.

Currently, the wage index value for an area is computed by dividing the area's average hourly wage by the national average hourly wage. The national average hourly wage is computed by summing the average hourly wages for each area and dividing by the number of areas. Thus, the average hourly wage for each area is weighted equally in determining the national average hourly wage regardless of the number of hospitals or the size of the hospital labor force in the area.

Using the current methodology (that is, an area-weighted national average hourly wage) leads to a problem whenever the wage data for hospitals in an area are adjusted or when hospitals are reclassified from one area to another. When either of these situations occurs, the national average hourly wage is affected, and thus the wage index values of all areas change.

Because of this problem, we proposed to compute the national average hourly wage by dividing the total wages for all hospitals by the total paid hours. This results in a wage index that is hour-weighted rather than area-weighted. If the national average hourly wage is hour-weighted, there is minimal, if any, impact on that national average when the wage data for a particular area are adjusted.

While the proposed change in methodology for computing the national average wage does not affect the relative wage levels among areas, it does result in lower index values for all areas relative to the national average hourly wage, since the national average hourly wage is higher under our revised methodology than it would be if computed on an area-weighted basis. Therefore, in the addendum to the proposed rule (52 FR 22102), we proposed to restandardize the Federal payment amounts to reflect the proposed new method of computing the national average hourly wage.

In addition to proposing use of a revised methodology for computing the national average hourly wage, we also proposed, under the exceptions and adjustments authority in section 1886(d)(5)(C)(iii) of the Act, to adopt a blended wage index that incorporates both 1982 and 1984 wage data from prospective payment hospitals. The proposed index was based on area wage index values computed from 1982 data on an hour-weighted basis and area wage index values computed from 1984 data on an hour-weighted basis, equally weighted to produce average area wage index values.

The method used to compute the wage index is as follows:

Procedure I: Recomputation of the 1982 wage index on an hour-weighted basis.

Step 1—Each of the non-Federal acute care hospitals subject to the prospective payment system for which 1982 data were received was classified into its appropriate urban or rural area based on the current definitions of urban and rural areas used in the prospective payment system.

Step 2—For each hospital, the total gross hospital salaries were inflated from the end of the hospital's cost reporting year through the end of calendar year 1982, using the 1982 annual rate of increase in the wages and salaries portion of the hospital market basket. This was done to eliminate any distortion caused by differing hospital cost reporting years.

Step 3—For each hospital, the inflated gross hospital salaries computed in step 2 were divided by the reported number of total paid hours to yield an average hourly wage. Hospitals with an aberrant hourly wage, which was defined as an hourly wage either less than $3.35 (the minimum wage in 1982) or greater than $19.58 (2.5 times the 1982 national average hourly hospital wage as reported in BLS' *Employment and Earnings Bulletin* as of February 1984), were excluded.

Step 4—Within each urban or rural area, the total gross hospital salaries as computed in step 2 were summed for all hospitals not excluded in step 3 to yield the total gross hospital salaries in each area.

Step 5—The total gross hospital salary result computed in step 4 was divided by the corresponding total number of paid hours in the area to yield an average hourly wage for each urban and rural area.

Step 6—The total inflated gross hospital salaries computed in step 2 for all wages not eliminated due to aberrant wage data were divided by the reported number of total paid hours in these hospitals to obtain the national average hourly hospital wage based on gross salaries. This national average is $8.52.

Step 7—For each urban or rural area, the hospital wage index value was calculated by dividing the average hourly wage computed in step 5 by the national average hourly wage.

Procedure II: Computation of the 1984 wage index.

Step 1—Each of the non-Federal acute care hospitals subject to the prospective payment system for which 1984 data have been received (including hospitals in Puerto Rico) was classified into its appropriate urban or rural area based on the current urban area definitions used in the prospective payment system.

Step 2—For each hospital, the total gross hospital salaries as reported for hospital fiscal years that began in FY 1984 were inflated from the end of the hospital's cost reporting year through August 31, 1985 using the percentage change in average hourly earnings of hospital industry workers (Standard Industrial Classification (S.I.C.) 806) in BLS' *Employment and Earnings Bulletin*. This was done to eliminate any distortion in the data caused by differing hospital cost reporting years. (August 31, 1985 was the latest end date for hospital cost reporting years in the data collection.)

Step 3—For each hospital, the inflated gross hospital salaries computed in step

2 were divided by the reported number of total paid hours to yield an average hourly wage. Hospitals with an aberrant average hourly wage, which was defined as an average hourly wage either less than $3.35 (the minimum wage in 1984) or greater than $23.61 (2½ times the national average hourly wage as computed from the data collected), were excluded.

Step 4—Within each urban or rural area, the result computed in step 2 was summed for all remaining hospitals to yield the total gross hospital salaries in each area.

Step 5—The total gross hospital salary result computed in step 4 was divided by the corresponding total number of paid hours in the area to yield an average hourly wage for each urban or rural area.

Step 6—The inflated gross hospital salaries computed in step 2 for all hospitals not eliminated due to aberrant wage data were divided by the reported number of total paid hours in these hospitals to obtain the national average hourly hospital wage based on gross salaries. This national average is $9.76.

Step 7—For each urban or rural area, the hospital wage index value was calculated by dividing the average hourly wage computed in step 5 by the national average hourly wage.

Procedure III: Computation of a wage index for all hospitals except those located in Puerto Rico, based on a blend of the 1982 wage index (computed under Procedure I) and the 1984 wage index (computed under Procedure II).

Step 1—Wage index values for each urban and rural area computed using 1984 data (Procedure II, step 7) were matched to the corresponding urban and rural wage index values computed using 1982 data (Procedure I, step 7). For both indexes, areas were classified as urban or rural using the current definitions.

Step 2—A blended wage index value for each urban and rural area was computed by adding the 1982 and 1984 wage index values and dividing the result by 2.

The results obtained in step 2 constitute the wage index values for each urban and rural area.

For hospitals located in Puerto Rico, the wage index values are not the result of a blend, but are instead based solely on 1984 data. We do not have usable 1982 wage data for Puerto Rico hospitals since these hospitals were not subject to the prospective payment system in 1984 and 1985 when we collected the 1982 wage data from prospective payment hospitals.

We received 25 pieces of correspondence that commented on the hospital wage index. The comments and our responses are discussed below.

Comment: Several commenters objected to the use of the 1984 wage data because, the commenters alleged, the data contained numerous errors and many hospitals' data were missing, omitted, or deleted from the data base used in calculating the 1984 wage index. In addition, the commenters believe that the data were not sufficiently edited or audited, nor were hospitals given the opportunity to examine and validate the 1984 wage data prior to publication of the proposed rule. The commenters also believe that data that appears to be incorrect should be corrected and revised rather than excluded from the calculation of the wage index.

Response: As we indicated in the proposed rule, we deleted from the data base the 1984 survey data from every hospital whose average hourly wage was below the minimum wage ($3.35) or 2½ times above the national average hourly wage. However, in addition to this edit, we also identified any hospital that submitted data that were not audited and whose average hourly wage increased more than a specified percentage over the 1982 average hourly wage, or decreased, or were missing from our data base. The list of hospitals identified using this edit was returned to each fiscal intermediary with instructions to verify the wages and hours reported and to follow up on missing survey data.

This process identified 66 hospitals that had not responded to the survey and 365 hospitals that reported unaudited data with large increases or decreases. As a result of this effort, we collected 38 of the missing surveys and made 129 edit changes prior to publication of the proposed rule. Consequently, we believe that the 1984 wage data base is complete, with 99.5 percent of all hospitals subject to the prospective payment system responding to the survey. In addition, with respect to the accuracy of the data, it should be noted that the survey data from 66 percent of the hospitals reporting were based on audited cost reports, and that a majority of the data that were not originally audited were subsequently returned to the fiscal intermediaries for verification and correction.

To ensure the accuracy of the data further, we identified those areas in which the 1984 wage index value increased or decreased more than eight percent when compared to the 1982 wage index value. In these instances, we compared the salaries reported on the 1984 survey with the same data elements reported on the cost reports as contained in our Hospital Cost Report Information System (HCRIS). Significant variations were investigated and resolved. As a result of the edits and the receipt of additional surveys since the proposed rule was published, 22 area wage index values (9 rural and 13 urban) have been revised.

We believe that we have taken all the steps possible to ensure the accuracy of the 1984 wage data. We further believe it is appropriate to exclude data that could not be corrected and that fell outside our minimum and maximum parameters. If we had continued to use these data, the wage index values could have been inappropriately skewed.

As indicated above, certain commenters believe that we should have afforded each hospital the opportunity to examine and verify its data, as we did after we had collected the 1982 data. Since the 1982 data collection was the first we had undertaken, we believed it appropriate to afford hospitals the opportunity to examine and verify the data, particularly since many hospitals were probably not aware of how the data were to be used, and of the necessity for accuracy. These same circumstances do not exist with respect to collection of the 1984 data. Hospitals are or should be aware that we periodically collect data for purposes of developing a wage index. A training session was also held with the fiscal intermediaries, at which the wage data collection effort was discussed, and its importance stressed.

Comment: Four commenters expressed concern that the data reported in the 1984 wage data should include items such as home office salaries, salaries of contract personnel, and salaries of personnel working in related organizations, as defined in Medicare regulations. These commenters argued that the inclusion of these items would result in index values that more closely approximate relative wage differences among areas.

Response: The 1984 survey data represent an update of the 1982 wage data. Wage index values constructed from these data use wages and salaries reported by hospitals in the total wages and salaries column of the trial balance on the Medicare cost report. In addition, we used the same definition for paid hours in developing the two wage indexes.

We did not make adjustments to the wage data for contract labor, home office salaries, and related organizations for three reasons. First, many hospitals indicated problems in determining hours associated with the services described above. Second, wages paid to home offices or related organizations do not

necessarily reflect local economic circumstances and wage patterns. Finally, the fees paid to outside organizations (such as contract nursing labor) often reflect overhead as well as salaries and other items.

However, we also recognize that there may be additional refinements that could be adopted in constructing the hospital wage index. We will continue to investigate which refinements and changes might be appropriate.

Comment: Two commenters wanted to know why we did not use the data reported on the HCFA Form 339, Exhibit 7, to develop a revised wage index based on an occupational mix of employers.

Response: Exhibit 7 of the HCFA Form 339 (Provider Reimbursement Questionnaire) was developed to allow us to assess the feasibility of developing a wage index that takes hospital occupational mix into account. This form was approved for use in connection with cost reports submitted during calendar year 1986. The collection of these data is incomplete, and they still must be analyzed and reviewed in order to determine their suitability for use.

Comment: Two commenters noted changes in the geographic classifications of several hospitals from what was reported using the 1982 wage data. The commenters alleged that the proposed rule did not contain sufficient information to allow them to ensure that these changes were proper.

Response: In an effort to ensure the accuracy of the location of a hospital, we compared the county location reported on the 1984 wage survey with other data sources including the 1982 wage data file. Any differences or discrepancies in location were resolved by using the hospital's address.

Comment: One commenter suggested that we eliminate the 1984 wage data for any hospital that has subsequently terminated its participation in the Medicare program or ceased operations altogether.

Response: We do not believe that it is appropriate to eliminate these hospitals from the survey data. To the extent that data are available for such a hospital for the period covered by the survey, it is appropriate for the data to be used, provided that the data pass edit screens.

The basis of the commenters' arguments is that a hospital that ceases operation or terminates its Medicare participation will not be subject to the new wage index. While this is true, the wage index measures relative wage difference from area to area as of a particular time. If a hospital was in operation at the time of the survey, it was paying wages and salaries. To eliminate its data could conceivably skew the average hourly wages in that area, either to the detriment or the benefit of the other hospitals in the area.

Comment: We received several comments requesting that the wage index be updated on a regular basis.

Response: In principle, we agree with these recommendations that the hospital wage index be updated on a regular basis. However, while we recognize the need for future updates, changes from year to year may not be significant enough to subject hospitals to the additional reporting requirements and paperwork necessary to accomplish a survey and subsequent follow-up on an annual basis. At present, we do not have a process in place for obtaining wage data on a regular basis. However, we will be investigating the necessity and feasibility of such a process for future updates.

Comment: Two commenters stated that the wage survey data for Puerto Rico are questionable. Specifically, the commenters are concerned that the rural wage index values are higher than most of the urban wage index values, which is contrary to the trend in the 50 States. Additionally, these commenters were concerned as to whether hospitals in Puerto Rico were classified properly as urban or rural.

Response: We can only speculate as to why the rural hospitals in Puerto Rico experience higher wage levels than the hospitals located in urban areas. The wage index values published in the proposed rule for Puerto Rico based on 1984 data were calculated in the same manner as the 1984 wage index values for the rest of the United States. The wage values for Puerto Rico were derived from the survey data received from the fiscal intermediary for all Puerto Rico hospitals. The wage index values merely reflect the results of the survey.

Nonetheless, as a result of comments received, we discovered that several Puerto Rico hospitals were incorrectly classified as rural hospitals. As a result of making the corrections, the wage index values for several Puerto Rico areas have changed. In addition, as a result of reclassifying hospitals into the correct areas, the Puerto Rico standardized amounts have also changed. Currently, there are only eight Puerto Rico hospitals that are classified as rural, therefore only these few hospitals were used to calculate the Puerto Rico rural standardized rates. The proposed Puerto Rico rates reflected classification of 15 hospitals as rural.

Comment: One commenter wanted to know what inflation factors were used to inflate the wage and salary data used in computing the wage index to August 31, 1985 (see Procedure II, Step 2, above). In addition, the commenter objected to the use of one inflation factor. The commenter indicated that different areas and different hospitals may experience difference rates of wage and salary increases.

Response: The rates used to inflate the wages and salaries reported in the 1984 wage index survey were 5.3 percent for 1984, and 5.3 percent for 1985. These rates were based on the Annual Rate of Change for Average Hourly Earnings for hospital workers (S.I.C. 806) published by the Bureau of Labor Statistics.

With respect to our use of a single inflation factor to bring all the wage data to a common point in time, we had serveral options at the time we begun using the 1984 wage data to create a wage index. One option was not to apply any inflation factor at all. This could have resulted in an index that did not represent relative differences in wages between areas due to the fact that wages for many hospitals could have been low simply because the data were from an earlier period. On the other hand, to reflect the impact of wage inflation among hospitals most accurately, we would have had to require that all hospitals report their gross wages and salaries, along with paid hours, on a monthly basis so that we would be able to track individual hospital inflation rates. Such a system, however, would be administratively burdensome for both HCFA and the hospital industry. Similarly, it would also be burdensome to require all hospitals to report the data for a standard time period, without regard to hospital cost reporting periods.

Not only would these alternative methods have been burdensome, but it has not been demonstrated, beyond the assertion of the commenter, that using a single national inflation factor would in fact lead to significant inaccuracies in the wage data and in the index values. We believe that our use of a single inflation factor represents a reasonable course of action given the alternatives discussed above.

Comment: We received comments on blending the 1982 and 1984 HCFA wage indexes from several commenters. Some commenters agreed that we should implement a blended rate to lessen the impact of large changes in the index values for some areas. However, one commenter did not believe that such a practice would be appropriate for more then one year. Other commenters recommended that the current wage index be retained until a more current

survey could be validated by hospitals and a means of annually updating the wage index established. All commenters found the 1982 data preferable to the 1984 data for various reasons although there were concerns about the age of the 1982 data. While recognizing that blending would smooth out the fluctuations that would result from moving to an index based on 1984 data, the commenters would prefer that we continue to use the 1982 data until better and more recent data are available.

Response: We have responded to the criticism of the accuracy of the 1984 HCFA wage data above and believe that we have taken all reasonable measures to ensure the accuracy of the data. Since we have established what we believe to be a reliable wage index, based upon the most recent data available, it is appropriate to begin using the new wage index. However, we do not believe that it would be prudent on our part to implement this change without providing some mechanism for protecting hospitals from abrupt changes in their payment amounts. To continue to use the 1982 wage index until further validation of the 1984 data can be accomplished, and a procedure developed for annually updating the wage index, would not be appropriate, since we would not be using the most recent data available for purposes of computing the prospective payment rates.

The principle of using the most recent data available was firmly established by Congress at the time the prospective payment system was first instituted. In addition, administrative law and judicial rulings do not require that changes or improvement to a system be perfect before they are adopted; rather, the criteria that should guide an agency's deliberations is one of "reasonableness," that is, has the agency acted reasonably or taken a reasonable approach in adopting such changes or improvements. We believe that we have met this standard both in the development of the 1984 wage index and the adoption of a blended wage index for payment purposes.

IV. Inclusion of Puerto Rican Hospitals in the Prospective Payment System

When section 1886(d) was added to the Act by Pub. L. 98–21, all hospitals located outside the 50 States and the District of Columbia were excluded from the prospective payment system and thus have continued to be paid on the basis of reasonable costs subject to the rate-of-increase limits established by section 1886(b) of the Act. However, section 9304(a) of Pub. L. 99–509 added a new section 1886(d)(9) to the Act to include eligible Puerto Rico hospitals in the prospective payment system effective with discharges occurring on or after October 1, 1987.

Section 1886(d)(9)(A) following (ii) of the Act specifies that a hospital is subject to the prospective payment system if it is located in Puerto Rico and otherwise would be subject to that system if it were located in one of the 50 States. Although eligible Puerto Rico hospitals are to be included in the prospective payment system, there are some special rules that apply to those hospitals.

Section 1886(b)(9)(A) of the Act specifies that the payment per discharge under the prospective payment system for hospitals in Puerto Rico is the sum of—

- 75 percent of the Puerto Rico discharge-weighted urban or rural standardized rate.
- 25 percent of a national discharge-weighted standardized rate.

We proposed to compute separate urban and rural standardized payment rates for Puerto Rico. For FY 1988, section 1886(d)(9)(B)(i) of the Act specifies that this computation is to be done in the same manner we used to compute the regional standardized rates under section 1886(d)(2) of the Act, except that the rate is to be based on the Puerto Rico hospitals' target amounts (as defined in section 1886(b)(3)(A) of the Act) that were applicable for cost reporting periods beginning on or after October 1, 1986, updated to the midpoint of FY 1988 by prorating the applicable percentage increase (that is, the percentage increase in the market basket index minus 2.0 percentage points). Under section 1886(d)(9)(A)(ii) of the Act, the national standardized rate that makes up 25 percent of the payment rate for Puerto Rico hospitals consists of the discharge-weighted average of the national rural standardized amounts and the national urban standardized amounts that are used for paying all prospective payment hospitals outside of Puerto Rico.

As required by section 1886(d)(9)(B)(vi) of the Act, the labor-related portion of the Puerto Rico standardized amount is adjusted by the appropriate wage index value for the area in which a Puerto Rico hospital is located. We proposed to include Puerto Rico in the HCFA wage index that is used for all prospective payment hospitals and to adjust the Puerto Rico standardized amount for each area to reflect the average wage level relative to the national average wage.

For FY 1989 and subsequent fiscal years, section 1886(d)(9)(C)(i) of the Act specifies that the Puerto Rico standardized amount is to be updated by the applicable percentage increase determined by the Secretary under section 1886(e)(4) of the Act. Section 1886(e)(4) of the Act further specifies that the update factor applied to Puerto Rico hospitals must be the same as the update factor applied to prospective payment hospitals located in the 50 States and the District of Columbia.

Section 1886(d)(9)(D) of the Act specifies that the following provisions of section 1886(d)(5) of the Act concerning additional payments to, or special treatment of, prospective payment hospitals also apply to prospective payment hospitals in Puerto Rico:

- Section 1886(d)(5)(A) of the Act, which requires that additional amounts be paid for outlier cases.
- Section 1886(d)(5)(B) of the Act, which requires that additional amounts be paid for indirect medical education costs.
- Section 1886(d)(5)(c)(iii) of the Act, which authorizes the Secretary to make other exceptions and adjustments as the Secretary deems appropriate.
- Section 1886(d)(5)(E) of the Act, which permits payment on a reasonable cost basis for anesthesia services furnished in a hospital by a certified registered nurse anesthetist (CRNA).
- Section 1886(d)(5)(F) of the Act, which authorizes additional payment for hospitals that serve a disproportionate share of low-income patients.

The following provisions of section 1886(d)(5) of the Act do not apply to prospective payment hospitals in Puerto Rico:

- Special treatment of referral centers (section 1886(d)(5)(C)(i) of the Act).
- Special treatment of sole community hospitals (section 1886(d)(5)(C)(ii) of the Act).

We proposed that the following types of hospitals and hospital costs that receive special treatment in the prospective payment system under section 1886(d)(5)(C)(iii) of the Act would also receive special treatment if located in Puerto Rico:

- Hospitals involved extensively in treatment for and research on cancer that meet the requirements of § 412.94.
- Christian Science Sanatoria.
- Hospitals that are located in urban areas and that are reclassified as rural, as described in § 412.104.
- Hospitals with a high percentage of discharges for end-stage renal disease patients, as described in § 412.104.
- Hospitals approved as renal transplantation centers.
- Hospitals in redesignated rural counties that are surrounded on 95

percent of their perimeters by urban counties, as described in § 412.63(b)(3).

We proposed to add a new Subpart K to Part 412 to implement the special rules that apply to prospective payment hospitals located in Puerto Rico. Conforming changes were also made in §§ 412.23(f).

Section 1886(e)(1)(C) of the Act, as added by section 9304(c) of Pub. L. 99–509, requires that for discharges occurring in FY 1988, the aggregate payment to prospective payment hospitals including those hospitals located in Puerto Rico be equal to the aggregate payment that would have been made to those hospitals under prior law; that is, the addition of hospitals in Puerto Rico to the prospective payment system must be "budget neutral".

As explanation of the methodology used to calculate the payment rates for hospitals in Puerto Rico, as well as the budget neutrality issue, is set forth in sections III and IV of the addendum to this final rule.

Comment: One commenter wanted to know how the labor-related and nonlabor-related components of the Puerto Rico standardized amounts were determined. Another commenter questioned whether the same labor and nonlabor portions were used in determining both the Puerto Rico standardized amounts and the national standardized amounts.

Response: As indicated in the proposed rule (52 FR 22107), the labor and nonlabor portions of the target amounts were based on the labor and nonlabor components of the hospital market basket. The latest hospital market basket components were published in the September 3, 1986 final rule (51 FR 31530). Based on these market basket components, the labor portion represents 74.39 percent of the Puerto Rico target amounts and the nonlabor portion is 25.61 percent. These are the same portions that are used in determining the national standardized amounts.

The source of the second commenter's confusion concerning the labor and nonlabor portions reflects a misunderstanding as to how the labor and nonlabor portions are determined for purposes of computing the standardized amounts. The commenter believes that a national average cost per discharge (or, in Puerto Rico, target amount per discharge) is first determined, and that this overall average is then split into labor and nonlabor portions. However, in actuality, each individual hospital's cost per discharge (for hospitals outside Puerto Rico) or target amount per discharge (in the case of Puerto Rico) is divided into labor and nonlabor portions using the constant percentages discussed above. Then, separate national and regional averages are computed for the labor portion, after the standardization for different area wage levels, and the nonlabor portion respectively.

Comment: One commenter requested that we publish the case-mix index values for Puerto Rico hospitals that were used to standardize the Puerto Rico prospective payment rates. The commenter noted that the Puerto Rico hospital case-mix index values were not included in table 3c of the June 10, 1987 proposed notice along with the case-mix index values of all other prospective payment hospitals.

Response: We note that the case-mix index table published in the proposed notice represents FY 1986 case-mix index values and was published for the sole purpose of identifying hospitals that may qualify as rural referral centers. Since the rural referral center provisions does not apply to Puerto Rico hospitals, their case-mix index values were not published.

As indicated in the proposed rule (52 FR 22107), the case-mix index values used to standardize the Puerto Rico rates were from FY 1984. These data, as well as all other data used to compute the standardized amounts, are available to the public upon request. Generally, we have not published all data used to compute prospective payment rates because of the volume and magnitude of the data.

Comment: One commenter stated that the same cost outlier thresholds applicable to prospective payment hospitals located outside of Puerto Rico are not appropriate for Puerto Rico hospitals given the fact that hospital costs are lower in Puerto Rico. This commenter suggested that cost outlier thresholds for Puerto Rico should be based on actual Puerto Rico hospital cost experience. However, another commenter stated that Puerto Rico hospitals have higher costs for some items than do other hospitals and that, therefore, they should receive a cost-of-living adjustment similar to the adjustment for hospitals in Alaska and Hawaii.

Response: Section 1886(d)(9)(D) of the Act (as added by section 9304 of Pub. L. 99–509) specifies that certain provisions (including outlier payments but not a cost-of-living adjustment) applicable to subsection (d) hospitals "shall apply to subsection (d) Puerto Rico hospitals * * * in the same manner and to the extent as they apply to subsection (d) hospitals * * *." Therefore, we are using the same day and cost outlier thresholds for Puerto Rico hospitals and all other hospitals. However, when determining whether a case qualifies as a cost outlier, the threshold amount is adjusted by the hospital's wage index value. In effect, this results in the outlier formula taking into account the specific cost experience of the hospital.

We note that, under current outlier policy, which we will not be revising as a part of this final rule (see section V.B. of this preamble), the preponderance of outlier cases will be paid as day outliers, thus reducing the impact of using uniform cost outlier thresholds. Further, we note that there are also differences in hospital costs among different regions located outside of Puerto Rico, but that different outlier thresholds were never provided in recognition of these differences.

Finally, we note the commenter's justification in support of the commenter's position that Congress recognized Puerto Rico's special cost situation by providing unique standardized rates for Puerto Rico. However, Congress also incorporated features that are identical to the features applicable to the prospective payment system for all hospitals outside of Puerto Rico. In fact, Congress provided that Puerto Rico hospitals will be entitled to additional payments for the indirect costs of medical education and as disproportionate share hospitals, even though the formulas for computing these adjustments would be different (and perhaps result in lower adjustments) if they were based solely on Puerto Rico data and circumstances.

For these reasons, and in view of the disagreement among the commenters as to whether Puerto Rico hospitals have higher or lower costs, we are not adopting at this time the suggestion that we develop outlier thresholds specific to Puerto Rico.

Comment: One commenter expressed concern that we have not appropriately identified all hospitals in Puerto Rico that qualify for a disproportionate share adjustment. The commenter also indicated that several hospitals in Puerto Rico would qualify for a disproportionate share adjustment under § 412.106(b)(2) because they receive at least 30 percent of their inpatient revenue from the Commonwealth government for the care of indigent patients.

Response: We should point out that the data we used to standardize the Puerto Rico payment amounts to reflect the disproportionate share adjustment were based on FY 1984 cost report data as well as Medicaid data supplied by

the Department of Health in Puerto Rico. These data were used solely for the purpose of adjusting the Puerto Rico rates. The determination of whether a hospital is entitled to receive additional payments as a disproportionate share hospital is made by the fiscal intermediary based on the latest data available.

The determination of whether a hospital would qualify for a disproportionate share adjustment under § 412.106(b)(2) would be made following the end of the hospital's cost reporting period, at which time the hospital will have the opportunity to apply for an adjustment under the provision on revenue from State and local governments for indigent care. Since we have no data concerning which hospitals would qualify for a disproportionate share adjustment under this provision, no adjustments were made to the Puerto Rico rates to reflect payments under this provision. However, any hospital that can demonstrate to its intermediary that it does, in fact, qualify for this adjustment, will receive disproportionate share adjustments as appropriate.

Comment: One commenter requested that hospitals in Puerto Rico be allowed to appeal their rate-of-increase target amounts used to compute the Puerto Rico standardized amounts. The commenter contends that prospective payment hospitals outside of Puerto Rico were permitted to appeal their base period costs upon entering the prospective payment system and, therefore, hospitals in Puerto Rico should be afforded the same opportunity to challenge their target amounts.

Response: The circumstances under which hospitals in the fifty States and the District of Columbia were afforded the opportunity to provide additional cost report data involved the computation of the hospital-specific portion of the prospective payment rates during the transition period to a fully Federal rate. However, since there is no transition period provided under the law for Puerto Rico hospitals under the prospective payment system, hospitals in Puerto Rico will not have a hospital-specific portion in their prospective payment rate, but rather will be paid using fully Federal standardized payment amounts (that is, 75 percent Puerto Rico Federal rate and 25 percent national Federal rate). We should point out that at the time the target amounts were computed, hospitals in Puerto Rico also had the opportunity to appeal their base period cost report data used to compute the target amounts.

The Federal standardized payment amounts for prospective payment hospitals outside of Puerto Rico were computed using 1981 unaudited cost report data. These data represented the latest cost data available to us at the time the initial standardized rates were computed. Hospitals were not given the opportunity to submit additional data for these 1981 cost reports. Likewise, the rate-of-increase target amounts we used to compute the Puerto Rico standardized amounts were the latest available to us at the time. While target rates for particular years may be revised under existing regulations for purposes of determining the amounts of payment for those years under the reasonable cost reimbursement principles, to permit their revision to affect the Puerto Rico standardized amounts would, in effect, defeat Congress' intention that the standardized amounts be prospectively determined based on the best data available.

As we stated in the proposed rule, if we were to allow constant revision of the Puerto Rico standardized amounts based on changes to the hospitals' target rates, we would create continuing uncertainty as to what the prospective rates are. Also, for years after FY 1988, section 1886(d)(9)(C)(i) of the Act requires that the previous year's Puerto Rico standardized amounts be updated by the applicable percentage increase determined for the prospective payment system. We do not believe that Congress contemplated changes in those amounts because of revisions in the data base.

Furthermore, revising the Puerto Rico standardized amounts to take into account revisions in target rates would be contrary to our policy that we not make changes to the standardized amounts because of changes to the data base used to calculate the standardized amounts. We believe our policy is in accordance with congressional intent to use the best data available. We note that we did not revise the original prospective payment standardized amounts that were effective October 1, 1983 to take into account revisions in the data that were used to calculate those amounts (that is, cost reports for reporting periods ending in calendar year 1981). Therefore, we would allow revisions in the target rates for individual cost reporting periods subject to the rate-of-increase limits under the current regulations for purposes of determining payment for those periods. However, these revisions would have no impact on the data used for the computation of the Puerto Rico standardized amounts.

V. Other Decisions and Changes to the Regulations

A. Review of DRG Assignments (§§ 412.60 and 466.70)

We have encountered situations in which a hospital that submits a claim to Medicare for payment later attempts to resubmit the claim based on additional information that would place the case in a higher-weighted DRG. Some corrections of billing information are warranted if, for example, the hospital omitted critical documentation or misread the medical record. We believe that it is appropriate to allow a hospital a reasonable period of time in which to correct its own error by submitting additional or corrected information on an adjustment bill. Nevertheless, as in the case of any business transaction, we do not believe it is appropriate for the billing party to revise a claim long after the original claim is submitted and paid.

Allowing hospitals an extended period of time to discover errors and to resubmit bills is contrary to good business practice. A workable prospective payment system would not exist if the fiscal intermediaries are constantly processing recoded claims based upon the same documentation or if bills lack finality because they are forever subject to revision.

Therefore, effective April 23, 1984, we established an informal review mechanism through administrative directive by issuing changes to the following manuals:

- Hospital Manual (HCFA Pub. 10), section 287.5, transmittal number 382.
- Medicare Intermediary Manual (HCFA Pub. 13-3), section 3798, transmittal number 1109.

These issuances specified that a hospital has 60 days after the date of an initial DRG assignment to a claim to request review. The hospital may submit additional information as a part of its request. The fiscal intermediary reviews the data and adjusts the DRG if appropriate.

As part of the PRO's review responsibility, the initial PRO contract cycle provided for review of hospital requests for DRG claims adjustments submitted after the initial claim had been filed. This review applied only if the intermediary's review resulted in the assignment of a higher-weighted DRG and the PRO had not previously reviewed the case in question. Because these claims adjustments were considered to represent a high risk of DRG manipulation, 100 percent of these cases were reviewed postpayment. The PRO not only determines if the request for coding changes is appropriate, but

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also conducts full PRO review of the case if this review was not performed previously. The PROs collected data on the frequency with which hospitals submitted erroneous requests for DRG claim adjustments. Identification by the PRO of a pattern of inappropriate coding adjustments required corrective actions. The second PRO contract cycle effective July 1, 1986, required that this review be conducted on a prepayment basis.

We proposed to include the provisions of the manual instructions concerning hospitals' requests for review of DRG assignments in the regulations. We proposed to review § 412.60 to specify that a hospital has 60 days to request a review by the intermediary of a DRG assignment and to describe how that review is conducted. In addition, we proposed to revise § 466.70 to provide that a PRO must review every case in which a higher-weighted DRG is assigned to a discharge as a result of the intermediary's review.

Comment: A number of commenters were not in favor of the proposal to codify the 60-day limitation on submittal of requests for review of the DRG initially assigned to a claim by the fiscal intermediary. More specifically, most commenters opposed the imposition of any limitation on the time allowed for a hospital to submit revised or corrected coding information to the fiscal intermediary for purposes of obtaining a more accurate DRG assignment. They believe that it is unnecessary to set a time limit because hospitals already have clear incentives to request promptly correction of DRG assignments that lead to inappropriately low payments; and conversely, the Medicare program is not harmed but actually benefits financially from any delay in hospitals' requesting corrections. Their complaint was that a time limit would only penalize those hospitals that, because of circumstances beyond their reasonable control, cannot always identify and prepare corrections within 60 days.

The commenters were concerned that the 60-day limitation will prevent hospitals from conducting their own review in order to identify incorrect or inadequate coding. Many commenters believe that hospitals should have the right to correct any coding mistake discovered on any bill processed by the fiscal intermediary in the last 90 to 180 days.

Response: We believe that the fact that the majority of the commenters are apparently unaware of the fact that the 60-day limitation on submittal of revised or corrected codings has been our stated policy since April 23, 1984, justifies our decision to include both the review by the fiscal intermediary and the review by the PRO in the regulations. Initially, requests for corrections of coding were processed as adjustment bills under procedures that were established prior to the implementation of the prospective payment system. As more hospitals became subject to that system, the hospitals became aware of the importance of correct coding. Hospitals came to appreciate that some cases could have been coded more advantageously under allowable International Classification of Diseases—9th Edition—Clinical Modification (ICD–9–CM) protocols. (The coding system of the ICD–9–CM is the one on which DRG assignments are based.)

The 60-day limitation was included in manual instructions to provide a reasonable control on the volume of corrections that would have to be processed. Since the manual issuances specified that hospitals could present additional information to the fiscal intermediary in the form of corrected coding, we expected that requests for review of DRG assignments might largely consist of corrections that would result in the assignment of a higher-weighted DRG (that is, that it might result in "upcoding"). However, corrections resulting in higher-weighted DRGs were made subject to PRO review (if not previously reviewed) to guarantee that the new coding was appropriate in view of the medical record of the case.•

We agree that hospitals should have a reasonable amount of time to correct errors. However, we are concerned about a review process that, while ostensibly having as its goal only complete and accurate coding, generally results in greater numbers of higher-weighted DRGs as opposed to equal numbers of higher and lower-weighted DRGs. Setting a time limit on revision of a claim serves the dual purpose of providing hospitals a reasonable period of time to correct errors and of ensuring that claims are considered final for payment purposes on an ongoing basis.

Comment: Commenters believe that PRO review of those cases resulting in assignment in a higher-weighted DRG provides adequate controls to ensure that payment of DRGs is not manipulated due to rebilled claims and that therefore a 60-day limit on requesting corrections is not necessary.

Response: Even assuming that the PRO review were adequate to prevent manipulation, as noted above, the 60-day limit also serves to provide a reasonable control on the volume of corrections that would have to be processed.

Comment: One commenter agreed that allowing hospitals or HCFA an extended period of time to discover errors and resubmit bills contradicts good business practice. However, the commenter suggested that a 90-day limit would be more realistic and would permit hospitals to include corrected bills in their cost reports, which are due 90 days after the close of the cost reporting period. Another commenter believes that it is inappropriate to compare Medicare claims with common business practice because the prospective payment system does not base payments on fee-for-service, as do most businesses, but on a complicated coding system. The commenter suggested that a period of 180 days to submit changes would allow prudent hospitals time to use their audit and review procedures to discover errors. The need for this time was linked to the high potential for errors in coding due to ongoing changes in the ICD–9–CM and high turnover in medical records personnel. The need to obtain physician attestation on bills was also cited.

Response: We appreciate the support of the first commenter in our goal of maintaining a current, reliable billing process. We believe that a 60-day limitation, beginning with the date of the fiscal intermediary's payment notification, is a sufficient amount of time in which to uncover errors in coding. Although it is true that the ICD–9–CM coding process is complicated and subject to ongoing changes, we believe that the combined efforts of the American Medical Records Association, the American Hospital Association, National Center for Health Statistics, and HCFA have provided an invaluable resource for medical records personnel in resolving coding questions.

Since the physician attestation must be obtained prior to submission of the bill to the fiscal intermediary, the need to obtain attestations should not affect resubmission of claims involving coding errors. Revised attestations are only needed when diagnoses or procedures in the original attestation must be changed.

Comment: Several commenters argued that the 60-day limitation was especially unfair because the fiscal intermediaries and PROs have no time limitations on the adjustment or review of claims. Commenters also recommended that PROs and fiscal intermediaries should be given more specific instructions concerning the review of claims, and that hospitals should have a method of recourse if the request for a change in DRG is denied.

Response: We believe that the commenters' concerns could have been

partially allayed with a more complete description in the proposed rule of the existing instructions to the fiscal intermediary and PROs. We assumed that this was an area already widely understood by a substantial number of hospitals, and we cited only the references in the manual that impose the 60-day limitation rather than describing the procedure in detail. (See 52 FR 22089.) The instructions for fiscal intermediaries on processing adjustment bills can be found in section 3816.1 of the Part A Intermediary Manual (HCFA Pub. 13–3). Prior to implementation of the prospective payment system, and for some time thereafter, the number of hospital-initiated adjustment bills under the provisions of section 3816.1 was very low, accounting for a small percentage of the fiscal intermediaries' processing time. By March 1984, a number of hospitals were submitting adjustment bills with corrected coding, creating an unaccustomed workload. Our estimate of the potential increase in this workload led us to impose a 60-day limitation on those claims submitted for DRG adjustment. Since claims had already been paid, these bills and subsequent submittals under the 60-day rule have been given a relatively low priority for processing.

We appreciate the comments pointing out the potential processing lag at the fiscal intermediary level. We will continue to measure the actual impact of these adjustment bills and will evaluate the need to monitor fiscal intermediary performance in this area.

PROs, on the other hand, have specific instructions and processing deadlines both in their contracts with HCFA and in the instructions outlining this review and they are reviewed by the regional office to ensure compliance with these requirements. (See the PRO Manual (HCFA Pub. 19), sections 2003, 2004, and 2050.4E.) All medical review activities included in section 2050 of the PRO manual must be instituted (that is, cases identified and records requested) within 15 calendar days of the receipt of the intermediary data.

The review of the case must be completed within 15 calendar days of the receipt of the medical record. Under section 2050.4E of Pub. 19, in order to complete the review of a revised DRG, the PRO must be supplied with the following information from the hospital:

- The initial codes submitted.
- The codes submitted for adjustments.
- A statement explaining why the original codes were submitted incorrectly.
- A copy of the medical record.
- If coding changes were based on newly acquired clinical information, a copy of such information (for example, an autopsy report).

We will continue to monitor the processing of hospital requests for DRG adjustment to determine whether the omissions and errors made by coding personnel justifies additional training efforts by the ICD–9–CM Coordination and Maintenance Committee. Although the processing of these bills by fiscal intermediaries will continue to have a lower priority than initial payment processing and coordination, we will monitor the number of these requests to determine if there is a substantial adverse impact of the procedure on the overall Medicare payment to any one hospital or any group of hospitals and make any necessary adjustments.

A hospital that receives an unfavorable decision on its request for review of DRG assignment may appeal that decision under the provisions of 42 CFR Part 405, Subpart R.

B. Increase in the Prospective Payment Rates and Rate-of-Increase Limits (§§ 412.63, 412.73, and 413.40)

Section 9302(a)(1) of Pub. L. 99–509 amended section 1886(b)(3)(B)(i)(II) of the Act to provide that the applicable percentage increase for FY 1987 is 1.15 percent and for FY 1988 is the market basket percentage increase minus 2.0 percentage points. (We note that the Congress is considering modifying the applicable percentage increase for FY 1988, so that the market basket change minus 2.0 percentage points may not be the final update factor.) A final rule published in the **Federal Register** (52 FR 42229) on November 24, 1986 amended §§ 412.63, 412.73, and 413.40 to implement the changes applicable to FY 1987. We proposed to amend those same sections to implement the provisions of section 1886(b)(3)(B)(i)(II) of the Act applicable to FY 1988. We received no comments on this proposal.

C. Payment for Outlier Cases (§§ 412.82 and 412.84)

Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made to hospitals for atypical cases known as "outliers". These are cases that have either an extremely long length of stay or extraordinarily high costs when compared to the other discharges classified in the same DRG.

Section 1886(d)(5)(A)(iii) of the Act specifies that the outlier payments should approximate the marginal cost of care beyond the outlier threshold. In the September 1, 1983 interim final rule, we established the ratio of marginal cost to average cost at 60 percent (48 FR 39776). Therefore, the regulations (§§ 412.82 and 412.84) currently provide that the marginal cost of outlier cases is based on a 60 percent factor.

For day outliers, an additional per diem payment is made for each covered day of care beyond the threshold. The per diem payment is based on 60 percent of the average per diem Federal rate for the DRG, which is calculated by dividing the wage-adjusted Federal rate for the DRG by the geometric mean length of stay for that DRG. During the transition period (cost reporting periods beginning on or after October 1, 1983 and before October 1, 1987), this amount is multiplied by the applicable Federal blend percentage. Starting with cost reporting periods beginning on or after October 1, 1987, the Federal portion is 100 percent of the payment rate.

For cost outliers, the additional payment is based on 60 percent of the difference between the hospital's adjusted charges for the discharge and the outlier threshold. We determine the cost of the discharge based on 66 percent of the billed charges for covered services. The cost is further adjusted to exclude an estimate of indirect medical education costs and payments for hospitals that serve a disproportionate share of low-income patients. As with day outliers, the resulting amount is then multiplied by the applicable Federal portion of the blend.

Our analysis indicates that while our payment policy for outliers effectively reduces the risk faced by hospitals in treating cases that are outside the normal range of cases in terms of care or costliness, additional compensation would be justified for the most expensive case, particularly those long-stay cases with extremely high costs. On the other hand, some cases that qualify for additional payment as day outliers are not extraordinarily costly. Therefore, we proposed to make two changes to the outlier regulations.

We currently pay even the most expensive day outliers at a per diem amount that is based on the average payment for all discharges assigned to that DRG. For some of the cases that currently qualify as day outliers (and therefore cannot be cost outliers), the per diem rate paid for those cases does not adequately compensate the hospital for its costs. This is especially true in day outlier cases with extremely high costs (for example, severe burn cases) for which the daily costs vastly exceed the day outlier per diem and for which that daily difference is multiplied by a long length of stay. Thus, we proposed that if a day outlier case also meets the

cost outlier criteria, we would pay the case using the cost outlier methodology. Day outliers that do not meet the cost outlier criteria would continue to be paid on the basis of a per diem rate.

We also reexamined the 60 percent marginal cost factor used in calculating the payment for outlier cases. Evidence from recent research indicates that a higher marginal cost factor would result in more appropriate payments for the most expensive cases by more effectively reducing the financial risk to hospitals that is associated with these cases. In particular, we note that the estimated loss per case is higher for cost outliers than for day outliers. When day outliers are separated into two categories—those exceeding the day outlier threshold but not the cost outlier, and those exceeding both the day and the cost outlier thresholds—the estimated loss per case for the more expensive day outliers (those also exceeding the cost threshold) substantially exceeds that for the less expensive day outliers (those that do not exceed the cost threshold).

This finding that the financial risk associated with outlier cases varies substantially with whether the case is long stay only or exceeds the cost threshold suggests that the marginal cost factor we are using for the most expensive outliers (those that exceed the cost outlier threshold) is too low. Accordingly, for discharges occurring on or after October 1, 1987, we proposed to set payment for the most expensive outlier cases (that is, all outlier cases exceeding the cost outlier threshold) at 80 percent of adjusted charges beyond the cost outlier threshold. Based on our research to date, we believe that this revised marginal factor would result in more adequate compensation to hospitals treating the most costly outlier cases.

Comment: We received a number of comments concerning our proposed changes in the outlier payment policy. While most commenters supported an outlier policy that pays a higher fraction of outlier payments for extremely costly cases, many were concerned about the impact of the proposed changes and recommended that changes in the outlier policy be delayed until further study can be accomplished. The areas of particular concern were the continued use of national cost-to-charge ratios to pay cost outliers as well as the negative impact of the proposed outlier policy on certain groups of hospitals, such as teaching and small rural hospitals.

Response: Given the concerns expressed by commenters, we have decided to delay implementation of any changes to the outlier policy. We are continuing our research concerning the impact of using national ratios in computing cost outlier payments. Preliminary studies conducted since the publication of the proposed rule indicate that, in general, hospitals that have large profits per case under the basic rates have lower cost-to-charge ratios than do hospitals that have smaller profits per case under the basic rates. This means that the use of the national cost-to-charge ratio results in a transfer of payments to hospitals that are doing very well from hospitals that are doing less well.

While the use of hospital-specific cost-to-charge ratios may be more accurate for purposes of computing cost outlier payments, there are a number of significant administrative and data problems associated with using these ratios. For example, estimating future outlier payments in order to establish appropriate outlier thresholds becomes more of a problem, since hospital specific cost-to-charge ratios used in the estimate would not be the same as those used for actually paying outliers. In addition, major changes in PRICER software (the program used to calculate each hospital's payment per discharge) and the Medicare cost report would be necessary in order for cost-to-charge ratios to be developed for payment purposes.

Therefore, rather than implement an outlier policy that would place greater emphasis on the cost outlier payment methodology, which could unfairly disadvantage certain hospitals, we have decided to continue with the current outlier policy until we can complete our analysis.

In addition, in response to the commenters' request, and as part of our ongoing analyses of outlier payments, we are continuing to look at the distribution of charges and costs by DRG and type of hospital.

Comment: A few commenters recommended that the outlier pool be increased from five percent to six percent, the maximum allowed under section 1886(d)(5)(A)(iv) of the Act.

Response: Since we did not propose to make any change to the aggregate outlier reduction, we believe it is inappropriate to make such a substantial change at this time without benefit of public comment. Also, since we are continuing, in response to comments, to study which changes might be desirable in outlier payment methodology, rather than implementing our proposed changes for FY 1988, we believe it would be inappropriate to make any changes in the outlier pool until that analysis is completed.

Comments: A few commenters pointed out that outlier payments have consistently fallen short of the outlier reserve and that we have failed to publish data on the amount of outlier payments made since the prospective payment system began. Commenters also stated that we should pay any outlier underpayments from prior prospective payment fiscal years.

Response: We responded to similar comments in the September 3, 1986 final rule (52 FR 31525). In addition, in the Department's report "DRG Refinement: Outliers, Severity of Illness and Intensity of Care," which was submitted to Congress on June 12, 1987, we presented updated outlier payment data for FY 1984 that indicated that actual payments for outliers were about 1.1 percent of total prospective payments, or 53 percent of the 2.1 percent target (5.7 percent of the Federal portion of prospective payments).

The shortfall in outlier payments for the first year of the prospective payment system was due mainly to the fact that we did not anticipate the steep decline in average length of stay that occurred. As with all other aspects of the system, we used the most recent data available at the time to estimate outlier payments in establishing thresholds. Outlier thresholds in subsequent years were adjusted to reflect the observed decline in length of stay. However, due to a continued decline in length of stay, preliminary outlier payment data for FY 1985 indicate that outlier payments may fall short of the 2.5 percent target for FY 1985 (based on 50 percent Federal portion). We expect the shortfall in FY 1985 to be less than in the first year since thresholds were based on data that included prospective payment experience. As the prospective payment transition period progresses and changes in hospital operations stabilize (as is evidenced by the latest length of stay and case-mix data), we expect that outlier payments will be closer to target.

As required by the law, we estimate, using the most recent data available, what the level of the outlier thresholds must be in order to yield the proper total amount of outlier payments. This is inherently a prospective process and the resulting estimate may be determined to be inaccurate based on later data. However, payment of additional outlier monies based on retrospective adjustments to the thresholds would not be appropriate. Had our original estimates been made to favor hospitals, we would not have later recouped any amounts paid over and above what was set aside in the outlier pool. We note that we do not recoup any part of

payments already made due to subsequent data that indicate upcoding or overstatement of rates.

Comment: Some commenters objected to the fact that in computing the amount of costs for outlier payments, we standardize for indirect medical education and disproportionate share adjustments, which results in reduced outlier payments for teaching and disproportionate share hospitals.

Response: We believe that in computing the amount of the cost outlier payment it is appropriate to standardize costs for the indirect medical education and disproportionate share adjustments. This is because the outlier thresholds represent standardized costs. Since teaching and disproportionate share hospitals generally incur higher costs (and charges) for treating the same cases as nonteaching and nondisproportionate share hospitals, it is appropriate to adjust costs to account for these higher costs before applying the standard outlier threshold. The indirect medical education and disproportionate share adjustments are then appropriately added to the amount of the cost outlier payment.

D. Payments to Sole Community Hospitals (§ 412.92)

Section 1886(d)(5)(C)(ii) of the Act requires that the special needs of sole community hospitals (SCHs) be taken into account under the prospective payment system. The statute specifies a special payment formula for hospitals so classified and further provides for additional payment to SCHs experiencing a significant volume decrease (that is, more than a five percent decrease in total discharges of inpatients) because of circumstances beyond their control. The statute defines SCHs as those hospitals that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals (as determined by the Secretary), are the sole source of inpatient hospital services reasonably available to Medicare beneficiaries in a geographic area. Regulations governing the special treatment of SCHs under the prospective payment system are set forth in § 412.92.

Currently, § 412.92(e) provides that an SCH is eligible for a payment adjustment in any cost reporting period if it experiences more than a five percent decrease in its total discharges for inpatients as compared to its immediately preceeding cost reporting period. To qualify for a payment adjustment, an SCH must submit documentation demonstrating the size of the decrease and the resulting effect on per discharge costs, and show that the decrease is due to extraordinary circumstances beyond the hospital's control, such as strikes, fires, floods, earthquakes, inability to recruit essential physician staff, or unusually prolonged severe weather conditions.

We determine on a case-by-case basis whether an adjustment will be granted and the amount of that adjustment. As specified in § 412.92(e)(3), a per dicharge payment adjustment, including at least an amount reflecting the reasonable cost of maintaining the hospital's necessary core staff and services, is determined based on the individual hospital's needs and circumstances, the hospital's fixed and semi-fixed costs not paid on a reasonable cost basis, and the length of time the hospital has experienced a decrease in utilization.

Based on our experience with this provision and the applications we have received from SCHs for a volume adjustment, we believe that it is appropriate at this time to clarify the regulations at § 412.92(e). Section 1886(d)(5)(C)(ii) of the Act provides that if an SCH experiences a decrease of more than five percent in its total number of inpatient cases due to circumstances beyond its control, "* * * the Secretary shall provide for such adjustment to the payment amounts under this subsection * * * as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services." We believe that this language makes it clear that a hospital that has continued to receive payments under the prospective payment system that are greater than its inpatient operating costs, even though there has been a decline in occupancy, is not entitled to receive a payment adjustment. Hospitals that receive payments that are greater than the hospitals' Medicare inpatient operating costs have been "fully compensated" for those costs by the prospective payment system. Consequently, we believe that no further adjustment should be granted to these hospitals. Therefore, we proposed to revise § 412.92(e)(3) to make it clear that any adjustment amounts granted to SCHs for a volume decrease may not exceed the difference between the hospital's Medicare inpatient operating costs and total payments made under the prospective payment system, including outlier payments and indirect medical education payments.

We also proposed to revise § 412.92(e)(2)(ii), which currently requires that, in order to receive a volume adjustment, the decline in the hospital's total discharges must be due to extraordinary circumstances beyond the hospital's control. Section 1886(d)(5)(C)(ii) of the Act requires only that "circumstances" be beyond the hospital's control. Therefore, effective with cost reporting periods beginning on or after October 1, 1987, we proposed to delete the word "extraordinary" from the regulations.

We did not receive any comments specific to our proposals for SCHs although one commenter suppported our interpretation of the law concerning the appropriateness of not paying an adjustment for volume declines in those cases in which the hospital's Medicare payment is greater than its inpatient operating costs. We note, however, that we received several comments urging changes in the criteria under which hospitals qualify as SCHs, the process for applying for SCH status, and the SCH payment methodolgy. Because these comments did not address matters presented in the proposed rule, it is not necessary that we respond to them in this final rule.

E. Referral Centers (§ 412.96)

1. Case-mix index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining referral center status. In determining the national and regional case-mix index values, we followed the same methodology we used in the November 24, 1986 final rule, as set forth in regulations at § 412.96(c)(1)(ii). Therefore, the national case-mix index value is the median case-mix index value of all urban hospitals nationwide and the regional values are the median values of urban hospitals within each census region excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.118).

Based on bills posted to HCFA's records through February 1987 for discharges occurring during FY 1986, we proposed that to qualify for or to retain rural referral center status for cost reporting periods beginning on or after October 1, 1987, a hospital's case-mix index value for FY 1986 would have to be at least—

- 1.1594; or
- Equal to the median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.118) calculated by HCFA for the census

region in which the hospital is located as indicated in the table below.

Region	Case-mix index value
1	1.1263
2	1.1136
3	1.1354
4	1.1195
5	1.0978
6	1.1492
7	1.1480
8	1.1900
9	1.1755

Based on the latest data available (discharges through June 1987), the final national case-mix index value is 1.1572 and the median case-mix index values by region are set forth in the table below.

Region	Case-mix index value
1	1.1261
2	1.1021
3	1.1355
4	1.1224
5	1.0912
6	1.1450
7	1.1442
8	1.1733
9	1.1737

We also proposed to amend § 412.96(c)(1) to state current policy that the case-mix index used to determine whether a hospital qualifies as a rural referral center is the case-mix index as calculated by HCFA from hospital billing records for Medicare discharges processed by the fiscal intermediary and submitted to HCFA's central office. This policy ensures consistency between the national and regional case-mix index standards and the case-mix index values used to determine qualification of a hospital as a rural referral center in that all case-mix index values are derived from hospitals' Medicare prospective payment bills.

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing the FY 1986 case-mix index values in Table 3c of section VI of the addendum to this rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment. The resulting case-mix index values are based on bills received in HCFA through June 1987.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges for purposes of determining referral center status in each year's annual notice of prospective payment rates. As specified in section 1886(d)(5)(C)(i)(II) of the Act, the national standard is set at 5,000 discharges. However, we proposed to update the regional standard based on discharges for urban hospitals during the second year of the prospective payment system (that is, October 1, 1984 through September 30, 1985), which is the latest year for which we have complete discharge data available.

Therefore, we proposed that to qualify for or to retain rural referral center status for cost reporting periods beginning on or after October 1, 1987, in addition to meeting other criteria, a hospital's number of discharges for its cost reporting period that began during FY 1986 would have to be at least—

- 5,000; or
- Equal to the median number of discharges for urban hospitals in the census region in which the hospital is located as indicated in the table below.

Region	Number of discharges
1	6885
2	7689
3	6478
4	7848
5	6724
6	5838
7	4706
8	7157
9	4666

Based on the latest discharge data available, the final median number of discharges by census region are set forth in the table below.

Region	Number of discharges
1	7385
2	8192
3	6611
4	8171
5	5456
6	5879
7	4706
8	6948
9	4742

We note that there are significant differences between the proposed median regional number of discharges and the final numbers set forth above. The final discharges are based on data taken from the Health Insurance Cost Report Information System (HCRIS). The proposed median numbers were derived from data available from 2717 urban hospitals received as of April 9, 1987; the final median numbers are calculated using data from 2931 urban hospitals received as of August 20, 1987.

3. Retention Criteria

In the August 31, 1984 final rule, we stated that, once approved, a rural referral center would retain its status for three years, after which we would review the hospital's status to determine if the facility continued to meet the criteria. Basically, we stated that if the hospital met the criteria for two of the three years for which it has received the rural referral center adjustment, it would continue to qualify for payment as a rural referral center for another three-year period.

Section 9302(d)(2) of Pub. L. 99-509 extended the initial-review period for most rural referral centers by stating that, if approved on the date the law was enacted (October 21, 1986), a rural referral center would retain that status through its cost reporting period beginning before October 1, 1989. Since this would mean that the existing rural referral centers would be approved for varying lengths of time prior to their first review, we solicited comments in the proposed rule on what would be the most equitable way to evaluate these facilities for retention purposes.

4. Change in Rate Paid to Rural Referral Centers

The adjustment allowed for approved rural referral centers is that they are paid based on the urban, rather than rural, prospective payment rate as adjusted by the applicable DRG weighting factor and the rural area wage index. Section 1886(d)(5)(C)(i) of the Act provides that hospitals with approved teaching programs are not included in determining the median case mix index of urban hospitals within a census region. We define "teaching" hospitals as those hospitals receiving indirect medical education payments as provided in § 412.118.

We proposed that these same hospitals be excluded in determining the urban standardized amount paid to approved rural referral centers. We do not believe it is equitable that hospitals with approved teaching programs be excluded from the median regional case mix index calculations but be included in the calculation of the urban standardized amounts. In addition, our own analyses of Medicare cost reports from FY 1984 indicate that rural referral centers' costs, regardless of the basis upon which they qualify, are less than those of the average urban hospital when case mix, teaching status, and wage differences are taken into account, but greater than those of other rural hospitals.

We determined that deletion of the costs of urban hospitals with approved teaching programs from the calculation of the urban standardized amount would lower the amount by three percent. Therefore, instead of receiving payment based on 100 percent of the urban standardized amount, payment for approved rural referral centers would be based on 97 percent of the urban standardized amount, adjusted by the appropriate rural wage index. We proposed to amend § 412.96 (d) and (e) to implement these changes.

We received 60 letters commenting on both our proposals for rural referral centers and our current policy. One comment concerned the discharge criteria for osteopathic hospitals. Since this issue was not presented in the proposed rule, we have not responded to it in this final rule.

Comments: One commenter expressed concern regarding the process of applying the case-mix index from a past year without adjustment to determine future qualification for rural referral center status. The commenter stated that it would be more equitable to use past data to project criteria for future qualification or retention of the rural referral center adjustment.

Response: The method the commenter is suggesting is the one we used initially to establish the case-mix standards. We revised that method in our final rule published on September 3, 1986 because we believe the current method is more accurate and more equitable to hospitals.

Under section 1886(d)(5)(C)(ii) of the Act, we are required to establish the regional case-mix index standards using the median case-mix index of typical urban hospitals in each census region. We have chosen to wait until the fiscal year has ended and most claims have been processed to determine these medians. The case-mix index value of a rural hospital seeking to acquire or to retain rural referral center status is then evaluated against these standards for the same period. This necessarily requires that the standards be determined and published for a retrospective period of time.

Basing criteria on what we believe the median case-mix standards might be could result in the disqualification of some hospitals that are similar to typical urban hospitals or result in the retention of some hospitals that have fallen below the standards. We found, in fact, that the median standards, when based on actual data, were lower than those we had published based on projections. This is demonstrated by the case-mix index standards we published in the September 3, 1986 final rule based on actual data for FY 1985 versus those in the September 3, 1985 final rule, which had been projected for the same period.

Thus, while we recognize that publishing standards based on data from prior years presents some difficulties for hospitals, we believe it is the only feasible method to ensure that rural hospitals are accurately and fairly evaluated against actual data from typical urban hospitals.

Comment: One commenter stated that while the current criteria of case-mix index, number of discharges, and medical staff composition are valid measures of a true rural referral center, considering each of these criteria individually results in some rural hospitals not qualifying for the adjustment; for example, a hospital that has a case mix index slightly below the minimum standard, but a number of discharges above the requirement together with a very high percentage of medical specialists on its staff. The commenter suggested that we create a "Referral Index" formula that would use the same criteria now in effect, but that would be formulated as follows:

Case mix index value x number of discharges + percentage of medical staff specialists (50%) = Referral Index.

Response: We believe that this is an interesting concept; however, we note that under such a concept it would be possible for a hospital to qualify as a rural referral center if it had a very low case-mix index but a high number of discharges or vice-versa.

We believe Congress intended that in order to qualify as a rural referral center, a hospital must demonstrate that both its case-mix index value and its number of discharges are comparable to a typical urban hospital in the same census region. Thus, although the suggested Referral Index might provide some relief to hospitals that narrowly miss meeting one of the criteria, but exceed the standards of one or both of the other criteria, we believe minimum standards would still have to be imposed for each criterion.

In addition, as discussed above, current law requires that the regional criteria for both case mix index and number of discharges be based on the median of urban hospitals in the same census region. Hence, we do not have the authority to adjust the criteria with a Referral Index such as the commenter suggested.

Comment: We received identical comments from seveal hospitals suggesting that rural referral centers be paid based on the urban, rather than rural, wage index.

Response: Hospitals approved as rural referral centers have been paid based on the appropriate rural wage index since the inception of the prospective payment system. We did not propose to make any revision to this policy in our proposed rule.

We have no comments to add to our original response to this suggestion, which was presented in the January 3, 1984 final rule (49 FR 275). For the reasons cited there, we still believe the rural wage index is appropriate for rural referral centers.

Comment: One commenter suggested that the case-mix index criterion be revised to exclude teaching hospitals from the national standard as well as the regional standards. The commenter also suggested that rural referral center status be granted to a hospital if it meets the lowest standard for any census region. Finally, the commenter believes that, instead of extablishing case-mix index standards based on national and regional medians, the criterion should be based on the 25th percentile.

Response: We do not agree with any of the commenter's suggestions. We do not believe teaching hospitals should be excluded from either the national or regional case-mix index standards. (See the September 3, 1986 final rule (51 FR 31475).) However, in section 9302(d)(1) of Pub. L. 99–509, Congress required that we exclude hospitals with approved teaching programs in calculating the regional standards. Since the law did not require that teaching hospitals be excluded in calculating the national case-mix index criterion, we have not done so.

With regard to the commenters' other suggestions, section 9302(d)(1) of Pub. L. 99–509 also requires that classification of a rural hospital as a rural referral center be based (among other criteria) on whether it "has a case mix index equal to or greater than the median case

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mix for hospitals * * * located in an urban area in the same region * * *." Thus, the method for determining the regional case-mix index standards is set by law and we do not have authority to alter it.

Comment: One commenter sugested that we establish a formal appeals procedure by which a hospital seeking to acquire or to retain rural referral center status can appeal its case-mix index value.

Response: We do not believe it is necessary to establish a formal appeals process for several reasons. First, the data used to calculate each hospital's case-mix index value is taken directly from the claim forms completed by the hospital and processed by the fiscal intermediary. In section V.A. of this preamble, we have discussed the requirements and procedures to be followed if a hospital believes an incorrect DRG has been assigned to a particular claim.

Also, as discussed in our proposed notice, the same data that are used to calculate each hospital's case-mix index value are used to determine the regional and national case-mix index standards. Thus, there is consistency between and individual hospital's case-mix index value and the standard against which it is being monitored.

Finally, since the case-mix index values published in each year's annual prospective payment update and used to determine if a hospital meets the case-mix index criteria for rural referral center status are for fiscal periods that closed almost one full year prior to publication of the values, we believe the data base is virtually complete. However, should a hospital seeking rural referral status believe its published case-mix index value is inaccurate, it may request the MEDPAR data on which the case-mix index value was based. If the hospital can demonstrate that the published case-mix index value is based on an incomplete number of cases, we will recompute that hospital's case-mix index value based on Medicare bills processed by the fiscal intermediary and received in central office through the date of the hospital's application for rural referral center status.

Comment: We received numerous comments regarding our proposal to reduce the urban standardized amount used in computing payments to rural referral centers from 100 to 97 percent. All of the commenters were opposed to our proposal. Some stated that the reduction should apply only to rural referral centers that do not have approved teaching programs, that is, the commenters believe that rural referral centers with teaching programs should continue to be paid based on 100 percent of urban standardized amount. Other commenters believe that the reduction should also be applied to all urban hospitals that do not have approved teaching programs. Still other commenters stated that the reduction should apply only to those hospitals approved under the criteria at § 412.96(c), that is, only those hospitals that qualified as rural referral centers using the case-mix index criterion.

Response: After reviewing the commenters' various objections and after further consideration, we have decided not to implement the reduction at this time. Thus, payment for all rural referral centers will continue to be based on the full 100 percent of the urban standardized amount. We will continue to study the rural referral center payment amounts and may propose adjustments in the future.

Comment: We received only two comments in response to our request for suggestions on the most equitable way to evaluate existing rural referral centers. One commenter reiterated suggestions made in the past regarding the criteria that should be used to evaluate rural referral centers and alternative methods of payment to rural referral centers. The other commenter states that our request for comments was "premature and inappropriate." Neither commenter addressed the issue of what would be an equitable time period to consider during the review process.

Response: We do not believe our solicitation of comments from interested parties on this important aspect of the rural referral center procedures was premature or inappropriate. Although all existing rural referral centers will retain their status through FY 1988, we wanted to give hospitals an opportunity to provide advice on the revised retention period criteria. We will continue to study the available options and will propose revised procedures in a future document.

F. Payment for Services of Nonphysician Anesthetists (§ 412.113)

Section 2312 of the Deficit Reduction Act of 1984 (Pub. L. 98–369), enacted on July 18, 1984, amended sections 1886(a)(4) and 1886(d)(5) of the Act to require that we pay an additional amount to hospitals for "reasonable costs incurred" for anesthesia services furnished by certified registered nurse anesthetists (CRNAs). Section 2312(a) of Pub. L. 98–369 added section 1886(d)(5)(E) to the Act to provide for payment to hospitals on a reasonable cost basis for the costs that hospitals incur in connection with the services of CRNAs. It further provides that this is the only payment made to the hospital for these services.

Section 1886(a)(4) of the Act, as amended by section 2312(b) of Pub. L. 98–369, exludes anesthesia services furnished by a CRNA from the definition of the term "operating costs of inpatient hospital services." Section 2312(c) of Pub. L. 98–369 specifies that these amendments are effective for hospital cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987.

In implementing this provision of the law, we did not limit its application only to the services of CRNAs. The regulations at § 412.113(c) also apply the exception to the services of anesthesiology assistants. For a detailed discussion of this provision and our implementation of it, see the August 31, 1984 final rule (49 FR 34748).

Section 9320(a) of Pub. L. 99–509 amended section 2312(c) of Pub. L. 98–369 to extend the effective date of the payment on a reasonable cost basis for the services of CRNAs through cost reporting periods beginning before January 1, 1989. In the case of a cost reporting period that begins before January 1, 1989, but ends after that date, the payment made under 1886(d)(5)(E) of the Act is proportionately reduced to reflect the portion of the period occurring after January 1, 1989. Section 9320 of Pub. L. 99–509 provides that payment on a reasonable cost basis for the services of CRNAs be excluded for any part of a cost reporting period that falls after December 31, 1988. Section 9320(d) of Pub. L. 99–509 revises section 1832(a)(2)(B) of the Act to authorize direct billing for the services of CRNAs on a reasonable charge basis under Medicare Part B (Supplementary Medical Insurance) effective with services furnished on or after January 1, 1989. We proposed to revise § 412.113(c) to reflect this extension of the effective date and to make conforming changes in §§ 412.1(a), 412.2(d)(5), and 412.71(b)(8).

The Conference Committee report that accompanies Pub. L. 99–509 states that it is the intention of the conferees that the exception in § 405.553(b)(4), which permits recognition of arrangements in which physicians bill for the services of their anesthetist employees "incident to" their own services, also be extended through December 31, 1988 (H.R. 99–1012, 99th Cong., 2d Sess. 323 (1986)). (A detailed discussion of this exception is included in the September 1, 1983 interim final rule (48 FR 39794) and later revisions made to the exception are discussed in the August 31, 1984 final

rule (49 FR 34748)). We proposed, therefore, to revise § 405.553(b)(4) to reflect the extension of the exception from the usual Part B reasonable charge rules for these anesthesia services.

Comment: We received two comments on our proposal to extend the pass-through provision for nonphysician anesthetist (§ 412.113(c)) and the Part B billing exception for physicians who employ anesthetists (§ 405.553(b)(4)) until December 31, 1988. While the commenters were generally supportive, one commenter is opposed to the recognition of an arrangement that does not allow CRNAs to receive direct reimbursement independently, without the involvement of a physician.

Response: As mentioned above, the Conference Committee report that accompanied Pub. L. 99-509 clearly states Congress' intent that the Part B exception be extended for services furnished before January 1, 1989, the effective date for the direct payment of services of CRNAs on a reasonable change basis under Medicare Part B. Therefore, until that date, CRNAs cannot bill directly for their services.

VI. Other ProPAC Recommendations

As required by law, we reviewed the April 1, 1987 report submitted by ProPAC and gave its recommendations careful consideration in conjunction with the formulation of the proposals set forth in the proposed rule. We also responded to the individual recommendations in that proposed rule. The comments we received on our treatment of the ProPAC recommendations are set forth below along with our responses to those comments. However, if we received no comments from the public concerning a ProPAC recommendation or our response to that recommendation, we have not repeated the recommendation and response in the discussion below.

Recommendations 1 through 5 concerning the update factor were addressed in a separate notice that was published in the **Federal Register** on June 11, 1987 (52 FR 22386). Comments that were received concerning recommendations 1 through 5 are addressed in Appendix B of this document.

Recommendations 7 through 11 concerning capital were addressed in a proposed rule on that subject published in the **Federal Register** on May 19, 1987 (52 FR 18840). Recommendations 21, 22, and 24 through 26 concerning the DRG classification system were addressed in a proposed notice that was published in the **Federal Register** on May 19, 1987 (52 FR 18877).

A. Adjustments to the Payment Formula

Improving the Definition of Hospital Labor Market Areas (Recommendation No. 12)

Recommendation: The Secretary should adopt improved definitions of hospital labor market areas. For urban areas, the Secretary should modify the current Metropolitan Statistical Areas (MSAs) to distinguish between central and outlying areas. The central areas should be defined using urbanized areas as designated by the Census Bureau. For rural areas, the Secretary should distinguish between urbanized rural counties and other rural counties within each State. Urbanized rural counties should be defined as counties with a city or town having a population of 25,000 or greater. The implementation of improved definitions should not result in any change in aggregate hospital payments. Furthermore, these definitions should not affect the assignment of hospitals to urban or rural areas for purposes of determining standardized amounts.

Response in the Proposed Rule: For FY 1988, we do not believe that the wage index should be subdivided beyond the MSA/non-MSA distinction. Because the wage index affects every hospital's payment for every discharge, we believe additional study and analysis are necessary in order to evaluate options and determine their impact. However, as new information is developed, we will consider making improvements in labor market area definitions in future years. Our reponses regarding ProPAC's urban and rural area recommendations are as follows:

- Urban Hospitals—While subdividing urban areas into downtown "cores" and suburban "rings" could improve the explanatory power of the wage index, such subdivision would significantly increase the number of areas containing only one or two hospitals. Hospitals in these areas would enjoy a virtual pass-through of labor costs associated with Medicare hospital inpatient operating costs. Further, much of the higher wage level of core city hospitals is addressed by the teaching and disproportionate share adjustments. If we were to adopt a separate index for hospitals in urbanized areas, we would have to reconsider our policies with regard to these two adjustments.

ProPAC has recommended that urban areas be subdivided into core and ring areas on the basis of whether a hospital is located within an urbanized area. The Bureau of the Census defines an urbanized area as an area that consists of a central city or cities that, when combined with surrounding closely settled territory ("urban fringe") having a population density of at least 1,000 persons per square mile, has a population of at least 50,000. Typically, urbanized areas cover the built-up areas at the cores of MSAs.

While we agree that the urbanized area classification may capture wage differentials, the use of urbanized areas as a basis for classifying core and ring areas may not be suitable for use in the prospective payment system. Unlike MSAs, which are county-specific, urbanized areas are defined according to actual population density and are specific to the city-block level. Also, because of the population-density basis for classifying urbanized areas, the boundaries of areas that would meet the 1,000 person per square mile criterion tend not to be stable. However, the Bureau of the Census updates urbanized areas only every 10 years. As a result, many areas that would meet the density criterion may not be classified as being in an urbanized area. Further, because urbanized areas are defined below the census-tract (and also below the MSA) level, it is not possible to determine with currently available information whether a hospital is located in an urbanized or nonurbanized area.

In summary, we do not believe that urbanized areas offer a viable system for classifying hospitals into core and ring areas because of the unstable nature of the boundaries of urbanized areas, the lag in updating urbanized areas because of the decennial census, and the inherent difficulties in determining whether a hospital is located within an urbanized area.

- Rural Hospitals—As with urban hospitals, although subdividing rural labor market areas according to urbanized and nonurbanized rural areas may increase the explanatory power of the wage index, such partition could also result in additional areas with only a few hospitals, creating for these hospitals a virtual pass through of Medicare-associated labor costs. Also, many of the high-wage rural hospitals mentioned in ProPAC's analysis are rural referral centers, which already receive the urban payment rate. In fact, analysis already indicates that large rural teaching hospitals (many of which are referral centers) are not as costly as their urban counterparts. This suggests that, even absent revisions in labor market definitions, it might be appropriate to reduce the urban rate for rural referral centers.

Further, we noted in the proposed rule that the ProPAC analysis of labor areas does not take into consideration the

change in methodology required by section 9302(c) of Pub. L. 99–509, that is, computing the average standardized amounts on a discharge-weighted basis rather than on a hospital-weighted basis. We must also take into account those refinements that have already been made to the system in order to improve its equity, and how those refinements, as well as other adjustments, interact with the proposed change. For example, differential outlier offsets to the standardized rates and a reduction in the proportion of hospital costs considered to be labor-related are two changes already implemented that have increased payments to rural hospitals.

Since the factors that make up a hospital's payment are interdependent, a change in the calculation of one factor has an impact on other factors. For this reason, we believe that any analysis of redefined labor markets must be considered in the context of the payment effects to hospitals. It is not sufficient to define an improved wage index merely in terms of that index's ability to explain a greater amount of variation in hospital costs.

Further, ProPAC's recommendation does not take into account the impact of restandardization of the average costs of each hospital in the data base to reflect reconfiguration of the wage index along the lines proposed by ProPAC. In order to avoid creating overpayments and underpayments in the impact model, the same wage index, revised to reflect redefined labor market areas, must be used both in standardizing for area wage differences and in modeling payments.

In our research on the urban and rural differentials in prospective payments, we have examined the impact of alternative wage indexes and labor market areas. Overall, these alternatives produce only a marginal or modest change in prospective payments by equalizing hospital operating margins to some degree. However, it is unclear whether the redistributive effects of alternative labor market areas are appropriate. For example, an urban core-ring system would increase payments to core urban hospitals, which are generally already doing well under the prospective payment system, and decrease payments to suburban ring hospitals. Along with payment redistributions that may not be appropriate, increasing the number of labor market areas would increase the number of boundaries in the system, thereby also increasing the number of hospitals that would consider themselves unfairly disadvantaged with respect to their location near a particular boundary.

In summary, we appreciate the work invested by ProPAC in examining labor market alternatives. However, at this point, we believe that we are still not knowledgable enough about the effects of these and other alternatives to be able to definitely recommend a particular methodology or classification system.

Comment: Several commenters expressed strong disagreement with our decision not to refine the definitions of labor market areas to encompass urban core and ring and rural urbanized and nonurbanized subdivisions. One commenter noted that, while we indicated that further study on this issue is required, the matter has been under consideration since 1985.

With regard to our contention concerning the impact of changes on individual hospitals resulting from a change in labor market areas, commenters believe that explaining variance in wage is the sole consideration in designating labor market areas. The commenters also consider invalid our argument that further subdivision of labor market areas would increase the number of hospitals enjoying a virtual pass through of wages. The commenters noted that (1) the pass-through phenomenon exists only in those subdivisions with but one hospital, (2) there is a lag between wage increases and the value of the wage index, (3) Medicare revenues represent, on average, only about 40 percent of hospital revenues, and (4) hospitals in isolated areas face market constraints on wage growth.

The commenters disagree with our contention that the instability of urbanized area boundaries is a consideration. The commenters dispute our contention that it is not possible, using currently obtained information, to determine whether hospitals are in urbanized or nonurbanized areas.

Finally, the commenters believe that rural referral center status does not address the issue that wages in urbanized rural areas are higher than wages in other rural areas.

Response: We share the commenters' concerns about the adequacy of the currend labor market area definitions. While we do not believe a revision is possible for FY 1988, we are actively reviewing refinements to labor market areas that are similar to those suggested by the commenters. Our research indicates the need to further refine urban labor market areas to reflect wage differentials across core cities, urbanized areas, and suburban areas. Our response in the proposed rule to ProPAC's recommendation contained a lengthly explanation of our reasons for not adopting the recommendation at this time. Our concerns fall into three broad categories that we believe warrant further investigation before we propose such a revision: Impact, Methodology, and Procedure.

Impact: As noted in the proposed rule, we believe refinements to the wage index must occur in conjunction with other improvements, including refinements to the indirect medical education adjustment and disproportionate share adjustment, in order to avoid paying some hospitals or groups of hospitals too much.

Our research indicates that adoption of an urban core/ring classification based on urbanized areas would result in abrupt changes in payment, with 17 hospitals receiving less than 75 percent of their current wage index value and 226 hospitals receiving between 75 and 90 percent of their current wage index value. It should be further noted that of the 17 hospitals that would receive less than 75 percent of their current wage index value, seven had negative operating margins during the first year of the prospective payment system.

In general, adoption of an urban core/ring classification would result in many cases in which hospitals doing well would gain, and hospitals doing poorly would lose. The definitions of labor market areas are not simply based on an academic model, but rather are an integral part of a system that distributes a large amount of money nationwide. Changes to such a system ought not be taken lightly, or made simply to satisfy narrow academic criteria such as maximum explanation of variance.

In assessing the impact of adoption of a new adjustment in the prospective payment formula, one must also be cognizant of the "ripple" effect of adopting the new adjustment, that is, how other parts of the prospective payment formula are affected. If a new wage index based on redefined urban and rural areas were adopted, the labor portion of each hospital's cost per discharge in the prospective payment system data base would have to be restandardized in order to reflect the new measurement of area differences in wages. Because of this process, it is by no means the case that a hospital in an area whose wage index increases would realize increased payments under the prospective payment system. A hospital's revised Federal payment depends not only on the magnitude of any new area wage index, but also on the level of the standardized labor-

adjusted rate that is developed using that new wage index. If a hospital's wage index percentage increases less than any percentage reduction in the labor-adjusted standardized rate, then its payment will be less than under the current system. This phenomenon, which proved to be very confusing to many hospitals, was observed in the impact analysis that accompanied our report on a new wage index submitted to Congress on March 29, 1985. In view of our past experience in this matter, we believe a thorough examination of the impact of any change is necessary prior to our proposing it for adoption.

Methodology: ProPAC's recommendation is intended to better reflect hospital variation in wages. If that were the only goal, the greatest amount of wage variation could be explained by a hospital-specific wage index system. However, this is assuredly not what ProPAC is recommending, but the point at which a technical improvement ceases to be such an improvement is never specified. Certain adjustments, such as the wage index, were adopted because they explained significant amounts of variation in hospital operating costs. We find no evidence in ProPAC's report that their refined wage index provides any greater explanatory power for variation in hospital operating costs or that such improvements are sufficient to warrant the substantial administrative cost of modifying the payment system that adoption of their recommendation would entail. Moreover, as we have noted before, it is not sufficient to define an improved index only in terms of its greater explanatory power. As we stated in our first point above, the impact on payments of any revision must also be considered.

Procedure: Accepting ProPAC's recommendation would require us to adopt a whole new series of geographic definitions that have never been used in a hospital payment system. Unlike MSAs, which are familiar entities based on counties, urbanized areas are much more specific to the local level. Our data files currently do not permit us to determine a hospital's location in an urbanized area. Such location would have to be determinable with a high degree of accuracy, since hospital payment would rest on such assignment

Comment: One commenter noted that the original reason given in the January 4, 1984 final rule (49 FR 257) for not subdividing the wage index into urban core and ring areas was that Bureau of Labor Statistics (BLS) data used in computing the wage index did not lend themselves to subdivision into small areas. The commenter, noting that BLS data are no longer used, urged that the issue of core and ring areas be considered in the context of the overall fairness of the system.

Response: We share the commenter's concern regarding the adequacy of current labor market definitions and are studying means to further refine those definitions to more adequately reflect area wage differentials. Contrary to the commenter's assertion, there are policy considerations beyond the limitations of the BLS data. These considerations are discussed in detail in the previous response.

B. Beneficiary Concerns

1. Inpatient Hospital Cost-Sharing Requirements (Recommendation No. 18)

Recommendation: The proportion of inpatient hospital payments borne by Medicare beneficiaries should be returned to its preprospective payment system level. This proportion has inappropriately increased as a result of significant declines in length of stay experienced since the beginning of the prospective payment system. Furthermore, the structure of inpatient hospital cost-sharing requirements should be consistent with the prospective payment system incentives. In particular, current coinsurance and spell of illness requirements need to be reexamined.

Response in the Proposed Rule: Section 9301 of Pub. L. 99–509 made a number of changes in the computation of the inpatient hospital deductible in order to make it more consistent with the current payment system. (For additional discussion of this provision, see the notice published in the **Federal Register** on November 20, 1986 (51 FR 42007).) In addition, the Department's recent catastrophic health proposal would further restructure the benefit package and modify beneficiary cost-sharing provisions.

Comment: One commenter, noting our statement that cost-sharing requirements would be restructured under the proposed catastrophic benefit legislation, urged us to reduce the amount of inpatient hospital payments borne by beneficiaries to preprospective payment levels if the legislation is not enacted.

Response: We appreciate the commenter's concern that, because of declines in the average length of stay, the inpatient deductible and coinsurance requirement have risen to a higher percent of the average cost of a hospital stay. However, as noted above, we believe that this problem has been resolved by the changes made by section 9301 of Pub. L. 99–509 and by the fact that recent evidence indicates that the average length of stay is no longer decreasing. Nevertheless, we are reviewing the Medicare cost-sharing requirements, and if the catastrophic health insurance legislation is not enacted, we will explore ways to mitigate the amount of payment made by beneficiaries, consistently with budgetary concerns.

2. Evaluating the Results of PRO Quality of Care Review (Recommendation No. 19)

Recommendation: The Secretary should promptly initiate a comprehensive evaluation of PRO quality of care review activities and findings. The evaluation should assess the impact on quality of care of preadmission, admission, transfer, and readmission review activities. The PRO findings concerning quality of the services furnished during an admission and the health outcome of the episode of care should also be evaluated. ProPAC is aware that the Super-PRO is auditing and validating PRO review activities. However, ProPAC does not believe that this effort can substitute for a comprehensive evaluation of the extent to which PROs are identifying, assessing, and correcting problems related to quality of care.

Response in the Proposed Rule: We have an extensive and comprehensive system in place to evaluate the credibility of PRO review decisions, including those related to quality of care. ProPAC does not consider the "Super-PRO" evaluation of PRO medical determinations to be sufficient to monitor PRO findings. We agree that the "Super-PRO" alone is not sufficient. However, if the "Super-PRO" results are viewed in the context of other evaluation activities, we believe that we are adequately assessing PRO performance in the area of quality of care review. We believe ProPAC's recommendation would result in a duplicative evaluation effort.

Comment: One commenter was concerned that use of the "Super-PRO" to audit and validate PRO review activities was not a substitute for a comprehensive review and evaluation of the PROs to determine the extent to which PROs are identifying, assessing, and correcting problems related to quality of care.

Response: We agree with the commenter's concern that the impact of PRO review on the patterns of quality of care should be the focus of a substantial evaluation and we have begun such a process. Section 9353(c)(3) of Pub. L. 99–

509 requires that we identify methods that are available to PROs to identify cases that are more likely than others to be associated with substandard quality of care. These methods could include statistical profiling (now required of all PROs) of practice patterns of physicians and providers and of DRG assignments, and subsequent identification of areas on which to focus review. We have provided funds to several PROs to develop a clinical data base and, eventually, a means of screening out cases (or patterns of cases) that are not likely to be quality of care problems. The data produced by these two activities can then be used to compare patterns of care both before and after PRO intervention.

In addition, the 1986–1988 PRO Scope of Work requires that PROs use definitive quality of care methodologies, including generic quality screens. Our data analysis at the end of the current contract period should enable us to evaluate the impact of those screens in terms of confirmation of quality of care problems, to determine whether patterns exist, and to establish whether trends are present.

PRO performance will be comprehensively evaluated by us and the results will be used in making decisions or contract renewals. We are developing a procedure to release these data to the public.

C. DRG Classification and Weighting Factors

Additional Payment for Magnetic Resonance Imaging (MRI) Scans (Recommendation No. 27)

Recommendation: For a three-year period, Medicare should pay hospitals an additional amount to reflect operating costs for each covered magnetic resonance imaging (MRI) scan performed on an inpatient Medicare beneficiary in a prospective payment hospital. The add-on payment should be calculated by the Secretary each year to reflect both changes in the average cost of an efficiently produced scan and the degree to which MRI substitutes for other hospital procedures.

Response in the Proposed Rule: We recognize ProPAC's concern that the current payment methodology may act as a disincentive to the widespread use of MRI technology. However, we regard this concern as anticipatory, since there is no evidence that hospitals furnishing MRI are losing money under the prospective payment system. On the contrary, the hospitals most likely to be furnishing MRI services are urban teaching hospitals; that is, the institutions that have been faring the best under the prospective payment system. We have always held that one of the basic tenets of a system built on averages is that payments would not cover costs in all cases and that excess payments on some cases would offset losses in other cases.

We are concerned that there will be numerous technological advances in the future that would be similar to MRI; that is, several DRGs would be affected by the changes. If we begin to unbundle the prospective payment rate to provide add-on payments in that manner, the basic concept of prospective payments on a discharge basis would be undermined.

We are, however, giving the issue further study. Unique ICD–9–CM codes for MRI services were approved effective October 1, 1986. From these data, we will be able to evaluate the issue more thoroughly in the upcoming months. If we find that the current prospective payment methodology adversely affects the quality of care, we will consider alternative payment options, including add-ons.

Comment: Several commenters supported the concept of an add-on payment for MRI cases. The commenters noted that this type of payment is necessary to encourage diffusion of this new technology and to ensure that MRI scans are made available to those beneficiaries who need them.

Response: As we stated in the proposed rule, although we are not providing an add-on payment for MRI, we have approved unique ICD–9–CM codes for MRI procedures in order to evaluate the adequacy of payment. We believe that add-on payments for new technology, including MRI, should be made in only the most compelling cases. Approval of an add-on for one technology would set a precedent that would encourage subsequent petitions for additional payments for other technologies. Further, as we discussed in the proposed rule, add-ons for MRI would undermine one of the basic tenets of the prospective payment system; that is, that the payment level made for each case is based on an average. Finally, it is not the function of the prospective payment system either to encourage or to discourage the diffusion of new technologies.

VII. Other Required Information

A. Effective Dates

The effective date of this final rule (including the addendum and appendixes) is October 1, 1987. The following change is effective beginning with cost reporting periods beginning on or after October 1, 1987: Section 412.92(e)(2)(ii)—Special treatment: Sole community hospitals.

B. Paperwork Reduction Act

This final rule does not impose information collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Health facilities, Medicare.

42 CFR Part 413

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 466

Competitive medical plans (CMPs), Grant programs—health, Health care, Health facilities, Health maintenance organizations (HMOs), Health professions, Peer Review Organizations.

42 CFR Chapter IV is amended as follows:

Chapter IV—Health Care Financing Administration

Department of Health and Human Services
Subchapter B—Medicare Programs

I. Part 405, Subpart E is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

A. The authority citation for Subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842(b) and (h), 1861(b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u(b) and (h), 1395x(b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

§ 405.553 [Amended]

B. In § 405.553, in paragraph (b)(4), the phrase "a cost reporting period beginning on or after October 1, 1984 and before October 1, 1987." is revised to read "cost reporting periods beginning on or after October 1, 1984 through any part of a cost reporting period occurring before January 1, 1989."

II. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1320a–1, 1395hh, and 1395ww)

B. Subpart A is amended as follows:

Subpart A—General Provisions

§ 412.1 [Amended]

1. a. In § 412.1(a), in the third sentence, the phrase "and before October 1, 1987," is revised to read "through any part of a cost reporting period occurring before January 1, 1989,".

b. In § 412.1(b), a new sentence is added at the end of the paragraph to read "Subpart K describes how the prospective payment system is implemented for hospitals located in Puerto Rico."

§ 412.2 [Amended]

2. In § 412.2(d)(5), the phrase "and before October 1, 1987," is revised to read "through any part of a cost reporting period occurring before January 1, 1989,".

C. In Subpart B, § 412.23(f) is revised to read as follows:

Subpart B—Hospital Services Subject to and Excluded from the Propective Payment System

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(f) *Hospitals outside the 50 States, the District of Columbia, or Puerto Rico.* A hospital is excluded from the prospective payment system if it is not located in one of the fifty States, the District of Columbia, or Puerto Rico.

* * * * *

D. Subpart D is amended as follows:

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

1. In § 412.60, paragraph (d) is redesignated as paragraph (e), a new paragraph (d) is added, and newly redesignated paragraph (e) is revised to read as follows:

§ 412.60 DRG classification and weighting factors.

* * * * *

(d) *Review of DRG assignment.* (1) A hospital has 60 days after the date of the notice of the initial assignment of a discharge to a DRG to request a review of that assignment. The hospital may submit additional information as a part of its request.

(2) The intermediary reviews the hospital's request and any additional information and decides whether a change in the DRG assignment is appropriate. If the intermediary decides that a higher-weighted DRG should be assigned, it must request the appropriate PRO to review the case to verify the change in DRG assignment as specified in § 466.70(e)(2) of this chapter.

(3) Following the 60-day period described in paragraph (d)(1) of this section, the hospital may not submit additional information with respect to the DRG assignment or otherwise revise its claim.

(e) *Revision of DRG classification and weighting factors.* Beginning with discharges in fiscal year 1988, HCFA adjusts the classifications and weighting factors established under paragraphs (a) and (b) of this section at least annually to reflect changes in treatment patterns, technology, and other factors that may change the relative use of hospital resources.

2. In § 412.63, text is added to paragraph (f) to read as follows:

§ 412.63 Federal rates for fiscal years after Federal fiscal year 1984.

* * * * *

(f) *Applicable percentage change for fiscal year 1988.* The applicable percentage change for fiscal year 1988 is the percentage increase in the market basket index (as described in § 413.40(c)(3)(ii) minus 2.0 percentage points.

* * * * *

E. Subpart E is amended as follows:

Subpart E—Determination of Transition Period Payment Rates

§ 412.71 [Amended]

1. In § 412.71(b)(8), the phrase "October 1, 1984, and before October 1, 1987," is revised to read "on or after October 1, 1984 through any part of a cost reporting period occurring before January 1, 1989,".

2. In § 412.73, text is added to a new paragraph (c)(5) and reserved paragraph (c)(6) is removed to read as follows:

§ 412.73 Determination of the hospital-specific rate.

* * * * *

(c) *Updating base-year costs.*

* * * * *

(5) *For Federal fiscal year 1988 and following.* For purposes of determining the prospective payment rates for sole community hospitals under § 412.92(d), the base-year cost per discharge continues to be updated each Federal fiscal year as follows:

(i) For Federal fiscal year 1988, the update factor is the percentage increase in the market basket index (as described in § 413.40(c)(3)(ii)) minus 2.0 percentage points.

(ii) For Federal fiscal years 1989 and following, the update factor is determined using the methodology set forth in § 412.63(g)(1) through (g)(3).

* * * * *

F. Subpart G is amended as follows:

Subpart G—Special Treatment of Certain Facilities

1. In § 412.92, the introductory text of paragraph (e)(2) is republished and paragraph (e)(2)(ii), the introductory language of paragraph (e)(3), and paragraph (e)(3)(i) are revised to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

* * * * *

(e) *Additional payments to sole community hospitals experiencing a significant volume decrease during the transition period.* * * *

(2) To qualify for a payment adjustment on the basis of a decrease in discharges, a sole community hospital must—

* * * * *

(ii) Show that the decrease is due to circumstances beyond the hospital's control.

(3) HCFA determines a lump sum adjustment amount not to exceed the difference between the hospital's Medicare inpatient operating costs and the hospital's total DRG revenue based on DRG-adjusted prospective payment rates (including outlier payments determined under Subpart F of this part and additional payments made for hospitals that serve a disproportionate share of low-income patients as determined under § 412.106 and for indirect medical education costs as determined under § 412.116). In determining the adjustment amount, HCFA considers—

(i) The individual hospital's needs and circumstances, including the reasonable cost of maintaining necessary core staff

and services in view of minimum staffing requirements imposed by State agencies:

* * * * *

2. In § 412.96(c)(1), the introductory language is revised to read as follows:

§ 412.96 Special treatment: Referral centers.

* * * * *

(c) *Alternative criteria.* * * *

(1) *Case-mix index.* HCFA sets forth national and regional case-mix index values in each year's annual notice of prospective payment rates published under § 412.8(b). The methodology HCFA uses to calculate these criteria is described in paragraph (g) of this section. The case-mix index value to be used for an individual hospital in the determination of whether it meets the case-mix index criteria is that calculated by HCFA from the hospital's own billing records for medicare discharges as processed by the fiscal intermediary and submitted to HCFA. The hospital's case-mix index for discharges (not including discharges from distinct part units excluded from the prospective payment system under Subpart B of this part) during the Federal fiscal year that ended one year prior to the beginning of the cost reporting period for which the hospital is seeking referral center status must be at least equal to—

* * * * *

G. In Subpart H, § 412.113 is amended as follows:

Subpart H—Payments to Hospitals under the Prospective Payment System

§ 412.113 [Amended]

In § 412.113(c), the phrase "and before October 1, 1987," is revised to read "through any part of the cost reporting period occurring before January 1, 1989,".

H. A new Subpart K is added to read as follows:

Subpart K—Prospective Payment System for Hospitals Located in Puerto Rico

Sec.

412.200 General provisions.
412.204 Payments to hospitals located in Puerto Rico.
412.208 Puerto Rico rates for Federal fiscal year 1988.
412.210 Puerto Rico rates for fiscal years after Federal fiscal year 1988.
412.212 National rate.
412.220 Special treatment of certain hospitals located in Puerto Rico.

Subpart K—Prospective Payment System for Hospitals Located in Puerto Rico

§ 412.200 General provisions.

Beginning with discharges occurring on or after October 1, 1987, hospitals located in Puerto Rico are subject to the rules governing the prospective payment system. Except as provided in this subpart, the provisions of Subparts A, B, C, F, G, and H of this part apply to hospitals located in Puerto Rico. Except for § 412.60, which deals with DRG classification and weighting factors, the provisions of Subpart D and E, which describe the methodology used to determine prospective payment rates for hospitals, do not apply to hospitals located in Puerto Rico. Instead, the methodology for determining porspective payment rates for these hospitals is set forth in §§ 412.204 through 412.212.

§ 412.204 Payments to hospitals located in Puerto Rico.

Payments to hospitals located in Puerto Rico that are paid under the prospective payment system are equal to the sum of—

(a) 75 percent of the Puerto Rico prospective payment rate, as determined under § 412.208 or § 412.210; and

(b) 25 percent of a national prospective payment rate, as determined under § 412.212.

§ 412.208 Puerto Rico rates for Federal fiscal year 1988.

(a) *General rule.* HCFA determines the Puerto Rico adjusted DRG prospective payment rate for each inpatient hospital discharge occurring in Federal fiscal year 1988 for a prospective payment hospital. These rates are determined as described in paragraphs (b) through (i) of this section.

(b) *Determining target amounts.* For each hospital subject to the prospective payment system, HCFA determines the Medicare target amount, as described in § 413.40(c) of this chapter, for the hospital's cost reporting period beginning in fiscal year 1987. Revisions in the target amounts made subsequent to establishment of the standardized amounts under paragraph (d) of this section do not affect the standardized amounts.

(c) *Updating the target amounts for fiscal year 1988.* HCFA updates each target amount determined under paragraph (b) of this section for fiscal year 1988 by prorating the applicable percentage increase (as defined in § 412.63(f) of this chapter) for fiscal year 1988 to the midpoint of fiscal year 1988 (April 1, 1988).

(d) *Standardizing amounts.* HCFA standardizes the amount updated under paragraph (c) of this section for each hospital by—

(1) Adjusting for variations in case mix among hospitals;

(2) Excluding an estimate of indirect medical education costs;

(3) Adjusting for area variations in hospital wage levels; and

(4) Excluding an estimate of the payments for hospitals that serve a disproportionate share of low-income patients.

(e) *Computing urban and rural averages.* HCFA computes separate discharge-weighted averages of the standardized amounts determined under paragraph (d) of this section for urban and rural hospitals in Puerto Rico.

(f) *Geographic classifications.* (1) For purposes of paragraph (e) of this section, the following definitions apply:

(i) The term "urban area" means a Metropolitan Statistical Area (MAS), as defined by the Executive Office of Management and Budget.

(ii) The term "rural area" means any area outside an urban area.

(2) A hospital classified as rural is deemed to be urban and receives the urban Puerto Rico payment amount if the county in which it is located meets the following criteria:

(i) At least 95 percent of the perimeter of the rural county is contiguous with urban counties.

(ii) The county was reclassified from an urban area to a rural area after April 20, 1983, as described in § 412.62(f)(1)(iv).

(iii) At least 15 percent of employed workers in the county commute to the central county of one of the adjacent MSAs.

(g) *Reducing for value of outlier payments.* HCFA reduces each of the average standardized amounts determined under paragraphs (c) through (e) of this section by a proportion equal to the proportion (estimated by HCFA) of the total amount of payments based on DRG prospective payment rates that are additional payments to hospitals located in Puerto Rico for outlier cases under Subpart F of this part.

(h) *Computing Puerto Rico rates for urban and rural hospitals.* For each discharge classified within a DRG, HCFA establishes a Puerto Rico prospective payment rate, as follows:

(1) For hospitals located in an urban area, the rate equals the product of—

(i) The average standardized amount (computed under paragraphs (c) through (g) of this section) for hospitals located in an urban area; and

(ii) The weighting factor determined under § 412.60(b) for that DRG.

(2) For hospitals located in a rural area, the rate equals the product of—

(i) The average standardized amount (computed under paragraphs (c) through (g) of this section) for hospitals located in an urban area; and

(ii) The weighting factor determined under § 412.60(b) for that DRG.

(i) *Adjusting for different area wage levels.* HCFA adjusts the proportion (as estimated by HCFA from time to time) of Puerto Rico rates computed under paragraph (h) of this section that are attributable to wages and labor-related costs, for area differences in hospital wage levels, by a factor (established by HCFA) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

§ 412.210 Puerto Rico rates for fiscal years after Federal fiscal year 1988.

(a) *General rule.* (1) HCFA determines the Puerto Rico adjusted prospective payment rate for each inpatient hospital discharge occurring in a Federal fiscal year after fiscal year 1988 that involves inpatient hospital services of a hospital in Puerto Rico subject to the prospective payment system for which payment may be made under Medicare Part A.

(2) The rate is determined for hospitals located in urban or rural areas within Puerto Rico, as described in paragraphs (b) through (e) of this section.

(b) *Geographic classifications.* For purposes of this section, the definitions set forth in § 412.208(f) apply.

(c) *Updating previous standardized amounts.* HCFA computes separate average standardized amounts for hospitals in urban areas and rural areas within Puerto Rico equal to the respective average standardized amount computed for fiscal year 1988 under § 412.208(e)—

(1) Increased by the applicable percentage change determined under § 412.63(g); and

(2) Reduced by a proportion equal to the proportion (estimated by HCFA) of the total amount of prospective payments that are additional payment amounts to hospitals located in Puerto Rico attributable to outlier cases under Subpart F of this part.

(d) *Computing Puerto Rico rates for urban and rural hospitals.* For each discharge classified within a DRG, HCFA establishes for the fiscal year a Puerto Rico prospective payment rate as follows:

(1) For hospitals located in an urban area in Puerto Rico, the rate equals the product of—

(i) The average standardize amount (computed under paragraph (c) of this section) for the fiscal year for hospitals located in an urban area; and

(ii) The weighting factor determined under § 412.60(b) for that DRG.

(2) For hospitals located in a rural area in Puerto Rico, the rate equals the product of—

(i) The average standardized amount (computed under paragraph (c) of this section) for the fiscal year for hospitals located in a rural area; and

(ii) The weighting factor (determined under § 412.60(b)) for that DRG.

(e) *Adjusting for different area wage levels.* HCFA adjusts the proportion (as estimated by HCFA from time to time) of Puerto Rico rates computed under paragraph (d) of this section that is attributable to wages and labor-related costs for area differences in hospital wage levels by a factor (established by HCFA) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

§ 412.212 National rate.

(a) *General rule.* For purposes of payment to hospitals located in Puerto Rico, the national prospective payment rate is determined as described in paragraphs (b) through (d) of this section.

(b) *Computing a national average standardized amount.* HCFA computes a discharge-weighted average of the—

(1) National urban adjusted standardized amount determined under § 412.63(i)(1)(i); and

(2) National rural adjusted average standardized amount determined under § 412.63(i)(2)(i).

(c) *Computing a national rate.* For each discharge classified within a DRG, the national rate equals the product of—

(1) The national average standardized amount computed under paragraph (b) of this section; and

(2) The weighting factor (determined under § 412.60(b)) for that DRG.

(d) *Adjusting for different area wage levels.* HCFA adjusts the proportion (as estimated by HCFA from time to time) of the national rate computed under paragraph (c) of this section that is attributable to wages and labor-related costs for area differences in hospital wage levels by a factor (established by HCFA) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

§ 412.220 Special treatment of certain hospitals located in Puerto Rico.

Subpart G of this part sets forth rules for special treament of certain facilities under the prospective payment system. The following sections in Subpart G of this part do not apply to hospitals located in Puerto Rico:

(a) Section 412.92, sole community hospitals.

(b) Section 412.96, referral centers.

III. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for Part 413 continues to read as follows:

Authority: Sections 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

B. In Subpart C, § 413.40, the introductory text in paragraph (c)(3)(i) is republished and text is added to paragraph (c)(3)(i)(C) to read as follows:

§ 413.40 Ceiling on rate of hospital costs increases.

* * * * *

(c) Procedure for establishing the ceiling (target amount).

* * * * *

(3) *Target rate percentage.*

(i) The applicable target rate percentage is determined as follows:

* * * * *

(C) *Federal fiscal year 1988.* The applicable target rate percentage for cost reporting periods beginning on or after October 1, 1987 and before October 1, 1988 is the percentage increase in the market basket index minus 2.0 percentage points.

* * * * *

IV. Part 466, Subpart C is amended as follows:

PART 466—UTILIZATION AND QUALITY CONTROL REVIEW

Subpart C—Review Responsibilities of Utilization and Quality Control Peer Review Organizations (PROs)

A. The authority citation for Part 466 continues to read as follows:

Authority: Secs. 1102, 1154, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320c–3, and 1395hh).

B. In § 466.70, paragraph (e) is amended by redesignating paragraph (e)(2) as (e)(3) and adding a new paragraph (e)(2) to read as follows:

§ 466.70 Statutory bases, applicability and provisions.

* * * * *

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(e) *Other duties and functions.*

* * * * *

(2) The PRO must review every change in a DRG assignment that is a result of a review made under the provisions of § 412.60(d) if the change results in the assignment of a higher-weighted DRG and the PRO has not previously reviewed the case. The PRO must verify that the diagnostic and procedural information supplied by the hospital is substantiated by the information in the medical record.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: August 24, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: August 26, 1987.

Otis R. Bowen,

Secretary.

[Editorial Note.—The following addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Schedule of Standardized Amounts Effective With Discharges On or After October 1, 1987, and Update Factors and Target Rate Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 1987

I. Summary and Background

In this addendum to the final rule, we are making changes in the methods, amounts, and factors for determining prospective payment rates for Medicare inpatient hospital services. We are also setting forth the methods, amounts, and factors for determining prospective payment rates for Medicare inpatient hospital services furnished by hospitals in Puerto Rico. Finally, we are setting new target rate percentages for determining the rate-of-increase limits (target amounts) for hospitals and hospital units excluded from the prospective payment system.

For hospital cost reporting periods beginning on or after October 1, 1987, except for sole community hospitals and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will, for the first time, be comprised of 100 percent of the Federal rate; that is, hospitals will no longer receive any part of their payment based on a hospital-specific rate (section 1886(d)(1)(A) of the Act). That section of the Act also requires that for discharges occurring on or after October 1, 1987, the Federal portion of a hospital's prospective payment rate is based on 100 percent of the national rate, instead of a blend of regional and national rates.

Sole community hospitals will continue to be paid on the basis of a rate per discharge composed of 75 percent of the hospital-specific rate and 25 percent of the applicable Federal regional rate (section 1886(d)(5)(C)(ii) of the Act).

Effective with discharges occurring on or after October 1, 1987, hospitals in Puerto Rico will be subject to the prospective payment system (section 1886(d)(9) of the Act as added by section 9304(a) of Pub. L. 99-509). However, these hospitals' payment per discharge will be the sum of 75 percent of a Puerto Rico rate and 25 percent of a national rate.

As discussed below in section II, we are making changes in the determination of the prospective payment rates. The changes, to be applied prospectively, will affect the calculation of the Federal rates. Section III sets forth our determination of payment rates for hospitals in Puerto Rico. In section IV, we discuss the various adjustments made to the average standardized amounts in order to achieve budget neutrality in those areas in which it is required. Section V sets forth our changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in the preamble to the final rule are presented at the end of this addendum.

II. Changes to Prospective Payment Rates and DRG Weighting Factors for FY 1988

The basic methodology for determining Federal national prospective payment rates is set forth at § 412.63. Below, we discuss the manner in which we are changing some of the factors or methodologies used for determining the prospective payment rates. The Federal rate changes will be effective with discharges occurring on or after October 1, 1987.

In summary, we are establishing the FY 1988 national and regional rates (that is, the standardized amounts set forth in Table 1a and 1b of the addendum) by—

- Restandardizing, with the 1982 HCFA wage index, the hospital costs used to establish the rates to reflect the revisions we are making in the methodology for calculating the national average hourly wage;
- Computing average costs per case per hospital and adjusting costs per case to exclude the effects of case mix, indirect medical education costs, payment adjustments to disproportionate share hospitals, and cost-of-living differences for Alaska and Hawaii;
- Grouping the adjusted operating costs per case (labor-related and nonlabor-related) to compute urban and rural, national and regional average standardized amounts using averages weighted by total discharges rather than by number of hospitals;
- Updating the standardized amounts by 2.7 percent (that is, the increase in the market basket percentage minus 2.0 percentage points).

A. Calculation of Adjusted Standardized Amounts

1. Standardization and Restandardization of Base-Year Costs. Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the interim final rule, published September 1, 1983 (48 FR 39763), contains a detailed explanation of how base-year cost data were established in the initial development of standard amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(2)(C) of the Act required that the updated base-year per discharge costs be standardized in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments, and indirect medical education costs. We proposed to restandardize the base-year costs using the 1982 HCFA wage index to reflect the change in the methodology for computing the national average hourly wage.

We did not propose to restandardize the base-year costs for the following:

- Case mix.
- Indirect medical education costs.
- Cost of living for Alaska and Hawaii.
- Payments to hospitals that serve a disproportionate share of low-income patients.

a. Adjustments for Variation in Hospital Wage Levels. Section 1886(d)(2)(C)(ii) of the Act requires that we standardize the average cost per case of each hospital used to develop the separate urban and rural standardized amounts for differences in area wage levels. Therefore, we divided each standardized amount into labor and nonlabor portions, based on the labor and nonlabor components of the hospital market basket, and standardized the labor portion of the FY 1984 standardized amounts using the Bureau of Labor Statistics (BLS's) area wage index. For FY 1986, we adopted a new wage index based on HCFA survey data, and we restandardized the base

year costs used to calculate the FY 1986 standardized amounts to account for the new wage index. We removed the effect of the previous standardization for each hospital's BLS wage index by multiplying each hospital's average cost per discharge value by the old index and restandardized the amounts by dividing that result by the new HCFA wage index (see 50 FR 35692).

As discussed in section III of the preamble, we proposed to use a blended HCFA wage index composed of two separate wage indexes based on 1982 and 1984 data, respectively, and to make a change in the methodology for computing the national average hourly wage, which serves as the basis for indexing the area wage levels. However, the latter change would result in lower index values for all areas relative to the national average hourly wage, since the national average hourly wage based on the 1982 data is higher using the proposed methodology. In order for our porposed change in methodology to have no adverse impact on level of payments to hospitals, the base year costs used to calculate the standardized amounts must be restandardized to take into account the effect on each area's wage index value of the revised methodology for calculating the national average hourly wage.

Therefore, we proposed to restandardize the base year costs that were used to calculate the standardized amounts using the 1982 HCFA wage index. We removed the effect of the previous standardization (1982 HCFA wage index based on an area-weighted national average hourly wage) by multiplying each hospital's average cost per discharge value by the current 1982 wage index and restandardizing the amount by dividing that result by the 1982 HCFA wage index recalculated using the proposed methodology for computing the national average hourly wage.

b. Variations in Case Mix Among Hospitals. Section 1886(d)(2)(C)(iii) of the Act requires that the updated FY 1984 amounts be standardized to adjust for variations in case mix among hospitals. The methodology used for determining the appropriate adjustment factor (that is, the case-mix index) is explained in the September 1, 1983 interim final rule (48 FR 39768–39771). A case-mix index has been calculated for each hospital based on 1981 cost and billing data.

Standardization, necessary to neutralize inpatient operating costs for the effects of variations in case mix, is accomplished by dividing the hospital's average cost per Medicare discharge by that hospital's case-mix index. Table 3a in the addendum to the September 1, 1983 interim final rule (48 FR 39847–39870) contains the case-mix index values used for this purpose. We did not propose to make any changes to the case-mix index for inpatient operating costs and, therefore, did not restandardize the updated amounts for variations in case mix.

c. Indirect Medical Education Costs. Section 1886(d)(2)(C)(i) of the Act requires that the updated FY 1984 amounts be standardized for indirect medical education costs. Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals receive an additional payment for the indirect costs of medical education. Section 9104(a) of Pub. L. 99–272 revised section 1886(d)(5)(B) of the Act to change the education adjustment factor used to determine the indirect medical education payment. Section 1886(d)(5)(B) of the Act currently specifies that the education adjustment factor is approximately 8.1 percent for discharges occurring on or after May 1, 1986 and before October 1, 1989. For discharges occurring on or after October 1, 1989, the adjustment factor is equal to approximately 8.7 percent. These factors are approximations because they are applied on a curvilinear or variable basis, rather than on a linear basis. An adjustment made on a curvilinear basis reflects a nonlinear cost relationship, that is, each absolute increment in a hospital's ratio of interns and residents to beds does not result in an equal proportional increase in costs. Therefore, the adjustment factors are only approximately 8.1 percent and 8.7 percent.

For discharges occurring on or after May 1, 1986 and before October 1, 1989, the indirect medical education factor equals the following:

$$2 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.405} - 1\right]$$

For discharges occurring on or after October 1, 1989, the indirect medical education factor equals the following:

$$1.5 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.5085} - 1\right]$$

Section 9104(b) of Pub. L. 99–272 amended section 1886(d)(2)(C)(i) of the Act to provide that the standardized amounts be restandardized to reflect the changes made to the payment adjustment for indirect medical education costs under section 9104(a) of Pub. L. 99–272. Therefore, in establishing the standardized amounts used to determine the FY 1987 prospective payment rates, after adjusting each hospital's inpatient operating cost per discharge for inflation, differences in area wage levels, and case mix, we divided each teaching hospital's cost per discharge by 1.0 plus the individual hospital's indirect medical education adjustment factor as computed using the formula described above, which section 1886(d)(5)(B)(ii)(I) of the Act requires be used for discharges on or after May 1, 1986 and before October 1, 1989. We did not propose to restandardize the base-year costs for FY 1988 for indirect medical education costs.

d. Cost-of-Living Factor for Alaska and Hawaii. Section 1886(d)(5)(C)(iv) of the Act authorizes the Secretary to provide for such adjustments to the payment amounts as the Secretary deems appropriate to take into account the unique circumstances of hospitals located in Alaska and Hawaii.

Generally, these two States have higher levels of cost in comparison to other States in the nation. The high cost of labor is accounted for in the wage index adjustments discussed above. However, the high cost of living in these States also affects the cost of nonlabor items (for example, supplies and

equipment). Therefore, in order to remove the effects of the higher nonlabor costs from the overall cost data (that is, for standardization purposes), the nonlabor portion of the average cost per Medicare discharge in hospitals located in Alaska and Hawaii is divided by an appropriate cost-of-living adjustment factor.

e. Costs for Hospitals that Serve a Disproportionate Share of Low-Income Patients. Section 1886(d)(2)(C)(iv) of the Act provides that, effective with discharges occurring on or after October 1, 1986 and before October 1, 1989, the updated amounts be standardized for the estimated additional payments made to hospitals that serve disproportionate shares of low-income patients. That is, the law requires us to remove the effects of the payments made to disproportionate share hospitals from the costs used to establish the standardized amounts. For discharges occurring on or after October 1, 1989, we will no longer make such an adjustment to take into account the estimated payments made to disproportionate share hospitals, since section 1886(d)(5)(F) of the Act does not authorize such payments for discharges after September 30, 1989.

Therefore, in establishing the standardized amounts for FY 1988, we proposed to adjust each disproportionate share hospital's inpatient operating cost per discharge by adding 1.0 to the applicable disproportionate share payment factor, and dividing the hospital's cost per discharge by that number. In this way, we removed the effect of payment adjustments for disproportionate share hospitals from the standardized amounts as required under section 1886(d)(2)(C)(iv) of the Act.

Under section 1886(d)(5)(F)(iv) calculation of the disproportionate share adjustment factor requires us to calculate the number of a hospital's patient days attributable to Medicare beneficiaries entitled to Supplemental Security Income (SSI), and to non-Medicare beneficiaries eligible for Medicaid. In determining the disproportionate share adjustment factors for purposes of standardizing the standardized amounts, we proposed to use available data on the percentage of Medicaid days from Medicare cost reports with cost reporting periods beginning in Federal FY 1984, and we proposed to use the percentage of SSI/Medicare days for FY 1985 derived from matching FY 1985 SSI eligibility files to Medicare FY 1985 PATBILL records.

In accomplishing the standardization, we did not take into account any payments to hospitals that qualify for disproportionate share payments based on the percentage of their revenue from State and local government sources for indigent care. This is because these hospitals must demonstrate on a hospital-by-hospital basis that they meet the criteria for a payment adjustment. We did not know at the time of the publication of the proposed rule how many or which hospitals would ultimately qualify under this provision. While it was our belief that the number of these hospitals would be small, and therefore would not have a significant effect on the standardized rates, we stated that we would monitor this situation closely, and, to the extent possible, present our data and analysis in the final rule. We stated that, if a larger number of hospitals than we expected do qualify, we would consider restandardizing the rates as a part of the final rule to take account of payments to these hospitals. However, currently, there are still no hospitals that have qualified for disproportionate share payments under this provision.

We also noted in the proposed rule that section 9306(a) of Pub. L. 99-509 amended section 1886(d)(5)(F)(v) of the Act to provide that a hospital that is located in a rural area and has 500 or more beds also serves a significantly disproportionate number of low-income patients for a cost reporting period if the hospital has a disproportionate patient percentage that equals or exceeds a percentage specified by the Secretary. We stated in the proposed rule that if standardization is necessary to take into account additional payments as a result of that rulemaking, we would do it as part of this final rule. This provision of the law was implemented through a final rule that was published in the **Federal Register** on June 25, 1987 (52 FR 23832). In the impact analysis prepared as a part of that rule, we estimated that only two hospitals would qualify as disproportionate share hospitals under the rule. We have now determined that only one hospital will qualify. Therefore, we do not believe that it is necessary to make any adjustment to the payment rates since the effect is negligible.

2. Grouping of Urban/Rural Averages Within Geographic Areas. Under section 1886(d)(2)(D) of the Act, the average standardized amounts must be determined for hospitals located in urban and rural areas of the nine census divisions and the nation. For FY 1988, the Federal rates will be comprised of 100 percent of the national rate (section 1886(d)(1)(A)(iii) of the Act). Section 1886(d)(5)(C)(ii) of the Act specifies that a sole community hospital's Federal rate is based on 100 percent of the regional rate.

In previous prospective payment final rules, Table 1 has contained 20 standardized amounts (ten urban amounts and ten rural amounts which are further divided into labor-related and nonlabor-ralated portions). However, this year we are splitting Table 1 into Tables 1a and 1b. (Table 1c applies to Puerto Rico, as discussed below.) Table 1a would contain the two national standardized amounts that are applicable to most hospitals. Table 1b would set forth the 18 regional standardized amounts applicable to sole community hosptials. The methodology for computing the national average standardized amounts is identical to the methodology for determining the regional amounts, except that the national urban and rural groups include hospitals from all urban and all rural geographic areas, respectively.

Currently, the average standardized amounts are based on hospital-weighted averages; that is, the average standardized amount is the average of the average standardized costs per discharge of all hospitals. As a result, each hospital, regardless of its number of discharges, has an equal impact on the average.

Section 9302(c) of Pub. L. 99-509 amended section 1886(d)(3)(A) of the Act to specify that, with respect to discharges occurring on or after October 1, 1987, urban and rural averages are to be computed on the basis of discharge-weighting rather than hospital-weighting. Under discharge-weighting, the standardized amounts are based on an average derived by dividing total costs by the number of discharges. Thus, a hospital with a high number of discharges has a correspondingly greater impact on the overall average.

Section 1886(d)(3)(A) of the Act also specifies that appropriate adjustments are to be made to ensure that average standardized amounts computed on the basis of discharge-weighting do not result in total payments that are greater or less than the total payments that would have been made had the average standardized amounts been computed on the basis of hospital-weighting; that is, this provision must be "budget neutral". (For a detailed discussion of budget neturality, see section IV of this addendum.)

The Executive Office of Management and Budget (EOMB) has not announced any revised listings of the Metropolitan Statistical Area (MSA) and New England County Metropolitan Area (NECMA) designations that are used in calculating the standardized amounts. Therefore, the designations of MSAs and NECMAs contained in the wage

index set forth in the proposed rule will remain the same for this final rule.

Comment: We received one comment concerning discharge-weighting. The commenter was concerned that using discharge-weighting in computing the DRG weighting factors is disadvantageous to hospitals with high case-mix index values. In particular, the commenter noted that the relative weights of some high-cost DRGs, such as those for burn cases, have been significantly reduced by the recalibration.

Response: We believe that the commenter has confused the revised computation of the average standardized amounts with the calculation of the DRG relative weights. Weighting the operating cost per case for each hospital in the prospective payment system data base by its volume of discharges has the effect of increasing the average standardized amounts because it gives greater weight to high-volume hospitals, which tend to be more expensive. The increased average standardized amounts are then uniformly adjusted to ensure budget neutrality of total payments relative to estimated payments that would have been made based on rates that were hospital-weighted. These adjustments, however, are limited to the average standardized amounts and do not enter into either the DRG classification or the recalibration of the DRG weights.

Recalibration of the DRG relative weights, on the other hand, is carried out in accordance with the steps described in section II.B. of the preamble of this final rule. As described in that section, the relative weights are normalized. That is, the average case weight for the FY 1986 MEDPAR cases using the revised DRG definitions and recalibrated weighting factors is computed. Similarly, the average case weight for the FY 1986 discharges using the current DRG definitions and weighting factors is computed. The ratio of the latter average case weight to the former is a normalization factor, which is then applied uniformly to the relative weights. Application of this normalization factor ensures that the average case weight for the FY 1986 MEDPAR cases used is constant before and after reclassification and recalibration, thus ensuring that reclassification and recalibration neither increase nor decrease estimated Medicare outlays for the set of cases on which the weights are based.

The final relative weight for each DRG represents the ratio of the average resources used to treat cases in the DRG to the average resources used to treat all Medicare cases in all DRGs. Changes in the weighting factor for each DRG reflect classification changes (if any were made) and the relationship between changes in the average standardized charges for cases in each DRG and changes in the average standardized charges of all other DRGs.

With respect to the commenter's particular concern with the weighting factors of the burn DRGs, our data indicate that the average standardized charges for these DRGs have declined from FY 1984 to FY 1986. We believe that it is this decline in charges, rather than the change to discharge-weighting, which accounts for the weighting factors for these DRGs.

3. Updating the Average Standardized Amounts. In accordance with section 1886(d)(3)(A) of the act as amended by section 9302(a)(2) of Pub. L. 99–509, we are proposing to update the urban and rural average standardized amounts using the applicable percentage increase specified in section 1886(b)(3)(B) of the Act, as amended by section 9302(a)(1) of Pub. L. 99–509. The percentage increase to be applied is mandated under that section of the law as the estimated increase in the hospital market basket percentage minus 2.0 percentage points. The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care.

In the September 3, 1986 final rule, we revised the hospital market basket by rebasing to reflect 1982, rather than 1977, cost data, expanding the number of market basket cost categories from 18 to 28, and modifying certain variables used as the price proxies for some of the cost categories. For a detailed discussion of this revision, see 51 FR 31461–31468.

When the proposed rule was published, the increase in the hospital market basket was estimated at 4.7 percent. Therefore, the proposed applicable percentage increase was 2.7 percent (market basket percentage increase minus 2.0 percentage points). Thus, we proposed that the standardized amounts and the hospital-specific rates (which for cost reporting periods beginning on or after October 1, 1987 apply only to sole community hospitals) be increased by 2.7 percent.

Although the update factor for FY 1988 is set by law, we are required by section 1886(e)(4) of the Act to recommend an appropriate update factor for FY 1988. Under section 1886(e)(5) of the act, we are required to publish both our proposed and final recommendations of an update factor. We published our proposed recommendation in the **Federal Register** on June 11, 1987 (52 FR 22386). Our final recommendation is set forth in Appendix B of this final rule.

Comment: We received a number of comments concerning the proposed update factor of 2.7 percent (market basket percentage increase minus 2.0 percent). Many commenters supported this update factor while some believe that the rates should be increased by the full market basket increase. Commenters were also concerned that we would implement the proposed recommended update of 0.75 percent set forth in the June 11, 1987 notice rather than the 2.7 percent set forth in the proposed rule.

Response: The percentage increase to be applied to the rates for FY 1988 is mandated by section 1886(d)(3)(A) of the Act as amended by section 9302(a)(2) of Pub. L. 99–509. This section of the law specifies the update for FY 1988 as the estimated increase in the hospital market basket minus 2.0 percentage points. The most recent forecast of the market basket increase for FY 1988 remains at 4.7 percent. Therefore, the applicable percentage increase is 2.7 percent.

Since the update for FY 1988 is set by law, we do not have the authority to apply a different percentage increase from that prescribed in the law. However, section 1886(e)(4) of the Act, as amended by section 9302(a)(2)(B) of Pub. L. 99–509, requires that the Secretary, taking into consideration the recommendations of ProPAC, *recommend* an appropriate update factor for FY 1988, which takes into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Accordingly, in the June 11, 1987 notice, we recommended an update of 0.75 percent for prospective payment hospitals and 1.9 percent for hospitals excluded from the prospective payment system. We note that these updates are only our recommendations and cannot be implemented without Congressional action. The comments we received in response to our proposed recommendation are addressed in Appendix B of this final rule.

Comment: One commenter expressed concern that the HCFA Hospital Occupational Index used in forecasting the hospital market basket increase does not reflect the unique labor market from which hospitals must recruit workers. This is because the labor component of the market basket is measured using a blend of hospital and nonhospital wage indicators with nonhospital wages accounting for nearly

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three-fourths of the labor component. Previously (prior to FY 1987), the labor component of the market basket was based solely on hospital wage trends. This commenter recommended that HCFA revert to the exclusive use of hospital industry wage data for the labor component of the market basket and suggested the use of the Employment Cost Index (ECI) for hospitals, which was developed by the Bureau of Labor Statistics.

Response. As discussed above, in the September 3, 1986 final rule, we revised the hospital market basket by rebasing to reflect 1982, rather than 1977, cost data. As part of that rebasing, we modified the variables used as price proxies for the labor component of the hospital market basket. We developed the HCFA Hospital Occupational Index, which uses a combination of hospital and nonhospital wage proxies.

In its April 1, 1985 report to the Secretary, ProPAC expressed concern that use of the BLS average hourly earning index for hospitals used in the previous market basket did not distinguish between changes in inflation and changes in occupational mix. That is, rapid increases in average hourly wages could reflect changes in skill mix instead of in wage rates. ProPAC suggested that a combination of internal and external (hospital and nonhospital) proxies should be used to measure changes in wages.

The issue of whether to use only an internal wage proxy (that is, one based exclusively on hospital wage and salary data) or a combination of internal and external wage proxies has been debated for some time. The market basket is intended to measure prices actually faced by the hospital industry. Thus, for labor, we wish to measure only changes in wage rates, not changes in the composition of the labor used by hospitals. In rebasing the market basket, we decided to use an external measure in addition to an internal measure because the external measure (the employment cost index) reflects changes in the price of wages only instead of changes in wage prices and labor mix, as reflected by the internal measure (Average Hourly Earnings of Hospital Workers).

We indicated in the September 3, 1986 final rule that once an employment cost index specific to hospital workers becomes available we would consider using it rather than the current blend of internal and external measures (54 FR 31465). As the commenter noted, the employment cost index for hospital worker categories has been recently developed by the Bureau of Labor Statistics. However, we believe its use as a measure of hospital labor price changes is premature at this time because there are not yet a sufficient number of historical observations from which to base accurate forecasts.

4. Other Adjustments to the Average Standardized Amounts—a. Part B Costs. Section 1862(a)(14) of the Act prohibits payments for nonphysician services furnished to hospital inpatients unless the services are furnished either directly by the hospital, or by an entity under arrangements made by the hospital under which Medicare's payment to the hospital discharges the beneficiary's liability to pay for the services furnished.

In the September 3, 1985 final rule, we increased the average standardized amounts by 0.13 percent so that they represent costs previously billed under Part B (50 FR 35708). In the September 3, 1986 final rule, we stated that we were making no further adjustments for this factor in FY 1987, or in future Federal fiscal years, because the appropriate adjustment had been built into the FY 1986 base (51 FR 31521).

b. FICA Taxes. Section 1886(b)(6) of the Act requires that adjustments be made in the base period costs in recognition of the fact that certain hospitals were required to enter the Social Security system and begin paying FICA taxes as of January 1, 1984. In the September 3, 1985 final rule, we increased the average standardized amounts by 0.18 percent to account for additional costs of payroll taxes for hospitals entering the Social Security system (50 FR 35708). In the September 3, 1986 final rule we stated that we were making no further adjustments for this factor in FY 1987, or in future Federal fiscal years, because the appropriate adjustment has also been built into the FY 1986 base.

c. Nonphysician Anesthetist Costs. Section 1886(d)(5)(E) of the Act provides that hospital costs for the services of nonphysician anesthetists are paid in full as a reasonable cost pass-through. Under section 2312(c) of Pub. L. 98–369, this pass-through was made effective for cost reporting periods beginning on or after October 1, 1984, and before October 1, 1987. Section 9320(a) of Pub. L. 99–509 extended the period of applicability of this pass-through so that services will continue to be paid under reasonable cost for any cost reporting periods (or parts of cost reporting periods) ending before January 1, 1989 and struck subsection (E) effective on that date.

In the September 3, 1985 final rule, we noted that to the extent an adjustment was warranted to reflect the removal of these costs from the prospective payment rates for FY 1985, it was incorporated in the overall budget neutrality adjustment (50 FR 35708). Therefore, because this adjustment has already been built into the FY 1985 base from which the FY 1986, FY 1987, and proposed FY 1988 rates are derived, we did not propose to make further adjustments to the average standardized amounts for FY 1988.

d. Indirect Medical Education. Section 9104(b) of Pub. L. 99–272 added section 1886(d)(3)(C)(ii) to the Act to provide that, effective for discharges occurring on or after October 1, 1986, the average standardized amounts be further reduced, taking into consideration the effects of the standardization for indirect medical education costs as described in section II.A.1.c. of this addendum. Specifically, for each geographic area (regional and national, urban and rural), total payments including indirect medical education and disproportionate share hospital adjustments, based on payment rates standardized for an 8.1 percent curvilinear indirect medical education factor and for disproportionate share, shall be neither more nor less than the estimated total of payments, including indirect medical education adjustment payments that would have been made based on rates standardized for an 11.59 percent linear indirect medical education factor and paid out at 8.7 percent on a curvilinear basis. The adjustment is accomplished on a regional basis in order to reflect congressional intent that the necessary calculations will not redistribute payments among the regions. Through this adjustment, Congress is ensuring that total prospective payments, on a regional basis, taking into consideration the restandardization of rates for disproportionate share payments and for a revised indirect medical education payment factor of approximately 8.1 percent on a curvilinear basis, will equal payments that would have resulted with rates standardized for an 11.59 percent linear indirect medical education adjustment factor, and payments computed using an indirect medical education factor of 8.7 percent applied on a curvilinear basis. For discharges on or after October 1, 1989 (that is, after that part of the law requiring disproportionate share payments ceases to be in effect), the adjustment must be such as to ensure that the system savings resulting from the changes to the indirect medical education factor are preserved.

Therefore, under section 1886(d)(3)(C)(ii) of the Act, for FY 1988 we proposed to adjust the urban and

rural regional and national standardized amounts to account for indirect medical education payments. This adjustment is made in conjunction with the budget neutrality adjustments (see section IV of this addendum).

f. Outliers. Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(3)(B) of the Act correspondingly requires that the standardized amounts be reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments. Furthermore, section 1886(d)(5)(A)(iv) of the Act directs that outlier payments may not be less than five percent nor more than six percent of total payments projected to be made based on the prospective payment rates in any year. For FY 1987, we set the outlier thresholds so as to result in estimated outlier payments equal to five percent of total payments.

Section 9302(b)(1) of Pub. L. 99–509 amended section 1886(d)(3)(B) of the Act to require that, effective with discharges occurring on or after October 1, 1986, each national and regional standardized amount be reduced for hospitals located in urban areas and for hospitals located in rural areas based on the estimated proportion of total DRG payments attributable to outlier payments for hospitals in urban areas and for hospitals in rural areas, respectively. Consequently, instead of the uniform five percent reduction factor applying equally to all the standardized amounts, there are now two separate reduction factors, one applicable to the urban national and regional standardized amounts and the other applicable to the rural national and regional standardized amounts. Rates for urban hospitals, which are projected to receive outlier payments in excess of five percent of total DRG payments, are reduced by that larger percentage (instead of by five percent). Rates for rural hospitals, which are projected to receive outlier payments of less than five percent of total DRG payments, are reduced by the lower percentage (instead of by five percent).

We proposed to continue to set the outlier thresholds so as to result in estimated outlier payments equal to five percent of total prospective payments. Therefore, for FY 1988, we proposed to set the day outlier threshold at the lesser of 23 days or 2.0 standard deviations and the cost outlier threshold at the greater of 2.0 times the prospective payment rate for the DRG or $16,000.

The proposed outlier reduction factors for FY 1988 were as follows:

Outlier Reduction Factors

Urban: .94519.
Rural: .97246.

As indicated in section V.C. of the preamble to this final rule, we have decided, based on comments received, not to adopt certain charges in outlier payment methodologies that we had proposed for FY 1988. These proposed changes affected the level of the proposed outlier thresholds. As a result of not implementing the proposed changes, as well as the incorporation of later charge data for FY 1986, we are setting the day outlier threshold at the lesser of 18 days or 2.0 standard deviations and the cost outlier threshold at the greater of 2.0 times the prospective payment rate for the DRG or $14,000.

The final outlier reduction factors for FY 1988 are as follows:

Outlier Reduction Factors

Urban: .94441
Rural: .97485

In another document [1] we are revising the prospective payment system to incorporate capital costs. Under the provisions of that document, payments may be made for outliers as a part of the capital payment in the same way that have been made for inpatient operating costs since the implementation of the prospective payment system. This final rule on capital costs contains the methodology, as well as examples, of how we compute the capital component of the outlier payment. This system for incorporating capital will be effective with cost reporting periods beginning on or after October 1, 1987. Until a hospital becomes subject to the new capital system, payment for outliers will be made using only the current methodology. (See the examples in the September 3, 1986 final rule (51 FR 31524).)

B. Adjustments for Area Wage Levels and Cost-of-Living

This section contains an explanation of the application of two types of adjustments to the adjusted standardized amounts that will be made by the intermediaries in determining the prospective payment rates as described in section D below. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Tables 1a and 1b contain the actual labor-related and nonlabor-related shares that will be used to calculate the prospective payment rates for hospitals located in the 50 States and the District of Columbia.

1. *Adjustment for Area Wage Levels.* Section 1886(d)(2)(H) of the Act requires that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of the preamble to this final rule, we discuss certain revisions we are making to the wage index. This index is set forth in Tables 4a and 4b of this addendum.

2. *Adjustment for Cost of Living in Alaska and Hawaii.* Section 1886(d)(5)(C)(iv) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States were included in the adjustment for area wages above. For FY 1988, the adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii will be made by the intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

Table of cost-of-Living Adjustment Factors, Alaska and Hawaii Hospitals

Alaska—All areas	1.25
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.15

[The above factors are based on data obtained from the U.S. Office of Personnel Management.]

C. DRG Weighting Factors

As discussed in section II of the preamble to this final rule, we have developed a classification system for all hospital discharges, sorting them into DRGs, and have developed weighting factors for each DRG that are intended to reflect the relative average resource consumption associated with each DRG.

Table 5 of section VI of this addendum contains the weighting factors that we will use for discharges occurring in FY 1988. These factors have been recalibrated as explained in section II of the preamble.

[1] **Editorial note.**—The capital costs final rule appears in Part IV of this issue.

D. Calculation of Prospective Payment Rates for FY 1988

General Formula for Calculation of Prospective Payment Rates for Cost Reporting Periods Beginning on or after October 1, 1987 and Before October 1, 1988

Prospective Payment Rate for all hospitals except sole community hospitals equals Federal Portion (100 percent national rate)

Prospective Payment Rate for Sole Community Hospitals equals 75 percent of the hospital-specific portion plus 25 percent of the Federal portion (100 percent regional rate)

1. Federal Portion. For cost reporting periods beginning on or after October 1, 1987 and before October 1, 1988, except for sole community hospitals, 100 percent of the hospitals rate is the hospital's Federal rate. Beginning with discharges occurring on or after October 1, 1987, the Federal rate is comprised of 100 percent of the Federal national rate except for sole community hospitals, whose 25 percent Federal portion is based on the Federal regional rate. The Federal rates are determined as follows:

Step 1—Select the appropriate regional or national adjusted standardized amount considering the type of hospital and urban or rural designation of the hospital (see Tables 1a and 1b, section VI of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate wage index.

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Sum the amount from step 2 and the nonlabor portion of the standardized amount (adjusted if appropriate under step 3).

Step 5—Multiply the final amount from step 4 by the weighting factor corresponding to the appropriate DRG weight (see Table 5, section VI of this addendum).

2. Hospital-Specific Portion (Applicable only to Sole Community Hospitals). The hospital-specific portion of the prospective payment rate is based on a hospital's historical cost experience. For the first cost reporting period under prospective payment, a hospital-specific rate was calculated for each hospital, derived generally from the following formula:

Base year costs per discharge divided by 1981 case-mix index times updating factor equals Hospital-specific rate

For sole community hospitals, the hospital-specific portion equals 75 percent of the hospital-specific rate for all cost reporting periods beginning on or after October 1, 1983. For each subsequent cost reporting period, the hospital-specific portion is derived as follows:

Hospital-Specific Rate times Updating Factor times Blending Percentage (75 percent) times DRG Weight.

For a more detailed discussion of the hospital-specific portion, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772).

a. Updating the Hospital-Specific Rates for FY 1988 Cost Reporting Periods. We are increasing the hospital-specific rates by 2.7 percent (market basket percentage increase minus two percentage points) for cost reporting periods beginning on or after October 1, 1987. As required by sections 1886(b)(3)(A) and (B) of the Act (as amended by section 9302 of Pub. L. 99-509), this is the same percentage increase (2.7 percent) by which we are changing the Federal rates for FY 1988.

b. Calculation of Hospital-Specific Portion. For sole community hospital cost reporting periods beginning on or after October 1, 1987, the hospital-specific portion of a hospital's payment for a given discharge is calculated by—

Step 1—Multiplying the hospital's hospital-specific rate by the applicable update factor (1.027);

Step 2—Multiplying the result in Step 1 by 75 percent; and

Step 3—Multiplying the amount resulting from Step 2 by the specific DRG weighting factor applicable to the discharge. The result is the hospital-specific portion of the FY 1988 prospective payment for a given discharge for a sole community hospital.

III. Prospective Payment Rates for Hospitals Located in Puerto Rico

This section contains an explanation of how we derive the adjusted standardized payment amounts applicable for FY 1988 for hospitals located in Puerto Rico. The methodology for arriving at the appropriate rate structure is essentially prescribed by section 1886(d)(9) of the Act and is set forth in regulations in §§ 412.207 through 412.212.

A. Calculation of Adjusted Standardized Amounts

The Puerto Rico adjusted standardized amounts, which are set forth in Table 1c, are computed as described below.

1. *Target Amounts.* Section 1886(d)(9)(B)(i) of the Act requires that we determine the Medicare target amount (as defined in section 1886(b)(3)(A) of the Act) for each hospital for its cost reporting period beginning in FY 1987. For purposes of computing the Puerto Rico standardized amounts, we will not consider revisions to the target amounts subsequent to HCFA's development of those amounts.

2. *Updating for FY 1988.* Section 1886(d)(9)(B)(i) of the Act also requires that each target amount be updated to the midpoint of FY 1988 (April 1, 1988) by prorating the applicable percentage increase for FY 1988 as defined in section 1886(b)(3)(B) of the Act. That section of the Act specifies that the applicable percentage increase for FY 1988 is the increase in the market basket percentage minus 2.0 percentage points, that is, 2.7 percent.

3. *Standardization of the Target Amount.* Section 1886(d)(9)(B)(ii) of the Act requires that the updated target amount for each hospital be standardized for several variables. Standardization means the removal of the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, payments for hospitals that serve a disproportionate share of low-income patients, and indirect medical education costs.

a. *Adjustments for Variations in Hospital Wage Levels.* Section 1886(d)(9)(B)(ii)(II) of the Act requires that the updated target amount be standardized by adjusting for variations among hospitals by area in the average area hospital wage level. Therefore, the target amount is divided into labor and nonlabor portions, based on the labor and nonlabor components of the hospital market basket. The labor-related portion is then divided by the appropriate wage index for the geographic area in which the hospital is located to remove the effects of local wage differences from hospital target amounts.

As discussed in section III of the preamble, we are updating the HCFA wage index using 1984 data and making a change in the methodology for computing the national average hourly wage, which serves as the basis for indexing the area wage levels. In addition, as discussed in section IV of the preamble, we are adding wage index values for areas in Puerto Rico to the wage index. The wage index is set forth in Tables 4a and 4b.

b. *Variations in Case Mix Among Hospitals.* Section 1886(d)(9)(B)(ii)(III) of the Act requires that the updated target amounts be standardized to adjust for variations in case mix among hospitals. The methodology used for determining the appropriate adjustment factor (that is, the case-mix index) is explained in the September 1, 1983 interim final rule (48 FR 39768-39771). A case-mix index

has been calculated for each hospital in Puerto Rico based on 1984 data.

Standardization, necessary to neutralize inpatient operating costs for the effects of variations in case mix, is accomplished by dividing the hospital's target amount per Medicare discharge by that hospital's case-mix index.

c. *Indirect Medical Education Costs.* Section 1886(d)(9)(B)(ii)(I) of the Act requires that the updated target amounts be standardized for indirect medical education costs. Section 1886(d)(9)(D)(ii) of the Act provides that prospective payment hospitals in Puerto Rico receive an additional payment for the indirect costs of medical education as specified in section 1886(d)(5)(B) of the Act. Under section 1886(d)(5)(B) of the Act, the indirect medical education cost payment is based on an education adjustment factor, which is approximately 8.1 percent for discharges occurring on or after May 1, 1986 and before October 1, 1989. For discharges occurring on or after October 1, 1989, the adjustment factor is equal to approximately 8.7 percent. These factors are approximations because the adjustment factor is calculated on a curvilinear or variable basis. An adjustment made on a curvilinear basis reflects a nonlinear cost relationship, that is, each absolute increment in a hospital's ratio of interns and residents to beds does not result in an equal proportional increase in costs. Therefore, the adjustment factors are only approximately 8.1 percent and 8.7 percent.

For discharges occurring on or after May 1, 1986 and before October 1, 1989, the indirect medical education factor is calculated using the following formula:

$$2 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.405} - 1\right]$$

For discharges occurring on or after October 1, 1989, the indirect medical education factor equals the following:

$$1.5 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.5795} - 1\right]$$

Therefore, after adjusting each hospital's updated target amount for differences in area wage levels and case mix, we divided each teaching hospital's target amount by 1.0 plus the individual hospital's indirect medical education adjustment factor as computed using the formula described above, which section 1886(d)(5)(B)(ii)(I) of the Act requires be used for discharges on or after May 1, 1986 and before October 1, 1989.

d. *Costs for Hospitals That Serve a Disproportionate Share of Low-Income Patients.* Section 1886(d)(9)(B)(ii)(IV) of the Act provides that the updated target amounts be standardized for the estimated additional payments made to hospitals that serve a disproportionate share of low-income patients. That is, the law requires us to remove the effects of the payments made to disproportionate share hospitals from the costs used to establish the standardized amounts.

Therefore, we are adjusting each disproportionate share hospital's updated target amount by adding 1.0 to the applicable disproportionate share payment factor, and dividing the hospital's updated target amount by that number. In this way, we remove the effect of payment adjustments for disproportionate share hospitals from the standardized amounts as required under section 1886(d)(9)(B)(ii)(IV) of the Act.

In determining the disproportionate share adjustment factors for purposes of standardizing the updated target amounts, we will use available data on the percentage of Medicaid days from FY 1984 Medicare cost reports and the percentage of SSI/Medicare days for FY 1985 derived from matching FY 1985 SSI eligibility files to Medicare FY 1985 PATBILL records.

In accomplishing this standardization, we have not taken into account any payments to hospitals that qualify for disproportionate share payments based on the percentage of their revenue from State and local government sources for indigent care. This is because these hospitals must demonstrate on a hospital-by-hospital basis that they meet the criteria for a payment adjustment.

4. Grouping of Urban/Rural Averages Within Geographic Areas. Under section 1886(d)(9)(B)(iii) of the Act, the average standardized amount per discharge must be determined for hospitals located in urban and rural areas in Puerto Rico. That section of the Act also specifies that the urban and rural average standardized amounts for Puerto Rico hospitals are based on discharge-weighted averages just as section 1886(d)(3)(a) of the Act specifies this methodology for the average standardized amounts that are applicable to other prospective payment hospitals. This methodology is discussed in detail in section II.A.2. of this addendum. The average standardized amounts for hospitals located in Puerto Rico are set forth in Table 1c.

5. Other Adjustments to the Average Standardized Amounts. The average standardized amounts, calculated as described above, are further adjusted as explained below. Note that there are no adjustments for Part B costs or FICA taxes for hospitals located in Puerto Rico as there are for prospective payment hospitals located outside of Puerto Rico. This is because adjustments to account for these costs have already been made to the target amounts on which the average standardized amounts are based.

a. Nonphysician Anesthetist Costs. Section 1886(d)(9)(D)(iv) of the Act specifies that the provisions of section 1886(d)(5)(E) of the Act apply to hospitals located in Puerto Rico. Section 1886(d)(5)(E) of the Act provides that hospital costs for the services of nonphysician anesthetists are paid in full as a reasonable cost pass-through. Under section 2321(c) of Pub. L. 98–369, this pass-through was made effective for cost reporting periods beginning on or after October 1, 1984, and before October 1, 1987. Section 9320(a) of Pub. L. 99–509 extended the period of applicability of this pass-through so that services will continue to be paid under reasonable cost for any cost reporting periods (or parts of cost reporting periods) ending before January 1, 1989 and struck subsection (E) effective on that date.

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We considered the effect of the pass-through provision on the average adjusted standardized amounts as part of the budget neutrality analysis (see discussion in section IV of this addendum).

b. Outliers. Section 1886(d)(5)(A)(iv) of the Act, made applicable to Puerto Rico by section 1886(d)(9)(D)(i) of the Act, directs that outlier payments may not be less than five percent nor more than six percent of total payments projected to be made to prospective payment hospitals based on the payment rates in any year. Since Puerto Rico hospitals will be subject to the prospective payment system beginning October 1, 1987, bills from those hospitals have been used in setting the proposed outlier thresholds (set forth above in section II.A.4.f. of the addendum) so that overall system-wide outlier payments are estimated to be five percent of total prospective payments as required by law.

Section 1886(d)(3)(B) of the Act requires that separate urban and rural outlier offsets to the standardized amounts be developed. As initially implemented October 1, 1986, these offsets apply on a national basis to urban and rural hospitals. We proposed to set the same outlier offsets for the Puerto Rico prospective payment standardized amounts as we have for hospitals located outside Puerto Rico. The proposed outlier reduction factors were as follows:

Urban	Rural
.94519	.97246

The final reduction factors for FY 1988 are as follows:

Urban	Rural
.94441	.97485

B. Calculation of National Standardized Amount for Puerto Rico

The national standardized payment amount applicable to hospitals in Puerto Rico consists of the discharge-weighted average of the national rural standardized amount and the national urban standardized amount (as set forth in Table 1a of this addendum). The national average standardized amount for Puerto Rico is set forth in Table 1c.

C. Adjustments for Area Wage Levels

Section 1886(d)(9)(B)(vi) of the Act requires that an adjustment be made to the labor-related portion of the Puerto Rico prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. (Table 1c sets forth the labor-related and nonlabor-related shares for both the Puerto Rico and the national standardized amounts that would be used to calculate the prospective payment rates for hospitals located in Puerto Rico.) The wage index is set forth in Tables 4a and 4b of this addendum.

D. DRG Weighting Factors

As discussed in section II of the preamble to this final rule, we have developed a classification system for all hospital discharges, sorting them into DRGs, and have developed weighting factors for each DRG that are intended to reflect the relative resource consumption associated with each DRG.

Table 5 of section VI of this addendum contains the weighting factors that we will use for discharges occurring in FY 1988. These factors have been recalibrated as explained in section II of the preamble.

E. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1987 and Before October 1, 1988

Prospective Payment Rate for Puerto Rico hospitals = 75 percent of the Puerto Rico Rate + 25 percent of the National Rate.

1. Puerto Rico Rate. The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the urban and rural designation of the hospital (see Table 1c, section VI of the addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate wage index.

Step 3—Sum the amount from step 2 and the nonlabor portion of the standardized amount.

Step 4—Multiply the amount from step 3 by the weighting factor corresponding to the appropriate DRG weight (see Table 5, section VI of the addendum).

2. National Rate. The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1c, section VI of the addendum) by the appropriate wage index.

Step 2—Sum the amount from step 1 and the nonlabor portion of the national average standardized amount.

Step 3—Multiply the amount from step 2 by the weighting factor corresponding to the appropriate DRG weight (see Table 5, section VI of the addendum).

IV. Budget Neutrality

The law requires that a number of adjustments be made to the average standardized amounts in order to achieve the payment levels anticipated by Congress in its revisions to section 1886 of the Act. In order to incorporate these adjustments, which are discussed in more detail below as well as in previous prospective payment rules, we used an iterative simulation process.

Using the most current data available (that is, bills for FY 1986 discharges from hospitals currently subject to the prospective payment system received in HCFA through June 1987 (approximately 9.7 million discharges)), we ran a baseline simulation using the PRICER program to price each case.

Estimated payments were calculated using FY 1988 standardized amounts computed on the same basis as those published in the September 3, 1986 final rule (51 FR 31530), except that these rates were—

- Updated by 1.15 percent for FY 1987 (rather than by .5 percent as announced in the September 3, 1986 final rule) and further updated by 2.7 percent for FY 1988 as prescribed by section 1886(b)(3)(B)(i)(II) of the Act;
- Adjusted to reflect the restandardization of the wage index resulting from revising the methodology for computing the national average hourly wage; and
- Adjusted to take into account the additional payments to rural referral centers as required by section 1886(d)(5)(C)(i) of the Act.

The September 3, 1986 rates already included adjustments required by various provisions of Pub. L. 99-272, such as restandardization for indirect medical education payments, standardization for payments to hospitals serving a disproportionate share of low-income patients, and the adjustment for the indirect medical education payment equality factor (see 51 FR 31498-31529).

From this simulation, we calculated the ratio of total outlier payments to total payments (including outliers). We computed separate outlier payment

ratios for hospitals in urban areas and hospitals in rural areas.

In addition, we calculated the total operating payments under the prospective payment system that we estimate would have occurred in FY 1988 using standardized amounts that were hospital-weighted and reduced uniformly for outliers by five percent. This amount served as the aggregate prospective payment target that had to be maintained after the urban and rural standardized amounts were discharge-weighted and differentially adjusted for urban and rural outlier ratios, respectively.

The next step was to discharge-weight the standardized amounts and to remove the effect of the five percent outlier adjustment from the FY 1988 standardized amounts and replace it with the initial outlier ratio estimates for urban hospitals and rural hospitals as computed in the initial price simulation. However, these initial outlier ratios require further refinements since they were computed on the basis of standardized payment amounts uniformly reduced by five percent. Therefore, further simulations were conducted to refine the outlier payment ratios used in computing the standardized amounts and to ensure that the total payment constraint was met.

These revised rates were also used to rerun the price simulation not only to refine the outlier payment ratios used to offset the standardized amounts but also to determine if aggregate payments based on these discharge-weighted, differentially adjusted rates equal the target payment amount computed in the baseline price simulation.

The entire simulation process was repeated until the outlier ratios and budget neutrality factor computed in the simulation and used to adjust the standardized rates resulted in total aggregate payments equal to the baseline target amount that represents our estimate of total prospective payment system payments for FY 1988 that would have been incurred had these provisions not been implemented.

The outlier adjustment and budget neutrality factors are as follows:

Outlier

Urban	Rural
.94441	.97485

Budget Neutrality Factor

.97449

Section 1886(e)(1)(C) of the Act requires that the incorporation of hospitals in Puerto Rico into the prospective payment system in FY 1988 be accomplished in a budget-neutral fashion; that is, the aggregate payment to prospective payment hospitals including those located in Puerto Rico must be neither greater nor less than the payment amount that would have been made to those hospitals had section 9304 of Pub. L. 99–509, which added Puerto Rico hospitals to the prospective payment system, not been enacted. Accordingly, we analyzed what the total payment for FY 1988 would be if all prospective payment hospitals, including hospitals located in Puerto Rico, are paid under the prospective payment system and what the total payment for FY 1988 would be for these hospitals if the hospitals located in Puerto Rico are paid as if they are still subject to the rate-of-increase limits and all other hospitals receive their payment under the prospective payment system. The difference in payment amounts is considerably less than 0.1 percent, and, consequently, the budget neutrality adjustment for incorporating hospitals in Puerto Rico into the prospective payment system is negligible. Therefore, we believe that it is unnecessary to adjust the average standardized amounts to achieve budget neutrality.

V. Target Rate Percentages for Hospitals and Hospital Units Excluded From the Prospective Payment System

A. Background

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (stated as inpatient operating cost per discharge) is set for each hospital, based on the hospital's own cost experience. This target amount is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

A hospital that has inpatient operating costs per discharge in excess of its target amount will be paid no more than that amount. However, a hospital has inpatient operating costs less than its target amount will be paid its costs plus the lower of (1) 50 percent of the difference between the inpatient operating cost per dishcarge and the target amount, or (2) five percent of the target amount.

Each hospital's target amount is adjusted annually before the beginning of its cost reporting period, by an applicable target rate percentage for the 12-month period, prorated based on calendar year target rate percentages. For cost reporting periods beginning in FY 1983 and FY 1984, the applicable target rate percentage was the estimated hospital market basket increase factor plus one percentage point. For cost reporting periods beginning in FY 1985, the applicable target rate percentage was the estimated hospital market basket increase factor plus one-quarter of one percentage point. Under section 9101(e)(3) of Pub. L. 99–272, the applicable target rate percentage increase for cost reporting periods beginning on or after October 1, 1985 through September 30, 1986 is 5/24 of one percent. Section 9101 of Pub. L. 99–272 provides that for purposes of updating the target rate for FY 1987, the FY 1986 increase will be deemed to have been one-half of one percent. For cost reporting periods beginning in FY 1987, section 9302(a) of Pub. L. 99–509 provided that the applicable percentage increase was 1.15 percent.

B. Target Amounts for Cost Reporting Periods Beginning in FY 1988

For cost reporting periods beginning in FY 1988, under section 1886(b)(3)(i)(II) of the Act, as amended by section 9302(a) of Pub. L. 99–509, the applicable percentage increase is the market basket percentage increase minus 2.0 percentage points. Therefore, we proposed to increase each hospital's previous year's target amount by 2.7 percent. Thus, the same percentage increase applies to the target rate amounts for hospitals and units excluded from the prospective payment system as applies to the prospective payment rates for hospitals subject to that system. Since the most recent estimated increase in the market basket remains at 4.7 percent, each hospital's previous year's target amount will be increased by 2.7 percent for its cost reporting period beginning on or after October 1, 1987.

VI. Tables

This section contains the tables referred to throughout the preamble to this proposed rule and in this addendum. For purposes of this proposed rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR

39844). Tables 1a, 1b, 1c, 3c, 4a, 4b, 5, and 7 are presented below. The tables are as follows:

Table 1a—National Adjusted Standardized Amounts, Labor/Nonlabor
Table 1b—Regional Adjusted Standardized Amounts, Labor/Nonlabor
Table 1c—Adjusted Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 3c—Hospital Case-Mix Indexes for Discharges Occurring in FY 1986
Table 4a—Wage Index for Urban Areas
Table 4b—Wage Index for Rural Areas
Table 5— Diagnosis-Related Groups.
Table 7a—Length-of-Stay Percentiles Using FY 1987 DRG Classification
Table 7b—Length-of-Stay Percentiles Using FY 1988 DRG Classification

TABLE 1A.—NATIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

Urban		Rural	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2337.09	828.12	2123.20	587.97

TABLE 1b.—REGIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR[1]

	Urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	2442.27	859.86	2350.23	696.88
2. Middle Atlantic (PA, NJ, NY)	2214.47	824.29	2253.79	657.49
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2348.04	753.85	2155.54	572.23
4. East North Central (IL, IN, MI, OH, WI)	2477.09	892.15	2180.78	634.81
5. East South Central (AL, KY, MS, TN)	2255.07	684.66	2136.28	533.47
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2346.62	812.11	2072.68	569.39
7. West South Central (AR, LA, OK, TX)	2356.52	753.37	1990.81	524.17
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2248.43	801.47	2022.89	606.49
9. Pacific (AK, CA, HI, OR, WA)	2198.90	919.67	1958.41	679.27

[1] Applicable Only to Sole Community Hospitals.

TABLE 1c.—ADJUSTED STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
Puerto Rico	2046.38	367.93	1366.46	260.43

	Labor-related	Nonlabor-related
National	2285.09	769.74

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TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
010001	01.1586	010058	01.1676	010119	01.0859	020026	01.4137	030067	01.0132
010004	00.9492	010059	00.9123	010120	00.9295	020027	00.9123	030068	01.0476
010005	01.1045	010060	00.9766	010121	01.0641	030001	01.1641	030069	01.1610
010006	01.1084	010061	00.9755	010122	00.9207	030002	01.4656	030071	00.9095
010007	00.9220	010062	00.8927	010123	01.1227	030003	01.1767	030072	00.9092
010008	01.0074	010064	01.3234	010124	01.0686	030004	00.9157	030073	01.1510
010009	01.0196	010065	01.0479	010125	00.9259	030006	01.3231	030074	00.9444
010010	01.0252	010066	00.8614	010126	00.9888	030007	01.1352	030075	00.9155
010011	01.2066	010067	00.9266	010127	01.1185	030008	01.2743	030076	00.8571
010012	01.2312	010068	01.1212	010128	01.0058	030009	01.2323	030077	00.8866
010015	00.9848	010069	01.1058	010129	01.0662	030010	01.2882	030078	01.1218
010016	01.1430	010070	01.1845	010130	01.0826	030011	01.1816	030079	00.8884
010017	01.1150	010072	01.0790	010131	01.0980	030012	01.0726	030080	01.2912
010018	00.9834	010073	00.9986	010133	00.8770	030013	01.1225	030081	00.8858
010019	01.0716	010074	00.9547	010134	00.9395	030014	01.1625	030082	00.9833
010020	00.9845	010075	01.0858	010136	01.0176	030016	01.1001	030083	01.1522
010021	01.0707	010078	01.1523	010137	01.1910	030017	01.1606	030084	01.0541
010022	00.9869	010079	01.0360	010138	00.9290	030018	01.2159	030085	01.1012
010023	01.1646	010080	00.9755	010139	01.4129	030019	01.1058	030086	01.0878
010024	01.1558	010081	01.3651	010142	00.8919	030020	01.2728	030087	01.1226
010025	01.1144	010083	00.9939	010143	01.0722	030022	01.2629	030088	01.1876
010026	00.9480	010084	01.1697	010144	01.0839	030023	01.2419	030089	01.1444
010027	00.9828	010085	01.1108	010145	01.1108	030024	01.4398	030091	00.8714
010028	00.9732	010086	00.9243	010146	01.0213	030025	01.1554	040001	01.0491
010029	01.1629	010087	01.2418	010148	00.9548	030027	00.9728	040002	01.0551
010030	00.8980	010089	01.0389	010149	01.1312	030030	01.3014	040003	00.9769
010031	01.1050	010090	01.2223	010150	00.9875	030033	01.0877	040004	01.2177
010032	00.9030	010091	01.0074	010152	01.1453	030034	01.1234	040005	01.0357
010033	01.7571	010092	01.2409	010153	00.9889	030035	01.1472	040006	01.0535
010034	00.9704	010094	00.9998	020001	01.2703	030036	01.1219	040007	01.3019
010035	01.0540	010095	01.0765	020002	01.1206	030037	01.5538	040008	01.0127
010036	01.0384	010096	00.9687	020004	01.0602	030038	01.3277	040009	01.0061
010038	00.9854	010097	00.9571	020005	01.0170	030040	01.0779	040010	01.1191
010039	01.3825	010098	01.0357	020006	01.1160	030041	00.9029	040011	00.8900
010040	01.1175	010099	01.0589	020007	01.0345	030043	01.0638	040013	01.0099
010041	00.8564	010100	01.1782	020008	01.0635	030044	00.9964	040014	01.1340
010043	00.9462	010101	01.0341	020009	00.8769	030046	01.0487	040015	01.0248
010044	00.8877	010102	00.9778	020010	00.9615	030047	00.9139	040016	01.3005
010045	00.9973	010103	01.3210	020011	00.9092	030049	01.0100	040017	01.1663
010046	01.1166	010104	01.3695	020012	01.1781	030051	01.0442	040018	01.1356
010047	00.9740	010108	01.0599	020013	00.8763	030054	00.9527	040019	01.0532
010049	01.0147	010109	01.0671	020014	00.9753	030055	01.0518	040020	01.3028
010050	00.9882	010110	00.9079	020016	00.9457	030057	01.2310	040021	01.1224
010051	00.9229	010111	00.9433	020017	01.0961	030059	01.0838	040022	01.1747
010052	00.9119	010112	01.0365	020018	00.9958	030060	01.1363	040024	00.9864
010053	01.0473	010113	01.3286	020019	00.9944	030061	01.2807	040025	00.9583
010054	01.1055	010114	01.1457	020020	00.8823	030062	01.0973	040026	01.2105
010055	01.2128	010115	00.9469	020021	00.9018	030063	01.1344	040027	01.1313
010056	01.1435	010117	01.0086	020024	01.0092	030064	01.4231	040028	01.0797
010057	01.0299	010118	01.1222	020025	01.0901	030065	01.4017	040029	01.0096

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE., 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
040030	00.9599	040100	01.1148	050046	01.1142	050104	01.2571	050166	01.1968
040031	00.9801	040105	00.9813	050047	01.4945	050107	01.1869	050167	01.2087
040032	00.9557	040106	01.0271	050049	01.1844	050108	01.2952	050168	01.4030
040033	00.9067	040107	00.9877	050051	00.9823	050109	01.7986	050169	01.3009
040035	00.9040	040108	00.9232	050052	01.1301	050110	01.0834	050170	01.2408
040036	01.1089	040109	01.1726	050053	01.2026	050111	01.1897	050172	01.1808
040037	01.0483	040114	01.5535	050054	01.1724	050112	01.3277	050173	01.1598
040039	01.0021	040115	00.9582	050055	01.1480	050113	01.1815	050174	01.4103
040040	01.0230	040116	01.1242	050056	01.1367	050114	01.3255	050175	01.1624
040041	01.1163	040118	01.0680	050057	01.2263	050115	01.2566	050177	01.2561
040042	01.2186	040119	01.1196	050058	01.2645	050116	01.3115	050179	01.1247
040043	00.9865	040122	01.0252	050060	01.2875	050117	01.1527	050180	01.2662
040044	00.9437	040123	00.9459	050061	01.2165	050118	01.1202	050181	01.1593
040045	00.9102	040124	01.0157	050063	01.2521	050119	00.9887	050182	01.1152
040047	01.0427	040126	00.9275	050065	01.3421	050121	01.0863	050183	01.1413
040048	01.1423	040127	00.8553	050066	01.2054	050122	01.2573	050186	01.1922
040050	01.0117	040128	00.9741	050067	01.1351	050124	01.2394	050187	01.0156
040051	00.9742	050002	01.1612	050068	01.0793	050125	01.1723	050188	01.2185
040053	00.9489	050004	01.1855	050069	01.4047	050126	01.2425	050189	00.9990
040054	00.9875	050006	01.2427	050070	01.1759	050127	01.1982	05019A	00.0000
040055	01.2503	050007	01.3893	050071	01.2157	050128	01.2684	050190	01.1237
040058	00.9351	050008	01.2574	050072	01.2063	050129	01.4615	050191	01.2764
040060	00.9656	050009	01.2945	050073	01.1224	050131	01.2588	050192	01.0531
040062	01.1944	050011	01.1313	050074	00.9304	050132	01.2250	050193	01.2475
040063	01.2801	050013	01.6836	050075	01.2052	050133	01.1382	050194	01.1875
040064	00.9595	050014	01.1352	050076	01.4291	050134	01.1333	050195	01.1571
040066	00.9370	050015	01.2953	050077	01.4129	050135	01.3786	050196	01.2260
040067	00.9699	050016	01.0796	050078	01.2195	050136	01.2156	050197	01.6218
040068	01.0829	050017	01.5494	050079	01.1955	050137	01.1771	050199	01.1978
040069	01.0262	050018	01.0947	050080	01.1796	050138	01.4279	050200	01.1820
040070	00.9315	050019	00.9377	050081	01.3419	050139	01.2074	050201	01.1714
040071	01.1556	050021	01.2015	050082	01.2333	050140	01.1597	050202	01.1768
040072	01.0108	050022	01.2431	050084	01.3377	050141	01.2516	050204	01.2664
040074	01.0577	050024	01.1244	050086	01.2821	050143	01.2291	050205	01.1642
040075	01.0545	050025	01.4458	050087	01.2432	050144	01.3635	050207	01.1779
040076	00.9683	050026	01.2461	050088	01.1619	050145	01.2370	050208	01.2161
040077	00.9392	050028	01.2685	050089	01.1952	050147	00.9588	050210	01.0166
040078	01.1801	050029	01.2169	050090	01.1751	050148	01.1043	050211	01.2006
040080	01.0612	050030	01.1407	050091	01.1499	050149	01.1569	050212	01.0557
040081	00.9009	050032	01.0573	050092	01.1023	050150	01.2385	050213	01.1735
040082	01.0935	050033	01.3030	050093	01.4179	050151	01.2403	050214	01.2647
040084	01.0324	050034	01.1648	050095	01.0891	050152	01.2388	050215	01.2834
040085	00.9436	050036	01.2300	050096	01.1696	050153	01.3737	050217	01.2030
040087	00.9373	050038	01.2155	050097	01.2455	050154	01.1211	050219	01.2617
040088	01.1760	050039	01.3949	050098	01.0736	050155	01.1096	050220	01.0740
040090	00.9069	050040	01.0083	050099	01.2943	050156	01.1979	050221	01.1905
040091	00.9630	050041	01.1496	050100	01.7005	050158	01.4320	050222	01.1181
040093	00.9419	050042	01.1487	050101	01.2537	050159	01.1587	050224	01.2225
040095	00.9988	050043	01.4579	050102	01.2547	050161	01.2116	050225	01.1619
040098	01.1205	050045	01.1009	050103	01.3305	050164	01.1973	050226	01.4233

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE., 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986 Page 3 of 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
050228	01.2194	050296	01.2398	050371	01.1167	050441	01.5513	050526	01.1526
050229	01.2085	050298	01.0856	050372	01.1048	050442	01.1668	050527	01.1641
050230	01.2151	050299	01.2966	050373	01.1005	050443	00.9391	050528	01.0850
050231	01.2059	050300	01.1996	050376	01.2847	050444	01.1366	050530	01.2380
050232	01.4844	050301	01.1233	050377	01.1604	050446	00.9700	050531	01.2049
050233	01.1324	050302	01.2459	050378	01.0531	050447	01.2275	050534	01.2423
050234	01.2184	050303	01.4137	050379	00.9975	050448	00.9823	050535	01.1584
050235	01.2781	050305	01.2340	050380	01.5254	050449	01.1386	050537	01.1988
050236	01.2086	050307	01.2615	050381	00.9580	050450	00.9916	050539	01.1599
050238	01.1756	050308	01.4059	050382	01.2102	050451	01.0318	050541	01.3996
050239	01.2433	050309	01.1616	050383	01.2712	050454	01.6861	050542	00.9934
050240	01.2367	050310	01.1137	050385	01.2173	050455	01.3332	050543	01.1891
050241	01.2034	050312	01.2392	050387	01.0155	050456	01.3062	050544	01.1377
050242	01.2942	050313	01.1327	050388	00.9761	050457	01.3993	050545	00.8412
050243	01.1819	050315	01.2004	050390	01.2010	050458	00.7997	050546	00.8488
050245	01.3704	050317	01.1910	050391	01.2168	050459	01.2536	050547	00.9484
050248	01.1865	050318	00.9877	050392	00.8824	050464	01.5284	050548	00.7153
050251	01.0466	050319	01.2624	050393	01.2771	050467	01.2273	050549	01.4717
050253	01.2936	050320	01.1035	050394	01.3764	050468	01.1854	050550	01.2518
050254	01.1741	050324	01.4973	050395	01.1117	050469	00.9643	050551	01.2565
050256	01.4770	050325	01.1704	050396	01.4053	050470	01.1195	050552	01.2439
050257	01.2362	050326	01.2779	050397	00.9971	050471	01.2742	050557	01.2104
050258	01.2452	050327	01.4667	050401	01.2121	050473	01.1587	050559	01.1727
050260	00.9703	050328	01.1170	050404	01.0703	050476	01.1175	050560	01.1374
050261	01.1221	050329	01.1431	050406	01.0060	050477	01.0795	050561	01.0943
050262	01.4550	050331	01.1774	050407	01.1600	050478	01.0999	050562	01.1112
050263	01.1974	050333	00.9989	050410	00.9692	050481	01.2004	050564	01.1377
050264	01.2564	050334	01.2143	050411	01.1823	050482	01.0611	050565	01.1085
050267	01.3647	050335	01.0932	050413	01.2896	050483	01.1575	050566	01.0414
050268	01.2448	050336	01.1953	050414	01.1173	050485	01.3518	050567	01.2353
050269	01.1643	050337	01.0569	050415	00.7932	050486	01.3180	050568	01.1549
050270	01.1753	050342	01.2675	050417	01.1499	050487	01.1645	050569	01.1513
050272	01.2425	050343	01.2554	050418	01.0740	050488	01.2139	050570	01.3933
050273	01.0460	050345	01.2390	050419	01.1770	050489	01.0883	050571	01.2413
050274	00.8658	050348	01.3236	050420	01.2005	050491	01.1947	050573	01.3886
050276	01.0663	050349	00.9628	050421	01.2083	050492	01.1041	050575	00.9810
050277	01.1683	050350	01.2500	050423	01.0536	050494	01.0795	050576	01.1432
050278	01.2295	050351	01.3389	050424	01.3137	050496	01.5733	050577	01.2716
050279	01.1552	050352	01.1402	050425	01.1937	050497	00.8872	050578	01.0801
050280	01.2294	050353	01.4318	050426	01.1407	050498	01.1732	050579	01.1588
050281	01.3189	050355	01.0322	050427	00.9489	050502	01.7492	050580	01.1457
050282	01.2050	050357	01.4418	050430	00.9020	050503	01.2676	050581	01.2151
050283	01.2234	050359	01.1169	050431	01.1098	050506	01.2273	050583	01.5186
050286	01.0760	050360	01.2053	050432	01.2968	050510	01.1307	050584	01.0919
050289	01.5175	050361	00.9911	050433	00.9799	050512	01.1621	050585	01.2599
050290	01.3212	050362	01.1300	050434	01.1234	050515	01.2387	050586	01.1059
050291	01.1391	050363	01.1247	050435	01.1699	050516	01.2519	050587	01.1798
050292	01.1837	050366	01.1446	050436	01.0275	050517	01.1438	050588	01.2119
050293	00.8631	050367	01.1737	050438	01.3642	050522	01.1606	050589	01.1968
050295	01.1829	050369	01.1536	050440	01.1289	050523	01.1100	050590	01.2167

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE., 1987.

TABLE 3C. HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986 Page 4 of 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
050591	01.1852	060001	01.3460	060056	00.9640	070021	01.1992	100018	01.1880
050592	01.2007	060003	01.1611	060057	01.1115	070022	01.5389	100019	01.1683
050593	01.1815	060004	01.0718	060058	00.9130	070023	01.1705	100020	01.1897
050594	01.9024	060005	01.3538	060060	01.1006	070024	01.1692	100021	01.1555
050597	01.1289	060006	01.2292	060062	01.0346	070025	01.4699	100022	01.3702
050598	01.1638	060007	01.1298	060063	01.2134	070026	01.1936	100023	01.1399
050599	01.3120	060008	01.1359	060064	01.2838	070027	01.2532	100024	01.1649
050601	01.1644	060009	01.2414	060065	01.1326	070028	01.3266	100025	01.3389
050603	01.2929	060010	01.4033	060066	01.0567	070029	01.1756	100026	01.2524
050604	01.1855	060011	01.1690	060067	01.0320	070030	01.1356	100027	01.0103
050605	01.0076	060012	01.3425	060068	01.2651	070031	01.2786	100028	01.1117
050607	01.1385	060013	01.2452	060070	01.1590	070033	01.2001	100029	01.1453
050608	01.1007	060014	01.3941	060071	01.2487	070034	01.2202	100030	01.0234
050609	01.2173	060015	01.3110	060072	01.0022	070035	01.2514	100032	01.2090
050613	00.9626	060016	01.2166	060073	01.0273	070036	01.2684	100033	01.1570
050615	01.2029	060017	01.2110	060074	00.9696	070038	01.0602	100034	01.2944
050616	01.1244	060018	01.1041	060075	01.2154	080001	01.2088	100035	01.1854
050618	01.0601	060019	01.2535	060076	01.2511	080002	01.1353	100036	01.1636
050619	01.2376	060020	01.2752	060077	00.9408	080003	01.2080	100038	01.3111
050622	01.0999	060022	01.4360	060083	01.0705	080004	01.2363	100039	01.2515
050623	01.2094	060023	01.3216	060085	00.9745	080005	01.0464	100040	01.3471
050624	01.1651	060024	01.4578	060087	01.1310	080006	01.0498	100042	01.1160
050625	01.3065	060025	01.0419	060088	00.9691	080007	01.1711	100043	01.2045
050630	01.0716	060026	01.2811	060090	01.0551	090001	01.2699	100044	01.1709
050633	01.1550	060027	01.2279	060092	01.0276	090002	01.0651	100045	01.1385
050635	01.2069	060028	01.3300	060093	00.8819	090003	01.2553	100046	01.1329
050636	01.2203	060029	00.9841	060096	00.9409	090004	01.3942	100047	01.1168
050637	01.1391	060030	01.2049	060097	01.0228	090005	01.2009	100048	00.9629
050638	00.9210	060031	01.3655	060098	01.1380	090006	01.2285	100049	01.0942
050641	01.0652	060032	01.2984	060099	00.7930	090007	01.1038	100050	01.0274
050643	01.0119	060033	01.2092	070001	01.5261	090008	01.1714	100051	01.0429
050644	01.1348	060034	01.2426	070002	01.5198	090009	01.1301	100052	01.2326
050646	00.7978	060035	01.2136	070003	01.2106	090010	01.0750	100053	01.1107
050649	01.0305	060036	01.1663	070004	01.1687	090011	01.5542	100054	01.1604
050650	01.1565	060037	00.9881	070005	01.3047	100001	01.2031	100055	01.1394
050651	01.1906	060038	01.2460	070006	01.1762	100002	01.2533	100056	01.1064
050657	01.1063	060039	01.1323	070007	01.1982	100004	00.9658	100057	01.1250
050661	00.9134	060041	01.2405	070008	01.1069	100005	01.0331	100059	01.2457
050663	01.1229	060042	01.0167	070009	01.2125	100006	01.3258	100060	01.4381
050665	00.5719	060043	01.0571	070010	01.3882	100007	01.5718	100061	01.1861
050666	00.8947	060044	01.1619	070011	01.1861	100008	01.2485	100062	01.1704
050668	01.2266	060045	01.0600	070012	01.1764	100009	01.2554	100063	01.1429
050669	00.8741	060046	01.1028	070013	01.1972	100010	01.1870	100065	01.0462
050672	00.6965	060047	01.0463	070014	01.1266	100011	00.9880	100067	01.1915
050673	00.9226	060049	01.1909	070015	01.1769	100012	01.2311	100068	01.1096
050674	01.1213	060050	01.1831	070016	01.2605	100013	00.9480	100069	01.1058
050675	01.2188	060051	01.2632	070017	01.2613	100014	01.1542	100070	01.2505
050676	00.8325	060052	01.0294	070018	01.2116	100015	01.1036	100071	01.1729
050677	01.1244	060053	00.9522	070019	01.1620	100016	00.9937	100072	01.1357
050678	00.8380	060054	01.2429	070020	01.2567	100017	01.2351	100073	01.3498

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE,, 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986 Page 5 of 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
100074	01.1046	100137	01.1109	100203	01.1820	100263	01.1369	110046	01.0814
100075	01.3967	100138	00.9565	100204	01.3160	100264	01.2089	110047	00.9215
100076	01.1540	100139	01.0580	100206	01.1793	100265	01.1221	110048	01.0374
100077	01.1751	100140	01.0824	100207	01.1656	100266	01.1405	110049	00.9323
100078	01.0291	100142	01.0452	100208	01.1375	100267	01.1845	110050	01.0191
100079	01.1529	100143	01.0092	100209	01.2304	100268	01.0682	110051	00.9268
100080	01.1949	100144	01.0291	100210	01.3022	100269	01.2081	110052	00.9243
100081	01.0177	100145	01.1076	100211	01.1593	100270	00.8911	110054	01.1792
100082	01.2001	100146	00.9828	100212	01.1386	100273	00.8508	110055	00.9150
100083	01.1219	100147	01.0338	100213	01.2236	110001	01.0896	110056	00.9385
100084	01.1086	100149	01.1263	100214	01.1244	110002	01.1359	110059	01.0534
100085	01.0678	100150	01.1666	100217	01.0758	110003	01.1322	110061	00.9072
100086	01.1571	100151	01.4730	100218	01.1048	110004	01.0997	110062	00.9395
100087	01.4274	100152	01.1222	100219	01.2020	110005	01.0647	110063	00.9959
100088	01.2543	100153	00.8808	100220	01.3549	110006	01.1344	110064	01.1928
100089	01.1411	100154	01.2315	100221	01.4990	110007	01.3131	110065	00.9529
100090	01.1212	100156	01.0391	100222	01.0942	110008	01.0222	110066	01.2003
100092	01.1131	100157	01.2880	100223	01.2024	110009	01.0471	110069	01.0625
100093	01.2190	100159	01.0053	100224	01.1107	110010	01.7742	110070	00.9904
100098	00.9487	100160	00.9803	100225	01.1193	110011	01.0798	110071	00.9846
100099	01.0939	100161	01.2019	100226	01.1804	110013	00.9742	110072	00.9629
100100	01.1068	100162	01.1061	100227	00.9439	110014	00.9176	110073	01.0337
100102	01.0225	100164	00.9761	100228	01.1166	110015	01.0129	110074	01.1589
100103	00.9363	100165	00.9605	100229	01.1506	110016	01.1617	110075	01.0553
100105	01.1707	100166	01.1489	100230	01.0632	110017	00.9391	110076	01.2420
100106	01.0728	100167	01.1466	100231	01.4442	110018	01.1016	110077	00.9162
100107	01.1042	100168	01.1639	100232	01.0287	110020	01.0349	110078	01.3756
100108	01.0022	100169	01.4374	100234	01.1647	110023	01.0699	110079	01.0841
100109	01.1003	100170	01.1303	100235	01.1465	110024	01.1844	110080	01.1116
100110	01.1562	100172	01.1099	100236	01.1747	110025	01.1603	110081	00.9929
100112	00.9341	100173	01.1472	100237	01.5760	110026	01.0176	110082	01.6753
100113	01.4486	100174	01.2787	100238	01.1525	110027	00.9712	110083	01.1887
100114	01.1768	100175	01.0061	100239	01.2436	110028	01.3460	110085	01.1061
100115	01.1241	100176	01.4303	100240	00.7510	110029	01.1008	110086	01.1259
100117	01.0996	100177	01.1846	100241	00.8840	110030	01.1162	110087	01.1190
100118	01.0572	100179	01.3380	100242	01.1479	110031	01.0866	110088	00.9086
100120	01.0432	100180	01.2665	100243	01.1804	110032	01.0849	110089	01.1354
100121	00.9956	100181	01.0764	100244	01.1483	110033	01.0637	110091	01.1882
100122	01.1270	100183	01.1092	100246	01.1967	110034	01.2398	110092	01.0056
100124	01.0977	100185	01.0493	100248	01.3863	110035	01.1180	110093	01.0142
100125	01.1097	100186	01.2388	100249	01.0702	110036	01.4893	110094	00.8853
100126	01.2188	100187	01.1175	100252	01.1271	110037	00.9948	110095	01.1515
100127	01.2666	100189	01.1425	100253	01.2013	110038	01.1479	110096	00.9767
100128	01.9451	100191	01.1749	100254	01.2143	110039	01.1001	110097	00.9301
100129	01.1544	100193	00.8394	100255	01.1455	110040	00.9912	110098	00.8959
100130	01.1270	100194	01.0970	100256	01.1601	110041	01.0801	110099	00.9431
100131	01.1482	100195	01.1863	100258	01.1355	110042	00.9850	110100	01.0464
100132	01.2080	100196	01.1884	100259	01.1155	110043	01.1998	110101	00.9332
100134	00.9071	100199	01.2150	100260	01.1436	110044	01.1067	110103	00.9406
100135	01.3906	100200	01.1406	100262	01.1693	110045	00.9949	110104	01.0543

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE., 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
110105	01.1275	110169	00.6881	130002	01.2631	140005	00.8919	140065	01.2055
110107	01.3830	110170	00.8294	130003	01.1670	140007	01.1722	140066	01.0541
110108	00.9072	110171	01.1964	130005	01.2297	140008	01.2154	140067	01.3439
110109	00.9596	110172	01.1377	130006	01.5116	140009	00.9952	140068	01.0675
110111	00.9441	110174	00.8859	130007	01.3198	140010	01.2823	140069	01.1047
110112	00.9394	110175	01.0937	130008	00.8935	140011	01.0735	140070	01.1752
110113	00.9899	110176	01.1106	130009	00.9636	140012	01.1833	140072	01.1280
110114	01.0486	110177	01.1381	130010	00.9664	140013	01.1585	140074	01.0048
110115	01.3046	110178	00.9628	130011	01.1978	140014	00.9847	140075	01.2546
110117	00.9292	110179	01.0844	130012	00.9173	140015	01.1023	140077	00.9846
110118	00.9384	110181	01.0466	130013	01.1307	140016	01.0324	140079	01.0986
110120	00.9317	110183	01.1309	130014	01.1799	140017	01.1413	140080	01.5392
110121	00.9425	110184	01.0419	130015	01.0691	140018	01.2657	140081	01.0947
110122	01.1639	110185	00.9202	130016	00.9346	140019	00.9502	140082	01.1555
110123	01.0085	110186	01.0390	130017	01.0056	140023	01.0484	140083	01.0892
110124	00.9380	110187	00.9760	130018	01.1950	140024	00.9714	140084	01.1695
110125	01.0576	110188	01.1237	130019	01.0369	140025	01.0836	140085	01.2129
110127	01.0058	110189	00.9694	130021	00.8972	140026	01.1090	140086	01.0360
110128	01.0774	110190	01.0014	130022	01.1059	140027	01.0675	140087	01.1543
110129	01.3137	110191	01.1266	130024	01.1630	140029	01.2067	140088	01.3976
110130	00.9034	110192	01.2112	130025	01.0168	140030	01.2848	140089	01.0797
110131	00.8957	110193	01.0622	130026	01.1227	140031	01.0520	140090	01.2087
110132	00.9731	110194	01.0177	130027	00.8997	140032	01.0931	140091	01.2999
110133	00.9650	110195	00.9551	130028	01.1293	140033	01.1076	140093	01.1130
110134	00.8728	110196	01.3434	130029	01.1282	140034	01.0470	140094	01.0803
110135	00.9611	110198	01.2263	130030	00.8939	140035	01.0884	140095	01.0998
110136	00.9951	110200	01.4854	130031	00.9207	140036	01.0261	140097	01.1659
110140	00.8630	110201	01.1785	130032	00.9626	140037	00.9838	140098	01.1745
110141	00.8975	110202	00.9852	130034	00.9421	140038	01.1155	140099	01.1755
110142	01.0208	120001	01.3889	130035	01.0698	140039	01.0268	140100	01.0650
110143	01.1278	120002	01.0975	130036	01.1190	140040	01.0935	140101	01.1419
110144	01.1545	120003	01.1066	130037	01.0309	140041	00.9783	140102	00.9618
110146	00.8572	120004	01.1596	130038	00.8788	140042	01.0235	140103	01.0966
110149	00.9563	120005	01.1754	130039	01.1444	140043	01.0931	140104	01.0887
110150	01.0626	120006	01.0757	130040	00.9151	140045	01.0554	140105	01.2129
110151	00.9706	120007	01.3332	130041	00.8711	140046	01.0857	140107	00.9377
110152	00.9774	120008	01.0281	130043	00.9483	140047	01.0846	140108	01.1315
110153	00.9390	120009	00.9788	130044	00.9088	140048	01.0861	140109	00.9904
110154	00.8785	120010	01.4201	130045	01.0164	140049	01.2410	140110	01.0785
110155	00.9870	120011	01.2925	130048	00.8961	140051	01.1787	140111	00.9640
110156	00.9049	120012	01.0147	130049	01.1826	140052	01.1447	140112	01.0751
110157	01.1102	120014	01.1163	130050	01.0712	140053	01.3903	140113	01.3529
110158	01.0360	120015	00.9911	130051	01.0725	140054	01.2505	140114	01.1053
110161	01.2526	120016	01.0381	130053	01.0142	140055	00.9662	140115	01.0430
110162	00.9038	120018	00.8991	130054	00.7894	140058	01.0468	140116	01.2172
110163	01.1932	120019	01.0619	130056	00.8755	140059	01.0106	140117	01.1768
110164	01.2150	120021	01.0160	140001	01.0886	140061	01.0359	140118	01.3036
110165	01.1369	120022	01.3927	140002	01.1786	140062	01.1317	140119	01.4468
110166	01.1886	120024	00.8939	140003	00.9210	140063	01.1516	140120	01.0673
110168	01.1492	130001	01.0217	140004	01.0321	140064	01.1289	140121	01.0535

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE,, 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
140122	01.2131	140174	01.1884	140236	01.0448	150015	01.1449	150071	01.1730
140123	01.1294	140176	01.1107	140239	01.3217	150017	01.4543	150072	01.1695
140124	01.0102	140177	01.0493	140240	01.1687	150018	01.1721	150073	01.0637
140125	01.0878	140178	01.0051	140241	00.8902	150019	01.1366	150074	01.2896
140126	01.3296	140179	01.1982	140242	01.2081	150020	01.0682	150075	01.1798
140127	01.1763	140180	01.2500	140243	01.1039	150021	01.3847	150076	01.0227
140128	01.0437	140181	01.0801	140245	01.0275	150022	01.0890	150077	01.0993
140129	01.0316	140182	01.2251	140246	01.0552	150023	01.2004	150078	01.0245
140130	01.1223	140184	01.0673	140247	01.0074	150024	01.1240	150079	01.1163
140131	01.1225	140185	01.1755	140248	01.1180	150025	01.2614	150081	01.0274
140132	01.2878	140186	01.0765	140249	00.8320	150026	01.1767	150082	01.2597
140133	01.1832	140187	01.2150	140250	01.1485	150027	01.0890	150083	01.0426
140134	01.1333	140188	00.9365	140251	01.1343	150029	01.1325	150084	01.5260
140135	01.1032	140189	01.1167	140252	01.1987	150030	01.1342	150085	00.9224
140136	00.9911	140190	01.0006	140253	01.1300	150031	00.9753	150086	01.0942
140137	01.0623	140191	01.1300	140258	01.2203	150032	01.6239	150088	01.0950
140138	00.9964	140192	01.0862	140261	01.0746	150033	01.2876	150089	01.2134
140139	00.9934	140193	00.9764	140271	00.9560	150034	01.1152	150090	01.1873
140140	01.0791	140197	01.2206	140273	01.0260	150035	01.1294	150091	01.0846
140141	00.9409	140199	01.0612	140275	01.1107	150036	01.0151	150092	01.0253
140142	01.1140	140200	01.2209	140276	01.8120	150037	01.1412	150094	01.0654
140143	01.1014	140202	01.1410	140280	01.1413	150038	01.1655	150095	01.0566
140144	01.0222	140203	01.0337	140281	01.3495	150039	01.0366	150096	01.0160
140145	01.0540	140204	01.1989	140285	01.0744	150042	01.1563	150097	01.0674
140146	00.9295	140205	01.0302	140286	01.1649	150043	01.1102	150098	01.0486
140147	01.0279	140206	01.1299	140288	01.1812	150044	01.1455	150099	01.0779
140148	01.3027	140207	01.1336	140289	01.1958	150045	01.0899	150100	01.2902
140150	01.2363	140208	01.2600	140290	01.1451	150046	01.2031	150101	01.0373
140151	01.0124	140209	01.2375	140291	01.1385	150047	01.2794	150102	01.0197
140152	01.0088	140210	01.0412	140292	01.1446	150048	01.1571	150103	01.0064
140153	01.0873	140211	01.0880	140293	00.9879	150049	01.0501	150104	01.0617
140154	01.1415	140212	01.0075	140294	00.9873	150050	01.1367	150105	01.0975
140155	01.0900	140213	01.1113	140295	01.1241	150051	01.1741	150106	01.0250
140156	01.1921	140215	01.1029	140296	00.8475	150052	00.9848	150109	01.2120
140157	01.0274	140216	00.9130	140297	01.2060	150053	01.0047	150110	00.8919
140158	01.1816	140217	01.1663	140298	01.2128	150054	00.9933	150111	01.0228
140159	01.0984	140218	01.0343	150001	01.1350	150056	01.3901	150112	01.1527
140160	01.1905	140219	01.1208	150002	01.2161	150057	01.0113	150113	01.1147
140161	01.0154	140220	01.0541	150003	01.3241	150058	01.2930	150114	01.0226
140162	01.1575	140223	01.3026	150004	01.1860	150059	01.0758	150115	01.1743
140163	00.9400	140224	01.2038	150005	01.1373	150060	01.1058	150122	01.0553
140164	01.1329	140226	00.9495	150006	01.1642	150061	01.1100	150123	01.0825
140165	00.9248	140228	01.3115	150007	01.0838	150062	01.0257	150124	01.1396
140166	01.1085	140229	01.0706	150008	01.2649	150063	01.1299	150125	01.1453
140167	01.0304	140230	00.9948	150009	01.1291	150064	01.0742	150126	01.6135
140168	01.0203	140231	01.1753	150010	01.0452	150065	01.1274	150127	01.0880
140170	01.0788	140232	01.0316	150011	01.1288	150066	01.1001	150128	01.1356
140171	00.9493	140233	01.3922	150012	01.2957	150067	01.0423	150129	01.0960
140172	01.2426	140234	01.1135	150013	01.0447	150069	01.1265	150130	01.2023
140173	01.0977	140235	00.9684	150014	01.1852	150070	01.1106	150132	01.2562

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE., 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
150133	01.1486	160055	01.0675	160111	01.1632	170018	01.0647	170076	01.1164
150134	01.1530	160056	01.0009	160112	01.2366	170019	01.2219	170077	00.9626
150135	00.7924	160057	01.1833	160113	01.0559	170020	01.1720	170079	00.8929
150136	01.0956	160058	01.4186	160114	01.0419	170021	00.9407	170080	00.9394
160001	01.1629	160059	01.2024	160115	01.0602	170022	01.1336	170081	01.0806
160002	01.2252	160060	01.0889	160116	01.1203	170023	01.2594	170082	00.9411
160003	01.0696	160061	01.0097	160117	01.3012	170024	01.0022	170084	00.9970
160004	01.1237	160062	01.0558	160118	01.1116	170025	01.0872	170085	01.0158
160005	01.1481	160063	01.0797	160119	00.9476	170026	01.0092	170086	01.4060
160007	01.0596	160064	01.2003	160120	00.9082	170027	01.0970	170087	01.1965
160008	01.1351	160065	01.1389	160122	01.0639	170030	01.0116	170088	00.9947
160009	01.1638	160066	01.0736	160123	00.9687	170031	01.0233	170089	00.9842
160012	01.0967	160067	01.1420	160124	01.1912	170032	01.0797	170090	01.0872
160013	01.2185	160068	01.0992	160126	01.1116	170033	01.1074	170092	01.0687
160014	01.0446	160069	01.3094	160129	01.0312	170034	00.9348	170093	00.9633
160016	01.2420	160070	01.0132	160130	01.1178	170035	00.9436	170094	00.8892
160018	01.0598	160071	01.1422	160131	01.1251	170036	00.9567	170095	01.0717
160020	01.0438	160072	01.1273	160132	01.0344	170037	01.1073	170097	01.0190
160021	01.0996	160073	00.9085	160133	01.1084	170038	00.9947	170098	01.0024
160023	01.0977	160074	00.9862	160134	00.9338	170039	01.0696	170099	01.0996
160024	01.1885	160075	01.0154	160135	00.9790	170040	01.3131	170100	00.8928
160025	01.4380	160076	01.0011	160136	01.0522	170041	00.9930	170101	01.0297
160026	01.1168	160077	01.0564	160138	01.0179	170043	01.1522	170102	01.0224
160027	01.1234	160079	01.2260	160140	01.0275	170044	01.0198	170103	01.1970
160028	01.1138	160080	01.1162	160141	01.0408	170045	01.0283	170104	01.2466
160029	01.2329	160081	01.1189	160142	01.1332	170046	00.9859	170105	00.9968
160030	01.2245	160082	01.4569	160143	01.1049	170049	01.1685	170106	01.0124
160031	01.0833	160083	01.3620	160145	01.0965	170050	00.9506	170108	00.9386
160032	01.0245	160085	01.2008	160146	01.2245	170051	00.9779	170109	01.0230
160033	01.2218	160086	01.0096	160147	01.2398	170052	01.0116	170110	00.9175
160034	01.0376	160088	01.0746	160151	01.1606	170053	00.9633	170112	01.0128
160035	01.0658	160089	01.1885	160152	01.0495	170054	00.9943	170113	01.0574
160036	01.1378	160090	01.0373	160153	01.3432	170055	00.9141	170114	01.0274
160037	01.1263	160091	01.1420	170001	01.1313	170056	00.9889	170115	01.0287
160038	01.1504	160092	01.0597	170002	01.1769	170057	00.9287	170116	01.1533
160039	01.0600	160093	00.9344	170003	01.0966	170058	01.0329	170117	01.0339
160040	01.1997	160094	01.1067	170004	01.0744	170060	00.9859	170119	00.9305
160041	01.0597	160095	01.0208	170005	00.9241	170061	01.0817	170120	01.1104
160043	01.0423	160097	01.1076	170006	01.1344	170062	00.9375	170121	00.8625
160044	01.2467	160098	01.1323	170007	01.1836	170063	00.9258	170122	01.5573
160045	01.3718	160099	01.0921	170008	00.9756	170064	00.9410	170123	01.3041
160046	01.0448	160101	01.0898	170009	01.1089	170066	00.9301	170124	00.9335
160047	01.2734	160102	01.2714	170010	01.0526	170067	01.0810	170125	00.9430
160048	01.1125	160103	00.9102	170011	01.1343	170068	01.0999	170126	00.9180
160049	01.0321	160104	01.0284	170012	01.3388	170069	01.0507	170128	00.9510
160050	01.0507	160106	01.1445	170013	01.1763	170070	00.9730	170130	01.0613
160051	01.0598	160107	01.1159	170014	01.0477	170072	00.9662	170131	01.1962
160052	01.0840	160108	01.1743	170015	01.0491	170073	01.2032	170133	01.2253
160053	01.1524	160109	01.0931	170016	01.4128	170074	01.1137	170134	00.9927
160054	01.0821	160110	01.3281	170017	01.1052	170075	00.8873	170137	01.1608

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE,, 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986 Page 9 of 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
170138	01.1561	180028	00.9203	180095	01.0541	190023	00.9197	190110	00.9769
170139	00.9981	180029	01.0644	180099	00.9436	190025	01.0764	190111	01.2883
170140	00.9941	180030	00.9765	180100	01.1482	190026	01.1601	190112	01.2047
170142	01.1116	180031	01.0206	180101	01.0980	190027	01.2070	190113	01.0812
170143	01.1534	180032	00.9016	180102	01.1790	190029	01.1300	190114	00.8634
170144	01.2780	180033	00.9773	180103	01.3559	190033	00.9146	190115	01.2105
170145	01.0925	180034	00.9430	180104	01.2397	190034	01.1207	190116	01.0798
170146	01.2504	180035	01.1753	180105	00.8801	190035	01.2522	190117	00.9887
170147	01.1278	180036	01.0226	180106	00.8754	190036	01.3985	190118	01.0105
170148	01.1671	180037	01.1556	180108	00.8635	190037	00.9194	190119	00.9596
170150	01.1044	180038	01.1179	180114	00.9572	190039	01.2821	190120	00.9407
170151	00.9960	180040	01.4041	180115	00.9523	190040	01.1886	190122	01.1504
170152	00.8968	180041	00.9787	180116	01.1096	190041	01.3090	190124	01.2153
170159	00.9869	180042	01.0230	180117	00.9230	190043	01.0784	190125	01.1976
170160	00.8967	180043	01.0148	180118	00.9870	190044	01.0354	190127	01.0752
170164	01.1605	180044	00.9707	180120	00.9351	190045	01.0953	190128	00.9837
170166	01.0221	180045	01.1170	180121	01.0395	190046	01.2698	190130	00.9396
170168	00.9878	180046	01.0060	180122	00.8836	190047	01.0154	190131	01.0154
170170	01.1689	180047	01.0037	180123	01.1747	190048	01.0361	190132	01.0264
170171	01.1044	180048	01.1337	180124	01.1560	190049	00.9691	190133	01.1339
170172	00.9886	180049	01.0829	180125	00.9087	190050	00.9832	190134	00.8796
170173	00.8813	180050	01.0626	180126	00.9506	190053	01.0896	190135	01.2882
170174	00.9346	180051	01.1377	180127	01.0811	190054	01.1764	190136	00.9446
170175	01.1036	180053	00.9901	180128	01.0408	190058	00.9755	190137	01.0031
170176	01.2273	180054	01.0765	180129	00.9728	190059	01.0668	190138	00.7021
170178	00.9032	180055	01.0382	180130	01.1846	190060	01.1580	190139	01.0389
180001	01.1326	180056	01.0619	180132	01.0575	190064	01.2173	190140	00.9791
180002	01.0169	180058	00.8668	180133	01.1251	190065	01.2828	190141	01.0001
180004	01.0378	180059	00.9260	180134	01.0278	190067	01.0270	190142	00.9795
180005	01.0138	180060	00.9368	180136	01.1857	190071	00.9940	190144	01.0631
180006	00.9234	180062	00.9233	180137	01.2346	190073	00.8850	190145	01.0130
180007	01.1613	180063	00.9401	190001	00.9461	190075	01.1257	190146	01.3315
180009	01.1002	180064	01.0094	190002	01.3267	190077	01.0349	190147	00.9950
180010	01.4602	180065	00.9705	190003	01.0991	190078	01.0124	190148	00.8964
180011	00.9896	180066	00.9861	190004	01.1710	190079	01.0866	190149	00.9809
180012	01.1337	180067	01.4135	190005	01.1308	190081	00.9359	190151	01.0643
180013	01.1255	180069	00.9804	190006	01.0687	190083	00.9461	190152	01.1028
180014	01.4114	180070	00.9608	190007	01.0022	190086	01.0928	190155	00.9685
180015	01.0312	180072	01.0541	190008	01.2328	190088	01.0118	190156	00.9188
180016	01.1248	180075	00.9311	190009	01.0964	190089	01.0425	190157	00.9346
180017	01.1477	180078	00.9640	190010	01.0015	190090	01.0571	190158	01.0883
180018	01.1128	180079	00.9880	190011	01.0282	190092	01.1034	190160	01.0149
180019	01.0916	180080	01.0498	190012	00.9312	190095	00.9285	190161	01.0336
180020	00.9526	180081	01.1334	190013	01.1068	190098	01.3058	190162	01.0843
180021	00.9469	180085	01.1606	190014	00.9934	190099	01.0459	190163	00.9773
180023	00.8866	180087	01.0068	190015	01.0835	190101	00.9641	190164	01.0625
180024	00.9922	180088	01.2512	190017	01.1043	190102	01.2270	190165	01.0482
180025	01.0797	180092	01.0410	190018	01.0672	190103	00.8132	190166	00.8877
180026	01.0156	180093	01.2004	190019	01.2828	190106	00.9848	190167	01.0223
180027	01.0057	180094	00.9687	190020	01.0471	190109	01.0782	190169	00.8601

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE., 1987.

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TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
190170	01.0154	200023	00.9919	210025	01.0926	220021	01.1909	220082	01.1618
190173	01.1562	200024	01.1851	210026	01.1678	220022	01.0847	220083	01.1233
190175	01.1180	200025	01.1343	210027	01.1733	220023	01.1957	220084	01.1229
190176	01.3614	200026	01.0387	210028	01.0498	220024	01.2013	220086	01.4553
190177	01.0421	200027	01.0777	210029	01.2630	220025	01.1142	220087	00.8958
190178	00.9767	200028	01.0167	210030	01.0336	220026	01.2450	220088	01.4078
190179	00.9950	200031	01.1445	210031	01.5503	220028	01.1861	220089	01.2179
190180	01.0376	200032	01.2281	210032	01.0636	220029	01.1129	220090	01.1515
190182	00.9840	200033	01.3221	210033	01.1649	220030	01.0477	220092	01.1774
190183	01.1254	200034	01.1397	210034	01.1108	220031	01.4862	220094	01.1198
190184	00.9522	200037	01.1365	210035	01.1239	220033	01.1735	220095	01.1273
190185	01.0952	200038	01.0560	210036	01.2004	220034	01.1048	220097	01.0117
190186	00.9094	200039	01.2414	210037	01.1379	220035	01.1341	220098	01.1431
190187	01.0837	200040	01.0661	210038	01.1635	220036	01.3355	220099	01.0860
190188	00.9079	200041	01.0436	210039	01.0834	220038	01.0907	220100	01.2420
190189	01.1542	200043	00.8824	210040	01.1985	220040	01.1864	220101	01.1869
190190	00.9379	200044	01.0957	210041	01.1318	220041	01.1394	220102	00.8314
190191	01.1548	200047	01.1007	210042	01.1732	220042	01.1201	220104	01.1258
190193	01.1898	200049	00.9532	210043	01.1019	220045	01.1526	220105	01.1037
190194	01.0083	200050	01.1206	210044	01.1783	220046	01.2723	220106	01.1209
190195	00.9344	200051	00.9333	210045	01.0246	220048	01.1454	220107	01.0334
190196	00.9295	200052	00.9938	210046	01.0221	220049	01.1241	220108	01.1132
190197	01.2139	200055	01.0290	210047	01.0386	220050	01.0040	220110	01.7697
190198	01.0612	200056	00.4590	210048	01.1409	220051	01.2061	220111	01.1447
190199	01.1281	200058	00.8477	210049	01.1879	220052	01.1783	220114	01.0719
190200	01.0032	200062	01.0378	210050	01.0234	220053	01.1575	220115	01.1419
190201	00.9332	200063	01.2396	210051	01.1995	220055	01.1870	220116	01.5771
190202	01.1768	200066	01.0992	210052	00.8419	220057	01.1530	220117	01.0707
190203	01.2264	210001	01.2508	210054	01.1260	220058	01.0731	220118	01.6634
190204	01.1213	210002	01.4356	210055	01.1728	220060	01.1053	220119	01.2068
190205	01.1009	210003	01.1601	210056	01.3165	220061	01.1259	220120	01.0439
190206	01.4237	210004	01.2115	210057	01.2307	220062	00.8736	220121	01.0544
190207	00.9711	210005	01.2414	210058	01.6201	220063	01.1321	220123	01.0075
200001	01.2679	210006	01.0607	210059	01.1016	220064	01.1764	220126	01.2396
200002	01.0380	210007	01.4112	220001	01.1518	220065	01.1444	220128	01.0867
200003	01.0133	210008	01.1605	220002	01.2875	220066	01.2296	220129	01.1438
200005	00.9696	210009	01.3671	220003	01.0137	220067	01.2070	220131	01.0497
200006	01.0047	210010	01.1326	220004	01.1644	220068	00.8132	220133	00.8949
200007	00.9814	210011	01.2485	220005	01.0914	220069	00.9858	220135	01.1511
200008	01.2009	210012	01.1830	220006	01.1768	220070	01.1547	220153	00.9908
200009	01.5399	210013	01.1995	220008	01.1475	220071	01.5482	220154	01.0581
200012	01.1041	210015	01.1750	220009	01.1126	220072	01.0857	220156	01.1729
200013	01.1286	210016	01.3429	220010	01.1173	220073	01.1745	220163	01.6098
200015	01.2209	210017	01.0912	220011	01.1397	220074	01.0962	220171	01.3342
200016	01.0791	210018	01.2111	220012	01.2218	220075	00.7084	230001	01.0595
200017	01.1667	210019	01.2695	220015	01.1817	220076	01.1501	230002	01.1358
200018	01.1092	210021	01.1488	220016	01.1550	220077	01.3300	230003	01.1267
200019	01.1713	210022	01.2166	220017	01.2231	220079	01.0678	230004	01.3919
200020	01.0342	210023	01.1735	220019	01.1305	220080	01.1419	230005	01.1128
200021	01.1221	210024	01.1935	220020	01.1478	220081	01.0139	230006	01.1127

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
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TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986 Page 11 of 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
230007	01.0446	230076	01.2149	230137	01.0229	230203	00.9071	240008	01.0422
230008	01.2076	230077	01.4746	230138	00.9419	230204	01.2285	240009	01.0342
230011	01.1109	230078	01.0234	230140	01.0855	230205	01.1379	240010	01.8114
230012	01.1473	230080	01.1505	230141	01.2929	230207	01.0643	240011	01.0172
230013	01.1727	230081	01.0569	230142	01.0666	230208	01.2089	240013	01.2008
230014	00.9950	230082	01.0750	230143	01.1998	230211	00.9630	240014	01.0592
230015	01.1231	230084	01.1264	230144	01.1334	230212	01.0593	240016	01.2478
230017	01.2597	230085	01.0782	230145	01.1028	230213	00.9630	240017	01.2136
230019	01.2008	230086	01.0253	230146	01.1209	230216	01.1732	240018	01.1593
230020	01.2072	230087	01.0444	230147	01.1336	230217	00.9985	240019	01.3579
230021	01.2375	230089	01.1630	230149	01.1140	230219	00.9058	240020	01.1231
230022	01.1865	230090	01.1183	230150	01.3966	230221	01.1713	240021	01.0570
230024	01.3444	230092	01.1809	230151	01.2718	230222	01.1360	240022	01.0600
230027	01.0576	230093	01.1435	230153	01.0832	230223	01.2011	240023	01.0265
230029	01.1990	230095	01.0538	230154	01.0787	230224	01.0646	240024	01.1524
230030	01.1685	230096	01.1068	230155	00.9902	230225	01.0430	240025	01.1427
230031	01.2776	230097	01.1482	230156	01.4113	230227	01.1548	240026	01.3116
230032	01.5200	230098	01.1078	230157	01.1913	230228	01.1944	240027	01.0235
230034	01.0574	230099	01.0887	230158	01.0839	230230	01.2109	240028	01.1153
230035	00.9852	230100	01.0879	230159	01.1414	230231	00.9555	240029	01.1036
230036	01.1974	230101	01.0973	230161	00.8722	230232	00.9732	240030	01.3353
230037	01.0434	230102	01.1993	230162	00.9010	230235	00.9488	240031	00.9698
230038	01.5007	230103	01.0349	230163	00.9275	230236	01.2587	240033	00.9879
230039	01.1705	230104	01.2326	230165	01.3596	230237	01.2591	240036	01.2879
230040	01.1445	230105	01.3299	230167	01.1104	230238	01.0760	240037	01.1665
230041	01.0905	230106	01.0748	230169	01.1679	230239	01.0363	240038	01.4243
230042	01.0999	230107	01.0677	230171	01.0926	230241	01.0535	240040	01.1341
230043	00.8066	230108	01.1167	230172	01.1313	230244	01.1871	240041	01.1399
230046	01.4726	230110	01.1199	230173	01.0824	230253	01.1088	240043	01.1727
230047	01.0938	230111	00.9510	230174	01.1616	230254	01.1539	240044	01.1571
230051	00.9749	230113	00.8780	230175	00.9365	230256	01.0402	240045	01.0818
230053	01.3146	230114	01.0063	230176	01.0858	230257	01.0583	240046	01.2941
230054	01.3270	230115	01.0275	230177	01.0732	230258	01.0608	240047	01.2838
230055	01.0600	230116	00.9234	230178	01.0384	230259	01.0280	240048	01.1557
230056	00.9588	230117	01.6169	230179	00.9893	230264	01.1443	240049	01.4954
230057	01.0402	230118	01.1376	230180	01.0238	230265	01.1986	240050	01.0623
230058	01.0841	230119	01.1677	230181	01.0121	230266	01.0866	240051	01.0694
230059	01.3291	230120	01.0332	230183	01.1534	230269	01.1379	240052	01.1994
230060	01.1104	230121	01.0968	230184	01.0890	230270	01.1440	240053	01.3280
230062	01.0796	230122	01.1996	230186	00.9830	230273	01.1306	240055	01.2575
230063	01.2034	230123	00.8600	230188	01.0907	230275	01.1882	240056	01.2597
230065	01.1742	230124	01.0450	230189	00.9355	230276	01.2777	240057	01.5848
230066	01.1662	230125	01.2697	230190	01.2418	230277	01.1108	240058	00.9792
230067	00.9700	230128	01.2201	230191	00.9000	240001	01.3190	240059	01.0963
230068	01.2140	230129	01.5214	230193	01.1462	240002	01.4129	240061	01.4498
230069	01.1063	230130	01.2915	230194	01.1395	240003	01.1671	240062	01.1622
230070	01.1987	230132	01.1577	230195	01.1875	240004	01.3374	240063	01.2983
230071	00.7441	230133	01.0799	230197	01.0885	240005	00.9303	240064	01.1901
230072	01.1325	230134	00.9941	230199	01.0622	240006	01.1254	240065	00.9257
230075	01.1342	230135	01.1268	230201	00.9494	240007	01.0738	240066	01.2209

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TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
240069	01.0692	240124	01.0566	240187	01.1929	250042	01.0465	250105	00.9303
240071	01.0636	240125	00.9840	240192	01.0536	250043	00.8498	250107	00.9092
240072	01.0033	240127	01.0430	240193	01.1235	250044	00.9416	250109	00.9577
240073	00.9862	240128	01.0681	240194	01.1467	250045	00.9889	250110	00.9104
240074	01.0513	240129	00.9794	240195	00.8451	250046	00.9740	250111	00.8772
240075	01.1479	240130	00.9964	240196	01.4032	250047	00.9081	250112	00.9104
240076	01.1897	240131	01.2593	240200	00.9719	250048	01.2638	250113	01.0005
240077	01.0016	240132	01.2482	240201	00.9199	250049	00.8963	250114	00.8697
240078	01.3121	240133	01.0834	240205	00.8609	250050	01.1703	250117	00.9707
240079	01.0617	240134	01.1346	240206	00.9262	250051	00.8629	250118	01.0434
240080	01.2327	240135	00.9144	240207	01.1758	250057	01.0094	250119	00.8883
240081	01.2658	240136	01.1115	240208	01.0026	250058	01.0847	250120	01.0559
240082	01.2022	240137	01.1069	240210	01.2500	250059	01.0021	250121	00.9595
240083	01.2523	240138	01.0410	250001	01.3454	250060	00.8364	250122	01.0256
240084	01.2201	240139	01.0748	250002	00.8642	250061	01.0073	250123	01.1237
240085	00.8809	240140	00.8626	250003	00.8679	250062	01.0238	250124	00.8802
240086	01.1078	240141	01.0445	250004	01.2280	250063	00.8669	250125	01.0850
240087	01.0681	240142	01.2206	250005	00.9167	250065	00.9677	250126	00.9920
240088	01.3696	240143	00.9993	250006	00.9252	250066	00.9319	250127	00.8672
240089	01.1189	240144	01.0338	250007	01.0604	250067	01.1012	250128	00.9481
240090	01.0586	240145	00.9882	250008	00.8765	250068	00.8462	250129	01.0068
240091	00.9621	240146	01.0570	250009	01.0433	250069	01.0735	250131	01.0489
240093	01.2755	240148	00.9382	250010	00.9524	250071	00.9718	250132	00.9301
240094	01.2631	240150	00.9393	250012	00.8993	250072	01.0812	250133	00.8317
240096	01.1008	240152	01.0465	250014	00.9949	250073	00.8491	250134	01.0195
240097	01.1553	240153	01.0213	250015	00.9737	250075	00.9527	250136	00.8073
240098	00.9752	240154	01.0031	250016	00.8577	250076	00.8793	250137	00.8574
240099	01.0271	240155	00.9945	250017	00.9082	250077	00.9098	250138	01.0173
240100	01.2082	240156	01.0200	250018	00.9687	250078	01.2269	250139	00.9158
240101	01.0778	240157	01.0279	250019	01.0969	250079	00.8563	250140	00.8622
240102	01.0026	240158	01.0485	250020	00.9556	250081	01.1119	260001	01.3757
240103	01.1641	240160	01.0779	250021	00.9756	250082	01.1132	260002	01.1451
240104	01.1923	240161	01.0195	250023	00.9002	250083	00.8424	260003	01.0158
240105	00.9537	240162	01.1666	250024	00.9249	250084	01.0573	260004	01.0125
240106	01.1916	240163	00.9715	250025	00.9494	250085	00.9492	260005	01.1266
240107	01.0525	240165	01.2483	250026	00.8744	250086	00.9452	260006	01.1766
240108	01.0304	240166	01.1152	250027	00.9461	250088	01.0145	260007	01.1360
240109	01.0290	240167	00.9741	250029	00.9083	250089	00.9451	260008	01.1735
240110	01.0737	240169	01.0304	250030	00.9091	250091	00.9687	260009	01.1136
240111	01.0163	240170	01.0782	250031	01.0354	250093	01.1131	260010	01.1223
240112	01.0557	240171	01.0603	250032	01.1178	250094	01.0917	260011	01.1744
240114	01.0561	240172	01.0194	250033	00.8482	250095	00.9757	260012	00.9223
240115	01.2303	240173	01.0150	250034	01.1027	250096	01.0902	260013	01.0532
240116	00.9545	240175	00.9748	250035	00.9002	250097	01.0393	260014	01.3660
240117	01.0920	240176	01.0224	250036	00.9646	250098	00.8747	260015	01.0340
240118	00.9010	240177	01.0329	250037	00.9137	250099	01.0330	260016	01.1806
240119	00.9728	240179	01.0027	250038	00.8744	250100	01.1801	260017	01.2031
240121	01.0678	240180	01.0514	250039	00.9414	250101	00.8663	260018	00.9816
240122	01.0091	240183	01.0363	250040	01.0539	250102	01.3243	260019	01.0726
240123	01.0632	240184	01.0429	250041	00.9273	250104	00.9929	260020	01.3172

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TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986 Page 13 of 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
260021	01.2328	260081	01.2882	260159	01.0437	270030	00.9006	280017	01.0718
260022	01.1919	260082	01.1072	260160	01.0528	270031	00.8757	280018	01.0076
260023	01.1606	260083	01.0527	260162	01.1885	270032	01.0797	280020	01.2589
260024	01.0965	260085	01.1937	260163	01.1402	270033	00.9288	280021	01.2605
260025	01.1112	260086	01.0577	260164	01.0734	270035	00.9540	280022	00.9756
260026	00.9939	260088	01.1039	260165	01.0545	270036	01.0138	280023	01.1975
260027	01.2838	260089	01.0861	260166	01.1270	270039	00.9229	280024	00.8871
260029	01.0932	260090	01.2122	260171	01.0031	270040	01.0734	280025	00.9673
260030	01.0639	260091	01.2664	260172	01.0046	270041	00.9641	280026	00.9464
260031	01.4025	260092	01.0135	260173	01.1621	270042	00.7819	280028	00.9404
260032	01.3751	260093	01.0669	260175	01.1050	270043	00.8201	280029	01.2443
260033	01.2056	260094	01.0514	260176	01.2380	270044	00.9551	280030	01.3945
260034	01.0296	260095	01.1476	260177	01.2059	270046	00.8601	280031	01.0705
260035	00.9670	260096	01.2760	260178	01.2553	270047	00.8838	280032	01.2060
260036	01.0575	260097	01.1328	260179	01.3499	270048	00.9814	280033	00.9914
260037	01.1487	260100	01.1532	260180	01.3289	270049	01.2785	280034	01.2299
260039	01.0941	260102	00.9913	260182	01.0719	270050	00.9761	280035	01.0047
260040	01.3353	260103	01.1964	260183	01.1725	270051	01.1113	280037	01.0838
260041	00.9880	260104	01.3179	260186	01.0503	270052	00.8576	280038	01.1520
260042	01.0777	260105	01.6617	260188	01.1849	270053	00.9283	280039	01.0500
260044	01.0954	260107	01.1751	260189	00.9739	270055	00.8390	280040	01.3985
260045	00.9978	260108	01.4754	260190	01.1200	270057	01.1550	280041	01.0126
260047	01.1663	260109	00.9461	260191	01.1825	270058	01.0454	280042	01.0570
260048	01.1588	260110	01.2486	260192	00.7855	270059	00.8676	280043	01.0184
260049	00.8936	260111	01.0508	260193	01.1357	270060	00.8868	280045	01.0831
260050	01.0488	260112	01.2690	260195	01.0322	270063	00.9307	280046	01.0652
260051	01.0985	260113	01.1028	260197	01.0871	270067	00.9369	280047	01.1591
260052	01.1262	260115	01.0010	270001	00.8750	270068	00.9479	280048	01.0085
260053	01.0828	260116	01.1123	270002	01.0487	270071	00.8237	280049	01.0254
260054	01.1830	260118	01.1752	270003	01.1145	270072	00.8435	280050	01.0420
260055	01.0384	260119	01.1533	270004	01.5478	270073	01.1073	280051	00.9558
260056	01.1229	260120	01.1230	270006	01.0673	270074	00.9019	280052	01.0397
260057	01.0214	260121	00.9694	270007	00.9018	270075	00.9329	280054	01.1077
260058	01.2057	260122	01.0724	270008	00.8588	270076	00.8897	280055	01.0134
260059	00.9841	260123	01.0209	270009	00.8895	270079	00.9323	280056	01.0862
260061	01.0872	260127	01.0765	270011	01.0552	270080	01.0570	280057	01.0523
260062	01.1284	260128	00.9881	270012	01.2691	270081	00.9581	280058	01.1470
260063	01.1274	260129	01.1723	270013	01.1576	270082	00.9150	280060	01.2340
260064	01.1636	260131	01.2653	270014	01.4451	270083	01.1181	280061	01.2177
260065	01.3026	260133	01.0360	270016	00.9520	280001	01.0793	280062	01.0930
260066	01.0266	260134	01.0895	270017	01.1680	280003	01.5226	280063	01.0174
260067	00.9911	260137	01.1768	270018	00.9894	280004	01.0820	280064	01.0431
260068	01.6489	260138	01.5237	270019	00.8996	280005	01.2396	280065	01.1809
260070	01.0037	260141	01.5798	270021	01.0079	280009	01.2169	280066	01.0416
260073	00.9642	260142	01.1376	270023	01.2650	280010	01.2197	280068	00.9626
260074	01.0753	260143	01.2650	270024	01.0019	280011	01.0771	280070	00.9916
260077	01.1917	260146	00.8761	270026	00.8887	280012	01.2300	280071	00.9665
260078	01.0617	260147	01.0669	270027	00.9776	280013	01.3689	280073	00.9949
260079	01.0610	260148	00.9676	270028	01.0236	280014	00.9643	280074	01.0726
260080	00.9953	260158	01.1020	270029	00.9463	280015	00.9619	280075	01.1031

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE., 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986 Page 14 of 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
280076	01.0411	290013	01.0417	310009	01.1197	310064	01.1728	320017	01.0996
280077	01.2169	290014	01.0503	310010	01.1750	310067	01.1787	320018	01.1417
280078	01.0142	290015	00.9149	310011	01.1897	310068	01.1446	320019	01.2417
280079	00.9359	290016	01.0576	310012	01.1944	310069	01.0801	320021	01.4798
280080	00.9683	290018	00.9070	310013	01.1368	310070	01.1816	320022	01.1975
280081	01.2485	290019	01.1576	310014	01.2861	310071	01.0737	320023	01.0325
280082	00.9151	290020	00.9120	310015	01.2167	310072	01.1408	320030	01.0080
280083	01.0721	290021	01.4080	310016	01.1209	310073	01.1685	320031	00.9142
280084	00.9568	290022	01.4370	310017	01.1509	310074	01.1985	320032	00.9877
280085	01.1856	290027	00.9530	310018	01.0995	310075	01.1915	320033	01.1838
280087	01.2498	290028	00.9719	310019	01.4337	310076	01.1958	320035	00.9223
280088	01.3672	290029	00.8045	310020	01.1220	310077	01.3710	320037	01.1464
280089	00.9263	290031	01.2186	310021	01.1594	310078	01.1248	320038	01.0933
280090	00.9759	290032	01.2412	310022	01.1553	310081	01.1593	320046	01.0704
280091	01.0422	290033	01.0776	310024	01.1422	310083	01.1276	320048	01.0562
280092	00.9394	290034	01.0036	310025	01.1053	310084	01.1783	320049	01.0546
280093	00.8908	300001	01.1828	310026	01.1278	310085	01.1674	320051	01.0554
280094	01.0119	300002	01.0869	310027	01.1643	310086	01.1762	320053	00.9617
280097	00.9982	300003	01.4949	310028	01.0953	310087	01.1421	320056	00.8646
280098	00.9398	300005	01.1991	310029	01.5615	310088	01.1220	320057	01.1178
280101	01.0400	300006	01.0630	310031	02.2514	310090	01.1607	320058	00.8422
280102	00.9929	300007	01.0782	310032	01.0896	310091	01.1656	320059	01.1098
280103	00.9910	300008	01.0748	310033	01.0601	310092	01.1648	320060	00.9290
280104	00.9825	300009	01.0932	310034	01.1231	310093	01.0444	320061	01.0767
280105	01.1387	300010	01.1282	310036	01.1529	310094	01.0874	320062	00.8924
280106	01.0231	300011	01.1424	310037	01.1699	310096	01.2858	320063	01.1272
280107	00.9744	300012	01.1575	310038	01.3662	310105	01.0427	320065	01.0982
280108	01.0520	300013	01.0604	310039	01.1935	310108	01.1760	320066	00.8221
280109	00.9720	300014	01.1839	310040	01.1249	310110	01.1592	320067	00.9006
280110	01.0574	300015	01.0810	310041	01.1852	310111	01.1709	320068	01.1283
280111	01.0974	300016	01.0152	310042	01.0957	310112	01.1396	320069	01.0919
280114	01.0228	300017	01.2445	310043	01.1337	310113	01.1284	320070	01.0834
280115	01.1177	300018	01.1685	310044	01.1634	310115	01.1160	320071	00.9411
280116	01.0038	300019	01.0844	310045	01.1470	310116	01.1992	320073	00.9628
280117	01.0631	300020	01.1180	310047	01.2640	310118	01.1330	320074	01.1823
280118	01.0286	300021	01.0654	310048	01.1541	310119	01.1523	320075	00.5716
280119	00.8664	300022	01.0874	310049	01.1375	310120	01.0623	320076	01.0848
280122	00.8682	300023	01.1240	310050	01.1048	320001	01.3079	320077	00.9905
280123	00.6412	300024	01.1917	310051	01.2365	320002	01.1820	330001	01.1371
290001	01.3702	300028	01.0929	310052	01.1748	320003	01.1598	330002	01.1791
290002	00.9284	300029	01.1662	310053	01.1398	320004	01.0948	330003	01.2228
290003	01.3360	300032	00.9202	310054	01.2548	320005	01.1859	330004	01.1092
290005	01.1660	300033	01.0243	310056	01.1943	320006	01.1463	330005	01.3672
290006	00.9953	300034	01.2095	310057	01.2125	320009	01.2114	330006	01.2261
290007	01.3906	310001	01.3622	310058	01.0128	320010	01.1867	330007	01.1326
290008	01.1794	310002	01.6083	310059	00.8322	320011	01.0235	330008	01.1123
290009	01.2872	310003	01.1217	310060	01.2169	320012	00.9996	330009	01.0084
290010	01.0014	310005	01.1587	310061	01.1010	320013	00.9960	330010	01.1127
290011	00.9890	310006	01.1277	310062	00.9751	320014	00.9559	330011	01.1349
290012	01.2572	310008	01.2079	310063	01.1993	320016	01.0181	330012	01.2600

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE., 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
330013	01.6498	330080	01.0794	330155	01.1207	330217	01.0241	330288	01.0261
330014	01.1633	330082	01.1447	330157	01.1764	330218	01.0978	330290	01.3684
330015	01.1307	330084	00.9935	330158	01.1473	330219	01.2175	330291	01.0086
330016	01.0067	330085	01.2894	330159	01.2456	330221	01.1877	330293	01.0573
330019	01.1301	330086	01.1271	330160	01.1612	330222	01.1311	330297	01.0693
330020	00.9958	330088	01.1688	330161	01.0456	330223	00.9943	330304	01.1608
330022	01.0341	330090	01.4222	330162	01.2092	330224	01.1558	330306	01.2230
330023	01.1521	330091	01.1476	330163	01.0713	330225	01.0934	330307	01.0917
330024	01.4484	330092	01.0410	330164	01.2863	330226	01.1325	330308	01.0968
330025	00.9916	330094	01.1767	330165	01.0434	330229	01.1538	330309	01.1150
330027	01.1756	330095	01.1180	330166	01.0307	330230	01.1983	330314	01.1448
330028	01.1735	330096	01.0245	330167	01.3120	330231	01.0617	330315	01.0980
330029	01.1522	330097	01.0834	330168	01.0566	330232	01.1572	330316	01.2322
330030	01.0120	330100	00.6214	330169	01.2000	330233	01.1571	330318	01.0737
330033	01.1990	330101	01.3671	330171	01.1894	330234	01.6674	330320	01.1085
330034	01.1274	330102	01.2022	330174	01.0402	330235	01.1527	330323	01.6492
330036	01.0343	330103	01.1833	330175	01.0528	330236	01.2136	330327	00.9521
330037	01.0772	330104	01.1610	330176	00.9075	330238	01.0886	330331	01.0855
330038	01.0536	330106	01.3999	330177	01.0460	330239	01.0819	330332	01.0719
330039	01.0780	330107	01.1644	330179	00.9233	330240	01.0552	330333	01.0851
330041	01.0944	330108	01.1930	330180	01.1558	330241	01.6022	330335	01.1069
330043	01.1073	330109	00.9059	330181	01.1728	330242	01.1579	330336	01.1318
330044	01.1673	330110	00.9692	330182	01.9515	330244	01.0804	330338	01.0909
330045	01.1502	330111	01.1136	330183	01.2785	330245	01.1511	330339	00.8853
330046	01.1996	330114	00.9788	330184	01.1556	330246	01.1496	330340	01.0428
330047	01.1238	330115	01.0797	330185	01.1235	330247	00.6298	330345	00.8246
330048	01.1121	330116	01.0060	330186	01.0998	330249	01.1360	330350	01.4927
330049	01.2098	330117	01.1728	330188	01.1331	330250	01.1032	330351	01.0071
330050	01.0374	330118	01.2436	330189	00.6658	330252	00.9055	330353	01.1075
330052	01.0838	330119	01.2096	330191	01.1300	330254	01.0038	330357	01.1628
330053	01.0429	330120	01.4357	330193	01.2245	330256	00.9207	330359	00.9833
330055	01.2121	330121	01.0296	330194	01.3622	330257	01.0284	330361	00.8842
330056	01.1753	330122	01.0963	330195	01.3468	330258	01.1098	330362	00.7793
330057	01.2820	330125	01.4827	330196	01.1609	330259	01.1774	330363	00.7666
330058	01.1310	330126	01.1038	330197	01.0289	330261	01.1830	330366	00.7902
330059	01.3326	330127	01.1088	330198	01.1882	330263	01.0032	330367	00.7937
330061	01.1742	330128	01.1584	330199	01.1298	330264	01.0574	330368	00.7734
330062	00.9607	330132	01.0974	330201	01.2204	330265	01.1966	330369	00.7632
330064	01.1866	330133	01.1032	330202	01.1342	330267	01.1380	330371	00.8597
330065	01.1162	330135	01.1361	330203	01.2720	330268	01.1745	330372	01.1229
330066	01.0915	330136	01.2201	330204	01.1277	330270	01.7688	330373	00.8560
330067	01.2153	330140	01.3620	330205	01.0552	330272	00.9735	330381	01.0194
330072	01.2324	330141	01.1279	330208	01.1266	330273	01.0579	330383	01.1135
330073	01.0983	330142	01.1636	330209	01.1079	330275	01.1550	330385	01.0735
330074	01.1491	330144	01.0319	330210	01.0468	330276	01.1028	330386	01.1351
330075	01.0432	330148	01.0314	330211	01.0821	330277	01.1146	330387	00.8903
330076	01.1138	330150	00.9022	330212	01.1073	330279	01.1304	330389	01.6020
330077	01.0898	330151	01.0658	330213	01.0158	330281	00.7607	330390	01.1175
330078	01.2491	330152	01.2185	330214	01.5078	330285	01.4402	330391	01.5482
330079	01.2152	330153	01.1622	330215	01.1327	330286	01.1409	330393	01.3859

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE., 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
330394	01.1705	340049	00.7340	340120	01.0618	350014	00.9572	360011	01.2695
330395	01.1701	340050	01.1104	340121	01.0542	350015	01.4091	360012	01.2099
330396	01.0547	340051	01.1639	340122	01.1299	350016	01.0977	360013	01.0992
330397	01.2028	340052	00.9794	340123	01.1265	350017	01.1322	360014	01.1134
330398	01.0779	340053	01.3269	340124	00.9745	350018	01.0106	360015	01.3379
330399	01.1322	340054	00.9743	340125	01.3120	350019	01.3025	360016	01.2076
340001	01.1607	340055	01.1540	340126	01.1733	350020	01.1930	360017	01.2708
340002	01.4377	340060	01.1140	340127	01.1236	350021	01.0183	360018	01.1809
340003	01.0951	340061	01.4685	340129	01.1070	350023	01.0197	360019	01.1441
340004	01.2827	340063	01.1133	340130	01.1626	350024	00.9716	360020	01.1425
340005	01.2238	340064	01.0706	340131	01.2304	350025	00.9722	360021	01.1546
340006	01.1057	340065	01.1047	340132	01.1861	350027	00.9570	360022	01.0630
340007	01.1159	340067	01.0216	340133	01.0125	350029	00.9260	360024	01.0931
340008	01.0207	340068	01.1563	340135	00.9331	350030	01.0724	360025	01.0715
340009	00.8941	340069	01.5143	340136	00.9573	350031	00.9662	360026	01.1322
340010	01.2612	340070	01.2652	340137	01.0416	350032	01.1277	360027	01.3446
340011	01.0585	340071	01.0455	340138	01.0579	350033	00.9239	360028	01.1199
340012	01.1127	340072	01.0923	340141	01.2372	350034	00.9593	360029	01.0492
340013	01.1711	340073	01.1738	340142	01.1923	350035	00.8728	360030	01.0572
340014	01.2546	340075	01.1274	340143	01.2740	350036	00.9546	360031	01.1779
340015	01.1997	340076	01.0523	340144	01.1324	350038	00.9245	360032	01.1270
340016	01.1455	340079	00.9619	340145	01.1015	350039	00.9731	360034	01.0780
340017	01.1514	340080	01.0062	340146	01.0035	350041	00.9764	360035	01.3109
340018	01.2275	340084	01.0851	340147	01.1821	350042	00.9565	360036	01.1007
340019	01.0745	340085	01.2296	340148	01.1933	350043	01.1548	360037	01.4290
340020	01.1024	340087	01.0620	340151	01.0696	350044	00.9041	360038	01.1986
340021	01.2039	340088	01.1125	340153	01.8688	350047	00.9521	360039	01.1437
340022	01.1191	340089	01.0664	340154	00.9002	350048	00.9503	360040	01.1503
340023	01.0997	340090	01.1252	340155	01.3179	350049	01.0403	360041	01.1651
340024	01.1270	340091	01.4546	340156	00.9015	350050	00.9395	360042	01.0512
340025	01.1331	340093	01.0651	340157	01.1928	350051	00.8837	360044	01.1408
340026	00.9420	340094	01.1913	340158	01.0746	350053	00.9884	360045	01.2892
340027	01.1207	340096	01.1122	340159	01.0753	350055	00.8771	360046	01.0163
340028	01.2131	340097	01.0221	340160	01.0846	350056	00.9237	360047	01.0120
340030	01.5589	340098	01.4511	340162	01.1813	350058	00.8834	360048	01.3541
340031	01.0666	340099	01.2044	340164	01.1543	350060	01.0306	360049	01.1185
340032	01.2444	340100	01.1924	340166	01.1808	350061	01.0170	360050	01.0929
340034	01.2575	340101	01.1689	350001	00.8918	350063	00.8504	360051	01.2669
340035	01.0885	340104	00.9273	350002	01.3771	350064	00.8931	360052	01.2712
340036	01.0191	340105	01.2291	350003	01.0831	350065	01.0107	360053	01.1806
340037	01.1964	340106	01.0508	350004	01.4686	350066	00.9868	360054	01.1579
340038	01.2023	340107	01.2079	350005	01.1659	350067	00.8471	360055	01.1878
340039	01.1465	340109	01.2608	350006	01.0750	360001	01.1497	360056	01.1393
340040	01.4637	340111	01.2215	350007	00.9290	360002	01.1205	360057	01.0313
340041	01.1616	340112	01.0744	350008	00.8992	360003	01.2246	360058	01.0642
340042	01.1379	340113	01.7059	350009	01.1575	360006	01.4079	360059	01.2441
340044	01.0241	340114	01.2138	350010	01.0507	360007	01.0458	360060	01.0193
340045	01.0851	340115	01.2901	350011	01.4926	360008	01.1095	360061	00.8850
340047	01.5507	340116	01.4082	350012	01.0075	360009	01.1716	360062	01.3355
340048	00.8626	340119	01.2059	350013	00.9740	360010	01.1057	360063	01.0534

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE,, 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986 Page 17 of 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
360064	01.2911	360119	01.0708	360176	01.2025	370020	01.1582	370089	01.1202
360065	01.1711	360121	01.1353	360177	01.0489	370021	00.9900	370090	00.9922
360066	01.1374	360122	01.1474	360178	01.1027	370022	01.1525	370091	01.4200
360067	01.1038	360123	01.1208	360179	01.1504	370023	01.1353	370092	00.9875
360068	01.2647	360124	01.1379	360180	01.8290	370025	01.1993	370093	01.3985
360069	01.0298	360125	01.1036	360184	01.0613	370026	01.2444	370094	01.1659
360070	01.1843	360126	01.1255	360185	01.1258	370028	01.4192	370095	01.0588
360071	01.1800	360127	01.0102	360186	00.8847	370029	01.0498	370096	01.1923
360072	01.1506	360128	01.1175	360187	01.1326	370030	01.0662	370097	01.1378
360074	01.1836	360129	00.9837	360188	01.0326	370032	01.1649	370099	00.9752
360075	01.2203	360130	01.0917	360189	01.0188	370033	01.0207	370100	00.9728
360076	01.1558	360131	01.1144	360192	01.2004	370034	01.0754	370103	00.9977
360077	01.2427	360132	01.1148	360193	01.1448	370035	01.3475	370105	01.8034
360078	01.0978	360133	01.2397	360194	01.0587	370036	01.0246	370106	01.2327
360079	01.3247	360134	01.3136	360195	01.1235	370037	01.5105	370107	00.9717
360080	01.1231	360135	01.0701	360197	01.0339	370038	00.9652	370108	00.9905
360081	01.1106	360136	00.9796	360200	01.0991	370039	01.1465	370109	00.8481
360082	01.1818	360137	01.3812	360203	01.1003	370040	01.0810	370110	00.9593
360083	01.0662	360139	01.0722	360204	01.1031	370041	01.0097	370112	00.9617
360084	01.2543	360140	01.0633	360210	01.0797	370042	00.8865	370113	01.0236
360085	01.4700	360141	01.2463	360211	01.0717	370043	00.9406	370114	01.4294
360086	01.1311	360142	01.0324	360212	01.2111	370045	01.0434	370117	01.0690
360087	01.2323	360143	01.1523	360213	01.0960	370046	01.0104	370121	01.1783
360088	01.0541	360144	01.2066	360218	01.1454	370047	01.0926	370122	00.8967
360089	01.1131	360145	01.2563	360230	01.1983	370048	00.9714	370123	01.1453
360090	01.1246	360147	01.0966	360231	01.0679	370049	01.1227	370125	00.9340
360091	01.1818	360148	01.1220	360232	01.1725	370050	01.0236	370126	01.0600
360092	01.0724	360149	01.0493	360234	01.1596	370051	00.9600	370130	00.9513
360093	01.0517	360150	01.1924	360236	01.0806	370054	01.1290	370131	00.9596
360094	01.0945	360151	01.2553	360238	01.0180	370056	01.1699	370133	00.9862
360095	01.1595	360152	01.2405	360239	01.1263	370057	01.1775	370136	01.0122
360096	01.0774	360153	01.0976	360240	01.1070	370059	01.0751	370138	00.9955
360098	01.2290	360154	01.0471	360241	00.9076	370060	01.0876	370139	01.0110
360099	01.0763	360155	01.1031	360345	01.2223	370061	00.9739	370140	01.0136
360100	01.1754	360156	01.0802	370001	01.4678	370063	01.0826	370141	01.2409
360101	01.3673	360159	01.0929	370002	01.0071	370064	00.9340	370144	01.2057
360102	01.2107	360161	01.1052	370004	01.0563	370065	01.0797	370146	01.0339
360103	01.1882	360162	01.0894	370005	00.9311	370069	00.9740	370148	01.2240
360104	01.0851	360163	01.4014	370006	01.1222	370071	00.9000	370149	01.1778
360106	01.1737	360164	01.0526	370007	01.1434	370072	00.9172	370153	01.0529
360107	01.0906	360165	01.0504	370008	01.1859	370076	01.1328	370154	01.0077
360108	01.0690	360166	01.0015	370011	00.9670	370077	01.1328	370156	01.0146
360109	01.0193	360167	00.9014	370012	00.9516	370078	01.2948	370157	00.9863
360110	00.8321	360168	00.9674	370013	01.3452	370079	00.9191	370158	00.9983
360112	01.3203	360169	00.9585	370014	01.0444	370080	01.0309	370159	01.1698
360113	01.1776	360170	01.0549	370015	01.1032	370082	00.9801	370161	01.1272
360114	01.0031	360171	01.0698	370016	01.1999	370083	01.0238	370163	00.9193
360115	01.1232	360172	01.1590	370017	00.9989	370084	00.9224	370165	00.9509
360116	01.0766	360174	01.0633	370018	01.1933	370085	00.9705	370166	00.9922
360118	01.1868	360175	01.0778	370019	01.0168	370086	01.0867	370168	00.9172

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE., 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
370169	01.0494	380040	01.0275	390010	01.1082	390063	01.3967	390118	01.0281
370170	01.0628	380041	00.9251	390011	01.1188	390064	01.1418	390119	01.2154
370171	01.0388	380042	01.0875	390012	01.1826	390065	01.1726	390121	01.1321
370172	00.9390	380043	00.9897	390013	01.1031	390066	01.1755	390122	01.0675
370173	01.1258	380044	01.0381	390014	00.9103	390067	01.3492	390123	01.1520
370174	00.8442	380045	01.1026	390015	01.0730	390068	01.1293	390125	01.1053
370176	01.1278	380047	01.2531	390016	01.0604	390069	01.1779	390126	01.1647
370177	00.9865	380048	00.9335	390017	01.0282	390070	01.0844	390127	01.0655
370178	01.0413	380050	01.1631	390018	01.1451	390071	01.0743	390128	01.1130
370179	00.9792	380051	01.2484	390019	01.0722	390072	00.9867	390130	01.0522
370180	01.0761	380052	01.1451	390020	01.0770	390073	01.1206	390131	01.1562
370181	00.9369	380055	01.2027	390021	01.1197	390074	01.1847	390132	01.0554
370182	00.9653	380056	00.9719	390022	01.1107	390075	01.1739	390133	01.2467
370183	01.0369	380059	01.0154	390023	01.1145	390076	01.1574	390135	01.1252
370184	01.2745	380060	01.2724	390024	00.7516	390077	01.1219	390136	01.0966
370187	00.7096	380061	01.3881	390025	00.7566	390078	01.0365	390137	01.0876
380001	01.3320	380062	00.9072	390026	01.2667	390079	01.5527	390138	01.2386
380002	01.1629	380063	01.1466	390027	01.2946	390080	01.1561	390139	01.3525
380003	01.1942	380064	01.1538	390028	01.4168	390081	01.2084	390142	01.3553
380004	01.6029	380065	01.1242	390029	01.2828	390083	01.1049	390143	00.9051
380005	01.1695	380066	01.2037	390030	01.0772	390084	00.9787	390145	01.1084
380006	01.1178	380068	01.0627	390031	01.1251	390086	01.0587	390146	01.0934
380007	01.4396	380069	00.9760	390032	01.1322	390087	01.0168	390147	01.0886
380008	01.0764	380070	01.0115	390034	01.1087	390088	01.2148	390148	01.0837
380009	01.4405	380071	01.1545	390035	01.1613	390090	01.3439	390149	01.1337
380010	01.1734	380072	00.9509	390036	01.1615	390091	01.0647	390150	01.0776
380011	01.1116	380074	00.9450	390037	01.1493	390092	01.0435	390151	01.1646
380013	01.1049	380075	01.1991	390039	01.0198	390093	01.0858	390152	01.0839
380014	01.1461	380077	00.9434	390040	00.9899	390095	01.0997	390153	01.1637
380016	00.9188	380078	01.0257	390041	01.1003	390096	01.1634	390154	01.0842
380017	01.5102	380079	01.1963	390042	01.1174	390097	01.2135	390155	01.2377
380018	01.4508	380081	00.9600	390043	01.0017	390098	01.3995	390156	01.1736
380019	01.1079	380082	01.1737	390044	01.3829	390099	01.0832	390157	01.1156
380020	01.2015	380083	01.0753	390045	01.1944	390100	01.4350	390158	01.2053
380021	01.2225	380084	01.2873	390046	01.2939	390101	01.1690	390159	01.1688
380022	01.1263	380087	00.9254	390047	01.3471	390102	01.2137	390160	01.0525
380023	01.0925	380088	01.0206	390048	01.1261	390103	01.0408	390161	00.9925
380024	01.1535	380089	01.2522	390049	01.2519	390104	01.0273	390162	01.1709
380025	01.2835	380090	01.2707	390050	01.1332	390106	01.0336	390163	01.1361
380026	01.1558	380091	01.2146	390051	01.5917	390107	01.1198	390164	01.4633
380027	01.1201	380094	00.9308	390052	01.0772	390108	01.1757	390165	01.0511
380029	01.0395	390001	01.1830	390054	01.1150	390109	01.0231	390166	01.0855
380030	01.0819	390002	01.1697	390055	01.4676	390110	01.0888	390167	01.1238
380031	00.9605	390003	01.1245	390056	01.1043	390111	01.5241	390168	01.0835
380033	01.3937	390004	01.1609	390057	01.2597	390112	01.0968	390169	01.1077
380035	01.2094	390005	01.0113	390058	01.1961	390113	01.1033	390170	01.5537
380036	01.0649	390006	01.3867	390059	01.3105	390114	01.0734	390171	01.0424
380037	01.0881	390007	01.1031	390060	01.1370	390115	01.1839	390172	01.0553
380038	01.2008	390008	01.0985	390061	01.2033	390116	01.1199	390173	01.0904
380039	01.2060	390009	01.2614	390062	01.1007	390117	01.0262	390174	01.5339

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE., 1987.

TABLE 3C.-HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
390176	01.0975	390244	00.9066	420023	01.1316	420084	00.7076	430060	00.9830
390177	00.9812	390245	01.1897	420024	00.9112	420085	01.1300	430062	00.8732
390178	01.1898	390246	01.0624	420026	01.5104	420086	01.1658	430064	01.0150
390179	01.1379	390247	01.0215	420027	01.1323	420087	01.2893	430065	00.9923
390180	01.2099	390249	01.0160	420028	00.9486	420088	01.1333	430066	00.8939
390181	01.0558	390252	01.0544	420029	02.1057	420089	01.1076	430072	01.0252
390183	01.0118	390256	01.5229	420030	01.0443	430001	01.1313	430073	01.0243
390184	01.0394	390258	01.1297	420031	00.8911	430004	01.0585	430076	00.9321
390185	01.1518	390260	01.1192	420032	00.9528	430005	01.0833	430077	01.1959
390186	01.0392	390261	01.5935	420033	01.1183	430007	01.0122	430079	01.0195
390187	01.0916	390262	01.1549	420035	00.6660	430008	01.1292	430080	00.8924
390188	01.0853	390263	01.3163	420036	01.1440	430009	01.0120	430081	00.9287
390189	01.0200	390265	01.1601	420037	01.1018	430010	01.0503	430082	00.9042
390191	01.0949	390266	01.1130	420038	01.0535	430011	01.1722	430083	00.8640
390192	01.0105	390267	01.0636	420039	01.0398	430012	01.2496	430084	00.8566
390193	01.1125	390268	01.1130	420040	01.1857	430013	01.1081	430085	00.8919
390194	00.9899	390270	01.1413	420042	01.0459	430014	01.1711	430086	01.0052
390195	01.3877	390272	00.8821	420043	01.0459	430015	01.0567	430087	00.8621
390197	01.2103	390275	00.8183	420044	01.0703	430016	01.2778	430088	00.9948
390198	01.0913	410001	01.1737	420048	01.0357	430017	01.0774	440001	01.0801
390199	01.1940	410002	01.1115	420049	00.9915	430018	00.9598	440002	01.3283
390200	01.0410	410004	01.1935	420050	00.9504	430020	01.0054	440003	01.1074
390201	01.2063	410005	01.2479	420051	01.2308	430022	00.8644	440005	00.9616
390203	01.1896	410006	01.1965	420053	00.9579	430023	01.0116	440006	01.1609
390204	01.1143	410007	01.3388	420054	01.0518	430024	00.9802	440007	00.9943
390205	01.1584	410008	01.1001	420055	00.9811	430025	00.9882	440008	00.9915
390206	01.1547	410009	01.1721	420056	01.0612	430026	00.9674	440009	01.0134
390209	00.9532	410010	00.9479	420057	01.0615	430027	01.4614	440010	01.0035
390211	01.0512	410011	01.1368	420059	01.0945	430028	00.9451	440011	01.1472
390213	00.9027	410012	01.3541	420061	01.0574	430029	00.8938	440012	01.1500
390215	01.1530	410013	01.0987	420062	01.0549	430030	01.0819	440014	00.9827
390217	01.0656	410014	01.1330	420064	01.0245	430031	00.8746	440015	01.4384
390219	01.1600	410016	01.0059	420065	01.1511	430033	01.0972	440016	00.9530
390220	01.0910	420002	01.1243	420066	00.9295	430034	01.0024	440017	01.2475
390222	01.1785	420003	01.0447	420067	01.0124	430036	01.0265	440018	01.1137
390223	01.5870	420004	01.3808	420068	01.1454	430037	00.8825	440019	01.3086
390224	00.8782	420005	01.0436	420069	01.0226	430038	01.0572	440020	00.9902
390225	01.1091	420006	01.1392	420070	01.1633	430039	00.9127	440022	01.0533
390226	01.3350	420007	01.2711	420071	01.1537	430040	00.9885	440023	00.9664
390228	01.1880	420009	01.1545	420072	00.8918	430041	01.0097	440024	01.1232
390229	01.2219	420010	01.0190	420073	01.1456	430042	01.0420	440025	01.0769
390231	01.2325	420011	01.0338	420074	00.9720	430043	01.1026	440026	01.1095
390232	01.0378	420014	00.9935	420075	00.9452	430044	00.8897	440028	01.0182
390233	01.2135	420015	01.1060	420076	00.8486	430047	01.0028	440029	01.1538
390234	01.1729	420016	01.0298	420078	01.2734	430048	01.0051	440030	01.0986
390235	01.4332	420017	00.9902	420079	01.2730	430049	00.8878	440031	00.9816
390236	01.0439	420018	01.3447	420080	01.0523	430051	01.0036	440032	01.0105
390237	01.3480	420019	01.0803	420081	00.9714	430054	00.9085	440033	01.0352
390238	00.7864	420020	01.0637	420082	01.1336	430056	00.8824	440034	01.1393
390242	01.1361	420022	01.0091	420083	01.0767	430057	00.8731	440035	01.1203

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE., 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
440038	00.9927	440113	01.0264	440183	01.2042	450045	01.0961	450111	01.0901
440039	01.3993	440114	01.0380	440184	01.1003	450046	01.1995	450112	01.1829
440040	00.9164	440115	01.0650	440185	01.0716	450047	01.0326	450113	01.1137
440041	00.9225	440117	00.8617	440186	01.0012	450048	01.0691	450115	01.0544
440046	01.0365	440120	01.1575	440187	01.0145	450050	01.0254	450116	01.2182
440047	00.9743	440121	01.0263	440189	01.2136	450051	01.5088	450118	01.2216
440048	01.3140	440125	01.1882	440191	00.9992	450052	01.1275	450119	01.1933
440049	01.3003	440128	00.8479	440192	00.9982	450053	01.0269	450121	01.2299
440050	01.0567	440130	01.1009	440193	01.0255	450054	01.3805	450122	00.9187
440051	00.9878	440131	01.0231	440194	01.0632	450055	01.0100	450123	01.1151
440052	00.9181	440132	00.9928	440196	00.9980	450056	01.3220	450124	01.3812
440053	01.1548	440133	01.3023	440197	01.1853	450057	01.1535	450126	01.2435
440054	00.9539	440134	01.0861	440200	00.9888	450058	01.2749	450127	01.0339
440055	01.1123	440135	01.0832	440202	00.9003	450059	01.1460	450128	01.1547
440056	00.9498	440136	01.0705	440203	01.0564	450060	01.1988	450130	01.2904
440057	00.9775	440137	01.0278	440204	01.2081	450063	00.9776	450131	01.1554
440058	01.0184	440141	00.9161	450002	01.1433	450064	01.3226	450132	01.3092
440059	01.0702	440142	00.8380	450004	01.0793	450065	01.0346	450133	01.1714
440060	01.0571	440143	00.9543	450005	00.9567	450066	01.3408	450134	01.0865
440061	01.1166	440144	01.0542	450007	01.2053	450068	01.2702	450135	01.3452
440063	01.0881	440145	00.9650	450008	01.1768	450069	00.9853	450136	00.7978
440064	00.9207	440146	00.8925	450010	01.1610	450070	01.0954	450137	01.1869
440065	01.0409	440147	00.7415	450011	01.2187	450072	01.1340	450140	00.8516
440067	01.0276	440148	01.0764	450013	01.2103	450073	01.0641	450141	00.9160
440068	01.1276	440149	01.0089	450014	01.0091	450074	01.0788	450142	01.1245
440069	01.1337	440150	01.1753	450015	01.3143	450077	01.0221	450143	01.0341
440070	00.9587	440151	01.0613	450016	01.2840	450078	00.9588	450144	01.0369
440071	01.1364	440152	01.3127	450018	01.3357	450079	01.1579	450145	01.0072
440072	01.1223	440153	00.9054	450019	01.2103	450080	01.1613	450146	00.9003
440073	01.1442	440154	00.8918	450020	01.0569	450081	01.1815	450147	01.1542
440074	00.9141	440156	01.2091	450021	01.4930	450082	00.9422	450148	01.1550
440078	00.9401	440157	00.8963	450022	01.0187	450083	01.2652	450149	01.1834
440079	00.8716	440159	01.0906	450023	01.2998	450084	01.0786	450150	01.0631
440081	01.0964	440160	00.9616	450024	01.1736	450085	01.0934	450151	01.0239
440082	01.6100	440161	01.4237	450025	01.2815	450087	01.2186	450152	01.1973
440083	00.9403	440162	00.9908	450027	01.1044	450090	01.1349	450153	01.2731
440084	01.0410	440166	01.1936	450028	01.2483	450092	01.0439	450154	01.1399
440087	00.9001	440167	01.1917	450029	01.1249	450094	01.1038	450155	01.0603
440090	01.0622	440168	01.0226	450031	01.2116	450095	01.1121	450157	01.0534
440091	01.2863	440170	00.7451	450032	01.1404	450096	01.3086	450160	00.8806
440095	00.9661	440171	01.0508	450033	01.3767	450097	01.2123	450162	01.2607
440100	00.9641	440173	01.0880	450034	01.3318	450098	01.0363	450163	01.0273
440101	00.8865	440174	00.9140	450035	01.2225	450099	01.0800	450164	00.9707
440102	01.0528	440175	01.0026	450037	01.2061	450101	01.2188	450165	01.0116
440103	01.0437	440176	01.1213	450039	01.1476	450102	01.3907	450166	01.0010
440104	01.2753	440177	00.9531	450040	01.2821	450104	01.0800	450169	00.8949
440105	00.6748	440178	01.1372	450041	00.9800	450107	01.2200	450170	01.1074
440109	01.0732	440180	00.9886	450042	01.3875	450108	00.9687	450174	01.1573
440110	01.0519	440181	01.0331	450043	01.1908	450109	01.0441	450175	01.0967
440111	01.1348	440182	00.9167	450044	01.4603	450110	01.1504	450176	01.1470

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE.. 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986 Page 21 of 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
450177	01.0423	450250	00.8227	450333	01.0831	450421	01.0627	450544	01.1167
450178	00.9429	450253	01.0591	450334	01.0342	450422	00.6848	450545	01.0725
450179	01.0656	450256	00.9225	450337	01.0261	450423	01.2940	450546	01.1491
450181	00.9562	450258	00.8474	450338	01.3465	450424	01.1490	450547	00.9301
450182	00.8860	450259	01.1200	450340	01.1451	450425	00.9767	450550	01.1233
450183	01.1060	450260	00.7096	450341	00.9314	450429	01.0371	450551	01.0053
450184	01.3170	450261	00.9565	450342	00.9598	450431	01.2970	450557	00.9682
450185	00.9449	450263	01.1263	450343	01.0288	450438	01.0640	450558	01.3627
450187	01.2678	450264	00.8701	450346	01.1683	450440	00.9358	450559	00.9293
450188	00.9404	450268	01.0369	450347	01.1071	450446	00.9371	450561	01.3035
450190	01.1451	450269	00.9700	450348	01.0527	450447	01.2005	450563	01.1347
450191	01.1800	450270	01.0016	450349	01.1049	450450	01.0482	450565	01.1618
450192	01.0966	450271	01.0928	450351	01.1183	450451	00.9355	450568	01.1275
450193	01.9696	450272	01.1590	450352	01.1623	450454	00.9748	450569	01.1312
450194	01.0613	450275	01.0476	450353	01.0875	450455	00.9419	450570	00.9523
450195	01.1852	450276	00.9907	450355	00.9210	450457	01.3066	450571	01.2164
450196	01.2078	450278	00.9074	450357	01.0638	450458	00.9134	450573	01.1168
450197	01.1267	450280	01.2126	450358	01.5212	450459	01.0312	450574	00.9582
450200	01.1643	450281	01.2293	450359	00.8387	450460	00.9352	450575	01.0834
450201	01.0967	450282	00.9098	450362	01.0152	450462	01.2967	450577	00.8825
450203	01.1492	450283	00.9725	450365	01.0574	450464	00.9684	450578	00.9455
450206	01.0413	450286	01.1651	450366	01.1650	450465	01.0664	450579	00.8805
450207	01.1939	450288	01.0878	450369	01.0669	450467	01.0061	450580	01.0879
450208	01.2209	450289	01.0791	450370	01.1107	450469	01.2275	450581	01.1004
450209	01.1983	450292	01.1101	450371	01.0093	450472	01.0075	450583	00.9546
450210	01.0509	450293	00.9426	450372	01.2794	450473	01.0336	450584	01.0851
450211	01.1212	450296	01.0017	450373	01.1329	450475	01.0723	450586	01.0406
450213	01.2276	450297	01.0102	450374	00.8991	450476	00.9201	450587	01.0808
450214	01.1052	450299	01.1463	450376	01.2661	450481	01.0348	450588	00.9488
450217	01.0089	450300	00.9478	450378	01.2182	450484	01.1506	450590	00.9256
450218	01.0029	450303	00.9821	450379	01.1656	450486	01.0788	450591	01.1711
450219	01.0727	450305	00.8156	450381	01.0435	450488	01.0535	450595	01.0554
450221	00.9899	450306	00.9872	450382	00.9497	450489	01.0372	450596	01.1102
450222	01.1699	450307	00.9516	450388	01.2856	450492	00.9490	450597	01.0306
450224	01.1024	450309	01.0774	450389	01.1325	450493	00.9563	450600	01.0539
450229	01.2046	450311	00.8852	450391	01.1324	450497	01.0992	450603	00.7884
450230	01.2056	450312	01.1780	450393	01.1955	450498	00.9836	450604	01.1319
450231	01.3847	450315	01.1986	450394	01.1565	450508	01.2090	450605	01.1853
450233	00.9645	450317	01.0079	450395	01.0060	450513	00.9629	450607	00.9123
450234	00.9054	450319	01.0644	450399	00.9860	450514	01.1218	450609	00.9651
450235	01.0635	450320	01.2626	450400	01.0433	450517	00.9160	450610	01.2215
450236	01.0376	450321	00.8514	450402	01.1593	450518	01.1228	450613	00.9774
450237	01.2172	450322	00.8568	450403	01.2902	450523	01.2442	450614	01.0481
450239	01.0961	450324	01.2294	450410	01.0241	450527	01.0648	450615	00.9595
450241	01.0166	450325	01.0862	450411	00.9691	450530	01.2389	450617	01.1858
450242	01.0610	450327	00.9503	450415	01.1061	450534	00.8826	450620	01.0360
450243	00.9658	450328	00.9641	450416	01.1552	450535	01.0919	450621	00.9874
450246	00.9841	450330	01.0956	450417	00.9044	450537	01.2010	450623	01.0205
450248	01.0469	450331	01.0051	450418	01.2746	450538	01.2023	450624	01.0133
450249	00.9726	450332	01.0659	450419	01.0375	450539	01.2068	450626	01.0400

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE., 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
450627	01.1533	450687	01.0474	460012	01.3898	490006	01.1009	490071	01.2054
450628	00.9331	450688	01.1155	460013	01.2952	490007	01.5230	490073	01.1365
450629	00.7854	450690	01.2368	460014	01.0716	490008	01.0232	490074	01.2442
450630	01.3882	450691	01.1000	460015	01.1118	490009	01.3987	490075	01.1623
450631	01.4971	450694	01.0618	460016	00.8790	490010	01.0247	490077	01.1232
450632	01.0279	450696	01.0740	460017	01.1952	490011	01.1655	490078	00.9291
450633	01.4032	450697	01.1754	460018	00.9014	490012	01.0107	490079	01.1084
450634	01.2546	450698	00.9010	460019	00.9833	490013	01.0665	490083	00.8081
450635	01.2429	450700	01.0037	460020	01.0245	490014	01.3900	490084	01.0249
450637	01.1526	450702	01.1811	460021	01.2095	490015	01.1826	490085	01.0396
450638	01.3057	450703	01.0714	460022	00.9967	490017	01.2300	490088	01.0651
450639	01.2233	450704	01.1712	460023	01.0732	490018	01.0920	490089	01.0124
450641	00.9445	450705	00.9351	460024	00.9932	490019	01.0917	490090	01.0723
450643	01.0852	450706	01.2215	460025	00.8125	490020	01.0688	490091	01.1674
450644	01.6439	450709	01.0559	460026	00.8911	490021	01.1263	490092	01.0734
450646	01.1825	450711	01.2006	460027	00.8269	490022	01.1170	490093	01.1833
450647	01.4949	450712	00.8314	460029	00.9980	490023	01.1608	490094	01.1483
450648	01.0956	450713	01.1694	460030	01.0441	490024	01.3835	490095	01.1589
450649	01.0128	450715	01.1985	460032	00.9403	490027	01.0202	490097	01.0574
450651	01.1926	450716	01.0957	460033	00.8732	490028	01.1519	490098	01.0779
450652	00.9548	450717	01.2452	460035	00.9546	490029	01.0980	490099	01.0841
450653	01.1398	450718	01.0174	460036	01.0142	490030	01.0681	490100	01.1847
450654	00.9811	450719	01.1149	460037	00.9482	490031	01.0393	490101	01.0719
450656	01.1660	450722	00.9777	460039	00.8948	490032	01.5795	490104	00.7229
450658	01.0112	450723	01.2002	460041	01.1737	490033	01.1115	490105	00.8738
450659	01.3397	450724	01.3226	460042	01.2698	490035	01.1278	490106	00.9539
450660	01.2897	450725	00.9819	460043	01.1862	490037	01.1033	490107	01.0289
450661	01.1089	450726	00.8945	460044	01.0906	490038	01.0677	490109	00.9959
450662	01.2031	450727	01.1351	460046	01.0473	490040	01.1580	490110	01.0663
450665	00.9915	450728	01.0355	470001	01.1157	490041	01.1134	490111	01.0588
450666	01.1267	450729	00.9846	470003	01.5192	490042	01.1161	490112	01.4023
450667	00.9518	450730	01.1937	470004	01.0970	490043	01.1346	490113	01.1093
450668	01.3812	450732	01.0512	470005	01.1563	490044	01.1011	490114	01.0435
450669	01.1814	450733	01.1349	470006	01.1331	490045	01.1442	490115	01.0582
450670	01.1067	450734	01.0722	470008	01.1245	490046	01.2461	490116	00.9716
450671	00.9089	450735	00.8922	470010	01.0792	490047	01.1112	490117	00.9855
450672	01.3003	450736	01.0361	470011	01.1616	490048	01.1626	490118	01.4172
450673	01.1102	450737	00.7176	470012	01.1508	490050	01.1313	490119	01.1671
450674	00.9918	450738	00.8796	470013	01.0416	490052	01.2903	490120	01.1863
450675	01.1401	450739	00.9542	470015	01.1581	490053	01.1514	490122	01.0774
450676	00.9983	460001	01.4395	470016	01.0600	490054	00.9614	490123	01.1023
450677	01.2209	460003	01.3251	470018	01.0725	490055	00.8783	490124	01.1416
450678	01.2488	460004	01.4020	470020	00.9722	490056	00.8580	490125	01.1815
450679	01.0097	460005	01.1769	470023	01.2053	490057	01.1768	490126	01.0692
450681	01.2332	460006	01.1713	470024	01.1035	490059	01.2292	490127	00.8949
450682	01.1232	460007	01.1617	490001	00.9344	490060	00.9143	490129	00.9823
450683	01.2233	460008	01.1513	490002	00.9819	490063	01.3520	490130	01.1460
450684	01.1498	460009	01.4574	490003	00.6983	490066	01.0907	500001	01.2941
450685	01.1392	460010	01.6454	490004	01.1643	490067	01.1150	500002	01.2659
450686	01.2826	460011	01.0887	490005	01.2423	490069	01.1969	500003	01.2170

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE., 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986 Page 23 of 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
500005	01.4319	500064	01.3524	510001	01.2289	510064	01.0970	520037	01.5495
500007	01.2473	500065	01.1522	510002	01.1213	510065	01.0112	520038	01.1190
500008	01.8912	500066	00.8034	510003	01.0540	510066	01.0484	520039	01.0691
500009	01.2525	500068	00.9832	510004	00.9381	510067	01.1667	520040	01.2543
500010	01.1764	500069	01.0189	510005	01.0523	510068	01.1126	520041	01.1318
500011	01.2151	500070	01.0849	510006	01.1252	510070	01.0477	520042	01.0482
500012	01.3197	500071	01.0781	510007	01.2856	510071	01.1687	520043	01.4603
500014	01.4671	500072	01.1341	510008	01.0884	510072	01.0668	520044	01.1939
500015	01.2283	500073	00.9967	510009	01.1234	510074	00.9072	520045	01.4024
500016	01.3264	500074	01.0514	510011	00.9544	510076	00.9868	520047	00.9697
500017	01.2086	500075	01.1106	510012	01.0539	510077	00.9640	520048	01.2579
500019	01.1296	500076	01.1124	510013	01.0719	510080	00.9491	520049	01.7125
500020	01.2364	500077	01.2315	510014	01.1198	510081	00.9932	520051	01.5531
500021	01.2499	500078	01.2230	510015	00.9820	510082	00.9644	520053	01.0458
500023	01.1429	500079	01.1566	510016	00.9436	510084	01.0082	520054	01.1027
500024	01.2742	500080	00.9715	510018	01.0815	510085	01.1704	520056	01.1113
500025	01.8135	500084	01.0395	510019	00.9790	510086	00.9121	520057	01.1185
500026	01.2065	500085	01.0146	510020	01.0927	520001	01.2182	520058	01.0668
500027	01.4305	500086	01.1674	510022	01.3688	520002	01.2163	520059	01.1639
500028	00.9725	500087	01.2844	510023	01.0079	520003	01.1351	520060	01.1528
500029	00.9880	500088	01.2372	510024	01.1674	520004	01.2665	520062	01.1730
500030	01.3529	500089	01.1178	510025	01.0004	520006	01.1221	520063	01.1943
500031	01.1524	500090	00.8880	510026	00.9836	520007	01.0871	520064	01.4009
500033	01.2120	500092	01.0667	510027	01.0618	520008	01.1770	520066	01.1681
500034	01.0974	500093	01.1017	510028	01.0354	520009	01.2542	520068	01.0167
500035	01.2547	500094	01.0536	510029	01.0830	520010	01.0261	520069	01.1531
500036	01.1880	500096	01.1055	510030	01.1423	520011	01.1161	520070	01.2328
500037	01.0564	500097	01.0853	510031	01.0956	520012	01.0352	520071	01.1277
500039	01.1752	500098	00.9256	510033	01.1733	520013	01.2029	520074	01.0996
500040	01.0604	500100	00.9576	510035	00.9642	520014	01.1566	520075	01.2866
500041	01.2595	500101	01.0112	510036	01.1163	520015	01.1821	520076	01.1867
500042	01.1986	500102	00.9794	510038	01.0284	520016	01.0162	520077	00.9840
500043	01.1399	500104	01.1458	510039	01.1289	520017	01.0963	520078	01.2229
500044	01.6378	500106	00.9135	510040	00.9309	520018	01.0574	520081	01.1624
500045	01.1395	500107	01.0979	510043	01.0252	520019	01.1885	520082	01.1624
500046	01.2379	500108	01.5001	510045	00.8796	520020	01.3484	520083	01.4177
500048	00.9139	500109	01.1852	510046	01.1468	520021	01.1664	520084	01.0592
500049	01.2051	500110	01.1900	510047	01.1642	520022	01.1849	520087	01.4205
500050	01.0935	500114	01.2804	510048	01.0743	520024	01.0045	520088	01.2151
500051	01.3287	500118	01.1508	510050	01.1042	520025	01.0715	520089	01.2630
500052	01.0795	500119	01.2317	510052	01.0556	520026	01.1803	520090	01.0798
500053	01.1264	500122	01.2524	510053	00.9782	520027	01.1557	520091	01.2975
500054	01.6313	500123	00.9193	510054	00.9644	520028	01.2609	520092	01.1239
500055	01.0056	500124	01.1910	510055	01.1744	520029	01.0292	520094	01.2881
500057	01.1855	500125	01.0513	510058	01.1725	520030	01.3187	520095	01.1266
500058	01.2286	500129	01.4460	510059	00.6596	520031	01.1865	520096	01.1993
500059	01.1384	500132	00.9239	510060	01.0348	520032	01.1948	520097	01.1538
500060	01.1182	500133	01.1752	510061	01.0287	520033	01.2694	520098	01.5170
500061	00.9932	500135	01.1289	510062	01.1524	520034	01.1762	520100	01.1251
500062	00.9580	500139	01.1296	510063	01.1106	520035	01.1318	520101	01.0367

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE,, 1987.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1986 Page 24 of 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
520102	01.1197	520171	01.0065						
520103	01.2074	520173	01.1051						
520104	00.9685	520174	01.3930						
520105	01.0201	520175	00.8454						
520107	01.1717	520177	01.3498						
520109	01.0265	520178	01.2206						
520110	01.0684	520183	00.9653						
520111	01.0401	530001	01.0759						
520112	01.0582	530002	01.0996						
520113	01.1587	530003	00.9216						
520114	01.0723	530004	00.9961						
520115	01.2038	530005	00.9983						
520116	01.1305	530006	01.0780						
520117	01.0330	530007	01.2193						
520118	00.9846	530008	01.0347						
520120	01.2080	530009	00.9893						
520121	00.9585	530010	01.1285						
520122	01.0783	530011	01.1119						
520123	01.1137	530012	01.3224						
520124	01.0921	530014	01.1328						
520126	00.9525	530015	01.0859						
520127	00.9754	530016	01.1705						
520130	00.9322	530017	00.8603						
520131	01.0292	530018	00.9844						
520132	01.1467	530019	00.9228						
520134	01.0465	530021	00.8803						
520135	01.0150	530022	00.9916						
520136	01.3404	530023	00.8977						
520138	01.6092	530024	01.0007						
520139	01.2298	530025	01.1002						
520140	01.2652	530026	01.0160						
520141	01.0778	530027	00.9687						
520142	01.0531	530029	01.0604						
520143	01.0367	530031	00.8796						
520144	01.0065	530032	01.0239						
520145	01.0448								
520146	01.0794								
520148	01.1210								
520149	01.1152								
520151	01.0291								
520152	01.0852								
520153	01.0208								
520154	01.1242								
520156	01.0096								
520157	01.0246								
520159	01.0042								
520160	01.6502								
520161	00.9812								
520167	01.1999								
520170	01.1411								

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE., 1987.

BILLING CODE 4120-01-C

TABLE 4a.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX	0.8335
Taylor, TX	
Aguadilla, PR	0.4624
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	1.0023
Portage, OH	
Summit, OH	
Albany, GA	0.7748
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8702
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0188
Bernalillo, MN	
Alexandria, LA	0.8182
Rapides, LA	
Allentown-Bethlehem, PA-NJ	0.9858
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9474
Blair, PA	
Amarillo, TX	0.9326
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2031
Orange, CA	
Anchorage, AK	1.4619
Anchorage, AK	
Anderson, IN	0.9175
Madison, IN	
Anderson, SC	0.7839
Anderson, SC	
Ann Arbor, MI	1.1723
Washtenaw, MI	
Anniston, AL	0.7847
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9792
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.4401
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8501
Buncombe, NC	
Athens, GA	0.7710
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	0.9196
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	0.9898
Atlantic City,	
Cape May, NJ	
Augusta, GA–SC	0.8908
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	1.0123
Kane, IL	
Kendall, IL	
Austin, TX	1.0409
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.1114
Kern, CA	
Baltimore, MD	1.0178
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.8907
Penobscot, ME	
Baton Rouge, LA	0.8665
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9670
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9394
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0368
Beaver, PA	
Bellingham, WA	1.0823
Whatcom, WA	
Benton Harbor, MI	0.8436
Berrien, MI	
Bergen-Passaic, NJ	1.0299
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9756
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8012
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9107
Broome, NY	
Tioga, NY	
Birmingham, AL	0.9226
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.9315
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.9215
Monroe, IN	
Bloomington-Normal, IL	0.9463
McLean, IL	
Boise City, ID	0.9821
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.0825
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0717
Boulder, CO	
Bradenton, FL	0.8796
Manatee, FL	
Brazoria, TX	0.8333
Brazoria, TX	
Bremerton, WA	0.9407
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1230
Fairfield, CT	
Brownsville-Harlingen, TX	0.8538
Cameron, TX	
Bryan-College Station, TX	0.9377
Brazos, TX	
Buffalo, NY	0.9726
Erie, NY	
Burlington, NC	0.7548
Alamance, NC	
Burlington, VT	0.9464
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.4001
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.9195
Carroll, OH	
Stark, OH	
Casper, WY	0.9842
Natrona, WY	
Cedar Rapids, IA	0.9242
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.9141
Champaign, IL	
Charleston, SC	0.8467
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9757
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	0.8424
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	0.8822
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.8959
Laramie, WY	
Chicago, IL	1.1211
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.1145
Butte, CA	
Cincinnati, OH-KY-IN	1.0319
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	0.7485
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.0826
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0047
El Paso, CO	
Columbia, MO	1.0378
Boone, MO	
Columbia, SC	0.8450
Lexington, SC	
Richland, SC	
Columbus, GA-AL	0.7406
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	0.9296
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.8801
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	0.8798
Allegeny, MD	
Mineral, WV	
Dallas, TX	0.9565
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7621
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	0.9739
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0107
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.8545
Volusia, FL	
Decatur, IL	0.8966
Macon, IL	
Denver, CO	1.1934
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9824
Dallas, IA	
Polk, IA	
Warren, IA	
Detriot, MI	1.0911
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7892
Dale, AL	
Houston, AL	
Dubuque, IA	0.9712
Dubuque, IA	
Duluth, MN-WI	0.9477
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8903
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.8849
El Paso, TX	
Elkhart-Goshen, IN	0.9142
Elkhart, IN	
Elmira, NY	0.9152
Chemung, NY	
Enid, OK	0.9125
Garfield, OK	
Erie, PA	0.9488
Erie, Pa	
Eugene-Springfield, OR	1.0353
Lane, OR	
Evansville, IN-KY	0.9963
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0031
Clay, MN	
Cass, ND	
Fayetteville, NC	0.7983
Cumberland, NC	
Fayetteville-Springdale, AR	0.7494
Washington, AR	
Flint, MI	1.1458
Genesee, MI	
Shiawassee, MI	
Florence, AL	0.7255
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.7472
Florence, SC	
Fort Collins-Loveland, CO	1.0252
Larimor, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0424
Broward, FL	
Fort Myers-Cape Coral, FL	0.8989
Lee, FL	
Fort Pierce, FL	1.0052
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.8726
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8210
Okaloosa, FL	
Fort Wayne, IN	0.9008
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	0.9475
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0978
Fresno, CA	
Gadsden, AL	0.8394
Etowah, AL	
Gainesville, FL	0.8902
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.0782
Galveston, TX	
Gary-Hammond, IN	1.0415
Lake, IN	
Porter, IN	
Glens Falls, NY	0.8889
Warren, NY	
Washington, NY	
Grand Forks, ND	0.9462
Grand Forks, ND	
Grand Rapids, MI	1.0058
Kent, MI	
Ottawa, MI	
Great Falls, MT	0.9966
Cascade, MT	
Greeley, CO	1.0174
Weld, CO	
Green Bay, WI	0.9692
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	0.8710
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Yadkin, NC	
Greenville-Spartanburg, SC	0.8961
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.8869
Washington, MD	
Hamilton-Middletown, OH	0.9649
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	0.9907
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.0898
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	0.8335
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1343
Honolulu, HI	
Houma-Thibodaux, LA	0.8083
Lafourche, LA	
Terrebonne, LA	
Houston, TX	0.9868
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	0.9066
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	0.8208
Madison, AL	
Indianapolis, IN	0.9941
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.1630
Johnson, IA	
Jackson, MI	0.9445
Jackson, MI	
Jackson, MS	0.8439
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.7506
Madison, TN	
Jacksonville, FL	0.8923
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7358
Onslow, NC	
Janesville-Beloit, WI	0.8935
Rock, WI	
Jersey City, NJ	1.0599
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.8446
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	0.9060
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0507
Grundy, IL	
Will, IL	
Joplin, MO	0.8649
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1352
Kalamazoo, MI	
Kankakee, IL	0.8989
Kankakee, IL	
Kansas City, KS-MO	1.0064
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	1.0384
Kenosha, WI	
Killeen-Temple, TX	0.9789
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8335
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9352
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.9629
LaCrosse, WI	
Lafayette, LA	0.9261
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8736
Tippecanoe, IN	
Lake Charles, LA	0.9172
Calcasieu, LA	
Lake County, IL	1.0904
Lake, IL	
Lakeland-Winter Haven, FL	0.8261
Polk, FL	
Lancaster, PA	0.9866
Lancaster, PA	
Lansing-East Lansing, MI	1.0251
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	0.7521
Webb, TX	
Las Cruces, NM	0.8362
Dona Ana, NM	
Las Vegas, NV	1.0873
Clark, NV	
Lawrence, KS	0.9748
Douglas, KS	
Lawton, OK	0.8579
Comanche, OK	
Lewiston-Auburn, ME	0.9034
Androscoggin, ME	
Lexington-Fayette, KY	0.8227
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.9233
Allen, OH	
Auglaize, OH	
Lincoln, NE	0.9267
Lancaster, NE	
Little Rock-North Little Rock, AR	0.9376
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8037
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.9519
Lorain, OH	
Los Angeles-Long Beach, CA	1.2463
Los Angeles, CA	
Louisville, KY-IN	0.9520
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.9568
Lubbock, TX	
Lynchburg, VA	0.8586
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.8287
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0167
Dane, WI	
Manchester-Nashua, NH	0.9222
Hillsborough, HN	
Merrimack, NH	
Mansfield, OH	0.9116
Richland, OH	
Mayaguez, PR	0.4842
Anasco, PR	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.7655
Hidalgo, TX	
Medford, OR	0.9701
Jackson, OR	
Melbourne-Titusville, FL	0.8862
Brevard, FL	
Memphis, TN-AR-MS	0.9644
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0727
Merced, CA	
Miami-Hialeah, FL	1.0151
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	0.9837
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0576
Midland, TX	
Milwaukee, WI	1.0435
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.1224
Anoka,	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8319
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1049
Stanislaus, CA	
Monmouth-Ocean, NJ	0.9365
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.8471
Ouachita, LA	
Montgomery, AL	0.8173
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.9565
Delaware, IN	
Muskegon, MI	0.9620
Muskegon, MI	
Naples, FL	0.9919
Collier, FL	
Nashville, TN	0.8878
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.2359
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	0.9352
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.0693
New Haven, CT	
New London-Norwich, CT	1.0562
New London, CT	
New Orleans, LA	0.9080
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3092
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.0808
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara, Falls, NY	0.8492
Niagara, NY	
Norfolk-Virginia Beach Newport News, VA	0.9196
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4023
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8183
Marion, FL	
Odessa, TX	0.8919
Ector, TX	
Oklahoma City 1.OK 1.0065	
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0349
Thurston, WA	
Omaha, NE-IA	0.9822
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	0.8828
Orange, NY	
Orlando, FL	0.9356
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8360
Daviess, KY	
Oxnard-Ventura, CA	1.2976
Ventura, CA	
Panama City, FL	0.7882
Bay, FL	
Parkersburg-Marietta, WV-OH	0.8828
Washington, OH	
Wood, WV	
Pascugoula, MS	0.8929
Jackson, MS	
Pensacola, FL	0.8241
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.9879
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.0935
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0079
Maricopa, AZ	
Pine Bluff, AR	0.7767
Jefferson, AR	
Pittsburgh, PA	1.0240
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	0.9946
Berkshire, MA	
Ponce, PR	0.5513
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9461
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1292
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	0.9114
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	0.9597
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	0.9811
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Provo-Orem, UT	0.9278
Utah, UT	
Pueblo, CO	0.9920
Pueblo, CO	
Racine, WI	0.9299
Racine, WI	
Raleigh-Durham, NC	0.9274
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8702
Pennington, SD	
Reading, PA	0.9381
Berks, PA	
Redding, CA	1.0779
Shasta, CA	
Reno, NV	1.1202
Washoe, NV	
Richland-Kennewick, WA	0.9688
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.8897
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.1536
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8346
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0027
Olmsted, MN	
Rochester, NY	0.9558
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1.0245
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2140
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0597
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.9662
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.8811
Buchanan, MO	
St. Louis, MO-IL	1.0165
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0416
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2211
Monterey, CA	
Salt Lake City-Ogden, UT	0.9508
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8302
Tom Green, TX	
San Antonio, TX	0.8377
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.2350
San Diego, CA	
San Francisco, CA	1.4946
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4323
Santa Clara, CA	
San Juan, PR	0.5387
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1428
Santa Barbara, CA	
Santa Cruz, CA	1.2017
Santa Cruz, CA	
Santa Fe, NM	0.9362
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.2943
Sonoma, CA	
Sarasota, FL	0.9166
Sarasota, FL	
Savannah, GA	0.8405
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	0.9318
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.0807
King, WA	
Snohomish, WA	
Sharon, PA	0.9198
Mercer, PA	
Sheboygan, WI	0.9318
Sheboygan, WI	
Sherman-Denison, TX	0.8285
Grayson, TX	
Shreveport, LA	0.8994
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	0.9248
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.9552
Minnehaha,SD	
South Bend-Mishawaka, IN	0.9605
St. Joseph, IN	
Spokane, WA	1.0823
Spokane, WA	
Springfield, IL	1.0040
Menard, IL	
Sangamon, IL	
Springfield, MO	0.9074
Christian, MO	
Greene, MO	
Springfield, MA	0.9758
Hampden, MA	
Hampshire, MA	
State College, PA	1.0303
Centre, PA	
Steubenville-Weirton, OH-WV	0.9106
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1743
San Joaquin, CA	
Syracuse, NY	0.9730
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0325
Pierce, WA	
Tallahassee, FL	0.8531
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	0.9125
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8090
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	0.8071

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TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Miller, AR	
Bowie, TX	
Toledo, OH	1.1101
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9955
Shawnee, KS	
Trenton, NJ	1.0014
Mercer, NJ	
Tucson, AZ	0.9639
Pima, AZ	
Tulsa, OK	0.9346
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.9515
Tuscaloosa, AL	
Tyler, TX	0.9326
Smith, TX	
Utica-Rome, NY	0.8211
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2767
Napa, CA	
Solano, CA	
Vancouver, WA	1.0772
Clark, WA	
Victoria, TX	0.7993
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	0.9580
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.1418
Tulare, CA	
Waco, TX	0.8585
McLennan, TX	
Washington, D.C.-MD-VA	1.1051
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	0.9432
Black Hawk, IA	
Bremer, IA	
Wausau, WI	0.9457
Marathan, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	0.9431
Palm Beach, FL	
Wheeling, WV-OH	0.8761
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.0469
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8221
Wichita, TX	
Williamsport, PA	0.8804
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0125
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8602
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	0.9460
Worcester, MA	
Yakima, WA	0.9850
Yakima, WA	
York, PA	0.9340
Adams, PA	
York, PA	
Youngstown-Warren, OH	0.9942
Mahoning, OH	
Trumball, OH	
Yuba City, CA	0.9970
Sutter, CA	
Yuba, CA	

TABLE 4b—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7005
Alaska	1.3922
Arizona	0.8869
Arkansas	0.7124
California	1.0428
Colorado	0.8666
Connecticut	1.0013
Delaware	0.8236
Florida	0.8223
Georgia	0.7385
Hawaii	0.9318
Idaho	0.8489
Illinois	0.8188
Indiana	0.8104
Iowa	0.8070
Kansas	0.7927
Kentucky	0.7754
Louisiana	0.7856
Maine	0.8191
Maryland	0.8112
Massachusetts	1.0033
Michigan	0.9036
Minnesota	0.8605
Mississippi	0.7215
Missouri	0.7640
Montana	0.8558
Nebraska	0.7751
Nevada	0.9817
New Hampshire	0.8784
New Jersey [1]	
New Mexico	0.8359
New York	0.8124
North Carolina	0.7650
North Dakota	0.8463
Ohio	0.8609
Oklahoma	0.7938
Oregon	1.0029
Pennsylvania	0.8807
Puerto Rico	0.5536
Rhode Island [1]	
South Carolina	0.7232
South Dakota	0.7668
Tennessee	0.7162
Texas	0.7591
Utah	0.8782
Vermont	0.8387
Virginia	0.7833
Virgin Islands [1]	
Washington	0.9806
West Virginia	0.8414
Wisconsin	0.8458
Wyoming	0.9100

[1] All counties within the State are classified urban.

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TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
1	01	SURG		CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.4434	18.8	14.2	32
2	01	SURG		CRANIOTOMY FOR TRAUMA AGE >17	3.8160	18.3	12.6	31
3	01	SURG	*	CRANIOTOMY AGE 0-17	2.9183		12.7	31
4	01	SURG		SPINAL PROCEDURES	2.5904	16.9	12.5	30
5	01	SURG		EXTRACRANIAL VASCULAR PROCEDURES	1.5685	8.0	6.7	21
6	01	SURG		CARPAL TUNNEL RELEASE	.4393	2.6	2.0	7
7	01	SURG		PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC WITH CC	2.5269	20.3	11.2	29
8	01	SURG		PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	.7367	5.1	3.4	19
9	01	MED		SPINAL DISORDERS & INJURIES	1.2639	11.1	7.1	25
10	01	MED		NERVOUS SYSTEM NEOPLASMS WITH CC	1.2123	11.2	7.6	26
11	01	MED		NERVOUS SYSTEM NEOPLASMS W/O CC	.7729	7.6	5.2	23
12	01	MED		DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9459	9.9	6.9	25
13	01	MED		MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.9324	9.6	7.2	25
14	01	MED		SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.2429	10.5	7.5	25
15	01	MED		TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	.6293	5.4	4.2	17
16	01	MED		NONSPECIFIC CERFBROVASCULAR DISORDERS W CC	1.0384	9.0	6.6	25
17	01	MED		NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6358	6.0	4.7	20
18	01	MED		CRANIAL & PERIPHERAL NERVE DISORDERS WITH CC	.9557	8.5	6.3	24
19	01	MED		CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.6158	6.0	4.5	22
20	01	MED		NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.6220	11.2	7.7	26
21	01	MED		VIRAL MENINGITIS	1.3613	9.2	7.1	25
22	01	MED		HYPERTENSIVE ENCEPHALOPATHY	.7055	5.8	4.6	18
23	01	MED		NONTRAUMATIC STUPOR & COMA	.9505	6.7	4.5	22
24	01	MED		SEIZURE & HEADACHE AGE >17 WITH CC	.9228	7.0	5.2	23
25	01	MED		SEIZURE & HEADACHE AGE >17 W/O CC	.5386	4.6	3.6	15
26	01	MED		SEIZURE & HEADACHE AGE 0-17	.5635	3.6	2.5	13
27	01	MED		TRAUMATIC STUPOR & COMA, COMA >1 HR	1.4753	8.7	4.3	22
28	01	MED		TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 WITH CC	1.1694	8.9	5.6	24
29	01	MED		TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	.5856	5.2	3.4	20
30	01	MED	*	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	.3539		2.0	8
31	01	MED		CONCUSSION AGE >17 WITH CC	.6550	6.0	4.2	22
32	01	MED		CONCUSSION AGE >17 W/O CC	.4005	3.7	2.8	13
33	01	MED	*	CONCUSSION AGE 0-17	.2457		1.6	5
34	01	MED		OTHER DISORDERS OF NERVOUS SYSTEM WITH CC	1.2038	8.7	6.0	24
35	01	MED		OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.6035	5.6	4.0	21

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
36	02	SURG		RETINAL PROCEDURES	.6820	3.6	3.1	10
37	02	SURG		ORBITAL PROCEDURES	.7104	4.1	3.0	14
38	02	SURG		PRIMARY IRIS PROCEDURES	.3779	2.8	2.2	9
39	02	SURG		LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5167	2.1	1.8	5
40	02	SURG		EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.4675	2.6	2.0	7
41	02	SURG	*	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3657		1.6	4
42	02	SURG		INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6600	3.1	2.5	9
43	02	MED		HYPHEMA	.3727	4.5	3.7	14
44	02	MED		ACUTE MAJOR EYE INFECTIONS	.6352	6.8	5.6	20
45	02	MED		NEUROLOGICAL EYE DISORDERS	.5595	4.3	3.3	14
46	02	MED		OTHER DISORDERS OF THE EYE AGE >17 W CC	.6195	5.6	3.8	22
47	02	MED		OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.3611	3.6	2.6	13
48	02	MED	*	OTHER DISORDERS OF THE EYE AGE 0-17	.4018		2.9	13
49	03	SURG		MAJOR HEAD & NECK PROCEDURES	2.8923	15.7	11.9	30
50	03	SURG		SIALOADENECTOMY	.6681	3.4	2.8	9
51	03	SURG		SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.5424	2.9	2.3	8
52	03	SURG		CLEFT LIP & PALATE REPAIR	.7033	3.5	2.7	11
53	03	SURG		SINUS & MASTOID PROCEDURES AGE >17	.6159	3.1	2.3	10
54	03	SURG	*	SINUS & MASTOID PROCEDURES AGE 0-17	.6889		3.2	11
55	03	SURG		MISCELLANEOUS EAR, NOSE & THROAT PROCEDURES	.4598	2.3	1.8	6
56	03	SURG		RHINOPLASTY	.4471	2.4	1.8	7
57	03	SURG		T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.7907	5.1	3.2	20
58	03	SURG	*	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.3097		1.5	3
59	03	SURG		TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.3845	2.0	1.7	5
60	03	SURG	*	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.2616		1.5	3
61	03	SURG		MYRINGOTOMY W TUBE INSERTION AGE >17	.5401	3.2	2.1	11
62	03	SURG	*	MYRINGOTOMY W TUBE INSERTION AGE 0-17	.3089		1.3	3
63	03	SURG		OTHER EAR, NOSE & THROAT O.R. PROCEDURES	1.1538	7.4	4.6	23
64	03	MED		EAR, NOSE & THROAT MALIGNANCY	1.0548	8.5	4.7	23
65	03	MED		DYSEQUILIBRIUM	.4600	4.2	3.5	12
66	03	MED		EPISTAXIS	.4272	3.9	3.2	12
67	03	MED		EPIGLOTTITIS	.9964	5.8	4.4	19
68	03	MED		OTITIS MEDIA & URI AGE >17 WITH CC	.7217	6.1	5.1	17
69	03	MED		OTITIS MEDIA & URI AGE >17 W/O CC	.5366	4.9	4.1	14
70	03	MED		OTITIS MEDIA & URI AGE 0-17	.5345	4.0	3.2	13

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
71	03	MED	LARYNGOTRACHEITIS	.6026	4.7	3.9	14
72	03	MED	NASAL TRAUMA & DEFORMITY	.4895	4.3	3.1	15
73	03	MED	OTHER EAR, NOSE & THROAT DIAGNOSES AGE >17	.7404	5.6	3.7	22
74	03	MED	* OTHER EAR, NOSE & THROAT DIAGNOSES AGE 0-17	.3427		2.1	9
75	04	SURG	MAJOR CHEST PROCEDURES	3.0258	14.9	12.3	30
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.0885	12.6	8.8	27
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.0970	6.8	4.4	22
78	04	MED	PULMONARY EMBOLISM	1.4817	10.8	9.0	27
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 WITH CC	2.0777	12.8	9.7	28
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.3341	9.7	7.7	26
81	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.1032	9.5	7.0	25
82	04	MED	RESPIRATORY NEOPLASMS	1.1899	9.3	6.5	24
83	04	MED	MAJOR CHEST TRAUMA WITH CC	.9698	8.4	6.5	25
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5372	5.4	4.3	17
85	04	MED	PLEURAL EFFUSION WITH CC	1.1451	9.0	6.8	25
86	04	MED	PLEURAL EFFUSION W/O CC	.7720	6.6	4.9	23
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.5691	8.4	6.1	24
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.1263	7.9	6.3	24
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 WITH CC	1.2862	9.2	7.3	25
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.8961	7.1	6.1	19
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.9448	6.3	4.9	23
92	04	MED	INTERSTITIAL LUNG DISEASE WITH CC	1.2821	8.9	6.8	25
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.8264	6.6	5.1	23
94	04	MED	PNEUMOTHORAX WITH CC	1.3954	9.7	7.4	25
95	04	MED	PNEUMOTHORAX W/O CC	.7571	6.5	5.2	21
96	04	MED	BRONCHITIS & ASTHMA AGE >17 WITH CC	.9804	7.2	6.0	20
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.7151	5.7	4.9	15
98	04	MED	BRONCHITIS & ASTHMA AGE 0-17	.5744	3.7	3.0	11
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS WITH CC	.7803	5.6	4.2	19
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5238	3.6	2.9	11
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES WITH CC	.9585	7.1	5.4	23
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.6625	5.3	4.0	19
103	05	SURG	HEART TRANSPLANT	11.9225	33.3	25.8	44
104	05	SURG	CARDIAC VALVE PROCEDURE W PUMP & W CARDIAC CATH	7.3424	20.4	17.4	35
105	05	SURG	CARDIAC VALVE PROCEDURE W PUMP & W/O CARDIAC CATH	5.7811	15.8	13.2	31

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				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
106	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.5415	16.0	14.2	32
107	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.2858	12.6	11.1	29
108	05	SURG	OTHER CARDIOTHORACIC OR VASCULAR PROCEDURES, W PUMP	5.3703	15.7	11.0	29
109	05	SURG	OTHER CARDIOTHORACIC PROCEDURES W/O PUMP	3.9142	12.3	7.4	25
110	05	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP WITH CC	3.6718	16.1	12.7	31
111	05	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W/O CC	2.2639	10.6	9.3	27
112	05	SURG	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	1.8911	8.2	5.9	24
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	2.4590	18.8	14.7	33
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.7040	14.0	10.3	28
115	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	4.0516	15.2	12.9	31
116	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W/O AMI, HEART FAILURE OR SHOCK	2.7694	8.3	6.6	25
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.2261	6.2	4.5	22
118	05	SURG	CARDIAC DEVICE REPLACEMENT	1.7563	4.1	3.0	14
119	05	SURG	VEIN LIGATION & STRIPPING	.8692	6.3	4.3	22
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.4776	16.6	11.1	29
121	05	MED	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	1.7162	11.2	9.4	27
122	05	MED	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.2002	8.7	7.3	25
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.3979	5.3	2.9	21
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.1806	6.2	4.5	22
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	.6884	3.2	2.5	10
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	3.0575	22.7	17.2	35
127	05	MED	HEART FAILURE & SHOCK	1.0222	7.9	6.2	24
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.8513	9.1	8.0	22
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.5715	5.9	3.0	21
130	05	MED	PERIPHERAL VASCULAR DISORDERS WITH CC	.8776	7.8	5.6	24
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.5862	5.6	4.0	22
132	05	MED	ATHEROSCLEROSIS WITH CC	.7976	6.0	4.7	19
133	05	MED	ATHEROSCLEROSIS W/O CC	.5997	4.6	3.7	14
134	05	MED	HYPERTENSION	.6088	5.5	4.4	17
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 WITH CC	.9221	7.0	5.2	23
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 W/O CC	.6103	4.8	3.8	15
137	05	MED	* CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	.6315		3.3	21
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS WITH CC	.8535	6.2	4.8	20
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.5912	4.5	3.6	14
140	05	MED	ANGINA PECTORIS	.6689	5.0	4.1	14

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				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
141	05	MED	SYNCOPE & COLLAPSE WITH CC	.6801	5.5	4.4	17
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5244	4.2	3.4	13
143	05	MED	CHEST PAIN	.5500	3.7	3.0	11
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.1449	7.8	5.8	24
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6689	5.0	3.8	17
146	06	SURG	RECTAL RESECTION WITH CC	3.4379	18.0	15.6	34
147	06	SURG	RECTAL RESECTION W/O CC	2.1344	13.0	12.0	27
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES WITH CC	3.2376	17.1	14.5	33
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.8341	11.6	10.7	24
150	06	SURG	PERITONEAL ADHESIOLYSIS WITH CC	2.6797	15.0	12.7	31
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.4885	10.0	8.9	24
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES WITH CC	1.5988	10.6	8.4	26
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.0566	7.8	6.7	23
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 WITH CC	3.7961	17.4	13.4	31
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 W/O CC	1.8195	10.8	8.9	27
156	06	SURG *	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8382		6.0	21
157	06	SURG	ANAL & STOMAL PROCEDURES WITH CC	.9324	7.0	5.3	23
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.5449	4.2	3.3	13
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 WITH CC	1.1454	7.5	6.0	23
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	.6810	4.7	4.0	14
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 WITH CC	.7541	5.1	4.0	16
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.5004	3.3	2.8	9
163	06	SURG	HERNIA PROCEDURES AGE 0-17	.7717	4.4	3.9	11
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG WITH CC	2.4014	12.6	11.0	29
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.4675	8.7	8.1	18
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG WITH CC	1.4954	8.8	7.4	23
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.8651	5.4	4.8	12
168	06	SURG	MOUTH PROCEDURES WITH CC	1.4067	8.2	4.8	23
169	06	SURG	MOUTH PROCEDURES W/O CC	.6689	3.6	2.6	12
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES WITH CC	2.7316	16.2	11.5	29
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.4018	9.4	6.7	25
172	06	MED	DIGESTIVE MALIGNANCY WITH CC	1.1861	10.3	6.9	25
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.7049	6.6	4.4	22
174	06	MED	G.I. HEMORRHAGE WITH CC	.9878	7.1	5.6	22
175	06	MED	G.I. HEMORRHAGE W/O CC	.6600	5.3	4.4	15

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				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
176	06	MED	COMPLICATED PEPTIC ULCER	.9964	7.8	6.1	24
177	06	MED	UNCOMPLICATED PEPTIC ULCER WITH CC	.7834	6.5	5.5	18
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.5838	5.1	4.3	14
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.0416	9.1	7.1	25
180	06	MED	G.I. OBSTRUCTION WITH CC	.9150	7.6	5.8	24
181	06	MED	G.I. OBSTRUCTION W/O CC	.5415	5.1	4.1	16
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 WITH CC	.7224	6.2	4.9	19
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	.5252	4.6	3.7	14
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	.4223	3.5	2.4	13
185	06	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	.7530	6.4	4.3	22
186	06	MED	* DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	.4112		2.9	11
187	06	MED	DENTAL EXTRACTIONS & RESTORATIONS	.4540	2.8	2.2	8
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 WITH CC	.9144	6.9	4.9	23
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.4966	4.2	3.0	15
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.8147	4.9	3.9	15
191	07	SURG	MAJOR PANCREAS, LIVER & SHUNT PROCEDURES	4.6881	20.7	16.7	35
192	07	SURG	MINOR PANCREAS, LIVER & SHUNT PROCEDURES	3.8625	19.5	14.4	32
193	07	SURG	BILIARY TRACT PROC EXCEPT TOT CHOLECYSTECTOMY WITH CC	3.0252	17.5	14.5	32
194	07	SURG	BILIARY TRACT PROC EXCEPT TOT CHOLECYSTECTOMY W/O CC	1.8505	12.3	10.0	28
195	07	SURG	TOTAL CHOLECYSTECTOMY W C.D.E. WITH CC	2.3854	13.9	12.4	30
196	07	SURG	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	1.6898	10.8	10.0	22
197	07	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. WITH CC	1.8768	11.2	9.8	27
198	07	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.1152	7.5	7.0	15
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.2693	15.3	12.3	30
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.4731	13.5	9.4	27
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.3933	12.8	8.3	26
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.2075	9.9	7.2	25
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.0422	9.3	6.4	24
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.0269	7.7	6.1	24
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA WITH CC	1.2132	9.3	6.7	25
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	.6806	6.0	4.2	22
207	07	MED	DISORDERS OF THE BILIARY TRACT WITH CC	.9243	7.1	5.6	23
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.5816	4.7	3.8	15
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	2.4145	13.4	12.3	28
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 WITH CC	2.1776	15.8	13.5	32

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				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.6104	12.3	11.1	27
212	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.3764	7.2	6.2	17
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	1.8460	14.3	10.5	29
214	08	SURG	BACK & NECK PROCEDURES WITH CC	2.1385	15.3	12.8	31
215	08	SURG	BACK & NECK PROCEDURES W/O CC	1.3768	10.3	9.0	26
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.5973	13.0	8.4	26
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	2.8155	20.6	12.9	31
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 WITH CC	1.6224	11.5	9.0	27
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	1.0186	7.1	5.9	20
220	08	SURG *	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	.9242		5.3	23
221	08	SURG	KNEE PROCEDURES WITH CC	1.4523	9.5	6.3	24
222	08	SURG	KNEE PROCEDURES W/O CC	.7995	4.7	3.3	18
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	1.1202	6.9	5.2	22
224	08	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	.6588	3.9	3.1	12
225	08	SURG	FOOT PROCEDURES	.6775	4.3	3.2	14
226	08	SURG	SOFT TISSUE PROCEDURES WITH CC	1.3570	10.1	6.8	25
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.6878	4.6	3.4	16
228	08	SURG	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	.8201	4.3	3.2	14
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.5202	2.7	2.1	8
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	.8868	6.7	4.6	23
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	.8346	5.5	3.5	21
232	08	SURG	ARTHROSCOPY	.8603	5.3	3.1	21
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC WITH CC	1.7267	12.5	9.0	27
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	.9057	6.5	4.9	23
235	08	MED	FRACTURES OF FEMUR	1.2060	13.9	8.2	26
236	08	MED	FRACTURES OF HIP & PELVIS	.9036	10.1	7.2	25
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.5959	6.4	4.8	23
238	08	MED	OSTEOMYELITIS	1.6579	14.6	10.7	29
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	.9550	9.9	7.5	26
240	08	MED	CONNECTIVE TISSUE DISORDERS WITH CC	1.0932	9.5	7.3	25
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.6644	6.9	5.4	22
242	08	MED	SEPTIC ARTHRITIS	1.4100	11.6	8.9	27
243	08	MED	MEDICAL BACK PROBLEMS	.6694	6.9	5.3	23
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES WITH CC	.7305	7.5	5.7	24
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.5345	5.6	4.4	19

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				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
246	08	MED	NON-SPECIFIC ARTHROPATHIES	.5769	5.8	4.6	18
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	.5407	5.1	3.9	18
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.6097	5.8	4.5	19
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	.6830	6.8	4.4	22
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 WITH CC	.6721	6.3	4.5	22
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	.4148	3.4	2.5	11
252	08	MED *	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	.3496		1.8	7
253	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 WITH CC	.7909	8.3	5.9	24
254	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	.4557	5.1	3.8	18
255	08	MED *	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.4638		2.9	15
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	.6585	5.8	4.1	21
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY WITH CC	1.0448	7.4	6.6	18
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.8462	5.9	5.3	13
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY WITH CC	1.0046	7.4	5.2	23
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6010	3.6	3.0	11
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	.6204	3.3	2.7	9
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.4312	2.4	2.0	6
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS WITH CC	2.5967	20.8	15.3	33
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.6179	14.7	10.8	29
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.3909	10.5	6.8	25
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	.6865	4.9	3.4	19
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.6248	4.6	3.4	15
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	.5934	3.5	2.4	12
269	09		OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE WITH CC	1.5177	11.5	7.6	26
270	09		OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE W/O CC	.6834	4.9	3.4	18
271	09	MED	SKIN ULCERS	1.2017	11.5	8.7	27
272	09	MED	MAJOR SKIN DISORDERS WITH CC	1.0375	9.7	7.4	25
273	09	MED	MAJOR SKIN DISORDERS W/O CC	.7247	7.9	6.0	24
274	09	MED	MALIGNANT BREAST DISORDERS WITH CC	1.0494	9.9	6.4	24
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.6395	6.1	3.8	22
276	09	MED	NON-MALIGANT BREAST DISORDERS	.5245	4.3	2.9	16
277	09	MED	CELLULITIS AGE >17 WITH CC	.9695	8.8	7.2	25
278	09	MED	CELLULITIS AGE >17 W/O CC	.7063	6.9	5.8	19
279	09	MED	CELLULITIS AGE 0-17	.7367	5.4	4.6	16
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 WITH CC	.6197	6.1	4.5	22

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** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
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TABLE 5

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					RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
281	09	MED		TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	.4306	4.5	3.4	16
282	09	MED	*	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	.3424		2.2	9
283	09	MED		MINOR SKIN DISORDERS WITH CC	.7682	7.3	5.5	24
284	09	MED		MINOR SKIN DISORDERS W/O CC	.4795	5.1	3.7	18
285	10	SURG		AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	2.9919	23.4	17.5	36
286	10	SURG		ADRENAL & PITUITARY PROCEDURES	2.7063	14.5	12.0	30
287	10	SURG		SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	2.2274	19.0	13.8	32
288	10	SURG		O.R. PROCEDURES FOR OBESITY	2.0018	11.2	8.2	26
289	10	SURG		PARATHYROID PROCEDURES	1.1470	6.9	5.4	20
290	10	SURG		THYROID PROCEDURES	.8428	4.9	4.0	13
291	10	SURG		THYROGLOSSAL PROCEDURES	.4991	2.8	2.3	8
292	10	SURG		OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC WITH CC	2.6027	17.1	12.0	30
293	10	SURG		OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.1698	8.9	6.2	24
294	10	MED		DIABETES AGE >35	.7493	7.4	6.1	21
295	10	MED		DIABETES AGE 0-35	.7228	5.7	4.5	19
296	10	MED		NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 WITH CC	.9259	8.0	6.0	24
297	10	MED		NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	.5791	5.6	4.5	17
298	10	MED		NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	.7065	5.2	3.2	20
299	10	MED		INBORN ERRORS OF METABOLISM	.8271	6.9	4.7	23
300	10	MED		ENDOCRINE DISORDERS WITH CC	1.0862	9.1	6.9	25
301	10	MED		ENDOCRINE DISORDERS W/O CC	.6758	6.3	4.7	22
302	11	SURG		KIDNEY TRANSPLANT	3.8463	19.1	16.5	35
303	11	SURG		KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.7747	15.0	12.8	31
304	11	SURG		KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL WITH CC	2.3651	13.5	10.3	28
305	11	SURG		KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.3665	8.0	6.2	24
306	11	SURG		PROSTATECTOMY WITH CC	1.4376	10.1	8.2	26
307	11	SURG		PROSTATECTOMY W/O CC	.9121	6.6	5.6	17
308	11	SURG		MINOR BLADDER PROCEDURES WITH CC	1.5354	10.2	7.3	25
309	11	SURG		MINOR BLADDER PROCEDURES W/O CC	.8620	5.9	4.3	22
310	11	SURG		TRANSURETHRAL PROCEDURES WITH CC	.9026	6.2	4.6	22
311	11	SURG		TRANSURETHRAL PROCEDURES W/O CC	.5681	3.6	2.9	11
312	11	SURG		URETHRAL PROCEDURES, AGE >17 WITH CC	.8246	6.0	4.4	21
313	11	SURG		URETHRAL PROCEDURES, AGE >17 W/O CC	.5286	3.7	2.8	12
314	11	SURG	*	URETHRAL PROCEDURES, AGE 0-17	.4323		2.3	11
315	11	SURG		OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.3635	13.0	8.2	26

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					RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED		RENAL FAILURE	1.2840	9.1	6.2	24
317	11	MED		ADMIT FOR RENAL DIALYSIS	.3542	2.4	1.8	7
318	11	MED		KIDNEY & URINARY TRACT NEOPLASMS WITH CC	1.0441	9.1	6.0	24
319	11	MED		KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.5777	4.9	3.2	19
320	11	MED		KIDNEY & URINARY TRACT INFECTIONS AGE >17 WITH CC	1.0230	8.4	6.8	25
321	11	MED		KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.7316	6.5	5.5	18
322	11	MED		KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	.6829	5.0	4.3	14
323	11	MED		URINARY STONES WITH CC, &/OR ESW LITHOTRIPSY	.7020	4.9	3.6	16
324	11	MED		URINARY STONES W/O CC	.5139	3.1	2.4	9
325	11	MED		KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 WITH CC	.6789	6.0	4.5	20
326	11	MED		KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	.4553	4.1	3.2	13
327	11	MED	*	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	.5511		3.3	21
328	11	MED		URETHRAL STRICTURE AGE >17 WITH CC	.6266	5.1	3.9	18
329	11	MED		URETHRAL STRICTURE AGE >17 W/O CC	.4431	3.5	2.6	12
330	11	MED	*	URETHRAL STRICTURE AGE 0-17	.2788		1.6	5
331	11	MED		OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 WITH CC	.9050	7.5	5.3	23
332	11	MED		OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	.5913	5.0	3.6	18
333	11	MED		OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	.6887	4.7	3.4	19
334	12	SURG		MAJOR MALE PELVIC PROCEDURES W CC	1.9237	12.8	11.6	28
335	12	SURG		MAJOR MALE PELVIC PROCEDURES W/O CC	1.4080	10.0	9.4	19
336	12	SURG		TRANSURETHRAL PROSTATECTOMY WITH CC	1.0774	7.7	6.6	19
337	12	SURG		TRANSURETHRAL PROSTATECTOMY W/O CC	.7505	5.4	5.0	11
338	12	SURG		TESTES PROCEDURES, FOR MALIGNANCY	.7865	5.6	3.5	22
339	12	SURG		TESTES PROCEDURES, NON-MALIGNANCY AGE >17	.5930	3.8	2.8	13
340	12	SURG	*	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	.4335		2.4	7
341	12	SURG		PENIS PROCEDURES	1.0294	5.2	4.3	15
342	12	SURG		CIRCUMCISION AGE >17	.4494	2.8	2.1	8
343	12	SURG	*	CIRCUMCISION AGE 0-17	.3788		1.7	4
344	12	SURG		OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.1302	7.4	5.7	24
345	12	SURG		OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	.8284	5.9	4.3	21
346	12	MED		MALIGNANCY, MALE REPRODUCTIVE SYSTEM, WITH CC	.9360	8.5	5.7	24
347	12	MED		MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.5091	4.0	2.7	14
348	12	MED		BENIGN PROSTATIC HYPERTROPHY WITH CC	.6588	5.4	3.8	20
349	12	MED		BENIGN PROSTATIC HYPERTROPHY W/O CC	.4059	3.0	2.3	9
350	12	MED		INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6734	5.8	4.8	16

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					RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
351	12	MED	*	STERILIZATION, MALE	.3333		1.6	5
352	12	MED		OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.4886	3.9	2.9	14
353	13	SURG		PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	2.2997	15.2	12.8	31
354	13	SURG		UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG WITH CC	1.5482	10.2	9.1	23
355	13	SURG		UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	.9929	7.1	6.7	13
356	13	SURG		FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.7983	6.3	5.7	14
357	13	SURG		UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIG	2.1591	13.2	11.4	29
358	13	SURG		UTERINE & ADNEXA PROC FOR NON-MALIGNANCY WITH CC	1.2941	9.0	8.1	20
359	13	SURG		UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.9025	6.6	6.3	12
360	13	SURG		VAGINA, CERVIX & VULVA PROCEDURES	.6957	5.2	3.6	19
361	13	SURG		LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	.6442	3.9	2.7	13
362	13	SURG		ENDOSCOPIC TUBAL INTERRUPTION	.4095	2.0	1.7	5
363	13	SURG		D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.6597	4.9	3.5	16
364	13	SURG		D&C, CONIZATION EXCEPT FOR MALIGNANCY	.4262	2.8	2.2	8
365	13	SURG		OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.9060	12.7	9.6	28
366	13	MED		MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM WITH CC	1.0916	9.6	6.1	24
367	13	MED		MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.5481	4.9	3.2	18
368	13	MED		INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.8308	7.2	5.7	22
369	13	MED		MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.4920	4.6	3.3	17
370	14	SURG		CESAREAN SECTION W CC	1.0303	7.7	6.5	19
371	14	SURG		CESAREAN SECTION W/O CC	.7164	5.2	5.0	9
372	14	MED		VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.4927	4.3	3.4	12
373	14	MED		VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3212	2.7	2.4	6
374	14	SURG		VAGINAL DELIVERY W STERILIZATION &/OR D&C	.5641	3.5	3.1	7
375	14	SURG	*	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.6817		4.4	15
376	14	MED		POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	.3520	3.3	2.5	11
377	14	SURG		POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	.9882	4.7	2.9	21
378	14	MED		ECTOPIC PREGNANCY	.7787	4.4	4.2	9
379	14	MED		THREATENED ABORTION	.2843	2.8	2.1	9
380	14	MED		ABORTION W/O D&C	.3124	2.5	1.9	8
381	14	SURG		ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	.3694	1.9	1.6	5
382	14	MED		FALSE LABOR	.1309	1.3	1.2	2
383	14	MED		OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	.3964	4.6	3.3	17
384	14	MED		OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.3512	3.7	2.6	13
385	15			NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.2232	8.4	3.7	22

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				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
386	15		* EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	3.6480		17.9	36
387	15		* PREMATURITY W MAJOR PROBLEMS	1.8267		13.3	31
388	15		* PREMATURITY W/O MAJOR PROBLEMS	1.1571		8.6	27
389	15		FULL TERM NEONATE W MAJOR PROBLEMS	1.4127	10.7	7.4	25
390	15		NEONATE W OTHER SIGNIFICANT PROBLEMS	.9416	6.0	4.2	20
391	15		* NORMAL NEWBORN	.2218		3.1	7
392	16	SURG	SPLENECTOMY AGE >17	3.5252	16.4	12.8	31
393	16	SURG	* SPLENECTOMY AGE 0-17	1.5206		9.1	27
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.2250	7.9	4.8	23
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.7264	6.0	4.4	22
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	.3441	2.4	1.7	7
397	16	MED	COAGULATION DISORDERS	1.0145	7.5	5.5	23
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS WITH CC	1.2115	8.7	6.4	24
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.6830	5.6	3.9	21
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.6900	15.3	11.2	29
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.0871	14.5	9.9	28
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	.9252	6.6	4.6	23
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.5222	11.6	7.9	26
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.8085	7.0	4.8	23
405	17		* ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.0407		4.9	23
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	2.7146	16.5	12.5	30
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.4499	9.5	7.4	25
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	.8955	6.4	4.2	22
409	17	MED	RADIOTHERAPY	1.0802	10.6	7.1	25
410	17	MED	CHEMOTHERAPY	.4742	3.1	2.4	10
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.4919	3.9	2.9	13
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.3954	2.7	2.0	8
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG WITH CC	1.2385	10.7	7.1	25
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	.8128	7.8	5.1	23
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.5067	19.9	14.5	32
416	18	MED	SEPTICEMIA AGE >17	1.5894	10.4	7.4	25
417	18	MED	SEPTICEMIA AGE 0-17	.9346	6.5	5.0	21
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9743	8.5	6.7	25
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 WITH CC	.9778	7.6	5.9	24
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6949	5.8	4.7	17

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				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
421	18	MED	VIRAL ILLNESS AGE >17	.6255	5.5	4.4	16
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	.6274	5.0	3.4	18
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.5333	11.2	8.0	26
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.2176	21.6	12.2	30
425	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.6004	6.0	4.3	21
426	19	MED	DEPRESSIVE NEUROSES	.6580	8.3	6.0	24
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.6315	8.2	5.6	24
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7305	9.8	6.1	24
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.8868	10.6	7.1	25
430	19	MED	PSYCHOSES	.9329	13.0	8.8	27
431	19	MED	CHILDHOOD MENTAL DISORDERS	.7134	8.3	5.8	24
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7097	7.0	4.3	22
433	20		ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.4232	5.0	3.2	20
434	20		ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT WITH CC	.8149	8.3	5.9	24
435	20		ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT W/O CC	.5903	7.5	5.0	23
436	20		ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	.9788	13.6	9.1	27
437	20		ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.3306	17.6	13.7	32
438	20		NO LONGER VALID	.0000		.0	0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.7523	12.9	7.2	25
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	2.2498	15.6	9.6	28
441	21	SURG	HAND PROCEDURES FOR INJURIES	.7185	3.8	2.4	14
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES WITH CC	1.9218	9.9	5.9	24
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.2169	6.9	4.3	22
444	21	MED	MULTIPLE TRAUMA AGE >17 WITH CC	.8207	7.3	5.3	23
445	21	MED	MULTIPLE TRAUMA AGE >17 W/O CC	.5183	5.0	3.7	17
446	21	MED	* MULTIPLE TRAUMA AGE 0-17	.4796		2.4	10
447	21	MED	ALLERGIC REACTIONS AGE >17	.4703	3.6	2.7	12
448	21	MED	* ALLERGIC REACTIONS AGE 0-17	.3470		2.9	9
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 WITH CC	.7922	6.1	4.5	22
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4917	4.1	3.0	14
451	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	.5907	4.4	3.4	14
452	21	MED	COMPLICATIONS OF TREATMENT WITH CC	.8976	6.7	4.6	23
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.5137	4.6	3.3	17
454	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG WITH CC	.9067	6.8	4.5	22
455	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG W/O CC	.4692	4.0	2.9	14

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
456	22		BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.9811	10.1	4.6	23
457	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE	2.5317	8.5	4.1	22
458	22	SURG	NON-EXTENSIVE BURNS W SKIN GRAFT	3.7113	22.8	16.1	34
459	22	SURG	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.7964	14.6	10.0	28
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.0495	9.2	6.4	24
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	.7198	4.4	2.4	17
462	23	MED	REHABILITATION	1.7517	18.3	13.7	32
463	23	MED	SIGNS & SYMPTOMS W CC	.7633	7.0	5.3	23
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4740	4.5	3.4	15
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.3172	2.2	1.8	6
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.5383	5.0	2.8	20
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4723	6.8	2.9	21
468			UNRELATED OPERATING ROOM PROCEDURES	2.4679	15.5	9.9	28
469		**	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000		.0	0
470		**	UNGROUPABLE	.0000		.0	0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	4.0896	20.7	18.1	36
472	22	SURG	EXTENSIVE BURNS W O.R. PROCEDURE	10.7296	29.6	17.1	35
473	17		ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	2.7107	14.8	8.3	26
474	04		RESPIRATORY SYSTEM DIAGNOSIS WITH TRACHEOSTOMY	11.8772	42.9	33.3	51
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.1757	12.8	6.8	27

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 7a- MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V4.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	23496	19.1	6	9	14	23	37
002	4957	18.6	4	8	13	23	38
003	4	12.0	6	6	8	15	19
004	4281	17.3	4	8	13	21	34
005	51126	8.3	3	4	6	10	15
006	3494	2.8	1	1	2	3	5
007	7442	15.3	2	3	7	16	33
008	2553	4.7	1	2	3	5	10
009	2122	11.6	2	4	8	13	23
010	20510	10.7	2	4	7	13	22
011	2304	6.8	1	2	5	8	14
012	31009	10.7	2	4	7	12	19
013	5966	10.0	3	5	8	12	18
014	310594	10.9	3	5	8	13	20
015	162909	5.6	2	3	4	7	10
016	15742	9.5	3	4	7	11	17
017	3888	6.5	2	3	5	8	11
018	20916	8.0	2	3	6	9	15
019	5412	5.8	1	2	4	8	11
020	6021	11.3	2	4	8	14	22
021	674	9.3	3	4	7	11	17
022	14536	5.9	2	3	5	7	11
023	4698	7.1	1	2	5	8	14
024	59331	6.7	2	3	5	8	13
025	15191	4.6	1	2	3	6	9
026	47	3.6	1	1	2	4	7
027	2478	9.6	1	1	4	11	22
028	10645	7.6	1	2	5	9	16
029	993	4.4	1	1	3	5	9
031	9702	5.2	1	2	3	6	10
032	1529	3.1	1	1	2	4	6
034	14668	8.2	2	3	6	10	16
035	2290	5.9	1	2	4	7	11
036	20526	3.7	2	2	3	4	6
037	3318	4.4	1	2	3	5	9
038	1905	3.1	1	1	2	3	6
039	59170	2.1	1	1	2	2	3
040	7253	2.7	1	1	2	3	5
041	1	5.0	5	5	5	5	5
042	24077	3.2	1	2	2	4	6
043	376	4.6	2	2	4	6	8
044	2501	6.9	3	4	6	8	12
045	4120	4.4	1	2	3	6	8
046	4034	5.9	1	2	4	7	12
047	4567	3.6	1	2	2	5	8
049	5416	15.9	4	8	13	19	29
050	5766	3.6	1	2	3	4	6
051	880	3.1	1	2	2	3	5
052	126	4.6	1	2	3	5	8
053	9672	3.4	1	2	2	3	7
054	1	3.0	3	3	3	3	3

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FY86 MEDPAR UPDATE 0687 GROUPER V4.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
055	11177	2.6	1	1	2	3	4
056	2190	2.5	1	1	2	3	5
057	775	5.5	1	2	3	6	13
059	371	2.3	1	1	2	2	4
061	277	4.5	1	1	2	5	11
062	1	1.0	1	1	1	1	1
063	4535	7.7	1	2	4	9	17
064	7316	8.7	1	2	5	10	19
065	33828	4.3	2	2	3	5	8
066	11453	4.1	1	2	3	5	7
067	396	6.0	2	3	5	7	12
068	25218	6.0	2	3	5	7	10
069	3283	4.5	2	2	4	6	8
070	24	4.0	1	2	3	6	8
071	142	4.7	2	3	4	6	8
072	917	5.0	1	2	3	6	9
073	9672	5.9	1	2	4	7	12
074	1	1.0	1	1	1	1	1
075	29426	15.6	6	9	12	19	28
076	12468	17.6	3	6	11	21	37
077	2941	7.6	1	2	4	10	15
078	29270	10.9	4	7	10	13	18
079	93802	12.7	4	6	10	15	24
080	2646	9.6	3	5	7	11	16
081	10	9.5	2	4	5	13	16
082	95599	9.4	2	4	7	12	19
083	9292	8.1	2	4	6	10	15
084	615	4.9	1	2	4	6	9
085	18263	8.8	2	4	7	11	17
086	958	6.0	1	3	5	8	12
087	71391	9.5	2	4	7	11	18
088	163637	8.3	3	4	6	10	15
089	346759	8.9	3	5	7	11	16
090	16728	6.4	3	4	6	8	11
091	31	6.3	1	3	6	7	9
092	12635	8.7	2	4	7	11	16
093	1055	6.1	2	3	5	8	11
094	9047	9.6	3	5	7	12	19
095	708	6.2	2	3	5	8	11
096	200954	7.2	3	4	6	9	12
097	23680	5.6	2	3	5	7	10
098	16	3.7	1	2	3	4	5
099	34023	5.4	1	2	4	7	10
100	5356	3.8	1	2	3	4	7
101	26427	7.0	2	3	5	9	13
102	2285	4.5	1	2	3	6	9
103	57	31.6	11	15	27	39	61
104	8332	21.0	10	13	17	25	35
105	9545	16.4	8	10	13	18	29
106	43396	16.6	9	11	14	19	26
107	34142	13.1	7	9	10	14	21

TABLE 7a- MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V4.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
108	1342	15.8	3	8	12	19	29
109	6511	12.4	1	3	9	17	26
110	64409	15.5	6	9	12	18	28
111	7527	10.2	5	7	9	12	15
112	68235	9.2	2	3	7	11	18
113	29917	18.6	6	9	14	22	35
114	8493	14.2	4	6	11	18	27
115	7205	15.2	6	9	13	19	26
116	53253	8.4	3	4	7	10	15
117	4301	6.3	2	3	4	8	13
118	8292	4.2	1	2	3	5	8
119	4817	6.6	2	3	4	8	14
120	20842	16.5	3	6	11	20	34
121	122179	11.3	4	7	10	14	19
122	132762	8.7	3	6	8	11	14
123	69141	5.4	1	1	3	7	13
124	57627	6.4	1	2	5	8	13
125	89898	3.3	1	2	2	4	7
126	3284	22.6	5	11	20	31	43
127	500070	8.1	3	4	6	10	15
128	38392	9.2	4	6	8	11	15
129	9693	6.2	1	1	2	8	15
130	81254	7.4	1	3	6	9	14
131	11540	5.5	1	2	4	8	11
132	36274	6.0	2	3	5	7	11
133	3871	4.3	1	2	3	5	8
134	44673	5.8	2	3	4	7	11
135	9572	6.9	2	3	5	8	13
136	885	4.6	1	2	3	5	8
137	1	27.0	27	27	27	27	27
138	214489	5.9	2	3	5	7	11
139	20251	4.0	1	2	3	5	7
140	360863	5.0	2	3	4	6	9
141	95618	5.3	2	3	4	6	10
142	9203	3.7	1	2	3	5	7
143	80651	3.8	1	2	3	5	7
144	43728	8.0	2	4	6	10	15
145	10636	5.2	1	2	4	6	10
146	20097	17.5	9	11	14	20	29
147	1826	12.3	8	9	11	14	18
148	124304	16.6	8	10	13	19	29
149	9754	10.8	7	8	10	12	16
150	18492	14.1	6	8	12	16	24
151	2590	9.3	4	6	8	11	15
152	9484	9.9	3	6	8	11	17
153	1562	7.6	3	5	7	9	11
154	44363	16.0	5	8	12	19	30
155	3948	10.1	4	6	9	12	17
156	1	18.0	18	18	18	18	18
157	38318	6.0	2	3	5	8	12
158	11317	3.9	1	2	3	5	7

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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
159	21237	6.5	2	3	5	8	12
160	7204	4.5	2	3	4	6	8
161	71202	4.3	1	2	3	5	8
162	19844	3.0	1	2	3	4	5
163	13	4.4	2	2	4	5	7
164	5260	11.5	6	7	10	13	18
165	1152	8.3	5	6	8	10	12
166	3434	7.8	3	4	6	9	13
167	1540	5.0	3	3	4	6	8
168	7646	6.4	1	2	3	7	14
169	2652	3.5	1	1	2	4	7
170	12808	15.4	3	7	12	19	30
171	1188	8.8	2	4	7	11	17
172	38778	9.8	2	4	7	12	21
173	2160	6.3	1	2	4	8	13
174	152000	6.9	2	4	5	8	12
175	10761	4.9	2	3	4	6	8
176	11595	7.9	3	4	6	9	15
177	25260	6.3	2	4	5	8	11
178	4409	4.8	2	3	4	6	8
179	7160	9.3	3	5	7	11	17
180	69208	7.0	2	3	5	8	13
181	8018	4.9	2	3	4	6	9
182	297807	5.9	2	3	5	7	11
183	40082	4.4	1	2	4	6	8
184	45	3.5	1	1	2	4	10
185	5455	6.6	1	2	5	8	13
186	1	4.0	4	4	4	4	4
187	2946	3.0	1	1	2	3	6
188	43761	6.4	1	2	4	8	13
189	5482	4.2	1	2	3	5	8
190	142	5.3	2	2	4	6	10
191	5357	20.9	8	11	17	26	39
192	3343	19.7	6	9	15	24	40
193	12023	16.4	6	10	14	20	29
194	744	11.4	3	7	11	15	21
195	26651	13.8	7	9	12	16	22
196	1377	9.6	6	7	9	11	14
197	76595	10.4	5	6	9	12	17
198	16994	6.9	4	5	6	8	10
199	3891	15.3	5	8	13	19	28
200	2327	13.6	2	6	10	17	27
201	3950	12.8	2	5	9	17	27
202	16423	10.0	2	4	8	13	20
203	30357	9.3	2	4	7	12	19
204	31640	8.0	3	4	6	10	14
205	21593	9.0	2	4	7	11	18
206	2207	5.5	1	2	4	7	11
207	48715	6.5	2	3	5	8	12
208	6030	4.1	1	2	3	5	8
209	170963	13.8	8	10	12	15	20

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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
210	122745	15.0	7	9	12	17	24
211	6461	11.9	5	8	10	14	18
212	14	7.2	3	5	6	7	14
213	4813	14.7	4	7	11	18	29
214	32286	13.6	6	8	11	16	24
215	14682	9.7	4	6	8	12	16
216	4895	13.1	2	4	10	18	28
217	9719	18.5	3	6	13	24	41
218	18582	9.9	3	5	7	12	18
219	7483	6.8	3	4	6	8	12
220	4	5.3	4	4	5	5	7
221	7224	7.0	1	2	5	9	15
222	3930	4.6	1	2	3	6	9
223	10436	7.0	2	3	5	9	14
224	10022	4.0	1	2	3	5	7
225	20075	4.7	1	2	3	5	9
226	7982	7.5	1	3	5	9	16
227	4008	4.4	1	2	3	5	8
228	5393	4.5	1	2	3	5	9
229	6059	2.9	1	1	2	3	5
230	4482	7.0	1	2	4	8	14
231	11284	5.9	1	2	3	6	13
232	874	5.7	1	1	3	7	14
233	9244	10.3	2	4	7	12	20
234	2651	5.7	2	3	4	7	11
235	6458	14.1	2	4	8	15	25
236	40140	10.5	2	5	8	12	19
237	2370	6.6	2	3	5	8	12
238	5015	14.6	4	7	11	18	30
239	59051	10.0	3	5	8	12	19
240	16509	9.0	3	4	7	11	16
241	4033	6.7	2	3	5	8	12
242	2315	11.7	3	6	9	14	24
243	153647	7.1	2	3	6	9	13
244	22459	7.0	2	3	5	9	13
245	2738	5.2	1	3	4	7	10
246	3021	6.2	2	3	5	7	11
247	11564	5.3	1	2	4	7	10
248	7645	5.9	2	3	5	7	11
249	5425	7.0	1	2	5	8	15
250	9426	5.0	1	2	3	6	10
251	1969	3.0	1	1	2	4	6
252	1	2.0	2	2	2	2	2
253	32242	7.1	2	3	5	8	13
254	5346	4.8	1	2	3	6	9
256	10207	6.1	1	2	4	7	12
257	37430	6.9	3	5	6	8	11
258	8256	5.7	3	4	5	7	9
259	7217	5.8	1	2	4	7	11
260	1665	3.4	1	2	3	4	6
261	5066	3.4	1	2	3	4	6

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SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V4.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
262	6459	2.5	1	1	2	3	4
263	26489	20.0	5	9	15	25	40
264	2620	15.5	4	7	12	20	31
265	5699	10.9	2	4	7	13	23
266	8044	5.2	1	2	3	7	11
267	630	4.8	1	2	3	5	10
268	2665	3.8	1	1	2	4	8
269	13762	9.3	2	3	6	11	20
270	3611	4.8	1	2	3	5	10
271	19037	12.1	3	6	9	14	22
272	9924	9.2	3	4	7	11	18
273	1376	8.1	2	4	6	9	17
274	6038	9.5	2	3	6	11	19
275	415	5.5	1	2	3	7	12
276	1405	4.3	1	1	3	6	9
277	63977	8.5	3	5	7	10	15
278	9383	6.5	3	4	5	8	11
279	12	5.4	2	2	5	7	9
280	24289	5.8	1	2	4	7	11
281	2827	3.8	1	2	3	5	7
282	3	3.3	1	1	3	6	6
283	9407	6.9	2	3	5	8	13
284	1629	4.8	1	2	3	6	9
285	2534	23.7	7	11	18	29	44
286	1277	14.9	6	8	11	17	27
287	5764	19.4	5	8	14	23	38
288	574	11.6	4	6	8	12	23
289	3546	7.6	3	4	5	8	15
290	8437	5.4	2	3	4	5	9
291	205	2.8	1	1	2	4	5
292	4471	15.6	3	6	11	19	30
293	357	8.8	1	3	6	10	17
294	105110	7.6	3	4	6	9	13
295	2724	5.9	2	3	5	7	11
296	215412	7.7	2	4	6	9	14
297	9346	5.1	2	3	4	6	9
298	51	5.2	1	2	3	5	8
299	1082	7.1	1	3	5	9	14
300	13061	8.9	2	4	7	11	17
301	1448	5.4	1	3	4	7	10
302	5711	19.3	9	11	16	23	34
303	14322	15.3	7	9	13	18	26
304	21474	12.0	3	6	9	15	23
305	4331	7.1	2	3	6	9	13
306	18226	9.1	3	5	7	11	17
307	1776	6.1	3	4	5	7	10
308	10981	8.8	2	3	6	11	18
309	1455	5.3	1	2	4	7	11
310	54351	5.2	1	2	4	6	10
311	9152	3.4	1	2	3	4	6
312	7118	5.3	1	2	4	6	10

TABLE 7a- MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V4.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
313	1388	3.6	1	2	3	4	7
314	1	4.0	4	4	4	4	4
315	20627	13.5	2	4	9	17	29
316	40302	9.2	2	4	7	12	19
317	1770	2.6	1	1	1	3	5
318	10105	8.4	1	3	6	10	18
319	695	4.7	1	2	3	5	10
320	153882	8.2	3	4	7	10	14
321	10137	6.2	2	3	5	7	10
322	48	5.0	2	3	4	7	9
323	30206	4.2	1	2	3	5	8
324	10610	2.7	1	1	2	3	5
325	20578	5.7	1	2	4	7	11
326	2079	3.6	1	2	3	5	7
327	7	3.1	1	1	1	2	4
328	3442	4.8	1	2	4	6	9
329	325	3.4	1	1	2	4	7
330	1	9.0	9	9	9	9	9
331	32214	7.0	2	3	5	9	14
332	3230	4.5	1	2	3	6	9
333	80	4.6	1	2	3	6	10
334	9521	12.4	7	8	11	15	19
335	5790	10.0	6	8	9	12	15
336	163347	6.7	3	4	6	8	11
337	21219	5.0	3	4	5	6	7
338	10569	5.8	1	2	3	7	13
339	7313	4.2	1	2	3	5	9
340	4	2.8	2	2	2	3	4
341	15254	5.3	2	3	4	6	9
342	1475	3.1	1	2	2	3	6
344	3574	7.7	2	4	6	9	14
345	2556	6.3	1	3	4	7	12
346	16328	7.7	1	2	5	9	16
347	1225	3.5	1	1	2	4	7
348	12986	4.6	1	2	3	6	9
349	1953	2.4	1	1	2	3	5
350	9725	5.9	2	3	5	7	10
351	1	1.0	1	1	1	1	1
352	1592	4.1	1	2	3	5	8
353	1655	15.5	7	9	12	18	27
354	10289	9.2	5	6	8	10	15
355	3181	6.7	4	5	6	8	9
356	25596	6.4	3	5	6	8	9
357	5925	13.6	6	8	11	16	24
358	25389	8.1	5	6	7	9	12
359	12861	6.4	4	5	6	7	9
360	6232	5.6	1	2	4	7	11
361	601	4.2	1	2	2	5	9
362	39	2.0	1	1	2	2	3
363	5297	5.2	1	1	3	5	10
364	7249	2.9	1	1	2	3	6

TABLE 7a- MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V4.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
365	3345	12.9	4	6	9	16	26
366	7528	8.7	1	3	6	11	19
367	906	4.4	1	1	3	5	9
368	1474	7.2	2	4	6	9	14
369	4202	4.8	1	2	3	6	10
370	377	8.0	4	5	6	8	13
371	550	5.5	3	4	5	6	7
372	253	4.4	2	2	3	5	7
373	1430	2.8	1	2	2	3	4
374	256	3.6	2	2	3	4	5
375	1	6.0	6	6	6	6	6
376	103	3.3	1	1	2	4	6
377	26	4.7	1	1	3	6	10
378	90	4.4	2	4	4	5	7
379	204	2.8	1	1	2	3	5
380	70	3.3	1	1	2	3	6
381	317	2.0	1	1	1	2	4
382	102	1.3	1	1	1	1	2
383	598	4.6	1	2	3	6	10
384	111	3.7	1	1	2	4	9
385	14	8.4	1	2	2	10	30
386	7	14.3	2	4	14	18	19
389	59	10.7	2	5	8	14	22
390	55	6.0	2	2	4	6	10
391	1	10.0	10	10	10	10	10
392	2158	16.6	6	8	12	21	33
393	1	10.0	10	10	10	10	10
394	2339	8.6	1	2	5	11	18
395	81182	6.2	1	3	5	8	12
396	48	3.1	1	1	1	2	4
397	9940	7.7	2	3	6	9	15
398	11784	8.2	2	3	6	10	16
399	955	5.5	1	2	4	7	11
400	7407	15.5	4	7	12	19	32
401	5762	14.6	3	6	10	18	30
402	4865	6.8	1	2	5	9	14
403	24647	11.6	2	4	8	15	24
404	10682	7.1	1	3	5	9	15
405	1	28.0	28	28	28	28	28
406	3966	16.3	5	8	13	21	32
407	1675	8.6	2	4	7	11	16
408	11657	6.6	2	3	4	7	14
409	7727	10.6	2	4	7	15	23
410	110301	3.3	1	1	2	4	6
411	1091	3.9	1	2	3	5	8
412	905	2.9	1	1	2	3	6
413	15463	9.9	2	4	7	13	21
414	1257	7.0	1	2	5	8	16
415	19715	19.8	5	9	15	24	39
416	86434	10.7	2	5	9	13	20
417	26	6.5	2	3	5	7	10

TABLE 7a- MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V4.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
418	10084	8.7	3	4	7	11	16
419	17270	7.4	2	4	6	9	14
420	1509	5.8	2	3	5	7	11
421	14202	5.7	2	3	4	7	10
422	82	5.6	1	2	3	5	11
423	6618	11.4	3	5	8	13	23
424	3737	21.5	2	6	14	26	44
425	14710	6.2	2	3	4	7	12
426	13086	8.5	2	4	6	10	17
427	2096	8.5	2	3	6	10	17
428	1298	10.2	2	3	6	12	21
429	32590	11.4	3	4	7	12	20
430	62919	13.1	3	5	9	17	27
431	461	8.5	2	3	6	11	17
432	785	7.1	1	2	4	8	15
433	4389	5.0	1	1	3	6	12
434	6806	8.1	2	3	5	10	18
435	21379	8.2	2	3	5	9	20
436	5992	13.8	2	4	11	21	28
437	6725	17.8	4	8	20	25	30
439	1223	13.4	1	3	8	16	30
440	5613	15.9	2	5	10	21	36
441	1185	4.1	1	1	2	4	9
442	45517	9.3	1	2	6	12	21
443	6936	6.9	1	2	4	9	15
444	6018	6.6	2	3	5	8	13
445	1025	5.2	1	2	3	6	9
446	4	3.8	1	1	2	4	8
447	2780	3.7	1	1	3	5	7
448	2	8.0	2	2	14	14	14
449	39013	5.9	1	3	4	7	11
450	6211	3.7	1	1	2	4	7
451	29	4.4	2	2	3	6	8
452	28698	6.2	1	2	4	8	13
453	5049	4.9	1	2	3	6	10
454	5716	6.3	1	2	4	7	13
455	473	4.1	1	1	2	5	9
456	203	10.1	1	1	5	11	26
457	151	8.3	1	1	4	10	20
458	1728	23.0	5	10	18	30	47
459	964	14.8	3	6	10	17	32
460	2667	9.4	2	4	7	11	18
461	10132	4.8	1	1	2	5	11
462	4925	18.1	4	8	15	24	34
463	9347	7.2	2	3	5	9	14
464	4729	4.9	1	2	3	6	9
465	1447	2.5	1	1	2	2	4
466	4432	5.3	1	1	2	6	11
467	8109	6.9	1	1	3	5	11
468	131774	15.5	2	6	11	19	31
469	2	8.0	7	7	9	9	9

TABLE 7a- MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V4.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
470	2135	10.3	2	3	6	11	19
471	2289	20.9	10	13	17	26	34
472	204	29.4	2	9	22	43	64
473	8062	14.8	2	4	9	21	36

TECHNICAL NOTE: The V4.0 GROUPER software used to assign FY 1986 cases to DRGs is based on the DRG classifications in effect for discharges occurring in Federal FY 1987.

Each percentile length of stay (LOS) value was computed according to the following formula: Let n represent the number of discharges classified by DRG and let $x_1, x_2, \ldots, x_n$ represent the ordered LOS values for each DRG set of discharges. For the t_{th} percentile, where $p = t/100$, let $np = j + g$ where j is the integer part and g is the fractional part of np. The t_{th} percentile, y, is defined as the LOS value at x_{np}.

$$y = (1-g)x_j + gx_{j+1}$$

(See SAS User's Guide: Basics, Version 5 Edition, Cary, NC: SAS Institute Inc., 1985, p. 1186.)

TABLE 7b- MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	23496	19.1	6	9	14	23	37
002	4959	18.6	4	8	13	23	38
003	4	12.0	6	6	8	15	19
004	4280	17.3	4	8	13	21	34
005	51108	8.3	3	4	6	10	15
006	3494	2.8	1	1	2	3	5
007	4743	21.0	3	6	12	22	47
008	5450	5.6	1	2	3	6	12
009	2126	11.6	2	4	8	13	23
010	16690	11.3	2	4	8	14	23
011	6179	7.8	2	3	5	9	16
012	31073	10.7	2	4	7	12	19
013	5983	10.1	3	5	8	12	18
014	310801	10.9	3	5	8	13	20
015	163083	5.6	2	3	4	7	10
016	15664	9.5	3	4	7	11	17
017	8992	6.5	2	3	5	8	11
018	12307	9.2	2	4	7	11	17
019	14085	6.2	2	3	5	8	12
020	6033	11.3	2	4	8	14	22
021	674	9.3	3	4	7	11	17
022	14555	5.9	2	3	5	7	11
023	4700	7.1	1	2	5	8	14
024	42215	7.3	2	3	5	9	14
025	32386	4.9	1	2	4	6	9
026	47	3.6	1	1	2	4	7
027	2479	9.6	1	1	4	11	22
028	6196	9.2	1	3	6	11	19
029	5659	5.4	1	2	3	7	11
031	4703	6.3	1	2	4	7	12
032	6538	4.0	1	2	3	5	8
034	10756	9.1	2	3	6	11	18
035	6232	6.0	1	2	4	7	11
036	20488	3.7	2	2	3	4	6
037	3354	4.4	1	2	3	5	9
038	1904	3.1	1	1	2	3	6
039	59166	2.1	1	1	2	2	3
040	7252	2.7	1	1	2	3	5
041	1	5.0	5	5	5	5	5
042	24078	3.2	1	2	2	4	6
043	376	4.6	2	2	4	6	9
044	2503	6.9	3	4	6	8	12
045	4122	4.4	1	2	3	6	8
046	3916	5.9	1	2	4	7	12
047	4689	3.7	1	1	2	5	8
049	5416	15.9	4	8	13	19	29
050	5749	3.6	1	2	3	4	6
051	875	3.1	1	2	2	3	5
052	105	4.3	1	2	3	4	6
053	9662	3.4	1	2	2	3	7
054	1	3.0	3	3	3	3	3

TABLE 7b- MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
055	10975	2.6	1	1	2	3	4
056	2153	2.5	1	1	2	3	5
057	864	5.4	1	2	3	6	12
059	375	2.3	1	1	2	2	4
061	470	3.5	1	1	2	3	8
062	1	1.0	1	1	1	1	1
063	4535	7.7	1	2	4	9	17
064	7409	8.7	1	2	5	10	19
065	33375	4.3	2	2	3	5	8
066	11465	4.1	1	2	3	5	7
067	396	6.0	2	3	5	7	12
068	18273	6.3	2	3	5	8	11
069	10262	4.9	2	3	4	6	9
070	24	4.0	1	2	3	6	8
071	142	4.7	2	3	4	6	8
072	918	5.0	1	2	3	6	9
073	9726	5.9	1	2	4	7	12
074	1	1.0	1	1	1	1	1
075	28983	15.2	6	9	12	18	27
076	10365	12.8	2	5	10	16	26
077	2913	7.0	1	2	4	9	15
078	28974	10.8	4	7	10	13	18
079	72804	12.9	4	6	10	16	24
080	20367	9.8	3	5	8	12	18
081	10	9.5	2	4	5	13	16
082	95394	9.4	2	4	7	12	19
083	6796	8.5	3	4	7	11	16
084	3019	5.6	2	3	4	7	10
085	15586	9.1	2	4	7	11	17
086	3571	6.7	2	3	5	8	13
087	65207	8.6	2	4	7	11	16
088	160750	8.1	3	4	6	10	14
089	252782	9.3	3	5	8	11	17
090	106877	7.3	3	4	6	9	12
091	31	6.3	1	3	6	7	9
092	9762	9.0	2	4	7	11	17
093	3758	6.8	2	3	5	8	12
094	7595	9.9	3	5	8	12	19
095	2003	6.6	2	3	5	8	12
096	164961	7.3	3	4	6	9	13
097	58309	5.8	2	3	5	7	10
098	16	3.7	1	2	3	4	5
099	25947	5.7	2	3	4	7	11
100	13703	3.8	1	2	3	5	7
101	18222	7.4	2	3	6	9	14
102	10092	5.4	1	2	4	7	10
103	54	32.7	11	19	27	42	64
104	8332	21.0	10	13	17	25	35
105	9544	16.4	8	10	13	18	29
106	43396	16.6	9	11	14	19	26
107	34142	13.1	7	9	10	14	21

TABLE 7b- MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
108	1342	15.8	3	8	12	19	29
109	6506	12.4	1	3	9	17	26
110	54583	16.5	6	9	13	19	30
111	21526	10.8	5	8	10	12	17
112	62016	8.4	2	3	6	10	17
113	32058	19.1	7	9	14	23	36
114	8485	14.2	4	6	11	18	27
115	7149	15.2	6	9	13	19	26
116	53005	8.3	3	4	7	10	15
117	4329	6.3	2	3	4	8	13
118	7839	4.1	1	2	3	5	8
119	4815	6.6	2	3	4	8	14
120	18539	17.2	3	7	12	21	35
121	122240	11.3	4	7	10	14	19
122	132792	8.7	3	6	8	11	14
123	69032	5.4	1	1	3	7	13
124	57697	6.4	1	2	5	8	13
125	89902	3.3	1	2	2	4	7
126	3297	22.6	5	11	20	31	43
127	495005	8.1	3	4	6	10	15
128	38462	9.2	4	6	8	11	15
129	9687	6.2	1	1	2	8	15
130	56003	8.0	2	3	7	10	15
131	37023	5.8	1	2	5	8	11
132	27574	6.3	2	3	5	7	11
133	12648	4.8	1	2	4	6	9
134	44765	5.8	2	3	4	7	11
135	7703	7.3	2	3	5	9	14
136	2764	5.0	1	2	4	6	9
137	1	27.0	27	27	27	27	27
138	148244	6.4	2	3	5	8	12
139	86732	4.6	1	2	4	6	8
140	361137	5.1	2	3	4	6	9
141	60330	5.7	2	3	4	7	10
142	44559	4.4	1	2	4	5	8
143	80693	3.8	1	2	3	5	7
144	43637	8.0	2	4	6	10	16
145	10652	5.2	1	2	4	6	10
146	15865	18.5	9	11	15	21	31
147	5958	13.0	8	10	12	15	20
148	97040	17.5	8	10	14	20	31
149	33868	11.8	7	9	10	13	18
150	13504	15.4	7	9	13	18	27
151	7578	10.1	5	7	9	12	16
152	6011	10.8	3	6	9	13	19
153	4913	7.9	3	5	8	10	12
154	40051	17.5	5	9	14	21	33
155	12007	10.8	4	7	9	13	19
156	1	18.0	18	18	18	18	18
157	22904	7.2	2	3	6	9	14
158	27773	4.2	1	2	3	5	8

TABLE 7b- MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
159	11162	7.8	3	4	6	9	14
160	16848	4.8	2	3	4	6	8
161	30698	5.4	2	3	4	6	10
162	59640	3.3	1	2	3	4	6
163	13	4.4	2	2	4	5	7
164	3392	13.0	6	8	11	15	21
165	3077	8.8	5	6	8	10	13
166	1992	9.1	4	5	7	11	16
167	3056	5.5	3	4	5	7	9
168	4362	8.5	1	2	4	10	19
169	6021	3.7	1	2	2	4	8
170	10762	16.4	4	7	12	21	32
171	3270	9.9	2	4	8	12	19
172	32442	10.3	2	4	7	13	22
173	8700	6.8	1	2	4	8	14
174	116553	7.3	2	4	6	9	13
175	46357	5.4	2	3	5	7	9
176	10975	8.0	3	4	6	10	15
177	17898	6.7	3	4	5	8	12
178	12454	5.2	2	3	4	6	9
179	7169	9.3	3	5	7	11	17
180	46488	7.9	2	4	6	10	15
181	30826	5.2	2	3	4	6	9
182	216875	6.4	2	3	5	8	12
183	121697	4.7	2	2	4	6	8
184	45	3.5	1	1	2	4	10
185	5499	6.6	1	2	5	8	13
186	1	4.0	4	4	4	4	4
187	2962	3.0	1	1	2	3	6
188	32113	7.1	1	3	5	9	14
189	17260	4.4	1	2	3	6	9
190	142	5.3	2	2	4	6	10
191	5357	20.9	8	11	17	26	39
192	3343	19.7	6	9	15	24	40
193	9333	17.6	7	10	15	21	31
194	3430	12.2	3	8	11	16	21
195	22528	14.2	7	9	12	16	23
196	5498	10.9	6	8	10	13	17
197	49815	11.6	5	7	9	14	19
198	43756	7.6	4	5	7	9	12
199	3891	15.3	5	8	13	19	28
200	2327	13.6	2	6	10	17	27
201	3949	12.8	2	5	9	17	27
202	16455	10.0	2	4	8	13	20
203	30564	9.3	2	4	7	12	19
204	31670	8.0	3	4	6	10	14
205	18345	9.4	2	4	7	12	19
206	5477	6.1	1	2	5	8	12
207	32831	7.3	2	4	6	9	13
208	21956	4.7	1	2	4	6	9
209	170243	13.7	8	10	12	15	20

TABLE 7b— MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
210	72808	16.3	7	10	13	18	27
211	55599	12.6	6	8	11	15	19
212	14	7.2	3	5	6	7	14
213	4813	14.7	4	7	11	18	29
214	17492	15.6	6	9	12	19	28
215	29465	10.4	5	7	9	13	18
216	4891	13.2	2	4	10	18	28
217	11197	20.7	3	7	14	27	45
218	9200	12.0	4	6	9	14	22
219	16848	7.4	3	4	6	9	13
220	4	5.3	4	4	5	5	7
221	3421	9.7	2	3	7	12	21
222	11164	4.8	1	2	3	6	10
223	10439	7.0	2	3	5	9	14
224	8693	3.9	1	2	3	5	7
225	20368	4.7	1	2	3	5	9
226	3514	10.6	2	4	7	13	22
227	8987	4.7	1	2	3	6	9
228	5561	4.4	1	2	3	5	9
229	5787	2.8	1	1	2	3	5
230	4116	7.3	1	3	5	8	15
231	8752	6.0	1	2	3	6	13
232	951	5.5	1	1	3	6	13
233	4921	12.9	3	5	9	15	25
234	7003	6.7	2	3	5	8	13
235	6466	14.2	2	4	8	15	35
236	40201	10.5	2	5	8	12	19
237	2372	6.6	2	3	5	8	12
238	5068	14.7	4	7	11	18	30
239	59420	10.0	3	5	8	12	19
240	11745	9.8	3	5	8	12	18
241	8894	7.0	2	4	6	8	13
242	2321	11.8	3	6	9	15	24
243	153922	7.1	2	3	6	9	13
244	13517	7.8	2	4	6	9	14
245	11754	5.8	2	3	5	7	11
246	3028	6.2	2	3	5	7	11
247	11586	5.3	1	2	4	7	10
248	7696	5.9	2	3	5	7	11
249	5431	7.0	1	2	5	8	15
250	3860	6.8	1	2	5	8	13
251	7554	3.6	1	1	2	4	7
252	1	2.0	2	2	2	2	2
253	15072	8.9	2	4	6	10	16
254	22568	5.4	1	2	4	7	10
256	10311	6.1	1	2	4	7	12
257	20187	7.7	4	5	7	9	12
258	25480	5.9	3	4	6	7	9
259	3658	7.8	2	3	5	9	16
260	5222	3.7	1	2	3	5	7
261	5066	3.4	1	2	3	4	6

TABLE 7b- MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
262	6459	2.5	1	1	2	3	4
263	21781	21.0	6	9	15	26	42
264	8065	15.1	4	7	11	19	30
265	5163	10.8	2	3	7	13	23
266	7838	5.1	1	2	3	7	11
267	630	4.8	1	2	3	5	10
268	2665	3.8	1	1	2	4	8
269	8464	11.8	2	4	8	15	24
270	8906	5.1	1	2	3	6	11
271	19036	12.1	3	6	9	14	22
272	6802	9.8	3	5	7	12	19
273	4499	8.0	2	4	6	9	16
274	5169	10.0	2	4	7	12	20
275	1285	6.1	1	2	4	7	13
276	1406	4.3	1	1	3	6	9
277	44687	9.0	3	5	7	11	16
278	28665	7.1	3	4	6	8	12
279	12	5.4	2	2	5	7	9
280	13573	6.4	2	3	5	8	12
281	13535	4.7	1	2	3	6	9
282	3	3.3	1	1	3	6	6
283	6124	7.6	2	3	6	9	15
284	4912	5.2	1	2	4	7	10
285	2534	23.7	7	11	18	29	44
286	1277	14.9	6	8	11	17	27
287	5764	19.4	5	8	14	23	38
288	574	11.6	4	6	8	12	23
289	3545	7.6	3	4	5	8	15
290	8435	5.4	2	3	4	5	9
291	205	2.8	1	1	2	4	5
292	3398	17.2	4	7	13	21	34
293	1218	9.7	1	4	7	12	18
294	105486	7.6	3	4	6	9	13
295	2740	5.9	2	3	5	7	11
296	155482	8.3	2	4	6	10	16
297	69567	5.9	2	3	5	7	10
298	51	5.2	1	2	3	5	8
299	1083	7.1	1	3	5	9	14
300	10248	9.3	3	4	7	11	18
301	4297	6.6	2	3	5	8	12
302	5711	19.3	9	11	16	23	34
303	14261	15.3	7	9	13	18	26
304	13998	13.7	6	7	11	17	26
305	11753	8.1	2	4	7	10	15
306	10666	10.4	4	5	8	13	19
307	8465	6.8	3	4	5	8	12
308	7487	10.4	2	4	8	13	21
309	5844	5.9	1	2	4	8	12
310	28340	6.5	2	3	5	8	13
311	35153	3.7	1	2	3	5	7
312	4123	5.3	2	3	5	8	12

TABLE 7b- MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
313	4381	3.8	1	2	3	5	7
314	1	4.0	4	4	4	4	4
315	21286	13.2	2	4	9	17	29
316	40355	9.2	2	4	7	12	19
317	1770	2.6	1	1	1	3	5
318	8238	9.2	2	3	6	11	19
319	2611	5.1	1	2	3	6	11
320	114822	8.6	3	5	7	10	15
321	49427	6.8	3	4	6	8	11
322	48	5.0	2	3	4	7	9
323	15959	5.0	1	2	4	6	10
324	24905	3.1	1	2	2	4	6
325	12571	6.2	2	3	5	7	12
326	8954	4.3	1	2	3	5	8
327	6	1.7	1	1	1	2	2
328	2479	5.2	1	2	4	7	10
329	1298	3.6	1	1	3	4	7
330	1	9.0	9	9	9	9	9
331	24117	7.6	2	3	6	9	15
332	12573	5.2	1	2	4	7	10
333	81	4.7	1	2	4	6	11
334	7391	13.1	7	9	11	15	21
335	7917	10.0	6	8	9	12	15
336	78726	7.9	4	5	6	9	14
337	105749	5.5	3	4	5	6	8
338	10566	5.8	1	2	3	7	13
339	7307	4.2	1	2	3	5	9
340	4	2.8	2	2	2	3	4
341	15286	5.3	2	3	4	6	9
342	1471	3.1	1	1	2	3	6
344	3574	7.7	2	4	6	9	14
345	2553	6.3	1	3	4	7	12
346	12686	8.6	2	3	6	11	17
347	4916	4.2	1	1	2	5	9
348	7211	5.6	1	2	4	7	11
349	7745	3.1	1	1	2	4	6
350	9741	5.9	2	3	5	7	10
351	1	1.0	1	1	1	1	1
352	1596	4.1	1	2	3	5	8
353	1655	15.5	7	9	12	18	27
354	5780	10.6	5	7	8	12	17
355	7686	7.1	5	6	7	8	10
356	25587	6.4	3	5	6	8	9
357	5923	13.6	6	8	11	16	24
358	11583	9.4	5	6	8	10	15
359	26661	6.7	4	5	6	8	9
360	5978	5.5	1	2	3	6	11
361	609	4.2	1	2	2	5	9
362	39	2.0	1	1	2	2	3
363	5337	5.2	1	2	3	5	11
364	7294	2.9	1	1	2	3	6

TABLE 7b- MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
365	3371	12.9	4	6	9	16	26
366	6038	9.6	2	3	7	12	21
367	2521	5.0	1	2	3	5	10
368	1482	7.2	2	4	6	9	14
369	4272	4.8	1	2	3	6	10
370	376	8.0	4	5	6	8	13
371	551	5.5	3	4	5	6	7
372	254	4.4	2	2	3	5	7
373	1429	2.8	1	2	2	3	4
374	256	3.6	2	2	3	4	5
375	1	6.0	6	6	6	6	6
376	103	3.3	1	1	2	4	6
377	26	4.7	1	1	3	6	10
378	90	4.4	2	4	4	5	7
379	204	2.8	1	1	2	3	5
380	70	3.3	1	1	2	3	6
381	317	2.0	1	1	1	2	4
382	102	1.3	1	1	1	1	2
383	598	4.6	1	2	3	6	10
384	111	3.7	1	1	2	4	9
385	14	8.4	1	2	2	10	30
386	7	14.3	2	4	14	18	19
389	59	10.7	2	5	8	14	22
390	55	6.0	2	2	4	6	10
391	1	10.0	10	10	10	10	10
392	2158	16.6	6	8	12	21	33
393	1	10.0	10	10	10	10	10
394	2196	8.4	1	2	5	10	18
395	81323	6.2	1	3	5	8	12
396	43	3.1	1	1	1	2	4
397	9968	7.7	2	3	6	9	15
398	9400	8.9	2	4	7	11	17
399	3433	5.6	1	2	4	7	11
400	7406	15.5	4	7	12	19	32
401	5411	14.6	3	6	10	18	30
402	4715	6.8	1	2	5	9	14
403	24800	11.7	2	4	8	15	24
404	11028	7.1	1	3	5	9	15
405	1	28.0	28	28	28	28	28
406	3486	16.7	5	8	13	21	33
407	2155	9.7	3	5	8	12	18
408	10001	6.6	2	3	4	7	15
409	7757	10.6	2	4	7	15	23
410	111482	3.3	1	1	2	4	6
411	1105	3.9	1	2	3	5	8
412	909	2.9	1	1	2	3	6
413	10815	10.7	2	4	8	14	22
414	6329	7.9	1	3	5	10	17
415	19620	20.1	5	9	15	25	39
416	92552	10.5	2	5	9	13	19
417	26	6.5	2	3	5	7	10

TABLE 7b- MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
418	10339	8.7	3	4	7	11	16
419	13407	7.7	2	4	6	9	14
420	5406	6.3	2	3	5	7	11
421	14215	5.7	2	3	4	7	10
422	82	5.6	1	2	3	5	11
423	6673	11.5	3	5	8	13	23
424	3539	21.8	2	6	14	26	45
425	14739	6.2	2	3	4	7	12
426	13100	8.5	2	4	6	10	17
427	2102	8.5	2	3	6	10	17
428	1298	10.2	2	3	6	12	21
429	32624	11.4	3	4	7	12	20
430	63002	13.1	3	5	9	17	27
431	462	8.5	2	3	6	11	17
432	787	7.1	1	2	4	8	14
433	4387	5.0	1	1	3	6	12
434	13500	8.5	2	3	6	10	19
435	13587	7.6	2	3	5	8	20
436	6740	13.4	2	4	10	21	28
437	7069	17.6	4	8	20	25	30
439	1223	13.4	1	3	8	16	30
440	5613	15.9	2	5	10	21	36
441	1185	4.1	1	1	2	4	9
442	34570	10.1	1	3	6	13	22
443	16989	6.9	1	2	4	9	15
444	3563	7.5	2	3	5	9	15
445	3541	5.4	1	2	4	6	10
446	4	3.8	1	1	2	4	8
447	2782	3.7	1	1	3	5	7
448	2	8.0	2	2	14	14	14
449	30558	6.2	2	3	5	8	12
450	14721	4.2	1	2	3	5	8
451	29	4.4	2	2	3	6	8
452	21832	6.8	1	3	5	8	14
453	12574	4.7	1	2	3	6	10
454	4180	7.0	1	2	5	8	14
455	2019	4.4	1	2	3	5	8
456	203	10.1	1	1	5	11	26
457	153	8.5	1	1	4	11	20
458	1728	23.0	5	10	18	30	47
459	964	14.8	3	6	10	17	32
460	2687	9.4	2	4	7	12	18
461	9961	4.8	1	1	2	5	11
462	4943	18.2	4	8	15	24	34
463	9850	7.2	2	3	5	9	14
464	4756	4.9	1	2	3	6	9
465	1470	2.5	1	1	2	2	4
466	4488	5.3	1	1	2	6	11
467	8141	6.9	1	1	2	5	11
468	122224	15.7	2	6	11	19	31
469	2	8.0	7	7	9	9	9

TABLE 7b- MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY86 MEDPAR UPDATE 0687 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
470	2646	9.7	2	3	6	11	18
471	2289	20.9	10	13	17	26	34
472	204	29.4	2	9	22	43	64
473	8062	14.8	2	4	9	21	36
474	8181	42.4	13	22	34	52	77
475	15595	12.8	2	5	10	17	25

TECHNICAL NOTE: The V5.0 Grouper software used to assign FY 1986 cases to DRGs is based on the DRG classifications that will be in effect for discharges occurring in Federal FY 1988. For further information on the DRG classifications, see the final notice of DRG Classification Changes published elsewhere in this issue of the Federal Register.

Each percentile length of stay (LOS) value was computed according to the following formula: Let n represent the number of discharges classified by DRG and let $x_1, x_2, \ldots, x_n$ represent the ordered LOS values for each DRG set of discharges. For the t_{th} percentile, where $p = t/100$, let $np = j + g$ where j is the integer part and g is the fractional part of np. The t_{th} percentile, y, is defined as the LOS value at x_{np}.

$$y = (1-g)x_j + gx_{j+1}$$

(See SAS User's Guide: Basics, Version 5 Edition, Cary, NC: SAS Institute Inc., 1985, p. 1186.)

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Appendix A—Regulatory Impact Analysis

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals as small entities. As we noted in the June 10 proposed rule, it is clear that these changes will affect a substantial number of hospitals and the effects on some will be significant. Therefore, the discussion below, in combination with the rest of this final rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis in accordance with E.O. 12291 and the RFA. It includes our responses to comments received on the initial analysis published June 10, 1987 at 52 FR 22155.

B. Hospitals Included In and Excluded From the Prospective Payment System

With the enactment of section 9304 of Pub. L. 99–509, which added section 1886(d)(9) to the Act, the 58 acute care hospitals located in urban and rural areas of Puerto Rico will be included in with the approximately 5,700 hospitals that are already operating under the prospective payment system, effective with discharges on or after October 1, 1987. Also, effective with cost reporting periods beginning on or after October 1, 1987, alcohol/drug hospitals and units that have been excluded from the prospective payment system under § 412.22(c) or §§412.25 and 412.32, respectively, of the regulations will begin receiving Medicare prospective payment. Twenty two hospitals and 347 units will be affected by this provision. Only 170 hospitals remain excluded from the prospective payment system under sections 1814(b)(3) and 1886(c) of the Act (Maryland and New Jersey) or as part of demonstration projects (the Rochester region of New York State).

As of March 31, 1987, 769 Medicare hospitals were excluded from the prospective payment system and continued to be paid on the basis of reasonable cost reimbursement, subject to limits on the rate of their cost increases for FY 1988. These hospitals include psychiatric, rehabilitation, long-term care, and children's hospitals Another 1,419 psychiatric and rehabilitation units in hospitals subject to the prospective payment system are excluded from prospective payment as of the same date. These units, too, are paid on the basis of reasonable cost reimbursement, subject to limits on the rate of their cost increases.

More than 400 hospitals are being paid on various special bases under the prospective payment system, as required by statute. They include hospitals accorded special treatment as described in our regulations at 42 CFR Part 412, Subpart G, such as: sole community hospitals; cancer treatment and research hospitals that meet certain conditions; and rural referral centers.

C. Inclusion of Puerto Rico Hospitals Under the Prospective Payment System

Using the best data available, we have computed the estimated difference between payments to Puerto Rico hospitals under the rules now in effect (§ 413.40) and under the prospective payment methodology prescribed in the Act. We estimate the combined effect on all Puerto Rico hospitals of implementing prospective payments will be an average payment increase of 5.7 percent over projected payments under the present payment provisions.

In computing this impact, we took into account an estimate of payments for indirect medical education costs and payments to disproportionate share hospitals. To simulate projected payments under the present regulations (that is, under the reasonable cost reimbursement system), we used FY 1988 target payment amounts as an approximation of actual payments. Under payment provisions in effect now, hospitals may receive their actual reasonable costs up to the target amount, plus incentive payments if their actual costs are less than their target amount. Using the target amount as a proxy for actual payments may thus result in a slight understatement of the increase Puerto Rico hospitals may receive under this proposal.

D. Inclusion of Alcohol and Drug Abuse Treatment Hospitals Under the Prospective Payment System

The exclusion of alcohol/drug treatment facilities from the prospective payment system is scheduled to end effective with cost reporting periods beginning on or after October 1, 1987. We have not extended the exclusion beyond that date. On the basis of our research and that of the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), we have redefined four of the five DRGs into which alcohol or drug abuse cases fall (see the final notice on the DRG classification system published elsewhere in this issue of the **Federal Register**), and we believe that the reconfigured DRGs and the recalibrated weights will result in equitable payments for alcohol/drug related services to Medicare beneficiaries.

As of March 31, 1987, there were 22 alcohol/drug hospitals and 347 alcohol/drug units located within hospitals already subject to the prospective payment system. These hospitals and units will begin receiving prospective payments for discharges occurring during cost reporting periods beginning on or after October 1, 1987. Because our cost data for these hospitals and units were incomplete at the time of the proposed rule, we were unable to quantify the payment impact of our proposal on these facilities.

Commenters on the proposed regulations for FY 1988 cited the lack of an impact analysis of including currently exempt alcohol/drug abuse hospitals and units in the prospective payment system beginning October 1, 1987. The comment was that such a study should be conducted before any action was taken to end the exclusion. We stated in the June 10, 1987 **Federal Register** that "because our cost data for these hospitals and units are incomplete, we are unable to quantify the payment impact of our proposal on these facilities." In response to comments, we are now including such an impact analysis. The analysis was accomplished using data from the Hospital Cost Report Information System (HCRIS) on alcohol/drug abuse hospitals/units for FY 1985 and FY 1986.

We estimated what payment to these hospitals would be for FY 1988 under reasonable cost reimbursement, subject to the rate-of-increase limits, and then compared these estimates to what we estimate payment would be under the prospective payment system for FY 1988. The analysis shows that, among 216 alcohol/drug abuse hospitals and units

(we excluded 22 hospitals/units with costs in excess of $7000 per case or less than $1000 per case) for which information was available in our data base, estimated prospective payment system payments per case in FY 1988 would be approximately 13 percent less than estimated payments per case under the reasonable cost reimbursement methodology. We estimate the total impact of this change to be a reduction in payments of $8 million, or an average of $33,600 per hospital or unit.

In many ways, the results of the impact analysis must be interpreted with caution. As we indicated in the June 10, 1987 **Federal Register**, we continue to believe our data are incomplete, and thus the results of the analysis must be viewed with the following points in mind.

- We believe that it is inappropriate to draw firm conclusions from comparing estimates of payment under reasonable cost with estimates of prospective payments. This is because hospitals under the reasonable cost system do not have the same incentives for efficiency and productivity as hospitals under the prospective payment system. Data indicating reductions in length of stay since the inception of the prospective payment system demonstrate that the system does have an impact on hospital behavior. Once the currently excluded alcohol/drug hospitals and units are subject to the prospective payment system, we expect them to respond similarly to the system's incentives by increasing their efficiency and productivity, while still continuing to provide high quality care to Medicare beneficiaries.
- The case-mix indexes used to estimate prospective payments are those derived form FY 1985 discharges in our alcohol/drug DRG study file (the MEDPAR file for FY 1985 updated through September 1986), grouped in accordance with the DRG definitions that will be in effect for FY 1988 and the final relative weights published in Table 5 of the Addendum to this notice. The distribution of a hospital's or unit's alcohol/drug cases in FY 1988 may be very different from that in FY 1985; however, we can neither project those differences nor reflect them in this impact analysis.
- Certain crucial data items are missing from the HCRIS files for some hospitals and units. For example, we are missing such key data as the target amounts and the aggregate reimbursement that would be permitted under § 413.40. Where such data are missing, we have no choice but to assume that a hospital or unit is reimbursed its actual inpatient operating costs, even though the target ceiling amount might be less. As a result, our estimate of hospitals' payments under the present system may be overstated.
- There are, however, circumstances when the lack of a target amount on the file is appropriate. New hospitals are exempt from the § 413.40 limits for up to three years. This exemption historically has been provided because new hospitals tend to experience high start-up costs and relatively low utilization as they establish themselves within a community. The same phenomena may occur in newly established units, but they are not similarly exempt from the limits. Hence, their target amounts, which are based on their actual costs during their first year of operation as a unit excluded from the prospective payment system, may reflect the combined effects of high start-up costs and lower-than-average utilization with no constraining effects from the § 413.40 limits to which they are subsequently subject.

We assume that hospitals and units with target amounts reflected in our data base have been in operation longer than hospitals and units without target amounts and have responded to the § 413.40 limits by constraining their costs so as to remain under the target limits. Conversely, we assume that hospitals and units without reported target amounts have been more recently established and, during their first year of operation as excluded units, had incentives to increase their costs so as to ensure a high target amount for future years.

In fact, when one compares the average operating cost per case of those alcohol/drug hospitals and units with established target amounts to the average operating cost per case of those alcohol/drug hospitals and units without established target amounts, the latter group appears to have costs per case about 20 percent higher than the cost per case of the former group. This supports our hypothesis that the high cost of many of the hospitals and units in the analysis is a temporary phenomenon, occurring in the absence of virtually any limitations on their costs. Thus, we would expect differences between actual costs in FY 1988 and payments under the prospective payment system to be smaller than what we have estimated.

- Some of the cost data are not audited to date. In general, use of unaudited data tends to produce higher estimates of costs than audited data. However, we applied no audit adjustment. Consequently, our estimates of reasonable cost reimbursement in FY 1988 would likely be lower if completely audited data were used.

Comment: One commenter recommended, if an impact analysis indicated that the alcohol/drug hospitals and units would receive lower payments under the prospective payment system than under cost reimbursement, that these hospitals and units be held harmless for at least their first year under the prospective payment system.

Response: While our impact analysis projects that prospective payments to alcohol/drug hospitals and units will decline relative to projected payments under cost reimbursement, such an effect is not unlike that which would have been estimated for some groups of general hospitals, had they moved immediately from cost reimbursement to fully national rates under the prospective payment system. However, a four-year phase-in to full national rates has afforded those hospitals the opportunity to make adjustments to their operations so as to bring their costs in line with Medicare's prospective payments. The alcohol/drug hospitals and units, on the other hand, were granted an exclusion of up to four years during which we have conducted extensive analyses so as to refine the alcohol/drug DRG classifications. We believe that, like the transition of short-stay hospitals to full national rates, the exclusion of alcohol/drug hospitals and units has afforded them the opportunity to achieve productivity gains, improve practice patterns, and otherwise adjust their operations in light of the prospective payment rates to which they would be subject once the exclusion ended. In addition, we are concerned that a hold harmless provision as suggested by the commenter is tantamount to extending the exclusion for one more year for those alcohol/drug hospitals and units with costs in excess of their prospective payments while increasing incentive payments for those hospitals and units with costs below their prospective payments. Such a provision could result in increased Medicare expenditures compared to simply extending the exclusion. For these reasons, we do not believe that either a hold harmless provision or a separate phase-in of alcohol/drug hospitals and units is necessary or appropriate.

E. Impact on Excluded Hospitals and Units

As noted above, 769 Medicare hospitals and 1,419 units in hospitals included in the prospective payment system currently are paid on a reasonable cost basis subject to the

rate-of-increase ceiling requirement of § 413.40. For cost reporting periods beginning in FY 1988, these hospitals would have their individual target amounts increased by the same factor used to update the prospective payment rate effective for FY 1988. This factor is equal to the projected increase in the hospital market basket less two percent, or an increase of 2.7 percent.

As noted in the proposed rule, the effect this change will have on affected hospitals and units will vary depending on each one's existing relationship of costs per discharge to its target amount, and the relative gains in productivity (efficiency) the hospital or unit is able to achieve. For hospitals and units that incur per discharge costs lower than their target amounts, the primary impact will be to affect the level of additional payments made under § 413.40(c). A hospital may receive additional incentive payments for incurring costs that are less than its target amount, but may not receive payments for costs that exceed the target amount. In general, we expect the inceased ceiling on payments to maintain existing incentives for economy and efficiency experienced by excluded hospitals and units.

F. Sole Community Hospitals and Rural Referral Centers

At present, about 360 hospitals are receiving payments under § 412.92 based on their status as sole community hospitals. Four of these hospitals have received adjustments to their payment rates as a result of decreases in discharges of five percent or greater. Since the changes we are making to § 412.92 are relatively minor, and will not affect our basic policies regarding sole community hospitals, we expect no impact on these providers.

We are not making major changes to § 412.96 concerning either the qualifying criteria or payments to rural referral centers. Yet because we are updating the discharge and case-mix criteria, some of the 186 hospitals that now meet these criteria may not meet the new ones, while other hospitals that cannot qualify under the present criteria may qualify under the new criteria. Because we lack data on total discharges, we do not know how many hospitals will either fail or meet the updated criteria. Based on previous experience, the number of hospitals affected either way is small.

G. Analysis of the Quantifiable Impact of Proposed Changes Affecting Rates and Payment Amounts

1. Basis and Methodology of Estimates

The data used in developing the quantitative estimates of changes in payments in Table I, below, are taken from FY 1986 billing data and hospital-specific data for FY 1984. As in previous analyses, we compare the estimated effects of changes for FY 1988 to our estimate of the payment amounts in effect for FY 1987.

We have treated all hospitals in our database as if they had the same cost reporting period; that is, a cost reporting period coinciding with the Federal fiscal year. Our model does not take into account any prospective behavioral changes in response to these changes.

The tables and the discussion that follow reflect our best effort to identify and quantify the effects of the changes being effected through this document. It must be emphasized, however, that as a result of gaps in our data, we are unable to quantify some of the effects. Nevertheless, we have attempted to improve the accuracy and completeness of our data. One such improvement in the quality of our data is the reclassification of 155 teaching hospitals that had been erroniously classified as non-teaching hospitals.

The analysis that follows examines each of the payment changes separately. That is, all variables except those associated with the provision under examination were held constant so as to display the effects of each provision compared to baseline provisions. Thus, in each of columns 1 through 4, we are comparing estimated FY 1987 payments with the payments that would result if only the specified change were made. (This table has fewer columns than the similar table in the proposed rule because we are not making the proposed changes in outlier payments, which were reflected in column 5 of the proposed rule's table.) The final column (5) displays the combined effects of all the previous analyses, as well as reflecting the FY 1988 update factor (which, giving a 2.7 percent increase across the board, generally has a larger effect than all other changes combined), the budget neutrality factor and the payment adjustment for rural referral centers. Also, the combined effects column captures and reflects certain interactive effects that do not present themselves in the analysis of the individual provisions. This last column is the only one in which the effects of simulated FY 1988 payments are reflected.

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TABLE I--ESTIMATED IMPACT OF THE CHANGES IN THE INPATIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEM

	Number of Hospitals 1/	Statutory Blend Change 2/ (1)	Statutory Change to Case Weighting 2/ (2)	Reclassification and Recalibration 2/ (3)	Proposed Revised Wage Index 2/ (4)	Combined Effect of All Changes 3/ (5)
All Hospitals	5414	0.6	0.0	0.0	0.1	3.1
Urban by Region						
New England	184	-0.9	0.2	0.2	0.6	2.1
Mid Atlantic	335	3.6	-0.4	0.6	0.3	6.7
South Atlantic	404	1.1	-0.7	-0.6	0.3	2.8
East North Central	505	-3.2	-0.2	0.4	-0.4	-1.3
East South Central	170	5.0	0.1	-0.2	0.1	7.0
West North Central	205	0.0	0.3	-0.2	0.2	2.1
West South Central	364	1.0	0.2	-0.1	-0.5	2.2
Mountain	102	1.3	-0.3	-0.2	-0.1	3.0
Pacific	498	0.5	-0.4	0.2	0.3	3.1
Rural by Region						
New England	56	-1.8	0.9	0.3	0.6	2.4
Mid Atlantic	97	-1.2	-0.3	0.7	-0.1	2.0
South Atlantic	346	1.0	1.1	0.0	0.6	6.0
East North Central	371	-2.8	1.1	-0 2	0.1	1.3
East South Central	322	2.7	1.4	-0.5	0.5	7.2
West North Central	591	1.8	2.5	-1.1	0.3	5.7
West South Central	446	3.7	1.2	-0.5	-0.5	7.1
Mountain	256	1.8	1.3	-0.4	-0.2	5.1
Pacific	162	0.4	1.0	0.0	-0.1	4.3
Urban Hospitals	2767	0.5	-0.2	0.1	0.1	2.7
0-99 Beds	683	2.5	-0.2	0.2	0.3	5.1
100-404 Beds	1674	0.5	-0.2	0.3	0.1	2.9
405-684 Beds	338	0.4	-0.2	-0.1	0.0	2.3
685 + Beds	72	0.3	-0.2	-0.4	0.0	2.0
Rural Hospitals	2647	0.7	1.2	-0.3	0.2	4.8
0-99 Beds	2045	1.1	2.0	-0.6	0.1	6.0
100-169 Beds	400	-0.2	1.2	-0.2	0.2	4.1
170 + Beds	202	0.9	0.2	0.0	0.3	4.0

Table I - continued

	Number of Hospitals[1]	Statutory Blend Change[2] (1)	Statutory Change to Case Weighting[2] (2)	Reclassification and Recalibration[2] (3)	Proposed Revised Wage Index[2] (4)	Combined Effect of All Changes[3] (5)
Teaching Status						
Non-Teaching	4362	0.8	0.2	0.0	0.1	3.7
Resident/Bed Ratio Less than 0.25	868	0.2	-0.2	0.1	0.0	2.3
Resident/Bed Ratio 0.25 or Greater	184	0.8	-0.3	0.0	0.0	2.9
Disproportionate Share Hospitals (DSH)						
No Additional Payments	4218	0.0	0.1	-0.2	0.1	2.4
Urban DSH 100 Beds or More	878	1.6	-0.3	0.4	0.1	4.2
Urban DSH fewer than 100 Beds	86	3.0	-0.3	0.5	0.0	5.6
Rural DSH	232	2.9	1.6	-0.1	0.6	8.5
Other Special Status						
Sole Community Hospitals (SCHs)	326	0.0	0.5	-0.3	0.1	2.9
Rural Referral Centers (RRCs)	202	2.7	-0.2	-0.3	0.2	4.6
Both SCH & RRC	21	0.0	0.1	0.0	0.2	2.9
Rural fewer than 50 beds	1233	3.0	2.2	-0.9	0.1	7.6
Type of Ownership						
Voluntary	3257	0.1	0.0	0.0	0.1	2.5
Proprietary	775	0.8	-0.1	0.3	0.1	3.7
Government	1358	2.7	0.3	-0.1	0.2	5.8

1/ Hospital data base excludes Puerto Rico and alcohol/drug hospitals.

2/ Columns 1 through 4 compare payments incorporating each of the specified FY 1988 changes with estimated payments based on parameters published in the Federal Register September 3, 1986 (51 FR 31454) and November 24, 1986 (51 FR 42229). That is, the comparison is not of simulated FY 1988 rates with FY 1987 rates, but of two sets of FY 1987 rates differing only in the incorporation of the change specified in the column title.

3/ This column represents simulated FY 1988 payments compared to estimated FY 1987 payments. It includes the update factor of 2.7 percent required by the Act. This column also reflects the various budget neutrality factors required under the Act as well as interactive effects of the various factors which we are not able to isolate. As a result, the values in this column are not equal to the sum of the four previous columns.

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2. Summary of Statutory and Wage Index Changes

Columns 1 through 3 of Table I indicate the estimated percent change in payments that would result from each of three statutory changes: transition to a 100 percent national Federal rate; calculation of the average standardized amounts on a discharge-weighted basis rather than on a hospital-weighted basis; and the required annual recalibration of DRG weights. Since the statutory update of 2.7 percent has an across-the-board effect on all hospitals, it is not shown in a separate column, but is merely added into the combined effects shown in column 5.

Our analysis of the statutorily mandated changes remains essentially the same as the one we presented in the proposed rule. The only changes in the final analysis are the result of imporivements in the data.

Column 4 of Table I shows the estimated effects of changes to the wage index, which are described in section III of the preamble. Since we have not altered our policy from what we proposed, the only changes reflected in the final analysis are the result of improvements to the wage index data base that we have made since publication of the proposed rule.

3. Combined Effects

In the last column of Table I (column 5) we display the combined effects of the previous four columns plus the effect of the statutorily mandated update factor of 2.7 percent. This column is the only one in which simulated FY 1988 payments are compared to estimated FY 1987 payments.

We must point out that there are interactions that result from the combining of the various separate provisions analyzed in the previous columns and which we are unable to isolate. Thus, the values appearing in column 5 do not represent merely the additive effects of the previous columns plus the update factor and the reduction in the rates for rural referral centers. Note that, generally, the largest changes (other than those attributable to the (update factor) are attributable to the statutory change to a 100 percent national Federal rate.

The greatest change between the final and initial analyses can be attributed to the retention of the present policy on outlier payments. As a result of maintaining the present policy, only urban result, only urban hospitals in the East North Central region are projected to have payment reductions, largely as the result of the statutory transition to a 100 percent Federal payment rate.

Overall, our analysis shows changes in payment policy will increase hospital payments by about 3.1 percent. Urban hospitals will receive an average increase of about 2.7 percent, while rural hospitals will receive, on average, a 4.8 percent increase. Rural hospitals in the East South Central region are projected to receive the largest increase of 7.2 percent. The biggest drop in payments is projected for urban hospitals in the East North Central region. On average, they will receive payment reductions of about 1.3 percent. Among groups of hospitals, rural disproportionate share hospitals and rural hospitals with fewer than 50 beds are projected to receive the largest percentage increases, of 8.5 and 7.6 percent, respectively. Large urban hospitals with over 685 beds are expected to receive the smallest percentage increase of two percent.

Table II presents the projected FY 1988 average payments per case for urban and rural hospitals and for the different categories of hospitals shown in Table I, and compares them with the average estimated per case payments for FY 1987. As such, this table presents in terms of the average dollar amounts paid per discharge the combined effects of the proposed changes presented in Table I. That is, the percentage change in average payments from FY 1987 to FY 1988 equals the percentage changes shown in the last column of Table I.

TABLE II—COMPARISON OF PAYMENT PER CASE, FY 1988 COMPARED TO FY 1987

	Number of hospitals	Averge FY 1987 payment per case	Average FY 1988 payment per case
All Hospitals	5,414	$4,049	$4,173
Urban by Region:			
New England	184	4,672	4,769
Mid Atlantic	335	4,847	5,174
South Atlantic	404	4,056	4,170
East North Central	505	4,700	4,637
East South Central	170	3,733	3,996
West North Central	205	4,530	4,627
West South Central	364	4,056	4,146
Mountain	102	4,491	4,627
Pacific	498	5,116	5,272
Rural by Region:			
New England	56	3,321	3,402
Mid Atlantic	97	3,028	3,088
South Atlantic	346	2,579	2,734
East North Central	371	2,773	2,809
East South Central	322	2,222	2,383
West North Central	591	2,485	2,627
West South Central	446	2,323	2,488
Mountain	256	2,764	2,904
Pacific	162	3,256	3,397
Urban Hospitals	2,767	4,521	4,645
0 to 99 Beds	683	3,512	3,693
100 to 404 Beds	1,674	4,258	4,381
405 to 684 Beds	338	4,967	5,080
685+ Beds	72	5,832	5,947

TABLE II—COMPARISON OF PAYMENT PER CASE, FY 1988 COMPARED TO FY 1987—Continued

	Number of hospitals	Averge FY 1987 payment per case	Average FY 1988 payment per case
Rural Hospitals	2,647	2,598	2,723
0 to 99 Beds	2,045	2,304	2,441
100 to 169 Beds	400	2,642	2,750
170+ Beds	202	3,087	3,209
Teaching Status:			
Non-Teaching	4,362	3,393	3,516
Resident/Bed Ratio Less than 0.25	868	4,629	4,736
Resident/Bed Ratio 0.25 or Greater	184	6,777	6,976
Disproportionate Share Hospitals (DSH):			
No Additional Payments	4,218	3,759	3,850
Urban DSH 100 Beds or More	878	4,937	5,142
Urban DSH Fewer than 100 Beds	86	3,743	3,951
Rural DSH	232	2,224	2,414
Other Special Status:			
Sole Community Hospitals (SCHs)	326	2,815	2,896
Rural Referral Centers (RRCs)	202	3,237	3,385
Both SCH & RRC	21	3,345	3,441
Rural Fewer than 50 beds	1,233	2,188	2,354
Type of Ownership:			
Voluntary	3,257	4,208	4,314
Proprietary	775	3,680	3,817
Government	1,358	3,564	3,769

Appendix B—Final Recommendation of Update Factors for Rates of Payment for Inpatient Hospital Services

Section 1886(e)(4) of the Act, as amended by section 9302(a)(2)(B) of Pub. L. 99–509, required that the secretary, taking into consideration the recommendations of ProPAC, *recommend* an appropriate update factor for FY 1988, which takes into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Section 1886(e)(4) of the Act also applies to the target rate-of-increase limits for hospitals and units excluded from the prospective payment system. (We reiterate that this provision of law requiring recommendations applies to FY 1988 only.)

As required by section 1886(e)(5) of the Act, we published the initial recommended FY 1988 update factors that are provided for under section 1886(e)(4) of the Act. We recommended update factors of 0.75 percent for prospective payment hospitals and 1.9 percent for hospitals excluded from the prospective payment system in a notice published in the **Federal Register** on June 11, 1987 (52 FR 22386). In recommending these increases, we took into account the requirements in section 1886(e)(4) of the Act. Thus, in that notice, we addressed ProPAC's Recommendations 1 through 5. Also, in that notice, we requested public comment on our recommendations.

Under section 1886(e)(5) of the Act, we are also required to provide a final recommendation of appropriate update factors after consideration of public comments. Accordingly, the purpose of this Appendix is to do so.

We note that although we recommended appropriate update factors, requested and received public comments on these recommendations, and are providing final recommendations, Congress actually prescribed the update factors to be used in FY 1988 in section 1886(b)(3)(B)(i)(II) of the Act, as amended by section 9302(a)(1) of Pub. L. 99–509. That is, as explained in the addendum to the final rule, the update factors for FY 1988 for inpatient hospital services for hospitals under the prospective payment system equals the market basket rate of increase forecasted for FY 1988 minus 2.0 percentage points, or 2.7 percent. This same figure is also the rate of increase in the target rate-of-increase limits for hospitals and units excluded from the prospective payment system.

We received 17 items of correspondence during the public comment period concerning our recommendations and our responses to ProPAC recommendations 1 through 5. After consideration of all the arguments presented, we have decided not to change our proposals. Therefore, we recommend update factors of 0.75 percent for prospective payment hospitals and 1.9 percent for hospitals and units excluded from the prospective payment system.

Comment: We received one comment that agreed with ProPAC's second recommendation of a higher update factor for rural hospitals in order to reduce the differential in the standardized amounts for urban and rural hospitals to a more reasonable level.

Response: We do not agree that there should be different update factors for the urban and rural standardized amounts. As indicated in our response to ProPAC's recommendation (52 FR 22389), we pointed out that Congress has already taken significant steps to increase payments for rural hospitals relative to urban hospitals. We believe that it ProPAC's recommendation to apply separate update factors for urban and rural hospitals were adopted, it would result in overcompensation to rural hospitals because ProPAC's analysis of the first-year prospective payment system cost experience did not take into account all of the statutorily-mandated refinements to the prospective payment system that were not already incorporated into the standardized amounts. For example, ProPAC's analysis did not consider the requirement of section 9302(c) of Pub. L. 99–509 that, effective for discharges in FY 1988, the rates be computed on a discharge-weighted basis rather than a hospital-weighted basis. By narrowing the difference between the urban and rural standardized amounts by more

than three percent, this change has a significant impact on rural hospitals.

Therefore, based on prospective payment system cost experience, we do not support different update factors for urban and rural hospitals as recommended by ProPAC. However, we will continue to study the difference between urban and rural payment rates to determine if additional refinements to the prospective payment system would be warranted.

Comment: Although two commenters agreed that the update factor for excluded hospitals should be different from the update factor for prospective payment hospitals, most commenters stated that our recommended update factors of 0.75 percent for prospective payment hospitals and 1.9 percent for excluded hospitals are too low. The commenters generally expressed concern that the Secretary would implement these *recommended* update percentages. Some commenters stated that the recommendations of both the Secretary and ProPAC concerning the update percentages were arbitrarily determined and are not adequately supported by quantifiable data and analysis.

Response: Both the Department and ProPAC have maintained that the amounts of the update factors have been based partly on judgments concerning the extent to which hospitals can increase productivity and reduce their costs. The framework we have established for determining the appropriate update factors was outlined in detail in Appendix B of the June 10, 1985 proposed rule (50 FR 24440). This same framework served as the basis for our recommended update factors for FY 1988.

The components of the policy target adjustment factor (PTAF) are difficult to completely quantify individually with existing data sources, and the components of the PTAF, to some extent, represent variables reflecting policy-determined targets. However, judgments about what the appropriate targets should be were also based on our experience with the prospective payment system in determining the extent to which hospitals have responded to the incentives of the system. For example, we have observed a significant decline in hospital length-of-stay for Medicare patients (a 17 percent reduction) since the beginning of the prospective payment system. This reduction translates into reduced hospital costs that we believe should be accounted for in the PTAF.

In addition, we continue to believe that the initial standardized rates were overstated because they were based on unaudited data. This is evidenced by cost data from the first year of the prospective payment system that indicate that Medicare payments exceeded costs for about 80 percent of all hospitals. Studies conducted by ProPAC using data from first-year prospective payment system cost reports also indicate that the standardized rates would be significantly lower if later, audited cost report data were used.

As we stated in the June 11, 1987 notice, we believe that a policy of steady restraint is warranted so that the Medicare program will continue to benefit from the changes in hospital behavior that have resulted from the prospective payment system. We believe it is appropriate to set the update factor at a level below the projected increase in the hospital market basket, and, in doing so, we have taken into account the requirement under section 1886(e)(4) of the Act that the amounts be high enough to ensure the efficient and effective delivery of medically appropriate and necessary care of high quality.

We believe that our recommended update factors of 0.75 percent for prospective payment hospitals and 1.9 percent for excluded hospitals represent increases in Medicare payments that are adequate to maintain access to high quality care for Medicare beneficiaries.

[FR Doc. 87-19988 Filed 8-27-87; 12:15 pm]
BILLING CODE 4120-01-M

VOL 52 ISS 169 SE 1 1987 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-410-FN]

Medicare Program; Changes to the DRG Classification System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This final notice specifies certain changes in the Diagnosis-Related Group (DRG) classification system. It also lists diagnosis and procedures for which new or revised identifying codes (in the coding system of the International Classification of Diseases—9th Edition—Clinical Modification (ICD-9-CM) on which DRG assignments are based) have been approved. This final notice also specifies the changes to the classification of alcohol and drug abuse DRGs and lists the revisions to the surgical hierarchies.

DATE: These classification and coding changes are effective for discharges occurring on or after October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 594-9343.

SUPPLEMENTARY INFORMATION:

I. Background

A. Publication of Proposed Changes

On May 19, 1987 we published a notice in the **Federal Register** (52 FR 18877) proposing certain changes to the DRG classification system. In that proposed notice we discussed the basic DRG classification system and its relation to the Medicare prospective payment system (PPS), the procedures for changes to the coding system on which the DRG system is based, and the role of the Prospective Payment Assessment Commission (ProPAC) in the analysis of DRGs. Also included in the May 19, 1987 notice was our response to certain recommendations included in ProPAC's April 1, 1987 report to the Secretary. Please refer to that notice for a detailed explanation of the above-mentioned issues.

On June 10, 1987 we also published a proposed rule in the **Federal Register** (52 FR 22080), which included a proposed reclassification of alcohol and drug abuse DRGs and the revision of surgical hierarchies. Please refer to Section II of that proposed rule (52 FR 22081) for more detailed background of these issues. Since the June 10 proposals also affect DRG classification, we are finalizing those changes and responding to comments on the proposals in this notice.

B. General

Under the PPS for inpatient hospital services, Medicare payment is made at a predetermined, specific rate for each discharge; that payment varies by the diagnosis-related group (DRG) to which a beneficiary's stay is assigned. Cases are classified into DRGs for payment under the PPS based on the principal diagnosis, any additional diagnoses, and any procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnostic and procedure information is expressed by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD-9-CM). The intermediary enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished. After screening through the MCE and any further development of the claims, cases are classified by a computer program called the Grouper into the appropriate DRG.

The DRGs are organized into 23 major diagnostic categories (MDCs), most of which are based on a particular organ system of the body and the remainder of which involve multiple organ systems (such as MDC 18, Infections and Parasitic Diseases, Systemic or Unspecified Sites; and MDC 22, Burns). Accordingly, the principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. The medical DRGs generally are differentiated on the basis of diagnosis. Both medical and surgical DRGs may be further differentiated based on, age, discharge status, and presence or absence of complications or comorbidities (hereafter CC). With some exceptions, the Grouper does not consider other procedures, such as non-surgical procedures or minor surgical procedures that generally do not require use of an operating room (OR). For ease of reference, when multiple DRGs are hereafter referred to in this final notice we will refer to the DRG title and category but we will not specify age and/or CC breaks, respectively. For example; reference to DRGs 277-279 will indicate (Cellulitis) for all three DRGs in lieu of DRGs 277 (Cellulitis age over 69 and/or CC), DRG 278 (Cellulitis age 18-69 without CC), and DRG 279 (Cellulitis age 0-17).

II. Comments on the Proposed Notice

In response to the May 19, 1987 proposed notice, we received 54 timely public comments and in response to the June 10, 1987 proposed notice we received 111 timely public comments. Both notices received comments from representatives from health care associations, hospitals, ProPAC, physicians and physician associations. Additionally, the May 19, 1987 notice received comments from medical record administrators. ProPAC incorporated by reference its recommendations on DRG classifications included in its April 1, 1987 report to the Secretary.

In addition to comments related to each of the proposed DRG classification changes discussed below, we received some comments of a general nature, as follows:

Comment: Two commenters wrote expressing concern with the lack of detail presented in the proposed notice. The commenters recommended that the notice provide full disclosure of the data, methodology, criteria, calculations, supporting documentation and underlying assumptions made by HCFA in reaching its conclusions. One of the commenters recommended that no further DRG changes, including those proposed for FY 1988, be made until criteria for reclassification are developed and published for public comment.

Response: As we have stated previously, we do not believe the rulemaking process requires, nor are most members of the public interested in, the level of detail requested by these commenters. The volume of data used during our evaluation of DRG issues prohibits publication in the **Federal Register**. Moreover, as evidence of the fact that most readers would find this level of detail burdensome, we note that we received fewer than 40 requests for copies of the diagnosis-specific material concerning the proposed refinements to the CC list. In light of constraints on Federal agency spending, we believe it would be very imprudent to reproduce thousands of pages in the **Federal Register**. Providing a detailed description of the analytic bases for our proposed changes is a reasonable alternative and is consistent with the level of detail most readers desire. For those individuals wishing more information, a contact person's name and telephone number are published in each proposed and final notice.

We note, in addition, that the Medicare Provider Analysis and Review

(MEDPAR) file of Medicare discharges, which serves as the basic source of data for analysis of DRG classification changes, can be purchased from our Bureau of Data Management and Strategy. (We regret any confusion created by our reference in the May 19 proposed notice to the PATBILL as our source file for our analysis. The MEDPAR file contains the same data as the PATBILL file but is in a simplified, reformatted record layout. Both files contain the same diagnostic and procedure data for up to five diagnoses and three procedures 100 percent of Medicare inpatient hospital bills. Although we use the two names interchangeably, technically we use the MEDPAR file). Other background information and data used in our DRG reclassification efforts are available upon request, including requests under the Freedom of Information Act. At least one of the above-cited commenters has secured information in this manner.

With regard to the comments recommending that detailed criteria for classification be developed and published for comment, we do not believe such steps are necessary. The DRGs, as originally developed, were intended to represent groups of hospital patients who were clinically similar to one another and were relatively homogeneous with respect to resource use as measured by length of stay (LOS). The algorithm used to define the DRGs was designed to establish partitions that would both reduce the variance with respect to length of stay within groups and maximize the differences between groups. It was originally thought that in order to be manageable, the DRGs should number something less than 500.

In our efforts to refine the DRG classifications and respond to changing medical practice, we have attempted to adhere to those principles. Since we have based DRG weighting factors on total charges (standardized to account for variations among hospitals in area wages, teaching intensity, and the proportion of low income patients), we have used standardized charges rather than the length of stay as our primary measure of relative resource use when examining the extent to which a proposed classification change makes the DRGs more or less homogeneous. In addition, with respect to new technologies, we prefer adding cases involving new technologies to an existing DRG, clinical heterogeneity notwithstanding, until there is relatively compelling evidence (based on Medicare patient experience) that a separate DRG would improve both the clinical coherence and the homogeneity with respect to resource use for the new DRG. Moreover, we described the bases on which we proposed DRG classification changes in our proposed notice. In general, the changes we have proposed are ones that either reduced within DRG variance among patients in resource use (as measured by standardized charges); incorporated new ICD–9–CM codes into the DRGs; incorporated new technologies into the DRGs; or represented housekeeping changes, such as consistency or other logic checks. In the case of the CC refinement included in the May 19 notice, the proposed exclusions were based on clinical review using the principles stated in that notice.

Generalizing beyond these goals to overriding criteria could be counterproductive in that the criteria thus adopted may be to narrow to permit adoption of a reasonable DRG classification change or too broad to forestall consideration of reassignment of each and every ICD–9–CM code from the DRG(s) to which it is presently assigned to all other possible DRGs. We believe it is better to continue to evaluate each DRG classification issue independently and that it is sufficient to describe the analytic basis upon which we propose each of the individual DRG classification changes.

We will continue to base our decisions on clinical grounds, comparability of the average charge for one type of case to the mean for the DRG in which it is classified and the DRG to which its movement is proposed, frequency of the procedure or diagnosis at issue, variation in a particular DRG relative to DRGs in general, and other issues pertinent to the type of case being considered for reclassification. We believe such individual consideration is superior to the development of criteria that could potentially prevent movement of cases in instances where reclassification is appropriate.

Comment: Several commenters raised DRG classification issues that had not been discussed in the proposed notice and requested we make DRG changes. Among the issues raised were the following:

(1) Analysis of the importance of CC in DRGs not currently partitioned by presence or absence of CC;

(2) Scraping of cornea for smear and culture in infected corneal ulcer cases;

(3) Carcinoma of the mouth; and

(4) Classification of trauma cases.

Response: To consider new issues that arise during a comment period, especially those that are not directly related to proposed changes, would require us to make hasty decisions without the benefit of detailed, reasoned analysis or public comments. Consequently, we do not intend to make it a general practice to make DRG changes, other than those directly related to our proposals, in the final DRG notices.

We will, however, place the issues raised on our agenda for study during FY 1988. We welcome further suggestions for issues to study and encourage commenters to submit detailed proposals early in the Federal fiscal year so that we are not hampered in our decision making process by time constraints imposed by the statutorily required publication process. That is, in order to meet the new statutory requirement for publication of a proposed notice by May 1 of each year, we must complete our evaluative process by no later than March of each year. Suggestions may be submitted to: Grouper Changes, P.O. Box 26681, Baltimore, Maryland 21207.

Comment: One commenter, representing a major health insurer, wrote expressing concern with the increase in the price of Grouper software for FY 1988, and believes that there is no justification for a significant price increase in software developed under a grant from HCFA. Another commenter complained of the price of the DRG Definitions Manual.

Response: The development and distribution of Grouper software is currently handled by Health Systems International (HSI) under a contract (not a grant) with HCFA. Under the contract, HCFA provides specifications on DRG classification changes and decides on whether to accept or reject recommended changes in DRG assignment. The contractor then works with HCFA in order to establish the precise logic that will determine DRG assignment, modifies the Grouper software accordingly, and performs extensive quality controls to ensure accuracy of DRG assignment. The Medicare fiscal intermediaries (FIs) must purchase the Grouper software from HSI to process and pay inpatient hospital claims under the Medicare prospective payment system. HSI is also obligated to provide documentation on the Grouper and Medicare Code Editor and to furnish a DRG Definitions Manual to the FIs. Generally, under the terms of HSI's contract, the material is made available to the FIs at cost. Alternatively, HSI itself may defray the cost of equipping the FIs with the software, using funds available under its contract.

HCFA's contract with HSI is silent with respect to HSI's operations in the

private sector. HSI is neither required to market Grouper software and the DRG Definitions Manual nor is it prohibited from doing so. Therefore, HSI is free to market its products in a manner similar to any other business. We take this approach in order to promote efficiency and competition in the marketplace. In this connection, we note that HSI is not the sole source of Grouper software; the software is also programmed and marketed by several other firms, and HCFA makes these materials available to the public through the National Technical Information Service. If a prospective purchaser of Grouper software is dissatisfied with the price charged by one source, it is free to bargain with that source or to seek the material elsewhere.

HSI advised us that the original price of the Grouper software was set in 1982 based on cost estimates furnished by Yale University, the developer of the original DRG system, and that 1987 marks the first increase in the price of the software since 1982.

Comment: One commenter suggested that we provide information on the distribution of cases before and after reclassification changes.

Response: In light of the nature and number of DRG classification changes we are adopting for FY 1988, we concur with the commenter and refer the reader to Tables 7a and 7b of our final notice of changes to the inpatient prospective payments system and FY 1988 rates. The FY 1986 Medicare discharges used for recalibration of the DRG relative weights were grouped in accordance with both the current (FY 1987) DRG classifications for Table 7a and the revised DRG classifications we are adopting with this notice for Table 7b. Both tables show the number of cases and the arithmetic mean length of stay for cases in each DRG as well as the lengths of stay for cases at the 10th, 25th, 50th, 75th and 90th percentiles within the distribution for each DRG.

Comment: One organization recommended that the revised Grouper software be made available simultaneous with publication of the proposed notice of DRG classsification changes to permit the public the opportunity to test the effects of the proposed changes on data more current than that available to and used by HCFA for reclassification and recalibration.

Response: In order to incorporate as many changes as possible into each year's proposed notice of DRG classification changes, we have either extended the period of time over which we conduct analyses (as was done this year) or, as in 1986, proposed changes in both a DRG classification notice (51 FR 18762) and in the proposed notice of changes to the inpatient hospital prospective payment system and FY 1987 rates (51 FR 19970). In either situation, we do not have a revised Grouper program until after the notice(s) of proposed classification changes is published. Rather, we simulate the Grouper revisions in order to analyze the effects of classification changes and, based on those analyses, propose DRG revisions. We acknowledge that this process may involve substantial internal programming and keying of codes to mimic the actual Grouper software, but we find that it generally works adequately to develop revised classifications and weighting factors. The commenters' concern that the final DRG weighting factors would be markedly different from the proposed weighting factors is not borne out by a comparison of weights in Table 5 between the proposed and final notices of changes to the inpatient hospital prospective payment system and FY 1988 rates. While most of the DRG weighting factors vary somewhat, we believe this movement has more to do with the use of a more recent update of the MEDPAR file than with differences in the classification of cases between the proposed and final notices resulting from the use of different software to group cases. The final recalibrated DRG weights are based on nearly 9.7 million Medicare discharges in FY 1986 received in HCFA through June 1987, while the proposed weights were based on 9.4 million records received through February 1987. (The June 10 proposed rule erroneously indicated that approximately 9.5 million bills had been used in recalibration.)

Because the approach we currently use works and based on the specificity of information we publish in the proposed notice, can be replicated by other parties, we believe it is preferable to analyze as many DRG classification changes as possible before publishing our proposed notice. Even if we publish our notice of proposed DRG changes earlier in the calendar year as we did in 1986, the need to consider the recommendations of ProPAC on a timely basis would render obsolete any Grouper based on such earlier notice if we accept recommendations of ProPAC on DRG classification changes other than those addressed in our earlier notice.

III. Proposed Changes and Comments Affecting a Particular MDC [1]

A. MDC 3: Diseases and Disorders of the Eye, Nose, and Throat

We stated in our proposed notice that claims for cochlear implants will continue to be assigned to DRG 49, (Major Head and Neck Procedures).

Comment: One manufacturer of cochlear implants, their congressional representatives, and ProPAC wrote to express disappointment in our decision to continue to assign cochlear implant cases to DRG 49.[2] They believe that payment at the DRG 49 rate understates the cost of the procedure and thereby adversely affects access to the device for Medicare beneficiaries. They urged us to adopt ProPAC's recommendation to create a unique DRG for implantation of the device.

Another manufacturer of the device wrote expressing satisfaction with our interim assignment of cochlear implants to DRG 49, stating that it has been their experience that current Medicare payments based on the DRG 49 weighting factor have been equitable. Noting that cochlear implant technology had not yet stabilized and that future reclassification might be necessary, this commenter observed that the ability to identify and retrieve from Medicare program files data on the use and cost of cochlear implants was of major importance, but a goal already met by the establishment of unique ICD–9–CM codes for the implantation of the device.

Response: As we stated in our proposed notice, Medicare data indicate that the charges for cochlear implants furnished to Medicare beneficiaries are not significantly different from charges for other cases assigned to DRG 49. Consequently, the creation of a new DRG for the procedure at this time would result in a DRG with very few cases and with a weight nearly identical to that of DRG 49. Indeed, based on partial FY 1987 Medicare billing data more recent than that which was available when we prepared our May 19 notice, we find that the average standardized charge for cochlear implant cases furnished to Medicare patients is actually slightly less than for other cases assigned to DRG 49. Thus, adoption of the ProPAC recommendation would actually reduce payment for the implants. Accordingly,

[1] Unless otherwise noted, these changes were proposed in the May 19, 1987 notice.

[2] For full DRG titles, see Table 5 in the final rule setting forth FY 1988 PPS changes and rates, elsewhere in this issue of the **Federal Register**.

we find no compelling reason to create such a new DRG at this time.

We are aware that cochlear implant charges may vary from one maufacturer to another and between single channel and multi-channel devices. However, the DRG system was not designed to recognize individual products by manufacturer or model.

We also acknowledge that other data sources, such as survey data gathered by one manufacturer, may indicate that charges for cochlear implant cases are higher than charges for other cases assigned to DRG 49. We note that the survey data submitted to us had not been standardized to adjust for hospital variations in wages, teaching, and proportion of low-income patients. Moreover, we believe that, wherever possible, it is appropriate to base the Medicare DRG weighting factor on data exclusively from Medicare patients to ensure consistency and comparability of types and sources of data used for all DRGs.

Finally, as we have previously stated, we view the classification of cochlear implant cases to DRG 49 as an interim measure while we continue to study the issue on the basis of more complete data reflective of Medicare beneficiary utilization of cochlear implants and their estimated cost. This will be facilitated by the establishment of a new unique set of codes for cochlear implants. (These codes became effective October 1, 1986.) Should reclassification of cochlear implants then prove appropriate, we will consider it at that time.

B. MDC 4: Diseases and Disorders of the Respiratory System

Based on numerous comments and our analysis of FY 1985 MEDPAR data, we determined that significantly more hospital resources were used to treat patients requiring mechanical ventilation than other patients with a principal diagnosis within the respiratory system MDC. We also observed that while ventilator patients were dispersed throughout the respiratory system DRGs, that they were more comparable to each other than to other cases in MDC 4. Finally, among ventilator patients, substantial differences in resource use also were found to be related to whether ventilator access was achieved through endotrachial intubation or tracheostomy.

Accordingly, we proposed to create two new interim DRGs for MDC 4. Cases presenting a principal diagnosis in MDC 4 and one of the tracheostomy procedure codes (31.1, Temporary tracheostomy; 31.21, Mediastinal tracheostomy; 31.29 Other permanent tracheostomy) would be assigned to a new DRG 474 (Respiratory System Diagnosis with Tracheostomy). This DRG would be ordered above all other DRGs in MDC 4, including the surgical DRGs.

We also proposed creation of a new DRG for cases involving mechanical ventilation through endotrachial intubation. A new medical DRG 475 (Respiratory System Diagnosis with Ventilator Support), would be established for cases presenting a principal diagnosis assigned to MDC 4 and showing both non-OR procedure codes 93.92, Other mechanical assistance to respiration, and 96.04, Insertion of endotrachial tube.

Comment: The American Association for Respiratory Care, the American College of Chest Physicians, the National Association of Medical Directors of Respiratory Care, ProPAC, and numerous other commenters wrote to express general support for the creation of DRGs 474 and 475. In addition, several of the commenters encouraged expansion of this proposal to patients with other than respiratory diagnoses.

Response: We appreciate the support of these commenters as we continue to refine the DRG classification system. As we stated in our proposed notice, we will continue our research in this area, including analysis of superior means of identifying ventilator cases and ways to address this issue in post-surgical cases and/or patients with non-respiratory principal diagnoses.

Comment: One commenter found our expressed concern with the potential for abuse of the proposed new DRGs 474 and 475 offensive, but the National Association of Medical Directors of Respiratory Care and ProPAC shared our concern that the new DRGs may create financial incentives for hospitals to pressure physicians to intubate patients or perform tracheostomies.

Response: We regret that anyone took offense at the cautionary statement included in the preamble of the proposed notice concerning the possibility that changes in medical practice or the reporting of such practices may be precipitated by the new DRGs. We did not intend to cast aspersions upon the medical community or the ethics of physicians or hospital personnel. However, we recognize that there may be an occasional questionable situation in which DRG classification may influence the course of patient treatment or the reporting of the treatment provided. Indeed, as the basis for their recommendations for DRG classification changes, many commenters routinely claim that the DRG definitions and weighting factors affect medical practice patterns, limit Medicare beneficiary access to the most up-to-date and sophisticated medical technologies, and subject physicians to financially-motivated pressure by hospital managers. If we are to believe that failure of the DRGs to provide higher payment for cases involving certain technologies discourages their use, we may reasonably anticipate that the recognition of procedures and technologies such as tracheostomies and mechanical ventilation in relatively high-weighted DRGs may encourage their use. Further, scattered instances of program abuse do occur and we are required by law to attempt to discover such abuses and institute corrective action.

Finally, we believe it is in the public interest to advise the medical community of our intent to target DRGs 474 and 475 for medical review by the PROs to ensure that use of the diagnoses and procedures that result in assignment of cases to these DRGs is medically reasonable and appropriate.

Comment: One commenter noted that the proposed notice stated that DRG 474 would be ordered above all other DRGs in MDC 4 but was silent as to the ordering of DRG 475. She requested clarification of this point.

Response: Because it contains both OR and non-OR procedures, DRG 474, is not characterized as either a medical or a surgical DRG. Nevertheless, it is ordered first in the hierarchy for MDC 4 and, thus, precedes all surgical and medical DRGs in the MDC. DRG 475, will be assigned to cases with a respiratory system principal diagnosis when neither a temporary tracheostomy nor any operating room procedure is performed and both Endotracheal intubation (code 96.04) and Other mechanical assistance to respiration (code 93.92) are performed. Medical DRGs generally are differentiated by principal diagnosis, so that there is usually no hierarchy beyond the surgical DRGs because the groups of diagnoses are mutually exclusive. However, while DRG 475 is technically a medical DRG, it is not specific to a subset of diagnoses within MDC 4 but rather can be assigned to a case with any principal diagnosis in MDC 4 if the specified procedures are performed. Because DRG 475 is procedure-driven, it is ordered below the surgical DRGs and above the medical DRGs in the MDC.

Comment: One commenter expressed concern that the DRG system does not adequately take into consideration patients who develop acute respiratory

failure. The commenter believes there are well-defined, medically acceptable definitions of acute respiratory failure that should be integrated into the DRG system.

Response: We believe the changes in the coding of respiratory failure and the creation of new DRGs 474 and 475 for patients requiring ventilator support will adequately address the issue of patients developing respiratory failure. A new ICD–9–CM diagnosis code, 518.81, Respiratory failure, has been adopted and will become effective October 1, 1987. Unlike the previous code for respiratory failure (799.1), this new code is not in Chapter 16 (Symptoms, Signs, and Ill-Defined Conditions) of the ICD–9–CM; therefore, hospitals will now be permitted to code respiratory failure as a principal diagnosis when it is the reason for admission.

C. MDC 5: Diseases and Disorders of the Circulatory System

1. Major Vessel Resection With Replacement

We proposed to assign procedure codes 38.46, Abdominal artery resection with replacement, 38.47, Abdominal vein resection with replacement, and 38.48 Lower limb artery resection with replacement, to DRGs 110 and 111 (Major Reconstruction Vascular Procedure without Pump), and remove them from DRG 112 (Vascular Procedures except major reconstruction, without pump). We did not receive any comments on this proposal, so it will be adopted without change.

2. Malignant Hypertension

We proposed to continue to classify malignant and benign types of hypertension disease into DRG 134 (Hypertension).

Comment: One commenter disagreed with our decision concerning malignant hypertension. The commenter noted that, in his experience, hypertension is rarely coded as the principal diagnosis without another acute diagnosis. The commenter believes that further study is needed on the conditions and charges in this category before a decision is made.

Response: While we agree in principle with the commenter that further study may be warranted, we note that the comment is generally non-specific as to other diagnoses that, in conjunction with malignant hypertension, account for variation in resource use. In the FY 1985 MEDPAR file on which our analysis was based, the vast majority (93 percent) of malignant hypertension cases were coded 401.0 and had standardized charges that were greater than the mean charges for the DRG by only $100 (less than 4 percent). The 208 cases involving hypertensive heart and renal disease (code 404.0), while considerably more costly than the average case in DRG 134, comprised less than 1.6 percent of all malignant hypertension cases and less than one-half of one percent of all cases in the DRG. In light of these findings, we are not prepared to reclassify malignant hypertension cases at this time.

In addition, we suggest that commenters concerned with the DRG classification of such cases furnish to us additional information on classification problems in DRG 134 by writing to the Grouper Changes address published in section II. of this notice. We are not persuaded that further analysis, uninformed by more specific information, would be fruitful at this time.

3. Acute Myocardial Infarction

We proposed to continue to classify acute myocardial infarctions (AMI) into DRGs 121, (Circulatory Disorders with AMI and Cardiovascular Compensation Discharged Alive) 122, (Circulatory Disorders with AMI Without Cardiovascular Compensation Discharged Alive) and 123 (Circulatory Disorders with AMI, Expired).

Comment: Two commenters urged that we reconsider our decision not to reclassify AMI cases at this time. The commenters believe the number of cases subject to misclassification due to coding guidelines is small and should not cause us to postpone quick action on the issue of reclassification of AMI cases. One commenter also suggested that the ICD–9–CM Coordination and Maintenance Committee "develop more ethical AMI coding guidelines."

Response: We believe that it is premature to revise the classification of AMI cases at this time. As we pointed out in our proposed notice, the current ICD–9–CM coding guidelines can result in the assignment to DRGs 121–123 of cases that do not involve a current, documented AMI but rather involve the admission of patients who had a myocardial infarction within the preceding eight weeks. Such patients may be hospitalized for recurrence of symptoms without an AMI, for regulation of their medication, or for further evaluation of their condition, including cardiac catheterization to determine the need for coronary bypass surgery. As many as 25 percent of FY 1984 AMI cases among Medicare beneficiaries discharged alive show a length of stay of seven days or less. Physicians advise us that the generally recognized standard of care for patients admitted with a documented AMI is at least seven days. Accordingly, cases with lengths of stay of less than seven days may in fact represent cases not admitted for the treatment of an AMI but nonetheless classified as AMIs because of the eight-week rule. We believe the commingling of such cases with cases admitted and treated for documented AMIs is responsible in part for the variation in resources in these DRGs.

We appreciate the commenters support for changes to the coding guidelines. The ICD–9–CM Coordination and Maintenance Committee addressed coding of AMIs at its July 1987 meeting. The National Center for Health Statistics solicited comments and announced plans to propose a revision at the November 1987 meeting of the ICD–9–CM Coordination and Maintenance Committee. We will continue to work with the ICD–9–CM Coordination and Maintenance Committee on the coding issue. We encourage commenters to address suggestions for revision of the AMI diagnosis code to:

Ms. Sue Meads, Co-Chairperson, ICD–9–CM Coordination-Maintenance Committee, National Center for Health Statistics, Room 2–19 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782.

In light of the possibility of coding changes that may affect the assignment of cases currently in the AMI DRGs, we believe it is more appropriate to delay action at this time. In general, we believe that making changes in a DRG that we expect to have to revise further a year or two later based on coding changes would create confusion that is likely to outweigh the potential benefits of the classification change.

In addition, we intend to conduct further analysis to determine whether, in the absence of diagnosis code modifications, there are alternative configurations to classify cases in DRGs 121–123 that better predict resource use among patients. We would also urge hospitals performing cardiac catheterizations on AMI patients to code those catheterizations even though they do not affect the DRG assignment at this time, as more complete data on procedures performed is of value in assessing the appropriateness of classification changes.

4. Adding a CC to DRG 124

We proposed to add diagnosis code 428.9, Heart Failure, unspecified, to the diagnoses included in DRG 124 (Circulatory Disorders except AMI with Cardiac Catheterization and Complex Diagnosis). We received no negative comments and one favorable comment

in support of this proposal. We are adopting it without change.

5. Pacemakers

We proposed to continue to classify single and dual chamber pacemakers in the existing pacemaker DRGs, 115 through 118.

Comment: One commenter wrote expressing displeasure with our failure to reclassify pacemaker cases based on the type of device. The commenter encouraged further study in this area so that hospitals will not continue to be underpaid for dual chamber devices in the future.

Response: As we explained in the proposed notice, the pacemaker classification issue is more complicated than identifying and recognizing price differences between dual chamber and single chamber devices. Moreover, new ICD–9–CM codes, which will permit us to distinguish among types of pacemaker devices, have just been adopted for use effective in October 1987. These codes may be found in Table II of this notice. We note that ProPAC, as well as several manufacturers of pacemaker devices, support our decision to conduct further study on this issue. We will report our findings as they become available.

Although we proposed no classification changes for cardiac pacemaker cases, we note that the adoption of new ICD–9–CM codes for cardiac pacemaker procedures requires modification of the Grouper logic in order to ensure consistent treatment of like cases using both the old codes and the new codes. A summary of the revised Grouper logic for classifying pacemaker cases appears as Table III in Section VI of this notice.

6. Defibrillators

We proposed the following interim measures for reclassification of automatic implantable cardioverter defibrillator (AICD) cases: to continue to assign AICD total system implants with cardiac catheterization to DRG 104 (Cardiac Valve Procedure with Pump and With Cardiac Catheterization); to assign AICD total system implant cases without cardiac catheterization to DRG 105 (Cardiac Valve Procedure with Pump and Without Cardiac Catheterization); and to assign procedure codes 37.95 through 37.98, Implant or replacement of cardiodefibrillator leads or generator, to DRG 120 (Other Circulatory System OR Procedures), and remove them from DRG 117 (Cardiac Pacemaker Revision Except Device Replacement).

Comment: Two commenters expressed concern with our proposed classification of defibrillator cases. The commenters expressed concern that ICD–9–CM coding conventions required clarification so that electrophysiological testing performed in association with the implant is reported. One commenter also believes that reclassification of defibrillator replacements and/or defibrillator lead implants from DRG 117 to DRG 120 would continue to result in underpayment for the procedure. The commenter requested reclassification to an unspecified higher weighted DRG.

Response: We admit that there is not a distinct ICD–9–CM code for electrophysiological testing. Currently, this is captured under code 37.29, Other diagnostic procedures on the heart and pericardium. The ICD–9–CM Coordination and Maintenance Committee addressed this issue at their July 1987 meeting. During the coming year it is anticipated that a new code will be proposed for electrophysiological testing. If approved, the code(s) would become effective October 1, 1988. In addition, hospitals should report cardiac catheterization on the Medicare billing form whenever performed. Use of the catheterization code affects DRG classification in several DRGs even though it is not considered an operating room procedure.

With regard to the classification of replacement and/or insertion of AICD leads and devices alone, we continue to believe DRG 120 is appropriate for the time being. Based on the limited Medicare data available at this time, we find that average charges for AICD procedures other than total system implants reasonably approximate the average charge for DRG 120. Until more claims data are available, we consider it more appropriate to temporarily classify the AICD procedures, other than total system insertions, in DRG 120. Once the technology is stabilized and we have a larger data base for evaluative purposes, we will consider further reclassification of both total system AICD implants and other defibrillator procedures. We note also that ProPAC's comments include support for assignment of these procedures to DRG 120.

Comment: One commenter noted our commitment, published in the September 3, 1986, PPS notice to re-evaluate complex aortic aneurysm repairs. The commenter expressed disappointment that the results of this re-evaluation were not contained in the May 19, 1987 proposed notice and requested that the results of the evaluation be included in this notice.

Response: The new ICD–9–CM procedure codes that clearly identify thoraco-abdominal aortic aneurysm repair just became effective October 1, 1986. Because of the lag between patient discharges and inclusion of the discharge data in our central office MEDPAR file, we have limited data from FY 1987.

We believe it is premature to conduct a re-evaluation on complex aortic aneurysm repairs at this time due to the scarcity of data. Any conclusions based on such limited data would of necessity be considered interim, as with cochlear implants and cardiac defibrillators. Since we have already instituted an interim reclassification of the procedure, we do not believe it is a prudent use of resources to engage in a rushed analysis based on incomplete data, only to repeat the analysis once more information becomes available. Consequently, we have nothing to report on this procedure at this time.

We do intend, however, to re-evaluate the classification of complex aortic aneurysm repairs once adequate data are available. We will report on our findings in the first DRG classification notice to be published after our review is complete.

D. MDC 6: Diseases and Disorders of the Digestive System

1. Reassignment of Ulcer Diagnosis Code

We proposed to remove diagnosis code 531.70, Chronic gastric ulcer without mention of hemorrhage, perforation or obstruction, from DRG 176 (Complicated Peptic Ulcer) and reassign it to DRGs 177 (Uncomplicated Peptic Ulcer with CC) and 178 (Uncomplicated Peptic Ulcer without CC). We did not receive any comments on this proposal, so it will be adopted without change.

2. No Change in the Classification of Bowel Procedures

We stated that national data indicated no significant classification problems in the major bowel procedure DRGs 148 and 149 (Major Small and Large Bowel Procedures). Thus, we proposed not to amend the current classification of bowel procedures. We did not receive any comments on our statement, so the current classification of bowel procedures will remain.

E. MDC 8: Diseases and Disorders of the Musculoskeletal System and Connective Tissue

1. Hamartoma

We proposed to remove diagnosis code 759.6, Other hamartoses, not elsewhere classified (NEC), from MDC 17, Myeloprofiferative and Poorly Differentiated Neoplasms, and to add it to MDC 8. We also proposed adding

procedure code 32.29, Other local excision or destruction of lesion or tissue of lung to DRGs 233 and 234 (Other Musculoskeletal and Connective Tissue Procedures), in order to avoid inappropriate assignment to DRG 468.

Comment: We received conflicting comments concerning our proposal to move diagnosis code 759.6, Other hamartoses, NEC, from MDC 17 to MDC 8. One commenter approved of the proposed change but, noting that hamartoses occur at sites other than the lung, recommended that additional procedure codes be added to DRGs 233 and 234 to prevent assignment to DRG 468 of excisions of hamartoses at other sites. Another commenter expressed concern that hamartoses not be removed from MDC 17, stating that a hamartoma is a tumor-like mass that may undergo neoplastic transformation. Therefore, the commenter believes assignment to MDC 17 is appropriate.

Response: In light of the conflicting comments on this subject we have decided to postpone implementation of this proposed change for FY 1988. We will study the issue in greater detail during the upcoming evaluative period and will report on our findings in next year's proposed notice.

2. Certain femur procedures

We proposed to reassign procedure code 79.95, Unspecified operation on femur injury from DRGs 218, 219, and 220 (Lower extremity and humerus procedure except hip, foot, femur). We received no negative comments and one favorable comment in support of this proposal, so it will be adopted without change.

F. MDC 9: Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast

1. Cellulitis of finger, toe and digit

We proposed to add the following diagnoses to the list of principal diagnoses that may result in assignment to DRG 263 (Skin Graft and/or Debridement For Skin Ulcer or Cellulitis with CC) and DRG 264 (Skin Graft and/or Debridement For Skin Ulcer or Cellulitis without CC).

681.00 Cellulitis and abcess of finger, unspecified
681.01 Felon
681.02 Onychia and paronychia of finger
681.10 Cellulitis and abscess of toe, unspecified
681.11 Onychia and paronychia of toe
681.9 Cellulitis and abscess of unspecified digit

We received no negative comments on this proposal, so it will be adopted without change.

2. Infected abrasion or friction burn of face, neck, and scalp

We proposed to remove diagnosis code 910.1, Abrasion or friction burn of face, neck, and scalp except eye, infected, from DRGs 280–282 (Trauma to the Skin, Subcutaneous tissue, and Breast), and assign the code to DRGs 277–279 (Cellulitis) along with other diagnoses for infection.

We received no negative comments on this proposal, so it will be adopted without change.

G. MDC 11: Diseases and Disorders of the Kidney and Urinary Tract

We proposed to remove diagnosis code 581.9, Nephrotic syndrome with unspecified pathological lesion in kidney, from DRGs 325–327 (Kidney and Urinary Tract Signs and Symptoms) and place it in DRGs 331–333 (Other Kidney and Urinary Tract Diagnoses). We did not receive any negative comments on this proposal, so it will be adopted without change.

H. MDC 18: Infections and Parasitic Diseases (Systemic and Unspecified Sites)

We proposed to remove diagnosis code 785.59, Shock without mention of trauma, NEC, from MDC 5 and reassign the condition to MDC 18, with non-surgical cases assigned to DRGs 416 and 417 (Septicemia). We did not receive any comments on this proposal, so it is adopted without change.

I. MDC 20: Alcohol/Drug Use and Alcohol/Drug Induced Organic Mental Disorders

1. Refinement of alcohol/drug DRGs

In accordance with our September 3, 1986 final rule on changes to the inpatient hospital prospective payment system and FY 1987 rates (51 FR 31454), the exclusion of alcohol/drug treatment hospitals and units was extended through cost reporting periods beginning before October 1, 1987. The extension was intended to permit completion of analyses of a record reabstraction study conducted by the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) in concert with the National Institute of Mental Health, the National Institute on Drug Abuse, the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism, the Office of the Assistant Secretary for Planning and Evaluation, and HCFA.

The record reabstraction study was designed to examine the predictive value of variables not currently included in the DRG logic for MDC 20, such as patient age, disability status, CC and polysubstance use, on patient resource use. Based on the analyses and recommendations of ADAMHA, HCFA tested the effects of reconfiguring the alcohol/drug DRGs along the lines suggested by ADAMHA by analyzing the FY 1985 and FY 1986 MEDPAR records for all Medicare discharges in MDC 20 (the ADAMHA reabstraction study was based on a stratified random sample of FY 1984 discharges). Based on our analyses and those of ADAMHA, we proposed to reconfigure the alcohol/drug DRGs as follows:

- Cases in the current DRGs 434 and 435 would be combined and then re-split based on the presence or absence of non-MDC 20 CC. The proposed DRG 434 would be Alcohol/Drug Abuse or Dependence, Detoxification or Other Symptomatic Treatment, with CC and the proposed DRG 435 would be Alcohol/Drug Abuse or Dependence, Detoxification or Other Symptomatic Treatment, without CC.
- We proposed that cases with either a principal or secondary diagnosis (rather than only a principal diagnosis, as currently) of alcohol or drug dependence would be assigned to the revised DRG 436, if rehabilitation therapy (diagnosis code V57.89) was furnished, and to the revised DRG 437 if both rehabilitation therapy and detoxification (procedure code 94.25) were provided. In addition, we proposed that certain diagnoses that are not currently assigned to DRGs 436 and 437 be permitted to group to the revised DRGs 436 and 437 if it is the physician's judgment that a patient with a principal or secondary diagnosis of one or more of these conditions may benefit from rehabilitation and such rehabilitation is furnished and reported on the bill submitted. These additional diagnoses to be treated as dependence diagnoses were alcohol amnestic syndrome (291.1), other alcoholic dementia (291.2), alcohol withdrawal hallucinosis (291.3), other specified alcoholic psychosis (291.8), and unspecified alcoholic psychosis (291.9).

The revised logic for DRGs 436 and 437 would move cases involving the above diagnoses from DRG 434 (to which codes 291.1 and 291.2 are currently assigned) and from DRG 435 (to which codes 291.3, 291.8 and 291.9 are currently assigned) as long as rehabilitation therapy was furnished. The effect of recognizing secondary as well as principal diagnoses of alcohol or drug dependence in the proposed revisions of DRGs 436 and 437 was to remove cases from DRG 434 when rehabilitation therapy was furnished to a patient with a principal diagnosis of

alcohol or drug abuse, as long as the record also contained evidence of alcohol or drug dependence as a secondary diagnosis.

No change was proposed to the logic for DRG 433, except that it be renamed Alcohol/Drug Abuse or Dependence, Left Against Medical Advice.

We received several comments on these proposed DRG revisions. We also received numerous comments on the scheduled end of the exclusion of alcohol/drug hospitals and units, the absence of an impact analysis on the effect of inclusion of alcohol/drug hospitals and units in the prospective payment system, the proposed recalibrated weights, and outlier thresholds for the alcohol/drug DRGs. They will be addressed separately in our final rule of changes to the inpatient hospital prospective payment system and FY 1988 rates, published elsewhere in this issue of the **Federal Register.**

Comment: Several associations representing hospitals, physicians and nurses commented favorably on the proposed restructuring of DRGs 434–437, indicating that the proposed DRGs for alcohol/drug diagnoses represented an improvement over the current classifications. The National Association of Addiction Treatment Providers (NAATP), while expressing major concerns regarding the recalibrated DRG weights, the scheduled end of the exclusion of alcohol/drug hospitals and units and the absence of an impact analysis, wrote: "We sincerely applaud the Department's efforts and diligence represented by the various analyses which have been conducted and served as the basis for the current proposed reclassification of the alcohol and drug abuse DRGs. We think that the proposed reclassification has a solid analytic foundation and fairly represents a method to classify alcoholism and drug abuse/dependency admissions for the Medicare beneficiary population."

Response: We are encouraged by the favorable response to the proposed reconfiguration of the alcohol/drug DRGs. We note that while many individual alcohol/drug hospitals and units were critical of the scheduled end of their exclusion from the prospective payment system, their criticism related to the absence of an impact analysis and the use of cases from short-stay hospitals as well as excluded alcohol/drug hospitals and units to establish the proposed weighting factors, rather than to the proposed classification of alcohol/drug cases among the MDC 20 DRGs. We believe this is further evidence that the proposed DRG classifications do represent an improvement over the existing alcohol/drug DRGs.

Comment: One commenter expressed concern that the June 10 notice provided only general descriptions of the ADAMHA and HCFA studies on which the proposed modifications were based but did not display the study results. This commenter also indicated that the study files had not been made available to the public.

Response: The ADAMHA study was designed to assess and test hypotheses regarding alternate structuring of the MDC 20 DRGs. The findings of this reabstract study were published in the June 10 proposed notice as supporting evidence for the proposed DRG reconfigurations. Sufficient information was provided to document the impact of those variables found to influence resource consumption in the alcohol/drug DRGs. Our description of the analyses undertaken identifies the data sources used and provides sufficient information to enable interested parties to conduct similar analyses, should they wish to do so. The availability of MEDPAR data, on which most of HCFA's analyses are based, was the subject of a **Federal Register** notice published July 2, 1985 (50 FR 27407). The ADAMHA reabstraction study database, consisting of data reabstracted from the medical record merged with MEDPAR data, contains personally identifiable data which under the provisions of the Privacy Act, may not be released. ADAMHA is in the process of removing personal identifiers and will make the data available to the public at the earliest possible date. Preparation of this data tape has involved careful screening of all variables to assure that no information identifying specific patients or providers is included. All provider-specific variables that might possibly identify a given provider were omitted, in support of ADAMHA's assurance of confidentiality with respect to the identities of providers participating in the study and their patients whose records were abstracted. Also, as noted earlier in this document, a contact person's name and telephone number are provided for those seeking additional information on the changes. Finally, all materials used and analyses conducted are subject to release upon request, including requests under the Freedom of Information Act. We believe that all of these procedures facilitate open, public debate and permit readers sufficient information in sufficient detail, to evaluate the proposed changes.

Comment: One commenter believed that the alcohol/drug DRGs should differentiate between patients with dual diagnoses, such as cirrhosis, depression, or other medical or psychiatric diagnoses, and those without. Other commenters thought presence or absence of CC should be incorporated into the revised DRGs 436 and 437.

Response: We evaluated the impact of presence or absence of any CC on all alcohol/drug DRGs and found that most patients with a principal diagnosis in MDC 20 also had a CC reported. Because most alcohol/drug diagnoses are on the master CC list and many patients in MDC 20 have multiple alcohol/drug diagnoses, such as both dependence and abuse, coded, this distinction was not associated with significant differences in resource use. After revising the CC list for MDC 20 to exclude diagnoses in MDC 20, we found that presence or absence of non MDC-CC was associated with significant differences in resource use among patients not undergoing rehabilitation.

Based on FY 1986 MEDPAR records, patients in DRGs 434 and 435 with non-MDC 20 CC had mean charges 40 percent and 45 percent greater, respectively, than patients without CC. Moreover, the homogeneity of the resulting groups, as measured by a weighted average of the coefficients of variation, improved by 3 percent for DRG 434 and by 8 percent for DRG 435. Because there were no statistical differences between charges for patients in DRGs 434 and 435 when presence or absence of CC was held constant, we proposed to combine all cases from DRGs 434 and 435 and then re-split them into two new DRGs, distinguished by presence or absence of non-MDC 20 CC. Accordingly, we believe our proposed revision of DRGs 434 and 435 does take into account differences between patients with multiple diagnoses and those without, as recommended by the first commenter cited.

When we performed similar analyses on cases in DRGs 436 and 437, we found that the resource differences between patients with CC and those without dropped to 17 and 10 percent, respectively. Moreover, the homogeneity of the two resulting pairs improved by only one-half of one percent. We infer from this minimal improvement in homogeneity that there are other factors contributing nearly as much to patient differences in resource use as the presence or absence of CC. As we indicated in the proposed notice, the average resource differential in over 100 pairs of DRGs, when split on the basis of CC, averages 60 percent for all pairs and is less than 20 percent for only two pairs. In light of the more modest resource differences associated with CC

in DRGs 436 and 437, combined with the minimal improvements in homogeneity of the resulting groups, we do not believe it is appropriate at this time to split DRGs 436 and 437 on the basis of presence or absence of CC. Therefore, we have not adopted the commenters' recommendations regarding DRGs 436 and 437.

Comment: One commenter observed that resource differences associated with multiple addictions should be reflected in the revised MDC 20 DRGs. Another commenter, while acknowledging that the proposed alcohol/drug DRGs are an improvement over the current DRGs in MDC 20, questioned the conclusions implied by a lack of differentiation in the DRGs between the types of substances abused.

Response: At the present time, cases of drug abuse represent less than fifteen percent of all Medicare cases in MDC 20. However, ADAMHA's study sample was designed so as to reabstract all Medicare alcohol/drug cases from each provider in the sample; it was hypothesized that differential resource intensity associated with type or combination of substances used would emerge at the provider level.

In an effort to evaluate the effects of multiple substance abuse ADAMHA examined cases involving alcohol only, single drug use only, alcohol/drug combinations, and multiple drug combinations. Based on the limited number of Medicare cases involving drug use other than alcohol, ADAMHA did not consider it appropriate to distinguish the DRGs by type of drug used or between alcohol and drug cases, nor did it find systematic and consistent results when it distinguished cases involving single substance abuse from those involving polysubstance abuse. On the basis of these analyses, ADAMHA recommended no distinction in the DRGs between alcohol and drug dependence or between single substance and multiple substance abuse.

Comment: One commenter noted that the proposed notice referenced the use of code V57.81 for rehabilitation rather than code V57.89.

Response: We agree with the commenter that the proposed notice contained a typographical error. The correct code for alcohol/drug-related rehabilitation is V57.89. We regret any confusion this error may have caused our readers.

Comment: One commenter raised questions about the validity of the ADAMHA study in light of the sample size and the use of only the face sheet and discharge summary as the basis for reabstraction.

This commenter observed that acceptable coding practices require use of the entire medical record, especially to identify CC.

Response: ADAMHA consulted extensively with industry representatives, HCFA and the Assistant Secretary for Planning and Evaluation regarding the design, implementation and analyses conducted during their MDC 20 study. The ADAMHA reabstraction study was based on a stratified random sample of 849 hospitals and units with some 15,000 Medicare discharges in the alcohol/drug DRGs. These discharges represented 28 percent of all alcohol/drug cases in FY 1984. Providers were stratified by type of hospital or unit and its PPS status (excluded hospital, excluded alcohol unit, included short-stay hospital, etc.). Within this sampling frame, sampled providers were asked to submit records for all of their MDC 20 discharges for FY 1984. The provider response rate approached 90 percent, and 80 percent of the requested records were obtained. Even after adjusting for response rate, the reabstracted records comprise 22 percent of Medicare alcohol/drug cases in FY 1984. We believe this sampling frame yielded an adequate database for analysis from the standpoint of both size and representativeness of the selected providers.

As to the validity of using only the face sheet and discharge summary as the basis for reabstraction, it is true that coders are encouraged to review the entire medical record in order to capture any diagnoses that might have been omitted by the physician who prepared the discharge summary. However, ADAMHA conducted a pilot test to compare the availability and reliability of variables of interest from the discharge summary with their availability from the full medical record. The pilot test confirmed that the face sheet and the discharge summary were in fact valid and reliable sources of the necessary information and demonstrated that their use would facilitate efficiency of the data collection effort without sacrificing accuracy. In addition, the study methodology specifically provided for call-back consultation with hospital medical records personnel and involved referring back to the full medical record whenever there was any doubt about the variables of interest being reabstracted from the face sheet and the discharge summary.

Coders working on the reabstraction study were instructed specifically to code coexisting conditions. The data collection instrument permitted coding of up to seven diagnoses and five procedures, in contrast to the maximum of five diagnoses and three procedures that can be reported on the Medicare billing form. The ADAMHA study paid particularly close attention to accurate coding of the incidence of rehabilitation.

We believe the procedures followed by ADAMHA in designing and conducting this study were sufficient to ensure completeness, quality and consistency of the data collected and the reliability of inferences drawn with respect to analyses of alternative configurations of the alcohol/drug DRGs.

Finally, we reiterate that the final analysis on many of the alternative configurations of the MDC 20 DRGs were ultimately tested on more recent and more complete Medicare data on discharges from the alcohol/drug DRGs—more than 40,000 in FY 1985 and more than 30,000 cases in FY 1986 all discharge data received in HCFA central office through September 1986.

Comment: One commenter observed that because the current MDC 20 DRG assignments are not affected by the presence of CC, it is likely that such conditions were under-reported in the ADAMHA study and in FY 1986

Response: As noted previously, ADAMHA specifically collected comprehensive data on secondary diagnoses, using a data collection instrument designed to collect up to seven diagnoses rather than five as are reported on the hospital billing form. In the FY 1985 and FY 1986 MEDPAR study files, the percentage of patients in the alcohol/drug DRGs with non- MDC 20 CC on their Medicare hospital bills was comparable to the percentage of patients in other DRGs with CC. We wish to emphasize that we require reporting of CC on all Medicare cases, even in DRGs not affected by the presence or absence of CC. We encourage hospitals to code diagnostic and procedural information as completely and accurately as possible on all Medicare claims. Complete and accurate medical record coding not only ensures the accuracy of DRG assignment; it also enriches the Medicare program data bases used for our ongoing monitoring and evaluation of the prospective payment system, including DRG classification changes.

Based on the foregoing discussion of comments on the proposed revisions of the MDC 20 DRGs, we are adopting our proposed reconfiguration of DRGs 434–437 without change.

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IV. Proposed Changes and Comments Affecting Multiple MDCS

A. Elimination of Age Over 69

In the May 19, 1987 proposed notice, we proposed to eliminate age over 69 as a criterion for DRG classification in all of the pairs of DRGs in which age over 69 and/or CC was a factor. We also proposed to continue to consider age under 18 in those pediatric DRGs that already have been established and to continue to consider age 35 in the diabetes DRGs (294 and 295).

Comment: Several rural hospitals wrote expressing dissatisfaction with our proposed elimination of age over 69 as a criterion for DRG classification. These commenters believed that the proposed change would result in a significant loss of revenue to rural hospitals. One commenter observed that small rural hospitals were not in a position to look for and code esoteric CC in a patient population comprised disproportionately of elderly Medicare beneficiaries.

Another commenter, a hospital, indicated that it had evaluated the impact of this proposal on 75 Medicare patients age 70 or older. It noted that 59 of the patients would be unaffected by the change but that it would experience a substantial drop in revenue for the remaining 16 cases.

Response: We believe these comments reflect legitimate concern mixed with some misunderstanding of the effects of the proposed change. About 70 percent of Medicare beneficiaries hospitalized each year are age 70 or older. About 60 percent of Medicare beneficiaries under age 70 are reported to have CC. As a result, the current split in the paired DRGs based on age over 69 or presence of CC results in about 88 percent of all Medicare cases in the paired DRGs being assigned to the DRGs involving age over 69 and/or CC. The fact that such a substantial majority of Medicare beneficiaries are grouped into these DRGs has the effect of masking significant differences in resource use among patients within the DRG pair because the DRG for older and/or complicated cases includes a mix of extremely sick patients who are very resource-intensive and patients who present no complications and are not very different from younger patients in their average resource use.

When age greater than 69 is eliminated from consideration, the differences between the resulting DRGs—those with and those without CC—generally widens and the variance within the resulting DRGs is less than in the former. In most pairs, the weighting factor for the DRG with CC rises and the weighting factor for the DRG without CC declines relative to the current weighting factors. (It is important to note that these are the combined results of both reclassification and recalibration; we have not isolated the effects of using FY 1986 data to recalibrate the weights separately from the DRG classification changes.) Accordingly, in the example described by one commenter, if the weighting factor and, hence, payment for 16 Medicare cases was projected to decline, the weighting factor for the 59 "unaffected" cases would rise. We believe this outcome was not understood by the commenters.

Even after elimination of age over 69 as a criterion in DRG assignment, some 60–65 percent of Medicare beneficiaries will continue to be grouped to the complicated DRGs within the pairs. Data on the distribution of complications by age reveals that there is a steady rise in the incidence of CC as age increases, from 58 percent among 65-year-olds to 71 percent for patients age 85 and older. To the extent that rural hospitals treat disproportionately more older patients among the Medicare population, we would expect to see disproportionately more of their cases assigned to the DRGs with CC. As to the allegation that rural hospitals are not in a position to identify esoteric CC, we note that there are about 2,700 diagnoses on the master CC list, the majority of which are not in the least esoteric but rather are diagnoses which, when principal, are assigned to some of the most frequently occurring DRGs in the Medicare population.

We should also point out that the data demonstrate that the presence of CC contributes much more significantly to the variation in case costs than does age over 69. After controlling for CC, patients over age 69 are, on average, four percent more expensive than patients under age 70, whereas, regardless of age, patients with complications are about 30 percent more expensive than patients without complications. This finding emerges in analyses conducted by ProPAC and HCFA and is consistent across three consecutive years of Medicare data (FYs 1984, 1985, and 1986). We do not believe it is within the overall interest of the general public to ignore those results.

Supporters of maintaining age over 69 in the DRG classification scheme argue that older patients generally require more resources than younger counterparts. Despite the fact that a few patients age 70 and older without CC are as expensive to treat as patients with CC, the data show that this is not generally the case. Consequently, the commingling of all aged patients with patients presenting CC reduces the mean for those DRGs and, thus, tends to result in underpayment for more complicated cases.

Since the DRG classification system is based on averages, there will always be cases with costs both above and below the payment level. Given that there is a fixed data base from which the weighting factors are computed, classification changes generally result in increased payment for one kind of case at the expense of decreased payment for another kind of case. Our intent is to refine the classification systems to be as equitable as possible. Thus, even though hospitals will experience a decrease in revenue for uncomplicated older patients, they will experience an increase in revenue for complicated cases. The net effect on an individual hospital is dependent upon its mix of patients.

Finally, we do not expect hospitals to frequently encounter situations in which an older patient who requires extremely intensive resources does not have any CC. The classic example cited of a 90-year-old patient utilizing a high level of nursing services without presenting any CC, simply does not occur frequently in reality. There is a high correlation between the intensity of services and the presence of CC. Consequently, we believe the elimination of age over 69 from the classification structure results in payments that better reflect resource use.

Comment: One commenter stated that both HCFA s and ProPAC's analyses are limited by their failure to consider alternative age splits that may be more meaningful in the Medicare population. Another commenter recommended that the complicated versus uncomplicated DRGs be further split on basis of age

Response: Although not specifically addressed in the proposed notice, we evaluated alternative age splits in our research on this issue. We found that alternative age breaks, in combination with CC, produced no overall improvement in the homogeneity of the DRGs. In addition, neither we nor ProPAC found that age by itself explained as much variation in charges as did the presence of CC. Regarding the recommendation that the revised DRGs be further split by age, thus doubling the number of DRGs in pairs, ProPAC found that patients over age 69 without CC were, on average, 4 percent more expensive than patients under age 70 without CC. This small difference does not justify duplicating DRGs on the basis of age.

Comment: Several commenters encouraged HCFA to split all DRGs based on presence of CC.

Response: We agree that it is necessary to investigate whether the presence of a CC significantly affects resource consumption in DRGs other than those that are currently split on that basis. We will be evaluating that issue and will report on our findings in the future.

Comment: One commenter voiced dissatisfaction with the elimination of age over 69 and argued that all DRGs must be reweighted in order to properly reimburse hospitals.

Response: The weighting factors for all the DRGs have been recalibrated for FY 1988 and annually thereafter. As described in our proposed notice, the weighting factors are based on standardized charges for all Medicare discharges in FY 1986 for which data have been received through June 1987. Those cases are grouped in accordance with the logic that will determine DRG assignment in FY 1988, including all of the classification changes finalized in this notice. The average case weight before and after DRG reclassification and recalibration of the weights is held constant to ensure that reclassification and recalibration neither increase nor decrease projected Medicare outlays for the same set of cases. Thus, the elimination of age over 69 as a factor in DRG assignment, as well as all other DRG classification changes, has been taken into account in computing the revised DRG weights. The DRG weights listed in table 5 of the addenda to both the June 10 proposed rule and the final rule published elsewhere in this issue reflect this recalibration.

Comment: Two commenters noted our statement that the elimination of age over 69 resulted in some DRGs being more internally heterogeneous. One commenter, briefly summarizing some of its own research, argued that the relationship between age and charges depends on the DRG weight. The commenters encouraged additional evaluation of the age proposal, possibly resulting in the splitting of certain DRGs by age and CC.

Response: When initially evaluating the appropriateness of eliminating age over 69, we considered the idea of making individual determinations as to whether to retain age in the classification of each pair of DRGs split on the basis of age and/or CC. However, we rejected this alternative primarily because we believe that annual evaluation, potentially causing some DRGs to consider age one year and not the following, would be extremely confusing and burdensome to hospitals as well as to HCFA and other DRG users. We believe it is preferable to sacrifice a minimal amount of internal homogeneity in a few DRG pairs than to present users with the uncertainty of not knowing the DRGs that would be split on age each year. Moreover, we do not believe such an annual re evaluation of each of the paired DRGs is a prudent use of resources, nor do we believe that it would be equitable to make a permanent decision to retain age over 69 for a few DRGs based on a single year's findings.

Comment: Several other commenters objected to the elimination of age over 69 as a factor in DRG classification. Two of the commenters stated that the proposal would adversely affect their hospitals because older patients require a greater intensity of nursing services that would no longer be reflected in payment. Another commenter noted that aged patients utilize a disproportionate share of non-revenue-producing hospital resources, such as social services, which should be considered.

Response: We continue to believe that age over 69 should be eliminated from the DRG classification system. The data indicate that the presence of CC has much greater power than either age by itself or age in combination with CC in explaining variations of resource use among patients, as measured by standardized charges. While we admit that the nursing needs of a healthy 90-year-old may be somewhat more than a healthy 65-year-old, the nursing needs of either a 65-year-old or a 90-year-old with CC are likely to exceed those of either patient without CC. Furthermore, we suspect that the vast majority of patients who require a greater intensity of nursing services do, in fact, present CC. We should point out that by not commingling relatively healthier, older patients with the patients who present CC, the average charge for the complicated cases increases. Consequently, the proposed revision in the classification system results in payment that more accurately reflects the additional services furnished.

With regard to non-revenue-producing hospital resources, such as social services, we must point out that the Medicare program, or any other payer of which we are aware, has never recognized differential utilization of such services. Rather, the cost of non-revenue-producing services are allocated to revenue producing services. Consequently, we have no means of determining the relationship between such services and age as opposed to CC.

B. Addition of Drug Diagnoses to CC List

In our May 19 notice we proposed adding the following diagnoses to the list of CC.

304.20 Cocaine dependence, unspecified
304.21 Cocaine dependence, continuous
304.22 Cocaine dependence, episodic
304.50 Hallucinogen dependence, unspecified
304.51 Hallucinogen dependence, continuous
304.52 Hallucinogen dependence, episodic
304.60 Other specified drug dependence, not elsewhere classified, unspecified
304.61 Other specified drug dependence, not elsewhere classified, continuous
304.62 Other specified drug dependence, not elsewhere classified, episodic
305.30 Hallucinogen abuse, unspecified
305.31 Hallucinogen abuse, continuous
305.32 Hallucinogen abuse, episodic
305.60 Cocaine abuse, unspecified
305.61 Cocaine abuse, continuous
305.62 Cocaine abuse, episodic
305.90 Other, mixed, or unspecified drug abuse
305.91 Other, mixed, or unspecified drug abuse, continuous
305.92 Other, mixed, or unspecified drug abuse, episodic

C. Refinement of Complications and Comorbidities Listing

In the May 19 notice we proposed to modify the Grouper logic so that certain diagnoses generally included on the list of CC would not be considered a valid CC in combination with a particular principal diagnosis.

Comment: One commenter noted that many principal diagnoses listed fall into MDCs that are not split on the basis of CC, such as mental disorders. The commenter believes it is pointless to complicate the task of refining the CC list by including these codes.

Response: We had considered limiting the CC refinement when we initially undertook this task. However, given the ongoing process of DRG refinement, future work of evaluating all DRGs for additional CC splits, and general research in classification methodologies, we believed it best to design the CC listing to be as all-encompassing as possible. Thus, if future DRG changes require CC splits for additional DRGs, the CC exclusion listing will be able to handle the change adequately without

massive modification of the CC exclusion list.

We regret any confusion this process may have created for some reviewers. However, we continue to believe it is prudent to remain prepared for as many future alternatives as possible in developing such a major revision to the software space utilized by the Grouper program.

Comment: Two commenters noted typographical errors in the CC exclusion listing.

Response: Although we attempted to proofread the copy of the CC exclusion listing carefully, a few errors were identified during the review of over 350,000 codes. The following changes should be made to the listing.

1. On page 1, principal diagnosis code 006.4 should read 006.5. Then, principal diagnosis code 006.4 should be added with code 513.0 excluded as a CC.

2. On page 515, principal diagnosis codes 807.00, 807.01, 807.02, and 807.03 were omitted inadvertently. They should be added with the same list of exclusions as under principal diagnosis code 807.05.

3. On page 687, under principal diagnosis code 868.12. all exluded codes listed should be deleted and replaced with only code 868.12.

4. On page 711, under principal diagnosis code 998.1, excluded code 981 should read 998.1.

5. The following codes are deleted from the list of excluded diagnoses and will continue to be treated as CC:

(a) On page 56, delete code 723.4 from exclusions listed under principal diagnosis code 054.40,

(b) On page 119, delete code 424.0 from exclusions listed under principal diagnosis code 395.0

(c) On page 151, delete codes 607.1, 607.2, and 607.3 from exclusions listed under principal diagnosis code 599.7,

(d) On page 199, delete codes 614.0, 614.3, 614.5, 615.0, 616.3, 616.4, and 620.7 from exclusions listed under principal diagnosis code 753.9,

(e) On page 199, delete all codes that do not begin with a "7" from exclusions listed under principal diagnosis code 759.8,

(f) On page 515, delete code 070.5 from exclusions listed under principal diagnosis code 807.04,

(g) On page 696, delete all codes from exclusions listed under principal diagnosis codes 901.83, 901.89, and 901.9.

(h) On pages 121–122, delete code 427.5 from exclusions listed under principal diagnosis codes 426.0, 426.10, 426.11, 426.12, 426.13, 426.2, 426.3, 426.4, 426.50, 426.51, 426.52, 426.53, 426.54, 426.6, 426.7, 426.81, 426.89, and 426.9.

6. Delete from the exclusions list, wherever it appears, any diagnosis code that is not already on the master list of CC (as modified by this notice). For example, on page 1, the first exclusion listed under principal diagnosis 003.1 is code 020.2. Since code 020.2 is not already a CC, it need not be excluded and should be deleted whenever it appears on the CC exclusions list.

Comment: One comment noted that some codes remain valid CC for themselves while other codes exclude themselves as valid CC. The commenter believes the revised CC exclusions for coding should be consistent.

Response: Whether or not a particular code can be a CC for itself was based on clinical judgment of the medical consultants developing the CC listing. A very few codes were not excluded from themselves because they may signify the bilateral occurrence of particular condition.

Other situations in which a code is not excluded from itself represent diagnoses that are not on the overall list of CC to begin with and thus need not be excluded from the CC list for any principal diagnosis. Such is the case in the example cited by one commenter of code 349.89, Kline Levin Syndrome. Since code 349.89 is not on the master CC list, it is entirely unnecessary to exclude it from the CC list for itself or any other principal diagnosis. In addition, as noted above, we have deleted from the list of exclusions any diagnosis code that was not already on the master CC list in an effort to eliminate any confusion regarding whether a particular diagnosis is ever a CC.

Comment: One commenter, anticipating that it would be impossible for hospitals and other organizations to incorporate the CC refinement into revised software by October 1, 1987, expressed concern that implementation of the CC refinements would disrupt billing operations. Given the elimination of periodic interim payments (PIP) effective July 1, 1987, this commenter recommended that HCFA make only necessary changes to data processing systems to minimize delays in the billing process.

Response: Hospitals are not required to make any changes in the information they furnish in order to have Medicare bills processed after the implementation of the CC refinement. Hospitals are free to report diagnoses on their Medicare billing form just as they have been doing since 1983. The Medicare FIs assign the DRG based on diagnosis and procedure codes reported. The DRG reported by hospitals is not considered by the FI in making payment. Consequently, hospitals should continue to submit their Medicare bills timely despite the fact that their internal Grouper software may not be revised by the beginning of the fiscal period.

Comment: One commenter noted that both the original CC listing and the proposed refinement to the listing were based on clinical judgments. The commenter believes that the CC list and exclusions need to be based on a more empirical foundation.

Response: We agree that empirical findings combined with clinical judgment should be considered in any broad refinement of the CC listing. We currently have let a research grant in this regard. We anticipate further improvements in the CC listing, once the research is completed.

In the meantime, we do not believe the absence of empirical findings should delay implementation of the currently proposed refinement to the CC listing. We believe that the proposed exclusions to the CC listing adhere closely to the principles that guided this endeavor, as described in the proposed notice. As we have stated above, we will continue to monitor the impact of the refinement and make further revisions based on empirical findings as they become available.

Comment: Several commenters wrote expressing general concern with the detail of the CC refinement. Two of the commenters were not confident that the listing was complete and urged us to ensure that all diagnoses that should not be considered as CC for a particular principal diagnosis be identified Another commenter questioned the appropriateness of some exclusions and suggested postponement of implementation of the proposal until additional review could be completed.

Response: The creation of the CC exclusions list was a major project involving hundreds of thousands of codes. The proposed revisions were intended to be only a first step toward refinement of the CC list and should not be perceived as exhaustive. We intend to review the remaining CC and identify additional exclusions as appropriate.

That the CC exclusions list is not exhaustive should not be a barrier to its immediate implementation. In general, the criteria used for eliminating certain diagnoses from consideration as CC were intended to identify only the most obvious diagnoses that should not be considered complications of another diagnosis. In addition, having conducted further review of the CC exclusion list on the basis of comments, we believe the exclusions comport with the principles or criteria used to develop

them. Recognizing that some of the exclusions do represent judgments that might vary from one clinician to another, similar to other aspects of DRG classification issues, we welcome specific suggestions regarding future modification of the CC exclusions list. Comments may be submitted in writing through the Grouper Changes address published elsewhere in this document.

Comment: One commenter noted that many of the refinements to the CC proposed through the exclusion listing were targeted at coding problems such as coding symptoms, signs, and ill-defined conditions. The commenter suggested that such refinements be implemented through the MCE or the PROs. He also suggested that the ICD–9–CM Coordination and Maintenance Committee look into the coding issues raised in the CC exclusions.

Response: The purpose of the MCE is to verify certain information furnished on the claim—for example, open versus closed biopsy, invalid diagnosis or procedure code. Regardless of whether for example, both symptoms and a diagnosis of the same condition should be coded, their simultaneous appearance on a claim is nevertheless likely to be fully supported by evidence in the medical record. No correction to the data submitted by a hospital is necessary in that instance, and without a change to the CC listing the symptom would be treated by the Grouper as a CC in assigning the case to a DRG. By revising the CC list as proposed, the Grouper would no longer treat the symptom as a CC. In addition, we do not believe our FIs are necessarily the appropriate bodies to conduct coding instruction for hospitals. Yet attempting to incorporate coding rules into the MCE would require that they do so. Moreover, the issue here is not whether the coding of a claim is accurate or not. The issue is the DRG to which each claim, however coded, is assigned. And DRG assignment is performed by Grouper software, not by the MCE.

We agree that many of the refinements to the CC listing proposed were intended, to a limited extent, to serve as coding edits. That is, if a hospital reported a principal diagnosis of acute epiglottitis without obstruction, then acute epiglottitis with obstruction would not qualify as a CC for payment purposes. Many other exclusions, however, are not directly related to coding rules, such as the reporting of both acute/chronic conditions. In some cases, it is correct coding to report both the acute and chronic conditions; however, the chronic condition would not be considered a CC during an acute manifestation. As the commenter points out, exclusions intended to represent coding edits could be implemented through the MCE or the PRO. However, we still would need to modify the Grouper program to handle the other exclusions.

Furthermore, use of the MCE could result in significant claims processing delays, as many claims would be returned to hospitals for corrections. We believe it is preferable to implement both types of exclusions through a single mechanism. Consequently, we have not adopted the commenter's suggestion.

With regard to the role of the ICD–9–CM Coordination and Maintenance Committee, the Committee is responsible for revising the ICD–9–CM and clarifying coding guidelines. We have informally asked the Committee staff to review the exclusion list and advise us of any difficulties noted. We intend to involve the Committee to the extent possible in ongoing maintenance and revision of the listing.

Comment: Three commenters noted an error in the discussion of the principles used in developing the CC refinement. These commenters advised us that coding guidelines permit the coding of both acute and chronic manifestations of the same condition but require that the acute manifestation be reported as the principal diagnosis.

Response: We regret the misstatement of coding guidelines in the proposed notice. The principles stated were intended to explain our rationale for excluding certain diagnoses as CC from other specific principal diagnoses, rather than to delineate coding principles. The commenters are correct in stating that coding guidelines permit the coding of both acute and chronic manifestations of the same condition.

Item 1 of Section V.B on page 18886 of the May 19, 1987 **Federal Register** should read:

1. Chronic and acute manifestation of the same condition should not be considered as CC for one another.

We should also point out that correct coding guidelines require that in cases where both chronic and acute manifestations of the same disease appear and lead to the admission, the acute condition is to be reported as the principal diagnosis. PROs are responsible for verifying that Medicare bills are correctly coded based on documentation in the medical record. The CC listing does not serve this function.

D. Surgical Hierarchies

In the May 19, 1987 notice, we advised that we were proposing to change surgical hierarchies. However, since those proposed changes were based on recalibration of the DRGs, they were discussed in the June 10, 1987 proposed rule, at 52 FR 220804.

We proposed to reorder the surgical hierarchies in the following MDCs as described below:

1. In MDC 2, we proposed to order Orbital Procedures before Retinal Procedures.

We received no specific comments on this proposal and, therefore, are adopting it without change.

2. In MDC 3, we proposed to reorder the procedure groups as follows:

Major Head and Neck Procedures
Tonsil and Adenoid Procedures Except Tonsillectomy and/or Adenoidectomy Only
Cleft Lip and Palate Repair
Sialoadenectomy
Myringotomy with Tube Insertion
Sinus and Mastoid Procedures
Salivary Gland Procedures Except Sialoadenectomy
Miscellaneous Ear, Nose and Throat Procedures
Rhinoplasty
Tonsillectomy and/or Adenoidectomy Only
Other Ear, Nose and Throat O.R. Procedures

Comment: We received one comment questioning the appropriateness of reordering the tonsil and adenoid procedures except tonsillectomy and/or adenoidectomy only to the second position and reordering myringotomy with tube insertion above sinus and mastoid procedures.

Response: We regrouped discharges from the FY 1986 MEDPAR file used for recalibration with the proposed DRG changes, including surgical hierarchy revisions, reflected in the Grouper. We continue to find tonsil and adenoid procedures except tonsillectomy and/or adenoidectomy only (DRGs 57 and 58) to be more resource intensive than all other surgical groups in MDC 3 except major head and neck procedures (DRG 49) and other ear, nose and throat OR procedures (DRG 63). As we explained in the proposed rule, the "other procedures" group in each MDC that has such a group consists of the procedure least directly related to the diagnoses in that MDC and is, accordingly, always ordered last in the surgical hierarchy. We believe that DRGs 57 and 58 are as resource intensive as they are because many cases assigned to them entail multiple procedures, such as tonsillectomy or adenoidectomy plus any other OR procedure. Therefore, we are ordering tonsil and adenoid

procedures except tonsillectomy and/or adenoidectomy only below major head and neck procedures as proposed.

The commenter's observation regarding the relative positions of myringotomy (DRGs 61 and 62) and sinus and mastoid procedures (DRGs 53 and 54) are borne out by analysis of data regrouped with Grouper software incorporating the change in the hierarchy.

As one can see from Table 5 of the June 10 proposal, the weighting factor for DRG 61 is greater than that for DRG 53. In point of fact, we weighted by frequency of cases in DRGs 61 and 62 for comparison to DRGs 53 and 54, as described in the proposed rule, but since DRGs 54 and 62 are low-volume DRGs, their relative weights had no practical effect on the comparison. It was on the basis of this comparison that we proposed to reorder myringotomy and sinus and mastoid procedures in the surgical hierarchy. Similar comparisons informed our other proposals regarding the surgical hierarchies.

When myringotomy preceded sinus and mastoid procedures in the hierarchy, however, the weighted average of the relative weights for DRGs 53 and 54 exceeded that for DRGs 61 and 62. On the basis of these findings, we are revising the ordering of sinus and mastoid procedures and myringotomy with tube insertion. The MDC 3 surgical hierarchy is therefore revised as follows:

Major Head and Neck Procedures (DRG 49)
Tonsil and Adenoid Procedures Except Tonsillectomy and/or Adenoidectomy only (DRGs 57–58)
Cleft Lip and Palate Repair (DRG 52)
Sialoadenectomy (DRG 50)
Sinus and Mastiod Procedures (DRGs 53–54)
Myringotomy with Tube Insertion (DRGs 61–62)
Salivary Gland Procedures Except Sialoadenectomy (DRG 51)
Miscellaneous Ear, Nose and Throat Procedure (DRG 55)
Rhinoplasty (DRG 56)
Tonsillectomy and/or Adenoidectomy Only (DRGs 59–60)
Other Ear, Nose and Throat OR Procedures (DRG 63)

3. In MDC 5, we proposed to reorder the procedure groups as follows:

Heart Transplant
Cardiac Valve Procedure with Pump
Coronary Bypass
Other Cardiothoracic Procedures
Major Reconstructive Vascular Procedures
Permanent Cardiac Pacemaker Implantation
Amputation Except Upper Limb and Toe
Vascular Procedures Except Major Reconstructive Procedures
Amputation Upper Limb and Toe
Cardiac Pacemaker Replacement and/or Revision
Vein Ligation and Stripping
Other Circulatory System OR Procedures

We received no specific comment on this proposal, so we are implementing it without change.

4. In MDC 6, we proposed to reorder the procedure groups as follows:

Stomach, Esophageal and Duodenal Procedures
Rectal Resection
Major Small and Large Bowel Procedures
Peritoneal Adhesiolysis
Appendectomy
Minor Small and Large Bowel Procedures
Mouth Procedures
Anal and Stomal Procedures
Hernia Procedures
Other Digestive System OR Procedures

Comment: One commenter expressed concern about ordering stomach, esophageal and duodenal procedures above major small and large bowel procedures.

Response: As with all other hierarchy changes, we based our proposal on a comparison of the average relative weight for cases involving stomach, esophageal and duodenal procedures (DRGs 146–147) and major small and large bowel procedures (DRGs 148–149), and so on through all the procedure groups in MDC 6. While the relative weights in Table 5 of the final rule of changes to the inpatient hospital prospective payment system and FY 1988 rates have changed somewhat from those in the proposed notice, owing to use of more complete FY 1986 data, the proposed ordering of the surgical hierarchy is entirely consistent with the relative weights for the DRGs in MDC 6. Accordingly, we are implementing the proposed hierarchy changes in MDC 6 without change.

5. In MDC 8, we proposed to reorder the procedure groups as follows:

Bilateral or Multiple Major Joint Procedures of the Lower Extremity
Wound Debridement and Skin Graft Except Hand
Major Joint and Limb Reattachment Procedures
Hip and Femur Procedures Except Major Joint
Amputations
Back and Neck Procedures
Biopsies
Lower Extremity and Humerus Procedures Except Hip, Foot, Femur
Major Shoulder/Elbow Procedures or Other Upper Extremity Procedures with CC
Knee Procedures
Soft Tissue Procedures
Arthroscopy
Local Excision and Removal of Internal Fixation Devices Except Hip and Femur
Local Excision and Removal of Internal Fixation Devices of Hip and Femur
Major Thumb or Joint Procedures or Other Hand or Wrist Procedures with CC
Foot Procedures
Shoulder, Elbow or Forearm Procedures Except Major Joint Procedures without CC
Hand or Wrist Procedures Except Major Joint Procedures without CC
Other Musculoskeletal System and Connective Tissue OR Procedures

We received no specific comments on this proposal. As described in the June 10, 1987 proposed rule and the foregoing discussion, however, when we propose changes to the surgical hierarchy, we are not always able to test the effects of the revisions due to the unavailability of revised Grouper software at the time of publication. Rather, in performing analysis of the surgical hierarchies, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification and then recalibrate the DRG weights. The weighting factor for each procedure group then serves as our best estimate of relative resource use for that procedure group.

As occurred last year for MDC 7, when we received a revised Grouper program and were able to test the proposed hierarchy changes, we found that the revision to the surgical hierarchy in MDC 8 produced anomalous results. The proposed hierarchy changes are consistent with the DRG weights from the top of the hierarchy through knee procedures (DRGs 221–222) and from foot procedures (DRG 225) through the bottom of the hierarchy. However, there appears to be a substantial number of cases involving surgical procedures from more than one of the groups for soft tissue procedures (DRGs 226–227), arthroscopy (DRG 230), local excision and removal of internal fixation devices (DRGs 230–231), and major thumb or joint procedures (DRG 228). Similar to the diagnostic procedure group in MDC 7, we found that the number of patients with arthroscopy more than doubled when the procedure group was moved higher in the surgical hierarchy. This result indicates that arthroscopy is as frequently performed in conjunction

with a procedure from one of the above-mentioned categories as it is by itself.

The fact that DRG 232 picked up so many cases, in and of itself is not troubling. However, the reassignment of so many cases results in weighting factors that are no longer appropriate for the proposed surgical hierarchy. For example, when arthroscopy is ordered 17th, as in the current DRG classification, its weight is the 12th highest in MDC 8. When arthroscopy is ordered 12th, as proposed, its weight drops to the 15th lowest. Most of the case movement seems to have come from DRGs 230 and 231 (Removal of Internal Fixation Devices, Hip and Femur, and Except Hip and Femur, respectively). Similarly to what occurred in MDC 7 last year when we proposed surgical hierarchy changes, we are left with the anomalous situation in which we cannot achieve complete correspondence between the ordering of the procedure groups in the surgical hierarchy and the relative weights that result from classification of cases based on such ordering.

Consequently, we have decided not to revise the ordering for that section of the MDC 8 surgical hierarchy involving removal of internal fixation devices, soft tissue, major thumb, and arthroscopy procedures, rather than to proceed with changes proposed for this section. We will, however, implement the other proposed changes in the MDC 8 hierarchy. Thus, the surgical hierarchy for MDC 8 is modified as follows:

Bilateral of Multiple Major Joint Procedures of the Lower Extremity (DRG 471)
Wound Debridement and Skin Graft Except Hand (DRG 217)
Major Joint and Limb Reattachment Procedures (DRG 209)
Hip and Femur Procedures Except Major Joint (DRGs 210–212)
Amputations (DRG 213)
Back and Neck Procedures (DRGs 214–215)
Biopsies (DRG 216)
Lower Extremity and Humerus Procedures Except Hip, Foot, Femur (DRGs 218–220)
Major Shoulder/Elbow Procedures or Other Upper Extremity Procedures with CC (DRG 223)
Knee Procedures (DRGs 221–222)
Local Excision and Removal of Internal Fixation Devices of Hip and Femur (DRG 230)
Local Excision and Removal of Interal Fixation Devices Except Hip and Femur (DRG 231)
Soft Tissue Procedures (DRGs 226–227)
Major Thumb or Joint Procedures or Other Hand or Wrist Procedures with CC (DRG 228)
Arthroscopy (DRG 232)
Foot Procedures (DRG 225)
Shoulder, Elbow or Forearm Procedures Except Major Joint without CC (DRG 224)
Hand or Wrist Procedures Except Major Joint Procedures without CC (DRG 229)
Other Musculoskeletal System and Connective Tissue OR Procedures (DRGs 233–234)

6. In MDC 11, we proposed to order Minor Bladder Procedures above Prostatectomy.

Comment: One commenter questioned the appropriateness of ordering minor bladder procedures (DRGs 308–309) above prostatectomy (DRGs 306–307), arguing that major procedures should be placed above, not below, minor ones.

Response: With respect to the commenter's argument that major procedures should always be placed above minor ones, we agree insofar as we are making appropriate comparisons. Were minor bladder procedures to be ordered above major bladder procedures, for example, it would call into question our use of the terms major and minor and would suggest we reconsider the relative complexity of the two groups.

On the other hand, we also believe that it is not generally appropriate simply to compare the adjectives "major" and "minor" without regard to the subjects they modify. In the instant case, "major" modifies procedures on one organ (the prostate) and "minor" is used to describe a set of procedures on another organ (the bladder). Unless we can assume that the bladder and the prostate are entirely comparable with respect to ease of surgical access, effects of surgical intervention on anatomically proximal organs, incidence of post-operative complications, and other factors, there is no basis for comparing minor procedures on the bladder to major procedures on the prostate and arguing that the latter should always precede the former. It is also important to recognize that the bladder procedures included in DRGs 308 and 309 are minor only in comparison to the bladder procedures included in DRGs 303–305.

Indeed, based on further analysis and more complete MEDPAR data than was available at the time we prepared the proposed rule, we continue to find that the weighted average of the relative weights for minor bladder procedures (DRGs 308–309) exceeds that for prostatectomy (DRGs 306–307). Therefore, we are implementing our proposed revision to the surgical hierarchy of MDC 11 without change.

In addition to the comments on specific surgical hierarchy changes proposed, discussed above, we received a comment from ProPAC reiterating its belief that the surgical procedures within each group should be evaluated on a regular basis. ProPAC believes that we did not address that part of its recommendation and that we misrepresented its position regarding the role of clinical input. ProPAC does not maintain that clinicians should determine the ordering of the surgical groups in the hierarchies, but rather recommends that clinical input should be combined with empirical analysis to produce revised procedure groups reflective of current technology and costs.

Response: We agree with ProPAC that clinical input should be combined with empirical analysis in any broad-based revision of the procedure groups. However, we are not persuaded that there is a need for such broad-based revision of the procedure groups at the present time. We are certainly willing to conduct appropriate analysis regarding membership of the procedure groups when a classification problem comes to our attention. In the absence of complaint or concern regarding the classification of particular kinds of cases, however, we are not convinced that our limited staff resources are best utilized on a project that is tantamount to reinventing the surgical DRGs. In addition, since the procedures assigned to many procedure groups are determined by reference to specific organs within an MDC, it is not clear what alternatives ProPAC believes ought to be considered or what classification problems major evaluative work should be designed to solve.

V. Proposed Changes to Reduce Inappropriate DRG 468 Assignment

A. Background

DRG 468 (Unrelated OR procedures) is reserved specifically for those cases in which none of the surgical procedures furnished to a patient is related to the principal diagnosis. It was established as a means of identifying those cases that do not readily lend themselves to classifications within groups of clinically similar patients, because the cases themselves do not reflect typical treatment patterns. These include, for example, cases in which the patient develops pressing medical-surgical needs related to a secondary diagnosis or complication. DRG 468 is not a catch-all for cases that do not fit elsewhere. It is designed to preserve the utility of,

rather than violate the principle of, diagnosis related classifications.

B. Reassignment of Intra-abdominal Hemangioma to MDC 6

In the May 19 notice, we proposed assigning diagnosis code 228.04, Intra-abdominal hemangioma, to MDC 6, Diseases and Disorders of the Digestive System. We also proposed assigning cases treated surgically to the appropriate surgical DRG based on the site of the lesion. Cases treated medically would be assigned to DRGs 182, 183, and 184 (Esophagitis, Gastroenteritis, and Miscellaneous Digestive Disorders). We did not receive any comments on this proposal, so it is adopted without change.

C. Removal of Codes for Minor Skin Procedures From Surgical List

We proposed to remove procedure codes 86.09, Other incision of skin and subcutaneous tissue, and 86.3, Other local excision or destruction of lesion or tissue of skin and subcutaneous tissue, from the list of OR procedures. We did not receive any comments on this proposal, so it is adopted without change.

D. Adding Lymphatic Structure Biopsy to MDC 1

We proposed adding procedure code 40.11, Biopsy of lymphatic structure, to MDC 1, DRGs 7 and 8, Peripheral and Cranial Nerve and Other Nervous System Procedures with CC and without CC, respectively. We did not receive any comments on this proposal, so it is adopted without change.

E. Adding Total Splenectomy to MDC 5

We proposed adding procedure code 41.5, Total splenectomy, to MDC 5, DRG 120 (Other Circulatory System OR Procedures). We did not receive any comments on this proposal, so it is adopted without change.

F. Adding Certain Pancreas Procedure Codes to MDC 10

We proposed to add the following procedure codes to MDC 10, DRGs 292 and 293 (Other Endocrine, Nutritional and Metabolic Procedures).

52.2 Local excision or destruction of pancreatic lesion
52.51 Proximal pancreatectomy
52.52 Distal pancreatectomy
52.53 Radical subtotal pancreatectomy
52.59 Other partial pancreatectomy, not elsewhere classified

We did not receive any comments on this proposal, so it is adopted without change.

G. MDC 11 Issues

We proposed adding procedure code 70.77, Vaginal suspension and fixation, to MDC 11, DRGs 308 and 309, (Minor Bladder Procedures). We also proposed adding procedure codes for replacement and removal of penile prosthesis, 64.95 through 64.97 to MDC 11, DRG 315 (Other Kidney and Urinary Tract OR Procedures). Finally, we proposed adding procedure code 60.69, Other Prostatectomy to DRGs 306 and 307 (Prostatectomy). We did not receive any comments on these proposals, so they are adopted without change.

H. Adding a Urethral Repair Code to MDC 12

We proposed adding procedure code 58.49, Other Urethral Repair, not elsewhere classified, to MDC 12, DRG 341, (Penis Procedures) to prevent inappropriate assignment of cases to DRG 468 when the procedure is related to the principal diagnosis. We did not receive any comments on this proposal, so it is adopted without change.

I. Deletion of Certain Codes from the OR List

We proposed deletion of procedure codes, 39.62, Hypothermia systemic incidental to open heart surgery, 39.63, Cardioplegia, and 39.64 Intraoperative cardiac pacemaker, from the list o operating room procedures. We did not receive any comments on this proposal, so it is adopted without change.

VI. Comments and Responses on Coding Issues

A. Background

In the final notice on changes to the DRG classification system published June 3, 1986 (51 FR 20192), and the final rule on the prospective payment system published September 3, 1986 (51 FR 31454), we published lists of new ICD–9–CM codes that became effective October 1, 1986. These new codes were adopted as a result of the recommendation of the ICD–9–CM Coordination and Maintenance Committee, and were also published on August 29, 1986 (51 FR 30914) in a notice announcing all codes approved before July 1, 1986, the availability of related instructional material, additions to the ICD–9–CM indexes, and errata for volumes 1, 2, and 3 of ICD–9–CM. Both our May 19 notice and this final notice contain all new coding changes that were approved before July 1, 1987 since the ICD–9–CM Coordination and Maintenance Committee does not plan to publish a separate listing this year.

Comment: Two commenters wrote expressing concern with the process for addressing coding issues. The commenters specifically encouraged increased involvement of coding experts in the process and acceleration of the time associated with implementing new codes.

Response: We have been quite pleased with the improvements in ICD–9–CM coding that have taken place over the past two years. We feel the committee has taken a giant step in improving coding in the hospital industry.

Although formal membership on the committee has not been extended to non-government entities, we note that coding experts from the American Hospital Association, the American Medical Records Association, the Commission on Professional and Hospital Activities and numerous other organizations have attended every meeting of the committee and have provided extensive recommendations and comments on proposed revisions. The insights, experiences and ideas shared by these participants have contributed significantly to the coding developments and have influenced the committee's recommendations. The Department of Health and Human Services is currently evaluating a proposal to add industry representatives to the committee; and a decision is expected in the near future.

Despite the fact that these commenters have recommended acceleration of the process for coding improvements, several other members of the public have expressed concern both formally and informally with the rapid pace of coding changes. Many users find it extremely difficult to make the rapid changes necessary to software programs that are used for numerous purposes to accommodate the implementation of new codes. Given the operational problems that rapid coding changes pose for hospitals, third party payers, and others, we do not believe it is appropriate to make coding changes any more frequently than annually.

Finally, we are not convinced that there is a large backlog of coding issues awaiting the committee's attention. Reactions from the American Medical Record Association and others indicate that the committee has made dramatic steps in resolving longstanding coding problems. However, the committee is evaluating means of improving its revision process, including the possibility of revising one or more chapters. The public is invited to raise issues that have not been included on the agenda at each meeting. If commenters have coding items that they believe require attention of the

committee, they are encouraged to submit a detailed request to the committee co-chairperson whose address is identified elsewhere in this document, identifying the problem, pertinent background information and recommended solutions.

B. Proposed Removal of Certain Codes from the Surgical List

We proposed to remove the following procedure codes from the list of surgical procedures:

38.22 Percutaneous angioscopy
44.22 Endoscopic dilation of pylorus
44.93 Insertion of gastric bubble (balloon)
44.94 Removal of gastric bubble (balloon)
51.97 Therapeutic endoscopic procedures on biliary tract, oral route
51.98 Other percutaneous procedures on biliary tract
55.03 Percutaneous nephrostomy without fragmentation
55.04 Percutaneous nephrostomy with fragmentation
80.52 Intervertebral chemonucleolysis

Thus, the presence of any one of these procedure codes would not result in assignment of a case to a surgical DRG.

Comment: Three commenters from a single hospital wrote to express displeasure with the removal of the chemonucleolysis procedure, 80.52, from the list of surgical procedures. They maintain that the necessity of sterile conditions and the risk of anaphylactic shock make it unsafe to perform the procedure in settings other than an OR.

Response: We recognize that an operating room may be the setting of choice for some facilities that perform chemonucleolysis. However, our medical consultants have advised us that the procedure is non-invasive and may safely be performed in settings other than ORs with proper precautions.

We note that nearly any procedure involving an injection presents the possibility of anaphylactic shock. It can be reasonable for a hospital to choose to use an operating room for prophylactic reasons in situations presenting even a small risk of anaphylactic shock. According to the commenters, one percent of patients develop such shock. However, we do not believe this is justification to place a procedure on the OR list. We note that this list is intended to recognize surgical procedures rather than procedures that are carried out in an operating room for prophylactic reasons.

Finally, if we were to place procedures on the OR list because of the possibility of anaphylactic shock, nearly all radiographic procedures and many other non-surgical procedures would need to be reclassified to the OR list. We should point out that the DRG classification of a procedure is not intended to influence the practice patterns at any particular hospital. Hospitals should continue to choose appropriate settings for procedures based upon the conditions at the facility and the individual needs of their patients.

Comment: Numerous commenters wrote expressing concern with our proposal to remove procedure codes 55.03 and 55.04, Percutaneous nephrostomy, without and with fragmentation, respectively, from the list of OR procedures. These commenters noted the necessity of general anesthesia and sterile conditions, protracted procedure time, as well as the possibilities of severe complications and profuse blood loss as contraindications for using other settings, such as radiographic suites. All commenters urged that we reconsider our proposal. One of the commenters noted that the current classification structure may result in payments higher than cost in percutaneous lithotripsy cases involving simple stone removal, but that complicated stone removal which allegedly comprises the majority of cases, was underpaid. Consequently, an alternative classification structure was recommended.

Response: Based on the number and nature of the comments received in response to this proposal, we examined preliminary FY 1987 data on cases involving percutaneous nephrostomy. We are persuaded that the data on resource intensity (in terms of both standardized charges and length of stay) support the commenters' arguments that moving cases involving percutaneous nephrostomy from the surgical to the medical DRGs would result in systematic underpayment of such cases. Accordingly, we believe it is appropriate to defer action at this time. Percutaneous nephrostomy with and without fragmentation will remain on the list of operating room procedures as currently assigned and will result in classification of cases to DRGs 303, 304, 305, 442 and 443. We will further evaluate this classification issue in light of alternatives suggested by commenters as more data on the procedure become available. Any further proposal will be published for additional public comment.

C. Proposed Removal of a Code From the CC List

We proposed removing diagnosis code 795.8, Positive serological or viral culture finding for Human T-Cell Lymphotropic Virus-III/Lymphadenopathy-Associated Virus (HTLV-III/LAV) from the list of CC. We received no negative comments and ProPAC's support for this proposal, so it is adopted without change.

D. New Coding Changes

We notified the public of plans to add new and revised diagnosis and procedure codes and the deletion of several procedure codes. Since the ICD-9-CM Coordination and Maintenance Committee does not plan to publish a separate listing this year, we are republishing the tables in this final notice. Table I contains the new or revised ICD-9-CM diagnosis codes, Table II lists the new or revised ICD-9-CM procedure codes, Table III lists the revised pacemaker DRG logic tables, and Table IV lists the ICD-9-CM procedure codes that we are deleting. A copy of the ICD-9-CM Official Authorized Addendum will be provided to each hospital by the FI in September 1987. Additional copies will be available from the Government Printing Office, in the September issue of the Journal of American Medical Record Association, and in Coding Clinic for ICD-9-CM.

Comment: One commenter expressed concern with the proposed DRG assignment of procedure code 86.06, Insertion of infusion pump. The commenter believes the proposed classification does not adequately recognize use of the pump in treatment of patients with osteomyelitis or in delivery of morphine for terminally ill patients. The commenter suggested assignment to DRGs 4 and 210.

Response: Procedure code 86.06 has been assigned to the other operating room procedures DRG of nearly every MDC that contains such a group. Only MDCs 2, 3 and 5 have been omitted, due to the unlikelihood of the device being used in treatment of patients with eye, ear or circulatory system diagnoses. Patients with a principal diagnosis of osteomyelitis would be assigned to DRGs 233 or 234, based on presence or absence of CC, if implantation of the infusion pump were the only surgical procedure performed. If another MDC 8 surgical procedure were performed in addition to insertion of an infusion pump, the surgical hierarchy would base DRG assignment on the other surgical procedure.

Similarly, patients being treated for pain associated with terminal illness would be assigned to the other OR procedure DRG for the MDC in which the principal diagnosis falls, if implantation of the infusion pump is the only surgical procedure performed.

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Since the other OR procedure group is uniformly considered last in the surgical hierarchy, DRG assignment of cases involving multiple procedures within the MDC will be based on any other surgical procedure performed that is related to the principal diagnosis rather than on the implantation of an infusion pump.

We find no problem with the proposed classification of implantation of the infusion pump. It appears the commenter's concern is based on an oversight in reading the list of DRGs to which the procedure is assigned or a misunderstanding of the classification mechanism.

TABLE I.—NEW OR REVISED DIAGNOSIS CODES

Diagnosis code [1]	Description	MDC	DRG [2]
518.81	Respiratory failure	4	87.
518.82	Other pulmonary insufficiency, not elsewhere classified	4	99 and 100
518.89	Other diseases of lung, not elsewhere classified [3]	4	101 and 102.
799.1	Respiratory arrest	4	101 and 102.
996.51	Mechanical complication due to corneal graft	2	46, 47, and 48.
996.52	Mechanical complication due to graft of other tissue, not elsewhere classified	21	452 and 453.
996.53	Mechanical complication due to ocular lens prosthesis	2	46, 47, and 48.
996.54	Mechanical complication due to breast prosthesis	9	276.
996.59	Mechanical complication due to other implant and internal device, not elsewhere classified	21	452 and 453.
996.80	Complications of transplanted organ, not otherwise specified	21	452 and 453.
996.81	Complications of transplanted kidney	11	331, 332, and 333.
996.82	Complications of transplanted liver	7	205 and 206.
996.83	Complications of transplanted heart	5	144 and 145.
996.84	Complications of transplanted lung	4	101 and 102.
996.86	Complications of transplanted pancreas	7	204.
996.89	Complications of other specified transplanted organ	21	452 and 453.

[1] All of the new diagnosis codes, except 518.89, would be added to the list of CC.
[2] DRG listed is assignment based on non-surgical treatment. If an OR procedure is performed, DRG assignment within the MDC is determined by the OR procedure performed.
[3] Not added to the list of CC.

TABLE II.—NEW OR REVISED PROCEDURE CODES

Procedure code	Description	DRG
01.11	Closed [percutaneous] [needle] biopsy of cerebral meninges	non-OR.
01.12	Open biopsy of cerebral meninges	1, 2, 3, 400, 406, and 407.
01.13	Closed [percutaneous] [needle] biopsy of brain	non-OR.
01.14	Open biopsy of brain	1, 2, 3, 400, 406, and 407.
03.90	Insertion of catheter into spinal canal for infusion of therapeutic or palliative substances	non-OR.
04.11	Closed [percutaneous] [needle] biopsy of cranial or peripheral nerve or ganglion	non-OR.
04.12	Open biopsy of cranial or peripheral nerve or ganglion	7, 8, 63, 233, 234, 442, and 443.
06.11	Closed [percutaneous] [needle] biopsy of thyroid gland	non-OR.
06.12	Open biopsy of thyroid gland	290.
07.11	Closed [percutaneous] [needle] biopsy of adrenal gland	non-OR.
07.12	Open biopsy of adrenal gland	286.
27.22	Biopsy of uvula and soft palate	63, 168, and 169.
33.24	Closed biopsy [endoscopic] of bronchus	non-OR.
33.25	Open biopsy of bronchus	75.
33.26	Closed percutaneous [needle] biopsy of lung	non-OR.
33.27	Closed endoscopic biopsy of lung	76 and 77.
33.28	Open biopsy of lung	75, 233, 234, 315, 400, 406, and 407.
33.29	Other diagnostic procedures on lung and bronchus	76 and 77.
34.25	Closed [percutaneous] [needle] biopsy of mediastinum	non-OR.
34.26	Open biopsy of mediastinum	76, 77, 292, 293, 394, 400, 406, and 407.
36.01	Single vessel percutaneous transluminal coronary angioplasty [PTCA] without mention of thrombolytic agent	108 and 112.
36.02	Single vessel percutaneous transluminal coronary angioplasty [PTCA] with thrombolytic agent	108 and 112.
36.05	Multiple vessel percutaneous transluminal coronary angioplasty [PCTA] performed during the same operation with or without mention of thrombolytic agent.	108 and 112.
37.70	Initial insertion of lead [electrode], not otherwise specified	([1])

TABLE II.—NEW OR REVISED PROCEDURE CODES—Continued

Procedure code	Description	DRG
37.71	Initial insertion of transvenous lead [electrode] into ventricle	(1)
37.72	Initial insertion of transvenous leads [electrodes] into atrium and ventricle	(1)
37.73	Initial insertion of transvenous lead [electrode] into atrium	(1)
37.74	Insertion or replacement of epicardial lead [electrode] into epicardium	(1)
37.75	Revision of lead [electrode]	117, 442, and 443.[1]
37.76	Replacement of transvenous atrial and/or ventricular lead(s) [electrode]	(1)
37.77	Removal of lead(s) [electrode] without replacement	117, 442, and 443.[1]
37.78	Insertion of temporary transvenous pacemaker system	non-OR.
37.79	Revision or relocation of pacemaker pocket	117, 442, and 443.[1]
37.80	Insertion of permanent pacemaker, initial or replacement, type of device not specified	(1)
37.81	Initial insertion of single-chamber device, not specified as rate responsive	(1)
37.82	Initial insertion of a single chamber device, rate responsive	(1)
37.83	Initial insertion of dual chamber device	(1)
37.85	Replacement of any type pacemaker device with single-chamber device, not specified as rate responsive	(1)
37.86	Replacement of any type pacemaker device with single-chamber device, rate responsive	(1)
37.87	Replacement of any type pacemaker device with dual-chamber device	(1)
37.89	Revision or removal of pacemaker device	117, 442, and 443.[1]
41.32	Closed [aspiration] [percutaneous] biopsy of spleen	non-OR.
41.33	Open biopsy of spleen	392, 393, 400, 406, 407.
44.14	Closed [endoscopic] biopsy of stomach	non-OR.
44.15	Open biopsy of stomach	154, 155, and 156.
45.14	Closed [endoscopic] biopsy of small intestine	non-OR.
45.15	Open biopsy of small intestine	152 and 153.
45.25	Closed [endoscopic] biopsy of large intestine	non-OR.
45.26	Open biopsy of large intestine	152 and 153.
45.95	Anastomosis to anus	148, 149, 400, 406, 407, 442, and 443.
48.24	Closed [endoscopic] biopsy of rectum	non-OR.
48.25	Open biopsy of rectum	152 and 153.
50.11	Closed (percutaneous) [needle] biopsy of liver	non-OR.
50.12	Open biopsy of liver	63, 76, 77, 170, 171, 199, 200, 233, 234, 269, 270, 292, 293, 315, 344, 345, 365, 394, 400, 406, 407, 442, and 443.
51.12	Closed [percutaneous] biopsy of gallbladder or bile ducts	non-OR.
51.13	Open biopsy of gallbladder or bile ducts	170, 171, 199, and 200.
52.11	Closed [aspiration] [needle] [percutaneous] biopsy of pancreas	non-OR.
52.12	Open biopsy of pancreas	170, 171, 199, 200, 292, 293, 400, 406, 407, 442, and 443.
54.24	Closed [percutaneous] [needle] biopsy of intra-abdominal mass	non-OR.
55.23	Closed [percutaneous] [needle] biopsy of kidney	non-OR.
55.24	Open biopsy of kidney	233, 234, 303, 304, 305, 394, 400, 406, 407, 442, and 443.
56.32	Closed percutaneous biopsy of ureter	non-OR.
56.33	Closed endoscopic biopsy of ureter	non-OR.
56.34	Open biopsy of ureter	303, 304, and 305.
56.35	Endoscopy [cystoscopy] [looposcopy] of ileal conduit	non-OR.
57.33	Closed [transurethral] biopsy of bladder	310, 311, 344, 345, and 365.
57.34	Open biopsy of bladder	308, 309, 344, 345, 365, 400, 406, and 407.
60.11	Closed [percutaneous] [needle] biopsy of prostate	non-OR.

TABLE II.—NEW OR REVISED PROCEDURE CODES—Continued

Procedure code	Description	DRG
60.12	Open biopsy of prostate	310, 311, 344, and 345.
60.13	Closed [percutaneous] biopsy of seminal vesicles	non-OR.
60.14	Open biopsy of seminal vesicles	344 and 345.
62.11	Closed [percutaneous] [needle] biopsy of testis	non-OR.
62.12	Open biopsy of testis	338, 339, and 340.
68.13	Open biopsy of uterus	354, 355, 357, 358, and 359.
68.14	Open biopsy of uterine ligaments	354, 355, 357, 358, and 359.
68.15	Closed biopsy of uterine ligaments	361.
68.16	Closed biopsy of uterus	363 and 364.
78.40	Other repair and plastic operations on bone, unspecified site	233, 234, 442, and 443.
78.41	Other repair and plastic operations of chest cage	76, 77, 233, 234, 442, and 443.
78.42	Other repair and plastic operations of humerus	218, 219, 220, 442, and 443.
78.43	Other repair and plastic operations of radius/ulna	223, 224, 442, and 443.
78.44	Other repair and plastic operation of carpals/metacarpals	228, 229, and 441.
78.45	Other repair and plastic operations of femur	210, 211, 212, 442, and 443.
78.46	Other repair and plastic operations of patella	221, 222, 442, and 443.
78.47	Other repair and plastic operations of tibia/fibula	218, 219, 220, 442, and 443.
78.48	Other repair and plastic operations of tarsals/metatarsals	225, 442 and 443.
78.49	Other repair and plastic operation on bone, not elsewhere classified	233, 234, 442, and 443.
78.90	Insertion of bone growth stimulator, unspecified site	233, 234, 442, and 443.
78.91	Insertion of bone growth stimulator into chest cage	76, 77, 233, 234, 442, and 443.
78.92	Insertion of bone growth stimulator into humerus	218, 219, 220, 442, and 443.
78.93	Insertion of bone growth stimulator into radius/ulna	223, 224, 442, and 443.
78.94	Insertion of bone growth stimulator into carpals/metacarpals	228, 229, and 441.
78.95	Insertion of bone growth stimulator into femur	210, 211, 212, 442, and 443.
78.96	Insertion of bone growth stimulator into patella	221, 222, 442, and 443.
78.97	Insertion of bone growth stimulator into tibia/fibula	218, 219, 220, 442, and 443.
78.98	Insertion of bone growth stimulator into tarsals/metatarsals	225, 442, and 443.
78.99	Insertion of bone growth stimulator, not elsewhere classified	233, 234, 442, and 443.
85.11	Closed [percutaneous] [needle] biopsy of breast	non-OR.
85.12	Open biopsy of breast	259, 260, 262, 292, 293, 442, and 443.
85.95	Insertion of breast tissue expander	259, 260, 261, 442, and 443.
85.96	Removal of breast tissue expander(s)	259, 260, 261, 442, and 443.
86.93	Insertion of tissue expander	7, 8, 63, 120, 170, 171, 217, 263, 264, 265, 266, 287, 439, 458, and 472.

TABLE II.—NEW OR REVISED PROCEDURE CODES—Continued

Procedure code	Description	DRG
86.06	Insertion of infusion pump	7, 8, 76, 77, 170, 171, 201, 233, 234, 269, 270, 292, 293, 315, 344, 345, 365, 394, 401, 402, 408, 442, 443, 459, and 472.
99.85	Hyperthermia for treatment of cancer	non-OR.
99.86	Non-invasive placement of bone growth stimulator	non-OR.

[1] See pacemaker DRG logic tables following this table.

Table III.—Pacemaker Logic Tables

DRGs 115 and 116 currently represent and will continue to represent insertion of total pacemaker systems, that is, device plus lead(s). Although insertion of a pacemaker system used to be represented by a single procedure code (37.70, 37.73, 37.74, 37.75, 37.76 or 37.77), the revised ICD–9–CM coding system uses at least two codes to signify the insertion of a pacemaker system—one code to identify the type of device (single-chamber, dual-chamber, or rate responsive) and another to identify the type of lead(s) inserted (transvenous atrial, transvenous ventricular, or epicardial). Consequently, effective for discharges on or after October 1, 1987, the Grouper logic is modified to comport with the revised pacemaker procedure codes order for a case to be classified into DRGs 115 or 116 (Permanent Cardiac Pacemaker Implant, with AMI, Heart Failure or Shock, and without AMI, Heart Failure or Shock, respectively).

DRGs 115 or 116 will be assigned, depending on principal diagnosis, only if one of the following combinations of procedure codes appears on the claim:

37.70 and 37.80
37.70 and 37.81
37.70 and 37.82
37.70 and 37.85
37.70 and 37.86
37.70 and 37.87
37.71 and 37.80
37.71 and 37.81
37.71 and 37.82
37.71 and 37.85
37.71 and 37.86
37.71 and 37.87
37.72 and 37.80
37.72 and 37.83
37.73 and 37.80
37.73 and 37.81
37.73 and 37.82
37.73 and 37.85
37.73 and 37.86
37.73 and 37.87
37.74 and 37.80
37.74 and 37.81
37.74 and 37.82
37.74 and 37.83
37.74 and 37.85
37.74 and 37.86
37.74 and 37.87
37.76 and 37.80
37.76 and 37.85
37.76 and 37.86
37.76 and 37.87

DRG 117 is renamed Cardiac Pacemaker Revision Except Device Replacement. Procedures assigned to it include:

37.74
37.75
37.76
37.77
37.79
37.89

DRG 118 is renamed Cardiac Pacemaker Device Replacement and includes the following procedures:

37.80
37.85
37.86
37.87

Finally, the following pacemaker procedure codes will be ignored by the Grouper when they do not appear in combination with other pacemaker procedure codes as in DRGs 115 and 116 above:

37.70
37.71
37.72
37.73
37.81
37.82
37.83

These codes represent the initial insertion of a lead (37.70–37.73) or a device (37.81–37.83). We are aware of no clinical condition that would require the initial insertion of a lead without the simultaneous insertion or replacement of a device. Likewise, the initial insertion of a device without the initial insertion of a lead(s) is clinically illogical. Accordingly, if an initial lead is inserted with no device or an initial device is inserted without a lead insertion, the procedure would not be a covered procedure since section 1862(a)(1)(A) of the Act prohibits payment for items and services that are not reasonable and necessary for the diagnosis or treatment of an illness or injury. Similarly, when an initial device is inserted but no lead code appears, a total system has not been implanted.

The following ICD–9–CM codes are deleted without replacement.

TABLE IV.—DELETED PROCEDURE CODES

Procedure code	Description
37.84	Removal of epicardial electrode.
99.71	Mercury-zinc pacemaker battery
99.72	Nuclear pacemaker battery
99.73	Lithium pacemaker battery.
99.74	Other pacemaker battery type.
99.75	Fixed rate pacemaker sensing type
99.76	Triggered demand pacemaker sensing type.
99.77	Inhibited demand pacemaker sensing type.
99.78	Other pacemaker sensing type.
99.79	Programmable pacemaker.

VII. Summary of Changes

As stated in our discussion of the comments and responses, we have made some changes to the proposals in the notice published on May 19, 1987. With the exception of the following changes, this final notice implements the proposals made in the May 19, 1987 proposed notice and the June 10 proposed rule.

- MDC

We have decided to postpone moving diagnosis code 759.6, (Other Hamartoses, NEC) from MDC 17 to MDC 8 for FY 1988. We will study the issue in greater detail during the upcoming fiscal

year and will report on our findings in the next year's proposed notice.

• Deletion of Certain Codes from the Surgical List

Based on the number and nature of the comments received, we believe it is appropriate to leave Percutaneous nephrostomy without and with fragmentation (procedure codes 55.03 and 55.04, respectively) on the list of OR procedures as currently assigned. Thus, percutaneous nephrostomy cases will continue to be assigned to DRGs 303, 304, 305, 442, and 443. We will further evaluate this classification issue in light of the alternative suggestions by commenters as more data on the procedure becomes available.

• Surgical Hierarchy

We are reversing the proposed ordering of sinus and mastoid procedures and myringotomy with tube insertion in MDC 3.

We have decided not to revise the ordering for the section of the proposed surgical hierarchy involving removal of internal fixation devices, soft tissue, major thumb, and arthroscopy procedures.

• Corrections

We have made some minor changes to the ICD–9–CM DRG coding changes tables and have reprinted them. Additionally, we have made minor revisions to the lists of CC refinements.

VIII. Regulatory Impact Statement

A. Executive Order 12291

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for final notices such as this if the implementation of the notice meets the criteria of a "major rule". A notice is considered a major rule if its implementation is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We do not believe that any of the changes to the DRG classification system presented in this notice meet the E.O. criteria for a major rule. Accordingly, we have not prepared a final regulatory impact analysis for this notice. Instead, we refer interested readers to the regulatory impact analysis for the final rule on FY 1988 changes to the prospective payment system, which is published elsewhere in this issue of the **Federal Register**. In that analysis, we include the effects of all these changes to the DRG classification system in our assessment of the impact of DRG recalibration on hospitals. We also discuss there the effects of discontinuing the exclusion of alcohol and drug abuse treatment facilities from the prospective payment system.

B. Regulatory Flexibility Act

It is our practice to prepare and publish a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 through 612) for a final notice such as this, unless the Secretary certifies that implementation of the notice will not have a significant economic impact on a substantial number of small entities. We treat all hospitals under the prospective payment system as small entities for purposes of the RFA.

As noted above, these changes to the DRG classification system will affect the amounts hospitals receive under the prospective payment system for furnishing services to Medicare beneficiaries. Therefore, this notice will clearly affect a substantial number of small entities. However, we do not consider an economic impact on small entities to be significant unless their annual total costs or revenues will be increased or decreased by at least three percent. Some of these classification changes may affect the amount paid for a particular DRG by more than 3 percent. The elimination of the age over 69 criterion, for example, may have significant effects on the weights of some DRGs as discussed elsewhere in this notice. However, the aggregate impact of these changes on hospital revenues is likely to be less substantial.

The changes we are presenting in this final notice will be used to determine the DRG weights for discharges occurring on or after October 1, 1987. However, it must be remembered that a DRG weight is a measure of average resource utilization for a particular group of cases relative to the average for all cases. Thus, each change that affects the group to which a case is assigned affects not only the payment for the reassigned case, but the weight for all other cases in both the prior and the new group. Through annual recalibrations, all weights are readjusted to reflect all reassignments, based on the best available data. Through this process some changes are offset by others. The interaction is complex and, of course, differs from year to year. However, the end result is that most hospitals will receive higher payments for some cases and lower payments for others. Thus, we view it as highly unlikely that a substantial number of hospitals would experience increases or decreases of revenues of more than three percent solely as a result of these changes in DRG classification.

Hypothetically, a given year's classification changes could have an effect of such magnitude on some hospitals. We expect that most of these hospitals will have a high proportion of cases falling in particular strongly affected DRGs. In such instances, we believe that improvements to the classification system tend to correct systematic understatements or overstatements of average resource utilization. In the first case, those hospitals most affected would be significantly benefited. In the latter case, we would be ending an inappropriate windfall. In either case, the payment system as a whole will more closely match payments made to hospitals for Medicare-covered services with the level of resources used in providing those services.

Ultimately, we believe that these finalized changes will yield DRG groupings based on factors that better predict resource utilization than the current factors. These refinements will lead to better classification of cases within groups (where better is defined in terms of predictive power, homogeneity within groups, and differences between groups), which in turn implies better case mix measurement and improvements in case level equity (that is, payment of cases in line with their relative resource intensity) even if these changes do not significantly affect the case mix indexes of many hospitals. Thus, we see these refinements, such as eliminating the age over 69 criterion and tailoring the CC list to each principal diagnosis, as necessary first steps towards broader refinements (such as introducing severity adjustments).

For these reasons, we have determined, and the Secretary certifies,

that this final notice is not likely to have a significant economic impact on a substantial number of small entities. Therefore, we have not prepared a final regulatory flexibility analysis for this notice.

(Sections 1102, 1871, and 1886(d)(4) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395ww(d)(4)); 42 CFR 412.10)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare Supplementary Medical Insurance)

August 25, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: August 26, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-19989 Filed 8-27-87; 12:15 pm]

BILLING CODE 4120-01-M

VOL
52
ISS
1
69
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1
1987
UMI

Federal Register

Tuesday
September 1, 1987

Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 412

Capital Payments under the Inpatient Hospital Prospective Payment System; Final Rule

VOL
52
ISS
169
SE
1
1987
UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC-403-F]

Capital Payments Under the Inpatient Hospital Prospective Payment System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are amending the Medicare regulations governing the inpatient hospital prospective payment system to incorporate capital costs into that system.

EFFECTIVE DATE: This final rule is effective on October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 594-9343.

SUPPLEMENTARY INFORMATION:

I. Background

In this final rule, we are changing the regulations that govern the way in which inpatient hospital capital costs, not including payments to proprietary hospitals for a return on equity capital, will be treated for Medicare payment purposes effective with hospital cost reporting periods beginning on or after October 1, 1987. Capital costs under Medicare include depreciation, interest, taxes, insurance and similar expenses (defined further in 42 CFR 413.130) for plant and fixed equipment, and for moveable equipment. Affected regulations are located in 42 CFR Part 412.

Currently, inpatient operating costs are the only costs included in the prospective payments received by hospitals under the prospective payment system (§ 412.2(c)) and by the payment amounts received under the target rate-of-increase limits by hospitals and distinct part units of hospitals that are excluded from the prospective payment system (§ 413.40). Under current Medicare rules, payment for capital costs has been on a reasonable cost basis (§ 413.5) because, under section 1886(a)(4) of the Social Security Act (the Act), those costs have been specifically excluded from the definition of inpatient operating costs both for hospitals subject to the prospective payment system and for those hospitals and units excluded from that system.

With the exception of sole community hospitals, this final rule eliminates this distinction between hospital inpatient capital and inpatient operating costs for Medicare inpatient hospital services provided by hospitals subject to the prospective payment system for cost reporting periods beginning on or after October 1, 1987. Under section 1886(g)(3) of the Act, as amended by section 9303(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), sole community hospitals are exempt from the inclusion of capital costs in operating costs of inpatient hospital services through their cost reporting periods beginning before October 1, 1990.

On May 19, 1987, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (52 FR 18840) to incorporate the capital costs of hospitals subject to the prospective payment system into that payment system. Technical corrections to the NPRM were published on June 11, 1987 (52 FR 22359). In setting forth the May 1987 NPRM, we took into consideration the provisions of section 9303 of Pub. L. 99-509, enacted on October 21, 1986, which amended section 1886(g) of the Act. As amended, section 1886(g)(3) of the Act provides that the amount of Medicare payments for capital costs attributable to inpatient services of prospective payment hospitals, otherwise determined to be reasonable, be reduced by—

- Three and one-half percent for payments attributable to portions of cost reporting periods occurring during FY 1987;
- Seven percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during FY 1988; and
- Ten percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during FY 1989.

Section 1886(g)(3) of the Act also provides that, in any inclusion of capital costs into the prospective payment system, the aggregate Medicare capital payments, for those capital costs attributable to portions of cost reporting periods occurring during Federal fiscal years (FYs) 1988 and 1989, must be neither greater nor less than the aggregate Medicare capital payments that would have been made, taking into account the reductions mandated under section 9303 of Pub. L. 99-509, without such inclusion of capital costs into the prospective payment system.

We also considered the recommendations of the Prospective Payment Assessment Commission (ProPAC), made under the authority of section 1886(d)(4)(D) of the Act, concerning the inclusion of capital costs into the prospective payment system. Our responses to ProPAC's recommendations may be found in the May 1987 NPRM at 52 FR 18853.

In addition, section 9304 of Pub. L. 99-509 amended section 1886(d) of the Act (by adding paragraph (d)(9)) to provide for inclusion of hospitals in Puerto Rico under the prospective payment system effective with inpatient hospital discharges occurring in FY 1988. We are implementing the provisions concerning hospitals in Puerto Rico in a separate final rule. (We note that in that document we established a new Subpart K to Part 412 to implement those provisions. In the May 1987 NPRM, we proposed to add § 412.214 to Subpart K to implement the provision for incorporating capital payments into the prospective payment system for hospitals in Puerto Rico.) Section 9304 of Pub. L. 99-509 also revised section 1886(d) of the Act (by adding section 1886(d)(9)(D)(iii)) to authorize the Secretary to make exceptions and adjustments under which we believe a transition period and other refinements for incorporating capital payments into the prospective payment system could be extended to hospitals in Puerto Rico. (We note that the reductions in capital payments for FY 1988 and FY 1989, as provided under section 1886(g)(3) of the Act, also apply to hospitals in Puerto Rico.)

In the May 1987 NPRM, we set forth the following proposals:

- We proposed to establish national urban and rural capital rates separately for plant/fixed equipment and for moveable equipment using the best data currently available, that is, capital costs for cost reporting periods beginning in Federal fiscal year (FY) 1984. (Since the Federal capital rates are calculated according to the Federal FY, we proposed to update the national capital rates each Federal fiscal year.)
- We proposed to standardize the capital costs for differences in case mix complexity, indirect medical education, and disproportionate share payments (and for moveable capital costs, a cost-of-living adjustment for hospitals in Alaska and Hawaii, and for plant/fixed capital costs, an area construction cost adjustment).
- We stated that we would determine the hospital-specific portion of the capital payment on the basis of each hospital's allowable capital costs for plant and fixed equipment and for moveable equipment in each year of the transition periods that we proposed for each classification of equipment.
- We proposed to provide—

—A ten-year transition period for incorporating capital payments for plant and fixed equipment; and

—A two-year transition period for incorporating capital payments for moveable equipment.

• We proposed to amend the existing payment policy for outliers (42 CFR Part 412, Subpart F), which is authorized by section 1886(d)(5)(A) of the Act, by adding a portion of the Federal capital payment to the pool set aside for total outlier payments. We proposed that the cost outlier policy (§ 412.84) would be based on inpatient operating costs including capital, and that we would pay cost outliers only when inpatient operating costs (including capital) for a case are above the cost outlier threshold.

• We proposed that the blending of Federal and hospital-specific portions of the capital payment for plant and fixed equipment during the transition period would be weighted heavily toward the hospital-specific portion in the earlier transition years as follows:

Cost reporting period beginning on or after	Plant and fixed equipment		Moveable equipment	
	Federal (percent)	Hospital-specific (percent)	Federal (percent)	Hospital-specific (percent)
Fiscal year:				
1988	5	95	33	67
1989	10	90	67	33
1990	15	85	100	0
1991	20	80		
1992	25	75		
1993	30	70		
1994	40	60		
1995	50	50		
1996	65	35		
1997	80	20		
1998	100	0		

• We stated that we would determine the hospital-specific portion based on Medicare's share of total allowable capital costs of plant and fixed equipment, and Medicare's share of total allowable capital costs of moveable equipment (rolling base) subject to the applicable blending percentages in each year of the transition for each hospital.

• Puerto Rico hospitals would be included in the prospective capital payment process in accordance with sections 1886(d)(9) and (g)(3)(A) of the Act.

• For FYs 1988 and 1989, we proposed to adjust the capital payment amounts (Federal and hospital-specific portions) in order that the aggregate capital payment amounts under the prospective payment system approximate the aggregate capital payment amounts that would have been made, taking into account the reductions prescribed under section 1886(g)(3) of the Act, on a reasonable cost basis during FYs 1988 and 1989.

• We proposed to make capital payments to new hospitals on the same basis as all other hospitals subject to the prospective payment system, using the rolling base approach and the applicable Federal/hospital-specific blend for the Federal fiscal year in which the hospital first participates in the Medicare program.

• We proposed to exclude sole community hospitals from inclusion of capital into the prospective payment system for cost reporting periods beginning before Ocotber 1, 1990, in accordance with section 1886(g)(3)(C)(i) of the Act.

• We stated our belief that the proposed capital payment policy would negate the need for a further distinct capital exceptions process.

We think it is important to note that, in developing the capital payment policy described in the May 1987 NPRM, we took into consideration ProPAC's 1986 recommendations concerning capital payment policy and numerous public comments on the June 3, 1986 NPRM (51 FR 19970) in which we initially proposed to incorporate capital costs into the prospective payment system. Based on those recommendations and comments, we significantly revised the original proposal, published in the June 1986 NPRM, in the following ways before publishing the May 1987 NPRM:

• We separated capital costs for plant/fixed equipment from moveable equipment.

• We extended the transition period from four years to ten years for plant/fixed equipment.

• We elected to use a rolling base rather than a fixed base year for hospital-specific costs.

• We elected to update the standardized average capital costs through FY 1990 by the estimated actual increase in capital costs per case rather than the overall prospective payment update factor.

In response to comments we received on the June 3, 1986 and May 19, 1987 proposed rules, we are incorporating capital costs into the prospective payment system as we had proposed in the May 19, 1987 NPRM subject to the following modifications (which are more fully discussed in section II of the preamble below):

• We are revising the length and blend of the transition period for incorporating capital costs for moveable equipment into the prospective payment system pursuant to the following schedule:

Cost reporting period beginning on or after fiscal year	Moveable equipment	
	Federal (percent)	Hospital-specific (percent)
1988	5	95
1989	10	90
1990	15	85
1991	20	80
1992	30	70
1993	50	50
1994	75	25
1995	100	0

• We will make additional capital payments to hospitals that are financially disadvantaged during the capital payment transition period by the changeover from cost reimbursement to

prospective payments for capital. Under this provision, an exceptions process is established pursuant to the general authority granted to the Secretary under section 1886(d)(5)(C)(iii) of the Act to provide for exceptions and adjustments to prospective payment amounts as is deemed appropriate. The amounts to be paid under this exception process will be obtained by reducing the average standardized capital payment rates by five percent of the total Federal capital payments.

The criterion we apply to determine the eligibility of a hospital for a payment in addition to its prospective capital payment amount is whether the portions (for plant/fixed equipment or moveable equipment, or both) of a hospital's actual, allowable inpatient capital costs not paid through the hospital-specific portions (after applying the mandated reductions under section 9303 of Pub. L. 99-509 of seven and ten percent for FYs 1988 and 1989, respectively), are 175 percent or more than the total of the hospital's Federal capital payments (excluding payments for the hospital-specific portion) for that period. For FYs 1995-1997, the exceptions policy will only apply to plant/fixed equipment since moveable equipment will be paid based on 100 percent of the prospective moveable equipment rate.

The amount of the additional capital payment for hospitals meeting the eligibility criterion will be equal to 70 percent of the difference between 175 percent of the hospital's total Federal capital payments (excluding payments for the hospital-specific portion) during the transition period and its portion of the actual allowable inpatient capital cost not paid through the hospital-specific portion, as established by the cost report for the applicable period. We note that the Federal capital payments do not include the hospital-specific portion of a hospital's total capital payment. A five percent pool has been established for payment of the adjustment, and we will announce prior to October 1 of each year of the transition any changes to the threshold level, if needed, to maintain the five percent pool. These additional capital payments will be adjusted retroactively for each cost reporting period during the transition based on changes in each hospital's actual, allowable inpatient capital cost as determined in its Notice of Amount of Program Reimbursement under cost reimbursement principles pursuant to section 1861(v) of the Act and implementing regulations at 42 CFR Part 413, Subpart G, §§ 413.130 through 413.154, and 42 CFR Part 412, Subpart D, §§ 412.65 through 412.68.

We are providing, below, two examples to demonstrate the exception payment process for a hospital that is financially disadvantaged during the transition period under the prospective capital payment system. Example 1 is applicable for FY 1988, a transition year in which the blended percentages for plant/fixed equipment and moveable equipment are the same. Example 2 is applicable for FY 1992, a transition year in which the blended percentages for plant/fixed equipment and moveable equipment are different.

Example 1—Hospital A submits its cost report for FY 1988 to its fiscal intermediary showing the following capital data:

- Medicare allowable capital cost of $1,000,000 ($800,000 for plant/fixed equipment and $200,000 for moveable equipment).
- A hospital-specific portion of Medicare allowable capital cost of $883,500 [($800,000 × .93 (reduction under section 1886(g)(3)) × .95 (hospital-specific blend)) plus ($200,000 × .93 × .95)].
- Total capital payments received from Medicare during the fiscal period of $898,500 [($883,500, the payment for the hospital-specific portion) plus ($15,000, the amount received under prospective capital payment rates which includes payments for plant/fixed equipment, moveable equipment, outliers, indirect medical education cost adjustment and disproportionate share adjustment)].

Hospital A has requested additional payment (an exception) for capital costs pursuant to § 412.68. After a review of the data submitted, the fiscal intermediary has determined that Hospital A is due an additional $14,175 pursuant to § 412.68. The fiscal intermediary computed the $14,175 based on the following steps:

(1) Medicare capital cost not paid as part of the hospital-specific portion. Note that the hospital-specific portion is 95% for FY 1988.

$1,000,000 × .93[1] × .05 = $46,500

(2) Payments received under the prospective capital payment rates times the exception threshold pursuant to § 412.68.

$15,000 × 1.75 = $26,250

(3) Exception amount determined based on 70% of the difference between steps 1 and 2.

($46,500 − 26,250) × .70 = $14,175

Example 2—Hospital A submits its cost report for FY 1992 to its fiscal intermediary showing the following capital data:

- Medicare allowable capital cost of $1,000,000 ($800,000 for plant/fixed equipment and $200,000 for moveable equipment).
- A hospital-specific portion of allowable plant/fixed equipment of $600,000 ($800,000 times 75% fixed hospital-specific blend) and a hospital-specific portion of moveable equipment of $140,000 ($200,000 times 70% moveable hospital-specific blend).
- Total capital payments received from Medicare during the fiscal period of $865,000 [($740,000 for the hospital-specific portion) plus ($125,000 for the prospective capital payments for plant/fixed and moveable equipment)].

Hospital A has requested an additional payment (an exception) for capital costs pursuant to § 412.68. After a review of the data submitted, the fiscal intermediary has determined that the hospital is due additional payments of $28,875 pursuant to § 412.68. The fiscal intermediary computed the $28,875 based on the following steps:

(1) Medicare plant/fixed equipment cost not paid as part of the hospital-specific portion. Note that the hospital-specific portion is 75% for FY 1992; 25% is not paid.

$800,000 × .25 = $200,000

(2) Medicare moveable equipment cost not paid as a part of the hospital-specific portion. Note that the hospital-specific portion is 70% for FY 1992; 30% is not paid.

$200,000 × .30 = $60,000

(3) Total Medicare plant/fixed and moveable equipment costs not paid as part of the hospital-specific portion in FY 1992. Add the values from step 1 and step 2.

$200,000 + $60,000 = $260,000

(4) Payments received under prospective capital payment rates for plant/fixed and moveable equipment times the exceptions threshold pursuant to § 412.68.

$125,000 × 1.75 = $218,750

(5) Exception amount determined based on 70% of the difference between step 3 and step 4.

($260,000 − $218,750) × .70 = $28,875

Note: Since reductions under section 1886(g)(3) of the Act do not extend beyond FY 1989, no reduction is reflected in this example. Also, the FY 1988 thresholds were used in this example, since we do not yet know the FY 1992 thresholds.

- The construction cost index to be applied to the Federal capital rate for

[1] Capital reductions for FY 1988 under section 1886(g)(3) of the Act.

plant/fixed equipment in Puerto Rico is 1.000. We do not have adequate data on which to base a Puerto Rico-specific ratio or proxy. We do not believe any adjustment relative to other areas would be appropriate at this time since the index will be applied only to the 25 percent national portion of its payment.

II. Comments and Responses

A total of 100 sets of comments concerning the May 1987 proposed rule were received timely. The commenters included 58 individual hospitals, ten hospital systems or corporations, 10 local or State hospital associations, three individuals, one U.S. Senator, 11 national health care assocaitions, two Medicare fiscal intermediaries, ProPAC, two law firms, and an insurance company. All of the commenters except for ProPAC voiced opposition to the incorporation of capital costs into the prospective payment system, both in general (by suggesting for example, that further study of the subject is necessary and requesting that we delay the incorporation) and with respect to specific issues. However, some commenters supported specific provisions of the NPRM, such as standardization for indirect medical education and the capital expenditure agreements policy. A few commenters, primary hospital associations, generally endorsed use of a construction index. Among the many issues addressed in the proposed rule, the following subjects received the majority of comments:

- Adequacy of payment rates.
- Split between plant/fixed equipment and moveable equipment.
- Construction cost index.
- Update factor.
- Urban versus rural rates.
- Outliers.
- Exceptions policy.

The contents of the proposed rule, the public comments, and our responses to the comments are discussed below.

We are responding to two general comments here rather than in one of the more issue-specific areas below.

Comment: The overwhelming majority of commenters opposed incorporating capital costs into the prospective payment system. The commenters asserted the following:

- The payment levels were grossly inadequate.
- Hospital capital cost cycles are—

—Unevenly distributed over time;
—Composed generally of fixed costs; and
—Not amenable to substitution.

Thus, the incorporation of capital costs into the propective payment system would result in significant over- and underpayments (that is, a maldistribution of payments) for many hospitals at the end/beginning of a capital expenditure cycle.

- The capital data were flawed or inadequate.
- The proposed rule did not account for significant reductions in occupancy rates subsequent to FY 1984 (the base year for establishing the Federal capital rates).
- No additional savings would be generated due to the capital reductions under section 9303 of Pub. L. 99–509.
- Reasonable cost reimbursement rules took into consideration hospital capital cost cycles.

Response: We acknowledge that in moving to an average pricing system to establish payments for capital expenditures for inpatient hospital services, we will not recognize the individual hospital capital cycle experience in the standardized portion of the prospective capital payment, and that the capital rate will be lower than a hospital's capital cost per case in roughly half of the cases. However, we believe these problems are alleviated, to some extent, by the provisions to have an extended transition period during which hospitals will receive a hospital-specific portion of the prospective capital payment based on their actual allowable capital costs and the transition blend, which is heavily weighted toward the hospital-specific portion for several years. We believe that those hospitals with substantially higher capital costs per discharge than the Federal portion of the capital payment will have adequate time under the transition period to adjust their operations and financing to meet the relatively lower payment levels by the time the Federal rate becomes a major portion of their capital payment. We are also making changes in this final rule based on these comments to aid hospitals that are unable to adjust their capital expenditures timely. However, because the Federal capital payment is based on industry-wide averages, we expect that the capital payment for most cases will be appropriate for the majority of hospitals.

While specific data concerns are addressed below, we wish to point out that with respect to setting the Federal capital payment rate, the most recent, audited cost report information available to us was used to set the rates. We believe those data are valid and reliable since they are based on the reports of the nearly complete universe of hospitals subject to these rules. All of the actual hospital capital costs reported were paid for on that basis for that period. Thus, we do not believe the cost per case used was understated. Further, since actual industry inflation rates (based on data provided by the American Hospital Association) were used to update the FY 1984 base year costs per case to FY 1988 levels (modified by legislative reductions imposed for FYs 1987 and 1988 under section 9303 of Pub. L. 99–509), the Federal rates are representative of the actual national cost per discharge levels that hospitals can expect to experience.

With respect to occupancy rate declines experienced by hospitals, these declines are taken into account in the capital cost per case projections that were used to determine the FY 1988 prospective capital payment rates. Such changes are taken into consideration automatically in calculating the projections, since we allocate the aggregate of costs in a period to Medicare's share of costs on a per admission basis for each such period. Thus, the cost per case inflation rate from year to year is dependent on changes in discharges due to occupancy level changes.

We also wish to clarify that this initiative is not intrinsically designed to increase Medicare program savings, but rather to correct the lack of incentive for controlling capital expenditures under cost reimbursement rules. Since no substantive alternative to continued cost reimbursement was suggested by commenters on either of the capital payment proposed rules, we do not believe that a delay in implementing this change would be appropriate in light of—

- Current Medicare program objectives to make hospitals more efficient;
- The recommendations of ProPAC; and
- The discretionary authority granted to the Secretary under the statute on this matter.

Comment: Many commenters pointed out that the average pricing method of making capital payments would disadvantage certain categories of hospitals with greater than average capital costs such as—

- Tertiary care hospitals which place heavy reliance on specialized, moveable, diagnostic and care equipment;
- Teaching hospitals with similar problems; and
- Rural hospitals, which maintain that the average age of their plants and equipment is greater than urban hospitals and that their lower rates for capital payments will exacerbate the problems they believe result from operating payment rates much lower than the rates for urban hospitals.

Further, the commenters pointed out that the impact on such hospitals due to conformance of State Medicaid plans to Medicare capital payment rules will accentuate financial results of this major program revision.

Response: We believe that the average pricing method for capital payments is the best approach to use for structuring prospective capital payments for hospitals. Like the method used to establish other prospective payment operating rates, this method does not differentiate between hospitals on the basis of size or efficiency. Since section 1886(d) of the Act provides for adjusting prospective capital payments for case-mix complexity, disproportionate share, indirect medical education, and referral center considerations, capital payment levels for those categories are expected to be responsive to such hospitals unique capital needs in the same manner as prospective payments for other inpatient operating costs.

With respect to rural hospitals in general, we point out elsewhere in this issue of the **Federal Register** that we are required to compute rates under the prospective payment system on the basis of urban and rural averages, pursuant to sections 1886(d)(2)(D) and (d)(3)(D) of the Act. All data available to us regarding urban and rural costs for both operating and capital expenditures reflect the distinction between the urban and rural rates under the Medicare program. On that basis, we do not believe that the capital payment rates will selectively disadvantage rural hospitals.

We do not expect that reimbursement changes by State Medicaid programs will be any more significant than the comparable changes resulting from implementation of prospective payments for other inpatient hospital operating costs occurring after October 1, 1983 (the inception of the prospective payment system).

A. Adequacy of Payment Amounts

1. Base-year data

We proposed to use inpatient capital cost data from FY 1984 Medicare cost reports (latest available audited data) in determining the Federal capital payment rates.

Comment: Several commenters expressed concern about the adequacy of the data used to establish the capital payment rates. They cited problems with the adequacy and accuracy of the cost report data used to calculate the capital rates including—

- Accurate classification of capital costs;
- Inadequate data base for all hospitals and units;
- Missing and erroneous data entries;
- Lack of a complete description of computation methods; and
- Unsettled cost reports for the base year.

Response: As we noted above, we are using the most recent audited data available from a statistically reliable volume of hospitals to determine the Federal capital payment rates. That data source is the set of Federal FY 1984 hospital cost reports as received, audited and submitted by Medicare fiscal intermediaries through our Hospital Cost Report Information System (HCRIS). More than 90 percent of all hospital cost reports form the basis for this data base which is used to set the prospective capital payment rates. This level of response permits us to conduct a statistically reliable analysis using HCRIS. Also, the data used were provided by hospitals that were reimbursed for their capital costs on the basis of the cost report information they furnished, and we, therefore, have every expectation that the same information is a valid basis on which to establish the average capital cost per discharge under this final rule. Although some cost reports for the period are not settled, all were received, and the vast majority audited by the fiscal intermediaries.

We agree that insufficient data were available at the time the May 1987 NPRM was issued that would support the separation of directly assigned capital costs into its various component costs. However, we did conduct a survey of a sample group of hospitals and obtained these component costs. The final rule includes those data which permit the analysis of the fixed/moveable split of directly assigned capital costs as described in the response below regarding this separation. Thus, we believe that the data and procedures we used to calculate the prospective capital payment rates are adequate and accurate.

2. Updating

We proposed to update hospitals' FY 1984 costs per case through FY 1987 by the estimated actual increase in capital costs per case for purposes of establishing the rates. We stated we would also update costs for FYs 1988 and 1989, subject to the reductions under section 1886(g)(3) of the Act, under reasonable cost principles. For FY 1990 onward, the update provisions under section 1886 (b)(3)(B) and (e)(4) of the Act will be applied to the capital rates as to all other inpatient hospital operating rates.

Comment: Many commenters expressed their confusion and apprehension about the update factors and the mechanism for prospective capital payments. They cited a lack of information in the proposed rule regarding the factors used to trend forward the FY 1984 base year cost per case to the first transition year (FY 1988). The commenters said that there is no indication of whether or how the prospective payment update factor will be adjusted to ensure that capital cost changes are properly reflected in future updates. The commenters also cited the need to disclose how the capital market basket will be constructed and applied, considering such factors as the volatility of interest rates, moving averages for the useful life of assets, new technology, and other factors. They were concerned that updates in the future will be used to cut back Medicare expenditures, ignoring the long range impact on hospitals and, thus, violating the requirements of Executive Order 12291 regarding disclosure of the long range impact in rulemaking.

One commenter stated that the update for capital payment rates should be established independent of the update for other prospective payment system operating rates during the transition period. Several commenters also stated that the inflation of the cost per case from FY 1984 to FY 1988 does not properly recognize technological changes and occupancy rate changes. Finally, one commenter suggested that the capital payment reductions contained in section 9303 of Pub. L. 99-509 should not be continued in the base to which update factors are applied after Federal FY 1989, and that the final rule on prospective capital payments should address this matter specifically.

Response: We agree that we neglected to indicate the amounts and source of update factors used to trend the average cost per discharge in the capital payment standardized rate base year (FY 1984) through the first two transition years, which are required to be budget neutral under section 9303 of Pub. L. 99-509 (FYs 1988 and 1989). The amounts used were the estimates of actual industry-wide capital expenditure increases based on the American Hospital Association panel survey data and converted to a per admission basis. The update factors for each year are:

FY 1985—17.29 percent
FY 1986—10.86 percent
FY 1987—7.06 percent
FY 1988—6.83 percent
FY 1989—5.86 percent

However, we believe that the budget neutrality requirement methodology and its impact on the calculation of updates for FYs 1988 and 1989 were thoroughly explained. Of course, that requirement, along with adjustments required to standardize the Federal rates, appears to reduce the average increase for inflation over this period as noted by several commenters. Nonetheless, no other action or adjustment to the rates was made to reduce them or to increase program savings. Further, the update to the rates between the base year (FY 1984) and FY 1988 takes into account hospital practice patterns and effective technologies. Thus, the resulting rates reflect our best estimate of the Medicare inpatient capital payments that would be made in FY 1988 subject to the per case reductions required under section 9303 of Pub. L. 99–509. We will revise the hospital market basket to reflect capital items and services, as discussed below. Therefore, updates to the Federal capital payments made after FY 1989 will be included in the overall update to the prospective payment system in order to fully integrate capital payments into the prospective payment system.

With respect to the concern for the reduction (pursuant to section 1886(g)(3) of the Act, as added by section 9303 of Pub. L. 99–509) in the base used to set capital payment rates after FY 1989, we believe that we have no discretion but to use the allowable cost base, as reduced under section 1886(g)(3) of the Act, in trending forward the base year amounts in setting the prospective capital rates. Since the years in question (FYs 1987 through 1989) are subject to statutorily mandated reductions, those amounts must be used as the basis for capital payment rate setting in the same manner as the rate of increase limits, established under section 1886(b) of the Act, were incorporated for other inpatient operating costs in setting the initial prospective payment system rates.

3. Urban Versus Rural Payments

We proposed to compute average standardized rates for plant/fixed equipment and moveable equipment, for all urban hospitals and for all rural hospitals in the United States and the District of Columbia, and for urban and rural hospitals in Puerto Rico. The national urban and rural averages would be discharge weighted in the same manner as other prospective payment rates.

We refer the reader to the general comments and responses discussed above.

B. Standardizations

1. Construction Costs

We proposed to standardize plant/fixed equipment capital costs for area construction costs using the Dodge/Data Resources, Incorporated (DRI) Construction Potentials database as the source for developing a construction costs index. We still believe that capital payments should vary geographically by construction costs.

Comment: Many commenters pointed out specific locations in which the construction cost index varies significantly across geographic boundaries, and stated they did not see why such variations should occur.

Response: There are a number of reasons why the construction cost index varies across local geographic boundaries, such as differences in the wage rates of construction workers or differences in the cost of materials used in construction. We expect local variations in the cost of construction because of the degree of competition (or lack thereof) between construction companies and the general economic conditions of an area.

As explained in the NPRM, there was considerable year to year variation in the relative cost of construction in many metropolitan statistical areas (MSAs)/New England County metropolitan areas (NECMAs). We believe it was important to average over an extended period (15 years) to smooth these fluctuations. By averaging over 15 years, the total volume of construction used to compute the index for each MSA/NECMA is increased, which helps prevent a single very expensive, low volume project from unduly influencing the index for an MSA/NECMA. If the cost of construction in an area has changed significantly relative to the national average during the past 15 years, it is possible this longer averaging period could cause an MSA/NECMA with the majority of the construction in its index in the past few years to have a different index than an adjacent area with little recent construction to influence its index. Even though the averaging technique may create a few boundary problems, we believe it is important to have a construction cost index that does not have wide fluctuations over short periods of time. Therefore, we believe this approach and the data for establishing the index are the best available way to measure geographic variation in hospital construction cost. We will continue to refine this index to measure local variation more precisely.

Comment: Several commenters provided specific local construction or cost of living data that they believe showed the construction cost index did not sufficiently compensate their area, relative to adjacent areas. Several suggested either the data must be flawed, or HCFA's manipulation of the data was incorrect.

Response: Data for this index were chosen from among a number of alternatives, as discussed in the May 1987 NPRM, because we believed it to be the best overall source for developing a prospective payment construction cost index (52 FR 18846). In some areas it may be possible to cite specific local data, such as wages for construction workers typically employed in hospital construction, which would appear to indicate the indices in adjacent areas should not vary. However, as we stated in the NPRM, there are significant fluctuations in the yearly construction cost data. Because of these fluctuations, we do not believe that a reliable index can be developed from one year of data, nor could we make appropriate comparisons from one year of data. We have not found evidence to suggest an index computed from an alternate data source would be more accurate nationally than the current index. We do not believe the data are flawed or that our methods for computing the index are inappropriate or incorrect.

Comment: A number of commenters stated that the construction cost index is invalid because it is based on data that include the construction costs of schools, libraries, churches, and other public buildings that do not reflect the higher and very different construction costs incurred in hospital construction. The increased costs associated with hospital construction (such as, the heavy-duty electrical system or built-in gas systems) generally arise from the life and safety standards required for hospital care. One commenter noted that, in particular, for those areas in which there are sufficient hospital construction cost data, the construction cost index should not include nonhospital construction costs.

Response: The construction cost index measures the relative costs of construction in an area, not the absolute costs. We believe that the types of construction (hospital and nonhospital) used to compute the construction cost index represent the same market for contractors as hospitals, and vary in construction costs in a manner similar to hospitals. As stated in the NPRM, we found using hospital-specific data results in a number of MSA areas having five or less years of data to average during the past 15 years. An index computed using hospital specific data from DRI has a 31 percent larger

standard deviation and a 38 percent wider range. Based on these results, we do not believe an MSA level index based on hospital only construction would be a better indicator of geographic variation in hospital construction cost than the index given in the NPRM. However, in the future, we may phase out nonhospital construction as we obtain more data.

Comment: Many commenters suggested that an index based on historical average construction costs is inappropriate because it fails to account for where a hospital is in its construction/depreciation cycle.

Response: We disagree with the commenters. The purpose of the construction cost index is to measure differences in the costs of construction among geographic areas. The index is not intended to adjust for differences in the construction/depreciation cycle (age) of a hospital's fixed capital.

Comment: Several commenters suggested that the construction cost index should be based on replacement capital costs rather than historical capital costs because use of historical capital costs fails to account for the financial position of a hospital in its construction/depreciation cycle. In addition, the construction cost index should account for the higher capital construction costs associated with new technology.

Response: Historical construction cost data are used because we believe they are the best data available to measure the geographic variation in construction cost. Since we do not have a reliable way for projecting replacement construction cost, we are unable to establish an index based on replacement capital cost. However, since we use a 15 year average to determine each MSA's/NECMA's construction index, future replacement costs, which include new technologies, will be represented in the construction cost index in future updates.

Comment: Several commenters suggested that the construction cost index should be computed from hospital specific data for those areas that had a large volume of hospital construction activity, and an alternative approach should be developed for those areas in which sufficient hospital-specific data do not exist. One approach would be to use the hospital-specific index of a similar geographic area. Another suggestion was to conduct a survey of general contractors in those areas for which additional data were needed to estimate local hospital construction costs.

Response: In developing the construction cost index, we considered a composite index based on hospital only data for those areas that exceeded a certain threshold of hospital construction, with an alternative supplemental data source for those areas in which there was insufficient hospital construction to develop a reliable index. A preliminary analysis of our data suggested the areas with sufficient hospital data to develop a reliable index would be the 50 or so largest MSAs, and many State rural areas. However, we were concerned that developing an alternative data source for the remaining perhaps two-thirds of the areas could bias the index. We therefore decided not to use this approach but to use a construction cost index in which all areas of the country are treated in exactly the same manner.

Comment: One commenter suggested that construction costs do not vary as much at the MSA level as the construction cost index indicates, and a regional index would be more appropriate.

Response: We acknowledge that whenever geographic boundaries are established, boundary problems may occur. We recognize that a regional construction cost index would reduce the number of boundaries; however, such an index would not recognize local variations in construction costs. Thus, we believe that an index based on the MSA/NECMA level is the most appropriate measure of fixed capital cost variation.

Comment: Several commenters stated that the construction cost index is biased toward urban hospitals, even though rural hospitals typically use contractors from urban areas who charge the same or more (because of transportation costs) for rural construction as for urban.

Response: We believe that a portion of the difference in construction costs between regional and urban areas results from the nature of urban construction, which tends to be more vertical (that is, taller buildings) than in rural areas because of the higher premium on space. In addition, the unweighted average difference between the construction cost indices for urban and rural areas is not large, with the average for all urban areas being 1.008, and .948 for all rural areas. This point is further exemplified by the construction cost indices for the western mountain States, in which rural transportation costs are probably quite significant. For these States, the unweighted average urban index is .928, while the average rural index is .934.

Comment: Two commenters alleged that because the construction cost index has an overall east coast and metropolitan bias, it is inappropriate.

Response: We agree that the construction cost index tends to be higher in the eastern part of the country than in the western part of the country, but we do not believe there is any systematic bias in the data. Both the hospital specific data and the data for other institutional construction included in the index separately exhibit this tendency, and we believe they are measuring appropriate construction cost differences in different regions of the country.

Comment: In response to our request in the NPRM for information and suggestions on how to establish a construction cost index for Puerto Rico, one commenter suggested direct collection of construction cost records and information from Puerto Rico hospitals.

Response: Prior to publication of the NPRM, we initiated telephone and written requests to obtain such hospital specific data from Puerto Rico, but have not yet received any data that could be used to develop a construction cost index for Puerto Rico. Because of our lack of Puerto Rico-specific data, and our analysis of the several proxies for Puerto Rico that we mentioned in the NPRM, we do not believe that we have sufficient information at this time to determine an appropriate index for Puerto Rico. We therefore have decided to use an index of 1.000, until a more appropriate index can be developed. This index is applied only to the 25 percent portion of Puerto Rico's Federal capital payment rates, which is based on the national Federal capital payment rates. The Puerto Rico-specific capital rates are not subject to this index.

Comment: One commenter suggested that the construction cost index is being improperly applied to all fixed capital costs (which include depreciation, lease/rental, interest, insurance and taxes), while it should be applied only to depreciation. Another commenter suggested that the index should take into consideration "soft" construction costs (that is, architect's fees, legal fees, accounting fees, finance costs during the construction period, and development overhead costs), which the commenter estimated to represent between 15 and 35 percent of total construction cost.

Response: Although the construction cost index only measures specifically the cost of constructing a fixed asset, we believe that, in general, the interest resulting from a hospital's debt along with insurance and tax costs vary in direct proportion to the cost of the fixed asset constructed. We also believe the

geographic variation in construction costs represented by the index is a reasonable proxy for geographic variation in the soft construction costs alluded to by the second commenter. Thus, we believe it is appropriate to apply the construction cost index to all of the fixed capital costs referenced by the commenters.

Comment: One commenter stated that because the construction cost index does not take into account inflation, many hospitals located in the same geographic area to which the same index is applied, will either be undercompensated or overcompensated for their capital construction costs depending on the year in which they incurred their construction costs.

Response: The construction cost index was designed to measure the relative differences in the costs of construction between geographic areas for assets purchased in the same year. The index, which is based on a 15 year average, is calculated in such a way as to remove the effects of construction cost inflation over time. Since the index is not dependent on the age of the asset, it does not result in undercompensation or overcompensation to hospitals that have different fixed asset age values.

Comment: Several commenters requested that the construction index should be updated on an annual basis to reflect actual construction costs.

Response: We agree that the construction cost index should be reviewed on an annual basis, and we will update the published values of the index as appropriate.

Comment: One commenter recommended using cost report data to develop a construction cost index.

Response: While cost report data are a basis upon which an index could be developed, it would be necessary to have several years of reliable data to smooth out yearly fluctuations. Currently, we do not have the necessary cost report data to perform the appropriate analyses for determining whether a geographically adjusted construction cost index could be developed from cost report data. Also, it would be difficult to establish a common unit for measuring relative cost, since depreciation per square foot would need to be standardized by the age of the asset being depreciated.

Comment: One commenter suggested that because many of the reported values were excluded from the construction cost index calculations, it might be flawed.

Response: Out of 365 MSA/NECMA and State rural areas, each with 15 years of data, 15 of the (365 x 15) data "cells" were excluded as outliers. This results in less than .28 percent of the data being excluded in calculating the index, which we believe is not significant. Further, we believe it is appropriate to exclude this small number of outliers from the construction cost index.

Comment: Two commenters requested that an appeals process be established for hospitals to request reconsideration of their assigned construction cost index values.

Response: Because of the complex multi-year formula we used to establish the national hospital construction cost index for 365 MSAs/NECMAs, we do not believe that an appeals process would be the most appropriate mechanism for addressing construction cost values that hospitals believe are aberrant. If hospitals have problems with their construction cost index value, we encourage them to submit data or an alternative methodology that they believe will improve the national construction cost index.

Comment: One commenter stated that central city construction costs were considerably higher than suburban construction costs, and that the construction cost index should address those cost differences.

Response: To develop an index that distinguishes between central cities and suburban ring areas within an MSA/NECMA, it would be necessary to develop geographic definitions to properly distinguish between central cities and suburban ring areas. We are not aware of a way to make such distinctions uniformly, but would consider use of such definitions if they become available in the future.

Comment: Two commenters questioned the disparity between their area wage index values and their construction cost index values in light of the fact that labor constitutes 60 percent of construction costs.

Response: While there is a positive correlation between the index for construction costs and the index for average wages of hospital workers, the correlation is not high. There are a number of factors that could cause the construction cost index to vary geographically from the wage index, including weather, terrain, and cost and proximity of building materials. Finally, the construction cost index is a multiyear average index, while the wage index is based on a single year of data. In view of these factors, we do not believe that an implication arises that the construction cost index is incorrect if it is not similar to the wage index.

2. Indirect medical education

We proposed to standardize capital plant/fixed equipment and moveable equipment costs for indirect medical education, case mix, disproportionate share of low-income patients, and other factors.

Comment: The majority of comments received about our request for evaluation of whether to standardize the prospective capital payment rates for indirect medical education and disproportionate share of low-income patients were in favor of such adjustments to the rates. Several commenters objected to standardization for these items observing that it is not clearly established by studies that capital costs are affected in the same manner that operating costs would be in these situations. In addition, commenters also expressed concern whether case mix should be used to standardize costs due to the methods used to allocate capital costs to various portions and departments of hospitals (square foot basis rather than department of major use), which allegedly distorts the resulting diagnosis-related group (DRG) weights, and, thereby, the case mix, with respect to capital item use intensity.

Response: The few comments we received that objected to standardization of the Federal rates for disproportionate share of low-income patients, indirect medical education, and other factors, were usually related to the fact that such standardization reduces the capital rates somewhat. However, we believe that this redistribution of payments is required under the statute since the removal of any statutory distinction between inpatient capital and other inpatient operating costs subjects all rates computed under the prospective payment system to the same standardization requirements.

With respect to the appropriateness of standardization by case mix in the capital payment calculation, we believe that standardization is required by section 1886(d)(2)(C)(iii) of the Act, and application of the DRG weight by section 1886(d)(2)(G)(ii)(II) of the Act.

We also believe that by using the charge data to recalibrate the DRG weights, as described in the September 3, 1985 final rule (50 FR 35722), capital costs are reasonably represented in the relative weights used to compute the Federal capital payment amounts. Furthermore, as capital use intensity changes in an individual DRG, future recalibrations will take into consideration such changes and automatically adjust the payment levels.

C. Split of Plant/Fixed Equipment from Moveable Equipment

We proposed to split plant/fixed equipment costs from moveable equipment costs by developing, for each hospital, ratios of plant/fixed equipment costs to the total capital costs and of moveable equipment costs to the total capital costs.

Comment: More than one-third of the commenters objected to the proposed split and separate transition period of moveable equipment from plant/fixed equipment. They cited the following reasons for their opposition:

- The split would redistribute capital payments in a manner that would seriously disadvantage hospitals with high moveable equipment costs.
- Significant proportions of moveable equipment are financed through long-term debt arrangements, contrary to the assumption stated in the proposed rule.
- More than three-fourths of the major moveable equipment listed in the AHA useful life guidelines have useful lives of 10 years or longer, thus undermining any transition distinction rationale.
- Much moveable equipment cost is included in long-term debt costs obtained for plant/fixed equipment financing arrangements, thus skewing any cost report data used in determining the split.
- None of the proposed bases for allocating interest expense between moveable equipment and plant/fixed equipment can be expected to allocate properly between the two because each method will result in a bias in valuation toward one type of capital expenditure or the other.
- The policy ignores the wide variation in the proportion of actual cost distribution between the two categories among hospitals.

Response: The method used to determine the proportions of moveable equipment and plant/fixed equipment for purposes of setting capital payment transition rates was explained in the proposed rule (52 FR 18848). We believe that the cost report information on this split is generally reliable for hospitals that separately reported each category, and that no better source of direct data on this distinction has been developed. There is no evidence that hospitals grossly or consistently misreported the categories of capital expenditures identified on the Medicare cost reports. While reimbursement of capital costs was not dependent in any way on this designation of capital costs, there was no incentive for hospitals to misrepresent those costs.

Only for the cases in which hospitals directly assigned capital costs and did not separately assign these costs to moveable or plant/fixed equipment categories would distortions of the ratio between the two be reasonably questioned. However, as we noted in the proposed rule, a special data collection effort was undertaken to provide additional information on directly assigned capital costs, which disaggregated them between moveable equipment and plant/fixed equipment. This effort, using FY 1984 settled cost reports, provided a reliable sample for an analysis to determine whether our assumptions in making the split, as presented in the proposed rule, were supportable, or if an adjustment based on the special study should be made. Based on the results of that study, we find that the ratios developed under the assumptions in the proposed rule are to be adjusted by splitting any directly assigned capital costs reflected in a hospital's base year cost report between plant/fixed equipment and moveable equipment in the following manner:

	Urban (percent)	Rural (percent)
Ratio of Plant/Fixed Equipment Costs to Total Capital Costs	28.3	18.2
Ratio of Moveable Equipment Costs to Total Capital Costs	71.7	81.8

Thus, we believe we now have an adequate and supportable basis on which to proceed with separate rates for each category.

While we recognize that each hospital's split of plant/fixed equipment from moveable equipment will vary from the proportions reflected in the capital payment rates, even significantly at times, the length and blending of the prospective payment transition period for the moveable equipment category is intended to moderate this impact, giving hospitals adequate time to adjust their situations Since the hospital-specific portion of the blend is important in ensuring that hospitals with widely divergent capital expenditure patterns are not adversely affected by the incorporation of capital payments into the prospective payment system, this concern of commenters added significantly to our decision to modify the transition rules (length and blend) for moveable equipment, as explained in our response to the comments regarding the length of the transition period below.

We believe that the modification to the transition period will correct the problems noted by commenters in regard to the longer term expenses encountered with major moveable equipment. We also believe that distinguishing between moveable equipment and plant/fixed equipment under the refined cost finding guidelines, and the update of the list of plant/fixed equipment and moveable equipment, as discussed in the May 1987 NPRM (52 FR 18851–18855, and 18864), will properly identify the wide variations among hospitals in the proportion of debt between those categories allowing appropriate payment under the hospital-specific portion of the capital payment blend for a longer period, so that no disadvantage will result to hospitals highly capitalized in moveable equipment.

Comment: Two commenters questioned whether the proposed regulations at § 412.67(d) that clarify cost finding distinctions in classifying plant/fixed equipment and moveable equipment, and the list of plant/fixed equipment and moveable equipment detailed in Appendix C of the NPRM, preclude the possibility of using other classification schemes or hospitals' past practices that may be appropriate as well.

Response: We believe that the approach for classifying plant/fixed equipment from moveable equipment, as stated in the May 1987 NPRM, is appropriate in terms of administrative efficiency. In addition, the list presented in Appendix C is based on usual industry practice and generally applied accounting procedures, as adapted from a comparable list of the American Hospital Association. However, we will provide a hospital an opportunity to appeal a classification if the hospital has had a longstanding past policy or practice of classifying items that is different from our approach, and that policy is not for the purpose of the hospital affecting its prospective capital payments. (We note that the use of a past practice of classifying equipment would not be appropriate, for example, if a building was classified as moveable equipment.) We are revising § 412.67(d) to implement this provision.

D. Length of Transition Periods

We proposed a ten-year transition period, heavily weighted toward the hospital-specific portion in the earlier transition years, for incorporating capital payments for plant/fixed equipment into the prospective payment system. Similar to ProPAC's recommendation, we proposed a two-year transition period for incorporating capital payments for moveable equipment into the prospective payment system.

Comment: A majority of the commenters not including ProPAC expressed opposition to the length of the transition periods. While the commenters were almost evenly divided as supporting or opposing the 10-year transition period for plant/fixed equipment, the vast majority objected to a two-year transition period for moveable equipment. In general, a number of commenters suggested that the moveable transition period should be between five and ten years. However, other commenters proposed that the transition period for moveable equipment should be the same as it is for plant/fixed equipment since it would take hospitals just as long to adjust to standardized payments for major moveable equipment. All those commenters who addressed the hospital-specific portion ("rolling base"), which is heavily weighted in the early transition year, were in favor of that approach.

Response: Based on the commenters' suggestions regarding the inadequacy of the transition period and the blend for the movable equipment component of the prospective capital payment, and comments critical of the split between moveable equipment and plant/fixed equipment (discussed above), we are revising the moveable equipment transition and blend in this final rule. As shown below, the transition for moveable equipment is extended to seven years (a level between the five-year and ten-year levels suggested by commenters), and the blend of Federal rate and hospital-specific amount is made identical to the blend for plant/fixed equipment in the first four years of the transition period.

Cost reporting period beginning on or after fiscal year	moveable equipment	
	Federal (percent)	Hospital-specific (percent)
1988	5	95
1989	10	90
1990	15	85
1991	20	80
1992	30	70
1993	50	50
1994	75	25
1995	100	0

We believe that this change will ameliorate the problems cited by commenters on this matter. However, we do not believe that longer transitions for these capital components are essential to allow hospitals sufficient time to adjust their operations and financing to accommodate prospective Federal capital payment rates.

E. Exceptions Process

We proposed not to establish an exceptions process because we had adopted a number of options (such as, a longer transition period, and a "rolling" base year in determining the hospital-specific portion) that we believed negated the need for an exceptions process.

Comment: Nearly a third of the commenters objected to the lack of an exception process for hospitals that are financially disadvantaged by incorporating capital payments into the prospective payment system. All of the major hospital asociations opposed deferral of including an exceptions process for hospitals that are adversely affected by the capital payment methodology. They believe that the capital payment system will redistribute payments for capital items, often in ways that are not dependent on a hospital's efficiency, its position in the capital expenditure cycle and other critical factors. Many commenters indicated that even the longer transition with a blend heavily weighted toward the hospital-specific component in the early years would not be adequate to safeguard a critical shortfall of funds for some highly leveraged facilities.

Response: We recognize the concerns expressed over the lack of an exceptions process for hospitals that find themselves financially disadvantaged by the changeover to an average pricing system for capital expenditures. We are incorporating an exceptions process in this final rule, pursuant to authority granted to the Secretary under section 1886(d)(5)(C)(iii) of the Act, to deal with this problem. The exceptions process added here is based on that proposed as an option in the June 3, 1986 proposed rule (51 FR 19981), as modified in response to the comments received on that option. We had received 62 comments on that option, 18 opposed and 44 in favor. Of those commenters in favor, 25 suggested that less stringent or alternate criteria be used to establish eligibility for an exception payment adjustment to the Federal capital rates.

We are relaxing those criteria, as requested, to require that if the portion of a hospital's actual allowable inpatient capital cost not paid through the hospital-specific portion is 175 percent, or greater, than its Federal capital payments (based on the Federal prospective capital rates), the hospital will be eligible for an additional capital payment adjustment. We will pay an additional capital payment to recognize 70 percent of the difference between the portions (for plant/fixed equipment or movable equipment, or both) of the hospital's actual, allowable capital cost not paid through the hospital-specific portions, and 175 percent of its Federal capital payments (based on the Federal prospective capital rates). A pool of funds is established for this additional payment process by reducing the average standardized capital payment rates by five percent of total Federal capital payments, based upon the comparable provision of the statute at section 1886(d)(2)(E) of the Act relating to outlier payments and the general intent of Congress and the Secretary to maintain payment equity in new prospective payment system program initiatives. We estimate that approximately 13 percent of prospective payment hospitals, nationally, will be eligible for this additional adjustment to their prospective capital payment. The 175 percent threshold level and the 70 percent payment factor are similar to the factors considered by Congress in 1986 during its deliberations on a capital exceptions policy. Each year we will evaluate the appropriateness of the threshold level. Unless we propose to do otherwise, the five percent additional payment pool and the 70 percent payment factor will be unchanged during the transition period.

F. Outlier Policy

We proposed that payment for captial day outliers be determined based on the same provisions in effect for noncapital day outliers. We proposed that payment for cost outliers be determined based on total inpatient operating costs including capital.

Comment: In response to both the June 1986 NPRM (51 FR 20028) and the May 1987 NPRM (52 FR 18850), many commenters objected to the policy proposed for making additional payments for day and cost outlier cases in accordance with current prospective payment system statutory and regulatory guidelines. Commenters cited the following objections to the capital payment outlier proposal:

- The capital payment pool should not be reduced by five percent to provide for capital outlier payment.
- A marginal cost factor rate of 60 percent should not be used; rather, it should be 80 percent as proposed for other inpatient operating rate outliers or 100 percent as hospitals now receive under cost reimbursement rules.
- The criteria and payment levels for capital outliers should be separated from those for operating rate outliers under the prospective payment system.
- Outlier payments should not be made for capital items and services at all because those are, by definition,

fixed costs, whereas operating costs are marginal and variable and should be considered for marginal adjustment (outlier) payments in addition to a basic rate.

Response: There is no alternative, in our view, to the creation of a prospective capital payment outlier pool if such payments are to be made for capital items and services for cases meeting the day or cost outlier definitions contained in the prospective payment system statute. In that case, the provisions of section 1886(d)(2)(E) of the Act are clear in regard to creating a reserve of funds from the payment pool. As noted previously in these comments and responses, with the elimination of any statutory distinction between capital costs and other operating costs, effective with incorporation of the former in the prospective payment system per section 1886(a)(4) of the Act, the requirements for calculation and payment under section 1886(d) of the Act appear to be controlling. For this same reason, capital costs should be treated similarly with other inpatient operating costs, not as separate costs for outlier purposes.

We do agree that any increased marginal cost factor applied to other inpatient operating outlier payment situations would be applicable to capital outlier payment cases. However, since our intent is to replace capital payments under cost reimbursement rules with payment under the prospective payment system, full allowable cost reimbursement would be inappropriate.

The outlier methodology adopted in this final rule is generally the same as the methodology we published in the June 1986 NPRM. However, because section 206 of the Urgent Supplemental Appropriations Act for FY 1986 (Pub. L. 99–349) precluded the incorporation of capital payments into the prospective payment system for an additional year, we did not issue a final rule to do so at that time. However, we have considered the outlier comments on both the June 1986 and May 1987 NPRMs in the development of this final rule.

We are adopting, in general, the same methodology on payment of outliers as we had proposed in both NPRMs. That methodology combines the inpatient hospital operating and capital payment for outliers. The only methodological changes are necessitated by the features of the prospective capital payment system that are different from the June 1986 NPRM (such as, the construction cost index, separate plant/fixed and moveable payment rates, and different transition periods). These different features were stated in the May 1987 NPRM.

The methodology for computing outlier payments makes use of the labor-related, nonlabor related, and capital portions from the hospital market basket. These portions are derived from the same basic market basket data used in computing the prospective payment system update factor for FY 1987, as set forth in a September 3, 1986 final rule to update the prospective payment system (51 FR 31454), except that, for outlier purposes, the market basket includes a capital component that was described in the capital outlier methodology of the June 3, 1986 NPRM (51 FR 20028).

G. Interest Allocation

We proposed to allocate interest between plant/fixed equipment capital assets and moveable equipment assets by properly classifying capital interest expenses between plant/fixed equipment and moveable equipment.

Comment: Several commenters objected to any fixed formula approach to allocating interest expenses between moveable equipment and plant/fixed equipment. The comments generally indicated that Medicare cost report data were not precise enough to make an appropriate allocation of interest in all financing situations but that other allocation methods (such as historic book value or the first in/first assigned method) would significantly distort actual interest cost distribution to the degree that would seriously disadvantage hospitals financially. Two commenters suggested interest should be allocated to plant/fixed equipment first.

Response: With the changes we are making to the transition and blend for the moveable equipment component of prospective capital payments, we do not believe that any mechanism, other than Medicare's principles of reimbursement currently in effect, along with refinements noted in this document, and to cost reports to identify more precisely the cost of moveable equipment from plant/fixed equipment, will be needed to make appropriate capital payments for each category during the seven and ten-year transition periods for each component, respectively. Total payments for capital items and services of hospitals will not be affected by the split in the first four years of the transition period.

H. Puerto Rico

We proposed to establish separate adjusted average capital payment rates for urban and rural hospitals in Puerto Rico using FY 1984 Puerto Rico hospital data and, in general, the same methodology as that used for the fifty States and the District of Columbia.

Comment: One commenter noted that because the standardized Puerto Rico specific capital payment rate was very low, further audit of Puerto Rico hospitals' capital costs should be undertaken.

Response: We agree with the commenter. We have directly obtained, examined and extracted capital cost information from Puerto Rico hospitals' final, audited cost reports, and reviewed our rate calculation procedures. Those actions ensure that the revised standardized capital payment rates for Puerto Rico are accurate based on the data submitted by the hospitals and for which they have been reimbursed. In addition, since the blend for plant/fixed equipment and moveable equipment is the same for the first four years of the transition period, the specific capital payments for Puerto Rico hospitals is independent of the split between plant/fixed equipment and moveable equipment capital rates during this time period.

I. Capital Expenditure Agreements

We proposed, based on our interpretation of section 1886(g)(3) of the Act, not to impose the requirements under section 1886(g)(1) of the Act which provide that if legislation concerning payments for inpatient hospital capital costs is not enacted before October 1, 1987, no payment may be made for capital costs of capital expenditures for inpatient hospital services in a State or jurisdiction if such expenditures are obligated after September 30, 1987, unless the State or jurisdiction has an agreement with the Secretary under section 1122(b) of the Act and under such agreement the State recommended approval of the capital expenditure.

Comment: Several commenters supported our finding that mandatory section 1122 agreements and review approval under section 1886(g)(1) of the Act were nullified by legislation that added section 1886(g)(3) of the Act. However, two commenters stated that further congressional confirmation would be appropriate.

Response: We believe that unless there is a further statutory change to the pertinent sections of the law, our understanding of section 1886(g)(3) of the Act is a reasonable and appropriate interpretation.

J. Other

Comment: One commenter suggested that the recapture of depreciation rules at § 413.1[illegible] should be rescinded if the proposed rules are implemented due to reimbursement penalties against both

the seller and purchaser in such circumstances.

Response: The rules we are implementing to incorporate capital payments will not contravene those cost reimbursement rules applicable in determining the hospital-specific portion of prospective capital payments. Thus, purchasers in charge of hospital ownership situations will receive the same level of payment as the sellers were entitled to, subject to the capital payment transition blend and allowable cost determination rules.

While we agree that § 413.134 requires adjustments to the selling provider's allowable costs to recognize gains and losses on disposals of assets, we would not preclude payment of depreciation to the acquiring provider. In fact, in the proposed rule, we noted that assets may be revalued consistently with section 1861(v)(1) of the Act, and that revalued amount is used in determining the hospital specific portion of capital costs (52 FR 18853). Therefore, we do not agree with the commenter that double penalties would occur.

Comment: Several comments were received regarding the inappropriate use of DRG weights in calculating any prospective capital payment amounts. Commenters allege that because different hospital departments tend to be involved with particular mixes of cases, many departments involved with treatment and care of patients are high capital item and service areas, but low on square foot area, and have a skewed impact on payments using operating cost-based weights and indices. This results from the fact that the weights and case-mix index are used in calculations for moveable equipment capital payment rates and plant/fixed equipment rates separately under the proposed rule. Thus, if a hospital is highly capitalized on major moveable equipment in ancillary departments and tends to treat patients in that setting, but the rates reflect a much lower moveable to plant/fixed equipment split ratio, the hospital would be disadvantaged. Other commenters note that on specific DRG weights, there is an irreconcilable loss in the average weights being used to pay on a case-by-case basis. The most blatant example is lithotripter treatment cases in which that DRG weight is half that of invasive techniques that require very limited capital intensive resources. Thus, hospitals would not recover appropriate costs for such cases until weighting averages change, which could be years away. Further, there is no indication our rules would ensure such technological changes will be made at all or in any reasonable timeframe to assure adequate capital payment for hospitals that specialize in such activities.

Response: We refer the reader to the comment and response discussed above in section II.B.2. of the preamble concerning standardization. As we indicated above, use of total charges to recalibrate relative weights for intensity of resource use, including capital items and services increased by technology or other changes, will adjust the case-by-case payment levels.

Comment: Several commenters suggested that the mechanism for making blended capital payments during the transition period be specified in the final rule. Some suggested a standard schedule of, or regular bi-weekly payments to be settled at the end of the cost reporting year (that is, a periodic interim payment type approach).

Response: Under § 413.64(k)(3), hospitals have been paid special interim payments for capital costs. With the incorporation of capital costs into the prospective payment system, the hospital-specific portion of capital payments will continue to be paid on a special interim payment basis, as described in § 413.64(k)(3). Payment of the Federal portion of capital payments depends on whether the hospital is entitled to periodic interim payments. (Under section 1815(e) of the Act, as added by section 9311(a) of Pub. L. 99-509, with certain exceptions, payment for inpatient hospital services of hospitals subject to the prospective payment system is no longer made on a periodic interim basis, but rather on the basis of bills actually submitted.) If a hospital meets the exceptions criteria under section 1815(e) of the Act, the hospital may receive periodic interim payments for the Federal portion of its capital payments. Otherwise, the hospital will be paid on the basis of bills actually submitted for the Federal portion of its capital payments, in the same manner as payment is made for other inpatient operating costs.

Comment: Several commenters stated their agreement with our proposal not to adjust standardized capital payment rates for the offset to interest expenses on funded depreciation. However, one commenter suggested that the capital rates should reflect an amount for return on equity capital.

Response: As we pointed out in the June 3, 1986 proposed rule (51 FR 19978), payments for a return on equity capital must be treated in accordance with section 1886(g)(2) of the Act, as amended by section 9107 of Pub. L. 99-272, and are being phased-out separately over a three-year period. We refer the reader to a June 4, 1987 final rule (52 FR 21216).

Comment: One commenter requested that the final regulations clearly state which capital payment policy would apply to sole community hospitals for cost reporting periods beginning on and after October 1, 1990.

Response: In light of the statutory prohibition excluding sole community hospitals from inclusion in prospective capital payment rulemaking at this time, we expect to announce rules for sole community hospitals at an appropriate time prior to the expiration of that exemption.

III. Summary of Final Rule

Under this final rule, hospitals subject to the prospective payment system, other than SCHs, will begin receiving capital payments on a prospective payment basis effective with cost reporting periods beginning on or after October 1, 1987, based on a combination of a Federal capital rate and a hospital-specific portion during ten-year and seven-year transition periods for plant/fixed equipment and moveable equipment, respectively. This will continue until capital payments are fully integrated into the prospective payment system with cost reporting periods beginning on or after October 1, 1997. Following is a summary of the methodology we have used in establishing the capital prospective payment rates and of other decisions affecting those payment rates.

A. Determination of Federal Capital Payment Rates

Step 1—Split of Plant and Fixed Equipment From Moveable Equipment

Inpatient capital cost data from FY 1984 Medicare cost reports (latest available audited data) were used in the determination of the Federal capital payment rates. In determining the split of plant and fixed equipment from moveable equipment, ratios of plant and fixed equipment costs to the total capital costs, and of moveable equipment costs to the total of capital costs, were developed for each hospital. Capital costs for departments as shown on the Medicare cost report, such as nursery, other reimbursable cost centers (for example, home dialysis), and nonreimbursable cost centers were excluded from these totals because these costs do not represent inpatient capital costs for Medicare payment. Since a split of plant/fixed equipment and moveable equipment could not be determined for directly assigned capital costs at the time the NPRM was

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published, directly assigned capital costs were treated as moveable equipment costs only for those hospitals that did not separately report capital costs in the moveable equipment cost center.

For those cases in which capital costs were reported in both the moveable equipment cost center and the directly assigned cost center, the directly assigned costs were not used in the ratio calculations. That is, we assumed that the split of plant and fixed equipment from moveable equipment in the directly assigned cost category is consistent with the split in the plant and fixed equipment from moveable equipment cost centers.

Inpatient capital costs apportioned to the Medicare program were split between plant/fixed equipment and moveable equipment, using the ratios as determined above for each hospital.

Through additional audit efforts, we collected further information on directly assigned capital costs from a sample of hospitals for their FY 1984 cost reports to disaggregate these costs between plant/fixed equipment and moveable equipment, more precisely.

The study results show that the majority of the costs classified to the directly assigned category in the Medicare cost report were for moveable equipment costs. Based on those results, we are adjusting the plant/fixed equipment and moveable equipment ratios determined for each hospital by apportioning directly assigned capital costs in the following manner:

[In percent]

	Urban	Rural
Ratio of plant/fixed equipment costs to total capital costs	28.3	18.2
Ratio of moveable equipment costs to total capital costs	71.7	81.8

Step 2—Adjustments and Standardizations

General

The Federal capital payment rates calculated separately for plant/fixed equipment and for moveable equipment from Federal FY 1984 cost reporting data are adjusted, updated, standardized and computed as separate national averages for urban and rural hospitals, in the 50 States and the District of Columbia. (For background, refer to the NPRM published on May 19, 1987 (52 FR 18846).)

Puerto Rico

We developed a separate adjusted average payment rate for urban and rural hospitals in Puerto Rico using FY 1984 Puerto Rico hospital data and, in general, using the same methodology as that used for the 50 States and the District of Columbia.

Standardization

We standardized the Medicare capital plant/fixed equipment and moveable equipment costs of each hospital to eliminate cost variations due to differences in case mix complexity, indirect medical education, and disproportionate share payments (and, for the moveable capital costs of hospitals in Alaska and Hawaii, a cost-of-living adjustment, and for plant/fixed capital costs, a construction cost index adjustment).

We are required to compute urban and rural averages as provided by sections 1886 (d)(2)(D) and (d)(3)(D) of the Act.

Local Cost Variations

In recognition of the variations in construction cost among areas, a construction cost index (presented in Appendix B of this document) will be applied in making payments for plant/fixed equipment. This construction cost index applies only to the Federal payment portion for plant/fixed equipment since such variations are already recognized on an individual hospital basis in determining the hospital-specific portion using a "rolling base." The construction cost index will be applied to standardize the plant/fixed equipment cost data in the same manner that cost data are standardized for case mix, indirect medical education and disproportionate share. (For a detailed description of the methodology used to compute the construction index, see the May 1987 NPRM (52 FR 18846).)

Step 3—Updating

The results from step 2 (the standardized average fixed and moveable costs per case for each hospital) are updated through FY 1987 using the estimated rate of increase in actual inpatient hospital capital costs.

The following update factor percentages were used to establish the capital rates set forth in Appendix A of this document:

Fiscal year	Update factor percentages
1985	17.29
1986	10.86
1987	7.06
1988	6.83
1989	5.86

In light of the requirement that aggregate payments for inpatient capital costs under a prospective payment system approximate aggregate payments for inpatient capital costs under cost reimbursement subject to the reductions under section 1886(g)(3) of the Act, we updated hospitals FY 1984 costs per case through FY 1987 by the estimated actual increase in capital costs per case, as shown above, for purposes of establishing the rates. We will also update costs for FY 1988 and FY 1989, as shown above, for purposes of estimating the payments that would be made, subject to the reductions under section 1886(g)(3) of the Act, under reasonable cost principles, as described in further detail in the May 1987 NPRM (52 FR 18849). (The latter estimate will form the basis of the budget neutrality adjustment to the rates.)

For FY 1990 onward, the same update factor methodology will apply to the capital rates as to all other inpatient hospital operating rates.

This methodology will account for—

- Increases in the hospital market basket;
- Plant/fixed equipment separately from moveable equipment;
- Cost-effective technologies;
- Improved practice patterns;
- Pricing of depreciable assets;
- Consideration of interest expense; and
- Productivity.

Step 4—Separate Averages

The amounts resulting from step 3 are then used to compute average standardized rates for plant/fixed equipment and moveable equipment, for all urban hospitals and for all rural hospitals in the United States and the District of Columbia, and for urban and rural hospitals in Puerto Rico. The national urban and rural averages are discharge-weighted in the same manner as the prospective payment rates for other inpatient hospital operating costs that will be in effect with discharges occurring on or after October 1, 1987.

Step 5—Reducing for Outliers

In accordance with section 1886(d)(5)(A) of the Act, we are amending the current outlier policy (in 42 CFR Part 412, Subpart F) by adding capital to the pool set aside for outliers. The average standardized rates for plant/fixed equipment and moveable equipment resulting from step 4 are reduced by the proportion (estimated by HCFA) of the amount of payments that, based on the total amount of the Federal capital payments for urban hospitals and the total amount of the Federal

capital payments for rural hospitals, are additional payments for outlier cases.

We are providing that payment for capital day outliers (extended length-of-stay cases) will be determined based on the same provisions in effect for noncapital day outliers (§ 412.82). We are providing that payment for capital cost outliers (extraordinarily high-cost cases) will be determined based on both total inpatient operating costs for each case including capital. We are amending § 412.84 to provide that payment for high capital cost cases may occur only when the inpatient operating costs including capital exceed the cost outlier threshold.

The day outlier and cost outlier criteria are revised as follows (note that criteria are the same for capital outliers and noncapital (that is, other inpatient operating cost) outliers):

- For FY 1988, we are setting the day outlier threshold at the lesser of 18 days or two standard deviations, and the cost outlier threshold at the greater of two times the Federal rate for the DRG, or $14,000.
- We are revising the national ratio of cost to charges used to compute a hospital's cost outlier payments from .66 to .71 to reflect the inclusion of capital costs.

We note that the outlier methodology reflected in this final rule is based on the outlier methodology for other inpatient operating costs as described in the final rule on changes to the inpatient hospital prospective payment system, which is published elsewhere in this issue of the **Federal Register**.

With the inclusion of capital in the outlier computation, we are providing two examples to illustrate the computation of day outliers and cost outliers. The two examples are applicable to hospitals with cost reporting periods that occur on the same basis as the Federal fiscal year (that is, October 1, 1987) and, therefore, will begin receiving payment for capital under the prospective payment system beginning October 1, 1987.

For hospitals with cost reporting periods that occur after October 1, 1987, capital costs continue to be paid on a pass-through basis as of October 1, 1987 through the end of the hospital's cost reporting period that began in FY 1987. For those hospitals, outlier payments will continue to be paid for other inpatient operating costs as described in the examples in the September 3, 1986 final rule (51 FR 31523).

The following is an example of how additional payment would be determined for a day outlier (which does not qualify as a cost outlier) in FY 1988.

Hospital X is a small central city teaching hospital located in the San Francisco MSA. Hospital X is entitled to an indirect medical education adjustment of 7.871 percent as well as a disproportionate share adjustment of five percent. Mrs. Smith is admitted to hospital X on October 3, 1987 and is discharged October 31, 1987. Mrs. Smith's stay is classified in DRG 31. Because Mrs. Smith's 28 day stay exceeds the 22 day length-of-stay outlier threshold for DRG 31, hospital X is eligible for payment for six outlier days in addition to the otherwise applicable prospective payment. The amount of Hospital X's outlier payment (excluding the usual Federal payment that applies to both outliers and non-outlier cases) is calculated as follows:

Step 1: Computation of Federal Rate (excludes capital, indirect medical education (IME), and disproportionate share hospital (DSH) payments)

National Urban Standardized Amounts:
Labor-related.....$2,337.09
Nonlabor-related.....828.12
San Francisco Wage Index.....1.4946
DRG 31 Relative Weight.....6550

.6550 × (2337.09 × 1.4946 + 828.12) = $2830.34

Step 2: Computation of Federal Capital Payments

A. Plant/fixed Equipment:
Federal Rate.....$180.03
San Francisco Construction Cost Index.....1.043
DRG 31 Relative Weight.....6550
Federal Portion of Plant/Fixed Equipment Capital Rate.....5%

.6550 × (180.03 × 1.043) × .05 = $6.15

B. Movable Equipment:
Federal Rate.....$122.39
DRG 31 Relative Weight.....6550
Federal Portion of Movable Equipment Capital Rate.....5%

.6550 × (122.39) × .05 = $4.01

C. Capital Outlier Payment Amount:
6.15 + 4.01 = $10.16

Step 3. Payment Amount, Including Capital

DRG 31: 2830.34 + 10.16 = $2840.50

Step 4. Computation of Day Outlier Payments

DRG 31:
Geometric Length of Stay.....4.2 days
Outlier Threshold.....22 days
Outlier Days...28 days length of stay minus 22 day threshold = 6 days
Marginal Cost Factor.....60
Outlier Payment (excluding IME & DSH adjustment) = # of outlier days × (Total Federal Payment ÷ Geometric length of stay for DRG) × Marginal cost factor
6 × (2840.50 ÷ 4.2) × .60 = $2437.71

Step 5: Computation of IME and DSH adjustment for Day Outliers

IME Adjustment Factor.....07871
DSH Adjustment Factor.....05
Outlier Payment.....$2437.71

IME Outlier Adjustment:
2437.71 × .07871 = $191.87

DSH Outlier Adjustment:
2437.71 × .05 = $121.89

Step 6. Total Day Outlier Payments

Regular	2437 71
IME	191 87
DSH	121 89
Total	2751 47

The following is an example of how the additional payment would be determined for a high cost outlier in FY 1988. Same facts as in the day outlier example with the exception that Mrs. Smith's length of stay was 16 days and she incurred total billed charges of $100.000.

Step 1: Computation of Hospital X's Standardized Costs (Includes Capital [2])

Billed Charges—$100.000
National Ratio of Cost to Charges[2]—.71
IME Adjustment Factor—.07871
DSH Adjustment Factor—.05

[2] This factor reflects the inclusion of capital costs and the exclusion of interest income on funded depreciation as described in the June 3, 1986 NPRM (51 FR 20029).

$$\text{Standardized cost} = \frac{\$100.000}{1+(.07871+.05)} \times .71 = \$62.903.67$$

Step 2: Determination of Cost Outlier Thresholds

Computation 1—(Based on Federal Rate)
DRG 31 Federal rate excluding capital.....$2830.34
DRG 31 Federal capital payment rate...DRG 31
Relative weight.....6550
Plant/fixed Equipment Federal Rate.....$180.03
Construction Cost Index (San Francisco).....1.043
Moveable Equipment Federal Rate.....$122.39
Federal Capital Rate=(180.03 × 1.043 + 122.39) × .6550=$203.16
Federal Rate including capital for threshold computation—$2830.34 + 203.16=$3033.50
Federal Rate, doubled=2 × $3033.50=$6067.00
Computation 2—Based on Adjusted Standard Cost Outlier Threshold
Standard Cost Outlier Threshold—$16,000
Labor-related share [3]—68.632%
San Francisco MSA wage index—1.4946
Nonlabor-related share, excluding capital [3]—23.628%
Nonlabor-related share; capital only[3]—
Plant/Fixed Equipment Share—5.761%
Moveable Equipment Share—1.979%
Construction Cost Index (San Francisco)—1.043
Adjusted Cost Outlier Threshold including capital = (16,000 × .68632 × 1.4946) + (16,000 × .23628) + (16,000 × .05761 × 1.043) + (16,000 × .01979) = $21,470.90
Computation 1 result.....$6,067.00
Computation 2 result.....$21,470.90
Applicable cost outlier threshold...L$21,470.90

Step 3: Calculation of Cost Outlier Payment

Outlier Cost—$62,903.67 − 21,470.90 = $41,432.77

Capital portion of outlier cost
—Plant/Fixed Equipment:

$41,432.77 × .05761 = $2386.94 Federal portion of Plant/Fixed Equipment Rate: 5%
Federal Plant/Fixed Equipment Portion of Outlier Cost $2,386.94 × .05 = $119.34

—Moveable Equipment:

$41,432.77 × .01979 = $819.95 Federal Portion of Moveable Equipment Rate: 5%
Federal Movable Equipemnt Portion of Outlier
Cost: $819.95 × .05 = $41.00
Outlier Cost Excluding Capital
$41,432.77 − (2386.94+819.95) = $38,225.88
Marginal Cost factor.....60
Outlier payment—capital and noncapital portions
($119.34 + 41.00 + 38,225.88) × .60 = $23,031.73

[3] These market basket weights reflect updated 1986 market basket components, including capital, which are based on 1982 cost data as described in the June 3, 1986 proposed rule (51 FR 19985–19988).

Step 4: Cost outlier payment for indirect medical education costs

Percent add-on for indirect medical education—7.871%
Indirect medical education cost outlier payment—$23,031.73 × .07871 = $1,812.82

Step 5: Cost outlier payment adjustment for disproportionate share hospital (DSH)

DSH percentage add-on.....5%
DSH outlier payment
$23,031.73 × .05 = $1,151.59

Step 6: Total cost outlier payments

Regular	$23,031.73
Indirect Medical Education	1,812.82
Disproportionate Share	1,151.69
Total	25,996.24

Step 6—Reducing for additional payments for financially disadvantaged hospitals

Under section 1886(d)(5)(C)(iii) of the Act, we are reducing the average standardized rates for plant/fixed equipment and moveable equipment resulting from step 4 to obtain a five percent pool of funds. This reduction represents the amount necessary to generate two pools of funds to be paid to urban hospitals and rural hospitals that meet the criterion indicating that they are financially disadvantaged under the prospective capital payment system.

We are adding § 412.68 stating that the eligibility criterion is based on whether a hospital's actual, allowable inpatient capital costs not paid through the hospital-specific portion are 175 percent or more than the hospital's total Federal capital payments received based on the Federal prospective capital rates. The amount of the additional capital payment for a hospital meeting the eligibility criterion will be equal to 70 percent of the difference between 175 percent of the hospital's Federal capital payments received based on the Federal prospective capital rates during the transition period and its actual allowable inpatient cost not paid through the hospital-specific portion. We will announce prior to October 1 of each year of the transition period any changes to the threshold level, if needed, to maintain the five percent pool.

Step 7—Budget neutrality

Section 1886(g)(3)(C)(ii) of the Act requires that, effective with cost reporting periods beginning during FY 1988, Medicare capital payments under the prospective payment system shall approximate the amount that would have been made (taking into account the seven percent reduction in capital payments in FY 1988 under section 1886(g)(3)(A)(ii) of the Act) without such inclusion into the prospective payment system (that is, be budget neutral). Since we assumed that the seven percent reduction to capital payments applied with or without the incorporation of capital into the prospective payment system, we did not reduce the amounts resulting from steps 5 and 6 by seven percent. In like manner, since sole community hospitals are excluded from a capital prospective payment system (section 1886(g)(3)(C)(i) of the Act) through cost reporting periods beginning before October 1, 1990, we did not adjust the amounts resulting from steps 5 and 6 for their costs.

We are adjusting the amounts resulting from steps 5 and 6 (by a budget neutrality adjustment factor of 1.0357) so that capital payments during FY 1988 under the capital prospective payment system equal the capital payments that would have been paid for the same time period in the absence of this system (that is, under the reasonable cost reimbursement system). Taking into consideration the different blends of the hospital-specific and Federal portions applied to plant/fixed equipment and moveable equipment in FY 1988, the budget neutrality equation is as follows:

.95 HSP Fixed + .05 Fed Fixed + .95 HSP Mov + .05 Fed Mov = CRC Fixed + CRC Mov

where—

- HSP Fixed and HSP Mov represent the total hospital-specific payments made for plant/fixed equipment and moveable equipment during FY 1988 under the capital prospective payment system;
- Fed Fixed and Fed Mov are the total Federal payments for plant/fixed equipment and moveable equipment during FY 1988 under the capital prospective payment system; and
- CRC Fixed and CRC Mov are the capital costs for plant/fixed equipment and moveable equipment that would have been paid under the reasonable cost reimbursement system.

Since the hospital-specific capital payments are based on actual costs in FY 1988, the budget neutrality equation can be modified as follows:

.05 Fed Fixed + .05 Fed Mov = .05 HSP Fixed + .05 HSP Mov

The terms on both sides of the equation were estimated for each hospital applying the payment rules described elsewhere in this final rule.

For each hospital, the hospital-specific payments were adjusted to the midpoint of the hospital's FY 1988 fiscal year. The Federal payments were estimated using rates adjusted to the midpoint of FY 1987. In both cases, these adjustments were based on estimates of the actual rate of increase in capital costs per admission derived from AHA data. As a result of the one year difference between the updating of the hospital-specific and Federal variables, the adjustment factor defined below accounts both for capital cost differences between 1987 and 1988 and for the budget neutrality requirement.

Federal payments were computed using case-mix indexes for FY 1986. Since all estimates were made on a per discharge basis, the number of discharges has no effect on the value of the adjustment factor.

To calculate the required adjustment to the Federal rates, we substituted the adjusted Federal payments for the Federal terms in the equation above. Let the adjustment factor applied to the Federal rates be k. Then the adjusted Federal payments are k*Fed fixed and k*Fed Mov. Solving the resulting equation for k yields the following:

k = (.05 HSP Fixed + .05 HSP Mov) / (.05 Fed Fixed + .05 Fed Mov)

B. Determination of the Hospital-Specific Portion of the Capital Payment

The hospital-specific portion of the capital payment during the transition period will be made by determining Medicare's share of the actual allowable capital costs of hospital plant/fixed equipment and of moveable equipment apportioned to inpatient areas for each transition year as determined under Medicare's principles of reimbursement that implement section 1861(v) of the Act and Subpart G of 42 CFR Part 413. We then determine the hospital-specific amount by reducing those costs by the percentage factors (seven and ten percent) mandated for FYs 1988 and 1989, respectively, and the appropriate blend percentages.

Step 1—Allocation of equipment

The amount of Medicare allowable capital costs of plant/fixed equipment and of moveable equipment, separately apportioned to inpatient hospital services, will be determined pursuant to §§ 412.113(a) and 413.130. Due to the importance of splitting fixed/plant from moveable equipment, we are providing a detailed list for classifying the current and future items of hospital capital in Appendix C. The HCFA list is an adaptation of the list of the American Hospital Association (AHA) 1987 Edition and is an extensive, but not exhaustive list of items of plant/fixed equipment, and of moveable equipment. (We noted in the May 1987 NPRM that we have added extracorporeal shockwave lithotripters and magnetic resonance imaging equipment to the AHA list of equipment under the moveable equipment category.) We will update the list periodically as necessary through notices published in the **Federal Register**. We also note that the definitions contained in the Provider Reimbursement Manual (HCFA Pub. 15–1, Chapters 1 and 2) will be used to classify equipment not specified on the list. We will also allow a hospital that has been classifying items differently than the classifications under the list in Appendix C of this final rule, or as defined in § 412.67(d), to continue its current classification practice if the present classification was in effect prior to its cost reporting period beginning on or after October 1, 1987, and the hospital demonstrates to the fiscal intermediary that the classification of equipment in question is based on longstanding past practices and is not for the purpose of affecting prospective capital payments.

Step 2—Apportionment

The Medicare allowable capital costs of plant/fixed equipment and of moveable equipment, apportioned to inpatient hospital services, are reduced by the appropriate percentage factor pursuant to section 1886(g)(3) of the Act, as added by section 9303 of Pub. L. 99–509. The capital costs thus reduced by seven percent and ten percent in FYs 1988 and 1989, respectively, are then multiplied by the appropriate hospital-specific blend percentage applicable to the pertinent transition cost reporting period.

C. Additional Payments

We are directed by section 1886(d)(5) of the Act to provide additional payments for outliers (section 1886(d)(5)(A)), indirect medical education (section 1886(d)(5)(B)), and disproportionate share adjustments (section 1886(d)(5)(C)) for hospitals that are under the prospective payment system. As a result, we are required to add to the current inpatient operating payment the portion of the Federal Capital payment for those additional payments that we are including in the prospective payment rate. In addition, pursuant to the Secretary's discretionary exceptions and adjustments authority under section 1886(d)(5)(C)(iii) of the Act, we will be providing additional payments to hospitals that are financially disadvantaged by the changeover to the prospective capital payment system.

1. Payments for Outliers

The pool of funds for day and cost outlier payments is increased by reducing the average standardization Federal capital payment rates by the same factors used to reduce inpatient operating prospective payment rates. In determining the amount of a day outlier payment, we are using the same methodology currently used for inpatient operating costs. That is, the Federal capital and inpatient operating standardized amounts, adjusted to reflect the construction cost index and the wage index (as appropriate), and also to reflect the appropriate blends, are multiplied by the applicable DRG weighting factor. The resulting adjusted standardized amounts for capital and other inpatient operating are added together, and the result divided by the geometric average length-of-stay figure for the DRG. This amount is then multiplied by the marginal cost factor, and the resulting amount will be paid to the hospital for each day of care beyond the day outlier threshold. We refer the reader to section III.A. step 5 of the preamble for a further discussion and examples of the outlier provisions.

In determining the amount for a cost outlier payment, we are using the same methodology currently used for other inpatient operating costs. Since we are including capital costs, as part of total inpatient operating costs, we will make any appropriate changes to the cost outlier thresholds to reflect additional capital costs. The plant/fixed capital portion of the thresholds will be adjusted by the construction cost index in the same manner as the other inpatient operating portion is adjusted by the hospital wage index. In addition, the national cost-to-charge ratio used in determining cost outlier payments will be increased to reflect capital costs.

We reiterate that capital outlier payments will not be paid until a hospital is subject to prospective payments for capital, that is, effective for discharges in cost reporting periods beginning on or after October 1, 1987. For example, if a hospital's cost reporting period in FY 1988 begins January 1, 1988, capital outlier payments would be made, if applicable, for discharges occurring on or after January 1, 1988. Therefore, adjustments to outlier payments for capital would not be available to that hospital until January 1, 1988. In addition, changes to both cost and day outliers criteria and capital outlier payments would apply on a Federal fiscal year basis in order to

maintain consistency with the outlier policy for other inpatient operating costs under the prospective payment system. This means that changes in outlier criteria and payments announced next year to be effective for Federal FY 1989 will apply to the January 1, 1988 hospital as of October 1, 1988.

In summary, we are making appropriate changes to §§ 412.82 and 412.84 to incorporate capital into the outlier criteria and payments.

2. Payments for Indirect Medical Education

We adjusted the average standardized amounts to account for indirect medical education payments. Hospitals that are eligible for indirect medical education payments under § 412.118 will receive an additional payment to their capital payments for indirect medical education costs to be calculated in the same manner as other inpatient operating indirect medical education payments are determined.

3. Payments for Hospitals that Serve a Disproportionate Share of Low-Income Patients

We adjusted the average standardized amounts to account for the costs of hospitals that serve a disproportionate share of low-income patients. Hospitals that meet the disproportionate share criteria under § 412.106 will receive an additional payment to their capital payments for disproportionate share costs to be calculated in the same manner as other inpatient operating disproportionate share payments are determined.

4. Payment Adjustment for Hospitals that Meet the Eligibility Requirements for an Exceptions Process

We adjusted the average standardized amounts to account for the cost of increasing the Federal capital payment amount for hospitals that meet the eligibility criteria established for hospitals that are financially disadvantaged during the transition period by the level of their capital payments in comparison to their actual inpatient hospital capital cost per discharge. As discussed above, we are providing a reserve pool of funds necessary to make these payments.

D. Total Capital Payment

The total capital payment to a hospital for any particular cost reporting period will be a total of the following components:

• The total of the hospital-specific amounts for discharges occurring in a period according to the following formula:

Medicare's Share of Allowable Cost for Plant and Fixed Equipment.	X	Applicable Factor[*].	Percentage Reduction	X	Hospital-Specific Portion Blend Percentage.		Transition
—Plus—							
Medicare's Share of Allowable Cost for Moveable Equipment.	X	Applicable Factor[*].	Percentage Reduction	X	Hospital-Specific Portion Blend Percentage.		Transition

[*] Represents the reduction applicable for FYs 1988 and 1989 as provided under section 1886(g)(3) of the Act.

• The aggregate Federal portion payment amounts for plant/fixed equipment and for moveable equipment, for discharges occurring during the pertinent cost reporting period based on the following formula:

Total of Plant and Fixed Equipment Federal Rate Per Discharge.[5].	X	Area Construction Index.	X	DRG Weight	X	Any Applicable Adjustment.[6].	X	Federal Transition Blend Percentage.		
—Plus—										
Moveable Equipment Federal Rate Per Discharge.[5].	X	DRG Weight	X	Any Applicable Adjustment.[6].	X	Federal Transition Blend Percentage.				
—Plus—										
Any Applicable Outlier and Exceptions Payments.										

[5] Includes the reductions and budget neutrality adjustments applicable for FYs 1988 and 1989 as provided under section 1886(g)(3) of the Act.
[6] For example, indirect medical education, disproportionate share.

E. New Hospitals

As a result of using a "rolling" base to determine the hospital-specific portion of the capital payment during the transition period, no special provision will be made for new hospitals that become subject to the prospective payment system upon entering the Medicare program. A new hospital is subject to the capital payment transition blends in effect at the beginning of its cost reporting period when it enters the program. Thus, a hospital entering the program (that is, newly participating in the Medicare program, under present or previous ownership) on January 1, 1993 will be paid at 70 percent of its hospital-specific costs and 30 percent of its Federal rate for plant/fixed equipment and 100 percent of its Federal rate for moveable equipment.

F. Sole Community Hospitals

As prescribed in section 1886(g)(3)(C)(i) of the Act, sole community hospitals will continue to be paid under the reasonable cost methodology described in section 1861(v)(1) of the Act with respect to capital costs for cost reporting periods beginning before October 1, 1990.

G. Capital Expenditure Agreements

Section 1886(g)(1) of the Act provides that, if legislation concerning payment for capital costs for inpatient hospital services is not enacted before October 1, 1987, no payment may be made for capital costs of capital expenditures (as defined in section 1122(g) and except as provided in section 1122(j) of the Act) for inpatient hospital services in a State (including the District of Columbia and Puerto Rico as defined in sections 210(h) and 1861(x) of the Act) if such expenditures are obligated after September 30, 1987, unless the State or jurisdiction has an agreement with the

Secretary under section 1122(b) of the Act and under such agreement the State recommended approval of the capital expenditure.

The deadline in section 1886(g)(1) of the Act for legislation to avoid invocation of the section 1122 requirements was extended to October 1, 1987, by section 206 of Pub. L. 99–349, enacted July 2, 1986. Subsequently, under section 9303 of Pub. L. 99–509, Congress enacted section 1886(g)(3) of the Act, which requires certain reductions in the payments for capital costs for inpatient hospital services. We stated in the NPRM that we believe that section 1886(g)(3) constitutes the necessary legislation required under section 1886(g)(1) "respecting the payment . . . for capital-related costs for inpatient hospital services," thus nullifying the requirement of section 1886(g)(1).

H. Interest Expense

As we stated in the May 1987 NPRM, interest expense, as described in § 413.153, is an integral part of capital costs. Under the current Medicare capital payment system (reasonable costs), it is important for hospitals to distinguish operating interest from capital interest appropriately since interest on funds borrowed for operating expenditures is included under the inpatient hospital prospective payment system, and therefore is not a pass-through, while interest on funds borrowed for capital expenditures is paid for on a reasonable cost pass-through basis. We proposed in the NPRM to continue the application of this principle without change throughout the transition period. We will apply this principle and Medicare's principles of reimbursement to establish the amount and appropriate split of capital interest expense for purposes of determining the hospital-specific portion of each hospital's prospective capital payment during the transition period, in the manner described below.

1. Treatment of interest expense

We are determining interest expense allocation based on current regulations (§ 413.153) and program guidelines (see section 3202.1 of the Provider Reimbursement Manual (HCFA Pub. 15–1)). To be allowable as a Medicare expense, interest must be—

- Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of funds are required;
- Identifiable in the hospital's records;
- Related to the reporting period in which the costs are incurred; and
- Necessary and proper for the operation, maintenance, or acquisition of the hospital's facilities.

To support the existence of a loan, the hospital must have available a signed copy of the loan contract, which should contain the pertinent terms of the loan. If the lender does not customarily furnish a copy of the loan contract, correspondence from the lender stating the pertinent terms of the loan would be acceptable. If interest expense has been determined to be allowable and the interest expense records are maintained physically away from the hospital's premises, such as a county treasurer's office, these records will be deemed to be those of the hospital. This is applicable when bond issues have been specifically designated for the construction or acquisition of hospital facilities and the financial records relative to the bond issue are maintained by some governmental body.

Once the allowable interest expense on capital indebtedness is determined, the interest expense is to be classified to plant/fixed equipment or to moveable equipment using the current Medicare principles of reimbursement for classifying interest.

If a loan is obtained to finance the purchase of a facility or moveable equipment, the interest expense is classified to plant/fixed equipment or to moveable equipment, as appropriate.

If a loan is obtained to finance the purchase of facilities and various equipment items, the interest expense must be distributed among the assets the loan covers based on the purchase price of the acquisitions.

Example:

Assets purchased	Purchase cost
Buildings & Fixtures	$240,000
Moveable Equipment	60,000
Total	300,000

Of the $300,000 purchase price, assume the hospital borrowed $270,000 for buildings, fixtures, capital improvements and moveable equipment at 10 percent annual interest. Thus, annual interest on the loan is equal to $27,000. The allocation to plant/fixed equipment and to moveable equipment is shown below:

Building Fixtures	$\frac{\$240,000}{\$300,000}$	$\times 270,000 \times 10\% =$	$21,600
Moveable Equipment	$\frac{\$60,000}{\$300,000}$	$\times \$270,000 \times 10\% =$	5,400
Total Interest Expense			$27,000

If a loan is obtained to finance the purchase of a facility and equipment and the loan exceeds the asset value of the acquisitions, the interest expense on that portion of the loan in excess of the asset value of the acquisitions is not considered capital. The portion of the interest expense on the asset value of the acquisitions must be distributed among the assets of the loan as described in the example above.

There are some cases in which a hospital may, for a variety of reasons, undertake advance refunding (that is, to replace existing debt prior to its scheduled maturity with new debt). The revenues and expenses associated with the advance refunding are treated in accordance with the principles set forth in section 233 of the Provider Reimbursement Manual. The allocation of interest expense on the new debt will be dependent upon the allocation used under the old debt.

If a hospital has consolidated various individual debts through advance refunding, the interest expense on the new debt will be allocated to the appropriate accounts based on the old debt balances that were refinanced.

Further refinements and clarifications to the cost-finding rules and the cost-reporting methodology will be developed through HCFA's administrative issuances system.

2. Treatment of Interest Income from Funded Depreciation

To minimize the disruption in a hospital's cash flow during the initial part of the transition period, we will not offset the interest expense for income earned on funded depreciation.

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I. Revaluation of Assets

Under section 1861(v)(1) of the Act, for hospital acquisitions which involve revaluation of assets, the new depreciation value of the purchased asset is limited to the lesser of the purchase price or original book value of the asset. When the sale price of the asset exceeds the net book value, Medicare recaptures its proportion of previous depreciation payments from the seller.

Under this final rule, fixed and moveable capital expenses will be phased-in using different transition schedules. For fixed assets, the amount of the capital expenses after adjustments for gains and losses due to changes of ownership will be equal to the percentage of fixed assets (as provided in the proposed transition period) that are subject to the hospital-specific portion of capital costs. Similarly, for moveable assets, the capital expenses after adjustment for gains and losses due to changes of ownership will be the percentage of moveable equipment (as provided in the proposed transition period) subject to the hospital-specific capital payment.

J. Hospitals and Units Not Subject to the Prospective Payment System

Capital costs for hospitals and units excluded from the prospective payment system will continue to be paid on a reasonable cost basis.

IV. Other Required Information

A. Impact Statement

See Appendix D for the Regulatory Impact Analysis.

B. Paperwork Reduction Act

In the May 1987 NPRM we stated that § 412.65(b) of this rule contains information collection requirements subject to approval by the Executive Office of Management and Budget under section 3507 of the Paperwork Reduction Act (44 U.S.C. 3507). The requirements of this final rule do not impose any information collection requirements that must be approved under the Paperwork Reduction Act. Therefore, the final rule need not be reviewed by EOMB for that purpose.

List of Subjects in 42 CFR Part 412

Health facilities, Medicare.

42 CFR Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1320a–1, 1395hh, and 1395ww).

B. The Table of Contents of Part 412 is amended by adding the titles of new §§ 412.65 through 412.68 to Subpart D, and by adding § 412.214 to Subpart K to read as follows:

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

Sec.

* * * * *

412.65 Incorporation of capital payments into the prospective payment system.
412.66 Federal capital rates beginning during and after Federal fiscal year 1988.
412.67 Phase-in period and methodology for capital payments.
412.68 Additional payments for capital costs.

* * * * *

Subpart K—Prospective Payment System for Hospitals Located in Puerto Rico

* * * * *

Sec.

412.214 Capital payments.

* * * * *

C. Subpart A is amended as follows:

Subpart A—General Provisions

1. Section 412.1 is amended by revising paragraph (a) to read as follows:

§ 412.1 Scope of part.

(a) *Purpose.* This part implements section 1886(d) of the Act by establishing a prospective payment system for inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983. Under the prospective payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system (generally, short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. Payment for other costs related to inpatient hospital services (capital costs for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1987, kidney acquisition costs incurred by hospitals with approved renal transplantation centers, direct costs of medical education, and, for cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987, the costs of qualified nonphysician anesthetists' services) is made on a reasonable cost basis. Additional payments are made for outlier cases, bad debts, and indirect medical education costs. Under the prospective payment system, a hospital may keep the difference between its prospective payment rate and its operating costs incurred in furnishing inpatient services, and is at risk for operating costs that exceed its payment rate.

* * * * *

2. In § 412.2, the introductory language of paragraphs (c) and (d) is republished; a new paragraph (c)(5) is added; and paragraph (d)(1) is revised to read as follows:

§ 412.2 Basis of payment.

* * * * *

(c) *Inpatient operating costs.* The prospective payment system provides a payment amount for inpatient operating costs, including—

* * * * *

(5) For cost reporting periods beginning on or after October 1, 1987, capital costs as described in Subpart D of this part.

(d) *Excluded costs.* The following inpatient hospital costs are excluded from the prospective payment amounts and paid for on a reasonable cost basis:

(1) For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1987, capital costs as described in § 413.130 of this chapter; and an allowance for return on equity, as described in § 413.157 of this chapter.

* * * * *

D. Subpart D is amended as follows:

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

1. Section 412.63 is amended by revising paragraph (a)(1) to read as follows:

§ 412.63 Federal rates for fiscal years after Federal fiscal year 1984.

(a) *General rule.* (1) HCFA determines a national adjusted prospective payment rate for each inpatient hospital discharge in a Federal fiscal year after fiscal year 1984 (including an additional payment, effective with cost reporting periods beginning on or after October 1, 1987, for the incorporation of capital payments as described in § 412.65) involving inpatient hospital services of a hospital in the United States subject to the prospective payment system, and determines a regional adjusted prospective payment rate for such discharges in each region, for which payment may be made under Medicare Part A.

* * * * *

2. New §§ 412.65 through 412.68 are added to read as follows:

§ 412.65 Incorporation of capital payments into the prospective payment system.

(a) *General rule.* As described in §§ 412.66 and 412.67, effective with cost reporting periods beginning on or after October 1, 1987, HCFA pays an amount for capital costs for each inpatient hospital discharge, in addition to the Federal rates as determined under § 412.63. In certain cases, HCFA makes additional capital payments as provided in § 412.68.

(b) *Cost reporting periods beginning on or after October 1, 1987 through September 30, 1997.* For cost reporting periods beginning during the period October 1, 1987 through September 30, 1997, the capital payment amount is based on a combination of a hospital specific capital portion and a Federal capital rate as determined under §§ 412.66 and 412.67.

(c) *Cost reporting periods beginning after the transition periods end.* For cost reporting periods beginning on or after October 1, 1994, the capital payment amount for movable equipment is based solely on a Federal capital rate as determined under § 412.66(h). For cost reporting periods beginning on or after October 1, 1997, the capital payment amount for plant and fixed equipment is based solely on a Federal capital payment as determined under § 412.66(h).

§ 412.66 Federal capital rates beginning during and after Federal fiscal year 1988.

(a) *Determining allowable base-year capital costs.* HCFA determines the Federal capital rate on the basis of hospitals' Medicare capital costs per discharge, as described in § 413.130 of this chapter, using hospital cost reports from fiscal year 1984 for hospitals in the fifty States and the District of Columbia subject to the prospective payment system, and from short-term acute care hospitals in Puerto Rico.

(b) *Separating moveable equipment from plant and fixed equipment.* For purposes of the phase-in period, as described in § 412.67, HCFA separates portions of each hospital's inpatient capital costs determined under paragraph (a) of this section that are attributable to moveable equipment from those portions attributable to plant/fixed equipment.

(c) *Standardizing the amounts.* (1) HCFA standardizes each portion of plant/fixed equipment and of moveable equipment, determined under paragraph (b) of this section, for each hospital as follows:

(i) For both moveable equipment and plant/fixed equipment, by—

(A) Adjusting for resource intensity in case mix among hospitals;

(B) Excluding an estimated amount of indirect medical education payments;

(C) Excluding an estimated amount of the payments for hospitals that serve a disproportionate share of low-income patients; and

(D) Adjusting for the reductions to capital payments under § 413.64(k)(6) of this chapter.

(ii) For moveable equipment, by adjusting for the effects of higher cost of living payments to hospitals located in Alaska and Hawaii.

(iii) For plant/fixed equipment, by adjusting for the effects of a capital construction cost index.

(2) Based on the standardizations calculated in paragraphs (c)(1)(i) through (c)(1)(iii) of this section, HCFA determines standardized rates for plant/fixed equipment and for moveable equipment, for hospitals in the fifty States and the District of Columbia subject to the prospective payment system, and for hospitals in Puerto Rico subject to the prospective payment system.

(d) *Updating the capital costs.* HCFA updates each hospital's adjusted plant/fixed and moveable costs per case determined under paragraph (c) of this section by—

(1) Updating from fiscal year 1984 through fiscal year 1987 using estimated increases in actual capital costs per case;

(2) Updating for fiscal years 1988 and 1989 using the respective annual estimated increase in actual capital costs per case, as adjusted in accordance with § 413.64(k)(6); and

(3) Projecting for fiscal year 1990 onward the applicable percentage change under § 412.63(e).

(e) *Computing urban and rural averages.* HCFA computes a discharge-weighted average of the standardized amounts determined under paragraph (d) of this section for all urban hospitals and for all rural hospitals, as defined in § 412.62(f), in the fifty States and the District of Columbia, and for urban hospitals and rural hospitals in Puerto Rico. HCFA also computes a discharge-weighted average of the urban capital payment rate and the rural capital payment rate for hospitals in Puerto Rico.

(f) *Reducing for value of outlier payments and additional capital payments.* Based on the total amount of the Federal capital payments for urban hospitals and the total amounts of the Federal capital payments for rural hospitals, HCFA reduces each of the average standardized amounts determined under paragraph (e) of this section by—

(1) The proportion (estimated by HCFA) of the amount of payments that are set aside for additional payments for outlier cases, as provided under Subpart F of this part; and

(2) Five percent (estimated by HCFA) of the total amount of payments, which is set aside for additional payments for capital costs, as provided under § 412.68.

(g) Application of blending percentages during the phase-in period. For cost reporting periods beginning during the period October 1, 1987 through September 30, 1997, the amounts for plant/fixed equipment and for moveable equipment determined separately under paragraphs (b) through (f) of this section are multiplied by the appropriate phase-in period percentages, respectively, as described in § 412.67(b).

(h) Federal capital payment. (1) Except for sole community hospitals as described in paragraph (h)(2) of this section, the Federal capital payment equals the product of—

(i) The national capital rates as determined under paragraphs (a) through (g) of this section and § 412.67(b) including an adjustment to the plant/fixed equipment standardized amounts for the construction cost index and an adjustment to the moveable equipment standardized amounts for the higher cost of living for hospitals located in Alaska and Hawaii; and

(ii) The DRG weighting factor determined under § 412.60(b) for each discharge.

(2) For cost reporting periods beginning before October 1, 1990, sole community hospitals are paid on a reasonable cost basis, as provided under Part 413 of this chapter, for their capital costs.

(i) Additional capital payments. HCFA makes additional capital payments to hospitals—

(1) That serve a disproportionate share of low-income patients, as described in § 412.106; and

(2) For indirect medical education costs, as described in § 412.118.

§ 412.67 Phase-in period and methodology for capital payments.

(a) Phase-in period. Except for new hospitals and sole community hospitals as described in paragraphs (e) and (f) of this section, respectively, inclusion of payments for capital for plant/fixed equipment and for moveable equipment in the prospective payment rates is to be phased-in over a ten-year period and a seven-year period, respectively, as described in paragraph (b) of this

section. During this period, the capital payment amount is based on a combination of a hospital-specific capital portion and a Federal capital rate as determined in § 412.66. At the end of the transition periods (that is, for discharges occurring in a cost reporting period beginning on or after October 1, 1994, for moveable equipment, and on or after October 1, 1997, for plant/fixed equipment), payment amounts are based entirely on a Federal capital rate.

(b) *Blended percentages for capital rates.* The blends of the hospital-specific capital portions and the Federal capital rates, for plant/fixed equipment and for movable equipment, are described in the following tables:

TABLE.—HOSPITAL-SPECIFIC AND FEDERAL RATE PERCENTAGES FOR DETERMINING PHASE-IN PERIOD CAPITAL RATES FOR PLANT AND FIXED EQUIPMENT

Cost reporting period beginning on or after	Hospital-specific capital percentage	Federal capital percentage
Oct. 1, 1987	95	5
Oct. 1, 1988	90	10
Oct. 1, 1989	85	15
Oct. 1, 1990	80	20
Oct. 1, 1991	75	25
Oct. 1, 1992	70	30
Oct. 1, 1993	60	40
Oct. 1, 1994	50	50
Oct. 1, 1995	35	65
Oct. 1, 1996	20	80
Oct. 1, 1997		100

TABLE.—HOSPITAL-SPECIFIC AND FEDERAL RATE PERCENTAGES FOR DETERMINING PHASE-IN PERIOD CAPITAL RATES FOR MOVEABLE EQUIPMENT

Cost reporting period beginning on or after	Hospotal-specific capital percentage	Federal capital percentage
Oct. 1, 1987	95	5
Oct. 1, 1988	90	10
Oct. 1, 1989	85	15
Oct. 1, 1990	80	20
Oct. 1, 1991	70	30
Oct. 1, 1992	50	50
Oct. 1, 1993	25	75
Oct. 1, 1994		100

(c) *Hospital-specific capital portion.* The hospital-specific capital portion is the hospital's actual allowable Medicare inpatient hospital costs attributed to plant/fixed equipment and to moveable equipment, determined separately, for the applicable phase-in year, multiplied by the appropriate phase-in period percentages described in paragraph (b) of this section, and adjusted for fiscal years 1988 and 1989 by the reductions described under § 413.64(k).

(d) *Classification of capital assets as plant/fixed or moveable equipment*—(1) *General rule.* Except as specified in paragraph (d)(4) of this section, a hospital must classify its capital assets as plant/fixed equipment or as moveable equipment as described in this paragraph for purposes of receiving payment for capital expenditures under the prospective payment system.

(2) *Procedures for classifying assets.* (i) HCFA establishes a list under which HCFA assigns capital assets to a plant/fixed equipment category or a moveable equipment category and updates the list periodically as necessary in notices published in the **Federal Register**.

(ii) Capital assets not specified on the list are assigned to the plant/fixed or moveable equipment categories under the definitions provided in paragraph (d)(3) of this section.

(3) *Definitions.* The following definitions apply for purposes of classifying assets not specified on the HCFA list.

(i) "Plant/fixed equipment" means—

(A) A building, which includes, in a restrictive sense, the basic structure or shell and additions thereto (with the remainder being identified as building equipment); and

(B) Building equipment, the general characteristics of which are that it is affixed to the building, and not subject to transfer; and that it has a fairly long useful life, but one that is shorter than the useful life of the building to which it is affixed.

(ii) "Moveable equipment" means equipment that has the following general characteristics:

(A) A relatively fixed location in the building;

(B) Capability of being moved as distinguished from building equipment;

(C) A unit cost sufficient to justify ledger control;

(D) Sufficient size and identity to make control feasible by means of identification tags; and

(E) A minimum useful life of approximately three years.

(4) *Exception for past classification practices.* A hospital may request review of the classification of a capital asset that is classified under paragraph (d)(2) or (d)(3) of this section, if the hospital demonstrates to its fiscal intermediary that its classification of the asset during its cost reporting period beginning before October 1, 1987—

(i) Is based on longstanding past practices; and

(ii) Is not for the purpose of affecting Federal capital prospective payments.

(e) *Payment rate for newly-participating hospitals.* (1) If a hospital meets the criteria in paragraph (e)(2) or (e)(3) of this section, it is paid on the basis of the Federal capital portion, as determined in § 412.66, and the hospital-specific capital portion, as determined in paragraph (c) of this section, using the blending percentages applicable for the Federal fiscal year in which it initially participates in the Medicare program.

(2) The hospital—

(i) Is newly participating in the Medicare program (under previous and present ownership); and

(ii) Does not have a 12-month cost reporting period ending on or before September 30, 1987.

(3) The hospital is under new ownership and documents to the satisfaction of its intermediary that the ownership and occupancy rate requirements described in § 412.74(a)(2) are met.

(f) *Payment rate for sole community hospitals.* For cost reporting periods beginning before October 1, 1990, a hospital that meets the criteria in § 412.92(a) for classification as a sole community hospital is paid on a reasonable cost basis, as provided under Part 413 of this chapter, for its capital costs.

§ 412.68 Additional payments for capital costs.

(a) *Threshold for additional payments.* During the phase-in periods for capital payments, as described in § 412.67, a hospital may be paid an additional capital payment for plant/fixed equipment or moveable equipment, or both, if the portions of the hospital's actual allowable inpatient capital cost not paid through the hospital-specific portions (as determined under § 412.67) equal or exceed a percent (specified by HCFA in the **Federal Register** notices published under § 412.8) of its total Federal capital payments received under § 412.66.

(b) *Payment amount.* A hospital that meets the criterion described in paragraph (a) of this section may be paid an additional capital payment equal to 70 percent of the difference between—

(1) The portion of the hospital's total actual allowable inpatient capital cost not paid through the hospital-specific portion as determined under § 412.67(c); and

(2) The percent (specified by HCFA) of the hospital's total Federal capital payments received under § 412.66.

E. Subpart F is amended as follows:

Subpart F—Payment for Outlier Cases

1. In § 412.82, paragraph (c) is revised to read as follows:

§ 412.82 Payment for extended length-of-stay cases (day outliers).

* * * * *

(c) The per diem payment made under paragraph (a) of this section is derived by first taking 60 percent of the average per diem payment for the applicable DRG, as calculated by dividing the Federal prospective payment rates (noncapital, and effective with cost reporting periods beginning on or after October 1, 1987, capital) determined under Subpart D of this part by the geometric mean length-of-stay for that DRG. The resulting amounts are then multiplied by the applicable Federal portions (capital and noncapital) of the blend as follows:

FEDERAL NONCAPITAL PORTIONS

Cost reporting periods beginning on or after	Federal portion (percent)
October 1, 1983	25
October 1, 1984	50
October 1, 1985	
The first seven months of the cost reporting period	50
The remaining five months of the cost reporting period	55
October 1, 1986	75
October 1, 1987	100

FEDERAL CAPITAL PORTIONS

Cost reporting periods beginning on or after	Plant and fixed equipment (percent)	Movable equipment (percent)
Oct. 1, 1987	5	5
Oct. 1, 1988	10	10
Oct. 1, 1989	15	15
Oct. 1, 1990	20	20
Oct. 1, 1991	25	30
Oct. 1, 1992	30	50
Oct. 1, 1993	40	75
Oct. 1, 1994	50	100
Oct. 1, 1995	65	100
Oct. 1, 1996	80	100
Oct. 1, 1997	100	100

* * * * *

2. In § 412.84, paragraphs (g) and (i) are revised to read as follows:

§ 412.84 Payment for extraordinarily high-cost cases (cost outliers).

* * * * *

(g) The intermediary bases the cost of the discharge on a certain percentage of the billed charges for covered impatient services. The cost is adjusted further to exclude an estimate of indirect medical education costs, and payments for hospitals that service a disproportionate share of low-income patients, and to include the reasonable charges for nonphysician services billed by an outside supplier in accordance with § 489.23(c)(3) of this chapter.

(1) For discharges in cost reporting periods beginning before October 1, 1987, the factor is 66 percent.

(2) For discharges in cost reporting periods beginning on or after October 1, 1987, the factor is 71 percent.

* * * * *

(i) The additional payment amount is derived by first taking 60 percent of the difference between the hospital's adjusted cost for the discharge (as determined under paragraph (g) of this section) and the threshold criteria established under § 412.80(a)(1)(ii). The resulting amounts are then multiplied by the applicable Federal portions (noncapital, and effective with cost reporting periods beginning on or after October 1, 1987, capital) of the blend as indicated in § 412.82(c).

F. Subpart G is amended as follows:

Subpart G—Special Treatment of Certain Facilities

1. In § 412.92, paragraph (d) is revised to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

* * * * *

(d) *Determining prospective payment rates for sole community hospitals.* For all cost reporting periods beginning on or after October 1, 1983, the prospective payment rates for sole community hospitals equal the sum total of the following payment rates:

(1) 75 percent of the hospital-specific base payment rate as determined under § 412.73;

(2) 25 percent of the appropriate regional prospective payment rate as determined under Subpart D of this part; and

(3) The capital payment as determined under § 412.67(f).

* * * * *

2. In § 412.96, paragraphs (d) and (e) are revised to read as follows:

§ 412.96 Special treatment: Referral centers.

* * * * *

(d) *Payment to rural referral centers with 500 or more beds.* A hospital that meets the criteria of § 412.96(b)(1) is paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 412.62(j) or § 412.63(f), as adjusted by the hospital's area wage index, and § 412.66(h), as adjustied by the capital construction cost index adopted by HCFA and applicable to the hospital.

(e) *Payment to all other rural referral centers.* For cost reporting periods beginning on or after October 1, 1984, a hospital that is located in a rural area and meets the criteria of § 412.96 (b)(2) or (c) is paid prospective payments per discharge based on the applicable urban payment rates determined in accordance with §412.62(j) or § 412.63(f), as adjusted by the hospital's area wage index, and § 412.66(h), as adjusted by the capital construction cost index adopted by HCFA and applicable to the hospital.

* * * * *

G. Subpart H is amended as follows:

Subpart H—Payments to Hospitals Under the Prospective Payment System

1. Section 412.113 is amended by revising paragraph (a) to read as follows:

§ 412.113 Payments determined on a reasonable cost basis.

(a) *Capital costs.* Payment for capital costs (as described in § 413.130 of this chapter) is determined on a reasonable cost basis for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1987. During that period, the capital costs for each hospital must be determined consistently with the treatment of such costs for purposes of determining the hospital-specific portion of the hospital's prospective payment rate under §§ 412.70 through 412.73. For cost reporting periods beginning on or after October 1, 1987, capital costs are paid on a prospective basis as described in §§ 412.65 through 412.68.

* * * * *

2. In § 412.125, the introductory language of the section is republished and paragraph (b) is revised to read as follows:

§ 412.125 Effect of change of ownership on payments under the prospective payment system.

When a hospital's ownership changes, as described in § 489.18 of this chapter, the following rules apply:

* * * * *

(b) Payment for capital costs (for reporting periods beginning before October 1, 1987) and bad debts, as described in §§ 412.113(a) and 412.115(a), respectively, is made to each owner or operator of the hospital (buyer and seller) in accordance with the principles of reasonable cost reimbursement.

H. In Subpart K, a new § 412.214 is added to read as follows:

Subpart K—Prospective Payment System for Hospitals Located in Puerto Rico

* * * * *

§ 412.214 Capital payments.

Subject to the blending percentages for the Federal rates described in § 412.204, capital payments for hospitals located in Puerto Rico are determined in the same manner, as described in §§ 412.65 through 412.68, as for other hospitals subject to the prospective payment system.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance Program)

Dated: August 24, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: August 27, 1987.

Otis R. Bowen,

Secretary.

Note.—Appendices A–D will not appear in the Code of Federal Regulations.

Appendix A—Federal Capital-Related Rates [1]

TABLE 1.—FIFTY STATES AND DISTRICT OF COLUMBIA

Plant/fixed equipment		Moveable equipment	
Urban	Rural	Urban	Rural
180.03	160.86	122.39	92.72

[1] The rates reflect the reduction for capital-related costs of seven percent for cost reporting periods or discharges (as the case may be) occurring during FY 1988, as required under section 1886(g)(3)(A)(ii) of the Act, and an offset for budget neutrality as required under section 1886(g)(3)(C)(ii) of the Act for cost reporting periods occurring during FY 1988.

TABLE 2.—PUERTO RICO [1]

	Plant/fixed equipment		Moveable equipment	
	Urban	Rural	Urban	Rural
Puerto Rico	93.06	167.55	38.29	3.88
National	181.84		119.23	

[1] For hospitals located in Puerto Rico, the Federal rate is comprised of 75 percent of the Puerto Rico-specific adjusted capital prospective payment rate and 25 percent of the discharge-weighted average of the national urban and rural adjusted capital prospective payment rates.

Appendix B—Construction Cost Indexes

Table I.—Construction Cost Index for Urban Areas

Urban area (constituent counties or county equivalents)	Construction cost index
Abilene, TX	.899
Taylor,TX	
Akron, OH	1.053
Portage, OH	
Summit, OH	
Albany, GA	.814
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	1.190
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	.987
Bernalillo, NM	
Alexandria, LA	1.049
Rapides, LA	
Allentown-Bethlehem, PA NJ	1.114
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	1.464
Blair, PA	
Amarillo, TX	.917
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	.965
Orange, CA	
Anchorage, AK	1.717
Anchorage, AK	
Anderson, IN	.921
Madison, IN	
Anderson, SC	.800
Anderson, SC	
Ann Arbor, MI	1.166
Washtenaw, MI	
Anniston, AL	.830
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	.925
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Asheville, NC	.827
Buncombe, NC	
Athens, GA	.879
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	.844
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.188
Atlantic, NJ	
Cape May, NJ	
Augusta, GA–SC	.830
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	.917
Kane, IL	
Kendall, IL	
Austin, TX	.888
Hays, Tx	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.082
Kern, CA	
Baltimore, MD	1.125
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	1.067
Penobscot, ME	
Baton Rouge, LA	.924
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	.985
Calhoun, MI	
Beaumont-Port Arthur, TX	.900
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.356
Beaver, PA	
Bellingham, WA	1.029
Whatcom, WA	
Benton Harbor, MI	1.002
Berrien, MI	
Bergen-Passaic, NJ	1.353
Bergen, NJ	
Passaic, NJ	
Billings, MT	1.056

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Yellowstone, MT	
Biloxi-Gulfport, MS	.958
Hancock, MS	
Harrison, MS	
Binghamton, NY	1.268
Broome, NY	
Tioga, NY	
Birmingham, AL	.876
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.957
Burleigh, ND	
Morton, ND	
Bloomington, IN	1.396
Monroe, IN	
Bloomington Normal, IL	.970
McLean, IL	
Boise City, ID	.793
Ada, ID	
Boston-Lawrence-Salem-Lowell Brockton, MA	1.338
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder Longmont, CO	.882
Boulder, CO	
Bradenton, FL	.760
Manatee, FL	
Brazoria, TX	.832
Brazoria, TX	
Bremerton, WA	1.069
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.290
Fairfield, CT	
Brownsville Harlingen, TX	.739
Cameron, TX	
Bryan-College Station, TX	1.012
Brazos, TX	
Buffalo, NY	1.352
Erie, NY	
Burlington, NC	.824
Alamance, NC	
Burlington, VT	.984
Chittenden, VT	
Grand Isle, VT	
Canton, OH	.902
Carroll, OH	
Stark, OH	
Casper, WY	.784
Natrona, WY	
Cedar Rapids, IA	.858
Linn, IA	
Champaign-Urbana-Rantoul, IL	1.243
Champaign, IL	
Charleston, SC	.921
Berkeley, SC	
Charleston, SC	
Dorchester, SC	

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Charleston, WV	1.155
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC–SC	.803
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	1.343
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN–GA	.868
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	.976
Laramie, WY	
Chicago, IL	1.108
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	.970
Butte, CA	
Cincinnati, OH–KY–IN	1.039
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN–KY	.904
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.190
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	.847
El Paso, CO	
Columbia, MO	1.197
Boone, MO	
Columbia, SC	.844
Lexington, SC	
Richland, SC	
Columbus, GA–AL	.940
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	.978
Delaware, OH	
Fairfield, OH	
Franklin, OH	

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.904
Nueces, TX	
San Patricio, TX	
Cumberland, MD–WV	1.183
Allegeny, MD	
Mineral, WV	
Dallas, TX	.861
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	.924
Danville, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA–IL	1.016
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.081
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	.903
Volusia, FL	
Decatur, IL	1.111
Macon, IL	
Denver, CO	.932
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, Co	
Des Moines, IA	1.081
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	I.135
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.805
Dale, AL	
Houston, AL	
Dubuque, IA	.982
Dubuque, IA	
Duluth, MN–WI	1.063
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	.839

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Chappewa, WI	
Eau Claire, WI	
El Paso, TX	.858
El Paso, TX	
Elkhart-Goshen, IN	.959
Elkhart, IN	
Elmira, NY	1.121
Chemung, NY	
Enid, OK	.955
Garfield, OK	
Erie, PA	1.223
Erie, PA	
Eugene-Springfield, OR	1.028
Lane, OR	
Evansville, IN–KY	1.081
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND–MN	.940
Clay, MN	
Cass, ND	
Fayetteville, NC	.785
Cumberland, NC	
Fayetteville-Springdale, AR	.947
Washington, AR	
Flint, MI	.987
Genesee, MI	
Shiawassee, MI	
Florence, AL	.861
Colbert, AL	
Lauderdale, AL	
Florence, SC	.840
Florence, SC	
Fort Collins-Loveland, CO	.926
Larimor, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	.878
Broward, FL	
Fort Myers-Cape Coral, FL	.761
Lee, FL	
Fort Pierce, FL	.900
Martin, FL	
St. Lucie, FL	
Fort Smith, AR–OK	.770
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	1.008
Okaloosa, FL	
Fort Wayne, IN	.964
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	.883
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.057
Fresno, CA	
Gadsden, AL	.813
Etowah, AL	
Gainesville, FL	.989
Alachua, FL	
Bradford, FL	

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Galveston-Texas City, TX	1.047
Galveston, TX	
Gary-Hammond, IN	1.050
Lake, IN	
Porter, IN	
Glens Falls, NY	1.377
Warren, NY	
Washington, NY	
Grand Forks, ND	.943
Grand Forks, ND	
Grand Rapids, MI	.912
Kent, MI	
Ottawa, MI	
Great Falls, MT	1.069
Cascade, MT	
Greeley, CO	.880
Weld, CO	
Green Bay, WI	.859
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.850
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.804
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.988
Washington, MD	
Hamilton-Middletown, OH	.937
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	1.109
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.220
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.826
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.023
Honolulu, HI	
Houma-Thibodaux, LA	1.201
Lafourche, LA	
Terrebonne, LA	
Houston, TX	.858
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Huntington-Ashland, WV-KY-OH	1.029
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.806
Madison, AL	
Indianapolis, IN	.988
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.370
Johnson, IA	
Jackson, MI	1.096
Jackson, MI	
Jackson, MS	.930
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.937
Madison, TN	
Jacksonville, FL	.874
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	1.115
Onslow, NC	
Janesville-Beloit, WI	.932
Rock, WI	
Jersey City, NJ	1.400
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	1.004
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	1.199
Cambria, PA	
Somerset, PA	
Joliet, IL	.877
Grundy, IL	
Will, IL	
Joplin, MO	.941
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.117
Kalamazoo, MI	
Kankakee, IL	1.119
Kankakee, IL	
Kansas City, KS-MO	.913

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	.872
Kenosha, WI	
Killeen-Temple, TX	.910
Bell, TX	
Coryell, TX	
Knoxville, TN	.873
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.885
Howard, IN	
Tipton, IN	
LaCrosse, WI	.970
LaCrosse, WI	
Lafayette, LA	.958
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	1.116
Tippecanoe, IN	
Lake Charles, LA	.929
Calcasieu, LA	
Lake County, IL	1.035
Lake, IL	
Lakeland-Winter Haven, FL	.788
Polk, FL	
Lancaster, PA	.977
Lancaster, PA	
Lansing-East Lansing, MI	1.108
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	.728
Webb, TX	
Las Cruces, NM	.845
Dona Ana, NM	
Las Vegas, NV	.949
Clark, NV	
Lawrence, KS	1.118
Douglas, KS	
Lawton, OK	.997
Comanche, OK	
Lewiston-Auburn, ME	.952
Androscoggin, ME	
Lexington-Fayette, KY	1.063
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.943

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Allen, OH	
Auglaize, OH	
Lincoln, NE	1.066
Lancaster, NE	
Little Rock-North Little Rock, AR	.925
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.746
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	1.048
Lorain, OH	
Los Angeles-Long Beach, CA	1.065
Los Angeles, CA	
Louisville, KY-IN	.983
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	.911
Lubbock, TX	
Lynchburg, VA	.900
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	.809
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.044
Dane, WI	
Manchester-Nashua, NH	1.084
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	.875
Richland, OH	
McAllen-Edinburg-Mission, TX	.762
Hidalgo, TX	
Medford, OR	.975
Jackson, OR	
Melbourne-Titusville, FL	.839
Brevard, FL	
Memphis, TN-AR-MS	.877
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.092
Merced, CA	
Miami-Hialeah, FL	.961
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.191
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	.862
Midland, TX	
Milwaukee, WI	1.069

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	.943
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.906
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.058
Stanislaus, CA	
Monmouth-Ocean, NJ	1.093
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.934
Ouachita, LA	
Montgomery, AL	.824
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	1.006
Delaware, IN	
Muskegon, MI	.970
Muskegon, MI	
Naples, FL	.879
Collier, FL	
Nashville, TN	.875
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.382
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	1.248
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.199
New Haven, CT	
New London-Norwich, CT	1.185
New London, CT	
New Orleans, LA	1.052
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.495

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.421
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	1.190
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.957
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.069
Alameda, CA	
Contra Costa, CA	
Ocala, FL	.755
Marion, FL	
Odessa, TX	.969
Ector, TX	
Oklahoma City, OK	.865
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.045
Thurston, WA	
Omaha, NE-IA	.958
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	1.382
Orange, NY	
Orlando, FL	.858
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	.959
Daviess, KY	
Oxnard-Ventura, CA	1.148
Ventura, CA	
Panama City, FL	.876
Bay, FL	
Parkersburg-Marietta, WV-OH	1.075
Washington, OH	
Wood, WV	
Pascagoula, MS	.757

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Jackson, MS	
Pensacola, FL	.842
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	.968
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.169
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	.959
Maricopa, AZ	
Pine Bluff, AR	.943
Jefferson, AR	
Pittsburgh, PA	1.311
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.502
Berkshire, MA	
Portland, ME	.992
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	.989
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	1.050
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.193
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.101
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	.827
Utah, UT	
Pueblo, CO	.949
Pueblo, CO	
Puerto Rico	1.000
Racine, WI	1.088
Racine, WI	
Raleigh-Durham, NC	.990
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	1.112
Pennington, SD	
Reading, PA	1.104
Berks, PA	
Redding, CA	.944

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Shasta, CA	
Reno, NV	1.021
Washoe, NV	
Richland-Kennewick, WA	1.002
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	1.011
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.073
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.983
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.358
Olmsted, MN	
Rochester, NY	1.250
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	.899
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.202
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.013
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	.964
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	1.035
Buchanan, MO	
St. Louis, MO-IL	1.143
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	.868

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.091
Monterey, CA	
Salt Lake City-Ogden, UT	.871
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.909
Tom Green, TX	
San Antonio, TX	.921
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.043
San Diego, CA	
San Francisco, CA	1.043
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.028
Santa Clara, CA	
Santa Barbara-Santa Maria-Lompoc, CA	1.036
Santa Barbara, CA	
Santa Cruz, CA	.950
Santa Cruz, CA	
Santa Fe, NM	1.086
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.134
Sonoma, CA	
Sarasota, FL	.804
Sarasota, FL	
Savannah, GA	1.028
Chatham, GA	
Effingham, GA	
Scranton-Wilkes-Barre, PA	1.110
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.085
King, WA	
Snohomish, WA	
Sharon, PA	1.144
Mercer, PA	
Sheboygan, WI	1.040
Sheboygan, WI	
Sherman-Denison, TX	.949
Grayson, TX	
Shreveport, LA	.936
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	1.020
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	1.202
Minnehaha, SD	
South Bend-Mishawaka, IN	1.143
St. Joseph, IN	
Spokane, WA	.971
Spokane, WA	

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Springfield, IL	1.011
Menard, IL	
Sangamon, IL	
Springfield, MA	1.233
Hampden, MA	
Hampshire, MA	
Springfield, MO	.912
Christian, MO	
Greene, MO	
State College, PA	1.035
Centre, PA	
Steubenville-Weirton, OH-WV	1.167
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.060
San Joaquin, CA	
Syracuse, NY	1.312
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.038
Pierce, WA	
Tallahassee, FL	.989
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	.890
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	1.040
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	.754
Miller, AR	
Bowie, TX	
Toledo, OH	1.044
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	.996
Shawnee, KS	
Trenton, NJ	1.226
Mercer, NJ	
Tucson, AZ	.931
Pima, AZ	
Tulsa, OK	.911
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	1.003
Tuscaloosa, AL	
Tyler, TX	.922
Smith, TX	
Utica-Rome, NY	1.256
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.118
Napa, CA	
Solano, CA	
Vancouver, WA	.819
Clark, WA	

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Victoria, TX	.842
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	1.099
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.017
Tulare, CA	
Waco, TX	.840
McLennan, TX	
Washington, DC-MD-VA	1.155
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.911
Black Hawk, IA	
Bremer, IA	
Wausau, WI	.889
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	.944
Palm Beach, FL	
Wheeling, WV-OH	1.052
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	.872
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	.929
Wichita, TX	
Williamsport, PA	1.063
Lycoming, PA	
Wilmington, DE-NJ-MD	1.231
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.851
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.252
Worcester, MA	
Yakima, WA	.975
Yakima, WA	
York, PA	.964
Adams, PA	
York, PA	
Youngstown-Warren, OH	.981
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	.910

Table I.—Construction Cost Index for Urban Areas—Continued

Urban area (constituent counties or county equivalents)	Construction cost index
Sutter, CA	
Yuba, CA	

TABLE II.—CONSTRUCTION COST INDEX FOR RURAL AREAS

Nonurban area	Construction cost index
Alabama	.787
Alaska	1.582
Arizona	1.000
Arkansas	.749
California	1.034
Colorado	.939
Connecticut	1.183
Delaware	1.040
Florida	.777
Georgia	.817
Hawaii	.907
Idaho	.930
Illinois	.978
Indiana	.919
Iowa	.880
Kansas	.814
Kentucky	.921
Louisiana	941
Maine	1.037
Maryland	1.180
Massachusetts	1.169
Michigan	.962
Minnesota	.918
Mississippi	.834
Missouri	.847
Montana	.917
Nebraska	.772
Nevada	.966
New Hampshire	1.069
New Jersey [1]	
New Mexico	.893
New York	1.224
North Carolina	.788
North Dakota	.942
Ohio	.884
Oklahoma	.828
Oregon	.931
Pennsylvania	1.177
Puerto Rico	1.000
Rhode Island [1]	
South Carolina	.774
South Dakota	.898
Tennessee	.766
Texas	.783
Utah	.869
Vermont	1.038
Virginia	.912
Washington	1.072
West Virginia	1.031
Wisconsin	.864
Wyoming	.958

[1] All counties within the State are classified urban.

Appendix C—List of Plant and Fixed Equipment, and Moveable Equipment [1]

I. Plant

A. Land Movements

Bumpers
Culverts
Fencing
- a. Brick or stone
- b. Chain link
- c. Wire
- d. Wood

Flagpole
Heated pavement
Lawn sprinkler system
Parking lot gate
Parking lot, open walls
Paving (including roadways, walks, and parking)
- a. Asphalt
- b. Concrete
- c. Gravel

Retaining wall
Shrubs, lawns, trees
Sign
Snow melting system
Turf, artificial
Underground sewer and water lines
Yard lighting

B. Buildings

Boiler house
Garage
- a. Masonry
- b. Wood frame

Masonry, reinforced concrete frame
Masonry, steel frame, fireproofed
Masonry, steel frame, not fireproofed
Masonry, wood frame
Reinforced concrete, common design
Residence
- a. Masonry
- b. Wood frame

Storage building
- a. Masonry
- b. Wood frame

Building, componentized parts
- a. Automatic door
- b. Canopies
- c. Ceiling finishes
- d. Computer flooring
- e. Cubicle track
- f. Designation signs
- g. Drapery track
- h. Floor finishes
- i. Folding partitions
- j. Interior finish
- k. Loading docks
- l. Overhead door
- m. Partitions, interior
- n. Roof covering
- o. Storefront construction
- p. Toilet partitions
- q. Wall paint
- r. Wallpaper

Multilevel parking structure, masonry

II. Fixed Equipment

A. Building Services Equipment

Boiler smokestack, metal
Clean air equipment
Clock system, central
Doctors' in-and-out register
Electric lighting and power
- a. Feed wiring
- b. Conduit and wiring
- c. Fixtures
- d. Transformer
- e. Switch gear

Elevator
- a. Dumbwaiter
- b. Freight
- c. Passenger, high-speed automatic
- d. Passenger, other

Emergency light system
Escalator
Fire alarm system, door closing devices
Heating, ventilating, and air conditioning system
Air conditioning system, all equipment and units
- a. Large—over 20 tons
- b. Medium—5–15 tons
- c. Small—under 5 tons
- d. Boiler
- e. Compressor, air
- f. Condensate tank
- g. Condenser
- h. Controls
- i. Cooler and dehumidifier
- j. Cooling tower
  - (1) Metal
  - (2) Wood
- k. Duct work
- l. Fan, air handling and ventilating
- m. Furnace, domestic type
- n. Incinerator, indoor
- o. Oil storage tank
- p. Piping
- q. Precipitator
- r. Pump
- s. Radiator, cast iron
- t. Radiator, finned tube
- u. Solar heat equipment
- v. Unit heater

Intercom system
Laboratory plumbing, piping
Magnetic door holders
Nurse call system
Oxygen, gas, air piping
Paging system
Plumbing, composite
- a. Fixtures
- b. Piping
- c. Pump
- d. Water heater, commercial
- e. Water storage tank

Pneumatic tube system
Sprinkler and fire protection system
- a. Fire alarm system
- b. Fire pump
- c. Smoke and heat detectors

[1] Adapted from the list published by the American Hospital Association, 1987 edition.

d. Sprinkler system
e. Tank and tower
Sewerage, composite
a. Piping
b. Sump pump and sewerage ejector
Telephone system
Television antenna system
Vacuum cleaning system
Water wells

B. Other Fixed Equipment

Bench, bin, cabinet, counter, shelving, built-in
Cabinet, biological safety
Carpentry work
Caulking
Ceramic tile
Conveying system
Drilled piers
Fire protection in hoods
Generator set
Hood, fume
ICU–CCU counters
Lockers, built-in
Mailboxes, built-in
Millwork
Nurses' counter
Painting
Pass-through boxes
Patients' wardrobes and vanities
Sink and drainboard
Sterilizer, built-in
X-ray protection

III. Moveable Equipment

Accelerator
Accounting/bookkeeping machine
Acculab
Adding machine
Air conditioner, window
Alternating pressure pad
Ambulance
Amplifier
Analyzer
a. Amino acid
b. Autos
c. Biochromatic
d. Clinical
e. Gas
f. Oxygen
g. pH gas
h. Peripheral
i. Pulmonary function
Anesthesia unit
Ankle exerciser
Apparatus
a. Anesthesia
b. Blood transfusion
c. Bone surgery
d. Resuscitating
Arthroscopy instrumentation
Aspirator
Audiometer
Autoclave
Automobile
a. Delivery
b. Passenger
Autoscaler, ionic
Auto suture stapler
Balance
a. Analytical
b. Electronic
c. Precision mechanical
Basal metabolism unit
Bassinet
Bassinet, heated
Bath
a. Paraffin
b. Serological
c. Sitz
d. Water, laboratory
e. Whirlpool
Battery charger
Bed
a. Electric
b. Flotation therapy
c. Hydraulic
d. Labor
e. Manual
f. Orthopedic
Bedpan washer
Beepers, paging
Bench, metal or wood
Bilirubin lamps
Bin, metal or wood
Binder, punch machine
Biochemical analysis unit, micro
Biofeedback machine
Bipolar coagulator
Blanket drier
Blanket warmer
Blood chemistry analyzer, automated
Blood cell counter
Blood gas analyzer
Blood gas apparatus, volumetrics
Blood warmer
Blood warmer coil
Boiler, copper
Bookcase, metal
Bottle washer
Bovie unit
Breathing unit, positive pressure
Broiler
Bronchoscope
a. Flexible
b. Rigid
Buffer, electric
Bulletin board
Burnisher, silverware
Cabinet
a. Bedside
b. File
c. Instrument
d. Metal or wood
e. Pharmacy
f. Solution
g. X-ray
Cage, animal
Camera
Camera, surgical
Camera, TV monitoring, color or black and white
Camera, videotape, color or black and white
Can opener, electric
Canopy, ventilating, ironer
Capsule machine
Carbon monoxide recorder/detector
Cardioscope
Carpeting
Cart
a. Food/tray, heat-refrig
b. Maid
c. Medicine
d. Supply
e. Utility
Cash register
Cassette changer
Cautery unit
a. Dermatology
b. Gynecology
Central processing unit
Centrifuge
Centrifuge, refrigerated
Chair
a. Dental
b. Executive
c. Hydraulic, surgeon's
d. Kinetron
e. Podiatric
f. Specialist
Chart rack
Chart recorder
Check signer
Child immobilizer
Chloridiometer
Chromatograph, gas
Cidematic washer
Clock
Clopay wrapping machine
Clothes locker
a. Fiberglass or metal
b. Laminate or wood
Cobalt unit
Coffee maker
Cold pack unit, floor
Collator, electric
Collector, silver, automatic
Colonoscope
Colorimeter
Colposcope with floorstand
Compactor, waste
Compresser, air
Computer assisted system for exercise
Computer
a. Cardiac output
b. Clinical
c. Large
d. Micro
e. Mini
Computer terminal
Conductivity tester
Conveyor system, laundry
Conveyor, tray
Cooker, pressure, food
Cooler
a. Walk-in, freestanding
b. Water
CO-oximeter
Copier
Coulter counter
Credenza
Crib
Croupette
Cryo-ophthalmic unit with probes
Cryostat

Cryosurgical unit
Cutter
  a. Cloth, electric
  b. Food
Cystic fibrosis system
Cystometer
Cystoscope
Data card processing unit, including keypunch, verifier, reader, sorter
Data printing unit
Data storage unit
  a. Mechanical
  b. Nonmechanical
Data tape processing unit, including controller, drive, tape deck
Decalcifier
Defibrillator
Densitometer, recording
Dental drill with syringe
Dermatome
Desk, metal or wood
Diagnostic set
Diathermy unit
Dictating equipment
Digital fluoroscopy unit
Digital radiography unit
Dilutor
Dish Sterilizer
Dishwasher
Disinfector
Dispenser
  a. Alcohol
  b. Butter, refrigerated
  c. Milk or cream
Distilling apparatus
Dopplers
Dose calibrator
Dresser
Drier
  a. Clothes
  b. Hair
  c. Sonic
Drill press
Drying oven, paint shop
Duplicator
Echocardiograph system
Echoview system
Electrocardioscanner
Electrocardiograph
Electroencephalograph
Electromyograph
Electronic blood pressure device
Electrophoresis unit
Electrosurgical unit
Emission computer tomography (ECT) scanner
Enlarger
Ergometer
Ether-suction unit
Evacuator
Evoked potential unit
Exercise apparatus
Extracorporeal shock-wave lithotripters
Extractor, laundry
Facsimile transmitter
Fiber optic equipment
Fiberometer
Film changer
Flame photometer
Floor scrubbing machine
Floor waxing machine
Fluorimeter
Fluoroscope
Folder, flatwork
Food chopper
Frame, turning
Freezer, ultra cold
Fryer, deep fat
Furnace, laboratory
Furniture
  a. Central supply
  b. Dietary
  c. Housekeeping
  d. ICU–CCU
  e. In-service education
  f. Labor-delivery
  g. Laboratory
  h. Lobby or public areas
  i. Nursing services
  j. Office
  k. Operating room
  l. Patient
  m. X-ray
Gamma camera
Gamma counter
Gamma wall system
Garbage disposal
Graphotype
Griddle
Grinder, food waste
Hand dynamometer
Heart-lung system
Hemoglobinometer
Hemodialysis unit
Hemophotometer
Hoist, chain or cable
Holter electrocardiograph
Holter electroencephalograph
Homogenizer
Hood, exhaust or Bacti
Hot-food box
Hotplate
Humidifier
Hyperbaric chamber
Hydrocollator
Hydrotherapy equipment
Hyfrecator
Hypothermia apparatus
Ice-cream freezer
Ice-cream storage cabinet
Ice-cube making equipment
Illuminator unit, multifilm
Illuminator unit, single
Image intensifier
IMI infant care center
Immuno-diffusion equipment
Imprinter, addresser
Imprinter, embossed plate
Incubator
  a. Laboratory
  b. Nursery
Indicator, remote
Infusion pump
Inhalator
Instruments, ortho-urological
Insufflator
Integrator
Intercom
Iontophoresis unit
Ironer, flatwork
Isodensitometer
Isolation chamber
Isotope equipment
Kettle, steam jacketed
Kiln
K-pads
Kymograph
Laminar air-flow unit
  a. Cabinet
  b. Wall
Lamp
  a. Deep therapy
  b. Emergency
  c. Infrared
  d. Mercury quartz
  e. Microscope
Laparoscope
Laryngoscope
Lathe
Lawn mower, power
Library furnishings
Lifter, patient
Light
  a. Delivery
  b. Examining
  c. Operating
  d. Portable, emergency
Linear accelerator
Linen cart
Linen drier
Linen press
Linen table
Linen washer
Loom
Lowerator
Magnetic resonance imaging
Mailing machine
Mannequin
Marking machine
Meat chopper
Medi-prep
Meter, pH
Microfilm unit
Microgasometer
Microphone
Microscope
Microprojector
Microtome
Mirror, therapy
Mixer, commercial type
Model, anatomical
Monitor
  a. Apnea
  b. Cardiac
  c. Cerebral function
  d. Patient
  e. TV
Narcotic safe
Natural childbirth backrest
Nebulizer
  a. Pneumatic
  b. Ultrasonic
Nephroscope
Neurological surgical table headrest
Nourishment ice station
Nuclear magnetic resonance scanner

Operating stool
Opthalmoscope
Optical readers
Orthotron system
Oscilloscope
Osmometer
Otoscope
Ottoman
Oven
  a. Baking
  b. Microwave
  c. Paraffin
  d. Roasting
  e. Sterilizing
Oximeter
Oxygen tank, motor, and truck
Pacemaker, cardiac
Pacing system analyzer
Packaging machine
Paint spray booth
Paint spraying machine
Panendoscope
Paper baler
Parallel bars
Parking lot sweeper
Patient monitoring equipment
Peeler, vegetable, electric
Percussor
Perforator
Phonocardiograph
Photocoagulator
Photocopier
Photography apparatus, gross pathology
Photometer
Phototherapy unit
Physicians' in-and-out register, portable
Physiological monitor
Physioscope
Piano
Pipe cutter-threader
Pipette, automatic
Planer and shaper, electric
Plasma freezer
Plate bending press
Polisher, floor
Polishing and buffing machine
Power supply
Press, laundry
Proctoscope
Projection machine
Projector, slide
Prothrombin timer, automated
Pulmonary function equipment
Pulsed oxygen chamber
Pump
  a. Breast
  b. Stomach
  c. Surgical
  d. Vacuum
Radiation meter
Radioactive source, cobalt
Radiographic duplicating printer
Radiographic fluoroscopic combination
Radiographic head unit
Range, household
Ratemeter, dual
Recorder
  a. Laboratory
  b. Tape
Refractometer
Refrigerator
  a. Blood bank
  b. Commercial
  c. Domestic
  d. Undercounter
Remote control receiver
Respirator
Resuscitator
Retractor
Rhinoscope
Rinser, sonic
Rotary tiller
Roto-osteotome unit
Safe
Sanitizer
Saw
  a. Autopsy
  b. Band
  c. Bench, electric
  d. Meat cutting
  e. Surgical, electric
  f. Neurosurgery
Scale
  a. Baby
  b. Bed
  c. Chair
  d. Clinical
  e. Laundry, platform
  f. Laundry, movable
  g. Metabolic
  h. Patient
  i. Postal
Scanner
  a. Body CT
  b. Isotope
  c. Rectilinear
  d. Ultrasonic
Scintillation scaler
Sectocardiograph
Sensitometer
Seriograph, automatic
Settee
Sewing machine
Shaking machine
Sharpener, microtome knife
Shears, squaring, floor
Shelving, portable, steel
Shoulder wheel
Sigmoidoscope
Silver recovery unit
Simulator
Skeleton
Slicer
  a. Bread
  b. Meat
Slide projector
Slide strainer, laboratory
Slit lamp
Snow blower
Sofa
Spectroscope
Spectrophotometer
Sphygmomanometer
Spirometer
Stall bars
Stamp machine
Stand
  a. Basin
  b. Irrigating
  c. IV
  d. Mayo
Stapler, electric or air
Steam pack equipment
Steamer, vegetable
Stencil machine
Stereo equipment
Sterilizer, movable
Stethophone
Still, water
Station system
Stimulator, muscle
Stretcher
Suction pump
Table
  a. Anesthetic
  b. Autopsy
  c. Electrohydraulic tilt
  d. Examining
  e. Fracture
  f. Food preparation
  g. Instrument
  h. Light
  i. Metal
  j. Obstetrical
  k. Operating
  l. Orthopedic
  m. Overbed
  n. Pool
  o. Refrigerated
  p. Therapy
  q. Traction
  r. Urological
  s. Wood
Tank
  a. Cleaning
  b. Full body
  c. Hot water
  d. Paraffin
  e. Therapy
Telemetry unit
Telescope, microlens
Telescopic shoulder wheel
Telethermometer
Television receiver
Tent
  a. Aerosol
  b. Oxygen
Test equipment
Thermometer, electronic
Thyroid testing equipment
Time recording equipment
Tissue embedding center
Tissue processor
Titrator, automatic
Toaster, commercial type
Tonometer
Totalap
Traction unit
Tractor
Transcribing equipment
Transcutaneous nerve simulator system
Treadmill, electric
Truck, hot food
Truck
  a. Forklift
  b. Multipurpose filling

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c. Van, pickup
Trunk
a. Platform
b. Tray
Tube dryer
Tube tester
Tumbler
Typewriter
a. Electric
b. Manual
Ultrasonic cleaner
Ultrasonic fetal heart detector
Urn, coffee
Vacuum cleaner
Vacuvette
Valet, office
Vectorcardiograph
Vending machine
Ventilator, respiratory
Vial filler
Vibrator
Victoreens meter
Vise, large bench
Walkie-talkie
Warmer
a. Dish
b. Food
Washer, glassware
Washing machine
a. Commercial
b. Domestic
Water cooler, bottle or fountain type
Water purifier or softener
Welder
Wheelchair
Wire tightener-twister
Word processor
a. Large
b. Small
X-ray
a. Developing tank
b. Film drier
c. Film processor
d. Image intensifier
e. Intensifying screens
f. Wiring
g. Unit, deep therapy
h. Unit, fluoroscopic
i. Unit, mobile
j. Unit, radiographic
k. Unit, superficial therapy

Appendix D—Regulatory Impact Analysis

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final regulation that meets one of the E.O. criteria for a "major rule"; that is, that will likely result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that the final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals as small entities.

We believe that this final rule will result in significant changes in the manner in which hospitals finance their capital expenditures. Accordingly, we have prepared the following discussion, which, in combination with the preamble of this final rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis meeting the requirements of E.O. 12291 and the RFA. This discussion includes our responses to comments related to the initial analysis published with the May 19 proposed rule.

B. Summary of the Initial Analysis Published May 19, 1987

In the May 19, 1987 proposed rule, we presented an initial regulatory impact analysis that compared projected payments under the phase-in of prospective payments for capital costs over the applicable transition period (ten years for fixed plant/equipment and two years for moveable equipment) to projected payments under current reasonable cost principles. The comparison used FY 1984 hospital capital cost data that were inflated through FY 1988 by an industry-wide inflation rate developed by the American Hospital Association. We displayed the effects of implementing the proposed payment system over the transition period in terms of the projected percent change in payment levels between the amounts that hospitals would receive under the current system for FY 1988 compared to what they could expect under the proposed capital prospective payment system.

As a result of both the relatively short transition period of two years for moveable equipment and the absence of an exceptions policy in the May 19, 1987 proposed rule, some hospitals might have experienced substantial reductions in their payments for capital costs. Many commenters, in responding to the proposed rule, indicated concern with the proposed payment system. We are now presenting a final regulation that we believe responds to the commenters' concerns.

C. Objectives

The chief objective we hope to achieve through integrating payments for inpatient capital costs into the prospective payment system is to establish the same kind of economic relationship between hospital operational characteristics and market conditions on the one hand, and capital investment decisions, on the other hand, as exists in a price-competitive market. The retrospective payment system now in effect does not constrain hospital capital spending sufficiently to bring these costs under control. Under the present system of capital payments, hospitals may gain access to financial markets for the purpose of obtaining capital and acquiring assets, even if these assets do not contribute to the effective or efficient operation of the facility. For example, under cost-based reimbursement, a hospital with low utilization could borrow funds for expansion of its plant even though it may have surplus capacity, and Medicare would still reimburse those capital costs. This final regulation establishing prospective payment rates for inpatient hospital capital costs, therefore, will establish a payment system that results in hospitals accepting a greater degree of risk for their investment decisions. Payments for capital costs will now face the same financial and economic incentives to which operating costs are now subject.

Comment: Many commenters expressed concern that incorporating reimbursement for capital costs into the prospective payment system might significantly harm their cash flow and overall reimbursement. In particular, several hospital associations asserted that our proposed rates would undercompensate hospitals capital costs and thus would have serious effects on their viability. Others noted that, based on the initial impact analysis, the new payment system may initially benefit some regions or provider types at the expense of others.

Response: We are issuing these final regulations to achieve our objective of more economical capital decisionmaking by health care providers. Moreover, although a number of commenters expressed dissatisfaction with our analysis, only a few commenters presented any detailed data in support of their claims. We are especially disappointed that none of the major hospital associations submitted pertinent national data.

Regarding our impact analysis, we caution readers that data limitations and necessary methodological

assumptions limit our understanding of the effects of these regulations on aggregate groups of hospitals. Even at this level, the results should be interpreted cautiously. For example, some hospitals of a type that appears to suffer reductions in payment in this analysis may not have made any major capital investments between FY 1984 and FY 1988. While our analysis assumes that the inflation-adjusted payments for these hospitals have grown at the same rate as the universe of hospitals between FY 1984 and FY 1988, their actual capital payments may have grown at a slower rate over that period. Ultimately, the requirements of budget neutrality under section 9303(a) of Pub. L. 99–509 require that any increases in payments to some hospitals be offset by payment reductions to others.

Moreover, we believe that the additional payments provided under § 412.68, in conjunction with transition periods for fixed plant/equipment and moveable equipment that are heavily weighted towards the hospital-specific payment in the first few years, should address many of the potential financial problems that may arise during the transition.

D. Analytical Methodology

1. General Considerations

Our approach for displaying the effects of the new payment system is similar to the one we adopted in the May 19, 1987 proposed rule. We will compare estimated FY 1988 payment levels under the new payment system using the FY 1988 Federal payment blends with projected payments under the present system. We are computing projected payments under reasonable cost principles by inflating each hospital's FY 1984 costs through FY 1988, using an estimate of the actual rate of inflation for capital costs. Hospital groupings that will, on average, receive higher payments under the new system will have positive values in our analysis while hospital groupings that will, on average, receive lower payments under the new system will have negative values. These positive and negative values represent the percent increase or reduction in payments compared to projected payments under the present system.

Comment: Several commenters noted that the annual update factors used to inflate the capital expenses of each hospital from FY 1984 to FY 1988 levels were omitted from the proposal.

Response: The updating factors used represent industry-wide estimates of the annual rate of inflation for per-case inpatient capital costs developed by the American Hospital Association, adjusted for the decline in Medicare inpatient utilization since FY 1984. We have published these estimates elsewhere in this preamble.

Section 1886(g)(3) of the Act (added by section 9303(a) of Pub. L. 99–509) requires payments for capital costs to be reduced by seven percent for portions of cost reporting periods or discharges occurring in FY 1988, regardless of the method of payment. Accordingly, we reduced our projected payments under reasonable cost reimbursement by seven percent. A similar reduction has already been made in the Federal prospective payment rates, so we are maintaining comparability between reasonable cost payments and prospective payments. As a result, the impact analysis in this document assumes that both the Federal payment rates and projected payment rates already have the seven percent removed from them.

Since the hospital-specific portion of the prospective payments for capital is, under these regulations, the hospital's actual allowable costs, we need not compute it separately from the reasonable costs used to simulate payments under the current system. That is, to compute the hospital-specific portion for a given year of the transition, all we need do is multiply the hospital's reasonable costs by the applicable blend factor in effect for that year of the transition. For example, in FY 1988, hospital-specific payments would equal the product of the same capital reasonable costs used to compute reasonable cost payments, multiplied by the applicable blend factor of .95.

In interpreting the results of this comparison, readers should keep in mind the following points:

- The first point is the static nature of the analysis. Hospitals and other interested parties should interpret the following analysis as indicating the direction and magnitude of changes in payment amounts based on the capital costs for hospitals in FY 1984. Although the cyclical nature of hospital investment would result in projected rates of growth in Medicare capital costs per case which are different for each hospital, we did not have the hospital specific data to incorporate these different growth rates in projecting FY 1988 hospital capital costs. Thus, for all of the impact analyses, we increased each hospital's FY 1984 capital costs per case by our projections of the national average increase in Medicare capital costs per case between FY 1984 and FY 1988. While applying this assumption to large aggregates of hospitals allows us to achieve a reasonable projection of the initial redistributional effects of these regulations, we warn the reader that, in assessing the following tables, the impact results for each group of hospitals assume FY 1984 conditions which may not exist in FY 1988.
- Second, we are presenting the effects of the new hospital payment system for both the FY 1988 Federal blends proposed in the NPRM and for the new blending rate and exceptions policy of this final regulation. In both instances, the comparison is made to our projections of the distribution of capital payments under the current cost reimbursement system, and our estimates of impacts are based on the assumption that the new payment system will take effect on October 1, 1987.
- A positive or negative value associated with a specific hospital grouping does not necessarily mean that hospitals in that group would experience either accounting or economic profits or losses for all inpatient care services. Our results show only decreases or increases of Medicare payments for capital costs under the new payment system, relative to payments under the present system (including the mandated reductions under section 9303(a) of Pub. L. 99–509). At present, Medicare covers, on average, approximately 41 percent of all inpatient hospital costs (based on estimated FY 1986 Medicare data compared to total hospital inpatient revenues as reported by the American Hospital Association), and capital expenditures account for about ten percent of all hospital inpatient expenditures. Thus, a five percent reduction in Medicare capital payments for an average hospital would result in a payment reduction of about .2 percent compared to total inpatient expenses. A hospital could receive lower payments under the new system, but overall, it could still be profitable because of operating gains earned from noncapital services to Medicare patients as well as to other patients. The converse may also occur; hospitals earning surpluses under the capital payment system may be suffering operating losses.
- The final point is that the impact values shown in Table I of Appendix D are single point estimates for different groups of hospitals rather than a range. Since a range of impact values allows one to better understand variations in capital payments among individual hospitals, we are including an analysis of range data for urban and rural hospitals, showing the distribution of hospitals using the blended Federal payment share effective for the first year

of the phase-in (see Table II of Appendix D, which depicts the effects of this final rule in comparison to the proposed rule).

Comment: One commenter argued that, if the Federal rates are updated for FY 1990 onward using the prospective payment update factor for all other inpatient operating costs, then the new payment system will extend the Pub. L. 99–509 mandatory reductions in aggregate capital spending indefinitely into the future (Section 9303(a) of Pub. L. 99–509 currently does not address national aggregate capital spending levels for FY 1990 and beyond). The commenter alleged that the initial regulatory impact analysis presented with the NPRM "obscures" this regulatory change.

Response: We are presenting our impact analysis of this regulation in terms of its possible FY 1988 distributional effects and other impacts as compared to current law and regulations. Current law provides for a nationwide seven percent reduction in capital-related reimbursement in FY 1988 and a ten percent reduction in FY 1989, regardless of payment mechanism used.

The data limitations and assumptions inherent in our analytic model, coupled with incomplete information on provider behavioral response to this regulation, forces us to present only short term impact projections here. Subject to these limitations, we nevertheless believe that the analysis contained herein fairly represents the impacts of the new payment system (in and of itself), and that possible Congressional action regarding national aggregate reimbursement levels after FY 1989 remains a separate issue.

Comment: Three commenters noted that the Federal rates for the new payment system are based upon cost and utilization data derived from hospital cost reporting periods that began in FY 1984. Given the fact that the new rates are on a per discharge basis, and given the decline in Medicare inpatient discharges since FY 1983, these commenters asked whether HCFA's impact estimates incorporate any potential decline in revenue that hospitals face under the new payment system on this account.

Response: The rates are based upon our best estimates of total Medicare capital costs in FY 1988. These estimates include the effects of nationwide reductions in hospital occupancy rates that have occurred since FY 1984.

Comment: Commenters expressed concern about possible conflict between HCFA's base year assumptions and those implicit in the proposed transition period for moveable equipment. In particular, one commenter asked whether the policy and impact analysis will take into account HCFA's guidelines to intermediaries regarding the audit treatment of depreciation expense. Intermediaries evaluate reported capital costs for moveable equipment on the basis of AHA depreciation schedules which assign a longer useful life to most items than was allowed for under the NPRM's proposed transition period.

Response: We believe that extending to seven years the transition period for incorporating capital payments for movable equipment into the new payment system more appropriately accounts for the true depreciable life of these items.

Comment: Several commenters argued that we should present impact projections for blending rates representing the fourth year and beyond of the transition.

Response: We are presenting information giving the direction and magnitude of changes which interested parties can expect to occur in the short term as a result of this rulemaking. However, providers can mitigate the long term impacts of the regulations through several strategies. In the absence of quantified models of provider response to the new payment system for capital, we believe that it would be speculative to present in tabular format impact scenarios for the Federal payment blends for FY 1991 and beyond. Actual adverse impacts can be expected to be much less substantial than shown in the tables, as providers adapt their capital purchasing to the new payment system. Similarly, those hospitals that would be advantaged by the new payment system can be expected to act so as to optimize their benefit.

Comment: Some commenters argued that, in order to perform a full impact analysis, we should provide the projected impacts of the new payment system on a hospital-specific or statewide basis.

Response: As explained earlier, the cyclical nature of capital investments can produce wide fluctuations in capital spending, which we are unable to model, within a short period of time. For an individual hospital, our FY 1988 projection of capital costs could be inaccurate, and an impact analysis for individual hospitals that relied on these data also would be inaccurate. Similarly, we felt that presenting the data on a statewide basis might also be misleading, particularly for States with relatively few hospitals.

The analysis showing the projected range of first year impacts on all hospitals is presented in section D.3. The analysis in D.3 also presents, for comparison, the estimated first year impacts under our original May 19, 1987 proposed rule.

2. Projected Differences Between Current and New Payment Methods

Table I displays the effects of the new prospective payment system compared to the present system. As previously explained, the results are based on FY 1984 costs inflated to FY 1988 and incorporate both the seven percent reduction mandated under section 1886(g)(3)(A) of the Act and the budget neutrality factor for FY 1988 mandated under section 1886(g)(3)(C) of the Act. It should be noted that, since we have no data on the investment patterns for each hospital between FY 1984 and FY 1988, the impact values for various groups may not be representative of the actual gains or losses resulting from our prospective payment system.

Comment: Many commenters expressed concern regarding the impact of the proposed short transition to a 100 percent Federal rate for movable equipment.

Two commenters asserted that Table I should present the impacts for the fixed plant/equipment and movable equipment provisions of the proposal separately. Another suggested that HCFA assess the impact of the split transition period for fixed plant/equipment and movable equipment on hospitals with different relative investments in the two categories.

Response: The transition period for movable equipment has been lengthened considerably to seven years in this final rule, and for the first four years the Federal blends for both fixed plant/equipment and movable equipment are the same. Accordingly, we believe that most commenters' concerns regarding the split between fixed plant/equipment and movable equipment have been addressed.

We cannot present with any degree of confidence the impacts of the several provisions of this rule separately, since many hospitals probably have different relative investments in the two capital categories in FY 1988 than they had in FY 1984. For this reason, we believe it most appropriate to present our projections of the impact of this rule on hospitals' total capital payments, especially given the fact that the Federal blend for the two capital categories will be equivalent in the first four years. We originally presented the impact of the proposed rule on hospitals' total capital expenditures because we believe that many hospitals are most concerned about the impact of this regulation on their total reimbursement levels.

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TABLE I--ESTIMATED IMPACT OF THE FIRST YEAR PAYMENT BLENDS OF FEDERAL AND HOSPITAL-SPECIFIC PAYMENTS FOR FIXED AND MOVEABLE CAPITAL COST IN FY 1988 COMPARED TO ESTIMATED IMPACTS OF THE FIRST YEAR BLEND AS PROPOSED MAY 19, 1987 [1]

	Number of Hospitals [2]	Fixed - 5% Federal Moveable - 33% Federal (PROPOSED PAYMENT RATES) [3]	Fixed - 5% Federal Moveable - 5% Federal (FINAL PAYMENT RATES) [4]
All Hospitals	4820	0.0	0.0
Urban by Region			
New England	174	5.0	1.5
Mid Atlantic	280	2.6	0.8
South Atlantic	382	-1.1	-0.2
East North Central	483	0.2	-0.1
East South Central	157	-1.9	-0.5
West North Central	188	-0.7	-0.2
West South Central	338	-1.5	-0.5
Mountain	91	-2.9	-0.8
Pacific	461	-1.0	-0.2
Rural by Region			
New England	30	5.0	2.0
Mid Atlantic	86	4.0	1.2
South Atlantic	301	1.0	0.0
East North Central	351	0.4	0.0
East South Central	294	0.4	0.1
West North Central	512	0.7	0.1
West South Central	404	0.5	0.0
Mountain	145	-0.7	-0.3
Pacific	89	1.6	0.1
Urban Hospitals	2554	-0.2	0.0
0-99 Beds	627	0.3	0.0
100-404 Beds	1561	-0.9	-0.3
405-684 Beds	308	1.2	0.4
685 + Beds	58	1.0	1.0
Rural Hospitals	2212	0.9	0.1
0-99 Beds	1694	2.3	0.5
100-169 Beds	347	-0.2	-0.2
170 + Beds	171	0.4	0.1
Teaching Status			
Non-Teaching	3824	-0.6	-0.3
Resident/Bed Ratio Less than 0.25	794	0.3	0.2
Resident/Bed Ratio 0.25 or Greater	148	3.1	1.1

Table I - continued

	Number of Hospitals 2/	Fixed - 5% Federal Moveable - 33% Federal (PROPOSED PAYMENT RATES) 3/	Fixed - 5% Federal Moveable - 5% Federal (FINAL PAYMENT RATES) 4/
Disproportionate Share Hospitals (DSH)			
No Additional Payments	3691	-0.3	-0.1
Urban DSH 100 Beds or More	793	0.5	0.2
Urban DSH fewer than 100 Beds	82	1.4	-0.4
Rural DSH	200	4.8	0.4
Other Special Status			
Rural Referral Centers (RRCs)	196	1.5	0.2
Rural fewer than 50 beds	983	5.6	1.3
Type of Ownership			
Voluntary	2868	0.4	0.1
Proprietary	712	-4.2	-1.1
Government	1165	3.3	1.1

1/ This table represents estimated Medicare margins for the Federal/hospital-specific payment blend for fixed and moveable capital costs for the first year of the transition from the present capital payment system to the prospective payment system compared to Medicare margins that were estimated based on the prospective payment rates for fixed and movable equipment proposed in the May 19, 1987 proposed rule as corrected by the June 11, 1987 notice. These margins result from a comparison of projected payments under the new payment system to payments under the current system, based on 1984 data inflated through FY 1988, and assumes all hospitals have cost reporting periods corresponding to the beginning and end dates of the phase-in year. Both sets of margins reflect a budget neutrality factor based on projected FY 1988 payments and the exclusion of sole community hospitals from the proposed payment system.

2/ This column shows the number of hospitals in each cell of the FY 1984 hospital cost data base used to compute both the proposed payment rates and the estimated impact. Puerto Rican hospitals are only included in the national hospital total of 4820; otherwise, Puerto Rican and sole community hospitals are not included in these figures.

3/ Margins based on a blend of 95 percent hospital-specific for plant/fixed equipment, and 67 percent hospital-specific portion for the moveable equipment that was proposed in the May 19, NPRM, as updated by revisions to the notice published on June 11, 1987.

4/ Margins based on a blend of 95 percent hospital-specific portion for both plant/fixed equipment, and moveable equipment.

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Table I clearly demonstrates that the first-year impacts of this final rule will be much less severe than the projected effects of implementing the May 19, 1987 proposed rule without change. For every region and every hospital category shown in our analysis, the aggregate first year capital payments which hospitals will receive under the new payment policy will more closely approximate their projected payments under cost-based reimbursement, than would have been the case under our proposed rule. We attribute this change to the lengthened transition period for moveable equipment and the inclusion of the exceptions policy for hospitals with high capital costs

Regarding the specific impact of our capital payments exceptions policy, we project that slightly over 13 percent of all hospitals will qualify for these payments. We project these payments in the first year to total about 10 million dollars nationally, and these exceptions payments will increase during the transition period as the Federal payment blend increases. Accordingly, our projections show that about 16 percent of urban hospitals and almost 11 percent of rural hospitals will qualify for additional payments.

In the aggregate, our analysis of this final rule as presented in Table I shows no change in overall payments from the present method of paying for inpatient hospital capital costs. This is to be expected because we have maintained throughout this analysis the budget neutrality requirement imposed on payments for the first year. Nevertheless, the impact varies among geographic regions Based on the first year Federal blend the impact ranges from a high of 2.0 percent increase for rural hospitals in the New England region to a low of 0.8 percent decrease for urban hospitals in the Mountain census division.

Among categories of hospitals there is also a wide range of projected impacts. Rural hospitals, overall, fare better than urban hospitals, with rural hospitals that have fewer than 50 beds doing especially well, showing, on average, a 1.3 percent increase in payments. All rural hospitals, in the aggregate, show a 0.1 percent average increase as compared to an insignificant decrease (less than 0.05 percent) in the aggregate payments for urban hospitals. It appears that the gains made by small rural hospitals are, in part, attributable to our computing the standardized payment rates on a case-weighted basis in accordance with section 1886(d)(3)(A) of the Act (as amended by section 9302(c) of Pub. L. 99–509).

Similarly, teaching hospitals with "heavy" graduate teaching programs (defined as hospitals with resident to bed ratios of 0.25 or greater) show an average increase in their capital payments of approximately 1.1 percent when projected payments are based on the first year Federal payment blend. Other categories of hospitals that would receive higher payments under the proposed system are large urban hospitals (with 405 beds or more) and government-controlled facilities. The latter group is shown to benefit by a 1.1 percent increase based on the first year blend.

Among hospitals that are likely to experience a drop in payments are proprietary facilities, with a projected payment decrease, under the first year Federal payment blend, of 1.1 percent. The losses resulting from high capital costs for these hospitals will be mitigated by our exceptions policy.

In general, any observed reductions in FY 1988 payments do not necessarily imply losses for hospitals. A noncash expense, such as depreciation, may cause a hospital to show an accounting loss, but does not affect cash flow. Also, principal payments, which Medicare does not reimburse, would not significantly affect cash flow, since these are usually low during the initial years after investment. Finally, hospitals that incur a loss in capital payments in FY 1988 due to a major recent investment will have fairly level capital expenses over the next ten years. Since the capital payments for all hospitals will be increased each year by the prospective payment system update factor, we would expect that a number of these hospitals will obtain capital surpluses during the transition.

Comment: Several commenters disagreed with our assertion that hospitals with initial losses under the new payment system could take action to adapt their capital spending, such as refinancing their debt at lower interest rates. They also questioned our assertion that, as the capital prospective payment rates are updated over time, hospitals which initially receive lower payments would eventually receive adequate reimbursement.

Response: We agree that interest rates appear to be rising at this time. However, we continue to believe that hospitals have the ability to undertake various term financing arrangements that could bring their stream of debt payments over time into line with their expected Medicare capital reimbursement. As stated, most hospitals can choose to postpone some capital expenditures until they have built an appropriate cash reserve. Also, hospitals could arrange to make heavier debt payments earlier or later in the capital cycle as necessary. We believe that the gradual transition period incorporated in this final rule should allow most hospitals ample time to adjust their capital expenditures to the new payment environment.

We disagree with those commenters who questioned our assertion that hospitals initially receiving inadequate payments will eventually receive adequate reimbursement. If a hospital's debt service remains constant or declines over time (because it is postponing the acquisition of noncritical assets), and our prospective rates are increased over time, then Medicare capital-related payments to such a hospital will eventually more than cover the Medicare share of the cost of related expenditures.

Comment: One commenter argued that the impact analysis given in the proposed rule should examine the interactive effects of the new payment system with Medicaid regulations, in particular those requiring State Medicaid programs to set payments at levels that, on average, do not exceed Medicare levels as an upper bound (§ 447.253(b)(2)).

Response: Under § 447.253(b), Federal financial participation to State Medicaid agencies is limited to an aggregate upper limit for payments to providers equal to the amount Medicare would pay. Because section 1886(g)(3) of the Act requires that capital prospective payments be budget neutral with respect to payments under the present system for FYs 1988 and 1989, aggregate Medicare payments to hospitals in some States will decline slightly below present payment levels. Because payment systems vary from State to State (even among those States that generally follow Medicare payment principles), and because States are subject to an aggregate upper limit that covers a number of different types of providers, States have considerable flexibility in responding to the new Medicare prospective payment system. As a result of such flexibility, and the relatively slight changes required by this regulation, we cannot determine how State agencies will respond. Consequently, we cannot determine the fiscal effect of the new systems on Medicaid providers. We believe the most significant payment adjustments State agencies need consider are the seven and ten percent reductions in payments for FYs 1988 and 1989, respectively, mandated under section 1886(g)(3)(A) of the Act.

For periods beyond FY 1989, it becomes increasingly difficult to predict the effects of this rule on Medicare providers. It is well beyond our present analytical capabilities to determine the possible effects of the new payment system on FFP levels to States and how State agencies will respond to changes in such levels.

It is also unclear how the new Medicare prospective payment system for capital costs will affect the amendment of Medicaid State plans.

Following the implementation of the Medicare prospective payment system for inpatient services, many States adopted similar DRG-based prospective payment systems or significantly modified their cost reimbursement systems to incorporate prospective payment features. Significantly, many of the new systems are comprehensive payment systems that include prospective payment for capital costs as well as payments for inpatient operating services. Thus it seems unlikely that the Medicare prospective payment system for capital costs will stimulate major changes in many Medicaid State plans.

Comment: Several commenters argued that further analyses of the characteristics shared by hospitals that will be adversely affected by the regulations need to be conducted prior to final implementation. In particular, one commenter argued that, prior to the final rule, we should assess whether urban and rural hospitals as groups are in different stages of the capital cycle.

Response: The commenters are, in essence, suggesting that we do an analysis based on the age of hospitals' plant and equipment and capital financing to definitively determine the impact of this rule on hospitals. Since the information necessary to perform such an analysis is not available, it cannot be done. Furthermore, it should be noted that in a competitive marketplace, the price of an item does not vary based on the age of the seller's capital assets. For similar reasons, we believe that prospective payments made to hospitals should not vary on the basis of their age.

3. Projected Distributional Effects of This Regulation

Recognizing that the above table and analysis provide only a measure of central tendency, and fail to give an indication of the range of possible effects, we have examined the range of possible effects the new payment system may have on all hospitals subject to the prospective payment system, and hospitals grouped by their location in either urban or rural areas for the first year of the transition. In presenting this analysis, we must point out again that our analysis does not reflect any investment changes for hospitals since FY 1984. Table II displays both the absolute number of hospitals in our data base groups and the percent they comprise of the number of hospitals in the group under analysis. Again, for the sake of comparison, we also present the range of impacts of the May 19, 1987 proposed rule (as those figures were updated by the June 10, 1987 correction notice published in the **Federal Register**).

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TABLE II DISTRIBUTION OF HOSPITALS

Percentage Increases or Decreases in Payments Based on a Comparison of the Proposed Corrected Rates and Final Prospective Payment Rates to Projected Cost-Based Payments 1/

First Year Payment Blend

	Hospitals in data base 5/	Percent Decreases 2/					Percent Increases 2/				
		Less than 20 percent	-20 to -15	-15 to -10	-10 to -5	-5 to 0	0 to +5	+5 to +10	+10 to +15	+15 to +20	Greater than 20 percent
DISTRIBUTION OF HOSPITALS BASED ON FINAL RATES 3/											
All Hospitals	4766	0.0	0.0	0.0	0.0	39.6	40.9	13.7	3.4	1.3	1.1
Urban Hospitals	2554	0.0	0.0	0.0	0.0	46.8	38.2	10.3	2.5	1.3	0.9
Rural Hospitals	2212	0.0	0.0	0.0	0.0	31.2	44.0	17.7	4.5	1.4	1.2
DISTRIBUTION OF HOSPITALS BASED ON PROPOSED RATES 4/											
All Hospitals	4718	0.6	1.3	3.3	10.9	20.9	17.9	14.1	9.2	6.4	15.5
Urban Hospitals	2535	0.5	1.2	3.9	13.2	24.7	19.4	12.7	7.9	5.3	11.1
Rural Hospitals	2183	0.7	1.3	2.6	8.2	16.4	16.0	15.8	10.8	7.7	20.5

1/ Analysis based on FY 1984 hospital data inflated by an estimate of the actual rate of inflation used in calculating both a projection of payments under current reasonable cost principles and hospital-specific payments under the final (and NPRM) capital payment system.

2/ Increases and decreases are relative to 1984 payments projected to 1988 levels under current reimbursement principles. The rates used for comparison purposes assume that all hospitals in the data base have an October 1 to September 30 cost reporting period.

3/ Final payments used in this analysis are based on FY 1988 blend of five percent Federal blend for both plant/fixed equipment and moveable equipment to simulate payments during the first transition year.

4/ Proposed payments used in this analysis are based on FY 1988 proposed blend of five percent Federal for plant/fixed equipment and 33 percent Federal blend for moveable equipment to simulate payments during the first transition year published in the May 19, 1987 proposed rule as corrected in the June 11, 1987 notice.

5/ Excludes Puerto Rican and sole community hospitals.

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Again, we can see from Table II how the policy changes incorporated in this final rule will mitigate the most serious adverse consequences of our proposed rule. Whereas we project that nearly 16 percent of hospitals nationally would have suffered a first-year reduction in payments of five percent or more under the proposed rule, no hospitals will lose more than five percent in payments compared to cost-based reimbursement as a result of this final rule. Indeed, our final policy prevents such a result, since the first year payment blend incorporates a ninety-five percent hospital-specific amount. As the transition proceeds, the capital exceptions policy and the longer transition period for movable equipment will mitigate the financial impact of the new capital payment system on high capital cost hospitals.

In our analysis of the effects of this final rule, we find that at the national level, for the first year of the proposed system approximately 80 percent of all hospitals in the data base would either lose or gain between zero and five percent compared to current payments for inpatient capital costs. The breakdown between those hospitals that would lose between zero and five percent is almost identical to the percent of hospitals that would gain between zero and five percent.

A similar clustering around the −5 percent and +5 percent interval is also evident among hospitals grouped by urban and rural locations. Approximately 75 percent of all rural hospitals fall within this interval, while 85 percent of all urban hospitals will either lose or gain between zero and five percent. Of all rural hospitals in the data base, nearly 44 percent are projected to receive between zero and five percent higher payments under the proposed payment system for the first year compared to their current payment levels while about 31 percent of rural hospitals would stand to lose between zero and five percent of their current payments. Similarly, among urban hospitals, approximately 38 percent of the hospitals are projected to receive increases of between zero and five percent while about 47 percent of urban hospitals are expected to receive between zero and five percent lower payments.

During FY 1988, about 25 percent of all rural hospitals would receive increases in their payments for capital related expenses of five percent or more, while no rural hospitals will receive payment decreases of 5 percent or greater. About 15 percent of urban hospitals would get payments increases of five percent or greater.

On the whole, based on policies and payment rates that will take effect in FY 1988, more hospitals would receive increases in payments over current levels than hospitals receiving decreases in their payments. Nationally, we project that about 61 percent of all hospitals in the data base (70 percent of rural hospitals and 53 percent of all urban hospitals) will receive increases in their capital related payments in the first year. Furthermore, almost 20 percent of hospitals will receive payment increases during the first year of more than 5 percent.

Comment: One commenter asked whether the ranges of impacts given in Table II could be given in terms of dollars-per-discharge as well as in percentages. The commenter asserted that this data should be presented for each of the first three years and the final year of the transition.

Response: Generally, we believe it is inappropriate to present in tabular format the range of possible impacts which may occur upon implementation of this regulation for many years into the future. All projected range impacts from the data are particularly sensitive to assumptions regarding changes in hospitals' debt structure between FY 1984 and FY 1988. Also, the addition of an exceptions policy, as well as possible behavioral changes on the part of providers in response to this regulation, will affect the distributional impacts of this policy. However, we cannot at this time model the magnitude of these factors precisely.

We are choosing to give the impacts for Table II in terms of percentages because hospitals can relate these figures to their own particular circumstances. The impact that a given dollar-per-discharge gain (or loss) will have on a particular provider depends in part upon what its average dollar-per-discharge capital costs actually are. For this reason, we believe that presenting this data in terms of dollars-per-discharge gained (or lost) would be less illuminating for most hospitals than percentages.

[FR Doc. 87-20081 Filed 8-28-87; 8:45 am]
BILLING CODE 4120-03-M

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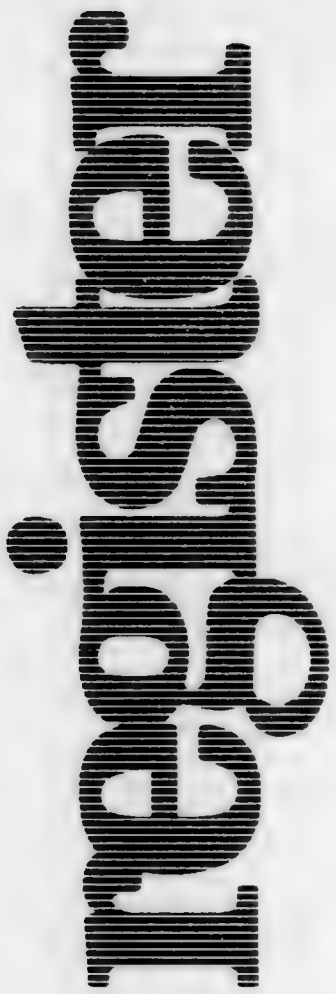

Tuesday
September 1, 1987

Part V

Department of Health and Human Services

Public Health Service

42 CFR Part 59

Statutory Prohibition on Use of Appropriated Funds in Programs Where Abortion Is a Method of Family Planning; Standard of Compliance for Family Planning Services Projects; Proposed Rules

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 59

Statutory Prohibition on Use of Appropriated Funds in Programs Where Abortion is a Method of Family Planning; Standard of Compliance for Family Planning Services Projects

AGENCY: Public Health Service, DHHS.

ACTION: Proposed rules.

SUMMARY: The Public Health Service (PHS) proposes to amend the regulations governing the use of funds for family planning services under Title X of the Public Health Service Act in order to set specific standards for compliance with the statutory requirement that none of the funds appropriated under Title X may be used in programs where abortion is a method of family planning. This change is being proposed to bring the compliance requirements for programs using Title X funds into conformity with the statutory ban on such use of Title X appropriated funds. The proposed amendments should improve compliance by grantees with the statute and facilitate monitoring of compliance by PHS.

DATE: Comments must be in writing and be received by November 2, 1987. It is intended that final regulations will be promulgated within 45 days following the close of the above noted comment period.

ADDRESS: Comments should be sent to the Deputy Assistant Secretary for Population Affairs, Department of Health and Human Services, P.O. Box 23993, L'Enfant Plaza, Washington, DC 20026–3993.

FOR FURTHER INFORMATION CONTACT: Nabers Cabaniss at 202–245–0152.

SUPPLEMENTARY INFORMATION: On July 30, 1987, President Reagan announced that the Department of Health and Human Services would, within 30 days, publish draft regulations governing grants under Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, to give effect to the statutory prohibition on the use of Title X appropriated funds in programs that include abortion as a method of family planning. Set out below are the Department's proposed regulations, along with a statement of the basis and purpose of the amendments. The regulations proposed herein, when they become final, will automatically supersede the present Title X guidelines to the extent those guidelines are inconsistent with the final rules. After the final rules are issued, the Department intends to issue revised Title X guidelines in conformity therewith.

Background

Title X of the Public Health Service Act was enacted in 1970 by Pub. L. 91–572. Title X authorizes the Secretary of Health and Human Services to, among other things, make grants to public and private nonprofit entities "to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services * * * ." Section 1001(a) of the Public Health Service Act, 42 U.S.C. 300(a). Approximately 95% of the funds appropriated for Title X since enactment have been used to fund family planning service projects under section 1001(a). At present, 90 services grants are funded under section 1001(a); these grants fund the provision of voluntary family planning services at approximately 3,900 clinic sites.

Since enactment, Title X has contained the following prohibition at section 1008:

> [n]one of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.

The legislative history of Title X in general, and of section 1008 in particular, reflects a fundamental dichotomy between the provision of preventive and other pre-pregnancy family planning services, on the one hand, and abortion on the other. As was stated in the Conference Report:

> [i]t is, and has been, the intent of both Houses that funds authorized under this legislation be used only to support preventive family planning services, population research, infertility services and other related medical, informational, and educational activities. The conferees have adopted the language contained in section 1008, which prohibits the use of such funds for abortion, in order to make clear this intent. Conf. Rep. No. 91–1667, 91st Cong., 2nd Sess. 8–9 (1970).

While the Conference Report reflects the conferees' understanding that certain "medical, informational and educational activities" are authorized under Title X, it is clear that these activities must be "related" to "preventive family planning services, population research, and infertility services." *Id.* Actions that promote abortion are manifestly distinct from these activities. This distinction is emphasized by the explicit contrast between abortion and family planning drawn in the floor statement of Representative Dingell, the sponsor of section 1008, who stated:

> There is a fundamental difference between the prevention of conception and the destruction of developing human life. Responsible parenthood requires different attitudes toward human life once conceived than toward the employment of preventive contraceptive devices or methods. What is unplanned contraceptively does not necessarily become unwanted humanly . . . . 116 Cong. Rec. 37375 (1970).

In explaining the purpose of section 1008, Representative Dingell indicated in his floor statements that this provision was intended to prohibit more than the actual conduct of abortions. Rather—

> [w]ith the "prohibition of abortion" amendment—Title X, section 1008—the committee members clearly intend that abortion is not to be encouraged or promoted in any way through this legislation. Programs which include abortion as a method of family planning are not eligible for funds allocated through this act. 116 Cong. Rec. 37375 (1970).

He also observed that—

> [i]f there is any direct relationship between family planning and abortion, it would be this, that properly operated family planning programs should reduce the incidence of abortion. *Id.*[1]

Thus, it is clear that Title X is meant to fund the provision of preventive and other pre-pregnancy family planning services, and not to promote or encourage abortion in any way.

HHS's interpretation of these policies over the years, however, has not provided clear standards for grantees and HHS personnel. In 1982, the Department's Office of the Inspector General (OIG), after auditing 32 Title X clinics, found that the Department's failure to provide specific program guidance regarding the scope of section 1008 had created confusion about precisely what activities were proscribed by the section, and had resulted in variations in practice by grantees. In particular, the OIG audits found that the clinics were relying upon the Department's policy of permitting both Title X family planning services and separately funded abortion-related activities to be provided at a single site. Similar findings were noted by the General Accounting Office (GAO) in an audit of 14 Title X clinics, also conducted in 1982. GAO went on to recommend that "the Secretary establish clear operational guidance by incorporating into the Title X program regulations and guidelines, HHS' position on the scope of the abortion

[1] Regulations implementing section 1008 were initially issued in 1971 (36 FR 18465, Sept. 15, 1971) and revised in 1980 (45 FR 37436, June 3, 1980). In both cases, the regulations stated that Title X projects could not provide abortion as a method of family planning.

restriction in section 1008." [2] The President's July 30th directive to the Secretary was based in part upon this demonstrated need for changes in existing HHS program guidelines.

Accordingly, pursuant to its rulemaking power under 42 U.S.C. 300a–4(a), HHS has herein proposed to revise the regulations governing Title X so as to conform the obligations of grantees to the statutory prohibition in section 1008, and to establish standards for compliance with section 1008 that will permit adequate monitoring of such compliance. Providing Title X grantees with clear notice of specific compliance standards that give effect to the prohibition in section 1008 is necessary to improve compliance by grantees with section 1008 over the level that presently exists. At the same time, issuance of the proposed rules will strengthen the Department's ability to monitor compliance with section 1008 by providing a clearer basis for measuring grantee activities against objective requirements. Finally, the proposed rules will enable HHS to better enforce section 1008 by providing a basis in regulation for disallowance of costs or termination of program funding where noncompliance exists.

Provisions of the Proposed Rules

Title X authorizes grants for family planning programs. It further specifies that Title X funds may not be used in programs that include abortion as a method of family planning. The rules proposed below set out specific requirements intended to enforce this congressional mandate by making it clear that a Title X program is limited to providing family planning services, and may not provide abortion counseling and referral; that a Title X program must be entirely separate and distinct, financially and physically, from any abortion-related activities; and that a Title X program may not encourage, promote or advocate abortion as a method of family planning.

The proposed regulations, however, apply only to a Title X-funded "program" or "project": that is, "the identified activity approved by the granting agency for support." HHS Grants Administration Manual, Ch. 1–85–20. The proposed rules in no way purport to restrict an organization's activities in programs that are supported otherwise than by Title X funds. Definitions clarifying this terminology are included in the proposed rules. This limitation on the scope of the proposed rules reflects the express application of the section 1008 prohibition to "programs," and the statute's legislative history to the same effect. It is also consistent with existing case law holding that the government may favor normal childbirth by refusing to fund or promote abortion, but it may not preclude organizations whose programs receive government funds from using nongovernment resources in other programs that may include abortion-related activities. The proposed regulations accordingly are not to be construed as restricting or limiting the activities of grantee organizations when such activities are entirely outside of, and separate from, a Title X-funded program.

Certain provisions of the proposed rules derive directly from and strengthen the Department's longstanding practice in implementing section 1008. *See, e.g.,* proposed § 59.9 (relating in part to financial and accounting separation of abortion-related services from family planning programs) and proposed § 59.10 (relating in part to activities that encourage, promote or advocate abortion as a method of family planning by using legal action to make abortion available as a method of family planning, or by developing or distributing materials advocating abortion as a method of family planning). Since these rules represent no substantial change from prior practice, it would be most helpful if any comments in these areas contain suggestions for improvement based on prior operational experience with existing requirements.

Proposed § 59.7, requiring that programs seeking Title X funding provide an assurance that they will not include abortion as a method of family planning, is procedurally similar to a requirement that appeared in the Title X regulations until 1980. *See* 42 CFR 59.5(a)(9), as in effect from 1971 through 1980. New § 59.7, however, more closely tracks the language of section 1008, and incorporates more specific requirements designed in part to enable the Secretary to obtain at the application stage information relevant to determining whether a program will in fact comply with the statutory prohibition. If an applicant for Title X funds cannot demonstrate that it will comply with the statutory prohibition by conducting its family planning program consistent with the requirements of each of the proposed rules, it will not be eligible for Title X funds.

Proposed § 59.8 prohibits Title X projects from providing counseling and referrals for abortion. In the past, "mere referral" for abortion and nondirective counseling regarding abortion were not prohibited by the guidelines, on the theory that such activities do not promote or encourage the performance of abortion. Thus, the current Title X program guidelines require that whenever counseling for dealing with unintended pregnancy is requested, family planning clinics funded under Title X must provide "mere referral" and "nondirective" counseling on all options, including abortion, for dealing with the unintended pregnancy. As clearly contemplated by Title X and its legislative history, however, "family planning" is meant to address plans and methods for facilitating or preventing pregnancy, not for terminating it. As such, medical services or counseling related to pregnancy care after pregnancy diagnosis, or any services relating to abortion as a method of family planning, are outside the scope of activities supported by Title X funds.

Moreover, it is clear that counseling activity and other forms of information distribution were understood by Congress to be a significant part of the "family planning services" that Title X funds were to be used to fund. Thus, "mere referral" and counseling are clearly covered by the prohibition in section 1008 on abortion as a method of family planning.

In addition, it is unreasonable to assume that counseling and referrals for abortion do not indeed "encourage or promote" abortion. Specifically, the purpose of counseling programs for pregnant women is to provide information upon which they will base a course of action; counseling concerning abortion would be pointless in the absence of an expectation that some women receiving such counseling will choose to have an abortion. Similarly, providing a referral for abortion facilitates the obtaining of abortion, and the intended and actual effect of a referral program is that at least some women referred will select abortion as a method of family planning. Thus, even if abortion counseling and referral were not prohibited by the express language of section 1008 as family planning services that include abortion, the statutory purpose of section 1008 not to promote or encourage abortion would be better effectuated by proposed § 59.8.

In order, therefore, to conform program policies with the general statutory limitation on the use of Title X funds for "family planning services" and the specific prohibition in section 1008 on the use of Title X funds in programs where abortion is a method of family planning, as well as to better effectuate

[2] Comp. Gen. Rep. No. GAO/HRD–82–106, "Restrictions on Abortion and Lobbying Activities in Family Planning Programs Need Clarification," p. 22 (1982) (hereafter referred to as the GAO Report).

the statutory purpose of not promoting or encouraging abortion, proposed § 59.8 prohibits abortion counseling and referral, as well as medical services or counseling related to pregnancy care after pregnancy is diagnosed. One of the effects of these regulations will be to insure the ability of otherwise eligible organizations or programs that refuse to engage in abortion-related activities to receive support under Title X.

Although proposed § 59.8 below prohibits counseling or referral for abortion, as well as counseling and other services relating to pregnancy that are provided after pregnancy diagnosis, it should be noted that the current Title X regulations provide, at § 59.5(b)(1), for "necessary referral to other medical facilities when medically indicated." Referrals to a comprehensive list of health-care providers who provide prenatal care and delivery are therefore permitted, provided that such referrals are not used as an indirect means to encourage or promote abortion. However—notwithstanding the Department's past view of this provision as requiring referrals for abortion in cases where it is medically indicated, such as where continuation of the pregnancy would endanger the life of the mother—it is the express purpose of the specific rule changes proposed below to insure that Title X-funded family planning project do not provide counseling or other services relating to the issue of "medical indication" for abortion. Rather, consistent with the legislative intent expressed in Title X—that is, the provision of preventive and other pre-pregnancy family planning services—§ 59.8 requires that pregnant women be referred outside of the Title X project for prenatal care and other related medical services. In no case, therefore, should a Title X-funded family planning program make a determination of the appropriateness of abortion.

Read together with proposed § 59.8, § 59.5(b)(1) will thus require referral in any case where pregnancy is diagnosed. Specifically, when a woman who is already pregnant comes to a Title X-funded family planning program, the program must provide her with a full listing of licensed health care providers of appropriate prenatal medical care and delivery services, from which she may select. This requirement is consistent with the legislative design of Title X as a program limited to funding preventive and other pre-pregnancy family planning services.

The Department solicits comments relating not only to proposed § 59.8, but also to its intended effect upon the meaning of § 59.5(b)(1). If necessary, the Department may amend the language in § 59.5(b)(1) in the final rules, in order to insure that the proposed change is unambiguous.

Proposed § 59.9 articulates new requirements designed to strengthen the Department's existing policy that abortion-related services must be "separate and distinct" from a Title X-funded program. Among these new requirements are provisions relating to the maintenance of separate medical records systems and the physical separation of a Title X project from any abortion-related functions or facilities.

The requirement of proposed § 59.9 that grantees maintain project medical record systems separate from any abortion-related operations is based squarely on the congressional intent that abortion not be a part of a Title X funded program. In this regard, the Department is concerned that commingled data systems may cause grantee organizations to aggregate abortion clients with Title X clients, and may inhibit monitoring of the segregation required by section 1008. The proposed rule thus seeks to ensure clearer records for purposes of excluding abortion-related activities from Title X funded programs and facilitating program monitoring. In fact, there is evidence that this requirement reflects the current practice of some grantees. The Department does not, therefore, anticipate that overall this requirement will impose substantial additional administrative burdens on grantees. See the GAO Report, p. 8.

The provisions of proposed § 59.9 relating to physical separation of abortion activities and family planning programs, while new, effectuate the underlying policy of section 1008. In the past, HHS has not consistently interpreted the statute so as to prohibit situations where the Title X project shares physical facilities (such as a common waiting or treatment area) with a project providing abortion services. HHS has now concluded, however, that a requirement of physical separation is necessary to strengthen the enforcement of the prohibition in section 1008.

In practice, an impermissible use of Title X funds may occur when the physical facility of a grantee organization's Title X-funded family planning program overlaps that of its abortion-related operations. Even where the strictest accounting and charging of expenses is performed, shared facilities inevitably increase the likelihood that a violation will occur, and lead to situations where the assertion that a program does not "include" abortion amounts to little more than an accounting fiction.

Accordingly, one purpose of proposed § 59.9 is to insure that Title X funds not be used for abortion-related activities. In addition, it is intended to further enforcement of the statutory requirement of section 1008 that abortion not be a method of family planning in a Title X program. Meeting this latter requirement mandates that Title X programs be organized so that they have an appropriate integrity and independence from other activities conducted by the grantee which are prohibited by statute from inclusion in a Title X funded program. Having a program that is separate and distinct from other such activities conducted by the grantee is a necessary predicate to any determination that abortion is not being included as a method of family planning in the program.

Moreover, proposed § 59.9 is independently justified by the need to prevent existing or potential clients of Title X projects—as well as the general public—from concluding that the government endorses abortion. By promoting the view that abortion is an acceptable and government-sanctioned method of family planning, moreover, the rendering of abortion and family planning services in common facilities violates the intent of Congress underlying section 1008, that Title X funds will not be used to "encourage or promote" abortion. Thus, proposed § 59.9 prohibits siting a Title X-supported family planning program in a fashion which would result in use of shared physical facilities—for example, with respect to waiting, consultation, examination, and treatment areas. It also prohibits Title X-funded projects from sharing office entrances and exits with an abortion facility. These proposed requirements effectuate the policy expressed in section 1008 that Title X projects not include abortion as a method of family planning.

One additional provision below—proposed § 59.10(a)(1) (relating to payment of dues to advocacy organizations)—constitutes a change from current program requirements. The provision of proposed § 59.10(a)(1) prohibiting payment of dues with project funds to advocacy organizations is necessary to ensure that Title X funds are not indirectly used to advance objectives that are not only inconsistent with Title X, but specifically prohibited by section 1008. Absent the restriction in proposed § 59.10(a)(1), neither the Department nor the grantee could ensure that Title X funds will not be used to encourage or promote

abortion—activities which are prohibited by section 1008. See the GAO Report, pp. 24–26.

Regulatory Flexibility Act and Executive Order 12291

The proposed rules codify existing statutory requirements applicable to Title X grantees. With one exception, the effect of the proposed rules is to eliminate existing requirements or permissive provisions concerning the provision of abortion-related services, and as a result the proposed rules should to this extent produce a reduction in costs for Title X-funded programs. The exception is proposed § 59.9, relating to separation of abortion-related services from family planning programs. According to the Department's information, approximately 89 of the approximately 3,900 Title X-supported family planning sites are physically located near facilities that provide abortion services. Of these 89, it is unknown how many currently meet the requirements of proposed § 59.9. However, in view of the fact that the potential number of sites affected is small, and in view of the fact that current requirements under Title X already prohibit any direct subsidy of abortion services with Title X family planning funds, the Department believes it is unlikely that the proposed rule would have economic consequences even approaching the threshold for major economic consequences as defined in Executive Order 12291.

For the foregoing reasons, and consistent with the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary also certifies that this rule will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Proposed § 59.7 and proposed § 59.9 contain collection of information requirements which are subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980. 44 U.S.C. Chapter 35. The Department will submit an information collection request to OMB for its review.

Organizations and individuals desiring to submit comments on this information collection requirement should direct them to the agency official designated for this purpose whose name appears in the preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, Attn.: Desk Officer for HHS.

List of Subjects in 42 CFR Part 59

Family planning—birth control, Grant programs—health, Health facilities.

Dated: August 28, 1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: August 28, 1987.

Otis R. Bowen,

Secretary.

For the reasons set out in the preamble, it is hereby proposed to amend Subpart A of Part 59, 42 Code of Federal Regulations, as set forth below.

PART 59—[AMENDED]

1. The authority citation for Subpart A of 42 CFR Part 59 is revised to read as follows:

Authority: 42 U.S.C. 300a–4.

2. In 42 CFR 59.2, the following definitions are added:

§ 59.2 [Amended]

"Family planning" means the process of establishing objectives for the number and spacing of a family's children, and selecting the means (including natural family planning methods, adoption, infertility services and general reproductive health care, abstinence and contraception) by which those objectives may be achieved. As such, family planning does not include medical services or counseling related to pregnancy care after pregnancy is diagnosed (including prenatal or post-partum care or counseling), or abortion-related services. As it relates to the statutory prohibition on the inclusion of abortion as a method of family planning, proper family planning should reduce the incidence of abortion.

"Grantee" means the organization to which a grant is awarded under section 1001 of the Public Health Service Act.

"Organization," as applied to an applicant for or grantee of funds under section 1001 of the Public Health Service Act, means any public or private nonprofit entity in a State. An organization may operate multiple family planning or related programs or projects.

"Program" and "project," which are used interchangeably in these regulations, both refer to the identified activity approved by the Secretary for support under section 1001 of the Public Health Service Act, unless the context indicates otherwise.

"Title X" means Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*

§ 59.5 [Amended]

3. In 42 CFR 59.5, paragraph (a)(5) is removed and paragraphs (a)(6) through (a)(11) are redesignated as paragraphs (a)(5) through (a)(10) respectively.

§§ 59.7 through 59.13 [Redesignated as §§ 59.11 through 59.17]

4. In 42 CFR Part 59, §§ 59.7 through 59.13 are redesignated as §§ 59.11 through 59.17 respectively, and new §§ 59.7 through 59.10 are added to read as follows:

§ 59.7 Standards of compliance with prohibition on abortion.

A project may not receive funds under this subpart unless it provides assurance satisfactory to the Secretary that it does not include abortion as a method of family planning. Such assurance must include, at a minimum, representations (supported by documentary evidence where the Secretary requests) as to compliance with each of the requirements in §§ 59.8 through 59.10. A project supported under this subpart must comply with such requirements at all times during the project period.

§ 59.8 Prohibition on counseling and referral for abortion services; limitation of program services to family planning.

(a) In order to give effect to the statutory prohibition on the use of Title X appropriated funds in projects where abortion is a method of family planning, a project which provides counseling and referral for abortion services as a method of family planning is not eligible to receive funds under this subpart. In addition, because Title X funds are intended only for family planning, services related to pregnancy care after pregnancy is diagnosed may not be provided with Title X funds. Where appropriate, medical or social service referrals for non-Title X supported services shall be made by providing a full list of available health care providers of appropriate prenatal medical care and delivery services and/or social service agencies from which a family planning client may select. Such referrals may not, however, be used as an indirect means to encourage or promote abortion in violation of section 1008, such as consciously weighting the list of referrals in favor of health care providers and/or facilities which provide abortions. One effect of these regulations will be to insure the ability of otherwise eligible organizations or programs that refuse to engage in abortion-related activities to receive support under this subpart.

(b) *Examples.* (1) A pregnant client at a family planning clinic supported with Title X funds solicits prenatal care services. Clinic personnel are medically qualified to provide such services Nonetheless, provision of such services

is outside the scope of family planning supported by Title X.

(2) A client at a family planning clinic supported with Title X funds seeks pregnancy testing and infertility counseling and services. Clinic personnel provide the requested services and in the process thereof discover an ectopic pregnancy. The client is immediately provided a complete list of appropriate hospitals and physicians from which to choose. This service is within the scope of family planning supported by Title X.

(3) A childless husband and wife seek counseling and services relating to infertility and adoption. Such counseling and services are within the scope of family planning supported by Title X.

(4) Clients at a family planning clinic are given a brochure and shown a film about birth control methods that include sections on abortion. Because use of the film and the brochure depicts abortion as a method of family planning, the clinic would not be eligible to receive Title X funds.

§ 59.9 Separation of abortion-related services from family planning programs.

(a) A project supported under this subpart must be kept entirely separate and distinct, financially and physically, from any abortion-related activities. This requirement includes maintaining separate financial, accounting, personnel, and medical record systems and separately maintaining other project functions and physical facilities (including office space, equipment, stationary and the like) in such a manner as to clearly separate Title X-funded activities from abortion-related activities. This requirement prohibits, by way of example, common waiting, consultation, examination, and treatment areas; shared telephone numbers and receptionists; common names for eligible and ineligible programs; and common office entrances and exits. Although common street or mailing addresses will presumptively constitute a failure to separate adequately Title X-funded programs from other programs which include abortion as a method of family planning, grant applicants may seek to establish the reasonableness of such arrangements in exceptional cases where, as in the example of a large metropolitan hospital with abortion and family planning services located in different wings, the fact of physical separation is otherwise established and no use of appropriated funds in an ineligible program is likely.

(b) *Examples.* (1) A nonprofit family planning organization operates abortion and family planning clinics simultaneously on Wednesdays and Fridays in the same one-story building. Nothing on the exterior of the building indicates the existence of two separate programs, although the programs are organized as legally separate entities. The clinics utilize a common parking lot adjacent to the building, a common entrance at the front of the building, and a common receptionist and reception area. The two clinics share the same executive director and financial manager, and the abortion clinic pays a management fee for the services of such personnel. Two other employees of the family planning clinic also work for the abortion clinic. The family planning clinic refers clients to the abortion clinic. The family planning clinic in this example is not "separate and distinct, financially and physically," from abortion-related activities.

(2) A nonprofit organization operates both abortion and family planning clinics at the same address. Both clinics are staffed by the same personnel, and the medical director for the family planning program generally performs the abortions for the abortion clinic as well. The programs, however, schedule clients at different times, with abortion clinic hours only in the mornings and family planning hours only in the afternoon. The schedules do not overlap. The programs use the same telephone number, and the same receptionist answers the phone and makes appointments for both. The programs use the same automobiles, office furnishings, and advertisements. The family planning program in this example is not "separate and distinct, financially and physically," from abortion-related activities.

(3) A private, nonprofit corporation operates a family planning program (Program A) and a program which includes abortion-related services (Program B). Both programs are operated as parts of the same corporate entity, with common directors and officers. Program A and Program B occupy office space leased under the terms of a common master lease, but the offices are in fact located in different sections of the city. Program A maintains entirely separate financial records and has no on-site personnel in common with Program B. The programs conduct no joint advertising and use separate furnishings and equipment. Program A is "separate and distinct, physically and financially," from Program B.

(4) A private, nonprofit organization operates both a family planning clinic that receives Title X funds and an abortion clinic. The clinics are physically separate, but their accounting and financial records are maintained jointly. Although the family planning clinic is separated physically from the abortion clinic, the joint financial records indicate that the family planning clinic is not "separate and distinct, financially and physically" from abortion-related activities.

(5) A private, nonprofit organization operates both a family planning clinic and an abortion clinic. Both clinics lease space in the same one-story building. The two clinics share a common waiting room. The family planning clinic has separate personnel and maintains separate financial records from the abortion clinic. The family planning clinic in this example is not "separate and distinct, physically and financially" from the abortion-related activities.

§ 59.10 Prohibition on activities that encourage, promote or advocate abortion.

(a) A project supported under this subpart may take no action which encourages, promotes, or advocates abortion as a method of family planning, or which assists a woman in obtaining an abortion as a method of family planning. Actions are considered to encourage, promote, or advocate abortion as a method of family planning if they in any way have the effect of facilitating obtaining abortion as a method of family planning. Such prohibited actions include the following:

(1) Lobbying for the passage of pro-abortion legislation, providing speakers to argue for abortion as a method of family planning, or paying dues to organizations that advocate abortion as a method of family planning;

(2) Using legal action to make available in any way abortion as a method of family planning;

(3) Developing, assisting in the development of, posting or disseminating in any way materials (including printed matter and audio-visual materials) that advocate abortion as a method of family planning;

(b) *Examples.* (1) A family planning clinic provides those of its clients who inquire concerning abortion with brochures advertising an abortion clinic. Such a service would "encourage, promote or advocate" abortion.

(2) A family planning clinic pay dues to an organization that devotes a substantial part of its activities to lobbying the Congress for liberalized abortion laws. This activity would "encourage, promote or advocate" abortion.

(3) A family planning clinic displays in its waiting room posters encouraging clients to write their legislative representatives to urge them to vote "pro choice" on pending legislation, and

distributes post cards for the same purpose. The clinic is engaged in "encouraging, promoting or advocating" abortion.

(4) A family planning clinic that receives Title X funds assists its clients in making appointments at abortion clinics. The provision of such services would violate section 1008.

(5) Personnel of a family planning project write their legislative representatives in support of pro-choice legislation, utilizing no project funds to do so. The eligibility of the project for Title X funds would be unaffected by their advocacy of abortion.

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How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

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7 CFR Par

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Rules and Regulations

Federal Register
Vol. 52, No. 170
Wednesday, September 2, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Handling Requirement for Florida Oranges and Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule the provisions of an interim rule which relaxed handling requirements for fresh shipments of Florida grapefruit, Temple oranges, and Valencia oranges, and fresh grapefruit imported into the United States.

EFFECTIVE DATE: September 2, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, USDA, AMS, Fruit and Vegetable Division, Marketing Order Administration Branch, P.O. Box 96456, Room 2523, South Building, Washington, DC 20250–6456; telephone: (202) 475–3914.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 905, as amended, (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Florida oranges, grapefruit, tangerines,and tangelos subject to regulation under the Florida citrus marketing order; approximately 15,000 oranges, grapefruit, tangerine, and tangelo producers in Florida; and approximately 26 importers of grapefruit into the United States. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers, producers, and importers may be classified as small entities.

The interim rule was issued May 21, 1987, and published in the **Federal Register** (52 FR 19717, May 27, 1987). That rule amended, effective May 21, 1987, § 905.306 Florida Orange, Grapefruit, Tangerine, and Tangelo Regulation 6 (46 FR 60170, December 8, 1981), issued under the Marketing Order 905. That rule provided that interested persons could file public comments through June 26, 1987. No comments were received.

The interim rule temporarily relaxed the minimum external grade requirement for domestic, export, and import shipments of white and pink seedless grapefruit from Improved No. 2 to U.S. No. 2 Russett while the minimum internal requirement remained U.S. No. 1, and the minimum size requirement for domestic and import shipments of white seedless grapefruit from size 48 (3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter). Also, the minimum size requirement for domestic shipments of Temple oranges was relaxed from size 125 (2$^{9}/_{16}$ inches in diameter) to size 163 (2$^{5}/_{16}$ inches in diameter). The relaxations for grapefruit and Temple oranges remained in effect through August 23, 1987, by which time this season's shipments were finished. In addition, that rule lowered the minimum external grade requirements for domestic shipments of Valencia oranges from U.S. No. 1 to U.S. No. 1 Golden with the minimum internal grade requirement remaining U.S. No. 1 during the period from July 1, 1987, through September 27, 1987. The later effective dates for the relaxed requirements for Valencia oranges recognize the late shipping season for this fruit, and the presence of late-bloom fruit, which matures later than normal.

At its May 8, 1987, meeting, the Citrus Administrative Committee unanimously recommended the relaxed requirements for the remainder of the 1986–87 season.

Grapefruit import requirements are specified in § 944.106 (7 CFR Part 944), which requires that the various varieties of grapefruit imported into the United States meet the same grade and size requirements as those specified for Florida grapefruit in Table 1 of paragraph (a) in § 905.306. Section 944.106 was issued under section 8e of the Act (7 U.S.C. 608e–1).

This rule maintains relaxed minimum grade and s ze requirements for Florida oranges and grapefruit grown in the production area in Florida shipped to the fresh domestic and export markets and the minimum grade and size requirements for grapefruit imported into the United States. Such action is designed to help ensure that such requirements do not unduly restrict the available supply of such fruit, and should make additional supplies of fruit available to consumers. The relaxation of the minimum grade and size requirements is only for the remainder of the 1986–87 shipping seasons for these fruits. The resumption of tighter requirements for 1987–88 season shipments is based upon the maturity, size, quality, and flavor characteristics of these fruits early in the shipping season.

Therefore, the Department's view is that the impact of the relaxed handling requirements upon producers, handlers, and importers would be beneficial. The application of minimum grade and size

requirements to Florida oranges, grapefruit, tangerines, and tangelos, and to imported grapefruit over the past several years, has helped to assure that only fruit of acceptable quality and size are shipped to fresh markets.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains unchanged handling requirements currently in effect for Florida citrus under an interim rule: (2) the handling requirements currently in effect under the interim rule are only for 1986–87 season Florida citrus shipments; (3) the grapefruit import requirements are mandatory under section 8e of the Act; and (4) no useful purpose would be served by delaying the effective date of this action until 30 days after publication.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 905 is taken:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 905.306 [Amended]

2. Accordingly, the interim rule amending § 905.306 (46 FR 60170, December 8, 1981), which was published at 52 FR 19717 on May 27, 1987, is adopted as a final rule without change.

Dated: August 27, 1987.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–20121 Filed 9–1–87; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 87–120]

Mediterranean Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining an area in Los Angeles County in California because of the Mediterranean fruit fly and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the artificial spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective August 27, 1987. Consideration will be given only to comments postmarked or received on or before November 2, 1987.

ADDRESS: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87–120. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 661 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6365.

SUPPLEMENTARY INFORMATION:

Background

We are amending the "Domestic Quarantine Notices" by adding a new Subpart 301.78, *Mediterranean Fruit Fly* (referred to below as the regulations). These regulations quarantine an area in Los Angeles County, California, because of the Mediterranean fruit fly and restrict the interstate movement of regulated articles from the quarantined area.

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

Recent trapping surveys by inspectors of California state and county agencies and by inspectors of Plant Protection and Quarantine (PPQ), a unit within the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), reveal that portions of Los Angeles County, California, are infested with the Mediterranean fruit fly. Specifically, inspectors collected seven male Mediterranean fruit flies and two female Mediterranean fruit flies in traps in the Maywood area of Los Angeles County between August 12 and August 18, 1987. In addition, 15 Mediterranean fruit fly larvae were collected in the same area on August 19, 1987. The Mediterranean fruit fly is not know to occur anywhere else in the United States, except in Hawaii.

Officials of state agencies of California have begun an intensive Mediterranean fruit fly eradication program in the quarantined area in California. Also, as explained below, California has taken action to restrict the intrastate movement of certain articles from the quarantined area to prevent the artificial spread of the Mediterranean fruit fly within California. However, it is also necessary to restrict the interstate movement of certain articles from the quarantined area to prevent the artificial spread of the Mediterranean fruit fly to noninfested areas in other states. Accordingly, to prevent the artificial spread of the Mediterranean fruit fly, this document establishes federal regulations, which are described below by section.

Restrictions on Interstate Movement of Regulated Articles (§ 301.78)

Section 301.78 prohibits any person from moving any regulated article interstate from any quarantined area except in accordance with conditions prescribed in the regulations. For informational purposes, a footnote (footnote 1) has been added to reference the authority of an inspector to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply remedial measures to, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Definitions (§ 301.78–1)

Section 301.78–1 contains, for informational purposes, definitions of

the following terms: "Certificate," "Compliance Agreement," "Deputy Administrator," "Infestation," "Inspector," "Interstate," "Limited permit," "Mediterranean fruit fly," "Moved," "Person," "Plant Protection and Quarantine," "Quarantined Area," "Regulated article" and "State."

Regulated Articles (§ 301.78–2)

The regulations impose conditions on the interstate movement of those articles that present a significant risk of spreading Mediterranean fruit fly if moved without restrictions from quarantined areas into or through noninfested areas. These articles, which are designated as regulated articles, may not be moved interstate from quarantined areas except in accordance with conditions specified in §§ 301.78–4 through 301.78–10.

Section 301.78–2 designates as regulated articles a number of fruits, nuts, vegetables, and berries, and soil within the drip line of plants that produce the fruits, nuts, vegetables, or berries. Based on research and experience, the articles listed in § 301.78–2 (a) and (b) as regulated articles are articles that are likely to cause the artificial spread of the Mediterranean fruit fly. In addition, § 301.78–2(c) allows designation of any other product, article, or means of conveyance as a regulated article if an inspector determines that it presents a risk of spreading the Mediterranean fruit fly and notifies the person in possession of the product, articles, or means of conveyance that it is subject to the restrictions in the regulations. This provision for "any other product, article, or means of conveyance" allows an inspector who discovers a risk of spreading Mediterranean fruit fly (e.g., a truck with Medfly pupae in cracks in the floorboards) to regulate the affected articles immediately, by informing the person in possession of the product, articles, or means of conveyance that it is being regulated.

Fruits, nuts, vegetables, or berries that are canned, dried, or frozen below −17.8 °C. (0 °F.) are not included as regulated articles since the Mediterranean fruit fly could not survive under those conditions.

Quarantined Areas (§ 301.78–3)

As stated in § 301.78–3(a), it is necessary to quarantine areas in which the Mediterranean fruit fly has been found by an inspector, areas in which the Deputy Administrator has reason to believe the Mediterranean fruit fly is present, and areas the Deputy Administrator considers necessary to quarantine because of their proximity to the Mediterranean fruit fly or their inseparability for quarantine enforcement purposes from localities where Mediterranean fruit flies have been found.

Section 301.78–3(a) further provides that less than an entire state will be designated as a quarantined area only if the Deputy Administrator determines that (1) the state has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed by our regulations with respect to the interstate movement of these articles; and (2) quarantining less than the entire state will prevent the interstate spread of the Mediterranean fruit fly. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire state as a quarantined area.

In accordance with these criteria, we are designating as a quarantined area an area in Los Angeles County in California. This area is as follows:

Los Angeles County—That portion of the county bounded by a line beginning at the intersection of Interstate Highway 10 and Central Avenue, then east along Interstate Highway 10 to its intersection with State Highway 60, then east on State Highway 60 to its intersection with Paramount Boulevard, then southeast along Paramount Boulevard to its intersection with Montebello Boulevard, then south along Montebello Boulevard to its intersection with State Highway 72, then east along State Highway 72 to its intersection with Paramount Boulevard, then southwest along Paramount Boulevard to its intersection with Washington Boulevard, then east along Washington Boulevard to its intersection with State Highway 19, then south along State Highway 19 to its intersection with Imperial Highway, then west along Imperial Highway to its intersection with Central Avenue, then north along Central Avenue to the point of beginning.

It is necessary to designate this portion of Los Angeles County as a quarantined area because it is an area in which the Mediterranean fruit fly has been found, or in which the Deputy Administrator has reason to believe the Mediterranean fruit fly is present, or an area necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for quarantine enforcement purposes from localities where Mediterranean fruit fly has been found.

There does not appear to be any reason to designate any other quarantined areas in California other than those areas specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles under this subpart.

Section 301.78–3(b) provides that the Deputy Administrator or an inspector may designate an area as a quarantined area temporarily without publication in the **Federal Register** if there is a basis for listing the area as a quarantined area under § 301.78–3(a) and if the owner or person in possession of the area to be quarantined is given written notice of this action. This is necessary in order to prevent artificial spread of the Mediterranean fruit fly before restrictions can be published in the **Federal Register** concerning the interstate movement of regulated articles from the designated area.

Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas (§§ 301.78–4 Through 301.78–10)

Section 301.78–4

Section 301.78–4(a) requires regulated articles moved interstate from quarantined areas to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.78–5 through 301.78–10, unless moved as prescribed in § 301.78–4(b).

Section 301.78–4(b) allows a regulated article to move interstate without a certificate or limited permit if the article originates outside of a quarantined area, if it is moved directly through the quarantined area without stopping except for refueling or for traffic conditions such as traffic lights and stop signs, if it is shipped in an enclosed vehicle or is completely covered so as to prevent access by Mediterranean fruit flies, if the point of origin is clearly indicated on shipping documents, and if the enclosed vehicle or the enclosure which contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

Also, § 301.78–4(c) allows the Department to move interstate regulated articles without a certificate or limited permit for experimental or scientific purposes. However, they must be moved in accordance with a permit issued by the Deputy Administrator, under conditions that prevent the spread of Mediterranean fruit fly.

Section 301.78–4 contains a footnote (number 2) to remind persons of other applicable domestic plant quarantine and regulation requirements that need to be met for interstate movement.

Section 301.78–5

Under federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by an inspector that, because of certain conditions (e.g. the article is free of Mediterranean fruit fly), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when an inspector has determined that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.78–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.78–5(a) provides that a certificate shall be issued by an inspector for the movement of a regulated article if the inspector determines that the article: (1) Is free of Mediterranean fruit fly, has been treated under direction of an inspector in accordance with § 301.78–10, or comes from a premise of origin which is free from Mediterranean fruit fly and has not been exposed to Mediterranean fruit fly; (2) will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act; and (3) is eligible for unrestricted movement under all other federal domestic plant quarantines and regulations applicable to that article.

Section 301.78–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if the inspector determines that the article is to be moved to a specified destination for specified handling, utilization or processing, and that the movement will not result in the spread of Mediterranean fruit fly.

Section 301.78–5(c) allows any person who has entered into and is operating under a compliance agreement to execute a certificate or limited permit for the interstate movement of a regulated article after an inspector has made a determination that the article is eligible for a certificate or limited permit in accordance with § 301.78–5 (a) or (b).

Also, § 301.78–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination by the inspector that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

Section 301.78–6

Section 301.78–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements can be entered into by any person engaged in the business of growing, handling, or moving regulated articles who agrees in writing to comply with the provisions of subpart 301.78. Compliance agreements are provided for the convenience of persons who, because of their business, are involved in frequent shipments of regulated articles from quarantined areas; they are written to ensure that persons issuing certificates or limited permits are knowledgeable with respect to the requirements of Subpart 301.78 and have agreed to comply with them.

Section 301.78–6 also provides that an inspector supervising enforcement of a compliance agreement may cancel the agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact. This section contains a footnote (number 4) to explain where compliance agreement forms can be obtained.

Sections 301.78–7, 301.78–8 and 301.78–9

Section 301.78–7 provides that any person who desires a certificate or limited permit to move regulated articles should request that an inspector issue a certificate or limited permit as far in advance of movement as possible (no less than 48 hours before the desired movement). A footnote (number 3) is added for informational purposes to indicate how to contact the inspectors for inspection or how to obtain additional information from offices of Plant Protection and Quarantine.

Section 301.78–8 requires the certificate or limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill or other shipping document during the interstate movement. These provisions are necessary for enforcement purposes and to ensure that persons desiring inspection services can obtain them before the intended movement date.

Section 301.78–9 explains the APHIS policy that services of an inspector that are needed to comply with the provisions of the quarantine and regulations in Subpart 301.78 are provided without cost during normal business hours, but that we will not be responsible for any other costs or charges.

Section 301.78–10

Section 301.78–10 identifies as authorized treatments those treatments for the Mediterranean fruit fly that are contained in the Plant Protection and Quarantine Treatment Manual. Research has determined that these treatments would be adequate to destroy the Mediterranean fruit fly. Treatment schedules have not been developed for all regulated articles; however, an individual may obtain a certificate or limited permit for the interstate movement of some regulated articles by complying with the inspection provisions of § 301.78–5(a)(1)(ii) or (iii), as an alternative to treatment of those articles.

Emergency Action

William F. Helms, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Because the Mediterranean fruit fly could be spread artificially to noninfested areas of the United States, it is necessary to act immediately to control its spread.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553(d)(3) for making this interim rule effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an

effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This amendment affects the interstate movement of regulated articles from a portion of the Los Angeles County, California. It appears that there is very little commercial activity that may be affected by this rule in the quarantined area. Specifically, the quarantined area is comprised of private residences and small wholesale dealers and shops. The small entities that may be affected by this regulation appear to consist of approximately 15 nurseries, 40 wholesale produce dealers (of which only 15 sell regulated articles), 75 mobile fruit vendors, five open fruit stands, and one farmers' market. Although these are small entities, they sell regulated articles primarily for local intrastate, not interstate, movement. Also, many of the retail shops and nurseries sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities appears to be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other states.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, 7 CFR Part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 161, 162, and 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart-Mediterranean Fruit Fly" to read as follows:

Subpart—Mediterranean Fruit Fly

Sec.

301.78 Restrictions on interstate movement of regulated articles.
301.78–1 Definitions.
301.78–2 Regulated articles.
301.78–3 Quarantined areas.
301.78–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
301.78–5 Issuance and cancellation of certificates and limited permits.
301.78–6 Compliance agreement and cancellation thereof.
301.78–7 Assembly and inspection of regulated articles.
301.78–8 Attachment and disposition of certificates and limited permits.
301.78–9 Costs and charges.
301.78–10 Treatments.

Subpart—Mediterranean Fruit Fly

§ 301.78 Restrictions on interstate movement of regulated articles.

No person shall move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

§ 301.78–1 Definitions.

In this subpart the following definitions apply:

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of Mediterranean fruit fly and may be moved interstate to any destination.

Compliance agreement. A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant to it.

Deputy Administrator. The Deputy Administrator of the Animal and Plant Health Inspection for Plant Protection and Quarantine, or any officer or employee of the United States Department of Agriculture to whom the Deputy Administrator has delegated authority to act in his or her stead.

Infestation. The presence of the Mediterranean fruit fly or the existence of circumstances that make it reasonable to believe that the Mediterranean fruit fly is present.

Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Deputy Administrator to enforce this subpart.

Interstate. From any state into or through any other state.

Limited permit. A document, in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is eligible for interstate movement in accordance with § 301.78–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

Mediterranean fruit fly. The insect known as Mediterranean fruit fly (*Ceratitis capitata* (Wiedemann)) in any stage of development.

Moved (Move, Movement). Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other organized group.

Plant Protection and Quarantine. Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

Quarantined area. Any state, or any portion of a state, listed in § 301.78–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.78–3(b) of this subpart.

Regulated article. Any article listed in § 301.78–2 (a) or (b) of this subpart or otherwise designated as a regulated article in accordance with § 301.78–2(c) of this subpart.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any state, territory or possession of the United States.

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

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§ 301.78–2 Regulated articles.

The following are regulated articles:

(a) The following fruits, nuts, vegetables and berries:

Almond with husk (*Prunus dulcis (P. amygdalus)*)
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Avocado (*Persea americana*)
Black Myrobalan (*Terminalia cherbula*)
Cherries (sweet and sour) (*Prunus avium, P. cerasus*)
Citrus citron (*Citrus medica*)
Date (*Phoenix dactylifera*)
Fig (*Ficus carica*)
Grape (*Vitis* spp.)
Grapefruit (*Citrus paradisi*)
Guava (*Psidium guajava*)
Japanese persimmon (*Diospyros kaki*)
Japanese plum (*Prunus salicina*)
Kiwi (*Actinidia chinensis*)
Kumquat (*Fortunella japonica*)
Lemon (*Citrus limon*) (smooth-skinned lemon of commerce that is cleaned and waxed)
Lime, sweet (*Citrus aurantiifolia*)
Loquat (*Eriobotrya japonica*)
Mandarin orange (*Citrus reticulata*) (tangerine)
Mango (*Mangifera indica*)
Mock orange (*Murraya exotica*)
Mountain apple (*Syzigium malaccense (Eugenia malaccensis)*
Natal plum (*Carissa macrocarpa*)
Nectarine (*Prunus persica* var. *nectarina*)
Olive (*Olea europea*)
Opuntia cactus (*Opuntia* spp.)
Orange, calamondin (*Citrus reticulata* x. *Fortunella*)
Orange, Chinese (*Fortunella japonica*)
Orange, king (*Citrus reticulata* x. *C. sinensis*)
Orange, sweet (*Citrus sinensis*)
Orange, Unshu (*Citrus reticulata* var. *Unshu*)
Papaya (*Carica papaya*)
Peach (*Prunus persica*)
Pear (*Pyrus communis*)
Pepper (*Capsicum frutescens, C. annuum*)
Pineapple guava (*Feijoa sellowiana*)
Plum (*Prunus americana*)
Pomegranate (*Punica granatum*)
Pomiform guajava (*Psidium guajava Pomiferum*)
Prune (*Prunus domestica*)
Pummelo (*Citrus grandis*)
Pyriform guajava (*Psidium guajava Pyriform*)
Quince (*Cydonia oblonga*)
Rose apple (*Eugenia jambos*)
Sour orange (*Citrus aurantium*)
Spanish cherry (Brazilian plum) (*Eugenia dombeyi* (*E. brasiliensis*))
Strawberry guava (*Psidium cattleianum*)
Surinam cherry (*Eugenia uniflora*)
Tomato (pink and red ripe) (*Lycopersicon esculentum*)
Walnut with husk (*Juglans* spp.)
White sapote (*Casimiroa edulis*)
Yellow oleander (Bestill) (*Thevetia peruviana*)

Any fruits, nuts, vegetables, or berries which are canned or dried or frozen below −17.8 °C. (0 °F.) are not regulated articles.

(b) Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, or berries listed in paragraph (a).

(c) Any other product, article, or means of conveyance, not covered by paragraph (a) or (b) of this section, that an inspector determines presents a risk of spread of the Mediterranean fruit fly and notifies the person in possession of it that the product, article, or means of conveyance is subject to the restrictions of this subpart.

§ 301.78–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a quarantined area in paragraph (c) of this section, each state, or each portion of a state, in which the Mediterranean fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe that the Mediterranean fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found. Less than an entire state will be designated as a quarantined area only if the Deputy Administrator determines that:

(1) The state has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire state as a quarantined area will prevent the interstate spread of the Mediterranean fruit fly.

(b) The Deputy Administrator or an inspector may temporarily designate any nonquarantined area in a state as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing such area. The Deputy Administrator will give written notice of this temporary designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation shall be terminated by the Deputy Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

California

Los Angeles County—That portion of the county bounded by a line beginning at the intersection of Interstate Highway 10 and Central Avenue, then east along Interstate Highway 10 to its intersection with State Highway 60, then east on State Highway 60 to its intersection with Paramount Boulevard, then southeast along Paramount Boulevard to its intersection with Montebello Boulevard, then south along Montebello Boulevard to its intersection with State Highway 72, then east along State Highway 72 to its intersection with Paramount Boulevard, then southwest along Paramount Boulevard to its intersection with Washington Boulevard, then east along Washington Boulevard to its intersection with State Highway 19, then south along State Highway 19 to its intersection with Imperial Highway, then west along Imperial Highway to its intersection with Central Avenue, then north along Central Avenue to the point of beginning.

§ 301.78–4 Conditions governing the interstate movement of regulated articles from quarantined areas.[2]

Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.78–5 and 301.78–8 of this subpart;

(b) Without a certificate or limited permit, if:

(1) The regulated article originated outside of any quarantined area and is moved directly through (without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area, and

(2) The point of origin of the regulated article is clearly indicated by shipping documents and the enclosed vehicle or the enclosure which contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

(c) Without a certificate or limited permit, if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a permit issued by the Deputy Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Deputy Administrator to be adequate to prevent

[2] Requirements under all other applicable federal domestic plant quarantines and regulations must also be met.

the spread of Mediterranean fruit fly; and,

(4) With a tag or label bearing the number of the permit issued for the regulated article securely attached to the outside of the container of the regulated article or securely attached to the regulated article itself if not in a container.

§ 301.78–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate shall be issued by an inspector for the interstate movement of a regulated article if the inspector:

(1)(i) Determines that the regulated article has been treated under the direction of an inspector in accordance with § 301.78–10 of this subpart; or

(ii) Determines, based on inspection of the premises of origin, that the premises are free from Mediterranean fruit flies and the regulated article has not been exposed to Mediterranean fruit fly; or

(iii) Determines, based on inspection of the regulated article, that it is free of Mediterranean fruit fly; and

(2) Determines that the regulated article is to be moved in compliance with any additional emergency conditions the Deputy Administrator may impose under the Federal Plant Pest Act to prevent the spread of the Mediterranean fruit fly; and

(3) Determines that the regulated article is eligible for unrestricted movement under all other federal domestic plant quarantines and regulations applicable to such articles.

(b) An inspector [3] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the Mediterranean fruit fly because life stages of the Mediterranean fruit fly will be destroyed by the specified handling, utilization, or processing;

(2) The regulated article is to be moved interstate in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); and

(3) The regulated article is eligible for interstate movement under all other federal domestic plant quarantines and regulations applicable the regulated article.

(c) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or person engaged in the business of growing, handling, or moving regulated articles provided the person is operating under a compliance agreement. A person operating under a compliance agreement may execute a certificate for the interstate movement of a regulated article if the inspector has made the determination that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may execute a limited permit for interstate movement of a regulated article when the inspector has made the determination that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Deputy Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Deputy Administrator.

§ 301.78–6 Compliance agreement and cancellation.

(a) Any person engaged in the business of growing handling, or moving regulated articles may enter into a compliance agreement to facilitate the interstate movement of regulated articles under this subpart.[4]

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with the subpart or any conditions imposed pursuant to this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within ten days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for the decision. A hearing shall be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Deputy Administrator.

§ 301.78–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.78–5(c)), who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance of the desired interstate movement as possible (no less than 48 hours before the desired interstate movement), request an inspector [5] to issue the certificate or limited permit.

(b) The regulated article shall be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart

§ 301.78–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during the interstate movement, must be securely attached to the outside of the container containing the regulated article, securely attached to the regulated article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill document: *Provided however,* that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping

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[3] Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, Maryland 20782.

[4] Compliance agreement forms are available without charge from the Permits Unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

document only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

§ 301.78–9 Costs and charges.

The services of the inspector during normal business hours will be furnished without cost. The United States Department of Agriculture will not be responsible for any other costs or charges.

§ 301.78–10 Treatments.

Treatment schedules listed in the Plant Protection and Quarantine Treatment Manual to destroy Mediterranean fruit fly on regulated articles are authorized treatments. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference."

Done at Washington, DC, this 27th day of August 1987.

D. Husnik,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87–20119 Filed 9–1–87; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Reopening and Extension of Comment Period on Final Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; reopening and extension of comment period.

SUMMARY: Notice is hereby given that the time period for filing written comments is being reopened and extended for 15 days on a final rule which established a volume regulation for lemons grown in California and Arizona. This final rule was published in the **Federal Register** on July 31, 1987. The comment period is reopened and extended until 15 days after publication of this document.

DATE: Comments must be received by September 17, 1987.

ADDRESS: Comments should be sent to: Docket Clerk, USDA, AMS, Fruit and Vegetable Division, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, USDA, AMS, Fruit and Vegetable Division, Marketing Order Administration Branch, P.O. Box 96456, Room 2523, South Building, Washington, DC 20090–6456; telephone: (202) 475–3914.

SUPPLEMENTARY INFORMATION: The final rule was issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601 through 674), as amended. The final rule was issued July 29, 1987, and published on July 31, 1987, in the **Federal Register** (52 FR 28535). It established a volume regulation for lemons grown in California and Arizona for the period August 2–8, 1987 (§ 910.872 Lemon Regulation 572). Comments were due on August 20, 1987.

The Department received a request from an interested person that the Department provide more time to analyze the rule and prepare comments.

Reopening and extending the comment period will provide all interested persons more time to review this final rule and submit comments. Accordingly, the comment period is reopened and extended until 15 days after the date of publication of this document in the **Federal Register**.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: August 28, 1987.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–20210 Filed 9–1–87; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–CE–19–AD; Amdt. 39–5708]

Airworthiness Directives; Beech 200 and 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Models of the Beech 200 and 300 Series airplanes. This AD supersedes AD 84–24–01 and requires repetitive inspection and repair of wing fuel bay upper skin panels. Entry of moisture through blind fastener rivets in the outer skin of the panels causes corrosion which results in debonding of these panels. Structural integrity of the panel may be impaired. The one-time actions of AD 84–24–01 are inadequate to insure safety, since repaired panels can also deteriorate.

DATES: Effective date: October 2, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Beech Service Bulletin No. 2040, Rev. 1, dated March, 1987, and Beech Service Instructions No. C–12–0094, Rev. 1, dated February, 1987, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681–9111. This information may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, ACE–120W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring repetitive inspections and repair of wing center section upper skin panels on certain Beech 200 and 300 Series airplanes was published in the **Federal Register** on June 18, 1987 (52 FR 22786). The proposal resulted from inadequacy of AD 84–24–01. That AD was issued on November 23, 1984, requiring a one-time inspection for and repair of a debond condition of wing upper skin panels in the area bounded by the fuselage, nacelle, front spar, and rear spar on Beech 200 and 300 Series airplanes. The area in question is a one piece all-aluminum bonded honeycomb sandwich which serves as the fuel bay upper cover, as well as a load-carrying structural member. The debonding is caused by moisture leaking into the honeycomb via blind fasteners (rivets) in the outer face sheet of the panel. The moisture causes corrosion to form inside the honeycomb, which attacks the face sheet bonds. Without corrective

maintenance, the debonding can progress to a point where safe flight is jeopardized.

A large portion of the fleet has been inspected and repaired in accordance with AD 84–24–01, which is a one-time inspection. The inspection consisted basically of searching for debonded areas by the "coin tap" method. If debonding was detected, the panel was repaired by potting-in extra fasteners provided in Beech service kits designed for this purpose. To preclude entry of moisture into the honeycomb area, it is necessary to seal each blind fastener in the upper surface of the fuel bay upper skin panels on all affected airplanes.

Subsequent to the issuance of AD 84–24–01, some complying airplanes experienced a recurrence of debonding. Out of the total of 44 aircraft reporting delamination, 20 had to have repeat repairs, and 19 cases of delamination occurred subsequent to the initial inspection. Additionally, some airplanes not subject to AD 84–24–01 have experienced debonding. Beech has revised the pertinent service information to call for repetitive inspections and expand the model effectivity. Improved skin panels are available which, if installed, eliminate the need for continued inspection. Since the condition described is likely to exist or develop in other Beech 200 and 300 Series airplanes of the same design, the FAA proposed an AD which would require repetitive inspections and repair of wing center section upper skin panels on Beech 200 and 300 Series airplanes in accordance with Beech Service Bulletin No. 2040, Rev. 1, dated March 1987, or Beech Service Instructions No. C–12–0094, Rev. 1, dated February 1987, as applicable. These inspections could be discontinued after installation of the appropriate replacement skin panels as described in the service information.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change, except for minor editorial corrections. The FAA has determined that this regulation only involves 682 airplanes at an approximate annual cost of $480 for each airplane, or a total annual fleet cost of $327,360. The only significant cost to small entities will occur whenever repair at a cost of $1,800 per airplane is not feasible and wing skin panel replacement is necessary at a cost of $10,700. It is estimated that less than 7 percent of the panels will require replacement. Few, if any, small entities own more than one of these airplanes. Therefore, a substantial number of small entities cannot receive a significant economic impact from this mandatory action.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to 200 and 300 Series (all serial numbers) airplanes certificated in any category which have wing center section fuel bay upper skin panels of bonded construction with blind fasteners in the three areas shown on Figure 1 of this AD.

Note 1: The subject panels may have been installed as original equipment or as replacement spares. The Beech Service Bulletins referenced in this AD contain explanatory material relating to this topic.

Compliance: Required as indicated after the effective date of this AD.

To assure the continued structural integrity of the wing fuel bay upper skin panels, accomplish the following:

(a) Within the next 75 hours time-in-service (TIS) or six calendar months, whichever occurs first, unless previously accomplished within the last 75 hours TIS or six calendar months per AD 84–24–01, and thereafter at intervals not to exceed 300 hours TIS or six calendar months, whichever occurs first, inspect the wing center section fuel bay upper skin panels for possible debonding in accordance with Beech Service Bulletin No. 2040, Rev. 1, dated March 1987 (for civil registered airplanes) or Beech Service Instructions No. C–12–0094, Rev. 1, dated February 1987, (for military airplanes).

(1) If no debonding is detected, prior to further flight, accomplish the actions of paragraph (b) below.

(2) If debonding is detected in either panel, prior to further flight modify the discrepant panel by installation of Kit No. 101–4032–1 (L.H.) or 101–4032–3 (R.H.), and the accomplishments of the actions of paragraph (b) below, or by installation of replacement skin panel P/N 101108–603 (L.H.) or –604 (R.H.).

(3) If debonding is detected in a panel which was previously repaired per paragraph (a)(2) above or AD 84–24–01, prior to further flight remove the discrepant panel and install a replacement skin panel P/N 101108–603 (L.H.) or –604 (R.H.) as applicable.

(b) Seal all accessible blind rivets in both wing center section fuel bay upper skin panels as described in Service Bulletin No. 2040, Rev. 1, dated March 1987, or Service Instructions No. C–12–0094, Rev. 1, dated February 1987 (as applicable).

Note 2: Resealing of these blind rivets is recommended anytime paint is removed from this area.

(c) The requirements of this AD are no longer required when skin panels P/N 101108–603 (L.H.) or –604 (R.H.) have been installed.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4400.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, Wichita, Kansas 67201–0085; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This AD supersedes AD 84–24–01; Amendment 39–4958.

This amendment becomes effective on October 2, 1987.

Issued in Kansas City, Missouri, on August 7, 1987.

Barry D. Clements,

Acting Director, Central Region.

BILLING CODE 4910–13–M

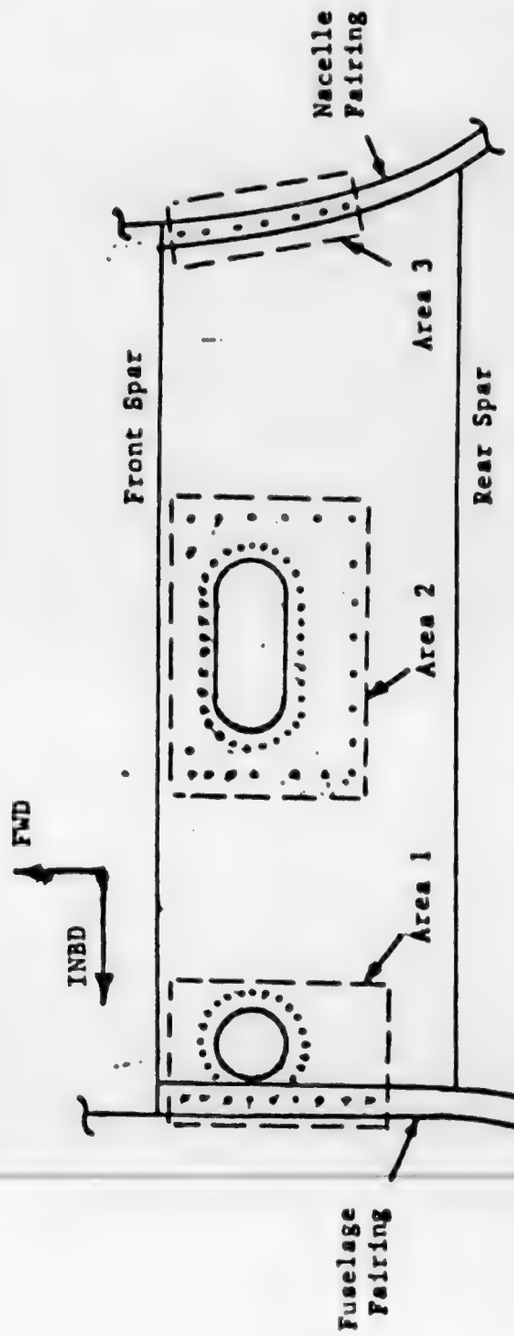

FIGURE 1

Showing Areas where Blind Fasteners may be Located (Upper Surface)
(RH Wing Shown)

[FR Doc. 87-20091 Filed 9-1-87; 8:45 am]
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14 CFR Part 39

[Docket No. 87-NM-39-AD; Amdt. 39-5717]

Airworthiness Directives; Short Brothers Model SD3-30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3-30 series airplanes, which requires the installation of an extended guard behind the overhead lockers to protect the elevator and rudder control system from interference caused by oversized luggage. This condition, if not corrected, could result in partial loss of control of the airplane.

DATES: Effective September 28, 1987.

ADDRESSES: The applicable service information may be obtained from Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires the installation of an extended guard behind the overhead lockers on certain Short Brothers Model SD3-30 series airplanes, was published in the **Federal Register** on May 18, 1987 (52 FR 18575).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 52 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $33,280.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($640). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Model SD3-30 series airplanes, serial numbers SH3002 through SH3099, SH3102, and SH3105, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent interference with the elevator and rudder control system, accomplish the following:

A. Within 180 days after the effective date of this AD, install an extended guard behind the overhead lockers in accordance with the Accomplishment Instructions of Shorts Service Bulletin No. SD330-27-31, dated March 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 28, 1987.

Issued in Seattle, Washington, on August 14, 1987

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-20090 Filed 9-1-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-14-AD; Amdt. 39-5719]

Airworthiness Directives: Fokker B.V. Model F28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 series airplanes, which requires replacement of the horizontal stabilizer control units. This amendment is prompted by reports of fatigue failure of certain bolts within the horizontal stabilizer control unit. This condition, combined with a dual hydraulic failure, could result in uncontrolled movement of the horizontal stabilizer.

EFFECTIVE DATE: Effective October 7, 1987.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft, 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires replacement of the horizontal stabilizer control unit on Fokker Model F28 series airplanes, was published in the **Federal Register** on April 14, 1987 (52 FR 11997).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due

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consideration has been given to the single comment received.

The one commenter concurred with the NPRM, but suggested that the applicability of the proposed rule be expanded to include any airplane in which the unmodified control unit could be installed. The FAA has considered this suggestion, and has determined, based on present information, that this unit is applicable for installation only on the Fokker Model F28. Accordingly, there is no need to expand the AD effectivity to include any other airplanes.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 35 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for parts is $2,000 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $77,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($2,200). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F28 airplanes certificated in any category, serial numbers 11003 through 11195, 11991, and 11992. Compliance required as indicated, unless previously accomplished.

To prevent uncommanded movement of the horizontal stabilizer as a result of fatigue failure of certain bolts within the horizontal stabilizer control unit, accomplish the following within one year after the effective date of this AD:

A. Replace the horizontal stabilizer control unit in accordance with the Accomplishment Instructions in Fokker Service Bulletin No. F28/F27–168, Revision 1, dated June 30, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Fokker Aircraft, 1199 North Fairfax Street, Alexandria, Virginia 22314. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 7, 1987.

Issued in Seattle, Washington, on August 24, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–20088 Filed 9–1–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–ASW–26; Amdt. 39–5700]

Airworthiness Directives; McDonnell Douglas Helicopter Company, Model 369 D, E, F, and FF Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires repetitive inspection of the main rotor transmission output shaft assembly ring gear carriers and removal from service of all defective units on McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF helicopters. The AD is prompted by reports that main rotor transmission output shaft assembly ring gear carriers have failed in flight. Failure could result in loss of power to the main rotor or possible jamming of the main rotor transmission and loss of control of the helicopter.

DATES: Effective dates: September 18, 1987.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 18, 1987.

Compliance: As indicated in the body of this AD.

ADDRESSES: The applicable service information notice may be obtained from McDonnell Douglas Helicopter Company, 500 E. McDowell Road, Mesa, Arizona 85205. A copy of each document supporting the AD is contained in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Twa, Jr., Aerospace Engineer, Propulsion Section, ANM–174W, Western Aircraft Certification Office, Northwest Mountain Region, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007; telephone (213) 297–1128.

SUPPLEMENTARY INFORMATION: There have been eight cases of upper disc failures of the main rotor transmission output shaft assembly ring gear carrier (P/N 369D25132) due to fatigue in an area that has been undercut during the electron beam welding of the lower disc. All failures have occurred during flight, and the pilot noted a chip detector light, a loud noise, and/or excessive lateral vibrations. Two output shaft assembly ring gear carriers had the upper and lower discs fail completely. The remaining six failed completely in the upper disc with the lower disc still carrying the load and with cracks varying from zero to 350 degrees around the disc. The currently acceptable nondestructive test method for verifying the integrity of the upper disc material is a visual inspection with a 10X magnifying glass and a dye penetrant inspection of the affected area. MDHC has issued Mandatory Service Information Notice DN–148/EN–36/FN–25, dated April 23, 1987. A more complete ultrasonic inspection is being developed by MDHC and will be implemented at a later date which will probably terminate the repetitive inspections imposed by this AD. Since this condition is likely to exist or

develop in other helicopters of the same type design, an airworthiness directive is being issued which requires a repetitive visual and dye penetrant inspection of the main rotor transmission output shaft assembly ring gear carrier (P/N 369D25132) and the removal from service of unairworthy ring gear carriers on MDHC Model 369D, E, F, and FF helicopters.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983), and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

McDonnell Douglas Helicopter Company (MDHC) (Hughes Helicopters, Inc.): Applies to all Model 369 D, E, F, and FF helicopters, certificated in any category, incorporating main rotor transmission output shaft assembly ring gear carrier (P/N 369D25132) in main transmission assemblies P/N 369D25100-BSC or -501 except (1) those with both the letter "U" etched before the serial number and the letter "T" after the serial number on the transmission I.D. plate; and (2) those with main transmission output shafts P/N 369D25132 identified by "N105" or "EPB" along with "MDHC" etched on lower bearing journal of output shaft.

Compliance is required as indicated unless previously accomplished.

To prevent possible loss of power to the main rotor, accomplish the following:

(a) For helicopters with metal particles found in the main transmission, excessive noise or vibration experienced in the main transmission, or vibrations felt in the aircraft that cannot be reduced or eliminated by ordinary main rotor blade tracking and balancing procedures, accomplish the inspection of paragraph (d) of this AD prior to further flight after the effective date of this AD and thereafter at intervals not to exceed 300 hours' time in service from the last inspection.

(b) For helicopters that have main transmission assemblies installed with less than 200 hours' time in service on the output shaft assembly ring gear carrier on the effective date of this AD, accomplish the inspection of paragraph (d) of this AD prior to accumulating 300 hours' time in service and thereafter at intervals not to exceed 300 hours' time in service from the last inspection.

(c) For helicopters that have main transmission assemblies installed with more than 200 hours' time in service on the output shaft assembly ring gear carrier on the effective date of this AD, accomplish the inspection of paragraph (d) of this AD within the next 100 hours' time in service after the effective date of this AD and, thereafter, at intervals not to exceed 300 hours' time in service from the last inspection.

(d) Perform a dye penetrant and visual inspection on the affected ring gear carriers in accordance with the procedures detailed in paragraphs a through e of the "Periodic Visual Inspection" section of McDonnell Douglas Helicopter Company Mandatory Service Information Notice (SIN) DN-148/EN-36/FN-25, dated April 23, 1987.

Remove from service prior to further flight:

(1) Output shafts with any bulging or raised surface in the area being inspected on the upper disc surface (See Figure 2 in referenced SIN).

(2) Output shafts with any crack indication in the area being inspected on the lower and upper disc surfaces (See Figure 3 in referenced SIN).

(e) Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Western Aircraft Certification Office, Hawthorne, California.

(f) Special flight permits may be issued in accordance with FAR sections 21.197 and 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

The procedure shall be done in accordance with MDHC Mandatory Service Information Notice DN-148/EN-36/FN-25, dated April 23, 1987. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)(1) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Helicopter Company, 500 E. McDowell Road, Mesa, Arizona 85205. Copies may be inspected at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment becomes effective September 18, 1987.

Issued in Fort Worth, Texas, on July 28, 1987.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 87-20089 Filed 9-1-87; 8:45 am]

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DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 16

[Order No. 1212-87]

Department of Justice Fee Regulation Implementing Fee and Fee Waiver Provisions of Freedom of Information Reform Act of 1986

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This notice constitutes the final revision of a procedural regulation of the Department of Justice, 28 CFR 16.10, setting forth the fees to be charged under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, in light of the new fee provisions of the Freedom of Information Reform Act of 1986 (Pub. L. No. 99-570, section 1803). The fee provisions conform to the Uniform Freedom of Information Act Fee Schedule and Guidelines promulgated by the Office of Management and Budget, 52 FR 10011 (March 27, 1987) ("OMB Fee Guidelines"). Additionally, as is required by the amended Act, this final revision contains procedures and guidelines for determining when such fees should be waived or reduced.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Richard L. Huff or Daniel J. Metcalfe,

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Co-Directors, Office of Information and Privacy, United States Department of Justice, Room 7238, Washington, DC 20530 ((202) 633–3642).

SUPPLEMENTARY INFORMATION: On June 16, 1987, the Department of Justice published a proposed FOIA fee schedule, in conformity with the OMB Fee Guidelines, which included procedures and guidelines for determining when such fees should be waived or reduced. 52 FR 22795 (June 16, 1987); 52 FR 24583 (July 1, 1987) (correcting error in printing). Public comment on the proposed regulation was invited, with the comment period extending to July 16, 1987.

Analysis of Comments Received

A total of five comments were postmarked or received within the comment period. Comments were received from the following:

Society of Professional Journalists/ Sigma Delta Chi
Reporters Committee for Freedom of the Press
Public Citizen Litigation Group
Mr. Edward H. Kohn
Mr. Dan Fiduccia

The comments are addressed below sequentially according to the specific subsections of the regulation to which they apply.

1. *Fees in general (§ 16.10(a)).* One commenter questioned the inclusion of language requiring components to collect all applicable fees before making copies of requested records available to a requester. Such language, however, is entirely consistent with subsection (a)(3) of the Act, which states that agencies are not required to make records available to a requester unless the request is made "in accordance with published rules stating the * * * fees (if any), and procedures to be followed * * *." The statute thus specifically predicates the release of disclosable records upon the payment of any applicable fees. Routinely requiring requesters to pay assessed fees before receiving what has been purchased also comports with sound business practice and protects the government and the taxpayers from possible loss of revenue. Further, this requirement does not constitute an impermissible "advance payment," contrary to the commenter's suggestion. As stated in § 16.10(g)(3), payment owed for work already completed is not an advance payment. Rather, an "advance payment," as addressed in new subsection (a)(4)(A)(v) of the Act, refers to payments requested by agencies before any work is begun on a request, where either the requester has previously failed to pay properly assessed fees in a timely manner or the agency has estimated that the total fee will exceed $250.00.

2. *Search charges (§ 16.10(b)(1)).* One commenter objected to what was perceived to be an incorrect treatment of searches conducted by computer, stating that the two hours of search time without charge that is provided for in new subsection (a)(4)(A)(iv)(II) should not be limited to manual searches. It was not the Department's intent to foreclose the applicability of that new subsection to searches conducted by computer, nor did it in fact do so. Indeed, § 16.10(c)(2)(ii), which addresses the rule that certain requesters shall receive the first two hours of search without charge, specifically includes the phrase, "or its cost equivalent," in accordance with the language of the provision addressing this point in the OMB Fee Guidelines. *See* OMB Fee Guidelines, sec. 7f, 52 FR 10011, 10018 (March 27, 1987). This provides for the cost equivalent of two hours of manual search to be applied in the context of a computer search; in order to make this unquestionably clear, additional language to this effect is now inserted into § 16.10(b)(1)(C) as well. Contrary to a further comment, however, it is not reasonable to conclude that Congress intended that the "free two hours of search time" provision be applied indiscriminately to computer searches in the same way as to manual searches; if such were the case, then search fees would rarely, if ever, be assessed. Indeed, most computer searches can be completed in far less than two hours, yet the cost of computer search time is far greater per unit of time than the cost of manual search.

One commenter also objected to the provision for charging requesters for unsuccessful searches, asserting that this might intimidate potential requesters. Yet the statute clearly provides for the recovery of search costs, where applicable, without any such reservation. *See* 5 U.S.C. 552(a)(4)(A)(ii). Moreover, the OMB Fee Guidelines, which already have been subject to notice and comment and are binding on all federal agencies subject to the FOIA, specifically provide for the recovery of costs for unsuccessful searches. *See* OMB Fee Guidelines, sec. 9b, 52 FR 10011, 10019 (March 27, 1987). Additionally, as such costs are incurred by the Department regardless of whether a search results in the discovery of responsive records, the Department believes that there is no reason for it, and in turn the taxpayers, to absorb these costs in lieu of the requester.

Lastly, two commenters expressed concern that this section does not provide requesters with an opportunity to confer with Department personnel in order to reformulate requests at a lower cost. These comments reflect a misunderstanding of the relationship of this section to § 16.10(e), which specifically addresses the subjects of anticipated fees and reformulation of requests. In all cases, whether the anticipated fees concern search charges or duplication charges, § 16.10(e) provides that if the anticipated fee exceeds $25.00, the component shall notify the requester of the actual or estimated fee (unless the requester has previously indicated his willingness to pay any fee assessed) and provide the requester with an opportunity to confer with Department personnel in order to reformulate the request at a lower cost.

3. *Review charges (§ 16.10(b)(3)).* One commenter objected to the provision for charging review costs for a subsequent review of records previously withheld pursuant to an exemption determined to no longer apply. However, this provision was taken directly from the OMB Fee Guidelines. *See* OMB Fee Guidelines, sec. 7c, 52 FR 10011, 10018 (March 27, 1987). Furthermore, the Department believes that such review properly qualifies under the statute as an "initial examination" because the record is being reviewed for the first time with respect to other potentially applicable exemptions. If such review costs were precluded, then at the first time at which records are processed components would be compelled to review them for the applicability of all possible exemptions, even though at the time of processing one exemption clearly covered all of the records or portions in question. Such an approach would unnecessarily increase review costs to requesters.

4. *Limitations on charging fees (§ 16.10(c)).* One commenter approved of the provision for not collecting a fee which is $8.00 or less, but questioned how the figure was calculated. The minimum charge of $8.00, set forth in § 16.10(c)(3), is based upon the Justice Management Division's estimated average cost of processing a check—including the cost of the salary of the employee processing the check (plus 16%, as provided for in the OMB Fee Guidelines), as well as the cost of the system used.

5. *Waiver or reduction of fees (§ 16.10(d)).* All five commenters addressed this section, expressing concern that the factors to be considered require components to make speculative and subjective value

judgments regarding the subject of a request and its value to the public. While the Department appreciates that the statutory standard governing the waiver or reduction of FOIA fees is phrased largely in general evaluative terms, the factors set forth by the Department are taken directly from the statute's plain language. It is entirely in keeping with well-recognized principles of statutory construction that each word of the statutory standard be given some effect, and this is precisely what the Department has done through its six factors. Furthermore, in its New FOIA Fee Waiver Policy Guidance issued to all agencies by the Department's Office of Legal Policy on April 2, 1987, the Department specifically cautioned against the imposition of improper value judgments by those deciding fee waiver requests. *See FOIA Update*, Vol. VIII, No. 1, at 8 (1987). The Department's components will make every effort to apply these factors, under the statutory standard, in an objective manner.

In order to ensure that components have all the necessary information that must be considered when applying these factors, the Department has added paragraph (d)(5), which requires a requester seeking a fee waiver or reduction to address each of the factors listed in paragraphs (d) (2) and (3), as they apply to the particular request for records in question. Contrary to the suggestion of three of the commenters, the requirement that such information be submitted in support of a fee waiver request is not affected by the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* The Office of Information and Regulatory Affairs of the Office of Management and Budget, which holds responsibility for the Paperwork Reduction Act's implementation, has determined that FOIA fee regulation requirements that requesters submit information in support of their fee waiver and fee limitation claims are not "information collection requests" within the meaning of that Act. *See also* 5 CFR 1320.7(c) (1987).

All of the commenters also urged the Department to establish certain categories of requesters or types of requests which would be presumptively entitled to a fee waiver. The Department declines to do this, firmly believing that each request must be judged on its own merits and that the provisions of § 16.10(d) accurately reflect the appropriate considerations guiding agency fee waiver determinations. The fee waiver provision of the FOIA, as amended, 5 U.S.C. 552(a)(4)(A)(iii), does not provide for any such presumptions for categories of requesters, although the limitations on duplication, search, and review fees under subsection (a)(4)(A)(ii) of the Act do distinguish among categories of requesters. The fee waiver provision in subsection (a)(4)(A)(iii), therefore, must be applied on a case-by-case basis for all requesters.

6. *Notice of anticipated fees in excess of $25.00 (§ 16.10(e)).* One commenter objected to the provision that a request will be deemed not to have been received until the requester has agreed to pay the total anticipated fee. However, this provision is not different in this regard than that which existed previously in the FOIA fee regulations of the Department, as well as those of other agencies. Such time-tolling FOIA fee provisions, which are based upon sound principles of responsible cost recovery and are aimed at providing the government with some assurance of reimbursement before it expends the effort and cost to process a request, have been upheld by the courts. *See, e.g., Irons* v. *FBI*, 571 F. Supp. 1241, 1243 (D. Mass. 1983).

7. *Advance payments (§ 16.10(g)).* One commenter objected to the requirement of an advance payment from a first-time requester, where the total fee to be assessed is estimated to exceed $250.00, and another commenter objected to the suspension of the statutory time limits for responding to a request while an advance payment is being sought. However, each of these provisions was taken directly from the OMB Fee Guidelines. *See* OMB Fee Guidelines, sec. 9d, 52 FR 10011, 10020 (March 27, 1987). The Department firmly believes that they correctly implement the statutory provision concerning advance payments.

8. *Charging interest (§ 16.10(h)).* One commenter questioned the legal basis for this provision, asserting that there is no statutory authorization for assessing interest charges in connection with FOIA fees. However, this provision was taken directly from the OMB Fee Guidelines. *See* OMB Fee Guidelines, sec. 9a, 52 FR 10011, 10019 (March 27, 1987). The statutory authority for assessing such interest is 31 U.S.C. 3717. Additionally, in accordance with section 9e of the OMB Fee Guidelines, 52 FR 10020, language has been inserted which further addresses collection procedures under the Debt Collection Act of 1982, Pub. L. No. 97-365 (Oct. 25, 1982).

9. *Definitions (§ 16.10(j)).* All five commenters objected to certain of the definition contained in this section, especially that of "representative of the news media." However, once again, these definitions were drawn from the OMB Fee Guidelines, which were made final only after a period of public notice and comment during which concerns such as those raised by these commenters were considered. *See* OMB Fee Guidelines, sec. 6g–6j, 52 FR 10011, 10017–18 (March 27, 1987); *see also* 52 FR 10013–15 (OMB analysis of comments on definitions). The Department is required by the amended Act to conform its fee schedule, which includes these definitions of categories of requesters, to the OMB Fee Guidelines. Furthermore, the Department firmly believes that these definitions, including that of "representative of the news media," properly implement the statutory terms of the amended Act.

These rules do not constitute "major rules" within the meaning of Executive Order No. 12291 (Improving Government Regulations). The requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

List of Subjects in 28 CFR Part 16

Freedom of Information.

Accordingly, under the authority vested in me by 28 U.S.C. 509 and 510, and 5 U.S.C. 301 and 552, Part 16 of Chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 16—[AMENDED]

1. The authority citation for Part 16 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.10 is revised to read as follows:

§ 16.10 Fees.

(a) *In general.* Fees pursuant to 5 U.S.C. 552 shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by components in responding to and processing requests for records under this subpart. All fees so assessed shall be charged to the requester, except where the charging of fees is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. A component shall collect all applicable fees before making copies of requested records available to a requester. Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Charges.* In responding to requests under this subpart, the following fees shall be assessed, unless a waiver or

reduction of fees has been granted pursuant to paragraph (d) of this section:

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media (as defined in paragraphs (j)(6), (j)(7) and (j)(8) of this section, respectively). Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. Components may assess fees for time spent searching even if they fail to locate any respective record or where records located are subsequently determined to be entirely exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee shall be $2.25. Where a search and retrieval cannot be performed entirely by clerical personnel—for example, where the identification of records within the scope of a request requires the use of professional personnel—the fee shall be $4.50 for each quarter hour of search time spent by such professional personnel. Where the time of managerial personnel is required, the fee shall be $7.50 for each quarter hour of time spent by such managerial personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requesters shall be charged the actual direct costs of conducting the search, although certain requesters (as defined in paragraph(c)(2) of this section) shall be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the costs of operator/programmer salary apportionable to the search (at no more than $4.50 per quarter hour of time so spent). A component is not required to alter or develop programming to conduct a search.

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (c) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $0.10 per page. For copies produced by computer, such as tapes or printouts, components shall charge the actual direct costs, including operator time, of producing the copy. For other methods of duplication, components shall charge the actual direct costs of duplicating a record.

(3) *Review.* (i) Review fees shall be assessed with respect to only those requesters who seek records for a commercial use, as defined in paragraph (j)(5) of this section. For each quarter hour spent by agency personnel in reviewing a requested record for possible disclosure, the fee shall be $4.50, except that where the time of managerial personnel is required, the fee shall be $7.50 for each quarter hour of time spent by such managerial personnel.

(ii) Review fees shall be assessed only for the initial record review, *i.e.*, all of the review undertaken when a component analyzes the applicability of a particular exemption to a particular record or record portion at the initial request level. No charge shall be assessed for review at the administrative appeal level of an exemption already applied. However, records or record portions withheld pursuant to an exemption that is subsquently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs of such a subsequent review are properly assessable, particularly where that review is made necessary by a change of circumstances.

(c) *Limitations on charging fees.* (1) No search or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) Except for requesters seeking records for a commercial use (as defined in paragraph (j)(5) of this section), components shall provide without charge—

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(3) Whenever a total fee calculated under paragraph (b) of this section is $8.00 or less, no fee shall be charged.

(4) The provisions of paragraphs (c)(2) and (3) of this section work together. For requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages exceeds $8.00.

(d) *Waiver or reduction of fees.* (1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where a component determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the component, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—*i.e.*, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—components shall consider the following four factors in sequence:

(i) *The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."* The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.* The disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding."* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications—*e.g.*, expertise in the subject area and ability and intention to effectively convey information to the general public—should be considered. It reasonably may be presumed that a representative of the

news media (as defined in paragraph (j)(8) of this section) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that he actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. Components shall not make separate value judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is "important" enough to be made public.

(3) In order to determine whether the second fee waiver requirement is met—*i.e.*, that disclosure of the requested information is not primarily in the commercial interest of the requester—components shall consider the following two factors in sequence:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* Components shall consider all commercial interests of the requester (with reference to the definition of "commercial use" in paragraph (j)(5) of this section), or any person on whose behalf the requester may be acting, but shall consider only those interests which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."* A fee waiver or reduction is warranted only where, once the "public interest" standard set out in paragraph (d)(2) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requester's commercial interest in disclosure. Components shall ordinarily presume that, where a news media requester has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who compile and market government information for direct economic return shall not be presumed to primarily serve the "public interest."

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(5) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (d) (2) and (3) of this section, as they apply to each record request.

(e) *Notice of anticipated fees in excess of $25.00.* Where a component determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the component shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph shall offer him the opportunity to confer with Department personnel in order to reformulate his request to meet his needs at a lower cost.

(f) *Aggregating requests.* Where a component reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the component may aggregate any such requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to evade fees. Where requests are separated by a longer period, components shall aggregate them only where there exists a solid basis for determining that such aggregation is warranted, *e.g.*, where the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(g) *Advance payments.* (1) Where a component estimates that a total fee to be assessed under this section is likely to exceed $250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billing, a component may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before the component begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g)(1) and (2) of this section, a component shall not require the requester to make an advance payment, *i.e.*, a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(4) Where a component acts under paragraphs (g)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA for the processing of an initial request or an appeal, plus permissible extensions of these time limits, shall be deemed not to begin to run until the component has received payment of the assessed fee.

(h) *Charging interest.* Components may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the requester. Once a fee payment has been received by a component, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of Title 31 U.S.C. and shall accrue from the date of the billing. Components shall follow the provisions of the Debt Collection Act of 1982, Pub. L. No. 97-265 (Oct. 25, 1982), and its implementing procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Other statutes specifically providing for fees.* (1) The fee schedule of this section does not apply with respect to the charging of fees under a

statute specifically providing for setting the level of fees for particular types of records—*i.e.*, any statute that specifically requires a government entity such as the Government Printing Office or the National Technical Information Service, to set and collect fees for particular types of records—in order to:

(i) Serve both the general public and private sector organizations by conveniently making available government information;

(ii) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(iii) Operate an information-dissemination activity on a self-sustaining basis to the maximum extent possible; or

(iv) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

(2) Where records responsive to requests are maintained for distribution by agencies operating statutorily based fee schedule programs, components shall inform requesters of the steps necessary to obtain records from those sources.

(j) *Definitions.* For the purpose of this section:

(1) The term "direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Components shall ensure, however, that searches are undertaken in the most efficient and least expensive manner reasonably possible; thus, for example, components shall not engage in line-by-line search where merely duplicating an entire document would be quicker and less expensive.

(3) The term "duplication" refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (*e.g.*, magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(4) The term "review" refers to the process of examining a record located in response to a request in order to determine whether any portion of it is permitted to be withheld. It also includes processing any record for disclosure, *e.g.*, doing all that is necessary to excise it and otherwise prepare it for release, although review costs shall be recoverable even where there ultimately is no disclosure of a record. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term "commercial use" in the context of a request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. Components shall determine, as well as reasonably possible, the use to which a requester will put the records requested. Where the circumstances of a request suggest that the requester will put the records sought to a commercial use, either because of the nature of the request itself or because a component otherwise has reasonable cause to doubt a requester's stated use, the component shall provide the requester a reasonable opportunity to submit further clarification.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research.

(7) The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (j)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scientific research.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization; a publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester also must not be seeking the requested records for a commercial use. In this regard, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use.

(k) *Charges for other services and materials.* Apart from the other provisions of this section, where a component elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending them other than by ordinary mail, the actual direct costs of providing the service or materials shall be charged.

Dated: August 24, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87-20149 Filed 9-1-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 46 and 47

State Grants for Advancement of Health and Safety in Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule removes the existing Mine Safety and Health Administration (MSHA) regulations in 30 CFR Part 46 governing grants to States and makes conforming technical changes to 30 CFR Part 47, which addresses education and training at the National Mine Health and Safety Academy. Part 46, which prescribes programmatic and administrative requirements for grants, has been superseded by other regulations and policy directives of MSHA, the Department of Labor (DOL) and the Office of Management and Budget (OMB). Part 46 is therefore unnecessary and is removed.

EFFECTIVE DATE: September 2, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Associate Assistant Secretary, MSHA, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203, telephone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

Background and Effect of Rule

MSHA is revoking the existing regulations in Part 46 because they are outdated and duplicative of other regulations and policy directives of MSHA, DOL, and OMB. Revocation of Part 46 will eliminate unnecessary regulations which are potentially confusing to current grantees and grant applicants and will streamline administration of the States grants program. References to Part 46 which appear in 30 CFR Part 47 are also removed by this rule. This action will have no substantive effect on MSHA's grants program, which will continue to be administered in accordance with section 503 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 953, and other applicable regulations and guidelines.

Part 46 was promulgated in 1979 (44 FR 28588) and consists primarily of a restatement of key provisions of section 503 of the Mine Act and references to OMB Circular No. A-102, "Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments." The purpose of OMB Circular No. A-102 is to establish consistency and uniformity among Federal agencies in the administration of grants by prescribing standards for such matters as cash management, recordkeeping, financial reporting, property management and procurement, closeout procedures and audits. Each agency with grant-making authority is directed to issue "appropirate" regulations necessary to implement the standards set forth in Circular No. A-102. Part 46 was intended to satisfy this requirement.

Shortly after MSHA promulgated Part 46, DOL promulgated the regulations in Part 29-70 of Title 41, Code of Federal Regulations (44 FR 42920). The DOL regulations, "Administrative Requirements Governing all Grants and Agreements by which Department of Labor Agencies Award Funds to State and Local Governments, Indian and Native American Entities, Public and Private Institutions of Higher Education and Hospitals, and other Quasi-Public and Private Nonprofit Organizations," also implemented OMB Circular No. A-102 and were intended to apply all grant programs administered by the Department or any of its component agencies. The regulations, which were last published in full text in the July 1, 1984 edition of Title 41 CFR, provide in § 29-70.101(f) that DOL grantees no longer need to refer directly to OMB Circular No. A-102, and that with certain exceptions, separate agency rules governing grants would no longer be necessary.

Additionally, Part 46 refers specifically to he 1977 revisions of OMB Circular No. A-102. Since 1977, OMB has issued several significant revisions and additions to the circular and the entire circular was reviewed by an interagency task force chaired by OMB. As a result of that review, government-wide regulations have recently been proposed by 21 agencies, including DOL, which would establish uniform administrative requirements for grants and cooperative agreements to state and local governments (See 52 FR 21820, June 9, 1987). These rules would set forth fiscal and administrative conditions governing DOL grants to State and local governments and subrecipients which are State and local governments. A revised Circular No. A-102 would provide OMB guidance to agencies on good grants management practices.

In practice, MSHA administers its State grants program according to Departmental regulations and current OMB guidelines. Accordingly, Part 46 is obsolete and potentially confusing to grantees and grant applicants.

MSHA has published a Grant Program Operator's Manual to assist grantees in complying with programmatic and administrative requirements applicable to MSHA grants. The manual sets forth a summary of the key requirements of current DOL regulations, as well as OMB Circular No. A-102, OMB guidance on cost principles, audit standards, closeout of grants and instructions concerning transfer of funds. The full text of relevant regulations and guidelines is included in appendices to the manual. The manual thus provides in a single, easily updated volume, all the key regulations and guidelines applicable to MSHA grants. MSHA anticipates updating this manual when the revised OMB Circular No. A-102 and government-wide regulations dicussed above are inssued in final form. The avlability of the manual along with the text of section 503 of the Mine Act eliminates the need for grantees to consult Part 46.

Executive Order 12291 and the Regulatory Flexibility Act

MSHA has determined that the final rule would not result in major cost increases nor have an incremental effect of $100 milliion or more on the economy. Therefore, a regulatory impact analaysis is not required. The Agency has also determined that the final rule required. The Agency has also detemined that the final rule will not have a signficant impact on a substantial number of small entities.

Publication as a Final Rule Effective Upon Publication

The rule eliminates an outdated and unnecessary regulation, and does not affect the rights or obigations of any MSHA grantee or applicant for a grant. In addition, the rules relates to Agency practice and procedure for the processing of grant applications and the award of grants. Publication of a general notice of proposed rulemaking therefore is not required by 5 U.S.C. 553; and good cause exists to make the rule effective immediately.

List of Subjects in 30 CFR Parts 46 and 47

Mine safety and health, Grants.

Under the authority of section 508 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 957, Chapter I of Title 30 of Code of Federal Regulations is amended as follows:

PART 46—[REMOVED]

Part 46 is removed.

PART 47—[AMENDED]

1. The authority citation for Part 47 is revised to read as follows:

Authority: 30 U.S.C. 957.

§ 47.10 [Amended]

2. Section 47.10 is amended by removing the words "under 30 CFR Part 46" at the end of the section.

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§ 47.50 [Amended]

3. Section 47.50 is amended by removing the words "under 30 CFR Part 46" at the end of the first sentence.

Alan C. McMillan,

Deputy Assistant Secretary for Mine Safety and Health.

Date: August 26, 1987.

[FR Doc. 87-20042 Filed 9-1-87; 8:45 am]

BILLING CODE 4510-43-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300163A; FRL-3253-2]

Raw Agricultural Commodities; Definitions and Interpretations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends certain sections in 40 CFR Part 180 by recodifying certain established tolerances as "tolerances with regional registration" as defined in 40 CFR 180.1(n). This Agency-initiated action distinguishes tolerances for minor uses, based on residue data from geographically specific areas for which data have been submitted and approved by EPA.

EFFECTIVE DATE: Effective on October 2, 1987.

ADDRESS: Written objections, identified by the document control number [OPP-300163A], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency. Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of May 6, 1987 (52 FR 16880) which proposed to recodify certain established tolerances as "tolerances with regional registration" as defined in § 180.1(n). Prior to the proposed recodification, no distinction was made for tolerances established based on residue data from geographically specific areas. Later, some "tolerances with regional registration" were defined and listed in separate subsections, alerting users to the fact that these tolerances were established for pesticides with registration restricted to defined geographic areas ("regional registrations").

This rule identifies "tolerances with regional registration" in 40 CFR 180.101 through 180.999 by deleting unidentified "tolerances with regional registration" and recodifying them in paragraphs clearly identified for that specific purpose.

It is not necessary, however, to recodify tolerances for chlorpyrifos on dry bulb onions and on cherries and for methomyl on green onions. These tolerances were originally established in support of regional registration and proposed for recodification in the **Federal Register** notice of May 6, 1987. Data were submitted sufficient to remove these geographical restrictions.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, the EPA has determined that this rule is not a "Major" rule and, therefore, does not require a Regulatory Impact analysis.

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1165.5 U.S.C. 601 et seq.) and it has been determined that it will not have an economic impact on a substantial number of small entities. Accordingly, I hereby certify that the regulation does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 12, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.108 is amended by removing the entry for "macadamia nuts . . . 0.05" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.108 Acephate; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of acephate and its cholinesterase-inhibiting metabolite in or on the following raw agricultural commodities:

Commodities	Parts per million
Macadamia nuts	0.05

3. Section 180.172 is amended by removing the entry for "Spinach . . . 12.0" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.172 Dodine; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of dodine in or on the following raw agricultural commodities:

Commodities	Parts per million
Spinach	12.0

4. Section 180.175 is amended by removing the entry for "Cranberries . . . 15.0" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.175 Maleic hydrazide; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of maleic hydrazide in or on the following raw agricultural commodities:

Commodities	Parts per million
Cranberries	15.0

5. Section 180.183 is amended by removing the entry for "Asparagus . . . 0.1" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.183 O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of *O,O*-diethyl *S*-[2-(ethylthio)ethyl] phosphorodithioate and its cholinesterase-inhibiting metabolites, calculated as demeton, in or on the following raw agricultural commodities:

Commodities	Parts per million
Asparagus	0.1

6. Section 180.185 is amended by removing the entries for "Radish, roots . . . 2.0" and "Radish, tops . . . 15.0" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.185 Dimethyl tetrachloroterephthalate; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of dimethyl tetrachloroterephthalate and its metabolites, calculated as dimethyl tetrachloroterephthalate, in or on the following raw agricultural commodities:

Commodities	Parts per million
Radish, roots	2.0
Radish, tops	15.0

7. Section 180.199 is amended by removing the entries for "Asparagus . . . 300", "Lettuce . . . 300", and "Onions (dry bulb) . . . 300" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.199 Inorganic bromides resulting from soil treatment with combinations of chloropicrin, methyl bromide, and propargyl bromide; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of inorganic bromides (calculated as Br) in or on the following raw agricultural commodities grown in soil fumigated with combinations of chloropicrin, methyl bromide, and propargyl bromide:

Commodities	Parts per million
Asparagus	300
Lettuce	300
Onions (dry bulb)	300

8. Section 180.204 is amended by removing the entry for "Cherries . . . 2" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.204 Dimethoate including its oxygen analog; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for total residues of dimethoate including its oxygen analog in or on the following raw agricultural commodities:

Commodities	Parts per million
Cherries	2

9. Section 180.253 is amended by removing the entry "Pears . . . 4" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.253 Methomyl; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of methomyl in or on the following raw agricultural commodities:

Commodities	Parts per million
Pears	4

10. Section 180.258 is amended by removing the entry for "Cassava, roots . . . 0.1" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.258 Ametryn; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the residues of ametryn in or on the following raw agricultural commodities:

Commodities	Parts per million
Cassava, root	0.1

11. Section 180.259 is amended by removing the entry for "Corn, fresh (including sweet K + CWHR) . . . 0.1", designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.259 Propargite; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of propargite in or on the following raw agricultural commodities:

Commodities	Parts per million
Corn, fresh (including sweet K + CWHR)	0.1

12. Section 180.262 is amended by removing the entry for "Okra . . . 0.02" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.262 Ethoprop; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of ethoprop in or on the following raw agricultural commodities:

Commodities	Parts per million
Okra	0.02

13. Section 180.275 is amended by removing the entry for "Mint hay . . . 2" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and

adding paragraph (b) to read as follows:

§ 180.275 Chlorothalonil; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of chlorothalonil and its metabolite in or on the following raw agricultural commodities:

Commodities	Parts per million
Mint hay	2

14. Section 180.294 is amended by removing the entry for "Turnip greens . . . 6.0" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.294 Benomyl; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of benomyl and its metabolites (calculated as benomyl) in or on the following raw agricultural commodities:

Commodities	Parts per million
Turnip greens	6.0

15. Section 180.315 is amended by removing the entry for "Celery . . . 1" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.315 Methamidophos; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of methamidophos in or on the following raw agricultural commodities:

Commodities	Parts per million
Celery	1

16. Section 180.330 is amended by removing the entry for "Apricots . . . 0.5" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.330 S-[2-(Ethylsulfinyl)ethyl] O,O-dimethyl phosphorothioate; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of *S*-[2-(ethylsulfinyl)ethyl] *O,O*-dimethyl phosphorothioate and its cholinesterase-inhibiting metabolites in or on the following raw agricultural commodities:

Commodities	Parts per million
Apricots	0.5

17. Section 180.342 is amended by removing the entries for "Asparagus . . . 5.0" and "Grapes . . . 0.5", from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of chlorpyrifos and its metabolite in or on the following raw agricultural commodities:

Commodities	Parts per million
Asparagus	5.0
Grapes	0.5

18. Section 180.349 is amended by removing the entry for "Asparagus . . . 0.02" from paragraph (a), and adding paragraph (c) to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate; tolerances for residues.

* * * * *

(c) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1-methylethyl) phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl) phosphoramidate in or on the following raw agricultural commodities:

Commodities	Parts per million
Asparagus	0.02

19. Section 180.350 is amended by removing the entry for "Strawberries . . . 0.2" from the list of commodities, designating the existing introductory paragragh and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.350 Nitrapyrin; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of nitrapyrin and its metabolite in or on the following raw agricultural commodities:

Commodities	Parts per million
Strawberries	0.2

20. Section 180.377 is amended by removing the entry for "Grass, pasture . . . 1.0" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.377 Diflubenzuron; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of diflubenzuron in or on the following raw agricultural commodities:

Commodities	Parts per million
Grass, pasture	1.0

[FR Doc. 87-19646 Filed 9-1-87; 8:45 am]
BILLING CODE 6560-60-M

40 CFR Part 180

[OPP-300167A; FRL-3255-8]

Definition and Interpretation Regarding Peaches

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends 40 CFR 180.1(h) by adding and defining the crop term "peaches" to include both peaches and nectarines. This rule, which clarifies and updates the current definition of "peaches," was requested by the Interregional Research Project No. 4(IR-4).

EFFECTIVE DATE: Effective on September 2, 1987.

ADDRESS: Written objections, identified by the document control number [OPP-300167A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1806.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of June 24, 1987 (52 FR 23694), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted a request to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the IR-4 Technical Committee.

The petitioner requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmestic Act, propose that 40 CFR 180.1(h) be amended by adding the general category "peaches" to column A and by adding the corresponding raw agricultural commodities "peaches, nectarines" to column B.

IR-4 requested this amendment in order to clarify and update the relationship between the general category definition of "peaches" in column A and the specific raw agricultural commodities listed in column B.

Comments were received in response to the proposed rulemaking. The Livingston Farmers Association of Livingston, California and the National Food Processors Association (NFPA) submitted comments in support of the proposed amendment. NFPA agreed with the conclusion of EPA and IR-4 that "in no case would applications of pesticides to nectarines be expected to result in higher residues than those already established for peaches." No adverse comments or requests for referral to an advisory committee were received in response to the proposed rule.

The data submitted in the request and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the amendment will protect the public health. Therefore, the amendment is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objection should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objection are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d), 68 Stat. 512 (21 U.S.C. 346a(d)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and Recordkeeping requirements.

Dated: August 21, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.1 [Amended]

2. Section 180.1 is amended by alphabetically inserting "peaches" in column A and adding the specific raw agricultural commodities "peaches, nectarines" in the corresponding column B, to read as follows:

§ 180.342 Definitions and interpretations.

* * * * *

(h) * * *

A	B
Peaches	Peaches, nectannes

* * * * *

[FR Doc. 87-20130 Filed 9-1-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6657

[CO-940-07-4220-10; C-0124534]

Withdrawal of Public Lands and Reserved Minerals for Protection of Fort Carson-Pinon Canyon Military Reservation, CO; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct an error in the **Federal Register** citation in Public Land Order No. 6649 effective June 23, 1987.

EFFECTIVE DATE: September 2, 1987.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303-236-1768.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

The **Federal Register** citation in Public Land Order No. 6649 signed June 16, 1987, published June 23, 1987, 52 FR 23548, 23549 (FR Doc. 87-14254), on page 23549, first column, third and fourth lines from the bottom of paragraph 2, which reads "at pages 28343 and 28344" is hereby corrected to read "at pages 38343 and 38344."

J. Steven Griles,

Assistant Secretary of the Interior.

Dated: August 24, 1987.

[FR Doc. 87-20103 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-JB-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 74

Administration of Grants

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This amendment to 45 CFR Part 74 implements for HHS a change to OMB Circular A-110. A longstanding rule generally requires recipients to remit to the Federal Government any interest they earn on advances of Federal grant funds. The change to Circular A-110 (1) requires recipients covered by the Circular to deposit advances of Federal funds in interest-bearing accounts, and (2) permits them to retain $100 per year of the earned

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interest to cover administrative expenses.

DATE: This rule is effective October 2, 1987.

ADDRESS: Joel B. Feinglass, Director, Division of Assistance and Cost Policy, Department of Health and Human Services, Room 513D, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Joel B. Feinglass, telephone (202) 245–7565.

SUPPLEMENTARY INFORMATION: On October 30, 1985, OMB published a notice of proposed revision to OMB Circular No. A–110 to require that recipients covered by the Circular deposit advances of grant funds in interest bearing accounts (50 FR 45183). That OMB proposal would not affect the longstanding rule that generally requires recipients to remit to the Federal Government any interest they earn on advances of Federal funds.

On February 10, 1987, OMB published the final revision in the **Federal Register** (52 FR 4240). That final version incorporated the provisions of the proposed revision and also allows recipients to retain $100 per year of the interest for administrative expenses.

The specified sum of $100 is an overall ceiling on the aggregate amount that a single grantee may retain for a year, even if the grantee earns interest on advances from more than one Federal source—such as two or more letters of credit from the same or different Federal grantor agencies.

Where a grantee earns interest on advances from two or more Federal sources, the new rule does not require the grantee to prorate the retainer among its various Federal funding sources. Thus, for example, if a grantee earns $200 of interest on HHS cash advances, and $300 on cash advances from one or more other Federal agencies, the grantee may retain its entire $100 allowance from the amount it remits to HHS or likewise choose to deduct it from the $300 earned from cash advances from another Federal agency. No Federal purpose would be served by requiring the grantee to prorate its retainer, e.g., two-fifths to HHS and three-fifths to the other Federal agency or agencies. This is because, in general, interest earnings received from grantees by Federal agencies end up in the same place—the general treasury of the United States—regardless of which agency receives and deposits the money. Federal agencies are not permitted to credit these amounts to their appropriation accounts.

With respect to State universities, OMB pointed out in their final revision cited above that section 203 of the Intergovernmental Cooperation Act of 1968 (recodified on September 13, 1982 as 31 U.S.C. 6503) exempts States and their instrumentalities from accountability for interest earned on grant-in-aid funds. OMB then stated that, as a consequence, universities that are instrumentalities of a State would not be subject to the revision.

However, in HHS most of the funds awarded to State universities are for research grants. Since the Intergovernmental Cooperation Act's exemption from accountability for interest does not apply to the type of research grants awarded by HHS (nor to grants without a cost-sharing or matching requirement) (31 U.S.C. 6501 (4)(C)), most of the grants awarded to State universities by HHS will be subject to the revision.

Executive Order 12291

The Department has determined that this rule is not a major rule under Executive Order 12291. Therefore a regulatory impact analysis is not required.

Paperwork Reduction Act

This amendment imposes no additional reporting/recordkeeping requirements requiring clearance by OMB.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant impact on a substantial number of small entities. Grantees' recordkeeping systems have the capacity to account for interest income, and the revision provides reasonable compensation for doing so. Therefore no significant impact is involved and a regulatory flexibility analysis is not required by 5 U.S.C. 603.

Waiver of Proposed Rule Making Procedures

This amendment to HHS' regulations merely incorporates changes to Government-wide policy established by OMB after obtaining public participation. Therefore HHS finds that proposed rule making procedures are unnecessary.

List of Subjects in 45 CFR Part 74

Accounting, Administrative practice and procedures, Grant programs—health, Grant programs—social programs, Grant administration.

Dated: July 31, 1987.

Otis R. Bowen

Secretary of Health and Human Services.

Accordingly, 45 CFR Part 74 is amended as follows:

PART 74—[AMENDED]

1. The authority citation for Part 74 continues to read:

Authority: 5 U.S.C. 301; sec. 74.62(a) and Appendix J also issued under sec. 7505 Pub. L. 98–502, 98 Stat. 2333 (31 U.S.C. 7505).

2. Section 74.92 is amended by designating the current text as paragraph (a), and by adding a new paragraph (b) as follows:

§ 74.92 Basic standard.

* * * * *

(b) Except as provided in § 74.47(b), public and private nonprofit institutions of higher education, public and private nonprofit hospitals, and other private nonprofit grantees shall maintain advances of Federal funds in interest bearing accounts. Interest earned on Federal advances deposited in such accounts shall be remitted promptly, but at least quarterly, to the Federal agencies that provided the funds. Interest amounts up to $100 per recipient fiscal year may be retained by the recipient for administrative expense. (The $100 pertains to the total interest earned on all Federal advances.)

[FR Doc. 87–20197 Filed 9–1–87; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–105; RM–5720]

Radio Broadcasting Services; Grants, New Mexico

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Kapdin Communications, Inc., licensee of Station KLLT (FM), Grants, New Mexico, substitutes Class C Channel 279 for Channel 237A at Grants and modifies its license to specify the higher powered channel. At the request of Jeremy Lansman and Davis Broadcasting Co., Inc., this document also allocates Class C Channel 288 to Grants. These allotments could provide Grants with its second and third wide coverage area FM services. Channel 279C can be allocated to Grants in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The allocation of Channel 288 requires a site restriction of 14.8 kilometers (9.2 miles) southeast to avoid a short-spacing to unoccupied and

unapplied for Channel 291C2 at Gallup, New Mexico. With this action, this proceeding is terminated.

DATES: Effective October 13, 1987. The window period for filing applications for Channel 288 will open on October 14, 1987, and close on November 13, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–105, adopted August 5, 1987, and released August 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Grants, New Mexico, is amended by removing Channel 237A and adding Channels 279C and 288C.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20171 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–31; RM–5542]

Radio Broadcasting Services; Lisbon, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Sheyenne Valley Broadcasting, Inc., substitutes Channel 291C2 for Channel 292A at Lisbon, North Dakota, and modifies its permit for Station KQLX-FM to specify operation on the higher powered channel. Channel 291C2 can be allocated to Lisbon in compliance with the Commission's minimum distance separation requirements and used at Station KQLX-FM's present site. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–31, adopted August 5, 1987, and released August 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Lisbon, North Dakota, is amended by removing Channel 292A and adding Channel 291C2.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20172 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–476; RM–5567; RM–5765]

Radio Broadcasting Services; Greenwood and Abbeville, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of United Community Enterprises, allocates Channel 278A to Greenwood, SC, as the community's second local FM service. Channel 278A can be allocated to Greenwood in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. At the request of Abbeville Broadcasting Co., this document also allocates Channel 225A to Abbeville, SC, as the community's first local FM service. Channel 225A can be allocated to Abbeville in compliance with the Commission's minimum distance separation requirements with a site restriction of 5 kilometers (3.1 miles) east to avoid a short-spacing to Station WKSX, Channel 224A, Johnston, SC. With this action, this proceeding is terminated.

DATES: Effective October 8, 1987. The window period for filing applications will open on October 9, 1987, and close on November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–476, adopted July 28, 1987, and released August 25, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for South Carolina is amended by adding Abbeville, Channel 225A, and adding Channel 278A to the Greenwood entry.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20173 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–20; RM–5544]

Radio Broadcasting Services; Caldwell, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 236A to Caldwell, Texas, as that community's first FM service, at the request of BCB Communications. With

this action, this proceeding is terminated.

DATES: Effective October 13, 1987. The window period for filing applications will open on October 14, 1987, and close on November 13, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–20, adopted August 5, 1987, and released August 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Caldwell, Texas, Channel 236A is added.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–20174 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–32; RM–5582]

Television Broadcasting Services; Aguada, PR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Evelyn Dueno, allocates UHF TV Channel 50 to Aguada, Puerto Rico, as the community's first local TV service. Channel 50 can be allocated to Aguada in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–32, adopted August 5, 1987, and released August 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments for Puerto Rico is amended by adding Aguada, Channel 50.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20175 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–505; RM–5533]

Radio Broadcasting Services; Fort Walton Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 258C2 for Channel 257A at Fort Walton Beach, Florida, and modifies the Class A license for Station WFTW–FM to specify Channel 258C2, at the request of the licensee, Vacationland Broadcasting Company, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–505, adopted August 4, 1987, and released August 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Fort Walton Beach, Florida, by adding Channel 258C2 and deleting Channel 257A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20166 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–145; RM–5121]

Radio Broadcasting Services; Webster, MA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 255A to Webster, Massachusetts in response to a petition filed by Okum Broadcasting, Inc., as that community's first FM broadcast service. There is a site restriction 7.9 kilometers (4.9 miles) west of the community. A counterproposal was filed by Helical Systems Company proposing the allotment of FM Channel 255A to Thompson, Connecticut, instead of Webster, Massachusetts. On March 10, 1987, Helical Systems Co. filed a notice of withdrawal of its counterproposal. With this action, this proceeding is terminated.

DATE: Effective October 13, 1987; The window period for filing applications will open on October 14, 1987, and close on November 13, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–145, adopted August 4, 1987, and released August 26, 1987. The full text of this Commission decision is available for inspection and copying during normal

business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Massachusetts, by adding Channel 255A to Webster.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20168 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–372; RM–5348]

Radio Broadcasting Services; Winona, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 268A to Winona, Minnesota, as that community's second FM broadcast service, in response to a petition filed by L.F. Baechler. There is a site restriction 8.0 kilometers east of Winona. In addition the allotment of Channel 268A is conditioned on the grant of a pending application for Station KDWB, Channel 267, Richfield, Minnesota (BPH 850709IK). Therefore, the filing window dates for Channel 268A at Winona, Minnesota, will be announced at a future date to follow the licensing of Station KDWB, accordingly. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–372, adopted August 5, 1987, and released August 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.203 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Minnesota, by adding Channel 268A at Winona.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20169 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–146; RM–4958]

Radio Broadcasting Services; Palmyra, MO and Pittsfield, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 250C2 to Palmyra, Missouri, and modifies the license of Station KIDS to specify operation on Channel 250C2 instead of Channel 252A, and allocates FM Channel 248B1 to Pittsfield, Illinois, and modifies the license of FM Station WBBA(FM) to specify Channel 248B1 in place of Channel 249A. This action is taken in response to a petition filed by Palmyra Broadcasting Company, licensee of Station KIDS. Supporting comments were filed by Palmyra Broadcasting Company and by Pike Broadcasting Company, licensee of Station WBBA. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–146, adopted August 5, 1987, and released August 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments, is amended under Missouri, by deleting Channel 252a and adding Channel 250C2 at Palmyra. The entry for Pittsfield, Illinois is amended to delete FM Channel 249A and add FM Channel 248B1.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20167 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–453; RM–5585]

Radio Broadcasting Services; Bennington, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of John Tynan, this document allocates Channel 227A to Bennington, Nebraska, as the community's first local FM service. Channel 227A can be allocated to Bennington in compliance with the Commission's minimum distance separation requirements without a site restriction. With this action, this proceeding is terminated.

DATES: Effective October 8, 1987. The window period for filing applications will open on October 9, 1987, and close on November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–453, adopted July 29, 1987, and released August 25, 1987. The full text of this

Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW. Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Nebraska is amended by adding Bennington, Channel 227A.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20170 Filed 9–1–87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845–7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments and request for comments.

SUMMARY: NOAA announces the (1) rescission of a restriction which requires that mixed loads of chinook and coho or loads of coho-only salmon caught in the commercial fishery from Cape Falcon to Cascade Head, Oregon, be delivered within the subarea; (2) establishment of a single daily possession and landing limit from Cape Falcon to Cape Blanco, Oregon; and (3) establishment of a season ending date for commercial all-species seasons from Cape Falcon to Cape Blanco, Oregon. The Director, Northwest Region, NMFS, has determined in consultation with the Chairman of the Pacific Fishery Management Council (Council), and representatives of the Washington Department of Fisheries, Oregon Department of Fish and Wildlife (ODFW), and the affected commercial fisheries, that these modifications meet the criteria for inseason adjustments to management measures. These modifications are intended to allow maximum harvest of the commercial coho salmon quota established for the 1987 season south of Cape Falcon, Oregon.

EFFECTIVE DATE: These inseason adjustments to commercial management measures in the exclusive economic zone (EEZ) from Cape Falcon to Cape Blanco, Oregon, are effective at 0001 hours, Pacific Daylight Time (PDT), August 29, 1987. Comments will be received until September 14, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director) at 206–526–6150.

SUPPLEMENTARY INFORMATION: The ocean salmon fisheries are managed under a framework fishery management plan (50 CFR Part 661). An amendment to the plan (52 FR 4116, February 10, 1987) authorizes inseason adjustments to management measures if the adjustments are consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the framework amendment. In addition, all inseason adjustments must be based on consideration of the following factors: predicted sizes of salmon runs; harvest quotas and hooking mortality limits for the area and total allowable impact limitations if applicable; amount of recreational, commercial, and treaty Indian catch for each species in the area to date; amount of recreational, commercial, and treaty Indian fishing effort in the area to date; estimated average daily catch per fisherman, predicted fishing effort for the area to the end of the scheduled season; and other factors as appropriate.

Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). According to this preseason notice, commercial fisheries south of Cape Falcon, Oregon, are partitioned into six subareas and managed not to exceed an overall troll catch quota south of Cape Falcon of 401,700 coho salmon.

Several of the six subareas south of Cape Falcon currently are closed to commercial fishing for coho salmon. Two subareas south of Point Delgada, California, were closed to commercial fishing for coho salmon on July 21, 1987, when the catch quota of 26,800 coho salmon for these subareas was projected to be reached (52 FR 27817, July 24, 1987). The subarea from Cape Blanco, Oregon, to Point Delgada, California, was closed to commercial fishing for all salmon on June 25, 1987, when the commercial fishing quota of 113,300 chinook salmon was projected to be reached (52 FR 24297, June 30, 1987).

In accordance with the preseason regulations, the estimated number of coho salmon not needed to complete recreational seasons south of Cape Falcon (35,000 coho) was transferred to the commercial fishery on August 22, 1987 (52 FR 32135, August 26, 1987) increasing the commercial quota for areas south of Cape Falcon from 401,700 to 436,700 coho salmon.

Based on the best available information, commercial landings south of Point Delgada, California, totaled approximately 26,800 coho, and commercial landings from Cape Falcon to Point Delgada totaled an estimated 334,300 coho salmon through August 26, 1987. Thus, nearly 75,600 coho salmon remain to be harvested in the commercial coho quota south of Cape Falcon. Recent commercial landings have averaged 2,000–3,000 coho salmon a day.

Three subareas in the area from Cape Falcon to Cape Blanco, Oregon, currently are open to commercial fishing for all salmon species with some restrictions. From Cape Falcon to Cascade Head, and from Cascade Head to Cape Perpetua (52 FR 32135, August 26, 1987), a single daily possession and landing per vessel of 100 coho salmon is permitted before a restriction on the number of coho accompanying the possession and landing of chinook (a ratio restriction) is applied. From Cape Perpetua to Cape Blanco, fishermen are not allowed this single daily possession and landing allowance before the ratio restriction is applied. Increasing the single daily possession and landing per vessel in all subareas to 200 coho salmon would increase landings of coho salmon, and shorten the time needed to harvest the coho quota. Ratio restrictions for possessing or landing more than the single daily possession and landing limit will remain as stated in Table 1 of the preseason notice (52 FR 17264).

From Cape Falcon to Cascade Head, and from Cascade Head to Cape Perpetua, mixed loads of chinook and coho and coho-only loads must be

delivered in the subarea where they were caught. This delivery requirement is not in effect from Cape Perpetua to Cape Blanco, because there is no single daily possession and landing allowance in that subarea. Commercial seasons off Oregon south of Cape Blanco and north of Cape Falcon are now closed. The regulation requiring that coho caught between Cape Falcon and Cascade Head be landed within that subarea is no longer needed as the area of catch can easily be determined.

Commercial fisheries for coho salmon south of Cape Falcon usually close by early to mid-August. Continued fishing into late September and early October would increase impacts on Oregon coastal natural (OCN) coho salmon, and may prevent the ocean escapement goal of 200,000 OCN coho from being met.

Therefore, NOAA issues this notice, after consideration of the factors specified for inseason adjustments, to adjust commercial management measures in specified areas south of Cape Falcon, Oregon, effective 0001 hours, local time, August 29, 1987, as follows:

1. The regulation which requires that mixed loads of chinook and coho or loads of coho-only salmon caught in the commercial fishery from Cape Falcon to Cascade Head, Oregon, be delivered within the subarea is rescinded.

2. A single daily possession and landing limit in all subareas from Cape Falcon to Cape Blanco, Oregon, of 200 coho salmon is established. (Ratio restrictions on possession or landing of more than the single daily possession and landing limit remain as stated at 52 FR 17264, May 6, 1987.)

3. An ending date for commercial all-species seasons in all subarea from Cape Falcon to Cape Blanco, Oregon, of September 15, 1987 is established.

The Regional Director consulted with the Chairman of the Council and representatives of ODFW regarding these inseason adjustments to commercial management measures from Cape Falcon to Cape Blanco, Oregon. An ODFW representative confirmed that Oregon will manage commercial fisheries in State waters adjacent to this area of the EEZ in accordance with this notice.

This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in this or other areas.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 et seq.)

Dated: August 28, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87-20215 Filed 8-28-87; 4:27 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 61225-7052]

Groundfish of the Bering Sea and Aleutian Islands Area; Inseason Adjustment; Corrections

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment; corrections.

SUMMARY: This document corrects two of the specifications in the table reapportioning amounts of non-specific reserve of Alaska groundfish to JVP that was presented in a notice of inseason adjustment for Groundfish of the Bering Sea and Aleutian Islands Area published August 5, 1987 (52 FR 29021).

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist), 907-586-7230.

In rule document 87-17771 beginning on page 29021 in the issues of August 5, 1987, make the following corrections:

On page 29022 in Table 1, in the entry "Pacific ocean perch (Aleutian Is. subarea)", the number, 120, referring to current JVP is corrected to read "163" and the number, 370, in the "Revised totals of JVP" column is corrected to read "413".

Dated: August 27, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87-20214 Filed 9-1-87; 8:45 am]

BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 52, No. 170
Wednesday, September 2, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 041CE, Notice No. 23-ACE-35]

Special Conditions; Mooney Model M20 Series Airplanes With Porsche PFM3200No3 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Mooney Model M20 Series Airplanes with Porsche PFM3200No3 Engines. The airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. The novel and unusual design features include the installation of the Porsche PFM3200No3 Engine, which incorporates an electronic ignition system and a unique single-lever power control, for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of Part 23.

DATE: Comments must be received on or before October 5, 1987.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 041CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 041CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Comunications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 041CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Type Certification Basis

The type certification basis for the Mooney Model 20L airplane in CAR 3, effective November 1, 1949, as amended to May 18, 1954, with §§ 3.109, 3.112, 3.115, 3.118, 3.120, and 3.441 of CAR 3, effective May 15, 1956, as amended to October 1, 1959; Part 23, effective February 1, 1965; § 23. 901 as amended to May 2, 1977; § 23.903, as amended to December 20, 1973; §§ 23.905 through 23.953, 23.955 through 23.963, 23.967 through 23.1063, as amended to September 14, 1969; §§ 23.1091 through 23.1105, as amended to February 1, 1977; §§ 23.1221 through 23.1193, 23.1351 through 23.1553, and 23.33 as amended to September 14, 1969; §§ 23.1527, as amended 23.1527, as amended to June 17, 1970; § 23.1557, as amended, to December 21, 1973; Part 36, effective September 20, 1976; Exemption No. 4753A; and any special conditions that may result from this notice.

Background

On April 10, 1986, Mooney Aircraft Corporation, Post Office Box 72, Kerrville, Texas 78029-0072, made application to the FAA to amend Type Certificate 2A3 to incorporate a new Model M20L. The Model M20L is a small, four-place cabin, normal category airplane. The Model M20L is basically a Model M20K with the Porsche PFM3200No3 Engine installed. The Porsche engine installation incorporates an electronic ignition system and a single-lever power control.

Discussion

Electronic ignition systems and single-lever power control were not envisaged by the applicable CAR 3/Part 23 airworthiness standards. These features are considered novel and unusual design features and, as such, will require special conditions to provide adequate airworthiness standards.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.17(a)(2).

The Porsche PFM3200No3 Engine's electronic ignition system consists of two independent microprocessor controlled circuits, each of which is capable of maintaining full engine performance. Both of the engine ignition control circuits, including the microprocessors and software programming, may be susceptible to malfunction due to a single lightning strike on any part of the airplane.

The regulations incorporated by reference include standards for protection from ignition of fuel vapor by lightning (§ 23.954). The airworthiness standards do not, however, provide for protection of an electronic ignition system from the influence of lightning that is inherently provided by traditional

designs, such as engine-driven magnetos. Therefore, a special condition is proposed.

The Porsche engine installation manual requires lightning protection for the ignition system if induced power spikes, caused by a lightning strike, exceed 600 volts and/or a duration time of 10 microseconds. The special condition will assure that the ignition system will be protected from induced power spikes in excess for the level for which the system was certificated.

The lightning current waveforms defined in the Society of Automotive Engineers (SAE) AE4L Committee Report AE4L–87–3 dated February 4, 1987, along with the voltage waveforms in Advisory Circular 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depends upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, under these special conditions, tests (including tests on the completed airplane or an adequate simulation) and/or a verified analysis must be conducted in order to determine the resultant internal threat to installed systems. The individual systems must then be evaluated with this internal threat in order to determine their susceptibility to malfunction.

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of RF energy from ground-based transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic propulsion system components, the immunity of the airplane to RF energy must be established. Therefore, a special condition is proposed.

No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established. At this time, the FAA and other airworthiness authorities are working to establish an agreed level of RF energy representative of that to which the airplane will be exposed in service. These special conditions require that the airplane be evaluated under an interim standard for the protection of the electronic engine control system and its associated wiring harness, exclusive of airframe shielding.

The applicant has requested approval of a unique, single-level power control to provide simultaneous control of the engine throttle and propeller governor and, to a limited extent, the mixture. The single-lever control incorporates standard industry components to drive both the throttle plate and propeller governor through one lever. Two control cables are connected to the lever and routed to the throttle and governor. In addition, for takeoff power, the lever closes a switch which activates the fuel injection system to provide the best power mixture for the engine. For all other operations, the fuel injection system provides the best economy mixture automatically.

The FAA has determined that this unique design feature requires an evaluation of the effect on engine performance and control in the event of a control lever system failure. A failure analysis of the interconnecting components would enhance confidence in the engine control system. Therefore, a special condition is proposd to require the single lever system to have the same level of integrity and reliability as currently provided by the regulations for individual controls.

Conclusion

In view of the design features discussed above, the following special conditions are proposed for the propulsion control system of the Model M20 Series Airplanes, with Porsche PFM3200 engine installed, under the provisions of § 21.16 to provide a level of safety equivalent to that intended by the regulations incorporated by reference. This action is not a rule of general applicability and affects only the model/series of airplane identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, and Safety.

The authority citation for these proposed special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the Mooney Model M20 Series Airplanes with Porsche PFM3200 engines installed:

1. *Lightning Protection.* In addition to compliance with other applicable requirements relative to lightning protection, each electronic propulsion control system component, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to lightning.

2. *Protection from Unwanted Effects of Radio Frequency (RF) Energy.* In the absence of specific requirements for protection from the unwanted effects of RF energy, each electronic propulsion control system component, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to externally radiation electromagnetic energy.

3. *Propulsion Control System.* In addition to the requirements applicable to throttle, mixture and propeller controls, components of the propulsion control system, both airframe and engine manufacturer furnished, that affect thrust and that are required for continued safe operation, must be shown to have the level of integrity and reliability of the typical Mooney Model M20 propulsion control system with independent throttle, mixture, and propeller controls.

Issued in Kansas City, Missouri, on August 18, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87–20087 Filed 9–1–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, 207, 210, and 241

43 CFR Part 3160

Royalty Management; Revision of Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Further notice of proposed rulemaking, extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that

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it is extending the public comment period on its Further Notice of Proposed Rulemaking for both gas and oil product valuation regulations which were published in the **Federal Register** on August 17, 1987 (52 FR 30776 and 52 FR 30826). In response to requests for additional time, the MMS will extend the comment period from September 2, 1987, to September 11, 1987.

DATES: Comments must be received by 4:00 p.m. m.s.t. September 11, 1987.

ADDRESS: Written comments should be sent to: Minerals Management Service, Building 85, Denver Federal Center, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis Whitcomb, Chief, Rules and Procedures, telephone (303) 231-3432, (FTS) 326-3432.

August 28, 1987

David W. Crow,

Acting Director, Minerals Management Service.

[FR Doc. 87-20224 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-MR-M

VETERANS ADMINISTRATION

38 CFR Part 13

Fiduciary Activities; Investment by Legal Custodians; Estates $1,500; Determination of Value of Estate

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendments.

SUMMARY: The Veterans Administration (VA) is proposing to amend 38 CFR Part 13 (Fiduciary Activities) to implement a suggestion contained in an unpublished opinion by the Veterans Administration General Counsel to provide clear authority for a Federally appointed fiduciary to purchase a pre-need burial arrangement on behalf of an incompetent beneficiary. The effect of this proposed amendment is to allow a Federally appointed beneficiary the latitude to provide the beneficiary with a decent burial.

In addition, the VA is amending Part 13 to provide two additional types of assets to be excluded from the value of estate computation; this amendment implements an unpublished VA General Counsel opinion and a provision of the Veterans Benefits Improvements Act of 1984. The effect of the proposed amendment is to protect the veteran's property from loss while hospitalized and to allow the accumulation of assets needed to provide a decent burial.

Certain technical amendments are also being incorporated into Part 13 at this time.

DATES: Comments must be received on or before October 5, 1987. Comments will be available for public inspection until October 16, 1987. It is proposed to make these regulatory amendments effective 30 days after publication of the final notice.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until October 16, 1987.

FOR FURTHER INFORMATION CONTACT: William Saliski, Investigation and Compliance Staff, Veterans Assistance Service, Department of Veterans Benefits, (202) 233-3644.

SUPPLEMENTARY INFORMATION: The VA is aware that many people desire to provide themselves with an adequate burial or other form of disposition of the remains after death. Pre-need burial plans or trusts now seem to answer this need. During the past few years, the VA has received inquiries from fiduciaries of incompetent VA beneficiaries as to the propriety of investment in or purchase of such pre-need burial arrangements on behalf of their wards. A court-appointed fiduciary's responsibilities with regard to such expenditure from the ward's estate is generally governed by State law; however, no clear authority existed for Federally appointed fiduciaries to make deposits in or purchase such burial arrangements with VA funds. The VA General Counsel was asked for an opinion in this regard. The General Counsel, in an unpublished opinion, stated that the Administrator had the authority to amend the regulations to provide authority to purchase pre-need burial plans and further suggested that the value of such plans by exempted from consideration of total estate for purposes of the $1,500 estate limitation under 38 U.S.C. 3203(b)(1)(A). The VA is sensitive to the needs of incompetent VA beneficiaries and therefore proposes to amend § 13.103 to provide clear authority to Federally appointed fiduciaries to invest in or purchase pre-need burial plans on behalf of their wards and to amend § 13.109 to provide an exemption as cited above.

The VA also proposes to amend § 13.103 to make clear that an institutional award payee has no investment authority with regard to VA benefits placed by the VA into an account at the institution on behalf of an incompetent veteran. Many VA General Counsel opinions given over the years have held that such funds do not lose their identity as VA funds. These monies are not part of the veteran's estate and are subject to the limited distribution and recoupment provisions of 38 U.S.C. 3202(d). This point is often overlooked, causing the VA to lose time and manpower in attempting to rectify mistakes. The VA, therefore, proposes to inform the public with regard to the status of these funds for investment purposes.

Section 13.108 contains language that has not kept up with amendments to 38 U.S.C. 3203(b)(1). The VA, therefore, proposes to amend § 13.108 to more accurately reflect current law, and further, to clearly state the Veterans Services Officer's authority to recommend a waiver of the provisions of 38 U.S.C. 3203(b)(1)(A) when appropriate and in accordance with the intent of 38 U.S.C. 3202(b)(1)(C). The Veterans Services Officer is responsible for supervising the management of an incompetent veteran's estate. The responsibility places the Veterans Services Officer in a position to assist in the making of any determination with regard to an incompetent veteran's eligibility for a waiver under the criteria set within 38 CFR 3.557(e).

The VA also proposes to amend § 13.109 to provide an additional exemption to estate computation. This exemption is specifically provided under 38 U.S.C. 3203(b)(1)(A) and applies to the value of the veteran's home unless there is no reasonable likelihood that the veteran will again reside in such home. The change, then, merely implements the law.

The Administrator hereby certifies that these proposed regulatory amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Therefore, pursuant to 5 U.S.C. 605(b), these proposed regulatory amendments are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. The reason for this certification is that these proposed regulatory amendments impose no regulatory burdens on small entities, and only claimants for VA benefits and their dependents will be directly affected.

In accordance with Executive order 12291, Federal Regulation, the VA has determined that these proposed regulatory amendments are non-major for the following reasons:

(1) They will not have an effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no Catalog of Federal Domestic Assistance Program number.

These proposed regulatory amendments contain no information collection requirements.

List of Subjects in 38 CFR Part 13

Administrative practice and procedure, Estates, Fraud, Handicapped, Infants and children, Investigations, Investments, Surety bonds, Trusts and trustees, Veterans.

Approved: July 8, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 13, *Fiduciary Activities*, is proposed to be amended as follows:

PART 13—[AMENDED]

§ 13.77, 13.101, 13.105, and 13.106 [Amended]

1. Add the citation "(38 U.S.C. 210)" at the end of §§ 13.77,13.101,13.105, and 13.106.

§ 13.100 [Amended]

2. Add the citation "(38 U.S.C. 3202)" at the end of paragraphs (a) and (c); add the citation "(38 U.S.C. 210)" at the end of paragraph (b); and add the citation "(38 U.S.C. 3501)" at the end of paragraph (d).

3. In § 13.102, paragraph (a) is revised and a citation is added at the end of the section to read as follows:

§ 13.102 Accountability of legal custodians.

(a) *Institutionalized veterans without spouse or child.* The legal custodian of VA benefits of an incompetent veteran who has neither spouse nor child and who is being furnished hospital treatment or institutional or domiciliary care by the United States or a political subdivision thereof, will account upon request to the VA for funds received from the VA for the beneficary and will submit a statement of all other income received and the total assets from any source held for the beneficiary.

* * * * *

(38 U.S.C. 210)

4. Section 13.103 is revised to read as follows:

§ 13.103 Investments by Federal fiduciaries.

(a) *Type authorized.* VA benefits paid to a Federally appointed fiduciary other than a spouse payee or an institutional award payee may be invested only in United States savings bonds, or in interest or dividend-paying accounts in State or Federally insured institutions, whichever is to the beneficiary's advantage. Veterans Administration benefits that are paid on behalf of an incompetent veteran to an institution via an institutional award payment arrangement may not be invested.

(b) *Registration.* (1) When funds are invested in bonds, the bonds will be registered in this form: (Beneficiary's Name), (Social Security No.), under custodianship by designation of the Veterans Administration.

(2) When funds are invested in interest or dividend-paying accounts in State or Federally insured institutions, the account will be registered in this form: (Beneficiary's name), by (Fiduciary's Name), Federal fiduciary.

(c) *Pre-need burial arrangements.* Federally appointed fiduciaries, other than institutional award payees, may use a beneficiary's funds derived from VA benefits to make deposits into, or purchase, a pre-need burial plan or burial insurance on behalf of the beneficiary, if to do so is in the beneficiary's interest.

(38 U.S.C. 210)

§ 13.107 [Amended]

5. Add the citation "(38 U.S.C. 3203(b)(3))" at the end of the section.

6. Section 13.108 is revised to read as follows:

§ 13.108 Estate $1,500; 38 U.S.C. 3203(b)(1).

(a) *Discontinuance of payments.* When a veteran, rated incompetent by the VA, without spouse or child, is receiving hospital treatment or domiciliary or institutional care by the United States or any political subdivision, with or without charge, and the veteran's estate equals or exceeds $1,500, the Veterans Services Officer shall, with regard to those estates monitored by the VSO, immediately notify the Adjudication Division so that VA payments, other than insurance, may be discontinued under the provision of § 3.557 of this title. In those cases in which the payments have been discontinued, the VSO shall, when the estate has been reduced to $500, immediately notify the Adjudication Division of that fact. (38 U.S.C. 3203(b)(1)(A))

(b) *Waiver of discontinuance.* The Veterans Services Officer shall assist in those cases under the VSO's supervision in determining when discontinuance should be waived for one or more periods not to exceed 60 days of the veteran's care during any calendar year by making an appropriate recommendation.

(1) The VSO should not recommend waiver as an administrative expediency but should recommend waiver when necessary to avoid hardship.

(2) Hardship will not be considered present when assets are readily available to meet current liabilities. (38 U.S.C. 3203(b)(1)(A))

(c) *Apportionment to dependent parent; care and maintenance award.* In any case in which a veteran, without spouse or child, is institutionalized by the United States or a political subdivision thereof and his or her award of compensation, pension or emergency officers' retirement pay has been discontinued because of his or her estate exceeds $1,500, an apportionment of the award otherwise payable may nevertheless be made to a dependent parent, if any, based on actual need as determined by the Veterans Services Officer. So much of any monthly remainder of the discontinued payments as equals the amount charged to the veteran for his or her current care and maintenance in the institution in which treatment or care is furnished, but not more than the amount determined by the Veterans Services Officer to be the proper charge as fixed by statute or administrative regulation, may be paid to the institution. The Veterans Services Officer shall recommend to the Adjudication Division the amount of either award. (38 U.S.C. 3203(b)(2))

(d) *Death of veteran; personal funds of patient.* In the event of the incompetent veteran's death in other than a VA institution, the Veterans Services Officer should make certain that the provisions of the pertinent laws are applied as to the gratuitous benefits in Personal Funds of Patients. (38 U.S.C. 210)

7. In § 13.109, the section heading is revised and paragraphs (d) (5), (6) and (7) are added to read as follows:

§ 13.109 Determination of value of estate; 38 U.S.C. 3203(b)(1)(A).

* * * * *

(d) * * *

(5) The value of the veteran's home unless medical prognosis indicates that there is no reasonable likelihood that the veteran will again reside in the

home. It may be presumed that there is no likelihood for return when the veteran is absent from the home for a continuous period of 12 months because of the need for care, and the prognosis is void of any expectation for a return to the home.

(6) Funds deposited into a pre-need burial arrangement such as a burial trust, prepaid burial agreement, burial insurance, etc. The value of the veteran's burial plot will be likewise excluded.

(7) Amounts withheld under § 3.551(b) of this title.

* * * * *

(38 U.S.C. 210)

[FR Doc. 87-20228 Filed 9-1-87; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-6-FRL-3255-3]

Exemption of Four Carbon Black Plants From Further Control Under Louisiana Air Quality Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rulemaking.

SUMMARY: This action proposes approval of a revision to the State of Louisiana Implementation Plan (SIP). The proposed approval is based on review of the SIP revision submitted to EPA by the Governor of Louisiana on January 12, 1987. This revision consists of exempting four carbon black plants in the State of Louisiana from further controls for acetylene emissions as required in the current SIP. Such emissions are presently required to be controlled by the Louisiana Air Quality Regulation (LAQR) 22.8, the waste gas stream regulation.

DATE: Comments must be received on or before October 2, 1987.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs at the EPA Region 6, Air Programs Branch (address below). Copies of the State's submittals and EPA's evaluation report may be examined during normal business hours at the following locations: U.S. Environmental Protection Agency, Region 6, Air Programs Branch, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Ricardo Saucedo, SIP/NSR Section, Air Programs Branch, Air, Pesticides and Toxics Division, EPA Region 6, 1445 Ross Ave., Dallas, Texas 75202-2733, (214) 655-7214.

SUPPLEMENTARY INFORMATION: On January 12, 1987, the Governor of Louisiana submitted a request to revise the Louisiana SIP to exempt four carbon black plants in the State of Louisiana from further controls on emissions of acetylene as required in the SIP. Such emissions are presently required to be controlled by the LAQR 22.8, the waste gas stream regulation. Even though stated in the Governor's submittal that this revision applies only to "additional controls", in another part of the Louisiana SIP submittal to EPA, the qualifying words additional controls were omitted from the exemptions. The State has agreed to correct this discrepancy in the SIP submittal, since the purpose of the SIP revision is, as mentioned in the letter from the Governor, to exempt the sources from further controls for acetylene emissions as required in the SIP, and not to exempt the sources from all controls for acetylene emissions. These four plants currently combust a portion of their waste gas in existing plant processes (i.e., dryers); however the current combustion practices do not meet the requirements of LAQR 22.8. The current level of combustion is not being exempted by this action.

This revision to the Louisiana SIP is being proposed for approval with the condition that the State corrects the noted discrepancy and submits the revised exemptions to reflect the actual purpose of the SIP revision as stated in the Governor's letter. EPA intends to publish notice of Final Rulemaking on the revisions discussed in today's notice once the State adopts the additional revision and submits it to EPA for incorporation into the SIP. However, if the State makes substantial changes from those currently proposed, EPA will have to evaluate those changes, and may publish a revised notice of proposed rulemaking. The submittal contained verification that adequate notice and a public hearing were provided for the proposed SIP revision. EPA proposes to approve this revision to the SIP and invites comments from all interested persons. Comments received by EPA within 30 days of the publication of the notice will be considered.

Background

On February 14, 1980, at 45 FR 9903, EPA approved the Louisiana Air Quality Regulation 22.8(a). This regulation requires burning at 1300 °F and 0.3 seconds for waste gas vents containing nonhalogenated compounds. The SIP revision submitted by the State on January 12, 1987, would allow the facilities to only combust a portion of their waste gas in existing plant processes (i.e. dryers) and exempt them from further controls on emissions of acetylene.

The State contends the SIP revision is approvable for the following reasons. First, three of the plants are located in areas classified as rural nonattainment for the pollutant ozone. The other plant is located in an ozone unclassified/attainment area. Second, the State did not consider emission reductions from VOC emission sources in rural ozone nonattainment areas in its demonstration that the ambient ozone air quality standard will be met in the adjacent Baton Rouge urban ozone nonattainment area by December 1987; and third, the State contends that available data shows that acetylene has low photochemical reactivity and toxicity. EPA disagrees with the State's reasons but believes the SIP revisions can be approved on other grounds. These grounds are discussed later in this notice.

Carbon Black Process Description

Carbon black is produced by the reaction of a hydrocarbon fuel such as oil or gas with air at high temperatures of 2400 to 2800 °F. The principal uses of carbon black are as a reinforcing agent in rubber compounds (e.g., tires), as a black pigment in printing inks, surface coatings, paper and plastics. Two major processes are presently used in the United States to manufacture carbon black, the oil furnace process and the thermal process. The oil furnace process accounts for about 90 percent of the total carbon black production in this country. The four carbon black plants considered in this action make use of the oil furnace process. In the oil furnace process, an aromatic liquid hydrocarbon feedstock is preheated and injected continously into a combustion zone of a natural gas fired furnace, where it is decomposed to form carbon black.

Emissions from the oil furnace process include particulate matter, carbon monoxide (CO), VOC, sulfur compounds, and trace elements. The principal source of emissions in the oil furnace process is the main process vent. Gaseous emissions vary considerably according to the grade of carbon black being produced. VOC and CO emissions tend to be higher for small particle production. Sulfur compound emissions are a function of the feed sulfur content. Particulates, sulfur oxides and nitrogen oxides are also emitted from the dryer vent.

Review

There are five carbon black facilities located in the State of Louisiana. None of them has ever met the requirements of the Louisiana Air Quality Regulation, section 22.8, the waste gas stream regulation. Four of the five plants are dealt with in this notice. Three of the carbon black plants are located in areas presently classified as rural nonattainment areas for the pollutant ozone. These three plants are the following: (1) Ashland Chemical Company, located in Louisa, Louisiana, St. Mary Parish, (2) Cabot Corporation, located in Centerville, Louisiana, St. Mary Parish and (3) Columbian Chemicals located in Franklin, Louisiana, St. Mary Parish. The other carbon black plant dealt with in this Notice is Cabot Corporation, located in Ville Platte, Louisiana, Evangeline Parish, an ozone attainment/unclassified area. Cabot, Ville Platte is also affected by LAQR 22.8 (and by this Notice) because the LAQR currently applies not only to sources located in areas designated as nonattainment, but statewide. Another carbon black plant in Louisiana, Sid Richardson Carbon & Gasoline Company is located in Addis, Louisiana, West Baton Rouge Parish, an area presently classified as urban nonattainment for the pollutant ozone. The Sid Richardson plant is the subject of a separate action by the State and by EPA. Therefore, it will be addressed in a separate package.

EPA has reviewed the air quality data available for the parishes of St. Mary and Evangeline. St. Mary parish was designated as a rural nonattainment area for the pollutant ozone since, during the summer of 1976, an ozone monitor located in that parish registered a total of 10 exceedances of the ozone standard. However, during the summers of 1983 and 1984, an ozone monitor was placed again in the parish. This time, no exceedances of the ozone standard were recorded for either year. The ozone standard is 0.12 parts per million (ppm). The highest reading recorded during 1983 and 1984 was 0.10 ppm. The highest reading in the parish during the monitoring period for 1976 was 0.20 ppm.

There has never been an ozone monitor located in Evangeline Parish. Therefore, no ozone data is available. EPA has reviewed the ozone data available from surrounding areas which shows an overall improvement on the air quality for ozone, except for Iberville Parish, which is adjacent to East and West Baton Rouge Parishes. Although there has never been a monitor located in Evangeline Parish, the experience in St. Mary Parish, where an in place ozone monitor shows a decrease in the ozone levels with the carbon black emission sources in operation, can arguably be applied to the Evangeline Parish.

The exemption for the four plants being proposed by the State as a SIP revision should have neither a real nor an adverse impact on the present ozone ambient air quality data for these parishes, since under the exemptions, these facilities will not increase their historical emission levels for acetylene.

Regarding the State's position on reactivity of acetylene, the existing published data shows the reactivity of acetylene to range from 0.6 to 3 times that of ethane; the existing data is inconclusive with respect to classifying acetylene as reactive or unreactive. However, most recent studies indicate that EPA considers acetylene as a rective compound. These studies show acetylene to be 2.73 times more reactive than ethane, which is considered to be the "borderline" VOC for reactivity. Pursuant to EPA's policy, all VOC's are to be included in SIP control strategy demonstrations except those which have been listed specifically as exempt in the **Federal Register**. Four compounds were listed as exempt on July 3, 1977 (42 FR 35314), methylene chloride was listed on June 4, 1977 (44 FR 32042), and an additional six freon compounds were listed as exempt on July 22, 1980 (45 FR 48941). These eleven compounds have been exempted because EPA determined that they have "negligible" photochemical reactivity. Acetylene is not one of those eleven compounds.

EPA has not independently verified the State's conclusions on the economic infeasibility for these four plants meeting the requirements since major non-CTG sources in rural ozone nonattainment areas are presently not required to meet RACT. Therefore at this time, economic infeasibility is not relevant.

For 1979 SIPs, in rural nonattainment areas, no attainment demonstration was required. However, RACT was required on all major CTG category sources. No CTG has been issued for carbon black plants as of this time. The RACT requirement combined with reductions in transported ozone from urban areas were thought to be a sufficient control strategy for rural ozone areas. Significant changes to this policy are being contemplated by EPA. Changes to EPA's ozone policy may require a reevaluation of these sources at a future date.

EPA solicits public comments on this notice and on EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

The revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish a revised Notice of Proposed Rule. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the State of Louisiana and submitted to EPA for incorporation into the SIP. Parallel processing will reduce the time necessary for final approval of the SIP revision by 3 to 4 months.

Proposed Action: EPA has evaluated the revision to the SIP to exempt the four carbon black plants located in St. Mary and Evangeline Parishes from further controls on emissions of acetylene as required by the LAQR 22.8(a). The proposed SIP revision meets the requirements of demonstrating no adverse effect on the air quality and RACT is not presently required for existing major non-CTG sources in rural nonattainment areas. Therefore, EPA proposes approval.

Interested persons are invited to submit comments on the proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

Under 5 U.S.C. section 605(b), the Administrator has certified that the SIP revision will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Authority: 42 U.S.C. 7401–7642.

Date: June 29, 1987.

Robert E. Layton, Jr.,

Regional Administrator (6A).

[FR Doc. 87–20135 Filed 9–1–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A-9-FRL-3255-4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Northern Sonoma County and Four Other Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes to approve several revisions to the California State Implementation Plan (SIP). California submitted most of these revisions on October 16 and November 12, 1985. EPA has also included one related rule from a February 23, 1983 submittal. The rules cover a variety of permitting and stationary source control subjects. EPA has evaluated these regulations and determined that they should be approved.

The five air pollution districts that adopted rules included in this notice are: the Bay Area Air Quality Management District (AQMD), the Northrn Sonoma County Air Pollution Control District (APCD), the South Coast AQMD, the Ventura County APCD, and the Yolo-Solano APCD.

DATES: Comments may be submitted to EPA at the address below up to October 2, 1987.

ADDRESSES: Comments on this proposal should be sent to: Regional Administrator, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, Attn.: Air Management Division, SIP Section (A-2-3).

Copies of the rule and of EPA's Evaluation Report for each rule are available for review at EPA, Region IX. All of the rules are also available at the Air Resources Board address listed below. Rules of specific districts are available at the districts which adopted them. The addresses are given below.

California Air Resources Board, General Projects Section, 1131 "S" Street, Sacramento, CA 95812.
Bay Area AQMD, 939 Ellis Street, San Francisco, CA 94109.
Northern Sonoma County APCD, 118 North Street, Healdsburg, CA 95448.
South Coast AQMD, 9150 Flair Drive, El Monte, CA 91731.
Ventura County APCD, 800 South Victoria Avenue, Ventura, CA 93009.
Yolo-Salano APCD, P.O. Box 1006, Woodland, CA 95695.

FOR FURTHER INFORMATION CONTACT: Julie Rose, Air Management Division, A-2-3, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8066, FTS: 454-8066.

SUPPLEMENTARY INFORMATION:

Background

The State of California submitted a series of SIP revisions to EPA on October 16 and November 12, 1985. Some of those rules and revisions are proposed for approval in this notice. Others are being addressed in other notices. This notice also includes one rule submitted February 23, 1983.

The revisions addressed in this notice cover a wide variety of subjects, as indicated by the titles listed below. All involve permitting or control of stationary sources. They are not expected to have major impacts on the sources affected, but some will make significant changes in procedures and requirements.

EPA's evaluation of the rules follows the list of regulations.

Regulations Submitted

Bay Area AQMD

Rule 8-16—Solvent Cleaning Operations (VOC), 11/12/1985

Northern Sonoma County APCD

Rule 240 (a-c)—Permit to Operate, 10/16/1985

South Coast AQMD

Rule 212 (a,b)—Standards for Approving Permits, 10/16/1985
Rule 431.2—Sulfur Content of Liquid Fuels (SO_2), 11/12/1985
Rule 1140—Abrasive Blasting (TSP), 11/12/1985

Ventura County APCD

Rule 10—Permits Required, 10/16/1985

Yolo-Solano APCD

Rule 1.2(r)—Definitions (VOC), 11/12/1985
Rule 2.24(D)(1)(b)—Solvent Cleaning Oper. (VOC), 11/12/1985
Rule 2.24 (except (D)(1)(b))—Solvent Cleaning Operations (VOC), 2/23/1983

EPA Evaluation

EPA has evaluated these rules for consistency with the Clean Air Act, EPA policy, and 40 CFR Part 51. It has also reviewed them to determine if they weaken or strengthen the existing SIP.

All of these rules meet the requirements of the Act, the Part 51 regulations, and EPA policy. Some also make the existing SIP more stringent.

The rules proposed for approval based on meeting the minimum requirements are South Coast rule 1140, Ventura County rule 10, and Yolo-Solano rule 1.2(r).

The rules that strengthen the SIP as well as meeting the minimum requirements are as follows: Bay Area rule 8-16, Northern Sonoma rule 240, South Coast rule 212, and Yolo-Solano rule 2.24.

South Coast AQMD rule 431.2, Sulfur Content of Liquid Fuels, has been revised to reduce the allowable sulfur content of diesel fuel. A provision has also been added which allows the District Executive Officer discretion in approving the use of an alternate fuel which will not create any additional emissions. EPA is proposing to approve this rule providing that the District submits a SIP revision with an accompanying air quality dispersion modeling demonstration which shows that the change will not result in a violation of the sulfur dioxide National Ambient Air Quality Standards each time the Executive Officer exercises this authority. This requirement will become part of 40 CFR Part 52. EPA policy requires that all discretionary Executive Officer actions be submitted to EPA as SIP revisions in order to become federally effective upon EPA approval. EPA is interested in receiving comments on this approach.

Copies of the rules and of EPA's Evaluation Report for each rule are ge available for review at EPA, Region IX.

EPA Proposed Action

EPA proposes to approve these rules under section 110 of the Clean Air Act, based on their meeting EPA's approval criteria.

Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Particulate matter, Hydrocarbons.

Authority: 42 U.S.C. 7401-7642.
Date: August 15, 1986.

John Wise,

Acting Regional Administrator.

[Editorial note.—This document was received at the Office of the Federal Register August 28, 1987.]

[FR Doc. 87-20134 Filed 9-1-87; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-323, RM-5341]

Radio Broadcasting Services; Webb City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by J.R. Communications Company, proposing the substitution of FM Channel 230C2 for 232A at Webb City, Missouri, and modification of its license for Station KIXQ to specify operation on Channel 230C2. The substitution has been requested to eliminate interference to Station KIXQ's primary service area and provide expanded coverage.

DATES: Comments must be filed on or before October 15, 1987, and reply comments on or before October 30, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James K. Edmundson, Mark Van Bergh, Kenkel, Barnard & Edmundson, 1220 Nineteenth Street, NW., Suite 202, Washington, DC 20036 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.87-323, adopted August 3, 1987, and released August 25, 1987. The full text of this Commission decsion is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division,Mass Media Bureau.

[FR Doc. 87-20180 Filed 9-1-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-322, RM-5826]

Radio Broadcasting Services; Atoka, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ballard Broadcasting of Oklahoma, Inc. requesting the substitution of Channel 276C2 for Channel 276A at Atoka, and the modification of its license for Station KHKC to specify the higher powered channel. Channel 276C2 can be allocated to Atoka in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.9 kilometers (1.2 miles) southwest to avoid a short-spacing to Station KTFX, Channel 277, Tulsa, Oklahoma. Since this proposal represents a co-channel upgrade, the Commission will not accept competing expressions of interest in use of Channel 276C2 at Atoka and we will not require petitioner to demonstrate the availability of an additional equivalent channel. The substitution of channels could enable Station KHKC to improve its local service to Atoka and its surrounding area.

DATES: Comments must be filed on or before October 15, 1987, and reply comments on or before October 30, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joseph E. Dunne III, Esq., May & Dunne, Chartered, 1156-15th Street, NW., Suite 515, Washington, DC 20005-1704 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-322, adopted July 28, 1987, and released August 25, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-20181 Filed 9-1-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-321, RM-5781]

Radio Broadcasting Services; Ashland, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Rogue Radio Corporation requesting the substitution of Class C Channel 270 for Channel 270C1 at Ashland, Oregon, and the modification of its license for Station KCMX-FM to specify the higher powered channel. Channel 270 can be allocated to Ashland in compliance with the Commission's minimum distance separation requirements and used at Station KCMX-FM's present transmitter site. In accordance with § 1.420(g) of the Commission's Rules, the Commission will not accept competing expressions of interest in use of the channel at Ashland or require petitioner to demonstrate the availability of an additional equivalent channel.

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DATES: Comments must be filed on or before October 15, 1987, and reply comments on or before October 30, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Benito Gaguine, Esq., Diane L. Mooney, Esq., Fly, Shuebruk, Gaguine, Boros and Braun, 1211 Connecticut Avenue, NW., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.87–321 adopted July 29, 1987, and released August 25, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20182 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–327, RM–5703]

Radio Broadcasting Services; Frederiksted, VI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Judith Mendez proposing the allotment of Channel 273A to Frederiksted, Virgin Islands, as that community's first FM service. In order to avoid a nearby airport the closest site on land requires a site restriction of 12 kilometers (7.5 miles) east of the city (17–43–00 N Lat, 64–42–30 W Long).

DATES: Comments must be filed on or before October 16, 1987, and reply comments on or before November 2, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Judith Mendez, Avenida Barbosa No. 218, Catano, Puerto Rico 00632 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–327, adopted July 29, 1987, and released August 25, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch Mass Media Bureau.

[FR Doc. 87–20183 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–326, RM–5778]

Radio Broadcasting Services; Ephrata, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Read Broadcasting, licensee of Station KGDN(FM), Channel 240A, Ephrata, Washington, proposing the substitution of Channel 222C2 for Channel 240A at Ephrata, Washington, and modification of its license to specify operation on the higher class channel. The proposal could provide a first wide coverage area FM station at Ephrata.

DATES: Comments must be filed on or before October 16, 1987, and reply comments on or before November 2, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Neal J. Friedman, Esquire, Pepper & Corazzini, 1776 K Street, NW., Suite 200, Washington, DC 20006 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–326, adopted July 29, 1987, and released August 25, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp.

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-20184 Filed 9-1-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-334 , RM-5741]

Radio Broadcasting Services; Madera, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by SJCC Broadcasting, Inc. proposing the substitution of FM Channel 221B1 for Channel 221A at Madera, California, and modification of the license of Station KQMD-FM accordingly, to provide that community with its first wide-coverage area FM service.

DATES: Comments must be filed on or before October 19, 1987, and reply comments on or before November 3, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Hayes, Jr., Esq., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, VA 22553.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-334, adopted August 3, 1987, and released August 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-20176 Filed 9-1-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-337, RM-5788]

Radio Broadcasting Services; Augusta, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Sunny Communications, Inc., licensee of Station WZNY(FM), Augusta, Georgia, which seeks to substitute Class C Channel 289 for Channel 289C1 at Augusta, and to modify its license to specify the new class of channel.

DATES: Comments must be filed on or before October 19, 1987, and reply comments on or before November 3, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Bodorff, Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., Washington, DC 20037, (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-337, adopted August 5, 1987, and released August 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-20177 Filed 9-1-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-336, RM-5672]

Radio Broadcasting Services; North Windham, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Kollen Dodge, proposing the allocation of FM Channel 294A to North Windham, Maine, as that community's first FM broadcast service. There is a site restriction 1.2 kilometers west of the community. Concurrence of the Canadian government is required for the allotment of FM Channel 294A at North Windham.

DATES: Comments must be filed on or before October 19, 1987, and reply comments on or before November 3, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian Dodge, Harvest Broadcasting Services, P.O. Box 105FM.

Hinsdale, New Hampshire 03451, (Consultant to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–336, adopted August 5, 1987, and released August 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. see 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments. See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20178 Filed 9–1–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–335, RM–5634 and RM–5897]

Radio Broadcasting Services; Steelville and Hermann, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separate petitions. Twenty-One Sound Communications Inc. requests the substitution of FM Channel 227C2 for 244A at Steelville, Missouri and modification of its license for Station KNSX–FM to specify operation on Channel 227C2. Kenneth W. Kuenzie proposes the allotment of FM Channel 227A to Hermann, Missouri as that community's first FM broadcast service. There is a site restriction 6.8 kilometers (4.2 miles) west of the community.

DATES: Comments must be filed on or before October 19, 1987, and reply comments on or before November 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Randal Wachter, Twenty-One Sound Communications, Inc., 3418 Douglas Road, Florissant, Missouri 63034

Kenneth W. Kuenzie, 102 Elm Street, Suite 203, Washington, Missouri 63090

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.87–335, adopted August 5, 1987, and released August 26 , 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20179 Filed 9–1–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–325, RM–5822]

Radio Broadcasting Services; Wenatchee, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Wenatchee Wireless Works, licensee of Station KYJR(FM), Channel 285A, Wenatchee, Washington, proposing the substitution of Class C2 Channel 285 for 285A at Wenatchee and modification of its license to specify the higher class frequency, as that community's second wide coverage area station. A site restriction of 6.3 kilometers (3.9 miles) southeast of Wenatchee is required. Also Canadian concurrence is required.

DATES: Comments must be filed on or before October 16, 1987, and reply comments on or before November 2 , 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Barry A. Friedman, Esquire, Wilner & Scheiner, 1200 New Hampshire Avenue, NW., Suite 300, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–325, adopted July 29, 1987, and released August 25, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-20185 Filed 9-1-87; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 230 (Sub-No. 5)]

Improvement of (TOFC/COFC) Regulation, Trailer on Flatcar and Container on Flatcar

AGENCY: Interstate Commerce Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: After reopening for additional comments (47 FR 220, Jan. 5, 1982) following a court remand, the Commission has concluded that the TOFC/COFC exemption formerly found in 49 CFR 1039.13, established in its prior decision (364 I.C.C. 731; 46 FR 14348, Feb. 27, 1981), can and should apply to the Alaska Railroad Transfer Act. No changes in 49 CFR 1039.13 (which has recently been replaced by new provisions in 49 CFR 1090.1 and 1090.2) are necessary.

Proposed changes in the lanugage of the TOFC/COFC exemption to clarify its scope will not be made in this proceeding, and a proposed technical amendment to 49 CFR 1300.67(b)(1) (now 49 CFR 1312.37(b)) is found to be unnecessary and will not be made.

DATE: This decision will be effective on October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Craig M. Keats, (202) 275-7312. TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from TSI in Room 2229 at Commission headquarters).

This action will not significantly affect either the quality of the human environment or energy conservation.

We reaffirm our certification in the proposed rulemaking notice that this action will not have a significant effect on a substantial number of small entities.

Authority: 49 U.S.C. 10321, 10505.

Decided: August 19, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20206 Filed 9-1-87; 8:45 am]

BILLING CODE 7035-1-M

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Notices

Federal Register
Vol. 52, No. 170
Wednesday, September 2, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

State of Idaho Agricultural Water Quality Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income

AGENCY: Office of the Secretary, USDA.
ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that cost-share payments made to individuals under the Idaho Agricultural Water Quality Program are made primarily for the purpose of conserving soil and water resources and protecting or restoring the environment. This determination, which is made in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended, and the provisions of 7 CFR Part 14, permits recipients of these payments to exclude them from gross income for Federal income tax purposes if certain other conditions are met.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013, (202) 447–6221; or Lee Stokes, Director, Division of Environment, Idaho Department of Health and Welfare, Statehouse, Boise, Idaho 83720, (208) 334–4061.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as added by the Revenue Act of 1978 and amended by the Technical Corrections Act of 1979, provides that certain payments made under State programs may be eligible for exclusion from gross income if certain determinations are made. The Secretary of Agriculture must determine whether payments made under a State program as described in section 162(a)(10), are "made primarily for the purpose of conserving soil and water resources, protection or restoring the environment, improving forests, or providing a habitat for wildlife." In making this determination, the Secretary of Agriculture must evaluate each program according to criteria set forth in 7 CFR Part 14.

One of the State conservation programs is the Idaho Agricultural Water Quality Program authorized by Idaho Code 39–3601 *et seq.*, effective July 1, 1980. The Idaho Agricultural Water Quality Program provides grants to soil conservation districts for cost-sharing with farmers who apply conservation and pollution control practices.

The objective of the program is to protect and enhance the quality and value of water resources of the State by controlling and abating water pollution from agricultural lands.

This program is funded by the availability of unobligated funds in the State Water Pollution Control Account and from the appropriation of funds by the Idaho State legislature to the Idaho Department of Health and Welfare.

Administration—The program is administered by the Idaho Department of Health and Welfare. The Idaho Board of Health and Welfare with the approval of the Idaho Soil Conservation Commission estabishes a list of priority projects for the control of agricultural nonpoint source pollution. The actual administration of the cost-share assistance rests with the local soil conservation district.

Program Operation—Under the Idaho Agricultural Water Quality Program, a grant is made to a soil conservation district by the board of health and welfare following an application and evaluation process. Only districts having projects included in the Idaho Soil Conservation Commission list of priority projects are eligible. After a grant is made, the district begins developing water quality plans with farmers in the project area. Each plan identifies farm problems and sets forth solutions (Best Management Practices) to those problems, as well as a schedule for installing the needed practices. The farmer-applicant must approve the plan and sign a long term (5 to 10 years) contract, agreeing to provide adequate treatment for all critical acres and pollution sources on his farm and agree to operate and maintain all installed practices for the life of the contract. The district then provides a cost-share payment to the applicant-farmer for portions of the practices. Additional practices are oftentimes required by the district for which cost-share assistance is not provided.

Practices which are eligible for cost/share assistance are those practices included in the catalogue of Best Management Practices set forth in the *Idaho Agricultural Pollution Abatement Plan*, a statewide plan for addressing agricultural pollution problems certified by the Governor of Idaho in 1979 as the agricultural portion of the State water quality management plan. These practices include: conservation cropping systems, contour farming, cover and green manure crops, diversions, grade stabilization structures, grassed waterway or outlets, irrigation improvement, animal waste control, pasture and hayland management, streambank protection, terraces and no-till farming systems.

Prior to project startup, all practices must be approved by the Idaho Soil Conservation Commission. In addition, cost-share rates are also approved at this time. Standards and specifications of the USDA Soil Conservation Service are used for design, construction, installation, operation, and maintenance of all practices in the program. Additional practices may be added to the catalogue of Best Management Practices in the *Idaho Agricultural Pollution Abatement Plan*, through the procedure spelled out in the *Plan*.

Cost-share rates are based upon average costs to land users for installing measures and practices. Eligible costs include labor, operating supplies, and other direct costs required for physical installation of a measure or practice. Average costs are based upon actual cost data collected from land users, suppliers and USDA Agricultural Stabilization and Conservation Service. The maximum payment per participant is $50,000. There is no annual payment limitation, however,

The authorizing legislation, regulations, and operating procedures for the Agricultural Water Quality Program of the State of Idaho have been carefully examined using the the criteria set forth in 7 CFR Part 14. The Department has concluded that the payments made under this cost-share

program are made to provide financial assistance to eligible persons in carrying out soil and water conservation measures and in protecting or restoring the environment.

A "Record of Decision Idaho Agricultural Water Quality Program: Primary Purpose Determination for Federal Tax Purposes" has been prepared and is available upon request from the Conservation and Environmental Protection Division, ASCS. Requests may be sent to the address listed above.

Determination

It is hereby determined in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended, and 7 CFR Part 14 that all cost-share payments made after July 1, 1980 for conservation practices under the Idaho Agricultural Water Quality Program (Idaho Code 39–3601 *et seq.*) are for the following purposes: soil and water conservation and protecting or restoring the environment.

Signed at Washington, DC, on August 24, 1987.

Richard E. Lyng,

Secretary, U.S. Department of Agriculture.

[FR Doc. 87–20211 Filed 9–1–87; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

Lemons Grown in California and Arizona; Marketing Policy Reopening and Extension of the Comment Period on Notice of Marketing Policy

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of marketing policy; reopening and extension of comment period.

SUMMARY: Notice is hereby given that the time period for filing written comments is reopened and extended on the notice of the 1987–88 marketing policy for lemons grown in California and Arizona until 15 days after publication of this document.

DATE: Written suggestions, views, or pertinent information will be considered if received by September 17, 1987.

ADDRESSES: Comments should be sent to: Docket Clerk, USDA, AMS, Fruit and Vegetable Division, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, USDA, AMS, Fruit and Vegetable Division, Marketing Order Administration Branch, P.O. Box 96456, Room 2523, South Building, Washington, DC 20090–6456; telephone: (202) 475–3914.

SUPPLEMENTARY INFORMATION: The notice of marketing policy was issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601–674), as amended. The notice was issued July 28, 1987, and published on August 3, 1987, in the **Federal Register** (52 FR 28736). If pertained to the 1987–88 marketing policy for lemons grown in California and Arizona. Comments were to be received by August 18, 1987.

The Department has recieved a request from an interested person, that the Department provide more time for interested persons including growers and handlers to analyze the marketing policy.

Reopening and extending the comment period will provide interested persons more time to review this marketing policy and submit written views and information pertinent to the marketing policy and the need for, and the level of, regulation for the 1987–88 season. The additional time will also provide interested persons more time to comment on the possible regulatory and informational impact of the marketing policy and seasonal regulations on small businesses. Accordingly, the comment period is reopened and extended until 15 days after the date of publication of this document in the **Federal Register**.

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: August 27, 1987.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–20120 Filed 9–1–87; 8:45 am]

BILLING CODE 3410–02–M

Forest Service

Intent To Supplement the Environmental Impact Statement for the Grand Mesa, Uncompahgre, and Gunnison National Forests Land and Resource Management Plan

The Department of Agriculture, Forest Service will prepare a supplement to the Final Environmental Impact Statement (EIS) and will amend the Grand Mesa, Uncompahgre, and Gunnison National Forests' Land and Resource Management Plan (the Forest Plan) in Delta, Garfield, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, San Juan, and San Miguel Counties, CO. The Forest Plan was approved September 29, 1983. The Notice of Availability for the EIS, Forest Plan and Record of Decision appeared in the October 14, 1983, **Federal Register**. A reanalysis of the Forest Plan was required by Deputy Assistant Secrtary of Agriculture, Douglas W. MacCleery's decision of July 31, 1985, related to a review of the Chief's decision on an appeal of the EIS and Plan by the Natural Resources Defense Council. A Notice of Intent to Reanalyze the Forest Plan appeared in the October 3, 1986, **Federal Register**.

The Forest Service has made a preliminary determination that significant changes to timber, water, wildlife, and range resources will occur to the Forest Plan (36 CFR 219.10(f)) based on results of its reanalysis efforts to date. No determination has yet been made as to what the specific changes to the Forest Plan might be. The Forest Service will subsequently make a final determination of significance in a new Record of Decision.

The analysis will concentrate on the following issue areas which initiated the need for a change:

1. USDA decision of July 31, 1985;
2. Below cost timber sales;
3. Timber demand; and
4. Aspen management.

The issues focus on demand for wood fiber on the Forest, vegetation treatment of aspen to provide non-timber benefits, "below-cost" timber sales, and the main points of the MacCleery decision. These six points deal with economic implications of the timber program, the timber program's contribution to net public benefits, timber cost reduction—revenue enhancement studies, timber demand, timberland suitability, and "below-cost" timber sales.

An addendum to Planning Action 1—Identification of Issues, Concerns, and Opportunities, is now available for public review by contacting the Forest Supervisor at the address below.

The Proposed Action (Forest Plan) and alternatives are described in Chapter II of the final Environmental Impact Statement prepared for the Forest Plan (Chapter II, pages II–15 through II–60). A discussion of the issues addressed in the final EIS is on pages I–10 through I–14. Public comment on the issues and the Forest Service responses appear in Chapter VI of the final EIS.

As part of the reanalysis effort the original alternatives will be redesigned to reflect the issues described above. Additional alternatives may be developed. Federal, State, and local

agencies, individuals, and organizations are invited to submit comments on the issues.

The Forest Service is following the requirements in 36 CFR Part 219 for amending the Forest Plan.

Gary E. Cargill, Regional Forester, Rocky Mountain Region, is the responsible official.

The draft supplement to the Environmental Impact Statement should be available for public review and comment by April 1988. The final supplement to the environmental impact statement is scheduled to be completed by September 1988.

Written comments and suggestions concerning the issues and their analysis should be sent to Raymond J. Evans, Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416, by September 30, 1987.

Date: August 17, 1987.

S.H. Hanks,

Deputy Regional Forester.

[FR Doc. 87-20139 Filed 9-1-87; 8:45 a.m.]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System; Oregon

The certification of the Statewide central filing system of Oregon is hereby amended on the basis of information submitted by Barbara Roberts, Secretary of State, for farm products produced in that State as follows:

Barley	Triticale
Corn for grain Oats	Wheat
Rye	
Alfalfa	Hay
Ensilage	Sorghum
Grass & Grain Straw	
Alfalfa Seed	Rape Seed
Bentgrass	Ryegrass
Bluegrass	Timothy
Brome	Vetch
Clover	Wheat Grass
Fescue	Other Grass Seed
Field Peas	Other Legume Seed
Orchardgrass	
Herb	Potatoes
Hops	Sugarbeet
Mint	Vegetable & Flower Seeds
Oil Seed	
Apples	Peaches
Apricots	Pears
Cantaloupes	Plums
Cherries	Prunes
Grapes	Watermelons
Filberts	Walnuts
Blackberries	Elderberries
Blueberries	Gooseberries
Boysen & Youngberries	Loganberries
Caneberries	Marionberries
Cranberries	Raspberries
Currants	Strawberries
Artichokes	Broccoli
Asparagus	Brussel Sprouts
Beans	Cabbage
Beets	Carrots
Cauliflower	Peas
Celery	Peppers
Corn	Pumpkins
Cucumbers	Radishes
Eggplant	Rhubarb
Garlic	Rutabagas
Kohlrabi	Spinach
Lettuce	Squash
Mushrooms	Tomatoes
Onions	Turnip
Bees	Standing Timber
Bees Wax	Trees (Except Standing Timber)
Bulbs	
Greenhouse Stock Honey	Turf Sod
Logs	Worms
Nursery Stock	
Cattle & Calves	Mink
Goats	Mules
Hogs & Pigs	Rabbits
Horses	Sheep & Lamb
Llamas	Wool
Milk	
Broilers	Eggs
Chickens	Geese
Ducks	Turkeys

Fish & Shellfish

The central filing system was previsouly certified, pursuant to section 1324 of the Food Security Act of 1985, for specified farm products produced in that State (51 FR 43647, December 3, 1986).

This amendment is issued pursuant to authority delegated by the Secreatary of Agriculture

Authority: Sec. 1324(c)(2), P.L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: August 28, 1987.

Calvin W. Watkins,

Acting Administrator Packers and Stockyards Administration.

[FR Doc. 87-20118 Filed 9-1-87; 8:45 am]

BILLING CODE 3410-KD-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: September 23, 1987.

Time: 9:00 a.m.

Place: State Department Building, Washington, DC.

Type of meeting: Closed.

Contact: Barry Daniel, Executive Director, General Advisory Committee on Arms Control and Disarmament. Room 5927, Washington, DC 20451, (202) 647-5178.

Purpose of advisory committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: Will present the following discussions and presentations:

September 23, 24, 1987

Soviet Arms Control Practices.
Soviet Force Developments
Executive Session.

Reason for closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to close meeting: The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated April 1, 1987, made pusuant to the provisions of section 10 (d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 87-18915 Filed 9-1-87; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

International Trade Administration

Short-Supply Review on Certain Universal Mill Edge Steel Plate; Request For Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products, with respect to certain universal mill edge steel plate.

DATE: Comments must be submitted on or before September 14, 1987.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular

product (including substantial objective evidence such as allocation, extended delivery periods, or other relevent factors), an additional tonnage shall be allowed for such product or products * * *".

We have received a short-supply request for certain universal mill edge plate in AISI grades 1060, 1552, 1572, and 15B28–H, which will be used in the manufacture of wearing parts for earth removal and snow removal equipment. The steel plate ranges from 3/4 to 3 1/2 inches in thickness, 9 to 27 inches in width, and 148 to 288 inches in length.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than September 14, 1987. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce at the above address.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 27, 1987.

[FR Doc. 87–20199 Filed 9–1–87; 8:45 am]

BILLING CODE 3510–DS–M

National Bureau of Standards

Announcement of a Workshop for POSIX [1] (IEEE Std. 1003.1) System Implementors

The Institute for Computer Sciences and Technology at the National Bureau of Standards (NBS) announces a workshop to discuss implementation issues related to the POSIX Standard, which has been proposed as a Federal Information Processing Standard (FIPS). To assure compatibility/interoperability, NBS has reviewed and analyzed the options that are available for implementing the Standard, and has selected options that will be proposed as part of the Federal Standard. At the workshop, NBS will present the proposed specification and participants will be invited to express their views.

The workshop will be held October 20–21, 1987 at a hotel in the Rockville-Gaithersburg area. Attendance is limited by space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitation of two participants per company. A registration fee will be charged for attending the workshop.

Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the workshop.

To register for the workshop, companies may contact: POSIX Workshop, Attn: Debbie Jackson, National Bureau of Standards, Building 225, Room B–252, Gaithersburg, MD 20899, Telephone: (301) 975–3295.

The registration request must name the company representative(s) and specify the business address and telephone number for each participant. An NBS representative will confirm workshop registration reservations by telephone. For additional information, contact D. Richard Kuhn, (301) 975–3337.

Date August 26, 1987.

Ernest Ambler,

Director.

[FR Doc. 87–20189 Filed 9–1–87; 8:45 am]

BILLING CODE 3510–CN–M

[1] POSIX is a trademark of IEEE.

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Hobonny Plantation, Inc., From Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

SUMMARY: On July 31, 1987, the Department of Commerce received a letter from Hobonny Plantation, Inc. (Appellant) filing a Notice of Appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). The appeal is taken from an objection by the South Carolina Coastal Council to Appellant's consistency certification for U.S. Army Corps of Engineers Permit Application No. P/N 87–2A–158–C, under section 10 of the River and Harbor Act of 1899 and section 404 of the Federal Water Pollution Control Act, for construction of dikes to develop aquaculture ponds in Beaufort County, South Carolina.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Sydney Anne Minnerly, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: August 27, 1987.

Daniel W. McGovern,

General Counsel.

[FR Doc. 87–20127 Filed 9–1–87; 8:45 am]

BILLING CODE 3510–08–M

Marine Mammals; Issuance of Permit to John G. Shedd Aquarium (P396)

On June 16, 1987, notice was published in the **Federal Register** (52 F.R. 22834) that an application had been filed by the John G. Shedd Aquarium, 1200 South Lakeshore Drive, Chicago, Illinois 60605 for a permit to import three (3) beluga whales (*Delphinapterus leucas*) for the purpose of public display.

Notice is hereby given that on August 26, 1987, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: August 26, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–20114 Filed 9–1–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the Export Visa Requirements for Certain Cotton Textile Products Produced or Manufactured in Pakistan

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 3, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive dated May 27, 1983 (48 FR 25257), as amended on June 2, 1987, established a new export visa arrangement and exempt certification for certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan and exported to the United States.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to further amend the export visa requirement to allow entry of certain cotton textile products in Category 369, visaed as 369–MCL or 369–DCL and 369–D or 369–SL, exported from Pakistan to the United States before August 3, 1987. Goods visaed as 369–MCL, 369–DCL or 369–SL and exported on or after August 3, 1987 shall be denied entry. Merchanise in Category 369 exported from Pakistan on or after August 3, 1987 must be visaed as 369–D, 369–R, 369–S or 369–O.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 28, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 27, 1983, as amended on June 2, 1987, by the Chairman of the Committee for the Implementation of Textile Agreements which established export visa requirements and exempt certification requirements for certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan.

Effective on September 3, 1987 the directive of May 27, 1983, as amended, is further amended to permit entry of cotton textile products, visaed as Category 369–MCL [1] or 369–DCL [1] and 369–D [2] or 369–SL [2], produced or manufactured in Pakistan and exported from Pakistan before August 3, 1987, for which the Government of Pakistan has issued an appropriate export visa. Merchandise in Category 369 exported on or after August 3, 1987 shall be visaed as 369–D [2], 369–R [3], 369–S [4] or 369–O [1]. Entry shall be denied to goods visaed as 369–MCL, 369–DCL, or 369–SL which have been exported from Pakistan on or after August 3, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–20190 Filed 9–1–87; 8:45 am]
BILLING CODE 3510–DS–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Competitive Strategies; Closed Session

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Competitive Strategies will meet in closed session on October 16, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceied needs of the Department of Defense. At this meeting the Task Force will periodically review the application of competitive strategies to the selection of technologies, weapons, and support systems including C3 for emphasis by the Department of Defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pul. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

L. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87–20123 Filed 9–1–87; 8:45 am]
BILLING CODE 3810–01–M

[1] In Category 369, all TSUSA numbers except those in 365.6615, 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440, 366.2840 and 366.2860.

[2] In Category 369, TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[3] In Category 369, only TSUSA number 366.1955.

[4] In Category 369, only TSUSA number 366.2840.

Department of the Army

Open Meeting of the Army Science Board's Ad Hoc Subgroup on Water Supply and Management on Western Installations

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Date of meeting: 23 September 1987.

Time: 0800–1400 Hours.

Place: Fort Drum, New York.

Agenda: The Army Science Board's Ad Hoc Subgroup on Water Supply and Management on Western Installation will meet to familiarize themselves with the water supply and management issues at Fort Drum, New York. This meeting is open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–20140 Filed 9–1–87; 8:45 am]
BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Inland Waterways Users Board; Open Meeting

August 24, 1987.

ACTION: Notice of opening meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of Committee: Inland Waterways Users Board.

Date of Meeting: September 28, 1987.

Place: Memphis Cook Convention Center, 255 North Main Street, Memphis, TN 38103.

Time: 10 a.m. to 5 p.m.

Proposed Agenda

A.M. Session

10:00 Business Meeting: Opening Remarks and Old Business
10:30 Discussion of Meeting Objectives and Formulation of Preliminary Board Recommendations

P.M. Session

1:00 Formulation of Interim Board Report
4:00 Public Comment Period
4:30 New Business
5:00 Meeting Adjournment

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Holliday, Headquarters, U.S. Army Corps of Engineers, CECW–P, Washington, DC 20314–1000 at (202) 272–0146.

H.J. Hatch,

Major General, U.S. Army, Executive Director to the Inland Waterways Users Board.

[FR Doc. 87–20141 Filed 9–1–87; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 2, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 27, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Application for the Training Program for Special Programs Staff and Leadership Personnel
Agency Form Number: ED 883
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 60, *Burden Hours:* 2,040
Recordkepping Burden:
Recordkeepers: 0, *Burden Hours:* 0.
Abstract: This application will be used by institutions to apply for funds under the Training Program for Special Program Staff and Leadership Personnel. The Department will use the information collected to award grants for training projects to improve the operation of special programs for students from disadvantaged backgrounds.

Type of Review: Extension
Title: Application for the Endowment Challenge Grant Program
Agency Form Number: ED 2480
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 1,000, *Burden Hours:* 4,000
Recordkeeping Burden:
Recordkeepers: 0 *Burden Hours:* 0
Abstract: This application will be used by institutions of higher education to apply for grants under the Endowment Challenge Grant Program, Title III of the Higher Education Act, as amended. Data collected from the institutions will be used by the Department to make grant awards for the purpose of establishing or increasing endowment funds.

Office of Elementary and Secondary Education

Type of Review: Extension
Title: Annual Survey of Children in Institutions for Neglected or Delinquent Children or in Adult Correctional Institutions
Agency Form Number: ED 4376
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 52, *Burden Hours:* 2,000
Recordkeeping Burden:
Recordkeepers: 0, *Burden Hours:* 0
Abstract: This survey will be used by State educational agencies to report (1) the average daily attendance of children in State operated or supported institutions for neglected or delinquent children, and (2) the number of children residing in institutions (other than State operated) for neglected or delinquent children. These data are used in the formula for computation of Chapter 1 grants for State agencies.

Office of Postsecondary Education

Type of Review: Extension
Title: Institutional Quality Control Project and Workbook
Agency Form Number: E40–9P
Frequency: Annually
Affected Public: Businesses or other for-profit; non-profit institutions; small businesses or organizations

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Reporting Burden:
Responses: 60, *Burden Hours:* 7,500
Recordkeeping Burden:
Recordkeepers: 0, *Burden Hours:* 0
Abstract: The Quality Control Workbook will be completed by participating financial aid administrators and their staffs to help them monitor their own errors, and design and implement procedures to reduce those errors when administering financial aid.

Type of Review: Reinstatement
Title: Financial Report for the Endowment Challenge Grant Program
Agency Form Number: E40–10P
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 175, *Burden Hours:* 175
Recordkeeping Burden:
Recordkeepers: 175, *Burden Hours:* 350
Abstract: The Endowment grant program consists of matching grants to institutions of higher education which they, in turn, invest in low-risk securities for 20 years. This form will be used by grantees to report to the Department what has happened to their investment and what they have done on their return on the investment. The Department would use the information collected to monitor grantees' compliance with regulations.

Type of Review: Reinstatement
Title: Performance Report for the Patricia Roberts Harris Fellowship
Agency Form Number: ED 591 and 404
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 265, *Burden Hours:* 1,060
Recordkeeping Burden:
Recordkeepers: 0, *Burden Hours:* 0
Abstract: This performance report will be used by institutions of higher education that receive grants under the Patricia Roberts Harris Fellowship program. The data collected on this form will help the Department confirm that the institutions are complying with the law and program regulations in recruiting and selecting students who are eligible for fellowships.

[FR Doc. 87–20162 Filed 9–1–87; 8:45 am]
BILLING CODE 4000–01–M

Intent To Repay to the Montana Board of Regents Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under Section 456 of the General Education Provisions Act (GEPA), the Secretary of Education (Secretary) intends to repay to the Montana Board of Regents (State) an amount equal to 75 percent of the funds recovered by the U.S. Department of Education as a result of a final audit determination. This notice describes the State's plans for the use of repaid funds and the terms and conditions under which the Secretary intends to make these funds available, and invites comments on the proposed grantback.

DATE: All written comments should be received on or before October 2, 1987.

ADDRESS: All written comments should be submitted to Dr. Thomas L. Johns, Acting Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education, (Room 620, Reporters Building), 400 Maryland Avenue SW., Washington, DC 20202–5609.

FOR FURTHER INFORMATION CONTACT: Mrs. Sharon A. Jones, (202) 732–2470.

SUPPLEMENTARY INFORMATION:

A. Background

In June 1985, the U.S. Department of Education recovered $40,413.81 from the State in satisfaction of an audit, covering the period from July 1, 1974 to June 30, 1976. The auditors found that several local educational agencies (LEAs) failed to maintain fiscal effort and, therefore, should return funds received in fiscal years 1975 and 1976 under the Vocational Education Act of 1963 (VEA), as amended, 20 U.S.C. 2301 *et seq.* Additionally, the auditors found that the State overreported expenditures for one school district.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the State agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this so-called "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the State that resulted in the audit determination have been corrected, and that the State is, in all other respects, in compliance with the requirements of the applicable program;

(2) State has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of the funds to be awarded under the grantback arrangement in accordance with the State's plan would serve to achieve the purposes of the program under which funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Agreement

Pursuant to section 456(a)(2) of GEPA, the State has applied for a grantback of $30,311 and has submitted a plan to use the grantback funds consistent with section 332 of the Carl D. Perkins Vocational Education Act (Perkins Act), 20 U.S.C. 2301 *et seq.* (Supp. II 1984). The audit findings against the State resulted from improper expenditures of VEA funds. However, since the Perkins Act has superseded the VEA, the State's proposal reflects the requirements of the Perkins Act, which—like the VEA—provides for grants to States for vocational education.

The State proposes to use the grantback funds to provide, in the 19 LEAs with violations that resulted in the recovery of funds, vocational interest and aptitude assessments that will give students a better understanding of the vocational options available to them. The State's plan is available on request from the U.S. Department of Education contact person listed above.

D. The Secretary's Determination

The Secretary has carefully reviewed the plan and other information submitted by the State. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Montana Board of Regents under a grantback arrangement.

The grantback award would be in the amount of $30,311, which is 75 percent—the maximum percentage authorized by the statute—of the funds recovered by the Department as a result of the audit.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will Be Made

The State agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements, and

(b) The plan that was submitted in conjunction with the request dated January 8, 1985, as amended on August 16, 1985, Feburary 20, 1987, and April 30, 1987, and any other amendments to that plan that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be expended not later than September 30, 1988, in accordance with section 456(c) of GEPA and the State's plan.

(3) The State must, not later than December 30, 1988, submit a report to the Secretary which—

(a) Indicates how the funds awarded under the grantback have been used;

(b) Shows that the funds awarded under the grantback have been liquidated; and

(c) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(5) Expenditures from the funds received under the grantback arrangement will not be used to meet the "hold-harmless" requirement set forth in section 113(b)(15) of the Perkins Act, which establishes a minimum level of State expenditures for guidance and counseling.

(Catalog of Federal Domestic Assistance Number 84.048, Basic State Grants for Vocational Education)

Dated: August 28, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-20163 Filed 9-1-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Floodplain/Wetlands Statement of Findings; Decontamination Research and Development Project Actions for Properties Located in Wayne, NJ

AGENCY: Office of the Secretary, DOE.

ACTION: Final floodplain/wetlands statement of findings.

SUMMARY: The Formerly Utilized Sites Remedial Action Program (FUSRAP), U.S. Department of Energy (DOE), has prepared a floodplain/wetland assessment for proposed remedial actions in the Wayne, New Jersey, area pursuant to 10 CFR 1022.18. Some of the proposed actions will take place within the Pompton River/Sheffield Brook wetlands and floodplains. Following publication of a notice of wetlands involvement (52 FR 12046), DOE completed a floodplain/wetland assessment. The proposed action was identified, environmental impacts examined, and mitigative measures identified. DOE has determined that there are no practicable alternatives to the proposed remedial action and that it has been designed to minimize potential harm to and within the floodplain/wetlands.

The radiological contamination in Sheffield Brook originated from a 2.7 ha (6.6-acre) site located at the intersection of Black Oak Ridge Road and Pompton Plains Cross Road in Wayne Township, Passaic County, New Jersey. The site was used to extract and process thorium and rare earth minerals from monazite sand during the period 1948 to 1971. During the processing operations, some of the various waste residues produced were buried on-site. Liquid effluents were treated in a waste treatment plant and then discharged into a drainage ditch which flowed into Sheffield Brook.

Remedial actions conducted by DOE in previous years have included cleanup of the drainage ditch and the portion of Sheffield Brook between Pompton Plains Cross Road and Farmingdale Road. The proposed action will complete the cleanup of Sheffield Brook from Farmingdale Road to the confluence of the Brook at the Pompton River.

The only alternative to the remedial action is no action. This alternative is not acceptable because it would result in continued potential health risks, continued potential for dispersion of contaminated materials by flooding and biota, and continued adverse social impacts such as concerns about health effects and property values. Thus, DOE plans to complete the remedial action in Sheffield Brook.

The potential effects resulting from the proposed activities include disruption of drainage patterns, erosion and sedimentation, habitat destruction, changes in water temperature, modification of water level, addition of contamination (e.g., engine fuel and oil), and displacement or destruction of biota. Overall impacts to wetland habitat will not be of sufficient magnitude to cause extinction of any species since the area affected is small relative to the total area in the vicinity of the Pompton River basin. Also, the habitat is not unique to the area and is a source of contamination that could adversely impact man and wildlife. The wetland habitat should return to preconstruction conditions within 5 to 10 years after completion of remedial actions due to the mitigative measures taken and the construction techniques used to restore the brook to its former condition.

Mitigative measures DOE will take to reduce the risk of adverse environmental consequences include: implementation of erosion and sedimentation control procedures during construction activities; minimization of changes to existing water regimes; preservation of surface drainage patterns; and seeding and/or replanting of disturbed areas.

Benefits derived from the proposed remedial action have been determined to outweigh the potential environmental impacts. As a result of its review of the environmental impacts, DOE has determined there is no practicable alternative to the proposed action in the floodplain/wetlands and that the proposed action has been designed to minimize harm to and within the floodplain/wetlands. All actions will be in conformity with local ordinances.

A copy of the floodplain/wetland assessment is available from: James W. Wagoner II, Office of Remedial Action and Waste Technology, NE-23, U.S. Department of Energy, Washington, DC 20545.

Issued in Washington, DC, on August 5, 1987.

James W. Vaughan, Jr.,

Acting Assistant Secretary for Nuclear Energy.

[FR Doc. 87-20126 Filed 9-1-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-37-NG]

Application To Amend Authorization To Import Canadian Natural Gas and Withdrawal of Pending Application; Texas Eastern Transmission Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to amend authorization to import Canadian natural gas and withdrawal of a pending application.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 14, 1987, of an application from Texas Eastern Transmission Corporation (Texas Eastern) to amend its existing natural gas import authorization expiring on October 31, 1987, based on a new gas sales agreement executed between Texas Eastern and its Canadian supplier, ProGas Limited (ProGas). The authorization requested would extend the term of the existing authorization from October 31, 1987, through October 31, 2000, and permit Texas Eastern to import gas at its currently authorized level of up to 75,000 Mcf per day during the extended period. The application also requests authorization to import authorized volumes not needed for system system supply for sale in the U.S. spot market by Texas Eastern's and/or ProGas's marketing agents under a special marketing agreement.

Concurrently with this request, Texas Eastern filed a notice of withdrawal of that portion of a previous application filed in ERA Docket No. 85-13-NG which sought extension of the term of this existing authorization from October 31, 1987, through October 31, 1989.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111.

Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on October 2, 1987.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9482.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence. Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Texas Eastern is a Delaware corporation with its principal office in Houston, Texas, and is engaged in the business of producing, purchasing, and selling natural gas. Texas Eastern's natural gas supply system extends from the Gulf Coast area through the Appalachian area to the Eastern seaboard in the Philadelphia-New York area plus the Boston area.

Texas Eastern was originally authorized in DOE/ERA Opinion and Order No. 32 (Order No. 32), dated April 24, 1981, to import up to 75,000 Mcf of natural gas per day from Canada through October 31, 1987, via the import point near Emerson, Manitoba, at an import price not to exceed $4.94 (U.S.) per MMBtu. The volumes imported entered the U.S. through existing pipeline facilities of Great Lakes Transmission Company (Great Lakes). Great Lakes delivered the gas to ANR Pipeline Company (ANR) at an existing delivery point near Farwell, Michigan. ANR then delivered the gas to Texas Eastern.

On July 15, 1985, Texas Eastern filed an application with the ERA in ERA Docket No. 85-13-NG seeking to amend the import authorization granted in Order No. 32 to take into account the terms of a May 30, 1985, revision to the gas sales agreement between Texas Eastern and ProGas and to extend the term of the import authorization through October 31, 1989. According to Texas Eastern, the revised agreement was designed to establish market responsive pricing provisions for the imported gas. On March 21, 1986, the ERA issued DOE/ERA Opinion and Order No.112 which amended the import authorization granted by Order No. 32 and allowed Texas Eastern to continue to import the volumes of Canadian gas previously authorized under the terms of the May 30, 1985, revision to the gas sales agreement.

The portion of Texas Eastern's July 15, 1985, application in ERA Docket No. 85-13-NG which sought an extension of the term of the existing import authorization from October 31, 1987, through October 31, 1989, was separated administratively by Order No. 112. Subsequently, the ERA consolidated it with ERA Docket Nos. 82-05-NG, 82-07-NG, and 85-19-NG for purposes of requesting additional comments. In procedural orders issued on March 21, 1986, and May 29, 1986, the ERA directed Texas Eastern to file additional information with respect to all four dockets and granted an indefinite extension of time in which to provide information showing that the proposed imports would be competitive and market responsive. On July 31, 1987, Texas Eastern filed a notice of withdrawal of that portion of its July 15, 1985, application in Docket No. 85-13-NG which sought to extend the term of the authorization through October 31, 1989, and filed a new application which has been docketed and is hereby being noticed in this **Federal Register** as ERA Docket No. 87-37-NG.

Based on a new gas sales agreement with ProGas dated November 1, 1986, as amended on July 9, 1987, which supersedes the previous sales agreement, Texas Eastern's current application requests an extension of the term of its existing import authorization from October 31, 1987, through October 31, 2000, and authority to continue to import for system supply up to 75,000 Mcf of Canadian natural gas per day via the same import and pipeline transportation facilities now being used to deliver gas to Texas Eastern. Texas Eastern also seeks authorization to import authorized volumes not needed for system supply under a November 1, 1986, Texas Eastern/ProGas special marketing agreement which provides that such gas may be released for sale in the U.S. spot market by Texas Eastern's and/or ProGas's marketing agents.

According to the application, the principle changes from the November 1, 1986, gas sales agreement, as amended, are: (1) Elimination of producer fixed costs from ProGas's demand charge; (2) addition of ProGas's fixed costs and the demand charge of NOVA, an Alberta Corporation's (NOVA) demand charge as an element in ProGas's monthly demand rate; (3) provision for natural gas imported but not needed for system supply to be sold on the U.S. spot market by the U.S. marketing agents of Texas Eastern and/or ProGas respectively; and (4) adjustment of ProGas's demand/commodity rates effective August 1, 1987, to comply with FERC Opinion No. 256, (37 FERC Para. 61,215 (December 8, 1986)), and FERC Opinion No. 256-A, (39 FERC Para. 61,218 (May 27, 1987)).

Under the price determination formula contained in the new gas sales agreement, effective August 1, 1987, ProGas's monthly demand charge consists of the demand tolls of TransCanada PipeLines Limited (TransCanada), NOVA's demand charge, and the fixed charges of ProGas, reduced in accordance with the provisions of FERC Opinion" Nos. 256 and 256-A (MDR adjustment). This

formula would result in a demand charge to Texas Eastern as of August 1, 1987, of $11.417 (U.S.) per MMBtu of the daily contract quantity but for the MDR adjustment which reduces the demand charge to $9.5689 (U.S.) per MMBtu. The new agreement further provides that the commodity charge for the gas at the border shall be an amount equal to the commodity charge per MMBtu in Texas Eastern's daily contract quantity rate schedule on file and in effect at the FERC for system supply customers in rate zone C, less an amount equal to the transportation charges for moving the gas from the international border to rate zone C. This formula results in a delivered commodity rate for the gas in rate zone C of $1.8812 (U.S.) per MMBtu and a border commodity rate of $1.76 (U.S.) per MMBtu.

The price determination formula further provides that ProGas's monthly demand charge shall be subject to adjustment for changes in the demand charges of NOVA, TransCanada, and in ProGas's fixed costs. The commodity charge is subject to adjustment for each change in Texas Eastern's commodity charge for firm sales in rate zone C and for changes in the charges for transporting the gas from the international border to Texas Eastern's pipeline system. Except for the MDR adjustment to conform ProGas's demand charge to FERC Opinion Nos. 256 and 256–A, the price of the imported gas may be renegotiated annually, when changes in market-responsive prices occur in Texas Eastern's gas purchase contracts for system supply, when ProGas makes a new PGA filing at the FERC, or when other changes in market or regulatory conditions occur, including a decision by the FERC to authorize a supply reservation charge applicable to the demand charges of Texas Eastern. The price provisions are also subject to renegotiation after a final decision has been rendered in the U.S. appellate courts on the merits of FERC Opinion Nos. 256 and 256–A, and if the quantity of gas Texas Eastern takes under the 1986 gas sales agreement as amended falls below 50 percent of the annual contract quantity.

The new Texas Eastern/ProGas gas sales agreement provides that the minimum annual quantity of gas which Texas Eastern must purchase shall be a quantity which maintains the same ratio of takes to total contract volumes available during the contract year as exists between Texas Eastern's takes and total contract volumes available under contracts with U.S. suppliers having a primary term of more than three years. Credit is given in meeting the minimum annual contract quantity requirement for gas sold on the U.S. spot market under the special marketing agreement between Texas Eastern and ProGas.

In support of its application, Texas Eastern urges that the proposed import is in the public interest because the arrangement will assure that the price of the imported gas is comparable to that of major energy sources, including natural gas, competing in Texas Eastern's market area. Texas Eastern asserts that the price adjustment and renegotiation provisions of the new gas sales contract provide the necessary flexibility so that the imported will remain competitive throughout the term of the authorization requested. According to Texas Eastern, the need for the imported gas is demonstrated by the fact that gas purchased under the new gas sales agreement and under the special marketing agreement will be competitive in the markets served, and that recent levels of gas purchases from ProGas have been at nearly 100 percent of daily contract quantity for system supply.

Texas Eastern contends that the information contained in the application satisfies the information request in the ERA's procedural order of March 21, 1986, in ERA Docket Nos. 85–13–NG, 82–05–NG, 82–07–NG, and 85–19–NG. Texas Eastern notes that it has not yet renegotiated the gas sales contracts underlying the import proposals in the latter three dockets. Texas Eastern requests expeditious processing of its application since the gas flowing under its existing import authorization would be shut off if the term of the authorization expiring on October 31, 1987, is not extended prior to that date.

The decision on this application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.s.t., October 2, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Texas Eastern's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, at the above address. The docket room is open between the

BEST COPY AVAILABLE

hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 24, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-20125 Filed 9-1-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E 87-59; Certification Notice 4]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants; Pennsylvania Power Associates, et al.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the *Federal Register* a notice reciting that the certification has been filed. Three owners or operators of proposed new electric base load powerplants have filed self certifications in accordance with section (d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies filed self certifications:

Name	Date received	Type facility	Megawatt capacity	Location
Pennsylvania Energy Associates, York, PA	8-6-87	Combined cycle	85	York, PA
Texas Energy Associates, Coahoma, TX	8-6-87	....do....	170	Coahoma, TX
Frontier Energy Associates L.P., Olean, NY	8-14-87	....do....	15	Jefferson Co., PA

Amendments to FUA on May 22, 1987 (Pub. L. 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure. Pertinent provisions are restated in the appendix to this notice.

Issued in Washington, DC on August 24, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

Appendix

Sec. 201. Coal Capability of New Electric Powerplants; Certification of Compliance

(a) General Prohibitions—Except to such extent as may be authorized under subtitle B, no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source.

(b) Capability To Use Coal or Alternate Fuel—An electric powerplant has the capability to use coal or another alternate fuel for purposes of this section if such electric powerplant—

(1) has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation.

(c) Applicability To Base Load Powerplants—(1) This section shall apply only to base load powerplants, and shall not apply to peakload powerplants or intermediate load powerplants.

(2) For the purposes of this section, hours of electrical generation pursuant to emergency situations, as defined by the Secretary and reported to the Secretary, shall not be included in a determination of whether a powerplant is being operated as a base load powerplant.

(d) Self-Certification—(1) In order to meet the requirement of subsection (a), the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary prior to construction or prior to operation as a base load powerplant in the case of a new electric powerplant operated as a peakload powerplant or intermediate load powerplant, that such powerplant has capability to use coal or another alternate fuel, within the meaning of subsection (b).

Such certification shall be effective to establish compliance with the requirement of subsection (a) as the date it is filed with the Secretary. Within 15 days after receipt of a certification submitted pursuant to this paragraph, the Secretary shall publish in the **Federal Register** a notice reciting that the certification has been filed.

(2) The Secretary within 60 days after the filing of a certification under paragraph (1), may require the owner or operator of such powerplant to provide such supporting documents as may be necessary to verify the certification.

[FR Doc. 87-20226 Filed 9-1-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EL86-15 et al.]

Hydroelectric Applications; NC Group et al.

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Declaration of Intention.

b. Project No: EL86-15.

c. Date Filed: December 13, 1985.

d. Applicant: NC Group.

e. Name of Project: Power Creek.

f. Location: On Power Creek near Cordova, Alaska.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Barry A. Noah, NC Group, 1013 Diamond Boulevard, #352, Anchorage, Alaska 99515, (907) 346-2302.

i. FERC Contact: Charles Brown, (202) 376-9129.

j. Comment Date: October 2, 1987.

k. Description of Project: The proposed project consists of: (1) A 10-foot-high, 65-foot-long diversion structure; (2) a 4,800-foot-long penstock; (3) a powerhouse containing a generating unit with a capacity of 1500kW; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: All power will be sold to Cordova Electric Cooperative.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

2 a. Type of Application: Declaration of Intention.

b. Project No: EL86-46.

c. Date Filed: June 24, 1986.

d. Applicant: Kickapoo Valley Energy Corporation.

e. Name of Project: LaFarge.

f. Location: On the East Branch Kickapoo River, Vernon County, Wisconsin, Southwest ¼ of Section 20, T. 13 N., R. 2 W.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Paul Bader, President, Kickapoo Valley Energy Corporation, Route 1, Box 15, LaFarge, Wisconsin 54639, (608) 625-2515.

i. FERC Contact: Charles Brown, (202) 376-9129.

j. Comment Date: October 2, 1987.

k. Description of Project: The existing project consists of: (1) A 100-foot-long, 10-foot-high dam; (2) 50-foot-long, 18-inch-diameter penstock; (3) a powerhouse containing one generating unit with a capacity of 120kW; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: All power is being sold to a local utility company.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

3 a. Type of Application: Declaration of Intention.

b. Project No.: EL87-5.

c. Date Filed: December 1, 1986.

d. Applicant: Island Power Company, Inc.

e. Name of Project: Hanalei.

f. Location: On Hanalei River, Kauai County, Island of Kauai, Hawaii.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Kenneth D. Murri, Island Power Company, Inc., 5160 Wiley Post Way, Salt Lake City, Utah 84116, (804) 537-1520.

i. FERC Contact: Charles T. Brown, (202) 376-9129.

j. Comment Date: October 5, 1987.

k. Description of Project: The proposed run-of-river project consists of: (1) A 75-foot-long diversion weir located approximately 11.2 river miles from the mouth of the Hanalei River; (2) a 26,000-foot-long, 54-inch-diameter penstock; (3) a powerhouse containing two Pelton-type turbines with a capacity of 8,000kW; (4) a 3,000-foot-long transmission line; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: Island Power Company, Inc. will sell energy to the Kauai Electric Division of Citizens Utilities Company.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

4 a. Type of Application: Major License.

b. Project No.: 2756-004.

c. Date Filed: July 14, 1980, and amended November 3, 1986.

d. Applicant: Burlington Electric Light Department and Winooski One Partnership.

e. Name of Project: Chace Mill.

f. Location: On the Winooski River, in the City of Winooski, in Chittenden County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791a-825r.

h. Contact Person: Robert Young, Mgr., Burlington Electric Light Dept., 585 Pine Street, Burlington, VT 05401, (802) 658-0300; John L. Warshow, Winooski One Partnership, 26 State Street, Montpelier, VT 05602, (802) 229-4666.

i. FERC Contact: William Guey-Lee, (202) 376-9827.

j. Comment Date: October 2, 1987.

k. Description of Project: The proposed project would consist of: (1) The existing 194-foot-long, 36-foot-high American Woolen timber-crib dam, to be repaired 8 feet to the original crest elevation of 136 feet N.G.V.D.; (2) a 5.7-acre reservoir; (3) a new 85-foot-long reinforced concrete intake structure; (4) 2 steel penstocks, one 90 feet long and one 74 feet long; (5) a submersible concrete powerhouse containing two 3250-kW generating units; (6) a 75-foot-long, 60-foot-wide tailrace; (7) a fish trap structure; (8) a 100-foot-long transmission line; and (9) appurtenant facilities. The dam is owned by Green Mountain Power Corporation. The estimated annual energy generation is 22 million kWh.

l. Purpose of Project: The energy will be sold to the Vermont Power Exchange.

m. This notice also consists of the following standard paragraphs: B, C, D1.

n. The amended application was filed in conjunction with a proposed settlement agreement for Commission approval. The issuance of this notice does not reflect a judgment by the Commission that the amended application conforms to the requirements of the Commission's regulations, and is without prejudice to the City of Winooski's rights pertaining to its preliminary permit application for Project No. 3101.

5 a. Type of Application: Transfer of License.

b. Project No.: 5000-010.

c. Date Filed: July 20, 1987.

d. Applicant: Lawrence R. Taft (licensee) and Trafalgar Power, Inc. (transferee).

e. Name of Project: Kayuta Lake.

f. Location: On the Black River in Oneida County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. John M. Cutler, McCarthy, Sweeney & Harkaway, P.C., Suite 1105, 1750 Pennsylvania Avenue, NW., Washington, DC 20006, (202) 393–5710.

i. FERC Contact: Steven H. Rossi, (202) 376–9819.

j. Comment Date: October 5, 1987.

k. Description of Transfer: On July 20, 1987, Lawrence R. Taft (licensee), and Trafalgar Power, Inc. (transferee), filed a joint application for transfer of a minor license for the Kayuta Lake Project No. 5000.

The purpose of the proposed transfer of the license is to facilitate the financing of the licensed project. The proposed transfer would not result in any changes in the proposed development. All engineering, design and feasibility studies performed would be transferred to the transferee. The transferee states that it would comply with all the terms and the conditions of the license.

l. This notice also consists of the following standard paragraphs: B & C.

6 a. Type of Application: Exemption from Licensing.

b. Project No: 10163–000.

c. Date Filed: November 10, 1986.

d. Applicant: Cresticon, Inc.

e. Name of Project: Cresticon Project.

f. Location: On the Millers River in the Town of Athol, Worcester County, Massachusetts.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Applicant Contact: Mr. Brook J. Pennypacker, Hydro-Tech, Inc., P.O. Box 277, South Barre, MA 01074, (617) 355–2139.

i. FERC Contact: Robert W. Bell—(202) 376–5706.

j. Comment Date: October 2, 1987.

k. Description of Project: The proposed project would consist of the following two developments:

(A) Upper Cresticon Development: (1) An existing 79-foot-long, 10-foot-high stone and concrete gravity dam; (2) the installation of 2-foot-high flashboards; (3) an impoundment having a surface area of 8.5 acres with negligible storage and normal water surface elevation of 569.06 feet m.s.l.; (4) an existing 334-foot-long power canal; (5) an existing powerhouse containing one generating unit with an installed capacity of 250 kW; (6) an existing 223-foot-long tailrace; (7) an existing 90-footlong, 13.8-kV transmission line; and (8) appurtenant facilities.

(B) Lower Cresticon Project: (1) An existing 135-foot-long, 3-foot 10-inch-high concrete and stone dam; (2) installation of 2-foot-high flashboards; (3) an impoundment having negligible storage and surface area and a normal water surface elevation of 555.2 feet m.s.l.; (4) a 670-foot-long power canal; (5) an existing powerhouse containing one generating unit with an installed capacity of 250 kW; (6) an existing tailrace; (7) an existing 1,200-foot-long, 13.8-kV transmission line; and (8) appurtenant facilities.

The applicant estimates the annual average generation would be 2,412,000 kWh. All energy generated would be utilized by the factory and excess would be sold to Massachusetts Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3A.

7 a. Type of Application: Minor License (5MW or Less).

b. Project No.: 10198–000.

c. Date Filed: November 28, 1986.

d. Applicant: Pelican Utility Company.

e. Name of Project: Pelican Hydroelectric Water Power Project.

f. Location: In the Tongass National Forest on Pelican Creek, near the city of Pelican, Alaska. Unsurveyed Township 45 S, Range 57 E of the Copper River Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Tom Whitmarsh, P.O. Box 601, Pelican, AK 99832, (907) 735–2213.

i. FERC Contact: Thomas Dean, (202) 376–9275.

j. Comment Date: October 23, 1987.

k. Description of Project: The proposed project consists of rehabilitating the 135-foot-long, 22-foot-high rock-filled timber crib Pelican Dam. The rehabilitation would consist of: (1) A 16-foot-wide by 30-foot-high rock-filled crib constructed against the downstream face of the existing structure, raising Pelican Dam approximately 7 feet; (2) an intake structure; (3) a 48-inch-diameter, 776-foot-long woodstave pipe to a surge tank; (4) a 36-inch-diameter, 330-foot-long penstock leading to; (5) a powerhouse containing two generating units rated at 600 kW and 100 kW operating under a gross head of 115 feet; (6) an 80-foot-long, 0.48-kV transmission line; and (7) appurtenant facilities. The applicant estimates the average annual energy production to be 2.75 GWh. The estimated cost of the project is $956,419.

l. Purpose of Project: Applicant proposes to supply electrical power generated at the facility to the city of Pelican.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and Dl.

8 a. Type of Application: License (5MW or Less).

b. Project No.: 8497–003.

c. Date Filed: January 5, 1987.

d. Applicant: Mesa II, Inc.

e. Name of Project: Mesa II.

f. Location: On the Middle Fork of the Weiser River within the Payette National Forest in T15N, RIE, near Council in Adams County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Paul E. Scofield, Secretary, Mesa II, Inc., 1107 Balsam, Boise, ID 83706, (208) 888–6764.

i. FERC Contact: Julie Bernt, (202) 376–9812.

j. Comment Date: October 1, 1987.

k. Description of Project: The proposed run-of-the-river project would consist of: (1) A 6.5-foot-high concrete diversion dam at elevation 4,500 feet; (2) a 22,100-foot-long penstock with a diameter ranging from 48 inches to 60 inches; (3) a powerhouse at elevation 3,200 feet containing one generating unit with a rated capacity of 5 MW; (4) a 150-foot-long tailrace; and (5) a 3.6-mile-long, 69-kV transmission line to an existing Idaho Power Company line near Highway 95. The average annual energy production is estimated to be 15 GWh. The cost of the project is estimated to be $5,320,000.

l. Purpose of Project: The power produced is to be sold to Idaho Power Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and Dl.

9 a. Type of Application: Preliminary Permit.

b. Project No: 5903–000.

c. Date Filed: January 21, 1982.[1]

d. Applicant: Gem Irrigation District and Ridgeview Irrigation District.[2]

e. Name of Project: Black Canyon.

f. Location: At the United States Bureau of Reclamation's existing Black Canyon Dam on the Payette River in Sec. 22, T7N, RIW, near Emmett in Gem County, Idaho.

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[1] This application was rejected on February 26, 1982, and was reinstated by Commission order issued March 20, 1987.

[2] The original permit application was filed by Black Canyon Irrigation District, Gem Irrigation District and Ridgeview Irrigation District. On May 28, 1987, the application was amended to delete the Black Canyon Irrigation District.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Ilene Garland, Hosey & Associates Engineering Company, 2850 Northrup Way, Bellevue, WA 98004, (206) 827–8661.

i. FERC Contact: Julie Bernt, (202) 376–9812.

j. Comment Date: October 5, 1987.

k. Description of Project: The proposed run-of-the-river project would use only water spilled from the existing Black Canyon Reservoir in excess of that used by the existing power plant and that diverted for irrigation and would consist of the following: (1) A widened canal at the South Main Canal head-works necessary to carry spill flows, in addition to the irrigation supply, to a bifurcation which will separate the irrigation from the power flow; (2) four 10-foot-long pen-stocks; (3) a powerhouse on the left bank of the Payette River at elevation 2,407 feet containing two generating units with a total rated capacity of 24,000 kW; and (4) a 300-foot-long transmission line. Applicant estimates the average annual energy production to be 62 gWh and the cost of the work to be performed under the preliminary permit to be $120,000.

l. Purpose of Project: The power produced is to be sold to a local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No: 10439–000.

c. Date Filed: July 1, 1987.

d. Applicant: CRV Corporation.

e. Name of Project: Crystal River.

f. Location: On the Crystal River in Gunnison County, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: William J. Kenney, Carlson & Warren, Suite 209, 2600 Virginia Avenue, NW., Washington, DC 20037, (202) 965–7040.

i. FERC Contact: Hector M. Perez (202) 376–1669.

j. Comment Date: October 5, 1987.

k. The proposed run-of-river project would consist of: (1) Reconstruction of a 5-foot-high, 7-foot-long wing wall with a top elevation of 8,409 feet msl, (2) a new 36-inch-diameter, 3,900-foot-long penstock; (3) a new powerhouse with an installed capacity of 4,900 kW; (4) a new 150-foot-long tailrace; (5) a new 14.4-kV short transmission line; and (6) other appurtenances. The applicant estimates an average annual generation of 13,600,000 kWh. The project would occupy lands of the White River National Forest.

l. Purpose of Project: Project energy would be sold to the Holy Cross Electric Association.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

Standard Paragraphs

A3. *Development Application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of prelimianry engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising adminstration over

fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825*l*(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time sent for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 28, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–20198 Filed 9–1–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI61–426–000 et al.]

Applications for Certificates, Abandonments of Service and Petitions To Amend Certificate [1]; Samson Resources Co.

August 28, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 14, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Puchaser and location	Price per Mcf	Pressure base
CI61–426–000, E, Aug. 24, 1987	Samson Resources Co., Samson Plaza, Two West Second Street, Tulsa, Oklahoma 74103.	Arkla Energy Resources, a division of Arkla, Inc., Red Oak Field, Leflore County, Oklahoma.	(1)	
CI87–827–000, E, Aug. 17, 1987	Samson Resources Co	Mid Louisiana Gas Company and Arkla Energy Resources, a division of Arkla, Inc., Vixen Field, Caldwell Parish, Louisiana.	(2)	
CI87–541–000, B, Aug. 24, 1987 [3]	Jorguss Oil Corp., 407 N. Big Spring, Suite 200, Midland, Texas 79701.	El Paso Natural Gas Company, Sprayberry Trend Area, Irion County, Texas.	(4)	
CI87–542–000, B, Aug. 24, 1987 [3]	Evelyn Gruss Lipper & Evelyn Gruss Lipper Trust	do	(4)	
CI87–543–000, B, Aug. 24, 1987 [3]	Gruss Petrroleum Corp	do	(4)	
CI87–544–000, B, Aug. 24, 1987 [3]	Martin D. Gruss	do	(4)	
CI87–545–000, B, Aug. 24, 1987 [3]	Gruss Petroleum Corp	El Paso Natural Gas Company, Sprayberry Trend Area, Upton County, Texas.	(4)	
CI87–749–000, B, July 7, 1987	Oakwood Resources Inc., P.O. Box 740516, Dallas, Texas 75374–0516.	Transwestern Pipeline Company, South Follett (Morrow) Field, Lipscomb County, Texas.	(5)	
CI87–828–000, B, Aug. 17, 1987	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Oklahoma 74102.	ANR Pipeline Company, OCS Lease No. G–2398, High Island Blk. A–273, Offshore Texas.	(6)	

Docket No. and date filed	Applicant	Puchaser and location	Price per Mcf	Pressure base
CI87-829-000, B, Aug. 17, 1987	Highland Production Company P.O. Box 63267, Odessa, Texas 79762.	Northern Natural Gas Company, Bailey Lease, Ozona, N.E. Field, Crockett County, Texas	[7]	
CI87-830-000, B, Aug. 17, 1987	Southwest Royalties, Inc., P.O. Drawer 10885, Midland, Texas 79702.	El Paso Natural Gas Company, Amacker-Tippett Field, Upton County, Texas.	[8]	
CI87-831-000, B, Aug. 17, 1987	do	El Paso Natural Gas Company, Amacker-Tippett Field, Upton County, Texas.	[8]	
CI87-832-000, B, Aug. 17, 1987	Brookover Enterprises, c/o R.W. Lange, P.O. Box 1034, Garden City, Kansas 67846.	Panhandle Eastgerm Pipe Line Company, Novinger Marmoton Field, Meade County, Kansas.	[9]	
CI87-835-000, B, Aug. 17, 1987	Lone Wolf Producing Company, P.O. Drawer 11150, Midland, Texas 79702.	ARCO Oil and Gas Company/Northern Natural Gas Company, Robinson #1 & #2 wells, E/2 SE/4, Section 39, Block I, GH & SA RR Co., Survey, Schleicher County, Texas.	[10]	
CI87-837-000 (CI61-1284), B, Aug. 19, 1987.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75331.	Arkansas Louisiana Gas Company, Vixen Field, Caldwell Parish, Louisiana.	[11]	
CI87-838-000 (CI63-819), B, Aug. 19, 1987.	do	Northwest Central Pipeline Corporation, Northwest Lovedale Field, Harper County, Oklahoma.	[12]	
CI87-839-000 (CI65-1150), B, Aug. 19, 1987.	do	ANR Pipeline Company, Gageby Creek Field, Wheeler County, Texas.	[12]	
CI87-840-000 (G-18659), B, Aug. 19, 1987.	do	KN Energy, Inc., Camrick Gas Area, Texas County, Oklahoma.	[12]	
CI87-843-000 (CI77-484), B, Aug. 10, 1987.	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046-0957.	Transwestern Pipeline Company, West Atoka Field, Eddy County, New Mexico.	[13]	
CI87-841-000 (G-19138), Aug. 19, 1987.	ARCO Oil Gas Company, Division of Atlantic Richfield Company.	Tennessee Gas Pipeline Company, South Pass Block 30 Field, Plaquemines Parish, Louisiana.	[14]	
CI87-844-000, B, Aug. 20, 1987	Celeste C. Grynberg, 500 So. Quebec, Suite 500, Denver, CO 80237.	Mountain Fuel Resources, Inc., Government Stauffer #1-25 Well, Blue Gravel Field, Section 25-T9N-R91W, Moffat County, Colorado.	[15]	

[1] Effective April 1, 1983, Applicant acquired acreage from Shell Western E&P Inc. in the Red Oak Field.

[2] Effective December 1, 1985, Applicant acquired acreage from Shell Western E&P Inc. in the Vixen Field. Effective January 1, 1987, Applicant Acquired acreage from ARCO Oil and Gas Company in the Vixen Field.

[3] This application was noticed on May 12, 1987. However, that notice did not include Applicants' additional request received August 24, 1987, to grant Applicant three-year pregranted abandonment of sales for resale in interstate commerce under its small producer certificate.

[4] Applicant requests permanent abandonment of gas sales to El Paso. Applicant states that the wells are becoming uneconomic to produce due to natural decline in oil and gas reserves and low prices. Applicant proposes to seek alternative markets and has requested three-year pregranted abandonment. Jogruss Oil Corp., Evelyn Gruss Lipper, Martin D. Gruss, and Gruss Petroleum Corp.'s (CI87-545-000) wells produce NGP Section 104 flowing gas with estimated deliverability of 1 Mcf/d, 60 Mcf/d, 25 Mcf/d and 100 Mcf/d, respectively. Gruss Petroleum Corp.'s (CI87-543-000) wells produce NGPA section 104 flowing and 104 1973-1974 biennium gas with estimated deliverability of 180 and 115 Mcf/d.

[5] Due to marketing and operational problems with the current purchaser, gas sales have been limited and intermittent. Applicant, desires to abandon gas in excess of the current purchaser's needs and sell the gas to another purchaser.

[6] Production ceased from the subject lease on 9-16-86, and the lease terminated on 12-16-86.

[7] Applicant request three-year limited-term abandonment with progranted abandonment. The contract's primary term expired in April 1987. Estimated deliverability is 243 Mcf/d. The gas is NGPA section 104 flowing gas. Applicant wishes to sell gas in the spot market.

[8] Applicant's gas well gas production is subject to significant curtailment. Applicant desires to improve gas sales through the spot market. Applicant also requests a three-year progranted abandonment.

[9] Uneconomical to produce.

[10] Lone Wolf's contract with ARCO has expired under its own terms. ARCO Oil and Gas Company's residue purchaser has indicated that its market demand is deteriorating as a result of its high cost of gas. The curtailment will make operations of the well uneconomical for ARCO as well as Lone Wolf causing severe economic hardship on Lone Wolf. Lone Wolf has secured a market which is ready, willing and able to take gas from the wells, thus preventing the possibility of premature abandonment of this well and loss of remaining reserves.

[11] By assignment effective 1-1-87, ARCO assigned its interest in certain acreage to Samson Resources Company.

[12] By assignment effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company.

[13] By assignment effective 3-1-87, Mobil assigned its interest in the Ann M. Johnson lease to Petrus Management Corporation, General Partner of Petrus Oil Company.

[14] The gas sales contract expired by its own terms 3-15-81. The only lease dedicated to the subject contract, State Lease 2716, was surrendered May 1968.

[15] Purchaser has removed its meter and purchase equipment from the well, it is no longer possible for Applicant to deliver any gas to purchaser. Applicant desires to sell any potential production from the #1-25 well to Rocky Mountain Natural Gas, an intrastate purchaser.f

Filing Code: A-Initial Service; B-Abandonment; C-Amendment to add acreage; D-Amendment to delete acreage; E-Total Succession; F-Partial Succession.

[FR Doc. 87-20153 Filed 9-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP87-62-000]

Petition To Reopen Well Category Determination; Ohio Department of Natural Resources

August 28, 1987.

On July 13, 1987, the Ohio Department of Natural Resources (ODNR) filed a petition to reopen well category determination. ODNR requests that the Commission remand to it a determination that gas produced from the Gills No. 5 well does not qualify under section 108 of the Natural Gas Policy Act of 1978 (NGPA). ODNR states that Wynn Oil & Gas (Wynn) filed a section 108 category application with ODNR on May 21, 1984. A negative determination followed and was filed with the Commission March 20, 1985, becoming final April 26, 1985. ODNR states that the negative determination was based on a failure to receive updated production information. This discrepancy has been corrected, and ODNR states that an affirmative NGPA section 108 well category determination should be issued.

The procedures applicable to the conduct of this proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

FR Doc. 87-20154 Filed 9-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP87-60-000]

Petition To Reopen and Vacate Final Well Category Determination; August 28, 1987.

Take notice that on July 6, 1987, Transcontinental Gas Pipe Line Corporation (Transco) filed pursuant to section 503(d) of the Natural Gas Policy Act of 1978 (NGPA)[1] and § 275.205[2] of the Federal Energy Regulatory Commission's (Commission) regulations a petition to reopen and vacate a deep high-cost well category determination made pursuant to section 107(c)(1) of the NGPA[3] for the, OCS-G-1960 No. A-3 well, which is located in the South Timbalier Block No. 148, Offshore Louisiana. C&K Marine Production (now Enstar Petroleum Company) made the filing with the United States Geological Survey (USGS) for the NGPA section 107(c)(1) determination for the OCS No. A-3 well. The USGS approved such filing and submitted notice of such determination to the Commission on May 6, 1980. That determination became final on June 19, 1980, pursuant to § 275.202(a) of the Commission's regulations, 45 days following notification.

Transco states that the USGS relied on incorrect data in determining that gas produced from the OCS No. A-3 well qualified for NGPA section 107(c)(1) incentive pricing. Transco states that the statement to the USGS that the OCS No. A-3 well's depth exceeded 15,000 feet was an untrue statement of material fact. Transco states that its review of pertinent well log data showed that the depth of the OCS No. A-3 well was never completed below 15,000 feet, and that, in accordance with the Commission's regulations, gas produced from such well whose depth was less than 15,000 feet cannot qualify as deep high-cost gas. Transco states that even though the gas produced from the well never qualified for NGPA section 107(c)(1) status and even though the NGPA section 107(c)(1) gas was decontrolled November 1, 1979, it has paid the NGPA section 107 (c)(1) price through January 1, 1987 for gas produced from the OCS No. A-3 well. Transco believes that the gas produced from the OCS No. A-3 well should be qualified for NGPA section 102(d) incentive pricing.

Transco requests that the Commission (1) reopen and vacate the well category determination granted to Enstar by the USGS; (2) find that gas from the OCS No. A-3 well should have been classified as NGPA section 102(d) gas; and (3) order Enstar, *et al* to refund to Transco the amounts by which Transco's payments exceeded the maximum lawful price for NGPA section 102(d) gas.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211 (1987)). All motions to intervene or protest should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days following publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20155 Filed 9-1-87; 8:45 am]

BILLING CODE 6717-1-M

[1] 15 U.S.C. 3413(d) (1982).
[2] 15 U.S.C. 3317(c)(1) (1982).
[3] 15 U.S.C. 275.202(a) (1987).

[Docket No. SA87-52-000]

Applications; Petition for Adjustment; Beren Corp., Petitioner

August 28, 1987.

Take notice that on June 18, 1987, Beren Corporation (Petitioner) filed with the Commission pursuant to section 502(c) of the Natural Gas Policy Act of 1978, a petition for adjustment requesting that the Commission authorize and confirm the repayment of certain overpayments for gas purchases, which repayments would be made from proceeds of current and future gas sales made by Petitioner to KN Energy, Inc. Petitioner also requests that the Commission eliminate or reduce any interest due on the repayment after August 30, 1985, when Petitioner notified KN Energy of the overpayments.

Petitioner operates for interest owners of three leases in the Shelda Area in Cheyenne County, Nebraska, namely the Nelson, the Nelson A, and the Nelson H, (Nelson Leases). There are four producing wells from which casinghead gas is produced on the Nelson lease, one on the Nelson A lease and one on the Nelson H Lease. All six of these wells produced gas before the enactment of the NGPA, November 1, 1978.

Since gas sales from the "Nelson Leases" began in June 1978, Petitioner has sold all such gas production to KN Energy, Inc. (KN) (or its predecessor in interest), pursuant to a March 7, 1978, gas purchase contract. Under this contract KN paid Petitioner the highest gas prices allowed under the NGPA. However, when the NGPA became effective (November 1, 1978), the Nelson and Nelson A wells qualified only as section 104 NGPA gas, while the Nelson H No. 1 qualified as section 102(a)(2) NGPA gas (New Onshore Well) and associated higher pricing. Petitioner certified gas sales at section 102 NGPA pricing for the Nelson H No. 1 on February 21, 1979 and promptly notified KN of the same.

In February 1979, KN began paying Petitioner the section 102(a)(2) NGPA price for gas production from the Nelson H No. 1. Unbeknown to Petitioner, KN also began paying Petitioner such prices for gas production from the Nelson and Nelson A Leases. From approximately February 1979 through August 1985, KN paid Petition section 102 NGPA prices for all gas produced from the three "Nelson Leases". Such payments constituted overpayments for gas from the Nelson and Nelson A leases which should have been paid at the lower section 104 NGPA prices. Petitioner asserts that KN never notified it of the overpayments even though KN had the contractual duty to monitor production of the "Nelson Leases". Petitioner discovered the overpayments in 1985 during an audit of Btu adjustments to gas produced from wells in the Shelda area, and thereafter notified KN of the overpayments. In October 1985, KN suspended payments for purchases from the three "Nelson Leases" and now demands repayment of overpayments from February 1979 through October 1985 in the principal amount of $458,361.05 with alleged interest of $257,008.32. KN states that the payments suspended from the three "Nelson Leases" from October 1985 to April 30, 1987 reduced the principal owed to $358,604.56 with alleged accrued interest through April 1987 of $309,745.59. Both Petitioner and KN agreed that KN should withhold payment for gas purchases made from all of the wells under the contract until the overpayments are made up in gas supplies.

Petitioner argues that requiring the interest owners to pay KN interest on the overpayments would constitute special hardship, inequity, and unfair distribution of the burdens because it was KN's contractual duty to monitor the gas allocation from the three Nelson Leases and therefore that they should have discovered these overpayments. Petitioner claims it acted in good faith,

is without fault, and could not have discovered the overpayment before 1985. In support of its argument, Petitioner asserts that it originally notified KN that only the Nelson H No. 1 qualified for section 102 ceiling prices and immediately informed KN when it discovered the overpayments. Further, Petitioner asserts that KN waited 10 months after notification of the overpayments before demanding interest payments or principal refunds. Petitioner also argues that the total amount that interest owners would have to pay is greater than the undiscounted future gross gas revenue expected to be produced from the leases. This result, Petitioner asserts, is unfair and produces a hardship. Finally, Petitioner asserts that it never used the overpayments to its advantage and thus repayment of interest at the prime rate compounded quarterly is unjustified and punitive. Petitioner requests that if the Commission does determine that interest on the overpayments is due, that the amounts should be limited to one-half of the interest demanded by KN.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days after publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition filed in this proceeding are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20156 Filed 9-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-816-000]

Notice of Application; LL&E Gas Marketing, Inc.

August 26, 1987.

Take notice that on August 7, 1987, LL&E Gas Marketing, Inc. (LGM), of 909 Poydras Street, New Orleans, Louisiana 70112, filed an application pursuant to Sections 4 and 7 of the Natural Gas Act (NGA), 15 U.S.C. sections 716 and 717 and Parts 154 and 157 of the Commission's regulations [18 CFR Parts 154 and 157 (1987)], for a blanket certificate and pregranted abandonment authorization for a three year term which would include (1) blanket certificate authorization for the resale in interstate commerce of natural gas which is committed or dedicated to interstate commerce but for which the prior seller has obtained abandonment authorization and blanket certificate authorization for a new sale of the gas; and natural gas which is subject to the Commission's NGA jurisdiction but which has not previously been sold in interstate commerce (whether or not the gas was subject to a prior contract) and (2) pregranted abandonment on all gas which is subject to the blanket certificate in item (1) above so LGM can sell gas in the spot and other markets on behalf of itself and others. This application is on file with the Commission and open to public inspection.

Further LGM requests a waiver of the Commission's rules and regulations (now effective or hereinafter promulgated) to the extent that they are inconsistent with the blanket certificate and pregranted abandonment authorization requested herein. Also LGM requests a waiver of Part 154 of the Commission's regulations concerning the establishment and maintenance of rate schedules, and the filing of blanket affidavits pursuant to §§ 154.94(h) and 154.94(k) of the regulations (in addition to any other such provisions) and finally, LGM requests that the Commission assert jurisdiction over it pursuant to the NGA only to the extent necessary to effectuate the requested authority and only with respect to its participation in the transactions authorized.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 9, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20157 Filed 9-1-87; 8:45am]

BILLING CODE 6717-01-M

[Docket No. CI87-758-000]

Application for Permanent Abandonment With Three-Year Limited-Term Pregranted Abandonment for Sales Under Small Producer Certificate; Natural Resource Management

August 28, 1987.

Take notice that on July 9, 1987, as supplemented July 21, 1987, Natural Resource Management Corporation (NRM), 26th floor, San Jacinto Tower, 2121 San Jacinto Street, Dallas, Texas 75201, filed pursuant to section 7 of the Natural Gas Act and Part 157 and §§ 2.76 and 2.77 [1] of the Commission's Regulations thereunder, an application for permanent abandonment with three-year limited-term pregranted abandonment for future sales of the released gas under its small producer certificate, all as more fully set forth in said application on file with the Federal Energy Regulatory Commission and open to public inspection.

Approval would authorize NRM to make sales of natural gas released from contract by Southern Natural Gas Company (SONAT) with pregranted abandonment tied to the expiration of future sales contracts. All released gas will be subject to the provisions of the Natural Gas Act, and is subject to the maximum lawful ceiling prices under the Natural Gas Policy Act.

NRM submits that pursuant to agreements dated April 1, 1987, NRM and SONAT have agreed that NRM will forever waive and release SONAT from any retrospective and prospective take-or-pay liability under the contracts with respect to which permanent abandonment is sought, contingent upon NRM receiving the authorization requested. Once the requested authorities are granted, NRM will make released gas available on a nondiscriminatory basis to SONAT's

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment or the parties have entered into a take-or-pay buy-out.

customers and any other interested parties. The gas will be sold at competitive terms. NRM further submits that the requested pregranted abandoment authority is necessary to permit NRM to engage in such competitive sales. NRM states its willingness to accept a three-year term for the requested pregranted abandonment authority, so long as such acceptance is without prejudice to any abandonment rights that may be conferred by a final rule in Docket No. RM87–16–000.

NRM states that as a result of a severe imbalance between the supply and demand for SONAT's system gas supplies, SONAT has reduced substantially its takes of gas all of its producer-suppliers, including NRM. NRM states that the three contracts subject to the instant application provide for SONAT to take-or-pay for 80 percent of deliverability from NRM on an annual basis. The three contracts cover sales from the Bayou Postillion Field, Iberia and St. Martin Parishes, Louisiana. Current estimated deliverability from NRM is 2,906 Mcf per day. The gas is NGPA section 104 flowing (92%) and 106(a) (8%) gas. Total recoverable reserves are approximately 6,229,007 Mcf. NRM states that SONAT faces potential take-or-pay liability to NRM under the subject contracts for past and future periods.

NRM states that to resolve the potential take-or-pay liability to NRM, SONAT and NRM entered into two separate agreements dated April 1, 1987.

The first of these agreements effects only a temporary and partial solution to the potential take-or-pay dispute between NRM and SONAT. SONAT has agreed to temporarily release up to the entire volume of gas available from NRM under these contracts pursuant to SONAT's limited-term abandonment and sales authority granted in Docket No. CI86–371–000, *et al.*, (36 FERC ¶ 61,401 (1987)) as extended and expanded in Docket Nos. CI86–371–001 and CI86–392–001 (38 FERC ¶ 61,347 (1987)). This temporary release agreement provides for credit to SONAT offsetting its take-or-pay liability to NRM under the contracts to the extent of volumes released and sold to another purchaser.

The parties' second agreement provides for termination of the three gas purchase contracts effective upon NRM obtaining the abandonment authority requested herein. Significantly, the agreement provides for the permanent release of SONAT from any retrospective or prospective take-or-pay liability under the contracts once abandonment authority is granted and the agreement to terminate becomes effective.

Thus, under existing authorities, NRM and SONAT have agreed to a temporary and partial solution to reduce SONAT's potential take-or-pay liability to NRM on a prospective basis from April 1, 1987. The authority requested herein, once granted, will trigger a complete and permanent release of SONAT from such liability both prospectively and for past periods.

Since Applicant alleges that it is subject to substantially reduced takes without payment, and has entered into a take-or-pay buy-out and requested that its application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–20158 Filed 9–1–87, 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–826–000]

Application; Standard Gas Marketing Co.

August 28, 1987.

Take notice that on August 17, 1987, Standard Gas Marketing Company (Standard Gas) of 5151 San Felipe, P.O. Box 4567, Houston, Texas 77210, filed an application under Sections 4 and 7 of the Natural Gas Act for a blanket certificate of public convenience and necessity authorizing Standard Gas to make sales for resale in interstate commerce, without supply or market restrictions, of any gas subject to Natural Gas Act jurisdiction, with pregranted abandonment of any such sale. The gas that Standard Gas would be purchasing and reselling under the blanket certificate would be gas released under other LTA authorizations, gas released pursuant to the Order No. 451 series, and any other natural gas subject to the Commission's Natural Gas Act jurisdiction which has been freed from requirements for continued deliveries to the previously certificated purchaser.

Standard Gas requests that the Commission waive Part 154 of its regulations as to the establishment and maintenance of rate schedules. Standard Gas requests permission to automatically collect the appropriate monthly adjustments under the Commission's wellhead ceiling price regulations without the filing of blanket affidavits pursuant to § 154.94(h). In addition, Standard Gas requests that, to the extent it qualifies for collection of any applicable allowances under section 110 of the Natural Gas Policy Act of 1978 and Subpart K, Part 271 of the Commission's regulations, it be permitted to collect such allowance without the filing of affidavits pursuant to § 154.94(k) of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 14, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–20159 Filed 9–1–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA87–55–000]

Petition for Adjustment; Tana Oil and Gas Corp.

August 28, 1987.

Take notice that on July 2, 1987, Tana Oil and Gas Corporation (Tana) filed with the Commission a petition for an adjustment pursuant to section 502(c) of

the Natural Gas Policy Act of 1978 (NGPA) requesting an exemption from the requirements of § 273.202 of the Commission's regulations (18 CFR 273.202). Section 273.202 permits a seller to begin collection of a particular price for natural gas only after a well category application has been filed with the appropriate jurisdictional agency. Tana asserts that it failed to timely file its section 102 well category application due to circumstances beyond its control, and requests that it be permitted to collect the section 102 price for certain first sales of natural gas from its Hostetter No. 2 well. Without a waiver of § 273.202, Tana could only collect the section 109 price.

Tana advises that on April 22, 1986, during the drilling of the Hostetter No. 2 well located in McMullen County, Texas, an equipment failure caused the well to blow out of control. All of Tana's supervisory personnel were called to the location to supervise the installation of facilities to divert the gas so that the well could be brought under control. On April 26, 1986, the first of two sales lines was laid to Tana's gas treating plant, and sales of gas to Texas Eastern Transmission Corporation commenced. During the course of the emergency, all of Tana's supervisory personnel contained their efforts to control the well, until it was finally controlled on May 11, 1986, at which time sales were discontinued so that repairs could be made and the well completed.

Tana states that due to the blowout of the Hostetter well, it failed to file a section 102 application for the well with the Texas Railroad Commission (TRC) prior to commencing sales to Texas Eastern. Tana claims that it was necessary to immediately commence sales in order to bring the well under control and that the Tana personnel who would have prepared the well category application were not available because of the emergency situation at the well site. Tana also states that the TRC requires that a well category application be accompanied by a completion report, and that a completion report could not have been prepared prior to May 11, 1986. Tana asserts that it would suffer a special hardship if it is unable to collect the section 102 price in place of the section 109 price for natural gas sales from the Hostetter well during the period of emergency, from April 26, 1986 to May 11, 1986. According to Tana, the difference between its contract price of $3.25 per MMBtu and the section 109 price for the 119,320 MMBtu delivered during the fifteen-day period in question is $81,614.88.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20160 Filed 9-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-825-000]

Application; V.H.C Gas Systems, L.P.

August 27, 1987.

Take notice that, pursuant to sections 4 and 7 of the Natural Gas Act ("NGA") 15 U.S.C. 717c and 717f, and Parts 154 and 157 of the Federal Energy Regulatory Commission ("Commission") regulations Under the NGA, 18 CFR Parts 154 and 157, V.H.C Gas Systems, L.P. ("V.H.C") filed on August 14, 1987, an application which requests (1) an order (a) issuing a blanket certificate of public convenience and necessity for the sale for resale of gas (including gas qualifying under sections 102(d), 104, 106(a), 107(c)(5), 108 and 109 of the Natural Gas Policy Act ("NGPA")) in interstate commerce by V.H.C and any producer from whom V.H.C purchases gas, (b) issuing a blanket certificate of public convenience and necessity for sales for resale of gas in interstate commerce by producers through V.H.C as their agent, and (c) authorizing pre-granted abandonment of sales authorized in (a) and (b) above.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 11, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20161 Filed 9-1-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $135,000 (plus accrued interest) obtained from Thriftyman, Inc. of Dallas, Texas. The funds will be distributed in accordance with DOE's special refund procedures pursuant to 10 CFR Part 205, Subpart V.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be filed no later than December 1, 1987, and should be addressed to: Thriftyman Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF-0018.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2860.

SUPPLEMENTARY INFORMATION:

In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute monies obtained from Thriftyman, Inc. The firm remitted monies to the DOE to settle possible allocation violations with respect to its sale of motor gasoline. The firm's payments are being held in an interest-bearing escrow account pending distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established refund procedures and solicited comments from interested parties concerning the proper disposition of the

consent order fund. 52 FR 17821 (May 12, 1987).

As the Decision and Order indicates, applications for refund from the consent order fund may now be filed. Applications will be accepted provided that they are filed no later than 90 days after the publication of this Decision and Order in the **Federal Register**. Applications will be accepted from customers who were entitled to purchase motor gasoline from Thriftyman during the consent order period. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: August 25, 1987.

George B. Breznay,

Director, Office of Hearings ad Appeals.

Decision and Order of the Department of Energy

August 25, 1987

Implementation of Special Refund Procedures

Name of Firm: Thriftyman, Inc.
Date of Filing: March 25, 1986
Case Number: KEF–0018

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on March 25, 1986, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Thriftyman, Inc. (Thriftyman).

1. Background

Thriftyman is a "wholesale purchaser-reseller" of motor gasoline as that term was defined in 10 CFR 211.51 and is located in Dallas, Texas. Under the authority of the Emergency Petroleum Allocation Act of 1973, as amended, 15 U.S.C. 751 *et eq.* (EPAA), the ERA conducted an audit of Thriftyman with respect to its compliance with the Mandatory Petroleum Allocation Regulations found in 10 CFR Part 211, Subparts A and F. As a result of that audit the DOE alleged that during the period May through December 1979 (the audit period), Thriftyman violated the allocation regulations by failing to satisfy its motor gasoline supply obligations to its base period customers and by diverting motor gasoline to non-base period purchasers on the spot market.[1]

On October 9, 1985, Thriftyman and the DOE entered into a consent order resolving all civil and administrative disputes concerning Thriftyman's compliance with the petroleum allocation regulations. The consent order states that there was neither a formal finding by DOE nor an admission by Thriftyman that any violations of the regulations occurred. Under the terms of the consent order, Thriftyman was required to remit $135,000 to the DOE for deposit into an interest-bearing escrow account for ultimate distribution by the DOE.[2]

On May 5, 1987, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order fund. 52 FR 17821 (May 12, 1987). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations.

In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from Thriftyman customers who can demonstrate that they were injured as a result of Thriftyman's allocation practices during the consent order period. The PD&O was published in the **Federal Register** on May 12, 1987 and comments were solicited regarding the proposed refund procedures. We have received no comments regarding those procedures.

II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The DOE policy is to use the Subpart V process to distribute refunds. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). As we indicated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Thriftyman consent order fund. We will thereore grant the ERA's petition and assume jurisdiction over the fund.

III. Refund Procedures

The Proposed Decision and Order established tentative procedures for considering claims from firms and individuals who may have been injured by Thriftyman's motor gasoline allocation practices during the consent order period May 1, 1979, through December 31, 1979. Since we have not received any adverse comments regarding our proposed refund procedures we have determined that those procedures should be adopted.

A. Refunds to Eligible Purchases. From our analysis of the ERA audit material and information provided to us by Thriftyman, we have determined that the eligible claimants in this proceeding will be independently operated wholesale purchaser-resellers (e.g., retail sales outlets), and wholesale purchaser-consumers to which Thriftyman sold motor gasoline during the months of November and December 1977 and May-October 1978 (the base period months for May—December 1979). With the assistance of Thriftyman, we have identified some of those customers. They are listed in the Appendix to this Decision and Order.[3]

In order to assess claims in this proceeding, we propose to adopt certain presumptions. The two presumptions we plan to adopt are used to enable OHA to consider refund applications in the most efficient and equitable way possible in view of the limited resources available. First, we plan to adopt a presumption that a claimant was not injured by the alleged allocation violations unless it took some contemporaneous action to mitigate its injury. In addition, we plan to adopt a presumption that an applicant was not injured if it purchased a quantity of motor gasoline equivalent to its adjusted base period allocation of that product during the consent order period.

The basis of the first presumption is that any firm that was injured by an

[1] According to a Proposed Remedial Order issued to Thriftyman on July 8, 1985, approximately 98 percent of Thriftyman's base period customers were retail sales outlets owned and/or operated by Thriftyman itself. PRO at 15. The remainder of its base period customers were independent retail outlets and wholesale purchaser-consumers.

[2] On November 7, 1985, Thriftyman paid $135,000 to the DOE. This amount represents the principal which will form the basis for refund calculations. The total value of the Thriftyman account stood at $149,123.38, including accrued interest as of May 29, 1987.

[3] Claimants which were retail outlets operated by Thriftyman will be ineligible for refunds. Such affiliated claimants are barred by the equitable doctrine of unclean hands from seeking restitution in a refund proceeding. *See Cosby Oil Company/Yucca Valley Liquor Store*, 13 DOE ¶ 85,402 (1986) (citing *Citronelle-Mobile, Gathering, Inc.* v. *Edwards*, 669 F.2d 717, 732 (Temp. Emer. Ct. App. 1982)).

alleged allocation violation would have been immediately aware of its injury. Therefore, we would expect that a party which was injured by a supply disruption of an allocated product would immediately seek redress by (i) filing a complaint or allocation request with or otherwise notifying the appropriate agency officals, *see, e.g.*, 10 CFR 250.201 (a) and (d) and 211.17, or (ii) filing a private lawsuit under Section 210 of the Economic Stabilization Act of 1970, 12 U.S.C. 1904 Note, or (iii) taking some other action to mitigate its injury. We have concluded that while imposing this limitation would tend to prevent spurious claims and promote speed and efficiency in processing applications for refund, it would present no impediment to parties who were actually injured by Thriftyman's alleged allocation violations. Accordingly, we will presume that a party which had not taken some action to mitigate the effects of alleged allocation violations by Thriftyman does not have a meritorious claim. *See Tenneco*, 9 DOE at 85,202, and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,243 (1982) (*Pennzoil*)

Secondly, we will adopt a presumption that if, during the course of the entire consent order period, a claimant received aggregate volumes of motor gasoline at least equal to its adjusted base period allocation for that period, it was not injured by Thriftyman's alleged failure to supply correct volumes during certain months. We believe that this presumption is justified in order to limit eligibility for refunds to only those firms that were most adversely affected by Thriftyman's alleged allocation violations. *Aztex Energy Co.*, 12 DOE ¶ 85,116 at 88,356 (1984).

Each applicant should submit enough information to demonstrate that its claim is not spurious, including the best available evidence of injury which was sustained as a result of an alleged allocation violation. In assessing the extent of any such injury, we will consider a number of equitable factors such as, for example, whether the alleged violation had a significant deleterious impact on the claimant, and whether the applicant had the ability to protect itself by obtaining a replacement supply of the allocated product or by taking other appropriate action. *Tenneco*, 9 DOE at 85,207, *Pennzoil*, 9 DOE at 85,246. In accordance with our prior decisions, claimants who make a reasonable demonstration of an allocation violation may receive a refund based on the net profits lost as a result of the failure to receive the allocated products. *Aztex Energy Co.*, 12 DOE at 88,356 (1984).

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.[4]

If any funds remain after all meritorious claims have been paid, they will be distributed to the state and federal governments in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99–509, Title III, *reprinted in* Fed. Energy Guidelines ¶ 11,703.

B. *Applications for Refund.* We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Thriftyman consent order fund. Accordingly, we shall now accept Applications for Refund from eligible purchasers of Thriftyman motor gasoline during the consent order period. As proposed, the consent order fund will be distributed to claimants that are identified in the ERA audit files as having been affected by Thriftyman's alleged allocation violations, as well as to any other eligible customers of Thriftyman who apply for refunds.

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. Applications for Refund should be written or typed on business letterhead or personal stationery. In its application, a claimant must include the following information:

(1) The name of the consent order firm: Thriftyman, Inc., the case number: KEF–0018, and the applicant's name should be prominently displayed on the first page.

(2) The name, position title, and telephone number of a person who may be contacted for additional information concerning the Application.

(3) A description of any contemporaneous actions taken during or immediately following the period May–December 1979 by which it attempted to mitigate the injury resulting from Thriftyman's alleged allocation violations (e.g., complaints made to appropriate officials or attempts to seek alternative supplies);

(4) Its "adjusted base period allocation" of motor gasoline from each of its suppliers for each month of the period May–December 1979 (its purchases during the months November and December 1977 and May through October 1978);

(5) Its actual purchases of motor gasoline from each supplier during each month of the period May–December 1979;

(6) A computation of lost net profits sustained as a result of Thriftyman's alleged allocation violations.

A claimant must also state:

(7) Whether it has previously received a refund, from any source, with respect to the alleged allocation violations underlying this proceeding;

(8) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not intend to claim a refund; and

(9) Whether it is or has been involved as a party in any DOE enforcement or private section 210 actions. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

(10) Whether it is or was during the consent order period affiliated in any way with Thriftyman.

In addition, the application must contain the following signed statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the *Federal Register*. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted, together with a statement specifying why the information is alleged to be confidential or privileged. All applications should refer to Case No. KEF–0018 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

[4] As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.86(b). The same principle applies to the present situation.

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Thriftyman, Inc. pursuant to the consent order executed on October 9, 1985 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: August 25, 1987.

Appendix

*Abel Vending
ABC Auto Parts
*ABC Auto Parts
Guy Bagwell
*Chip-Christ No. 3
*Chip-Christ No. 4
Chip-Christ No. 5
Bass Chevrolet
*Ben Franklin No. 4822
*Ben Franklin No. 4863-Gilme
Berry-Barnett
Bobby's Discount Auto
George Brabum
Farmers LP Gas
*Bread Box
*Bread Box No. 1
*Bread Box No. 3
Susan Burton
Cape Oil
*Cape-Tyler No. 2
*Cliff's No. 1
Columbus Club of ET
Crow-Burlingame
Larry Cummings
Economy Supperette Inc.
East Cotton Auto Parts
Ben Franklin
Ben Franklin
*Giant Petroleum Co.
*Giant No. 8
*Giant No. 9
*Giant No. 10
*Giant No. 12
*Giant No. 13
*Giant No. 18
*Giant No. 22
*Giant No. 23
*Giant No. 25
Giant No. 27
Giant No. 28
Gibson's Discount No. 186
*Gibson's Discount No. 83
*Gibson's Discount No. 535
*Gibson's Discount No. 221
*Gibson's Discount No. 387
*Gibson's Discount No. 688
Gibson's Discount No. 273
*Gibson's Discount No. 693
Gibson's Discount
*Gibson's Discount No. 706
*Gibson's No. 199
Gibson Products-Bay City
*Gibson Products-El Campo
Danceland USA
Gregg Liquor No. 3-ACE
*Huey Hancock Taw Ware
Jerry Harris
Heritage Tool and Supply
*Jackson Self-Serve
Jim's Mini-Mart No. 1
*Jim's Mini-Mart
*Bobby Johnson
Kwik Phil Gasoline Co.
Larry's ABC Auto Parts
Lone Star Peterbilt Inc.
*Longview Rollercades
Love Laddy Oil Co.
*M W Oil Co.
Martin and Sons, Inc.
*Martin Son Tyler
Martin and Son No. 1
Martin and Son No. 2
Louis Morgan No. 2
J C Penney Co. Inc.
Pine Tree
Pine Tree High School
R & R Vending
Elaine Rainey
*Reliable Sales Co.
Roadrunners
Joan Rouse
Red Rushing
Rush-in Food Mart
Sam's Candy Co.
Larry Sanders
*Service Center
Security Alarm System
Shop and Save
*Sav-Ko Bulk Plant
*Shamrock-Bay City
Shamrock-El Campo
Shamrock-Palacios
*Shamrock-West Columbia
TEI Pantry No. 6
TEI Station No. 7
TEI Station No. 8
TEI Station No. 9
*TEI Pantry No. 10
TEI Station No. 11
*TEI Station No. 12
TEI Station No. 13
TEI Station No. 14
TEI Station No. 15
*TEI Station No. 16
*TEI Station No. 17
*TEI Station No. 18
TEI Station No. 19
*TEI Station No. 21
*TEI Station No. 22
*TEI Station No. 23
*TEI Station No. 24
*TEI Station No. 25
TEI Station No. 26
TEI Station No. 27
TEI Station No. 28
TEI Station No. 29
*TEI Station No. 30
TEI Pantry No. 32
*TEI Station No. 33
TEI Station No. 34
*TEI Pantry No. 35
*TEI Station No. 36
TEI Station No. 37
*TEI Station No. 38
*TEI Station No. 39
*TEI Station No. 40
Speedy Pack No. 3
*TEI Station No. 42
TEI Station No. 43
*TEI Station No. 44
*TEI Station No. 45
*TEI Station No. 46
*TEI Station No. 47
*TEI Station No. 64
TEI Pantry No. 65
*TEI Station No. 66
*TEI Station No. 67
TEI Station No. 68
TEI Pantry No. 70
*TEI Pantry No. 72
*TEI Pantry No. 73
*TEI Station No. 77
*TEI Station No. 86
*TEI Station No. 87
*TEI Station No. 88
TEI Station No. 89
Toledo Automotive Supply
Toledo Automotive
*Triangle T. Corporation
Walls Vending Service
Wal-Mart Stores
Wal-Mart Stores No. 146
Wal-Mart
Wal-Mart
Wiley College
*Alice Williams
*Youngblood and Associate
A/N Wholesale
*Alexander's Grocery
Bailey Salmons Exxon
West Loop Quick Stop
B J's 2—Mize
B J's No. 1
*B J's No. 3
*B J's No. 4
Bill's Self Service
Bearcat Self-Service
*Beckville Market
Bob's Pantry
Bread Box No. 1
Blue Top Food Store
*Jo Boyd's Station
Broadway Gulf
Bully of the Woods
Burn's Self-Serve
Carthage Skate Palace
*Cliff's Food Market No. 1
College Lanes
*Copeland's Self-Service
Country Cache
Don's 7–11
Doug's Automotive
Gary Dow Vending
Downing Texaco
*Dugger Grocery
Duke's Gulf
East Erwin Self-Service
*Edmond's Vending Co.
El Patio Restaurant
Rick's W Main Mini-Mart
The Farm Club
Hickory Hut
Figley's Auto Service
Gregg Liquor No. 3
J–1
Hal's Grocery
*Harley's Cut Rate Liquor
*Harley's No. 5
Harley's Liquors
H L No. 2
Harley's No. 2
Bill Harpher's Gulf
Hartley's Oil
*Holiday Gulf
Hughes Grocery and Gas
Hutto-Roberts Station
1–20 Liquor Store
Jerry's Grocery
Jim's Auto Parts
*Jim's Citgo

Jim's Liquor
Jim's Mint-Mart No. 1
*Jim's Mini Mart
Jerry Jones
*Kwik Stop
Kirby Oil
Ames Automotive Service
Larry's Country Boy Gro
*Lenard's Self Service
Lee Gulf
London's Self Service
*Longview Christian Acad
Louis Morgan No. 1
Louis Morgan No. 3
Love's Pick-n-Pay
Joe Maloney
*Marantha Vending Co.
Jerry Martin Exxon
*McRea's Texaco
Lee Melton
Mike's Grocery No. 2
Mike's Qui⅓k Stop
Ronald Moore's Service St
*Morgas-Cash Only
Nadar Candy Company
National Truck Stop
*Nipper's Grocery
Kathy Norris
N Main 66
Grady Nutt Gulf Service
*Doom's Grocery
Dilwell Club
*Oldham Phillips 66
Ore City Self-Service
Par-Mar Oil Co.
Petty Cafe
*Piddlin Peeler's
*Pirtle Bar-BQue
Polly's Grocery Feed
Grand Gulf Station
Cynthia Pruitt
Quick Zip
Quillin Garage
R and M Grocery
*Ray's Liquor
Roger's Liquors
Rush-In Food Mart
*SHS Vending
Sabine Valley MHMPC
Salyard's Enterprises
Shamrock-Bay City
Sigmore Corp. No. 516
Sigmore Corp. No. 513
Sigmore Corp. No. 519
Laverne Walker
Skateland of Longview
*Sitton's Cape-Lindale
*Skyway Rest
*Smith's 7-11
*Slogan's Grocery
*Smith's Self Service
*Stan-Gas No. 5
*Stockyard Restaurant
*Texas City Warehouse
*Texsun Gas
*Texsun Gas No. 2
*Time Saver Mini Mart
*Lynn Timmons FINA
Tomball Station No. 20
Triangle Grocery Station
*Turner's Thriftyman
United Welding Spec.
Walker's FINA

*We do not have current addresses for these customers and hereby solicit this information.

[FR Doc. 87-20225 Filed 9-1-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3255-7]

Fuels and Fuel Additives; Waiver Application Submitted by AM Laboratories, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On July 23, 1987, AM Laboratories, Inc., submitted an application for a waiver of the prohibition against introduction into commerce of certain fuels and fuel additives set forth in section 211(f) of the Clean Air Act ("Act"). This application seeks a waiver for a gasoline-alcohol fuel, referred to as AM 5/5, containing methanol in combination with cosolvent alcohol(s) and a proprietary corrosion inhibitor. The Administrator of EPA has until January 19, 1988 (180 days from the date of receipt of the application) to grant or deny this application. If not denied by that date, it will be deemed to be granted, under section 211(f)(4).

DATE: Comments should be submitted on or before October 19, 1987.

ADDRESS: Copies of the information relative to this application are available for inspection in public docket EN-87-05 at the Central Docket Section (LE-131) of the EPA, Washington Information Center, Conference Room 4, 401 M Street SW., Washington, DC 20460, (202)382-7548, between the hours of 8:00 a.m. and 4:00 p.m. Any comments from interested parties should be addressed to this docket with a copy forwarded to Richard G. Kozlowski, Director, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202)475-8841.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 46 FR 38528 (July 28, 1981).

Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application (in this case by January 19, 1988), the statute provides that the waiver shall be treated as granted.

AM Laboratories, Inc. is requesting that EPA grant a waiver for introduction into commerce of a gasoline-alcohol fuel blend, referred to as AM 5/5, such that the resultant fuel is composed of a maximum of 4.40 weight percent fuel oxygen, a maximum of 5 volume percent methanol, a minimum of 5 volume percent cosolvents and specified amounts of any corrosion inhibitor currently or subsequently approved by EPA pursuant to the waiver granted to E.I. DuPont de Nemours and Company, Inc. (DuPont), at 51 FR 39800 (October 31, 1986). These corrosion inhibitors currently include: 41.3 mg/l DuPont DGOI-100, 42.7 mg/l Petrolite TOLAD MFA-10, or 31.4 mg/l DuPont DMA-67. The cosolvents are any one or a mixture of ethanol, propanols, or butanols, including gasoline-grade tertiary butanol. With the exception of a higher oxygen content and a higher minimum cosolvent level, AM 5/5 must meet the same conditions to which the DuPont blend is subject: The gasoline-alcohol fuel must conform with the requirements of ASTM D439-83 Standard Specifications for Automotive Gasoline for the season and area in which it is sold, with the qualification that Test Method D323 for the Reid Vapor Pressure will be replaced by the test method attached to the EPA's January 10, 1985, DuPont waiver decision. The fuel must also meet the phase separation

and purity specifications set forth in the DuPont decision and the fuel manufacturer must take all reasonable precautions to ensure that the finished fuel is not used as a base gasoline to which other oxygenated materials are added.

EPA invites comments on whether the Administrator should grant or deny this waiver application.

Dated: August 26, 1987.

W. Ray Cunningham,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 87-20131 Filed 9-1-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3255-6]

Fuels and Fuel Additives; Waiver Application Submitted by Texas Methanol Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 7, 1987, the Texas Methanol Corporation submitted an application for a waiver of the prohibition of the introduction into commerce of certain fuels and fuel additives set forth in section 211(f) of the Clean Air Act ("Act"). This application seeks a waiver for a gasoline-alcohol fuel, referred to as OCTAMIX, containing methanol in combination with cosolvent alcohol(s) and a proprietary corrosion inhibitor. The Administrator of EPA has until February 3, 1988 (180 days from the date of receipt of the application) to grant or deny this application. If not denied by that date, it will be deemed to be granted, under section 211(f)(4).

DATE: Comments should be submitted on or before October 19, 1987.

ADDRESS: Copies of the information relative to this application are available for inspection in public docket EN-87-06 at the Central Docket Section (LE-131) of the EPA, Washington Information Center, Conference Room 4, 401 M Street SW., Washington, DC 20460, (202)382-7548, between the hours of 8:00 a.m. and 4:00 p.m. Any comments from interested parties should be addresssed to this docket with a copy forwarded to Richard G. Kozlowski, Director, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 475-8841.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 46 FR 38528 (July 28, 1981).

Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application (in this case by February 3, 1988), the statute provides that the waiver shall be treated as granted.

The Texas Methanol Corporation is requesting that EPA grant a waiver for the introduction into commerce of a gasoline-alcohol fuel blend, referred to as OCTAMIX, such that the resultant fuel is composed of a maximum of 3.7 weight percent fuel oxygen, a maximum of 5 volume percent methanol, a minimum of 2.5 volume percent cosolvents and 42.7 mg/l of Petrolite TOLAD MFA-10 corrosion inhibitor or an appropriate concentration of other corrosion inhibitor such that the fuel will pass the National Association of Corrosion Engineers' test TM-01-72 (NACE Rust Test). The cosolvents are any one or a mixture of ethanol, propanols, butanols, pentanols, hexanols, heptanols and octanols within the following contraints: The ethanol, propanols and butanols or mixtures thereof must compose a minimum of 60 weight percent of the cosolvent mix whereas a maximum limit of 40 weight percent of the cosolvent mix is placed on the pentanols, hexanols, heptanols and octanols or mixtures thereof. Furthermore, the heptanols and octanols are limited to a maximum 5 weight percent of the higher molecular weight alcohol mix (pentanols, hexanols, heptanols and octanols). With the exception of the allowance for higher alcohols (C5 through C8) in the cosolvent mix, the allowance for any corrosion inhibitor which would pass the NACE Rust Test, and the allowance for 2 volume percent methyl tertiary butyl ether (MTBE) in the base fuel if present as a result of unintentional commingling during transport or storage. OCTAMIX must meet the same conditions specified in the waiver granted to E.I. DuPont de Nemours and Company, Inc. (DuPont), at 51 FR 39800: The gasoline-alcohol fuel must conform with the requirements of ASTM D439-85a (DuPont designated ASTM D439-83) Standard Specifications for Automotive Gasoline for the season and area in which it is sold, with the qualification that Test Method D323 for Reid Vapor Pressure will be replaced by the "dry" test method described in ASTM D-2 Proposal P-176, Proposed Specification for Automotive Spark Ignition Fuel, Annex A.3, or by automatic apparatus as described in Annex A.4. The fuel is limited to a maximum 3.7 weight percent oxygen. The fuel must meet the phase separation requirements set forth in ASTM D-2 Proposal P-176, Table 4 using the test method for water tolerance contained in Annex A.5. The alcohol purity specifications are the same as those specified in the DuPont decision. In addition, the manufacturer must take all reasonable precautions to ensure that the finished fuel is not used as a bas" gasoline to which other oxygenated materials are added.

EPA invites comments on whether the Administrator should grant or deny this waiver application.

Dated: August 26, 1987.

W. Ray Cunningham,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 87-20132 Filed 9-1-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3255-5]

California Marine Sanitation Device Standard for One Embayment Within the State

On May 26, 1987, (52 FR 19572 notice was published that the State of California has petitioned the Assistant Administrator for Water, U.S. Environmental Protection Agency (EPA), to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are

reasonably available for the waters of Richardson Bay, an embayment in the northern portion of San Francisco Bay. The waters of Richardson Bay covered by this petition are defined as that portion of Richardson Bay bounded by the shore and by a line bearing 257 degrees from north from Peninsula Point to the shore at Sausalito. The petition was filed pursuant to section 312(f)(3) of Pub. L. 92–500, as amended by Pub. L. 95–217.

Section 312(f)(3) states:

> After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adqequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to EPA by the State of California certified that there are six pumpout facilities available to service vessels in Richardson Bay. These facilities are located on the Bay's western shore. The pumpout facilities discharge directly to the Sausalito-Marin City Sanitary District's sewage treatment facility. The State has provided information on the location, the service hours, per pumpout, and the maximum draft of each facility. This information was updated by EPA, Region 9, on July 21, 1987, and is provided below.

(1) Kappas Yacht Harbor—Located just outside the city limits of Sausalito, at the end of Gate Six Road.
—One pumpout facility
—Available seven days a week, 24 hours a day
—Cost per pumpout: $1.00
—Can accept vessels with a draft of up to seven feet

(2) Clipper Yacht Harbor—located on the fuel dock in Clipper Basin No. 2 near the end of Harbor Drive in Sausalito.
—One pumpout facility
—Available seven days a week, 24 hours a day
—Cost per pumpout: Free
—Can accept vessels with a draft of up to 10 feet

(3) Marina Plaza—located in Sausalito, off the foot of Testa Street.
—One pumpout facility
—Available seven days a week, 24 hours a day
—Cost per pumpout: Free
—Can accept vessels with a draft of up to 10 feet

(4) Pelican Yacht Harbor—located in Sausalito, near the foot of Johnson Street.
—One pumpout facility for tenants
—Available seven days a week, 9:00 A.M. to 5:00 P.M.
—Cost per pumpout: Free
—Can accept vessels with a draft of up to 10 feet

(5) Sausalito Yacht Harbor—located in Sausalito, alongside Bay Street.
—Two pumpout facilities
—Available by appointment
—Cost per pumpout: Free to marina tenants, or for those vessel owners who can operate the facility without assistance. Vessel owners who require assistance in the use of the facility are charged at a rate of $45.00 per hour for the time of the marina personnel.

EPA received seven letters, one from each of the seven commenters, on the merits of the petition. These were all submitted prior to the deadline for eceipt of comments; June 25, 1987. The San Francisco Bay Conservation and Development Commission (BCDC), a State agency, was in favor of EPA granting the petition. The other six commenters were opposed to EPA granting the petition. They included three boating organizations, one engineering firm, and an individual.

Six commenters stated their belief that pumpout facilities are inadequate to accomodate a no-discharge zone in Richardson Bay. They were concerned with excessive fees, inconvenient schedules, mechanical problems, and general inaccessibility of the pumpout facilities; and that these problems resulted in a substantial reduction in pumpout facility availability. EPA disagrees with these commenters. The information on the six facilities, as presented above, indicates that there will be an adequate number of pumpout facilities to accomodate a no-discharge zone for Richardson Bay, given the number of berths in the bay.

The State of California certified that there are presently 1852 recreational vessel berths in Richardson Bay; two to six percent of which are occupied as permanent residences. The State further certified that 550 houseboats are berthed in the embayment, 50 of which are yet to be connected to sewers; and that approximately 120 recreational vessels anchor there during the summer months.

Richardson Bay has a ratio of approximately 310 vessel berths to one pumpout facility. This compares favorably with the berth to pumpout facility ratios in two other California no-discharge zones. The ratios are 600 berths per pumpout facility for the Oxnard-Channel Islands Harbor no-discharge zone, and 709 berths per pumpout facility for the San Diego no-discharge zone. Utilizing conservative assumptions, the staff of the San Francisco Regional Water Quality Control Board (Regional Board) revealed that the average pumpout time at the six identified pumpout facilities varied from three to fifteen minutes, depending primarily on the tank size and the pumping rate. The State of California also certified that the pumpout facility operators indicated that there was typically no problem in meeting the demand for service.

The State's BCDC has issued permits to the marinas in Richardson Bay. The conditions vary from permit to permit, but each of the six harbors discussed above are required to operate a pumpout facility. There have been problems with the availability of pumpout facilities in Richardson Bay in the past. The BCDC is currently working to ensure that these facilities are in full compliance with their permits, in order to maximize accessibility. Harbors that do not comply with their permits are subject to enforcement by the BCDC.

Two commenters expressed their concern that the volume of flow from the marine sanitation devices (MSD), and the loading of chemicals from Type III MSDs (e.g., formaldehyde), would adversely affect the local sewage treatment facilities. The Sausalito-Marin City Sanitary District receives all of the sewage from these six pumpout facilities. The District has not attributed any of their difficulties to the pumpout facilities' flows or chemical loads.

The majority of MSDs in current use on recreational vessels are Type III MSDs. Though some vessels are likely to switch from Type I or Type II MSDs to Type III MSDs, the change is not expected to significantly increase the flow from the pumpout stations to the sewage treatment facilities. Since the Sausalito-Marin City Sanitary District has not attributed any of its past difficulties to the flow or chemical load from the pumpout facilities, and since the flow is not expected to significantly increase from the present level, the sewage treatment facility should not experience any adverse effects from the pumpout facilities' discharges.

The commenters addressed other issues. These did not pertain directly to the State's petition that an adequate number of facilities were available which could remove and treat sewage from vessels in Richardson Bay, in a safe and sanitary manner. One commenter stated his belief that, "the primary purpose" of creating a no-discharge zone is to obtain improved control over unsewered houseboats in

Richardson Bay. This comment does not address the State's petition.

Three commenters felt that creating a no-discharge zone in Richardson Bay would, in effect, penalize and exclude vessels with Type I and II MSDs from the embayment. Two commenters were concerned that the creation of the zone would render costly Type I and II MSDs obsolete, and would require vessel owners to expend more capital to install, maintain, and pump out Type III MSDs. These comments address the effects of the creation of no-discharge zones, in general. They do not pertain to the availability of pumpout facilities in Richardson Bay.

Five commenters disagreed with various aspects of the Regional Board's study. They stated that the study did not indicate that the recreational vessels contributed significantly to the embayment's pollution. These commenters expressed their view that such a conclusion could not be reached without in depth studies of the character and volume of pollution from the embayment's bird sanctuary and houseboats. Two commenters felt that the study's results were inconclusive since the data were collected at a time when there were no operational pumpout facilities in Richardson Bay. These comments address the conclusions of the Regional Board's study, and not the availability of pumpout facilities.

Following an examination of the State's petition, and the comments received prior to the closing date of June 25, 1987, EPA has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Richardson Bay. This determination is made pursuant to section 312(f)(3) of the Pub. L 92–500.

Dated: August 11, 1987.

Judith E. Ayres,

Regional Administrator, Region 9.

[FR Doc. 87–20133 Filed 9–1–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3254–7]

Superfund Program; De Minimis Contributor Settlements

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment; extension of comment period.

SUMMARY: The Agency is today extending the 60-day public comment period on the Interim Guidance on Settlements with *De Minimis* Waste Contributors under section 122(g) of SARA by 30 days. The interim guidance was published on June 30, 1987, at 52 FR 24333. In accordance with this extension, comments are due by September 30, 1987.

DATE: Comments must be provided on or before September 30, 1987.

ADDRESS: Comments should be addressed to Janice Linett, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, LE–134S, 401 M Street SW., Washington, DC 20460, (202) 382–3077.

FOR FURTHER INFORMATION CONTACT: Janice Linett, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, LE–134S, 401 M Street SW., Washington, DC 20460, (202) 382–3077.

Date: August 26, 1987.

Edward E. Reich,

Associate Enforcement Counsel for Waste.

[FR Doc. 87–20129 Filed 9–1–87; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before October 19, 1987. If you anticipate commenting on a report form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Liaison Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance, (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Liaison Officer and the OMB Reviewers.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Liaison Officer: Margaret P. Ulmer, Resource Management Division, Financial and Resource Management Services, Room 386, 2401 E. Street, NW., Washington, DC, 20507; Telephone (202) 634–1932

OMB Reviewer: Joseph Lackey, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washigton, DC, 20503; Telephone (202) 395–6880

Type of request: Extension (No change)

Title: Employer Information Report EEO–1

Form number: Standard Form 100

Frequency of report: Annually

Type of respondent: Private employers with 100 or more employees and certain Federal government contractors with 50 or more employees

Standard Industrial Classification (SIC) Code: Multiple

Description of affected public: IND/HHID and Farms and Businesses/INST

Responses: 126,700

Reporting hours: 558,500

Federal cost: $542,500

Applicable under section 3504(h) of Pub. L. 96–511: Not applicable

Number of forms: 1

Abstract-needs/users: EEO–1 data are used by EEOC to investigate charges of discrimination against employers in private industry. Data are shared with several Federal government agencies, particularly the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor. Under section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data are also shared with approximately 127 State and local FEPC agencies.

For the Commission.

John Seal,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 87–20124 Filed 9–1–87; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1674]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

August 25, 1987

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47

CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 73 of the Commission's Rules Concerning Equal Opportunity in the Broadcast Radio and Television Services. (MM Docket No. 85–350) Number of petitions received: 1

Subject: Regulation of Small Telephone Companies. (CC Docket No. 86–467) Number of petitions received: 6.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–20187 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; San Jacinto Broadcasting, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM Docket No.
A. Mildred Baptist, Gerald M. Hale, Morris Courtright, Jr. d/b/a San Jacinto Broadcasting; Salinas, CA.	BPH–860911MB	87–338
B. Salinas Broadcasting LP, a California Limited Partnership; Salinas, CA.	BPH–860917MC	
C. Artichoke Broadcasting Corporation; Salinas, CA	BPH–860917MG	
D. Gary T. Rodriguez; Salinas, CA.	BPH–860918MH	
E. B F.J. Timm, Salinas, CA	BPH–860918MI	
F. FM Salinas Limited Partnership, Salinas, CA.	BPH–860918MJ	
G. P&R Communication Partnership, Salinas, CA.	BPH–860918MN	
H. Franklin D. Graham; Salinas, CA.	BPH–860918MP	
I. Rose T. Casalan; Salinas, CA.	BPH–860918ND	
J. Lisa Ann Wayne; Salinas, CA.	BPH–860918NI	
K. Southern California Broadcasting Company; Salinas, CA.	BPH–860918NO	
L. Crystal Communications, Inc.; Salinas, CA.	BPH–860918NZ	
M. Innovative Broadcastings, Inc.; Salinas, CA.	BPH–860918OE	
N. Julio A. Villamil, Maria Elena Villamil, Lawrence M. Wrathall and Mayereh E. Wrathall, d/b/a Villamil FM Radio; Salinas, CA.	BPH–860918OL	
O. California Community Television Network, Salinas, CA.	BPH–86091800	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B,C,D,E,F,G,H,I,J,M,O
2. Comparative, ALL
3. Ultimate; ALL

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–20188 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

Radio Advisory Committee Meeting

The next meeting of the Advisory Committee on Radio Broadcasting will be held at 1:30 p.m., Thursday, October 1, 1987, at the McCollough Room, National Association of Broadcasters, 1771 N Street, NW., Washington, DC.

The Committee will consider:

— Possible improvements to service on the AM band through revisions to the technical AM Broadcast Rules;
— Preparation for the Second Session of the Region 2 Administrative Radio Conference concerning expansion of the AM band;
— International matters affecting radio broadcasting; and
— Other Business.

The meetings of the Committee are public, and are open for participation by all interested persons. The meeting scheduled for October 1, 1987 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information, please contact the Committee Chairman, Mr. Larry Eads, at FCC Headquarters. His telephone number is (202) 632–6485.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–20186 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; The Scindia Steam Navigation Co., Ltd., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007690–021
Title: The India, Pakistan, Bangladesh, Ceylon, & Burma Outward Freight Conference
Parties: The Scindia Steam Navigation Co., Ltd.; The Shipping Corporation of India, Ltd.; Waterman Isthmian Line
Synopsis: The proposed amendment would permit the parties to exercise independent action on the level of compensation paid to on ocean freight forwarder who is also a customs broker upon not more than ten days' written notice.

Agreement No.: 202–010636–023
Title: U.S. Atlantic-North Europe Conference
Parties: Atlantic Container Line, B.V.; Dart-ML Limited; Hapag-Lloyd AG; Sea-Land Service, Inc.; Gulf Container Line (GCL), B.V.; Trans Freight Lines; Compagnie Generale Maritime (CGM); Nedlloyd Lijnen, B.V.
Synopsis: The proposed amendment would delete Southampton and Greenock from the list of United Kingdom ports served under the agreement's alternate port service provisions.

Agreement No.: 202–010987–003
Title: United States/Central America Liner Agreement
Parties: Crowley Caribbean Transport, Inc.; Sea-Land Service, Inc.; Seaboard Marine Ltd.
Synopsis: The proposed amendment would permit the parties to exercise independent action on the level of compensation paid to on ocean freight

forwarder who is also a customs broker.

By Order of the Federal Maritime Commission.

Dated: August 28, 1987.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 87-20192 Filed 9-1-87; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Gulfstream Line, Inc., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010876-002

Title: Port of Palm Beach Terminal Lease Agreement

Parties: Port of Palm Beach District (Landlord) Gulfstream Line, Inc. (Tenant)

Synopsis: The proposed agreement modifies the provisions of the basic lease to reflect the terms and conditions upon which the landlord shall regain possession of certain warehouse and open area, and other changes in the lease.

Agreement No.: 224-200028

Title: Kodiak Terminal Agreement

Parties: City of Kodiak American President Lines (APL)

Synopsis: The proposed agreement provides for a five year lease to APL of 66,200 square feet of space at the Port of Kodiak for the storage of chassis, containers and tractors.

Agreement No.: 224-200027

Title: Port of Pascagoula Terminal Lease Agreement

Parties: The Jackson Country Port Authority (County) Ryan-Walsh Stevedoring Company, Inc. (Lessee)

Synopsis: The proposed agreement provides that the County leases to Lessee, both real and personal property, Terminals E and F in the Port of Pascagoula, Mississippi. The initial term of the agreement shall be for 4 years and shall commence 3 days after delivery to Lessee by County of written otice of effectiveness pursuant to Federal Maritime Commission rules.

Dated: August 28, 1987.

Tony Kominoth,

Assistant Secretary.

[FR Doc. 87-20193 Filed 9-1-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 26, 1987.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

For further information contact:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report title:* Agreement of Domestic and Foreign Nonmember Banks.

Agency form number: FR T-1, T-2.

OMB Docket number: 7100-0191.

Frequency: On occasion.

Reporters: Domestic and foreign nonmember banks.

Annual reporting hours: 8½.

Small businesses are not affected.

General description of report: This information collection is mandatory [15 U.S.C. 78h, w] and is not given confidential treatment.

This report is filed by nonmember banks, both domestic and foreign, which agree to comply with all statutes and regulations applicable to member banks relating to credit extended to broker-dealers on the collateral of registered securities.

2. *Report title:* Notice of Proposed Stock Redemption.

Agency form number: FR 4008.

OMB Docket number: 7100-0131.

Frequency: On occasion.

Reporters: Bank holding companies.

Annual reporting hours: 2,250.

Significant effect on small businesses is not expected.

General description of report: This information collection is mandatory [12 U.S.C. 1844] and is given confidential treatment [5 U.S.C. 552(b)(4), (6), and (8)].

The filing of this notice is required of a bank holding company proposing to purchase or redeem its shares when the gross consideration to be paid for such purchase or redemption is equal to 10 percent or more of the company's consolidated net worth over any 12-month period.

Board of Governors of the Federal Reserve System, August 26, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-20095 Filed 9-1-87; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of July 7, 1987

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on July 7, 1987.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests on balance that economic activity expanded at a moderate pace in the second quarter. In May and June, total nonfarm payroll employment rose modestly further, with most of the gains continuing to be in the service-producing sectors. The civilian unemployment rate fell to 6.1 percent in June and was down appreciably from its average level in the first quarter. Industrial production increased substantially in May after rising moderately on balance in earlier months of the year. Consumer spending appears to have increased in the second quarter, but housing starts were down somewhat further in May to a level considerably below their first-quarter average. Recent indicators of business capital spending point to some recovery, particularly in equipment outlays, from a depressed level in the first quarter. In April the merchandise trade deficit was smaller than in March and below the monthly average for the first quarter. The rise in

[1] Copies of the Record of policy actions of the Committee for the meeting of July 7, 1987, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

consumer and producer prices moderated in May but for the year to date prices have risen more rapidly than in 1986, primarily reflecting sizable increases in prices of energy and non-oil imports. Wage increases have remained relatively moderte in recent months.

M2 increased slightly in May and June while growth of M3 remained moderate. For 1987 through June, expansion of M2 has been below the lower end of the range established by the Committee for the year, and growth of M3 around the lower end of its range. Following a surge in April, M1 contracted on balance in May and June. Expansion in total domestic nonfinancial debt has moderated this year.

Most interest rates have declined somewhat on balance since the May 19 meeting of the Committee. In foreign exchange markets, the trade-weighted value of the dollar against the other G–10 currencies has risen on balance since the May meeting.

The Federal Open Market Committee seeks monetary and financial conditions that will foster reasonable price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee agreed at this meeting to reaffirm the ranges established in February for growth of 5½ to 8½ percent for both M2 and M3, measured from the fourth quarter of 1986 to the fourth quarter of 1987. The Committee agreed that growth in these aggregates around the lower ends of their ranges may be appropriate in light of developments with respect to velocity and signs of the potential for some strengthening in underlying inflationary pressures, provided that economic activity is expanding at an acceptable pace. The monitoring range for growth in total domestic nonfinancial debt set in February for the year was left unchanged at 8 to 11 percent.

For 1988, the Committee agreed on tentative ranges of monetary growth, measured from the fourth quarter of 1987 to the fourth quarter of 1988, of 5 to 8 percent for both M2 and M3. The Committee provisionally set the associated range for growth in total domestic nonfinancial debt at 7½ to 10½ percent.

With respect to M1, the Committee recognized that, based on experience, the behavior of that aggregate must be judged in the light of other evidence relating to economic activity and prices; fluctuations in M1 have become much more sensitive in recent years to changes in interest rates, among other factors. Because of this sensitivity, which has been reflected in a sharp slowing of the decline in M1 velocity over the first half of the year, the Committee again decided not to establish a specific target for growth in M1 over the remainder of 1987 and no tentative range has been set for 1988. The appropriateness of changes in M1 this year will continue to be evaluated in the light of the behavior of its velocity, developments in the economy and financial markets, and the nature of emerging price pressures. The Committee welcomes substantially slower growth of M1 in 1987 than in 1986 in the context of continuing economic expansion and some evidence of greater inflationary pressures. The Committee in reaching operational decisions over the balance of the year will take account of growth in M1 in the light of circumstances then prevailing. The issues involved with establishing a target for M1 will be carefully reappraised at the beginning of 1988.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Somewhat greater reserve restraint or somewhat lesser reserve restraint would be acceptable depending on indications of inflationary pressures and on developments in foreign exchange markets, as well as the behavior of the aggregates and the strength of the business expansion. This approach is expected to be consistent with growth in M2 and M3 over the period from June through September at annual rates and around 5 and 7½ percent, respectively. Growth in M1, while picking up from recent levels, is expected to remain well below its pace during 1986. The Chairman may call for Committee consultation if its appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 4 to 8 percent.

By order of the Federal Open Market Committee, August 27, 1987.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 87–20212 Filed 9–1–87; 8:45 am]

BILLING CODE 6210–01–M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Anderson Brothers Bancshares, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulations Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 25, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Anderson Brothers Bancshares, Inc.*, Mullins, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Anderson Brothers Bank, Mullins, South Carolina.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *CBTC Holding Company, Inc.*, Paris, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial Holding Company, Inc., Paris, Tennessee, and thereby indirectly acquire Commercial Bank and Trust Company, Paris, Tennessee.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *FIH, L.P. and FIH, Inc.*, Beverly Hills, California; to become a bank holding company by acquiring 50.1 percent of the voting shares of First Interstate of Hawaii, Inc., Honolulu, Hawaii, and thereby indirectly acquire First Interstate Bank of Hawaii, Honolulu, Hawaii.

Board of Governors of the Federal Reserve System, August 27, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–20096 Filed 9–1–87; 8:45 am]

BILLING CODE 6210–01–M

BEST COPY AVAILABLE

Acquisition of Shares of Banks or Bank Holding Companies; R. Huston Babcock

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 16, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *R. Huston Babcock, M.D., P.A.*, St. Petersburg, Florida; to acquire 10.53 percent of the voting shares of US Bancorp, Inc., St. Petersburg, Florida, and thereby indirectly acquire United Southern Bank, St. Petersburg, Florida.

Board of Governors of the Federal Reserve System, August 26, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-20097 Filed 9-1-87; 8:45 am]

BILLING CODE 6210-01-M

Applications To Engage de Novo in Permissible Nonbanking Activities; BAII Holdings S.A., et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 15, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *BAII Holdings S.A.*, Luxembourg; B.A.I.I. Finance Company N.V., Curacao, Netherlands Antilles; Compagnie Arabe et Internationale d'Investissement (Nederland) B.V., Amsterdam, The Netherlands; and Banque Arabe et Internationale d'Investissement, Paris, France; to engage *de novo* through their subsidiary, Sheppards Overseas, Inc., New York, New York, in providing securities brokerage services, related securities credit activities pursuant to the Board's Regulation T and permitted incidental activities; such securities brokerage services will be restricted to buying and selling securities solely as agent for the account of customers and will not include securities underwriting or dealing or investment advice or research services pursuant to § 225.25(b)915) of the Board's Regulation Y. These activities will be conducted through the United States, the Bahamas, Bahrain, France, Hong Kong, Luxembourg and the United Kingdom.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Franklin Financial Services Corporation*, Chambersburg, Pennsylvania; to engage *de novo* through its subsidiary, Franklin Founders Life Insurance Company, Phoenix, Arizona, and thereby engage in the reinsurance of credit life, and accident and health insurance issued in connection with extensions of credit made by Applicant's bank holding company system pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. This activity will be conducted in South Central Pennsylvania. Comments on this application must be received by September 24, 1987.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *County Financial Corporation*, North Miami Beach, Florida; to engage *de novo* in a joint venture with North American Financial Services of Southeast Florida, Inc., North Miami Beach, Florida, in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in Dade, Broward and Palm Beach Counties, Florida.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Midwest Financial Group, Inc.*, Peoria, Illinois; to engage *de novo* in acquiring and servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted in the State of Illinois.

Board of Governors of the Federal Reserve System, August 26, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-20098 Filed 9-1-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; BCB Financial Services Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a

written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 21, 1987.

A. **Federal Reserve Bank of Philadelphia,** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *BCB Financial Services Corporation,* Reading, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Berks County Bank, Reading, Pennsylvania, a *de novo* bank.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *The Colonial BancGroup, Inc.,* Montgomery, Alabama; to merge with Liberty Holding Company, Pensacola, Florida, and thereby indirectly acquire Liberty Bank, formerly Liberty Bank of Cantonment, Pensacola, Florida. Comments on this application must be received by September 16, 1987.

2. *The Colonial BancGroup, Inc.,* Montgomery, Alabama; to merge with CB&T Bancshares, Inc., Hartselle, Alabama, and thereby indirectly acquire Community Bank and Trust, Hartselle, Alabama. Comments on this application must be received by September 16, 1987.

3. *CNB, Inc.,* Lake City, Florida; to acquire 100 percent of the voting shares of Citizens Bank of Live Oak, Live Oak, Florida, a *de novo* bank.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Kingsbury Bank Holding Company,* DeSmet, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank of DeSmet, DeSmet, South Dakota. Comments on this application must be received by September 25, 1987.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National Holding Company, Inc.,* Fullerton, Nebraska; to become a bank holding company by acquiring 80.6 percent of the voting shares of First National Bank and Trust Company, Fullerton, Nebraska.

Board of Governors of the Federal Reserve System, August 26, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-20099 Filed 9-1-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 21, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Bank South Corporation,* Atlanta, Georgia; to acquire First Financial Realty Service, Corp., Conyers, Georgia, and thereby enagage in originating mortgage and other loans for sale in the secondary market pursuant to § 225.25(b)(l)(iii) of the Board's Regulation Y. Comments on this application must be received by September 14, 1987.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First State Agency of Lake Lillian, Inc.,* Lake Lillian, Minnesota; to acquire Harold Olson Agency, Lake Lillian, Minnesota, and thereby engage in general insurance activities in a town of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Lake Lillian, Minnesota.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Union Bancorp,* Los Angeles, California; Standard Chartered Holdings, Inc., Los Angeles, California, and Standard Chartered Overseas Holdings Limited, Standard Chartered Bank, and Standard Chartered PLC, all in London, England; to retain control of the voting securities of United Security Corporation, a wholly-owned subsidiary of United Bank of Arizona, Phoenix, Arizona, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y. Union Security Corporation is licensed by the Arizona Department of Insurance and is authorized to sell a full range of life and casualty and disability insurance. United Security historically has offered a variety of coverages related to extensions of credit, including credit-life and accident and health insurance, and collateral protection through Vendor's Single Interest ("VSI"), Lender's Security Program ("LSP"), and Real Estate Owned ("REO") master policies. As a general insurance agency, United Security also offered its individual and commercial customers insurance unrelated to extensions of credit, including life, accident and health, disability, property, casualty, surety, automobile and marine transportation, workers' compensation, products liability, and general liability insurance. In addition, United Security has offered other products, including single and flexible premium tax-deferred annuities, interest-sensitive life insurance, and single premium whole life insurance.

Board of Governors of the Federal Reserve System, August 26, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87-20100 Filed 9-1-87; 8:45 am]
BILLING CODE 6210-01-M

Applications To Engage de Novo in Permissible Nonbanking Activities; First Midwest Bancorp, Inc., et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Midwest Bancorp, Inc.*, Naperville, Illinois; to engage *de novo* through its subsidiary, First Midwest Insurance Company, Naperville, Illinois, in acting as principal agent or broker for insurance that is directly related to the extensions of credit pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Western Bancorporation, Inc.*, La Jara, Colorado; to engage *de novo* in acting as agent for the sale of general insurance from offices of bank subsidiaries located in a community of less than 5,000 persons pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in the southern half of Costilla and northern half of Conejos counties in Colorado.

Board of Governors of the Federal Reserve System, August 27, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87-20101 Filed 9-7-87; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; New System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Aftercare Evaluation System (AES)," HHS/HCFA/ORD NO. 09-70-0035. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice. Please note, however, that comments with respect to "routine uses" must be received by October 2, 1987.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on August 27, 1987. In addition, HCFA has requested a waiver of the OMB requirement for this notice to remain in the **Federal Register** for a total of 60 days. If granted, the new system of records, including routine uses, will become effective September 28, 1987 unless HCFA receives comments which would convince us to make a contrary determination.

ADDRESS: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G-A-1, East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Lawrence Kucken, Division of Beneficiary Studies, Office of Research and Demonstrations, Health Care Financing Administration, Room 2C-14, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone 301-597-6148.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new sytem of records and to collect data under the authority of sections 9305(i), 9305(c), 9305(h), and 9313(d) of the Omnibus Budget Reconciliation Act (Pub. L. 99-509) which mandates that: "The Secretary of Health and Human Services shall: (1) Include information on the quality of post-hospital care in the annual reports to Congress on the Propsective Payment System, (2) develop guidelines and standards for discharge planning, (3) develop a uniform needs assessment instrument (or instruments) to be used by discharge planners and other health care providers to evaluate an individual's need for post-hospital extended care services, home health services, the long-term care services of a health-related or supportive nature, and (4) design a strategy for reviewing and assuring the quality of care for which payment is made under Medicare.

The Privacy Act permits us to disclose information without consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information. The proposed routine uses in the new system meet the compatibility criteria, since the information is collected for addressing the issues of assessing the adequacy of care receipt and linking adverse outcomes with inadequate care. We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: August 25, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-0035

SYSTEM NAME:

Aftercare Evaluation System (AES).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207, (Contact system manager for location of Magnetic Computerized records). Contractor (see Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare Beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information concerning a patient's name, Health Insurance Claim number, medical diagnosis, conditions, diagnoses and procedures, functional impairments, social and demographic problems in the receipt of services, services (e.g., physical therapy, nursing, meals or wheels), living arrangement (e.g., living alone, with family), and outcomes of aftercare.

AUTHORITY OF MAINTENANCE OF THE SYSTEM:

Sections 9305(c), 9305(h), 9305(i), and 9313(d) of Pub. L. 99–509.

PURPOSE OF THE SYSTEM:

To assess the adequacy of the amount of care received, and linking adverse outcomes with inadequate care. To evaluate the methodology to assess the risk of inadequate services and adverse outcomes. To describe the problems of receipt of care. To develop preliminary estimate of the incident of high risk patients and incident of receipt of inadequate services and adverse outcomes for use and development of the national sample design.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made to:

(1) A contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

(2) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

(3) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(4) To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

(a) Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained.

(b) Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit or

(d) When required by law.

(d) Secures a written statement attesting to the information and recipient's understanding of and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic media.

RETRIEVABILITY:

Records are retrieved by the Health Insurance Claim Number.

SAFEGUARDS:

a. Authorized Users: Only agency employees and contractor personnel whose duties require the use of information in the system. In addition, such agency employees and contractor personnel are adivsed that the information is confidential and of criminal sanctions for unauthorized disclosure of information.

b. Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is included in contracts related to this system.

d. Implementation Guidelines: Safeguards are implemented in accordance with all guidelines required

by the Department of Health and Human Services. Safeguards for automated records have been established in accordance with the Department of HHS' automated Data Processing Manual, Part 6, "ADP System Security."

RETENTION AND DISPOSAL:

Records are retained for 5 years after the last action on the record.

SYSTEM MANAGER(S) AND ADDRESS:

Director, ORD, Health Care Financing Administration, Room 300 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

Inquiries and requests for system records should be addressed to the system manager at the address above. The requestor must specify the Health Insurance Claim Number.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. (These procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e. g., why it is inaccurate, irrelevent, incomplete or not current). (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

HCFA obtains the identifying information in this system from the hospital records of which some will be verified by beneficiaries. In addition to these hospital records other information will be obtained from interview with the patients and caregivers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

Cyrus Baghelia, System Sciences, Inc., 4330 East-West Highway, Suite 1117, Bethesda, Maryland 20814

George Carcagno, Interprise Business Center, Mathematica Policy Research, 101 Morgan Lane, Plainsboro, New Jersey 08536.

[FR Doc. 87-20092 Filed 9-1-87; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Program Announcement for Cooperative Agreements for Area Health Education Center Programs

The Health Resources and Services Administration announces that applications are now being accepted for Fiscal Year 1988 Cooperative Agreements for Area Health Education Center (AHEC) Programs under the authority of section 781(a)(1) of the Public Health Service Act, as amended by Pub. L. 99–129.

The Administration's budget request for Fiscal Year 1988 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that cooperative agreements can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

Section 781(a)(1) authorizes Federal assistance to medical and osteopathic schools which have cooperative arrangements with or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs. New applications submitted under this authority will be accepted from medical and osteopathic schools for the purpose of planning, developing and operating new area health education center programs. Applicants may request up to three years of support with the expectation that centers planned and developed in years one and two would be operational no later than the third year.

To be eligible to receive support for an area health education center cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or ostepathy, or consortium of such schools, or the parent institution on behalf of such school(s).

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR Part 57, Subpart MM.

Personnel of the Bureau of Health Professions have substantial programmatic involvement with the planning, developing, and administering of the AHEC projects by:

1. Reviewing and approving plans, upon which continuation of the cooperative agreement is contingent, to permit appropriate direction and redirection of activities.

2. Reviewing all contracts and agreements among recipient medical or osteopathic schools, other health professions schools and community-based centers.

3. Participating with project staff in the development of funding projections.

4. Developing with project staff individual project data collection systems and procedures.

5. Participating with project staff in the design of project evaluation protocols and methodologies.

Section 781(e)(2) of the Act requires that not more than 75 percent of total operating funds of a program in any year shall be provided by the Secretary.

In making awards for Fiscal Year 1988, the following funding preferences are established:

(1) Competing continuation applications

(2) New applications for planning and development projects under section 781(a)(1), and

(3) Supplements to existing awards.

Additional Funding Preferences

Additional funding preferences will be given to:

(1) Applications proposing Centers that serve health manpower shortage areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks and/or Hispanics; or low-income individuals.

An individual will be deemed to be of "low income" if that individual comes from a family with an annual income below a level based on low income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The following income figures determine what constitutes a low income family for purposes of the Area Health Education Centers Program for Fiscal Year 1988.

Size of family [1]	Income level [2]
1	$7,400
2	9,500
3	11,400
4	14,500
5	17,200
6 or more	19,300

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1986, rounded to $100

An application will be evaluated with respect to other approved applications to determine whether it has a "greater proportion" of the stated minority individuals.

(2) Applications proposing Centers located in primary care health manpower shortage areas designated under section 332 of the Public Health Service Act.

Requests for application materials and questions regarding grants policy should be directed to:

Grants Management Officer (U–76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857,Telephone: (301) 443–6857.

Questions regarding programmatic information should be directed to:

Division of Medicine, Area Health Education Center Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6950.

The standard application form PHS 6025–I HRSA Competing Training Grant Application, general instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The application deadline date is November 13, 1987. Applications will be considered as meeting the deadline if they are either;

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.824 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: July 31, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 87–20102 Filed 9–1–87; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Disability Advisory Council; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting; correction.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), this notice announces the schedule, proposed agenda, and a change of location of a forthcoming meeting of the Disability Advisory Council (the Council). The Council published a notice of meetings in the **Federal Register** on December 24, 1986 at 51 FR 46724. The notice announced the schedule of regular meetings to be held by the Council. The Council is changing the location of the meeting scheduled for September.

DATES:

September 16, 1987, 10:00 a.m. to 5:00 p.m.;

September 17, 1987, 9:00 a.m. to 5:00 p.m.;

September 18, 1987, 9:00 a.m. to 4:00 p.m.

ADDRESS: Williamsburg Hilton and National Conference Center, 50 Kingsmill Road, Williamsburg, Virginia 23185.

Agenda: Prepare and Review Report.

The Council may hold additional sessions during the evening of September 16 and/or 17, 1987. If the Council decides to hold these evening sessions, the Council will make the announcement during the regularly scheduled sessions.

FOR FURTHER INFORMATION CONTACT: Douglas Badger, Executive Director, Disability Advisory Council, P.O. Box 17064, Baltimore, Maryland 21203, (301) 965–4643.

SUPPLEMENTARY INFORMATION: The Council is established and governed by the provisions of section 12102 of Pub. L. 99–272. The Council is chaired by Dr. John E. Affeldt.

This meeting is open to the public to the extent that space is available. Anyone wishing to submit his or her views and/or questions for consideration by the Council should send them to the Executive Director of the Council at the address shown above.

A transcript of the Council meeting is available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Council.

Date: August 11, 1987.

W. Douglas Badger,

Executive Director, Disability Advisory Council.

[FR Doc. 87–20191 Filed 9–1–87; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–87–1716; FR–2386]

Comprehensive Homeless Assistance Plan; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Notice; correction.

SUMMARY: This document corrects and clarifies HUD's Comprehensive Homeless Assistance Plan Notice, published as Part XI of the August 14, 1987 edition of the **Federal Register** (52 FR 30628).

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telepehone (202) 755–7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: An August 14, 1987 **Federal Register** Notice entitled "Comprehensive Homeless Assistance Plan" informed the public that jurisdictions required to submit Comprehensive Homeless Assistance Plans as a prerequisite to the availability of assistance under several funding programs contained in the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987) had to submit their plans to HUD no later than September 28, 1987.

In the final paragraph in column one, page 30631 of the August 14, 1987 Notice, the September 28, 1987 deadline date for submissions was intended to have been repeated for clarity. Instead, a bracketed instruction to the printer, "[insert date 45 days after publication]", appeared in the published Notice.

The substance of the paragraph, with the appropriate submission deadline date included, is reprinted below:

"Comprehensive Homeless Assistance Plans must be forwarded to the responsible HUD Field Office, and be received or post-marked no later than September 28, 1987. The Department believes that this 45-day Plan preparation period is responsive both to the need to allow jurisdictions adequate time to prepare their Plans, and to the congressional concern evidenced throughout Title IV that amounts appropriated be made available to assist the homeless at the earliest possible time."

VOL 52 ISS 170 SE 2 1987 UMI

Dated: August 26, 1987.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 87-20115; Filed 9-1-87; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-050-07-4410-08]

Availability of Draft Environmental Assessment; Fiddler Butte Wilderness Study Area, Utah

AGENCY: Bureau of Land Management, Richfield, Utah, Interior.

ACTION: Notice of comment period for the proposed U.S. Geological Survey (USGS) Station Draft EA ending October 9, 1987.

SUMMARY: The EA analyzes the impacts of the proposed action and alternatives of the USGS placing water gaging and weather monitoring equipment adjacent to the Fiddler Butte WSA (UT-050-214).

The DRAFT EA is available at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701. For additional information contact Roy Edmonds, Environmental Coordinator, at the above address or call (810) 896-8221.

Donald L. Pendleton,

District Manager.

August 25, 1987.

[FR Doc. 87-20104 Filed 9-1-87; 8:45 am]

BILLING CODE 4410-DQ-M

[AA-620-4211-022-24-10]

Availability of Oil and Gas or Geothermal Lease Bond and Oil and Gas or Geothermal Exploration Bond Forms

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Form 3000-4, "Oil and Gas or Geothermal Lease Bond" and Form 3000-4a, "Oil and Gas or Geothermal exploration Bond".

SUMMARY: The subject forms, numbered 3000-4 and 3000-4a, replace Bureau of Land Management bond forms 3045-3, 3104-1, 3104-2, 3104-8, 3106-4, 3200-11, 3200-12, 3200-13, and 3200-16.

EFFECTIVE DATE: September 2, 1987.

ADDRESS: Bureau of Land Management State Offices, See 43 CFR 1821.2-1 for addresses.

FOR FURTHER INFORMATION CONTACT: Gloria J. Austin, Bureau of Land Management, Washington, DC 20240, (202) 653-2190.

SUPPLEMENTARY INFORMATION: To reduce the paperwork burden for the public who file separate Bureau of Land Management approved from for each type of required Federal onshore oil and gas or geothermal resources bond, new bond forms 3000-4 and 3000-4a have been developed to replace nine existing bond forms. The form being replaced are as follows:

3045-3 Oil and Gas Exploration Bond
3104-1 Bond of Oil and Gas Lessee
3104-2 Bond of Oil and Gas Lease Operator
3104-8 State, Nationwide or National Petroleum Reserve in Alaska Oil and Gas Bond
3106-4 Nationwide Personal Oil and Gas Lease Bond
3200-11 Geothermal Resources Exploration Bond
3200-12 General Geothermal Resources Lease Bond
3200-13 Bond of Geothermal Resources Lease Operator
3200-16 Nationwide-Statewide Geothermal Resources Lease Bond

Initially, a draft bond form was developed which combined bonding provisions for both geophysical exploration operations and lease operations. After considering comments received, two separate bond forms were designed, one for lease operations and one for geophysical exploration operations. Form 3000-4 may be used by those desiring either surety or personal bond coverage for individual oil and gas of geothermal lease operations, or operations in any one State or nationwide. The bond will provide coverage for the lessee, the operator, the designated operator or a unit operator. It should be noted that the second provision numbered "1" on the reverse of the form concerning the extension of coverage to assignees is applicable only for individual lease bonds including in NPR-A.

Form 3000-4a may be used by those desiring either surety or personal bond coverage for single oil and gas or geothermal geophysical exploration operations, or such geophysical exploration activities in a single State or nationwide.

All entities that are involved in Federal onshore oil and gas and geothermal resources operations are encouraged to obtain and use the new bond forms for all future bond requirements that may be needed to conduct such operations.

Both bond forms can be used by those individuals desiring bond coverage for the National Petroleum Reserve in Alaska. Copies of the new forms may be obtained from Bureau of Land Management State Offices (see 43 CFR 1821.2-1 for specific office locations). Those bonds currently maintained in any BLM office on any of the forms referenced above are still valid. Valid existing bonds do not require resubmission on the revised forms.

The two bond forms fall within the Office of Management and Budget "Certification Only" designation since the requested information is the minimum required to identify the specific transaction.

Dated: August 25, 1987.

Robert F. Burford,

Director, Bureau of Land Management.

[FR Doc. 87-20109 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-84-M

[ES-970-07-4111-11-2411; ES 20420A]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Mississippi

AGENCY: Bureau of Land Management, Interior.

ACTION: Reinstatement of Terminated Oil and Gas Lease ES 20420A.

SUMMARY: Terminated oil and gas lease ES 20420A located in Wayne County, Mississippi, T. 6 N., R. 9 W., containing 318.89 acres.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Beckham at (703) 274-0150.

SUPPLEMENTARY INFORMATION: Federal oil and gas lease ES 20420A terminated automatically by operation of law on June 1, 1987 (30 U.S.C. 188).

A petition for reinstatement of ES 20420A was filed by Kaneb Operating Company, Ltd. (Lessee) under section 31D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

The Lessee has met all the following requirements for reinstatement:

(a) $500, Reimbursement of Departmental Administrative Cost.

(b) $1,595, Back Rental Payments.

(c) $136, Publication Cost.

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5.00 per acre per year, and royalty increased to 16⅔ percent beginning June 1, 1987.

G. Curtis Jones, Jr.,

State Director

[FR Doc. 87-20143 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-GT-M

[AZ-040-07-4212-11; A 21630]

Realty Action, Recreation and Public Purposes Conveyance of Public Land in Graham County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, Recreation and Public Purposes conveyance of public land in Graham County, Arizona.

SUMMARY: The following lands have been examined and identified as suitable for disposal under the Recreational and Public Purposes Act of June 14, 1926 (44 Stat. 741), as amended by the Act of June 4, 1954 (68 Stat. 174; 43 U.S.C. 896), as amended, and the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no cost.

Legal Description	Acres
Gila and Salt River Meridian, Arizona	
T. 7 S., R. 24 E.,	
Sec. 14, SE¼NE¼	40.00
Sec. 24, NW¼NE¼, SE¼NW¼	80.00
Sec. 26, lots 1, 2, 3	111.06
Total	231.06

The land is being offered to the Arizona Game and Fish Commission for recreation and wildlife purposes.

The land is not required for any federal purpose. Conveyance of these parcels would best serve the public interest. This action is consistent with the Bureau's planning recommendations.

The patent issued as the result of the conveyance will be subject to all valid existing rights and reservations of record. It will contain the following reservations:

1. Rights-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals shall be reserved to the United States. Such resources shall be subject to the right to explore, prospect for, mine, and remove under applicable law and such regulations as prescribed by the Secretary of the Interior.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining and mineral leasing laws. The segregative effect will end upon issuance of a patent or 270 days from the date of publication, whichever occurs first.

DATES: For a period up to October 19, 1987, interested parties may submit comments to the District Manager, 425 E. 4th Street, Safford, Arizona 85546. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Detailed information concerning reservations, conditions, appraised price and other items may be obtained from the Safford District Office or by calling (602) 428–4040 during the office hours 7:45 a.m. to 4:15 p.m. MST.

Dated: August 25, 1987.

Lyle K. Rolston,

Acting District Manager.

[FR Doc. 87–20105 Filed 9–1–87; 8:45 am]

BILLING CODE 4310–32–M

[UT-040-07-4212-14; U-58162]

Realty Action; Sale of Public Lands in Kane County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) public land described as Lots 1 and 2 section 31 T. 43 S., R. 4.5 W., SLM, Utah (containing 79.80 acres), is proposed for direct sale to Charles and Carol Compas at the appraised fair market value of $8,000.00. The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomical to manage by a government agency.

DATES: Comments will be accepted until October 23, 1987. The sale will be held on November 6, 1987 at 10:00 A.M.

ADDRESS: Detailed information concerning the sale is available at the Kanab Area Office, 318 North First East, Kanab, Utah 84741, (801) 644–2672. Comments should also be sent to the same address. The sale will be held in the Kanab Area Office.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for the surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States a right-of-way for ditches or canals constructed by the Authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

3. Title transfer will be subject to valid existing rights, including a 66 foot wide county road right-of-way crossing the southeast corner of the 79.80 acre tract, and 2.5 acre right-of-way for a water diversion and dike structure.

Any comments received during the comment period will be evaluated and the State Director may vacate or modify this realty action. In the absence of any objections, this Realty Notice will become the final determination of the Department of the Interior.

Dated: August 25, 1987.

Morgan S. Jensen,

District Manager.

[FR Doc. 87–20106 Filed 9–1–87; 8:45 am]

BILLING CODE 4310–DQ–M

[NM-67194; NM-060-07-4211-02-NCGG]

Realty Action; New Mexico

AGENCY: Bureau of Land Management Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following lands comprising 9.488 acres will be made available for direct sale to Mr. George A. Smart.

T. 25 S., R. 24 E., NMPM.

Sec. 27, E½NE¼SW¼NW¼, N½NE¼SE¼SW¼NW¼, W½W¼NW¼SE¼NW¼, W½NW¼NW¼SE¼NW¼.

The lands will be sold at the fair market value of $950.00. The United States Government will reserve all mineral rights, ditches, canals, and access rights. Conditions of the sale are that prior to issuance of patent all unauthorized roads, electric lines, and other utilities will be properly authorized by right-of-way; the boundaries of the subject will be fenced at Mr. Smart's expense; the junk and debris on adjacent public land will be removed; and existing lands classifications will be lifted.

Mineral Reservation

(a) The United States reserves all minerals (or other appropriate wording) in the lands subject to this conveyance, including, without limitation, substances subject to disposition under the general mining laws, the general mineral leasing laws, the Materials Act, and the Geothermal Steam Act.

(b) The United States reserves to itself, its permittees, licensees, lessees, and mining claimants the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and such

regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mining, geothermal and mineral leasing, and material disposal laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, open pit, or surface mining operations, storage, and transportation facilities deemed necessary and authorized under law and implementing regulations.

(c) Mining claimants, permittees, licensees, and lessees of the United States shall only be liable for and shall only compensate owners of the surface estate for damages to the extent prescribed by regulations issued by the Secretary of the Interior.

(d) Unless otherwise provided by separate agreement with the surface owner, mining claimants, permittees, licensees, and lessees of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior.

(e) By purchase of this land, the owner, pursuant to Section 714 of the Surface Mining Control and Reclamation Act, 30 U.S.C. 1304, gives his "surface owner" consent to the United States and its lessees to enter and commence surface mining operations to extract the United States' reserved coal.

(f) All causes of action brought to enforce the rights of the surface owner under the regulations above referred to shall be instituted against mining claimants, permittees, licensees, and lessees of the United States, and the United States shall not be liable for the acts or omissions of its mining claimants, permittees, licensees, and lessees.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

David L. Mari,

Associate District Manager.

[FR Doc. 87-20144 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-FB-M

[NV-030-07-4212; N-46540]

Realty Action; Modified; Competitive Sale; Public Lands in Washoe County, NV

The following described land, comprising 20 acres, has been identified as suitable for disposal by modified-competitive sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than fair market value:

Mt. Diablo Meridian

T. 19 N., R. 21 E.,
Sec. 10, W½NE¼SW¼SW¼, NW¼SW¼SW¼, N½SW¼SW¼SW¼.
Aggregating 20 Acres.

The land is hereby segregated from appropriation under the public land laws including the mining laws, but not from sale under the above cited statute. The segregative effect will end upon the issuance of the patent or 270 days from the date of publication of the notice in the **Federal Register**, whichever occurs first.

The sale is consistent with the Bureau's planning system. The land is not needed for support of any resource programs and is not suitable for management by another Federal agency.

In accordance with section 209(b)(1)(l) of Pub. L. 94-579, mineral interests excepting geothermal steam and related resources will be conveyed simultaneously with the surface estate.

The patent when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; U.S.C. 945.

2. Geothermal steam and related resources together with the right to explore for, and develop the resource.

The patent will also be subject to the following rights-of-way:

1. Those rights for powerline purposes which have been granted to Sierra Pacific Power Company, its successors or assigns, by Rights-of-Way CC-021238 & Nev-066082.

2. Those rights for highway purposes granted to Nevada Department of Transportation, its successors or assigns, by Right-of-Way Nev-054977.

3. Those rights for communication purposes which have been granted to Bell Telephone Company of Nevada, its successors or assigns, by Right-of-Way CC-020776.

4. Those rights for access purposes which have been granted to Jay D. Farmer, his successors or assigns, by Right-of-Way N-43688.

The subject parcel lies within Nevada Department of Transportation Material Site Right-of-Way Nev-058707 which would be relinquished prior to consummating the sale.

Bid Information

No bids will be accepted for less than the appraised fair market value. Prior to the sale, a brochure will be made available to the public which contains the appraised fair market value, pertinent information regarding the parcel and sale procedures. Bidders must be either: (1) Citizens of the United States, 18 years of age or older, (2) corporations subject to the laws of any State of the United States, (3) entities such as associations or partnerships capable of holding land or interest therein under the laws of the State within which the land is located, or (4) States, State instrumentalities or political subdivisions authorized to hold title to real property.

Sealed bids may be made by a principal or duly qualified agent. Sealed bids shall be considered only if received at the Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701, prior to 9:00 a.m., December 1, 1987. The written sealed bids will be opened and publicly declared at the sale, which will be held on December 1, 1987, at 10:00 a.m.

Each bid shall accompanied by a certified check, postal money order or cashier's check made payable to the Department of the Interior-BLM for not less than ten (10) percent of the amount of the bid and the $50.00 filing fee to purchase the mineral interest of no known value shall be enclosed in a sealed envelope marked in the lower left hand corner, Bid for Public Land Sale N-46540, December 1, 1987. In the event identical bids are received, the determination of who is to be considered the highest bidder shall be by supplemental sealed bids.

The remainder of the full bid price shall be paid within 180 days of the sale. Failure to submit the full bid price within 180 days shall disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of sale.

Mr. J.R. Mastelotto, who has a contract of sale to purchase an adjoining private parcel, and in addition has proposed a project which incorporates both private and public lands, will be given a preference right to purchase the property by meeting the high bid within 30 days of the sale. Failure to exercise

this option shall constitute a waiver of such bidding provision.

All bids will be returned, accepted or rejected within 30 days of the sale date.

BLM may accept or reject any and all offers, or withdraw the land from sale, up to the point of receiving the balance of the bid amount if the authorized officer determines that sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable law.

The land will not be offered for sale for at least 60 days after the date of this notice. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suit 300, Carson City, Nevada 89701. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action.

Date this 21st day of August 1987.

Norman L. Murray,

Acting District Manager.

[FR Doc. 87-20165 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-HC-M

[WY-060-07-4212-14; W-105860]

Decision on Resource Management Plan Amendment; Platte River Resource Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Decision on Plan Amendment; Platte River Resource Area, Wyoming.

SUMMARY: Notice is given to the public that the Bureau of Land Management has decided to amend the Platte River Resource Area Resource Management Plan. The plan amendment changes decision L1: Land Disposal and the prescription for resource management unit No. 14 by identifying the following parcel for disposal by sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended.

Sixth Principal Meridian, Wyoming

T. 33 N., R. 89 W.
Sec. 15, S½.

The above described parcel aggregates 320.00 acres in Natrona County.

DATES: Protests on the plan amendment may be filed within 30 days from the date of this notice. Consistency review comments from the Governor of Wyoming have been received. This decision will become final 30 days from the date of this notice or upon resolution of any protest.

ADDRESSES: Protests on the plan amendment shall be sent to the Director, Bureau of Land Management, 18th C. Street NW., Washington, D.C. 20240. The environmental assessment prepared for the plan amendment is available at the Platte River Resource Area, 815 Connie Street, P.O. Box 2420, Mills, WY 82644.

FOR FURTHER INFORMATION CONTACT: Bill Mortimer, Platte River Resource Area Manager (307) 261-5191.

August 25, 1987.

Hillary A. Oden,

State Director, Wyoming.

[FR Doc. 87-20145 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-22-M

[AZ-943-07-4220-10; A-22923]

Proposed Withdrawal of Federal Land; Opportunity for Public Meeting; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 78,670.73 acres of federal land for the protection of a site currently being considered by the State of Arizona for the Department of Energy's Superconducting Super Collider project near Phoenix, Arizona. This notice closes the land for up to 2 years from mining location. The land will remain open to surface entry and mineral leasing.

DATES: Comments and request for a public meeting should be received by December 1, 1987.

ADDRESS: Comments and meeting requests should be sent to Arizona State Director, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, BLM, Arizona State Office, 602-241-5534.

SUPPLEMENTARY INFORMATION: On August 18, 1987 a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described federal land from location under the mining laws, subject to valid existing rights:

Gila and Salt River Meridian

T. 4 S., R. 1 E.,
Sec. 19, W½;
Sec. 31, E½.
T. 5 S., R. 1 E.,
Sec. 7, E½;
Sec. 8, W½;
Sec. 9, W½;
Sec. 16, all (State owned minerals);
Sec. 17, W½;
Sec. 18, lots 3-4, E½, E½SW¼;
Sec. 19, lots 1-4, incl., E½, E½W½;
Sec. 21, all;
Sec. 22, W½;
Sec. 27, W½;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1-4, incl., E½, E½W½;
Sec. 31, lots 1-4, incl., E½, E½W½;
Sec. 32, all (State owned minerals);
Sec. 33, all;
Sec. 34, W½.
T. 6 S., R. 1 E.,
Sec. 3, lot 4, SW¼NW¼, SW¼;
Sec. 4, lots 1-4, incl., S½N½, S½;
Sec. 5, lots 1-4, incl., S½N½, S½;
Sec. 6, lots 1-7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1-2, E½NW¼, NE¼;
Sec. 9, S½, SW¼NW¼;
Sec. 10, W½;
Sec. 15, W½;
Sec. 18, lots 3-4, E½SW¼;
Sec. 19, lots 1-2, E½NW¼;
Sec. 21, N½;
Sec. 27, S½;
Sec. 28, W½NW¼, E½SE¼;
Sec. 29, W½;
Sec. 30, lots 3-4, E½SW¼, SE¼;
Sec. 31, lots 1-4, incl., E½, E½W½;
Sec. 32, all (State owned minerals);
Sec. 33, NW¼.
T. 4 S., R. 1 W.,
Sec. 3, lots 1-4, incl., S½N½, S½;
Sec. 4, lots 1-4, incl., S½N½, S½;
Sec. 5, lots 1-4, incl., S½N½, S½;
Sec. 6, lots 1-7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1-4, incl., E½, E½W½;
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, W½;
Sec. 13, all;
Sec. 14, all;
Sec. 15, N½;
Sec. 24, SW¼;
Sec. 25, NE¼.
T. 4 S., R. 2 W.,
Sec. 1, lots 1-4, incl., S½N½, S½;
Sec. 2, lots 1-4, incl., S½N½, S½;
Sec. 3, lots 1-4, incl., S½N½, S½;
Sec. 4, S½;
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 14, N½;
Sec. 15, all;
Sec. 16, all;
Sec. 17, all;
Sec. 18, lots 1-4, incl., E½W½, E½;
Sec. 19, lots 1-4, incl., E½W½, E½;
Sec. 20, all;
Sec. 21, N½;
Sec. 29, all;
Sec. 30, lots 1-4, incl., E½W½, E½;
Sec. 31, lots 1-4, incl., E½W½, E½.
T. 4 S., R. 3 W.,
Sec. 24, all;
Sec. 25, all;
Sec. 35, all.
T. 5 S., R. 2 W.,
Sec. 6, lots 1-7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;

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Sec. 7, lots 1–4, incl., E½W½, E½;
Sec. 18, lots 1–4, incl., E½W½, E½;
Sec. 19, lots 1–4, incl., E½W½, E½;
Sec. 30, lots 1–4, incl., E½W½, E½;
Sec. 31, lots 1–4, incl., E½W½, E½.
T. 5. S., R. 3 W.,
Sec. 1, lots 1–4, incl., S½N½, S½;
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 35, all;
Sec. 36, all (State owned minerals).
T. 6. S., R. 1 W., unsurveyed,
Sec. 25, all;
Sec. 34, all;
Sec. 35, all;
Sec. 36, all;
T. 6. S., R. 2 W., unsurveyed,
Sec. 6, all;
Sec. 7, all;
Sec. 18, all;
Sec. 19, all;
Sec. 20, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, all;
Sec. 31, all;
Sec. 32, all;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all;
T. 6. S., R. 3 W.,
Sec. 1, lots 1–4, incl., S½N½, S½;
Sec. 2, lots 1–4, incl., S½N½, S½ (State owned minerals);
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
T. 7. S., R. 1 W.,
Sec. 1, lots 1–4, incl., S½N½, S½;
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 3, lots 1–4, incl., S½N½, S½;
Sec. 4, lots 1–4, incl., S½N½, S½;
Sec. 5, lots 1–4, incl., S½N½, S½;
Sec. 6, lots 1–4, incl., S½NE¼, SE¼NE¼, E½SW¼, SE¼;
Sec. 7, lots 1–4, incl., E½W½, E½;
Sec. 7, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, W½.
T. 7. S., R. 2 W.,
Sec. 1, lots 1–4, incl., S½N½, S½;
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 3, lots 1–4, incl., S½N½, S½;
Sec. 4, lots 1–4, incl., S½N½, S½;
Sec. 5, lots 1–4, incl., S½N½, S½;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all.

The area described contains 78,670.73 acres in Maricopa County, Arizona. The mineral estate in five of the Federal sections containing 3,201.16 acres is owned by the State of Arizona. The federally-owned mineral estate affected by this application is 75,469.57 acres

In addition to the Federal lands, the area includes approximately 11,500 acres of privately-owned land and 5,100 acres of State-owned fee and mineral estate.

The purpose of the proposed withdrawal is to protect the lands while the site is under consideration by the State of Arizona for the Department of Energy's Superconducting Super Collider Project. The Department of Energy is expected to make the site selection during the two-year protection period afforded by this withdrawal application.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Arizona State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Arizona State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The aplication will be processed in accordance with the regulations set forth in 43 CFR Group 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled prior to that date.

The temporary segregation of the lands in connection with the withdrawal application does not affect administrative jurisdiction over the lands and the segregation shall not affect the authorizing of any use of the land by the Bureau of Land Management.

August 28, 1987.

Dean Stepanek,

Assistant Director, Land and Renewable Resources.

[FR Doc. 87–20227 Filed 9–1–87; 8:45 am]

BILLING CODE 4310-32-M

[CO-940-07-4220-11; C-28324]

Notice of Proposed Continuation of Land Withdrawal; Colorado

August 25, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for the Stone Cellar Ranger Station, be modified and the withdrawal be continued for 20 years insofar as it affects 10 acres of National Forest System land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received on or before December 1, 1987.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236–1768.

The Forest Service, U.S. Department of Agriculture, proposes the existing withdrawal made by Secretarial Order of December 11, 1908, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands:

New Mexico Principal Meridian

Rio Grande National Forest

T. 43 N., R. 3 E.,
Sec. 6, NE¼SE¼NW¼.

The area described aggregates 10 acres in Saguache County.

The purpose of this withdrawal is for the administration and protection of the Stone Cellar Ranger Station. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will

determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register.** The existing withdrawal will continue until such determination is made.

James D. Crisp,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-20146 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Outer Continental Shelf; Receipt of Proposed Development Operations Coordination Document From Chevron U.S.A., Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc., Unit Operator of the South Timbalier Block 135 Federal Unit Agreement No. 14-08-001-6669, has submitted a DOCD describing the activities it proposes to conduct on the South Timbalier Block 135 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on August 21, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8:00 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Stephen T. Dessauer; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2660.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 24, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-20147 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Receipt of Proposed Development Operations Coordination Document From Taylor Energy Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Taylor Energy Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3087, Block 620, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Port O'Connor, Texas.

DATE: The subject DOCD was deemed submitted on August 24, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 25, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-20148 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

San Antonio Missions Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Missions Advisory Commission will be held at 1:00 p.m., Tuesday, September 29, 1987, at the park headquarters, located at 2202 Roosevelt, San Antonio, Texas.

The San Antonio Missions Advisory Commission was established pursuant to Pub. L. 95-629, Title II, November 10, 1978. The purpose of the Commission is to advise the Secretary of the Interior or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed include:

—Minutes of previous meeting
—Park Operations Update
—Los Compadres Update
—Archdiocesan Report
—City Report
—County Report
—Open Discussion
—Acknowledgment of outgoing members

The meeting will be open to the public, however, facilities and space for accommodating members of the public will be limited and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park.

Persons wishing further information regarding this meeting or who wish to submit a written statement may contact Jose A. Cisneros, Superintendent, 2202 Roosevelt Avenue, San Antonio, Texas 78210 (512) 229-5701.

Minutes of the meeting will be available for public review approximately four weeks after the meeting at the office of the San Antonio Mission National Historical Park.

Dated: August 25, 1987.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 87-20128 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

Agency: United States International Trade Commission.

Action: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35,) the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

Purpose of information collection: The proposed information collection is for use by the Commission in connection with investigation No. 332-247, Cost Saving or Other Benefits to U.S. Consumers Resulting from Temporary Duty Suspension in the Trade and Tariff Act of 1984, instituted under the authority of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332).

Summary of proposal:

(1) Number of forms submitted: one

(2) Title of form: Questionnaire for Companies Importing and/or Using Products Granted Duty-Free Entry Under Pub. L. 98-573

(3) Type of request: new

(4) Frequency of use: nonrecurring

(5) Description of respondents: Firms which import and/or use products granted duty-free entry under Pub. L. 98-573

(6) Estimated number of respondents: 153

(7) Estimated total number of hours to complete the forms: 24

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional information or comment: Copies of the proposed form and supporting documents may be obtained from Edmund Cappuccilli (USITC tel. no. 202-523-0490) or Cynthia B. Foreso (USITC tel. no. 202-523-1230). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and including specific suggested revisions or language changes.

Submission of comments: Comments should be submitted to OMB within two weeks of the date this notice appears in the **Federal Register**. If you are unable to submit them promptly you should advise OMB within the two week period of your intent to comment on the proposal. Ms. Picoult's telephone number is 202-395-7340. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, NW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contracting our TDD terminal on (202) 724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: August 25, 1987.

[FR Doc. 87-20231 Filed 9-1-87; 8:45 am]

BILLING CODE 7020-02-M

Agency Form Submitted for OMB Review

Agency: United States International Trade Commission.

Action: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of information collection: The proposed information collection is for use by the Commission in connection with investigation No. 332-248, The Implications of Foreign-Trade Zones (FTZ's) for U.S. Industries and for Competitive Conditions between U.S. and Foreign Firms (Supplement and Expansion).

Summary of proposals:

(1) Number of forms submitted: 1

(2) Title of forms: Questionnaire for U.S. Producers Operating in Foreign-Trade Zones

(3) Type of Request: new

(4) Frequency of use: non-recurring

(5) Description of respondents: U.S. producers with approval to operate in foreign-trade zones

(6) Estimated number of respondents: 101

(7) Estimated total number of hours to complete the forms: 3,030

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional information or comment: Copies of the proposed forms and supporting documents may be obtained from Carl Seastrum (USITC, tel. no. 202-724-1733). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and including specific suggested revisions or language changes.

Submission of comments: Comments should be submitted to OMB within two weeks of the date this notice appears in the **Federal Register**. If you are unable to submit them promptly you should advise OMB within the two week period of your intent to comment on the proposal. Ms. Picoult's telephone number is 202-395-7340. Copies of any comments should be provided to Charles Ervin, United States International Trade Commission, 701 E Street, NW., Washington, DC 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: August 26, 1987.

[FR Doc. 87-20232 Filed 9-1-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-287 (Preliminary) and 731-TA-378 (Preliminary)]

Certain Electrical Conductor Aluminum Redraw Rod From Venezuela [1]

Determinations

On the basis of the record [2] developed in investigation No. 701-TA-287 (Preliminary), the Commission unanimously determines,[3] pursuant to

[1] For purposes of these investigations the term "electrical conductor aluminum redraw rod" refers to wrought rods of aluminum which are electrically conductive and contain not less than 99 percent of aluminum by weight.

[2] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[3] Chairman Liebeler not participating.

section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Venezuela of electrical conductor aluminum redraw rod, provided for in item 618.15 of the Tariff Schedules of the United States, that are alleged to be subsidized by the Government of Venezuela.

On the basis of the record [2] developed in investigation No. 731-TA-378 (Preliminary), the Commission unanimously determines,[3] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Venezuela of electrical conductor aluminum redraw rod, provided for in item 618.15 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 14, 1987, petitions were filed with the Commission and the Department of Commerce by Southwire Company, Carrollton, Georgia, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of electrical conductor aluminum redraw rod from Venezuela and by reason of LTFV imports of electrical conductor aluminum redraw rod from Venezuela. Accordingly, effective July 14, 1987, the Commission instituted preliminary countervailing duty and antidumping investigations to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise into the United States.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 22, 1987 (52 FR 27593). The conference was held in Washington, DC, on August 6, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 28, 1987. The views of the Commission are contained in USITC Publication 2008 (August 1987), entitled "Certain Electrical Conductor Aluminum Redraw Rod from Venezuela: "Determination of the Commission in Investigation No. 701-TA-287 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation," and "Determination of the Commission in Investigation No. 731-TA-378 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the the Commission.

Issued: August 28, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-20234 Filed 9-1-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-260]

Certain Feathered Fur Coats and Pelts, and Process for the Manufacture Thereof; Notice of Commission Decision Not to Review Initial Determination Terminating One Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination terminating the above-captioned investigation as to one respondent.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) granting a joint motion to terminate the investigation as to respondent Hong Kong Tientsin Fur Co. Ltd. (Tientsin) on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-563-0261.

SUPPLEMENTAL INFORMATION: On November 10, 1986, David Leinoff and David Leinoff, Inc. (Leinoff), filed a section 337 complaint with the Commission alleging unfair methods of competition and unfair acts in the importation and sale of certain feathered fur coats and pelts. On the basis of that complaint, the Commission instituted the above-captioned investigation. The notice of investigation referred to the following unfair acts: (1) alleged infringement of claim 1 of U.S. Letters Patent 3,760,424 (the '424 patent), owed by Leinoff and (2) alleged manufacture abroad by a process which, if practiced in the United States, would infringe claim 5 of the '424 patent, the effect or tendency of which is to destroy or substantially injure an industry, efficently and economically operated, in the United States. 51 FR 46944 (December 29, 1986). The Commission's notice of investigation listed nine respondents that were alleged to be in violation of section 337.

On June 22, 1987, complainants and respondent Tientsin filed a joint motion (Motion No. 260-18) to terminate the investigation as to Tientsin on the basis of a settlement agreement.

On July 30, 1987, the presiding administrative law judge (ALJ) issued an ID (Order No. 24) granting joint Motion No. 260-18 and terminating the investigation as to Tientsin on the basis of the settlement agreement.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.53-.55 (19 CFR 210.53-.55).

Copies of the ID and all other nonconfidental documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-1626. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: August 28, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-20233 Filed 9-1-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-30029]

Motor Carriers; Petition for Declaratory Order; Andrews Van Lines, Inc., et al.

August 26, 1987.

A decision in this proceeding, served July 20, 1987, as corrected by notice served August 10, 1987, specified a date of August 10, 1987, for persons intending to participate to so inform the Secretary. It also stated that comments would be due 30 days after issuance of a service list of all interested persons. A notice published on July 21, 1987, in the **Federal Register** (52 FR 27471) and the *ICC Register* erroneously stated that comments are due on or before

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September 4, 1987. The purpose of this notice is to clarify this inconsistency and advise that comments will not be due until 30 days after issuance of a service list of all persons intending to participate. Those intending to participate may still so inform the Secretary until September 4, 1987.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20207 Filed 9-1-87; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-18573]

Motor Carriers; Continuance in Control Exemption for Elder Moving & Storage Co.; Mayflower Group, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Mayflower Group, Inc. (Group), a noncarrier, has filed a petition under 49 U.S.C. 11343(e) seeking an exemption from the requirement of prior regulatory approval for its continuance in control of Elder Moving & Storage Co. (Elder), which has an initial application for authority to transport household goods pending in No. MC-202722.

Group currently controls, with Commission approval, Mayflower Transit, Inc. d/b/a Aero Mayflower Transit Company, Inc. (Transit) (No. MC-2934), a motor carrier of property, and Mayflower Contract Services, Inc. (Contract Services), a noncarrier that owns R. W. Harmon & Sons, Inc. (Harmon) (No. MC-20071), a motor carrier of passengers, which, in turn, owns Dorsey Bus, Inc. (Dorsey) (No. MC-189841), also a motor carrier of passengers.

Elder is affiliated with the following regulated subsidiaries of Transit: AMTC Brokers, Inc. (No. MC-169831), a property broker; and Crest-Mayflower International, Inc. (FF-361), Mayflower Forwarders, Inc. (FF-672), and Mayflower International Forwarding, Inc. (FF-834), household goods freight forwarders whose stock is currently held in a voting trust approved by the Commission.

Group submits that regulation of this transaction is not necessary to carry out the transportation policy of 49 U.S.C. 10101. Elder is seeking authority primarily to handle military traffic and to supplement the authority of Transit and its affiliated companies. Elder's proposed service can be used by Transit's existing network of origin agents at military bases, who are limited to representing not more than three carriers and forwarders. In addition, Elder would be able to provide additional equipment within an established military household goods transportation system, thus promoting safe, adequate, economical, and efficient transportation services. Group also states that regulation is not necessary to protect shippers from abuse of market power because a large number of carriers are competing for the same traffic.

DATES: Comments must be received October 2, 1987.

ADDRESSES: Send comments (an original and 10 copies), referring to No. MC-F-18573, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
and
(2) Petitioner's representative: James P. Reichert, P.O. Box 107, Indianapolis, IN 46206-0107

FOR FURTHER INFORMATION CONTACT:

Thomas J. Barry, (202) 275-7540
or
Warren Wood, (202) 275-7977
(TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION:

Petitioners seek an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982).

A copy of the petition may be obtained from petitioners' representative, or it may be inspected at the Washington, DC office of the Interstate Commerce Commission during normal business hours.

Decided: August 25, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Chairman Gradison did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20208 Filed 9-1-87; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-C-30052]

Petition for Declaratory Order on Transportation of Appliances Within Colorado; RAC Transport Co., Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of petition for declaratory order.

SUMMARY: RAC Transport Company, Inc. (RAC), a motor carrier, seeks institution of a declaratory order proceeding to determine whether the transporation of home convenience products (mostly appliances such as washers, dryers, refrigerators, and stoves) from Sears' warehouse in Denver, CO, to other Colorado points is interstate or intrastate in nature. Sears, Roebuck & Company (Sears) receives shipments of these products at its Denver distribution facility from manufacturers located at various points outside Colorado. Sears reships the products to customers at other points in Colorado as it receives orders, on average within 2 months. RAC transports the shipments from Denver under interstate operating authority.

DATES: Persons interested in particpating in this proceeding should so advise the Commission in writing by September 16, 1987. A list of interested parties will then be compiled and served. RAC will have 10 days from the service date of that list to serve each party on the list and the Commission with a copy of its petition and any additional comments. Other parties will then have 35 days from the service date of the service list to submit their comments to the Commission and to petitioner's representative. Petitioner will have 50 days from the service date of the service list to reply.

ADDRESS: Send an original and, if possible, 10 copies of comments referring to No. MC-C-30052 to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to petitioner's representative:

Catherine W. Hansen, Baker & Hostetler, Suite 1100, 303 E. 17th Ave., Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Paul Schach (202) 275-7885 or Andrew L. Lyon (202) 275-7691. TDD for hearing impaired (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. Copies of the decision are available from T.S. InfoSystems, Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or by calling (202) 289-4357, (assistance for the hearing impaired is available through TDD services (202 275-1721 or by pickup from TSI in Room 2229 at Commission headquarters).

Decided: August 24, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissions Sterrett, Andre, and Simmons.

Noreta R. McGee

Secretary.

[FR Doc. 87-20302 Filed 9-1-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31097]

The Great Western Railway Co.; Trackage Rights Exemption

Union Pacific Railroad Company (UPRR) has agreed to grant overhead trackage rights to The Great Western Railway Company (GWR). GWR will have the right to use rail lines (1) on UPRR's Ft. Collins branch, between milepost 0.04 near Milliken, CO, and milepost 9.10 in Kelim, CO, and (2) on UPRR's Dent branch, between milepost 42.80 in Dent, CO, and milepost 50.6 in La Salle, CO. The trackage rights are effective August 21, 1987.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. (1980).

Dated: August 24, 1987.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20209 Filed 9-1-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31096]

Railroad Operation and Acquisition Exemption; Terre Haute, Brazil & Eastern Railroad; Certain Lines of Consolidated Rail Corp.

The Terre Haute, Brazil & Eastern Railroad (THB&E) has filed a notice of exemption to acquire and operate certain properties of Consolidated Rail Corporation (Conrail). The property includes 28 route miles of rail line in Terre Haute, IN, which was Conrail's former Limedale Secondary trackage located between milepost 30.3 (EOT) and milepost 68.7, the East Yard between the western end of the Limedale Secondary, milepost 68.7 to a point approximately 500 feet west of Twenty Fifth Street, milepost 71.5, and its East Yard running track from milepost 71.5 to milepost 73.0 (EOT).

Any comments must be filed with the Commission and served on John C. Carvey, Carvey & Powers, Suite 500, Inland Building, 156 East Market Street, Indianapolis, IN 46204.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 26, 1987.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20200 Filed 9-1-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree; Hillsborough County, FL

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on August 19, 1987 a proposed Consent Decree in *United States* v. *Hillsborough County, Florida and the State of Florida*, was lodged with the United States District Court for the Middle District of Florida. That action was brought pursuant to the Clean Water Act for violations of the discharge limitations included in the Federal permit issued to Hillsborough County for its River Oaks Advanced Wastewater Treatment Plant.

The settlement agreement requires Hillsborough County to complete construction of new treatment facilities at the River Oaks Plant and to renovate existing portions of the River Oaks Plant in order to handle the increased flow to the plant and comply with the terms of its permit issued under the Clean Water Act. Hillsborough County is required to complete construction outlined in the Consent Decree and be in full compliance with its permit by May 31, 1988. Until that time, Hillsborough County must meet strict standards regulating its discharge or pay civil penalties for such violations. In addition, Hillsborough County will pay a $180,000 civil penalty to the United States.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *Hillsborough County, Florida*, D.J. Ref. 90-5-1-1-2742.

The proposed consent decree may be examined at the office of the United States Attorney, Robert Timberlake Building, 500 Zack Street, Tampa, Florida 33602 and at the Region IV Office of the U.S. Environmental Protection Agency, 345 Courtland Street N.E., Atlanta, Georgia 30365. Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW, Washington, DC 20530.

A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the consent decree should be accompanied by a check in the amount of $1.90 for copying costs ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-20150 Filed 9-1-87; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-69)]

NASA Advisory Council, Space and Earth Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC), Informal Executive Advisory Subcommittee.

Date and time: October 1, 1987, 1 p.m.—5 p.m. and October 2, 1987, 8 a.m.—5 p.m.

ADDRESS: Capitol Gallery, Room 770, 600 Maryland Avenue, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code E, National Aeronautics and Space

Administration, Washington, DC 20546 (202/453–1656).

SUPPLEMENTARY INFORMATION: The Space and Earth Science Advisory Committee's Executive Subcommittee will meet to plan in detail the agenda of the full committee scheduled for November 18–20, 1987 and to discuss possible committee activities to be undertaken during the coming year. The Subcommittee is chaired by Dr. Louis Lanzerotti and is composed of 5 members. The meeting will be open to the public up to the seating capacity of the room (approximately 10 persons including committee members and other participants).

Type of meeting: Open.

Agenda:

October 1, 1987

1 p.m.—Discussion of future Committee activities.

5 p.m.—Adjourn.

October 2, 1987

8 a.m.—Continuation of Committee discussion on future activities.

5 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

August 27, 1987.

[FR Doc. 87–20094 Filed 9–1–87; 8:45 am]

BILLING CODE 7510–01–M

[Notice (87–68)]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC), Ad Hoc Team on Lunar and Planetary Mission Propulsion.

Date and time: September 23, 1987, 8:15 a.m. to 5 p.m.

ADDRESS: Room 647, Federal Office Building 10B, National Aeronautics and Space Administration Headquarters, Washington, DC 20546.

FURTHER INFORMATION CONTACT: Mr. Robert Wasel, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2855.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance and direction to the Office of Aeronautics and Space Technology (OAST). Special Ad Hoc Teams were formed to address specific topics. The ad hoc team on Lunar and Planetary Mission Propulsion, chaired by Mr. Robert G. Jahn, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants).

Type of meeting: Open.

Agenda:

September 23, 1987

8:15 a.m.—Introduction.

8:30 a.m.—Review of NASA propulsion program for lunar and planetary missions.

11 a.m.—Discussion of propulsion program.

5 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

August 27, 1987.

[FR Doc. 87–20108 Filed 9–1–87; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

Receipt of Petition for Director's Decision, Houston Lighting & Power Co., et al.

In the matter of Houston Lighting & Power Co.; City Public Service Board of San Antonio, and Central Power and Light Co., City of Austin, TX, South Texas Project, Units 1 and 2.

Notice is hereby given that by Memorandum and Order dated July 24, 1987, the Commission has referred a motion filed by Lanny Sinkin on behalf of Citizens Concerned About Nuclear Power, Inc., on May 29, 1987, with regard to the South Texas Nuclear Plant (STNP) to the NRC staff for consideration under 10 CFR 2.206. In the motion, entitled "Intervenor Citizens Concerned About Nuclear Power, Inc. Motion to Reopen the Record," the Petitioner requested that the record in the STNP licensing hearing be reopened and that fuel loading then scheduled for June 1987 be suspended pending resolution of the matters in the motion. The Petitioner requested that the Licensing Board decisions with regard to STNP should be altered, asserting as a basis for this request that, based on the April 9, 1987, testimony of NRC witnesses before the Senate Committee on Governmental Affairs, there is evidence of intimidation and harassment of NRC personnel in Region IV which sheds doubt on the credibility, accuracy and objectivity of the testimony presented by NRC personnel in the operating license proceeding on which the Licensing Board relied in reaching its decision. The Commission denied the request for the stay of fuel loading and referred the remainder of the motion to the NRC staff for consideration under 10 CFR 2.206. This matter is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

Copies of the Petition are available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and in the local public document rooms for the facility located at Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77418 and in the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Dated at Bethesda, Maryland, this 27th day of August 1987.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87–20220 Filed 9–1–87; 8:45 am]

BILLING CODE 7590–01–M

Availability of Publications Concerning the Facts and Implications of the Accident at the Chernobyl Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing for public comment an NRC staff report entitled "Implications of the Accident at Chernobyl for Safety Regulation of Commercial Nuclear Power Plants in the United States," NUREG–1251.

The NRC is also making available for information another publication concerning the April 26, 1986, accident at the Chernobyl Nuclear Power Station in the Soviet Union. This report, entitled "Report on the Accident at the Chernobyl Nuclear Power Station," NUREG–1250, provides information concerning the facts of the accident. NUREG–1250 was prepared collaboratively by the NRC, other United States government agencies, and other groups.

ADDRESS: Comments on NUREG–1251 should be sent to the Rules and

Procedures Branch, Division of Rules and Records, Office of Administration, Room 4000 MNBB, Washington, DC 20555. Copies of NUREG–1250 and NUREG–1251 may be purchased by calling the U.S. Government Printing Office on (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

Both publications will be available for review or copying for a fee in the NRC Public Document Room, located at 1717 H Street, NW., Washington, DC. In addition, single copies of NUREG–1251 may be obtained free of charge upon written request to the Distribution Section, Document Control Branch, Room P–130A, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

DATES: Comments on NUREG–1251 should be submitted by November 2, 1987.

FOR FURTHER INFORMATION CONTACT: George Sege, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–9640.

SUPPLEMENTARY INFORMATION: NUREG–1250, "Report on the Accident at the Chernobyl Nuclear Power Station" reports the results of coordinated, cooperative fact-finding effort of various U.S. Government Agencies and some other groups. The NRC served as general coordinator of the report. Other participating government agencies were the U.S. Department of Energy, the U.S. Environmental Protection Agency, and the Federal Emergency Management Agency. Other participating groups were the Electric Power Research Institute and the Institute of Nuclear Power Operations. The report has eight chapters: Overview, Plant Design, Safety Analysis, Accident Scenario, Role of Operating Personnel, Radionuclide Release and Atmospheric Dispersion and Transport, Emergency Preparedness and Response, and Health and Evironmental Consequences. NUREG–1250 is being made available for information.

NUREG–1251, "Implications of the Accident at Chernobyl for Safety Regulation of Commercial, Nuclear Power Plants in the United States," prepared by the NRC staff, is being issued for comment. The facts of the Chernobyl accident relied on for this assessment have been drawn from NUREG–1250 and its sources. NUREG–1251 presents a general assessment of the implications, supported by detailed assessments with respect to a number of particular issues. The particular U.S. reactor safety regulatory issues selected for evaluation were those that are associated with significant factors which led to or exacerbated the consequences of the Chernobyl accident. The issues covered are in the areas of administrative controls and operational practices, design, containment, emergency planning, and severe accident phenomena.

The Summary of NUREG–1251 is an overall assessment. The detailed assessment for each of the issues states the issue with particular reference to its Chernobyl context, describes current U.S. regulatory practices with respect to the issue and relevant ongoing work, assesses the implications, and draws conclusions and makes recommendations with respect to the issue.

Most of the report, NUREG–1251, focuses on light-water reactor power plants. A final chapter addresses graphite reactors. The scope of the report is limited to reactors subject to NRC regulation; Department of Energy reactors are not covered.

Dated at Washington, DC, this 28th day of August, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk

Secretary of the Commission.

[FR Doc. 87–20222 Filed 9–1–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination; Philadelphia Electric Co., et al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56 issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company (the licensee) for operation of the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3 located in York County, Pennsylvania.

The amendment would provide interim relief from the requirement in the Technical Specification plant staff organization chart that either the plant manager or the superintendent of operations shall hold a senior reactor operator's license. These revisions to the Technical Specifications would be made in response to the licensee's application for amendment dated August 10, 1987.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Peach Bottom Atomic Power Station, Units 2 and 3 (PBAPS) has been shutdown by NRC Order issued on March 31, 1987 because of the problem of inattentiveness to duties by the plant operation staff. The issuance of the Order was notice in the **Federal Register** on April 8, 1987 (52 FR 11386–11388).

The licensee states that it has completed an analysis to determine the underlying root causes of the problem identified in the order and has developed a plan to assure that the PBAPS will operate safely and in compliance with all requirements. This plan, entitled the "Peach Bottom Commitment to Excellence Action Plan" (CTE) was submitted to the NRC on August 7, 1987. As stated in the CTE Action Plan, the licensee has, in addition to other actions to address the concerns identified in the Order, made changes in the management organization at the plant. These plant management changes include, to date, the replacement of the plant manager with an individual who has many years of nuclear related experience but does not have an SRO license. Also, as noted in section 3.4.1. of the CTE plan, the former Superintendent-Plant Services at PBAPS will become the Superintendent-Operations upon completion of his SRO qualification for PBAPS. The licensee states that although this individual is highly qualified for the position of Superintendent-Operations, he does not yet hold an SRO on PBAPS and therefore cannot yet assume the duties of Superintendent of Operations. The licensee notes that this individual has been undergoing classroom training specific to the Peach Bottom plant to prepare him for SRO written and oral exams to be given by NRC in October 1987. This training was completed in mid-August 1987.

The licensee submits that, on having completed this plant specific training for

the SRO exam in mid-August 1987, it would strengthen and enhance the management of the PBAPS if he could then assume the duties of Superintendent-Operations. Therefore, the licensee requests the temporary relief from the Technical Specification requirement that either the plant manager or the Superintendent-Operations have an SRO license. This relief would be effective only until the individual successfully completes the SRO written and oral exams, which the licensee expects to be in October 1987, and only with the PBAPS in a cold shutdown condition.

The licensee addressed the three standards for determining whether a significant hazards consideration exists in the amendment application by providing the following analyses.

1) The proposed revision does not involve a significant increase in the probability or consequences of an accident previously evaluated because (1) the individual who is intended to succeed the current Superintendent-Operations will have completed the majority of the training required for SRO License prior to the effective date of the temporary Technical Specification relief, (2) the individual has held an SRO License at a similar BWR facility (Limerick Generating Station) within the past few years, and (3) the Operating Engineer maintains an SRO License, thus meeting ANSI N18.1–1971 requirements for managing operations.

2) The proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated because the lack of SRO Licenses on the part of the Plant Manager and the Superintendent-Operations, unlike a procedure or design change, is not a potential new accident precursor.

3) The proposed revision does not involve a significant reduction in a margin of safety because the candidate's training and experience qualifications more than compensate for the lack of certain plant-specific power change and participation requirements required for an SRO License, and adequate compensation is provided through the function of the Operations Engineer who maintains an SRO License as required by the Technical Specifications and by limiting plant status to operations in the cold condition.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, and its consideration of the temporary nature of the requested relief, the support to be provided by the Operations Engineer and the status of the plant in cold shutdown condition during the period of the requested relief, the staff believes that the licensee has met the three standards. Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission has determined that failure to act in a timely way would result in the impedance or delay in needed changes identified by the licensee in the management of plant operations. There are numerous changes currently being undertaken by the licensee with respect to plant staff organization leadership and management, staffing, plant procedures, work management systems, etc. as set forth in the CTE Action Plan. In consideration of the critical nature of the activity by the licensee on these tasks during late August, September and October 1987, the staff has determined that the earliest practical implementation of the licensee's proposal to have the new designee assume the duties of Superintendent-Operations will further strengthen and enhance the management of the PBAPS and will therefore contribute to the assurance that the station will be operated in a safe manner.

If the proposed determination becomes final, an opportunity for a hearing will be published in the **Federal Register** at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the **Federal Register** and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to Walter R. Butler, Director, Project Directorate I–2, by collect call to 301–492–7425 or submitted in writing to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. All comments received by September 17, 1987 will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room 1717 H Street, NW, Washington, D.C. and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Bethesda, Maryland, this 28th day of August 1987.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II.

[FR Doc. 87–20324 Filed 9–1–87; 8:45 am]

BILLING CODE 7590–01–M

THE PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

Extension of Deadline for Accepting Applications

August 25, 1987.

AGENCY: President's Commission on White House Fellowships.

ACTION: Notice of change to later date for acceptance of applications.

SUMMARY: Normally, applications for White House Fellowships must be received between June 1 and November 15 of the current year. The President's Commission on White House Fellowships has extended the deadline to December 1, 1987.

DATE: The closing date for applications for White House Fellowships is December 1, 1987.

FOR FURTHER INFORMATION CONTACT: President's Commission on White House Fellowships, 712 Jackson Place, NW., Washington, DC 20503, (202) 395–4522.

Dated: August 25, 1987.

Ann W. Lavin,

Associate Director, President's Commission on White House Fellowships.

[FR Doc. 87–20196 Filed 9–1–87; 8:45 am]

BILLING CODE 6325–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings; Prospective Payment Assessment Commission

Notice is whereby given of meetings of the Prospective Payment Assessment Commission on Tuesday, September 15 and Wednesday, September 16, 1987, at the Hyatt Regency Crystal City at Washington National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in Washington Room A, on the second concourse at 8:30 a.m. on September 15, 1987. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting at 9:00 a.m. In

Washington Room B, also on the second concourse. Both subcommittees' meetings will be held September 15, 1987.

The full Commission will meet at 1:30 p.m. in Washington Rooms A&B, on the second concourse, September 15, 1987, and in the Kennedy/Jefferson/Lincoln rooms on the third floor at 9:15 a.m. on September 16, 1987.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 87-20004 Filed 9-1-87; 8:45 am]

BILLING CODE 8820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24449]

Filings Under the Public Utility Holding Company Act; Columbia Gas Transmission Corp., et al.

August 27, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 21, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate), should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Gas Transmission Corp.; (70-7106)

Columbia Gas Tranmission Corporation ("Transmission"), 20 Montchanin Road, Wilmington, Delaware 19807, a subisidiary of Columbia Gas System, Inc., a registered holding company, has filed a post-effective amendment to its declaration pursuant to sections 6(a) and 7 of the Act.

By order dated August 30, 1985 (HCAR No. 23813) Transmission received authorization to enter into a limited recourse loan agreement for $350 million with a group of commercial banks. Under the terms of the agreement, borrowings may be made on a revolving basis to October 15, 1987 ("Revolver Termination Date"), after which any loans outstanding will be converted to term loans and amortized by quarterly payments over a period of five years, with a final maturity of July 15, 1992.

Transmission proposes to amend the Agreement: (a) to extend the Revolver Termination Date to October 15, 1989, and (b) to extend the repayment schedule and the final maturity date to July 15, 1994. All other terms and conditions of the agreement will remain in effect without change.

Jersey Central Power & Light Co., et al. (70-7425)

Jersey Central Power & Light Company, Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company, 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19605 and Pennsylvania Electric Company, 1001 Broad Street, Johnstown, Pennsylvania 15907 (together, "GPU Subsidiaries"), electric utility subsidiaries of General Public Utilities Corporation, a registered holding company, have filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

The GPU Subsidiaries propose to issue and sell from time to time through March 31, 1989 their respective unsecured short-term promissory notes to dealers in commercial paper. The amount of commercial paper to be issued by each GPU Subsidiary would not exceed $50 million at any one time outstanding, nor would the principal amount issued, when added to other short-term borrowings authorized by order of the Commission dated October 6, 1986 (HCAR No. 24207), exceed the amount of short-term indebtedness permitted by such company's charter to be outstanding at any one time. The GPU Subsidiaries request that the proposed issuance and sale of commercial paper be excepted from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5).

Kingsport Power Co., et al. (70-7441)

Kingsport Power Company ("Kingsport") and Wheeling Electric Company ("Wheeling"), 1 Riverside Plaza, Columbus, Ohio 43215, subsidiaries of American Electric Power Company, Inc., a registered holding company, have filed a declaration pursuant to sections 6(a) and 7 of the Act thereunder.

By orders dated January 21, 1980 (HCAR No. 21401) and April 9, 1982 (HCAR No. 22453), Kingsport entered into a term-loan agreement, as amended, with Manufacturers Hanover Trust Company and First American National Bank-Tri-Cities pursuant to which it presently has unsecured borrowings outstanding of $2,000,000 which have a maturity date of December 31, 1987. Kingsport requests authorization to extend the maturity date of the outstanding borrowings to November 1, 1990.

By orders dated October 24, 1979 (HCAR No. 21265) and December 22, 1981 (HCAR No. 22332), Wheeling entered into a term-loan agreement, as amended, with the Bankers Trust Company pursuant to which it presently has unsecured borrowings outstanding of $7,000,000 which have a maturity date of November 1, 1987. Wheeling requests authorization to extend the maturity date of the outstanding borrowings to December 1, 1990.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20217 Filed 9-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24847; File No. SR-NYSE-87-26]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 17, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

BEST COPY AVAILABLE

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On March 13, 1987, the Exchange filed a proposed rule change to modify the settlement pricing of expiring stock index options to the opening prices on expiration Friday.[1] In particular, the Exchange modified the definition of "Current Index Group Value" in Rule 700(b)(17) to permit the Exchange to specify that the value upon exercise of options on the NYSE Composite Index and the NYSE Beta Index on expiration Friday is to be calculated from the opening prices for the constituent stocks on that day. The Exchange made conforming changes to make clear that trading in these options ceases on the Thursday before expiration Friday.

The Temporary Rule Filing was effective only with respect to contracts expiring in June 1987. On April 3, 1987, the Exchange filed a proposed rule change to make permanent the rule change proposed in the Temporary Rule Filing.[2] Thereafter, it became evident that the publication, comment and approval procedures for the permanent Rule Filings would not be completed before the Exchange opened for trading its contracts expiring in July 1987. Accordingly, on April 10, 1987, the Exchange filed a proposed rule change that extended the Temporary Rule Filing to the July expiration date.

On May 15, 1987, the Commission approved the Permanent Rule Filing, but only in relation to contracts expiring in August and September.[3] This was intended to permit the Commission to evaluate the June expiration before deciding on permanent approval. The Exchange understands that the Commission wishes to evaluate the September expiration as well before acting on the Exchange's permanent approval request. Accordingly, the proposed rule change seeks an extension to the December expiration date of the Commission's approval of the permanent filing on a temporary basis.

[1] *See* SR–NYSE–87–06: Letter dated March 16, 1987, to Sharon Lawson, Branch Chief, SEC, from Daniel P. Odell, Assistant Secretary, NYSE (collectively, the "Temporary Rule Filing"); and Release No. 34–24276 (March 27, 1987), 52 FR 10836 (April 3, 1987).]

[2] *See*, SR–NYSE–87–11 and Securities Exchange Release No. 24341 (April 14, 1987), 52 FR April 21, 1987 (the "Permanent Rule Filing").)

[3] *See* File No. SR–NYSE–87–13, Securities Exchange Act Release No. 24369 (April 12, 1987) 52 FR 13894 (April 27, 1987). *See* Securities Exchange Act Release No. 24486 (May 15, 1987), 52 FR 19947 (May 28, 1987).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to ameliorate the impact of the concurrent expiration of index options and futures on the markets for individual stocks and on the stock market as a whole. The Exchange believes that settling index futures and options based upon the opening prices of the constituent stocks, and thereby permitting use of the Exchange's opening procedures in handling the accompanying stock volume, is the best strategy for addressing widely-held concerns about the actual and potential impact of the derivative products on the pricing mechanism and integrity of the stock market.

The basis under the Act for the proposed rule change is section 6(b)(5), which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance on the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act, retroactive to July 17, 1987.

As noted above, the Commission's approval on a temporary basis of the Exchange's Permanent Rule Filing permitted the Exchange to change the settlement pricing of expiring stock index options to opening prices only for contracts expiring through September 1987. The Commission's evaluation of the experience with the September expiration cannot be completed before the Exchange opens its October, November and December contracts for trading. Accelerated approval of the proposed rule change will permit the Exchange to open its October, November and December contracts on a timely basis using expiration valuation based upon the opening prices of the underlying stocks. This will maintain the continuity and order of the Exchange's marketplace.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder. The proposed rule change will enable the Exchange to implement procedures to base settlement of its index products on opening stock prices for the contract months of October, November and December that will open for trading before the Commission is able to evaluate the effects of settlement based on opening prices on the September 18, 1987 expiration. The Exchange believes that index settlement based on the opening prices of constituent stocks, utilizing the Exchange's opening procedures, may best address the actual and potential impact of index expirations.

On certain occasions during the past two years, the concurrent expiration of index futures and options has been accompanied by significant price volatility. This volatility appears to have resulted in part from the liquidation of securities held as part of index arbitrage trading strategies. Many market professionals have chosen to liquidate these positions at the close of trading in order to receive an execution price that will be consistent with the closing value

of the index used in the cash settlement of index futures and options positions.[4]

The Commission believes that the NYSE's revised opening procedures, designed to attract order flow to offset stock order imbalances related to index expirations, may help to ameliorate the price effects of index expirations. The ability to calculate and disseminate imbalance notices and quote indications, in a non-continuous trading environment, increases the accuracy and usefulness of the information. The Exchange believes that both factors allow it to provide investors with a more accurate picture of the market in the affected stocks.

The Commission believes that adequate steps have been taken to inform investors of the change in contract settlements. The Commission recently approved an Options Clearing Corporation ("OCC") supplement to the Options Disclosure Document amending the discussion of settlement procedures for index products. As a result, investors have been notified of the change in procedures. In addition, OCC has effected a rule change to its By-Laws to permit options exchanges to provide by rule that the settlement value of any index on which options are traded on a particular exchange will be determined by reference to the prices of the constitutent stocks at times other than the close of trading. Moreover, the NYSE and broker-dealers have taken steps to fully inform investors of these changes.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because of the Exchange's need to open October, November and December contracts for trading on a timely basis, subject to expiration valuation based upon the opening prices of the underlying stocks. These contracts will be open for trading prior to when the Commission will have reviewed the results of the September expiration and made a determination as to the appropriateness of permanent approval of the proposal. Moreover, the Commission believes that acceleration is appropriate because it will preclude the need to change the settlement time of already outstanding October, November and December NYSE index options contracts. Accordingly, the proposed rule change is hereby approved, retroactive to July 15, 1987.

[4] The liquidation of index arbitrage positions has resulted in increased volatility at expirations [*See* H. Stoll & R. Whaley, *Expiration Day Effects of Index Options and Futures* (March 15, 1986)] Consequently, the Commission, in conjunction with the WYSE, has implemented early order-entry and exposure experiments on the last four expirations (September and December 1986, and March and June 1987). Reduced volatility at these recent expirations may partially be attributed to these procedures.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communicatons relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 23, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 24, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20110 Filed 9-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24852; File No. SR-NYSE-87-23]

Self-Regulatory Organizations; Proposed Rule Change by New York, Stock Exchange, Inc., Automated Submission of Customer and Proprietary Trading Data by Member Firms.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 24, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the required submission by member firms of reports of their customer and proprietary trading data upon request to the Exchange in automated format.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections(A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to enhance the Exchange's ability to surveil customer and member proprietary trading, by requiring that members and member organizations submit upon request, in an automated format prescribed by the Exchange, reports of their customer and proprietary trading data, which is currently required to be submitted to the Exchange in "paper" form.

The Securities Industry Association (SIA), which was requested by the SEC to explore the feasibility of developing a means of providing transaction data in computer format, spear-headed an effort by the self-regulatory organizations to develop this system. As a result of this initiative, the SIA and the self-regulatory organizations have jointly developed a universal format which facilitates the automated transmission of proprietary and customer transaction data.

In many instances member firms would have to make some further programming modifications in order to adapt to the new requirement. However, this initiative should not add any significant additional regulatory burden to the member firms, but would simply ask that the same information that is currently requested by the Exchange be submitted in an automated format prescribed by the Exchange. In fact, as

member organizations adapt to the new reporting system, they will be able to respond to Exchange requests for information more quickly, accurately, and completely, thereby eliminating an otherwise time-consuming, manual task and consequently allowing a more cost-effective use of their resources. The proposed rule will also enable the Exchange to use its resources more effectively, as information submitted by member firms can be processed most efficiently by means of direct input to the Exchange's automated systems.

While large member firms may incur relatively small expense in meeting an automated reporting requirement, smaller firms may find such a requirement somewhat more burdensome. Therefore, paragraph (d) of the proposed rule authorizes the Exchange to grant exceptions to the overall automated reporting requirement in appropriate cases. In addition, an exemption as to the automated reporting of certain specific data elements may be granted on a case-by-case basis for a reasonable period of time, if a firm has sown that it has made a substantial effort to comply with this requirement, but is unable to do so at a particular time in regard to any specific data element. For example, some member firms may have certain of the data elements called for in the proposed rule in disparate automated data bases which are not interlinked, or may have certain of the data elements in an automated data base, with other data elements being retained solely in a manual format. Certainly at the outset of the effectiveness of Rule 410A, the Exchange intends to take a reasonable approach that takes into account the specific operational practices of particular member firms.

The system, once it is fully operational, will be available to market surveillance analysts on the computer terminals at their individual work stations. It will be an automated analytical and investigative tool which will be integrated with the Exchange's existing and future automated data bases. However, it should be noted that the Exchange conducts other surveillance activities which also involve member firm submission of certain information regarding their proprietary trading. Such information is submitted to the Exchange currently in a manual format on Form 82–P (general member firm proprietary trading) and Form 97 (block positioner surveillance). The Exchange expects at some point in the future to require automated submission of the information called for an Forms 82–P and 97 as well.

Therefore, proposed Rule 410A contains a provision that the Exchange may require submission of additional data elements as well. Of course, member firms would be given ample notice of any additional requirements as to automated submission of proprietary trading data that the Exchange may subsequently determine to adopt and such a rule change would be submitted to the Commission under Rule 19b–4.

As part of a separate initiative involving NYSE reporting requirements, the Exchange's Board of Directors recently approved an addition to the list of Exchange rule violations subject to summary fines pursuant to Rule 476A that authorizes the Exchange to impose such fines for failure to comply with NYSE reporting requirements in a timely manner (See SR–NYSE–87–10). The automated reporting requirement of proposed Rule 410A should better enable members and member organizations to fulfill their obligation to submit requested information in a timely manner.

"Solicited Order". Paragraph (b)(2) of proposed Rule 410A calls for a member organization to report whether a transaction effected or caused to be effected for a customer account was based upon a solicited or unsolicited order. Several questions have arisen as to the definition of a "solicited order". For purposes of paragraph (b)(2) of proposed Rule 410A, a "solicited order" shall refer to an order in a particular security entered by a customer following an oral or written communication with a registered employee associated with a member or member organization, or with the member, which was intended to elicit the entry of an order in that security. Clearly, if a broker were to call a customer and specifically recommend the purchase or sale of a particular security, the resulting order should be marked "solicited". Conversely, if a customer were to call his broker in order to place an order in a stock which the customer had already determined to buy or sell, that order should be marked "unsolicited". The Exchange expects members and member organizations to comply with this aspect of the rule on a good faith, best efforts basis.

(2) Statutory Basis for the Proposed Rule Change

By providing an enhanced automated surveillance tool, the proposed rule change will help ensure that the Exchange's regulatory and surveillance capabilities keep pace with the complexity of trading in today's sophisticated market environment, and therefore the proposed rule change is consistent with protecting investors and the public interest, as called for in section 6(b)(5) of the Act. The proposed rule change meets other requirements of section 6(b)(5) in that it will assist in preventing fraudulent and manipulative acts and practices, and thereby promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriation in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not seek written comment on the actual text of proposed Rule 410A. However, the Exchange has provided preliminary detailed computer specifications to 34 of its member firms, which account for about 75% of the trading volume involved in NYSE investigations initiated by the Market Trading Analysis Department of Market Surveillance, informing them of our projected target date of the second half of 1987. These particular firms were approached because of their overall large trading volume. These firms have indicated that they will be reviewing closely the proposed specifications, and their responses to date have been generally favorable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or written such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments,

all written statements with respect to the proposed rule change that are filed with the Commission, and all writtten communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–87–23 and should be submitted by September 23, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 25, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20112 Filed 9–1–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 27, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(b) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

American Family Corporation
Common Stock, $0.10 Par Value (File No. 7–0368)
Abitibi-Price Inc.
Common Shares, No Par Value (File No. 7–0369)
GW Utilities Limited
Common Shares, No Par Value (File No. 7–0370)
Gulf Canada Resources Limited
Ordinary Shares, No Par Value (File No. 7–0371)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 18, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20111 Filed 9–1–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0431]

Revocation of License to Operate as a Small Business Investment Company; MRN Capital Co.

Notice is hereby given that MRN Capital Company (MRN), 150 Great Neck Road, Great Neck, New York 11021 has had its license revoked and no longer operates as a small business investment company under the Small Business Investment Act of 1958, as amended, (the Act). MRN was licensed by the Small Business Administration on April 23, 1982.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the revocation was effective July 2, 1987, and accordingly, all rights, privileges and franchises derived therefrom have been termined.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 24, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87–20082 Filed 9–1–87; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council; Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, Vermont, will hold a public meeting at 10:00 a.m., Thursday, October 15, 1987, at the Cortina Inn, Killington, Vermont, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Ora H. Paul, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602. (802) 828–4422.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 25, 1987.

[FR Doc. 87–20086 Filed 9–1–87; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Dallas, Texas, will hold a public meeting at 8:30 a.m. on Friday, November 13, 1987, at the Quality Inn in Jefferson, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100 Commerce, Room 3C36, Dallas, Texas 75242 (214) 767–0600

Jean M. Nowak,

Director, Office of Advisory Councils.

August 25, 1987.

[FR Doc. 87–20085 Filed 9–1–87; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena, Montana, will hold a public meeting at 8:00 a.m. on Friday, October 16, 1987, at the Yogo Inn Convention Center, 211 East Main Street, Lewistown, Montana 59457, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, Federal Office Building, 301 South Park, Drawer 10054, Helena, Montana 59626—(406) 449–5381.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 25, 1987.

[FR Doc. 87–20084 Filed 9–1–87; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council; Public Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, Hawaii, will hold a public meeting at 10:30 a.m. on Friday, October 9, 1987, at

the Hale Koa Hotel, Banyan Tree Room, 2055 Kalia Road, Honolulu, Hawaii 96815–1998, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Charles T.C. Lum, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850 (808) 541–2990.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 25, 1987.

[FR Doc. 87–20083 Filed 9–1–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Prince William County, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Prince William County, Virginia.

FOR FURTHER INFORMATION CONTACT: George E. Kirk, Jr., District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone (804) 771–2380.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT) will prepare an environmental impact statement (EIS) on a proposal to construct a new four-lane facility from the intersection of Route 234 to the intersection of relocated Route 641 in Prince William County, Virginia.

The construction will involve the use of existing Route 642 alignment and new location for various segments of the project. The environmental study limits of the project are from the intersection of Route 234 to the intersection of existing Route 641, for a total length of about 6 miles.

The proposed project will improve traffic flow between Route 234 and I–95 (Dale City). It will also help relieve local traffic congestion with the expanding Dale City area.

Alternatives under consideration include: (1) Taking no action; (2) upgrading along the existing alignment; (3) utilizing existing highway and new location on certain segments. Depending on traffic patterns, various typical sections will be incorporated into the project.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to organizations and/or citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. The Draft EIS will be available for public and agency review and comment.

Following the publication of the Draft EIS, a location and design public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 13372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on: August 25, 1987.

George E. Kirk, Jr.,

District Engineer, Richmond, Virginia.

[FR Doc. 87–20107 Filed 9–1–87; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[BS–Ap–No. 2712]

Consolidated Rail Corp.; Public Hearing

The Consolidated Rail Corporation has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance of the traffic control and automatic block signal systems between Salamanca, New York, and Meadville, Pennsylvania. This proceeding is identified as FRA Block Signal Application No. 2712.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9 a.m. on November 4, 1987, in the Council Chamber of the Meadville City Building at 984 Water Street in Meadville, Pennsylvania.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on August 25, 1987.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87–20117 Filed 9–1–87; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; Motor Club of America Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24618 to reflect this addition:

Motor Club of American Insurance Company. Business Address: 484 Central Avenue, Newark, New Jersey 07107–2096. Underwriting Limitation [b]: *$2,804,000.* Surety License[c]: All except IL, IA, MN, NH, VA, WV. Incorporated in: New Jersey. Federal Process agents [d].

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The certificates are subject

to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 23).

A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to Underwriting Limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Department of Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2214.

Dated: August 27, 1987.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

[FR Doc. 87–20113 Filed 9–1–87; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 170
Wednesday, September 2, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., September 4, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–20257 Filed 8–31–87; 10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 1:30 p.m., September 8, 1987.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Commission Interpretation on risk management exemptions from Speculative Limits for Financial and Currency Futures and Options
Consideration of the Chicago Board of Trade's petition for rulemaking—amendment of the Commission's Hedging Definition

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–20258 Filed 8–31–87; 10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., September 11, 1987.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–20259 Filed 8–31–87;10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., September 18, 1987.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secreatry of the Commission.
[FR Doc. 87–20260 Filed 8–31–87;10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND PLACE: 10:00 a.m., September 22, 1987.

PLACE: 2033 K St., NW., Washington, DC 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters
Financial Rule Enforcement Review

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–20261 Filed 8–31–87; 10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:15 a.m., September 25, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–20262 Filed 8–31–87; 10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND PLACE: 11:30 a.m., September 25, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule Enforcement Reviews

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–20263 Filed 8–31–87; 10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., September 29, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters
Rule Enforcement Reviews

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–20264 Filed 8–31–87; 10:57 am]
BILLING CODE 6351–01–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, September 3, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratification
4. Petitions and Complaints:
   Certain erasable programmable read only memories and products containing such memories (Docket Number 1415).
5. Inv. 701–TA–282 and 731–TA–351 and 353 (Final) (Certain forged steel crankshafts from Brazil, the Federal Republic of Germany, and the United Kingdom)—briefing and vote.
6. Inv. 731–TA–355 (Final) (Certain silica filament fabric from Japan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

August 24, 1987.

[FR Doc. 87–20229 Filed 8–28–87; 5:06 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, September 9, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street NW., Washington, DC 20436

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 701–TA–288, 289 and 731–TA–381, 382 (Preliminary) (Certain Granite from Italy and Spain)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

August 25, 1987.

[FR Doc. 87–20230 Filed 8–28–87; 5:06 PM]

BILLING CODE 7020–02–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 31, September 7, 14, and 21, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 31

Wednesday, September 2

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Revision to the General Statement of Policy and Procedures for Enforcement Action
b. Shoreham—Intervenor Motion to Admit New Contention on Medical Services for Contaminated Injured Individuals
c. Licensing Board Decision in Radiology Ultrasound Nuclear Consultants, P.A. (Tentative)
d. Review of ALAB–867 (Jurisdiction Over Kress Creek) (Tentative)

Thursday, September 3

2:00 p.m.
Briefing on Status of Decommissioning Activities (Public Meeting)

Week of September 7—Tentative

Wednesday, September 9

2:00 p.m.
Briefing on Performance of Sandia Containment Tests (Public Meeting)

Thursday, September 10

2:00 p.m.
Discussion of Integration of AEOD Reports into the Regulatory Process (Public Meeting)
3:30 p.m. Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 14—Tentative

Monday, September 14

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Briefing on the Status of Peach Bottom (Public Meeting)

Thursday, September 17

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 21—Tentative

Tuesday, September 22

2:00 p.m.
Briefing on the Integrated Safety Assessment Program (ISAP) (Public Meeting)

Thursday, September 24

2:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Andrew L. Bates,

Office of the Secretary.

August 27, 1987.

[FR Doc. 87–20223 Filed 8–28–87; 4:33 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 52, No. 170
Wednesday, September 2, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 3215-1]

Standards of Performance for New Stationary Sources; Determination of Carbon Monoxide Emissions in Certifying Continuous Emission Monitoring Systems at Petroleum Refineries

Correction

In rule document 87-18598 beginning on page 30674 in the issue of Monday, August 17, 1987, make the following corrections:

PART 60—[CORRECTED]

Appendix A—[Corrected]

1. On page 30679, in the third column, in the last line of the column, "+ 10 percent" should read "± 10 percent".

2. On page 30680, in the third column, in paragraph 5.3, the 10th line should read "to 400-or 400-to 1000-ppm range. If any samples".

3. On page 30681, in the first column, in the second line, insert the word "Equation" after "using".

4. On the same page, Equation 10A-4 should appear as follows:

$$C = C_b (1 - F)$$

5. On the same page, in the second column, under "Bibliography", in paragraph 4., in the second line, "Law" should read "Low".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Wage Coverage

Correction

In rule document 87-18088 beginning on page 29659 in the issue of Tuesday, August 11, 1987, make the following correction:

On page 29663, in the first column, in the **Authority**, in the second line, "215(b)" should read "215(h)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Issuance of Acquiescence Rulings

Correction

In notice document 87-17945 beginning on page 29441 in the issue of Friday, August 7, 1987, make the following corrections:

1. On page 29442, in the second column, in the fifth line, insert "202" after "section".

2. On page 29443, in the first column, under **AR 86-19(11)**, in the first line under paragraph *Issue*, remove "be".

3. On the same page, in the first column, in footnote 6, in the seventh line, "(f) of (g)" should read "(f) or (g)".

4. On the same page, in the second column, in footnote 9, in the fourth line, "had" should read "has".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-030-07-4322-02]

Meeting; Carson City District Grazing Advisory Board

Correction

In notice document 87-18774 appearing on page 30962 in the issue of Tuesday, August 18, 1987, make the following correction:

In the first column, in the third line of the **SUMMARY**, the date should read "September 16,".

BILLING CODE 1505-01-D

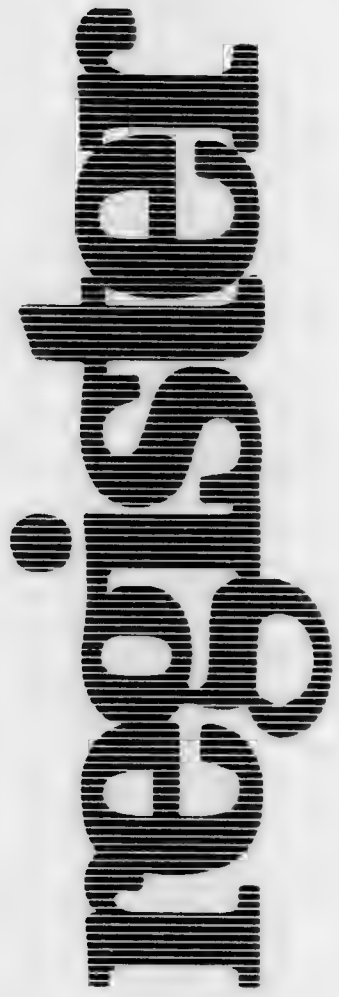

Wednesday
September 2, 1987

Part II

Pension Benefit Guaranty Corporation

29 CFR Parts 2616 and 2617

Distress Terminations of Single-Employer Plans and Standard Terminations of Single Employer Plans; Proposed Rules

VOL
52
ISS
170
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1987
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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2616 and 2617

Distress Terminations of Single-Employer Plans and Standard Terminations of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rules.

SUMMARY: These regulations, when adopted, will replace the Pension Benefit Guaranty Corporation's regulations on Notice of Intent to Terminate and Determination of Plan Sufficiency and Termination of Sufficient Plans (29 CFR Parts 2616 and 2617), as modified by the Notice of Interim Procedures, 51 FR 12491 (April 10, 1986). Those regulations were, to a great extent, rendered obsolete by the enactment of the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA"), which substantially changed the rules governing voluntary terminations of single-employer plans. Among other changes, SEPPAA created two distinct types of voluntary termination, "standard" and "distress". The notice of interim procedures summarized the new termination rules for both types of voluntary plan terminations. The effect of these regulations, when adopted, will be to replace that notice and prescribe, in Part 2617, all of the rules and procedures governing standard terminations and, in Part 2616, all of the rules and procedures for distress terminations.

DATE: Comments must be submitted by November 2, 1987.

ADDRESS: Comments should be addressed to Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. Comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Attorney, Corporate Policy and Regulations Department (Code 35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

On April 7, 1986 the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA"), amending the Employee Retirement Income Security Act, as amended ("ERISA" or the "Act"), became law. As part of the reform measures aimed at better protecting promised pension benefits and better controlling the costs of the single-employer insurance program under Title IV of ERISA, SEPPAA substantially altered the rules governing voluntary plan terminations. These new rules apply to all terminations initiated (*i.e.*, for which a notice of intent to terminate was filed) on or after January 1, 1986.

Under prior law, a plan administrator was free to terminate a single-employer plan at any time (subject to certain procedural requirements), without regard to the degree to which plan benefits were funded. Upon the termination of an underfunded plan, participants' benefits were protected by Title IV only to the extent of their guaranteed benefits; participants lost their right to any additional benefits to which they were entitled under the plan (*i.e.*, their nonforfeitable benefits) that were not funded.

Moreover, plan termination not only enabled a plan sponsor to cut off its statutory obligation to fund participants' benefits, but also to shift all or a portion of the liability for guaranteed benefits to the single-employer insurance program. Plan sponsors that were able to continue in business and to continue providing pension coverage to their employees found that it was cheaper to terminate their underfunded plans, because their liability for the underfunding was limited by the net worth rule in ERISA section 4062. Thus under prior law, the single-employer insurance program wound up bearing the burdens of plan underfunding, often in cases where the plan sponsor was financially strong enough to sustain the costs of eliminating the underfunding. Further, participants whose nonforfeitable benefits exceeded PBGC guarantees lost benefits unless plan assets were sufficient to cover them.

SEPPAA changed all this and essentially transferred back to plan sponsors the liability for funding promised pension benefits when the plan sponsor is financially able to bear these costs. Under SEPPAA, the right to terminate a defined benefit plan is no longer unrestricted. Instead, most plan sponsors may terminate their plans only if the plans are able to satisfy "benefit commitments", which generally exceed PBGC guaranteed benefits. Failing this, a plan may be terminated only if the contributing sponsor that maintains the plan and the other members of its controlled group can demonstrate that they are in such poor financial condition, or that their costs of maintaining single-employer plans have become so burdensome, that they cannot, realistically, continue to maintain the plan for which termination is sought.

The first kind of plan termination is a "standard" termination, and the second a "distress" termination. Under SEPPAA section 11007, amending ERISA section 4041(a), a single-employer plan may be voluntarily terminated only in a standard or distress termination. Absent qualifying for one of these types of termination, a single-employer plan cannot voluntarily terminate.

It should be kept in mind, however, that SEPPAA does not affect a plan administrator's right to freeze a plan, although SEPPAA does impose certain new notice requirements pertaining thereto. Therefore, in cases where a plan administrator knows that a plan cannot, or is uncertain whether it can, qualify for either a standard or distress termination, the plan administrator may want to consider freezing the plan.

In addition to these very substantial changes to the substantive rules on plan termination, SEPPAA also changes many of the procedural rules. The new rules for standard terminations are set forth in amended ERISA section 4041(b) (amended by SEPPAA section 11008) and the rules for distress terminations are in amended section 4041(c) (amended by SEPPAA section 11009).

In order to reflect these new rules, the Pension Benefit Guaranty Corporation's two principal regulations dealing with the voluntary plan termination process, the rules on Notice of Intent to Terminate and Determination of Plan Sufficiency and Termination of Sufficient Plans (29 CFR Parts 2616 and 2617), need to be totally revised. In keeping with the structure of the SEPPAA amendments, the PBGC is now proposing to promulgate two new termination regulations, one dealing solely with distress terminations and the other with standard terminations. The distress termination rules will be codified in Part 2616 and the standard termination rules in Part 2617.

Most terminations under SEPPAA will be standard terminations. In addition, a number of the rules applicable to distress terminations are merely variants of the standard termination rules. For these reasons, the discussion that follows will deal first with standard terminations.

Standard Terminations—Statutory Rules

One of the goals of the Congress in promulgating the new termination rules was to simplify and expedite the PBGC's review of terminations under which the PBGC would not be called on to pay

guaranteed benefits, thereby permitting the faster distribution of plan assets to participants in those plans, as well as enabling the PBGC to devote more of its resources to those terminations that do impose liabilities on the plan termination insurance program. Thus, sections 11007 and 11008 of SEPPAA greatly reduce the PBGC's role in standard terminations, while at the same time increasing the statutory protections afforded plan participants and beneficiaries and enhancing their ability to protect their own rights. In developing proposed Part 2617, the PBGC has adhered to this Congressional intent and attempted to restrict its role in standard terminations to the minimum consistent with its statutory obligations.

Although the substantive requirements for standard terminations are new, many of the procedural rules are a codification of the PBGC's prior procedures for terminating sufficient plans. Therefore, the termination process described in SEPPAA section 11008, amended ERISA section 4041(b), will be familiar to most pension practitioners. (Statutory references hereinafter are to amended section 4041 unless stated otherwise.)

Pursuant to section 4041(b)(1), a plan may terminate in a standard termination only if:

(A) The plan administrator issues a 60-day advance notice of intent to terminate to affected parties other than the PBGC (as required by section 4041(a)(2));

(B) The plan administrator issues a termination notice to the PBGC and notices of benefit commitments to plan participants and beneficiaries (as required by section 4041(b)(2) (A) and (B));

(C) The PBGC does not issue the plan a notice of noncompliance under section 4041(b)(2)(C); and

(D) When the final distribution of assets occurs, plan assets are sufficient to satisfy all benefit commitments under the plan.

The requirement of a 60-day notice of intent to terminate to plan participants, beneficiaries and collective bargaining representatives derives from, but significantly modifies, the requirement in the PBGC's Notice of Intent to Terminate regulation that the plan administrator notify participants and retirees of a proposed termination on or before the date of filing the notice with the PBGC. Under amended section 4041(a)(2), however, the notice of intent to terminate is not filed with the PBGC and the recipients must receive personal notice. Instead of filing the notice of intent to terminate with the PBGC, the plan administrator must make a subsequent filing with the PBGC, referred to in Part 2617 as the "standard termination notice". The requirements for this notification to the PBGC (contained in section 4041(b)(2)(A)) essentially embody the PBGC's Enrolled Actuary and Plan Administrator Certification Program, making that program mandatory for all standard terminations.

The requirement of the issuance of notices of benefit commitments to plan participants and beneficiaries is new under SEPPAA and is discussed in greater detail later in this preamble. However, it is important at the outset to understand SEPPAA's new concept of "benefit commitments", since this concept is central to many of SEPPAA's most significant reformations of prior law.

"Benefit commitments" are those benefits which: (1) Are guaranteed by the PBGC under section 4022 of the Act; (2) would be guaranteed but for the limitations in section 4022(b); or (3) constitute early retirement supplements or subsidies or plant closing benefits, providing the participant or beneficiary has, prior to the plan termination date, satisfied the plan's conditions for entitlement to the benefit, but for the statutory exceptions (listed in the regulation). The legislative history of this provision indicates that the terms comprising the third portion of the definition are to be liberally construed. Benefit commitments include, for example, "30-and-out" benefits or post-termination cost-of-living adjustments, assuming, in both cases, that all conditions for entitlement to the benefit had been satisfied before plan termination. Benefit commitments do not, however, include benefits related to post-termination service or post-termination shutdowns. Thus, benefit commitments do not include all benefits protected by section 301(a) of the Retirement Equity Act under section 411(d)(6) of the Internal Revenue Code.

Title IV now protects participants' rights to their benefit commitments (although, as will be discussed later in this preamble, this protection is only partial in the case of distress terminations). Under amended section 4041, a "sufficient" plan is one that can satisfy all obligations for benefit commitments, rather than merely guaranteed benefits.

The provision for the PBGC's issuance of a "notice of noncompliance" is new under SEPPAA and constitutes a reversal of prior procedure. The PBGC must issue this notice (normally within 60 days after receipt of the standard termination notice) in order to stop a proposed standard termination, thereby prohibiting a plan administrator from making the final distribution of assets. Contrary to prior law, under SEPPAA the PBGC must take no formal action to authorize a final distribution of plan assets, but instead, must act only if it wishes to stop the distribution. (Of course, the PBGC's taking no action to stop a final distribution of assets does not imply that the termination and distribution satisfy the requirements of the Internal Revenue Code.) The PBGC will issue a notice of noncompliance if it determines that any of the notice requirements was not met, or that there is reason to believe that the plan is not sufficient for benefit commitments (section 4041(b)(2)(C)).

SEPPAA's final prerequisite to a standard termination is a significant departure from prior law, one intended to protect the single-employer insurance program. Previously, if a plan was sufficient for guaranteed benefits as of the proposed termination date and thereafter became insufficient, its earlier status was controlling. Thus, participants received the benefits to which assets were allocated as of the proposed termination date, and the PBGC made up the subsequent shortfall. This liability was borne by the PBGC without any commensurate liability for the plan sponsor.

Under SEPPAA, when a subsequent insufficiency (for benefit commitments) occurs, the proposed termination is nullified, and the plan continues as an ongoing plan. Thus, SEPPAA ensures that the obligation for funding promised benefits stays with the plan sponsor, rather than the insurance program. (As will be discussed later in this preamble, this same principle is incorporated in a slightly modified fashion under the distress termination rules as well.)

Finally, unless the PBGC issues a notice of noncompliance barring the termination, and assuming that the plan can in fact satisfy all benefit commitments, the plan administrator must close out the plan (section 4041(b)(2)(D)) in the same manner as under prior law. The plan administrator must also (as under prior practice) submit a post-distribution certification to the PBGC (section 4041(b)(3)).

Distress Terminations—Statutory Rules

As mentioned above, SEPPAA's restrictions on the termination of insufficient (for benefit commitments) plans constitute a major departure from prior law. In addition to meeting notice requirements similar to those applicable to standard terminations, qualification for a distress termination necessitates

demonstrating the requisite financial hardship.

Specifically, under section 4041(c)(1), a plan may terminate in a distress termination only if:

(A) The plan administrator issues a 60-day advance notice of intent to terminate to affected parties including the PBGC (as required by section 4041(a)(2));

(B) The plan administrator issues a subsequent termination notice to the PBGC, referred to in Part 2616 as the "distress termination notice", (as required by section 4041(c)(2)(A)); and

(C) The PBGC determines that the distress tests are satisfied in accordance with section 404.1(c)(2)(B).

Section 4041(c)(2)(B) both establishes the four statutory distress tests and prescribes their applicability. Under that provision, the contributing sponsor and each substantial member of its controlled group must satisfy at least one of the distress tests; they need not all satisfy the same distress test. The concept of a "substantial member" of a controlled group is new under SEPPAA and is defined as any member of a controlled group whose assets comprise at least five percent of the total assets of the entire controlled group. (It should be kept in mind that this concept of a substantial member of a controlled group is relevant only for purposes of satisfying the statutory distress tests. Employer liability under section 4062 of the Act still runs to all members of the contributing sponsor's controlled group.)

The four distress tests are as follows:

(1) Liquidation in bankruptcy—a person has filed or had filed against it, as of the termination date, a petition seeking liquidation under title 11, United States Code, or under a similar provision of state law, and, as of that date, the petition has not been dismissed.

(2) Reorganization in bankruptcy—a person has filed or had filed against it, as of the termination date, a petition seeking reorganization under title 11, or under a similar state law, or, as of that date, a case described in #1, has been converted to a reorganization proceeding; the case has not been dismissed, as of the termination date; and the plan termination is approved by the bankruptcy court or the appropriate state court.

(3) Inability to continue in business—a person demonstrates that, unless a distress termination occurs, the person will be unable to pay its debts and to continue in business.

(4) Unreasonably burdensome pension costs—a person demonstrates that its costs of providing pension coverage have become unreasonably burdensome solely as a result of declining employment of employees covered under all single-employer plans maintained by that person.

If the PBGC determines that the necessary persons meet at least one of these tests, and the aforementioned notice requirements are also satisfied, the plan may terminate in a distress termination. How this is effected depends on the degree to which plan benefits are funded. Under section 4041(c)(3)(B), the rules for implementing a distress termination are a hybrid of the rules applicable to standard terminations and the rules under prior law applicable to the termination of insufficient (for guaranteed benefits) plans.

If a plan can pay at least all guaranteed benefits, the PBGC will authorize the plan administrator to distribute all plan assets according to the same rules as under a standard termination (sections 4041(c)(3)(B) (i) and (ii)). If the plan assets are not sufficient to satisfy guaranteed benefits, the plan administrator may not take any further actions to implement the plan termination, and the PBGC will act under ERISA section 4042 to have a trustee appointed and will assume the obligation to pay guaranteed benefits (section 4041(c)(3)(B)(iii)).

As alluded to previously, SEPPAA modifies Title IV's employer liability rules in a number of significant ways in order to better protect the termination insurance program and plan participants and beneficiaries. Two of these changes are pertinent to the distress termination process.

First, since in some distress terminations plan administrators will be authorized to distribute plan assets, the possibility exists that a subsequent insufficiency for guaranteed benefits (or, less likely, a subsequent insufficiency for benefit commitments) may occur. When this happens, the original valuations and asset allocation are no longer controlling. Instead, SEPPAA provides for new valuations and a new allocation as of, generally, the date the subsequent insufficiency is discovered (sections 4062 (b)(1)(B) and (c)(1)(B)). Thus, the liability or loss associated with a subsequent shortfall is shared by the contributing sponsor (and its controlled group members), plan participants and the PBGC.

The second employer liability change pertinent to the termination process is the creation of liability for unfunded benefit commitments in excess of guaranteed benefits (section 4062(a)(2)). This liability equals the lesser of 15% of total benefit commitments or 75% of the unfunded benefit commitments in excess of guaranteed benefits. It affords plan participants some protection against a plan's inability to pay the benefits to which participants were entitled. In order to collect this liability and make payments to participants, SEPPAA creates a new "section 4049 trust". (Proposed Part 2616 set forth below does not deal with the establishment and operation of the section 4049 trust. That will be dealt with in a separate regulation.)

Because of the similarities between SEPPAA, particularly its standard termination rules, and prior rules for terminating plans, the discussion of the proposed regulations that follows does not summarize all of the regulations, but rather focuses on the new rules and discusses issues arising from them. It should be kept in mind that a number of the issues raised under the discussion of Part 2617 are applicable to distress terminations, as well.

Finally, the PBGC notes that it is still reviewing these termination regulations, as well as others of its regulations (*e.g.*, Parts 2618 and 2619, dealing with the allocation of plan assets and the valuation of plan benefits, respectively) to determine what changes are necessary to conform the regulations to the requirements of the Retirement Equity Act ("REA"). For this reason, the sections in Parts 2616 and 2617 dealing with the form of benefit that must be provided upon plan termination and with the election of alternative forms have been reserved. Similarly, it should be understood that portions of Part 2619, which is referred to in several places both in this preamble and in Part 2616, will be revised in light of REA (and SEPPAA). The PBGC expects that these revisions will be completed before Parts 2616 and 2617 are made final. (Although, the various REA issues are not specifically addressed in this preamble, the PBGC welcomes public comment on the proper interaction of REA with ERISA Title IV.)

Part 2617—Standard Terminations

Section 2617.2 of the regulation on standard terminations defines several terms new under SEPPAA. The new term "benefit commitments" was discussed above. Also new is the term "affected parties". Among other uses, this term is used to describe the persons to whom a notice of intent to terminate must be issued. Since, in a standard termination, that notice is not given to the PBGC, § 2617.2 omits the PBGC from the statutory list of affected parties. It defines "affected party" as each plan participant, each beneficiary of a deceased participant, each alternate

payee under an applicable qualified domestic relations order, and each employee organization representing plan participants. For purposes of this regulation, "participant" is defined as it is defined under the PBGC's Payment of Premiums regulation (29 CFR Part 2610), except that the definition in § 2617.2 does not include deceased participants. (As under Part 2610, the definition also excludes participants whose benefits have been fully satisfied through the purchase from an insurer of an irrevocable commitment to provide the benefits.)

SEPPAA uses the terms "contributing sponsor" and "members of the contributing sponsor's controlled group" in lieu of the term "employer". For purposes of standard terminations, only the term "contributing sponsor" is relevant, and it is defined as the person who is responsible for meeting the minimum funding standards with respect to a plan. This definition does not deal with paragraph (B) of the statutory definition, which has no relevance to standard termination and is discussed in connection with distress termination.

Part 2617 uses an old term, "proposed termination date", in a slightly different manner than under prior law. The "proposed termination date" is the date so specified in the notice of intent to terminate and the standard termination notice filed with the PBGC. If these dates are different, the date in the standard termination notice is controlling. This might occur when, for example, a plan administrator decides that more time is needed to file the standard termination notice and therefore a later termination date must be proposed in that notice. (See discussion below on the time limits for filing a standard termination notice.) The proposed termination date specified in the termination notice may be later, but never earlier, than the date stated in the notice of intent to terminate.

The term "proposed termination date" is used throughout the regulation, rather than the term "termination date". This is because until the final distribution of assets in satisfaction of all benefit commitments occurs, the plan termination is contingent upon the plan's ability to actually satisfy all benefit commitments under the plan. When this final distribution occurs, then the proposed termination date becomes the actual termination date.

One of the other SEPPAA changes designed to better enable plan participants to protect their rights in the event of a proposed plan termination is set forth in section 4041(a)(3) and implemented by § 2617.5 of this proposed regulation. (Section 4041(a)(3) also applies to distress terminations, and therefore, the discussion that follows is relevant to those terminations as well.) Pursuant to section 4041(a)(3), the PBGC may "not proceed with a plan termination if the termination would violate the terms and conditions of an existing collective bargaining agreement". While the purpose of this provision seems rather straightforward, implementing it raises a host of questions.

By its terms this rule applies only to terminations that would violate "*existing* collective bargaining agreements" (emphasis added). Yet, in many cases when a collective bargaining agreement has expired, the parties continue to be obligated to adhere to the terms of the expired agreement. Should the protection afforded plan participants by section 4041(a)(3) continue to exist in these situations?

Other difficult problems involve the condition "if the termination would violate the . . . collective bargaining agreement". Obviously, whether this is the case will often be subject to dispute. Who is to make this determination? Labor-management relations law provides mechanisms for resolving such disputes, as do many collective bargaining agreements. This suggests that the PBGC should not attempt to make these determinations. But if it does not, does that mean that the PBGC must suspend processing of a plan termination whenever there is an assertion that the termination would violate an existing collective bargaining agreement? (Indeed, is a mere assertion adequate to invoke section 4041(a)(3), or must a party take some formal action, *e.g.*, initiate arbitration or file a lawsuit?) What if a challenge is frivolous on its face? Further, if the PBGC is not to make these determinations, how long may the suspension of a termination last? Must the suspension continue until the challenging party and the contributing sponsor have exhausted their judicial remedies and appeal rights?

The PBGC has considered these questions in developing the rules set forth in proposed § 2617.5 as discussed below (and proposed § 2616.5 in the distress regulation). The PBGC emphasizes, however, that this is a proposal only and urges interested persons to submit their views on these matters.

In brief, § 2617.5(a) of the proposed regulation provides that whenever the PBGC is advised, prior to the expiration of the time within which it may issue a notice of noncompliance, that a formal challenge (as described in § 2617.5(c)) has been initiated asserting that the plan termination violates the terms of an existing collective bargaining agreement, the PBGC will suspend the processing of the termination. The effect of a suspension is to stop the running of all time periods imposed by the Act and this regulation relevant to the termination. The suspension does not, however, nullify the notice of intent to terminate, nor negate its effects. Therefore, the prohibition in § 2617.4 against any distributions pursuant to the plan termination after issuance of the notice of intent to terminate remains in effect, and benefit accruals and vesting cease as of the proposed termination date. (As in any proposed termination, if the PBGC ultimately dismisses or nullifies the termination, accruals and vesting resume as of the proposed termination date.)

The methods of formally challenging a proposed termination described in § 2617.5(c) are methods available under labor relations law. This list is intended to be all inclusive. Whether or not any one of these avenues is available in a particular case depends on the terms of the collective bargaining agreement and/or applicable law. This regulation does not confer any new rights with respect to how or when a party may challenge a proposed plan termination under a collective bargaining agreement.

A suspension under § 2617.5 remains in effect until the final resolution of the challenge as described in § 2617.5(d). As with the types of formal challenges that may be initiated, this list is meant to be all inclusive. If the contributing sponsor prevails and wishes to continue the plan termination, the termination proceeding will be reactivated and all prior actions taken with respect to the termination shall be effective. If the challenge to the termination is sustained, the PBGC shall dismiss the termination proceeding and it shall be void *ab initio*.

Proposed § 2617.6 ("Requirement for annuities") contains a general rule that is very similar to the general rule under the PBGC's old sufficiency regulation. As noted earlier in this preamble, rules on exceptions to the annuity requirement and required annuity form have been reserved until the PBGC determines what changes are necessary to conform the regulation to the requirements under Title I of ERISA and the Internal Revenue Code that were added by the Retirement Equity Act.

Proposed § 2617.7 carries over from the existing regulation, with one important change, the rule permitting a contributing sponsor to make a commitment to make a plan sufficient.

Under a standard termination, of course, that commitment must be to fund all benefit commitments under the plan. However, § 2617.7 provides that if the contributing sponsor is the subject of a bankruptcy liquidation or reorganization proceeding, the commitment will be valid only if it is approved by the court before which the proceeding is pending. The purpose of this rule is to prevent a standard termination from going forward on the basis of a commitment that is not very likely to be honored.

Proposed § 2617.8 contains the rule on what constitutes "filing" of a document with the PBGC under this regulation. Under § 2617.8(a), a document is deemed filed with the PBGC on the date that it is received by the PBGC, providing it is received on a regular business day, no later than 4:00 p.m. Documents received at other times are deemed filed on the next regular business day. This change from prior practice is necessary because the old filing rule (postmark date) proved difficult to administer, and because the PBGC's time for reviewing proposed terminations is shorter under SEPPAA.

Section 4041(a)(2) provides that, at least 60 days prior to the proposed termination date, the plan administrator must provide each affected party with a notice of intent to terminate. This requirement is implemented by § 2617.12, which requires the plan administrator to issue (*i.e.*, either hand deliver or deposit with a mail or courier service) the notices by the stipulated date. (Section 2617.12 also provides that the notices may not be issued more than 180 days prior to the proposed termination date.) In other words, the earliest possible proposed termination date is the date the notices are issued plus 60 days. For example, a plan administrator who wished to terminate a plan on October 31, 1986, would have to issue all notices of intent to terminate no later than September 1, 1986; September 1 plus 60 days is October 31. The PBGC stresses this rule because this requirement cannot be waived. If a standard termination notice filed with the PBGC shows that the proposed termination date stated in the notice of intent to terminate did not comply with this rule, the PBGC will issue a notice of noncompliance voiding the proposed termination. In order to terminate the plan, the plan administrator would then have to begin the process again.

Because of the severity of this rule, § 2617.12(a) requires that the notices be "issued" by the appropriate date. To require actual delivery would, in the PBGC's judgment, place an unreasonable burden on the plan administrator in light of the consequences of noncompliance. The plan administrator is not responsible for the performance of the United States Postal Service or any other established delivery service. To require actual delivery of the notices by the appropriate date would mean that slower delivery than the plan administrator might reasonably have expected could defeat the plan termination. Moreover, the 60-day requirement (increased from 10 days under prior law) ensures that the affected parties will be advised of the proposed termination in time to challenge it if they so desire. (The PBGC notes that plan administrators may choose to use the same mailing for the notice of intent to terminate and the notice to interested parties required under ERISA section 3001, although these notices must be set forth in separate documents.)

Pursuant to section 4041(b)(2)(A), the plan administrator must file the standard termination notice with the PBGC "(a)s soon as practicable" after the issuance of the notices of intent to terminate. Notices of benefit commitments must be issued no later than the date on which the standard termination notice is sent (section 4041(b)(2)(B)). The PBGC is concerned that an "as soon as practicable" rule would be unadministrable, and therefore, § 2617.15(a) requires the plan administrator to file the standard termination notice no later than 60 days after the proposed termination date stated in the notice of intent to terminate (or, if later, the proposed termination date specified in the standard termination notice). For example, if the proposed termination date stated in the notice of intent to terminate was October 31, the standard termination notice would have to be filed with the PBGC no later than December 30; October 31 plus 60 days is December 30. (Tracking the statutory language, § 2617.13(a) requires that the notices of benefit commitments be issued no later than the date on which the standard termination notice is sent to the PBGC.).

The PBGC believes that this 60-day rule is necessary to avoid potential abuse of the termination process. Without the establishment of a fixed time period within which a plan administrator must proceed with a termination, the process could be used to effect a "deep freeze" of the plan (*i.e.*, the cessation of benefit accruals and vesting), while waiting for the most propitious time to carry out the termination and actually distribute plan assets in full satisfaction of all benefit commitments.

The PBGC also believes that this rule provides more than enough time (at least 120 days after issuance of the notices of intent to terminate) for plan administrators to issue the notices of benefit commitments and prepare and file the standard termination notice. The regulation does provide for a limited extension to complete the filing of a standard termination notice submitted within the requisite 60-day period (§ 2617.16(d)). Moreover, if the plan administrator finds that it is impossible to submit the standard termination notice within 60 days after the proposed termination date stated in the notice of intent to terminate, the plan administrator may set a later proposed termination date in the standard termination notice. However, in no event may the new proposed termination date be later than 180 days after the issuance of the notices of intent to terminate.

The PBGC stresses that it will not waive the filing date requirement. Filing a standard termination notice after the 60-day period (or failing to complete the submission within the time specified in § 2617.16(d)) will result in the PBGC's issuing a notice of noncompliance pursuant to § 2617.17.

One more time limit under the regulation bears mentioning. Section 4041(b)(2)(D) requires the plan administrator to begin the final distribution of assets "as soon as practicable" after the expiration of the period within which the PBGC may issue a notice of noncompliance. For the reasons stated in connection with the 60-day rule discussed above, the PBGC has decided that it should establish a fixed time frame for making the distribution. Accordingly, § 2617.18(a) requires the plan administrator to make the final distribution within 30 days after the expiration of the PBGC's review period.

The PBGC finds that the most common reason given by plan administrators for delaying the final distribution is that the plan has not received an IRS determination letter with respect to the termination. The PBGC, therefore, urges plan administrators to file their requests for determination letters early in the termination process, at or about or before the time they issue the notices of intent to terminate.

Where, despite the plan administrator's best efforts, it is not possible to distribute plan assets within the required period, the PBGC may extend the period under § 2617.18(e). A

request for extension must be filed before the expiration of the 30-day period and request an extension of a specific duration not to exceed 45 days. The PBGC will grant the extension only if it finds that the inability to distribute is not caused by the actions or inactions of the plan administrator or contributing sponsor.

In this connection, the PBGC notes that the existence of a claim against the contributing sponsor for due and unpaid contributions is not a valid reason for delaying the final distribution of assets, subject, of course, to the restriction that if the plan administrator cannot distribute assets in full satisfaction of all benefit commitments, the plan administrator may not proceed with the termination. Otherwise, the plan administrator shall make the distribution within the prescribed 30-day period and thereafter pursue the claim for the unpaid contributions. Amounts subsequently collected may be paid to participants and beneficiaries without regard to the annuity requirement in § 2617.6, since these are amounts in excess of benefit commitments.

Failure to distribute within the 30-day (or extended) period shall nullify the proposed termination, and the plan shall be an ongoing plan.

Another significant mechanism introduced by SEPPAA to enable plan participants and beneficiaries to better protect their rights in a plan termination is the requirement that participants and beneficiaries be issued notices of their benefit commitments at least 60 days prior to the final distribution. This notice serves two purposes. First, for benefits that may not or will not be paid in the plan's normal form, the notice must state the normal form under the plan and the factors used to convert to the alternative form (§ 2617.14 (d)–(f)). This will enable participants who have not made their benefit elections to make more informed elections, and it will enable all participants to question whether correct factors and assumptions are being used. In the past, the PBGC has received numerous inquiries from participants concerning a plan's interest assumptions (principally, the rate used for calculating lump sum benefits paid in lieu of annuities). Providing this data to participants before the final distribution of assets will enable participants to direct these concerns to their plan administrators before plan assets are distributed.

The second purpose of the notice of benefit commitments is to enable participants and beneficiaries to verify the personal data upon which the calculation of their benefits was based. Section 2617.14 (d)–(f) mandates that the notice contain the personal data (*e.g.*, participant's age, beneficiary's age, length of service, salary, etc.) used to compute the benefit commitments. Thus, participants will be able to correct any erroneous information prior to the plan's close out.

With respect to benefits of participants (or beneficiaries) in pay status as of the proposed termination date, § 2617.14(d) requires that the personal data be provided only to participants (or beneficiaries) who were in pay status one year or less as of that date. Requiring that this information be provided to all persons in pay status could create a tremendous administrative burden in many plans. Moreover, it seems unlikely that, after one year, there would be outstanding questions as to a person's correct benefit.

Finally, notices of benefit commitments will serve their intended function only if they are written in clear, simple language that the average participant or beneficiary can understand. Section 4041(b)(2)(B) specifically requires this. This rule is reiterated in § 2617.14(a) of the proposed regulation and further implemented by § 2617.14(b), which provides a special rule covering situations where a significant number of plan participants speak only the same non-English language.

The standard termination notice that must be filed with the PBGC under proposed § 2617.15 essentially combines Form 5310 (notice of intent to terminate) and Forms 444 and 445 (enrolled actuary and plan administrator certifications). While the PBGC is continuing the use of those forms (with appropriate modifications) during the start-up period under SEPPAA (although one-stop filing is no longer available), Part 2617 (and Part 2616) when issued in final form will supersede Forms 5310, 444 and 445. The information that must be submitted to the PBGC will be set forth in this regulation (see § 2617.15 (b) and (c)).

The PBGC has endeavored to keep the information requirements for the standard termination notice at the absolute minimum. In brief, the notice requires plan and contributing sponsor identifying information, statements verifying compliance with the notice of intent to terminate and notice of benefit commitments requirements, and data showing that the plan is sufficient for all benefit commitments. Data supporting the enrolled actuary's certification is not required; if the enrolled actuary's determination of sufficiency is incorrect, or for any other reason the plan proves to be unable to satisfy all benefit commitments, the proposed termination will be nullified (§ 2617.18(d)). Similarly, the proposed regulation does not prescribe the valuation methods to be used by the enrolled actuary. The enrolled actuary may use any reasonable methods and assumptions consistently applied that will accurately reflect the plan's ability to pay all benefit commitments on the date of distribution after allocating plan assets in accordance with Part 2618 of this subchapter. In addition, the PBGC notes that the rules in Part 2619 regarding the valuation of benefits to be paid as lump sums will apply.

Plan administrators who expect a termination to result in a reversion of residual assets to the contributing sponsor should bear in mind that certain information relating to such terminations that the PBGC used to request later in the termination process is now required to be submitted as part of the standard termination notice (§ 2617.15(e)). This information is needed so that the PBGC can (among other things) review the termination for consistency with the PBGC/DOL/IRS guidelines on asset reversions and also review any alternative method for allocating the reversion under a contributory plan. (The PBGC notes that its review with regard to the guidelines is limited to Title IV matters and does not extend to questions of compliance with Title I and the Internal Revenue Code.) The PBGC reminds plan administrators that a purported plan termination that is not consistent with the joint guidelines is not a termination under ERISA and the plan is an ongoing plan.

With respect to contributory plans under which the plan administrator proposes to allocate the reversion in a manner other than that prescribed in § 2618.31(b) of the Allocation of Assets regulation, § 2617.15(c)(3) requires that the plan administrator consent to a 60-day extension of the PBGC's time within which to issue a notice of noncompliance. This extension is needed to provide the PBGC with adequate time to review the proposed alternative allocation method. (In this connection, the PBGC notes that plans that are no longer, but once were, contributory plans and still retain any employee contributions are treated as contributory plans for all purposes under the allocation rules of Part 2618 and section 4044 of the Act.)

As mentioned earlier in this preamble, under SEPPAA the PBGC no longer must authorize the final distribution of plan assets in a standard termination, but instead, must prohibit the distribution if the termination does not comply with

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the statute and this regulation. Accordingly, the PBGC will notify plan administrators of the date on which the PBGC's 60-day (or 120-day for certain reversion cases involving contributory plans) review period begins to run. Absent a suspension or extension of the 60-day (or 120-day) period, if a notice of noncompliance is not issued before the 61st (or 121st) day, the plan administrator is free to distribute plan assets; the PBGC will not issue anything authorizing the distribution.

If the PBGC issues a notice of noncompliance, the termination is nullified and the plan is an ongoing plan for all purposes (§ 2617.17(b)). However, the plan administrator may appeal the issuance of a notice of noncompliance in accordance with the rules prescribed in Subpart D of Part 2606, and the filing of an appeal automatically stays the effectiveness of the notice of noncompliance until the PBGC issues its decision on the appeal (§ 2617.17(c)). The stay avoids harm to the plan, the contributing sponsor and participants, that could arise from erroneously treating the plan as an ongoing plan if, for example, the plan were required to commence paying benefits to participants whose eligibility depends on plan continuation. If the PBGC revoked the notice of noncompliance and upheld the termination on appeal, recovery of such payments could be costly or impossible for the plan and, if successful, could impose hardship on the participants. The PBGC recognizes that if the appeal were denied, the automatic stay could have resulted in a delay in putting some eligible participants into pay status. The PBGC notes that this problem could be addressed in particular cases by making the notice of noncompliance effective immediately, without a right of appeal, as provided in 29 CFR 2606.23(b). Nevertheless, the PBGC requests comments on the appropriateness of the automatic stay provision.

The PBGC stresses that, even in the absence of a notice of noncompliance, the plan administrator may not make the final distribution if the plan cannot actually satisfy all benefit commitments (§ 2617.18(b)). When such a subsequent insufficiency occurs, the plan administrator must notify the PBGC immediately. If the plan administrator nevertheless makes the final distribution, the plan will be subject to restoration by the PBGC under ERISA section 4047 and an action may be brought against the plan administrator for violating ERISA.

Part 2616—Distress Terminations

Most of the definitions used in Part 2617 are also used in Part 2616, although some terms have slightly different meanings. For purposes of the distress termination regulation, the term "affected parties" includes the PBGC. Therefore, as noted earlier, in a distress termination, the notice of intent to terminate must be issued to the PBGC as well as to participants, beneficiaries and collective bargaining representatives.

The term "contributing sponsor" is defined to include the person responsible for meeting the funding standards with respect to a plan, as well as any person who is a member of the contributing sponsor's controlled group and was responsible for meeting the funding requirements with respect to the plan at a time when the person employed a significant number of the plan participants. The definition parallels the statutory definition and does not attempt to define what constitutes "a significant number of participants" for purposes of paragraph (B) of the statutory definition.

The term "proposed termination date" also is defined somewhat differently under proposed Part 2616. Under this regulation, the proposed termination date specified in the distress termination notice must be the same as the date specified in the notice of intent to terminate. The plan administrator may not move the proposed termination date to a later date. Because in most distress terminations the contributing sponsor and the members of its controlled group will be in bankruptcy or otherwise experiencing severe financial hardship, permitting the plan administrator to change the proposed termination date to a later date would pose a significant risk to the PBGC.

The definition of "substantial member of a controlled group" found in § 2616.2 creates a rebuttable presumption that every member of the contributing sponsor's controlled group as of the termination date is a "substantial member" (*i.e.*, owns five percent or more of the total gross assets of the controlled group) unless the plan administrator can prove otherwise to the PBGC's satisfaction. The PBGC believes that this is a reasonable and appropriate rule since it is the contributing sponsor and its controlled group members who are in possession of the data necessary to prove whether any person is a substantial member of the controlled group.

Moreover, since the determination of "substantiality" is the first major step in the PBGC's processing of a distress termination, it is important that the PBGC be able to make this finding quickly. Establishing this presumption will facilitate that process. As another means of expediting this process, gross assets ordinarily will be determined from book values.

The plan administrator may submit whatever information the plan administrator believes is relevant to the demonstration that a person is not a substantial member. However, at a minimum, this information must include consolidated (for parent/subsidiary controlled groups) or combined (for brother/sister controlled groups) financial statements and financial statements for each controlled group member that the plan administrator asserts is not substantial (§ 2616.14(b)). Proposed § 2616.14(b) also requires that these financial statements be submitted for each of the five years preceding the proposed termination date. This is to enable the PBGC to review the relationship (in terms of gross assets) between the specific controlled group members in question and the whole controlled group during the recent past.

Proposed § 2616.3 basically reiterates the statutory requirements for a distress termination. It should be noted, however, that § 2616.3(d)(1), which describes the first statutory distress test (section 4041(c)(2)(B)(i)), slightly modifies that test. Specifically, the regulatory provision includes both cases begun as bankruptcy liquidations and cases begun as bankruptcy reorganizations and subsequently converted to liquidations. The latter group is not included in the statutory provision. This is an apparent oversight, since the statute does take account of cases begun as bankruptcy liquidations and subsequently converted to reorganizations (section 4041(c)(2)(ii)).

The distress tests, as set forth in § 2616.3(d), require, as does the statute, that a distress test be satisfied as of the plan termination date. Section 2616.14 (the section dealing with the distress termination notice) provides, however, that the plan administrator demonstrate satisfaction of the distress tests as of the proposed termination date. The reason for this is simple: at the time a distress termination notice is filed, the plan termination date will not have been established. This apparent inconsistency or gap in the statute raises a series of difficult questions.

With respect to distress terminations, SEPPAA does not change the statutory rules on establishment of a termination date. Section 4048(a)(2) (former section 4048(a)(1)) provides that in a distress termination, the termination date is "the date established by the plan

administrator and agreed to by the corporation". Section 4048(a)(4) (former section 4048(a)(3)) provides that when "no agreement is reached between the plan administrator and the corporation", the termination date is "the date established by the court". It was clear under prior law that the PBGC did not have to agree to the termination date proposed by the plan administrator. It was also clear that under these rules a "retroactive" termination date (*i.e.*, a termination date earlier than the date 10 days after the filing of a notice of intent to terminate) could be established.

If the PBGC does not agree to the termination date proposed by the plan administrator and another date is agreed to (or established by a court), would this mean that the plan administrator would have to prove satisfaction of the distress tests as of the new termination date? What if the contributing sponsor and the substantial members of its controlled group do not qualify for distress as of the new termination date? Should there, perhaps, be two termination dates in distress terminations: (1) The termination date proposed by the plan administrator, which would be the date used for determining satisfaction of the distress tests; and (2) the termination date established in accordance with section 4048 (a)(2) or (a)(4), which would be the date used for all other purposes, *e.g.*, for establishing participants' benefit commitments and guaranteed benefits?

Also, it may be argued that, although SEPPAA did not change the pertinent provisions of section 4048, the establishment of a retroactive termination date is inconsistent with SEPPAA's greater emphasis on advance notice to plan participants and beneficiaries of a proposed termination. In other words, the greater rights ostensibly afforded participants and beneficiaries by amended sections 4041 (a)(2) and (c)(1)(A) are largely vitiated if those provisions mean only that the date stated in the notices of intent to terminate must be 60 days later than the date the notices are issued, and not that the actual termination date agreed to by the plan administrator and the PBGC must be at least 60 days after the notice.

On the other hand, concluding that section 4048 no longer authorizes the establishment of retroactive termination dates appears inconsistent, not only with the express language of section 4048, but with SEPPAA's purpose of providing greater protection to the termination insurance program. The purpose of establishing a retroactive termination date in any case is to protect the insurance program. The PBGC, therefore, tentatively has concluded that retroactive termination dates continue to be authorized under ERISA in limited circumstances.

The PBGC specifically requests that interested members of the public comment on these questions. The PBGC is considering a wide range of options, including those suggested above, and will consider any others that members of the public might suggest.

Proposed § 2616.5, like its counterpart under proposed Part 2617, provides for the suspension of a distress termination proceeding if there is a challenge under a collective bargaining agreement to the proposed termination. Under § 2616.5, however, the proceeding is only suspended at the point where the PBGC would otherwise issue a notice of inability to determine sufficiency or a distribution notice authorizing a plan administrator to distribute plan assets. Regardless of when a challenge to the termination is initiated, the plan administrator must still perform all actions required by the proposed regulation, up to and including submission of the distress termination notice.

There are a number of reasons for this requirement. Principal among them is that the suspension of a potential distress termination increases the possibility, present in most distress terminations, of harm to participants and of losses to the termination insurance program. Therefore, in such cases the PBGC will need to determine whether it should involuntarily terminate the plan under ERISA section 4042. (The initiation of a challenge to a proposed voluntary termination in no way limits the PBGC's authority under section 4042 to initiate a plan termination proceeding.) Normally, the PBGC would need the information that is submitted as part of the distress termination notice to make this decision.

In addition, this requirement also ensures that during the pendency of the challenge, the plan administrator is not paying benefits in excess of estimated guaranteed, or if greater, estimated Title IV benefits. (Proposed § 2616.4 sets forth the rules concerning benefit payments during the termination proceeding.) This minimizes the risk to retirees of benefit recoupment by the PBGC should the plan termination occur. If the challenge is successful and the plan does not terminate, all withheld amounts will be immediately payable with interest (§ 2616.5(b)(1)).

As under prior law, proposed Part 2616 permits a contributing sponsor to make a commitment to make its plan sufficient for guaranteed benefits (§ 2616.7). However, since the contributing sponsor will frequently be involved in either a bankruptcy liquidation or reorganization, any commitment by such a contributing sponsor must receive the approval of the court. Without the court's approval, a commitment is not valid under § 2616.7. If the contributing sponsor does not honor its commitment, and the PBGC is required to trustee the plan and assume the obligation to pay guaranteed benefits, the PBGC may take any necessary actions to enforce the commitment. The contributing sponsor's obligations under the commitment are distinct from and may be enforced separately from any claims the PBGC might have for unpaid contributions or employer liability under ERISA section 4062.

Section 2616.7 provides for a commitment to make a plan sufficient only for guaranteed benefits, not for all benefit commitments. While a commitment for the greater amount would be permissible under Part 2616, the PBGC does not anticipate that a contributing sponsor that qualifies for a distress termination would have the financial ability to make the plan sufficient for benefit commitments. Moreover, if the contributing sponsor were able to do so, it would be simpler and less costly to terminate the plan in a standard termination under Part 2617.

The PBGC notes in this regard that a plan administrator contemplating a distress termination, who believes that the plan may be able to satisfy all benefit commitments, might want to initiate both a distress and a standard termination. Similarly, if the plan administrator is uncertain whether the distress tests can be satisfied and the contributing sponsor would be willing, if necessary, to fund all benefit commitments, the plan administrator might want to initiate both types of termination. This approach would enable a plan to retain its proposed termination date if it fails to qualify for one type of termination and chooses to proceed with the other. If the PBGC finds that a proposed termination fails to meet the applicable requirements, that termination cannot be "converted" into the other type of termination in order to preserve the original proposed termination date.

The rules discussed under standard terminations pertaining to the issuance of the notice of intent to terminate and the establishment therein of the proposed termination date are the same under proposed Part 2616 (§ 2616.12). The PBGC will review a notice of intent to terminate promptly upon its receipt to

verify compliance with these rules. If, based on the notice, it appears that the rules were not satisfied, the PBGC will advise the plan administrator that the proposed termination is nullified (§ 2616.12(c)). This will enable the plan administrator to avoid some of the expense and effort of completing and filing the distress termination notice.

It is possible, however, that even where the notice of intent to terminate indicates compliance with § 2616.12, this may not, in fact, be true. Therefore, in order to give the other affected parties the opportunity to demonstrate non-compliance to the PBGC, § 2616.12(b) provides that the PBGC's approval of a notice of intent to terminate at this stage of the termination process is merely tentative. The PBGC's final ruling on this issue will be made after submission of the distress termination notice, at which point the PBGC must determine whether all of the requirements for a distress termination have been satisfied.

As with the filing of a standard termination notice and for the same reason, a distress termination notice must be filed no later than 60 days after the proposed termination date (§ 2616.14(a)). The distress termination notice is a combination of the plan administrator and enrolled actuary certifications required for a standard termination and the participant data schedules previously required by Form 5310, plus information evidencing satisfaction of the distress criteria. Even though more information must be submitted for the distress termination notice, the PBGC believes that the 60-day rule provides adequate time to the plan administrator. For one thing, in a distress termination the plan administrator will not have to issue notices of benefit commitments (except in the rare case of a plan that is sufficient for benefit commitments). Further, prior to issuing the notices of intent to terminate, the plan administrator should have ascertained whether the distress criteria could be met and what evidence was available to demonstrate satisfaction of the criteria. Finally, the proposed regulation (§ 2616.14(d)) permits the plan administrator to defer the submission of the participant data schedules until after the PBGC has reviewed the distress termination notice and advised the plan administrator that the plan may terminate.

The information called for under proposed § 2616.14(b) to demonstrate satisfaction of the distress criteria is, with one exception, very similar to the information called for under the PBGC's Notice of Interim Procedures (51 FR 12491 (April 10, 1986)), which prescribes temporary procedures for plan terminations under SEPPAA prior to the promulgation of these new regulations. (The one significant departure from the interim procedures involves the information showing which persons are substantial members of the controlled group. This issue, including the information that must be submitted, was discussed previously.) The PBGC has not as yet had sufficient experience with proposed distress terminations to be able to refine or improve the information requirements. It is hoped that by the time the final Part 2616 is drafted, it will be possible to do so.

The plan data and benefit data that must be submitted under § 2616.14 (c) and (d) are similar to the data called for under prior law, although some additional information reflecting SEPPAA's new provisions is now required. For example, § 2616.14(c)(4) provides that whenever the contributing sponsor or any member of its controlled group is, on or after the proposed termination date, the subject of a proceeding described in § 2616.3(d)(1) or (d)(2), *i.e.*, a bankruptcy liquidation or reorganization proceeding, the plan administrator must submit copies of all motions, memoranda, notices or other filings made in those proceedings with respect to the plan. Prior to termination, a plan administrator is required to file these documents with the PBGC pursuant to the reportable events regulation (29 CFR Part 2615). (The PBGC notes, however, that the reportable events regulation is applicable only until the filing of a notice of intent to terminate. This is inadequate under SEPPAA, since the PBGC no longer receives that notice in a standard termination and the notice of intent to terminate for a distress termination contains little of the information required in a notice of intent to terminate under prior law. Accordingly, the PBGC will soon be amending Part 2615 to make it applicable until the proposed termination date specified in a notice of intent to terminate.)

The most significant changes in the plan and benefit data that must be submitted pertain to information on a plan's benefit commitments. Under SEPPAA, it is necessary in a distress termination for the enrolled actuary to value, and allocate plan assets to, benefit commitments, as well as guaranteed benefits. Likewise, the PBGC must determine whether the plan is funded for guaranteed benefits and for benefit commitments. Complying with these added requirements according to the prior rules and procedures for processing insufficient plan terminations would create substantially more work for both enrolled actuaries and the PBGC. Furthermore, in those cases where a distress termination is actually more like the termination of a sufficient plan (*i.e.*, in those cases where the plan is able to satisfy at least all guaranteed benefits), much of this work would be pointless. Accordingly, the PBGC is proposing rules that are an amalgam of the prior valuation rules for sufficient and insufficient plans and the rules for demonstrating plan sufficiency.

Under proposed § 2616.14(c)(6), which prescribes the rules for the enrolled actuary certification, the valuation date and methods used depend on whether the plan is sufficient for benefits in priority categories 1–4. If the plan is not, then benefits are valued pursuant to Part 2619, Subpart C, as of the proposed termination date. If the enrolled actuary will certify that the plan is sufficient for all benefits in categories 1–4, then benefits may be valued under Subpart B of Part 2619 (*i.e.*, by obtaining a qualifying bid from an insurer), using an assumed distribution date. If the plan, though sufficient for all benefits in categories 1–4, is not sufficient for all benefit commitments, the enrolled actuary will need to value each participant's total benefit commitments, as of the proposed termination date in accordance with Subpart C of Part 2619, so that employer liability for the unfunded benefit commitments can be determined. Nevertheless, permitting the use of a qualifying bid for valuation purposes in the circumstances described will significantly reduce the time required for (and therefore the cost of) plan valuations in a number of distress terminations.

These proposed valuation rules for plans that are sufficient for guaranteed benefits depart from the statutory rules in section 4041(c)(2)(A), which require that all values be computed as of the proposed termination date. Termination date valuations are logical and workable for plans that are insufficient for guaranteed benefits. However, this is not the case with respect to other plans, since other plans make a final distribution of plan assets. Thus, termination date values are unimportant because (as in a standard termination) it is the ability to actually distribute assets, in this case, in satisfaction of all guaranteed benefits, that is controlling. If the plan administrator is unable to do so, there is a subsequent insufficiency, the PBGC will trustee the plan and proceed under section 4042, and the valuation date moves forward to the

date of the subsequent insufficiency, sections 4041(c)(3)(C)(ii) and 4062 (b)(1)(B) and (c)(1)(B). (The rules on subsequent insufficiencies are discussed in greater detail later in this preamble.)

In addition, for plans that the PBGC will not need to trustee, there is really no need to require the time-consuming and expensive calculation of guaranteed benefits. The amount of outstanding benefit commitments (which forms the basis for the calculation of employer liability) is determined by comparing total benefit commitments to benefits to which assets are allocated. (Therefore, where a distribution is made, outstanding benefit commitments should be determined based on the benefits actually distributed.) Moreover, for purposes of the PBGC's determination of whether to issue a distribution notice, a qualifying bid as of a proposed distribution date will normally be better proof of a plan's ability to satisfy all guaranteed benefits as of some future distribution date than would a valuation performed under the PBGC's assumptions as of the proposed termination date. (Of course, eliminating the obligation to submit a valuation of guaranteed benefits does not relieve the plan administrator from the duty to ensure that each participant and beneficiary actually receives full guaranteed benefits.)

For these reasons, the PBGC proposes to adopt the valuation rules discussed above. However, the PBGC specifically requests that interested persons submit their views on this issue.

The requirements pertaining to the participant data schedules (§ 2616.14(d)) parallel the valuation rules. For example, when the enrolled actuary certifies that plan assets are sufficient for all benefits in categories 1–4 and a qualifying bid is obtained, the participant data schedules need not show each participant's guaranteed benefits. Instead, the schedules must show the value of each participant's monthly benefit commitments and monthly benefit to which assets were allocated (*i.e.*, the value of the monthly benefit covered by the qualifying bid). In other respects, the participant data schedules require the same information as under prior practice.

The PBGC emphasizes that if the enrolled actuary certifies that a plan is sufficient through priority category 4, but the plan is not in fact able to distribute assets in satisfaction of all guaranteed benefits, the enrolled actuary will be required to perform another valuation, pursuant to Subpart C of Part 2619, and to prepare new participant data schedules (§ 2616.17(b)(1)).

Finally, in the unlikely event that a plan is sufficient for all benefit commitments, the participant data schedules need not be submitted since neither the PBGC nor a section 4049 trustee will be paying any benefits under the plan. However, since in this event the completion of the plan termination is essentially the same as in a standard termination, the plan administrator will have to issue notices of benefit commitments in accordance with § 2617.13 and 2617.14 (§ 2616.14(e)).

After determining that a plan qualifies for a distress termination (§ 2616.15), the PBGC will instruct the plan administrator as to how the plan is to be closed out (§ 2616.16), based on the enrolled actuary's findings as to the level of the plan's sufficiency. If the plan is insufficient for guaranteed benefits, all the rules and procedures under prior law apply (with potentially greater liability to the PBGC under section 4062(b)), and, in addition the PBGC will decide whether to establish a section 4049 trust and appoint a trustee. This trustee collects for the section 4049 trust any employer liability payments for the unfunded benefit commitments, and the amounts collected are paid to plan participants. Liability to the section 4049 trust is the lesser of 15% of total benefit commitments or 75% of the unfunded benefit commitments in excess of guaranteed benefits (ERISA section 4062(c)) and is paid over time according to negotiated terms. Thus, while the amounts of participants' guaranteed benefits and benefit commitments are fixed as of the plan's termination date, the total payments (if any) participants will receive pursuant to the termination may not be known for several years.

While SEPPAA provides for the establishment of a section 4049 trust in all cases where a plan is insufficient for benefit commitments, the PBGC believes that in some cases it will be obvious from the outset that the purposes of the trust cannot be realized. Since most distress terminations will occur because of the bankruptcy of the contributing sponsor and the other members of its controlled group, the collectibility of amounts due the section 4049 trust pursuant to section 4062(c) is highly speculative. Even where some amounts might be collectible, the costs attendant thereto may be unreasonable. In addition, there will be costs to the PBGC associated with creating the trust and appointing a trustee, and these costs would be reimbursed only if the trustee is able to collect some of the section 4062(c) liability. Therefore, the PBGC is considering whether to establish a section 4049 trust only in those cases where it is reasonable to do so given the likelihood and potential costs of collection. The PBGC specifically requests public comment on this issue.

If the enrolled actuary's certification indicates that a plan can pay at least all guaranteed benefits, the PBGC will, generally, issue a "distribution notice". The exception to this rule is the case in which a plan's sufficiency for guaranteed benefits is dependent on its collecting all or part of a claim against the contributing sponsor for due and unpaid contributions, and the enrolled actuary is unable to certify that, in his or her belief, the necessary amounts will be collected before the proposed distribution date. In this event, the PBGC will trustee the plan without regard to whether it is sufficient for guaranteed benefits. The purpose of this is to enable the PBGC to pursue collection of the claim for unpaid contributions, since it is the PBGC, through its guarantee obligations, that is at risk in the event the claim is not collected. It is emphasized that, for all other purposes, (for example, allocating plan assets or computing employer liability) a claim for due and unpaid contributions is treated as any other plan asset. (As under the standard termination regulation, in a case where a plan administrator is authorized to distribute plan assets and there is an outstanding claim for unpaid contributions, it is the plan administrator's duty to pursue that claim. The distribution of assets, however, should not be delayed pending liquidation of the claim.)

In a distress termination, unlike in a standard termination, a subsequent insufficiency for guaranteed benefits (or, less likely, a subsequent insufficiency for benefit commitments) does not nullify the termination. It does, however, move the valuation date for all purposes forward to the date that the plan administrator notifies the PBGC of the subsequent insufficiency or the date on which the PBGC, on its own initiative, discovers the subsequent insufficiency (§ 2616.17 (b) and (d)). (In the case of a plan that had been sufficient for all benefit commitments, the valuation date becomes the date of distribution.) Thus, during the period between the termination date and the date of distribution, the risk of loss if a plan goes from being sufficient for guaranteed benefits (or benefit commitments) to insufficient for guaranteed benefits (or benefit commitments) is shared by the contributing sponsor, plan participants and beneficiaries and the PBGC.

This rule derives from ERISA section 4062 (b)(1)(B) and (c)(1)(B), which

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provides for moving the valuation date forward for purposes of determining employer liability in the case of a subsequent insufficiency. Equitable treatment of all the involved parties suggests that the valuation date used for determining employer liability must also be used for determining the value of guaranteed benefits payable by the PBGC and of benefit commitments payable to participants and beneficiaries.

Finally, a finding by the PBGC that a plan does not qualify for a distress termination nullifies the proposed termination and all actions taken to effect it are void *ab initio*. However, plan sponsors, plan administrators and plan participants should bear in mind that in cases where it appears that benefit payments to retirees are in jeopardy or that the PBGC's risk of loss is increasing, the PBGC may act to terminate a plan involuntarily under ERISA section 4042.

Miscellaneous Amendments to Other PBGC Regulations

Several provisions in these regulations contradict or modify provisions in other PBGC regulations not mentioned earlier. For example, § 2617.17(c) establishes the right of a plan administrator to appeal the issuance of a notice of noncompliance. The PBGC's administrative appeals regulation (Part 2606) currently does not include this authority. Similarly, other provisions in proposed Parts 2616 and 2617 affect Parts 2615 and 2623 of the PBGC's regulations. In the interests of simplicity, all provisions that would require amendments to Parts 2606, 2615 and 2623 are discussed in this document. PBGC expects to make conforming amendments in the other regulations upon issuance of Parts 2616 and 2617 in final form (or perhaps prior thereto).

E.O. 12291 and the Regulatory Flexibility Act

The PBGC has determined that these proposed regulations are not "major rules" for the purposes of Executive Order 12291, because they will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These proposed rules would, if adopted, merely implement the statutory procedures and requirements governing voluntary pension plan terminations.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that these rules will not have a significant economic impact on a substantial number of small entities. Traditionally pension plans with fewer than 100 participants have been treated as small plans. Seventy-five percent of these plans are defined contribution plans and are not covered by PBGC regulations. Only about 88,000 small plans are covered by the PBGC's single-employer insurance program. Of these, about 6 percent (5,600 plans or about 1.5 percent of all small pension plans) terminate each year and would be covered by the proposed regulations.

Public Comments

The PBGC urges interested parties to submit comments and suggestions on these proposed regulations. Comments should be addressed to: Director, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. Written comments will be available for public inspection at the above address, Suite 7100, between the hours of 9:00 a.m. and 4:00 p.m. Comments should include the commenter's name and address, and give reasons for any recommendation. This proposal may be changed in light of the comments received.

List of Subjects in 29 CFR Parts 2616 and 2617

Employee Benefit plans, Pension insurance, Pensions, Reporting requirements.

In consideration of the foregoing, the PBGC proposed to revise Parts 2616 and 2617 of Subchapter C of Chapter XXVI, Title 29 of the Code of Federal Regulations as follows:

PART 2616—DISTRESS TERMINATIONS OF SINGLE-EMPLOYER PLANS

Subpart A—General Provisions

Sec.

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2616.2 Definitions.
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Appendix—Agreement for Commitment to Make Plan Sufficient for Guaranteed Benefits.

Authority: Secs. 4002(b)(3), 4041 and 4044, Pub. L. 93–406, 88 Stat. 1004, 1020 and 1025, as amended by secs. 403(1), 40(d) and 402(a)(7), Pub. L. 96–364, 94 Stat. 1299, 1301 and 1302, and by secs. 11007 and 11009, Pub. L. 99–272, 100 Stat. 244 and 248 [29 U.S.C. 1302(b)(3), 1341 and 1344].

Subpart A—General Provisions

§ 2616.1 Purpose and scope.

(a) *Purpose.* This regulation sets forth the rules and procedures for terminating a single-employer pension plan in a distress termination. Under the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA"), a single-employer plan may be voluntarily terminated only in a "standard" or a "distress" termination, and then only if the termination satisfies the statutory requirements for the type of termination sought. The plan termination rules in SEPPAA apply to all plan terminations initiated by the plan administrator or the Pension Benefit Guaranty Corporation ("PBGC") on or after January 1, 1986. This regulation supersedes the PBGC's Notice of Intent to Terminate regulation (29 CFR Part 2616) and includes new rules governing the notice of intent to terminate for distress terminations, as well as other new substantive and procedural requirements pertaining to those terminations. (The rules for the notice of intent to terminate in a standard termination are now included in new Part 2617.) Subpart A of this regulation contains the various general rules and requirements relating to distress terminations. Subpart B sets forth the specific steps that a plan administrator must follow in order to terminate a plan in a distress termination.

(b) *Scope.* This part applies to any single-employer plan covered under ERISA section 4021(a) and not excluded by section 4021(b) that files a notice of intent to terminate in a distress termination on or after [effective date of part].

§ 2616.2 Definitions.

For purposes of this part:

"Act" means the Employee Retirement

Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 and the Single-Employer Pension Plan Amendments Act of 1986.

"Affected party" means, with respect to a single-employer plan, each participant, each beneficiary of a deceased participant, each alternate payee (as defined in section 206(d)(3)(K) of the Act) under an applicable qualified domestic relations order (as defined in section 206(d)(3)(B)(i)), each employee organization representing participants, and the PBGC. However, in connection with any notice required under this part, if an affected party has designated in writing another person to receive the notice, then any reference to the affected party shall be deemed to refer to the designated person.

"Benefit commitments" means those benefits that: (1) Are guaranteed under section 4022 of the Act; (2) would be guaranteed but for the limitations in section 4022(b); or (3) constitute early retirement supplements or subsidies or plant closing benefits, provided the participant or beneficiary has, prior to the plan termination date, satisfied all of the conditions under the plan to establish entitlement to the benefits, except for the satisfaction of a formal application, retirement, completion of a required waiting period subsequent to application for benefits, or designation of a beneficiary.

"Contributing sponsor" means, with respect to a single-employer plan, the person responsible for meeting the minimum funding requirements under section 302 of the Act or section 412 of the Internal Revenue Code of 1954, and any person that is a member of the contributing sponsor's controlled group and was responsible for meeting the funding requirements with respect to the plan at a time when the person employed a significant number of the plan participants.

"Distress termination notice" means the notice filed with the PBGC pursuant to section 4041(c)(2)(A) of the Act and § 2616.14 of this part that contains information demonstrating satisfaction of the distress criteria and also provides various plan and participant data including, but not limited to, an enrolled actuary's certification of the level of benefits funded under the plan.

"Insurer" means a company authorized to do business as an insurance carrier under the laws of a state or the District of Columbia.

"Multiple employer plan" means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group, under which all plan assets are available to pay benefits to all plan participants and beneficiaries.

"Notice of intent to terminate" means the notice to affected parties advising them of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2616.12 of this part.

"Participant" means any individual who is in employment covered by the plan and is earning or retaining credited service (including an individual who is below the integration level in a plan that is integrated with Social Security); any non-vested individual separated from employment who is earning or retaining credited service, excluding those individuals who have incurred a break in service of one year or the plan's break-in-service period, whichever is greater; and any individual who has retired or separated from employment and is either receiving benefits or entitled to begin receiving benefits in the future, excluding those individuals to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Proposed termination date" means the date specified as such by the plan administrator in a notice of intent to terminate. A proposed termination date may not be earlier than the 60th day after the issuance of the notice of intent to terminate, nor later than the 180th day thereafter. The proposed termination date is used in the distress termination notice as the date for demonstrating satisfaction of the distress criteria, for determining participants' and beneficiaries' benefit commitments and guaranteed benefits, and for valuing plan benefits and assets in some cases.

"SEPPAA" means the Single-Employer Pension Plan Amendments Act of 1986.

"Single-employer plan" means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3)).

"Substantial member of a controlled group" means a member of the contributing sponsor's controlled group whose gross assets (both tangible and intangible), as of the termination date, equal five percent or more of the total gross assets of the controlled group. Any member of the contributing sponsor's controlled group as of the termination date shall be deemed to be a substantial member for all purposes under this part, unless the plan administrator demonstrates to the satisfaction of the PBGC that the person's gross assets equal less than five percent of the controlled group's total gross assets.

"Termination date" means the date established pursuant to section 4048(a)(2) of the Act or, if applicable, section 4048(a)(4). The termination date is the date as of which a contributing sponsor and the substantial members of its controlled group (if any) must satisfy the distress criteria and the date for determining benefit commitments and guaranteed benefits.

§ 2616.3 Requirements for a distress termination.

(a) *Exclusive means of voluntary plan termination.* A plan may be voluntarily terminated by the plan administrator only in a standard termination or a distress termination. For a standard termination to occur, a plan must be able to discharge all of its obligations for benefit commitments and otherwise satisfy the requirements set forth in Part 2617 of this subchapter. A distress termination may occur only if all of the requirements set forth in paragraph (b) of this section are satisfied.

(b) *Requirements.* A plan may terminate in a distress termination only if—

(1) The plan administrator issues a notice of intent to terminate to affected parties in accordance with § 2616.12 at least 60 days before the proposed termination date;

(2) The plan administrator submits a distress termination notice to the PBGC in accordance with § 2616.14 no later than 60 days after the proposed termination date; and

(3) The PBGC determines that the contributing sponsor and each substantial member of its controlled group satisfy one of the distress criteria set forth in paragraph (d) of this section.

(c) *Effect of failure to satisfy requirements.* If any of the requirements of paragraph (b) of this section is not satisfied, any action taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan for all purposes. A plan administrator who still desires to terminate the plan shall initiate the termination process again from the beginning, starting with the issuance of a notice of intent to terminate. The PBGC retains its authority in any case to initiate a plan termination under section 4042 of the Act.

(d) *Distress criteria.* A contributing sponsor and each substantial member of its controlled group (as defined in § 2616.2) shall satisfy at least one of the following criteria in order for a distress termination to occur. The contributing sponsor and the substantial members of

the controlled group need not all satisfy the same test.

(1) *Liquidation in bankruptcy.* This criterion is met if, as of the termination date, a person has filed or had filed against it a petition seeking liquidation in a case under title 11, United States Code, or under a similar law of a state or political subdivision of a state, or a case described in paragraph (d)(2)(i) of this section has been converted to such a case, and, as of the termination date, the case has not been dismissed.

(2) *Reorganization in bankruptcy.* This criterion is met if—

(i) As of the termination date, a person has filed or had filed against it a petition seeking reorganization in a case under title 11, United States Code, or under a similar law of a state or a political subdivision of a state, or a case described in paragraph (d)(1) of this section has been converted to such a case;

(ii) The case has not been dismissed as of the termination date; and

(iii) The bankruptcy court or appropriate state court approves the termination.

(3) *Inability to continue in business.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that, unless a distress termination occurs, the person will be unable to pay its debts when due and to continue in business.

(4) *Unreasonably burdensome pension costs.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that the person's costs of providing pension coverage have become unreasonably burdensome solely as a result of declining covered employment under all single-employer plans for which that person is a contributing sponsor.

(e) *Non-recognition of certain actions.* If the PBGC finds that a person undertook any action or failed to act for the principal purpose of satisfying any of the criteria contained in paragraph (d) of this section, rather than for a reasonable business purpose, the PBGC shall disregard such act or failure to act in determining whether the person has satisfied any of those criteria.

§ 2616.4 Administration of plan during pendency of termination proceedings.

(a) *Prohibitions after filing notice of intent to terminate.* Beginning on the date that the plan administrator files with the PBGC (as defined in § 2616.8) a notice of intent to terminate, and unless and until the PBGC issues a distribution notice pursuant to § 2616.16 (b) or (c), the plan administrator may not—

(1) Distribute plan assets pursuant to, or take any other actions to implement, the termination of the plan;

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than as an annuity;

(3) Use plan assets to purchase irrevocable commitments to provide benefits from an insurer; or

(4) Pay benefits in excess of a participant's benefit commitments under the plan.

(b) *Benefit payments on or after proposed termination date.* Notwithstanding paragraph (a)(4) of this section, beginning on the proposed termination date specified in the notice of intent to terminate, and unless and until the PBGC issues a distribution notice, the plan administrator may not make any benefit payments in excess of the greater of—

(1) A participant's estimated guaranteed benefit, determined pursuant to § 2623.6 of this subchapter; or

(2) A participant's estimated Title IV benefit, determined pursuant to § 2623.7 of this subchapter. For purposes of applying §§ 2623.6 and 2623.7, the term "section 4041(a) date of termination" used therein shall be replaced by the term "proposed termination date".

(c) *Failure to qualify for distress termination.* In any case where the PBGC determines, pursuant to § 2616.13(c) or § 2616.15(c), that the requirements for a distress termination are not satisfied, any benefits that were not paid pursuant to paragraph (a)(4) or (b) of this section shall be due and payable as of the date of the PBGC's determination, together with interest, from the date (or dates) on which the unpaid amounts were originally due, at the rate prescribed under Part 2610 in effect on that date (or dates).

(d) *Other administrative actions.* Except to the extent specifically limited by this section, the plan administrator shall continue to carry out the normal operations of the plan, such as putting participants into pay status, collecting contributions due the plan and investing plan assets.

§ 2616.5 Challenges to plan termination under a collective bargaining agreement.

(a) *Suspension of termination proceeding.* If, prior to the issuance by the PBGC of a notice of inability to determine sufficiency or a distribution notice pursuant to § 2616.16, the PBGC is advised that a formal challenge (as defined in paragraph (c) of this section) has been initiated asserting that the proposed termination violates the terms and conditions of an existing collective bargaining agreement, the PBGC shall suspend the termination proceeding and shall so advise the plan administrator in writing. The effect of the suspension shall be to stay the issuance by the PBGC of a notice of inability to determine sufficiency or a distribution notice. However, nothing in this paragraph relieves the plan administrator of the obligation to comply with § 2616.4 and to file a distress termination notice with the PBGC in the manner and within the time specified in § 2616.14.

(b) *Resolution of challenge.* Immediately upon the final resolution (as defined in paragraph (d) of this section) of the formal challenge to the termination, the plan administrator shall notify the PBGC in writing of the outcome of the challenge. If the validity of the proposed termination has been upheld, the plan administrator shall also advise the PBGC of whether the plan administrator wishes to continue the termination.

(1) *Challenge sustained.* If it has been determined that the proposed termination violates the collective bargaining agreement, the PBGC shall dismiss the termination proceeding, all actions taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan for all purposes. In this event, § 2616.4(c) shall apply, as of the date of the PBGC's dismissal, with respect to any benefits not paid pursuant to § 2616.4 (a)(4) or (b).

(2) *Termination sustained.* If it has been determined that the proposed termination does not violate the collective bargaining agreement and the plan administrator wishes to proceed with the termination, the PBGC shall reactivate the termination proceeding by sending a written notice thereof to the plan administrator. In that event, all actions taken to effect the termination prior to the suspension shall be effective, and the PBGC shall proceed to issue a notice of inability to determine sufficiency or a distribution notice, either with or without first requesting updated information from the plan administrator pursuant to § 2616.14(f).

(c) *Formal challenge to plan termination.* The occurrence of any of the following actions, asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement, shall constitute grounds for the PBGC to suspend the termination proceeding:

(1) The commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement.

(2) The filing of a charge with the National Labor Relations Board alleging an unfair labor practice under section 8 of the National Labor Relations Act.

(3) The commencement of an action under section 301 of the National Labor Relations Act in a court of competent jurisdiction.

(d) *Final resolution of challenge.* For the purposes of this section, a formal challenge to a proposed termination shall be considered finally resolved when the parties involved in the challenge enter into a settlement that resolves the challenge or upon the issuance of a final, non-appealable order, as defined in this paragraph. Depending upon the type of action challenging the termination, any of the following constitutes a final, non-appealable order:

(1) An arbitrator's award that is neither appealed nor is review thereof sought within the time for filing such appeals or requesting review.

(2) An order of the National Labor Relations Board for which the Board does not petition for enforcement nor the person aggrieved petition for review within the time permitted for filing such actions.

(3) An order by a court of competent jurisdiction that is not appealed within the time limit for filing such appeals.

(4) When an appeal is taken from or a request for review is made concerning a decision described in paragraph (d)(1), (d)(2) or (d)(3) of this section, an order by a court of competent jurisdiction finally resolving the dispute.

(e) *Involuntary termination by the PBGC.* Paragraphs (a) and (b) of this section notwithstanding, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of the Act.

§ 2616.6 Requirement for annuities.

(a) *General rule.* Except as provided in paragraph (b) of this section, when a plan administrator distributes all plan assets pursuant to § 2616.18, any benefit to which assets are allocated pursuant to Part 2618 that is payable as an annuity under the provisions of the plan must be provided in annuity form through the purchase from an insurer of a single premium, nonparticipating (except in the case of a plan that is sufficient for all accrued benefits), nonsurrenderable annuity that constitutes an irrevocable commitment by the insurer to provide the benefits purchased.

(b) *Exceptions.* [Reserved]

(c) *Required form of annuity.* [Reserved]

§ 2616.7 Contributing sponsor's commitment to make plan sufficient for guaranteed benefits.

At any time prior to the filing with the PBGC of a distress termination notice, a contributing sponsor may make a commitment to contribute any additional sums necessary to make a plan sufficient for all guaranteed benefits, in order to enable the plan to distribute assets in full satisfaction of all guaranteed benefits. The commitment shall be in writing and be signed by the contributing sponsor and shall contain substantially the same provisions as the sample commitment in the appendix to this part. In addition, a commitment by a contributing sponsor that satisfies either the bankruptcy liquidation or reorganization distress criterion (§ 2616.3 (d)(1) or (d)(2)), shall be valid under this section only if it is approved by the court before which the liquidation or reorganization proceeding is pending. A commitment that meets the requirements of this section shall be considered a plan asset for all purposes under this part. In the event that a contributing sponsor fails to honor its commitment, rendering a plan insufficient for guaranteed benefits, the PBGC may bring an action to enforce the commitment.

§ 2616.8 Filings with the PBGC; time limits.

(a) *"Filing" defined.* Any document required or permitted to be filed with the PBGC under this part shall be deemed filed on the date it is received at the PBGC, providing it is received on a weekday, other than a Federal holiday, no later than 4:00 p.m. Documents received after 4:00 p.m. or on weekends or Federal holidays shall be deemed filed on the next regular business day.

(b) *How to file.* Any document being filed under this part may be delivered by mail or by hand to the PBGC's Case Classification and Control Division, Control Branch, Room 5300A (Code 25420), 2020 K Street NW., Washington, DC 20006.

(c) *Time limits.* If the last day of any period prescribed by this part for issuing or filing any notices or other documents or taking any other actions falls on a Saturday, Sunday or legal holiday, then the last day of the period shall be the next regular business day.

Subpart B—Distress Termination Process

§ 2616.11 Purpose and scope.

This subpart describes in detail the distress termination process. Sections 2616.12 and 2616.14 prescribe the contents of and the rules for issuing the two statutory notices that plan administrators must issue in a distress termination. The first notice, which is issued to all affected parties to begin the termination process, is the "notice of intent to terminate". The second notice, which is issued only to the PBGC, is the "distress termination notice". Sections 2616.15 and 2616.16 cover the PBGC's review of the proposed termination and the actions that the PBGC may take with respect to it. Sections 2616.17 and 2616.18 apply only to plans that are at least sufficient for guaranteed benefits and describe the actions the plan administrator must take to close out the plan.

§ 2616.12 Notices of intent to terminate.

(a) *General Rule.* At least 60 days and no more than 180 days prior to the proposed plan termination date, the plan administrator shall issue to each affected party (as defined in § 2616.2) a notice of intent to terminate containing all of the information specified in paragraph (d) of this section and, to the extent applicable, paragraph (e) of this section.

(b) *Method of issuance.* Notices of intent to terminate shall be issued individually to each affected party. The notice to the PBGC shall be filed in accordance with § 2616.8. The notices to the other affected parties shall be either hand delivered or delivered by first-class mail or courier service to the affected party's last known address.

(c) *When issued.* The notice of intent to terminate is deemed issued to the PBGC on the date on which it is filed (as defined in § 2616.8) and to the other affected parties on the date on which it is handed to the affected party or deposited with a mail or courier service.

(d) *Contents of notice.* Each notice of intent to terminate shall contain all of the following information (and the notice to the PBGC shall also contain the information described in paragraph (e) of this section):

(1) The name of the plan and of the contributing sponsor.

(2) The Employer Identification Number ("EIN") of the contributing sponsor and the Plan Identification Number ("PN"); if there is no EIN or PN, the notice shall so state.

(3) The name, address and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination.

(4) A statement that the plan administrator expects to terminate the plan on a specified proposed termination date (as defined in § 2616.2).

(5) A statement that the benefits under the plan are guaranteed by the

PBGC, including a brief description of what benefits are guaranteed (*e.g.*, if only a portion of the benefits are guaranteed because of the phase-in rule, this shall be explained), and that participants and beneficiaries may also receive a portion of the benefits to which each is entitled under the terms of the plan in excess of guaranteed benefits.

(6) For retirees only, a statement that their monthly (or other periodic) benefit amount may be reduced because of the plan's termination, but not below the amount guaranteed by the PBGC, or, if applicable, that the benefit amount may be reduced below the guarantee level if the benefits are subject to recoupment by the PBGC pursuant to Part 2623 of this subchapter.

(e) *Additional information for notice of intent to terminate filed with PBGC.* In addition to the information required under paragraph (d) of this section, the notice of intent to terminate that is filed with the PBGC shall contain the following:

(1) The name, address and telephone number of the plan administrator and of the plan administrator's duly authorized representative, if any.

(2) If premiums for the plan have been paid under another Employer Identification Number or Plan Identification Number, that EIN or PN.

(3) A statement of whether the plan is a multiple employer plan; if so, the names and EIN's of all contributing sponsors shall be given.

(4) The total number of plan participants (actives and retirees).

(5) The plan year ending date.

(6) The date (or latest date) on which the notices of intent to terminate were (or will be) issued to the other affected parties and a statement that they were (or will be) issued in accordance with § 2616.12.

(7) A statement of whether any participants or beneficiaries in pay status (or entitled to be in pay status) are not receiving their benefits, and whether the plan administrator expects to be able to pay all benefits when due during the 180-day period following issuance of the notices of intent to terminate.

(8) A list of all members of the contributing sponsor's controlled group, with the EIN of each, as of the proposed termination date and a statement of which distress test each is expected to satisfy; (if the plan administrator expects to demonstrate that any of these persons is not a substantial member of the controlled group, as defined in § 2616.2, the list shall so identify those persons and no distress test need be listed for them). If a petition seeking liquidation or reorganization under title 11, United States Code (or under similar law of a state or political subdivision thereof) has already been filed by or against the contributing sponsor or any member of its controlled group, a copy of the filed petition showing the court docket number shall also be submitted.

§ 2616.13 PBGC review of notice of intent to terminate.

(a) *General.* Upon receipt of a notice of intent to terminate, the PBGC shall review the notice to determine whether it was issued in accordance with § 2616.12 and shall advise the plan administrator of its determination, in accordance with paragraph (b) or (c) of this section, no later than the proposed termination date specified in the notice. The PBGC shall also review the notice, and may require the submission of additional information pursuant to paragraph (d) of this section, for the purpose of determining whether the PBGC should consider initiating an involuntary termination or the appointment of a trustee without an immediate termination under section 4042 of the Act.

(b) *Tentative finding of compliance.* If the PBGC determines that the issuance of the notices of intent to terminate appears to have complied with § 2616.12, it shall notify the plan administrator in writing of this tentative determination of compliance and that this determination will be made final or reversed after the PBGC has reviewed the distress termination notice filed pursuant to § 2616.14. The effect of this tentative determination is to allow the distress termination proceeding to continue.

(c) *Improper notice.* If the PBGC determines that the issuance of the notices of intent to terminate failed to comply with § 2616.12, it shall so notify the plan administrator in writing and advise the plan administrator that the proposed distress termination is null and void and that the plan is an ongoing plan for all purposes. In addition, the PBGC may require the plan administrator to submit the information prescribed by paragaph (d) of this section, in order to enable the PBGC to determine whether it should institute proceedings under section 4042.

(d) *Information on need to institute section 4042 proceedings.* Whenever a notice of intent to terminate indicates that there are currently benefits in pay status (or that should be in pay status) that are not being paid or that this is likely to occur within the 180-day period following the issuance of the notices of intent to terminate, or whenever the PBGC issues a determination under paragraph (c) of this section, or in any other case where the PBGC has any reason to believe that it may be necessary or appropriate to institute proceedings under section 4042 of the Act, it may require the plan administrator to submit the following information within a reasonable period of time specified in the request for the information.

(1) A copy of the most recent actuarial valuation of the plan.

(2) A statement of whether any funding waivers under section 303 of the Act or extensions of the amortization period under section 304 have been granted within the five years preceding the proposed termination date, and if so, the amounts involved, and whether any requests for waivers or extensions are currently pending, and if so, the amounts involved.

(3) Any other information that the PBGC determines that it needs in order to decide whether to institute termination or trusteeship proceedings pursuant to section 4042.

(e) *Appeal of determination that notice was improper.* A plan administrator may appeal the PBGC's determination under paragraph (c) of this section in accordance with the rules prescribed in Subpart D of Part 2606. The filing of an appeal automatically stays the effectiveness of the determination until the PBGC issues its decision on the appeal. However, a request for information by the PBGC under paragraph (c) of this section is not stayed by the filing of the appeal.

§ 2616.14 Distress termination notice.

(a) *General rule.* Except to the extent permitted by paragraph (d) of this section, no later than 60 days after the proposed termination date specified in the notice of intent to terminate, the plan administrator shall file with the PBGC, in accordance with § 2616.8, a "distress termination notice". The distress termination notice shall be clearly identified as such and shall contain the information described in paragraphs (b)–(d) of this section. Unless otherwise specified, all data and other information submitted shall be as of the proposed termination date.

(b) *Proof of distress.* In order to establish that the plan qualifies for a distress termination, the plan administrator shall submit the following:

(1) If applicable, the name and Employer Identification Number of each member of the contributing sponsor's controlled group that is not a substantial member of the controlled group and evidence demonstrating to the PBGC's satisfaction that such members are not

substantial. Such evidence shall in every case include—

(i) The controlled group's audited (or, if not available, unaudited) consolidated or combined (as applicable) financial statements for the most recent five years ending, prior to the proposed termination date, updated to show any material changes;

(ii) Audited (or, if not available, unaudited) financial statements for the five years ending prior to the proposed termination date (updated to show any material changes) for each member of the controlled group that the plan administrator asserts is not a substantial member; and

(iii) Any other relevant evidence.

(2) Identification of the distress test satisfied by the contributing sponsor and each substantial member (all members need not satisfy the same distress test).

(3) For the contributing sponsor and each substantial member of its controlled group, proof of satisfaction of a distress test, as follows:

(i) For the bankruptcy liquidation and reorganization tests, a copy of the filed petition showing the court docket number (unless this was submitted as part of the notice of intent to terminate), and for the reorganization test only, a copy of the order of the bankruptcy court or the appropriate state court approving the termination.

(ii) For the test of inability to stay in business without plan termination—

(A) Audited (or, if not available, unaudited) financial statements for the three most recent fiscal years ending prior to the proposed termination date, updated to show any material changes; if the person is undergoing (or has undergone) a partial liquidation, the financial statements must specify the data relating to the liquidating portion and estimated liquidation values and the source thereof shall be given;

(B) Projections of future revenues and expenses assuming both the continuation and the termination of the pension plan for which a distress termination is sought, for the next three fiscal years beginning with the year in which the plan would terminate; the projections that assume plan continuation must include estimated minimum funding contributions for each of those three years, and the projections that assume plan termination must include the projected termination liabilities to the PBGC, the section 4042 trustee and the section 4049 trust (amended section 4062 defines these liabilities);

(C) Certification by the person's chief financial officer or chief executive officer that all of the information submitted is accurate and complete to the best of that individual's knowledge, and that the person will not be able to continue in business without the plan termination;

(D) All recent (within the prior three years) financial analyses (if any) done of the person by an outside party, with a certification by the person's chief financial officer that the information on which the analysis was based was accurate and complete;

(E) All submissions (if any) made within the prior three years to a financial institution or investment banker in support of possible outside financing;

(F) A statement of whether any funding waivers under section 303 of the Act or extensions of the amortization period under section 304 have been granted within the five years preceding the proposed termination date, and if so, the amounts involved, and whether any requests for waivers or extensions are currently pending or planned, and if so, the amounts involved; and

(G) Any other relevant information.

(iii) For the test of unreasonably burdensome pension costs—

(A) The name and plan identification number of each single-employer defined benefit plan for which the person is a contributing sponsor;

(B) The latest Form 5500 Schedule B filed for each plan named in paragraph (b)(3)(iii)(A) of this section;

(C) For each plan named in paragraph (b)(3)(iii)(A) of this section, a plan census showing total, active and retired participants for the most recent five plan years ending prior to the proposed termination date; (these data may be provided by submitting the relevant Forms 5500 Schedules B);

(D) Audited (or, if not available, unaudited) financial statements of the person for the most recent five fiscal years ending prior to the proposed termination date, updated to show any material changes, with a breakout of the person's total pension costs (including any defined contribution plans) as a percentage of the person's total wage costs and a statement of the total costs per plan;

(E) A statement of whether any funding waivers under section 303 of the Act or extensions of the amortization period under section 304 have been granted within the five years preceding the proposed termination date, and if so, the amounts involved, and whether any requests for waivers or extensions are currently pending or planned, and if so, the amounts involved; and

(F) any other relevant information.

(c) *Plan data.* The plan administrator shall submit the following documents and information relating to the plan and its level of funding. Each item of information shall be numbered as the items are numbered in this paragraph.

(1) A copy of the executed plan document and any amendments thereto.

(2) A copy of any IRS determination letters.

(3) A statement of whether a formal challenge to the termination, as defined in § 2616.4(c), has been initiated, and if so, what action was initiated, by whom and on what date, and the current status of the challenge.

(4) If, as of the proposed termination date or thereafter, the contributing sponsor or any member of its controlled group is the subject of a proceeding described in § 2616.3 (d)(1) or (d)(2), copies of all motions, memoranda, notices or other filings in that proceeding with respect to the plan.

(5) A summary of plan participants and beneficiaries, showing the total numbers in each of the following categories:

(i) Retirees (including disability retirees) and beneficiaries receiving benefits.

(ii) Active participants eligible for normal retirement.

(iii) Active participants eligible for early (but not normal) retirement.

(iv) All other active participants vested before termination.

(v) All active, non-vested (before termination) participants.

(vi) Participants separated from service with deferred vested benefits.

(6) A certification by an enrolled actuary pursuant to paragraph (c)(6) (i), (ii), (iii) or (iv) of this section, as applicable. All values shall be as of the proposed termination date, except for benefits that are valued in accordance with Part 2619, Subpart B, in which event those benefits shall be valued as of a proposed distribution date that is no earlier than the proposed termination date.

(i) *Plan insufficient for guaranteed benefits.* If the plan is not sufficient for benefits in priority categories 1–4 of section 4044(a) of the Act as of the proposed termination date, the certification shall include the following:

(A) The value of the plan's assets valued in accordance with Part 2620;

(B) The actuarial present value of the plan's benefit commitments valued in accordance with Part 2619, Subpart C;

(C) The actuarial present value of the plan's benefits in priority categories 1–4 of section 4044(a) of the Act valued in accordance with Part 2619, Subpart C; and

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(D) A statement that the plan is not sufficient for all benefits in priority categories 1–4.

(ii) *Plan sufficient for guaranteed benefits.* If the plan is sufficient for all benefits in priority categories 1–4 of section 4044(a), the certification shall include the following:

(A) The value of the plan's assets valued in accordance with Part 2620;

(B) The actuarial present value of the plan's benefit commitments valued in accordance with Part 2619, Subpart C;

(C) The actuarial present value of the plan's benefits that can be purchased from an insurer valued in accordance with Part 2619, Subpart B and a copy of the qualifying bid; and

(D) A statement that the plan is sufficient for all benefits in priority categories 1–4.

(iii) *Plan sufficient for benefit commitments.* If the plan is sufficient for all benefit commitments, the certification shall include the following:

(A) The value of the plan's assets valued in accordance with Part 2620;

(B) The actuarial present value of the plan's benefit commitments valued in accordance with Part 2619, Subpart B and a copy of the qualifying bid; and

(C) A statement that the plan is sufficient for all benefit commitments.

(iv) *Special rule for plans with claims for due and unpaid contributions.* Except as provided in the next sentence, if collection of any portion of a claim for due and unpaid contributions is necessary to make the plan sufficient for guaranteed benefits, then the enrolled actuary shall value the plan's assets and benefits in accordance with paragraph (c)(6)(i) of this section. If the enrolled actuary certifies that he or she believes that the amount needed to make the plan sufficient for guaranteed benefits will be collected prior to the proposed distribution date, then the enrolled actuary shall value the plan's assets and liabilities in accordance with paragraph (c)(6)(ii) of this section. In either case described in this paragraph, the certification shall also include a statement by the enrolled actuary of whether or not the plan is sufficient for guaranteed benefits.

(7) If the enrolled actuary certifies that the plan is not sufficient for benefits in priority categories 1–4 of section 4044(a), a description of the plan's funding arrangement, including copies of any executed group annuity or insurance contracts or trust agreements.

(8) A list of all plan assets, including, if applicable, a contributory sponsor's commitment made pursuant to § 2616.7.

(9) A certification by the plan administrator that the information submitted and statements made pursuant to paragraph (b) of this section and this paragraph and the information made available to the enrolled actuary are all accurate and complete.

(d) *Participant data schedules.* Within 20 days after receipt of the PBGC's determination under § 2616.15(b) that the requirements for a distress termination have been satisfied, the plan administrator shall file with the PBGC participant data schedules containing the information prescribed by this paragraph and shall certify that the information is accurate and complete. Each item of information shall be numbered as the items are numbered in this paragraph. (If desired, the plan administrator may submit the data required by this paragraph on computer tape after first obtaining from the PBGC the specifications therefor.)

(1) Name and last known address of each participant and beneficiary, including—

(i) Identification of any such persons who are officers or owner-employees; and

(ii) The percentage of the business owned by each.

(2) Sex and date of birth of each participant and beneficiary.

(3) For each participant, the date on which participation began and the date on which employment terminated, if that date is earlier than the proposed plan termination date.

(4) For each participant (including deceased participants whose beneficiaries are entitled to benefits under the plan), the specific data used to compute the participant's accrued benefit (*e.g.*, credited service, compensation, etc.) Social Security benefits, and the ages of the participant and beneficiary as of the earlier of the date of retirement or the proposed termination date.

(5) If the enrolled actuary has certified that the plan is sufficient for guaranteed benefits, with respect to each participant, the accrued monthly benefit, vesting percentage, amount, form, type (for benefits in pay status) and value of the monthly benefit commitments and the value of the monthly benefits to which assets are allocated pursuant to ERISA section 4044 and Part 2618 of this subchapter; for benefits in pay status, include the benefit commencement date. For purposes of this paragraph and paragraph (d)(6) of this section, benefit "type" means nature of benefit entitlement, *e.g.*, normal, early, or shutdown benefit, and benefit "form" means form of payment or annuity, *e.g.*, lump sum, period certain annuity or joint and survivor annuity. For joint and survivor benefits, include the benefit reduction, if any, for the participant and the percentage of the participant's benefit that continues to the survivor.

(6) If the enrolled actuary has certified that the plan is not sufficient for guaranteed benefits, with respect to each participant, the accrued monthly benefit, vesting percentage, amount, form, type (for benefits in pay status) and value of the monthly guaranteed benefit and of the monthly benefit commitments and the value of the monthly guaranteed benefit to which assets are allocated; for benefits in pay status, include the benefit commencement date, and for joint and survivor benefits, include the benefit reduction, if any, for the participant and the percentage of the participant's benefit that continues to the survivor.

(e) *Special rule for plans sufficient for benefit commitments.* In any case in which the enrolled actuary certifies that the plan is sufficient for all benefit commitments, the plan administrator need not submit the participant data schedules required under paragraph (d) of this section. However, in that event, prior to the date prescribed in paragraph (d) of this section for filing the schedules, the plan administrator shall issue to participants and beneficiaries described in 2617.13(b) notices of benefit commitments in accordance with §§ 2617.13 and 2617.14 and shall file with the PBGC, on or before the date prescribed in paragraph (d) of this section, a certified statement that the notices of benefit commitments were so issued.

(f) *Additional information.* The PBGC may in any case require the submission of any additional information that it needs to make the determinations that it is required to make under this subpart or to pay benefits pursuant to sections 4061 or 4049 of the Act.

§ 2616.15 PBGC determination of compliance with requirements for distress termination.

(a) *General.* Upon receipt of a distress termination notice, the PBGC shall determine whether the qualifications for a distress termination set forth in § 2616.3(b) have been met and shall notify the plan administrator in writing of its determination, in accordance with paragraph (b) or (c) of this section. The PBGC's determination shall be based on the information contained in the notice of intent to terminate and the distress termination notice, and on any information submitted by an affected party or otherwise obtained by the PBGC.

(b) *Qualifying termination.* If the PBGC determines that all of the requirements of § 2616.3(b) have been

satisfied, it shall so advise the plan administrator and shall also advise the plan administrator that participant data schedules must be submitted in accordance with § 2616.14(d).

(c) *Non-qualifying termination.* Except as provided in paragraph (c)(1) of this section, if the PBGC determines that the plan administrator failed to issue the notices of intent to terminate or the distress termination notice in accordance with § 2616.12 or § 2616.14, respectively, or that the distress criteria set forth in § 2616.3(d) were not met, it shall notify the plan administrator of this determination and the basis therefor. In addition, the notice shall advise the plan administrator of the effects of this determination, *viz.*, that the proposed termination is null and void, that all actions taken to cause or implement the termination are without effect, and that the plan is an ongoing plan for all purposes.

(1) If the basis for the PBGC's determination of non-qualification is that the plan administrator timely filed an incomplete distress termination notice, the PBGC shall notify the plan administrator of the missing items of information and advise the administrator that the information must be filed with the PBGC no later than the 60th day after the proposed termination date or the 20th day after the date of the PBGC notice, whichever is later.

(2) Failure to comply with the terms of a notice described in paragraph (c)(1) of this section shall nullify the proposed termination, and the PBGC shall so notify the plan administrator in accordance with paragraph (c) of this section.

(d) *Appeal of determination of non-qualification.* A plan administrator may appeal the PBGC's determination under paragraph (c) of this section in accordance with the rules prescribed in Subpart D of Part 2606. The filing of an appeal automatically stays the effectiveness of the determination until the PBGC issues its decision on the appeal.

§ 2616.16 PBGC determination of plan sufficiency/insufficiency.

(a) *General.* Upon receipt of the participant data schedules filed pursuant to § 2616.14(d) (or, where appropriate, the certification of issuance of notices of benefit commitments filed pursuant to § 2616.14(e)), the PBGC shall determine the degree to which the plan is sufficient and notify the plan administrator in writing of its determination in accordance with paragraph (b), (c) or (d) of this section.

(b) *Insufficiency for guaranteed benefits.* If the PBGC finds that it is unable to determine that a plan is sufficient for guaranteed benefits, it shall issue a "notice of inability to determine sufficiency" notifying the plan administrator of this finding and advising the plan administrator that—

(1) The plan administrator shall continue to administer the plan under the restrictions imposed by § 2616.4;

(2) The termination shall be completed under section 4042 of the Act; and

(3) Unless the PBGC has determined that all benefit commitments under the plan are guaranteed benefits under section 4022 of the Act, the PBGC will determine whether to establish a section 4049 trust with respect to the plan.

(c) *Sufficiency for guaranteed benefits.* Except as provided in paragraph (e) of this section, if the PBGC determines that a plan is sufficient for guaranteed benefits, but is unable to determine that the plan is sufficient for benefit commitments, it shall issue to the plan administrator a "distribution notice" instructing the plan administrator to distribute all plan assets in accordance with § 2616.18 and advising the administrator that the PBGC will determine whether to establish a section 4049 trust with respect to the plan. The PBGC may also require the plan administrator to submit any additional information needed to verify the amounts of participants' and beneficiaries' benefit commitments.

(d) *Sufficiency for benefit commitments.* If the PBGC determines that a plan is sufficient for benefit commitments, it shall issue to the plan administrator a "distribution notice" instructing the plan administrator to distribute all plan assets in accordance with § 2616.18.

(e) *Special rules for certain plans with claims for due and unpaid contributions.* If the PBGC finds that a plan would become sufficient for guaranteed benefits only if the plan collects all or a portion of a claim for due and unpaid contributions and the enrolled actuary did not certify that he or she believed the necessary amount would be collected prior to the proposed distribution date, the plan shall be treated like a plan described in paragraph (b) of this section.

(f) *Plan records.* The PBGC shall also advise the plan administrator that all records needed to compute the benefit commitments (if any) of each individual who is a plan participant or beneficiary as of the termination date (excluding those individuals who were in pay status for longer than one year as of that date), *e.g.*, records showing a participant's age, marital status, employment history, etc., shall be preserved for six years after the date of the post-distribution certification required under § 2616.18(c). These records shall be retained by either the plan administrator or the contributing sponsor.

§ 2616.17 Verification of plan sufficiency prior to close out.

(a) *General.* Prior to making the final distribution of plan assets, the plan administrator shall verify whether the plan is still sufficient, *i.e.*, is able to pay benefits, at the level determined by the PBGC, *i.e.*, guaranteed benefits or benefit commitments. If the plan administrator finds that the plan is no longer able to pay benefits at the level determined by the PBGC, then paragraph (b) or (c) of this section, as appropriate, shall apply.

(b) *Subsequent insufficiency for guaranteed benefits.* When a plan administrator finds that a plan has become insufficient for guaranteed benefits, the plan administrator shall promptly notify the PBGC in writing of that fact and may take no further action to implement the plan termination, pending the PBGC's determination and notice pursuant to paragraph (b)(1) or (b)(2) of this section.

(1) *PBGC concurrence with finding.* If the PBGC concurs with the plan administrator's finding, the distribution notice shall be void, and the PBGC shall issue the plan administrator a new notice in accordance with § 2616.16(b). In addition, the PBGC shall require the plan administrator to submit a new valuation, certified to by an enrolled actuary, of the benefit commitments and guaranteed benefits under the plan valued in accordance with Part 2619, Subpart C, as of the date of the plan administrator's notice to the PBGC.

(2) *PBGC non-concurrence with finding.* If the PBGC does not concur with the plan administrator's finding, it shall so notify the plan administrator in writing, and the distribution notice shall remain in effect.

(c) *Subsequent insufficiency for benefit commitments.* When a plan administrator finds that a plan has become insufficient for benefit commitments, the plan administrator shall immediately notify the PBGC in writing of this fact, but shall continue with the final distribution of assets in accordance with § 2616.18. If the PBGC does not agree with the plan administrator's finding, it shall take no action. If the PBGC does concur with the plan administrator's finding, it shall—

(1) Determine whether to establish a trust pursuant to section 4049 with respect to the plan; and

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(2) Require the plan administrator to submit a new valuation, certified to by an enrolled actuary, of the benefit commitments valued in accordance with Part 2619, Subpart C, as of the final distribution date, and any additional information needed to verify the amounts of participants' and beneficiaries' benefit commitments.

(d) *Finding by PBGC of subsequent insufficiency.* In any case in which the PBGC finds on its own initiative that a subsequent insufficiency has occurred, paragraph (b)(1) or paragraphs (c)(1) and (c)(2) of this section, as appropriate, shall apply. In this event, the benefit commitments and, if applicable, guaranteed benefits shall be revalued as of the date of the PBGC's finding.

§ 2616.18 Close out of plan.

(a) *General.* When a plan administrator receives a distribution notice from the PBGC pursuant to § 2616.16 (c) or (d), and unless the plan administrator or the PBGC makes the finding described in § 2616.17(b), the plan administrator shall, within 30 days after receipt of the distribution notice, make the final distribution of plan assets in accordance with paragraph (b) of this section and thereafter shall file with the PBGC a post-distribution certification in accordance with paragraph (c) of this section.

(b) *Methods of final distribution.* The plan administrator shall distribute plan assets by purchasing annuities from an insurer, in accordance with § 2616.6(a), in satisfaction of all benefits that must be provided in annuity form under § 2616.6 to which assets are allocated in accordance with Part 2618, and by otherwise providing all benefits to which assets are allocated that need not be paid in annuity form under § 2616.6. With respect to annuity benefits, the plan administrator shall give to the participant or beneficiary the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the benefits purchased.

(c) *Post-distribution certification.* Within 30 days after the completion of the final distribution of assets, the plan administrator shall file with the PBGC a post-distribution certification containing the following information:

(1) The name and address of the insurer from which annuity contracts were purchased.

(2) A statement that plan assets were allocated in accordance with Part 2618.

(3) Unless all benefit commitments under the plan were paid, an addendum to the participant data schedules filed pursuant to § 2616.14(d) showing the amounts of the benefit commitments actually distributed to (or with respect to) each participant.

(4) If all benefit commitments under the plan were paid, the place or places where the plan records will be held.

(5) A certified statement that all information provided and statements made pursuant to this paragraph are true and complete.

Appendix—Agreement for Commitment To Make Plan Sufficient for Guaranteed Benefits

This agreement, by and between [title of Company] _____(the "Company") and the Pension Benefit Guaranty Corporation (the "PBGC") shall be effective as of the last date executed.

Whereas, the PBGC is a wholly owned government corporation created by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq* (1982) (amended by Pub. L. No. 99–272 (1986), 100 Stat. 244) (the "Act"); and

Whereas _____ (the "Plan") is an employee pension benefit plan as described in section 3(2)(A) of the Act; and

Whereas the Company is [describe entity: e.g., corporation, partnership]; and

Whereas, the Company is a contributing sponsor of the Plan as described in section 4001(a)(13) of the Act, 29 U.S.C. § 1301(a)(13); and

Whereas, the Plan is covered by the termination insurance provisions of Title IV of the Act, 29 U.S.C. § 1301 *et seq;* and

Whereas, the Plan administrator has provided (or intends to provide) to each affected party a Notice of Intent to Terminate the Plan, pursuant to Section 4041(a)(2) of the Act, 29 U.S.C. § 1342(a)(2), and

Whereas, the Company wishes the Plan to be sufficient for all benefits described in section 4044(a) (1)–(4) of the Act, 29 U.S.C. 1344(a) (1)–(4) for purposes of Title IV of the Act, 29 U.S.C. § 1301 et seq; and

Whereas, the Company is not a debtor in a bankruptcy or other insolvency proceeding, and the Company does not anticipate that it will become a debtor in such a proceeding.

[Alternative Paragraph]

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and the court before which the proceeding is pending approves this commitment.

Now Therefore, the parties hereto agree as follows:

1. The Company promises to pay to the Plan, on or before the date prescribed for distribution of Plan assets by the Plan administrator, the amount necessary, if any, to ensure that, on the date the Plan administrator distributes the assets of the Plan, the Plan is able to provide all benefits described in section 4044(a) (1)–(4) of the Act, 29 U.S.C. § 1344(a) (1)–(4).

2. For the sole purpose of determining whether the plan is sufficient to provide all benefits described in section 4044(a) (1)–(4) of the Act, 29 U.S.C. 1355(a) (1)–(4), an amount equal to the amount described in paragraph 1 shall be deemed to be a Plan asset available for allocation among the participants and beneficiaries of the Plan, in accordance with section 4044 of the Act, 29 U.S.C. § 1344.

3. In the event that the Company fails to honor this commitment, the PBGC may bring an action to enforce the commitment.

4. In the event that the Plan administrator is unable to distribute the assets of the Plan to satisfy all benefits described in section 4044(a) (1)–(4) of the Act, 29 U.S.C. § 1344(a) (1)–(4), the PBGC may proceed to place the Plan into trusteeship in accordance with section 4042 of the Act, 29 U.S.C. § 1342.

5. This Agreement shall in no way relieve the company of its obligations—

(a) to pay contributions under the Plan;

(b) in the event of PBGC trusteeship, to pay any amount due to the PBGC under section 4062(b) of the Act, 29 U.S.C. § 1362; and

(c) in the event a trust is established pursuant to section 4041(c)(3)(B) (ii) or (iii) or section 4041(c)(3)(C) (i) or (ii) of the Act, 29 U.S.C. § 1341 (c)(3)(B) (ii) or (iii) or § 1341(c)(3)(C) (i) or (ii), to pay any amount due to the trust pursuant to section 4062(c) of the Act, 29 U.S.C. § 1362(c).

Date: _____

By: _____

Date: _____

PBGC By: _____

Knowingly and willfully making false, fictitious or fraudulent statements to PBGC is punishable under 18 U.S.C. § 1001.

PART 2617—STANDARD TERMINATIONS OF SINGLE-EMPLOYER PLANS

Subpart A—General Provisions

Sec.

2617.1 Purpose and scope.
2617.2 Definitions.
2617.3 Requirements for a standard termination.
2617.4 Administration of plan during pendency of termination proceedings.
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Subpart B—Standard Termination Process

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2617.12 Notice of intent to terminate.
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2617.14 Form and contents of notices of benefit commitments.
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2617.16 PBGC action upon receipt of standard termination notice.
2617.17 Notice of noncompliance.
2617.18 Close out of plan.

Appendix—Agreement for Commitment To Make Plan Sufficient for Benefits Commitments.

Authority: Secs. 4002(b)(3), 4041 and 4044, Pub. L. 93–406, 88 Stat. 1004, 1020 and 1025, as amended by secs. 403(1), 40(d) and 402(a)(7), Pub. L. 96–364, 94 Stat. 1299, 1301 and 1302, and by secs. 11007 and 11009, Pub. L. 99–272,

100 Stat. 244 [29 U.S.C. 1302(b)(3), 1341 and 1344].

Subpart A—General Provisions

§ 2617.1 Purpose and scope.

(a) *Purpose.* This regulation sets forth the rules and procedures for terminating a single-employer pension plan in a standard termination. Under the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA"), a single-employer plan may be voluntarily terminated only in a "standard" or a "distress" termination, and then only if the termination satisfies the statutory requirements for the type of termination sought. The plan termination rules in SEPPAA apply with respect to all plan terminations initiated by the plan administrator or the Pension Benefit Guaranty Corporation ("PBGC"), on or after January 1, 1986. This regulation combines the PBGC's regulations on Notices of Intent to Terminate and Determination of Plan Sufficiency and Termination of Sufficient Plans (29 CFR Parts 2616 and 2617), with appropriate changes to reflect SEPPAA's new rules for standard terminations. Subpart A of this regulation contains the various general rules and requirements relating to standard terminations. Subpart B sets forth the specific steps that a plan administrator must follow in order to terminate a plan in a standard termination.

(b) *Scope.* This part applies to the termination of any single-employer plan covered under ERISA section 4021(a) and not excluded by section 4021(b), for which a notice of intent to terminate is issued (or is required to be issued) on or after [effective date of part] and which is not terminated in accordance with the requirements for a distress termination under section 4041(c) of the Act and Part 2616 of this subchapter.

§ 2617.2 Definitions.

For purposes of this part:

"Act" means the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 and the Single-Employer Pension Plan Amendments Act of 1986.

"Affected party" means, with respect to a single-employer plan, each participant, each beneficiary of a deceased participant, each alternate payee (as defined in section 206(d)(3)(K) of the Act) under an applicable qualified domestic relations order (as defined in section 206(d)(3)(B)(i)), and each employee organization representing participants. However, in connection with any notice required under this part, if an affected party has designated in writing another person to receive the notice, then any reference to the affected party shall be deemed to refer to the designated person.

"Benefit commitments" means those benefits that: (1) Are guaranteed under section 4022 of the Act; (2) would be guaranteed but for the limitations in section 4022(b); or (3) constitute early retirement supplements or subsidies or plant closing benefits, provided the participant or beneficiary has, prior to the plan termination date, satisfied all of the conditions under the plan to establish entitlement to the benefit, except for the submission of a formal application, retirement, completion of a required waiting period subsequent to application for benefits or designation of a beneficiary.

"Contributing sponsor" means, with respect to a single-employer plan, the person responsible for meeting the minimum funding requirements under section 302 of the Act or section 412 of the Internal Revenue Code of 1954.

"Insurer" means a company authorized to do business as an insurance carrier under the laws of a state or the District of Columbia.

"Multiple employer plan" means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group, under which all plan assets are available to pay benefits to all plan participants and beneficiaries.

"Notice of benefit commitments" means the notice to participants and beneficiaries required by section 4041(b)(2)(B) of the Act and §§ 2617.13 and 2617.14 of this part that advises them of the minimum benefit entitlement of each in the event of a standard termination.

"Notice of intent to terminate" means the notice to affected parties advising them of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2617.12 of this part.

"Notice of noncompliance" means a notice issued to a plan administrator by the PBGC pursuant to section 4041(b)(2)(C) of the Act and § 2617.17 of this part advising the plan administrator that the requirements for a standard termination have not been satisfied and that the plan may not terminate.

"Participant" means any individual who is in employment covered by the plan and is earning or retaining credited service (including an individual who is below the integration level in a plan that is integrated with Social Security); any non-vested individual separated from employment who is earning or retaining credited service, excluding those individuals who have incurred a break in service of one year or the plan's break-in-service period, whichever is greater; and any individual who has retired or separated from employment and is either receiving benefits or entitled to begin receiving benefits in the future, excluding those individuals to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Proposed distribution date" means the date chosen by the plan administrator as the tentative date for the final distribution of plan assets pursuant to a standard termination and the date used by the enrolled actuary for valuing plan assets and benefits. A proposed distribution date may never be earlier than the day following the last day of the PBGC's review period, as described in § 2617.16(b), nor later than the 30th day following the expiration of the review period.

"Proposed termination date" means the date specified as such by the plan administrator in a notice of intent to terminate or, if different, in the standard termination notice. If a plan terminates in a standard termination, this date becomes the termination date, and this is the date used by the enrolled actuary for determining participants' accrued benefits and benefit commitments under a plan. A proposed termination date may not be earlier than the 60th day after the issuance of the notice of intent to terminate, nor later than the 180th day thereafter.

"Single-employer plan" means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3)).

"Standard termination" means the termination, in accordance with section 4041(b) of the Act and this part, of a single-employer plan that is able to pay all its benefit commitments.

"Standard termination notice" means the notice filed with the PBGC pursuant to section 4041(b)(2)(A) of the Act and § 2617.15 of this part advising the PBGC of a proposed standard termination and providing various plan data including, but not limited to, an enrolled actuary's certification of the plan's sufficiency for benefit commitments.

§ 2617.3 Requirements for a standard termination.

(a) *Exclusive means of voluntary plan termination.* Unless all the requirements for a distress termination set forth in section 4041(c) of the Act and Part 2616 are satisfied, a plan may be voluntarily terminated by the plan administrator

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only in a standard termination. A standard termination may occur only if it meets all of the requirements set forth in paragraph (b) of this section.

(b) *Requirements.* A plan may terminate in a standard termination only if—

(1) The plan administrator issues a notice of intent to terminate to affected parties in accordance with § 2617.12 at least 60 days before the proposed termination date;

(2) The plan administrator files a standard termination notice with the PBGC in accordance with § 2617.15 no later than 60 days after the proposed termination date;

(3) The plan administrator issues notices of benefit commitments to plan participants and beneficiaries in accordance with §§ 2617.13 and 2617.14 no later than the date that the standard termination notice is sent to the PBGC;

(4) The PBGC does not issue a notice of noncompliance to the plan administrator pursuant to § 2617.17; and

(5) The plan administrator makes the final distribution of plan assets in accordance with § 2617.18, thereby satisfying all plan obligations for benefit commitments.

(c) *Effect of failure to satisfy all requirements.* If any of the requirements of paragraph (b) of this section are not satisfied, any action taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan for all purposes. A plan administrator who still desires to terminate the plan shall initiate the termination process again from the beginning, starting with the issuance of a notice of intent to terminate.

§ 2617.4 Administration of plan during pendency of termination proceedings.

Beginning on the date that the plan administrator issues the notice of intent to terminate and ending upon the expiration of the PBGC's review period referred to in § 2617.16(a) (generally 60 days after the filing with the PBGC of a complete standard termination notice), the plan administrator may not make any distributions to participants pursuant to or in furtherance of the plan's termination. This does not prohibit the plan administrator from carrying out the normal operations of the plan, such as putting participants into pay status, collecting contributions due the plan and investing plan assets.

§ 2617.5 Challenges to plan termination under a collective bargaining agreement.

(a) *Suspension of termination proceeding.* If, prior to the expiration of the PBGC's review period referred to in § 2617.16(a), the PBGC is advised that a formal challenge (as defined in paragraph (c) of this section) has been initiated asserting that the proposed termination violates the terms and conditions of an existing collective bargaining agreement, the PBGC shall suspend the termination proceeding. The effect of the suspension shall be to stop the running of all time periods specified in Title IV of ERISA or under this part relevant to the termination. However, the restriction prescribed by § 2617.4 shall continue in effect during the period of suspension. The PBGC shall notify the plan administrator in writing of the suspension.

(b) *Resolution of challenge.* Immediately upon the final resolution (as defined in paragraph (d) of this section) of the formal challenge to the termination, the plan administrator shall notify the PBGC in writing of the outcome of the challenge. If the validity of the proposed termination has been upheld, the plan administrator shall also advise the PBGC of whether the plan administrator wishes to continue or withdraw the proposed termination.

(1) *Challenge sustained.* If it has been determined that the proposed termination violates the collective bargaining agreement, the PBGC shall dismiss the termination proceeding, all actions taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan for all purposes.

(2) *Termination sustained.* If it has been determined that the proposed termination does not violate the collective bargaining agreement and the plan administrator wishes to proceed with the termination, the PBGC shall reactivate the termination proceeding by sending a written notice thereof to the plan administrator. In that event, the termination proceeding shall continue from the point where it was suspended, and all actions taken to effect the termination prior to the suspension shall be effective. Any time periods that were suspended shall resume running from the date of the PBGC's notice of the reactivation of the proceeding, and any time periods that had fewer than 15 days remaining shall be extended to the 15th day after the date of the PBGC's notice.

(c) *Formal challenge to plan termination.* The occurrence of any of the following actions, asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement, shall constitute grounds for the PBGC to suspend the termination proceeding:

(1) The commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement.

(2) The filing of a charge with the National Labor Relations Board alleging an unfair labor practice under section 8 of the National Labor Relations Act.

(3) The commencement of an action under section 301 of the National Labor Relations Act in a court of competent jurisdiction.

(d) *Final resolution of challenge.* For the purposes of this section, a formal challenge to a proposed termination shall be considered finally resolved when the parties involved in the challenge enter into a settlement that resolves the challenge or upon the issuance of a final, non-appealable order, as defined in this paragraph. Depending upon the type of action challenging the termination, any of the following constitutes a final, non-appealable order:

(1) An arbitrator's award that is neither appealed nor is review thereof sought within the time for filing such appeals or requesting review.

(2) An order of the National Labor Relations Board for which the Board does not petition for enforcement or the person aggrieved petition for review within the time permitted for filing such actions.

(3) An order by a court of competent jurisdiction that is not appealed within the time limit for filing such appeals.

(4) When an appeal is taken from or a request for review is made concerning a decision described in paragraph (d)(1), (d)(2) or (d)(3) of this section, an order by a court of competent jurisdiction finally resolving the dispute.

(e) *Involuntary termination by the PBGC.* Paragraphs (a) and (b) of this section notwithstanding, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of the Act.

§ 2617.6 Requirement for annuities.

(a) *General rule.* Except as provided in paragraph (b) of this section, when a plan is closed out under § 2617.18, any benefit that is payable as an annuity under the provisions of the plan must be provided in annuity form through the purchase from an insurer of a single premium, nonparticipating (except in the case of a plan that is sufficient for all accrued benefits), nonsurrenderable annuity that constitutes an irrevocable commitment by the insurer to provide the benefits purchased.

(b) *Exceptions.* [Reserved]

§ 2617.7 Contributing sponsor's commitment to make plan sufficient.

At any time prior to the filing with the PBGC of a standard termination notice, a contributing sponsor may make a commitment to contribute any additional sums necessary to make a plan sufficient for all benefit commitments, in order to enable the plan to terminate in a standard termination. The commitment shall be in writing and be signed by the contributing sponsor, shall contain substantially the same provisions as the sample commitment in the appendix to this part, and shall be made to the plan. In addition, a commitment by a contributing sponsor that is the subject of a bankruptcy liquidation or reorganization proceeding, as described in § 2616.3 (d)(1) or (d)(2), shall be valid under this section only if it is approved by the court before which the liquidation or reorganization proceeding is pending. A commitment that meets the requirements of this section shall be considered a plan asset for all purposes under this part.

§ 2617.8 Filings with the PBGC; time limits.

(a) *"Filing" defined.* Any document required or permitted to be filed with the PBGC under this part shall be deemed filed on the date that it is received at the PBGC, providing it is received on a weekday, other than a Federal holiday, no later than 4:00 p.m. Documents received after 4:00 p.m. or on weekends or Federal holidays shall be deemed filed on the next regular business day.

(b) *How to file.* Any document being filed under this part may be delivered by mail or by hand to the PBGC's Case Classification and Control Division, Control Branch, Room 5300A (Code 25420), 2020 K Street NW., Washington, DC 20006.

(c) *Time limits.* If the last day of any period prescribed by this part for issuing or filing any notices or other documents or taking any other actions falls on a Saturday, Sunday or legal holiday, then the last day of the period shall be the next regular business day.

§ 2617.9 Maintenance of plan records.

All records (including the plan document) needed to compute the benefit commitments (if any) of each individual who is a plan participant or beneficiary as of the proposed termination date, excluding those individuals who have been in pay status for longer than one year as of that date, shall be preserved for six years after the date of the post-distribution certification required under § 2617.18(f). These records shall be retained by either the plan administrator or the contributing sponsor.

Subpart B—Standard Termination Process

§ 2617.11 Purpose and scope.

This subpart describes in detail the standard termination process. Sections 2617.12–2617.14 prescribe the contents of and the rules for issuing the two statutory notices that plan administrators must give to participants and beneficiaries in a standard termination. The first notice, which is issued to begin the termination process, is the "notice of intent to terminate." The second notice, which is issued prior to the PBGC's review of the termination request, is the "notice of benefit commitments." Section 2617.15 deals with the filing made with the PBGC, the "standard termination notice." Sections 2617.16 and 2617.17 cover the PBGC's review of the proposed termination and the actions that the PBGC may take with respect to it. Finally § 2617.18 prescribes the rules for closing out a plan in the absence of a notice of noncompliance.

§ 2617.12 Notice of intent to terminate.

(a) *General rule.* At least 60 days and no more than 180 days prior to the proposed plan termination date, the plan administrator shall issue to each affected party (as defined in § 2617.2) a notice of intent to terminate containing all of the information specified in paragraph (d) of this section. Failure to comply with this rule shall nullify the proposed termination.

(b) *Method of issuance.* The notice of intent to terminate shall be issued individually to each affected party. The notice shall be either hand delivered or delivered by first-class mail or courier service to the affected party's last known address.

(c) *When issued.* The notice of intent to terminate is deemed issued on the date in which it is handed to the affected party or deposited with a mail or courier service.

(d) *Contents of notice.* The notice of intent to terminate shall contain all of the following information:

(1) The name of the plan and of the contributing sponsor.

(2) The Employer Identification Number ("EIN") of the contributing sponsor and the Plan Identification Number ("PN"); if there is no EIN or PN, the notice shall so state.

(3) The name, address and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination.

(4) A statement that the plan administrator expects to terminate the plan on a proposed termination date (as defined in § 2617.2) that is either—

(i) A specific date set forth in the notice; or

(ii) A date to be determined that is dependent on the occurrence of some future event (such as the merger of the contributing sponsor with another entity). When an unspecified date is used, the notice shall state what the event is, generally when it is expected to occur, and when the termination will occur in relation to the other event.

(5) A statement that if the termination does not occur, the plan administrator will notify the affected parties of that fact.

(6) A statement that each affected party, other than the employee organization that represents plan participants, will be receiving a written notification of the benefits that the person will receive.

(7) For retirees only, a statement that their monthly (or other periodic) benefit amounts will not be affected by the plan's termination.

§ 2617.13 Issuance of notices of benefit commitments.

(a) *General rule.* No later than the date on which the plan administrator sends the standard termination notice to (or, if hand-delivered, files it with) the PBGC, as required by § 2617.15, the plan administrator shall issue to each plan participant and beneficiary described in paragraph (b) of this section a notice of that person's benefit commitments under the plan. The notice shall be in the form and contain the information specified in § 2617.14. Failure to comply with this rule shall nullify the proposed termination.

(b) *Persons entitled to notice.* A notice of benefit commitments shall be issued to all persons who, as of the proposed termination date, are participants in the terminating plan, and, in the case of a spin-off/termination, participants in the continuing plan. A notice of benefit commitments shall also be issued to all persons who are, as of that date, under the terminating plan or the continuing plan, beneficiaries of deceased participants or alternate payees under an applicable qualified domestic relations order. With respect to all other beneficiaries, notice to the participant shall constitute notice to that participant's beneficiary(ies).

(c) *Method of issuance.* A notice of benefit commitments shall be issued individually to each person described in paragraph (b) of this section. The notice shall be either hand-delivered or

delivered by first-class mail or courier service to the person's last known address.

(d) *When issued.* A notice of benefit commitments is deemed issued on the date it is handed to the recipient or deposited with a mail or courier service.

§ 2617.14 Form and contents of notices of benefit commitments.

(a) *Form.* A notice of benefit commitments shall be written in plain, non-technical English that is likely to be understood by the average participant or beneficiary. When technical terms must be used, their meaning shall be explained in non-technical language.

(b) *Foreign languages.* In the case of any plan described in paragraph (b)(1) or (b)(2) of this section, in addition to complying with paragraph (a) of this section, the notice of benefit commitments shall contain a statement, prominently displayed, in the foreign language (or languages) common to the non-English speaking plan participants advising them of how they may obtain assistance in understanding the notice. The assistance need not involve written materials, but shall be adequate to reasonably ensure that the participants and beneficiaries understand the information contained in their notices, and shall be provided through media and at times and places that are reasonably accessible to the participants and beneficiaries.

(1) *Small plans.* A plan described in this paragraph is any plan that covers fewer than 100 participants as of the proposed termination date, in which at least 25 percent of the participants speak only the same non-English language.

(2) *Other plans.* A plan described in this paragraph is any plan that covers 100 or more participants as of the proposed termination date, in which the lesser of 500 or 10 percent of the participants speak only the same non-English language.

(c) *Contents.* Each notice of benefit commitments shall contain the information specified in this paragraph. In addition, a notice shall contain the information described in paragraphs (d) through (f) of this section, depending on whether the benefit is in pay status and whether the participant has elected a benefit form as of the proposed termination date. If, as of the proposed termination date, the plan administrator is certain that the plan will be able to pay full accrued benefits to all participants, the information set forth in the notices may be for accrued benefits rather than benefit commitments, and each notice shall so state.

(1) The name of the plan and the Employer Identification Number ("EIN"); if there is no EIN, the notice shall so state.

(2) The name, address and telephone number of the person who may be contacted to answer questions concerning a participant's or beneficiary's benefit.

(3) The proposed termination date and, if applicable, a statement that this date is later than the proposed termination date given in the notice of intent to terminate.

(4) A statement that the amount of the benefit commitments set forth in the notice is an estimate, that under the proposed termination benefits paid will in no event be less than the estimate, and (where applicable) greater benefits may be paid if plan assets are adequate.

(d) *Benefits of persons in pay status.* A notice of benefit commitments to a participant or beneficiary in pay status as of the proposed termination date shall state—

(1) The amount and form of benefit payable as of the proposed termination date;

(2) The amount (if any) and form of benefit payable to a beneficiary upon the participant's death and the name of the beneficiary;

(3) The amount and date of any increase or decrease in the benefit scheduled to occur (or that has already occurred) after the proposed termination date and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provision; and

(4) For benefits of participants (or beneficiaries) in pay status for one year or less as of the proposed termination date, the specific personal data used to calculate the benefit commitments described in paragraphs (d)(1) and (d)(2) of this section, *e.g.*, participant's age at retirement, spouse's age, participant's length of service, etc., and including for Social Security offset benefits, the participant's actual or, if unknown, estimated Social Security benefit and for an estimated benefit, the assumptions used for the participant's earnings history.

(e) *Benefits of participants not in pay status but form and starting date known.* For benefit commitments payable with respect to a participant who is not in pay status as of the proposed termination date, but who has, as of that date, elected to retire, a notice of benefit commitments shall state—

(1) The amount and form of the benefit commitments payable as of the projected benefit starting date, and what that date is;

(2) The amount (if any) and form of benefit payable to a beneficiary upon the participant's death and the name of the beneficiary;

(3) If the age at which or form in which the benefit commitments will be paid differ from the age or form in which the participant's accrued benefit at normal retirement age is stated in the plan, the age or form stated in the plan and the age or form adjustment factors, including in the case of a lump sum benefit the interest rate, used to convert to the benefit described in paragraph (e)(1) of this section, with a reference to the pertinent plan provision;

(4) The specific personal data, as described in paragraph (d)(4) of this section, used to calculate the benefit commitments (other than a lump sum benefit) described in paragraphs (e)(1) and (e)(2) of this section, and, with respect to a benefit payable as a lump sum, the personal data used to calculate the underlying annuity; and

(5) When the benefit commitments will be paid in a lump sum, an explanation of how the interest rate is used to calculate the lump sum, a statement that the higher the interest rate used, the smaller the lump sum amount, and (if applicable) a statement that the lump sum amount given pursuant to paragraph (e)(1) of this section is an estimate because the applicable interest rate may change before the distribution date.

(f) *All other benefits of participants not in pay status.* With respect to all deferred benefits, other than those described in paragraph (e) of this section, a notice of benefit commitments shall state—

(1) The amount and form of the participant's benefit commitments at normal retirement age in the plan's normal form;

(2) The availability of any alternative benefit forms, including those payable to a beneficiary upon the participant's death either before or after retirement, and for any benefits to which the participant is entitled as of the proposed termination date that would be payable before normal retirement age, the amount and earliest benefit commencement date of such benefit and whether the benefit would be subject to future reduction;

(3) If the benefit commitments may be paid in a lump sum without the participant's consent, the amount of the lump sum and the interest rate used to calculate it;

(4) The specific personal data, as described in paragraph (d)(4) of this section, used to calculate the benefit commitments described in paragraph

(f)(1) of this section, and, with respect to a benefit that may be paid in a lump sum without the participant's consent, the personal data used to calculate the underlying annuity; and

(5) When the benefit commitments may be paid in a lump sum without the participant's consent, an explanation of how the interest rate is used to calculate the lump sum, a statement that the higher the interest rate used, the smaller the lump sum amount, and a statement that the lump sum amount given pursuant to paragraph (f)(3) of this section is an estimate because the applicable interest rate may change before the distribution date.

§ 2617.15 Standard termination notice.

(a) *General rule.* No later than 60 days after the proposed termination date specified in the notice of intent to terminate (or, if later, the proposed termination date specified in the notice required by this paragraph), the plan administrator shall file with the PBGC a "standard termination notice" containing the information prescribed in this section.

(b) *Contents of notice.* A standard termination notice shall be clearly identified as such and shall contain all of the information specified in this paragraph and, if the plan administrator expects the termination to result in the reversion of residual assets to the contributing sponsor, the information specified in paragraph (c) of this section, as well. Each item of information shall be numbered as the items are numbered in this paragraph and in paragraph (c) of this section.

(1) The name of the plan and of the contributing sponsor.

(2) The Employer Identification Number ("EIN") of the contributing sponsor and the Plan Identification Number ("PN"); if there is no EIN or PN, the notice shall so state; if premiums have been paid by the plan under another EIN or PN, that EIN or PN shall be given as well.

(3) The name, address and telephone number of the plan administrator and of the plan administrator's duly authorized representative, if any.

(4) A statement of whether the plan is a multiple employer plan; if so, the names and EIN's of all contributing sponsors must be given.

(5) The total number of plan participants (actives and retirees).

(6) The plan year ending date.

(7) The proposed termination date of the plan and, if earlier, the proposed termination date specified in the notice of intent to terminate.

(8) The date (or latest date) on which the notices of intent to terminate were issued and a statement that they were issued to each affected party in accordance with § 2617.12.

(9) The proposed distribution date.

(10) A statement that notices of benefit commitments were issued and the date or dates thereof, in accordance with §§ 2617.13 and 2617.14, to each person entitled to receive the notice pursuant to § 2617.13.

(11) A statement of whether a formal challenge to the termination, as defined in § 2617.4(c), has been initiated, and if so, what action was initiated, by whom and on what date, and the current status of the challenge.

(12) A statement of whether the contributing sponsor has made a commitment to make the plan sufficient, pursuant to § 2617.7.

(13) A statement of whether the termination will result in the reversion of residual assets to the contributing sponsor; if so, the information required by paragraph (c) of this section must also be submitted.

(14) A certification by an enrolled actuary of the information specified in this paragraph. The certification shall be signed by the enrolled actuary and shall show the enrolled actuary's identification number. All valuations done pursuant to this paragraph shall utilize reasonable methods and assumptions consistently applied, and all values given shall be as of the proposed distribution date, as defined in § 2617.2.

(i) The projected value of plan assets.

(ii) The projected actuarial present value of all benefit commitments (determined as of the proposed termination date).

(iii) A statement that the plan is projected to be sufficient for all benefit commitments.

(iv) A statement of whether the plan is projected to be sufficient for all accrued benefits and, if so, the projected actuarial present value of all accrued benefits (determined as of the proposed termination date).

(v) A statement of whether the termination is projected to result in a reversion of residual assets to the contributing sponsor, and if so, the projected amount of the reversion.

(15) A certification by the plan administrator that the information given and statements made pursuant to paragraphs (b)(1)–(b)(13) and, if applicable, paragraph (c) of this section and the information made available to the enrolled actuary are all accurate and complete.

(c) *Additional information for terminations resulting in asset reversions.* In any termination that will result in the reversion of residual assets to the contributing sponsor, the standard termination notice shall contain the following:

(1) A statement that the plan provides for a reversion of any residual assets to the contributing sponsor.

(2) A statement of whether the plan was involved in a spin-off or other transfer of assets or liabilities within the 36-month period preceding the proposed termination date.

(3) A statement of whether the contributing sponsor intends to cover substantially the same employees participating in the terminating plan in another (new or existing) defined benefit plan.

(4) With respect to a contributory plan, a statement of whether the plan administrator is requesting PBGC approval of an allocation method other than that prescribed in § 2618.31(b) of the PBGC's regulations; if so, the proposed allocation method must be submitted and the plan administrator shall consent to a 60-day extension of the PBGC's review period referred to in § 2617.16(a).

(5) A statement of whether the contributing sponsor intends to cover substantially the same employees participating in the terminating plan in a new or existing defined contribution plan.

(6) If an affirmative answer is made with respect to paragraph (c)(2) or (c)(3) of this section, a copy of the contributing sponsor's most recent annual report or audited financial statement.

§ 2617.16 PBGC action upon receipt of standard termination notice.

(a) *General.* Upon the filing of a standard termination notice containing all of the information required by § 2617.15 (b) and (c), the PBGC has (except as provided in paragraph (b) or (e) of this section or in § 2617.5) 60 days (or, in the case of a contributory plan involving a reversion of residual assets with respect to which the plan administrator proposes to use an allocation method other than that described in 29 CFR 2618.31(b), 120 days) to review the standard termination notice, determine whether or not to issue a notice of noncompliance pursuant to § 2617.17, and issue any such notice. If the PBGC does not issue a notice of noncompliance within this period, the plan administrator shall proceed to close out the plan in accordance with § 2617.18. The consequences of the issuance of a notice of noncompliance are set forth in § 2617.17.

(b) *Review period.* The 60-day (or 120-day) period referred to in paragraph (a)

of this section begins on the day following the filing of a complete standard termination notice and includes the 60th (or 120th) day. The PBGC and the plan administrator may agree in writing, prior to the expiration of the review period, to extend the period for an additional 60 days. More than one such extension may be made. Any extension may be made upon whatever terms and conditions are agreed to by the PBGC and the plan administrator.

(c) *Acknowledgment of complete standard termination notice.* Upon receipt of a standard termination notice containing all of the information required by § 2617.15 (b) and (c), the PBGC shall notify the plan administrator in writing of the date on which the notice was filed, so that the plan administrator may determine when the PBGC's review period will expire.

(d) *Incomplete standard termination notice.* Upon receipt of a standard termination notice that does not contain all of the information required by § 2617.15 (b) and (c), the PBGC shall return the notice and advise the plan administrator in writing of the missing items of information and that the complete standard termination notice must be filed no later than the 60th day after the proposed termination date or the 20th day after the date of the PBGC notice, whichever is later.

(e) *Authority to request additional information.* Whenever the PBGC has reason to suspect that any of the requirements of §§ 2617.12–2617.15 were not complied with, or in any case that will result in a reversion of residual assets to the contributing sponsor, the PBGC may require the submission of information supplementing that furnished pursuant to § 2617.15. A request for additional information under this paragraph shall be in writing and shall suspend the running of the PBGC's review period specified in paragraph (a) of this section. That period shall begin running again on the day following the filing of the requested information. If a plan administrator or contributing sponsor fails to submit information requested under this paragraph within the period specified in the PBGC's request, the PBGC may issue a notice of noncompliance in accordance with § 2617.17.

§ 2617.17 Notice of noncompliance.

(a) *General.* The PBGC shall issue to the plan administrator a written notice of noncompliance, within the period prescribed by § 2617.16(a), whenever it makes one of the determinations set forth in this paragraph. Any such determination shall be based on the information contained in the standard termination notice or in any supplemental submission under § 2617.16(e), or on information provided by any affected party or otherwise obtained by the PBGC.

(1) A determination that the plan administrator failed to issue notices of intent to terminate in accordance with § 2617.12.

(2) A determination that the plan administrator failed to issue notices of benefit commitments in accordance with §§ 2617.13 and 2617.14.

(3) A determination that the standard termination notice was not filed in compliance with § 2617.15.

(4) A determination that, as of the proposed distribution date, plan assets will not be sufficient to satisfy all benefit commitments under the plan.

(b) *Effect of notice of noncompliance.* The issuance of a notice of noncompliance terminates a standard termination proceeding. The effect of the notice is to nullify all actions taken to effect the plan termination and to render the plan an ongoing plan for all purposes. The notice of noncompliance is effective upon the expiration of the period within which the notice may be appealed under Part 2606 ("Rules for Administrative Review of Agency Decisions"). However, once the notice is issued, the plan administrator may take no further actions to terminate the plan until the notice is revoked pursuant to a decision by the PBGC on an appeal.

(c) *Appeal of notice of noncompliance.* A plan administrator may appeal the issuance of a notice of noncompliance in accordance with the rules prescribed in Subpart D of Part 2606. The filing of an appeal automatically stays the effectiveness of the notice of noncompliance until the PBGC issues its decision on the appeal.

(d) *Notice to affected parties.* Upon a decision by the PBGC on an appeal affirming the issuance of a notice of noncompliance or upon the expiration of the period within which the issuance of a notice of noncompliance may be appealed, the plan administrator shall notify the affected parties in writing that the plan is not going to terminate. The notices shall be delivered by first-class mail or by hand to the employee organization representing plan participants and to participants and beneficiaries who are in pay status. The notices to other participants and beneficiaries shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in an employee organization newsletter or newspaper of general circulation in the area or areas where participants and beneficiaries reside.

§ 2617.18 Close out of plan.

(a) *General rule.* Except as provided in paragraph (b) of this section, if the PBGC does not issue a notice of noncompliance within the period specified in § 2617.17, the plan administrator shall, within 30 days after the expiration of that period, make the final distribution of plan assets in accordance with paragraph (c) of this section. Thereafter, the plan administrator shall file with the PBGC the post-distribution certification required under paragraph (f) of this section.

(b) *Inability to pay all benefit commitments.* Prior to making the final distribution of plan assets, the plan administrator shall determine that plan assets are in fact sufficient to satisfy all benefit commitments under the plan. The plan administrator may not make any distribution of assets to effect the plan's termination if the assets are not sufficient. In the event of an insufficiency, the plan administrator shall promptly notify the PBGC.

(c) *Methods of final distribution.* The plan administrator shall distribute plan assets by purchasing annuities from an insurer, in accordance with § 2617.6(a), in satisfaction of all benefit commitments (or, if greater, benefits to which assets are allocated in accordance with Part 2618) that must be provided in annuity form under § 2617.6, and by otherwise providing all benefit commitments (or, if greater, benefits to which assets are allocated) that need not be paid in annuity form under § 2617.6. With respect to annuity benefits, the plan administrator shall give to the participant or beneficiary the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit.

(d) *Failure to distribute within 30-day period.* Except as provided in paragraph (e) of this section, failure to make the final distribution of assets in accordance with paragraph (a) of this section, because of an insufficiency of plan assets as described in paragraph (b) of this section or for any other reason, shall nullify the termination. All actions taken to effect the plan's termination shall be null and void, and the plan shall be an ongoing plan for all purposes.

(e) *Extension of time for distribution.* If the plan administrator is unable to make the final distribution of plan

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assets within the 30-day period for any reason other than an insufficiency described in paragraph (b) of this section, the plan administrator may make a written request to the PBGC for an extension of time within which to make the distribution. The request shall be filed with the PBGC prior to the expiration of the 30-day period, state the reason for the request, and provide a date certain no later than 45 days after the end of the 30-day period by which the distribution will be made if the extension is granted. The PBGC will grant an extension only if it is satisfied that the delay in making the distribution is not due to the actions or inactions of the plan administrator or the contributing sponsor, and that the distribution can in fact be complete by the date requested. In no event will the PBGC grant an extension of greater than 45 days.

(f) *Post-distribution certification.* Within 30 days after the completion of the final distribution of assets, the plan administrator shall file with the PBGC a post-distribution certification containing the following information:

(1) The name and address of the insurer from which annuity contracts were purchased.

(2) The place or places where the plan records will be held.

(3) A statement that plan assets were allocated in accordance with Part 2618.

(4) A statement that assets were distributed in accordance with paragraph (c) of this section.

(5) A certified statement that all information provided and statements made pursuant to this paragraph are true and complete.

Appendix—Agreement for Commitment To Make Plan Sufficient for Benefits Commitments

This agreement, by and between [title of company] _____ (the "Company") and _____ [title of plan] (the "Plan") shall be effective as of the last date executed.

Whereas, _____ (the "Plan") is an employee pension benefit plan as described in section (3)(2)(A) of the Act; and

Whereas the company is [describe entity; e.g., corporation, partnership]; and

Whereas, the company is a contributing sponsor of the Plan as described in section 4001(a)(13) of the Act, 29 U.S.C. § 1301(2)(13); and

Whereas, the Plan is covered by the termination insurance provisions of Title IV of the Act, 29 U.S.C. 1301 et seq.; and

Whereas, the Plan administrator has issued or intends to issue to each affected party a Notice of Intent to Terminate the Plan, pursuant to section 4041(a)(2) of the Act, 29 U.S.C. § 1341(a)(2), and

Whereas, the Company wishes the Plan to be sufficient for benefit commitments, as described in section 4001(a)(16) of the Act, 29 U.S.C. § 1301(a)(16), for purposes of Title IV of the Act, 29 U.S.C. § 1301 et seq.; and

Whereas, the parties understand that if the Plan is not able to satisfy all its obligations for benefit commitments it will not be able to terminate in a standard termination under section 4041(b) of the Act, 29 U.S.C. § 1341(b); and

Whereas, the Company is not a debtor in a bankruptcy or other insolvency proceeding, and the Company does not anticipate that it will become a debtor in such a proceeding.

[Alternative Paragraph]

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and the court before which the proceeding is pending approves this commitment.

Now Therefore, the parties hereto agree as follows:

1. The Company promises to pay to the Plan, on or before the date prescribed for distribution of Plan assets by the Plan administrator, the amount necessary, if any, to ensure that, on the date the Plan administrator distributes the assets of the Plan, the Plan is able to provide all benefit commitments.

2. For the sole purpose of determining whether the Plan is sufficient to provide all benefit commitments, an amount equal to the amount described in paragraph 1 shall be deemed a Plan asset available for allocation among the participants and beneficiaries of the Plan, in accordance with section 4044 of the Act, 29 U.S.C. § 1344.

3. This Agreement shall in no way relieve the Company of its obligations to pay contributions under the Plan.

Date: _____

By: _____

Company: _____

By: _____

Plan: _____

Issued in Washington, DC, this 25th day of August, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-19882 Filed 9-1-87; 8:45 am]

BILLING CODE 7708-01-M

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Food and Drug Administration

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. 78N-3128]

Ophthalmic Devices; General Provisions and Classifications of 109 Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying 109 generic types of ophthalmic devices. The preamble to this final rule responds to comments received on the proposed regulations classifying these devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: October 2, 1987.

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A. Background

In the **Federal Register** of January 26, 1982 (47 FR 3694), FDA published proposed regulations containing general provisions applicable to the classification of ophthalmic devices and individual proposed regulations to classify 119 ophthalmic devices into one or more of three regulatory classes: class I (general controls), class II (performance standards), and class III (premarket approval). Of the 119 ophthalmic devices that were the subjects of the proposed regulations, FDA proposed to classify 45 devices into class I, 51 devices into class II, 4 devices into class III, and 19 devices into either class I or class II depending upon their construction.

In this final rule, FDA is classifying 109 devices, with 65 devices in class I, 33 in class II and 11 in class III. FDA has withdrawn the proposed regulation classifying one device, the fluorescein strip (Docket No. 78N-3150; 51 FR 40396) because the agency is regulating the fluorescein strip as a drug. Further, FDA is codifying the statutory classification into class III of nine transitional devices that were not required to be the subjects of proposed classification rules. FDA is also postponing classifications of certain devices that were the subjects of the proposed regulations. See the discussion below under "D. Devices Not Being Classified at this Time."

Elsewhere in this issue of the **Federal Register**, FDA is proposing to grant 55 ophthalmic devices an exemption from the requirement of premarket notification.

Classification of medical devices in commercial distribution is required by section 513 of the Medical Device Amendments of 1976 (Pub. L. 94-295) (the amendments) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c). The effect of classifying a device into class I is to require that the device meet the general controls applicable to all devices. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device. For a class III device not considered a new drug before the amendments that either was in commercial distribution before May 28, 1976, or that is substantially equivalent to a device that was in commercial distribution before that date, each application for premarket approval must be submitted to FDA on or before March 30, 1990, or within 90 days after promulgation of a separate regulation requiring premarket approval of the device, whichever occurs later. Devices that FDA previously regulated as new drugs, or newly offered devices that are not substantially equivalent to a device that was in commercial distribution before the amendments, are classified by statute into class III and already are required to have in effect an approved application for premarket approval. See section 520(1) of the act (21 U.S.C. 360j(1)).

The preamble to the proposed regulations described the development of the general provisions and the proposed regulations classifying ophthalmic devices and the activities of the Ophthalmic Devices Panel, an FDA advisory committee that makes recommendations to FDA concerning the classification of ophthalmic devices.

FDA provided a period of 60 days, later extended to 240 days (March 19, 1982; 47 FR 11879), for interested persons to submit written comments on the proposed regulations on ophthalmic devices. Summaries of the comments received and FDA's responses are discussed below.

In April 1985, H.R. 2177 (99th Cong., 1st Sess.) was introduced in the U.S. House of Representatives. The bill was a legislative proposal of the Department of Health and Human Services. Among other things, the bill would have (1) amended the act to eliminate the statutory category of class II, (2) made the establishment of a performance standard one of the several general controls that may be made applicable to a device, and (3) streamlined the procedure for establishing standards required by section 514 of the act. If legislation comparable to this bill becomes law, there would be only two categories of devices, class I (general controls) and class II (premarket approval, currently class III). Class II devices would be redesignated as class I devices. Because the proposed legislation contains transitional provisions that convert classifications under the current law to classifications under the proposed law, FDA is continuing to issue classification rules under the current law.

B. FDA's Priorities for Establishing Performance Standards

In the **Federal Register** of October 23, 1985 (50 FR 43060), FDA published a notice, "Policy Statement. Class II Medical Devices," announcing its policy for setting priorities for initiating proceedings to establish performance standards for medical devices classified into class II. Under the amendments, FDA is required to establish performance standards for class II devices. At this time, however, FDA does not have the resources to establish performance standards for all of the devices already classified (or being classified) in class II. Under the amendments, FDA is using the regulatory controls of class I to regulate a device classified into class II until a

performance standard is established under section 514 of the act (21 U.S.C. 360d) for the class II device.

In that notice, FDA announced it will consider the following factors when setting priorities for establishing performance standards for class II devices.

a. The seriousness of questions concerning the safety and effectiveness of the device; the risks associated with use of the device; the significance of a device to the public health; and the present and projected use of the device.

b. The recommendations of FDA's advisory committees.

c. The impact of an FDA guideline or recommendation.

d. The effect of a Federal standard or other regulatory controls under an authority other than the act.

e. The impact of voluntary standards.

f. The impact of activities authorized under the general controls provisions of the act.

g. The effect of dissemination of information and education efforts.

h. The sufficiency of voluntary corrective actions.

i. Valid scientific evidence developed since classification.

j. The existence of a petition for reclassification.

k. The impact of any other factors that affect a device's safety or effectiveness.

C. Changes in the Name of the Ophthalmic Device Advisory Committee

FDA has periodically reorganized its advisory panels for device classification. Most recently, on April 14, 1984, FDA established the Ophthalmic Devices Panel (the Panel) (see 49 FR 17446; April 24, 1984). The new panel performs the same functions with respect to ophthalmic devices as did its predecessors, the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel (1978–1984) and the Ophthalmic Devices Classification Panel (1976–1978).

D. Devices not Being Classified at This Time

FDA is postponing classification of certain, or all, versions of 36 proposed generic types of ophthalmic devices.

Although FDA proposed to classify the eye pad (Docket No. 78N–3265) (§ 886.4650) with ophthalmic devices, FDA intends to classify the device with general and plastic surgery devices using the same docket number. Thus, FDA is not classifying the eye pad at this time.

FDA proposed to classify the polymethylmethacrylate (PMMA) contact lens (Docket No. 78N–3277) (§ 886.5400) into class II. FDA is postponing the classification of the polymethylmethacrylate (PMMA) contact lens to obtain additional information on the device. After reopening the comment period on this proposed classification and reviewing available information, FDA will classify the device in a future issue of the **Federal Register.**

FDA is postponing the classification of the 34 ophthalmic devices listed below to review additional data on electrical safety. FDA is considering classifying each of these 34 devices into class I. FDA proposed to classify the battery-powered or manual versions of certain ophthalmic devices into class I and the AC-powered versions of each of the same devices into class II. FDA identified the manual or battery-powered and AC-powered versions of these proposed devices with the same docket number and same proposed section number. FDA is postponing the classification of the AC-powered version of each of 18 devices, but is classifying into class I the battery-powered or manual version of each of the 18 devices. Accordingly, when FDA publishes regulations classifying the 18 AC-powered ophthalmic devices whose classifications are being postponed, the agency intends to use the same docket numbers and section numbers to identify these classifications.

Section No.	Device
886.1050	Adaptometer (biophotometer).
886.1070	Anomaloscope.
886.1090	Haidinger brush.
886.1120	AC-powered ophthalmic camera.
886.1140	Ophthalmic chair (AC-powered).
886.1160	Color vision plate illuminator.
886.1250	Euthyscope (AC-powered).
886.1290	AC-powered fixation device.
886.1300	Afterimage flasher.
886.1340	Haploscope.
886.1350	Keratoscope (AC-powered).
886.1425	AC-powered lens measuring instrument.
886.1430	Ophthalmic contact lens radius measuring device.
886.1435	AC-powered Maxwell spot.
886.1450	Corneal radius measuring device.
886.1605	Perimeter (AC-powered).
886.1680	Ophthalmic projector.
886.1690	Pupillograph.
886.1700	Pupillometer (AC-powered).
886.1780	Retinoscope (AC-powered).
886.1810	Tangent screen (campimeter) (AC-powered).
886.1860	Ophthalmic instrument stand (AC-powered).
886.1870	Stereoscope (AC-powered).
886.1910	Spectacle dissociation test system (AC-powered).
886.1940	Tonometer sterilizer.
886.1945	Transilluminator (AC-powered).
886.4070	Powered corneal burr (AC-powered).
886.4250	Ophthalmic electrolysis unit (AC-powered).
886.4335	Operating headlamp (AC-powered).
886.4370	Keratome (AC-powered).
886.4855	Ophthalmic instrument table (AC-powered).
886.5820	Closed-circuit television reading system.
886.5900	Electronic vision aid (AC-powered).
886.5915	Optical vision aid (AC-powered).

Although the devices identified above are not classified in this final rule, for clarity these devices are listed below under "G. List of Ophthalmic Devices."

E. Safety of Light Emitted From Certain Ophthalmic Devices

FDA is aware of published data concerning possible risks of retinal damage from light emitted by the battery-powered and AC-powered ophthalmoscope (§ 886.1570), and the AC-powered slitlamp biomicroscope (§ 886.1850) devices (Refs. 9, 10, and 11). The agency believes that a need may exist for a range of light intensities to be available from these ophthalmic instruments to accommodate the differing needs of patients with clear ocular media and those of patients with hazy ocular media. The agency is currently conducting research to determine if the high levels of light intensity that may be needed to examine eyes of patients with hazy ocular media may exceed the existing safety guidelines for patients with clear ocular media (Ref. 12). When the results of this research are available and being prepared for publication, FDA will propose any appropriate actions necessary to provide reasonable assurance of the safety and effectiveness of these two light-emitting ophthalmic devices.

F. Changes in Classifications of Devices

Based on the comments received and on additional consideration of all information before the agency, FDA has placed eight devices in different classes from those originally proposed: the visual acuity chart (§ 886.1150), the ophthalmoscope (battery-powered) (§ 886.1570), the vitreous aspiration and cutting instrument (§ 886.4150), the phacofragmentation system (§ 886.4670), the magnifying spectacles (§ 886.5840), the spectacle frame (§ 886.5842), the prescription spectacle lens (§ 886.5844), and sunglasses (nonprescription) (§ 886.5850). If FDA's final classification of a device differs from FDA's proposed classification, the name of the device is identified with an asterisk (*) below under "G. List of Ophthalmic Devices."

FDA proposed that the battery-powered ophthalmoscope be in class I and the AC-powered ophthalmoscope be in class II (§ 886.1570). FDA has become aware of published data concerning possible risks of retinal damage from the ophthalmoscope, whether battery-powered or AC-powered. (See "E. Safety of Light Emitted from Certain Ophthalmic Devices.") Because of these possible risks, in this final rule FDA is classifying the battery-powered ophthalmoscope into class II. FDA now believes that the general controls of class I are insufficient to provide reasonable

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assurance of the safety and effectiveness of the battery-powered ophthalmoscope and that establishment of a performance standard is necessary to provide such assurance. FDA believes that sufficient information is available to establish a performance standard for the battery-powered ophthalmoscope. FDA's reasons for changing the classification of the other seven devices are discussed below under "H. Summaries of Comments on Classification and FDA's Responses" (see paragraphs 3a, 4, 6, and 7). FDA does not believe that it is necessary to issue new proposed regulations concerning these decisions. The purpose of publishing a proposal and soliciting comments is to enable the agency to determine whether its proposed classification of a device was correct. After reviewing the comments submitted on a proposal, the agency may be persuaded that its proposed classification is incorrect. Persons interested in the classification process should, therefore, anticipate that in a final regulation a device may be placed in a class different from the one originally proposed. This possibility was specifically identified in the proposed general regulation for ophthalmic devices (see 47 FR 3694; January 26, 1982). Persons who disagree with the final classification of a device may petition for reclassification of the device under Subpart C of 21 CFR Part 860.

G. List of Ophthalmic Devices

The list below shows the section of the Code of Federal Regulations at which the device classification is being codified, the docket number of the corresponding proposed classification regulation, the classification of each device in the final rule, and an identification (yes or no) of whether public comments were received on the proposed classification regulation. If no comments were received, FDA is adopting the proposed regulation without a change in classification, unless specified otherwise in this rule. As mentioned above, the names of eight devices on this list whose final classifications are different from the classifications proposed for these devices are identified by asterisks (*).

Each of 36 devices whose final classification is being postponed is identified below as follows: The section number is in parentheses; the name of the device is identified with footnote "1"; and no classification is provided. (See "D. Devices Not Being Classified at this Time" for a description of FDA's reasons for postponing classification of these 36 devices.) Nine transitional devices identified below with footnote "2" were not the subjects of proposed regulations. FDA is codifying the statutory classification of these devices into class III. (See the discussion below under "K. Codification of Transitional Devices.")

SUBPART B—DIAGNOSTIC DEVICES

Section	Device name	Docket No.	Class	Comments
886.1040	Ocular esthesiometer	78N-3129	I	No.
(886.1050)	Adaptometer (biophotometer) [1]	78N-3130		Yes.
(886.1070)	Anomaloscope [1]	78N-3132		Yes.
(886.1090)	Haidinger brush [1]	78N-3133		Yes.
(886.1120)	AC-powered ophthalmic camera [1]	78N-3135		Yes.
886.1140	Ophthalmic chair	78N-3137	I	Yes.
(886.1140)	Ophthalmic chair (AC-powered) [1]	78N-3137		Yes.
886.1150	Visual acuity chart*	78N-3139	I	Yes.
(886.1160)	Color vision plate illuminator [1]	78N-3140		Yes.
886.1170	Color vision tester	78N-3141	I	No.
886.1190	Distometer	78N-3142	I	No.
886.1200	Optokinetic drum	78N-3143	I	No.
886.1220	Corneal electrode	78N-3144	II	Yes.
886.1250	Euthyscope	78N-3145	I	Yes.
(886.1250)	Euthyscope (AC-powered) [1]	78N-3145		Yes.
886.1270	Exophthalmometer	78N-3147	I	No.
(886.1290)	AC-powered fixation device [1]	78N-3148		No.
(886.1300)	Afterimage flasher [1]	78N-3149		Yes.
886.1320	Fornixscope	78N-3151	I	No.
886.1330	Amsler grid	78N-3152	I	No.
(886.1340)	Haploscope [1]	78N-3295		Yes.
886.1350	Keratoscope	78N-3153	I	Yes.
(886.1350)	Keratoscope (AC-powered) [1]	78N-3153		Yes.
886.1360	Visual field laser instrument	78N-3155	II	Yes.
886.1375	Bagolini lens	78N-3156	I	No.
886.1380	Diagnostic condensing lens	78N-3157	I	No.
886.1385	Polymethylmethacrylate (PMMA) diagnostic contact lens	78N-3158	II	Yes.
886.1390	Flexible diagnostic Fresnel lens	78N-3159	I	No.
886.1395	Diagnostic Hruby fundus lens	78N-3160	I	No.
886.1400	Maddox lens	78N-3161	I	No.
886.1405	Ophthalmic trial lens set	78N-3162	II	Yes.
886.1410	Ophthalmic trial lens clip	78N-3163	I	No.
886.1415	Ophthalmic trial lens frame	78N-3164	I	No.
886.1420	Ophthalmic lens guage	78N-3165	I	No.
(886.1425)	AC-powered lens measuring instrument [1]	78N-3166		Yes.
(886.1430)	Ophthalmic contact lens radius measuring device [1]	78N-3167		Yes.
(886.1435)	AC-powered Maxwell spot [1]	78N-3168		Yes.
(886.1450)	Corneal radius measuring device [1]	78N-3169		Yes.
886.1460	Stereopsis measuring instrument	78N-3170	I	No.
886.1500	Headband mirror	78N-3171	I	No.

SUBPART B—DIAGNOSTIC DEVICES—Continued

Section	Device name	Docket No.	Class	Comments
886.1510	Eye movement monitor	78N-3172	II	Yes.
886.1570	Ophthalmoscope*	78N-3175	II	Yes.
886.1605	Perimeter	78N-3178	I	Yes.
(886.1605)	Perimeter (AC-powered) [1]	78N-3178		Yes.
886.1630	AC-powered photostimulator	78N-3181	II	Yes.
886.1640	Ophthalmic preamplifier	78N-3182	II	Yes.
886.1650	Ophthalmic bar prism	78N-3184	I	No.
886.1655	Ophthalmic Fresnel prism	78N-3185	I	No.
886.1660	Gonioscopic prism	78N-3186	I	No.
886.1665	Ophthalmic rotary prism	78N-3187	I	No.
886.1670	Ophthalmic isotope uptake probe	78N-3188	II	Yes.
(886.1680)	Ophthalmic projector [1]	78N-3189		Yes.
(886.1690)	Pupillograph [1]	78N-3190		Yes.
886.1700	Pupillometer	78N-3191	I	Yes.
(886.1700)	Pupillometer (AC-powered) [1]	78N-3191		Yes.
886.1750	Skiascopic rack	78N-3193	II	Yes.
886.1760	Ophthalmic refractometer	78N-3194	II	Yes.
886.1770	Manual refractor	78N-3195	I	No.
886.1780	Retinoscope	78N-3196	I	Yes.
(886.1780)	Retinoscope (AC-powered) [1]	78N-3196		Yes.
886.1790	Nearpoint ruler	78N-3198	I	No.
886.1800	Schirmer strip	78N-3199	I	No.
886.1810	Tangent screen (campimeter)	78N-3200	I	Yes.
(886.1810)	Tangent screen (campimeter) (AC-powered) [1]	78N-3200		Yes.
886.1840	Simulatan (including crossed cylinder)	78N-3206	I	No.
886.1850	AC-powered slitlamp biomicroscope	78N-3207	II	Yes.
886.1860	Ophthalmic instrument stand	78N-3208	I	Yes.
(886.1860)	Ophthalmic instrument stand (AC-powered) [1]	78N-3208		Yes.
886.1870	Stereoscope	78N-3210	I	Yes.
(886.1870)	Stereoscope (AC-powered) [1]	78N-3210		Yes.
886.1880	Fusion and stereoscopic target	78N-3212	I	No.
886.1905	Nystagmus tape	78N-3213	I	No.
886.1910	Spectacle dissociation test system	78N-3214	I	Yes.
(886.1910)	Spectacle dissociation test system (AC-powered) [1]	78N-3214		Yes.
886.1930	Tonometer and accessories	78N-3218	II	Yes.
(886.1940)	Tonometer sterilizer [1]	78N-3220		Yes.
886.1945	Transilluminator	78N-3221	I	Yes.
(886.1945)	Transilluminator (AC-powered) [1]	78N-3221		Yes.
	Subpart D—Prosthetic Devices			
886.3100	Ophthalmic tantalum clip	78N-3224	II	Yes.
886.3130	Ophthalmic conformer	78N-3225	II	Yes.
886.3200	Artificial eye	78N-3226	II	Yes.
886.3300	Absorbable implant (scleral buckling method)	78N-3227	II	Yes.
886.3320	Eye sphere implant	78N-3228	II	Yes.
886.3340	Extraocular orbital implant	78N-3229	II	Yes.
886.3400	Keratoprosthesis	78N-3230	III	No.
886.3600	Intraocular lens [2]		III	
886.3800	Scleral shell	78N-3231	II	Yes.
886.3920	Eye valve implant	78N-3232	III	No.
	Subpart E—Surgical Devices			
886.4070	Powered corneal burr	78N-3233	I	Yes.
(886.4070)	Powered corneal burr (AC-powered) [1]	78N-3233		Yes.
881.4100	Radiofrequency electrosurgical cautery apparatus	78N-3235	II	Yes.
886.4115	Thermal cautery unit	78N-3237	II	Yes.
886.4150	Vitreous aspiration and cutting instrument*	78N-3239	II	Yes.
886.4170	Cryophthalmic unit	78N-3241	II	Yes.
886.4230	Ophthalmic knife test drum	78N-3243	I	No.
886.4250	Ophthalmic electrolysis unit	78N-3244	I	Yes.
(886.4250)	Ophthalmic electrolysis unit (AC-powered) [1]	78N-3244		Yes.
886.4300	Intraocular lens guide	78N-3250	I	No.
886.4270	Intraocular gas [2]		III	
886.4275	Intraocular fluid [2]		III	
886.4280	Intraocular pressure measuring device [2]		III	
886.4335	Operating headlamp	78N-3252	I	Yes.
(886.4335)	Operating headlamp (AC-powered) [1]	78N-3252		Yes.
886.4350	Manual ophthalmic surgical instrument	78N-3253	I	No.

SUBPART B—DIAGNOSTIC DEVICES—Continued

Section	Device name	Docket No.	Class	Comments
886.4360	Ocular surgery irrigation device	78N-3254	I	No.
886.4370	Keratome	78N-3255	I	Yes.
(886.4370)	Keratome (AC-powered) [1]	78N-3255		Yes.
886.4390	Ophthalmic laser	78N-3257	II	Yes.
886.4400	Electronic metal locator	78N-3258	II	Yes.
886.4440	AC-powered magnet	78N-3259	II	Yes.
886.4445	Permanent magnet	78N-3260	I	No.
886.4570	Ophthalmic surgical marker	78N-3261	I	No.
886.4610	Ocular pressure applicator	78N-3264	II	Yes.
(886.4650)	Eye pad [1]	78N-3265		Yes.
886.4670	Phacofragmentation system*	78N-3266	II	Yes.
886.4690	Ophthalmic photocoagulator	78N-3267	II	Yes.
886.4750	Ophthalmic eye shield	78N-3268	I	No.
886.4770	Ophthalmic operating spectacles (loupes)	78N-3269	I	No.
886.4790	Ophthalmic sponge	78N-3270	II	Yes.
886.4855	Ophthalmic instrument table	78N-3272	I	Yes.
(886.4855)	Ophthalmic instrument table (AC-powered) [1]	78N-3272		Yes.
	Subpart F—Therapeutic Devices			
886.5100	Ophthalmic beta radiation source	78N-3273	II	Yes.
886.5120	Low-power binocular loupe	78N-3274	I	No.
(886.5400)	Polymethylmethacrylate (PMMA) contact lens [1]	78N-3277		Yes.
886.5420	Contact lens inserter/remover	78N-3278	I	No.
886.5540	Low-vision magnifier	78N-3281	I	No.
886.5600	Ptosis crutch	78N-3282	I	No.
886.5800	Ophthalmic bar reader	78N-3283	I	No.
886.5810	Ophthalmic prism reader	78N-3284	I	No.
(886.5820)	Closed-circuit television reading system [1]	78N-3285		Yes.
886.5840	Magnifying spectacles*	78N-3286	I	Yes.
886.5842	Spectacle frame* (proposed as § 886.5270)	78N-3276	I	Yes.
886.5844	Prescription spectacle lens* (proposed as § 886.5450)	78N-3279	I	Yes.
886.5850	Sunglasses (nonprescription)*	78N-3287	II	Yes.
886.5870	Low-vision telescope	78N-3288	I	No.
886.5900	Electronic vision aid	78N-3290	I	Yes.
(886.5900)	Electronic vision aid (AC-powered) [1]	78N-3290		Yes.
886.5910	Image intensification vision aid	78N-3292	I	No.
886.5915	Optical vision aid	78N-3293	I	Yes.
(886.5915)	Optical vision aid (AC-powered) [1]	78N-3293		Yes.
886.5916	Rigid gas permeable contact lens [2]		III	
886.5918	Rigid gas permeable contact lens solution [2]		III	
886.5925	Soft (hydrophilic) contact lens [2]		III	
886.5928	Soft (hydrophilic) contact lens solution [2]		III	
886.5933	Contact lens heat disinfection unit [2]		III	

[1] Classification postponed.
[2] Not proposed; statutory classification.

H. Summaries of Comments on Classification and FDA's Responses to Comments

To clarify the final rule and save printing costs, FDA is responding once to comments that apply to more than one ophthalmic device.

1. FDA proposed that all AC-powered ophthalmic devices be classified into class II. Comments argued that manufacturers have complied with voluntary electrical design and construction standards for AC-powered ophthalmic devices. Comments said that compliance with such standards has provided reasonable assurance of the safety of these devices. Further, comments questioned whether the risks to health FDA identified in the proposed regulation for each of the devices justified establishment of a performance standard for the device. The comments recommended that FDA classify AC-powered ophthalmic devices in class I instead of class II.

FDA agrees in part and disagrees in part with the comments. FDA now is considering classifying 34 AC-powered ophthalmic devices into class I where the only risk to health is electrical shock or leakage current. To allow time for FDA to review additional data on safety of AC-powered devices, FDA is postponing classification of these 34 AC-powered ophthalmic devices. The 34 devices are listed above under "D. Devices Not Being Classified at this Time."

However, where an AC-powered ophthalmic device presents risks to health in addition to the risk of electrical shock or leakage current, FDA believes that the general controls of class I alone are insufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA is classifying the AC-powered ophthalmic devices listed below into class II as proposed. FDA believes that performance standards are necessary for these AC-powered devices to control the risks to health identified below for each device, and that sufficient information is available to establish such standards.

Section 886.1220 *Corneal electrode.* The materials used in the device should be biocompatible to prevent adverse tissue reactions. Design and construction should be controlled to prevent surface roughness that may cause corneal abrasion. Electrical properties should be controlled to prevent burns.

Section 886.1360 *Visual field laser.* The design and construction should be controlled to (1) ensure detection (diagnosis) of any defects in a patient's visual field to prevent inappropriate therapy and (2) prevent exposure to unnecessary laser radiation.

Section 886.1510 *Eye movement monitor.* The materials used in the device should be biocompatible to prevent adverse tissue reactions. Design and construction should be controlled to prevent surface roughness that may cause corneal abrasions. Electrical properties should be controlled to prevent burns.

Section 886.1570 *Ophthalmoscope.* The design and construction of the AC-powered and battery-powered ophthalmoscope should be controlled to regulate the intensity of light to prevent eye damage. See "E. Safety of Light Emitted from Certain Ophthalmic Devices" above for further information on this issue.

Section 886.1630 *AC-powered photostimulator.* The intensity of light emitted should be controlled to prevent retinal damage.

Section 886.1640 *Ophthalmic reamplifier.* The design and construction of the AC-powered and battery-powered ophthalmic preamplifier should be controlled to ensure accuracy of measurement functions (diagnosis) to prevent inappropriate therapy. Labeling should provide users with precise information regarding accuracy, reproducibility, and any limitations on performance.

Section 886.1670 *Ophthalmic isotope uptake probe.* The design and construction should be controlled to ensure (1) the accuracy of measurements (diagnosis) to prevent need for repeat examinations which may result in exposure of the patient to unnecessary radiation and (2) the device's capability of being sterilized to prevent infection.

Section 886.1760 *Ophthalmic refractometer.* The design and construction should be controlled to ensure accuracy of measurements of refraction (diagnosis) to prevent inappropriate therapy. Labeling should provide users with precise information regarding accuracy, reproducibility, and any limitations on performance.

Section 886.1850 *AC-powered slitlamp biomicroscope.* The design and construction should be controlled to (1) ensure accuracy of diagnosis to prevent inappropriate therapy and (2) regulate the intensity of light emitted to prevent eye damage. See "E. Safety of Light Emitted from Certain Ophthalmic Devices" above for further information on the latter issue.

Section 886.1930 *Tonometer and accessories.* The design and construction should be controlled to ensure (1) the accuracy of measurements (diagnosis) to prevent inappropriate therapy and (2) the device's capability of being sterilized to prevent infection. Labeling should provide users with precise information regarding accuracy, reproducibility, and any limitations on performance.

Section 886.4100 *Radiofrequency cautery apparatus.* The design and construction should be controlled to ensure that (1) the level of electrical current or heat delivered by the device provides precise, reproducible tissue coagulation or arrest of bleeding without unwanted effects, (2) the electrodes are capable of being sterilized to prevent infection, and (3) the electronic radiation is controlled to prevent interference with other nearby devices. There also is a risk of fire or explosion if the device is used in the presence of flammable anesthetic gases.

Section 886.4115 *Thermal cautery unit.* The risks are the same as for the radiofrequency cautery apparatus above, except that the risk that electronic radiation may interfere with other nearby devices does not apply.

Section 886.4170 *Cryophthalmic unit.* The design and construction should be controlled to ensure (1) that the operating tip can withstand appropriate levels of refrigerant gas pressure without bursting, (2) that the temperature provided at the tip is predictable and reproducible, and (3) that the device does not produce excessively cold temperatures that could injure the eye.

Section 886.4390 *Ophthalmic laser.* The design and construction should be controlled to prevent exposure of the patient to excessive intensity of laser radiation resulting in unnecessary tissue damage or prevent any unnecessary laser radiation exposure of the patient or user.

Section 886.4400 *Electronic metal locator.* The design and construction should be controlled to ensure that the device is capable of being sterilized to prevent infection. Labeling should provide users with precise information regarding accuracy, reproducibility, and any limitations on performance.

Section 886.4440 *AC-powered magnet.* The design and construction of the operating tip should be controlled to prevent burns to the eye.

Section 886.4690 *Ophthalmic photocoagulator.* The design and construction should be controlled to prevent (1) power surges that could cause unwanted tissue destruction in the eye, (2) malfunction of the filter that may result in burns to the eye of the operator, and (3) injury from explosion of the xenon tube.

Accordingly, FDA is adopting the 18 proposed regulations identified above with minor clarifying changes.

2. FDA proposed that each of the devices below in paragraphs a. through i. be classified into class II. Comments questioned whether the risks to health that FDA identified in the proposed regulation for each device are sufficient to justify promulgation of a performance standard for the device. Comments suggested that the devices be classified into class I instead of class II.

FDA disagrees with the comments. FDA believes that the general controls of class I are insufficient to provide reasonable assurance of the safety and effectiveness of these devices. FDA believes that performance standards are necessary for the devices to control the risks to health identified below for each device and that sufficient information is available to establish such standards.

a. Sections 886.3100 *Ophthalmic tantalum clip;* 886.3300 *Absorbable implant (scleral buckling method);* 886.3320 *Eye sphere implant;* and 886.3340 *Extraocular orbital implant.* The materials used in each of the devices should be biocompatible to prevent adverse tissue reactions. The design and construction of each of the devices should be controlled to prevent breakage or erosion and to ensure that the devices are capable of being sterilized to prevent infection. The design and construction of the eye sphere implant should be controlled to prevent extrusion. Further, the four devices above are intended to be implanted. Section 513(d)(2)(B) of the act (21 U.S.C. 360c(d)(2)(B) requires that FDA classify a device intended to be implanted into class III unless the agency determines that classification of the device in this class is unnecessary to provide reasonable assurance of its safety and effectiveness. Although FDA believes that the safety and effectiveness of the four implanted devices listed above can be assured by a performance standard, FDA believes that insufficient evidence of safety and effectiveness is available at this time for any of these devices to support its classification into class I.

b. Sections 886.1405 *Ophthalmic trial lens set* and 886.1750 *Skiascopic rack.* The design and construction should be controlled to ensure that each lens in the sets of lenses has the necessary performance characteristics, such as lens power, centration, front curve, thickness, additive sphere, cylindrical powers at a constant vertex distance, and axis alignment for cylindrical lenses, to prevent inaccurate measurements of refraction (misdiagnosis) and inappropriate therapy.

c. Section 886.1385 *Polymethylmethacrylate (PMMA) diagnostic contact lens.* The design and construction should be controlled to ensure that the device is capable of being sterilized to prevent infection and, for a vacuum diagnostic contact lens, prevent suction of the aqueous that could result in angle closure glaucoma.

d. Section 886.3130 *Ophthalmic conformer.* The material used in the device should be biocompatible and not leach components or ingredients into adjacent tissues to prevent adverse tissue reactions.

e. Section 886.3200 *Artificial eye.* The materials used in the device should be biocompatible, nonallergenic, noncarcinogenic, and nonantigenic to prevent adverse tissue reactions. The device should be capable of being sterilized to prevent infections.

f. Section 886.3800 *Scleral shell.* The material used in the device should be biocompatible to prevent adverse tissue reactions. The surface finish of the device should be controlled to prevent corneal abrasion.

g. Section 886.4610 *Ocular pressure applicator.* The design and construction should be controlled to prevent excessive pressure being applied to the eye to prevent injury to tissues.

h. Section 886.4790 *Ophthalmic sponge.* The design and construction should be controlled to ensure (1) that the device does not shed particles of device material into the eye that may become intraocular foreign bodies or cause adverse tissue reactions, (2) that the device is capable of being sterilized to prevent infections, and (3) that materials used in the device are biocompatible to prevent adverse tissue reactions. See also paragraph 6 below for further discussion of the ophthalmic sponge.

i. Section 886.5100 *Ophthalmic beta radiation source.* The materials used to make the device should be controlled to ensure biocompatibility to prevent adverse tissue reactions. Radiation properties should be controlled to prevent exposure of the patient or user to excessive or unnecessary radiation to prevent adverse effects.

Accordingly, FDA is adopting the 13 proposed regulations identified above in paragraphs a. through i. with minor clarifying changes.

3. Sections 886.1150; Visual acuity chart; proposed class II and 886.5850; Sunglasses (nonprescription); proposed class II.

Comments argued that experience has shown that the visual acuity chart and sunglasses are safe and effective under current levels of regulatory control and that any additional performance standards that would be established following classification of the devices into class II are unnecessary. Comments questioned whether the risks to health identified in the proposed regulation for each device are sufficient to justify establishment of performance standards for the devices. Further, a comment suggested that FDA grant an exemption from the requirements of the current good manufacturing practice (CGMP) regulations for sunglasses (nonprescription).

a. *Visual acuity chart.* FDA agrees with the comments. FDA now believes that the device meets the criteria in section 513(a)(1)(A)(i) of the act (21 U.S.C. 360c(a)(1)(A)(i) for devices to be classified into class I. FDA believes that the general controls of class I would provide reasonable assurance of the safety and effectiveness of the visual acuity chart, and that establishment of a performance standard for the device is unnecessary. Accordingly, FDA is classifying the visual acuity chart into class I instead of class II as proposed and with minor clarifying changes.

The agency also recognizes that the Committee on Optics and Visual Physiology of the American Academy of Ophthalmology is currently working on a voluntary standard for the visual acuity chart.

b. *Sunglasses (nonprescription).* FDA believes that these devices meet the criteria in section 513(a)(1)(A)(i) of the act (21 U.S.C. 360c(a)(1)(A)(i)) for devices to be classified into class I. FDA agrees that the general controls of class I are sufficient to provide reasonable assurance of the safety and effectiveness of the device and that the establishment of performance standards is unnecessary. FDA believes that its present regulations requiring use of spectacle lenses that have successfully passed the impact resistance tests in 21 CFR 801.410 ensure that the devices are impact resistant to prevent trauma to the eye following lens breakage.

Concerning the risk of flammability, the Federal Hazardous Substances Act, enacted in 1960 (15 U.S.C. 1261, et seq.), and administered by the Consumer Product Safety Commission, provides that agency the authority to regulate nonprescription sunglasses that contain flammable materials that may cause substantial injury. Thus, performance standards under section 514 of the act are unnecessary to control the risk of flammability of the device.

Also, manufacturers generally follow the voluntary standards for spectacle lenses that have been developed by the American National Standards Institute (Z–80).

Accordingly, FDA is classifying sunglasses (nonprescription) in class I instead of class II as proposed.

4. Section 886.4150; Vitreous aspiration and cutting instrument; proposed class III and 886.4670; Phacofragmentation system; proposed class III.

Comments requested that FDA classify both devices into class II instead of class III as proposed. Comments argued that the experience with these two devices has shown that the general controls of class I with performance standards established following classification of the devices in class II would be sufficient to provide reasonable assurance of the safety and effectiveness of the devices.

FDA agrees with the comments urging classification of these devices into class II. FDA has reconsidered the information available on both devices and concluded that sufficient information is available to establish performance standards for the vitreous aspiration and cutting instrument and the phacofragmentation system and that establishing such standards would provide reasonable assurance of their safety and effectiveness. FDA believes that both devices have been shown through experience to be safe and effective for their intended uses. FDA now believes that the two devices do not present any greater potential for illness or injury than similar devices classified into class II, e.g., the ophthalmic laser (§ 886.4390) used in eye surgery. Therefore, premarket approval is unnecessary for these devices.

Establishing performance standards for the design and construction of the vitreous aspiration and cutting instrument would (1) reduce the risk of any malfunction causing destruction of the retina, choroid, or iris, (2) prevent particles or shavings shedding from the operating tip into the eye causing adverse tissue reactions, (3) prevent emission of unwanted levels of ultrasonic energy causing tissue damage, (4) ensure that the device is capable of being sterilized to prevent

infection, and (5) ensure that electrical properties of the device are controlled to prevent electrical injury.

Establishing performance standards for the design and construction of the phacofragmentation system would (1) prevent emission of unwanted levels of ultrasonic energy causing tissue damage, (2) prevent a reduced flow rate of irrigation solution that could cause overheating of the device or burns to eye tissue, (3) ensure that the device is capable of being sterilized to prevent infection; and (4) ensure that the electrical properties of the device are controlled to prevent electrical injury.

FDA believes that the general controls of class I alone are insufficient to provide reasonable assurance of the safety and effectiveness of the vitreous aspiration and cutting instrument and the phacofragmentation system and that establishing performance standards for the devices is necessary to provide such assurance. FDA now believes that classification of these devices into class III is unnecessary. Accordingly, FDA is classifying the two devices into class II, with minor clarifying changes, instead of class III as proposed.

5. Section 886.4790; Ophthalmic sponge; proposed class II.

a. A comment suggested that the identification of the device should be changed to include use of materials other than cellulose to make the device.

FDA has changed the identification of the device to show that various materials can be used to make the device, subject, of course, to the requirements of section 510(k) of the act and implementing regulations (21 CFR Part 807, Subpart E).

b. A comment suggested that the labeling of the device include a warning against cutting or trimming the device, to reduce hazards from shedding of particulate matter.

FDA agrees with the comment. The labeling should warn against cutting or trimming the device and should identify the materials used in the device.

c. A comment agreed with FDA's proposed regulation classifying the device into class II and recommended that a standard be established to ensure the biocompatibility of the materials used in the device.

FDA agrees with the comment. Accordingly, FDA is adopting the proposed regulation for the ophthalmic sponge with minor clarifying changes. See also paragraph 2h. above for a further discussion of the ophthalmic sponge.

6. Section 886.5270; Spectacle frame; proposed class II.

a. A comment suggested that the spectacle frame be classified as an accessory to a prescription spectacle lens rather than as a separate generic type of device.

FDA disagrees with the comment. Because the spectacle frame is made of different materials using different manufacturing procedures and presents different risks to health, FDA believes that it should be classified as a generic type of device separate from the prescription spectacle lens.

b. Comments suggested that the spectacle frame be classified into class I because establishment of a performance standard for the device is unnecessary.

FDA believes that the device meets the criteria in section 513(a)(1)(A)(i) of the act (21 U.S.C. 360c(a)(1)(A)(i)) for devices to be classified into class I. FDA agrees that the general controls of class I are sufficient to provide reasonable assurance of the safety and effectiveness of the spectacle frame and that establishment of a performance standard for the device is unnecessary. Thus, FDA believes that the general controls of class I are sufficient to control the risks to health presented by the device: (1) That the materials used in the device do not cause dermatitis, (2) that the design of the device does not interfere with a patient's vision, and (3) that the design or construction of the device prevents breakage of the device or the lens used with the device. Concerning the risk of flammability, the Federal Hazardous Substances Act, enacted in 1960 (15 U.S.C. 1261, et seq.), and administered by the Consumer Product Safety Commission, provides that agency authority to ban spectacle frames intended for children, and to require precautionary labeling on spectacle frames intended for adults, where such spectacle frames contain flammable materials that may cause substantial injury. Thus, performance standards under section 514 of the act are unnecessary to control the risk of flammability of the device. Also, manufacturers generally follow the voluntary standards for the device that have been developed by the American National Standards Institute (Z–80).

Accordingly, FDA is classifying the spectacle frame in class I, with minor clarifying changes, instead of class II as proposed. Although FDA proposed to codify the spectacle frame at § 886.5270, in the final rule FDA is codifying the device at § 886.5842, to place the device next to the prescription spectacle lens (§ 886.5844).

7. Sections 886.5450; Prescription spectacle lens; proposed class II and 886.5840; Magnifying spectacles; proposed class II.

a. A comment suggested that the identification of the prescription spectacle lens be broadened to include the raw glass spectacle lens blanks as well as the finished prescription spectacle lens.

FDA disagrees with the comment. FDA believes that it is unnecessary to broaden the identification of prescription spectacle lens to include raw glass spectacle lens blanks, which are simply components.

b. One comment agreed with FDA's proposed regulations classifying the prescription spectacle lens and the magnifying spectacle lens into class II. Other comments questioned whether the risks to health that FDA identified in the proposed regulations for these devices are sufficient to justify establishment of performance standards for the devices. These comments suggested that each of these devices be classified into class I instead of class II.

FDA now believes that the general controls of class I are sufficient to provide reasonable assurance of the safety and effectiveness of the two devices and that establishment of performance standards is unnecessary. FDA believes that its present regulations requiring use of spectacle lenses that have successfully passed the impact resistance tests in 21 CFR 801.410 ensure that the devices above are impact resistant to prevent trauma to the eye following lens breakage. FDA also believes that these devices meet the criteria in section 513(a)(1)(A)(i) of the act (21 U.S.C. 360c(a)(1)(A)(i)) for devices to be classified into class I. FDA now believes that performance standards are not necessary for these two devices. Also, manufacturers generally follow the voluntary standards for spectacle lenses that have been developed by the American National Standards Institute (Z–80).

Accordingly, FDA is classifying the prescription spectacle lens and magnifying spectacles into class I, with minor clarifying changes, instead of class II as proposed. Although FDA proposed to codify the prescription spectacle lens at § 886.5450, in the final rule FDA is codifying the device at § 886.5844, to place the device next to sunglasses (nonprescription) (§ 886.5850).

I. Exemptions for Class I Devices

8. FDA proposed to exempt 29 devices from most requirements of the current good manufacturing practice (CGMP) regulations in 21 CFR Part 820. Comments requested that exemptions from CGMP requirements be granted for all class I ophthalmic devices.

The agency is granting exemptions from most CGMP requirements for 49

generic types of class I ophthalmic devices. FDA is exempting manufacturers of these 49 devices from all of the CGMP requirements with the exception of §§ 820.180 and 820.198 relating to records and complaint files. As stated in the proposed regulations, the agency has determined that exemption of manufacturers of any device from requirements in §§ 820.180 and 820.198 of the CGMP regulations would not be in the public interest. Moreover, compliance with these sections is not unduly burdensome for device manufacturers. The complaint file requirements of § 820.198 ensure that device manufacturers have adequate systems for complaint investigation and followup. The general requirements concerning records in § 820.180 ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, can determine whether the manufacturer's corrective actions are adequate, and can determine whether an exemption from other sections of the CGMP regulations, if one has been granted, is still appropriate. Also, for reasons given in the proposed regulations, these exemptions do not apply to devices that are labeled or otherwise represented as sterile.

FDA has prepared guidelines on the procedures that should be followed by persons who wish to submit petitions for exemption or variance from the device CGMP regulations. The agency announced the availability of these guidelines in a notice published in the **Federal Register** of January 18, 1980 (45 FR 3671). The guidelines assist petitioners in complying with the provisions of section 520(f)(2) of the act (21 U.S.C. 360j(f)(2)). Section 513(d)(2)(A) of the act allows FDA to approve an exemption for a device from a requirement if the agency determines that compliance with such requirement is not required to assure that the device will be safe and effective and otherwise in compliance with the act.

Exemptions from premarket notification procedures. Many comments requested that exemptions from premarket notification procedures in section 510(k) of the act and Subpart E of 21 CFR Part 807 be granted for all class I ophthalmic devices.

Elsewhere in this issue of the **Federal Register**, FDA is proposing to grant an exemption from the requirement of premarket notification for each of 55 class I ophthalmic devices. FDA is explaining in that proposed rule its recently developed policy on granting such exemptions.

J. Classification Regulations Published to Date

The following table shows the current structure of the advisory committees involved with the classification of medical devices and a list of all proposed and final classification regulations published to date:

Panel name	Publication date in Federal Register
Circulatory Systems Devices Panel	March 9, 1979; 44 FR 13284–13434 (proposals); February 5, 1980; 45 FR 7904–7971 (final regulations).
Clinical Chemistry and Clinical Toxicology Devices Panel.	February 2, 1982; 47 FR 4802–4929 (proposals); May 1, 1987; 52 FR 16102–16138 (final regulations).
Hematology and Pathology Devices Panel	September 11, 1979; 44 FR 52950–53063 (proposals); September 12, 1980; 45 FR 60576–60651 (final regulations).
General Hospital and Personal Use Devices Panel.	August 24, 1979; 44 FR 49844–49954 (proposals); October 21, 1980; 45 FR 69678–69737 (final regulations).
Gastroenterology-Urology Devices Panel	January 23, 1981; 46 FR 7562–7641 (proposals); November 23, 1983; 48 FR 53012–53029 (final regulations).
Immunology Devices Panel	April 22, 1980; 45 FR 27204–27359 (proposals); November 9, 1982; 47 FR 50814–50840 (final regulations).
Microbiology Devices Panel	April 22, 1980; 45 FR 27204–27359 (proposals); November 9, 1982; 47 FR 50814–50840 (final regulations).
Obstetrics-Gynecology Devices Panel	April 3, 1979; 44 FR 19894–19971 (proposals); February 26, 1980; 45 FR 12682–12720 (final regulations).
Radiologic Devices Panel	January 29, 1982; 47 FR 4406–4451 (proposals).
Ophthalmic Devices Panel	January 26, 1982; 47 FR 3694–3749 (proposals); September 2, 1987 (final regulations).
Ear, Nose, and Throat Devices Panel	January 22, 1982; 47 FR 3280–3325 (proposals); November 6, 1986; 51 FR 40378 (final regulations).
Dental Devices Panel	December 30, 1980; 45 FR 85962–86168 (proposals); August 12, 1987; 52 FR 30082–30106 (final regulations).
Anesthesiology and Respiratory Therapy Devices Panel.	November 2, 1979; 44 FR 63292–63426 (proposals); July 16, 1982; 47 FR 31130–31150 (final regulations).
Neurological Devices Panel	November 23, 1978; 43 FR 54640–55732 (proposals); September 4, 1979; 44 FR 51726–51778 (final regulations).
Orthopedic and Rehabilitation Devices Panel (Physical Medicine Devices).	August 28, 1979; 44 FR 50458–50537 (proposals); November 23, 1983; 48 FR 53032–53054 (final regulations).
Orthopedic and Rehabilitation Devices Panel (Orthopedic Devices).	July 2, 1982; 47 FR 29052–29140 (proposals).
General and Plastic Surgery Devices Panel	January 19, 1982; 47 FR 2810–2853 (proposals).

K. Codification of Transitional Devices

The amendments include transitional provisions applicable to devices intended for human use that were declared to be new drugs before enactment of the amendments. (See section 520(1)(1)(E) of the act (21 U.S.C. 360j(1)(1)(E)).) The transitional provisions assure that devices formerly regarded as new drugs continue to be subject to needed regulatory controls as the amendments are being implemented. Thus, a device previously considered a new drug is classified into class III unless the agency in response to a petition has reclassified it into class I or class II. FDA is codifying the statutory classification into class III of the following nine commercially distributed transitional ophthalmic devices. Most of these devices were the subject of a **Federal Register** notice (see 42 FR 63472; December 16, 1977) on their former status as new drugs, and certain of these

devices were the subject of subsequent **Federal Register** documents concerning the classification of rigid gas permeable contact lenses (see 48 FR 56778; December 23, 1983) and soft (hydrophilic) contact lenses (see 49 FR 17523; April 24, 1984).

In this final rule, FDA is codifying the statutory classification of solutions that are accessories to contact lenses as three separate generic types of devices: rigid gas permeable contact lens solution (§ 886.5918), soft (hydrophilic) contact lens solution (§ 886.5928), and contact lens heat disinfection unit (§ 886.5933).

Section	Transitional device
886.3600	Intraocular lens.
886.4270	Intraocular gas.
886.4275	Intraocular fluid.
886.4280	Intraocular pressure measuring device.
886.5916	Rigid gas permeable contact lens.
886.5918	Rigid gas permeable contact lens solution.
886.5925	Soft (hydrophilic) contact lens.
886.5928	Soft (hydrophilic) contact lens solution.
886.5933	Contact lens heat disinfection unit.

L. Minor Changes or Clarifications

Occasionally, the agency has made minor changes in the name of a generic type of device or its identification to clarify the final regulation. The agency is adding new § 886.3 in Subpart A to explain the various effective dates for premarket approval requirements for devices classified into class III. FDA also is adding a new paragraph (c) in the classification regulation for each device classified into class III to declare, where applicable, the effective date for premarket approval requirements for the device.

M. References

The following information has been placed on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Pitts, D.G., L.L. Cameron, J. Jose, S. Lerman, E. Moss, S.D. Varma, S.D. Zigler, S. Zigman, and J. A. Zuclich, "Cataracts and Optical Radiation" in *Optical Radiation and Visual Health*, M. Waxler and V.M. Hitchins (Eds.), CRC Press, Inc., in press, 1986.

2. Ederer, F., "Epidemiologic Considerations," ibid.

3. Ham, W.T., Jr., R.G. Allen, L. Feeney-Burns, M.F. Marmor, L. Parver, P.H. Proctor, D.H. Sliney, and M.L. Wolbarsht, "Retinal Pigment Epithelial Damage Induced By Optical Radiation," ibid.

4. Massof, R.W., S.A. Sykes, L. Rapp, W.G. Robison, Jr., H. Zwick, and B. Hochheimer, "Photoreceptor Damage Induced By Optical Radiation," ibid.

5. Newsome, D.A., E. Berson, H.G. Sperling, M.O.M. Tso, T. Lawwill, M. LaVail, R. Bonner, L. Hyman, and M.A. Mainster, "Possible Role of Optical Radiation in Retinal Degenerations," ibid.

6. Sliney, D.H., "Sunglasses May Not Provide Best Protection for Retinas," *Ophthalmology Times*, 8(9):13, 1983.

7. Pike, A., "Protecting Your Human Camera, Your Eyes," *Let's LIVE*, July 1984, pp. 66–69.

8. *Proceedings of the Workshop on Long-Term Visual Health and Optical Radiation*, September 26, 1983, Rockville, MD, pp. 243–245.

9. Calkins, J.L., and B.F. Hochheimer, "Retinal Light Exposure from Ophthalmoscopes, Slit Lamps, and Overhead Surgical Lamps—An Analysis of Potential Hazards," *Association for Research in Vision and Ophthalmology, Inc.*, 19(9):1009–1015, 1980.

10. Hochheimer, B.F., S.A. D'Anna, and J.L. Calkins, "Retinal Damage from Light," *American Journal of Ophthalmology*, 88(6):1039–1044, 1979.

11. Delori, F.C., O. Pomerantzeff, and M.A. Mainster, "Light Levels in Ophthalmic Diagnostic Instruments," SPIE, 229 (Ocular Effects of Non-Ionizing Radiation) pp. 154–160, 1980.

12. American Conference of Governmental Industrial Hygienists: "Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment," ACGIH, 6500 Glenway Ave., Cincinnati, OH 45211, 1985–1986.

N. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

O. Economic Impact

The agency has carefully analyzed the economic effects of this final rule and has determined that the rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the agency has carefully analyzed the impact of this final rule and has determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order. Rules classifying devices into class I generally maintain the status quo: These devices are now subject only to the general controls provisions of the act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j) and under the final rule would remain subject only to such controls either in their entirety or with certain exemptions. Devices classified into class II would also remain subject only to the general controls provisions of the act unless and until an applicable performance standard was established. Similarly, devices classified into class III remain subject only to the general controls provisions of the act until an additional regulation is promulgated under section 515(b) of the act (21 U.S.C. 360e(b)) requiring that such devices have in effect approved applications for premarket approval. In accordance with section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)), devices classified by regulation into class III may remain in commercial distribution without an approved premarket approval application for 30 months following the effective date of classification of the device into class III, or for 90 days following the promulgation of a regulation under section 515(b) of the act, whichever occurs later. In sum, device classification rules do not have a significant impact on a substantial number of small entities and are not major rules.

List of Subjects in 21 CFR Part 886

Ophthalmic devices; Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Chapter I of Title 21 of the Code of Federal Regulations is amended by adding new Part 886, to read as follows:

PART 886—OPHTHALMIC DEVICES

Subpart A—General Provisions

Sec.
886.1 Scope.
886.3 Effective dates of requirement for premarket approval.

Subpart B—Diagnostic Devices

886.1040 Ocular esthesiometer.
886.1140 Ophthalmic chair.
886.1150 Visual acuity chart.
886.1170 Color vision tester.
886.1190 Distometer.
886.1200 Optokinetic drum.
886.1220 Corneal electrode.
886.1250 Euthyscope.
886.1270 Exophthalmometer.
886.1320 Fornixscope.
886.1330 Amsler grid.
886.1350 Keratoscope.
886.1360 Visual field laser instrument.
886.1375 Bagolini lens.
886.1380 Diagnostic condensing lens.
886.1385 Polymethylmethacrylate (PMMA) diagnostic contact lens.
886.1390 Flexible diagnostic Fresnel lens.
886.1395 Diagnostic Hruby fundus lens.
886.1400 Maddox lens.
886.1405 Ophthalmic trial lens set.
886.1410 Ophthalmic trial lens clip.
886.1415 Ophthalmic trial lens frame.
886.1420 Ophthalmic lens gauge.
886.1460 Stereopsis measuring instrument.
886.1500 Headband mirror.

Sec.
886.1510 Eye movement monitor.
886.1570 Ophthalmoscope.
886.1605 Perimeter.
886.1630 AC-powered photostimulator.
886.1640 Ophthalmic preamplifier.
886.1650 Ophthalmic bar prism.
886.1655 Ophthalmic Fresnel prism.
886.1660 Gonioscopic prism.
886.1665 Ophthalmic rotary prism.
886.1670 Ophthalmic isotope uptake probe.
886.1700 Pupillometer.
886.1750 Skiascopic rack.
886.1760 Ophthalmic refractometer.
886.1770 Manual refractor.
886.1780 Retinoscope.
886.1790 Nearpoint ruler.
886.1800 Schirmer strip.
886.1810 Tangent screen (campimeter).
886.1840 Simulatan (including crossed cylinder).
886.1850 AC-powered slitlamp biomicroscope.
886.1860 Ophthalmic instrument stand.
886.1870 Stereoscope.
886.1880 Fusion and stereoscopic target.
886.1905 Nystagmus tape.
886.1910 Spectacle dissociation test system.
886.1930 Tonometer and accessories.
886.1945 Transilluminator.

Subpart C—[Reserved]

Subpart D—Prosthetic Devices

886.3100 Ophthalmic tantalum clip.
886.3130 Ophthalmic conformer.
886.3200 Artificial eye.
886.3300 Absorbable implant (scleral buckling method).
886.3320 Eye sphere implant.
886.3340 Extraocular orbital implant.
886.3400 Keratoprosthesis.
886.3600 Intraocular lens.
886.3800 Scleral shell.
886.3920 Eye valve implant.

Subpart E—Surgical Devices

886.4070 Powered corneal burr.
886.4100 Radiofrequency electrosurgical cautery apparatus.
886.4115 Thermal cautery unit.
886.4150 Vitreous aspiration and cutting instrument.
886.4170 Cryophthalmic unit.
886.4230 Ophthalmic knife test drum.
886.4250 Ophthalmic electrolysis unit.
886.4270 Intraocular gas.
886.4275 Intraocular fluid.
886.4280 Intraocular pressure measuring device.
886.4300 Intraocular lens guide.
886.4335 Operating headlamp.
886.4350 Manual ophthalmic surgical instrument.
886.4360 Ocular surgery irrigation device.
886.4370 Keratome.
886.4390 Ophthalmic laser.
886.4400 Electronic metal locator.
886.4440 AC-powered magnet.
886.4445 Permanent magnet.
886.4570 Ophthalmic surgical marker.
886.4610 Ocular pressure applicator.
886.4670 Phacofragmentation system.
886.4690 Ophthalmic photocoagulator.
886.4750 Ophthalmic eye shield.
886.4770 Ophthalmic operating spectacles (loupes).
886.4790 Ophthalmic sponge.
Sec.
886.4855 Ophthalmic instrument table.

Subpart F—Therapeutic Devices

886.5100 Ophthalmic beta radiation source.
886.5120 Low-power binocular loupe.
886.5420 Contact lens inserter/remover.
886.5540 Low-vision magnifier.
886.5600 Ptosis crutch.
886.5800 Ophthalmic bar reader.
886.5810 Ophthalmic prism reader.
886.5840 Magnifying spectacles.
886.5842 Spectacle frame.
886.5844 Prescription spectacle lens.
886.5850 Sunglasses (nonprescription).
886.5870 Low-vision telescope.
886.5900 Electronic vision aid.
886.5910 Image intensification vision aid.
886.5915 Optical vision aid.
886.5916 Rigid gas permeable contact lens.
886.5918 Rigid gas permeable contact lens solution.
886.5925 Soft (hydrophilic) contact lens.
886.5928 Soft (hydrophilic) contact lens solution.
886.5933 Contact lens heat disinfection unit.

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

Subpart A—General Provisions

§ 886.1 Scope.

(a) This part sets forth the classification of ophthalmic devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 cannot show merely that the device is accurately described by the section title and identification provision of a regulation in this part but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, an ophthalmic device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed in one subpart only.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 886.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act, FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraphs (b) and (c) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

(c) A device identified in a regulation in this part that is classified into class III and that is subject to the transitional provisions of section 520(1) of the act is automatically classified by statute into class III and must have an approval

under section 515 of the act before being commercially distributed. Accordingly, the regulation for such a class III transitional device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

Subpart B—Diagnostic Devices

§ 886.1040 Ocular esthesiometer.

(a) *Identification.* An ocular esthesiometer is a device, such as a single-hair brush, intended to touch the cornea to assess corneal sensitivity.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1140 Ophthalmic chair.

(a) *Identification.* An ophthalmic chair is a manual device with adjustable positioning in which a patient is intended to sit or recline during ophthalmological examination or treatment.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1150 Visual acuity chart.

(a) *Identification.* A visual acuity chart is a device that is a chart, such as a Snellen chart with block letters or other symbols in graduated sizes, intended to test visual acuity.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1170 Color vision tester.

(a) *Identification.* A color vision tester is a device that consists of various colored materials, such as colored yarns or color vision plates (multicolored plates which patients with color vision deficiency would perceive as being of one color), intended to evaluate color vision.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1190 Distometer.

(a) *Identification.* A distometer is a device intended to measure the distance between the cornea and a corrective lens during refraction to help measure the change of the visual image when a lens is in place.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1200 Optokinetic drum.

(a) *Identification.* An optokinetic drum is a drum-like device covered with alternating white and dark stripes or pictures that can be rotated on its handle. The device is intended to elicit and evaluate nystagmus (involuntary rapid movement of the eyeball) in patients.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1220 Corneal electrode.

(a) *Identification.* A corneal electrode is an AC-powered device, usually part of a special contact lens, intended to be applied directly to the cornea to provide data showing the changes in electrical potential in the retina after electroretinography (stimulation by light).

(b) *Classification.* Class II.

§ 886.1250 Euthyscope.

(a) *Identification.* A euthyscope is a device that is a modified battery-powered ophthalmoscope (a perforated mirror device used to inspect the interior of the eye) that projects a bright light encompassing an arc of about thirty degrees on the fundus of the eye. The center of the light bundle is blocked by a black disk covering the fovea (the central depression of the macular retinae where only cones are present and blood vessels are lacking). The device is intended for use in the treatment of amblyopia (dimness of vision without apparent disease of the eye).

(b) *Classification.* Class I.

§ 886.1270 Exophthalmometer.

(a) *Identification.* An exophthalmometer is a device, such as a ruler, gauge, or caliper, intended to measure the degree of exophthalmos (abnormal protrusion of the eyeball).

(b) *Classification.* Class I.

§ 886.1320 Fornixscope.

(a) *Identification.* A fornixscope is a device intended to pull back and hold open the eyelid to aid examination of the conjunctiva.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1330 Amsler grid.

(a) *Identification.* An Amsler grid is a device that is a series of charts with grids of different sizes that are held at 30 centimeters distance from the patient and intended to rapidly detect central and paracentral irregularities in the visual field.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1350 Keratoscope.

(a) *Identification.* A keratoscope is a battery-powered device intended to measure and evaluate the corneal curvature of the eye. Lines and circles within the keratoscope are used to observe the corneal reflex. This generic type of device includes the photokeratoscope which records corneal curvature by taking photographs of the cornea.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1360 Visual field laser instrument.

(a) *Identification.* A visual field laser instrument is an AC-powered device intended to provide visible laser radiation that produces an interference pattern on the retina to evaluate retinal function.

(b) *Classification.* Class II.

§ 886.1375 Bagolini lens.

(a) *Identification.* A Bagolini lens is a device that consists of a plane lens containing almost imperceptible striations that do not obscure visualization of objects. The device is placed in a trial frame and intended to determine harmonious/anomalous retinal correspondence (a condition in which corresponding points on the retina have the same directional values).

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1380 Diagnostic condensing lens.

(a) *Identification.* A diagnostic condensing lens is a device used in binocular indirect ophthalmoscopy (a procedure that produces an inverted or reversed direct magnified image of the eye) intended to focus reflected light from the fundus of the eye.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1385 Polymethylmethacrylate (PMMA) diagnostic contact lens.

(a) *Identification.* A polymethylmethacrylate (PMMA) diagnostic contact lens is a device that is a curved shell of PMMA intended to be applied for a short period of time directly on the globe or cornea of the eye for diagnosis or therapy of intraocular abnormalities.

(b) *Classification.* Class II.

§ 886.1390 Flexible diagnostic Fresnel lens.

(a) *Identification.* A flexible diagnostic Fresnel lens is a device that is a very thin lens which has its surface a concentric series of increasingly refractive zones. The device is intended to be applied to the back of the spectacle lenses of patients with aphakia (absence of the lens of the eye).

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1395 Diagnostic Hruby fundus lens.

(a) *Identification.* A diagnostic Hruby fundus lens is a device that is a 55 diopter lens intended for use in the examination of the vitreous body and the fundus of the eye under slitlamp illumination and magnification.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1400 Maddox lens.

(a) *Identification.* A Maddox lens is a device that is a series of red cylinders that change the size, shape, and color of an image. The device is intended to be handheld or placed in a trial frame to evaluate eye muscle dysfunction.

(b) *Classification.* Class I. The device is exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1405 Ophthalmic trial lens set.

(a) *Identification.* An ophthalmic trial lens set is a device that is a set of lenses of various dioptric powers intended to be handheld or inserted in a trial frame for vision testing to determine refraction.

(b) *Classification.* Class II.

§ 886.1410 Ophthalmic trial lens clip.

(a) *Identification.* An ophthalmic trial lens clip is a device intended to hold prisms, spheres, cylinders, or occluders on a trial frame or spectacles for vision testing.

(b) *Classification.* Class I. The device is exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1415 Ophthalmic trial lens frame.

(a) *Identification.* An opthalmic trial lens frame is a mechanical device intended to hold trial lenses for vision testing.

(b) *Classification.* Class I. The device is exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1420 Ophthalmic lens gauge.

(a) *Identification.* An ophthalmic lens gauge is a calibrated device intended to manually measure the curvature of a spectacle lens.

(b) *Classification.* Class I.

§ 886.1460 Stereopsis measuring instrument.

(a) *Identification.* A stereopsis measuring instrument is a device intended to measure depth perception by illumination of objects placed on different planes.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1500 Headband mirror.

(a) *Identification.* A headband mirror is a device intended to be strapped to the head of the user to reflect light for use in examination of the eye.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1510 Eye movement monitor.

(a) *Identification.* An eye movement monitor is an AC-powered device with an electrode intended to measure and record ocular movements.

(b) *Classification.* Class II.

§ 886.1570 Ophthalmoscope.

(a) *Identification.* An ophthalmoscope is an AC-powered or battery-powered device containing illumination and viewing optics intended to examine the media (cornea, aqueous, lens, and vitreous) and the retina of the eye.

(b) *Classification.* Class II.

§ 886.1605 Perimeter.

(a) *Identification.* A perimeter is a manual device intended to determine the extent of the peripheral visual field of a patient. The device projects light on various points of a curved surface, and the patient indicates whether he or she sees the light.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1630 AC-powered photostimulator.

(a) *Identification.* An AC-powered photostimulator is an AC-powered device intended to provide light stimulus which allows measurement of retinal or visual function by perceptual or electrical methods (e.g., stroboscope).

(b) *Classification.* Class II.

§ 886.1640 Ophthalmic preamplifier.

(a) *Identification.* An ophthalmic preamplifier is an AC-powered or battery-powered device intended to amplify electrical signals from the eye in electroretinography (recording retinal action currents from the surface of the eyeball after stimulation by light), electrooculography (testing for retinal dysfunction by comparing the standing potential in the front and the back of the eyeball), and electromyography

(recording electrical currents generated in active muscle).

(b) *Classification.* Class II.

§ 886.1650 Ophthalmic bar prism.

(a) *Identification.* An ophthalmic bar prism is a device that is a bar composed of fused prisms of gradually increasing strengths intended to measure latent and manifest strabismus (eye muscle deviation) or the power of fusion of a patient's eyes.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1655 Ophthalmic Fresnel prism.

(a) *Identification.* An ophthalmic Fresnel prism is a device that is a thin plastic sheet with embossed rulings which provides the optical effect of a prism. The device is intended to be applied to spectacle lenses to give a prismatic effect.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1660 Gonioscopic prism.

(a) *Identification.* A gonioscopic prism is a device that is a prism intended to be placed on the eye to study the anterior chamber. The device may have angled mirrors to facilitate visualization of anatomical features.

(b) *Classification.* Class I.

§ 886.1665 Ophthalmic rotary prism.

(a) *Identification.* An ophthalmic rotary prism is a device with various prismatic powers intended to be handheld and used to measure ocular deviation in patients with latent or manifest strabismus (eye muscle deviation).

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1670 Ophthalmic isotope uptake probe.

(a) *Identification.* An ophthalmic isotope uptake probe is an AC-powered device intended to measure, by a probe which is placed in close proximity to the eye, the uptake of a radioisotope (phosphorus 32) by tumors to detect tumor masses on, around, or within the eye.

(b) *Classification.* Class II.

§ 886.1700 Pupillometer.

(a) *Identification.* A pupillometer is a manual device intended to measure by reflected light the width or diameter of the pupil of the eye.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180 with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1750 Skiascopic rack.

(a) *Identification.* A skiascopic rack is a device that is a rack and a set of attached ophthalmic lenses of various dioptric strengths intended as an aid in refraction.

(b) *Classification.* Class II.

§ 886.1760 Ophthalmic refractometer.

(a) *Identification.* An ophthalmic refractometer is an automatic AC-powered device that consists of a fixation system, a measurement and recording system, and an alignment system intended to measure the refractive power of the eye by measuring light reflexes from the retina.

(b) *Classification.* Class II.

§ 886.1770 Manual refractor.

(a) *Identification.* A manual refractor is a device that is a set of lenses of varous dioptric powers intended to measure the refractive error of the eye.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1780 Retinoscope.

(a) *Identification.* A retinoscope is a battery-powered device intended to measure the refraction of the eye by illuminating the retina and noting the direction of movement of the light on the retinal surface and of the refraction by the eye of the emergent rays.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1790 Nearpoint ruler.

(a) *Identification.* A nearpoint ruler is a device calibrated in centimeters intended to measure the nearpoint of convergence (the point to which the visual lines are directed when convergence is at its maximum).

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1800 Schirmer strip.

(a) *Identification.* A Schirmer strip is a device made of filter paper or similar material intended to be inserted under a patient's lower eyelid to stimulate and evaluate formation of tears.

(b) *Classification.* Class I.

§ 886.1810 Tangent screen (campimeter).

(a) *Identification.* A tangent screen (campimeter) is a battery-powered device that is a large square cloth chart with a central mark of fixation intended to map on a flat surface the central thirty degrees of a patient's visual field. This generic type of device includes projection tangent screens, target tangent screens and targets, felt tangent screens, and battery-powered stereo campimeters.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1840 Simulatan (including crossed cylinder).

(a) *Identification.* A simulatan (including crossed cylinder) is a device that is a set of pairs of cylinder lenses that provides various equal plus and minus refractive strengths. The lenses are arranged so that the user can exchange the positions of plus and minus cylinder lenses of equal strengths. The device is intended for subjective refraction (refraction in which the patient judges whether a given object is clearly in focus, as the examiner uses different lenses).

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1850 AC-powered slitlamp biomicroscope.

(a) *Identification.* An AC-powered slitlamp biomicroscope is an AC-powered device that is a microscope intended for use in eye examination that projects into a patient's eye through a

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control diaphragm a thin, intense beam of light.

(b) *Classification.* Class II.

§ 886.1860 Ophthalmic instrument stand.

(a) *Identification.* An ophthalmic instrument stand is a nonpowered device intended to store ophthalmic instruments in a readily accessible position.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1870 Stereoscope.

(a) *Identification.* A stereoscope is a battery-powered device that combines the images of two similar objects to produce a three-dimensional appearance of solidity and relief. It is intended to measure the angle of strabismus (eye muscle deviation), evaluate binocular vision (usage of both eyes to see), and guide a patient's corrective exercises of eye muscles.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1880 Fusion and stereoscopic target.

(a) *Identification.* A fusion and stereoscopic target is a device intended for use as a viewing object with a stereoscope (§ 886.1870).

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1905 Nystagmus tape.

(a) *Identification.* Nystagmus tape is a device that is a long, narrow strip of fabric or other flexible material on which a series of objects are printed. The device is intended to be moved across a patient's field of vision to elicit optokinetic nystagmus (abnormal and irregular eye movements) and to test for blindness.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1910 Spectacle dissociation test system.

(a) *Identification.* A spectacle dissocation test system is a battery-powered device, such as a Lancaster test system, that consists of a light source and various filters, usually red or green filters, intended to subjectively measure imbalance of ocular muscles.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1930 Tonometer and accessories.

(a) *Identification.* A tonometer and accessories is a manual device intended to measure intraocular pressure by applying a known force on the globe of the eye and measuring the amount of indentation produced (Schiotz type) or to measure intraocular tension by applanation (applying a small flat disk to the cornea). Accessories for the device may include a tonometer calibrator or a tonograph recording system. The device is intended for use in the diagnosis of glaucoma.

(b) *Classification.* Class II.

§ 886.1945 Transilluminator.

(a) *Identification.* A transilluminator is a battery-powered device that is a light source intended to transmit light through tissues to aid examination of patients.

(b) *Classification.* Class I.

Subpart C—[Reserved]

Subpart D—Prosthetic Devices

§ 886.3100 Ophthalmic tantalum clip.

(a) *Identification.* An ophthalmic tantalum clip is a malleable metallic device intended to be implanted permanently or temporarily to bring together the edges of a wound to aid healing or prevent bleeding from small blood vessels in the eye.

(b) *Classification.* Class II.

§ 886.3130 Ophthalmic conformer.

(a) *Identification.* An ophthalmic conformer is a device usually made of molded plastic intended to be inserted temporarily between the eyeball and eyelid to maintain space in the orbital cavity and prevent closure or adhesions during the healing process following surgery.

(b) *Classification.* Class II.

§ 886.3200 Artificial eye.

(a) *Identification.* An artificial eye is a device resembling an eyeball, usually made of glass or plastic, intended to be inserted in a patient's eye socket for cosmetic purposes to replace an eye. The device is not intended to be implanted.

(b) *Classification.* Class II.

§ 886.3300 Absorbable implant (scleral buckling method).

(a) *Identification.* An absorbable implant (scleral buckling method) is a device intended to be implanted on the sclera to aid retinal reattachment.

(b) *Classification.* Class II.

§ 886.3320 Eye sphere implant.

(a) *Identification.* An eye sphere implant is a device intended to be implanted in the eyeball to occupy space following the removal of the contents of the eyeball with the sclera left intact.

(b) *Classification.* Class II.

§ 886.3340 Extraocular orbital implant.

(a) *Identification.* An extraocular orbital implant is a nonabsorbable device intended to be implanted during scleral surgery for buckling or building up the floor of the eye, usually in conjunction with retinal reattachment. Injectable substances are excluded.

(b) *Classification.* Class II.

§ 886.3400 Keratoprosthesis.

(a) *Identification.* A keratoprosthesis is a device made of plastic intended to be implanted to replace the central area of an opacified natural cornea of the eye to maintain or restore sight.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 886.3.

§ 886.3600 Intraocular lens.

(a) *Identification.* An intraocular lens is a device made of materials such as glass or plastic intended to be implanted to replace the natural lens of an eye.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.3800 Scleral shell.

(a) *Identification.* A scleral shell is a device made of glass or plastic that is intended to be inserted for short time periods over the cornea and proximal-cornea sclera for cosmetic or reconstructive purposes. An artificial eye is usually painted on the device. The device is not intended to be implanted.

(b) *Classification.* Class II.

§ 886.3920 Eye valve implant.

(a) *Identification.* An eye valve implant is a one-way, pressure-sensitive, valve-like device intended to be implanted to normalize intraocular pressure. The device may be used in the treatment of glaucoma.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 886.3.

Subpart E—Surgical Devices

§ 886.4070 Powered corneal burr.

(a) *Identification.* A powered corneal burr is a battery-powered device that is a motor and drilling tool intended to remove rust rings from the cornea of the eye.

(b) *Classification.* Class I.

§ 886.4100 Radiofrequency electrosurgical cautery apparatus.

(a) *Identification.* A radiofrequency electrosurgical cautery apparatus is an AC-powered or battery-powered device intended for use during ocular surgery to coagulate tissue or arrest bleeding by a high frequency electric current.

(b) *Classification.* Class II.

§ 886.4115 Thermal cautery unit.

(a) *Identification.* A thermal cautery unit is an AC-powered or battery-powered device intended for use during ocular surgery to coagulate tissue or arrest bleeding by heat conducted through a wire tip.

(b) *Classification.* Class II.

§ 886.4150 Vitreous aspiration and cutting instrument.

(a) *Identification.* A vitreous aspiration and cutting instrument is an electrically powered device, which may use ultrasound, intended to remove vitreous matter from the vitreous cavity or remove a crystalline lens.

(b) *Classification.* Class II.

§ 886.4170 Cryophthalmic unit.

(a) *Identification.* A cryophthalmic unit is a device that is a probe with a small tip that becomes extremely cold through the controlled use of a refrigerant or gas. The device may be AC-powered. The device is intended to remove cataracts by the formation of an adherent ice ball in the lens, to freeze the eye and adjunct parts for surgical removal of scars, and to freeze tumors.

(b) *Classification.* Class II.

§ 886.4230 Ophthalmic knife test drum.

(a) *Identification.* An ophthalmic knife test drum is a device intended to test the keenness of ophthalmic surgical knives to determine whether resharpening is needed.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.4250 Ophthalmic electrolysis unit.

(a) *Identification.* An ophthalmic electrolysis unit is a battery-powered device intended to destroy ocular hair follicles by applying a galvanic electrical current.

(b) *Classification.* Class I.

§ 886.4270 Intraocular gas.

(a) *Identification.* An intraocular gas is a device consisting of a gaseous fluid intended to be introduced into the eye to place pressure on a detached retina.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.4275 Intraocular fluid.

(a) *Identification.* An intraocular fluid is a device consisting of a nongaseous fluid intended to be introduced into the eye to aid performance of surgery, such as to maintain anterior chamber depth, preserve tissue integrity, protect tissue from surgical trauma, or function as a tamponade during retinal reattachment.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.4280 Intraocular pressure measuring device.

(a) *Identification.* An intraocular pressure measuring device is a manual or AC-powered device intended to measure intraocular pressure. Also included are any devices found by FDA to be substantially equivalent to such devices. Accessories for the device may include calibrators or recorders. The device is intended for use in the diagnosis of glaucoma.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.4300 Intraocular lens guide.

(a) *Identification.* An intraocular lens guide is a device intended to be inserted into the eye during surgery to direct the insertion of an intraocular lens and be removed after insertion is completed.

(b) *Classification.* Class I.

§ 886.4335 Operating headlamp.

(a) *Identification.* An operating headlamp is a battery-powered device intended to be worn on the user's head to provide a light source to aid visualization during surgical, diagnostic, or therapeutic procedures.

(b) *Classification.* Class I.

§ 886.4350 Manual ophthalmic surgical instrument.

(a) *Identification.* A manual ophthalmic surgical instrument is a nonpowered, handheld device intended to aid or perform ophthalmic surgical procedures. This generic type of device includes the manual corneal burr, ophthalmic caliper, ophthalmic cannula, eyelid clamp, ophthalmic muscle clamp, iris retractor clip, orbital compressor, ophthalmic curette, cystotome, orbital depressor, lachrymal dilator, erisophake, expressor, ophthalmic forcep, ophthalmic hook, sphere introducer, ophthalmic knife, ophthalmic suturing needle, lachrymal probe, trabeculotomy probe, cornea-sclera punch, ophthalmic retractor, ophthalmic ring (Flieringa), lachrymal sac rongeur, ophthalmic scissors, enucleating snare, ophthalmic spatula, ophthalmic specula, ophthalmic spoon, ophthalmic spud, trabeculotome or ophthalmic manual trephine.

(b) *Classification.* Class I.

§ 886.4360 Ocular surgery irrigation device.

(a) *Identification.* An ocular surgery irrigation device is a device intended to be suspended over the ocular area during ophthalmic surgery to deliver continuous, controlled irrigation to the surgical field.

(b) *Classification.* Class I.

§ 886.4370 Keratome.

(a) *Identification.* A keratome is battery-powered device intended to shave tissue from sections of the cornea for a lamellar (partial thickness) transplant.

(b) *Classification.* Class I.

§ 886.4390 Ophthalmic laser.

(a) *Identification.* An ophthalmic laser is an AC-powered device intended to coagulate or cut tissue of the eye, orbit, or surrounding skin by a laser beam.

(b) *Classification.* Class II.

§ 886.4400 Electronic metal locator.

(a) *Identification.* An electronic metal locator is an AC-powered device with

probes intended to locate metallic foreign bodies in the eye or eye socket.

(b) *Classification.* Class II.

§ 886.4440 AC-powered magnet.

(a) *Identification.* An AC-powered magnet is an AC-powered device that generates a magnetic field intended to find and remove metallic foreign bodies from eye tissue.

(b) *Classification.* Class II.

§ 886.4445 Permanent magnet.

(a) *Identification.* A permanent magnet is a nonelectric device that generates a magnetic field intended to find and remove metallic foreign bodies from eye tissue.

(b) *Classification.* Class I.

§ 886.4570 Ophthalmic surgical marker.

(a) *Identification.* An ophthalmic surgical marker is a device intended to mark by use of ink, dye, or indentation the location of ocular or scleral surgical manipulation.

(b) *Classification.* Class I.

§ 886.4610 Ocular pressure applicator.

(a) *Identification.* An ocular pressure applicator is a manual device that consists of a sphygmomanometer-type squeeze bulb, a dial indicator, a band, and bellows, intended to apply pressure on the eye in preparation for ophthalmic surgery.

(b) *Classification.* Class II.

§ 886.4670 Phacofragmentation system.

(a) *Identification.* A phacofragmentation system is an AC-powered device with a fragmenting needle intended for use in cataract surgery to disrupt a cataract with ultrasound and extract the cataract.

(b) *Classification.* Class II.

§ 886.4690 Ophthalmic photocoagulator.

(a) *Identification.* An ophthalmic photocoagulator is an AC-powered device intended to use the energy from an extended noncoherent light source to occlude blood vessels of the retina, choroid, or iris.

(b) *Classification.* Class II.

§ 886.4750 Ophthalmic eye shield.

(a) *Identification.* An ophthalmic eye shield is a device that consists of a plastic or aluminum eye covering intended to protect the eye or retain dressing materials in place.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.4770 Ophthalmic operating spectacles (loupes).

(a) *Identification.* Ophthalmic operating spectacles (loupes) are devices that consist of convex lenses or lens systems intended to be worn by a surgeon to magnify the surgical site during ophthalmic surgery.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198 with respect to complaint files.

§ 886.4790 Ophthalmic sponge.

(a) *Identification.* An ophthalmic sponge is a device that is an absorbant sponge, pad, or spear made of folded gauze, cotton, cellulose, or other material intended to absorb fluids from the operative field in ophthalmic surgery.

(b) *Classification.* Class II.

§ 886.4855 Ophthalmic instrument table.

(a) *Identification.* An ophthalmic instrument table is a manual device on which ophthalmic instruments are placed.

(b) *Classification.* Class I. This device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Subpart F—Therapeutic Devices

§ 886.5100 Ophthalmic beta radiation source.

(a) *Identification.* An ophthalmic beta radiation source is a device intended to apply superficial radiation to benign and malignant ocular growths.

(b) *Classification.* Class II.

§ 886.5120 Low-power binocular loupe.

(a) *Identification.* A low-power binocular loupe is a device that consists of two eyepieces, each with a lens or lens system, intended for medical purposes to magnify the appearance of objects.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5420 Contact lens inserter/remover.

(a) *Identification.* A contact lens inserter/remover is a handheld device intended to insert or remove contact lenses by surface adhesion or suction.

(b) *Classification.* Class I.

§ 886.5540 Low-vision magnifier.

(a) *Identification.* A low-vision magnifier is a device that consists of a magnifying lens intended for use by a patient who has impaired vision. The device may be held in the hand or attached to spectacles.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5600 Ptosis crutch.

(a) *Identification.* A ptosis crutch is a device intended to be mounted on the spectacles of a patient who has ptosis (drooping of the upper eyelid as a result of faulty development or paralysis) to hold the upper eyelid open.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5800 Ophthalmic bar reader.

(a) *Identification.* An ophthalmic bar reader is a device that consists of a magnifying lens intended for use by a patient who has impaired vision. The device is placed directly onto reading material to magnify print.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820 with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5810 Ophthalmic prism reader.

(a) *Identification.* An ophthalmic prism reader is a device intended for use by a patient who is in a supine position to change the angle of print to aid reading.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5840 Magnifying spectacles.

(a) *Identification.* Magnifying spectacles are devices that consist of spectacle frames with convex lenses intended to be worn by a patient who has impaired vision to enlarge images.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in

Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5842 Spectacle frame.

(a) *Identification.* A spectacle frame is a device made of metal or plastic intended to hold prescription spectacle lenses worn by a patient to correct refractive errors.

(b) *Classification.* Class I.

§ 886.5844 Prescription spectacle lens.

(a) *Identification.* A prescription spectacle lens is a glass or plastic device that is a lens intended to be worn by a patient in a spectacle frame to provide refractive corrections in accordance with a prescription for the patient. The device may be modified to protect the eyes from bright sunlight (i.e., prescription sunglasses). Prescription sunglass lenses may be reflective, tinted, polarizing, or photosensitized.

(b) *Classification.* Class I.

§ 886.5850 Sunglasses (nonprescription).

(a) *Identification.* Sunglasses (nonprescription) are devices that consist of spectacle frames or clips with absorbing, reflective, tinted, polarizing, or photosensitized lenses intended to be worn by a person to protect the eyes from bright sunlight but not to provide refractive corrections. This device is usually available over-the-counter.

(b) *Classification.* Class I.

§ 886.5870 Low-vision telescope.

(a) *Identification.* A low-vision telescope is a device that consists of an arrangement of lenses or mirrors intended for use by a patient who has impaired vision to increase the apparent size of objects. This generic type of device includes handheld or spectacle telescopes.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5900 Electronic vision aid.

(a) *Identification.* An electronic vision aid is a battery-powered device that consists of an electronic sensor/transducer intended for use by a patient who has impaired vision or blindness, to translate visual images of objects into tactile or auditory signals.

(b) *Classification.* Class I.

§ 886.5910 Image intensification vision aid.

(a) *Identification.* An image intensification vision aid is a battery-powered device intended for use by a patient who has limited dark adaptation or impaired vision to amplify ambient light.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5915 Optical vision aid.

(a) *Identification.* An optical vision aid is a device that consists of a magnifying lens with accompanying battery-powered light source intended for use by a patient who has impaired vision to increase the apparent size of object detail.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5916 Rigid gas permeable contact lens.

(a) *Identification.* A rigid gas permeable contact lens is a device intended to be worn directly against the cornea of the eye to correct vision conditions. The device is made of various materials, such as cellulose acetate butyrate, polyacrylate-silicone, or silicone elastomers, whose main polymer molecules generally do not absorb or attract water.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.5918 Rigid gas permeable contact lens solution.

(a) *Identification.* A rigid gas permeable contact lens solution is a device intended to clean, disinfect, wet, or store a rigid gas permeable contact lens (§ 886.5916).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.5925 Soft (hydrophilic) contact lens.

(a) *Identification.* A soft (hydrophilic) contact lens is a device intended to be worn directly against the cornea and adjacent limbal and scleral areas of the eye to correct vision conditions or act as a therapeutic bandage. The device is made of various polymer materials the main polymer molecules of which absorb or attract a certain volume (percentage) of water.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.5928 Soft (hydrophilic) contact lens solution.

(a) *Identification.* A soft (hydrophilic) contact lens solution is a device intended to clean, disinfect, wet, or store a soft (hydrophilic) contact lens (§ 886.5925).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.5933 Contact lens heat disinfection unit.

(a) *Identification.* A contact lens heat disinfection unit is a device intended to disinfect a contact lens by means of heat.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

Dated: June 15, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-20049 Filed 9-1-87; 8:45 am]

BILLING CODE 4160-01-M

VOL
52
ISS
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2
1987
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federal register

Wednesday
September 2, 1987

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 886

Ophthalmic Devices; Proposed Exemptions From Premarket Notification; Proposed Rule

VOL
52
ISS
170
SE
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1987
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. 86N-0013]

Ophthalmic Devices; Proposed Exemptions From Premarket Notification

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to exempt from the requirement of premarket notification, with limitations, 55 class I ophthalmic devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying these and other ophthalmic devices. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

DATES: Comments by November 2, 1987. FDA is proposing that the final rule based on this proposed rule become effective 30 days after its date of publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. Jacobs, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7320.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (Pub. L. 94–295, hereinafter called the amendments) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: class I, general controls; class II, performance standards; and class III, premarket approval.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR Part 807, Subpart E. Such an exemption allows manufacturers to introduce into commerical distribution devices of the generic type exempted without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendment devices, the agency did not routinely evaluate whether it should grant to manufacturers of such devices placed in class I an exemption from the requirement of premarket notification in section 510(k) of the act and 21 CFR Part 807, Subpart E. Generally, FDA considered such exemptions only when the advisory panels recommended the exemptions.

Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification, to reduce the number of premarket notifications on relatively innocuous devices while freeing agency resources for the review of more complex notifications.

The development of these criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification in section 510(k) of the act will help implement a goal in FDA's July 1985 "A Plan for Action" (Ref. 1).

Criteria for 510(k) Exemptions

FDA is proposing to exempt a generic type of class I device from the requirement of premarket notification with the limitations described below, if FDA determines that premarket notification is not necessary for the protection of the public health. FDA may propose to grant an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (1) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (2) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) that any changes in the device will not be likely to result in a change in the device's classification.

FDA will make the determinations above based on its knowledge of the device, including past experience with premarket notification and publicly available reports or studies on device performance. Based on the above criteria, FDA will place the exempted device into the same class as the class I device to which it would be substantially equivalent.

FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a premendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Application of the Criteria to Class I Ophthalmic Devices

In the proposed regulations of January 26, 1982 (47 FR 3694), FDA proposed to classify preamendments ophthalmic devices in accordance with the amendments. When FDA proposed to classify the 55 devices below, the agency did not propose exemptions from the requirement of premarket notification for these devices. The Panel did not recommend exemptions from the requirement of premarket notification for certain of these devices. FDA agrees that full exemption from premarket notification is unjustified for these devices; however, for efficient enforcement of the act and consistent with its policy regarding exemptions from premarket notification, FDA now is proposing to exempt from the requirement of premarket notification, with limitations, the 55 devices below.

Section	Device
	Subpart B—Diagnostic Devices
886.1040	Ocular esthesiometer
886.1140	Ophthalmic chair
886.1150	Visual acuity chart
886.1170	Color vision tester
886.1190	Distometer
886.1200	Optokinetic drum.
886.1270	Exophthalmometer
886.1320	Fornixscope
886.1330	Amsler grid
886.1350	Keratoscope
886.1375	Bagolini lens
886.1380	Diagnostic condensing lens
886.1390	Flexible diagnostic Fresnel lens
886.1395	Diagnostic Hruby fundus lens.
886.1400	Maddox lens
886.1410	Ophthalmic trial lens clip
886.1415	Ophthalmic trial lens frame
886.1420	Ophthalmic lens gauge
886.1460	Stereopsis measuring instrument
886.1500	Headband mirror
886.1605	Perimeter
886.1650	Ophthalmic bar prism
886.1655	Ophthalmic Fresnel prism
886.1660	Gonioscopic prism
886.1665	Ophthalmic rotary prism
886.1700	Pupillometer
886.1770	Manual refractor
886.1790	Near-point ruler
886.1800	Schirmer strip
886.1810	Tangent screen (campimeter)
886.1840	Simulatan (including crossed cylinder)
886.1860	Ophthalmic instrument stand
886.1870	Stereoscope
886.1880	Fusion and stereoscopic target
886.1905	Nystagmus tape
886.1910	Spectacle dissociation test system
	Subpart E—Surgical Devices
886.4230	Ophthalmic knife test drum
886.4335	Operating headlamp
886.4350	Manual ophthalmic surgical instrument
886.4360	Ocular surgery irrigation device
886.4445	Permanent magnet
886.4570	Ophthalmic surgical marker
886.4770	Ophthalmic operating spectacles (loupes)
886.4855	Ophthalmic instrument table
	Subpart F—Therapeutic Devices
886.5120	Low-power binocular loupe
886.5420	Contact lens inserter/remover
886.5540	Low-vision magnifier.
886.5600	Ptosis crutch
886.5800	Ophthalmic bar reader.
886.5810	Ophthalmic prism reader
886.5840	Magnifying spectacles
886.5844	Prescription spectacle lens.
886.5870	Low-vision telescope
886.5910	Image intensification vision aid
886.5915	Optical vision aid

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying the devices above in class I. FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices above. However, the proposed exemptions for the ocular esthesiometer (§ 886.1640), gonioscopic prism (§ 886.1660), Schirmer strip (§ 886.1800), ophthalmic surgical marker (§ 886.4570), magnifying spectacles (§ 886.5840), and prescription spectacle lens (§ 886.5844) are limited and would apply only to those devices made of the same materials that were used in the devices before May 28, 1976. Further, the proposed exemption for the ocular surgery irrigation device (§ 886.4360) is limited and would apply only to uses where the device does not contact the patient's body.

References

The following information has been placed in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action," Public Health Service, Department of Health and Human Services, July 1985, p. 18.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this proposed rule and has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this proposed rule has been carefully analyzed, and it has been determined that the proposed rule does not constitute a major rule as defined in section 1(b) of the Executive Order. The devices subject to this proposed rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j), with certain exemptions. Under any final rule based on this proposal, the devices would remain subject to such controls, other than premarket notification.

Interested persons may, on or before November 2, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 886 be amended as follows:

PART 886—OPHTHALMIC DEVICES

1. The authority citation for 21 CFR Part 886 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Part 886 is amended by adding new § 886.9, to read as follows:

§ 886.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially

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equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. In § 886.1040 by revising paragraph (b) to read as follows:

§ 886.1040 Ocular esthesiometer.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

4. In § 886.1140 by revising paragraph (b) to read as follows:

§ 886.1140 Ophthalmic chair.

* * * * *

(b) *Classification.* Class I for manual ophthalmic chair. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

5. In § 886.1150 by revising paragraph (b) to read as follows:

§ 886.1150 Visual acuity chart.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

6. In § 886.1170 by revising paragraph (b) to read as follows:

§ 886.1170 Color vision tester.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

7. In § 886.1190 by revising paragraph (b) to read as follows:

§ 886.1190 Distometer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

8. In § 886.1200 by revising paragraph (b) to read as follows:

§ 886.1200 Optokinetic drum.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

9. In § 886.1270 by revising paragraph (b) to read as follows:

§ 886.1270 Exophthalmometer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

10. In § 886.1320 by revising paragraph (b) to read as follows:

§ 886.1320 Fornixscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

11. In § 886.1330 by revising paragraph (b) to read as follows:

§ 886.1330 Amsler grid.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

12. In § 886.1350 by revising paragraph (b) to read as follows:

§ 886.1350 Keratoscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

13. In § 886.1375 by revising paragraph (b) to read as follows:

§ 886.1375 Bagolini lens.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

14. In § 886.1380 by revising paragraph (b) to read as follows:

§ 886.1380 Diagnostic condensing lens.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

15. In § 886.1390 by revising paragraph (b) to read as follows:

§ 886.1390 Flexible diagnostic Fresnel lens.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning

records, and § 820.198, with respect to complaint files.

16. In § 886.1395 by revising paragraph (b) to read as follows:

§ 886.1395 Diagnostic Hruby fundus lens.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

17. In § 886.1400 by revising paragraph (b) to read as follows:

§ 886.1400 Maddox lens.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

18. In § 886.1410 by revising paragraph (b) to read as follows:

§ 886.1410 Ophthalmic trial lens clip.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

19. In § 886.1415 by revising paragraph (b) to read as follows:

§ 886.1415 Ophthalmic trial lens frame.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

20. In § 886.1420 by revising paragraph (b) to read as follows:

§ 886.1420 Ophthalmic lens gauge.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

21. In § 886.1460 by revising paragraph (b) to read as follows:

§ 886.1460 Stereopsis measuring instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

22. In § 886.1500 by revising paragraph (b) to read as follows:

§ 886.1500 Headband mirror.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

23. In § 886.1605 by revising paragraph (b) to read as follows:

§ 886.1605 Perimeter.

* * * * *

(b) *Classification.* (1) Class I for manual perimeter. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

24. In § 886.1650 by revising paragraph (b) to read as follows:

§ 886.1650 Ophthalmic bar prism.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

25. In § 886.1655 by revising paragraph (b) to read as follows:

§ 886.1655 Ophthalmic Fresnel prism.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

26. In § 886.1660 by revising paragraph (b) to read as follows:

§ 886.1660 Gonioscopic prism.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

27. In § 886.1665 by revising paragraph (b) to read as follows:

§ 886.1665 Ophthalmic rotary prism.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

28. In § 886.1700 by revising paragraph (b) to read as follows:

§ 886.1700 Pupillometer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

29. In § 886.1770 by revising paragraph (b) to read as follows:

§ 886.1770 Manual refractor.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

30. In § 886.1790 by revising paragraph (b) to read as follows:

§ 886.1790 Near-point ruler.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

31. In § 886.1800 by revising paragraph (b) to read as follows:

§ 886.1800 Schirmer strip.

* * * * *

(b) *Classifications.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

32. In § 886.1810 by revising paragraph (b) to read as follows:

§ 886.1810 Tangent screen (campimeter).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

33. In § 886.1840 by revising paragraph (b) to read as follows:

§ 886.1840 Simulatan (including crossed cylinder).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

34. In § 886.1860 by revising paragraph (b) to read as follows:

§ 886.1860 Ophthalmic instrument stand.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

35. In § 886.1870 by revising paragraph (b) to read as follows.

§ 886.1870 Stereoscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

36. In § 886.1880 by revising paragraph (b) to read as follows:

§ 886.1880 Fusion and stereoscopic target.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

37. In § 886.1905 by revising paragraph (b) to read as follows:

§ 886.1905 Nystagmus tape.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

38. In § 886.1910 by revising paragraph (b) to read as follows:

§ 886.1910 Spectacle dissociation test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

39. In § 886.4230 by revising paragraph (b) to read as follows:

§ 886.4230 Ophthalmic knife test drum.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

40. In § 886.4335 by revising paragraph (b) to read as follows:

§ 886.4335 Operating headlamp.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

41. In § 886.4350 by revising paragraph (b) to read as follows:

§ 886.4350 Manual ophthalmic surgical instrument.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

42. In § 886.4360 by revising paragraph (b) to read as follows:

§ 886.4360 Ocular surgery irrigation device.

* * * * *

(b) *Classification.* Class I. If the device does not directly contact the patient's body, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

43. In § 886.4445 by revising paragraph (b) to read as follows:

§ 886.4445 Permanent magnet.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

44. In § 886.4570 by revising paragraph (b) to read as follows:

§ 886.4570 Ophthalmic surgical marker.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

45. In § 886.4770 by revising paragraph (b) to read as follows:

§ 886.4770 Ophthalmic operating spectacles (loupes).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

46. In § 886.4855 by revising paragraph (b) to read as follows:

§ 886.4855 Ophthalmic instrument table.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

47. In § 886.5120 by revising paragraph (b) to read as follows:

§ 886.5120 Low-power binocular loupe.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

48. In § 886.5420 by revising paragraph (b) to read as follows:

§ 886.5420 Contact lens inserter/remover.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

49. In § 886.5540 by revising paragraph (b) to read as follows:

§ 886.5540 Low-vision magnifier.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

50. In § 886.5600 by revising paragraph (b) to read as follows:

§ 886.5600 Ptosis crutch.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

51. In § 886.5800 by revising paragraph (b) to read as follows:

§ 886.5800 Ophthalmic bar reader.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

52. In § 886.5810 by revising paragraph (b) to read as follows:

§ 886.5810 Ophthalmic prism reader.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

53. In § 886.5840 by revising paragraph (b) to read as follows:

§ 886.5840 Magnifying spectacles.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

54. In § 886.5844 by revising paragraph (b) to read as follows:

§ 886.5844 Prescription spectacle lens.

* * * * *

(b) *Classification.* Class 1. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

55. In § 886.5870 by revising paragraph (b) to read as follows:

§ 886.5870 Low-vision telescope.

* * * * *

(b) *Classification.* Class 1. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

56. In § 886.5910 by revising paragraph (b) to read as follows:

§ 886.5910 Image intensification vision aid.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

57. In § 886.5915 by revising paragraph (b) to read as follows:

§ 886.5915 Optical vision aid.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Dated: June 17, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-20050 Filed 9-1-87; 8:45 am]

BILLING CODE 4160-01-M

VOL
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ISS
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Wednesday
September 2, 1987

Part V

Office of Management and Budget

Budget Rescissions and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report two revised deferrals of budget authority now totaling $706,709,883.

The deferrals affect programs in the Departments of Agriculture and Health and Human Services.

The details of these deferrals are contained in the attached report.

Ronald Reagan.

The White House,
August 27, 1987.

BILLING CODE 3110-01-M

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CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Department Agriculture:	
	Forest Service:	
D87-4B	Cooperative work.....	535,791
	Department of Health and Human Services:	
	Social Security Administration:	
D87-57A	Limitation on administrative expenses (information technology systems).....	170,919
	Total, deferrals.....	706,710

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SUMMARY OF SPECIAL MESSAGES FOR FY 1987
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Sixth special message:		
Revisions to previous special messages.....	---	36,998
Effects of second special message.....	---	36,998
Amounts from previous special messages that are changed by this message (changes noted above).....	---	669,712
Subtotal, rescissions and deferrals.....	---	706,710
Amounts from previous special messages that are not changed by this message.....	5,835,751	10,787,865
Total amount proposed to date in all special messages.....	5,835,751	11,494,575

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D87-4B

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D87-4A transmitted to Congress on March 4, 1987.

This revision to a deferral of the Department of Agriculture, Forest Service, Cooperative work account, increases the amount previously reported from $535,274,663 to $535,790,883. This increase of $516,220 results from the deferral of actual recoveries of prior year obligations that cannot be used this year.

Deferral No: D87-4B

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture
Bureau:
Forest Service
Appropriation title and symbol:
Cooperative work 1/
12X8028
MB identification code:
12-8028-0-7-302
rant program:
[ ] Yes [X] No
ype of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority.....*$ 209,582,000
(16 U.S.C. 576b)
Other budgetary resources..* 548,322,883
Total budgetary resources..* 757,904,883
Amount to be deferred:
Part of year.....$ _____
Entire year.....* 535,790,883
Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____
Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: Funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work consists of protection and improvement of the National Forest System and it benefits the national forest users, research investigations, reforestation, and administration of private forest lands. Much of the work for which deposits have been collected cannot be done during the same year that the collections are being realized because of seasonality, scheduling, and extensive site preparation requirements. Examples include areas where the timber operators have not completed all of the contract obligations during the year funds are deposited. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-61).

* Revised from previous report.

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D87-57A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D87-57 transmitted to Congress on March 4, 1987.

This revision to a deferral for the Limitation on administrative expenses (information technology systems) account of the Social Security Administration in the Department of Health and Human Services increases the amount previously reported from $134,437,367 to $170,919,000. This net increase of $36,481,633 results from (1) the release and transfer of $18,000,000 to the regular limitation on administrative expenses account to fund the full cost of the January 1987 Federal pay raises (as required by the Supplemental Appropriations Act, 1987), (2) the recovery of $3,168,706 of prior year obligations that cannot be used this year, and (3) a net decrease of $51,312,927 in the planned program for 1987 due to cancellation of some projects, lower contract awards than anticipated, delays in awarding projected contracts, and small increases in other projects.

Deferral No: D87-57A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services

Bureau: Social Security Administration

Appropriation title and symbol:

Limitation on administrative expenses (information technology systems) 1/
75X8704

OMB identification code:

20-8007-0-7-651

Grant program:

[ ] Yes [X] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year _____ (expiration date)

[X] No-Year

New budget authority.....$ 225,398,000
(P.L. 99-500 & 99-591)

Other budgetary resources..*$ 199,604,773

Total budgetary resources..*$ 425,002,773

Amount to be deferred:
Part of year.....$ _____

Entire year.....*$ 170,919,000

Legal authority (in addition to sec. 1013):

[X] Antideficiency Act

[ ] Other * _____

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Justification: *This account funds the lease and purchase of ADP hardware and software, ADP supplies and contractual services, major telephone system procurement, and telephone lease and maintenance costs for the Social Security Administration (SSA). All planned projects and acquisitions for Information Technology Systems resources during 1987 can be accomplished at a cost of $254 million. Other available resources will not be required for obligation during the year. The deferred funds consist of accumulated savings from delays in project awards resulting from vendor protests and the actual timing of awards, revised project and acquisition plan timetables due to delays in project awards, and awards at lower than estimated cost based on competitive procurement. These funds are reserved pending the identification of new requirements. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

D87-57A

1/ Another limitation in this same account is also the subject of a deferral (D87-12A). This account was the subject of similar deferrals in 1986 (D86-28A, D86-39 and D86-40).

* Revised from previous report.

[FR Doc. 87-20221 Filed 9-1-87; 8:45 am]
BILLING CODE 3110-01-C

VOL 52 ISS 170 SE 2 1987 UMI

federal register

Wednesday
September 2, 1987

Part VI

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 38
Education Personnel; Proposed Rule

VOL
52
ISS
170
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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 38

Education Personnel

July 10, 1987.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking revises provisions of the existing regulations in 25 CFR Part 38, Education Personnel. This proposed revision sets forth the requirements of employment, discharge, and payment of teachers and other personnel in Bureau of Indian Affairs operated schools and agency education positions. It follows a new format and includes deletions, changes, and/or additions in language to clarify the current provisions and to make some substantive changes. These regulations also propose rulemaking for certain sections of the Indian Education Technical Amendments Act of 1985.

DATES: Comments must be received and/or postmarked on or before October 2, 1987.

ADDRESSES: Written comments should be directed to the Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs), Bureau of Indian Affairs, Department of the Interior, Room 3512N, 18th and "C" Streets, NW., Washington, DC 20240. If preferred, comments may be delivered to Room 3528, Main Interior Building, 18th & "C" Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: George D. Scott, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, Room 3528N, 18th and "C" Streets, NW., Washington, DC 20240, telephone number (202) 343–4872.

SUPPLEMENTARY INFORMATION: This proposed revised rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Background

The Bureau is reviewing, deleting, and revising selected parts of the Bureau's personnel regulations contained in Chapter I, Title 25, CFR Part 38, with the objective of reducing and/or eliminating obsolete and unnecessary regulatory requirements. This action is mandated by the Regulatory Flexibility Act and by the Department of the Interior Regulatory Flexibility Review Plan, which appeared in the **Federal Register** on April 19, 1984 (49 FR 15997). As stated in a notice published by the Department of the Interior in the **Federal Register** on October 22, 1984 (49 FR 41773), 25 CFR Part 38 is one of the sections scheduled for revision under the Department of the Interior plan. Accordingly, the revised Part 38 proposes revised guidelines for filling education positions, recruitment, employment and payment of teachers and other personnel in Bureau of Indian Affairs (BIA) operated schools and incorporates both current provisions and substantive changes. Section 38.14, Information collection was added recently to conform with 5 CFR Part 1320 by codifying such statements as part of its rules and as required by the Office of Management and Budget. Under the proposed revision, § 38.14 has been redesignated § 38.2 and § 38.14 has been designated as Voluntary services. The major changes from the present regulations are deletions of the requirements contained in: §38.6(g), Conditional appointment and (h), Short term contracts; § 38.8, Entitlement of educators to compensation; § 38.9, Payment of compensation to educators; and § 38.10(g), Mid-term review with school boards.

In addition, these regulations provide for the proposed implementation of sections 511 and 512 of Pub. L. 98–511 and sections 8 and 9 of Pub. L. 99–89, the Indian Education Technical Amendments Act of 1985. Sections 511 and 8 of Pub. L. 98–511 and Pub. L. 99–89 respectively, provide for volunteer services in BIA schools to provide more services to Indian students. This is a positive way of including members of the Indian community and the public at large in the education process of Indian children.

Sections 512 and 9 of Pub. L. 98–511 and Pub. L. 99–89 respectively, pro rata of pay, provide for the employee, at his or her election, to be paid on a 12 month basis or only for those months while school is in session. The 12 month pay schedule provides an employee currently in an education position a steady salary over a 12 month period.

Sections 512 and 9 of Pub. L. 98–511 and Pub. L. 99–89 respectively, extracurricular activities, provide employees a stipend in lieu of overtime pay or compensatory time off. This provision provides more incentive for employees to perform additional activities and to provide additional services to students to support the school's academic and social programs.

Throughout the revision, editorial changes are made the clarify and simplify the language contained in the present education personnel regulations in Part 38. Because of the numerous amendments made throughout Part 38, the entire proposed rulemaking document is being published rather than describing amendments by using the words of issuance and amendatory language procedure.

The Policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule revisions to the location identified in the addresses section of this preamble.

The Department of the Interior has determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The information collection requirement contained in § 38.5 uses Standard Form 171 for collection which has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 3206.0012. The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirement contained in § 38.14 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0116.

The principal authors of this proposes rulemaking are Ms. Betty Walker, Education Programs Administrator, Minneapolis Area Office, and Mr. Larry Holman, Agency Superintendent, for Education, Eastern Navajo Agency.

List of Subjects in 25 CFR Part 38

Indians—education, Teachers.

For the reasons set out in the preamble, Title 25, Chapter I, Part 38 is proposed to be revised to read as follows:

PART 38—EDUCATION PERSONNEL

Sec.

38.1 Scope.
38.2 Information collection.
38.3 Definitions.
38.4 Education positions.
38.5 Qualifications for educators.
38.6 Basic compensation for educators and education positions.
38.7 Appointment of educators.

Sec.
38.8 Nonrenewal of contract.
38.9 Discharge of educators.
38.10 Conditions of employment of educators.
38.11 Length of the regular school term.
38.12 Leave system for education personnel.
38.13 Status quo employees in education positions.
38.14 Voluntary services.

Authority: Secs. 1131 and 1135 of the Act of November 1, 1978 (92 Stat. 2322 and 2327, 25 U.S.C. 2011 and 2015); secs. 511 and 512 of Pub. L. 98–511; and Secs. 8 and 9 Pub. L. 99–89 (Indian Education Technical Amendments Act of 1985).

§ 38.1 Scope.

(a) *Primary scope.* This part applies to all individuals appointed or converted to contract education positions as defined in § 38.3 in the Bureau of Indian Affairs after November 1, 1979. This part applies to elementary and secondary school positions and agency education positions.

(b) *Secondary scope.* Section 38.13 applies to employees with continuing tenure in both the competitive and excepted service who encumber education positions.

§ 38.2 Information collection.

(a) The information collection requirements contained in § 38.5 use Standard Form 171 for collection, and have been approved by OMB under 25 U.S.C. 2011 and 2015 and assigned approval number 3206–0012. The sponsoring agency for the Standard Form 171, is the Office of Personnel Management. The information is being collected to determine eligibility for employment. The information will be used to rate the qualifications of applicants for employment. Response is mandatory for employment.

(b) The information collection requirement for § 38.14, Voluntary Services has been approved by the Office of Management and Budget under 44 U.S.C. *et seq.* and assigned clearance number 1076–0116. The information is being collected to determine an applicants eligibility and selection for appropriate volunter assignments. Response is voluntary.

§ 38.3 Definitions.

As used in this part, the term:

"Agency" means the current organization unit of the Bureau, which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes.

"Agency school board" as defined in section 1139(1), of Pub. L. 95–561, means a body, the members of which are appointed by the school boards of the schools located within such Agency. The number of such members shall be determined by the Director in consultation with the affected tribes. In Agencies serving a single school, the school board of that school shall function as the Agency School Board.

"Agency Superintendent for Education" (ASE) means the Bureau official in charge of education functions at an Agency Office and to whom the school supervisor(s) and other educators under the Agency's jurisdiction, report.

"Area Education Programs Administrator" (AEPA) means the Bureau official in charge of Bureau education programs and functions in a Bureau Area Office, who is responsible for off-reservation residential schools, and, in some cases, peripheral dormitories and on-reservation day schools not receiving services from the Agency Superintendent for Education.

"Assistant Secretary" means the Assistant Secretary for Indian Affairs of the Department of the Interior.

"Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

"Consult", as used in this part and provided in section 1131(d)(1) (B) and (C) of Pub. L. 95–561, means providing pertinent information to and being available for discussion with the school board, giving the school board the opportunity to reply and giving due consideration to the school board's response, subject to appeal rights provided in § 38.7 (a), (b) and (c), and § 38.9(e)(3).

"Director" means the Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs) in the Bureau.

"Discharge" means the separation of an employee during the term of the contract.

"Education function" means the administration and implementation of the Bureau's education programs and activities (including school operations).

"Education position", as defined in section 1131(n)(1) of Pub. L. 95–561, means a position in the Bureau the duties and responsibilities of which:

(1) Are performed on a school term basis principally in a Bureau elementary and secondary school which involve:

(i) Classroom or other instruction or the supervision or direction of classroon or other instruction;

(ii) Any activity (other than teaching) that requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education; or

(iii) Any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(2) Are performed at the Agency level of the Bureau and involve the implementation of education-related Bureau programs. The position of Agency Superintendent of Education is excluded.

"Educator", as defined in section 1131(n)(2) of Pub. L. 95–561 means an individual whose services are required, or who is employed, in an education position as defined in § 38.3

"Employment contract" means a signed agreement executed by and between the Bureau and the individual employee hired or converted under this part, that specifies the position title, period of employment, and compensation attached thereto.

"Involuntary change in position" means the release of an employee from his/her position instigated by a change in program or other occurrence beyond the control of the employee.

"Local school board", as used in this part and defined in section 1139(7) of Pub. L. 95–561, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, the body elected by the parents of the Indian children attending a Bureau-operated school. In schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected and the number of such members shall be determined by the Director in consultation with the affected tribes.

"School board" means an Agency school board or a local school board.

"School supervisor" means the Bureau official in charge of a Bureau school who reports to an Agency Superintendent for Education. In the case of an off-reservation residential school(s), and, in some cases, peripheral dormitories and on-reservation day schools, the school supervisor shall report to the Area Education Programs Administrator.

§ 38.4 Education positions.

(a) The Director shall establish the kinds of positions required to carry out the Bureau's education function. No position will be established or continued for which:

(1) Funds are not available; or

(2) There is not a clearly demonstrable need and intent for it to carry out an education function.

(b) Positions established for regular school operations will be restricted to school term or program duration. Particular care shall to taken to insure that year-long positions are not

established unless they are clearly required and involve essential 12-month assignments.

§ 38.5 Qualifications for educators.

(a) *Qualifications related to positions.* Job qualification requirements shall be at least equivalent to those established by the appropriate licensing and certification authorities of the State in which the position is located.

(b) *Qualifications related to individuals.* An applicant for an education position must establish that he/she meets the requirements of the position by submitting an application and a college transcript, as appropriate, to the local school supervisor, Agency Superintendent for Education (ASE), or Director and appearing for an interview if requested by the official involved. The applicant's education and experience will be subject to verification by the ASE or the Area Education Programs Administrator (AEPA). Employees who falsify experience and employment history may be subject to disciplinary action or discharge from the position to which he/she is appointed.

(1) School boards may waive formal education and State certification requirements for tribal members who are hired to teach tribal culture and language.

(2) Tribal members appointed under this waiver may not have their basic pay rate set higher than the rate paid to qualified educators in teaching positions at that school.

(c) *Identification of qualified individuals.* The Director shall require each ASE, AEPA, and other appropriate local officials in the education program organization to maintain lists of qualified and interviewed applicants for each of the kinds of established positions. Applications on file shall be purged annually. Applicants whose qualifications are established and who indicated an interest in working in specified locations will be included on those local applicant lists. The Director shall maintain a national list of qualified applicants for each of the kinds of positions established. Applicants whose qualifications are established and who either do not indicate an interest in a specific location or indicate and interest in working any location will be entered on the national list. The national list is a secondary source of applicants.

(d) *Special recruitment and training for Indian educators.* The Director reviews annually the Bureau's "Recruitment of Indian Educators Program" and updates as necessary. The Director's training program describes opportunities for advancement and defines steps required for promotion from within the Bureau and includes a listing of opportunities for acquiring work experience prior to an actual work assignment.

§ 38.6 Basic compensation for educators and education positions.

(a) *Schedule of basic compensation rates.* The Director shall establish a schedule for each pay level specified in 62 Bureau of Indian Affairs Manual (BIAM). The schedule will be revised at the same time as and be consistent with rates in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions.

(b) *Range of pay rates for positions within pay levels.* The range of basic compensation rates for positions assigned to each pay level will be consistent with the General Schedule rates that would otherwise be applicable if the position were classified under Chapter 51 of Title 5 U.S.C. The maximum pay shall not exceed step 10 of the comparable General Schedule position by more than ten percent.

(c) *Adjusting employee basic compensation rates.* (1) Adjustments in an employee's basic compensation made in connection with each contract renewal will be based on the following:

(i) Contract renewal incentive—one pay increment for each renewal, not to exceed four increments, unless the educator is covered by a negotiated labor union agreement.

(ii) Performance—employees whose performance is rated "above sastisfactory," one pay increment; employees whose performance is rated "outstanding," two pay increments.

(2) Pay increments based on education may be awarded as outlined in 62 BIAM.

(d) *Special additions to basic compensation.* The Director is authorized to establish the following special additions to rates of basic compensation:

(1) The Director may authorize payment of a staffing differential not exceeding 25 per centum of the rate of basic compensation based on a formally-documented request by an ASE or AEPA. Such a staffing differential shall only be authorized in writing when the Director determines that:

(i) It is warranted by the geographic isolation of the work site or other unusually difficult environmental working or living conditions and/or

(ii) It is necessary as a recruitment or retention incentive. This staffing differential is to be computed on the basic schedule rate before any other additions are computed.

(2) Special rates may be established for recruitment and retention applicable only to a specific position or to specific types of position in specific locations based on a formally documented request by an ASE or AEPA and submitted to the Director for approval.

(e) *Payment of compensation to educators.* This section applies to those individuals employed under the provisions of section 1131(m) of Pub. L. 95–561 or Title 5, United States Code.

(1) *Pay periods.* Educators shall be paid on the basis of biweekly pay period during the term of the contract. Chapter 55 of Title 5 U.S.C. applies to the administration of pay for educators, except that section 1131(m) of Pub. L. 95–561 provides that 5 U.S.C. 5533 does not apply with respect to the receipt of pay by educators during summer recess under certain circumstances.

(2) *Pay for contract educators.* When an educator is appointed, payment under the contract is to begin as of the effective date of the contract. If an educator resigns or is discharged before the expiration of the term of the contract, pay ceases as of the date of resignation or discharge.

(3) *Prorating of pay.* Up to 30 days prior to the beginning of the academic school term, each educator must elect whether to have the annual contractual rate or basic pay prorated over the contractual academic school term, or to have the basic pay prorated over a 12 month period.

(i) Each educator may change such election once during the academic school term, provided notice is given two weeks prior to the end of the fifth month after the beginning of the academic school term.

(ii) An educator who elects a 12 month basis of prorate pay may further elect to be paid on one lump sum at the end of the academic school term for the then remaining amount of rate of basic pay otherwise due, provided notice is given four weeks prior to the end of the academic school term.

(iii) No educator shall suffer a loss of pay or benefits because of elections made under this section.

(4) *Stipends for extracurricular activities.* An employee, if assigned to sponsor an approved extracurricular activity, may elect annually at the beginning of the contract to be paid a stipend in lieu of overtime premium pay or compensatory time when the employee performs additional activities to provide services to students or otherwise support the school's academic and social programs.

(i) The Director is authorized to establish a schedule of stipends for each Bureau Area, taking into consideration types of activities to be compensated

and payments provided by public school districts in or near the area.

(ii) The stipend shall be a supplement to the employee's base pay and is not a part of salary for retirement computation purposes.

(iii) The employee may elect annually at the beginning of the contract to be paid the stipend either in equal payments over the period of the extracurricular activity or in equal payments paid each pay period the employee is in pay status.

§ 38.7 Appointment of educators.

(a) *Local school employees.* Local Bureau school employees shall be appointed only by the school supervisor. Before the local school employee is employed, the school board shall be consulted. An individual's appointment may be finalized upon receipt of a formal written determination certified by the local school board under such uniform procedures as it may adopt. Written determination by the school board should be received within a reasonable period, not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The local school board shall use the same written procedure to disapprove an appointment. The school supervisor may appeal to the ASE, or, where appropriate, to the AEPA, any determination by the local school board concerning an individual's appointment. A written statement of appeal describing the action and the reasons the supervisor believes such action should be overturned must be filed within 10 days of receipt of the action from the local school board. A copy of such statement shall be submitted to the school board and the board shall be afforded an opportunity to respond, not to exceed 10 calendar days, in writing, to the appeal. After reviewing such written appeal and response, the ASE or AEPA may, for cause, overturn the action of the local school board. The ASE or AEPA must transmit the determination of the appeal (in the form of a written opinion) to the board and to the supervisor identifying the reasons for overturning the action 10 calendar days. Failure to act within the 10 calendar day period shall have the effect of approving the local school board's determination.

(b) *School supervisors.* School supervisors may be appointed only by the ASE, except the AEPA shall appoint school supervisors for off-reservation boarding schools and those few other schools supervised by the AEPA. The school board shall be consulted before the school supervisor is employed. The appointment may be finalized upon receipt of a formal written determination certified by the school board under any uniform procedures as it may adopt. Written determination by the school board shall be received within a reasonable period, not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The school board shall use the same procedure to disapprove an appointment. Within 20 calendar days of receipt of any determination by the school board concerning an individual's appointment, the ASE or AEPA, as appropriate, may appeal to the Director by filing a written statement describing the determination and the reasons the supervisor believes the determination should be overturned. A copy of the statement shall be submitted to the local school board and the board shall be afforded an opportunity to respond, within 10 calendar days, in writing, to such appeal. The Director may reverse the determination for cause set out in writing to the school board. Within 20 calendar days of the school board's response, the Director shall transmit the determination of the appeal (in the form of a written opinion) to the board and to the ASE or AEPA identifying the reasons for overturning the determination. Failure by the Director to act within the 20 calendar day period shall have the effect of approving the school board's determination.

(c) *Agency office education program employees.* Appointments to Agency office education positions may be made only by the ASE. The Agency school board shall be consulted before the agency education employee is employed, and the appointment may be finalized upon receipt of a formal, written determination certified by the Agency school board under any uniform procedures as it may adopt. Written determination by the school board shall be received within a reasonable period, not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The Agency school board shall use the same written procedure to disapprove an appointment. Within 20 calendar days of receipt of any determination by the school board concerning an individual's appointment, the ASE may appeal to the Director by filing a written statement describing the determination and the reasons the supervisor believes the determination should be overturned. A copy of the statement shall be submitted to the Agency school board and the board shall be afforded an opportunity to respond, within 10 calendar days, in writing, to such appeal. After reviewing the written appeal and response, the Director may, for cause, overturn the determination of the Agency school board. Within 20 days of the board's response, the Director shall transmit the determination of the appeal (in the form of a written opinion) to the board and to the ASE identifying the reasons for overturning the determination. Failure by the Director to act within the 20 calendar day period shall have the effect of approving the school board's determination.

(d) *Employment contracts.* The Bureau shall issue employment contracts each year for individuals employed in contract education positions at the Agency or school levels.

(e) *Absence of local school boards.* Where a local school board has not been established in accordance with section 1139(7) Pub. L. 95–561 with respect to a Bureau school, or where a school board is not operational, and the local school board is required to be given a notice or required to be consulted by statute or these regulations, the official involved shall notify or consult with the Agency school board serving the tribe(s) to which the parents of the Indian children attending that school belong, or, in that absence, the tribal organization(s) of the tribe(s) involved.

(f) *Provisional contracts.* Provisional certification or other limited certificates from the state is not considered full certification and only a provisional contract may be issued. There may be circumstances when no individual who has met the full certification or experience requirements is available for a professional position or when a status quo employee who does not meet full certification or experience requirements desires to convert the contract. When this situation exists, a provisional contract may be issued in accordance with the following:

(1) The contract will be made only:

(i) After it is determined that an individual already meeting certification or experience requirements is not available; or

(ii) For conversion of a status quo employee who does not yet meet all established position requirements.

(2) Consultation with the appropriate school board is required prior to the contract.

(3) The contract may be of 12 month or school term duration.

(4) The employee will be required to make satisfactory progress toward meeting full qualification requirements.

(5) If the employee fails to meet the requirements established under § 38.7(f)(4), the contract will be terminated. Such termination cannot be grieved or appealed.

(g) *Conditional appointment.* As provided in section 1131(d)(4), Pub. L. 95–561, if an individual who has applied at both the national and local levels is appointed from a local list of applicants, the appointment shall be conditional for 90 days. During that period, the individual's application and background shall be examined to determine if there is a more qualified individual for the position. Removal during this period is not subject to discharge, hearing or grievance procedures.

(h) *Short term contracts.* (1) There may be circumstances where immediate action is necessary and it is impossible to consult with the local school board. When this situation exists short term contracts may be made by the school supervisor in accordance with the following:

(i) The length of the contract will not exceed 60 days, or the next regularly scheduled school board meeting, whichever comes first.

(ii) If the board meets and does not take action on the individual in question, the short term contract may be extended for the duration of the school year.

(iii) It shall be the responsibility of the school supervisor to fully inform the local school board of all such short term contracts. Failure to do so may be cited as reason to discharge the school supervisor if so requested by the board.

(2) The local school board may authorize the school supervisor to make an emergency short term contract to classroom, dormitory and other positions directly related to the health and safety of students. When this situation exists short term contracts may be made in accordance with the following:

(i) If local and agency lists of qualified applicants are exhausted, short term contracts may be made without regard to qualifications for the position;

(ii) The pay level will be based on the qualifications of the individual employed rather than the requirements of the position;

(iii) The short term contract may not exceed the school term and may not be renewed or extended:

(iv) Every 60 days the school supervisor will determine if qualified individuals have been placed on the local or agency lists. If a qualified individual on the list accepts employment, the school supervisor must terminate the emergency appointment at the time the qualified individual is appointed.

(i) *Waiver of Indian preference.* As provided in section 1131(f)(1) of Pub. L. 95–561. "Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action within the purview of this section respecting an employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action, where such a waiver is in writing deemed to be a necessity by the tribal organization, except that this shall in no way relieve the Bureau of its responsibility to issue timely and adequate announcements and advertisements concerning any such personnel action if it is intended to fill a vacancy (no matter how such vacancy is created)." Waivers shall apply only to Federal employees. When a waiver is granted, it shall apply only to that particular position and as long as the employee remains in that position.

(j) *Prohibited reappointment.* An educator who voluntarily terminates employment before the end of the school term may not be appointed to another Bureau education position before the beginning of the following school term. An educator will not be deemed to have voluntarily terminated employment if transferred elsewhere with the consent of the local school or Agency boards.

(k) *Contract renewals.* The appropriate school board shall be notified in writing by the school supervisor and/or ASE or AEPA not less than 90 days before the end of the school term whether or not an individual's contract is recommended for renewal.

(1) If the school board disagrees with the school supervisor's or ASE's recommendations, the board will submit a formal, written certification of its determinations to the school supervisor or ASE within 25 days. If the boards determinations are not received within the 25 days, the school supervisor or ASE shall issue the required 60 day notification of renewal or nonrenewal to the individual under § 38.8.

(2) When the school board submits its determination within the 25 days and determines that a contract will be renewed, the appropriate official shall issue the required renewal notice. If the determination is that the contract will not be renewed, the procedures specified in § 38.8 shall apply.

§ 38.8 Nonrenewal of contract.

Where the determination is made that an employee's contract shall not be renewed for the following year the following procedure will apply:

(a) The employee will be given a written notice of the action and the reasons therefor not less than 60 days before the end of the school term.

(b) The employee will be given 10 calendar days to request an informal hearing before the appropriate official or body. Upon request, the employee may be given official time, not to exceed eight hours, to prepare a written response to the reason(s).

(c) If so requested, an informal hearing shall be held within 30 calendar days of the receipt of the request.

(d) The appropriate official or body will render a written determination within seven calendar days after the informal hearing.

(e) The employee has a right to request an administrative review by the ASE of the determination within 10 calendar days of that determination. The ASE then has 20 calendar days to render a final decision. Where the employee is the supervisor of the school or an agency education employee, any appeal of the ASE would be addressed to the Director for a decision. If the Director or ASE's decision overturns the appropriate official or bodies determination, the appropriate official or body will be notified of the reasons in writing. Failure by the Director or ASE to act within the 20 days will sustain the determination. This completes the administrative appeal process.

(f) Failure of any of the parties to meet the requirements of the above procedures will serve to negate the particular action sought by the negligent party.

(g) The above procedures only apply to employees who have completed 36 months of continuous service under consecutive contract appointments and satisfactory performance in the same or comparable education position.

(h) For those employees with less than 36 months of consecutive contract appointment, nonrenewal of a contract will be considered a continuation of the examining process. This action cannot be appealed.

(i) Independently of the procedures outlined in this section, the school supervisor, or the Agency Superintendent for Education for applicable positions, shall be required to submit to the Agency Superintendent for Education or appropriate higher authority all nonrenewal actions. Within 60 days, the Agency Superintendent for Education, shall review the nonrenewal actions and may overturn the determination of nonrenewal. In the event that the Agency Superintendent

for Education makes a decision to overturn the school board determination, the ASE shall notify the school board in writing of his/her reasons for doing so.

(j) No more than the substantial standard of evidence shall be required to sustain the nonrenewal.

(k) A procedural error shall not be grounds for overturning a determination of nonrenewal unless the employee shows harmful error in the application of the agency's procedures in arriving at such decision. For purpose of this section, "harmful error" means error by the agency in the application of its procedures which, in the absence or cure of the error, might have caused the agency to reach a conclusion different than the one reached. The burden is upon the appellant to show that based upon the record as a whole the error was harmful, i.e., caused substantial harm or prejudice to his/her rights.

(l) Nonrenewal of a contract is not discharge and will not follow the discharge procedures. The individual contract shall be subject to valid provisions of any collective bargaining agreement only during the term of the contract.

§ 38.9 Discharge of educators.

(a) *Discharge for cause.* Educators covered under the provision of this section are excluded from coverage under 5 U.S.C. 7511 and 4303. In order to provide due process for educators, the Director shall publish in 62 BIAM representative conditions that could result in the discharge of educators for cause and procedures to be followed in discharge cases.

(b) *Discharge for inadequate performance.* Action to remove educators for inadequate performance will be taken for failure to meet performance standards established under 5 U.S.C. 4302. Performance standards for all educators will include, among others, lack of student achievement. Willful failure to exercise properly assigned supervisory responsibilities by supervisors shall also be cause for discharge.

(c) *Other discharge.* The Director shall publish in 62 BIAM a description of the budgetary and program conditions that may result in the discharge of educators for other than cause during the school term. The individual's personnel record will clearly reflect that the action taken is based upon budgetary or program restraints and is not a reflection on the employee's performance.

(d) *Procedures for discharge for cause.* The Director shall publish in 62 BIAM the procedural steps to be followed by school supervisors and ASE's in discharge for cause cases. These procedures shall provide (among other things) for the following:

(1) The educator to be discharged shall receive a written notice of the proposal, specifying the causes or complaints upon which the proposal is based, not less than 30 calendar days before the discharge. However, this shall not prohibit the exclusion of the individual from the education facility in cases where exclusion is required for the safety of the students or the orderly operation of the facility.

(2) A reasonable time, but not less than 10 calendar days, will be allotted for the individual to make written and/or oral responses to the charge.

(3) An opportunity will be afforded the individual to review the material relied upon to support the charge.

(4) Official time, not to exceed eight hours, will be provided to the individual to prepare a response to the charge.

(5) The educator may elect to have a representative and shall furnish the identity of any representative to the ASE. The ASE may disallow, as an employee representative, any individual whose activities as a representative would cause a conflict of interest or position, or an employee whose release from his or her official position would give rise to unreasonable costs to the Government, or when priority work assignment precludes his or her release from official duties. The terms of any applicable collective bargaining agreement and 5 U.S.C. 7114(a)(5) shall govern representation of employees in an exclusive bargaining unit.

(6) The individual has a right to a final decision made by the appropriate level of supervision.

(7) The individual has a right to appeal the final decision and have the merits of the case reviewed by a Departmental official not previously involved in the case. This right includes entitlement to a hearing upon request under procedures in accordance with the requirements of due process under section 1131(e)(1)(B) of Pub. L. 95–561.

(e) *School board action.* (1) The appropriate school board shall be notified as soon as possible, but in no case later than 10 calendar days from the date of issue of the notice of intent to discharge.

(2) The appropriate school board, under any uniform procedure as it may adopt, may issue a formal written certification to the school supervisor, ASE, or AEPA either approving or disapproving the discharge before the expiration of the notice period and before actual discharge. Failure to respond before the expiration of the notice period will have the effect of approving the discharge.

(3) The school supervisor initiating a discharge action may appeal the board's determination to the ASE or AEPA within 10 calendar days of receipt of the board's notice. The ASE or AEPA initiating a discharge may appeal the board's determination to the Director within 10 calendar days of receipt of the board's notice. Within 20 calendar days following the receipt of an appeal, the reviewing official may, for good cause, reverse the school board's determination by a notice in writing to the board. Failure to act within 20 calendar days shall have the effect of approving the board's determination.

(f) *School board recommendations for discharge.* School boards may recommend in writing to school supervisors, ASE's, AEPA's, and the Director that individuals in the education program be discharged. These written recommendations may follow any procedures formally established internally by the school board or tribal government. However, the written recommendations must contain specific causes or complaints that may be verified or established by investigation of factual situations. The official receiving a board recommendation for discharge of an individual shall acknowledge the recommendation in writing within 10 calendar days of receipt and proceed with a fact finding investigation. The official who finally disposes of the recommendation shall notify the school board of the disposition in writing within 60 calendar days of initiation of the fact finding investigation.

§ 38.10 Conditions of employment of educators.

(a) *Supervision not delegated to school boards.* School boards may not direct, control, or interrupt the day-to-day activities of BIA employees carrying out Bureau-operated education progams.

(b) *Employee handbook.* Employee handbook and recruiting guides shall be developed by each local school or agency to provide specific information regarding:

(1) The working and hiring conditions for various tribal jurisdictions and Bureau locations;

(2) The need for all education personnel to adapt to local situations; and

(3) The requirement of all education personnel to comply with and support duly adopted school board policies, including those relating to tribal culture or language.

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(c) *Contract renewal notification.* Employees will be notified 60 calendar days before the end of the school term whether or not their contracts are to be renewed. If an individual's contract is to be renewed, the individual must agree in writing to serve for the next school term. This agreement must be received within 14 calendar days of the date of the notice in order to complete the contract renewal. If this agreement is not received by the fourteenth day, the employee has voluntarily forfeited his or her right to continuing employment. If an individual agrees to serve for the next school term and fails to report for duty at the beginning of the next school term, the contract will be terminated and the individual's future appointment will be subject to the restriction in § 38.7(j) of this part.

(d) *Dual compensation.* An employee accepting a renewal of a school term contract may be appointed to another federal position during the school recess period without regard to the dual compensation regulations in 5 U.S.C. 5533.

(e) *Discrimination complaints.* Equal Employment Opportunity (EEO) procedures established under 29 CFR 1613 are applicable to contract employees under this part. It is the policy of the BIA that all employees and applicants for employment shall be treated equally when considered for employment or benefits of employment, regardless of race, color, sex, religion, national origin, age, or mental or physical health (handicap), within the parameters of Indian preference.

(f) *Grievance procedures.* The Director shall publish in 62 BIAM procedures for the rapid and equitable resolution of grievances.

(g) *Performance evaluation.* The minimum number of times a supervisor shall meet with an employee to discuss performance and suggest improvements shall be once every three months for the educator's first year at a school or Agency, and twice annually thereafter during the school term.

§ 38.11 Length of the regular school term.

The length of the regular school term shall be at least 180 student instructional days, unless the Bureau-operated school has entered into a cooperative agreement with a public school district. The cooperative agreement shall establish the minimum student instructional days.

§ 38.12 Leave system for education personnel.

(a) *Full-time school term employees.* Employees on a full-time school term contract are authorized the following types of leave:

(1) *Personal leave.* A school-term employee will receive 28 hours of personal leave to be used for personal reasons and 12 hours of emergency leave. This leave only accrues provided the length of the contract exceeds 24 weeks.

(i) The school-term employee will request the use of this leave in advance when it is for personal use or personal business (e.g., going to bank, etc.). When this leave is requested for emergency purposes (e.g., death in immediate family), it will be requested immediately after the emergency is known by the employee and before leave is taken.

(ii) Final approval rests with the supervisor. This leave shall be taken only during the school term. No compensation for or carryover of unused leave is authorized.

(2) *Sick leave.* Sick leave is an absence approved by the supervisor for incapacity from duty due to injury or illness, not related to or incurred on-the-job and not covered by the Federal Employee's Compensation Act Regulations.

(i) Sick leave shall accrue at the rate of four hours each biweekly pay period in pay status during the term of the contract; and no precredit or advance of sick leave is authorized.

(ii) Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(3) *School vacation time.* School term employees may receive up to 136 hours of school vacation time for use when school is not in session. Approval for the use of this time will be administratively determined by the school supervisor, ASE or AEPA, and this vacation time may not be scheduled before the first day of student instruction or after the last day of student instruction. All school vacation time for school term employees will be approved at the convenience of the program and not as a right of the employee. It cannot be paid for or carried over if the employee is required to work during the school vacation time or if the program will not permit school term employees to take such vacation time.

(b) Leave for full-time year-long employees. Employees who are on a full-time, year-long contract are authorized the following types of leave:

(1) *Vacation Leave.* Absence approved in advance by the supervisor for rest and relaxation or other personal reasons is authorized on a per year basis of Federal Government service as follows: years 1 and 2 of employment—120 hours; years 3–5 of employment—160 hours; 6 or more years—200 hours. The supervisor will determine when vacation leave may be used. Vacation leave is to be scheduled and used to the greatest extent possible during periods when school is not in session and the students are not in the dormitories. Vacation leave is credited to an employee on the day following his or her date of employment, provided the length of the contract exceeds 24 weeks. An employee may carry into succeeding years up to 200 hours of vacation leave. Leave unused at the time of separation is forfeited.

(2) *Sick leave.* Sick leave accumulation and use is authorized on the same basis as for school term employees under § 38.12(a)(2) of this part.

(c) Leave for part-time year-long employees. Employees who are on part-time, year-long contracts exceeding 20 hours per week are authorized the following types of leave:

(1) *Vacation leave.* Absence approved in advance by the supervisor for rest and relaxation or other personal reasons is authorized on a per year basis of Federal Government service as follows: years 1 and 2 of employment—60 hours; years 3–5 of employment—80 hours; 6 or more years—100 hours. The supervisor shall determine when vacation leave may be used. Vacation leave is to be scheduled and used to the greatest extent possible during periods when school is not in session and the students are not in the dormitories. Vacation leave is credited to an employee on the day following his or her date of employment provided the length of the contract exceeds 24 weeks and may not be accumulated in excess of 100 hours from year to year. An employee may carry over up to 100 hours from one contract year to the next. Leave unused at the time of separation is forfeited.

(2) *Sick leave.* Sick leave is accumulated on the basis of three hours each bi-weekly pay period in pay status; no precredit or advance of sick leave is authorized. Accumulated sick at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(d) Leave for school term employees on a part-time work schedule in excess of 20 hours per week. (1) Employees on a part-time work schedule in excess of 20 hours per week may receive a maximum of 102 hours of school vacation time; 18 hours of personal leave; and 63 hours of sick leave accrued at three hours per pay period for the first 21 pay periods of their contracts. Personal leave only accrues provided the length of the contract exceeds 24 weeks.

(2) The part-time employee will request the use of this leave in writing in advance when it is for personal use or personal business (e.g., going to bank, etc.). When this leave is requested for emergency purposes (e.g., death in immediate family), it will be requested immediately after the emergency is known by the employee and before leave is taken.

(3) Final approval rests with the supervisor. This leave shall be taken only during the school year. No compensation for or carryover of unused leave is authorized.

(4) *Sick leave.* Sick leave is an absence approved by the supervisor for incapacity from duty due to injury or illness, not related to or incurred on-the-job and not covered by the Federal Employee's Compensation Act Regulations.

(i) Sick leave shall accrue at the rate of three hours each biweekly pay period in pay status for the first 21 pay periods of their contract; no precredit or advance for sick leave is authorized.

(ii) Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(5) School vacation time. Part-time employees may receive up to 102 hours of school vacation time for use when school is not in session. Approval for the use of this time will be administratively determined by the school supervisor, ASE or AEPA, and this time may not be scheduled before the start of school or after the end of school.

(i) All school vacation time for part-time employees will be approved at the convenience of the program and not as a right of the employee.

(ii) Vacation time cannot be paid for or carried over for a part-time employee if the employee is required to work during the school vacation time or if the program will not permit part-time employees to take such vacation time.

(e) Accountable absences for all contract employees. The following are considered accountable absences:

(1) *Approved absence.* If prescheduled and approved by the school supervisor, ASE or AEPA, as appropriate, an employee may be on leave without pay.

(2) *Absence without leave.* Any absence that is not prescheduled or approved in advance or excused by the supervisor is considered absence without leave.

(3) *Court and military leave.* Employees are entitled to paid absence for jury or witness service and military duty as a member of the National Guard or Reserve under the same terms or conditions as outlined in Sections 6322 and 6323 of Title 5 U.S.C., and corresponding provisions of the Federal Personnel Manual, when the absence occurs during the regular contract period. Employees may be requested to schedule their military leave at times other than when school is in session.

(4) *Administrative leave.* Administrative leave is an excused absence from duty administratively authorized without loss of pay or without charge to leave. This leave is not a substitute for other paid or unpaid leave categories. Administrative leave usually is authorized on an individual basis except when a school is closed or a group of employees is excused from work for a particular purpose. The school supervisor, ASE or AEPA will grant administrative leave; a school closing must be approved by the ASE or AEPA.

(f) Educators serving with contracts with work weeks of 20 hours a week or less are not eligible for any type of paid leave.

(g) For school term educators, no paid leave is earned nor may accumulated leave be used during any period of employment with the Bureau between school terms.

(h) Employees issued contracts for intermittent work are not eligible for any type of paid leave.

(i) Leave transferred in. Annual leave credited to an employee's accrued leave balance immediately before conversion to a contract education position or appointment under this part will be carried over and made available to the employee. Sick leave credited to an employee's accrued sick leave balance immediately before conversion to a contract education position or appointment under this part shall be credited to the employee's sick leave account under the system in § 38.12(a)(2) and (b)(2).

§ 38.13 Status quo employees in education positions.

(a) *Status quo employees.* Individuals who were Bureau employees on October 31, 1979, with an appointment in either the competitive or excepted service without time limitation, and who are serving in an education position, shall be continued in their positions under the terms and conditions of that appointment with no change in their status or positions. Such employees are entitled to receive any changes in compensation attached to the position. Although such employees occupy "education positions" as defined in this part, the terms and conditions of their appointment, status, and entitlements are determined by competitive service regulations and procedures. Under applicable procedures, these employees are eligible for consideration for movement to other positions that are defined as "contract education" positions. Such movement shall change the terms and conditions of their appointment to the terms and conditions of employment established under this part.

(b) *Conversion of status quo employees to contract positions.* Status quo employees may request in writing to the school supervisor, ASE or AEPA, as applicable, that their position be converted to contract. The appropriate school board will be consulted and a determination made by such school board whether such individual should be converted to a contract employee.

(1) Written determination by the school board should be received within a reasonable period, but not to exceed 30 days from receipt of the request. Failure of the school board to act within this period shall have the effect of disapproving the proposed conversion.

(2) With school board approval, an involuntary change in position shall not affect the current status of status quo education employees.

§ 38.14 Voluntary services.

(a) *Scope.* An ASE or AEPA may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau schools from the private sector, including individuals, groups, or students. Voluntary service shall be for all non-hazardous activities where public services, special projects, or school operations are improved and enhanced. Volunteer service is limited to personal services received without compensation (salary or wages) by the Bureau from individuals, groups, and students earning credit (i.e., student teaching). Nothing in this section shall be construed to require Federal employees to work without compensation or to allow the use of volunteer services to displace or replace Federal employees.

(b) *Volunteer service agreement.* An agreement is a written document, jointly completed by the volunteer and the Bureau school supervisor, that outlines the responsibilities of each. In the case of students receiving credit for their work (i.e., student teaching) from an education institution, the agreement will be jointly completed by the student, a representative of the school, and the Bureau school supervisor. In the case of volunteer groups, the agreement shall be signed by an official of the volunteering organization and a list of signatures and emergency telephone numbers of all participants shall be attached.

(c) *Eligibility.* Although no minimum age requirement exists for volunteers, schools shall comply with appropriate Federal and State laws and standards on using the services of minors. All volunteers under the age of 18 must obtain written permission from their parents or guardians to perform volunteer activities.

(d) *Status.* Volunteers participating under this part are not considered Federal employees for any purpose other than:

(1) Title 5 U.S.C. Chapter 81, dealing with compensation for injuries sustained during the performance of work assignments.

(2) Federal tort claims provisions published in 28 U.S.C. Chapter 171.

(3) Department of the Interior Regulations Governing Responsibilities and Conduct.

(e) *Travel and other expenses.* The decision to reimburse travel and other incidental expenses, as well as the amount of reimbursement, shall be made by the school supervisor, ASE, AEPA, and the respective school board. Payment is made in the same manner as for regular employees. Payment of travel and per diem expenses to a volunteer on a particular assignment must be supported by a specific travel authorization and cannot exceed the cost of employing a temporary employee of comparable qualification at the school for which a travel authorization is considered.

(f) *Annual report.* School supervisors shall submit reports on volunteers to the ASE or AEPA by October 31 of each year for the preceding year.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 87-20142 Filed 9-1-87; 8:45 am]

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Federal Register

Wednesday
September 2, 1987

Part VII

Department of Commerce

Presidential Board of Advisors on Private Sector Initiatives; Meeting Notice

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**Presidential
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DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison, Commerce.

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on September 14, 1987. Committee meetings will also be held on this date. Public comment is welcome.

Time and Place:

Presidential Board of Advisors on Private Sector Initiatives

Monday, September 14, 1987, 2:00 p.m.–3:00 p.m., at the U.S. Chamber of Commerce, 1615 H Street NW., Washington, DC 20062, Room to be Posted.

Committee Meetings

Monday, September 14, 1987, 10:00 a.m.–11:30 a.m., at the National Paint and Coating Association, 1500 Rhode Island Avenue NW., Washington, DC 20005, Rooms to be Posted.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce (202/377–3942), Main Commerce Building, Washington, DC 20230.

Date: August 31, 1987.

Robert H. Brumley,

Deputy General Counsel.

[FR Doc. 87–20387 Filed 9–1–87; 11:05 am]

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Part VIII

The President

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act—Memorandum of August 27, 1987

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Title 3—

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[FR Doc. 87-2
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Presidential Documents

Title 3—

The President

Memorandum of August 27, 1987

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State, the Secretary of the Treasury

Under Section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a previous determination made by me on August 20, 1986 (51 F.R. 30201), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 1987.

I hereby determine that the extension for one year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

Therefore, pursuant to the authority vested in me by Section 101(b) of Public Law 95–223, I extend for one year, until September 14, 1988, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 CFR Part 500;

(2) the Transaction Control Regulations, 31 CFR Part 505;

(3) the Cuban Assets Control Regulations, 31 CFR Part 515; and

(4) the Foreign Funds Control Regulations, 31 CFR Part 520.

This memorandum shall be published in the **Federal Register**.

Ronald Reagan

[FR Doc. 87–20393
Filed 9–1–87; 11:36 am]
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

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Rules and Regulations

Federal Register
Vol. 52, No. 171
Thursday, September 3, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 522, 563, and 592

[No. 87-936]

Assessments by the Financing Corporation, FSLIC Insurance Premiums, Book-Entry Procedure for Financing Corporation Securities, and Office of Finance Functions

August 28, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; request for comments.

SUMMARY: On August 10, 1987, the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987 (the "Recapitalization Act") was enacted into law. The Recapitalization Act authorizes the Federal Home Loan Bank Board ("Board") to charter a corporation known as the Financing Corporation. The Financing Corporation will issue debt securities in the capital markets, and with the net proceeds thereof, it will purchase capital instruments to be issued by the Federal Savings and Loan Insurance Corporation (the "FSLIC" or "Corporation").

The Board today is adopting regulations to clarify the manner in which the Financing Corporation will exercise its assessment authority and to make minor conforming technical amendments to the regulations concerning FSLIC insurance premiums. Additionally, the Board is adopting rules regarding book-entry procedure for Financing Corporation securities. Finally, the Board is amending a procedural rule governing the responsibilities of the Office of Finance of the Federal Home Loan Bank System ("Office of Finance"), so as to reflect the responsibilities of that office with regard to the Financing Corporation's activities.

DATES: This regulation is effective September 3, 1987. Comments on the regulations concerning Financing Corporation assessments and FSLIC insurance premiums must be received on or before October 5, 1987.

ADDRESS: Send comment letters to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Steven A. Rosenberg, Acting Deputy Director, Legislation, (202) 377-6455, or Carol J. Johnson, Attorney, (202) 377-6357, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or K. Diane Boyle, Manager, Special Projects Division, (202) 272-4978, Office of Finance, Federal Home Loan Bank System, 655 15th Street, NW., Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

A. General

The Recapitalization Act was enacted as Title III of the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552. Section 302 of the Recapitalization Act amends the Federal Home Loan Bank Act (the "Bank Act"), 12 U.S.C. 1421 *et seq.*, by adding a new section 21 concerning the Financing Corporation.

Pursuant to section 21 of the Bank Act, the Board has chartered the Financing Corporation, which is under the management of a directorate (the "Directorate") composed of three members. Paragraph (8) of section 21(b) of the Bank Act provides that: "[T]he Directorate shall be subject to such regulations, orders, and directions as the Board may prescribe." Additionally, section 21(c) of the Bank Act provides that the exercise by the Financing Corporation of its statutory powers shall be subject to such regulations, orders, and directions as the Board may prescribe. Finally, section 21(k) of the Bank Act authorizes the Board to "prescribe such regulations as may be necessary to carry out the provisions of [section 21], including regulations defining terms used in [section 21]."

The Financing Corporation is authorized, over time and in series, to issue debt securities having an aggregate principal amount not to exceed $10.825 billion. The Financing Corporation will use the net proceeds from the issuance of the bonds to purchase nonredeemable capital certificates and redeemable nonvoting capital stock to be issued by the FSLIC, pursuant to section 402(b) of the National Housing Act ("NHA"), 12 U.S.C. 1724 *et seq.*, as amended by section 304 of the Recapitalization Act.

B. Assessments and FSLIC Insurance Premiums

Holders of Financing Corporation securities will be entitled to receive payment of interest on the bonds on a semiannual basis. In order to ensure that the Financing Corporation will be able to satisfy its obligation to pay interest to the bondholders, section 21(f) of the Bank Act provides the Financing Corporation with an income source, namely assessments on institutions the accounts of which are insured by the FSLIC ("insured institutions"). Specifically, section 21(f) authorizes the Financing Corporation to levy and collect three types of assessments: (1) Regular assessments not to exceed an amount equal to ½th of 1 percent of the aggregate amount of all accounts of insured members of the assessed institution; (2) supplemental assessments, which under certain grounds may be assessed in an amount not to exceed ⅛th of 1 percent of the aggregate amount of all accounts of insured members of the assessed institution; and (3) termination assessments, which the Financing Corporation is directed to collect from any institution that ceases to be an insured institution.

In light of the assessment power granted to the Financing Corporation and the FSLIC's power to collect insurance premiums, insured institutions may be subject to the following six categories of charges: (1) Financing Corporation regular assessments pursuant to section 21(f)(1) of the Bank Act; (2) Financing Corporation supplemental assessments pursuant to section 21(f)(2) of the Bank Act; (3) Financing Corporation termination assessments pursuant to section 21(f)(4) of the Bank Act; (4) regular FSLIC insurance premiums pursuant to section 404(b) of the NHA; (5) additional ("special") FSLIC insurance premiums pursuant to section 404(c) of the NHA;

and (6) final FSLIC insurance premiums (sometimes referred to as "FSLIC exit fees") pursuant to section 407(d) of the NHA.

The Recapitalization Act not only grants to the Financing Corporation the power to levy assessments, but it also amends the power of the FSLIC to collect insurance premiums, as discussed further below.

1. Regular and Supplemental Assessments

In order to enable the Financing Corporation to pay expenses related to its bonds, paragraphs (1) and (2) of section 21(f) of the Bank Act authorized it to collect regular and supplemental assessments. The Financing Corporation is required to obtain the approval of the Board in order to make the regular assessment. In order to make the supplemental assessment two conditions must be satisfied. These are as follows: (1) The Directorate, by unanimous vote, must determine that additional funds are needed to pay the interest on the obligations of the Financing Corporation because no other funds are available; and (2) the Board must approve the determination to assess the supplemental assessment.

Additionally, paragraph (3) of section 21(f) of the Bank Act provides that the aggregate of the regular and supplemental assessments of the Financing Corporation may not exceed an amount equal to (1) the sum of (a) issuance costs incurred with respect to obligations issued during the year; (b) interest paid on (and any redemption premium paid with respect to) obligations of the Financing Corporation during such year; and (c) custodian fees incurred during such year, *minus* (2) the aggregate amount of any payments made, during such year, by the Financing Corporation with respect to such issuance costs, interest and custodian fees pursuant to section 21(g)(4).

In order to eliminate confusion and ensure consistency, the rule adopted today provides that the manner in which the Financing Corporation will calculate and collect regular assessments is to be the same as that currently employed by the FSLIC for its calculation and collection of regular insurance premiums, as set forth at 12 CFR 563.15. Accordingly, the Financing Corporation will collect regular assessments on an annual basis with a semiannual adjustment. Moreover, as discussed further below, each insured institution will receive unified bills representing the amounts owed to both the Financing Corporation and the FSLIC.

2. Reconciliation of Amounts Owed to the Financing Corporation and to the FSLIC

Section 305 of the Recapitalization Act limits the amount the FSLIC may collect in premiums and the amount it may assess as spplemental premiums so as not to impose an additional financial burden on insured institutions.[1] The practical effect of section 305 is to provide that the regular assessment paid to the Financing Corporation and the regular insurance premium paid to the FSLIC, in any one annual assessment period, is not to exceed 1/12th of 1 percent of the aggregate amount of the insured accounts of an insured institution. Likewise, the sum of the supplemental assessment of the Financing Corporation and the supplemental premium of the FSLIC, in any one annual assessment period, is not to exceed 1/8th of 1 percent of the aggregate amount of the insured accounts of an insured institution.

The Board today is amending § 563.15 to add a new paragraph addressing the limitations on the FSLIC's authority to assess premiums on insured institutions.[2]

3. Joint Collection Agent

The Board believes it is desirable to establish a mechanism to coordinate the manner in which the Financing Corporation levies and collects assessments and the manner in which the FSLIC levies and collects deposit insurance premiums. In the Board's view, such a mechanism should be designed to ensure that the sum of amounts billed by the Financing Corporation and the FSLIC do not exceed the statutory limitation. Accordingly, the Board also has amended § 563.15 to provide such a mechanism. In short, § 563.15, as amended, provides that a joint collection agent will bill each insured institution on behalf of both the Financing Corporation (for its regular assessments) and the FSLIC (for its regular insurance premiums). The Board believes that this coordinated billing and collection procedure will satisfy the objectives described in the previous paragraphs.

C. Exit Fees

The rule adopted today also implements the provisions of section 21(f)(4) of the Bank Act authorizing the Financing Corporation to levy termination assessements on institutions that have ceased to maintain their states as insured institutions ("exiting institutions"). The regulation incorporates the statutory requirements pertaining to the calculation of such termination assessments based on the amount assessed on the existing institution with respect to (1) FSLIC insurance premiums (regular and special); and (2) Financing Corporation assessments (regular and supplemental).

The rule also provides, pursuant to section 21(f) of the Bank Act, that any such termination assessment imposed on an institution may be reduced at the discretion of the Financing Corporation, with the approval of the Board, after a determination that the institution poses a substantial risk to the Corporation and that such reduction is necessary to assist in the sale or other disposition of the institution.

The regulation also includes the statutorily prescribed time periods for payment of termination assessments. Section 21(f) of the Bank Act provides for a one-time payment of the full amount of the assessment within 30 days after an institution ceases to be an insured institution or for payment of semiannual installments beginning 30 days after an institution ceases to be an insured institution and lasting over a period of two years. The regulation makes the same provision for a one-time payment of the termination assessment but permits an institution to make payment either within 30 days of the date it ceases to be an insured institution or within ten business days of its receipt of the notice of termination assessment, whichever is later. The regulation also provides for payment in semiannual installments over a two-year period, but adds the requirement that an institution electing semiannual payments must give written notice of its election to the Financing Corporation within 5 business days of its receipt of the notice of termination assessment.

The rule adopted today also includes provisions regarding exit fee equalization provided pursuant to paragraph (4)(E) of section 21(f) of the Bank Act. That provision concerns final

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[1] Section 305 of the Recapitalization Act amends section 404 of the NHA by adding a new subsection (j), which provides as follows: "Notwithstanding any other provision of this section, the sum of—(1) the amount of any premium required to be paid by any insured institution under subsection (b)(1); and (2) the amount of any premium authorized to be assessed by the Corporation under subsection (b) with respect to such institution, for any period shall be reduced by the amount of any assessment paid for such period by such insured institution to the Financing Corporation pursuant to section 21(f) of the Federal Home Loan Bank Act."

[2] Section 563.15 governs payment of regular FSLIC insurance premiums. The Board has not promulgated an analogous regulation governing additional ("special) premiums. Instead, the Board, in its capacity as operating head of the FSLIC, has assessed such additional premiums by resolution. *See, e.g.*, Board Res. No. 85–142 (Feb. 22, 1985).

insurance premiums assessed by the FSLIC pursuant to section 407(d) of the NHA.

D. Book-Entry Procedure for Financing Corporation Securities

Section 302 of Title III of the Recapitalization Act amended section 21(h)(2) of the Bank Act to authorize Federal Reserve Banks to act as depositaries, fiscal agents, or custodians of the Financing Corporation.

By this action, the Board authorizes Federal Reserve Banks to apply to any debentures, bonds, or other obligations issued by the Financing Corporation the book-entry procedure contained in 12 CFR Part 506a (1987) previously established by the Board with respect to consolidated obligations of the Federal Home Loan Banks. The procedure affirms that Financing Corporation obligations may be issued in definitive (*i.e.*, engraved or printed) form, rather than book-entry form, to the extent expressly permitted by the terms of the securities. It permits Financing Corporation obligations issued in definitive form to be converted to book-entry form subject to the provisions of Part 506a.

The Board believes that issuances of Financing Corporation securities in book-entry form will benefit investors, the Financing Corporation, the FSLIC, and the financing community by (1) reducing the risk of loss due to theft, mishandling, and counterfeiting; (2) decreasing the cost of issuing, storing, and delivering physical certificates; and (3) minimizing the paperwork created by the growing volume of public debt transactions.

To ease the application of these rules, the provisions of Part 506a, as they may be amended from time to time, are incorporated into new regulation section 592.17 and are made applicable to Financing Corporation debt securities insofar as they are appropriate. Definitions and terms used in Part 506a should be read as though modified to accomplish this purpose.

E. Office of Finance, Federal Home Loan Bank System

Finally, section 21(b)(6) of the Bank Act prohibits the Financing Corporation from hiring its own employees. Instead, the Directorate may, with the approval of the Board, authorize the officers, employees, or agents of the Federal Home Loan Banks to act for and on behalf of the Financing Corporation. The Office of Finance has developed expertise in managing offerings of Federal Home Loan Bank debt securities. The Board, therefore, believes that that office is well suited to provide assistance to the Financing Corporation. Accordingly, the Board is amending § 522.81 of Subchapter B to expand the list of functions authorized for the Office of Finance so as to include the performance of such services for the Financing Corporation as may be requested from time to time by the Directorate and approved by the Board.

F. Notice and Comment Considerations

The Board finds that, in connection with its adoption of these rules, observance of the notice and comment procedures, prescribed by 5 U.S.C. 553(b) (1982) and 12 CFR 508.11 and 508.12 (1987), is unnecessary for the reasons set forth below.

Section 553(b) provides in pertinent part as follows:

> Except when notice of hearing is required by statute, this subsection does not apply—
> (A) to interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or
> (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.

5 U.S.C. 553(b) (1982).

1. Amendment of the Office of Finance Rule

The amendment to § 522.81 of Subchapter B of the Board's rules constitutes adoption of a rule of agency organization, procedure, or practice. Accordingly, the exception set forth in paragraph (A) of section 553(b) of Title 5 of the United States Code applies to the adoption of this amendment.

2. Adoption of the book-entry procedure rule

The book-entry procedure rule, adopted at section 592.17 of new Subchapter H of the Board's rules, is a rule of agency organization, procedure, or practice. Accordingly, the exception set forth in paragraph (A) of section 553(b) of Title 5 of the United States Code applies to the adoption of this rule.

3. Adoption of the Financing Corporation assessment rules and amendment of the FSLIC insurance premium rules

The Board for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest with respect to its adoption of the Financing Corporation assessment rule (12 CFR 592.12) and its amendment of the FSLIC insurance premium rules (12 CFR 563.15 and 563.16). The reasons in support of this finding are as follows. First, the Board believes that it is contrary to the public interest to have the adoption of the rules delayed in order to provide for such notice and public procedure. The Board finds that it is in the public interest for the Financing Corporation to commence its issuance of debt securities at the earliest possible opportunity and that the Financing Corporation will be unable to commence such activity until the assessment rules are adopted. In connection with this finding the Board notes that the funds raised by the Financing Corporation will be contributed to the capital of the FSLIC, which currently is insolvent, in accordance with generally accepted accounting principles. The Financing Corporation's contributions to the FSLIC's capital (1) will permit the maintenance of public confidence in the nation's depository institutions; and (2) will enable the FSLIC to resume its resolution of insolvent insured institutions in accordance with Title IV of the NHA.

Secondly, the Board is of the view that notice and public procedure thereon are unnecessary, because the rules set forth in §§ 592.12, 563.15, and 563.16, as amended today, generally only codify in the Board's regulations the statutory rules already applicable under sections 302 and 305 of the Recapitalization Act. Therefore, the new rules impose no new legal burden on insured institutions.

Thirdly, with respect to the amendment to § 563.15 providing for the Financing Corporation and the FSLIC to have assessments and insurance premiums collected by a joint collection agent, the Board is of the view that such amendment constitutes adoption of a rule of agency organization, procedure, or practice within the meaning of paragraph (A) of 5 U.S.C. 553(b).

The Board recognizes that notice and public procedure thereon are useful for providing it with information and viewpoints that it might not otherwise obtain. In addition, the Board notes that other issues, not addressed in today's rule, arise in connection with the Financing Corporation's assessment authority and the FSLIC's authority to collect insurance premiums. Such related issues include the following: (1) The temporary phase-down of the FSLIC's authority to assess special insurance premiums (or "special assessments") prescribed by section 306(c) of the Recapitalization Act; and (2) changes to the NHA provision regarding the FSLIC's secondary reserve, pursuant to section 307 of the Recapitalization Act. Accordingly, notwithstanding the issuance in final form of the assessment and insurance premium rules, the Board

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hereby invites public comment on those rules and the related issues.

G. Effective Date Considerations

This rule is effective September 3, 1987. The Board, for good cause, finds that the full thirty-day delay of effective date following publication of the regulation, pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14, is unnecessary. The Board's reasons for this finding are as follows:

It is imperative that the Financing Corporation be able to commence its issuance of debt securities as expeditiously as possible for the reasons set forth in the section entitled "Notice and Comment Considerations." Additionally, the rules simply codify in the Board's regulations the statutory provisions of the Recapitalization Act that already are the law of the land. Finally, the Board is of the view that, with respect to the aspects of the rule concerning agency organization, procedure, or practice, no public interest is jeopardized by shortening the period of delayed effectiveness. Accordingly, the Board finds that there is good cause for shortening the delayed-effectiveness period from the prescribed 30-day period to the slightly shorter period provided hereby.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements have been incorporated into the Board's discussion set forth in the **SUPPLEMENTARY INFORMATION** section of this rule.

2. *Issues raised by comments and agency assessment and response.* As explained in the **SUPPLEMENTARY INFORMATION** section, the Board is issuing the rules in final form without prior opportunity for comment, although the Board is soliciting post-promulgation public comment. Accordingly, at this time, there are no issues raised by comments that require Board assessment and response.

3. *Significant alternatives minimizing small-entity impact and agency response.* The book-entry procedure rule will have no impact on small institutions. The assessments rules will not have a disproportionate effect on small institutions. The rules do not change the rules regarding the gross amount that an institution may pay, but rather change only the manner in which the gross amount is allocated.

List of Subjects in 12 CFR Parts 522, 563, and 592

Bank deposit insurance, Financing Corporation, Investments, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 522, Subchapter B, Part 563, Subchapter D, and amends Chapter V by adding a new Subchapter H and Part 592, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

Subchapter B—Federal Home Loan Bank System

PART 522—ORGANIZATION OF THE BANKS

1. The authority citation for Part 522 is revised to read as follows:

Authority: Sec. 5 B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6–7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426–1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101 *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, reprinted in 12 U.S.C.A. 1437 App. (West Supp. 1986).

2. Amend § 522.81 by removing the word "and" before the beginning of paragraph (a)(4); by removing the "period" at the end of paragraph (a)(4) and adding the word "; and"; and by adding the following new paragraph (a)(5) to read as follows:

§ 522.81 Functions of Office of Finance.

(a) * * *

(5) perform such functions for the Financing Corporation on behalf of the Federal Home Loan Banks as may be requested of such Office by the Directorate of the Financing Corporation (as defined in § 592.1(e) of this chapter) after receiving the approval of the Board.

* * * * *

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 563—OPERATIONS

3. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 CFR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

4. Amend § 563.15 by revising the heading of the section; by adding new paragraphs (a)(3) and (a)(4); by revising the introductory text of paragraph (b)(1); by redesignating paragraphs (c) and (d) as new paragraphs (d) and (e); and by adding a new paragraph (c) to read as follows:

§ 563.15 Premiums.

(a) *Definitions.* * * *

(3) "Financing Corporation" means the Financing Corporation chartered by the Board pursuant to section 21(a) of the Federal Home Loan Bank Act.

(4) "Joint Collection Agent" means any person, corporation, governmental unit, or any other entity other than the Corporation or the Financing Corporation that has been authorized by the Corporation and the Financing Corporation to act as an agent on behalf of both the Corporation and the Financing Corporation for collecting premiums pursuant to section 404(b) of National Housing Act and/or assessments pursuant to section 21(f) of the Federal Home Loan Bank Act.

(b) *General provisions.* (1) Pursuant to section 404(b) of the National Housing Act and subject to the provisions of paragraphs (c) and (d) of this section, each institution whose application for insurance is approved by the Corporation shall pay to the Corporation through the Joint Collection Agent as follows: * * *

(c) *Limitations.* The amount of any premiums assessed by the Corporation on an insured institution pursuant to paragraph (b) of this section shall be reduced by the amount of any regular assessment paid for such period by such insured institution to the Financing Corporation pursuant to section 21(f) of the Federal Home Loan Bank Act, as implemented at Part 592 of this Chapter.

* * * * * *

5. Amend § 563.16 by revising the first sentence of the section to read as follows:

§ 563.16 Premiums in mergers, consolidations, or purchases of bulk assets.

In the event of the purchase of bulk assets by an insured institution (which, for the purposes of this section, shall not include a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation) or of the absorption by an insured institution of another institution through merger or consolidation and the

issuance of accounts of an insurable type in connection therewith, such insured institution will be billed for an additional premium based upon the aggregate of the increase of its accounts of an insurable type issued in connection with such transaction. *subject to* the limitations set forth in § 563.15(c) of this subchapter. * * *

6. Amend Chapter V by adding a new Subchapter H; and by adding a new Part 592 to read as follows:

Subchapter H—Financing Corporation

PART 592—OPERATIONS

Sec.
592.1 Definitions.
592.2–592.10 (Reserved).
592.11 General authority.
592.12 Assessments on insured institutions.
593.13–592.16 (Reserved).
592.17 Book-entry procedure for Financing Corporation securities.

Authority: Sec. 10, 47 Stat. 725, as amended (12 U.S.C. 1421 et seq.)

§ 592.1 Definitions.

(a) *General.* Unless another definition is provided in this Subchapter, definitions in Parts 521, 541, and 561 of this Chapter apply to terms used in this Subchapter.

(b) "Act" means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

(c) "Corporation" means the Federal Savings and Loan Insurance Corporation.

(d) "Directorate" means the three member board established pursuant to section 21(b) of the Act to manage the Financing Corporation.

(e) "Financing Corporation" means the Financing Corporation chartered by the Board pursuant to section 21(a) of the Act.

(f) "Financing Corporation securities" means debentures, bonds, or similar obligations of the Financing Corporation issued pursuant to sections 21(c) and (e) of the Act.

(g) "Regular assessment" means the assessment the Financing Corporation may assess on insured institutions pursuant to paragraph (1) of section 21(f) of the Act.

(h) "Supplemental assessment" means the assessment the Financing Corporation may assess on insured institutions pursuant to paragraph (2) of section 21(f) of the Act.

(i) "Termination assessment" means the assessment the Financing Corporation may assess on insured institutions pursuant to paragraph (4) of section 21(f) of the Act.

(j) "Exiting institution" means an insured institution (or any successor in interest thereto resulting from a merger, acquisition or otherwise) that has ceased to maintain its status as an insured institution.

§§ 592.2–592.10 [Reserved]

§ 592.11 General authority.

The Financing Corporation may exercise all authority granted it by the Act and by its charter and bylaws, whether or not implemented specifically by Board regulations, subject to the limitations and interpretations contained in this part and such orders and directions as the Board may prescribe.

§ 592.12 Assessments on insured institutions.

(a) *General.* The Financing Corporation may levy on, and collect (directly or through a collecting agent) from, each insured institution assessments in accordance with section 21(f) of the Act and this section.

(b) *Regular assessments.* (1) Pursuant to section 21(f) of the Act, and subject to the limitations of paragraph (d) of this section, the Financing Corporation may, with the approval of the Board, assess on each insured institution regular assessments, *Provided* That the aggregate amount assessed under this paragraph (b) on any insured institution for any year may not exceed an amount equal to 1/12th of 1 percent of the aggregate amount of all insured accounts of such institution, as calculated in the manner set forth in § 563.15 of Subchapter D.

(2) In the event of the purchase of bulk assets or the absorption by an insured institution of another institution through merger or consolidation and the issuance of insured accounts in connection therewith, the Financing Corporation may, with the approval of the Board, adjust the regular assessment of the insured institution in a manner consistent with § 563.16 of Subchapter D.

(c) *Supplemental assessments.* Pursuant to section 21(f)(2) of the Act and subject to the limitations of paragraph (d) of this section, if the Financing Corporation, by unanimous vote of the Directorate, finds that additional funds are needed to pay the interest on the obligations of the Financing Corporation because no other funds are available, it may, with the approval of the Board and in addition to any assessment made pursuant to paragraph (b), assess on each insured institution an assessment, except that the aggregate amount assessed under this paragraph (c) on any insured institution for any year may not exceed an amount equal to 1/8th of 1 percent of the aggregate amount of all accounts of insured members of such insured institution.

(d) *Total amount of assessments.* The aggregate amount of assessments made under paragraphs (b) and (c) of this section for any year may not exceed:

(1) The aggregate amount of—

(i) Issuance costs (as such term is defined in section 21(g)(5)(A) of the Act) incurred with respect to obligations issued during such year;

(ii) Interest paid on (and any redemption premium paid with respect to) obligations of the Financing Corporation during such year; and

(iii) Custodian fees (as such term is defined in section 21(g)(5)(B) of the Act) incurred during such year; less

(2) The aggregate amount of any payments under section 21(g)(4) of the Act during such year.

(e) *Termination assessments.* (1) The Financing Corporation, with the approval of the Board, shall make a termination assessment on any existing institution in accordance with paragraph (4) of section 21(f) of the Act.

(2) The amount of the assessment on any institution under this paragraph (e) shall be the amount equal to the sum of—

(i) The amount that is equal to two times the last annual insurance premium payable by such institution, including the amount of any regular assessment imposed under this section in lieu of such premium; and

(ii) The amount that is the product of—

(A) The aggregate amount of all accounts of insured members of such institution (as of the date the institution ceases to be an insured institution); and

(B) An amount equal to two times the rate (expressed as an annual rate) at which the supplemental assessment authorized in section 404(c) of the National Housing Act was assessed against insured institutions by the Corporation in 1986.

(3) The Financing Corporation, with the approval of the Board, shall determine whether to reduce the amount of the termination assessment in accordance with paragraph (4)(C) of section 21(f) of the Act.

(4) If an assessment is imposed on an institution under paragraph (e) of this section, the institution shall be obligated to pay such assessment within the 30-day period beginning on the date on which such institution ceases to be an insured institution or within ten business days following its receipt of

notice of a termination assessment, whichever is later.

(5) Notwithstanding the requirement of paragraph (e)(4) of this section, during the period beginning no later than the end of the period referred to in paragraph (e)(4) of this section and ending no later than the end of the two-year period beginning on the date such assessment is imposed, an institution may elect to pay the amount of any assessment imposed under paragraph (e) in semiannual installments together with interest accruing on the unpaid balance of such amount at a variable rate equal to the sum of—

(i) The bond equivalent yield on 6-month United States Treasury bills; and

(ii) 100 basis points.

Any institution making such an election shall provide the Financing Corporation with written notice of its election within 5 business days of its receipt of a termination assessment notice.

(f) *Exemption from termination assessments.* Notwithstanding the provisions of paragraph (e) of this section, termination assessments imposed pursuant to paragraph (e) of this section shall not be imposed on institutions exempted from such assessments pursuant to section 21(f)(4)(F) of the Act.

(g) *Repayment to exempted institutions.* Upon presentation of a written application and documentation to the Corporation within one year from September 3, 1987, the Corporation shall repay to institutions described in paragraph (f) of this section an amount equal to the amount by which any exit fee previously imposed on such institution exceeds the amount such institution would be required to pay under paragraph (e) of this section.

§§ 592.13–592.16 [Reserved]

§ 592.17 Book-entry procedure for Financing Corporation securities.

(a) A Federal Reserve Bank is hereby authorized to apply book-entry procedure to Financing Corporation securities.

(b) The book-entry procedure for Financing Corporation securities shall be governed by the book-entry procedure established for Federal Home Loan Bank securities, codified at Part 506a of Subchapter A of this chapter, and wherever the term "Federal Home Loan Bank" shall appear in said part, the term shall also be construed to mean the "Financing Corporation," if appropriate, to accomplish the purposes of this section.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-20344 Filed 9-2-87; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-87-1347; FR-2347]

Mortgage and Loan Insurance Programs; Title I Property Improvement and Manufactured Home Loans

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends provisions that became effective on January 15, 1986 governing the property improvement and manufactured home loan insurance programs under Title I of the National Housing Act. The provisions relate to the refinancing of Title I loans and extensions for late filing of xcsurance claims. This rule also removes restrictions imposed upon both lenders and borrowers, and codifies some policies that have already been given effect by means of letters sent to all Title I lending institutions.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Director, Title I Insurance Division, Room 9160, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755–6880. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department published a final rule in the **Federal Register** of October 25, 1985 (50 FR 43516) that restated and reorganized the then-current property improvement and manufactured home loan regulations in 24 CFR Part 201. Those regulations implemented section 2 of Title I of the National Housing Act. On January 14, 1986 the Department published in the **Federal Register** a Notice announcing that the effective date of the final rule would be January 15, 1986. Since the effective date of the final rule, the Department has found that some provisions in the Title I regulations require modification because of economic conditions or to ease administrative burdens on lenders and HUD. These modifications have already been implemented by means of letters sent to all Title I lending institutions. This rule codifies the policies effectuated through those letters.

Refinancing of Title I Loans

Since the effective date of the final rule, a number of Title I lenders have advised the Department that the prohibitions in 24 CFR 201.10(f) and 201.18 against refinancing delinquent loans are not practical, and have requested that the Department amend the Title I regulations to allow delinquent loans to be refinanced. The Department has considered the matter extensively, and has concluded that the lenders' request has merit.

Refinancing of Title I loans is authorized by section 2(b)(6)(A) of the National Housing Act. Enactment of this provision in the early 1940's was predicated largely upon the theory that allowing borrowers to refinance delinquent loans—so as to be able to make lower monthly payments over a greater period of time—would result in fewer defaults and insurance claims. At the time, this provision was enacted, loan amounts were much smaller and loan terms were significantly shorter than they are today.

In promulgating the final rule of October 25, 1985, the Department was concerned about extending delinquent loans with large outstanding balances for long periods of time, and therefore developed the concept of using modification agreements and repayment plans to bring delinquent loans current without extending the loan term. As lenders have pointed out, a modification agreement or repayment plan will result at some point in a borrower's having to make payments in excess of the scheduled monthly payments to bring the loan current (because a modification agreement cannot be used to extend the loan term) and some borrowers cannot afford to make these higher payments. The Department therefore has determined that its prohibition against refinancing Title I loans that are delinquent or in default should be removed from the regulations.

The Department still believes that modification agreements and repayment plans are good alternatives, and in many cases would be preferable to refinancing. Accordingly, the regulations continue to provide for the use of modification agreements and repayment plans. (A modification agreement is especially useful when reducing the interest rate and, correspondingly, the

monthly payments on a loan, as there is no risk of subordination of the security.)

This final rule codifies a change that was made effective by means of a letter to all Title I lenders dated February 27, 1987, and effective as of that date. See TI–386. The rule amends seven sections in the Title I regulations: § 201.10 Loan amounts; § 201.11 Loan maturities; § 201.18 Modification agreement or repayment plan; § 201.30 Reporting of loans for insurance; § 201.32 Insurance coverage reserve account; § 201.50 Lender efforts to cure the default; and § 201.54 Insurance claim procedure. In addition, a new § 201.19, Refinanced loans, is added. Changes in the regulations relating to the refinancing of Title I loans are as follows:

1. Section 201.10 is amended by removing the introductory sentence of paragraph (f), which prohibits the refinancing of loans that are delinquent or in default. Paragraph (2) of § 201.10(f) is revised to change the maximum amount of a refinanced manufactured home loan from the outstanding balance of the loan to the cost to the borrower of prepaying the existing loan. This change allows accrued but unpaid interest on a manufactured home loan to be capitalized and makes paragraph (2) consistent with the other paragraphs in § 201.10(f).

2. Section 201.18 currently provides for the use of a modification agreement or repayment plan in lieu of refinancing a delinquent or defaulted loan. This rule removes the sentence prohibiting the refinancing of a delinquent or defaulted loan until the borrower brings the loan current, and divides the section into paragraphs (a) Modification agreement, and (b) Repayment plan. Paragraph (a) is further revised to clarify that the use of a modification agreement is not limited to a loan that is delinquent or in default, but may also be used in connection with a current Title I loan in lieu of refinancing to effectuate a reduction in the interest rate and the monthly payment for the remainder of the loan term.

3. A new section, § 201.19 Refinanced loans, is added. Paragraph (a) of this section specifies the conditions under which (1) an existing insured property improvement loan or manufactured home loan, (2) an existing insured property improvement loan with an advance of funds for additional improvements, and (3) an existing uninsured manufactured home loan may be refinanced. Paragraph (b) contains requirements relating to the note and security for a refinanced loan. These requirements include cancellation of the old note and execution of a new note and, if the loan is secured, obtaining a new security instrument and releasing the original lien, unless State law allows for renewal and extension of the original lien. Paragraph (b) also requires that copies of all documents pertaining to the original loan be retained in the loan file for the refinanced loan.

4. Section 201.32 is revised by adding a new paragraph (d)(3), which provides that an existing insured loan may not be refinanced by a lender different from the originating or purchasing lender unless the loan has been sold, assigned, or transferred to the new lender and the Secretary has transferred insurance coverage for such loan. (This provision enunciates long-standing departmental policy).

5. In § 201.50, paragraph (a) is revised to include loan refinancing as a possible method for curing a default, and to clarify that a modification agreement or repayment plan for bringing a loan current at a later date does not cure the default, although it does preclude the lender's foreclosing or taking possession of the security. Paragraph (b) similarly is revised (1) to indicate that a modification agreement or repayment plan for bringing the loan current at a later date does not cure the default, and (2) to make other clarifying changes. Paragraph (c) is revised to clarify that the lender may rescind the acceleration of maturity and reinstate the loan only if the borrower brings the loan current, executes a modification agreement, or agrees to an acceptable repayment plan. Precluding refinancing as a means of rescinding acceleration comports fully with § 201.19(a), which allows refinancing only in connection with a Title I loan whose maturity has not been accelerated.

6. Because of the other changes made by this rule, the references in § 201.11(c) to refinancing "under § 201.10(f)" and in § 201.30(a) to refinancing "under § 201.10(f) and § 201.11(c)" are changed to refer to refinancing "under this part".

Change in Procedure for Approval of Late Claim Submissions

Section 201.54(c) provides that the Secretary may extend the maximum claim period specified in 24 CFR 201.54(b) upon presentation of the facts in a particular case, if the request for an extension is made within the applicable claim period. During the past year, lenders have submitted, and HUD has processed, an estimated 20,000 requests for extension of the claim filing period. Most of these requests are routinely approved by HUD if they are received within the allowable time limit. Claims that are denied because of late filing are generally appealed, and the Secretary's Substantial Compliance Committee must consider whether to waive the time limit based on the facts submitted.

The Department has determined that a reduction in paperwork, benefitting both lenders and HUD, can be accomplished by changing the procedure for extensions of time in which to submit claims—from a pre-claim request procedure to one providing for a written explanation for the delay submitted along with the claim. This new procedure should simplify claim filing for lenders, while maintaining the Department's objective of timely submission of claims; it does not affect the payment of interest on the unpaid amount of the loan obligation, which is calculated from the date of default to the date of claim submission plus 15 calendar days, but not longer than the maximum periods specified in 24 CFR 201.55. Lenders were advised of this change by letter dated March 20, 1987, effective as of the date of the letter. See TI–389. This rule codifies the change by removing the phrase "within the allowable maximum claim period" from § 201.54(c).

Findings and Certifications

Under the authority of 5 U.S.C. 553(b), the Department has dispensed with proposed rulemaking with regard to this rule. The Department finds that notice and public procedure are contrary to the public interest, in that proposed rulemaking would delay unnecessarily the benefits to lenders and borrowers as a result of the amendments made by this final rule.

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the

majority of financial institutions participating in the Title I program are large depository institutions. In any event, the changes implemented by this rule are ameliorative, and thus will not have a significant economic impact on small lenders.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Paperwork Reduction Act

The information collection requirements contained in this rule were submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB Control Number 2502–0328.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are:

14.110 Manufactured Home Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;

14.142 Property Improvement Loan Insurance for Improving Existing Structures and Building of New Nonresidential Structures; and

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

List of Subjects in 24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Mobile homes, Manufactured homes and lots, Reporting and recordkeeping requirements.

Accordingly, the Department of Housing and Urban Development amends Part 201 of Title 24 of the Code of Federal Regulations as follows:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for Part 201 continues to read as follows:

Authority: Sec. 2, National Housing Act, 12 U.S.C. 1703; sec 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

2. In § 201.10, paragraph (f) is amended by removing the introductory sentence and by revising paragraph (f)(2) to read as follows:

§ 201.10 Loan amounts.

* * * * *

(f) *Loan refinancing* * * *

(2) The total principal obligation of a loan made to refinance a borrower's existing insured manufactured home loan shall not exceed the lesser of the cost to the borrower of prepaying the existing loan or the maximum loan amount permitted under this section for the particular type of loan.

* * * * *

3. In § 201.11, paragraph (c) is revised to read as follows:

§ 201.11 Loan maturities.

* * * * *

(c) *Loan refinancing.* A loan to be refinanced under this part may be refinanced for an extended period.

* * * * *

4. Section 201.18 is revised to read as follows:

§ 201.18 Modification agreement of repayment plan.

(a) *Modification agreement.* A written but unrecorded modification agreement acceptable to the lender and executed by the borrower may be used in lieu of refinancing of a delinquent or defaulted loan to reduce or increase the monthly payment, but not to increase the term or the interest rate, so as to assure that the delinquent or defaulted loan is brought current before or by the end of the loan term. A modification agreement may also be used in lieu of refinancing in connection with a loan that is current to effect a reduction in the interest rate, and in the monthly payment, for the remainder of the loan term. When a modification agreement is used, no insurance reporting is required under § 201.30.

(b) *Repayment plan.* The lender may elect to negotiate an informal repayment plan with the borrower to enable a temporary delinquency to be cured within a short period of time. The lender may document the terms of the repayment plan by sending a letter to the borrower reciting the terms of their agreement. When a repayment plan is used, no insurance reporting is required under § 201.30.

5. In Part 201, add a new § 201.19, to read as follows:

§ 201.19 Refinanced loans.

(a) *Conditions on refinancing.* (1) An existing insured property improvement loan or manufactured home loan may be refinanced without an advance of funds only under the following conditions:

(i) If the loan is in default and its maturity has been accelerated, it may not be refinanced unless the acceleration has been rescinded and the loan has been reinstated in accordance with § 201.50(c);

(ii) The refinancing of a loan for the original borrower shall be subject to all of the requirements of this part, except §§ 201.20(b) and (c), 201.21(b) through (e), 201.22, 201.23, and 201.26;

(iii) If there are co-makers or co-signers on the original note, the lender shall require the same co-makers or co-signers on the refinanced note, unless the lender obtains the Secretary's approval to release a co-maker or co-signer from liability under the note in accordance with § 201.24(e); and

(iv) The refinancing of a loan that has been assumed by a new borrower shall be subject to all of the requirements of this part, except §§ 201.20(b) and (c), 201.21(b) through (e), 201.23, and 201.26; however, a lender may not refinance a loan that has been assumed by a new borrower unless the Secretary's approval to release the original borrower from liability under the note has been obtained in accordance with § 201.24(e).

(2) An existing insured property improvement loan may be refinanced with an advance of funds for additional improvements only under the following conditions:

(i) The existing insured loan must not be in default; and

(ii) The refinancing shall be subject to all of the requirements of this part applicable to the particular type of loan and to the additional improvements being financed.

(3) An existing uninsured manufactured home loan may be refinanced only for the original borrower and only under the following conditions:

(i) The existing uninsured loan must not be in default;

(ii) Refinancing of an existing uninsured manufactured home purchase loan or combination loan shall be subject to all of the requirements of this part applicable to the particular type of loan, except §§ 201.23 and

201.26(b)(2)(iv), (3) (i) and (ii), (b)(4), (b)(6) through (b)(8), and (b)(10); and

(iii) Refinancing of an existing uninsured manufactured home lot loan in connection with the purchase of a manufactured home shall be subject to all of the requirements of this part.

(b) *Note and security requirements.* (1) Refinancing of a loan requires the execution of a new note and cancellation of the old note.

(2) Refinancing of a loan that was secured when originated, regardless of the principal balance of the note at the time of refinancing, is required to be secured.

(3) Refinancing of a loan that was not secured when originated is not required to be secured if no additional funds are advanced.

(4) When a refinanced loan is secured, the lender shall obtain and record a new security instrument in accordance with § 201.24 and shall release the original lien, unless State law permits a renewal and extension of the original lien.

(5) Copies of all documents pertaining to the original loan must be retained in the loan file for the refinanced loan.

6. In § 201.30, paragraph (a) is revised to read as follows:

§ 201.30 Reporting of loans for insurance.

(a) *Date of reports.* The lender shall transmit a loan report on the prescribed form to the Secretary within 31 days from the date of the loan's origination or purchase for the loan to be registered for insurance under this part. Any loan refinanced under this part shall similarly be reported on the prescribed form within 31 days from the date of refinancing. When a loan insured under this part is transferred to another lender without recourse, guaranty, guarantee, or repurchase agreement, a report on the prescribed form shall be transmitted to the Secretary within 31 days from the date of the transfer. No report will be required when a loan insured under this part is transferred with recourse or under a guaranty, guarantee, or repurchase agreement. If, after it is reported for insurance, a manufactured home purchase loan or combination loan is determined to be uninsurable under § 201.26(b)(6)(iii)(B), the lender shall report this fact to the Secretary within 31 days after determining the loan's uninsurability.

* * * * *

7. Section 201.32 is amended by adding a new paragraph (d)(3) to read as follows:

§ 201.32 Insurance coverage reserve account.

* * * * *

(d) * * *

(3) An existing insured property improvement loan or manufactured home loan may not be refinanced by a lender different from the originating or purchasing lender of record unless the loan has been sold, assigned, or transferred to the new lender under paragraph (c) of this section and the Secretary has transferred insurance coverage for the loan under the applicable requirements of this paragraph.

* * * * *

8. In § 201.50, paragraphs (a), (b) introductory text and (b)(2), (3), and (4), and (c) are revised to read as follows:

§ 201.50 Lender efforts to cure the default.

(a) *Personal contact with the borrower before acceleration and foreclosure or repossession.* The lender shall undertake foreclosure or repossession of the property securing a Title I loan that is in default only after the lender has timely serviced the loan with diligence in accordance with the requirements of this part, and has taken all reasonable and prudent measures to induce the borrower to bring the loan account current. Before taking action to accelerate the maturity of the loan in the event of default, the lender or its agent shall arrange for a face-to-face meeting with the borrower, or make a reasonable effort to do so, in order to assist the borrower—

(1) To cure the default by bringing the loan current immediately or by refinancing the loan, or

(2) To agree to a modification agreement or repayment plan for bringing the loan current by a later date. If the lender is unable to arrange for a face-to-face meeting, the lender may discuss the default with the borrower by telephone and attempt to secure the borrower's agreement to curing the default, executing a modification agreement, or agreeing to an acceptable repayment plan. If the borrower cannot be located or indicates a refusal to meet or discuss the default, or refuses to consent to its cure or to a modification agreement or a repayment plan, the lender may proceed to take action under paragraphs (b) and (c) of this section. The lender shall document its actions, including placing in the file a copy of any modification agreement or any letter to the borrower reflecting an acceptable repayment plan.

(b) *Notice of default and acceleration.* Unless the borrower cures the default or agrees to a modification agreement or repayment plan, the lender shall provide the borrower with written notice that the loan is in default and that the loan maturity is to be accelerated. In addition to complying with applicable State or local notice requirements, the notice shall be sent by certified mail and shall contain:

* * * * *

(2) A statement of the nature of the default and of the amount due to the lender as unpaid principal and earned interest on the note as of the date 30 days from the date of the notice;

(3) A demand upon the borrower either to cure the default (by bringing the loan current or by refinancing the loan) or to agree to a modification agreement or a repayment plan, by not later than the date 30 days from the date of the notice;

(4) A statement that if the borrower fails either to cure the default or to agree to a modification agreement or a repayment plan by the date 30 days from the date of the notice, then, as of the date 30 days from the date of the notice, the maturity of the loan is accelerated and full payment of all amounts due under the loan is required;

* * * * *

(c) *Reinstatement of the loan.* The lender may rescind the acceleration of maturity after full payment is due and reinstate the loan only if the borrower brings the loan current, executes a modification agreement, or agrees to an acceptable repayment plan.

* * * * *

9. In § 201.54, paragraph (c) is revised to read as follows:

§ 201.54 Insurance claim procedure.

* * * * *

(c) *Extension of the claim filing period.* Upon presentation of the facts of a particular case, the Secretary may extend the claim filing period. In computing the claim, no interest will be allowed for the period of the extension.

* * * * *

Dated: July 22, 1987.

James E. Schoenberger,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 87-20278 Filed 9-2-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Deletion of Provision Relating to Crime Sprees

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is making a revision to the general notes accompanying its paroling policy guidelines contained in 28 CFR 2.20 by deleting a provision relating to crime sprees. The change is intended to eliminate uneven and inconsistent interpretation of the provision.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development. U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. Telephone (301) 492–5980.

SUPPLEMENTARY INFORMATION:

A. The Proposed Rule and Its Purpose

General Note 7 of Subchapter A, Chapter Thirteen of the paroling policy guidelines contained in 28 CFR 2.20 provides guidance for the grading of state offenses that are sufficiently related to the instant federal offense "in time or nature to be considered as part of the same episode, course, or spree of criminal conduct." The note continues that such conduct "shall be considered as an aggravating factor by being graded on the severity scale as if part of the current federal offense behavior." Further, according to the note, any "time spent in custody on the state offense(s) shall be credited" for the purposes of the parole release guidelines.

It has been the experience of the Parole Commission that this provision's wording has led to uneven application and that, rather than attempting to revise the language, it would be preferable to delete the provision in full. It is the determination of the Commission that other rules, notes and provisions in the guidelines are sufficient to provide guidance for determining the appropriate severity level for related state offenses committed as part of a crime spree.

Pursuant to that experience and determination, on June 12, 1987, the U.S. Parole Commission published in the **Federal Register** (52 FR 22499) a proposal to revise the General Notes in 28 CFR 2.20 by deleting General Note 7.

B. Public Comment

The Parole Commission received no public comment on the proposed rule change.

C. Changes for the Proposed Rule

There are no changes from this rule as proposed.

The rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

28 CFR Part 2 is amended as follows:

PART 2—[AMENDED]

The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. The General Notes in Subchapter A, Chapter Thirteen of the paroling policy guidelines of 28 CFR 2.20 are revised by removing General Note 7.

Dated: August 21, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87–20282 Filed 9–2–87; 8:45 am]

BILLING CODE 4410–01–M

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Disclosure of Information on Parolees

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending its procedures regarding the disclosure to law enforcement officials of information concerning parolees in order to conform the regulations in 28 CFR 2.37(b) to recent statutory changes in 18 U.S.C. 4203.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. Telephone (301) 492–5980.

SUPPLEMENTARY INFORMATION: Pursuant to 28 CFR 2.37(b), certain information about parolees may be released by the Commission to law enforcement agencies when necessary for public protection or for the enforcement of the conditions of parole.

As part of the Criminal Law and Procedure Technical Amendments Act of 1986 (Pub. L. 99–646, Section 57(b), Nov. 10, 1986), new subsection (e) was added to 18 U.S.C. 4203 essentially codifying the provisions contained in 28 CFR 2.37(b). To conform the existing regulations to the recently amended federal code, the Parole Commission is revising 28 CFR 2.37(b). A reference to requests for information made pursuant to 18 U.S.C. 4203(e) is being added to the regulation. Further, the rule is being amended to designate the appropriate Chief Probation Officer as the individual to authorize such disclosure.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.37(b) is revised to read as follows:

§ 2.37 Disclosure of information concerning parolees; statement of policy.

* * * * *

(b) Information concerning parolees may be released by a Chief U.S. Probation Officer to a law enforcement agency (1) as deemed appropriate for the protection of the public or the enforcement of the conditions of parole or (2) pursuant to a request under 18 U.S.C. 4203(e).

Dated: August 21, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87–20284 Filed 9–2–87; 8:45 am]

BILLING CODE 4410–01–M

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Supervision of Parolees: Deletion of Obsolete Reference

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The United States Parole Commission is making a revision to the Revocation Hearing Procedures found at 28 CFR 2.50(f) by deleting the reference therein to 28 CFR 2.25, formerly Regional Appeal.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship

Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5980.

SUPPLEMENTARY INFORMATION: In section 1408(c) of the Victims of Crime Act of 1984, Title II, ch. 14, Pub. L. 98–473 (Oct. 12, 1984), Congress amended 18 U.S.C. 4215 to eliminate the intermediate appeal of a Commission decision to the Regional Commissioner. As amended, section 4215 provides one avenue of administrative review of an agency determination—an appeal to the National Appeals Board. Thereafter, the Commission deleted its rule at 28 CFR 2.25 to reflect this procedural change and to eliminate the appeal to the Regional Commissioner (49 FR 44097 (November 2, 1984)). A prisoner or parolee may now only appeal a Commission decision to the National Appeals Board under 28 CFR 2.26. For original jurisdiction cases under 28 CFR 2.17, appeals of agency determinations are still made under 28 CFR 2.27 to the full Commission.

The Commission, at the same time, amended several other of its regulations to conform to the deletion of 28 CFR 2.25. A reference to that obsolete section, however, was overlooked in 28 CFR 2.50 (Revocation Hearing Procedures). The Commission is amending its rule at § 2.50 to delete that reference.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

28 CFR Part 2 is amended as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.50(f) is revised to read as follows:

§ 2.50 Revocation hearing procedures.

* * * * *

(f) A revocation decision may be appealed under the provisions of § 2.26 or § 2.27 as applicable.

August 21, 1987.

Benjamin F. Baer,

Chairman, United States Parole Commission.

[FR Doc. 87–20283 Filed 9–2–87; 8:45 am]

BILLING CODE 4410–01–M

Office of the Attorney General

28 CFR Part 51

[Order No. 1214–87]

Voting Rights Act of 1965; Procedural Amendments

AGENCY: Department of Justice.

ACTION: Final Rule.

SUMMARY: The Voting Section of the Department's Rights Civil Division now uses a post office box to receive U.S. mail. This amendment simply substitutes the new post office address for the old address in the several places where an address is provided in the procedures.

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: David H. Hunter, Attorney, Voting Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C., 202–724–5898.

SUPPLEMENTARY INFORMATION: The Voting Section of the Department's Civil Rights Division now has its own post office box. Submissions under Section 5 and other correspondence for the Voting Section sent via the U.S. Postal Service should be addressed as follows: Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035–6128.

(Submissions and other correspondence sent via carriers *other than* the U.S. Postal Service should not be addressed to the post office box but should be addressed as follows: Chief, Voting Section, Civil Rights Division, Department of Justice, 320 First Street, NW., Room 716, Washington, DC 20001).

This amendment is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127) because it imposes no new requirements. Therefore, a regulatory impact analysis has not been prepared.

This amendment does not have an impact on small entities and, therefore, is not subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 28 CFR Part 51

Administrative practice and procedure, Archives and records, Authority delegations (government agencies), Civil rights, Elections, Political committees and parties, Voting rights.

Accordingly, 28 CFR Part 51 is amended as set forth below.

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

§ 51.19 [Amended]

2. Section 51.19 is amended by removing the words "Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, DC 20530" and inserting in their place the word "Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035–6128".

3. Section 51.24 is revised to read as follows:

§ 51.24 Address for submissions.

(a) *Delivery by U.S. Postal Service.* Submissions sent to the Attorney General via the U.S. Postal Service shall be addressed to the Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035–6128.

(b) *Delivery by other means.* Submissions sent to the Attorney General by carriers *other than* the U.S. Postal Service should be addressed or may be delivered to the Chief, Voting Section, Civil Rights Division, Department of Justice, 320 First Street, NW., Room 716, Washington, DC 20001.

(c) *Special marking.* The envelope and first page of the submission shall be clearly marked: Submission under Section 5 of the Voting Rights Act.

§ 51.25 [Amended]

4. Section 51.25(a) is amended by removing the words "Civil Rights Division, Department of Justice, Washington, DC 20530" and inserting in their place the words "as specified in § 51.24 of this part".

§ 51.29 [Amended]

5. Section 51.29(b) is amended by removing the words "Washington, D.C. 20530" and inserting in their place the words "P.O. Box 66128, Washington, D.C. 20035–6128".

Dated: August 28, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87–20353 Filed 9–2–87; 8:45 am]

BILLING CODE 4410–01–M

POSTAL SERVICE

39 CFR Part 10

Code of Ethical Conduct for Postal Service Employees, Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

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SUMMARY: The Postal Service is correcting an error in the heading of new Part 10, which contains the Code of Ethical Conduct for Postal Service Governors. Notice of the adoption of this Code was published in the **Federal Register** on August 11, 1987 (52 FR 29697).

EFFECTIVE DATE: August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Charles D. Hawley, (202) 268–2971.

SUPPLEMENTARY INFORMATION: In FR Doc. 87–18159, in the issue of Tuesday, August 11, 1987, the Postal Service published a final rule establishing a Code of Ethical Conduct for Postal Service Governors. The final rule noted that this Code is an appendix to the bylaws of the Board of Governors, that it comprises a new Part 10 of 39 CFR, and that the existing Part 10 is renumbered as Part 20. Unfortunately, the heading of new Part 10 inadvertently failed to show the status of the Code as an appendix to the bylaws. This error is corrected in this document.

For the foregoing reason, the Postal Service hereby corrects FR Doc. 87–18159, beginning on page 29697 in the issue of Tuesday, August 11, 1987, as follows:

PART 10—[AMENDED]

On page 29697, right hand column, in the heading of Part 10, add the word "[APPENDIX]" after the word "GOVERNORS".

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87–20307 Filed 9–2–87; 8:45 am]

BILLING CODE 7710–12–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 5

Implementation of Freedom of Information Reform Act; Changes to Freedom of Information Act Fee Schedule

AGENCY: Federal Emergency Management Agency.

ACTION: Technical amendment.

SUMMARY: The Federal Emergency Management Agency (FEMA) promulgated amendments to its rules concerning the Freedom of Information Act (FOIA) to incorporate recent changes to the Act regarding the establishment of fees charged for the search, review, and duplication of records in response to FOIA requests (52 FR 13674–13680, April 24, 1987). The rules followed the guidelines established by the Office of Management and Budget.

The technical correction in § 5.46 specifies that for manual searches for records, FEMA will charge at the salary rate(s), (i.e., basic hourly pay rate plus 16 percent rather than basic pay plus 16.1 percent as reflected in the current regulations) of the employee(s) conducting the search. In view of the technical nature of the action being taken, no public comments are being requested, and the change shall be effective immediately upon publication in the **Federal Register**.

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 646–3840.

List of Subjects in 44 CFR Part 5

Freedom of Information Act, Production or disclosure of information.

Accordingly, for reasons set out in the preamble, 44 CFR Chapter I, Subchapter A, is amended as follows:

PART 5—[AMENDED]

1. The authority citation for Part 5 continues to read as follows:

Authority: 5 U.S.C. 552 as amended by sections 1801–1804 of the omnibus Anti-Drug Abuse Act of 1986 which contains the Freedom of Information Reform Act of 1986 (Pub. L. 99–570); Reorganization Plan No. 3 of 1978; and E.O. 12127.

2. Section 5.46(a) is revised to read as follows:

§ 5.46 Fee schedule.

(a) *Manual searches for records.* FEMA will charge at the salary rate(s), (i.e., basic hourly pay rate plus 16 percent) of the employee(s) conducting the search. FEMA may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure. FEMA may assess charges for time spent searching, even if FEMA fails to locate the records or if records located are determined to be exempt from disclosure.

* * * * *

Dated: August 27, 1987.

Spence W. Perry,

General Counsel.

[FR Doc. 87–20270 Filed 9–2–87; 8:45 am]

BILLING CODE 6718–01–M

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44 CFR Parts 59 and 60

[Docket No. FEMA–FIA]

National Flood Insurance Program; Elevation Requirements for Manufactured Homes in Existing Mobile Home Parks or Subdivisions; Suspension of Rule and Amendment of Rule With Request for Comments

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Modification of suspension of rule and technical corrections of errors.

SUMMARY: This notice modifies and makes technical corrections to a notice published in the **Federal Register** on June 30, 1987, (52 FR 24370). That notice suspended certain revisions to National Flood Insurance Program (NFIP) regulations which became effective on October 1, 1986, and restored prior provisions of the regulations. The suspended revisions required the elevation of manufactured homes placed or substantially improved in existing mobile home parks and subdivisions in special flood hazard areas. The modifications to the notice are to extend the suspension through September 30, 1988, in order to be consistent with the Supplemental Appropriations Act of 1987 (Pub. L. 100–71) signed into law on July 11, 1987, and to extend the comment period in the notice through October 30, 1987.

FOR FURTHER INFORMATION CONTACT: Michael F. Robinson, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472; telephone number (202) 646–2717.

SUPPLEMENTARY INFORMATION: On June 30, 1987, the Federal Emergency Management Agency (FEMA) published a notice in the **Federal Register** (52 FR 24370) which suspended until March 31, 1988, a portion of a revision to National Flood Insurance Program (NFIP) criteria which became effective October 1, 1986. The portion of the revision that was suspended required the elevation to or above the base flood elevation of manufactured homes placed or substantially improved in existing mobile home parks and subdivisions (those established prior to the adoption of a community's floodplain management regulations). Subsequent to this publication, the Supplemental Appropriations Act of 1987 (Pub.L. 100–71) was signed into law on July 11, 1987. That Act suspended the same provision through September 30, 1988. In order to make the June 30, 1987, notice consistent with the Supplemental Appropriations

Act, FEMA is hereby modifying that notice to suspend the provision through September 30, 1988, rather than until March 31, 1988. Because of the additional time that this provides, FEMA is also extending through October 30, 1987, the comment period provided for in the June 30, 1987, Federal Register notice. A number of technical corrections are hereby made to the June 30, 1987, notice, most of which correct cross references elsewhere in NFIP criteria that were inadvertently not changed to reflect the suspension of § 60.3(c)(6) and the addition of a new § 60.3(c)(12).

Accordingly, in the "Suspension of Rule; Amendment of Rule with Request for Comments" (document 87-14527) beginning on page 24370 in the Federal Register of Tuesday, June 30, 1987, make the following modifications and corrections:

Modifications

1. On page 24370 in the first column under EFFECTIVE DATE, change "until March 31, 1988" to read "through September 30, 1988."

2. On page 24370 in the first column under DATE FOR COMMENTS, change "August 31, 1987" to read "October 30, 1987."

Corrections

1. On page 24371 in the third column under "Impacts of the Suspension of the Rule Revision on Communities," line 18, "§ 60.3(c)(12)" should read "§ 60.3(c)(6)."

2. Add amendatory instruction number 4 under Part 60 to read as follows:

4. Section 60.3 is amended as follows:

(a) By removing in paragraph (b)(4) the phrase "(c)(6)" and replacing it with "(c)(12)."

(b) By removing in paragraph (d)(1) the phrase "(11)" and replacing it with "(12)."

(c) By removing in paragraph (e)(1) the phrase "(11)" and replacing it with "(12)."

Dated: August 13, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-20269 Filed 9-2-87; 8:45 am]

BILLING CODE 6718-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

48 CFR Part 208

Federal Acquisition Regulation Supplement; Federal Supply Schedules

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The DAR Council has approved revisions to section 208.404-70 with respect to Federal Supply Schedules.

EFFECTIVE DATE: August 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o Room 3D139, The Pentagon, Washington, DC 20301-3062, Telephone (202) 697-7266. Please cite DAR Case 87-80 in all correspondence related to this issue.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to an agreement between the Department of Defense (DoD) and the General Services Administration (GSA), DoD will no longer be a mandatory user on Federal Supply Schedules. This policy becomes effective for each Federal Supply Group (FSG) as that schedule expires. The sole exception will be Federal Supply Group 68, chemicals and gases, and services for maintenance, repair, rehabilitation, and reclamation of personal property. Section 208.404-70 has been revised to annotate each FSG with its expiration date and to delete those FSGs which were not agreed to by DoD for mandatory use.

B. Regulatory Flexibility Act Information

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act Information

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 208

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Part 208 is amended as follows:

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1. The authority citation for 48 CFR Part 208 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 208.404-70 is revised to read as follows:

208.404-70 Applicability of listed Federal Supply Schedules.

Supplies and services covered by the Federal Supply Schedules listed herein are mandatory in whole or in part upon some element of the Department of Defense until expired (see list for expiration date). Except for Group 68, gases and chemical, and services for which DoD provides annual requirement estimates (see 208.470-6), DoD will not be listed as a mandatory user on any future Federal Supply Schedules. Some o the Federal Supply Schedules listed include classes unrelated to the Federal Supply Group which identifies the Schedule. To aid in locating an item in the mandatory Schedules, the classes included in each Schedule have been listed. The Remarks column states exceptions to the mandatory provisions of the Schedule when applicable. (But see 208.470-6 for mandatory use of GSA Term Contracts for maintenance, repair, rehabilitation and reclamation of personal property.) The Schedules should be checked for complete details concerning the exceptions.

Mandatory nationally			Schedule title	Remarks
Expiration date	Schedule identification	FSC class		
10/01/87	19 I	1940, 1945, 2010/2805	Small Craft Marine and Floating Barriers	
11/01/87	25 I	2520, 2530, 2540	VEHICULAR EQUIPMENT COMPONENTS—tire chains and clutch facings	
05/01/88	26 II	2610	PNEUMATIC TIRES AND INNER TUBES—Highway, off-highway industrial, pursuit/emergency high speed passenger, and agriculture.	

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Mandatory nationally			Schedule title	Remarks
Expiration date	Schedule identification	FSC class		
07/01/88	36 II	3610, 3615	SPECIAL INDUSTRY MACHINERY—lithographic printing plates (masters) and solutions; spirit duplicators, thermal process; printing, duplicating, and bookbinding equipment; and pulverizing, pulping, and shredding machines.	Except Special Item No. 51-1, 51-1-1, 51-1-3, 51-2, 51-46, 51-106, 51-107, 51-108, 51-110, 51-111, 51-113, 51-114, 51-125, 51-125-1, 51-126.
10/01/90	36 IV	3610	SPECIAL INDUSTRY MACHINERY—copying equipment, supplies and services	Except Special Item No. 51-43, 51-44, 51-45, 51-52, 51-53, 51-54.
03/01/88	37 II A	3750	LAWN AND GARDEN EQUIPMENT—lawn mowers, mowers, shredders, edgers, trimmers, roto-tillers, broadcast spreaders, sprayers, vacuums, sweepers, tractors, and accessories.	
08/01/87	45 VII A	4520	PLUMBING AND HEATING EQUIPMENT—domestic water heaters, gas and electric	
07/01/88	45 VIII A	4540	PLUMBING AND SANITATION EQUIPMENT—household garbage disposers, ⅓ and ½ horsepower	
04/01/88	51 I A	5130, 5133, 5180	HAND AND POWER TOOLS—pneumatic, hydraulic, power actuated, gasoline engine, and special purpose drill bits.	
06/01/88	51 IV	5110, 5120, 5136, 5140, 5210	HAND AND POWER TOOLS—nonpowered tools	
06/01/88	61 I	6140	BATTERIES—6- or 12-volt lead-acid automotive storage	
02/01/88	61 III	6135	BATTERIES—dry cell	Except Index Numbers 5, 13-22.
05/01/88	62 I	6230	LIGHTING FIXTURES AND LAMPS—household and quarters use	
10/01/87	62 III	6240, 6250, 6750	ELECTRIC LAMPS—fluorescent and incandescent, and fluorescent adapters	
10/01/87	62 & 67	6240, 6750	LAMPS—electrical and photographic	
10/01/87	66 I B	6650, 6675	INSTRUMENTS AND LABORATORY EQUIPMENT—electronic distance measuring equipment and magnifiers.	Except Air Force.
10/01/87	66 II A	6630	INSTRUMENTS AND LABORATORY EQUIPMENT—blood analysis systems, diluters, pipettes, electrophoresis equipment	Except Air Force.
05/01/90	66 II B	6515, 6630, 6640, 8125	INSTRUMENTS AND LABORATORY SUPPLIES—glass, plastic, and metal laboratory ware; laboratory distillation and demineralizing systems; vena puncture products for blood specimen collection; and prescription bottles.	
02/01/89	66 II C	6630, 6640, 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—microscopes, centrifuges, pH meters, microtomes, stirrers, shakers, stereoscopes, monoculars, and titrators/titration systems	
01/01/88	66 II E	6670	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory balances, precision scales and accessories.	
08/01/88	66 II H	5915, 5985, 6625	INSTRUMENTS AND LABORATORY EQUIPMENT—amplifiers, microwave and low frequency instruments, and RF components.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD
05/01/90	66 II M	6625, 6630, 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—spectrophotometers, densitometers, liquid scintillation systems, multi-channel pulse height analyzers, spectrometers, photometers, and polarograph analysis equipment.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD.
06/01/88	66 II N	6630, 6635, 6640, 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—analyzers, chromatographs, colony counters, blood analysis systems diluters, pipettes, electrophoresis equipment, and image analysis systems.	Not mandatory for Dept. of the Air Force.
04/01/88	66 II O	4110, 6530, 6636, 6640	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory apparatus, and laboratory and clinical refrigerators and freezers.	
02/01/88	66 II P	6640	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory and pharmacy furniture	
12/01/88	66 II Q	6625, 6630, 6640, 6655, 6660, 6680, 6685.	INSTRUMENTS AND LABORATORY EQUIPMENT—environmental analysis equipment, pollution, oceanographic and weather.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD
02/01/90	66 II R	6625, 6665, 6680	INSTRUMENTS AND LABORATORY EQUIPMENT—environmental analysis, pollution control air bag and detecting equipment.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD.
08/01/88	66 II S	6630, 6640, 6670	INSTRUMENTS AND LABORATORY EQUIPMENT—glassware and scales	
02/01/88	67 II B	6635, 6750, 6720, 6740	PHOTOGRAPHIC SUPPLIES—film, chemicals, and photographic paper	
10/01/88	67 IV B	6720, 6730, 6740, 6750, 6760	MICROPHOTOGRAPHIC EQUIPMENT AND SUPPLIES—cameras, projectors, printers, developing and duplicating equipment, and chemicals, film, and paper.	Except SINs 21-4-1a, b & c, 21-4-2a, b & c, 21-4-3a, b & c, 21-50a, 50b, 21-26, 26a.
	68 III E & F	6830	CHEMICALS AND CHEMICAL PRODUCTS—refrigerant fluorocarbons and sulfur hexafluoride	
	68 III G	6830	CHEMICALS AND CHEMICAL PRODUCTS—helium	
	68 III H	6830	CHEMICALS AND CHEMICAL PRODUCTS—fire extinguishing fluorocarbons	
07/01/88	71 I B	7105	HOUSEHOLD AND QUARTERS FURNITURE—danish style	Except SINs 29 through 38.
02/01/88	71 I C	7105	HOUSEHOLD AND QUARTERS FURNITURE—traditional style	
01/01/88	71 I D	7105	HOUSEHOLD AND QUARTERS FURNITURE—dormitory and quarters	Except items 1-57 and items 92-100.
05/01/88	71 I E	7105	HOUSEHOLD AND QUARTERS FURNITURE—upholstered (performance tested) furniture	
11/01/88	71 II B	7110	OFFICE FURNITURE—executive traditional, unitized and contemporary, wood	
07/01/88	71 II C			
10/01/88	71 II E	7110	OFFICE FURNITURE—systems furniture	
09/01/87	71 III B	7195	MISCELLANEOUS FURNITURE—library, wood, or metal	
02/01/88	71 III C	7125	MISCELLANEOUS FURNITURE—storage cabinets for forms and flammable liquids	
10/01/87	71 III D	7110, 7125	MISCELLANEOUS FURNITURE—mail sorting and distribution equipment, modular cabinets for high and low density storage, and molded plastic/corrugated storage bins	
02/01/88	71 III E	7110	MISCELLANEOUS FURNITURE—insulated and uninsulated security filing cabinets, safes, vault doors, and map and plan files.	
11/01/88	71 III F	6530, 7105, 7210, 7230	MISCELLANEOUS FURNITURE—hospital patient room	Except items 482-7 and 482-8.
02/01/88	71 III H	7105, 7110	MISCELLANEOUS FURNITURE—multi-purpose seating	
05/01/88	71 III J	7125	MISCELLANEOUS FURNITURE—steel vertical blueprint filing cabinets, roll drawing files, and high-density movable shelf filing cabinet systems.	
07/01/90	71 III K	7125	MISCELLANEOUS FURNITURE—special purpose	
10/01/87	71 III L	7110	MISCELLANEOUS FURNITURE—cafeteria and food service	

Mandatory nationally			Schedule title	Remarks
Expiration date	Schedule identification	FSC class		
05/01/88	71 III M	7195	MISCELLANEOUS FURNITURE—acoustical partitions, speech privacy partitions, and vertical surface panels.	Except Items 500-2, 500-3, and 500-4
04/01/88	71 III N	7045, 7110	MISCELLANEOUS FURNITURE—ADP furniture, storage and transportation items	
10/16/87	71 III O	7105, 7195	MISCELLANEOUS FURNITURE—folding chairs and tables	
01/01/88	71 V B	7110, 7125	OFFICE FURNITURE—key cabinets	
08/01/87	71 V D	7105, 7110	OFFICE AND FIELD FURNITURE—office furniture; map and plan filing cabinets and folding tables; modular steel field office furniture: filing cabinets, desk top, and end folding table.	
06/01/88	71 XIV A	7110, 7125, 7195	SHOP FURNITURE—desks, benches, and tables	
10/01/87	72 I	7220	HOUSEHOLD AND COMMERICAL FURNISHINGS—carpets, special purpose carpets, rugs, carpet tiles, and carpet cushions.	Not mandatory for use aboard vessels
02/01/88	72 I E	7220	HOUSEHOLD AND COMMERCIAL FURNISHINGS—mats and matting; entrance-way, interlocking modular, resilient open construction and anti-static types.	Not mandatory for use abroad vessels.
09/01/87	73 IV B	7310	APPLIANCES—household and commercial electric ranges	
10/01/89	74 I A	7430	OFFICE MACHINES—electronic typewriters, visual display preparation devices, sound reduction equipment and electric typewriter supplies.	
12/01/87	74 I B	7430	OFFICE MACHINES—typewriters, electric, single element	
12/01/87	74 I C	7450	OFFICE MACHINES—dictating and transcribing equipment	
07/01/89	74 II & III	6645, 7420, 7490	OFFICE MACHINES—adding, calculating, cash registers, time measuring instruments, miscellaneous office machines.	
09/01/87	74 II A	7420	OFFICE MACHINES—calculators, desk top nonprogrammable	
04/01/88	74 IV	7460	VISIBLE RECORD EQUIPMENT—control boards, files and frames	Not mandatory on DoD for rental, repair and maintenance.
01/01/88	75 I C	7530, 9310	OFFICE SUPPLIES—special use paper: engineering and draftsman papers—graph, drawing, tracing, overlay plastic sheets, cardboard and paper embossing; index sheet sets for looseleaf binders; paperboard, drawing; and labels for automatic data processing.	
09/01/87	75 I D	7530	OFFICE SUPPLIES—plotting paper, supplies; and recording paper	
03/01/90	75 II A	3540, 7510, 7520, 7690, 7530	OFFICE SUPPLIES—pencils, leads, tape label marking, chart supplies and/or letters and figures, sorters, desk correspondence, file suspended folders, plastic book jackets, plastic organizers and sorters, out-of-typewriter correction material, labels, price marking equipment, data binders, binders, looseleaf, typewriter ribbons, word processing ribbons, correction tape, computer ribbons, computer print-out ruler, plastic copyholder, and print wheels.	
09/01/88	75 II B	3540, 7510, 7520	OFFICE SUPPLIES—looseleaf binders, label tape, pamphlet files, multi-strike typewriter ribbons, typewriter correction tape, pressure sensitive adhesive tape, correctable typewriter ribbons, plastic desk trays, lead holders, document protector, typist copyholders, gummed tape dispensers, file drawer frames, stapling machines, bristol cardboard, labeling machines.	
05/01/88	75 IV A & B	7520	OFFICE SUPPLIES—rubber stamps	
05/01/90	75 IV C	7520	OFFICE SUPPLIES—pre-inked rubber stamps	
12/01/87	75 V	7530	OFFICE SUPPLIES—envelopes: mailing, printed and plain	Mandatory except for plain envelopes for use in the District of Columbia.
04/01/88	75 VIII A	7530	OFFICE SUPPLIES—cards; tabulating, aperture, and copy	
03/01/88	75 X	7530	OFFICE SUPPLIES—xerographic paper	
10/01/87	75 XI	7530	OFFICE SUPPLIES—xerographic paper and thermal copy paper	
11/01/87	75 XII	7530	OFFICE SUPPLIES—electrographic paper	
02/01/89	76 I	7610, 7640	PUBLICATIONS—dictionaries, encyclopedias, other reference books and pamphlets, maps, atlases, charts, and globes.	
10/01/87	76 II	7610, 7630, 7670	PUBLICATIONS—law, tax, and reporting periodicals, microfilm library systems	Except SINs 37-5, 6, and 7.
10/01/89	77 III	7105, 7730	AUDIO AND VIDEO EQUIPMENT—televisions, radios, phonographs and video cassette recorders.	
01/01/90	78 I A	7810	ATHLETIC AND RECREATIONAL EQUIPMENT—outdoor equipment	
09/01/89	78 I C	7830	ATHLETIC AND RECREATIONAL EQUIPMENT—outdoor recreational equipment	
12/01/87	79 I A	7910	CLEANING EQUIPMENT AND SUPPLIES—vacuum cleaners, carpet shampooers, floor polishing and scrubbing machines.	
03/01/90	79 I B	7910	CLEANING EQUIPMENT AND SUPPLIES—vacuum cleaners, carpet shampooers, floor polishing and scrubbing machines.	
04/01/89	79 II A	7930	CLEANING EQUIPMENT AND SUPPLIES—liquid and powdered dishwashing compounds with contractor supplied, installed and maintained accessory dispensing systems.	
05/01/88	79 III A	7930	CLEANING EQUIPMENT AND SUPPLIES—liquid and powdered laundry detergents with contractor supplied, installed and maintained accessory dispensing systems.	
12/01/87	81 I A	8135	PACKAGING AND PACKING SUPPLIES—cushioning material	
07/01/88	81 II A	8135	PACKAGING AND PACKING SUPPLIES—steel and nonmetallic strapping	
03/01/89	99 VI A	9910	TROPHIES AND AWARDS—trophies, awards, plaques, pins, and ribbons	
05/01/89	99 V A	9905	RECRUITING AID PROMOTIONAL MATERIAL	For requirements of recruiting commands only.

In addition to these National Federal Supply Schedules, there are Regional Schedules (chiefly covering various services) which are mandatory in the region covered. Activities should check with local GSA Region offices for listings of regional schedules applicable in their area.

[FR Doc. 87-20309 Filed 9-2-87; 8:45 am]

BILLING CODE 3810-01-M

48 CFR Parts 213 and 253

Federal Acquisition Regulation Supplement; Defense Acquisition Circular (DAC) 86-4

AGENCY: Department of Defense (DOD).

ACTION: Final rule.

SUMMARY: Defense Acquisition Circular (DAC) 86-4 amends Part 213 of the DOD FAR Supplement (DFARS) with respect to purchase orders, and provides instructions for completion of DD Form 1155.

EFFECTIVE DATE: August 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o Room 3D139, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Public Comments

Public comments are not necessary because the revisions do not have a significant cost or administrative impact

on contractors or offerors and do not have a significant effect beyond the internal operating procedures of the Department of Defense.

B. Regulatory Flexibility Act

This rule does not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

C. Paperwork Reduction Act

The Office of Management and Budget approved use of the DD Form 1155 under clearance number 0704–0187.

List of Subjects in 48 CFR Parts 213 and 253

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Defense Acquisition Circular

[Number 86–4]

August 1, 1987.

Unless otherwise specified, all DOD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective August 1, 1987.

Defense Acquisition Circular (DAC) 86–4 amends the DOD Federal Acquisition Supplement (DFARS) and prescribes procedures to be followed. The following is a summary of the amendments and procedures:

Item I—DD Form 1155, Order for Supplies or Services

DAC 86–4 revises the DD Form 1155 and associated coverage. Because the provisions on the DD Forms 1155r and 1155r–1 are obsolete, these forms and the clause requirements at DFARS 213.505–2(S–71), (S–72), and (S–73) are rescinded. New clause requirements are expressed at 213.507 and are intended to allow activities wider latitude in the selection of clauses appropriate for purchase order transactions. Minimal revisions have been made to the face of the DD Form 1155. Block 16 of the form has been replaced with a contractor acceptance block. The DD Form 1155 has also been retitled to reflect abandonment of its use as an RFQ. Other editorial changes have been made throughout DFARS 213 to implement the above actions and to consolidate related subject matter. The revised DD Forms 1155 and 1155c–1, JUL 87, are provided with this DAC. (Note: DD Forms are not published in the **Federal Register** or the Code of Federal Regulations.)

Adoption of Amendments

Therefore the DOD FAR Supplement is amended as set forth below.

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1. The authority for 48 CFR Parts 213 and 253 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, and DOD FAR Supplement 201.301.

2. Section 213.203–1 is added to read as follows:

213.203–1 General.

(i) BPA's shall be prepared and issued on DD Form 1155, Order for Supplies or Services, except for BPA's issued by the Defense Personnel Support Center, which may be issued on its form "Order for Subsistence".

3. Section 213.203–2 is revised to read as follows:

213.203–2 Clauses.

(a) The clause requirements prescribed at 213.507 for purchase orders shall also apply to BPA's.

213.204 [Amended]

4. Section 213.204 is amended by removing in the first sentence of paragraph (b) the words "$10,000, except that BPA calls up to" and adding a period after the figure $25,000"; and by removing the remainder of the first sentence of paragraph (b).

213.402 [Amended]

5. Section 213.402 is amended by removing the penultimate sentence of paragraph (b)(2) which reads "An alternate cashier . . . as the principal."

213.404 [Amended]

6. Section 213.404 is amended by removing from paragraph (b)(1) the words "of $75,000 or less"; by changing the period to a comma at the end of paragraph (b)(1) and adding the words "provided the changes are determined to be reasonable and acceptance is in the best interest of the Government."

7. Section 213.503 is amended by removing from the first sentence of paragraph (b)(2) the word "otherwise"; and by revising the first sentence of paragraph (b)(3) to read as follows:

213.503 Obtaining contractor acceptance and modifying purchase orders.

* * * * * *

(b) * * *

(3) To otherwise modify the purchase order, and if not previously included in the purchase order, the clauses set forth at 213.507(a)(2) shall be incorporated in the SF 30 and the contractor's acceptance obtained by signature on the SF 30.

* * * * *

8. Section 213.505–2 is revised to read as follows:

213.505–2 Agency order forms in lieu of optional forms 347 and 348.

(S–70) Optional Forms 347 and 348 are not authorized for use in the Department of Defense.

(1) The DD Form 1155, Order for Supplies or Services, is authorized for use in small and other simplified, unclassified purchases made pursuant to FAR Part 13 and this supplement. (For classified purchases see 213.507(a)(4).) The DD Form 1155, when used in concert with the applicable clause requirements at 213.507(a) (1) through (4), provides in one document:

(i) A purchase order, a blanket purchase agreement, a delivery order under a contract or a delivery order on Government agencies outside the Department of Defense;

(ii) A receiving and inspection report;

(iii) A property voucher;

(iv) A public voucher:

(A) Not exceeding $25,000 when the form is used as a purchase order;

(B) Without monetary limitation when the form is used as a delivery order; and

(C) Without monetary limitation as the basis for payment of an invoice against blanket purchase agreements, or basic ordering agreements when a firm price has been established;

(v) A document for acceptance by the supplier.

(2) Optional Form 336, Continuation Sheet, provides additional space, or a blank sheet of paper may be used. (SF 36 may be used until stocks are exhausted.)

(3) DD Form 1155c–1, Commissary Continuation Sheet (for use on an optional basis), provides columns suited for commissary procurements.

(4) Standard Form 30, Amendment of Solicitation/Modification of Contract, shall be used for all modifications to DD Form 1155 (see 213.503).

(5) Blanket purchase agreements issued by the Defense Personnel Support Center may be prepared on its form "Order for Subsistence".

(6) The foregoing forms may be used as snap-out manifold forms, as cut sheets, as reproducible masters, or automatically printed (including computer generated). Continuation sheets may be printed on the reverse of DD Form 1155.

9. Section 213.505–70 is amended by substituting in the title the words "Optional Form 336" in lieu of the words "Standard Form 36"; by adding paragraphs (c) and (d) and redesignating the existing paragraph (c) as paragraph (e); by removing from the second

sentence of the redesignated paragraph (e) the words " 'C' for contractor" and the comma; by removing under the listing "Title and Instructions for Entries", immediately following the redesignated paragraph (e), the first column (heading "RFQ") of the three right-hand columns; by substituting, in the same listing, under Block #9, the word "Contractor" in lieu of the words "Contractor/Quoter"; by adding in (i) of Block #9, a period after the word "contractor" and removing the words "or quoter."; by substituting in the penultimate sentence of the instructions under Block #9 the words "Optional Form 336" in lieu of the words "Standard Form 36"; by substituting in both places under Block #11 the word "contractor" for the words "contractor/quoter"; and by removing under Block #16 of the same listing paragraph (ii) and redesignating the existing paragraph (iii) as paragraph (ii), to read as follows:

213.505–70 Instructions for entries on DD Form 1155 and Optional Form 336.

* * * * *

(c) When the purchase order includes FMS requirements, clearly indicate "FMS Requirement" on its face and specify within the order each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY–D–DCA.

(d) For orders requiring payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall be identified by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate in effect at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

* * * * *

10. Section 213.507 is added to read as follows:

213.507 Clauses.

(a) Purchase orders shall incorporate the clause requirements addressed in (a)(1) through (4) of this section per FAR 52.102. Where the provisions of (a) (1) and (2) of this section do not meet the requirements of a specific order, (a)(3) provides authorization for such other clauses as appropriate.

(1) The following clauses are normally appropriate for unilateral purchase orders. These clauses shall be included in each order as applicable.

(i) FAR 52.252–2, "Clauses Incorporated by Reference" (required only if other clauses are incorporated by reference)

(ii) FAR 52.203–1, "Officials Not to Benefit"

(iii) FAR 52.203–3, "Gratuities"

(iv) FAR 52.203–5, "Covenant Against Contingent Fees"

(v) FAR 52.203–7, "Anti-Kickback Procedures"

(vi) FAR 52.212–9, "Variation in Quantity"

(vii) FAR 52.222–3, "Convict Labor" (unless the order, will be subject to the Walsh-Healey Public Contracts Act, see FAR 22.6)

(viii) FAR 52.222–26, "Equal Opportunity" (unless exempted by FAR 22.807 exceptions)

(ix) FAR 52.225–3, "Buy American Act—Supplies"

(x) FAR 52.232–1, "Payments"

(xi) DFARS 252.232–7000, "Invoices"

(xii) FAR 52.233–1,"Disputes"

(xiii) FAR 52.246–1, "Contractor Inspection Requirements" (except when an alternate level of inspection or quality assurance is necessary pursuant to FAR 46.202–3)

(xiv) FAR 52.246–16, "Responsibility for Supplies"

(2) When a purchase order requires the contractor's written acceptance, the following clauses shall be included in addition to those determined to be applicable in accordance with (a)(1) of this section:

(i) FAR 52.243–1, "Changes—Fixed-Price", with appropriate alternate as necessary

(ii) DFARS 252.243–7001, "Pricing of Adjustments"

(iii) An appropriate "Termination for Convenience of the Government" clause from FAR 52.249–1, FAR 52.249–3, FAR 52.249–4, or FAR 52.249–5

(iv) An appropriate "Termination for Default" clause from FAR 52.249–8, FAR 52.249–9, FAR 52.249–10, or FAR 52.249–11

(3) Any other clauses required or permitted shall be incorporated consistent with the guidance prescribing their use.

(4) The DD Form 1155 may be used when the acquisition is classified if:

(i) The purchase is made within the United States, its possessions and Puerto Rico.

(ii) The Security Requirements clauses in FAR 52.204–2 is inserted in the schedule.

(iii) DD Form 254, Contract Security Classification Specification, is incorporated in the purchase order. (See FAR 4.403(c) and FAR 53.204–1.)

(iv) The contractor's written acceptance of the purchase order is obtained at the time of purchase order issuance.

10. The list of forms following section 253.270 is amended by removing "253.303–70–DD–1155r DD Form 1155r: General Provisions" and "253.303–70–DD–1155r1 DD Form 1155r1: Reverse of Order for Supplies or Services/Request for Quotations—Foreign".

[FR Doc. 87–20310 Filed 9–2–87; 8:45 am]

BILLING CODE 3810–01–M

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48 CFR Part 217

Defense Federal Acquisition Regulation Supplement (DFARS); Undefinitized Contract Actions (UCAs); Correction

AGENCY: Department of Defense (DOD).

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule on Undefinitized Contract Actions (UCAs) which was published in the **Federal Register** on Thursday, April 16, 1987 (52 FR 12387) and corrected on May 28, 1987 (52 FR 19872) and June 25, 1987 (52 FR 23835). The action is necessary to exclude the need for a maximum not-to-exceed price for initial spares. The interim rule of April 16, 1987 required a maximum not-to-exceed price for UCAs; however, that pricing concept is inappropriate for initial spares. The purpose of this document is to remove the requirement to identify maximum not-to-exceed price for initial spares from Part 217.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

PART 217—SPECIAL CONTRACTING METHODS

Accordingly, the Department of Defense is correcting 48 CFR Part 217 as follows:

217.7503 [Corrected]

Section 217.7503 is amended by adding in paragraph (b)(5) between the word "subparagraphs" and the reference "(b)(3)" the reference "(b)(2)" and a comma.

[FR Doc. 87–20311 Filed 9–2–87; 8:45 am]

BILLING CODE 3810–01–M

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1-18, Notice 33]

Federal Motor Vehicle Safety Standards; Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In a final rule published in the **Federal Register** on February 3, 1987, NHTSA amended a number of the requirements of Standard No. 101, *Controls and Displays*. The agency received a number of petitions for reconsideration. Some of the issues raised by the petitioners were responded to in a notice published in the **Federal Register** on March 9, 1987. This notice responds to the rest of the issues and makes several changes in the standard for purposes of clarification or correction.

DATES: The amendments made by this rule are effective September 3, 1987. Petitions for reconsideration must be received by October 5, 1987.

ADDRESS: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-5271).

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** (52 FR 3244) on February 3, 1987, NHTSA amended a number of the requirements of Standard No. 101, *Controls and Displays*. While the primary purpose of the amendments was to permit greater flexibility in the illumination and identification of controls and displays, the agency recognized that some of the amendments could result in the need for manufacturers to modify existing designs. The agency adopted an effective date of September 1, 1989, for these amendments in order to provide adequate leadtime for such modifications. Other amendments relieved restrictions and were not believed to result in the need for design modifications. The agency concluded that an effective date of 30 days after publication in the **Federal Register**, i.e., March 5, 1987, was in the public interest for these amendments.

NHTSA received petitions for reconsideration from the Automobile Importers of America, Inc. (AIA), Volkswagen (VW), Volvo, Ford, Chrysler, the Motor Vehicle Manufacturers Association (MVMA), Nissan, Austin Rover, Mazda and Toyota. Many of the petitioners indicated that some of the amendments effective on March 5, 1987 would result in the need for design modifications and requested that the effective date for these amendments be extended to September 1, 1989.

After reviewing the petitions, NHTSA concluded that some of the amendments would require design changes and, accordingly, decided to permit compliance with either the earlier version of the standard or the amended standard until September 1, 1987. In a final rule published in the **Federal Register** (45 FR 7151) on March 9, 1987, the agency reissued the earlier version of Standard No. 101, redesignated as Standard No. 100, to apply to vehicles manufactured before September 1, 1989. The application section of the standard made it clear that manufacturers have the option of meeting the requirements of Standard No. 101 for any control or display as an alternative to Standard No. 100's requirements. Conforming amendments were made to the application section of Standard No. 101.

NHTSA noted in its March 1987 notice that while the petitioners were particularly concerned about the March 5, 1987 effective date, they also raised other issues, which would be addressed in a separate notice. This notice addresses those issues.

Several petitioners raised issues concerning the requirements of section S5.3.5. That section states:

> Any source of illumination within the driver's forward field of view which is not used for the controls and displays regulated by this standard, and which is capable of being illuminated while the vehicle is in motion, must have either a variable intensity, a single intensity that is barely discernible to a driver who has adapted to dark ambient roadway conditions, or a means of being turned off. This requirement shall not apply to buses that are normally operated with the passenger compartment illuminated.

AIA stated that clarification is needed in section S5.3.5 to ensure that the term "variable intensity" means manually or automatically adjustable intensity to provide at least two levels of brightness, and not continuously variable intensity. Similarly, Toyota stated that it assumes that "variable intensity" means manually or automatically adjustable intensity to provide at least two levels of brightness, neither of which need be barely discernible to a driver who has adapted to dark ambient roadway conditions, and not continuously variable. In order to provide greater clarity, the agency is amending section S5.3.5 along the lines requested by AIA. With respect to Toyota's understanding that neither of the two levels of brightness need be "barely discernible to a driver who has adapted to dark ambient roadway conditions, the agency notes that the purpose of section S5.3.5 is to limit glare. Thus, while NHTSA is not setting specific requirements for the two levels of brightness, it expects that manufacturers will consider problems of glare as they select levels of brightness.

AIA and Toyota also requested clarification concerning section S5.3.5's use of the term "driver's forward field of view." AIA asked whether the term is intended to apply to controls beneath the dash, on the floor console or on the driver's door. Toyota requested that NHTSA provide a definition of "driver's forward field of view," stating that items that should be subject to this section cannot be determined because the term is unclear. The agency interprets that term to refer to anything forward of the driver and within his or her view, including peripheral view. In order to clarify the meaning of this requirement, NHTSA is replacing the phrase which includes "driver's forward field of view" with the following phrase: sources of illumination within a vehicle's passenger compartment which are forward of a transverse vertical plane 4.35 inches (110.6 mm.) rearward of the manikin "H" point with the driver's seat in its rearmost driving position. The 4.35 inches dimension represents the distance between the Z-Z datum line and the rearmost point of the 99th percentile eye ellipse (reference SAE JG41 Oct. 1985). This may include illumination sources beneath the dash, on the floor console, and on the driver's door.

Chrysler expressed concern about section S5.3.5's requirements as they apply to telltales not otherwise regulated by Standard No. 101. That petitioner noted that while section S5.3.4 permits the light intensity of telltales listed in the standard to be either variable or non-variable, so long as they can be made visible under all driving conditions, section S5.3.5 requires telltales not listed in the standard to have a variable intensity, a single intensity barely discernible to the driver under nighttime conditions, or a means of being turned off. Chrysler objected that these requirements preclude use of non-variable telltales which are bright

enough to be seen under all driving conditions. That company noted that it and other manufacturers provide a number of telltales not listed in Standard No. 101 that provide important and useful information, such as door-liftgate ajar, exterior lamp outage, low windshield washer fluid, transmission oil temperature, and engine condition. NHTSA agrees with the petitioner that manufacturers should be permitted to provide these types of telltales with non-variable intensity. As suggested by Chrysler, the agency is excepting telltales from the requirements of section S5.3.5.

Austin Rover argued that section S5.3.5 should be amended to clarify the requirements for what it termed supplemental information displays. Noting that the February 1987 final rule deleted the definition of "informational readout display" from Standard No. 101, that petitioner stated that some supplemental information displayed in an informational readout display could now be misinterpreted to be covered by section S5.3.3's requirements for "controls, gauges and the identification of those items." Austin Rover stated that "(a)s this element is more stringent than the previous requirements for informational readout displays, it is in clear contradiction to the intent of the amendment as stated in the preamble, that being, to provide greater flexibility in the illumination and identification of controls and displays." The petitioner did not describe what it meant by "supplemental information" or provide any examples.

NHTSA notes that the illumination requirements of section S5.3.3 apply only to the controls and gauges listed in Standard No. 101 (see section S5), while section S5.3.5 covers illuminations for controls and displays not otherwise regulated by the standard. Thus, if the "supplemental information" referred to by the petitioner is a gauge listed in the standard, it is covered by section S5.3.3. On the other hand, if the "supplemental information" is a gauge not listed by the standard, it is covered by section S5.3.5. NHTSA believes that Austin Rover's arguments fail to indicate any need for further clarification. With respect to the petitioner's argument that section S5.3.3's requirements are more stringent than the earlier requirements for informational readout displays, the agency notes that it recognized in both the February 1987 and the March 1987 final rule that some of the amendments would require design changes.

Ford noted that while the definition of informational readout display was removed from the standard, the term still appears in the second sentence of section S5.1. The retention of the term was inadvertent, and it is therefore being deleted.

Ford, VW, Toyota and MVMA noted that amendments to Table 1(a), permitting greater flexibility in identifying certain controls, should have been made to Table 1. While manufacturers currently have the option of complying with the requirements specified in either Table 1 or Table 1(a), they must comply with the requirements of Table 1, effective September 1, 1987. This notice accordingly amends Table 1.

Toyota stated that it assumes that manufacturers may comply with either Standard No. 100 or No. 101 on a control by control (or display or identification) basis and suggested that, in order to minimize confusion in this area, Tables 1 and 1(a) should be revised in both standards. However, NHTSA believes that amendments to Standard No. 100 could cause confusion. Standard No. 101 is the agency's primary standard for controls and displays, and the amendments are being made to that standard. Standard No. 100 is simply the earlier version of the standard, which was reissued for purposes of optional compliance until September 1, 1989. Amending both standards would cloud the distinction between the two standards. NHTSA notes that the application section of Standard No. 101 states that at the option of the manufacturer, motor vehicles manufactured before September 1, 1989, may comply with the requirements of Standard No. 100, instead of the requirements of Standard No. 101, for *any* control, display, or illumination. The agency also notes that there is no need to rescind the amendment to Table 1(a) in Standard No. 101.

Ford pointed out a typographical error in the February 1987 notice. On p. 3246, in the last paragraph of the first column, the notice stated that "(t)he amended provision, now designated as S5.3.3, applies only to those sources of illumination which are capable of being illuminated while the vehicle is in motion. . . ." This sentence should have referred to S5.3.5.

NHTSA has determined that an immediate effective date is in the public interest. The amendments made by this notice impose no new requirements but instead either increase manufacturer flexibility or are for purposes of clarification or correction. As discussed above, manufacturers must comply with the requirements of Table 1 rather than Table 1(a), effective September 1, 1987. Since the amendments permitting greater flexibility in identifying certain controls were made to Table 1(a) rather than to Table 1, manufacturers availing themselves of this flexibility may as of that date be unable to certify that some of their vehicles comply with Standard No. 101, absent these amendments.

The agency has analyzed these amendments and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the amendments are so minimal that a full regulatory evaluation is not required. Since the amendments impose no new requirements but instead either increase manufacturer flexibility or are for purposes of clarification or correction, any cost impacts would be in the nature of slight, nonquantifiable cost savings.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. For the reasons discussed above, the only impacts of the amendments would be in the nature of slight, nonquantifiable cost savings. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, will be significantly affected by the amendments. Accordingly, no regulatory flexibility analysis has been prepared.

Finally, the agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.101 [Amended]

2. The introductory text of S5.1 is revised to read as follows:

S5.1 *Location.* Under the conditions of S6, each of the following controls that is furnished shall be operable by the driver

and each of the following displays that is furnished shall be visible to the driver. Under the conditions of S6. telltales are considered visible when activated.

* * * * *

3. S5.3.5 is revised to read as follows:

S5.3.5 Any source of illumination within the passenger compartment which is forward of a transverse vertical plane 4.35 inch (110.6 mm) rearward of the manikin "H" point with the driver's seat in its rearmost driving position, which is not used for the controls and displays regulated by this standard, which is not a telltale, and which is capable of being illuminated while the vehicle is in motion, shall have either (1) light intensity which is manually or automatically adjustable to provide at least two levels of brightness, (2) a single intensity that is barely discernible to a driver who has adapted to dark ambient roadway conditions, or (3) a means of being turned off. This requirement does not apply to buses that are normally operated with the passenger compartment illuminated.

4. Table 1 is amended by adding the word "Lights" to column 2 as identifying words or abbreviation for Master Lighting Switch control, by adding the word "Horn" to column 2 as identifying words or abbreviation for Horn control, by adding the word "Hazard" to column 2 as identifying words or abbreviation for Hazard Warning Signal control, by adding the words "Wiper or Wipe" to column 2 as identifying words or abbreviation for Windshield Wiping System control, by adding the words "Washer or Wash" to column 2 as identifying words or abbreviation for Windshield Washing System control, by adding the words "Wash-Wipe or Washer-Wiper" to column 2 as identifying words or abbreviation for Windshield Washing and Wiping Combined control, by adding the word "Fan" to column 2 as identifying words or abbreviation for Heating and/or Air Conditioning Fan control, by adding the words "Defrost, Defog or Def" to column 2 as identifying words or abbreviation for Windshield Defrosting and Defogging System control, by adding the words "Rear Defrost, Rear Defog, Rear Def, or R-Def" to column 2 as identifying words or abbreviation for Rear Window Defrosting and Defogging System control, and by adding the words "Marker Lamps or MK Lps" to column 2 as identifying words or abbreviation for Identification, Side Marker and or Clearance Lamps control.

Issued on August 31, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-20268 Filed 8-31-87; 12:16 pm]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1181

[Ex Parte No. MC-184]

Regulation of Household Goods Freight Forwarders Under the Surface Freight Forwarder Deregulation Act of 1986; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; correction.

SUMMARY: At 51 FR 44297, December 9, 1986, the Commission published regulations making numerous ministerial revisions to its regulations governing freight fowarders. That notice contained an omission, which this notice corrects.

FOR FURTHER INFORMATION CONTACT: Ann Guthridge, (202) 275-6796.

SUPPLEMENTARY INFORMATION:

At 51 FR 44297, December 9, 1986, amendatory instruction 27 under Amendment No. 1 is corrected to read as follows:

27. Section 1181.21(g), (i) and (l).

Noreta R. McGee,

Secretary

[FR Doc. 87-20202 Filed 9-2-87; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1207

[No. 38904]

Elimination of Accounting and Reporting Requirements for Motor Carriers of Property; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rules; correction.

SUMMARY: At 52 FR 10382, April 1, 1987, the Commission adopted rules regarding accounting and reporting of motor carriers of property. That notice contained an error which this notice corrects.

FOR FURTHER INFORMATION CONTACT: Ann Guthridge, (202) 275-6796.

SUPPLEMENTARY INFORMATION:

PART 1207—CLASS I AND CLASS II COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY

In amendment No. 1 under Part 1207 at 52 FR 10382, April 1, 1987, the list of authority citations being removed is corrected by revising Class I and Class II Motor Carrier Balance Sheet Explanation "1449" to read "1451."

Noreta R. McGee,

Secretary.

[FR Doc. 87-20201 Filed 9-2-87; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1244

[Ex Parte No. 385 (Sub-No. 2)]

Procedures on Release of Data From the ICC Waybill Sample; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rules; correction.

SUMMARY: At 52 FR 12415, April 16, 1987, the Commission published rules concerning the type of data and information that may be obtained from the "ICC Waybill Sample." That notice contained an error which this notice corrects.

FOR FURTHER INFORMATION CONTACT: Ann Guthridge, (202) 275-6796.

SUPPLEMENTARY INFORMATION:

PART 1244—[CORRECTED]

In amendment No. 1 to Part 1244 published at 52 FR 12416, April 16, 1987, the newly revised authority citation is corrected by revising the reference to "5 U.S.C. 522" to read "5 U.S.C. 552."

Noreta R. McGee,

Secretary.

[FR Doc. 87-20205 Filed 9-2-87; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1249

Revision to the Accounting and Reporting Requirements for Motor Carriers of Passengers; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; correction.

SUMMARY: At 52 FR 20399, June 1, 1987, the Commission adopted new accounting and reporting regulations for motor carriers of passengers. That notice contained an error, which this notice corrects.

FOR FURTHER INFORMATION CONTACT: Ann Guthridge, (202) 275-6796.

SUPPLEMENTARY INFORMATION:

PART 1249—[CORRECTED]

Amendatory instruction No. 1 to Part 1249 published at 52 FR 20400, June 1, 1987 is corrected to read as follows:

1. In 49 CFR Part 1249, the authority citation is revised to read as follows:

Noreta R. McGee,

Secretary.

[FR Doc. 87-20204 Filed 9-2-87; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1313

[Ex Parte No. 387 (Sub-No. 960)]

Department of Defense Railroad Transportation Contracts; Exemption From Certain Requirements; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rule and exemption; correction.

SUMMARY: At 52 FR 25228, July 6, 1987, the Commission published rules exempting all rail transportation contracts (other than agricultural commodity contracts) made by the Department of Defense from the requirements of 49 U.S.C. 10713. That notice contained an error which this notice corrects.

FOR FURTHER INFORMATION CONTACT: Ann Guthridge (202) 275-6796.

SUPPLEMENTARY INFORMATION:

PART 1313—CORRECTED

In Amendment No. 1 to Part 1313 published at 52 FR 25228, July 6, 1987, the newly revised authority citation is corrected by revising 49 U.S.C. "10813" to read "10713."

Noreta R. McGee,

Secretary.

[FR Doc. 87-20203 Filed 9-2-87; 8:45 am]

BILLING CODE 7035-01-M

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Proposed Rules

Federal Register
Vol. 52, No. 171
Thursday, September 3, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket PRM-73-6]

Partial Denial of Petition for Rulemaking; Wisconsin Electric Power Co. et al.

AGENCY: Nuclear Regulatory Commission.

ACTION: Partial denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is responding to a petition submitted by Wisconsin Electric Power Company, et al., to amend 10 CFR Part 73, Appendix B. The petition includes three proposals: Eliminate the requirement that armed security personnel carry an extra pair of corrective lenses, reduce the mandated frequency of medical examinations for personnel under age 39, and eliminate requirements that armed security personnel undergo a medical examination within the 30-day period preceding the physical fitness test that is given at least yearly. After considering the issues raised, the Commission finds that it is prudent to retain the requirements for the carrying of an extra pair of corrective lenses and annual medical examinations. These two parts of the petition are being denied because it has not been shown that the relaxation of present requirements would result in the same level of protection provided by the current regulations. The Commission intends to grant, through issuance of a rule, the third part of the petition requesting deletion of a specified link between the timing of the medical examination and the physical fitness test.

ADDRESSES: Copies of the petition for rulemaking, the public comments thereon, and the NRC's letter of denial are available for examination and copying for a fee at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra D. Frattali, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443–7746.

SUPPLEMENTARY INFORMATION:

The Petition

The Nuclear Regulatory Commission is responding to a petition for rulemaking dated December 2, 1981, filed by Shaw, Pittman, Potts and Trowbridge on behalf of the Wisconsin Electric Power Company, the Public Service Electric and Gas Company, the Commonwealth Edison Company, the Yankee Atomic Electric Company, the Northern States Power Company, and the Sacramento Municipal Utility District. The petition requested changes in the qualifications for armed security personnel set out in 10 CFR Part 73, Appendix B, and entitled "General Criteria for Secondary Personnel." Specifically, the petitioners requested changes to criteria I.B.1.b(1)(a), I.C. and I.E.

The changes the petitioners requested would eliminate the requirement that, at nuclear power plants or other facilities licensed to handle special nuclear material, armed security personnel who need corrective lenses carry an extra pair and the requirement that security personnel undergo a medical examination within 30 days preceding an annual physical fitness test.

Basis for Request

The petitioners, in an accompanying memorandum in support of the petition, state that "the requirement for security personnel to carry an extra pair of corrective lenses is an unnecessary nuisance to those personnel. It also makes them subject to harassing inspections to check for their second set of eyeglasses or contact lenses." The petitioners also state that other Federal and State agencies, including:

> the military services, the FBI, the Immigration Service, ATF, the Customs Service, the GSA, nor the District of Columbia Police Department or the Maryland State Police [do not] require security personnel to carry an extra pair of corrective lenses if their uncorrected eyesight falls below a certain level. This NRC requirement thus appears overly stringent. Moreover, the requirement is often difficult to satisfy because carrying an extra pair of glasses often leads to breakage or loss. Consequently, compliance can become an ineffective yet costly exercise.

Regarding the requirement that security personnel undergo an annual medical examination within 30 days of an annual physical fitness test, the petitioners "suggest that the two types of tests need not be tied to the same schedule, and that the frequency of medical examinations should vary with age. * * * The petitioners [do] recognize the importance of regular physical fitness testing and medical examinations for security personnel" and state that, under the revised language proposed in the petition, "existing requirements for additional medical examinations following serious illness, injury, disease or operation would not be affected." The petitioners reviewed the physical fitness and medical examination requirements of the various branches of the military service, the FBI, and similar enforcement-related organizations with

> responsibilities of equal or greater sensitivity than those of security officers at nuclear power plants * * * [and conclude] that the present NRC requirements are excessively strict. In view of the requirements in the military and at other federal and state agencies, the petitioners recommend elimination of the Commission's present requirement tying medical examinations to physical fitness testing schedules and modification of the Commission's overly rigid medical examination schedule for young employees while maintaining all other requirements in the existing qualification program.

The petitioners include proposed amendments to the test of portions of Appendix B to Part 73.

Public Comments on the Petition

The petition was published for comment in the **Federal Register** on February 16, 1982 (47 FR 6659). The NRC received 13 comment letters. The sources were as follows:

Congress—1
General public—1
Nuclear industry—11

Ten of the comment letters supported the petition, yet none of them contained any technical information beyond that in the petition. One commenter argued that broken eyeglasses are meaningful only if the entire guard force is engaging in a response and pointed out that there has never been a call-up of the total

guard force onsite. Another commenter expanded on the medical examination issue by describing the practices of certain other State and Federal agencies.

Response to Petition

On the first proposal regarding the requirement for the extra pair of glasses, neither staff reevaluation nor public comments have identified substantive ways in which the proposed changes would either benefit the public or result in the same level of protection provided by current regulations. While the need to carry an extra pair of corrective lenses is not commonly required by persons charged with public safety and protection, a requirement for a minimum acceptable uncorrected vision is common.

A few examples of those public agencies whose regulations require extra corrective lenses for their operational personnel are as follows. The Department of Energy requires that armed personnel who need corrective lenses carry an extra pair. Federal Motor Carrier Safety regulations provide that persons, who drive motor vehicles on behalf of motor carriers and who use contact lenses, carry a spare pair on their person. The Coast Guard requires that a pilot (i.e. marine pilot), who needs corrective lenses, have a spare pair available on the vessel. Since the pilot is normally on the vessel bridge, a considerably smaller area than a nuclear facility, this situation approximates actually carrying them.

On the other hand, most agencies charged with the protection of the public set minimum uncorrected as well as corrected vision standards for their armed personnel.[1] The NRC does not. It sets only corrected vision standards. In a published report,[2] the importance of good visual acuity for police officers is documented. Officers deprived of optical correction are shown to have suffered impaired performance in some tasks such as the use of firearms and pursuit of criminals. With regard to pursuit, the experience of the Columbus, Ohio, Police Department is reported. In the period from December 1977 to June 1979, eleven instances of damaged eyewear were reported, including one involving a fall and six involving pursuit and apprehension of prisoners. One instance resulted in a suspect not being apprehended. With regard to the use of firearms, the study makes the statement that "point shooting was extremely poor at night with visual acuties over 20/30." [3] The experience of the New York City Police Department shows that 20 percent of officer gunfights occur at distances greater than 20 feet. The importance of having an assured level of visual acuity is stressed by the authors.[4]

In March, 1987, another study of the Columbus, Ohio, Police Department was published and provided further evidence that police officers must periodically function with impaired vision. Also included in this published study were results of a survey of police officers who routinely wear corrective lenses on duty. Of the officers responding to the survey, 52% reported that their glasses had become "dislodged" while performing their duties.[5]

Although agencies such as the Secret Service do not require that armed personnel with vision problems carry an extra pair of corrective lenses, the personnel themselves commonly do so. Moreover, the Secret Service and similar agencies have stringent non-corrected vision standards for weapons-carrying personnel. The Secret Service, for example, requires new recruits to have at least 20/40 uncorrected vision.

A minimum vision standard was suggested in one of the public comments to 10 CFR Part 73 when it was published as a proposed rule. The commenter suggested a vision standard as a substitute for the requirement to carry an extra pair of corrective lenses. However, this proposed alternative, which suggested an uncorrected vision of 20/67 in the better eye, was rejected as making the vision requirements too restrictive for NRC licensee guard force employment.

Since NRC has no non-corrected vision standards for armed personnel and has not determined that a need exists to place such restrictions on licensee guard personnel, the requirement to carry an extra pair of corrective lenses is necessary to maintain the current level of protection. Furthermore, the need for good vision standards for armed personnel is well recognized in the above-cited studies. Therefore, in the absence of any minimum uncorrected vision requirement, and in view of the Commission's determination not to reduce the present level of protection, the NRC's current requirement for carrying an extra pair of glasses by armed personnel will be retained.

With respect to the second proposal, NRC finds that an annual medical examination is necessary to ensure that the guard force personnel are physically able to perform their duties and that there are no contraindications to participation in the annual physical fitness testing. Annual or "preparticipation" medical examinations are common practice for young people who engage in sports or strenuous physical activity. The Department of Energy, Secret Service, and U.S. Marshal Service all require annual medical examinations regardless of age, as does the Department of Labor for its mine rescue team testing. The petitioner has not presented persuasive evidence that a three-year examination period will provide the same degree of assurance achieved by the current annual requirement.

With respect to the third proposal, the Commission recognizes that the timing between medical examinations and a physical fitness test is primarily a scheduling matter in which the licensee requires discretion for efficient management. The present regulation requires the physical examination to be scheduled within 30 days of the physical test. The Commission agrees with the petitioners that there is no necessary relationship between this schedule interval and the level of protection. The latter is satisfied in demonstrating physical ability by an annual examination and an annual test. Accordingly, the Commission recognizes that the timing between medical examinations and physical fitness testing is primarily a scheduling matter in which the licensee requires discretion for efficient management. The current rule denies this discretion. The Commission intends to implement this change by amending the appropriate sections of Appendix B to 10 CFR Part 73. However, as a matter of prudence to protect the well-being of the guard force personnel, the Commission believes that the interval between the medical examination and the physical fitness tests should be minimized.

Reasons for the Partial Denial

Consideration of the petition and the public comments did not result in a conclusion that granting the petition in its entirety would result in maintaining the present level of assurance that the national security and public health and safety would be protected. Since the Commission does not intend to change its present policy, it is prudent to require that replacements for corrective lenses

[1] Richard N. Holden, "Vision Standards for Law Enforcement: A Descriptive Study." *Journal of Police Science and Administration*, 12 (1984), p. 125.

[2] James E. Sheedy, "Police Vision Standards," *Journal of Police Science and Administration*, 8 (1980), p. 18.

[3] Ibid.

[4] Ibid.; Sheedy, "Police Vision Standards," p. 18.

[5] Gregory W. Good and Arol R. Augsburger, "Uncorrected Visual Acuity Standards for Police Applicants," *Journal of Police Science and Administration*, 15 (1987), p. 18.

be immediately available to armed security personnel in an emergency situation and to require the continuance of annual medical examinations for all armed security personnel. The NRC, therefore, denies the two parts of the petition proposing those changes in the requirements.

Dated at Bethesda, Maryland, this 20th day of August 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87-20325 Filed 9-2-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Parts 1204 and 1205

[NHTSA Docket No. 81-12; Notice 4]

Uniform Standards for State Highway Safety Programs and Highway Safety Programs; Determination of Effectiveness

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM) and notice of public hearings.

SUMMARY: On April 2, 1987, Congress enacted the Surface Transportation and Uniform Relocation Assistance Act of 1987. Section 206(d) of the Act, amending 23 U.S.C. 402(j), requires the Secretary to begin a rulemaking process to determine those programs most effective in reducing accidents, injuries, and deaths and to amend 23 CFR Part 1205 accordingly. Pursuant to the Act, those programs judged to be most effective in the Department's final rule will be eligible for Federal funding under the State and Community Highway Safety Grant Program (23 U.S.C. 402).

This notice is being issued to solicit public comments to assist the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) to determine which highway safety programs are most effective. The notice announces public hearings, and invites submission or written comments to the public docket on this subject. It also proposes to replace the terms "standard" and "standards" with the words "guideline" and "guidelines" in Part 1204 of the agencies' joint regulation, 23 CFR Part 1204, pursuant to section 206(a) of the Act. The agencies expect to issue a final rule by April 1, 1988.

DATES: The public hearings will be held on September 29, and October 8 and 14, 1987. All written comments must be received by October 19, 1987. If the rule is promulgated by April 1, 1988, it will be effective October 1, 1988. If the rule is promulgated on a later date, it will be effective October 1, 1989.

ADDRESS: The September 29, 1987 hearing will be held in Room 2230 of the Nassif Building, U.S. Department of Transportation, 400 7th St., SW., Washington, DC; the October 8, 1987 hearing will be held in Room 1A03 of the Fritz Lanham Building, 819 Taylor Street, Fort Worth, Texas; the October 14, 1987 hearing will be held in Conference Rooms A & B of the Lehigh Building, 555 Zang Street, Lakewood, Colorado. Each hearing will be scheduled from 9 a.m. to 12 noon and from 1:30 p.m. to 5 p.m., or until the final witness has been heard, whichever is earlier.

Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, Room 5109, U.S. Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are from 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: In NHTSA: Mr. J. Michael Sheehan, Jr., Traffic Safety Programs, Room 5125, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366-1755.

In FHWA: Mr. Howard Hanna, Office of Highway Safety, Room 3413, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366-2131; or Mr. Thomas Holian, Office of Chief Counsel, Federal Highway Administration, telephone (202) 366-1350.

SUPPLEMENTARY INFORMATION: On April 2, 1987, the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, was enacted by Congress. Section 206(d) of the Act, amending 23 U.S.C. 402(j), requires the Secretary to begin a rulemaking process to determine those programs most effective in reducing accidents, injuries, and deaths and to amend 23 CFR Part 1205 accordingly. Pursuant to the Act, those programs judged to be most effective in the Department's final rule will be eligible for Federal funding under the State and Community Highway Safety Grant Program (23 U.S.C. 402). The Act also gives the Secretary authority to revise the rule from time to time thereafter. Any revision must be accomplished through a rulemaking process to determine those programs most effective in reducing accidents, injuries and deaths.

Section 206(d) provides that the Secretary begin a rulemaking process not later than September 1, 1987, and promulgate a final rule not later than April 1, 1988. If the final rule is promulgated by April 1, 1988, the Act provides that the rule shall take effect October 1, 1988. If the rule is promulgated on a later date, it shall take effect October 1, 1989. NHTSA and FHWA expect to meet the April 1, 1988 deadline.

Section 206(a) of the Act, amending 23 U.S.C. 402, replaces the terms "standard" and "standards" wherever they appear with the words "guideline" and "guidelines". This change will also be addressed in this rulemaking action.

Background

The State and Community Highway Safety Grant Program (the 402 program) was established under the Highway Safety Act of 1966, 23 U.S.C. 402. The Act required the establishment of Uniform Standards for State Highway Safety Programs to assist the States and local communities to organize their highway safety programs.

Until 1976, the 402 program was principally directed towards achieving State and local compliance with the 18 Highway Safety Program Standards, which were considered mandatory requirements with financial sanctions available for noncompliance. Under the Highway Safety Act of 1976, Congress provided for a more flexible implementation of the program so that the Secretary would not have to require State compliance with every uniform standard or with each element of every uniform standard. As a result, the standards have become more like guidelines for use by the States. Management of the program has shifted from enforcing standards to one of problem identification, countermeasure development and evaluation, using the standards as a framework for the State programs. This approach was formalized in section 206(a) of the 1987 Act. See, the discussion below entitled, "Change from Standards to Guidelines."

The 402 program has been administered at the federal level by the Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA). NHTSA is responsible for developing and implementing highway safety programs relating to the vehicle and driver. FHWA has similar

responsibilities in program areas involving the highway.

In 1981, Congress passed the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, revising the section 402 program. The Act directed the agencies to conduct a rulemaking process to determine those State and local highway safety programs most effective in reducing accidents, injuries, and fatalities.

On April 1, 1982, in accordance with section 1107(d) of the Omnibus Budget Reconciliation Act of 1981, NHTSA and FHWA issued a final rule (47 FR 15116) identifying the six program areas which the agencies then considered to be the most effective NHTSA and FHWA highway safety programs. Those program areas were determined to be national priority program areas, and include:

NHTSA Program Areas:
- Occupant Protection
- Alcohol Countermeasures
- Police Traffic Services
- Emergency Medical Services
- Traffic Records

FHWA Program Areas:
- Safety Construction and Operational Improvements

The April 1982 final rule provided that these national priority program areas continue to be eligible for Federal funding under the 402 program, and established a mechanism by which additional programs identified by a State may be eligible for Federal funding.

The rule provided for an expedited procedure for the funding of national priority program areas. See, 23 CFR 1205.4. For the funding of other program areas, the rule permits States to select one or both of two procedures: Formal decisionmaking or problem identification. See, 23 CFR 1205.5(a) and (b). The agencies are not proposing, in this NPRM, any changes to these funding procedures.

On January 5, 1987, the Department submitted to Congress a legislative proposal to revise 23 U.S.C. 402. The Department's proposal provided for a periodic review of the effectiveness of the various programs eligible for funding under section 402 in reducing accidents, injuries and fatalities. The Department believed the periodic review procedure to be the best method for ensuring the continued relevance of the section 402 program to changing circumstances and traffic safety needs, and for ensuring that federal funds continue to be used in as cost effective a manner as possible. The proposal scheduled the first review to begin on September 1, 1987.

The legislative proposal also provided that the terms "standard" and "standards" wherever they appear be replaced with the words "guideline" and "guidelines". The purpose of this amendment was to conform the language of section 402 to the current implementation of the programs, pursuant to the 1982 determinations of program effectiveness under section 402(j). As a result of the section 402(j) determinations, the highway safety program standards have been maintained as non-binding guidelines for use by the States in their section 402 programs.

The Department's proposal was enacted by Congress as subsections 206(a) and (d) of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

Evaluation of Most Effective Program Areas

As directed by Congress in section 206(d) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, the agencies are considering, in this notice of proposed rulemaking, whether the six National Priority program areas identified in 1982 continue to be the most effective in reducing accidents, injuries and fatalities, and whether any emerging program areas should be added to the list of most effective programs.

There are factors that complicate any effort to identify effective programs. A relationship between a crash prevention program and a reduction in crashes or injury levels is often difficult to document. The actual impact and effect of individual elements of a coordinated program may be hard to identify and distinguish from those of other programs.

Another complicating factor in establishing priority areas is that not all States and localities experience similar crash patterns. Crash reduction efforts in highly urbanized areas may not produce similar results when applied to low population rural areas. Because of the differences in problem areas and the difficulty in evaluating program effectiveness, there is a need for flexibility in determining priority programs.

Despite these difficulties, NHTSA and FHWA have reviewed the available data within the Department to determine whether the program areas identified in the April 1982 final rule continue to be most effective in reducing accidents, injuries and fatalities. Based on their review, the agencies have tentatively determined that the six program areas identified in the April 1982 final rule continue to be of national concern, that effective countermeasures have been developed in these areas which address these concerns, and that State programs in these areas appear to be the most effective in reducing accidents, injuries and fatalities.

A summary regarding each of these program areas is listed below. The agencies note that the order in which each summary appears should not be interpreted as reflecting agency views regarding its relative importance.

NHTSA-Administered Program Areas

(1) Occupant Protection

In recent years, approximately 27,000 people have been killed annually in the front seats of passenger vehicles (passenger cars, light trucks and vans) and hundreds of thousands more suffer moderate to critical injuries on U.S. highways. Research and evaluative studies indicate that occupant protection systems, such as safety belts, child safety seats and automatic crash protection systems, if universally and properly used, could prevent as much as half of all these deaths and moderate to critical injuries to occupants of passenger cars, light trucks, and vans. Increasing and maintaining proper use of occupant protection systems is vital to achieving major fatality and injury reductions.

Safety belt use for drivers has more than tripled, from 11% in 1982 to 39% in the last half of 1986, as identified through annual surveys in 19 cities around the country. The surveys reveal that child safety seat use has also tripled, rising to 76% in the second half of 1986 from 23% in 1982. A large part of the success in achieving these increases is attributed to enactment of State safety belt laws and child safety seat laws. Among front seat passenger vehicle occupants, NHTSA estimates that approximately 2,200 fatalities and 25,000 moderate to critical injuries were prevented in 1986. Of these, NHTSA estimates that approximately 1,200 fatalities and 13,000 injuries were prevented in States which have mandatory safety belt use laws. NHTSA has projected that a 100% safety belt use rate could save up to 12,000 lives and prevent 150,000 moderate to critical injuries each year.

Obviously, the benefits of safety belts depend on the usage rates. The agencies believe that raising usage rates and obtaining public understanding and acceptance for automatic protection systems are among the greatest priorities in State and community programs. Practical and effective programs, techniques and strategies to

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achieve these goals need to be identified. It is important that the States continue their efforts to increase safety belt usage, provide public education, enforce safety belt and child safety seat use laws, and increase acceptance of automatic crash protection systems.

(2) Alcohol Countermeasures

Drunk driving continues to be one of our nation's most serious public health problems. Although progress has been made to combat this problem, approximately 19,000 lives are lost annually in alcohol-related crashes representing over 40% of all highway fatalities.

Since 1982, nearly every State (including the District of Columbia) has made significant progress in improving its drunk driving laws and in controlling the drunk driver. States have been extremely aggressive in their passage of legislation to address this problem, by raising the minimum drinking age to 21 (in all but one State, up from 19), establishing a BAC level of .10 as illegal per se (in 43 States, up from 25), and providing for the administrative suspension of driver licenses (in 22 States, up from 6). More importantly, most States have reported reductions in the proportion of alcohol-related fatalities in each sucessive year from 1982 through 1985. Since 1985, however, progress appears to have leveled off.

The agencies believe there is a need to renew State and local emphasis on the drunk driving problem. Research and national experience have shown that various enforcement strategies and licensing actions, when coupled with public information strategies, are effective in reducing alcohol-related fatalities. However, enforcement and sanctions must be sustained and new strategies must continually be introduced in order to maintain media and public attention to the issue. There is a need to pursue effective DWI prevention programs which emphasize, in both public and private places, responsible alcohol use and serving policies, and the value of designated drivers. There is a growing recognition that drug as well as alcohol impairment contributes to crashes, injuries and fatalities on our highways, and new methods of detecting drug-impaired drivers are being developed and used. We must also find more effective ways of dealing with individuals who contribute to a disproportionate number of fatal crashes, such as youthful drinkers who drive, repeat offenders and other high risk drivers. The agencies believe that State programs which systematically implement effective enforcement, licensing and media strategies, and develop and implement innovative DWI prevention programs are effective in reducing accidents, injuries and fatalities.

(3) Police Traffic Services

Police traffic services is an area of major concern. Between 89 and 90 percent of all types of motor vehicle crashes, including commercial motor vehicle collisions, involve some type of traffic law violation on the part of the driver. Data from NHTSA's National Accident Sampling System (NASS) and Fatal Accident Reporting System (FARS) reveal that excessive speed, alcohol use and other serious moving violations are major causative factors in most serious traffic crashes. In the past few years, an increase in traffic volume and vehicle miles traveled has contributed to a greater potential for vehicle crashes. In addition, it is the perception of police officials that there is a growing level of disrespect for traffic laws, particularly speed limit laws, and disobedience of traffic control devices.

Research has demonstrated that traffic services programs which involve increased enforcement, when coupled with appropriate sanctions and reinforced with public information and education strategies to create a general deterrence, are the most effective countermeasures to employ to reduce the incidence of the types of violations which most often contribute to vehicle crashes.

The agencies believe it is important to maintain and improve police traffic services. Most police departments have experienced limited growth at a time when demands for additional police services have risen. In many State and local agencies, personnel previously assigned to traffic duties have been shifted to other responsibilities to meet pressing needs in response to increased criminal activity, such as drug enforcement. Technical assistance and funding support is needed to encourage the adoption of improved support systems, and the implementation of innovative enforcement of safety belt use laws, speeding violations, drunk driving and other serious traffic violations. These systems will enable police traffic services programs to more effectively and productively cope with their limited resources.

(4) Emergency Medical Services

Emergency Medical Services (EMS) is an area of national importance. While motor vehicle-related injuries result in about one-third of the annual traumatic deaths and constitute about 10% of all injuries, they represent 60 to 70% of the need for comprehensive prehospital and hospital trauma services. State indices assessing the risk of death from motor vehicle injury indicate significantly lower risk as prehospital services improve in quality. One State (Maryland), having a comprehensive prehospital care system of coordinated access and dispatch, highly sophisticated transport systems, and a highly trained cadre of EMS care providers, reports a dead-on-arrival rate for injury patient which is less than half of the national average (5.6%, compared to 14.5%).

The agencies believe that comprehensive systems of trauma care and improved prehospital services are effective in reducing accidents, injuries and fatalities. Even greater improvements in injury outcome can be appreciated when high quality prehospital services are integrated with designated trauma centers into true systems of trauma care. In its 1986 report on EMS, the General Accounting Office noted that many States have assumed the leadership role in EMS, and have also taken on much of the financial responsibility. However, only 21 States currently have an active trauma center program, and in many States, the integration of prehospital and trauma center services has not been fully implemented. In addition, improvements have been and continue to be introduced in the EMS field, including the development of new planning indices such as the "EMS Sensitivity Index for Highway Safety Need," the growth of rapid transport systems and training for those programs, the exploration of new systems of radio dispatch and field-to-hospital communications, and the use of new technologies to maintain and improve the skills of trauma care providers.

(5) Traffic Records

An effective traffic records system alone within a State does not directly reduce crashes or injuries. However, it is an essential support service for all other highway safety programs. Traffic records serve as the source of data for making informed decisions about highway safety programs, and enable States to evaluate the effectiveness of these programs. They identify the drivers, roadways and vehicles involved in crashes, and document whether the crashes involve fatalities, injuries or property damage. In the area of driver licensing, for example, the availability of a complete and accurate driver history file, integrated with other traffic records files, allows the identification of problem drivers. Young drivers (ages 15

through 24) are seriously over-represented in vehicle crashes, as are drunk drivers. Elderly drivers also are over-represented in crash rates when the rates are measured by miles driven.

Despite improvements in certain areas of records operations, problems remain which prevent optimum performance of State and local traffic records systems. Areas which need improvement include uniformity of data elements and definitions, integration of system subfiles, and reduction of the error rate in obtaining and processing data. In addition, to have the most effective and efficient systems, State and local communities should use new data processing technology. The technology currently available allows both decentralization of data operations and linkage of all State files, and would permit State participation in the upgraded National Driver Register.

Congress authorized a ten percent section 402 set aside for traffic records in FY's 1985 and 1986. The set aside was used to advance records development, particularly in: (1) Identifying States which need improved systems, (2) assisting States to develop computer links between their driver licensing files and the National Driver Register, and (3) improving systems designed to support the State's driver license suspension and revocation program. The agencies believe it is important to complete the tasks which were started with these special funds. It is also important to develop and implement innovative driver licensing techniques for identifying problem drivers through State traffic records systems, and for implementing appropriate control measures, such as "administrative per se" procedures and the adoption and implementation of the Driver License Compact. The Driver License Compact encourages each State to adopt both a "one driver license" and a "one driver record" concept, to exchange information with other States and to assure uniform and predictable treatment of offenders.

The agencies note that FHWA administers a separate grant program in support of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA). The CMVSA will establish a uniform national system of single and classified licenses for truck and bus drivers, and will require States to develop and implement standards for driver tests, license issuance and suspensions. The agencies have tentatively determined that section 402 funds apportioned to the States should not be used to fund actions taken pursuant to the CMVSA which are covered by the FHWA grant program. If interested parties disagree with the agencies' initial determination, please submit comments indicating why section 402 funds are necessary to support actions taken under the CMVSA. Comments should identify the specified actions that would be appropriate for funding under section 402.

FHWA-Administered Program Area

Safety Construction and Operational Improvements

Crash statistics demonstrate the safety benefits of improved highway design. For example, crash rates on modern highways are up to 50% less than on older highways. Historically, financial and other constraints have severely limited the number of major improvements and changes that can be made to existing road systems. As a result, a majority of vehicle miles continue to be travelled on roads that allow less margin for error and more severe consequences than currently designed highways.

Selective correction of known hazards on older roads can provide major safety benefits. Recent evaluations conducted in conjunction with the Department's 1987 annual report to Congress on the Highway Safety Improvement Programs, for example, identified measures which have resulted in a 41% reduction in fatal crash rates and a 19% reduction in injury crash rates. Overall, the report estimates that projects under this program have been responsible for saving over 50,000 lives and preventing over 925,000 injuries since program inception in 1974. The most cost-effective projects are low cost improvements, such as traffic signing, roadway lighting, guardrail and barrier improvements, minor structural changes and intersection improvements.

Although section 402 funds may not be used for highway construction, they may be used to support other elements of a coordinated highway safety program, such as problem identification and program development. The programs developed with section 402 funds can then be funded under other highway safety programs. Over 81% of the section 402 funds in this program area is currently used for improved record systems, studies and analyses, technical training, and safety program development. Another 13% is being used for eligible minor traffic engineering safety improvements. While most section 402 expenditures do not result in crash reduction directly, they provide the foundation on which safety construction improvement decisions are based. The agencies believe State and local highway safety agencies should continue these types of activities to ensure that funds spent on highway improvements include maximum concern for the safety of the driving public.

The agencies seek public comments from interested parties on these six program areas. Parties may submit comments on any or all of the program areas, including whether the focus of the program areas should be changed. For example, in recognition of the growing interest in the problem of drugged driving, should the agencies formally rename the Alcohol Countermeasures program area to be Alcohol and Drug Countermeasures? The agencies also seek comments on whether to expand the list of national priority programs. Discussed below, for example, are two additional program areas: Motorcycle Safety and Pedestrian and Bicycle Safety. The agencies believe they are emerging as program areas of national concern. Countermeasures exist in these areas which have proven to be effective, through which significant safety benefits could be achieved. Parties may submit comments on one or both of these programs, or on program areas not discussed in this NPRM. If the agency is persuaded by comments that other program areas not mentioned here should be included as national priority program areas, the agency will add them in the final rule.

(1) Motorcycle Safety

Motorcycle crashes cause more than 11% of all motor vehicle fatalities in this country, and the proportion of these crashes to motor vehicle fatalities is increasing. The death rate per mile of travel for motorcyclists is up to 20 times that of automobile occupants. About 4,500 persons are killed and 200,000 injured each year in motorcycle crashes. Injuries are often severe and occur in more than 80% of all crashes. This is about three times higher than for automobiles. Head injuries are the most life-threatening. About 70% of all motorcycle fatalities result from head injuries. The failure of riders to wear safety helmets exacerbates the problem. Non-helmeted riders are at least two times more likely to incur a head injury of any type and at least three times more likely to be killed by a head injury than are helmeted riders.

Motorcycle crashes result from auto driver violation of motorcyclists' right-of-way, motorcyclists' lack of knowledge and skill, the lack of noticeability of the motorcycle and rider to other motorists, and alcohol consumption (between 40 and 70% of the motorcyclists killed in crashes have

consumed alcohol). NHTSA and the Motorcylce Safety Foundation have developed a comprehensive motorcycle safety program for State and community implementation. The program is comprised of the following elements: Operator Licensing, Rider Education, Safety Helmet Use, Conspicuity Enhancement, Motorist Awareness of Motorcycles, Alcohol Safety, and Moped Safety.

Motorcyclists are so vulnerable to severe injury when a crash occurs, that prevention of a motorcycle crash is tantamount to preventing a serious or fatal injury. It has been well documented that helmet use cuts the incidence of fatal head injuries by two-thirds. Therefore, motorcycle safety programs, which can effectively address these issues through community-based education projects, can be inexpensive and cost-effective. This program area would be administered by NHTSA.

(2) Pedestrian/Bicycle Safety

In 1986, motor vehicle crashes claimed the lives of 7,845 non-occupants, (6,771 pedestrians, 941 bicyclists, and 133 others). Nationwide, this number represents approximately one in five traffic fatalities. In some large urban cities, pedestrians and bicyclists represent half the traffic fatalities. In a motor vehicle crash, the pedestrian/bicyclist is at far greater risk than the vehicle occupant, FARS data indicate alcohol is involved in 57% of pedestrian and 44% of bicycle fatalities. The elderly are significantly over-represented in pedestrian fatalities. Head injuries are responsible for 70% of bicycle fatalities, and bicycle helmets are rarely used and poorly promoted.

Early NHTSA research found that, based on similar crash characteristics, pedestrian and bicycle crashes could be grouped into distinct crash "types." Associated with each type are specific behavioral errors committed by the pedestrian, bicyclist, or driver. For each major crash type, NHTSA has developed countermeasures containing guidance that could reduce the occurrence of these unsafe behaviors. The crash type which causes most injuries and fatalities is "dart out". A field test of the countermeasures developed to reduce this problem resulted in a 20% reduction in crashes for pedestrians under age 14. NHTSA has since developed instructional materials designed to influence particular audiences: Walking In Traffic Safely; (pre-school); Safe Street Crossing (K–4); Traffic Safety Curriculum (K–12); and public service announcements (child and adult). FHWA has also developed highway-related countermeasures for each pedestrian crash type identified, and included them in a model pedestrian safety program. These countermeasures include fixed illumination, urban intersection improvements, barriers, and one-waystreets. The FHWA bicycle safety efforts have focused on guidelines for developing new facilities and criteria for designating bicycle routes. Comprehensive pedestrian and bicycle safety programs have been implemented by a number of cities and States, resulting in reduced pedestrian and bicycle fatalities.

As with motorcyclists, pedestrians and bicyclists are so vulnerable to severe injury when a crash occurs, that prevention of a crash is tantamount to preventing a serious or fatal injury. It has been documented that bicycle helmet use reduces the incidence of fatal head injuries. Pedestrian/bicycle safety programs can effectively address these issues through community-based education projects, facility planning and improvement, and enforcement. Therefore, they also can be inexpensive and cost-effective. This program area would be administered jointly by NHTSA and FHWA.

It would assist the agencies if commenters address the issues listed below. Please note that when the agencies refer to "the program area" in this list, they are requesting comments regarding the programs previously identified as national priority areas as well as emerging programs that may be added. Comments may address one or all of the areas discussed in this NPRM, or areas which are not mentioned. When applicable, comments addressing the perspective or concerns of a particular region, State or locality are welcome.

(1) Does the program area represent a major problem at the national, State and local level?

(2) Is it expected that the program area will represent a major problem at the national, State and local level in the future?

(3) Are countermeasures sufficiently developed in the program area to effectively address the problem?

(4) What are the costs and benefits of these countermeasures?

(5) Have section 402 funds measurably affected the problems articulated in the 1982 rulemaking action? Please explain.

(6) Is there a need for section 402 support in the program area being addressed in the comment? Please explain.

(7) On what basis do the States determine the effectiveness of their highway safety programs, and how should the Federal government determine program effectiveness?

Section 206(d) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 requires, "any rule under this subsection shall be promulgated taking into account consideration of the States having a major role in establishing programs [most effective in reducing accidents, injuries and deaths]." Accordingly, the agencies particularly encourage States to provide comments to this notice. We also encourage others involved in establishing highway safety programs or affected by these programs, to comment.

Change Standards to Guidelines

Section 206(a) of the Act amends section 402 by replacing the terms "standard" and "standards" wherever they appear with the words "guideline" and "guidelines". To implement this change, the agencies propose to amend the body of 23 CFR Part 1204. (We will review the supplemental materials following this Part at a later date, as discussed below.) Wherever the term "standard" or "standards" appears in the regulation, we propose to replace it with the word "guideline" or "guidelines", respectively. Wherever the term "shall" appears in the regulation, we propose to replace it with the word "should". This amendment would conform the language of the agencies' regulation with the current implementation of the section 402 programs. As a result of the section 402(j) determinations conducted in 1982, the existing highway safety program standards have been maintained as non-binding guidelines for use by the States in their section 402 programs.

The agencies intend to review all the regulations that implement section 402, including Part 1204, and the supplemental materials that follow, to determine whether additional revisions need to be made. See, 23 CFR Chapter II. Any additional revisions will be accomplished in a separate rulemaking action. Comments to this notice, therefore, should be limited to the revisions currently being proposed.

Public Hearings

Public hearings will be held on September 29 and October 8 and 14, 1987. The September 29, 1987 hearing will be held in Room 2230 of the Nassif Building, U.S. Department of Transportation, 400 7th St., SW., Washington, DC; the October 8, 1987 hearing will be held in Room 1A03 of the Fritz Lanham Building, 819 Taylor Street, Fort Worth, Texas; the October 14, 1987 hearing will be held in Conference

Rooms A & B of the Lehigh Building, 555 Zang Street, Lakewood, Colorado. Each hearing will be scheduled from 9 a.m. to 12 noon and from 1:30 p.m. to 5 p.m., or until the final witness has been heard, whichever is earlier. The agency invites interested members of the public to participate in these hearings and to comment on all issues raised by this proposal.

Persons wishing to make an oral presentation at a public hearing should contact Mr. J. Michael Sheehan (whose address and telephone number are provided near the beginning of this notice) no later than seven days before the hearing. Oral statements should be limited to 5 minutes or less. Oral or written clarification on issues raised in the oral statements or in the docket submissions may be requested by agency representatives conducting these hearings. As time permits, the formal statements may be followed by an open discussion, and persons who have not requested time but would like to make a statement, may be afforded an opportunity to do so at the end of each day's schedule.

Persons making oral presentations are requested but not required to submit 25 written copies of the full text of their presentation to Mr. Sheehan, no later than two days before each hearing begins. Copies of all written statements will be placed in the docket for this notice. A verbatim transcript of each public hearing will be prepared and also placed in the public docket as soon as possible after the hearing. A schedule of the persons making oral presentations at each hearing will be available at the designated meeting area at the beginning of each public hearing.

Written Comments

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted.

Written comments to the public docket must be received by October 19, 1987. In order to expedite the submission of comments, simultaneous with the issuance of this notice, copies will be mailed to all Governors, Governors' Representatives for Highway Safety and State highway agencies.

Comments should not exceed 15 pages in length. Necessary attachments may be added to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise manner.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all written comments and statements will be placed in Docket 81–12; Notice 4 of the Docket Section in Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Impact Analyses

A. Economic Impacts

The agencies have analyzed the effect of this action and determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. The rulemaking would not affect the level of funding available in the highway safety program, or otherwise have a significant economic impact, so that neither a Preliminary Regulatory Impact Analysis nor a Preliminary Regulatory Evaluation is required. Although not required to do so, the agencies prepared an Evaluation in 1982 to assist them in the rulemaking process. The Evaluation has been reviewed by the agencies and an Addendum has been prepared. These documents have been submitted to the Docket Section, Room 5109, and are available for inspection. Also in association with the 1982 rulemaking process, the agencies prepared and submitted to the public docket, Effectiveness and Efficiency Papers regarding the programs then being considered to be national priority program areas. These documents are also available in the public docket, Room 5109, Docket Number 81–12, General Reference Section.

B. Impacts on Small Entities

In compliance with the Regulatory Flexibility Act, the agenices have evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action would not have a significant economic impact on a substantial number of small entities. States would be recipients of any funds awarded under the regulation and, accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

C. Environmental Impacts

The agencies have also analyzed this action for the purpose of the National Environmental Policy Act. The agencies have determined that this action would not have any effect on the human environment.

D. Paperwork Reduction Act

The requirement relating to this proposal, that each State must submit a highway safety plan to receive section 402 grant funds, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

Accordingly, this proposed action has been submitted to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through May 31, 1989; OMB No. 2127–0003.

List of Subjects in 23 CFR Parts 1204 and 1205

Grant programs, Highway safety.

Issued on August 28, 1987.

Diane K. Steed,

National Highway Traffic Safety Administrator.

R.A. Barnhart,

Federal Highway Administrator.

[FR Doc. 87–20237 Filed 8–31–87; 11:16 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes; Limitation on Taxpayer's Basis or Inventory Cost In Property Imported From Related Persons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the limitation on taxpayer's basis or inventory cost in property imported from a related person. This limitation was enacted by the Tax Reform Act of 1986. The regulations will provide guidance to taxpayers who import, from a related person, property that is subject to a

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United States customs duty upon importation into the United States.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 2, 1987. These regulations are proposed to be effective with respect to transactions entered into after March 18, 1986.

ADDRESS: Send comments and request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL–960–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: W. Edward Williams of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attn: CC:LR:T). Telephone 202–566–3486 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1). These regulations are proposed to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1986 (68A Stat. 917, 26 U.S.C. 7805).

Congress was concerned that the potential exists for a United States taxpayer that imports property from a related person into the United States to state a low value for the property for purposes of determining the amount of any customs duties. However, the same taxpayer may have an incentive to state a high value for the property for purposes of determining, under the income tax law, its cost basis or inventory cost in the property. This latter incentive is greater when the property is imported by the U.S. taxpayer from a related person who is not subject to U.S. income tax.

Section 1248 of the Tax Reform Act of 1986 enacted Code section 1059A to prevent a U.S. taxpayer from claiming a higher value for income tax purposes for property imported from a related person than the value claimed by that U.S. taxpayer for purposes of customs duties.

Explanation of Provision

Section 1059A provides that a U.S. taxpayer that imports property into the U.S. in a transaction (directly or indirectly) from a person or persons related to the taxpayer, within the meaning of section 482 of the Code, may not claim, for purposes of computing the basis or inventory cost of the property, a greater cost than the amount of the cost taken into account for customs valuation purposes. However, because the rules for determining the value of imported property for customs purposes differ in some respects from the rules for determining cost basis or inventory cost for income tax purposes, certain adjustments to the customs value are required to determine the limitation to cost basis or inventory cost for income tax purposes. Congress was aware of the need for these adjustments, and the legislative history of section 1059A contemplates that the Internal Revenue Service will provide rules for making necessary adjustments to the customs value. These proposed regulations provide rules for adjusting the value utilized for customs value so that the customs value, as adjusted, will be the limitation under section 1059A for purposes of computing the basis or inventory cost of property imported by a U.S. taxpayer from a related person.

The term "customs value" is defined in section 1059A(b)(1) as "the value taken into account for purposes of determining the amount of any customs duties or any other duties which may be imposed on the importation of any property." The proposed regulations provide that a taxpayer is bound by the finally-determined customs value and that the customs value is finally-determined when liquidation of the entry (*i.e.*, the ascertainment of the customs duties accruing on the entry of property) becomes final (*i.e.* after 90 days following notice of liquidation to the importer, unless a protest is filed). If the importer protests the initial customs value determination before it is finally determined, the proposed regulations treat the value as finally-determined either when the decision of the U.S. Customs Service on the importer's protest is not contested or when a judgment of the Court of International Trade becomes final and all of the importer's appeal rights are exhausted. The proposed regulations also provide that a taxpayer is bound for income tax purposes by a finally-determined customs value, even though the customs duties are refunded as the result of a particular use made of the imported merchandise.

The proposed regulations permit the finally-determined customs value to be increased for tax purposes by amounts paid by the U.S. taxpayer for: international freight; insurance charges; the construction, erection, assembly, or maintenance of, or technical assistance provided with respect to, the property after its importation into the United States; the transportation of the property after its importation; and any other amounts not taken into account in determining the customs value and which amounts are properly included in the cost basis or inventory cost of the property.

Section 1059A was intended by Congress to prevent the abuse resulting from a taxpayer's reporting of a greater value of imported property for income tax purposes than for customs purposes. The section does not require reduction of the value of imported property utilized for income tax purposes below the value used for customs purposes. However, other statutory provisions, such as section 482, may be so applied. Accordingly, while there are reductions that properly reduce the cost basis or inventory cost for income tax purposes that are not taken into account when computing customs value (*e.g.*, rebates), the proposed regulations provide that these downward adjustments may only be applied to offset upward adjustments permitted by the proposed regulations for purposes of determining the limitation under section 1059A. Thus, downward adjustments permitted by the proposed regulations that are not taken into account for customs purposes may not reduce the limitation of section 1059A below the customs value, prior to any adjustments permitted by the proposed regulation.

Under the proposed regulations, the following types of property are not subject to the section 1059A limitation: an item or portion of an item not subject to any customs duty; items subject only to a user fee under 19 U.S.C. sec. 58(c); items or portions of items not subject to duty because of their American content; nondutiable items valued by customs solely for statistical purposes; and items not subject to a customs duty based on value.

The regulations are proposed to be effective with respect to property imported by a taxpayer if the entry documentation required to be filed to obtain the release of the property from the custody of the Customs Service was filed after March 18, 1986.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking which solicits public comment, it has been determined that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

It has also been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal author of these proposed regulations is W. Edward Williams of the Office of Associate Chief Counsel (International) within the Office of the Chief Counsel. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.1001–1 Through 1.1102–3

Income taxes, Gain and loss, Basis, Nontaxable exchanges.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. The authority citation for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.1059A–1 is added immediately after § 1.1055–4, to read as follows:

§ 1.1059A–1 Limitation on taxpayer's basis or inventory cost in property imported from related persons.

(a) *General rule.* In the case of property imported into the United States in a transaction (directly or indirectly) by a controlled taxpayer from another member of a controlled group of taxpayers, except for the adjustments permitted by paragraph (c)(2) of this section, the amount of any costs taken into account in computing the basis or inventory cost of the property by the purchasing U.S. taxpayer and which costs are also taken into account in computing the valuation of the property for customs purposes may not, for purposes of the basis or inventory cost be greater than the amount of the costs used in computing the customs value. For purposes of this section, the terms "controlled taxpayer" and "group of controlled taxpayers" shall have the meaning set forth in § 1.482–1(a).

(b) *Definitions*—(1) *Import.* For purposes of this section, the term "import" means the filing of the entry documentation required by the U.S. Customs Service to secure the release of imported merchandise from custody of the U.S. Customs Service.

(2) *Indirectly.* For purposes of this section, "indirectly" refers to a transaction between a controlled taxpayer and another member of the controlled group whereby property is imported through a person acting as an agent of, or otherwise on behalf of, either or both related persons, or as a middleman or conduit for transfer of the property between a controlled taxpayer and another member of the controlled group. In the case of the importation of property indirectly, an adjustment shall be permitted under paragraph (c)(2) of this section for a commission or markup paid to the person acting as agent, middleman, or conduit, only to the extent that the commission or markup is otherwise properly included in cost basis or inventory cost; was actually incurred by the taxpayer and not remitted, directly or indirectly, to the taxpayer or related party; and there is a substantial business reason for the use of a middleman, agent, or conduit.

(c) *Customs value*—(1) *Definition.* For purposes of this section, the term "customs value" means the value required to be taken into account for purposes of determining the amount of any customs duties or any other duties which may be imposed on the importation of any property. Where an item or a portion of an item is not subject to any customs duty, such item or portion of such item shall not be subject to the provisions of section 1059A or this section. Thus, items subject only to a user fee under 19 U.S.C. 58(c), items or portions of items not subject to duty because of their American content (item 807.00, Tariff Schedules of the United States, 19 U.S.C. 1202), and non-dutiable items that are valued by customs for statistical purposes only are not subject to section 1059A or this section. This section imposes no limitation on a claimed basis or inventory cost in property which is less than the value used to compute the customs duty with respect to the same property. Also, this section imposes no limitation on the basis or inventory cost of property (or portion of property) not subject to a customs duty. Section 1059A and this section have no application to imported property not subject to any customs duty based on value, including property subject only to a per item duty or a duty based on volume, because there is no customs value, within the meaning of this paragraph, with respect to such property.

(2) *Adjustments to customs value.* To the extent not otherwise included in customs value, a taxpayer, for purposes of determining the limitation on claimed basis or inventory cost of property under this section, may increase the customs value of imported property by the amounts incurred by it and properly included in inventory cost for—

(i) Freight charges,

(ii) Insurance charges,

(iii) The construction, erection, assembly, or technical assistance provided with respect to, the property after its importation into the United States, and

(iv) Any other amounts which are not taken into account in determining the customs value, which are not properly includible in customs value, and which are appropriately included in the cost basis or inventory cost for income tax purposes. *See* § 1.471–11 and section 263A.

To the extent that an amount attributable to an adjustment permitted by this section is paid by a controlled taxpayer to another member of the group of controlled taxpayers, an adjustment is permitted under this section only to the extent that the amount incurred represents an arm's length charge within the meaning of § 1.482–1(d)(3).

(3) *Offsets to adjustments.* To the extent that a customs value is adjusted under paragraph (c)(2) of this section for purposes of calculating the limitation on claimed cost basis or inventory cost under this section, the amount of the adjustments must be offset (reduced) by amounts that properly reduce the cost basis of inventory and that are not taken into account in determining customs value, such as rebates and other reductions in the price actually incurred, effected between the purchaser and related seller after the date of importation of the property.

(4) When an item of imported property consists of both a dutiable portion and a nondutiable American content portion and the taxpayer claims a basis or inventory cost greater than the customs value reported for the item, the claimed tax basis or inventory cost in the dutiable portion of the item is limited under section 1059A and this section to the customs value of the dutiable portion under paragraph (c)(1) of this section. The claimed tax basis or inventory cost in the nondutiable portion of the item is determined by multiplying the customs value of the

nondutiable portion by the percentage by which the claimed basis or inventory cost exceeds the customs value of the item and adding this amount to the customs value of the nondutiable portion of the item. The claimed tax basis or inventory cost in the dutiable portion is determined by multiplying the customs value of the dutiable portion by the percentage by which the claimed basis or inventory cost exceeds the customs value of the item and adding this amount to the customs value of the dutiable portion of the item. However, the taxpayer may not claim a tax basis or inventory cost in the dutiable portion greater than the customs value of this portion of the item.

(5) When an item of imported property consists of both a dutiable and a nondutiable American content portion and the taxpayer establishes that the customs value may be increased by adjustments permitted under paragraph (c)(2) of this section for purposes of the section 1059A limitation, the taxpayer's basis or inventory cost of the dutiable portion of the item is determined by multiplying the customs value of the dutiable portion times the percentage that the adjustments represent of the total customs value of the item and adding this amount to the customs value of the dutiable portion of the item. The taxpayer's basis or inventory cost of the nondutiable portion of the item is determined in the same manner. The amount so determined for the dutiable portion of the item is the section 1059A limitation for this portion of the item.

(6) Neither this section nor section 1059A limits in any way the authority of the Commissioner to increase or decrease the claimed basis or inventory cost under section 482 or any other appropriate Code section. Neither does this section or section 1059A permit a taxpayer to adjust upward its cost basis or inventory cost for property appropriately determined under section 482 because such basis or inventory cost is less than the customs value with respect to such property.

(7) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $2,000 to Y for merchandise imported into the United States and an additional $150 for ocean freight and insurance. The customs value of the shipment is determined to be the amount actually paid by X ($2,000) and does not include the charges for ocean freight and insurance. For purposes of computing the limitation on its inventory cost for the merchandise under section 1059A and this section, X is permitted, under paragraph (c)(2) of this section, to increase the customs value ($2,000) by amounts it paid for ocean freight and insurance charges ($150). Thus, the inventory cost claimed by X in the merchandise may not exceed $2,150.

Example (2). Assume the same facts as in Example (1) except that, subsequent to the date of importation of the merchandise, Y grants to X a rebate of $200 of the purchase price. At the time of sale, the rebate was contingent upon the volume of merchandise ultimately bought by X from Y. The value of the merchandise, for customs purposes, is not decreased by the rebate paid to X by Y. Therefore, the customs value, for customs purposes, of the merchandise remains the same ($2,000). For purposes of computing its inventory cost, X was permitted, under paragraph (c)(2) of this section, to increase the customs value for purposes of section 1059A of $2,000 by the amounts it paid for ocean freight and insurance charges ($150). However, under paragraph (c)(3) of this section, X is required to reduce the amount of the customs value by the lesser of the amount of the rebate or the amount of any positive adjustments to the original customs value. The inventory price claimed by X may not exceed $2,000 ($2,000 customs value, plus $150 transportation adjustment, less $150 offsetting rebate adjustment). While X's limitation under section 1059A is $2,000, X may not claim a basis or inventory cost in the merchandise in excess of $1,950. *See* I.R.C. § 1012; and § 1.471–2.

Example (3). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $10,000 to Y for merchandise imported into the United States. The merchandise is composed, in part, of American content. The customs value of the merchandise, on which a customs duty is imposed, is determined to be $8,000 ($10,000, the amount declared by X, less $2,000, the value of the American content). For income tax purposes, X claims a cost basis in the merchandise of $11,000. None of the adjustments permitted by paragraph (c)(2) of this section is applicable. For customs purposes, the American content represented 20 percent of the total value of the merchandise. Since the cost basis claimed by X for income tax purposes represents a 10 percent increase over the customs valuation (before reduction for American content), the claimed tax basis in the dutiable content is considered to be $8,800 and in the American content is $2,200. Since a customs duty was imposed only on the dutiable content of the merchandise, the limitation in section 1059A and this section is applicable only to the claimed tax basis in this portion of the merchandise. Accordingly, under paragraph (a) of this section, X is limited to a cost basis of $10,200 in the merchandise. This amount represents a cost basis of $8,000 in the dutiable content and of $2,200 in the American content portion of the merchandise.

Example (4). Assume the same facts as in Example (3) except that X establishes that it is entitled to increase its customs value by $1,000 in adjustments permitted by paragraph (c)(2) of this section. Since the adjustments to customs value that X is entitled to under paragraph (c)(2) of this section are 10 percent of the customs value, for purposes of determining the limitation under section 1059A and this section, both the dutiable content and the American content shall be increased to an amount 10 percent greater than the respective values determined for customs purposes, or $8,800 for the dutiable content and $2,200 for the American content. Accordingly, under paragraph (a) of this section, X is limited to a cost basis of $11,000 in the merchandise.

Example (5). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $10,000 to Y for merchandise imported into the United States. The customs value of the merchandise, on which a customs duty is imposed, is determined to be $10,000. Subsequent to the date of importation of the merchandise, Y grants to X a rebate of $1,000 of the purchase price. The value of the merchandise, for customs purposes, is not decreased by the rebate paid to X by Y. Notwithstanding the fact that X correctly reported and paid customs duty on a value of $10,000 and that its limitation on basis or inventory cost under this section is $10,000, X may not claim a basis or inventory cost in the merchandise in excess of $9,000. *See* I.R.C. § 1012; and § 1.471–2.

Example (6). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $5,000 to Y for merchandise imported into the United States. The merchandise is not subject to a customs duty and is valued by customs solely for statistical purposes. Accordingly, pursuant to paragraph (c)(1), the merchandise is not subject to the provisions of section 1059A or this section.

(8) *Averaged customs values.* To the extent substantiated by the taxpayer, in the case of a good faith overvaluation of one article and a good faith undervaluation of a second article for customs purposes, the section 1059A limitation on the undervalued article may be increased by the amount of the duty overpaid on the overvalued article times a fraction the numerator of which is "1" and the denominator of which is the rate of duty on the undervalued article. This subsection applies exclusively to property imported in open transactions in which the actual transaction value cannot be determined until after duty is paid and the entry is liquidated; in these cases, the actual transaction value is objectively determined after liquidation of the entry according to a formula in existence at the time of importation (for example, a percentage of future sales receipts). This subsection does not apply where customs value is correctly determined for purposes of liquidating the entry and where the customs value is subsequently adjusted, for example by a rebate, under paragraph (c)(2) of this

section. The application of this subsection may be illustrated by the following example:

Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X purchases Articles A and B from Y on consignment and imports the Articles into the United States. The purchase price paid by X will be determined as a percentage of the sale prices that X realizes. Rather than deferring liquidation for customs purposes, X makes good faith estimates of the transaction values of Articles A and B and the customs duties are paid by X and the entries are liquidated. Ultimately, it is determined that Article A was undervalued and Article B was overvalued by X. The section 1059A limitation for Article A is computed as follows:

	Article A	Article B
Finally-determined customs value	$9	$9
Transaction value	$10	$5
Duty rate (percent)	10	1
Customs duty paid	$.90	$.09
Duty overpaid or (underpaid)	($.10)	$.04

The section 1059A limitation on Article A may be increased by the amount of the duty overpaid on Article B, $.04, times 1/.10. Therefore, the section 1059A limitation on Article A is $9.00 plus $.40, or a total of $9.40.

(d) *Finality of customs value and of other determinations of the U.S. Customs Service.* For purposes of section 1059A and this section, a taxpayer is bound by the finally-determined customs value and by every final determination made by the U.S. Customs Service, including, but not limited to, dutiable value, the value attributable to American content, and classification of the product for purposes of imposing any duty. The customs value is considered to be finally determined, and all U.S. Customs Service determinations are considered final, when liquidation of the entry becomes final. For this purpose, the term "liquidation" means the ascertainment of the customs duties occurring on the entry of the property, and liquidation of the entry is considered to become final after 90 days following notice of liquidation to the importer, unless a protest is filed. If the importer files a protest, the customs value will be considered finally determined and all other U.S. Customs Service determinations will be considered final either when a decision by the Customs Service on the protest is not contested after expiration of the period allowed to contest the decision or when a judgment of the Court of International Trade becomes final. For purposes of this section, any adjustments to the customs value resulting from a petition under 19 U.S.C. 1516 (requests by interested parties unrelated to the importer for redetermination of the appraised value, classification, or the rate of duty imposed on imported merchandise) or reliquidation under 19 U.S.C. 1521 (reliquidation by the Customs Service upon a finding that fraud was involved in the original liquidation) will not be taken into account. However, reliquidation under 19 U.S.C. 1501 (voluntary reliquidation by the Customs Service within 90 days of the original liquidation to correct errors in appraisement, classification, or any element entering into a liquidation or reliquidation) will be taken into account in the same manner as, and take the place of, the original liquidation in determining customs value.

(e) *Drawbacks.* For purposes of this section, a drawback, that is, a refund or remission (in whole or in part) of a customs duty because of a particular use made (or to be made) of the property on which the duty was assessed or collected, shall not affect the determination of the customs value of the property.

(f) *Effective date.* Property imported by a taxpayer is subject to section 1059A and this section if the entry documentation required to be filed to obtain the release of the property from the custody of the United States Customs Service was filed after March 18, 1986. Section 1059A and this section will not apply to imported property where the entry documentation is filed prior to September 3, 1987, the importation was liquidated upon payment of a customs duty based on the importer's good faith estimate of the transaction value of the property because the imported property was imported in an open transaction whereby the importer's purchase price was determined, according to an objective formula in existence at the time of importation, by events occurring subsequent to the entry, and which estimated value proves to be lower than the actual transaction value.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-20164 Filed 9-2-87; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Paroling Policy Guidelines Revisions

AGENCY: Parole Commission, Justice.

ACTION: Proposed rules and request for comments.

SUMMARY: The Parole Commission proposes to make a number of revisions to the dollar amount thresholds in its paroling policy guidelines contained in 28 CFR 2.20. These changes are intended to make the guidelines more comprehensive and more fair.

DATE: Public comment must be received by October 5, 1987.

ADDRESS: Comments should be addressed to: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: The Commission proposes to adjust the dollar thresholds for the following property offenses: Offense Example 303 (Property Destruction Other Than Listed Above); Offense Example 331 (Theft, Forgery, Fraud, Trafficking in Stolen Property, Interstate Transportation of Stolen Property, Receiving Stolen Property, Embezzlement, and Related Offenses); Offense Example 341 (Passing or Possession of Counterfeit Currency or Other Medium of Exchange); Offense Example 363 (Insider Trading); Offense Example 501 (Tax Evasion [income tax and other taxes]); Offense Example 1161 (Reports or Monetary Instrument Transactions; and Offense Example 1172 (Knowing Disposal and/or Storage and Treatment of Hazardous Waste Without a Permit; Transportation of Hazardous Waste to an Unpermitted Facility [Re: U.S.C. 6928(d) (1-2)]. The Commission's proposal would have the effect of lowering the offense severity ratings (and the corresponding guideline ranges) for a number of property offenses by raising the dollar value threshold required for rating offenses in the various severity categories.

The Parole Commission is proposing

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these changes for a number of reasons, the primary reason, however, being fairness. The guidelines for property offenses have remained basically unchanged since the first set of parole release guidelines was implemented in 1973. In the intervening 14 years, no adjustment for inflation has been made for property offenses over $2,000 and the proposed modification of severity category thresholds is, therefore, only proportional to the amount of inflation during this period of time. More specifically, the degree of economic harm caused by a $20,000 property crime in 1987 is substantially less than that caused by a $20,000 crime in 1973, and the diminution in the severity ratings now proposed merely cancels the incidental increase in severity ratings which had crept into the guidelines since 1973. In addition, the change is more comparable to the Sentencing Commission's guidelines.

Further, the Bureau of Prisons is presently more than 50% over rated capacity and these changes will assist in providing some relief for the overcrowding problems. It should be noted that the overwhelming majority of large scale property offenders have been found to be very good parole risks, and release of these offenders would not endanger the community. The changes will allow for release, in some cases, of these non-dangerous persons and thus, by assisting in the overcrowding problem, will make available more prison space for individuals who are dangerous to the community, specifically assaultive types, drug dealers, etc.

These proposed rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Lists of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.20 [Amended]

2. It is proposed to revise Offense Example 303 in Chapter Three, Subchapter A of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

303 *Property Destruction Other Than Listed Above*

(a) If the conduct results in bodily injury *, or if 'serious bodily injury is the result intended'*, grade as if 'assault during commission of another offense';

(b) If damage of more than $1,000,000 is caused, grade as Category Six;

(c) If damage of more than $200,000 but not more than $1,000,000 is caused, grade as Category Five;

(d) If damage of at least $40,000 but not more than $2,000,000 is caused, grade as Category Four;

(e) If damage of at least $2,000 but not less than $40,000 is caused, grade as Category Three;

(f) If damage of less than $2,000 is caused, grade as Category One;

(g) *Exception:* If a significant interruption of a government or public utility function is caused, grade as not less than Category Three.

3. It is proposed to amend Offense Example 331 in Chapter Three, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 by revising paragraphs (a)–(e) to read as follows:

331 *Theft, Forgery, Fraud, Trafficking in Stolen Property Interstate Transportation of Stolen Property, Reveiving Stolen Property, Embezzlement, and Related Offenses*

(a) If the value of the property * is more than $1,000,000, grade as Category Six;

(b) If the value of the property * is more than $2,000 but not more than $1,000,000, grade as Category Five;

(c) If the value of the property * is at least $40,000 but not more than $2,000, grade as Category Four;

(d) If the value of the property * is at least $2,000 but less than $40,000, grade as Category Three;

(e) If the value of the property * is at least $2,000 grade as Category One.

* * * * * *

4. It is proposed to revise Offense Example 341 of Chapter Three, Subchapter E of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

341 *Passing or Possession of Counterfeit Currency or Other Medium of Exchange**

(a) If the face value of the currency or other medium of exchange is more than $1,000,000, grade as Category Six;

(b) If the face value is more than $200,000 but not more than $1,000,000, grade as Category Five;

(c) If the face value is at least $40,000 but not more than $200,000, grade as Category Four;

(d) If the face value is at least $2,000 but less than $40,000, grade as Category Three;

(e) If the face value is less than $2,000, grade as Category Two.

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* Terms marked by an asterisk are defined in Chapter Thirteen.

* Terms marked by an asterisk are defined in Chapter Thirteen.

5. It is proposed to revise Offense Example 363 of Chapter Three, Subchapter F of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

363 *Insider Trading*

(a) If the estimated economic impact is more than $1,000,000, grade as Category Six;

(b) If the estimated economic impact is more than $200,000 but not more than $1,000,000, grade as Category Five;

(c) If the estimated economic impact is at least $40,000 but not more than $200,000, grade as Category Four;

(d) If the estimated economic impact is at least $2,000 but less than $40,000, grade as Category Three;

(e) If the estimated economic impact is less than $2,000, grade as Category Two.

(f) *Note:* The term 'economic impact' includes the damage sustained by the victim whose information was unlawfully used, plus any other illicit profit resulting from the offense.

6. It is proposed to amend Offense Example 501 of Chapter Five, Subchapter A of the Offense Behavior Severity Index of 28 CFR 2.20 by revising paragraphs (a)—(e) to read as follows:

501 *Tax Evasion [income tax or other taxes]*

(a) If the amount of tax evaded or evasion attempted is more than $1,000,000, grade as Category Six;

(b) If the amount of tax evaded or evasion attempted is more than $200,000 but not more than $1,000,000, grade as Category Five;

(c) If the amount of tax evaded or evasion attempted is at least $40,000 but not more than $200,000, grade as Category Four;

(d) If the amount of tax evaded or evasion attempted is at least $2,000 but less than $4,000, grade as Category Three;

(e) If the amount of tax evaded or evasion attempted is less than $2,000, grade as Category One.

* * * * * *

7. It is proposed to revise Offense Example 1161 of Chapter Eleven, Subchapter G of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

1161 *Reports on Monetary Instrument Transactions*

(a) If the very large scale (e.g., the estimated gross amount of currency involved is more than $1,000,000), grade as Category Six;

(b) If large scale (e.g., the estimated gross amount of currency involved is more than $200,000 but not more than $1,000,000), grade as Category Five;

(c) If medium scale (e.g., the estimated gross amount of currency involved is at least $40,000 but not more than $200,000), grade as Category Four;

(d) If small scale (e.g., the estimated gross amount of currency involved is less than $40,000), grade as Category Three.

8. It is proposed to revise Offense Example 1172 of Chapter Eleven, Subchapter 4 of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

1172 *Knowing Disposal and/or Storage and Treatment of Hazardous Waste Without a Permit; Transportation of Hazardous Waste to an Unpermitted Facility [Re: 42 U.S.C. 6928(d) (1–2)]*

(a) If death results, grade as Category Six;

(b) If (1) serious bodily injury results; or (2) a substantial potential for death or serious bodily injury in the future results; or (3) a substantial disruption to the environment results (e.g., estimated cleanup cost exceeds $200,000, or a community is evacuated for more than 72 hours), grade as Category Five;

(c) If (1) bodily injury results, or (2) a significant disruption to the environment results (e.g., estimated cleanup costs of $40,000–$200,000, or a community is evacuated for 72 hours or less), grade as Category Four;

(d) Otherwise, grade as Category Three;

(e) *Exception:* Where the offender is a non-managerial employee (i.e., a truckdriver or loading dock worker) acting under the orders of another person, grade as two categories below the underlying offense, but not less than Category One.

Dated: August 20, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87–20286 Filed 9–2–87; 8:45 am]

BILLING CODE 4410–01–M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners: Paroling Policy Guidelines Revisions and Criteria for Rewarding Assistance to Law Enforcement Officials

AGENCY: Parole Commission, Justice.

ACTION: Proposed rules and request for comments.

SUMMARY: The Parole Commission proposes to make a number of revisions and additions to its paroling policy guidelines contained in 28 CFR 2.20. These changes and additions are intended to make the guidelines more comprehensive. Additionally, the Commission proposes to revise its criteria and guidelines, as contained in 28 CFR 2.63, for rewarding a prisoner's assistance to law enforcement authorities in the prosecution of other offenders. The proposed changes are intended to eliminate uneven and inconsistent interpretations and applications of the provision and for fairness.

DATE: Public comment must be received by October 5, 1987.

ADDRESS: Comments should be addressed to: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5980.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, Telephone (301) 492–5980.

SUPPLEMENTARY INFORMATION: First, Chapter Four of the Offense Behavior Severity Index of 28 CFR 2.20 contains the offense examples involving immigration, naturalization and passports. Recent changes in the immigration statutes and policies have occasioned a revisiting of the guidelines applicable to these offenses. Since it is now more difficult for illegal immigrants to find employment which in turn has lessened the threat of illegal immigration, the Commission proposes to revise Offense Example 401 to grade unlawful entry as Category One. Next, the Commission rates the transportation of unlawful aliens as Category Three unless it involves detention and demand for payment. To differentiate those situations from where an illegal alien transports unlawful aliens without receiving any payment or other remuneration, the Commission is revising Offense Example 402 to grade such behavior as Category One, similar to illegal entry.

Next, the proposed revision to 28 CFR 2.63 (Rewarding Assistance in the Prosecution of Other Offenders; Criteria and Guidelines) would simplify the Commission's process of rewarding cooperation by eliminating the requirement for the U.S. Attorney to personally endorse a recommendation from his office before the Commission would consider rewarding such cooperation. Further, pursuant to this proposal, when the Commission decides to reward the assistance of an inmate whose term has been continued to expiration, any reduction will be taken from the actual date of the expiration of sentence rather than from the presumptive date that would otherwise have been deemed warranted. These changes will serve to facilitate the use of this regulation, eliminating uneven and inconsistent application and will, it is felt, provide more fairness to the procedures.

These proposed rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Lists of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. It is proposed to revise Offense Example 401 of Chapter Four of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

401 *Unlawfully Entering the United States as an Alien*

Category One

3. It is proposed to amend Offense Example 402 of Chapter Four of the Offense Behavior Severity Index of 28 CFR 2.20 by revising paragraph (b) and adding paragraph (c) to read as follows:

402 *Transportation of Unlawful Alien(s)*

(a) * * *

(b) Transportation of unlawful alien(s) without re-muneration other than free transportation or passage shall be rated the same as unlawful entry into the United States as an alien.

(c) Otherwise, grade as Category Three.

4. It is proposed to revise 28 CFR 2.63 (Rewarding Assistance in the Prosecution of Other Offenders: Criteria and Guidelines) to read as follows:

§ 2.63 Rewarding assistance in the prosecution of other offenders; criteria and guidelines.

(a) The Commission may consider as a factor in the parole release decision-making a prisoner's assistance to law enforcement authorities in the prosecution of other offenders.

(1) The assistance must have been an important factor in the investigation and/or prosecution of an offender other than the prisoner. Other significant assistance (e.g., providing information critical to prison security) may also be considered.

(2) The assistance must be reported to the Commission in sufficient detail to permit a full evaluation. However, no promises, express or implied, as to a

Parole Commission reward shall be given any weight in evaluating a recommendation for leniency.

(3) The release of the prisoner must not threaten the public safety.

(4) The assistance must not have been adequately rewarded by other official action.

(b) If the assistance meets the above criteria, the Commission may consider providing a reduction of up to one year from the presumptive parole date that the Commission would have deemed warranted had such assistance not occurred. If the prisoner would have been continued to the expiration of sentence, any reduction will be taken from the actual date of the expiration of the sentence. Reductions exceeding the one year limit specified above may be considered only in exceptional circumstances.

Dated: August 21, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87-20285 Filed 9-2-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 87-09]

Drawbridge Operation Regulations; South Fork Willapa River, WA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Burlington Northern Railroad Company, the Coast Guard is considering a change to the regulations governing the railroad drawbridge across the South Fork Willapa River, mile 0.3, at Raymond, Washington, to provide that the draw need not be opened for the passage of vessels. This proposal is being made because only one request has been made to open the draw since 1983. This action should relieve the bridge owner of the burden of maintaining the machinery and having a person available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 19, 1987.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3564. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this propsed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in, the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Commander Lawrence I. Kiern, project attorney.

Discussion of the Proposed Regulations

In 1983 the operating regulations for the Burlington Northern railroad bridge across the South Fork Willapa River, mile 0.3, at Raymond, Washington, were changed from the requirement to open on signal, to the requirement that 24 hour's advance notice be given for openings. Since this change has been in effect, the bridge has only been required to open once for the passage of a vessel. The draw rest for the bridge is in a deteriorated condition and must be replaced if the bridge is to remain operational. The bridge owner is reluctant to expend funds for replacement of the draw rest it there is not sufficient vessel traffic to require bridge openings. The proposed change would allow the bridge to be maintained in the closed position and not be required to open. However, should the waterway again be used for navigation, the bridge would be restored to operable condition upon six months notice by the District Commander. This change would result in savings in operating costs to the bridge owner and should not have a significant effect on navigation because no potentially affected waterway users have been identified.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The waterway is no longer used by commercial navigation and receives only occasional use by small recreational vessels. There are no marine oriented commercial facilities, located on the waterway upstream from the bridge, which would be affected by the proposed change. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46.

2. Section 117.1063 is revised to read as follows:

§ 117.1063 Willapa River.

The draw of the US101 highway bridge across the North Fork Willapa River, mile 7.8, and the draw of the Burlington Northern railroad bridge across the South Fork Willapa River, mile 0.3, both at Raymond, need not be opened for the pasage of vessels. However, the draws ahall be returned to an operable condition within six months after notification by the District Commander to do so.

Dated: August 28, 1987.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 87-20337 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD7 87-27]

Regulated Navigation Area; Brunswick, GA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

The Coast Guard is considering a proposal to change 33 CFR Part 165 by establishing a Regulated Navigation Area in the Port of Brunswick, GA. All vessels over 500 Gross Tons departing the Port of Brunswick, GA, at any time other than during flood current, would be required to approach the Sidney Lanier Bridge (U.S. Route 17) in such a manner so as to be shaped up for bridge transit before passing a point of no return and being committed to the transit. These additional navigation precautions are proposed because of the history of collisions with the bridge.

DATES: Comments must be received on or before October 5, 1987.

ADDRESS: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, Savannah, P.O. Box 8191, Savannah, Georgia 31402–8191. The comments and other materials referenced in this notice will be available for inspection and copying at Coast Guard Marine Safety Office Savannah, Georgia. Normal office hours are between 8:00 A.M. and 4:00 P.M., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Danny R. Buck, Project Officer, (912) 944–4371 at Marine Safety Office Savannah, GA.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD7 87–27) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulation may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Chief Warrant Officer Danny R. Buck, U.S. Coast Guard, Project Officer and Lieutenant Commander S. T. Fuger, U.S. Coast Guard, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

Original construction on the Sidney Lanier Bridge began in 1948 and was completed in 1956. It was designed to accommodate vessels with smaller overall dimensions and displacement tonnages than many of the vessels going through the drawspan today. The horizontal clearance of the span is 250 ft. The fender system does not afford protection to the bridge structure from allision by larger modern vessels.

The bridge is constructed perpendicular to the Turtle River Channel. Vessels departing to sea from the Turtle River require only minor course adjustments to maintain alignment with the center of the channel and span.

The East River Channel intersects the Turtle River at a 50-degree angle approximately 1200 ft. above the Sidney Lanier Bridge. Vessels departing for sea from the East River must make a 50 degree left turn as they enter the Turtle River. The start and rate of turn must be controlled so that the vessels finish their turn near the centerline of the Turtle River Channel because room for further corrective maneuvers before reaching the bridge is limited.

The strikings of the bridge by M/V African Neptune in 1972, and by the M/V Ziemia Bialostocka in 1987, each involved vessels departing for sea from the East River. In each case the vessel failed to achieve alignment with the center of the Turtle River Channel after making the left turn. In the case of the M/V African Neptune, the proximate cause was determined to be an improperly executed helm order. A determination of the proximate cause of the M/V Ziemia Bialostocka allision is pending.

In both cases, by the time it was realized that the vessels would not shape up for a safe transit, they were too close to the bridge to avoid allision by backing engines or turning.

The Coast Guard is concerned that further allisions with the bridge are possible given the navigation environment in the Port of Brunswick and desires to reduce the risk of such an event.

During the period of repairs to the lift span and fender system of the bridge, Captain of the Port Savannah issued Order Number 13–87 which required that, except on the flood tide, all vessels over 500 GRT departing the Port of Brunswick for sea approach the Sidney Lanier Bridge only from the Turtle River, so as to be shaped up for the bridge transit before reaching Buoy C "1". The effect of the order was to require that vessels departing the East River turn up the Turtle River and proceed approximately 1.5 NM to an area south of Andrews Island, and then turn and reverse course and proceed down the Turtle River Channel on a straight course through the bridge span. An exception was made for flood tide conditions, because the current results in greater vessel control and possibility for evasive action. The order simplified the approach to and transit through the bridge, and reduced the risk of striking by obviating the need for the 50 degree left turn in close proximity to the bridge.

Navigation pursuant to COTP Order 13–87 has proved to be satisfactory. No incidents have been reported, nor has undue delay to vessels resulted. In the first two months under the order, 67 vessels departing from East River were affected. The added transit up and down the Turtle River added approximately one hour to each vessel's sailing time. In addition, most vessels required an average of 1 hour additional tug service.

The Brunswick Pilots have suggested a method of approach to the Sidney Lanier Bridge in addition to that provided for in COTP Order 13–87. This method would apply to vessels departing from the East River, and would involve stopping such vessels at the junction of the East River and Turtle River Channels and then using tug assistance or installed bow thrusters to achieve proper channel alignment before proceeding.

This suggested method appears reasonable in that it obviates the risk sought to be avoided in COTP Order 13–87, and desirable in that it reduces delay to vessels to an estimated 15 minutes. It has been incorporated in the proposed rulemaking.

The channel through the Sidney Lanier Bridge is the sole means of access to the harbor for deep draft shipping in the Port of Brunswick. If the bridge were damaged in the closed position, the Port of Brunswick would be closed to commercial vessel traffic for an extended period pending repairs to the bridge. The economic costs associated with the operational procedures established by the regulations are believed to be substantially less than that from damage to the bridge or closure of the port should another bridge striking occur.

Proposals for alteration of the navigation environment in the Port of Brunswick, such as by dredging in the area between Andrews Island and the channel junctions, have been made as a result of the most recent incident and are being considered by appropriate agencies. Alterations being proposed are sought to reduce the risk of further bridge strikings. The Coast Guard believes that it is appropriate to go forward with this rulemaking and regulate navigation in vicinity of the bridge until changes to the navigation environment make regulation unnecessary.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

The effect of the regulation will be to require a vessel departing the Brunswick Harbor on other than flood current to maneuver into the Turtle River from the East River in an east bound direction and turn around before approaching the Sidney Lanier Bridge for maneuvering to sea, or to stop and turn at the channel junctions. This is projected to add approximately 15 minutes to one hour to a vessel's outbound harbor transit time. The amount of time required will depend upon which maneuver is selected.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.7 is revised to read as follows:

§ 165.7 Brunswick, Georgia, Turtle River, Vicinity of Sidney Lanier Bridge.

Except during the flood tide, every vessel over 500 GRT departing the Port of Brunswick for sea shall do so only from the Turtle River, so as to be shaped up for bridge transit:

(a) Before reaching Turtle River Buoy "1" (Light List Number 6050); or,

(b) Before reaching the intersection of Brunswick Harbor Range and Turtle River Lower Range, provided that the vessel:

(1) Be equipped with an operable bow thruster or have tug assistance; and

(2) Be stopped and maneuvered with no appreciable way on until aligned with the centerline axis of the Turtle River Channel.

Dated: August 19, 1987.

M.J. O'Brien,

Captain, U.S. Coast Guard Acting Commander, Seventh Coast Guard District.

[FR Doc. 87–20338 Filed 9–2–87; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD7 87–22]

Security Zone; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering establishing a Security Zone on the north bank of the St. Johns River at the junction of Brill's Cut Range and Broward Point Turn; said zone to be activated by the Captain of the Port, Jacksonville, Florida, at the request of Commander, Fast Sealift Squadron ONE, should a threat arise. This security zone is necessary for the protection of vital United States assets aboard Fast Sealift ships layberthed at Sealift Terminals.

DATES: Comments must be received on or before October 19, 1987.

ADDRESSES: Comments should be mailed to USCG Marine Safety Office, 2831 Talleyrand Avenue, Jacksonville, Florida 32206. The comments and other materials referenced in this notice will be available for inspection and copying at the USCG Marine Safety Office at the above address. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander H. Henderson, at telephone number (904) 791–2648.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views data; or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD7 87–22) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulation may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant (junior grade) K. L. Rhodes, project officer, and Lieutenant Commander S. T. Fuger, Jr., project attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

Recent international developments have highlighted the potential for terrorist activities involving vital United States assets. It is desirable for the protection of Fast Sealift ships moored at Sealift Terminal near Dunn's Creek on the St. Johns River, to have a means of implementing heightened security in response to a potential terrorist threat. A security zone which can be activated in the event of a threat will augment protection of these assets. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Vessels transiting the St. Johns River at Brill's Cut Range and Broward Point Turn will be unaffected by the establishment of the zone, as it does not impede navigation in the channel. Since the security zone will be activated only if a security threat is perceived, only minor delays to other mariners can be foreseen.

Since the impact of this proposal is expected to be minimal, the Coast

Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.710 is added to read as follows:

§165.710 St. Johns River, Jacksonville, Florida.

(a) The water, land, and land and water located within the following area is established as a security zone when activated by the Captain of the Port, Jacksonville, Florida: the north bank of the St. Johns River at the junction of Brill's Cut Range and Broward Point Turn, centered at Latitude 30–24'–25" N, Longitude 081–34'–55" W, including 800 feet of the north bank in each direction (1600 feet total) up and down river from this position (as defined by a corrugated steel bulkhead which extends in a southeasterly direction along the north bank commencing at the entrance to Dunn's Creek) and extending offshore to the northern edge of the ship channel, and extending onshore approximately 300 feet to a steel chain-link fence.

(b) When the security zone is activated, no unauthorized persons shall enter this zone and no unauthorized water craft shall approach ships that are berthed within this zone, nor shall any unauthorized vessel moor alongside the corrugated steel bulkhead anywhere within the security zone.

(c) The general regulations governing security zones contained in 33 CFR 165.33 apply.

(d) Captain of the Port, Jacksonville, Florida, will activate the security zone by means of locally promulgated notices.

Dated: August 31, 1987.

M. Woods,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 87–20339 Filed 9–2–87; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–7–FRL–3256–4]

Approval and Promulgation of Implementation Plans, for State of Iowa; Stack Heights

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In compliance with a mandate from the U.S. Court of Appeals for the D.C. Circuit, EPA promulgated revisions to its stack height regulations on July 8, 1985. As required by section 406(d)(2) of the Act, each state was to review its State Implementation Plan (SIP) for consistency with EPA's revised requirements and to submit revisions as necessary.

On May 20, 1986, the state of Iowa submitted its stack height SIP revision; additional material was submitted on September 15, 1986. The state submittal included revised regulations and a formal declaration that, except for one area, sources in the state are not subject to any emission limit revisions in accord with EPA's revised requirements. Today's action proposes to approve the state's stack height SIP. The state has committed to submit revised emission limits for the sources in the aforementioned area; thus, these revisions will be addressed in a future **Federal Register** action.

DATES: Public comments must be received on or before November 2, 1987.

ADDRESSES: Comments should be sent to Robert J. Chanslor, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101.

The state submission is available for inspection during normal business hours at the above address and at the Iowa Department of Natural Resources, 900 East Grand, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236–2893; FTS 757–2893.

SUPPLEMENTARY INFORMATION:

I. Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by Section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc.; the Nautal Resources Defense Council, Inc.; and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F.2d 436. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a write of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S. Ct. 3571), and on July 18, 1984, the Court of Appeals' mandate formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefined a number of specific terms including "excessive concentrations", "dispersion techniques", "nearby", and other important concepts, and modified some of the bases for determining GEP stack height.

Pursuant to section 406(d)(2) of the Act, all states were required to: (1) Review and revise, as necessary, their SIPs to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation, as required by section 406.

Subsequently, EPA issued detailed guidance on conducting the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater then 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the de minimis GEP stack height and the de minimis SO_2 emission exemption from prohibited dispersion techniques. These sources were then reviewed for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

II. Review of the State Submittal

A. Regulations

On May 20, 1986, the state submitted its stack height SIP. The submittal contained revised Chapters 22 and 23 regulations which addressed EPA's requirements as amended on July 8, 1985. The regulations were adopted by the Water, Air and Waste Commission on April 22, 1986, after proper notice and public hearing in accord with 40 CFR 51.102.

Paragraph 22.3(1)C. provides that, for new source construction permits, an emission limitation shall not be affected in any manner by stack height above GEP or by any other prohibited dispersion techniques. This provision meets the requirements of 40 CFR 51.164 (old § 51.18(1)).

Subrule 23.1(4) sets limits for the maximum stack height credit to be used for the purpose of setting emission limitations and is consistent with 40 CFR 51.118(a) (old § 51.12(j)). The definitions of "stack", "a stack in existence", "dispersion technique", "nearby", and "excessive concentration" as set forth in 40 CFR 51.1(ff) through (hh), (jj), and (kk) as amended on July 8, 1985, are adopted by reference. (These definitions are now at 40 CFR 51.100(ff) through (hh), (jj), and (kk)). The exemptions provided in 40 CFR 51.118(b) (old § 51.12(k)) are also adopted by reference. The state's definition of "good engineering practice" is consistent with 40 CFR 51.100(ii) (old § 51.1(ii)). Consistent with 40 CFR 51.118(a) (old § 51.12(j)) and 51.164 (old § 51.18(1)), the subrule meets the public participation requirements regarding emission limitations established in consideration of field studies or fluid modeling.

Subrule 23.3(2) was amended to delete provisions which addressed supplemental control systems. Such system would constitute a prohibited dispersion technique under 40 CFR 51.100(hh) (old § 51.1(hh)).

The regulations adopted by the state of Iowa do not include EPA's definition of emission limitation or emission standard found at 40 CFR 51.100(z) (old 51.1(z)). Iowa's regulations contain a definition for "emission standard" at Rule 20.2, Definitions. That definition is not consistent with the EPA definition at 51.100(z). On April 22, 1987, the state of Iowa provided EPA with a letter committing to a revision of its emission standard definition before the end of September 1987, which will be consistent with EPA's definition. EPA proposes to incorporate the state's committal letter as part of the SIP in the final rulemaking, unless the definition of emission standard is revised and submitted prior to final rulemaking.

B. Analysis of Affected Facilities

The state's May 20 submittal also included a formal statement, including documentation, that no source-specific emission limitations revisions were necessary; i.e., negative declarations. EPA's initial review, however, concluded that sources in the Muscatine area would require extensive reanalysis and possibly emission limit revisions. Also, additional documentation was needed for the remainder of the state's affected facilities whose negative declarations were consistent with EPA policy.

On September 15, 1986, the state submitted the necessary additional documentation and formally withdrew its negative declarations for three sources in the Muscatine area: (1) Iowa-Illinois Louisa Generating Station; (2) Muscatine Power and Water; and (3) Grain Processing Corporation. The September 15 submittal included a commitment to reanalyze the Muscatine area sources and to submit revised emission limitations as necessary by June 30, 1987. Those revisions will be addressed in a future **Federal Register** notice.

For the remainder of the sources in Iowa, EPA has determined that no revisions of existing emissions limits are required by the Clean Air Act, section 123, which provides that an emissions limit shall not be affected in any manner by a prohibited dispersion technique. Several of the emissions limits outside of Muscatine were established through dispersion modeling which included stack heights equal to or less than good engineering practice (GEP). The emission limits for most sources outside the Muscatine area were based on an "example region" approach. Pursuant to EPA's regulations (36 FR 15486 (August 14, 1971)), these emissions limits were not based on air quality demonstrations specific to the actual sources. The "example" region" approach as used by the state of Iowa did not give credit for stack height in excess of GEP as defined by section 123 of the Clean Air Act.

A detailed review of the state submittals is contained in the EPA-prepared technical support document and is available for public inspection at the EPA Regional Office listed in the **ADDRESS** Section of this notice.

EPA intends to add the documented source-specific negative declarations and the September 15 commitment to the Iowa SIP as additional material. This will provide a clear record of the state's actions and intentions in these matters.

Proposed Action

EPA proposes to approve the amended Iowa Chapters 22 and 23 regulations which address EPA's revised stack height requirements. Also, EPA proposes to approve the state's source-specific negative declarations which certify that, excluding the Muscatine area, affected facilities in the state do not require emission limit revisions in accord with EPA's revised stack height requirements.

EPA is soliciting comments on today's proposed rulemaking. The Administrator will consider comments received in deciding to approve the state's SIP submittal.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Date: November 14, 1986.

Morris Kay,

Regional Administrator.

Editorial Note: This document was received at the Office of the Federal Register August 31, 1987.

[FR Doc. 87–20295 Filed 9–2–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 80, 86, and 600

[AMS-FRL-3256-2]

Control of Gasoline and Alcohol Blends Volatility and Evaporative Emissions, and Refueling Emissions From New Motor Vehicles and Engines

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing.

SUMMARY: This notice announces the time and place for a combined public hearing on EPA's proposed regulation to control refueling emissions and the proposed regulation to control the volatility of gasoline and alcohol blends sold in the summertime. These proposals were both published in the **Federal Register** on August 19, 1987 (52 FR 31162 and 52 FR 31274).

DATES: This hearing is scheduled to take place on October 27–29, 1987. The hearing will be convened at 9:00 a.m. on each day and will adjourn at 5:00 p.m. or

such later time as may be necessary for completion of testimony. Depending upon the extent of testimony, the full three days may not be needed. In that case, the hearing will conclude upon presentation of all testimony.

ADDRESSES: The public hearing will be held at the Dulles International Airport Holiday Inn, 1000 Sully Road, Sterling, Virginia (outside Washington, DC). Materials relevant to the proposed refueling emission controls are available in Public Docket No. A–87–11. Materials relevant to the proposed gasoline volatility regulations are available in Public Docket No. A–85–21. These dockets are located at the Environmental Protection Agency, Central Docket Section, Room 4, South Conference Center, Waterside Mall, 401 M Street SW., Washington, DC 20460. The docket section is open for inspection weekdays between 8:00 a.m. and 3:00 p.m. A reasonable fee may be charged for providing copies of material in the dockets.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Carlson, U.S. Environmental Protection Agency, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4270.

SUPPLEMENTARY INFORMATION: Any person desiring to make a statement at the public hearing should notify the contact person indicated above of such intention, in writing or by telephone, by October 13, 1987. When notifying the contact person of your intent to make a statement at the hearing, please specify any need for audio-visual equipment. It is suggested that sufficient copies of any written statement or material be brought to the hearing for distribution to the audience.

A sign-up sheet will be available at the registration table the morning of the hearing for scheduling the order of testimony. However, depending on the number of people wishing to testify, the hearing officer may elect to schedule panels of testifiers in order to facilitate conduction of the hearing.

A joint hearing has been scheduled for these two proposals in recognition of the interactions between some aspects of the proposals. However, in order to insure an orderly public review and clearly distinguish between the two, commenters wishing to testify on both proposals are requested to prepare their testimony so as to furnish separate comments on each proposal.

Also, EPA recommends that parties interested in commenting on Bonner and Moore's most recent refinery modeling comment on the final report rather than on the draft report which is already in Public Docket No. 85–21 (Document No. II–A–30). The final report will be placed in this docket on or about September 11. It will contain a number of sensitivity analyses not contained in the draft as well as correct errors in the draft report.

The record for the hearing will remain open until November 30, 1987, to allow submission of rebuttal testimony and supplementary information. Any material submitted during this period of time should be sent to the EPA Central Docket Section at the address given above, Attention: Docket No. A–87–11 for the refueling emission control proposal, or Attention: Docket A–85–21, for the gasoline volatility control proposal. It is also requested, but not required, that a copy of this submittal be sent directly to the contact person indicated above.

Persons intending to participate in the hearing may submit written questions on any matters relevant to this proposal to the presiding officer at any time. To the extent that time permits, the presiding officer, at his discretion, may direct these questions to witnesses testifying at the hearing or as appropriate to EPA personnel present at the hearing for answers. If time does not permit all such written questions to be addressed at the hearing, EPA will provide the remaining questions to the appropriate witnesses or EPA personnel for written response to be placed in the rulemaking docket.

Commenters desiring to submit proprietary information should clearly distinguish such information from other comments to the greatest extent possible, and label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the EPA contact person indicated above, and not to the Public Docket, to insure that proprietary information is not inadvertently placed in the docket.

Information covered by such a proprietary claim will be disclosed by EPA only to the extent, and by means of the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the information when it is received by EPA, it will be made available to the public without further notice to the commenter.

Mr. J. Craig Potter, Assistant Administrator for the Office of Air and Radiation, is hereby designated as the Presiding Officer of the hearing. The hearing will be conducted informally and technical rules of evidence will not apply. A written transcript of the hearing will be taken. Anyone desiring to purchase a copy of this transcript should make arrangements individually with the court reporter recording the hearing.

Date: August 27, 1987.

W. Ray Cunningham,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 87–20298 Filed 9–2–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 261

[SW–FRL–3254–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude from the list of hazardous wastes contained in 40 CFR 261.31 and 261.32 solid waste that will be generated from the treatment of Syntex lagoon sludge by EPA's Mobile Incineration System located in McDowell, Missouri. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list.

DATES: EPA will accept public comments on this proposed action until October 5, 1987. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed action by September 14, 1987. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSP/OSW (WH–563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–87–SSDP–FFFFF."

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH–563), U.S.

Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed action is located at U.S. Environmental Protection Agency, 401 M Street, SW. (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per gage.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Myles Morse, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. (202) 382–4788.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its interim final and final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner must demonstrate also that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is (1) that the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous waste, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine on a periodic basis whether these residues exhibit any of the hazardous waste characteristics.

B. Approach to Evaluating Delisting Petitions

The Agency first will evaluate the petition to determine whether or not the waste is hazardous based on the factors for which the waste was originally listed. If the Agency determines that, based on the original listing factors, the waste is still hazardous, it will propose to deny the petition. If the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). In some cases, this approach may eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

As an alternative to submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit these data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach in evaluating wastes that are landfilled and land treated. (See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985),

50 FR 48943 (November 27, 1985), and 51 FR 41084 (November 13, 1986).) The overall approach, which includes a ground-water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby receptor wells (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a given extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous. (Other factors, such as actual ground-water monitoring data or spot check verification data, may result in the denial of a petition.) The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than level of regulatory concern. This approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional fivefold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

Under certain circumstances, a petitioner may request an "upfront" delisting. An "upfront" delisting allows an exclusion to be granted based on untreated waste characterizations, pilot-scale data if available, process descriptions and conditional batch testing requirements to show that, once on-line, a system can meet the Agency's verification testing limitations and can therefore generate a non-hazardous waste. A list of constituents is developed for the verification testing and maximum allowable treated waste concentrations for these constituents are determined by backcalculating from the regulatory standards through the VHS model and Organic Leachate Model (OLM).

The Agency has adopted upfront delisting because it has the advantage of allowing the applicant to know what constituent levels must be achieved before investing in new or modified waste treatment systems. Additionally, upfront delistings should be processed more quickly since evaluation of the petition will not be held up pending completion of construction or permitting activities. Therefore, new or modified treatment systems should be brought on line sooner than otherwise possible. At the same time, conditions requiring submission of on-line data verifying that the delisting levels are achieved will guarantee the integrity of the delisting program and ensure that only non-hazardous wastes are removed from Subtitle C control.

Upfront conditional exclusions are very similar to the approach the Agency proposed on June 3, 1987 (see 52 FR 20914), which, if finalized, will incorporate a delisting function into permits for treatment units which have either full scale test data or preliminary treatment residue characterizations from bench scale processes with submission of on-line verification data. The Agency has used this upfront delisting approach in evaluating the wastes discussed in today's publication. As a result of this evaluation, the Agency is proposing to grant the petition discussed in this notice.

Finally, the Hazardous and Solid Waste Amendments of 1984, specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made for the petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

II. Disposition of Exclusion Petition

A. Syntex Agribusiness, Inc., Springfield, Missouri

1. Petition for Exclusion

Syntex Agribusiness, Inc. (Syntex), located in Springfield, Missouri, has submitted a petition to exclude wastes generated from the incineration of dioxin-contaminated sludge in the EPA's Mobile Incineration System (MIS) located in McDowell, Missouri. This sludge is presently listed as EPA Hazardous Waste No. F020—Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. The listed constituents of concern are tetra- and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodibenzofurans; and tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts. Syntex claims that the incineration residues from the treatment of this waste should be excluded because they will not meet the criteria for which they were listed. The sludge originated from the treatment of wastewater generated from pilot-scale hexachlorophene production in 1969 when the Syntex facility was owned by Hoffman-Taff and leased by the Northeastern Pharmaceutical & Chemical Co., Inc (NEPACCO). The waste originally settled in a lagoon and was subsequently removed to an on-sit concrete storage bunker. As part of a site cleanup program, Syntex plans to remove the sludge from the bunker, transport the sludge to McDowell, MO where the MIS is located, mix the sludge with contaminated soils (whose treatment residues were previously excluded), and incinerate the sludge/soil mixture. Approximately 775 cubic yards of sludge will be mixed and incinerated with 1,200 to 2,700 cubic yards of soil.

2. Process Description

On June 5, 1985, EPA proposed to exclude certain wastes generated by the MIS from the list of hazardous wastes (see 50 FR 23721). This proposed rule was in response to a petition submitted pursuant to 40 CFR 260.20 and 260.22 by EPA's Releases Control Branch (RCB), located in Edison, NJ. The final rule was issued July 25, 1985 (see 50 FR 30272) and included several conditions requiring monitoring of certain waste streams from the MIS, specifically, analyzing each batch for mercury, selenium, and chromium EP toxicity levels in the wastes. The Syntex lagoon sludge was not included in that exclusion and thus a separate petition has been filed to address incineration residues from the treatment of the Syntex sludge. Since the original MIS

exclusion was granted, the MIS has been modified. A second trial burn is being conducted and will include a demonstration on the Syntex lagoon sludge. This notice addresses the lagoon sludge treatment residues as well as the system modifications.

A detailed description of the MIS prior to modification is presented in the MIS proposed exclusion (see 50 FR 23721, June 5, 1985). The RCB submitted enigneering reports which describe the modifications to the MIS including increased feed rate, replacement of one kiln burner with an oxygen enriched burner, addition of a cyclone before the secondary combustion chamber (SCC), and replacement of the cleanable high efficiency air filter (CHEAF) with a wet electrostatic precipitator (WEP). The design modifications were made to increase on-stream time and through-put rate.

Modifications to the mechanical feed system have increased the design feed rate from 2,000 lb/hr to 5,000 lb/hr. In order to accommodate the higher feed rate, one of the two kiln burners has been replaced with an oxygen enriched "Linde" burner, which will reduce the flue gas volume, with the added benefit of improving the pressure profile throughout the system and reducing kiln turbulence which in turn reduces particulate carryover to the Secondary Combustion Chamber (SCC). In order to further minimize particulate carryover to the SCC, a cyclone has been added between the kiln and the SCC. The particulates collected from the cyclone will contain a higher distribution of fine particulates than the kiln ash and will be drummed separately from the kiln ash. The cleanable high efficiency air filter (CHEAF), described in the original MIS exclusion, has been replaced with a wet electrostatic precipitator (WEP). The WEP cleans SCC flue gas by electrically attracting particulates to the walls of the WEP. The collected particulates are removed from the WEP by a water wash. The solids are removed by the MIS's wastewater treatment system and will be landfilled under the terms of the permit.

3. Waste Characterization

Syntex submitted analytical data which quantified the priority pollutants and other organic constituents likely to be present in the untreated sludge. The maximum contaminant concentrations of eight samples analyzed are summarized in Table 1. The samples were collected with a 3-inch continuous auger. The augers were power-driven into the sludge until the flights discharged sludge at the top or until refusal. One sample penetrated to the maximum depth of 6.5 feet, 2 samples penetrated 4.0 feet, and the last sample penetrated 5.3 feet. The augers were manually extracted from the sludge, and samples were taken and composited from the material adhering to the flights. Two samples were taken at each of four locations in the bunker; one sample was used for volatiles analysis and the remaining sample for all other analyses.

TABLE 1.—HAZARDOUS ORGANIC CONSTITUENT ANALYSIS (PPM)

(Untreated Sludge)

Constituent	Concentration
Chloroform	20
1,2-Dichloroethane	172
Dichloromethane	6,250
2,3,7,8-TCDD	0.046
Toluene	6,100
Trichloroethylene	212

Since Syntex intends to mix the sludge with contaminated soils (addressed in the original MIS exclusion), a list of the contaminants likely to be present in the contaminated soils is presented in Table 2.

Table 2.—Hazardous Organic Constituents Potentially Present in Contaminated Soils

Constituent

Benz(a)pyrene
Benz(b)fluoranthene
Chrysene
Dibenzo(a,h)anthracene
2,5-Dichlorophenol
3,4-Dichlorophenol
Hexachlorophene
Indeno(1,2,3-c,d)pyrene
Polychlorinated biphenyls (PCBs)
1,2,3,5-Tetrachlorobenzene
1,2,4,5-Tetrachlorobenzene
2,3,4,5-Tetrachlorophenol
2,3,4,6-Tetrachlorophenol
2,3,4-Trichlorophenol
2,4,5-Trichlorophenol
2,4,6-Trichlorophenol

Syntex has requested an "upfront" delisting thus no analytical data from actual treatment residues as generated by the modified MIS were available for the Agency's review.

4. Agency Analysis and Action

The Agency considers the sampling procedures used by Syntex to be adequate, and that the reported analytical data representative of the sludge. A significant amount of mixing occurred when the sludge was excavated from the lagoon and placed in the storage bunker. The excavation process included the following steps:

- The exposed lagoon slopes above the sludge level were first scraped to a depth of 6 inches, and the resulting material was discharged into the lagoon.
- The lagoon sludge was excavated with a clamshell and placed in an elevated hopper. (Some mixing occurred as the clamshell positioned the sludge in more accessible locations.) Calcium oxide was added to the material in the hopper to facilitate dewatering.
- The contents of the hopper were dumped in a cement mix truck and vigorously mixed for approximately 5 minutes.
- The truck dumped each batch onto an inclined conveyor, which fed the sludge onto a horizontal conveyor, which in turn discharged the sludge into alternating openings in the roof of the bunker.

The Agency, therefore, believes that the composite samples taken from four positions in the bunker adequately represent any variations which may occur in the untreated waste.

As discussed in the background section of this notice, the Agency will grant upfront delistings with conditions. Accordingly, the Agency is proposing a conditional exclusion for Syntex which will require (1) batch testing for metals throughout the incineration of the Syntex lagoon sludge, and (2) verification testing for certain organics (identified by the characterization of the untreated sludge and contaminated soils) to demonstrate that the MIS actually performs as expected. The batch testing requirements for each waste stream generated by the modified MIS will ensure that the system continues to operate at least as efficiently as during the trial burn.

The Agency is therefore proposing to grant an exclusion for the solid resudes and wastewater generated from EPA's Mobile Incineration System's treatment of the Syntex lagoon sludge in McDowell, Missouri, with the following conditions:

(1) MIS's performance is continuously monitored to ensure efficient destruction of the wastes (i.e., meet test burn parameters for destruction efficiencies, kiln temperature, SCC temperature, oxygen and carbon monoxide concentrations in the exhaust gas, combustion gas velocity, scrubber water pH and flow rates, and pressure drops across the system).

The purpose of this condition, as in the initial exclusion for the MIS, is to ensure efficient destruction of the constituents of concern. If the data collected under this condition show that the MIS is not operating properly, the residues must be retreated or disposed as hazardous.

(2) Four grab samples must be taken and composited from each tank of wastewater generated and the compositive must be analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results do not exceed 0.061 ppm, berium levels do not exceed 12 ppm, cadmium and selenium levels do not exceed 0.1 ppm, mercury levels do not exceed 0.02 ppm, nickel levels do not exceed 4.3 ppm, and cyanide levels do not exceed 2.4 ppm, the wastewater will be considered non-hazardous. Analyses must be performed according to SW–846 methodologies.

(3) Grab samples must be taken from each drum of ash, sludge, and soil and composited daily. An EP leachate test must be performed on these samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results do not exceed 0.33 ppm, barium levels do not exceed 6.6 ppm, cadmium and selenium levels do not exceed 0.07 ppm, mercury levels do not exceed 0.01 ppm, nickel levels do not exceed 2.3 ppm, and cyanide levels (using a distilled water extraction) do not exceed 1.3 ppm, the wastes will be considered non-hazardous. Analyses must be performed according to SW–846 methodologies.

Since the unmodified MIS occasionally produced residues with unacceptable EP leachate levels of chromium selenium, and mercury, conditions (2) and (3) have been included to ensure that the residues generated are uniformly non-hazardous. If the data collected under conditions (2) and (3) show that a batch is still hazardous, that batch must be retreated or disposed as hazardous.

(4) Each batch for each of the petitioned residues must be analyzed to demonstrate that the treatment residues (i.e, the kiln ash, cyclone ash, wastewater treatment sludge, and filtered wastewater) do not exceed the maximum allowable waste concentrations listed in Table 3. Sampling must be conducted as specified in conditions (2) and (3). Analyses should be performed according to SE–846 methodologies. Any residues which have constituents which exceed the levels listed in Table 3 must be retreated or disposed as hazardous. This testing requirement will continue until Syntex demonstrates that the residues from four consecutive batches do not exceed any of the maximum allowable treatment residue concentrations listed below.

TABLE 3.—MAXIMUM ALLOWABLE TREATMENT RESIDUE CONCENTRATIONS

Constituent	Solid residue and sludge [1] (ppm)	Wastewater [1] (ppm)
Benz(a)anthracene	0.1	1×10^{-4}
Benz(a)pyrene	0.04	4×10^{-5}
Benz(b)fluoranthene	0.18	2×10^{-4}
Chloroform	0.01	0.006
Chrysene	17	0.002
Dibenzo(a,h) anthracene	0.008	9×10^{-6}
1,2-Dichloroethane	0.009	0.005
Dichloromethane	9.1	0.68
Indeno(1,2,3,-c,d)pyrene	33	0.002
Polychlorinated biphenyls (PCBs)	0.03	1×10^{-4}
1,2,4,5-Tetrachloroben-zene	72	0.13
2,3,4,6-Tetrachloro-phenol	706	4.3
Toluene	15%	130
Trichloroethylene	0.66	0.04
2,4,5-Trichlorophenol	0.19%	43
2,4,6-Trichlorophenol	0.34	0.02

[1] Assumes solids waste volume of 3,500 yd ^{3} and wastewater volume of 3,000,000 gallons.

Maximum allowable treatment residue concentrations were not included in Table 3 for six compounds (*e.g.*, 2,5-dichlorophenol, 3,4-dichlorophenol, hexachlorophene, 1,2,3,5-tetrachlorobenzene, 2,3,4,5-tetrachlorophenol, and 2,3,4-trichlorophenol), which were detected in the untreated sludge or are potentially present in the contaminated soil, because regulatory standards are not currently available for these compounds. If any of these standards become available before this rule is promulgated, they will be added to Table 3.

Condition (4) was added to ensure that the hazardous constituents of concern in the untreated sludge and contaiminated soils are destroyed or reduced to non-hazardous levels. Under condition (4), if Syntex does not detect a constituent listed in Table 3 and the lowest achievable detection limit has been reached (when the appropriate SW–846 methodology has been used correctly) and this detection limit exceeds the maximum allowable treatment residue concentrations, the Agency, as a matter of policy, will not regulated the residue as hazardous. If, however, the data collected under condition (4) show higher detected levels than listed in Table 3, the waste must be retreated or disposed as hazardous. This conditional testing requirement will remain in effect until Syntex can demonstrate that four consecutive batches of the petitioned residues are non-hazardous, that is, the constituents in the wastes do not exceed any of the levels listed in Table 3, and as with all waste generators, that the wastes do not exhibit any of the characteristics of hazardous wastes. The Agency has added this testing termination provisions to this condition for the following reasons: (1) based on the past performance of the MIS, the Agency believes that consistently non-hazardous wastes can be generated from this fixed volume of uniformly mixed wastes and thus testing every batch for the organics listed in Table 3 would be excessive; and (2) termination of this condition after four consecutive clean batches is consistent with existing policy that petitioners submit a minimum of four representative samples in support of their petitions for delisting where wastes are well mixed and uniform. The Agency is specifically requesting comments on this condition termination provision. Future upfront delisting decisions issued by the Agency may include different testing requirements based on an evaluation of the uniformity of the process and waste, the waste volume (including whether there is a fixed volume of waste or an infinite source), and other factors normally considered in the petition review process. For example, variable wastes which have been discussed in previous decisions for multiple wastes (see 51 FR 41323) require continuous batch testing due to continuous variability in the client base. (A similar termination provision has not been included in conditons (2) and (3) because those conditions are for metals which have occasionally been found at failing levels in past residues generated by the MIS. The presence of these metals is not related to the efficacy of the incineration process but rather the inherant metals content of the incinerator feed streams.

(5) Each batch for each of the petitioned residues must be analyzed to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels as specified in conditons (2) and (3). The TCDD equivalant levels for solids must be less than 0.5 ppt and for wastewater the levels must be below 0.002 ppt. A high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS)

analytical method must be used. Any residues which exceed the levels listed above must be retreated or disposed as hazardous. This testing requirement will continue until Syntex demonstrates that the residues from four consecutive batches do not exceed the maximum allowable treatment residue concentrations listed above.

This condition has been added to ensure that the dioxin destruction is at least as effective as demonstrated in the original MIS exclusion. The toxicity equivalency levels of tetra-, penta-, or hexachlorodibenzo-p-dioxin or -furan and summing the values for comparison to the equivalent levels set in condition (5). When the petitioner is able to determine that a detected homolog is not 2,3,7,8-substituted, the factors listed below under "Non-2,3,7,8-PCDDs and PCDFs" may be used. If the petitioner determines that either 2,3,7,8-substituted homologs are present or the analysis cannot differentiate the ring substitution pattern, then the factors listed below under "2,3,7,8-PCDD's and PCDF's or Unspecified Homologs" must be used.

TOXICITY EQUIVALENCE FACTORS

Homolog	2,3,7,8-PCDDs and PCDFs or Unspecified Homologs	Non-2,3,7,8-PCDDs and PCDFs
TCDDs	1	0.01
PeCDDS	0.5	.005
HxCDDs	.04	.0004
TCDFs	1	.001
PeCDFs	.1	.001
HxCDFs	.01	.0001

These factors were developed by the Agency's Chlorinated Dioxins Workgroup (CDWG) to assess the risks associated with exposure to a mixture of chlorinated dioxin homologs, and were derived from an evaluation of the structure-activity relationships of the homologs using their carcinogenic, reproductive, an biochemical effects.[1] Syntex will use the "Region VII" HRGC/MRMS method;[2] this method is available in the public docket for this notice. The Agency is requiring Syntex to use a NRGC/HRMS method in place or SW–846 method 8280 because of the significant difference between the achievable detection limits for method 8280 (1 ppb for liquids) and the maximum allowable treatment levels listed in this condition (0.002 ppt for liquids). The HRGC/HRMS methods is capable of achieving a significantly lower detection limit and thus is a more appropriate tool for evaluating whether the residues are non-hazardous. The Agency is currently developing a HRGC/HRMS method, which we intend to add to SW–846. When this method is available, all petitioners testing for dioxin content may be required to use it. Until that time, however, the Agency will request that petitioners submit a HRGC/MRMS method for review and approval. Syntex submitted the Region VII method which has been used extensively in the characterization of dioxin contamination in Missouri. The method has been reviewed and approved for use in demonstrating compliance with condition (5) of this exclusion.

Under condition (5), if Syntex does not detect any of the homologs listed above and the lowest achievable detection limit has been reached (using the Region VII methodology correctly) and this detection limit exceeds the maximum allowable treatment residue concentrations, the Agency, as a matter of policy, will not regulate the residue as hazardous. If, however, the data collected under condition (5) show higher levels than are acceptable, the wastes must be retreated or disposed as hazardous. This condition will terminate under the same conditions and for the same reasons listed earlier for condition (4).

The maximum allowable waste concentrations discussed in conditions (2), (3), (4), and (5) and listed in Table 3 were derived from the Organic Leachate Model (OLM) and the vertical and horizontal spread (VHS) model. (See 51 FR 41084, November 13, 1986 for a discussion of the Agency's final OLM. See 50 FR 48896, Appendix, November 27, 1985 for a discussion of the Agency's final VHS model.) The OLM is used to predict leachable concentrations of organic constituents in a waste. The VHS model is used to predict the concentration of a constituent in the ground water at a hypothetical compliance point. The maximum allowable wastewater concentrations were derived by back-calculating from regulatory standards through the VHS model to predict allowable leachate concentrations. The concentrations for solids were back-calculated through the OLM from the predicted VHS model leachate concentrations.

(6) The test data from conditions (1), (2), (3), (4), and (5) must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a monthly basis and when the treatment of Syntex's sludge is concluded.

(7) Syntex must provide a signed copy of the following certification statement when submitting data in response to the conditions listed above: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete."

Condition (7) is being added as a standard condition for all conditional and upfront exclusions.

The Agency believes that the engineering descriptions of the modifications to the MIS and the untreated sludge characterization data submitted by Syntex, in conjunction with the proposed contingency testing requirements, are a reasonable basis for the upfront conditional exclusion. The modifications to the MIS have been designed to improve the efficacy of the system and thus the Agency expects that the treatment residues from the modified MIS will be non-hazardous. The confirmatory data (e.g., conditions (1) through (5)) will be used to ensure that the MIS can actually meet the terms of the proposed exclusion.

III. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than 6 months when the regulated community does not need the 6-month period to come into compliance. This is the case here since this rule reduces, rather than increases, the existing requirements for generators of hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on this petitioner by an effective date 6 months after promulgation, and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we are proposing that this rule be effective immediately upon promulgation. These

[1] Risk Assessment Forum, "Interim Procedures for Estimating Risk Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs), October, 1986.

[2] *Determination of Polychlorinated Dibenzodioxins and Polychlorinated Dibenzofurans in Environmental Samples Using HRGC/MRMS.* Roy F. Weston, Inc., Spill Prevention and Emergency Response Division, Region VII Technical Assistance Team, July 1986.

reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subjet to the requirements of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding from EPA's hazardous waste list wastes generated at a specific facility, thereby enabling the facility to treat its waste as non-hazardous.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, the Agency must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall cost of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation will not have a significant impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling.

Date: August 19, 1987.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6921(a), 6912, and 6922).

Appendix IX—[Amended]

2. In Appendix IX, add the following wastestream in alphabetical order to Table 1 as indicated:

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Syntex Agribusiness	Springfield, MO	Kiln ash, cyclone ash, wastewater, and wastetreatment solids (except spent activated carbon) (EPA Hazardous Wastes Nos. F020, F022, F023, F026, F027, and F028) generated during the treatment of wastewater treatment sludge by the EPA's Mobile Incineration System at the Denney Farm Site in McDowell, MO after [insert date of final rule publication in FEDERAL REGISTER], so long as: (1) the incinerator is monitored continuously and is in compliance with trial burn parameters; (2) four grab samples are taken and composited from each tank of wastewater generated and the EP leachate values of the composite for arsenic, chromium, lead, and silver do not exceed 0.61 ppm, barium levels do not exceed 12 ppm, cadmium and selenium levels do not exceed 0.1 ppm, mercury levels do not exceed 0.02 ppm, nickel levels do not exceed 4.3 ppm, and cyanide levels do not exceed 2.4 ppm. Analyses must be performed according to SW–846 methodology; (3) a grab sample is taken from each drum of soil, ash, and sludge generated and the EP leachate values of daily composites of arsenic, chromium, lead, and silver do not exceed 0.33 ppm, barium levels do not exceed 6.6 ppm, cadmium and selenium levels do not exceed 0.7 ppm, mercury levels do not exceed 0.01 ppm, nickel levels do not exceed 2.3 ppm, and cyanide levels do not exceed 1.3 ppm. Analyses must be performed according to SW–846 methodology; (4) each batch of each of the excluded wastes is analyzed to demonstrate that detected solid and sludge concentrations do not exceed the following levels: 0.1 ppm benz(a)-anthracene, 0.18 ppm benz(b)fluoranthene, 0.04 ppm benzo(a)pyrene, 0.01 ppm chloroform, 17 ppm chrysene, 0.008 ppm dibenzo(a,h)anthracene, 0.009 ppm 1,2-dichloroethane, 9.1 ppm dichloromethane, 33 ppm indeno(1,2,3-c,d) pyrene, 0.03 ppm PCBs, 72 ppm 1,2,4,5-tetrachlorobenzene, 710 ppm 2,3,4,6-tetrachlorophenol, >15 % toluene, 0.66 ppm trichloroethylene, 0.2 % ppm 2,4,5-trichlorophenol, and 0.34 ppm 2,4,6-trichlorophenol; and detected wastewater concentrations do not exceed the following levels: $1x10^{-4}$ ppm benz(a)anthracene, $2x10^{-4}$ ppm benz(b)fluoranthene, $4x10^{-5}$ ppm benzo(a)pyrene, 0.006 ppm chloroform, 0.002 ppm chrysene, $9x10^{-6}$ ppm dibenz(a,h)anthracene, 0.005 ppm 1,2-dichloroethane, 0.68 ppm dichloromethane, 0.002 ppm ideno(1,2,3-c,d)pyrene, $1x10^{-4}$ ppm PCBs, 0.13 ppm 1,2,4,5-tetrachlorobenzene, 4.3 ppm 2,3,4,6-tetrachlorophenol, 130 ppm toluene, 0.04 ppm trichloroethylene, 43 ppm 2,4,5-trichlorophenol, and 0.02 ppm 2,4,6-trichlorophenol. Sampling must be conducted as specified in conditions (2) and (3). Analyses must be performed according to SW–846 methods. Any residues which contain constituents which exceed these levels must be retreated or disposed as hazardous. This testing requirement will continue until Syntex demonstrates that the residues from four consecutive batches are non-hazardous; (5) each batch for each of the petitioned residues is analyzed to demonstrate that total equivalent dioxin concentrations in the excluded solid wastes do not exceed 0.5 ppt, and the equivalent wastewater concentration does not exceed 0.002 ppt. Sampling must be conducted as specified in conditions (2) and (3). A high resolution gas chromatography/high resolution mass spectrometry method must be used. Any residues which contain total dioxin equivalent concentrations which exceed these levels must be retreated or disposed as hazardous. This testing requirement will continue until Syntex demonstrates that the residues from four consecutive batches are non-hazardous; (6) the test data from conditions (1), (2), (3), (4), and (5) are kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a monthly basis and when the treatment of Syntex's sludge is concluded; and (7) Syntex must provide a signed copy of the following certification statement when submitting data in response to the conditions listed above: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete."

[FR Doc. 87–19916 Filed 9–2–87; 8:45 am]

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40 CFR Part 300

[FRL-3255-9]

National Priorities List (NPL) for Uncontrolled Hazardous Waste Sites; Deletion of Sites

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete sites; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete three sites from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

DATES: Comments may be submitted on or before October 5, 1987.

ADDRESSES: Comments may mailed to Russel H. Wyer, Director, Hazardous Site Control Division (Attn: Design and Construction Management Branch), Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Headquarters Docket clerk will maintain some background information on each site. Comprehensive information on each site is available through the EPA Regional docket clerks.

The Headquarters public docket is located in EPA Headquarters, Waterside Mall subbasement, 401 M Street, SW., Washington, DC 20460, and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding holidays. Requests for copies of the background information from the Headquarters public docket should be directed to the EPA Headquarters Docket Office. Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. Addresses for the Headquarters and Regional Docket Offices are:

For background information on all three sites: Tina Maragousis, (WH-548D), U.S. EPA CERCLA Docket Office, Waterside Mall, Subbasement, 401 M Street, SW., Washington, DC 20460, 202/382-3046.

For the Middletown Road Dump, Annapolis, Maryland site: Diane McCreary, Region III, U.S. EPA Library, 5th Floor, 841 Chestnut Bldg., 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597-0580.

For the Harris (Farley Street), Houston, Texas site: Leticia Lane, Region VI, U.S. EPA Library, 12th Floor, Mail Code 6M-IR, 1445 Ross Avenue, Dallas, TX 75202-2733, 214/655-6444.

For the Mountain View Mobile Home Estates, Glove, Arizona site: Jean Circiello, Region IX, U.S. EPA Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/974-8076.

FOR FURTHER INFORMATION CONTACT: Paul Nadeau, Chief, Design and Construction Management Branch, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Phone (800) 424-9346 (or 382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletions

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete three sites from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on these deletions. The EPA identifies sites that appear to present a significant risk to human health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of the Hazardous Substance Response Fund (Trust Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The three sites EPA intends to delete from the NPL are:

1. Middletown Road Dump, Annapolis, Maryland
2. Harris (Farley Street), Houston, Texas
3. Mountain View Mobile Home Estates, Globe, Arizona

The EPA will accept comments on these three sites for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action and those that the Agency is considering using for future site deletions. Section IV discusses each site and explains how each site meets the deletion criteria.

II. NPL Deletion Criteria

Amendments to the NCP published in the **Federal Register** on November 20, 1985 (50 FR 47912) establish the criteria the Agency uses to delete sites from the NPL. Section 300.66(c)(7) of the NCP provides that:

> . . . sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria has been met:
>
> (i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;
>
> (ii) All appropriate Fund-financed response under CERCLA has been implemented, and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or
>
> (iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary, is protective of human health and the environment, consistent with section 121(d) of the Superfund Amendments and Reauthorization Act of 1986.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

Deletion of sites from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this notice, § 300.66(c)(8) of the NCP states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For the deletion of this group of three sites, EPA's Headquarters Office will accept and evaluate public comments before making the final decision to delete. Comments from the local community surrounding the sites considered for deletion are likely to be the most pertinent to deletion decisions. The following procedures were used for

the intended deletion of these three sites:

1. EPA Regional Offices recommended deletion and prepared relevant documents.

2. EPA Regional Offices provided a two to three week public comment period on the deletion package for the Harris (Farley St), TX and the Mountain View Mobile Home Estates, AZ sites, both of which had undergone remedial measures. A public meeting for discussion of the Remedial Investigation and No-Action alternative (no remedial action was necessary) was provided instead of a public comment period on the deletion package for the Middletown Road site where an Emergency Removal preceded a No-Action Decision. For all three sites, notifications were provided to local residents through local and community newspapers. The Region made all relevant documents available in the Regional Offices and local site information repositories. Notice was also given at the time of public meetings if they were determined to be necessary.

3. Comments received during the notice and comment period were evaluated and a Responsiveness Summary prepared before the tentative decision to delete was made.

A deletion occurs when the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register**, and the NPL will reflect those deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to the local residents by the Regional Offices.

IV. Basis for Intended Site Deletions

The following summaries provide the Agency's rationale for intending to delete these sites from the NPL.

Harris (Farley Street) Site, Houston, TX

The Harris (Farley Street) site is a 2.07-acre site located in southeast Houston, Texas. In early 1958 the site was used as a disposal site for chemical wastes. In 1959 the trenches were backfilled with native soil. The waste was uncovered in 1981 in the process of installing a swimming pool. The site was listed on the NPL in December 1982 based on potential ground water contamination.

In June 1983, one of the site's potentially responsible parties (PRP) signed an Administrative order on Consent with EPA to perform the Remedial Investigation and Feasibility Study (RI/FS) for the site. The Remedial Investigation Report was submitted to EPA in November 1983 and the Field Study was submitted in May 1984. The RI indicated that wastes consisting of styrene tars and their degradation products were present. Ground water monitoring wells installed next to the trenches and down-gradient of the site showed no sign of ground water contamination. As a result of these findings the Enforcement Decision Document was signed by the Regional Administrator on September 27, 1985 and a second Administrative Order on Consent was signed with the PRP in September 1985 for the Remedial Design (RD) and Remedial Action (RA) to be conducted and funded by the PRP.

The waste materials were chemically characterized as alkanes, substituted benzenes, substituted biphenyls, polynuclear aromatic hydrocarbons and non-aromatic cyclics. Measurement of total extractable organics was employed as a surrogate for quantification of total contamination. Initial laboratory tests indicated that the total extractable organics (TEO) test adequately measured to total amount of contamination. Background level was defined as from 0 to 10 parts per million (ppm) TEO with a detection limit of <2 ppm.

A series of four removals was initiated by the PRP in April 1986 and completed in July 1986 with disposal of contaminated soils in a Class I, RCRA landfill. Subsequent soil sampling indicated wastes had been removed to background levels in 54 of 57 samples, with three samples with TEO levels slightly elevated above background, and the environmental threat presented by the site had been effectively mitigated.

Because the action was a complete removal of the contamination source, no ground water monitoring was done after the removal and no operation or institutional controls were found to be necessary for the site. All activities and decisions are consistent with those outlined in the Enforcement Decision Document and comply with current standards.

The property will be turned over to a disposal company once the site has been deleted from the National Priorities List and will become a part of a private construction material, Class IV landfill (a non-hazardous materials landfill), which now bounds the site on two sides. A sandpit which lies to the south of the site is also scheduled to become a landfill cell once the useable sand has been removed.

A three week public comment period concerning the proposed deletion was held from August 27 to September 17, 1986. No written comments were received. Oral comments were received from the Assistant Director of the Department of Health and Human Services for the City of Houston. Three concerns were raised: (a) Why was the test for total extractable organics (TEOs) used as the indicator parameter for completion of the clean-up; (b) is the TEO test applicable to the types of waste found at the Harris (Farley Street) site; and (c) what about small patches of stained soil left at the site after completion of removal. Subsequently, the State reviewed a summary of EPA/PRP data documenting the analytical relationship between the TEO test and the site contaminants and determined that the TEO test was indeed appropriate. The State also agreed that the small amount of remaining material posed an insignificant threat to human health and the environment and continuation of removal was not justifiable. These concerns and their resolution are detailed in the Responsiveness Summary.

EPA, in consultation with the State of Texas, has determined that the site is protective of human health and the environment, that responsible parties have implemented all appropriate response actions required and that no further cleanup by responsible parties is appropriate.

Mountain View Mobile Home Estates, Globe, AZ

Mountain View Mobile Home Estates was a 17-acre mobile home subdivision located in Globe, Arizona, approximately 75 miles east of Phoenix. The subdivision was developed in 1973 on the site of the Metate Asbestos Corporation chrysotile asbestos mill after the mill ceased operation by order of the Gila County Air Quality Control District. Metate Asbestos mill tailings and contaminated soil were used as fill to level the site. Forty-seven mobile homes were eventually placed on the subdivision's 55 lots and the site was occupied by approximately 130 residents.

Asbestos contamination of the soil in the subdivision was discovered in October 1979 by State and local health officials. Subsequent sampling of air and soil in the subdivision confirmed the presence of asbestos fibers. Mountain View Mobile Homes Estates was added to the National Priorities List in July 1982.

The Remedial Investigation/Feasibility Study commenced on April 4, 1983. The final draft Remedial Investigation/Feasibility Study Report (RI/FS) was published in May 1983. During the RI/FS activity, EPA and the Federal Emergency Management Agency (FEMA) offered to temporarily relocate Mountain View residents on a

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voluntary basis pending a decision on the permanent remedy for the site.

The RI/FS found that residents of Mountain View Mobile Home Estates were being exposed to significant quantities of asbestos fibers both from contaminated soil on-site and from airborne fibers from a nearby mill. Direct contact with asbestos by children was of the greatest concern because their life expectancy exceeds the latency periods for asbestos related disease. Polarized light microscopy was the analytical method used to identify and quantify asbestos for all samples collected at the site.

A Record of Decision was signed on June 2, 1983 selecting Site Abandonment by Permanent Relocation as the remedial action. Permanent relocation of residents was completed in March 1985 and ownership of the purchased property was transferred to the State of Arizona. Following relocation of the site residents, remediation of the site was completed.

The homes and other structures were crushed and buried on-site in two natural depressions. Drainage culverts and enclosed pipes were installed to reduce the potential for erosion of the cover. A non-woven filter fabric was placed over the entire site to act as a physical barrier to upward movement of asbestos fibers and as an indicator of erosion. Twenty-one inches of uncontaminated soil was placed over the filter fabric in lifts and compacted. Three inches of crushed rock was added to complete the cover. The site was fenced to protect the integrity of the cover.

Analytical results from 107 post-closure soil samples of the site cover are non-detectable for asbestos or show only traces <1% consistent with background readings. Twenty-five final cover samples were also non-detectable. Physical inspections of the site found no problem with integrity of the site other than minor settling and erosion. The State of Arizona has committed to maintenance of the site for a minimum of twenty years. All actions taken are consistent with those outlined in the Record of Decision and comply with current standards.

The Region provided a three week public comment period from August 29th to September 19, 1986 on the proposed deletion. No written or oral comments were received.

All appropriate Fund-financed response under CERCLA has been implemented, and EPA, in consultation with the State of Arizona, has determined that no further cleanup by responsible parties is appropriate and that the site is protective of human health and the environment.

Middletown Road Dump, Annapolis, MD

The Middletown Road Dump site is located off Maryland Route 50 near Annapolis, Anne Arundel County, Maryland. This 2.3 acre site was operated as a dump, primarily for rubble and construction debris, over several decades without proper state permits. The owner accepted drums of unidentified industrial wastes and marine paints which were discovered during an October 1982, EPA Field Investigation Team (FIT) Investigation of the property. As a result of the FIT Investigation, based on potential ground water and surface water contamination, the site was placed on the National Priorities List (NPL) in December 1982.

A site assessment in April 1983, revealed that emergency conditions existed on-site, threatening ground and surface waters. Stream sediments and surface soils showed significant heavy metals contamination. Immediate removal measures were initiated, contaminated on-site materials were removed, plus additional soils until background levels were achieved.

A Remedial Investigation (RI) was initiated on January 2, 1985. Evaluation of possible routes of contaiminant migration included water quality assessment from existing data from on-site and off-site wells and surface waters; and soils and sediments evaluation by site sampling and analysis for priority metals, volatile organics and base/neutral extractables. All air, water, soil and sediment contaminant levels were very close to naturally occurring background levels, based on previously collected State data.

The RI determined that there was no significant threat to public health or the environment via direct contact, inhalation or ingestion and that No-Action is the proper alternative for the Middletown Road site. A No-Action Record of Decision was signed by the Acting Regional Administrator on March 17, 1986.

The State will monitor the on-site wells at least annually as a part of its existing closed waste site inspection schedule. Uncontaminated tires remain on site. However, the State has entered into a Consent Order with the owner to have them removed and disposed of properly.

A public meeting was held on August 27, 1985, to discuss the final RI and No-Action alternative. No written or verbal comments from the public were received.

Based on the remedial investigation, EPA, in consultation with the State of Maryland, has determined that the site poses no significant threat to human health or the environment and remedial measures are not appropriate.

Dated: August 25, 1987.

Thaddeus L. Juszczak, Jr.,

Acting Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 87-20297 Filed 9-2-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION
Coast Guard
46 CFR Part 25
[CGD 87-016]

Emergency Position Indicating Radio Beacons for Uninspected Fishing, Fish Processing, and Fish Tending Vessels

AGENCY: Coast Guard, DOT.

ACTION: Noice of proposed rule making.

SUMMARY: The Coast Guard is proposing to amend the uninspected vessel regulations by requiring emergency position indicating radio beacons (EPIRBs) to be carried on uninspected fishing, fish processing, and fish tender vessels operating on the high seas. Congress amended the shipping laws of the United States by requiring those vessels to have the number and type of EPIRBs prescribed by regulation. By implementing the law, the regulations will ensure rapid and effective search and rescue during emergency situations.

DATES: Comments must be submitted on or before: October 19, 1987.

ADDRESSES: Comments should be submitted to the Commandant (G-CMC/21), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593-0001. Between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays, comments may be delivered to, and are available for inspection and copying at, the Marine Safety Council (G-CMC) Room 2110 U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1477. The Draft Evaluation may also be inspected or copied at the Marine Safety Council.

FOR FURTHER INFORMATION CONTACT: LCDR William M. Riley, Survival Systems Branch, Room 1404, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1444. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by

submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 87–016) and the specific section to which each comment applies, and give reasons for the comments. If an acknowledgement is desired, a stamped, pre-addressed post card or envelope should be enclosed. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposal may be changed in light of comments received.

No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if written requests are received from interested persons raising relevant issues and desiring to comment orally at a public hearing and it is determined that the opportunity to make oral presentations will aid in the rulemaking process.

Drafting Information

The principal persons involved in drafting these regulations are: LCDR William M. Riley, Project Manager, and Mr. Stanley Colby, Project Counsel, Office of Chief Counsel.

Discussion of the Proposed Regulations

Fishing vessels frequently sink suddenly without calling for help. When a distress call is made, it often does not include an accurate or complete identification of the vessel, description of the situation, or position. Fishing vessels do not have established routes or schedules, and in fact often guard the secret of where they fish most successfully as a trade secret. Therefore, the position of a fishing vessel, and even whether or not it is overdue, is often unknown to anyone ashore. These factors greatly reduce the chance of anyone being rescued alive following a fishing vessel casualty. In contrast, when there is an EPIRB to provide prompt notification of the casualty and a homing beacon to guide rescuers to the scene, the chance of saving lives—as opposed to recovering bodies—increases dramatically.

The Coast Guard agreed to seek legislative authority to require EPIRBs on fishing vessels and other uninspected vessels in a response to the April 24, 1980 recommendation resulting from the National Transportation Safety Board (NTSB) investigation of the 1978 loss of the F/V LOBSTA I. Coast Guard investigations of a number of fishing vessel casualties have also resulted in internal recommendations for EPIRBs. These casualties include the F/V ELSIE JANE, F/V MARBLEHEAD, F/V BARBIE I, F/V MARY LOU, F/V NOREEN ANN, F/V EQUINOX, and F/V CITY OF SEATTLE. Navigation and Vessel Inspection Circular 5–86 contained voluntary safety standards for all vessels engaged in the commercial fisheries, and included a recommendation for the carriage of EPIRBs, and COMDTINST 2370.2A of October 28, 1981 instructed Coast Guard personnel to encourage all fishing vessel operators to carry EPIRBs.

Regulations prescribing EPIRB carriage by fishing vessels do not now exist because the Coast Guard did not previously have the authority to issue those regulations. On November 10, 1986, the Ninety-Ninth Congress passed Pub. L. 99–640, known as the "Coast Guard Authorization Act of 1986" (100 Stat. 3545). Section 16 of the Act amended section 4102 of Title 46 of the United States Code by adding paragraph (e) which requires uninspected fishing vessels operating on the high seas to carry the number and type of EPIRBs prescribed by regulation. Except for the type of EPIRB required, this notice would implement that law to require uninspected fishing, fish processing, and fish tender vessels operating on the high seas to carry EPIRBs by proposing regulations that are similar to the carriage, testing, and maintenance requirements for EPIRBs in 46 CFR Subchapter I, (Cargo and Miscellaneous Vessels). If adopted, the regulations will be published in 46 CFR Subchapter C, (Uninspected Vessels).

The regulations would require the use of FCC Type Accepted float-free EPIRBs operating on the dedicated satellite frequency of 406.025 MHz. The 406 MHz satellite EPIRB not only provides improved alerting and locating over conventional EPIRBs operating on aircraft and marine frequencies, but also avoids most of the false alarm problems on those frequencies. Necessary final rules permitting manufacture and sale of such beacons are expected to be completed by the Federal Communications Commission (FCC) before February 1988. These beacons should be readily available before mid-1988.

The Coast Guard recognizes that many owners and operators of fishing vessels have voluntarily installed EPIRBs in response to the previous educational campaign and that this equipment has a long service life. Therefore the proposed rules would allow 121.5/243 MHz Class A (float-free) EPIRBs that are installed on or before the effective date of the final rules to be carried for about 10 years. To allow adequate time for installation of satellite EPIRBs, the Coast Guard intends to establish a compliance date approximately one year after the effective date of the final rules. The Coast Guard will consult with the FCC and manufacturers prior to publication of the final rule and will adjust the compliance date, if necessary, to allow approximately six months for installation of satellite EPIRBs after the units are readily available. If production is subsequently delayed, further adjustments to the effective date will be made and published in the **Federal Register**.

Although conventional 121.5/243 MHz Class A EPIRBs would be acceptable for the proposed 10 year phase-in period, there are a number of problems with these EPIRBs. The 121.5/243 MHz system has a serious false alarm problem. Although COSPAS/SARSAT search and rescue satellites are designed to receive 121.5 MHz signals, 121.5/243 MHz EPIRBs are not designed as "satellite EPIRBs" and their coverage area and alert and locate ability is significantly inferior to that of the 406 MHz satellite EPIRB. An estimated 25% of the existing 121.5/243 MHz EPIRBs will not be detected by COSPAS/SARSAT satellites because their transmitter spectrum does not comply with the modulation requirements of Federal Aviation Administration Technical Standard Order (TSO) C91a. A pending regulatory project by the Federal Communications Commission published in the June 5, 1987 issue of the **Federal Register** (52 FR 21334) would solve this problem for future production Class A EPIRBs, but not for existing units.

Although conventional 121.5/243 MHz Class A EPIRBs would be acceptable for the proposed 10 year phase-in period, the proposals in this notice would not allow Class B 121.5/243 MHz EPIRBs or Class C VHF-FM EPIRBs to be counted toward the EPIRB carriage requirement. Class B EPIRBs will float, but are not automatically deployed and activated. The signal from a VHF-FM Class C EPIRB is not detectable by the COSPAS/SARSAT satellites, and can often go unnoticed by coast and ship radio stations.

All fishing vessels operating on the high seas are included in the EPIRB carriage requirements proposed in this notice, including small fishing vessels regardless of length, tonnage, numbering or documentation, manning, accommodation spaces, or propulsion. Pub. L. 99–640 makes no provision for exemption of such vessels.

Comments are specifically invited on the following:

(1) The proposed 10 year phase-out period for Class A EPIRBs. We are considering a shorter phase-out period of 6 years in consideration of the shortcomings of the 121.5/243 MHz system.

(2) Class A EPIRBs which do not comply with TSO C91a. We are considering prohibiting the carriage of non-complying EPIRBs during the phase-out period in consideration of their questionable performance with COSPAS/SARSAT satellites.

(3) the non-acceptability of existing Class B and C EPIRBs during the phase-out period. Persons suggesting that Class B and Class C EPIRBs should be allowed to be carried should also address the appropriate phase-out period, as well as the number of these EPIRBs thought to be in service on the affected vessels.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation has been prepared and placed in the docket. It may be inspected or copied at the Office of the Marine Safety Council (see "**ADDRESSES**", above).

The draft evaluation estimates a cost of about $600 for each of the estimated 31,555 fishing vessels that would be affected. Approximately half of these vessels would have to install satellite EPIRBs within a year, at a cost of about $9.5 million. The remainder would replace their existing conventional EPIRBs over a 10-year period at a cost, adjusted to 1988 dollars, of about $7.5 million, for a total of about $17 million for the industry to comply with the requirements in the proposed rules.

In addition to the saving of lives, the primary benefits of the proposed regulations are identified in the draft evaluation as more timely notification that a casualty has occurred, more accurate identification of the area to be searched, and consequently large savings of money for the Coast Guard and other organizations involved in a search.

In the three-year period from 1982 to 1984, 288 lives were lost as a result of total losses of fishing vessels. Using the minimally accepted value of a human life of one million dollars, it is evident that the savings of only a few of the lives lost each year would justify the cost of this proposal.

More tangible benefits can be identified in the reduction of search and rescue costs. The search for the fishing vessel AMAZING GRACE took 16 days and cost $12 million before the search was abandoned. There was no definite notice that a casualty had occurred, and the area to be searched was unknown. In contrast, a number of searches for pleasure vessels and fishing vessels have been expedited by EPIRBs carried voluntarily. The savings to the government as a result of elimination or significant reduction of only two or three searches of the scope of the AMAZING GRACE operation, would justify the cost of these proposed rules, even without considering the benefit of the unknown number of lives that will be saved by more timely location of vessels in distress.

The agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Generally, fishing vessel operators are considered to be small entities in that they are typically not part of large diversified corporations, and generally own no more than a few vessels. The $600 cost is not considered significant for any of these vessels.

It has been determined that this rulemaking is categorically excluded from a detailed environmental evaluation. The Categorical Exclusion Determination is available in the docket for examination, copying, and public comment.

List of Subjects in 46 CFR Part 25

Fire prevention, Marine safety.

In consideration of the foregoing, it is proposed to amend Subchapter C of Title 46, Code of Federal Regulations, as follows:

PART 25—[AMENDED]

1. The authority citation to Part 25 continues to read as follows:

Authority: 46 U.S.C. 4104 and 4302; 49 CFR 1.46.

2. By amending Part 25 by adding a new Subpart 25.26 to read as follows:

Subpart 25.26—Emergency Position Indicating Radio Beacons

Sec.

25.26–1 Uninspected Fishing, Fish Processing, and Fish Tender Vessels.

25.26–5 Servicing of EPIRBs.

Subpart 25.26—Emergency Position Indicating Radio Beacons

§ 25.26–1 Uninspected fishing, fish processing, and fish tender vessels.

(a) After [insert date one year after effective date], the owner of an uninspected vessel that is a fishing vessel, a fish processing vessel, or a fish tender vessel shall ensure that the vessel does not operate on the high seas unless it has on board an FCC Type Accepted float-free, automatically activated, 406 MHz Emergency Position Indicating Radio Beacon (EPIRB); or a 121.5/243 MHz Class A EPIRB meeting paragraph (b) of this section.

(b) Until [insert date 10 years after effective date], a 121.5/243 MHz Class A EPIRB may be on board a vessel, under paragraph (a) of this section, if the EPIRB is operable and installed on the vessel on or before [insert effective date].

§ 25.26–5 Servicing of EPIRBs.

(a) The master of each vessel required to have an EPIRB under this subpart shall ensure that each EPIRB on board that is not installed in an inflatable life raft is tested and serviced as required by this section.

(b) The EPIRB must be tested by the visual or audio output indicator to determine whether or not it is operating immediately after installation and at least once each month thereafter. If the EPIRB is not operating, it must be repaired or be replaced with an operating EPIRB.

(c) The battery of the EPIRB must be replaced—

(1) immediately after the EPIRB is used for any purpose other than being tested; and

(2) before the expiration date that is marked on the battery.

Dated: August 6, 1987.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87–20335 Filed 9–2–87; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Office of the Secretary

48 CFR Parts 209, 225, and 252

Defense Federal Acquisition Regulation Supplement (DFARS); Acquisition From Firms Owned or Controlled by Foreign Governments That Support Terriorism

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule and request for comments.

SUMMARY: The defense Acquisition Regulatory (DAR) Council is proposing to amend the DFARS to further implement 10 U.S.C. 2327 regarding exclusion of contractors, owned or controlled by foreign governments that support terrorism, from award of contracts by DOD. The proposed rule defines the term "significant interest" and prescribes a solicitation provision to facilitate offeror compliance with 10 U.S.C. 2327.

DATE: Comments on the proposed rule should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before October 5, 1987, to be considered in the formulation of the final rule. Please cite DAR Case 86–169 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS, c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

If commenters choose to hand-carry comments to the DAR Council Office at 1211 South Fern Street, Arlington, VA, arrangements for hand-carried comments must be made with the DAR Council Staff Members. Security Guards at this location are not permitted to accept or sign for hand-delivered comments of any kind.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2327 prohibits award, without a waiver from the Secretary of Defense, of a contract by a Defense agency to a firm or a subsidiary of a firm in which a foreign government owns or controls a significant interest, if such foreign government is the government of a country that has been determined by the Secretary of State to be one that has repeatedly provided support for acts of international terrorism.

The proposed rule would require that contractors certify that no foreign government, as described above, holds a significant interest in the firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary).

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. because few, if any, small businesses responding to DOD solicitations are likely to be owned or controlled by governments that repeatedly support acts of international terrorism. Additionally, 10 U.S.C. 2327 makes no provision for differentiating between large and small businesses with regard to its application. Further, ownership and control of a small business is generally common knowledge since they tend to be concentrated in a few individuals who are actively involved in day-to-day operations. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DAR Case 87–610D in correspondence.

C. Paperwork Reduction Act

The proposed rule does not impose information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and OMB approval of the proposed rule is not required pursuant to 5 CFR Part 1320 et seq.

List of Subjects in 48 CFR Parts 209, 225, and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 209, 225, and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 209, 225, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 209—CONTRACTOR QUALIFICATIONS

2. Sections 209.170 through 209.170–4 are added to read as follows:

209.170 Acquisition from firms owned or controlled by foreign governments that support terrorism.

209.170–1 Definition.

"Significant interest" as used in this section means—

(a) Ownership of or beneficial interest in five percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding five percent or more of any class of the firm's securities in "nominee shares", "street names", or some other method of holding securities that does not disclose the beneficial owner'

(b) Holding a management position in the firm such as a director or officer;

(c) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(d) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(e) Holding 50 percent or more of the indebtedness of a firm.

209.170–2 Disclosure.

10 U.S.C. 2327 requires that, for contracts expected to equal or exceed $100,000, Department of Defense agencies obtain from any firm, or subsidiary of a firm, submitting a bid or proposal, a disclosure in that bid or proposal of any significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary) which is owned or controlled, directly or indirectly, by a foreign government or an agent or instrumentality of a foreign government, if such foreign government is the government of a country that has been determined by the Secretary of State under 50 U.S.C. 2405(j)(1)(A) to have repeatedly provided support for acts of international terrorism.

209.170–3 Prohibition.

10 U.S.C. 2327(b) prohibits a Defense agency from awarding a contract of $100,000 or more to a firm or a subsidiary of a firm in which a foreign government owns or controls a significant interest, directly or indirectly, in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary), if such foreign government is the government of a country that has been determined by the Secretary of State under U.S.C. 2405(j)(1)(A) to have repeatedly provided support for acts of international terrorism. The Secretary of Defense may waive this prohibition in accordance with 10 U.S.C. 2327(c).

209.170–4 Solicitation provision.

The contracting officer shall insert the provision at 252.209–7000; Certification or Disclosure of Ownership or Control by a Foreign Government that Supports Terrorism, in solicitations when the contract is expected to equal or exceed $100,000.

PART 225—FOREIGN ACQUISITION

3. Section 225.702 is added to read as follows:

225.702 Restrictions.

(S–70) (Reserved)

(S–71) See 209.170 for restrictions on contracting with firms owned or controlled by foreign governments that support terrorism.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.209–7000 is added to read as follows:

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252.209-7000 Certification or disclosure of ownership or control by a foreign government that supports terrorism.

As prescribed at 209.170-4, insert the following provision:

Certification or Disclosure of Ownership or Control by a Foreign Government That Supports Terrorism (Date)

(a) "Significant interest" as used in this provision means—

(1) Ownership of or beneficial interest in five percent (5%) or more of the firm's or subsidiary's securities. Beneficial interest includes holding five percent (5%) or more of any class of the firm's securities in "nominee shares", "street names", or some other method of holding securities that does not disclose the beneficial owner;

(2) Holding a management position in the firm such as director or officer;

(3) Ability to control or influence the election, appointment, or tenure of directors or officers of the firm;

(4) Ownership of ten percent (10%) or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(5) Holding 50 percent (50%) or more of the indebtedness of a firm.

(b) Unless paragraph (c) of this section has been completed, the Offeror, by submission of its offer, certifies, to the best of its knowledge and belief, that no government of a foreign country, or agent or instrumentality of a foreign country, listed below, has, directly or indirectly, a significant interest in the Offeror or, if the Offeror is a subsidiary, in the firm that owns or controls, directly or indirectly, the Offeror. Such countries currently include:

(1) Cuba;

(2) Iran;

(3) Libya;

(4) Syria; and

(5) South Yemen.

(c) If the Offeror is unable to certify in accordance with (b) above, the Offeror represents that the following country or countries (listed in (b) of this section) or an agent or instrumentality of such country or countries, have a significant interest in the Offeror's firm:

Country _____

Significant Interest _____

(End of provision)

[FR Doc. 87-20312 Filed 9-2-87; 8:45 am]
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Notices

Federal Register
Vol. 52, No. 171
Thursday, September 3, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 28, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Animal and Plant Health Inspection Service
Cooperative National Plant Pest Survey and Detection Program
PPQ–391 and 395
On occasion; Semi-annually
State or local governments; 350,850 responses; 1,700 hours; not applicable under 3504(h)
Thomas E. Wallenmaier, (301) 436–6405

• Federal Grain Inspection Service
Applications for Service and Designations under USGSA & AMA
CP–5, CP–5–1, FGIS–4, FGIS–100, FGIS–907, FGIS–908, FGIS–942, FGIS–943, FGIS–944, FGIS–955, WH–30
• On occasion; Varies
State or local governments; Businesses or other for-profit; 154,051 responses; 22,576 hours; not applicable under 3504(h)
Robert "E" Soderstrom, (202) 382–0231

• Rural Electrification Administration
Financial and Statistical Report
REA–479
Annually
Small businesses or organizations; 1,000 responses; 14,000 hours; not applicable under 3504(h)
Monte Heppe, Jr., (202) 382–8530

• Rural Electrification Administration
Operating Report
REA–12a–i
Recordkeeping; Annually
Small businesses or organizations; 315 responses; 6,930 hours; not applicable under 3504(h)
Archie W. Cain, (202) 382–1900

• Rural Electrification Administration
Financial Forecast Electric Distribution Systems
REA–325 a-k
On occasion
Small businesses or organizations; 500 responses; 10,025 hours; not applicable under 3504(h)
Archie W. Cain, (202) 382–1900

New

• Food and Nutrition Service
WIC Vendor Management Study
One-time Survey
State or local governments; 49 responses; 147 hours; not applicable under 3504(h)
Jerry Burns, (703) 756–3127

• Food and Nutrition Service
Evaluation of the Food Stamp Employment and Training Program
On occasion
Individuals or households; State or local governments; 35,515 responses; 10,220 hours; not applicable under 3504(h)
Boyd Kowal, (703) 756–3130.

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 87–20277 Filed 9–2–87; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Stabilization and Conservation Service

Tobacco Marketing Fire-Cured (Type 21), Fire-Cured (Types 22-23), Dark Air-Cured, Virginia Sun-Cured, and Cigar-Filler and Binder (Types 42, 43, 44, 53, 54 & 55) Tobaccos; 1987–88 Marketing Quotas and Acreage Allotments

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination of 1987-88 marketing quotas and acreage allotments.

SUMMARY: The purpose of this notice is to affirm determinations which were made by the Secretary of Agriculture on March 3, 1987, with respect to the 1987 crops of fire-cured (type 21), fire-cured (types 22-23), dark air-cured, Virginia sun-cured, and cigar-filler and binder tobaccos. In addition to other determinations, the Secretary declared national acreage allotments for the following kinds of tobaccos: Fire-cured (type 21), 6,546 acres; fire-cured (types 22-23), 11,874 acres; dark air-cured, 4,035 acres; Virginia sun-cured, 920 acres; and cigar-filler and binder (types 42-44 & 53-55), 8,526 acres.

This notice also affirms the proclamation made by the Secretary that marketing quotas will be in effect for cigar-filler and binder tobacco for the three marketing years beginning October 1, 1987 and sets forth the results of the referendum held during the period March 23-27, 1987, in which producers of cigar-filler and binder tobacco approved marketing quotas for the 1987-88, 1988-89, and 1989-90 marketing years.

EFFECTIVE DATE: March 3, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5187. The Final Regulatory Impact Analysis describing the options considered in developing

this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The purpose of this notice is to affirm the determinations of the national marketing quotas for the 1987 crops of fire-cured (type 21), fire-cured (types 22-23), dark air-cured, sun-cured, and cigar-filler and binder (types 42-44 & 53-55) tobacco which were announced by the Secretary on March 3, 1987 and to set forth certain other determinations with respect to these kinds of tobacco. On March 3, 1987 the Secretary also announced that a referendum would be conducted by mail with respect to cigar-filler and binder tobacco.

During the period March 23-27, 1987, eligible cigar-filler and binder producers voted in a referendum to determine whether such producers disapprove marketing quotas for the 1987-88, 1988-89, and 1989-90 marketing years for cigar filler and binder tobacco. Of the producers voting, 76.0 percent favored marketing quotas. Accordingly, such quotas are in effect for the 1987-88 marketing year.

In accordance with section 312(a) of the Agricultural Adjustment Act of 1938, as amended (the "Act"), the Secretary of Agriculture is required to proclaim not later than February 1 of any marketing year with respect to any kind of tobacco, other than flue-cured tobacco, a national marketing quota for any such kind of tobacco for each of the next 3 marketing years if such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect. With respect to cigar-filler and binder tobacco, the 1986-87 marketing year is the last year of three such consecutive years. Accordingly, a marketing quota for cigar-filler and binder tobacco is proclaimed for each of the three marketing years beginning October 1, 1987, October 1, 1988, and October 1, 1989. Sections 312 and 313 of the Act also provide that the Secretary shall announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22-23), dark air-cured, Virginia sun-cured, and cigar-filler and binder (types 42-44 & 53-55) tobaccos for the marketing year beginning October 1, 1986, and the amounts of the national marketing quotas, national acreage allotments, and national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farms allotments for fire-cured (type 21), fire-cured (types 22-23), dark air-cured, Virginia sun-cured, cigar-filler and binder (types 42-44 & 53-55) tobaccos for the 1987-88 marketing year.

Section 312(b) of the Act provides, in part, that the amount of the national marketing quota for a kind of tobacco is the total quantity of that kind of tobacco which may be marketed which will make available during such marketing year a supply of such tobacco equal to the reserve supply level. Since producers of these kinds of tobacco generally produce less than their respective national acreage allotments, it has been determined that a larger quota would be necessary to make available production equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply levels.

Section 301(B)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. The "normal supply" is defined in section 301(b)(10)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the average quantity produced and consumed in the United States during the marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the average quantity produced in and exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

On January 30, 1987, a Notice of Proposed Determination was published (52 FR 3032) in which interested persons were requested to comment with respect to these issues.

Discussion of Comments

Fourteen written responses were received in response to the Notice of Proposed Determination. Some of these comments addressed the establishment of quotas with respect to more than one kind of tobacco. A summary of these comments by kind of tobacco is as follows:

Fire-cured (type 21) tobacco: Two comments were received. Both comments recommended that the marketing quotas established for this kind of tobacco be established on an acreage basis, 10 percent below the level which was applicable for the 1986 marketing year.

Virginia sun-cured (type 37) tobacco: Two comments were received. Both comments recommended that marketing quotas established for this kind of tobacco be established on an acreage basis at the same level which was applicable for the 1986 marketing year.

Fire-cured (types 22-23) tobacco: Three comments were received. These comments recommended that the

marketing quota be reduced by 10 to 25 percent from the 1986 marketing quota.

Dark air-cured tobacco: Four comments were received. These comments ranged from a recommendation of no change in the marketing quota to a reduction of 20 percent from the 1986 marketing year.

Cigar-filler and binder (types 42–44 & 53–55) tobacco: Three comments were received. All comments recommended that marketing quotas established for this kind of tobacco be established on an acreage basis at the same level which was applicable for the 1986 marketing year.

Based upon a review of these comments and the latest available statistics of the Federal Government, the following determinations have been made.

Fire-Cured (Type 21) Tobacco

The yearly average quantity of fire-cured (type 21) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1986–87 marketing year was approximately 2.6 million pounds. The average annual quantity of fire-cured (type 21) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1986–87 marketing year was 3.0 million pounds (farm sales weight basis). Both domestic use and exports have fluctuated erratically. Accordingly, a normal year's domestic consumption has been determined to be 1.5 million pounds and a normal year's exports have been determined to be 2.3 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 8.3 million pounds.

Manufacturers and dealers reported stocks of fire-cured (type 21) tobacco held on October 1, 1986, of 5.9 million pounds. The 1986 fire-cured (type 21) tobacco crop is estimated to be 3.1 million pounds. Therefore, the total supply of fire-cured (type 21) tobacco for the 1986–87 marketing year is 9.0 million pounds. During the 1986–87 marketing year, it is estimated that disappearance will total approximately 5.0 million pounds. By deducting this disappearance from the total supply, a carryover of 4.0 million pounds at the beginning of the 1987–88 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1987 is 4.3 million pounds. This represents the quantity of fire-cured (type 21) totacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level.

During the past 5 years, slightly more than half of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 7.6 million pounds is necessary to make available production of 4.0 million pounds. Accordingly, the 1987–88 national marketing quota is 7.6 million pounds.

In accordance with section 313(g) of the Act, the 1987–88 national marketing quota divided by the 1982–86 5-year national average yield of 1,161 pounds per acre results in a 1987 national acreage allotment of 6,546.08 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 0.90 is determined by dividing the national acreage allotment, less a national reserve of 42.0 acres, by the total of 1987 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Fire-Cured (Types 22–23) Tobacco

The yearly average quantity of fire-cured (types 22–23) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1986–87 marketing year was approximately 16.6 million pounds. The average annual quantity of fire-cured (types 22–23) tobacco produced in the United States and exported during the 10 marketing years preceding the 1986–87 marketing year was approximately 16.6 million pounds. The average annual quantity of fire-cured (types 22–23) produced in the United States and exported during the 10 marketing years preceding the 1986–87 marketing year was 19.1 million pounds (farm-sales weight basis). Domestic use and exports fluctuate widely. Accordingly, a normal year's domestic consumption has been determined to be 28.0 million pounds and a normal year's exports have been determined to be 20.7 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 116.7 million pounds.

Manufacturers and dealers reported stocks of fire-cured (types 22–23) tobacco on October 1, 1986, of 96.3 million pounds. The 1986 fire-cured (types 22–23) crop is estimated to be 35.1 million pounds. Therefore, the total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1986, is 131.4 million pounds. During the 1986–87 marketing year, it is estimated that disappearance will total approximately 33.0 million pounds. By deducting this disappearance from the total supply, a carryover of 98.4 million pounds at the beginning of the 1987–88 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1987 is 18.3 million pounds. This represents the quantity of fire-cured (types 22–23) tobacco which may be marketed which will make available during the 1987–88 marketing year a supply equal to the reserve supply level. During the past 5 years, about 95 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1987–88 marketing year of 19.2 million pounds is necessary to make available production of 18.3 milion pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1987–88 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1987–88 marketing year of 23.0 million pounds.

In accordance with section 313(g) of the Act, the national marketing quota for the 1987–88 marketing year has been divided by the 1982–86 5-year national average yield of 1,937 pounds per acre to obtain a national acreage allotment of 11,874.03 acres, for the 1987–88 marketing year.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 0.60 is determined by dividing the national acreage allotment for the 1987–88 marketing year less a national reserve of 18 acres by the total of the 1987 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Dark Air-Cured Tobacco

The yearly average quantity of dark air-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1986–87 marketing year was approximately 13.0 million pounds. The average annual quantity produced domestically and exported during this period was 2.1 million pounds (farm-sales weight basis). Both domestic use and exports have been erratic. Accordingly, 17.2 million pounds have

been used as a normal year's domestic consumption and 3.0 million pounds have been used as a normal year's exports. Application of the formula required by section 301(14)(B) of the Act results in a reserve supply level of 54.9 million pounds.

Manufacturers and dealers reported stocks of dark air-cured tobacco held on October 1, 1986, of 50.9 million pounds. The 1986 dark air-cured crop is estimated to be 11.1 million pounds. Therefore, the total supply for the market year beginning October 1, 1986, is 62.0 million pounds. During the 1986–87 marketing year, it is estimated that disappearance will total approximately 13.0 million pounds. By deducting this disappearance from the total supply, carryover of 49.0 million pounds at the beginning of the 1987–88 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1987 is 5.9 million pounds. This represents the quantity of dark air-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the last 5 years, about 90 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1987–88 marketing year of 6.5 million pounds is necessary to make available production of 5.9 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1987–88 marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1987–88 marketing year of 7.8 million pounds.

In accordance with sections 313(g) of the Act, the 1987–88 national marketing quota, divided by the 1982–86, 5-year national average yield of 1,933 pounds per acre, results in a national acreage allotment of 4,035.18.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 0.65 is determined by dividing the national acreage allotment, less a national reserve of 33 acres, by the total of the 1987 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Virginia Sun-Cured Tobacco

The yearly average quantity of Virginia sun-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1986–87 marketing year was approximately 6,000 thousand pounds. The average annual quantity produced in the United States and exported during the same period was approximately 200 thousand pounds (farm-sales weight basis). Both domestic use and exports have shown a downward trend. Accordingly, a quantity of 250 thousand pounds has been determined to be a normal year's domestic consumption and a quantity of 149 thousand pounds has been determined to be a normal year's exports. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 980 thousand pounds.

Manufacturers and dealers reported stocks of Virginia sun-cured tobacco held on October 1, 1986 or 900 thousand pounds. The 1986 Virginia sun-cured tobacco crop is estimated to be 140 thousand pounds. Therefore, the total supply of Virginia sun-cured tobacco for the 1986–87 marketing year is 1,040 thousand pounds. During the 1986–87 marketing year, it is estimated that disappearance will total approximately 350 thousand pounds. By deducting this disappearance from the total supply, a carryover of 690 thousand pounds at the beginning of the 1987–88 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1987 is 290 thousand pounds. This represents the quantity of Virginia sun-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the last 5 years, only approximately one-third of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 870 thousand pounds is necessary to make available production of 290 thousand pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 1,044 thousand pounds is necessary to avoid undue restriction of marketings. This results in a national marketing quota for the 1987–88 marketing year of 1,044 thousand pounds.

In accordance with section 313(g) of the Act, the 1987–88 national marketing quota divided by the 1982–86 5-year national average yield of 1,135 pounds per acre, results in a 1987 national acreage allotment of 919.82 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 4 acres, by the total of the 1987 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Cigar-Filler and Binder (Types 42–44 & 53–55) Tobacco

The yearly average quantity of cigar-filler and binder (types 42–44 & 53–55) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1986–87 marketing year was approximately 22.5 million pounds. The average annual quantity of cigar-filler and binder (types 42–44 & 53–33) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1986–87 marketing year was very small. Domestic use is steady and exports are negligible. Accordingly, a normal year's domestic consumption has been established at 22.1 million pounds while a normal year's exports has been established at 0.0 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 63.8 million pounds.

Manufacturers and dealers report stocks of cigar-filler and binder (types 42–44 & 53–55) tobacco held on October 1, 1986 of 60.5 million pounds. The 1986 cigar-filler and binder crop is estimated to be 12.2 million pounds. Therefore, the total supply of cigar-filler and binder (types 42–44 & 52–55) tobacco for the 1986–87 marketing year is 72.7 million pounds. During the 1986–87 marketing year, it is estimated that disappearance will total about 20.0 million pounds. By deducting this disappearance from the total supply, a carryover of 52.7 million pounds at the beginning of the 1987–88 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1987 is 11.1 million pounds. This represents the quantity of cigar-filler and binder tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the past 5 years, approximately 77 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that

a 1987–88 national marketing quota of 14.4 million pounds is necessary to make available production of 11.1 million pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 17.3 million pounds is necessary to avoid undue restriction of marketings. This results in a national marketing quota for the 1987–88 marketing year of 17.3 million pounds.

In accordance with section 313(g) of the Act, the 1987–88 national marketing quota of 17.3 million pounds divided by the 1982–86 5-year national average yield of 2,029 pounds per acre results in a 1987–88 national acreage allotment of 8,526.37 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of .95 is determined by dividing the national acreage allotment, less a national reserve of 11 acres, by the total of the 1987 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Proclamations of National Marketing Quotas for Cigar-Filler and Binder Tobacco

Since the 1986–87 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for cigar-filler and binder tobacco, a national marketing quota for such kind of tobacco for each of the 3 marketing years beginning October 1, 1987, October 1, 1988, and October 1, 1989 was proclaimed. Subsequently, a referendum was held to determine whether producers disapproved of such quotas.

Referendum Results

In the referendum held during the period March 23–27, 1987, 76.0 percent of producers of cigar-filler and binder tobacco voted in favor of marketing quotas. Accordingly, marketing quotas shall be in effect for the 1987–88 marketing year for cigar-filler and binder tobacco.

The following is a summary, by State, of the results of the referendum:

	Total votes	Yes votes	No votes	Percent votes
Minnesota	7	7	0	100.0
Ohio	138	80	58	58.0
Wisconsin	2,196	1,691	505	77.0
Total	2,341	1,778	563	76.0

Determinations for the 1987–88 Marketing Years of Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured, Virginia Sun-Cured, and Cigar-Filler and Binder (Types 42–44 and 53–55) Tobacco

With respect to fire-cured (type 21) tobacco for the marketing year beginning October 1, 1987:

(a) *Reserve supply level.* The reserve supply level for fire-cured (type 21) tobacco is 8.3 million pounds.

(b) *Total supply.* The total supply of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1986, is 9.0 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1987, is 4.0 million pounds.

(d) *National marketing quota.* The amount of fire-cured (type 21) tobacco which will make available during the marketing year beginning October 1, 1987 a supply equal to the reserve supply level of such tobacco is 4.3 million pounds. Because producers have been producing slightly more than half of the announced national marketing quota during the past 5 marketing years, the amount of the national marketing quota for fire-cured (type 21) tobacco for the marketing year beginning October 1, 1987 is 7.6 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 6,546.08 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments is 0.90.

(g) *National reserve.* The national acreage reserve is 42 acres of which 7 acres are made available for the 1987 new farms and 35 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1987:

(a) *Reserve supply level.* The reserve supply level for fire-cured (types 22–23) tobacco is 116.7 million pounds.

(b) *Total supply.* The total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1986, is 131.4 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1987, is 98.4 million pounds.

(d) *National marketing quota.* The amounf of fire-cured (types 22–23) tobacco which will make available during the marketing year beginning October 1, 1987, a supply equal to the reserve supply level of such tobacco is 18.3 million pounds. Because producers have been producing about 95 percent of the announced national marketing quota during the past 5 marketing years, it has been determined that a national marketing quota for the 1987–88 marketing year of 19.2 million pounds is necessary to make available production of 18.3 million pounds. Accordingly, a 1987–88 national marketing quota of 19.2 million pounds is announced. It has been determined, however, that the 1987–88 national marketing quota in the amount of 19.2 million pounds would result in undue restriction of marketing during the 1987–88 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is increased by 20 percent. Therefore, the amount of 1987–88 national marketing quota for fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1987, is 23.0 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 11,874.03 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1987–88 marketing year is 0.60.

(g) *National reserve.* The national acreage reserve is 18 acres of which 2 acres are made available for 1987 new farms, and 16 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to dark air-cured tobacco for the marketing year beginning October 1, 1987:

(a) *Reserve supply level.* The reserve supply level for dark air-cured tobacco is 54.9 million pounds.

(b) *Total supply.* The total supply of dark air-cured tobacco for the marketing year beginning October 1, 1986, is 62.0 million pounds.

(c) *Carryover.* The estimated carryover of dark air-cured tobacco for the marketing year beginning October 1, 1987, is 49.0 million pounds.

(d) *National marketing quota.* The amount of dark air-cured tobacco which will make available during the marketing year beginning October 1, 1987, a supply equal to the reserve supply level of such tobacco is 5.9 million pounds. Because producers have been producing about 90 percent of the announced national marketing quota during the past 5 marketing years, it has been determined that a 1987–88 national marketing quota of 6.5 million pounds is necessary to make available production of 5.9 million pounds. Accordingly, a 1987–88 national marketing quota of 6.5 million pounds is announced. It has

been determined, however, that a national marketing quota in the amount of 6.5 million pounds would result in undue restriction of marketings during the 1987–88 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is increased by 20 percent. Therefore, the amount of the 1987–88 national marketing quota for dark air-cured (types 35 & 36) tobacco for the marketing year beginning October 1, 1987, is 7.8 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 4.035.18 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1987–88 marketing year is 0.65.

(g) *National reserve.* The national acreage reserve is 33.0 acres, of which 6.0 acres are made available for 1987 new farms and 27.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to Virginia sun-cured tobacco for the marketing year beginning October 1, 1987:

(a) *Reserve supply level.* The reserve supply level for Virginia sun-cured tobacco is 980 thousand pounds.

(b) *Total supply.* The total supply of Virginia sun-cured tobacco for the marketing year beginning October 1, 1986 is 1,040 thousands pounds.

(c) *Carryover.* The estimated carryover of Virginia sun-cured tobacco for the marketing year beginning October 1, 1987, is 690 thousand pounds.

(d) *National marketing quota.* The amount of Virginia sun-cured tobacco which will make available during the marketing year beginning October 1, 1987, a supply equal to the reserve supply level of such tobacco is 290 thousand pounds. Because producers have been producing about one-third of the announced national marketing quota over the past 5 years, it has been determined that a national marketing quota of 870 thousand pounds is necessary to make available production of 290 thousand pounds.

Accordingly, a national marketing quota of 870 thousand pounds is announced. It has been determined, however, that a national marketing quota in the amount of 870 thousand pounds would result in undue restriction of marketings during the 1987–88 marketing year. Accordingly, such amount is increased by 20 percent. Therefore, the amount of the national marketing quota for Virginia sun-cured (type 37) tobacco for the marketing year beginning October 1, 1987, is 1,044 thousand pounds.

(e) *National acreage allotment.* The national acreage allotment is 919.82 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1987–88 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 4.0 acres, of which 1.0 acres are made available for 1987 new farms, and 3.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1987:

(a) *Reserve supply level.* The reserve supply level for cigar-filler and binder (types 42–44 & 53–55) tobacco is 63.8 million pounds.

(b) *Total supply.* The total supply of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1986 is 72.7 million pounds.

(c) *Carryover.* The estimated carryover of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1987 is 52.7 million pounds.

(d) *National marketing quota.* The amount of cigar-filler and binder (types 42–44 & 53–55) tobacco which will make available during the marketing year beginning October 1, 1987, a supply equal to the reserve supply level of such tobacco is 11.1 million pounds. Because producers have been producing about 77 percent of the announced national marketing quota over the past 5 years, it has been determined that a national marketing quota of 14.4 million pounds is necessary to make available production of 11.1 million pounds. Accordingly, a national marketing quota of 14.4 million pounds is announced. It has been determined, however, that a national marketing quota in the amount of 14.4 million pounds would result in undue restriction of marketings during the 1987–88 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is increased by 20 percent. Therefore, the amount of the national marketing quota for cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1987, is 17.3 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 8,526.37 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1987–88 marketing year is 0.95.

(g) *National reserve.* The national acreage reserve is 11 acres, of which 3.0 acres are made available for 1987 new farms, and 8.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

Authority: Secs. 301, 312, 313, 375, 52 Stat. 38, as amended, 46, as amended, 47, as amended, 66, as amended (7 U.S.C. 1301, 1312, 1313, 1375).

Signed at Washington, DC on August 28, 1987.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 87–20356 Filed 9–2–87; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 359]

Approval for Expansion of Foreign-Trade Zone No. 9; Honolulu, HI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Hawaii Department of Planning and Economic Development, on behalf of the State of Hawaii, Grantee of Foreign-Trade Zone No. 9, has applied to the Board for authority to expand its general-purpose zone in Honolulu, Hawai, to include a site at the James Campbell Industrial Park, Ewa, Oahu, Hawaii, adjacent to the Honolulu Customs port of entry;

Whereas, the application was accepted for filing on September 10, 1985, and notice inviting public comment was given in the **Federal Register** on September 30, 1985 (Docket 30–85, 50 FR 39743);

Whereas, the application was amended on June 10, 1986, reducing the scope of the request;

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Honolulu area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the

application filed September 10, 1985, as amended. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 21st day of August 1987.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-20315 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 13-87]

Application for Subzone Chrysler Auto Components Plants, Detroit Area; Foreign-Trade Zone 70, Detroit, MI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign-Trade Zone, Inc., grantee of FTZ 70, requesting special-purpose subzone status for five Detroit area plants of the Chrysler Corporation, which produce a variety of components for its North American auto assembly operations. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 25, 1987.

The five Chrysler plants, which employ a total of some 4,800 persons, are: Detroit Trim Plant (28 acres), 12501 Dequindre, Detroit (interior and exterior trim); Trenton Chemical Division Plant (60 acres), 5473 W. Jefferson Avenue, Trenton (brake pads, paint, sealants and chemicals); McGraw Glass Plant (40 acres), 9400 McGraw Avenue, Detroit (automative glass); Mound Road Engine plant (33 acres), 20300 Mound Road, Detroit (engines, bearing cups, and yokes); and, Detroit Axle plant (47 acres), 6700 Lynch Road, Detroit (axle assemblies).

Certain parts and material for these plants are sourced abroad, including vinyl roll goods, carbon fiber, sheet glass, bearings, gears, and miscellaneous auto parts. Foreign materials account for less than 5 percent of total production costs at each of the plants.

Zone procedures would exempt Chrysler from Customs duties on the foreign components that are reexported either as auto parts or in assembled autos. On products shipped to U.S. auto assembly plants with subzone status, the company would be able to take advantage of the same duty rate available to importers of complete automobiles. The duty rates on components used at the five plants range from 3.2 to 11.0 percent, whereas the rate on autos is 2.5 percent. The savings will help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; William Morandini, District Director, U.S. Customs Service, North Central Region, 477 Michigan Avenue, Detroit, Michigan 48226; and Colonel Robert F. Harris, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, Michigan 48231.

Comments concerning the proposed subzone are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 30, 1987.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 1140 McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48226

Office of the Executive Secretary Foreign-Trade Zones Board U.S. Department of Commerce, Room 1529 Washington, DC 20230

Dated: August 28, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-20316 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-021]

Preliminary Results of Antidumping Duty Administrative Review; Cell-Site Transceivers and Related Subassemblies From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from one manufacturer/exporter, the Department of Commerce has conducted an administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. The review covers one manufacturer/exporter of this merchandise to the U.S., Kokusai Electric Co., Ltd. ("Kokusai"), and the period January 1, 1986 through December 31, 1986. There were no known shipments of this merchandise to the United States by Kokusai during the period and there are no known unliquidated entries.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5505/3601.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 30413) the final results of its last administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. Kokusai requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation on February 23, 1987 (52 FR 5479). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated ("TSUSA")* item number(s) and the HS item number(s) with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item

number(s) as well as TSUSA number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are cell-site transceivers and related subassemblies which are part of the radio frequency (RF) equipment in the base station of a cellular radio communications system. This single-package RF equipment functions as a locating receiver and provides simultaneous two-way voice and data communications between the base station and the subscriber's mobile telephone by using different frequencies to transmit and receive. Subassemblies are an assemblage of parts dedicated for use in cell-site transceivers as defined above. These products are currently classifiable under TSUSA items 685.2810 and 685.2820 and HS item numbers 8525.20.15, 8525.20.20, and 8525.20.30.

The review covers one known manufacturer/exporter of this merchandise, Kokusai, and the period January 1, 1986 through December 31, 1986. There were no known shipments by Kokusai of this merchandise to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists during the period:

Manufacturer/exporter	Time period	Margin (percent)
Kokusai	1/1/86-12/31/86	[1] 0.08

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 45 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, since the rate for Kokusai is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties. This waiver is effective for all shipments of Japanese cell-site transceivers and related subassemblies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: August 27, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-20317 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-007]

Final Results of Antidumping Duty Administrative Review; Certain Circular Welded Carbon Steel Pipes and Tubes From Korea

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 19, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order that was in effect prior to October 1, 1984 on certain circular welded carbon steel pipes and tubes from Korea. The review covers three exporters of this merchandise and the period October 24, 1983 through September 30, 1984.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed the margins from those presented in the preliminary results.

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/5255.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1985, the Department of Commerce ("the Department") revoked the antidumping duty order on certain circular welded carbon steel pipes and tubes from Korea, effective October 1, 1984 (50 FR 42582). On June 19, 1987, the Department published in the **Federal Register** (52 FR 23321) the preliminary results of its administrative review of the antidumping duty order that was in effect prior to October 1, 1984. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of certain circular welded carbon steel pipes and tubes, currently classifiable under items 610.3231, 610.3234, 610.3241 and 610.3252 of the Tariff Schedules of the United States Annotated.

The review covers three manufacturers/exporters of Korean circular welded carbon steel pipes and tubes to the United States, Hyundai Steel Pipe Co., Korea Steel Pipe Co., and Pusan Steel Pipe Co., and the period October 24, 1983 through September 30, 1984.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received the following comments from the petitioner:

Comment 1: Petitioner contends that the Department's reliance on the proposed Commerce regulations to deny its request to conduct a sales below cost investigation is unfair and would not hold up in court. The Department should delay completion of the review in order to proceed with the cost of production investigation.

Department's Position: We disagree. The Department denied petitioner's request to conduct such an investigation on the grounds that the request was untimely. We did not rely on the proposed regulations to deny the request but on a standard of reasonableness. Under the proposed regulations, cost allegations should be received within 120 days after the date of publication of the notice of initiation of the review. Normally, this should be within 30-45 days from receipt of the questionnaire responses. We recognize the delays that occurred during the course of this administrative review. Nevertheless, petitioner did not request that the Department conduct a cost investigation for more than three and one-half months after the respondents submitted their questionnaire responses. Petitioner based its April 22, 1987 request on the non-proprietary version of the

questionnaire response which it had received in January 1987. To conduct a cost investigation at this stage of the review would delay our review far beyond the one-year period set forth in our regulations. Although the annual administrative review process was in part created to grant speedy relief to injured domestic industries, it was also intended to relieve importers of the economic uncertainties connected with lengthy delays in assessment of antidumping duties. Any parties in an antidumping proceeding wishing to allege that sales in the home market are below the cost of production should make their allegations at the earliest possible time during the course of a review in order to avoid unduly delaying the review.

Comment 2: Petitioner maintains that the drawback cannot be tied to the exports under review. Therefore, the claim for drawback should not be allowed as an adjustment.

Department's Position: Respondents in their original submission provided information on total drawback received on all products whether or not these products were covered in the scope of the review. The total drawback was then divided by the total exports of all products to calculate the weighted-average drawback amount per metric ton. The Department requested additional information relative to the drawback, imported coil, and the exports in question. In a letter dated August 12, 1987, respondents stated that they were not able to provide the requested information in the time allotted by the Department. Since the respondents have not adequately quantified this claim for drawback, the Department has disallowed the claim.

Comment 3: Petitioner argues that the additional rebate claimed by Pusan was retroactively applied and this adjustment should be disallowed until additional information is provided regarding the timing of the rebate payments. Petitioner notes that the Department denied a claimed allowance for retroactive rebates during the fair value investigation in this case.

Department's Position: During the fair value investigation Pusan made a claim for two types of rebates: A regular rebate which was based on its customers' monthly purchases, and a special rebate to help distributors in the home market compete. The Department allowed the regular rebate but disallowed the additional special rebate because it reflected a change made after the initiation of the antidumping investigation, and the respondent did not demonstrate that it was normal in the trade. Pusan made no claim for the additional rebate in this review, and the Department has only allowed the regular rebate, which it considers to be in the normal course of trade.

Final Results of the Review

Based on our analysis of the comments received, we have changed the final results of our review from those presented in the preliminary results. We determine that the following margins exist for the period October 24, 1983 through September 30, 1984:

Manufacturer/exporter	Margin (percent)
Hyundai Steel Pipe Co.	0.149
Korea Steel Pipe Co.	0.409
Pusan Steel Pipe Co.	0.144

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

This administrative review, covering the period October 24, 1983 through September 30, 1984, does not affect the revocation of the antidumping duty order. Therefore, we will instruct the Customs Service to continue to liquidate entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: August 28, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 20318 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-501]

Offshore Platform Jackets and Piles From Japan; Intention To Review and Preliminary Results of Changed Circumstances Adminstrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke antidumping duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Traiff Act of 1930, of the antidumping duty order on offshore platform jackets and piles from Japan. The review covers the period from November 25, 1985. The petitioners in this proceeding have notified the Department that they are no longer interested in the antidumping duty order. Their affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioners' notification, the revocation will apply to offshore platform jackets and piles from Japan exported on or after November 25, 1985.

Interested parties are invited to comment on thise preliminary results and tentative determination to revoke.

EFFECTIVE DATE: November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 18641) an antidumping duty order on offshore platform jackets and piles from Japan.

In a letter dated July 17, 1987, Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, the petitioners in this proceeding, informed the Department that they are no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate Traiff Schedules of the United States Annotated ("TSUSA")

item numbers and the appropriate HS item numbers with our product descriptions on an test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Record Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of steel jackets (templates) and/or piles for offshore platforms, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These products constitute the supporting structures which permanently affix drilling and/or production platforms to the ocean floor. Appurtenances include grouting systems, boat landings, pre-installed conductor pipes, and similar attachments. Offshore platform jackets and piles are currently classifiable under TSUS number 652.97 and HS item numbers 8430.49.40 and 8431.43.00. The review covers the period from November 25, 1985.

Preliminary Results of the Review and Tentative Determination To Revoke

As a result of our review, we preliminarily determine that the petitioners' affirmative statement of no interest in continuation of the antidumping duty order on offshore platform jackets and piles from Japan provides a reasonable basis for revocation of the order. In light of the November 25, 1985 effective date for revocation requested by the petitioners, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on offshore platform jackets and piles from Japan effective November 25, 1985. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported on or after November 25, 1985, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review and its decision on revocation, including its analysis of any such comments or hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

August 28, 1987.

[FR Doc. 87-20319 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-505]

Offshore Platform Jackets and Piles From the Republic of Korea; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke antidumping duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act of 1930, of the antidumping duty order on offshore platform jackets and piles from the Republic of Korea. The review covers the period from November 25, 1985. The petitioners in this proceeding have notified the Department that they are no longer interested in the antidumping duty order. Their affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioners' notification, the revocation will apply to offshore platform jackets and piles from the Republic of Korea exported on or after November 25, 1985.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 18642) an antidumping duty order on offshore platform jackets and piles from the Republic of Korea.

In a letter dated July 17, 1987, Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, the petitioners in this proceeding, informed the Department that they are no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule

is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of steel jackets (templates) and/or piles for offshore platforms, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These products constitute the supporting structures which pemanently affix drilling and/or production platforms to the ocean floor. Appurtenances include grouting systems, boat landings, pre-installed conductor pipes, and similar attachments. Offshore platform jackets and piles are currently classifiable under TSUS number 652.97 and HS item numbers 8430.49.40 and 8431.43.00. The review covers the period from November 25, 1985.

Preliminary Results of the Review and Tentative Determination To Revoke

As a result of our review, we preliminarily determine that the petitioners' affirmative statement of no interest in continuation of the antidumping duty order on offshore platform jackets and piles from the Republic of Korea provides a reasonable basis for revocation of the order. In light of the November 25, 1985 effective date for revocation requested by the petitioners, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore we tentatively determine to revoke the order on offshore platform jackets and piles from the Republic of Korea effective November 25, 1985. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported on or after November 25, 1985, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tenative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review and its decision on revocation, including its analysis of any such comments or hearing.

This intention to review, administrative review, tenative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

August 28, 1987.

[FR Doc. 87–20320 Filed 9–2–87; 8:45 am]

BILLING CODE 3510–DS–M

Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order; Certain Steel Wire Nails From The People's Republic of China

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances administrative review and revocation of antidumping duty order.

SUMMARY: Because of changed circumstances, we are revoking the antidumping duty order on certain steel wire nails from the People's Republic of China. The revocation applies to all entries of steel wire nails from the PRC entered, or withdrawn from warehouse, for consumption on or after January 1, 1986.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 23878) the preliminary results of its changed circumstances administrative review and tentative determination to revoke the antidumping duty order on certain steel wire nails from the People's Republic of China (PRC). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The products covered by the review are certain steel wire nails from the PRC. These nails are: one-piece steel wire nails as currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) under item numbers 646.25 and 646.26, and similar steel wire nails of one-piece construction, whether at, over or under 0.065 inch in diameter, as provided for in item number 646.3040 of the TSUSA; two-piece steel wire nails provided for in item number 646.32 of the TSUSA; and steel wire nails with lead heads provided for in item number 646.36 of the TSUSA. These products are currently classifiable under HS item numbers 7317.00.55, 7317.00.65 and 7317.00.75.

The review covers the period from January 1, 1986.

Final Results of the Review and Revocation

We invited interested parties to comment on the preliminary results and tentative determination to revoke. We received no comments or requests for a hearing. The final results are unchanged from the preliminary results.

As a result of our review, we determine that the petitioners' affirmative statement of no interest in continuation of the antidumping duty order on certain steel wire nails from the PRC provides a reasonable basis for revocation of the order.

Therefore, we are revoking the order on certain steel wire nails from the PRC effective January 1, 1986. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1986 without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This administrative review, revocation and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 353.53 and 353.54.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–20321 Filed 9–2–87; 8:45 am]

BILLING CODE 3510–DS–M

[A-588-041]

Preliminary Results of Antidumping Duty Administrative Review; Synthetic Methionine From Japan

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on synthetic methionine from Japan. The review covers four manufacturers/exporters and one third-country reseller of this merchandise to the United Staes and the period July 1, 1985 through June 10, 1986. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Since information received in response to our questionnaire from the one third-country reseller for the period was inadequate, we used the best information available for that firm.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 10600) the final results of its last administrative review of the antidumping finding on synthetic methionine from Japan (38 FR 18392, July 10, 1973). The petitioner requested in accordance with section 353.53a(a) of the Commerce Regulations that we conduct the administrative review. We published a notice of initiation of the antidumping duty administrative review on August 25, 1986 (51 FR 30259). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering the legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated ("TSUSA")* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of synthetic methionine other than L methionine. Synthetic methionine is an amino acid produced in two grades, DL methionine national formula grade (used for research and pharmaceutical purposes) and L methionine feed grade (used as a food additive). Both grades of synthetic methionine are currently classifiable under TSUSA item 425.0430 and HS item number 2922.42.50.

The review covers four manufacturers/exporters and one third-country reseller of Japanese synthetic methionine and the period July 1, 1985 through June 30, 1986.

Three firms had no shipments during the period and Central Soya (Canada) provided an inadequate response to the Department's questionnaire for the period. Specifically, among other things, Central Soya failed to furnish the identity of its Japanese suppliers and any information on its prices or expenses. Therefore, the Department used the best information available, which was based on information provided by the petitioner.

Preliminary Results of the Review

As a result of our review, we preliminarily detrmine that the following margins exist for the period July 1, 1985 through June 30, 1986.

Manufacturer/exporter/third-country reseller (Country)	*Margin (percent)*
Nippon Kayaku	*48.0
Nippon Soda/Mitsui	*3.35
Nippon Soda/Mitsui/Central Soya (Canada)	79.0
Sumitomo Chemical	*0

*No shipments during the period.

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice, and may request disclosure and/or an administrative protective order within 5 days of the date of publication. Any request for a hearing must be made no later than 8 days after the date of publication.

Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for all shipments by the reviewed firms of Japanese synthetic DL methionine. For any shipments from the remaining known manufacturers, exporters, and third-country resellers not covered by this review, the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms (48 FR 55153, December 9, 1983 and 52 FR 10600, April 2, 1987).

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after June 30, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 3.35 percent shall be required. This is in accordance withour practice of not using the most recently reviewed rate as a basis for a cash deposit for new shippers when we have based the recent rate on best information available.

These deposit requirements are effective for all shipments of Japanese synthetic methionine entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1))

and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: August 28, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-20322 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-580-504]

Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order; Offshore Platform Jackets and Piles From the Republic of Korea

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke countervailing duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review of the countervailing duty order on offshore platform jackets and piles from the Republic of Korea. Because the petitioners have notified the Department that they are no longer interested in maintaining the countervailing duty order, we tentatively determine to revoke the order. We invite interested parties to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: July 19, 1985.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 1987, Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, the petitioners in this proceeding, informed the Department of Commerce ("the Department") that they were no longer interested in maintaining the countervailing duty order on offshore platform jackets and piles from the Republic of Korea (51 FR 18643, May 21, 1986) and requested that the Department revoke the order.

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are steel jackets (templates) and/or piles for offshore platforms, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These products constitute the supporting structures which permanently affix offshore drilling and/or production platforms to the ocean floor. These products are used for "conventional" steel template platforms. Jackets and/or piles for "tower-type" platforms are not included in the order. Appurtenances include grouting systems, boat landings, pre-installed conductor pipes and similar attachments. Such merchandise is currently classifiable under item 652.97 of the Tariff Schedules of the United States. These products are currently classifiable under HS item numbers 8430.49.40 and 8431.43.00. The review covers the period from July 19, 1985.

Preliminary Results of Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested parties' statement that they are no longer interested in maintaining the countervailing duty order on offshore platform jackets and piles from the Republic of Korea provides a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on offshore platform jackets and piles from the Republic of Korea effective July 19, 1985. We intend to instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after July 19, 1985, and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication, or the first workday following. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with section 751 (b) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675 (b) and (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Date: August 27, 1987.

Joseph A. Spectrini,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-20323 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application =87-00009.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to the California Cherry Export Association of San Joaquin County. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration,

202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct:

Export Trade

Fresh sweet cherries.

Export Markets

Japan.

Members (in Addition to Applicant)

Reynolds Packing Company, Lodi, CA; O–G Packing, Stockton, CA; Chinchiolo Fruit Company, Stockton, CA; Sunniland Fruit, Inc., Stockton, CA; Delta Packing Co. of Lidi, Inc., Lodi CA; Linden Associated Growers, Linden, CA; Blossom Farms, Linden, CA; Sunworld, Inc., Lodi, CA; J & B Farms, Linden, CA; and A. Sambado & Son, Inc., Linden, CA.

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, CCEA and its members are certified to:

1. On behalf and with the advice of the members, advise and cooperate with the U.S. Government in establishing procedures regulating the export of sweet cherries.

2. On behalf and with the advice of the members, participate in negotiations and enter into agreements with foreign governments and foreign persons regarding:

a. Fumigating, packing, and other quality control procedures to be followed by the members in the export of sweet cherries.

b. The quantities, time periods, prices, and terms and conditions upon which the members shall export sweet cherries.

3. On behalf and with the advice of the members, establish and operate fumigation facilities for use in the export of sweet cherries.

4. On behalf and with the advice of the members, establish export prices for and allocate export quotas among the members.

5. Enter into agreements for the processing, including fumigation and packing, of the members sweet cherries for export to Japan. Such agreements are not assignable by the members without the prior written consent of CCEA.

6. Enter into a Corporate Redemption and Cross Purchase Agreement which restricts the sale or transfer of each member's stock in CCEA, except when the sale or transfer is made to:

a. Any partnership, corporation, or other entity in which the member holds an eighty percent controlling interest;

b. The individual owner(s) of a member which is a corporation, partnership, or similar entity upon the liquidation or dissolution of that member; or

c. Any other member.

The Corporation Redemption and Cross Purchase Agreement gives CCEA and its remaining members a right of first refusal to buy a departing member's stock in CCEA.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: August 28, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87–20427 Filed 9–2–87; 8:45 am]

BILLING CODE 3510–DR–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts next scheduled meeting is Friday, September 18, 1987, at 10:00 AM in the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc., also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, August 24, 1987.

Charles H. Atherton,

Secretary.

[FR Doc. 87–20241 Filed 9–2–87; 8:45 am]

BILLING CODE 6330–01–M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Public Law 98–525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting:

Dates and Times: Thursday, September 10, 1987, Beginning 9:00 a.m.; Friday, September 11, 1987, Beginning 9:00 a.m.

Place: Suite 520, 4401 Ford Avenue, Alexandria Virginia, 22301–0268.

Type of Meeting: Closed.

Contract Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302–0268, Telephone (202) 756–0411.

Purpose of Meeting: To receive additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and to deliberate facts and opinions obtained from briefings and public hearings.

SUPPLEMENTARY INFORMATION: The executive meetings of the Commission will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and 552b(c)(4) in the interests of national security and to protect proprietary information provided to the Commission in confidence.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 87–20256 Filed 9–2–87; 8:45 am]

BILLING CODE 3820–01–M

DEPARTMENT OF EDUCATION

Invitation to Comment on Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 5, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 31, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Special Education and Rehabilitative Services

Type of Review: Revision
Title: Report of Handicapped Children and Youth Receiving Special Education and Related Services Under Part B of the Education of the Handicapped Act
Agency Form Number: ED 869–5 and 869–8
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 12,238
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by States to report the number of handicapped children and youth receiving special education and related services under Part B of the Education of the Handicapped Act, as amended. The Department will use these data for monitoring activities and for distributing formula grant funds.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: Report of Special Education and Related Services in Need of Improvement
Agency Form Number: ED 869–2
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 116
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will collect information from States on the number and type of special education programs and related services in need of improvement. This information is used by the Department to assist in establishing programmatic priorities and for reporting purposes.

Office of Special Education and Related Services

Type of Review: Reinstatement
Title: Report of Handicapped Children and Youth Exiting the Educational System
Agency Form Number: ED 869–3
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 13,978
Recordkepping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by States to report the number of handicapped youth exiting the school system and the services needed by these youth in the following year. The Department uses this information to assess the progress and effectiveness of State efforts to implement programs under Part B of the Education of the Handicapped Act, as amended.

Office of Management

Type of Review: Extension
Title: Student Rights in Research, Experimental Activities, and Testing Information Collections
Agency Form Number: ED 2470
Frequency: On occasion
Affected Public: Individuals or households; State or local governments
Reporting Burden:
Responses: 50
Burden Hours: 25
Recordkepping Burden:
Recordkeepers: 25
Burden Hours: 6.25
Abstract: This form will be used by parents of a child who alleges a violation of rights accorded by section 439 of the General Education Provisions Act (GEPA). The Department uses this information to assure compliance with these requirements under GEPA.

Office of Management

Type of Review: Reinstatement
Title: GEPA 406A: State Uses of Federal Funds Under State-Administered Federal Education Programs
Agency Form Number: P75–7P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 51
Burden Hours: 2550
Recordkepping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey will collect information from State educational agencies on how Federal funds are distributed under Federal state-administered education programs. The Department uses this information for an annual report to Congress mandated by section 406A of the General Education Provisions Act.

Office of Postsecondary Education

Type of Review: Extension
Title: Continuation Application for Grants under the Strengthening Program
Agency Form Number: ED 851
Frequency: Annually
Affected Public: Institutions of higher education
Reporting Burden:
Responses: 115
Burden Hours: 1725
Recordkepping Burden:
Recordkeepers: 115
Burden Hours: 345
Abstract: This form will be used by eligible institutions of higher education to submit a request for non-competitive continuation of Federal assistance under the Strengthening Program. The information collected will be used by the Department to determine whether the institution has maintained its eligibility for continued Federal assistance.

Office of Postsecondary Education

Type of Review: Extension
Title: Continuation Application for Grants under the Special Needs Program
Agency Form Number: ED 852
Frequency: Annually
Affected Public: Institutions of higher education
Reporting Burden:
Responses: 38
Burden Hours: 570
Recordkepping Burden:
Recordkeepers: 38
Burden Hours: 114
Abstract: This form will be used by eligible institutions of higher education to submit a request for non-competitive continuation of Federal assistance under the Special Needs Program. The information collected will be used by the Department to determine whether the institution has maintained its eligibility for continued Federal assistance.

[FR Doc. 87-20301 Filed 9-2-87; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF87-583-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; City of Spokane et al.

August 28, 1987.

COMMENT DATE: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. City of Spokane

[Docket No. QF87-583-000]

On August 6, 1987, City of Spokane (Applicant), of Spokane Regional Solid Waste Disposal Project, W. 720 Boone, Suite 201, Spokane, Washington 99201-2006 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Spokane County, Washington. The facility will consist of two (2) 400-TPD mass-fired refuse-burning steam generators and a turbine generator. The net electric power production capacity wil be 22.9 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas will be used for flame stabilization, start-up and shut-down purposes. Such fossil fuel uses, however, will not exceed 25 percent of the total energy input to the facility during any calendar year period. Construction of the facility will begin in January 1988.

2. Tarkington Independent School District

[Docket No. QF87-548-000]

On August 12, 1987, Tarkington Independent School District (Applicant), of Route 6, Box 130, Cleveland, Texas 77327 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Cleveland, Texas. The facility will consist of six (6) engine generator sets, a heat recovery steam generator, and heat exchangers. Thermal energy recovered from the facility will be used for space heating and cooling. The net electric power production capacity will be 1,320 kilowatts. The primary energy source will be natural gas. Construction of the facility began August 15, 1987.

3. Panguitch Micro Energy Cogeneration Inc.

[Docket No. QF87-577-000]

On August 4, 1987, Panguitch Micro Energy Cogeneration Inc. (Applicant), c/o Ashley Valley Engineering, of P.O. Box 68, Magna, Utah 84044 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Panguitch, Utah. The facility will consist of a steam generator and a extraction/condensing turbine generator. Steam recovered from the facility will be used for space heating and lumber kiln. The net electric power production capacity will be 4,250 kilowatts. The primary energy source will be coal and woodwaste. Construction of the facility will begin in early 1988.

4. Eacalante Micro Energy Cogeneration Inc.

[Docket No. QF87-576-000]

On August 4, 1987, Eacalante Micro Energy Cogeneration Inc. (Applicant), c/o Ashley Valley Engineering, of P.O. Box 68, Magna, Utah, 84044 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Escalante, Utah. The facility will consist of a steam generator and an extraction/condensing turbine generator. Steam recovered from the facility will be used in a lumber kiln. The net electric power production capacity will be 4,250 kilowatts. The primary energy source will be coal and woodwaste. Construction of the facility will begin in the fall of 1987.

5. Hopewell Cogeneration, Inc.

[Docket No. QF87-217-001]

On August 10, 1987, Hopewell Cogeneration, Inc. (Applicant), of 1177 West Loop South, Suite 900, Houston, Texas 77027, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Hopewell, Virginia. The facility as originally proposed was to consist of a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing turbine generator. Thermal energy recovered from the facility will be used in chemical manufacturing operations and space heating by Hercules, Incorporated. The primary energy source will be natural gas. The net

electric power production capacity of the facility as originally proposed was to be 130 MW.

By order issued March 30, 1987, the Director of Office of Electric Power Regulation granted certification of the facility as a cogeneration facility under Docket No. QF87–217–000.

The recertification is requested due to change of ownership of the facility from CRSS Hopewell Cogenerators to Hopewell Cogeneration, Inc., and change from one combustion turbine with one heat recovery steam generator to multiple combustion turbines with multiple heat recovery steam generators. The net electric power production capacity of the facility will increase to 302.55 MW. Installation of the facility will begin in March, 1988. All other facility's characteristics remain unchanged.

6. Idaho Natural Energy, Inc.

[Docket No. QF84–269–001]

On August 12, 1987, Idaho Natural Energy, Inc. (Applicant), of 699 E. South Temple, Suite 220, Salt Lake City, Utah 87102 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 30 MW hydroelectric facility (FERC P. 7948) will be located on Smith Creek in Boundary County, Idaho.

Recertification is requested due to a change in the electric power production capacity of the facility. Under the instant application, the electric power production capacity of the facility will increase from 11 MW to 30 MW.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

7. Ogden Martin Systems of Fairfax, Inc.

[Docket No. QF87–605–000]

On August 14, 1987, Ogden Martin Systems of Fairfax, Inc. (Applicant), of 40 Lane Road, Fairfield, New Jersey 07007–2615 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Lorton, Virginia. The facility will consist of four (4) mass-burn steam generators and two (2) turbine generators. The net electric power production capacity will be 72.5 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas will be used for flame stabilization, start-up and shut-down purposes. Such fossil fuel uses, however, will not exceed 25% of the total energy input to the facility during any calendar year period. Construction of the facility is expected to begin in November 1987.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb

Secretary

[FR Doc. 87–20314 Filed 9–2–87; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[Region VII; FRL–3256–5]

Announcement of Actions Taken Under the NSPS/NESHAPS/PSD Regulations; Iowa and Missouri

Notice is hereby given that the Environmental Protection Agency (EPA), Region VII, has taken the following actions under the federal Standards of Performance for New Stationary Sources (a.k.a., New Source Performance Standards, NSPS) regulation, 40 CFR Part 60; the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulation, 40 CFR Part 61; and, the Federal prevention of significant deterioration of air quality (PSD) regulation, 40 CFR Part 52 (specifically, 40 CFR 52.21):

(A) The following PSD permits were issued:

Archer Daniels Midland Company, Cedar Rapids, Iowa: For the installation of two coal-fired boilers (each a circulating fluidized bed combustion (FBC) boiler with a maximum heat input of 551.5 million British Thermal Units per hour (MMBTUs/hr)) and related equipment. The proposed project qualified as a "major modification" of an existing major stationary source. The projected impact of emissions on air quality was a major review consideration. The existing source is a corn wet milling plant (SIC: 2046). Pollutants reviewed: nitrogen oxides (NO_x), sulfur dioxide (SO_2), carbon monoxide (CO), and fluorides (F). *Date of Permit Issuance:* October 21, 1986.

Iowa State University, Ames, Iowa: For the installation of two coal-fired boilers (each a circulating FBC boiler with a maximum heat input of 235 MMBTUs/hr) and related equipment. The proposed project qualified as a "major modification" of an existing major stationary source. The existing source is a university (SIC: 8221). Pollutants review: NO_x, SO_2, CO, F, lead (Pb), and beryllium (Be). *Date of Permit Issuance:* December 15, 1986.

Archer Daniels Midland Company, Des Moines, Iowa: For the installation of a coal-fired boiler (a multi-bed FBC boiler with a maximum heat input of 192 MMBTUs/hr) and related equipment. The proposed project qualified as a "major modification" of an existing major stationary source. The existing source is a soybean processing plant and a vegetable oil refinery (SIC: 2075). Pollutants reviewed: NO_x, SO_2, and Be. *Date of Permit Issuance:* January 13, 1987.

The University of Iowa, Iowa City, Iowa: For the installation of a new coal-fired boiler (a multi-solid circulating FBC boiler with a maximum heat input of 223 MMBTUs per hour) and related equipment. The proposed project qualified as a "major modification" of an existing major stationary source. The projected impact of emissions on air quality was a major review consideration. The existing source is a university (SIC: 8221). Pollutants reviewed: NO_x, SO_2, CO, F, Be, and particulate matter (PM). *Date of Permit Issuance:* June 9, 1987.

(B) The following PSD nonapplicability determination was issued:

Iowa Methodist Medical Center, Des Moines, Iowa: The regional office determined that the anticipated air

emissions to be generated by a proposed internal combustion engine (a 1500 kilowatt engine-generator set) do not qualify the proposed engine as a "major modification" as interpreted under the regulation. As such, the proposed project was not subject to the review/approval requirements of the regulation. *Decision Issued: September 8, 1986.*

(C) The following PSD permit was revised:

Meredith/Burda, Des Moines, Iowa: The PSD permit that was issued to the company on April 15, 1982, for a publication rotogrvure printing press, was revised to allow for the tie-in of a non-PSD printing press (Press 81) to the volatile organic compounds (VOC) emission control unit (a carbon adsorber) which currently serves the PSD-affected press (Press 83) approved by the regional office on April 15, 1982. The carbon adsorber also controls the VOC emission from another printing press (Press 82) that was approved by the regional office under the PSD regulation on April 2, 1980. The VOC percent recovery requirements that were established by the regional office for the PSD-affected presses (i.e., Press 82 and 83) remain in effect. *Revision Issued:* June 18, 1987.

(D) The following decisions relating to NESHAPS approval requests were issued:

Sigma Chemical Company, St. Louis, Missouri: The company was granted an approval to construct and operate a radionuclide installation at its plant in St. Louis, Missouri. The installation is affected by the requirements of Subpart I of the NESHAPS regulation. The approval limited the usage of Iodine-125 at the facility to no more than 100 millicuries per calendar month. *Approval Issued:* May 29, 1987.

Washington University School of Medicine, St. Louis, Missouri: The University's request for a variance from the requirements of 40 CFR Part 61, Subpart I, was denied by the regional office because the regulation does not have provisions for the granting of either a variance or an exemption from the owner/operator's obligation to obtain an "approval" for activities/facilities affected by said Subpart I. *Decision Issued:* June 16, 1987.

Under section 307(b)(1) of the Clean Air Act (the Act), judicial review of any of the above actions is available only by the filing of a petition for review in the appropriate U.S. Circuit Court of Appeals within (60) days from the date of publication of today's notice. Under section 307(b)(2) of the Act, any requirements associated with the above actions may not be challenged later in civil or criminal proceedings that may be brought by the EPA to enforce the requirements.

For the above actions, the appropriate court is the U.S. Court of Appeals for the Eighth Circuit. A petition for review must be filed on or before November 2, 1987.

Copies of the above actions and related information are available for public inspection at the following location: U.S. Environmental Protection Agency, Region VII, Air and Toxics Division (ARTX), Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Interested individuals may also contact Mr. Charles W. Whitmore, Chief, Air Compliance Section, Air Branch, ARTX, or Dan Rodriguez at 913/236-2896 (FTS: 757-2896).

William Rice,

Acting Regional Administrator.

[FR Doc. 87-20298 Filed 9-2-87; 8:45am]

BILLING CODE 6560-50-M

[OPTS-00086; FRL-3257-4]

Asbestos-Containing Materials in Schools; Announcement of Interim Laboratory Quality Assurance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of Interim Laboratory Quality Assurance Program.

SUMMARY: EPA has established an "Interim Asbestos Bulk Sample Analysis Quality Assurance Program." Laboratories currently not participating in the existing voluntary EPA Bulk Sample Analysis Quality Assurance Program but who wish to be included in the laboratory listing of accredited laboratories and plan to perform analyses of bulk samples for schools should apply to the following address: Research Triangle Institute, Box 12194, Research Triangle Park, North Carolina 27709, Attention: Steve Westbrook. Letters of application will be accepted from laboratories for the November 1987 round of samples until September 30, 1987.

FOR FURTHER INFORMATION CONTACT:

Betsy Dutrow, Office of Toxic Substances (TS-798), Environmental Protection Agency, Rm. NE-G012, 401 M Street SW., Washington, DC 20460, (202-382-3569).

or

Mike Beard, Environmental Monitoring Systems Laboratory (MD-77), Environmental Protection Agency, Research Triangle Park, NC 27711, (919-541-2623).

SUPPLEMENTARY INFORMATION:

I. Background

On October 22, 1986, President Reagan signed the Asbestos Hazard Emergency Response Act (AHERA). AHERA states that EPA must provide for the development of an accreditation program through the National Bureau of Standards (NBS) for laboratories conducting analyses of bulk samples of asbestos-containing materials by October 17, 1987. Due to a delay in funding, NBS has stated that the program will not be operational until fiscal year 1989. In order to provide schools with a listing of accredited laboratories, EPA has established the "Interim Asbestos Bulk Sample Quality Assurance Program." EPA announced the interim program in the **Federal Register** of April 30, 1987 (52 FR 15824). Laboratories which intend to conduct analyses of bulk samples of asbestos-containing materials for schools must first be accredited under the interim EPA program and, subsequently, the NBS program. When the NBS program is operational, the EPA program will be discontinued.

II. Enrollment in EPA Program

Laboratories currently participating in the voluntary EPA Bulk Sample Analysis Quality Assurance Program will be automatically enrolled in the interim accreditation program. Laboratories not participating in the existing EPA program must submit a letter requesting enrollment in September 30, 1987, to Research Triangle Institute, Box 12194, Research Triangle Park, NC 27709, Attention: Steve Westbrook. Laboratories submitting letters of application after September 30, 1987, will be included in the second round of participation which will be held in April 1988. The EPA program will be of no cost to the laboratories. Laboratories enrolled in the EPA program by September 30, 1987, will be issued four samples of bulk materials in October 1987. Laboratories will be expected to analyze the samples and return the results of the analyses by November 1987. Laboratories meeting the criteria for successful analytical performance for the program will receive formal notification from EPA, and the laboratory's name and address will be included in an EPA listing of accredited laboratories. Laboratories will be notified of their performance in December 1987. The formal listing of accredited laboratories will be available in January 1988.

III. Evaluation of Laboratories

Four samples will be submitted to each laboratory for analysis. Bulk

samples of asbestos-containing materials will be selected from a repostitory of actual construction materials. Nonasbestos-containing materials will be selected from commonly used construction materials, e.g., fiberglass. These materials are inspected for uniformity and integrity by macroscopic and microscopic examination. Reference characterization for each material will be established by internal and external analysis. The reference values will serve as the standards upon which program participants will be evaluated.

The EPA program will accredit laboratories based on their correct classification of the bulk materials as either asbestos-containing or nonasbestors-containing. To be accredited by EPA, laboratories must correctly classify the samples. It is EPA's intent that in order for a laboratory to be considered capable of analyzing bulk samples for asbestos, a laboratory must demonstrate the ability to correctly analyze four samples on the simple basis of classifying the individual samples as asbestos-containing or nonasbestos-containing. Laboratories will be requested to identify the types of asbestos (identification) and to quantify the amount of asbestos in the sample (quantification) for each asbestos-containing sample. The identification and quantification results will be used to further evaluate the performance of the laboratories meeting the minimal classification criterion. The listing of accredited laboratories will be ranked based on performance in the identification and quantification analyses.

Laboratories which do not correctly classify each of the four samples as asbestos-containing or nonasbestos-containing will be notified of their performance. These laboratories will not be included in the laboratory listing. Laboratories which did not meet the performance criteria of the program may re-enroll in March 1988 to participate in the April 1988 round of samples. Prior to formal enrollment in the program, laboratories must return to Research Triangle Institute a signed statement that the laboratory accepts the conditions of the program for accreditation and understands that failure to classify the samples as asbestos-containing or nonasbestos-containing will prohibit them from receiving accreditation in the program until the subsequent round.

IV. Method of Analysis

Laboratories must employ the EPA *Interim Method for the Determination of Asbestos in Bulk Insulation Samples,* (EPA–600/M4–82–020) for analysis of the samples. (See also 47 FR 38535, September 1, 1982.) The interim method requires the use of a polarizing light microscope (PLM). Copies of this method may be obtained by calling 1–800–334–8571.

Dated: August 27, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87–20416 Filed 9–2–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–798–DR]

Amendment to Notice of Major-Disaster Declaration; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–798–DR), dated August 21, 1987, and related determinations.

DATED: August 28, 1987.

FOR FURTHER INFORMATION CONTACT: Neva E. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Illinois, dated August 21, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 21, 1987:

Elk Grove, Leyden, Maine and Schaumburg Townships in Cook County; and Addison, Bloomingdale, and York Townships in DuPage County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe D. Winkle,

Acting Deputy Associate Director State and Local Programs, and Support, Federal Emergency Management Agency.

[FR Doc. 87–20271 Filed 9–2–87; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–798–DR]

Amendment to Notice of Major-Disaster Declaration; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–798–DR), dated August 21, 1987, and related determinations.

DATED: August 27, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646–3616.

NOTICE: The notice of a major disaster for the State of Illinois, dated August 21, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 21, 1987:

Barrington, Berwyn, Cicero, Evanston, Jefferson, Lake View, New Trier, Niles, Northfield, Oak Park, and Rogers Park Townships, and that portion of the City of Chicago north of Roosevelt Road, in Cook County; and all areas of DuPage County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joseph A. Moreland,

Acting Deputy Associate Director, State and Local Programs, and Support, Federal Emergency Management Agency.

[FR Doc. 87–20272 Filed 9–2–87; 8:45 am]

BILLING CODE 6718–02–M

Senior Performance Review Board Members

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Listing names of the members of the Senior Executive Service Performance Review Board.

DATE: August 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mary J. Stafford, Chief, Staffing Division, Office of Personnel, 500 C Street, SW., Washington, DC 20472, 202–646–4010.

The names of the members of the FEMA Senior Executive Service Performance Review Board established pursuant to 5 U.S.C. 4314(c) are:

Members: Frank H. Thomas, William K. Chipman, John D. Hwang, Edward W. Kernan, Joe D. Winkle, George H. Orrell, John R. Curran, Sr.

Spence W. Perry,

General Counsel.

[FR Doc. 87–20273 Filed 9–2–87; 8:45 am]

BILLING CODE 6817–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0257]

Filing of Food Additive Petition; Ferro Corp.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ferro Corp. has filed a petition proposing that the food additive regulations be amended to provide for the additional safe use of 2,4-di-*tert*-butylphenyl 3,5-di-*tert*-butyl-4-hydroxybenzoate as a light stabilizer for olefin copolymers in contact with food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4011) has been filed by Ferro Corp., 7050 Krick Rd., Bedford, OH 44146, proposing that § 728.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the additional safe use of 2,-di-*tert*=butylphenyl 3, 5-di-*tert*-butyl-4-hydroxybenzoate as a light stabilizer for olefin copolymers complying with § 177.152(c)3.1 and 3.2.

The potential environmental impact of this action is being reviewed. If the agency finds that an evironmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting the finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 26, 1987.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-20267 Filed 9-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87N-0295]

Drug Export; Rimantadine Hydrochloride (Bulk)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hoffmann-LaRoche Inc. has filed an application requesting approval for the export of the human drug Rimantadine Hydrochloride (Bulk) to France and to Switzerland solely for the purpose of further export to France.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Hoffmann-LaRoche Inc., 340 Kingsland Street, Nutley, New Jersey 07110, has filed an application requesting approval for the export of the drug Rimantadine Hydrochloride (Bulk) to France and to Switzerland solely for the purpose of further export to France. Rimantadine Hydrochloride (Bulk) is indicated for use as an antiviral agent that is active mainly against influenza type A virus. The application was received and filed in the Center for Drugs and Biologics on August 20, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 14, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: August 25, 1987.

Sammie R. Young

Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87-20266 Filed 9-2-87; 8:45 am]

BILLING CODE 4160-01-M

[FDA 225-75-3003]

Memorandum of Understanding Between the Department of Defense and the Food and Drug Administration

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Department of Defense (DOD) and FDA which replaces the previous MOU on this subject signed in 1974. The MOU establishes the procedures to be followed by DOD regarding the investigational use of drugs, including antibiotics and biologics, and medical devices.

DATE: The agreement became effective May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583..

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing this memorandum of understanding.

Dated: August 27, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Between the Food and Drug Administration and the Department of Defense, Concerning Investigational Use of Drugs, Antibiotics, Biologics, and Medical Devices by the Department of Defense

I. Purpose

This agreement between the Department of Defense (DoD) and the Food and Drug Administration (FDA) establishes the procedures to be followed regarding the investigational use of drugs, including antibiotics and biologics, and medical devices by DoD. This Memorandum of Understanding (MOU), when signed by the representatives of the agencies, replaces the previous MOU on this subject signed in 1974.

II. Backgroung

Sections 505(a) and 507 of the Federal Food, Drug, and Cosmetic Act ("the Act") establish procedures for the approval required before a new drug or antibiotic can be introduced into interstate commerce. Sections 505(i) and 507(d) of the Act (21 U.S.C. 355(i), 357(d)) provide authoirty for the Secretary to exempt from the drug approval procedures new drugs and antibiotics which will be used for investigational purposes. Section 520(g) of the Act (21 U.S.C. 360(g)) provides authority for the Secretary to exempt from the device approval procedures devices which will be used for investigational purposes. Section 351 of the Public Health Service Act establishes procedures for the approval required before a biological product can be introduced into interstate commerce.

Regulations governing investigational new drugs, investigational antibiotics, and investigational biologics are published at 21 CFR Part 312; for investigational medical devices at 21 CFR Parts 812 and 813; for protection of human subjects at 21 CFR Part 50; and for institutional review boards at 21 CFR Part 56. These regulations establish the procedure and prescribe the necessary forms to be filed in order to exempt drugs and devices to be used for investigational purposes from, inter alia, the approval procedures of the Federal Food, Drug, and Cosmetic Act and the biologic licensing provisions of the Public Health Service Act.

Pursuant to Title 5, Section 301, of the United States Code, DoD regulations on protection of human subjects in DoD-supported research in 32 CFR Part 219 and DoD Directive 3216.2 generally adopt the system of Institutional Review Boards (IRBs) established under 21 CFR Part 56. However, the functions of research protocol review and approval are separate in the Department of Defense. The function of protocol review remains with the IRB which recommends approval. The function of approval is held by the commander to whom the review committee reports. In addition, the Surgeon General of each Service may require that the final review and approval for use of investigational drugs, biologics, or medical devices, remain within his or her office. The Surgeons General have the authority to delegate this final review and approval authority to a "Headquarters Review Board" (HRB), or the medical department component holding the IND or IDE. In no case can an approving authority or HRB give final approval to a protocol which has been disapproved by a local IRB, nor can an approving authority or HRB reduce safeguards or special conditions imposed by the local IRB.

A Memorandum of Understanding (MOU) on this subject was first executed by the Departments of Defense and Health, Education, and Welfare in 1964. It was revised in 1974 to state the procedures that would be followed to ensure that the requirements of the Federal Food, Drug, and Cosmetic Act and its implementing regulations are fully met without jeopardizing or impeding the requirements of national security. Experience in operating under these MOUs from 1964 to 1987 indicates that the DoD and FDA have a record of cooperation; that human subject concerns have been adequately addressed in DoD-sponsored studies; that the DoD has been able to carry out effectively its responsibilities for national security without compromising the intent of the above-cited statutes and regulations; and that certain exemptions, relieving the DoD from the need to meet the ordinary requirements of the Investigation New Drug (IND) and Investigational Device Exemption (IDE) regulations are no longer necessary. Accordingly, the DoD and the FDA agree to the following new procedures concerning investigational use of drugs and devices by the DoD.

III. Substance of Agreement

The FDA and the DoD agree that:

A. Clinical testing of investigational drugs, biologics, or medical devices under programs sponsored by the DoD and conducted either by the DoD within its own research facilities, or for the DoD by a contractor or grantee will folllow the provisions of 21 CFR Part 312 or 21 CFR Part 812 governing the investigational use of new drugs and medical devices in human beings, and FDA's informed consent and Institutional Review Board regulations (21 CFR Part 50 and 21 CFR Part 56).

B. They will continue to cooperate in meeting the requirements of the Federal Food, Drug, and Cosmetic Act and its implementing regulations without jeopardizing the mission of the DoD. To accomplish this goal, they agree that an expeditious review of special DoD requirements to meet national defense considerations will be carried out by FDA. This review would consist of an FDA review of available data on a drug, biological, or device under IND or IDE to detemine if stockpiling for future use, or use in an expanded military population is appropriate. When necessary, special reporting requirements would also be established by FDA.

C. It is the general policy of the DoD not to classify medical research and development. However, should it become necessary to classify for reasons of national security the clinical testing of a drug, biologic, or medical device that would normally fall under the provisions of 21 CFR Parts 312 or 812, these studies will be handled under the special provisions of this MOU. The DoD will be solely responsible for determining the security classification of such research projects. If classified studies are required DoD will submit a classified IND or IDE application to be reviewed by appropriate FDA personnel who hold the required security clearances. It will be the responsibility of the FDA to maintain an appropriate cadre of personnel who have security clearances. In the event that a request is made under the Freedom of Information Act for records concerning the research DoD has classified, FDA will refer such requests to DoD for processing and response under DoD regulations.

IV. Name and Address of Participating Agencies

A. Department of Defense, Washington, DC 20301

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857

V. Liaison Officers

A. Senior Program Specialist for Medical Research Office of the Assistant Secretary of Defense (Health Affairs), Washington, DC 20301, Telephone: (202) 695–6800

B. Military Assistant for Medical and Life Sciences Office of Under Secretary of Defense (Acquisition).

Washington, DC 20301, Telephone: (202) 697–8535

C. Associate Commissioner for Health Affairs, HFY–1 (Currently Stuart L. Nightingale, M.D.), Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6143.

VI. Period of Agreement

This agreement becomes effective upon acceptance by both parties, and will remain in effect indefinitely. It may be amended by mutual written consent or terminated by either party upon a 30-day advance written notice.

Approved and Accepted for the Department of Defense:

William Mayer,

Assistant Secretary of Defense (Health Affairs).

Date: May 21, 1987.

Approved and Accepted for the Food and Drug Administration:

Frank E. Young,

Commissioner, Food and Drug Administration.

Date: May 1, 1987.

[FR Doc. 87–20265 Filed 9–2–87; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, September 28–30, 1987, Building 31C, Conference Room 6, 6th Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Portions of the Board meeting and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

Portions of the meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred J. Lumsden, Committee Management Officer, Division of Extramural Activities, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708), will provide a summary of the minutes and rosters of the Board members upon request.

Name of Committee: Subcommittee on Cancer Centers
Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19 Bethesda, MD 20892 (301/496–5515)
Date of Meeting: September 27
Place of Meeting: Building 31C, Conference Room 7
Open: 6 p.m. to adjournment
Agenda: Discussion of programmatic issues regarding the Cancer Centers.

Name of Committee: Subcommittee on Organ Systems Program
Executive Secretary: Dr. Andrew Chiarodo, Blair Building, Room 722A Bethesda, MD 20892 (301/427–8818)
Date of Meeting: September 27
Place of Meeting: Building 31C, Conference Room 8
Open: 7:30 p.m. to adjournment
Agenda: Discussion of programmatic issues of the Organ Systems Program.

Name of Committee: Subcommittee on Planning and Budget
Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19 Bethesda, MD 20892 (301/496–5515)
Date of Meeting: September 28
Place of Meeting: Building 31C, Conference Room 7
Open: Following adjournment of NCAB meeting.
Agenda: Discussion of plans for NCAB portion of the 1988 biennial budget report.

Name of Committee: Subcommittee on Cancer Control for the Year 2000
Executive Secretary: Dr. Peter Greenwald, Building 31, Room 10A52 Bethesda, MD 20892 (301/496–6616)
Date of Meeting: September 28
Place of Meeting: Building 31C, Conference Room 4
Open: 7:30 p.m. to adjournment
Agenda: To discuss NCAB participation and other issues of cancer control.

Name of Committee: Subcommittee on Special Actions for Grants
Executive Secretary: Mrs. Barbara S. Bynum, Building 31, Room 10A03 Bethesda, MD 20892 (301/496–5147)
Date of Meeting: September 29
Place of Meeting: Building 31C, Conference Room 6
Open: 8:30 a.m. to adjournment
Agenda: Review and discussion of individual grant applications.

Name of Committee: Review of Contracts and Budget for the Office of the Director, National Cancer Institute
Executive Secretary: Mr. James Prather, Building 31, Room 11A29 Bethesda, MD 20892 (301/496–5801)
Date of Meeting: September 29
Place of Meeting: Building 31C, Conference Room 7
Open: Following adjournment of the Subcommittee on Special Actions for Grants.
Agenda: Review of contracts and budget for the Office of the Director, National Cancer Institute.

Name of Committee: AIDS Subcommittee
Executive Secretary: Dr. Maryann Roper, Building 31, Room 11A19 Bethesda, MD 20892 (301/496–3505)
Date of Meeting: September 29
Place of Meeting: Building 31C, Conference Room 7
Open: 7:30 p.m. to adjournment
Agenda: The Subcommittee will discuss the National Cancer Institute's involvement in AIDS research.

Name of Committee: National Cancer Advisory Board
Executive Secretary: Mrs. Barbara S. Bynum, Building 31, Room 10A03 Bethesda, MD 20892 (301/496–5147)
Date of Meeting: September 28 and 30, 1987
Place of Meeting: Building 31C, Conference Room 6
Open: September 28, 8:30 a.m. to recess September 30, 8 a.m. to adjournment
Agenda: Reports on activities of the President's Cancer Panel and the Director's Report on the National Cancer Institute; Subcommittee Reports and New Business.

(Catalog of Federal Domestic Assistant Program Nos. 13.392, Project grants in cancer construction; 13.393, Project grants in cancer cause and prevention; 13.394, Project grants in cancer detection and diagnosis; 13.395, Project grants in cancer treatment; 13.396, Project grants in cancer biology; 13.397, Project grants in cancer centers support; 13.398, Project grants in cancer research manpower and 13.399; Project grants and contracts in cancer control.)

Dated: August 19, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–20345 Filed 9–2–87; 8:45 am]

BILLING CODE 4140–01–M

Meeting; Cancer Biology-Immunology Contract Review Committee

Pursuant to Pub. L. 94–463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contract Review Committee, National Cancer Institute, National Institutes of Health, October 9, 1987, 9000 Rockville Pike, Building 31C, Conference Room 9, Bethesda, Maryland 20892.

This meeting will be open to the public on October 9 from 9 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on October 9 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Wilna A. Woods, Executive Secretary, Cancer Biology-Immunology Contract Review Committee, 5333 Westbard Avenue, Room 807, Bethesda, Maryland 20892 (301/496–7153) will furnish substantive program information.

Dated: August 26, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–20346 Filed 9–2–87; 8:45 am]

BILLING CODE 4140–01–M

Meeting, National Cancer Institute

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on October 22–23, 1987, Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on October 22 and from 9 a.m. to adjournment on October 23 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub.L. 92–463, the meeting will be closed to the public from 9 a.m. to approximately 12 p.m. on October 22 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20891 (301/496–6927) will furnish substantive program information.

Dated: August 27, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–20347 Filed 9–2–87; 8:45 am]

BILLING CODE 4140–01–M

Cancer Research Manpower Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, November 5–6, 1987, Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on November 5 at 8:30 a.m. to 9 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Publ L. 92–463, the meeting will be closed to the public on November 5 at 9 a.m. to recess and on November 6 at 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, NCI, Building 31, Room 10A06, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of the Committee members.

Ms. Cynthia Sewell, Executive Secretary, Westwood Building, 5333 Westbard Avenue, Room 838, Bethesda, Maryland 20892 (301/496–7721) will provide substantive program information upon request.

Dated: August 26, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–20348 Filed 9–2–87; 8:45 am]

BILLING CODE 4140–01–M

Meeting; Developmental Therapeutics Contracts Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, September 23–24, 1987, Holiday Inn-Bethesda, Montgomery Conference Room, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on September 23 from 8 a.m. to 8:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 23, 8:30 a.m. to recess; September 24, 8:30 a.m. to recess; and September 25, 8:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a

roster of committee members upon request.

Dr. Kendall G. Powers, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7575) will provide substantive program information, upon request.

Dated: August 26, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–20349 Filed 9–2–87; 8:45 am]

BILLING CODE 4140–01–M

Research Manpower Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Research Manpower Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on September 27–29, 1987, at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on September 27, from 7 p.m. to approximately 11 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 28 from approximately 8 a.m. until adjournment on September 29, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Executive Secretary, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: August 19, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–20352 Filed 9–2–87; 8:45 am]

BILLING CODE 4140–01–M

Meeting; National Institute of Neurological and Communicative Disorders and Stroke

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Neurological and Communicative Disorders and Stroke, Intramural Research, Program, on November 11–13, 1987, Conference Room 5C–101, Building 10, Bethesda, Maryland.

This meeting will be open to the public from 9 a.m. to 5 p.m. on November 12 to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 8 p.m. to 10 p.m. on November 11 and from 9 a.m. until adjournment on November 13 for the review, discussion and evaluation of individual programs and projects conducted by the National Institute of Health, NINCDS, including consideration of personnel qualifications and performances, the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Freedom of Information Coordinator, Mr. Edward M. Donohue, Federal Building, Room 1016, 7550 Wisconsin Avenue, Bethesda, Maryland 20892, telephone (301) 496–4188, will furnish a summary of the meeting and a roster of committee members upon request. The Executive Secretary from whom substantive program information may be obtained is Dr. Irwin J. Kopin, Director, Intramural Research Program, NINCDS, Building 10, Room 5N214, NIH, Bethesda, Maryland 20892, telephone (301) 496–4297.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: August 27, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–20350 Filed 9–2–87; 8:45 am]

BILLING CODE 4140–01–M

Meeting; National Institute on Aging

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, October 26–28, 1987, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public from 9:00 a.m. on Monday, October 26 until approximately 4:00 p.m. and will again be open to the public from 9:00 a.m. on Tuesday, October 27, until 4:00 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on October 26 from 4:00 p.m. until recess, and again on October 27 from 4:00 p.m. until adjournment on October 28 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, NIA, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland 20892, (telephone: 301/496–9322) will provide a summary of the meeting and a roster of committee members. Dr. Richard C. Greulich, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: August 27, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87–20351 Filed 9–2–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Application for Natural Gas Pipeline Right-of-Way, Louisiana

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that under section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449; 30 U.S.C. 185), as amended by Pub. L. 93–153, Lear Petroleum Corporation, has applied for a right-of-way to construct approximately

3.84 miles of 12¾" O.D. natural gas pipeline across a portion of D'Arbonne National Wildlife Refuge, Louisiana, described as follows:

A right-of-way with a beginning width of thirty (30) feet and centerline point of beginning lying on the Northeast Boundary of the D'Arbonne National Wildlife Refuge, said point of beginning being also on the Southwesterly Right-of-Way Line of State Route No. 143 and the same point of beginning being located fifteen (15) feet East of the Easterly Right-of-Way Line of Louisiana Power and Light Company's 115 KV Sterlington-Drew Electric Transmission Line, all in the SE¼ of the NW¼ of Section 17, T. 19 N., R. 3 E., Union Parish, Louisiana; thence, South 08°05' West, approximately thirty-five (35) feet; thence, South 53°05' West, approximately fifteen (15) feet to a point five (5) feet East of the Easterly Right-of-Way Line of LP & L Company's Transmission Line, with the proposed right-of-way narrowing at this point to ten (10) feet in width; thence, South 08°05' West and parallel to said LP & L Company's Easterly Right-of-Way Line in Section 17, crossing the Union Parish—Quachita Parish Line and continuing South 08°05' West, parallel to LP & L Company's Power Line in Quachita Parish crossing Sections 20, 29, 32, and a portion of Section 31, T. 19 N., R. 3 E., and a portion of the NE¼ of the NE¼ of Section 6, T. 18 N., R. 3 E., a total distance from the point of beginning of approximately 19,480 lineal feet (3.69 miles), and located approximately 580' South of the North Line of said Section 6, T. 18 N., R. 3 E.

The right-of-way then widens at this point to fifty (50) feet in width, continuing South 36°55' East approximately 840 lineal feet (.15 mile) to the Southern Boundary of the D'Arbonne National Wildlife Refuge, said point of ending being located on the South Line of the NW¼ of the NW¼ of Section 5, T. 18 N., R. 3 E. and approximately one hundred fifty (150) feet east of the West Line of said Section 5.

Total approximate acreage of proposed right-of-way is 5.45 acres.

The purpose of this notice is to inform the public that the United States Fish and Wildlife Service is currently considering the merits of approving this application.

DATE: Interested persons desiring to comment on this application should do so on or before October 5, 1987.

ADDRESS: Comments should be addressed to the Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Room 1200, Atlanta, Georgia 30303.

August 27, 1987.

David B. Allen,

Acting Regional Director.

[FR Doc. 87-20242 Filed 9-2-87; 8:45 am]

BILLING CODE 4310-55

Bureau of Indian Affairs

Irrigation Projects; San Carlos Irrigation Project

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in exercise of authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3.

Pursuant to Part 173, Title 25, Code of Federal Regulations, certain lands comprising the San Carlos Reservoir site near Globe, Arizona will be subject to granting of concessions after March 23, 1988. The San Carlos Apache Tribe has submitted a reapplication. Any person or party interested in commenting on the concession permit must submit a letter to the Project Engineer, San Carlos Irrigation Project, P.O. Box 250, Coolidge, Arizona 85228. Letters will be accepted until October 1, 1987. If transmitted through the United States mail service, letters must be post marked on or before October 1, 1987.

There is no current form for new applicants for the concession permit; therefore, based on responses to this notice, the Project Engineer may require detailed proposals from new applicants in order to give further consideration to a grant of concession.

In lieu of an application form, a new applicant will be required to prepare an Environmental document as defined in 40 CFR 1508.10.

SUPPLEMENTARY INFORMATION: Concession for San Carlos Reservoir site shall be granted by the Secretary of the Interior only with the concurrence of the San Carlos Apache Tribe.

FOR FURTHER INFORMATION CONTACT: Further information about concessions on San Carlos Reservoir site may be obtained from Mr. Ralph Esquerra, Project Engineer, San Carlos Irrigation Project, telephone (602) 723-5439.

Date: August 19, 1987.

James H. Stevens,

Phoenix Area Director.

[FR Doc. 87-20279 Filed 9-2-87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AA-48892-I]

Proposed Reinstatement of Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48892-I has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 22 S., R. 2 W.,
Sec. 11, NE¼SW¼, W½SW¼.
(120 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this notice have been paid. The required rentals and royalties accruing from December 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48892-I as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective December 1, 1986, subject to the terms and conditions cited above.

Dated: August 28, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87-20328 Filed 9-2-87; 8:45 am]

BILLING CODE 4310-JA-M

[WY-920-07-4111-15; W-89871]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-89871 for lands in Crook County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year, and 16-2/3 percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for

reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–89871 effective September 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Fred O'Ferrall,

Acting Chief, Leasing Section.

[FR Doc. 87–20329 Filed 9–2–87; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–07–4111–15; W–99014]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–99014 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year, and 16⅔ percent, respectively.

The lessees have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188) and the Bureau of Land Management is proposing to reinstate lease W–99014 effective May 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Fred O'Ferrall,

Acting Chief, Leasing Section.

[FR Doc. 87–20330 Filed 9–2–87; 8:45 am]

BILLING CODE 4310–22–M

[AZ–940–07–4132–04]

Arizona State Office; Temporary Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of office closure.

SUMMARY: On Monday, September 14, 1987, the Bureau of Land Management Arizona State Office, 3707 North 7th Street, Phoenix, Arizona, will be closed. Limited access to the office due to street closures will occur as a result of the visit of Pope John Paul II to the City. Applications and other documents will be accepted for filing on the next business day, September 15, 1987.

The Arizona State Office closure will have no effect on the District and Resource Area Offices or the Phoenix Training Center. Those offices will remain open to the public.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Joy Ayers, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241–5547.

Beaumont C. McClure,

Acting State Director.

[FR Doc. 87–20243 Filed 9–2–87; 8:45 am]

BILLING CODE 4310–32–M

[NM–010–4212–14; NM NM 68429]

Realty Action on Proposed Land Disposal in Santa Fe County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to advise the public that the Albuquerque District, of the Bureau of Land Management (BLM), is proposing to dispose of 10 acres of public land near the Village of La Cienega within Santa Fe County, State of New Mexico. The BLM has determined that the acres of public land described below are suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 (1976).

New Mexico Principal Meridian, New Mexico

T. 16 N., R. 8 E.,
Sec. 31, S½SE¼NE¼SE¼, N½NE¼SE¼SE¼.

These lands are presently used for landfill purposes and were C&MU classified on September 9, 1970. The classification effectively segregates against sales under R.S. 2455.

Currently the injunction filed in the National Wildlife Federation lawsuit prohibits the modification or termination under FLPMA of any C&MU classification in effect on January 1, 1981, unless they are not isolated, too rough for cultivation or too mountainous.

The subject parcel has been determined to be suitable for disposal under the above criteria. The lands are also suitable for disposal as outlined in 43 CFR 2710.0–3(a)2 whereby it shall serve important public objectives in providing Santa Fe County residents a facility to aid in community expansion and economic development.

This Notice of Realty Action will be published once a week for three weeks in a newspaper of general circulation and will be sent to the New Mexico Congressional Delegation and the relevant congressional committees by BLM.

The terms and conditions applicable to the disposal are:

1. The patent will contain a reservation to the United States for ditches and canals.

2. Disposal is for surface estate only. The patent will contain a reservation to the United States for all minerals.

3. Disposal will be made subject to prior existing rights.

Additional information pertaining to this disposal including the environmental documents are available for review at the Taos Resource Area Office, Plaza Montevideo, Cruz Alta Road, Taos, New Mexico 87571, or telephone (505) 758–8851. For a period of 45 days from the date of this notice, interested parties may submit written comments to the Taos Resource Area Manager. Any adverse comments will be evaluated by the New Mexico State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Richard Fagan,

Acting District Manager.

Dated: August 24, 1987.

[FR Doc. 87–20244 Filed 9–2–87; 8:45 am]

BILLING CODE 4310–FB–M

Realty Action; Direct Sale of O&C Land in Jackson County, OR

The following land has been found suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719, at no less than the appraised fair market value of $6,000.00:

Willamette Meridian, Oregon

T. 38 S., R. 3 E.,
Sec. 31, a portion of the NE¼SE¼

containing 23.4 acres.

The above described federal land is hereby segregated from apropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes pending disposition of this action or 270 days from the date of this publication of this notice, whichever occurs first.

The land will not be offered for sale until at least sixty (60) days after publication of this notice. The land is being offered by direct sale procedures to Mr. James C. Miller of Ashland, Oregon under 43 CFR 2711.3–3 sections (a) (3) and (4). To do otherwise could cause Mr. Miller to suffer substantial economic loss to his ranching business. The ownership pattern and access of this area also indicates that a direct sale is appropriate.

This parcel was acquired for a specific purpose and is no longer required for that or any other Federal purpose. No significant resource values will be affected by the disposal. The consistency of this area's resource values will be maintained even though the sale is to occur.

This notice replaces the Notice of Realty Action; Direct Sale of O&C Status Federal Land in Jackson County, Oregon, published in the **Federal Register**, Volume 52, No. 142, on July 24, 1987, on pages 27861 and 27862, which is hereby canceled in its entirety.

For Further Information Contact: Don Kreitner, Klamath Area Realty Specialist of the Medford District Office, 3040 Biddle Road, Medford, Oregon 97504, (503) 776–3923.

Conditions, reservations and terms of the sale are as follows:

1. Acceptance of the sale will also constitute an application for conveyance of the mineral estate, with the exception of the oil and gas resources which will be reserved to the United States, in accordance with section 209 of the Federal Land Policy and Management Act U.S.C. 1719. The sale proponent must include with his bid deposit a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

2. Mr. Miller shall, at the same time the patent is issued, grant to the United States an exclusive easement for the Bureau of Land Management's Burnt Creek Road #39–3E–21 as described within Medford District's original fee acquisition RE–M–487 (50' C/L by 2100' for 4.2 acres more or less).

3. Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

4. Patents will be issued subject to all valid existing rights and reservations of records.

If the offer is not accepted by Mr. Miller, the land will be offered to the public on a continuing basis until sold or withdrawn from sale.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date of issue August 26, 1987.

David A. Jones,

District Manager.

[FR Doc. 87–20245 Filed 9–2–87; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting Jeane Kalas at 303–231–3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Washington D.C. 20503, telephone 202–395–7340.

Title: Auditing and Financial Systems Reports on Solid Minerals.

Abstract: The information used in the Auditing and Financial System (AFS) is collected from lessees and lease operators producing minerals from leased Indian lands or from leased Federal lands. The information provides comprehensive data on solid mineral sales and royalties and is necessary to document payments, maintain royalty accounts, and audit. The AFS, a revenue accounting system, is used as a cross-check with the Production Accounting and Auditing System (PAAS), which tracks mineral production. The data comparison also aids in tracking losses caused by carelessness, fraud, and theft.

Bureau Form Number: MMS–4014, MMS–4030.

Frequency: Monthly, quarterly, annually, or on occasion.

Description of Respondents: Solid mineral companies and leases operators producing minerals from leased Federal and Indian lands.

Annual Responses: 846

Annual Burden Hours: 1242

Bureau Clearance Officer: Dorothy Christopher, 703–435–6213.

Date: August 11, 1987.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 87–20246 Filed 9–2–87; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting Jeane Kalas at 303–231–3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Application For and Disposition Of Royalty Oil Taken In Kind.

Abstract: The Government has the option to accept oil rather than money in payment of royalties owed by companies producing minerals from leased Federal onshore and offshore lands. Title to such royalty oil is transferred to the Government, and when the Secretary determines that small refiners do not have access to adequate supplies of oil, the Secretary conducts a sale of royalty oil to eligible refiners. Form MMS–4070, Application for the Purchase of Royalty Oil, is submitted by refiners interested in purchasing royalty oil. The information collected is used by MMS to determine if the applicant meets eligibility requirements, and provides a basis for the allocation of available royalty oil among eligible refiners. Form MMS–4071, Semiannual Report of Royalty-In-Kind Oil Entitlements and Deliveries, documents monthly entitlements and deliveries of royalty oil from lease operators to eligible refiners.

Bureau Form Number: MMS–4070, MMS–4071.

Frequency: On occasion, semiannually, annually.

Description of Respondents: Operators of Federal offshore and onshore leases, oil refiners.

Annual Responses: 1,770

Annual Burden Hours: 833.

Bureau of Clearance Officer: Dorothy Christopher, 703–435–6213.

Dated: July 24, 1987

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 87-2024 Filed 9-2-87; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Alexander et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on August 19, 1987, a proposed partial consent decree in *United States v. Alexander et al.*, Civil Action No. G-86-267, was lodged with the United States District Court for the Southern District of Texas. This partial consent decree settles a potion of a lawsuit filed on July 18, 1986, pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, for the recovery of response costs incurred by the United States with respect to a hazardous waste site located in LaMarque, Texas, and known as the "Motco Site." The complaint alleged, among other things, that the defendants generated hazardous substances that are located at the Site and that the United States has incurred and will continue to incur response costs in response to the release or threat of release of hazardous substances.

Under the terms of the proposed partial consent decree, the settling defendants agree to fund and perform onsite remedial work at the Site. The partial consent decree does not address offsite and groundwater remedial work, nor does it resolve the claims of the United States relative to such work. The partial consent decree includes the preauthorization by the Environmental Protection Agency of a claim by the settling defendants against the Hazardous Substance Response Trust Fund for 21% of the cost of the remedial work undertaken by the settling defendants, subject to a cap of $9.324 million. The partial consent decree also calls for the settling defendants to reimburse the United States for $2,586,034.11 in past government response costs incurred through March 31, 1986, and to reimburse the United States for all of its response and oversight costs related to the onsite remedial work incurred after March 31, 1986.

The Department of Justice will receive comments relating to the proposed partial consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States v. Alexander et al.*, D.J. Ref. 90-11-3-74.

The proposed partial consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Pamela Phillips, Office of Regional Counsel, U.S. Environmental Protection Aency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-2120

United States Attorney's Office

Contact: Robert Darden, Assistant United States Attorney, U.S. Courthouse and Federal Building, 515 Rusk, Houston, Texas 77002, (713) 229-2691

Copies of the proposed partial consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylania Avenue, NW., Washington, DC 20530. A copy of the proposed partial consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $20.30 payable to Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-20354 Filed 9-2-87; 8:45 am]

BILLNG CODE 4410-01-M

Lodging of Consent Decree; Koppers Co., Inc., et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on August 7, 1987, a proposed Consent Decree in *United States v. Koppers Co., Inc., et al.*, was lodged with the United States District Court for the District of Massachusetts. The Consent Decree concerns releases of hazardous substances and remedial measures to be taken in response thereto at the Hocomonco Pond Site in Westborough, Massachusetts, as well as recovery of Environmental Protection Agency's ("EPA") past costs for response action, pursuant to sections 104, 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, 42 U.S.C. 9604, 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973.

Under the terms of the Consent Decree, Koppers will implement a remedy at the site and pay $400,000 to EPA for reimbursement of EPA's past costs. Koppers will also pay EPA's oversight costs as they are incurred up to the amount of $230,000. Koppers will also pay the State's oversight costs up to the amount of $15,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States v. Koppers Co., Inc., et al.*, D.J. Ref. 90-11-2-165.

The proposed Consent Decree may be examined at the office of the United States Attorney, 1107 John W. McCormack Federal Building, USPO and Courthouse, Boston, Massachusetts 02109 and at the Region I office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203. Copies of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. Any request for a copy of the Consent Decree should be accompanied by a check in the amount of $1.50 for copying costs ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-20355 Filed 9-2-87; 8:45 am]

BILILING CODE 4410-01-M

Office of the Attorney General

Pollution Control; Lodging of Consent Judgment Pursuant to Clean Air Act; Esselte Pendaflex Corp.

In accordance with Departmental

policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Judgment ("Judgment") in *United States v. Esselte Pendaflex Corporation*, C.A. 85–5511, has been lodged in the United States District Court for the District of New Jersey on August 18, 1987.

The proposed Judgment concerns alleged violations of the Clean Air Act ("Act"), 42 U.S.C. 7401 *et seq.*, and provisions of the New Jersey State Implementation Plan ("SIP") established pursuant to Section 110 of the Act, 42 U.S.C. 7410. The alleged violations occurred during the defendant's manufacture of metal office furniture in Moonachie, New Jersey. During the manufacturing process, coatings containing volatile organic substances ("VOS") were applied in excess of the amounts permitted by the New Jersey SIP. The proposed Judgment requires the company to comply with the New Jersey SIP. Stipulated penalties for future violations are also provided. Finally, the proposed Judgment requires the defendant to pay a $110,000 civil penalty for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Judgment. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Esselte Pendaflex Corporation*, D.J. Ref. No. 90–5–2–1–873.

The proposed Judgment may be examined at the Office of the United States Attorney, 970 Broad Street, Room 502, Newark, New Jersey 07102, the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed Judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Dated: August 6, 1987.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice.

[FR Doc. 87–20248 Filed 9–2–87; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Proposed Termination of Judgment and Decree

Notice is hereby given that Manville Sales Corporation ("Manville"), as successor to Holophane Company, Inc. ("Holophane"), has filed with the United States District Court for the Southern District of Ohio a motion to terminate the judgment and decree ("judgment") in *United States v. Holophane Company, Inc.*, Civil No. 2659; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on November 10, 1949) alleged that Holophane, along with two foreign firms named as co-conspirators but not defendants, conspired to divide international markets for the production, distribution and sale of prismatic glassware and lighting fixtures containing prismatic glassware ("prismatic products"). The judgment (entered on February 8, 1954) enjoins Holophane, among other things, from continuing to carry out any of the agreements which constituted the alleged conspiracy. The judgment further enjoins Holophane from granting any technological information or know-how to any foreign person on an exclusive basis and from granting any person rights under trademarks or trade names in any foreign country where the purpose of effect of such grant is to interfere with the exportation from the United States to such foreign country of goods manufactured by Holophane.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and judgment, Manville's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at Room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone 202–633–2481), and at the Office of the Clerk of the United States District Court for the Southern District of Ohio, Eastern Division, Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the judgment to the Department. Such comments must be received within the 30–day period established by court order, and will be filed with the court.

Comments should be addressed to John A. Weedon, Chief, Cleveland Field Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone 216–522–4070).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87–20300 Filed 9–2–87; 8:45 am]

BILLING CODE 4410–01–M

Office of Juvenile Justice and Delinquency Prevention

Grants and Cooperative Agreements; Missing Children's Assistance Act Final Program Priorities

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of final program for third year program under Missing Children's Act.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing its final program priorities for making grants and contracts under the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, for the third year of the Missing Children's Program.

FOR FURTHER INFORMATION CONTACT: Michelle Easton, Coordinator, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724–7655.

SUPPLEMENTARY INFORMATION: Responsibility for establishing annual research, demonstration, and service program priorities for making grants and contracts pursuant to Section 406 of the Missing Children's Assistance Act rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. As required by the Act, the Administrator announced his proposed program priorities on May 22, 1987, and invited public comment on these priorities for 60 days. Several comments were received on this notice. The comments were generally supportive of the new proposed program priorities. The Administrator is now announcing the establishment of the final funding priorities.

The final funding priorities follow:

1. Prevention. A variety of programs are currently used to educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children. As few programs target the broad range of children's ages, standards for curricula need to be developed for pro-active prevention education programs that would apply to children of all ages.

2. Training for Local Officials on Exploitation of Children. Current emphasis on training in this area has been primarily at the state and Federal levels. It is important that local officials become better informed on issues relating to child exploitation, including how best to deal with those who exploit children and the children harmed by the exploitation.

3. Training and Policy Development for Law Enforcement Administrators on Missing and Exploited Children Policies and Procedures. Expansion of current training programs in this area is needed to further educate elected officials, appointed managers, judges and district attorneys, in addition to law enforcement officials.

4. Comparative Systems Responses to the Return of Missing Children to Their Familes. The project would examine the processes, and improvements that could be made in the processes, for returning missing children to their families.

5. The Child Victim as Witness Research and Development Program. This study will design, implement and test new strategies to be used to improve court policies and practices for handling child victim witnesses.

6. Families of Missing Children: Psychological Consequences and Promising Interventions. This research will increase our knowledge of and develop effective treatment of alternatives for the psychological consequences of families with missing exploited children.

7. Assistance to Private Voluntary Organizations. The Administrator has added this program to the 1987 Final Funding Priorities. This is a continuation of a 1986 Funding Priority. The grants are intended to expand the capacity of private voluntary organizations serving missing and exploited children.

Deletion from Proposed Funding Priorities. Deleted from the Proposed Funding Priorities published on May 22, 1987 is the Public Awareness Campaign. Instead we will fund additional assistance to Private Voluntary Organizations. We will consider the Public Awareness Campaign again in FY 1988. Pursuant to section 404(a) and (b), the following programs were awarded or will be awarded with FY 1987 Missing Children's Funds:

1. The National Center for Missing and Exploited Children to: (a) Provide the information derived from the National Toll-Free telephone line to appropriate law enforcement entities and to enable individuals to report information regarding the location on any missing child, or a child 13 years of age or younger, whose whereabouts are unknown to such child's legal custodian, and request information pertaining to procedures necessary to reunite such children with such child's legal custodian. (Section 404(a)(3), 404(b)(1))

(b) Serve as a national resource center and clearinghouse. (Section 404(b)(2))

2. Institute for Non-profit Organization Management (INPOM) to: Serve as a national resource center and clearinghouse that focus on providing technical assistance to private voluntary organizations working on the issue of missing and exploited children. (Section 404(b)(2))

3. National Incidence Study: Having completed several pilot studies, funding of the first national incidence study will begin in 1987. Results of the study are anticipated in 1988. (Section 404(b)(3))

Dated: August 28, 1987.
Approved:

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87-20274 Filed 9-2-87; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Inter-Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Dance, Inter-Arts and State Programs Presenting Touring Initiative) to the National Council on the Arts will be held on September 19, 1987 from 10:00 a.m.-5:00 p.m. in room M0-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 19, 1987 from 3:30 p.m.-5:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on September 19, 1987 from 10:00 a.m.-3:30 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: August 28, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-20249 Filed 9-2-87; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Inter-Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Folk Arts Advancement) to the National Council on the Arts will be held on September 21, 1987, from 9:00 a.m.-4 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: August 28, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-20250 Filed 9-2-87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

United States Antarctic Program Safety Review Panel; Meeting

The National Science Foundation announces the following meeting:

Name: United States Antarctic Program (USAP) Safety Review Panel (USRP).

Date and Time: September 17, 18, 1987: 9:00 a.m. to 5:00 p.m. each day.

Place: Sheraton Washington, 2660 Woodley Road NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Mr. Russell L. Schweickart, Chairman, USAP Safety Review Panel, Room 510, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7673.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: Initial meeting of the USAP Safety Review Panel, to discuss organizational matters and to provide background information to the panel.

Agenda: A general meeting to introduce the panel to the nature and scope of the U.S. Antarctic Program, and to acquaint the panel with safety issues in several areas, including aviation, fire, and industrial.

Reason for Late Notice: Unable to confirm meeting location.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87–20275 Filed 9–2–87; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee on Chemical, Biochemical, and Thermal Engineering; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee on Chemical, Biochemical, and Thermal Engineering.

Type of Meeting: Spetember 22, 1987—Open; September 23, 1987—Open.

Date: September 22 and 23, 1987.

Place: 1800 G Street NW., Washington, D.C. 20550, Room 643.

Contact Person: Dr. E.M. Sparrow Division Director for Chemical, Biochemical, and Thermal Engineering, Room 1126, National Science Foundation, Washington, DC 20550. Telephone: 202–357–9606.

Summary Minutes: May to obained from Dr. E.M. Sparrow, Director, Division of Chemical, Biochemical, and Thermal Engineering, Room 1126, National Science Foundation, Washington, DC 20550. Telephone: 202–357–9606.

Purpose of Committee: To provide directions to Chemical, Biochemical, and Thermal Engineering research.

Agenda:

Tuesday, September 22, 1987—Open

9:00 a.m.—Report on the Chemical, Biochemical, and Thermal Engineering Program and Divisional Activities, and on Engineering Directorate activities.
11:45 a.m.—Recess.
1:15 p.m.—The National Science Foundation/Engineering vision and community responses to it.
4:00 p.m.—Committee recommendations relevant to the National Science Foundation/Engineering vision.
5:00 p.m. Adjournment for the day.

Wednesday, September 23, 1987—Open

8:30 a.m.—New directions in chemical, biochemical, and thermal engineering
10:00 a.m.—Drafting of Committee report
11:45 a.m.—Recess
1:15 p.m.—Continuation of report drafting
2:00 p.m.—Presentation and discussion of the report
4:00 p.m.—Adjourn.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87–20276 Filed 9–2–87; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Exemption Determinations; Carolina Power & Light Company, et al. (Brunswick Steam Electric Plant, Units 1 and 2)

I.

Carolina Power & Light Company (the licensee) is the holder of Facility Operating License Nos. DPR–71 and DPR–62, which authorize operation of the Brunswick Steam Electric Plant, Units 1 and 2, respectively (Brunswick or the facilities). The licenses provide, among other things, that the facilities are subject to all rules, regulations and Order of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are boiling water reactors located at the licensee's site in Brunswick County, North Carolina.

II.

Section 50.48 of 10 CFR Part 50 requires that licensed operating reactors be subject to the requirements of Appendix R of 10 CFR Part 50. Appendix R contains the general and specific requirements for fire protection programs at licensed nuclear facilities. On February 17, 1981, the fire protection rule for nuclear power plants, 10 CFR 50.48 and Appendix R, became effective. This rule required all licensees of plants licensed prior to January 1, 1979, to submit by March 19, 1981: (1) Plans and schedules for meeting the applicable requirements of Appendix R, (2) a design description of any modifications proposed to provide alternative safe shutdown capabilities pursuant to paragraph III.G.3 of Appendix R, and (3) exemption requests for which the tolling provisions of § 50.48(c)(6) were to be invoked.

III.

By letter dated December 3, 1986, the licensee requested an exemption from Section III.J. of Appendix R to 10 CFR Part 50 for the lights in the control room common to both Units 1 and 2 of the Brunswick Steam Electric Plant. Section III.J requires emergency lighting units with at least an 8-hour battery power supply to be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

The lights in the control room are designed to be powered by the emergency diesel generators in the event of the loss of offsite power and by the station batteries upon the additional loss of the emergency diesel generators. In addition, the power sources from the diesel generators are separated from each other by three-hour rated fire barriers in the diesel generator building and in separate underground ducts to the control building. The licensee notes that a single credible fire, exterior to the control building, will not cause a loss of control room lighting; and, thus, the licensee has requested an exemption. The acceptability of the exemption request is addressed below. More details are contained in the Commission's related Safety Evaluation issued concurrently with this exemption.

The licensee's exemption request involves the need for 8-hour battery-powered lighting units in areas having safe shutdown equipment. The reason for requiring 8-hour battery-powered emergency lighting is to ensure that at least minimum lighting is available for performance of manual actions necessary for safe shutdown after a fire. The licensee requested the exemption to allow the use of:

1. Diesel generators to power lighting in case of loss of offsite power.

2. Station batteries capable of supplying power for a minimum of 120 minutes if the diesel generators fail.

The Control Room area is common to both units and area lighting is provided equally by each unit. Every other light fixture in the area is fed from the opposite unit. The normal AC lighting power sources for the Control Room are physically separated by the length of the Control Building, since the cables enter the building at opposite ends. This arrangement will assure that adequate Control Room lighting will be provided for any fire where safe shutdown is accomplished from the Control Room.

The Control Room area is the only area where both sources of power come

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in close proximity. A Control Room fire significant enough to damage both lighting power sources would result in an evacuation of the area. For this condition, egress lighting (eight-hour battery units) from the area has been installed.

For a fire in any area outside the Control Room, adequate Control Room lighting will be provided by either the diesel generators or the station batteries. These provisions will assure that lighting is provided for a duration which would meet and, in fact, exceed the eight-hour requirement in paragraph III.J of Appendix R.

In addition, both trains of the emergency diesel generators are routed underground and separated by a 3-hour barrier in the Diesel Generator Building. Therefore, a single credible fire either in the building or in the yard will not result in a loss of both trains from both units. Therefore, a single credible fire exterior to the Control Building will not cause a loss of AC lighting.

IV.

The licensee provided a determination that special circumstances exist under 10 CFR 50.12(a). As discussed above, the underlying purposes of the requirement of Section III.J of Appendix R to 10 CFR Part 50 are to ensure that at least minimum lighting is available for the performance of actions necessary for safe shutdown after a fire. The application of the regulation in this case is not necessary to achieve its underlying purpose. The purpose can be met with the use of emergency diesel generators and station batteries.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), the Exemption, as described in Section III, is authorized by law and will not present an undue risk to the public health and safety and is consistent with common defense and security, and special circumstances are present for the Exemption, in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the Exemption from paragraph III.J of Appendix R to 10 CFR Part 50 to allow the use of emergency lighting, powered initially by the emergency diesel generators, and then by station batteries.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (52 FR 29452). This exemption is effective upon issuance.

Dated at Bethesda, Maryland this 27th day of August 1987.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.

[FR Doc. 87-20326 Filed 9-2-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Director's Task Force on the Combined Federal Campaign

AGENCY: Office of Personnel Management.

ACTION: Notice of open meetings.

SUMMARY: OPM is holding open meetings concerning the future of the Combined Federal Campaign. According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Director's Task Force on the Combined Federal Campaign will be held on:

DATES:

September 16, 1987, 10:00 a.m., Federal Building, Room 305C, 26 Federal Plaza, New York, N.Y.

September 23, 1987, 1:00 p.m., Federal Office Building, Room 350, 23 South Dearborn, Chicago, Ill.

September 25, 1987, 9:30 a.m., Federal Office Building, Room 754, 525 Griffin Street, Dallas, TX

September 29, 1987, 9.30 a.m., San Francisco Regional Training Center, 120 Howard Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Jeremiah J. Barrett, Secretary, Director's Task Force on the Combined Federal Campaign, 1900 E Street NW., Room 7354, Washington, D.C. 20415, (202) 632-5564.

SUPPLEMENTARY INFORMATION: All persons wishing to testify before the Task Force must submit eight copies of their testimony to Mr. Barrett at the above address no later than seven days prior to the meeting at which they wish to testify.

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 87-20395 Filed 9-2-87; 10:29 am]

BILLING CODE 6325-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-61]

Unfair Trade Practices; Brazil Patent Protection for Pharmaceuticals; Public Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public hearing.

SUMMARY: USTR has schedule a public hearing in this investigation for September 14, 1987, at the Federal Home Loan Bank Board Building, 1700 G Street, NW., Washington, DC in the 6th floor Board Room.

FOR FURTHER INFORMATION CONTACT: Christina Lund, Director for Brazil and Southern Cone Affairs, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC, telephone (202) 395-5190; or Catherine R. Field, Assistant General Counsel, Office of the U.S. Trade Representative (same address), telephone (202) 395-3432.

SUPPLEMENTARY INFORMATION: On July 23, 1987, the U.S. Trade Representative initiated an investigation into the Brazilian Government's denial of patent protection to pharmaceutical products and processes for their manufacture. USTR requests comments regarding: (1) The effect of lack of patent protection in Brazil on investment; (2) other benefits that could accrue to Brazil when they provide patent protection to pharmaceuticals; and (3) the effect of Brazil's policy and practice of denying patent protection on U.S. firms operating in Brazil.

A public hearing is scheduled for September 14, 1987, at 10:00 a.m. at the Federal Home Loan Bank Board Building, 1700 G Street, NW., Washington, DC in the 6th floor Board Room. Interested persons desiring to present oral testimony must submit a request in writing, accompanied by a statement or brief in 20 copies in English by noon, September 7, 1987, to Christina Lund or Catherine Field at the address listed above. Remarks at the hearing should be limited to a 15-minute summary of the written statement to allow for possible questions from the hearing officers.

Persons desiring to make written comments only should provide a written statement in 20 copies in English by September 10, 1987, to the persons specified above.

Judith Hippler Bello,

Chairman, Section 301 Committee.

[FR Doc. 87-20389 Filed 9-2-87; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24858; File No. SR-Amex-87-117]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange, Inc. Relating to an Extension of the Rule 126(g) Precedence Based on Size Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 18, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex Proposes to extend the Rule 126(g) precedence based on size pilot program, set forth in File No. SR-Amex-86-14,[1] unit May 1, 1988.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In April 1986, the Amex proposed a three-month pilot program under Rule 126(g) during which orders to cross blocks of 50,000 shares or more would be permitted to have precedence over other bids and offers. (*See* File No. SR-Amex-86-14 and the Commission's order approving the pilot, note 1, *supra*, for details of the program.) On February 12, 1987 the Amex requested an extension of the Rule 126(g) precedence based on size pilot program until May 1, 1987 (File No. SR-Amex-88-6). The SEC granted the extension on March 20, 1987.[2] The Amex believes that extension of the pilot program for an additional year will enable the Exchange to study the pilot program for a period of time sufficient to assess adequately the effectiveness of the program.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)5 in particular in that it is intended to remove impediments to and perfect the mechanism of a free and open market and a national market system and to facilitate transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-87-17 and should be submitted by September 24, 1987.

IV. Commission Findings and Order Granting Accelerated Approval

The Amex's original proposal to establish block size precedence,[3] was based on the Exchange's concern that an increasing number of block transactions in Amex listed securities were being conducted on regional exchanges rather than on the Amex. The Amex believed the reason for routing such block transactions to regional exchanges was not the cost of transactions on the Amex but rather the difficulty of effecting block transactions of large size without losing an excessive number of shares due to priority rules.

In its order originally approving the Rule 126(g) pilot, the Commission stated that it was unclear from the data provided by Amex that the Exchange was losing a significant amount of block order business to regional exchanges because of its inability to provide size precedence to such orders on the floor. In addition, the Commission expressed concern about changing existing Amex rules so that large institutional investors executing block size orders would have precedence over smaller customer orders. Nevertheless, the Commission decided to approve the proposal on a pilot basis in light of the fact that the size precedence would only be permitted in orders to cross blocks of 50,000 shares or more.[4] In addition, Amex indicated that it would carefully monitor the pilot program and provide the Commission with information regarding the operation of the pilot and its impact on the routing of block orders from Amex to regional exchanges.

As we noted in our order extending the pilot program until May 1, 1987,[5] Amex had stated that it did not have sufficient information to enable it to evaluate the effectiveness of the pilot program due to the relatively infrequent

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[1] This pilot program was originally approved for a three month period by the Commission in Securities Exchange Act Release No. 23693, October 9, 1986, 51 FR 37358.

[2] Securities Exchange Act release No. 24240, March 20, 1987, 52 FR 10430.

[3] *See* note 1, *supra*.

[4] The Commission noted in its order that it believes that this restriction will serve to limit the application of the pilot program to the more active and liquid Amex issues.

[5] *See* note 2, *supra*.

use of the pilot program procedures. In spite of the most recent extension of the pilot program, the Commission believes there is still insufficient information to assess the effectiveness of the Amex's pilot program.[6] In view of this, the Exchange has requested an extension of the pilot program for one year, until May 1, 1988, to enable the Exchange to study the pilot for a period of time adequate to assess the effectiveness of the program.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder. The Commission believes that it is appropriate to extend, until May 1, 1988, the Amex size precedence pilot program in order to allow the Exchange to collect additional information regarding the operation and effectiveness of the pilot, thereby enabling the Exchange to assess adequately the effectiveness of the program.[7]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the Amex's pilot program under Rule 126(g) may continue on an uninterrupted basis. In addition, the Commission has not received any negative comment on the pilot during its operation.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: August 27, 1987.

[FR Doc. 87-20287 Filed 9-2-87; 8:45 am]

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[6] The Amex provided the Commission with an analysis of the results of the Rule 126(g) pilot program for the period from October 29, 1986, through February 28, 1987. During the approximately four month period covered by the data, the block precedence exemption was used only 29 times in 19 different securities. The Commission does not believe that this data provides sufficient information to enable the Commission to evaluate the effect of such a rule on those bids or offers over which block orders are given size precedence. *See* letter from Jules L. Winters, Senior Vice President, Trading Analysis Division, Amex, to Sharon Lawson, Branch Chief, Division of Market Regulation, SEC, dated April 24, 1987.

[7] Amex has indicated that it will provide us with information on the pilot by February 1, 1988, so that the Commission has time to review the data prior to the pilot's expiration.

[Release No. 34-24853; File No. SR-CBOE-87-24]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On June 9, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) (1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to permit the CBOE to list long term option series.

The proposed rule change was noticed in Securities Exchange Act Release No. 24662 (June 30, 1987), 52 FR 25678 (July 8, 1987). No comments were received by the Commission on the proposed rule change.

The proposed rule change will allow the Exchange to list long term equity and index option series. Currently, CBOE equity options generally begin trading approximately nine months prior to their expiration and index options begin trading 12 months prior to their expiration. The proposal would allow the CBOE to list option series that expire 12 to 24 months from the time they are listed.

The CBOE may add up to four additional expiration months for such longer term options. When listed, such option series will be opened for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations will be posted for such long term option series until they are opened for trading. When these option series have less than 12 months to expiration (nine for equity options), they will be treated like any other non long-term option for all trading procedures, including opening procedures.

Strike price interval, bid/ask differential, and continuity rules will not apply to such long term option series until the time to expiration is less than 12 months for index options or less than nine months for equity options. The CBOE believes it is appropriate to waive these rules initially because of the lack of historical pricing data upon which to base such prices.[3] Strike price interval requirements and bid/ask differential rules currently are based on options that expire nine to 12 months from the time they begin trading. There currently is no basis for establishing accurate prices for long-term options that will expire 12 to 24 months from the time they begin trading. Moreover, the price of an option, whether an equity option or an index option, generally is dependent upon a series of factors.

In addition, the Commission notes that the bad/ask differential and continuity rules are part of the general rule that obligates market-makers to maintain a fair and orderly market.[4] The Commission believes that the requirements of this rule are broad enough, even in the absence of bid/ask differential and continuity requirements, to allow the Exchange authority to make a finding of inadequate market-maker performance should a market-maker enter into transactions or make bids or offers in long term options that are inconsistent with the maintenance of a fair and orderly market.

The Commission agrees that it may be impractical for the CBOE to apply the usual strike price interval, bid/ask differential, and continuity rules to the longer term options. However, the CBOE has stated that it will monitor the trading in the longer-term options closely to gain experience with regard to these options, and that it will reexamine the applicability of these rules to the long-term options in one year's time.[5]

The proposed rule change is designed to facilitate transactions in options by providing investors with additional means to hedge equity portfolios from long-term market risk. The proposal responds to requests from institutional customers to list long term options. Currently, institutional customers use options to hedge the risks associated with holding diversified equity portfolios. The proposal would allow institutions to use long term options to protect portfolios from long-term market moves with a known and limited cost. The Commission believes that the proposed rule change will thus better serve the long-term hedging needs of institutional investors.

Long term options also would provide institutions with an alternative to insuring portfolios with futures positions. Many institutional investors now use financially equivalent futures

[1] 15 U.S.C. 78s(b) (1) (1982).

[2] 17 CFR 240 19b-4 (1986).

[3] Telephone conversation between Frederic Krieger, Associate General Counsel, CBOE, and Joseph Furey, Branch Chief, Division of Market Regulation, Commission, August 19, 1987.

[4] *See* CBOE Rule 8.7, Obligations of Market Makers.

[5] Telephone conversation between Nancy Crossman, Associate General Counsel, CBOE, and Mary Revell, Staff Attorney, Division of Market Regulation, Commission, August 27, 1987.

that have terms of 12 months or more to hedge portfolio risk, and then "roll" the futures position forward to the next expiration month when the futures contract expires, to the competitive disadvantage of the Exchange. The Commission believes that the proposed long-term options will provide institutions with a broader range of choice in their use of hedging vehicles, and will place options on a more equal position with futures products.

For the above reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6[6] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

Dated: August 27, 1987.

[FR Doc. 87-20288 Filed 9-2-87; 8:45 am]

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[Release No. 34-24854; File No. SR-NASD-87-26]

Self-Regulatory Organizations; Amendment No. 1 to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Prohibition Against Use of the Small Order Execution System ("SOES") by non-SOES Market Makers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 24, 1987, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On August 11, 1987, the NASD filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[6] 15 U.S.C. 78f (1982).

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a) (12) (1986).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends paragraph c(1)B of the Rules of Practice and Procedures governing the NASD's Small Order Execution System ("SOES") to prohibit NASDAQ market makers from using SOES to execute agency orders in securities in which they are not registered as SOES market makers. In addition the proposed rule change reorganizes and divides the existing language of the rule into subsections, such that section (c)(1)(B) will be section (c)(1)B(i)-(iv).

II. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change to the NASD's SOES operation rules and Amendment No. 1 thereto would prohibit subscribers to the National Association of Securities Dealers Automated Quotation ("NASDAQ") System from utilizing SOES to execute agency orders in securities in which the subscribers are registered as NASDAQ market makers but are not also registered as SOES market makers. The NASD's SOES was designed to provide a cost-effective system for the automated execution of small, public, agency orders in NASDAQ securities. Currently customer transactions for up to 1,000 shares in NASDAQ National Market System securities or up to 500 shares in other NASDAQ securities may be automatically executed through SOES. Because SOES was designed to benefit public customers, only agency orders, including riskless principal transactions, received from public customers may be entered by SOES order-entry firms into SOES for execution.

The proposed rule filing would prohibit NASDAQ market makers from using SOES to execute agency orders in securities in which they are not registered as SOES market makers. For example, if firm X is a registered NASDAQ market maker in Apple Computer but is not a registered SOES market maker in that security it would be prohibited from using SOES to execute agency trades in the security.

Although statistics compiled by the NASD indicate that the number of agency orders entered by non-SOES market makers is minimal in comparison to total SOES transaction volume, the Board of Governors believes that the proposed prohibition will eliminate the possible execution of principal transactions through SOES, and thus ensure the maximum use of SOES for the benefit of public customers. In addition to the above-referenced proposed rule change to section (c)(1)(B), the NASD is proposing to reorganize and divide the existing language of the rule into subsections, such that section (c)(1)(B)(i)-(iv) will be created.

The NASD believes the proposed rule change is consistent with sections 11A(a) and 15A(b)(6) under the Act. In pertinent part, section 15A(b)(6) provides that the rules of a registered securities association be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. By prohibiting the use of SOES by non-SOES NASDAQ market makers the proposed rule change eliminates the possible execution of principal transactions through SOES thus protecting public customers. The proposed rule change is also consistent with the provisions of section 11A(a) under the Act in that the rule change will promote the maintenance of a fair and orderly marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Association solicited comments on the proposed rule change in Notice to Members 87-6, dated January 30, 1987

("Notice").[1] Four of the comments received related to the proposed rule change. Of these, three came from NASD member firms and one came from the National Security Traders Association ("NSTA").

Two member firms supported the amendment as proposed. The NSTA found no fault with the proposed amendment but cautioned the NASD against adopting too many rules that may hamper the use of SOES. Finally, one member firm opposed adoption of the proposed amendment, emphasizing that only a minimal amount of orders would be affected by the proposed rule change. This member firm suggested that a rule to prohibit such activity seemed inappropriate.

III. Dates of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 24, 1987.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority, 200.30–3(a)(12).

Dated: August 27, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20289 Filed 9–2–87; 8:45 a.m.]

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[1] The Notice also solicited comment on another proposed amendment to section (c)(1)(B). At this time, however, the NASD has determined not to pursue action on the second amendment discussed in the Notice.

[Release No. 34–24855; File No. SR–NASD–87–21]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Amendments to Schedule E of the NASD By-Laws

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 21, 1987 the National Association Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Set forth below is the text of a proposed rule change to Schedule E of the By-Laws ("Schedule E") of the NASD. Additions are italicized; deletions are in brackets.

Schedule E—Distribution of Securities of Members and Affiliates

Section 1—General

(a) No member of person associated with a member shall participate in the distribution of a public offering of *debt or equity* securities [issued or] to be issued by the member, *the parent of the member*, or an affiliate of the member and no member *or parent of a member* shall issue securities except in accordance with this Schedule.

Section 2—Definitions

For purposes of this Schedule, the following words shall have the stated meanings:

(a) Affiliate—

(1) a company which controls, is controlled by or is under common control with a member;

(2) *The term affiliate is presumed to include, but is not limited to, the following* [F] for purposes of subsection 2(a)(1) [hereof,]:

Section 2(a)(2)(i)through Section 2(a)(3)(iv): no change

(v) *a corporation, trust, partnership or other entity issuing financing instrument-backed securities which are rated by nationally recognized statistical rating organization in one of its four highest generic rating categories.*

(*b*) *Beneficial ownership—the right to the economic benefits of a security.*

[(b)] (*c*): no change, except delete "of the class of securities being offered" in (*c*)(3).

[(c)] (*d*) through [(e)] (*f*): no change

[(f)] (*g*) Immediate family—parents, mother-in-law, father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, *soon-in-law or daughter-in-law, and* children, or any [relative] *other person* [to whom financial support is contributed directly or indirectly by an employee of, or person associated with, a member] *who is supported, directly or indirectly, to a material extent by an employee of, or person associated with a member.*

[(g)] (*h*) through [(i)] (*j*): no change

[(j)] (*k*) Public offering—any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offer[ing]s, rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings and all other securities distributions of any kind whatsoever, except any offering made pursuant to an exemption under Sections 4(1), [or] 4(2), *or 4(6)* of the Securities Act of 1933, *as amended, or pursuant to Rule 504 (unless considered a public offering in the states where offered), Rule 505 or Rule 506 adopted under the Securities Act of 1933, as amended.*

[(k) (*l*) through [[m)] (*n*): no change

Section 3—Participation in Distribution of Securities of Member of Affiliate

(a) No member shall underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of an issue of debt or equity securities [issued or] to be issued by the member or an affiliate of the member unless the member is in compliance with subsection 3(b) and [either] subsection 3(c) [or 3(d)] below [, depending on the nature of the member's participation].

(b) In the case of a member which is a corporation, the majority of the board of directors, or in the case of a member

which is a partnership, a majority of the general partners or, in the case of a member which is a sole proprietorship, the proprietor as of the date of the filing of the registration statement and as of the effective date of the offering shall have been actively engaged in the investment banking or securities business for the five year period immediately preceding the filing of the registration statement.

(c) If a member proposes to underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of [debt or equity] *its own or an affiliate's* securities subject to this Section without limitation as to the amount of securities to be distributed by the member, one or more of the following three criteria shall be met:

(1) the price at which an equity issue or the yield at which a debt issue is to be distributed to the public is established at a price no higher or yield no lower than that recommended by a qualified independent underwriter which shall also participate in the preparation of the registration statement and the prospectus, offering circular, or similar document and which shall exercise the usual standards of "due diligence" in respect thereto; provided, however, that an offering of securities by a member which has not been actively engaged in the investment banking or securities business, in its present form or as a predecessor broker/dealer, for at least the five years immediately preceding the filing of the registration statement shall be managed by a qualified independent underwriter; or

(2) the offering is of a class of equity securities for which a bona fide independent market exists as of the date of the filing of the registration statement and as of the effective date thereof; or

(3) the offering is of a class of securities rated Baa or better by Moody's rating service or Bbb or better by Standard & Poor's rating service or rated in a comparable category by another rating service acceptable to the [Association] *Corporation.*

[(d) A member may participate as a member of the underwriting syndicate or selling group in the distribution of a public offering of debt or equity securities subject to this Section without regard to the requirements of subsection (c) if the member restricts its participation to an amount not exceeding ten percent of the total dollar amount of the offering and the offering is underwritten on a firm commitment basis and managed by a qualified independent underwriter.]

Section 4—[Escrow of Proceeds] Disclosure

[(a) All proceeds from an offering by a member of its securities shall be placed in a duly established escrow account and shall not be released therefrom or used by a member in any manner until the member has complied with Section 5 hereof.]

[(b)] (*a*) Any member offering its securities pursuant to this Schedule shall disclose in the registration statement, offering circular or similar document a date by which the offering is reasonably expected to be completed and the terms upon which the proceeds will be released from the escrow account described in subsection *5*(a) [hereof.]*;*

(*b*) *All offerings included within the scope of this Schedule shall disclose in the underwriting section of the registration statement, offering circular or similar document that the offering is being made pursuant to the provisions of this Schedule, that the offering is being made by a member of its own securities or those of an affiliate, the name of the member acting as qualified independent underwriter, if any, and that such member is assuming the responsibilities of acting as a qualified independent underwriter in pricing the offering and conducting due diligence.*

Section 5—*Escrow of Proceeds;* Net Capital Computation

(*a*) *All proceeds from an offering by a member of its securities shall be placed in a duly established escrow account and shall not be released therefrom or used by a member in any manner until the member has complied with subsection 5(b)hereof.*

(*b*): no change

Section 6—Audit Committee[s]

Section 6 through Section 8: no change

Section 9—Offerings Resulting in Affiliation or Public Ownership of Member

If an issuer proposes to direct all or part of the proceeds from a public offering to a member or exchange securities by means of a public offering for an interest in a member, and the member is, or as a result of the proposed transaction would be, an affiliate of the issuer, or if an issuer proposes to engage in any offering which results in the public ownership of a member, *or if an issuer proposes to utilize the proceeds from a public offering to register a member, or if a member proposes simultaneously or subsequent to a public offering to enter into a transaction with the issuer or an affiliate of the issuer and as a result of the transaction would be an affiliate of the issuer,* the offering shall be subject to the provisions of this Schedule [E] to the same extent as if the [offering were of securities issued by a member] *transaction had occurred prior to the filing of the offering.*

Section 10 through Section 12: no change

Section 13—Sales to Employees—No Limitations

Notwithstanding the provisions of the Board of Governors' Interpretation With Respect To "Free-Riding and Withholding," a member may sell securities issued by a member [or an affiliate] *a parent* of a member, *or by an issuer treated as a member or parent of a member under* [which is subject to] Section 9 hereof to the member's employees; potential employees resulting from intended mergers, acquisitions, or other business combination of members resulting in one public successor corporation, or persons associated with it; and the immediate family of such employees or associated persons without limitation as to amount and regardless of whether such persons have an investment history with the member as required by that Interpretation; provided, however, that in the case of an offering of equity securities for which a bona fide independent market does not exist, such securities shall not be sold, transferred, assigned, pledged or hypothecated for a period of [six] *five* months following the effective date of the offering.

Section 14—Filing Requirements; Coordination with Corporate Financing Interpretation

(a) Nothwithstanding the provisions of the "Interpretation of the Board of Governors—Review of Corporate Financing" relating to factors to be taken into consideration in determining underwriter's compensation, the value of securities of a new corporate member succeeding to a previously established partnership or sole proprietorship member acquired by such member or person associated therewith, or created as a result of such reorganization, shall not be taken into consideration in determining such compensation.

(b) All offerings of securities included within the scope of this Schedule shall be subject to the provisions of the "Interpretation of the Board of Governors—Review of Corporate Financing" and documents and filing fees relating to such offerings shall be filed with the Corporation pursuant to the provisions of that Interpretation. The responsibility for filing the required documents and fees shall be that of the

member issuing securities, or, in the case of an issue of an affiliate, the managing underwriter or, if there is none, the member affiliated with the issuer.

(c) *All offerings included within the scope of this Schedule are required to be filed with the Corporation, with the appropriate documents and filing fee referred to unde subsection 14(b), notwithstanding the fact that the offering may otherwise be expressly exempted from filing under the provisions of the "Interpretation of the Board of Governors—Review of Corporate Financing."*

Section 15 through Section 17: no change

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B) and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Schedule E is intended to address the conflicts of interest which are present when a member performs the traditional underwriting functions of structuring the offering, negotiating the underwriting arrangements, establishing the public offering price, performing due diligence and recommending the purchase of securities to customers at the same time that the member or an affiliate of the member is the issuer. The NASD is proposing a number of amendments to Schedule E that are intended to clarify the scope and application of the Schedule. The majority of the proposals do not contain substantive changes, but merely clarify certain provisions and incorporate interpretations of the Schedule. However, one proposal to exempt investment grade financing instrument-backed securities from compliance with Schedule E represents a substantive change.

Section 1—General

The NASD is proposing to amend this provision to clarify that Schedule E is applicable to offerings by a parent of a member, as defined in current Subsection 2(g) of Schedule E.

regardless of whether the member participates in the offering. Further, a technical amendment is proposed to be made to this provision to clarify that Schedule E applies to both debt and equity public offerings of securities.

Section 2—Definitions

Affiliate—Section 2(a) of Schedule E defines when an issuer is considered to be an affiliate of a member firm. The NASD is concerned that members and their counsel may look to the presumptions contained in subsection 2(a)(2) as the sole bases upon which affiliation may be found. Therefore, the NASD is proposing to amend the introductory language of Subsection 2(a)(2) to clarify that the term affiliate "is presumed to include, but is not limited to" those situations described in the enumerated presumptions.

Exemption for Financing Instrument-Backed Securities—The NASD is proposing to amend Subsection 2(a)(3) to exempt from Schedule E distributions by members and associated persons of securities issues by affiliates of members organized solely for the purpose of offering investment grade securities to the public collateralized with a specified portfolio of debt instruments.

Where an offering of financing instrument-backed securities rated investment grade is not issued by a member's affiliate, such offerings are exempt from NASD review pursuant to an exemption incorporated in the Interpretation of the Board of Governors—Review of Corporate Financing, Article III, Section 1 of the NASD Rules of Fair Practice ("Corporate Financing Interpretation").[1] The exemption reflects the NASD view that competitive market forces that ordinarily affect investment grade debt can be relied upon to assure its fair pricing and the fairness and reasonableness of underwriting compensation. The NASD believes that a member's conflicts of interest addressed by Schedule E, related to the pricing of the offering, the member's due diligence obligation and suitability of investors, are absent in distributions of financing instrument-backed securities that have received an investment grade rating. Such an investment grade rating reflects the confidence of the rating agency regarding the ability of the issuing entity to pay dividends and to redeem the obligation when required to do so. In addition, the investment grade rating of securities routinely results in their sales to investors that are of an institutional or a financially sophisticated nature.

Further, since Subsection 2(a)(3)(iv) of Schedule E contains an exemption for debt and equity securities issued by a direct participation program, as defined in Article III, Section 34 of the Rules of Fair Practice, offerings of financing instrument-backed securities issued by a general or limited partnership or by a trust are exempt from Schedule E. Therefore, it is only offerings by corporate issues of financing instrument-backed securities that are subject to Schedule E. However, members and their counsel do not appear to be generally aware that an exemption is available for offerings of investment grade financing instrument-backed securities issued by a trust. Therefore, to avoid confusion on the part of members and their counsel as to whether offerings of financing instrument-backed securities by non-corporate issuers qualify for an exemption from Schedule E, the NASD is proposing that new Subsection 2(a)(3)(v) to Schedule E provide an exemption from Schedule E for offerings by a "corporation, trust, partnership or other entity issuing financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories."

Beneficial Ownership—For purposes of determining affiliation, Subsection 2(a)(2) of Schedule E bases a presumption of affiliation on the beneficial ownership of 10% or more of the outstanding voting securities of one entity by the other entity. Subsequent to the adoption of amendments to Schedule E in 1983, the Board of Governors approved an interpretation that the concept of beneficial ownership contained in Schedule E, as well as in the Venture Capital Restrictions contained in the Corporate Financing Interpretation, refers to the ownership of the economic benefits of the security, rather than the right to vote the security.[2] Therefore, the NASD is proposing to amend Schedule E to include in new Subsection 2(b) a definition of the term "beneficial ownership" to provide that beneficial ownership is based on the "right to the economic benefits of a security."

Immediate Family—The NASD is proposing to amend the term "immediate family" contained in current Subsection 2(f) of Schedule E to include the son-in-law or daughter-in law and any other person who is supported,

[1] *See NASD Manual*, ¶2151, p. 2025 (exemptions 1 and 4), May 1986.

[2] *See* SR–NASD–80–29; NASD Notice to Members 83–45 (August 17, 1983).

directly or indirectly, to a material extent by an employee of, or person associated with a member, in order to incorporate language similar to that contained in the Interpretation of the Board of Governors—"Free Riding and Withholding", Article III, Section 1 of the NASD Rules of Fair Practice.[3]

Public Offering—The NASD is proposing that the definition of public offering contained in current Subsection 2(j) of Schedule E be amended to reflect exemptions from Schedule E for offerings pursuant to section 4(6) of the Securities Act of 1933, Rule 504 (unless considered a public offering in the states where offered), Rule 505, and Rule 506 of Regulation D adopted by the Securities and Exchange Commission.

Section 3—Experience, Pricing and Due Diligence

The NASD is proposing to amend this section by deleting Subsection 3(d) and amending Subsection 3(a) in coordination therewith. Prior to the adoption of amendments to Schedule E in 1983, Schedule E required the participation of *two* qualified independent underwriters, except that only one qualified independent underwriter was required under Subsection 3(d) where the offering was underwritten on a "firm commitment" basis, was managed by the qualified independent underwriter and the affiliated member limited its participation to no more than 10% of the total dollar amount of the offering. Subsection 3(d) is now unnecessary as Subsection 3(c) was modified to only require the participation of one qualified independent underwriter and permits the affiliated member to participate to an unlimited extent in the offering.

Subsection 3(c) is proposed to be amended to clarify that compliance with Section 3 is required only when a member is participating in a distribution of its own or an affiliate's securities.

Section 4—Escrow of Proceeds

The NASD is proposing that provisions of Subsection (a) of Section 4 of Schedule E be located in Section 5 as Subsection (a) thereof in order to clarify the interrelation of the escrow requirement and the requirement contained in Section 5 of computing net capital prior to the release of offering proceeds from escrow.

Current Subsection 4(b) requires disclosure in the offering document of the date when a member expects to complete its offering of a security and the terms under which the proceeds will be released from escrow. The NASD is proposing that Subsection (b) be redesignated as Subsection (a) of Section 4. Further, the NASD is proposing that a new Subsection (b) be added to Section 4 to clarify disclosure requirements with respect to all offerings subject to Schedule E. The new provision is intended to codify current NASD policy in this area. Finally, the NASD is proposing that the title of Section 4 be changed to "Disclosure".

Section 5—Net Capital Computation

This section is proposed to be amended to include as new Subsection (a) the provision previously in Subsection 4(a) which requires a member issuing its own securities to place the offering proceeds in an escrow account. Further, the current language of Section 5 is proposed to be retaind in Subsection (b) thereof. Finally, the NASD is proposing to change the title of Section 4 to "Escrow Proceeds; Net Capital Computation". The NASD believes that the interrelationship of the provisions contained in Sections 4 and 5 will be clearer to the membership if combined into one section.

Section 9—Offerings Resulting in Affiliation or Public Ownership of a Member

Section 9 is intended to provide a basis for applying Schedule E to an offering by an issue which is not an affiliate of a member at the time of filing the offering, but as a result of the offering will be a member's affiliate. In addition, Section 9 requires compliance with the Schedule where the offering would result in the public ownership of a member. The provision currently specifically fails to address two situations where the NASD believes Schedule E is applicable. As the NASD has consistently required compliance with Schedule E in the following situations, Section 9 is proposed to be amended to clarify that Schedule E is applicable to situations where the issue proposes to utilize the offering proceeds to register a member and where a member would become an affiliate of the issuer as a result of a transaction with the issuer or its affiliate that occurs simultaneously or subsequent to the public offering. In addition, the NASD is proposing to amend Section 9 to clarify that offering within Section 9 shall be subject to Schedule E "to the same extent as if the transaction had occurred prior to the filing of the offering." Thus, pursuant to the latter proposed amendment, if a transaction should occur simultaneous with the offering that would result in the issuer becoming a parent of a member, the offering would be subject to Schedule E as if the offering were by a parent of a member. In comparison, if the issuer proposes to utilize the proceeds of the offering to register a member, the offering would be subject to Schedule E as if by a member firm.

Section 13—Sales to Employees—No Limitations

Section 13, which provides an exemption from the Free-Riding and Withholding Interpretation for sales to employees of a member, is proposed to be amended to clarify that employees of a member are only permitted to purchase securities of the member or those of the member's parent. In addition, Section 13 is proposed to be amended to reduce the lock-up period on securities acquired by a person associated with a member where an independent market does not exist for such securities, from six to five months following the effective date of the offering.

Section 14—Filing Requirements

Pursuant to Section 15 of Schedule E, the filing requirements of Schedule E contained in Section 14 take precedence over the filing requirements contained in the Corporate Financing Interpretation. The Corporate Financing Interpretation was recently amended to clarify that certain offerings exempt from the Corporate Financing Interpretation filing requirements are nonetheless required to be filed if subject to Schedule E.[4] The NASD is proposing to adopt new Subsection 14(c) of Schedule E to clarify that members are required to file public offerings subject to Schedule E with the NASD for review, notwithstanding the fact that such offerings may not be required to be filed pursuant to an exemption from filing under the Corporate Financing Interpretation.

The proposed rule change to Schedule E is consistent with the provisions of section 15A(b)(2) of the Securities Exchange Act of 1934, as amended, as it is intended to facilitate compliance by members and their associated persons with the provisions of Schedule E to the NASD By-Laws. The proposed amendments to Schedule E are also consistent with the provisions of section 15A(b)(6) of the Securities Exchange Act of 1934, as amended, which requires that the rules of registered securities associations promote just and equitable principles of trade and protect investors and the public interest.

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[3] *See* SR-NASD-82-15; NASD Notice to Members 83-68 (December 12, 1983).

[4] See File No. SR-NASD-86-6; Securities Exchange Act Release No. 23094 (April 2, 1986); 51 FR 12010 (April 8, 1986).

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B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change will not result in a burden on competition not necessary in furtherance of the purposes of the Securities Exchange Act of 1934, as amended.

C. Self-Regualtory Organization's Staement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Association published Notice to Members 86–28 dated April 22, 1986, requesting comments from Association members concerning the proposed amendments to Schedule E. Four comment letters were received. All of the comment letters addressed the proposed exemption for financing instrument-backed securities. Only two commented with respect to other proposed amendments. As a result of its consideration of such comments, the NASD determined to make some modifications to the amendments that were originally proposed in Notice to Members 86–28.

To avoid confusion on the part of members and their counsel as to whether offerings of financing instrument backed securities by non-corporate issuers qualify for the proposed new exemptions, the NASD expanded the exemption to be available to a corporation, trust, partnership or other entity issuing financing instrument-backed securities.

The NASD deleted the proposal to clarify in Section 1 that "no member or affiliate of a member" shall issue securities except in accordance with Schedule E. However, in reconsidering the introductory section to Schedule E, the NASD determined to modify that provision to specifically reference offerings by a "parent of a member."

In response to a comment, the NASD modified its proposal in Notice to Members 86–28 to amend the introductory language of Subsection 2(a)(2) to state that "The term affiliate shall include, but is not limited to," those specified situations included in the subprovisions of that subsection, to clarify that "The term affiliate is presumed to include. . . ." In addition, the NASD modified the proposed amendment to the definition of "immediate family" contained in current Subsection 2(f) of Schedule E, in accordance with the Free Riding and Withholding Interpretation, to make it clear that the definition includes "any other person who is supported, directly or indirectly, to a material extent by an employee of or a person associated with, a member."

The NASD received an objection to the proposal to adopt new Subsection 4(b) to require that the offering document disclose that a member has assumed the responsibility of acting as a qualified independent underwriter in pricing the offering and conducting due diligence on the basis that "due diligence" is an affirmative defense, not an affirmative obligation of an underwriter under section 11 of the Securities Act of 1933. The NASD determined that although "due diligence" is an affirmative defense under section 11 of the Securities Act of 1933 for underwriters participating in an offering, it is an affirmative obligation of a "qualified independent underwriter" pursuant to the provisions of Schedule E. It is the NASD's belief that the offering document should disclose the qualified independent underwriter's affirmative obligation under Subsection 3(c)(1) to conduct "due diligence."

Finally, one comment letter expressed opposition to the NASD proposal to adopt new Subsection 14(c) of Schedule E to clarify that members are required to file public offerings subject to Schedule E with the NASD for review, notwithstanding the fact that such offerings may not be required to be filed pursuant to an exemption from filing under the Corporate Financing Interpretation. Exemptions from the Corporate Financing Interpretation filing requirements reflect the view of the Association that certain conditions are present that will independently assure fair compensation and reasonableness of offering terms and arrangements. However, such exemptions were determined to be available only in the absence of conflict of interests regarding pricing and due diligence. The Corporate Financing Interpretation was recently amended to clarify that certain offerings exempt from the Interpretation's filing requirements are nonetheless required to be filed if subject to Schedule E.[5]

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date or it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and be submitted by September 24, 1987.

The Commission specifically notes that section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)) ("Exchange Act") defines a mortgage related security to be a security rated in one of the *two* highest rating categories by at least one nationally recognized statistical rating organization ("NRSRO"). The Commission also notes that it has issued orders exempting certain issuers of mortgage related securities from all provisions of the Investment Company Act of 1940 ("1940 Act").[6] Those orders require, based on section 3(a)(41) of the Exchange Act, that the securities be rated in one of two highest rating categories by at least one NRSRO. Exempting from Schedule E financing instrument-backed securities that are in one of the top four rating categories, as in proposed section 2(a)(3)(v) of Schedule E, differs from the existing exemptive orders issued under the 1940 Act and from section 3(a)(41) of the Exchange Act. It is consistent, however, with existing Schedule E, which provides (Sections 3(b), (c)) that a member complies with that Schedule where that member has been actively

[5] Id.

[6] *See, e.g.*, Dean Witter CMO, Investment Co. Act Rel. Nos. 15663 (April 3, 1987) (52 FR 11897, April 13, 1987) and 15704 (April 21, 1987).

engaged in the securities or investment banking business for the five-year period immediately preceding the filing of the registration statement and is offering a class of securities rated in one of the top four categories by either Moody's or Standard and Poor's, or in a comparable category by another rating service acceptable to the NASD.

Therefore, the Commission requests specific comments on whether proposed section 2(a)(3)(v) of the NASD's rules should be limited to securities that are rated by a NRSRO in one of its two highest rating categories, to conform the NASD's rules to the Exchange Act, or should extend to securities rated by a NRSRO in one of its four highest rating categories. Further, the Commission requests comment on whether there are any financing instrument-backed securities that would fall within the proposed exemption by virtue of being rated in the *third* or *fourth* rating category.

The Commission retains discretion to exempt from the provisions of the 1940 Act only mortgage related securities rated in one of the top rating categories, irrespective of whether the NASD ultimately extends its exemption from Schedule E to securities rated in one of the top four categories.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,
Secretary.

Dated: August 27, 1987.

[FR Doc. 87–20290 Filed 9–2–87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–24859; File Nos. SR–Phlx–87–24, SR–Phlx–87–26]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Changes

On August 10 and 14, 1987, respectively, the Philadelphia Stock Exchange, Inc. ("Phlx"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] proposed rule changes to (1) enable the Phlx to offer European style foreign currency option contracts ("FCOs") on all the underlying foreign currencies on which it currently lists and trades American style FCOs; *i.e.*, Australian dollar, British Pound, Canadian Dollar, Deutsche mark, European Currency Unit ("ECU"), French franc, Japanese yen, and the Swiss franc; and (2) change the contract denominations of the proposed FCOs. No comments have been received on the proposed rule changes.

On July 30, 1987, the PHLX and the Chicago Board Options Exchange ("CBOE") entered into an agreement whereby the CBOE agreed to wind down and transfer to the PHLX its rights and interests to European style FCOs presently listed on the CBOE and the outstanding open interest therein. Under this agreement the PHLX covenanted to file with the Commission to list on PHLX, effective on or before August 31, 1987, substantially similar European style FCOs in series with existing open interest on the CBOE as of the close of CBOE European style FCO trading.

The PHLX proposes to differentiate the proposed European style FCOs from the American style contracts it currently trades by retaining use of symbols beginning with the letter (C) to identify them. Retention of these symbols will allow securities information processors, broker-dealers, and the investing public to maintain existent databases intact. At the time the PHLX begins trading these contracts, the terms and specifications of the contracts, including the contract size, will in all respects be the same as they currently are on CBOE. Thus, positions previously opened on the CBOE can be closed out on the Phlx. The one exception to this is options on the ECU. The CBOE currently does not trade ECU options. The PHLX proposes to introduce European style ECU options at the same time it commences trading the other European style FCOs now traded on the CBOE. The Exchange proposes that these ECU options would be of the same denomination as PHLX's existing American style options contract.

The Exchange also proposes to halve the size of each of the European style FCOs except the Australian dollar and the ECU contracts.[3] This would make the size of European style FCOs the same as the American style FCOs.

British pound	12,500
Canadian dollar	50,000
Deutsche mark	62,500
Swiss franc	125,000
Japanese Yen	6,250,000

The PHLX believes that the European exercise feature respecting FCOs will appeal to potential FCO sellers and spread traders, since it restricts exercise until the trading day prior to expiration. The PHLX believes trading in both American and European style FCOs on the same trading floor will increase liquidity and facilitate opportunities for hedging and arbitrage activities leading to a more efficiently priced FCOs market. Except for the proposed restriction on early exercise, trading in the proposed European style FCOs would be conducted in accordance with existing PHLX FCO rules. In addition, the PHLX believes that uniformity of contract denomination will increase liquidity and facilitate opportunties for hedging and arbitrage activities more readily than retention of larger size European style FCO contracts.

Mechanically, halving the size of the European style FCOs will be a very straightforward process. On the effective date of the adjustement, all open positions in the affected European style FCOs will be doubled, with each contract covering half of the former amount of underlying currency. This will work in much the same way as an options contract adjustment following a 2–for–1 stock split. Unlike a stock split adjustment, however, quotations and strike prices will be unaffected by the adjustment. Option premiums will be essentially halved, though, because the quoted premium will only be multiplied by half the former amount of underlying currency. The Exchange will make clear the impact of the split in currency contract size by issuing an educational memorandum to all members before the effectiveness of the split.

The Exchange requests accelerated approval of the proposed rule changes so that the PHLX may provide for an orderly transition of trading in European style FCO contracts from the CBOE. The CBOE has represented that, as of September 1, 1987, it anticipates that the principal market-maker in FCOs on its floor will cease to be active. The loss of this market making capacity would have an adverse impact on the ability of the CBOE and its members to maintain a fair and orderly market in European style FCOs. Thus, particularly in light of existing open interest, transfer of the trading market in these FCOs to the PHLX would facilitate the maintenance of a fair and orderly market in these products. With the Commission's approval, the PHLX and CBOE have agreed that August 27, 1987 would be the last day on which these contracts will trade on CBOE, and on August 28, 1987 they will commence trading on PHLX. Approval by the Commission of the instant proposed rule changes before

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[1] 15 U.S.C. 78s(b)(1)(1982).
[2] 17 CFR 240.19b–4 (1985).

[3] Respective contract denominations are as follows (expressed in foreign currency):

those dates is necessary to effectuate an orderly transition of trading activity in European style FCOs.

The Exchange also requests accelerated approval so that the adjustment in the size of the European style FCOs can be effectuated as of the opening of trading on Monday, September 14, 1987, the first trading day after the September FCO expiration. The Exchange believes that selection of this date will minimize any hardships on existing holders of European style FCOs while allowing the change to become effective at the earliest possible date. The Exchange notes that, as of August 4, 1987, 65.44% of the open interest in the European style FCOs was in the August and September contracts. The PHLX notes that it is a relatively simple matter, particularly in light of the existing open interest in affected contract positions, for the Options Clearing Corporation ("OCC"), member organizations, and the small number of European style FCO customers holding positions with expiration terms beyond September to simply double the number of contracts outstanding for their accounts.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, and the rules and regulations thereunder. The PHLX currently has in place an American-style FCO program. By listing European-style FCOs, the PHLX will enable investors to continue to choose which style of FCO they wish to purchase or write.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof because the proposed rule changes will provide for an orderly transfer of existing trading activity in European FCOs from the CBOE to the PHLX prior to the September FCO expiration. As the PHLX and the CBOE have determined, and the Commission has agreed, that August 27, 1987 will be the last trading day for these contracts on the CBOE, the Commission believes it is appropriate to allow them to commence trading on the PHLX as of August 28, 1987. The Commission further believes that the September 14, 1987 adjustment date for the adjustment in FCO denomination on the PHLX, and the Exchange's commitment to issue an educational memorandum to all members before the effectiveness of the adjustment, will give existing holders of European style FCOs sufficient notice of the impending change.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 24, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: August 27, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20291 Filed 9-2-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24857; File No. SR-PHLX-87-27]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Change

On August 19, 1987, the Philadelphia Stock Exchange, Inc. ("PHLX"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to clarify that spread, straddle and combination orders in the Exchanges' foreign currency options contracts ("FCOs") may consist of a combination of American-style and European-style FCOs.

On July 30, 1987, the PHLX and the Chicago Board Options Exchange ("CBOE") entered into an agreement whereby the CBOE agreed to wind down and transfer to the PHLX its rights and interests to European-style FCOs presently listed on the CBOE and the outstanding open interest therein. Under this agreement the PHLX covenanted to file with the Commission to list on PHLX, effective on or before August 31, 1987, substantially similar European-style FCOs in series with open interest existent as of the close of CBOE European-style FCO trading.

On August 10 and 14, 1987, respectively, the PHLX submitted to the Commission proposed rule changes to enable the PHLX to offer European-style FCOs on all underlying foreign currencies and change the contract denominations of the proposed FCOs.[3] The Commission is approving these rules concurrent with this filing.[4]

In connection with the upcoming introduction of trading of European-style FCOs on the PHLX, the PHLX proposes to clarify Rule 1066 by adding a commentary stating that for FCOs a spread, straddle and combination order may consist of either all American-style FCOs, all European-style FCOs, or a combination of American-style and European-style contracts. For example, a straddle may consist of the purchase of 10 American-style currency calls and the purchase of 10 European-style currency puts. Likewise, a spread order in FCOs may consist of the purchase of American-style calls and sale of European-style calls having identical terms.

The proposed rule change is designed to supplement the previously filed rule changes respecting the treatment of European-style options and is intended to increase liquidity and facilitate opportunities for hedging, spreading and combination orders by and between market participants in both American-style and European-style FCOs thereby leading to a more efficiencly priced FCO market.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, and the rules and regulations thereunder.

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[4] 15 U.S.C. 78 s(b)(2)(1982).

[5] 17 CFR 200.30-3(a)(12)(1985).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] *See* File Nos. SR-Phlx-87-24 and SR-Phlx-87-26.

[4] *See* Securities Exchange Act Release No. 34-24859.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposed rule change will promptly notify investors that they may use combinations of American-style and European-style contracts in executing spreads, straddles and combination orders in FCOs on the PHLX. This should facilitate trading in both American-style and European-style FCOs.

Concurrent with this filing, the Commission is approving a proposal that will enable the PHLX to commence trading of European-style FCOs on August 28, 1987. The Commission believes it is appropriate to accelerate approval of this proposed rule change so that it may coincide with the opening of business on August 28, 1987 and facilitate the maintenance of a fair and orderly market in FCOs on the PHLX.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 24, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: August 27, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20292 Filed 9-2-87; 8:45 am]

BILLING CODE 8010-01-M

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1985).

[Rel. No. IC-15951; 812-6674]

Application; ML-Lee Acquisition Fund, L.P., et al.

August 28, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption and Order permitting certain transactions under the Investment Company Act of 1940 (the "1940 Act").

Applicants: ML-Lee Acquisition Fund, L.P. ("Partnership"), Mezzanine Investments, L.P. ("Managing General Partner") and Thomas H. Lee Advisors, Inc. ("Investment Adviser") (collectively, "Applicants").

Relevant 1940 Act Sections: Order requested (i) pursuant to sections 6(c), 17(d) and 57(i) and Rule 17d-1 permitting joint certain transactions otherwise prohibited by sections 57(a)(4) and 17(d); and (ii) pursuant to section 57(c) for exemption from section 57(a)(1), and pursuant to sections 17(d), 57(i) and Rule 17d-1 thereunder permitting the acquisition of certain investments.

Summary of Application: Applicants seek an order: (i) Under Sections 6(c), 57(i), and 17(d) of the 1940 Act and Rule 17d-1, permitting the purchase of securities by the Partnership in joint transactions otherwise prohibited by sections 57(a)(4) and 17(d) in which the Investment Adviser or an affiliate thereof is a participant; and (ii) under section 57(c) of the 1940 Act for exemption from section 57(a)(1), and pursuant to sections 17(d), 57(i) and Rule 17d-1 permitting the Partnership to acquire one or more initial investments from the Managing General Partner or an affiliated person thereof.

Filing Date: The application was filed on April 2, 1987, and amended on July 8, July 16, July 22, July 31, and August 3, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on September 22, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, ML-Lee Acquisition Fund, L.P. and Mezzanine Investments, L.P., Merrill Lynch World Headquarters, North Tower, World Financial Center, New York, New York 10281-1201. Thomas H. Lee Advisors, Inc., One Boston Place, Boston, Massachusetts 02108.

FOR FURTHER INFORMATION CONTACT: Richard Pfordte, Staff Attorney, at (202) 272-2811, or Houghton R. Hallock, Jr., Special Counsel, at (202) 272-3030, Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the above referenced application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership is a newly-formed, Delaware limited partnership organized under an Agreement of Limited Partnership (the "Partnership Agreement"). The Partnership has elected to be regulated as a business development company pursuant to section 54 of the 1940 Act and thus will be subject to sections 55 through 65 of the 1940 Act and to those sections of the 1940 Act made applicable to business development companies by section 59 thereof. The Partnership has been designed to provide the ability for individuals to participate in "mezzanine" level debt and preferred stock investments issued in connection with leveraged buy-outs and other corporate reorganizations. Applicants believe these investments would not be ordinarily available to the Partnership's investors except through a pooled investment vehicle such as the Partnership.

2. The Partnership's investment objectives will be to provide a current return, an opportunity for significant capital appreciation, and a return of investment in a limited period of time through investments in mezzanine loans and other securities ("Qualified Investments"). Qualified Investments include (i) subordinated debt investments (including the mezzanine portion of traditional leveraged buy-outs), private placements of debt with equity components, partial buy-outs and other forms of mezzanine financing with equity participations in the form of straight equity, options, warrants and other equity securities ("Mezzanine

Investments"), and (ii) investments with a term of nine months or less, a portion of which is expected to become Mezzanine Investments. The Partnership will not provide financing for a hostile tender offer or proxy contest, regardless of whether such investment by the Partnership would otherwise constitute a Qualified Investment.

3. The Partnership has filed a registration statement (File No. 33–13394) on Form N–2 under the Securities Act of 1933 ("1933 Act"), with respect to an offering of up to 1,000,000 units of limited partnership interest ("Units"). The public offering price will be $1,000 per Unit, with a maximum aggregate offering price of $1 billion.

4. The General Partners of the Partnership will consist of at least four individual general partners ("Individual General Partners") and the Managing General Partner. The Individual General Partners will include the Independent General Partners (defined to be individuals who are not "interested persons" of the Partnership within the meaning of the 1940 Act) and one General Partner who is an individual and who is an "affiliated person" of the Managing General Partner and/or the Investment Adviser.

5. The Managing General Partner is a limited partnership controlled by its general partner, ML Mezzanine Inc., a special purpose, indirect, wholly-owned subsidiary of Merrill Lynch & Co., Inc. ("ML & Co."). The sole limited partner of the managing General Partner is the Investment Adviser. Under the partnership agreement establishing the Managing General Partner, its limited partner will have no authority to participate in the management of the Managing General Partner nor will it have any voting rights relating to the Managing General Partner. The Managing General Partner will be a registered investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Under the Partnership Agreement, the Managing General Partner will be responsible for purchasing and acquiring the investments made by the Partnership, for providing administrative services to the Partnership and for the admission of additional or assignee Limited Partners to the Partnership. The Managing General Partner will receive the allocation of profits and losses provided in the Partnership Agreement. In addition, it will receive an annual administrative fee equal to the larger of $400,000 or .45% of the net offering proceeds, subject to certain adjustments after the fourth year of operations. The limited partner of the Managing General Partner will be allocated substantially all of the profits and losses allocated to the Managing General Partner, other than that which is directly proportionate to the Managing General Partner's equity investment in the Partnership. The Partnership considers its relationship with the Managing General Partner to be an investment advisory relationship, and accordingly, the Partnership relationship and the distributions made thereunder, including specifically the distributions made to the Investment Adviser as the limited partner of the Managing General Partner, will be subject to the provisions of the 1940 Act, including section 15 thereof.

6. The Partnership Agreement provides that a majority of the General Partners will be Independent General Partners. Thomas H. Lee, an affiliated person of the Investment Adviser, will serve as an "interested" Individual General Partner. The Partnership will be managed solely by the Individual General Partners, except with regard to those specific activities of the Partnership for which the Managing General Partner or the Investment Adviser will be responsible. The Individual General Partners provide overall guidance and supervision of Partnership operations and will perform the same functions as directors of a corporation. The Individual General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on non-interested directors of a registered investment company.

7. The Partnership Agreement provides that the Individual General Partners may be removed either (i) for cause by the action of two-thirds of the remaining Individual General Partners or (ii) by vote of the Limited Partners. The Managing General Partner may be removed either (i) by a majority of the Individual General Partners or (ii) by vote of the Limited Partners. The Partnership's Limited Partners have no right to control the Partnership's business, but may exercise certain rights and powers of a Limited Partner under the Partnership Agreement, such as approving amendments to the Partnership Agreement. Limited Partners will have all voting rights afforded to investors by the 1940 Act.

8. The Investment Adviser is a corporation substantially-owned and controlled by the Thomas H. Lee Company ("Lee Company"), a private investment firm engaged primarily in acquiring or making majority equity investments in established middle-market companies, often through leveraged acquisition, as well as venture capital investments. The Investment Adviser will act under an investment advisory agreement ("Advisory Agreement") and will be a registered adviser under the Advisers Act. Under the Advisory Agreement, the Investment Adviser will be responsible for the identification of all mezzanine and related equity investments made by the Partnership and will perform other functions done by an investment adviser to a business development company. For its services under the Advisory Agreement, the Investment Adviser will receive an annual fee equal to the larger of $1.2 million or 1.0% of assets under management. The advisory fee will be reduced by a proportionate amount of certain fees received by the Investment Adviser or its affiliates with respect to proposed transactions considered for investment by the Partnership.

9. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") will act as the placement agent for the Units on a "best efforts" basis. Limited Partners will be required to subscribe for at least five Units, except that the minimum purchase for individual retirement accounts will be two Units. Units will be sold only to investors who have (i) gross income of $60,000 during the current year and a net worth (exclusive of homes, home furnishings and automobiles) of $60,000 in excess of the Units for which the investor has subscribed or (ii) a net worth (with the same exclusions) of $150,000 in excess of the proposed purchase price. In establishing suitability standards for the Limited Partners, the Applicants have considered the objective of the Partnership, the risks involved in an investment in the Partnership and the need to establish income and net worth standards that are consistent with the protection of investors.

10. An insurance policy to provide coverage for the Limited Partners has not been obtained at the filing date of the application because (i) the Partnership has been advised by its counsel that Units in the Partnership will constitute valid limited partnership interests in the Partnership and that Limited Partners will be entitled to all of the benefits of limited partners under the Partnership Agreement and The Revised Uniform Limited Partnership Act of the State of Delaware; (ii) based upon the nature of the business to be conducted by the Partnership, the Partnership believes that the risk of liability for actions against the Limited Partners, including actions based upon contract or tort claims, is remote; and (iii) the Partnership Agreement will

obligate the General Partners of the Partnership to take all action which may be necessary or appropriate to protect the limited liability of the Limited Partners. The Partnership will review periodically the appropriateness of obtaining an errors and omissions insurance policy for the Partnership.

11. The allocation of profits and losses of the Partnership will be made in accordance with the Partnership Agreement. In summary, those allocations will be made on a cumulative basis and provide for the allocation to the Managing General Partner of 1% of income and capital gains, in proportion to its equity investment in the Partnership, and up to 20% of cumulative ordinary income and net realized capital gains from investments which is subordinated to a Priority Return (as described in the application) to the Limited Partners of the Partnership. The foregoing allocation has been included in the Partnership Agreement on the basis exclusively of an opinion of counsel to the Partnership that such allocation will not violate the provisions of section 205 of the Advisers Act. Applicants have not requested Commission review or approval of such opinion letter and the Commission expresses no opinion as to counsel's interpretation that section 205(C) of the Advisers Act permits the Partnership's allocations. The specific allocation of profits and losses, as set forth in the Partnership Agreement, is described in detail in the application.

12. Applicants have obtained an order of the Commission determining that the Independent General Partners are not, within the definition of section 2(a)(19) of the 1940 Act, "interested persons" of the Partnership, the Managing General Partner, the Investment Adviser and/or Merrill Lynch solely by virtue of being general partners of the Partnership. (Investment Company Act Release No. 15918, August 12, 1987).

13. Applicants request an order pursuant to sections 6(c), 17(d) and 57(i) of the 1940 Act and Rule 17d–1 thereunder permitting the purchase of securities by the Partnership in joint transactions in which the Investment Adviser or an affiliate thereof is a participant, which transactions are otherwise prohibited under sections 17(d) and 57(a)(4) of the 1940 Act. In structuring the Partnership, Merrill Lynch and the Managing General Partner, in conjunction with the Lee Company, have established specific guidelines for the Partnership's Qualified Investments ("Guidelines"). These Guidelines, which are based on criteria utilized for institutional mezzanine funds that are exempt from registration under the 1940 Act, give prospective investors the parameters of the Partnership's investments, and, as with the institutional partnerships which co-invest with the general partners, Applicants believe that the Guidelines limit potential conflicts of interest by delineating specific categories of investments eligible for investment. The Partnership may alter the Guidelines as a result of changes in the structure of Qualified Investments or otherwise. However, any changes in the Guidelines will require the approval of both the Managing General Partner and the Individual General Partners.

14. Investments for the Partnership consist of "Managed Companies," where the Investment Adviser or its affiliates intend to make available "significant managerial assistance" (as defined in section 2(a)(47) of the 1940 Act) to the issuer of the securities purchased by the Partnership, and the "Non-Managed companies." As used in the Guidelines, the term "Lee Affiliates" includes the Lee Company, the Investment Adviser and any affiliated person of the Lee Company. Unless a Qualified Investment meets the applicable Guidelines, it will not be acquired by the Partnership unless it has been approved in advance by the Independent General Partners in accordance with the conditions set forth in the application. In this regard, while the Partnership may make "bridge investments" in Managed Companies, these investments will be subject to such advance approval requirement since, by their nature, they will not meet all of the applicable Guidelines. The Guidelines, which are primarily financial in nature, relate to various aspects to the Qualified Investments, including yield, cash distribution, leverage, equity rights of the Partnership and other investment criteria. Under the Guidelines, with respect to Managed Companies, (i) the Lee Affiliates will make a meaningful equity investment, either (a) equal to at least $5,000,000 or (b) by acquisition of, or the right to acquire 50% or more of, the equity remaining after any common equity acquired by management and the subordinated lenders; (ii) the Partnership's investment will be the same as, or no less advantageous to the Partnership than any corresponding investments in the same company by third parties, including any Lee Affiliates; and (iii) at least 70% of the Partnership's assets will have to be invested in Qualified Investments in Managed Companies. With respect to Non-Managed Companies, (i) the investment will be structured by third parties which are not affiliates of the Investment Adviser; (ii) the Lee Affiliates will not acquire more than 25% of the non-management equity of a Non-Managed Company (subject to the conditions described below); (iii) the Partnership's investment will be on terms the same as, or no less advantageous to the Partnership than any corresponding investments in the same company by third parties, including any Lee Affiliates; and (iv) not more than 30% of the Partnership's assets will be invested in Non-Managed Companies.

15. The Independent General Partners must determine whether an investment meets the applicable Guidelines; if investments do not meet the Guidelines, then determinations as to several factors must be made by the Independent General Partners before any such investment is made.

16. Co-investments by the Partnership and a Lee Affiliate will be subject to the following terms and conditions:

Conditions

(i) Other than Temporary Investments and investments described below, each investment made by the Partnership will have to meet, in the determination of the Independent General Partners, as described below, the Guidelines for Qualified Investments or be approved by the Managing General Partner and the Individual General Partners.

(ii) Each Qualified Investment that is structured by a Lee Affiliate and approved for investment by it, except for certain *de minimus* investments of less than $7.5 million which are structured by Lee Capital Corporation, a Lee Affiliate, will be brought to the attention of the Independent General Partners for review, subject to condition (iv) below. If the Independent General Partners determine that the investment meets the applicable Guidelines, the investment will be eligible for investment by the Partnership, and each such investment will be acquired by the Partnership to the extent that the Partnership has available funds sufficient to make such acquisition. If there are presented to the Independent General Partners more eligible investments than the Partnership has funds to acquire, the Independent General Partners will have to determine, with the advice of the Investment Adviser and the Managing General Partner, the order of priority of such investments. If a proposed investment does not meet the Guidelines, the Independent General Partners will have to determine that the investment is appropriate for the Partnership in light of its objectives and

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does not involve overreaching of the Partnership and then determine, together with the Managing General Partner, whether to acquire such investment for the Partnership.

(iii) Prior to committing to a particular investment that does not meet the Guidelines, the Independent General Partners would be required to determine that (a) the terms of the transaction, including the consideration to be paid, are reasonable and fair to the Limited Partners of the Partnership and do not involve overreaching of the Partnership or such partners on the part of any person concerned and (b) the proposed transaction is consistent with the interests of the Limited Partners of the Partnership and is consistent with the policy of the Partnership as recited in filings made by the Partnership under the 1933 Act, its registration statement and reports filed under the Securities Exchange Act of 1934 and its reports to partners.

(iv) Neither Thomas H. Lee, individually, in his capacity as an Individual General Partner, nor Thomas H. Lee Advisors, Inc., in its capacity as limited partner in the Managing General Partner, will either (a) participate in the deliberations or approval of any investment by the Partnership or (b) receive and comment on information with respect to any potential investments.

(v) Neither the Managing General Partner nor any other Merrill Lynch affiliate will participate in a transaction in which the Partnership invests unless such participation is permitted by the 1940 Act or any separate exemption obtained thereunder.

(vi) To the extent a Lee Affiliate purchases Qualified Investments to be acquired by the Partnership, the terms of purchase (including terms as to purchase price, settlement date, registration rights (if any) and other rights provided to the purchasers of such Qualified Investments) will have to be identical.

(vii) If a Lee Affiliate elects to sell a security that is also held by the Partnership, notice of the proposed sale will be given to the Managing General Partner and the Individual General Partners at the earliest practical time, and the Partnership will be given the opportunity to participate in such sale on a proportionate basis. The Partnership will participate in such sale if the Individual General Partners determine that such action is in the best interests of the Partnership; provided, however, that neither Thomas H. Lee, individually, in his capacity as an Individual General Partner, nor Thomas A. Lee Advisors, Inc., in its capacity as limited partner in the Managing General Partner, will participate in such deliberations. The Managing General Partner and the Individual General Partners will record the basis of their decision as to whether to participate in such sale.

(viii) The Individual General Partners will be provided information quarterly to enable them to determine whether all investments made during the preceding quarter comply with the conditions set forth above; provided, however, that neither Thomas H. Lee, individually, in his capacity as an Individual General Partner, nor Thomas H. Lee Advisors, Inc., in its capacity as limited partner in the Managing General Partner, will participate in such deliberations to the extent any such investment was recommended to the Partnership by the Investment Adviser. In addition, on a quarterly basis, the Individual General Partners will consider the continuing appropriateness of the standards established for investments by the Partnership. In this regard, the Individual General Partners will consider whether use of such standards continues to be in the best interests of the Partnership and the limited partners and does not involve overreaching of the Partnership or its Limited Partners on the part of any party concerned.

(ix) The Individual General Partners will maintain the records required by section 57(f)(3) of the 1940 Act and will comply with section 57(h) of the 1940 Act, and each of the Applicants will otherwise maintain all records required by the 1940 Act.

17. Applicants also request an order under section 57(c) of the 1940 Act for exemption from the provisions of section 57(a)(1) of the 1940 Act and pursuant to sections 17(d), 57(i) and Rule 17d–1 permitting the proposed acquisition by the Partnership of one or more interim investments from the Managing General Partner or an affiliated person thereof. Such transactions are prohibited by section 57(a)(1) of the 1940 Act and may constitute a joint transaction under sections 17(d) and 57(a)(4) of the 1940 Act. It is contemplated that a period of up to four to six months will elapse before the public offering of the Units is consummated and the Partnership receives the proceeds from the sale of such Units. During this period, it is expected that investment opportunities suitable for the Partnership (i.e., within the investment objective and policies stated in its Prospectus) may come to the attention of the Investment Adviser. The Partnership will not have the funds to make such investments during this period and such investment opportunities could be lost to the Partnership if not then acquired. Therefore, it is proposed that the Managing General Partner, or a subsidiary of ML &Co. that is an affiliated person of the Managing General Partners, acquire such investments as if the Partnership were acquiring such investments directly.

18. Any investment acquired pursuant to the terms of the exemption requested will be a Qualified Investment and must meet the Guidelines unless it is approved in advance by both the Managing General Partner and the Independent General Partners. The Managing General Partner or its affiliate will hold such investments on behalf of the Partnership until the sale of the Units takes place, at which time the Partnership will acquire such investments from the Managing General Partner or its affiliate at the lesser of (i) the value of the investment at the time it is acquired by the Partnership or (ii) the cost to the Managing General Partner or its affiliate of purchasing and holding such investment [reduced by the amount of any dividends or interest received by such entity with respect to such investment). With respect to clause (ii), such cost shall be the original purchase price paid by the Managing General Partner or its affiliate, plus permitted carrying costs as described below. No carrying costs will be paid by the Partnership in respect of the period prior to the later of (1) the date of acquisition of the proposed investment by the Managing General Partner or its affiliate, or (2) the date the Independent General Partners give written approval for the Partnership to purchase the investment. For purposes of the Applicants' order, carrying costs consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A., during the period for which carrying costs are permitted to be paid until the date the Partnership acquires the investment or (ii) the effective cost of borrowings by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total cost of borrowings.

19. If the Partnership acquires any of such investments, it will do so within 90 days after the closing of its public offering. Market value of such investments will be determined by the Managing General Partner, subject to review by the Independent General Partners. The Partnership will not be obligated to acquire any such investments if the acquisition of the

investments is not approved by the Independent General Partners or if the public offering is not consummated. In determining whether to approve such investments for the Partnership, the Independent General Partners will consider the terms of the transaction under the standards set forth above in condition (iii) with respect to co-investments, and further, the Independent General Partners will consider the fact that acquisition of such an investment may cause the Partnership to incur carrying costs. If the Partnership does not acquire such investments, the Managing General Partner or its affiliate will retain the investments for its own account. If the acquisition of such investments is approved by the Independent General Partners, the Managing General Partner or its affiliate will transfer each investment so acquired in its entirety to the Partnership following the sale of the Units to the public. Each such investment and the cost thereof will be disclosed in the Prospectus or a supplement thereto.

Applicants' Legal Conclusions

1. Applicants submit that the request for an order permitting the co-investments by the Partnership and the Investment Adviser is consistent with the provisions, policies and purposes of the 1940 Act, and that the participation of the Partnership will be on a basis no less advantageous than that of other participants. In addition, Applicants submit that the Investment Adviser or its affiliate will have significant involvement in structuring transactions, and through such equity participation, will be able to render significant managerial assistance to the companies in which the Applicants co-invest.

2. Applicants submit that the statutory standards of section 57(c) are satisfied. The Managing General Partner or its affiliate will acquire investments suitable for the Partnership within its investment objective and policies, holding such investments for the Partnership during an interim period and then selling such investments to the Partnership at the lower of market value or cost (which may include carrying charges). Based upon the nature of these investments, Applicants submit that the granting of the exemptive relief requested will benefit the Partnership by permitting it to acquire investments it might otherwise not be able to acquire. Because the Managing General Partner or its affiliate will retain the investments for its own account if the acquisition thereof is not approved by the Independent General Partners or the public offering of the Units is not consummated, there will be no incentive for overreaching or unfairness with respect to the Partnership and the transactions are not potentially subject to the abuses section 57(a) is designed to prevent. Moreover, the investments will be disclosed in the Partnership's Prospectus. The Managing General Partner or its affiliate will acquire such investments for the benefit of the Partnership as, in effect, its nominee and will bear the risk of decline in value of such investments, yet not benefit from any increase in value between the time of investment and the purchase of the investment by the Partnership. Accordingly, Applicants believe it is appropriate for the Partnership to pay carrying costs on the terms set forth above.

Applicants' Condition

If the requested order is granted, Applicants agree to the following conditions:

1. Any investments made by the Managing General Partner on behalf of the Partnership before the public offering of Units is consummated and the Partnership has received the proceeds from the sale of Units will be acquired on the terms described above.

2. Applicants undertake that no changes will be made in the Guidelines or the Conditions until an amendment of such order is obtained from the Commission.

3. The Partnership represents that at least 15% of its assets will be invested in Non-Managed Companies in which the Lee Affiliates do not own any securities.

4. Under the Partnership Agreement, in-kind distributions are not specifically authorized; however, Applicants believe that unrealized gains and losses attributable to securities distributed in-kind should be deemed realized at the time of distribution for purposes of allocations. Applicants agree not to make any in-kind distributions of securities to partners until it has either obtained a no-action letter from the staff of the Commission confirming the Partnership's interpretation or, alternatively, has obtained an order pursuant to section 206(A) of the Advisers Act permitting the Partnership to deem such gains or losses to be realized upon making of in-kind distributions of such securities.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20293 Filed 9-2-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-17352]

Application and Opportunity for Hearing; Rail Car Associates, Limited Partnership and Union Tank Car Company

August 28, 1987.

Notice is hereby given that Rail Car Associates Limited Partnership and Union Tank Car Company (both of which are referred to as "Applicant") have filed an application under Clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 ("Act") for a finding by the Securities and Exchange Commission ("Commission") that the trusteeship of Harris Trust and Savings Bank ("Harris") under one existing indenture dated as of January 15, 1973, which is qualified under the Act, and the proposed trusteeship of Harris under a new indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Harris from acting as trustee under either of such indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides that, with certain exceptions, a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which other securities of the same obligor are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the same obligor are outstanding, if the obligor shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that the trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures. Applicant alleges that:

(1) Harris is presently acting as Trustee under Union Tank Car Company's Series 9 Equipment Trust Agreement dated as of January 15, 1973. The aggregate principal amount outstanding as of February 28, 1987 was as follows:

Series	Principal Amount
9	$8,500,000

(2) The Equipment Trust Certificates issued under the Series 9 Trust Agreement are secured by a separate lot of identified railroad cars as will be the Equipment Trust Certificates issued under the proposed Series P–6 Agreement, so that, should Harris have the occasion to proceed against the security of any of the Equipment Trusts, such action would not affect the security or the use of any security, under the other Equipment Trusts. Thus, the existence of the other trusteeships should in no way inhibit or discourage the Trustee's action.

(3) Union Tank Car Company is not in default under of its Equipment Trust obligations.

(4) Such differences as exist between the Series P–6 indenture and the existing indenture for which Harris is presently acting as trustee are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Harris from acting as Trustee under any of said indentures.

Applicant has waived notice of hearing, hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission with respect to this application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22–17352, which is a public document on file in the offices of the Commission at 450 5th Street, NW., Judiciary Plaza, Washington, DC 20549.

Notice is further given that any interested person may, not later than September 21, 1987, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Judiciary Plaza, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and in the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 87–20294 Filed 9–2–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[CM–8/1111]

Partially Closed Meeting; Advisory Committee to United States Section, International North Pacific Fisheries Commission

The Advisory Committee to the United States Section, International North Pacific Fisheries Commission, will meet on September 25, 1987, at the Sheffield Hotel, 720 W. 5th St., Anchorage, Alaska, at 2:00 p.m. This session will discuss the Protocol to the International Convention for the High Seas Fisheries of the North Pacific Ocean, surveillance of foreign fishing fleets, the progress of fisheries research, the Alaska salmon fisheries, and fishery developments as they affect the International North Pacific Fisheries Commission. The session will be open to the public.

The Advisory Committee will also meet from 9:00 a.m. to 5:00 p.m. on September 26, 1987. These sessions will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States' negotiating position to be taken at the 34th Annual Meeting of the International North Pacific Fisheries Commission to be held in Vancouver, Canada, November 2–6, 1987. Pursuant to section 4(c) of the North Pacific Fisheries Act of 1954, as amended, 16 U.S.C. 1023(c) which provides that the "advisory committee . . . shall be granted opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section", the members of the Advisory Committee will examine various options for the negotiating position at the Special Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Robert J. Ford, Pacific Fisheries Officer, OES/OFA Room 5806, U.S. Department of State, Washington, DC 20520. Mr. Ford can be reached by telephone on (202) 647–2009.

Date: August 25, 1987.

Edward E. Wolfe,

Deputy Assistant Secretary, Oceans and Fisheries Affairs.

[FR Doc. 87–20251 Filed 9–2–87; 8:45 am]

BILLING CODE 4710–09–M

[cm–8/1112]

For International Radio Consultative Committee (CCIR); U.S. Organization; Study Group 6; Meeting

The Department of State announces that Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on October 7 and 8, 1987 at the Naval Ocean System Center in San Diego California. Meetings will begin at 9:00 a.m. on both days.

Study Group 6 deals with matters relating to the propagation of radio waves in and through the ionosphere. The purpose of the meeting is to review preparations for the international meeting of Study Group 6 in the Spring of 1988.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Request for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telelphone (202) 647–2592.

Date: August 25, 1987.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 87–20252 Filed 9–2–87; 8:45 am]

BILLING CODE 4710–07–M

[cm 8/1110]

International Telegraph and Telephone Consultative Committee and International Radio Consultative Committee; U.S. Organization; Legal Panel on International Telecommunications Law; Meeting

The Department of State announces the third meeting of the Panel on International Telecommunications Law, which is under the auspices and authority of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and International Radio Consultative Committee (CCIR). The Panel's meeting will convene on

Monday, September 21, 1987 in Room 1408, Department of State, 2201 C Street, NW., Washington, DC

The meeting will begin at 2:00 p.m.

The agenda will include discussion of issues pertaining to the work of the International Telecommunication Union (ITU) and the division of current provisions between a Constitution and Convention. The Panel will address issues relating to the provisions governing amendment, accession, coming into force and similar issues.

Members of the general public may attend the meeting and join in the discussion. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of the Deputy U.S. Coordinator for International Communications and Information Policy, Mr. Thomas J. Ramsey, State Department, Washington, DC; telephone (202) 647-5832. All attendees must use the C Street entrance to the building.

Dated: August 21, 1987.

Earl S. Barbely,

Chairman, U.S. CCITT National Committee.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 87-20253 Filed 9-2-87; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1108]

Partially Closed Meeting; Advisory Committee on International Law

A meeting of the Advisory Committee on International Law will take place at 10:30 a.m. on Wednesday, September 23, 1987, in Room 6909 of the Department of State, 2201 C Street, NW., Washington, DC. The morning session will not be open to the public; the afternoon session (3:00 p.m. to 4:00 p.m.) will be open to the public up to the capacity of the meeting room.

The subject meeting will focus on policy and legal issues relating to the immunity of foreign States and their instrumentalities in United States courts, the protection of the diplomatic pouch, the Torture Convention and Torture Victims Protection Act and the United States relationship to the International Court of Justice. As the morning session will include examination and discussion of material classified in accordance with Executive Order 12356 the disclosure of which could adversely affect the foreign policy interests of the United States, it has been closed pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B).

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring to attend the afternoon session should, prior to September 22, notify the Office of the Assistant Legal Adviser for Nuclear Affairs (telephone (202) 647-1043) of their name, affiliation, address and telephone number in order to arrange admittance.

Date: August 21, 1987.

Ted A. Borek,

Executive Director.

[FR Doc. 87-20254 Filed 9-2-87; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 87-063]

Chemical Transportation Advisory Committee; Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC). This committee advises the Chief, Office of Marine Safety, Security and Environmental Protection on regulatory requirements for promoting safety in the transportation of hazardous materials on vessels and the transfer of these materials between vessels and waterfront facilities.

Applications will be considered for eight expiring terms and any other existing vacancies. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in applications from minorities and women.

The Committee usually meets at least once a year in Washington, DC, with subcommittee meetings for specific problems on an as-required basis.

DATE: Requests for applications should be received no later than December 1, 1987.

ADDRESS: Persons interested in applying should write to Commandant (G-MTH-1), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Commander Ronald W. Tanner, at the above mailing address, or telephone (202) 267-1217.

Dated: August 31, 1987.

N.W. Lemley,

Acting Executive Director, Chemical Transportation Advisory Committee.

[FR Doc. 87-20340 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-14-M

[CGD 87-060]

Consolidation of Atlantic and Gulf Strike Teams

ACTION: Notice of availability of FONSI.

SUMMARY: The Coast Guard is in the process of consolidating the Atlantic Strike Team (AST) located at Elizabeth City, North Carolina, with the Gulf Strike Team (GST) located at Mobile, Alabama. The Pacific Strike Team located at Hamilton AFB near San Francisco, California, will not be affected by this consolidation. The consolidated unit will be located at Mobile and will serve the Coast Guard Atlantic Area, which includes the states, territories and U.S. possessions east of the Rocky Mountains. This notice announces the public availability of the Environmental Assessment and FONSI prepared for this action.

ADDRESS: The FONSI and Environmental Assessment will be available for inspection and copying at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Allen R. Thuring, Office of Marine Safety, Security and Environmental Protection, (202) 267-0426.

SUPPLEMENTARY INFORMATION: The primary mission of the strike teams is to provide assistance upon request to federal On-Scene Coordinators when a pollution incident occurs that exceeds the capability of local emergency resources for pollution response. Assistance ranges in nature from sophisticated site entry techniques, which require equipment and training that may be either too costly or impractical to maintain in some locations, to the addition of skilled personnel to assist a unit overburdened by response activity. Increasingly, the strike teams provide expertise and do not utilize response equipment.

In the 14 years since the strike teams were created, the availability of emergency response capability within local governments and from commercial contractors has grown dramatically. However, there remains a need for

supplementary assistance in very serious cases and to fill in gaps where local capability has not developed. This reorganization will continue to support the performance of that mission, but in a more cost effective manner that is reflective of the above noted increases in local and commercial capability.

The Coast Guard has prepared an Environmental Assessment which includes an evaluation of the impacts of this action. As a result of the Environmental Assessment, the Coast Guard announces a finding of no significant impact (FONSI). A detailed discussion of the environmental considerations involved in this action is contained in the Environmental Assessment.

Date: August 28, 1987.

J. W. Kime,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 87-20341 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-14-M

[87-064]

Meeting of New York Harbor Traffic Management Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on October 7, 1987, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10:00 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Vessel Traffic Service New York update.
3. Permanent change of Vessel Traffic Service New York's boundary extensions to the Lehigh Valley Draw bridge and the Hell Gate Railroad bridge.
4. Information report from Vessel Traffic Service New York on a seaplane familiarization ride in NY Harbor.
5. Marina construction requirements implemented by the Philadelphia Corps of Engineers and their possible adaptation to NY Harbor.
6. Use of marine radios by pleasure craft.
7. Topics from the floor.
8. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Commander W. Young, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, New York Vessel Traffic Service, Governors Island, New York, NY 10004; or by calling (212) 668-7954.

Dated: August 28, 1987.

R.L. Johanson,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 87-20342 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Charleston County, SC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed replacement for the existing John P. Grace Memorial Bridge over the Cooper River in Charleston County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Rice, District Engineer, Federal Highway Administration, Suite 758, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina, 29201, Telephone: (803) 253-3386.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration in cooperation with the South Carolina Department of Highway and Public Transportation, will prepare an environmental impact statement for replacement of the Grace Memorial Bridge between the city of Charleston and the City of Mount Pleasant. The existing bridge carries two southbound lanes of U.S. 17. The project will extend from the terminus of I-26 in Charleston across Town Creek, Drum Island and the Cooper River to Mathis Ferry Road in Mount Pleasant, a distance approximately 3.0 miles.

Various types of steel and concrete bridges as well as a tunnel will be considered in the EIS and will all generally be in the same corridor as the existing bridge. Each alternate will provide a limited access road with grade separations and interchanges. A funding study will consider the use of tolls to pay for the project.

A letter of intent inviting written comments and suggestions, to ensure that the full range of environmental impacts associated with the project are considered will be sent to appropriate Federal State and local agencies, and to private organizations and interested citizens. A public hearing will be conducted to further involve local citizens in the process. Public notice will be given of the time and place of the hearing. The environmental impact statement will be available for public and agency review and comment.

A formal scoping meeting will be held with Federal State and local agencies, and private interest groups for the purpose of identifying the significant environmental issues to be addressed in the EIS. The scoping meeting will be held on September 22, 1987 at 10:30 a.m. in Seminar Room A of the Business and Technology Center located at 701 East Bay Street in Charleston.

To ensure that the full range of environmental issues are addressed and identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the supplemental EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovermental consultation on Federal programs and activities apply to this program)

Robert J. Probst,

Division Administrator, Columbia, South Carolina.

[FR Doc. 87-20331 Filed 9-2-87; 8:45am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Jasper, Newton, and McDonald Counties, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Jasper, Newton and McDonald Counties, Missouri.

FOR FURTHER INFORMATION CONTACT:

Mr. James Mullen, District Engineer, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO, 65102, Telephone No. 314–636–7104

Mr. James F. Roberts, Surveys and Plans Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO, 65102, Telephone No. 314–751–2876.

SUPPLEMENTARY INFORMATION: (1) The project begins at Carthage, Missouri and extends south approximately 49 miles to the Missouri-Arkansas State Line. The proposed highway will be a four-lane controlled access divided facility. The proposed improvement will serve to reduce traffic congestion on existing Route 71 and Alternate Route 71 in Jasper, Newton, and McDonald Counties in southwestern Missouri. These routes are deficient for handling traffic capacities. This is a Demonstration Project authorized under the Surface Transporation and Uniform Relocation Assistance Act of 1987. This project was authorized for the purpose of demonstrating methods of improving highway safety and accelerating highway construction. It shall also demonstrate the latest high-type geometric design features and new advances in highway traffic control and safety hardware.

(2) Several undetermined alternates will be considered for the purposed highway. The "no build" alternate as well as the upgrading of existing facilities will be addressed.

(3) To date, presentation of the study has been made in four meetings at the local level, and input has been received. The scoping process will be initiated with Federal, State, and local agencies as studies continue. Further public hearings will be held, also.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction)

Issued on August 28, 1987.

James M. Mullen,

District Engineer, Jefferson City.

[FR Doc. 87–20255 Filed 9–2–87; 8:45 am]

BILLING CODE 4910–22–M

Diabetic Conditions and Commercial Drivers; Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that a conference on Diabetic Conditions and Commercial Drivers will be held on September 9 and 10, 1987, beginning at 12:00 noon at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The telephone number is (703) 521–5500.

The Agenda includes a plenary session which will be followed by consensus development task force meetings and will conclude with a plenary session during which the task force recommendations will be commented on by other task force members. The two plenary sessions will be open to the public. The approximate time for each plenary session is as follows: Plenary Session I, September 9, 1987, 12:00 noon to 2:00 p.m., and Plenary Session II, September 10, 1987, 10:00 a.m. to 12:00 noon.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis P. McEachen, Standards Development Division, Office of Motor Carrier Standards, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2987. Office hours are from 7:45 a.m. to 4:15 p.m. Monday through Friday.

Issued August 28, 1987.

R.A. Barnhart,

Federal Highway Administrator.

[FR Doc. 87–20280 Filed 9–2–87; 8:45 am]

BILLING CODE 4910–22–M

Meeting; Environmental Impact and Related Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces a public informational meeting on its recently issued final regulation governing the preparation of environmental impact statements and related environmental documents. The public informational meeting will be held from 10:00 a.m. to 12:00 noon on September 11, 1987, in Washington, DC in Room 4234 at the U.S. Department of Transportation Headquarters, 400 Seventh Street SW., Washington, DC 20590. The agenda will include a presentation on the new regulation and a question and answer session.

The new regulation was published on August 28, 1987, in the **Federal Register** (52 FR 32646), and amends Part 771 of Title 23 of the Code of Federal Regulations. The amendments simplify and streamline the project development process, provide increased decisionmaking authority to agency field offices, and consolidate the FHWA's public involvement requirements. The regulatory changes are part of the FHWA's establishment of a streamlined, one-stop environmental process. A rulemaking process with public notice and comments was conducted, as discussed in the final notice published at 52 FR 32646.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick Skaer, Office of Environmental Policy (HEV–10), (202) 366–2050, FHWA 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., EST, Monday through Friday except legal holidays.

Issued on August 31, 1987.

R.A. Barnhart,

Federal Highway Administrator.

[FR Doc. 87–20343 Filed 9–2–87; 8:45 am]

BILLING CODE 4910–22–M

Meeting; Motor Carrier Advisory Committee

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on September 15, 1987, in Washington, DC, at the U.S. Department of Transportation headquarters, 400 Seventh Street, SW., Washington, DC 20590. The meeting will be held from 9 a.m. to 5 p.m. in Room 4234. This meeting is open to the public. The agenda will focus on the status of the implementation of the commercial drivers license program, public information efforts regarding the motor carrier industry, the development of a "Futures Program" for the industry, a review of previous resolutions regarding drug testing, the status of other FHWA legislative and regulatory activities and a review of old business from previous meetings.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Toole, Executive Director,

National Motor Carrier Advisory Committee, Federal Highway Administration, HOA-1, Room 4218, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2238. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

Issued on August 28, 1987.

R. A. Barnhart,

Federal Highway Administrator.

[FR Doc. 87-20281 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 23-87]

Treasury Notes; Series AC-1989

The Secretary announced on August 26, 1987, that the interest rate on the notes designated Series AC-1989, described in Department Circular—Public Debt Series—No. 23-87 dated August 20, 1987, will be 7¾ percent. Interest on the notes will be payable at the rate of 7¾ percent per annum.

Washington, August 27, 1987.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-20238 Filed 9-2-87; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 24-87]

Treasury Notes; Series L-1992

The Secretary announced on August 27, 1987, that the interest rate on the notes designated Series L-1992, described in Department Circular—Public Debt Series—No. 24-87 dated August 20, 1987, will be 8⅜ percent. Interest on the notes will be payable at the rate of 8⅜ percent per annum.

Washington, August 28, 1987.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-20239 Filed 9-2-87; 8:45 am]

BILLING CODE 4810-40-M

Senior Executive Service; Performance Review Board Membership

AGENCY: Treasury.

ACTION: Notice of Members of Performance Review Board (PRB).

SUMMARY: This notice announces the appointment of members of the composite PRB for the U.S. Savings Bonds Division, the Bureau of the Public Debt, the Bureau of Engraving and Printing, the United States Mint, and the Financial Management Service.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Rath, Assistant Commissioner (Administration), Bureau of the Public Debt, E Street Building, Room 527, Washington, DC 20239-0001; Telephone: (202) 376-4330.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4) and the Civil Service Reform Act of 1978, the members of the Senior Executive Service Performance Review Board for the U.S. Savings Bonds Division, the Bureau of the Public Debt, the Bureau of Engraving and Printing, the United States Mint, and the Financial Management Service are listed below. This Board reviews the performance of career senior executives below the level of bureau head and principal deputy in the five bureaus. At least three voting members constitute a quorum.

Bureau	Primary	Alternate
SB	Jerrold B. Speers, Executive Director.	Edward J. Guss, Deputy Executive Director
PD	Kenneth W. Rath, Assistant Commissioner (Administration)	Eleanor J. Holsopple, Assistant Commissioner (Securities and Accounting Services)
E&P	L. Paul Blackmer, Jr., Assistant Commissioner (Administration).	Carl D'Alessandro, Acting Assistant Director (Operations).
Mint	Eugene H. Essner, Deputy Director.	Michael F. Hill, Associate Director for Policy and Management.
FMS	Diane E. Clark, Assistant Commissioner Administration.	Mitchell Levine, Assistant Commissioner Comptroller.

This notice does not meet the Department's criteria for significant regulations.

Kenneth W. Rath,

Assistant Commissioner (Administration), Bureau of the Public Debt, and Acting PRB Chairman, 1987.

[FR Doc. 87-20240 Filed 9-2-87; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: August 31, 1987.

By direction of the Administrator

David A Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. Request for Approval of School Attendance
3. VA Forms 21-674 and 21-674c
4. This information is necessary to determine eligibility for continued entitlement to benefits for a child between the ages of 18 and 23 who is attending school.
5. On occasion
6. Individuals or households
7. 138,000 responses
8. 34,500 hours
9. Not applicable

1. Department of Veterans Benefits
2. Placement Certificate for Manufactured Home
3. VA Form 26-8644
4. This information certifies the placement of the manufactured home on the property as approved by VA and receipt of all accessories included in the home loan.
5. On occasion
6. Individuals or households; Businesses or other for-profit; and Small businesses or organizations
7. 6,000 responses
8. 1,000 hours
9. Not applicable

1. Department of Veterans Benefits
2. Water-Plumbing Systems Inspection Report (Manufactured Home)
3. VA Form 26–8731a
4. This information is used to determine acceptability of used manufactured homes for VA guaranteed home loans.
5. On occasion
6. Individuals or households; Businesses or other for-profit; and Small businesses or organizations
7. 1,000 responses
8. 2,000 hours
9. Not applicable

1. Department of Veterans Benefits
2. Trainee Request for Leave—Chapter 31, Title 38, U.S.C.
3. VA Form 26–1905h
4. This information is used to determine a veteran's eligibility for subsistence during a leave of absence while participating in the vocational rehabilitation program.
5. On occasion
6. Individuals or households
7. 30,000 responses
8. 7,500 hours
9. Not applicable

1. Department of Veterans Benefits
2. Loan Service Report
3. VA Form 26–6808
4. This information is used to process delinquent guaranteed and insured home loans.
5. On occasion
6. Individuals or households
7. 78,000 responses
8. 32,500 hours
9. Not applicable

[FR Doc. 87–20308 Filed 9–2–87; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52. No. 171
Thursday, September 3, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

September 1, 1987.

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, September 11, 1987, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the Public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report
  A. Status of Earmarks
  B. Personnel Report
  C. Activity Report
IV. Statement by Clarence M. Pendleton, Jr., Regarding the Flagstaff, Arizona Hearings on the Enforcement of the Indian Civil Rights Act of 1968
V. Report of Commission Subcommittee Regarding Proposed Projects
VI. SAC Recharters
VII. Discussion by SAC Chairs

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division (202) 376–8312.

William H. Gillers,
Solicitor, 376–8514.

[FR Doc. 87–20394 Filed 9–1–87; 11:56 am]
BILLING CODE 6335–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Thursday, August 27, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (a) matters relating to the Corporation's assistance agreement with an insured bank; and (b) requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: August 31, 1987.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 87–20415 Filed 9–1–87; 12:25pm]
BILLING CODE 6714–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, September 9, 1987.

PLACE: 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Review of Central Liquidity Facility Lending Rate.
4. Central Liquidity Facility Reserving Policy for FY 1988.
5. Central Liquidity Facility Agent Commitment Fees.
6. Insurance Fund Report.
7. Appeal of Regional Director's Disapproval of Charter Application.
8. Interim Final Rule: Prohibited Lending Practices.
9. Request for Exemption from NCUA's Nonpreferential Treatment and Prohibited Fees Lending Rules.
10. Interpretive Ruling and Policy Statement Regarding Procedures for Developing Regulations.
11. Final Rules: Part 705 and § 700.1, NUCA Rules and Regulations, Community Developing Revolving Loan Program for Credit Unions and Definition of Low Income Members.
12. College Student Credit Union Pilot Program.
13. Federal Credit Union Field of Membership and Chartering Policy.

RECESS: 11:30 a.m.

TIME AND DATE: 11:45 a.m., Wednesday, September 9, 1987.

PLACE: 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Approval of Central Liquidity Facility Agent Member. Closed pursuant to exemptions (4), (8), and (9)(A)(ii).
3. Central Liquidity Facility Lines of Credit. Closed pursuant to exemptions (4), (8), and (9)(A)(ii).
4. Requests for Exemption from § 701.21(h)(2)(ii), NCUA Rules and Regulations. Closed pursuant to exemptions (6), (8), and (9)(A)(ii).
5. Appeals of Liquidating Agent Denial of Claims. Closed pursuant to exemptions (6), (7), (8), (9)(A)(ii), and (10).
6. Administrative Action under section 206(h)(1)(a) of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
7. Board Briefings. Closed pursuant to exemptions (2), (8), (9)(A)(ii), and (9)(B).
8. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357–1100.

Becky Baker,
Secretary of the Board.

[FR Doc. 87–20426 Filed 9–1–87; 1:40 pm]
BILLING CODE 7535–01–M

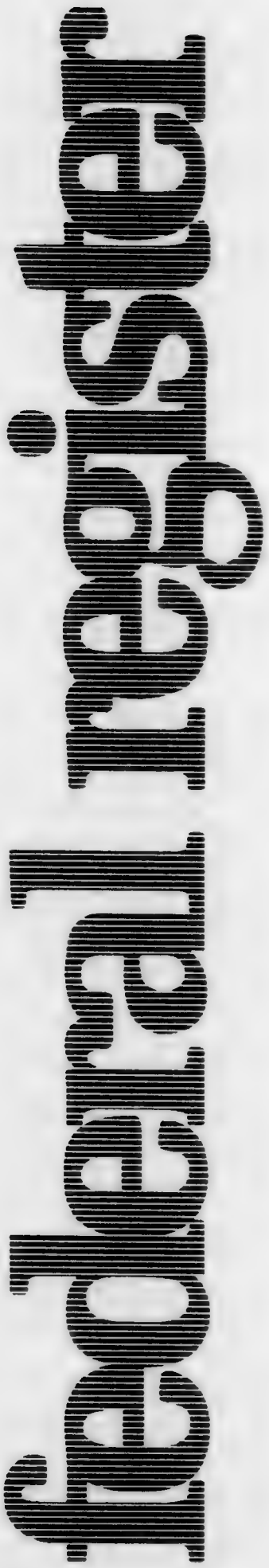

Thursday
September 3, 1987

Part II

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2550

Proposed Regulation Regarding Participant Directed Individual Account Plans; Notice of Proposed Rulemaking

VOL
52
ISS
171
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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2550

Proposed Regulation Regarding Participant Directed Individual Account Plans (ERISA Section 404(c) Plans)

AGENCY: Department of Labor.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains a proposed regulation under section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA, or the Act). That section provides that, where a participant or beneficiary of an employee pension benefit plan exercises control over assets in an individual account maintained for him under the plan, the participant or beneficiary is not considered a fiduciary by reason of his exercise of control and other plan fiduciaries are relieved of liability under Part 4 of Title I of ERISA for the results of the participant's or beneficiary's exercise of control. Section 404(c) specifically contemplates the issuance of regulations, and the proposal describes the circumstances in which section 404(c) applies to a transaction involving a participant's or beneficiary's exercise of control over his individual account. If adopted, the regulation will affect participants and beneficiaries as well as plan fiduciaries.

DATES: Written comments on the proposed regulation must be received by the Department of Labor (the Department) on or before November 2, 1987. The proposed regulation, if adopted, would apply to transactions occurring in plan years beginning after a date 90 days from the date the regulation is published in final form.

ADDRESSES: Written comments (preferably at least three copies) should be submitted to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, Washington, DC 20210, and marked "Attention: Section 404(c) regulation." All submissions will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, Room N–4677, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rooney, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210. Telephone (202) 523–9596 or Mark A. Greenstein, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210. Telephone (202) 523–8671.

SUPPLEMENTARY INFORMATION: This document contains a proposed regulation under section 404(c) of ERISA.[1] That section provides that where a participant or beneficiary of an employee pension benefit plan that provides for individual accounts exercises control over assets in his account, then: (1) the participant or beneficiary shall not be deemed to be a fiduciary by reason of his exercise of control; and (2) no person who is otherwise a fiduciary shall be liable under the fiduciary responsibility provisions of ERISA for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control. A discussion of section 404(c) and a description of the proposed regulation follows.

A. General Considerations

The relief from the fiduciary responsibility provisions of ERISA that is provided by section 404(c) applies only to individual transactions that meet the criteria established by that section—*i.e.*, the transaction must be under the kind of plan described in section 404(c) and the participant must have actually exercised control with respect to the transaction. Thus, a determination whether sections 404(c)(1) and 404(c)(2) apply can be made only on a case by case basis. The proposed regulation provides the general framework for such determinations.

It is the Department's view that section 404(c) is similar to a statutory exception to the general fiduciary provisions of ERISA, and, accordingly, the person asserting applicability of the exception will have the burden of proving that the conditions of section 404(c) and any regulation thereunder have been met.[2]

The proposed regulation is organized in a manner similar to section 404(c) itself. Paragraph (a) describes the general standards of section 404(c). Paragraph (b) describes the kinds of plans that may provide for participant control. Paragraph (c) describes the application of paragraph (b) in certain special circumstances. Paragraph (d) describes the manner in which a participant must exercise control in order for the relief provided by section 404(c) to be available. Paragraph (e) describes the application of sections 404(c)(1) and 404(c)(2). Paragraph (f) defines certain terms that are used in the regulation. Paragraph (g) contains specific examples which illustrate the provisions of the proposal. Paragraph (h) establishes the effective date for the regulation.

B. ERISA Section 404(c) Plans

The proposed regulation defines an "ERISA section 404(c) plan" as an individual account plan described in section 3(34) of ERISA that permits a participant to make an independent choice, from a broad range of investment alternatives, regarding the manner in which any portion of the assets in his individual account is invested.[3] The definition permits a plan to provide for participant control in many different ways and in varying degrees. For example, under the definition, a plan could meet the requirements for treatment as an ERISA section 404(c) plan notwithstanding that it only allows certain participants to exercise control over their individual account balances and notwithstanding that it only permits participants to exercise control over a specified portion of their account balances.[4] However, if

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[1] 29 U.S.C. 1104(c).

[2] See *Donovan v. Cunningham*, 716 F.2d 1455, 1465, 1467–68 (5th Cir. 1983) in which it was held that a fiduciary of an employee stock ownership plan had the burden of proof to show that the conditions to the availability of the statutory exemption found in section 408(e) of ERISA were met. As support, the court cited *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953): "As the Supreme Court has observed in a different context, it seems 'fair and reasonable' to place the burden of proof upon a party who seeks to bring his conduct within a statutory exception to a broad remedial scheme. *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126, 73 S.Ct. 981, 985, 97 L.Ed. 1494 (1953)." *Id.* at 1467–68, n.27.

[3] Section 404(c) refers to a pension plan that "provides for individual accounts." The proposed regulation, however, limits coverage of section 404(c) to "individual account plans" described in section 3(34) of ERISA because the conference report accompanying ERISA, H.R. Rep. No. 1280, 93d Cong., 2d Sess. 305 (1974) (hereafter, the Conference Report) refers to individual account plans that provide for participant control and because section 404(c) seems to contemplate separate individual accounting so that each participant will bear the sole risk of loss attributable to his investment decision.

[4] This discussion deals only with the effect of such classifications on a plan's status as an ERISA section 404(c) plan; in certain circumstances such classifications may violate other provisions of law, including conditions to qualification of a pension plan under section 401(a) of the Internal Revenue Code (the Code). That section provides that a qualified pension plan may not discriminate in favor of employees who are officers, shareholders or highly compensated. See section 401(a)(4) of the Code. In Rev. Rul. 70–370, 1970–2 C.B. 84, the Internal Revenue Service held that a profit sharing plan failed to meet the qualification requirements under section 401 of the Code because only highly compensated employees were permitted to exercise control over assets in their individual accounts.

a plan does not permit a participant to exercise control over all of the assets in his account, the provisions of sections 404(c)(1) and 404(c)(2) would not, in any circumstances, apply to transactions involving assets with respect to which the participant is not permitted to exercise control. To the extent the participant is not permitted to exercise control, plan fiduciaries are subject to all of the fiduciary duties and obligations set forth in Part 4 of Title I of ERISA.[5]

1. Opportunity To Exercise Control

The proposed regulation states that a section 404(c) plan must provide participants with a reasonable opportunity to give investment instructions to a responsible plan fiduciary who is obligated to comply with such instructions.[6] These instructions can be either in written or oral form. If the plan permits oral participant instructions, written confirmations of such instructions must be given by the responsible plan fiduciary. A plan does not fail to meet this requirement because it imposes reasonable restrictions on the frequency with which a participant may give investment directions. For example, opportunities to give instructions may be restricted to a certain degree where the investment options available to the participant consist of pooled funds that, because of the character of the underlying assets and the diversification of the funds' assets, generally may be expected to rise and fall in value slowly and in accord with broad market trends. If, on the other hand, the investment options available to participants include the option to invest in securities that are traded in a volatile market where the value of such securities may fluctuate widely over a short period of time, the proposed regulation would require the plan to permit participants to give investment instructions at any time during which the securities are traded in order for the participant to have a reasonable opportunity to exercise control over assets in his account.[7]

The proposed regulation also provides that a plan does not fail to qualify as an ERISA section 404(c) plan merely because it charges the participant's account with the reasonable expenses of carrying out his instructions provided the participant is informed that such charges will be made and that the participant is furnished periodic reports regarding the actual expenses incurred pursuant to reasonable procedures established under the plan.[8]

Pursuant to paragraph (b)(2)(ii) of the proposed regulation, an ERISA section 404(c) plan may impose certain limitations on the responsible fiduciary's duty to carry out a participant's investment instructions. For example, the proposal states that a plan fiduciary may refuse to implement an investment decision that would generate unrelated business income or unrelated debt-financed income to the plan that would be taxable under the Code.[9] The circumstances described in the proposal are not intended as an exhaustive list and a plan may impose other reasonable limitations. However, such restrictions could so restrict a participant's opportunity to exercise control as to cause the plan to fail to meet the general requirement that an ERISA section 404(c) plan must provide for a broad range of investment alternatives. Thus, such restrictions should be taken into account in determining whether a particular plan meets the requirements for treatment as an ERISA section 404(c) plan and in determining the scope of the responsibilities of plan fiduciaries.

2. Broad Range of Investment Alternatives

a. *In general.* As noted above, the proposed regulation provides that a plan is an ERISA section 404(c) plan only if it offers a "broad range" of investment alternatives. This provision is derived from the discussion of section 404(c) in the Conference Report.[10] Whether a plan provides a broad range of investment alternatives is ultimately a factual question to be resolved in light of the facts and circumstances of the particular case. However, the proposed regulation establishes the minimum standards which a plan must meet in order to provide a sufficient range of investment options.[11]

First, the alternatives available under the plan must be sufficient to permit the participant to materially affect the potential return on the assets in his account and the risks to which they are subject.

Second, the options must be sufficient to permit the participant to pursue a variety of different investment objectives. These include: (1) Capital preservation and generation of income; (2) capital appreciation; and (3) liquidity with a high degree of assurance of repayment.

Third, the plan must provide a sufficient range of investments so that a participant may diversify investments so as to minimize the risk of large losses. There are two aspects to this requirement. First, the proposed regulation makes it clear that, within each of the investment objective categories discussed above, an ERISA section 404(c) plan must offer participants a sufficient number of options so that a participant may diversify investments within each category to minimize the risk of large losses. Second, the regulation contains a more general requirement under which the plan as a whole must provide participants with the opportunity to diversify investments. The nature of the plan and the size of the participants' accounts may affect the number and type of investment options necessary to meet this requirement. For example, a plan which does not provide participants with an opportunity to

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[5] ERISA also imposes certain requirements which are not affected by a participant's exercise of control over the assets in his individual account; those requirements, of course, continue to apply to plan fiduciaries even though a plan is an ERISA section 404(c) plan. For example, the bonding requirements of section 412 of ERISA would apply to all persons (other than the participant) who handle plan funds under an ERISA section 404(c) plan.

[6] As discussed below, paragraph (e)(2)(ii) of the proposed regulation describes certain categories of participant instructions with respect to which the provisions of section 404(c) do not apply.

[7] To further illustrate, an opportunity to give instructions once every calendar quarter generally would be sufficient if the investment options available to the participant are diversified pooled funds and the underlying assets of each fund consist of a large, diversified group of securities which are actively traded and for which there is a recognized market. Based on the nature and diversity of these underlying assets, the market value of an interest in any of these funds should reflect overall broad market trends and, hence, should not fluctuate greatly over short periods of time. If, however, an ERISA section 404(c) plan includes an option to invest in commodities futures, it might be necessary, because the market for such securities is highly volatile, for the plan to permit participants to give investment instructions at any time during which such futures are traded in order to provide each participant a reasonable opportunity to exercise control over the assets in his account.

[8] For example, if a plan's summary plan description contains a general description of the type of administrative charges that may be incurred along with the amount of such charge (and any change in that information is reflected in subsequent summaries of material modifications), the requirement of prior periodic disclosure of the existence of these charges generally would be met. Such disclosure would not, however, satisfy the requirement of periodic disclosure of the actual expenses incurred by the participant.

[9] *See* sections 512–514 of the Code.

[10] Conference Report, at 305–6.

[11] Of course, a plan which permits a participant to direct the investment of the assets in his account in any available investment will be considered to offer a broad range of investment alternatives. In cases where the plan limits the investment options available to participants, a determination whether the plan provides a broad range of investment alternatives would be made on a case by case basis, taking into account the factors described in the regulation.

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invest in pooled investment funds might not meet the diversification requirement if the average size of the participants' accounts is such that pooled investment is the only reasonable way in which to diversify account investments. In addition, the general diversification requirement should assure that participants have an opportunity to pursue "balanced" investment objectives involving a combination of investments from the specified categories discussed above.[12]

Fourth, the plan must provide a participant the opportunity to invest some or all of his account balance in a relatively "safe" investment—*i.e.*, a fully insured interest-bearing deposit in a bank or similar financial institution or a pooled investment fund the assets of which consist solely of cash and securities issued or guaranteed by the United States or one of its agencies. The principal investment objectives of such an investment fund must include a high level of current income consistent with the preservation of capital and a high degree of liquidity.

Where pooled investment funds are available as investment options, the underlying securities held in the investment funds may be considered in evaluating the extent to which a participant is able to diversify investments so as to minimize the risk of large losses.[13]

The Department notes that, in view of the importance of these provisions defining a broad range of investment opportunities available for participation direction, it will carefully consider comments describing other options that the commentator believes satisfy the requirements of section 404(c) of ERISA and its legislative intent.

b. *Access to information regarding investment options.* The proposed regulation states that only those investment options as to which sufficient information is available to the participant to permit informed investment decisions will be taken into account in determining whether a plan provides a broad range of investment alternatives.[14] This provision does not require plans to *limit* the available investment alternatives to those which meet these information requirements, but rather requires only that participants under an ERISA section 404(c) plan must at least be able to choose from a broad range of investments with respect to which such information *is* available. Thus, a plan can offer investment alternatives for which no information is available and still meet the broad range of investment alternatives requirement if it also offers a sufficient number of investment alternatives about which information is available. Paragraph (g)(1) of the proposal illustrates the operation of this provision.

C. Special Rule for Designated Pooled Investment Funds and Designated Investment Managers

1. *Designated Pooled Funds.* It appears that some individual account plans limit a participant's investment options by permitting participants to choose from a variety of different kinds of *specified* pooled investment funds. These funds frequently are identified in the plan document and may be the only investment options available to the participant. In many cases, all of the available funds are managed by the same investment manager or by affiliated investment managers. The Department has concluded that, in general, these plans should be treated as ERISA section 404(c) plans because they permit participant control and provide for a broad range of investment alternatives. However, these plans appear to differ in at least two respects from other participant-directed plans.

First, these plans offer participants *designated* pooled funds to the exclusion of other investments. Participants are able to choose from funds that have different investment objectives, but once they invest in a fund they do not have control over individual investment decisions made by the pooled fund's manager. Moreover, in many cases, the participant has no choice with respect to the investment managers who do make individual investment decisions. For these reasons, the Department believes that it is important that any regulation under section 404(c) of ERISA clearly reflect plan fiduciaries' ongoing duty to consider the suitability of the designated funds in these circumstances in order to protect the interests of participants.

Second, because a participant may have limited funds in his account, investment in pooled funds may frequently be the only way in which the participant can diversify his account. Thus, the Department believes that it is essential that a sufficient variety of funds be available to enable the participant to pursue—through investment in the designated funds—each of the investment objectives discussed above in connection with the general requirement that the plan permit a participant to choose from a broad range of investments.

In view of the foregoing, the proposed regulation provides that a plan whose investment alternatives include any specified pooled investment fund is an ERISA section 404(c) plan only if (in addition to the plan's compliance with the requirements of paragraph (b)): (1) An independent plan fiduciary is required to designate the pooled investment funds offered as investment options, and (2) the fiduciary designates at least four funds, each of which is managed in furtherance of a different one of four investment objectives (preservation of capital, capital appreciation, liquidity, and balanced funds).[15] For purposes of this rule, an

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[12] Even if a plan offers a diverse group of investments in each of the categories of investments discussed above, it may not meet the general diversification standard of the proposed regulation. For example, a plan may fail to provide a participant an opportunity to diversify his account if all of the available options relate to one industry.

[13] This is made clear in an example included in the regulation (paragraph (g)(2)). The Department's position is also consistent with the position taken in the Conference Report with regard to a fiduciary's obligation to diversify plan investments. There, the conferees stated that for efficiency and economy plans may invest all their assets in a single bank or other pooled investment fund, but that the pooled fund itself could have diversified investments, and, in such circumstances, the diversification rule is to be applied to the plan by examining the diversification of the investments in the pooled fund. Conference Report at 305.

For purposes of diversification, an investment in a closed-end management company will not be considered to be an investment in a pooled investment fund unless the investment is in the common stock issued by that company.

[14] The requirement that sufficient information must be available to permit informed investment decisions applies not only to the initial participant investment decision but also to subsequent decisions with regard to that investment. Thus, for example, in order for an investment option to meet this requirement, information regarding the current value of the investment would need to be readily available on a regular basis as well as information regarding the financial condition of the issuer. A participant must also be given sufficient information to make informed decisions with regard to all incidents of ownership of that investment in order for an investment to be taken into account for purposes of the broad range requirement. In the case of a security, such information would include information sufficient to permit the participant to make informed decisions in exercising any voting rights attendant to such ownership. One of the examples (paragraph (g)(1)) illustrates that this standard would be met where the investment options available under the plan include a broad range of publicly-offered securities for which market quotations are readily available and where the plan administrator distributes copies of proxies, periodic reports and similar materials to the participants who have invested in such securities.

[15] For example, a plan which designates all stocks listed on the New York Stock Exchange and one specified pooled investment fund as investment alternatives would fail to meet the requirement for a diversified group of pooled funds contained in paragraph (c)(2) of the proposal because it does not offer at least four funds. Therefore, the plan would not be considered an ERISA section 404(c) plan. The regulation also provides, however, that the plan need not comply with the requirements of paragraph (c)(2) of the proposal merely because it offers a designated investment fund in order to comply with

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"independent" plan fiduciary is a fiduciary that is not affiliated with any of the specified investment funds or with any investment manager of such a fund. Under these rules, a plan that limits participants' choices to a "family of funds" managed by a single investment manager could be treated as an ERISA section 404(c) plan.

2. *Designated Investment Managers.* It is also possible that an individual account plan may limit a participant's investment options by providing participants with the opportunity to appoint one or more *specified* investment managers to make individual investment decisions on behalf of participants.[16]

The Department has concluded that any such plan should also be subject to a special rule in order to assure that a plan fiduciary assumes a continuing obligation to assess the suitability of the designated investment managers. Thus, the proposed regulation provides that a plan whose investment alternatives include the selection of one or more designated investment managers is an ERISA section 404(c) plan only if an independent fiduciary is required to designate the investment managers from which the participant may select. This rule is similar to the first of the two special rules for designated pooled funds. Since, however, a participant's account assets would be managed individually under this kind of plan, the Department has concluded that the general rules in paragraph (b) are sufficient to assure that participants are free to pursue their desired investment objectives by choosing from a broad range of investment alternatives.

Paragraphs (g)(2) and (g)(3) of the proposed regulation illustrate the operation of the special requirements for designated pooled investment funds and designated investment managers.

Finally, the Department emphasizes that the rules for pooled funds are not intended to negate the relief that section 404(c) is intended to provide. In this respect, the independent fiduciary generally would discharge his oversight duties by prudently selecting the investment funds (or investment managers), periodically evaluating their performance, and determining, based on that evaluation, whether the funds should continue to be available as participant investment options. In making these decisions the fiduciary would, of course, consider the special characteristics of ERISA section 404(c) plans.

D. Exercise of Control by a Participant

1. *Generally.* In view of the transactional nature of the relief provided by section 404(c), the proposed regulation makes it clear that a determination whether a participant has in fact exercised control must necessarily be made on a case by case basis, taking into account the relevant facts and circumstances.

The proposed regulation makes it clear that sections 404(c)(1) and 404(c)(2) apply only where the participant's exercise of control has been independent. This is consistent with the Conference Report discussion of section 404(c).[17] In this regard, the proposed regulation describes certain factors that indicate the absence of independent control. These are: (1) Improper influence by a plan fiduciary or plan sponsor with respect to the transaction; (2) concealment from the participant by a plan fiduciary of material nonpublic facts regarding the transaction that are known by the plan fiduciary;[18] and (3) the legal incompetence of the participant where the plan fiduciary accepting his instructions knows him to be incompetent.[19]

The proposed regulation also provides that where a participant exercises control over the assets in his account to engage in a sale or an exchange of property or a loan with a plan fiduciary (other than a plan sponsor, or an affiliate as discussed below) [20] or an affiliate of such fiduciary, such exercise of control will not be "independent" (regardless of whether it meets the other requirements of the regulation) unless the terms of the transaction are fair and reasonable to the participant at the time of the transaction. A transaction will be deemed to be fair and reasonable to the participant if the participant pays no more than, or receives no less than, adequate consideration as defined in section 3(18) of the Act in connection with the transaction. These standards are adopted from established principles relating to the circumstances under which consent of a beneficiary of a trust will relieve a trustee from liability for breach of his fiduciary duties.[21]

2. *Absence of Affirmative Instructions.* Generally, the proposed regulation contemplates that a participant will give affirmative instructions regarding the investment of assets in his individual account. However, the regulation does indicate that section 404 may apply in cases where the participant has not given such affirmative instructions if certain conditions are met. Such passive investment options are limited to the relatively "safe" investments required by paragraph (b)(1)(iii) of the proposal to be included in each ERISA section 404(c) plan—*i.e.*, fully insured interest-bearing deposits in a bank or similar financial institution or a pooled investment fund the assets of which consist solely of cash and securities issued or guaranteed by the United States or one of its agencies. It is contemplated that such a passive investment designation will serve primarily as a "suspense" fund in which

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the "safe" investment option requirement of paragraph (b)(1)(iii) or to provide a "passive" investment option of the kind described in (d)(4)(ii).

[16] In the case of any ERISA section 404(c) plan which permits a participant to designate an investment manager, the individual investment decisions of such an investment manager are not the direct and necessary results of the participant's designation of the manager (see paragraph (e)(2)(iii) of the proposal). Plan fiduciaries would have an obligation to assess the suitability of the investment manager only in cases where the participant's choices are limited to specified investment managers (see paragraphs (c) and (d)(5) of the proposal and the discussion below).

[17] Conference Report, at 305.

[18] As provided in paragraph (d)(5) of the proposed regulation, it is contemplated that generally a fiduciary would have no affirmative obligation to advise participants regarding the suitability of various investment options.

[19] With respect to the third factor, the Department does not intend to impose an affirmative duty on the implementing fiduciary to evaluate the participant's competence. However, the Department is of the opinion that the implementing fiduciary should not be able to invoke section 404(c) to avoid liability for losses resulting from the imprudent instructions of a participant where the fiduciary has actual knowledge of the incompetence.

[20] Paragraph (e)(2)(ii)(D) of this regulation provides that section 404(c) does not relieve any fiduciary of any liability for implementing a participant instruction which results in a transaction between the plan and a plan sponsor or an affiliate or the acquisition or sale of any employer securities or employer real property.

[21] Restatement (Second) of Trusts section 216 (1959) provides:

Section 216. Consent of Beneficiary

(1) Except as stated in Subsections (2) and (3), a beneficiary cannot hold the trustee liable for omission of the trustee as a breach of trust if the beneficiary prior to or at the time of the act or omission consented to it.

(2) The consent of the beneficiary does not preclude him from holding the trustee liable for a breach of trust, if—

(a) the beneficiary was under an incapacity at the time of such consent or of such act or omission; or

(b) the beneficiary, when he gave his consent, did not know of his rights and of the material facts which the trustee did not reasonably believe that the beneficiary knew; or

(c) the consent of the beneficiary was induced by improper conduct of the trustee.

(3) Where the trustee has an adverse interest in the transaction, the consent of the beneficiary does not preclude him from holding the trustee liable for a breach of trust not only under the circumstances stated in Subsection (2), but also if the transaction to which the beneficiary consented involved a bargain which was not fair and reasonable.

See also III Scott, Trusts section 216 (3rd ed. 1967); Bogert, Trusts section 941 (2d ed. 1960).

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plan assets are held until such time as a participant makes an investment decision. Therefore, the kinds of investments that may be used for this purpose are limited to those which can be liquidated in a reasonably short period of time and which are most likely to conserve the principal amount deposited, even though the rate of return on assets invested in this way may not be as favorable as other investment opportunities.

The Department is concerned that amounts may accumulate in a suspense account over an extended period of time because the participant is not adequately informed of his opportunity to direct investment of his account assets. Accordingly, the proposed regulation also provides that a participant will be deemed to have exercised control with respect to such automatic allocations only if reasonable procedures are established under the plan which are designed to inform participants of the nature of the passive investment options and the anticipated rate of return of each option and to elicit affirmative instructions.[22]

The proposal also states that the special rules contained in paragraph (c) for plans that offer investment alternatives which include one or more designated pooled investment funds are not applicable to an ERISA section 404(c) plan merely because the plan provides for a "passive" investment fund pursuant to paragraph (d)(4)(ii) of the proposal.

Finally, the proposed regulation specifically states that fiduciaries of an ERISA section 404(c) plan generally have no obligation to advise the participant regarding the suitability of making an investment or of the advisability of retaining an investment that has already been made.

E. Effect of a Participant's Independent Exercise of Control

1. *Participant not treated as a fiduciary.* As provided in section 404(c)(1), the proposed regulation states that a participant is not considered to be a fiduciary solely because he exercises control over assets in his individual account. This provision has two primary effects. First, because a participant is not a fiduciary, he would not violate the prohibited transaction provisions of Title I of ERISA if he exercises control over assets in his account to engage in a transaction with a party in interest.[23] Second, other fiduciaries generally would have no co-fiduciary liability under section 405 of the Act with respect to participant investment decisions under ERISA section 404(c) plans.

2. *Other fiduciary responsibilities.* The proposed regulation discusses in more detail the consequences to other plan fiduciaries of a participant's exercise of control. Section 404(c) provides that plan fiduciaries are relieved of liability for losses, or with respect to breaches of the requirements of Title I, which "result" from a participant's exercise of control over individual account assets. Thus, given the transactional nature of the relief provided by section 404(c), it is necessary to determine in any particular case whether alleged losses or violations resulted from a participant's investment decision.

In the Department's view, section 404(c) was not intended to apply in those situations where losses are attributable to intervening breaches of fiduciary responsibility by the plan official implementing the participant's instructions. Thus, the proposed regulation states that a fiduciary is relieved of responsibility only for the direct and necessary consequences of a participant's exercise of control.[24] Accordingly, if a participant gives investment instructions to a plan fiduciary, and, due to the imprudence of the fiduciary in carrying out the instructions, the participant suffers a loss, then the fiduciary is liable for such loss because it resulted from a breach of his duties as a fiduciary rather than from the participant's exercise of control.

Similarly, if a participant gives investment instructions that may be carried out in more than one way, and the fiduciary chooses a method of carrying out the instructions that results in a breach of his obligations as a fiduciary, then he is liable for any resulting losses because such losses would not be a necessary consequence of the participant's exercise of control. Thus, if a participant directs a fiduciary to acquire certain securities, but does not specify the manner in which the acquisition is to be effected, and the fiduciary causes a party in interest to execute the transaction, the fiduciary would be liable with respect to the resulting prohibited transaction (unless an exemption is otherwise available) notwithstanding the participant's exercise of control.

The proposal also specifically states that the individual investment decisions of an investment manager are not direct and necessary results of the participant's designation of the investment manager or of investment in a pooled investment fund managed by the investment manager. In the Department's view, this provision is consistent with the general rule describing the scope of the relief provided by section 404(c)(2). However, the proposed regulation also provides that this rule should not be construed to impose co-fiduciary liability on a fiduciary who would otherwise be relieved of liability under section 404(c). Thus, if a participant chooses an investment manager who imprudently invests plan assets, the investment manager will not be relieved of liability because his imprudence is not a direct and necessary result of the participant's exercise of control.[25] However, other plan fiduciaries would be relieved of liability under section 405, even if, for example, they had knowledge of the investment manager's imprudent decisions. A fiduciary that designates an investment manager or pooled fund in the manner contemplated by paragraph (c) of the regulation, would, however, be required to take any known imprudence of the manager into account in determining whether to continue the designation of that manager.

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[22] The periodic disclosure of this information to the participant by means of summary plan descriptions and summaries of material modifications could satisfy the requirement to inform the participant of the nature of the passive investment options and the anticipated rate of return of each option provided that the plan administrator assures that such information remains current. Such disclosure would not, however, satisfy the requirement that reasonable procedures be established that are designed to elicit affirmative participant investment instructions.

[23] Section 406 of ERISA prohibits a plan *fiduciary* from engaging in a transaction which he knows (or should know) to be a prohibited transaction. It is important to note, however, that section 404(c) of ERISA does not affect the excise taxes imposed on "disqualified persons" under section 4975 of the Internal Revenue Code. This is discussed in more detail below.

[24] In following any particular participant's instruction under a section 404(c) plan, a fiduciary is relieved of liability only with respect to the individual participant whose instruction he is following; that fiduciary is not, however, relieved of any fiduciary obligation he may owe to any other plan participant. Therefore, for example, if a participant in an ERISA section 404(c) plan directs the investment of a portion of his individual account in a pooled investment fund pursuant to an arrangement with the manager of the fund under which the manager will loan a portion of the fund's assets to the participant, the fund manager may be relieved of liability to the directing participant by reason of section 404(c), but would not be relieved of liability with respect to any other plans or plan participants that have interests in the pooled investment fund.

[25] As noted above, liability results from the investment manager's imprudent exercise of discretionary authority over plan assets because, once a participant has invested in a pooled investment fund, the participant no longer has control over the individual investment decisions concerning the assets which are invested in the fund.

It is important to note that the proposed rule relating to individual investment decisions of an investment manager relates only to the scope of the relief provided by section 404(c)(2); it is not intended to create fiduciary duties which would not otherwise exist. Thus, even though the individual decisions of the investment manager of an investment company registered under the Investment Company Act of 1940 would not be considered to "result" from a participant's decision to invest in the company, the manager would have no liability under ERISA for any losses because mutual fund investment advisers are excluded from the statutory definition of "fiduciary" in ERISA (see sections 3(21)(B) and 401(b)(1) of ERISA).

3. *Limitations.* There are four exceptions to the general rule in the proposed regulation regarding the relief provided to a fiduciary. Under these exceptions, a plan fiduciary will not be relieved of liability with respect to a participant's instructions which: (a) would not be in accordance with the documents and instruments governing the plan; (b) would cause a fiduciary to maintain the indicia of ownership of any assets of the plan outside of the jurisdiction of the district courts of the United States (other than as permitted by section 404(b) of the Act); (c) would jeopardize the plan's status as a trust described in section 401(a) of the Code; or (d) would result in a direct or indirect acquisition, sale, or lease of property (including employer securities or employer real property) between a participant and a plan sponsor or an affiliate of the sponsor or a direct or indirect loan to a plan sponsor or any affiliate of the sponsor. In addition, a plan fiduciary will not be relieved of liability with respect to any sale, acquisition or lease of employer securities or employer real property whether or not the transaction involves the employer.

The Conference Report expresses concern regarding participant-directed investments which may inure to the direct or indirect benefit of a plan sponsor and indicates that the Department should impose special standards with respect to such investments.[26] The proposed regulation does not provide relief under section 404(c) with respect to these investments because the Department does not believe that it has sufficient information to determine if it is appropriate to apply section 404(c) to participant-directed investments which may benefit a plan sponsor, or to determine the kinds of safeguards that might be appropriate to assure that participants are not subjected to undue influence with respect to such investments. Nonetheless, the Department recognizes that many participant-directed plans do permit investments in such property and that the Conference Report might be read to contemplate that section 404(c) would apply to at least some participant decisions to invest in property acquired from an employer and in employer securities and employer real property. Thus, the Department specifically invites comments addressing the issue. Such comments should assist the Department in developing a final rule which will limit the potential for the exercise of improper influence by the plan sponsor, but not unduly restrict participant investment options. The Department is particularly interested in comments describing current practices with respect to property acquired from or sold to plan sponsors, the benefits of such investments and the safeguards which exist with respect to such investments.

With respect to employer securities, the Department is particularly interested in commentators' views concerning whether a participant's investments should be limited to a specified percentage of his account balance and/or whether such investments should be limited to publicly-offered securities.

Investment in employer real property, however, appears to be less liquid and may be less appropriate as a participant investment alternative. Accordingly, comments describing any participant investment alternatives that involve employer real property, the safeguards (such as investment limitations) that exist with respect to such investments, and the benefits to the participant of this particular type of real estate investment will be particularly helpful.

4. *Prohibited transactions.* Finally, the proposed regulation makes it clear that, if the conditions to the availability of the relief described in section 404(c)(2) otherwise are met, a fiduciary would be relieved from direct liability (in addition to any co-fiduciary liability) for engaging in a prohibited transaction in violation of section 406 of ERISA if the prohibited transaction is a direct and necessary consequence of the participant's exercise of control. However, the proposed regulation also makes it clear that the relief provided by section 404(c)(2) extends only to the provisions of part 4 of Title I of ERISA (relating to fiduciary responsibility). Therefore, even if a prohibited transaction is a direct and necessary consequence of a participant's exercise of control, nothing in section 404(c) of ERISA would relieve a "disqualified person" described in section 4975(e)(2) of the Code (including a fiduciary) from liability for the taxes imposed by sections 4975 (a) and (b) of the Code with respect to such prohibited transaction. In this respect, the Department notes that, although Reorganization Plan Number 4 of 1978[27] generally transferred the authority of the Secretary of the Treasury to grant exemptions from the provisions of section 4975 of the Code to the Secretary of Labor, authority to issue exemptions for transactions with respect to which a fiduciary is relieved of liability under section 404(c) is expressly left with the Secretary of the Treasury.[28] Accordingly, the Department has no authority to provide exemptive relief for a disqualified person's liability for the excise taxes imposed by section 4975 of the Code with respect to a prohibited transaction that results from a participant's exercise of control pursuant to section 404(c).

Reporting and Disclosure

The proposal also does not address the reporting and disclosure provisions of ERISA with respect to their applicability to ERISA section 404(c) plans. The Department does, however, specifically invite comments discussing the application of the existing reporting and disclosure requirements of ERISA to

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[26] The relevant passage of the Conference Report states: "The conferees expect that the [section 404(c)] regulations will provide for stringent standards with respect to determining whether there is an independent exercise of control where the investments may inure to the direct or indirect benefit of the plan sponsor since in this case participants might be subject to pressure with respect to investment decisions. (Because of the difficulty of ensuring that there is independence of choice in an employer established individual retirement account, it is expected that the regulations will generally provide that sufficient individual control will not exist with respect to the acquisition of employer securities by participants and beneficiaries under this type of plan)." Conference Report at 305.

[27] 43 FR 47713, October 17, 1978; effective December 31, 1978 (44 FR 1065, January 3, 1979).

[28] Section 102 of the Reorganization Plan provides in part as follows:

"Except as otherwise provided in Section 105 of this plan, all authority of the Secretary of the Treasury to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of Labor:

"(a) regulations, rulings, opinions, and exemptions under section 4975 of the Code.

. . . . . .

"EXCEPT for . . . exemptions with respect to transactions that are exempted by subsection 404(c) of ERISA from the provisions of Part 4 of Subtitle B of Title I of ERISA . . . ."

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such plans and whether it would be appropriate for the Department to develop an alternative method of compliance under section 110 of ERISA for ERISA section 404(c) plans.

Effective Date

In general, the proposed regulation would be effective with respect to transactions occurring in plan years beginning after a date 90 days from the date the regulation is published in final form. Transactions before that date would be governed by section 404(c) of the Act without regard to the regulation.

Technical Revisions

Pursuant to recent amendments to the rules for publication of the Office of the Federal Register, this proposal contains a proposed amendment of the authority citation for Part 2550 of Chapter XXV of Title 29 of the Code of Federal Regulations.

Executive Order 12291 Statement

The Department has determined that the proposed regulatory action would not constitute a "major rule" as that term is used in Executive Order 12291 because the action would not result in: an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographical regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Regulatory Flexibility Act Statement

The Department has determined that this regulation would not have a significant economic effect on small plans. In conducting the analysis required under the Regulatory Flexibility Act, it was estimated that the total annual cost to the approximately 15,600 small plans which may be affected by the regulation would be just over $6 million, or a cost of approximately $410 per plan. This does not reflect an actual increase in costs to most plans with participant directed account features since the regulations are intended to reflect, to a large extent, current administrative practices by these plans.

Paperwork Reduction Act Statement

This proposed regulation contains several paperwork requirements. The regulation has been forwarded for approval to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511). A control number has not yet been assigned.

Statutory Authority

The proposed regulation set forth herein is issued pursuant to sections 404(c) (Pub. L. 93–406, 88 Stat. 877, 29 U.S.C. 1104) and 505 (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1135) of the Act and under Secretary of Labor's Order No. 1–87.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

In view of the foregoing the Department proposes to amend Part 2550 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. By revising the authority citation for Part 2550 to read as set forth below and the authority citations following all the sections in Part 2550 are removed.

Authority: 29 U.S.C. 1135.

§ 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., 332.

§ 2550.404c–1 also issued under 29 U.S.C. 1104.

§ 2550.407c–3 also issued under 29 U.S.C. 1107.

§ 2550.412–1 also issued under 29 U.S.C. 1112.

§ 2550.414b–1 also issued under 29 U.S.C. 1114.

Secretary of Labor's Order No. 1–86.

2. By adding a new § 2550.404c–1 to read as follows:

§ 2550.404c–1 | ERISA Section 404(c) Plans.

(a) *In General.* Section 404(c) of the Act provides that if a pension plan that provides for individual accounts permits a participant or beneficiary to exercise control over the assets in his account and that participant or beneficiary in fact exercises control over assets in his account, then the participant or beneficiary shall not be deemed to be a fiduciary by reason of his exercise of control and no person who is otherwise a fiduciary shall be liable for any loss, or by reason of any breach, which results from such exercise of control. This section describes the kinds of plans that are "ERISA section 404(c) plans," the circumstances in which a participant is considered to have exercised independent control over the assets in his account as contemplated by section 404(c), and the consequences of a participant's exercise of control.

(b) *ERISA section 404(c) plans*—(1) *In general.* An "ERISA section 404(c) plan" is an individual account plan described in section 3(34) of the Act that:

(i) Provides an opportunity for a participant or beneficiary to exercise control over the assets in his individual account (see paragraph (b)(2));

(ii) Provides a participant or beneficiary an opportunity to choose, from a broad range of investment alternatives, the manner in which some or all of the assets in his account are invested (see paragraph (b)(3));

(iii) Provides a participant or beneficiary an opportunity to invest some or all of the assets in his account in an investment which is either:

(A) An interest-bearing deposit in a bank or similar financial institution, which deposit has a high degree of liquidity and is fully insured against loss by the United States or an agency of the United States, or

(B) A pooled investment fund the assets of which consist solely of cash and securities issued or guaranteed by the United States or one of its agencies and the principal investment objectives of which include a high level of current income consistent with the preservation of capital and a high degree of liquidity; and

(iv) Meets the requirements of paragraph (c), in the case of a plan under which the investment alternatives available to a participant or beneficiary include investment in one or more designated pooled investment funds or the selection by a participant of one or more designated investment managers.

(2) *Opportunity to exercise control.* (i) A plan provides a participant or beneficiary the opportunity to exercise control over assets in his account if, under the terms of the plan, the participant or beneficiary has a reasonable opportunity to give written investment instructions (or oral instructions followed by a written confirmation of such instructions returned to the participant) to an identified plan fiduciary who is obligated to comply with such instructions.

(ii) A plan does not fail to provide an opportunity for a participant or beneficiary to exercise control over his individual account merely because it—

(A) Imposes reasonable restrictions on the frequency with which the

participant or beneficiary may give investment instructions;

(B) Charges the participant or beneficiary's account for the reasonable expenses of carrying out his instructions, provided reasonable procedures are established under the plan to inform participants that such charges are made and to inform each participant periodically of the actual expenses incurred with respect to his individual account; or

(C) Permits a fiduciary to decline to implement participant instructions which would generate income that would be taxable to the plan.

(iii) Paragraph (d) of this section describes the circumstances under which a participant or beneficiary will be considered to have exercised independent control with respect to a particular transaction.

(3) *Broad range of investment alternatives.* (i) A plan offers a broad range of investment alternatives only if the available alternatives are sufficient to provide the participant or beneficiary with a reasonable opportunity to:

(A) Materially affect the potential return on amounts in his individual account with respect to which he is permitted to exercise control and the degree of risk to which such amounts are subject;

(B) Choose from a diversified group of investments within each of the following categories:

(*1*) Investments which can reasonably be expected to result in the generation of a high level of income while preserving capital in the long term;

(*2*) Investments which can reasonably be expected to result in capital appreciation, or

(*3*) Investments which can reasonably be expected to result in the generation of a high level of current income consistent with the preservation of capital and a high degree of liquidity; and,

(C) Diversify the investments of that portion of his individual account with respect to which he is permitted to exercise control so as to minimize the risk of large losses, taking into account the nature of the plan and the size of participants' accounts.

(ii) *Diversity and pooled investment funds.* Where pooled investment funds are available as investment options to participants or beneficiaries, the underlying investments of the pooled investments funds shall be considered in determining whether the plan satisfies the requirements of paragraphs (b)(3)(i)(B) and (b)(3)(i)(C) (relating to diversification of investments).

(iii) In determining whether a plan provides a broad range of investment alternatives, only those investment alternatives are to be taken into account as to which sufficient information is available to the participant or beneficiary to permit informed investment decisions.

(c) *Special Rule for Designated Pooled Investment Funds and Investment Managers*—(1) *In general.* A plan under which the investment alternatives available to a participant or beneficiary include investment in one or more designated pooled investment funds (other than a fund described in paragraph (b)(1)(iii) or (d)(4)(ii)) or the right to choose from one or more designated investment managers, shall be treated as an ERISA section 404(c) plan only if it meets the requirements of this paragraph in addition to the requirements of paragraph (b).

(2) *Pooled investment funds.* (i) A plan under which the investment alternatives available to a participant or beneficiary include investment in designated pooled investment funds is an ERISA section 404(c) plan only if, under the plan, an independent fiduciary is required to designate a diversified group of pooled investment funds (as described in paragraph (c)(2)(ii)).

(ii) For purposes of this paragraph (c)(2), a "diversified group" of pooled investment funds is a group of at least four funds each of which has a different one of the following primary objectives:

(A) The generation of the highest level of income consistent with the preservation of capital over the long term;

(B) Capital appreciation;

(C) A balance between capital appreciation and preservation of capital and generation of income; and

(D) The generation of a high level of current income consistent with the preservation of capital and a high degree of liquidity.

(3) *Designated investment managers.* A plan under which the investment alternatives available to a participant or beneficiary include the right to appoint a designated investment manager is an ERISA section 404(c) plan only if, under the plan, an independent fiduciary is required to designate the investment manager(s) which the participant or beneficiary may appoint.

(4) *Independent fiduciary.* For purposes of this paragraph (c), a fiduciary is an independent fiduciary if he is not affiliated with any designated pooled investment fund or any investment manager with respect to such a fund or with any designated investment manager.

(d) *Exercise of control*—(1) *In general.* Sections 404(c)(1) and 404(c)(2) of the Act and paragraphs (a) and (e) of this section apply only with respect to a transaction where a participant or beneficiary has exercised independent control in fact with respect to the investment of assets in his individual account under an ERISA section 404(c) plan.

(2) *Independent control.* Whether a participant or beneficiary has exercised independent control in fact with respect to a transaction depends on the facts and circumstances of the particular case. However, a participant's or beneficiary's exercise of control is not independent in fact if:

(i) The participant or beneficiary is subjected to improper influence by a plan fiduciary or the plan sponsor with respect to the transaction;

(ii) A plan fiduciary has concealed material non-public facts regarding the transaction from the participant or beneficiary; or

(iii) The participant or beneficiary is legally incompetent and the responsible plan fiduciary accepts the instructions of the participant or beneficiary knowing him to be legally incompetent.

(3) *Transactions involving a fiduciary.* In the case of a sale, exchange or leasing of property (other than a transaction described in paragraph (e)(2)(ii)(D)) between an ERISA section 404(c) plan and a plan fiduciary or an affiliate of such a fiduciary, or a loan to a plan fiduciary or an affiliate of such a fiduciary, the participant or beneficiary will not be deemed to have exercised independent control unless the transaction is fair and reasonable to him. For purposes of this paragraph (d)(3), a transaction will be deemed to be fair and reasonable to a participant or beneficiary if he pays no more than, or receives no less than, adequate consideration (as defined in section 3(18) of the Act) in connection with the transaction.

(4) *Absence of affirmative direction.* Generally, an affirmative investment direction by a participant or beneficiary is required to establish that a participant or beneficiary has exercised independent control with respect to an investment. However, a participant or beneficiary shall be deemed to have exercised independent control with respect to investments of any amount in his individual account over which he is permitted to exercise control, but as to which he has not given affirmative investment instructions, if:

(i) Reasonable procedures are established under the plan—

(A) To inform participants of the manner in which individual account assets will be invested in the absence of affirmative instructions and the

anticipated rate of return on such investments; and

(B) To elicit affirmative investment instructions from the participant; and

(ii) Amounts with respect to which no affirmative investment instructions have been received are invested in an investment vehicle described in paragraph (b)(1)(iii).

(5) *No obligation to advise.* In general, a fiduciary has no obligation under part 4 of Title I of the Act to provide advice to a participant or beneficiary with respect to an investment made pursuant to the participant's or beneficiary's independent exercise of control under an ERISA section 404(c) plan. See paragraph (d)(2)(ii), however, with respect to the effect of a fiduciary's concealment of material, nonpublic facts regarding a transaction.

(e) *Effect of independent exercise of control*—(1) *Participant or beneficiary not a fiduciary.* If a participant or beneficiary of an ERISA section 404(c) plan exercises independent control over assets in his individual account in the manner described in paragraph (d), then such participant or beneficiary is not a fiduciary of the plan by reason of such exercise of control.

(2) *Limitation on liability of plan fiduciaries.* (i) If a participant or beneficiary of an ERISA section 404(c) plan exercises independent control over assets in his individual account in the manner described in paragraph (d), then no other person who is a fiduciary with respect to such plan shall be liable for any loss, or with respect to any breach of part 4 of Title I of the Act, that is the direct and necessary result of the participant's or beneficiary's exercise of control.

(ii) Paragraph (e)(2)(i) does not apply with respect to any instruction which, if implemented—

(A) Would not be in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of Title I of ERISA;

(B) Would cause a fiduciary to maintain the indicia of ownership of any assets of the plan outside the jurisdiction of the district courts of the United States other than as permitted by section 404(b) of the Act and 29 CFR 2550.404b–1;

(C) Would jeopardize the plan's status as a trust described in section 401(a) of the Internal Revenue Code; or

(D) Would result in a direct or indirect:

(*1*) Sale, exchange, or lease of property between a plan sponsor or any affiliate of the sponsor and the plan;

(*2*) Loan to a plan sponsor or any affiliate of the sponsor;

(*3*) Acquisition or sale of any employer security (as defined in section 407(d)(1) of the Act); or

(*4*) Acquisition, sale, or lease of any employer real property (as defined in section 407(d)(2) of the Act).

(iii) The individual investment decisions of an investment manager who is designated directly by a participant or who manages a pooled investment fund in which a participant has invested are not direct and necessary results of the designation of the investment manager or of investment in the pooled investment fund. However, this paragraph (e)(2)(iii) shall not be construed to result in liability under section 405 of ERISA with respect to a fiduciary (other than the investment manager) who would otherwise be relieved of liability by reason of section 404(c)(2) of the Act and this paragraph (e).

(3) *Prohibited transactions.* The relief provided by section 404(c) of the Act and this section applies only to the provisions of Part 4 of Title I of the Act. Therefore, nothing in this section relieves a disqualified person from the taxes imposed by sections 4975 (a) and (b) of the Internal Revenue Code with respect to the transactions prohibited by section 4975(c)(1) of the Code.

(f) *Definitions.* For purposes of this section:

(1) "Pooled investment fund" means:

(i) An investment company described in section 3(a) of the Investment Company Act of 1940,

(ii) A common or collective trust fund or a pooled investment fund maintained by a bank,

(iii) A pooled separate account of an insurance company qualified to do business in a State, or

(iv) Any entity whose assets include plan assets by reason of a plan's investment in the entity;

(2) "Adequate consideration" has the meaning given it in section 3(18) of the Act and in any regulations under this title;

(3) "Investment manager" includes any person described in section 3(38) of the Act and any person who exercises discretionary authority or control over the assets of a plan or a pooled investment fund or who provides investment advice with respect to such assets for a fee;

(4) An "affiliate" of a person includes the following:

(i) Any person directly or indirectly controlling, controlled by, or under common control with the person;

(ii) Any officer, director, partner, employee, an employee of an affiliated employer, relative (as defined in section 3(15) of ERISA), brother, sister, or spouse of a brother or sister, of the person; and

(iii) Any corporation or partnership of which the person is an officer, director or partner.

For purposes of this paragraph (f)(4), the term "control" means, with respect to a person other than an individual, the power to exercise a controlling influence over the management or policies of such person.

(g) *Examples.* The provisions of this section are illustrated by the following examples. Examples (5) through (12) assume that the participant has exercised independent control with respect to his individual account under an ERISA section 404(c) plan described in paragraph (b) and has not directed a transaction described in paragraph (e)(2)(ii).

(1) Plan A is an individual account plan described in section 3(34) of the Act under which a plan participant may direct the plan administrator to invest any portion of his individual account in any asset which it is administratively feasible for the plan to hold and the acquisition of which would not result in disqualification of the plan under the Internal Revenue Code. Plan A provides that the plan administrator is obligated to effect participant investment instructions when requested but must decline to implement any participant instructions which would not be in accordance with plan documents or which would cause a fiduciary to hold the indicia of ownership of any plan assets outside the jurisdiction of the district courts of the United States. In addition, Plan A provides that the administrator is required to forward to the participant any proxy solicitations, periodic reports, and other communications with respect to participant directed investments in publicly-offered securities. Plan A is an ERISA section 404(c) plan. Although a participant in Plan A would be permitted to direct an investment as to which there is not sufficient information available to permit an informed investment decision, it nonetheless provides a broad range of investment alternatives as to which such information is available (*i.e.*, publicly-offered securities). Finally, Plan A is an ERISA section 404(c) plan notwithstanding that it does not meet the requirements of paragraph (c) because it does not limit the choices of pooled funds or investment managers to *designated* funds or to *designated* managers.

(2) Plan B is an individual account plan described in section 3(34) of the Act. Plan B provides for participant directed investments in the following manner: Under the plan, participants may direct investments only in shares of mutual funds designated by the plan's named fiduciary or in a government securities investment fund described in paragraph (b)(1)(iii) and designated by the plan's named fiduciary. The plan document requires the named fiduciary to designate a "diversified group" of mutual funds (as

described in paragraph (c)(2)(ii)) as permissible participant investments. Pursuant to the terms of the plan, the appropriate plan fiduciary designates diversified income, growth, balance, and cash equivalency funds all of which are managed by one investment manager. Absent other relevant circumstances, Plan B is an ERISA section 404(c) plan because: (i) Under the terms of the plan, participants and beneficiaries have a reasonable opportunity to give investment instructions to a plan fiduciary who is obligated to carry out those instructions (as described in paragraph (b)(2)); (ii) the investment alternatives available to a participant or beneficiary allow him to significantly affect the potential return on his account balance and the degree of risk to which his account balance is subject, and (iii) the participant or beneficiary is permitted to diversify the investments of his account since the income, growth, balance, and cash equivalency pooled investment funds are each diversified (see paragraph (b)(3)(ii)). The plan is required to meet the requirements of paragraph (c) because the pooled investment funds in which participants may invest are limited to designated funds, but Plan B satisfies the requirements of paragraph (c) because it provides the participant a choice from a diversified group of four funds of the kind described in that paragraph.

(3) Assume that Plan B contains the same provisions as those described in paragraph (g)(2). However, the appropriate plan fiduciary designates one diversified growth fund, one diversified income fund, and one diversified balanced fund, but does not designate a cash equivalency fund. Plan B is not a section 404(c) plan because the plan fiduciary has not specified at least one fund within each of the four categories of funds described in paragraph (c)(2). If, however, the appropriate fiduciary designates a cash equivalency fund, Plan B would then be an ERISA section 404(c) plan.

(4) Plan C, an individual account plan described in section 3(34) of the Act, permits a participant to give investment instructions to the plan administrator in the same manner as Plan A (see paragraph (g)(1)). Plan C, however, limits the investment options available to the participant to an interest-bearing account of Bank A and three different securities issued by private corporations: A debt obligation of a large, well-established company, stock of another large, well-established company, and highly speculative stock of another company. Plan C does not provide for a broad range of investment alternatives because, under the plan, although a participant is able to significantly affect the potential return on his account balance and the degree of risk to which his account balance is subject and is able to invest in different securities which arguably would allow the participant to achieve the three required investment goals of paragraph (b)(3)(i)(B), the participant would not have an opportunity to diversify his investments within each of the three investment groups so as to minimize the risk of large losses (see paragraphs (b)(3)(i)(B) and (b)(3)(i)(C)).

(5) A participant, P, independently exercises control over assets in his individual account plan by directing a plan fiduciary, F, to invest 100% of his account balance in a single stock. P is not a fiduciary with respect to the plan by reason of his exercise of control and F will not be liable for any losses that may necessarily result from P's investment instruction.

(6) Assume the same facts as in paragraph (g)(5), except that P directs F to purchase the stock from B, who is a party in interest with respect to the plan. Neither P nor F has engaged in a transaction prohibited under section 406 of the Act: P because he is not a fiduciary with respect to the plan by reason of his exercise of control and F because he is not liable for any breach of Part 4 of Title I that is the direct and necessary consequence of P's exercise of control. However, a prohibited transaction under section 4975(c) of the Internal Revenue Code may have occurred, and, in the absence of an exemption, tax liability may be imposed pursuant to sections 4975 (a) and (b) of the Code.

(7) Assume the same facts as in paragraph (g)(6), except that P does not specify the use of B, and F chooses to purchase the stock from B. In the absence of an exemption, F has engaged in a prohibited transaction described in 406(a) of ERISA because the decision to purchase the stock from B is not a direct or necessary result of P's exercise of control.

(8) Pursuant to the terms of the plan, plan fiduciary F designates three reputable investment managers which participants may appoint to manage assets in their individual accounts. Participant P selects M, one of the designated managers, to manage the assets in his account. M prudently manages P's account for 6 months after which he incurs losses in managing the account through his imprudence. M has engaged in a breach of fiduciary duty because M's imprudent management of P's account is not a direct or necessary result of P's exercise of control (the choice of M as manager). F has no fiduciary liability for M's imprudence because he has no affirmative duty to advise P (see paragraph (d)(5)) and because F is relieved of co-fiduciary liability by reason of section 404(c)(2) (see paragraph (e)). F does have a duty to determine the suitability of M as an investment manager, however, and M's imprudence would be a factor which F must consider in periodically reevaluating its decision to designate M.

(9) Participant P instructs plan fiduciary F to appoint G as his investment manager pursuant to the terms of the plan which provide P total discretion in choosing an investment manager. Through G's imprudence, G incurs losses in managing P's account. G has engaged in a breach of fiduciary duty because G's imprudent management of P's account is not a direct or necessary result of P's exercise of control (the choice of G as manager). Plan fiduciary F has no fiduciary liability for G's negligence because F has no obligation to advise P (see paragraph (d)(5)) and because F is relieved of co-fiduciary liability for G's actions by reason of section 404(c)(2) (see paragraph (c)(2)(iii)). In addition, F also has no duty to determine the suitability of G as an investment manager because the plan does not limit P's choices to *designated* investment managers.

(10) Participant P directs a plan fiduciary, F, a bank, to invest all of the assets in his individual account in a collective trust fund managed by F that is invested solely in a diversified portfolio of common stocks. Due to economic conditions, the value of the common stocks in the bank collective trust fund declines while the value of publicly-offered fixed income obligations remains relatively stable. F is not liable for any losses incurred by P solely because his individual account was not diversified to include fixed income obligations. Such losses are the direct result of P's exercise of control; moreover, under paragraph (d)(5) of this section F has no obligation to advise P regarding his investment decisions.

(11) Assume the same facts as in paragraph (g)(10) except that F, in managing the collective trust fund, invests the assets of the fund solely in a few highly speculative stocks. F is liable for losses resulting from his imprudent investment in the speculative stocks and for his failure to diversify the assets of the account. This conduct involves a separate breach of F's fiduciary duty that is not a direct or necessary result of P's exercise of control (see paragraph (e)(2)(iii)).

(12) Participant P, in exercising control over the assets in his individual account, directs a plan fiduciary F to purchase a limited partnership share in a limited partnership managed by Y. Just prior to P's instruction to purchase, Y provides F with a confidential report which is pessimistic concerning the prospects of the investments made by the partnership. Without disclosing the contents of the report, F executes P's instructions. Participant P has not exercised independent control in fact with respect to the transaction because F has concealed a material nonpublic fact (the pessimistic report) from P (see paragraph (d)(2)(ii)).

(h) *Effective date.* This section is effective with respect to transactions occurring in plan years beginning after [90 days after publication of a final rule]. Transactions occurring before that date would be governed by section 404(c) of the Act without regard to the regulation.

Signed at Washington, DC, this 20th day of August, 1987.

David M. Walker,

Deputy Assistant Secretary of Labor, Pension and Welfare Benefits Administration, United States Department of Labor.

[FR Doc. 87-20152 Filed 9-2-87; 8:45 am]

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federal register

Thursday
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Part III

Department of Labor

Employment and Training Administration

20 CFR Part 602

Federal-State Unemployment Compensation Program; Unemployment Insurance Quality Control Program; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 602

Federal-State Unemployment Compensation Program; Unemployment Insurance Quality Control Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Secretary of Labor is issuing the final regulation to establish a permanent Quality Control program for the Federal-State unemployment insurance system. The Quality Control program will be a major tool to assess the timeliness and accuracy of State administration of unemployment insurance in order to improve program performance and revenue collection, and to reduce inaccurate benefit payments and claims denials, administrative errors, and abuse in the unemployment insurance system.

EFFECTIVE DATE: October 5, 1987.

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SUPPLEMENTARY INFORMATION:

Background

Recent reviews of benefit payments and revenue collections indicate potentially serious problems in the Federal-State Unemployment Insurance (UI) system. The Random Audit program, which evaluated benefit payments in 46 States, found a percentage of errors in making payments which needs to be reduced. In addition, audits of benefits payment control, tax accounting and cash management activities indicated the need for improvement in all of these functions. To address these needs, a Quality Control (QC) program will be initiated; QC will expand upon previous efforts, notably the Random Audit program, and provide the basis for diagnosing problems and taking corrective actions.

QC Will Be Mandatory

The QC program will be the principal means by which the Federal-State UI partners evaluate the administration of a State's UI law and achieve improvement in program operations. Its design relies heavily on the experience of the Random Audit program, which was voluntary for the States. Given the importance of ensuring the accurate and timely payment of benefits to eligible UI claimants and the accurate and prompt collection of UI revenues, however, participation of the States in the QC program will be mandatory.

Section-by-Section Regulatory Highlights

Subpart A, *General Provisions*, sets out the purpose and scope of the QC program, including the laws to which the regulation applies.

Subpart B, *Federal Requirements*, defines the authority under which these regulations are issued. It also explains the Secretary of Labor's (Secretary) interpretation of the authority allowing the Department of Labor (Department) to make the QC program mandatory.

The Department does not believe that a mandatory QC program will require any State to amend its law to fulfill the methods of administration requirement in section 303(a)(1) of the Social Security Act (SSA) (42 U.S.C. 503(a)(1)) as the QC program is an expansion/enhancement of other Federal-State UI evaluation programs, such as Random Audit and Quality Appraisal, which have been operative in State agencies for some time. States are encouraged, however, to review their laws to ensure that an adequate legal basis exists for implementing QC.

Subpart C, *State Responsibilities*, contains requirements which ensure the objectivity of the State's QC unit and eliminates potential conflicts of interest. Subpart C also provides that:

(1) The State shall sample, investigate cases, and classify findings in accordance with standard procedures; use a questionnaire prescribed by the Department, in which the collection of demographic data will be limited to those related to eligibility and those necessary for validating the representativeness of samples; and

(2) The State shall conclude all findings of inaccuracy as detected through QC investigations with appropriate official actions; and

(3) The State shall inform claimants in writing that the information obtained from a QC investigation may affect their eligibility for benefits and inform employers in writing that the information obtained from QC investigation of revenues may affect their tax liability; and

(4) The State shall transmit data so obtained (without identifying individuals) and other required reports to the Department; and release the results of the QC program at the same time each year in a format prescribed by the Department; and

(5) The Department may determine the QC program, or a portion of the program, is not necessary for the proper and efficient administration of a State law and, therefore, the State need not administer the entire QC program or designated portion of the QC program. However, it is not anticipated at this time that the section will result in exceptions in cases other than those in which the costs of operating a QC program might be deemed by the Department to be excessive in relating to the overall results obtained.

Subpart D, *Federal Responsibilities*, defines the management and oversight responsibilities that the Department has under these regulations. These responsibilities include establishing required methods and procedures, providing technical assistance, maintaining a computer data base, validating QC methodology, and reviewing QC operational procedures and samples.

Subpart E, *QC Grants to States*, provides that: (1) The Secretary has the authority to recapture QC granted funds expended which are not necessary for the proper and efficient administration of the QC program; and (2) after notice and a hearing, the Secretary may withhold all Title III grants from a State that fails to implement a QC program in accordance with Part 602. However, under Part 602, there is no sanction or incentive to influence achievement of any specific error rate, although errors revealed by the QC operation might result in questions being raised about methods of administration or other Federal requirements.

Consultation for Development of the Proposed Rule

The Department published an Advance Notice of Proposed Rulemaking in the **Federal Register** on September 26, 1984, at 49 FR 38083, to inform interested persons of its intentions to establish a permanent QC program for the UI system. During the 30-day comment period, the Department received five letters with comments. Prior to and after the request for formal comments, the Department held numerous meetings with those involved in the UI system to solicit ideas and reactions to the proposed design of the QC system.

In June 1985, the Secretary of Labor decided to delay the planned July 1985 implementation of the QC program and directed the undertaking of a wide-ranging policy review. The purpose of the review was to explore fully and

formally the basic policy decisions forming the framework of the QC system and to ensure full participation of the many groups involved in UI administration.

The Secretary's review was announced in a notice published in the **Federal Register** on August 6, 1985, at 50 FR 31787 and a public meeting was announced to be held on August 21, 1985, at 50 FR 31792, inviting viewpoints, suggestions, and alternative approaches from Governors, employer groups, organized labor, and State Employment Security Administrators. Each group was asked to comment specifically on nine (9) design issues which were described in the **Federal Register** on August 6, 1985, at 50 FR 31787.

Listed below are decisions on the nine design issues which were reached after consideration of the 61 comments received.

1. *System Operations.* The QC system will provide mixed Federal/State division of responsibilities.

2. *Coverage.* QC will be mandatory for the States.

3. *Access to Data.* States will be required to release QC results annually using a standard format, retaining the option of release by States before any national release.

4. *Scope.* QC investigations will be conducted State-wide at Federally-established sample levels. Beyond the minimum sampling effort, States will be given the flexibility to examine subjects more closely through such choices as increased sample size, augmented sampling, or special studies.

5. *Investigative Objectives.* Case reviews of the QC sample claims will focus on both outcomes and process.

6. *Purpose.* The QC program will focus on correcting, not just measuring problems. Data to support operational corrections will be required and data to affect policy and legislative changes will be optional.

7. *Methodology.* QC will feature a prescribed minimum sample size specified for each State, standard definitions and methodology, and will offer flexibility for additional State-designed sampling and special studies (subject to Departmental approval).

8. *Error Correction Strategies.* The Department will encourage corrective action and foster it through technical assistance, but will not mandate corrective action.

9. *Programs Included.* QC will cover both paid and denied claims under all major regular benefit programs as well as revenue activities and it will be gradually extended to other programs such as Extended Benefits and Trade Readjustment Allowances.

In response to the Secretary's review of QC, representatives of several District of Columbia-based public interest groups including the Interstate Conference of Employment Security Agencies, Inc. (ICESA), the National Conference of State Legislatures, the National Federation of Independent Businesses, the Council of State Chambers of Commerce, UBA Inc. (United Benefit Advisor, Inc.), the U.S. Chamber of Commerce, and the American Federal of Labor-Congress of Industrial Organizations (AFL–CIO), suggested a series of QC principles. These consensus principles (described later under Major Themes) were adopted as policy by the Department and issued in Unemployment Insurance Program Letter (UIPL) No. 4–86, on December 20, 1985.

The proposed regulation was written to conform to the consensus principles plus the decisions on the design issues. Decisions which deal with procedural subjects are reflected in The Benefits Quality Control State Operations Handbook (Benefits QC Handbook) which the Department prepared and issued separately for comment.

Comments Received in Response to the Notice of Proposed Rulemaking

The proposed rule (new Part 602) to establish the QC program was published for comment in the **Federal Register** on July 25, 1986 at 51 FR 26846. On August 12, 1986, the Department extended the period for comments on the proposed rule until September 9, 1986, at 51 FR 28840.

The Department received timely comments from 33 organizations and individuals. An additional seven organizations submitted comments after the close of the comment period. The majority of comments were from State Employment Security Agencies (SESAs); comments were also received from other interested parties such as public interest groups. All comments received timely were given careful consideration in preparing the final regulation in this document.

Major Themes in the Comments

Three major themes were present in the comments: (1) questioning the Secretary's authority to mandate a QC program as a requirement under the Federal law; (2) a desire for more specificity in the regulation; and (3) the desire that the regulation reflect the consensus recommendations previously accepted by the Department which were submitted by ICESA on behalf of several District of Columbia-based public interest groups.

The first major area of concern, the Secretary's authority to mandate the program, is addressed in the section-by-section analysis that follows.

The request for specificity, the second major theme, reflected States' expressed desire to be protected from any undue exercise of Departmental discretion outside the regulatory process. Ten commenters expressed concern about the failure of the proposed regulation to specify all of the requirements of the QC program. After carefully considering these comments, the Department has concluded that the regulatory approach taken, that of issuing a broad and brief implementing regulation supported by detailed operating procedures in handbooks, is the most appropriate way of establishing the program. The regulation establishes and defines the program while the handbooks provide the necessary level of detail and flexibility needed to initiate and operate the QC program. This approach is considered appropriate because it allows for phasing in QC and making handbook changes based on early experience. It is also consistent with the Administration's desire to limit detailed regulations where possible. The Department committed itself to gathering the maximum possible public and State input before modifying and issuing the regulation in this document and the operations' handbooks. Although they will not be published in the **Federal Register**, handbooks containing detailed operating procedures have been and will continue to be broadly circulated for comment before being issued or modified by the Department.

In a related group of responses, thirteen commenters identified particular sections of the regulation that they believed did not provide sufficient specificity for the States (e.g., contents of the questionnaire, timing/contents of the annual release of data). The Department does not want to make these sections more specific because of the need for flexibility to make the QC program more comprehensive in succeeding years. These items will be part of the handbooks and will be circulated widely for comment before being issued or modified by the Department.

The third theme was that the consensus principles be included in the regulation. These principles were suggested by representatives of the previously listed District of Columbia-based public interest groups. They were outlined in an issuance from the Department that was sent to all interested parties (UIPL No. 4–86). Six

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commenters requested that the consensus principles be incorporated in the body of the regulation. Another fourteen requested that certain specific principles be included.

Although the principles are already embodied in the operations handbooks and other implementing instructions, the Department agrees they should be specifically included in the regulation as well. The principles, with the sections of the regulation modified to embody them indicated in brackets, follow:

1. All States would perform "Core QC." That is, a minimum of 400 weeks claimed cases, per State per year, would be investigated to determine whether the payments were proper. [§ 602.21(b)] Only those data elements that relate to eligibility for UI benefits would be collected. [§ 602.21(c)(3)] [This principle was accepted in modified form by the Department to (1) substitute "cases of weeks paid" for "weeks claimed cases" and (2) include the collection of demographic data necessary to conduct proportions tests to validate the selection of representative samples.]

2. QC would be expanded to include the review/investigation of claims that had been denied and employer tax collection activities. In addition, other categories of UI payments (interstate benefits, combined wage claims, and Federal UI benefits) should eventually be included in the program. [§ 602.1]

3. States would not be required to furnish information to the Federal Government about individuals whose claims are audited unless that information were provided without revealing the identity of the individuals. [§ 602.21(f)] [This principle was accepted in modified form by the Department to specify that each State shall furnish information to the Department without, *in any manner*, identifying individuals *to whom such data pertain*.]

4. The collection of demographic data elements that do not relate to an individual's eligibility for UI benefits would not be a part of QC. [§ 602.21(c)(3)] [This principle was accepted in modified form by the Department to include the collection of demographic data necessary to conduct proportions tests to validate the selection of representative samples.]

5. Obtaining information needed for QC by telephone rather than in face-to-face interviews would be tested on a limited basis. [§ 602.30(b)] [This principle was accepted in modified form by the Department to provide also for tests of collecting data by mail.]

6. A portion of additional resources would be used for analysis of data generated by QC, to increase the number of claims sampled in areas where more information is needed, and for corrective action. [§ 602.40(b)] [This principle was accepted in modified form by the Department to specify that the Department *may* allocate additional resources, *if available*, to States for analysis of data generated by the QC program, to increase the number of claims sampled in areas where more information is needed, and for corrective action.]

7. No sanctions nor funding "incentives" would be used to force the achievement of specified error rates. [§ 602.43]

8. States would be required to release the results of the QC program at the same time each year, providing calendar year results using a standardized format to present the data. States would have the opportunity to release this information prior to any release at the national level. [§ 602.21(g)]

Section-by-Section Analysis of Comments

Subpart A—General Provisions

Section 602.1 Purpose.

Section 602.2 Scope.

Eleven commenters said that the inclusion of Denials and/or Revenue in the QC regulation is inappropriate or premature at this time. While it is true that only Core QC, which assesses the benefit payment operations by investigating paid claims, has been designed and tested thus far, the Department wrote the regulation broadly to provide authority for what is planned as a comprehensive QC program. Also, by its acceptance of consensus principle number two, the Department is committed to expand the QC program to include the investigation of claims that have been denied and employer revenue collection activities (Revenue QC) which would include any other UI revenues, such as payments in lieu of contributions and reimbursements from the Extended Unemployment Compensation Account (EUCA). The methodologies will be developed in conjunction with SESAs and tested through State-operated pilot programs to ensure that they are effective mechanisms for State use.

One commenter stated that the "Purpose" section is too narrow in its explanation of the QC program: The first sentence is nebulous and open to interpretation, and the last sentence should be excluded. The "Purpose" section has been expanded to explain that QC will be a major tool to assess the timeliness and accuracy of State administration of the UI program. Additionally, the last sentence of the paragraph has been revised to clarify that the reference to "collections" does refer to revenue collections which includes any other UI revenues such as payments in lieu of contributions and EUCA reimbursements.

Two commenters proposed that States be allowed the option to participate in whichever components of the QC program (benefits, denials, or revenue) they believe that they need. While States may have ideas of which areas of their programs require attention, the Random Audit experience demonstrated to the Department the value of such a program nationwide.

Subpart B—Federal Requirements

Section 602.10 Federal law requirements.

Section 602.11 Secretary's interpretation.

Five commenters questioned the authority of the Secretary to mandate a QC program. One commenter said that requiring a State to operate a QC program goes far beyond the intent of section 303(a)(6) of the SSA, which gives the Secretary authority to require reports. Legal authority to establish QC derives from both sections 303(a)(1) and 303(a)(6) of the SSA. As described in the regulation, the Secretary interprets these sections to authorize QC among the "methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due," as well as authorizing the Secretary to require verifiable reports of its QC implementation and operations. The methods of administration requirement (section 303(a)(1), SSA) has from the beginning of the program been interpreted as pertaining to all UI operations, including revenue and benefit operations.

One commenter suggested that QC would be more successful and States would be more cooperative if it were voluntary, as was Random Audit. Observations of QC as operated since March 30, 1986 and its predecessor, Random Audit, both of which were voluntary, have revealed less than adequate adherence by several States to methodology necessary to ensure valid results.

Another commenter suggested that § 602.11(a), which says in the proposed rule, "the Secretary interprets section 303(a)(1), SSA, to require that a State law [provide for] such methods of administration . . . and collection [and handling] of unemployment revenues [and reimbursements], with the greatest

accuracy feasible" is sufficient, and that § 602.11(d) requiring a State law authorizing QC is unnecessary. Section 602.11(d) has been improperly interpreted by this commenter. Section 602.11 sets forth the Secretary of Labor's basic interpretations of sections 303(a)(1) and 303(a)(6) as they relate to the QC program. As stated earlier in the Section-by-Section Regulatory Highlights, the Secretary has no reason to believe that a mandatory QC program will require any State to amend its law. Section 602.11(d) is included to insure that States interpret their existing law to require the establishment of a QC program. Without § 602.11(d), a State might construe their methods of administration requirement to be sufficient without the establishment of a QC program.

To clarify that QC involves both conformity and compliance, additions were made to both §§ 602.10(d) and 602.11. An additional sentence in § 602.11(c) states, "Further, conformity of the State law with those requirements is required by section 303(a) and section 601.5 of this chapter."

Subpart C—State Responsibilities

Nine commenters stated that corrective action should be funded and/or required by the Federal government and that technical assistance should be made available to help correct the errors detected by QC. Concerning funding of corrective actions, State initiatives in response to Random Audit data and to QC data collected on a voluntary basis have demonstrated that many corrective actions can be taken with existing resources as part of ongoing management oversight. Should it develop that necessary actions nationwide cannot be supported with available resources, the Department will use the information from QC findings in budget development to seek funding for such necessary corrective actions. However, such data is expected to be available only after QC has operated for some time in each State. The regulation was modified by the addition of § 602.40(b) to authorize the Department to allocate additional resources, if available, for corrective action, as called for in consensus principle number six.

The Department finds no need to impose an explicit requirement that SESAs implement corrective action. It believes that SESAs want to operate the best possible UI program and also have a strong incentive to improve their operations and lower taxes for the benefit of their own States' employers whose taxes finance UI. Rather than promulgating such a requirement, the Department is committed to providing technical assistance to the States to help correct errors detected by QC. To this end, the Department funded an analyst position in each State so that SESAs may develop additional expertise to help determine where their problems lie.

Section 602.20 Organization.

Two commenters opposed direction by the Department of the States' organizational structure. The limits imposed by the regulation are intended to protect the integrity of the program while preserving the States' prerogatives. The SESA is free to locate the QC unit wherever it wishes so long as it is independent of, and not accountable to, any unit performing functions the QC unit evaluates. The Department allows the SESA full flexibility to locate the unit within this constraint.

One commenter questioned the wisdom of prohibiting the QC unit from being within the UI Division, reportable to the UI Director, or under the authority of the State Commissioner of Labor. This is an apparent misinterpretation of the requirements intended to ensure independence from operational units being evaluated. The regulation would prohibit the QC unit from reporting to a manager whose sole or predominant responsibility is to manage an area, e.g. benefit payment operations, being evaluated. Depending upon the organizational structure of the State, therefore, the QC unit could report to the State Commissioner of Labor, the SESA Administrator, or the UI Director.

Section 602.21 Standard methods and procedures.

Section 602.21 has been renamed to more aptly describe the subjects included and reorganized to achieve a more logical order. Following is a table showing the new section title and topics covered in each subsection compared to the location of the same material in the proposed rule.

Final rule	Proposed rule
602.21 Standard methods and procedures.	602.21 Sampling, study methodology, recordkeeping, and reporting.
602.21(a) [In reference to using standard methods and procedures established by the Department].	602.21(b).
602.21(b) [In reference to representative sample minimums set by the Department].	602.21(a)(1).
602.21(c) [In reference to prompt and in-depth case investigations].	602.21(a)(2)
602.21(c)(1) [In reference to informing claimants/employers of effect of QC].	602.21(d).
602.21(c)(2) [In reference to the use of the questionnaire being required].	602.21(e).
602.21(c)(3) [In reference to collecting data required by the Department]	602.21(b).
602.21(c)(4) [In reference to taking official actions on inaccuracies detected though QC investigations].	602.21(c).
602.21(d)(1) [In reference to classifying benefit payment case findings]	602.21(a)(4).
602.21(d)(2) [In reference to classifying denial case findings]	602.21(a)(3)
602.21(e) [In reference to making and maintaining records]	602.21(a)(5)
602.21(f) [In reference to furnishing information and reports].	602.21(a)(6)
602.21(g) [In reference to releasing the results of the QC program].	602.21(a)(7).

One commenter contended that QC is not cost effective because of high unit cost, that sampling should be reduced from 12 months to one month, and that QC should be incorporated into the UI Quality Appraisal system (the existing system used to assess performance in UI benefits, appeals, and revenue collections). The Department recognizes the expense of operating a QC program, but the investment in QC, when compared to the overall administrative costs of the UI program (less than two percent) and to benefit outlays (two tenths of one percent), is very worthwhile. Studies of alternative investigative methods have been and will continue to be undertaken in order to identify the most cost-effective procedures. Despite the costs of the QC program, it is expected to realize savings that would more than offset costs. The QC and Quality Appraisal programs have been examined, and duplications have already been eliminated. Ultimately the two assessment systems will be merged into a single system which preserves Quality Appraisal's useful features.

Section 602.21(a) [In reference to using standard methods and procedures established by the Department].

Ten commenters objected to the inflexibility of the prescribed methodology and the absence of alternative methodology. Consensus principle number five on this subject states that the Department will test collecting information by telephone rather than in face-to-face interviews, and this language, modified to provide also for tests of collecting data by mail, has been added to the regulation at § 602.30(b). Furthermore, in keeping with the commitment to test alternative methodologies, the Department has approved and supported one SESA's proposal for such a test. Other SESAs'

proposals for conducting their own tests are also welcomed.

Two commenters stated that the required methods and procedures should be established only after consultation and should be specified in the regulation. The methods and procedures are not specified in the regulation due to the nature of the regulatory approach taken with the QC program. The Department has sought and used input from SESAs in the development of QC methodology and will continue to do so. State comments on two draft versions of the benefits QC State Operations Handbook (Benefits QC Handbook) have led to several modifications in the methodology. Future revisions to the Benefits QC Handbook also will be circulated for comment before being issued. After agreeing to the consensus principles, the Department made additional changes to the methodology.

Section 602.21(b) [In reference to representative sample minimums set by DOL].

Five commenters were concerned that the regulation does not specify minimum sample sizes but gives the Department the authority to establish minimum sample sizes outside the regulatory process. Two expressed the opinion that States should have input on the number of cases sampled to reflect State-specific factors affecting the time it takes to complete an investigation. Two others proposed that States should be allowed to reduce the sample pull below existing Benefits QC Handbook limits if necessary due to illnesses, vacancies, leave, etc. In contrast, another commenter believed that the sample sizes will be too small to make valid estimates.

The Department concurs in consensus principle number one that each State sample a minimum of 400 cases and has amended the regulation to incorporate that principle. The principle, as incorporated, has been modified for technical accuracy. The term "cases of weeks paid", which are covered in Core QC, has been substituted for the suggested language of "weeks claimed cases" as contained in the consensus principles.

The Department believes that 400 cases per year is the minimum needed to enable sufficiently precise QC inferences to be made for each State. It has further specified in the Benefits QC Handbook, minimum weekly sample sizes—which do allow States some flexibility to adjust to staffing constraints—to ensure that the QC samples are large enough to permit valid inferences to be made from the data obtained each quarter. Samples below these minimums run the risk of significantly reducing the usefulness and reliability of data from an entire quarter.

Two commenters suggested that special studies should largely be at State discretion, with no mandatory application to the national data perspective. SESAs have discretion to determine what should be studied; however, the Department must reserve the right to review State proposals to ensure that they are technically valid and consistent with QC objectives.

Another commenter suggested that nonscientific, ad hoc studies are inexpensive and useful and should be included. The Department recognizes that nonscientific, ad hoc studies have been performed for years by SESAs. Such studies are encouraged so long as the minimum requirements for QC are met.

Section 602.21(c) [In reference to completing prompt and in-depth case investigations to determine degree of accuracy and timeliness].

Two commenters objected to the addition to the regulation of timeliness as a subject of assessment without first consulting the States. Reference to timeliness in this section refers not to QC case completion, but to more general UI applications such as claim payment timeliness. This language has been included to permit future applications of the QC program beyond those in the existing design of the QC case investigations, e.g., utilization of capabilities built into the QC system to eliminate the need for periodic reports which provide data from which first payment time lapse is measured.

Section 602.21(c)(1) [In reference to informing claimants and employers in writing of the effect of QC investigations].

Section 602.21(c)(1) was clarified to explain that States must inform claimants in writing that the information obtained from a QC investigation may affect their eligibility for benefits. Each State must also inform employers in writing that the information obtained from a QC investigation of revenue may affect their tax liability.

Section 602.21(c)(2) [In reference to the use of the questionnaire being required].

Eleven commenters objected to the language that States must require claimants to complete a questionnaire, contending that the Department/SESAs do not have the legal authority or that it is a post facto eligibility determination. The Department's legal authority to establish the QC program encompasses the use of the questionnaire. A standard questionnaire is necessary in order to ensure the reliability of data collected. Each State will apply its own law for claimant eligibility requirements to obtain claimant participation in answering the questionnaire, and the regulation has been revised to clarify that requirement. Information obtained from QC is no different than that obtained from any other source having the potential to affect claimant eligibility. The establishment of a QC program would not affect the SESA's authority to undertake redeterminations or necessitate any change in State finality laws. The language in the regulation in § 602.11(d) has been modified to emphasize this position.

Three commenters were concerned about the absence of any specific information in the regulation about the contents of the required questionnaire. In light of the regulatory approach taken in the QC program, it would be inappropriate to include this level of specificity in the regulation. The questionnaire is included as an appendix to the Benefits QC Handbook and was developed and revised with State input.

Two commenters contended that it is not feasible to require a questionnaire because claimants cannot always be located. The Benefits QC Handbook acknowledges that it is not possible to complete all questionnaires and has provided for the investigator to document attempts to interview the claimant. In situations where the claimant cannot be located, the investigator must investigate the claim using the information that can be obtained from agency records.

Section 602.21(c)(3) [In reference to collecting data required by the Department].

Eleven commenters stated that the collection of demographic data beyond that necessary for determination of eligibility is inappropriate or should be optional for the States. The Department accepts this position, which is also contained in consensus principles number one and four, and has revised the regulation to so state and identify the demographic data that are necessary to conduct proportions tests for the purpose of validating the selection of representative samples: Claimants' date of birth, sex, and ethnic classification.

Section 602.21(c)(4) [In reference to concluding all findings of inaccuracy as detected through QC investigations with appropriate official actions].

The language in this section has been revised to more accurately set forth the requirement that appropriate official actions be taken when inaccuracies are detected through QC investigations. The term "determination" used in the proposed rule is too narrow in definition as an inaccuracy may be properly concluded with some other appropriate action. Moreover, State finality laws may preclude action.

Section 602.21(d)(1) and (2) [In reference to classifying QC case findings].

One commenter stated that there is too much detail regarding the classification of cases, which should more appropriately be located in the Benefits QC Handbook. In contrast, another commenter suggested that the regulation should define "error." The Department believes that a proper balance between the regulation and the operational handbooks will be maintained by the regulation setting forth the major classification of case findings (e.g., proper payments, overpayments, underpayments, or proper denials) while the handbooks prescribe the detailed categories and definitions of error.

Section 602.21(f) [In reference to furnishing information and reports].

Two commenters were concerned that the regulation does not make clear what data are to be transmitted, why they are to be transmitted weekly, or how they are to be used. They believe that the statement "for statistical and other analysis" is too general and does not support State integrity. In keeping with the broad regulatory approach described earlier, the Department does not believe it should specify in the regulation which QC data are to be collected and transmitted; such detail is contained in the Benefits QC Handbook. However, the Department has modified the regulation at § 602.30 to identify examples of how the data are to be used. Section 602.30 was amended to state that a QC data base will be combined with other data for statistical and other analyses such as assessing the impact of economic cycles, funding levels, and workload levels on program accuracy and timeliness.

Five commenters stated that weekly transmission of data was inappropriate. The Department finds that weekly transmission is desirable because Federal oversight responsibility involves ensuring that cases are sampled properly and completed in a timely manner to ensure reliability of data. Prompt entry and transmission of QC data are necessary to enable the Department to conduct proportions tests at frequent intervals in order to minimize the possibility that large blocks of data might be invalidated.

Seven commenters preceived a need to ensure privacy of claimant's Social Security numbers. Based on these comments, the Department's desire to incorporate consensus principle number three, and compliance with the Privacy Act of 1974 (5 U.S.C. 552(a)), the Department has modified the regulation. Containing even more restrictive language than presented in consensus principle number three, the regulation now specifies that States will be required to furnish information and reports to the Department of Labor, including weekly transmissions of case data entered into the automatic QC system and annual reports, without, in any way, identifying individuals to whom such data pertain. The States are being provided with software which will ensure that identifiers for all data transmitted from States will be encrypted so that individual claimants cannot be identified from information furnished to the Department. The Department does not maintain any records or establish any identifiers on individual persons under the QC program; therefore, no system of records is being established which would be subject to the Privacy Act.

Section 602.21(g) [In reference to releasing results of the QC program].

Five commenters requested that the timing/format of the annual release of QC data be specified in regulation. Four additional commenters requested that the release of QC data to the public should be controlled by the States.

Two others believed that publication of QC results by the Department in a standardized format may lead to unfair and unrealistic comparisons between States. Nine commenters stated that flexibility on release of information was necessary. One commenter said that the annual release of data should include full disclosure of the States' work search requirements, while another saw a need to differentiate between "correctable" and "non-correctable" improper payments. Two commenters stated that QC results should be published at the national level only as a composite-of-performance rate of all States, and that individual State data should be released by the Department only if a State fails to release its own data within 90 days of a composite release.

In response to these varied comments, the Department has agreed to consensus principle number eight that States will release calendar year results of the QC program at the same time each year, using a standardized format to present the data. States will have the opportunity to release this information prior to any release at the national level. This language has been added to the regulation. Specific formats and procedures will be promulgated through the Benefits QC Handbook, rather than in regulation, consistent with the regulatory approach previously described. The Department is committed to ensuring that significant concerns on the subject continue to be identified and addressed. Although there are no general plans to publish handbook sections in the **Federal Register**, proposals related to releasing the QC data will use this mechanism to ensure that all interested parties have the opportunity to comment.

Section 602.22 Exceptions.

One commenter suggested that the final rule should stipulate that States can petition the Department for exclusion from QC. As stated in the background statement of the proposed regulation, published at 51 FR 26846 on July 25, 1986, and repeated in the section titled QC Will Be Mandatory above, "Given the importance of ensuring accurate and timely payment of benefits to eligible UI claimants and accurate and prompt collection of UI contributions, however, participation of the States in the QC program will be mandatory." At this time it is anticipated that the only jurisdiction that may be excepted from Core QC would be the Virgin Islands. The Department has determined, therefore, that a procedure for requesting exemptions is not necessary. However, the regulation has been revised to clarify that cost effectivensss will be considered in excepting States from participation in QC. Moreover, any exceptions will be discussed with the individual State in advance of any final decison.

Subpart D—Federal Responsibilities

Section 602.30(a) [In reference to the establishment of methods and procedures].

Two commenters stated that the required methods and procedures should be established only after consultation with the States and should be specified in the regulation. Reponse to this comment is included in the earlier discussion of § 602.21(a) [In

reference to using standard methods and procedures established by the Department].

Section 602.30(b) [In reference to alternative methodologies].

In response to the ten commenters objecting to the inflexibility of the prescribed methodology and the absence of alternative methodology, the Department has added a section to the regulation concerning consensus principle number five, alternative methodologies. Complete reponse to this comment is found in the earlier discussion of § 602.21(a) [In reference to using standard methods and procedures established by the Department].

Section 602.30(c) [In reference to the Department maintaining a computerized data base].

Four commenters were concerned about the need, cost, and security of Federal data bases and of access to State data bases. The need for a Federal data base and its uses are addressed in § 602.21(f) above. Prior to the transmission of case data, States will encrypt each claimant's social security number, thereby preventing identification of any individual's record. This should ensure the maintenance of privacy in the data base. While the Department recognizes the cost of maintaining a Federal data base, its use and potential savings outweigh the expense. More discussion of QC cost benefit is found in § 602.21 above.

SESAs are presumed to have established appropriate security and password procedures to prohibit unauthorized access to either the SESA mainframe or the QC microcomputers. There will be no mandatory access by the Department to any data in the SESA mainframe in the operation of the QC program under this part, although access to such data may be required in connection with audits conducted under State or Federal authority.

Section 602.31 Oversight.

Two commenters stated that the Department should have the responsibility to establish uniform, standard methods and procedures, but monitoring of the State operational procedures should be limited to ensuring only that States meet conformity and compliance requirements. The QC program is based on the Secretary's interpretations of section 303 of the SSA, which contains the "methods of administration" requirement. All departures from these requirements pose a potential conformity/compliance issue.

Subpart E—Grants to States

Section 602.40 Funding.

Three commenters stated that the regulation should ensure, and the Department should provide, sufficient funds in order for States to meet the Federal QC requirements. This would not be appropriate subject matter for regulation, because the Department is dependent upon Congress for appropriation levels and cannot guarantee, in regulation, specified funding. Furthermore, it should not be necessary for any State to use State resources for implementing and maintaining a QC program, as adequate resources have been provided for such purpose.

One commenter requested that the regulation should stipulate that State revenues not be used for QC. To prohibit States from using State revenues for QC could be counterproductive. The Department would not want to discourage States from taking the initiative to expand QC to meet their own needs.

In response to the six commenters wishing the consensus principles to be explicitly incorporated in the regulation, the Department has added § 602.40(b). This new section, embodying a slightly modified version of consensus principle number six, states that the Department may allocate additional resources, if available, to States for analysis of data generated by the QC program, to increase the number of claims sampled in areas where more information is needed, for pilot studies for the purpose of expanding the QC program, and for corrective action. The revision to the exact language of consensus principle number six acknowledges that allocations can only be made if funds are available and provides some Departmental discretion in making the allocation.

Section 602.41 Proper expenditure of QC granted funds.

One commenter pointed out that subjecting QC funds to recapture seems inconsistent with the Administrative Financing Initiative (AFI). There is no inconsistency between financing and proper expenditure requirements with respect to QC and the four short-term changes made thus far under the Department's AFI which was published in the **Federal Register** at 51 FR 18052. Should future changes in administrative financing pose any issue, a reconciliation will be effected.

Sections 303(a)(8) and (9), SSA, require that State laws include provisions for:

> . . . the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law; and
>
> . . . The replacement, within a reasonable time, of any moneys received pursuant to section 302 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such state law.

These provisions authorize the Department to take exception to and require reimbursement for any expenditure made which is not in compliance with requirements placed on States for the operation of QC. This reference is set forth in the regulation to notify States that an interim step will be taken before proceeding with any action to withhold all grants.

Another commenter observed that effective review of the use of QC granted funds will be difficult unless they are identified as a separately budgeted item. SESAs will be responsible for operating the QC program in accordance with the QC requirements. The Department will be responsible for ensuring that SESA program performance is adequate. It will only be necessary for the Department to review SESA use of grant funds if program performance is inadequate.

Section 602.42 Effect of failure to implement a Quality Control program.

Twelve commenters questioned the authority of the Secretary to withhold grants for failure to implement QC in accordance with Federal requirements. The Social Security Act makes the Secretary responsible for ensuring that SESAs adopt such methods of administration as will ensure full payment of unemployment compensation when due, and makes provision for grants withdrawal to ensure conformity/compliance. The Random Audit experience has revealed the existence of problems in the payment of benefits and has demonstrated that this approach is feasible for estimating the extent of improper payments. The Secretary has determined that implementation of QC will be the most efficient means of fulfilling these responsibilities.

It is the intent of the Department to ensure that an effective QC program is implemented by providing adequate funding and offering technical assistance to SESAs as needed. Consistent with other aspects of UI administration, withdrawal of grants would be a last resort.

Four commenters were concerned that conformity/compliance issues could be raised for failure to run the QC program within the strict guidelines of the QC methodology. They suggested that the regulation should clarify that administrative funding would not be withheld unless a State "refuses" to participate in QC. It was further suggested that the Department should give States quarterly written assurance that their QC program is in compliance with Federal rules, and if deficiences are found by the Department, they should be specifically defined for corrective action.

The language from the proposed regulation is being maintained to be consistent with that of section 303(a)(1) SSA, and the Secretary's interpretation as set out in the regulation. Failure to comply substantially with QC methodology could result in proceeding under section 303(b), SSA. However, the intent of the regulation is not to withhold administrative funding for technical deficiences beyond the SESA's control. The Department will be conducting routine compliance monitoring of the State QC programs and providing regular feedback to the States. If problems are found, it will be in the interest of all parties involved to resolve them. As with all such matters, the Department will work cooperatively with a State before taking any formal conformity/compliance action. The regulation states that "the Department of Labor shall, for purposes of determining eligibility for grants . . . annually review the adequacy of the administration of a State's QC program." This is deemed sufficiently frequent for official notification to the SESAs.

One commenter proposed that definition of the word "implementation" was necessary. For purposes of this regulation, implementation refers to the act of establishing a QC program in accordance with the regulation and the prescribed methodology in the QC operations' handbooks. (Thus far only the Benefits QC Handbook has been written and issued.) Further definition does not appear appropriate or necessary.

Section 602.43 No incentives or sanctions based on specific error rates.

Two commenters said that the regulation should state that no sanctions or funding incentives will be used to force achievement of specified error rates. This position also was stated in consensus principle number seven. The Department has revised the regulation, substituting the word "influence" for "force", to incorporate this principle.

Appendix A—Standard for Claims Determinations—Separation Information

Three commenters asserted that Appendix A is not needed and should be deleted from the regulation. The appendix is intended to support the QC requirement that appropriate action resulting from QC investigations be issued officially. This ensures that findings are subject to the same possible challenges by claimants as other agency actions. The inclusion of Appendix A in the regulation is mandated by the Office of the Federal Register's rule on incorporation by reference.

Another commenter was concerned that Appendix A changes procedural instructions, which if not followed could result in sanctions. Procedural instructions are not affected by inclusion of Appendix A, which is presently contained in the Employment Security Manual, and is a requirement independent of the QC regulation.

Other Comments Which Are Not Section Specific

Eleven commenters contended that the problem with UI is that it is systematically underfunded. Furthermore, they content that if the requirements of Gramm-Rudman legislation are implemented, it is implicit that the QC program will be fully funded, while funding for the payment of benefits and collection of revenues will be reduced. This would result in QC having a higher priority than the operation of the basic UI program. The Department believes that QC is essential at any time, regardless of budget constraints. Moreover, QC could reveal the impact of such variables as budget and workload fluctuations. Such information would be invaluable in future budget discussions.

One commenter believed that the QC rule represents a potential for substantial interference in State UI administrative processes and objected to the potential use of QC to enforce non-statutory Federal work-search standards upon States without making those standards explicit. The Department does not intend to impose or enforce non-statutory work-search standards. The QC program will not interfere with the administrative processes of SESAs, since the QC program methodology simply verifies the degree to which SESAs are applying their own State laws and official operational procedures. Thus, it will yield a great deal of information which will assist SESA managers in operating the UI program or assessing the need to revise their own UI law and policies.

One commenter requested a delay of the implementation of the QC program, originally limited to the audit of benefit payments, until other elements of UI administration, notably denials and revenue collections, can be included. After a thorough review of the QC program, a decision was made to proceed with the revised QC program. As described in UIPL No. 4–86, which presented the aforementioned consensus principles as Departmental policy, the revised QC program was implemented voluntarily in March 1986. Such implementation was called for in consensus principle number one. Consistent with consensus principle number two, the Core QC program will be expanded to include the investigation of claims that have been denied and employer revenue collection activities. The QC denials pilot was launched in five States in October 1986 and Revenue QC is currently being designed.

Two commenters contended that QC should be designed to improve quality through corrective action rather than to be a longitudinal research project which provides for statistics and data compilation. The Department concurs that the objective of the QC program is to improve program operations. Any longitudinal research will be dealt with separately.

One commenter stated that the QC program should easily meet the definition of a "major rule" as outlined in the published proposal. Executive Order 12291 on Federal Regulations defines the requirements for classification as a "major rule". As stated in the preamble of the proposed rule and repeated below, this rule is not classified as a "major rule" because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Other Comments Which Are Not Applicable to the Regulation

Individuals or groups who made the following comments will receive direct responses from the Department since they do not apply to the regulation:

One commenter noted language in the QC State Operations Handbook which required a log-in account to be established on the SESA mainframe computer for the sole purpose of

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allowing data file transfer from the SESA computer to the QC microcomputer. This assumes a QC-to-mainframe link. This commenter believes that the Secretary does not have the authority to mandate such internal operations.

Another commenter was opposed to telephone transmission of QC data between State and National Office during nonworking hours.

One commenter suggested that local office managers' comments be obtained whenever mispayments are detected in a QC investigation.

Four commenters suggested establishment of a National Clearinghouse on Corrective Strategies for the purpose of exchanging ideas and experiences under the QC program.

Another commenter suggested that State staff need more training on interpreting QC data.

Untimely Comments

As noted above, a number of comments were received after the comment period had ended. While these comments are not addressed specifically in this document, the comments were examined, and most were found to present nothing of substantial import not addressed in the timely comments discussed above. Those individuals or groups which presented additional issues or concerns will receive direct responses from the Department.

Technical and COnforming CHanges

In addition to the changes noted above, other technical and conforming changes have been made to improve the accuracy and completeness of the regulation.

Authority

Section 302(a), SSA, (42 U.S.C. section 502(a)) requires the Secretary of Labor to certify payment of granted funds to each State in:

> . . . such amounts as the Secretary of Labor determines to be necessary . . . for the proper and efficient administration of . . .

the State's unemployment compensation law.

Section 303(a)(1), stipulates that the Secretary shall make no certification for payment of granted funds unless he finds the State law includes provision for:

> Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

The rule interprets section 303(a)(1) to require that States administer a QC program in accordance with Federal requirements and, therefore, QC is a condition for certification of granted funds by the Secretary.

Under section 303(a)(6), SSA, the Secretary has authority to require States to make reports. Under this section, the Secretary has the authority to require the States to make reports concerning their implementation and operation of the QC program.

Classification—Executive Order 12291

The rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

The Department has complied with the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. Approval of recordkeeping requirements at §§ 602.21(c)(2), 602.21(e), and 602.21(f) are under OMB control number 1205–0245.

Regulatory Flexibility Act

This rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b). This rule implements an internal QC program, and has no significant economic impact on any small entities. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Catalog of Federal Domestic Assistance

This program is listed in the *Catalog of Federal Domestic Assistance* at number 17.225, Unemployment Insurance.

List of Subjects in 20 CFR Part 602

Labor, Unemployment compensation, Reporting and recordkeeping requirements.

Words of Issuance

For the reasons set out in the preamble, Part 602 is added to Title 20, Chapter V, of the Code of Federal Regualtions to read as set forth below.

Signed at Washington, DC, on August 27, 1987.

William E. Brock,

Secretary of Labor.

PART 602—QUALITY CONTROL IN THE FEDERAL-STATE UNEMPLOYMENT INSURANCE SYSTEM

Subpart A—General Provisions

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602.43 No incentives or sanctions based on specific error rates.

Appendix A To Part 602—Standard For Claim Determinations—Separation Information.

Authority: 42 U.S.C. 1302.

Subpart A—General Provisions

§ 602.1 Purpose.

The purpose of this part is to prescribe a Quality Control (QC) program for the Federal-State unemployment insurance (UI) system, which is applicable to the State UI programs and the Federal unemployment benefit and allowance programs administered by the State Employment Security Agencies (SESA) under agreements between the States and the Secretary of Labor (Secretary). QC will be a major tool to assess the timeliness and accuracy of State administration of the UI program. It is designed to identify errors in claims processes and revenue collections (including payments in lieu of contributions and Extended Unemployment Compensation Account collections), analyze causes, and support the initiation of corrective action.

§ 602.2 Scope.

This part applies to all State laws approved by the Secretary under the Federal Unemployment Tax Act (section

3304 of the Internal Revenue Code of 1954, 26 U.S.C. section 3304), to the administration of the State laws, and to any Federal unemployment benefit and allowance program administered by the SESAs under agreements between the States and the Secretary. QC is a requirement for all States, initially being applicable to the largest permanently authorized programs (regular UI including Combined-Wage-Claims) and federally-funded programs (Unemployment Compensation for Ex-Servicemen and Unemployment Compensation for Federal Employees). Other elements of the QC program (e.g., interstate, extended benefit programs, benefit denials, and revenue collections) will be phased in under a schedule determined by the Department in consultation with State agencies.

Subpart B—Federal Requirements

§ 602.10 Federal law requirements.

(a) Section 303(a)(1) of the Social Security Act (SSA), 42 U.S.C. 503(a)(1), requires that a State law include provision for:

> Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

(b) Section 303(a)(6), SSA, 42 U.S.C. 505(a)(6), requires that a State law include provision for:

> The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports.

(c) Section 303(b), SSA, 42 U.S.C. 503(b), provides in part that:

> Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—
>
> * * * * *
>
> (2) a failure to comply substantially with any provision specified in subsection (a);
>
> the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply. Until he is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State . . . .

(d) Certification of payment of granted funds to a State is withheld only when the Secretary finds, after reasonable notice and opportunity for hearing to the State agency—

(1) That any provision required by section 303(a) of the Social Security Act is no longer included in the State unemployment compensation law, or

(2) That in the administration of the State unemployment compensation law there has been a failure to comply substantially with any required provision of such law.

§ 602.11 Secretary's interpretation.

(a) The Secretary interprets section 303(a)(1), SSA, to require that a State law provide for such methods of administration as will reasonably ensure the prompt and full payment of unemployment benefits to eligible claimants, and collection and handling of income for the State unemployment fund (particularly taxes and reimbursements), with the greatest accuracy feasible.

(b) The Secretary interprets sections 303(a)(1) and 303(a)(6), SSA, to authorize the Department of Labor to prescribe standard definitions, methods and procedures, and reporting requirements for the QC program and to ensure accuracy and verification of QC findings.

(c) The Secretary interprets section 303(b)(2), SSA to require that, in the administration of a State law, there shall be substantial compliance with the provisions required by sections 303(a)(1) and (6). Further, conformity of the State law with those requirements is required by section 303(a) and § 601.5(a) of this chapter.

(d) To satisfy the requirements of sections 303(a)(1) and (6), a State law must contain a provision requiring, or which is construed to require, the establishment and maintenance of a QC program in accordance with the requirements of this part. The establishment and maintenance of such a QC program in accordance with this part shall not require any change in State law concerning authority to undertake redeterminations of claims or liabilities or the finality of any determination, redetermination or decision.

Subpart C—State Responsibilities

§ 602.20 Organization.

Each State shall establish a QC unit independent of, and not accountable to, any unit performing functions subject to evaluation by the QC unit. The organizational location of this unit shall be positioned to maximize its objectivity, to facilitate its access to information necessary to carry out its responsibilities, and to minimize organizational conflict of interest.

§ 602.21 Standard methods and procedures.

Each State shall:

(a) Perform the requirements of this section in accordance with instructions issued by the Department, pursuant to § 602.30(a) of this part, to ensure standardization of methods and procedures in a manner consistent with this part;

(b) Select representative samples for QC study of at least a minimum size specified by the Department to ensure statistical validity (for benefit payments, a minimum of 400 cases of weeks paid per State per year);

(c) Complete prompt and in-depth case investigations to determine the degree of accuracy and timeliness in the administration of the State UI law and Federal programs with respect to benefit determinations, benefit payments, and revenue collections; and conduct other measurements and studies necessary or appropriate for carrying out the purposes of this part; and in conducting investigations each State shall:

(1) Inform claimants in writing that the information obtained from a QC investigation may affect their eligibility for benefits and inform employers in writing that the information obtained from a QC investigation of revenue may affect their tax liability,

(2) Use a questionnaire, prescribed by the Department, which is designed to obtain such data as the Department deems necessary for the operation of the QC program; require completion of the questionnaire by claimants in accordance with the eligibility and reporting authority under State law,

(3) Collect data identified by the Department as necessary for the operation of the QC program; however, the collection of demographic data will be limited to those data which relate to an individual's eligibility for UI benefits and necessary to conduct proportions tests to validate the selection of representative samples (the demographic data elements necessary to conduct proportions tests are claimants' date of birth, sex, and ethnic classification); and

(4) Conclude all findings of inaccuracy as detected through QC investigations with appropriate official actions, in accordance with the applicable State and Federal laws; make any determinations with respect to individual benefit claims in accordance with the Secretary's "Standard for Claim Determinations—Separation Information" in the *Employment Security Manual*, Part V, sections 6010–6015 (Appendix A of this part);

(d) Classify benefit case findings resulting from QC investigations as:

(1) Proper payments, underpayments, or overpayments in benefit payment cases, or

(2) Proper denials or underpayments in benefit denial cases;

(e) Make and maintain records pertaining to the QC program, and make all such records available in a timely manner for inspection, examination, and audit by such Federal officials as the Secretary may designate or as may be required or authorized by law;

(f) Furnish information and reports to the Department, including weekly transmissions of case data entered into the automated QC system and annual reports, without, in any manner, identifying individuals to whom such data pertain; and

(g) Release the results of the QC program at the same time each year, providing calendar year results using a standardized format to present the data as prescribed by the Department; States will have the opportunity to release this information prior to any release by the Department.

(Approved by the Office of Management and Budget under Control Number 1205–0245)

§ 602.22 Exceptions.

If the Department determines that the QC program, or any constituent part of the QC program, is not necessary for the proper and efficient administration of a State law or in the Department's view is not cost effective, the Department shall use established procedures to advise the State that it is partially or totally excepted from the specified requirements of this part. Any determination under this section shall be made only after consultations with the State agency.

Subpart D—Federal Responsibilities

§ 602.30 Management.

(a) The Department shall establish required methods and procedures (as specified in § 602.21 of this part); and provide technical assistance as needed on the QC process.

(b) The Department shall consider and explore alternatives to the prescribed sampling, study, recordkeeping, and reporting methodologies. This shall include, but not be limited to, testing the obtaining of information needed for QC by telephone and mail rather than in face-to-face interviews.

(c) The Department shall maintain a computerized data base of QC case data which is transmitted to the Department under § 602.21, which will be combined with other data for statistical and other analysis such as assessing the impact of economic cycles, funding levels, and workload levels on program accuracy and timeliness.

§ 602.31 Oversight.

The Department shall review QC operational procedures and samples, and validate QC methodology to ensure uniformity in the administration of the QC program and to ensure compliance with the requirements of this part. The Department shall, for purposes of determining eligibility for grants described in § 602.40, annually review the adequacy of the administration of a State's QC program.

Subpart E—Quality Control Grants to States

§ 602.40 Funding.

(a) The Department shall use established procedures to notify States of the availability of funds for the operation of QC programs in accordance with this part.

(b) The Department may allocate additional resources, if available, to States for analysis of date generated by the QC program, to increase the number of claims sampled in areas where more information is needed, for pilot studies for the purpose of expanding the QC program, and for corrective action.

§ 602.41 Proper expenditure of Quality Control granted funds.

The Secretary may, after reasonable notice and opportunity for hearing to the State agency, take exception to and require repayment of an expenditure for the operation of a QC program if it is found by the Secretary that such expenditure is not necessary for the proper and efficient administration of the QC program in the State. See Actions 303(a)(8), 303(a)(9) and 303(b)(2), SSA, and 20 CFR 601.5. For purposes of this section, an expenditure will be found not necessary for proper and efficient administration if such expenditure fails to comply with the requirements of Subpart C of this part.

§ 602.42 Effect of failure to implement Quality Control program.

Any State which the Secretary finds, after reasonable notice and opportunity for hearing, has not implemented or maintained a QC program in accordance with this part will not be eligible for any grants under Title III of the Social Security Act until such time as the Secretary is satisfied that there is no longer any failure to conform or to comply substantially with any provision specified in this part. See sections 303(a)(1), 303(a)(6), and 303(b)(2), SSA, and 20 CFR 601.5.

§ 602.43 No incentives or sanctions based on specific error rates.

Neither sanctions nor funding incentives shall be used by the Department to influence the achievement of specified error rates in State UI programs.

Appendix A to Part 602—Standard for Claim Determinations—Separation Information

Employment Security Manual (Part V, Sections 6010–6015)

6010 *Federal Law Requirements.* Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

"Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

Section 303(a)(3) of the Social Security Act requires that a State law include provision for:

"Opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied."

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law include provision for:

"Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation.

. . .

Section 3306(h) of the Federal Unemployment Tax Act defines "compensation" as "cash benefits payable to individuals with respect to their unemployment."

6011 *Secretary's Interpretation of Federal Law Requirements.* The Secretary interprets the above sections to require that a State law include provisions which will insure that:

A. Individuals who may be entitled to unemployment compensation are furnished such information as will reasonably afford them an opportunity to know, establish, and protect their rights under the unemployment compensation law of such State, and

B. The State agency obtains and records in time for the prompt determination and review of benefit claims such information as will reasonably insure the payment of benefits to individuals to whom benefits are due.

6012 *Criteria for Review of State Law Conformity with Federal Requirements:*

In determining the conformity of a State law with the above requirements of the Federal Unemployment Tax Act and the Social Security Act as interpreted by the Secretary, the following criteria will be applied:

A. Is it required that individuals who may be entitled to unemployment compensation be furnished such information of their potential rights to benefits, including the manner and places of filing claims, the reasons for determinations, and their rights of appeal, as will insure them a reasonable opportunity to know, establish, and protect their rights under the law of the State?

B. Is the State agency required to obtain, in time for prompt determination of rights to benefits such information as will reasonably

insure the payment of benefits to individuals to whom benefits are due?

C. Is the State agency required to keep records of the facts considered in reaching determinations of rights to benefits?

6013 *Claim Determinations Requirements Designed To Meet Department of Labor Criteria:*

A. *Investigation of claims.* The State agency is required to obtain promptly and prior to a determination of an individual's right to benefits, such facts pertaining thereto as will be sufficient reasonably to insure the payment of benefits when due.

This requirement embraces five separate elements:

1. It is the responsibility of the agency to take the initiative in the discovery of information. This responsibility may not be passed on to the claimant or the employer. In addition to the agency's own records, this information may be obtained from the worker, the employer, or other sources. If the information obtained in the first instance discloses no essential disagreement and provides a sufficient basis for a fair determination, no further investigation is necessary. If the information obtained from other sources differs essentially from that furnished by the claimant, the agency, in order to meet its responsibility, is required to inform the claimant of such information from other sources and to afford the claimant an opportunity to furnish any further facts he may have.

2. Evidentiary facts must be obtained as distinguished from ultimate facts or conclusions. That a worker was discharged for misconduct is an ultimate fact or conclusion; that he destroyed a machine upon which he was working is a primary or evidentiary fact, and the sort of fact that the requirement refers to.

3. The information obtained must be sufficient reasonably to insure the payment of benefits when due. In general, the investigation made by the agency must be complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with the unemployment compensation law. On the other hand, the investigation should not be so exhaustive and time-consuming as unduly to delay the payment of benefits and to result in excessive costs.

4. Information must be obtained promptly so that the payment of benefits is not unduly delayed.

5. If the State agency requires any particular evidence from the worker, it must give him a reasonable opportunity to obtain such evidence.

B. *Recording of facts.* The agency must keep a written record of the facts considered in reaching its determinations.

C. *Determination notices.*

1. The agency must give each claimant a written notice of:

a. Any monetary determination with respect to his benefit year;

b. Any determination with respect to purging a disqualification if, under the State law, a condition or qualification must be satisfied with respect to each week of disqualification; but in lieu of giving written notice of each determination for each week in which it is determined that the claimant has met the requirements for purging, the agency may inform the claimant that he has purged the disqualification for a week by notation of his applicant identification card or otherwise in writing.

c. Any other determination which adversely affects [1] his rights to benefits, except that written notice of determination need not be given with respect to:

(1) A week in a benefit year for which the claimant's weekly benefit amount is reduced in whole or in part by earnings if, the first time in the benefit year that there is such a reduction, he is required to be furnished a booklet or leaflet containing the information set forth below in paragraph 2f(1). However, a written notice of determination is required if: (a) there is a dispute concerning the reduction with respect to any week (e.g., as to the amount computed as the appropriate reduction, etc.); or (b) there is a change in the State law (or in the application thereof) affecting the reduction; or

(2) Any week in a benefit year subsequent to the first week in such benefit year in which benefits were denied, or reduced in whole or in part for reasons other than earnings, if denial or reduction for such subsequent week is based on the same reason and the same facts as for the first week, and if written notice of determination is required to be given to the claimant with respect to such first week, and with such notice of determination, he is required to be given a booklet or pamphlet containing the information set forth below in paragraphs 2f(2) and 2h. However, a written notice of determination is required if: (a) there is a dispute concerning the denial or reduction of benefits with respect to such week; or (b) there is a change in the State law (or in the application thereof) affecting the denial or reduction; or (c) there is a change in the amount of the reduction except as to the balance covered by the last reduction in a series of reductions.

Note.—This procedure may be applied to determinations made with respect to any subsequent weeks for the same reason and on the basis of the same facts: (a) that claimant is unable to work, unavailable for work, or is disqualified under the labor dispute provision; and (b) reducing claimant's weekly benefit amount because of income other than earnings or offset by reason of overpayment.

2. The agency must include in written notices of determinations furnished to claimants sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal.

The written notice of monetary determination must contain the information specified in the following items (except h) unless an item is specifically not applicable. A written notice of any other determination must contain the information specified in as many of the following items as are necessary to enable the claimant to understand the determination and to inform him of his appeal rights. Information specifically applicable to the individual claimant must be contained in the written notice of determination. Information of general application such as (but not limited to) the explanation of benefits for partial unemployment, information as to deductions, seasonality factors, and information as to the manner and place of taking an appeal, extension of the appeal period, and where to obtain information and assistance may be contained in a booklet or leaflet which is given the claimant with his monetary determination.

a. *Base period wages.* The statement concerning base-period wages must be in sufficient detail to show the basis of computation of eligibility and weekly and maximum benefit amounts. (If maximum benefits are allowed, it may not be necessary to show details of earnings.)

b. *Employer name.* The name of the employer who reported the wages is necessary so that the worker may check the wage transcript and know whether it is correct. If the worker is given only the employer number, he may not be able to check the accuracy of the wage transcript.

c. *Explanation of benefit formula—weekly and maximum benefit amounts.* Sufficient information must be given the worker so that he will understand how his weekly benefit amount, including allowances for dependents, and his maximum benefit amount were figured. If benefits are computed by means of a table contained in the law, the table must be furnished with the notice of determination whether benefits are granted or denied.

The written notice of determination must show clearly the weekly benefit amount and the maximum potential benefits to which the claimant is entitled.

The notice to a claimant found ineligible by reason of insufficient earnings in the base period must inform him clearly of the reason for ineligibility. An explanation of the benefit formula contained in a booklet or pamphlet should be given to each claimant at or prior to the time he receives written notice of a monetary determination.

d. *Benefit year.* An explanation of what is meant by the benefit year and identification of the claimant's benefit year must be included in the notice of determination.

e. *Information as to benefits for partial unemployment.* There must be included either in the written notice of determination or in a booklet or pamphlet accompanying the notice an explanation of the claimant's rights to partial benefits for any week with respect to which he is working less than his normal customary full-time workweek because of

[1] A determination "adversely affects" claimant's right to benefits if it (1) results in a denial to him of benefits (including a cancellation of benefits or wage credits or any reduction in whole or in part below the weekly or maximum amount established by his monetary determination) for any week or other period; or (2) denies credit for a waiting week; or (3) applies any disqualification or penalty; or (4) determines that he has not satisfied a condition of eligibility, requalification for benefits, or purging a disqualification; or (5) determines that an overpayment has been made or orders repayment or recoupment of any sum paid to him; or (6) applies a previously determined overpayment, penalty, or order for repayment or recoupment; or (7) in any other way denies claimant a right to benefits under the State law.

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lack of work and for which he earns less than his weekly benefit amount or weekly benefit amount plus earnings, whichever is provided by the State law. If the explanation is contained in the notice of determination, reference to the item in the notice in which his weekly benefit amount is entered should be made.

f. *Deductions from weekly benefits.*

(1) *Earnings.* Although written notice of determinations deducting earnings from a claimant's weekly benefit amount is generally not required (see paragraph 1 c (1) above), where written notice of determination is required (or given) it shall set forth the amount of earnings, the method of computing the deduction in sufficient detail to enable the claimant to verify the accuracy of the deduction, and his right to protest, request redetermination, and appeal. Where a written notice of determination is given to the claimant because there has been a change in the State law or in the application of the law, an explanation of the change shall be included.

Where claimant is not required to receive a written notice of determination, he must be given a booklet or pamphlet the first time in his benefit year that there is a deduction for earnings which shall include the following information:

(a) The method of computing deductions for earnings in sufficient detail to enable the claimant to verify the accuracy of the deduction;

(b) That he will not automatically be given a written notice of determination for a week with respect to which there is a deduction for earnings (unless there is a dispute concerning the reduction with respect to a week or there has been a change in the State law or in the application of the law affecting the deduction) but that he may obtain such a written notice upon request; and

(c) A clear statement of his right to protest, request a redetermination, and appeal from any determination deducting earnings from his weekly benefit amount even though he does not automatically receive a written notice of determination; and if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

(2) *Other deductions.*

(a) A written notice of determination is required with respect to the first week in claimant's benefit year in which there is a reduction from his benefits for a reason other than earnings. This notice must describe the deduction made from claimant's weekly benefit amount, the reason for the deduction, the method of computing it in sufficient detail to enable him to verify the accuracy of such deduction, and his right to protest, request redetermination, or appeal.

(b) A written notice of determination is not required for subsequent weeks that a deduction is made for the same reason and on the basis of the same facts, if the notice of determination pursuant to (2)(a), or a booklet or pamphlet given him with such notice explains (i) the several kinds of deductions which may be made under the State law (e.g., retirement pensions, vacation pay, and overpayments); (ii) the method of computing each kind of deduction in sufficient detail that claimant will be able to verify the accuracy of deductions made from his weekly benefit payments; (iii) any limitation on the amount of any deduction or the time in which any deduction may be made; (iv) that he will not automatically be given a written notice of determination for subsequent weeks with respect to which there is a deduction for the same reason and on the basis of the same facts, but that he may obtain a written notice of determination upon request; (v) his right to protest, request redetermination, or appeal with respect to subsequent weeks for which there is a reduction from his benefits for the same reason, and on the basis of the same facts even though he does not automatically receive a written notice of determination; and (vi) that if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

g. *Seasonality factors.* If the individual's determination is affected by seasonality factors under the State law, an adequate explanation must be made. General explanation of seasonality factors which may affect determinations for subsequent weeks may be included in a booklet or pamphlet given claimant with his notice of monetary determination.

h. *Disqualification or ineligibility.* If a disqualification is imposed, or if the claimant is declared ineligible for one or more weeks, he must be given not only a statement of the period of disqualification or ineligibility and the amount of wage-credit reductions, if any, but also an explanation of the reason for the ineligibility or disqualification. This explanation must be sufficiently detailed so that he will understand why he is ineligible or why he has been disqualified, and what he must do in order to requalify for benefits or purge the disqualification. The statement must be individualized to indicate the facts upon which the determination was based, e.g., state, "It is found that you left your work with Blank Company because you were tired of working; the separation was voluntary, and the reason does not constitute good cause," rather than merely the phrase "voluntary quit." Checking a box as to the reason for the disqualification is not a sufficiently detailed explanation. However, this statement of the reason for the disqualification need not be a restatement of all facts considered in arriving at the determination.

i. *Appeal rights.* The claimant must be given information with respect to his appeal rights.

(1) The following information shall be included in the notice of determination:

(a) A statement that he may appeal or, if the State law requires or permits a protest or redetermination before an appeal, that he may protest or request a redetermination.

(b) The period within which an appeal, protest, or request for redetermination must be filed. The number of days provided by statute must be shown as well as either the beginning date or ending date of the period. (It is recommended that the ending date of the appeal period be shown, as this is the more understandable of the alternatives.)

(2) The following information must be included either in the notice of determination or in separate informational material referred to in the notice:

(a) The manner in which the appeal, protest, or request for redetermination must be filed, e.g., by signed letter, written statement, or on a prescribed form, and the place or places to which the appeal, protest, or request for redetermination may be mailed or hand-delivered.

(b) An explanation of any circumstances (such as nonworkdays, good cause, etc.) which will extend the period for the appeal, protest, or request for redetermination beyond the date stated or identified in the notice of determination.

(c) That any further information claimant may need or desire can be obtained together with assistance in filing his appeal, protest, or request for redetermination from the local office.

If the information is given in separate material, the notice of determination would adequately refer to such material if it said, for example, "For other information about your (appeal), (protest), (redetermination) rights, see pages ___ to ___ of the _____ (name of pamphlet or booklet) heretofore furnished to you."

6014 *Separation Information Requirements Designed To Meet Department of Labor Criteria:*

A. *Information to agency.* Where workers are separated, employers are required to furnish the agency promptly, either upon agency request or upon such separation, a notice describing the reasons for and the circumstances of the separation and any additional information which might affect a claimant's right to benefits. Where workers are working less than full time, employers are required to furnish the agency promptly, upon agency request, information concerning a claimant's hours of work and his wages during the claim periods involved, and other facts which might affect a claimant's eligibility for benefits during such periods.

When workers are separated and the notices are obtained on a request basis, or when workers are working less than full time and the agency requests information, it is essential to the prompt processing of claims that the request be sent out promptly after the claim is filed and the employer be given a specific period within which to return the notice, preferably within 2 working days.

When workers are separated and notices are obtained upon separation, it is essential that the employer be required to send the notice to the agency with sufficient promptness to insure that, if a claim is filed, it may be processed promptly. Normally, it is desirable that such a notice be sent to the central office of the agency, since the employer may not know in which local office the workers will file his claim. The usual procedure is for the employer to give the worker a copy of the notice sent by the employer to the agency.

B. *Information to worker.*

1. *Information required to be given.* Employers are required to give their employees information and instructions concerning the employees' potential rights to benefits and concerning registration for work and filing claims for benefits.

The information furnished to employees under such a requirement need not be elaborate; it need only be adequate to insure that the worker who is separated or who is working less than full time knows he is potentially eligible for benefits and is informed as to what he is to do or where he is to go to file his claim and register for work. When he files his claim, he can obtain more detailed information.

In States that do not require employers to furnish periodically to the State agency detailed reports of the wages paid to their employees, each employer is required to furnish to his employees information as to (a) the name under which he is registered by the State agency, (b) the address where he maintains his payroll records, and (c) the workers' need for this information if and when they file claims for benefits.

2. *Methods for giving information.* The information and instructions required above may be given in any of the following ways:

a. *Posters prominently displayed in the employer's establishment.* The State agency should supply employers with a sufficient number of posters for distribution throughout their places of business and should see that the posters are conspicuously displayed at all times.

b. *Leaflets.* Leaflets distributed either periodically or at the time of separation or reduction of hours. The State agency should supply employers with a sufficient number of leaflets.

c. *Individual notices.* Individual notices given to each employee at the time of separation or reduction in hours.

It is recommended that the State agency's publicity program be used to supplement the employer-information requirements. Such a program should stress the availability and location of claim-filing offices and the importance of visiting those offices whenever the worker is unemployed, wishes to apply for benefits, and to seek a job.

6015 *Evaluation of Alternative State Provisions with Respect to Claim Determinations and Separation Information.* If the State law provisions do not conform to the suggested requirements set forth in sections 6013 and 6014, but the State law contains alternative provisions, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effects of the alternative provisions. If the Administrator of the Bureau concludes that the alternative provisions satisfy the criteria in section 6012, he will so notify the State agency. If the Administrator of the Bureau does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy the criteria in section 6012, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy the criteria, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, section 601.5.

[FR Doc. 87-20151 Filed 9-2-87; 8:45 am]
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September 3, 1987

Part IV

Department of Housing and Urban Development

Office of the Secretary

Transitional Housing Demonstration Program; Notice of Funds Availability

Supportive Housing Demonstration Program; Notice of Delegation of Authority

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-87-1727; FR-2396]

Transitional Housing Demonstration Program; Notice of Funds Availability

AGENCY: Office of the Assistant Secretary for Housing–Federal Housing Commissioner, HUD.

ACTION: Notice of funds availability.

SUMMARY: The Transitional Housing Demonstration Program, authorized in HUD's regular fiscal year 1987 appropriation, is designed to develop innovative approaches to providing housing and supportive services to help facilitate the transition to independent living for homeless persons. Under the program, HUD provides assistance to eligible governmental and private nonprofit organizations in the forms of: (1) interest-free advances to cover part of the costs of acquiring and rehabilitating (or both) existing structures for use in the provision of housing and supportive services for homeless persons; (2) funding of a portion of the operating costs of the housing; and (3) technical assistance to recipients in carrying out activities under the program. This notice is intended to inform the public of the requirements that will govern the use of amounts appropriated for the program by the Supplemental Appropriations Act, 1987 (Pub. L. 100–71, approved July 11, 1987).

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, telephone (202) 755–5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Transitional Housing Demonstration Program was first included in the Homeless Housing Act of 1986, enacted as Part B of title V of HUD's regular appropriation for fiscal year 1987.[1] HUD published final guidelines for the operation of the program and an invitation for applications for funding on June 9, 1987 (52 FR 21743). A technical correction concerning program requirements was published on July 13, 1987 (52 FR 26187).

On July 22, 1987, the President approved the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100–77 ("McKinney Act"). Title IV of the McKinney Act contains a number of housing assistance provisions to be administered by HUD.

Subtitle C of Title IV of the McKinney Act authorizes the Supportive Housing Demonstration Program. This program has two components—a reauthorization (with amendments) of the Transitional Housing Demonstration Program and a new program of Permanent Housing for Handicapped Homeless Persons. The McKinney Act makes the following substantive changes to the Transitional Housing Demonstration Program: (1) an increased emphasis on serving the needs of specified populations of homeless persons; (2) the redefinition of significant terms used for the program affecting the homeless persons who may be served, the eligibility of applicants and recipients, and the supportive services that may be provided; (3) the addition of authority to fund moderate rehabilitation grants; (4) the revision of provisions governing repayments of advances provided under the program; (5) the addition of provisions addressing the prevention of undue benefits upon the sale or disposition of a project that has been acquired or rehabilitated with funds provided under the program; (6) the expansion of the term of the commitment to operate a funded project from five years to ten; (7) the codification of requirements that recipients must match Federal assistance with at least an equal amount of other funds; and (8) the addition of limitations on the use of program funds to replace certain public funds, and limitations on the amount of administrative expenses. In addition to these changes, Subtitle A of Title IV of the McKinney Act adds requirements for a Comprehensive Homeless Assistance Plan, as discussed below.

Section 426 of the McKinney Act requires HUD, not later than 90 days after enactment, to establish by notice such requirements as may be necessary to carry out the provisions of the Supportive Housing Demonstration Program. HUD is developing a proposed rule to govern the Supportive Housing Demonstration Program. Following an opportunity for public comment, a final rule will be issued.

Until final regulations implementing the program are issued, section 426(a) of the McKinney Act provides that HUD's rules implementing the provisions made effective by HUD's appropriations for fiscal year 1987 (*i.e.*, the Transitional Housing Demonstration Program Guidelines published on June 9, 1987, 52 FR 21743) shall govern the transitional housing provisions of the Supportive Housing Demonstration Program.

In addition to other amounts authorized by law, section 428(a) of the McKinney Act authorizes $80 million to be appropriated to carry out the Supportive Housing Demonstration program for fiscal year 1987. Of the funds provided under Subtitle C under any fiscal year, section 428(b) provides that not less than $20 million is to be allocated to transitional housing projects that serve homeless families with children, and not less than $15 million is to be allocated to projects that provide permanent housing for handicapped homeless persons.

The Supplemental Appropriations Act, 1987 (Pub. L. 100–71, approved July 11, 1987), appropriated $80 million for supportive housing. Of the $80 million, $65 million is available for funding under the transitional housing provisions of the Supportive Housing Demonstration Program during this fiscal year. This figure is computed by deducting the $15 million set aside for the program for permanent housing for handicapped homeless persons (for which no HUD regulations or guidelines have, as yet been adopted) from the total $80 million recently appropriated and authorized for the Supportive Housing Demonstration Program. The $15 million in funding for permanent housing for handicapped homeless persons will be made available following the issuance of final regulations governing the Supportive Housing Demonstration Program.

The $65 million is in addition to the $5 million already made available for the Transitional Housing Demonstration Program in HUD's regular appropriation for fiscal year 1987. (In the final guidelines issued June 9, 1987, HUD announced the availability of this $5 million in funding and invited applications for the program. Applications were due on August 7, 1987 and HUD is currently selecting recipients for this $5 million in funding.)

Consistent with section 426(a) of the McKinney Act, the use of the $65 million appropriated and the selection of applications will be governed by the Transitional Housing Demonstration Program Guidelines published June 9, 1987 (52 FR 21743). This notice announces the availability of the additional $65 million for transitional

[1] Section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate) to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

housing and informs the public of the requirements that will govern the use of these funds.

II. Requirements governing the Program

In addition to the Transitional Housing Demonstration Program Guidelines, the following requirements will govern the use of the finds and the selection of applications under this notice:

A. Comprehensive Homeless Assistance Plan.

Subtitle A of Title IV of the McKinney Act adds new requirements for a Comprehensive Homeless Assistance Plan. Section 401(a) prohibits assistance under the other provisions of Title IV (including the Supportive Housing Demonstration Program) from being made available to, or within the jurisdiction of States, metropolitan cities or urban counties that are eligible for a formula grant under the Emergency Shelter Grants Program (contained in Subtitle B of Title IV), unless the jurisdiction has a HUD-approved Comprehensive Homeless Assistance Plan. (Private nonprofit organizations seeking assistance under certain programs, including the Supportive Housing Demonstration Program, however, may apply for and receive assistance without regard to a city's or an urban county's Plan approval, if the applicable State Comprehensive Plan has been approved.) Under section 401(f), applications for assistance must contain or be accompanied by a certification from the State or from the formula grant city or county, as appropriate, that the proposed activities are consistent with the plan.

The Department has reviewed the statutory text and legislative history of Subtitle A and section 426(a) of the McKinney Act, and has determined that the requirements for the establishment of the Comprehensive Plan apply to the use of funds appropriated for the transitional housing component of the Supportive Housing Demonstration Program under the Supplemental Appropriations Act, 1987. The language of Subtitle A establishes the Plan as an independent, specific condition to the receipt of funding under each of the other Subtitles of Title IV. Section 426(a), on the other hand, makes the transitional housing component of the Supportive Housing Demonstration Program subject to the provisions of the recently issued Transitional Housing Demonstration Program Guidelines by means of a general incorporation by reference, without any attention to specific features of the involved program. The Department believes that the clear funding condition in Subtitle A of the McKinney Act should take precedence over section 426(a)'s more general directive.

In addition, to hold the Comprehensive Plan inapplicable to the transitional housing component of the Supportive Housing Demonstration Program would frustrate the McKinney Act's purpose of according to States and localities responsibility for coordinating all of Title IV's assistance programs in a comprehensive manner. As the Conference Report accompanying the Act states:

> The conference report improves upon current law (1) by providing a streamlined requirement for one comprehensive plan covering all facets of assistance to the homeless under this Act, and (2) by placing at the relevant State or local level clear responsibility for coordinating assistance under various sections of this Act with other forms of assistance. (H. Rep. No. 174, 100th Cong., 1st Sess. 73 (1987)).

Thus, HUD will apply requirements for the Comprehensive Plan on applicants for assistance under this notice.

Section 401(f) of the McKinney Act requires that every application submitted under Title IV must contein or be accompanied by a certification made by the appropriate public official stating that the proposal activities are consistent with the Comprehensive Plan. On August 14, 1987, the Department published a notice in the **Federal Register** (52 FR 30628) establishing requirements for the Plan. Among other things, the notice specifies the time required for Comprehensive Plan submission and approval. The notice allows jurisdictions until September 28, 1987 to prepare and submit their plan to HUD. Following that submission, HUD will process and review the plans and, if the plan is approved, will provide a written notification of approval within 30 days of receipt. If the plan is disapproved, HUD will notify the jurisdiction of the reasons for disapproval within 15 days. In order to receive formula allocations, all State and ESG formula grantees must have Comprehensive Plan approval by November 27, 1987.

To postpone the application submission process until applicants have had a reasonable opportunity to obtain a certification that the application is consistent with a *HUD-approved* plan would extend the data for submission of applications and for final selection of applications for transitional housing assistance under this notice of funds availability far into the future. The purpose of the Comprehensive Plan is not to provide a source of delay or administrative burden, but to ensure that assistance under the McKinney Act is provided in a coherent and expeditious manner. H. Rep. 174, 100th Cong., 1st Sess. 73 (1987). Similarly, the clear intent of section 426(a) of the McKinney Act (which permits the use of the Transitional Housing Demonstration Program guidelines for the transitional housing provisions of the Supportive Housing Demonstration Program) is to ensure that transitional housing assistance is available at the earliest possible time.

Consistent with this intent, the time limits established for Comprehensive Plan submission and approval, and the section 401(f) requirement that every application must contain or be accompanied by a certificate of consistency with the Comprehensive Plan, HUD will require applicants to submit a certification by the appropriate public official (described below) stating that the application is consistent with a Comprehensive Plan *that has been approved by HUD or submitted to HUD for approval.* HUD will not select an application for funding unless the Comprehensive Plan has been approved before the date the HUD makes its final selections.

The Comprehensive Plan notice described the certification requirements applicable to transitional housing proposals. As modified to permit the submission of certifications before HUD approval of the Comprehensive Plan, the certification requirements are:

—If the applicant is a State or formula grantee under the Emergency Shelter Grants program, the public official responsible for submitting the Comprehensive Plan for the applicant must certify that the proposed project is consistent with the applicant's Comprehensive Plan, as submitted to HUD.

—If the applicant is a governmental entity that is not a State or a formula grantee under the Emergency Shelter Grants program (such as a Public Housing Agency), and (1) the governmental entity is applying for assistance to be used within the jurisdiction of an ESG formula grantee, the applicant must submit a certification of the public official responsible for submitting the Comprehensive Plan for the ESG formula grantee, stating that the proposed project is consistent with the grantee's Comprehensive Plan, as submitted to HUD; or (2) the governmental entity is applying for assistance to be used outside of the jurisdiction of any ESG formula grantee, the applicant must submit a certification of the public official responsible for the

submission of the Comprehensive Plan for the State in which the assistance is to be provided, stating that the proposed project is consistent with the State's Comprehensive Plan, as submitted to HUD.

—If the applicant is a private nonprofit organization and the assistance is to be provided within the jurisdiction of an ESG formula grantee, the applicant must submit a certification of the public official responsible for submitting the Comprehensive Plan for the ESG formula grantee, stating that the proposed project is consistent with the ESG formula grantee's Comprehensive Plan, as submitted by HUD. If the ESG formula grantee does not plan to submit a Comprehensive Plan to HUD, or if the assistance will not be provided within the jurisdiction of an ESG formula grantee, the private nonprofit organization must submit a certification of the public official responsible for submitting the Comprehensive Plan for the State in which the assistance is to be provided, stating that the proposed project is consistent with the State's Comprehensive Plan, as submitted to HUD.

B. Historic Preservotion.

The Transitional Housing Demonstration Guidelines, as amended on July 13, 1987 (52 FR 26187), required applicants to provide a letter from the State Historic Preservation Officer (SHPO), indicating that the proposed project would not involve an historic property as defined in 36 CFR 800.2(e) (*i.e.* an historic or prehistoric district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places), and would not involve a structure that is immediately adjacent to an historic property listed on the Register. Under the guidelines, the SHPO letter was a threshold requirement. An application could not be approved if the letter was omitted.

HUD has reconsidered the imposition of this requirement and has decided to revise the historic preservation requirement for applications filed under this notice. The requirement for the SHPO letter was originally imposed to enable HUD to comply with the congressional mandate for speedy implementation of the demonstration and to benefit homeless persons as quickly as possible. While there still is a necessity for expeditious action, HUD believes that the disqualification of historic properties is no longer appropriate. Under this notice, HUD has a substantially larger amount of funding available and is concerned that the continued application of this restrictive requirement could exclude meritorious applications.

Accordingly, HUD will not prohibit the use of historic properties for transitional housing projects. HUD will meet its responsibilities under the National Historic Preservation Act and related authorities as part of the environmental review under 24 CFR Part 50. This environmental review is performed in the third stage of the selection process. As an aid to early processing, HUD will require the applicant to indicate in its application whether the project will involve the use of, or be adjacent to, an historic property and, if so, to identify the historic property. For assistance in meeting the application requirement, the applicant may request available information on historic properties from the SHPO, the local government or any local historic commission or organization.

HUD believes that notice and public comment on this change are impracticable, unnecessary and contrary to the public interest. The change does not substantially alter the existing regulatory framework. Rather, the notice continues to permit HUD to fulfill its statutory duty to ensure compliance with historic preservation requirements, while relieving a regulatory burden by relaxing application requirements that may unduly restrict the number of applications submitted. Moreover, HUD believes that effecting this change through the use of public notice and comment would delay the timely execution of its responsibilities under the Supportive Housing Demonstration Program contrary to its regulatory responsibilities under the McKinney Act. The clear intent of section 426(a), which subjects transitional housing assistance under the McKinney Act to the guidelines until final supportive housing regulations are issued, was to ensure that transitional housing assistance under the program is available at the earliest possible time.

C. Funding Categories.

Section 428(b)(1) the McKinney Act provides that at least $20 million of the funds provided under the Supportive Housing Demonstration Program for any fiscal year shall be allocated to transitional housing projects that serve homeless families with children. Section 428(c) of the McKinney Act directs HUD to provide additional funding consideration to projects designed especially to meet the needs of deinstitutionalized homeless individuals and other homeless persons with mental disabilities, so that such projects will receive a significant share of the funds provided under the subtitle. In accordance with this provision, the conference report accompanying the Supplemental Appropriations Act designates $30 million to be used for transitional housing for deinstitutionalized individuals.

To ensure that these congressional directives are met, HUD has established three separate funding categories. These categories include applications that propose to serve (1) homeless families with children; (2) deinstitutionalized homeless individuals and other homeless individuals with mental disabilities; and (3) other homeless individuals or families. Thee categories are more fully described below.

(1) *Applications that propose to serve homeless families with children.* For the purposes of this notice, a homeless family with children means a family (consisting of at least one adult and at leat one child under the age of 18) which meets the definition of homeless person as defined in Section IV.A. of the Transitional Housing Demonstration Program Guidelines (52 FR at 21761). The Guidelines define homeless person as a homeless individual or family which does not have access to traditional or permanent housing, but which is capable of living independently within a reasonable amount of time, not to exceed 18 months. A person is capable of living independently if, at the time the person is reviewed for admission to transitional housing, the recipient determines that: (1) the resources reasonably expected to be available in the community after the person's anticipated departure from transitional housing will be adequate to meet the person's housing needs and requirements for continued services, and (2) the person will understand the importance, and will be capable, of using these resources after his or her departure from transitional housing.

An application will fall within this funding category if at least 75 percent of the total population of the project to be served by the proposal meet the definition of homeless families with children. $20 million will be available for funding these applications.

(2) *Applications that propose to serve deinstitutionalized homeless individuals and other homeless individuals with mental disabilities.* For the purposes of this notice, a deinstitutionalized homeless individual or homeless individual with mental disabilities means an individual who meets the definition of homeless person (as defined in the guidelines cited above) and who has a mental or emotional impairment which is expected to be of

long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable living conditions (*i.e.*, a stable residential situation). This term also includes a family that meets the definition of homeless person, as defined in the guidelines, if the head of the family (or the spouse of the head of the family) has an impairment as described above. Projects that will serve deinstitutionalized homeless individuals or other homeless individuals with mental disabilities who also suffer from alcoholism or drug addiction, may be included in this funding category.

An application will fall within this category if at least 75 percent of the total population of the project to be served by the proposal meet the definition of deinstitutionalized homeless individual and other homeless individual with mental disabilities. $30 million will be available for funding applications in this category.

(3) *Applications that propose to serve other homeless individuals or homeless families that meet the definition of homeless person as defined under the guidelines.* $15 million will be available for funding applications in this category.

HUD will require each applicant to identify the category of homeless individuals that it wishes to serve. Applications in each of the three funding categories will compete separately for the funds available to the category. Selections will be made by applying the four-stage selection process described at 52 FR 21764-21767 to applications falling within each of the three funding categories.

D. Application process.

HUD has developed an application package prescribing the information that applicants must submit. The application package will be provided upon the written or oral request of any party made to the address set forth in the beginning of this document or by calling (202) 755–8232. This is not a toll-free number. Applications must be on the forms prescribed by HUD and must be received at that address by 5:15 p.m. on October 30, 1987. Late-filed applications will be rejected.

Applicants that participated in the earlier funding competition will be required to resubmit their applications to be eligible for funding under this notice. Such applicants should review the application package carefully before resubmitting their original applications, since some requirements contained in the package have been modified. (For example, in the earlier application package, applicants were required to demonstrate site control at least through December 31, 1987. The new application package will require site control at least through March 1, 1988.)

Following the expiration of the October 30, 1987 deadline, HUD headquarters will review, rate and rank the applications in each funding category consistent with the selection procedures described in the Transitional Housing Demonstration Guidelines, as modified by this notice. By mid-December 1987, HUD will make its final selections. No information regarding the status of applications will be released until final selections are completed.

Other information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection in the Office of the General Counsel, Rules Docket Clerk, at the above address.

The information collection requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB control number is 2502–0361.

The Catalog of Federal Domestic Assistance Program Number is 14.178.

Authority: Title IV, Subtitle C of the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100–77, approved July 22, 1987; Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 26, 1987.

James E. Schoenberger,

Acting General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 87–20235 Filed 9–2–87; 8:45 am]

BILLING CODE 4210-32-M

Office of the Secretary

[Docket No. D–87–858; FR–2385]

Delegation of Authority With Respect to Supportive Housing Demonstration Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of concurrent delegation of authority.

SUMMARY: The Supportive Housing Demonstration Program was authorized by Title IV, Subtitle C of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987). This notice delegates to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner, the Secretary's power and authority with respect to this Program, subject to specified exceptions.

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This notice states the scope of authority given to the Assistant Secretary for Housing-Federal Housing Commissioner and General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner for the Supportive Housing Demonstration Program. All of the Secretary's authority with respect to this Program is delegated except the power to sue and be sued. The authority delegated includes the authority to redelegate to employees of the Department, except for the authority to issue rules regulations and guidelines under the Program.

The Supportive Housing Demonstration Program is a program authorized by Title IV, Subtitle C of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987). A notice of funds availability for the transitional housing component of this program is published elsewhere in today's issue of the **Federal Register**. Accordingly, the Secretary delegates as follows:

Section A—Authority Delegated

The Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner are authorized individually to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the Supportive Housing Demonstration Program as authorized in Title IV, Subtitle C of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77), approved July 22, 1987, except as indicated in Section B below. This includes the authority to issue or waive

rules, regulations, or guidelines under the Program.

Section B—Authority Excepted

There is excepted from the authority delegated under Section A the power to sue or be sued.

Section C—Authority to Redelegate

The Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner are authorized, individually, to redelegate to employees of the Department any of the power and authority delegated under Section A, and not excepted under Section B of this delegation. In addition, the Assistant Secretary and the General Deputy Assistant Secretary are not authorized to redelegate the authority to issue or waive rules, regulations and guidelines under the Program.

(Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: August 26, 1987.

Carl D. Covitz,

Under Secretary.

[FR Doc. 87-20236 Filed 9-2-87; 8:45 am]

BILLING CODE 4210-32-M

VOL 52 ISS 171 SEP 3 1987 UMI

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federal register

Thursday
September 3, 1987

Part V

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Interim Final Rule and Request for Comments and Proposed Regulation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL 3197-4(b)]

Guidelines Establishing Test Procedures for the Analysis of Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim Final Rule and Request for Comments.

SUMMARY: This interim final rule amends the Guidelines Establishing Test Procedures for the Analysis of Pollutants under section 304(h) of the Clean Water Act. This amendment approves an additional analytical technique to measure the concentrations of twenty-three inorganic chemicals. This technique, the direct current plasma (DCP) atomic emission spectrometric method, is substantially equivalent in both precision and accuracy to the techniques already approved. Approved analytical techniques are required for determining compliance with effluent limitations, guidelines and standards and in pretreatment standards set forth at 40 CFR Parts 402 through 699 (unless otherwise specially noted or defined in those parts.)

DATE: Interim final rule effective October 5, 1987. The Agency will accept comments on this amendment until October 19, 1987.

ADDRESS: Send comments to Mr. Robert Graves, Environmental Monitoring and Support Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268.

The record and all supporting information is available to the public for inspection or copying during normal business hours at the Environmental Monitoring and Support Laboratory, 26 West St. Clair Street, Cincinnati, Ohio. The public should contact the Equivalency Staff at (513) 569–7301 for access. Materials in the public docket include the following documents:

- Technical reviews of the proposed analytical techniques.
- Report with recommendations from the Director, Environmental Monitoring and Support Laboratory in Cincinnati.
- Copies of the proposed analytical techniques and performance data.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Graves, address above. Telephone number: (513) 569–7315.

SUPPLEMENTARY INFORMATION:

I. Authority and Background

This regulation is proposed under authority of sections 304(h) and 501(a) of the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977) (the "Act"). Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act." Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his functions under this Act."

EPA promulgated "Guidelines Establishing Test Procedures for the Analysis of Pollutants" in 40 CFR Part 136 on October 16, 1973 (38 FR 28758). These guidelines, which were amended on December 1, 1976 (41 FR 52780), provided test procedures for 115 well known pollutants and pollutant parameters, including metals and a number of organic compounds.

On October 26, 1984 the EPA promulgated regulations in the **Federal Register** (49 FR 43234) which further amended Part 136. These amendments approved gas chromatographic (GC), gas chromatographic/mass spectrometric (GC/MS), and high pressure liquid chromatographic (HPLC) methods for the analysis of the 111 toxic organic "priority" pollutants, an analytical method for carbonaceous biochemical oxygen demand (CBOD), a method for metals by inductively coupled plasma spectrophotometry (ICP), and mandatory sample container, preservation and holding time requirements. The test procedures for the organic pollutants included provisions for performance criteria that analysts must meet. These provisions were promulgated as interim final rulemaking. A correction notice was published on January 4, 1985 (50 FR 690–697). EPA also published technical amendments in those regulations in the **Federal Register** of June 30, 1986 (51 FR 23692).

The Virginia Electric Power Company and others (VEPCO) challenged the October, 1984 regulations (*Virginia Electric Power Co.*, et al. v. *U.S. Environmental Protection Agency*, et al., No. 84–2227. (4th Cir. filed Nov. 9, 1984)). In settling that challenge, EPA and the parties entered into a settlement agreement (July 12, 1985). In the settlement, EPA agreed to propose a change to the procedures for approving new, alternate test methods for nationwide use to allow an opportunity for notice and comment prior to final approval. Beckman Instruments, Inc., in accordance with the guidelines published at 40 CFR Section 136.5, has applied for nationwide approval of the Beckman Instruments, Inc., method, "Direct Current Plasma—Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Waste," for the analysis of the following metals: Aluminum, Barium, Beryllium, Boron, Cadmium, Calcium, Chromium, Cobalt, Copper, Gold, Iron, Lead, Magnesium, Manganese, Molybdenum, Nickel, Palladium, Platinum, Silver, Sodium, Titanium, Vanadium, and Zinc.

This method describes a technique for the simultaneous multi-element or sequential determination of trace elements by DC argon plasma spectroscopy. The basis of the method is the measurement of atomic emission by an optical spectroscopic technique. Samples are nebulized and the aerosol is transported into a DC argon plasma where excitation of the analyte atoms occurs. When these excited atoms decay to a lower energy state, characteristic atomic line emission spectra are produced. The spectra are dispersed by an echelle grating spectrometer and the intensities of the lines are monitored by photomultiplier tubes. The photocurrents from the photomultiplier tubes are processed and controlled by a computer system.

A background correction technique may be required to compensate for variable background contribution to the determination of trace elements. Background must be measured adjacent to analyte lines on samples during analysis.

EPA's Environmental Monitoring and Support Laboratory in Cincinnati, Ohio (EMSL–CI) has thoroughly reviewed and evaluated the supporting data submitted by the Beckman Instruments, Inc. That information is on file at EMSL–CI, 26 West St. Clair, Cincinnati, Ohio 45268. It is available for public inspection, to the extent consistent with 40 CFR Part 2 (EPA's "Public Information" regulations). The approved method description is available from Beckman Instruments, Inc., Scientific Instruments Division, Campus Drive at Jamboree Boulevard, P.O. Box C–19600, Irvine, California 92713.

Based on EMSL–CI's review, and pursuant to 40 CFR 136.5, EPA gives interim approval for the Beckman Instruments, Inc., DCP procedure as an alternate test procedure for nationwide use. As an approved alternate test procedure, the Beckman DCP procedure

would be acceptable for use by any person required to use procedures approved under section 304(h) of the CWA.

Currently, EPA regulations at 40 CFR 136.5 do not require a notice and comment period for the Administrator to approve new alternate test methods. However, elsewhere in today's **Federal Register**, EPA is proposing to add an opportunity for public comment to the procedures under § 136.5. In accordance with the settlement agreement, EPA is publishing this DCP method as an interim final rule with an opportunity for comment. Thus, although EPA regulations do not yet require a comment period for approval of alternate methods under 40 CFR 136.5, EPA will consider changes in the final rule to reflect appropriate comments.

Public comment is requested concerning the suitability of the DCP technique as an alternative method for the determination of the twenty-three metals.

II. Regulatory Requirements

Executive Order 12291 (46 FR 13193, February 19, 1981), requires a regulatory impact analysis if it is determined that the regulations are considered to be "major rules." EPA has determined that this regulation is not a "major rule," and thus a regulatory impact analysis has not been prepared. This rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 602 *et. seq.*). There is no change in the paperwork requirements as a result of this rule.

List of Subjects in 40 CFR Part 136

Water pollution control.

Dated: August 14, 1987.

Lee M. Thomas,

Administrator.

In consideration of the preceding, EPA amends Chapter I, Subchapter D of Title 40 of the Code of Federal Regulations as follows:

PART 136—[AMENDED]

1. The authority citation for Part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Public Law 95–217, Stat. 1566, *et seq.* (33 U.S.C. 1251 *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended by revising the following entries in Table IB of paragraph (a): 3, Aluminum; 7, Barium; 8, Beryllium; 10, Boron; 12, Cadmium; 13, Calcium; 19, Chromium; 20, Cobalt; 22, Copper; 26, Gold; 30, Iron; 32, Lead; 33, Magnesium; 34, Manganese; 36, Molybdenum; 37, Nickel; 47, Palladium; 51, Platinum; 62, Silver; 63, Sodium; 72, Titanium; 74, Vanadium; and 75, Zinc; and by adding a new footnote 33 as follows:

§ 136.3 Identification of test procedures

(a) * * *

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method No. or page)				
	EPA 1979	Std. methods 16th Ed.	ASTM	USGS [1]	Other
* * * * * * *					
3. Aluminum—Total,[3] mg/L; Digestion[3] followed by:					
AA direct aspiration	202.1	303C		I-3051-84	
AA furnace	202.2	304			
Inductively coupled plasma (ICP)					200.7 [4]
Direct current plasma (DCP), or					Note 33
Colorimetric (Eriochrome cyanine R)		306B			
* * * * * * *					
7. Barium—Total,[3] mg/L; Digestion[3] followed by:					
AA direct aspiration	208.1	303C		I-3084-84	
AA furnace	208.2	304			
ICP, or					200.7 [4]
DCP					Note 33
* * * * * * *					
8. Beryllium—Total,[3] mg/L; Digestion[3] followed by:					
AA direct aspiration	210.1	303C	D3645-84(A)	I-3095-84	
AA furnace	210.2	304			
ICP					200.7 [4]
DCP, or					Note 33
Colorimetric (aluminon)		309B			
* * * * * * *					
10. Boron—Total, mg/L;					
Colorimetric (curcumin)	212.3	404A		I-3112-84	
ICP, or					200.7 [4]
DCP					Note 33
* * * * * * *					
12. Cadmium—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	213.1	303A or B	D3557-84 (A or B)	I-3135-84 or I-3136-84	33.089 [2], p.37 [5]
AA furnace	213.2	304			
ICP					200.7 [4]
DCP					Note 33
Voltametry [10], or			D3557-84(C)		
Colorimetric (Dithizone)		310B			

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method No. or page)				
	EPA 1979	Std. methods 16th Ed.	ASTM	USGS [1]	Other
13. Calcium—Total,[3] mg/L; Digestion[3] followed by:					
AA direct aspiration	215.1	303A	D511-84(B)	I-3152-84	
ICP					200.7 [4]
DCP, or					Note 33
Titrimetric (EDTA)	215.2	311C	D511-84(A)		
19. Chromium—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	218.1	303A	D1687-84(D)	I-3236-84	33.089 [2]
AA chelation-extraction	218.3	303B			
AA furnace	218.2	304			
ICP					200.7 [4]
DCP, or					Note 33
Colorimetric (Diphenylcarbazide)		312B	D1687-84(A)		
20. Cobalt—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	219.1	303A or B	D3558-84 (A or B)	I-3239-84 or I-3240-84	p. 37 [5]
AA furnace	219.2	304			
ICP					200.7 [4]
DCP					Note 33
22 Copper—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	220.1	303A or B	D1688-84 (D or E)	I-3270-84 or I-3271-84	33.089,[2] p. 37 [5]
AA furnace	220.2	304			
ICP					200.7 [4]
DCP or					Note 33
Colorimetric (Neocuproine), or		313B	D1688-84(A)		
(Bicinchoninate)					Note 18
26. Gold—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	231.1	303A			
AA furnace	231.2	304			
DCP					Note 33
30. Iron—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	236.1	303A or B	D1068-84 (C or D)	I-3381-84	33.089 [2]
AA furnace	236.2	304			
ICP					200.7 [4]
DCP or					Note 33
Colorimetric (Phenanthroline)		315B	D1068-84(A)		Note 21
32. Lead—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	239.1	303A or B	D3559-84(A or B)	I-3399-84	33.089 [2]
AA furnace	239.2	304			
ICP					200.7 [4]
DCP or					Note 33
Voltametry [10] or			D3559-85(C)		
Colorimetric (Dithizone)		316B			
33. Magnesium—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	242.1	303A	D511-84(B)	I-3447-84	33.089 [2]
ICP					200.7 [4]
DCP or					Note 33
Gravimetric		318B	D511-77(A)		
34. Manganese—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	243.1	303A or B	D858-84 (B or C)	I-3454-84	33.089 [2]
AA furnace	243.2	304			
ICP					200.7 [4]
DCP or					Note 33

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method No. or page)				
	EPA 1979	Std. meth-ods 16th Ed.	ASTM	USGS [1]	Other
Colorimetric (Persulfate), or		319B	D858–84(A)		33.126 [2]
(Periodate)					Note 22
36. Molybdenum—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration,	246.1	303C		I–3490–84	
AA furnace,	246.2	304			
ICP, or					200.7 [4]
DCP					Note 33
37. Nickel—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration,	249.1	303A or B	D1886–84 (C or D)	I–3499–84	
AA furnace	249.2	304			
ICP					200.7 [4]
DCP or					Note 33
Colorimetric (Heptoxime)		321B			
47. Palladium—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	253.1				p. S27 [9]
AA furnace	253.2				p. S28 [9]
DCP					Note 33
51. Platinum—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	255.1	303A			
AA furnace	255.2	304			
DCP					Note 33
62. Silver—Total,[2 8] mg/L; Digestion [3] followed by:					
AA direct aspiration,	272.1	303A or B		I–3720–84	33.089 [2], p. 37 [8]
AA furnace	272.2	304			
Colorimetric (Dithizone)					319B [16]
ICP or					200.7 [4]
DCP					Note 33
63. Sodium—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration,	273.1	303A		I–3735–84	33.107 [2]
ICP					200.7 [4]
DCP or					Note 33
Flame photometric		325B	D1428–82(A)		
72. Titanium—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	283.1	303C			
AA furnace	283.2	304			
DCP					Note 33
74. Vanadium—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	286.1	303C			
AA furnace	286.2	304			
ICP					200.7 [4]
DCP or					Note 33
Colorimetric (Gallic acid)		327B	D3373–84(A)		
75. Zinc—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	289.1	303A or B	D1691–84 (C or D)	I–3900–84	33.089 [2], p. 37 [8]
AA furnace	289.2	304			
ICP					200.7 [4]
DCP or					Note 33
Colorimetric (Dithizone) or		328C			
(Zincon)					Note 32

[1] "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, U.S. Geological Survey, Open-File Report 85–495, 1986, unless otherwise stated.

[2] "Official Methods of Analysis of the Association of Official Analytical Chemists," methods manual, 14th ed. (1985).

[3] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in "Methods for Chemical Analysis of Water and Wastes, 1979." One (section 4.1.3) is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all sample types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials would also benefit by this vigorous digestion. Use of the graphite furnace technique, inductively coupled plasma, as well as determinations for certain elements such as arsenic, the noble metals, mercury, selenium, and titanium require a modified digestion and in all cases the method write-up should be consulted for specific instruction and/or cautions.

NOTE: If the digestion included in one of the other approved references is different than the above, the EPA procedure must be used.

Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion for dissolved metals may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses provided the sample solution to be analyzed meets the following criteria:

a. has a low COD (<20)
b. is visibly transparent with a turbidity measurement of 1 NTU or less.
c. is colorless with no perceptible odor, and
d. is of one liquid phase and free of particulate or suspended matter following acidification.

* * * * * * * * *

[4] The full text of Method 200.7, "Inductively-Coupled Plasma Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes," is given at Appendix C of this Part 136.

[5] American National Standard on Photographic Processing, Effluents, Apr. 2, 1975. Available from ANSI, 1430 Broadway, New York, NY 10018.

[9] Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency." Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[10] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[15] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition, 1976.

* * * * * * * * *

[18] Copper, Biocinchoinate Method, Method 8506, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

* * * * * * * * *

[21] Iron, 1,10-Phenanthroline Method, Method 8008, 1980, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[22] Manganese, Periodate Oxidation Method, Method 8034, Hach Handbook of Wastewater Analysis, 1979, pages 2-113 and 2-117, Hach Chemical Company, Loveland, CO 80537.

* * * * * * * * *

[28] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to a pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and 2 M NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.

* * * * * * * * *

[32] Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis, 1979, pages 2-231 and 2-233, Hach Chemical Company, Loveland, CO 80537.

[33] "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029," 1986. Beckman Instruments, Inc., Campus Drive at Jamboree Boulevard, Irvine, CA 97213.

[FR Doc. 87-19648 Filed 9-2-87; 8:45 a.m.]
BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL-3197-4(a)]

Guidelines Establishing Test Procedures for the Analysis of Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: On October 26, 1984, the EPA published final and interim final rules revising Guidelines Establishing Test Procedures for the Analysis of Pollutants under the Clean Water Act, 49 FR 432341–43436. These rules are published at 40 CFR Part 136. The Virginia Electric Power Company and others filed a lawsuit challenging these regulations. A final Settlement Agreement was arrived at by the parties in which the Agency agreed to propose certain changes to the regulations and make certain clarifications in the **Federal Register**. Today's proposal and clarifications are a step in satisfying that agreement. This action proposes that the results of certain validation studies for the inductively coupled plasma, and the flame and furnace atomic absorption tests procedures be made a part of 40 CFR Part 136. EPA also proposes to amend the procedures for approving alternate methods by adding an opportunity for comments on the test procedures before they are approved for nationwide use. In addition, this action proposes to clarify EPA's views on the equivalency of methods approved under Part 136. Though not compelled by the settlement agreement, the option to preserve samples for oil and grease determinations with HC1 in place of H_2SO_4 is also proposed.

DATE: Comments on this proposal must be submitted on or before October 19, 1987.

ADDRESS: Send comments to Mr. Robert Graves, Environmental Monitoring and Support Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268.

All supporting materials pertinent to the development of this proposal are included in the Public Docket located at Room 2404 EPA Headquarters, Washington, DC. The Public Docket is available to the public from 9:00 a.m. to 4:00 p.m. for inspection and copying. The materials included in the public docket are:

1. Settlement Agreement, *Virginia Electric Power Co.*, et al. v. *U.S. Environmental Protection Agency*, et al., No. 84–2227, 4th Cir., dated July 12, 1985.
2. "EPA Method Study 27, Method 200.7, Trace Metals by ICP" EPA 600/4–85–051.
3. "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)" EPA 600/4–85–070.
4. "USEPA Method Study 7, Analyses for Trace Metals in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry" EPA 600/4–86–025.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Graves, address above. Telephone number: (513) 569–7315.

SUPPLEMENTARY INFORMATION:

I. Authority and Background

This regulation is proposed under authority of sections 304(h) and 501(a) of the Clean Water Act, 33 U.S.C. 1251 et seq (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977) (the "Act"). Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act." Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his functions under this Act."

EPA promulgated "Guidelines Establishing Test Procedures for the Analysis of Pollutants" in 40 CFR Part 136 on October 16, 1973 (38 FR 28758). These guidelines, which were amended on December 1, 1976 (41 FR 52780), provided test procedures for 115 well known pollutants and pollutant parameters, including metals and a number of organic compounds.

On October 26, 1984, the EPA promulgated regulations in the **Federal Register** (49 FR 43234) which further amended Part 136. These amendments approved gas chromatographic (GC), gas chromatographic/mass spectrometric (GC/MS), and high pressure liquid chromatographic (HPLC) methods for the analysis of the 111 toxic organic "priority" pollutants, an analytical method for carbonaceous biochemical oxygen demand (CBOD), a method for metals by inductively coupled plasma spectrophotometry (ICP), and mandatory sample container, preservation and holding time requirements. The test procedures for the organic pollutants included provisions for performance criteria that the laboratory must meet. These provisions were promulgated as an interim final rule. A correction notice was published on January 4, 1985, (50 FR 690–697). EPA also published technical amendments to those regulations in the **Federal Register** of June 30, 1986 (51 FR 23692).

The Virginia Electric Power Company and others (VEPCO) challenged the October 1984 regulations (*Virginia Electric Power Co.*, et al. v. *U. S. Environmental Protection Agency*, et al., No. 84–2227, [4th Cir. filed November 9, 1984]). In settling that challenge, EPA and the parties entered into a settlement agreement (July 12, 1985). In the settlement, EPA agreed to make available for comment certain studies assessing the performance of three analytical methods and to propose statements of precision and bias for these methods based on the studies. EPA also agreed to propose a change to 40 CFR 136.5 to allow an opportunity for notice and comment prior to final approval of new, alternate test methods for nationwide use. In addition, EPA agreed to propose a clarification in the preamble of these proposed regulations concerning the use of the term "equivalent" in approving test methods. The Agency further agreed to take final action on these proposals. The settlement agreement is a part of the public record for this rulemaking.

II. Proposed Precision and Accuracy Amendments to Analytical Methods

EPA agreed to propose accuracy (as recovery) and precision (as single-analyst and multilaboratory standard deviation) information for incorporation into three analytical methods for the analysis of metals: inductively coupled plasma (ICP), flame atomic absorption (FLAA), and graphite furnace atomic absorption (GFAA) test procedures. Publication of the precision and accuracy data is simply a publication of record support for EPA's choice of analytical methods. The data should indicate to the methods user what kind of performance to expect. However, EPA is not setting performance criteria by publication of this data and EPA does not intend that this information be used in enforcement actions to avoid liability based on Discharge Monitoring Reports. Variability factors are already routinely taken into account when effluent limitation guidelines are established or when permit limitations are set. See, e.g., *Student Public Interest Research Group* v. *Tenneco Polymers, Inc.*, 602F. Supp. 1394 (D.N.J. 1985); *SPIRG.* v. *American Cyanamid Co.*, 23 ERC 2044

(D.N.J. 1985); *SPIRG* v. *Georgia-Pacific*, 615F. Supp. 1419 (D.N.J. 1985) (all holding that " 'margin of analytic error' in test methods may not be taken into account to avoid liability based on self-reported exceedances)."

Both FLAA and GFAA test procedures have been approved methods since 1973 but the recovery and precision statements published for the methods were, for the most part, limited to data gathered by a single laboratory. The ICP test procedure included the results of a preliminary EPA multilaboratory study when approved in the 1984 final rule, but did not incorporate the recovery and precision results from the multi-laboratory study discussed below. The recovery and precision results from EPA's multilaboratory studies are now available for FLAA, GFAA, and ICP and are being proposed for incorporation into the currently approved EPA methods. In addition, although not part of the settlement agreement, the Agency proposes to incorporate recovery and precision statements into an approved EPA colorimetric procedure that was included in the same interlaboratory study as the FLAA methods.

1. ICP Method—The Reference Interlaboratory Study Is Described in the EPA Report, "EPA Method Study 27, Method 200.7 Trace Metals by ICP" (EPA 600/4–85–051)

This study was based upon Youden's non-replicative plan for collaborative tests of analytical methods. Five Youden pairs of spike materials were prepared. Five water types (3 industrial wastewaters, drinking water, and one surface water) were each spiked with three Youden pair concentrations of 27 elements (Aluminum, Antimony, Arsenic, Barium, Beryllium, Boron, Cadmium, Calcium, Chromium, Cobalt, Copper, Iron, Lead, Lithium, Magnesium, Manganese, Molybdenum, Nickel, Potassium, Selenium, Silicon, Silver, Sodium, Strontium, Thallium, Vanadium, and Zinc) and analyzed after both a "hard" and a "soft" digestion procedure. In addition, reagent water was spiked at all five concentrations with the 27 elements. The reagent water data were used as a reference against which all other matrix recovery data were compared. All samples were analyzed by Method 200.7, provided by the Environmental Monitoring and Support Laboratory in Cincinnati. Twelve laboratories participated in the study.

The study design and data treatment are essentially identical to that used in earlier studies of the 600-series methods for organic compounds. The statistical analyses included rejection of outliers, estimation of mean recovery, estimation of single-analyst and overall precisions, and tests for the effects of water type and digestion technique on recovery and precision. Mean recovery in the reference study was generally expressed as a linear regression function of the spike concentration. Precision was generally expressed as separate linear regression functions of the mean recovery that defined both overall and single-analyst precision of the method.

Low concentrations levels for aluminum, boron, and silica were affected in the reference study by contamination of the spiking material from the borosilicate glass ampules used in the study. Precision and recovery data were accordingly poorer for these elements at the lower concentrations than would have otherwise been expected. High endogenous levels of some of the elements in specific effluents made evaluation of data for precision and recovery difficult. This problem was inherent in the study design and the selection of "real world" effluents. The lowest concentration level selected for barium proved to be too low for a number of participating laboratories to detect.

In the reference ICP study, aluminum, barium, beryllium, boron, cobalt, copper, iron, magnesium, manganese, nickel, selenium, silver, strontium, vanadium, and zinc indicated matrix effects of some significance. Digestion method was shown to have an effect on recovery and/or on precision for many of the 27 elements studied. Soft digestion showed better results for nine of these elements. Five elements indicated variable advantages of digestion type for individual matrices, while two indicated better recovery or precision was achieved with hard digestion.

The reagent water matrix for the ICP method study was spiked at five concentration levels, although only three concentration levels were used at any one time to generate the regression equations in the final report. Since sample matrices were only spiked at three selected concentration levels, the same concentration levels from the reagent water data base were used to develop regression equations that were used to test for matrix effects. For the recovery and precision statements to be included in the ICP method, EPA is proposing that the data from all five reagent water concentrations be used to develop the equations.

EPA proposes to incorporate the recovery and precision statements into Method 200.7 by directly amending the language of section 13 of the method in Appendix C of 40 CFR Part 136.

2. GFAA Methods—The Reference Interlaboratory Study Is Described in the EPA Report, "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)" (EPA 600/4–85–070)

This study also employed Youden's non-replicative plan for collaborative tests of analytical methods. Twelve Youden pairs of spike materials were prepared. Five water types (three industrial wastewaters, drinking water, and surface water) were each spiked with three Youden pair concentrations of 18 elements. In addition, reagent water was spiked at all concentrations (up to 12 different levels) with the 18 elements. The reagent water data were used as a reference against which all other matrix test data were compared. Ten laboratories participated in the study.

The elements and the EPA methods employed in the reference study were:

Aluminum (Method 202.2)
Antimony (Method 204.2)
Arsenic (Method 206.2)
Barium (Method 208.2)
Beryllium (Method 210.2)
Cadmium (Method 213.2)
Chromium (Method 218.2)
Cobalt (Method 219.2)
Copper (Method 220.2)
Iron (Method 236.2)
Lead (Method 239.2)
Manganese (Method 243.2)
Nickel (Method 249.2)
Selenium (Method 270.2)
Silver (Method 272.2)
Thallium (Method 279.2)
Vanadium (Method 286.2)
Zinc (Method 289.2)

As with the ICP study, the statistical analyses included rejection of outliers, estimation of mean recovery, estimation of single-analyst and overall precisions, and tests for the effects of water type on recovery and precision. Linear regression functions were generally used to express recovery as a function of the spike concentration and precision as functions of the mean spike recovery.

Aluminum, iron and zinc analyses were erratic with a high percentage of outliers due to contamination. High endogenous levels of some of the elements (e.g. manganese in the surface waters) led to high outlier rates at low-concentration spikes and made data evaluation of limited value. The lowest concentration levels studied for beryllium, cadmium, manganese and silver were erratic and may have been too low for some participating laboratories to detect. In the reference study, arsenic, beryllium, nickel,

selenium, silver, and thallium indicated matrix effects of some significance.

The reagent water matrix for the GFAA method study was spiked at up to 12 concentration levels, depending upon the element. As with the ICP study, the reference study developed a series of regression equations with the reagent water data to match the three concentrations added to the individual sample matrices used in testing for matrix effects. For the recovery and precision statement the Agency is proposing for inclusion in the GFAA methods, equations have been developed using results for all reagent water concentrations employed in the study.

The Agency has incorporated the interlaboratory method study results into a statement of recovery and precision for each GFAA method. These statements are proposed in today's action to be added to 40 CFR Part 136 as Appendix D and incorporated through footnote into Table IB. This action serves to incorporate these data into the approved methods until such time as the EPA manual of methods can be amended to permit these statements to be incorporated by reference.

3. FLAA Methods—The Reference Interlaboratory Study Is Described in the EPA Report, "USEPA Method Study 7, Analyses for Trace Metals in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry" (EPA 600/4–86/025)

The reference study, originally conducted in 1972, employed three Youden pairs of spike materials. These materials were added to reagent water and to a natural water (river, lake, estuary, tap, wastewater, etc.) of the analyst's choice. The reagent-water data were used as a reference against which all other data were compared. A total of 116 laboratories participated, at least in part, in the method study.

The atomic-absorption and colorimetric methods used in the study were taken from the 1971 edition of the Agency's "Manual for Methods of Chemical Analysis of Water and Wastes." Elements and methods included in the study (along with method numbers for the equivalent methods in Table IB of this part) are:

Aluminum	FLAA	Method 202.1
Arsenic	Colorimetric (SDDC)	Method 206.4
Cadmium	FLAA	Method 213.1
Chromium	FLAA	Method 218.1
Copper	FLAA	Method 220.1
Iron	FLAA	Method 236.1
Lead	FLAA	Method 239.1
Manganese	FLAA	Method 243.1
Zinc	FLAA	Method 289.1

The low Youden concentration for the FLAA methods was selected to challenge direct aspiration detection limits. Analysts were instructed to use the extraction procedure involving chelation with ammonium pyrrolidine dithiocarbamate and extraction with methyl isobutyl ketone if problems with detection were encountered. Some participants employed alternate concentration techniques, such as evaporation, to improve their detection limits. Laboratories also selected their own level of participation, and total participants varied from element to element. At the conclusion of the study, statistical summaries of mean recovery and standard deviation in the water of choice were calculated for each spike concentration. These data were published in the 1974 edition of the EPA methods manual.

As part of the settlement agreement, the Agency has reprocessed the analytical data gathered in this study according to the procedures used for the ICP and GFAA method studies. These relatively modern techniques (patterned after the 1977 ASTM procedure D2777–77) were used for the rejection of outliers, estimation of mean recovery, estimation of single-analyst and overall precision, and testing for the effect of water type on recovery and precision. Some accommodations were made in the data processing due to the study design. For example, a computer software limitation restricted the size of the data sets to 50. Therefore, when more than 50 laboratories submitted data, participants were randomly selected from the total population until 50 data sets were obtained.

Laboratories that analyzed the low Youden concentration by direct aspiration FLAA produced very erratic data. The precision and recovery produced through sample concentration by chelation-extraction and sample concentration by evaporation were better but still somewhat disappointing. For the FLAA methods, only the middle and upper Youden concentrations were used to develop the statements of precision and recovery.

The Agency has incorporated the interlaboratory method study results into a statement of recovery and precision for each FLAA method, and for the arsenic colorimetric procedure. These statements are proposed to be added to 40 CFR Part 136 as Appendix D and incorporated through footnote into Table IB. As with the GFAA methods, this action serves to incorporate these data into the approved methods until such time as the referenced methods can themselves be amended.

III. Proposed Amendments to Approval of Alternate Test Procedures for Nationwide Use

Under Part 136, EPA has two procedures for approval of test procedures not already listed under Part 136 upon application from persons outside the Agency. Responsible persons or firms holding a discharge permit may apply for approval of a method for either "Regional" or "nationwide" use. The purpose of this program is to encourage the development of innovative analytical methods and to allow applicants to use these new test methods, where appropriate for a given pollutant or parameter. Sections 136.4 and 136.5 contain the application and approval requirements.

In the VEPCO settlement, EPA agreed to propose to modify the existing procedures for approval of alternate test procedures for nationwide use to allow opportunity for public notice and comment. Under the existing regulations (40 CFR 136.5(e)), the Director of the EPA Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-CI) is to notify the applicant of his recommendation to the Administrator to approve or reject an application or specify additional information necessary to review the application. Alternate methods which the Administrator determines satisfy the applicable requirements of Part 136 are to be approved; notice of any final determination is to be submitted for publication in the **Federal Register** within 15 days after such determination. EPA agreed to propose a modification to this procedure to allow an opportunity for public notice and comment prior to final EPA acceptance of an alternate test method for nationwide use. The notice and comment opportunity is to extend to all the factual bases of EPA-proposed acceptance of the test method, including any performance data submitted by the applicant and any available EPA analysis of those data. VEPCO sought this proposal because they believed that affected industries should have an opportunity to submit their views on use of new test methods. EPA believes that public comment on proposed alternate methods will benefit both the public and the Agency.

In addition to proposing an opportunity for comment on the Administrator's intention to approve an application for nationwide use, EPA is proposing to delete the requirement that these determinations be submitted for

publication within 15 days; EPA is retaining the requirement that the final decision be published in the **Federal Register.**

IV. Clarification of Use of the Term "Equivalent" in Approving Test Methods

For each regulated water pollutant or parameter, the Administrator has approved an array of analytical methods which have been judged to provide analytical data of a quality that is acceptable under the Clean Water Act. In the past, the Agency has occasionally described certain Part 136 approved test procedures as "equivalent" (*see e.g.* 49 FR 43238 and 43247). VEPCO requested a clarification of use of this term. For any given parameter, the array of approved methods will not necessarily give the same precision, accuracy (recovery of spikes). or detection limits when repeated aliquots of samples are analyzed. Therefore, they are not necessarily statistically equivalent methods and have been designated "approved test procedures" in the Tables given in § 136.3 of 40 CFR Part 136. The approval of any array of methods allows NPDES permittees to select the analytical option which is best suited to their monitoring requirements and that will minimize their monitoring costs.

V. Preservation of Samples for Oil and Grease

The Agency has recognized a problem with the use of sulfuric acid as a preservative for oil and grease determinations in certain types of wastewater samples. Samples containing high concentrations of polyvalent metals-petroleum production brines, for example, will incur heavy precipitation upon acidification with sulfuric acid. The precipitation, which affects the reliability of the measurement can be avoided if hydrochloric acid is used instead of sulfuric acid. The Agency proposes to allow this optional preservation procedure.

VI. Regulatory Analysis

(a) Under Executive Order 12291, the Agency must judge whether a regulation is "major" and therefore subject to the requirement of a "Regulatory Impact Analysis." This regulation is not major for the following reasons: (1) It only prescribes analytical methods and sample handling requirements that ensure a uniform measure of pollutants across all wastewater discharges within minimum acceptance criteria. It does not require that analyses actually be made. The purpose is to ensure that the quality of the environmental monitoring data meet certain minimum standards.

(2) The impact of this regulation will be far less than $100 million.

(a) The regulation affects unit monitoring costs for other regulatory programs, e.g., effluent guidelines regulations and the implementation regulations of the National Pollutant Discharge Elimination System (NPDES), and the pretreatment programs. However, it does not impose those costs. In fact, the monitoring costs for other programs are considered in each other rulemaking. This is appropriate because total (rather than unit) monitoring costs are determined by the monitoring provisions of those other regulations.

(b) This regulation has deliberately provided approval of several analytical options for most compounds. This often allows NPDES permittees to select the option that is best suited to their particular monitoring requirements and that will minimize their monitoring costs.

(c) Further, through the equivalency provisions, these test procedure guidelines have been designated to encourage the development of innovative analytical methods by the private sector and to encourage the competitive viability of the instrument manufacturing industry. The equivalency provision also allows individual dischargers to gain approval of analytical systems of their own design that may further reduce their total monitoring costs.

(3) The impact of compliance with these regulations will not be concentrated on any particular sectors of American industry.

(b) Under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., EPA is required to determine whether a regulation will significantly affect a substantial number of small entities so as to require a regulatory analysis. The regulation requires no new reports beyond those already required. The analytical techniques approved here either can be handled by small facilities, or are widely available by contract at a reasonable price. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small facilities.

(c) The equivalency information provision in this rule has been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. It is not effective until OMB approves it and a technical amendment to that effect will be published in the **Federal Register.**

VII. Request for Comments

EPA requests public analysis, comments and information on aspects of this proposal. Comment is specifically solicited on the amendment to the approval procedure for nationwide applications for alternate test procedures. EPA has attempted to provide a mechanism for public review and participation in the approval of such procedures, while also attempting to minimize unnecessary delays in obtaining these approvals.

List of Subjects in 40 CFR Part 136

Water pollution control.

Dated: August 14, 1987.

Lee M. Thomas,

Administrator.

In consideration of the preceding, EPA proposes to amend Chapter I, Subchapter D of Title 40 of the Code of Federal Regulations as follows:

PART 136—[AMENDED]

1. The authority citation for Part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, Stat. 1566, *et. seq.* (33 U.S.C. 1251, *et. seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. In § 136.3, Table IB is amended by revising the column headings and by adding a new footnote 34 to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, Units and Method	EPA 1979 [34]	Reference (Method No. or page)			
		Std. Methods	ASTM	USGS [1]	Other
* * * * * * *					

[34] The precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic that are detailed in Appendix D, Precision and Recovery Statements for Methods for Measuring Metals" of this Part 136 are incorporated by reference into the respective methods cited in this column.

3. In § 136.3, Table II, under Table IB–Inorganic Tests, by revising the entry 41,"Oil and grease", to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter	No./Name	Container [1]	Preservation [2 3]	Maximum holding time [4]
* * * * * * *				
Table IB—Inorganic Tests:				
* * * * * * *				
41.	Oil and Grease	G	Cool, 4 °C, HCl or H_2SO_4 to pH <2	28 days.
* * * * * * *				

4. In § 136.5 by revising paragraph (e) to read as follows:

§ 136.5 Approval of alternate test procedures.

* * * * *

(e) *Approval for nationwide use.* (1) Within 60 days of the receipt by the Director of the Environmental Monitoring and Support Laboratory-Cincinnati (EMSL–CI) of an application for an alternate test procedure for nationwide use, the Director of EMSL–CI shall notify the applicant in writing whether the application is complete. If the application is incomplete, the applicant shall be informed of the information necessary to make the application complete.

(2) Within 90 days of the receipt of a complete package: EMSL–CI shall perform any analysis necessary to determine whether the alternate method satisfies the applicable requirements of this part; and the Director of EMSL–CI shall recommend to the Administrator that he/she approve or reject the application and shall also notify the applicant of such recommendation.

(3) As expeditiously as practicable, an alternate method determined by the Administrator to satisfy the applicable requirements of this Part shall be proposed by EPA for incorporation in subsection 136.3 of 40 CFR Part 136. EPA shall make available for review all the factual bases for its proposal, including any performance data submitted by the applicant and any available EPA analysis of those data.

(4) Following a period of public comment not to exceed 60 days, EPA shall, as expeditiously as practicable, publish in the **Federal Register** a final decision to approve or reject the alternate method.

5. In Appendix C to Part 136, by revising section 13.1, adding Reference 14.10, and revising Table 4 to read as follows:

Appendix C to Part 136—Inductively Coupled Plasma-Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes, Method 200.7

* * * * *

13. Precision and Accuracy

13.1 An interlaboratory study of metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of the twenty-five elements listed in Table 4 were added to reagent water, surface water, drinking water and three effluents. These samples were digested by both the total digestion procedure (9.3) and the total recoverable procedure (9.4). Results for both digestions for the twenty-five elements in reagent water are given in Table 4; results for the other matrices can be found in Reference 14.10.

14. References

* * * * *

14.10 Maxfield R. and Minak B., "EPA Method Study 27, Method 200.7 Trace Metals by ICP," National Technical Information Service, Order No. PB 85–248–656, November 1983.

* * * * *

TABLE 4.—ICP PRECISION AND ACCURACY DATA

Analyte	Concentration µg/L	Total digestion (9.3) µg/L	Recoverable digestion (9.4) µg/L
Aluminum	69–4792	X=0.9273(C)+3.6 S=0.0559(X)+18.6 SR=0.0507(X)+3.5	X=0.9380(C)+22.1 S=0.0873(X)+31.7 SR=0.0481(X)+18.8

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TABLE 4.—ICP PRECISION AND ACCURACY DATA—Continued

Analyte	Concentration µg/L	Total digestion (9.3) µg/L	Recoverable digestion (9.4) µg/L
Antimony	77–1406	X=0.7940(C)−17.0 S=0.1556(X)−0.6 SR=0.1081(X)+3.9	X=0.8908(C)+0.9 S=0.0982(X)+8.3 SR=0.0682(X)+2.5
Arsenic	69–1887	X=1.0437(C)−12.2 S=0.1239(X)+2.4 SR=0.0874(X)+6.4	X=1.0175(C)+3.9 S=0.1288(X)+6.1 SR=0.0643(X)+10.3
Barium	9–377	X=0.7683(C)+0.47 S=0.1819(X)+2.78 SR=0.1285(X)+2.55	X=0.8380(C)+1.68 S=0.2540(X)+0.30 SR=0.0826(X)+3.54
Beryllium	3–1906	X=0.9629(C)+0.05 S=0.0136(X)+0.95 SR=0.0203(X)−0.07	X=1.0177(C)−0.55 S=0.0359(X)+0.90 SR=0.0445(X)−0.10
Boron	19–5189	X=0.8807(C)+9.0 S=0.1150(X)+14.1 SR=0.0742(X)+23.2	X=0.9676(C)+18.7 S=0.1320(X)+16.0 SR=0.0743(X)+21.1
Cadmium	9–1943	X=0.9874(C)−0.18 S=0.0557(X)+2.02 SR=0.0300(X)+0.94	X=1.0137(C)−0.65 S=0.0585(X)+1.15 SR=0.0332(X)+0.90
Calcium	17–47170	X=0.9182(C)−2.6 S=0.1228(X)+10.1 SR=0.0189(X)+3.7	X=0.9658(C)+0.8 S=0.0917(X)+6.9 SR=0.0327(X)+10.1
Chromium	13–1406	X=0.9544(C)+3.1 S=0.0499(X)+4.4 SR=0.0009(X)+7.9	X=1.0049(C)−1.2 S=0.0698(X)+2.8 SR=0.0571(X)+1.0
Cobalt	17–2340	X=0.9209(C)−4.5 S=0.0436(X)+3.8 SR=0.0428(X)+0.5	X=0.9278(C)−1.5 S=0.0498(X)+2.6 SR=0.0407(X)+0.4
Copper	8–1887	X=0.9297(C)−0.30 S=0.0442(X)+2.85 SR=0.0128(X)+2.53	X=0.9647(C)−3.64 S=0.0497(X)+2.28 SR=0.0406(X)+0.96
Iron	13–9359	X=0.8829(C)+7.0 S=0.0683(X)+11.5 SR=−0.0046(X)+10.0	X=0.9830(C)+5.7 S=0.1024(X)+13.0 SR=0.0790(X)+11.5
Lead	42–4717	X=0.9699(C)−2.2 S=0.0558(X)+7.0 SR=0.0353(X)+3.6	X=1.0056(C)+4.1 S=0.0779(X)+4.6 SR=0.0448(X)+3.5
Magnesium	34–13868	X=0.9881(C)−1.1 S=0.0607(X)+11.6 SR=0.0298(X)+0.6	X=0.9879(C)+2.2 S=0.0564(X)+13.2 SR=0.0268(X)+8.1
Manganese	4–1887	X=0.9417(C)+0.13 S=0.0324(X)+0.88 SR=0.0153(X)+0.91	X=0.9725(C)+0.07 S=0.0557(X)+0.76 SR=0.0400(X)+0.82
Molybdenum	17–1830	X=0.9682(C)+0.1 S=0.0618(X)+1.6 SR=0.0371(X)+2.2	X=0.9707(C)−2.3 S=0.0811(X)+3.8 SR=0.0529(X)+2.1
Nickel	17–47170	X=0.9508(C)+0.4 S=0.0604(X)+4.4 SR=0.0425(X)+3.6	X=0.9869(C)+1.5 S=0.0526(X)+5.5 SR=0.0393(X)+2.2
Potassium	347–14151	X=0.8669(C)−36.4 S=0.0934(X)+77.8 SR=−0.0099(X)+144.2	X=0.9355(C)−183.1 S=0.0481(X)+177.2 SR=0.0329(X)+60.9
Selenium	69–1415	X=0.9363(C)−2.5 S=0.0855(X)+17.8 SR=0.0284(X)+9.3	X=0.9737(C)−1.0 S=0.1523(X)+7.8 SR=0.0443(X)+6.6
Silicon	189–9434	X=0.5742(C)−35.6 S=0.4160(X)+37.8 SR=0.1987(X)+8.4	X=0.9737(C)−60.8 S=0.3288(X)+46.0 SR=0.2133(X)+22.6
Silver	8–189	X=0.4466(C)+5.07 S=0.5055(X)−3.05 SR=0.2086(X)−1.74	X=0.3987(C)+8.25 S=0.5478(X)−3.93 SR=0.1836(X)−0.27
Sodium	35–47170	X=0.9581(C)+39.6 S=0.2097(X)+33.0 SR=0.0280(X)+105.8	X=1.0526(C)+26.7 S=0.1473(X)+27.4 SR=0.0884(X)+50.5
Thallium	79–1434	X=0.9020(C)−7.3 S=0.1004(X)+18.3 SR=0.0364(X)+11.5	X=0.9238(C)+5.5 S=0.2156(X)+5.7 SR=−0.0106(X)+48.0
Vanadium	13–4698	X=0.9615(C)−2.0 S=0.0618(X)+1.7 SR=0.0220(X)+0.7	X=0.9551(C)+0.4 S=0.0927(X)+1.6 SR=0.0472(X)+0.5

TABLE 4.—ICP PRECISION AND ACCURACY DATA—Continued

Analyte	Concentration µg/L	Total digestion (9.3) µg/L	Recoverable digestion (9.4) µg/L
Zinc	7–7076	X=0.9356(C)−0.30 S=0.0914(X)+3.75 SR=−0.0130(X)+10.07	X=0.9500(C)+1.82 S=0.0597(X)+6.50 SR=0.0153(X)+7.78

X=Mean Recovery, µg/L.
C=True Value for the Concentration, µg/L.
S=Multi-laboratory Standard Deviation, µg/L.
SR=Single-analyst Standard Deviation, µg/L.

6. In Part 136, by adding Appendix D to read as follows:

Appendix D to Part 136—Precision and Recovery Statements for Methods for Measuring Metals

Twenty-eight selected methods from "Methods for Chemical Analysis of Water and Wastes," EPA–600/4–79–020 (1979) have been subjected to interlaboratory method validation studies. The results of these studies have not yet been incorporated into the text of the methods. Until such time as the Agency is able to update the manual, the following precision and recovery statements are presented in this Appendix and incorporated into Part 136:

Method 202.1

For Aluminum, Method 202.1 (Atomic Absorption, direct aspiration) replace the Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86–208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For a concentration range of 500–1205 µg/L

X=0.979(C)+6.16
S=0.066(X)+125
SR=0.086(X)+40.5

Where:

C=True Value for the Concentration, µg/L
X=Mean Recovery, µg/L
S=Multi-laboratory Standard Deviation, µg/L
SR=Single-analyst Standard Deviation, µg/L

Method 206.4

For Arsenic, Method 206.4 (Spectrophotometric-SDDC) add the following to the Precision and Accuracy Section:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86–208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For a concentration range of 20–292 µg/L

X=0.850(C)−0.25
S=0.198(X)+ 5.93
SR=0.122(X)+3.10

Where:

C=True Value for the Concentration, µg/L
X=Mean Recovery, µg/L
S=Multi-laboratory Standard Deviation, µg/L
SR=Single-analyst Standard Deviation, µg/L

Method 213.1

For Cadmium, Method 213.1 (Atomic Absorption, direct aspiration) replace the Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86–208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For a concentration range of 14–78 µg/L

X=0.919(C)+2.97
S=0.108(X)+5.08
SR=0.120(X)+0.89

Where:

C=True Value for the Concentration, µg/L
X=Mean Recovery, µg/L
S=Multi-laboratory Standard Deviation, µg/L

Method 218.1

For Chromium, Method 218.1 (Atomic Absorption, direct aspiration) replace the Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86–208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For a concentration range of 74–407 µg/L

X=0.976(C)+3.94
S=0.131(X)+4.26
SR=0.052(X)+3.01

Where:

C=True Value for the Concentration, µg/L
X=Mean Recovery, µg/L
S=Multi-laboratory Standard Deviation, µg/L
SR=Single-analyst Standard Deviation, µg/L

Method 220.1

For Copper, Method 220.1 (Atomic Absorption, direct aspiration) replace the Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure

was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86–208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For concentration range 60–332 μg/L

$X = 0.963(C) + 3.49$
$S = 0.047(X) + 12.3$
$SR = 0.042(X) + 4.60$

Where:

C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

Method 236.1

For Iron, Method 236.1 (Atomic Absorption, direct aspiration) replace the Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86–208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For concentration range 350–840 μg/L

$X = 0.999(C) - 2.21$
$S = 0.022(X) + 41.0$
$SR = 0.019(X) + 21.2$

Where:

C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-Laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

Method 239.1

For Lead, Method 239.1 (Atomic Absorption, direct aspiration) replace Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86–208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For concentration range of 84–367 μg/L

$X = 0.961(C) + 13.8$
$S = 0.028(C) + 33.9$
$SR = 0.011(X) + 16.1$

Where:

C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

Method 243.1

For Manganese, Method 243.1 (Atomic Absorption, direct aspiration) replace Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86–208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For concentration range 84–469 μg/L

$X = 0.987(C) - 1.27$
$S = 0.042(X) + 8.95$
$SR = 0.023(X) + 4.90$

Where:

C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

Method 289.1

For Zinc, Method 289.1 (Atomic Absorption, direct aspiration) replace the Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86–208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For concentration range 56–310 μg/L

$X = 0.999(C) + 0.033$
$S = 0.078(X) + 10.8$
$SR = 0.049(X) + 1.10$

Where:

C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

Method 202.2

For Aluminum, Method 202.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.46—125.0 μg/L

$X = 1.1579(C) - 0.121$
$S = 0.4286(X) - 0.124$
$SR = 0.2908(X) - 0.082$

Where:

C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

Method 204.2

For Antimony, Method 204.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual as modified by this method. Results for the reagent water are given below.

Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 10.50–240.00 μg/L

$X = 0.7219(C) - 0.986$
$S = 0.3732(X) + 0.854$
$SR = 0.1874(X) + 0.461$

Where:

C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

Method 206.2

For Arsenic, Method 206.2 (Atomic Absorption, furnace technique) add the following to the existing Precision and Accuracy statement:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 9.78–237.00 μg/L

$X = 0.9652(C) + 2.112$
$S = 0.1411(X) + 1.873$
$SR = 0.0464(X) + 2.109$

Where:

C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

Method 208.2

For Barium, Method 208.2 (Atomic Absorption, furnace technique) add the following to the existing Precision and Accuracy information:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 56.50–437.00 μg/L

$X = 0.8268(C) + 59.459$
$S = 0.2466(X) + 6.436$
$SR = 0.1393(X) - 0.428$

Where:

C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

Method 210.2

For Beryllium, Method 210.2 (Atomic Absorption, furnace technique) replace the existing Precision and Accuracy statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.45–11.40 μg/L

$X = 1.0682(C) - 0.158$
$S = 0.2167(X) + 0.090$
$SR = 0.1096(X) + 0.061$

Where:

C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

Method 213.2

For Cadmium, Method 213.2 (Atomic Absorption, furnace technique) add the following to the existing Precision and Accuracy information:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.43–12.50 μg/L

$X = 0.9826(C) + 0.171$
$S = 0.2300(X) + 0.045$
$SR = 0.1031(X) + 0.116$

Where:

C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

Method 218.2

For Chromium, Method 218.2 (Atomic Absorption, furnace technique) add the following to the existing Precision and Accuracy Section:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 9.87–246.00 μg/L

$X = 0.9120(C) + 0.234$
$S = 0.1684(X) + 0.852$
$SR = 0.1469(X) + 0.315$

Where:

C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

Method 219.2

For Cobalt, Method 219.2, (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method

Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 21.10–461.00 μg/L

X=0.8875(C)+0.859
S=0.2481(X) − 2.541
SR=0.0969(X)+0.134

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 220.2

For Copper, Method 220.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.30–245.00 μg/L

X=0.9253(C)+0.010
S=0.2735(X) − 0.058
SR=0.2197(X) − 0.050

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 236.2

For Iron, Method 236.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.37–455.00 μg/L

X=1.4494(C)+0.229
S=0.3611(X)−0.079
SR=0.3715(X)−0.161

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 239.2

For Lead, Method 239.2 (Atomic Absorption, furnace technique) add the following to the existing Precision and Accuracy Section:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 10.40–254.00 μg/L

X=0.9430(C)+0.504
S=0.2224(X)+0.507
SR=0.1931(X)−0.378

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 243.2

For Manganese, Method 243.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.42–666.00 μg/L

X=1.0480(C)+1.404
S=0.2001(X)+1.042
SR=0.1333(X)+0.680

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 249.2

For Nickel, Method 249.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 26.20–482.00 μg/L

X=0.8812(C)+2.426
S=0.2475(X)+1.898
SR=0.1935(X) − 1.315

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 270.2

For Selenium, Method 270.2 (Atomic Absorption, furnace technique) add the following to the existing Precision and Accuracy Section:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. Results for the reagent water are given below. Results for other water

types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 10.00–246.00 μg/L

X=0.9564(C)+0.476
S=0.1584(X)+0.878
SR=0.0772(X)+0.547

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 272.2

For Silver, Method 272.2 (Atomic Absorption, furnace technique) add the following to the existing Precision and Accuracy Section:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.45–56.50 μg/L.

X=0.9470(C)+0.181
S=0.1805(X)+0.153
SR=0.1417(X)+0.039

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 279.2

For Thallium, Method 279.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 10.00–252.00 μg/L.

X=0.8781(C)−0.715
S=0.1112(X)+0.669
SR=0.1005(X)+0.241

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 286.2

For Vanadium, Method 286.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 1.36–982.00 μg/L.

X=0.8486(C)+0.252
S=0.3323(X)−0.428
SR=0.1195(X)−0.121

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 289.2

For Zinc, Method 289.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati. Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.51–189.0 μg/L

X=1.6710(C)+1.485
S=0.6740(X)−0.342
SR=0.3895(X)−0.384

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

[FR Doc. 87–19649 Filed 9–2–87; 8:45 am]
BILLING CODE 6560–50–M

VOL
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federal register

Thursday
September 3, 1987

Part VI

Environmental Protection Agency

40 CFR Part 86

Amendments to Regulations Governing Test Procedures for Light-Duty Vehicles and Light-Duty Trucks and Selective Enforcement Auditing of New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Engines; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-3218-5]

Amendments to Regulations Governing Test Procedures for Light-Duty Vehicles and Light-Duty Trucks and Selective Enforcement Auditing of New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: EPA is proposing several technical and procedural amendments to the regulations at 40 CFR Part 86, Subparts B, G and K. These regulations govern the Federal test procedure (FTP) for new gasoline-fueled and diesel-fueled light-duty vehicles (LDVs) and light-duty trucks (LDTs), and the Selective Enforcement Auditing (SEA) of new LDVs, LDTs and heavy-duty engines (HDEs). The main purpose of these amendments is to delete from the SEA requirements of Subpart K the mandatory reporting of manufacturers' LDT and HDE internal quality assurance emission test data. It is expected that the data will still be submitted voluntarily to EPA. Another purpose is to ensure a common basis for diesel hydrocarbon measurements during the FTP for LDVs and LDTs as specified in Subpart B. In addition, these amendments are intended to clarify specific aspects of the existing regulations and to improve the efficiency of the LDV, LDT and HDE SEA program.

Each amendment and the reason for its proposal are described in the accompanying chart. The more significant amendments are described in detail in the **SUPPLEMENTARY INFORMATION** section.

DATES: A public hearing will be scheduled if a request is received by September 24, 1987. If a request is received, EPA will hold a hearing on Oct. 2, 1987 from 10:00 a.m. to 4:00 a.m. at EPA, North Conference Room 1, Waterside Mall, 401 M Street SW., Washington, DC 20460. All written comments should be submitted on or before November 2, 1987, to the address indicated below.

EPA proposes to make these amendments effective 30 days after the date of promulgation of the final rule in the **Federal Register.**

ADDRESSES: Send written comments to: Public Docket EN–86–17, Central Docket Section, Environmental Protection Agency, Room 4, South Conference Center (LE–131), Waterside Mall, 401 M Street, SW., Washington, DC 20460. If possible, a copy of the written comments also should be submitted to the EPA contact listed below.

Copies of materials relevant to this rulemaking proceeding are contained in Public Docket EN–86–17 at the Central Docket Section of the U.S. Environmental Protection Agency, Room 4, South Conference Center (LE–131), Waterside Mall, 401 M Street, SW., Washington DC 20460, and are available for public inspection between 8:00 a.m. and 3:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Sinkez or Mr. Sean Conley, Manufacturers Operations Division (EN–340–F), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Phone (202) 382–4104.

SUPPLEMENTARY INFORMATION

I. Most Significant Amendments

A. Manufacturer's Test Data (§ 86.1005–84(c))

EPA's SEA regulations, at 40 CFR Part 86, Subpart K, mandate the submission of manufacturers' internal quality audit data from their emission testing programs on 1984 and later model year production LDTs and HDEs. In addition, 40 CFR § 86.1005–84(c), requires that the submissions be in a standard format on an Automatic Data Processing (ADP) storage device if available. The most significant changes proposed to Subpart K would delete both of these requirements.

Manufacturers' internal quality audit data provides EPA with some additional assurance that manufacturers are producing engines and vehicles in compliance with applicable emission regulations. Prior to the promulgation in 1980 of § 86.1005–84(c), some manufacturers conducting internal quality audits had been submitting their data voluntarily to EPA. However, since the promulgation of § 86.1005–84(c), manufacturers have been required to submit their data. EPA has never enforced this requirement. While the submission of emissions test data is critical to EPA's SEA program implementation, EPA does not believe that the current SEA program would be impaired by deleting the requirement that manufacturers submit their emissions test data, given that manufacturers will probably continue to submit the data voluntarily. Of course, EPA may still exercise the authority of section 208 of the Clean Air Act to require the submission of specific data in any given case should a manufacturer not submit the data voluntarily and should EPA determine the information is needed to determine compliance with the Act or Subpart K.

EPA will attempt to work with the manufacturers in setting up a voluntary ADP program with the anticipation that, in the long term, this system of voluntarily submitting data will be efficient and cost effective for both EPA and the manufacturers.

B. Heated Flame-Ionization Detector Procedures (§ 86.111–82 and § 86.121–82)

Regulations at 40 CFR Part 86, Subpart B, set forth the procedures required to be followed in setting up an exhaust gas analytical system for testing exhaust hydrocarbon (HC) emissions from LDVs and LDTs. The regulations require the use of a Heated Flame-Ionization Detector (HFID) in testing for HC emissions from diesel-fueled LDVs and LDTs, while allowing the use of a non-heated Flame-Ionization Detector (FID) for testing gasoline-fueled LDVs and LDTs. This notice proposes to expressly extend the procedures used to optimize and calibrate the FID to the HFID. Current optimization and calibration requirements specify the FID without expressly mentioning the HFID.

The Agency is proposing these procedures to clarify the Agency's intent with respect to HFID settings and to ensure a common basis for diesel hydrocarbon measurements. The Agency recently became aware that some confusion exists in the industry concerning the allowable HFID procedures. It is proposed that the HFID be optimized and calibrated following the procedure specified in this proposal unless an alternative method is approved by the Agency.

In addition, certain language incorporating standard industry practices is proposed to clarify the official HFID calibration procedure by including an additional description of the "overflow" zero and span system.

II. Less Significant Amendments

In addition to the more significant amendments discussed in the previous section, EPA is proposing several less significant technical and procedural amendments. One proposed amendment would allow the use of precision blending devices (gas dividers) to obtain required calibration gas concentrations. Other amendments are intended to clarify specific aspects of the existing regulations and to improve the efficiency with which the LDV, LDT and

HDE SEA program will be conducted in the future.

Each amendment contained in this NPRM and the reason for its proposal are described in the chart at the end of this preamble.

Administrative Designation

Under Executive Order 12291, EPA must judge whether a rule it intends to propose or issue is "major" and therefore subject to the requirement to prepare a Regulatory Impact Analysis (RIA). The Agency has determined that this regulation is not "major" for the following reasons:

(1) The proposed amendments will not result in an annual effect on the economy of $100 million or more. The majority of these amendments are administrative or technical in nature and will have no measurable cost impact.

(2) Because of the limited cost impact, this proposal will not, if finalized, result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local governments, or geographic regions.

(3) Due to its limited cost impact and its applicability to all domestic and foreign manufacturers, EPA does not expect this proposal to have any significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. manufacturers to compete with foreign manufacturers in domestic or export markets.

Because of its "non-major" classification, the Agency has not prepared an RIA to accompany this proposal.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to perform a preliminary regulatory flexibility analysis (PRIA) of any proposed regulation unless the Administrator certifies that the regulation will not have a significant impact on a substantial number of small entities. Since these proposed amendments will affect only motor vehicle and engine manufacturers, none of which are small entities, and will not significantly affect any manufacturer's compliance cost, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the Agency has not prepared a regulatory flexibility analysis to accompany this proposal.

Office of Management and Budget Review

As required by Executive Order 12291, this Notice of Proposed Rulemaking has been reviewed by the Office of Management and Budget (OMB). Any written OMB comments to EPA and EPA's response to those comments are available for inspection in the public docket for this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, provides that reporting and recordkeeping requirements be approved by OMB before they can be imposed on the public. The information collection requirements in this proposed rule have been submitted to OMB. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked: Attention Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection provisions.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 25, 1987.

A. James Barnes,

Acting Administrator.

EXPLANATION OF PROPOSED AMENDMENTS AND REVISIONS

Section	Paragraph	Change	Reason
86.111–82	(b)(3) (ii), (iii), (iv), (v)	Adds additional description of the "overflow" zero and span system.	Provides clarification.
86.114–79	(a)(7)	Prescribes requirements for using precision blending devices.	Allows blending devices to be used without prior approval of Administrator, makes regulation consistent with standard industry practice.
86.121–82	(a), (b)	Includes HFID in the section on hydrocarbon analyzer calibration.	Ensures common basis for diesel HC measurement.
86.601		Redesignate as 86.601–84	Provides model year designation.
86.602		Redesignate as 86.602–84	Do.
86.603		Redesignate as 86.603–88	Do.
	(c)(1)	Provides for specification of the number of test vehicles to be selected per day.	Provides clarification, ensures expeditious audit performances.
86.604		Redesignate as 86.604–84	Provides model year designation.
86.605		Redesignate as 86.605–88	Do.
	(a)(2)(ix)	Adds requirement of maintaining a paper copy of driver's trace.	EPA needs to be able to verify the proper conduct of the test.
	(f)	Remove	Updated language regarding business confidentiality claims appears in 86.615.
86.606		Redesignate as 86.606–84	Provides model year designation.
86.607		Redesignate as 86.607–84	Do.

EXPLANATION OF PROPOSED AMENDMENTS AND REVISIONS—Continued

Section	Paragraph	Change	Reason
86.608		Redesignate as 86.608–88	Do.
	(a)(2)(ii)	Deletes requirement of advance approval for optional test fuel temperature measurement and fuel tank drainage procedures so long as equivalent method is used.	Reduces paperwork and administrative burden.
	(c) (1), (2), (3)	Prescribes manner of optional mileage accumulation for SEA test vehicles.	Reinstates and clarifies inadvertently deleted provisions, ensures expeditious audit performance.
86.609		Redesignate as 86.609–84	Provides model year designation.
86.610		Redesignate as 86.610–84	Do.
86.612		Redesignate as 86.612–84	Do.
86.614		Redesignate as 86.614–84	Do.
86.615		Redesignate as 86.615–84	Do.
Table of Contents of Part 86.	Title of Subpart K	Adds Light Duty Trucks to title	Makes title more accurate.
86.1003–84		Redesignate as 86.1003–88	Updates model year designation based on proposed changes.
	(c)(1)	Provides for specification of the number of test vehicles or engines to be selected per day.	Provides clarification, ensures expeditious audit performances.
86.1005–84		Redesignate as 86.1005–88	Updates model year designation based on proposed changes.
	(a)(1)(ii)	Updates regulatory citations	To make consistent with current regulations.
	(a)(2)(vi) (A), (B), (C), (D)	Updates regulatory citations	To make consistent with current regulations.
	(a)(2)(viii)	Adds requirement of maintaining paper copy of driver's trace.	EPA needs to be able to verify the proper conduct of the test.
	(c), (d), (e), (f)	Remove (c), which had required submission of internal quality control audit data, and redesignate (d), (e) and (f) as (c), (d) and (e).	Voluntary submission of internal audit data is adequate.
	(g)	Remove	Updated language regarding business confidentiality claims appears in 86.1015.
86.1008–84		Redesignate as 86.1008–88	Updates model year designation based on proposed changes.
	(a)(4)(ii)	Deletes requirement of advance approval for optional test fuel temperature measurement and fuel tank drainage procedures so long as equivalent method is used.	Reduces paperwork and administrative burden.
	(c) (1), (2), (3).	Prescribes manner of optional service and mileage accumulation for SEA test engines and vehicles.	Reinstates inadvertently deleted provisions, clarifies manner of accumulation, ensures expeditious audit performances.
	(g) (1), (2), (3), (4)	Prescribes rates of testing for SEA test vehicles.	Reinstates inadvertently deleted provision, ensures expeditious audit performances.

PART 86—[AMENDED]

For the reasons set forth in this preamble, Part 86, Subparts B, G and K, Chapter I of Title 40, Code of Federal Regulations, are proposed to be amended as follows:

1. The authority citation for Part 86 continues to read as follows:

Authority: Secs. 206(b), 208(a), 301(a), Clean Air Act, as amended, 42 U.S.C. 7525(b), 7542(a), 7601(a).

1a. Section 86.111–82 is amended by revising paragraph (b)(3) to read as follows:

§ 86.111–82 Exhaust gas analytical system.

* * * * *

(b) * * *

(3) For diesel vehicles a continuous hydrocarbon sample shall be measured using a heated analyzer train as shown in Figure B82–3 (or B82–4). The train shall include a heated probe, a heated continuous sampling line, a heated particulate filter and a heated hydrocarbon instrument (HFID) complete with heated pump, filter and flow control system.

(i) The response time of this instrument shall be less than 1.5 seconds for 90 percent of full scale response.

(ii) The continuous HC sample system may use an "overflow" zero and span system; see § 86.140–82(b)(4). In this type of system (figures B82–3A and B82–4A), zero or span gas is introduced into the heated sample line at a flow rate that exceeds the sample flow rate to the HFID. The excess gas overflows the sample probe into the dilution tunnel. This method prevents calibration gases from entering the HFID at a different rate than sample gas. In addition to zero and span checks, it may also be used to calibrate the HC analyzer per § 86.121–82(b). The overflow gas flow rate into the sample line shall be between 190 percent and 210 percent of the HFID

flow rate with the CVS blower operating. A lower flow rate may be used if it has been experimentally shown to produce equivalent results and current documentation is maintained. The overflow gases shall enter the heated sample line as close as practicable to the outside surface of the dilution tunnel.

(iii) No other analyzers may draw a sample from the continuous HC sample probe, line or system, unless a common sample pump is used for all analyzers and the single sample line system design reflects good engineering practice.

(iv) Sample transport time from sampling point to inlet of instrument shall be less than 4 seconds.

(v) The sample line and filter shall be heated to maintain a sample gas temperature of 357 ± 10 °F (191 ± 6 °C) before the filter and before the HFID.

* * * * *

2. Section 86.114–79 is amended by revising paragraph (a)(7) to read as follows:

§ 86.114–79 Analytical gases.

(a) * * *

(7) The use of precision blending devices (gas dividers) to obtain the required calibration gas concentrations is acceptable, provided that the calibration curves they produce name a calibration gas within 2 percent of its certified concentration. This mid-range verification shall be performed at between 25 and 50 percent of the full scale concentration of the range and shall be included with each gas calibration incorporating a blending device.

* * * * *

3. Section 86.121–82 is amended by revising the introductory text, paragraph (a) introductory text, paragraph (a)(3), and the introductory text of paragraph (b) to read as follows:

§ 86.121–82 Hydrocarbon analyzer calibration.

The hydrocarbon analyzers shall receive the following initial and periodic calibration. The HFID shall be operated at a temperature of 375 ± 10 °F (191 ± 6 °C).

(a) *Initial and periodic optimization of FID and HFID response.*

Prior to its introduction into service and at least annually thereafter, the FID and HFID hydrocarbon analyzers shall be adjusted for optimum hydrocarbon response. Alternate methods yielding equivalent results may be used, if approved in advance by the Administrator.

* * * * *

(3) With the fuel and air flow rates set at the manufacturer's recommendations, determine the analyzer response from the difference between the span-gas response and the zero-gas response. Incrementally adjust the fuel flow above and below the manufacturer's specification. Record the span and zero response at these fuel flows. A plot of the difference between the span and zero response versus fuel flow will be similar to the one shown in Fig. B87–11. Adjust the fuel-flow rate to the highest setting that produces the maximum analyzer response.

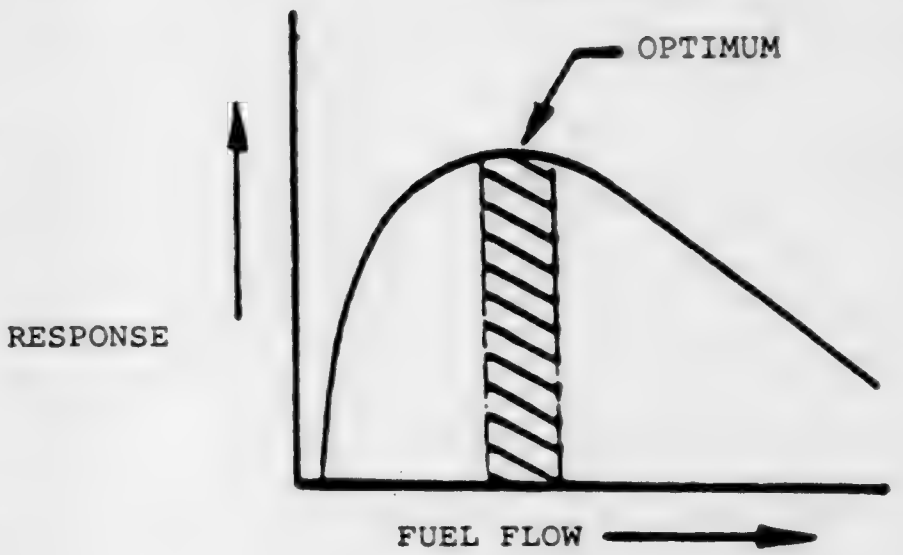

FIGURE N87-9: RESPONSE VS. FUEL FLOW

* * * * *

(b) *Initial and periodic calibration.* Prior to its introduction into service and monthly thereafter the FID and HFID hydrocarbon analyzers shall be calibrated on all normally used instrument ranges. Use the same flow rate as when analyzing samples.

* * * * *

§ 86.601 [Redesignated as § 86.601–84]

4. Section 86.601 is redesignated as § 86.601–84.

§ 86.602 [Redesignated as § 86.602–84]

5. Section 86.602 is redesignated as § 86.602–84.

6. Section 86.603 is redesignated as § 86.603–86. In the newly redesignated § 86.603–86, paragraph (c)(1) is revised to read as follows:

§ 86.603–86 Test orders.

* * * * *

(c)(1) The test order will specify the vehicle configuration selected for testing, the time and location at which vehicles must be selected, and the procedure by which vehicles of the specified configuration must be selected. The test order may specify the number of vehicles to be selected per day and

may include alternative configurations (primary, secondary, etc.) to be selected for testing in the event that vehicles of the first specified configuration are not available for testing because those vehicles are not being manufactured at the specified assembly plant, not being manufactured during the specified time, or not being stored at the specified assembly plant or associated storage facility. If the first specified configuration is not being manufactured at a rate of at least four vehicles per day over the expected duration of the audit, the Assistant Administrator for Air and Radiation or his designated representative may select vehicles of a primary alternate configuration for testing in lieu of the first specified configuration. Likewise, vehicles of a secondary alternate configuration may be selected in lieu of vehicles of the first specified configuration or primary alternate configuration. In addition, the test order may include other directions or information essential to the administration of the required testing.

* * * * *

§ 86.604 [Redesignated as § 86.604–84]

7. Section 86.604 is redesignated as § 86.604–84.

8. Section 86.605 is redesignated as § 86.605–88. In the newly redesignated § 86.605–88, paragraph (f) is removed, and paragraph (a)(2)(ix) is added to read as follows:

§ 86.605–88 Maintenance of records; submittal of information.

(a) * * *

(2) * * *

(ix) A paper copy of the driver's trace for each test.

* * * * *

§ 86.606 [Redesignated as § 86.606–84]

9. Section 86.606 is redesignated as § 86.606–84.

§ 86.607 [Redesignated as § 86.607–84]

10. Section 86.607 is redesignated as § 86.607–84.

11. Section 86.608 is redesignated as § 86.608–88. In the newly redesignated § 86.608–88, paragraph (a)(2)(ii) is revised and paragraphs (c)(1), (c)(2), and (c)(3) are added to read as follows:

§ 86.608–88 Test procedures.

(a) * * *

(2) * * *

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in § 86.131(a), and may drain the test fuel from other than the lowest point of the tank, as specified in § 86.131(b), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

* * * * *

(c) * * *

(1) Mileage accumulation must be performed in a manner which is consistent with the new vehicle break-in instructions contained in the applicable vehicle owner's manual. In the absence of such instructions, mileage accumulation must be performed in a manner consistent with normal owner usage.

(2) The manufacturer shall accumulate mileage at a minimum rate of 300 miles during each 24 hour period, unless otherwise provided by the Administrator.

(3) Mileage accumulation shall be performed on a sufficient number of test vehicles during each 24 hour period to assure that the number of vehicles tested per day fulfills the requirements of paragraph (g) of this section.

* * * * *

§ 86.609 [Redesignated as § 86.609–84]

11. Section 86.609 is redesignated as § 86.609–84.

§ 86.610 [Redesignated as § 86.610–84]

12. Section 86.610 is redesignated as § 86.610–84.

§ 86.612 [Redesignated as § 86.612–84]

13. Section 86.612 is redesignated as § 86.612–84.

§ 86.614 [Redesignated as § 86.614–84]

14. Section 86.614 is redesignated as § 86.614–84.

§ 86.615 [Redesignated as § 86.615–84]

15. Section 86.615 is redesignated as § 86.615–84.

16. Part 86 is amended by revising the title of Subpart K to read as follows:

Subpart K—Selective Enforcement Auditing of New Heavy-Duty Engines and Light-Duty Trucks

17. Section 86.1003–84 is redesignated as § 86.1003–88. In the newly redesignated § 86.1003–88, paragraph (c)(1) is revised to read as follows:

§ 86.1003–88 Test orders.

* * * * *

(c)(1) The test order will specify the engine or vehicle configuration selected for testing, the manufacturer's vehicle or engine assembly plant or associated storage facility from which the engines or vehicles must be selected, the time and location at which engines or vehicles must be selected, and the procedure by which engines or vehicles of the specified configuration must be selected. The test order may specify the number of vehicles or engines to be selected per day. Heavy-duty engine manufacturers will be required to select a minimum of four engines per day unless an alternate selection procedure is approved pursuant to § 86.1007–84(a) or unless total production of the specified configuration is less than four engines per day. If total production of the specified configuration is less than four engines per day, the manufacturer will select the actual number of engines produced per day.

* * * * *

18. Section 86.1005–84 is redesignated as § 86.1005–88. In the newly redesignated § 86.1005–88, paragraphs (c) and (g) are removed, and paragraphs (a)(1)(ii) and (a)(2)(vi) (A), (B), (C), and (D) are revised, paragraph (a)(2)(viii) is added, and paragraphs (d), (e) and (f) are redesignated as paragraphs (c), (d) and (e), respectively, to read as follows:

§ 86.1005–88 Maintenance of records; submittal of information.

(a) * * *

(1) * * *

(ii) If testing heavy-duty diesel engines, the equipment requirements specified in §§ 86.1306–84, 86.1506–84, 86.884–8 and 86.884–9 of this part;

* * * * *

(2) * * *

(vi) * * *

(A) If testing heavy-duty gasoline engines, the record requirements specified in §§ 86.1344–88 and 86.1542–84 of this part;

(B) If testing heavy-duty diesel engines, the record requirements specified in §§ 86.1344–88 and 86.1542–84 and 86.884–10 of this part;

(C) If testing light-duty gasoline-fueled trucks, the record requirements specified in §§ 86.142–82 and 86.1542–84 of this part; and

(D) If testing light-duty diesel trucks, the record requirements specified in § 86.142–82 of this part; and

* * * * *

(viii) A paper copy of the driver's trace for each test.

* * * * *

19. Section 86.1008–84 is redesignated as §86.1008–88. In the newly redesignated § 86.1008–88, paragraphs (a)(4)(ii) and (c) are revised, and paragraphs (g)(1), (g)(2), (g)(3) and (g)(4) are added to read as follows:

§ 86.1008–88 Test procedures.

(a) * * *

(4) * * *

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in paragraph (a) of § 86.131, and may drain the test fuel from other than the lowest point of the fuel tank, as specified in paragraph (b) of § 86.131, provided an equivalent method is used. Equivalent documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

* * * * *

(c) Prior to performing exhaust emission testing on an SEA test engine, the manufacturer may accumulate on each engine a number of hours of service equal to the greater of 125 hours or the number of hours the manufacturer accumulated during certification on the emission-data engine corresponding to the configuration specified in the test order. Prior to performing exhaust emission testing on an SEA test vehicle, the manufacturer may accumulate a number of miles equal to the greater of 4,000 miles or the number of miles the manufacturer accumulated during certification on the emission-data vehicle corresponding to the configuration specified in the test order.

(1) Service or mileage accumulation must be performed in a manner which is consistent with the new vehicle break-in instructions contained in the applicable vehicle owner's manual. In the absence of such instructions, service or mileage accumulation must be performed in a manner consistent with normal owner usage.

(2) The manufacturer shall accumulate service at a minimum rate of 16 hours or mileage at a minimum rate of 300 miles during each 24-hour period, unless otherwise provided by the Administrator.

(3) Service or mileage accumulation shall be performed on a sufficient number of test engines or vehicles during each 24-hour period to assure that the number of engines or vehicles tested per day fulfills the requirements of paragraph (g) of this section.

* * * * *

(g) * * *

(1) Heavy-duty engine manufacturers with projected sales for the United States market for that year of 30,000 or greater shall complete emission testing at their testing facility on a minimum of two engines per 24 hour period, including voided tests.

(2) Heavy-duty engine manufacturers with projected sales for the United States market for that year of less than 30,000 shall complete emission testing at their testing facility on a minimum of one engine per 24 hour period, including voided tests.

(3) Light-duty truck manufacturers shall complete emission testing on a minimum of four vehicles per 24-hour period, including voided tests.

(4) The Administrator may approve a lower daily rate of conducting emission tests based upon a request by a manufacturer accompanied by a satisfactory justification.

* * * * *

[FR Doc. 87-19915 Filed 9-2-87; 8:45 am]
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Part VII

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Department of the Air Force

Meeting of the USAF Scientific Advisory Board; Notice

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Air Force
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DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 1, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Peacekeeper Inertial Measuring Unit (IMU) Testing and Production will meet on September 18, September 24–25, and September 29–30, 1987, at the Pentagon, Washington, DC from 8:00 a.m. to 5:00 p.m. each day. The purpose of these meetings is to review, discuss and evaluate the effectiveness of the IMU testing and production programs.

These meetings will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–20519 Filed 9–2–87; 12:01 pm]

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Rules and Regulations

Federal Register
Vol. 52, No. 172
Friday, September 4, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This rule delegates authority to the Assistant Secretary of Agriculture for Natural Resources and Environment and thence to the Chief of the Forest Service to designate specially trained officers and employees of the Forest Service to have the powers and authorities enumerated in the National Forest System Drug Control Act of 1986 (16 U.S.C. 559b–f).

EFFECTIVE DATE: This rule is effective September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Cecil L. Wilson, Law Enforcement Branch Chief, Fiscal & Public Safety Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 (703/235–8484).

SUPPLEMENTARY INFORMATION: The National Forest System Drug Control Act of 1986, Pub. L. 99–570, Title XV (16 U.S.C. 559b–f) authorizes the Secretary of Agriculture, in connection with the administration of the National Forest System, to take actions necessary to prevent the manufacture, distribution, or dispensing of marijuana or other controlled substances.

The Act also provides authority for the Secretary to designate not more than 500 specially trained officers and employees of the Forest Service to have the authorities and powers enumerated within the Act when in the performance of their duties within the boundaries of the National Forest System.

The Act also provides for the Secretary to authorize the Forest Service to cooperate with any other Federal law enforcement agency, State, or political subdivision, in the investigation of violation of and enforcement of section 401 of the Controlled Substance Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State laws or ordinances, within the boundaries of the National Forest System.

This rule delegates the authorities in the Act to the Assistant Secretary for Natural Resources and Environment and thence to the Chief of the Forest Service. Because the rule relates solely to internal agency management, pursuant to 5 U.S.C. 533, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**.

Further, since this rule relates to internal management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Therefore, for the reasons set forth in the preamble, Part 2, Subtitle A, of Title 7 of the Code of Federal Regulations is hereby amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read:

Authority: 5 U.S.C. 301 and reorganization plan No. 2 of 1953 unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Amend § 2.19 by adding paragraphs (d)(27) and (28) to read as follows:

§ 2.19 Assistant Secretary for Natural Resources and Environment.

* * * * *

(d) * * *

(27) For the purposes of the National Forest System Drug Control Act of 1986, 16 U.S.C. 559b–f, specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System.

(1) To carry firearms;

(2) To conduct investigations of violations of and to enforce section 401 of the Controlled Substance Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest lands;

(3) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant, if the employee has probable cause to believe that the person being arrested has committed or is committing such felony;

(4) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(5) To search, with or without a warrant or process any person, place, or conveyance according to Federal law or rule of law; and

(6) To seize with or without a warrant or process any evidentiary item according to Federal law or rule of law.

(28) Authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of and enforcement of section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

Subpart G—Delegations of Authority By the Assistant Secretary for Natural Resources and Environment

3. Amend § 2.60 by adding paragraphs (a)(29) and (30) to read as follows:

§ 2.60 Chief, Forest Service.

(a) * * *

(29) For the purposes of the National Forest System Drug Control Act of 1986, 16 U.S.C. 559b-f, specifically designate

certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(i) To carry firearms;

(ii) To conduct investigations of violations of and enforce section 401 of the Controlled Substance Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest lands;

(iii) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such felony;

(iv) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(v) To search with or without a warrant or process any person, place, or conveyance according to Federal law or rule of law; and

(vi) To seize with or without warrant or process any evidentiary item according to Federal law or rule of law.

(30) Authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency; State, or political subdivision, in the investigation of violations of and enforcement of section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

* * * * *

For Subpart C.

Richard E. Lyng,

Secretary.

Date: August 24, 1987.

For Subpart G.

George S. Dunlop,

Assistant Secretary, Natural Resources and Environment.

Date: August 21, 1987.

[FR Doc. 87-20122 Filed 9-3-87; 8:45 am]

BILLING CODE 3410-11-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 577]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 577 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 283,781 cartons during the period September 6 through September 12, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 577 (§ 910.877) is effective for the period September 6 through September 12, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456, telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on September 1, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by an 11 to 1 vote a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is fair.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.877 is added to read as follows:

§ 910.877 Lemon Regulation 577.

The quantity of lemons grown in California and Arizona which may be handled during the period September 6 through September 12, 1987, is established at 283,781 cartons.

Dated: September 2, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-20569 Filed 9-3-87; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 87-115]

Ports Designated for Exportation of Animals; Deletion of Alex Nichols Agency

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the Inspection and Handling of Livestock for Exportation by removing the Alex Nichols Agency, Glen Head, New York, from the list of ports that have export inspection facilities and are designated as ports of embarkation. This action is necessary because the facility no longer exists.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. William Parham, Staff Veterinarian, Import-Export Emergency Planning Staff, VS, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 91, "Inspection and Handling of Livestock for Exportation," prescribe conditions for exporting animals from the United States. Section 91.14(a) of the regulations lists ports that have export inspection facilities and are designated as ports of embarkation.

On May 11, 1987, we published in the **Federal Register** (52 FR 17597, Docket Number 87-017) a document proposing to revise § 91.14(a) to remove the Alex Nichols Agency, P.O. Box 283, Glen Head, New York, from the list of ports that have export inspection facilities and are designated as ports of embarkation. This was necessary because the facility no longer exists. We did not receive any comments by the close of the comment period on July 10, 1987. We are therefore adopting the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers; individual industries, Federal, state, or local government agencies, or geographical regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because the Alex Nichols Agency facility at Glen Head, New York, does not exist, removing it from the list of ports of embarkation will have no effect on the exporters. Alternate ports of embarkation are available in New York.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock and livestock products, Transportation.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, 9 CFR Part 91 is amended as follows:

1. The authority citation for Part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.14 [Amended]

2. In § 91.14, paragraph (a)(8)(ii)(B) is removed.

Done in Washington, DC, this 1st day of September, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-20471 Filed 9-3-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Red No. 33 and D&C Red No. 36; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 33 and D&C Red No. 36 for use as color additives in drugs and cosmetics. The new closing date will be November 3, 1987. FDA has decided that this brief postponement is necessary to provide time for the preparation of documents that will explain the bases for the agency's decisions concerning the conditions under which these color additives may be safely used.

EFFECTIVE DATE: Effective September 4, 1987, the new closing date for D&C Red No. 33 and D&C Red No. 36 will be November 3, 1987.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of September 4, 1987, for the provisional listing of D&C Red No. 33 and D&C Red No. 36 by regulation published in the **Federal Register** of July 6, 1987 (52 FR 25209). FDA extended the closing date for these color additives until September 4, 1987, to provide time for completion of the agency's review and evaluation of the data concerning the drug and cosmetic uses of these color additives, and for publication of a regulation in the **Federal Register** regarding the agency's final decision on the petitions for the permanent listing of these color additives. The regulation set forth below will postpone the September 4, 1987, closing date for the provisional listing of these color additives until November 3, 1987.

FDA has essentially completed its review and evaluation of available information relevent to the use of these color additives in drugs and cosmetics. The agency has concluded that the drug and cosmetic uses of D&C Red No. 33 and D&C Red No. 36 are safe. Thus, the agency has decided to permanently list the color additives for these uses. New certification specifications are also being developed for these color additives.

The agency has not yet completed documents fully describing the bases for each of these decisions and setting forth detailed conditions for use. Therefore, FDA believes that it is reasonable to postpone the closing date for these color additives until November 3, 1987, to provide time for the preparation and publication of appropriate **Federal Register** documents. The agency intends to publish these documents as soon as possible. FDA concludes that this short extension is consistent with the public health and the standards set forth for continuation of provisonal listing in *McIlwain* v. *Hayes*, 690 F.2d 1041 (D.C. Cir. 1982).

Because of the shortness of time until the September 4, 1987, closing data, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of September 4, 1987. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553(b) and (d)(1) and (3), this postponement is issued as a final regulation, effective on September 4, 1987.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* by revising the closing dates for "D&C Red No. 33" and "D&C Red No. 36" appearing in the table in paragraph (b) to read "November 3, 1987."

§ 81.27 [Amended]

3. In § 81.27 *Conditions of provisional listing* by revising the closing dates for "D&C Red No. 33" and "D&C Red No. 36" in paragraph (d), introductory text table, to read "November 3, 1987."

Dated: August 19, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–20380 Filed 9–3–87; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 177

[Docket No. 86F–0075]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of Nylon 6/66 copolymer resins as the non-food-contact layer in multilayer film structures intended for use in the cooking and holding of food. This action responds to a petition filed by Allied Corp.

DATES: Effective September 4, 1987; objections by October 5, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 14, 1986 (51 FR 8898), FDA announced that a petition (FAP 6B3913) had been filed by Allied Corp., Morristown, NJ 07960, proposing that the food additive regulations be amended to provide for the safe use of Nylon 6/66 copolymer resins as the non-food-contact layer in film structures in which ionomeric resins complying with 21 CFR 177.1330 of the food additive regulations are the food-contact surface. The multilayer film structure is intended for cooking and holding food.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

Because the Nylon 6/66 copolymer resin evaluated in this petition may only be used as the non-food-contact layer in multilayer film structures, and because it has significantly different specifications than the Nylon 6/66 that is currently approved for use in direct contact with food, FDA is amending § 177.1500 *Nylon resins* (21 CFR 177.1500) to clearly differentiate between the two types of Nylon 6/66. Nylon 6/66 resins that comply with § 177.1500, item 4.1, may be used in direct contact with food. Nylon 6/66 resins that comply with § 177.1500, item 4.2, may be used only as the non-food-contact layer in multilayer film structures.

FDA is also establishing a new food additive regulation, § 177.1395 *Laminate structures for use at temperatures between 120 °F and 250 °F* (21 CFR 177.1395), to specify the conditions of use for the new multilayer film structure with Nylon 6/66. The agency is also changing the section heading of § 177.1390 *High-temperature laminates* (21 CFR 177.1390) to read § 177.1390 *Laminate structures for use at temperatures of 250 °F and above*, to clearly differentiate the temperatures under which these packaging materials may be used. The agency also wishes to make it clear that adoption of new § 177.1395 does not revoke prior FDA opinions stating that other multilayer film structures may be safely used in contact with food.

The filing notice for this petition specified that the food-contact layer of the petitioned laminate would be ionomeric resins complying with 21 CFR 177.1330. FDA determined, during the review of this petition, that the inclusion in new § 177.1395 of a limitation on the migration of residual *epsilon*-caprolactam monomer from the Nylon 6/66 resin to food obviates the need to list in the regulation the specific material that is to be used as the food-contact surface. Therefore, in addition to ionomeric resins, other approved food-contact materials may be used as the food-contact layer with Nylon 6/66 in multilayer structures (see § 177.1395(b)).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by

appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before October 5, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1390 is amended by revising the section heading to read as follows:

§ 177.1390 Laminate structures for use at temperatures of 250° F and above.

* * * * *

3. By adding new § 177.1395 to Subpart B to read as follows:

§ 177.1395 Laminate structures for use at temperatures between 120 °F and 250 °F.

(a) The laminates identified in this section may be safely used at the specified temperatures. These articles are layered structures that are optionally bonded with adhesives. In these articles, the food-contact layer does not function as a barrier to migration of components from non-food-contact layers. The layers may be laminated, extruded, coextruded, or fused.

(b) Laminate structures may be manufactured from:

(1) Polymers and adjuvants complying with § 177.1390 of this chapter.

(2) Any polymeric resin listed in these regulations so long as the use of the resin in the structure complies with the conditions of use (food type and time/temperature) specified in the regulation for that resin.

(3) Optional adjuvant substances used in accordance with § 174.5 of this chapter.

(4) The following substances in non-food-contact layers only:

Substances	Limitations
Nylon 6/66 resins complying with § 177.1500(b), item 4.2, of this chapter (CAS Reg. No. 24993-04-2).	For use with nonalcoholic foods at temperatures not to exceed 82.2 °C (180 °F). Laminate structures with authorized food-contact materials yield no more than 0.15 milligram of *epsilon*-caprolactam per square inch when extracted with water at 82.2 °C (180 °F) for 5 hours.

4. Section 177.1500 is amended by revising paragraph (a)(4) and in paragraph (b) by amending the table to revise the heading in the fifth column and by revising item 4 to read as follows:

§ 177.1500 Nylon resins.

* * * * *

(a) * * *

(4) Nylon 6/66 resins manufactured by the condensation and polymerization of Nylon 66 salts and *epsilon*-caprolactam.

* * * * *

(b) * * *

Nylon resins	Specific gravity	Melting Point (degrees Fahrenheit)	Solubility in boiling 4.2*N* HCl	Maximum extractable fraction in selected solvents (expressed in percent by weight of resin)			
				Water	95 percent ethyl alcohol	Ethyl acetate	Benzene
* * *							
4.1 Nylon 6/66 resins, *epsilon*-caprolactam monomer content not to exceed 0.7 percent by weight	1.13±.015	440–460	.....do	2.0	2.0	1.5	1.5
4.2 Nylon 6/66 resins with combined caprolactam content greater than 60 percent and residual *epsilon*-caprolactam monomer content not to exceed 0.4 percent by weight. For use only as specified in § 177.1395 of this chapter (CAS Reg. No. 24993-04-2	1.14±.015	380–400	.....do	0.8	1.0	0.5	0.5
* * *							

Dated: August 25, 1987.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-20374 Filed 9-3-87; 8:45 am]

BILLING CODE 4160-01-M

VOL
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21 CFR Part 331

[Docket No. 78N-0263]

Antacid Drug Products for Over-the-Counter Human Use; Final Classification of Category III Antacid Ingredients and Labeling Claims

AGENCY: Food and Drug Administration.

ACTION: Denial of petition and final decision.

SUMMARY: This notice denies a petition to amend the final monograph for over-the-counter (OTC) antacid drug products to include the ingredient alginic acid and the labeling claim "floating," and contains a final decision on the use of this ingredient and labeling claim for OTC antacid drug products. This notice is part of the ongoing review of OTC drug products conducted by FDA.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 4, 1974 (39 FR 19862), FDA published the final monograph for OTC antacid drug products (21 CFR Part 331). Alginic acid was classified as a Category III ingredient and "floating" as a Category III labeling claim. At that time, OTC drug regulations in 21 CFR Part 330 provided for a 2-year period following the publication of a final monograph for manufacturers to conduct testing to upgrade Category III conditions (conditions for which there were insufficient data to determine general recognition of safety and effectiveness). During the testing period that had been established for OTC antacid drug products, a petition to amend the final monograph for OTC antacid drug products was submitted by Marion Laboratories, Inc., in support of its foam-forming floating antacid combination product containing the ingredients aluminum hydroxide dried gel, magnesium trisilicate, alginic acid, and sodium bicarbonate.

The Marion Laboratories' antacid combination product did not pass the in vitro effectiveness test set forth in the antacid final monograph (21 CFR 331.10(a)). The petition contained clinical studies in support of the product's antacid effectiveness and clarified the rationale for including alginic acid in the formulation, i.e., to react with the sodium bicarbonate in the formulation to form a foam that carries the antacid ingredients and floats on the stomach contents. The petition stated that no claim was being made that alginic acid has any antacid activity and that, therefore, alginic acid was an inactive ingredient. The petitioner called this product a foam-forming floating antacid.

In the **Federal Register** of September 5, 1978 (43 FR 39427), the agency published a final classification of Category III antacid ingredients and labeling claims. All Category III ingredients and labeling claims except those covered by petitions to amend the antacid final monograph were reclassified in Category II (not generally recognized as safe and effective). Alginic acid and the labeling claim for "floating" were excluded from the agency's final classification of antacid conditions because the data contained in Marion Laboratories' petition were under review. The agency stated that its findings on the petition would be set forth in a future **Federal Register** publication following completion of its review of the data contained in the petition. In the interim, products affected by the pending petition were allowed to remain in the marketplace under 21 CFR 330.10(a).

After reviewing the petition, FDA informed Marion Laboratories, in a letter dated March 23, 1979, that the studies submitted were inadequate to support the effectiveness of its combination product. FDA suggested further clinical studies and provided Marion Laboratories with 2 years from the date of the letter to obtain and submit additional data demonstrating the product's effectiveness. The agency also stated that marketing of the product would be allowed to continue during the testing period (Ref. 1).

Not long after the above letter was issued, the United States District Court for the District of Columbia entered its opinion in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). In this case, the plaintiffs alleged that 21 CFR 330.10 was unlawful because it authorized the marketing of Category III drugs after publication of a final monograph. The Court concluded that "* * * the FDA may not lawfully maintain Category III in any form in which drugs with Category III conditions * * * are exempted from enforcement action," (*Cutler, supra*, 475 F. Supp. at 856). The Court issued an order declaring the FDA OTC drug regulations, 21 CFR 330.10, unlawful to the extent that they authorize the marketing of Category III drugs after a final monograph. The Court also enjoined FDA from implementing any portion of the regulation that authorizes such marketing.

In conformance with the Court's decision, the agency established that any OTC drug product with a condition not included in Category I in a final OTC drug monograph was a new drug requiring an approved new drug application (NDA) as a condition of marketing. FDA then informed Marion Laboratories that its OTC antacid combination product containing alginic acid, which had been marketed under Category III conditions, was now considered a new drug without an approved NDA and that an NDA for the product should be submitted (Ref. 2).

In September 1981, Marion Laboratories submitted an NDA for two products containing alginic acid, i.e., Gaviscon Antacid Tablets and Gaviscon-2 Antacid Tablets. The agency found the data adequate to support the effectiveness of the products for the temporary relief of heartburn (acid indigestion) due to acid reflux, and the NDA was approved on December 9, 1983 (Ref. 3).

With this NDA approval, Marion Laboratories may now market the product without further consideration of the petition to amend the OTC antacid final monograph. However, the agency has not issued a final response to the original petition and has not completed action on the final classification of Category III ingredients and labeling claims excluded from the 1978 final classification (see above). In this notice, for the reasons given below, FDA denies Marion Laboratories' petition to amend the OTC antacid final monograph to include the combination product containing alginic acid and the "floating" labeling claim. Accordingly, the ingredient alginic acid and the term "floating" are not included in the final monograph for OTC antacid drug products.

As explained above, in its petition Marion Laboratories clarified that alginic acid is an inactive ingredient and no claims regarding antacid activity are made for this ingredient. Although originally reviewed as an active antacid ingredient, alginic acid is now classified as an inactive ingredient in OTC antacid drug product formulations and is labeled as such in marketed products. Because the OTC drug review establishes allowable active ingredients, not inactive ingredients, the agency will not consider this ingredient for inclusion in the antacid drug products monograph. Alginic acid, like any other inactive

ingredient, may be used in OTC drug formulations in compliance with the requirements for inactive ingredients set forth in 21 CFR 330.1(e), i.e., that they are safe and do not interfere with the effectiveness of the product or with tests to be performed on it.

Marion Laboratories' submission to the Advisory Review Panel on OTC Antacid Drug Products included labeling relating the property of "floating" to its product's effectiveness (Ref. 4). The Panel recognized that alginic acid-containing products may produce a layer of material floating on top of the contents of the stomach (April 5, 1973; 38 FR 8722), but concluded that there was insufficient evidence to support the claim that such a property contributed to the product's effectiveness (38 FR 8723). The agency notes that OTC drug monographs directly address only those labeling items that are related in a significant way to the safe and effective use of covered products by lay persons. These labeling items are the product statement of identity; names of active ingredients; indications for use; directions for use; warnings against unsafe use, side effects, and adverse reactions; and claims concerning mechanism of drug action. The agency considers the term "floating" to be a product attribute which describes a physical property. Normally, such product attributes are considered to be outside the scope of OTC drug monographs when the labeling does not relate the attribute to the effectiveness of the product. The agency has no objection to the use of terms describing product attributes of OTC drug product formulations as long as they do not imply that any therapeutic effect might occur, are not false or misleading, and are not intermixed with labeling established by the monograph. However, labeling relating "floating" to a product's antacid effectiveness, such as that submitted by Marion Laboratories, remains a condition which requires supporting data.

Marion Laboratories claimed that the property of floating added to the efficacy of its combination antacid drug product, i.e., that "floating" was more than simply a product attribute because it was directly related to effectiveness. Additional data in support of this claim were submitted by Marion Laboratories to the agency, and the NDA was approved. However, the contribution of the floating property as related to antacid effectiveness is not generally recognized. Therefore, in order to use labeling suggesting that "floating" uniquely contributes to an antacid's effectiveness, any other antacid drug product would need to have supporting data. Any interested person who believes that "floating" supports or enhances antacid effectiveness may submit an NDA or petition the agency to amend the final monograph for OTC antacid drug products. Such petition should include appropriate data to establish general recognition of safety and effectiveness, e.g., an appropriate in vitro or in vivo test.

The agency has examined the economic consequences of this notice in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this notice for OTC antacid drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, the requirement for a Regulatory Flexibility Analysis under the Regulatory Flexibility Act does not apply to this notice for OTC antacid drug products because the proposed rule was issued prior to January 1, 1981, and is therefore exempt.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

References

(1) Letter from J.R. Crout, FDA, to J.E. Budde, Marion Laboratories, Inc., dated March 23, 1979, coded LET, Docket No. 78N–0263, Dockets Management Branch.

(2) Letter from J.R. Crout, FDA to J.E. Budde, Marion Laboratories Inc., dated March 3, 1980, coded LET005, Docket No. 78N–0263, Dockets Management Branch.

(3) Letter from R. Temple, FDA, to J.E. Budde, Marion Laboratories, Inc., dated December 9, 1983, coded LET007, Docket No. 78N–0263, Dockets Management Branch.

(4) Copy of original labeling submitted to the Panel included in Docket No. 78N–0263, Docket Management Branch.

Dated: August 25, 1987.

John A. Norris,

Acting Commissioner of Food and Drugs.

[FR Doc. 87–20376 Filed 9–3–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8158]

Income Taxes; Tax on Unearned Income of Certain Minor Children

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the tax on unearned income of certain minor children. Changes to the applicable law were made by the Tax Reform Act of 1986. The regulations affect minor children who, at the close of the taxable year, have not attained age 14; have at least one living parent; and realize at least $1,000 of unearned income and provide the guidance needed to comply with the law.

DATES: The regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: William A. Jackson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (LR–112–86) (202) 566–4336, not a toll-free call.

SUPPLEMENTARY INFORMATION: .

Background

This document contains temporary regulations relating to the tax on unearned income of certain minor children under section 1(i) of the Internal Revenue Code of 1986 (Code), as amended by section 1411 of the Tax Reform Act of 1986 (Pub. L. 99–514; 100 Stat. 2714).

These temporary regulations are presented in the form of questions and answers. Taxpayers may rely on these questions and answers for guidance. No inference, however, should be drawn regarding questions not addressed in the temporary regulations.

In General

For taxable years beginning after December 31, 1986, section 1(i) provides that the tax imposed on the net unearned income of a child who at the close of the taxable year is under 14 years of age and has at least one living parent, shall be no less than the additional tax that would have been imposed on the child's net unearned income if such income had been added to such parent's taxable income. If the parent has two or more children subject to section 1(i), the tax imposed on each is the child's proportionate share of additional tax that would have been imposed on the net unearned income of all such children if such income were aggregated and added to the parent's taxable income.

Net unearned income is the excess of the portion of the child's adjusted gross income for the taxable year that is not earned income (as defined in section 911(d)(2)), over the sum of the standard deduction amount allowed in the case of certain dependents under section 63(c)(5)(A) ($500 for 1987 and 1988 (indexed for inflation beginning after 1988)), plus the greater of such standard deduction amount or the child's itemized deductions for the taxable year that are directly connected with the production of unearned income. A child's net unearned income for the taxable year cannot exceed such child's taxable income for the tax year. Further, if the child has itemized deductions, the child may offset unearned income with the greater of the amount of such itemized deductions that is equal to the standard deduction or the amount of allowed deductions directly connected with the production of unearned income.

Unearned Income Subject to Tax

The regulations explain that the tax imposed by section 1(i) of the Code applies to net unearned income for taxable years beginning after December 31, 1986, even though it is attributable to property transferred to the child prior to 1987. (See A–7). Further, the regulations illustrate that the tax under section 1(i) applies to net unearned income that is attributable to gifts from persons other than the child's parents as well as to unearned income derived with respect to assets from earned income of the child. (See A–8). In addition, the regulations clarify that unearned income includes social security and pension payments received by a child to the extent such amounts are included in the child's adjusted gross income.

Parent's Taxable Income

In the case of parents who file a joint return, the parental taxable income to be taken into account in determining the tax liability of a child is the joint taxable income of the parents. If the child's parents are married to each other but file separate returns, the taxable income of the parent with the greater taxable income is taken into account. In the case of parents who are not married to each other, treated as not married under section 7703(b) (relating to certain married individuals living apart), or divorced or legally separated, the taxable income of the custodial parent is taken into account. (See A–12). If a custodial parent files a joint return with a spouse who is not a parent of the child, the parental taxable income to be taken into account is the total joint taxable income of the custodial parent and his or her spouse. (See A–13.)

The regulations provide that a child subject to tax under section 1(i) may, upon written request to the Internal Revenue Service, obtain sufficient information regarding the parent's return so that the child can properly file his or her return. (See A–22). The Service recognizes that under certain unusual circumstances a child may not be able to obtain sufficient information regarding the parent's tax return directly from the parent. In such cases, it may be difficult for such child to file an accurate return in a timely manner. Accordingly, the Service is considering the possibility of providing special rules for hardship cases. If special rules are subsequently determined by the Service to be appropriate, such rules will be provided in future regulations or revenue rulings and will be applied retroactively. The Service welcomes comments as to whether special rules are needed, what type of rules are appropriate, and which children should qualify for the special rules.

Income From a Trust

The regulations provide that in the case of a trust with children subject to tax under section 1(i) as income beneficiaries, such children will be taxed on the trust income to the extent of distributable net income that is included in the child's gross income. (See A–16). The regulations clarify that unearned income attributable to a gift to a child under the Uniform Gift to Minors Act is treated as the child's unearned income and is subject to tax under section 1(i). (See A–15).

The regulations include no provision regarding the application of the tax imposed by section 1(i) to accumulation distributions of a trust (as defined in section 665(b) of the Code). The Service believes that most accumulation distributions received by a child from a trust will not be included in the child's gross income because of the minority exception under section 665(b) and thus will not be subject to section 1(i). However, to the extent that an accumulation distribution does not fall within the minority exception, the Internal Revenue Service will issue guidance in the future (by revenue ruling or other means) with respect to how section 1(i) applies in such situations.

Effect of Adjustments to the Parent's Taxable Income

The regulations provide that if the parent's taxable income is adjusted and if a child of the parent paid tax under section 1(i) for the same taxable year with reference to such parent's taxable income, the child's tax liability under section 1(i) must be recomputed using the parent's taxable income as adjusted. (See A–17). A similar recomputation must be made with respect to that child if there is an adjustment to the net unearned income of another child who used the same parent's taxable income to determine any allocable parental tax. (See A–18). Further, any additional tax liability to the child resulting from an adjustment to the parent's taxable income or another child's net unearned income shall be treated as an underpayment of tax and interest shall be imposed on such underpayment. However, the child will not be subject to any penalties on such underpayment as a result of additional tax being imposed on the child because of such an adjustment. (See A–19).

Phase-Out of Rate Bracket and Limitations on Deductions and Credits

The regulations provide that the allocable parental tax, computed by adding the net unearned income of all children of a parent who are subject to section 1(i) to such parent's taxable income, reflects any phase-out of the 15 percent rate bracket or personal exemptions under section 1(g). Thus, the child is liable for any addition to tax resulting from any phase-out. (See A–20). However, the regulations provide that a child's net unearned income is not taken into account in computing any limitation on a deduction or credit, such as the phase-out of the $25,000 passive loss allowance for active rental real estate activities or the 2 percent of adjusted gross income floor on miscellaneous deductions, for purposes of determining either the parent's tax liability or the child's allocable parental tax. (See A–21).

Need for Temporary Regulations

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Special Analysis

No general notice of proposed rulemaking is required by 5 U.S.C. 553 (b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal author of these temporary regulations is William A. Jackson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR 1.01–1.58–9

Income taxes, Tax liability, Tax rates, Credits.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. A new § 1.1(i)–1T is added immediately following § 1.1–3 to read as set forth below.

§ 1.1(i)–1T Questions and answers relating to the tax on unearned income certain minor children (Temporary).

In General

Q–1. To whom does section 1(i) apply?

A–1. Section 1(i) applies to any child who is under 14 years of age at the close of the taxable year, who has at least one living parent at the close of the taxable year, and who recognizes over $1,000 of unearned income during the taxable year.

Q–2. What is the effective date of section 1(i)?

A–2. Section 1(i) applies to taxable years of the child beginning after December 31, 1986.

Computation of Tax

Q–3. What is the amount of tax imposed by section 1 on a child to whom section 1(i) applies?

A–3. In the case of a child to whom section 1(i) applies, the amount of tax imposed by section 1 equals the greater of (A) the tax imposed by section 1 without regard to section 1(i) or (B) the sum of the tax that would be imposed by section 1 if the child's taxable income was reduced by the child's net unearned income, plus the child's share of the allocable parental tax.

Q–4. What is the allocable parental tax?

A–4. The allocable parental tax is the excess of (A) the tax that would be imposed by section 1 on the sum of the parent's taxable income plus the net unearned income of all children of such parent to whom section 1(i) applies, over (B) the tax imposed by section 1 on the parent's taxable income. Thus, the allocable parental tax is not computed with reference to unearned income of a child over 14 or a child under 14 with less than $1,000 of unearned income. *See* A–10 through A–13 for rules regarding the determination of the parent(s) whose taxable income is taken into account under section 1(i). *See* A–14 for rules regarding the determination of children of the parent whose net unearned income is taken into account under section 1(i).

Q–5. What is the child's share of the allocable parental tax?

A–5. The child's share of the allocable parental tax is an amount that bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the total net unearned income of all children of such parent to whom section 1(i) applies. See A–14.

Example (1). During 1988, D, and a 12 year old, receives $5,000 of unearned income and no earned income. D has no itemized deductions and is not eligible for a personal exemption. D's parents have two other children, E, a 15 year old, and F, a 10 year old. E has $10,000 of unearned income and F has $100 of unearned income. D's parents file a joint return for 1988 and report taxable income of $70,000. Neither D's nor his parent's taxable income is attributable to net capital gain. D's tax liability for 1988, determined without regard to section 1(i), is $675 on $4,500 of taxable income ($5,000 less $500 allowable standard deduction). In applying section 1(i), D's tax would be equal to the sum of (A) the tax that would be imposed on D's taxable income if it were reduced by any net unearned income, plus (B) D's share of the allocable parental tax. Only D's unearned income is taken into account in determining the allocable parental tax because E is over 14 and F has less than $1,000 of unearned income. *See* A–4. D's net unearned income is $4,000 ($4,500 taxable unearned income less $500). The tax imposed on D's taxable income as reduced by D's net unearned income is $75 ($500×15%). The allocable parental tax is $1,225, the excess of $16,957.50 (the tax on $74,000, the parent's taxable income plus D's net unearned income) over $15,732.50 (the tax on $70,000, the parent's taxable income). *See* A–4. Thus, D's tax under section 1(i) (1) (B) is $1,300 ($1,225 + $75). Since this amount is greater than the amount of D's tax liability as determined without regard to section 1(i), the amount of tax imposed on D for 1988 is $1,300. *See A–3.*

Example (2) H and W have 3 children, A, B, and C, who are all under 14 years of age. For the taxable year 1988, H and W file a joint return and report taxable income of $129,750. The tax imposed by section 1 on H and W is $35,355. A has $5,000 of net unearned income and B and C each have $2,500 of net unearned income during 1988. The allocable parental tax imposed on A, B, and C's combined net unearned income of $10,000 is $3,300. This tax is the excess of $38,655, which is the tax imposed by section 1 on $139,750 ($129,750 + 10,000), over $35,355 (the tax imposed by section 1 on H and W's taxable income of $129,750). *See* A–4. Each child's share of the allocable parental tax is an amount that bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the total net unearned income of A, B, and C. Thus, A's share of the allocable parental tax is $1,650 (5,000÷10,000×3,300) and B and C's share of the tax is $825 (2,500÷10,000×3,300) each. *See* A–5.

Definition of Net Unearned Income

Q–6. What is net unearned income?

A–6. Net unearned income is the excess of the portion of adjusted gross income for the taxable year that is not "earned inocme" as defined in section 911(d)(2) (income that is not attributable to wages, salaries, or other amounts received as compensation for personal services), over the sum of the standard deduction amount provided for under section 63 (c)(5)(A) ($500 for 1987 and 1988; adjusted for inflation thereafter), plus the greater of (A) $500 (adjusted for inflation after 1988) or (B) the amount of allowable itemized deductions that are directly connected with the production of unearned income. A child's net unearned income for any taxable year shall not exceed the child's taxable income for such year.

Example (3). A is a child who is under 14 years of age at the end of the taxable year 1987. Both of A's parents are alive at this time. During 1987, A receives $3,000 of interest from a bank savings account and earns $1,000 from a paper route and performing odd jobs. A has no itemized

deductions for 1987. A's standard deduction is $1,000, which is an amount equal to A's earned income for 1987. Of this amount, $500 is applied against A's unearned income and the remaining $500 is applied against A's earned income. Thus, A's $500 of taxable earned income ($1,000 less the remaining $500 of the standard deduction) is taxed without regard to section 1 (i); A has $2,500 of taxable unearned income ($3,000 gross unearned income less $500 of the standard deduction) of which $500 is taxed without regard to section 1(i). The remaining $2,000 of taxable unearned income is A's net unearned income and is taxed under section 1(i).

Example (4). B is a child who is subject to tax under section 1(i). B has $400 of earned income and $2,000 of unearned income. B has itemized deductions of $800 (net of the 2 percent of adjusted gross income (AGI) floor on miscellaneous itemized deductions under section 67) of which $200 are directly connected with the production of unearned income. The amount of itemized deductions that B may apply against unearned income is equal to the greater of $500 or the deductions directly connected with the production of unearned income. *See* A–6. thus, $500 of B's itemized deductions are applied against the $2,000 of unearned income and the remaining $300 of decuctions are applied against earned income. As a result, B has taxable earned income of $100 and taxable unearned income of $1,500. Of these amounts, all of the earned income and $500 of the unearned income are taxed without regard to section 1(i). The remaining $1,000 of unearned income is net unearned income and is taxed under section 1(i).

Unearned Income Subject to tax Under Section 1(i)

Q–7. Will a child be subject to tax under section 1(i) on net unearned income (as defined in section 1(i) (4) and A–6 of this section) that is attributable to property transferred to the child prior to 1987?

A–7. Yes. The tax imposed by section 1(i) on a child's net unearned income applies to any net unearned income of the child for taxable years beginning after December 31, 1986, regardless of when the underlying assets were transferred to the child.

Q–8. Will a child be subject to tax under section 1(i) on net unearned income that is attributable to gifts from persons other than the child's parents or attributable to assets resulting from the child's earned income?

A–8. Yes. The tax imposed by section 1(i) applies to all net unearned income of the child, regardless of the source of the assets that produced such income. Thus, the rules of section 1(i) apply to income attributable to gifts not only from the parents but also from any other source, such as the child's grandparents. Section 1(i) also applies to unearned income derived with respect to assets resulting from earned income of the child, such as interest earned on bank deposits.

Example (5). A is a child who is under 14 years of age at the end of the taxable year beginning on January 1, 1987. Both of A's parents are alive at the end of the taxable year. During 1987, A receives $2,000 in interest from his bank account and $1,500 from a paper route. Some of the interest earned by A from the bank account is attributable to A's paper route earnings that were deposited in the account. The balance of the account is attributable to cash gifts from A's parents and grandparents and interest earned prior to 1987. Some cash gifts were received by A prior to 1987. A has no itemized deductions and is eligible to be claimed as a dependent on his parent's return. Therefore, for the taxable year 1987, A's standard deduction is $1,500, the amount of A's earned income. Of this standard deduction amount, $500 is allocated against unearned income and $1,000 is allocated against earned income. A's taxable unearned income is $1,500 of which $500 is taxed without regard to section 1(i). The remaining taxable unearned income of $1,000 is net unearned income and is taxed under section 1(i). The fact that some of A's unearned income is attributable to interest on principal created by earned income and gifts from persons other than A's parents or that some of the unearned income is attributable to property transferred to A prior to 1987, will not affect the tax treatment of this income under section 1(i). *See* A–8.

Q–9. For purposes of section 1(i), does income which is not earned income (as defined in section 911(d)(2)) include social security benefits or pension benefits that are paid to the child?

A–9. Yes. For purposes of section 1(i), earned income (as defined in section 911(d)(2)) does not include any social security or pension benefits paid to the child. Thus, such amounts are included in unearned income to the extent they are includible in the child's gross income.

Determination of the Parent's Taxable Income

A–10. If a child's parents file a joint return, what is the taxable income that must be taken into account by the child in determining tax liability under section 1(i)?

A–10. In the case of parents who file a joint return, the parental taxable income to be taken into account in determining the tax liability of a child is the total taxable income shown on the joint return.

Q–11. If a child's parents are married and file seperate tax returns, which parent's taxable income must be taken into account by the child in determining tax liability under section 1(i)?

A–11. For purposes of determining the tax liability of a child under section 1(i), where such child's parents are married and file separate tax returns, the parent whose taxable income is the greater of the two for the taxable year shall be taken into account.

Q–12. If the parents of a child are divorced, legally separated, or treated as not married under section 7703(b), which parent's taxable income is taken into account in computing the child's tax liability?

A–12. If the child's parents are divorced, legally separated, or treated as not married under section 7703(b), the taxable income of the custodial parent (within the meaning of section 152(e)) of the child is taken into account under section 1(i) in determining the child's tax liability.

Q–13. If a parent whose taxable income must be taken into account in determining a child's tax liability under section 1(i) files a joint return with a spouse who is not a parent of the child, what taxable income must the child take into account?

A–13. The amount of a parent's taxable income that a child must take into account for purposes of section 1(i) where the parent files a joint return with a spouse who is not a parent of the child is the total taxable income shown on such joint return.

Children of the Parent

Q–14. In determining a child's share of the allocable parental tax, is the net unearned income of legally adopted children, children related to such child by half-blood, or children from a prior marriage of the spouse of such child's parent taken into account in addition to the natural children of such child's parent?

A–14. Yes. In determining a child's share of the allocable parental tax, the net unearned income of all children subject to tax under section 1(i) and who use the same parent's taxable income as such child to determine their tax liability under section 1(i) must be taken into account. Such children are taken into account regardless of whether they are adopted by the parent, related to such child by half-blood, or are children from a prior marriage of the spouse of such child's parent.

Rules Regarding Income From a Trust or Similar Instrument

Q–15. Will the unearned income of a child who is subject to section 1(i) that is attributable to gifts given to the child under the Uniform Gift to Minors Act (UGMA) be subject to tax under section 1(i)?

A–15. Yes. A gift under the UGMA vests legal title to the property in the child although an adult custodian is

given certain rights to deal with the property until the child attains majority. Any unearned income attributable to such a gift is the child's unearned income and is subject to tax under section 1(i), whether distributed to the child or not.

Q–16. Will a child who is a beneficiary of a trust be required to take into account the income of a trust in determining the child's tax liability under section 1(i)?

A–16. The income of a trust must be taken into account for purposes of determining the tax liability of a beneficiary who is subject to section 1(i) only to the extent it is included in the child's gross income for the taxable year under sections 652(a) or 662(a). Thus, income from a trust for the fiscal taxable year of a trust ending during 1987, that is included in the gross income of a child who is subject to section 1(i) and who has a calendar taxable year, will be subject to tax under section 1(i) for the child's 1987 taxable year.

Subsequent Adjustments

Q–17. What effect will a subsequent adjustment to a parent's taxable income have on the child's tax liability if such parent's taxable income was used to determine the child's tax liability under section 1(i) for the same taxable year?

A–17. If the parent's taxable income is adjusted and if, for the same taxable year as the adjustment, the child paid tax determined under section 1(i) with reference to that parent's taxable income, then the child's tax liability under section 1(i) must be recomputed using the parent's taxable income as adjusted.

Q–18. In the case where more than one child who is subject to section 1(i) uses the same parent's taxable income to determine their allocable parental tax, what effect will a subsequent adjustment to the net unearned income of one child have on the other child's share of the allocable parental tax?

A–18. If, for the same taxable year, more than one child uses the same parent's taxable income to determine their share of the allocable parental tax and a subsequent adjustment is made to one or more of such children's net unearned income, each child's share of the allocable parental tax must be recomputed using the combined net unearned income of all such children as adjusted.

Q–19. If a recomputation of a child's tax under section 1(i), as a result of an adjustment to the taxable income of the child's parents or another child's net unearned income, results in additional tax being imposed by section 1(i) on the child, is the child subject to interest and penalties on such additional tax?

A–19. Any additional tax resulting from an adjustment to the taxable income of the child's parents or the net unearned income of another child shall be treated as an underpayment of tax and interest shall be imposed on such underpayment as provided in section 6601. However, the child shall not be liable for any penalties on the underpayment resulting from additional tax being imposed under section 1(i) due to such an adjustment.

Example (6). D and M are the parents of C, a child under the age of 14. D and M file a joint return for 1988 and report taxable income of $69,000. C has unearned income of $3,000 and no itemized deductions for 1988. C properly reports a total tax liability of $635 for 1988. This amount is the sum of the allocable parental tax of $560 on C's net unearned income of $2,000 (the excess of $3,000 over the sum of $500 standard deduction and the first $500 of taxable unearned income) plus $75 (the tax imposed on C's first $500 of taxable unearned income). *See* A–3. One year later, D and M's 1988 tax return is adjusted on audit by adding an additional $1,000 of taxable income. No adjustment is made to the amount reported as C's net unearned income for 1988. However, the adjustment to D and M's taxable income causes C's tax liability under section 1(i) for 1988 to be increased by $50 as a result of the phase-out of the 15 percent rate bracket. *See* A–20. In addition to this further tax liability, C will be liable for interest on the $50. However, C will not have to pay any penalty on the delinquent amount.

Miscellaneous Rules

Q–20. Does the phase-out of the parent's 15 percent rate bracket and personal exemptions under section 1(g), if applicable, have any effect on the calculation of the allocable parental tax imposed on a child's net unearned income under section 1(i)?

A–20. Yes. Any phase-out of the parent's 15 percent rate bracket or personal exemptions under section 1(g) is given full effect in determining the tax that would be imposed on the sum of the parent's taxable income and the total net unearned income of all children of the parent. Thus, any additional tax on a child's net unearned income resulting from the phase-out of the 15 percent rate bracket and the personal exemptions is reflected in the tax liability of the child.

Q–21. For purposes of calculating a parent's tax liability or the allocable parental tax imposed on a child, are other phase-outs, limitations, or floors on deductions or credits, such as the phase-out of the $25,000 passive loss allowance for rental real estate activities under section 469(i)(3) or the 2 percent of AGI floor on miscellaneous itemized deductions under section 67, affected by the addition of a child's net unearned income to the parent's taxable income?

A–21. No. A child's net unearned income is not taken into account in computing any deduction or credit for purposes of determining the parent's tax liability or the child's allocable parental tax. Thus, for example, although the amounts allowable to the parent as a charitable contribution deduction, medical expense deduction, section 212 deduction, or a miscellaneous itemized deduction are affected by the amount of the parent's adjusted gross income, the amount of these deductions that is allowed does not change as a result of the application of section 1(i) because the amount of the parent's adjusted gross income does not include the child's net unearned income. Similarly, the amount of itemized deductions that is allowed to a child does not change as a result of section 1(i) because section 1(i) only affects the amount of tax liability and not the child's adjusted gross income.

Q–22. If a child is unable to obtain information concerning the tax return of the child's parents directly from such parents, how may the child obtain information from the parent's tax return which is necessary to determine the child's tax liability under section 1(i)?

A–22. Under section 6103(e)(1)(A)(iv), a return of a parent shall, upon written request, be open to inspection or disclosure to a child of that individual (or the child's legal representative) to the extent necessary to comply with section 1(i). Thus, a child may request the Internal Revenue Service to disclose sufficient tax information about the parent to the child so that the child can properly file his or her return.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: August 25, 1987.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87–20459 Filed 9–3–87; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 31

[T.D. 8156]

Employment Taxes and Collection of Income Tax at Source; Interest on Hospital Insurance Taxes on Wages of State and Local Government Employees

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that relate to interest-free adjustments of underpayments of hospital insurance taxes (Medicare) with respect to wages of State and local government employees hired after March 31, 1986. Changes to the hospital insurance tax law were made by the Consolidated Omnibus Budget Reconciliation Act of 1985.

DATES: These regulations are effective with respect to State and local government employees hired after March 31, 1986, for services performed after that date.

FOR FURTHER INFORMATION CONTACT: Laura Ann M. Lauritzen of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3459, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under section 6205 of the Internal Revenue Code of 1954 to provide for making interest-free adjustments of certain underpayments of hospital insurance taxes. Section 3121 of the Code as amended by section 13205 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272, 100 Stat. 313) provides that hospital insurance taxes are to be withheld from, and paid by the employer, pursuant to section 3101(b) and 3111(b), with respect to, the wages of State and local government employees hired after March 31, 1986. It was determined that no notice and public comment procedure is necessary since this document will not be detrimental to any taxpayer.

Explanation of Provisions

Section 6205(a)(1) authorizes the Secretary to issue regulations prescribing the manner and time for making interest-free adjustments of underpayments of taxes imposed by sections 3101 or 3111. Section 3121 of the Code has been amended to provide for the withholding and payment under sections 3101(b) and 3111(b) of the hospital insurance taxes on wages of State and local government employees hired after March 31, 1986.

The Consolidated Omnibus Budget Reconciliation Act of 1985 was enacted on April 7, 1986. On July 14, 1986, the Internal Revenue Service published Revenue Ruling 86–88, 1986–28 I.R.B. 10, to provide guidelines concerning the applicability of the hospital insurance taxes to employees of States and local governments. Generally, the ruling states that the Service will automatically waive penalties for failure to pay and for failure to make timely deposits of the hospital insurance taxes with respect to services performed through the fourth quarter of 1986, so long as all payments due for April through December of 1986 are paid by February 2, 1987.

In view of the unique circumstances surrounding the application of the new FICA tax provisions, it appears appropriate as well for the Service to permit interest-free adjustments of underpayments of these taxes. Accordingly, this Treasury decision makes a technical amendment to the regulations under section 6205 to provide that interest will not be imposed for the failure to timely pay these new taxes required to be reported on returns due July 31, 1986, October 31, 1986, or February 2, 1987, provided all such taxes were paid on or before February 2, 1987. The right to the interest-free adjustments, however, will not be lost if the only amount not paid by February 2, 1987, is itself eligible for, and paid pursuant to, an interest-free adjustment under § 31.6205–1.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required by 5 U.S.C. 553 for final regulations not preceded by notice because notice would be unnecessary. Accordingly, the regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Laura Ann M. Lauritzen of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service.
However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 31 is amended as follows:

PART 31—[AMENDED]

Paragraph 1. The authority for Part 31 is amended by the adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 31.6205–2 also issued under 26 U.S.C. 6205(a)(1). * * *

Par. 2. A new § 31.6205–2 is added immediately after § 31.6205–1, to read as follows:

§ 31.6205–2 Adjustments of underpayments of hospital insurance taxes that accrue after March 31, 1986, and before January 1, 1987, with respect to wages of State and local government employees.

(a) *Adjustments without interest.* A State or local government employer who makes, or has made, an undercollection or underpayment of the hospital insurance taxes imposed by sections 3101(b) and 3111(b) that—

(1) Are required to be paid by reason of section 3121(u)(2), and

(2) Are required to be reported on returns due July 31, 1986, October 31, 1986, or February 2, 1987.

may make an adjustment without interest with respect to such taxes provided that all such taxes for the time period specified in paragraph (a)(2) (except for amounts that are subsequently paid pursuant to an interest-free adjustment under § 31.6205–1) are paid on or before February 2, 1987.

(b) *Example.* The application of the provisions of this section are illustrated by the following example:

Example. A State or local government employer should have withheld and paid $100 dollars in hospital insurance taxes for the quarter beginning April 1, 1986, and ending June 30, 1986. The due date for the return and payment for that period is July 31, 1986. If the employer made the payment by February 2, 1987, then, under section 6601, interest is not assessable with respect to the underpayment of the hospital insurance taxes. If the employer did not make the payment by February 2, 1987, the interest is assessable for the period from July 31, 1986, until the time of payment.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: August 25, 1987.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87–20458 Filed 9–3–87; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 41 and 602

[T.D. 8159]

Excise Taxes; Reduction of Heavy Vehicle Use Tax for Foreign-Based Vehicles

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary and final regulations relating to the imposition of the heavy vehicle use tax on foreign-based highway motor vehicles. Changes to the applicable law were made by the Surface Transportation and Uniform Relocation Assistance Act of 1987. The regulations affect owners of highway motor vehicles that have a base for registration purposes in a contiguous foreign country and provide them with the guidance needed to comply with the law. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: The regulations are effective for taxable periods beginning after June 30, 1987.

FOR FURTHER INFORMATION CONTACT: William A. Jackson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (LR–32–87) (202) 566–4336, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the imposition of the heavy vehicle use tax on foreign-based highway motor vehicles under section 4481 of the Internal Revenue Code of 1986 (Code), as amended by section 507 of the Highway Revenue Act of 1987 (Title V of the Surface Transportation and Uniform Relocation Assistance Act of 1987) (Pub. L. 100–17, 101 Stat. 260) (Act). The regulations will remain in effect until superseded by final regulations on this subject.

Explanation of Provisions

Section 4481(a) of the Code imposes a tax on the use of any highway motor vehicle that (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 55,000 pounds. For taxable periods beginning after June 30, 1987, section 4481(b) of the Code provides that the heavy vehicle use tax imposed by section 4481(a) shall be paid by the person in whose name the highway motor vehicle is registered, or is required to be registered, under the law of the State or contiguous foreign country in which such vehicle is registered or required to be registered. Section 4483(f) of the Code provides that if the base for registration purposes of any highway motor vehicle is in a contiguous foreign country for any taxable period, the tax imposed by section 4481 for such period shall be 75 percent of the tax that would otherwise be imposed.

Prior to the Act, § 41.4481–1(a)(2) of the regulations provided that for taxable periods after June 30, 1985, any highway motor vehicle that is issued a base plate by a Canadian province under the International Registration Plan (IRP) or similar agreement and has a proportional registration under such agreement to satisfy the registration laws of any of the United States shall be exempt from the tax imposed by section 4481. Under the temporary regulations, this exemption is effective for taxable periods beginning after June 30, 1985, and before July 1, 1987. The temporary regulations further provide under § 41.4481–1(a)(2)(ii) that for taxable periods beginning after June 30, 1987, the tax imposed by section 4481 shall apply to any highway motor vehicle that has a base for registration purposes in a contiguous foreign country upon the first use of such vehicle on the public highways in the United States during such period.

Reduction in Tax for Foreign-based Vehicles

Section 41.4483–7T of the regulations provides that in the case of a highway motor vehicle that has a base for registration purposes in a contiguous foreign country for any taxable period, the tax imposed by section 4481 for such taxable period shall be 75 percent of the tax that would otherwise be imposed. A highway motor vehicle has a base for registration purposes in a contiguous foreign country in any taxable period in which such vehicle is registered under the laws of a contiguous foreign country and is not registered under the laws of any of the United States other than under a proration agreement (such as the International Registration Plan). Further, a highway motor vehicle is not considered to have a base for registration purposes in a contiguous foreign country if the vehicle is registered under the laws of any of the United States and such State is required to receive proof of payment of the tax imposed by section 4481 with respect to such vehicle as a condition for registration in that State.

Proof of Payment for Entry into the United States

Section 41.6001–3T(a) of the regulations generally provides that proof of payment of the heavy vehicle use tax must be presented with respect to any highway motor vehicle subject to the tax imposed by section 4481 that has a base for registration purposes in a contiguous foreign country, upon entry of such vehicle into the United States. Section 41.6001–3T(b) provides generally that if proof of payment of the heavy vehicle use tax is not presented with respect to any highway motor vehicle with a base for registration purposes in a contiguous foreign country upon attempting to enter such vehicle into the United States, such vehicle may be denied entry into the Unites States.

Section 41.6001–3T(a)(2) of the regulations provides that no proof of payment is required to be presented upon entry of a highway motor vehicle into the United States if, as of the date of such entry, the period of time for filing the heavy vehicle use tax return with respect to such vehicle for the taxable period that includes the date of such entry has not expired. Section 41.6001–3T(a)(2) of the regulations further provides that, under this exception to the proof of payment requirement, a written declaration must be presented upon entry into the United States stating that, as of the date of such entry, the period for filing the heavy vehicle use tax return for such vehicle has not expired. Such declaration must include: (1) The name, address, and taxpayer identification number of the person liable for the heavy vehicle use tax imposed on such vehicle; (2) the vehicle identification number of the vehicle; (3) a statement of the date such vehicle was first used on the public highways in the United States during the taxable period; and (4) an acknowledgement by the person liable for the tax that the misuse of the declaration will subject such person to fine or imprisonment. The declaration must be signed by the person liable for the tax imposed on such vehicle and must be retained as part of such person's records.

Section 41.6001–3T(c)(1) of the regulations provides that proof of payment of the heavy vehicle use tax shall consist of a receipted Schedule 1 (Form 2290) that is returned by the Internal Revenue Service to a taxpayer

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that files a Form 2290 and pays the amount of tax due with such return. A photocopy of such receipted Schedule 1 shall also serve as proof of payment. In addition, a receipted Schedule 1 (or photocopy thereof) shall serve as proof of suspension of the heavy vehicle use tax under § 41.4483–3 for vehicles for which tax has been suspended. The regulations further provide that the vehicle identification number of any vehicle for which a return is being filed, whether tax is being paid or suspended with respect to such vehicle, must appear on the Schedule 1 (or an attached page) in order for the Schedule 1 to be valid proof of payment for such vehicle. Section 41.6001–3T(c)(2) of the regulations provides that a photocopy of the Form 2290 (with Schedule 1 attached) that is filed with the Internal Revenue Service for a vehicle being entered into the United States with sufficient documentation of payment of the tax due at the time the Form 2290 is filed (such as a photocopy of both sides of a cancelled check) shall be accepted as a substitute proof of payment. The regulations also provide that no documentation of payment of the tax is required with the substitute proof of payment if at the time the Form 2290 is filed the tax is suspended with respect to the vehicle entering the United States.

Special Analysis

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Paperwork Reduction Act

The collection of information requirements contained in these temporary regulations have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. These regulations have been approved by OMB.

Drafting Information

The principal author of these regulations is William A. Jackson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

List of Subjects

27 CFR Part 41

Excise taxes, Motor vehicles.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 41 and 602 are amended as follows:

PART 41—[AMENDED]

Paragraph 1. The authority for Part 41 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 41.6001–3T also issued under 101 Stat. 260.

Par. 2. Section 41.4481–1 is amended by substituting "1993" for "1988" every place it appears and by revising paragraph (a)(2) to read as set forth below:

§ 41.4481–1 Imposition of tax.

(a) *In general.* * * *

(2)(i) For taxable periods beginning after June 30, 1985, and before July 1, 1987, any highway motor vehicle that is issued a base plate by a Canadian province under the International Registration Plan (IRP) or similar agreement and has a proportional registration under such agreement to satisfy the registration laws of any of the United States shall be exempt from the tax imposed by section 4481(a).

(ii) For each taxable period beginning after June 30, 1987, the tax imposed by section 4481(a) shall apply to any highway motor vehicle that has a base for registration purposes in a contiguous foreign country upon the first use of such vehicle on the public highways in the United States during such period. See § 41.4483–7T relating to a reduction of the tax in the case of a highway motor vehicle that has a base for registration purposes in a contiguous foreign country.

* * * * *

Par. 3. Section 41.4481–3 is amended by revising the first sentence of paragraph (a) (consisting of (a) introductory text, and (a) (1) and (2)) to read as set forth below:

§ 41.4481–3 Registration.

(a) For purposes of the regulations in this part, the term "registered" when used in reference to a highway motor vehicle means—

(1) Registered under the law of any State or Territory of the United States, the District of Columbia, or contiguous foreign country, or

(2) Required to be registered under the law of any State or Territory of the United States or contiguous foreign country in which such highway motor vehicle is operated or situated or, in case the vehicle is operated or situated in the District of Columbia, under the law of the District of Columbia.

* * * * *

Par. 4. Section 41.4482 (c)–1 is amended by substituting "1993" for "1988" every place it appears in paragraph (b).

Par. 5. Section 41.4483–5 is amended by substituting "1993" for "1988" where it appears.

Par. 6. A new § 41.4483–7T is added immediately after § 41.4483–6 to read as follows:

§ 41.4483–7T Reduction in tax for vehicles registered in a contiguous foreign country (temporary).

(a) *In general.* In the case of a highway motor vehicle that, for any taxable period, has a base for registration purposes in a contiguous foreign country, the tax imposed by section 4481 for such taxable period shall be 75 percent of the tax that would be imposed but for this section. A highway motor vehicle has a base for registration purposes in a contiguous foreign country in any taxable period in which such vehicle is registered under the laws of a contiguous foreign country and such vehicle is not registered under the laws of any of the United States other than proportionately registered under a proration agreement (such as the International Registration Plan). A highway motor vehicle is not considered to have a base for registration purposes in a contiguous foreign country in any taxable period in which such vehicle is registered under the laws of any of the United States and such State is required under § 41.6001–2(b) to receive proof of payment of the tax imposed by section 4481(a) with respect to such highway motor vehicle. For purposes of this paragraph (a), a highway motor vehicle that is allowed to operate in a State under a reciprocity agreement is not considered to be registered under the laws of that State.

(b) *Contiguous foreign country.* The term "contiguous foreign country" means Canada or Mexico.

Par. 7. A new § 41.6001–3T is added immediately after § 41.6001–2 to read as follows:

§ 41.6001–3T Proof of payment for entry into the United States (temporary).

(a) *In general.* (1) Except as otherwise provided in paragraph (a)(2) of this section, proof of payment of the tax imposed by section 4481(a) must be presented to United States Customs officials with respect to any highway motor vehicle subject to the tax imposed by section 4481(a) that has a base for registration purposes in a contiguous foreign country upon entry of such vehicle into the United States during any taxable period to which this section applies. Such proof of payment must relate to tax paid (or suspended under § 41.4483–3) for the taxable period that includes the date of entry into the United States. See paragraph (c) of this section for the definition of the term "proof of payment."

(2) No proof of payment is required upon entry of a highway motor vehicle described in paragraph (a)(1) of this section into the United States if, as of the date of such entry, the period of time for filing a return of the tax imposed on such vehicle by section 4481(a) for the taxable period that includes the date of such entry has not expired and a written declaration is presented to United States Customs officials. Such declaration must state that, as of the date of such entry, the period of time for filing a return of the tax imposed on such vehicle by section 4481(a) for the taxable period that includes the date of such entry has not expired. The written declaration must include (i) the name, address, and taxpayer identification number of the person liable under § 41.4481–2 for the tax imposed on such vehicle; (ii) the vehicle identification number of such vehicle; (iii) the date on which such vehicle was first used on the public highways in the United States during the taxable period (or a statement that the current entry is the first use on the public highways in the United States during the taxable period); (iv) an acknowledgment by the person liable for the tax imposed on such vehicle that the willful use of the declaration to evade or defeat the tax otherwise applicable under section 4481(a) will subject such person to a fine or imprisonment or both; and (v) the signature of the person liable for the tax imposed on such vehicle. A copy of the written declaration shall be retained in the records of the person liable for the tax imposed on such vehicle under the rules of § 41.6001–1. See § 41.6071(a)–1 for rules regarding the time for filing a return of the tax imposed by section 4481(a).

(b) *Failure to provide proof of payment.* If, upon attempting to enter the United States, the operator of a highway motor vehicle described in paragraph (a) of this section is unable to present proof of payment of the tax imposed by section 4481(a), or documentation described in paragraph (a)(2) of this section, with respect to such vehicle, then such vehicle may be denied entry into the United States.

(c) *Proof of payment*—(1) *In general.* For purposes of this section, the proof of payment required in paragraph (a) of this section shall consist of a receipted Schedule 1 (Form 2290) that is returned by the Internal Revenue Service to a taxpayer that files a return of tax under section 4481(a) and pays the amount of tax (or installment thereof) due with such return. A photocopy of such receipted Schedule 1 shall also serve as proof of payment. Such proof of payment shall also serve as proof or suspension of the tax under § 41.4483–3 for the number of vehicles entered in that part of the Schedule 1 designated for vehicles for which tax has been suspended. The vehicle identification number of any vehicle for which a return is being filed, whether tax is being paid with respect to such vehicle or tax is suspended on such vehicle, must appear on the Schedule 1 (or an attached page) in order for the Schedule 1 to be a valid proof of payment for such vehicle.

(2) *Acceptable substitute for receipted Schedule 1.* For purposes of this section, a photocopy of the Form 2290 (with the Schedule 1 attached) that is filed with the Internal Revenue Service for a vehicle being entered into the United States with sufficient documentation of payment of tax due at the time the Form 2290 is filed (such as a photocopy of both sides of a cancelled check) shall be accepted as proof of payment. No documentation of payment of tax is required with the substitute proof of payment if at the time the Form 2290 is filed the tax imposed by section 4481(a) is suspended under § 41.4483–3 with respect to the vehicle entering the United States. This substitute proof of payment may be used to enter a vehicle into the United States when, for example, the receipted Schedule 1 has been lost, or if the taxpayer that filed a Form 2290 with respect to such vehicle has not received a receipted Schedule 1 at the time such vehicle enters the United States.

(d) *Taxable periods to which this section applies.* This section shall apply to any taxable period beginning on or after July 1, 1987.

Par. 8. Section 41.6091–1 is amended as follows:

a. The second sentence of paragraph (a) is revised to read as set forth below.

b. The second sentence of paragraph (b) is revised to read as set forth below.

§ 41.6091–1 Place for filing returns.

(a) * * * If the person has no principal place of business or legal residence in any internal revenue district, the return shall be filed with the Internal Revenue Service Center, Philadelphia, PA.

(b) * * * If a corporation has no principal place of business or principal office or agency in any internal revenue district, the return shall be filed with the Internal Revenue Service Center, Philadelphia, PA.

PART 602—[AMENDED]

Par. 9. The authority for 26 CFR Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 602.101(c) is amended by inserting the following item in the appropriate place in the table:

§ 41.6001–3	1545–0143

* * * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: August 6, 1987.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87–20455 Filed 9–3–87; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 161

[CGD 85–076]

Berwick Bay Vessel Traffic Service

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations which apply to towing operations during periods of high water in the area covered by Berwick Bay Vessel Traffic Service (VTS) at Morgan City, Louisiana. A review of recent casualties within the VTS area indicated the need to tailor the regulations to better address the nature of the problems actually experienced. In addition, the present regulations have proven to be complex and difficult to apply. These amendments focus on actual needs and deficiencies, eliminate unreasonable burdens resulting from the present system of determining required horsepower for towboats, and simplify

implementation of the high water limitations.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Powers, Office of Navigation, (202) 267–0415.

SUPPLEMENTARY INFORMATION: Berwick Bay VTS (VTS) regulations were originally published on January 5, 1984, to replace a Coast Guard local order outlining procedures to be followed when transiting the VTS. Since publication, meetings between industry representatives and the Coast Guard and the conduct of a study of casualties in the Berwick Bay area highlighted the need to make the regulations more accurately reflect actual operating conditions on the waterway. Changes recommended were published in a Notice of Proposed Rulemaking (NPRM) on January 9, 1987 (52 FR 806) with a sixty day comment period. Two letters were received in response to the NPRM.

Drafting information

The principal persons involved in drafting this final rule are Mr. Michael J. Powers, Project Manager, LCDR Richard E. Ford, PSSTA Houston, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Discussion of Comments

Both of the letters received concurred with the intent of the changes, one specifically saying so and the other not voicing opposition to the substance of the changes. One comment recommended removing the last sentence in the note to § 161.767, which recommends, rather than requires, barges to have draft and beam variations not exceeding 10% of the draft of the barge drawing the most water and 10% of the beam of the widest barge. This recommendation, it is contended, may be construed by vessel operators to have the force of a regulation. The Coast Guard concurs with this recommendation. Therefore, this sentence is removed.

Two comments made recommendations as to the placement of mooring buoys for the fleeting of barges. The Coast Guard is aware of the interest in the placement of mooring buoys in the Berwick Bay area. These comments will be considered should barge fleeting areas be established in the Berwick Bay area.

The Coast Guard is correcting the description, in § 161.768, of the two highway bridges crossing Berwick Bay. This change will reflect that there are two bridges, one is the U.S. Highway 90 bridge, while the other is the LA Route 187 bridge.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A Regulatory Impact Analysis under Executive Order 12291 is not required. The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary.

The amendments will affect only towing operations during periods when the High Water Towing Limitations are in effect. These amendments, as do the existing regulations, restrict length, horsepower, and configuration of vessels with tows and may require certain operations to break up tows or add power. However, because the amendments will replace the existing fixed horsepower requirements based on a range of lengths (e.g., 1,200 horsepower for a 400' to 600' range) with a direct horsepower to length requirement, some operations will be permitted to operate with more barges or less available horsepower than permitted under the existing regulations. In other words, depending on the circumstances of the particular operation, the changes will increase the operational costs for some operations but could reduce them for others. Because of the numerous variables from one operation to the next, the overall extent of these benefits and burdens is not precisely quantifiable. No information was received in response to the Coast Guard's specific solicitation for comments on this point. However, an estimate of the savings can be made from the expected decrease in the number of tripping operations that will occur when these changes are implemented.

"Tripping" is the operation whereby a tow too long for the available horsepower of the towing vessel must be broken up into two or more segments for transiting the bridges, and then reassembled. It is known that tripping through the VTS Area can take up to twelve hours and cost an additional $800 to $3,000 in manhours, fuel, and revisions to schedules. If the average tripping cost is $1,900 per trip (midway between $800 and $3,000) and this figure is multiplied by 60 (the estimated number of operations per year that require tripping under the existing regulations but would not require tripping under these amendments), the total savings could be approximately $114,000 per year. However, as mentioned earlier, some operations not requiring tripping under the existing regulations might require it under this final rule.

In any event, the real benefits of this rulemaking are to make the limitations more fair and less arbitrary and to make them easier to understand and apply in the field. Savings which one operator may incur on a particular operation would be, under the broad scheme, only a secondary benefit.

Also, because these amendments are keyed to the results of the Coast Guard study based on actual usage of the VTS Area, these amendments should, in some instances, improve safety but, in all cases, maintain at least the present level of safety without unnecessary "overkill".

No comments were received to the regulatory evaluation in the NPRM.

Regulatory Flexibility Analysis

As discussed above in the final Regulatory Evaluation, these amendments should not have a significant economic effect. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605 (b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Reporting and Recordkeeping Requirements

This rule contains no reporting or recordkeeping requirements.

Environmental Impact

This action has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation, in accordance with Section 2.B.2 (1) of Commandant Instruction (COMDTINST) M16475.1B.

List of Subjects in 33 CFR Part 161

Hazardous materials transportation, Navigation (water), Vessels.

For reasons set forth in the preamble, Title 33, Part 161 of the Code of Federal Regulations is amended as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

1. The authority citation for Part 161 is revised to read as follows and all other authority citations are removed:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. By revising in the table of contents for Part 161, the entries under Berwick Bay Vessel Traffic Service, High Water Towing Limitations, to read as follows:

* * * * *

Berwick Bay Vessel Traffic Service

* * * * *

High Water Towing Limitations

161.761 Applicability.
161.762 Precautionary notices.
161.764 When limitations are in effect.
161.765 Notice of when limitations are in effect.
161.767 Operational limitations.
161.768 Horsepower limitations.

* * * * *

3. By removing the term "Integrated tow" from § 161.703 and by adding in alphabetical order a definition for the term "length of tow" to read as follows:

§ 161.703 Definitions.

* * * * *

"Length of tow" means the combined length in feet of all barges in the tow, excluding the length of hawsers and the length of the tug.

* * * * *

4. By revising § 161.761 to read as follows:

§ 161.761 Applicability.

The high water towing limitations (§§ 161.761 through 161.768) apply to the operation of vessels with tows intending to transit under the lift span of the SPRR bridge or through the navigational openings of either the U.S. Highway 90 bridge or the LA Route 187 bridge, both to the north of the SPRR bridge, when those limitations are in effect.

5. By revising §§ 161.767 and 161.768 to read as follows:

§ 161.767 Operational limitations.

(a) Towing on a hawser in either direction is prohibited, with the exception of one self-propelled vessel towing one other vessel upbound.

(b) Barges and towing vessels must be arranged in tandem, with the exception of one vessel towing one other vessel alongside.

(c) A towing vessel or vessels and tow must not exceed an overall length of 1,180 feet.

(d) Tows with a box end in the lead must not exceed two barges in length.

Note.—The variation in draft and beam of the barges in a multibarge tow should be minimized in order to avoid unnecessary strain on the coupling wires.

§ 161.768 Horsepower limitations.

(a) All tows carrying a cargo of particular hazard must have available horsepower of at least 600 or three times the length of tow, whichever is greater.

(b) All tows not carrying a cargo of particular hazard must have available horsepower of at least the following:

Direction of transit	Available horsepower for daytime transit	Available horsepower for nighttime transit
Upbound	400 or three times (length of tow minus 300 ft.), whichever is greater	600 or three times (length of tow minus 200 ft.), whichever is greater
Downbound	600 or three times (length of tow minus 200 ft.), whichever is greater	600 or three times length of tow, whichever is greater.

"Daytime" means sunrise to sunset. "Nighttime" means sunset to sunrise.

(c) A 5% variance from the available horsepower required under paragraphs (a) and (b) of this section is permitted.

(d) Tows with 3,000 or more available horsepower need not comply with paragraphs (a) and (b) of this section.

§ 161.769 [Removed]

6. By removing § 161.769, *Northbound limitations.*

161.770 [Removed]

7. By removing § 161.770, *Extreme high water limitations.*

Dated: August 6, 1987.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 87-20333 Filed 9-3-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Parts 166 and 167

[CGD 84-004]

Shipping Safety Fairways; Approach to New York

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule establishes two new parallel fairways to connect the Eastern approach off Nantucket and the Eastern approach off Ambrose lanes of the traffic separation scheme (TSS) Off New York. The intended effect of this rule is to enhance navigational safety by providing a corridor free from fixed offshore structures. This action is necessary to allow vessels to navigate safely in the approach to New York. This rule will repromulgate the TSS Off New York under the Ports and Waterways Safety Act (PWSA) and incorporate it into Part 167 Title 33 Code of Federal Regulations. This action is administrative in nature and will make the regulations in 33 CFR Part 167 for PWSA established TSSs applicable to the Off New York TSS (which was originally established prior to the PWSA). This final rule will also renumber the one TSS in 33 CFR Part 167. This action is administrative in nature and will allow TSSs to be numbered according to their geographic area.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Lieutenant (j.g.) Daphne Reese, Project Manager, Office of Navigation (G-NSS-2), Room 1606, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-0365.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) concerning the shipping safety fairway in this final rule was published on December 8, 1986 (51 FR 44072). Interested parties were given until February 6, 1987, to submit comments. A public hearing was not held.

The Coast Guard is making an administrative change to 33 CFR Part 167 in this final rule which will renumber the Galveston Bay approach TSS and precautionary areas. This change will place all future TSSs in sequence according to their corresponding Coast Guard District. As a result, the section numbers for the Off New York TSS and precautionary areas published in this final rule are different from the section numbers given in the NPRM of December 8, 1986.

Drafting Information

The principal persons involved in drafting this rulemaking are: Lieutenant (j.g.) Daphne Reese, Project Manager, and Lieutenant Sandra Sylvester, Project Attorney, Office of Chief Counsel.

Background

The Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223) authorizes the Coast Guard to designate shipping safety fairways to allow vessels an area free of fixed structures for safe access to U.S. ports. The regulation governing shipping safety fairways (33 CFR Part 166) provide that fixed offshore structures, temporary or permanent, are not permitted within designated safety fairways, and are only permitted within fairway anchorages if the structures are two miles apart. The shipping safety fairways exist to provide an obstruction

free corridor for navigation during development and production of offshore resources. The Coast Guard also has the authority, in accordance with the PWSA, to modify or relocate existing safety fairways to improve navigation safety or to accommodate offshore mineral exploitation and exploration.

The authority to create a fairway may be exercised by the Coast Guard only after a study of potential traffic density and use conflicts has been conducted to determine the need for designated safe access routes for vessels proceeding to and from U.S. ports. One such conflict can occur when vessels navigate in an area which is subject to offshore development. Shipping safety fairways can interfere with the direct exploration for and production of oil and gas on the Outer Continental Shelf (OCS). In conducting a port access route study, the Coast Guard attempts to recognize and minimize each identifiable cost impact as balanced against the needs of save navigation. The results of a port access route study can cause restrictions in the manner in which specific offshore areas are leased after the date of the study. The study which identified the need for this rulemaking was initiated by a notice in the **Federal Register** on February 9, 1984 (49 CFR Part 5017), and corrected on February 22, 1984 (49 FR 6593).

The Third Coast Guard District performed the study after the Minerals Management Service (MMS) scheduled Outer Continental Shelf (OCS) lease sale 82 for May 9, 1984. The sale included blocks in the area between the existing portions of the Off New York TSS and posed a potentially significant impact on navigation.

Study Results were published in the **Federal Register** on December 13, 1985, (50 FR 50925). The study recommended the TSS Off New York remain as presently established; the lanes of the two sections of the TSS Off New York be connected by two new parallel shipping safety fairways; and the TSS Off New York be repromulgated and published in Part 167 of Title 33, Code of Federal Regulations.

This rulemaking establishes a new shipping safety fairway in the approach to New York. The fairway connects the Eastern approach, off Nantucket segment, of the Off New York TSS to the Eastern approach, off Ambrose segment, of the TSS. The fairway design consists of two parallel fairways, each approximately two-miles wide, except over the final five miles at each end where they gradually expand to connect with the five-nautical-mile-wide lanes of the existing TSS, creating a funneling effect. The fairway runs generally east-west for approximately 130 miles and is located approximately 10 miles offshore (at its closest point). The fairway totally or partially includes the following blocks as described by the MMS:

Mid-Atlantic	No of blocks
NK 18-12:	
418-419	2
424-437	14
462-480	19
506-509	4
550-551	2
558-570	13
594-614	21
638-643	6
NK 19-10:	
406-423	18
537-555	19
581-599	19
Total	137

North Atlantic	No of blocks
NK 19-10:	
392-393	2
424-437	14
479-481	3
524-525	2
556-569	14
600-613	14
Total	49

Total Atlantic Blocks Affected = 186

The PWSA stipulates future development of these blocks be in accordance with fairway restrictions based on the announcement of the study for this rulemaking. This new fairway will provide a corridor free from fixed structures for vessel traffic in the approach to New York.

The MMS received only one bid on lease sale 82, which was returned unopened. Lease sale 82 has been cancelled. The MMS has postponed leasing in the North Atlantic until lease sale 96, scheduled for November, 1987. At this time, it is impossible to determine what resources, if any, would be inaccessible as a result of this rulemaking.

The original New York TSS was established in May, 1967 and was approved by the International Maritime Organization (IMO) prior to the promulgation of the PWSA. IMO approved TSSs and precautionary areas established after the PWSA are contained in 33 CFR Part 167. For consistency among TSSs, New York TSS is incorporated into 33 CFR Part 167 by this rulemaking under the authority of the PWSA. Eventually, all other pre-PWSA TSSs will be incorporated into 33 CFR Part 167 by rulemaking.

This rulemaking also renumbers the Galveston approach TSS in 33 CFR Part 167 from 33 CFR 167.100 to 33 CFR 167.350. This action is administrative in nature and will allow all TSSs in Part 167 to have section numbers according to geographic area. The section numbers given in this final rule for the Off New York TSS reflect this administrative change in numbering.

Discussion of Comments

One comment was received in response to the NPRM. The comment was in favor of the rulemaking and was from a maritime trade association. The comment supported the rulemaking as published because it will "increase navigational safety by providing a corridor free from fixed offshore structures and have the least impact on development of the OCS." Based on a review of the need for our proposal and the comment to the NPRM, the Coast Guard believes the shipping safety fairway in the approach to New York is necessary.

Regulatory Evaluation

This rulemaking will not have adverse environmental impact. To the contrary, the risk of environmental damage will decrease because vessels will have an established access route where structures will not be permitted, allowing for safer maritime navigation. While there is potential energy impact from this rulemaking, none has been identified or can be determined from the available information.

The Coast Guard is directed by the PWSA to anticipate development on the OCS and to reconcile the potential conflict with navigation by establishing routing measures in frequently used corridors. The fairway was designed to have the least adverse impact upon future blocks and leaseholders. Although shipping safety fairways may interfere with direct exploration and production of oil and gas on the OCS, there is no indication that the establishment of this fairway will interfere with OCS development. The precise location of resources in the fairways is unknown; the outcome of future lease sales on blocks within the fairway is uncertain; and indirect access to resources is technically feasible through most of the two-mile-wide fairway.

When there is evidence fixed structures must be placed in an area designated as a fairway to gain access to significant quantities of oil or gas, a request for an adjustment to a fairway will be given the appropriate consideration by the Coast Guard. The request will be handled in accordance with the PWSA and rulemaking procedures to determine whether navigation safety will be jeopardized by a modification of the fairway. In most cases a fairway modification will

require a PWSA port access study before rulemaking can be commenced.

This shipping safety fairway will overlay traditional traffic routes and will not alter applicable navigation rules or cause interference with fishing activities.

These regulations are considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). This designation will contribute to navigation safety without significantly interfering with development of the OCS. The economic impact of this regulation has been found to be minimal and further evaluation is unnecessary. Since the impact of this rulemaking has been found to be minimal, the Coast Guard certifies it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 166

Anchorage grounds, Marine safety, Navigation (water), Waterways, Shipping safety fairways.

33 CFR Part 167

Navigation (water), Vessel, Traffic Separation Scheme.

In consideration of the foregoing, Parts 166 and 167 of Title 33, Code of Federal Regulations are amended as follows:

PART 166—SHIPPING SAFETY FAIRWAYS

1. The authority citation for Part 166 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46(n)(4).

2. Section 166.500 is added to read as follows:

§ 166.500 Areas along the Atlantic Coast.

(a) *Purpose.* Fairways, as described in this section are established to control the erection of structures therein to provide safe vessel routes along the Atlantic Coast.

(b) *Designated areas.*—(1) *Off New York Shipping Safety Fairway.*

(i) Ambrose to Nantucket Safety Fairway. The area enclosed by rhumb lines, [North American Datum of 1927 (NAD–27)], joining points at:

Longitude	*Longitude*
40°32.20′N	73°04.57′W
40°30.58′N	72°58.25′W
40°34.07′N	70°19.23′W
40°35.37′N	70°14.09′W
40°30.37′N	70°14.00′W
40°32.07′N	70°19.19′W
40°28.58′N	72°58.25′W
40°27.20′N	73°04.57′W

(ii) Nantucket to Ambrose Safety Fairway. The area enclosed by rhumb lines, NAD–27, joining points at:

Latitude	*Longitude*
40°24.20′N	73°04.58′W
40°22.58′N	72°58.26′W
40°26.07′N	70°19.09′W
40°27.37′N	70°13.46′W
40°22.37′N	70°13.36′W
40°24.07′N	70°19.05′W
40°20.58′N	72°58.26′W
40°19.20′N	73°04.58′W

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

3. The authority citation for Part 167 is amended to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46(n).

§ 167.100 [Redesignated as § 167.350].

4. In Subpart B, § 167.100 is redesignated as § 167.350 and an undesignated heading is added preceeding § 167.350 to read as follows:

Atlantic Gulf Coast

* * * * *

5. In Part 167, the heading of Subpart B is revised to read as follows:

Subpart B—Description of Traffic Separation Schemes and Precautionary Areas. (All geographic positions are based on North American Datum of 1927)

6. In Subpart B, an undesignated heading and §§ 167.150 to 167.155 are added to read as follows:

Atlantic East Coast

§ 167.150 Off New York Traffic Separation Scheme and Precautionary Areas.

The specific areas in the Off New York Traffic Separation Scheme and Precautionary Areas are described in §§ 167.151, 167.152, 167.153, 167.154, and 167.155 of this chapter.

§ 167.151 Precautionary areas.

(a) A circular precautionary area with a radius of seven miles is established centered upon Ambrose Light in geographical position 40°27.50′N, 73°49.90′W.

(b) A precautionary area is established between the traffic separation scheme "Eastern Approach, off Nantucket" and the traffic separation scheme "In the Approach to Boston, Massacnusetts." (1) The precautionary area is bounded to the east by a circle of radius 15.5 miles, centered upon geographical position 40°35.00′N, 69°00.00′W, and is intersected by the traffic separation schemes "In the Approach to Boston, Massachusetts" and "Off New York" at the following geographic positions:

Latitude	*Longitude*
40°50.33′N	68°57.00′W
40°23.75′N	69°14.63′W

(2) The precautionary area is bounded to the west by a line connecting the two traffic separation schemes between the following geographical positions:

Latitude	*Longitude*
40°36.75′N	68°15.16′W
40°48.00′N	69°03.33′W

§ 167.152 Eastern approach, off Nantucket.

(a) A separation zone is established bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
40°28.75′N	69°14.83′W
40°27.62′N	70°13.77′W
40°30.62′N	70°14.00′W
40°31.75′N	69°14.97′W

(b) A traffic lane for westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
40°36.75′N	69°15.17′W
40°35.62′N	70°14.15′W

(c) A traffic lane for eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
40°22.62′N	70°13.60′W
40°23.75′N	69°14.63′W

§ 167.153 Eastern approach, off Ambrose Light.

(a) A separation zone is established bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
40°24.33′ N.	73°04.97′ W.
40°24.20′ N.	73°11.50′ W.
40°26.00′ N.	73°40.93′ W.
40°27.00′ N.	73°40.75′ W.
40°27.20′ N.	73°11.50′ W.
40°27.33′ N.	73°04.95′ W.

(b) A traffic lane for westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
40°32.33′ N.	73°04.95′ W.
40°32.20′ N.	73°11.50′ W.
40°28.00′ N.	73°40.73′ W.

(c) A traffic lane for eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
40°25.05′ N.	73°41.32′ W.
40°19.20′ N.	73°11.50′ W.
40°19.33′ N.	73°04.97′ W.

§ 167.154 South-eastern approach.

(a) A separation zone is established bounded by a line connecting the following geographical positions:

Latitude	Longitude
40°03.10' N.	73°17.93' W.
40°06.50' N.	73°22.73' W.
40°22.45' N.	73°43.55' W.
40°23.20' N.	73°42.70' W.
40°24.20' N.	73°04.58' W.
40°08.72' N.	73°20.10' W.

(b) A traffic lane for north-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
40°08.98' N.	73°10.87' W.
40°12.42' N.	73°15.67' W.
40°24.02' N.	73°41.97' W.

(c) A traffic lane for south-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
40°21.82' N.	73°44.55' W.
40°02.80' N.	73°27.15' W.
39°59.43' N.	73°22.35' W.

§ 167.155 Southern approach.

(a) A separation zone is established bounded by a line connecting the following geographical positions:

Latitude	Longitude
39°45.70' N.	73°48.00' W.
40°20.63' N.	73°48.33' W.
40°20.87' N.	73°47.07' W.
39°45.70' N.	73°44.00' W.

(b) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
39°45.70' N.	73°37.70' W.
40°21.25' N.	73°45.85' W.

(c) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
40°20.53' N.	73°49.65' W.
39°45.70' N.	73°54.40' W.

Note.—Use of LORAN C enables masters of appropriately equipped vessels to be informed highly accurately and continuously about the vessel's position in the area covered by this scheme.

7. In Part 167, the table of contents for Subpart B is revised to read as follows:

Subpart B—Description of Traffic Separation Schemes and Precautionary Areas. (All geographic positions are based on North American Datum of 1927).

Atlantic Coast East

Sec.
167.150 Off New York Traffic Separation Scheme and Precautionary Areas.
167.151 Precautionary areas.
167.152 Eastern approach, off Nantucket.
167.153 Eastern approach, off Ambrose Light.
167.154 South-eastern approach.
167.155 Southern approach.

Atlantic Gulf Coast

167.350 Galveston Bay Approach Traffic Separation Scheme and Precautionary Areas.

Dated: July 31, 1987.

A.B. Smith,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation.

[FR Doc. 87-20334 Filed 9-3-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3250-3]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: Today's final rulemaking pertains to rules developed by Indiana to satisfy the Clean Air Act's (ACT) Reasonably Available Control Technology (RACT) requirements for Stage I Gasoline Dispensing Regulations. USEPA's final approval of this action is based upon a revision which was submitted by the State to satisfy the requirements of Part D of the ACT and USEPA's October 27, 1982 (47 FR 47554) and February 10, 1986 (51 FR 4912), conditional approval of Indiana's plan.

EFFECTIVE DATE: This final rulemaking becomes effective on October 5, 1987.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206-6015

A copy of today's revision to the Indiana SIP is also available for inspection at:

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886-6031.

SUPPLEMENTARY INFORMATION:

Part I—Background

Under section 107 of the Clean Air Act, USEPA has designated certain areas in Indiana as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. See 43 FR 8962 (March 3, 1978), and 43 FR 45993 (October 5, 1978). Part D of the ACT requires the State to revise its SIP to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the ozone NAAQS as expeditiously as practicable, but not later than December 31, 1982 (in certain cases by December 31, 1987). The requirements for an approvable SIP are described in a General Preamble for Part D Rulemaking published on April 4, 1979 (44 FR 20372), and at 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

An adequate SIP for ozone is one that includes sufficient control of VOC emissions for stationary and mobile sources to provide for attainment of the ozone standard. For stationary sources, the plan must include, at a minimum, legally enforceable requirements reflecting the application of RACT for those sources for which USEPA has published Control Technique Guidelines (CTGs).[1] In general, where the State regulations are not supported by the information in the CTGs, the State must provide a demonstration that its regulations represent RACT or amend the regulations to be consistent with the information in the CTGs.

In response to the requirements of Part D of the Act, the State of Indiana revised its SIP to require control of VOC emissions from the stationary industrial sources addressed in USEPA's Group I CTGs. On February 11, 1980, the State submitted to USEPA a revision to the ozone portion of its SIP for the Group I sources of VOC emissions. USEPA took final action to conditionally approve the Group I sources' regulations on October 27, 1982 (47 FR 47552).[2]

[1] CTGs published before January 1, 1978, are referred to as "Group I CTGs" and pertain to "Group I Sources", and CTGs published between January 1, 1978, and January 1, 1979, are "Group II CTGs" and pertain to "Group II Sources".

[2] For more detail on conditional approvals, see 44 FR 38583 (July 2, 1979), and 44 FR 38583 (November 23, 1979).

On November 25, 1980, the State submitted to USEPA as a revision to its ozone SIP, amendments to its VOC regulation, now codified as 325 IAC Article 8,[3] which controlled VOC emissions from the Group II sources. USEPA took final action to conditionally approve this revision on January 18, 1983 (48 FR 2124). Both of the conditional approvals were based upon a commitment from the State to correct deficiencies in the regulation.

In response to these conditional approvals, on November 7, 1984, Indiana promulgated revised VOC regulations 325 IAC 8–1.1, 8–2, 8–3, 8–4, and 8–5. The State submitted these revisions to USEPA on July 3, 1984, and January 30, 1985, to satisfy certain conditions of USEPA'a approval. In addition, the applicability of the regulations was extended to cover St. Joseph and Elkhart Counties. On February 10, 1986 (51 FR 4912), USEPA approved Indiana's revised VOC RACT I and II regulations and the St. Joseph and Elkhart Counties RACT regulations, leaving two RACT deficiencies for future rulemaking. Today's final rulemaking concerns one of the remaining outstanding conditional approval items, which pertain to Stage I vapor control recovery systems at gasoline dispensing facilities. This condition was set forth in the October 27, 1985, **Federal Register** and was later cited in the February 10, 1986, **Federal Register**. This condition was codified at 40 CFR 52.777(c)(1)(i) and reads as follows:

(c)(1) The plan for stationary source volatile organic compound control must contain the following:

(i) For regulation 325 IAC 8–4, Petroleum Sources, the State must conduct a study to demonstrate that the 20,000 gallons per months [SIC] throughput exemption meets RACT requirements and submit the results to EPA within 6 months of the effective date of final rulemaking on Group I CTG source categories. If the demonstrated emissions resulting from the State's exemption are not essentially equivalent to those resulting from the RACT requirements, then the State must submit to EPA a rule which requires control of emissions from storage tanks at gasoline dispensing facilities with either 10,000 gallons per month [SIC] or more throughput or 2,000 gallons capacity.

[3] On October 6, 1980, the State resubmitted 1980 APC 15, recodified as 325 IAC Article 8. USEPA approved the State's recodification, but not the underlying regulations, on July 16, 1982 (47 FR 30972). On January 18, 1983, when USEPA codified its conditional approval of the RACT II regulations, it additionally revised the codification of the conditions of its October 27, 1982, approval of the RACT I regulation, 1980 APC 15, to reflect Indiana's recodification of that regulation to 325 IAC Article 8

In response to this condition, Indiana chose to lower the throughput exemption to 10,000 gallons per month. The Indiana Air Polution Control Board (Board) submitted revised rules incorporating this change to USEPA on January 23, 1986. This submittal consisted of revised Rule 325 IAC 8–4–6 (requirements for gasoline dispensing facilities State I vapor recovery systems) and revised Rule 8–1.1–3, which includes subsections (f), (g), and (h) (compliance date extensions for gasoline dispensing facilities). On October 24, 1986, USEPA published a notice of proposed rulemaking proposing to approve the variance request for Indiana's Stage I Vapor Recovery Rules (51 FR 37758). During the 30-day public comment, USEPA received no comments. Today, USEPA is approving Indiana's revised rules. These revised rules are discussed in Part II of this notice.

Part II—Description of the Revisions and USEPA's Evaluation of Them

Rule 325 IAC 8–4–6, Gasoline Dispensing Facilities was amended to reflect the minimum throughput of 10,000 gallons per month for gasoline dispensing facilities that would be subject to the RACT regulations. The amendment of this rule changes it such that it conforms with USEPA's CTG and, thus, satisfies one of the requirements of the conditional approval of the Part D Plan for ozone in Indiana (51 FR 4913). USEPA is approving the revised Rule 325 IAC 8–4–6.

Rule 325 IAC 8–1.1–3 (f) and (g) were revised and new paragraph (h) was added to revise the compliance schedule portion of all rules such that a reasonable time was given for sources between 10,000 and 20,000 gallons per month to come into compliance, i.e., December 31, 1987. This rule has no effect on Indiana's new source review requirements.

USEPA is approving these subsections for the following reasons: (1) They require an expeditious compliance schedule for sources with throughputs from 10,000 gallons per month to 20,000 gallons per month; and (2) the compliance schedules are generally consistent with the amount of time that sources have been given to comply with VOC RACT I and RACT II regulations. USEPA is approving revised rules 325 IAC 8–4–6 and 325 IAC 8–1.1–3.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 17, 1987.

A. James Barnes,

Acting Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, Subpart P, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart P—Indiana

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.770 is amended by adding new paragraph (c)(63) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(63) On January 23, 1986, the State submitted revisions to its Stage I Gasoline Dispensing regulations, which replace those conditionally approved at (c)(33), (C)(35)—Codification only, and (C)(55).

(i) *Incorporation by reference.* (A) Letter of January 23, 1986 to EPA from the State of Indiana, and Title 325 Air Pollution Control Board Rule 325 IAC 8–4–6, Gasoline Dispensing Facilities, which was promulgated on January 14, 1986.

(B) Title 325 Air Pollution Control Board Rule 8–1.1–3, Compliance Schedules, subsections (f), (g), and (h), which was promulgated on January 14, 1986.

§ 52.777 [Amended]

3. Section 52.777 is amended by removing and reserving paragraph (c)(1)) (i).

[FR Doc. 87–19311 Filed 9–3–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A-4-FRL-3238-6; KY-033]

Approval and Promulgation of Implementation Plans; Kentucky; Stack Height Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving revisions to the Kentucky State Implementation Plan (SIP) submitted to EPA on July 15, 1986. Kentucky has revised its SIP to include regulations for good engineering practice stack height. These regulations are equivalent to EPA requirements promulgated at Part 51 of Chapter I, Title 40, of the Code of Federal Regulations.

DATE: This action will be effective on November 3, 1987, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Air Programs Branch, Region IV, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365

Kentucky Natural Resources and Environmental Protection Cabinet, 18 Reilly Road, Building #2, Fort Boone Plaza, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA, Region IV, Air Programs Branch at the above listed address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 8, 1985 (50 FR 27892), EPA published final regulations to implement section 123 of the Clean Air Act (CAA), which regulates the manner in which dispersion of pollutants from a source may be considered in setting emission limitations. Pursuant to these regulations and the Clean Air Act Amendments of 1977, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For review of emission limitations, states were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

State Submission

On July 15, 1986, the Kentucky Natural Resources and Environmental Protection Cabinet submitted State Implementation Plan revisions for good engineering practice stack height. A public hearing was held on these revisions on May 17, 1986. The regulations as proposed became effective on June 10, 1986.

These regulations (401 KAR 50:042) limit the amount of stack height or dispersion credit (dispersion techniques) a source can claim in the process of establishing its emission limitation. Dispersion techniques include the use of stack heights greater than 65 meters and use of other techniques to increase the dispersion of emissions rather than continously reducing emissions from a source. These regulations do not limit the physical stack height of any source, or the actual use of dispersion techniques at a source, nor do they require any specific stack height for any source. Instead, they set limits on the maximum credit for stack height and other dispersion techniques to be used in ambient air modeling for the purpose of setting an emission limitation and calculating the air quality impact of a source. Sources are modeled at their actual physical stack height unless that height exceeds their GEP stack height. The regulations apply to all stacks not in existence on December 31, 1970, and all dispersion techniques implemented since December 31, 1970. The regulation applies to both new and existing sources, thereby satisfying requirements for state new source review regulations at 40 CFR 51.164.

Kentucky has adopted definitions corresponding to EPA's GEP regulations. The State's regulations define a number of specific terms, including, "excessive concentration," "dispersion techniques," and "nearby." Kentucky's revisions bring their existing regulations into conformance with the federal stack height rule. The State will submit their final revised emission limits for those sources affected under the new stack height regulations at a later date.

Final Action

EPA has reviewed the submittal and found it to be in conformance with EPA's stack height requirements. Therefore, EPA is today approving Kentucky's regulations on stack height.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial issue and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 3, 1987.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the Kentucky State Implementation Plan was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: July 21, 1987.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart S—Kentucky

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.920 is amended by adding paragraph (c)(47) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(47) Stack height regulations were submitted to EPA on July 15, 1986, by the Kentucky Natural Resources and Environmental Protection Cabinet.

(i) *Incorporation by reference.* (A) Regulation 401 KAR 50:042, which became effective on June 10, 1986.

(ii) Other material—none.

[FR Doc. 87–16951 Filed 9–3–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–447; RM–5427 and 5757]

Radio Broadcasting Services; Newberry and Munising, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 250C2 to Newberry, Michigan, as that community's second FM service in response to a petition filed by Leon B. Van Dam. In response to a counterproposal filed by Munising Radio, Inc., we shall substitute FM Channel 252C2 for Channel 252A at Munising, Michigan and modify the license of Station WQXO(FM), to specify operation on Channel 252C2. Concurrence of the Canadian government has been obtained for the allocation of both channels. With this action, this proceeding is terminated.

DATES: Effective October 13, 1987. The window period for filing applications for Channel 250C2 at Newberry, Michigan will open on October 14, 1987, and close on November 13, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–447, adopted August 6, 1987, and released August 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Michigan is amended by removing Channel 252A and adding 252C2 at Munising, and by adding Channel 250C2 at Newberry.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20434 Filed 9–3–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–437; RM–5392]

Radio Broadcasting Services; Warsaw, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 229A to Warsaw, Missouri, as that community's second FM broadcast service, in response to a petition filed by Mid-Mo Broadcasting Company. There is a site restriction 1 kilometer northwest of the community. With this action, this proceeding is terminated.

DATES: Effective October 13, 1987. The window period for filing applications will open on October 14, 1987, and close on November 13, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–437, adopted July 30, 1987, and released August 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Warsaw, Missouri, by adding Channel 229A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20435 Filed 9–3–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 70101–7001]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final reassessment.

SUMMARY: NMFS issues this notice announcing the final reassessment of domestic annual harvest (DAH) and domestic annual processing (DAP) for Pacific whiting taken in the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. Of the 39,000 metric tons (mt) of Pacific whiting in the reserve, 2,250 mt will be added to DAH to accommodate additional joint venture processing (JVP) needs, and the remaining 36,750 mt will be added to the total allowable level of foreign fishing (TALFF). This action will allow the Department of State to allocate additional tonnage of Pacific whiting to foreign countries, if appropriate.

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Director, Northwest Region, NMFS), 206–526–6150.

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SUPPLEMENTARY INFORMATION: A notice of preliminary reassessment and request for comments was published in the **Federal Register** on August 10, 1987 (52 FR 29528). This notice discussed the results of an industry survey conducted in June 1987 to reassess the 1987 fishing year initial specifications for Pacific whiting (52 FR 682, January 8, 1987), and announced NMFS' intent to add 2,250 mt to DAH for projected JVP needs for the remainder of the fishing year. The remaining 36,750 mt of the 39,000 mt reserve surplus to domestic needs will be released to TALFF. Domestic annual processing (DAP) and optimum yield (OY) would not change. No comments were received during the public comment period for this notice.

The Pacific Fishery Management Council considered the preliminary reassessment at its July 8–10, 1987 meeting and recommended release of the Pacific whiting reserve to TALFF, since at that time no firm commitments had been made for any portion of the projected increase to go to JVP needs. Total allowable level of foreign fishing will be increased from 27,000 to 63,750 mt, the total amount request by foreign nations, and JVP will be increased from 114,000 to 116,250 mt to allow for later commitments.

This notice hereby announces revised specifications for Pacific whiting as follows: OY—195,000 mt (no change), DAH—131,250 mt, DAP—15,000 mt (no change), JVP—116,250 mt, TALFF—63,750 mt, and Reserve—0 mt. Performance of the foreign fleet in taking the first half-year allocation of whiting will largely determine whether NMFS recommends that the Department of State allocate all or part of the added TALFF to foreign fishermen.

Classification

Release of the Pacific whiting reserve to TALFF is based on the most recent data available. The action is authorized by 50 CFR 611.70(d) (1) and (2), is in compliance with Executive Order 12291, and is covered by the regulatory flexibility analysis and environmental impact statement prepared for the authorized regulations.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 663

Fishing, Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: September 1, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–20431 Filed 9–1–87; 3:02 pm]

BILLING CODE 3510–22–M

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50 CFR Part 642

[Docket No. 70605–7141]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects the commercial quotas for the Gulf migratory group of king mackerel that appeared in the **Federal Register** on July 2, 1987 (52 FR 25012).

SUPPLEMENTARY INFORMATION: NOAA published a final rule on July 2, 1987 (52 FR 25012) to change the total allowable catch and bag limits for king and Spanish mackerel. Under the fishery management plan for coastal migratory pelagic species, the quotas for the eastern and western zones of the commercial fishery for the Gulf migratory group of king mackerel are determined in accordance with fixed percentages. To adhere to these percentages, calculations should be rounded to the nearest hundredth of a million pounds. The eastern and western zone quotas contained in the final rule published July 2, 1987, were incorrect as a result of having been rounded to the nearest tenth of a million pounds. This rule corrects that error by respecifying the quota for the eastern zone as 0.48 million pounds and for the western zone as 0.22 million pounds.

The following corrections are made in rule document 87–15112 on page 25013, column 3:

§ 642.21 [Corrected]

1. In § 642.21(a)(1)(i), change "0.5" to "0.48".

2. In § 642.21(a)(1)(ii), change "0.2" to "0.22".

(16 U.S.C. 1801 et seq.)

Dated: September 1, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–20432 Filed 9–3–87; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 52, No. 172
Friday, September 4, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOME LOAN BANK BOARD

12 CFR Ch. V

[No. 87-941]

Regulations Required by the Competitive Equality Banking Act of 1987

Date: August 28, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Home Loan Bank Board ("Board") is issuing this advance notice of proposed rulemaking to inform the public of its intention to promulgate regulations required by the Competitive Equality Banking Act of 1987 ("CEBA" or "Act"). Within 2 to 6 months of the date of CEBA's enactment, the Board is required to issue regulations or guidelines in the following areas: qualified thrift lender test; classification of assets; appraisals; uniform generally accepted acounting principles ("GAAP"); gain and loss deferrals; capital forbearance; minimum capital requirements; procedures setting the limits for approval or disapproval of applications submitted to the Board; and asset disposition. The Board is requesting comment on these areas and others to assist it in implementing the requirements of the CEBA. Additionally, the Board is soliciting comment on the possible promulgation of other regulations not covered by this notice as well as amendments to existing regulations that may be necessary to implement the provisions of the Act in the most effective way.

DATE: Comments must be received on or before October 5, 1987.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Acting Regulatory Counsel, (202) 377-6649; Carol J. Rosa, Paralegal Specialist, (202) 377-7037; or Karen Knopp O'Konski, Acting Director, (202) 377-7240, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION:

A. Background

The Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552, was signed into law on August 10, 1987. The purpose of the CEBA is to facilitate the provision of additional financial resources to the Federal Savings and Loan Insurance Corporation ("FSLIC") and, for purposes of strengthening the reserves of the FSLIC, to establish a forbearance program for thrift institutions, and to provide additional congressional oversight of the Board and the Federal Home Loan Bank System. This advance notice of proposed rulemaking sets forth a list of the regulations and guidelines to be promulgated by the board pursuant to the Act. Part 1 of the list contains regulations and guidelines that the CEBA explicitly requires the Board to Implement within specified deadlines. Part 2 contains regulations and guidelines that the Board is required, without a time deadline, to promulgate. Part 3, entitled "Other Board Action," lists new regulations, amendments to existing regulations, or guidelines that may be required by the CEBA to implement provisions of the Act.

As indicated above, the CEBA requires the Board to implement certain regulations and guidelines within specified deadlines ranging from 60 days to 6 months from August 10, 1987, the date of enactment of the Act. In addition, the CEBA requires the Board to submit to Congress no later than November 8, 1987, proposed regulations in some of the areas mentioned above. The Board intends to issue, as promptly as possible, regulations addressing those areas listed below in Parts 1 and 2. The Board will, consistent with the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, seek and consider public comment on those regulations. Because of the statutorily mandated deadline for publication of final rules on certain subjects, the Board will probably set a 30-day comment period on its proposed rules in those areas set forth in the footnote.[1]

Today, the Board is soliciting general comment on the most effective way to implement the requirements of the CEBA. The Board requests that interested parties identify specific substantive and procedural issues that should be addressed in formal notices of proposed rulemaking concerning implementation of those regulations and guidelines listed in Parts 1 and 2, below. Finally, the Board is soliciting comment on the possible promulgation of other regulations not covered by this notice as well as amendments to existing regulations in order implement provisions of the Act effectively. Because of the statutorily mandated deadlines established by the CEBA, the Board is adopting a 30-day comment period for public response to this notice. The Board notes that, to the extent possible, it will consider all comments received on this notice prior to issuing any proposed regulations. However, to the extent statutorily imposed deadlines preclude consideration of all such comments prior to issuance of the proposed regulations, the Board will consider such comments, in addition to comments received on the proposed regulations, prior to the issuance of any final regulations. The Board encourages all interested parties to consult the CEBA and to comment on any aspect of this notice.

The Board notes that the CEBA directs it specifically to issue rules on classification of assets, appraisal standards, and accounting standards that are consistent with what is required by the Federal banking regulatory agencies. CEBA, sections 402(a) and (b). The banking regulators have not, however, published rules with respect either to classification of assets or appraisal standards. Therefore, the Board invites commenters specifically to address how it might best comply with the statutory mandate to achieve conformity with the banking regulators.

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[1] A 30-day comment period will probably apply to proposals on: classification of assets, appraisals, accounting rules, capital forbearance, and implementation of the qualified thrift lender test. The Board will probably publish proposals in each of these areas in the **Federal Register** by October 9, 1987.

B. Board Action under the CEBA

1. Mandatory Board Action

Title I

a. Section 104—Qualified Thrift Lender ("QTL") test—Regulations to define terms and implement the requirements of the QTL test. Regulations which tie Federal Home Loan Bank ("FHLBank") advances to members' ability to meet the QTL test.

Deadline: Institutions have until January 1, 1988, to satisfy the QTL test.

Title IV

b. Section 402—Regulations on classification of assets; appraisal standards; reappraisal upon foreclosure; use of the Statements of Financial acconting Standards No. 5 and No. 15 for troubled debt restructurings; uniform GAAP accounting; asset evaluations; and loan loss deferrals.[2]

Deadline: Must be "implemented" by January 7, 1988; except that GAAP accounting rule "shall take effect" on December 31, 1987. Proposals due to Congress by November 8, 1987.

c. Section 404—Regulations implementing Capital Forbearance provisions.

Deadline: Regulations must be "implemented" by January 7, 1988. Proposal due to Congress by November 8, 1987.

d. Section 410—Guidelines for approval and disapproval procedures for all applications to the Board.

Deadline: Guidelines must become "effective" by October 9, 1987.

e. Section 411—Guidelines for asset disposition.

Deadline: Guidelines must be "promulgated" by February 6, 1988.

f. Section 415—Guidelines for employment of outside accountants, attorneys, conservators, other consultants, and outside professionals.

Report on guidelines to be submitted to Congress by February 6, 1988.

2. Required Board Action Without Specified Time Frames

Title III

a. Section 302—Regulations to avoid conflicts of interest with respect to disclosure to and use by members of the FSLIC Industry Advisory Committee or information relating to Board, FSLIC, FHLBanks, and the Federal Asset Disposition Association.

[2] Section 402 also contains provisions requiring regulations on the treatment of loan loss reserves as regulatory capital and accounting for subordinated debt and good will. This required regulatory action has already been taken in the Board's final regulation on the definition of regulatory capital. Board Res. No. 87-529, 52 FR 18340 (May 15, 1987).

Title IV

b. Section 406—Regulations implementing Board's authority to set minimum capital requirements.

c. Section 407—Guidelines providing greater supervisory flexibility including: flexible approval procedures for renegotiated loans; recognition of the additional financial capacity of the borrower; appraisal review system; elimination of scheduled items except for 1–4 family residences; and informal review procedures for appeal of Principal Supervisory Agent decisions.

3. Other Board Action

Title I

a. Section 104—Regulations or amendments to existing requlations concerning Savings and Loan Holding Company activities and grandfathering regulations; anti-tying regulations; treatment of Federal Deposit Insurance Corporation ("FDIC") insured savings banks and cooperative banks as FSLIC-insured institutions upon application to the Board; and new exceptions to interstate acquisitions.

b. Section 105—Regulations concerning advances to insured institutions from FHLBanks (tied to the QTL test).

c. Section 106—Regulations or amendments to existing regulations concerning securities affiliations of FSLIC-insured institutions.

d. Section 107—Regulations or amendments to existing regulations concerning establishment of holdiong companies for FSLIC-insured or FDIC-insured mutual savings and loans.

e. Section 110—Regulations or amendments to existing regulations concerning exemption from affiliate transaction restrictions.

f. Section 111—Regulations or amendments to existing regulations concerning consideration of tax implications on FSLIC-arranged and emergency acquisitions.

Title III

g. Sections 302, 304–307—Regulations concerning the establishment and authority of the financing corporation and related matters.

h. Section 306—Regulations on exit fees.

Title IV

i. Section 405—Regulations or guidelines to govern a capital instrument purchase program to complement the capital forbearance program.

j. Section 406—Regulations or guidelines establishing minimum capital requirements.

k. Section 413—Regulations or guidelines concerning the disclosure requirements of the authority for those acting on behalf of the Board.

l. Section 414—Regulations or guidelines regarding the extension of forbearance provisions granted prior to March 31, 1987.

Title VI

m. Section 603–605—Regulations, in conjunction with or patterned after those of other banking regulatory agencies, concerning expedited funds availability and automatic teller machine provisions.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,
Assistant Secretary.

[FR Doc. 87-20487 Filed 9-3-87; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Doc. No. R-0612]

Truth in Lending; Intent To Make Determination of Effect on State Law; Indiana

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to make preemption determination.

SUMMARY: The Board is publishing for comment a proposed determination that a provision in the law of Indiana is inconsistent with the Truth in Lending Act and Regulation Z and therefore preempted. A final determination that the provision is preempted would have an effective date of October 1, 1988, although compliance may begin from the date of the Board's determination.

This notice also includes a discussion of the procedures that the Board follows upon receipt of a request for a determination and a statement of the principles used in making preemption determinations.

DATE: Comments must be received on or before November 3, 1987.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC, 20551, or delivered to the 20th Street courtyard entrance, on 20th Street between C Street and Constitution Avenue NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R-0612. Comments may be inspected in

Room B–1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman, Attorney, Division of Consumer and Community Affairs, at (202) 452–3667 For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC, 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Board has received a request for a determination as to whether a provision of Indiana law is inconsistent with the Truth in Lending Act or Regulation Z, and therefore preempted. Section 111(a)(1) of the Truth in Lending Act authorizes the Board to determine whether any inconsistency exists between Chapters 1, 2, and 3 of the federal act or the implementing provisions of the regulation and any state law relating to the disclosure of information in connection with consumer credit transactions. These proposed preemption determinations are issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR 265.2(h)(3)).

The procedures for requesting a determination and the general procedures followed in making a determination are contained in Appendix A to 12 CFR Part 226.

(2) Principles Followed in Preemption Analysis

In determining whether a state law is inconsistent with federal provisions, § 226.28(a)(1) of Regulation Z, which implements § 111 of the act, provides that state requirements are inconsistent with, and therefore preempted by, the federal provisions if the state law requires a creditor to make disclosures or take actions that contradict the requirements of the Federal law. A state law is contradictory, and therefore preempted, if it significantly impedes the operation of the Federal law or interferes with the ppurposes of the Federal statute. Two examples of contradictory state laws are included in § 226.28(a)(1). They are (1) a law that requires the use of the same term to represent a different amount or a different meaning than the Federal law, or (2) a law that requires the use of a term different from the Federal term to describe the same item.

In previous preemption determinations (48 FR 4454, February 1, 1983) the Board developed the following principles that are applied in making preemption determinations:

- For purposes of making preemption determinations, state law is deemed to require the use of specific terminology in the State disclosures if the State statute uses certain terminology in the disclosure provision.
- A State disclosure does not "describe the same item," under § 226.28(a)(1), if it is not the functional equivalent of a Federal disclosure.
- Preemption occurs only in those transactions in which an actual inconsistency exists between the State law and the Federal law.
- A State law is not inconsistent merely because it requires more information than Federal law or requires disclosure in transactions where Federal law requires none.

In general, preemption determinations will be limited to those provisions of State law identified in the request for a determination. At the Board's discretion, however, other State provisions that may be affected by the Federal law will also be addressed.

(3) Effect of Preemption Determination

If the Board determines that a state-required disclosure is inconsistent with the Federal law, the State law is preempted to the extent of the inconsistency. Disclosures using the inconsistent term or form may not be given, even on a separate document from the Federal disclosures. Preemption determinations have an effective date of the October 1 that follows the determination by at least 6 months, as required by section 105(d) of the act. This proposed determination, if adopted, will have an effective date of October 1, 1988, although compliance with the determination may begin before that time.

A determination on provisions in the law of one State will have no effect on the validity of similar provisions in other States.

(4) Discussion of Specific Request and Proposed Determination

The Board has been asked to examine section 8(d) of the recently amended Indiana "Loan Broker" statute, Ind. code section 23–2–5–1 *et seq.* The requesting party believes that section 8(d) of the Indiana statute, as amended, requires certain disclosures that contradict the disclosures required under the Federal act and regulation.

The relevant provisions of the State statute (which has an effective date of September 1, 1987) are as follows:

23–2–5–8. *Disclosure statement.*

(d) A loan broker shall deliver to any person who proposes to become obligated for a loan an estimated disclosure statement if the creditor would be required to deliver to the person a disclosure statement under the Truth-in-Lending Act (15 U.S.C. 1601–1667e) for the transaction. The estimated disclosure statement:

(1) shall be delivered to the person before the person becomes contractually obligated on the loan; or

(2) shall be delivered or placed in the mail to the person not later than three (3) business days after the person enters into an agreement with the loan broker; whichever occurs first. The estimated disclosure statement must contain all of the information and be in the form required by the Truth-in-Lending Act (15 U.S.C. 1601–1667e) and regulations under the Act. However, the annual precentage rate, finance charge, total of payments, and other matters required under the Truth-in-Lending Act (15 U.S.C. 1601–1667e) shall be adjusted to reflect the amount of all fees and charges of the loan broker that the creditor could exclude from a disclosure statement. The disclosure statement must state at the top in at least 10 point type: "The following is an estimated disclosure statement showing your loan transaction as if the fees and charges you are scheduled to pay us were charged to you directly by the creditor." After the estimated disclosure statement is delivered to any person, the loan broker shall deliver to the person an additional statement redisclosing all items if the actual annual precentage rate will vary from the annual percentage rate contained in the original estimated disclosure by more than one-eighth of one percent (0.125%). Any required additional disclosure statement shall be delivered or placed in the mail before consummation of the loan or the elapse of three (3) days after the information that requires redisclosure becomes available, whichever occurs first.

The requesting party has asked for a determination as to whether the requirement imposed by this section that loan brokers reflect all of their fees and charges in their calculation of, among other items, the finance charge and annual percentage rate that must be disclosed to potential borrowers is preempted by the Truth-in-Lending Act and Regulation Z. Sections 106(a) and 226.4(a) of the Federal statute and regulation, respectively, state that, in any consumer credit transaction, the finance charge includes charges paid by the consumer that are imposed by the creditor as an incident to the extension of credit. Under Regulation Z, charges imposed by third parties are not finance charges as long as the creditor does not require the parties services or retain the charges. Thus, fees charged by a loan broker are not finance charges provided that the creditor does not require the use of the broker. (See Official Staff Commentary, 12 CFR 226.4(a)–3.)

Since the State statute requires that loan brokers include their fees in calculating the finance charge and annual percentage rate in cases where the creditor would exclude such fees in calculating those same items, the Board proposes to determine that the State disclosure requirement is preempted in those instances where the State law would require the use of the same term to disclose a different amount than would be disclosed under Federal law. The Board recognizes that the State disclosure serves a useful purpose in informing consumers about costs that they may incur in such credit transactions. The Board, however, believes that the approach chosen by the State will confuse consumers who will receive two different sets of figures, described by the same terminology. In such cases, it appears that the State disclosure would contradict the disclosures required under Federal law and interfere with the intent of the Federal scheme.

(5) Comment Requested

Interested persons are invited to submit comments regarding the proposed determination. Since this request concerns a State law governing disclosures by loan brokers, who are not considered "creditors" and therefore are not themselves subject to the requirements of Regulation Z, the question arises as to whether the State law is subject to the Board's preemption authority. (See § 226.28(a) of Regulation Z, which provides that "a State law is inconsistent if it requires a creditor to make disclosures * * * that contradict the requirements of the Federal law.") Although the Board, in the past, has made preemption determinations concerning laws whose coverage may extend to parties who are not considered creditors for purposes of Regulation Z (for example, Arizona in 1985 and South Carolina in 1983), the Board specifically requests comment on this issue. The Board has assumed, however, for purposes of this proposed determination, that the law in question is subject to the Board's preemption authority. After the close of the comment period and analysis of the comments received, notice of final action on the proposal will be published in the **Federal Register.**

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in Lending.

Board of Governors of the Federal Reserve System, August 31, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-20308 Filed 9-3-87; 8:45 am]

BILLING CODE 6210-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Extension of Comment Period on Proposed Rulemaking

AGENCY: Small Business Administration.

ACTION: Notice of extension of comment period on proposed rulemaking.

SUMMARY: On August 4, 1987, the Small Business Administration (SBA) published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) regarding an increase in the examination fees imposed upon small business investment companies (see 52 FR 28842).

That publication provided that comments on the NPRM would be received for a period of 30 days from the date of publication. This Notice extends the comment period pertaining to the NPRM for an additional 30 days to allow the public more time to consider this proposal.

DATE: Comments on the above-referenced proposed rule should be submitted in duplicate by October 3, 1987.

ADDRESS: Written comments should be addressed to: Robert G. Lineberry, Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Room 808, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: John L. Werner, Director, Office of Investment, (202) 653-6584.

SUPPLEMENTARY INFORMATION: In order to provide more time for public comment on the above-referenced proposed rule, SBA is hereby extending the comment period relative to the proposal for an additional 30 days. The public is encouraged to supply written comments to the address indicated above so that a complete record can be established in this rulemaking.

Date: August 29, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-20417 Filed 9-3-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 352

[Docket No. 78N-0038]

Discussion of Appropriate Testing Procedures for Over-the-Counter Sunscreen Drug Products; Public Meeting and Reopening of the Administrative Record

AGENCY: Food and Drug Administration.

ACTION: Public meeting and reopening of the administrative record.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a public meeting will be held to discuss recommendations of the Advisory Review Panel on Over-the-Counter (OTC) Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products regarding final product testing (i.e., testing procedures for determination of the sun protection factor (SPF) value and related claims) of OTC sunscreen drug products. The meeting will be structured to discuss the specific topics and to seek answers to the specific questions listed in this notice.

DATES: Meeting date January 26, 1988; Time 9:00 a.m. The agency anticipates that the meeting will last one day. However, if there is sufficient interest in participation, the meeting will be extended an additional day at the discretion of the chairperson. Relevant data and notice of participation by December 3, 1987. Administrative record to remain open until April 26, 1988. Comments regarding matters raised at the meeting by April 26, 1988.

ADDRESSES: Relevant data, notice of participation, and comments to the Dockets Management Branch, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857. Meeting to be held in Conference Rooms D and E, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Saul Bader or Jeanne Rippere, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md 20857, 301-295-8003.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 25, 1978 (43 FR 38206), FDA published an advance notice of proposed rulemaking on OTC sunscreen drug products based on the recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products. In that report, the Panel

recommended final product testing of each sunscreen drug product. In its recommended monograph, the Panel included testing procedures for the determination of the sun protection factor (SPF) value and of related labeling claims for all sunscreen drug products containing Category I (generally recognized as safe and effective) ingredients (43 FR 38265 to 38267). The Panel included these testing procedures to assure the uniform evaluation of all sunscreen products.

In response to the Panel's report; the agency received a number of comments regarding statistical and technical aspects of the sunscreen product testing procedures (Refs. 1 through 9). The comments questioned these aspects of the testing procedures and offered many suggestions, ranging from requiring a minimum of 8 subjects per test (Ref. 2) to proposing alternated statistical methods for evaluating the test data (Refs. 2 and 7). One technical aspect of the sunscreen testing procedures is the use of an 8 percent standard homosalate formulation to validate a laboratory's testing methods. The agency believes that data submitted to the Panel and the agency on the 8 percent standard homosalate formulation (Refs. 6, 9, and 10) are too variable to estimate accurately the SPF of this formulation. The agency believes that it is necessary to analyze more data on the 8 percent homosalate formulation before officially designating this formulation as the standard formulation.

The Panel's recommendations represent a first attempt to standardize testing for sunscreen drug products, and many technical issues are left to be resolved. Because the testing procedures for sunscreen drug products will be included in the agency's tentative final monograph, the agency feels that it is important to try to resolve the majority of these issues regarding sunscreen testing before the tentative final monograph is proposed.

In addition, the agency is aware that, recently, a number of sunscreen drug products have been marketed with SPF values greater than 15, which was the Panel's highest classifiction. The agency believes that consideration needs to be given to modifying the Panel's recommended monograph in order to address these higher SPF values. However, to date, no data on products with such SPF values have been submitted to the rulemaking for OTC sunscreen drug products, and the agency is not able to make any determinations regarding such products.

Therefore, under 21 CFR 10.65, the agency has concluded that it would be in the public interest to hold an open public meeting to discuss these and related issues. The agency is inviting interested individuals or groups to discuss these and related issues at an open meeting to be held on January 26 1988.

Topics and questions to be considered during the meeting include:

1. Procedures and Statistical Methods

Are the Panel's proposed general procedures and statistical methods for sunscreen testing valid? Some comments questioned the soundness of the Panel's proposed procedures and statistical methods for determining the SPF and the Product Category Designations (PCD) of a sunscreen drug product (Refs. 2 and 7). One comment (Ref. 2) suggested categorizing a product into a PCD on the basis of a 90 percent confidence interval computed for the product's mean SPF. To categorize a product into a particular PCD, the entire confidence interval would have to fall within the range of values included in that PCD. The other comment (Ref. 7) suggested the use of binomial (nonparametric) analysis instead of parametric analysis of sunscreen testing data.

Based upon the comments and because the testing procedures represent a first attempt to standardize sunscreen testing methods, the agency believes that it may be necessary to revise the Panel's proposed testing procedures. However, the agency believes that the confidence interval procedure suggested by the first comment may be too stringent for use in assigning PCD's because the criterion of having the entire confidence interval fall within the PCD would never, or only rarely, be satisfied. For example, if the true mean SPF is 6, then 90 percent of the time the confidence interval will straddly two PCD's (i.e., moderate (SPF of 4 to 6) and extra (SPF of 6 to 8)).

The agency believes that the binomial procedure suggested by the second comment has merit, but that the binomial procedure may not be as statistically powerful as the procedure described below, which involves a confidence interval for the mean SPF.

Therefore, in this notice, the agency is setting forth for comment two different approaches to analyzing the data generated by sunscreen drug product testing. The first method utilizes the testing procedures proposed by the Panel but adds one step to the determination of the PCD. The added step is equivalent to performing a one-sided t test at the 0.05 level of significant where the null hypothesis is that the mean SPF is less than the minimal SPF of the assigned PCD.

The full statistical procedure would be as follows: First, select at least 20 subjects, with n representing the number of subjects selected, and for each subject compute the SPF value in the manner described in the Panel's report (43 FR 38213). Second, compute the mean SPF value, $\bar{x}$, and the standard deviation, s, for these subjects. Third, obtain the upper 5 percent point from the t distribution with $n-1$ degrees of freedom. Denote this value by little t. Fourth, compute $ts/\sqrt{n}$. Let this quantity be denoted by A (i. e., $A=ts/\sqrt{n}$). Fifth and last, the drug product is classified into a PCD as follows: if $15+A<\bar{x}$, the PCD is Ultra; if $8+A<\bar{x}<15+A$, the PCD is Maximal; if $6+A<\bar{x}<8+A$, the PCD is Extra; if $4+A<\bar{x}<6+A$, the PCD is Moderate; if $2+A<\bar{x}<4+A$, the PCD is Minimal; if $\bar{x}<2+A$, the PCD is Below Minimal. (Note: The procedure proposed by the Panel has $A=0$ which is equivalent to a test of hypothesis with the level of significant equal to 0.50.)

The above fifth step can also be written in the following equivalent fashion: if $15<\bar{x}-A$, the PCD is Ultra; if $8<\bar{x}-A<15$, the PCD is Maximal; if $6<\bar{x}-A<8$, the PCD is Extra; if $4<\bar{x}-A<6$, the PCD is Moderate; if $2<\bar{x}-A<4$, the PCD is Minimal; if $\bar{x}-A<2$, the PCD is Below Minimal.

The following numerical example is provided: Take 20 subjects with a mean SPF value of 6.40 and a standard deviation of 1.60. Here $n=20$, $\bar{x}=6.40$, $s=1.20$, and the standard error is $s/\sqrt{n}=1.2/\sqrt{20}=0.268$. The procedure proposed by the Panel would stop here and classify the product in the PCD "Extra" ($6<\bar{x}<8$). The procedure set forth above goes one step further by testing whether the observed mean of 6.4 really reflects a true population mean of at least 6. To do this testing, the third to fifth steps, outlined above would be carried out as follows: The upper 0.05 point from the t distribution with 19 degrees of freedom is 1.729. The A value of the fourth step is $A=1.729(0.268)=0.46$. The mean SPF value minus A is $\bar{x}-A=6.40-0.46=5.94$. We thus find $\bar{x}-A$ satisfies the $4<\bar{x}-A<6$ interval ($4<5.94<6$). Thus, the product would be classified as "Moderate." The observed mean value of 6.40 is not significantly large enough to establish that the true population means SPF value is 6 or larger.

The second method that the agency is prcposing concentrates on the boundaries between the PCD's rather than on the actual SPF values of the sunscreen drug product. After the minimal erythema dose for unprotected

skin (MED(US)) has been established (see 43 FR 38213), the protected skin is tested at exposure times chosen so that the corresponding SPF's are slightly less than the lower bounds of the intervals defining the various PCD's. For example, the protected skin could be tested at 1.9 x MED(US), 3.9 x MED(US), 5.9 x MED(US), 7.9 x MED(US), and 14.9 x MED(US). Thus, if a subject's MED(US) were 1.5, the subject's protected skin exposure times would be 2.85(=1.9x1.5), 5.85(=3.9x1.5), 8.85(=5.9x1.5), 11.85(=7.9x1.5) and 22.35(=14.9x1.5). For each subject who experiences erythema, the calculated "SPF" (being the minimal erythema dose of the protected skin (MED(PS) divided by the MED(US)) would be either 1.9, 3.9, 5.9, 7.9, or 14.9. If a subject's "SPF," calculated in this manner, is 5.9, then that subject received Moderate (i.e., 4 to less than 6) protection and is assigned a score of 4, the lower bound of the interval defining the Moderate PCD. Thus, a subject with a calculated "SPF" of 1.9 is not in any of the PCD's and is assigned a 0; an "SPF" of 3.9 is in the Minimal PCD and is assigned a 2; an "SPF" of 5.9 is in the Moderate PCD and is assigned a 4; an "SPF" of 7.9 is in the Extra PCD and is assigned a 6; an SPF of 14.9 is in the Maximal PCD and is assigned an 8; and if erythema is not found on the protected skin at 14.9 x MED(US), then the product is in the Ultra PCD and is assigned a 15.

This procedure does not distinguish between SPF's in the same PCD such as 4.1, 4.5, 5.0, or 5.9. It does distinguish between SPF's in different PCD's, such as 5.9 and 6.1. The agency considers this procedure's ability to make this distinction important because products are labeled in terms of their PCD, not their SPF. Thus, there is no need to distinguish between two products whose true SPF's are 4.1 and 5.9 because they are both labeled as Moderate. However, there is a need to distinguish between two products whose true SPF's are 5.9 and 6.1 because the former is labeled as Moderate, and the latter is labeled as Extra.

The PCD assigned to a test preparation is the largest PCD for which one would, using a one-sided binomial test at $p = 0.5$, reject the hypothesis that the probability is not greater than 50 percent that an individual will receive the protection of the assigned PCD. This procedure is the same as assigning the largest PCD for which the lower limit of a 95 percent confidence interval on the percentage of subjects that received protection at least as great as that defining the PCD exceeds 50 percent.

In a panel of 20 subjects, the product is assigned the PCD corresponding to the sixth smallest score (disregarding ties) from among the 20 subjects. In a panel of 25 subjects, the product is assigned the PCD corresponding to the eighth smallest score. A few examples are shown below.

Product 1:
2 2 2 4 4 6 6 6 6 6 6 6 8 8 8
8 8 8 8 8

Product 2:
0 0 2 2 4 4 4 4 4 6 6 6 6 6 6
6 6 6 6 6

Product 3:
4 4 4 4 4 6 6 8 8 8 8 8 8 8 8
8 8 8 8 8 15 15 15 15 15

Product 1 would be assigned the Extra PCD, Product 2 the Moderate PCD, and Product 3 the Maximal PCD.

The agency is requesting comments on the Panel's proposed procedure for sunscreen testing as well as on the two methods outlined above.

2. Standard Formulation

The agency's evaluation of the Panel's report and of the comments received has raised some questions regarding the use of the 8 percent homosalate formulation as the standard for the validation of sunscreen product testing. Results from two collaborative studies that were designed to establish an SPF value for a standard sunscreen formulation, each study involving six participating laboratories, were submitted to the Panel and to the agency (Refs. 6, 9, and 10). The standard sunscreen formulation used in these studies was an 8 percent homosalate formulation that was endorsed by the Panel for use as a standard in such testing. In the collaborative studies, however, the results obtained by the laboratories involved were inconsistent, producing SPF values that place the 8 percent homosalate standard formulation into different PCD's. The agency believes that the variability of the SPF values obtained in these studies demonstrates that the SPF and PCD of the 8 percent homosalate standard formulation have not been precisely established and may be incorrect. Therefore, the agency is asking whether new data have become available since the 8 percent homosalate standard formulation was originally tested that would provide additional information regarding the reliability of the 8 percent homosalate standard formulation. If such data are available, they should be submitted to the agency.

The agency is also concerned about using a standard preparation that may have a relatively low SPF of 4 to validate a sunscreen testing procedure that is supposed to determine a wide range of SPF's (currently SPF 2 up to SPF 30). Would standard formulations with SPF values higher than 4 make the determination of SPF values higher than 8 and 15 more accurate? The agency believes that two or three standard preparations should be available having SPF's that represent the entire range of possible SPF's (e.g., SPF 8 and SPF 20 or SPF 4, SPF 15, and SPF 25). Are sunscreen preparations with relatively high SPF values available that would be appropriate for use as standard preparations when testing sunscreen drug products with estimated SPF's greater than 15? Data on such preparations should be submitted.

3. Number of Subjects.

The Panel recommended that groups of twenty subjects should be used for each test panel but added that "the standard error shall not exceed +5 percent of the mean. An appropriate number of additional subjects shall be used to determine the PCD, if a PCD does not fall within the limits of the standard error." Comments submitted to the agency (Refs. 2, 5, and 11) revealed substantial confusion regarding the standard error criterion proposed by the Panel. Additionally, one comment suggested that determination of the SPF of a sunscreen could be accurately done with only 8 subjects.

The agency believes that the number of subjects for a test panel should be fixed before the test and should not be changed. The sample size must be large enough to give a sense that it is not a unique, atypical subset of the target population. The agency believes that 20 subjects is the minimum number of subjects that may be used to make a test panel.

Regarding the standard error criterion for determining the precision of an assay, the agency believes that the data submitted to the Panel do not support use of the standard error. Furthermore, because the agency is proposing more elaborate statistical calculations for determining SPF's and PCD's, the standard error criterion is no longer necessary. Therefore, the agency is considering revising the Panel's recommended § 352.42(g) as follows: "Number of subjects. Groups of at least 20 subjects shall be used for each test panel. The panel size shall be fixed in advance and additional subjects shall not be added."

The agency invites comment on this possible change. If this change is not acceptable, what is the best method for evaluating sunscreen test data to determine if additional subjects are needed to obtain a valid SPF value?

What is the minimum number of subjects required?

4. Exposure Times

The Panel's protocol for sunscreen testing calls for a geometric series of increments in ultraviolet (UV) exposures (e.g., 1, 1.25, 1.56, 1.96, and 2.44 minutes). One comment (Ref. 5) recommended the use of time increments smaller than 25 percent. Other comments (Refs. 1, 4, and 6) recommended shorter time intervals and the use of an arithmetic rather than geometric progression of UV doses for the determination of SPF values above 8.

The agency believes that there is little justification for a geometrically increasing series of time intervals. Geometrically increasing intervals offer less precision in the upper ranges, and precision has become increasingly important because of the appearance on the OTC market of sunscreens with SPF values much higher than 15 (i.e., up to 30). Conversely, the MED can be measured with equal precision across the full range of an arithmetically arranged series of exposure times.

The agency believes that exposure times are crucial to the accurate determination of SPF values and PCD's. Therefore, FDA is considering revising the discussion of the determination of SPF value using an artificial light source in proposed § 352.43 to state:

A series of UV light exposures (units of time) are administered to the subsite areas on each subject with a solar simulator. One series of exposures shall be administered to the untreated, unprotected skin to determine the subject's inherent MED (MED (US)). The time intervals selected shall be an arithmetic series with 11 exposures, increasing in 4 second increments, beginning with 10 seconds and ending with 50 seconds (i.e., 10, 14, 18, 22, 26, 30, 34, 38, 42, 46, and 50 seconds). This series would be suitable for a normal person exposed to a 150-watt xenon lamp solar simulator. Usually the MED of a subject's unprotected skin is determined the day before the testing of a product. The protected test sites (standard sunscreen and test sunscreen product) usually are exposed to UV light the next day. [NOTE: The foregoing procedure is applicable only for the PDC determination based on the lower confidence limit for the mean SPF. The protected skin exposure times appropriate for the PCD determination based on the lower confidence limit for the percentage of patients that receive a given level of protection has already been specified.] The exact series of exposures to be given shall be determined by the MED of the unprotected skin and the expected SPF of the test product. There should be at least 11 exposures. The difference between successive exposure times should be consistent. The exposure times should be densely clustered around the expected MED of the protected skin (MED(PS)). Preliminary testing using more widely spaced exposure times may be necessary to roughly determine an expected SPF value. The increment interval (I) for the series of UV exposures of the protected skin is determined from the MED(US) and the upper and lower limit of the expected testing range of SPF values. Each expected SPF has a testing range of SPF values defined by a lower value (L) and an upper value (U). The following example is provided for guidance:

Expected SPF	Testing range of SPF, L to U
2	1 to 5
4	3 to 7
6	5 to 10
8	6 to 12
15	10 to 18
22	16 to 24
30	25 to 35

Based on the above, the exposure times for an expected SPF would be calculated as follows:

L×MED(US); L×MED(US)+I; L×MED(US)+2I; L×MED(US)+3I; . . . L×MED(US)+10I, where

$$I = \frac{U \times MED(US) - L \times MED(US)}{10}$$

and MED (US) is the observed MED (US) value from the previous day. For example, if the MED (US) is 30 seconds, and the product being tested has an expected SPF of 8, then L=6 and U=12. From these values, the interval (I) can be computed as follows:

$$I = \frac{U \times MED\ (US) - L \times MED\ (US)}{10} = \frac{12 \times 30 - 6 \times 30}{10} = 18$$

Thus the increment used to establish the exposure times is 18 seconds. Therefore, the calculated exposure times would be as follows:

L×MED (US)=180 seconds
L×MED (US)+I=180+18=198 seconds
L×MED (US)+2I=216 seconds
L×MED (US)+3I=234 seconds
L×MED (US)+4I=252 seconds
L×MED (US)+5I=270 seconds
L×MED (US)+6I=288 seconds
L×MED (US)+7I=306 seconds
L×MED (US)+8I=324 seconds
L×MED (US)+9I=342 seconds
L×MED (US)+10I=360 seconds

At 16 to 24 hours after exposure, the shortest exposure time must produce no effect (i.e., no erythema) on the skin. The longer exposure times should produce light and moderately red exposure sites. The MED is the time of exposure the produces the minimally perceptible erythema at 16 to 24 hours postexposure. The SPF value of the test sunscreen is then the ratio of the exposure time interval required to produce the MED of the protected skin to the exposure time interval required to produce the MED of the unprotected skin (control site) as follows:

$$\text{SPF value} = \frac{MED\ (PS)}{MED\ (US)}$$

5. Amount of Sunscreen.

In its report, the Panel recommended that the amount of test sunscreen and the standard sunscreen per application should be 2 miligrams (mg) or 2 microliters (ul) per square centimeter (cm^2). An expert on sunscreen testing procedures who is not affiliated with FDA suggested to the agency that 1 mg/cm^2 rather than 2 mg/cm^2 is a more appropriate amount of sunscreen to use in the sunscreen testing procedure because 1 mg/cm^2 more accurately reflects the amount of sunscreen drug product normally used by a consumer (Ref. 12). The agency notes that use of 1 mg/cm^2 would undoubtedly produce lower SPF values and believes that this may be a way to accommodate the new higher SPF values because using 1 mg/cm^2 of the product may produce SPF value that more closely approximate the time a product will provide protection. Is 2 mg/cm^2 an appropriate amount of sunscreen product to use for the testing procedure?

6: SPF Value Higher Than 15

According to the Panel's report (43 FR 38267 and 38268), a product containing active sunscreen ingredients that provide an SPF of 15 or greater may be labeled as an "Ultra Sun Protection Product (15)—stay in the sun 15 times as long as before without sunburning." The Panel recommended that such products be allowed the following indications, among others: (1) "Affords the most protection against sunburn;" (2) "provides the highest degree of sunburn

protection. . . ;" and (3) "provides the highest degree of sunscreen protection* * *" What benefit is provided to the consumer by sunscreen drug products claiming to have SPF values greatly in excess of 15 (i.e., 23 or even 30) if, as the Panel claims, SPF 15 offers the maximum possible protection? Can these higher SPF values be accurately determined using currently available sunscreen testing procedures? Companies marketing such products should provide supporting data. If the currently recognized sunscreen testing procedures are not adequate, what tests are necessary to determine SPF values higher than 15?

7. Product Category Designations

The agency notes that the Panel's recommended Product Category Designations do not adequately accommodate sunscreen drug products with high SPF values of 25 or 30. If products having SPF values much higher than 15 are determined to be rational, how should the Panel's recommended PCD's be modified to include these higher SPF values?

One example might be as follows:

PCD	SPF
Minimal	2 to under 4.
Moderate	4 to under 8
Extra	8 to under 12
Maximal	12 to under 20
Ultra	20 and above

8. "Sweat Resistant," "Water Resistant," and "Waterproof" Labeling

The agency notes that the Panel's recommended criteria for a sunscreen drug product to be labeled as "sweat resistant," "water resistant," or "waterproof" are based on the product's ability to maintain its original PCD after testing procedures that are specified for each of the above three claims. The agency believes that there are situations in which the Panel's recommendation could lead to labeling that would be misleading to the consumer. For example, a product in the Moderate PCD ($4 \leq SPF < 6$) that maintained its PCD after 40 minutes of water immersion could be labeled "water resistant," whereas a product in the Ultra PCD ($15 < SPF$) that fell into the Maximal PCD ($8 \leq SPF < 15$) after the water immersion could not. The fact that the latter product would provide more sun protection after immersion than would the former would not be reflected by the Panel's labeling proposal. One way of avoiding such a situation involves labeling a product with a PCD established under the ordinary test conditions and with a PCD established under the "sweat resistant," "water resistant," or "waterproof" test conditions. The agency is requesting comments on this situation or other possible solutions to this problem.

Because the final formulation of a sunscreen drug product affects the performance of the active ingredient in the product, the agency concludes that testing procedures for sunscreen drug products are necessary. It is important for the safe and effective use of these products by consumers that these testing procedures result in labeling that accurately reflects the characteristics of a particular sunscreen formulation. Consumers should have assurance that using any sunscreen displaying an SPF value of 8 will indeed provide protection in the sun for 8 times longer than using no sunscreen. An inaccurately labeled sunscreen may cause a consumer to remain in the sun too long and may result in a painful burn. The long effects of using an improperly labeled sunscreen could include premature aging of the skin and skin cancer.

The agency requests information on the recommended sunscreen testing procedures from any interested person. Any individual or group wishing to submit data relevant to the questions above should send them on or before December 3, 1987 to Docket No. 78N–0038, Dockets Management Branch, Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Any individual or group wishing to make a presentation at the meeting should contact Saul Bader or Jeanne Rippere, Division of OTC Drug Evaluation (HFN-210), Office of Drug Standards, Center for Drugs and Biologics, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8003. Interested persons who wish to participate must also send a notice of participation on or before December 3, 1987 to the Dockets Management Branch (address above). All notices submitted should be identified with the docket number found in brackets in the heading of this notice and should contain the following information: Name; address; telephone number; business affiliation, if any, of the person desiring to make a presentation, and the approximate amount of time requested for the presentation.

Groups having similar interests are requested to consolidate their comments and present them through a single representative. FDA may require joint presentations by persons with common interests. After reviewing the notices of participation, FDA will notify each participant of the schedule and time allotted to each person.

The administrative record of the OTC sunscreen drug products rulemaking is being reopened to specifically include only the proceedings of this pubic meeting. The administrative record will remain open until April 26, 1988, to allow comments on matters raised at the meeting.

References

(1) *Comment No. C00004*, Dockets No. 78N–0038, Dockets Management Branch.
(2) *Comment No. C00008*, Dockets No. 78N–0038, Dockets Management Branch.
(3) *Comment No. C00009*, Dockets No. 78N–0038, Dockets Management Branch.
(4) *Comment No. C00016*, Dockets No. 78N–0038, Dockets Management Branch.
(5) *Comment No. C00031*, Dockets No. 78N–0038, Dockets Management Branch.
(6) *Comment No. C00046*, Dockets No. 78N–0038, Dockets Management Branch.
(7) *Comment No. C00049*, Dockets No. 78N–0038, Dockets Management Branch.
(8) *Comment No. C00075*, Dockets No. 78N–0038, Dockets Management Branch.
(9) *Comment No. SUP002*, Dockets No. 78N–0038, Dockets Management Branch.
(10) *OTC Volume 060169*, Dockets No. 78N–0038, Dockets Management Branch.
(11) *Comment No. C00068*, Dockets No. 78N–0038, Dockets Management Branch.
(12) Memorandum from J. Rippere to S. Bader, dated December 3, 1986, coded M00001, Dockets No. 78N–0038, Dockets Management Branch.

Dated: August 25, 1987.

John A. Norris,

Acting Commissioner of Food and Drugs.

[FR Doc. 87–20377 Filed 9–3–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 41

[LR–33–87]

Excise Taxes; Reduction of Heavy Vehicle Use Tax for Foreign-Based Vehicles

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the imposition of the heavy vehicle use tax on foreign-based highway motor vehicles. The temporary regulations also serve as the text for this Notice of Proposed Rulemaking.

DATE: Written comments and requests for a public hearing must be delivered or mailed November 3, 1987.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, 1111 Constitution Avenue, NW., Attention: CC:LR:T (LR–33–87), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: William A. Jackson of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (LR–33–87). Telephone 202–566–4336 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 41 of Title 26 of the Code of Federal Regulations. The final regulations which are proposed to be based on the temporary regulations would amend Part 41 of Title 26 of the Code of Federal Regulations. The regulations provide rules relating to the imposition of the heavy vehicle use tax on foreign-based vehicles under section 4481 of the Internal Revenue Code of 1986 (Code), as amended by section 507 of the Highway Revenue Act of 1987 (Title V of the Surface Transportation and Uniform Relocation Assistance Act of 1987) (Pub. L. 10017, 101 Stat. 260). For the text of the temporary regulations see T.D. 8159 published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations provides a discussion of the rules.

Special Analysis

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service request that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is William A. Jackson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 41

Excise taxes, Motor vehicles.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87–20456 Filed 9–3–87; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 638]

Disclosure of FD&C Yellow No. 6 in the Labeling of Wine, Distilled Spirits, and Malt Beverages

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms is proposing to amend the regulations in 27 CFR Parts 4, 5, and 7, by requiring the mandatory disclosure of FD&C Yellow No. 6 on labels of alcoholic beverages, because of evidence indicating the possibility of allergic-type reactions to the color additive.

DATE: Written comments must be received on or before October 5, 1987.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20004–0385, Attn: Notice No. 638.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e)(2), vests broad authority in the Director of the Bureau of Alcohol, Tobacco and Firearms, as a delegate of the Secretary of the Treasury, to prescribe regulations which will provide the consumer with "adequate information" as to the identity and quality of alcoholic beverages. Under this authority, labeling requirements are prescribed in Title 27, Code of Federal Regulations, Parts 4, 5, and 7 for wines, distilled spirits, and malt beverages, respectively. The regulations requiring basic mandatory labeling information for alcohol beverage products have been effect for over 50 years.

In recent years, the Bureau has considered numerous petitions for regulation changes with respect to the labeling of ingredients in alcoholic beverages, including requests to require full ingredient labeling, partial ingredient labeling, even health warning statements for specific ingredients found in alcoholic beverages which were alleged to be a health hazard. In response to such requests, the Bureau has established a regulatory policy with respect to ingredient labeling, and the need to disclosure to consumers the presence of specific ingredients found to be present in alcohol beverage products which have been determined to pose health risks.

The Bureau, on October 6, 1983, published a final rule (T.D. ATF–150, 48 FR 45549), rescinding the ingredient labeling regulations for alcohol beverage products. However, mandatory label disclosure was required for alcoholic beverages containing the color additive FD&C Yellow No. 5. The Bureau found, as a result of its rulemaking effort, that there was evidence establishing that consumers of the few alcohol beverage products containing that color additive could have adverse reactions to the ingredient. The Bureau also determined

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that there was no clear evidence in the record, at that time, that any other ingredient being used in the production of alcohol beverages posed a recognized health problem.

Pursuant to T.D. ATF-150, the Bureau specifically stated it "will look at the necessity of mandatory labeling of other ingredients on a case-by-case basis through its own rulemaking initiative, or on the basis of petitions for rulemaking under 5 U.S.C. § 553(e) and 27 CFR 71.41(c)."

In that regard, ATF has published a final rule in the Federal Register requiring mandatory label disclosure of saccharin for alcoholic beverages containing that artificial sweetener (T.D. ATF-220; December 20, 1985, 50 FR 51851). The Bureau has also published a final rule requiring label disclosure of sulfites when present in alcoholic beverages at a level of ten or more parts per million (T.D. ATF-236; September 30, 1986, 51 FR 34706).

Recently, on November 19, 1986, the Food and Drug Administration (FDA) published a final rule in the Federal Register (51 FR 41765) requiring, in part, mandatory disclosure of FD&C Yellow No. 6 on labels of food products, because of evidence of possible allergic-type reactions to the color additive. In the preamble of this rule, FDA stated that "because there is a possible relationship between FD&C Yellow No. 6 and allergic-type responses in some individuals. . . . . action should be taken to inform the public of the presence of color additive in food or drugs." FDA believes that a label declaration would enable individuals who may be allergic to FD&C Yellow No. 6 to minimize their exposure to that ingredient.

In view of the above, ATF believes there is now official recognition of evidence linking the presence of FD&C Yellow No. 6 in food and beverages to allergic-type responses in a small percentage of consumers. Therefore, ATF is proposing specific label disclosure of FD&C Yellow No. 6 for alcoholic beverages containing that color additive.

Transition Time

As with the color additive FD&C Yellow No. 5, ATF believes Yellow Dye No. 6 is used infrequently in the production of alcoholic beverages, being limited to mostly cocktails, liqueurs, and other specialty products. Therefore, as in the case of FD&C Yellow No. 5, the Bureau is proposing a one year transition period following the date of publication of a final rule in the Federal Register, for industry to meet the new requirements of specifically disclosing FD&C Yellow No. 6.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1931), ATF has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 630, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidential effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. Paperwork Reduction Act

The requirement to collect information proposed in this notice has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. 3504(h). Comments relating to ATF's compliance with 5 CFR Part 1320— Controlling Paperwork Burdens on the Public should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Office, Officer of Management and Budget, Washington, DC 20503.

Public Participation

ATF requests comments from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action.

ATF will not recognize any material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

Drafting Information

The author of this document is Coordinator James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority and Issuance.

27 CFR Part 4, *Labeling and Advertising of Wine*, is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.32 is amended by redesignating existing paragraph (c) as (c)(1), and by adding a new paragraph (c)(2) as follows:

§ 4.32 Mandatory label information.

* * * * *

(c) * * *

(2) There shall be stated on the brand label or on a back label a statement that the product contains FD&C Yellow No. 6, where that coloring material is used in the product.

* * * * *

27 CFR Part 5, *Labeling and Advertising of Distilled Spirits*, is amended as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 3. The authority citation for 27 CFR Part 5 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 4. Section 5.32 is amended by redesignating existing paragraph (b)(5) as (b)(5)(i), and by adding a new paragraph (b)(5)(ii) as follows:

§ 5.32 Mandatory label information.

* * * * *

(b) * * *

(5) * * *

(ii) A statement that the product contains FD&C Yellow No. 6, where that coloring material is used in the product.

* * * * *

27 CFR Part 7, *Labeling and Advertising of Malt Beverages*, is amended as follows:

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 5. The authority citation for 27 CFR Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 6. Section 7.22 is amended by redesignating existing paragraph (b)(4) as (b)(4)(i), and by adding a new paragraph (b)(4)(ii) as follows:

§ 7.22 Mandatory label information.

(b) * * *

(4) * * *

(ii) A statement that the product contains FD&C Yellow No. 6, where that coloring material is used in the product.

Signed: July 8, 1987.

Stephen E. Higgins,

Director.

Approved: July 13, 1987.

Francis A. Keating II,

Assistant Secretary, (Enforcement).

[FR Doc. 87-20445 Filed 9-3-87; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA Docket No. AM205PA; FRL-3256-3]

Section 111(d)—TRS Emissions From Kraft Pulp Mill; PA

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: EPA is today proposing to approve regulations submitted by the Commonwealth of Pennsylvania. These regulations will reduce kraft pulp mill Total Reduced Sulfur (TRS) emissions as required under section 111(d) of the Clean Air Act. The intent of this notice is to discuss the results of EPA's review and to solicit public comments on the regulations and EPA's proposed action.

DATE: Comments must be received on or before October 5, 1987. Public comments on this document are requested and will be considered before taking final action on these regulations.

ADDRESSES: Copies of the proposed regulations and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Eighth Floor, Philadelphia, PA 19107, Attn: Esther Steinberg (3AM11)

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120, Attn: Mr. Gary Triplett.

FOR FURTHER INFORMATION CONTACT: Eileen M. Glen (3AM11) at the EPA, Region III address given above or at (215) 597-8379. All written comments should be sent to Mr. Joseph W. Kunz, Chief, PA/WV Section at the EPA Regional III address shown above.

SUPPLEMENTARY INFORMATION: Section 111(d) of the Clean Air Act requires that pollutants regulated under the standards of performance for new sources also regulated for existing sources of the same category. On May 12, 1979, EPA announced the availability of the final guidelines for the control of TRS emissions from existing kraft pulp mills.

In compliance wtih section 111(d), the Commonwealth of Pennsylvania submitted draft regulations for TRS emissions from kraft pulp mills to the EPA on October 3, 1985. EPA recommended several revisions which were subsequently incorporated into the final draft.

The following table lists the proposed limits for the individual process facilities of a kraft pulp mill:

Facility	Parts per million (ppm) (volume) dry	Condition
Recovery furnace (old design).	20	12-hour average corrected to 8 percent oxygen by volume
Recovery furnace (new design).	5	Do.
Lime kiln	20	Never to be exceeded
Digester system	5	Do.
Multiple effect evaporator system.	5	Do.
Smelt dissolving tank	20	Do.

All the proposed limits are in compliance with the EPA guideline document except for the smelt dissolving tank value of 20 ppm. Unless substantive adverse comments are received, this higher limit will be approved by EPA because continuous compliance with the more stringent guideline limit of 8.4 ppm by new sources has not been achieved. EPA deems the higher limit to be a reasonable choice of an attainable limit for existing sources in the Commonwealth, based in part on the reasons provided in the May 20, 1986 **Federal Register** notice proposing the relaxation of the NSPS standard from 8.4 ppm to 16 ppm for new smelt dissolving tanks.

Final approval of these regulations by EPA is contingent on the Pennsylvania Department of Environmental Resources redefining the valid 12-hour average as a discrete 12-hour period in the Department's "Continuous Source Monitoring Manual". In addition, it should be noted that the term "New Source" in § 129.20(c) of the regulations refers to the replacement of an old recovery furnace by a new one with a capacity no greater than the original. As stated in the regulation, this replacement clause is valid for only six months following the promulgation of the regulation. Furthermore, it should be noted that any recovery furnace or other affected facility as defined in the New Source Performance Standards (NSPS) for Kraft Pulp Mills, 40 CFR Part 60 Subpart BB, that is new, modified, or reconstructed must comply with the NSPS.

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address above.

The revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish a revised Notice of Proposed Rulemaking. If no substantial changes are made, EPA will publish a Final Rulemaking Notice on these revisions. The final rulemaking action by EPA will occur only after the regulations have been adopted by Pennsylvania and submitted to EPA. Parallel processing will reduce the time necessary for final approval of these plan revisions by three to four months.

Proposed Action

The EPA proposes to approve the submitted kraft pulp mill regulations, but final action will occur only after all submitted comments are reviewed.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that plan approvals do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, Phosphate, Aluminum, Fertilizers, Paper and paper products industry, Sulfuric oxides, Sulfuric acid plants.

Authority: 42 U.S.C. 7401–7642.

Date: April 29, 1987.

Alvin Morris,

Acting Regional Administator.

[FR Doc. 87–20424 Filed 9–3–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR PART 721

[OPTS–50562; FRL–3257–5]

1-Chloro-2-Bromoethane; Proposed Determination of Significant New Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 1-chloro-2-bromoethane (CBE) (CAS No. 107–04–0). The Agency believes that this substance may be hazardous to human health and/or the environment and that the use described in this proposed rule may result in significant human or environmental exposure. As a result of this rule, certain persons who intend to manufacture, import, or process this substance for a significant new use would be required to notify EPA at least 90 days before commencing that activity. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, prohibit or limit that activity before it occurs.

DATE: Written comments should be submitted to EPA by October 5, 1987.

ADDRESS: Since some comments are expected to contain confidential business information (CBI), all comments should be sent in triplicate to: Document Control Officer (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. E–209, 401 M St., SW., Washington, DC 20460.

Comments should include the docket control number OPTS–50562. Nonconfidential comments and sanitized versions of confidential comments received on this proposed rule will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. NE–G004 at the address given above. For further information on submitting comments containing confidential data, see Unit X of this preamble.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404.

SUPPLEMENTARY INFORMATION: The proposed Significant New Use Rule (SNUR) for 1-chloro-2-bromoethane would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of CBE for any use.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." The Agency must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, the Agency may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a chemical substance are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). The general provisions are discussed in detail in that **Federal Register** notice, and interested persons should refer to that document for further information. On April 22, 1986 (51 FR 15104), EPA proposed revisions to the general provisions, some of which would apply to this proposed SNUR.

III. Summary of This Proposed Rule

The chemical substance which is the subject of this proposed SNUR is 1-chloro-2-bromoethane (CBE) (CAS No. 107–04–0). EPA is proposing to designate any use of CBE as a significant new use of the substance. This proposed rule would require persons who intend to manufacture, import, or process CBE for any use to notify EPA at least 90 days before such manufacture, import, or processing.

If any ongoing uses are identified for CBE, EPA may issue a final section 8(a) rule, or a final section 8(a) rule and

SNUR in place of this proposed SNUR. If EPA decides to issue a final section 8(a) rule for CBE, the requirements specified in 40 CFR Part 704, Subpart A, would apply.

IV. Background

A. Production and Use Data

EPA reviewed both the TSCA Chemical Substance Inventory data base and other information sources to identify current manufacturers, importers, and processors of CBE.

Apparently, CBE is no longer produced in the United States and currently there are no commercial uses, though small amounts are imported and used for research and development. Because of health concerns about the chemical substance, substitutes have been found for commercial applications. CBE is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*) for use as an active pesticide ingredient and has been used in the United States as a fumigant for fruits and vegetables. However, there is no evidence that CBE is currently used as a pesticide in the United States. It has potential use in plant growth and fruit maturity enhancement agents, as well as in agents to regulate plant metabolism. Such uses also would be regulated under FIFRA. CBE can be used as a solvent for cellulose esters and ethers and as an intermediate in chemical synthesis, especially of compounds containing haloalkylamino groups. It is conceivable that CBE could also be used as a substitute for ethylene dibromide (EDB) and ethylene dichloride (EDC) as a lead scavenger in gasoline, and as an intermediate in the production of numerous pharmaceutical agents, such as analgesics, antihistamines, and tranquilizers.

B. Health Effects

CBE has demonstrated mutagenic activity in the Ames *Salmonella* assay and the Chinese hamster ovary cell HGPRT assay. It also showed activity in a deoxyribonucleic acid (DNA) repair assay with *E. coli* and caused *in vivo* DNA damage in mice comparable in degree to that caused by EDB.

No studies examining the relationship between human exposure to CBE and the incidence of human cancer were found in the literature. No animal carcinogenicity studies on CBE were reported in the literature. However, based on its mutagenic activity and structural similarity to EDB, CBE is a suspect carcinogen as well as a potential mammalian mutagen. For these reasons, EPA has concluded that exposure to CBE may present a risk of injury to human health.

C. Exposure

Although present exposure to CBE is thought to be minimal, because of the high probability of carcinogenic activity implied by the *in vitro* results and CBE's close structural analogy to the known carcinogens EDB and EDC, there is concern for exposures from any future use of CBE.

V. Determination of Proposed Significant New Uses

To determine what would constitute a significant new use of CBE, EPA considered relevant information on the toxicity of the substance, likely exposures and releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA expects to achieve the following objectives with regard to the significant new use that is designated in this proposed rule:

1. The Agency wants to ensure that it would receive notice of any company's intent to manufacture, import, or process CBE for a significant new use before that activity begins. Potential uses of CBE as a solvent, as a chemical intermediate, or as a substitute for EDB and EDC could also result in significant human exposure. Risk from these releases cannot be assessed without detailed data on worker exposure, potential releases to the environment, and the substance's fate in these uses.

2. The Agency wants to ensure that it would have an opportunity to review and evaluate data submitted in a significant new use notice before the notice submitter begins manufacturing, importing, or processing CBE for the significant new use.

3. The Agency wants to ensure that it would be able to regulate prospective manufacturers, importers, or processors of CBE before a significant new use of this substance begins, provided that the degree of potential health and environmental risk is sufficient to warrant such regulation.

CBE has demonstrated mutagenic activity and is a close structural analogue to the known carcinogens EDB and EDC. There is concern that CBE may find new markets and that this increased usage could occur without notification of appropriate regulatory authorities. CBE is not subject to any federal regulation that would notify the government of activities that might result in adverse exposures to CBE or provide a regulatory mechanism that could protect human health from potentially adverse exposures before they occurred.

EPA believes that the significant new use and associated manufacture, import, or processing of CBE have a high potential to increase the magnitude and duration of exposure to this substance. Also, given the toxicity of this chemical substance, the reasonably anticipated situations that could result in exposure, and the lack of sufficient existing regulatory controls, individuals could be exposed to CBE at levels which may result in adverse effects.

The consideration of these factors has resulted in EPA's decision to propose that any use of CBE be designated a significant new use of this chemical substance.

VI. Alternatives

EPA is considering alternative regulatory actions for CBE.

1. One alternative is to promulgate a section 8(a) reporting rule for this substance. Under such a rule, EPA could require any person to report to the Agency when they manufacture, import, or process CBE. However, the use of section 8(a) rather than SNUR authority would have several drawbacks. First, EPA would not be able to receive advance notification of the intended activity, nor would it be able to take immediate follow-up regulatory action under section 5(e) or 5(f) as it can under a SNUR to prohibit or limit the activity. In addition, EPA may not receive important information from small businesses, because such firms generally are exempt from section 8(a) reporting requirements. In view of the level of health and environmental concern for CBE, the Agency believes that a section 8(a) rule for this substance would not be the most effective choice. However, if, as a result of this proposed rule, any ongoing uses are identified for CBE, EPA may decide to issue a final section 8(a) reporting rule, or both a final 8(a) reporting rule and a SNUR.

2. The Agency also has the authority to regulate substances under section 6 of TSCA. However, the Agency may regulate under section 6 only if there is a reasonable basis to conclude that the manufacture, importation, processing, distribution in commerce, use, or disposal of a chemical substance or mixture "presents or will present" an unreasonable risk of injury to human health or the environment. Presently, there is insufficient information about prospective manufacturing, importation, or processing operations, or human health or environmental effects to enable EPA to make a conclusive determination of risk. Therefore, the Agency is not able at this time to take action under section 6 to regulate CBE.

VII. Applicability of Proposed Rule to Uses Occurring Before Promulgation of Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the promulgation of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing, any person could defeat the SNUR by initiating the proposed significant new use before the rule became final. This would make it extremely difficult for the Agency to establish SNUR notice requirements.

Thus, persons who begin commercial manufacture, importation, or processing of CBE for the significant new use designated in this proposed rule between proposal and promulgation of the SNUR would have to cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expired.

EPA recognizes that this interpretation of TSCA may disrupt the commercial activities of persons who begin manufacturing, importing, or processing CBE for a significant new use during the proposal period of this SNUR. However, this proposed rule constitutes notice of that potential disruption, and persons who commence the proposed significant new use prior to promulgation of the SNUR do so at their own risk.

VIII. Test Data and Other Information

EPA recognizes that under TSCA section 5(a)(2), persons are not required to develop any particular test data before submitting a significant new use notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them.

However, in view of the potential risks that may be posed by a significant new use of CBE, EPA encourages SNUR notice submitters to conduct tests that would permit a reasoned evaluation of risks posed by this substance when utilized for an intended use. SNUR notices submitted without accompanying test data may increase the likelihood that EPA would take action under section 5(e).

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. As part of this optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed according to TSCA Good Laboratory Practice Standards at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to evaluate reasonably the health or environmental effects of the substance.

EPA urges SNUR notice submitters to provide detailed information on human exposure and environmental release that may result from the significant new use of CBE. In addition, EPA encourages persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by potential substitutes.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of CBE. The Agency's complete economic analysis is available in the rulemaking record for this proposed rule (OPTS–50562).

X. Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the itme of submission will be placed in the public version of the rulemaking record. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any party submitting confidential comments prepare and submit a sanitized version of the comments that EPA can place in the public record.

XI. Rulemaking Record

EPA has established record for this rulemaking (docket control number OPTS–50562). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. This proposed rule.
2. The economic analysis of this proposed rule.
3. A summary of data on CBE prepared by Tracor Jitco/Technical Resources, Inc.

The Agency will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public in the OTS Public Information Office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The OTS Public Information Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

XII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the reporting cost for submitting a significant new use notice would be approximately $1,400 to $8,000. EPA believes that, because of the nature of the rule and the substance involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605 (b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA expects to receive few SNUR notices for the substance since the Agency has no evidence of recent commercial manufacture, import, or processing of CBE. Therefore, EPA believes that the number of small businesses affected by this proposed rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.)* and has assigned OMB control number 2070–0038 to this proposed rule. Comments on these requirements should be submitted to the

Office of Information and Regulaotry Affairs of OMB, marked "Attention: Desk Officer for EPA." The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, significant new uses.

Dated: August 25, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.648 to read as follows:

§ 721.648 1-Chloro-2-bromoethane.

(a) *Chemical substance and significant new use subject to reporting.*

(1) The chemical substance 1-chloro-2-bromoethane (CAS No. 107–04–0) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: any use.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 2070–0038)

[FR Doc. 87–20418 Filed 9–3–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–332, RM–5751]

Radio Broadcasting Services; Oildale, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Buckley Broadcasting Corporation, proposing the substitution of FM Channel 237B1 for Channel 237A at Oildale, CA, and mofidication of the license of Station KLLY(FM) accordingly, to provide that community with its first wide coverage area FM service.

DATES: Comments must be filed on or before October 19, 1987, and reply comments on or before November 3, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Martin R. Leader, Esq., John Joseph McVeigh, Esq., Fisher, Wayland, Cooper & Leader, 1255–23rd Street NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–332, adopted August 5, 1987, and released August 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20437 Filed 9–3–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–331, RM–5867]

Radio Broadcasting Services; L'Anse, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Aaron J. Coffey, proposing the allocation of FM Channel 291C2 to L'Anse, Michigan, as that community's first FM broadcast service. Concurrence of the Canadian government is required for the allotment of FM Channel 291C2 at L'Anse.

DATES: Comments must be filed on or before October 19, 1987, and reply comments on or before November 3, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lauren A. Colby, 10 E. Fourth Street, P.O. Box 113, Frederick, Maryland 21701, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–331, adopted August 5, 1987, and released August 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-20438 Filed 9-3-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-341, RM-5779]

Radio Broadcasting Services; Wichita Falls, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Wichita Falls Communications, licensee of Station KTLT(FM), Channel 292A, Wichita Falls, Texas, proposing the substitution of Channel 292C2 for 292A at Wichita Falls and modification of its license to specify the higher class frequency. The proposal would provide a fourth wide coverage area FM station at Wichita Falls.

DATES: Comments must be filed on or before October 19, 1987, and reply comments on or before November 3, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Edward W. Hummers, Jr., Esquire, Frank R. Jazzo, Esquire, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036 (Counsels to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-341, adopted August 3, 1987, and released August 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-20439 Filed 9-3-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 80

[PR Docket No. 87-275; FCC 87-255]

Maritime Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: The amended rules would designate VHF marine channel 13 in lieu of channel 16 as the bridge-to-bridge channel on the Great Lakes. This proposal is in keeping with informal coordination between the Canadian and U.S. Coast Guards.

DATES: Comments must be received on or before October 13, 1987 and reply comments must be received on or before October 28, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jim Shaffer (202) 632-7197 or Maureen Cesaitis (202) 632-7175, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted July 24, 1987 and released August 24, 1987. The complete text of the Commission decision including the rule amendments is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this proposal including the rule amendments may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The Vessel Bridge-to-Bridge Radiotelephone Act requires that the Commission designate a specific frequency to be used in U.S. waters by approaching vessels to communicate their intentions to one another. VHF marine channel 13 has been designated for this purpose. However, the Great Lakes were exempted from the terms of the Bridge-to-Bridge Act because under the Great Lakes Radio Agreement channel 16, the distress, safety and calling channel, is also used for bridge-to-bridge communications. Increasing congestion on channel 16 prompted the Canadian Coast Guard and the U.S. Coast Guard to discuss designating channel 13 as the bridge-to-bridge frequency. As a result of these negotiations, the Commission and the Canadian Department of Communications are preparing companion proposals that would specifically designate channel 13 as the bridge-to-bridge frequency in the Great Lakes.

2. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the amended rules will not have a significant impact on a substantial number of small entities. The only vessels affected by the rule change are those subject to the Great Lakes Radio Agreement.

3. The rule amendments contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new information collection and record keeping requirement.

4. This Notice of Proposed Rule Making is issued under the authority of 47 U.S.C. 154(i) and 303(r).

The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless othewise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 4726, 12 UST 2377, unless otherwise noted.

5. A copy of this Notice of Proposed Rule Making will be served on the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 80

Bridge-to-bridge, Canada, Great Lakes.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-20436 Filed 9-3-87; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM-126C; Notice No. 87-10]

Emergency Response Communication Standards; Extension of Comments Period and Corrections

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking: Extension of comment period; corrections.

SUMMARY: On August 20, 1987 RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (52 FR 31486). The NPRM proposed to amend the Hazardous Materials Regulations (HMR) by requiring additional emergency response information on shipping papers and placement of response action information in all places, including vehicles, where hazardous materials are transported in commerce. This document extends the comment period and makes two corrections to the NPRM.

DATE: By this document, RSPA extends the comment period of Notice No. 87-10 from September 21, 1987 to December 22, 1987.

FOR FURTHER INFORMATION CONTACT: Lee Jackson, (202) 366-4488, Office of Hazardous Materials Transportation, RSPA, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Representatives of various industries and corporations have contracted RSPA stating that additional time is necessary to fully evaluate the proposals contained in the NPRM. RSPA agrees that additional time should be provided to interested persons so that they are afforded adequate time to comment on the proposals. Therefore, RSPA is extending the closing date for comments on Notice No. 87-10 to December 22, 1987. In addition, RSPA is correcting two errors which appeared in the NPRM.

In Docket No. HM-126C, Notice No. 87-10, which begins on page 31486 of the August 20, 1987 **Federal Register**, the following are corrected:

1. On page 31490, in the third line of the second column, the reference to "Section 1910.1200" is changed to read "Section 1910.120".

2. In § 172.301 (c) introductory text on page 31493, the first sentence in the first column is changed to read: "If the hazardous material is a mixture of two or more hazardous materials, the technical name of at least two components most predominantly contributing to the hazard or hazards of the mixture must be marked in parentheses immediately following the proper shipping name."

Issued in Washington, DC on August 31, 1987.
Alan I. Roberts,
Director, Office of Hazardous Materials Transportation.
[FR Doc. 87-20388 Filed 9-3-87; 8:45 am]
BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 52, No. 172
Friday, September 4, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Review of the United States Sugar Import Quota System

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the annual determination of the Secretary of Agriculture concerning the continued operation of the U.S. sugar import quota system established by Presidential Proclamation 4941 of May 5, 1982 (47 FR 19661).

FOR FURTHER INFORMATION CONTACT: John Nuttall, Chief, Sugar Group, Foreign Agricultural Service, Room 6095, South Building, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: In accordance with paragraph (f) of Headnote 3, subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (TSUS), the Secretary of Agriculture has consulted with the U.S. Trade Representative, the Department of State, and other concerned agencies on the operation of the sugar import quota system established under the authority of Headnotes 2 and 3 of subpart A of part 10 of schedule 1 of the TSUS, the now-expired International Sugar Agreement, 1977, Implementation Act, and Section 201 of the Trade Expansion Act of 1962. After reviewing the operation of the sugar import quota system, the Secretary of Agriculture has determined that the system should be continued in effect in order to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT). The rationale for this decision is based on the following analysis.

A. Current World and U.S. Sugar Market Situation

World sugar production for 1986/87 once again exceeded consumption. This has been the case for every year in the 1980's. As a result, the world sugar market continues to be depressed. World production in 1986/87 is estimated at 101.7 million metric tons, while consumption is estimated at around 100.0 million metric tons. Ending stocks should increase by 1.7 million metric tons and will continue to exceed 40 percent of estimated consumption. The continued high stock levels will prevent any sustained recovery in world sugar prices. Accordingly, the world price (f.o.b.s., Caribbean, No. 11 spot contract as published by the New York Coffee, Sugar and Cocoa Exchange) averaged 6.72 cents per pound during the January 1, 1987 through July 31, 1987 period, compared to 6.49 cents per pound during the same period of the previous year, and prices recently have dropped to as low as 5.03 cents per pound. U.S. centrifugal sugar production is estimated at 6.75 million short tons (6.13 million metric tons), and domestic utilization is expected to be 7.85 million short tons (7.13 million metric tons).

During the period January 1, 1987 through August 15, 1987, 686,901 short tons were charged against the quotas for the 39 countries which have allocations totalling 1,001,430 short tons. The domestic price of raw sugar (c.i.f., duty and fee paid, No. 14 contract nearby futures, January 1, 1987 through July 31, 1987, as published by the New York Coffee, Sugar and Cocoa Exchange) averaged 21.85 cents per pound for the first seven months of the quota year.

B. Outlook for World and U.S. Sugar Market

World centrifugal sugar production and consumption may be close to being balanced in 1987/88. Prospective production increases around the world coupled with a moderate increase in consumption indicate that there will not be a dramatic change in world stocks in 1987/88. However, large world sugar stocks will continue to prevent a substantial recovery in prices. This is relfected in world sugar futures prices which currently range from 5.2 cents per pound for contracts due in September 1987 to 7.1 cents per pound for contracts due to mature in October 1988.

Given these factors, we anticipate that world prices will remain at levels that make it impossible to achieve market conditions that give due consideration to the interests of domestic producers in the U.S. sugar market without a continuation of the current sugar import quota system.

Notice

In accordance with paragraph (f) of Headnote 3, subpart A, part 10, schedule 1 of the TSUS, I have determined that the continued operation of paragraphs (b), (c), (d) and (e) of Headnote 3 gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT, and that paragraph (9) of that headnote, which would allow entry of sugar into the United States of not to exceed 6.90 million short tons, would not give due consideration to such interests.

Signed at Washington, DC, on August 31, 1987.

Peter Meyers,

Acting Secretary of Agriculture.

[FR Doc. 87–20392 Filed 9–1–87; 12:04 pm]
BILLING CODE 3410–10–M

COMMISSION ON CIVIL RIGHTS

Meetings; Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on September 23, 1987, at the Woolley's Petit Suites, 3211 East Pinchot Street, Phoenix, Arizona 85018. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John While or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 1, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-20395 Filed 9-3-87; 8:45 am]

BILLING CODE 6335-01-M

Meetings; Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Subcommittee of the Colorado Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 3:30 p.m. on September 8, 1987, at the Pueblo Holiday Inn, 4001 North Elizabeth, Pueblo, Colorado 81008. The purpose of the meeting is to gather information on the impact in Colorado of the implementation of the Immigration Reform and Control Act.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 31, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-20397 Filed 9-3-87; 8:45 am]

BILLING CODE 6335-01-M

Meetings; Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Subcommittee of the Colorado Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:00 Noon on September 9, 1987, at the Ouray Room, Sky Ute Lodge, Southern Ute Reservation, Ignacio, Colorado 81137. The purpose of the meeting is to gather information on the impact in Colorado of the implementation of the Immigration Reform and Control Act.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 31, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-20399 Filed 9-3-87; 8:45 am]

BILLING CODE 6335-01-M

Meetings; Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Subcommittee of the Colorado Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m. on September 9, 1987, at the County Commission Room, 109 West Main, Cortez, Colorado 81321. The purpose of the meeting is to gather information on the impact in Colorado of the implementation of the Immigration Reform and Control Act.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 31, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-20396 Filed 9-3-87; 8:45 am]

BILLING CODE 6335-01-M

Meetings: Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Colorado Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on September 10, 1987 and reconvene at 9:00 a.m. and adjourn at 12 noon on September 11, 1987, at the Radisson Hotel, 1550 Court Place, Denver, Colorado 80202. The purpose of the meeting is to gather information on the impact in Colorado of the implementation of the Immigration Reform and Control Act.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 31, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-20398 Filed 9-3-87;8:45 am]

BILLING CODE 6335-01-M

Colorado Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Subcommittee of the Colorado Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:30 p.m. on September 9, 1987, at the Greeley Holiday Inn, 609 8th. Avenue, Greeley, Colorado 80631. The purpose of the meeting is to gather information on the impact in Colorado of the implementation of the Immigration Reform and Control Act.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign leanguage interpreter, should contact the Regional office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 31, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-20400 Filed 9-3-87; 8:45 am]

BILLING CODE 6335-01-M

Colorado Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Subcommittee of the Colorado Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 3:30 p.m. on September 8, 1987, at the Grand Junction Holiday Inn, 755 Horizon Dr., Grand Junction, Colorado 81506. The purpose of the meeting is to gather information on the impact in Colorado of the implementation of the Immigration Reform and Control Act.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 31, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-20401 Filed 9-3-87; 8:45 am]

BILLING CODE 6335-01-M

Nebraska Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m., on September 18, 1987, at the Scottsbluff Inn, 1901 21st Avenue, Scottsbluff, Nebraska. The purpose of the meeting is to hear presentations on the status of civil rights in Nebraska. Presenters include representatives of the Scottsbluff Police Department, Scotts Bluff Sheriff Department, Nebraska Mexican American Affairs Commission, Scotts Bluff County Clerk, Nebraska Association of Farmworkers and the American Indian community. In addition, program ideas and activities for fiscal year 1988 will be discussed.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard F. Duncan, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rule and regulations of the Commission.

Dated at Washington, DC, September 1, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-20402 Filed 9-3-87; 8:45 am]

BILLING CODE 6335-01-M

North Dakota Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Dakota Advisory Committee to the Commission will convene at 1:00 p.m. on September 19, 1987, at the Doublewood Ramada Inn, Board Room, 1400 East Interchange Avenue, Bismark, North Dakota. The purpose of the meeting it to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Modesto Del Busto or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rule and regulations of the Commission.

Dated at Washington, DC, September 1, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-20403 Filed 9-3-87; 8:45 am]

BILLING CODE 6335-01-M

Tennessee Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m., on September 23, 1987, at the Vanderbilt Plaza Hotel, 2100 West End Avenue, Nashville, Tennessee. The purpose of the meeting is to receive background information on desegregation in public higher education in the State and finalize plans for a community forum on that subject.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James F. Blumenstein, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 1, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-20404 Filed 9-3-87; 8:45 am]

BILLING CODE 6335-01-M

Utah Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on September 16, 1987 at the Cotillion A Room, Airport Holiday Inn, 1659 W. North Temple, Salt Lake City, Utah 84116. The purpose of the meeting is to conduct program planning.

Persons desiring additional information, or planning a presentation to the Committee should contact Committee Member Shu H. Cheng, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 31, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-20405 Filed 9-3-87; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[P373]

Marine Mammals; Permit Modification; Dr. Lanny Cornell and Mr. Edward Asper

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 549 issued to Dr. Lanny H. Cornell and Mr. Edward Asper, 1720 South Shores Road, San Diego, California 92109, on June 3, 1986 (51 FR 19883), is modified as follows:

Section A.2 is added:

2. An unspecified number of specimens taken from live marine mammals of the Order Cetacea and Pinnipedia (except walrus) be imported and exported for research purposes provided:

(a) The specimens are taken by scientists/veterinarians for usual and customary veterinary or curatorial purposes;

(b) The specimens are taken from animals which are not listed as endangered, threatened or depleted;

Section B.14 is added:

14. This importation/exportation shall be conducted for the purposes set forth in the application and modification request.

This modification became effective on August 26, 1987.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Ave., NW., Room 805, Washington, DC 20009;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115–0070;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802; and

Director, U.S. Fish and Wildlife Service, 1000 Glebe Road, Room 611, Arlington, Virginia 22201.

Date: August 26, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–20413 Filed 9–3–87; 8:45 am]

BILLING CODE 3510–22–M

[P8F]

Marine Mammals; Issuance of Permit; Naval Ocean Systems Center

On July 10, 1987, notice was published in the **Federal Register** (52 FR 26056) that an application had been filed by the Naval Ocean Systems Center, P.O. Box 997, Kailua, Hawaii 96734 for a permit to import four (4) false killer whales (*Pseudorca crassidens)* and four (4) Grampus (*Grampus griseus)* from Japan for scientific research.

Notice is hereby given that on August 28, 1987, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC 20009; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: August 28, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–20414 Filed 9–3–87; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a contract market in the CBOE (Chicago Board Options Exchange) 50 Stock Index. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 3, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT CBOE 50 Stock Index futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7227.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by November 3, 1987.

Issued in Washington, DC on September 1, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87-20449 Filed 9-3-87; 8:45 am]

BILLING Code 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting; Task Force on Process for Ada 9X

ACTION: Notice of Meeting.

SUMMARY: A meeting of Task Force on Process for Ada 9X will be held Wednesday, September 16, 1987 from 9:00–5:00 p.m. at the Software Engineering Institute, 4500 Fifth Avenue, Pittsburgh, PA 15213, to discuss the process for developing Ada 9X and to develop recommendations to be forwarded to the Ada Board.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, IIT Research Institute, Ada Information Clearinghouse, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, (703) 685-1477.

Linda M. Bynum,

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

August 31, 1987.

[FR Doc. 87-20407 Filed 9-3-87; 8:45 am]

BILLING CODE 3810-01-M

Membership of the Defense Contract Audit Agency (DCAA) Performance Review Board; Membership

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Notice of Membership of the Defense Contract Audit Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Contract Audit Agency (DCAA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Board provides fair and impartial review of Senior Executive Service (SES) Performance appraisals and makes recommendations to the Director, Defense Contract Audit Agency, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Roger D. Kriesch, Personnel Management Specialist, Office of the Director of Personnel and Security, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, Virginia, 202/274-5798.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Board. They will serve a one-year term, effective upon publication of this notice.

Mr. John Quill, General Counsel, Defense Legal Services Agency, Chairperson

Ms. Joanne Shuck, Director, Resources Management, Assistant Secretary of Defense (Command, Control, Communications and Intelligence), member

Mr. Peter H. Tovar, Chief, Accounting and Finance Division, Office of the Comptroller, Defense Logistics Agency, member

Linda M. Bynum,

Alternate Office of Secretary of Defense Federal Liaison Officer, Department of Defense.

September 1, 1987.

[FR Doc. 87-20408 Filed 9-3-87; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Commitee; Publication of Changes in Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of Changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 141. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 141 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: September 1, 1987.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 141 to the Heads of the Executive Departments and Establishments

SUBJECT: Maximum Per Diem Rates for Official Travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government Civilian Employees

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5701(a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 140 except for the cases identified by asterisks which rates are effective on the date of this Bulletin unless otherwise indicated.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	*Maximum rate*
Alaska:	
Adak [1]	$25
Anaktuvuk Pass	140
Anchorage	125
Atqasuk	215
Barrow	150
Bethel	124
Bettles	110
Cold Bay	120
Coldfoot	122
College	105
Cordova	118
Deadhorse	113
Dillingham	114
Dutch Harbor-Unalaska	127
Eielson AFB	105
Elmendorf	125
Fairbanks	105

Locality	Maximum rate
Ft. Richardson	125
Ft. Wainwright	105
Homer	115
Juneau	109
Katmai National Park	148
Kenai	104
Ketchikan	105
King Salmon [3]	134
Kodiak	118
Kotzebue [3]	136
Kuparuk Oilfield	127
Murphy Dome [3]	105
Noatak	136
Nome	129
Noorvik	136
Petersburg	113
Point Hope	160
Point Lay	179
Prudhoe Bay	113
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Other	88
Kauai, Island of:	
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[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska: on any day when Government quarters are not used and quarters are obtained at a construction camp, a daily travel per diem allowance of $69 is prescribed to cover the costs of lodging, meals and incidental expenses.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when U.S. Government or contractor quarters and U.S. Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters and U.S. Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

August 31, 1987.

[FR Doc. 87–20406 Filed 9–3–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Notice Inviting Public Comment on the Condition of American Education

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Secretary of Education invites public comment on the condition of American education, to help in the preparation of a report requested by the President on the state of American education five years after release of *A Nation At Risk*, the 1983 report of the National Commission on Excellence in Education.

The Secretary's forthcoming report will include an examination of progress on issues raised by the 1983 report, including its recommendations on the content of curricula; standards and expectations for American schools; time allocted to learning and instruction; the quality of teaching; and leadership and fiscal support.

The forthcoming report may also address issues not prominently featured in the 1983 report, and the Secretary invites additional comment on these as well. In this category may be included the role of parents in education; the conditions of elementary and higher education; the role of schools in developing character and citizenship; the influence of the wider culture on educational achievement; and changes in education policy arising since release of the 1983 report. The Secretary also invites comment on opportunities for future improvement in the American education system.

DATES: Comments are requested by October 5, 1987.

ADDRESSES: Public comments should be addressed to "1988 Report," U.S. Department of Education, 555 New Jersey Avenue, NW., Room 304–E, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Ann Swift, Information Services, 555 New Jersey Avenue, NW., Room 300–I, Washington, DC 20208. Telephone: (202) 537–6651 or 800–424–1616.

Dated: September 2, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–20594 Filed 9–3–87; 8:51 am]

BILLING CODE 4000–01–M

[CFDA No. 84.072A]

Applications for New Awards Under the Indian Education Act of 1972, as Amended, Part A—Indian Controlled Schools for Fiscal Year 1988; Correction

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: This notice corrects an error made in the application notice published on August 31, 1987, in the **Federal Register** on page 32831. The applications available date is corrected to read September 30, 1987, and the deadline for transmittal of applications date is corrected to read November 16, 1987.

FOR APPLICATIONS OR FURTHER INFORMATION CONTACT: Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2166, Washington, DC 20202. Telephone: (202) 732–1918.

Program authority: 20 U.S.C. 241bb(b).

Dated: August 31, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87-20475 Filed 9-3-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.061A]

Applications for New Awards Under the Indian Education Act of 1972, as Amended, Part B—Educational Services Projects for Fiscal Year 1988; Correction

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: This notice corrects an error made in the application notice published on August 31, 1987, in the **Federal Register** on page 32831. The applications available date is corrected to read September 30, 1987, and the deadline for transmittal of applications date is corrected to read November 16, 1987.

FOR APPLICATIONS OR FURTHER INFORMATION CONTACT: Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2166, Washington, DC 20202. Telephone: (202) 732-1918.

Program authority: 20 U.S.C. 3385 (a), (c).

Dated: August 31, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87-20477 Filed 9-3-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.061C-E]

Applications for New Awards Under the Indian Education Act of 1972, as Amended, Part B—Planning, Pilot and Demonstration Projects for Fiscal Year 1988; Correction

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: This notice corrects an error made in the application notice published on August 31, 1987, in the Federal Register on page 32831. The applications available date is corrected to read September 30, 1987, and the deadline for transmittal of applications date is corrected to read November 16, 1987.

FOR APPLICATIONS OR FURTHER INFORMATION CONTACT: Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2166, Washington, DC 20202. Telephone: (202) 732-1918.

Program authority: 20 U.S.C. 3385(a)(1), (b).

Dated: August 31, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87-20475 Filed 9-3-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.062A]

Applications for New Awards Under the Indian Education Act of 1972, as amended, Part C—Educational Services Projects for Fiscal Year 1988; Correction

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: This notice corrects an error made in the application notice published on August 31, 1987, in the **Federal Register** on page 32830. The applications available date is corrected to read September 30, 1987, and the deadline for transmittal of applications date is corrected to read November 16, 1987.

FOR APPLICATIONS OR FURTHER INFORMATION CONTACT: Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2166, Washington, DC 20202. Telephone: (202) 732-1918.

Program authority: 20 U.S.C. 1211a(b).

Dated: August 31, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87-20476 Filed 9-3-87; 8:45 am]

BILLING CODE 4000-01-M

Intergovernmental Advisory Council on Education; Meeting

AGENCY: Intergovernmental Advisory Council on Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Intergovernmental Advisory Council on Education. This notice also describes the functions of the council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: September 21-22, 1987.

ADDRESS: Sept. 21, 10:00 am-5:00 pm: The Washington Marriott, 1221 22nd Street, NW., Washington, DC 20037.

Sept. 22, 10:00 am-Noon: Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Jacqueline McGregor, Executive Director, Intergovernmental Advisory Council on Education, 413 Reporters Building, 300 Seventh Street, SW., Washington, DC 20202, 472-6464.

SUPPLEMENTARY INFORMATION: The Intergovenmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

The meeting is open to the public. The proposed agenda includes:

—Swearing-in of new members

—Old Business

—New Business

Records are kept of all council proceedings, and are available for public inspection at the office of the Intergovernmental Advisory Council on Education, 413 Reporters Building, 300 Seventh Street, SW., Washington, DC 20202, from the hours of 9:00 a.m. to 5:00 p.m.

Dated: September 1, 1987.

Peter R. Greer,

Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 87-20482 Filed 9-3-87; 8:45 am]

BILLING CODE 4000-01-M

Senior Executive Service, Membership of the Performance Review Board

AGENCY: Department of Education.

ACTION: Notice of membership of the Performance Review Board.

SUMMARY: Notice is hereby given by the names of members of the Department of Education Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Martha C. Brooks, Director, Executive Resources Staff, Office of Personnel Resource Management Service, Office of Management, Department of Education, [Room 1085, FOB 6], 400 Maryland Avenue, SW., Washington, DC 20202, Telephone: [202] 472-3567.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial rating, any written response by the senior executive, any further reply by a higher level executive,

and will conduct such further review as the Board finds necessary.

Membership

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the Department of Education: Mary Rose, Co-Chair; Ronald Kimberling, Co-Chair; Charles J. O'Malley, Kenneth Whitehead, Henry Curry, Milton Goldberg, Emerson Elliott, Thomas Skelly, Carol Cichowski, Leroy Cornelsen, Theodore Sky, Jack Klenk, Mary Jean LeTendre, Daniel Lau, Ernest Canellos, Alicia Coro, Lois Bowman, John Pucciano, Charles Kolb, Diane Weinstein, Patrick Pizzella, William Smith, Thomas Bellamy, Arthur Sinai, Carlos Rice, Ronald Oleyar, Sylvia Pate, Ex-Officio Member.

Dated: August 31, 1987.

Mary M. Rose,

Deputy Under Secretary for Management.

[FR Doc. 87-20479 Filed 9-3-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87-46-NG]

Application To Import Natural Gas From Canada; Williams Gas Marketing Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 26, 1987, of an application filed by Williams Gas Marketing Company (Williams), for blanket authorization to import Canadian natural gas for short-term and spot market sales in the United States. Authorization is requested to import up to 200 Bcf for a two-year term beginning on the date of the first delivery. The gas would be sold on a short-term or spot basis to U.S. purchasers including pipelines, local distribution companies, electric utilities and commercial and industrial end-users. Williams, a wholly-owned subsidiary of Williams Companies, Inc., of Tulsa, Oklahoma, would import gas for its own account or act as a broker for U.S. purchasers as well as Canadian suppliers. The specific terms of each import and sale would be negotiated on an individual basis, including price and volumes. Williams intends to utilize existing pipeline facilities for transportation of the volumes imported.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than October 5, 1987.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9590

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. yThe filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., October 5, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Williams' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 31, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-20451 Filed 9-3-87; 8:45 am]

BILLING CODE 6450-01-M

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Federal Energy Regulatory Commission

[Docket Nos. ER87-599-000, et al.]

Electric Rate and Corporate Regulation Filings: Gulf States Utilities Co. et al.

August 31, 1987.

Take notice that the following filings have been made with the Commission.

1. Gulf States Utilities Company

[Docket No. ER87-599-000]

Take notice that on August 25, 1987, Gulf States Utilities Company (GSU) tendered for filing a contract for purchases of economic energy by Florida Power and Light Company from GSU.

GSU requests an effective date of August 18, 1987, for the contract.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Company

[Docket No. ER87-603-000]

Take notice that on August 27, 1987, Arizona Public Service Company (APS) tendered for filing Supplemental Agreement No. 3 to the Wholesale Power Supply Agreement between Arizona Public Service Company (APS) and Arizona Power Authority (APA) executed August 4, 1987.

In the event APA loses a portion of its load served by Electrical District No. 4 (District) as a result of redevelopment of a portion of said District's service area from agricultural to non-agricultural proposes and APS becomes the supplier for such new load, APA may reduce its Contract Demand at the appropriate delivery point up to the amount of the kW load lost by the District.

APS requested that this Agreement become effective 60 days from the date of filing with FERC.

Copies of this filing are being served upon APA and the Arizona Corporation Commission.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this document.

3. Arizona Public Service Company

[Docket No. ER87-602-000]

Take notice that on August 26, 1987, Arizona Public Service Company (Company) tendered for filing, pursuant to 18 CFR 35.15 Notices of Cancellation of Wholesale Power Agreements (Current Agreement) for Maricopa County Municipal Water Conservation District No. (MCM), (FPC Rate Schedule No. 14); Roosevelt Irrigation District (RID) (FPC Rate Schedule No. 15) and Buckeye Water Conservation and Drainage District (BCD), (FPC Rate Scedule No. 16) (Collectively referred to as "Districts") in the form set forth in 18 CFR 131.53.

The Company states that it presently provides wholesale electrical power and operating and wheeling services to the Districts under the Current Agreements. And by letters dated October 1, 1984, the Company notified the districts of its intent to cancel the Current Agreements pursuant to Article XXII of the Agreement for MCM and Article XXI of the Agreements for RID and BCD. The Current Agreements provide for termination at midnight on December 31, 1987.

The Company requests waiver of the notice requirements under 18 CFR 35.15 to allow sufficient time for the Commission to act on the matter to ensure that these Notices of Cancellation become effective as of the December 31, 1987 date of expiration of the Current Agreements.

Copies of this filing have been served upon the Districts and the Arizona Corporation Commission.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Cambridge Electric Light Company

[Docket No. ER87-600-000]

Take notice that on August 25, 1987, Cambridge Electric Light Company (Cambridge) tendered for filing, pursuant to § 35.12 of the Commission's regulations, a proposed tariff for the provision of non-firm transmission services at wholesale. Cambridge states that its proposed tariff is intended to be generally-available to investor-owned utilities, municipalities operating an electric distribution system and "Qualifying Facilities". The tariff proposes a cost of service formula rate to be implemented on an annual basis. If implemented based upon data applicable to calendar 1986, such rate would be $2.14 per kilowatt per month. Cambridge proposes that its tariff become effective upon November 1, 1987, an even date slightly in excess of sixty days following the instant filing.

Cambridge states that copies of the tendered filing have been served upon the Massachusetts Department of Public Utilities.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Electric Company—Boston Edison Company and Montaup Electric Company

[Docket No. ER87-601-000]

Take notice that on August 25, 1987, Commonwealth Electric Company (Commonwealth) tendered for filing on behalf of itself, Montaup Electric Company and Boston Edison Company supplemental data pertaining to their applicable gross investments, combined Federal income and franchise tax rates, and local tax rates for the twelve-month period ending December 31, 1986. Commonwealth states that this supplemental data is submitted pursuant to a letter order of the Federal Power Commission in Docket No. E-7981 dated April 26, 1973 accepting for filing Commonwealth's Rate Schedule FERC No. 21, Boston Edison Company's Rate Schedule FERC No. 67, and Montaup Electric Company's Rate Schedule No. 27.

Commonwealth states that these rate schedules have previously been similarly supplemented for the calendar years 1972 through 1985.

Copies of said filing have been served upon Boston Edison Company, Montaup Electric Company, Northeast Utilities and the Massachusetts Department of Public Utilities.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Connecticut Light and Power Company et al.

[Docket No. ER87-604-000]

Take notice that on August 26, 1987, Connecticut Light and Power Company (CL&P) tendered for filing proposed amendments (Amendments) to various rate schedules with respect to system sales agreements.

CL&P states that the Amendments reduce the capacity charge and/or energy reservation charge in each of the rate schedules to a maximum of $10.00 per megawatt-hour when CL&P and Western Massachusetts Electric Company (WMECO) (collectively called the "NU Companies") are the seller.

CL&P requests that the Commission waiver its standard notice period and permit the Amendments to become effective as of July 1, 1987.

WMECO has filed a Certificate of Concurrence in this docket.

CL&P states that copies of this Amendment have been mailed or delivered to each of the affected parties.

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER87–521–000]

Take notice that on August 26, 1987, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing Amendment No. 1 dated August 21, 1987, to the Long-Term Power Sales Agreement dated June 30, 1987, between Pacific and Southern California Edison Company (Edison).

Copies of this filing were supplied to the Public Utilities Commission of the State of California and Edison.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Idaho Power Company

[Docket No. ER87–598–000]

Take notice that on August 24, 1987, Idaho Power Company tendered for filing pursuant to section 205(c) of the Federal Power Act and in accordance with the provisions of § 35.30 of the Commission's Rules of Practice and Procedure, copies of Idaho's agreement with and/or objections to the Average System Cost adjustments made by BPA in its Average System Cost Report for Idaho Power's Idaho residential jurisdiction.

This report contains:

1. BPA's Average System Cost Report for Idaho Power Company—Idaho Jurisdiction, dated August 3, 1987.

2. An Appendix 1 for the Company's Idaho jurisdiction which demonstrates an ASC of 17.83 mills per kwh pursuant to BPA's 1984 ASC Methodology. Also attached are supplemental schedules which detail the allocation and functionalization of each cost item referenced in the Appendix 1. Included are detailed tables which indicated the jurisdictional separation study results using the same allocation methods and procedures used by the Idaho Public Utility Commission in its Order Nos. 20610 and 20924, and reviewed by BPA in its ASC Report dated August 3, 1987.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER87–365–000]

Take notice that on August 25, 1987, Southern California Edison Company tendered for filing an amendment to its filing in Docket No. ER87–365–000 to make proposed changes in its FERC Electric Service Tariff, Time-of-Use Resale Service, Schedule R–4.1. The proposed changes incorporated in proposed Schedule R–4.2 would decrease revenues for the 12-month period ending December 31, 1988, from jurisdictional sales and service by $6.3 million from revenues at present rates, Schedule R–4.1, to reflect the first-year impact of the Tax Reform Act of 1986 on the resale revenue requirement.

These proposed rates, Schedule R–4.2, are to become effective on January 1, 1987, in accordance with terms of a settlement agreement approved by the FERC in Docket No. ER86–271–000.

Also filed were proposed rates, Schedule R–4.3, which would decrease revenues for the 12-month period ending December 31, 1986, by an additional $5.4 million to become effective on January 1, 1988, to reflect the second year impact of the Tax Reform Act of 1986 on the resale revenue requirement. As rates for all resale customers except the City of Vernon have been changed effective June 1, 1987, in Docket No. ER87–483–000, the Schedule R–4.3 rates would be applicable only to the City of Vernon, and only if rates established in Docket No. ER86–271–000 were still in effect on that date.

Copies of this amendment were served upon the public utility's jurisdictional customers, the California Public Utilities Commission, and the Arizona Corporation Commission.

Comment date: September 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–20484 Filed 9–3–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP87–224–001 et al.]

Natural Gas Certificate Filings; Northwest Pipeline Corp. et al.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

August 28, 1987.

[Docket No. CP87–224–001]

Take notice that on August 7, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87–224–001 an amendment to its pending application filed on February 27, 1987, in Docket No. CP87–224–000 pursuant to section 7(b) of the Natural Gas Act for a certificate of public convenience and necessity granting permission and approval to partially abandon the transportation and delivery of the direct sale of natural gas to Chevron Chemical Company (Chevron), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Northwest states that in its application filed in Docket No. CP87–224–000, it proposed to immediately reduce its authorized maximum delivery of gas to Chevron's Finley ammonia plant from 160,000 therms per day of firm and 40,000 therms per day of interruptible service to a total of 50,000 therms per day which would be available on a firm basis until February 28, 1988, and on an interruptible basis thereafter.

Northwest's amended application requests that its currently authorized 160,000 therms per day of firm service and 40,000 therms of interruptible be abandoned down to a total service level of 140,000 therms per day, of which 50,000 therms per day would be firm and 90,000 per day would be interruptible from June 21, 1987 to February 29, 1988, with the full 140,000 therms per day being available only on an interruptible basis thereafter, all pursuant to an Amendatory Agreement dated June 21, 1987. Further, Northwest states that the Amendatory Agreement revised the commodity charges applicable to volumes of gas sold and delivered from June 21, 1987 to February 29, 1988. Northwest states that the commodity charge would be the lower of Rate Schedule ODL–1 Commodity Charge or the actual weighted average cost of gas for Northwest's system plus a variable operation and maintenance cost of 2.3 cents per MMBtu plus GRI charges plus fuel.

Comment date: September 18, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company a Division of Tenneco Inc

August 28, 1987.

[Docket No. CP87-494-000]

Take notice that on August 13, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP87-494-000 a request, pursuant to § 284.223 of the regulations under the Natural Gas Act, to provide an interruptible transportation service on behalf of Phillips Petroleum Company (Phillips) under the authorization issued in Docket No. CP87-115-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated June 25, 1987, it proposes to transport natural gas on behalf of Phillips from a receipt point located in South Marsh Island Block 274, offshore Louisiana, to a delivery point located in Vermilion Block 131, offshore Louisiana. The Applicant further states that the maximum daily quantity would be 4,272 dt equivalent of natural gas per day and 1,009,590 dt equivalent of natural gas on an annual basis. Service under Section 284.223(a) commenced June 27, 1987, as reported in Docket No. ST87-3515-000, it is stated.

Comment date: October 13, 1987, in accordance with Standard Paragraph G at the end of this notice.

3. Southern Natural Gas Company

August 28, 1987.

[Docket No. CP87-487-000]

Take notice that on August 7, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-487-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern to transport natural gas on behalf of Atlanta Gas Light Company (Atlanta), acting as agent for Burgess Pigment Company (Burgess), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Atlanta would cause gas purchased by Burgess from SNG Trading Inc., Entrade Corporation, and End Users Supply System to be delivered to Southern at various existing points of delivery on Southern's contiguous pipeline system in onshore and offshore Louisiana, Mississippi, and Alabama. Southern proposes to transport on an interruptible basis up to 1.5 billion Btu equivalent of gas per day for Atlanta to Atlanta's Sandersville Meter Station in Washington County, Georgia for ultimate delivery by Atlanta to Burgess' plant in Sandersville.

Southern requests that the proposed transportation be authorized for a term expiring on October 31, 1988.

Southern states that its agreement with Atlanta provides that Atlanta shall pay Southern each month the following rates for performing the proposed transportation service:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Atlanta do not exceed the daily contract demand of Atlanta, the transportation rate shall be 48.2 cents per million Btu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Atlanta exceed the daily contract demand of Atlanta, the transportation rate for the excess volumes shall be 77.6 cents per million Btu.

Additionally, Southern indicates that it would collect from Atlanta the GRI surcharge of 1.52 cents per Mcf, of such other GRI funding unit or surcharge as the Commission or other government authority may from time to time, by order or specific applicability or otherwise, prescribe or approve.

Southern states that the proposed transportation service would be conditioned upon the availability of capacity sufficient for Southern to perform the proposed services without detriment or disadvantage to Southern's obligations to its customers who are dependent on its general system supply.

Comment date: September 18, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. ANR Pipeline Company

August 28, 1987.

[Docket No. CP87-442-000]

Take notice that on July 13, 1987, as supplemented July 17, 1987, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an application in Docket No. CP87-442-000 pursuant to section 7(c) of the Natural Gas Act to transport gas on a firm and interruptible basis for Standard Oil Chemial Company (SOCC) and to continue to operate any jurisdictional facilities needed to implement the service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

More specifically, ANR proposes to implement transportation contracts dated October 10, 1986, as amended on April 23, 1987, and October 14, 1986, as amended on November 24, 1986, and April 24, 1987, which provide for the transportation for SOCC of 90,000 dekatherm equivalent (dt) of gas per day on an interruptible basis and 550,000 dt equivalent of gas per day on a firm basis, respectively. ANR states that under the transportation agreements, as amended, it would receive volumes of gas from 424 and 326 receipt points, respectively, specified in the agreements as amended, and redeliver thermally equivalent volumes to SOCC at three specified delivery points located in Paulding and Definance Counties, Ohio.

ANR proposes rates for the interruptible and firm transportation service as provided by ANR's Rate Schedules ITS-1 and FTS-1, respectively. In each case ANR proposes a primary term expiring December 31, 1989, but which would continue on a month to month basis until terminated by ANR or SOCC on thirty days written notice. It is indicated that ANR's contract also provides that ANR may terminate the agreements if it also terminates like service for others on a non-discriminatory basis which is consistent with applicable regulatory law and regulations.

Comment date: September 18, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Citrus Interstate Pipeline Company

August 28, 1987.

[Docket No. CP87-415-000]

Take notice that on June 30, 1987, Citrus Interstate Pipeline Company (CIPCO), P.O. Box 1188, Houston, Texas, 77251-1188, filed in Docket No. CP87-415-000 an application pursuant to section 7(c) of the Natural Gas Act requesting (1) authorization to construct and operate a total of approximately 51.9 miles of 30-inch pipeline, consisting of 51.3-mile and 0.6-mile segments, together with metering and appurtenant facilities, in Mobile County, Alabama, to connect reserves to be produced in the vicinity of Mobile Bay; (2) approval of its FERC Gas Tariff, Original Volume No. 1, including its proposed transportation Rate Schedules FTS-1

and ITS–1 and initial rates; and (3) authorization to transport gas for certain shippers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In addition to the proposals set forth above and in the Notice of Application issued in Docket No. CP87–415–000 (52 Fed. Reg. 27241) CIPCO states that in ordre to provide all potential shippers an opportunity to obtain initial transportation services from CIPCO, CIPCO is proposing (1) to accept requests for both firm and interruptible transportation services on a first-come, first-served basis for all requests received within 60 days of the date the notice of this application is published in the **Federal Register** (Request Period) and (2) to request authorization to transport gas for any shippers requesting services and excuting a precedent agreement within that time and to file all executed precedent agreements within 15 days of the end of the Request Period. CIPCO further states for any shippers requiring downstream transportation services, CIPCO anticipates that any required applications for authorization to render such services for these shippers would be filed with the Commission.

Comment date: September 18, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Algonquin Gas Transmission

August 31, 1987.

[Docket No. CP87–492–000]

Take notice that on August 12, 1987, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP87–492–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Algonquin to provide an existing customer, Commonwealth Gas Company (Commonwealth), with a firm transportation service for a primary term of 20 years starting upon the commencement date which is contemplated to be November 1, 1988, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin states that the proposed service would allow Commonwealth a means of delivering peak season supply owned by Commonwealth to existing points of delivery between Algonquin and Commonwealth. The proposal would involve receipt firm transportation and delivery of up to 40,000 MMBtu per day of gas, it is stated. Algonquin indicates that such deliveries would be subject to fuel reimbursement in accordance with the provisions of Section 29 of the General Terms and Conditions of Algonquin's FERC Gas Tariff Second Revised Volume No. 1. It is further stated that the gas would be received from Commonwealth at a new receipt point in Hopkinton, Massachusetts, referred to as the Marathon Station, transported through the Algonquin system and redelivered at six (6) existing points of delivery between Algonquin and Commonwealth. Algonquin also proposes to make deliveries on an interruptible basis under existing Rate Schedules at the new Marathon Station.

To order such service, Algonquin proposes to construct and operate certain facilities including 8.0 miles of 12-inch pipeline connecting its existing 24-inch mainiine and 30-inch mainline loop in Medway, Massachusetts to the new Marathon Station receipt point in Hopkinton, Massachusetts. Algonquin's proposal would also involve replacement of approximately 0.4 miles of 3-inch pipeline with a new 10-inch pipeline on Algonquin's H system in Medway, Massachusetts, it is stated.

Algonquin estimates that the total cost of the proposed pipeline system to be $10,823,000. It further states that initial financing would be through revolving credit arrangements, short term loans, and from funds on hand.

Algonquin states that the Gas Transportation Agreement would be designated as Rate Schedule X–33 and would be contained in Algonquin's FERC Gas Tariff Original Volume No. 2. Charges related to the service would be set forth in Rate Schedule, it is stated. Algonquin proposes to recover its facilities costs through a monthly demand charge, the deviation of which is set forth in the application. Algonquin indicates it would also charge a commodity charge for transportation quantities within the Maximum Daily Quantity (MDQ). It is further stated that quantities in excess of the MDQ would be subject to overturn charges. Algonquin asserts that the rates of such commodity related charges are based upon those set forth in Algonquin's pending Section 4 rate filing in Docket No. RP87–14–000.

Comment date: September 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

Columbia Gas Transmission Corporation

August 31, 1987.

[Docket No CP73–302–002]

Take notice that on August 19, 1987, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP73–302–002 a petition to amend the order issued March 21, 1977, in Docket No. CP73–302, as amended, pursuant to section 7(c) of the Natural Gas Act a request to extend the period of time in which to complete Phase II development of Crawford Storage Field located in Fairfield and Hocking Counties, Ohio, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Specifically, Columbia requests a three-year extension of time from October 31, 1987 to October 31, 1990 in which to complete the Phase II development of Crawford Storage Field. Columbia states that during the contruction and operation of its Phase II facilities, subsequent monitoring of pressures and volumes indicated that the geographic area and reservoir capacity of the field were larger than originally estimated. Columbia further states that data from drilling and electric logging indicate the geology of the field to be much more complex than as stated in the original application and that studies involving reservoir simulation by computer modeling is required to provide the most economical final design of the storage field for complete integration into its pipeline operations. Columbia states that no further development of the Crawford Storage Field should be undertaken until such time as the reservoir simulation studies are completed.

Columbia estimates that an additional two years are required to perform the simulation studies and an additional twelve months to analyze the studies and prepare any necessary applications to amend its present authorization for construction and operation of the field.

Comment date: September 21, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. El Paso Natural Gas Company; Northern Natural Gas Company, Division of Enron Corp.

August 31, 1987.

[Docket Nos. CP61–92–016 and CP61–139–013]

Take notice that on August 11, 1987, El Paso Natural Gas Company (El Paso), a Delaware Corporation, whose mailing address is P.O. Box 1492, El Paso, Texas 79978 and Northern Natural Gas Company, Division of Enron Corp. (Northern), a Delaware Corporation, whose mailing address is 2223 Dodge

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Street, Omaha, Nebraska 68102, hereinafter referred to jointly as Petitioners, filed at Docket No. CP61–92–016, *et al.*, pursuant to section 7(c) of the Natural Gas Act and Rules 212 and 2001, *et seq.*, of the Commission's Rules of Practice and Procedure, a joint motion to amend the order heretofore issued on January 11, 1965, as amended, in the above proceeding.

The instant joint motion states that by Commission order issued on January 11, 1965 at 33 FPC 34, as later amended, at Docket Nos. CP61–92–000 and CP61–139–000, El Paso and Northern, respectively, received permanent certificate authorization to: (1) Construct and operate certain facilities; (2) deliver natural gas, on an exchange basis, by use of existing capacity in either El Paso's or Northern's gathering system at certain designating points; (3) establish a specified area of interest; and (4) provide for blanket authorization for the addition and deletion of delivery points from time-to-time, all pursuant to the 1963 Services Agreement dated August 17, 1962, as amended (Agreement) between El Paso and Northern.

The instant joint motion states further that El Paso and Northern have reviewed the operational needs of each party to the Agreement and have agreed that certain modifications are necessary in order for the Agreement to continue to serve each party's needs. Petitioners state that, based upon that review and analysis, it has been specifically determined that: (1) A need continues for the subject exchange arrangement encompassed by the Agreement; (2) a need exists for certain operational aspects of the exchange arrangement to be modified by the parties to reflect current measurement and balancing philosophies; and (3) a need has arisen to delete the lease of capacity and facilities provision of the Agreement. To satisfy these needs, it is asserted that Petitioners have entered into an Amendatory Agreement dated April 1, 1987 wherein the parties agreed to revise the Agreement to set forth the proposed changes. More particularly, it is stated that El Paso and Northern each have comprehensively reviewed the exchange arrangement based upon each party's goal to obtain optimum operations for its system relative to the location of gas supply sources and to assure compliance with existing contract obligations, market requirements, and economically sound and prudent operating practices. Petitioners state that the review was undertaken by each party because the Agreement's term currently would expire on April 13, 1988, and because of significant changes that have occurred in the industry affecting all aspects of each company's operations.

It is stated that the results of this review by Petitioners reveals a continuing need by Petitioners for the exchange arrangement and, therefore, the parties seek to extend the primary term of the Agreement for an additional two years from and after April 1, 1987, and thereafter to continue further the Agreement on a year-to-year basis, until terminated by either party. Additionally, Petitioners indicate that, as a part of such review, they have determined that the exchange arrangement should be modified so deliveries of natural gas at the delivery points specified in Articles II and III of the Agreement and balancing under the Agreement, respectively, be on thermally equivalent volumes to properly reflect the actual treatment on an MMBtu basis by the parties for deliveries and balancing under similar arrangements being conducted in today's business. It is further indicated that Northern has advised El Paso that it no longer wishes to lease El Paso's facilities as provided by Article IX, Section 1 to Rate Schedule Z–1, commencing with the effective date of the instant proposal and extending through the extended term of the arrangement. El Paso has agreed the exchange should be accomplished without charge by either party for the remaining term because the exchange is a best-efforts arrangement and that benefits are shared by both parties, it is asserted.

Accordingly, Petitioners jointly request that the amended authorization requested herein, when issued, specifically permit: (1) Extension of the primary term of the Agreement for an additional two years from and after April 1, 1987, thereafter continuing in effect on a year-to-year basis until terminated by either party; (2) deletion of the lease of capacity and facilities provision under the Agreement; (3) delivery between the parties of thermally equivalent exchange volumes; and (4) balancing of deliveries under the Agreement on an MMBtu basis. Consistent with the proposed extension of the primary term from and after April 1, 1987 under item (1) above, El Paso and Northern also jointly request that the amended authorization be effective as of April 1, 1987 for items (2), (3) and (4) above.

Comment date: September 21, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Natural Gas Pipeline Company of America

August 31, 1987.

[Docket No. CP86–375–004]

Take notice that on August 17, 1987, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street Lombard, Illinois 60148, filed in Docket No. CP86–375–004, a petition to amend the order issued October 7, 1986, in Docket No. CP86–375–000, as amended on March 13, 1987, in Docket No. CP86–375–001 pursuant to section 7 of the Natural Gas Act so as to authorize the transportation of natural gas on an interruptible basis for Hawkeye Chemical Company (Hawkeye) for an extended term ending October 7, 1989, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Natural indicates that in Docket No. CP86–375–001 it was previously authorized to transport up to a maximum of 22,000 MMBtu per day for Hawkeye for ultimate delivery to Hawkeye at its Clinton County, Iowa plant for a term ending on the earlier of October 7, 1987, or the date on which Natural accepts a blanket certificate under Order No. 436 in Docket No. CP86–582–000.

Natural states that pursuant to the gas transportation agreement dated February 27, 1986, Natural and Hawkeye seek to extend the transportation service authorized in Docket Nos. CP86–375–000 and CP86–375–001 until October 7, 1989.

No other changes are proposed.

Comment date: September 21, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Northern Natural Gas Company, Division of Enron Corp.

August 31, 1987.

[Docket No. CP87–490–000]

Take notice that on August 11, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87–490–000, an application pursuant to section 7(b) and 7(c) of the Natural Gas Act requesting permission and approval to abandon Rate Schedules X–17, X–23, X–35 and X–86 and the services thereunder which Northern currently is providing to Westar Transmission Company and for a Certificate of Public Convenience and Necessity authorizing the sale of natural gas by Northern to Westar pursuant to a new gas sales agreement dated

February 12, 1987 (Gas Sales Agreement).

Pursuant to the Gas Sales Agreement, Northern proposes to sell and deliver to Westar up to 25,000 MMBtu of natural gas per day on a firm basis. Northern states that each MMBtu of gas delivered to Westar will be billed at the Field Sales rate set forth on sheet No. 1c of Northern's Volume No. 2 FERC Gas Tariff. It is further stated that prior to June 1, 1988, Westar may negotiate with Northern to increase the daily contract quantity from 25,000 MMBtu per day up to a maximum of 75,000 MMBtu per day. The term also may be extended, from December 31, 1988, for an additional three years at Westar's option, it is indicated. Northern is requesting pregranted abandonment of this service upon its termination.

Comment date: September 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

11. Panhandle Eastern Pipe Line Company

August 31, 1987.

[Docket No. CP87-491-0000]

Take notice that on August 11, 1987, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP87-491-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service authorized under Docket No. CP70-51 and related facilities thereof located in Melvindale, Michigan and St. Clair County, Michigan, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that the specific arrangement it requests to abandon is pursuant to an August 29, 1969 Exchange Agreement whereby Panhandle is authorized to exchange certain volumes of gas with Michigan Consolidated Gas Company (MichCon) for redelivery by Panhandle to Southeastern Michigan Gas Company (Southeastern) at the Adair Metering and Regulating Station in St. Clair County. Panhandle explains that Southeastern uses such gas in its Port Huron Market Area. Because Southeastern has negotiated with Panhandle a sale price of $197,000 for Adair station, Southeastern would no longer require Panhandle's service to deliver such gas to the Adair station, it is asserted. As a result, the volumes could now be delivered directly to the Port Huron Station for Southeastern use, it is stated.

Panhandle also states that this abandonment would cause no decrease in deliveries to Southeastern.

Comment date: September 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

12. Southern Natural Gas Company)

August 31, 1987.

[Docket No. CP86-210-003]

Take notice that on August 13, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202 2563, filed in Docket No. CP86-210-003 a petition to amend the order issued December 30, 1985 in Docket No. CP86-210-000, as amended on November 14, 1986 in Docket No. CP86-210-001, pursuant to section 7 (c) of the Natural Gas Act, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By its Order Amending Certificate issued November 14, 1986 in this proceeding, the Commission authorized Southern to provide interruptible transportation of up to 20,000 MMBtu equivalent of natural gas per day of Georgetown Seel Corporation (Georgetown) for a term expiring November 14, 1987.

In its petition to amend, which is the subject of the present filing, Southern, in accordance with an amended agreement with Georgetown, requests that the authorized term be extended for a limited term ending October 31, 1988, and that additional existing delivery points on Southern's system in onshore and offshore Louisiana and Mississippi be authorized.

Southern states that Georgetown has obtained additional sources of supply from Exxon Corporation, and that the addition of the proposed existing delivery points would permit Southern to transport the gas for Georgetown from this alternative supply source.

Comment date: September 21, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Southern Natural Gas Company

August 31, 1987.

[Docket No. CP87-497-000]

Take notice that on August 18, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP87-497-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern to transport gas on behalf of Bishop Pipeline Corporation (Bishop) as agent in arranging for the transportation of natural gas supplies for Nicholson File, and operating unit of Cooper Industries, Inc., (Nicholson) for use at its plant in Cullman, Alabama, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Nicholson in accordance with the terms and conditions of a transportation agreement between Bishop, the Cullman-Jefferson Counties Gas District (Cullman-Jefferson) and Southern, dated July 24, 1987. Southern states it has agreed to transport on an interruptible basis up to 1,000 MMBtu equivalent of gas per day purchased by Nicholson from Bishop. Southern requests that the Commission issue a limited-term certificate for a term expiring on October 31, 1988.

Southern states that the transportation agreement provides for Bishop to cause natural gas to be delivered to Southern for transportation at various existing points on Southern's contiguous pipeline system in St. Mary Parish, Louisiana, and Marion County, Mississippi. Southern states that it would redeliver to Cullman-Jefferson for Bishop's account at the Cullman-Jefferson Counties gas district meter station located in Jefferson County, Alabama, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to be as compressor fuel and company-use gas (including system unaccounted-for gas losses), less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas, and less Bishop's pro-rata share of any gas delivered for Bishop's account which is lost or vented for any reason.

Southern states that Bishop has agreed to pay Southern each month, the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Cullman-Jefferson under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Cullman-Jefferson does not exceed the daily contract demand of Cullman-Jefferson, the transportation rate shall be 39.9 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Cullman-Jefferson under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Cullman-Jefferson exceeds the daily contract

demand of Cullman-Jefferson, the transportation rate for the excess volumes shall be 64.9 cents per MMBtu.

Southern states that the transportation arrangement would enable Nicholson to diversify its natural gas supply sources and to obtain gas at competitive prices. Additionally, Southern advises that it would obtain take-or-pay relief on the gas Nicholson may obtain from its suppliers.

Comment date: September 21, 1987, in accordance with Standard Paragraph F at the end of this notice

14. Southern Natural Gas Company and) South Georiga Natural Gas Company)

August 31, 1987.

[Docket No. CP87-498-000]

August 31, 1987.

Take notice that on August 18, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, and South Georgia Natural Gas Company (South Georgia), P.O. Box 1279, Thomasville, Georgia 31792, filed as co-applicant's in Docket No. Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern to transport gas on behalf of South Georiga as agent in arranging for the transportation of natural gas supplies for Florida Power Corporation (Florida Power) for use at its plant in Live Oak, Florida, and authorizing South Georgia to transport gas for Florida Power, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

South Georgia proposes to transport up to 35,000 MMBtu of natural gas on an interruptible basis for Florida Power in accordance with the terms and conditions of a transportation agreement dated July 24, 1987, wherein South Georgia has agreed to transport the gas and to act as agent in arranging for the transportation of the gas through Southern's pipeline system. Southern states that under contract dated July 24, 1987, it has agreed with South Georgia to transport on an interruptible basis up to 35,000 MMBtu equivalent of gas per day purchased by Florida Power from SNG Trading Inc. (SNG) and request authorization therefor. Southern and South Georgia request that the Commission issue a limited-term certificate authorizing such services for a term expiring on October 31, 1988.

Southern states that its transportation agreement provides for South Georgia to cause natural gas to be delivered to Southern for transportation at various existing points on Southern's contiguous pipeline system in the Breton Sound, Chandeleur Sound, Main Pass and Mississippi Canyon Areas, offshore Louisiana; Charles, Lincoln, Ouachita, Plaquemines, St. Martin and St. Mary Parishes, Louisiana; Lawrence County, Mississippi; and Pickens and Tuscaloosa Counties, Alabama. Southern states that it would redeliver to South Georgia at the existing point of interconnection between the pipeline facilities of Southern and those of South Georgia located in Lee County, Alabama, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to be used as compressor fuel and company-use gas (including system unaccounted-for gas losses), less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas for the account of Florida Power, SNG or Southern, and less South Georgia's pro-rate share of any gas delivered for South Georgia's account which is lost or vented for any reason. South Georgia states that it would transport and deliver equivalent volumes of the gas, less 0.5 percent attributed to fuel use, to Florida Power at the existing interconnection facilities with Florida Power in Suwannee, Florida.

Southern states that its agreement with South Georgia provides for South Georgia to pay Southern each month, the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Georgia does not exceed the daily contract demand of South Georiga, the transportation rate shall be 39.9 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Georgia exceeds the daily contract demand of South Georgia, the transportation rate for the excess volumes shall be 64.9 cents per MMBtu.

Additionally, Southern states it would collect the 1.52 cent per Mcf GRI surcharge, or such other amount as the Commission may from time to time prescribe or approve.

It is stated that the South Georgia agreement with Florida Power provides for Florida Power to pay South Georgia each month a transportation rate of 28.33 cents per MMBtu redelivered by South Georgia and to reimburse South Georgia for all transportation and fuel charges, and other charges and costs South Georgia pays Southern pursuant to the Southern-South Georgia agreement.

Southern states that the transportation arrangement would enable Florida Power to diversify its natural gas supply sources and to obtain gas at competitive prices. Additionally, Southern advises that it would obtain take-or-pay relief on the gas Florida Power may obtain from its suppliers.

Comment date: September 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

15. Williams Natural Gas Company

August 31, 1987.

[Docket No. CP87-496-000]

Take notice that on August 17, 1987, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87-496-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by sale approximately 1.99 miles of 8-inch and 10-inch pipeline and appurtenant facilities located in Jasper County, Missouri, and to abandon the transportation of gas through said facilities, under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams requests abandonment authorization for the facilities, which were installed pursuant to Commission authorization in Docket No. G-298 (Williams' grandfather certificate). Williams indicates that the Kansas Power and Light Company (KPL) has made a request to purchase said facilities. It is stated that Williams has no customers on the section of pipeline proposed for abandonment and that there would be no denial of service as a result of the abandonment. It is further stated that KPL seeks to purchase the facilities to use as part of its distribution system. It is explained that Williams filed in Docket No. CP85-668-000 to abandon the facilities, but before they were abandoned, KPL made its request to purchase them. It is estimated that the cost to reclaim the facilities would be $2,800, the salvage value $300 and the sale price $300.

Comment date: October 15, 1987, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said

filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20485 Filed 9-3-87; 8:45 am]

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[Docket No. TA87-2-27-000]

Applications; Proposed Changes In Gas Tariff; North Penn Gas Co.

August 28, 1987.

Take notice that North Penn Gas Company (North Penn) on August 20, 1987, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1 pursuant to its PGA Clause for rates to be effective September 1, 1987.

Specifically, North Penn has included in its semiannual PGA, to be effective September 1, 1987, the following:

1. A change in rates to reflect changes in Cost of Gas Purchased.

2. A surcharge credit of 34.048¢ per Mcf resulting from amounts accumulated in the Unrecovered Purchased Gas Cost Account for the period January, 1987 through June 30, 1987; the jurisdictional portion of supplier refunds received by North Penn for the same six-month period; carrying charges computed in accordance with the regulations of the Federal Energy Regulatory Commission's (Commission); a carry-over balance from the surcharge credit effective for the period September 1, 1986 through February 28, 1987; and a credit to reflect the average pipeline commodity cost of gas for the period September, 1986 to February, 1987 pursuant to Article XIII of the Stipulation and Agreement in Docket No. RP85-193.

3. A TOP surcharge credit of 0.355¢ to repay customers of North Penn for the overrecovery of Take-Or-Pay payments made to Tennessee Gas Pipeline Company under procedures approved by the Commission in Docket No. RP83-8 et al, issued April 6, 1985.

As part of this filing, North Penn has also included Sixteenth Revised Sheet No. 15H which reflects no incremental pricing surcharges under section 15 of the General Terms and Conditions of its tariff, and a revised index page to reflect its current tariff.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective September 1, 1987, as proposed.

Copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to Intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 4, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20486 Filed 9-3-87; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Proposed Navajo Power Marketing Plan

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed Navajo Power Marketing Plan and request for comments.

SUMMARY: By letter dated August, 5, 1987, the Commissioner of the Bureau of Reclamation (Reclamation) requested that the Western Area Power Administration (Western) initiate and administer a public process to obtain comments on the proposed Navajo Power Marketing Plan (Plan). This notice initiates that public process.

The proposed Plan was developed in consultation with representatives of Reclamation, Western, the Central Arizona Water Conservation District (CAWCD), the Governor of Arizona, and Arizona utility and water agencies pursuant to section 107 of the Hoover Power Plant Act of 1984 (98 Stat. 1333) (Act).

Section 107(a) of the Act provides that the capacity and energy associated with the United States interest in the Navajo Generating Station (Navajo), which is in excess of the pumping requirements of the Central Arizona Project (CAP), and certain needs for desalting and protective pumping facilities (Navajo Surplus) shall be marketed and exchanged by the Secretary of Energy. Furthermore, section 107(c) of the Act provides that in the marketing and exchanging of Navajo Surplus, the Secretary of the Interior shall adopt the plan deemed most acceptable, after consultation with the Secretary of Energy, the Governor of Arizona, and CAWCD (or its successor in the interest of the repayment obligation for the CAP), for the purposes of optimizing the availability of Navajo Surplus and providing financial assistance in the timely construction and repayment of

construction costs of authorized features of the CAP. The Act also provides that rates for Navajo surplus shall not exceed levels that allow for an appropriate saving for the contractor.

The proposed Plan provides the criteria for the sale and exchange of capacity and energy from Navajo determined to be surplus to the needs of CAP after the completion of the New Waddell Dam, a feature of CAP. The New Waddell Dam is a regulatory storage feature of CAP that would allow for operating flexibility to increase winter season pumping and reduce summer season pumping, thereby providing an enhanced power resource during the peak load season of the Southwest.

All interested parties are invited to submit comments concerning the proposed Plan to Western. After conclusion of the public comment process, Western will deliver the comments and all other relevant documents to Reclamation for its review, response to comments, and for adoption of the final Plan in accordance with the Act.

DATES: Interested parties may submit written comments on the proposed Plan on or before October 5, 1987. A public information forum on this subject will be held on September 21, 1987, at the Phoenix Hilton Hotel, Central and Adams, Phoenix, Arizona, beginning at 9 a.m. An opportunity will be given all interested parties to present written and oral comments at a public comment forum to be held on September 28, 1987, at the Phoenix Hilton Hotel, Central and Adams, Phoenix, Arizona, beginning at 9 a.m.

ADDRESSES: The public information forum and the public comment forum will be held at the Phoenix Hilton Hotel, Central and Adams, Phoenix, Arizona, on the dates cited above. Written comments concerning the proposed Plan should be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005.

FOR FURTHER INFORMATION: Mr. Earl W. Hodge, Acting Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477–3255.

SUPPLEMENTARY INFORMATION: The United States has acquired an entitlement to 24.3 percent of generation available at Navajo for use by CAP pursuant to the Colorado River Basin Project Act (32 U.S.C. 1501, *et seq.*) The CAP is a Reclamation multipurpose water resource development and management project in Arizona. During initial years of construction of CAP, the United States entitlement to Navajo power was sold on an interim basis to various public and private utilities (Layoff). The Layoff contracts were subject to withdrawal of power as needed by the United States. Notice of final withdrawal was given to all Layoff contractors, and the Layoff contracts terminated on May 31, 1987.

Section 107(c) of the Act provides that a power marketing plan be adopted by the Secretary of the Interior to provide for the marketing and exchange of Navajo Surplus. In order to provide for the interim marketing of the Navajo Surplus during the intial delivery and pump testing of the CAP and during the pre-New Waddell Dam period, an Interim Navajo Power Marketing Plan (Interim Plan) was developed and adopted by the Commissioner of Reclamation on March 17, 1986.

The proposed Plan provides that the Interim Plan will terminate upon expiration of all contracts entered into pursuant to the Interim Plan. Contracts entered into under the Interim Plan will expire upon 1 year notice given by Western subsequent to September 30, 1989; but no later than the date of initial operation of regulatory storage at New Waddell Dam.

This proposed Plan contains the criteria for the sale and exchange of Navajo Surplus, including a description of the power to be marketed, eligibility criteria, contact provisions, ratesetting procedures, and revenue collection and distribution criteria, after termination of the contracts under the Interim Plan. The ratesetting procedures in the proposed Plan were developed in order to accomplish the requirements of the Act to market and exchange Navajo Surplus "for the purposes of optimizing the availability of Navajo surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona project," to provide "That rates shall not exceed levels that allow for an appropriate saving for the contractor." The rates in the proposed Plan will provide annual revenues for repayment of costs associated with the marketing and exchange of Navajo Surplus. An additional rate component is included pursuant to section 107(d) of the Act to provide for repayment of funds advanced by CAWCD for authorized features of CAP. The timetable for the completion of the Plan is contained in the letter from the Commissioner of Reclamation included in this notice. The final Plan will be effective 30 days after publication in the **Federal Register**.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality regulations, and the Department of the Interior regulations for compliance with NEPA, Reclamation completed an Environmental Impact Statement on the Regulatory Storage Division, Central Arizona Project, Statement No. INT FES 84–4, February 10, 1984. The environmental impact statement describes six alternatives for the proposed construction and operation of the Regulatory Storage Division of the CAP. The alternatives described provide for CAP regulatory storage, flood control for the Salt and Gila Rivers through the Phoenix metropolitan area, and concurrent and coincident aspects of the Safety of Dams program. A No Action alternative is also described. The environmental impact statement fulfills the requirements of Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands), and the requirements of the Nationwide Permit in accordance with the provisons of section 404 of the Clean Water Act. Western is evaluating the EIS as to its relevancy to this marketing proposal and will determine if additional analysis is needed. Copies of the environmental impact statement will be made available to interested persons upon request.

Executive Order 12291

The Department of the Interior has determined that this Plan is not a major rule because the Plan does not meet the criteria of section 1(b) of Executive Order 12291 (46 FR 13193) dated February 17, 1981.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required to publish a general notice of proposed rule, shall prepare for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the Department of the Interior has determined that this proposed Navajo Power Marketing Plan relates to electric services. Under section 601(b) of the Regulatory Flexibility Act of 1980, services are not considered "rules" within the meaning of the Act; therefore, Reclamation believes that no flexibility analysis is required.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that certain information collection

requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided for the interested public to participate in the development of the Navajo Power Marketing Plan. However, there is no requirement that members of the public participating in the development of the Navajo Power Marketing Plan supply information about themselves to the Government. It follows that the proposed Navajo Power Marketing Plan is exempt from the Paperwork Reduction Act.

Issued in Golden, Colorado, August 27, 1987.

William H. Clagett,

Administrator.

It is proposed that the Navajo Power Marketing Plan be adopted prior to December 31, 1987, as specified in the following letter from the Commissioner of Reclamation to the Administrator of Western.

August 5, 1987.

Mr. William H. Clagett, Administrator, *Western Area Power Administration, P.O. Box 3402, Golden, Colorado 80401.*

Dear Mr. Clagett: Section 107 of the Hoover Power Plant Act of 1984 (Act) provides that power associated with the United States' entitlement in the Navajo Generating Station, which is in excess of the pumping requirements of the Central Arizona Project, shall be marketed and exchanged pursuant to a plan adopted by the Secretary of the Interior (Secretary). We request that the Western Area Power Administration (Western) initiate and administer a public process to obtain comments on the proposed Navajo Power Marketing Plan (copy enclosed) in accordance with Department of Energy procedures. Western is further requested to deliver the comments and all other relevant documents to Reclamation for review, response to comments, and decision after the conclusion of the public comment process.

Our staff will continue to work very closely with your staff, the Arizona Department of Water Resources, and the Central Arizona Water Conservation District to complete the plan in a timely manner. The following schedule is our collective goal for completion of the plan:

Action	On or before
FEDERAL REGISTER Notice	Sept. 1, 1987.
Deadline for Public Comments	Oct. 1, 1987.
Recommend Plan with Responses to Comments	Nov. 2, 1987.
Adoption of Plan	Dec. 31, 1987.

Environmental documentation in accordance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality regulations, and the Department of the Interior guidelines for compliance with NEPA is included in the *Final Environmental Impact Statement, Regulatory Storage Division, Central Arizona Project*, Document No. INT FES 84–4, dated February 10, 1984.

Upon receipt and review of public comments, upon making such changes as may be appropriate in response to such comments, and after consultation with the Secretary of Energy, the Governor of Arizona and the Central Arizona Water Conservation District (CAWCD), Reclamation will then proceed with the adoption of the final Navajo Marketing Plan in accordance with the Act. A notice of the adoption of the plan including the text of the plan and responses to comments will be published in the **Federal Register**.

I am pleased with the high level of cooperation between Reclamation, Western, the Arizona Governor's office, and the CAWCD which has thus far characterized the efforts to resolve this complex and difficult matter. I am confident that continuation of these efforts will result in a plan which will be fair to all involved.

Sincerely yours,

C. Dale Duvall,

Commissioner.

Enclosure.

cc: Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, Nevada 89005; Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Proposed Navajo Power Marketing Plan

I. Purpose and Scope

Section 107 of the Hoover Power Plant Act requires that a power marketing plan be developed to provide for marketing and exchanging of Navajo Surplus to provide financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona Project.

A. This Plan has been developed based upon data contained in the report by Reclamation entitled "Central Arizona Project Power Marketing and Water Supply Study-October 1985" to meet the requirements of the Hoover Power Plant Act and provide for the sale and Exchange of Navajo Surplus for the benefit of the Central Arizona Project as provided in section 107 of the Hoover Power Plant Act.

B. This Plan recognizes the obligation of the United States to use its entitlement to electrical capacity and energy from Navajo to provide necessary power for the pumping requirements of the Central Arizona Project and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act. For the purposes of this Plan, Reclamation has determined that the Navajo Surplus peaking resource identified in section V.A. and V.B. of this Plan is not required to meet the needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act; however, the Navajo Surplus identified in section V.C. will be considered in meeting these needs.

C. The Plan provides that Western, working closely with Reclamation and CAWCD, will be the primary marketing entity responsible for the sale and Exchange of Navajo Surplus in accordance with applicable Federal law and regulations. Western may utilize exchange, banking, purchase agreements, or integration with other resources to fulfill any purpose of this Plan. CAWCD will act as a marketing entity solely for the purpose of establishing and causing to be collected the Additional Rate Component.

D. This Plan sets rates and parameters for the establishment of rates, not exceeding levels that allow for an appropriate saving for the contractor, that will provide revenues from the sale and Exchange of Navajo Surplus for the purposes of: payment of the operation and maintenance costs associated with Navajo Surplus; utilization and assignment of the revenues derived from the Additional Rate Component at least sufficient to make repayment and establish reserves for repayment of $175,000,000 (or more) of funds advanced by CAWCD to Reclamation for construction of authorized features of the CAP pursuant to the Plan Six Cost Sharing Agreement; recovery of capital costs, including interest, of authorized features of the Central Arizona Project allocated to power; and recovery of capital costs of authorized features of the Central Arizona Project allocated to power; and recovery of capital costs of authorized features of the Central Arizona Project allocated to irrigation that are determined to be beyond the irrigators' ability to repay.

II. Authorities

The authorities under which this Plan is developed are:

A. Federal Reclamation laws (43 U.S.C. 372, *et seq.*), and all Acts amendatory thereof or supplementary thereto); in particular, the Colorado River Basin Project Act (Pub. L. 90–537); and the Hoover Power Plant Act of 1984 (Pub. L. 98–381).

B. Rules, regulations, and agency agreements of Western and Reclamation issued or made pursuant to applicable law.

III. Definitions

The following terms wherever used herein shall have the following meanings:

A. "Additional Rate Component" shall mean the rate component(s) established, charged, and caused to be collected by CAWCD to recover the CAWCD Advance to Reclamation, plus interst thereon, pursuant to section 107 of the Act and to Chapter 21, Laws of the State of Arizona, Thirty-Seventh Legislature, Second Regular Session, 1986.

B. "Authority" shall mean the Arizona Power Authority.

C. "Authority's Final Hoover Power Marketing Plan" shall mean the Arizona Power Authority's marketing plan entitled "Final Hoover Power Mareketing, Post-1987," dated June 7, 1985.

D. "CAP" or "Central Arizona Project" shall mean the Reclamation multipurpose water resource development and management project in Arizona authorized by the Colorado River Basin Project Act, as amended (43 U.S.C. 1501, *et seq.*).

E. "CAWCD" shall mean the Central Arizona Water Conservation District.

F. "CAWCD Advance to Reclamation" shall mean the advance of $175,000,000 (or more) to Reclamation by CAWCD for authorized features of the Central Arizona Project in accordance with the Plan Six Cost Sharing Agreement.

G. "Colorado River Basin Salinity Control Act" shall mean the Colorado River Basin Salinity Control Act of 1974, as amended (43 U.S.C. 1591, *et seq.*).

H. "Conformed Criteria" shall mean the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects published in the **Federal Register** (49 FR 50583) on December 29, 1984.

I. "Date of Initial Operation" shall mean the date of initial test pumping into regulatory storage at New Waddell Dam, as determined by Reclamation.

J. "Exchange" shall mean any arrangements providing for delivery of capacity and energy to Western by an Exchange Contractor during an Operating Year and the return of such capacity and energy to the Exchange Contractor by Western from Navajo in the same Operating Year.

K. "Exchange Contractor" shall mean a contractor which enters into a Long-Term Exchange Contract.

L. "Exchange Energy Account" shall mean the record of Exchanges between Western and an Exchange Contractor.

M. "Hoover Power Plant Act" or "Act" shall mean the Hoover Power Plant Act of 1984 (Pub. L. 98–381.).

N. "Hoover Schedule B Capacity and Energy" shall mean the capacity and energy from the Boulder Canyon Project described in section 105(a)(1)(B) of the Act which is available to the Authority.

O. "Hoover Schedule C Excess Energy" shall mean the energy from the Boulder Canyon Project described in section 105(a)(1)(C) of the Act which is available to the Authority.

P. "Interim Plan" shall mean the Interim Navajo Power Marketing Plan adopted by the Commissioner of Reclamation on March 17, 1986.

Q. "Layoff Contract" shall mean the contract(s) entered into as of September 30, 1969, between certain non-Federal entities and Western for the sale of the Navajo Entitlement.

R. "Long-Term Contracts" shall mean the Long-Term Peaking Sales Contracts and the Long-Term Exchange Contracts.

S. "Long-Term Peaking Sales Contract" shall mean a contract between Western and a contractor for sale of Navajo Surplus for a period of years ending September 30, 2011.

T. "Long-Term Exchange Contract" shall mean a contract between Western and an Exchange Contractor for Exchange of Navajo Surplus for a period of years ending September 30, 2011.

U. "Navajo" shall mean the Navajo Generating Station, the thermal generating power plant located near Page, Arizona, and associated transmission facilities.

V. "Navajo Entitlement" shall mean the United States entitlement of 24.3 percent of the generation from Navajo.

W. "Navajo Surplus" shall mean capacity and energy associated with the Navajo Entitlement which is in excess of the pumping requirements of the Central Arizona Project and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act.

X. "New Waddell Dam" or "New Waddell Reservoir" shall mean the regulatory storage facilities constructed on the Agua Fria River as a feature of the CAP.

Y. "Offpeak" shall mean those hours during a day that are not considered Onpeak.

Z. "Onpeak" shall mean the hours during a day, except Sunday, that are between 9:00 a.m. to 9:00 p.m. mountain standard time during the Summer Season.

AA. "Operating Year" shall mean the period beginning October 1 and ending September 30 of the next succeeding year.

BB. "Plan" shall mean this Navajo Power Marketing Plan.

CC. "Plan Six Cost Sharing Agreement" shall mean the agreement among the United States, the Central Arizona Water Conservation District, the Flood Control District of Maricopa County, the Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users' Association, the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, the State of Arizona, and the city of Tucson for funding of Plan Six facilities of the Central Arizona Project, Arizona, and for other purposes, dated April 15, 1986, and any amendments or supplements thereto.

DD."Reclamation" shall mean the Bureau of Reclamation, Department of the Interior.

EE. "Summer Season" shall mean the period from May 1 through September 30 of any year.

FF. "Western" shall mean the Western Area Power Administration, Department of Energy.

GG. "Winter Season" shall mean the period from October 1 through April 30 of the next succeeding year.

IV. Elements

This Plan includes the following elements:

A. The estimated amounts of Navajo Surplus used in developing this Plan were obtained from data contained in a report by Reclamation, entitled "Central Arizona Project Power Marketing and Water Supply Study—October 1985," and the "Central Arizona Project, Surplus/Shortage Pumping Power Profile (Revision No. 1)," dated October 1986, prepared by CAWCD/Arizona Department of Water Resources.

B. Optimization of Navajo Surplus will be achieved through several means: (1) Delivering maximum amounts of water from the Colorado River in the Winter Season for storage in the New Waddell Reservoir and then serving CAP water demands in the Summer Season from water previously placed in storage, and on a daily basis, delivering maximum amounts of CAP water Onpeak from the limited aqueduct storage and recharging that storage to the extent possible Offpeak, thereby making Navajo Surplus available when electrical loads in the marketing area are at their peak and thus enhancing the value of the Navajo resource; (2) CAWCD contracting with the Authority for Hoover schedule B

Capacity and Energy and CAWCD receiving Hoover Schedule B Capacity and Energy pursuant to paragraph E of this section and using it to meet CAP pumping requirements in part; (3) CAWCD contracting with the Authority for Hoover Schedule C Excess Energy and CAWCD receiving the Hoover Schedule C Excess Energy pursuant to paragraph F of this section and using it to meet CAP pumping requirements in part; and (4) using CAP and Western operating flexibility.

C. In order to enhance the value of Navajo Surplus to maximize financial assistance to CAP, the proposed CAP operation will utilize daily energy management, weekly energy management, and seasonal power management as described in paragraph B of this section. Except for scheduling adjustments to achieve operating flexibility, to the extent possible CAP pumping will be Offpeak to optimize Onpeak availability of Navajo Surplus.

D. CAP pumping will be maximized during the Winter Season, to the extent possible, within the physical and legal limitations of moving CAP water through the CAP aqueduct. Any Winter Season energy deficiencies are intended to be met through exchanges or through a combination of exchange, banking, purchase agreements, or integration with other resources.

E. This Plan includes, for purposes of the Authority's Final Hoover Power Marketing Plan, the recapture of Hoover Schedule B Capacity and Energy pursuant to the Authority's Final Hoover Power Marketing Plan, as further provided for in a resolution of the Board of Directors of CAWCD which is attached hereto as appendix A and incorporated by reference herein, for the benefit of CAWCD (1) after October 1, 1991, if requested by CAWCD pursuant to the provisions of appendix A, or (2) upon the Date of Initial Operation, but (3) not later than December 31, 1994.

F. The Authority's Final Hoover Power Marketing Plan states that "the Authority intends to allocate and sell" Hoover Schedule C Excess Energy "in a manner which is consistent with such adopted [Navajo Marketing] Plan". In order to accomplish the goals of this Plan, this Plan assumes that all Hoover Schedule C Excess Energy available to the Authority will be marketed by the Authority in accordance with the Hoover C energy sales contracts dated as of April 15, 1987, as follows:

1. From June 1, 1987, until recapture of Hoover Schedule B Capacity and Energy for CAWCD is completed, to Authority contractors taking capacity and energy in a manner calculated to equalize load factors between Hoover Schedule A capacity and Hoover Schedule B capacity. (This provision contemplates that increasing amounts of Hoover Schedule C Excess Energy will be marketed with Hoover Schedule B capacity as increased amounts of that capacity become available.)

2. After recapture of Hoover Schedule B Capacity and Energy has been completed, pursuant to the Authority's power sales contracts with its contractors, dated as of September 15, 1986, on the basis of a first right of refusal to Authority contractors which are then utilizing Hoover Schedule B Capacity and Energy, pro rata to the amount of capacity being taken.

3. To CAWCD, on the basis of a first right of refusal, at any time after June 1, 1987, until recapture of Hoover Schedule B Capacity and Energy has been completed, to the extent that the amount of Hoover Schedule C Excess Energy, if made available under contract with the United States to be marketed by the Authority in the current contract year (October through September), shall exceed 400 GWh, but not exceed 800 GWh. During the same period, Hoover Schedule C Excess Energy over 800 GWh shall be marketed, if available, on the basis of first right of refusal, 50 percent to CAWCD and 50 percent to other Authority contractors. Delivery pursuant to this section shall be made only at a time and to the extent that the capacity of the Authority's contractors is not being utilized to generate Hoover Schedule A energy or Hoover Schedule B energy, or if other capacity is made available by Western for said delivery.

G. Termination of the Long-Term Contracts on September 30, 2011, will not terminate this Plan. So long as Navajo operates and there is Navajo Surplus, Western shall continue to market Navajo Surplus under this Plan with such amendments or revisions as may be adopted by the Secretary of the Interior, after consultation with the Secretary of Energy, CAWCD, and the Governor of Arizona and as provided by law, including the authorities set forth in section II. Contractors with Long-Term Peaking Sales Contracts and contractors with Long-Term Exchange Contracts whose contracts terminate in 2011 shall be given the first opportunity for new long-term sales contracts and new long-term exchange contracts for approximately the same amounts of power contained in the terminated contracts with available capacity and energy distribution pro rata among contractors. Such new contracts shall be entered into prior to October 1, 2007.

V. Power to be Marketed or Exchanged

Contracts entered into pursuant to the Interim Plan shall expire as follows: (1) After consultation by Western with Reclamation and CAWCD, upon 1 year notice given by Western subsequent to September 30, 1989; but in any event, (2) after such notice as Western deems appropriate, upon the Date of Initial Operation. The Interim Plan shall terminate upon expiration of all contracts entered into pursuant to the Interim Plan. Navajo Surplus to be sold or Exchanged under this Plan consists of the following:

A. Capacity and energy will be availalbe for sale on a long-term basis generally during the Summer Season. Capacity and energy will be available for delivery during the Summer Season and the Winter Season Onpeak and Offpeak. Capacity available for sale will be 400 MW, less the capacity used for Exchange purposes under paragraph B of this section. There will be 760 kWh of energy per year available for sale to a contractor for each kW of contract capacity.

B. A maximum of 150 MW of the 400 MW available under paragraph A of this section may be used for Exchanges on a long-term basis. Energy scheduled from an Exchange Contractor will be returned to such Exchange Contractor on a one-kWh-for-one-kWh basis under terms provided in a Long-Term Exchange Contract. There will be 760 kWh of energy per year available to an Exchange Contractor for each kW of contract capacity exchanged.

C. Any capacity or energy not sold or exchanged in accordance with paragraphs A and B of this section may, as determined by Western, in cooperation with CAWCD and Reclamation, be sold under appropriate long-term or short-term arrangements or integrated with the Federal system and sold by Western under arrangements developed in cooperation with CAWCD and Reclamation.

D. Any capacity or energy determined to be available under paragraph C of this section, up to 30 MW, will be made available first to Reclamation for the purposes of the Colorado River Basin Salinity Control Act.

E. Delivery of capacity and energy provided in paragraphs A and B of this seciton is subject to the following:

1. In the event of an outage, curtailment, or derating (or any combination thereof) of the generating capabilities at Navajo, each contractor's right to receive capacity and energy shall be as follows:

a. Capacity shall be reduced on a pro rata basis among all contractors and CAWCD.

b. Energy will be affected as follows:

(i) If the energy produced by the Navajo Entitlement is equal to or greater than an average of 3,500 GWh per year in the current and immediately prior Operating Year, then the contractor is entitled to the full 760 kWh per kW per year.

(ii) If the total energy produced by the Navajo Entitlement is less than an average of 3,500 GWh per year in the current and immediately prior Operating Year, then either (1) each contractor's right to receive energy may be reduced by Western, and if reduced, the reduction shall be on a pro rata basis among all contractors and CAWCD, or (2) at the contractor's option, energy may be scheduled to Western, on a one-for-one basis at times and amounts mutually acceptable to Western and the contractor, to replace the energy which would have otherwise been lost by pro rata reduction.

2. If in the Operating Year in which the Date of Initial Operation occurs, contract entitlements cannot be delivered, such entitlements shall be reduced among all contractors pro rata.

3. In September of each Operating Year, each Exchange Contractor shall supply Western with a schedule of proposed deliveries of energy during the Winter Season equal to the amount to which the Exchange Contractor will be entitled during the following Operating Year. Western may upon 24 hours notice cancel a day's delivery in the event that Western finds that the energy is not needed for pumping and could not be sold at a rate higher than the Navajo Surplus energy rates described in section VIII.A.2. In the event that the Exchange Contractor, because of emergency conditions, would have to supply Exchange energy from oil-fired or gas-fired resources, the contractor may notify Western and be relieved of its obligation under the schedule for the period of time until it is able to supply such Exchange energy without using oil-fired or gas-fired generation.

4. In the event of an outage, curtailment, or derating (or any combination thereof) of the Navajo transmission system, Western will use its best efforts to deliver Navajo Surplus to the contractors, in amounts as close to each contractor's Navajo Surplus entitlement or pro rata share of such entitlement as possible, using the available Navajo transmission system. Upon appropriate arrangements, Western may assist the contractors in the event of such outage, curtailment, or derating of the Navajo transmission system by arranging alternative emergency transmission service with third parties or on Western's transmission system as determined to be available in the sole judgment of Western.

5. Each long-Term Exchange Contract will provide for an Exchange Energy Account. It is generally intended that the account will contain a balance of energy owed to the Exchange Contractor. Under some circumstances, the balance of the Exchange Energy account may be reversed whereby the Exchange Contractor will owe energy to Western. Under either circumstance, energy can be scheduled by the Exchange Contractor at any time for credit to his Exchange Energy Account provided Western has adequate pumping loads or sales opportunities to use the energy. It is not intended that Western would accept energy for resale when such resale would be at rates less than Navajo Surplus energy rates described in section VIII.A.2. Energy deliveries by an Exchange Contractor to balance its Exchange Energy Account must be at times and amounts mutually acceptable to Western and to the Exchange Contractor.

6. Except as provided in paragraph 7 of this section, energy deliveries by Western under Long-Term Contracts will be scheduled at least 24 hours in advance, as mutually agreed between the contractor and Western, and such deliveries will be contingent only on the output of Navajo.

7. Capacity and energy, not scheduled at least 24 hours in advance, may be ordered by a contractor under a Long-Term Contract through appropriate dispatch channels. Such requested capacity and energy may be supplied, at Western's discretion, after coordinating with CAWCD, either through rapid pump unloading (estimated 100 percent loaded to 0 percent within 10 minutes) or from other resources available to Western. Such delivery not scheduled at least 24 hours in advance may be limited to 8 hours per day. A charge shall be assessed to a contractor as a start-up cost for each occurrence of a request for an increase in delivery not scheduled at least 24 hours in advance. The accounting for energy delivered under the provisions of this paragraph shall be identical to accounting for energy scheduled 24 hours in advance.

VI. Eligibility

Navajo Surplus will be offered for sale and Exchange in accordance with the requirements of this section.

A. Capacity and energy will be offered for sale in the following order of priority, in accordance with part IV, section A of the Conformed Criteria:

1. Federal preference entities within Arizona.

2. Federal preference entities within the Boulder City marketing area.

3. Federal preference entities in adjacent Federal marketing areas.

4. Nonpreference entities in the Boulder City marketing area.

B. In the event that a potential contractor fails to place capacity and energy under contract within a reasonable period, as specified by Western and in accordance with the terms and conditions offered by Western, the amounts of capacity and energy not placed under contract will be reoffered in accordance with the order of priority specified in paragraph A of this section.

C. Arizona entities, regardless of preference status, shall have first opportunity for electrical capacity and energy Exchange rights as necessary to implement this Plan. Western, in consultation with CAWCD and Reclamacation, may determine that any capacity and energy not subscribed to by Arizona entities for Exchange may be offered for long-term sale in the order of priority stated in paragraph A of this section or may be offered to non-Arizona entities for Exchange.

VII. Contract Provisions

Western, after consultation with Reclamation and CAWCD, shall enter into all power sales and Exchange contracts necessary to carry out the provisions of this Plan in selling and exchanging capacity and energy pursuant to section V. Navajo Surplus shall be marketed, and Exchange rights granted by Western on behalf of the Secretary of the Interior, under contracts consistent with this Plan and the Conformed Criteria. Contracts for sale or Exchange of Navajo Surplus made pursuant to this Plan shall include, but not be limited to, the following provisions:

A. Each Long-Term Peaking Sales Contract shall become effective upon its execution, the implementation of which, including all terms, covenants, and conditions related to delivery of capacity and energy and all appropriate payments therefore, shall begin on the first day within the Summer Season following the Date of Initial Operation. Contractors shall be given at least 60 days written notice prior to the Date of Initial Operation. If contract entitlements are reduced pursuant to section V.E.2, each contractor shall be charged only for the amount of capacity and the energy made available to the

contractor in that Operating Year. Each Long-Term Peaking Sales Contract shall terminate on September 30, 2011.

B. Each Long-Term Exchange Contract shall become effective upon its execution, the implementation of which, including all terms, covenants, and conditions related to the exchange of capacity and energy and all appropriate payments therefore, shall begin upon the Date of Initial Operation. Contractors shall be given at least 60 days written notice prior to the Date of Initial Operation. Each Long-Term Exchange Contract shall provide for an Exchange Energy Account. It is the intent of this Plan that the Exchange Energy Account will be balanced to zero annually. However, in the event that such balance owed Western is not reduced to zero, the Long-Term Exchange Contract shall include provisions for a carryover of such balance to the subsequent Operating Year or for payment to Western. In the event that such balance owed the Exchange Contractor is not reduced to zero, the Long-Term Exchange Contract shall include provisions for a carryover of such balance to the subsequent Operating Year to be credited against the Exchange Contractor's scheduled delivery. Prior to the Date of Initial Operation, each Exchange Contractor shall receive an estimate of the amount of capacity and energy which will be available to it during the first Operating Year, and the Exchange Contractor shall propose a schedule of Winter Season energy delivery to Western in the same amount as Reclamation's estimate of the available return of energy. If contract entitlements are reduced pursuant to section V.E.2, each Exchange Contractor shall be charged only for the amount of capacity made available to the Exchange Contractor in that Operating Year. Each Long-Term Exchange Contract shall terminate on September 30, 2011.

C. Any Long-Term Contract may, at the contractor's request, contain a provision that if the New Waddell Dam is not scheduled to be completed by a certain date the contractor may terminate the Long-Term Contract on or before a date established in the contract.

D. Contract entitlements will be measured or calculated at the 500 kV bus at the Navajo Generating Station. Capacity and energy, less losses, will be scheduled and delivered at a voltage of 500 kV to contractors at either Westwing Switchyard or McCullough Switchyard or at such other points and voltages on the Navajo system as Western and the contractor shall agree. Any necessary trasmission service beyond the contractor's point(s)-of-delivery will be the responsibility of the contractor.

E. CAWCD shall be a party to contracts for the sale or Exchange of Navajo Surplus for the limited purpose of establishing and collecting the Additional Rate Component.

F. Written metering and scheduling instructions shall be agreed upon between Western and the contractor, in consultation with CAWCD and Reclamation, prior to any deliveries under this Plan. The metering and scheduling instructions shall provide the operating and accounting procedures for such deliveries. Metering and scheduling instructions are intended to implement terms of the contract, not to modify or amend it, and therefore are subordinate to the contract. The implementation shall be the responsibility of Western and the contractor. After consultation with Reclamation and CAWCD, Western and the contractor may modify these instructions, as necessary, to reflect changing power system conditions. In the event the contractor fails or refuses to execute the initial metering and scheduling instructions or any revised instructions Western determines to be necessary, Western shall develop and implement temporary instructions until initially acceptable instructions have been developed and executed by Western and the contractor.

VIII. Ratesetting Procedures

In order to accomplish the requirements of the Act to market and Exchange Navajo Surplus "for the purposes of optimizing the availability of Navajo surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona project," and the provision, "That rates shall not exceed levels that allow for an appropriate saving for the contractor," rates for Navajo Surplus sales and Exchanges shall be established and modified in accordance with the following provisions:

A. Long-term capacity and energy described in section V.A shall be sold at rates which will provide financial assistance in the timely repayment of the CAWCD Advance to Reclamation, plus interest thereon, and repayment of costs of other authorized features of CAP to be repaid by power revenues. The following rates do not exceed a level that will allow for an appropriate saving for the contractor. The rates shall be composed of a capacity rate and an energy rate calculated in the following manner:

1. The capacity rate will be fixed for the term of the Long-Term Peaking Sales Contract at (a) the Additional Rate Component established by CAWCD, plus (b) an amount which when added to the Additional Rate Component shall total $72 per kW-year. The annual rate of $72 per kW-year shall be billed to each contractor in a monthly amount of $6 per kW based on the amount of each contractor's capacity entitlement.

2. The energy rate will be based on the actual annual operating costs associated with the Navajo Entitlement in the prior Operating Year plus a charge for Western's costs associated with Navajo. The Western charge will be based on Western's actual cost of services performed under this Plan, including appropriate administrative expenses. The annual operating costs will be determined in a similar manner as the generation operating charge, generation energy charge, and transmission operating charge in the Layoff Contracts. The energy rate will be a mills per kWh rate calculated by dividing the total costs described above by the total annual kWh available to the United States in the same Operating Year. The energy rate will be applied monthly to each kWh delivered.

B. Long-term Exchanges described in section V.B. shall be Exchanged at a one-for-one energy Exchange rate plus the following charges, which do not exceed a level that will allow for an appropriate saving for the contractor.

1. The capacity rate described in paragraph A.1 of this section.

2. A charge for Western's cost associated with Navajo as described in paragraph A.2 of this section.

3. If a balance remains in favor of Western in the Exchange Energy Account at the close of any Operating Year, Western may require a settlement of the account in cash at 115 percent of the Navajo Surplus energy rate described in paragraph A.2 of this section.

C. For capacity and energy not scheduled at least 24 hours in advance as described in section V.E.7, the charge shall be $4.000 each occurrence of a request for an increase in delivery. This charge shall be in addition to the charges for capacity and energy described in paragraphs A and B of this section.

D. Capacity and energy described in sections V.C. and V.D. shall be sold at rates established by Western, after consultation with CAWCD and Reclamation. Such rates may include an Additional Rate Component.

E. Because the Act's requirements for noncost-based rates, the rates established pursuant to this Plan are not suitable to the required review of Western's rates by the Federal Energy Regulatory Commission. All rates promulgated by the Administrator of Western under this Plan shall be a final act of the Secretary of Energy and shall be subject to review pursuant to the judicial review provided by the Administrative Procedure Act (5 U.S.C. 553, *et seq.*).

IX. Revenue Collection and Distribution

Western will bill and collect in accordance with the rates and charges for the sale or Exchange of Navajo Surplus, including the Additional Rate Component for CAWCD.

A. Western shall distribute all revenues collected from the application of the rates and charges in the following manner:

1. First, revenues will be deposited into the Lower Colorado River Basin Development Fund to pay all costs of operation and maintenance determined to be associated with the sale and Exchange of Navajo Surplus, including Western's costs.

2. Second, revenues derived from the collection of the Additional Rate Component by Western for CAWCD will be paid directly to CAWCD or its nominee for repayment and establishment of reserves for repayment of the CAWCD Advance to Reclamation plus interest thereon.

3. Third, any revenues remaining will be deposited into the Lower Colorado River Basin Development Fund to repay other CAP obligations.

B. In the event that the revenues and resulting funds available to make the repayments referenced in this Plan are insufficient for that purpose, the United States shall be under no obligation, by reason of this Plan, to supply funds to make up such insufficiency or to reduce any repayment obligations referenced in this Plan.

X. Effective Date

This Plan will become effective 30 days after publication in the **Federal Register** following adoption by the Secretary of the Interior.

XI. Consultation

This Plan is deemed most acceptable in accordance with section 107(c) of the Hoover Power Plant Act as evidenced by concurrences from Western (Secretary of Energy), the Governor of Arizona, and CAWCD, attached as Appendices to this Plan.

Appendix A—Resolution of the Board of Directors of the Central Arizona Water Conservation District

August 6, 1987.

Whereas, the proposed Navajo Power Marketing Plan includes, for purposes of the Arizona Power Authority's Final Hoover Power Marketing Plan of June 7, 1985, the recapture of Hoover Schedule B Capacity and Energy pursuant to the Authority's Final Hoover Power Marketing Plan for the benefit of the Central Arizona Water Conservation District ("CAWCD") (1) after October 1, 1991, if requested by CAWCD pursuant to the provisions of this Resolution, or (2) upon the Date of Initial Operation, but (3) not later than December 31, 1994; and

Whereas, in order to obtain Hoover Schedule B Capacity and Energy pursuant to the Authority's Final Hoover Power Marketing Plan, CAWCD must, among other requirements, deliver a written request to the Arizona Power Authority ("Authority") to recapture Hoover Schedule B Capacity and Energy after the Secretary of the Interior adopts the Navajo Power Marketing Plan; and

Whereas, the Authority's Final Hoover Power Marketing Plan provides that, upon compliance by CAWCD with the conditions of paragraph 5 of the Summary contained in the Authority's Final Hoover Power Marketing Plan and not later than 90 days after receipt of the written request for recapture from CAWCD, the Authority will issue the notice of recapture and it is assumed that the Authority will use its best efforts to issue such notice prior to the next quarterly advance, if any, required of CAWCD by the Plan Six Cost Sharing Agreement; and

Whereas, it is necessary and desirable to further define and clarify the circumstances under which CAWCD will request and the Authority will recapture Hoover Schedule B Capacity and Energy pursuant to the Authority's Final Hoover Power Marketing Plan for the benefit of CAWCD in order to promote wide support for the final Navajo Power Marketing Plan; and

Whereas, the proposed Navajo Power Marketing Plan prepared for the consideration of the Secretary of the Interior has been presented to the Board of Directors of the CAWCD for its approval, including Appendix A which contains this Resolution; and

Whereas, to the best of the knowledge of the Board of Directors of CAWCD, this Resolution is consistent with the obligations of CAWCD's Hoover Power Sales Contract with the Authority;

Now, therefore, be it resolved that, subject to the adoption by the Secretary of the Interior of the Navajo Power Marketing Plan ("Plan") in substantially the form presented to the Board of Directors for its consideration on this date, the Board of Directors approves the terms and conditions thereof, including but not limited to the following resolutions.

Be it further resolved that terms used in this Resolution which are defined in the Plan shall have the meanings ascribed to them in the Plan.

Be it further resolved that CAWCD agrees that, except as provided in the next resolved clause herein, any written request for recapture delivered to the Authority by CAWCD prior to October 1, 1992, will be delivered only after Reclamation has determined that construction of New Waddell Dam has sufficiently advanced that the Date of Initial Operation is scheduled to occur within 27 months.

Be it further resolved that CAWCD agrees that it will not, prior to October 1, 1989, deliver a written request for recapture to the Authority. CAWCD further agrees that any written request for recapture, not occasioned by a determination by Reclamation that construction of New Waddell Dam has sufficiently advanced that the Date of Initial Operation is scheduled to occur within 27 months, will be delivered to the Authority prior to October 1, 1992 only upon the occurrence of the events described in subsections a and b as follows:

a. CAWCD has advanced to the escrow account or subaccount for New Waddell Dam called for in the Plan Six Cost Sharing Agreement, and Congress has appropriated, funds collectively equivalent to seventy-two percent (72%) or more of the current estimated construction costs of $452.6 million for New Waddell Dam or CAWCD has advanced $110 million. Funds shall be considered appropriated by Congress for New Waddell Dam if actually spent, contractually obligated, or specifically designated in a Department of the Interior request that has resulted in appropriations legislation or continuing resolution passed by Congress and signed by the President. Funds shall be considered advanced by CAWCD when deposited in the escrow account or subaccount.

b. The CAWCD Board of Directors has formally determined in its sole discretion that, in order to continue to make the payments required of CAWCD by the Plan Six Cost Sharing Agreement it is required that the CAWCD issue or cause to be issued revenue bonds. In making this determination, the CAWCD Board will take into account revenues from Interim Plan sales and Plan sales of Navajo Surplus prior to recapture, effects of any renegotiation of the CAWCD contribution schedule in the Plan Six Cost Sharing Agreement, and the oral and written comments of interested parties delivered to CAWCD at and after a public meeting called for receiving such comments. The CAWCD Board will also take into account a reasonable reserve level and not more than the $17 million currently forecast for underground storage and recovery projects. Such dollar limit is not intended to limit the CAWCD Board from considering additional expenditures for such projects from other revenue resources.

Be it further resolved that, in the event that CAWCD fails to advance at least $110 million of the $175 million required by the Plan Six Cost Sharing Agreement by the end of the schedule defined therein, or any extension thereof under the current terms of that Agreement, or any extension thereof hereafter negotiated, or Congress and CAWCD fail to appropriate and advance funds collectively equivalent to seventy-two percent (72%) or more of the current

estimated construction costs of $452.6 million for New Waddell Dam, then CAWCD agrees that its amount of recapturable Hoover Schedule B Capacity and Energy shall be reduced in each Operating Year thereafter to an amount determined by multiplying (1) the total amount of Hoover Schedule B Capacity and Energy available to the Authority in that Operating Year under the Authority's contract with Western for electric service by (2) a fraction in which the numerator is the amount of total funds of the $175 million, exclusive of interest penalties and additional contributions, actually advanced by CAWCD and withdrawn by the United States, and the denominator is $175 million. The resulting reduced amount of recapturable Hoover Schedule B Capacity and Energy is hereinafter referred to as the "Reduced Recapturable Amount." In the event of such failure after recapture has been completed or partially completed, CAWCD shall, within 20 days, tender in each Operating Year thereafter a relinquishment to the Authority of such amounts of Hoover Schedule B Capacity and Energy as are being delivered and are determined by the above formula to be in excess of the Reduced Recapturable Amount. Each such relinquishment shall take effect and remain in effect when and so long as (1) CAWCD is relieved of its financial obligations to the Authority with respect to such relinquished Hoover Schedule B Capacity and Energy as provided in CAWCD's Hoover Power Sales Contract with the Authority, dated as of September 15, 1986 (including any amendments thereof), or (2) CAWCD is satisfactorily indemnified against such financial obligations. It is the intent of this Resolution that the "Eligible Entities," as defined in CAWCD's Hoover Power Sales Contract with the Authority, shall receive such amounts of Hoover Schedule B Capacity and Energy pursuant to Section 30 of CAWCD's Hoover Power Sales Contract with the Authority as to total 14.04 percent (14.04%) of the Hoover Schedule B Capacity and Energy available to CAWCD under this Resolution and CAWCD's Hoover Power Sales Contract with the Authority.

I, the undersigned, as Secretary of the Central Arizona Water Conservation District, hereby certify that the foregoing is a true and correct copy of the resolutions duly adopted by the Board of Directors of the Central Arizona Water Conservation District at a meeting thereof, duly called and held on August 6, 1987, at which a quorum was present and acting throughout. I further certify that said resolutions have not been modified or revoked since their adoption and are still in full force and effect.

Signed this 8th day of August, 1987.

Marilyn H. Ronstadt,

Secretary.

[FR Doc. 87-20535 Filed 9-3-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3256-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 17, 1987 through August 21, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-AFS-L70008-AK, Rating EC2, Woewodski Island Area Analysis, Site-Specific Mgmt. Standards and Guidelines, Stikine Area, Tongass Nat'l Forest, AK. Summary: EPA is concerned that the lack of a water quality monitoring plan will make it difficult to ensure that Alaska Water Quality Standards (WQS) will be met and requests additional information on compliance with WQS, water quality and fish habitat monitoring, mitigation measures, and baseline data. EPA is also concerned as to how this area analysis fits into the overall Tongass Land Management Plan which will be updated in the next few years and that the range of alternatives for the area analysis may need to be expanded.

ERP No. D-NPS-K70003-CA, Rating LO, Decker Canyon Mgmt. and Development Concept Plan, Santa Monica Mtns. Nat'l Recreation Area, CA. SUMMARY: EPA expressed its lack of objections to the development concept plan proposed in the draft EIS.

ERP No. D-UAF-J10008-MT, Rating EC2, Malmstrom 341st Strategic Missile Wing, Air Force Base, Intercontinental Ballistic Missiles (ICBM) Program, Development, MT. Summary: EPA believes the draft EIS adequately identifies the environmental issues associated with the proposed program, however, discussion of the environmental consequences did not adequately represent the range of environmental conditions throughout the deployment area and possible cumulative impacts under varying launch site configurations. Specific information and greater detail needs to be provided concerning monitoring plans, mitigation techniques, and rationale for application of various mitigation techniques or spill contingency plans.

Final EISs

ERP No. FS-CDB-K89061-CA, Santa Maria Town Center Expansion and Development, CDBG, CA. Summary: EPA made no formal comments. EPA's prior concerns, mostly air issues, were found to be satisfactorily addressed in the final supplemental EIS.

ERP No. F-COE-G36114-TX, Cypress Creek Flood Control Plan, San Jacinto River and Tributaries, TX. Summary: The final EIS adequately responded to EPA comments issued on the draft EIS. EPA has no objections to the proposed action with proper implementation of the mitigation measures as described.

ERP No. F-FHW-E40088-TN, TN-34 Bypass Construction, TN-34 Southwest of Johnson City to TN-137 Northwest of Johnson City, TN. Summary: EPA's primary remaining concern was the final EIS uncertainty regarding a potential 500-foot channel relocation of Knob Creek (understanding from TN Department of Transportation that such a relocation is likely, but not finalized). Other concerns included noise and karst geologic impacts. Coordination with EPA and the State regarding the potential channel relocation, further consideration of mitigation, and additional documentation were requested.

ERP No. F-FHW-K40119-HI, Moanalua Road Improvement, Pali Momi Street to AIEA Interchange, 404 Permit, HI. Summary: EPA's review found that the final EIS adequately addressed the concerns EPA raised on the draft EIS.

Regulations

ERP No. R-NRC-A22110-00, 10 CFR Parts 30, 40 and 70, Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees (52 FR 12921). Summary: EPA recommended some modifications to NRC's proposed rule to reflect EPA's authority under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

Amended Notice

The following review should have appeared in the FR Notice published on August 28, 1987.

ERP No. F-COE-H40130-IA, IA-415 Highway Modifications, Segment C, IA-415 and NW 78th Street to Barrier Dam Roadway, Saylorville Lake Recreation Areas, Access Roadway Improvement Under Section III of the Water Resource Act 1976, IA. Summary: EPA comments concerning the adequacy of the draft EIS

have been addressed in the final EIS. However, EPA believes that the selected alternative is the most environmentally damaging of those evaluated. EPA believes that another alternative is available that will both satisfy the public needs and avoid adverse impacts on the habitat in question. EPA urges the Corps to reevaluate its position prior to issuing the Record of Decision.

Dated: September 1, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-20466 Filed 9-3-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3256-8]

Environmental Impact Statements; Notice of Availability

Responsible agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed August 24, 1987 Through August 28, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870296, Final, FHW, CA, CA-85 Transportation Corridor Construction, CA-101 to I-280/Stevens Creek Boulevard, Santa Clara County, Due: October 5, 1987, Contact: Dave Eyres (916) 551-1314.

EIS No. 870297, Draft, AFS, CO, Rock Creek Reservoir, Routt National Forest or Muddy Creek Reservoir, Kremmling Resource Area Construction, Special Use Permit, Routt and Grand Counties, Due: October 26, 1987, Contact: Ed Ryberg (303) 879-1722.

EIS No. 870298, Final, AFS, CA, Angeles Pipeline Project, Construction, Operation Maintenance and Abandonment, Emidio Pump Station and Tank Farm to Los Angeles Basin Refineries, Approval, Angeles National Forest Kern and Los Angeles Counties, Due: October 5, 1987, Contact: Richard Simon (213) 620-4038.

EIS No. 870299, Final, AFS, NM, Santa Fe National Forest, Land and Resource Management Plan, Due: October 5, 1987, Contact: Maynard Rost (505) 988-6940.

EIS No. 870300, Final, FHW, GA, GA-400/North Atlanta Freeway Extension, I-85 to I-285, Construction, Fulton County, Due: October 5, 1987, Contact: Louis Papet (404) 347-4751.

Amended Notice

EIS No. 870257, Draft, USN, NJ, Naval Weapons Station Earle, Family Housing Development, Construction, Colts Neck, Due: September 14, 1987, Published FR 7-31-87—Review period extended.

Dated: September 1, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-20467 Filed 9-3-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00245; FRL 3258-1]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with the peer review classification of DDVP as a Class B-2 oncogen and as a neurotoxin; a set of issues being considered by the Agency in connection with the peer review classification of Assert as a Class D oncogen; a set of issues being considered by the Agency in connection with the peer review classification of Assert as a Class D oncogen; a set of issues being considered by the Agency in connection with the peer review classification of Chlorothalonil as a Class B-2 oncogen; a set of issues being considered by the Agency in connection with the peer review classification of Linuron as a Class C oncogen; a set of scientific issues being considered by the Agency in connection with the peer review classification of Isoxaben as a Class C oncogen; and an information briefing on ETU, Tributyltin and Part 158—Toxicology Data Requirements for Food Use Pesticides.

DATES: The meeting will be held on Wednesday, September 23, 1987, from 8:30 a.m. to 4 p.m.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-769C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, Arlington, VA, (703-557-7695).

SUPPLEMENTARY INFORMATION: The agenda for the meeting is:

1. Review of a set of scientific issues in connection with the Agency's classification of the peer review of DDVP as a Class B/2 oncogen and as a neurotoxin.

2. Review of a set of scientific issues in connection with the Agency's classification of the peer review of Assert as a Class D oncogen.

3. Review of a set of scientific issues in connection with the Agency's classification of the peer review of Chlorothalonil as a Class C oncogen.

4. Review of a set of scientific issues being considered by the Agency's classification of Linuron as a Class C oncogen.

5. Review of a set of scientific issues being considered by the Agency's classification of Isoxaben as a Class C oncogen.

6. An information briefing on Ethylthiourea (ETU).

7. An information briefing on Tributyltin (TBT).

8. An Information briefing on Part 158—Toxicology Data Requirements for Food Use Pesticides.

9. Completion of any unfinished business from previous Panel meetings.

10. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to items 1-5 may be obtained by contacting: By mail: Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1006, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA., (703-557-2805).

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or telephone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance-notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment

that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral and /or written statements should notify the Executive Secretary and submit ten copies of a summary no later than September 16, 1987, in order to ensure appropriate consideration by the Panel.

Dated: September 1, 1987.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87-20512 Filed 9-3-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36147; FRL-3257-2]

Availability of Pesticide Chemical Fact Sheets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Pesticide Chemical Fact Sheets. It also supersedes all other availability information in earlier **Federal Register** notices regarding Pesticide Chemical Fact Sheets. EPA has made arrangements with the National Technical Information Service (NTIS) to process and distribute the Pesticide Chemical Fact Sheets. EPA will provide NTIS with the Pesticide Chemical Fact Sheets, previously issued and future ones, as they are issued.

ADDRESS: Published Pesticide Fact Sheets may be purchased from NTIS at the following address: National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703-487-4650).

Orders may be placed by telephone to the NTIS order desk and charged against a deposit account or American Express, VISA, or MasterCard, or sent by mail with check, money order, or deposit account number.

FOR FURTHER INFORMATION CONTACT: By mail:

Summer Gardner, Registration Support and Emergency Response Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 718, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2126).

SUPPLEMENTARY INFORMATION: The Pesticide Chemical Fact Sheets include a description of the chemical use patterns and formulations, scientific findings, a summary of the Agency's regulatory position/rationale, and a summary of major data gaps. They are issued if one of the following regulatory actions occurs:

1. A Registration Standard has been issued.

2. A significantly different use pattern has been registered.

3. A new chemical is registered.

4. A Special Review determination document has been issued.

Facts Sheets have been prepared for Registration Standards issued since June 1982 and for new chemicals and for chemicals with significantly changed use patterns registered since January 1984. Fact Sheets have also been issued for Special Review final determinations since June 1983.

For each Pesticide Chemical Fact Sheet desired, provide NTIS with the title of the document, the corresponding NTIS Order Number, and whether hard copy or microfiche is desired. The NTIS Order Number is the same for hard copies and microfiche, but the price differs. All microfiche copies are $6.50 and the hard copies are $9.95.

The following Pesticide Chemical Fact Sheets are available to this date from NTIS:

Chemical name	EPA No	NTIS Order No
1,3-Dichloropropene	95	PB87-116547
2,4-Dichlorophenoxyacetic Acid	94 1	PB87-192712
3,5-Dibromo	67	PB87-108841
Actellic	59	PB87-108858
Aldicarb	19	PB87-108866
Aldoxycarb	115	PB87-155230
Aldrin	108	PB87-155164
Aliette	1	PB87-114179
Amitrole	20	PB87-108874
Anilazine	12	PB87-108882
Arosurf	17	PB87-108890
Arsenal	63	PB87-108908
Arsenic Acid	91	PB87-108916
Arsenic Trioxide	110	PB87-155180
Avermectin	89	PB87-114153
Azinphos-Methyl	100	PB87-116489
Bentazon	64	PB87-108924
Bronopol	32	PB87-108932
Butylate	7	PB87-108940
Cadmium	103	PB87-108957
Calcium Arsenate	111	PB87-155198
Captafol	35	PB87-131199
Captan	75	PB87-108965
Carbaryl	21	PB87-108973
Carbofuran	24	PB87-108981
Carbon Tetrachloride	102	PB87-155123
Carbophenothion	25	PB87-116596
Chlordane	109	PB87-155172
Chlorimuron Ethyl	82	PB87-114773
Chlorobenzilate	15	PB87-113981
Chlorothalonil	36	PB87-113296
Chlorpyrifos	37	PB87-114781
Chlorpyrifos Methyl	57	PB87-111993
Clipper	62	PB87-111928
Command	[illegible]	PB87-124764
Copper Sulfate	87	PB87-116570
Cryolite	2	PB87-116109
Cyanazine	41	PB87-117461
Cyhexatin	56	PB87-111959
Cyromazine	105	PB87-155131
Daminozide	26	PB87-112025
Dantochlor	33	PB87-112017
DCNA	13	PB87-112033
Demeton	45	PB87-112009
Diazinon	96	PB87-116505
Dicamba	8	PB87-111944
Dichlobenil	122	PB87-192522
Dicofol	16	PB87-111936
Diflubenzuron	68 1	PB87-193058
Dinocap	65 1	PB87-193066
Dipropetryn	56	PB87-114245
Disulfoton	43	PB87-115051
Diuron	9	PB87-115168
EPN	127	PB87-192753
EPTC	6	PB87-115150
Ethalfluralin	58	PB87-115143
Ethoprop	3 1	PB87-111498
Fenaminosulf	10	PB87-115069
Fenbutatin-Oxide	119	PB87-193041
Fenoxycarb	78	PB87-115614
Fensulfothion	14 1	PB87-111506
Fluchloralin	52	PB87-113494
Fluometuron	88	PB87-111514
Flundone	81	PB87-111985
Fluvalinate	86	PB87-124756
Fonofos	22 1	PB87-124749
Formetanate Hydrochloride	11	PB87-112264
Glycoserve	47	PB87-112272
Heliothis NPV	27	PB87-112280
Heptachlor	107	PB87-155156
Hyprex	85	PB87-113049
Imazaquin	83	PB87-125522
Isomate-M	126	PB87-192746
Lactofen	128	PB87-201893
Lead Arsenate	112	PB87-155206
Linalool	77 1	PB87-111522
Lindane	73	PB87-111795
Linuron	28	PB87-116588
Mancozeb	125	PB87-192738
Methiocarb	120	PB87-191920
Methyl Bromide	98	PB87-116513
Methyl Parathion	117	PB87-155255
Metolachlor	106	PB87-155149
Metribuzin	53	PB87-116604
Metsulfuron Methyl	71	PB87-124731
Monocrotophos	72	PB87-116612
Nabam	124	PB87-192720
Naled	4	PB87-118485
Naptalam	49	PB87-118915
Nitrapyrin	54	PB87-118022
Norflurazon	60	PB87-118477
Parathion	116	PB87-155248
Pendimethalin	50	PB87-117578
Perfluidone	74	PB87-117560
Phorate	34 1	PB87-111530
Phosmet	101	PB87-117198
Picloram	48	PB87-117586
Potassium Bromide	38	PB87-118923
Potassium Permanganate	80	PB87-124772
Prometryn	121	PB87-191912
Pronamide	70	PB87-124723
Propachlor	44	PB87-116063
Propargite	99	PB87-116497
Propham	123	PB87-191938
Simazine	23	PB87-112256
Sodium & Calcium Hypochlorites	79	PB87-125530
Sodium Arsenate	114	PB87-155222
Sodium Arsenite	113	PB87-155214
Sodium Omadine	61	PB87-124384
Sulfuryl Fluoride	51	PB87-124392
Terbufos	5 1	PB87-125548
Terbutryn	104	PB87-121877
Thiodicarb	18	PB87-111811
Thiophanate Ethyl	84	PB87-111548
Thiophanate Methyl	92	PB87-111555
Thiram	29	PB87-111563
TPTH	39	PB87-111603
Trimethacarb	76	PB87-111571
Vitamin D-3	43	PB87-115622
Wood Preservatives	31	PB87-115630

The following Pesticide Chemical Fact Sheets have been recently issued and will be made available through NTIS. Please see the next quarterly issue for

the appropriate NTIS PB order number before ordering.

Brominated Salicylanilide
Dodine
Dinoseb
Diphenamid
Ethylenethiourea (ETU)
Isazophos
Oxamyl
Paraquat
Sodium & Calcium Hypochlorite
Sodium Salt of Fomesafen
Sulfurytl Fluoride
Tebuthiuron

Availability of additional Pesticide Chemical Fact Sheets through NTIS will be published quarterly in the **Federal Register**.

Dated: August 21, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 87-20421 Filed 9-3-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59249; FRL-3254-8]

Acrylic Acid, 2-Allylphenol Polymer, Sodium Salt; Test Market Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by September 2, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-59249]" and the specific TME number should be sent to: Document Control Officer (TS-794), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 87-29

Close of Review Period. October 2, 1987.

Importer. Colloids, Incorporated.

Chemical. (G) Acrylic acid, 2-allylphenol polymer, sodium salt.

Use/Import. (G) Antiscalant for water treatment. Import range: Confidential.

Date: August 26, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-20136 Filed 9-3-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51690; FRL-3255-1]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-two such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-1572, 87-1573, 87-1574, 87-1575, 87-1576 and 87-1577; November 11, 1987.
P 87-1578, 87-1579, 87-1580 and 87-1581; November 14, 1987.
P 87-1582, 87-1583, 87-1584, 87-1585, 87-1586, 87-1587, 87-1588, 87-1589, 87-1590, 87-1591, 87-1592, 87-1593, 87-1594 and 87-1595; November 15, 1987.
P 87-1596, 87-1597, 87-1598, 87-1599, 87-1600, 87-1601, 87-1602, 87-1603, 87-1604, 87-1605, 87-1606, 87-1607, 87-1608 and 87-1609; November 16, 1987.
P 87-1610, 87-1611, 87-1612 and 87-1613; November 17, 1987.

Written comments by:

P 87-1572, 87-1573, 87-1574, 87-1575, 87-1576 and 87-1577; October 10, 1987.
P 87-1578, 87-1579, 87-1580 and 87-1581; October 13, 1987.
P 87-1582, 87-1583, 87-1584, 87-1585, 87-1586, 87-1587, 87-1588, 87-1589, 87-1590, 87-1591, 87-1592, 87-1593, 87-1594 and 87-1595; October 16, 1987.
P 87-1596, 87-1597, 87-1598, 87-1599, 87-1600, 87-1601, 87-1602, 87-1603, 87-1604, 87-1605, 87-1606, 87-1607, 87-1608 and 87-1609; October 17, 1987.
P 87-1610, 87-1611, 87-1612 and 87-1613; October 18, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51690]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-1572

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Fiber reactive monoazo dyestuff.

Use/Production. (G) Fiber reactive dye for fibers. Prod. range: 18,000 to 54,000 kg/yr.

Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizing; LC_{50} 48 hr. (Zebra-fish): 500 mg/1, EC_{50} 24 hr. (Daphnia magna): >1,000 mg/1.

P 87-1573

Importer. Hoechst Celanese Corporation.

Chemical. (G) Perfluoralkyl group containing toluene—bisurethane.

Use/Import. (G) Fluorochemical to improve soil-, oil-, and water repellency. Import range: Confidential.

Toxicity Data. Acute oral: 2000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; LC_{50} 96 hr. (Zebra-fish): 500 mg/l.

P 87-1574

Importer. Confidential.
Chemical. (G) Diurea crystals.
Use/Import. (G) Site-limited and industrial coatings. Import range: Confidential.

P 87-1575

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (G) Amino modified organopolysiloxane.
Use/Import. (S) Industrial textile finishing agent additive for resins or plastics and for waxes. Import range: 8,000 to 12,000 kg/yr.

P 87-1576

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (G) Amino modified organosiloxane.
Use/Import. (S) Industrial textile finishing agent; additive for resins or plastics; and additive for waxes. Import range: 5,000 to 20,000 kg/yr.

P 87-1577

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (G) Alkoxy modified organopolysiloxane.
Use/Import. (S) Industrial wax and lubricant. Import range: 500 to 1,500 kg/yr.

P 87-1578

Importer. Confidential.
Chemical. (G) Thiazoline derivative of para phenylinediamine.
Use/Import. (G) Additive for imaging products. Import range: Confidential.
Toxicity Data. Acute dermal: >2,000 mg/kg; Irritation: Eye—Non-irritant.

P 87-1579

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (G) Amino modified organopolysiloxane.
Use/Import. (S) Industrial textile finishing agents, additive for resin or plastics and for waxes. Import range: 10,000 to 40,000 kg/yr.

P 87-1580

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (G) Organoploysiloxane containing amino and hydroxy groups.
Use/Import. (S) Industrial textile finishing agent and additive for paints or rubber compounds. Import range: 1,000 to 3,000 kg/yr.

P 87-1581

Importer. Confidential.
Chemical. (G) Isophthalic alkyd resin.
Use/Import. (S) Priting ink. Import range: Confidential.

P 87-1582

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Styrene acrylic copolymer.
Use/Production. (G) Site-limited and industrial highly dispersive use. Prod. range: Confidential.

P 87-1583

Manufacturer. E.I. du Pont de Nemours and Company, Ind.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Site-limited and industrial open, non-dispersive use. Prod. range: Confidential.

P 87-1584

Manufacturer. Confidential.
Chemical. (G) Acrylic acid, 2-allyl phenol polymer, sodium salt.
Use/Production. (G) Antiscalant—industrial process water treatment. Prod. range: Confidential.

P 87-1585

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Styrene acrylic copolymer.
Use/Production. (G) Site-limited and industrial highly dispersive use. Prod. range: Confidential.

P 87-1586

Manufacturer. Finetex, Incorporated.
Chemical (G) N'-alky'-N,N,N",N"-tetra alkyl"-dipropylene-quarternary ammonium trialkyl' "-sulfate.
Use/Production. (S) Industrial anti-static agent for synthetic textiles; substantive lubricant and processing aid for fibrous materials; and pigment dispersing aid for use in cationic and substantive paints. Prod. range: 10,000 to 20,000 kg/yr.
Toxicity Data. Irritation: Skin-Irritant, Eye-Mild.

P 87-1587

Manufacturer. Confidential.
Chemical. (G) Neo-alcohol.
Use/Production. (S)Chemical intermediate for manufacture of oil additives. Prod. range: Confidential.
Toxicity Data. Acute oral: 3.2 ml/kg; Irritation: Skin-Mild; Ames test: Non-mutagenic.

P 87-1588

Manufacturer. Confidential.
Chemical. (G) Carboxyl-functional uralkyd.
Use/Production. (G) Varnish for printing inks. Prod. range: Confidential.

P 87-1589

Manufacturer. Confidential.
Chemical. (G) Polyamine phosphonate, amine salt.
Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 87-1590

Manufacturer. Confidential.
Chemical. (G) Polyaminephosphonate, polyamine salt.
Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 87-1591

Manufacturer. The Dow Chemical Company.
Chemical. (G) Modified styrene, butadiene polymer.
Use/Production. (S) Industrial polymer component of industrial adhesive formula. Prod. range: Confidential.
Toxicity Data. Acute oral: – 5,000 mg/kg; Irritation: Skin-Non-irritant, Eye-Slight.

P 87-1592

Manufacturer. Confidential.
Chemical. (G) Substituted thiadiazole.
Use/Production. (G) Industrial lubricant and engine oil additive. Prod. range: Confidential.
Toxicity Data. Acute oral: 5 g/kg; Acute dermal: 2 g/kg; Irriation: Skin-Moderate, Eye-Moderate; Ames test: Non-mutagenic.

P 87-1593

Manufacturer. Confidential.
Chemical. (G) Potassium alcoholates.
Use/Production. (S) Chemical intermediate for manufacture of polymers. Prod. range: Confidential.

P 87-1594

Manufacturer. The Dow Chemical Company.
Chemical. (G) Alkyl pyrimidine.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 800 mg/kg.

P 87-1595

Importer. Confidential.
Chemical. (G) Dibasic acid/glycol ester.
Use/Import. (S) Industrial stamping enamels-exterior can coating. Import range: Confidential.

P 87-1596

Manufacturer. The Dow Chemical Company.
Chemical. (G) Alkyl pyrimidine, methyl ether.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 87-1597

Manufacturer. Confidential.
Chemical. (G) Amine salt of a styrene-acrylic copolymer.
Use/Production. (G) Site-limited and industrial contained use as an emulsifier for the production of an emulsion polymer. Prod. range: 15,000 to 60,000 kg/yr.

P 87-1598

Importer. Hodogaya Chemical (U.S.A.), Incorporated.
Chemical. (S) 1-Hexadecanaminium, N,N,N-trimethyl-, hexa-.mu.-oxotetra-.mu. 3-oxodi-.mu. 5-oxotetradecaoxooctamolybdate(4-) (4:1).
Use/Production. (G) Ingredient in toner for plain paper copy. Import range: 1,000 to 5,000 kg/yr.
Toxicity Data. Acute oral: 5 g/kg; Irritation: Skin—Slight, Eye—Irritant; Ames test: Non-mutagenic.

P 87-1599

Manufacturer. Alco Chemical Corporation.
Chemical. (G) Sodium polyacrylate; acrylate copolymer salt; and vinylic copolymer.
Use/Production. (G) Thickening compound for aqueous system. Prod. range: Confidential.

P 87-1600

Importer. Confidential.
Chemical. (S) Benzene, ethenyl-.2-propenoic acid, 2-methyl ester.2-propenoic acid, butylester. butanedioic acid, mono[2-[(1-oxo-2-propenyl)oxy]ethyl]ester polymer.
Use/Import. (G) Toner. Import range: 120,000 to 240,000 kg/yr.
Toxicity Data. Ames test: Non-mutagenic.

P 87-1601

Manufacturer. Interez Incorporated.
Chemical. (G) Modified polymeric amine.
Use/Production. (G) Industrial and commercial epoxy resin curing (crosslinking) agent. Prod. range: Confidential.

P 87-1602

Manufacturer. Confidential.
Chemical. (G) Polyurethane polymer.
Use/Production. (G) Coatings/adhesives for open, non-dispersive use. Prod. range: Confidential.

P 87-1603

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphenic acid.
Use/Production. (G) Site-limited intermediate (destructive use). Prod. range: Confidential.

P 87-1604

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphonic anhydride.
Use/Production. (G) Site-limited intermediate (destructive use). Prod. range: Confidential.

P 87-1605

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphonic anhydride, homopolymer.
Use/Production. (G) Site-limited intermediate (destructive use). Prod. Range: Confidential.

P 87-1606

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphonic acid, homopolymer.
Use/Production. (G) Site-limited intermediate. Prod. Range: Confidential.

P 87-1607

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphonic acid, homopolymer, alkaline metal salt.
Use/Production. (G) Industrial boiler water dispersant (dispersive use). Prod. Range: Confidential.

P 87-1608

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Substituted indole.
Use/Production. (S) Industrial intermediate for manufacture of spectral sensitizer of photographic materials. Prod. range: 6 to 18 kg/yr.

P 87-1609

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Indole carbocyanine dye.
Use/Production. (G) Industrial and commercial photographic emulsion additive. Prod. range: 12 to 36 kg/yr.

P 87-1610

Importer. Confidential.
Chemical. (G) Polyamide resin.
Use/Import. (S) Printing ink component (used to disperse pigment and to provide gloss, adhesion and resistance properties when printed on paper, plastic and metal substrates. Import range: Confidential.

P 87-1611

Importer. The Aqualon Company.
Chemical. (G) Hydrophobically-modified hydroxyethylcellulose.
Use/Import. (S) A thickner for joint compounding tile cements and plasters, a protective colloid for emulsion polymerization and for suspension polymerization. Import range: Confidential.

P 87-1612

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Polyester from aromatic dicarboxylic acid ester, aliphatic diols and oxirane polymer.
Use/Production. (G) Soil release additive, anti static agent, dye bath additive. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

P 87-1613

Manufacturer. Peltz Rowley Chemical Company.
Chemical. (G) Epoxy—amine adduct.
Use/Production. (S) Curing agent for expoxy resin coating. Prod. range: Confidential.

Date: August 25, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substance.

[FR Doc. 87-20137 Filed 9-3-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59829; FRL-3254-9]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) permanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such PMNs and provides the summary of each.

DATES: Close of Review Period:

Y 87-219	Sept. 3, 1987
Y 87-220	Sept. 8, 1987
Y 87-221	Sept. 9, 1987

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-219

Importer. Unitika America Corporation.
Chemical. (G) Co-polyester.
Use/Import. (G) Resin for powder coating. Import range: 30,000 to 50,000 kg/yr.

Y 87-220

Importer. Nippon Gohsei U.S.A. Company, Ltd.
Chemical. (G) High molecular weight linear staturated polyester.
Use/Import. (S) Commercial and consumer flexibility modified for hard resins. Import range: 10,000 to 50,000 kg/yr.

Y 87-221

Importer. Confidential.
Chemical. (G) Isophthalic alkyd resin.
Use/Import. (G) Coatings.

Date: August 25, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-20138 Filed 9-3-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51691; FRL-3257-6]

Toxic and Hazardous Substances Control; Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-four such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-1614, 87-1615 and 87-1616—November 18, 1987.
P 87-1617—November 15, 1987.
P 87-1618, 87-1619, 87-1620, 87-1621, 87-1622, 87-1623, 87-1624, 87-1625, 87-1626, 87-1627 and 87-1628—November 21, 1987.
P 87-1629, 87-1630, 87-1631, 87-1632, 87-1633, 87-1634, 87-1635, 87-1636, 87-1637, 87-1638 and 87-1639—November 22, 1987.
P 87-1640, 87-1641, 87-1642, 87-1643, 87-1644, 87-1645, 87-1646, 87-1647, 87-1648, 87-1649, 87-1650 and 87-1651—November 23, 1987.
P 87-1652, 87-1653, 87-1654, 87-1655, 87-1656 and 87-1657—November 24, 1987.

Written comments by:

P 87-1614, 87-1615 and 87-1616—October 19, 1987.
P 87-1617—October 16, 1987.
P 87-1618, 87-1619, 87-1620, 87-1621, 87-1622, 87-1623, 87-1624, 87-1625, 87-1626, 87-1627 and 87-1628—October 22, 1987.
P 87-1629, 87-1630, 87-1631 87-1632, 87-1633, 87-1634, 87-1635, 87-1636, 87-1637, 87-1638 and 87-1639—October 23, 1987.
P 87-1640, 87-1641, 87-1642, 87-1643, 87-1644, 87-1645, 87-1646, 87-1647, 87-1648, 87-1649, 87-1650 and 87-1651—October 24, 1987.
P 87-1652, 87-1653, 87-1654, 87-1655, 87-1656 and 87-1657—October 25, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51691]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidental PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-1614

Manufacturer. Reichhold Chemicals, Incorporated.
Chemical. (G) Limonene—hydrocarbon resin.
Use/Production. (S) Industrial tackifier component in the production of various adhesives. Prod. range: Confidential.

P 87-1615

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (S) Coating. Prod. range: Confidential.

P 87-1616

Manufacturer. Confidential.
Chemical. (G) Alkyd copolymer.
Use/Production. (G) Resin for coating. Prod. range: Confidential.

P 87-1617

Manufacturer. Confidential.
Chemical. (G) Basic dyetone sm.
Use/Production. (G) Industrial and commercial open- non-dispersive. Prod. range: Confidential.

P 87-1618

Manufacturer. The Dow Chemical Company.
Chemical. (G) Alkyl amide.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 87-1619

Manufacturer. The Dow Chemical Company.
Chemical. (G) Halogenated alkyl pyrimidine.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 87-1620

Manufacturer. The Dow Chemical Company.
Chemical. (G) Alkyl diamide.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P-87-1621

Manufacturer. Hack Company.
Chemical. (S) N-decyl-tri-N-dodecylammonium bromide.
Use/Production. (S) Industrial and commercial part of formulation used in ion-specific nitrate electrode. Prod. range: 1 to 5 kg/yr.

P 87-1622

Manufacturer. The DOW Chemical Company.
Chemical. (G) Alkyl tetrahydropyrimidine.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 87-1623

Importer. Marubeni America Corporation.
Chemical. (S) 4-[4-[4-(4-Butyl phenylazo)phenyl azo]-1-naphthyl azo]-N,N-diethyl aniline.
Use/Import. (S) Industrial coloring matter for liquid crystal. Import range: 0.1 to 1.0 kg/yr.

P 87-1624

Importer. Marubeni America Corporation.
Chemical. (S) 1-(4-n-Butoxybenzylideneamino)-4-[4-(4-n-butoxy benzylideneamino)phenylazo]naphthalene.
Use/Import. (S) Industrial coloring matter for liquid crystal. Import range: 0.1 to 1.0 kg/yr.

P 87-1625

Importer. Marubeni America Corporation.
Chemical. (S) 4-[4-(4-Butyl phenylazo)-1-naphthylazo]-N,N-dimethyl aniline.
Use/Import. (S) Industrial coloring matter for liquid crystal. Import range: 0.1 to 1.0 kg/yr.

P 87-1626

Manufacturer. Confidential.
Chemical. (G) Aliphathic aromatic poly(ester thioether urethane).
Use/Production. (G) Industrial paint product with open, dispersive uses. Prod. range: 50,000 to 398,000 kg/yr.

P 87-1627

Manufacturer. Confidential.
Chemical. (G) Mixed dibasic acid esters of monohydric alcohol and polyols mixed esters of monophydric alcohol and polyols.
Use/Production. (G) Metal working lubricant additive. Prod. range: Confidential.

P 87-1628

Manufacturer. Confidential.
Chemical. (G) Alkenyl substituted succinic anhydride product with substituted ethanol.
Use/Production. (G) Contained use. Prod. range: 40,000 to 150,000 ky/yr.

P 87-1629

Manufacturer. Confidential.
Chemical. (G) Alkaline water soluble polyester.
Use/Production. (G) Coating for paper and other cellulosics. Prod. range: Confidential.

P 87-1630

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic acrylic resin.
Use/Production. (G) Industrial dispersively used coating. Prod. range: 120,000 to 240,000 kg/yr.

P 87-1631

Manufacturer. Confidential.
Chemical. (G) Alkenes, long chain alkyl.
Use/Production. (S) Intermediate for preparation of alkylated aromatic hydrocarbons from aromatic hydrocarbons; and intermediate for general synthetic usage. Prod. range: Confidential.

P 87-1632

Manufacturer. Confidential.
Chemical. (G) Alkylbenzene for manufacture of lubricant additives—destructive use.
Use/Production. (G) Intermediate for manufacture of lubricant additives—destructive use. Prod. range: Confidential.
Toxicity Data. Acute oral: 5 g/kg; Acute dermal: 2 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic.

P 87-1633

Manufacturer. Confidential.
Chemical. (G) Metal salt of alkaryl sulfonate.
Use/Production. (G) Lubricating oil additive—contained use. Prod. range: Confidential.
Toxicity Data. Acute oral: 2,310 mg/kg; Acute dermal: >1,580 mg/kg; Irritation: Skin—Slight, Eye—Mild; Inhalation: Non-toxic.

P 87-1634

Manufacturer. Confidential.
Chemical. (G) Metal salt of alkaryl sulfonate.
Use/Production. (G) Petroleum lubricant additive—contained use. Prod. range: Confidential.
Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >5 g/kg; Irritation: Skin—Moderate, Eye—Mild.

P 87-1635

Manufacturer. Confidential.
Chemical. (G) Metal salt of alkaryl sulfonate.
Use/Production. (G) Lubricating oil additive-contained use. Prod. range: Confidential.
Toxicity Data. Acute oral: 25,100 mg/kg; Acute dermal: 10,000 mg/kg; Irritation: Skin—Slight, Eye—Moderate; Inhalation: Non-toxic.

P 87-1636

Importer. Confidential.
Chemical. (G) Polyfluorinated copolymers.
Use/Import. (G) Oil and water repellent for paper. Import range: Confidential.
Toxicity Data. Acute oral: 22 ml/kg; Irritation: Skin—Slight, Eye—Moderate.

P 87-1637

Importer. Confidential.
Chemical. (S) Chloroethene.2-propenoic acid monoester with 1,2-propandiol.2-butenedioic acid polymer.
Use/Import. (S) Industrial paint vehicle. Import range: 24,000 to 36,000 kg/yr.
Toxicity Data. Ames test: Non-mutagenic.

P 87-1638

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (S) Polymer of dimethyl cyclosiloxane; methyl vinyl cyclosiloxane; and octaphenyl cyclotetrasiloxane.
Use/Import. (S) Industrial ingredient for silicone rubber compounds or adhesives. Import range: 3,000 to 5,000 kg/yr.

P 87-1639

Manufacturer. Confidential.
Chemical. (G) Alkaryl sulfonic acid.
Use/Production. (G) Intermediate for manufacture of lubricant additives and destructive use. Prod. range: Confidential.
Toxicity Data. Acute oral: >10.003 g/kg; Acute dermal: >7.94 g/kg; Irritation: Skin—Irritant, Eye—Irritant.

P 87-1640

Manufacturer. The Dow Chemical Company.
Chemical. (G) Alkylpyrimidinol
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 87-1641

Manufacturer. The Dow Chemical Company.
Chemical. (G) Vinylidene chloride/butadiene polymer with alkaneoic and alkanedioic acids.
Use/Production. (G) Industrial adhesive. Prod. range: Confidential.

P 87-1642

Manufacturer. The Dow Chemical Companv.
Chemical. (G) Vinylidene chloride, butadiene, polymer with alkane dioic acid.
Use/Production. (G) Industrial adhesive. Prod. range: Confidential.

P 87-1643

Manufacturer. The Dow Chemical Company.

Chemical. (G)Alkyl pyrimide, alkali salt.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 87–1644

Manufacturer. General Electric Company.

Chemical. (G) Aryl alkylarylpolyamide resin.

Use/Production. (S) Industrial thermoplastic resin for sheet and film blend resin for themoplastic blends. Prod. range: Confidential.

P 87–1645

Manufacturer. General Electric Company.

Chemical. (G) Aryl alkylpolyamide resin.

Use/Production. (S) Industrial thermoplastic resin for sheet and film and blend resin for thermoplastic blends. Prod. range; Confidential.

P 87–1646

Manufacturer. Milliken and Company.

Chemical. (G) Substituted polyoxyethylene aniline diacetylester.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1647

Manufacturer. Milliken and Company.

Chemical. (G) Substituted polyoxyethylene aniline.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 87–1648

Manufacturer. Confidential.

Chemical. (G) Substituted phthalic anhydride.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 87–1649

Importer. Confidential.

Chemical. (G) Soya alkyd resin.

Use/Import. (G) Coatings. Import range: Confidential.

P 87–1650

Importer. Confidential.

Chemical. (G) Soya alkyd resin.

Use/Import. (G) Coatings. Import range: Confidential.

P 87–1651

Manufacturer. General Electric Company.

Chemical. (G) Aryl alkylarylcopolyamide resin.

Use/Production. (S) Thermoplastic resin for sheet and film and blend resin for thermoplastic blends. Prod. range: Confidential.

P 87–1652

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. (G) Methyl hydrogen methoxy polysiloxane.

Use/Import. (S) Industrial cross linking agent for liquid silicone rubber compound. Import range: 60 to 150 kg/yr.

P 87–1653

Manufacturer. Confidential.

Chemical. (G) Azoxy bis[(substituted phenyl) axo]bis[substituted naphthalenesulfonic acid, salt.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1654

Importer. Confidential.

Chemical. (G) Blocked aliphatic urethane.

Use/Import. (S) Textile finish. Import range; Confidential.

P 87–1655

Manufacturer. Confidential.

Chemical. (G) Azoxybis[(substituted phenyl)azo]bis[substituted naphthalenesulfonic acid, and salt.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 87–1656

Manufacturer. Confidential.

Chemical. (G) Modified maleated metal resinate.

Use/Production. (S) Industrial publication gravure printing inks. Prod. range: Confidential.

P 87–1657

Manufacturer. Confidential.

Chemical. (G) Cyclic halophosphite.

Use/Production. (G) Hydrocarbon, resin and polymer additive—contained use. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant, Ames test: Non-mutagenic.

Date: August 28, 1987.

Linda K. Smith,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87–20422 filed 9–3–87; 8:45 am]

BILLING CODE 6560–50–M

[OW–FRL–3258–5]

Water Quality Act of 1987 Implementation; Draft Guidance Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for public comment of five draft guidance documents for implementation of several sections of the Water Quality Act of 1987. These five documents are: "Final Draft: Nonpoint Source Guidance," "Final Draft: Clean Lakes Program Guidance," "Draft: State Water Quality-based Toxics Control Program Review Guidance," "Draft: Initial Guidance—State Water Pollution Control Revolving Fund," and "State Clean Water Strategies: Meeting The Challenges of The Future."

DATE: Copies of these documents will be available for public comment from EPA Headquarters Office of Water for a period of 30 days, beginning September 4, 1987.

ADDRESSES: Copies of these documents can be obtained by writing Mario Hegewald, Office of Water, WH–556, U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. All comments should be forwarded to Mr. Hegewald at the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Hegewald, (202) 382–5700.

SUPPLEMENTARY INFORMATION: The Water Quality Act of 1987 (WQA) expands and strengthens the Clean Water Act through a number of changes designed to enhance water quality and improve programs. The WQA builds on the progress made in water quality management, and focuses on remaining problems. The new law reinforces the national commitment to the goal of restoring and maintaining our waters; presents new challenges to EPA and States; and revises and expands the agenda for State and EPA water programs.

The EPA Office of Water intends to work closely with the States, municipalities and the public to structure implementation activities. In some areas, that will mean renewed vigor in implementing traditional base programs and priorities. In other areas, it will mean structuring new programs to improve their capability to achieve beneficial environmental results. To the extent possible, EPA will encourage States to integrate requirements across programs to avoid redundant efforts and to make efficient and effective use of resources. Final draft guidance on EPA's overall approach to State WQA implementation, entitled "State Clean Water Strategies: Meeting The Challenges of The Future," is available now from EPA at the above address.

As the first comprehensive revision of the Clean Water Act in a decade, the WQA establishes many new

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requirements for EPA and the States from information gathering, assessments, strategies, control requirements, grants, and conferences, to management plans, studies and reports. Although they relate to dozens of different program activities, the cumulative burden of the requirements for EPA and the States is substantial.

A summary of the major provisions gives a flavor for the scope of the task.

Surface Water Toxics Control

The WQA establishes a program for identification of waters affected by toxic pollutants and implementation of specific controls, section 304(1) individual control strategies, to reduce those toxics.

This program requires States to assess and list their waters to determine where there are impairments of water quality due to point source discharges and to identify the discharges. By February 1989, States are to set effluent limitations in § 402 National Pollutant Discharge Elimination system (NPDES) permits ("individual control strategies") for these discharges to assure that water quality standards are attained. States are also to revise and expand their water quality standards to include all section 307(a) toxic pollutants where EPA has promulgated criteria and where their discharge could reasonably be expected to interfere with designated uses. Guidance on implementation of requirements under section 304(1) is nearing completion and will soon be available from EPA at the above address. EPA will publish a notice of availability when this draft guidance is available for comment.

An additional guidance document which is available now, is the "Draft State Water Quality-based Toxics Control Program Review Guidance." The purpose of this document is to provide guidance to EPA Regional offices in conducting comprehensive assessments of State toxics control programs on a State-by-State basis, and in developing detailed State action plans to strengthen State toxics control programs, including monitoring, water quality standards, and NPDES permitting.

Nonpoint Source Pollution

The legislation authorizes funding for State implementation of nonpoint source management programs. States must assess their waters to determine where there are impairments of water quality due to nonpoint sources and to identify the sources. By August 1988, States are to develop programs to implement best management practices and other controls including an implementation schedule, an Attorney General's statement of legal authorities, an identification of funding sources and a list of related Federal projects that conflict with a State's nonpoint source policies. The "Final Draft: Nonpoint Source Guidance" is available now from EPA at the above address.

State Revolving Loan Fund (SRF)

By authorizing Federal funds to capitalize State revolving fund programs, WQA provides for a transition from the current Federal Construction Grant Program to a new approach for assisting communities in construction of publicly owned treatment works (POTWs). From the SRF, States can provide loans and other types of financial assistance, but not grants, to local communities and intermunicipal and interstate agencies, for the construction of POTWs and for the implementation of projects and programs established under the nonpoint source pollution control program (sectiion 319) and the national estuaries program (section 320). The "Draft: Initial Guidance—State Water Pollution Control Revolving Fund" is available now from EPA at the above address.

Sewage Sludge

The WQA establishes a more aggressive program by EPA and States for the control of toxic pollutants in sewage sludge which may adversely affect public health or the environment. EPA is to promulgate standards for sludge use and disposal to control those pollutants and to implement those standards through permits. These standards will be proposed in a separate **Federal Register** notice of proposed rulemaking.

In the interim before promulgation of the standards for sewage sludge use and disposal, the WQA directs EPA to include sludge requirements in NPDES permits issues to publicly owned treatment works (POTWs) or to take other measures to protect public health and the environment. EPA is developing guidance for permit writers for including interim sludge requirements in POTWs' permits. The guidance currently is scheduled to be available in early FY 1988.

The WQA also directs EPA to promulgate regulations for approval of State sewage sludge management programs. EPA expects to propose these regulations, as well as regulations governing sludge permits, in December 1987.

Estuaries

The new law sets up a national estuary program. EPA and States are to convene management conferences for estuaries of national significance. These conferences will assess water quality and trends, and collect and assess data on problems and causes. States will develop and implement comprehensive management plans in expeditious fashion. Development of national estuary program guidance is presently underway, and assessment of the six existing estuary protection programs is underway to see if these programs will become established as management conferences. EPA will publish a notice of availability in the **Federal Register** when the draft guidance is available for comment.

Clean Lakes

The Clean Lakes provision of the WQA provides for a comprehensive analysis of the quality of lakes nationally through expanded monitoring and reporting. Completion of the lake water quality assessment is required in order for States and Indian Tribes to be eligible for Clean Lakes grants. States must assess all lakes to determine where there are impairments in water quality, to classify them by eutrophic condition and to discuss lake water quality trends. States must also identify the means planned to control pollution in lakes and restore lake quality, as well as methods planned to mitigate acidity. Several types of lake restoration and protection grants are authorized. The "Final Draft: Clean Lakes Program Guidance" is available now from EPA at the above address.

Storm Water

The legislation significantly alters the CWA approach to the control of storm water runoff pollution by adopting a phased and tiered approach.

EPA will promulgate regulations governing permit application requirements for storm water discharges associated with industrial activity and for discharges from large municipal storm sewer systems by February 4, 1989. Permit application requirements for discharges from medium municipal storm systems are to be developed by February 4, 1991. EPA, in consultation with the States, is required to study and submit reports to Congress on certain other storm water discharges for which permits are not required prior to October 1, 1992. A storm water discharge which EPA or a State with an approved NPDES program determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States can be required to obtain a permit prior to October 1, 1992. EPA

will publish a notice of proposed rulemaking in the **Federal Register** when the proposed rule is available for comment.

Great Lakes

The bill formally establishes the Great Lakes National Program Office in EPA to carry out this Country's commitments in the Great Lakes Water Quality Agreement. The program office, in conjunction with the States, will develop and implement "action plans" for control of toxic pollutants. In addition, they will create a monitoring network, establish a five year nutrient control program, and undertake a five year toxic demonstration study.

There are dozens of additional implementation activities stemming from the WQA Amendments. They include policies, guidance documents and regulation changes. All will influence water pollution control efforts over the next several years and will require coordination with interested parties. We actively solicit your comments on the documents that are available today, as well as other guidances and regulations as they become available.

Dated: September 2, 1987.

Lawrence J. Jensen,

Assistant Administrator for Water.

[FR Doc. 87-20536 Filed 9-3-87; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Pub. L. 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Tuesday, September 22, 1987 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of the following topics: Trade Issues Update, Financial Report, Program Update, Legislative Update, Report of State/City/Municipal Task Force, Report of the FCIA Task Force, Report of LDC Debt Task Force, and other topics.

Public Participation: The meeting will be open to public participation; and the last 20 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871, not later than September 21, 1987. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact prior to September 15, 1987 the Office of the Secretary, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 566-8871 or TDD: (202) 535-3913.

Further Information: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871.

Hart Fessenden,

General Counsel.

[FR Doc. 87-20534 Filed 9-3-87; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

August 26, 1987.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0329
Title: Equipment Authorization—Verification (Sections 2.955, 15.69(b), 15.814(b), 15.834(b)(c), 18.203(b))
Action: Revision
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion recordkeeping
Estimated Annual Burden: 5,675 Recordkeepers; 102,150 Hours

Needs and Uses: Equipment testing is performed and data is gathered to provide information to aid in controlling interference to radio communications. Data collected verifies compliance of equipment to the FCC Rules. The information is retained by the equipment manufacturer and made available only at the request of the Commission.

OMB Number: 3060-0209
Title: Section 73.1920, Personal attacks
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 1,189 Responses; 595 Hours

Needs and Uses: If an attack is made on the honesty, character, integrity, or like personal qualities of an identified person or group during the presentation of views on a controversial issue of public importance on a television or radio station, the licensee of the station must notify the person or group of the attack and offer a reasonable opportunity to respond over the licensee's facilities. The notification permits the person or group to respond to the attack.

Federal Communications Commission

William J. Tricarico,

Secretary.

[FR Doc. 87-20440 Filed 9-3-87; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

August 27, 1987.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0309
Title: Section 74.1281, Station Records
Action: Extension

Respondents: State or local governments, business (including small businesses), non-profit institutions
Frequency of Response: On occasion recordkeeping
Estimated Annual Burden: 1,900 Recordkeepers; 1,900 Hours

Needs and Uses: This rule requires licensees of FM translator or booster stations to maintain adequate records. These records include the current instrument of authorization, official correspondence with the FCC, maintenance records, contracts, permission for rebroadcasts, and information concerning antenna tower lights. The records are used by FCC staff in investigations to ensure that licensees are operating in accordance with FCC rules and the station authorizations.

OMB Number: 3060–0310
Title: Section 76.12, Registration statement required
Action: Revision
Respondents: State or local governments, businesses (including small businesses), non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 1,500 Responses; 375 Hours

Needs and Uses: This rule requires that a registration statement be filed with the FCC before a system community unit (a cable television system or portion of a cable television system) is authorized to commence operation. The data is used by FCC staff to maintain complete records regarding cable systems and to ensure compliance with FCC rules.

Federal Communications Commission
William J. Tricarico,
Secretary.
[FR Doc. 87–20441 Filed 9–3–87; 8:45 am]
BILLING CODE 6712-01-M

Special Radio Services; Lottery Rankings of 900 MHz SMRs Applicants

August 21, 1987.

On July 24, 1987, the Federal Communications Commission conducted its fourth round of lotteries to select applicants to provide 900 MHz Specialized Mobile Radio (SMR) Service. These lotteries were used to rank applications in each of the following Designated Filing Areas (DFAs):

#17 Minneapolis-St. Paul
#18 Seattle
#19 San Diego
#20 Tampa-St. Petersburg
#21 Denver
#22 Phoenix
#23 Cincinnati-Dayton
#25 Kansas City
#26 Portland
#28 Columbus
#47 Orlando

Lists of the forty top-ranked applications in each of these Designated Filing Areas are attached to this public notice. The top 20 selectees in each DFA will be granted authorizations to provide SMR service. The next 20 ranked applicants will be alternate selectees should it be determined that any of the winners are not qualified to be licensees, or if any of the winners fail to provide the Commission with required transmitter site information within the specified time period. Within 30 days of the publication of this public notice in the **Federal Register**, interested parties may advise the Commission of any matter that may reflect on an applicant's qualifications to be a licensee. A copy of any such pleading must be served on the applicant in question on or before the day on which the document is filed with the Commission. *See* § 1.47(b) of the Commission's rules, 47 CFR 1.47(b). Service can be accomplished pursuant to § 1.47(d) of the Commission's rules, 47 CFR 1.47(d). Matters raised in such pleadings will be resolved prior to issuance of any license to the applicant. Individual applications may be examined at the Private Radio Bureau's Public Reference Room in Gettysburg, PA. Copies of individual applications may be ordered from the Commission's copy contractor, International Transcription Services, at (717) 337–1433.

All applications ranked below number 40 are hereby dismissed and will not be returned to the applicants. There will be no individual notices of dismissal mailed to applicants. The Lottery Notice of July 9, 1987 contains the names and addresses of lottery participants.

For further information regarding the selection procedures, consult the November 4, 1986 public notice (1 FCC Rcd 543 (1986), 52 FR 1302 (January 12, 1987)) or contact Betty Woolford of the Land Mobile and Microwave Division at (202) 632–7125.

900 MHz SMR Applications in the Minneapolis-St. Paul DFA

Rank and applicant name	Lottery code	File No.
Winners		
1. Schmidt, Terry L	775	044634
2. Weidlein, Mimi C	920	049393
3. Johnson Communications	429	049919
4. Allison, Kenneth	027	048519
5. Perkins, Robert H	879	041987
6. Cohen, Deborah A	175	049803
7. Biasucci, Peter	095	050844
8. Dechert, Glen	235	049086
9. Pettey, Donald. Herzog	685	047697
10. Gifford Engineering, Inc	340	035445
11. General Communications Co	334	040624
12. M&M Communications	537	051075
13. Thomas, Jayne M	874	044365
14. Beck, Harold I	073	049800
15. Communications Sales & Service Inc	186	041914
16. Shults, William O	807	041414
17. Brown, Katherine	117	045229
18. Atlantic Coast Communications, Inc	043	049771
19. Cook, Tommy L	193	035872
20. D&L Communications, Inc	217	035940
Alternates		
21. Sundbland, C. William	660	039846
22. King, Tom	461	037339
23. Atlantic Excavating	044	050348
24. Cline, Richard H	167	042492
25. Via Net Companies	803	045255
26. Loesch, Paul C	521	047525
27. Compass Communications, Inc	190	046702
28. Ewens, James L	260	046292
29. Kramps, Walter H	476	038539
30. Kravetz Media Corp	477	038815
31. Klugerman, Gerald	468	035193
32. Foster, Kent S	307	040000
33. Hauschildt, Paula	375	035404
34. Simpson, Michael G	813	037348
35. Kramps, Karl	475	038278
36. Citrone, Joseph	161	044181
37. Smith, Norman	825	049080
38. Folta, Edmund V. Jr	301	047777
39. Capobinanchi, Joseph D	140	041296
40. Timm, B.F.J	778	047847

900 MHz SMR Applications in the Seattle DFA

Rank and applicant name	Lottery code	File No.
Winners		
1. Powell, Charles A	0727	039944
2. Parrott, Billy J	0697	048327
3. California Mobile Communications	0136	035050
4. Wilbur, Waymon D	0977	043357
5. Lofland, Douglas S	0545	050514
6. Roth, Alan	0785	036857
7. Gavin, Thomas	0341	037123
8. Farrar, David W	0294	040561
9. Barnes, Ronald E	0067	043646
10. Baker, David R	0058	040404
11. Ipekdjian, Michael H.S	0428	049740
12. Ross, Michael P	0784	045926
13. Professional Communications	0733	036294
14. McDonnell, Tim	0597	044896
15. Takaya, Cheri	0905	044526
16. Long, Ronald W	0547	043440
17. Radio Systems Inc	0746	037054
18. Crump, Donald T	0213	045672
19. Zeff, A Robert	1001	046448
20. BRL Industries	0119	040014
Alternates		
21. Johnson Communications	0447	049920
22. Metrolink Mobile Telephone Inc	0614	039564
23. Yeager, John J	0996	046449
24. M & M Communications Inc	0564	051074
25. Loesch, Paul C	0544	047524
26. Wang, Robert Y.: Wang, Jennifer W	0958	039983
27. Steinbrink, William H	0881	040599
28. Corsoro, Gloria	0205	050308
29. Stoffer, Gary	0888	046331
30. Lyon, Juliette J	0563	045723
31. Santos, Eliseus R	0797	051315
32. Woodrow, Barry	0988	046442
33. Logloff, Ralph W	0560	038291
34. Kansas City Communications Ltd	0454	050280
35. Lesser, David	0522	041323
36. Sims, Joe	0846	040184
37. Perkins, Robert H	0708	048611
38. Alphatronics Inc	0027	036413
39. Feiler, Michael H	0795	046440

900 MHz SMR Applications in the Seattle DFA—Continued

Rank and applicant name	Lottery code	File No.
40. Stonnington, Nicholas H	0892	050476

900 MHz SMR Applications in the San Diego DFA

Rank and applicant name	Lottery code	File No.
Winners		
1. Rossi, Anthony	0917	048670
2. Super Trucking Co	1053	046704
3. Custom Radio, Inc	0262	047754
4. Legal Com Services, Inc	0621	046582
5. BCI Corporation	0085	036530
6. Rich, Paula C	0895	038507
7. Mabnzi, David	0687	039743
8. Huffman Communications Sales Inc	0506	035339
9. Parrott, Billy J	0820	048326
10. Smiley, C. Philip	0997	044130
11. Holman, William H	0492	037564
12. Travel Paging Corporation of America	1080	051033
13. Fulton, James G	0394	042643
14. Heninger, Randall D	0472	047611
15. Progressive Mobile Communication Service	0880	036936
16. Abadie, Leon W	0005	041167
17. Jordan, Clifford D	0544	050269
18. Mitchell, Michael A	0741	036014
19. Kenney, Gerald	0561	046720
20. Parton, James D	0822	047263
Alternates		
21. DeCap Electronics Inc	0306	037779
22. Barlow, Randall T	0156	043463
23. Musch, David	0765	046723
24. Murphy, Jennifer	0767	039644
25. Manobar, Apte	0672	049487
26. Orosz, Keth S	0799	047623
27. Russ Miller Communications Inc	0921	038890
28. McGaw, John E	0707	040882
29. Crump, Donald T	0256	045674
30. Pounds, Gary S	0549	037355
31. Singleman, Amy	0993	044610
32. U S West Paging, Inc	1092	044048
33. XW Corporation	1162	038854
34. O'Connell, Barbara	0788	048173
35. Reese, Wayne Stewart	0888	038874
36. Young, Christopher W	1187	044843
37. Burdett Communications	0154	051274
38. Patton, William R	0827	046771
39. Wolfram, Duane E	1156	045501
40. BRL Industries	0140	049015

900 MHz SMR Applications in the Tampa/St. Petersburg DFA

Rank and applicant name	Lottery code	File No.
Winners		
1. Badar, Talat	0088	049538
2. Sells, Mark	1152	037755
3. Manobar, Apte	0790	049486
4. Morris, Peter L	0887	044444
5. Marsh, Fred C	0798	042478
6. Vader, Stephen L	1322	047543
7. Kyle Jones Enterprises Inc	0703	039733
8. Kasper, Adam	0647	049164
9. Dune Corporation	0349	036005
10. General Communicabens Inc	0471	039352
11. Shiller, Lois	1137	048362
12. Springall, Art R	1222	043952
13. Newell, Robert C	0812	040788
14. Gem Electronics of Monmouth Inc	0468	050931
15. Schempp, Albert H	1131	050764
16. Jenkins, C. David	0616	050286
17. Ryder, William A	1107	041810
18. Hopper, Richard	0578	038772
19. G. Witt and Sons	0454	047535
20. Malloy, Gerald M	0788	046868
Alternates		
21. Trixler, Dennis	1305	048420
22. Biarnesen, Keith R	0113	045411

900 MHz SMR Applications in the Tampa/St. Petersburg DFA—Continued

Rank and applicant name	Lottery code	File No.
23. D & R Radio	0296	040135
24. Parton, James D	0965	047265
25. Rinehart, Donald D	1068	043740
26. Eichberg, Robert H	0359	047135
27. Advanced Communications Service Co	0013	039792
28. Homberger, Deborah L	0580	050212
29. S & L Communications, Inc	0063	049863
30. Jason, Day	0612	037290
31. Richardson, James G	1063	043737
32. Rankin, Joan W	1037	039293
33. Ginsberg, Richard	0480	049127
34. Autophone Comm & Electronics Inc	0066	043417
35. Associated Technologies Inc	0053	047047
36. Ybarra, Susan Jane	1404	046899
37. Kramps, Karl	0695	038354
38. Hyder, Ronald H	0593	037889
39. Rick, Neil	1064	051054
40. Horn, Samuel L	0551	042162

900 MHz SMR Applications in the Phoenix DFA

Rank and applicant name	Lottery code	File No.
Winners		
1. Johnson Radio Communications Co., Inc	545	041912
2. Coates, Dawn	209	048775
3. Smiley, C. Philip	1033	044124
4. Mobile Radio Communications Inc	763	037709
5. B&L Communications, Inc	056	049861
6. King James Partnership	580	042934
7. Arcop	040	039653
8. Vader, Stephen L	1135	047253
9. Kall, Kenneth E	560	050861
10. Shaw, David C	1003	042835
11. Salyers, Douglas D	961	043502
12. Swade, George, Jr	1089	045509
13. American Mobilphone Paging Inc	031	049987
14. Manobar Apte	589	049489
15. Gay, John	410	035127
16. Pounds, Gary S	575	037359
17. Stetter, John	1069	048527
18. Millicom Radio Telephone Company Inc	754	045445
19. Johnson Communications	543	049925
20. Stangel, Barry	1055	050729
Alternates		
21. Webre, John C	1161	042747
22. Ceol, Karen Kennedy	180	049305
23. O'Hara, James T	810	047444
24. Interphone Co	522	040827
25. Friedland, Albert	388	043287
26. Estep, Robert L	336	040592
27. Patel, Nilkanth	849	048779
28. Mussman, Kyle W	790	051135
29. Amesbury, Marilyn	033	045969
30. Allison, Kenneth	026	049885
31. American 3001 Telecommunications Inc	029	045519
32. Eby, Peter Jr	314	050712
33. Ewens, James L	345	046425
34. EM Associates	329	045549
35. Communications Service Co	225	050943
36. Cooper, Ellaree P	225	041581
37. Bowker, Eleanor L	122	041274
38. E.F. Johnson Co	311	037022
39. Simon, Harold	1022	045238
40. Jabbour, C. Eugene	530	041148

900 MHz SMR Applications in the Denver DFA

Rank and applicant name	Lottery code	File No.
Winners		
1. DePhillips, Andrew J	0293	049568
2. Davidson, Carl	0277	047509
3. Gladysz, Larry	0423	040490

900 MHz SMR Applications in the Denver DFA—Continued

Rank and applicant name	Lottery code	File No.
4. Kinzler, Gerard P	0572	043926
5. Betterton, Floyd	0101	036229
6. Young, Christopher W	1187	044944
7. Burdett Communications	0153	051276
8. A & E Electronics Corp	0002	035541
9. X W Corporation	1180	038858
10. Wolfram, Duane E	1174	045504
11. Garofalo, Anita M	0406	044724
12. Gorson, Gloria	0430	047590
13. Boulais, Marcel J	0122	036807
14. Select Communications and Data Acquisition	0872	039299
15. Munch, David	0771	046833
16. Bearden, Red S	0084	040058
17. Fife, Georgiann	0363	035098
18. Heubner, Sandra J	0477	049104
19. Mims, Annalisa S	0741	041224
20. Zotkos Communications	1198	049062
Alternates		
21. Howe, Delores M	0503	041814
22. Paoli, Richard D	0829	043105
23. Delong, Chad A	0288	039461
24. KKK Repeater Inc	0576	045525
25. Novastar Corporation	0791	047309
26. Francis Communications Corporation	0084	050915
27. Ramer, Donald J	0686	035548
28. Shapiro, Greg M	0955	037090
29. Swider, Robert A	1078	044545
30. Appell, James T	0041	049667
31. Gustine, Golob & Brager	0441	047870
32. Clinton, Joseph	0906	038242
33. Talbot, Roger W	1078	046675
34. Amesbury, Marilyn	0934	045968
35. Trider, Dennis	1305	048418
36. Geb Associates Inc	0410	047336
37. White, William B	1158	040850
38. Atlantic Excavating	0951	050344
39. Mobile Radio Service Co	0748	039306
40. Hamblin Jr., Gordon S	0447	038514

900 MHz SMR Applications in the Cincinnati-Dayton DFA

Rank and applicant name	Lottery code	File No.
Winners		
1. Cutler Investments, Inc	219	050257
2. Bowles, William G., Jr	104	050121
3. Barak, Andrew P	000	039952
4. Simon, Harold	798	045248
5. Buff, Jonathan A	126	039488
6. Russ Miller Communications, Inc	742	036894
7. Carter, Richard M	145	042503
8. Sibits, David J	793	038070
9. Martano, Ralph	549	048950
10. Haggerty, Robert C	354	035952
11. Schnedl, John S	764	035362
12. Meyer, Stephen C	595	043103
13. Hansen, Sumner M	363	045423
14. McGee Communications Electronics, Inc	577	035670
15. Morris, Peter L	615	044448
16. MDI Systems, Inc	585	039370
17. Longoria, Salvador Gonzalez	525	040737
18. Channel One Communications, Inc	151	050437
19. Bradford, Donald F	107	038549
20. Risingsun, Richard E	726	036267
Alternates		
21. Eriekson, R. Crismen	276	037975
22. Riley, Michael W	724	038030
23. Cook, Richard B	192	045037
24. Fritz, Norman	318	046303
25. S & R Communications	745	036193
26. Ritchie, Donald A	727	037920
27. Ronney, Martin	735	045485
28. Allen, Edward V	017	038914
29. Rankin, Joan W	711	039433
30. Lachesky, Hilda E	485	036487
31. Singleman, Amy	801	044616
32. Fritz, Edward	319	043972
33. Millicom Radio Telephone Co., Inc	599	045446
34. Wiztronics, Inc	925	036476
35. Mester, John	591	041358

900 MHz SMR Applications in the Cincinnati-Dayton DFA—Continued

Rank and applicant name	Lottery code	File No.
36. Rothstein, Elliot B	741	039443
37. Communications Service Co	182	050944
38. Jay M. Eshbach II & Associates	422	036705
39. McNamara, Kim E	583	046798
40. Sheahan, Dennis P	785	040306

900 MHz SMR Applications in the Kansas City DFA

Rank and applicant name	Lottery code	File No.
Winners		
1. Peters, Arthur	561	046545
2. Lee, Bruce V	415	037209
3. Kramps, Karl	389	038353
4. Certified Systems, Inc	125	036543
5. Henderson, Henry B	309	048893
6. Johnson, Edward M	357	038577
7. Clatt Communications	141	047654
8. Chicago Communications Service, Inc	131	049045
9. Palmer Communications of Florida	543	038964
10. Rajala, A.I	590	044598
11. Abadie, Cynthia Y	004	043580
12. Olivett International Inc	533	035027
13. Cieslak, Terrance C	134	036803
14. Krell, Steven	393	048121
15. Landsberger III, John	403	038829
16. Steil, Jack E	686	048230
17. Coughlin, Michael J	177	048541
18. Progressive Communications Inc	578	041883
19. DePhillips, Andrew Joseph	207	049477
20. Brown & Schwanringer	099	035241
Alternates		
21. Parkinson Electronics Co	550	038416
22. Wiley, Byron N	762	039661
23. Domencich, Thomas A	214	040468
24. Berman, Gordon	071	046034
25. McCormick, Rhonda G	468	038737
26. D & R Radio	190	039903
27. Morris Communications, Inc	504	044082
28. Francis Communications Corp	263	050912
29. Dabrusin, Sheri L	191	048705
30. Rosenzweig, Saul	613	048015
31. Scott, Margaret A	638	041255
32. Baird, Robert	050	048377
33. Miloro, Jesse	494	051042
34. Denault Jr., Herbert M	205	040428
35. Sinelk, Paul R	665	046810
36. BCI Corporation	059	036523
37. United States Sugar Corp	731	039138
38. King James Partnership	379	042926
39. Rogers, Sharon	612	044472
40. Le Riche David E	419	043064

900 MHz SMR Applications in The Portland DFA

Rank and applicant name	Lottery code	File No.
Winners		
1. Ponce, Anna	637	037226
2. Dawson, John F	225	037792
3. Asmus, Richard V	036	049674
4. Bobrowsky, Charles	090	050688
5. Kramps, Walter	444	038356
6. Wall Enterprises	837	040046
7. Bryant, John	116	048480
8. Clear Channel Communications Corp	155	050650
9. Waxman, Marvin N	844	048034
10. Matthews Radio Service, Inc	521	051212
11. Sonnenschein, Irving	758	045378
12. Super Trucking Co	784	046485
13. Motor Carrier Radio Network, Inc	577	050744
14. Gordon, Glona	327	047586
15. Unitel Corp	821	037407
16. Johnson Radio Communications Co., Inc	401	041927
17. Stonnington, Nicholas H	780	050483
18. Snow, Terrance	756	039503
19. Channel One Communications, Inc	144	050434
20. Cohen, Murray	169	042386
Alternates		
21. Ramsey, Kenneth L	663	049827
22. Ross, Richard T	688	038594
23. Harris, Stanley W	345	040705
24. Dannehower, James K	219	042768
25. Holohan, William J	370	044843
26. Huffman Communications Sales, Inc	378	035347
27. Andes, Maureen	032	046253
28. Baird, Robert	052	048378
29. Burdick, Rita A	121	038150
30. Stark, Richard L	766	036899
31. Kimball, Robert M	428	039806
32. Sherwood, Stephen	734	045663
33. DePhillips, Andrew J	233	049478
34. Eichberg, Robert H	252	047130
35. Blatt, A. Jacqueline	088	045215
36. Palmer Communications of Florida	610	038963
37. Polokoff, John G	636	046157
38. Chicago Communication Service, Inc	149	049044
39. Barak, Andrew P	055	040854
40. Upwardly Mobile Communications Corp	822	051295

900 MHz SMR Applications in the Columbus DFA

Rank and applicant name	Lottery code	File No.
Winners		
1. Parkerson Electronics, Inc	590	036318
2. Atlantic Coast Communications	037	050092
3. BCI Corporation	063	036524
4. Doleba, Ivymane	231	046654
5. Ross, Michael P	657	045935
6. Berson, Brian	078	042758
7. Franklin, John P	088	044212
8. Cooper, Charles B	179	047680
9. Metz, Forrest L	529	039932
10. Deking, Chad A	221	039464
11. Glassman, Steven B	313	035468
12. Central Communications & Electronics, Inc	138	036777
13. Evans, Charles J	259	038695
14. Lee, Bernard D	450	045799
15. Klowden, Arthur J	416	040085
16. Bittman, JoAnne	083	049499
17. Berryman, Gene C	077	048288
18. Kall, Kenneth E	397	050863
19. Hershkowitz, Joan	347	044661
20. Chi Shing Chan, Arthur	144	041058
Alternates		
21. Ditsky, Stuart	230	048968
22. Corsoro, Glona	186	050297
23. Electronic Communications	244	036625
24. Forster, Robert W	283	047096
25. Ramer, Donald J	634	036715
26. Bell, Carl E	073	038269
27. Sanborn, JoAnn	667	045440
28. First Telecommunications Group, Inc	274	036574
29. Chatco Communications, Inc	142	039406
30. LMR International, Inc	465	043864
31. MacCutcheon, Chryssa	481	045200
32. Carlson, Kathleen G	133	046175
33. Telecommunications Network Inc	759	045332
34. Radio Communications Co	627	035703
35. McGregor, William A	513	043512
36. Elliot, David	250	044271
37. Bunten, Arthur H	118	039677
38. Communications Sales and Service, Inc	167	041901
39. Forkish, Joseph	282	047112
40. Kohler, Alan C	418	043685

900 MHz SMR Applications in the Orlando DFA

Rank and applicant name	Lottery code	File No.
Winners		
1. Global Communications, Inc	0465	048610
2. Biasucci, Peter	0116	050847
3. Tower Site Communications, Inc	1246	036939
4. Dawson Associates	0304	047364
5. Browne, Douglas V	0155	042684
6. Young, Christopher W	1360	044945
7. Teesdale, Susan	1223	043296
8. Metzkow, Parsons M	0817	043639
9. Norcom Communications Corp	0879	051333
10. Gale, Bruce	0440	047079
11. Shapiro, Greg M	1121	037088
12. Pogue, Richard W	0954	046968
13. Mounger, Robert G	0857	041536
14. Rothstein, Elliot B	1056	039440
15. Smith, Clifford G	1158	046957
16. Mims, Robert B	0831	042125
17. Baird, Robert	0069	048388
18. Ewens, James L	0377	046434
19. Salinas, Aroldo	1072	036331
20. Zolkos Communications	1371	049067
Alternates		
21. Kearns, David	0626	043002
22. Cutter Investments Inc	0287	050264
23. Bradway, W. Jean	0136	049257
24. Degrandis, Joseph	0311	050849
25. Oliver, James T	0892	043328
26. Ketzel, Raymond W	0634	045711
27. Moody, Karen A	0841	049204
28. Clutterbuck, Gretchen R	0226	038251
29. American Mobilphone Inc	0032	040353
30. Carr, Charles	0193	043485
31. Rynkewicz, John T	1066	043187
32. Cucci, Rick	0282	041123
33. Russo, Frederick	1063	045587
34. Ross, Michael P	1050	045939
35. Hall, J. Michael	0492	037329
36. Argyrides, Anthony	0047	047166
37. Communications Repeater Corp & Telauto	0242	047564
38. O'Neill, Dennis	0887	042021
39. Wawcomm Partnership	1307	038294
40. Salkund, Sandy	1073	047876

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-20442 Filed 9-3-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; John Strelitz, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. John Streitz, Kams, TN	BPH-860730MC	87-343
B. Piedmont Partnership, Kams, TN	BPH-860730ME	
C. Kams Broadcasters, Ltd.; Kams, TN	BPH-860730MF	
D. Beaver Ridge Communications, Ltd.; Kams, TN	BPH-860730MI	
E. Jacob Broadcasting Company, Inc.; Kams, TN	BPH-860730MK	
F. George S. Flinn, Jr.; Kams, TN	BPH-860730ML	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A–F
2. Ultimate, A–F

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–20443 Filed 9–3–87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Mehl D. Tafoya, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station.

Applicant, City and State	File No.	MM Docket No.
A. Mehl D. Tafoya; Bloomfield, NM	BPH-850710ML	87-340
B. James M. Taber *et al*, d/b/a The Taber Broadcasting Company of New Mexico, Bloomfield, NM	BPH-850712RM	
C. Jose C. Olivarez; Bloomfield, NM	BPH-850712V8	

2. Pursuant to section 309(c) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Environmental, A
2. Air Hazard, B,C
3. Comparative, A,B,C
4. Ultimate, A,B,C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–20444 Filed 9–3–87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 87–942]

Pilot Program to Improve Liquidity and Reduce Cost of Funds of Institutions Under Supervisory Control

Date: August 28, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Advance notice of proposed policy.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board" or "Board") is currently considering establishing a pilot program to alleviate certain difficulties facing a number of thrift institutions. The Board is exploring whether certain incentives might both attract deposits to these institutions and lower the cost of funds of these institutions. Ideas currently under consideration include certain undertakings by the Board and the Federal Savings and Loan Insurance Corporation ("FSLIC") in the event that any of the institutions within the program are declared in default and liquidated pursuant to section 406 of the National Housing Act ("NHA"), 12 U.S.C. 1729, and the FSLIC incurs the obligation to pay insurance on the insured accounts of the institution pursuant to section 405(b) of the NHA, 12 U.S.C. 1728(b). As part of its consideration of the advisability of such a pilot program, the Board is today soliciting public comment on such a program.

DATE: Comments must be received on or before September 21, 1987.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Henry R. F. Griffin, Associate General Counsel for FSLIC-Red Division, (202) 377–6442; or Deborah Dakin, Assistant Director, Regulations and Legislation Division, (202) 377–6445; Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

In recent months, a number of FSLIC-insured institutions operting under the supervisory control of the Bank Board ("supervisory institutions") have been facing two related significant—albeit temporary—problems. First, information presented to the Bank Board indicates that some supervisory institutions may have been finding it difficult to attract sufficient funds through usual channels at market rates to meet their operating needs. When these supervisory institutions have offered market rates of interest, they have experienced some run-off of wholesale deposits. Many do not have adequate collateral to allow them to secure advances from their respective Federal Home Loan Banks in order to replace these lost funds. As a result, to attract or retain deposits these supervisory institutions often must offer higher interest rates than those available from other insured institutions. These higher operating costs may adversely affect these institutions' net worth. This could eventually cause increased risks and costs to the FSLIC.

The Board believes that with the recent passage of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552, public confidence in the thrift industry will rise, eventually resulting in increased deposits in all thrift institutions. It may take some time, however, before this will be reflected in deposits at these supervisory institutions. In the interim, while the public becomes more educated about the effects of the new statute, the Bank Board is considering various methods to attract funds at lower rates to certain supervisory institutions. One method would be for the Bank Board to offer guarantees to, or enter into agreements with, certain securities firms or deposit brokers to induce them to place insured funds in these institutions. Many of these companies may have avoided supervisory institutions in the past, deeming certain consequences of potential liquidation unacceptable.

The Bank Board staff has had informal discussions with certain potential large-scale brokers about ways to minimize the risks that have deterred them from depositing funds on behalf of their customers in supervisory institutions. One such risk is that an insured depositor may not recover the full return on its investment at maturity because of an intervening liquidation of the institution by the FSLIC. Such liquidations result in the payment of insurance on both principal and interest, up to the date of default only, up to the statutory limit of $100,000.

Certain methods of paying insurance used by the FSLIC may result in an insured depositor's receiving no interest or a lower rate or return on insured funds for the period between the date of default and the maturity of the investment. Concerns have also been expressed about delays in access to funds beyond the maturity of the investment while the insured status of the funds is under review by the FSLIC pursuant to 12 U.S.C. 1728. Some companies have indicated that appropriate guarantees and agreements by the Bank Board and the FSLIC would counterbalance the perceived risks of placing funds in supervisory institutions and would encourage these investors to open accounts at lower interest rates. If supervisory institutions can attract sufficient funds to meet their needs at lower rates as higher cost funds mature and are withdrawn, not only these institutions but all thrift institutions would benefit. This benefit would accrue industry-wide because the high rates currently offered by many supervisory institutions appear to inflate the rates other thrift institutions, both in their geographic market and nationwide, must pay for deposits. This higher cost of funds increases the operating costs of all thrift institutions.

The Bank Board is in the process of collecting information to determine whether offering such guarantees or entering into such agreements will in fact result in the anticipated benefits, *i.e.*, lower cost of funds and alleviation of the liquidity problems. The Board believes that a one-year, experimental, carefully monitored pilot program incorporating some of the proposed agreements and commitments on a limited scale is the best way to determine if such benefits in fact result. The Bank Board is currently planning to limit this pilot program in two ways. First, it would cover only selected troubled institutions that are operating under supervisory control. Second, the Board currently plans to limit the number of brokers participating in the pilot program until it can determine if the contemplated agreements and guarantees are both workable and effective. The Board has not yet determined the exact scope of such agreements or guarantees or the number of thrift institutions or brokers who should participate in such a pilot program. Furthermore, the Board has not yet determined what criteria should distinguish participating brokers beyond the ability to raise sufficient low cost funds to help alleviate the problems discussed above.

II. Proposed Structure of the Pilot Program

At present, the Board is focussing on two ways of addressing some of the concerns brokers may have about investing on behalf of their customers in supervisory institutions. The first would be a Board statement of policy providing that if a receiver is appointed for liquidation of a designated supervisory institution, the FSLIC's insurance obligation to the insured members of such an institution would be fulfilled by the transfer of the insured accounts to another insured institution with the new accounts, maintaining the original rates and terms. The second is adopting certain expedited insurance verification procedures that the FSLIC would use in making insurance determinations on funds deposited pursuant to the pilot program in designated institutions.

A. Terms and Conditions

The first component of the proposed pilot program would be a commitment by the Bank Board on how it, as operating head of the FSLIC, would authorize the FSLIC to pay insurance on insured accounts at participating supervisory institutions pursuant to 12 U.S.C. 1728(b). The Board would undertake to pay insurance on such accounts only by transferring those accounts on the same terms and conditions to another insured institution. Such an undertaking in a published policy statement would address the concerns of some securities firms, brokers, and other investors that they might forfeit bargained-for income if an insurance action took the form of a cash payout or transfer of insured accounts at "passbook" rates. In either case, the investor would lose the benefit of its former contractual rate of return from the date of liquidation of the insured institution to what would have been the maturity of the investor's certificate of deposit.

Under 12 U.S.C. 1728(b), in paying insurance claims upon the default of an insured institution, the FSLIC may either pay cash or provide each insured member with an insured account in another insured institution. In either event, there are two caps on the amount that can be paid: (1) The withdrawable value of the insured account as of the date of the insured institution's default: and (2) the statutory insurance limit of $100,000. Subject to these limits, the FSLIC has paid insurance in the past in three ways: (1) A cash payment of the withdrawable value of the account, including both principal and interest accrued as of the date of default, which

the insured member may then invest however it wishes at whatever rate of return is then available; (2) a transfer of the insured accounts to another insured institution at the same terms and conditions (including rate, maturity, and penalty for early withdrawal) as the insured accounts carried at the defaulted institution; and (3) a transfer of insured accounts to another insured institution at "passbook" terms, thereby enabling the acquiring institution to reprice some or all acquired accounts, but also allowing the insured member to withdraw funds from the new institution without being subject to an early-withdrawal penalty. In the past year, in order to avoid a cash payout and its accompanying disruption to all depositors, the FSLIC has transferred accounts under Option 3 (allowing "repricing") when it could not find an acquirer willing to accept the accounts under Option 2 (same terms and conditions). Since July 1986 the FSLIC has found it necessary to effect a cash payout in only four instances out of twenty-one insurance actions where an acquirer of the insured accounts of a thrift institution could not be found under either of the other options.

Some potential large-scale brokers have informed the Board and the FSLIC that they would normally be unwilling to deposit on behalf of their customers large amounts of funds into institutions that they perceive as more likely to be liquidated when liquidation could mean an insurance action altering the original terms and conditions of their accounts. They would rather place funds at somewhat lower rates into thrift institutions where they are more confident that the terms and conditions originally negotiated will be honored until maturity of the certificate of deposit. To the extent, therefore, that the Board can provide these brokers with greater confidence that their customers will receive at maturity the return on their deposits that they originally negotiated (subject to the $100,000 insurance limit) even if they invest in supervisory institutions, these firms may be more willing to invest their customers' funds in those institutions. Moreover, it is anticipated that, because of the lower risks incurred, such deposits might be made in larger quantities at lower rates than these institutions would otherwise be able to attract. It is anticipated that this might significantly relieve the liquidity difficulties and lower the cost of funds of supervisory institutions designated to come within the pilot program. To the extent that a lower cost of funds decreases an institution's operating costs and losses and increases its net worth, the FSLIC would be the true beneficiary of such infusions of funds, since the reduced accumulated losses would reduce the FSLIC's eventual costs of assistance to an acquirer or of liquidation.

Therefore the Board is considering adopting a policy statement whereby only Option 2 (transfer of accounts) would be elected in the event that designated supervisory institutions participating in the pilot program are found in default and placed into a liquidating receivership. By making the designated institutions more attractive to depositors and thus alleviating those institution's liquidity and cost of funds difficulties, such a commitment may in fact significantly reduce the risk that a number of such institutions may have to be liquidated at all. This would result in lowered costs to the FSLIC. On the other hand, the pilot program may show that such commitments prove significantly more costly to the FSLIC than transfers whereby the acquiring institution is permitted to reprice the acquired insured accounts. For example, a requirement that accounts be maintained at existing terms could be expected to lower the attractiveness of such deposits to potential acquirers and reduce or eliminate any discount that they might otherwise be willing to pay for assuming such deposits. Furthermore, if no existing insured institution were willing to assume the insured accounts, under the suggested policy the FSLIC would have no alternative but to form a *de novo* federal association to take the accounts, which can involve significant ongoing administrative and supervisory costs.

The Board must also decide how broad any such commitment should be. The first question is the number of, and characteristics distinguishing, institutions that should be covered by such a commitment. The Board believes that program institutions must be subject to some degree of supervisory control in order to ensure to the greatest extent possible that new deposits are used to replace higher cost funds. The selection of participating institutions by the Director of the FSLIC must therefore be based primarily on supervisory information, often of a highly confidential nature. The second question is whether a distinction should be made in determining which accounts in an institution should be covered by such a commitment. Options under consideration include that any such commitment: Should cover all insured accounts in a participating supervisory institution as of the date of its default; should only apply to funds brought into such an institution under the direction of the Board or its agents; should apply to funds of only a certain range of maturities, not to the remainder of the institution's deposit base; or should cover not only funds brought into the institution under the direction of the Bank Board, but also any other "new" deposits (*i.e.*, those made after the institution was designated as a participant in the pilot program, including rollovers of existing deposits). Finally, the exact form such a commitment should take has not yet been determined.

In the past, decisions as to the appropriate method for meeting the FSLIC's insurance obligation have been made on an institution-by-institution basis. The Bank Board has generally treated the cash payout option as the least desirable method and the transfer of accounts on the same terms and conditions as the most desirable, because it is the least disruptive to the depositors. A choice among the options was made at the time of liquidation. The proposed commitments would limit that flexibility with respect to supervisory institutions designated to participate in the pilot program.

Before determining to make any such commitment, the Bank Board requests public comment about the authority for such commitment, the accompanying costs and benefits, and the appropriateness, based upon both authority and costs and benefits, of any distinctions with respect to either the targeted supervisory institutions or the types or maturities of insured accounts within an institution.

B. Insurance Verification

The second component of the pilot program would address the other concern expressed by some brokers: the perceived potential for delay accompanying insurance determinations in the event an institution is liquidated, regardless of the method used for paying insurance. In the past, the vast majority of accountholders, who hold funds under $100,000, have received immediate access to their insured funds. Other depositors with more than $100,000 in an insured institution do not have access to accounts in the acquiring institution until their funds have been determined to be insured, a process that generally takes a few days. In limited circumstances, however, due to the complexity of certain accounts, insurance determinations on some funds, including but not limited to those placed by some brokers, have been delayed for a longer time period,

occasionally past the maturity of the original account.

Some brokers and securities firms have indicated that access at maturity to the funds they have invested on behalf of their customers is critical to their willingness to invest in supervisory institutions. Additionally, some acquiring institutions have paid a lower interest rate on transferred funds during the period between maturity of the transferred account and the FSLIC's insurance determination and release of funds.

Under the NHA, the FSLIC has the obligation to make payment of insurance promptly to insured members. 12 U.S.C. 1728(b). It also has the obligation to pay only the insured members and to pay no more than the statutory $100,000 to each insured member. In that regard, the NHA provides that the FSLIC may require proof of claim before paying claims for insurance. *Id.* Since 1934, the FSLIC has had recordkeeping requirements to assist in making insurance determinations on accounts.

The Bank Board has long recognized the need to reduce delays in paying claims for insurance. In 1985, it proposed increased disclosure on the records of the insured institution for complex accounts. *See* 50 FR 19185, 19188–89 (1985). In commenting upon this proposed regulation, a number of brokers indicated that the new requirement would be unduly burdensome and was unnecessary because the brokers could provide information quickly to the FSLIC in the event of a default. Although the Bank Board ultimately withdrew the proposed regulation, *see* 52 FR 8611 (1987), the underlying problem remains: Large denomination accounts with multiple levels of complex relationships and numerous undisclosed principals are time-consuming for the FSLIC to analyze in making its insurance determinations, resulting in delays.

As part of the pilot program, the FSLIC is considering means of guaranteeing more expeditious insurance processing of some accounts, where the brokers have undertaken to provide the FSLIC with information and documentation on an expedited basis. As currently contemplated, qualified brokers placing funds into institutions under the pilot program would take steps internally to (1) limit the complexity of the accounts by avoiding multiple levels of agents, nominees, custodians, and trustees, (2) limit the size of deposits made in any institution for any principal to amounts under $100,000 so as to result in full insurance for both principal and interest, and (3) maintain business records containing the information about the identities and interests of its principals in a format compatible with the information drawn from the records of the insured institution. A qualified broker would provide this information to the FSLIC on a highly expedited basis after the default of the insured institution. The FSLIC would in turn guarantee that it would process the insurance determinations on such accounts on an expedited timetable so that insured accounts could be released before, at, or immediately after the original maturity. If such documentation is, in fact, maintained and provided quickly, in the FSLIC's experience, such expedited insurance determinations should be quite feasible.

Pursuant to its statutory obligation to process all insured accounts promptly, the FSLIC will of course make all interested brokers and depositors, whether or not qualified to participate in the pilot program, aware of its documentation requirements and expeditiously process the accounts of all accountholders. If any accountholder establishes less complex accounts, and quickly provides information that shows accounts that can readily be determined to be insured as held for principals who hold less than $100,000 in all accounts at the insured institution, the FSLIC has an easier, and more quickly completed, task in making insurance determinations. The FSLIC cannot bind itself to process accounts in all institutions according to a particular preset timetable. As part of a limited pilot program, however, it is willing to consider setting up timetables for release of funds, conditioned upon an expedited receipt of all necessary information about their principals from qualified brokers. If such timetables prove workable, the FSLIC would consider expanding them to all accountholders.

Accordingly, the Bank Board requests public comment about whether such expedited insurance processing is likely to assist in attracting funds to supervisory institutions, what criteria should be used to qualify investors for the benefit of such expedited timetables, and what timetables might be reasonable.

III. Summary

The Bank Board is today seeking comments about (1) whether a pilot program as described in this Notice should be established; (2) what should be the scope of such a program in terms of (a) participating supervisory institutions, (b) participating securities firms and brokers, (c) duration, and (d) commitments that could reasonably be expected to result in lowered costs of funds to both supervisory institutions and non-troubled thrifts that must compete with them at higher than market rates; (3) what criteria should be used to determine whether the pilot program should be expanded, modified, or terminated in terms of costs and benefits; (4) possible additional or alternative methods to address the liquidity and cost-of-funds problems; and (5) any other matter reasonably pertinent to the above-described proposal. The Bank Board currently anticipates that its staff will continue to have informal discussions with experts in this area in order to determine the details of any pilot program. The substance of any such discussions will be summarized and inserted in the administrative record.

Although the Administrative Procedure Act exempts general policy statements and internal agency procedures from notice and comment requirements, 5 U.S.C. 553(b)(3)(a), the Board is nevertheless requesting public comments on this proposed pilot program. However, because of the need for prompt action by the Bank Board, the Board is only seeking comment for a fifteen day period and contemplates implementing the pilot program shortly thereafter. Since the pilot program is designed as a short-term experiment (currently anticipated to last for one year) that in and of itself will be likely to demonstrate whether it is workable and effective, the Board does not believe that a longer notice and comment period is necessary or in the public interest before initiating the program. Comments received after the close of the comment period will be taken into account in evaluating the pilot program.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–20488 Filed 9–3–87; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants; Nadia B. Cardenas

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarder

and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Nydia B. Cardenas, 48 Willia Avenue, Staten Island, NY 10301; Officer: Frank Vasta, Sole Officer

Durlar, Inc., 7257 N.W. 12th Street, Miami, FL 33126; Officers: Victor Larco, President/Director, Tusi Bruce Cottle, Secretary, Mario Mimbella

Transcontinental Cargo, Inc. dba Freight Forwarding Service, 7389 N.W. 54th Street, Miami, FL 33166; Officers: Carlos S. Estrada, President, Carlos R. Estrada, Vice President, Ana Pinero, Treasurer, Nubia Estraca, Secretary

The Camelot Company, 9865 West Leland, Schiller Park, IL 60176; Officers: Thomas C. Case, President, Sharon C. Case, Secretary/Treasurer, Julia L. Ertler, Assistant Secretary

Alphamain (U.S.A.) Inc., 1201 Corbin Street, Port Elizabeth Plaza, Elizabeth, NJ 07201; Officers: Frank E. Olschewski, President, Capt. C. M. Karnaker, Director, Franz J. Fassbener, Vice President

Gloria Ann Price dba Price Professional Services, 3111 North Alameda Street, Compton, CA 90222

Shu-Hwa Chen, 260 West 5th Street, San Pedro, CA 90731

Cargo Import Brokers, Inc., 2423 Greens Road, Suite 9B, Houston, TX 77032; Officers: Rodrigo Ulloa, President, Jose V. Torres, Secretary/Treasurer.

Dated: September 1, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-20454 Filed 9-3-87; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011145.

Title: Eastern Mediterranean Cooperation Agreement.

Parties: The United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference Nordana Lines.

Synopsis: The proposed agreement would permit the parties to discuss and agree upon rates, charges, service contracts and other matters in the trade from U.S. Atlantic, Gulf and Great Lakes ports, and U.S. points via such ports, to certain Eastern Mediterranean and North African ports and certain inland points via such ports.

Dated: September 1, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-20453 Filed 9-3-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 28, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register**.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below:

Federal Reserve Board Clearance Officer, Nancy Steele, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

Proposed to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report Title:* Officer's Questionnaire
Agency Form Number: FR 2410
OMB Docket Number: 7100-0050
Frequency: On occasion
Reporters: State member banks
Annual Reporting Hours: 70
Small businesses are affected.
General Description of Report:
This information collection is mandatory [12 U.S.C. 325] and is given confidential treatment [5 U.S.C. 552(b)(8)].

As part of its full-scale consumer affairs examination of a state member bank, the Federal Reserve requests a senior bank officer to complete this questionnaire, which provides information regarding past, present, and potential lawsuits in which the bank has been or may become involved concerning consumer credit compliance.

2. *Report Title:* Community Reinvestment Act Questionnaire
Agency Form Number: FR 1283
OMB Docket Number: 7100-0052
Frequency: On occasion
Reporters: State member banks
Annual Reporting Hours:
Small businesses are affected.
General Description of Report:
This information collection is mandatory [12 U.S.C. 325 and 12 U.S.C

2901(b) and is given confidential treatment [5 U.S.C. 552(b)(8)].

Each state member bank that undergoes a comprehensive compliance examination is requested to complete this form, which is called the CRA Questionnaire. After it is completed by a senior bank officer, the questionnaire provides information regarding the bank's effort to serve the credit needs of its local community.

3. *Report Title:* Consumer Satisfaction Questionnaire
Agency Form Number: FR 1379
OMB Docket Number: 7100–0135
Frequency: On occasion
Reporters: Consumers who have filed consumer complaints concerning state member banks
Annual Reporting Hours: 9
Small businesses are affected.
General Description of Report:
This information collection is voluntary [15 U.S.C. 57(a)(f)(1)] and is not given confidential treatment.

This questionnaire is sent by the Federal Reserve System to people who have filed a consumer complaint with a Federal Reserve Bank concerning a state member bank. Complainants are requested to answer questions voluntarily about the effectiveness of the Reserve Bank's effort in handling the consumer complaint.

Board of Governors of the Federal Reserve System, August 28, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87–20369 Filed 9–3–87; 8:45 am]
BILLING CODE 6210–01–M

Agency Forms Under Review

August 28, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provied n § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

A copy of the proposed form, the request for clearance (SF 83), supporting statement, instruction, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below:

Federal Reserve Board Clearance Officer Nancy Steele, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

Proposal to approve under OMB delegated authority the extension, with revision, of the following reports:

1. *Report Title:* Report of Selected Deposits in Foreign Branches Held by U.S. Addressees
Agency Form Number: FR 2050
OMB Docket Number: 7100–0068
Frequency: Weekly
Reporters: Foreign branches of U.S. banks and of Edge and Agreement corporations
Annual Reporting Hours: 9009
Small businesses are not affected.
General Description of Report:
This information collection is authorized by law [12 U.S.C. 248(a), 355, 461]. Individual respondent data are exempt from disclosure under the Freedom of Information Act [5 U.S.C. 552(b)(4), (b)(8)].

This report collects data from a selection of foreign branches of U.S. banks on overnight Eurodollar deposits held by U.S. nonbank residents. Data are used in construction of the monetary aggregates and analysis of liability management. A revision in the panel selection criteria is proposed which would reduce the size of the panel by approximately 18 percent.

2. *Report Title:* Monthly Report of Large International Banking Facility Accounts
Agency Form Number: FR 2072
OMB Docket Number: 7100–0158
Frequency: Monthly
Reporters: International Banking Facilities (IBFs) of large U.S.-chartered banks and large U.S. branches and agencies of foreign banks
Reporting Hours: 1187
Small businesses are not affected.
General Description of Report:
This information collection is required by law [12 U.S.C. 248(a), 602, 625, and 3105(b)]. Individual respondent data is given confidential treatment [5 U.S.C. 552(b)(4)].

This report collects data on assets and liabilities of International Banking Facility (IBF) accounts. Data are used to assist in interpreting the monetary aggregates and to monitor IBF activities. The proposed revisions include an increase in the reporting threshold which would reduce the panel; minor changes in report items; and a change in report date to the last day of the month.

3. *Report Title:* Monthly Report of Foreign Branch Assets and Liabilities
Agency Form Number: FR 2502
OMB Docket Number: 7100–0078
Frequency: Monthly
Reporters: Foreign branches of U.S. banks and of Edge and Agreement corporations
Reporting hours: 15,756
Small businesses are not affected.
General description of report:
This report is required by law [12 U.S.C. 248(a)(2), 353 et seq., 602 and 625]. Individual respondent data are given confidential treatment [5 U.S.C. 552(b)(8)].

This report provides a breakdown of foreign branch assets and liabilities by category of customer and between dollars and foreign currencies. Data are used for supervisory purposes, in construction of the monetary aggregates, and to monitor U.S. banks' foreign activities. The proposed revisions

include minor changes in reporting instructions and in form items.

4. *Report Title:* Quarterly Report of Foreign Branch Assets and Liabilities
Agency Form Number: FR 2502S
OMB Docket Number: 7100–0079
Frequency: Quarterly
Reporting: Foreign branches of U.S. banks and Edge and Agreement corporations
Reporting Hours: 7070
Small businesses are not affected.
General description of report:
This report is required by law [12 U.S.C. 248(a)(2), 353 et seq., 602 and 625]. Individual respondent data are given confidential treatment [5 U.S.C. 552(b)(8)].

This report provides a breakdown of assets and liabilities of foreign branch offices of U.S. banks geographically for all countries. It is used to monitor U.S. banks' claims on and liabilities to individual foreign countries by particular branch offices and to monitor countries' indebtedness to U.S. banks. The revisions include minor changes in instructions and country names on the form.

Board of Governors of the Federal Reserve System, August 28, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87–20370 Filed 9–3–87; 8:45 am]
BILLING CODE 6210–01–M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; BMR Bancorp, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 25, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *BMR Bancorp, Inc.,* Atlanta, Georgia; to acquire 100 percent of the voting shares of Citizens Bank of Americus, Americus, Georgia.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F&M Financial Services Corporation,* Menomonee Falls, Wisconsin; to acquire 100 percent of the voting shares of Citizens Community Bankshares, Inc., Wittenberg, Wisconsin, and thereby indirectly acquire Citizens State Bank of Wittenberg, Wittenberg, Wisconsin; Crandon National Bank, Crandon, Wisconsin; Iron Exchange Bank, Hurley, Wisconsin; and Farmers State Bank, Stetsonville, Wisconsin. Comments on this application must be received by September 21, 1987.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Bradford Bancshares, Inc.,* Bradford, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Bradford, Bradford, Tennessee.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Farmers Bancshares, Inc.* and Farmers National Bank Employees Stock Ownership Plan, both of Lincoln, Kansas; to become bank holding companies by acquiring 50.37 percent of the voting shares of Farmers Bancshares, Inc., Lincoln, Kansas, and thereby indirectly acquire The Farmers National Bank, Lincoln, Kansas.

Board of Governors of the Federal Reserve System, August 31, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87–20371 Filed 9–3–87; 8:45 am]
BILLING CODE 6210–01–M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Hartford National Corp. et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 28, 1987.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Hartford National Corporation,* Hartford, Connecticut; to acquire 100 percent of the voting shares of Massachusetts National Bank, Boston, Massachusetts.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Home Bancorp, Inc.,* Sutton, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Home National Bank of Sutton, Sutton, West Virginia.

2. *Riggs National Corporation,* Washington, DC; to acquire 100 percent of the voting shares of The Riggs National Bank of Maryland, successor by merger to First Fidelity Bank, Rockville, Maryland.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Rihord Bank Holding Company,* Lake Butler, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers and Dealers Bank Lake Butler, Florida.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Plains Capital Corporation,* Lubbock, Texas; to become a bank holding company by acquiring 84.6 percent of the voting shares of The Plains Corporation, Lubbock, Texas; and

thereby indirectly acquire The Plains National Bank of Lubbock, Lubbock, Texas.

Board of Governors of the Federal Reserve System, August 31, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-20372 Filed 9-3-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Shares of Banks or Bank Holding Companies; Kenneth A. Jewell et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 25, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Kenneth A. Jewell,* Lake Worth, Florida; to acquire 20.07 percent of the voting shares of Gold Coast Bancshares, Inc., Hypoluxo, Florida; thereby indirectly acquire The Bank of South Palm Beaches, Hypoluxo, Florida.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Peter J. and Margery J. Bollman,* Lena, Illinois; to acquire an additional 4 percent of the voting shares of Lena Bancorp, Lena, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Glen Lau,* Clearwater, Nebraska; to acquire 6.35 percent of the voting shares of Clearwater Development Company, Inc., Clearwater, Nebraska; thereby indirectly acquire Citizens State Bank, Clearwater, Nebraska.

2. *Janet Newell,* Clearwater, Nebraska; to acquire 6.35 percent of the voting shares of Clearwater Development Company, Inc., Clearwater, Nebraska; thereby indirectly acquire Citizens State Bank, Clearwater, Nebraska.

3. *Marilyn Goetowski,* Clearwater, Nebraska, to acquire 6.35 percent of the voting shares of Clearwater Development Company, Inc., Clearwater, Nebraska; thereby indirectly acquire Citizens State Bank, Clearwater, Nebraska.

4. *Alan Domina,* Clearwater, Nebraska; to acquire 3.18 percent of the voting shares of Clearwater Development Company, Inc., Clearwater, Nebraska; thereby indirectly acquire Citizens State Bank, Clearwater, Nebraska.

Board of Governors of the Federal Reserve System, August 31, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-20373 Filed 9-3-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Meeting; Advisory Committee for Elimination of Tuberculosis

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Advisory Committee for Elimination of Tuberculosis (ACET).

Time and Date: 8:30 am—5:00 pm—September 22, 1987. 8:30 am—3:00 pm—September 23, 1987.

Place: Conference Room 207, Building 1, 1600 Clifton Road, N.E., Atlanta, Georgia 30333.

Status: Open.

Purpose: This Committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for eliminating tuberculosis. Specifically, the Committee makes recommendations regarding policies, strategies, objectives, and priorities, addresses the development of new technologies and their subsequent application, and reviews progress toward elimination.

Matters to be Discussed: The Committee will discuss the tuberculosis problem it the United States and current CDC activities for its prevention and control. The Committee will begin deliberations of a plan and priorities for achieving elimination of tuberculosis in the United States. The Committee will also discuss the impact of the acquired immunodeficiency syndrome (AIDS) on the tuberculosis problem and current CDC recommendations regarding BCG vaccine. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dixie E. Snider, Jr., M.D., Director, Division of Tuberculosis Control, and Executive Secretary, ACET, Center for Prevention Services, CDC, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephones: FTS: 236-2501; Commercial: 404/329-2501.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 87-20489 Filed 9-3-87; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Advisory Committee Meetings; Amendment of Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice of the Blood Products Advisory Committee to reflect changes in location for the second day and in the open committee discussion agenda, and to add a closed committee discussion to the agenda. Notice of the meeting was published in the **Federal Register** of August 17, 1987 (52 FR 30738). The location and agenda are revised as follows:

Blood Products Advisory Committee

Date, Time, and Place

September 17, 1987, 9 a.m., Rm. 121, Office of Biologics Research and Review, 8800 Rockville Pike, Bethesda, Maryland, and September 18, 1987, conference rooms G and H, third floor, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland.

Type of Meeting and Contact Person

Open public hearing, September 17, 1987, 9 a.m. to 10 a.m. unless public participation does not last that long; open committee discussion, 10 a.m. to 11 a.m.; closed preparation of data, 11 a.m. to 5 p.m.; open committee discussion, 8 a.m. to 11 a.m.; September 18, 1987, closed committee discussion, 11 a.m. to 1 p.m., Clay Sisk, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

Open Committee Discussion

For a brief period on September 17, 1987, the committee will discuss

methods for reevaluation of persons who are currently deferred from donating blood because of reactive hepatitis B surface antigen (HBsAg) tests, but which upon further, more specific testing again may be acceptable as donors. On September 18, testing for human immunodeficiency virus antigen will be discussed.

Closed Committee Discussion

The committee will discuss trade secret or confidential commercial information relevant to pending investigational new biological products and a license application for alpha-1-proteinase inhibitor. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Dated: Aug. 28, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-20378 Filed 9-3-87; 8:45 am]

BILLING CODE 4160-01-M

Health Professional Organizations; Notice of Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming meeting of health professional organizations to be chaired by Frank E. Young, Commissioner of Food and Drugs. The agenda will include discussions on: acquired immune deficiency syndrome (AIDS) progress, the new drug approval process, treatment investigational new drugs (IND's), health messages on foods, cholesterol education messages, import concerns, anabolic steroids, and Talk About Prescriptions Month—1987.

DATE: The meeting will be held from 2 to 4 p.m. on Monday, September 21, 1987.

ADDRESS: The meeting will be held in Conference Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Robert Veiga, Office of Health Affairs (HFY-40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5470.

Dated: August 28, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-20379 Filed 9-3-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[IOA-014-N]

Final Report of the Task Force on Long-Term Health Care Policies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of release of final report.

SUMMARY: Under section 10(a)(3) of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), we are annoucing the release of the Report of the Task Force on Long-Term Health Care Policies.

DATE: The report will be available on September 21, 1987.

ADDRESS: Task Force on Long-Term Health Care Policies, Department of Health and Human Services, Attention: Dennis DeWitt, Executive Director, Room 4406, North Building, 300 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Dennis DeWitt, (202) 245-0063.

SUPPLEMENTARY INFORMATION:

Purpose

The Task Force on Long-Term Health Care Policies, established under section 9601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), has evaluated current issues relating to private long-term care insurance. To ensure the evolution of sound private long-term care insurance policies and to help foster consumer confidence in them, the Task Force has developed recommendations that can be used by State regulators, persons involved in the insurance industry, and consumers who may wish to purchase such policies.

The term "long-term health care policy" means an insurance policy, or similar health benefits plan, that is designed for or marketed as providing (or making payment for) health care services (such as nursing home care and home health care) or related services (which may include home or community-base services), or both, over an extended period of time.

On September 21, 1987, the Task Force on Long-Term Health Care Policies will submit its Report to the Secretary of Health and Human Services and the Congress concerning the development of insurance policies for long-term care that are privately marketed to individuals or groups. The Task Force has developed recommendations for long-term health care policies, including recommendations designed to—

- Limit marketing and agent abuse of those policies;
- Assure the dissemination of information to consumers necessary to permit informed choice in purchasing the policies and to reduce the purchase of unnecessary or duplicative coverage;
- Assure that benefits provided under the policies are reasonable in relationship to premiums charged; and
- Promote the development and availability of long-term health care policies that meet these recommendations.

Release of Report

The Task Force will present its Report to the Secretary of Health and Human Services, Otis R. Bowen, M.D., at a Press Conference on Monday, September 21, 1987, at 10:30 am in the Small Theater on the Ground Floor of the Hubert H. Humphrey Building at 200 Independence Avenue, SW., Washington, DC. The press conference will be open to the public. The report also will be transmitted to the Congress on September 21. The Report will be available as of September 21, 1987, from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(Sec. 10(a)(3) of Pub. L. 92-463, as amended (5 U.S.C. App. I Sec. 1-15))

Dated: August 27, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-20483 Filed 9-3-87; 8:45 am]

BILLING CODE 4120-01-M

Public Health Service

National Toxicology Program; Announcement of Completed Short-Term Toxicology Studies on Fifteen Chemicals; Request for Comments

As part of an effort to inform the public and allow interested parties to comment and provide information on chemicals prior to designing of studies for long-term toxicology and carcinogenesis studies, the National Toxicology Program (NTP) will routinely announce in the **Federal Register** the list of chemicals for which short-term toxicology studies have been completed.

Short-term toxicology studies on the chemicals listed in this announcement have been completed and the National Institute of Environmental Health Sciences (NIEHS)/National Toxicology Program (NTP) is in the process of evaluating the results. A decision on whether additional studies, including long-term toxicology and carcinogenicity studies, are needed will soon be made by the NTP. If you have relevant

information (such as current production, use pattern, exposure levels, toxicological data) to share with the NTP on any of these chemicals, please contact the responsible NTP Scientist within 30 days of the appearance of this announcement by telephone or by mail to: NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709. The information provided will be considered by the NTP in determining which chemicals require additional studies and in designing these studies.

2-(4-Aminophenyl)-6-methyl-7-benzothiazole sulfonic acid (130-17-6)—14-day and 90-day dosed feed studies in Fischer 344 rats and B6C3F$_1$ mice. Dr. Elmer Rauckman, telephone (919) 541-7981.

Azodicarbonamide (123-77-3)—14-day and 90-day inhalation studies in Fischer 344 rats and B6C3F$_1$ mice; 4-week inhalation study on airway hypersensitivity in guinea pigs. Dr. Linda Birnbaum, telephone (919) 541-3583.

n-Hexane (110-54-3)—14-day and 90-day inhalation studies in Fischer 344 rats and B6C3$_1$ mice. Dr. June Dunnick, telephone (919) 541-4811.

6-Methoxy-2-benzothiazolamine (1747-60-0)—14-day and 90-day dosed feed study in Fischer 344 rats and B6C3$_1$ mice. Dr. Elmer Rauckman, telephone (919) 541-7981.

4-(6-Methyl-2-benzothiazolyl)-benzenamine (92-36-4)—14-day and 90-day dosed feed study in Fischer 344 rats and B6C3F$_1$ mice. Dr. Elmer Rauckman, telephone (919) 541-7981.

Nickel Oxide (1313-99-1)—14-day and 90-day inhalation studies in Fischer 344 rats and B6C3F$_1$ mice. Dr. June Dunnick, telephone (919) 541-4811.

Nickel Sulfate (10101-97-0)—14-day and 90-day inhalation studies in Fischer 344 rats and B6C3F$_1$ mice. Dr. June Dunnick, telephone (919) 541-4811.

Crotonaldehyde (4170-30-3)—14-day and 90-day gavage study in Fischer 344 rats and B6C3F$_1$ mice. Dr. John French, telephone (919) 541-7990.

5,6-Dichloro-2-benzothiazolamine (24072-75-1)—14-day and 90-day dosed feed study in Fischer 344 rats and B6C3F$_1$ mice. Dr. Elmer Rauckman, telephone (919) 541-7981.

1,2-Dihydro-2,2,4-trimethylquinoline (147-47-7) (monomer)—14-day and 90-day dermal studies in Fischer 344 rats and B6C3F$_1$ mice. Dr. John French, telephone (919) 541-7790.

1,2-Dihydro-2,2,4-trimethylquinoline (26780-96-1) (polymer)—14-day and 90-day dermal studies in Fischer 344 rats and B6C3F$_1$ mice. Dr. John French, telephone (919) 541-7790.

Isobutyraldehyde (78-84-2)—14-day and 90-day inhalation studies in Fischer 344 rats and B6C3F$_1$ mice. Dr. John French, telephone (919) 541-7790.

Butyraldehyde (123-72-8)—14-day and 90-day gavage study in Fischer 344 rats and B6C3F$_1$ mice. Dr. John French, telephone (919) 541-7790.

Triethanolamine (102-71-6)—14-day and 90-day skin paint study in Fischer 344 rats and B6C3F$_1$ mice. Dr. Ronald Melnick, telephone (919) 541-4142.

Salicylazosulfapyridine (599-79-1)—14-day and 90-day gavage study in Fischer 344 rats and B6C3F$_1$ mice. Dr. Frank Kari, telephone (919) 541-2926.

Date: August 21, 1987.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 87-20423 Filed 9-3-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-07-4220-11: GP-07-280; OR-37365]

Realty Action; Conveyance of Public Land; Order Providing for Opening of Land; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice corrects the last sentence in the summary in the Conveyance of Public Land; Order Providing for Opening of Public Lands published in the **Federal Register** on August 12, 1987.

EFFECTIVE DATE: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: In FR Doc. 87-18289, published at page 29895 in the issue of August 12, 1987, make the following correction:

The last sentence in the summary is hereby corrected to read: "The reconveyed land will not be opened to mining in order to protect existing Federal improvements."

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

Dated: August 26, 1987.

[FR Doc. 87-20361 Filed 9-3-87; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-07-4220-11: GP-07-281; OR-39468]

Realty Action; Conveyance of Public Land; Order Providing for Opening of Land; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice corrects the summary by adding an additional sentence in the Conveyance of Public Land: Order Providing for Opening of Land published in the **Federal Register** on August 13, 1987.

EFFECTIVE DATE: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: 1. In FR Doc. 87-18459, published at page 30259 in the issue of August 13, 1987, make the following correction:

Add the following sentence to the summary: "The reconveyed land will not be opened to mining in order to protect the New River Area of Critical Environmental Concern.

Dated: August 26, 1987.

Champ C. Vaughan, Jr.,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-20362 Filed 9-3-87; 8:45 am]

BILLING CODE 4310-33-M

[MT-920-07-4520-11]

Filing of Plat Survey; Land Resource Management; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: Plat of survey of the lands described below accepted August 12, 1987, was officially filed in the Montana State Office effective 10 a.m. on August 24, 1987.

Principal Meridian, Montana

T. 7 N., R. 47 E.

This plat represents the dependent resurvey of portions of the subdivision lines and Tracts No. 2 and S, and the survey of Tract Y. The area described is in Custer County.

This survey was executed at the request of the Deputy State Director, Division of Lands and Renewable Resources for the administrative needs of the Bureau.

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Eugene D. Russell,

Acting State Director.

Dated: August 27, 1987.

[FR Doc. 87-20363 Filed 9-3-87; 8:45 am]

BILLING CODE 4310-DN-M

National Park Service

Intention to Negotiate Concession Permit; Cherokee Boys Club

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Cherokee Boys Club authorizing it to continue to provide firewood sales for the public within Great Smoky Mountains National Park for a period of four (4) years from January 1, 1988, through December 31, 1991.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and an environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under the existing permit which expires by limitation of time on December 31, 1987, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated. Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta Georgia 30303, for information as to the requirements of the proposed permit.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 87-20470 Filed 9-3-87; 8:45 am]

BILLING CODE 4310-70-M

Meeting; Statue of Liberty-Ellis Island Centennial Commission History Committee

AGENCY: National Park Service, Interior

ACTION: Notice of meeting.

SUMMARY: This notice announced a forthcoming meeting of the History Committee of the Statue of Liberty-Ellis Island Centennial Commission. The Committee will review its purpose in relation to the Statute of Liberty-Ellis Island restoration project and will discuss the committee's suggestions and initiatives that will commemorate the hundredth anniversaries of the Statue of Liberty (1986) and Ellis Island (1992).

DATE: September 28, 1987, 9 a.m. to 5 p.m.

ADDRESS: 52 Vanderbilt Avenue (at 45th Street), 4th floor, New York, New York 10017-3808.

FOR FURTHER INFORMATION CONTACT: Herbert S. Cables, Jr., Regional Director, National Park Service, 15 State Street, Boston, MA 02109-3572.

Date: August 26, 1987.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region.

[FR Doc. 87-20468 Filed 9-3-87; 8:45 am]

BILLING CODE 4310-70-M

Meeting; Sleeping Bear Dunes National Lakeshore Advisory Commission

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission will be held at 9:30 a.m. (EDT), October 9, 1987, at the Sleeping Bear Dunes National Lakeshore Visitor Center Auditorium at M-22 and M-72, Empire, Michigan.

The Commission was established by the Act of October 21, 1970, 84 Stat. 1076, 16 U.S.C. 460x-3, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Sleeping Bear Dunes National Lakeshore and with respect to the provisions of Sections 9 (zoning bylaws), 12 (scenic roads), and 13 (commercial properties) of this Act.

The members of the Commission are as follows:

Mr. John B. Daugherty (Chairman)
Ms. Uledene Merrill
Mr. George T. Schilling
Mr. Lawrence J. Verdier
Mr. Charles Rubner
Ms. Cathlene Search
Ms. Evangeline J. Stanchik
Dr. Michael Chubb
Mr. George Weeks
Mr. Gary Jones

The agenda for the meeting will include updates on recent park development projects and future projects, development concept plans for North Manitou Island, the Glen Haven Village, and the Platte River Management Plan.

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Richard R. Peterson, Superintendent, Sleeping Bear Dunes National Lakeshore, P.O. Box 277, Empire, Michigan 49630, telephone (616) 326-5134.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Sleeping Bear Dunes National Lakeshore, Empire, Michigan.

Date: August 27, 1987.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 87-20469 Filed 9-3-87; 8:45am]

BILLING CODE 4310-70-M

Office Surface Mining Reclamation and Enforcement

[OSM-EIS-23]

Availability of Final Petition Evaluation Document/Environmental Impact Statement on the North Chickamauga Creek Watershed, TN

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of final petition evaluation document/ environmental impact statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is making available a final petition evaluation document/environmental impact statement (PED/EIS) on the North Chickamauga Creek watershed in Tennessee. The PED/EIS has been prepared to assist the Director of OSMRE in making a decision on the petition to designate certain lands as unsuitable for surface coal mining operations in the North Chickamauga Creek watershed in Tennessee.

ADDRESSES: Copies of the Final EIS may be obtained from Willis Gainer, Chief, Southern Branch, Division of Tennessee Permitting, OSMRE, 530 Gay Street SW., Suite 500, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Willis Gainer, at the location given

under "**ADDRESSES**", telephone: (615) 673–4348.

SUPPLEMENTARY INFORMATION: On April 30, 1986, the Guardians of North Chickamauga Creek, Inc., and the Sierra Club filed a petition to designate certain lands as unsuitable for surface coal mining operations in the North Chickamauga Creek watershed in Tennessee. OSMRE determined the petition to be administratively complete on June 27, 1986. On March 27, 1987, OSMRE made available the draft PED/EIS for a 60-day public review and comment period.

The Final PED/EIS was prepared by OSMRE in accordance with section 522(d) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). It analyzes five alternatives which range from designation of the entire petition area as unsuitable for all surface coal mining operations to not designating any of the petition area as unsuitable for surface coal mining operations.

In preparing the final PED/EIS, OSMRE has revised the draft PED/EIS in response to comments received during the public comment period. These comments and OSMRE's responses to them are included in the final PED/EIS.

No decision will be made on the petition by the Director of OSMRE until at least 30 days from the time that the Environmental Protection Agency announces that the PED/EIS is available to the public. Notice of such a decision by the Director will be made available to the public at that time.

Date: September 1, 1987.

Brent Walquist,

Assistant Director, Program Policy.

[FR Doc. 87–20425 Filed 9–3–87; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 751–TA–12 and 751–TA–13]

Bicycle Tires and Tubes From Taiwan and the Republic of Korea

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)), that an industry in the United States would not be materially injured or threatened with material injury, nor would the establishment of an industry in the United States be materially retarded, by reason of imports from Taiwan and the Republic of Korea (Korea) of bicycle tires and tubes if the antidumping orders covering such imports were to be revoked.[2] [3]

Background

On April 4, 1979, the Commission published in the **Federal Register** (44 FR 20308) its determination that an industry in the United States was being or was likely to be injured by reason of the importation of bicycle tires and tubes from Korea which the Department of the Treasury had determined were being, or were likely to be sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on April 13, 1979, a dumping finding with respect to bicycle tires and tubes from Korea was published in the **Federal Register** as Treasury Decision 79–115 (44 FR 22051).

On May 31, 1984, the Commission published in the **Federal Register** (49 FR 22720) its determination that an industry in the United States was materially injured by reason of imports of bicycle tires and tubes from Taiwan which the Department of Commerce had determined to be sold or likely to be sold at LTFV. Accordingly, the Department of Commerce ordered that dumping duties be imposed on such imports (49 FR 24157, June 12, 1984).

On April 2, 1987, the Commission received a request, pursuant to section 751(b) of the Tariff Act of 1930, to review its affirmative determination in investigation No. 731–TA–166, Bicycle Tires and Tubes from Taiwan. This request was filed by counsel on behalf of the Taiwan producers of bicycle tires and tubes. On April 28, 1987, the Commission received a second request, pursuant to section 751(b) of the Act, to review its affirmative determination in investigation No. AA1921–193, Bicycle Tires and Tubes from the Republic of Korea. This request was filed by counsel on behalf of Korea Inoue Kasai Co., Ltd. (KIK), a Korean manufacturer and exporter of bicycle tires and tubes. Both requests provided similar alleged changed circumstances, the termination of production of bicycle tires and tubes by the sole U.S. producer, as of February 27, 1987.

On April 23, 1987, the Commission published a request for comments concerning the institution of a section 751(b) review investigation on bicycle tires and tubes from Taiwan (52 FR 13532). On May 6, 1987, a similar request concerning bicycle tires and tubes from Korea was published (52 FR 16923). In response to the Commission's request for comments, statements were filed by counsel for petitioners in the Taiwan case, counsel for the Bicycle Manufacturers Association of America, Inc., Midway Sales, Inc., an importer of bicycle tires and tubes from Taiwan, and Hedstrom Corporation, a manufacturer of children's bicycles. None of the respondents opposed the requests to institute review investigations. In addition to these comments, staff counsel for Carlisle Corporation, the original domestic petitioner in both the Taiwan and Korean case, submitted a letter advising the Commission that Carlisle Tire & Rubber Co. would interpose no objection to the revocation of the injury determination and dumping finding with respect to bicycle tires and tubes from Korea. In subsequent telephone conversations with Commission staff,[1] counsel extended his comments to include bicycle tires and tubes from Taiwan.

On the basis of the comments filed, the Commission instituted investigations Nos. 751–TA–12 and 751–TA–13 (effective July 1, 1987) and, at the same time, announced its tentative determinations that an industry in the United States would not be materially injured or threatened with material injury nor would the establishment of an industry in the United States be materially retarded, by reason of imports from Taiwan and Korea of bicycle tires and tubes if the antidumping orders covering such imports were to be revoked. Notice of the institution of the Commission's investigations and its tentative determinations was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i).

[2] Bicycle tires and tubes are provided for in items 772.48 and 772.57, respectively, of the Tariff Schedules of the United States.

[3] Counsel for petitioners in the Taiwan case requested that the Commission revoke the antidumping order retroactively to March 1, 1987. It is the position of the Commission that section 751(b) does not empower us to recommend retroactive revocation to the Administering Authority (the Department of Commerce). Nonetheless, we have notified the Department of Commerce that domestic production of bicycle tires and tubes terminated as of February 27, 1987.

[1] Telephone conversations between Mr. Timothy P. O'Reilly, staff counsel for Carlisle Corp. and Daniel Leahy, Office of Investigations, May 12, 1987 and July 9, 1987.

Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 1, 1987 (52 FR 24539). The notice provided for a 30-day comment period. None of the parties requested that a public hearing be held and the Commission has waived rule 207.21 concerning preparation of a staff report.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: August 14, 1987.

[FR Doc. 87-20464 Filed 9-3-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Agricultural Cooperative Filings; Intent To Perform Interstate Transportation For Certain Nonmembers; Western Agricultural Lines, Inc.

Date: August 31, 1987.

The following Notices were filed in accordance with section 10526 (a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days, of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Western Agricultural Lines, Inc. 4734 N. Cornelia, Fresno, CA 93722.
(2) 4734 N. Cornelia, Fresno, CA 93722.
(3) John Hays, 4737 N. Cornelia, Fresno, CA 93722.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20303 Filed 9-3-87; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations; Gifford Hill & Co., Inc., et al

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Gifford-Hill & Company, Inc., P.O. Box 47127, Dallas, Texas 75247; Physical Address: 300 E. John Carpenter Freeway, Irving, Texas 75062. Incorporated—Delaware.

2. Wolly-Owned subsidiaries which will participate in the operations and address of their respective principal offices:

(i) ConAgg Transportation, Inc., P.O. Box 47127, Dallas, Texas 75247; Physical Address: 300 E. John Carpenter Freeway, Irving, Texas 75062. Incorporated—Texas.

(ii) Gifford-Hill Concrete Company, P.O. Box 47127, Dallas, Texas 75247; Physical Address: 300 E. John Carpenter Freeway, Irving, Texas 75062. Incorporated—Texas.

(iii) Gifford-Hill Materials Company, P.O. Box 47127, Dallas, Texas 75247; Physical Address: 300 E. John Carpenter Freeway, Irving, Texas 75062. Incorporated—Texas.

B. 1. *Parent Corporation and Address of Principal Office:* USG Corp., 101 South Wacker Drie, Chicago, IL 60606.

2. *Wholly Owned Subsidiaries Which Will Participate in the Operations and States of Incorporation:*

Corporation and principal office address	Incorporated in
I. United States Gypsum Co., 101 South Wacker Drive, Chicago, IL 60606.	Delaware.
II. Masonite Corp., 1 South Wacker Drive, Chicago, IL 60606.	Do.
(a) Wood Fiber Industries, Inc. 1 South Wacker Drive, Chicago, IL 60606.	Do.
III. USG Industries, Inc., 101 South Wacker Drive, Chicago, IL 60606.	Do.
IV. USG Interiors, Inc., 101 South Wacker Drive, Chicago, IL 60606.	Do.
(a) Integrated Ceilings Inc., 1601 Iowa Avenue, Riverside, CA 92507.	California.
V. L&W Supply Corp., 1 South Wacker Drive, Chicago, IL 60606.	Delaware.
(a) C–S–W Drywall Supply Co., 1 South Wacker Drive, Chicago, IL 60606.	Do.
(b) Stocking Specialists, Inc., 1 South Wacker Drive, Chicago, IL 60606.	Do.
VI. A. P. Green Refractories Co. Green Boulevard, Mexico, MO 65265.	Do.
(a) A. Lynn Thomas Co., Inc., 10 East Belt Boulevard, Richmond, VA 23225.	Virginia.
(b) A. P. Green Services, Inc. 1250 Maplelawn Drive, Troy, MI 48007–7000.	Michigan.
(c) A. P. Green Refractories (Canada) Ltd., 234 Rosemont Avenue, Weston, Ontario, Canada M9N 3C4.	Canada.
(d) Empire Firebrick Co., 219 Murray Street, Fort Wayne, IN 46803–2348.	Indiana.

Noreta R. McGee,
Secretary.

[FR Doc. 87–20304 Filed 9–3–87; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 31095]

Rail Carriers; Exemption; Southern Railway Co. and Carolina and Northwestern Railway Co.; Control and Acquisition; Blue Ridge Railway Co.

Southern Railway Company (Southern) and Carolina and Northwestern Railway Company (C&NW) have filed a notice of exemption for (a) the acquisition by C&NW from Southern of 100 percent of the capital stock of Blue Ridge Railway Company (Blue Ridge) and (b) the subsequent acquisition by C&NW of the assets and properties of Blue Ridge pursuant to the liquidation and dissolution of Blue Ridge. C&NW and Blue Ridge are wholly owned subsidiaries of Southern. The transfer of common stock and dissolution were to occur on or about August 15, 1987. The proposed transaction is intended to simplify Southern's corporate structure, and results in various efficiencies and economies.

The control and acquisition involve a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). This transaction will not result in any adverse changes in the level of services to shippers, or significant operational changes. Nor will it have any impact on the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under sections 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), wil be imposed.[1]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: J. Gary Lane, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510.

Decided: August 13, 1987.

By the Commision, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 87–20305 Filed 9–3–87; 8:45 am]
BILLING CODE 7035–01–M

[1] The Railway Labor Executives' Association (RLEA) filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 11343, the imposition of the labor protective condition is mandatory and it has been imposed above.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 87-19]

Hearing; James Beale, M.D., Southfield, MI

Notice is hereby given that on January 30, 1987, the Drug Enforcement Administration, Department of Justice, issued to James Beale, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your certificate of registration AB8737009 and deny any pending applications for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, September 29, 1987, commencing at 10:00 a.m. in the U.S. Claims Court, 717 Madison Place NW., Washington, DC, Courtroom No. 10, Room 309.

Dated: August 28, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-20381 Filed 9-3-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-90]

Hearing; Wilfredo Fernandez-Vila, M.D., South Houston, TX

Notice is hereby given that on November 4, 1986, the Drug Enforcement Administration, Department of Justice, issued to Wilfredo Fernandez-Vila, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AF0912798, and deny any pending applications for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Wednesday, September 16, 1987, at the Harris County Courthouse, LaPort Annex, 117 East Avenue-A, LaPort, Texas.

Dated: August 28, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-20382 Filed 9-3-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-93]

Hearing; Leo R. Miller, M.D., New York, NY

Notice is hereby given that on December 10, 1986, the Drug Enforcement Administration, Department of Justice, issued to Leo R. Miller, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your certificate of registration AM1852474 and deny any pending applications for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, September 9, 1987, commencing at 10:00 a.m. in the U.S. Claims Court, 717 Madison Place NW., Washington, DC, Courtroom No. 10, Room 309.

Dated: August 28, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-20383 Filed 09-3-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-86]

Gil E. Padlo, M.D., Jenkintown, PA Hearing;

Notice is hereby given that on October 16, 1986, the Drug Enforcement Administration, Department of Justice, issued to Gil E. Pablo, M.D. an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AP2427993, and deny any pending applications for registration.

Thirty days having elasped since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Thursday, September 10, 1987, at the U.S. Claims Court, 717 Madison Place NW., Courtroom No. 10, Washington, DC.

Dated: August 28, 1987.

John C. Lawn,

Administrator Drug Enforcement Administration.

[FR Doc. 87-20384 Filed 9-3-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-28]

Hearing; Richard T. Robinson, M.D., Detroit, MI

Notice is hereby given that on February 5, 1987, the Drug Enforcement Administration, Department of Justice, issued to Richard T. Robinson, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your certificate of registration AR8810461 and deny any pending applications for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, September 29, 1987, commencing at 10:00 a.m. in the U.S. Claims Court, 717 Madison Place NW., Washington, DC, Courtroom No. 10, Room 309.

Dated: August 28, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-20385 Filed 9-3-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[Unemployment Insurance Program Letter No. 35-87]

Determining Eligibility and Amounts Payable to Unemployed Self-Employed Individuals Under the Disaster Unemployment Assistance (DUA) Program

As previously applied, our Disaster Unemployment Assistance (DUA) position denied DUA eligibility to unemployed self-employed individuals if they could render *any* of their customary services in self-employment. A recent review of this matter has led the Department of Labor to modify this position to address the special circumstances of the self-employed, and to issue guidance to all States for their use in determining eligibility and amounts payable to unemployed self-employed individuals under this revised position. This change applies to all self-employed persons and is effective for all major presidentially declared disasters occurring on or after September 10, 1986. The Department has issued this modification to all State employment security agencies in Unemployment

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Insurance Program Letter No. 35–87. Unemployment Insurance Program Letter No. 35–87 is published below.

Dated: August 31, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

August 25, 1987.

Directive: Unemployment Insurance Program Letter No. 35–87.

To: All state employment security agencies.

From: Donald J. Kulick, Administrator for Regional Management.

Subject: Disaster Unemployment Assistance (DUA), Eligibility for Partially Unemployed Self-Employed Individuals.

1. *Purposes.* To provide guidance to SESAs in determining eligibility and amounts payable to unemployed self-employed individuals under the DUA program.

2. *References.* Section 407(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5177(a)); 20 CFR Part 625; and ET Handbook No. 356.

3. *Background.* Questions have been raised concerning the Department of Labor's policy (based on 20 CFR 625.5 and amplified in the DUA Handbook) that self-employed individuals, such as diversified farmers, were not eligible to receive DUA if they could render *any* of their customary services in self-employment. A recent review of this issue has led the Department to conclude that a modification of this policy is appropriate to address the special circumstances of the self-employed.

4. *Policy Reinterpretation.* This review has concluded that in some cases self-employed individuals can be substantially impacted by a major disaster even though they are still able to perform some of their customary services in self-employment. In accordance with 20 CFR 625.1(b), 625.2(w), and 625.6(d) such individuals, including diversified farmers, can be eligible for partial DUA payments even if they are still able to render some of their customary services in self-employment, provided their services performed in self-employment activity have been *substantially reduced* as a direct result of a major disaster. This policy change applies to all self-employed persons and is effective for all major presidentially declared disasters occurring on or after September 10, 1986.

5. *Procedures.* Eligibility for DUA initially and on a continuing basis depends on a finding that the individual's partial or total unemployment has been caused directly by the disaster. In order for any self-employed individual to establish eligibility for full or partial DUA, it is first necessary to determine that 1) the individual, as a direct result of the disaster, is unable to perform any customary services in self-employment or that the individual's services have been substantially reduced; and 2) the individual's potential self-employment income has been adversely affected. As soon as such individuals fully resume their customary services in self-employment they are no longer eligible for DUA. Each individual's situation needs to be evaluated case by case taking these factors into account.

Once such an individual is determined eligible for DUA the individual's weekly benefit amount (WBA) will be determined based upon the self-employed individual's net earnings as shown on the Federal income tax return (usually 1040, schedules F or C and SE) for the year preceding the beginning date of the disaster. The net earnings shown would be used to determine the DUA/WBA in accordance with § 625.6 of the DUA regulations. If it is determined that the individual suffered a loss or had zero net earnings, the applicant will be entitled to the State's minimum UI/WBA, as provided in § 625.6(a)(4). Since the WBA must be reduced by any net earnings in the case of partial or part-total unemployment, as provided in § 625.6(d) of the regulations, the applicant for DUA must file an affidavit, together with a reasonable explanation therefor, stating what the individual's anticipated net earnings will be for the taxable year in which the disaster occurs. The individual who projects no net earnings or a net loss for the current tax year will be eligible for the full DUA/WBA as determined under § 625.6 of the regulations. If the individual projects net self-employment earnings for the current tax year, that amount will be prorated to a fixed weekly amount and deducted from the WBA for each week claimed. If the prorated net earnings equal or exceed the weekly DUA/WBA payable (plus the earnings allowance applicable under State law) the individual will not be eligible for any DUA payments. If the individual projects net earnings which, when prorated to a weekly amount, are less than the weekly DUA/WBA (plus the State earnings allowance) the individual's weekly DUA payable will be reduced in accordance with State law as prescribed in § 625.6(d) of the regulations.

If a claimant claims DUA into a second tax year, a projection of net earnings for that tax year will also be necessary. The above procedures will then be followed.

All projections of net earnings/loss are subject to verification as soon as the individual's Federal income tax return for the year has been filed with the Internal Revenue Service. For all cases in which the claimant is still in active benefit status when the tax return is filed, the State agency must require the individual to furnish a copy of the return and make any necessary adjustments in the individual's DUA payable. Overpayments or underpayments shall be established. For cases in which the individual is no longer in active benefit status when the tax return is field, the State may use its discretion as to whether to require that a copy of the tax return be provided. The State should be guided in its judgment as to whether or not substantial adjustments are likely to be required.

Sources of information which might affect DUA farm claim eleigibility, such as customary seasonal activities and area farming operations, are the Agricultural Stabilization and Conservation Service (ASCS offices) and the country extension agents. These sources should be particularly helpful in determining those weeks of the year when farmers (or other seasonally self-employed) normally are not engaged in any of their customary self-employment activity and may not, therefore, be eligible for DUA.

Also, from time to time Congress passes special disaster assistance legislation for farmers. Such legislation may occur well after the occurrence of the disaster and could significantly affect a DUA applicant's earnings in the year of or the year following the disaster. To keep informed SESAs should stay in contact with county ASCS officials. In the event special legislation is enacted, active DUA recipients should be required to make a new projection of earnings and SESAs should make any appropriate adjustments to the DUA amount payable. Sources of information on other self-employment activities which might affect DUA claim eligibility are trade associations, business groups, the local Chamber of Commerce and the Small Business Administration (SBA).

When more than one family member claims DUA based on the same self-employment business, each individual's self-employment income must be supported by the last year's Federal income tax return(s) showing separate SE (self-employment) schedules. The fact that a husband and wife simply filed a joint tax return would not be sufficient for these purposes. In these instances where more than one family member files DUA claims, the separate

SE schedules should be used to determine the weekly DUA payable under Section 625.6. When a husband and wife have a loss or no net earnings there should still be documentary evidence that the individuals operated as a partnership for both to be eligible for DUA based on the same business. If a bona fide partnership exists a form 1065 should have been filed with IRS and the scheduled K–1 will show how the partnership income or loss is to be allocated.

Individuals cease to be eligible for DUA when their partial or total unemployment is no longer caused by the declared disaster or when they fully resume their customary services in self-employment or otherwise are no longer partically or part-totally unemployed as provided in § 625.2(w).

Earlier instructions to the Regional Offices conveying this policy reinterpretation were limited to diversified farmers. Under the circumstances, it is possible that certain partially self-employed persons, who were not diversified farmers, filed claims for DUA and were denied. If that occurred, SESAs should review those claims and make redeterminations in accordance with State law.

6. *Action Required.* SESA Administrators should communicate the contents of this UIPL to appropriate staff.

7. *Inquiries.* Direct questions to the appropriate Regional Office.

Expiration Date: August 31, 1988.

[FR Doc. 87–20461 Filed 9–3–87; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications; Additions to List

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The additions to the labor surplus area list are effective September 1, 1987.

SUMMARY: The purpose of this notice is to announce additions to the list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., Room N4470, Attention: TEESS, Washington, DC 20210. Telephone: 202–535–0185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981, (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on March 26, 1987 (52 FR 9727).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are added to the list of labor surplus areas, effective September 1, 1987.

The following additions to the list of labor surplus areas are published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC, on August 31, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

Additions to the Annual List of Labor Surplus Areas

[September 1, 1987]

Labor surplus area	Civil jurisdiction included
New Mexico:	
Farmington City.	Farmington City in San Juan County.
Torrance County.	Torrance County.
Utah: Uintah County.	Uintah County.

[FR Doc. 87–20463 Filed 9–3–87; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and

federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:
AL87–17 (January 2, 1987)—pp. 36–37
Connecticut:
CT87–1 (January 2, 1987)—pp. 70–71
Florida:
FL87–17 (January 2, 1987)—pp. 154–155
New Jersey:
NJ87–3 (January 2, 1987)—p. 640
New York:
NY87–3 (January 2, 1987)—pp. 704–707

Volume II

Indiana:
IN87–2 (January 2, 1987)—p. 251
IN87–3 (January 2, 1987)—pp. 268–269
IN87–4 (January 2, 1987)—p. 281
IN87–5 (January 2, 1987)—p. 292
IN87–6 (January 2, 1987)—p. 302
New Mexico:
NM87–1 (January 2, 1987)—p. 695
Ohio:
OH87–29 (January 2, 1987)—p. 846
Texas:
TX87–12 (January 2, 1987)—p. 952

Volume III

Alaska:
AK87–1 (January 2, 1987)—p. 2
California:
CA87–2 (January 2, 1987)—p. 46–62d.
Montana:
MT87–1 (January 2, 1987)—p. 165
North Dakota:
ND87–3 (January 2, 1987)—p. 230
Utah:
UT87–1 (January 2, 1987)—pp. 308–314
UT87–3 (January 2, 1987)—pp. 320–328

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, This 28th Day of August 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87–20218 Filed 9–3–87; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 87–82; Exemption Application No. D–6725 et al.]

Grant of Individual Exemptions; Wichita Falls Clinic et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred

the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Wichita Falls Clinic Employees Profit Sharing Plan and Trust (the Plan), Located in Wichita Falls, TX

[Prohibited Transaction Exemption 87–82; Exemption Application No. D–6725]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of certain improved real property (the Real Property) to an acquiring partnershp, which is a party in interest with respect to the Plan, provided the sales price is the greater of the fair market value of the Real Property or the historical costs incurred by the Plan in its ownership of the Real Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1987 at 52 FR 25323.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Steven Sohmer, Inc. Defined Benefit Pension Plan (the Plan), Located in Los Angeles, CA

[Prohibited Transaction Exemption 87–83; Exemption Application No. D–7027]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the contribution of a copyright interest by Steve Sohmer to the Plan.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 17, 1987 at 52 FR 27084.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Mortgage & Real Estate Class of John Hancock Separate Account No. 1 (the Fund), Located in Boston, Massachusetts

[Prohibited Transaction Exemption 87–84; Exemption Application No. D–7053]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4974(c)(1) (A) through (E) of the Code, shall not apply, effective March 31, 1987, to the sale of certain mortgage and real estate investments by the fund to the General Account of John Hancock Mutual Life Insurance Company, a party in interest with respect to plans participating in the Fund, provided that the terms of sale were not less favorable to the Fund than those terms obtainable in an arm's-length transaction with an unrelated party at the time of execution of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 17, 1987 at 52 FR 27084.

Effective Date: March 31, 1987.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Iron Workers Local No. 25 Pension Fund (the Plan), Located in Birmingham, Michigan

[Prohibited Transaction Exemption 87–85; Exemption Application No. D–7090]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash purchase of a certain parcel of land (the Land) by the Plan from Local No. 25, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO (the Union), a party in interest with respect to the Plan, provided the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 5, 1987, at 52 FR 21394.

Written Comments Received

The Department has received four written comments regarding the proposed exemption. No requests for a hearing were received. Two of the comments were in favor of granting the proposed exemption, and two were opposed.

One of the comments in favor of granting the proposed exemption expresses the view that building a fringe benefit fund office building on the Land would benefit Plan participants, who now must drive from the union hall to the current offices of the fringe benefit funds.[2]

One of the comments opposed to granting the proposed exemption expressed the view that Union members were being misled because when land was purchased for the new union hall, this commentator had received the impression that the new union hall would also house the fringe benefit fund offices, credit union, and all Union-related functions. The other comment opposed to granting the proposed exemption expressed the opinion that the proposed purchase price was outrageously overpriced.

In response to the first adverse comment, the applicants represent that since the purchase of the Union property by the Union, there was never any serious consideration given to the construction of one main facility in which the Plan would lease space from the Union. The applicants point out that the Plan trustees have secured the expert advice of both a commercial real estate appraiser, as well as the auditors for the Plan, in an attempt to determine whether or not the purchase of the Land from the Union and the subsequent construction of the fringe benefit fund office building [2] would adversely affect

[1] Since Mr. Sohmer is the sole shareholder of Steve Sohmer, Inc. and is the sole participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under title II of the Act pursuant to section 4975 of the Code.

[2] As mentioned in the notice of proposed exemption, this exemption does not cover the proposed construction of the fringe benefit office building on the Land.

the Plan's ability to meet its future obligations for vested participants.

The applicants assert that based upon the advice of the independent real estate appraiser, it is readily apparent that the proposed purchase of the Land will be a prudent investment of Plan assets. In addition, an exhaustive study by the Plan auditors has indicated that the purchase and the future construction will not have any negative impact upon the Plan's ability to pay present or future benefits. The applicants express the hope that the above commentators' apprehensions should be somewhat eased by the thoroughness of the investigation and preparation by the Plan concerning the proposed purchase, as well as the independent analysis of the independent fiduciary, Mr. Woodbeck, who is familiar with such transactions and has longstanding expertise in the fields of both construction and fiduciary investments under the Act.

In response to the second adverse comment, the applicants point out further that, notwithstanding the opinion of that commentator, the Plan trustees have secured an appraisal by an independent real estate appraiser who has attested to the fact that the market value of the Land far exceeds the purchase price which the Plan proposes to pay for the Land. The applicants anticipate that if the proposed exemption is granted, at the time of the closing on the Land, its market value will have appreciated even more than that indicated in the independent appraisal. However, the applicants represent that in no event will the Plan be required to pay any monies in excess of $35,595.00 or, if less, the fair market value of the Land on the purchase date, as determined by Mr. Woodbeck.

After considering the entire record, the Department has determined that the exemption should be granted as proposed.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8194. (This is not a tool-free number.)

Emanuel Klimpl Pension Plan (the Plan), Located in New York, New York

[Prohibited Transaction Exemption 87–86; Exemption Application No. D–7162]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the contribution to the Plan of certain stock warrants (the Warrants) of Arlen Corporation (Arlen) by Emanuel Klimpl, a disqualified person with respect to the Plan, provided that: (1) The Warrants are valued at their fair market value at the time contributed, and (2) the Warrants, together with certain promissory notes of Arlen (the Arlen Notes), represent in the aggregate no more than 10% of the total assets of the Plan at the time of contribution of either the Warrants or the Arlen Notes.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 17, 1987 at 52 FR 27090.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 1st day of September 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87–20481 Filed 9–3–87; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87–70)]

NASA Advisory Council (NAC), Space Applications Advisory Committee (SAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee.

DATE AND TIME: September 22, 1987, 9 a.m.–5 p.m.; September 23, 1987, 8:30 a.m.–2:30 p.m.; and September 24, 1987, 8:30 a.m.–10:30 a.m.

ADDRESS: NASA Headquarters, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ray J. Arnold, Code EE, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1707).

SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council and NASA on plans currently in progress and accomplishments for NASA's Space Applications programs. The Committee is chaired by Mr. Leonard Jaffe and is composed of 32 members. The Committee operates both through a number of informal subcommittees and as a whole. The agenda which follows include all Committee and Subcommittee sessions. The Full Committee meeting will be closed Wednesday, September 23, from 1 p.m. until 2:30 p.m., to discuss and evaluate the qualifications of candidates being considered for membership on the committee. Such discussions would invade the privacy of the individuals involved. Since these sessions will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up

to the seating capacity of the rooms. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open—except for closed session as noted in the agenda below.

Agenda

September 22, 1987.

Communications Subcommittee—Mars Room, Holiday Inn-Capitol
9 a.m.—Review status of Communication Division program and structure.
1 p.m.—Develop recommendations to NASA for future activities.
4:30 p.m.—Adjourn.

Information Systems Subcommittee—Room 770, Capitol Gallery East
9 a.m.—Introduction and Discussion of SAAC concerns.
9:30 a.m.—Proxmire Response Status Update.
10:30 a.m.—Space Station Information System.
1 p.m.—Technical and Management Information System.
2:30 p.m.—Space Station Software Support Environment.
3:45 p.m.—General Discussion.
4:30 p.m.—Adjourn.

Remote Sensing Subcommittee—Jupiter Room, Holiday Inn-Capitol
10 a.m.—Earth Science and Applications Division Management.
10:30 a.m.—Implementation of Applications Research Program.
11 a.m.—Update on Landsat Program Status.
1:30 p.m.—Discussions on the linkage between Earth System Science Program and Applications Research Program.
4 p.m.—Develop Recommendations for Chairman of SAAC.
5 p.m.—Adjourn.

September 23, 1987.

Full Committee—Room 226A, NASA Headquarters Building
8:30 a.m.—Introduction and Review of Agenda.
9 a.m.—Subcommittee Reports and Presentations of FY88 Workplans: Communications, Information Systems, Microgravity and Remote Sensing.
11 a.m.—Status of OSSA Programs.
1 p.m.—Closed Session.
2:30 p.m.—Adjourn.

September 24, 1987.

Remote Sensing Subcommittee—Jupiter Room, Holiday Inn-Capitol
8:30 a.m.—Development of a Constituency for the Applications Research Program.
9:30 a.m.—Development of Recommendations for Chairman of SAAC.
10:30 a.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

August 28, 1987.

[FR Doc. 87-20357 Filed 9-3-87; 8:45 am]
BILLING CODE 7510-01-M

[Notice (87-71)]

NASA Advisory Council (NAC), Space System, and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Team on Photonics.

DATE AND TIME: September 30, 1987, 8:15 a.m. to 5 p.m.

ADDRESS: Room 625, Federal Office Building 10B, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Anemarie DeYoung, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2989.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance and direction to the Office of Aeronautics and Space Technology (OAST). Special ad hoc teams were formed to address specific topics. The Ad Hoc Team on Photonics, chaired by Dr. Stanley Weiss, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

Type of Meeting: Open.

AGENDA:

September 30, 1987

8:15 a.m.—Introduction.
8:30 a.m.—Review of NASA Photonics Program.
11 a.m.—Discussion of Photonics Program.
5 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

August 28, 1987.

[FR Doc. 87-20358 Filed 9-3-87; 8:45 am]
BILLING CODE 7510-01-M

[Notice (87-72)]

Intent To Grant a Partially Exclusive Patent License; BFGoodrich Co.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant a Patent License.

SUMMARY: NASA hereby gives notice of intent to grant to BFGoodrich Company, of Uniontown, Ohio, a combined partially exclusive and nonexclusive license to practice the invention described in United States Patent No. 4,690,353, Entitled "Electro-Expulsive Separation System," which issued on September 1, 1987; NASA Case No. ARC-11,613-1. This invention relates to a novel system for separating a solid body from the surface of a resilient member. It utilizes very high repulsive forces to impact rapid expulsive movements to a flexible elastomeric member. The forces are generated by overlapping conductive members that receive a very high instantaneous current pulse from a power storage unit. The forces distend the elastomeric member and separate the elastomeric member from a solid body thereon. The invention is useful for separating ice gathered on a substrate, and it is particularly useful for aircrafted deicing applications. It relates to an aircraft deicing system which does not require stretching of the aircraft structural members themselves in order to dislodge the accreted ice. Most especially, it relates to such a system that can be provided as a retrofit on existing aircraft.

The proposed partially exclusive license will contain a field of use limitation which will limit it to aeronautical deicing applications. Additionally, it will be for a limited number of years, royalty-bearing, revocable, and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. The proposed nonexclusive license will be for all fields of use. However, the nonexclusive license may provide that after termination of a period specified in the license

agreement, NASA may restrict the license to the fields of use or geographic areas, or both, in which the licensee has brought the invention to practical application and continues to make the benefits of the invention reasonably accessible to the public. However, such restrictions shall be made only in order to grant an exclusive or partially exclusive license in accordance with the NASA Patent Licensing Regulations. The nonexclusive license will also be royalty-bearing, revocable, and will contain other appropriate terms and conditions to be negotiated.

NASA will negotiate the terms and conditions and grant the license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATE: Comments to the notice must be received by November 3, 1987.

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 453–2430.

Date: August 28, 1987.

John E. O'Brien,

General Counsel.

[FR Doc. 87–20359 Filed 9–3–87; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comment on this information collection must be submitted on or before October 5, 1987.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786–0233 and Ms. Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503, (202) 395–6880.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786–0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries is subject to 44 U.S.C. 3504(h).

Category Extension

Title: NEH—Division of Fellowships and Seminars—Guidelines and Application Instructions for Directors, Summer Seminars for College Teachers program
Form Number: 3136–0093
Frequency of collection: Collection occurs onde yearly, according to individual program application deadline.
Respondents: University faculty
Use: The guidelines and application instructions provide direction for preparing narrative and budgetary parts of applications for grant funds and request additional information regarding grants recently received by applicants.
Estimated number of respondents: 780
Estimated hours for respondents to provide information: 1,794

Title: NEH—Division of Fellowships and Seminars—Guidelines and Application Instructions for Participants, Summer Seminars for College Teachers program
Form Number: 3136–0096
Frequency of collection: Collection occurs once yearly, according to individual program application deadline.
Respondents: College faculty and independent scholars
Use: The guidelines and application instructions provide direction for preparing narrative and budgetary parts of applications for grant funds and request additional information regarding grants recently received by applicants.
Estimated number of respondents: 5,935
Estimated hours for respondents to provide information: 17,805

Thomas Kingston,

Assistant Chairman for Programs.

[FR Doc. 87–20428 Filed 9–3–87; 8:45 am]

BILLING CODE 7536–01–M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before October 5, 1987.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0233) and Ms. Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries is subject to 44 U.S.C. 3504(h).

Category: Revision

Title I: NEH Challenge Grant Guidelines and Application Instructions Form Numbers Not Applicable
Frequency of Collection: Annually
Respondents: Applicants for Challenge Grants

Estimated number of respondents: 195 annually
Estimated hours for respondents to provide information: 45 hours per respondent annually

Thomas Kingston,

Assistant Chairman for Programs.

[FR Doc. 87-20429 Filed 9-3-87; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Task Force on Women, Minorities and the Handicapped in Science and Technology; Meeting and Public Hearing; Correction

September 2, 1987.

Correction of address of public hearing on page 32086 of August 25, 1987 edition of **Federal Register**:

Name: Task Force on Women, Minorities and the Handicapped in Science and Technology
Date and Time: September 22, 1987, 9:30 am—4:45 pm
Place: Conference Center, University of New Mexico, 1634 University Boulevard, NE., Albuquerque, New Mexico

Sue Kemnitzer,

Executive Director.

[FR Doc. 87-20521 Filed 9-3-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-08280; Licensee No. 52-14939-01]

Order Imposing Civil Monetary Penalty; Centro Oftamologico Metropolitano

In the matter of Centro Oftamologico Metropolitano, San Juan, PR 00922.

I

Centro Oftalmologico Metropolitano (licensee) is the holder of materials License No. 52-14939-01 (license) issued by the Nuclear Regulatory Commission (NRC/Commission) on August 16, 1982. The license authorizes the licensee to employ the use of a strontium-90 eye applicator for the superficial treatment of eye disease in accordance with the conditions specified therein.

II

A routine inspection of the licensee's activities was conducted on April 14, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated June 24, 1987. The notice states the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated June 29, 1987.

III

After consideration of the licensee's response and the statement of fact, explanations, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered* That:

The licensee pay a civil penalty in the amount of Seven Hundred Fifty Dollars ($750) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region II.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 31st day of August 1987.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Appendix—Evaluations and Conclusions

On June 24, 1987 a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was issued for violations identified during a routine NRC inspection. Centro Oftalmologico Metropolitano (licensee) responded to the notice on June 29, 1987. The licensee admitted that the violations did occur and requested that the civil penalty be fully mitigated. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

Restatement of Violation

I. Violation Assessed a Civil Penalty

License Condition 12 requires that licensed material be used by or under the supervision of the two named physicians.

Contrary to the above, five additional users have used licensed material on numerous occasions since 1982 without supervision.

This is a Severity Level III violation (Supplement VI). (Civil Penalty—$750)

II. Violations Not Assessed a Civil Penalty

A. License Condition 15 requires in part that licensed material be stored in a wall cabinet and kept locked at all times.

Contrary to the above, on April 14, 1987, licensed material was stored in an unlocked treatment room on open shelving.

This is a Severity Level IV violation (Supplement VI).

B. 10 CFR 19.11 requires a licensee to post current copies of certain documents near or in a licensed activity location. These documents include 10 CFR Part 19, 10 CFR Part 20, the license complete with amendments, referenced documents, and operating procedures. If posting is not practicable, the licensee may post a notice that describes the documents and where they may be examined. The licensee is also required to post Form NRC-3, "Notice to Employees," to permit individuals who frequent any portion of a "restricted area" to observe the form.

Contrary to the above, on April 14, 1987, the licensee had not posted the documents, or the notice of where the documents might be examined, nor had the licensee posted Form NRC–3.

This is a Severity Level V violation (Supplement VI).

Summary of Licensee's Response

The licensee, while admitting that the violations occurred as stated, requested mitigation of the civil penalty due to the fact that the authorized users had trained and supervised the unauthorized users and felt that by reason of proximity, education, and experience they were qualified to independently use licensed material. The licensee also contended that the unauthorized users were under the supervision of authorized user.

NRC Evaluation of Licensee's Response

The NRC has considered your request for mitigation of the Civil penalty based on the fact that the authorized users had trained and supervised the unauthorized users, but mitigation was considered inappropriate because (1) your license does not authorize you to make a determination of the qualification of users, and (2) the unauthorized users did not meet the qualification criteria stated in 10 CFR 35.941 based on your letter of June 29, 1987. Under your current license, qualification of users is an NRC determination which is made following submittal of a license amendment. Furthermore, based upon the explanation set forth in your letter of June 29, 1987 and the results of the April 14, 1987 inspection, NRC does not believe that these unauthorized users were sufficiently supervised to meet the requirements of 10 CFR 35.25.

NRC Conclusion

The NRC concludes that the violations occurred as stated in the Notice of Violation and that no mitigation of the civil penalty is warranted. Therefore, the proposed Civil Penalty in the amount of $750 should be imposed.

[FR Doc. 87–20448 Filed 9–3–87; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 40–08027, License No. SUB–1010, EA 87–108]

Order To Show Cause; Sequoyah Fuels Corp.

In the matter of Sequoyah Fuels Corporation, P.O. Box 5801, Oklahoma City, OK 73125.

I

Sequoyah Fuels Corporation (the licensee) (SFC) is the holder of Source Material License No. SUB–1010 which authorizes the licensee to possess and use source material for the purpose of refining uranium from uranium ore concentrates and converting this uranium to uranium hexafluoride (UF_6) for use by enrichment facilities. The license was most recently renewed on September 20, 1985 and will expire on September 30, 1990.

II

On January 4, 1986 a cylinder containing in excess of 30,000 pounds of UF_6 ruptured while being heated in a steam chest at the Sequoyah Fuels facility in Gore, Oklahoma. The cylinder had been overfilled to the point that its contents exceeded the cylinder's maximum allowable shipping weight of 27,560 pounds. A process operator, with the consent of his supervisor, had placed the cylinder in a steam chest to heat the cylinder to facilitate removal of the excess UF_6. While the cylinder was being heated, the cylinder wall ruptured because of the expansion of UF_6 as it changed from the solid to the liquid phase. Heating of the overfilled cylinder was contrary to the requirements of the license and the licensee's operating procedures. The high pressure in the cylinder and the large size of the rupture resulted in the rapid release of much of the UF_6 into the atmosphere. One individual employed by the licensee died because of exposure to hydrogen fluoride (a hydrolysis product of UF_6). Other employees received exposures to uranium and hydrogen fluoride.

By letter dated January 9, 1986, the licensee committed not to restart the UF_6 conversion process at the Sequoyah facility without the concurrence of the NRC. In addition, the licensee made a number of commitments in meetings with the NRC Region IV staff. These commitments were confirmed in a Confirmation of Action Letter issued by Region IV to the licensee dated January 17, 1986.

Kerr-McGee Corporation promptly instituted an internal investigation of the event. (A letter from Sequoyah Fuels Corporation to the Director, Office of Inspection and Enforcement, dated September 24, 1986, summarizes the results of this investigation.) The NRC initiated a number of inspections, investigations, and reviews after the January 4 accident with the assistance of other State and Federal agencies to determine the cause and effects of the event and the efficiency and adequacy of the response of the licensee to the event. The NRC also has inspected and reviewed all of the requirements of the license.

As a result of these efforts, several violations of NRC requirements were identified. These violations were addressed in a Notice of Violation dated October 14, 1986 and an Order Imposing Civil Monetary Penalties issued February 5, 1987. These actions addressed procedural deficiencies in the management and operation of the Sequoyah facility, which were associated with the January 4, 1986 accident.

In an Order Modifying License issued October 2, 1986, the NRC specified certain actions required before restart of Sequoyah Fuels Facility would be authorized. These conditions included imposition of an independent oversight team (IOT) to maintain a 24-hour surveillance while the facility is in operation. The IOT was required to ensure full compliance with required procedures because of NRC concerns with the conduct of certain supervisors. The Director, Office of Inspection and Enforcement, was authorized to relax or rescind all or part of those requirements. On October 16, 1986 the Commission authorized restart and the facility has resumed operations. Reports of the IOT and NRC inspections have been reviewed by the staff. Based on NRC consideration of these reports and submittals from the licensee, in a letter accompanying this Order, the Deputy Executive Director for Regional Operations has reduced the required IOT coverage from 24-hours to 8-hours per day.

III

The NRC investigations of the accident and the management and operation of the facility sought information concerning possible overfilling and heating of UF_6 cylinders, including supervisory knowledge of and acquiescence in those practices which violated authorized procedures. An NRC Augmented Investigation Team (AIT) conducted its inquiry immediately following the accident. In addition, subsequent to the accident, Sequoyah Fuels Corporation formed an Internal Investigation Team (IIT) to investigate the cause of the accident. The IIT report concluded that the January 4, 1986 rupture was "most likely caused by heating of the overfilled cylinder" and also noted that overfilling regularly occurred. In March 1986, the Office of Investigations (OI) commenced an investigation which, in addition to the above areas of inquiry, also examined whether willful material false statements were made in the January 29, 1986 letter.

The NRC investigations revealed that several Sequoyah Fuels Corporation employees in supervisory positions apparently were aware that UF_6 cylinders were being filled beyond the authorized limit and were subsequently heated while in an overfilled condition. The licensee's September 24, 1986 response to a question from the Commission stated that: "Some supervisory personnel either acquiesced in or condoned this practice" (i.e., heating with more than the maximum net weight). In the course of responding to questions from the various investigators, Messrs. J. Brewer, L. McCoy, L. Reid, and J. Swimmer did not appear to fully disclose their knowledge of the overfilling and heating of the UF_6 cylinders. Information provided by other SFC employees, including the operators and the Facility Manager, indicated that these supervisors were more aware of the subject practices than they revealed. These supervisors were aware of the weight limitations for cylinders and the provisions of Operating Procedure N-280-1, Revision 6, which prohibited the heating of overfilled cylinders. They all signed cylinder status sheets reflecting excessive weights. Further, some of the statements of these individuals to the investigators were inconsistent.

IV

The holder of a license from the NRC has a clear obligation to be candid and forthcoming in dealing with the NRC and its staff. The effectiveness of the regulatory program is dependent on the ability of NRC investigators to obtain complete and accurate information in determining the causes of accidents in order to protect the public health and safety as well as workers in licensed facilities. The OI investigation revealed a lack of candor among supervisory personnel, specifically with regard to Messrs. Brewer, McCoy, Reid, and Swimmer. It appears that these supervisors knew about and acquiesced in practices that were contrary to authorized procedures. The NRC needs assurance that these supervisors will properly run plant operations, ensure that these operations will be conducted in accordance with authorized procedures, and in the future provide complete and accurate information to the NRC.

V

In view of the foregoing, pursuant to sections 63, 161 b, i, and o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and Part 40, *It is hereby ordered that the licensee:*

Show cause why an Order should not be issued suspending licensed activities while the following individuals are involved in licensed activities:

1. J. Brewer, Shift Supervisor
2. L. McCoy, Area Supervisor
3. L. Reid, Shift Supervisor
4. J. Swimmer, Shift Supervisor

The response should at a minimum address actions such as disciplinary action taken or to be taken, training conducted or scheduled to be conducted and management controls, including disciplinary policies, instituted which will provide assurance if these employees are allowed to perform licensed activities, that the licensee will have, and the NRC should have, confidence that each of these individuals will be candid with the NRC in the future. If the licensee should decide to remove these supervisors from licensed activities, the response should include information concerning their replacements, to provide assurance that the replacements are qualified and will be candid with the NRC so that they can be relied on to provide complete and accurate information.

VI

The licensee may show cause why this Order should not have been issued and should be vacated by filing a written answer under oath or affirmation within 30 days of the date of this Order which sets forth the matters of fact and law on which the licensee relies. If the licensee fails to file an answer within the specified time the Deputy Executive Director for Regional Operations may issue without further notice an Order described above.

The licensee or any other person who has an interest adversely affected by this Order may request a hearing on this Order within 30 days of the date of its issuance. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555, with copies to (1) the Assistant General Counsel for Enforcement, Office of the General Counsel, and (2) the Regional Administrator, Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, TX 76011. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the person's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order shall be sustained.

Dated at Bethesda, Maryland this 1st day of September 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive for Regional Operations.

[FR Doc. 87-20447 Filed 9-3-87; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Application and Claim for RUIA Benefits Unpaid at Death.

(2) Form(s) submitted: ID-28(a)(1), SI-62 and UI-63.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 3,625.

(7) Annual reporting hours: 572.

(8) Collection description: The collection obtains the information needed by the Board to pay, under section 2(g) of the RUIA, benefits under that Act accrued but not paid because of the death of the employee.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Elaina Norden (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 87-20364 Filed 9-3-87; 8:45 am]

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Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Application for Reimbursement for Hospital Insurance Services in Canada.

(2) Form(s) submitted: AA–104.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 123.

(7) Annual reporting hours: 21.

(8) Collection description: The Board administers the Medicare program for persons covered by the Railroad Retirement system. The collection obtains the information needed to determine eligibility for and amount due for covered hospital services received in Canada.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Elaina Norden (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 87–20365 Filed 9–3–87; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24862; File No. SR–NASD–87–32]

Self-Regulatory Organizations; Proposed Rule Change; National Association of Securities Dealers, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 26, 1987, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") hereby requests that the Securities and Exchange Commission ("SEC") extend the period of effectiveness of the Pilot Program with The International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("Exchange"), formerly The Stock Exchange, London, England. This matter was the subject of five (5) previous filings made by the NASD: File Nos. SR–NASD–86–4, SR–NASD–86–26, SR–NASD–86–35, SR–NASD–87–15 and SR–NASD–87–24. Each of those filing was approved timely by the Commission to enable continous operation of the Pilot Program from April 22, 1986 through August 31, 1987. The NASD is seeking another extension of this approval until September 30, 1987. The proposed extention will permit continued operation of the Pilot Program while the Commission considers the disposition of File No. SR–NASD–87–20. In that filing the NASD requests Commission approval of the Pilot for a prospective two-year term as well as certain modifications in access terms.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purposes of and basis for the proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule filing is to obtain an extension of the SEC's temporary approval of the Pilot Program through September 30, 1987. Absent such an extention, the NASD's link with the Exchange will terminate August 31, 1987.

The Pilot Program, the first transatlantic communication link of its kind between major domestic and foreign equities marketplaces, provides a unique opportunity to gather and analyze information leading to the efficient and effective development of international trading, related regulatory programs and potentially new systems designs. As currently structured, the Pilot Program provides for the exchange of market data, between the NASD and the Exchange, without charge, on a group of securities of international interest and the transmission of that data by the recipient (NASD or Exchange) to its current subscribers as part of either NASDAQ Level 2/3, TOPIC, or TOPICLINE service. When the Pilot Program was originally filed *(i.e.,* File No. SR–NASD–86–4), the NASD requested the SEC's approval of the Pilot for a two year period. At the SEC's request, however, the NASD has acquiesced in the Agency's approved of the Pilot for shorter, consecutive time periods.

The tentative approach is not traceable to any regulatory concern, actual or potential, arising from the linkage's daily operation. Rather, the SEC's reluctance to approve the Pilot Program for a two year term relates to the fact that the broker-dealers able to access quotes disseminated via the linkage are not assessed an additional fee for that access. This issue was raised by one vendor of securities market information (hereinafter referred to as the "Vendor") during the SEC's notice and comment process on the original rule filing (File No. SR–NASD–86–4).[1] Vendor claimed that this aspect of the Pilot Program was anticompetitive because Vendor could not obtain access to linkage data (particularly market makers' quotations) from the NASD or the Exchange on the same terms as participating brokers, *i.e.,* at no cost. Further, Vendor maintained that the NASD was utilizing its status as a self-regulatory organization to impede competition from Vendor by virtue of the NASD's receiving quotation information from the Exchange on a preferential basis.

The Association continues to believe that the legal and economic arguments that Vendor previously raised are lacking in merit. Moreover, those arguments suggest a misperception of the economic incentives that have

[1] *See* letter from Daniel T. Brooks, Cadwalader, Wickersham & Taft, Counsel for Instinet Corporation, to John Wheeler, Secretary, SEC, dated April 16, 1986. *See also* Securities Exchange Act Release No. 23158 (April 21, 1986), 51 FR 15989 (April 29, 1986).

prompted various market centers to initiate international linkages in recent years. Nonetheless, the NASD and the Exchange have re-examined the original access terms for the Pilot Program and proposed certain modifications in File No. SR–NASD–87–20.[2] Generally, the proposed modifications would narrow the universe of firms/terminals accessing linkage data at no cost. Such modifications were based in part upon the results of an Exchange survey to provide objective information respecting the breadth of dissemination of Pilot data among Exchange members. This information should also respond definitively to specific questions raised by the Commission staff.

The Commission staff has requested additional time to analyze that data, along with comment letters submitted by Vendor and the NASD, in formulating a recommendation to the Commission on File No. SR–NASD–87–20. Therefore, the Association has submitted the instant filing to sustain the operation of the Pilot Program until September 30, 1987 pursuant to temporary Commission approval. During the requested extension, only information on a limited group of securities of international interest will be exchanged on a like kind basis in lieu of separate and offsetting monetary transfers. Further, the NASD and the Exchange will refrain from introducing an automatic execution linkage during this temporary extension of the Pilot Program.

The statutory bases for the Pilot Program and the requested extension thereof, are found in section 11A(a)(1)(B) and (C), 15A(b)(6), and 17A(a)(1)(C) and (D) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market. . . ." Section 17A(a)(1) sets forth the Congessional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the requested extension of approval for the Pilot Program will foster significant progress toward these ends by providing the cooperative regulatory environment and operating experience necessary to realize these goals in the international marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

In its first release announcing temporary approval of the Pilot Program, the Commission articulated arguments made by Vendor regarding the competitive impact which Vendor believes the Program has upon it. These arguments were summarized in the preceding section. In response, the NASD and the Exchange have re-examined the existing access terms and proposed to narrow the universe of firms/terminals permitted access to linkage data at no cost. These changes are contained in File No. SR–NASD–87–20. Hence, the NASD and the Exchange have made a good faith effort to address the perceived, competitive concerns raised by Vendor and reiterated by the SEC in its original release. In light of these factors, the NASD believes that no additional competitive burden would be created by the SEC's extension of the Pilot Program until September 30, 1987.

During the period of such extension, no use will be made of the information exchanged for purposes of operation of an automatic execution system. Given the limited numbers of securities involved, the limited use to be made of the information exchanged, and the Association's efforts to address the competitive issues previously raised, the NASD submits that the benefits to be derived from the further extension of the Pilot Program significantly outweigh any perceived burden upon competition and materially advance the purposes to be served under the above-referenced sections of the Act.

C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received from Members, Participants or Others

Not applicable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the 35th day after its publication in the **Federal Register**, and, in any event, by August 28, 1987, the last business day before the expiration date for the Pilot Program. The NASD believes that the continuation of the Pilot Program provides an opportunity to develop additional information leading to the efficient and effective development of international trading, related regulatory programs and the potential for new system designs. Accordingly, the NASD believes that good cause exists to accelerate the effectiveness of the rule change to no later than August 28, 1987.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1)(B) and (C), 15A(b)(6), and 17A(a)(1)(C) and (D) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. Specifically, accelerated approval and the continuation of the Pilot Program will benefit public investors and provide the opportunity to develop additional information leading to the efficient and effective development of international trading, related regulatory programs and the potential for new system designs. The Commission recognizes that without accelerated approval, authorization for the Pilot Program will expire on August 31, 1987. The Commission believes that the benefits of extending its approval of the Pilot Program on a temporary basis outweigh any potential adverse effects during the period of the rule change's effectiveness.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-

[2] *See*, Release No. 34–24364 (April 17, 1987), 52 FR 13891 (April 27, 1987). In this filing, the NASD also seeks approval of the Pilot Program for a two-year term which would commence from the Commission's approval of File No. SR–NASD–87–20.

mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 25, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: August 28, 1987.

[FR Doc. 87–20410 Filed 9–3–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 28, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Hancock Fabrics, Inc.
Common Stock, $0.01 Par Value (File No. 7–0372)
KaiserTech Limited
Common Stock, $0.33 1/3 Par Value (File No. 7–0373)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 21, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20409 Filed 9–3–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15952; 811–3168]

Application: Bache/KILICO Variable Annuity Account

August 28, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application on Form N–8F under the Investment Company Act of 1940 [the "1940 Act").

Applicant: Bache/KILICO Variable Annuity Account.

Relevant 1940 Act Sections: Order requested under Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: August 19, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, either personally or by mail, and also sent it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 120 S. LaSalle Street, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: David S. Goldstein, Attorney (202) 272–2622 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. It registered under the 1940 Act on April 9, 1981, and its depositor, Kemper Investors Life Insurance Company, filed a registration statement for variable annuity contracts on Form S–6 on April 9, 1981, but the registration statement never became effective and no public offering of securities was ever made.

2. It is an insurance company separate account created on March 6, 1981, under the laws of California, and the Board of Directors of Kemper Investors Life Insurance Company will rescind the resolution creating the Applicant at the next practicable opportunity.

3. It has no securityholders, no assets, and no outstanding debts or other liabilities.

4. It is not a party to any litigation or administrative proceeding and has made no sales of securities of which it is the issuer.

5. It is not now engaged and does not propose to engage in any business activities other than those necessary for winding up its affairs.

For the Commission, by the Division of Investment, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20411 Filed 9–3–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/1109]

Meeting; Secretary of State's Advisory Committee on Private International Law, Study Group on the Law Applicable to Decedents' Estates

There will be a meeting of the subject Study Group at 10:00 a.m. to 4:00 p.m., on Thursday, September 17, 1987 in Room 413 of the Federal Mediation and Conciliation Service Building, 2100 K Street, NW., Washington, DC. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The meeting agenda will include a review of the progress of the Special Commission of experts of The Hague Conference on Private International Law in developing a proposed convention on the law applicable to decedents' estates. Comments will be sought on the appropriateness of a single applicable law for purposes of succession to all assets, the extent to which the decedent can appropriately choose the applicable law and on the identification of the controlling contact, i.e., domicile or nationality, in absence of testamentary direction. A preliminary draft of the proposed convention will be discussed.

Entry to the Federal Mediation and Conciliation Service Building is controlled. As entry will be facilitated by advance arrangements, members of the general public planning to attend should, prior to September 15, notify the Office of the Assistant Legal Adviser for Private International Law, Department of State, Washington, DC, 20520 (telephone: (202) 653–9851) of their

name, affiliation, address and telephone number.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 87-20366 Filed 9-3-87; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 28, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8656
Type of Review: New Collection
Title: Alternative Minimum Tax—Fiduciaries
Description: This form was developed to assist fiduciaries in computing the alternative minimum tax under new Code sections 55 through 59. The minimum tax is determined by recomputing the distributable net income of the fiduciary on a minimum tax basis. The distributable net alternative minimum taxable income is then allocated to the beneficiaries
Respondents: Businesses or other for-profit
Estimated Burden: 161,454 hours
OMB Number: 1545-0915
Form Number: 8332
Type of Review: Extension
Title: Release of claim to Exemption for Child for Divorced or Separated Parents
Description: This form is used by the custodial parent to release claim to the dependency exemption for a child of divorced or separated parents. The data is used to verify that the noncustodial parent is entitled to claim the exemption
Respondents: Individuals or households
Estimated Burden: 20,715

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Department Reports Management Officer.

[FR Doc. 87-20386 Filed 9-3-87; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 2]

Surety Companies Acceptable on Federal Bonds; Southeastern Casualty and Indemnity Insurance Co., Inc., and Southeastern Reinsurance Co., Inc.; Correction of Address

The business address for the above mentioned companies was listed at 52 FR 24625 (July 1, 1987) as: 499 NW. 79th Street, #200, Plantation, FL 33317. The companies' business address is hereby corrected to: 499 NW. 70th Avenue, Suite 200, Plantation, FL 33317.

Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1987 Revision, at the appropriate pages to reflect this correction.

Questions concerning this correction notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, or by calling (202) 634-2295.

Dated: August 27, 1987.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 87-20360 Filed 9-3-87; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 172
Friday, September 4, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME, Wednesday, September 9, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C., 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
International personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, September 10, 1987, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft Advisory Opinion 1987–24—John B. Simon on behalf of Hyatt Corporation.
Draft Advisory Opinion 1987–25—Ricardo A. Otaola.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 87–20537 Filed 9–2–87; 8:45 am]
BILLING CODE 6715–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 27, 1987.

TIME AND DATE: 10:00 a.m., September 2, 1987.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Consideration of the matter below, previously announced in the agenda for September 2, 1987 is canceled. Consideration will be rescheduled at a future date. Consideration of the other matter previously announced in the agenda for September 2, 1987 remains in effect.

2. *Martha Perando v. Mettiki Coal Corporation,* Docket No. YORK 85–12–D.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 87–20496 Filed 9–2–87; 8:45 am]
BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, September 9, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed extension and revision of the Weekly Report of Assets and Liabilities (FR 2416) and the Weekly Report of Selected Assets (FR 2644).
2. Proposed extensions and revision of the Monthly Survey of Eligible Bankers Acceptances (FR 2006).
3. Proposed revision and extension of Senior Loan Officer Opinion Survey on Bank Lending Practices (FR 2018).
4. Proposed revision and extension of the Domestic Finance Company Reports of Consolidated Assets and Liabilities (FR 2248/2248a).

Discussion Agenda

5. Publication for comment of a proposed amendment to Regulation Z (Truth in Lending) to implement provisions of the Competitive Equality Banking Act of 1987 regarding adjustable rate mortgage caps.
6. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 87–20507 Filed 9–2–87; 11:11 am]
BILLING CODE 6219–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, September 9, 1987, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: September 2, 1987.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 87–20508 Filed 9–2–87; 11:11 am]
BILLING CODE 6210–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

STATUS: Open.

TIME AND DATE: September 9–10, 1987, 9:00 p.m.

PLACE: City Council Chambers, the Electric Building, 140 South Capital, Idaho Falls, Idaho.

MATTERS TO BE CONSIDERED:

1. Public Hearing on General Model Conservation Standards.
2. Public Hearing on Umatilla Hatchery Amendment.

3. Public Comment on Yakima/Klickitat Outplanting Facility Master Plan Issue Paper.
4. Staff Presentation, Public Comment and Council Deliberation on Comments regarding the Bonneville Power Administration Partnership Program.
5. Public Comment on Heating Cost Comparison Study.
6. Council Decision on the Analysis of Conservation Measures as required by Section 4(k) of the Northwest Power Act.
7. Bonneville Presentation on the Status of the Residential Weatherization Program.
8. Staff Presentation of an Issue Paper on Current Resources in the West for the Western Electricity Study.
9. Staff Presentation of an Issue Paper on the Status of Commercial Model Conservation Standards.
10. Council Decision on Proposed Guidelines on Notice of Meetings.
11. Council Business.
12. Public Comment.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 87–20524 Filed 9–2–87; 12:17p.m.]

BILLING CODE 0000–00–M

UNITED STATES INSTITUTE OF PEACE

TIMES AND DATES:

9:00 a.m.–5:00 p.m., Thursday, September 10, 1987

9:00 a.m.–5:00 p.m., Friday, September 11, 1987

PLACE: National Trust for Historic Preservation, 1785 Massachusetts Avenue, NW., Washington, DC 20035.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98–525).

AGENDA (TENTATIVE): Meeting of Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of minutes of the fifteenth meeting. Report on National Peace Essay Contest. Discussion of Jennings Randolph Program. Presentation on Chairman's Report to Congress and the President. Reports on Housing, TV Project, and Institute Seal. Consideration of grant applications.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 789–5700.

Dated: September 2, 1987.

Robert F. Turner,

President, United States Institute of Peace.

[FR Doc. 87–20526 Filed 9–2–87; 12:52 PM]

BILLING CODE 3155–01–M

Corrections

Federal Register
Vol. 52, No. 172
Friday, September 4, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Activities of Self-Regulatory Organization Governing Members Who Possess Material, Nonpublic Information

Correction

In proposed rule document 87-19688 beginning on page 32568 in the issue of Friday, August 28, 1987, make the following corrections on page 32572:

1. In the first column, in the paragraph under **Regulatory Flexibility Act**, in the 20th line, "§ 1.59 (a)(8) and (c)" should read "§ 1.59 (a)(9) and (c)".

2. In the second column, in the **Authority**, in the last line, "rated" should read "noted.".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Western Area Power Administration

Salt Lake City Area Integrated Projects; Rate Order; Utah

Correction

In notice document 87-18432 beginning on page 30245 in the issue of Thursday, August 13, 1987, make the following correction on page 30249:

In the second column, in the first complete paragraph, in the next to the last line, "would be expected" should read "would not be expected".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-62053; FRL 3176-1]

Polychlorinated Biphenyls; Exclusions, Exemptions and Use Authorizations

Correction

In proposed rule document 87-15245 beginning on page 25838 in the issue of Wednesday, July 8, 1987, make the following corrections:

1. On page 25838, in the first column, in the **SUMMARY**, in the 23rd line, "elimination" should read "eliminate".

§ 761.20 [Corrected]

2. On page 25860, in the third column, in § 761.20(e)(4)(i), in the sixth line insert "required" after "records".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 203 and 234

[Docket No. R-87-1317; FR-2266]

Termination of Section 245(b) GPM Program

Correction

In rule document 87-19768 beginning on page 32754 in the issue of Friday, August 28, 1987, make the following correction:

On page 32755, in the third column, in the second complete paragraph, in the fourth line, "justify" should read "disqualify".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWP-21]

Amendment to Santa Maria, CA, Control Zone

Correction

In rule document 87-19028 beginning on page 31385 in the issue of Thursday, August 20, 1987, make the following correction:

§ 71.171 [Corrected]

On page 31385, in the third column, in § 71.171, in the description for the Santa Maria, CA control zone, in the third line, insert "during" after "effective".

BILLING CODE 1505-01-D

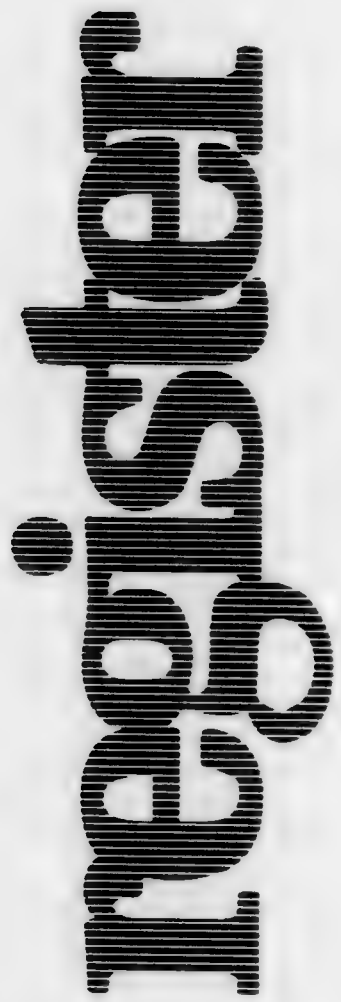

Friday
September 4, 1987

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 888

Orthopedic Devices; General Provisions and Classifications of 77 Devices; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 78N-3028]

Orthopedic Devices; General Provisions and Classifications of 77 Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying 77 orthopedic devices. In the preamble to this rule, FDA is responding to comments received on the proposed regulations classifying these devices. These actions are being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Carl Larson, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7156.

SUPPLEMENTARY INFORMATION:

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A. Background.
B. FDA's Priorities for Establishing Performance Standards.
C. Changes in the Name of the Orthopedic Device Advisory Committee.
D. Devices Not Being Classified at This Time.
E. List of Orthopedic Devices.
F. Changes in Classifications in Final Rule.
G. Summary of Comments on Classification and FDA's Responses.
H. Exemptions for Class I Orthopedic Devices.
I. Classification Regulations Published To Date.
J. Minor Changes or Clarifications.
K. Transitional Devices.
L. Studies Submitted By Comments.
M. Environmental Impact.
N. Economic Impact.

A. Background

In the **Federal Register** of July 2, 1982 (47 FR 29052), FDA published a proposed rule containing general provisions applicable to the classification of orthopedic devices, and individual proposed regulations classifying 77 orthopedic devices into one or more of three regulatory classes: Class I (general controls), class II (performance standards), and class III (premarket approval).

FDA is postponing final classification of 2 of the 77 orthopedic devices subject to the proposed rule in order to review additional data on electrical safety. Thus, in this final rule FDA is classifying 75 orthopedic devices based on the proposed rule. Also, in this final rule FDA is codifying the statutory classification into class III of two transitional devices that were not subjects of the proposed classification rule. Accordingly, in this final rule FDA is classifying 77 generic types of orthopedic devices (77 minus 2 plus 2 equals 77). Of these 77 devices, FDA is classifying 15 devices into class I, 37 devices into class II, 24 devices into class III, and 1 device into class II or class III depending upon its intended use.

To reduce printing costs, FDA is publishing in one final rule, the general provisions and the classifications of 77 orthopedic devices. FDA previously published a separate final rule for each device.

Classification of medical devices in commercial distribution is required by section 513 (21 U.S.C. 360c) of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 through 392). The effect of classifying a device into class I is to require that the device continue to meet only the general controls applicable to all devices. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device. For a class III device not considered a new drug before the amendments that either was in commercial distribution before May 28, 1976, or that is substantially equivalent to a device that was in commercial distribution before that date, each application for premarket approval must be submitted to FDA on or before March 30, 1990, or 90 days after promulgation of a separate regulation requiring premarket approval of the device, whichever occurs later. Devices that FDA previously regarded as new drugs, or newly offered devices that are not substantially equivalent to a device that was in commercial distribution before the amendments, are classified by statute into class III and already are required to have in effect an approved application for premarket approval. See section 520(1) of the act (21 U.S.C. 360j(1)).

The preamble to the proposed regulations described the development of the general provisions and the proposed regulations classifying orthopedic devices and the activities of the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee that makes recommendations to FDA concerning the classification of orthopedic devices. FDA provided a period of 90 days, later extended to 180 days (October 8, 1982; 47 FR 44475), for interested persons to submit written comments on the proposed regulations. The comments received and FDA's responses to the comments are discussed below.

In April 1985, H.R. 2177 (99th Cong. 1st Sess.) was introduced in the U.S. House of Representatives. The bill was a legislative proposal of the Department of Health and Human Services. Among other things, the bill would have (1) amended the act to eliminate the statutory category of class II, (2) made the establishment of a performance standard one of the several general controls that may be made applicable to a device, and (3) streamlined the procedure for establishing standards required by section 514 of the act. If legislation comparable to this bill becomes law, there would be only two categories of devices: Class I (general controls) and class II (premarket approval, currently class III). Class II devices would be redesignated as class I devices. Because the proposed legislation contains transitional provisions that convert classifications under the current law to classifications under the proposed law, FDA is continuing to issue classification rules under the current law.

B. FDA's Priorities for Establishing Performance Standards

In the **Federal Register** of October 23, 1985 (50 FR 43060), FDA published a notice, "Policy Statement; Class II Medical Devices," announcing its policy for setting priorities for initiating proceedings to establish performance standards for medical devices classified into class II. Under the amendments, FDA is required to establish performance standards for class II devices. FDA does not have the resources, however, to establish simultaneously performance standards for all the devices already classified (or being classified) in class II. In the October 23, 1985 notice, FDA announced that it will consider the following factors when setting priorities for establishing performance standards for class II devices:

a. The seriousness of questions concerning the safety or effectiveness of the devices; the risks associated with use of the device; the significance of a device to the public health; and the present and projected use of the device:

b. The recommendations of FDA's advisory committees;

c. The impact of an FDA guideline or recommendation;

d. The effect of a Federal standard or other regulatory controls under an authority other than the act;

e. The impact of voluntary standards;

f. The impact of activities authorized under the general controls provisions of the act;

g. The effect of dissemination of information and educational efforts;

h. The sufficiency of voluntary corrective actions;

i. Valid scientific evidence developed since classification;

j. The existence of a petition for reclassification;

k. The impact of any other factors that affect a devices's safety or effectiveness.

C. Changes in the Name of the Orthopedic Device Advisory Committee

FDA has periodically reorganized its advisory panels for device classification. Most recently, on April 14, 1984, FDA established the Orthopedic and Rehabilitation Devices Panel (see 49 FR 17446; April 24, 1984). The new panel performs the same functions with respect to orthopedic devices as did its predecessors, the Orthopedic Device Classification Panel. (1976–1978) and the Surgical and Rehabilitation Devices Panel (1978–1984).

D. Devices Not Being Classified at This Time

FDA is postponing classification of the following two generic types of orthopedic devices in order to review additional data on electrical safety: AC-powered goniometer and AC-powered cast removal instrument.

E. List of Orthopedic Devices

The list below shows, for each orthopedic device, the section of the Code of Federal Regulations at which classification of that device is being codified (or will be codified), the docket number of the corresponding proposed classification regulation (where applicable), the final classification of the device, and an indication (yes or no) of whether public comments were received on the proposed regulation. The list includes the two AC-powered orthopedic devices for which classification is being postponed. For each of these two devices, the section number of the Code of Federal Regulations is in parentheses, the name of the device is identified with footnote "[1]," and no classification of the device is provided (§§ 888.1500 and 888.5960). The two transitional devices included in this rule are identified with footnote "[2]," (§§ 888.3015 and 888.3027). (See "K. Transitional Devices" near the end of the preamble.)

Section and device	Docket No.	Class	Comments
Subpart B—Diagnostic Devices			
888.1100—Arthroscope	78N-3041	II	Yes.
888.1240—AC-powered dynamometer	78N-3300	II	No.
888.1250—Nonpowered dynamometer	78N-3042	I	No.
(888.1500)—AC-powered goniometer [1]	78N-3043		No.
888.1520—Nonpowered goniometer	78N-3044	I	Yes.
Subpart D—Prosthetic Devices			
888.3000—Bone cap	78N-3046	II	Yes.
888.3010—Bone fixation cerclage	78N-3051	II	Yes.
888.3015—Bone heterograft [2]		III	
888.3020—Intramedullary fixation rod	78N-3056	II	Yes.
888.3025—Passive tendon prosthesis	78N-3098	II	Yes.
888.3027—Polymethylmethacrylate (PMMA) bone cement [2]		III	
888.3030—Single/multiple component metallic bone fixation appliances and accessories	78N-3049	II	Yes.
888.3040—Smooth or threaded metallic bone fixation fastener	78N-3053	II	Yes.
888.3050—Spinal interlaminal fixation orthosis	78N-3047	II	Yes.
888.3060—Spinal intervertebral body fixation orthosis	78N-3048	II	Yes.
888.3100—Ankle joint metal/composite semi-constrained cemented prosthesis	78N-3059	II	Yes.
888.3110—Ankle joint metal/polymer semi-constrained cemented prosthesis	78N-3060	II	Yes.
888.3120—Ankle joint metal/polymer non-constrained cemented prosthesis	78N-3061	III	No.
888.3150—Elbow joint metal/metal or metal/polymer constrained cemented prosthesis	78N-3062	III	Yes.
888.3160—Elbow joint metal/polymer semi-constrained cemented prosthesis	78N-3063	II	Yes.
888.3170—Elbow joint radial (hemi-elbow) polymer prosthesis	78N-3064	II	Yes.
888.3180—Elbow joint humeral (hemi-elbow) metallic uncemented prosthesis	78N-3065	III	No.
888.3200—Finger joint metal/metal constrained uncemented prosthesis	78N-3066	III	No.
888.3210—Finger joint metal/metal constrained cemented prosthesis	78N-3301	III	No.
888.3220—Finger joint metal/polymer constrained cemented prosthesis	78N-3067	III	No.
888.3230—Finger joint polymer constrained prosthesis	78N-3068	II	Yes.
888.3300—Hip joint metal constrained cemented or uncemented prosthesis	78N-3070	III	Yes.
888.3310—Hip joint metal/polymer constrained cemented or uncemented prosthesis	78N-3071	III	Yes.
888.3320—Hip joint metal/metal semi-constrained, with a cemented acetabular component, prosthesis.	78N-3072	III	No.
888.3330—Hip joint metal/metal semi-constrained, with an uncemented acetabular component, prosthesis.	78N-3073	III	No.
888.3340—Hip joint metal/composite semi-constrained cemented prosthesis	78N-3074	II	Yes.
888.3350—Hip joint metal/polymer semi-constrained cemented prosthesis	78N-3075	II	Yes.
888.3360—Hip joint femoral (hemi-hip) metallic cemented or uncemented prosthesis	78N-3077	II	Yes.
888.3370—Hip joint (hemi-hip) acetabular metal cemented prosthesis	78N-3076	III	No.
888.3380—Hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis	78N-3078	III	No.

[1] Classification postponed.

[2] Not proposed; statutory classification.

Section and device	Docket No.	Class	Comments
888.3390—Hip joint femoral (hemi-hip) metal/polymer cemented or uncemented prosthesis	78N-3079	II	No.
888.3400—Hip joint femoral (hemi-hip) metallic resurfacing prosthesis	78N-3080	II	Yes.
888.3410—Hip joint metal/polymer semi-constrained resurfacing cemented prosthesis	78N-3081	III	Yes.
888.3480—Knee joint femorotibial metallic constrained cemented prosthesis	78N-3082	III	Yes.
888.3490—Knee joint femorotibial metal/composite non-constrained cemented prosthesis	78N-3083	II	Yes.
888.3500—Knee joint femorotibial metal/composite semi-constrained cemented prosthesis	78N-3302	II	Yes.
888.3510—Knee joint femorotibial metal/polymer constrained cemented prosthesis	78N-3084	II	Yes.
888.3520—Knee joint femorotibial metal/polymer non-constrained cemented prosthesis	78N-3085	II	No.
888.3530—Knee joint femorotibial metal/polymer semi-constrained cemented prosthesis	78N-3086	II	Yes.
888.3540—Knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis	78N-3087	III	Yes.
888.3550—Knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis	78N-3088	III	Yes.
888.3560—Knee joint patellofemorotibial polymer/metal/polymer semi-constrained cemented prosthesis.	78N-3090	II	Yes.
888.3570—Knee joint femoral (hemi-knee) metallic uncemented prosthesis	78N-3091	III	No.
888.3580—Knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis	78N-3092	II, III	Yes.
888.3590—Knee joint tibial (hemi-knee) metallic resurfacing uncemented prosthesis	78N-3093	II	No.
888.3640—Shoulder joint metal/metal or metal/polymer constrained cemented prosthesis	78N-3094	III	Yes.
888.3650—Shoulder joint metal/polymer non-constrained cemented prosthesis	78N-3095	III	Yes.
888.3660—Shoulder joint metal/polymer semi-constrained cemented prosthesis	78N-3096	III	Yes.
888.3680—Shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis	78N-3058	III	Yes.
888.3690—Shoulder joint humeral (hemi-shoulder) metallic uncemented prosthesis	78N-3097	II	Yes.
888.3720—Toe joint polymer constrained prosthesis	78N-3099	II	Yes.
888.3730—Toe joint phalangeal (hemi-toe) polymer prosthesis	78N-3100	II	Yes.
888.3750—Wrist joint carpal lunate polymer prosthesis	78N-3101	II	Yes.
888.3760—Wrist joint carpal scaphoid polymer prosthesis	78N-3102	II	Yes.
888.3770—Wrist joint carpal trapezium polymer prosthesis	78N-3304	II	Yes.
888.3780—Wrist joint polymer constrained prosthesis	78N-3103	II	Yes.
888.3790—Wrist joint metal constrained cemented prosthesis	78N-3305	III	No.
888.3800—Wrist joint metal/polymer semi-constrained cemented prosthesis	78N-3104	II	No.
888.3810—Wrist joint ulnar (hemi-wrist) polymer prosthesis	78N-3105	II	Yes.
Subpart E—Surgical Devices			
888.4150—Calipers for clinical use	78N-3106	I	Yes.
888.4200—Cement dispenser	78N-3107	I	Yes.
888.4210—Cement mixer for clinical use	78N-3108	I	Yes.
888.4200—Cement monomer vapor evacuator	78N-3109	I	No.
888.4230—Cement ventilation tube	78N-3110	I	Yes.
888.4300—Depth gauge for clinical use	78N-3111	I	Yes.
888.4540—Orthopedic manual surgical instrument	78N-3114	I	Yes.
888.4580—Sonic surgical instrument and accessories/attachments	78N-3116	II	No.
888.4600—Protractor for clinical use	78N-3117	I	Yes.
888.4800—Template for clinical use	78N-3118	I	Yes.
888.5850—Nonpowered orthopedic traction apparatus and accessories	78N-3120	I	No.
888.5890—Noninvasive traction component	78N-3122	I	Yes.
888.5940—Cast component	78N-3123	I	No.
(888.5960)—AC-powered cast removal instrument [1]	78N-3124		Yes.
888.5980—Manual cast application and removal instrument	78N-3125	I	No.

[1] Classification postponed.
[2] Not proposed; statutory classification.

F. Changes in Classifications in Final Rule

Based upon consideration of the comments received and on additional information before the agency, FDA has placed the six devices listed below in different classes from those originally proposed:

Section and Device	Proposed class	Final class
888.3100—Ankle joint metal/composite semi-constrained cemented prosthesis	III	II
888.3340—Hip joint metal/composite semi-constrained prosthesis	III	II
888.3480—Knee joint femorotibial metallic constrained prosthesis	II	III
888.3490—Knee joint femorotibial metal/composite non-constrained cemented prosthesis	III	II
888.3500—Knee joint femorotibial metal/composite semi-constrained cemented prosthesis	III	II
888.3550—Knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis	II	III

FDA's reasons for changing the classifications of these six devices are provided in this preamble under the heading "G. Summary of Comments on Classification and FDA's Responses" in paragraphs 14, 20, 25, 26, 27, and 29.

FDA believes that it is unnecessary to issue a new proposed rule concerning these decisions. The purpose of publishing a proposed regulation and soliciting comments is to enable the agency to determine whether its proposed classification of a device was correct. After reviewing the comments submitted on a proposed regulation or upon reconsideration, the agency may be persuaded that its proposed classification was incorrect. Persons interested in the classification process should therefore anticipate that in a final regulation a device may be placed in a class different from the one originally proposed. This possibility was specifically identified in the proposed regulation on orthopedic devices (see 47 FR 29052). Persons who disagree with the final classification of a device may petition for reclassification of the device under number Subpart C of Part 860 (21 CFR Part 860).

G. Summary of Comments on Classification and FDA's Responses

FDA notes that it is required by section 513(d)(2)(B) of the act (21 U.S.C. 360c(d)(2)(B)) to classify a device intended to be implanted into class III, unless the agency determines that such class is unnecessary. After determining that classification of such a device into class III is unnecessary, in determining whether it should classify a device intended to be implanted into class II or class I, FDA believes that it should classify such a device into class II, unless the agency determines such class is unnecessary. Because of the risks to health presented by devices intended to be implanted, such as loss or reduction of limb function, adverse tissue reaction, immediate risk of infection, and long-term potential for increased risk of infection from the presence of a foreign body discussed in the proposed rule (47 FR 29054 at 29055 (Refs. 4 and 5)); FDA believes that general controls alone are insufficient to provide reasonable assurance of the safety and effectiveness of any device intended to be implanted. Thus, FDA believes that establishment of a performance standard is necessary for any device intended to be implanted that the agency believes need not be in class III.

1. One comment asked that FDA explain its rationale for proposing to classify into class II a number of orthopedic implants with failure rates in excess of 20 percent, while proposing to classify into class III other such devices for which insufficient data are available to estimate their failure rates and, consequently, whose failure rates may be less than 20 percent.

FDA agrees that further explanation is needed. In accordance with section 513 of the act (21 U.S.C. 360c), FDA is classifying into class II orthopedic devices intended to be implanted for which sufficient evidence is available to (a) identify and assess the risks to health presented by the devices, (b) weigh the probable benefits to health from use of the devices against the probable risks from such use, (c) establish performance standards to provide reasonable assurance of the safety and effectiveness of the devices, and (d) determine that the general controls of class I alone are insufficient to provide such assurance. Implants for which such evidence is unavailable are being placed in class III, as required by section 513 of the act. Accordingly, consistent with the statutory standard, FDA proposed to classify into class III many orthopedic devices intended to be implanted because important information concerning their safety and effectiveness is not currently available.

To provide reasonable assurance of the safety and effectiveness of devices intended to be implanted, clinical studies of the devices should include periodic followup examinations of patients over a number of years. These periodic examinations should include taking X-rays of the implant to help determine whether the device is biocompatible. If long-term followup of patients receiving an implant has not been documented in the results of the clinical studies, or if such data are unavailable, FDA believes that the safety and effectiveness of the device have not been established. Thus, when the failure rate of a device intended to be implanted is unknown because of lack of followup data, FDA is classifying the device into class III. When such data become available, and if the data establish that the device has an acceptable failure rate, the device may be reclassified.

2. Comments argued that, for several reasons, FDA should classify into class I many of the devices intended to be implanted that it proposed be in class II or class III. FDA's responses to each of these arguments follow.

2a. Comments recommended that many devices intended to be implanted be classified into class I because, for those devices, the existence of a performance standard or the requirement of premarket approval would not improve the outcome for a patient who develops an infection following implantation of a device.

FDA agrees that the existence of a performance standard or the requirement of premarket approval would not change the result for a patient who develops an infection following implantation of the device, but disagrees that that is a valid reason for classifying the device into class I. Although performance standard requirements and premarket approval requirements will not eliminate all possibility of infection, these requirements will reduce the risk of infection and, therefore, FDA believes that these requirements are necessary to provide reasonable assurance of the safety and effectiveness of these devices.

2b. Comments recommended that FDA classify many devices intended to be implanted into class I in order to ensure their continued commercial availability.

FDA disagrees with the comments. The continued commercial availability of a device is not the major criterion to be considered by FDA when classifying devices. Classification decisions are based on the degree of regulatory control necessary to ensure the safety and effectiveness of the device. In any event, classification of a preamendments device into class II or class III has no immediate impact on the commercial availability of the device. For each device classified into class II or class III, FDA must publish an additional proposed and final regulation allowing further public comment before the agency may establish a performance standard (21 U.S.C. 360d) or require premarket approval (21 U.S.C. 360e) for the device. See the discussion later in this preamble entitled "N. Economic Impact."

2c. Comments requested that many devices intended to be implanted be classified into class I instead of class II as proposed, arguing that the Panel recommended that standards be established, not for the finished devices themselves, but rather for the materials intended for use in such devices.

FDA disagrees with the comments. As stated in the "Summary of the Reasons for Recommendations" for each of the regulations proposing that devices intended to be implanted be classified into class II, the Panel recommended and FDA proposed that performance standards be established that would apply both to the materials intended for use in the devices and to the finished devices themselves.

2d. Comments requested that many orthopedic devices intended to be implanted be classified into class I, arguing that the literature cited in the proposed rule did not support classification of these devices into class II or class III.

FDA disagrees with the comments. FDA based its proposed classification of each device primarily on the Panel's recommendation. Section 513(c)(2)(A) of the act requires that a Panel summarize the data upon which its recommendation is based. The legislative history of the amendments provides that the term "data" as used in that section has a special meaning. As used in section 513(c)(2)(A), "data" refers not only to the results of scientific experiments, but also to less formal evidence, other scientific information, or the judgments of experts (House Committee on Interstate and Foreign Commerce. Medical Device Amendments of 1976, H. Rept. 94–853, 94th Cong., 2d Sess. 40 (1976)). FDA's proposed classifications, therefore, are based as much on the Panel members' personal knowledge of, and clinical experience with, the devices as on the data in the cited medical literature. Furthermore, FDA believes that a lack of data in the literature regarding a device intended to be implanted, or a lack of clinical experience with the device, supports classifying the device into class II or class III, rather than class I. Moreover, the little literature available shows that such devices present risks to health that can be controlled only by requiring performance standards or premarket approval.

2e. Several comments argued that many orthopedic devices intended to be implanted should be classified into class I because no major health problems have been identified in FDA's device experience network or in manufacturers' complaint files for either the devices or the materials used in them.

FDA disagrees with the comments. FDA believes that the data in complaint files of manufacturers or the voluntarily submitted adverse experience reports in FDA's device experience network are not necessarily an accurate reflection of the number of adverse experiences with devices. Although FDA has published in the**Federal Registera** final rule requiring manufacturers and importers to report to FDA adverse experiences with devices (49 FR 36326; September 14, 1984), the rule does not apply to physicians who implant orthopedic devices. Consequently, FDA may not be informed of all adverse experiences with these devices. Further, FDA has identified risks to health presented by orthopedic devices intended to be implanted that support classifying the devices into class II or class III. As stated earlier, a lack of information about, or a lack of clinical experience with, a device intended to be implanted also supports classification of the device into class II or class III.

2f. Comments argued that FDA should classify many joint prostheses intended to be implanted into class I because little data exist showing a correlation between in vitro wear and strength measurements of the devices or the materials intended for use in them, and performance of the devices after they are implanted.

FDA agrees that little data are available showing a correlation between in vitro measurements of wear or strength of devices intended to be implanted, or materials used in them, and in vivo performance of such devices. FDA is not classifying any device intended to be implanted solely on the basis of the amount of in vitro wear and strength data available. However, as shown by the available data summarized in the proposed rule (Ref. 7; 47 FR 29052 at 29055), when wear debris produced by an orthopedic implant was injected into rats, tumorigenesis was observed among a significant proportion of the rats. Further, the fact that little data exists supports the concept that the increased level of control provided by classification into class II or class III is necessary. The fact that little in vitro wear and strength data exists certainly does not support classifying devices intended to be implanted into class I. Thus, FDA believes that it is necessary to classify joint prostheses into class II or class III in order to ensure that the level of wear debris produced by an orthopedic joint prosthesis is kept to a minimum by requiring in vitro wear and strength measurements of the devices before they are implanted. FDA believes that sufficient information exists for manufacturers to develop standard methods for in vitro measurements of wear or strength of joint prostheses and of materials intended for use in these devices. Further, FDA believes that the results of such comparative measurements of wear or measurements of other critical device attributes using standard test methods should be included in the labeling of the devices to assist the physician in selecting an appropriate device for a patient.

2g. Comments noted that FDA did not include in the proposed regulations the acceptance criteria for materials intended for use in components of devices intended to be implanted and did not identify which of the materials used in such devices the agency believed resulted in a lack of biocompatibility. For these reasons, comments suggested that many devices intended to be implanted be classified into class I.

FDA disagrees with the comments. FDA believes that it was unnecessary to include in the proposed classification regulations specific criteria for acceptance of materials intended for use in devices intended to be implanted or to identify specific materials used in such devices thar may not be biocompatible. The appropriate time to identify the materials to be used in these devices and to establish acceptance criteria for these materials is when FDA establishes performance standards for the devices or when manufacturers prepare applications for premarket approval of the devices. Certainly, the absence of this information does not support classifying these devices into class I, as these devices are intended to be implanted to fix living bone or replace a joint, uses which are of substantial importance in preventing impairment of human health. Moreover, section 513(d)(2)(B) of the act (21 U.S.C. 360c(d)(2)(B)) requires that FDA classify all implants into class III unless the agency determines that, for a particular implant, premarket approval is unnecessary to provide reasonable assurance of its safety and effectiveness. FDA believes that orthopedic devices intended to be implanted have not been implanted in a sufficient number of patients by a sufficient number of medical practitioners to provide adequate evidence on the long-term biocompatibility of these devices to permit these devices to be classified into class I. Consequently, FDA believes that insufficient evidence of safety and effectiveness is available at this time to support classifying any orthopedic device intended to be implanted into class I. The considerations discussed in this paragraph are also relevant to the comments described below in paragraphs 10, 14, 16, 17, 20, 22, 23, 26, 27, 29, 32, 35, 36, 37, 38, and 39.

3. One comment complained that public involvement in the classification of orthopedic devices was limited and that, as a result, FDA proposed to classify too many orthopedic devices in class II or class III.

FDA disagrees with the comment. During its classification deliberations, the Panel held public meetings and provided the public numerous opportunities to make presentations and submit data. Additionally, when FDA published its proposed rule classifying orthopedic devices, the agency provided 180 days for interested persons to comment on the proposed rule and included in the proposed rule a list of

500 references supporting its proposed classifications.

4. Comments said that mandatory performance standards are unnecessary for the orthopedic devices that FDA proposed to classify into class II that are subject to voluntary standards, arguing that the voluntary standards are adequate to control the documented risks.

FDA disagrees with the comments. Section 513(a)(1)(B) of the act (21 U.S.C. 360c(a)(1)(B)) requires that performance standards be established under section 514 of the act (21 U.S.C. 360d) for each device classified into class II. In the **Federal Register** of October 23, 1985 (50 FR 43060), FDA published a final policy statement regarding class II devices in which it identified the factors the agency will take into account in setting priorities for initiating proceedings to establish performance standards under section 514 of the act. See "B. FDA's Priorities for Establishing Performance Standards" at the beginning of this preamble. Among the factors FDA will consider is the existence of an adequate, adhered to voluntary standard. In the notice of October 23, 1985 (50 FR 43065) FDA stated "[u]nder the final policy, FDA will not conclude that an adequate, adhered to voluntary standard makes a performance standard under section 514 of the act unnecessary for a class II device. FDA does not believe nor does the legislative history suggest, however, that Congress intended that FDA could not consider the existence of adequate adhered to, voluntary standards in setting priorities for the initiation of proceedings under section 514 of the act."

5. Comments recommended that the labeling for joint prostheses devices intended to be implanted should be improved by including in the package insert the kinematic description of the device. The comments also recommended that a kinematic description of the device be included in the codified identification of the device.

FDA agrees that the labeling of a joint prosthesis device intended to be implanted should contain the kinematic description of the device. FDA also agrees that the classification regulation for each such device should be clarified by including a general kinematic description of the device. In the preamble to the proposed rule, FDA defined several terms used in the proposed names or identifications of joint prostheses devices intended to be implanted. To clarify further the names of such devices and their identifications, FDA is codifying certain definitions, § 888.5 *Resurfacing technique,* and § 888.6 *Degree of constraint.* One of the terms defined, i.e., degree of constraint, is a general kinematic description of the device.

6. Comments noted that the proposed names of many, but not all, prosthetic devices included information regarding: (a) The general kinds of materials used in the construction of the device (e.g., "metallic" or "polymer"), and (b) whether or not bone cement (§ 888.3027) is to be used during implantation of the device (e.g., use in the name and identification of the device of the term "cemented" or "uncemented"). The comments suggested that, for the sake of consistency, the names of all prosthetic devices should include this information.

FDA agrees with the comments that the names of the devices should be clarified. For the sake of consistency, therefore, in the final rule FDA is including in the name of each prosthetic device intended to be implanted information regarding the general kinds of materials used in the construction of the device and, where appropriate, whether or not bone cement (§ 888.3027) is intended to be used to implant the device.

7. One comment said that where the only risk to health cited by the Panel concerning a device was electrical shock or leakage current, FDA should classify the device into class I.

FDA tentatively agrees with the comment. FDA believes that two electrically powered orthopedic devices present only the risk of electrical shock or leakage current: AC-powered goniometer (§ 888.1500) and AC-powered cast removal instrument (§ 888.5960). Accordingly, FDA is postponing classification of these two devices pending review of additional data regarding electrical safety of devices. See the discussion under "D. Devices Not Being Classified at This Time" located earlier in this preamble.

8. Section 888.1100; Arthroscope; proposed class II.

a. Comments on the proposed regulation classifying this device argued that the device should be classified into class I instead of class II as proposed, because performance standards are not necessary to control the risks of electrical shock or leakage current presented by this device.

The agency tentatively agrees that AC-powered devices that present only the risk of electrical shock or leakage current should be considered for classification into class I. However, the arthroscope presents risks to health in addition to the risks of electrical shock and leakage current, i.e., the risks of infection and tissue trauma. The agency believes that establishment of a performance standard for this device is necessary to control these risks.

b. One comment on the proposed regulation classifying the arthroscope argued that the device should be classified into class I because it has a record of safe use. The comment submitted published reports (Studies 1 through 18) showing results of clinical experience with the device.

FDA concludes that the studies provided by the comments contain insufficient data on long-term followup for FDA to evaluate fully the safety and effectiveness of the arthroscope. As noted above, the device presents risks to health of infection and tissue trauma, risks which general controls alone would be insufficient to control. A performance standard would control the design, optical characteristics, size, shape, rigidity/flexibility, surface finish, materials used, and construction of the device to assure that it is capable of being sterilized properly and that it has sufficient strength to prevent tissue trauma from breakage of the device when it is inserted into a patient's joint. Accordingly, the agency believes that establishment of a performance standard for this device is necessary.

c. One comment urging the agency to classify this device into class I said that the labeling requirements of class I are sufficient to ensure proper use of the device by surgeons.

FDA agrees that adequate directions for use in the labeling of the device would generally ensure that the device is used properly by surgeons. However, the device is required to comply with the labeling requirements of class I, whether the device is classified into class I, class II, or class III. (See discussion at "N. Economic Impact.") FDA disagrees that adequate labeling would ensure that the device performs properly. Therefore, for the reasons provided in paragraph 8b above, FDA believes that establishment of a performance standard is necessary to provide reasonable assurance of the safety and effectiveness of the device, and that sufficient information is available to establish such a standard. Accordingly, in this final rule FDA is adopting the proposed regulation classifying the arthroscope into class II with minor clarifying changes.

9. Comments on the proposed regulations classifying the devices listed below argued that these devices should be classified into class I instead of class II or class III as proposed because the risks to health cited in the proposed regulations either were not identified by the Panel or are not supported by the cited literature.

Section and Device

888.1100—Arthroscope
888.3010—Bone fixation cerclage
888.3020—Intramedullary fixation rod
888.3030—Single/multiple component metallic bone fixation appliances and accessories
888.3040—Smooth or threaded metallic bone fixation fastener
888.3050—Spinal interlaminal fixation orthosis
888.3060—Spinal intervertebral body fixation orthosis
888.3530—Knee joint femorotibial metal/polymer semi-constrained prosthesis
888.3540—Knee joint patellofemoral polymer/metal semi-constrained prosthesis
888.3560—Knee joint patellofemorotibial polymer/metal/polymer semi-constrained prosthesis

FDA disagrees with the comments. FDA has re-reviewed the supplemental data sheets on which the Panel recorded information concerning the classification of the devices named above and the transcript of the Panel meeting during which classification of these devices was discussed. The risks to health that were listed in the proposed regulations accurately reflect the risks to health identified by the Panel for these devices. In addition, as stated in the proposed regulations, clinical experience and judgment also qualify as valid scientific evidence to support classification of a device. Thus, while many of the risks to health identified in the proposed regulations are, in fact, supported by the cited literature, it is unnecessary that every risk to health cited by the Panel be supported by the medical literature. Accordingly, FDA is adopting the proposed regulations classifying the devices listed above into class II or class III as proposed because performance standards or requirements of premarket approval are necessary to control the risks to health presented by these devices that were identified in the proposed regulations.

10. Section 888.3000; Bone cap; proposed class II.

Comments requested that this device be classified into class I instead of class II as proposed. The comments cited three published reports of preclinical and clinical experience with the device to support their requests (Studies 19, 20, and 21).

FDA disagrees with the comments. One of the studies (Study 19) reports on the use of the device in surgical procedures involving dogs. The other two studies (Studies 20 and 21) describe experimental use of the device and surgical technique for its implantation at one clinic. FDA believes that the general controls of class I by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the bone cap. FDA still believes that the device should be classified into class II because a performance standard is necessary to control the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish, in order to prevent loss or reduction of limb function, adverse tissue reaction, or infection. FDA believes that a performance standard is necessary to provide reasonable assurance of the safety and effectiveness of the device and that sufficient evidence is available to establish such a standard. Accordingly, FDA is adopting the proposed regulation classifying the bone cap into class II with minor clarifying changes.

11. Section 888.3050; Spinal interlaminal fixation orthosis; proposed class II.

a. Comments requested that this device be classified into class I instead of class II as proposed. In support of the request, the comments cited one published study that they claimed showed a low incidence of infections following implantation of the device (Study 22), and two published studies that they claimed showed a low incidence of adverse tissue reactions or fracture of a component of the device (Studies 23 and 24). The comments argued that all of the complications resulting from use of the device are related to surgical technique, and not to the safety and effectiveness of the device itself.

FDA disagrees with the comments. FDA disagrees that the studies cited by the comments support classifying this device in class I. One of the studies involved implantation of a different type of device in a part of the body other than the spine. In another study, the rate of adverse results could not be determined because the total numbers of patients and implanted devices were unknown. In the remaining study, the authors determined that the device components that fractured showed characteristics of fatigue fracture. FDA believes that performance standards are necessary to control the risks to health listed in the proposed regulation, i.e., adverse tissue reaction, infection, and paralysis. As with all surgically implanted devices, the surgical risks attendant upon implantation of the device must be considered along with the risks presented by the device itself in determining the total risks to health from the intended uses of the device.

b. One comment on the proposed regulation classifying the spinal interlaminal fixation orthosis into class II objected that the proposed regulation did not identify what specific material in the device might cause an adverse tissue reaction or infection, two of the risks to health identified by the Panel.

FDA agrees that it did not identify a specific material used in the device that may cause an adverse tissue reaction or infection. However, the proposed regulations do contain information on the risks of adverse tissue reaction or infection that may be caused by orthopedic implants in general (47 FR 29054).

Therefore, for the reasons stated in the preamble to the proposed rule, FDA believes that the spinal interlaminal fixation orthosis should be classified into class II and that sufficient information exists to establish performance standards for the device, including the telemetered data on stress forces placed on the device (Study 25) and studies concerning stress analysis of the rod component of the device (Study 26). FDA believes that establishing performance standards for the device will provide reasonable assurance of its safety and effectiveness. Accordingly, FDA is adopting the proposed regulation classifying the spinal interlaminal fixation orthosis into class II with minor clarifying changes.

12. Section 888.3060; Spinal intervertebral body fixation orthosis; proposed class II.

a. One comment urged FDA to classify this device into class I instead of class II as proposed, citing a published study that the comment claimed showed a low incidence of infections following implantation of the device (Study 22).

FDA disagrees with the comment. The data in Study 22 cannot be used to evaluate the safety and effectiveness of the spinal intervertebral body fixation orthosis. The spinal intervertebral body fixation orthosis is implanted as treatment for "sway back," scoliosis (lateral curvature of the spine), or other conditions. Study 22 describes clinical treatment of deep wound infections following total hip arthroplasty. Study 22, therefore, involves implantation of a different device in a part of the body other than the spine.

b. One comment indicated that the major risk to health from use of this device is failed fusion of the vertebrae following implantation of the device. The comment argued that, because this problem is caused by improper surgical technique, establishing performance standards for the device would not reduce the incidence of failed fusion and, therefore, that the device should be classified into class I instead of class II as proposed.

FDA disagrees with the comment. Although performance standards may not reduce the risk of failed fusion, they would reduce the risks of adverse tissue reaction, infection, and paralysis by controlling the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish. Accordingly, in the final rule FDA is adopting the proposed regulation classifying the spinal intervertebral body fixation orthosis into class II with minor clarifying changes.

13. FDA received comments suggesting that, to simplify the regulations, the three devices listed below should be combined into one generic type of device, identified as the single/multiple component metallic bone fixation appliances and accessories: Bone fixation cerclage (§ 888.3010), intramedullary fixation rod (§ 888.3020), and smooth or threaded bone fixation fastener (§ 888.3040).

FDA disagrees with the comments. Each of the devices listed above has different indications for use, has different functions, or presents different risks to health. Accordingly, FDA is adopting the proposed regulations on the devices listed above, with minor clarifying changes.

14. Section 888.3100; Ankle joint metal/composite semi-constrained prosthesis; proposed class III.

Comments recommended that this device be classified into class I instead of class III as proposed, and submitted published and unpublished additional data (Studies 27 through 33) to support their recommendations. The polymer component of this device consists of ultra high molecular weight polyethylene (UHMWPE) with carbon fibers composite.

FDA disagrees that the device should be classified into class I. However, FDA no longer believes that premarket approval is necessary to provide reasonable assurance of the safety and effectiveness of the device. Based on the evidence now available, FDA believes that the clinical performance and mechanical properties of the device are comparable to a similar device (§ 888.3110) that FDA proposed to classify into class II in which the polymer component consists of UHMWPE without the carbon fibers composite. Although the ankle joint metal/composite semi-constrained prosthesis is intended to be implanted, FDA has determined that premarket approval is not necessary because sufficient information exists to establish performance standards that will provide reasonable assurance of the safety and effectiveness of the device. Clinical experience with the device has established the persons for whose use the device is intended and the proper conditions of use. FDA has determined that the probable benefit to health from proper use of the device outweighs any likelihood of injury or illness resulting from its use. FDA believes that informative labeling and compliance with general controls will reduce the risks to health presented by the device. However, FDA believes that the general controls of class I by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the ankle joint metal/composite semi-constrained prosthesis. In addition, FDA believes that a performance standard is needed to control the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish. Accordingly, in this final rule FDA is classifying the ankle joint metal/composite semi-constrained prosthesis into class II, with minor clarifying changes.

15. Section 888.3150; Elbow joint constrained prosthesis; proposed class III.

a. A comment agreed that class III is appropriate for the elbow joint constrained prosthesis because the device has an unacceptably high failure rate due to the interaction between the two implanted metallic parts.

FDA agrees with the comment and is classifying the elbow joint constrained prosthesis into class III as proposed.

b. A comment noted that the identification of this device excluded the ultra-high molecular weight polyethylene (UHMWPE) component often used as a bushing or liner between the metallic humeral and ulnar components of the device.

FDA agrees with the comment. FDA's proposed identification of the device inadvertently failed to include the UHMWPE bushing that often is used in the elbow joint constrained prosthesis. FDA is modifying the identification of the device in the final rule to include this component.

c. A comment noted that, while the original versions of the elbow joint constrained metallic rigid hinge device had unacceptably high failure rates, many of the original devices either are no longer marketed or have been modified to provide less rigid restraint, thereby reducing the incidence of device loosening. These later, modified versions of the device consist of constrained, loose hinge, elbow joint prostheses with an UHMWPE bushing. The comment submitted six published studies (Studies 34 through 39) that it claimed show that five more recent, modified versions of the device (Volz, Tri-Axial, Mayo, Pritchard-Walker, and Coonrad) are safe and effective and should be classified into class II instead of class III as proposed.

FDA has reviewed the studies supplied by the comment and has concluded that they do not show that the more recent loose hinge versions of the elbow joint constrained prosthesis with or without a UHMWPE bushing have a significantly reduced overall rate of loosening compared to the earlier rigid hinge versions of this device. Also, as stated in the proposed regulation, the biomechanics of the elbow joint are not well understood (Refs. 144 and 145) and the amount of varus-valgus laxity in elbow joint constrained devices necessary to reduce the rate of loosening is currently unknown. FDA believes that premarket approval is necessary to ensure the safety and effectiveness of the device. Accordingly, FDA is adopting the proposed regulation classifying the elbow joint constrained prosthesis into class III with minor clarifying changes.

16. Section 888.3170; Elbow joint radial (hemi-elbow) prosthesis; proposed class II.

Comments on the elbow joint radial (hemi-elbow) prosthesis requested that the device be in class I rather than class II as proposed. To support the request, the comments submitted three studies (Studies 40, 51, and 52). In these studies, the practitioners implanting the device reported that the results were predictable and satisfactory, that the risks to health identified in the proposed regulation (loss or reduction of joint function, adverse tissue reaction, and infection) were essentially nonexistent, or occurred at low frequency rates, and thus these risks were not unreasonable risks requiring controls of regulatory performance standards.

FDA disagrees with the comments. As discussed earlier in this preamble in paragraphs 1 and 2 and in the preamble to the proposed rule, the risk of infection concerns short-term frequency of occurrences of infection, and also the long-term potential for infection from an implant. FDA believes that the general controls of class I by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the elbow joint radial (hemi-elbow) prosthesis. FDA believes that performance standards are necessary to provide reasonable assurance of the safety and effectiveness of the device and that sufficient evidence is available to establish such standards. FDA believes that a performance standard is needed

to control the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish. Accordingly, FDA is adopting the proposed regulation classifying the elbow joint radial (hemi-elbow) prosthesis into class II with minor clarifying changes.

17. Section 888.3230; Finger joint polymer constrained prosthesis; proposed class II.

a. Comments suggested that this proposed generic type of device be split into three generic types: (1) Finger joint plastic/elastomer constrained uncemented prosthesis, (2) finger joint elastomer/polyester fiber composite constrained porous ingrowth prosthesis, and (3) finger joint elastomer constrained uncemented prosthesis. The comments said that FDA had proposed to group dissimilar devices into one generic type of device.

FDA disagrees with the comments. FDA recognizes that this proposed generic type of device includes devices of various designs, materials, and fixation techniques. Despite these variations, however, the devices encompassed within the proposed generic type of device do not differ significantly in purpose, design, materials, or function, or any other feature relating to safety or effectiveness (see the definition of generic type of device in 21 CFR 860.3(i)). FDA believes that the same regulatory controls are required to provide reasonable assurance of the safety and effectiveness of all the devices encompassed within this proposed generic type of device.

b. Some comments requested that the finger joint polymer constrained prosthesis be classified into class II instead of class II as proposed. These comments submitted eight published studies (Studies 42 through 49) and a letter from a medical practitioner to support their requests.

FDA disagrees with the comments. FDA's review of the additional data submitted by the comments reveals that the device continues to present the risks to health described in the proposed regulation, i.e., loss or reduction of joint function, adverse tissue reaction, and infection. FDA believes that the general controls of class I by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the finger joint polymer constrained prosthesis. FDA believes that performance standards are necessary to provide reasonable assurance of the safety and effectiveness of the device and that sufficient evidence is available to establish such standards. FDA believes that a performance standard is needed to control the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish.

c. One comment suggested that the device be classified in class III instead of class II as proposed, claiming that a high percentage of complications occur from use of the device. No additional data on complication rates were provided by the comment.

FDA disagrees with the comment. FDA has no knowledge of a high complication rate from use of the device. Although the finger joint polymer constrained prosthesis is an implanted device, FDA has determined that premarket approval is not necessary because sufficient information exists to establish a performance standard that will provide reasonable assurance of its safety and effectiveness. In addition, FDA had identified and assessed the major risks to health associated with the use of this device. FDA believes that the major risks, i.e., fracture, loosening, and adverse tissue reaction, are related to biological responses of the human body to the presence of the device, the device design, and the underlying joint pathology. Clinical experience with the device has established the persons for whose use the device is intended and the proper conditions of use. FDA has determined that the probable benefit to health from proper use of the device outweighs any likelihood of injury or illness resulting from its use. FDA further believes that informative labeling and compliance with general controls may greatly reduce the risks to health associated with the use of this device. The agency believes that a performance standard is necessary because general controls alone are insufficient to minimize the risks to health presented by the device. Accordingly, FDA is adopting the proposed regulation classifying the finger joint polymer constrained prosthesis into class II with minor clarifying changes.

18. Section 888.3300; Hip joint metal constrained prosthesis; proposed class III.

A comment stated that the proposed name of this device and its proposed identification are inconsistent with respect to the materials used in the device.

FDA agrees with the comment. Accordingly, in the final rule, FDA has revised the identification of the device to remove reference to a polyethylene component.

19. Section 888.3310; Hip joint metal/polymer constrained prosthesis; proposed class III.

A comment argued that this device should not be classified because it is no longer commercially distributed.

FDA agrees that the device is not currently commercially distributed. This device was commercially distributed before the enactment date of the amendments. Accordingly, in the final rule FDA is adopting the proposed regulation classifying the hip joint metal/polymer constrained prosthesis into class III with minor clarifying changes.

20. Section 888.3340; Hip joint metal/composite semi-constrained prosthesis; proposed class III.

Comments recommended that this device be classified into class I instead of class III as proposed, and submitted published and unpublished additional data (Studies 33 and 53 through 57) to support their recommendations. The polymer component of this device consists of ultra high molecular weight polyethylene (UHMWPE) with carbon fibers composite.

FDA disagrees that the device should be classified into class I. However, FDA no longer believes that premarket approval is necessary to provide reasonable assurance of the safety and effectiveness of the device. Based on the evidence now available, FDA believes that the clinical performance and mechanical properties of the device are comparable to a similar device (§ 888.3350) that FDA proposed to classify in class II in which the polymer component consists of UHMWPE without the carbon fibers composite. Although the hip joint metal/composite semi-constrained prosthesis is intended to be implanted, FDA has determined that premarket approval is not necessary because sufficient information exists to establish performance standards that will provide reasonable assurance of the safety and effectiveness of the device. Clinical experience with the device has established the persons for whose use the device is intended and the proper conditions of use. FDA has determined that the probable benefit to health from proper use of the device outweighs any likelihood of injury or illness resulting from its use. FDA also believes that informative labeling and compliance with general controls will reduce the risks to health presented by the device.

However, FDA believes that the general controls of class I by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the hip joint metal/

composite semi-constrained prosthesis. FDA believes that a performance standard is needed to control the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish. Accordingly, in this final rule FDA is classifying the hip joint metal/composite semi-constrained prosthesis into class II with minor clarifying changes.

21. Section 888.3360; Hip joint femoral (hemi-hip) metallic prosthesis; proposed class II—Section 888.3400; Hip joint femoral (hemi-hip) resurfacing prosthesis; proposed class II.

Comments requested that these devices be classified into class I instead of class II as proposed. The comments argued that the mechanical properties of the devices, such as their strength and the resistance to wear of the materials used in them, should not be used as a basis for classifying the devices into class II.

FDA disagrees with the comments. FDA believes that the mechanical properties of the materials intended for use in implanted joint prostheses are important criteria to be considered in determining whether performance standards are necessary to ensure the safety and effectiveness of the devices. For example, if a material used to construct a joint prosthesis lacked strength or resistance to wear, particles of the material could break or wear off of the contact surfaces of the joint prosthesis within the patient's joint and cause pain and inflammation. Further, as shown by the data summarized in the proposal (Ref. 7; 47 FR 29052 at 29055), when wear debris produced by an orthopedic implant was injected into rats, tumorigenesis was observed among a significant proportion of the rats. FDA believes that sufficient information exists to develop standard methods for measuring strength and resistance to wear of joint prostheses and the materials intended for use in such devices. FDA believes that results of comparative, standardized in vitro measurements of wear or other critical device parameters should be included in the labeling of joint prostheses to assist the user in selecting an appropriate device for a patient. See also paragraphs 2f and 2g earlier in this preamble. FDA believes that the general controls of class I are insufficient to provide reasonable assurance of the safety and effectiveness of the hip joint femoral (hemi-hip) metallic prosthesis and the hip joint femoral (hemi-hip) resurfacing prosthesis. FDA believes that performance standards are necessary to control the risks to health presented by these two devices and that sufficient information is available to develop performance standards that would provide reasonable assurance of their safety and effectiveness. Accordingly, FDA is adopting the proposed regulations classifying the two devices above into class II with minor clarifying changes.

22. Section 888.3360; Hip joint femoral (hemi-hip) metallic prosthesis; proposed class II.

A comment argued that the literature cited in the proposed rule contained no evidence that the design of the device contributed to its failure and, therefore, suggested that the device be in class I.

FDA disagrees with the comment. As discussed in paragraph 2d above, FDA's proposed classifications are based as much on the Panel members' personal knowledge of, and clinical experience with, the devices as on the data in the cited literature. It is unnecessary, therefore, that all risks to health presented by a device be described in the medical literature. Moreover, Ref. 236, cited in the proposed rule, contains data showing that faulty design of the stem of the device did, indeed, contribute to its failure. Also, a comparative study of various designs of the device showed that different stem designs resulted in variations in yield strength (Study 58). FDA believes that the general controls of class I by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the hip joint femoral (hemi-hip) metallic prosthesis.

FDA believes that performance standards are necessary to provide reasonable assurance of the safety and effectiveness of the device and that sufficient evidence is available to establish such standards. FDA believes that a performance standard is needed to control the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish. Accordingly, FDA is adopting the proposed regulation classifying the hip joint femoral (hemi-hip) metallic prosthesis into class II with minor clarifying changes.

23. Section 888.3400; Hip joint femoral (hemi-hip) resurfacing prosthesis; proposed class II.

A comment argued that this device should be classified into class I because there is no evidence showing that failure of the device due to lack of strength is related to improper design of the device.

FDA disagrees with the comment. As discussed in paragraph 2d above, FDA's proposed classifications are based as much on the Panel members' personal knowledge of, and clinical experience with, the devices as on the data in the cited literature. It is unnecessary, therefore, that every reason why a device may fail be documented in the medical literature. FDA believes that the device presents the risks to health described in the proposed regulation, i.e., loss or reduction of joint function, adverse tissue reaction, and infection. FDA believes that the general controls of class I by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the hip joint femoral (hemi-hip) resurfacing prosthesis. FDA believes that performance standards are necessary to provide reasonable assurance of the safety and effectiveness of the device and that sufficient evidence is available to establish such standards. FDA believes that a performance standard is needed to control the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish. Accordingly, FDA is adopting the proposed regulation classifying the hip joint femoral (hemi-hip) resurfacing prosthesis into class II with minor clarifying changes.

24. Section 888.3410; Hip joint metal/polymer semi-constrained resurfacing prosthesis; proposed class III.

Comments recommended that FDA classify this device into class II instead of class III as proposed, arguing that one of the risks to health identified in the proposed regulation, adverse tissue reaction, is only a hypothetical risk that has not been documented. The comments submitted additional data to support the request (Studies 59 through 61).

FDA disagrees with the comments. The references cited in the proposed rule (Refs. 9, 89, 241, 242, 243, 299, 341, 342, and 345 through 359) do, in fact, discuss adverse tissue reactions resulting from implantation of this device. In addition, the data supplied in the comments, show that the device continues to present the other risks to health described in the proposed regulation, i.e., loss or reduction of joint function and infection. FDA believes that there is insufficient information from which to conclude that general controls or performance standards would provide reasonable assurance of the safety and effectiveness of this device. FDA believes that premarket approval is necessary to provide such assurance. Accordingly, FDA is adopting the proposed regulation classifying the hip joint metal/polymer semi-constrained resurfacing prosthesis

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into class III with minor clarifying changes.

25. Section 888.3480; Knee joint femorotibial metallic constrained prosthesis; proposed class II—Section 888.3550; Knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis; proposed class II.

Comments suggested that these devices be classified into class III instead of class II as proposed, because the literature FDA cited in the proposed regulation shows that a large volume of metallic particles are generated within the joint after implantation due to metal-to-metal contact between articulating components of the devices. The comments said that these metallic particles cause adverse effects in patients. Some of the comments noted that FDA proposed to classify into class III several other prostheses that had similar metal-to-metal articulation.

FDA agrees with the comments. Because of their design, these devices present a potential unreasonable risk of illness or injury. In addition, the devices are purported or represented to be for a use (implantation to replace a major joint) that is of substantial importance in preventing impairment of human health. Furthermore, the agency has determined that premarket approval is necessary for the devices because general controls and performance standards are insufficient to provide reasonable assurance of their safety and effectiveness. FDA also believes that there is insufficient information to establish a standard to provide such assurance. Accordingly, in this final rule, FDA is classifying both the knee joint femorotibial metallic constrained prosthesis and the knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis into class III with minor clarifying changes.

26. Section 888.3490; Knee joint femorotibial metal/composite non-constrained prosthesis; proposed class III.

Comments recommended that this device be classified into class I instead of class III as proposed, and submitted published and unpublished additional data (Studies 33, 53, and 62 through 65) to support their recommendations. The polymer component of this device consists of ultra high molecular weight polyethylene (UHMWPE) with carbon fibers composite.

FDA disagrees that the device should be classified into class I. However, FDA no longer believes that premarket approval is necessary to provide reasonable assurance of the safety and effectiveness of the device. Based on the evidence now available, FDA believes that the clinical performance and mechanical properties of the device are comparable to a similar device (§ 888.3520) that FDA proposed to classify into class II in which the polymer component consists of UHMWPE without the carbon fibers composite. Although the knee joint metal/composite non-constrained prosthesis is intended to be implanted, FDA has determined that premarket approval is not necessary because sufficient information exists to establish performance standards that will provide reasonable assurance of its safety and effectiveness. Clinical experience with the device has established the persons for whose use the device is intended and the proper conditions of use. FDA has determined that the probable benefit to health from proper use of the device outweighs any likelihood of injury or illness resulting from its use. FDA believes that informative labeling and compliance with general controls will reduce the risks to health presented by the device.

However, FDA believes that the general controls of class I by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the knee joint femorotibial metal/composite nonconstrained prosthesis. FDA believes that a performance standard is needed to control the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish. Accordingly, in this final rule FDA is classifying the knee joint femorotibial metal/composite nonconstrained prosthesis into class II, with minor clarifying changes in the regulation.

27. Section 888.3500; Knee joint femorotibial metal/composite semi-constrained prosthesis; proposed class III.

Comments recommended that this device be classified into class I instead of class III as proposed and submitted published and unpublished additional data (Studies 53, 62, 63, 66, and 67) to support their recommendations. The polymer component of this device consists of ultra high molecular weight polyethylene (UHMWPE) with carbon fibers composite.

FDA disagrees with the recommendations of the comments that the device be classified in class I. However, FDA no longer believes that premarket approval is necessary to provide reasonable assurance of the safety and effectiveness of the device. Based on the evidence now available, FDA believes that the clinical performance and mechanical properties of the device are comparable to a similar device (§ 888.3530) that FDA proposed to classify into class II in which the polymer component consists of UHMWPE without the carbon fibers composite. Although the knee joint metal/composite semi-constrained prosthesis is intended to be implanted, FDA has determined that premarket approval is not necessary because sufficient information exists to establish performance standards that will provide reasonable assurance of its safety and effectiveness. Clinical experience with the device has established the persons for whose use the device is intended and the proper conditions of use. FDA has determined that the probable benefit to health from proper use of the device outweighs any likelihood of injury or illness resulting from its use. FDA believes that informative labeling and compliance with general controls will reduce the risks to health presented by the device.

However, FDA believes that the general controls of class I by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the knee joint femorotibial metal/composite semi-constrained prosthesis. FDA believes that a performance standard is needed to control the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish. Accordingly, FDA is classifying the knee joint femorotibial metal/composite semi-constrained prosthesis into class II, with minor clarifying changes in the regulation.

28. Section 888.3540; Knee joint patellofemoral polymer/metal semi-constrained prosthesis; proposed class III.

Comments requested that this device be classified into class I instead of class III as proposed, arguing that the risks to health identified in the proposed rule classifying this device, i.e., loss or reduction of joint function, adverse tissue reaction, and infection, occur very infrequently. The comments submitted a published study supporting their request (Study 68).

FDA disagrees with the comments. FDA believes that the data provided by the comments (Study 68), particularly the failure rate of the device as reflected by the number of revisions performed, show that insufficient information exists to determine that the general controls of class I or the establishment of performance standards would provide reasonable assurance of the safety and effectiveness of the device. Accordingly, FDA is adopting the proposed regulation classifying the knee joint patellofemoral

polymer/metal semi-constrained prosthesis into class III with minor clarifying changes.

29. Section 888.3560; Knee joint patellofemorotibial polymer/metal/polymer semi-constrained prosthesis; proposed class II.

Comments requested that this device be classified into class I instead of class II as proposed, arguing that the risks to health identified in the proposed regulation classifying this device, i.e., loss or reduction of joint or limb function, adverse tissue reaction, and infection, occur very infrequently. The comments submitted six studies in support of their requests (Studies 63 and 69 through 73).

FDA disagrees with the comments. FDA's review of the additional data submitted in the comments reveals that the device continues to present the risks to health described in the proposed regulation. FDA believes that the general controls of class I by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the knee joint patellofemorotibial polymer/metal/polymer semi-constrained prosthesis. FDA believes that performance standards are necessary to provide reasonable assurance of the safety and effectiveness of the device and that sufficient evidence is available to establish such standards. FDA believes that a performance standard is needed to control the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish. Accordingly, FDA is adopting the proposed regulation classifying the knee joint patellofemorotibial polymer/metal/polymer semi-constrained prosthesis into class II with minor clarifying changes.

30. Section 888.3580; Knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis; proposed class II.

a. One comment recommended that this device be classified into class III instead of class II as proposed, arguing that the device has metal to metal articulation which generates harmful metallic particles within the joint after implantation.

FDA disagrees with the comment. The device does not have metal to metal articulation, but rather is intended to articulate with intact hyaline cartilage within the femoral sulcus (groove). It is unlikely, therefore, that metallic wear debris would be generated and increase the failure rate of the device.

b. A comment recommended that the identification of this device not limit its use to treatment of degenerative and posttraumatic patellar (osteo) arthritis. The comment also suggested that FDA classify the device into class II for all intended uses, but did not furnish any additional data.

FDA disagrees with the comment. FDA proposed to classify the device into class II, when intended for treatment of degenerative and posttraumatic patellar arthritis, based on the recommendation of the Panel and FDA's review of the literature cited and summarized in the proposed rule. By limiting the proposed class II intended uses of the device to treatment of degenerative and posttraumatic patellar arthritis, FDA effectively proposed to classify the device into class III, when intended for other uses. FDA still believes that when intended for uses other than the treatment of degenerative and posttraumatic patellar arthritis, the device should be classified into class III, because there is no valid scientific evidence supporting its safety and effectiveness for such uses and section 513 of the act requires that FDA classify the device into class III when no data exists for the intended uses of the device.

Accordingly, for the reasons provided in the proposed rule, FDA is classifying the knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis into class II when intended for treatment of degenerative and posttraumatic patellar arthritis, and into class III when intended for other uses. FDA also is making clarifying changes in the codified language for the device.

31. Section 888.3640; Shoulder joint constrained prosthesis; proposed class III.

a. Comments recommended that this device be classified into class I instead of class III as proposed, arguing that the device has a high level of success and that the references FDA cited in the proposed regulation show that the device is safe and effective with only minimal complications.

FDA disagrees with the comments. The information reviewed by the Panel and summarized by FDA in the proposed regulation consisted of published data concerning implantation of the device in about 35 patients. The data reviewed by the Panel and FDA showed that 8 of the 35 patients (about 23 percent) did not achieve successful results. FDA also summarized in the proposed regulation 4 additional published studies (Refs. 447 through 450; 47 FR 29106) concerning this device in which a significant percentage of patients had adverse experiences following implantation of the device. FDA disagrees, therefore, that the references FDA cited in the proposed regulation for the shoulder joint constrained prosthesis show that the device is safe and effective with only minimal complications.

b. Comments requesting that the device be classified into class I instead of class III as proposed also argued that the device loosenings and fractures that were reported in oral presentations at the Panel meetings held in March and October of 1981 were not device-related, but rather were due to unusual stress placed on the device by the patient, such as that occurring as a result of falls, accidents, or fights.

FDA disagrees with the comments. Although one investigator at the Panel meeting did report that device loosening and fractures were associated with unusual stress, other investigators at that meeting reported loosening of the device in cases where unusual stress had not occurred. The evidence consisted of "loosening lines" at the juncture of the device and bone, shown by radiographic examination of the implanted device. Because of limited data available on both use of the device and followup of patients following its implantation, the Panel recommended that the device be classified into class III.

For the reasons provided in the proposed rule, FDA believes that the shoulder joint contrained prosthesis presents an unreasonable risk of illness or injury. FDA believes that insufficient information exists to support the conclusion that general controls or performance standards would provide reasonable assurance of the safety and effectiveness of the device. Accordingly, FDA is adopting the proposed regulation classifying the shoulder joint constrained prosthesis into class III with minor clarifying changes.

32. Section 888.3650; Shoulder joint metal/polymer non-constrained prosthesis; proposed class III.

Comments requested that FDA classify this device into class I or class II instead of class III as proposed, arguing that no adverse effects from implanting the device were described in the proposed regulation. The comments submitted additional data to support their requests (Studies 74 and 75).

FDA disagrees with the comments. In the proposed regulation, FDA cited available literature on the device (47 FR 29106; Refs. 451 and 452) and identified several adverse effects following implantation of the device in a small number of patients, such as infection and dislocation requiring reoperation. Moreover, as the author of Study 74 concluded, the 3-year followup period of patients involved in that study was

insufficient to assess either wear or loosening of the components of the device. Study 75 does not distinguish the results obtained from implanting the shoulder joint metal/polymer non-constrained prosthesis from those obtained from implanting other generic types of shoulder joint prostheses. As a result, the data in Study 75 cannot be used to assess the safety and effectiveness of the shoulder joint metal/polymer non-constrained prosthesis. Accordingly, FDA believes that the data submitted by the comments and other data considered by FDA are insufficient to support classification of the shoulder joint metal/polymer non-constrained prosthesis into class I or class II. FDA believes that premarket approval is necessary to provide reasonable assurance of the safety and effectiveness of the device. Accordingly, FDA is adopting the proposed regulation classifying the shoulder joint metal/polymer non-constrained prosthesis into class III with minor clarifying changes.

33. Section 888.3660; Shoulder joint semi-constrained prosthesis; proposed class III.

a. Comments requested that FDA classify this device into class I or class II instead of class III as proposed, arguing that the reference that FDA cited in the proposed regulation (Ref. 453) did not identify infection and lack of biocompatibility as risks to health presented by the device.

FDA disagrees with the comments. Ref. 453, which contains the results of the only study available on this device, shows that, of the 28 patients in whom the device was implanted, one patient developed an infection and the device dislocated in two patients. FDA believes that the data from this one study is insufficient evidence upon which to conclude that general controls or performance standards would provide reasonable assurance of the safety and effectiveness of the device. FDA believes that premarket approval is necessary to provide such assurance. Further, as stated earlier in this preamble, FDA bases its classification decisions as much on the Panel members' experience and expert judgments as on the information in the medical literature. It is not necessary, therefore, that all risks to health presented by a device be described in the literature in order for FDA to classify the device into class III.

b. A comment noted that FDA incorrectly stated in the proposed rule that the Panel recommended that the labeling of the device include information on the dimensions, kinematics, and the strength and wear characteristics of the device.

FDA agrees that the Panel did not make the recommendation described above for this device, although FDA inadvertently stated that it did. This error, however, had no effect on the agency's decision to propose that the device be classified into class III or to recommend that the labeling of the device include information on the dimensions, kinematics, and strength and wear characteristics of the device. Accordingly, FDA is adopting the proposed regulation classifying the shoulder joint semi-constrained prosthesis into class III with minor clarifying changes.

34. Section 888.3680; Shoulder joint glenoid (hemi-shoulder) prosthesis; proposed class III.

a. Comments said that FDA's proposed identification of this device was incorrect in limiting the device to components made only of alloys. The comments suggested that the identification be changed to include ultra-high molecular weight polyethylene (UHMWPE) in addition to alloys, arguing that the device made of alloys with UHMWPE is as safe and effective as the device made only with alloys.

FDA agrees with the comments. FDA agrees that, when made of alloys with UHMWPE, the device is as safe and effective as it is when made of alloys alone. In the final rule, therefore, FDA is changing the identification of the device to state that the device may be composed of UHMWPE with alloys.

b. Comments recommended that FDA classify this device into class I instead of class III as proposed, arguing that general controls alone are sufficient to provide reasonable assurance of the safety and effectiveness of the device.

FDA disagrees with the comments. Because the device is intended to be implanted in the human body, the act requires that it be classified into class III unless FDA determines that premarket approval is not necessary to provide reasonable assurance of its safety and effectiveness. On the basis of the information currently available, FDA cannot make this determination for this device. Insufficient information exists to support the conclusion that general controls or performance standards would provide reasonable assurance of the safety and effectiveness of this device. FDA believes that premarket approval is necessary to provide such assurance. Accordingly, FDA is adopting the proposed regulation classifying the shoulder joint glenoid (hemi-shoulder) prosthesis into class III with clarifying changes in the identification of the device.

35. Section 888.3720; Toe joint constrained uncemented prosthesis; proposed class II.

a. Comments suggested that this proposed generic type of device be split into the following three generic types of devices: toe joint elastomer unconstrained uncemented prosthesis, toe joint elastomer/polyester fiber composite constrained porous ingrowth prosthesis, and toe joint polymer/elastomer constrained uncemented prosthesis.

FDA disagrees with the comments. FDA recognizes that the proposed generic type of device encompasses devices of various designs, materials, and fixation techniques. However, despite these variations, devices subject to the regulation do not differ significantly in purpose, design, materials, function, or any other feature relating to safety or effectiveness (see the definition of generic type of device in 21 CFR 860.3(i)). In addition, FDA believes that the same regulatory controls are required to provide reasonable assurance of the safety and effectiveness of all the devices encompassed within the proposed generic type of device.

b. Comments requested that FDA classify this device into class I instead of class II as proposed, arguing that the risks to health of adverse tissue reaction and infection occur very infrequently. These comments provided additional data to support their requests (Studies 76 through 79).

FDA disagrees with the comments. FDA's review of the additional data submitted in the comments reveals that the device continues to present the risks to health described in the proposed regulation, i.e., loss or reduction of joint function, adverse tissue reaction, and infection. As discussed earlier in this preamble in paragraphs 1 and 2 and in the preamble to the proposed rule, the risk of infection concerns short-term frequency of occurrences of intection, and also the long-term potential for infection from an implant. FDA believes that the general controls of Class I by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the toe joint constrained uncemented prosthesis. FDA believes that performance standards are necessary to provide reasonable assurance of the safety and effectiveness of the device and that sufficient evidence is available to establish such standards. FDA believes that a performance standard is needed to control the design, material

composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish. Accordingly, FDA is adopting the proposed regulation classifying the toe joint constrained uncemented prosthesis into class II with minor clarifying changes.

36. Section 888.3730; Toe joint phalangeal (hemi-toe) prosthesis; proposed class II.

Comments requested that FDA classify this device into class I instead of class II as proposed, arguing that the risks to health of adverse tissue reaction and infection occur very infrequently. These comments submitted additional data to support their requests (Studies 77 and 80).

FDA disagrees with the comments. FDA's review of the additional data submitted in the comments reveals that the device continues to present the risks to health described in the proposed regulation, i.e., loss or reduction of joint function, adverse tissue reaction, and infection. As discussed earlier in this preamble in paragraphs 1 and 2 and in the preamble to the proposed rule, the risk of infection concerns short-term frequency of occurrences of infection, and also the long-term potential for infection from an implant. FDA believes that the general controls of class I by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the toe joint phalangeal (hemi-toe) prosthesis. FDA believes that performance standards are necessary to provide reasonable assurance of the safety and effectiveness of the device and that sufficient evidence is available to establish such standards. FDA believes that a performance standard is needed to control the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish. Accordingly, FDA is adopting the proposed regulation classifying the toe joint phalangeal prosthesis into class II with minor clarifying changes.

37. Section 888.3770; Wrist joint carpal trapezium prosthesis; proposed class II.

Comments requested that FDA classify this device into class I instead of class II as proposed, arguing that the risks to health cited in the proposed rule occur very infrequently. These comments provided additional data to support their requests (Study 81). One of the studies submitted by the comments (Study 82), was summarized by FDA in the proposal and identified as Ref. 486 (47 FR 29052 at 29113).

FDA disagrees with the comments. FDA's review of the additional data submitted in the comments reveals that the device continues to present the risks to health described in the proposed regulation, i.e., loss or reduction of joint function, adverse tissue reaction, and infection. As discussed earlier in this preamble in paragraphs 1 and 2 and in the preamble to the proposed rule, the risk of infection concerns short-term frequency of occurrences of infection, and also the long-term potential for infection from an implant. FDA believes that the general controls of class I by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the wrist joint carpal trapezium prosthesis. FDA believes that performance standards are necessary to provide reasonable assurance of the safety and effectiveness of the device and that sufficient evidence is available to establish such standards. FDA believes that a performance standard is needed to control the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish. Accordingly, FDA is adopting the proposed regulation classifying the wrist joint carpal trapezium prosthesis into class II with minor clarifying changes.

38. Section 888.3780; Wrist joint polymer constrained uncemented prosthesis; proposed class II.

Comments requested that FDA classify this device into class I instead of class II as proposed, arguing that the risks to health identified in the proposed regulation occur very infrequently. The comments provided additional data to support their requests (Studies 83 through 85).

FDA disagrees with the comments. FDA's review of the additional data submitted in the comments reveals that the device continues to present the risks to health described in the proposed regulation, i.e., loss or reduction of joint function, adverse tissue reaction, and infection. As discussed earlier in this preamble in paragraphs 1 and 2 and in the preamble to the proposed rule, the risk of infection concerns short-term frequency of occurrences of infection, and also the long-term potential for infection from an implant. FDA believes that the general controls of class I by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the wrist joint polymer constrained uncemented prosthesis. FDA believes that performance standards are necessary to provide reasonable assurance of the safety and effectiveness of the device and that sufficient evidence is available to establish such standards. FDA believes that a performance standard is needed to control the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish. Accordingly, FDA is adopting the proposed regulation classifying the wrist joint polymer constrained uncemented prosthesis into class II with minor clarifying changes.

39. Section 888.3810; Wrist joint ulnar (hemi-wrist) prosthesis; proposed class II.

Comments requested that FDA classify this device in class I instead of class II as proposed, arguing that the risks to health identified in the proposed regulation occur very infrequently. The comments provided additional data to support their requests (Studies 87 and 88). One of the studies submitted by the comments (Study 86), was summarized by FDA in the proposal and identified as Ref. 500 (47 FR 29052 at 29117).

FDA disagrees with the comments. FDA's review of the additional data submitted in the comments reveals that the device continues to present the risks to health described in the proposed regulation, i.e., loss or reduction of joint function, adverse tissue reaction, and infection. As discussed earlier in this preamble in paragraphs 1 and 2 and in the preamble to the proposed rule, the risk of infection concerns short-term frequency of occurrences of infection, and also the long-term potential for infection from an implant. FDA believes that the general controls of class I by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the wrist joint ulnar (hemi-wrist) prosthesis. FDA believes that performance standards are necessary to provide reasonable assurance of the safety and effectiveness of the device, and that sufficient evidence is available to establish such standards. FDA believes that a performance standard is needed to control the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish. Accordingly, FDA is adopting the proposed regulation classifying the wrist joint ulnar (hemi-wrist) prosthesis into class II with minor clarifying changes.

H. Exemptions for Class I Orthopedic Devices

Exemptions From Current Good Manufacturing Practices (CGMP) Requirements

Although FDA proposed to grant exemptions from most CGMP requirements for the nonpowered dynamometer (§ 888.1250) and the nonpowered goniometer (§ 888.1520), in this final rule FDA is classifying each of the two devices into class I without such

an exemption. FDA now believes that in order to control the risks to health that may result from incorrect measurement of a patient's muscle strength (§ 888.1250) or incorrect measurement of the range of motion of a patient's joints (§ 888.1520) due to device defects caused by inadequate manufacturing practices, each of the devices should be subject to all of the requirements of the CGMP regulations for noncritical devices.

Exemptions From Requirement of Premarket Notification

FDA proposed to exempt eight class I orthopedic devices from the requirement of premarket notification. In this final rule, FDA is exempting the eight devices from the premarket notification procedures; however, the exemption for the orthopedic manual surgical instrument (§ 888.4540) is limited and will apply only to those devices made of the same materials that were used in the device before May 28, 1976.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule proposing to exempt from the requirement of premarket notification, or exempt with limitations, seven orthopedic devices being classified into class I in this final rule.

I. Classification Regulations Published to Date

The following table shows the current structure of the advisory committees involved with the classification of medical devices and a list of all proposed and final classification regulations published to date:

Panel name and Publication Date in "Federal Register"

Circulatory System Devices Panel—March 9, 1979, 44 FR 13284–13434 (proposals); February 5, 1980, 45 FR 7904–7971 (final regulations)
Clinical Chemistry and Clinical Toxicology Devices Panel—February 2, 1982, 47 FR 4802–4929 (proposals)
Hematology and Pathology Devices Panel—September 11, 1979, 44 FR 53063 (proposals); September 12, 1980, 45 FR 60576–60651 (final regulations)
General Hospital and Personal Use Devices Panel—August 24, 1979, 44 FR 49844–49954 (proposals); October 21, 1980, 45 FR 69678–69737 (final regulations)
Gastroenterology-Urology Devices Panel—January 23, 1981, 46 FR 7562–7641 (proposals); November 23, 1983, 48 FR 53012–53029 (final regulations)
Immunology Devices Panel—April 22, 1980, 45 FR 27204–27359 (proposals); November 9, 1982, 47 FR 50814–50840 (final regulations)
Microbiology Devices Panel—April 22, 1980, 45 FR 27204–27359 (proposals); November 9, 1982, 47 FR 50814–50840 (final regulations)
Obstetrics-Gynecology Devices Panel—April 3, 1979, 44 FR 19894–19971 (proposals); February 26, 1980, 45 FR 12682–12720 (final regulations)
Radiologic Devices Panel—January 29, 1982, 47 FR 4406–4451 (proposals)
Ophthalmic Devices Panel—January 26, 1982, 47 FR 3694–3749 (proposals)
Ear, Nose, and Throat Devices Panel—January 22, 1982, 47 FR 3280–3325 (proposals); November 6, 1986, 51 FR 40378–40393 (final regulations)
Dental Devices Panel—December 30, 1980, 45 FR 85962–86168 (proposals)
Anesthesiology and Respiratory Therapy Devices Panel—November 2, 1979, 44 FR 63292–63426 (proposals); July 16, 1982, 47 FR 31130–31150 (final regulations)
Neurological Devices Panel—November 23, 1978, 43 FR 54640–55732 (proposals); September 4, 1979, 44 FR 51726–51778 (final regulations)
Orthopedic and Rehabilitation Devices Panel (Physical Medicine Devices)—August 28, 1979, 44 FR 50458–50537 (proposals); November 23, 1983, 48 FR 53032–53054 (final regulations)
Orthopedic and Rehabilitation Devices Panel (Orthopedic Devices)—July 2, 1982, 47 FR 29052–29140 (proposals); September 4, 1987 (final regulations)
General and Plastic Surgery Devices Panel—January 19, 1982, 47 FR 2810–2853 (proposals)

J. Minor Changes or Clarifications

Occasionally the agency has made minor changes in the name of a generic type of device or its identification to clarify the final regulation. Additionally, the agency is adding new sections in Subpart A to explain the various effective dates for premarket approval requirements for devices classified into class III and to define various terms used in the names and identifications of orthopedic devices. FDA also is adding new paragraph (c) in the classification regulation for devices classified into class III to declare, where applicable, the effective date of premarket approval requirements for the device.

K. Transitional Devices

The amendments include transitional provisions applicable to devices intended for human use that were declared to be drugs before enactment of the amendments. (See section 520(l)(1) of the act (21 U.S.C. 360j(l)(1).) The transitional provisions assure that devices formerly regarded as drugs continue to be subject to appropriate regulatory controls as the amendments are being implemented. Thus, a device previously considered a drug is classified into class III unless the agency in response to a petition has reclassified it into class I or class II.

FDA is including in this final rule sections codifying the statutory classification into class III of the following two commercially distributed, transitional orthopedic devices: bone heterograft (§ 888.3015) and polymethylmethacrylate (PMMA) bone cement (§ 888.3027).

L. Studies Submitted by Comments

Some comments submitted copies of clinical studies to support their requests for changes in the classification of certain devices. These studies are available in the Dockets Management Branch and may be seen by interested persons between 9:00 a.m. and 4:00 p.m., Monday through Friday.

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M. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

N. Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has determined that the rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed, and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order. Rules classifying devices into Class I generally maintain the status quo: These devices are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j) and under the final rule remain subject only to such controls either in their entirety or with certain exemptions. Devices classified into class II also remain subject only to the general controls provisions of the act unless and until an applicable performance standard is established. Similarly, devices classified into Class III remain subject only to the general controls provisions of the act until an additional regulation is promulgated pursuant to section 515(b) of the act (21 U.S.C. 360e(b)) requiring that such devices have in effect approved applications for premarket approval. In accordance with section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)), devices classified by regulation into Class III may remain in commercial distribution without an approved premarket approval application for 30 months following the effective date of classification of the device into Class III, or for 90 days following the promulgation of a regulation under section 515(b) of the act (21 U.S.C. 360e(b)), whichever occurs later. In sum, device classification rules do not have a significant impact on a substantial number of small entities and are not major rules.

List of Subjects in 21 CFR Part 888

Orthopedic devices, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Chapter I of Title 21 of the Code of Federal Regulations is amended by adding new Part 888, to read as follows:

PART 888—ORTHOPEDIC DEVICES

Subpart A—General Provisions

Sec.
888.1 Scope.
888.3 Effective dates of requirement for premarket approval.
888.5 Resurfacing technique.
888.6 Degree of constraint.

Subpart B—Diagnostic Devices

888.1100 Arthroscope.
888.1240 AC-powered dynamometer.
888.1250 Nonpowered dynamometer.
888.1520 Nonpowered goniometer.

Subpart C—[Reserved]

Subpart D—Prosthetic Devices

888.3000 Bone cap.
888.3010 Bone fixation cerclage.
888.3015 Bone heterograft.
888.3020 Intramedullary fixation rod.
888.3025 Passive tendon prosthesis.
888.3027 Polymethylmethacrylate (PMMA) bone cement.
888.3030 Single/multiple component metallic bone fixation appliances and accessories.
888.3040 Smooth or threaded metallic bone fixation fastener.
888.3050 Spinal interlaminal fixation orthosis.
888.3060 Spinal intervertebral body fixation orthosis.
888.3100 Ankle joint metal/composite semi-constrained cemented prosthesis.
888.3110 Ankle joint metal/polymer semi-constrained cemented prosthesis.

888.3120 Ankle joint metal/polymer non-constrained cemented prosthesis.
888.3150 Elbow joint metal/metal or metal/polymer constrained cemented prosthesis.
888.3160 Elbow joint metal/polymer semi-constrained cemented prosthesis.
888.3170 Elbow joint radial (hemi-elbow) polymer prosthesis.
888.3180 Elbow joint humeral (hemi-elbow) metallic uncemented prosthesis.
888.3200 Finger joint metal/metal constrained uncemented prosthesis.
888.3210 Finger joint metal/metal constrained cemented prosthesis.
888.3220 Finger joint metal/polymer constrained cemented prosthesis.
888.3230 Finger joint polymer constrained prosthesis.
888.3300 Hip joint metal constrained cemented or uncemented prosthesis.
888.3310 Hip joint metal/polymer constrained cemented or uncemented prosthesis.
888.3320 Hip joint metal/metal semi-constrained, with a cemented acetabular component, prosthesis.
888.3330 Hip joint metal/metal semi-constrained, with an uncemented acetabular component, prosthesis.
888.3340 Hip joint metal/composite semi-constrained cemented prosthesis.
888.3350 Hip joint metal/polymer semi-constrained cemented prosthesis.
888.3360 Hip joint femoral (hemi-hip) metallic cemented or uncemented prosthesis.
888.3370 Hip joint (hemi-hip) acetabular metal cemented prosthesis.
888.3380 Hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis.
888.3390 Hip joint femoral (hemi-hip) metal/polymer cemented or uncemented prosthesis.
888.3400 Hip joint femoral (hemi-hip) metallic resurfacing prosthesis.
888.3410 Hip joint metal/polymer semi-constrained resurfacing cemented prosthesis.
888.3480 Knee joint femorotibial metallic constrained cemented prosthesis.
888.3490 Knee joint femorotibial metal/composite non-constrained cemented prosthesis.
888.3500 Knee joint femorotibial metal/composite semi-constrained cemented prosthesis.
888.3510 Knee joint femorotibial metal/polymer constrained cemented prosthesis.
888.3520 Knee joint femorotibial metal/polymer non-constrained cemented prosthesis.
888.3530 Knee joint femorotibial metal/polymer semi-constrained cemented prosthesis.
888.3540 Knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis.
888.3550 Knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis.
888.3560 Knee joint patellofemorotibial polymer/metal/polymer semi-constrained cemented prosthesis.
888.3570 Knee joint femoral (hemi-knee) metallic uncemented prosthesis.
888.3580 Knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis.
888.3590 Knee joint tibial (hemi-knee) metallic resurfacing uncemented prosthesis.
888.3640 Shoulder joint metal/metal or metal/polymer constrained cemented prosthesis.
888.3650 Shoulder joint metal/polymer non-constrained cemented prosthesis.
888.3660 Shoulder joint metal/polymer semi-constrained cemented prosthesis.
888.3680 Shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis.
888.3690 Shoulder joint humeral (hemi-shoulder) metallic uncemented prosthesis.
888.3720 Toe joint polymer constrained prosthesis.
888.3730 Toe joint phalangeal (hemi-toe) polymer prosthesis.
888.3750 Wrist joint carpal lunate polymer prosthesis.
888.3760 Wrist joint carpal scaphoid polymer prosthesis.
888.3770 Wrist joint carpal trapezium polymer prosthesis.
888.3780 Wrist joint polymer constrained prosthesis.
888.3790 Wrist joint metal constrained cemented prosthesis.
888.3800 Wrist joint metal/polymer semi-constrained cemented prosthesis.
888.3810 Wrist joint ulnar (hemi-wrist) polymer prosthesis.

Subpart E—Surgical Devices

Sec.
888.4150 Calipers for clinical use.
888.4200 Cement dispenser.
888.4210 Cement mixer for clinical use.
888.4220 Cement monomer vapor evacuator.
888.4230 Cement ventilation tube.
888.4300 Depth gauge for clinical use.
888.4540 Orthopedic manual surgical instrument.
888.4580 Sonic surgical instrument and accessories/attachments.
888.4600 Protractor for clinical use.
888.4800 Template for clinical use.
888.5850 Nonpowered orthopedic traction apparatus and accessories.
888.5890 Noninvasive traction component.
888.5940 Cast component.
888.5980 Manual cast application and removal instrument.

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

Subpart A—General Provisions

§ 888.1 Scope.

(a) This part sets forth the classification of orthopedic devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 cannot show merely that the device is accurately described by the section title and identification provision of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, an orthopedic device that has two or more types of uses (e.g., used both as a diagnostic device and as a surgical device) is listed in one subpart only.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 888.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act, FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraphs (b) and (c) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket

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approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

(c) A device identified in a regulation in this part that is classified into class III and that is subject to the transitional provisions of section 520(1) of the act is automatically classified by statute into class III and must have an approval under section 515 of the act before being commercially distributed. Accordingly, the regulation for such a class III transitional device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

§ 888.5 Resurfacing technique.

Because of resurfacing techniques, certain joint prostheses require far less bone resection than other devices intended to repair or replace the same joint. The amount of bone resection may or may not affect the safety and effectiveness of the implantation of the prosthesis. When a resurfacing technique is used, the name of the prosthesis includes this information.

§ 888.6 Degree of constraint.

Certain joint prostheses provide more constraint of joint movement than others. FDA believes that the degree of constraint is an important factor affecting the safety and effectiveness of orthopedic prostheses. FDA is defining the following standard terms for categorizing the degree of constraint.

(a) A "constrained" joint prosthesis is used for joint replacement and prevents dislocation of the prosthesis in more than one anatomic plane and consists of either a single, flexible, across-the-joint component or more than one component linked together or affined.

(b) A "semi-constrained" joint prosthesis is used for partial or total joint replacement and limits translation and rotation of the prosthesis in one or more planes via the geometry of its articulating surfaces. It has no across-the-joint linkage.

(c) A "non-constrained" joint prosthesis is used for partial or total joint replacement and restricts minimally prosthesis movement in one or more planes. Its components have no across-the-joint linkage.

Subpart B—Diagnostic Devices

§ 888.1100 Arthroscope.

(a) *Identification.* An arthroscope is an electrically powered endoscope Intended to make visible the interior of a joint. The arthroscope and accessories also is intended to perform surgery within a joint.

(b) *Classification.* Class II.

§ 888.1240 AC-powered dynamometer.

(a) *Identification.* An AC-powered dynamometer is an AC-powered device intended for medical purposes to assess neuromuscular function or degree of neuromuscular blockage by measuring, with a force transducer (a device that translates force into electrical impulses), the grip-strength of a patient's hand.

(b) *Classification.* Class II.

§ 888.1250 Nonpowered dynamometer.

(a) *Identification.* A nonpowered dynamometer is a mechanical device intended for medical purposes to measure the pinch and grip muscle strength of a patient's hand.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

§ 888.1520 Nonpowered goniometer.

(a) *Identification.* A nonpowered goniometer is a mechanical device intended for medical purposes to measure the range of motion of joints.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

Subpart C—[Reserved]

Subpart D—Prosthetic Devices

§ 888.3000 Bone cap.

(a) *Identification.* A bone cap is a mushroom-shaped device intended to be implanted made of either silicone elastomer or ultra-high molecular weight polyethylene. It is used to cover the severed end of a long bone, such as the humerus or tibia, to control bone overgrowth in juvenile amputees.

(b) *Classification.* Class II.

§ 888.3010 Bone fixation cerclage.

(a) *Identification.* A bone fixation cerclage is a device intended to be implanted that is made of alloys, such as cobalt-chromium-molybdenum, and that consists of a metallic ribbon or flat sheet or a wire. The device is wrapped around the shaft of a long bone, anchored to the bone with wire or screws, and used in the fixation of fractures.

(b) *Classification.* Class II.

§ 888.3015 Bone heterograft.

(a) *Identification.* Bone heterograft is a device intended to be implanted that is made from mature (adult) bovine bones and used to replace human bone following surgery in the cervical region of the spinal column.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 888.3.

§ 888.3020 Intramedullary fixation rod.

(a) *Identification.* An intramedullary fixation rod is a device intended to be implanted that consists of a rod made of alloys such as cobalt-chromium-molybdenum and stainless steel. It is inserted into the medullary (bone marrow) canal of long bones for the fixation of fractures.

(b) *Classification.* Class II.

§ 888.3025 Passive tendon prosthesis.

(a) *Identification.* A passive tendon prosthesis is a device intended to be implanted made of silicon elastomer or a polyester reinforced medical grade silicone elastomer intended for use in the surgical reconstruction of a flexor tendon of the hand. The device is implanted for a period of 2 to 6 months to aid growth of a new tendon sheath. The device is not intended as a permanent implant nor to function as a replacement for the ligament or tendon nor to function as a scaffold for soft tissue ingrowth.

(b) *Classification.* Class II.

§ 888.3027 Polymethylmethacrylate (PMMA) bone cement.

(a) *Identification.* Polymethylmethacrylate (PMMA) bone cement (luting agent) is a device intended to be implanted that is made from methylmethacrylate, polymethylmethacrylate, esters of methacrylic acid or copolymers containing polymethylmethyacrylate and polystyrene. The device is intended

for use in arthroplastic procedures of the hip, knee, and other joints for the fixation of polymer or metallic prosthetic implants to the living bone.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 888.3.

§ 888.3030 Single/multiple component metallic bone fixation appliances and accessories.

(a) *Identification.* Single/multiple component metallic bone fixation appliances and accessories are devices intended to be implanted consisting of one or more metallic components and their metallic fasteners. The devices contain a plate, a nail/plate combination, or a blade/plate combination that are made of alloys, such as cobalt-chromium-molybdenum, stainless steel, and titanium, that are intended to be held in position with fasteners, such as screws and nails, or bolts, nuts, and washers. These devices are used for fixation of fractures of the proximal or distal end of long bones, such as intracapsular, intertrochanteric, intercervical, supracondylar, or condylar fractures of the femur; for fusion of a joint; or for surgical procedures that involve cutting a bone. The devices may be implanted or attached through the skin so that a pulling force (traction) may be applied to the skeletal system.

(b) *Classification.* Class II.

§ 888.3040 Smooth or threaded metallic bone fixation fastener.

(a) *Identification.* A smooth or threaded metallic bone fixation fastener is a device intended to be implanted that consists of a stiff wire segment or rod made of alloys, such as cobalt-chromium-molybdenum and stainless steel, and that may be smooth on the outside, fully or partially threaded, straight or U-shaped; and may be either blunt pointed, sharp pointed, or have a formed, slotted head on the end. It may be used for fixation of bone fractures, for bone reconstructions, as a guide pin for insertion of other implants, or it may be implanted through the skin so that a pulling force (traction) may be applied to the skeletal system.

(b) *Classification.* Class II.

§ 888.3050 Spinal interlaminal fixation orthosis.

(a) *Identification.* A spinal interlaminal fixation orthosis is a device intended to be implanted made of an alloy, such as stainless steel, that consists of various hooks and a posteriorly placed compression or distraction rod. The device is implanted, usually across three adjacent vertebrae, to straighten and immobilize the spine to allow bone grafts to unite and fuse the vertebrae together. The device is used primarily in the treatment of scoliosis (a lateral curvature of the spine), but it also may be used in the treatment of fracture or dislocation of the spine, grades 3 and 4 of spondylolisthesis (a dislocation of the spinal column), and lower back syndrome.

(b) *Classification.* Class II.

§ 888.3060 Spinal intervertebral body fixation orthosis.

(a) *Identification.* A spinal intervertebral body fixation orthosis is a device intended to be implanted made of titanium. It consists of various vertebral plates that are punched into each of a series of vertebral bodies. An eye-type screw is inserted in a hole in the center of each of the plates. A braided cable is threaded through each eye-type screw. The cable is tightened with a tension device and it is fastened or crimped at each eye-type screw. The device is used to apply force to a series of vertebrae to correct "sway back," scoliosis (lateral curvature of the spine), or other conditions.

(b) *Classification.* Class II.

§ 888.3100 Ankle joint metal/composite semi-constrained cemented prosthesis.

(a) *Identification.* An ankle joint metal/composite semi-constrained cemented prosthesis is a device intended to be implanted to replace an ankle joint. The device limits translation and rotation: in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that consist of a talar resurfacing component made of alloys, such as cobalt-chromium-molybdenum, and a tibial resurfacing component fabricated from ultra-high molecular weight polyethylene with carbon fibers composite, and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class II.

§ 888.3110 Ankle joint metal/polymer semi-constrained cemented prosthesis.

(a) *Identification.* An ankle joint metal/polymer semi-constrained cemented prosthesis is a device intended to be implanted to replace an ankle joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces and has no linkage across-the-joint. This generic type of device includes prostheses that have a talar resurfacing component made of alloys, such as cobalt-chromium-molybdenum, and a tibial resurfacing component made of ultra-high molecular weight polyethylene and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class II.

§ 888.3120 Ankle joint metal/polymer non-constrained cemented prosthesis.

(a) *Identification.* An ankle joint metal/polymer non-constrained cemented prosthesis is a device intended to be implanted to replace an ankle joint. The device limits minimally (less than normal anatomic constraints) translation in one or more planes. It has no linkage across-the-joint. This generic type of device includes prostheses that have a tibial component made of alloys, such as cobalt-chromium-molybdenum, and a talar component made of ultra-high molecular weight polyethylene, and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3150 Elbow joint metal/metal or metal/polymer constrained cemented prosthesis.

(a) *Identification.* An elbow joint metal/metal or metal/polymer constrained cemented prosthesis is a device intended to be implanted made exclusively of alloys, such as cobalt-chromium-molybdenum, or made from these alloys with a ultra-high molecular weight polyethylene bushing, and used to replace an elbow joint. The device prevents dislocation in more than one anatomic plane and consists of two components which are linked together. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3160 Elbow joint metal/polymer semi-constrained cemented prosthesis.

(a) *Identification.* An elbow joint metal/polymer semi-constrained cemented prosthesis is a device intended to be implanted to replace an elbow joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that consist of a humeral resurfacing component made of alloys, such as cobalt chromium-molybdenum, and a radial resurfacing component made of ultra-

high molecular weight polyethylene. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class II.

§ 888.3170 Elbow joint radial (hemi-elbow) polymer prosthesis.

(a) *Identification.* An elbow joint radial (hemi-elbow) polymer prosthesis is a device intended to be implanted made of medical grade silicone elastomer used to replace the proximal end of the radius.

(b) *Classification.* Class II.

§ 888.3180 Elbow joint humeral (hemi-elbow) metallic uncemented prosthesis.

(a) *Identification.* An elbow joint humeral (hemi-elbow) metallic uncemented prosthesis is a device intended to be implanted made of alloys, such as cobalt-chromium-molybdenum, that is used to replace the distal end of the humerus formed by the trochlea humeri and the capitulum humeri. The generic type of device is limited to prostheses intended for use without bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3200 Finger joint metal/metal constrained uncemented prosthesis.

(a) *Identification.* A finger joint metal/metal constrained uncemented prosthesis is a device intended to be implanted to replace a metacarpophalangeal or proximal interphalangeal (finger) joint. The device prevents dislocation in more than one anatomic plane and consists of two components which are linked together. This generic type of device includes prostheses made of alloys, such as cobalt-chromium-molybdenum, or protheses made from alloys and ultra-high molecular weight polyethylene. This generic type of device is limited to prostheses intended for use without bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3210 Finger joint metal/metal constrained cemented prosthesis.

(a) *Identification.* A finger joint metal/metal constrained cemented prosthesis is a device intended to be implanted to replace a metacarpophalangeal (finger) joint. This device prevents dislocation in more than one anatomic plane and has components which are linked together. This generic type of device includes prostheses that are made of alloys, such as cobalt-chromium-molybdenum, and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3220 Finger joint metal/polymer constrained cemented prosthesis.

(a) *Identification.* A finger joint metal/polymer constrained cemented prosthesis is a device intended to be implanted to replace a metacarpophalangeal or proximal interphalangeal (finger) joint. The device prevents dislocation in more than one anatomic plane, and consists of two components which are linked together. This generic type of device includes prostheses that are made of alloys, such as cobalt-chromium-molybdenum, and ultra-high molecular weight polyethylene, and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3230 Finger joint polymer constrained prosthesis.

(a) *Identification.* A finger joint polymer constrained prosthesis is a device intended to be implanted to replace a metacarpophalangeal or proximal interphalangeal (finger) joint. This generic type of device includes prostheses that consist of a single flexible across-the-joint component made from either a silicone elastomer or a combination pf polypropylene and polyester material. The flexible across-the-joint component may be covered with a silicone rubber sleeve.

(b) *Classification.* Class II.

§ 888.3300 Hip joint metal constrained cemented or uncemented prosthesis.

(a) *Identification.* A hip joint metal constrained cemented or uncemented prosthesis is a device intended to be implanted to replace a hip joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. This generic type of device includes prostheses that have components made of alloys, such as cobalt-chromium-molybdenum, and is intended for use with or without bone cement (§ 888.3027). This device is not intended for biological fixation.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3310 Hip joint metal/polymer constrained cemented or uncemented prosthesis.

(a) *Identification.* A hip joint metal/polymer constrained cemented or uncemented prosthesis is a device intended to be implanted to replace a hip joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. This generic type of device includes prostheses that have a femoral component made of alloys, such as cobalt-chromium-molybdenum, and an acetabular component made of ultra-high molecular weight polyethylene. This generic type of device is intended for use with or without bone cement (§ 888.3027). This device is not intended for biological fixation.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3320 Hip joint metal/metal semi-constrained, with a cemented acetabular component, prosthesis.

(a) *Identification.* A hip joint metal/metal semi-constrained, with a cemented acetabular component, prosthesis is a two-part device intended to be implanted to replace a hip joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that consist of a femoral and an acetabular component, both made of alloys, such as cobalt-chromium-molybdenum. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3330 Hip joint metal/metal semi-constrained, with an uncemented acetabular component, prosthesis.

(a) *Identification.* A hip joint metal/metal semi-constrained, with an uncemented acetabular component, prosthesis is a two-part device intended to be implanted to replace a hip joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that consist of a femoral and

an acetabular component, both made of alloys, such as cobalt-chromium-molybdenum. The femoral component is intended to be fixed with bone cement. The acetabular component is intended for use without bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3340 Hip joint metal/composite semi-constrained cemented prosthesis.

(a) *Identification.* A hip joint metal/composite semi-constrained cemented prosthesis is a two-part device intended to be implanted to replace a hip joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that consist of a femoral component made of alloys, such as cobalt-chromium-molybdenum, and an acetabular component made of ultra-high molecular weight polyethylene with carbon fibers composite. Both components are intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class II.

§ 888.3350 Hip joint metal/polymer semi-constrained cemented prosthesis.

(a) *Identification.* A hip joint metal/polymer semi-constrained cemented prosthesis is a device intended to be implanted to replace a hip joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that have a femoral component made of alloys, such as cobalt-chromium-molybdenum, and an acetabular resurfacing component made of ultra-high molecular weight polyethylene and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class II.

§ 888.3360 Hip joint femoral (hemi-hip) metallic cemented or uncemented prosthesis.

(a) *Identification.* A hip joint femoral (hemi-hip) metallic cemented or uncemented prosthesis is a device intended to be implanted to replace a portion of the hip joint. This generic type of device includes prostheses that have a femoral component made of alloys, such as cobalt-chromium-molybdenum. This generic type of device includes designs which are intended to be fixed to the bone with bone cement (§ 888.3027) as well as designs which have large window-like holes in the stem of the device and which are intended for use without bone cement. However, in these latter designs, fixation of the device is not achieved by means of bone ingrowth.

(b) *Classification.* Class II.

§ 888.3370 Hip joint (hemi-hip) acetabular metal cemented prosthesis.

(a) *Identification.* A hip joint (hemi-hip) acetabular metal cemented prosthesis is a device intended to be implanted to replace a portion of the hip joint. This generic type of device includes prostheses that have an acetabular component made of alloys, such as cobalt-chromium-molybdenum. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3380 Hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis.

(a) *Identification.* A hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis is a two-part device intended to be implanted to replace the head and neck of the femur. This generic type of device includes prostheses that consist of a metallic stem made of alloys, such as cobalt-chromium-molybdenum, with an integrated cylindrical trunnion bearing at the upper end of the stem that fits into a recess in the head of the device. The head of the device is made of polyacetal (polyoxymethylene) and it is covered by a metallic alloy, such as cobalt-chromium-molybdenum. The trunnion bearing allows the head of the device to rotate on its stem. The prosthesis is intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3390 Hip joint femoral (hemi-hip) metal/polymer cemented or uncemented prosthesis.

(a) *Identification.* A hip joint femoral (hemi-hip) metal/polymer cemented or uncemented prosthesis is a two-part device intended to be implanted to replace the head and neck of the femur. This generic type of device includes prostheses that have a femoral component made of alloys, such as cobalt-chromium-molybdenum, and a snap-fit acetabular component made of an alloy, such as cobalt-chromium-molybdenum, and ultra-high molecular weight polyethylene. This generic type of device may be fixed to the bone with bone cement (§ 888.3027) or implanted by impaction.

(b) *Classification.* Class II.

§ 888.3400 Hip joint femoral (hemi-hip) metallic resurfacing prosthesis.

(a) *Identification.* A hip joint femoral (hemi-hip) metallic resurfacing prosthesis is a device intended to be implanted to replace a portion of the hip joint. This generic type of device includes prostheses that have a femoral resurfacing component made of alloys, such as cobalt-chromium-molybdenum.

(b) *Classification.* Class II.

§ 888.3410 Hip joint metal/polymer semi-constrained resurfacing cemented prosthesis.

(a) *Identification.* A hip joint metal/polymer semi-constrained resurfacing cemented prosthesis is a two-part device intended to be implanted to replace the articulating surfaces of the hip while preserving the femoral head and neck. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that consist of a femoral cap component made of alloy, such as cobalt-chromium-molybdenum, that is placed over a surgically prepared femoral head, and an acetabular resurfacing polymer component. Both components are intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3480 Knee joint femorotibial metallic constrained cemented prosthesis.

(a) *Identification.* A knee joint femorotibial metallic constrained cemented prosthesis is a device intended to be implanted to replace part of a knee joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. The only knee joint movement allowed by the device is in the sagittal plane. This generic type of device includes prostheses that have an intramedullary stem at both the proximal and distal locations. The upper and lower components may be joined either by a solid bolt or pin, an internally threaded bolt with locking screw, or a bolt retained by circlip. The components of the device are made of alloys, such as cobalt-chromium-molybdenum. The stems of the device

may be perforated, but are intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3490 Knee joint femorotibial metal/composite non-constrained cemented prosthesis.

(a) *Identification.* A knee joint femorotibial metal/composite non-constrained cemented prosthesis is a device intended to be implanted to replace part of a knee joint. The device limits minimally (less than normal anatomic constraints) translation in one or more planes. It has no linkage across-the-joint. This generic type of device includes prostheses that have a femoral condylar resurfacing component or components made of alloys, such as cobalt-chromium-molybdenum, and a tibial condylar component or components made of ultra-high molecular weight polyethylene with carbon fibers composite and are intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class II.

§ 888.3500 Knee joint femorotibial metal/composite semi-constrained cemented prosthesis.

(a) *Identification.* A knee joint femorotibial metal/composite semi-constrained cemented prosthesis is a two-part device intended to be implanted to replace part of a knee joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that have a femoral component made of alloys, such as cobalt-chromium-molybdenum, and a tibial component with the articulating surfaces made of ultra-high molecular weight polyethylene with carbon-fibers composite and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class II.

§ 888.3510 Knee joint femorotibial metal/polymer constrained cemented prosthesis.

(a) *Identification.* A knee joint femorotibial metal/polymer constrained cemented prosthesis is a device intended to be implanted to replace part of a knee joint. The device limits translation or rotation in one or more planes and has components that are linked together or affined. This generic type of device includes prostheses composed of a ball-and-socket joint located between a stemmed femoral and a stemmed tibial component and a runner and track joint between each pair of femoral and tibial condyles. The ball-and-socket joint is composed of a ball at the head of a column rising from the stemmed tibial component. The ball, the column, the tibial plateau, and the stem for fixation of the tibial component are made of an alloy, such as cobalt-chromium-molybdenum. The ball of the tibial component is held within the socket of the femoral component by the femoral component's flat outer surface. The flat outer surface of the tibial component abuts both a reciprocal flat surface within the cavity of the femoral component and flanges on the femoral component designed to prevent distal displacement. The stem of the femoral component is made of an alloy, such as cobalt-chromium-molybdenum, but the socket of the component is made of ultra-high molecular weight polyethylene. The femoral component has metallic runners which align with the ultra-high molecular weight polyethylene tracks that press-fit into the metallic tibial component. The generic class also includes devices whose upper and lower components are linked with a solid bolt passing through a journal bearing of greater radius, permitting some rotation in the transverse plane, a minimal arc of abduction/adduction. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class II.

§ 888.3520 Knee joint femorotibial metal/polymer non-constrained cemented prosthesis.

(a) *Identification.* A knee joint femorotibial metal/polymer non-constrained cemented prosthesis is a device intended to be implanted to replace part of a knee joint. The device limits minimally (less than normal anatomic constraints) translation in one or more planes. It has no linkage across-the-joint. This generic type of device includes prostheses that have a femoral condylar resurfacing component or components made of alloys, such as cobalt-chromium-molybdenum, and a tibial component or components made of ultra-high molecular weight polyethylene and are intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class II.

§ 888.3530 Knee joint femorotibial metal/polymer semi-constrained cemented prosthesis.

(a) *Identification.* A knee joint femorotibial metal/polymer semi-constrained cemented prosthesis is a device intended to be implanted to replace part of a knee joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that consist of a femoral component made of alloys, such as cobalt-chromium-molybdenum, and a tibial component made of ultra-high molecular weight polyethylene and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class II.

§ 888.3540 Knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis.

(a) *Identification.* A knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis is a two-part device intended to be implanted to replace part of a knee joint in the treatment of primary patellofemoral arthritis or chondromalacia. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes a component made of alloys, such as cobalt-chromium-molybdenum or austenitic steel, for resurfacing the intercondylar groove (femoral sulcus) on the anterior aspect of the distal femur, and a patellar component made of ultra-high molecular weight polyethylene. This generic type of device is limited to those devices intended for use with bone cement (§ 888.3027). The patellar component is designed to be implanted only with its femoral component.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3550 Knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis.

(a) *Identification.* A knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis is a device intended to be implanted to replace a knee joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. This generic type of device includes prostheses that have a femoral component, a tibial component, a cylindrical bolt and accompanying locking hardware that are all made of alloys, such as cobalt-chromium-molybdenum, and a retropatellar resurfacing component made of ultra-high molecular weight polyethylene. The retropatellar surfacing component may be attached to the resected patella either with a metallic

screw or bone cement. All stemmed metallic components within this generic type are intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3560 Knee joint patellofemorotibial polymer/metal/polymer semi-constrained cemented prosthesis.

(a) *Identification.* A knee joint patellofemorotibial polymer/metal/polymer semi-constrained cemented prosthesis is a device intended to be implanted to replace a knee joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that have a femoral component made of alloys, such as cobalt-chromium-molybdenum, and a tibial component or components and a retropatellar resurfacing component made of ultra-high molecular weight polyethylene. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class II.

§ 888.3570 Knee joint femoral (hemi-knee) metallic uncemented prosthesis.

(a) *Identification.* A knee joint femoral (hemi-knee) metallic uncemented prosthesis is a device made of alloys, such as cobalt-chromium-molybdenum, intended to be implanted to replace part of a knee joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that consist of a femoral component with or without protuberance(s) for the enhancement of fixation and is limited to those prostheses intended for use without bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3580 Knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis.

(a) *Identification.* A knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis is a device made of alloys, such as cobalt-chromium-molybdenum, intended to be implanted to replace the retropatellar articular surface of the patellofemoral joint. The device limits minimally (less than normal anatomic constraints) translation in one or more planes. It has no linkage across-the-joint. This generic type of device includes prostheses that have a retropatellar resurfacing component and an orthopedic screw to transfix the patellar remnant. This generic type of device is limited to those prostheses intended for use without bone cement (§ 888.3027).

(b) *Classification.* (1) Class II when intended for treatment of degenerative and posttraumatic patellar arthritis.

(2) Class III when intended for uses other than treatment of degenerative and posttraumatic patellar arthritis.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device intended for uses described in paragraph (b)(2). See § 888.3.

§ 888.3590 Knee joint tibial (hemi-knee) metallic resurfacing uncemented prosthesis.

(a) *Identification.* A knee joint tibial (hemi-knee) metallic resurfacing uncemented prosthesis is a device intended to be implanted to replace part of a knee joint. The device limits minimally (less than normal anatomic constraints) translation in one or more planes. It has no linkage across-the-joint. This prosthesis is made of alloys, such as cobalt-chromium-molybdenum, and is intended to resurface one tibial condyle. The generic type of device is limited to those prostheses intended for use without bone cement (§ 888.3027).

(b) *Classification.* Class II.

§ 888.3640 Shoulder joint metal/metal or metal/polymer constrained cemented prosthesis.

(a) *Identification.* A shoulder joint metal/metal or metal/polymer constrained cemented prosthesis is a device intended to be implanted to replace a shoulder joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. This generic type of device includes prostheses that have a humeral component made of alloys, such as cobalt-chromium-molybdenum, and a glenoid component made of this alloy or a combination of this alloy and ultra-high molecular weight polyethylene. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3650 Shoulder joint metal/polymer non-constrained cemented prosthesis.

(a) *Identification.* A shoulder joint metal/polymer non-constrained cemented prosthesis is a device intended to be implanted to replace a shoulder joint. The device limits minimally (less than normal anatomic constraints) translation in one or more planes. It has no linkage across-the-joint. This generic type of device includes prostheses that have a humeral component made of alloys, such as cobalt-chromium-molybdenum, and a glenoid resurfacing component made of ultra-high molecular weight polyethylene, and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3660 Shoulder joint metal/polymer semi-constrained cemented prosthesis.

(a) *Identification.* A shoulder joint metal/polymer semi-constrained cemented prosthesis is a device intended to be implanted to replace a shoulder joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that have a humeral resurfacing component made of alloys, such as cobalt-chromium-molybdenum, and a glenoid resurfacing component made of ultra-high molecular weight polyethylene, and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3680 Shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis.

(a) *Identification.* A shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis is a device that has a glenoid (socket) component made of alloys, such as cobalt-chromium-molybdenum, or alloys with ultra-high molecular weight polyethylene and intended to be implanted to replace part of a shoulder joint. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date

has been established of the requirement for premarket approval. See § 888.3.

§ 888.3690 Shoulder joint humeral (hemi-shoulder) metallic uncemented prosthesis.

(a) *Identification.* A shoulder joint humeral (hemi-shoulder) metallic uncemented prosthesis is a device made of alloys, such as cobalt-chromium-molybdenum. It has an intramedullary stem and is intended to be implanted to replace the articular surface of the proximal end of the humerus and to be fixed without bone cement (§ 888.3027). This device is not intended for biological fixation.

(b) *Classification.* Class II.

§ 888.3720 Toe joint polymer constrained prosthesis.

(a) *Identification.* A toe joint polymer constrained prosthesis is a device made of silicone elastomer or polyester reinforced silicone elastomer intended to be implanted to replace the first metatarsophalangeal (big toe) joint. This generic type of device consists of a single flexible across-the-joint component that prevents dislocation in more than one anatomic plane.

(b) *Classification.* Class II.

§ 888.3730 Toe joint phalangeal (hemi-toe) polymer prosthesis.

(a) *Identification.* A toe joint phalangeal (hemi-toe) polymer prosthesis is a device made of silicone elastomer intended to be implanted to replace the base of the proximal phalanx of the toe.

(b) *Classification.* Class II.

§ 888.3750 Wrist joint carpal lunate polymer prosthesis.

(a) *Identification.* A wrist joint carpal lunate prosthesis is a one-piece device made of silicone elastomer intended to be implanted to replace the carpal lunate bone of the wrist.

(b) *Classification.* Class II.

§ 888.3760 Wrist joint carpal scaphoid polymer prosthesis.

(a) *Identification.* A wrist joint carpal scaphoid polymer prosthesis is a one-piece device made of silicone elastomer intended to be implanted to replace the carpal scaphoid bone of the wrist.

(b) *Classification.* Class II.

§ 888.3770 Wrist joint carpal trapezium polymer prosthesis.

(a) *Identification.* A wrist joint carpal trapezium polymer prosthesis is a one-piece device made of silicone elastomer or silicone elastomer/polyester material intended to be implanted to replace the carpal trapezium bone of the wrist.

(b) *Classification.* Class II.

§ 888.3780 Wrist joint polymer constrained prosthesis.

(a) *Identification.* A wrist joint polymer constrained prosthesis is a device made of polyester-reinforced silicone elastomer intended to be implanted to replace a wrist joint. This generic type of device consists of a single flexible across-the-joint component that prevents dislocation in more than one anatomic plane.

(b) *Classification.* Class II.

§ 888.3790 Wrist joint metal constrained cemented prosthesis.

(a) *Identification.* A wrist joint metal constrained cemented prosthesis is a device intended to be implanted to replace a wrist joint. The device prevents dislocation in more than one anatomic plane and consists of either a single flexible across-the-joint component or two components linked together. This generic type of device is limited to a device which is made of alloys, such as cobalt-chromium-molybdenum, and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 888.3.

§ 888.3800 Wrist joint metal/polymer semi-constrained cemented prosthesis.

(a) *Identification.* A wrist joint metal/polymer semi-constrained cemented prosthesis is a device intended to be implanted to replace a wrist joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that have either a one-part radial component made of alloys, such as cobalt-chromium-molybdenum, with an ultra-high molecular weight polyethylene bearing surface, or a two-part radial component made of alloys and an ultra-high molecular weight polyethylene ball that is mounted on the radial component with a trunnion bearing. The metallic portion of the two-part radial component is inserted into the radius. These devices have a metacarpal component(s) made of alloys, such as cobalt-chromium-molybdenum. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class II.

§ 888.3810 Wrist joint ulnar (hemi-wrist) polymer prosthesis.

(a) *Identification.* A wrist joint ulnar (hemi-wrist) polymer prosthesis is a mushroom-shaped device made of a medical grade silicone elastomer or ultra-high molecular weight polyethylene intended to be implanted into the intramedullary canal of the bone and held in place by a suture. Its purpose is to cover the resected end of the distal ulna to control bone overgrowth and to provide an articular surface for the radius and carpus.

(b) *Classification.* Class II.

Subpart E—Surgical Devices

§ 888.4150 Calipers for clinical use.

(a) *Identification.* A caliper for clinical use is a compass-like device intended for use in measuring the thickness or diameter of a part of the body or the distance between two body surfaces, such as for measuring an excised skeletal specimen to determine the proper replacement size of a prosthesis.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

§ 888.4200 Cement dispenser.

(a) *Identification.* A cement dispenser is a nonpowered syringe-like device intended for use in placing bone cement (§ 888.3027) into surgical sites.

(b) *Classification.* Class I.

§ 888.4210 Cement mixer for clinical use.

(a) *Identification.* A cement mixer for clinical use is a device consisting of a container intended for use in mixing bone cement (§ 888.3027).

(b) *Classification.* Class I.

§ 888.4220 Cement monomer vapor evacuator.

(a) *Identification.* A cement monomer vapor evacuator is a device intended for use during surgery to contain or remove undesirable fumes, such as monomer vapor from bone cement (§ 888.3027).

(b) *Classification.* Class I.

§ 888.4230 Cement ventilation tube.

(a) *Identification.* A cement ventilation tube is a tube-like device usually made of plastic intended to be inserted into a surgical cavity to allow the release of air or fluid from the cavity as it is being filled with bone cement (§ 888.3027).

(b) *Classification.* Class I.

§ 888.4300 Depth gauge for clinical use.

(a) *Identification.* A depth gauge for clinical use is a measuring device intended for various medical purposes, such as to determine the proper length of screws for fastening the ends of a fractured bone.

(b) *Classification.* Class I. The device is exempt from the premarket

notification procedures in Subpart E of Part 807.

§ 888.4540 Orthopedic manual surgical instrument.

(a) *Identification.* An orthopedic manual surgical instrument is a nonpowered hand-held device intended for medical purposes to manipulate tissue, or for use with other devices in orthopedic surgery. This generic type of device includes the cerclage applier, awl, bender, drill brace, broach, burr, corkscrew, countersink, pin crimper, wire cutter, prosthesis driver, extractor, file, fork, needle holder, impactor, bending or contouring instrument, compression instrument, passer, socket positioner, probe, femoral neck punch, socket pusher, reamer, rongeur, scissors, screwdriver, bone skid, staple driver, bone screw starter, surgical stripper, tamp, bone tap, trephine, wire twister, and wrench.

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

§ 888.4580 Sonic surgical instrument and accessories/attachments.

(a) *Identification.* A sonic surgical instrument is a hand-held device with various accessories or attachments, such as a cutting tip that vibrates at high frequencies, and is intended for medical purposes to cut bone or other materials, such as acrylic.

(b) *Classification.* Class II.

§ 888.4600 Protractor for clinical use.

(a) *Identification.* A protractor for clinical use is a device intended for use in measuring the angles of bones, such as on X-rays or in surgery.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

§ 888.4800 Template for clinical use.

(a) *Identification.* A template for clinical use is a device that consists of a pattern or guide intended for medical purposes, such as selecting or positioning orthopedic implants or guiding the marking of tissue before cutting.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

§ 888.5850 Nonpowered orthopedic traction apparatus and accessories.

(a) *Identification.* A nonpowered orthopedic traction apparatus is a device that consists of a rigid frame with nonpowered traction accessories, such as cords, pulleys, or weights, and that is intended to apply a therapeutic pulling force to the skeletal system.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820 with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

§ 888.5890 Noninvasive traction component.

(a) *Identification.* A noninvasive traction component is a device, such as a head halter, pelvic belt, or a traction splint, that does not penetrate the skin and is intended to assist in connecting a patient to a traction apparatus so that a therapeutic pulling force may be applied to the patient's body.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

§ 888.5940 Cast component.

(a) *Identification.* A cast component is a device intended for medical purposes to protect or support a cast. This generic type of device includes the cast heel, toe cap, cast support, and walking iron.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

§ 888.5980 Manual cast application and removal instrument.

(a) *Identification.* A manual cast application and removal instrument is a nonpowered hand-held device intended to be used in applying or removing a cast. This generic type of device includes the cast knife, cast spreader, plaster saw, plaster dispenser, and casting stand.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Dated: June 15, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-20194 Filed 9-3-87; 8:45 am]

BILLING CODE 4160-01-M

VOL
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ISS
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1987
UMI

federal register

Friday
September 4, 1987

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 888

Orthopedic Devices; Proposed Exemptions From Premarket Notification; Proposed Rule

VOL 52 ISS 172 SEP 4 1987 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 86N-0012]

Orthopedic Devices; Proposed Exemptions From Premarket Notification

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to exempt from the requirement of premarket notification, with limitations, seven class I orthopedic devices. Elsewhere in this issue of the **Federal Register**, FDA is issuing a final rule classifying these and other orthopedic devices. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

DATES: Comments by November 3, 1987. FDA is proposing that the final rule based on this proposed rule become effective 30 days after its date of publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl A. Larson, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7156.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (Pub. L. 94-295, hereinafter called the amendments) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: class I, general controls; class II, performance standards; and class III, premarket approval.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR Part 807, Subpart E. Such an exemption allows manufacturers to introduce into commercial distribution devices of the generic type exempted without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendment devices, the agency did not routinely evaluate whether it should grant to manufacturers of such devices placed in class I an exemption from the requirement of premarket notification in section 510(k) of the act and 21 CFR Part 807, Subpart E. Generally, FDA considered such exemptions only when the advisory panels recommended the exemptions.

Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification, to reduce the number of premarket notifications on relatively innocuous devices while freeing agency resources for the review of more complex notifications.

The development of these criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification in section 510(k) of the act will help implement a goal in FDA's July 1985 "A Plan for Action" (Ref. 1).

Criteria for 510(K) Exemptions

FDA is proposing to exempt a generic type of class I device from the requirement of premarket notification with the limitations described below, if FDA determines that premarket notification is not necessary for the protection of the public health. FDA may propose to grant an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (1) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (2) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) that any changes in the device will not be likely to result in a change in the device's classification.

FDA will make the determinations above based on its knowledge of the device, including past experience with premarket notification and publicly available reports or studies on device performance. Based on the criteria above, FDA will place the exempted device into the same class as the class I device to which it would be substantially equivalent.

FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Application of the Criteria To Class I Orthopedic Devices

In the proposed rule of July 2, 1982 (47 FR 29052), FDA proposed to classify preamendments orthopedic devices in accordance with the amendments. When FDA proposed to classify the seven devices below, the agency did not propose exemptions from the requirement of premarket notification for these devices. The Panel did not recommend exemptions from the requirement of premarket notification for certain of these devices. FDA agrees that full exemption from premarket notification is unjustified for these devices; however, for the efficient enforcement of the act and consistent with its policy regarding exemptions from premarket notification, FDA now is proposing to exempt from the requirement of premarket notification, with limitations, the seven devices below.

Section	Device
888.4200	Cement dispenser.
888.4210	Cement mixer for clinical use.
888.4220	Cement monomer vapor evacuator.
888.4230	Cement ventilation tube.
888.5890	Noninvasive traction component.
888.5940	Cast component.
888.5980	Manual cast application/removal instrument.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying the devices above in class I. FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices above. However, the proposed exemptions for the cement dispenser (§ 888.4200), cement mixer for clinical use (§ 888.4210), cement ventilation tube (§ 888.4230), and the cast component (§ 888.5940) are limited and would apply only to those devices made of the same materials that were used in the devices before May 28, 1976.

Reference

The following information has been placed in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action," Public Health Service, Department of Health and Human Services, July 1985, p. 18.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this proposed rule and has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this proposed rule has been carefully analyzed, and it has been determined that the proposed rule does not constitute a major rule as defined in section 1(b) of the Executive Order. The device subject to this proposed rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j), with certain exemptions. Under any final rule based on this proposal, the devices would remain subject to such controls, other than premarket notification.

Interested persons may, on or before November 3, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 888

Orthopedic devices, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 888 be amended as follows:

PART 888—ORTHOPEDIC DEVICES

1. The authority citation for 21 CFR Part 888 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Part 888 is amended by adding new § 888.9, to read as follows:

§ 888.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. In § 888.4200 by revising paragraph (b) to read as follows:

§ 888.4200 Cement dispenser.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

4. In § 888.4210 by revising paragraph (b) to read as follows:

§ 888.4210 Cement mixer for clinical use.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

5. In § 888.4220 by revising paragraph (b) to read as follows:

§ 888.4220 Cement monomer vapor evacuator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket

notification procedures in Subpart E of Part 807.

6. In § 888.4230 by revising paragraph (b) to read as follows:

§ 888.4230 Cement ventilation tube.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

7. In § 888.5890 by revising paragraph (b) to read as follows:

§ 888.5890 Noninvasive traction component.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

8. In § 888.5940 by revising paragraph (b) to read as follows:

§ 888.5940 Cast component.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

9. In § 888.5980 by revising paragraph (b) to read as follows:

§ 888.5980 Manual cast application/removal instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Dated: June 15, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-20195 Filed 9-3-87; 8:45 am]

BILLING CODE 4160-01-M

VOL 52 ISS 172 SEP 4 1987 UMI

Federal Register

Friday
September 4, 1987

Part IV

Department of Defense

Department of the Navy

32 CFR Part 728

Medical and Dental Care for Eligible Persons at Navy Medical Department Facilities; Final Rule

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 728

Medical and Dental Care for Eligible Persons at Navy Medical Department Facilities

AGENCY: Naval Medical Command, Navy, DOD.

ACTION: Final rule.

SUMMARY: The Naval Medical Command has promulgated this regulation to describe and publish the policies and procedures for providing medical and dental care to eligible persons at Navy Medical Department facilities. This promulgation enumerates those persons eligible to receive medical and dental care at Navy Medical Department facilities and prescribes the extent and conditions under which medical and dental care may be provided such persons. It updates a Department of the Navy instruction for conformity with Department of Defense directives.

EFFECTIVE DATE: May 14, 1987.

FOR FURTHER INFORMATION CONTACT: Herbert L. Pelham, Program Analyst, Naval Medical Command, Washington, DC 20372–5120, (202) 653–1179.

SUPPLEMENTARY INFORMATION: This revision relates to internal naval management and personnel practices and largely reflects nonsubstantive changes adopted in NAVMEDCOMINST 6320.38. It was determined that invitation of public comment on these changes prior to adoption would be impracticable and is therefore not required under public rulemaking provisions of Parts 296 and 701 of 32 CFR.

List of Subjects in 32 CFR Part 728

Dental health, Government employees, Health care, Military personnel.

Jane M. Virga,

LT, JAGC, USNR, Federal Register Liaison Officer.

Date: August 20, 1987.

Accordingly, 32 CFR Part 728 is revised to read as follows:

PART 728—MEDICAL AND DENTAL CARE FOR ELIGIBLE PERSONS AT NAVY MEDICAL DEPARTMENT FACILITIES

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728.111 General.
728.112 Responsibilities.
728.113 Categories of patients.

Authority: 5 U.S.C. 301 and 8101; 10 U.S.C. 1071–1095, 1201–1221, 2104, 2107, 2109, 2110, 5031, 5537, 6011, 6201–6203; 22 U.S.C. 1158, 2357, 2504, 2505, 2507, 2522; 24 U.S.C. 15, 34, 35; 31 U.S.C. 1535; 42 U.S.C. 249, 253; and 32 CFR 700.1202.

Subpart A—General

§ 728.1 Mission of Navy Medical Department facilities.

The primary mission of Navy Medical Department facilities is to provide medical and dental care for members of the Navy and Marine Corps and for members of the other uniformed services who may be sick, injured, or disabled. In addition, Navy Medical Department facilities may provide medical and dental care to dependents of military personnel, to members not on active duty, and to such other persons as authorized by law, U.S. Navy regulations, and Department of Defense directives. These authorizations also provide that Navy Medical Department facilities may be called upon to furnish medical and dental care, under laws of humanity or principles of international

courtesy, to civilians and to other persons not otherwise entitled to medical and dental care.

§ 728.2 Definitions.

Unless otherwise qualified in this part, the following terms, when used throughout, are defined as follows:

(a) *Active duty.* Full-time duty in the active military service of the United States. This includes full-time training duty; annual training duty; and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. It does not include full-time National Guard duty.

(b) *Active duty for training.* A tour of active duty for reserves for training under orders that provide for automatic reversion to non-active status when the specified period of active duty is completed. It includes annual training, special tours, and the initial tour performed by enlistees without prior military service.

(c) *CHAMPUS.* Civilian Health and Medical Program of the Uniformed Services.

(d) *Catchment area.* A specified geographic area surrounding each Uniformed Services Medical Treatment Facility (USMTF) or designated Uniformed Services Treatment Facility (USTF). In the United States, catchment areas are defined by zip codes and are based on an area of approximately 40 miles in radius for inpatient care and 20 miles in radius for ambulatory care. Zip codes designating such areas in the United States are specified in Volumes I and II of the Military Health Services System (MHSS) Catchment Area Directory. Catchment areas for facilities outside the United States are defined in Volume III of the MHSS Catchment Area Directory. These directories exclude certain areas because of geographic barriers.

(e) *Chronic condition.* Any medical or surgical condition marked by long duration or frequent recurrence—or likely to be so marked—which, in light of medical information available, will ordinarily resist efforts to eradicate it completely; a condition which needs health benefits to achieve or maintain stability that can be provided safely only by, or under the supervision of, physicians, nurses, or persons authorized by physicians.

(f) *Civilian employee.* Under 5 U.S.C. 2105, a nonmilitary individual (1) appointed in the civil service, (2) engaged in the performance of a Federal function, or (3) engaged in the performance of his or her duties while subject to the supervision of The President, a Member or Members of Congress, or the Congress, a member of a uniformed service, an individual who is an employee under 5 U.S.C. 2105, the head of a Government controlled corporation, or an adjutant general designated by the Secretary concerned under section 709c of title 32. Included are justices and judges of the United States, appointed and engaging in the performance of duties per 5 U.S.C. 2104.

(g) *Cooperative care.* Medical services and supplies for which CHAMPUS will share in the cost under circumstances specified in § 728.4 (z), even though the patient remains under the primary control of a USMTF.

(h) *Cooperative care coordinator.* Designated individual in a CHAMPUS contractor's office who serves as the point of contact for health benefits advisors on all matters related to supplemental-cooperative care or services provided or ordered for CHAMPUS-eligible beneficiaries by USMTF providers.

(i) *Dental care.* Treatment which will prevent or remedy diseases, disabilities, and injuries to the teeth, jaws, and related structures and thereby contribute to maintenance or restoration of the dental health of an individual.

(j) *Dependent.* A spouse, an unremarried widow or widower, a child, or a parent who bears that legal relationship to his or her sponsor. For the purpose of rendering care under title 10, U.S.C., chapter 55, this category may also include an unremarried former spouse. However, each beneficiary must also meet the eligibility criteria in § 728.31(b) and § 728.31(c).

(k) *Designated USTFs.* The following former U.S. Public Health Service (USPHS) facilities operate as "designated USTFs" for the purpose of rendering medical and dental care to active duty members and to all CHAMPUS-eligible individuals.

(1) *Sisters of Charity of the Incarnate Word Health Care System,* 6400 Lawndale, Houston, TX 77058 (713) 928–2931 operates the following facilities:

(i) St. John Hospital, 2050 Space Park Drive, Nassau Bay, TX 77058, telephone (713) 333–5503. Inpatient and outpatient services.

(ii) St. Mary's Hospital Outpatient Clinic, 404 St. Mary's Boulevard, Galveston, TX 77550, telephone (409) 763–5301. Outpatient services only.

(iii) St. Joseph Hospital Ambulatory Care Center, 1919 La Branch, Houston, TX 77002, telephone (713) 757–1000. Outpatient services only.

(iv) St. Mary's Hospital Ambulatory Care Center, 3600 Gates Boulevard, Port Arthur, TX 77640 (409) 985–7431. Outpatient services only.

(2) *Inpatient and outpatient services.*

(i) Wyman Park Health System, Inc., 3100 Wyman Park Drive, Baltimore, MD 21211, telephone (301) 338–3693.

(ii) Alston-Brighton Aid and Health Group, Inc., Brighton Marine Public Health Center, 77 Warren Street, Boston, MA 02135, telephone (617) 782–3400.

(iii) Bayley Seton Hospital, Bay Street and Vanderbilt Avenue, Staten Island, NY 10304, telephone (718) 390–5547 or 6007.

(iv) Pacific Medical Center, 1200 12th Avenue South, Seattle, WA 98144, telephone (206) 326–4100.

(3) *Outpatient services only.* (i) Coastal Health Service, 331 Veranda Street, Portland, ME 04103, telephone (207) 774–5805.

(ii) Lutheran Medical Center, Downtown Health Care Services, 1313 Superior Avenue, Cleveland, OH 44113, telephone (216) 363–2065.

(l) *Disability retirement or separation.* Temporary or permanent retirement or separation for physical disability as provided in title 10, U.S.C., 1201–1221.

(m) *Elective care.* Medical, surgical, or dental care desired or requested by the individual or recommended by the physician or dentist which, in the opinion of other cognizant professional authority, can be performed at another place or time without jeopardizing life, limb, health, or well-being of the patient, e.g., surgery for cosmetic purposes and nonessential dental prosthetic appliances.

(n) *Emergency care.* Medical treatment of patients with severe, life-threatening, or potentially disabling conditions that require immediate intervention to prevent undue suffering or loss of life or limb and dental treatment of painful or acute conditions.

(o) *Health benefits advisors (HBA).* Designated individuals at naval facilities who are responsible for advising and assisting beneficiaries covered in this part concerning medica1 and dental benefits in uniformed services facilities and under CHAMPUS. They also provide information regarding Veterans' Administration, Medicare, MEDICAID, and such other local health programs known to be available to beneficiaries (see § 728.4(n)).

(p) *Hospitalization.* Inpatient care in a medical treatment facility.

(q) *Inactive duty training.* Duty prescribed for Reserves by the Secretary concerned under section 206 of title 37, U.S.C. or any other provision of law. Also includes special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed on a voluntary basis in connection with the prescribed training

or maintenance activities of the units to which they are assigned. It includes those duties when performed by Reserves in their status as members of the National Guard.

(r) *Legitimate care.* Those medical and dental services under the cooperative/supplemental care program of CHAMPUS that are legally performed and not contrary to governing statutes.

(s) *Maximum hospital benefit.* That point during inpatient treatment when the patient's progress appears to have stabilized and it can be anticipated that additional hospitalization will not directly contribute to any further substantial recovery. A patient who will continue to improve slowly over a long period without specific therapy or medical supervision, or with only a moderate amount of treatment on an outpatient basis, may be considered as having attained maximum hospital benefit.

(t) *Medical care.* Treatment required to maintain or restore the health of an individual. Medical care may include, but is not limited to, the furnishing of inpatient treatment, outpatient treatment, nursing service, medical examinations, immunizations, drugs, subsistence, transportation, and other adjuncts such as prosthetic devices, spectacles, hearing aids, orthopedic footwear, and other medically indicated appliances or services.

(u) *Medically inappropriate.* A situation arising when denial of a Nonavailability Statement could result in significant risk to the health of a patient or significant limitation to the patient's reasonable access to needed health care.

(v) *Medically necessary.* The level of services and supplies (i.e., frequency, extent, and kinds) adequate for the diagnosis and treatment of illness or injury, including maternity care. Medically necessary, includes the concept of appropriate medical care.

(w) *Medical treatment facility (MTF).* Any duly authorized medical department center, hospital, clinic, or other facility that provides medical, surgical, or dental care.

(x) *Member or former member.* Includes:

(1) Members of the uniformed services ordered to active duty for more than 30 days.

(2) Retired members as defined in § 728.2(bb).

(3) Members of a uniformed service ordered to active duty for more than 30 days who died while on that duty.

(4) Deceased retired members.

(y) *Military patient.* A member of a United States uniformed service on active duty, active duty for training, or inactive duty training, or an active duty member of the armed forces of a foreign government who is receiving inpatient or outpatient care.

(z) *Occupational health services.* Includes medical examinations and tests related to preemployment, preplacement, periodic, and pretermination; tests required for protecting the health and safety of naval personnel; job-related immunizations and chemoprophylaxis; education and training related to occupational health; and other services provided to avoid lost time or to improve effectiveness of employees. The latter will include the furnishing of emergency treatment of illnesses or injuries occurring at work. Furnish such health services to both active duty military personnel and naval civilian employees per current directives.

(aa) *Retired member.* A member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay, as a result of service in a uniformed service. This includes a member or former member who is: (1) Retired for length of service; (2) permanently or temporarily retired for physical disability; (3) on the emergency officers' retired list and is entitled to retired pay for physical disability; or (4) otherwise in receipt of retired pay under chapter 67 of title 10.

(bb) *Routine care.* Medica1 and dental care necessary to maintain health or dental functions other than care of an emergency or elective nature.

(cc) *Supplemental care or services.* When medical or dental management is retained by a naval MTF and required care is not available at the facility retaining management, any additional material, professional diagnostic or consultative services, or other personal services ordered by qualified uniformed service providers, and obtained for the care of that patient are supplemental. See § 728.12 concerning the management of active duty member patients.

(dd) *Uniformed services.* The Navy, Marine Corps, Air Force, Army, Coast Guard, Commissioned Corps of the Public Health Service, and the Commissioned Corps of the National Oceanic and Atmospheric Administration.

(ee) *USMTF.* Uniformed services medical treatment facility.

(ff) *Visit, outpatient.* Appearance by an eligible beneficiary at a separate, organized clinic or specialty service for: Examination, diagnosis, treatment, evaluation, consultation, counseling, or medical advice; or treatment of an eligible beneficiary in quarters; and a signed and dated entry is made in the patient's health record. Specifically excluded are personnel in an inpatient status at the time of such a visit.

§ 728.3 General restrictions and priorities.

(a) *Restrictions.* (1) Naval MTFs provide care to all eligible beneficiaries subject to the capabilities of the professional staff and the availability of space and facilities.

(2) Hospitalization and outpatient services may be provided outside the continental limits of the United States and in Alaska to officers and employees of any department or agency of the Federal Government, to employees of a contractor with the United States or the contractor's subcontractor, to accompanying dependents of such persons, and in emergencies to such other persons as the Secretary of the Navy may prescribe: *Provided,* such services are not otherwise available in reasonably accessible and appropriate non-Federal facilities. Hospitalization of such individuals in a naval MTF is limited to the treatment of acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases, or those requiring domiciliary care. Routine dental care, other than dental prosthesis or orthodontia, may be rendered on a space available basis outside the continental limits of the United States and in Alaska, *Provided,* such services are not otherwise available in reasonably accessible and appropriate non-Federal facilities.

(b) *Priorities.* When care cannot be rendered to all eligible beneficiaries, the priorities in the following chart will prevail. Make no distinction as to the sponsoring uniformed service when providing care or deciding priorities

PRIORITIES FOR THE VARIOUS CATEGORIES OF PERSONNEL ELIGIBLE FOR CARE IN NAVY MEDICAL DEPARTMENT FACILITIES

Priority	Category	Degree of entitlement
1	A. Members of the uniformed services on active duty (including active duty for training and inactive duty training) and comparable personnel of the NATO nations meeting the conditions prescribed in this part.	See Subpart B.
	B. Members of a Reserve Component of the Armed Forces and National Guard personnel under orders.	See Subpart C.
2	Dependents of active duty members of the uniformed services, dependents of persons who died while in such a status, and the dependents of active duty members of NATO nations meeting the conditions prescribed in subpart E of this part.	See Subparts D and E.
3	Members ot the Senior Reserve Officers' Training Corps of the Armed Forces	See § 728.23.
4	Retired members of the uniformed services and their dependents and dependents of deceased retired members.	See Subpart D.
5	Civilian employees of the Federal Government under the limited circumstances covered by the Federal Employees' Health Service program.	See § 728.80.
6	All others, including ex-service maternity eligibles	See Subparts F and G.

§ 728.4 Policies.

(a) *Admissions to closed psychiatric wards.* Admit patients to closed psychiatric wards only when they have a psychiatric or emotional disorder which renders them dangerous to themselves or others, or when a period of careful closed psychiatric observation is necessary to determine whether such a condition exists. When a patient is admitted to a closed psychiatric ward, the reason for admission must be clearly stated in the patient's clinical record by the physician admitting the patient to the ward. These same policies apply equally in those instances when it becomes necessary to place a patient under constant surveillance while in an open ward.

(b) *Absence from the sick list.* See § 728.4 (d), (x), and (y).

(c) *Charges and collection.* Charges for services rendered vary and are set by the Office of the Assistant Secretary of Defense (Comptroller) and published in a yearly NAVMEDCOMNOTE 6320, (Cost elements of medical, dental, subsistence rates, and hospitalization bills). Billing and collection actions also vary according to entitlement or eligibility and are governed by the provisions of NAVMED P-5020, Resource Management Handbook. See subpart J on the initiation of collection action on pay patients.

(d) *Convalescent leave.* Convalescent leave, a period of authorized absence of active duty members under medical care when such persons are not yet fit for duty, may be granted by a member's commanding officer (CO) or the hospital's CO per the following:

(1) Unless otherwise indicated, grant such leave only when recommended by COMNAVMEDCOM through action taken upon a report by a medical board, or the recommended findings of a physical evaluation board or higher authority.

(2) Member's commanding officer (upon advice of attending physician); commanding officers of Navy, Army, or Air Force medical facilities; commanders of regional medical commands for persons hospitalized in designated USTFs or in civilian facilities within their respective areas of authority; and managers of Veterans Administration hospitals within the 50 United States or in puerto Rico may grant convalescent leave to active duty naval patients, with or without reference to a medical board, physical evaluation board, or higher authority provided the:

(i) Convalescent leave is being granted subsequent to a period of hospitalization.

(ii) Member is not awaiting disciplinary action or separation from the service for medical or administrative reasons.

(iii) Medical officer in charge:

(A) Considers the convalescent leave beneficial to the patient's health.

(B) Certifies that the patient is not fit for duty, will not need hospital treatment during the contemplated convalescent leave period, and that such leave will not delay final disposition of the patient.

(3) When considered necessary by the attending physician and approved on an individual basis by the commander of the respective geographic regional medical command, convalescent leave in excess of 30 days may be granted. The authority to grant convalescent leave in excess of 30 days may not be redelegated to hospital commanding officers. Member's permanent command must be notified of such extensions (see MILPERSMAN 3020360).

(4) Exercise care in granting convalescent leave to limit the duration of such leave to that which is essential in relation to diagnosis, prognosis, estimated duration of treatment, and patient's probable final disposition.

(5) Upon return from convalescent leave;

(i) Forward one copy of original orders of officers, bearing all endorsements, to the Commander, Naval Military Personnel Command (COMNAVMILPERSCOM) (NMPC–4) or the Commandant of the Marine Corps (CMC), as appropriate.

(ii) Make an entry on the administrative remarks page (page 13 for Navy personnel) of the service records of enlisted personnel indicating that convalescent leave was granted and the dates of departure and return.

(6) If considered beneficial to the patient's health, commanding officers of hospitals may grant convalescent leave as a delay in reporting back to the parent command.

(e) *Cosmetic surgery.* (1) Defined as that surgery which is done to revise or change the texture, configuration, or relationship of contiguous structures of any feature of the human body which would be considered by the average prudent observer to be within the broad range of "normal" and acceptable variation for age or ethnic origin, and in addition, is performed for a condition which is judged by competent medical opinion to be without potential for jeopardy to physical or mental health of an individual.

(2) Commanding officers will monitor, control, and assure compliance with the following cosmetic surgery policy:

(i) Certain cosmetic procedures are a necessary part of training and retention

of skills to meet the requirements of certification and recertification.

(ii) Insofar as they meet minimum requirements and serve to improve the skills and techniques needed for reconstructive surgery, the following cosmetic procedures may be performed as low priority surgery on active duty members only when time and space are available.

(A) Cosmetic facial rhytidectomies (face lifts) will be a part of all training programs required by certifying boards.

(B) Cosmetic augmentation mammaplasties will be done only by properly credentialed surgeons and residents within surgical training programs to meet requirements of certifying boards.

(f) *Cross-utilization of uniformed services facilities.* To provide effective cross-utilization of medical and dental facilities of the uniformed services, eligible persons, regardless of service affiliation, will be given equal opportunity for health benefits. Catchment areas have been established by the Department of Defense for each USMTF (see § 728.2(d)). Eligible beneficiaries residing within such a catchment area are expected to use that inpatient facility for care. Make provisions to assure that:

(1) Eligible beneficiaries residing in a catchment area served by a USMTF not of the sponsor's own service may obtain care at that facility or at a facility of the sponsor's service located in another catchment area.

(2) If the facility to which an eligible beneficiary applies cannot furnish needed care, the other facility or facilities in overlapping catchment areas are contacted to determine whether care can be provided thereat.

(g) *Disengagement.* Discontinuance of medical management by a naval MTF for only a specific episode of care.

(1) *General.* Disengagement is accomplished only after alternative sources of care (i.e., transfer to another USMTF, a USTF, or other Federal source via the aeromedical evacuation system, if appropriate) and attendant costs, if applicable, have been fully explained to patient or responsible family member. Counselors may arrange for counseling by other appropriate sources when the patient is or may be eligible for VA, Medicare, MEDICAID, etc. benefits. With the individual's permission, counselors may also contact State programs, local health organizations, or health foundations to determine if care is available for the condition upon which disengagement is based. After the disengagement decision is made, the patient to be disengaged or the responsible family member should be advised to return to the naval MTF for any care required subsequent to receiving the care that necessitated disengagement.

(2) *CHAMPUS-eligible individuals.* (i) Issue a Nonavailability Statement (DD 1251) per § 728.33, when appropriate, to patients released to civilian sources for total care (disengaged) under CHAMPUS. CHAMPUS-eligible patients disengaged for total care, who do not otherwise require a DD 1251 (released for outpatient care or those released whose residence is outside the inpatient catchment area of all USMTFs and USTFs) will be given the original of a properly completed DD 2161, Referral For Civilian Medical Care, which clearly indicates that the patient is released for total care under CHAMPUS. CHAMPUS-eligible beneficiaries will be disengaged for services under CHAMPUS when:

(A) Required services are beyond your capability and these services cannot be appropriately provided through one of the alternatives listed in § 728.4(z), or

(B) You cannot effectively provide required services or manage the overall course of care even if augmented by services procured from other Government or civilian sources using naval MTF operation and maintenance funds as authorized in subpart § 728.4(z).

(ii) When a decision is made to disengage a CHAMPUS-eligible individual, commanding officers (CO) or officers-in-charge (OIC) are responsible for assuring that counseling and documentation of counseling are appropriately accomplished. Complete a NAVMED 6320/30, Disengagement for Civilian Medical Care, to document that all appropriate disengagement procedures have been accomplished.

(iii) After obtaining the signature of the patient or responsible family member, the counselor will file a copy of the DD 2161 and the original of the NAVMED 6320/30 in the patient's Health Record.

(3) *Patients other than active duty or CHAMPUS-eligible individuals*— (i) *Categories of patients.* The following are categories of individuals who also may be disengaged:

(A) Medicare-eligible individuals.

(B) MEDICAID-eligible individuals.

(C) Civilians (U.S. and foreign) admitted or treated as civilian humanitarians.

(D) Secretarial designees.

(E) All other individuals, with or without private insurance, who are not eligible for care at the expense of the Government.

(ii) *Disengagement decision.* Disengage such individuals when:

(A) Required services are beyond the capability of the MTF, and services necessary for continued treatment in the MTF cannot be appropriately provided by another USMTF, a USTF, or another Federal source. (Explore alternative sources, for individuals eligible for care from these sources, before making the disengagement decision.)

(B) The MTF cannot, within the facility's capability, effectively provide required care or manage the overall course of treatment even if augmented by services procured from other Government sources or through procurement from civilian sources using supplemental care funding.

(iii) *Counseling.* The initial step in the disengagement process is appropriate counseling and documentation. In an emergency, or when the individual cannot be appropriately counseled prior to leaving the MTF, establish procedures to ensure counseling and documentation are accomplished during the next working day. Such "follow-up" counseling may be in person or via a witnessed telephone conversation. In either instance, the counselor will document counseling on a NAVMED 6320/30, Disengagement for Civilian Medical Care. The disengagement decision making authority must assure the accomplishment of counseling by personally initiating this service or by referring the patient or responsible family member to the HBA for counseling. As a minimum, counseling will consist of:

(A) Explaining that the patient is being disengaged from treatment at the facility and the reason therefor. Assure that the individual understands the meaning of "disengagement" by explaining that the MTF is unable to provide for the patient's present needs and must therefore relinquish medical management of the patient to a health care provider of the individual's choice.

(B) Assuring the individual that the disengagement action is taken to provide for the patient's immediate medical needs. Also assure that the individual understands that the disengagement is not indicative of whether care is or will be available in the MTF for other aspects of past, current, or future medical conditions.

(C) Explaining Medicare, MEDICAID, or other known programs as they relate to the particular circumstance of the patient, including cost-sharing, deductibles, allowable charges, participating and authorized providers, physicians accepting assignment, claim filing procedures, etc. Explain that once disengagement is accomplished, the Navy, is not responsible for any costs

for care received from a health care provider of the patient's or responsible family member's choice.

(iv) *Documentation.* Commanding officers are responsible for ensuring that proper documentation procedures are started and that providers and counselors under their commands are apprised of their individual responsibilities for counseling and documenting each disengagement. Failure to properly counsel and document counseling may result in the naval MTF having to absorb the cost of the entire episode of care. Document counseling on a NAVMED 6320/30, Disengagement for Civilian Medical Care. Completion of all items on the form assures documentation and written acknowledgement of appropriate disengagement and counseling. If the patient or responsible family member refuses to acknowledge receipt of counseling by signing the form, state this fact on the bottom of the form and have it witnessed by an officer. Give the patient or responsible family member a copy and immediately file the original in the patient's Health Record.

(4) *Active duty members.* When an active duty member seeks care at a USMTF, that USMTF retains some responsibility (e.g., notification, medical cognizance, supplemental care, etc.) for that member even when the member must be transferred to another facility for care. Therefore, relinquishment of total management of an active duty member (disengagement) cannot be accomplished.

(h) *Domiciliary/custodial care.* The type of care designed essentially to assist an individual in meeting the normal activities of daily living, i.e., services which constitute personal care such as help in walking and getting in or out of bed, help in bathing, dressing, feeding, preparation of special diets, and supervision over medications which can usually be self-administered and which does not entail or require the continuing attention of trained medical or paramedical personnel. The essential characteristics to be considered are the level of care and medical supervision that the patient requires, rather than such factors as diagnosis, type of condition, or the degree of functional limitation. Such care will not be provided in naval MTFs except when required for active duty members of the uniformed services.

(i) *Emergency care.* Treat patients authorized only emergency care and those admitted as civilian emergencies only during the period of the emergency. Initiate action to effect appropriate disposition of such patients as soon as the emergency period ends.

(j) *Evaluation after admission.* Evaluate each patient as soon as possible after admission and continue reevaluation until disposition is made. Anticipate each patient's probable type and date of disposition. Necessary processing by the various medical and administrative entities will take place concurrently with treatment of the patient. Make the medical disposition decision as early as possible for U.S. military patients inasmuch as immediate transfer to a specialized VA center or to a VA spinal cord injury center may be in their best interest (see NAVMEDCOMINST 6320.1.2). Make disposition decisions for military personnel of NATO nations in conformance with § 728.42(d).

(k) *Extent of care.* Subject to the restrictions and priorities in § 728.3, eligible persons will be provided medical and dental care to the extent authorized, required, and available. When an individual is accepted for care, all care and adjuncts thereto, such as nonstandard supplies, as determined by the CO to be necessary, will be provided from resources available to the CO unless specifically prohibited elsewhere in this part. When a patient has been accepted and required care is beyond the capability of the accepting MTF, the CO thereof will arrange for the required care by one of the means shown below. The method of choice will be based upon professional considerations and travel economy.

(1) Transfer the patient per § 728.4(bb).

(2) Procure from civilian sources the necessary material or professional personal services required for the patient's proper care and treatment.

(3) Care authorized in § 728.4(k)(2) will normally be accomplished in the naval MTF. However, when such action is not feasible, supplementation may be obtained outside the facility. Patients may be sent to other Federal or civilian facilities for specific treatment or services under § 728.4(k)(3) *provided* they remain under medical management of the CO of the sending facility during the entire period of care.

(l) *Family planning services.* Provide family planning services following the provisions of SECNAVINST 6300.2A.

(m) *Grouping of patients.* Group hospitalized patients according to their requirements for housing, medical, or dental care. Provide gender identified quarters, facilities, and professional supervision on that basis when appropriate. Individuals who must be retained under limited medical supervision (medical hold) solely for administrative reasons or for medical conditions which can be treated on a clinic basis will be provided quarters and messing facilities, where practicable, separately from those hospitalized. Provide medical care for such patients on a periodic clinic appointment basis (see § 728.4(p) for handling enlisted convalescent patients). Make maximum use of administrative versus medical personnel in the supervision of such patients.

(n) *Health benefits advising*—(1) *General.* A Health Benefits Advising program must be started at all shore commands having one or more medical officers. While health benefits advisors are not required aboard every ship with a medical officer, the medical department representative can usually provide services to personnel requiring help. The number of health benefits advisors (HBAs) of a command will be commensurate with counseling and assistance requirements. The program provides health benefits information and counseling to beneficiaries of the Uniformed Services Health Benefits Program (USHBP) and to others who may or may not qualify for care in USMTFs. Office location of HBAs, their names, and telephone numbers will be widely publicized locally. If additional help is required, contact MEDCOM-333 on AUTOVON 294-1127 or commercial (202) 653-1127. In addition to the duties described in § 728.4(n)(2), HBAs will:

(i) Maintain a depository of up-to-date officially supplied health benefits information for availability to all beneficiaries.

(ii) Provide information and guidance to beneficiaries and generally support the medical and dental staff by providing help to eligible beneficiaries seeking or obtaining services from USMTFs, civilian facilities, VA facilities, Medicare, MEDICAID, and other health programs.

(iii) Assure that when a referral or disengagement is required, patients or responsible family members are:

(A) Fully informed that such action is taken to provide for their immediate medical or dental requirements and that the disengagement or referral has no bearing on whether care may be available in the naval MTF for other aspects of current or other future medical conditions.

(B) Provided the services and counseling outlined in § 728.4(n)(2) or § 728.3(g)(3)(ii), as appropriate, *prior* to their departure from the facility when such beneficiaries are referred or disengaged because care required is beyond the naval MTF's capability. In an emergency, or when the patient or sponsor cannot be seen by the HBA

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prior to leaving, provide these benefits as soon thereafter as possible.

(2) *Counseling and Assisting CHAMPUS-Eligible Individuals.* HBAs, as a minimum, will:

(i) Explain alternatives available to the patient.

(ii) If appropriate, explain CHAMPUS as it relates to the particular circumstance, including the cost-sharing provisions applicable to the patient, allowable charges, provider participation, and claim filing procedures. Fully inform the patient or responsible family member that when a patient is disengaged for care under CHAMPUS or when cooperative care is to be considered for payment under the provisions of § 728.4(z) (5) and (6), the naval MTF is not responsible for monetary amounts above the CHAMPUS-determined allowable charge or for charges CHAMPUS does not allow.

(iii) Explain why the naval MTF is paying for the supplemental care, if appropriate (see § 728.4(z) (3) and (4)), and how the bill will be handled. Then:

(A) Complete a DD 2161, Referral For Civilian Medical Care, marking the appropriate source of payment with the concurrence of the naval MTF commanding officer or CO's designee.

(B) If referred for a specified procedure with a consultation report to be returned to the naval MTF retaining medical management, annotate the DD 2161 in the consultation report section to state this requirement. Advise patient or responsible family member to arrange for a completed copy of the DD 2161 to be returned to the naval MTF for payment, if appropriate, and inclusion in patient's medical record.

(iv) Brief patient or responsible family member on the use of the DD 2161 in USMTF payment procedures and CHAMPUS claims processing, as appropriate. Provide sufficient copies of DD 2161 and explain that CHAMPUS contractors will return claims submitted without a required DD 2161. Obtain signature of patient or responsible family member on the form.

(v) Arrange for counseling from appropriate sources when the patient is eligible for VA, Medicare, or MEDICAID benefits.

(vi) Serve as liaison between civilian providers and naval MTF on administrative matters related to the referral and disengagement process.

(vii) Serve as liaison between naval MTF and cooperative care coordinators on matters relating to care provided or recommended by naval MTF providers, as appropriate.

(viii) Explain why the patient is being disengaged and, per § 728.4(g)(2), provide a DD 1251, Nonavailability Statement, or DD 2161, Referral For Civilian Medical Care, as appropriate.

(o) *Immunizations.* Administer immunizations per BUMED INST 6230.1H.

(p) *Medical holding companies.* Medical holding companies (MHC) have been established at certain activities to facilitate handling of enlisted convalescent patients whose medical conditions are such that, although they cannot be returned to full duty, they can perform light duty ashore commensurate with their condition while completing their medical care on an outpatient basis. Where feasible, process such patients for transfer.

(q) *Notifications.* The interests of the Navy, Marine Corps, and DOD have been adversely affected by past procedures which emphasized making notifications only when an active duty member's condition was classed as either seriously ill or injured or classed as very seriously ill or injured. However, even temporary disabilities which preclude communication with the next of kin have generated understandable concern and criticism, especially when emergency hospitalization has resulted. Accordingly, naval MTFs will effect procedures to make notifications required in § 728.4(q) (2), (3), and (4) upon admission or diagnosis of individuals specified. The provisions of § 728.4(q) supplement articles 1810520 and 4210100 of the Naval Military Personnel Manual and chapter 1 of Marine Corps Order P3040.4B, Marine Corps Casualty Procedures Manual; they do not supersede them.

(1) *Privacy Act.* The right to privacy of individuals for whom hospitalization reports and other notifications are made will be safeguarded as required by the Privacy Act, implemented in the Department of the Navy by SECNAVINST 5211.5C, U.S. Navy Regulations, the Manual of the Judge Advocate General, the Marine Corps Casualty Procedures Manual, and the Manual of the Medical Department.

(2) *Active duty flag or general officers and retired Marine Corps general officers.* Upon admission of subject officers, make telephonic contact with MEDCOM-33 on AUTOVON 294-1179 or commercial (202) 653-1179 (after duty hours, contact the command duty officer on AUTOVON 294-1327 or commercial (202) 653-1327) to provide the following information:

(i) *Initial.* Include in the initial report:

(A) Officer's name, grade, social security number, and designator.

(B) Duty assignment in ship or station, or other status.

(C) Date of admission.

(D) Present condition, stating if serious or very serious.

(E) Diagnosis, prognosis, and estimated period of hospitalization. To prevent possible invasion of privacy, report the diagnosis only in International Classification of Diseases—9th Edition (ICD-9-CM) code designator.

(ii) *Progress reports.* Call frequency and content will be at the discretion of the commanding officer. However, promptly report changes in condition or status.

(iii) *Termination report.* Make a termination of hospitalization report to provide appropriate details for informational purposes.

(iv) *Additional commands to apprise.* The geographic naval medical region serving the hospital and, if different, the one serving the officer's command will also be apprised of such admissions.

(3) *Active duty members*—(i) *Notification of member's command.* The commanding officer of naval medical treatment facilities has responsibility for notifying each member's commanding officer under the conditions listed below. Make COMNAVMILPERS COM or CMC, as appropriate, information addressees on their respective personnel:

(A) *Direct admissions.* Upon direct admission of an active duty member, with or without orders regardless of expected length of stay. The patient administration department (administrative watch officer after hours) is responsible for preparation, per § 728.4(q)(4), and release of these messages. If the patient is attached to a local command (CO's determination), initial notification may be made telephonically. Record the name, grade or rate, and position of the person receiving the call at the member's command on the back of the NAVMED 6300/5, Inpatient Admission/Disposition Record and include the name and telephone number of the MTF's point of contact as given to the patient's command.

(B) *Change in medical condition.* Upon becoming aware of any medical condition, including pregnancy, which will now or in the foreseeable future result in the loss of a member's full duty services in excess of 72 hours. Transmit this information in a message, prepared per § 728.4(q)(4), marked "Commanding Officer's Eyes Only."

(ii) *Notification of Next of Kin (NOK)*—(A) *Admitted members.* As part of the admission procedure, encourage all patients to communicate expeditiously and regularly with their NOK. When an active duty member's

incapacity makes timely personal communication impractical, i.e., fractures, burns, eye pathology, psychiatric or emotional disorders, etc., MTF personnel will initiate the notification process. Do not start the process if the patient specifically declines such notification or it is clear that the NOK already has knowledge of the admission (commands should develop a local form for such patients to sign attesting their desire or refusal to have their NOK notified). Once notification has been made, the facility will make progress reports, at least weekly, until the patient is again able to communicate with the NOK.

(*1*) *Navy personnel.* Upon admission of Navy personnel, effect the following notification procedures.

(*i*) *In the contiguous 48 States.* Patient administration department personnel will notify the NOK in person, by telephone, telegraph, or by other expeditious means. Included are notifications of the NOK upon arrival of all Navy patients received in the medical air-evacuation system.

(*ii*) *Outside the contiguous 48 States.* If the next of kin has accompanied the patient on the tour of duty and is in the immediate area, hospital personnel will notify the next of kin in person, by telephone, telegraph, or by other expeditious means. If the next of kin is located in the 48 contiguous United States, use telegraphic means to notify COMNAVMILPERSCOM who will provide notification to the NOK.

(*2*) *Marine Corps personnel.* When Marine Corps personnel are admitted, effect the following notification procedures.

(*i*) *In the Contiguous 48 States.* The commander of the unit or activity to which the casualty member is assigned is responsible for initiating notification procedures to the NOK of seriously or very seriously ill or injured Marine Corps personnel. Patient administration department personnel will assure that liaison is established with the appropriate command or activity when such personnel are admitted. Patient administration personnel will notify the Marine's command by telephone and request that cognizance be assumed for in-person initial notification of the NOK of Marine Corps patients admitted with an incapacity that makes personal and timely communication impractical and for those arriving via the medical air-evacuation system. If a member's command is unknown or cannot be contacted, inform CMC (MHP–10) on AUTOVON 224–1787 or commercial (202) 694–1787.

(ii) Outside the contiguous 48 States. Make casualty notification for Marine Corps personnel hospitalized in naval MTFs outside the contiguous 48 States to the individual's command. If the command is unknown or not located in close proximity to the MTF, notify CMC (MHP–10). When initial notification to the individual's command is made via message, make CMC (MHP–10) an information addressee.

(iii) In and outside the United States. In life-threatening situations, the Commandant of the Marine Corps desires and encourages medical officers to communicate with the next of kin. In other circumstances, request that the Marine Corps member communicate with the NOK if able. If unable, the medical officer should communicate with the NOK *after* personal notification has been effected.

(B) *Terminally ill patients.* As soon as a diagnosis is made and confirmed (on inpatients or outpatients) that a Navy member is terminally ill, MILPERSMAN 4210100 requires notification of the primary and secondary next of kin. Accomplish notification the same as for Navy members admitted as seriously or very seriously ill or injured, i.e., by priority message to the Commander, Naval Military Personnel Command and to the Casualty Assistance Calls/Funeral Honors Support Program Coordinator, as appropriate, who has cognizance over the geographical area in which the primary and secondary NOK resides (see OPNAVINST 1770.1). Submit followup reports when appropriate. See MILPERSMAN 4210100 for further amplification and for information addressees.

(1) In the contiguous 48 States. Notification responsibility is assigned to the USMTF making the diagnosis and to the member's duty station if diagnosed in a civilian facility.

(2) Outside the contiguous 48 States. Notification responsibility is assigned to the naval medical facility making the diagnosis. When diagnosed in nonnaval facilities or aboard deployed naval vessels, notification responsibility belongs to the Commander, Naval Military Personnel Command.

(C) *Other uniformed services patients.* Establish liaison with other uniformed services to assure proper notification upon admission or diagnosis of active duty members of other services.

(D) *Nonactive duty patients.* At the discretion of individual commanding officers, the provisions of § 728.4(q)(3)(ii) on providing notification to the NOK may be extended to admissions or diagnosis of nonactive duty patients; e.g., admission of dependents of members on duty overseas.

(4) *Messages*— (i) *Content.* Phrase contents of messages (and telephonic notifications) in lay terms and provide sufficient details concerning the patient's condition, prognosis, and diagnosis. Messages will also contain the name and telephone number of the facility's point of contact. When appropriate for addressal, psychiatric and other sensitive diagnoses will be related with discretion. When indicated, also include specific comment as to whether the presence of the next of kin is medically warranted. **Note:** In making notification to the NOK of patients diagnosed as having Acquired Immune Deficiency Syndrome (AIDS) or Human Immunodeficiency Virus (HIV), use one of the symptoms of the disease as the diagnosis (e.g., pneumonia) rather than "HIV", "AIDS", or the diagnostic code for AIDS.

(ii) *Information addressees.* Make the commander of the geographic naval medical region servicing the member's command and the one servicing the hospital, if different, information addressees on all messages. For Marine Corps personnel, also include CMC (MHP–10) and the appropriate Marine Corps district headquarters as information addressees. COMNAVMEDCOM WASHINGTON DC requires information copies of messages *only* when a patient has been placed on the seriously ill or injured or very seriously ill or injured list or diagnosed as terminally ill.

(r) *Outpatient care.* Whenever possible, perform diagnostic procedures and provide preoperative and post operative care, surgical care, convalescence, and followup observations and treatment on an outpatient basis.

(s) *Performance of duties while in an inpatient status.* U.S. military patients may be assigned duties in and around naval MTFs when such duties will be, in the judgement of the attending physician, of a therapeutic value. Physical condition, past training, and other acquired skills must all be considered before assigning any patient a given task. Do not assign patients duties which are not within their capabilities or which require more than a very brief period of orientation.

(t) *Prolonged definitive medical care.* Prolonged definitive medical care in naval MTFs will not be provided for U.S. military patients who are unlikely to return to duty. The time at which a patient should be processed for disability separation must be determined on an individual basis, taking into consideration the interests of the patient as well as those of the Government. A long-term patient roster will be maintained and updated at least

once monthly to enable commanding officers and other appropriate staff members to monitor the progress of all patients with 30 or more continuous days of hospitalization. Include on the roster basic patient identification data (name, grade or rate, register number, ward or absent status, clinic service, and whether assigned to a medical holding company), projected disposition (date, type, and profile), diagnosis, and cumulative hospital days (present facility and total).

(u) *Remediable physical defects of active duty members*—(1) *General.* When a medical evaluation reveals that a Navy or Marine Corps patient on active duty has developed a remediable defect while on active duty, the patient will be offered the opportunity of operative repair or other appropriate remediable treatment, if medically indicated.

(2) *Refusal of treatment.* Per MANMED art. 18–15, when a member refuses to submit to recommended therapeutic measures for a remediable defect or condition which has interfered with the member's performance of duty and following prescribed therapy, the member is expected to be fit for full duty, the following procedures will apply:

(i) Transfer the member to a naval MTF for further evaluation and appearance before a medical board. After counseling per MANMED art. 18–15, any member of the naval service who refuses to submit to recommended medical, surgical, dental, or diagnostic measures, other than routine treatment for minor or temporary disabilities, will be asked to sign a completed NAVMED 6100/4, Medical Board Certificate Relative to Counseling on Refusal of Surgery and/or Treatment, attesting to the counseling.

(ii) The board will study all pertinent information, inquire into the merits of the individual's refusal to submit to treatment, and report the facts with appropriate recommendations.

(iii) As a general rule, refusal of minor surgery should be considered unreasonable in the absence of substantial contraindications. Refusal of major surgical operations may be reasonable or unreasonable, according to the circumstances, The age of the patient, previous unsuccessful operations, existing physical or mental contraindications, and any special risks should all be taken into consideration.

(iv) Where surgical procedures are involved, the board's report will contain answers to the following questions:

(A) Is surgical treatment required to relieve the incapacity and restore the individual to a duty status, and may it be expected to do so?

(B) Is the proposed surgery an established procedure that qualified and experienced surgeons ordinarily would recommend and undertake?

(C) Considering the risks ordinarily associated with surgical treatment, the patient's age and general physical condition, and the member's reason for refusing treatment, is the refusal reasonable or unreasonable? (Fear of surgery or religious scruples may be considered, along with all the other evidence, for whatever weight may appear appropriate.)

(v) If a member needing surgery is mentally competent, do not perform surgery over the member's protestation.

(vi) In medical, dental, or diagnostic situations, the board should show the need and risk of the recommended procedure(s).

(vii) If a medical board decides that a diagnostic, medical, dental, or surgical procedure is indicated, these findings must be made known to the patient. The board's report will show that the patient was afforded an opportunity to submit a written statement explaining the grounds for refusal. Forward any statement with the board's report. Advise the patient that even if the disability originally arose in line of duty, its continuance may be attributable to the member's unreasonable refusal to cooperate in its correction; and that the continuance of the disability might, therefore, result in the member's separation without benefits.

(viii) Also advise the patient that:

(A) Title 10 U.S.C. 1207 precludes disposition under chapter 61 of 10 U.S.C. if such a member's disability is due to intentional misconduct, willful neglect, or if it was incurred during a period of unauthorized absence. A member's refusal to complete a recommended therapy regimen or diagnostic procedure may be interpreted as willful neglect.

(B) Benefits from the Veterans Administration will be dependent upon a finding that the disability was incurred in line of duty and is not due to the member's willful misconduct.

(ix) The Social Security Act contains special provisions relating to benefits for "disabled" persons and certain provisions relating to persons disabled "in line of duty" during service in the Armed Forces. In many instances persons deemed to have "remediable" disorders have been held not "disabled" within the meaning of that term as used in the statute, and Federal courts have upheld that interpretation. One who is deemed unreasonably to have refused to undergo available surgical procedures may be deemed both "not disabled" and to have incurred the condition "not in the line of duty."

(x) Forward the board's report directly to the Central Physical Evaluation Board with a copy to MEDCOM–25 except in those instances when the convening authority desires referral of the medical board report for Departmental review.

(xi) Per MANMED art. 18–15, a member who refuses medical, dental, or surgical treatment for a condition that existed prior to entry into the service (EPTE defect), not aggravated by a period of active service but which interferes with the performance of duties, should be processed for reason of physical disability, convenience to the Government, or enlisted in error rather than under the refusal of treatment provisions. Procedures are delineated in BUMEDINST 1910.2G and SECNAVINST 1910.4A.

(3) *Other uniformed services patients.* When a patient of another service is found to have a remediable physical defect developed in the military service, refer the matter to the nearest headquarters of the service concerned.

(v) *Responsibilities of the commanding officer.* In connection with the provisions of this part, commanding officers of naval MTFs will:

(1) Determine which persons within the various categories authorized care in a facility will receive treatment in, be admitted to, and be discharged from that specific facility.

(2) Supervise care and treatment, including the employment of recognized professional procedures.

(3) Provide each patient with the best possible care in keeping with accepted professional standards and the assigned primary mission of the facility.

(4) Provide for counseling patients and naval MTF providers when care required is beyond the naval MTF's capability. This includes:

(i) Establishing training programs to acquaint naval MTF providers and HBAs with the uniformed services' referral for supplemental/cooperative care or services policy outlined in § 728.4(z).

(ii) Implementing control measures to ensure that:

(A) Providers requesting care under the provisions § 728.4(z) are qualified to maintain physician case management when required.

(B) Care requested under the supplemental/cooperative care criteria is medically necessary, legitimate, and otherwise permissible under the terms of that part of the USHBP under which it will be considered for payment.

(C) Providers explain to patients the reason for a referral and the type of referral being made.

(D) Attending physicians properly refer beneficiaries to the HBA for counseling and services per § 728.4(n).

(E) Uniform criteria are applied in determining cooperative care situations without consideration of rate, grade, or uniformed service affiliation.

(F) All DD 2161's are properly completed and approved by the commanding officer or designee.

(G) A copy of the completed DD 2161 is returned to the naval MTF for inclusion in the medical record of the patient.

(w) *Sick call.* A regularly scheduled assembly of sick and injured military personnel established to provide routine medical care. Subsequent to examination, personnel medically unfit for duty will be admitted to an MTF or placed sick in quarters; personnel not admitted or placed sick in quarters will be given such treatment as is deemed necessary. When excused from duty for medical reasons which do not require hospitalization, military personnel may be authorized to remain in quarters, not to exceed 72 hours.

(x) *Sicklist—authorized absence from.* Commanding officers of naval MTFs may authorize absences of up to 72 hours for dependents and retired personnel without formal discharge from the sicklist. When absences are authorized in excess of 24 hours, subsistence charges or dependent's rate, as applicable, for that period will not be collected and the number of reportable occupied bed days will be appropriately reduced. Prior to authorizing such absences, the attending physician will advise patients of their physical limitations and of any necessary safety precautions, and will annotate the clinical record that patients have been so advised. For treatment under the Medical Care Recovery Act, make reporting consistent with § 728.4(aa).

(y) *Subsisting out.* A category in which officer and enlisted patients on the sicklist of a naval MTF may be placed when their daily presence is not required for treatment nor examination, but who are not yet ready for return to duty. As a general rule, patients placed in this category should reside in the area of the facility and should be examined by the attending physician at least weekly. Enlisted personnel in a subsisting out status should be granted commuted rations.

(1) Granting of subsisting out privileges is one of many disposition alternatives; however, recommend that other avenues (medical holding company, convalescent leave, limited duty, etc.) be considered before granting this privilege.

(2) Naval MTF patients in a subsisting out status should not be confused with those enlisted personnel in a rehabilitation program who are granted liberty and are drawing commuted rations, but are required to be present at the treating facility during normal working hours. These personnel are not subsisting out and must have a bed assigned at the naval MTF.

(3) Naval MTF patients who are required to report for examinations or treatment more often than every 48 hours should not be placed in a subsisting out status.

(z) *Supplemental/cooperative care or services*—(1) *General.* When such services as defined in § 728.2(cc) are rendered to other than CHAMPUS-eligible individuals, the cost thereof is chargeable to operation and maintenance funds available for operation of the facility requesting care or services. Cooperative care applies to CHAMPUS-eligible patients receiving inpatient or outpatient care in a USMTF who require care or services beyond the capability of that USMTF. The following general principles apply to such CHAMPUS-eligible patients:

(i) *Cooperation of uniformed services physicians.* USMTF physicians are required to cooperate in providing CHAMPUS contractors and OCHAMPUS additional medical information. SECNAVINST 5211.5C delineates policies, conditions, and procedures that govern safeguarding, using, accessing, and disseminating personal information kept in a system of records. Providing information to CHAMPUS contractors and OCHAMPUS will be governed thereby.

(ii) *Physician case management.* Where required by NAVMEDCOMINST 6320.18 (CHAMPUS Regulation; implementation of), uniformed services physicians are required to provide case management (oversight) as would an attending or supervising civilian physician.

(iii) *CHAMPUS-authorized providers.* CHAMPUS contractors are responsible for determining whether a civilian provider is CHAMPUS-authorized and for providing such information, upon request, to USMTFs.

(iv) *Phychiatric or psychotherapeutic services.* If psychiatric care is being rendered by a psychiatric or clinical social worker, a psychiatric nurse, or a marriage and family counselor, and the uniformed services facility has made a determination that it does not have the professional staff competent to provide required physician case management, the patient may be (partially) disengaged for the psychiatric or psychotherapeutic service, yet have the remainder of required medical care provided by the naval MTF.

(v) *Forms and documentation.* A DD 2161, Referral For Civilian Medical Care, will be provided to each patient who is to receive supplemental or cooperative care or services. When supplemental care is required under the provisions of § 728.4(z) (3) and (4), the provisions of § 728.4(z)(3)(iii) apply. When cooperative care or services are required under the provisions of § 728.4(z) (5) and (6), the provisions of § 728.4(z)(5)(iv) apply.

(vi) *Clarification of unusual circumstances.* Commanding officers of naval MTFs will submit requests for clarification of unusual circumstances to OCHAMPUS or CHAMPUS contractors via the Commander, Naval Medical Command (MEDCOM–33) for consideration.

(2) *Care beyond a naval MTF's capability.* When, either during initial evaluation or during the course of treatment of CHAMPUS-eligible beneficiaries, required services are beyond the capability of the naval MTF, the commanding officer will arrange for the services from an alternate source in the following order, subject to restrictions specified. The provisions of § 728.4(z)(2)(i) through (iii) must be followed before either supplemental care, authorized in § 728.4(z)(4), is considered for payment from Navy Operations and Maintenance funds, or cooperative care, authorized in § 728.4(z)(6), is to be considered for payment under the terms of CHAMPUS.

(i) Obtain from another USMTF or other Federal MTF the authorized care necessary for continued treatment of the patient within the naval MTF, when such action is medically feasible and economically advantageous to the Government.

(ii) When the patient is a retired member or dependent, transfer per § 728.4(bb)(3) (i), (ii), (iii), or (iv), in that order. When the patient is a dependent of a member of a NATO nation, transfer per § 728.4(bb)(4) (i), (ii), or (iii), in that order.

(iii) With the patient's permission, the naval MTF may contact State programs, local health agencies, or health foundations to determine if benefits are available.

(iv) Obtain such supplemental care or services as delineated in § 728.4(z)(4) from a civilian source using local operation and maintenance funds, or

(v) Obtain such cooperative care or services as delineated in § 728.4(z)(6)

from a civilian source under the terms of CHAMPUS.

(3) *Operation and maintenance funds.* When local operation and maintenance funds are to be used to obtain supplemental care or services, the following guidelines are applicable:

(i) Care or services must be legitimate, medically necessary, and ordered by a qualified USMTF provider.

(ii) The naval MTF must make the necessary arrangements for obtaining required care or services from a specific source of care.

(iii) Upon approval of the naval MTF commanding officer or designee, provide the patient or sponsor with a properly completed DD 2161, Referral For Civilian Medical Care. The DD 2161 will be marked by the health benefits advisor or other designated individual to show the naval MTF as the source of payment. Forward a copy to the MTF's contracting or supply officer who is the point of contact for coordinating obligations with the comptroller and thus is responsible for assuring proper processing for payment.

(iv) Authorize care on an inpatient or outpatient basis for the minimum period necessary for the civilian provider to perform the specific test, procedure, treatment, or consultation requested. Patients receiving inpatient services in civilian medical facilities will not be counted as an occupied bed in the naval MTF, but will be continued on the naval MTF's inpatient census. Continue to charge pay patients the USMTF inpatient rate appropriate for their patient category.

(v) Naval MTF physicians will maintain professional contact with civilian providers.

(4) *Care and services authorized.* Use local operation and maintenance funds to defray the cost of the following when CHAMPUS-eligible patients are referred to civilian sources for the following types of care or services;

(i) All specialty consultations for the purpose of establishing or confirming diagnoses or recommending a course of treatment.

(ii) All diagnostic tests, diagnostic examinations, and diagnostic procedures (including genetic tests and CAT scans), ordered by qualified USMTF providers.

(iii) Prescription drugs and medical supplies.

(iv) Civilian ambulance service ordered by USMTF personnel.

(5) *CHAMPUS funds.* When payment is to be considered under the terms of CHAMPUS for cooperative care, even though the beneficiary remains under naval MTF control, the following guidelines are applicable:

(i) Process charges for care under the terms of CHAMPUS.

(A) If the charge for a covered service or supply is above the CHAMPUS-determined reasonable charge, the direct care system will not assume any liability on behalf of the patient where a civilian provider is concerned, although a USMTF physician recommended or prescribed the service or supply.

(B) Payment consideration for all care or services meeting cooperative care criteria will be under the terms of CHAMPUS and payment for such care or services will not be made from naval MTF funds. Conversely, any care or services meeting naval MTF supplemental care or services payment criteria will not be considered under the terms of CHAMPUS.

(ii) Care must be legitimate and otherwise permissible under the terms of CHAMPUS and must be ordered by a qualified USMTF provider.

(iii) Provide assistance to beneficiaries referred or disengaged under CHAMPUS. Although USMTF personnel are not authorized to refer beneficiaries to a specific civilian provider for care under CHAMPUS, health benefits advisors are authorized to contact the cooperative care coordinator of the appropriate CHAMPUS contractor for aid in determining authorized providers with the capability of rendering required services. Such information may be given to beneficiaries. Also encourage beneficiaries to obtain required services only from providers willing to participate in CHAMPUS. Subject to the availability of space, facilities, and capabilities of the staff, USMTFs may provide consultative and such other ancillary aid as required by the civilian provider selected by the beneficiary.

(iv) Provide a properly completed DD 2161, Referral For Civilian Medical Care, to patients who are referred (versus disengaged) to civilian sources under the terms of CHAMPUS for cooperative care. (A Nonavailability Statement (DD 1251) may also be required. Provide this form when required under § 728.33.) The DD 2161 will be marked by the health benefits advisor, or other designated individual, to show CHAMPUS as the source of payment consideration. All such DD 2161's must be approved by the commanding officer or designee. Give the patient sufficient copies to ensure a copy of the DD 2161 accompanies each CHAMPUS claim. Advise patients that CHAMPUS contractors will return claims received without the DD 2161. Also advise patients to arrange for return of a completed copy of the DD 2161 to the naval MTF for inclusion in their medical record.

(v) Such patients receiving inpatient or outpatient care or services will pay the patient's share of the costs as specified under the terms of CHAMPUS for their beneficiary category. Patients receiving inpatient services will not be continued on the naval MTF's census and will not be charged the USMTF inpatient rate.

(vi) Certain ancillary services authorized under CHAMPUS require physician case management during the course of treatment. USMTF physicians will manage the provision of ancillary services by civilian providers when such services are obtained under the terms of CHAMPUS. Examples include physical therapy, private duty (special) nursing, rental or lease/purchase of durable medical equipment, and services under the CHAMPUS Program for the Handicapped. USMTF providers exercising physician case management responsibility for ancillary services under CHAMPUS are subject to the same benefit limitations and certification of need requirements applicable to civilian providers under the terms of CHAMPUS for the same types of care. USMTF physicians exercising physician case management responsibility will maintain professional contact with civilian providers of care.

(6) *Care and services authorized.* Refer CHAMPUS-eligible patients to civilian sources for the following under the terms of CHAMPUS:

(i) Authorized nondiagnostic medical services such as physical therapy, speech therapy, radiation therapy, and private duty (special) nursing.

(ii) Preauthorized (by OCHAMPUS) adjunctive dental care, including orthodontia related to surgical correction of cleft palate.

(iii) Durable medical equipment. (CHAMPUS payment will be considered only if the equipment is not available on a loan basis from the naval MTF.)

(iv) Prosthetic devices (limited benefit), orthopedic braces and appliances.

(v) Optical devices (limited benefit).

(vi) Civilian ambulance service to a USMTF when service is ordered by other than direct care personnel.

(vii) All CHAMPUS Program for the Handicapped care.

(viii) Psychotherapeutic or psychiatric care.

(ix) Except for those types of care or services delineated in § 728.4(z)(4), all other CHAMPUS authorized medical services not available in the naval MTF (for example, neonatal intensive care).

(aa) *Third party liability case.* Per chapter 24, section 2403, JAG Manual, use the following guidelines to complete

and submit a NAVJAG 5890/12, Hospital and Medical Care, 3rd Party Liability Case, when a third party may be liable for the injury or disease being treated:

(1) *Preparation.* All naval MTFs will use the front of NAVJAG 5890/12 to report the value of medical care furnished to any patient when (i) a third party may be legally liable for causing the injury or disease, or (ii) when a Government claim is possible under workmen's compensation, no-fault insurance (see responsibilities for apprising the insurance carrier in § 728.4(aa)(5)), uninsured motorist insurance, or under medical payments insurance (e.g., in all automobile accident cases). Block 4 of this form requires an appended statement of the patient or an accident report, if available. Prior to requesting such a statement from a patient, the person preparing the front side of NAVJAG 5890/12 will show the patient the Privacy Act statement printed at the bottom of the form and have the patient sign his or her name beneath the statement.

(2) *Submission*—(i) *Naval patients.* For naval patients, submit the completed front side of the NAVJAG 5890/12 to the appropriate action JAG designee listed in section 2401 of the JAG Manual at the following times:

(A) *Initial.* Make an initial submission as soon as practicable after a patient is admitted for any period of inpatient care, or if it appears that more than 7 outpatient treatments will be furnished. This submission should not be delayed pending the accumulation of all potential charges from the treating facility. This submission need not be based upon an extensive investigation of the cause of the injury or disease, but it should include all known facts. Statements by the patient, police reports, and similar information (if available), should be appended to the form.

(B) *Interim.* Make an interim submission every 4 months after the initial submission until the patient is transferred or released from the facility, or changed from an inpatient status to an outpatient status.

(C) *Final.* Make a final submission upon completion of treatment or upon transfer of the patient to another facility. The facility to which the patient is transferred should be noted on the form. Report control symbol NAVJAG 5890–1 is assigned to this report.

(ii) *Nonnaval patients.* When care is provided to personnel of another Federal agency or department, that agency or department generally will assert any claim in behalf of the United States. In such instances, submit the NAVJAG 5890/12's (initial, interim, and final) directly to the appropriate of the following:

(A) *U.S. Army.* Commanding general of the Army or comparable area commander in which the incident occurred.

(B) *U.S. Air Force.* Staff judge advocate of the Air Force installation nearest the location where the initial medical care was provided.

(C) *U.S. Coast Guard.* Commandant (G–K–2). U.S. Coast Guard, Washington, DC 20593–0001.

(D) *Department of Labor.* The appropriate Office of Workers' Compensation Programs (OWCP).

(E) *Veterans Administration.* Director of the Veterans Administration hospital responsible for medical care of the patient being provided treatment.

(F) *Department of Health and Human Services (DHHS).* Regional attorney's office in the area were the incident occurred.

(3) *Supplementary documents.* An SF 502 should accompany the final submission in all cases involving inpatient care. Additionally, when Government care exceeds $1,000, inpatient facilities should complete and submit the back side of NAVJAG 5890/12 to the action JAG designee. On this side of the form, the determination of "patient status" may be used on local hospital usage.

(4) *Health record entries.* Retain copies of all NAVJAG 5890/12's in the Health Record of the patient. Immediately notify action JAG designees when a patient receives additional treatment subsequent to the issuance of a final NAVJAG 5890/12 if the subsequent treatment is related to the condition which gave rise to the claim.

(5) *No-fault insurance.* When no-fault insurance is or may be involved, the naval legal service office at which the JAG designee is located is responsible for apprising the insurance carrier that the Federal payment for the benefits of this part is secondary to any no-fault insurance coverage available to the injured individual.

(6) *Additional guidance.* Chapter 24 of the JAG Manual and BUMEDINST 5890.1A contain supplemental information.

(bb) *Transfer of patients*—(1) *General.* Treat all patients at the lowest echelon equipped and staffed to provide necessary care; however, when transfer to another MTF is considered necessary, use Government transportation when available. Accomplish medical regulating per the provisions of OPNAVINST 4630.25B and BUMEDINST 6320.1D.

(2) *U.S. military patients.* Do not retain U.S. military patients in acute care MTFs longer than the minimum time necessary to attain the mental or physical state required for return to duty or separation from the service. When required care is not available at the facility providing area inpatient care, transfer patients to the most readily accessible USMTF or designated USTF possessing the required capability. Transportation of the patient and a medical attendant or attendants, if required, is authorized at Government expense. Since the VA is staffed and equipped to provide care in the most expeditious manner, follow the administrative procedures outlined in NAVMEDCOMINST 6320.12 when:

(i) A patient has received the maximum benefit of hospitalization in a naval MTF but requires a protracted period of nursing home type care. The VA can provide this type care or arrange for it from a civilian source for individuals so entitled.

(ii) Determined that there is or may be spinal cord injury necessitating immediate medical and psychological attention.

(iii) A patient has sustained an apparently severe head injury or has been blinded necessitating immediate intervention beyond the capabilities of naval MTFs.

(iv) A determination has been made by the Secretary concerned that a member on active duty has an alcohol or drug dependency or drug abuse disability.

(3) *Retired members and dependents.* When a retired member of a dependent requires care beyond the capabilities of a facility and a transfer is necessary, the commanding officer of that facility may:

(i) Arrange for transfer to another USMTF or designated USTF located in an overlapping inpatient catchment area of the transferring facility if either has the required capability.

(ii) If the patient or sponsor agrees, arrange for transfer to the nearest USMTF or designated USTF with required capability, regardless of its location.

(iii) Arrange for transfer of retired members to the Veterans Administration MTF nearest the patient's residence.

(iv) Provide aid in releasing the patient to a civilian provider of the patient's choice under the terms of Medicare, if the patient is entitled. Beneficiaries entitled to Medicare, Part A, because they are 65 years of age or older or because of a disability or chronic renal disease, lose CHAMPUS

eligibility but remain eligible for care in USMTFs and designated USTFs.

(v) If the patient is authorized benefits under CHAMPUS, disengage from medical management and issue a Non-availability Statement (DD 1251) per the provisions of § 728.33, for care under CHAMPUS. This step should only be taken after due consideration is made of the supplemental/cooperative care policy addressed in § 728.4(z).

(4) *Dependents of members of NATO nations.* When a dependent, as defined in § 728.41, of a member of a NATO nation requires care beyond the capabilities of a facility and a transfer is necessary, the commanding officer of that facility may:

(i) Arrange for transfer to another USMTF or designated USTF with required capability if either is located in an overlapping inpatient catchment area of the transferring facility.

(ii) If the patient or sponsor agrees, arrange for transfer to the nearest USMTF or designated USTF with required capability, regardless of its location.

(iii) Effect disposition per § 728.42(d).

(5) *Others*—(i) *Medical care.* Section 34 of title 24, United States Code, provides that hospitalization and outpatient services may be provided outside the continental limits of the United States and in Alaska to officers and employees of any department or agency of the Federal Government, to employees of a contractor with the United States or the contractor's subcontractor, to dependents of such persons, and in emergencies to such other persons as the Secretary of the Navy may prescribe: *Provided,* such services are not otherwise available in reasonably accessible and appropriate non-Federal facilities. Hospitalization of such persons in a naval MTF is further limited by 24 U.S.C. 35 to the treatment of acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases, or those requiring domiciliary care.

(ii) *Dental care.* Section 35 of title 24 provides for space available routine dental care, other than dental prosthesis and orthodontia, for the categories of individuals enumerated in § 728.4(bb)(5)(i): *Provided,* that such services are not otherwise available in reasonably accessible and appropriate non-Federal facilities.

(iii) *Transfer.* Accomplish transfer and subsequent treatment of individuals in § 728.4(bb)(5)(i) per the provisions of law enumerated in § 728.4(bb)(5) (i) and (ii).

(cc) *Verification of patient eligibility*—(1) *DEERS.* (i) The Defense Enrollment Eligibility Reporting System (DEERS) was implemented by OPNAVINST 1750.2. Where DEERS has been started at naval medical and dental treatment facilities, commanding officers will appoint, in writing, a DEERS project officer to perform at the base level. The project officer's responsibilities and functions include coordinating, executing, and maintaining base-level DEERS policies and procedures; providing liaison with line activities, base-level personnel project officers, and base-level public affairs project officers; meeting and helping the contractor field representative on site visits to each facility under the project officer's cognizance; and compiling and submitting reports required within the command and by higher authority.

(ii) Commanding officers of afloat and deployable units are encouraged to appoint a unit DEERS medical project officer as a liaison with the hospital project officer providing services to local medical and dental treatment facilities. Distribute notice of such appointments to all concerned facilities.

(iii) When a DEERS project officer has been appointed by a naval MTF or DTF, submit a message (report control symbol MED 6320–42) to COMNAVMEDCOM, with information copies to appropriate chain of command activities, no later than 10 October annually, and situationally when changes occur. As a minimum, the report will provide:

(A) Name of reporting facility. If the project officer is responsible for more than one facility, list all such facilities.

(B) Mailing address including complete zip code (zip + 4) and unit identification code (UIC). Include this information for all facilities listed in § 728.4(cc)(1)(iii)(A).

(C) Name, grade, and corps of the DEERS project officer designated.

(D) Position title within parent facility.

(E) AUTOVON and commercial telephone numbers.

(2) *DEERS and the identification card.* This subpart includes DEERS procedures for eligibility verification checks to be used in conjunction with the identification card system as a basis for verifying eligibility for medical and dental care in USMTFs and uniformed services dental treatment facilities (USDTFs). For other than emergency care, certain patients are required to have a valid ID card in their possession and, under the circumstances described in § 728.4(cc)(3), are also required to meet DEERS criteria before treatment or services are rendered. Although DEERS and the ID card system are interrelated, there will be instances where a beneficiary is in possession of an apparently valid ID card and the DEERS verification check shows that eligibility has terminated or vice versa. Eligibility verification via an ID card does not override an indication of ineligibility in DEERS without some other collateral documentation. Dependents (in possession of or without ID cards) who undergo DEERS checking will be considered ineligible for the reasons stated in § 728.4(cc)(4)(v) (A) through (G). For problem resolution, refer dependents of active duty members to the personnel support detachment (PSD) servicing the sponsor's command; refer retirees, their dependents, and survivors to the local PSD.

(3) *Identification cards and procedures.* All individuals, including members of uniformed services in uniform, must provide valid identification when requesting health benefits. Although the most widely recognized and acceptable forms of identification are DD 1173, DD 2, Form PHS–1866–1, and Form PHS–1866–3 (Ret), individuals presenting for care without such identification may be rendered care upon presentation of other identification as outlined in this part. Under the circumstances indicated, the following procedures will be followed when individuals present without the required ID card.

(i) *Children Under 10.* Although a DD 1173 (Uniformed Services Identification and Privilege Card) may be issued to children under 10 years of age, under normal circumstances they are not. Accordingly, certification and identification of children under 10 years of age are the responsibility of the member, retired member, accompanying parent, legal guardian, or acting guardian. Either the DD 1173 issued the spouse of a member or former member or the identification card of the member or former member (DD 2, DD 2 (Ret), Form PHS–1866–1, or Form PHS–1866–3 (Ret)) is acceptable for the purpose of verifying eligibility of a child under 10 years of age.

(ii) *Indefinite expiration.* The fact that the word "indefinite" may appear in the space for the expiration date on a *member's* card does not lessen its acceptability for identification of a child. See § 728.4(cc)(3)(iii) for dependent's cards with an indefinite expiration date.

(iii) *Expiration date.* To be valid, a dependent's DD 1173 *must* have an expiration date. Do not honor a dependent's DD 1173 with an expiration date of "indefinite". Furthermore, such a card should be confiscated, per NAVMILPERSCOMINST 1750.1A, and forwarded to the local PSD. The PSD may then forward it to the Commander, Naval Military Personnel Command.

(NMPC (641D)/Pers 7312), Department of the Navy, Washington, DC 20370–5000 for investigation and final disposition. Render necessary emergency treatment to such a person. The patient administration department must determine such a patient's beneficiary status within 30 calendar days and forward such determination to the fiscal department. If indicated, billing action for treatment will then proceed following NAVMED P–5020.

(iv) *Without cards or with expired cards.* (A) When parents or parents-in-law (including step-parents and step-parents-in-law) request care in naval MTFs or DTFs without a DD 1173 in their possession or with expired DD 1173's, render care if they or their sponsor sign a statement that the individual requiring care has a valid ID card or that an application has been submitted for a renewal DD 1173. In the latter instance, include in the statement the allegation that: (*1*) The beneficiary is dependent upon the service member for over one-half of his or her support, and (*2*) that there has been no material change in the beneficiary's circumstances since the previous determination of dependency and issuance of the expired card. Place the statement in the beneficiary's medical record. Inform the patient or sponsor that if eligibility is not verified by presentation of a valid ID card to the patient administration department within 30 calendar days, the facility will initiate action to recoup the cost of care. If indicated, billing action for the cost of treatment will then proceed following NAVMED P–5020.

(B) When recent accessions, National Guard, reservists, or Reserve units are called to active duty for a period greater than 30 days and neither the members nor their dependents are at yet in receipt of their identification cards, satisfactory collateral identification may be accepted in lieu thereof, i.e., official documents such as orders, along with a marriage license, or birth certificate which establish the individual's status as a dependent of a member called to duty for a period which is not specified as 30 days or less. For a child, the collateral documentation must include satisfactory evidence that the child is within the age limiting criteria outlined in § 728.31(b)(4). An eligible dependent's entitlement, under the provisions of this subpart, starts on the first day of the sponsor's active service and ends as of midnight on the last day of active service.

(4) *DEERS checking.* Unless otherwise indicated, all DEERS verification procedures will be accomplished in conjunction with possession of a valid ID card.

(i) *Prospective DEERS processing*—(A) *Appointments.* To minimize difficulties for MTFs, DTFs, and patients, DEERS checks are necessary for prospective patients with future appointments made through a central or clinic appointment desk. Without advance DEERS checking, patients could arrive at a facility with valid ID cards but may fail the DEERS check, or may arrive without ID cards but be identified by the DEERS check as eligible. Records, including full social security numbers, of central and clinic appointment systems will be passed daily to the DEERS representative for a prospective DEERS check. This enables appointment clerks to notify individuals with appointments of any apparent problem with the DEERS or ID card system and refer those with problems to appropriate authorities prior to the appointment.

(B) *Prescriptions.* Minimum checking requirements of the program require prospective DEERS checks on all individuals presenting prescriptions of civilian providers (see § 728.4(cc)(4)(iv)(D)).

(ii) *Retrospective DEERS processing.* Pass daily logs (for walk-in patients, patients presenting in emergencies, or patients replacing last minute appointment cancellations) to the DEERS representative for retrospective batch processing if necessary for the facility to meet the minimum checking requirements in § 728.4(cc)(4)(iv). For DEERS processing, the last four digits of a social security number are insufficient. Accordingly, when retrospective processing is necessary, the full social security number of each patient must be included on daily logs.

(iii) *Priorities.* With the following initial priorities, conduct DEERS eligibility checks using a CRT terminal, single-number dialer telephone, or 800 number access provided for the specific purpose of DEERS checking to:

(A) Determine whether a beneficiary is enrolled.

(B) Verify beneficiary eligibility. Eastablishment of eligibility is under the cognizance of personnel support activities and detachments.

(C) Identify any errors on the data base.

(iv) *Minimum checking requirements.* Process patients presenting at USMTFs and DTFs in the 50 States for DEERS eligibility verification per the following minimum checking requirements.

(A) Twenty five percent of all outpatient visits.

(B) One hundred percent of all admissions.

(C) One hundred percent of all dental visits at all DTFs for other than active duty members, retired members, and dependent.

(*1*) Active duty members are exempt from DEERS eligibility verification checking at DTFs.

(*2*) Retired members will receive a DEERS vertification check at the initial visit to any DTF and annually thereafter at time of treatment at the same facility. To qualify for care as a result of the annually performed verification check, the individual performing the eligibility check will make a notation to this effect on an SF 603, Health Record—Dental. Include in the notation the date and result of the check.

(*3*) Dependents will have a DEERS eligibility verification check upon initial presentation for evaluation or treatment. This check will be valid for up to 30 days if, when the check is conducted, the period of eligibility requested is 30 days. A 30-day eligibility check may be accomplished online or via telephone by filling in or requesting the operator to fill in a 30 day period in the requested treatment dates on the DEERS eligibility inquiry screen. Each service or clinic is expected to establish auditable procedures to trace the date of the last eligibility verification on a particular dependent.

(D) One hundred percent of pharmacy outpatients presenting new prescriptions written by a civilian provider. Prospective DEERS checks are required for all patients presenting prescriptions of civilian providers. A DEERS check is not required upon presentation of a request for refill of a prescription of a civilian provider if the original prescription was filled by a USMTF within the past 120 days.

(E) One hundred percent of all individuals requesting treatment without a valid ID card if they represent themselves as individuals who are eligible to be included in the DEERS data base.

(v) *Ineligibility determinations.* When a DEERS verification check is performed and eligibility cannot be verified for any of the following reasons, deny routine nonemergency care unless the beneficiary meets the criteria for a DEERS eligibility override as noted in § 728.4(cc)(4)(viii).

(A) Sponsor not enrolled in DEERS.

(B) Dependent not enrolled in DEERS.

(C) "End eligibility date" has passed. Each individual in the DEERS data base has a date assigned on which eligibility is scheduled to end.

(D) Sponsor has separated from active duty and is no longer entitled to benefits.

(E) Spouse has a final divorce decree from sponsor and is not entitled to continued eligibility as a former spouse.

(F) Dependent child is married.

(G) Dependent becomes an active duty member of a uniformed service. (Applies only to CHAMPUS benefits since the former dependent becomes entitled to direct care benefits in his or her own right as an active duty member and must enroll in DEERS.)

(vi) *Emergency situations.* When a physician determines that emergency care is necessary, initiate treatment. If admitted after emergency treatment has been provided, a retrospective DEERS check is required. If an emergency admission or emergency outpatient treatment is accomplished for an individual whose proof of eligibility is in question, the patient administration department must determine the individual's beneficiary status within 30 calendar days of treatment and forward such determination to the fiscal department. Eligibility verifications will normally consist of presentation of a valid ID card along with either a positive DEERS check or a DEERS override as noted in § 728.4(cc)(4)(viii). If indicated, billing action for treatment will then proceed per NAVMED P–5020.

(vii) *Eligibility verification for nonemergency care.* When a prospective patient presents without a valid ID card and:

(A) DEERS does not verify eligibility, deny nonemergency care. Care denial will only be accomplished by supervisory personnel designated by the commanding officer.

(B) The individual is on the DEERS data base, do not provide nonemergency care until a NAVMED 6320/9, Dependent's Eligibility for Medical Care, is signed by the member, patient, patient's parent, or patient's legal or acting guardian. This form attests the fact that eligibility has been established per appropriate directives and includes the reason a valid ID card is not in the prospective patient's possession. Apprise the aforementioned responsible individual of the provisions on the form NAVMED 6320/9 now requiring presentation of a valid ID card within 30 calendar days. Deny treatment or admission in physician determined nonemergency situations of persons refusing to sign the certification on the NAVMED 6320/9. For persons rendered treatment, patient administration department personnel must determine their eligibility status within 30 calendar days and forward such determination to the fiscal department. If indicated, billing action for treatment will then proceed following NAVMED P–5020.

(viii) *DEERS overrides.* Possession of an ID card alone does not constitute sufficient proof of eligibility when the DEERS check does not verify eligibility. What constitutes sufficient proof will be determined by the reason the patient failed the DEERS check. For example, groups most expected to fail DEERS eligibility checks are recent accession members and their dependents, Guard or Reserve members recently activated for training periods of greater than 30 days and their dependents, and parents and parents-in-law with expired ID cards. Upon presentation of a valid ID card, the following are reasons to "override" a DEERS check either showing the individual as ineligible or when an individual does not appear in the DEERS data base.

(A) *DD 1172.* Patient presents an original of a copy of a DD 1172, Application for Uniformed Services Identification and Privilege Card, which is also used to enroll beneficiaries in DEERS. If the original is used, the personnel support detachment (PSD) furnishing the original will list the telephone number of the verifying officer to aid in verification. Any copy presented must have an original signature in section III; printed name of verifying officer, his or her grade, title, and telephone number; and the date the copy was issued. For treatment purposes, this override expires 120 days from the date issued.

(B) *Recently issued identification cards—(1) DD 1173.* Patient presents a recently issued DD 1173, Uniformed Services Identification and Privilege Card. Examples are spouses recently married to sponsor, newly eligible stepchildren, family members of sponsors recently entering on active duty for a period greater than 30 days, parents or parents-in-law, and unremarried spouses recently determined eligible. For treatment purposes, this override expires 120 days from the date issued.

(2) *Other ID Cards.* Patient presents any of the following ID cards with a date of issue within the previous 120 days: DD 2, DD 2 (Ret), Form PHS 1866–1, or Form PHs 1866–3 (Ret). When these ID cards are used for the purpose of verifying eligibility for a child, collateral documentation is necessary to ensure the child is actually the alleged sponsor's dependent and in determining whether the child is within the age limiting criteria outlined in § 728.31(b)(4).

(C) *Active duty orders.* Patient or sponsor presents recently issued orders to active duty for a period greater than 30 days. Copies of such orders may be accepted up to 120 days of their issue date.

(D) *Newborn infants.* Newborn infants for a period of 1 year after birth provided the sponsor presents a valid ID card.

(E) *Recently expired ID cards.* If the DEERS data base shows an individual as ineligible due to an ID card that has expired within the previous 120 days (shown on the screen as "Elig with valid ID card"), care may be rendered when the patient has a new ID card issued within the previous 120 days.

(F) *Sponsor's duty station has an FPO or APO number or sponsor is stationed outside the 50 United States.* Do not deny care to bona fide dependents of sponsors assigned to a duty station outside the 50 United States or assigned to a duty station with an FPO or APO address as long as the sponsor appears on the DEERS data base. Before initiating nonemergency care, request collateral documentation showing relationship to sponsor when the relationship is or may be in doubt.

(G) *Survivors.* Dependents of deceased sponsors when the deceased sponsor failed to enroll in or have his or her dependents enrolled in DEERS. This situation will be evidenced when an eligibility check on the surviving widow or widower (or other dependent) finds that the sponsor does not appear (screen shows "Sponsor SSN Not Found") or the survivor's name appears as the sponsor but the survivor is not listed separately as a dependent. In any of these situations, if the survivor has a valid ID card, treat the individual on the first visit and refer him or her to the local personnel support detachment for correction of the DEERS data base. For second and subsequent visits prior to appearance on the DEERS data base, require survivors to present a DD 1172 issued per § 728.4(cc)(4)(viii)(A).

(H) *Patients Not Eligible for DEERS Enrollment. (1)* Secretarial designees are not eligible for enrollment in DEERS. Their eligibility determination is verified by the letter, on one of the service Secretaries' letterhead, of authorization issued.

(2) When it becomes necessary to make a determination of eligibility on other individuals not eligible for entry on the DEERS data base, patient administration department personnel will obtain a determination from the purported sponsoring agency, if appropriate. When necessary to treat or admit a person who cannot otherwise present proof of eligibility for care at the expense of the Government, do not deny care based only on the fact that the

individual is not on the DEERS data base. In such instances, follow the procedures in NAVMED P–5020 to minimize, to the fullest extent possible, the write-off of uncollectible accounts.

Subpart B—Members of the Uniformed Services on Active Duty

§ 728.11 Eligible beneficiaries.

(a) A member of a uniformed service, as defined in subpart A, who is on active duty is entitled to and will be provided medical and dental care and adjuncts thereto. For the purpose of this part, the following are also considered on active duty:

(1) Members of the National Guard in active Federal service pursuant to a "call" under 10 U.S.C. 3500 or 8500.

(2) Midshipmen of the United States Naval Academy.

(3) Cadets of the United States Military Academy.

(4) Cadets of the Air Force Academy.

(5) Cadets of the Coast Guard Academy.

(b) The following categories of personnel who are on active duty are entitled to and will be provided medical and dental care and adjuncts thereto to the same extent as is provided for active duty members of the Regular service (except reservists when on active duty for training as delineated in § 728.21).

(1) Members of the Reserve components.

(2) Members of the Fleet Reserve.

(3) Members of the Fleet Marine Corps Reserve.

(4) Members of the Reserve Officers' Training Corps.

(5) Members of all officer candidate programs.

(6) Retired members of the uniformed services.

§ 728.12 Extent of care.

Members who are away from their duty stations or are on duty where there is no MTF of their own service may receive care at the nearest available Federal MTF (including designated USTFs) with the capability to provide required care. Care will be provided without regard to whether the condition for which treatment is required was incurred or contracted in line of duty.

(a) *All uniformed services active duty members.*

(1) All eligible beneficiaries covered in this subpart are entitled to and will be rendered the following treatment and services upon application to a naval MTF whose mission includes the rendering of the care required. This entitlement provides that when required care and services are beyond the capabilities of the facility to which the member applies, the commanding officer of that facility will arrange for care from another USMTF, designated USTF, or other Federal source or will authorize and arrange for direct use of supplemental services and supplies from civilian non-Federal sources out of operation and maintenance funds.

(i) Necessary hospitalization and other medical care.

(ii) Occupational health services as defined in § 728.2(z).

(iii) Necessary prosthetic devices, prosthetic dental appliances, hearing aids, spectacles, orthopedic footwear, and other orthopedic appliances (see Subpart H). When these items need repair or replacement and the items were not damaged or lost through negligence, repair or replacement is authorized at Goverment expense.

(iv) Routine dental care.

(2) When a USMTF, with a mission of providing the care required, releases the medical management of an active duty member of the Navy, Marine Corps, Army, Air Force, or a commissioned corps member of USPHS or NOAA, the resulting civilian health care costs will be paid by the referring facility.

(3) The member's uniformed service will be billed for care provided by the civilian facility only when the referring MTF is not organized nor authorized to provide needed health care (see Part 732 of this chapter for naval members). Saturation of service or facilities does not fall within this exception. When a naval MTF retains medical management, the costs of supplemental care obtained from civilian sources is paid from funds available to operate the MTF which manages care of the patient. When it becomes necessary to refer a USPHS or NOAA commissioned corps member to a non-Federal source of care, place a call to the Department of Health and Human Services (DHHS), Chief, Patient Care Services on (301) 443–1943 or FTS 443–1943 if DHHS is to assume financial responsibility. Patient Care Services is the sole source for providing authorization for non-Federal care at DHHS expense.

(b) *Maternity episode for active duty female members.* A pregnant active duty member who lives outside the MHSS inpatient catchment area of all USMTFs is permitted to choose whether she wishes to deliver in a closer civilian hospital or travel to the USMTF for delivery. If such a member chooses to deliver in a naval MTF, makes application, and presents at that facility at the time for delivery, the provisions of § 728.12(a) apply with respect to the furnishing of needed care, including routine newborn care (i.e., nursery, newborn examination, PKU test, etc.); arrangements for care beyond the facility's capabilities; or the expenditure of funds for supplemental care or services. Pay expenses incurred for the infant in USMTFs or civilian facilities (once the mother has been admitted to the USMTF) from funds available for care of active duty members, *unless* the infant becomes a patient in his or her own right either through an extension of the birthing hospital stay because of complications, subsequent transfer to another facility, or subsequent admission. If the Government is to assume financial responsibility for:

(1) Care of pregnant members residing within the MHSS inpatient catchment area of a uniformed services hospital or in the inpatient catchment area of a designated USTF, such members are required to:

(i) Make application to that facility for care, or

(ii) Obtain authorization, per Part 732 of this chapter, for delivery in a civilian facility.

(2) Non-Federal care of pregnant members residing outside inpatient catchment areas of USMTFs and USTFs, the member must request and receive authorization per Part 732 of this chapter. Part 732 of this chapter also provides for cases of precipitious labor necessitating emergency care. OPNAVINST 6000.1, Management of Pregnant Servicewomen, contains medical-administrative guidelines on management prior to admission and after discharge from admission for delivery.

(c) *Reserve and National Guard personnel.* In addition to those services covered in § 728.12 (a) and (b), Reserve and National Guard personnel are authorized the following under conditions set forth. (See § 728.25 for additional benefits for National Guard personnel.)

(1) Personnel whose units have an active Army mission of manning missile sites are authorized spectacle inserts for protective field masks.

(2) Personnel assigned to units designated for control of civil disturbances are authorized spectacle inserts for protective field masks M17.

§ 728.13 Application for care.

Possession of an ID card (a green colored DD 2 (with letter suffix denoting branch of service), Armed Forces Identification Card; a green colored PHS 1866–1, Identification Card; or a red colored DD 2 Res (Reservists on active duty for training)) alone does not constitute sufficient proof of eligibility. Accordingly, make a DEERS check, per § 728.4(cc), before other than emergency

care is rendered to the extent that may be authorized.

§ 728.14 Pay patients.

Care is provided on a reimbursable basis to: Coast Guard active duty officers, enlisted personnel, and academy cadets; Public Health Service Commissioned Corps active duty officers; and Commissioned Corps active duty officers of the National Oceanic and Atmospheric Administration. Accordingly, patient administration personnel will initiate the collection action process in Subpart J in each instance of inpatient or outpatient care provided to these categories of patients.

Subpart C—Members of Reserve Components, Reserve Officers' Training Corps, Navy and Marine Corps Officer Candidate Programs, and National Guard Personnel

§ 728.21 Navy and Marine Corps reservists.

(a) *Scope.* This § 728.21 applies to reservists, as those terms are defined in § 728.2, ordered to active duty for training or inactive duty training for 30 days or less. Reservists serving under orders specifying duty in excess of 30 days, such as Sea and Air Mariners (SAMS) while on initial active duty for training, will be provided care as members of the Regular service per subpart B.

(b) *Entitlement.* Per 10 U.S.C. 1074a(a), reservists who incur or aggravate an injury, illness, or disease in line of duty while on active duty for training or inactive duty training for a period of 30 days or less, including travel to and from that duty, are entitled to medical and dental care appropriate for the treatment of that injury, disease, or illness until the resulting disability cannot be materially improved by further hospitalization or treatment. Care is authorized for such an injury, illness, or disease beyond the period of training to the same extent as care is authorized for members of the Regular service (see subpart B) subject to the provisions of § 728.21(e).

(c) *Questionable circumstances.* If the circumstances are questionable, referral to the OMA or ODA is appropriate. If necessary, make referral to the Naval Medical Command (MEDCOM–33 for medical and MEDCOM–06 for dental) on determinations of entitlements.

(d) *Line of duty.* For the purpose of providing treatment under laws entitling reservists to care, an injury, illness, or disease which is incurred, aggravated, or becomes manifest while a reservist is employed in the performance of active duty for training or inactive duty training (including authorized leave, liberty and travel to and from either duty) will be considered to have been incurred in line of duty (LOD) unless the condition was incurred as a result of the reservist's own misconduct or under other circumstances enumerated in JAG Manual, chapter VIII. While the LOD investigation is being conducted, such reservists remain entitled to care. If the investigation determines that the injury or illness was not incurred in line of duty, the civilian humanitarian nonindigent rate is applicable if further care is required in naval MTFs. (See DOD Military Pay and Allowances Entitlement Manual for allowable constructive travel times.)

(e) *Treatment and services authorized.* In addition to those services delineated above, the following may be rendered under circumstances outlined:

(1) Prosthetic devices, including dental appliances, hearing aids, spectacles, and orthopedic appliances that are lost or have become damaged during training duty, not through negligence of the individual, may be repaired or replaced at Government expense.

(2) Reservists covered by this subpart may be provided the following only if approved by the appropriate OMA or ODA, or by the Commander, Naval Medical Command (MEDCOM–33 for medical and MEDCOM–06 for dental) *prior* to initiation of services.

(i) Treatment for acute exacerbations of conditions that existed prior to a reservist's period of training duty. Limit care to that necessary for the prevention of pain or undue suffering until the patient can reasonably return to control of the member's private physician or dentist.

(A) Remediable physical defects and remediable treatment for other conditions.

(B) Elective surgery.

(ii) All dental care other than emergency treatment and that necessary to correct an injury incurred in the line of duty.

(f) *Authorization for care.* (1) Reservists covered by this subpart may be provided inpatient or outpatient care during a period of training duty without written authorization.

(2) Except in emergencies or when inpatient care initiated during a period of training duty extends beyond such period, reservists will be required to furnish written official authorization from their unit commanding officer, or higher authority, incident to receiving inpatient or outpatient care beyond the period of training duty. The letter of authorization will include name, grade or rate, social security number, and organization of the reservist; type of training duty being performed or that was being performed when the condition manifested; diagnosis (if known); and a statement that the condition was incurred in line of duty and that the reservist is entitled to care. If the reservist has been issued a notice of eligibility (NOE) (Subpart I), the NOE may then be accepted in lieu of the letter of authorization. When authorization has not been obtained beforehand, care may be provided on a civilian humanitarian basis (see Subpart G) pending final determination of eligibility.

§ 728.22 Members of other reserve components of the uniformed services.

(a) Members of reserve components of the Coast Guard may be provided care the same as Navy and Marine Corps reservists.

(b) Members of reserve components of the Army and Air Force may be provided care in naval MTFs to the same extent that they are eligible for such care in MTFs of their respective services. Consult current Army Regulation 40–3, Medical, Dental, and Veterinary Care, or Air Force Regulation 168–6, Persons Authorized Medical Care, as appropriate, for particular eligibility requirements or contact the nearest appropriate service facility.

(c) When the service directive requires written authorization, obtain such authorization from the reservist's unit commanding officer or other appropriate higher authority.

(d) Naval MTFs in the United States are authorized to conduct physical examinations of and administer immunizations to inactive reserve Public Health Service commissioned officers upon presentation of a written request from the Commissioned Personnel Operations Division, OPM/OAM, 5600 Fishers Lane, Rockville, MD 20852.

§ 728.23 Reserve Officers' Training Corps (ROTC).

(a) *Eligible beneficiaries.* (1) Members of the Senior Reserve Officers' Training Corps of the Armed Forces including students enrolled in the 4-year Senior ROTC Program or the 2-year Advanced Training Senior ROTC Program.

(2) Designated applicants for membership in the Navy, Army, and Air Force Senior ROTC Programs during their initial 6-weeks training period (practice cruises or field training).

(3) Medical, dental, pharmacy, veterinary or science allied to medicine students who are commissioned officers of a reserve component of an Armed Force who have been admitted to and

training in a unit of a Senior Reserve Officers' Training Corps.

(b) *Extent of care.* (1) While attending or en route to or from field training or practice cruises:

(i) Medical care for a condition incurred without reference to line of duty.

(ii) Routine dental care.

(iii) Prosthetic devices, including dental appliances, hearing aids, spectacles, and orthopedic appliances that have become damaged or lost during training duty, not through negligence of the individual, may be repaired or replaced as necessary at government expense.

(iv) Care of remediable physical defects, elective surgery or other remediable treatment for conditions that existed prior to a period of training duty are not authorized without approval from the appropriate OMA or ODA, or from the Commander, Naval Medical Command (MEDCOM–33 for medical and MEDCOM–06 for dental).

(v) Medical examinations and immunizations.

(vi) ROTC members are authorized continued medical care, including hospitalization, upon expiration of their field training or practice cruise period, the same as reservists in § 728.21(b) and § 728.22.

(2) While attending a civilian educational institution:

(i) Medical care in naval MTFs, including hospitalization, for a condition incurred in line of duty while at or traveling to or from a military installation for the purpose of undergoing medical or other examinations or for purposes of making visits of observation, including participation in service-sponsored sports, recreational, and training activities.

(ii) Medical examinations, including hospitalization necessary for the proper conduct thereof.

(iii) Required immunizations, including hospitalization for severe reactions therefrom.

(c) *Authorization.* The individual's commanding officer will prepare a letter of authorization addressed to the commanding officer of the MTF concerned.

(d) *ROTC members as beneficiaries of the Office of Workers' Compensation Programs (OWCP).* Under circumstances described therein, render care as outlined in § 728.53 to members of the ROTC as beneficiaries of OWCP.

§ 728.24 Navy and Marine Corps Office Candidate Programs.

Members of the Reserve Officers Candidate Program and Platoon Leaders Class are entitled to the same medical and dental benefits as are provided members of the Navy and Marine Corps Reserve Components. Accordingly, the provisions of § 728.21 are applicable for such members. Additionally, candidates for, or persons enrolled in such programs are authorized access to naval MTFs for the purpose of conducting special physical examination procedures which have been requested by the Commander, Naval Medical Command to determine their physical fitness for appointment to, or continuation in such a program. Upon a request from the individual's commanding officer, the officer in charge of cognizant Navy and Marine Corps recruiting stations, or officer selection officer, naval MTFs are authorized to admit such persons when, in the opinion of the cognizant officer, hospitalization is necessary for the proper conduct of the special physical examinations. Hospitalization should be kept to a minimum and treatment other than for humanitarian reasons, except as provided in this part, is not authorized.

§ 728.25 Army and Air Force National Guard personnel.

(a) *Medical and dental care.* Upon presentation of a letter of authorization, render care as set forth in AR 40–3 (Medical, Dental, and Veterinary Care) and AFR 168–6 (Persons Authorized Medical Care) to members of the Army and Air Force National Guard who contract a disease or become ill in line of duty while on full-time National Guard duty, (including leave and liberty therefrom) or while traveling to or from that duty. The authorizing letter will include name, social security number, grade, and organization of the member; type and period of duty in which engaged (or in which engaged when the injury or illness occurred); diagnosis (if known); and will indicate that the injury suffered or disease contracted was in line of duty and that the individual is entitled to medical or dental care. Limit care to that appropriate for the injury, disease, or illness until the resulting disability cannot be materially improved by further hospitalization or treatment.

(b) *Physical examinations.* AR 40–3 and AFR 168–6 also authorize physical examinations for National Guard personnel. Accordingly, when requested by an Army or Air Force National Guard unit's commanding officer, naval MTFs may perform the requested physical examination per the appropriate service directive, subject to the availability of space, facilities, and the capabilities of the staff.

Subpart D—Retired Members and Dependents of the Uniformed Services

§ 728.31 Eligible beneficiaries and health benefits authorized.

(a) *Retired members of the uniformed services.* Retired members, as defined in § 728.2(aa), are authorized the same medical and dental benefits as active duty members subject to the availability of space and facilities, capabilities of the professional staff, and the priorities in § 728.3, except that:

(1) Periodic medical examinations for members on the Temporary Disability Retired List, including hospitalization in connection with the conduct thereof, will be furnished on the same priority basis as care to active duty members.

(2) When vision correction is required, one pair of standard issue spectacles, or one pair of nonstandard spectacles, are authorized when required to satisfy patient needs. Two pairs of spectacles may be furnished only when professionally determined to be essential by the examining officer. Military ophthalmic laboratories will not furnish occupational type spectacles, such as aviation, industrial safety, double segment, and mask insert, to retired military personnel (NAVMEDCOMINST 6810.1 refers).

(b) *Dependents of members of former members.* Include:

(1) The spouse.

(2) The unremarried widow.

(3) The unremarried widower.

(4) An unmarried legitimate child, including an adopted child or a stepchild, who either—

(i) Has not passed his or her 21st birthday;

(ii) Is incapable of self-support because of a mental or physical incapacity that existed before the 21st birthday and is, or was at the time of the member's or former member's death, in fact dependent on the member for over one-half of his or her support; or

(iii) Has not passed the 23rd birthday, is enrolled in a full-time course of study in an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, in fact dependent on the member for over one-half of his or her support. (If such a child suffers a disabling illness or injury and is unable to return to school, the child remains eligible for benefits until 6 months after the disability is removed, or until the 23rd birthday is reached, whichever comes first.)

(5) An unmarried illegitimate child or illegitimate step-child who is, or was at the time of sponsor's death, dependent on the sponsor for more than one-half of

his or her support; residing with or in a home provided by the sponsor or the sponsor's spouse, as applicable, and is—

(i) Under 21 years of age; or

(ii) Twenty-one years of age or older but incapable of self-support because of a mental or physical incapacity that existed prior to the individual's 21st birthday; or

(iii) Twenty-one or 22 years of age and pursuing a full-time course of education that is approved per § 728.31(b)(4)(iii).

(6) A parent or parent-in-law, who is, or was at the time of the member's or former member's death, in fact dependent on the member for over one-half of such parent's support and residing in the sponsor's household.

(7) An unremarried former spouse of a member or former member who does not have medical coverage under an employer-sponsored health plan, and who:

(i) On the date of the final decree of divorce, dissolution, or annulment, had been married to the member or former member at least 20 years during which period the member of former member performed at least 20 years of service creditable in determining that member's or former member's eligibility for retired or retainer pay, or equivalent pay.

(ii) Had been married to the member of former member at least 20 years, at least 15 of which were during the period the member of former member performed service creditable in determining the member's eligibility for retired or retainer pay, or equivalent pay. The former spouse's sponsor must have performed at least 20 years of service creditable in determining the sponsor's eligibility for retired or retainer pay, or equivalent pay.

(A) Eligibility for such former spouses continue until remarriage if the final decree of divorce, dissolution, or annulment occurred before 1 April 1985.

(B) Eligibility terminates the later of: Either 2 years from the date of the final decree of divorce, dissolution, or annulment; or 1 April 1988 for such former spouses whose final decree occured on or after 1 April 1985.

(iii) An unremarried former spouse of a deceased member of former member who meets the requirements of § 728.31(b)(7)(i) or (ii) may be provided medical and dental care as a dependent when the sponsor:

(A) Died before attaining age 60.

(B) At the time of death would have been eligible for retired pay under 10 U.S.C. 1331–1337 except that the sponsor was under 60 years of age; but the former spouse is not eligible for care until the date the sponsor would have attained age 60;

(C) Whether or not the sponsor elected participation in the Survivor Benefit Plan of 10 U.S.C. 1447–1455.

(c) *Eligibility factors.* Care that may be rendered to all dependents in this subpart D is subject to the availability of space and facilities, capabilities of the professional staff, and priorities in § 728.3. Additionally:

(1) Members of the uniformed services must be serving under orders specifying active duty for more than 30 days before their dependents are authorized benefits delineated in § 728.31(d).

(2) A dependent's eligibility begins on the date the member enters on active duty and ends as of midnight of the date the sponsor's period of active duty ends for any reason other than retirement or death. Dependents lose eligibility as of midnight of the date a member is officially place in a deserter status. Eligibility is restored on the date a deserter is returned to military control.

(3) A dependent (other than a former spouse) of a member or former member who died before attaining age 60 and at the time of death—

(i) Would have been eligible for retired pay under chapter 67 of title 10 U.S.C. but for the fact that the member of former member was under 60 years of age, and

(ii) Had elected to participate in the Survivor Benefit Plan, may not be rendered medical or dental care under the sponsor's entitlement until the date on which such member of former member would have attained age 60.

(4) A spouse, not qualifying as a former spouse, who is divorced from a member loses eligibility for benefits as of midnight of the date the divorce becomes final. This includes loss of maternity care benefits for wives who are pregnant at the time a divorce becomes final. A spouse does not lose eligibility through issuance of an interlocutory decree of divorce even when a property settlement has been approved which releases the member from responsibility for the spouse's support. A spouse's eligibility depends upon the relationship of the spouse to the member; so long as the relationship of husband and wife is not terminated by a final divorce or annulment decree, eligibility continues.

(5) Eligibility of children is not affected by the divorce of parents except that a stepchild relationship ceases upon divorce or annulment of natural parent and step-parent. A child's eligibility for health benefits is not affected by the remarriage of the divorced spouse maintaining custody unless the marriage is to an eligible service member.

(6) A stepchild relationship does not cease upon death of the member step-parent but does cease if the natural parent subsequently remarries.

(7) A child of an active duty or retired member, adopted after that member's death, retains eligibility for health benefits. However, the adoption of a child of a living member (other than by a person whose dependents are eligible for health benefits at USMTFs) terminates the child's eligibility.

(8) If a member's child is married before reaching age 21 to a person whose dependents are not eligible for health benefits in USMTFs, eligibility ceases as of midnight on the date of marriage. Should the marriage be terminated, the child again becomes eligible for benefits as a dependent child if otherwise eligible.

(d) *Health benefits authorized.* (1) Inpatient care including services and supplies normally furnished by the MTF.

(2) Outpatient care and services.

(3) Drugs (see chapter 21, MANMED).

(i) Prescriptions written by officers of the Medical and Dental Corps, civilian physicians and dentists employed by the Navy, designated officers of the Medical Service Corps and Nurse Corps, independent duty hospital corpsmen, and others designated to write prescriptions will be filled subject to the availability of pharmaceuticals, and consistent with control procedures and applicable laws.

(ii) Prescriptions written by civilian physicians and dentists (non-Navy employed) for eligible beneficiaries may be filled if:

(A) The commanding officer or CO's designee determines that pharmacy personnel and funds are available.

(B) The items requested are routinely stocked.

(C) The prescribed quantity is within limitations established by the command.

(D) The prescriber is in the local area (limits designated by the commanding officer).

(E) The provisions of chapter 21, MANMED are followed when such services include the dispensing of controlled substances.

(4) Treatment on an inpatient or outpatient basis of:

(i) Medical and surgical conditions.

(ii) Contagious diseases.

(iii) Nervous, mental, and chronic conditions.

(5) Physical examinations, including eye examinations and hearing evaluations, and all other tests and procedures necessary for a complete physical examination.

(6) Immunizations.

(7) Maternity (obstetrical) and infant care, routine care and examination of the newborn infant, and well-baby care for mothers and *infants* meeting the eligibility requirements of § 728.31(b). If a newborn infant of an unmarried dependent minor daughter becomes a patient in his or her own right after discharge of the mother, classify the infant as civilian humanitarian nonindigent inasmuch as § 728.31(b) does not define the infant as a dependent of the active duty or retired service member. Therefore, the minor daughter's sponsor (parent) should be counseled concerning the possibility of Secretarial designee status for the infant (see § 728.77).

(8) Diagnostic tests and services, including laboratory and x-ray examinations. Physical therapy, laboratory, x-ray, and other ambulatory diagnostic or therapeutic measures requeted by non-Navy employed physicians may be provided upon approval of the commanding officer or designated department heads. Rendering of such srvices is subordinate to and will not unduly interfere with providing inpatient and outpatient care to active duty personnel and others whose priority to receive care is equal to or greater than such dependents. Ensure that the release of any information to non-Navy employed physicians is in consonance with applicable provisions of SECNAVINST 5211.5C.

(9) Family planning services as delineated in SECNAVINST 6300.2A. Abortions, at the expense of the Government, may not be performed except where the life of the mother would be endangered if the fetus were carried to term.

(10) Dental care worldwide on a space available basis.

(11) Government ambulance services, surface or air, to transport dependents to, from, or between medical facilities when determined by the medical officer in charge to be medically necessary.

(12) Home calls when determined by the medical officer in charge to be medically necessary.

(13) Artificial limbs and artificial eyes, including initial issue, fitting, repair, replacement, and adjustment.

(14) Durable equipment such as wheelchairs, hospital beds, and resuscitators may be issued on a loan basis.

(15) Orthopedic aids, braces, crutches, elastic stockings, walking irons, and similar aids.

(16) Prosthetic devices (other than artificial limbs and eyes), hearing aids, orthopedic footwear, and spectacles or contact lenses for the correction of ordinary refractive error may not be provided dependents. These items, however, may be sold to dependents at cost to the Government at facilities outside the United States and at specific installations within the United States where adequate civilian facilities are unavailable.

(17) Special lenses (including intraocular lenses) or contact lenses for those eye conditions which require these items for complete medical or surgical management of the condition.

(18) One wig if the individual has alopecia resulting from treatment of a malignant disease: *Provided* the individual has not previously received a wig at the expense of the United States.

(e) *Dependents of reserves.* (1) A dependent, as defined in § 728.31(b), of a deceased member of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve, who—

(i) Was ordered to active duty or to perform inactive-duty training for any period of time.

(ii) Was disabled in the line of duty from an injury while so employed, and

(iii) Dies from such a specific injury, illness, or disease is entitled to the same care as provided for dependents in § 728.31(c).

(2) The provisions of this subpart D are not intended to authorize medical and dental care precluded for dependents of members of Reserve components who receive involuntary orders to active duty under 10 U.S.C. 270b.

(f) *Unauthorized care.* In addition to the devices listed in § 728.31(d)(16) as unauthorized, dependents are not authorized care for elective correction of minor dermatological blemishes and marks or minor anatomical anomalies.

§ 728.32 Application for care.

Possession of an ID card alone (DD 2 (Retired), PHS–1866–3 (Retired), or DD 1173 (Uniformed Services Identification and Privilege Card)) does not constitute sufficient proof of eligibility. Accordingly, a DEERS check will be instituted per § 728.4 (cc) before medical and dental care may be rendered except in emergencies. When required inpatient or outpatient care is beyond the capabilities of the naval MTF, the provisions of § 728.34 apply. When required inpatient care cannot be rendered and a decision is made to disengage a CHAMPUS-eligible beneficiary, the provisions of § 728.33 apply.

§ 728.33 Nonavailability statement (DD 1251).

(a) *General.* Per DODINST 6015.19 of 26 Nov. 1984, the following guidelines are effective as of 1 Jan. 1985. All previously issued Nonavailability Statement guidelines and reporting requirements are superseded.

(b) *Applicability.* The following provisions are applicable to nonemergency inpatient care only. A DD 1251 is not required:

(1) For emergency care (see § 728.33(d)(1)).

(2) When the beneficiary has other insurance (including Medicare) that provides primary coverage for a covered service.

(3) For medical services that CHAMPUS clearly does not cover.

(c) *Reasons for issuance.* DD 1251's may be issued for only the following reasons:

(1) Proper facilities are not available.

(2) Professional capability is not available.

(3) It would be medically inappropriate (as defined in § 728.2(u)) to require the beneficiary to use the USMTF and the attending physician has specific prior approval from the facility's commanding officer or higher authority to make such determination.

(i) Issuance for this reason should be restricted to those instances when denial of the DD 1251 could result in a significant risk to the health of any patient requiring any clinical specialty.

(ii) Issuing authorities have discretionary authority to evaluate each situation and issue a DD 1251 under the "medically inappropriate" reason if:

(A) In consideration of individual medical needs, personal constraints on an individual's ability to get to the USMTF results in an unreasonable limitation on that individual's ability to get required medical care, and

(B) The issuing authority determines that obtaining care from a civilian source selected by the individual would result in significantly less limitations on that individual's ability to get required medical care than would result if the individual was required to obtain care from a USMTF.

(C) A beneficiary is in a travel status. The commanding officer of the first facility contacted, in either the beneficiary's home catchment area or the catchment area where hospital care was obtained, has this discretionary authority. Travel in this instance means the beneficiary is temporarily on a trip away from his or her permanent residence. The reason the patient is traveling, the distance involved in the travel, and the time away from the permanent residence is not critical to the principle inherent in the policy. The issuing officer to whom the request for a Nonavailability Statement is made

should reasonably determine that the trip was not made, and the civilian care is not (was not) obtained, with the primary intent of avoiding use of a USMTF or USTF serving the beneficiary's home area.

(d) *Guidelines for issuing*—(1) *Emergency care.* Emergency care claims do not require an NAS; however, the nature of the service or care must be certified as an emergency by the attending physician, either on the claim form or in a separate signed and dated statement. Otherwise, a DD 1251 is required by CHAMPUS-eligible beneficiaries who are subject to the provisions of § 728.33.

(2) *Emergency maternity care.* Unless substantiated by medical documentation and review, a maternity admission would not be deemed as an emergency since the fact of the pregnancy would have been established well in advance of the admission. In such an instance, the beneficiary would have had sufficient opportunity to obtain a DD 1251 if required in her residence catchment area.

(3) *Newborn infant(s) remaining in hospital after discharge of mother.* A newborn infant remaining in the hospital continuously after discharge of the mother does not require a separate DD 1251 for the first 15 days after the mother is discharged. Claims for care beyond this 15-day limitation must be accompanied by a valid DD 1251 issued in the infant's name. This is due to the fact that the infant becomes a patient in his or her own right (the episode of care for the infant after discharge of the mother is not considered part of the initial reason for admission of the mother (delivery), and is therefore considered a separate admission under a different diagnosis).

(4) *Cooperative care program.* When a DD 2161, Referral for Civilian Medical Care, is issued for inpatient care in connection with the Cooperative Care Program (§ 728.4(z)(5)(iv)) for care under CHAMPUS, a DD 1251 must also be issued.

(5) *Beneficiary responsibilities.* Beneficiaries are responsible for determining whether an NAS is necessary in the area of their residence and for obtaining one, if required, by first seeking nonemergency inpatient care in the USMTF or USTF serving the catchment area. Beneficiaries cannot avoid this requirement by arranging to be away from their residence when nonemergency inpatient care is obtained, e.g., staying with a relative or traveling. Individuals requiring an NAS because they reside in the inpatient catchment area of a USMTF or USTF also require an NAS for nonemergency care received while away from their inpatient catchment area.

(e) *Issuing authority.* Under the direction of the Commander, Naval Medical Command, exercised through commanders of naval geographic medical commands, naval MTFs will issue Nonavailability Statements only when care required is not available from the naval MTF and the beneficiary's place of residence is within the catchment area (as defined in § 728.2(d)) of the issuing facility or as otherwise directed by the Secretary of Defense. When the facility's inpatient catchment area overlaps the inpatient catchment area of one or more other USMTFs or USTFs with inpatient capability and the residence of the beneficiary is within the same catchment area of one or more other USMTFs or USTFs with inpatient capability, the issuing authority will:

(1) Determine whether required care is available at any other USMTFs or USTFs whose inpatient catchment area overlaps the beneficiary's residence. If care is available, refer the beneficiary to that facility and do not issue a DD 1251.

(2) Implement measures ensuring that an audit trail related to each check and referral is maintained, including the check required before retroactive issuance of a DD 1251 as delineated in § 728.33(g). When other than written communication is made to ascertain capability, make a record in the log required in § 728.33(h) that "Telephonic (or other) determination was made on (date) that required care was not available at (name of other USMTF(s) or USTF(s) contacted)". The individual ascertaining this information will sign this notation.

(3) Once established that a DD 1251 is authorized and will be issued, the following will apply:

(i) Do not refer patients to a specific source of care.

(ii) Nonavailability Statements issued at commands outside the United States are not valid for care received in facilities located within the United States. Statements issued within the United States are not valid for care received outside the United States.

(iii) The issuing authority will:

(A) If capability permits, prepare a DD 1251 via the automated application of DEERS. Where this system is operational, it provides for transmitting quarterly reports to the Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)) by electronic means. System users should refer to their DEERS/NAS Users Manual for specific guidance on the use of the automated system. At activities where the DEER/NAS automated system is not operational, prepare each DD 1251 per instructions on the reverse of the form. After completion, if authorized by the facility CO, the issuing authority will sign the DD 1251. Give a copy to the patient for presentation to a participating civilian provider, or for submission with the claim of a nonparticipating provider. Retain a copy for the issuing activity's records. Retain the original for subsequent transmittal to the Naval Medical Data Services Center per § 728.33(j).

(B) Explain to the patient or other responsible family member the validity period of the DD 1251 (see § 728.33(f)).

(C) Ensure that beneficiaries are clearly advised of the cost-sharing provisions of CHAMPUS and of the fact that the issuance of a Nonavailability Statement does not imply that CHAMPUS will allow any and all costs incurred through the use of the DD 1251. The issuance of a DD 1251 indicates only that care requested is not available at a USMTF or USTF serving the beneficiary's residence inpatient catchment area.

(D) Review, with the patient or responsible family member, instructions 1 through 6 on the face of the DD 1251 and have the patient or responsible family member sign acknowledgement that such review has been made and is understood.

(E) Advise recipients that CHAMPUS fiscal intermediaries may deny claims of individuals who are not enrolled in the Defense Enrollment Eligibility Reporting System (DEERS).

(f) *Validity period.* DD 1251's issued for:

(1) Other than maternity care are valid for a hospital admission occurring within 30 days of issuance and remain valid from the date of admission until 15 days after discharge from the facility rendering inpatient care. This allows for any follow-on treatment related directly to the original admission.

(2) Maternity episodes are valid if outpatient of inpatient treatment related to the pregnancy is initiated within 30 days of its issuance. They remain valid for care of the mother through termination of the pregnancy and for 42 days thereafter to allow for postnatal care to be included in the maternity episode. (See § 728.33(d)(3) for the validity period of DD 1251's for infants remaining after discharge of the mother.)

(g) *Retroactive issuance.* Issue Nonavailability Statements retroactively only if required care could not have been rendered in a USMTF or USTF as specified in § 728.33(e) at the time services were rendered in the civilian sector. At the time a retroactive issuance is requested, the facility

receiving the request will determine whether capability existed at the USMTF or USTF serving the inpatient catchment area wherein the beneficiary resides (resided) or at any of the facilities in the overlapping area described in § 728.33(e). While the date of service will be recorded on the DD 1251, send the retained original to the Naval Medical Data Services Center along with others issued during the week of issuance (§ 728.33(j) refers).

(h) *Annotating DD 1251's.* Before issuance, annotate each DD 1251 per the instructions for completion on the reverse of the form. DD 1251's issued under the CO's discretionary authority for the "medically inappropriate reason (§ 728.33(c)(3)(ii)) will be annotated in the remarks section documenting the special circumstances necessitating issuance, the name and location of the source of care selected by the beneficiary, and approximate distance from the source selected to the nearest USMTF or USTF with capability (see instruction number 2 on the reverse of the DD 1251). Establish and maintain a consecutively numbered log to include for each individual to whom a DD 1251 is issued:

(1) Patient's name and identifying data.

(2) The facility unique NAS number (block number 1 on the DD 1251).

(i) *Appeal procedures.* Beneficiaries may appeal the denial of their request for a DD 1251. This procedure consists of four levels within Navy, any one of which may terminate action and order issuance of a Nonavailability Statement if deemed warranted:

(1) The first level is the chief of service, or director of clinical services if the chief of service is the cognizant authority denying the beneficiary's original request.

(2) The second level is the commanding officer of the naval MTF denying the issuance. Where the appeal is denied and denial is upheld at the commanding officer's level, inform beneficiaries that their appeal may be forwarded to the geographic commander having jurisdictional authority.

(3) The third level is the appropriate geographic commander, if the appeal is denied at this level, inform beneficiaries that their appeal may be forwarded to the Commander, Naval Medical Command, Washington, DC 20372–5120.

(4) The Commander, Naval Medical Command, the fourth level of appeal, will evaluate all documentation submitted and arrive at a decision. The beneficiary will be notified in writing of this decision and the reasons therefor.

(j) *Data collection and reporting.* Do not issue the original of each DD 1251 prepared at activities where the DEER/NAS automated system is not operational. Send the retained originals to the Commanding Officer, Naval Medical Data Services Center (Code–03), Bethesda, MD 20814–5066 for reporting under report control symbol DD-HA (Q) 1463(6320).

§ 728.34 Care beyond the capabilities of a naval MTF.

When either during initial evaluation or during the course of treatment of an individual authorized care in this subpart, a determination is made that required care or services are beyond the capability of the naval MTF, the provisions of § 728.4(z)(2) apply.

§ 728.35 Coordination of benefits—third party payers.

Title 10 U.S.C. 1095 directs the services to collect from third-party payers the reasonable costs of inpatient hospital care incurred by the United States on behalf of retirees and dependents. Naval hospital collection agents have been provided instructions relative to this issue and are responsible for initiating claims to third-party payers for the cost of such care. Admission office personnel must obtain insurance, medical service, or health plan (third-party payer) information from retirees and dependents upon admission and forward this information to the collection agent.

§ 728.36 Pay patients.

Care is provided on a reimbursable basis to retired Coast Guard officers and enlisted personnel, retired Public Health Service Commissioned Corps officers, retired Commissioned Corps officers of the National Oceanic and Atmospheric Administration, and to the dependents of such personnel. Accordingly, patient administration personnel will follow the provisions of subpart J to initiate the collection action process when inpatient or outpatient care is provided to these categories of beneficiaries.

Subpart E—Members of Foreign Military Services and Their Dependents

§ 728.41 General provisions.

(a) *Dependent.* As used in this subpart, the term "dependent" denotes a person who bears one of the following relationships to his or her sponsor:

(1) A wife.

(2) A husband if dependent on his sponsor for more than one-half of his support.

(3) An unmarried legitimate child, including an adopted or stepchild who is dependent on the sponsor for over one-half of his or her support and who either:

(i) Has not passed the 21st birthday; or

(ii) Is incapable of self-support due to a physical or mental incapacity that existed prior to reaching the age of 21; or

(iii) Has not passed the 23rd birthday and is enrolled in a full-time course of study in an accredited institution of higher learning.

(b) *Transfer to naval MTFs in the United States.* Do not transfer personnel covered in this subpart to the United States solely for the purpose of obtaining medical care at naval MTFs. Consideration may be given however, in special circumstances following laws of humanity or principles of international courtesy. Transfer to naval MTFs in the United States of such persons located outside the United States requires approval of the Secretary of the Navy. Naval commands, therefore, should not commit the Navy by a promise of treatment in the United States. Approval generally will not be granted for treatment of those who suffer from incurable afflictions, who require excessive nursing or custodial care, or those who have adequate facilities in their own country. When a request is received concerning transfer for treatment at a naval MTF in the United States, the following procedures apply:

(1) Forward the request to the Chief of Naval Operations (OP–61), with a copy to the Commander, Naval Medical Command, Washington, DC 20372–5120 for administrative processing. Include:

(i) Patient's full name and grade or rate (if dependent, the sponsor's name and grade or rate also).

(ii) Country of which a citizen.

(iii) Results of coordination with the chief of the diplomatic mission of the country involved.

(iv) Medical report giving the history, diagnosis, clinical findings, results of diagnostic tests and procedures, and all other pertinent medical information.

(v) Availability or lack thereof of professional skills and adequacy of facilities for treatment in the member's own country.

(vi) Who will assume financial responsibility for costs of hospitalization and travel.

(2) The Chief of Naval Operations (OP–61) will, if appropriate, obtain State Department clearance and guidance and advise the Secretary of the Navy accordingly. The Commander, Naval Medical Command will furnish the Chief of Naval Operations information and recommendations relative to the medical aspects and the name of the naval MTF with the capability to

provide required care. If approved, the Chief of Naval Operations will furnish, through the chain of command, the commanding officer of the designated naval MTF authorization for admission of the beneficiary for treatment.

§ 728.42 NATO.

(a) *NATO SOFA nations.* Belgium, Canada, Denmark, Federal Republic of Germany, France, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and the United States.

(b) *Beneficiaries.* The following personnel are beneficiaries under the conditions set forth.

(1) *Members of NATO military services and their dependents.* Military personnel of NATO nations, who, in connection with their official duties, are stationed in or passing through the United States, and their dependents residing in the United States with the sponsor may be provided care in naval MTFs to the same extent and under the same conditions as comparable U.S. uniformed services personnel and their dependents. Accordingly, the provisions of § 728.12 are applicable to military personnel and § 728.31(d) through § 728.34 to accompanying dependents.

(2) *Military ships and aircraft personnel.* Crew and passengers of visiting military aircraft and crews of ships of NATO nations which land or come into port at NATO or U.S. military airfields or ports within NATO countries.

(3) *NATO liaison officers.* In overseas areas, liaison officers from NATO Army Forces or members of a liaison detachment from such a Force.

(c) *Application for care.* Military personnel of NATO nations stationed in the United States and their dependents will present valid Uniformed Services Identification and Privilege Cards (DD 1173) when applying for care. For other eligible persons passing through the United States on official business and those enumerated in § 728.42(b) (2) and (3), orders or other official identification may be accepted in lieu of the DD 1173.

(d) *Disposition.* When it becomes necessary to return individuals to their home country for medical reasons, make immediate notification to the NATO unit sponsoring the member or dependent's sponsor. Include all pertinent information regarding the physical and mental condition of the individual concerned. Following are details of agreements among the Armed Forces of NATO, CENTO, and SEATO Nations on procedures for disposition of allied country patients by DOD medical installations.

(1) *Transfer of patients.* (i) The patient's medical welfare must be the paramount consideration. When deciding upon transfer of a patient, give due consideration to any increased medical hazard which the transfer might involve.

(ii) Arrangements for disposition of patients should be capable of being implemented by existing organizations. Consequently, no new establishment should be required specially for dealing with the transferring of allied casualties.

(iii) Transfer patients to their own national organization at the earliest practicable opportunity consistent with the observance of principles established in § 728.42(d)(1) (i) and (ii) and under any of the following conditions:

(A) When a medical facility of their own nation is within reasonable proximity of the facility of the holding nation.

(B) When the patient is determined to require hospitalization in excess of 30 days.

(C) Where there is any question as to the ability of the patient to perform duty upon release from the MTF.

(iv) The decision as to whether a patient, other than one requiring transfer under § 728.42(d)(1)(iii), is fit for release from the MTF is the responsibility of the facility's commanding officer.

(v) All clinical documents, to include x-rays, relating to the patient will accompany such patients on transfer to their own national organization.

(vi) The decision of suitability for transfer and the arrangements for transfer will be the responsibility of the holding nation.

(vii) Final transfer channels should be arranged by local liaison before actual movement.

(viii) Patients not suitable for transfer to their own national organization must be dealt with for treatment and disposition purposes as patients of the holding nation until they are transferred, i.e., they will be dealth with in military hospitals, military medical installations, or in civilian hospitals that are part of the military medical evacuation system of the holding nation.

(2) *Classification of patients.* Different channels for disposition will be required for the following two types of patients:

(i) *Patients not requiring admission.* Patients not requiring admission to an MTF will be returned to their nearest national unit under arrangements to be made locally.

(ii) *Patients admitted to medical installations.* All such patients will be dealth with per § 728.42(d)(1).

(e) *Care authorized outside the 48 contiguous United States.* Major overseas commanders may authorize care in naval MTFs subject to the availability of space, facilities, and the capabilities of the professional staff in emergency situations only, *Provided,* the required care cannot reasonably be obtained in medical facilities of the host country or in facilities of the patient's own country, or if such facilities are inadequate. Provide hospitalization only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Administer dental treatment only as an adjunct to authorized inpatient care. Do not include dental prostheses or orthodontia.

§ 728.43 Members of other foreign military services and their dependents.

(a) *Foreign military service members.* For the purpose of § 728.43, members of foreign military services include only:

(1) Military personnel carried on the current Diplomatic List (Blue) or on the List of Employees of Diplomatic Missions (White) published by the Department of State.

(2) Military personnel assigned or attached to United States military units for duty; military personnel on foreign military supply missions accredited to and recognized by one of the military departments; and military personnel on duty in the United States at the invitation of the Secretary of Defense or one of the military departments. For the purpose of § 728.43, members of foreign Security Assistance Training Programs (SATP) and Foreign Military Sales (FMS) are not included (see § 728.44).

(3) Foreign military personnel accredited to joint United States defense boards or commissions when stationed in the United States.

(4) Foreign military personnel covered in agreements entered into by the Secretary of State, Secretary of Defense, or one of the military departments to include, but not limited to, United Nations forces personnel of foreign governments exclusive of NATO nations.

(b) *Care authorized in the United States.* Military personnel of foreign nations not covered in § 728.42 and their dependents residing in the United States with the sponsor may be routinely provided only outpatient medical care in naval MTFs on a reimbursable basis. *Provided,* the sponsor is in the United States in a status officially recognized by an agency of the Department of Defense. Dental care and hospitalization for such members and their dependents are limited to emergencies. All outpatient care and hospitalization in

emergencies are subject to reimbursement as outlined in § 728.46.

(c) *Application for care.* All personnel covered by § 728.43 will present orders or other official U.S. identification verifying their status when applying for care.

(d) *Disposition.* When it becomes necessary to return individuals covered by § 728.43 to their home country for medical reasons, make immediate notification to the sponsoring unit of the patient or patient's sponsor with a copy to the Chief of Naval Operations (OP–61). Include all pertinent information regarding the physical and mental condition of the individual concerned and full identification, diagnosis, prognosis, estimated period of hospitalization, and recommended disposition. Additionally, the provisions of § 728.42(d) (1) and (2) apply.

(e) *Care authorized outside the 48 contiguous United States.* Major overseas commanders may authorize care in naval MTFs subject to the availability of space, facilities, and the capabilities of the professional staff in emergency situations only. *Provided,* the required care cannot reasonably be obtained in medical facilities of the host country or in facilities of the patient's own country, or if such facilities are inadequate. Provide hospitalization only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Administer dental treatment only as an adjunct to authorized inpatient care. Do not include dental prostheses or orthodontia.

§ 728.44 Members of security assistance training programs, foreign military sales, and their ITO authorized dependents.

(a) *Policies.*—(1) *Invitational Travel Orders screening.* Prior to determining the levels of care authorized or the government or person responsible for payment for care rendered, carefully screen ITOs to detect variations applicable to certain foreign countries. For example, unless orders state differently, Kuwait has a civilian health plan to cover medical expenses of their trainees; trainees from the Federal Republic of Germany are personally responsible for reimbursing for inpatient care provided to their dependents; and all inpatient medical services for trainees from France and their dependents are to be borne by the individual trainee.

(2) *Elective and definitive surgery.* The overall policy with respect to elective and definitive surgery for Security Assistance Training Program (SATP), Foreign Military Sales (FMS) personnel and their dependents is that conservatism will at all times prevail, except bona fide emergency situations which might threaten the life or health of an individual. Generally, elective care is not authorized nor should be started. However, when a commanding officer of a naval MTF considers such care necessary to the early resumption and completion of training, submit the complete facts to the Chief of Naval Operations (OP–63) for approval. Include the patient's name (sponsor's also if patient is an ITO authorized dependent), grade or rate, country of origin, diagnosis, type of elective care being sought, and prognosis.

(3) *Prior to entering training.* Upon arrival of an SATP or FMS trainee in the United States or at an overseas training site, it is discovered that the trainee cannot qualify for training by reason of a physical or mental condition which will require a significant amount of treatment before entering or completing training, return such trainees to their home country immediately or as soon thereafter as travel permits.

(4) *After entering training.* When trainees require hospitalization or are disabled after entering a course of training, return them to their home country as soon as practicable when, in the opinion of the commanding officer of the medical facility, hospitalization or disability will prevent training for a period in excess of 30 days. Forward a copy of the patient's clinical records with the patient. When a trainee is accepted for treatment that is not expected to exceed 30 days, notify the commanding officer of the training acvitity. Further, when a trainee is scheduled for consecutive training sessions convening prior to the expected data of release from a naval MTF, make the next scheduled training activity an information addressee. Upon release from the MTF, direct such trainees to resume training.

(b) *Care authorized.* Generally, all SATP and FMS personnel and their ITO authorized dependents are entitled to care to the same extent. However, certain agreements require that they be charged differently and that certain exclusions apply.

(1) *NATO members and their ITO authorized dependents*—(i) *Foreign military sales (FMS).* Subject to reimbursement per § 728.46, FMS personnel of NATO nations who are in the United States or at U.S. Armed Forces installations outside the United States and their accompanying ITO authorized dependents will be provided medical and dental care in naval MTFs to the same extent and under the same conditions as comparable United States military personnel and their dependents except that:

(A) Dependent dental care is not authorized.

(B) Dependents are not authorized cooperative care under CHAMPUS.

(ii) *International military education and training (IMET).* Subject to reimbursement for inpatient care at the appropriate IMET rate for members or at the full reimbursement rate for dependents, IMET personnel of NATO nations who are in the United States or at U.S. Armed Forces installations outside the United States and accompanying dependents will be provided medical and dental care in naval MTFs to the same extent and under the same conditions as comparable United States military personnel and their dependents except that:

(A) Dependent dental care is not authorized.

(B) Dependents are not authorized cooperative care under CHAMPUS.

(2) *Other foreign members and ITO authorized dependents*—(i) *Foreign military sales.* Subject to reimbursement by the trainee or the trainee's government for both inpatient and outpatient care at the full reimbursement rate, FMS personnel of non-NATO nations and ITO authorized accompanying dependents may be provided medical and dental care on a space available basis when facilities and staffing permit except that:

(A) Prosthetic devices, hearing aids, orthopedic footwear, and similar adjuncts are not authorized.

(B) Spectacles may be furnished when required to enable trainees to perform their assigned duties, *Provided* the required spectacles are not available through civilian sources.

(C) Dental care is limited to emergency situations for the military member and is not authorized for dependents.

(D) Dependents are not authorized cooperative care under CHAMPUS.

(ii) *International military education and training.* Subject to reimbursement for both inpatient and outpatient care at the appropriate rates for members and dependents, IMET personnel of non-NATO nations may be provided medical and dental care on a space available basis when facilities and staffing permit except that:

(A) Prosthetic devices, hearing aids, orthopedic footwear, and similar adjuncts are not authorized.

(B) spectacles may be furnished when required to enable trainees to perform their assigned duties, *Provided* the

required spectacles are not available through civilian sources.

(C) Dental care is limited to emergency situations for military members and is not authorized for dependents.

(D) Dependents are not authorized cooperative care under CHAMPUS.

(c) *Application for care.* Trainees and accompanying dependents will present official U.S. identification or orders verifying their status when applying for care. If any doubt exists as to the extent of care authorized, ITOs should be screened (see § 728.44(a)(1)).

(d) *Notification.* When trainees require hospitalization as a result of illness or injury prior to or after entering training, the training activity (the hospital if patient has been admitted) will make a message report through the normal chain of command to the Chief of Naval Operations (OP–63) with information copies to MAAG, COMNAV MEDCOM, Navy International Logistics Control Office (NAVIL CO), Unified Commander, the affected office, and the foreign naval attache concerned. Include details of the incident, estimated period of hospitalization, physical or mental condition of the patient, and diagnosis. For further amplification, see OPNAVINST 4950.1H and NAVCOMPTMAN 032103.

§ 728.45 Civilian components (employees of foreign military services) and their dependents.

(a) *Care authorized.* Beneficiaries covered in § 728.45 are only authorized care in naval MTFs in the United States and then only civilian humanitarian emergency care on a reimbursable basis (Subpart J) rendered at installations which have been designated as remote by the Secretary of the Navy. Make arrangements to transfer such beneficiaries to a civilian facility as soon as their condition permits.

(b) *Potential beneficiaries.*—(1) *NATO.* Civilian employee personnel (and their dependents residing with them) accompanying military personnel in § 728.42(b)(1), *Provided*, the beneficiaries are not stateless persons nor nationals of any state which is not a party to the North Atlantic Treaty, nor nationals of, nor ordinarily residents in the United States.

(2) *Others.* Civilian personnel not covered in § 728.45(b)(1) (and their dependents residing with them) accompanying personnel of foreign nations on duty in the United States at the invitation of the Department of Defense or one of the military departments.

(c) *Application for care.* Personnel covered by the provisions of § 728.45 will present orders or other official U.S. identification verifying their status when applying for care.

§ 728.46 Charges and collection.

(a) *Policy.* Pub. L. 99–591, section 9029, contains provisions prohibiting the expenditure of appropriated funds ". . . to provide medical care in the United States on an inpatient basis to foreign military and diplomatic personnel or their dependents unless the Department of Defense is reimbursed for the costs of providing such care: *Provided*, That reimbursements . . . shall be credited to the appropriations against which charges have been made for providing such care, except that inpatient medical care may be provided in the United States without cost to military personnel and their dependents from a foreign country if comparable care is made available to a comparable number of United States military personnel in that foreign country."

(b) *Canadian agreement.* On 3 November 1986, the Department of National Defence of Canada and DOD concluded a comparable care agreement that covers certain military personnel. The agreement stipulates that:

(1) DOD will, upon request, provide Canadian Forces members the same range of medical and dental services under the same conditions and to the same extent as such services are provided comparable United States military personnel. Inasmuch as the agreement covers only certain military personnel, the reimbursement provisions of Pub. L. 99–591 remain in effect for inpatient care provided to Canadian diplomatic personnel, Canadian dependents, and Canadian foreign military sales trainees who receive care in the United States. Further:

(2) Permanently stationed Canadian units with established strengths of more than 150 personnel are expected to have integral health care capability. Any health care services which members of such units receive from the host nation will be provided on a full reimbursement basis. Groups of larger than 150 personnel, which conduct collective training in the United States, are expected to deploy with an organic unit medical capability. Naval MTFs may be requested to provide services, beyond the capability of the organic unit, at full reimbursement rates.

(c) *Procedures.* (1) Until otherwise directed, naval MTFs in the 50 United States will collect the full reimbursement rate (FRR) for inpatient care provided to all foreign military personnel (except Canadians covered by the comparable care agreement in § 728.46(b), and military personnel connected with a Foreign Military Sales (FMS) case number), foreign diplomatic personnel, and to the dependents of both whether they are in the United States on official duty or for other reasons.

(2) Subpart J contains procedures for the initiation of collection action when inpatient care is rendered to beneficiaries from NATO nations and when either inpatient or outpatient care is rendered to all others enumerated in this part. Chapter II, part 4 of NAVMED P–5020 is applicable to the collection of and accounting for such charges.

Subpart F—Beneficiaries of Other Federal Agencies

§ 728.51 General provisions—the "Economy Act."

The Economy Act, 31 U.S.C. 1535, generally permits agency heads, or heads of major organizational units of agencies, to procure goods and services from other agencies or within their own agency so long as funds for procurement are available, the order is in the best interest of the Government, the source from which the goods or services are ordered can produce them or obtain them by contract, and the internal or inter-agency procurement is more convenient, or less expensive, than commercial procurement. Provisions of the Economy Act apply to requests from other Federal agencies for medical and dental care for beneficiaries for whom they are responsible. Consult specific provisions of the Act respecting financial and acounting limitations and requirements.

§ 728.52 Veterans Administration beneficiaries (VAB).

(a) *Eligible beneficiaries*—Those who have served in the Armed Forces, have been separated under conditions other than dishonorable, and have been determined by the Veterans Administration (VA) to be eligible for care at VA expense. Prior to 7 September 1980, veterans status could be obtained by virtue of 1 day's honorable service. The following restrictions do not apply to individuals who are discharged from active duty because of a disability or who were discharged for reasons of "early out" or hardship program under 10 U.S.C. 1171 and 1173.

(1) For individuals with an original enlistment in the military service after 7 September 1980, the law generally denies benefits, including medical care.

(2) For individuals entering service after 16 October 1981, the law generally denies medical benefits when such

individuals do not complete the shorter of:

(i) Twenty-four months of continuous active duty, or

(ii) The full period for which that person was called or ordered to active duty.

(b) *Inpatient control*—Each VAB admitted will be required to conform to regulations governing the internal administration of the naval facility. Restrictive or punitive measures, including disciplinary action or denial of privileges, will conform as nearly as possible to VA instructions.

(c) *Resolution of problems*—All problems pertaining to VABs, including admission, medical or other records, and all correspondence will be matters of resolution between the commanding officer of the naval facility and the VA office of jurisdiction authorizing admission. Questions of policy and administration which cannot be so resolved will be forwarded, through the normal chain of command, to the Administrator of Veterans Affairs via COMNAVMEDCOM for resolution.

(d) *Care in the United States*—(1) *Inpatient care.* An eligible VAB may be admitted to a naval MTF on presentation of a written authorization for admission signed by an official of the VA office of jurisdiction. Neurological and certain neuropsychiatric patients without obvious evidence of psychosis and not requiring restraints, and instances of suspected tuberculosis, may be admitted for diagnosis. When diagnosed, promptly report instances of psychosis, psychoneurosis, and tuberculosis of present clinical significance to the VA office of jurisdiction with a request for transfer to a VA facility.

(i) *Extent of care.* Provide eligible VABs medical and surgical care, including prostheses such as eyes and limbs and appliances such as hearing aids, spectacles, or orthopedic appliances when required for the proper treatment of the condition upon which eligibility is based.

(ii) *Disposition of emergency admission.* Notify the appropriate VA office of jurisdiction by message or other expeditious means within 72 hours after the date and hour of an emergency admission of a potential VAB. Include a request for an authorization for admission and emergency treatment. If VA denies VAB status to such a person admitted in an emergency, the provisions of § 728.81(a) are applicable. Once admitted in an emergency situation, discharage a VAB promptly upon termination of the emergency unless arrangements have been made with the VA office of jurisdiction:

(A) For transfer to a VA treatment facility if further treatment is required.

(B) To retain the patient as a VAB in the naval MTF.

(2) *Outpatient care.* Outpatient care, including post hospitalization outpatient care, may be provided upon authorization by the VA office of jurisdiction. When outpatient followup care is requested, commanding officers are responsible for determining whether capabilities and workload permit providing such care. In an emergency, provide necessary care.

(3) *Physical examinations.* Upon a determination by a naval MTF commanding officer that space, facilities, and capabilities exist, naval MTFs may provide physical examinations when requested by the VA for the purpose of adjudicating claims for VA physical disability compensation. If authorized by the VA, patients may be admitted when the examination requires more than 1 day.

(4) *Dental care.* Limit dental treatment to inpatients who require services adjunctive to medical or surgical conditions for which hospitalized.

(e) *Care outside the United States*—(1) *Eligible beneficiaries.* Beneficiaries described in § 728.52(a) who are citizens of the United States and residing or sojourning abroad may, within the capabilities of the facility as determined by the commanding officer, be provided inpatient and outpatient care upon presentation of an authorization from the appropriate VA office of jurisdiction listed in § 728.52(e)(3).

(2) *Emergency care.* Overseas naval MTFs furnishing emergency care to potential VABs will promptly notify the appropriate VA office of jurisdiction and request authorization for treatment and instructions for disposition of the patient.

(3) *Offices of jurisdiction.* The following activities are vested with responsibility for issuing authorizations for care and furnishing dispisition instructions for VABs in overseas naval MTFs:

(i) In the Trust Territory of the Pacific (Micronesia), VA Office, Honolulu, Hawaii.

(ii) In the Philippines, VA Regional Office, Manila, Philippines.

(iii) In Canada, Canadian Department of Veterans Affairs, Ottawa, Canada.

(iv) In all other foreign countries, consular offices of U.S. embassies.

(f) *Forms required.* (1) Complete a VA 10–10 (Application for Medical Benefits) when potential VABs are admitted for emergency care without prior authorization.

(2) Prepare a VA 10–10m (Medical Certificate and History) when care is rendered. All information required in the medical certificate thereon will be furnished whether the admission is subsequently approved or disapproved by the VA office of jurisdiction.

(3) Since the completion of VA 10–10m requires an examination of patients, admissions which are disapproved will be reported as medical examinations on DD 7A, Report of Treatment Furnished Pay Patients, Outpatient Treatment Furnished (Part B) (See Subpart J).

(4) Prepare and submit a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished (Part A)) on all VABs and potential VABs admitted (see Subpart J).

(5) Complete an SF 502 (Narrative Summary) or SF 539 (Abbreviated Clinical Record), as appropriate, when a VAB or potential VAB is discharged or otherwise released. When an interim report of hospitalization is requested by the VA office of jurisdiction, it may be prepared on an SF 502.

§ 728.53 Department of Labor, Office of Workers' Compensation Programs (OWCP) beneficiaries.

(a) *Potential beneficiaries.* The following may be beneficiaries of one of the programs sponsored by the Office of Workers' Compensation Programs (OWC) under the conditions set forth. They are not beneficiaries of OWCP until authorized as such by the appropriate district officer of OWCP. However, they may be carried as potential beneficiaries pending OWCP determination of eligibility. DOD civilian employees provided medical services under a Defense or service health program are not included under this authority (see subpart G).

(1) Members and applicants for membership in the Reserve Officers' Training Corps of the Navy, Army, and Air Force, provided the condition necessitating treatment was incurred in line of duty during an off-campus training regimen. Such care is authorized for injury (a disease or illness which is the proximate result of performance of training is considered an injury) incurred while engaged in:

(i) Training.

(ii) Flight instructions.

(iii) Travel to or from training or flight instructions.

(2) The following employees of the Government of the United States, regardless of nationality or place of work, are entitled to receive care as outlined in § 728.53(e) for work incurred traumatic injuries at the expense of OWCP. (In addition to injury by accident, a disease or illness which is the proximate result of performance of

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employment duties is considered an injury.) This category includes but is not limited to:

(i) Civilian student employees in training at Navy and Marine Corps facilities.

(ii) Civilian seamen in the service of vessels operated by the Department of the Army (see § 728.53(a)(7) and § 728.80(c)(2) for civilian Military Sealift Command (MSC) personnel).

(iii) All civilian employees of the Government except nonappropriated-fund-activity employees. Nonappropriate fund employees may be covered under the Longshore and Harbor Workers' Compensation Act (contact cognizant district office of OWCP).

(3) Civilian members of the Civil Air Patrol (except Civil Air Patrol Cadets) for injury or disease which is the proximate result of active service or travel to and from such service, rendered in performance or support of operational missions of the Civil Air Patrol under the direction and written authority of the Air Force.

(4) Former Peace Corps enrollees for injury or disease which is the proximate result of their former employment with the Peace Corps or which was sustained or contracted while located with the Peace Corps outside the United States and its territories.

(5) Former Job Crops enrollees for injury or disease which is the proximate result of employment with the Job Corps.

(6) Former VISTA (Volunteers in Service to America) enrollees for injury or disease which is the proximate result of employment with VISTA.

(7) Military Sealift Command (MSC) civilian marine personnel (CIVMARPERS or CIVMARS) (including temporary employees, intermittent employees, and employees with less than 1 year's service) are entitled to occupationally related care at the expense of OWCP. CIVMARS are in a crew status only after reporting to their assigned ship. They are in a travel status from crewing point to ship and return. While in a travel status, they are entitled to the same health care benefits as other Federal civil service employees in a travel status (5 U.S.C. 8101). CIVMARS presenting for treatment with a properly completed CA–16, Request for Examination and/or Treatment, will:

(i) Enter the naval MTF's system through the occupational medicine service.

(ii) Be treated for any injury or disease proximately caused by their employment. Although the actual determination of whether an illness or injury is occupationally related is a function of OWCP, determinations are based on the required injury report along with the treatment record from the attending physician. Therefore, when doubt exists as to the relationship of the condition to the potential patient's employment, the physician should report an unbiased medical conclusion and the medical rationale therefor, indicating the conditions which are responsible for the claimant's disability. As a general rule, the following may be initially considered as occupationally related, however, it should be emphasized that OWCP is the final approval authority:

(A) Any injury or illness occurring as a direct result of employment. May occur on a ship, at a Government installation ashore, or in an aircraft while performing a requirement of employment.

(B) Any injury or illness which becomes manifest while away from work (on leave or liberty) while in a crew status or travel status as long as the condition may be directly related to job activities or to exposures incident to travel to ship assignment.

(C) Required immunizations.

(D) Required physical examinations.

(E) Periodic medical surveillance screening examinations for DOD occupational and industrial health programs, i.e., asbestos medical surveillance, hearing conservation, etc.

(iii) Be referred to a non-Federal source of care where back-to-work care may be provided at the CIVMAR's expense after, if necessary, the immediate emergency is alleviated when a reasonable determination can be made that the injury or illness is not occupationally related.

(A) Per 5 U.S.C. 7901(c)(3), the health service program for Federal civilian employees is limited to referral of employees, upon their request, to private sources of care.

(B) Long term extended care of chronic illnesses such as hypertension, diabetes, etc., is not authorized in naval MTFs at the expense of OWCP nor at the CIVMAR's personal expense.

(C) Patients who cannot be referred, because of medical reasons or because non-Federal sources are not available or available but inadequate, may be retained in naval MTFs at the expense of the CIVMAR or of his or her private insurance until transfer becomes possible. Although the means of access to the naval MTF may have been through the occupational medicine service, retention in the naval MTF is on a civilian humanitarian basis. This is also applicable when OWCP disallows a CIVMAR's claim (see § 728.53(c)).

(b) *Authorization required.* Personnel in § 728.53(a) (1) through (6) may be rendered inpatient and outpatient care as outlined in § 728.53(e), unless otherwise stipulated in § 728.53, upon presentation of a properly prepared and signed authorization from CA–16 (Request for Examination and/or Treatment). District offices of OWCP will honor these authorizations for 60 days unless written notice of termination of authorization is given earlier. Whereas the CA–16 is used primarily for traumatic injuries, it may also be used to authorize examination and treatment for disease or illness provided the affected agency has obtained prior permission from the cognizant district office of OWCP. If the condition for which treatment is requested appears related to employment, treatment of beneficiaries in § 728.53(a) (1) through (7) may be initiated without presentation of a CA–16. Patients provided treatment without a CA–16 may be carried as OWCP beneficiaries from the time of initial treatment, provided the appropriate district office of OWCP is notified and requested to submit a CA–16 within 48 hours giving authorization as of the date of actual treatment. OWCP will not be liable for payment of bills for unauthorized treatment. Post hospitalization care following authorized inpatient care does not require an additional authorization. First aid treatment rendered civilian employees does not require an authorization form

(c) *Disallowance by OWCP.* When OWCP determines that any claim should be disallowed, OWCP will advise the naval facility rendering care that no further treatment should be rendered at OWCP expense. The patient ceases to be an OWCP beneficiary as of the date of receipt of the notice of disallowance by the naval MTF and the patient will be so notified. Any treatment subsequent to the date of receipt of the notice of disallowance will be at the personal expense of the patient (see § 728.81(a)).

(d) *Authorization for transfer.* Prior approval of OWCP is required before a transfer can be effected, except in an emergency or when immediate treatment is deemed more appropriate in another Federal facility. When transfer is effected without approval, the transferring facility will immediately request such authorization from the appropriate district office of OWCP. When authorized by OWCP, evacuation to the United States can be effected per OPNAVINST 4630.25B. Medical records and a CA–16 will accompany such patients.

(e) *Care authorized*—(1) *Inpatient care.* Medical and surgical care necessary for the proper treatment of the condition upon which eligibility is based. Specific OWCP authorization is required before major surgical procedures can be performed unless the urgency of the situation is such that time does not permit obtaining said authorization. All necessary prostheses, hearing aids, spectacles, and orthopedic appliances will be furnished when required for proper treatment of the condition upon which eligibility is based. Upon specific authorization, damaged or destroyed medical braces, artificial limbs, and other orthopedic and prosthetic devices will be replaced or repaired, except that eyeglasses and hearing aids will not be replaced or repaired unless their damage or destruction is incidental to a personal injury requiring medical services.

(2) *Outpatient care.* Complete medical and surgical care not requiring hospitalization, and posthospitalization services following authorized inpatient care in a naval MTF for the proper treatment of the condition upon which eligibility is based.

(3) *Dental care.* Limit dental treatment to emergencies and that care necessary as an adjunct to inpatient hospital care authorized in advance. Such care will not include dental prostheses, unless specifically authorized, nor orthodontic treatment.

(f) *Reports and records.* (1) Copies of medical records will accompany OWCP patients being transferred from one medical treatment facility to another. Records accompanying OWCP patients to a debarkation hospital will be the same as for military personnel and will clearly identify the patient as an OWCP beneficiary.

(2) Forward a CA–20 (Attending Physician's Report) to the appropriate district office of OWCP on discharge of the patient unless hospitalization exceeds 1 month. In such instances, a report will be submitted every 30 days. When extensive hospitalization is required, use an SF 502 or a narrative format in lieu of CA–20. When submitted to OWCP, the physician's report will include:

(i) History.

(ii) Physical findings.

(iii) Laboratory findings.

(iv) Abstract of hospital records.

(v) Diagnosis for conditions due to injury and not due to injury.

(vi) Rationalized medical opinion for the physician's belief that the illness or disease treated was causally related to a specific condition or set of conditions to which the claimant was subjected.

(vii) Condition on discharge with opinion as to degree of impairment due to injury, if any.

(3) Complete and submit, per Subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, Part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, Part B) when outpatient or inpatient care is rendered to any OWCP beneficiary.

§ 728.54 U.S. Public Health Service (USPHS), other than members of the uniformed services.

(a) *Potential beneficiaries.* The following may be beneficiaries of the USPHS for care in naval MTFs upon submission of the necessary form from appropriate officials as outlined in § 728.54(b).

(1) *Within and Outside the United States.* Any individuals the USPHS may determine to be eligible for care on an interagency reimbursable basis.

(2) *Within the 48 Contiguous United States and the District of Columbia.* American Indians, Alaska Natives, Eskimos, and Aleuts.

(3) *In Alaska.* American Indians, Eskimos, and Aleuts.

(b) *Authorization required.*—(1) *Normal circumstances.* An American Indian or Alaska Native may be rendered inpatient care upon presentation of form HRSA 43 (Contract Health Service Purchase Order for Hospital Services Rendered) or HRSA form 64 (Purchase/Delivery Order for Contract Health Services Other Than Hospital Inpatient or Dental). Either form must be signed by an appropriate Indian Health Service or Alaska Native Health Service area/program official.

(2) *Emergencies.* In an emergency, care may be rendered upon written request of patient's commanding officer or superior officer, or the patient if neither of the above is available. When emergency care is rendered without prior authorization, the facility rendering care must notify the service unit director of the patient's home reservation within 72 hours from the time such care is rendered unless extenuating circumstances preclude prompt notification.

(c) *Care authorized.* Unless limited by the provisions stipulated in § 728.54(a) and subject to the provisions of § 728.3, the following care may be rendered, when requested, to all beneficiaries enumerated in § 728.54(a).

(1) *Inpatient care.* Necessary medical and surgical care.

(2) *Outpatient care.* Necessary medical and surgical care.

(3) *Dental care.* (i) Limit dental care in the United States, its territories, possessions, and the Commonwealth of Puerto Rico to emergencies for the relief of pain or acute conditions and that necessary as an adjunct to inpatient hospital care. Prosthetic dental appliances and permanent restorations are not authorized.

(ii) In overseas areas, dental care is authorized to the extent necessary pending the patient's return to the United States, its territories, possessions, or the Commonwealth of Puerto Rico.

(d) *Report.* Complete and submit, per Subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, Part A) or a DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, Part B) when outpatient or inpatient care is rendered.

§ 728.55 Department of Justice beneficiaries.

Upon presentation of a letter of authorization that includes disposition of SF 88 (Report of Medical Examination), SF 93 (Report of Medical History), and address for submission of claim, the following personnel may be furnished requested care as beneficiaries of the Department of Justice. See subpart J on completing and submitting forms for central collection of the cost of care provided.

(a) *Federal Bureau of Investigation.* Investigative employees of the Federal Bureau of Investigation (FBI) and applicants for employment as special agents with the FBI may be provided:

(1) Immunizations.

(2) Physical examinations and hospitalization when required to determine physical fitness. Use this period of hospitalization for diagnostic purposes only. Do not correct disqualifying defects.

(b) *U.S. Marshals.* U.S. Marshals may receive physical examinations and hospitalizations when required to determine physical fitness. Use this period of hospitalization for diagnostic purposes only. Do not correct disqualifying defects.

(c) *Claimants against the United States.* Claimants whose suits or claims against the United States are being defended by the Department of Justice may be furnished physical examinations to determine the extent and nature of the injuries or disabilities being claimed. Hospitalization is authorized for proper conduct of the examination. Upon completion, forward the report of the examination promptly to the U.S. Attorney involved.

§ 728.56 Treasury Department beneficiaries.

(a) *Potential beneficiaries.* The following may be beneficiaries of the Treasury Department and may be rendered care as set forth below.

(1) Secret Service Special Agents and support personnel.

(2) Secret Service Agents providing protection to certain individuals.

(3) Persons being provided protection by the Secret Service.

(4) Agents of the U.S. Customs Service.

(5) Prisoners (detainees) of the U.S. Customs Service.

(b) *Care authorized.* (1) Secret Service Special Agents may be provided routine annual physical examinations upon request and presentation of a letter of authorization. Conduct and record examinations in the same manner as routine examinations rendered naval officers except that they may be conducted only on an outpatient basis. If hospitalization is considered desirable in connection with an examination, patient administration department personnel will contact the United States Secret Service at (202) 535–5641 at the address in § 728.56(c). Enter a statement, attesting to the fact that hospitalization is desirable, in item 73 or 75 of the SF 88, as appropriate, before forwarding to the United States Secret Service as directed by the letter of authorization.

(2) Secret Service Agents providing protection to certain individuals and those persons being provided such protection may be rendered all required medical services including hospitalization subject to the provisions of § 728.3.

(3) Agents of the U.S. Customs Service and their prisoners (detainees) may be provided emergency medical treatment and evacuation services to the nearest medical facility (military or civilian) in those remote areas of the United States where no other such services are available. Limit evacuation to the continental United States and do not cross borders. The Navy's responsibility for medical care of such prisoners terminates once the medical emergency has been resolved. Guarding of prisoners, while they or their captors are receiving treatment at naval MTFs, remains the responsibility of the U.S. Customs Service or other appropriate Federal (nonmilitary) law enforcement agencies.

(c) *Reports and records.* (1) When examinations are rendered to Secret Service Special Agents and support personnel, forward one copy of the SF 88, one copy of the SF 93, and one copy of any forms provided with the letter of authorization to United States Secret Service, Administrative Operations Division, Safety and Health Branch, 1800 G Street, NW., Room 845, Washington, DC 20223 or as otherwise directed by the letter of authorization. Provide an information copy to the Deputy Comptroller of the Navy.

(2) Complete and submit, per Subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, Part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, Part B) when outpatient or inpatient care is rendered.

§ 728.57 Department of State and associated agencies.

Eligibility for care under the provisions of § 728.57 will be determined by the Department of State, Office of Medical Services.

(a) *Beneficiaries.* Officers and employees of the following agencies, their dependents, and applicants for appointment to such agencies are authorized inpatient and outpatient medical care as set forth below in addition to that care that may be authorized elsewhere within this part (i.e., §728.53, § 728.55, § 728.56, and § 728.58). Limit dental care to that delineated in § 728.57(b)(6).

(1) Department of State-U.S.Arms Control and Disarmament Agency and the Office of International Conferences.

(2) U.S. Agency for International Development.

(3) International Communications Agency.

(4) ACTION—Peace Corps Staff.

(5) Department of Agriculture—Foreign Agriculture Service.

(6) Department of Commerce—Bureau of Public Roads.

(7) Department of Interior—Bureau of Reclamation and the U.S. Geological Survey.

(8) Department of Transportation—Federal Aviation Administration and the Federal Highway Administration.

(9) Department of Justice—Drug Enforcement Agency.

(10) Department of Treasury—U.S. Customs, U.S. Secret Service, Office of International Affairs (OIA), U.S.—Saudi Arabian Joint Commission for Economic Cooperation (JECOR), and the Internal Revenue Service.

(11) National Aeronautics and Space Administration.

(12) Library of Congress.

(13) Beneficiaries of such other agencies as may be included in the Department of State Medical Program.

(b) *Care authorized*—(1) *General.* The Foreign Service Act of 1946, as amended, authorizes care delineated in § 728.57. Subject to the restrictions and priorities of § 728.3 and the restrictions of § 728.57, care may be rendered at the expense of the Department of State or one of the agencies listed in § 728.57(a). The law allows for payment when care is furnished for an illness or injury which results in hospitalization or equal treatment. Outpatient care is only authorized as an adjunct to hospitalization.

(2) *Overseas.* (i) When, in the opinion of the principal or administrative officer of an overseas post of the Department of State, an individual meets the conditions of eligibility, the post will furnish authorization to the naval MTF for care at the expense of the Department of State or one of the agencies listed in § 728.57(a).

(ii) Should the Department of State official determine that the illness or injury does not meet the conditions of eligibility for care at the expense of one of the agencies, all care provided will be at the expense of the patient or patient's sponsor and charged at the full reimbursement rate.

(3) *In the United States.* (i) Care is not authorized for an injury or illness incurred in the United States. Authorizations and other arrangements for care in the United States for individuals incurring injury or illness outside the United States will be provided by the Deputy Assistant Secretary for Medical Services, Department of State, using appropriate authorization form(s). When personnel are admitted in an emergency without prior authorization, the commanding officer of the admitting naval MTF will immediately request authorization from the Deputy Assistant Secretary for Medical Services.

(ii) The extent of care furnished in the United States, to individuals in § 728.57(a) who are evacuated to the United States for medical reasons, will be comparable in all respects to that which is authorized or prescribed for these individuals outside the United States. When determined appropriate by the Deputy Assistant Secretary for Medical Services, officers and employees and their accompanying dependents who have returned to the United States for nonmedical reasons may be furnished medical care at the expense of one of the above agencies for treatment of an illness or injury incurred while outside the United States.

(4) *Physical examinations.* The Secretary of State is authorized to provide for comprehensive physical examinations, including dental examinations and other specific testing, of applicants for employment and for officers and employees of the Foreign Service who are U.S. citizens and for

their dependents, including examinations necessary to establish disability or incapacity for retirement purposes. An authorization will be executed by an appropriate Department of State official and furnished in duplicate to the naval MTF, listing the type of examination required and stating that the individual is entitled to services at the expense of the Department of State. Furnish reports per the letter of authorization.

(5) *Immunizations.* Inoculations and vaccinations are authorized for officers, employees, and their dependents upon written authorization from an appropriate Department of State official. This authorization, in duplicate, will include the type of inoculation or vaccination required and will state that the individual is entitled to services at the expense of the Department of State. Furnish reports per the letter of authorization.

(6) *Dental care.* Limit dental care to emergencies for the relief of pain or acute conditions, or dental conditions as an adjunct to inpatient care. Do not provide prosthetic dental appliances.

(c) *Evacuation to the United States.* Should a beneficiary in an overseas naval MTF require prolonged hospitalization, the commanding officer of the overseas facility will report the requirement to the nearest Department of State principal or administrative officer and request authority to return the patient to the United States. Release dependents who decline evacuation to the custody of their sponsor. Aeromedical evacuation may be used per OPNAVINST 4630.25B. Travel of an attendant or attendants is authorized at Department of State expense when the patient is too ill or too young to travel unattended.

(d) *Report.* Complete and submit, per Subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, Part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, Part B) when outpatient or inpatient care is rendered.

§ 728.58 Federal Aviation Agency (FAA) beneficiaries.

(a) *Beneficiaries.* Air Traffic Control Specialists (ATCS) of the FAA when appropriate authorization has been furnished by the FAA regional representative.

(b) *Authorization.* Written authorization from an FAA Regional Flight Surgeon is required and will include instructions for forwarding the results of services rendered.

(c) *Care authorized.* Subject to the provisions of § 728.3, authorized personnel may be rendered chest x-rays, electrocardiograms, basic blood chemistries, and audiograms, without interpretation in support of the medical surveillance program for ATCS personnel established by the FAA.

(d) *Report.* Complete and submit, per Subpart J, a DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, Part B) outpatient care is rendered.

§ 728.59 Peace Corps beneficiaries.

(a) *Potential beneficiaries.* (1) Applicants for the Peace Corps.

(2) Peace Corps Volunteers.

(3) Minor children of a Peace Corps volunteer living with the volunteer.

(b) *Care authorized in the United States.* Upon written request of a Peace Corps official, stating care to be provided and disposition of reports, the following may be provided subject to the provisions of § 728.3.

(1) *Physical examinations.* Physical examinations are authorized on an outpatient basis only. Except for interpretation of x-rays, make no assessment of the physical qualifications of examinees.

(i) Preselection physical examination may be provided applicants (volunteers) for the Peace Corps.

(ii) Separation or other special physical examinations may be provided volunteers and their dependents as listed in § 728.59(a)(3). Unless otherwise prescribed in written requests, report such examinations of Peace Corps volunteers on SF–88 and SF–93. Include:

(A) Medical history and systemic review.

(B) Chest x-ray with interpretation.

(C) Complete urinalysis, serology, and blood type.

(D) Pelvic examination and Pap smear for all female volunteers.

(E) Hematocrit or hemoglobin for all females and for all males over 40 years of age.

(F) Electrocardiogram for all volunteers over 40 years of age.

(2) *Immunizations.* Immunizations, as requested, may be provided all beneficiaries listed in § 728.59(a).

(3) *Medical care.* Both inpatient and outpatient care may be provided volunteers for illnesses or injuries occurring during their period of service which includes all periods of training. Dependents of volunteers specified in § 728.59(a)(3) are authorized care to the same extent as their sponsor.

(4) *Dental care.* Limit dental care to emergencies. Render only that care essential to relieve pain or prevent imminent loss of teeth. All beneficiaries seeking dental care will be requested, whenever possible, to furnish advanced authorization.

(c) *Care authorized outside the United States*—(1) *Physical examinations.* Termination physical examinations may be provided volunteers and eligible dependents of volunteers. In most instances, Peace Corps staff physicians will provide these examinations; however, help may be required of naval MTFs for ancillary services.

(2) *Immunizations.* When requested, immunizations may be provided all beneficiaries listed in § 728.59(a).

(3) *Medical care.* When requested in writing by a representative or physician of a Peace Corps foreign service post, volunteers, eligible dependents of volunteers, and trainees of the Peace Corps may be provided necessary medical care at Peace Corps expense. When emergency treatment is rendered without prior approval, forward a request to the Peace Corps foreign service post as soon as possible.

(4) *Dental care.* Limit dental care to emergencies. Render only that care essential to relieve pain or prevent imminent loss of teeth. All beneficiaries seeking dental care will be requested, whenever possible, to furnish advanced authorization.

(5) *Evacuation to the United States.* When a beneficiary in an overseas naval MTF requires prolonged hospitalization, the commanding officer of the overseas facility will report the requirement to the nearest Peace Corps foreign service post and request authorization to return the patient to the United States. Releases custody of dependents to their sponsor when evacuation is declined. Aeromedical evacuation may be used per OPNAVINST 4630.25B. Travel of attendant(s) is authorized when the patient is too ill or too young to travel unattended.

(d) *Report.* Complete and submit, per Subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, Part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment Part B) when outpatient or inpatient care is rendered.

§ 728.60 Job Corps and Volunteers in Service to America (VISTA) beneficiaries.

(a) *Beneficiaries.* Job Corps and VISTA enrollees and Job Corps applicants may be provided services as set forth. For former members, see § 728.53.

(b) *Authorization required.* (1) *Job Corps enrollees.* Presentation of a Job Corps Identification Card after appointment has been made by the corpsmember's Job Corps center.

(2) *Job Corps applicants.* Presentation of a letter from a screening agency (e.g.,

State Employment Service) after an appointment has been made by that agency.

(3) *VISTA Volunteers and VISTA Trainees.* A "Blue-Cross and Blue Shield Identification Card" is issued to such personnel as identification. Each card has a VISTA identification number which will be used on all records and correspondence.

(c) *Care authorized.* Normally, medical services are provided only when civilian of VA facilities are not available. or if available, are incapable of providing needed services. However, upon presentation of an appropriate authorization, the following services may be rendered subject to the provisions of § 728.3.

(1) Job Corps enrollees are authorized emergency medical care upon presentation of their Job Corps Identification Card; however, the corpsmember's Job Corps center should be notified immediately.

(2) Job Corps applicants may be provided preenrollment physical examinations and immunizations on an outpatient basis only.

(3) Job Corps enrollees, VISTA trainees, and VISTA volunteers are authorized:

(i) Outpatient medical examinations, outpatient treatment, and immunizations.

(ii) Inpatient care for medical and surgical conditions which, in the opinion of the attending physician, will benefit from definitive care within a reasonable period of time. When found probable that a patient will require hospitalization in excess of 45 days, notify the Commander, Naval Medical Command (MEDCOM–33) by the most expeditious means.

(iii) Limit dental care to emergencies. Render only that care essential to relieve pain or prevent imminent loss of teeth. Beneficiaries seeking dental care will be requested to furnish, whenever possible, advanced authorization.

(d) *Report.* Complete and submit, per Subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, Part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, Part B) when outpatient or inpatient care is rendered.

§ 728.61 Medicare beneficiaries.

(a) *Care authorized.* Emergency hospitalization and other emergency services are authorized for beneficiaries of the Social Security Health Insurance Program for the Aged and Disabled (Medicare) who reside in the 50 United States and the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Northern Mariana Islands. Such care in naval MTFs may be rendered when emergency services, as defined in § 728.61(b), are necessary.

(b) *Emergency services.* Services provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(1) Placing the patient's health in serious jeopardy.

(2) Serious impairment to bodily functions of serious dysfunction of any bodily organ or part.

(c) *General provisions*—(1) *Limitations.* Benefit payments for emergency services under Medicare can be made for only that period of time during which the emergency exists. Therefore, when the emergency is terminated and it is permissible from a medical standpoint, discharge or transfer the patient to a facility that participates in Medicare.

(2) *Notification.* Notify the nearest office of the Social Security Administration as soon as possible when a Medicare beneficiary is rendered treatment.

(d) *Report.* Complete and submit, per Subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, Part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, Part B) when outpatient or inpatient care is rendered.

Subpart G—Other Persons

§ 728.71 Ex-service maternity care.

(a) *Eligible beneficiaries.* After separation from the service under honorable conditions because of pregnancy, or separated from the service under honorable conditions and found to have been pregnant at the time of separation, the following former members and their newborn infant(s) may be provided care as set forth below. The rendering of this care is subject to the provisions of § 728.3. When certified by medical authorities that the pregnancy existed prior to entry into service (EPTE), maternity benefits are not authorized.

(1) Former women members of the Army, Air Force, Navy, and Marine Corps.

(2) On or after 12 August 1985, former women members of the Commissioned Corps of the United States Public Health Service (USPHS) and the National Oceanic and Atmospheric Administration (NOAA).

(b) *Care authorized.* (1) Former women members may be rendered medical and surgical care in naval MTFs incident to that pregnancy, prenatal care, hospitalization, postnatal care, and, when requirements of SECNAVINST 6300.2A are met, abortions. Limit postnatal care to 6 weeks following delivery. Do not promise civilian sources under any circumstances for either the mother or the infant as such care is not authorized.

(2) Treatment of the newborn infant in USMTFs includes care, both inpatient and outpatient, only during the first 6 weeks (42 days) following delivery. If the newborn infant requires care beyond the 6-weeks postnatal period, the mother or other responsible family member must make arrangements for disposition to private, State, welfare, or another Federal facility.

(c) *Application for care.* In making application for care authorized by § 728.71, former women members should apply either in person or in writing to the Armed Forces inpatient MTF nearest their home and present either their DD 214 (Armed Forces of the United States Report of Transfer or Discharge) or DD 256A (Honorable Discharge Certificate) as proof of eligibility for requested care. In areas with more than one Armed Forces MTF available and capable of providing required care, application should be made to the MTF of the service from which separated, as applicable. Disengagement in such areas to MTFs of other services may be made only when space is not available or capability does not exist in the MTF of the services from which the individual was separated.

(d) *Charges and collection.* Charges and reimbursement procedures for care rendered to beneficiaries in § 728.71(a)(2) are the same as prescribed by current regulations for active Coast Guard, USPHS, and NOAA members.

§ 728.72 Applicants for enrollment in the Senior Reserve Officers' Training Program.

When properly authorized, designated applicants (including applicants for enrollment in the 2-year program and Military Science II enrollees applying for Military Science III) may be furnished medical examinations at naval MTFs including hospitalization necessary for the proper conduct thereof. Medical care, including hospitalization, is authorized for diseases contracted or injuries incurred in line of duty while at or traveling to or from a military installation for the purpose of undergoing medical or other examinations or for visits of observation.

§ 728.73 Applicants for enlistment or reenlistment in the Armed Forces, and applicants for enlistment in the reserve components.

(a) Upon referral by a commander of a Military Enlistment Processing Station (MEPS), applicants will be furnished necessary medical examinations, including hospitalization when qualifications for service cannot otherwise be determined. Use the hospitalization period only for diagnostic purposes. Do not correct disqualifying defects.

(b) Applicants who suffer injury or acute illness while awaiting or undergoing processing at Navy and Marine Corps facilities or MEPS may be furnished emergency medical and dental care, including emergency hospitalization, for that injury or illness.

§ 728.74 Applicants for appointment in the regular Navy or Marine Corps and reserve components, including members of the reserve components who apply for active duty.

(a) Necessary medical examinations may be furnished, including hospitalization when qualifications for service cannot otherwise be determined. Use such a period of hospitalization only for diagnostic purposes. Do not correct disqualifying defects.

(b) Applicants who suffer injury or acute illness while awaiting or undergoing processing at Navy and Marine Corps facilities or MEPS may be furnished emergency medical and dental care, including emergency hospitalization, for that injury or illness.

§ 728.75 Applicants for cadetship at service academies and applicants for the Uniformed Services University of Health Sciences (USUHS).

(a) Upon presentation of a letter of authorization from the Department of Defense Medical Examination Review Board (DODMERB), applicants for cadetship at Service Academies (Navy, Army, Air Force, Coast Guard, and Merchant Marine) and applicants for the Uniformed Services University of Health Sciences (USUHS) will be furnished medical examinations at facilities designated by the DODMERB. Hospitalization is authorized when qualifications for service cannot otherwise be determined. Use the hospitalization period for diagnostic purposes only, and not to correct disqualifying or other defects. Perform examinations and make disposition of completed forms per BUMEDINST 6120.3M.

(b) Applicants who suffer injury or acute illness while awaiting or undergoing processing at Navy and Marine Corps facilities or at MEPS may be furnished emergency medical and dental care, including emergency hospitalization, for that injury or illness.

§ 728.76 Naval Home residents.

Provide necessary medical and dental care, both inpatient and outpatient, to residents of the Naval Home when requested by the Governor of the Home. In an emergency, care may be rendered without prior approval of the Governor; however, the Governor of the Home should be contacted immediately and requested to furnish authorization.

§ 728.77 Secretarial designees.

Subject to the capabilities of the professional staff and the availability of space and facilities, naval MTFs and DTFs will provide treatment to individuals that have been granted Secretarial designee status by any of the three service Secretaries (Navy, Army, or Air Force), the Secretary of Commerce for NOAA personnel, the Secretary of Health and Human Services for USPHS personnel, or the Secretary of Transportation for Coast Guard personnel.

(a) *Potential designees.* Upon a showing of sufficient cause, the Secretary of the Navy may authorize individuals, not otherwise authorized by law, to receive such care as is available in naval MTFs in the United States. Designation may be extended on a worldwide basis for preadoptive children and wards of active duty members, and for abused dependents delineated in §728.77(a)(6). Temporary in loco parents or foster parent status of the member with regard to a minor is insufficient for approval. Also, civilian health care under the CHAMPUS program cannot be authorized for other than abused dependents. The Secretary's discretionary authority is exercised most conservatively, however, favorable action is usually taken on requests involving the following situations:

(1) Preadoption proceedings wherein an active duty member or a retired member has taken affirmative legal action to adopt a child.

(2) Custodianships and guardianships authorized by a court order wherein the member is designated by the court as the custodian or guardian and the child is fully dependent upon the active duty or retired member sponsor.

(3) Evaluation and selection of nonbeneficiaries who are donor candidates for an organ or tissue transplant procedure in behalf of a military service beneficiary.

(4) Nonbeneficiary participants in officially approved clinical research studies.

(5) Unremarried former spouses who: Require care for a condition incurred during or caused/aggravated by conditions associated with the member's or former member's creditable service; do not qualify under the former spouses act; and do not have medical coverage under an employer-sponsored health plan which will provide for the care required.

(6) Abused dependents of discharged or dismissed former uniformed services members in need of medical or dental care resulting from knowledge of the abuse or for an injury or illness resulting from abuse by the former member. Eligibility will terminate the earliest of 1 year after the date on which the member is discharged or dismissed from a uniformed service, or when care is no longer needed.

(7) In other instances wherein the circumstances clearly merit the providing of treatment in naval MTFs, and in which the best interest of the patient, the Navy, *and* the Government will be served, favorable Secretarial action may result. The mere need of medical care by a former beneficiary or other person, alone, will not support approval of such a request.

(b) *Requests for consideration.* Requests for consideration will be submitted to the Commander, Naval Medical Command (MEDCOM–33) by applicants via their command, when applicable, or by the Medical Department command concerned. Requests should include any pertinent information which will support resolution and a return address. Requests involving:

(1) Preadoption must include a legible reproducible copy of an interim court order or adoption agency placement agreement which names the sponsor and identifies the other participating parties. A petition for a court order is insufficient to support a recommendation for approval.

(2) Custodianships and guardianships must include a legible reproducible copy of the court order, identification of the parties, and also identify any amounts of income to which the ward is entitled.

(3) Participants in clinical research studies must include:

(i) Sufficient clinical information concerning the nature of the study.

(ii) Benefits which may accrue to the individual.

(iii) The extent, if any, to which access by other authorized beneficiaries will be impaired.

(iv) Benefits which will accrue to the command, e.g., enhancement of training, maximum use of specialized facilities, etc.

(v) Recommended duration of designation.

(vi) Whether the consenting individual has been informed concerning the nature of the study, its personal implications, and freely consents.

(4) Unremarried former spouses must include:

(i) A notarized copy of the marriage license.

(ii) A statement attesting to the fact that the sponsoring former spouse achieved 20 or more years of creditable military service.

(iii) Copy of divorce decree with official date.

(5) Abused depdendents must include:

(i) Full name, social security number, grade or rate, branch or service, and date and type of discharge or dismissal of the former member. Such a member must have received a dishonorable or bad-conduct discharge or dismissal from a uniformed service as a result of court-martial conviction for an offense involving abuse of a dependent of the member.

(ii) Full names, social security numbers (if assigned), and relationship to the former member of any dependent in need of medical or dental care to treat adverse health conditions resulting from such dependent's knowledge of the abuse or any injury or illness suffered by the abused person as a result of such abuse.

(c) *Blanket designation.* (1) The Secretary of Defense has granted Secretarial designee status to full-time Schedule "A" faculty members of the Uniformed Services University of Health Sciences (USUHS). They have been provided documentation substantiating their eligibility and, where necessary, an eligibility termination date. These personnel are authorized routine care at the Naval Hospital, Bethesda, MD. At other naval MTFs, only emergency treatment is authorized while they are traveling on official university business. The letter of authorization excludes routine dental care, prosthetic appliances, and spectacles.

(2) The following officials within the Government, the Department of Defense, and military departments have been granted blanket Secretarial designation for medical and emergency dental care in naval MTFs in the United States:

(i) The President.

(ii) The Vice President.

(iii) Members of the Cabinet.

(iv) Article III Federal Judges.

(v) U.S. Court of Military Appeals Judges.

(vi) Members of Congress.

(vii) The Secretary, Deputy Secretary, and the Assistant Secretaries of Defense.

(viii) The Under Secretary of Defense for Policy.

(ix) The Under Secretary of Defense for Research and Engineering.

(x) The Secretaries, Under Secretaries, and the Assistant Secretaries of the Military Departments.

(d) *Authorization.* Designees will present a signed letter bearing the letterhead of the designating service. Secretarial designees are not included in the DEERS data base and may not possess Government identification cards. Therefore, the only proof of their eligibility for treatment may be the letter of authorization. When a Secretarial designee presents for treatment:

(1) Ask for identification of the individual presenting the letter of authorization to assure that the person seeking care is the individual to whom the letter was issued.

(2) Check the expiration date on the letter of authorization. Many authorizations are issued for only a specified period of time, e.g., abused dependents—no longer than 1 year.

(3) Check to assure that the individual is applying for care authorized by the letter of authorization. Designation is often granted for a specific diagnosis or specific mode of treatment.

(4) Check to assure that the individual has not been designated for care only as specific facility. Many authorizations are granted for conditions or for care that can be rendered only by a specified physician or under a specific program.

(5) Place a copy of the letter of authorization in the individual's Health Record or outpatient treatment record on the left side at the first visit or admission.

(e) *Charges and collection.* (1) Interagency rates are applicable for inpatient and outpatient care provided outside the National Capital Region to all individuals listed in § 728.77(c)(2) with the exception of Members of Congress. Charges are at full reimbursement rates for Members of Congress provided inpatient or outpatient care outside the National Capital Region.

(2) In the National Capital Region:

(i) Charges are waived for outpatient care provided to all categories listed in § 728.77(c)(2).

(ii) Charge interagency rates for inpatient care of all individual in § 728.77(c)(2) except Members of Congress. Charge Members of Congress at full reimbursement rates.

(3) Complete and submit, per Subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, Part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, Part B) when outpatient or inpatient care is rendered to Secretarial designees whose charges for care have not been waived.

§ 728.78 American Red Cross representatives and their dependents.

(a) *Potential beneficiaries.*

(1) Volunteer workers.

(2) Full-time, paid employees.

(3) Dependents of personnel enumerated in § 728.78(a) (1) and (2) when accompanying their sponsor outside the continental United States, including Alaska, Hawaii, and Puerto Rico.

(b) *Care authorized.* (1) When services of the American Red Cross (ARC) have been accepted in behalf of the Federal Government under applicable DOD regulations, beneficiaries in § 728.78(a)(1) are considered "employees" of the Government for the purpose of this part and are authorized health care in USMTFs, both in and outside the United States for work-related conditions. See § 728.53(a)(2) regarding the specific application of this authorization.

(2) Beneficiaries enumerated in § 728.78(a) (1) and (2) are authorized health care in USMTFs located outside the United States for both work and nonwork-related conditions. See § 728.53(a)(2) for treatment of work-related conditions of those in § 728.78(a)(1).

(3) Beneficiaries identified in § 728.78(a) (1), (2), and (3) are authorized emergency care in USMTFs outside the continental United States, including Alaska, Hawaii, and Puerto Rico where facilities are not otherwise available in reasonably accessible and appropriate non-Federal hospitals. Provide hospitalization only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Routine dental care, other than dental prosthesis and orthodontia, is authorized on a space available basis provided facilities are not otherwise available in reasonably accessible non-Federal facilities.

(c) *Records disposal.* Upon completion of treatment of accredited representatives of the American Red Cross or their dependents, forward medical records, including all clinical records and x-ray films, to the Medical Director, National Headquarters, American Red Cross, 20th and D Street NW., Washington, DC 20006.

(d) *Charges and collection.* Charge beneficiaries in § 728.78(a) (1) and (2)

the rate applicable to officer personnel and dependents in § 728.78(a)(3) the dependent rate. Complete and submit, per Subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, Part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, Part B) when outpatient or inpatient care is rendered to ARC personnel or to their dependents.

§ 728.79 Employees of Federal contractors and subcontractors.

(a) *Beneficiaries.* (1) U.S. citizen contractor, engineering, and technical service personnel designated as U.S. Navy Technicians.

(2) Civilian employees of contractors and subcontractors operating under U.S. Government contracts.

(3) Dependents of personnel enumerated in § 728.79(a) (1) and (2) when accompanying their sponsor outside the continental United States or in Alaska.

(b) *Care authorized.* (1) Beneficiaries identified in § 728.79(a) (1) and (2) may be provided emergency care in naval MTFs for illnesses and injuries occurring at work in or outside the United States.

(2) While serving outside the continental United States or in Alaska, where facilities are not otherwise available in reasonably accessible and appropriate non-Federal facilities, beneficiaries identified in § 728.79(a) (1), (2), and (3) may receive hospitalization and necessary outpatient services in naval MTFs on a reimbursable basis. Except for beneficiaries in § 728.79(a)(1) who are serving aboard naval vessels, all others enumerated may only be hospitalized for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Routine dental care, other than dental prosthesis and orthodontia, is authorized on a space available basis provided facilities are not otherwise available in reasonably accessible and appropriate non-Federal facilities.

(c) *Charges and collection.* Care is authorized on a reimbursable basis. Complete and submit, per Subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, Part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, Part B) when outpatient or inpatient care is rendered.

§ 728.80 U.S. Government employees.

(a) Civil service employees of all Federal agencies, including teachers employed by Department of Defense Dependent's Schools (DODDS) and their dependents, may be provided hospitalization and necessary outpatient services, (other than occupational health services), on a reimbursable basis, outside the continental limits of the United States and in Alaska, where facilities are not otherwise available in reasonably accessible and appropriate non-Federal hospitals. Except for employees who are serving aboard naval vessels, hospitalization may be furnished only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Routine dental care, other than dental prosthesis and orthodontia, is authorized on a space available basis provided facilities are not otherwise available in reasonably accessible and appropriate non-Federal facilities.

(b) Such civilian employees and their dependents may be provided medical, surgical, dental treatment, hospitalization, and optometric care at installations in the United States which have been designated remote by the Secretary of the Navy for the purpose of providing medical care.

(c) The major objective of the following programs for civil service employees, regardless of location, is emergency treatment for relief of minor ailments or injuries to keep the employee on the job:

(1) The Department of Labor, Office of Workers' Compensation Programs (OWCP), governs the overall medical care program for employees of the Government who sustain injuries while in the performance of duty, including diseases proximately caused by conditions of employment (see § 728.53).

(2) Federal civil service employees and applicants for such employment are authorized services as outlined in chapter 22, section XIII, of the Manual of the Medical Department (MANMED). When appropriated fund and nonappropriated fund employees, including unpaid volunteer employees, require emergency and nonemergency occupational health services due to an illness or an injury on the job, provide this limited care through your occupational health service, emergency room, or evening primary care clinic, as appropriate. This care is rendered free of charge to the employee, the employee's command, or insurance carrier. Included with this group are Military Sealift Command (MSC) civilian marine personnel (authorized additional care and services as outlined in BUMINST 6320.52 and care under § 728.53(a)(7)) and members of the National Oceanic and Atmospheric Administration (NOAA) serving with the Navy.

(3) Under the technical control of the Surgeon General of the Army, the DOD Civilian Employees' Health Service is responsible for administering the health program for all Federal civil service employees in the District of Columbia area.

(d) Care, other than occupational health services, is provided on a reimbursable basis. Complete and submit, per Subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, Part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, Part B) when outpatient or inpatient care is rendered.

§ 728.81 Other civilians.

(a) *General.* In an emergency, any person may be rendered care in naval MTFs to prevent undue suffering or loss of life or limb. Limit care to that necessary only during the period of the emergency, and if further treatment is indicated, initiate action to transfer the patient to a private physician or civilian facility as soon as possible. Further, subject to the provisions of § 728.3, the following personnel are authorized care as set forth.

(b) *Beneficiaries and extent of care.*

(1) Provide all occupational health services to civilian employees paid from nonappropriated funds, including Navy exchange employees and service club employees, free of charge (see § 728.80(c)(2)). Provide treatment of occupational illnesses and injuries other than in emergencies per rules and regulations of the Office of Workers' Compensation Programs (see § 728.53).

(2) Civilians attending the Federal Bureau of Investigation (FBI) Academy, Marine Corps Development and Education Command, Quantico, VA, may be rendered care at the Naval Medical Clinic, Quantico, VA, for emergencies. Such persons who are in need of hospitalization for injuries or disease may be hospitalized and classed as civilian humanitarian nonindigents with the approval of the cognizant hospital's commanding officer. EXCEPTION: Certain individuals, such as employees of the Federal Bureau of Investigation who are injured in the line of duty, may be entitled to care at the expense of the Office of Workers' Compensation Programs (OWCP) (see § 728.53).

(3) The following civilians who are injured or become ill while participating in Navy or Marine Corps sponsored sports, recreational or training activities may be rendered care on a temporary (emergency) basis until such time as

disposition can be effected to another source of care.

(i) Members of the Naval Sea Cadet Corps.

(ii) Junior ROTC/NDCC (National Defense Cadet Corps) cadets.

(iii) Civilian athletes training or competing as part of the U.S. Olympic effort.

(iv) Civilians competing in Navy or Marine Corps sponsored competitive meets.

(v) Members of Little League teams and Youth Conservation groups.

(vi) Boy Scouts and Girl Scouts of America.

(4) Other civilian personnel included below are not normally eligible for care in naval MTFs; however, under the conditions set forth, care may be rendered.

(i) *Potential beneficiaries.*

(A) Civilian representatives of religious groups.

(B) Educational institutions representatives.

(C) Athletic clinic instructors.

(D) USO representatives.

(E) Celebrities and entertainers.

(F) Social agencies representatives.

(G) Others in a similar status to those in § 728.81(b)(4)(i) (A) through (F).

(H) News correspondents.

(I) Commercial airline pilots and employees.

(J) Volunteer workers. This category includes officially recognized welfare workers, other than Red Cross.

(ii) *Care authorized.*

(A) Persons enumerated in § 728.81(b)(4)(i) (A) through (G), who are contracted to provide direct services to the Armed Forces and who are acting under orders issued by the Department of Defense or one of the military departments to visit military commands overseas, and their accompanying dependents, may be provided medical care in naval MTFs outside the 48 contiguous United States and the District of Columbia provided local civilian facilities are not reasonably available or are inadequate. Limit inpatient care to acute medical and surgical conditions exclusive of nervous, mental, or contagious diseases, or those requiring domiciliary care. Routine dental care, other than dental prostheses and orthodontia, is authorized on a space available basis outside the United States, provided such care is not otherwise available in reasonably accessible and appropriate non-Federal facilities.

(B) Persons enumerated in § 728.81(b)(4)(i) (H) and (I) are authorized emergency medical and dental care in naval MTFs outside the 48 contiguous United States and the District of Columbia provided local civilian facilities are not reasonably available or are inadequate.

(C) Persons enumerated in § 728.81(b)(4)(i)(J), both within and outside the 48 contiguous United States and the District of Columbia, may receive care in naval MTFs for injuries or diseases incurred in the performance of duty as beneficiaries of OWCP (see § 728.53). Additionally, if such volunteers are sponsored by an international organization (e.g., the United Nations) or by a voluntary nonprofit-relief agency registered with and approved by the Advisory Committee on Voluntary Aid (e.g., CARE), they may receive other necessary nonemergency medical care and occupational health services while serving outside the 48 contiguous United States and the District of Columbia.

(c) *Charges and collection.* Care is provided on a reimbursable basis. Complete and submit, per Subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, Part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, Part B) when outpatient or inpatient care is rendered.

§ 728.82 Individuals whose military records are being considered for correction.

Individuals who require medical evaluation in connection with consideration of their individual circumstances by the Navy, Army, and Air Force Board for Correction of Military Records are authorized evaluation, including hospitalization when necessary for the proper conduct thereof.

§ 728.83 Persons in military custody and nonmilitary Federal prisoners.

(a) *Potential beneficiaries.*

(1) Military prisoners.

(2) Nonmilitary Federal prisoners.

(3) Enemy prisoners of war and other detained personnel.

(b) *Care authorized*—(1) *Military prisoners.*

(i) Whose punitive discharges have been executed but whose sentences have not expired are authorized all necessary medical and dental care.

(ii) Whose punitive discharges have been executed and who require hospitalization beyond expiration of sentences are not eligible for care but may be hospitalized as civilian humanitarian nonindigents until final disposition can be made to some other appropriate facility.

(iii) On parole pending completion of appellate review or whose parole changes to an excess leave status following completion of sentence to confinement while on parole are members of the military service and as such are authorized care as outlined in subpart B.

(iv) On parole whose punitive discharge has been executed are not members of the military service and are therefore not entitled to care at Government expense. If the circumstances are exceptional, individuals herein who are not authorized care may request Secretarial designee status under the provisions of § 728.77.

(2) *Nonmilitary Federal prisoners.* Under the provisions of § 728.83, nonmilitary Federal prisoners are authorized only emergency medical care. When such care is being rendered, the institution to which prisoners are sentenced must furnish necessary guards to effectively maintain custody of prisoners and assure the safety of other patients, staff members, and residents of the local area. Under no circumstances will military personnel be voluntarily used to guard or control such prisoners. Upon completion of emergency care, make arrangements for immediate transfer of the prisoners to a nonmilitary MTF or for return to the facility to which sentenced.

(3) *Enemy prisoners of war and other detained personnel.* Subject to the provisions of § 728.3, enemy prisoners of war and other detained personnel are entitled to and may be rendered all necessary medical and dental care.

(c) *Charges and collection.* Care provided individuals enumerated in § 728.83(b)(1) (ii), (iv), and § 728.83(b)(2) is on a reimbursable basis. Complete and submit, per Subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, Part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, Part B) when outpatient or inpatient care is rendered.

Subpart H—Adjuncts to Medical Care

§ 728.91 General 28.

Adjuncts to medical care include but are not limited to prosthetic devices such as artificial limbs, artificial eyes, hearing aids, orthopedic footwear, spectacles, wheel chairs, hospital beds, and similar medical support items or aids which are required for the proper care and management of the condition being treated. Generally, expenses incurred for procurement of such items, either from civilian sources as supplemental care or from stocks maintained by the facility, are payable from operation and maintenance funds

available for support of naval MTFs. However, certain adjuncts may be cost-shared under CHAMPUS for CHAMPUS-eligible individuals under circumstances enumerated in the cooperative care or services criteria of § 728.4(z).

§ 728.92 Policy.

(a) Provide adjuncts to medical care to eligible beneficiaries receiving inpatient or outpatient care when, in the opinion of the attending physician, such adjuncts will offer substantial assistance in overcoming the handicap or condition and thereby contribute to the well-being of the beneficiary.

(b) Unless necessary for humanitarian reasons, do not furnish orthopedic and prosthetic appliances on an elective basis to members of the naval service with short periods of service remaining when the defect requiring the appliance existed prior to entry into service and when such members will be separated from the service because of these defects.

(c) For active duty members, make the initial allowance of orthopedic footwear and orthopedic alterations to standard footwear the same quantity as provided in the initial clothing allowance.

(d) Base the number of orthopedic and prosthetic appliances issued or replaced for other authorized recipients upon the individual's requirements as determined by the attending physician to be consistent with the highest standards of modern medicine.

(e) Former members of the uniformed service should be advised that they may obtain durable medical equipment, medical care, and adjuncts from Veterans Administration facilities.

(f) Dependents are authorized certain adjuncts per §§ 728.31 (c) and (d) and in instances where items are not normally authorized at the expense of the Government, they may be provided at cost to the United States if available from Government stocks under the following conditions:

(1) Outside the United States.

(2) At specific stations within the United States which have been authorized by the Secretary of the Navy to sell these items.

§ 728.93 Chart of adjuncts.

The following chart and footnotes provide information relative to adjuncts which may be furnished the several categories of beneficiaries eligible for medical care at naval MTFs.

Adjuncts	Active duty and retired members	Others authorized the same benefits as active duty or retired members[8]	Dependents authorized the same benefits	Other beneficiaries[8]
Ambulance service	Yes	Yes	Yes[1]	No
Artificial eyes	Yes	Yes	Yes	Maybe[3]
Artificial limbs	Yes	Yes	Yes	Maybe[3]
Contact or special lenses[11]	Yes[4]	Yes[4]	Maybe[2] [4] [6]	No
Crutches[7]	Yes	Yes	Yes	Yes
Dental prostheses	Yes	Yes	Maybe[9]	Maybe[9]
Elastic stockings	Yes	Yes	Yes	Yes
Hearing aids[10]	Yes[5]	Yes[5]	Maybe[2]	Maybe[3]
Hearing aid parts and batteries	Yes[10]	Yes[10]	Maybe[2] [10]	No
Hospital beds [7]	Yes	Yes	Yes	Yes
Joint braces	Yes	Yes	Yes	Yes
Orthopedic footware	Yes	Yes	Maybe[2]	Maybe[3]
Prosthetic devices, other[7]	Yes	Yes	Maybe[2]	No
Respirators and inhalators[7]	Yes	Yes	Yes	Yes[1]
Resuscitators [7]	Yes	Yes	Yes	Yes[1]
Spectacles	Yes	Yes	Maybe[2] [6]	No
Walking irons[7]	Yes	Yes	Yes	Yes
Wheel chairs[7]	Yes	Yes	Yes	Yes

[1] When considered medically appropriate by the attending physician.

[2] See § 728.92(f).

[3] Outside the United States and at designated remote stations when considered medically appropriate by the attending physician.

[4] Contact or special lenses are not to be issued solely for cosmetic reasons. Further guidelines are contained in NAVMEDCOMINST 6810.1.

[5] In addition to the hearing aid, include in initial issue one spare receiver cord, approximately 1 month's supply of batteries, and a statement indicating make, model, type of receiver, serial number, code, part numbers, "B" battery voltage, and type of "A" and "B" batteries, as appropriate. Provide replacement of hearing aids upon the same basis as initial issue and, except in unusual circumstances, will not be replaced within 2 years of the initial furnishing or the last replacement of the appliance.

[6] Spectacles, contact lenses, or intraocular lenses may be provided dependents with eye conditions which require these items for complete medical or surgical management of a condition other than ordinary refractive error. For further information, consult NAVMEDCOMINST 6810.1.

[7] May be loaned on a custody basis at the discretion of the attending physician.

[8] See subpart of this part relating to specific beneficiary.

[9] When considered by the attending physician and dentist to be an adjunct to a medical or surgical condition other than dental and when in consonance with existing legislation and directives.

[10] For further guidelines, consult BUMEDINST 6320.41B.

[11] Includes intraocular lenses required for implantation upon removal of cataracts:

Subpart I—Reservists—Continued Treatment, Return to Limited Duty, Separation, or Retirement for Physical Disability

§ 728.101 General.

(a) *Notice of eligibility (NOE).* While the NOE is basically a document that substantiates entitlement to a disability benefit equal to pay and allowances, it may be accepted when required to substantiate eligibility for benefits other than pay and allowances, i.e., treatment in USMTFs under the provisions of title 10, United States Code.

(b) *Physical disability benefits.* The following, excerpted and paraphrased from SECNAVINST 1770.3, paragraph 10, is applicable when a reservist may be entitled to physical disability benefits.

(1) When a notice of eligibility (NOE) has been issued to a member hospitalized in a naval MTF and the attending physician is of the opinion that recovery is not anticipated or that the reservist is not expected to be fit for return to full duty within a reasonable period, a medical board will be convened and the case managed the same as that of a Regular member. Assure that a copy of the NOE accompanies the medical board report forwarded to the Central Physical Evaluation Board. Disability benefits, equal to pay and allowances, will continue in such instances until final disposition.

(2) There is no limited duty status, per se, for inactive reservists. However, if the attending physician determines that a reservist is temporarily unfit for full duty, but will be fit for full duty following a period of convalescence or following duty with physical limitations, not to exceed 6 months, the physician may return the reservist to duty with a summary of the hospitalization or treatment. The summary will set forth the limitations posed by the member's disability and the period of such limitations. Followup hospitalization, treatment, and evaluation for the same condition may be provided at USMTFs during the period of restricted duty, if required. If, during the period of the restricted duty, it appears that the reservist will be *permanently* unfit for full duty, promptly authorize the reservist to report for evaluation, treatment if required, and appearance before a medical board at the nearest naval MTF capable of accomplishing same. Admission to the sicklist is authorized, when required. Should the medical board recommend appearance before a physical evaluation board, disability benefits equal to pay and allowances should continue until final disposition is effected.

§ 728.102 Care from other than Federal sources.

The provisions of this subpart do not authorize care for reservists at other than Federal facilities nor out of funds available for operation of USMTFs (supplemental care) after a period of active duty or a period of training duty ends, including travel to and from such training. Such care may be rendered under the provisions of Part 732 of this chapter.

Subpart J—Initiating Collection Action on Pay Patients

§ 728.111 General.

The Comptroller of the Navy has approved a system of transactions that generates reports to COMNAV MEDCOM on unfunded reimbursable transactions. The purpose of the final report is to provide data on services furnished by naval health care facilities for which central collection from other Government agencies and private parties is required.

§ 728.112 Responsibilities.

(a) *Patient administration departments.* The initiation of the collection process begins with patient administration departments. Collection action cannot be accomplished unless patient administration departments take the initial step to complete:

(1) *DD 7, Report of Treatment Furnished Pay Patients, Hospitalization Furnished (Part A).* Prepare a separate substantiating DD 7, in triplicate, for each category of pay patient receiving inpatient care. At the end of each day that any pay patient is admitted, submit DD 7's to the collection agent.

(2) *DD 7A, Report of Treatment Furnished Pay Patients, Outpatient Treatment Furnished (Part B).* Prepare a separate substantiating DD 7A, in triplicate, for each category of pay patient receiving outpatient care. At the end of each day that any pay patient is treated on an outpatient basis, submit DD 7A's to the collection agent.

(b) *Collection agents.* Upon receipt of a completed DD 7 or DD 7A, collection agents will take the action indicated in paragraph 24304 of the Resource Management Handbook, NAVMED P-5020, to effect central collection action.

§ 728.113 Categories of pay patients.

The categories of patients for whom collection action must be initiated are:

(a) *Coast Guard.* (1) Active Officers. (2) Retired Officers. (3) Active Enlisted. (4) Retired Enlisted. (5) Dependents. (6) Cadets.

(b) *Public Health Service.* (1) Active Officers. (2) Retired Officers. (3) Dependents of Officers.

(c) *National Oceanic and Atmospheric Administration (NOAA).* (1) Active Officers. (2) Retired Officers. (3) Dependents of Officers.

(d) *Foreign.* (1) NATO Officers (Except Canadians provided care under the comparable care agreement.). (2) NATO Enlisted (Except Canadians provided care under the comparable care agreement.). (3) NATO Dependents. (4) Civilians Accompanying NATO Members. (5) Foreign Military Sales (FMS) Officers. (6) FMS Enlisted. (7) FMS Dependents. (8) FMS Civilians. (9) Military Grant Aid Officers. (10) Military Grant Aid Enlisted. (11) Military Grant Aid Dependents. (12) Military Grant Aid Civilians. (13) Military Officers From Other Than NATO Nations. (14) Military Enlisted From Other Than NATO Nations. (15) Dependents of Officers and Enlisted From Other Than NATO Nations. (16) Civilians Accompanying Military Members of Other Than NATO Nations. (17) Nationals and Their Dependents.

(e) *Secretarial Designees Not Exempted From Paying.*

(f) *Others.* (1) Merchant Marines. (2) Military Sealift Command (MSC) Personnel. (3) Public Health Service Beneficiaries (Other than Commissioned Corps). (4) Veterans Administration Beneficiaries. (5) Peace Corps Beneficiaries. (6) Job Corps Beneficiaries. (7) Volunteers In Service to America (VISTA) Beneficiaries. (8) Office of Workers Compensation Program (OWCP) Beneficiaries. (9) Bureau of Employees Compensation (BEC) Beneficiaries. (10) Department of State and Other Federal Agencies Beneficiaries (prepare a separate form for each Federal agency). (11) Civilian Humanitarian Nonindigents (CHNI). (12) Trust Territory Beneficiaries. (13) Others Not Specified Above Who Are Not Entitled to Health Benefits at the Expense of the Government.

[FR Doc. 87-19551 Filed 9-3-87; 8:45 am]
BILLING CODE 3810-AE-M

Federal Register

Friday
September 4, 1987

Part V

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Data Request

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM87-34-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued: August 28, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of data request.

SUMMARY: The Federal Energy Regulatory Commission has sent to forty-five interstate natural gas pipelines the attached data request concerning the nature and extent of their take-or-pay problems. While only pipelines are required to respond to this data request, the Commission also invites any producers desiring to do so to file responses to the request.

DATE: All responses must be filed within thirty days of the effective date of Order No. 500.[1]

ADDRESS: The cover letter, paper copy, and magnetic tape, if any, must be submitted to: Office of the Secretary, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426.

Hand delivery may be made to: Office of the Secretary, Federal Energy Regulatory Commission, Room 3110, 825 N. Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Marilyn L. Rand, (202) 357-8674
John E. Moriarty, (202) 357-8824
Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION:

Take notice that on August 26, 1987, the Federal Energy Regulatory Commission sent to forty-five interstate natural gas pipelines a data request concerning the nature and extent of their take-or-pay problems. In Order No. 500,[1A] the Commission stated that it would issue this data request in order to obtain information necessary to respond to the decision of the United States Court of Appeals for the District of Columbia in *Associated Gas Distributors* v. *FERC*.[2] In particular, the information sought in this data request is necessary to enable the Commission to respond to the Court's direction that the Commission reassess its decision in Order No. 436 not to invoke its power under NGA section 5 to modify or set aside jurisdictional contracts with troublesome take-or-pay provisions.

While only pipelines are required to respond to this take-or-pay data request, the Commission also invites any producers desiring to do so to file responses to the attached data request. Those producers filing responses need not submit responses to all questions in all schedules. However producers should file their responses, to the maximum extent possible, in the format described in the instructions to the data request. At a minimum, producers must identify the schedule and the particular questions within each schedule, to which responses are made. Producers are also encouraged, to the maximum extent possible, to submit their responses on magnetic computer tape as prescribed in the instructions to the data request. Producers filing responses must comply with all other instructions set forth on pages 1 and 2 of the data request under "General Information for Take-or-Pay Data Request." The Commission strongly encourages those producers filing responses to conform their responses to the procedures and format required for pipelines so that the Commission can process all responses promptly. Producer responses, like pipeline responses, must be filed within thirty days of the effective data of Order No. 500.

Kenneth F. Plumb.

Secretary.

TAKE-OR-PAY DATA REQUEST

[FERC-593; OMB No. 19020149; Expires 11/7/87]

August 26, 1987.

General Information for Take-or-Pay Data Request

A. How To Submit

All data is to be submitted on 9-track magnetic computer tape(s) conforming in all respects to the requirements of the Federal Information Processing Standard Publication, FIPS Pub. 79, "Magnetic Tape Tables and File Structure for Information Interchange." Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. Level three labeling standards described in the federal standard should be utilized for file formats, tape labels and record formats. All tapes will be returned to the respondent within 30 days of their receipt at the Commission. The respondent should include file names, file attributes and recording density in a cover letter accompanying each tape.

Each tape must be accompanied by one paper copy tape listing of the data submitted on magnetic tape. The specifications for the magnetic tape layout are included in Exhibit A. The specifications for the paper copy are included in Exhibit B.

B. Where to Submit

(1) Submit the tape, the cover letter, and the paper copy to: Office of the Secretary, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426.

(2) Hand delivery can be made to: Office of the Secretary, Federal Energy Regulatory Commission, Room 3110, 825 N. Capitol Street, NE., Washington, DC 20426.

Retain a copy of the tape for your files.

C. Attestation

All filings with the Commission require the subscription and attestation prescribed in § 385.2005 of the Commission's regulations. Accordingly, the cover letter, mentioned above, should also attest that the information on the paper copy tape listing is the same as the information on the magnetic tape and that the contents of the paper copy and magnetic tape are true to the best knowledge and belief of the signer.

D. Records Retention To Support Tape

The respondent is required to maintain records which support the tape for a period of at least one (1) year.

E. Waivers

Waivers from the magnetic tape provision and other requirements, including the time by which the data must be filed, may be granted on a case-by-case basis for good cause shown.

F. Requests For Confidential Treatment

Respondents may request confidential treatment of their responses. *See*, 18 CFR 388.110 (1987).

G. Whom To Contact

For general questions contact: Marilyn L. Rand, (202) 357-8674.

For technical reporting questions contact: John E. Moriarty, (202) 357-8824.

General Instructions for Take-or-Pay Data Request

A. Introduction

This data request consists of six contract-summary schedules. Three of these same schedules (i.e., Schedules

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[1] The Federal Energy Regulatory Commission will publish a notice of the effective date of Order No. 500. See 52 FR 30334, August 14, 1987.

[1A] 52 FR 30334 (Aug. 14, 1987).

[2] No. 85-1811, et. al.

No. 4, 5, and 6, see below) are to be used to report on an aggregated basis data for company-totals only. A narrative-text schedule may also be provided at the option of the respondent to *supplement* (not substitute for) data reported on Schedules 1 through 6.

1. The contract-summary schedules are:

Schedule 1. Contract Summary Information
Schedule 2. Contract Take-or-Pay Provisions (As of July 1, 1987)
Schedule 3. Contract Pricing Provisions (As of July 1, 1987)
Schedule 4. Take-or-Pay History (One for each calendar year 1983–1986 and for the first six months of 1987)
Schedule 5. Take-or-Pay Obligations, Prepayments, and Settlements (One for each calendar year 1983–1986 and for the first six months of 1987)
Schedule 6. Contract Reformations and Terminations (One for each calendar year 1983–1986 and for the first six months of 1987)

2. The summary schedules are:

Schedule 4. A summary of Schedule 4 for all contracts (One for each calendar year 1983–1986 and for the first six months of 1987)
Schedule 5. A summary of Schedule 5 for all contracts (One for each calendar year 1983–1986 and for the first six months of 1987)
Schedule 6. A summary of Schedule 6 for all contracts (One for each calendar year 1983–1986 and for the first six months of 1987)

3. The narrative-text schedule is:

Schedule 7. Narrative Text Schedule (This schedule provides the respondent the opportunity to clarify the data reported on Schedules 1 through 6. Note, however, that Schedule 7 cannot be used as a substitute for Schedules 1 through 6.)

B. Reports for Individual Contracts

1. Which Contracts to Report Individually

A contract should be reported individually if:

(a) It is an active contract (i.e., not an expired or terminated contract), and had an annual deliverability of more than one billion cubic feet between January 1, 1983 and June 30, 1987.

(b) It is an expired or terminated contract and had a deliverability of more than one billion cubic feet between January 1, 1983 and June 30, 1987, and is associated with any of the following five conditions:

(i) A remaining unresolved take-or-pay exposure;

(ii) An outstanding prepayment for gas not taken;

(iii) A settlement payment to extinguish or mitigate take-or-pay exposure;

(iv) A payment to terminate or reform the contract in consideration of take-or-pay related to this or any other contract; or

(v) Non-cash consideration to terminate or reform the contract in consideration of take-or-pay related to this or any other contract.

(c) It does not meet the criteria identified in (a) or (b) but would be necessary to be added to those contracts reported under (a) and (b) so that the sum effect of contracts reported on an individual basis would account for 90 percent of the "Pipeline Estimate of Cumulative Take-or-Pay Obligation at End of Year," as would be reported at Schedule 5 column (1), for the period ending December 31, 1986.

2. Schedules to Report for Individual Contracts

Schedules for individual contracts should be reported as follows:

(a) Schedule 1 should be reported for all contracts which are subject to individual reporting. (See item B.1. above.) Note, however, that if a contract does not now nor did at any time since 1982 include a take-or-pay provision, only Items 1 through 6 and 11(e) should be reported on Schedule 1 for that contract.

(b) Schedules 2 and 3 should be reported only for those contracts which now, or did since 1982, include a take-or-pay provision. That is, if the answer to Question 6 on Schedule 1 is "Yes," then Schedules 2 and 3 should be reported.

(c) Schedules 4 and 5 should be reported only for those contracts for which:

(i) There is or has been a past or present take-or-pay exposure, a gas prepayment, or take-or-pay settlement associated with the contract, or

(ii) Gas covered by the contract was temporarily or permanently released with take-or-pay credit, or

(iii) The contract was reformed or terminated as either partial or complete consideration for take-or-pay related to this or any other contract, or

(iv) The contract does now or did since 1982 include a take-or-pay clause. That is, if the answer to either Question 6, or to any portion of Question 11 (a) through (d) is "Yes," then Schedules 4 and 5 should be reported.

(d) Schedule 6 should be reported only if there has been a contract reformation or termination for the purpose of resolving take-or-pay related to this contract or any other contract since 1982. That is, if the answer to Question 11(e) on Schedule 1 is "Yes," then Schedule 6 should be reported.

C. Company-Summary Schedules

The company summary schedules are company total data. The company-summary schedules should be submitted for each year 1983 through 1986 and for the first six months of 1987. Only the "Totals" line need be completed in reporting company-total data. That is, the company-total data does not have to be reported by "NGPA Section" category. Moreover, only the following columns need be completed in reporting company-total data:

Schedule 4: Column (g)
Schedule 5: Columns (a) through (n)
Schedule 6: Column (i)

D. Miscellaneous Instructions

1. All data on Schedule No. 1 should be reported on a contract-summary basis (i.e., not segregated by NGPA category or subcategory). All data on Schedule Nos. 2 through 6 should be reported separately for each NGPA category or subcategory of gas covered by the contract. However, in regard to Schedule Nos. 2 and 3, the data should be reported on the "Whole Contract" line, if all of the provisions and terms of the contract apply consistently and equally to all gas covered by the contract, regardless of the NGPA category or subcategory of gas.

2. Report all gas volumes in MMMBtu's (i.e., Billion Btu's).

3. Report all dollars in thousands of dollars.

4. Report all percentages to the nearest whole percentage (e.g., 75).

5. The various terms used here are intended to have the same meanings as in the documents recently issued by the Commission. See, for example:

"Statement of Policy;" Take-or-Pay Provisions in Gas Purchase Contracts; Docket No. PL81–1–000 (Issued December 16, 1982).

"Statement of Policy and Interpretive Rule;" Regulatory Treatment of Payments Made in Lieu of Take-or Pay Obligations; Docket No. PL85–1–000 (Issued April 10, 1985).

"Proposed Statement of Commission Policy;" Recovery of Take-or-Pay Buy-Out and Buy-Down Costs by Interstate Natural Gas Pipelines; Docket No. PL87–3–000 (Issued March 5, 1987).

6. Where an answer is requested on a yes or no basis, enter a "Y" for yes or "N" for no.

7. Schedule-specific instructions are given to clarify data items and to make reference to source publications. Unless otherwise instructed, all items are self-explanatory.

8. Note: Previous experience has shown that respondents occasionally report dollars and volumes in the wrong units (e.g., MMBtu or dollars). This can lead to very serious problems in processing and analyzing data. Respondents are therefore requested to be particularly careful in reporting the correct units.

9. Use the following codes for the NGPA categories in the computer tape submission:

Code = 1 Whole Contract
Code = 2 102(d)
Code = 3 Other 102
Code = 4 103 (Price Controlled)
Code = 5 Other 103
Code = 6 104 Pre 1973
Code = 7 104 1973–74 Biennium
Code = 8 104 Post 1974
Code = 9 104 Other
Code = 10 106(a)
Code = 11 107(c)(5)
Code = 12 Other 107
Code = 13 108 Jurisdictional
Code = 14 108 Non-jurisdictional
Code = 15 105/106(b)
Code = 16 109
Code = 17 Totals

10. "Casinghead gas," as used here, is gas which is produced concurrently with the production of crude oil.

Specific Instruction for Take-or-Pay Data Request

SCHEDULE NO. 1—CONTRACT SUMMARY INFORMAITON

Schedule reference	Instructions
1(a), 1(b), 3(a), 3(b)	Enter the name and code as contained in the Buyer/Seller Code List, U.S. Department of Energy publication DOE/EIA–0176.
2	Enter the respondent's own designation for the contract or agreement as it would appear in the purchaser's Form No. 542–PGA filings.
3	Complete items 3(a) through 3(d) and 3(f) for each seller who is a signatory to the contract being reported and has a working interest of at least 10 percent. These items must be reported for the operator, even if it has no working interest in the leases covered by the contract.
3(e)	Enter the FERC Gas Rate Schedule Number assigned to the contract. If not applicable, enter "NA" (Not Applicable).
4(a) through 4(h)	Enter as defined in "Instructions For Filing FERC Form No. 542–PGA Purchased Gas Adjustment (PGA) Filing." Note: If the contract covers gas produced in more than one field, area, or state, the largest or principal location data (field, area, etc.) should be entered. The respondent may provide supplemental data or notations on Schedule 7.
6	Enter "Y" or "N" as to whether the contract does now or did at any time since 1982, include a take-or-pay provision.
Complete 7 through 11(d) *only* if the answer in 6 is "Y." Complete 11 (e) regardless of answer to 6.	
8	Enter the date of the most recent rollover or significant renegotiation of this contract. "Significant" means a permanent change of 10 percent or more in the price and/or take-or-pay quantity provisions of this contract.
9(a)	Enter month, day, and year, if the contract contains a fixed expiration data; otherwise enter "NA" in each data field (i.e., enter "NA" for "mm," "dd," and "yy."
10	A "market-out clause" means a clause giving the purchaser the right to terminate the contract at the purchaser's discretion.

SCHEDULE NO. 2—CONTRACT TAKE-OR-PAY PROVISIONS

Schedule reference	Instructions
Contract No.	Enter the respondent's own designation for the contract (Same as Schedule 1, Item 2).
Purchaser Name, Pipeline Code No.	Enter the name and code as contained in the Buyer/Seller Code List, U.S. Department of Energy publication DOE/EIA–0176 (Same as Schedule 1, Item 1).
(a)	Enter "Y" if take-or-pay is based on reserves; if not, enter "N."
(b)	Enter "Y" if take-or-pay is based on deliverability; if not, enter "N."
(c)	Enter "Y" if take-or-pay is based on a method other than reserves or deliverability; if not, enter "N."
(d)	If take-or-pay is based on deliverability, enter the annual percentage which applies to casinghead gas (gas which is produced concurrently with the production of crude oil)
(e)	If take-or-pay is based on deliverability, enter the annual percentage which applies to all gas other than casinghead gas.
(f)	If take-or-pay for casinghead gas is based on reserves, enter the number which completes the ratio 1:_____. For example, if the reserve ratio is 1:7300, enter 7300.
(g)	If take-or-pay for all gas other than casinghead gas is based on reserves, enter the number which completes the ratio 1:_____. For example, if the reserve ratio is 1:7300, enter 7300.
(h)	Enter the number of years during which the contract permits the purchaser to make up any gas. If no make-up right exists, enter "0" (Zero).
(i)	Enter "Y" if there are make-up rights after the contract expires or is terminated; if not, enter "N."
(j)	Enter "Y" if the contract provides that the seller will refund payment upon expiration or termination of the contract for gas paid for but not taken; if not, enter "N."

SCHEDULE NO. 3—CONTRACT PRICING PROVISIONS

Schedule reference	Instructions
Contract No	Enter the respondent's own designation for the contract (Same as Schedule 1, Item 2).
Purchaser Name, Pipeline Code No.	Enter the name and code as contained in the Buyer/Seller Code List, U.S. Department of Energy publication DOE/EIA–0176 (Same as Schedule 1, Item 1).
(a)	Enter "Y" if the contract contains a price provision which allows the contract price to escalate to the NGPA Maximum Lawful Price; otherwise, enter "N."
(b)	Enter "Y" if the contract price is referenced to NGPA prices; otherwise, enter "N."
(c)	Enter "Y" if the contract states a fixed price or states a fixed rate of price escalation; otherwise, enter "N."
(d) through (h)	If the contract does not contain a price redetermination clause, enter "N" in columns (d) through (h). If the contract does contain a redetermination clause, columns (d) through (h) should be completed as follows.
(d)	Enter the code indicating the frequency with which the contract allows the price to be redetermined: A—1 year or less B—Greater than 1, up to 3 years C—Greater than 3 years D—Upon request E—Not specified F—Other G—Required by contract deregulation
(e)	Enter "Y" if the contract contains a market sensitive pricing clause which allows the price to adjust to reflect current market conditions. This includes provisions with language such as the price will be based on the "fair market value" or the price will reflect an "economic analysis of all factors affecting value."
(f)	If the contract has a redetermination clause which ties the price to an alternate fuel price or index, enter one of the following codes: A—Price tied to No. 2 fuel oil with an adjustment for transportation and distribution charges. B—Price tied to No. 2 fuel oil with no adjustment for transportation and distribution charges. C—Price tied to No. 6 fuel oil with an adjustment for transportation and distribution charges. D—Price tied to No. 6 fuel oil with no adjustment for transportation and distribution charges. E—Price tied to other fuel prices such as crude oil or an average of prices for more than one type of fuel oil; e.g., a mix of No. 2 and No. 6 fuel oil.

SCHEDULE NO. 3—CONTRACT PRICING PROVISIONS—Continued

Schedule reference	Instructions
(g)	Enter "Y" if the redetermination clause has a most-favored-nation provision, i.e., the contract calls for the redetermination to be based on any of the clauses detailed below. This may mean it is either the single determination factor or it shall be considered along with other factors in the negotiation. Most-favored-nation clauses require the contract prices to be tied to the: —Highest contract price paid by buyer for same area —Highest contract price from same area paid by any purchaser —Average of several of the highest contract prices from the same area
(h)	Enter "Y" if the contract redetermination process includes any other factors not included in columns (e) through (g).
(i)	Enter "Y" if the contract has a "buyer protection" clause currently operable under which the price of gas can be adjusted below the price called for under redetermination or other price adjustment terms. Enter "N" if the contract does not have such a clause, or if the contract has a "buyer protection" clause which becomes effective only when a given category of gas is deregulated, and that gas is still price controlled.
(j)	Enter "Y" if the contract does not allow the price to fall below a specified level; otherwise, enter "N."
(k)	Enter "Y" if the actual price paid is based on a unilateral action by the purchaser; otherwise, enter "N."
(l)	Enter "Y" if the actual price paid is set under a market-out clause; otherwise, enter "N."
(m)	Enter "Y" if the actual price paid is a renegotiated price; otherwise, enter "N."
(n)	Enter "Y" if the actual price paid is equal to the NGPA Maximum Lawful Price; otherwise, enter "N."
(o)	Enter "Y" if the actual price paid is determined under some mechanism other than those in (k) through (n); otherwise, enter "N."

SCHEDULE NO. 4—TAKE-OR-PAY HISTORY

Schedule reference	Instructions
Contract No	Enter the respondent's own designation for the contract (same as Schedule 1, Item 2) when the schedule reports an individual contract. Enter "AGR" when the schedule reports the company totals aggregated together.
Purchaser Name, Pipeline Code No.	Enter the name and code as contained in the Buyer/Seller Code List, U.S. Department of Energy publication DOE/EIA-0176 (Same as Schedule 1, Item 1).
(a)	Enter the physical annual deliverability of the gas covered by the contract.
(b)	Enter the annual take-or-pay quantity obligation. For example, if take-or-pay were 90%, the quantity in column (b) would equal 90% times column (a).
(c)	Enter the quantity actually taken under the contract during the year.
(d)	Enter the take-or-pay quantity not taken but released, and for which a take-or-pay credit was received.
(e)	Enter the take-or-pay quantity obligation which was not taken nor released. This quantity should equal columns (b), less (c), less (d). This quantity should also equal the quantity reported at Schedule 5, column (c).
(f)	Enter the portion of (e) which the purchaser expects to ultimately recover or recoup.
(g)	Enter the portion of (e) which the purchaser does not expect to ultimately recover or recoup; because, for example, there are no make-up rights in the contract, the contract has expired, the make-up period specified in the contract has expired, the reserves are not sufficient to permit recovery of the prepayments, prepayments have been made or requested to be made repeatedly on the same gas reserves, etc. This quantity should equal columns (e), less (f)

SCHEDULE NO. 5—TAKE-OR-PAY OBLIGATIONS, PRE-PAYMENTS, AND SETTLEMENTS

Schedule reference	Instructions
Contract No.	Enter the respondent's own designation for the contract (same as Schedule 1, Item 2) when the schedule reports an individual contract. Enter "AGR" when the schedule reports the company totals aggregated together
Purchaser Name, Pipeline Code No.	Enter the name and code as contained in the Buyer/Seller Code List, U.S. Department of Energy publication DOE/EIA-0176 (Same as Schedule 1, Item 1)
(a)	Enter the cumulative quantity for which the purchaser has an outstanding take-or-pay obligation. Column (a) for 1983 should be the cumulative quantity on January 1, 1983. For all years after 1983, the amount in column (a) will be the amount from column (k) of the preceding year.
(b)	Enter the cumulative dollar amount associated with the quantity in (a)
(c)	Enter the quantity of additional take-or-pay obligation during the year. This quantity should equal the quantity reported at Schedule 4, column (e).
(d)	Enter the dollar amount associated with the quantity in (c)
(e)	Enter the quantity of conventional, recoupable gas prepayments.
(f)	Enter the dollar amount associated with the quantity in (e)
(g)	Enter the quantity resolved by a settlement payment or non-cash consideration in lieu of a conventional prepayment.
(h)	Enter the dollar amount associated with the quantity in (g)
(i)	Enter the dollar amount or value paid to settle the quantity and dollar amount in (g) and (h).
(j)	When the schedule reports on an individual-contract basis, enter "Y" if the settlement included a non-cost consideration; if not, enter "N." When the schedule reports on an aggregated contract basis, enter "A."
(k)	Enter the cumulative quantity of gas for which the purchaser has an outstanding take-or-pay obligation on December 31. This amount is equal to the sum of (a) plus (c) less the sum of (e) and (g).
(l)	Enter the dollar amount associated with the quantity (k). This amount is equal to the sum of (b) plus (d) less the sum of (f) and (h).
(m)	Enter the cumulative quantity of gas for which a take-or-pay claim has actually been billed by the producer.
(n)	Enter the dollar amount associated with the quantity in (m).

SCHEDULE NO. 6—CONTRACT REFORMATIONS AND TERMINATIONS

Schedule reference	Instructions
Contract No	Enter the respondent's own designation for the contract (same as Schedule 1, Item 2) when the schedule reports an individual contract. Enter "AGR" when the schedule reports the company totals aggregated together
Purchaser Name, Pipeline Code No.	Enter the name and code as contained in the Buyer/Seller Code List, U.S. Department of Energy publication DOE/EIA-0176 (Same as Schedule 1, Item 1).
When reporting contracts on an individual basis, the following instructions apply:	
(a), (b)	Enter "Y" or "N."
(c) through (f)	Enter the take-or-pay obligation that existed before and after the contract reformation/termination. If the take-or-pay obligation is based on deliverability enter the obligation as a percent. If the take-or-pay obligation is based on reserves enter the number which completes the ratio 1:_____. For example, if the reserve ratio is 1.7300, enter 7300. Where termination applies, enter "T" in (e) and (f).
(g), (h)	Enter "Y" or "N" if there was a market out clause in the contract either before or after reformation/termination. A "market out clause" means a clause giving the purchaser the right to determine the contract at the purchaser's discretion. Where termination applies, enter "T" in (h)
(i)	Enter the amount of any cash paid by the purchaser to reform or terminate this contract in consideration of take-or-pay related to this or any other contract.
(j)	Enter "Y" or "N" as to whether any non-cash consideration was given by the purchaser to reform or terminate this contract in consideration of take-or-pay related to this or any other contract.
When reporting contracts on an aggregate basis, the following instructions apply.	
(a) through (h), (j)	Enter "A"
(i)	Enter the amount of any cash paid by the purchaser to reform or terminate contracts in consideration of take-or-pay.

SCHEDULE NO. 7—NARRATIVE-TEXT SCHEDULE

Schedule reference	Instructions
Contract No	Enter the respondent's own designation for the contract (same as Schedule 1, Item 2) when the schedule reports an individual contract. Enter "AGR" when the schedule reports the company totals aggregated together.
Purchaser Name, Pipeline Code No.	Enter the name and code as contained in the Buyer/Seller Code List, U.S. Department of Energy publication DOE/EIA-0176 (Same as Schedule 1, Item 1).
All	This Schedule provides the respondent the opportunity to clarify the data reported on Schedules 1 through 6. Note, however, that Schedule 7 cannot be used as a substitute for Schedules 1 through 6. Schedule 7 may be used by the respondent to, for example, clarify the data reported at Schedule 4, column (g), "Quantity Not Recoupable." The instructions for this item specify that any unrecoverable or unrecoupable take-or-pay quantity (MMMBtu's) should be reported on an aggregate basis. The respondent is encouraged to segregate and quantify the reason(s) why the gas is not recoverable or recoupable. The respondent is also encouraged to assign dollar values to any segregated quantities. Schedule 7 may also be used to clarify and quantify the respondent's future take-or-pay obligations, costs, etc. These and other types of clarification and quantification may be very useful in evaluating possible future actions by the Commission.

Schedule 1—Contract Summary Information (as of July 1, 1987, Except as Otherwise Specified)

1. Purchaser:
   (a) Name _____
   (b) Pipeline Code Number _____
2. PGA Identification: Contract Number ____
3. Seller(s) with gross working interest of at least 10 percent.
   (a) Name _____
   (b) Seller Code Number _____
   (c) Gross Working Interest Percent _____
   (d) Operator, yes/no _____
   (e) Rate Schedule Number _____
   (f) Seller and Purchaser Affiliated? yes/no _____
4. Production Area
   (a) Field Name _____
   (b) Field Code _____
   (c) Area Name _____
   (d) Area Code _____
   (e) State Name _____
   (f) State Code _____
5. Is any of the gas covered by this contract now or has it ever been since 1982:
   (a) Purchaser-owned production? yes/no ____
   (b) Affiliated company production? yes/no ____
6. Does this contract now or did it at any time since 1982 include a take-or-pay provision? yes/no ____
7. What is the date of the initial contract? mm____, dd____ yy____
8. What is the date of the most recent renegotiation or rollover of this contract? mm____, dd____ yy____
9. What determines the expiration of this contract? (complete all that apply)
   (a) Fixed expiration date? mm____ dd____ yy____
   (b) Life of lease/life of reserves covered by this contract? yes/no ____
   (c) Short-term agreement? (such as purchases on a year-to-year or more frequent basis; currently in force until one party gives notice; spot purchase contract; etc.) yes/no ____
   (d) Other? yes/no ____
10. Does this contract now or did it at any time since 1982 include a market-out clause? yes/no ____
11. In regard to this contract, is there now or has there been at any time since 1982: yes/no ____
    (a) Take-or pay exposure? yes/no ____
    (b) Prepayment for gas? yes/no ____
    (c) Settlement of take-or-pay? yes/no ____
       (i) Partial? yes/no ____
       (ii) Complete? yes/no ____
    (d) Release, with take-or-pay credit, of any of the gas covered by this contract? yes/no ____
    (e) Reformation or termination of contract as consideration for settlement of take-or-pay related to this contract or any other contract? yes/no ____

Contract No. _____
Purchaser Name _____
Pipeline Code No. _____

SCHEDULE 2.—CONTRACT TAKE-OR-PAY PROVISIONS

[As of July 1, 1987]

NGPA section	Based on			If deliverability basis, percent of del. required		If reserve basis, take/res ratio		Make up rights		Refund provision Y/N
	Res Y/N	Del Y/N	Other Y/N	Csgnhd.	Other	Csgnhd.	Other	Yrs.	After cont. term Y/N	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
"Whole Contract"										
102(d)										
Other 102										
103 (Price Controlled)										
Other 103										
104 Pre 1973										
104 1973–74 Biennium										
104 Post 1974										
104 Other										
106(a)										
107(c)(5)										
Other 107										
108 Jurisdictional										
108 Non-jurisdictional										
105/106(b)										
109										

Contract No. _____ Purchaser Name _____ Pipeline Code No. _____

SCHEDULE 3.—CONTRACT PRICING PROVISIONS

[As of July 1, 1987]

NGPA SECTION	Pricing provisions										Current price basis				
				Price redetermination clause											
	NGPA ceiling price	Referenced to NGPA price	Fixed rate or fixed esc	Frequency of redetermination	Market sensitive	Fuel parity	Most favored nation	Other	Buyer protection clause	Is there a price floor	Unilateral action	Market out	Renegotiation	NGPA ceiling price	Other
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)
"Whole Contract"															
102(d)															
Other 102															
103 (Price Controlled)															
Other 103															
104 Pre 1973															
104 1973–74 Biennium															
104 Post 1974															
104 Other															
106(a)															
107(c)(5)															
Other 107															
108 Jurisdictional															
108 Non-jurisdictional															
105/106(b)															
109															

Contract No. _____ Purchaser Name _____ Pipeline Code No. _____

SCHEDULE 4.—TAKE-OR-PAY HISTORY (MMMBTU)

[Year ____]

NGPA Section	Deliverability contracted to buyer	Take-or-pay quantity obligation	Quantity actually taken	Quantity released w/ T-O-P credit	Quantity not taken nor released [(b)-(c)-(d)]	Quantity recoupable	Quantity not recoupable [(e)-(f)]
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
102(d)							
Other 102							
103 (Price Controlled)							
Other 103							
104 Pre 1973							
104 1973–74 Biennium							
104 Post 1974							
104 Other							
106(a)							
107(c)(5)							
Other 107							
108 Jurisdictional							
108 Non-jurisdictional							
105/106(b)							
109							
Totals							

Contract No. _____ Purchaser Name _____ Pipeline Code No. _____

SCHEDULE 5.—TAKE-OR-PAY OBLIGATIONS, PRE-PAYMENTS, AND SETTLEMENTS

[Year ____]

NGPA Section	Pipeline estimate of cumulative take-or-pay obligation at beginning of year		Take-or-pay obligation incurred during year		Take-or-pay obligation resolved during year						Pipeline estimate of cumulative take-or-pay obligation at end of year		Cumulative unresolved take-or-pay actually billed to pipeline at end of year	
					By pre-payment		By settlement							
									Basis of settlement					
	MMMbtu	$ (1,000s)	MMMbtu	$ (1,000s)	MMMbtu	$ (1,000s)	MMMbtu	$ (1,000s)	$ (1,000s)	Non-cost Y/N	MMMbtu	$ (1,000s)	MMMbtu	$ (1,000s)
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
102(d)														
Other 102														
103 (Price Controlled)														
Other 103														
104 Pre 1973														
104 1973–74 Biennium														
104 Post 1974														
104 Other														
106(a)														
107(c)(5)														
Other 107														
108 Jurisdictional														
108 Non-jurisdictional														
105/106(b)														
109														
Totals														

Contract No. _____ Purchaser Name _____ Pipeline Code No. _____

SCHEDULE 6.—CONTRACT REFORMATIONS AND TERMINATIONS

[Year ___]

NGPA section	Contract status at end of year		Contract changes in effect at end of year						Considerations given by pipeline	
			Take-or-pay obligation				Market out provision			
			Before		After		Before	After		
	Reformed Y/N	Terminated Y/N	Percent	T/R	Percent	T/R	Y/N	Y/N	Cash ($1,000s)	Non-cash Y/N
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
102(d)										
Other 102										
103 (Price Controlled)										
Other 103										
104 Pre 1973										
104 1973–74 Biennium										
104 Post 1974										
104 Other										
106(a)										
107(c)(5)										
Other 107										
108 Jurisdictional										
108 Non-jurisdictional										
105/106(b)										
109										
Totals										

Schedule 7

Schedule 7 is not printed in the **Federal Register.** It consists of the heading "NARRATIVE TEXT" with blank space provided below it for the text.

Exhibit A—Tape Layout for Take-or-Pay Data Request

The specific instructions provide the necessary directions for filling out the various schedules. The tape layout merely provides a means for submitting that data on computer tape.

SCHEDULE 1

Item	Character position	Data type	Comments
Schedule No.	1–2	Numeric	Sch = 1
Purchaser Name	3–23	Character	
Purchaser Code	24–29	Character	
Contract No	30–35	Character	
Seller Name	36–56	Character	See Note 1 Below
Code Number	57–62	Character	
Gross Working Interest	63–64	Numeric	
Operator	65	Character	
Rate Schedule No	66–71	Character	
Affiliated	72	Character	
Field Name	73–93	Character	
Field Code	94–99	Character	
Area Name	100–120	Character	
Area Code	121–126	Character	
State Name	127–147	Character	
State Code	148–149	Numeric	
Purchaser Owned Coverage	150	Character	
Affiliated Coverage	152	Character	
Take-or-Pay Provision	153	Character	
Date of Initial Contract	154–159	Numeric	
Renegotiation/Rollover	160–165	Numeric	
Fixed Expiration Date	166–171	Numeric	
Life of Lease/Life	172	Character	
Short-term Agreement	173	Character	
Other	174	Character	
Market-Out	175	Character	
Take-or-Pay Expense	176	Character	
Prepayment	177	Character	
Partial Settlement	178	Character	
Complete Settlement	179	Character	
Release	180	Character	

SCHEDULE 1—Continued

Item	Character position	Data type	Comments
Reformation/Termination	181	Character	

Note 1: Since there can be up to 10 sellers reported per contract, repeat positions 1–72 for each seller.

SCHEDULE 2

Item	Character position	Data type	Comments
Schedule No	1–2	Numeric	Sch=2
Purchaser Name	3–23	Character	
Purchaser Code	24–29	Character	
Contract No	30–35	Character	
NGPA Code	36–37	Numeric	See General Instructions. See also Note 2 below
Reserve	38	Character	
Delivery	39	Character	
Other	40	Character	
Casinghead Delivery	41–42	Numeric	
Other Delivery	43–44	Numeric	
Casinghead Reserve	45–49	Numeric	
Other Reserve	50–54	Numeric	
Rights Years	55–56	Numeric	
Terminations	57	Character	
Refund	58	Character	

Note 2: Repeat entire Schedule, positions 1–58, for each NGPA code used.

SCHEDULE 3

Item	Character position	Data type	Comments
Schedule No	1–2	Numeric	Sch=3.
Purchaser Name	3–23	Character	
Purchaser Code	24–29	Character	
Contract No.	30–35	Character	
NGPA Code	36–37	Character	See General Instructions.
Ceiling Price	38	Character	
NGPA Price	39	Character	
Fixed	40	Character	
Frequency	41	Character	
Market Sensitive	42	Character	
Fuel Parity	43	Character	
Most Favored Nation	44	Character	
Other	45	Character	
Buyer Protection	46	Character	
Price Floor	47	Character	
Unilateral Action	48	Character	
Market Out	49	Character	
Renegotiation	50	Character	
NGPA Ceiling Price	51	Character	
Other	52	Character	

Note 3: Repeat entire Schedule, positions 1–52, for each NGPA code used.

SCHEDULE 4

Item	Character position	Data type	Comments
Schedule No	1–2	Numeric	Sch=4.
Purchaser Name	3–23	Character	
Purchaser Code	24–29	Character	

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SCHEDULE 4—Continued

Item	Character position	Data type	Comments
Contract No.	30–35	Character	See Note 3 below.
NGPA Code	36–37	Numeric	See General Instructions.
Deliverability	38–46	Numeric	
Take-or-Pay	47–55	Numeric	
Quantity Taken	56–64	Numeric	
Quantity Released	65–73	Numeric	
Quantity Not Taken	74–82	Numeric	
Quantity Recoupable	83–91	Numeric	
Quantity Not Recoupable	91–100	Numeric	

Note 4: If Schedule 4 is being used to report a Take-or-Pay history for an individual contract, use the contract number in positions 30–35. If Schedule 4 is being used to report total company data use the code "AGR" in positions 30–35 and report data in only positions 91–100.
Note 5: Repeat entire Schedule, positions 1–100, for each NGPA code used. This note does not apply to the company total report.

SCHEDULE 5

Item	Character position	Data type	Comments
Schedule No.	1–2	Numeric	Sch=5.
Purchaser Name	3–23	Character	
Purchaser Code	24–29	Character	
Contract No.	30–35	Character	See Note 4 below.
NGPA Code	36–37	Numeric	See General Instructions.
Cumulative Volume	38–46	Numeric	
Beginning Obligations	47–55	Numeric	
Volume During Year	56–64	Numeric	
Obligation	65–73	Numeric	
Pre-Pay Volume	74–82	Numeric	
Pre-Pay Dollars	83–91	Numeric	
Settlement Volume	92–100	Numeric	
Settlement Dollars	101–109	Numeric	
Basis Dollars	110–118	Numeric	
Non-Cost	119	Character	
Ending Volume	120–128	Numeric	
Ending Dollars	129–137	Numeric	
Ending Billed Volume	138–146	Numeric	
Ending Billed Dollars	147–155	Numeric	

Note 6: If Schedule 5 is being used to report for an individual contract, use the contract number in positions 30–35. If Schedule 5 is being used to report total company data use the code "AGR" in positions 30–35 and report only total data in positions 38–155.
Note 7: Repeat entire Schedule, positions 1–155, for each NGPA code used. This note does not apply to the company total report.

SCHEDULE 6

Item	Character position	Data type	Comments
Schedule No.	1–2	Numeric	Sch=6.
Purchaser Name	3–23	Character	
Purchaser Code	24–29	Character	
Contract No	30–35	Character	See Note 5 below.
NGPA Code	36–37	Numeric	See General Instructions.
Reformed	38	Character	
Terminated	39	Character	
TOP Before Percent	40–41	Numeric	
TOP Before T/R	42–47	Numeric	
TOP After Percent	48–49	Character	Numeric for %.
TOP After T/R	50–55	Character	Numeric for T/R.
Market Before	56	Character	
Market After	57	Character	
Cash	58–66	Numeric	
Non-Cash	67	Character	

Note 8: If Schedule 6 is being used to report for an individual contract, use the contract number in positions 30–35. If Schedule 6 is being used to report total company data use the code "AGR" in positions 30–35, and report data in only positions 58–66.
Note 9: Repeat entire Schedule, positions 1–67, for each NGPA code used. This note does not apply to the company total report.

SCHEDULE 7

Item	Character position	Data type	Comments
Schedule No.	1–2	Numeric	Sch=7.
Schedule Reference	3–4	Numeric	Schedule to which text applies.
Line Counter	5–6	Numeric	Enter consecutively as additional lines of text are added.
Text	7–78	Character	

Exhibit B—Paper Copy Specifications

The Commission requires all respondents to submit a paper copy that is attested to as valid. This paper copy also reflects the data submitted on tape and is considered a paper copy duplicate of the electronically stored data. This section specifies the rules for creating paper copies.

The following conventions will apply to paper copies from a mainframe:

1. A CHARACTER item for the print image is defined as not more than 120 alphanumeric characters and punctuation.

2. A TEXT item for the print image may exceed 120 alphanumeric characters including punctuation.

3. A line of printout will be 132 or fewer columns.

4. Each NUMERIC item in a record, except the last item, will be printed with a trailing comma. (ASCII–44 decimal)

5. Each CHARACTER item in a record, except the last item, will be printed with a trailing bar. (ASCII–124 decimal)

6. If the sum of the lengths of the items to be printed that are not text, and including commas and bars, exceed 132 columns, then the record continuation can be printed on a second and subsequent lines but do not split a field when continuing. The second and any subsequent lines must be indented 6 spaces from the left hand margin (except for TEXT items as described below). The last whole item on a given line, other than the last item of the record, must be printed with the appropriate trailing comma or bar. The end of the record should be marked by the end of a line in the printout.

7 If the last item available for the line is TEXT, then alternately print the non-TEXT items on the first line, the line of TEXT on the second line without indenting, the non-TEXT items on the third line and the line of TEXT on the fourth and so on until the entire record is printed.

8. Use commas to denote blank fields.

9. Between the last record of one record type and the first record of another type, there should be three blank lines.

10. The first record of each schedule should be printed on a new page.

11. The data collection layout, definitions, instructions and footnotes define the terms and printing order.

[FR Doc. 87–20313 Filed 9–3–87; 8:45 am]
BILLING CODE 6717–01–M

18 CFR Parts 2 and 284

[Docket No. RM87–34–000; Order No. 500]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Information Collection Requirements Approved by OMB

August 20, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of data request; OMB Control Number.

SUMMARY: On August 7, 1987, the Federal Energy Regulatory Commission issued an interim rule (Order No. 500) in Docket No. RM87–34–000, 52 FR 30334 (August 14, 1987), readopting the open access transportation regulations, originally promulgated in Order No. 436, with modifications intended to respond to the concerns of the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors v. FERC* (No. 85–1811, *et al.*). As a result of the interim rule the Commission is sending interstate natural gas pipeline companies a data request (FERC–593) (published elsewhere in this issue of the **Federal Register**) to determine the extent and nature of pipelines' take-or-pay obligations with respect to various NGPA pricing categories for natural gas. This data request was submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. OMB has provided an OMB control number.

EFFECTIVE DATE: The OMB approval of the information requirements is effective from August 20, 1987 until November 7, 1987.

FOR FURTHER INFORMATION CONTACT: Richard O. Howe, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, Phone: (202) 357–8308.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1987) require that OMB approve information collection requirements imposed by agency rule. OMB has temporarily approved the information collection requirements of the Commission's data request contained in FERC–593 for 90 days and issued Control Number 1902–0149. The information requirements are discussed in the preamble to the interim rule but are not codified in the regulatory text. The information collected will be used in preparation of a final rule. This OMB Control Number is effective until November 7, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–19634 Filed 9–3–87; 8:45 am]
BILLING CODE 6717–01–M

VOL
52
ISS
1
7
2
SE
4
1987
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federal register

Friday
September 4, 1987

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 58

Good Laboratory Practice Regulations; Final Rule

VOL
52
ISS
172
SE
4
1987
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 58

[Docket No. 83N-0142]

Good Laboratory Practice Regulations

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule that amends the regulations that specify good laboratory practice (GLP) for nonclinical laboratory studies. The amendments clarify, delete, or amend several provisions of the GLP regulations to reduce the regulatory burden on testing facilities. The changes will also achieve a substantial reduction in the paperwork burden imposed upon the regulated industries by the current regulations. Significant changes are made in the provisions respecting quality assurance, protocol preparation, test and control article characterization, and retention of specimens and samples based on FDA's experience in implementing the regulations. The agency has determined that the changes will not compromise the objective of the GLP regulations, which is to assure the quality and integrity of the safety data submitted in support of the approval of regulated products.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Paul D. Lepore, Office of Regulatory Affairs (HFC-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2390.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of October 29, 1984 (49 FR 43530), FDA published a proposal to amend the agency's regulations in 21 CFR Part 58, which prescribe good laboratory practice for conducting nonclinical laboratory studies (the GLP regulations). The proposal was the result of an evaluation of the GLP regulations and of the data obtained by the agency's inspection program to assess laboratory compliance with the regulations. The evaluation led the agency to conclude that some of the provisions of the regulations could be revised to permit nonclinical testing laboratories greater flexibility in conducting nonclinical laboratory studies without compromising public protection. FDA invited comments on all aspects of the proposal and provided 60 days for interested persons to submit comments, views, data, and information on the need to revise any other provisions of Part 58.

Comments

FDA received 33 comments: 19 from manufacturers of articles regulated by FDA, 4 from associations, 8 from foreign or domestic testing or consulting laboratories, and 2 from individuals within FDA. The majority of these comments endorsed the proposed changes. Many of the comments suggested additional revisions to the GLP regulations or modifications to the proposed changes. A summary of the comments received by FDA during the comment period and the agency's response to them follows.

General

1. One comment urged FDA to initiate training procedures for its field personnel so that the regulated community would obtain maximum benefit from the revisions to the GLP regulations.

FDA agrees that agency field personnel who conduct inspections of nonclinical testing laboratories need to understand the specific requirements of the GLP regulations to follow appropriate inspectional practices and procedures. FDA has, to date, conducted 17 training courses at its National Center for Toxicological Research in Jefferson, AR, to provide training in good laboratory practice and the associated laboratory inspection techniques. FDA intends to continue to provide such training for its personnel.

2. Eight comments urged FDA to encourage the Environmental Protection Agency (EPA) to adopt similar revisions to its good laboratory practice standards. The comments noted that unless EPA amends its good laboratory practice standards to conform them to FDA's GLP regulations, nonclinical laboratories will still be required to comply with EPA's more stringent requirements. Therefore, regardless of any changes that FDA makes in its regulations, laboratories will not benefit from the revisions unless the EPA regulations are similarly revised.

FDA recognizes that certain nonclinical laboratories that are subject to FDA's regulations are also subject to the good laboratory practice standards established by EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135 et seq.) and the Toxic Substances Control Act (15 U.S.C. 2600 et seq.). When this final rule becomes effective, some of the provisions of the GLP regulations will differ from the good laboratory practice standards established by EPA. FDA has consulted with EPA officials respecting the changes to FDA's regulations effected by this final rule and will cooperate fully with EPA when that agency propose to revise its regulations.

Scope

3. Except for editorial changes to § 58.1, FDA did not propose to change the scope of Part 58. One comment, however, urged the agency to revise § 58.1 further to make clear that batch release safety tests performed on specific batches of biological products intended for use in clinical trials after tests to establish the basic safety profile have been conducted are subject to the GLP regulations.

FDA declines to change final § 58.1 on the ground that the studies described by the comment are within the current scope of Part 58. The animal tests performed with an investigational biological product prior to licensing, including the batch release safety tests, are intended to establish the safety of the product. Accordingly, any such test would constitute a nonclinical laboratory study as defined in § 58.3(d). Because such test would also be intended to support a marketing application for a product regulated by FDA, it would be subject to the GLP regulations.

Definitions

4. Four comments endorsed FDA's proposal to change the definition of "control article" in § 58.3(c) to exclude from the definition feed and water administered to control groups of a test system. One comment, however, expressed concern that, by relaxing essential standards, the proposed change would compromise the quality of the animal test.

FDA does not agree that excluding feed and water from the definition of "control article" will compromise test quality. The regulations will continue to contain provisions adequate to control the use of feed and water in a nonclinical laboratory study. For example, § 58.31(e) requires management to assure that materials are available as scheduled, § 58.45 provides for proper feed storage, § 58.81(b)(2) requires the preparation of standard operating procedures for animal care (e.g., nutrition), § 58.90(g) requires periodic analysis of feed and water for interfering contaminants, and final § 58.120(a)(7) (formerly § 58.120(a)(9)) requires the protocol to contain a description or an identification of the diet, including specifications for acceptable levels of contaminants Other sections of the regulations also

apply to feed or water that is used as a carrier for the test or control article. For example, § 58.31(d) requires management to assure that test and control article mixtures have been appropriately tested, § 58.47 requires that a testing facility include storage areas that are adequate to preserve the identity, strength, purity, and stability of such mixtures, and § 58.113 requires the laboratory to conduct appropriate analyses for uniformity of the mixture, as well as concentration and stability of the test article in the mixture. As discussed at length in the preamble to the proposal (49 FR 43531), the amendment to § 58.3(c) will mean that the feed and water provided to the control groups of a test system will not be subject to certain provisions of the regulations, e.g., those requiring control articles to be characterized and tested for stability (§ 58.105), retained as reserve samples (§ 58.195), or accountable with respect to use (§ 58.107). As discussed above, however, the regulations will continue to require the provision of adequate supplies of feed and water, a description of the feed, proper storage, and use accountability procedures as directed by the protocol, and standard operating procedures. Further, only feed and water shown to be free from unacceptable contamination may be used in a study.

For the reasons above, FDA concludes that the change to § 58.3(c) will not compromise the quality of the animal test and that the term "control article" should be reserved for the discrete substances/articles and vehicles other than feed and water administered to groups of the test system to provide a basis of comparison with the test article.

5. Four comments on proposed § 58.3(d) endorsed FDA's proposal to allow laboratories to conduct several experiments using the same test article under a single, comprehensive protocol. One comment, however, expressed concern that by amending the definition of "nonclinical laboratory study," FDA may inadvertently encourage laboratories to establish protocols that (1) are too brief to assure the quality and integrity of safety data developed through a study conducted under the protocol, or (2) do not describe study procedures in sufficient detail for such assurance, because lengthy "umbrella protocols" may be difficult to administer and track during the amendment process.

Under the revised definition in § 58.3(d), a single "umbrella" protocol may be used for concurrent testing of more than one test article using a single common procedure, e.g., mutagenicity testing, or for a battery of studies of one test article conducted in several test systems. Section 58.120 requires that each study have an approved written protocol that clearly indicates the objectives and all methods for the conduct of the study, and § 58.33 requires the study director to assure that the protocol is approved and followed.

FDA notes that the changed definition of "nonclinical laboratory study" does not require any laboratory to establish "umbrella" protocols—it only allows it as an option. The agency recognizes that a longer, more complex protocol might be more difficult to manage than a simpler one; however, using an "umbrella" protocol should be more efficient than using several closely related protocols. The quality or accuracy of test data and procedures should not be compromised, while the paperwork burden should be reduced. In any event, the laboratory remains responsible for assuring that the validity of any study that it conducts is not adversely affected due to an inadequate protocol.

6. One comment urged FDA to revise further the definition of nonclinical laboratory study to define the terms "study initiation" and "study termination."

FDA recognizes that differing words and phrases are used within the GLP regulations to denote dates respecting significant events that occur during a laboratory study. For this reason, the agency agrees that it may be useful to add to the regulations definitions of the terms "study initiation" and "study completion."

FDA advises that the study initiation date represents the date on which the study director has completed plans in preparation for the technical conduct of a study (see § 58.33) and on which, under § 58.31(e), management is required to make certain that personnel, resources, facilities, equipment, materials, and methodologies for the study are available as scheduled. On the study initiation date, the study is entered on the master schedule sheet (see § 58.35(b)(1)). After this date, any protocol changes are to be made only in accordance with the procedure described in § 58.120(b). Accordingly, FDA is adding new § 58.3(o) to define "study initiation" to mean the date the protocol is signed by the study director.

The study completion date is the date on which the study director signs the final report (see final § 58.185(b)). On the study completion date, the study director is required to make certain that raw data, documentation, protocols, specimens, and final reports are transferred to the archives (see § 58.33(f)), and under § 58.35, the quality assurance unit may retire the study from the master schedule sheet. This date also specifies the beginning of the record retention period under § 58.195(b). After the study completion date, final reports may be amended only in accordance with the procedure described in § 58.185(c). Accordingly, FDA is adding new § 58.3(p) to define "study completion" to mean the date the final report is signed by the study director. As a necessary conforming amendment, FDA is also amending § 58.185(b) to provide that the final report shall contain the dated signature of the study director.

FDA advises that the phrase "close of the study" as used in § 58.33(f) refers to the study completion date. Also, the terms "terminate" and "discontinue" as used in § 58.195(b)(3) are used in their ordinary senses to mean stop, cease, break off, or give up, denoting that a study has been ended before the planned study completion date. For these reasons, FDA believes that these terms do not need any further definition to make clear their meanings.

7a. Three comments urged FDA to expand the definition of "raw data" under § 58.3(k) to provide that the computer record of "hand-recorded data entered into the computer verbatim and verified" could be substituted for the original source as raw data.

FDA does not agree that the computer record of hand-recorded data may be considered as raw data. Individuals who enter data from a laboratory study into the computer commonly do not have any knowledge of the conditions under which the data were collected and may not understand the data originator's notations that regularly are included on the hand-recorded data sheets. The probability of error in data entry is greatly increased under these circumstances.

7b. One comment urged the agency to revise § 58.3(k) to make clear that the term "raw data" as it pertains to the findings of the histopathological examinations refers only to the signed and dated final report of the pathologist.

FDA does not agree that it needs to amend the definition of raw data relative to the findings of histopathological examinations. In pertinent part, § 58.3(k) defines raw data as laboratory worksheets, records, memoranda, notes, or exact copies thereof, that are the result of original observations and activities and are necessary for the reconstruction and evaluation of the final report. Although the notes taken by a pathologist during

histopathological examination of slides are indeed the result of original observations, these notes are not necessary for the reconstruction and evaluation of the final report. The final report is evaluated by an analysis of the pathology syndrome as described in the pathologist's report, which is required under § 58.185(a)(12). Further, because § 58.190(a) requires histopathological blocks, tissues, and slides to be retained as specimens, the final report can be reconstructed by verification of the pathology findings by, e.g., a second pathologist or by a team of pathologists.

The pathologist's interim notes, therefore, which are subject to frequent changes as the pathologist refines the diagnosis, are not raw data because they do not contribute to study reconstruction. Accordingly, only the signed and dated final report of the pathologist comprises raw data respecting the histopathological evaluation of tissue specimens.

Testing Facility Management

8. One comment objected to FDA's proposal to delete the provision in § 58.31(b) that requires testing facility management to document as "raw data" the replacement of a study director. The comment argued that it could be difficult to retrieve such documentation if data were transferred to another location after completion of a study.

FDA proposed to delete the requirement in § 58.31(b) to document study director replacement as "raw data" in the agency's belief that other provisions of the GLP regulations adequately require documentation of this event. The agency continues to believe that the requirement in § 58.31(b) is redundant to such other provisions and is not necessary to assure the quality and integrity of the safety data developed through a study conducted by a laboratory. For example, § 58.35(b)(1) provides that the master schedule sheet shall contain the name of the study director. Thus, replacement of the study director would necessitate an updating of the master schedule sheet. The master schedule sheet itself is "raw data" because it is a record that is the result of laboratory activities and is necessary for the reconstruction of the study. Also, § 58.120(b) requires that any change in an approved protocol and the reason or reasons for the change are to be documented. Because § 58.120(a)(11) of the final rule (previously § 58.120(a)(15)) requires that the protocol contain the dated signature of the study director, replacement of the study director would constitute such a change. Other provisions of the regulations require the quality assurance unit to retain the master schedule sheet and copies of protocols as an easily accessible system of records for a specified period after completion of the study (§ 58.195(d)). Therefore, it should not be difficult to identify the term of each study director even if records are transferred elsewhere after study completion.

Study Director

9. Several comments objected to § 58.33 in its entirety on the grounds that (1) the regulation does not clearly define the responsibility of the study director and (2) the wording of the regulation implies that the study director must be technically competent in all areas of a study. One comment argued that the study director should be responsible only for "coordinating" the technical conduct, interpretation, analysis, documentation, and reporting of results.

FDA discussed at length in the preamble to the GLP final rule the intent of § 58.33 and the requirements applicable to the individual who is designated the study director for any study (43 FR 59986, 59995; December 22, 1978). As discussed in that preamble, the study director represents the single, fixed point of responsibility for overall conduct of each study. Although "coordination" of the pieces of a study logically is part of the study director's responsibilities, to limit his or her responsibilities to mere "coordination" would compromise public protection if another person were not such designated fixed point and would add an unnecessary burden if FDA were to require a laboratory to employ an additional person to provide such a point. The study director is charged with the technical conduct of a study, including interpretation, analysis, documentation, and reporting of results. FDA does not intend, however, that the individual is to be technically competent in all areas of a study. FDA's inspectional experiences have demonstrated that if responsibility for proper study conduct is not assigned to one person, a potential exists for the issuance of conflicting instructions and improper protocol implementation.

FDA concludes that the comments did not provide any new data or information to negate the agency's original determinations and that it should retain § 58.33 as it was established in the December 22, 1978, final rule.

10. One comment objected to FDA's proposal to delete the phrase "and verified" from § 58.33(b), which currently requires that the study director assure that all experimental data are "verified" as well as accurately recorded. The comment argued that removing the study director's obligation to assure that the data have been verified would dilute the responsibility of the study director for proper conduct of the study.

FDA has carefully reevaluated its proposal to remove the phrase "and verified" from § 58.33(b). FDA proposed to delete the phrase from the regulation in response to arguments from management of testing facilities that they misinterpreted the provision, apparently believing that it required the study director personally to witness each data observation. FDA did not intend the provision to so require. Rather, the agency regards the study director as responsible for assuring that all experimental data are verified.

Ordinarily the verification required by § 58.33(b) is obtained by the individual collecting the data, using data verification procedures described in the protocol or in the specific standard operating procedure, and by the individual's supervisor as part of the supervisory quality control procedures. "Verified" is used to describe the study director's responsibility to assure the accurate recording of data. Verification in this sense does not require the study director to observe every data collection event but does require the study director to make certain that the study conduct procedures designated in the protocol for a study and the standard operating procedures established for a study are followed. For all these reasons, FDA has decided to retain the phrase "and verified" to confirm the need for data verification in nonclinical laboratory studies.

11. Two comments urged that the study director's responsibility for assuring placement in the archives of the study records specified under § 58.33(f) be transferred to testing facility management under § 58.31. The comments argued that raw data and documentation are under the immediate control of facility management rather than the study director.

The change suggested by the comments would conflict with the study director's responsibility identified in § 58.33 of representing the single point of study control (see paragraph 9 of this preamble). The archived materials of each study, including raw data and documentation, constitute lasting proof of study validity. The transfer of such materials to the archives is a critical step in study control that assures that the archived materials are complete and adequate for study reconstruction. Indeed, these revised regulations further emphasize the study director's control function by defining the study

completion date as the date the final report is signed and dated by the study director; after this date, the study director assures that all required materials are transferred to the archives. Consequently, FDA declines to accept the change proposed by the comments.

Quality Assurance Unit

12. FDA received eight comments regarding § 58.35(a), which sets forth the composition and function of the Quality Assurance Unit (QAU). One comment endorsed FDA's proposal to substitute "which" for the current phrase, "composed of one or more individuals who," to make clear the personnel who can perform quality assurance duties. The comment suggested, however, that the agency use the term "function" or "activity" in § 58.35(a) in place of the current term "unit" to make it clear that quality assurance monitoring need not be performed by individuals of a permanently staffed unit. Four comments disagreed strongly with the proposed change to § 58.35(a), arguing that the change inappropriately implies that assurance of a well-conducted study does not require special training or experience. The comments also asserted that verifiable data are produced as a result of the current requirement for an independent, fixed and permanently staffed quality assurance unit. Other comments argued that individuals should not monitor studies similar to their own work. Some comments requested further clarification of the required composition of the QAU.

FDA does not believe that identification of the quality assurance unit as a "function" or "activity" would serve to clarify the composition or function of the QAU. FDA never has intended that the QAU necessarily has to be a separate entity or a permanently staffed "unit" (see 43 FR 59996). "Quality assurance unit" has become an accepted term to describe those individuals responsible for quality assurance as described in § 58.35. FDA also does not agree that the proposed revision to § 58.35(a) implies that assurance of a well-conducted study does not require special training or experience on the part of individuals monitoring the conduct and reporting of a nonclinical laboratory study. FDA continues to believe that well-qualified and trained personnel are essential to quality assurance under the GLP regulations and that one of management's most important responsibilities in maintaining effective quality assurance is to provide an adequate number of such personnel (§ 58.31 (c) and (e)).

FDA concludes from the comments that the requirements set forth in § 58.35(a) have been misinterpreted in some instances to mean that the regulations require that the QAU be composed of individuals whose sole duties are in quality assurance. In fact, the agency intends only that quality assurance activities be separated from study direction and conduct activities; that is, a trained and qualified person who works on one study can perform quality assurance duties on any study in which he or she is not involved. FDA's reason for requiring separation of quality assurance functions from study conduct functions is fundamental—to assure that quality assurance personnel can act candidly, without bias or a real or perceived conflict of interest. In effecting the separation required by the GLP regulations, FDA was aware that many small laboratories could not afford the operation of a permanently staffed QAU. For this reason, the agency concluded that the separation of functions on a study-by-study basis as permitted in the existing and revised regulations would provide effective quality assurance. The agency's intent in defining the composition and function of the QAU was discussed at length in the preamble to the current GLP regulations (see 43 FR 59996). FDA believes that the change now being made more clearly reflects the agency's original intent.

13. One comment recommended that FDA delete the word "sheet" from the term "master schedule sheet" in § 58.35(b)(1) on the ground that there are methods for maintaining a master schedule other than use of an actual "sheet."

FDA acknowledges that current technology allows for various methods for maintaining a master schedule, ranging from sophisticated computerized procedures to procedures whereby such information is contained in written records. Regardless of the method utilized, however, the master schedule information is "raw data" within the meaning of the GLP regulations and copies of the master schedule are required to be retained in the study archives in accordance with § 58.195(b). The agency is, therefore, retaining the term "master schedule sheet" to emphasize that the master schedule constitutes raw data subject to agency inspection and that the records must be retained.

14. One comment suggested that FDA delete the current provision in § 58.35(b)(1), which requires a laboratory to include the name of the sponsor of each study on the master schedule sheet for all studies conducted at the facility. The comment urged the agency to allow sponsor identification by code.

FDA agrees that including the sponsors' name on the master schedule sheet is not essential either for the conduct of management's functions listed in § 58.31 or for the conduct of proper quality assurance under § 58.35. Sponsor identification by code is an adequate procedure, provided that the name of any sponsor is made available to FDA upon request. Accordingly, FDA is amending § 58.35(b)(1) to read "* * * identity of the sponsor * * *."

15. One comment suggested that FDA further revise § 58.35(b)(1) to allow the master schedule sheet to be indexed by study number rather than test article on the ground that multiple studies may be performed on each test article.

FDA recognizes that a nonclinical laboratory may have in progress several studies on each test article that is listed on the master schedule sheet. The agency concludes, however, that indexing by study number alone and not by test article would be inappropriate. The master schedule sheet is the mechanism through which the QAU can assure management that the facilities are adequate and that there are sufficient numbers of qualified personnel available to accomplish the scheduled work (see 43 FR 59997). In addition, § 58.31(e) requires management to assure that study materials (e.g., test articles) are available as scheduled. The use of study numbers rather than test articles as index terms would, therefore, frustrate a major purpose of the master schedule sheet and impede the conduct of an important management function.

16. Three comments endorsed FDA's proposal to delete the current requirement under § 58.35(b)(1) that the status of the final report be a distinct entry on the master schedule sheet. One comment, however, objected to the proposal on the basis that frequently there are delays in completing the final report, and the study status often is different from the expected date of completion of the report.

FDA believes that the comment that objected to the proposal misconstrued the purpose of revising § 58.35(b)(1). Section 58.35(b)(1) currently requires that the master schedule sheet contain separate headings for the "current status" of the study and for the "status of the final report" of the study. FDA considers the preparation of the final report to be a study event, current status of which should be reflected on the master schedule sheet. Preparation of the final report is similar to other study

events (e.g., test article-mixture preparation, test system dosing, in life observations) that are listed under "current status." Under this revision to § 58.35(b)(1), the master schedule sheet would contain the same information respecting the final report as is required under the current GLP regulations, but the information would be included only under the "current status" heading. The agency advises that "expected date of completion of a final report" is not a "status" entry. Such information has not been required in the past nor is this information being required now.

17. FDA proposed to revise § 58.35(b)(3) to provide specifically that the QAU need only inspect "each nonclinical laboratory study" on a schedule adequate to assure the integrity of the study. Four comments recommended that the agency further revise the regulation to substitute the word "studies" for the phrase "each nonclinical laboratory study" alleging that inspection of multiple short duration studies can result in expenditure of significant time and effort with little derived benefit. Two comments argued that inspection of short duration studies conducted repeatedly at the same facility by the same personnel is not necessary and suggested that, in lieu of requiring inspection of each study, standard operating procedures be developed to determine the inspection frequency of various types of studies. These comments also recommended that such inspections be used to demonstrate compliance of other similar studies conducted in the same time frame.

FDA does not agree with the comments. The quality of each nonclinical laboratory study submitted to the agency in support of an application for a research or marketing permit for a product regulated by FDA is critical to a determination of the safety of the product. The principle of quality assurance advanced in the GLP regulations is to inspect studies to identify and correct problems in a timely fashion. FDA is convinced that such problems can be detected only through a program of vigorous inspection of each study. This does not mean, however, that every phase of every study needs to be inspected by the QAU (see paragraph 18 of this preamble).

18. Two comments disagreed with FDA's proposal to modify the current requirement in § 58.35(b)(3) that the QAU inspect each phase of a study at specified intervals. The comments argued that elimination of specified quality assurance inspection intervals may result in decreased compliance by cost-cutting laboratories. Another comment urged FDA to identify the critical phases of a nonclinical laboratory study to be inspected by the QAU.

Section 58.35(b)(3) currently provides that the QAU is to inspect at periodic intervals each phase of a nonclinical laboratory study. For studies lasting more than 6 months, the inspections are to be conducted every 3 months. For studies lasting less than 6 months, the inspections are to be conducted at intervals adequate to assure the integrity of the study (including each phase at least once). The term "each phase" was intended to emphasize the need for repeated surveillance so that the QAU observes at least once during the course of the study each critical operation. The term "periodic" was included in the regulation to indicate the need for more than one inspection of certain repetitive, continuing operations. In light of current information, however, FDA does not believe that such a rigid schedule is essential to assure study quality. The agency has learned through its inspection program that the quality of toxicology testing is much higher than that envisioned in 1976 when FDA proposed to establish the GLP regulations (see 41 FR 51206, 51207–51208; November 19, 1976).

Contemporary concepts of quality assurance emphasize the effectiveness of thorough, in-depth inspections of study processes (i.e., all operations required to accomplish a study phase) in place of quick, spot checks of individual operations with a study. Thorough examination of personnel, facilities, equipment, standard operating procedures, data collection procedures, raw data books, and other features associated with a study phase can achieve more effective quality assurance than does a more superficial observation of the conduct of the same study phase in a series of studies.

The agency has concluded that the QAU's inspection schedule should take into account the need for inspection of each study on a schedule adequate to assure the integrity of the study being monitored. The change in § 58.35(b)(3) permits the QAU to exercise reasonable flexibility and judgment so that inspections can be scheduled to best achieve the goal of assuring that studies are properly conducted. The agency advises, however, that each study, no matter how short, needs to be inspected in-process at least once. Further, across a series of studies all phases should be inspected in order to assure the integrity of the studies. For these reasons, FDA does not believe that the regulation as revised will result in decreased compliance with the GLP regulations or that the term "critical phase" needs to be defined.

19. Eight comments addressed FDA's proposal to delete § 58.35(b)(4), which currently requires the QAU to submit periodic written status reports to management and to the study director. One of the comments supported the proposal on the basis that the provisions of § 58.35(b)(3), which require reports to management on problems likely to affect study integrity, are adequate to assure study quality. Several comments questioned whether deleting § 58.35(b)(4) would provide any practical benefit to testing facilities, noting that management is likely to continue to expect periodic reports. One comment noted that elimination of the requirement for status reports could allow management to disregard quality assurance problems if management is only marginally supportive of good laboratory practice and quality assurance. Three comments argued that, by deleting the provision, FDA would inappropriately place on the QAU rather than on the study director the obligation of determining what constitutes a problem likely to affect the integrity of a study. One comment argued that, because management is required to be involved in corrective actions under the provisions of §§ 58.31(g) and 58.35(b)(3), management must be kept informed respecting the status and the progress of any study inspected by the QAU. Another comment suggested that FDA delete the requirement that status reports be provided to the study director but retain the requirement that management receive such reports.

After careful consideration of these comments, FDA has concluded that § 58.35(b)(4) should be retained in its current form. The agency proposed to delete the paragraph based on its tentative conclusion that routine reports of unremarkable findings by the QAU are not essential to study quality. The comments, however, are persuasive in that such reports are necessary to demonstrate to management that the QAU is functioning properly. It is also necessary that the study director continue to receive such reports because that individual is responsible for all aspects of any study being conducted by a facility, including GLP compliance.

20. One comment suggested that, in lieu of deleting the entire paragraph, § 58.35(b)(4) be modified by removing the requirement for status reports on each study, thereby reducing paperwork.

In accord with the conclusions stated in paragraph 19 of this preamble, FDA

believes that it is inappropriate to eliminate the requirement for status reports for each study. Without status reports on each study, there would not be adequate assurances concerning the quality of the ongoing studies.

21. One comment urged FDA to revise current § 58.35(b)(5) to hold the QAU responsible only to (1) determine that known deviations from approved protocols or standard operating procedures were not made without proper documentation, and (2) require authorization for anticipated deviations. The comment argued that the current wording of the regulation implies that the QAU shall have prior knowledge of any deviations and shall approve such deviations, which is not the case in most instances.

FDA would not consider a laboratory to have violated § 58.35(b)(5) if a deviation was not authorized in advance because it was unanticipated. For example, as recognized in the preamble to the final rule (43 FR 59998), a fire in the facility would necessitate immediate action. Also, as discussed at length at 43 FR 59998, FDA does not intend that the QAU is responsible for authorizing any deviations from the protocol or standard operating procedures, rather it is responsible for detecting any such deviations by its inspection and audit procedures. The revision suggested by the comment would remove the accountability of the QAU for detecting deviations and would undermine the requirements for quality assurance.

22. FDA proposed to revise current § 58.35(b)(7) to provide that the statement which the QAU prepares to accompany the final report would be required to identify the phases of the study inspected and the number of inspections conducted. Eleven comments objected to the proposed change to the regulation, which currently requires only that the statement by the QAU specify the dates that inspections of the study were made and the dates that findings were reported to management and to the study director. Most of the comments were concerned with the additional reporting burden imposed by the proposed revision. Some of the comments argued that the information sought by FDA through the proposed revision in § 58.35(b)(7) is currently required under the provisions of § 58.35 (b)(3) and (c). These comments pointed out that requiring additional documentation would be duplicative and contrary to the stated purposes of the proposed revisions to the GLP regulations.

FDA has carefully reevaluated its proposal to require that the QAU statement identify the phases of a study inspected and the number of inspections conducted. The agency is persuaded that the proposal would have provided information redundant to that which is available under other provisions of the GLP regulations. Accordingly, FDA has decided not to change § 58.35(b)(7) and is retaining this provision in its current form. Proposed § 58.35(b)(6) (as § 58.35(b)(7) would have been renumbered) is not being adopted.

Animal Care Facilities

23. One comment objected to the proposed modification to § 58.43(c), which would delete the current requirement that all laboratory facilities include separate areas for the diagnosis, treatment, and control of laboratory animal diseases. The comment noted that animal health is a major problem in toxicology testing. For this reason, the comment argued that any relaxation of the current requirements in the GLP regulations for animal care is ill-advised and contradictory to FDA's responsibility for the welfare of animals.

As discussed in the preamble to the proposed amendments to the GLP regulations (49 FR 43532), a laboratory may elect to dispose of diseased animals, thereby obviating the need for dedicated areas for such animals. FDA believes that it is not cost-effective to require separate areas in every case and has concluded that the decision concerning appropriate separation of animals should be made by the study director in consultation with other scientific personnel. The agency does not believe that providing for dedicated laboratory areas as appropriate compromises FDA's continuing commitment to animal welfare, which is specifically dealt with in § 58.90. Indeed, FDA believes that the GLP regulations foster quality animal testing under defined conditions so that fewer animals are required to establish product safety.

Animal Supply Facilities

24. FDA proposed to revise § 58.45 to permit laboratories to store perishable supplies or feed by methods most appropriate to the characteristics of the materials. One comment urged FDA to amend § 58.45 further to permit storage of animal feed in rooms housing small animals or small groups of animals that are isolated from other studies.

FDA declines to amend § 58.45 as recommended by the comment. In developing the current GLP regulations, the agency carefully considered whether animal feed or bedding might be stored within any test areas. FDA concluded at that time that storage areas needed for feed and bedding should be separate from the areas housing the test system to preclude mixups and contamination of test article-carrier mixtures and inadvertent exposure of the test system to potentially interfering contaminants. FDA continues to believe that separate storage areas for feed and animal bedding should be required and the comment did not provide any data to counter this belief. FDA advises, however, that § 58.45 does not preclude holding of limited quantities of test or control article-feed mixtures for short periods of time in properly constructed and labeled containers in the animal rooms.

25. One comment objected to the proposed changes to § 58.47, arguing that it believed the current requirements respecting facilities for handling test and control articles have resulted in fewer mixups.

Based on the comment, FDA has reconsidered the proposed revision of § 58.47. The agency agrees with the comment, in principle. Indeed, the agency intended the revision to be only editorial to simplify and to make clear that laboratories shall provide separate areas for receipt, mixing, and storage of test and control articles and their mixtures as necessary to prevent contamination or mixups. Inadvertently, however, the proposed revision would have deleted an essential requirement of good laboratory practice, i.e., the need to provide storage areas for test and control article mixtures adequate to preserve the identity, strength, purity, and stability of the mixtures. For this reason, the agency has concluded that the regulation is appropriate as currently stated and existing § 58.47 is retained.

Maintenance and Calibration of Equipment

26. FDA proposed to revise § 58.63(b) to provide that written standard operating procedures respecting maintenance and calibration of equipment would allow laboratories to discard faulty equipment as an alternative to the current provisions of § 58.63(b), which provide only for the repair of equipment that fails or malfunctions. Under FDA's proposal, a testing facility would need to specify remedial action in the event of equipment failure or malfunction only when remedial action is "appropriate" to the particular piece of equipment. Three comments recommended that FDA amend § 58.63(a) to require testing, calibration, and/or standardization of equipment in accord with written standard operating procedures. The comments argued that by changing

current § 58.63(a) in this fashion, FDA might delete § 58.63(b) in its entirety without substantively affecting the requirements of the GLP regulations applicable to laboratory equipment.

FDA advises that § 58.63(b) concerns not only setting forth in standard operating procedures the details of routine inspection, cleaning, maintenance, testing, calibration, and/or standardization of equipment, but it also concerns describing remedial actions to be taken when appropriate if the equipment fails or malfunctions. In promulgating existing § 58.63(b), FDA concluded that the specific features set forth in the regulations need to be included in equipment standard operating procedures because of the crucial role that properly used equipment plays in study conduct; a role which pervades every phase of a study and is vital to study quality and final report integrity. The comments did not provide any data that negate FDA's original determination. The agency continues to believe that specification of these features provides useful guidance to persons subject to the GLP regulations and concludes, therefore, that it would be inappropriate to delete § 58.63(b) from the regulations.

27. Section 58.63(b) requires in part that written standard operating procedures designate the person responsible for certain operations respecting equipment, i.e., routine inspection, cleaning, maintenance, testing, calibration, and/or standardization. Although FDA did not propose to revise these requirements of § 58.63(b), three comments stated that by requiring that standard operating procedures designate an individual responsible for performing each operation, FDA obligates testing facilities to change their standard operating procedures frequently. The comments further argued that the requirement to make a copy of the standard operating procedures available to laboratory personnel is redundant to the requirements set forth in § 58.81(c) and should be deleted.

The comments misconstrue the meaning of the word "person" as it is used in § 58.63(b). The second sentence of § 58.63(b) requires, in pertinent part, that "the written standard operating procedures shall designate the person responsible for the performance of each operation * * *." As explained in paragraph 120 of the preamble to the final rule (43 FR 60001), FDA adopted the term "person" as defined in § 58.3(h) rather than the originally proposed term "individual" to allow the standard operating procedures to designate an organizational unit.

The agency agrees with the comment that § 58.63(b) is redundant to § 58.81(c) insofar as it provides for standard operating procedure availability. Accordingly, FDA is removing the phrase "and copies of the standard operating procedures shall be made available to laboratory personnel" from § 58.63(b).

28. Section 58.63(c) requires that a testing facility maintain written records of all equipment inspection, maintenance, testing, calibration, and/or standardizing operations. Two comments recommended that FDA delete § 58.63(c) in its entirety, arguing that if management is satisfied that the standard operating procedures are adequate, further requirements are unnecessary.

FDA does not agree with the comments. FDA carefully considered the necessity for maintaining the records specified in § 58.63(b) when the agency developed the current GLP regulations. FDA concluded that such records are necessary to reconstruct a study and to ensure the validity and integrity of the data that are obtained from a study (see paragraph 26 of this preamble and 43 FR 60001). The purpose of the record retention requirement is to provide documentation throughout the study of equipment function in accord with design specifications for the equipment, and equipment use in accord with standard operating procedures for maintenance and calibration of the equipment. FDA'S experience in administering the GLP regulations has shown the benefit of maintaining such records. For example, through FDA's laboratory inspection program, the agency has been able to identify the precise period of time of equipment malfunction by an examination of the equipment records. Thus, § 58.63(c) has made it possible to disregard the data collected by a single defective piece of equipment without having to disregard all the data obtained from a specific study.

Standard Operating Procedures

29. Two comments on the requirements for standard operating procedures suggested that § 58.81(a) be amended to permit appropriate supervisory personnel to authorize deviations from the written standard operating procedures, arguing that the study director may not have the technical expertise to evaluate such deviations. One of the comments further argued for the change on the ground that the principles of good laboratory practice established by the Organization for Economic Cooperation and Development of the World Health Organization do not require study director approval of all standard operating procedure deviations.

FDA does not accept the suggestion. As discussed in paragraph 9 of this preamble, it is not necessary for the study director to be technically competent in all aspects of a study to assure that appropriate action is taken in response to any circumstances that may affect the quality and integrity of a study. The study director, however, has to be aware of and authorize any deviations that could have an impact on the study. FDA does not agree that the responsibility of the study director, as set forth in § 58.81(a), is inconsistent with the Organization for Economic Cooperation and Development principles of GLP. Chapter 2, section 2.3 (Ref. 1, p. 27) of the Organization for Economic Cooperation and Development document defines the responsibilities of the study director, in part, as "ensur[ing] that the procedures specified in the study plan are followed, and that authorization for any modification is obtained and documented together with the reasons for them * * *." Accordingly, both the GLP regulations and the Organization for Economic Cooperation and Development principles of GLP require that the study director make certain that specified procedures are followed and that all modifications to the procedures in the approved study plan (i.e., standard operating procedures) are documented and approved.

30. One comment recommended that FDA amend § 58.81(b) to delete all examples of standard operating procedures that FDA requires a testing facility to establish on the ground that the list is not all-inclusive and may lead to misinterpretation.

FDA disagrees with the recommendation. The examples listed in § 58.81(b) are those minimal laboratory procedures which the agency believes are essential to assuring the quality and integrity of the data generated in the course of any study (see 41 FR 51213). FDA recognizes that circumstances may necessitate establishment of additional standard operating procedures. The list is not intended to be all-inclusive and should not be interpreted as such.

31. Three comments objected to the proposed deletion of examples of laboratory manuals and standard operating procedures required to be in the laboratory under § 58.81(c). The comments argued that the listing of examples serves to spell out the agency's intent, helps laboratories

decide which areas to cover, and that without such guidance a potential exists for misinterpretation of FDA's intent.

FDA does not agree. Section 58.81(c) requires that each laboratory area have immediately available standard operating procedures relative to the laboratory procedures being performed. Unlike the list in § 58.81(b), which represents specific minimal requirements, the examples listed in § 58.81(c) encompass very broad areas. Each of the areas presented would require the preparation of a group of standard operating procedures to cover adequately the operations within that area. Consequently, the agency concludes that the list in § 58.81(c) is too broad to serve as useful guidance.

Reagents and Solutions

32. FDA received five comments that recommended that the agency amend § 58.83. Four comments stated that only those reagents and solutions used in the conduct of nonclinical laboratory studies need to be labeled in accord with the requirements of § 58.83, i.e., "to indicate identity, titer or concentration, storage requirements, and expiration date" of the material. These comments argued that such a modification would allow the laboratory flexibility in designing the most suitable system to assure that deteriorated or outdated reagents and solutions are not used. The fifth comment recommended that FDA insert into the first sentence of § 58.83 the phrase "as appropriate" to make the provision read "all reagents and solutions in the laboratory areas shall be labeled to indicate identity, titer or concentration, storage requirements, and, as appropriate, expiration date." This comment argued that it was not necessary to have expiration dates on certain stable reagents and solutions such as water and saline.

FDA declines to amend § 58.83. The agency continues to believe, as discussed in paragraph 148 of the preamble to the final rule (43 FR 60003), that all reagents and solutions maintained in the laboratory area for use in the conduct of nonclinical laboratory studies should be labeled as required by § 58.83. Accordingly, the label should include the identity, titer or concentration, storage requirements, and expiration date. This label information is the minimum information necessary to make clear to the laboratory personnel that the reagents and solutions are suitable for use in the procedures specified in the protocol and to protect against inadvertent mixups of reagents and solutions that are used in nonclinical laboratory studies with those that are not intended for such use. Further, FDA disagrees with the comment that suggested that expiration dating is not necessary for some reagents and solutions. FDA believes that expiration dates should be required on all reagents and solutions, without regard to their stability so that there is no doubt about the suitability of the materials for use in nonclinical laboratory studies.

Animal Care

33. One comment recommended that FDA delete § 58.90(a) on the basis that requiring standard operating procedures for housing, feeding, handling, and care of animals is redundant to other provisions of the GLP regulations.

FDA recognizes that § 58.81(b)(2) requires testing facilities to establish standard operating procedures for animal care. Section 58.90(a), however, expressly specifies that standard operating procedures shall also cover animal housing, feeding, and handling. The agency believes that these items are essential features for providing adequate humane treatment of animals and, therefore, is retaining § 58.90(a).

34. Two comments objected to the proposed amendment of the requirements under §§ 58.90 (b) and (c) to provide that animals may be isolated rather than quarantined. The comments argued that allowing laboratories to develop isolation and health status evaluation procedures in lieu of quarantine may not provide adequate assurance of test animal health because such evaluations are done only on a small randomly selected number of animals and are not as reliable as an adequate quarantine period. One comment suggested that the term "segregated" or the term "separated" may more accurately reflect FDA's intent in amending §§ 58.90 (b) and (c) than does the term "isolated."

As discussed in the preamble to the proposed amendments (49 FR 43533), substitution of a requirement for isolation and health status evaluations in lieu of quarantine of newly received animals will permit laboratories to develop specific isolation and health status evaluation procedures in concert with the age, species, and class of animals, and with the type of study to be done. As used in current § 58.90(b), the term "quarantine" connotes a rigid set of prestudy procedures which a facility is obligated to follow, including a mandatory holding period, specified diagnostic procedures, and the use of specialized facilities and animal care practices. The agency has concluded that isolation and health status evaluations should provide adequate precautions against entry of unhealthy animals into a study. Health status evaluations may be performed during the prestudy acclimation period. Under § 58.90(b), the health status of each animal is to be evaluated soon after receipt. Section 58.90(c) prohibits the entry of any diseased animal into the study.

The agency has also concluded that a devoted area equipped to provide isolation of diseased animals is not necessary in all cases. As discussed in the preamble to the proposal (49 FR 43533), FDA believes that it should allow certain options for handling diseased animals, thereby permitting increased flexibility in laboratory operation. FDA agrees that the term "segregate" or the term "separate" rather than the term "isolate" could be used in as much as each term connotes "to set apart." Because "isolate" is a term commonly used and understood in contemporary veterinary medical practice, however, FDA will continue to use that term in these regulations.

35. One comment recommended that FDA amend § 58.90(d) to permit procedural means to provide "appropriate identification" of individual animals in a study.

FDA does not accept the recommendation. The agency notes that proper animal identification throughout a study is essential to study integrity. When animals are housed individually in cages, procedural means can be used to identify each individual animal, i.e., a cage card may be used if it provides all the information necessary to identify the animal specifically, and the animal handling standard operating procedures specify detailed procedures for preventing animal mixups. The agency is not aware, however, of any procedural means that could be used to identify adequately individual animals that are housed within a group in a cage. FDA advises that § 58.90(d) does not preclude identification by means other than the examples enumerated in that section provided that individual identification can be maintained and documented throughout a study.

Test and Control Article Characterization

36. One comment urged the agency to delete the requirement in § 58.105(b) for stability determination of test and control articles before initiation of the study. The comment argued that changing § 58.105(b) as recommended would make it consistent with FDA's proposed changes to § 58.105(a), which would allow test and control article characterization after completion of the study.

FDA disagrees with the recommendation. As discussed in the preamble to the proposal (49 FR 43533), FDA has concluded that characterization of test and control articles need not be performed until initial toxicology studies with the test article show reasonable promise of the article's reaching the marketplace. In arriving at this conclusion, the agency considered that prior knowledge of the precise molecular structure of a test article is not vital to the conduct of a valid toxicology test. It is important, however, to know the strength, purity, and stability of a test or control article that is used in a nonclinical laboratory study.

A stability determination of a test or control article conducted after completion of the nonclinical laboratory test with the article does not provide any information about the continued strength of either the test or control article previously given to the test system. Determining that the test and control articles are stable for the duration of the study is fundamental to interpreting the results of the study. For this reason, it would be inappropriate to allow for stability determinations only after-the-fact.

The agency does believe, however, that the continued strength of the test or control article may adequately be determined either by stability testing before initiation of the study or through appropriate periodic analysis of each batch. Section 58.105(b) currently allows stability testing of the test and control articles through periodic analysis only if it is not possible to determine their stability before study initiation. Because experience has shown that it is adequate either to determine stability of the test and control articles before initiation of a study or by periodic analysis of the articles while the study is in progress, the agency on its own initiative is revising § 58.105(b) to provide facilities and sponsors the flexibility to use either approach. Therefore, § 58.105(b) has been revised to provide for determination of the stability of the test or control article either before study initiation or through periodic analysis of each batch according to established standard operating procedures.

37. One comment observed that § 58.105(a) provides that testing facilities may rely on the labeling of marketed products for purposes of characterizing such products used as control articles in a study. The comment recommended that the agency also revise § 58.105(b) to allow product labeling to serve as documentation of stability for marketed products used as control articles.

FDA declines to adopt this recommendation. The only stability information typically included on the labeling of marketed products is the expiration date. The manufacturer's expiration dating on a marketed product is not adequately precise to provide data on the strength of the control article used throughout a nonclinical laboratory study. Lacking precise stability information respecting the control article could raise doubts concerning whether the test and control articles are comparable. Furthermore, mixing the marketed product with a carrier or use of the product in a manner not in accord with its labeling could alter the stability characteristics of the product. For these reasons, FDA concludes that determination of the stability in accordance with the procedures in § 58.105(b) still is appropriate for any products used as control articles.

38. Several comments recommended that FDA revise § 58.105(c) to remove the current requirement that storage containers be assigned to a test article for the duration of a nonclinical laboratory study. The comments argued that the requirement is unnecessary and is inconsistent with the Organization for Economic Cooperation and Development principles of GLP. One comment alleged that the statement is vague and questioned whether the provision would permit a storage container that a laboratory emptied during the conduct of, but before completion of, a study to be destroyed or reused. The same comment also questioned whether, as the test article is depleted during the conduct of a study, the provision would permit a laboratory to transfer the test article into a container smaller than that originally assigned to the article.

FDA does not believe that it would be appropriate to eliminate the storage container provision in § 58.105(c). FDA advises that the provision simply requires that each test article storage container be assigned to a test article at the beginning of a study and remain so assigned until the study is completed, terminated, or discontinued. The test article may not be transferred to different sized storage containers as a study progresses, nor may assigned storage containers be destroyed while a study is in progress.

The agency recognizes that it may be inconvenient for laboratories, especially small laboratories, to devote space to a test article container which is emptied before a study is completely terminated, or discontinued, or which might be replaced by progressively smaller containers while a study is in progress. Destroying or reusing or otherwise substituting for originally assigned, identified test article storage containers, however, could adversely affect the integrity of the study. FDA established the current provision because the agency observed a lack of accountability for test materials, ostensibly due to the very acts proscribed by the regulation, i.e., transfer of test articles to different sized containers and destruction of empty containers during the progress of nonclinical laboratory studies.

FDA continues to believe that the requirement concerning assignment of storage containers is necessary to ensure the integrity of a study. For example, the mere act of transferring a test article from one storage container to another introduces the opportunity for contamination of the test article by other laboratory materials or for mix-ups with other laboratory materials. In addition, during a transfer the test article would be exposed to air-borne contaminants as well as to moisture, either of which may compromise the integrity of the test article.

FDA also believes that requiring that containers be assigned to a test article for the duration of a study is fully consistent with the Organization for Economic Cooperation and Development principles of GLP. Chapter 2, section 2.3 (Ref. 1, p. 31) of the Organization for Economic Cooperation and Development document states that "storage container(s) should carry identification information, earliest expiration date, and specific storage instructions." Although the Organization for Economic Cooperation and Development document does not further characterize storage instructions that the Organization for Economic Cooperation and Development would recommend be included on containers, FDA concludes that its regulation identifies a "specific" storage instruction that is necessary to assure the integrity of the test article.

Mixtures of Articles with Carriers

39. Two comments argued that the requirements in § 58.113(a) to determine the uniformity, concentration, and stability of test and control articles in mixtures is unnecessarily burdensome for short-term studies. One comment stated that such tests are not necessary for test articles that are prepared and dispensed on the same day as used in single-dose acute toxicity tests. The comments suggested that the agency

revise § 58.113(a) to require that tests of mixtures of test and control articles need be conducted only "for studies other than short-term."

Section 58.113(a) requires, for all test or control articles mixed with a carrier, a determination of the uniformity of the mixture and a periodic analysis of the concentration of the test or control article in the mixture. In addition, § 58.113(a)(2), as amended, requires a determination of the stability of the test or control article in the mixture adequate to support time of use. Each of these analyses is necessary to assure that the test system is exposed to the test or to the control article in the amounts specifically designated in the protocol for a study. Determination of the uniformity of a mixture assures that each member of the test system receives the intended dose of test or control article. Periodic analysis of the concentration of the test or control article serves as a spot check to assure that the test or control article mixture has been prepared properly and in accord with the protocol and with applicable standard operating procedures. Determining the stability of the test or control article in the mixture helps to determine the period of time during which the test or control article mixture may be suitable for administration to the test system. FDA believes that knowledge of the dose of test or control article used in any test is essential for the proper evaluation of the results of that test. For these reasons, FDA has concluded that the requirements of § 58.113(a) should continue to apply to short-term tests as well as to studies other than short term.

As discussed in paragraph 36 of this preamble, however, FDA has decided to allow facilities and sponsors the flexibility to determine the stability of test and control articles either before study initiation or through periodic analysis of each batch according to established standard operating procedures. The agency believes that it is appropriate to allow similar flexibility with respect to determining the stability of mixtures of articles with carriers. For this reason, on its own initiative, FDA has revised § 58.113(a)(2) to allow determination of the stability of test and control articles in the mixture either before study initiation or through periodic analysis of the mixture according to established standard operating procedures.

40. One comment recommended that FDA delete § 58.113(a)(1), alleging that periodic determinations of the test or control article in mixtures is routine and provisions respecting such determination would more appropriately be included in § 58.35(b)(3).

The comment miscontrues the function of the QAU (see especially paragraphs 12 and 18 of this preamble). Current § 58.35(b)(3), as well as § 58.35(b)(3) as revised by this final rule assigns responsibility for periodic inspection of laboratory operations to the QAU. The QAU does not, indeed, under § 58.35(a), the QAU may not conduct any portion of a study. Rather, it is responsible for assuring that a study is conducted according to the protocol, the standard operating procedures, and the GLP regulations.

Protocol

41. A comment urged the agency to delete the provision in current § 58.120(a)(14) (final § 58.120(a)(10)) that requires that the protocol for each study identify the records for the study to be maintained. The comment argued that the requirement in renumbered § 58.120(a)(10) is redundant to the same requirements in §§ 58.33(f), 58.190(a), and 58.195(b).

FDA recognizes that §§ 58.33(f), 58.190(a), and 58.195(b) address records that the GLP regulations require a testing facility to retain in all events. As the authorized master plan for a study, however, the protocol should identify all records of the study to be maintained by the testing facility to inform all study participants fully of recordkeeping obligations. The agency believes that inclusion of this information in the protocol is essential to ensure adequate documentation of the conduct of the study.

For these reasons, FDA declines to remove § 58.120(a)(10) from the GLP regulations.

42. One comment recommended that FDA delete the provision in current § 58.120(a)(16) (final § 58.120(a)(12)) that requires that the protocol for each study include a statement of the proposed statistical methods to be used in the study. The comment argued that a determination of the statistical methods used to evaluate data can, in many cases, be made only after data have been reviewed.

FDA recognizes that circumstances occasionally require a testing facility to modify the proposed statistical methods for analysis of the data in a given study. Good scientific practice, however, requires consideration of the statistical analysis of a study as part of the design of the study to assess whether the objectives of the study can be met. FDA concludes that the requirement is appropriate.

Conduct of a Nonclinical Laboratory Study

43. Section 58.130(c) provides that materials derived from a test system for examination or analysis (specimens) are to be identified by test system, study, nature, and the date of collection, and requires that such identification is to be located on the specimen container or is to accompany the specimen in a manner that precludes error in the recording and storage of data. Five comments argued that the requirements under § 58.130(c) for specimen identification are overly restrictive and suggested that management should be responsible for determining methods for identifying specimens.

The identification requirements specified in § 58.130(c) are designed to preclude error during the conduct of a nonclinical laboratory study. FDA has reviewed the requirements and has concluded that the identifying information specified in the regulation is the minimum information needed to distinguish each specimen from all others that have been collected in the facility thereby protecting against mixups and permitting orderly storage of specimens. Such information also shows whether the data collected on each specimen are assigned to the correct component of the test system.

FDA has always provided flexibility in the methods to be used for identifying the specimens in that the identifying information can be encoded through, for example, the use of accession numbers affixed to the specimen with the numbers decoded in accompanying information (see, e.g., paragraph 205 of the preamble to the final rule (43 FR 60008)). The agency believes that the requirements with respect to specimen identification are the minimum requirements necessary to prevent mixup of specimens or lost specimen identity.

44. Two comments disagreed with FDA's proposal to revise § 58.130(d), which currently requires that records of gross findings for a specimen from postmortem (necropsy) observations shall, in all cases, be provided to a pathologist during study of the specimen. The proposed revision provides only that such records "should" be made available to the pathologist. Four comments supported the proposed change on the ground that the resulting flexibility allows "blinding" of the pathologist. One comment suggested that § 58.130(d) be deleted in its entirety or, alternatively, modified by specifying that the records

are to be provided to the pathologist "if required by the protocol."

FDA established § 58.130(d) in the belief that the provision would increase the pathologist's ability to describe correctly microscopic findings and to relate such findings properly with the gross postmortem observations (41 FR 51214). FDA continues to believe that for most studies it is important for the pathologist to have available the records of gross findings when examining a specimen histopathologically. The agency recognizes, however, that for certain nonclinical laboratory studies it may be appropriate for pathologists to evaluate the histopathological specimens without being informed of the necropsy findings. The change made in the regulation will permit the study director, in concert with management, to determine the need for "blinding" in relation to the specific objectives of the study.

FDA advises that it continues to believe that for most studies it is a preferred practice not to use "blinding" in histopathological evaluation. For this reason, the agency is not deleting § 58.130(d) as suggested by one comment. The alternative phrase "if required by the protocol" suggested by the comment would serve the same purpose as the modification proposed by the agency. Therefore, the agency is adopting § 58.130(d) as proposed.

45. One comment on § 58.130(e) requested that FDA clarify the meaning of the term "automated data collection systems," stating that it is unclear whether § 58.130(e) applies to tabulation of source data from "hard" copy by automated systems.

As discussed in paragraph 7a. of this preamble, hand-recorded data collected during a study are "raw data." The subsequent entry of these hand-recorded data into a computer system, for example, by data processing clerks or through the use of optical readers, does not alter the status of the hand-recorded data as "raw data." The processing of these data by the computer, e.g., tabulation, is not "direct data input" and is, therefore, not encompassed by the requirements of § 58.130(e).

Reporting of Nonclinical Laboratory Study Results

46. Section 58.185(a) requires that a final report be prepared for each nonclinical laboratory study conducted and specifies the minimum information that shall be included in a final report. One comment urged that § 58.185(a) should be modified to require final reports to include the specified information only "where appropriate" to make the requirements respecting final reports consistent with FDA's proposal to change § 58.120(a) respecting protocols. Alternatively, the comment urged that, at the least, § 58.185(a)(8), which requires that any final report shall include a description of the dosage, dosage regimen, route of administration, and duration, should be so modified. The comment argued that some of the information required under this paragraph is not applicable to certain studies involving medical devices.

FDA proposed to change § 58.120(a) in recognition of the fact that certain of the enumerated items are not necessary for the protocols for all studies. FDA has carefully reviewed each of the items listed in § 58.185(a) and has concluded that the information required by this section to be included in a final report for a nonclinical laboratory study is necessary to evaluate any such study. FDA notes that § 58.185 currently allows certain appropriate flexibilities where specified information is determined by the laboratory not to be relevant to a study. For example, § 58.185(a)(4) provides that test and control articles may be identified by "other appropriate characteristics" and § 58.185(a)(7) includes the term "where applicable." The agency believes that the information required by § 58.185(a)(8) is applicable to studies involving medical devices. For example, "dosage" and "dosage regimen" for devices may be expressed in units used per animal at a designated frequency of use. "Route of administration" may describe the means by which the device is used in relation to the animal. "Duration" would pertain to the period of time the device was tested in the animal. These clarifications should permit nonclinical laboratory studies on medical devices to be reported properly.

47. Section 58.185(a)(10) requires that each final report of a nonclinical laboratory study include the name of the study director, the names of other scientists or professionals, and the names of all supervisory personnel involved in the study. One comment recommended that FDA revise § 58.185(a)(10) to require identification only of the study director and of the principal scientists involved in the study.

FDA disagrees with this suggestion. Supervisors play an important role in the data collection process. They supervise those who perform the procedures, may recommend or actually provide training, and assure that data collection is carried out in accordance with the protocol, the standard operating procedures, and the GLP regulations. The names of all scientists, professionals, and supervisors are needed to assure the accountability of all of those individuals responsible for the integrity of the study. The comment did not provide any data or information to support its recommendation to revise § 58.185(a)(10) and the agency concludes that it should retain the current requirement.

48a. Section 58.185(a)(12) requires that the final report of a nonclinical laboratory study include the signed and dated reports of each of the individual scientists or other professionals who were involved in the study. Two comments recommended that FDA revise § 58.185(a)(12) to allow for combined reports signed by the principal scientists. According to the comments, allowing for such combined reports would be consistent with the Organization for Economic Cooperation and Development principles of GLP.

The agency does not believe that a combined report from scientists of different disciplines would be appropriate. Each individual scientist involved in a study has to be accountable for reporting data, information, and views within his or her designated area of responsibility. Reports which combine the data, information, and views of more than one such person would obscure the individual's accountability for accurate reporting. Furthermore, FDA believes that the comment has misinterpreted the standard that the Organization for Economic Cooperation and Development established respecting reports of persons involved in a nonclinical laboratory study. Chapter 2, section 2.3 (Ref. 1, p. 36) of the Organization for Economic Cooperation and Development document provides that "if reports of principal scientists from co-operating disciplines are included in the final report, they should sign and date them." It provides further that the final report should contain the "names of other principal personnel having contributed reports to the final report." These provisions do not imply that combined reports would be appropriate. Rather, they support the need for individual accountability. The Organization for Economic Cooperation and Development provisions are entirely consistent with the provisions of § 58.185(a)(12).

48b. On its own initiative, FDA is amending § 58.185(b) to provide that the final report shall contain the dated signature of the study director to conform the provision to the definition of "study completion date" being added by this final rule (see paragraph 6 of this preamble).

Storage and Retrieval of Records and Data

49. FDA proposed to revise § 58.190(a) to allow wet specimens and specimens from mutagenicity tests to be discarded after evaluation and recording. The agency's proposal was supported by several comments. One comment, however, requested that the agency clarify the meaning of "mutagenicity tests" as the term is used in § 58.190(a). The comment asked whether, for example, in vitro cell transformation is interpreted to be a mutagenicity test under this provision.

FDA advises that, for the purpose of § 58.190(a), the agency considers mutagenicity tests to be those tests designed to assess the capacity of a test or control article to induce heritable changes in a test system. Accordingly, FDA considers in vitro cell transformation to be a mutagenicity test as the term is used in the GLP regulations.

50. One comment recommended that FDA further revise § 58.190(a) to assure that the regulation makes clear that final reports must be retained.

As discussed at length in the preamble to the proposal (49 FR 43534), FDA intended to exclude from the retention requirements of the GLP regulations specimens that are relatively fragile or contribute only in a minor way to safety evaluation. FDA did not intend to change the current requirement that final reports of any nonclinical laboratory study are to be retained in accordance with § 58.195. To preclude any possible confusion regarding the requirement that final reports must be retained, FDA is rewording § 58.190(a) to read "all raw data, documentation, protocols, final reports, and specimens (except those specimens obtained from mutagenicity tests and wet specimens of blood, urine, feces, and biological fluids) generated as a result of a nonclinical laboratory study shall be retained."

Retention of Records

51. FDA proposed to delete from current § 58.195(c) the listed examples of materials that the agency believes need to be retained only so long as the quality of the preparation affords evaluation. One comment noted that § 58.195(c) should be further revised to delete wet specimens to be consistent with the proposed revisions in § 58.190(a) (see paragraph 50 of this preamble).

FDA agrees with the comment and in this final rule is conforming § 58.195(c) to revised § 58.190(a). In pertinent part, § 58.195(c) now reads "Wet specimens (except those specimens obtained from mutagenicity tests and wet specimens of blood, urine, feces, and biological fluids), samples of test or control articles, and specially prepared material * * *."

52. Two comments suggested that FDA should specifically provide in new § 58.195(g) that records to be retained under the GLP regulations may be retained as magnetic media.

Section 58.195(g), which is being added to Part 58 by this final rule, provides that records respecting a nonclinical laboratory study may be retained as original records or as true copies such as photocopies, microfilm, microfiche, or other accurate reproductions of the original records. Magnetic media could qualify as either "original records" or "accurate reproductions of the original records." This conclusion is consistent with § 58.3(k), which includes "magnetic media" within the meaning of "raw data." Consequently, the agency does not believe that it is necessary to change new § 58.195(g) in order to achieve the result desired by the comments.

Reference

The following reference has been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

1. "Good Laboratory Practice in the Testing of Chemicals," Organization for Economic Cooperation and Development Publications, Paris, France, 1982.

Economic Assessment

As announced in the proposal, FDA has examined the economic consequences of this final rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). At that time, the agency concluded that the changes would not constitute a major rule as defined in the Order and that no regulatory flexibility analysis would be required. The agency also certified that the revisions would not have a significant impact on a substantial number of small entities. The agency has not received any new information or comments that would alter its previous determination.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act of 1980

Sections 58.35(b) (1), (3), and (6), 58.63(b), 58.90(c), 58.105(a), 58.120(a), 58.130(e), and 58.190 (a) and (e) of this final rule contain collection of information requirements. FDA submitted a copy of the proposed rule containing the same requirements to the Office of Management and Budget (OMB). These collection of information requirements were approved under OMB Control No. 0910–0203.

List of Subjects in 21 CFR Part 58

Laboratories.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under 21 CFR 5.11, Part 58 is amended as follows:

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

1. The authority citation for 21 CFR Part 58 is revised to read as follows:

Authority: Secs. 306, 402(a), 406, 408, 409, 502, 503, 505, 506, 507, 510, 512–516, 518–520, 701(a), 706, 801, Pub. L. 717, 52 Stat. 1045–1046 as amended, 1049–1053 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 68 Stat. 511–517 as amended, 72 Stat. 1785–1788 as amended, 76 Stat. 794 as amended, 82 Stat. 343–351, 90 Stat. 539–574 (21 U.S.C. 336, 342(a), 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360b–360f, 360f, 360h–360j, 371(a), 376, 381); secs. 215, 351, 354–360F, Pub. L. 410, 58 Stat. 690, 702 as amended, 82 Stat. 1173–1186 as amended (42 U.S.C. 216, 262, 263b–263n); 21 CFR 5.11.

2. In § 58.1 by designating the existing text as paragraph (a) and adding new paragraph (b), to read as follows:

§ 58.1 Scope.

* * * * *

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

3. In § 58.3 by removing the phrase "of this chapter" wherever it appears; by revising paragraphs (c), (d), and (e)(8); by removing and reserving paragraph (e)(12); by replacing "in section 513 of the act" with "in Part 860" in paragraph (e)(17); by replacing "section 514 of the act" with "in Part 861" in paragraph (e)(18); and by adding new paragraphs (o) and (p), to read as follows:

§ 58.3 Definitions.

* * * * *

(c) "Control article" means any food additive, color additive, drug, biological product, electronic product, medical device for human use, or any article other than a test article, feed, or water that is administered to the test system in the course of a nonclinical laboratory

study for the purpose of establishing a basis for comparison with the test article.

(d) "Nonclinical laboratory study" means in vivo or in vitro experiments in which test articles are studied prospectively in test systems under laboratory conditions to determine their safety. The term does not include studies utilizing human subjects or clinical studies or field trials in animals. The term does not include basic exploratory studies carried out to determine whether a test article has any potential utility or to determine physical or chemical characteristics of a test article.

(e) * * *

(8) Data and information about a substance submitted as part of the procedures for establishing a tolerance for unavoidable contaminants in food and food-packaging materials, described in Parts 109 and 509.

* * * * *

(12) [Reserved]

* * * * *

(o) "Study initiation date" means the date the protocol is signed by the study director.

(p) "Study completion date" means the date the final report is signed by the study director.

4. In § 58.31 by revising paragraph (b), to read as follows:

§ 58.31 Testing facility management.

* * * * *

(b) Replace the study director promptly if it becomes necessary to do so during the conduct of a study.

* * * * *

5. In § 58.35 by removing paragraph (e), by revising paragraphs (a) and (b) introductory text, (1) and (3), and by adding an OMB number at the end of the section to read as follows:

§ 58.35 Quality assurance unit.

(a) A testing facility shall have a quality assurance unit which shall be responsible for monitoring each study to assure management that the facilities, equipment, personnel, methods, practices, records, and controls are in conformance with the regulations in this part. For any given study, the quality assurance unit shall be entirely separate from and independent of the personnel engaged in the direction and conduct of that study.

(b) The quality assurance unit shall:

(1) Maintain a copy of a master schedule sheet of all nonclinical laboratory studies conducted at the testing facility indexed by test article and containing the test system, nature of study, date study was initiated, current status of each study, identity of the sponsor, and name of the study director.

* * * * *

(3) Inspect each nonclinical laboratory study at intervals adequate to assure the integrity of the study and maintain written and properly signed records of each periodic inspection showing the date of the inspection, the study inspected, the phase or segment of the study inspected, the person performing the inspection, findings and problems, action recommended and taken to resolve existing problems, and any scheduled date for reinspection. Any problems found during the course of an inspection which are likely to affect study integrity shall be brought to the attention of the study director and management immediately.

* * * * *

(Collection of information requirements approved by the Office of Management and Budget under number 0910-0203.)

6. By revising § 58.41, to read as follows:

§ 58.41 General.

Each testing facility shall be of suitable size and construction to facilitate the proper conduct of nonclinical laboratory studies. It shall be designed so that there is a degree of separation that will prevent any function or activity from having an adverse effect on the study.

7. In § 58.43 by removing paragraph (e) and by revising the first sentence of paragraph (c) to read as follows:

§ 58.43 Animal care facilities.

* * * * *

(c) Separate areas shall be provided, as appropriate, for the diagnosis, treatment, and control of laboratory animal diseases. * * *

* * * * *

8. In § 58.45 by revising the last sentence, to read as follows:

§ 58.45 Animal supply facilities.

* * * Perishable supplies shall be preserved by appropriate means.

9. By revising § 58.49, to read as follows:

§ 58.49 Laboratory operation areas.

Separate laboratory space shall be provided, as needed, for the performance of the routine and specialized procedures required by nonclinical laboratory studies.

§ 58.53 [Removed]

10. By removing § 58.53 *Administrative and personnel facilities.*

11. By revising § 58.61, to read as follows:

§ 58.61 Equipment design.

Equipment used in the generation, measurement, or assessment of data and equipment used for facility environmental control shall be of appropriate design and adequate capacity to function according to the protocol and shall be suitably located for operation, inspection, cleaning, and maintenance.

12. In § 58.63 by revising paragraph (b) and by adding an OMB numbert at the end of the section, to read as follows:

§ 58.63 Maintenance and calibration of equipment.

* * * * *

(b) The written standard operating procedures required under § 58.81(b)(11) shall set forth in sufficient detail the methods, materials, and schedules to be used in the routine inspection, cleaning, maintenance, testing, calibration, and/or standardization of equipment, and shall specify, when appropriate, remedial action to be taken in the event of failure or malfunction of equipment. The written standard operating procedures shall designate the person responsible for the performance of each operation.

* * * * *

(Collection of information requirements approved by the Office of Management and Budget under number 0910-0203.)

13. In § 58.81 by revising the first sentence of paragraph (c), to read as follows:

§ 58.81 Standard operating procedures.

* * * * *

(c) Each laboratory area shall have immediately available laboratory manuals and standard operating procedures relative to the laboratory procedures being performed. * * *

* * * * *

14. In § 58.90 by revising paragraphs (b) and (c) and by adding an OMB number at the end of the section, to read as follows:

§ 58.90 Animal care.

* * * * *

(b) All newly received animals from outside sources shall be isolated and their health status shall be evaluated in accordance with acceptable veterinary medical practice.

(c) At the initiation of a nonclinical laboratory study, animals shall be free of any disease or condition that might interfere with the purpose or conduct of the study. If, during the course of the study, the animals contract such a disease or condition, the diseased animals shall be isolated, if necessary. These animals may be treated for disease or signs of disease provided that

such treatment does not interfere with the study. The diagnosis, authorizations of treatment, description of treatment, and each date of treatment shall be documented and shall be retained.

* * * * *

(Collection of information requirements approved by the Office of Management and Budget under number 0910–0203.)

15. In § 58.105 by revising the first sentence of paragraph (a), by revising paragraph (b), and by adding an OMB number at the end of the section, to read as follows:

§ 58.105 Test and control article characterization.

(a) The identity, strength, purity, and composition or other characteristics which will appropriately define the test or control article shall be determined for each batch and shall be documented. * * *

(b) The stability of each test or control article shall be determined by the testing facility or by the sponsor either: (1) Before study initiation, or (2) concomitantly according to written standard operating procedures, which provide for periodic analysis of each batch.

* * * * *

(Collection of information requirements approved by the Office of Management and Budget under number 0910–0203.)

16. In § 58.113 by revising paragraph (a)(2), to read as follows:

§ 58.113 Mixtures of articles with carriers.

(a) * * *

(2) To determine the stability of the test and control articles in the mixture as required by the conditions of the study either (i) before study initiation, or (ii) concomitantly according to written standard operating procedures which provide for periodic analysis of the test and control articles in the mixture.

* * * * *

17. In § 58.120 by revising paragraph (a) and by adding an OMB number at the end of the section, to read as follows:

§ 58.120 Protocol.

(a) Each study shall have an approved written protocol that clearly indicates the objectives and all methods for the conduct of the study. The protocol shall contain, as applicable, the following information:

(1) A descriptive title and statement of the purpose of the study.

(2) Identification of the test and control articles by name, chemical abstract number, or code number.

(3) The name of the sponsor and the name and address of the testing facility at which the study is being conducted.

(4) The number, body weight range, sex, source of supply, species, strain, substrain, and age of the test system.

(5) The procedure for identification of the test system.

(6) A description of the experimental design, including the methods for the control of bias.

(7) A description and/or identification of the diet used in the study as well as solvents, emulsifiers, and/or other materials used to solubilize or suspend the test or control articles before mixing with the carrier. The description shall include specifications for acceptable levels of contaminants that are reasonably expected to be present in the dietary materials and are known to be capable of interfering with the purpose or conduct of the study if present at levels greater than established by the specifications.

(8) Each dosage level, expressed in milligrams per kilogram of body weight or other appropriate units, of the test or control article to be administered and the method and frequency of administration.

(9) The type and frequency of tests, analyses, and measurements to be made.

(10) The records to be maintained.

(11) The date of approval of the protocol by the sponsor and the dated signature of the study director.

(12) A statement of the proposed statistical methods to be used.

* * * * *

(Collection of information requirements approved by the Office of Management and Budget under number 0910–0203.)

18. In § 58.130 by revising paragraphs (d) and (e) and by adding an OMB number at the end of the section, to read as follows:

§ 58.130 Conduct of a nonclinical laboratory study.

* * * * *

(d) Records of gross findings for a specimen from postmortem observations should be available to a pathologist when examining that specimen histopathologically.

(e) All data generated during the conduct of a nonclinical laboratory study, except those that are generated by automated data collection systems, shall be recorded directly, promptly, and legibly in ink. All data entries shall be dated on the date of entry and signed or initialed by the person entering the data. Any change in entries shall be made so as not to obscure the original entry, shall indicate the reason for such change, and shall be dated and signed or identified at the time of the change. In automated data collection systems, the individual responsible for direct data input shall be identified at the time of data input. Any change in automated data entries shall be made so as not to obscure the original entry, shall indicate the reason for change, shall be dated, and the responsible individual shall be identified.

(Collection of information requirements approved by the Office of Management and Budget under number 0910–0203.)

19. In § 58.185 by revising paragraph (b), to read as follows:

§ 58.185 Reporting of nonclinical laboratory study results.

* * * * *

(b) The final report shall be signed and dated by the study director.

20. In § 58.190 by revising paragraphs (a) and (e) and by adding an OMB number at the end of the section, to read as follows:

§ 58.190 Storage and retrieval of records and data.

(a) All raw data, documentation, protocols, final reports, and specimens (except those specimens obtained from mutagenicity tests and wet specimens of blood, urine, feces, and biological fluids) generated as a result of a nonclinical laboratory study shall be retained.

* * * * *

(e) Material retained or referred to in the archives shall be indexed to permit expedient retrieval.

(Collection of information requirements approved by the Office of Management and Budget under number 0910–0203.)

21. In § 58.195 by revising paragraph (c), redesignating paragraph (g) as paragraph (h), and adding new paragraph (g), to read as follows:

§ 58.195 Retention of records.

* * * * *

(c) Wet specimens (except those specimens obtained from mutagenicity tests and wet specimens of blood, urine, feces, and biological fluids), samples of test or control articles, and specially prepared material, which are relatively fragile and differ markedly in stability and quality during storage, shall be retained only as long as the quality of the preparation affords evaluation. In no case shall retention be required for longer periods than those set forth in paragraphs (a) and (b) of this section.

* * * * *

(g) Records required by this part may be retained either as original records or as true copies such as photocopies, microfilm, microfiche, or other accurate reproductions of the original records.

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§ 58.204 [Amended]

22. In § 58.204 *Notice of and opportunity for hearing on proposed disqualification* in paragraph (b) by removing "of this chapter."

§ 58.213 [Amended]

23. In § 58.213 *Public disclosure of information regarding disqualification* in paragraph (b) by removing "of this chapter."

§ 58.219 [Amended]

24. In § 58.219 *Reinstatement of a disqualified testing facility* by removing "of this chapter."

Frank E. Young,
Commissioner of Food and Drugs.
Otis R. Bowen,
Secretary of Health and Human Services.

Dated: August 10, 1987.

[FR Doc. 87-20375 Filed 9-3-87; 8:45 am]
BILLING CODE 4160-01-M

federal register

Friday
September 4, 1987

Part VII

Department of Labor

Employment and Training Administration

Invitation to Comment on Design Issues for Release of Quality Control Data for Unemployment Insurance Program; Notice

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DEPARTMENT OF LABOR

Employment and Training Administration

Invitation to Comment on Design Issues for Release of Quality Control Data for Unemployment Insurance Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice and opportunity to comment on issues relating to release of Quality Control data for the Unemployment Insurance program.

SUMMARY: The final regulation to establish a permanent Quality Control program for the Federal-State Unemployment Insurance system has been issued. Consistent with this regulation, the results of the Quality Control program will be released each year using a standardized format prescribed by the Department. States will have the opportunity to release this information before any release by the Department.

This notice sets forth design issues and requests public comment on issues relating to the format, method, and timing of the release.

DATE: Written comments must be received by the close of business on October 5, 1987.

ADDRESS: Submit comments to Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S–4231, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S–4231, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 535–0600 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Introduction

The final Unemployment Insurance (UI) Quality Control (QC) regulation will be published in the **Federal Register** on September 3, 1987 (52 FR).
QC is a requirement for all States. It is being implemented incrementally and initially covers intrastate benefit payments under the three largest permanently authorized programs (Regular UI, including Combined Wage Claims; and the Federally-funded programs providing Unemployment Compensation for Ex-servicemembers and Federal Employees). The Department of Labor (Department) intends to expand QC to encompass other major aspects of the UI program such as benefit denials, tax collection operations, interstate benefit payments, and extended benefit programs.

The QC methodology has a unique ability to assess the accuracy of UI operations. It is thus an essential tool for State managers to improve their UI programs, and from the standpoint of their use, QC's main orientation is toward program improvement.

The benefit payment portion of UI QC was launched voluntarily in April 1986, after an intensive public policy review which established or confirmed several fundamental QC design principles. One is that the decision to make a program improvement is up to the State; States will not be forced or given incentives to achieve a certain error rate. Another is that QC findings will be released publicly, to enable persons and organizations with an interest in the UI programs to assess how well each State program is operating and to communicate to UI management their desires for changes to aspects of the program they judge should be improved. Consequently, § 602.21(g) of the QC regulation provides that each State shall:

> Release the results of the QC program at the same time each year, providing calendar year results using a standardized format to present the data as prescribed by the Department; States will have the opportunity to release this information prior to any release by the Department.

Each week, the QC program systematically selects a sample of cases. For each such case, which "stands for" thousands of noninvestigated cases, an extensive amount of data is carefully verified through field investigation. QC assembles data identifying the claimant, the nature of his or her prior job and job sought, the type of contacts made by the UI agency, and information pertaining to all stages of the claim process and its validity, such as earnings in the base period, reason for separation, and availability for work. On the basis of this information and the investigation developing it, the QC staff conclude whether or not a payment was proper. If improper, they assess the dollar value of the error, why it occurred, and who (claimant, employer, agency) was responsible. Using the results of QC investigations over a period of time, the Unemployment Insurance Service (UIS) and each State can determine the proportion of both cases and dollars paid properly, underpaid and overpaid. This can be done for all cases, or a selected subgroup, e.g., those paid in a single local office or region, or for a given claim type. The extensive information available on each case enables a State's payment activities to be analyzed from a variety of viewpoints.

The public release of QC data is intended to afford all interested parties—including claimants and their advocates, employers, and the general public—a balanced and objective summary of what QC shows about UI operations. Only in this way can it respond to the public's right to know how well a tax-supported, public program is operating. Such users thus should also be the final judge of the form, content, and frequency of such reports. The Department is placing this notice in the **Federal Register** to give all such potential users an opportunity to participate in the development of the public release.

This notice poses general questions, the responses to which will help guide the initial development of proposed procedures governing the public release of QC data on benefit payments. A subsequent **Federal Register** notice will offer these procedures for review and comment. Based on comments received on the proposal, a final procedure will be developed and issued to the States and published as a notice in the **Federal Register**. Persons interested in more indepth QC information are encouraged to work directly with the individual State Employment Security Agencies (SESAs). They maintain an extensive QC data base that is not practical to release more broadly.

Settled Aspects of the Release and Release Process

The QC regulations together with the realities of the QC investigative procedure establish some broad outlines for the QC data release format and procedures:

1. States must release results at the same time each year using a standardized format. They have the option of releasing results before that time if they wish.

2. The release will reflect calendar year results. Because case investigations can take up to 90 days to complete, all results of a year's last case reviews are not available until the end of the following March. At least 2 additional months is needed to prepare and clear report language. Thus, this implies a release date in May of the following year, at the earliest.

3. Since the QC regulations require each State to "classify benefit case findings resulting from QC investigations as proper payments,

underpayments, or overpayments . . ." the annual report must contain at least this level of detail on QC results.

Issues on Which Comment is Being Sought

Within these broad limits, many options exist for shaping the final report format and procedures. The Department is seeking public comment on the principles that should be applied in making these decisions. Public comment is sought particularly on the following aspects of the report which are intended to be as mutually exclusive as possible: (1) Objectives and focus of the release; (2) the level of detail in the report; (3) qualifications of reported error rates; (4) who should release the data; (5) the vehicle for the release; and (6) the timing and scope of data in the initial release. The public is also requested to identify and comment on other issues.

1. *What Should be the Objectives and Focus of the QC Data Release?* One primary objective is to enable persons and organizations interested in the UI system to make informed judgments about the accuracy of a State's UI operations. This information should also enable them to work constructively to improve UI program operations if they want to do so. At the same time, the potential audience for the report extends beyond UI beneficiaries and taxpayers to all educational, governmental and public interest organizations as well. The QC's system's potential for developing information of interest to various parties is substantial. Various interested parties may have objectives they want to fulfill through this report. Among the objectives are:

A report oriented toward inducing program improvement. Such a report would focus on improper payment amounts and rates, where they occur within a State's operation, their major causes, and who is responsible. This information would permit interested parties to become aware of UI issues, discuss them more fully with proper officials, and induce those officials to take action.

A comprehensive report that provides other information on the UI system and the claimant population in addition to factual QC data. The QC system has the clear potential for doing this. The release could serve other purposes in addition to providing information conducive to program improvement.

2. *What level of detail should the Report include?* Closely related to the issue of objectives and focus of the report is the extent or level of detail displayed. The QC data record contains over 100 data elements on each case investigated (see Appendix), all of which could be displayed in some way in the report. On the other hand, the items specified in the regulations (i.e., proper payments, underpayments and overpayments) are few in number. The objectives of the report, and the need to meet essential information needs while avoiding overwhelming and confusing detail, should determine the actual content of the report. Respondents are urged to consider their objectives for the report and suggest the classifications and extent of QC data needed to satisfy those objectives. The effect of greater detail on the size and usability of, and time required to prepare, the release must be considered in this context.

A minimal report, which implies a single objective and focus, would probably be limited to data on rates of proper payments, overpayments and underpayments, where in the process errors are occurring (e.g. unreported or errors in reporting earnings in the Benefit Year; errors related to continuing eligibility issues) and who (agency, claimant, employer) is responsible. Because such a report would be oriented toward providing a basis to support program improvements, it might also emphasize data on any correlations between errors identified and particular aspects of the program's operations.

The release could be more extensive and provide additional information on locations, types and causes of errors (e.g., error rates by local office or sub-State region; fraud vs. nonfraud errors; error due to lack of sufficient worksearch or misreported wages).

3. *How much explanatory information should accompany the data?* An important consideration in shaping the release is its balance between numerical data obtained from the QC data base and qualifying or explanatory narrative, especially about a State's error rates. Because each State's UI program is in many respects unique, comparing error rates and other aspects of accuracy requires an awareness of the major differences in law, policy, structure, and economic conditions that can affect error rates from State to State or from year to year in addition to other variables.

The report could contain data with a minimum of text. The advantage of this approach is that it would keep the report short. Its disadvantage is that major differences in law, policy, economic conditions, etc., known to influence error rates would not be provided to permit the users to evaluate the statistical data in light of these other variables. Lack of qualifying information may lead readers to erroneously or naively compare error rates between States.

The release could include explanatory factors known to have a marked effect on error rates, such as particular requirements of State law and policies affecting major aspects of the program, e.g., requirements for claimants to search for work. While this would enable users to better compare QC error rates across States, it would also lengthen the report. Such explanations could also reduce the impact of publishing only observed error rates and thus undermine the report's use as a force for change.

The release could identify rates of error officially acted upon as well as total error rates. State laws and policies differ considerably with respect to what *officially* constitutes an overpayment or underpayment that can be collected when a payment is determined after the fact to have been made incorrectly. In some States, if a QC investigation is completed after a "finality" date, or its law required a warning which was not given, the State may not act to correct an error identified by QC. Should the QC report contain the error rates *identified by QC,* or should it present only the State's "official error rate", or both?

The release could explain program improvement actions planned or underway. Some States may have already taken or initiated program improvements to correct problems identified through QC. Is a narrative explanation of such actions a desirable feature of such a report? What is its potential effect on the length and complexity of the report?

Other Combinations. The release could be some combination whereby a basic report would show "hard numbers" which may satisfy many readers and appropriate appendices may be attached to explain law differences and other factors causing State differences and an explanation of corrective actions planned or underway.

4. *Who Should Release the Data?* The regulation cited earlier specifies that calendar year QC data must be released by each State at the same time each year, using a common format. It does not indicate whether the responsibility for releasing the report should rest with the Federal Government, the various States or both.

Each State could release its own data. Each State could be required to release its QC data on a given date using a common format. This approach would tend to minimize State-to-State comparisons which are difficult to make and focus most attention on this issue at the State level. Individual State reports would be shorter; and, because each

State is responsible for its own performance and for taking corrective action, most interest groups would focus only on their own State's program.

The Department could issue a single comprehensive report, having obtained the necessary data from each State. This report would present all States' QC findings using a common format thus highlighting inter-State differences. This report could be long and cumbersome, if it also contained extensive narrative. Because there are no nationwide accuracy standards, the only way to assess one State's performance against another would be comparing it with others, and attempt to make necessary adjustments for relevant factors affecting accuracy.

There could be a combined Federal-State release; the Department could obtain individual State reports and release them en masse at the same time or after each State releases the same information within its State.

5. *What type of publication should be used to disseminate data?* The answer to this issue could be determined by the decision on Issue 4.

If each State is to release its own report, the publication could be an *official State report,* suitably publicized and made available from a State office source and/or sent to a published list of known interested parties.

If the report is a Federal report, it could be issued as a Department of Labor report, announced nationwide through a **Federal Register** or similar notice or published in full in the **Federal Register**. This latter approach would make the report immediately accessible to all who get, or who can copy, the **Federal Register**. With both this and the previous option, the Department would send copies of the report to known interested parties.

In the case of individual State reports, or a combined Federal-State release, State publicity could be supplemented by a **Federal Register** notice informing interested parties how to obtain each State's report or all States' reports.

6. *Timing and Scope of Data in the First Report.* Deciding when the first release should occur involves a tradeoff. If the first release is to conform to all subsequent releases, it must contain a full calendar year's data under the permanent program—meaning it could not be available before June 1, 1989. Earlier release dates mean the data may not be of the same quality, or will not be consistent in other respects with data in subsequent releases.

The first Release could be June 1, 1988 and contain data for calendar year 1987. This release would combine findings under both the voluntary and mandatory phases of QC. Three quarters of the data would have been gathered under the voluntary program, during which some States ran only partial programs or deviated from standard QC methodology.

Release Date June 1, 1988; Data for Balance of Calendar Year 1987 Under Mandatory Program. This would involve about one fourth of a year's worth of data. Although the data quality would be high, the precision would be low because of the small number of cases, and comparisons with subsequent reports' data would be of questionable value.

Release Date 150 Days After Completion of First Full Year Under Mandatory Program. One quarter of the data in this release would be from calendar 1987 and three quarters from calendar 1988. The second release, containing all calendar year 1988 data, would occur about June 1, 1989. Both the precision and data quality of this first release would be good. However, there would be a considerable overlap between Releases 1 and 2, making it difficult to judge progress in making program improvements between these two periods or between them and subsequent years.

First Release June 1, 1989; Data for Calendar Year 1988. Data quality and precision for this release are good and are consistent with subsequent releases. However, the cost is a nearly 2-year wait.

7. *Are there any other issues and recommendations which should be considered during design of procedures for release of benefit payment QC data?* In preparing this notice, the Department has attempted to identify for comment all dimensions of the release and its procedures for which public comment is warranted. Comment is also sought on any other report design issues the Department should consider.

Signed at Washington, DC, this 29th day of August 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

Appendix

The Appendix is provided to assist the reader to respond to questions in the Notice. The identification and description of the data elements collected by the QC system is preceded by definitions of some terms which are used.

Definition of Terms

SESA—(State Employment Security Agency) The agency of a State government which administers the unemployment insurance program.

Key Week—A specific week of unemployment, for which a claimant has received compensation, that is investigated to verify that all information pertaining to eligibility and payments is treated in conformity with State written law and policy.

Before Investigation—Information as found in the SESA records before the QC investigation.

After Investigation—Information as verified through the QC investigation which is correct and should have been used for the claim.

New Claim—A claim for benefits which establishes a new benefit year.

Additional Claim—A claim filed at the beginning of new unemployment within a benefit year when a break of one week or more has occurred in the claim series with intervening employment.

Non-Separation Issue—An issue that could affect eligibility for benefits that does not concern the claimant's separation from employment, e.g., availability for work, failure to look for work, refusal of job referral, etc.

Base Period—The period of time prior to a claim in which a claimant must have had a specified minimum amount of insured work in order to qualify for benefits.

Benefit Year—The one year period beginning with the first day of the first week in which an individual first files a claim for benefits and during which payment of benefits may be made.

Weekly Benefit Amount (WBA)—The maximum amount of benefits (before adding dependents allowance) that a claimant can receive weekly, based upon wages earned during the base period.

Maximum Benefit Amount (MBA)—The total amount of benefits payable in a benefit year.

Remaining Balance (RB)—The amount of benefits left to be claimed during the benefit year at a given point in the benefit year.

Dependents Allowance—Additional allowance provided in some States because of dependent family members of claimant.

Finality—Provisions of law prohibiting modifications of decisions after a specified period of time.

Description of Information Collected Under the Quality Control Program

Part A—Control Information

(1) Social Security Number.

(2) State I.D. Code—Federal Information Processing Standard (FIPS) code.

(3) Batch Number—identifies week from which case sampled.

(4) Compensable Week Ending Date of Key Week.

(5) Local Office Number—the SESA local office or itinerant point number through which the Key Week claim was filed.

(6) Investigator Identification Code—the identification code of investigator to whom the case was assigned.

Part B—Claimant Information

(1) Primary Method by which Claimant QC Information Obtained—identifies the method by which the information contained on the claimant questionnaire was obtained, e.g., in-person interview, telephone interview, mail.

(2) U.S. Citizen—citizenship or alien status.

(3) Education—highest level of academic education completed.

(4) Vocational or Technical School Training—whether or not attended.

(5) Currently in Training.

(6) Occupation Code (Last job prior to most recent Initial/Additional Claim)—the major occupational group code for claimant's last job as classified in the *Dictionary of Occupational Titles*, US DOL/ETA 4th Edition 1977.

(7) Occupation Code for Usual Job—the major occupational group code for claimant's primary occupation.

(8) Normal Hourly Wage, Usual Job.

(9) Occupation Code (Seeking Work)—the major occupational group code for type of work that claimant is seeking.

(10) Lowest Acceptable Hourly Wage—the lowest hourly wage that the claimant was willing to accept during the Key Week.

(11) Date of Birth.

(12) Sex.

(13) Ethnic Classification.

Part C—Benefit Year Information

(1) Program Code—the code that identifies the program that the benefits were paid under, e.g., Unemployment Insurance (UI), Unemployment Compensation for Ex-Servicemembers (UCX), Unemployment Compensation for Federal Employees (UCFE).

(2) Combined Wage Claim—indicates whether or not the wages from two or more States were combined to determine eligibility for benefits.

(3) Benefit Year Beginning—the effective date of most recent new claim.

(4) New/Additional Claim Filing Method—e.g., Mail Claim, In Person Claim, Employer Filed Claim.

(5) Benefit Rights Given—the method(s) by which claimant was given Benefits Rights Interview.

(6) Number of Eligibility Review Program Interviews (ERPs) Held, Current Benefit Year.

(7) Last ERP Date.

(8) Number of Prior Nonseparation Issues Disposed of.

(9) Number of Prior Nonseparation Issues Resulting in Disqualification.

Part D—Separation Information.

(1) Reason for Separation before Investigation—from the last job prior to the Key Week.

(2) Date of Separation before Investigation—the date of separation from last employer.

(3) Recall Status Before Investigation—categorization of likelihood of claimant returning to work with previous employer.

(4) Tax Rate for Last Employer—the last employer's UI tax rate at the time of filing for the most recent new or additional claim.

(5) Industry Code (Last Employer)—the four digit standard industry code (SIC) for the claimant's last employer, prior to most recent new or additional claim as of the Key Week.

(6) Reason for Separation After Investigation.

(7) Recall Status After Investigation.

Part E—Monetary Eligibility

(1) Number of Base Period Employers Before Investigation—the number of subject base period employers that was used in calculating entitlement for the monetary determination in effect as of the Key Week.

(2) Base Period Wages Before Investigation—the total amount of all wages used to compute entitlement.

(3) Industry Code (Primary Base Period Employer)—the four digit industry code for claimant's primary base period employer from whom the *most* wages were earned.

(4) High Quarter Wages Before Investigation—the total amount of claimant's high quarter base period wages used in the monetary determination from which the original Key Week payment was made.

(5) Number of Weeks Worked in Base Period Before Investigation.

(6) Weekly Benefit Amount (WBA) Before Investigation—the claimant's maximum WBA for the Key Week, based on the monetary determination from which the original Key Week payment was made.

(7) Maximum Benefit Amount (MBA) Before Investigation—the maximum benefit amount, based on the monetary determination from which the original Key Week payment was made.

(8) Monetary Redetermination Before Investigation—indicates whether the SESA redetermined claimant's monetary eligibility prior to Key Week payment date.

(9) Remaining Balance as of Key Week Ending Date—the remaining balance of claimant's benefits at the time the Key Week was claimed.

(10) Number of Base Period Employers After Investigation.

(11) Base Period Wages After Investigation.

(12) High Quarter Wages After Investigation.

(13) Number of Weeks Worked in Base Period After Investigation.

(14) Weekly Benefit Amount (WBA) After Investigation.

(15) Maximum Benefit Amount (MBA) After Investigation.

(16) Number of Dependents Claimed Before Investigation.

(17) Dependents' Allowance Before Investigation.

(18) Number of Dependents claimed After Investigation.

(19) Dependents' Allowance After Investigation.

Part F—Benefit Payment History Information

(1) First Compensated Week Ending Date—the week ending date of first week compensated in the benefit year.

(2) Date of First Payment.

(3) Key Week Filing Method—e.g. in person claim, mail claim, employer filed.

(4) Key Week Certification Procedure—the cycle under which the Key Week was certified, e.g., weekly, bi-weekly.

(5) Original Amount Paid and/or Offset for Key Week—original whole dollar amount paid and/or offset for the Key Week.

(6) Total Earnings for Key Week Before Investigation—the whole dollar amount of earnings during Key Week.

(7) Earnings Deduction for Key Week Before Investigation—amount of claimant's earnings deducted from WBA.

(8) Total Other Deductible Income for Key Week Before Investigation—amount of claimant's other income (e.g., pension, separation pay, etc.) deducted from WBA.

(9) Other Income Deductions for Key Week Before Investigation—the actual amount deducted from WBA.

(10) Total Earnings for Key Week After Investigation.

(11) Earnings Deduction for Key Week After Investigation.

(12) Total Other Deductible Income for Key Week After Investigation.

(13) Other Income Deduction for Key Week After Investigation.

Part G—Registration/Work Search Efforts

(1) Work Search Requirements—the Work Search policy that applies to the Key Week according to State UI law and policy.

(2) Job Service Registration Required for the Key Week—indicates whether the claimant was required to register with Job Service during the Key Week.

(3) Actively/Currently Registered with Job Service as of Key Week.

(4) Reason Job Service Registration Deferred—e.g., union member, job attached, approved training.

(5) Number of Job Service Referrals—the number of times Job Service referred claimant for employment during current benefit year.

(6) Registered with Private Employment Agency.

(7) Number of Private Employment Agency Referrals.

(8) Union Referral Status—indicates whether claimants, who are union members, were eligible to be referred to job openings.

(9) Number of Union Referrals for the Key Week.

(10) Number of Job Contacts Listed for the Key Week.

(11) Number of Job Contacts Made Prior to Key Week but Used to Satisfy Work Search Requirements for Key Week.

(12) Number of Work Search Contacts Investigated for Key Week Eligibility.

(13) Number of Acceptable Work Search Contacts—indicates whether contacts made by claimant were considered acceptable according to SESA written law/policy.

(14) Number of Unacceptable Work Search Contacts.

(15) Number of Work Search Contacts for Key Week that Could not be Verified as Either Acceptable or Unacceptable.

Part H—Error Classification/Completion Information

(1) Dollar Amount of Key Week Error.

(2) Key Week Action.

(a) Proper Payments.

(b) Improper Payments.

Overpayments

—Fraud overpayment.

—Nonfraud recoverable overpayment.

—Nonfraud nonrecoverable overpayment or official action taken to adjust future benefits by decreasing entitlement.

—QC determines payment was too large, although payment "technically" proper due to finality rules.

—QC determines payment would have been too large except for formal warning rule that prohibits official action. Payment "technically" proper due to law/rules requiring formal warnings for unacceptable worksearch efforts.

—QC determines payment was too large, although payment "technically" proper due to rules other than finality or formal warning rule.

Underpayments

—Supplemental check issued/offset applied or increase in entitlement.

—QC determines payment was too small, although payment "technically" proper due to finality rules.

—QC determines payment was too small, although payment "technically" proper due to rules other than finality.

(3) Error Responsibility—party responsible, e.g., claimant, employer, agency.

(4) Error Cause

(a) In the Benefit Year, unreported or errors in reporting/recording earnings or days/hours of work affecting the Key Week due to:

—Unreported (concealed) earnings or days/hours of work.

—Earnings or days/hours of work incorrectly estimated/reported/recorded or deducted.

—Errors in reporting or unreported severance pay.

—Errors in reporting or unreported vacation pay.

—Errors in reporting or unreported Social Security or pension benefits.

—Other causes related to reporting or recording of earnings or days/hours of work for Key Week.

(b) In the Base Period, errors in reporting/recording earnings or weeks, days, or hours of work affecting the Key Week due to:

—Earnings or weeks/days/hours of work incorrectly estimated/reported/recorded.

—One or more base period employers not reported by claimant.

—Other causes related to errors in reporting or recording earnings or weeks/days/hours of work for base period.

(c) Separation Issues Due to:

—Voluntary quits.

—Discharges.

—Other causes related to separation issues.

(d) Eligibility Issues Due to:

—Ability to work.

—Availability for work.

—Active work search.

—Refusal of suitable work.

—Self-employment.

—Illegal alien status.

—Other causes related to eligibility issues.

(e) Dependents' Allowances Incorrect Due to:

—Dependents' information incorrectly reported/recorded or allowance incorrectly calculated.

—Other causes related to dependents' allowances.

(f) Other Causes Due to:

—Benefits paid during a period of disqualification, even though a stop-pay order was in effect.

—Redetermination (at deputy level) or reversal (appeal or higher authority).

—Back pay award.

—All other causes.

(5) QC Detection Point

—Verification of work search contact.

—Verification of wages and/or separation.

—Claimant interview.

—Verification of eligibility with third parties.

—UI records.

—Job Service/Employment Service records.

—Verification with union.

(6) Prior Agency Action—indicates any action(s) taken by the SESA on the Key Week issue as of the date sample selected.

(7) Prior Employer Action—indicates action(s) taken by the employer affecting the Key Week issue as of the date sample was selected.

(8) QC Action Regarding Key Week Appealed—identifies party appealing QC action, e.g., claimant, employer, SESA.

(9) Total Whole $ Amount of Overpayments (include Key Week)—officially established as a result of QC investigation.

(10) Total Whole $ Amount of Underpayments (include Key Week)—officially established as a result of QC investigation.

(11) Investigation Completed—date.

(12) Supervisory Approval Completed—date.

(13) Federal Monitor Case Review Completed—date.

[FR Doc. 87-20462 Filed 9-3-87; 8:45 am]
BILLING CODE 4510-30-M

federal register

Friday
September 4, 1987

Part VIII

Department of Housing and Urban Development

Emergency Shelter Grants Program; Notices

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-87-1724; FR-2388]

Emergency Shelter Grants Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Emergency Shelter Grants program authorizes HUD to make grants to States, units of general local government, and private nonprofit organizations for the rehabilitation or conversion of buildings for use as emergency shelters for the homeless, for the payment of certain operating expenses, and for essential social service expenses in connection with emergency shelters for the homeless. This Notice informs the public of the requirements that will govern the allocation and use of amounts appropriated for the program by the Supplemental Appropriations Act, 1987 (Pub. L. 100-71, approved July 11, 1987).

EFFECTIVE DATE: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Cities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5977. For matters relating to Emergency Shelter Grants to States, James N. Forsberg, Director, State and Small Cities Division, Room 7184, telephone (202) 755-6322. [These are not toll-free telephone numbers].

SUPPLEMENTARY INFORMATION:

Background

The Emergency Shelter Grants ("ESG") program was first enacted as Part C of Title V of HUD's appropriation for fiscal year 1987.[1] HUD published a proposed rule and program requirements to implement the program on December 17, 1986 (51 FR 45278). In accordance with section 525(a) of Title V, the proposed rule served two purposes. First, it sought public comment to assist the Department in developing a final rule for the program. Second, it established the requirements necessary to carry out the program until the final rule is made effective. The proposed rule and requirements have governed, and continue to govern, the allocation and use of funds appropriated for the 1986 ESG program. The Department is currently developing the final rule for the 1986 program and intends to make it effective before the October 18, 1987 statutory deadline. The program will then be administered under that final rule.

On July 22, 1987, the President approved the Stewart B. McKinney Homeless Assistance Act ("the Act") (Pub L. 100-77). Title IV of the Act contains a number of housing assistance provisions to be administered by HUD. The Department has implemented the Comprehensive Homeless Assistance Plan ("Plan") requirements contained in Subtitle A (*see* 52 FR 30628, dated August 14, 1987), and the allocation provisions contained in Subtitle B (as described in this Notice).

Subtitle A of Title IV establishes requirements for the Plan. It prohibits assistance under the other provisions of Title IV (including the ESG program) from being made available to, or within the jurisdiction of, States and ESG formula cities and counties, unless the jurisdiction has a HUD-approved Plan. Any State or ESG formula city or county applying for assistance under Title IV must certify that its proposed activities are consistent with its Plan. Any other applicant for ESG reallocated funds must provide a certification from the State or ESG formula city or county in which the activities will be carried out (as appropriate) that the applicant's proposed activities are consistent with the Plan.

Subtitle B of Title IV [2] reauthorizes the ESG program with numerous substantive changes. As discussed later in this notice, several of these changes will be implemented immediately, while others will not take effect until notice and comment rulemaking is completed. These changes include:

The minimum formula grant for metropolitan cities and urban counties is changed from a flat $30,000 to .05 percent of the amounts appropriated for the program for any fiscal year.

—If an ESG formula city or county fails to obtain approval of its Plan under Subtitle A within a specified period, HUD must reallocate the amounts to the State in which the city or county is located, provided the State has an approved Plan;

—HUD must reallocate the following amounts to other States, cities, and counties that demonstrate extraordinary need or large numbers of homeless individuals (as determined by HUD):

1. Any city or county formula amounts that cannot be reallocated to the State; and

2. Any State formula amount, if the State fails to secure HUD approval of its Plan on or before November 27, 1987.

—HUD must establish a separate allocation formula for assistance to the Virgin Islands, Guam, America Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Palau).

—HUD may waive the 15 percent limitation on the use of assistance for "essential services," if the local government receiving the assistance demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources.

—The requirement that program grantees submit a Homeless Assistance Plan as part of their application is replaced by the certification (described above) that the proposed activities are consistent with the Comprehensive Homeless Assistance Plan.

Requirements for the Allocation and Use of Funds Appropriated by the Supplemental Appropriations Act

1. General

The Supplemental Appropriations Act (Pub. L. 100-71, approved July 11, 1987), states that its appropriation for the ESG program is "subject to the requirements" of the 1987 ESG program. Section 416(a) of the Act requires HUD to go through notice and comment rulemaking to implement the program, with a proposed rule to be published by September 21, 1987, and a final rule to be published by July 22, 1988. Until a final rule can be made effective, section 416(a) provides that HUD's requirements for the 1986 ESG program will govern.

Consistent with these directives, funds authorized under the 1987 program and appropriated under the Supplemental Appropriations Act will be governed by the proposed rule and program requirements for the 1986 ESG program (51 FR 45278, December 17, 1986, adding a new 24 CFR Part 575) and by the modifications discussed in this Notice (below). When a final rule for the 1986 ESG program becomes effective, that rule and the modifications contained in this Notice will govern the 1987 program.

The Department will implement by notice and comment rulemaking the

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[1] Section 101(g), Pub. L. 99-500 (approved October 18, 1986) and Pub. L. 99-591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986). For ease of reference, this Notice refers to this program as the "1986 ESG program."

[2] For ease of reference, the Notice refers to the program as the "1987 ESG program."

remainder of the 1987 ESG legislation, including the 15 percent waiver provision in section 414(b) and certain reallocation provisions in section 413(d). Consequently, these provisions will not take effect until the final rule is promulgated sometime in 1988.

2. Comprehensive Homeless Assistance Plan

Section 416(a) of the Act calls for HUD's requirements under the 1986 ESG program to govern until a final rule for the 1987 program takes effect. These regulatory requirements include the submission and approval of a Homeless Assistance Plan as a condition to the receipt of ESG assistance. However, the Homeless Assistance Plan overlaps the Comprehensive Plan/certification approach which the new Act requires to be implemented immediately, and, accordingly, the filing of a Homeless Assistance Plan will not be required under the 1987 program.

The Department has reviewed the statutory text and legislative history of Subtitle A and section 416(a) of the Act, and has determined that the provisions establishing the Comprehensive Homeless Assistance Plan (and not the Homeless Assistance Plan) apply to the allocation and use of funds appropriated for the program by the Supplemental Appropriations Act, 1987. The language of Subtitle A establishes the Plan as an independent, specific condition to the receipt of funding under each of the other Subtitles of Title IV. The Department believes that this clear funding condition takes precedence over section 416(a), which makes the 1987 ESG program subject to the 1986 program requirements by means of a general incorporation by reference, without any attention to specific features of the programs, including how the Homeless Assistance Plan and the Comprehensive Homeless Assistance Plan fit together.

In addition, to hold the Comprehensive Homeless Assistance Plan inapplicable to the 1987 ESG program's appropriation would frustrate the Act's purpose of according States and localities the responsibility for coordinating all of Title IV's assistance in a comprehensive manner. As the Conference Report accompanying the Act states:

> The conference report improves upon current law (1) by providing a streamlined requirement for one comprehensive plan covering all facets of assistance to the homeless under this Act, and (2) by placing at the relevant State or local level clear responsibility for coordinating assistance under various sections of this Act with other forms of assistance. (H. Rep. No. 174, 100th Cong., 1st Sess. 73 (1987).)

Thus, for purposes of the 1987 ESG program, HUD has determined that applicants will be subject to the Comprehensive Homeless Assistance Plan/certification requirements of Subtitle A of Title IV of the Act, and will not have to submit Homeless Assistance Plans, as provided in §§ 575.33(b)(2) (formula allocation) and 575.41(c)(3)(ii) (reallocation) of the original program.

Subtitle A of Title IV of the Act prohibits ESG assistance from being made available to, or within the jurisdiction of, a State or ESG formula city or county that does not have a HUD-approved Comprehensive Homeless Assistance Plan. The Department published a Notice in the **Federal Register** on August 14, 1987 (52 FR 30628) establishing requirements for the Plan. Among other things, the Notice specifies the jurisdictions that are subject to the Plan's funding prohibition, and describes Subtitle A's effect on the applicants and recipients under each of the programs of Title IV of the Act, including the ESG program. The Notice also specifies the required Plan's content, timing and procedures for the submission of proposed Plans to HUD, HUD's review and approval of Plans, and State or local reviews and reports on progress in carrying out the Plans. All potential grantees and recipients of ESG assistance—both those that may receive amounts directly by formula or reallocation and those that may receive amounts through other grantees or recipients—are encouraged to familiarize themselves with the requirements contained in the August 14, 1987 Notice.

3. Application Requirements

The Department is currently notifying States and formula ESG cities and counties of their grants allocations under the Emergency Shelter Grants program. These letters of notification will trigger the 45-day (in the case of formula cities and counties) and 75-day (in the case of States) deadlines for filing an ESG application that are specified in § 575.33(a) of the proposed rule. All applications to HUD for ESG assistance must include the following:

A. *Comprehensive homeless assistance plan certification:* Any State or ESG formula city or county that applies to HUD for ESG assistance must include a certification, by the public official responsible for submitting the Plan for the jurisdiction to be served by the proposed activities, that the activities are consistent with the Plan. In addition, any other applicant for ESG reallocated funds must provide a certification from the State or ESG formula city or county in which the activities will be carried out (as appropriate) that the applicant's proposed activities are consistent with the Plan. This certification will take the place of the Homeless Assistance Plan contained in the 1986 ESG program. In Appendix B of its Notice published in the **Federal Register** on August 14, 1987 (52 FR 30628, 30634), the Department listed the States, territories, and ESG formula cities and counties that are subject to Plan requirements.

B. *Other certifications and assurances:* The ESG application must contain the certifications and assurances listed under § 575.33 (b)(3), (b)4) and (b)(5) of the December 17, 1986 proposed rule and program requirements, and Standard Form 424 (§ 575.33(b)(1)).

C. *Budget data and verification of program consistency:* In the case of a metropolitan city or urban county, item (7) of Standard Form 424 must contain budgetary information identifying the applicant's proposed use of grants amounts for each of the three categories of eligible activities under §§ 575.21 (a)(1), (a)(2), and (a)(3). States must provide a statement, at item (7), (1) of how they intend to implement the requirements in § 575.23(a) that the entire formula allocation will be made available to units of general local government in the State, or (2) identifying the specific units of local government that will receive these amounts.

4. Funding Allocation Provisions

The 1987 ESG program contains a number of modifications to the fund allocation system used in the 1986 program. The Department has determined that the allocation of amounts appropriated by the Supplemental Appropriations Act, 1987, will be subject to these changes. Section 416(b) of the Act contains special provisions dealing with the initial allocation of assistance under the 1987 ESG program. These provisions are distinct from the guidance provided by section 416(a) concerning what regulations govern the program, and make clear that each State and ESG formula grantee is to have its allocation determined under the 1987 Act.

In making allocations, the Department will follow these procedures:

a. *Funding threshold.* The funding threshold for formula cities and counties will be $25,000 (.05 percent of the $50 million appropriation), rather than the $30,000 threshold contained in

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§ 575.31(c) of the 1986 ESG program. As under the 1986 program, allocations below the threshold amount will be added to the allocation for the State in which the city or county is located.

b. *Territories.* HUD has set aside grants amounts for allocation to the Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and the Trust Territory of the Pacific (Palau). Under section 416(b) of the McKinney Act, the Secretary of HUD is required to allocate ESG funds to each "State, metropolitan city and urban county" within 60 days of the date of enactment of the Supplemental Appropriations Act (approved July 11, 1987). The Act further provides that "[S]uch assistance shall be allocated and may be used", notwithstanding the failure of the Department to issue final requirements implementing the 1987 ESG program. The Department interprets this provision as also requiring the allocation of grant funds to be the individual territories, and will allocate the amount set aside for the territories based upon each territory's proportionate share of the total population of the territories. Nevertheless, since the choice of this particular allocation method involves an exercise of discretion by HUD, the Department intends to solicit public comment on this formula in its forthcoming proposed rule. Any revisions made to this allocation formula would then be incorporated into the final rule for the 1987 ESG program and would govern future funding of the territories under the program.

It also requires noting that, while the Act includes territories in its definition of "States", the unique governmental structure of these entities requires that for purposes of program administration they be treated as metropolitan cities. Consequently, the 1986 ESG program requirements in Part 575 applicable to metropolitan cities and urban counties will also govern the territories.

c. *Reallocations for failure to have an approved Plan.* If an ESG formula city or county fails to obtain approval of its Plan on or before November 27, 1987,[3] will reallocate the amounts to the State in which the city or county is located—provided the State has an approved Plan. If a State cannot secure approval of its Plan on or before November 27, 1987,[3] HUD will take back the amounts, but will not reallocate them until a final rule for the 1987 program takes effect. This is because reallocation of these amounts is to be made to "States, cities, and counties that demonstrate extraordinary need or large numbers of homeless individuals", as determined by HUD. The Department believes that establishing procedures for reallocation of these amounts involves an exercise of HUD discretion that must first be subjected to notice and comment rulemaking. The reallocation to States, cities, and counties under this provision of the 1987 program was not contained in the 1986 program and, thus, is not coverted by 24 CFR Part 575. Consequently, HUD will retain amounts to be reallocated under this provision until the 1987 program's final rule is made effective.

Amounts reallocated because of failure of cities and counties to obtain approval of their Plans will (assuming an approved State Plan) be added to the State formula allocation, and will be subject to the same requirements that govern the use of State formula amounts.

5. Timing Considerations

The applicability of the Comprehensive Homeless Assistance Plan requirements to the 1987 ESG program may cause some timing questions. For example, section 416(b) requires HUD to allocate, and permits grantees to use at a reasonable time thereafter, formula amounts at the end of the 60-day period after funds are appropriated for the program, *i.e.*, September 9, 1987. In addition, reallocations of formula amounts are triggered where grantees do not obtain Comprehensive Plan approval within 90 days of the date that funds become available for allocation.

The Department believes that Congress intended the Comprehensive Plan to be an integral and essential part of the Act's homeless assistance strategy. As such, it has interpreted section 416(b)'s 60-day trigger to apply only to HUD's obligation to *allocate* grant funds by September 9, 1987. The ability of grantees to actually *use* ESG funds is dependent upon the Department's receiving a satisfactory Plan and supporting application documents. To construe section 416(b) otherwise would permit the use of ESG amounts before Plan approval, thereby vitiating the Plan's role in the initial ESG allocation. Thus, the Department will not permit use of ESG funds until the relevant Comprehensive Homeless Assistance Plan has been approved and the grant application (including the certification of consistency with the Plan) has been reviewed and approved.

With respect to the reallocation provisions triggered by failure to have an approved Plan (section 413(d)(3) of the Act), the Department considers that these provisions are intended to give States and formula cities and counties a reasonable period within which to obtain Plan approval. Consequently, HUD interprets the 90-day statutory deadline to begin running 15 days after the Department published its Notice on the Comprehensive Homeless Assistance Plan, *i.e.*, 15 days after August 14, 1987, or August 29, 1987. If a State fails to meet the 90-day deadline, the amounts involved are to be reallocated for use by or in a jurisdiction that has an approved Plan. The Department believes that the policy behind the Comprehensive Plan and the reallocation provisions can be best effectuated by providing a reasonable period, keyed to the August 14, 1987 publication date of the Comprehensive Homeless Assistance Plan Notice, within which Plans must be approved to avoid reallocation of the amounts involved.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket clerk, at the above address.

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act. The OMB control number, when it is assigned, will be announced by separate notice in the **Federal Register**.

Authority: Sections 401 and 416 of the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100-77, approved July 22, 1987; section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 28, 1987.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 87-20472 Filed 9-3-87; 8:45 am]

BILLING CODE 4210-29-M

[3] November 27, 1987 is 105 days after the August 14, 1987 **Federal Register** publication of the Notice establishing requirements for the Comprehensive Homeless Assistance Plan. Selection of this date is discussed in paragraph 5, *Timing Considerations*, below.

Office of the Secretary

[Docket No. D-87-859; FR-2388]

Emergency Shelter Grants Program; Delegation of Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of concurrent delegation of authority.

SUMMARY: The Emergency Shelter Grants program was reauthorized by Subtitle B of the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100–77, approved July 22, 1987. This Notice delegates to the Assistant Secretary and the General Deputy Assistant Secretary for Community Planning and Development the Secretary's power and authority with respect to this program, subject to specified exceptions.

EFFECTIVE DATE: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Don I. Patch, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–6587. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION: This Notice states the scope of authority given to the Assistant Secretary and General Deputy Assistant Secretary for Community Planning and Development for the Emergency Shelter Grants Program. All of the Secretary's authority with respect to this program is delegated except the power to sue and be sued. The authority delegated includes the authority to redelegate to employees of the Department, except for the authority to issue rules and regulations.

The Emergency Shelter Grants Program has been reauthorized by Title IV, Subtitle B of the Stewart B. McKinney Homeless Assistance Act. A Notice describing the program requirements for the 1988 fiscal year is published elsewhere in today's issue of the **Federal Register**. Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development are authorized individually to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the Emergency Shelter Grants Program as authorized by Subtitle B of the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100–77, approved July 22, 1987, except as indicated in section B below. This includes the authority to issue or waive rules and regulations.

Section B. Authority Excepted

There is excepted from the authority delegate under Section A the power to sue or be sued.

Section C. Authority to Redelegate

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development are authorized, individually, to redelegate to employees of the Department any of the power and authority delegated under section A that is not excepted under section B of this delegation. In addition, the Assistant Secretary and the General Deputy Assistant Secretary are not authorized to redelegate the authority to issue or waive rules and regulations, except with respect to the extension of grantee submission and obligation of grant amount deadlines.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 28, 1987.

Carl D. Covitz,

Under Secretary.

[FR Doc. 87–20473 Filed 9–3–87; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. 87–860; FR–2388]

Emergency Shelter Grants Program; Redelegation of Authority

AGENCY: Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Community Planning and Development is redelegating his power and authority with respect to the Emergency Shelter Grants Program to Regional Administrators and Category A Field Office Managers, subject to certain specified exceptions.

EFFECTIVE DATE: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Don I. Patch, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410, telephone (202) 755–6587. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION: The Secretary of Housing and Urban Development has delegated his power and authority with respect to the Emergency Shelter Grants Program to the Assistant Secretary and to the Deputy Assistant Secretary for Community Planning and Development, subject to certain exceptions. These exceptions include the authority to sue or be sued and the authority to redelegate responsibility and authority for the issuance or waiver of rules and regulations. Notice of the Secretary's delegation is published elsewhere in today's issue. In this redelegation, the Assistant Secretary for Community Planning and Development is redelegating his authority with respect to the Emergency Shelter Grants Program to specified officials of HUD Field Offices, subject to additional exceptions. This redelegation is intended to maximize the authority of HUD Field Offices to administer the Emergency Shelter Grants Program within departmental regulations, subject to the specific exception set out in section B of this Notice.

Accordingly, the Assistant Secretary for Community Planning and Development redelegates as follows:

Section A. Authority Redelegated

Each Regional Administrator and Category A Office Manager, and the Deputy of each such official, is authorized by the Assistant Secretary for Community Planning and Development to exercise the power and authority of Assistant Secretary with respect to the Emergency Shelter Grants Program authorized by Subtitle B of the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100–77 (approved July 22, 1987), except as indicated in section B below.

Section B. Authority Excepted

There is excepted from the authority delegated under Section A: the authority

to issue or waive rules and regulations (except with respect to the extension of up to 30 days of grantee submission and obligation of grant amount deadlines); the authority to impose sanctions under 24 CFR 575–63 (other than to issue a warning letter); the authority to reallocate grant amounts that are returned to HUD by a metropolitan city or urban county for use outside the respective jurisdiction; and the authority to reallocate any grant amounts outside the State to which they were allocated.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 28, 1987.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 87–20474 Filed 9–3–87; 8:45 am]

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Part IX

Securities and Exchange Commission

17 CFR Part 202

Temporary Lockbox Rule; Extension of Temporary Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 202

[Release Nos. 33-6733; 34-24866; 35-24452; 39-2112; IC-15953; IA-1080]

Temporary Lockbox Rule

AGENCY: Securities and Exchange Commission.

ACTION: Extension of temporary rule.

SUMMARY: The Commission is extending for one year the effectiveness of a temporary rule, adopted in June, 1984, which permits filing and other fees to be remitted to a U.S. Treasury designated lockbox depository located in Pittsburgh, Pennsylvania. This action will permit registrants to continue to use the procedures specified by the temporary rule pending the Commission's consideration of whether to adopt amendments to the rule.

EFFECTIVE DATES: September 1, 1987–September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Jeanne G. Hartford, Special Counsel, (202–272–2700), Office of the Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Securities Act Release No. 6540, dated June 27, 1984 (49 FR 27306), the Commission adopted a temporary amendment to rule 202.3a, to permit filing and other fees to be remitted to a lockbox depository. Under this amendment, filers may continue to submit fees to the Commission with filings or may transmit required fees to a lockbox depository in Pittsburgh, Pennsylvania by mail, wire transfer, or hand delivery. When the temporary amendments were adopted, the Commission stated that in approximately twelve months it would consider whether to eliminate payment of fees directly to the Commission and instead mandate payment of fees to a lockbox. The effectiveness of the temporary rule has been extended on two previous occasions, November 10, 1986 (51 FR 40791) and February 3, 1986 (51 FR 4160). In addition, amendments to rule 202.3a, which would change its provisions from permissive to mandatory, were proposed in January, 1986 (51 FR 6267, February 21, 1986). Subsequent issues have been raised as a result of Commission concerns and comments received from the public. In addition, the staff has recommended redesign of the Commission's existing fee collection system. Pending its decision concerning whether to adopt the proposed changes, the Commission has determined that the effectiveness of temporary rule 202.3a should be extended for a period of one year (until September 1, 1988) to permit the continuation of existing procedures.

Administrative Procedure Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(A), that temporary rule 202.3a relates solely to agency organization, procedure or practice and, therefore, advance notice and opportunity for comment is unnecessary in connection with this action.

By the Commission.

Jonathan G. Katz,

Secretary.

August 31, 1987.

[FR Doc. 87-20412 Filed 9-3-87; 9:44 am]

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Federal Register

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federal register

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS: 1010-87]

Automatic Conversion of Classification of Beneficiary

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This amendment to the regulations clarifies for the Service, immigration attorneys and representatives, and the public the process for the automatic conversion of classification of a beneficiary of an approved Form I-130, Petition for Alien Relative, to the proper classification and the retention of the original priority date when conversion is done. This clarification will assure that the beneficiary is accorded the classification and priority date to which he/she is entitled and that visa numbers under numerical limitations are preserved when a preference beneficiary converts to an immediate relative beneficiary.

EFFECTIVE DATE: September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Yolanda Sanchez-K, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-5014.

SUPPLEMENTARY INFORMATION: Title 8, Code of Federal Regulations, § 204.5, Automatic Conversion of Classification of Beneficiary, should clearly show that after a relative petition has been approved by the Service, the following instances that occur subsequent to the approval of the petition cause the classification of the beneficiary to automatically convert to another classification, but have no effect on the original priority date or the date the initial petition is filed with the Service:

1. A currently valid petition previously approved to classify the beneficiary as the unmarried son or unmarried daughter of a United States citizen under section 203(a)(1) of the Act is automatically converted to section 203(a)(4) of the Act as of the date the beneficiary marries.

2. A currently valid petition previously approved to classify a child of a United States citizen as an immediate relative under section 201(b) automatically converts to section 203(a)(4) as of the date the beneficiary marries.

3. A currently valid petition classifying the married son or daughter of a United States citizen as a preference immigrant under section 203(a)(4) automatically converts to section 201(b) if the beneficiary is under 21 years of age or to section 203(a)(1) if the beneficiary is over 21 years of age as of the date of termination of the beneficiary's marriage.

4. A current valid petition classifying the child of a United States citizen as an immediate relative under section 201(b) of the Act shall be regarded as approved for preference status under section 203(a)(1) of the Act as of the beneficiary's twenty-first birthday if the beneficiary is still unmarried.

5. Upon the naturalization of the petitioner, a currently valid petition according preference status under section 203(a)(2) of the Act shall be regarded as approved for immediate relative status under 201(b) for a spouse and a child under the age 21, and under section 203(a)(1) for a son or daughter over 21 years of age.

These changes in regulation accomplish that purpose.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8, Part 204, Code of Federa Regulations, is amended as follows:

PART 204—PETITION TO CLASSIFY ALIEN AS RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

1. The authority citation for Part 204 is revised to read:

Authority: 66 Stat. 166, 173, 175, 178, 179, 182, 217; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1192, 1255.

2. Section 204.5 is revised to read as follows:

§ 204.5 Automatic conversion of classification of beneficiary.

(a) *By change in beneficiary's marital status.* (1) A currently valid petition previously approved to classify the beneficiary as the unmarried son or daughter of a United States citizen under section 203(a)(1) of the Act shall be regarded as approved for preference status under section 203(a)(4) of the Act as of the date the beneficiary marries. The beneficiary's priority date is the same as the date the petition for classification under section 203(a)(1) was properly filed.

(2) A currently valid petition previously approved to classify a child of a United States citizen an immediate relative under section 201(b) of the Act shall be regarded as approved for preference status under section 203(a)(4) of the Act as of the date the beneficiary marries. The beneficiary's priority date is the same as the date the petition for 201(b) classification was properly filed.

(3) A currently valid petition classifying the married son or married daughter of a United States citizen for preference status under section 203(a)(4) of the Act shall, upon legal termination of the beneficiary's marriage, be regarded as approved under section 203(a)(1) of the Act. The beneficiary's priority date is the same as the date the petition for classification under section 203(a)(4) was properly filed. If the beneficiary is under 21 years of age, the petition is considered approved for status as an immediate relative under section 201(b) of the Act as of the date of termination of the marriage.

(b) *By beneficiary's attainment of the age of 21 years.* A currently valid petition classifying the child of a United States citizen as an immediate relative under section 201(b) of the Act shall be regarded as approved for preference status under section 203(a)(1) of the Act as of the beneficiary's twenty-first

birthday. The beneficiary's priority date is the same as the date the petition for 201(b) classification was filed.

(c) *By petitioner's naturalization.* Effective upon the date of naturalization of a petitioner who had been lawfully admitted for permanent residence, a currently valid petition according preference status under section 203(a)(2) of the Act to the petitioner's spouse, unmarried children under 12 years of age, or unmarried son or unmarried daughter over 21 years of age shall be regarded as approved for immediate relative status under section 201(b) of the Act, for the spouse and unmarried children under 21 years of age, and for the unmarried son or unmarried daughter shall be regarded as approved under section 203(a)(1) of the Act. In any case of conversion to classification under section 203(a)(1), the beneficiary's priority date is the same as the date the petition for classification under section 203(a)(2) was properly filed.

Date: September 1, 1987.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87-20446 Filed 9-4-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 87-050]

Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations by restricting the use of tattoos for identifying certain sows and boars in interstate commerce. Before tattoos may be used, we are requiring that they be authorized by the Deputy Administrator, Veterinary Services. This action is necessary because the majority of slaughter plants have switched to a new methodology that is incompatible with the use of tattoos.

EFFECTIVE DATE: October 8, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. W.E. Ketter, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782, 301-436-8135.

SUPPLEMENTARY INFORMATION:

Background

The provisions of 9 CFR Part 78 et seq. (referred to below as the regulations) restrict the interstate movement of cattle, bison, and swine to prevent the spread of brucellosis, and designate the infection status of various states and areas. In the current regulations, Subpart D (§§ 78.30 through 78.34) specifically restricts the interstate movement of certain swine. Section 78.33 requires the use of tattoos, eartags, and backtags for:

1. Identifying sources of brucellosis by tracing movements of brucellosis infested swine back through marketing channels to herds of origin; and

2. Tracing movements of brucellosis infected and exposed swine from herds of origin to final destinations to determine the extent of brucellosis spread.

On January 13, 1987, we published in the **Federal Register** (52 FR 1336-1338, Docket No. 85-049), a document proposing to amend the regulations by restricting the use of tattoos as a swine identification tool. Amendments were also proposed to clarify the regulations relating to "approved swine identification tags" and "purebred registry associations." Other amendments were proposed to require certain individuals to maintain written records concerning swine.

We solicited comments on the proposal for 60 days, ending March 16, 1987. Eight comments were received. All of them supported our proposal. However, several suggested further changes.

One commenter recommended that we "[c]ompletely eliminate the option of tattooing any slaughter breeding swine for the purpose of traceback." Another commenter stated that "[i]f a slaughter plant still uses the scalding process, tattoos should remain an alternative identification to eartags and backtags." In the past, tattoos were a good identification method. Slaughtering establishments routinely scalded swine in hot water. This removed the hair, and identification tattoos were easily read and recorded. Today, many slaughtering establishments use skinning procedures rather than the scalding process. In skinning, hair is not removed from the hides, and tattoos are impossible to read. However, some slaughtering plants still use scalding. In these cases, tattoos would still effectively identify the swine.

We have considered these comments, and decided not to discontinue the use of tattoos entirely. There are some situations, for example, slaughter plants that still use the scalding process, when tattoos provide an adequate means for swine identification and trace-back. To allow for this, and ensure that any continued uses of tattoos will provide effective identification, § 78.33(a)(3) permits use of Veterinary Services-approved tattoos only when:

1. This means of identification has been requested, in writing, by the person who will be using the tattoo or by a state animal health official; and

2. The Deputy Administrator authorizes this specific use of tattoos after determining that tattoos would provide an effective means of identification and trace-back under the circumstances described by the requestor.

One commenter recommended that swine backtags be visually different from cattle backtags to avoid confusion after the tags are removed from slaughtered animals. We not only agree, but we have been issuing different swine and cattle backtags since the beginning of the year. The cattle backtag is still oblong in shape and utilizes both alpha-numeric and bar codes. The new swine backtag is round in shape and utilizes alpha-numeric codes only.

Another commenter suggested that cattle backtags be the "primary mode of identification on all slaughter breeding swine," and that ear tags should be reserved for animals from known infected and quarantined herds, or in special situations. The commenter explained that: (1) The cattle backtag system has been in use for a long time; (2) markets and dealers use it for keeping track of animals in their own records; (3) making it the primary identification system would eliminate the need for industry to introduce any additional, different identification systems; and (4) ear tags cannot be inserted without restraining each individual swine; whereas backtags are very easy to apply.

We are not making any changes in the regulations based on this comment. The regulations as proposed allow either a backtag or eartag to be used to identify swine. The individual responsible for identifying the swine can choose, based on all the circumstances, which identification device to use. Also, as explained above, swine backtags are different than cattle backtags. However, industry can keep track of and use swine backtag numbers in the same way as they keep track of and use cattle backtag numbers. Allowing eartags as acceptable identification for swine should not require industry to introduce any new identification systems.

One commenter suggested that the regulations specify where the backtag should be placed on swine.

Though we currently have regulations in Part 78 specifying where backtags must be placed on cattle, we do not have enough data at this time to determine the best location to place backtags on swine. Placement on the shoulder has been successful on cattle, but at least one state has reported that backtags do not stay on when placed behind the shoulder on swine. States reporting good backtag retention on swine do not agree on where the backtag should be placed. For example, one state requires placement on the forehead; another requires placement "on either side of the neck, as close to the head area as possible." If we determine that there is one preferable position for backtag placement on swine, we will propose amending the regulations to specify the location.

Finally, one commenter questioned whether footnotes to the regulations are enforceable, and stated specifically that the material in footnote 6 to § 78.33 is "needed" and should be in a form that can be enforced.

In fact, footnotes are enforced just like any other subpart, section, or paragraph of the regulations. However, if the commenter is uncertain, we can assume that a certain amount of reader confusion may exist with regard to this point. Therefore, we have inserted the wording of footnotes 6 and 7 into the text of the final regulations as new §§ 78.33 (d) and (e), respectively. Because we have moved proposed footnotes 6 and 7 into the text, we have renumbered proposed footnote 8 as footnote 6.

Miscellaneous

We have made nonsubstantive changes to present the provisions of this rule more clearly.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0047.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this action will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The purpose of this final rulemaking is to make official eartags and United States Department of Agriculture backtags the primary methods for identifying sows and boars moved in interstate commerce for slaughter or breeding, rather than Veterinary Services approved tattoos. This change will have little effect on the movement of swine in interstate commerce.

Previously, Veterinary Services approved tattoos were used without prior approval, while eartag and backtag use was restricted. This final rule removes prior approval requirements for eartag and backtag use, but places restrictions on the use of tattoos. As a result, most persons who were tattooing will now switch to use of official eartags or United States Department of Agriculture backtags.

The changeover of identification methods will represent a small savings for some users and a small additional cost for others. In either case, the economic impact will be insignificant when measured against the overall production, maintenance, and transportation costs for any persons moving swine.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended to read as follows:

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 78.1 is amended by adding the following definitions in alphabetical order:

§ 78.1 [Amended]

Purebred registry association. A swine breed association formed and perpetuated for the maintenance of records of purebreeding of swine species for a specific breed whose characteristics are set forth in Constitutions, By-Laws, and other rules of the association.

* * * * *

United States Department of Agriculture backtag. A Veterinary Services approved identification backtag conforming to the eight-character alpha-numeric National Backtagging System, which provides a unique identification for each individual animal.

* * * * *

Veterinary Services approved tattoo. A tattoo, conforming to the six character alpha-numeric National Tattoo System, which is assigned by a state animal health official or the Veterinarian in Charge to provide a unique identification for each herd or lot of swine.

* * * * *

3. Section 78.33 is revised to read as follows:

§ 78.33 Sows and boars.

(a) Sows and boars may be moved in interstate commerce for slaughter or for sale for slaughter if they are:

(1) Individually identified by an official eartag or a United States Department of Agriculture backtag applied before movement in interstate commerce and before they are mixed with swine from any other source; or

(2) Individually identified by an official eartag or a United States Department of Agriculture backtag applied upon arrival after movement in interstate commerce and before they are mixed with swine from any other source, when moved directly from their herd of origin to:

(i) A recognized slaughtering establishment; or

(ii) A stockyard, market agency, or dealer operating under the Packers and Stockyards Act, as amended (7 U.S.C. 181 et seq.); or

(3) Individually identified by a Veterinary Services-approved tattoo, when the use of the Veterinary Services-approved tattoo has been requested by a user or the State animal health official, and the Deputy Administrator authorizes its use in writing based on a determination that use of the Veterinary Services-approved tattoo will provide a means of tracing the movement of the sows and boars in interstate commerce.

(b) Sows and boars may be moved in interstate commerce for breeding only if individually identified by an official eartag, or by ear notching or an ear tattoo that has been recorded in the book of record of a purebred registry association. This identification must be

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accomplished before movement in interstate commerce and before the sows and boars are mixed with swine from any other source.

(c) Sows and boars may be moved in interstate commerce for purposes other than slaughter or breeding without restriction under this subpart.

(d) Serial numbers of official eartags, United States Department of Agriculture backtags, and Veterinary Services approved tattoos will be assigned to each person who applies to the state animal health official or the Veterinarian in Charge for the state in which that person maintains his or her place of business. Persons assigned serial numbers must:

(1) Identify the herd of origin of swine upon which the serial numbers were used and record this information on a document;

(2) Maintain these records at their place of business for two years; and

(3) Make these records available for inspection during ordinary business hours upon request by a Veterinary Services representative or a state representative.

(e) The operator of each place of business where sows and boars are identified on arrival in accordance with this section must enter the identification on the yarding receipt, sale ticket, invoice, or waybill relating to the sows and boars, and maintain the document at the place of business for 2 years. The operator must make the document available for inspection during ordinary business hours upon request by a Veterinary Services representative or state representative.

§ 78.44 [Amended]

4. In § 78.44, footnote number "9" and the reference to it are redesignated "8".

Done at Washington, DC, this 2nd day of September, 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 87-20571 Filed 9-4-87; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 94

[Docket No. 86-129]

Importation of Meat and Animal Products Imported From Countries With Rinderpest, etc.

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of meat and animal products by requiring that imported cooked meat from ruminants or swine originating in countries where rinderpest or foot-and-mouth disease exists be inspected at ports of arrival in defrost facilities approved by the Deputy Administrator, Veterinary Services. This action is necessary to help prevent the introduction of rinderpest and foot-and-mouth disease into the United States.

EFFECTIVE DATE: October 8, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 805, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (referred to below as the regulations), restrict the importation into the United States of certain animals, meat, and animal byproducts in order to prevent the introduction into the United States of various diseases, including rinderpest and foot-and-mouth disease. Section 94.4(b) sets forth the conditions under which a person may import cooked meat (except meat sterilized by heat in hermetically sealed containers) from ruminants or swine originating in any country where rinderpest or foot-and-mouth disease exists.

On October 20, 1986, we published in the **Federal Register** (51 FR 37193-37195, Docket Number 85-112), a document proposing to revise § 94.4(b) to (1) require that cooked meat originating in countries where rinderpest or foot-and-mouth disease exists be inspected at ports of arrival in defrost facilities approved by the Deputy Administrator, (2) clarify the restrictions on the importation of ruminants and swine from countries where rinderpest and foot-and-mouth disease exists, and (3) establish a new § 94.0, "Definitions" and add two footnotes to § 94.4. Our proposal invited the submission of written comments on or before December 19, 1986. We received one comment, which supports the proposed rule.

We have made nonsubstantive changes to present the provisions of this rule more clearly. Except for these changes, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Cooked meat derived from ruminants or swine originating in countries where rinderpest or foot-and-mouth disease exists is imported into the United States from South America. The meat is shipped frozen in refrigerated containers aboard ships and arrives in the United States for Food Safety and Inspection Service (FSIS) inspection, at 35 defrost facilities located at the following ports: Boston, MA; Charleston, SC; Chicago, IL; Gulfport, MS; Houston, TX; Los Angeles and San Francisco, CA; New Orleans, LA; New York, NY; Norfolk, VA; Philadelphia, PA; Seattle and Takoma, WA; Jacksonville, Miami, and Tampa, FL; and Wilmington, DE. Cooked meat from South America has been shipped to these same ports for over 10 years. All 35 defrost facilities are approved by FSIS to receive this meat for inspection, and all meet the standards that are required by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 94

African swine fever, Animal diseases, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Rinderpest, Swine vesicular disease.

Accordingly, 9 CFR Part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNUEMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for Part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In Part 94, a new § 94.0 is added to read as follows:

§ 94.0 Definitions.

As used in this part, the following terms shall have the meanings set forth in this section.

Deputy Administrator. The Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other Veterinary Services official authorized to act in the Deputy Administrator's stead.

FSIS Inspector. An individual authorized by the Administrator, Food Safety and Inspection Service, United States Department of Agriculture, to perform the function involved.

Operator. The operator responsible for the day-to-day operations of a facility.

Thoroughly cooked. Heated so that the flesh and juices have lost all red or pink color.

3. In § 94.1, the section heading and paragraph (b) are revised, and a new footnote 1 is added to read as follows.

§ 94.1 Countries where rinderpest or foot-and-mouth disease exists; importations prohibited.

* * * * *

(b) The importation of any ruminant or swine or any fresh, chilled, or frozen meat of any ruminant or swine [1] that originates in any country where rinderpest or foot-and-mouth disease exists, as designated in paragraph (a) of this section, or that enters a port in or otherwise transits a country in which rinderpest or foot-and-mouth disease exists, is prohibited: (1) Except as provided in Part 92 of this chapter for wild ruminants and wild swine; (2) except as provided in Part 92 of this chapter for the importation of ruminants and swine through the Harry S Truman Animal Import Center; (3) except as provided in paragraph (c) of this section for meat of ruminants or swine that originates in countries free of rinderpest and foot-and-mouth disease but that enters a port or otherwise transits a country where rinderpest or foot-and-mouth disease exists; and (4) except as provided in § 94.4 of this part for cooked or cured meat from countries where rinderpest or foot-and-mouth disease exists.

* * * * *

4. In § 94.4, paragraph (b)(3) is redesignated (b)(4).

5. In § 94.4, the section heading and paragraphs (b) through (b)(2) are revised, and a new paragraph (b)(3), and footnotes 2 and 3 are added to read as follows:

§ 94.4 Cured or cooked meat [1] from countries where rinderpest or foot-and-mouth disease exists.

* * * * *

(b) The importation of cooked meat from ruminants or swine originating in any country where rinderpest or foot-and-mouth disease exists, as designated in § 94.1, is prohibited unless the following conditions are met:

(1) All bones have been completely removed in the country of origin.

(2) The meat has been thoroughly cooked in the country of origin.

(3) The meat is inspected by an FSIS inspector at a port of arrival in a defrost facility approved by the Deputy Administrator [2] and the meat is found to be thoroughly cooked.

(i) Request for approval of any defrost facility must be made to the Deputy Administrator. The Deputy Administrator will approve a defrost facility only under the following conditions:

(A) The defrost facility has equipment and procedures that permit FSIS inspectors to determine whether meat is thoroughly cooked;

(B) The defrost facility is located at a port of arrival; and

(C) The defrost facility is approved by the Food Safety and Inspection Service, United States Department of Agriculture.[3]

(ii) The Deputy Administrator may deny approval of any defrost facility if the Deputy Administrator determines that the defrost facility does not meet the conditions for approval. If approval is denied, the operator of the defrost facility will be informed of the reasons for denial and be given an opportunity to respond. The operator will be afforded an opportunity for a hearing with respect to any disputed issues of fact. The hearing will be conducted in accordance with rules of practice that will be adopted for the proceeding.

(iii) The Deputy Administrator may withdraw approval of any defrost facility as follows: (A) When the operator of the defrost facility notifies the Deputy Administrator in writing that the defrost facility no longer performs the required services; or (B) when the Deputy Administrator determines that the defrost facility does not meet the conditions for approval. Before the Deputy Administrator withdraws approval from any defrost facility, the operator of the defrost facility will be informed of the reasons for the proposed withdrawal and given an opportunity to respond. The operator will be afforded a hearing with respect to any disputed issues of fact. The hearing will be conducted in accordance with rules of practice that will be adopted for the proceeding. If approval of a defrost facility is withdrawn, the Deputy Administrator will remove its name from the list of approved defrost facilities.

* * * * *

Done in Washington, DC, this 2nd day of September, 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-20572 Filed 9-4-87; 8:45 am]

BILLING CODE 3410-34-M

[1] Importation of animals and meat includes bringing the animals or meat within the territorial limits of the United States on a means of conveyance for use as sea stores or for other purposes.

[1] This does not include any meat that has been sterilized by heat in hermetically sealed containers.

[2] The names and addresses of approved defrost facilities and conditions for approval may be obtained from the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Washington, DC 20250.

[3] Conditions for the approval of any defrost facility by the Food Safety and Inspection Service, United States Department of Agriculture, may be obtained from the Import Inspection Division, International Programs, Food Safety and Inspection Service, United States Department of Agriculture, Washington, DC 20250.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86-2-000]

Revision of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act and to the Methodology for Assessing Federal Land Use Charges

August 20, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of OMB control number.

SUMMARY: On May 8, 1987, the Federal Energy Regulatory Commission issued a final rule in Docket No. RM86–2–000, 52 FR 18201 (May 14, 1987) revising the billing procedures for annual charges for administering Part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges. This notice states the OMB control number for the regulations promulgated in this docket.

EFFECTIVE DATE: July 28, 1987.

FOR FURTHER INFORMATION CONTACT: James R. Keegan, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357–8542.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501 through 3520 (1982), and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1987), require that OMB approve certain information collection requirements imposed by agency rules. On July 23, 1987, the OMB approved the information collection requirements set forth in the final rule, and issued Control Number 1902–0136 for those requirements in §§ 11.3(c) and 11.4(b). This control number appears in the table in 18 CFR 389.101(b). Therefore, the final rule in Docket No. RM86–2–000 became effective on July 28, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–19633 Filed 9–4–87; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 75F–0303]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acrylonitrile/styrene copolymer in packaging beverages that contain up to 8 percent alcohol. This action responds to a petition filed by Monsanto Co.

DATES: Effective September 8, 1987; objections by October 8, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 10, 1975 (40 FR 52427), FDA announced that a petition (FAP 6B3128) had been filed by Monsanto Co., 800 North Lindbergh Blvd., St. Louis, MO 63141, proposing that § 121.2629 *Acrylonitrile/styrene copolymer* (21 CFR 121.2629) (recodified on March 15, 1977 (42 FR 14572) as 21 CFR 177.1040) be amended to expand the permitted use of the copolymer to include its use as an article or a component of articles intended to contact all foods except those containing more than 8 percent alcohol. During the course of the petition review, Monsanto limited its request to the use of the copolymer in the fabrication of bottles for use only in contact with beverages containing up to 8 percent alcohol.

I. Background

In the **Federal Register** of September 19, 1984 (49 FR 36635), FDA issued a final rule in response to FAP 3B3690 on the use of acrylonitrile/styrene copolymer. This final rule amended § 177.1040 to authorize the use of this copolymer to fabricate bottles for nonalcoholic beverages. In that final rule, FDA set forth the regulatory history of the use of acrylonitrile copolymers as articles or components of articles for use in contact with food. In addition, the agency explained the basis on which it had concluded that the use of this copolymer resin in the manufacture of bottles for nonalcoholic beverages is safe, even though the copolymer may contain minute amounts of acrylonitrile monomer, which has been shown to cause cancer in test animals, as a byproduct of its production.

Residual amounts of reactants and manufacturing aids, such as acrylonitrile monomer, are commonly found as contaminants in chemical products, including food additives. To ensure that potential exposure to acrylonitrile monomer from its presence in bottles for nonalcoholic beverages did not exceed levels considered to be safe, however, the agency established specifications for the copolymer.

II. Evaluation of the Proposed Use

A. Introduction

In 1986, when Monsanto Co. limited the present petition (FAP 6B3128) so that it covered only the use of acrylonitrile/styrene copolymer in bottles for beverages containing up to 8 percent alcohol, it also limited the petition to cover only the acrylonitrile/styrene copolymer that FDA had listed in 21 CFR 177.1040(c)(3) in the 1984 final rule. FDA has evaluated the safety of the use of this additive, and of the starting materials used to manufacture it, in fabricating bottles that would contact beverages that contain up to 8 percent alcohol.

B. Migration

Monsanto submitted data on the migration of acrylonitrile monomer from copolymer fabricated bottles using 8 percent ethanol to simulate alcoholic beverage use. These data show that the level at which the acrylonitrile monomer migrates into 8 percent alcohol does not exceed the level at which it migrates into 3 percent acetic acid, the solvent that was used to simulate nonalcoholic beverages.

C. Exposure

In the 1984 final rule, in estimating the dietary exposure to the acrylonitrile monomer from its use in bottles that contact nonalcoholic beverages, the agency conservatively assumed that such beverages comprise about one-third of a person's total diet. In its review of the present petition, FDA made the same assumption about the portion of the diet that is comprised of beverages containing up to 8 percent alcohol. Nonetheless, the agency believes that total beverage intake will not exceed one-third of the diet, and that, in reality, beverages containing up to 8 percent alcohol will substitute for nonalcoholic beverages (see 49 FR 36635). Therefore, exposure to acrylonitrile monomer from its use in bottles used to package beverages containing up to 8 percent alcohol, as well as in bottles used to package nonalcoholic beverages, will not exceed the exposure previously estimated for nonalcoholic beverages alone, i.e., 0.058 microgram per person per day. For this reason, the agency concludes that there will be no increase in the maximum potential dietary exposure to acrylonitrile monomer from the use of the copolymer for packaging beverages containing up to 8 percent alcohol.

D. Evaluation

In the 1984 final rule (49 FR 36635), FDA discussed two multidose carcinogenicity drinking water studies performed in rats and the quantitative risk assessment used to evaluate the safety of acrylonitrile monomer exposure from nonalcoholic beverages. In that risk assessment, FDA calculated the upper limit of individual lifetime risk from the exposure to acrylonitrile monomer that it estimated could result from the use of the acrylonitrile/styrene resin in bottles for use in contact with nonalcoholic beverages to be 5.8×10^{-8} to 1.2×10^{-7} or less than 1 in 8 million.

Given the fact that the subject use represents no increase in exposure to acrylonitrile monomer above levels that will result from the use of acrylonitrile/styrene resin in bottles containing nonalcoholic beverages, FDA concludes that it can use the same animal studies and quantitative risk assessment procedures to calculate the upper limit of individual lifetime risk in this proceeding as was used in the nonalcoholic beverage container proceeding. After applying such procedures, the agency finds that the risk from the use of acrylonitrile/styrene resin in containers of beverages that contain up to 8 percent alcohol will be no greater than the risk from its use in packaging nonalcoholic beverages, i.e., 5.8×10^{-8} to 1.2×10^{-7} or less than 1 in 8 million.

Therefore, the agency concludes that there is reasonable certainty that no harm will result from exposure to acrylonitrile/styrene copolymer from its use in packaging beverages that contain up to 8 percent alcohol. FDA is consequently amending 21 CFR 177.1040(c) of the food additive regulations to include the proposed use of acrylonitrile/styrene copolymer in fabricating bottles for use in contact with beverages that contain up to 8 percent alcohol, as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The environmental impact of the use of acrylonitrile copolymer to fabricate beverage bottles was thoroughly discussed in FDA's 1984 environmental impact determination (49 FR 36635; Docket No. 83F–0006). The agency has again carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before October 8, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

§ 177.1040 [Amended]

2. In § 177.1040 *Acrylonitrile/styrene copolymer* in the table in paragraph (c), item 3, first column, "Type VI–B" is revised to read "Types VI–A and VI–B".

Dated: September 1, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–20504 Filed 9–4–87; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid With Melengestrol Acetate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two new animal drug applications (NADA's) filed by the Upjohn Co., providing melengestrol acetate and lasalocid combined in Type C medicated feeds for administration to feedlot heifers. Each combination drug is indicated for increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat) in heifers fed in confinement for slaughter.

EFFECTIVE DATE: September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed NADA's 139–876 and 140–288 to provide for combining melengestrol acetate with lasalocid sodium in Type C medicated feeds for administration to feedlot heifers. The drugs are incorporated into Type C feeds by (1) adding melengestrol acetate dry or liquid (NADA's 139–876 or 140–288, respectively) and lasalocid sodium from separate Type B feeds, or (2) adding a Type B feed containing 0.125 to 1.0 milligram of melengestrol acetate per pound to a Type C feed containing 10 to 30 grams of lasalocid sodium activity per ton. The melengestrol acetate concentration in the Type C feed is 0.25 to 2.0 grams per ton to provide 0.25 to 0.5 milligram per head per day. The drug combination is indicated for increased rate of weight gain, improved feed efficiency, and suppression of estrus in heifers fed in

confinement for slaughter. There are existing approvals for use of the drugs at the same levels separately in Type C cattle feeds.

The NADA's are approved and the regulations are amended in § 558.311 by amending paragraph (b)(3) and by adding a new paragraph (e)(1)(xii) and in § 558.342 by adding a new paragraph (c)(3) to reflect the approvals. The basis of approval is explained in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (2 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.311 is amended in paragraph (b)(3) by revising the phrase "(e)(1)(vi), (vii), (ix), and (xi)" to read "(e)(1)(vi), (vii), (ix), (xi), and (xii)" and by adding new paragraph (e)(1)(xii), to read as follows:

§ 558.311 Lasalocid.

* * * * *

(e) * * *

(1) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
. . .	. . .	. . .	. . .	
(xii) 10 (0.0011 pct) to 30 (0.0033 pct) ...	Melengestrol acetate 0.25 to 2	Heifers; for increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat).	In Type C feeds; heifers fed in confinement for slaughter only; feed continuously in Type C feed to provide not less than 100 mg nor more than 360 mg of lasalocid sodium activity per head per day and 0.25 mg to 0.5 mg of melengestrol acetate per head per day; withdraw melengestrol acetate 48 hours prior to slaughter; lasalocid sodium provided by No. 000004 in § 510.600(c) of this chapter; melengestrol acetate provided by No. 000009 in § 510.600(c) of this chapter and used as in § 558.342(c)(3).	.....
. . .	. . .	. . .	. . .	

2. Section 558.342 is amended by adding new paragraph (c)(3) to read as follows:

§ 558.342 Melengestrol acetate.

* * * * *

(c) * * *

(3) *Amount.* Melengestrol acetate, 0.25 to 2.0 grams per ton (to provide 0.25 to 0.50 milligram per head per day), plus lasalocid sodium, 10 to 30 grams per ton (to provide 100 to 360 milligrams per head per day), see § 558.311(e)(1)(xii).

(i) *Indications for use.* For increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat).

(ii) *Limitations.* Heifers being fed in confinement for slaughter: Administer melengestrol acetate and lasalocid sodium by (*a*) adding melengestrol acetate from a separate Type B feed containing 0.125 to 1.0 milligram per pound to Type C medicated feeds containing 10 to 30 grams of lasalocid sodium activity per ton or (*b*) adding melengestrol acetate from a separate Type B feed containing 0.125 to 1.0 milligram per pound and lasalocid sodium from a separate Type B feed containing 100 to 1,440 grams per ton to Type C medicated feeds. Type C medicated feeds in paragraphs (c)(3)(ii)(*a*) and (*b*) of this section may be manufactured from lasalocid liquid Type B feeds in accordance with paragraphs (d)(1) through (5) of § 558.311. Withdraw melengestrol acetate 48 hours prior to slaughter. Lasalocid sodium provided by No. 000004 in § 510.600(c) of this chapter.

Dated: August 31, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87–20503 Filed 9–4–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 234

[Docket No. R–87–1202; FR–1999]

Condominium Ownership Mortgage Insurance; 1983 Act Amendments

AGENCY: Office of the Assistant Secretary for Housing, Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts a proposed rule to revise the regulations governing eligibility requirements for mortgage insurance in the condominium program, in accordance with 1983 statutory amendments to section 234 of the National Housing Act.

This rule removes (1) the provision making units in a project having 12 or more units and less than a year old ineligible for condominium mortgage insurance where the project was not covered by FHA mortgage insurance or was not VA-approved; and (2) the requirements that an investor must be the owner-occupant of a family unit covered by an insured mortgage before acquiring other units covered by insured mortgages. The rule also restricts the availability of unit mortgage insurance in projects that were converted from rental housing.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: John Coonts, Acting Director, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 755–3046. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Statutory Background

Section 420 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181, approved November 30, 1983) (1983 Act) amended section 234(c) of the National Hosing Act (NHA), which provides for mortgage insurance for condominium dwelling units. The amendment removed the requirement that, for a condominium unit to be eligible for mortgage insurance, it had to be in a project covered by a HUD-insured mortgage. Accompanying this requirement was the proviso (also repealed) that a dwelling in an uninsured condominium project containing 12 or more units was eligible for mortgage insurance only if project construction had been completed more than one year before application for mortgage insurance. Under the amended section 234(c), project mortgage insurance is no longer a prerequisite to eligibility for unit mortgage insurance.

The amendment also had the effect of removing language from section 234(c) that provided for insurance of unit mortgages in a project approved for a guarantee, insurance, or a direct loan by the Veterans Administration (VA). However, under the continuing authority of section 203(b), made applicable to section 234(c), units in a condominium approved by the VA under that agency's programs remain eligible for mortgage insurance.

Also removed from section 234(c) was the provision that a mortgagor must be an owner-occupant of a family unit covered by an insured mortgage in order to be able to acquire additional family units covered by mortgages insured under this section—limited to a maximum of four units. With the repeal of this provision, a mortgagor no longer has to acquire a unit covered by a mortgage insured under this section for the mortgagor's own use and occupancy before the mortgagor may purchse, for investment purposes, units with mortgages insured under section 234(c). Section 234(c) of the NHA now provides instead that mortgage insurance on an investor-owned condominium unit is contingent on at least 80 percent of the FHA-insured units in the project being occupied by mortgagors or by comortgagors. Thus, an application for mortgage insurance will not be approved if approval would result in less than 80 percent of the units with insured mortgages in the project being occupied by mortgagors or comortgagors.

Section 420 of the 1983 Act also amended section 234 to add a new section 234(k), which provides that no insurance may be provided with respect to a unit in any project that was converted from rental housing, unless—

> (I) The conversion occurred more than one year prior to the application for insurance, (2) the mortgagor or comortgagor was a tenant of that rental housing, or (3) the conversion of the property is sponsored by a bona fide tenants organization representing a majority of the households in the project.

Under an amendment by section 104(a)(2) of the Housing and Community Development Technical Amendments Act of 1985 (Pub. L. 98–479, approved October 17, 1984) a new subsection (4) was added, to permit mortgage insurance on a unit in a project that was converted from rental housing if—

> [B]efore April 20, 1984 (A) application was made to the Secretary for a commitment to insure a mortgage covering any unit in the project, (B) in the case of direct endorsement, the mortgagee received the case number assigned by the Secretary for any unit in the project, or (C) application was made for approval of the project for guarantee, insurance, or direct loan under Chapter 37 of Title 38, United States Code.

The amendment made by section 104(a)(2) is not implemented in this rulemaking because by the effective date of this rule, action would have been completed on the three categories of projects specified in subsection (4) that were converted before April 20, 1984.

Amendments Made by This Final Rule

In § 234.1 definitions are added for the terms "conversion", "tenant", and "bona fide tenants' organization". The terms "mortgage" and "project" (formerly "multifamily project") are redefined in this rule to omit reference to the word "multifamily", since the text of the rule does not use the term "multifamily project", but only "project".

Section 234.26 is revised to remove the restrictive eligibility requirements previously applicable under 24 CFR 234.26(a)(1) through (3). These requirements are no longer necessary under the amendments contained in the 1983 Act. Added to § 234.26 by this rule, at § 234.26(e)(2) and § 234.26(f), respectively, are the new provisions on minimum mortgagor occupancy levels and on limitations on conversion of rental housing.

The regulatory provision at 24 CFR 234.59 on "mortgagor limitations" is removed. That provision is no longer valid as a result of the repeal of section 234(c)(3) of the NHA by section 420 of the 1983 Act.

Public Comments

The Department published a proposed rule on June 28, 1985 (50 FR 26792), inviting comment for a 60-day period ending August 27, 1985. Three comments were received. A summary of these comments, along with the Department's response, follows.

A developer proposed that the rule be drafted in a manner that would allow the Veterans Administration (VA) to "honor" the VA's Certificate of Reasonable Value (CRV) on a condominium for which HUD has issued a commitment. The commenter claimed that the VA had informed him that unless the VA is involved in a condominium project from the beginning, it "will not underwrite a VA mortgage nor honor reciprocal agreement with HUD." The commenter's proposal, even if it were to be made part of this rule, would be unenforceable by HUD, because this Department has no authority to fix VA policy regarding that agency's acceptance of HUD commitments. HUD, however, does accept VA CRVs on units in condominiums.

The Department notes, however, that in a Circular issued on December 30, 1983 (DVB Circular 26–83–50), the VA informed its field stations that, among other things, section 535 of Pub. L. 98–181 "requires total reciprocity for housing subdivision approvals issued by the VA, USDA * * *, and HUD." The VA Circular went on to advise that—

> As of January 1, 1984, VA will accept satisfactory evidence of subdivision approvals given by [HUD] when presented by the holder of such approval. No further subdivision processing or environmental clearances will be conducted by VA.
>
> * * * * *
>
> Condominiums approved by HUD * * * shall be accepted by VA. Organizational documents related to condominiums and planned-unit developments approved by HUD * * * are required as necessary exhibits for appraisal purposes only. VA CRV's issued as the result of the conversion of a HUD conditional commitment related to a condominium a planned-unit development do not require any submission of review or organizational documents.

In light of the above-cited language from the VA Circular, which VA has advised us continues to be its policy, we

believe the information conveyed by the commenter is out of date or based on misunderstanding. We do not believe there is a problem of VA reluctance to issue CRVs based on HUD/FHA commitments or on appraisals by Direct Endorsement lenders.

The same commenter also proposed that HUD grant permission to commence early construction on a condominium construction phase, in the same way that it allows an early start on projects that apply for an FHA-insured mortgage, when there is an unreasonable delay in processing the commitment on a construction phase.

HUD will grant permission for an early start, *i.e.*, for construction to begin before the commitment for mortgage insurance is issued. After the local authority issues the building permit, the mortgagee may request HUD's permission for the builder to start construction before the issuance of a conditional commitment.

This commenter also argued that much time could be saved if applications for condominium mortgage insurance were processed under guidelines similar to those applicable to single family mortgage insurance. This rule eliminates project mortgage insurance as a prerequisite to unit mortgage insurance. Thus, with only the application for unit mortgage insurance to process, delays should be minimized, making processing time for condominium unit insurance generally comparable to that in the single family program.

A trade association limited its comments to supporting the inclusion in the rule of the amendment to section 234(k) of the NHA made by section 104(a)(2) of the Housing and Community Development Technical Amendments Act of 1984. The 1984 Amendment is not included in this final rule because, as explained above, the passage of time has made the amendatory language superfluous.

Another trade association urged the Department to seek repeal of the statutory language restricting the availability of condominium unit mortgage insurance in projects that are converted from rental housing. In this commenter's view, such a restriction does not stop conversion, but limits the availability of FHA insurance to those who need it most.

The Department is not persuaded that it should seek repeal of the restrictive statutory language. Indeed, HUD disagrees with the contention that the restriction limits the availability of FHA insurance to a needy class. Mortgage insurance is still available unconditionally on other condominium projects, and the commenter offers no evidence to show that the class that it seeks to protect (first-time and other buyers with limited assets) cannot frequently qualify to purchase these units. Stated differently, the comment fails to make a case that unrestricted condominium conversion brings homeownership within easier reach of this class. Moreover, the restriction at issue is short-term and is inapplicable to mortgagors who were tenants of a converted project or to conversions sponsored by the majority of the tenants of a rental project.

The same commenter also sought clarification of the provision relating to conversion that states that "the mortgagor or comortgagor was a tenant of the housing." The commenter argued that this language might be interpreted as limiting a tenant in a converted project to purchasing the same unit that he or she formerly rented. The Department disagrees that the proposed rule's formulation is unclear. The statute (section 420(c) of the 1983 Act) uses both term "rental housing" and the term "unit." The rule closely parallels the statute. Both are clear, in our view, in providing that a preconversion tenant is free to purchase *any* unit in the tenant's converted project. However, to clarify further the intended meaning, we have revised § 234.26(f)(2).

A further point raised by this commenter was that for multi-phase condominium conversions, the date of conversion be defined for the entire project (*i.e.*, all phases) as the date the conversion documents were filed *for the first phase* of the project. According to the comment, because of the vagaries of the market, a "concrete determination of an entire project's eligibility for FHA unit mortgage insurance will enhance the ability to plan projects in a financially feasible manner, thus lowering costs to potential buyers."

The creation of a condominium is peculiarly a matter of State or local law. A conversion can only take place, under the rule, when "all documents necessary to create a condominium under State law * * * have been recorded." Therefore, by tying the act of conversion to the creation of a condominium, the rule permits State or local law to determine whether the conversion of the first phase in a multi-phase condominium project can serve as the date of conversion for all phases of the project. As such, State or local condominium law may recognize that a condominium has been created for all phases of a multi-phase condominium project, notwithstanding that conversion documents were filed for only the first phase of the project. Additionally, the rule's definition of "project" and "conversion" (see § 234.1 (k) and (o), respectively) is sufficiently broad, the Department believes, to accommodate the commenter's suggestion. The test, however, would be whether the suggestion is consistent with a particular jurisdiction's condominium law. Therefore, unless State or local law allows the recordation creating the condominium to cover all phases, the one-year limitation will apply to each phase.

As a final note, this commenter urged HUD to advise its field offices to maintain accurate records under the 80 percent mortgagor-occupied provision. (See §234.26(e)(2).) Accurate records are necessary, argued the commenter, to avoid borrowers' losing non-refundable application fees in situations where approval of an application for insurance would violate the 80 percent provision. The Department has already taken steps to ensure that FHA commitments are properly recorded in each Field Office's condominium log. Further, direct endorsement lenders have been advised to contact the local HUD office to determine whether the office can accept an endorsement where an investor is involved. These actions, the Department believes, will avoid the occurrence of the problem cited by the commenter.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(20(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule removes regulatory provisions in accordance with recent statutory amendments, and adds provisions that are protective of, or that redirect benefits to, a determinable class of users without imposing any economic burden on small entities.

This rule was listed as Sequence Number 963 in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14387), under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.133.

List of Subjects in 24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

Accordingly, the Department amends 24 CFR Part 234 as follows:

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

1. The authority citation for Part 234 continues to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 234.1, paragraphs (d) and (k) are revised, and new paragraphs (o), (p), and (q) are added, to read as follows:

§ 234.1 Definitions used in this subpart.

* * * * *

(d) "Mortgage" means a first lien covering a fee interest or eligible leasehold interest in a one-family unit in a project, together, with an undivided interest in the common areas and facilities serving the project, and such restricted common areas and facilities as may be designated.

* * * * *

(k) "Project" means a structure or structures containing four or more family units.

* * * * *

(o) "Conversion" means the date on which all documents necessary to create a condominium under State law (and under local law, where applicable) have been recorded.

(p) "Tenant" means the occupant(s) named in the lease or rental agreement of a housing unit in a project as of the date the condominium conversion documents are properly filed for the project, or as of the date on which the occupants are notified by management of intent to convert the project to a condominium, whichever is earlier.

(q) "Bona fide tenants' organization" means an association of tenants formed by the tenants to promote their interests in a particular project, with membership in the association open to each tenant, and all requirements of the association applying equally to every tenant.

3. Section 234.26 is revised to read as follows:

§ 234.26 Project requirements.

No mortgage shall be eligible for insurance unless the following requirements are met:

(a) *Location of family unit.* The family unit shall be located in a project that the Commissioner determines to be acceptable.

(b) *Plan of condominium ownership.* The project in which the unit is located shall have been committed to a plan of condominium ownership by a deed, or other recorded instrument, that is acceptable to the Commissioner.

(c) *Releases.* The family unit shall have been released from any mortgage covering the project or any part of the project.

(d) *Certificate by mortgage.* The mortgagee shall certify that:

(1) The deed of the family unit and the deed or other recorded instrument committing the project to a plan of condominium ownership comply with legal requirements of the jurisdiction.

(2) The mortgagor has good marketable title to the family unit, subject only to a mortgage that is a valid first lien on the family unit.

(3) The family unit is assessed and subject to assessment for taxes pertaining only to that unit.

(e) *Conditions and provisions.* (1) The Commissioner may require such conditions and provisions as the Commissioner determines are necessary for the protection of consumers and the public interest.

(2) An application for mortgage insurance of a unit will not be approved if approval would result in less than 80 percent of the FHA-insured mortgages covering units in the projects being occupied by the mortgagors or comortgagors.

(3) In addition to the other requirements contained in his section, in order for a project to be acceptable to the Secretary, at least 51 percent of all family units (i.e., both FHA-insured and conventionally financed units) shall be occupied by the owners or shall have been sold to owners who intend to occupy the units.

(f) *Limitations on conversion of rental housing to condominium use.* With respect to a family unit in any project that was converted from rental housing, no insurance will be provided under this section unless:

(1) The conversion occurred more than one year before the application for insurance; or

(2) The mortgagor or comortgagor was a tenant of a unit in the rental housing project converted to condominium use; or

(3) The conversion of the property is sponsored by a bona fide tenants' organization representing a majority of the households in the project.

(g) *Projects covered by an insured or Secretary-held mortgage.* In addition to the requirements contained in paragraphs (a) through (f) of this section, projects which are covered by an FHA-insured project mortgage, or by a mortgage held by the Secretary, must be in compliance with a conversion plan approved by the Commissioner. The conversion plan shall provide for:

(1) The termination by payment in full of the mortgage or by voluntary termination of the insurance contract covering any HUD/FHA-insured or Secretary-held mortgage on the project, unless the Commissioner determines that the Commissioner's interests, and those of the individuals purchasing the family units, are best served by not requiring the termination of the insurance or payment in full of the mortgage.

(2) On release of a family unit from the project mortgage, payment shall be made on the outstanding balance of the project mortgage in an amount equal to the share of the balance determined by HUD to be attributable to the family unit.

(3) The project mortgage shall certify that, notwithstanding any provisions of the mortgage covering prepayment, no charge is contemplated or has been collected for prepayment in full of the project mortgage.

(h) *Projects not covered by an insured or Secretary-held mortgage.* In addition to the requirements containted in paragraphs (a) through (f) of this section, projects which are not covered by an insured project mortgage or by a Secretary-held mortgage and which have not been approved by the Veterans Administration for its guaranty, insurance, or direct loan programs shall meet the requirements of this paragraph. Except with the approval of the Commissioner for the purpose of constructing or coverting the project in phases or stages, any special right of the declarant (as declarant and not as a unit

owner) to do any or all of the following must have expired or must have been waiver in a recorded instrument:

(1) Add land or units to the condominium;

(2) Convert common elements into additional units or limited common elements;

(3) Withdraw land from the condominium;

(4) Use easements through the common elements for the purpose of making improvements within the condominium or within any adjacent land; or

(5) Convert a unit into two or more units, common elements, or into two or more units and common elements.

§ 234.59 [Removed]

4. Section 234.59 is removed.

Date: August 28, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-20525 Filed 9-4-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8157]

Income Tax Regulations; Deposit of Estimated Income Tax by Certain Private Foundations and Tax-Exempt Organizations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations that revise the Federal tax deposit regulations relating to corporate estimated income tax to make them applicable to quarterly payments required by the Tax Reform Act of 1986 of unrelated business income tax imposed upon certain tax-exempt organizations and the net investment income excise tax imposed upon certain private foundations. These amendments affect certain tax-exempt organizations which have income subject to the tax upon unrelated business income imposed by section 511 and certain private foundations subject to the net investment excise tax imposed by section 4940.

DATE: These amendments are applicable and effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202-566-3829 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 24, 1986, the Federal Register published a notice of proposed rulemaking (51 FR 46689) by cross reference to temporary regulations published the same day in the Federal Register (51 FR 46619) under section 1542 of the Tax Reform Act of 1986 which requires quarterly payments of the tax upon net investment income and unrelated business income of certain private foundations and tax-exempt organizations.

This document contains final regulations regarding deposits under section 6302(c) of the Internal Revenue Code of 1986 of the above-described tax effective for taxable years beginning after December 31, 1986. No hearing was requested with respect to the proposed regulations, and none was held. Several written public comments were received in response to the cross-reference notice, but since none of them requested any revision to the temporary regulations under section 6302(c), the final regulations promulgate the proposed regulations without substantive change.

Explanation of Provisions

Prior to the enactment of the Tax Reform Act of 1986, tax-exempt organizations were required to pay the tax imposed by section 511 upon their unrelated business income, and some private foundations were required to pay the excise tax imposed by section 4940 upon their net investment income, annually with their returns. Section 1542 of the Tax Reform Act of 1986 provides that private foundations and tax-exempt organizations must make quarterly estimated payments of the tax on net investment income or of the tax on unrelated business income, respectively, under the same rules that currently require quarterly estimated payments of corporate income taxes.

This Treasury decision provides that private foundations and tax-exempt organizations shall pay their quarterly estimated taxes in the same manner and time as corporations pay their quarterly estimated taxes by making a deposit of their quarterly taxes through the Federal Tax Deposit (FTD) system by the due dates for paying estimated taxes.

Public Comments

Two commentators discussed the problems which they believe private foundations and tax-exempt organizations face in making accurate and timely estimated tax payments by the 15th day of the 4th month of the taxable year (April 15 in the case of a calendar-year organization) as required under section 6154(b) of the Internal Revenue Code of 1986, while section 6072(e) of the Code provides that such organizations are not required to file their income tax returns for the previous taxable year until the 15th day of the 5th month of the taxable year (May 15 in the case of a calendar-year organization). Any problem caused by the application of these rules arises directly from the effect of Code section 6154(h) in subjecting private foundations and tax-exempt organizations to the estimated tax rules applicable to corporations and not from any provision of the proposed regulations.

No commentator noted any problem in requiring such organizations to make their estimated tax payments through the Federal Tax Deposit (FTD) system instead of using estimated tax payment vouchers similar to those used by individual taxpayers. Hence, this document promulgates, without substantive revision, the proposed regulations which simply require such organizations to make their quarterly estimated tax payments through the FTD system.

Nonapplicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

The Secretary of the Treasury has certified that this rule will not have a significant impact on a substantial number of small entities because the economic and any other secondary or incidental impact of the requirement for quarterly tax payments flows directly from the underlying statute. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget

(OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. The requirements have been approved by OMB under control number 1545–0257. This number has already been incorporated into the table in 26 CFR 602.101(c).

Drafting Information

The principal author of this regulatory amendment is John A. Tolleris of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.6302–1—1.6302–2

Income taxes, Administration and procedure, Tax depositaries.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by removing the citation for § 1.6302–1T, and adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.6302–1 (a) also issued under 26 U.S.C. 6302 (c). * * *

Par 2. The heading and paragraph (a) of § 1.6302–1 are hereby revised to read as follows:

§ 1.6302–1 Use of Government depositaries in connection with corporation income and estimated income taxes and certain taxes of tax-exempt organizations.

(a) *Requirement.* A corporation (and, for taxable years beginning after December 31, 1986, any organization subject to the tax imposed by section 511, and any private foundation subject to the tax imposed by section 4940) shall deposit with an authorized depositary of Federal taxes all payments of tax imposed by Chapter 1 of the Code (or treated as so imposed by section 6154 (h)), including any payments of estimated tax, on or before the date otherwise prescribed for paying such tax. This paragraph does not apply to a foreign corporation or entity which has no office or place of business in the United States.

* * * * *

§ 1.6302–1T [Removed]

Par. 3. Section 1.6302–1T is hereby removed.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: August 19, 1987.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87–20457 Filed 9–4–87; 8:45 am]

BILLING CODE 483–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

Exemption from Coverage of Apprenticeship Programs Under the Age Discrimination in Employment Act (ADEA)

AGENCY: Equal Employment Opportunity Commission.

ACTION: Reaffirmation of final rule.

SUMMARY: In June of 1984 the Equal Employment Opportunity Commission voted to undertake a review of the Commission's Interpretative Regulation set forth at 29 CFR 1625.13: Apprenticeship Programs Under the Age Discrimination in Employment Act of 1967, as amended (ADEA). The Commission has determined, after careful reassessment of the statutory language of the ADEA, the Act's legislative history, related statutes and case law, and a thorough examination of the history of apprenticeship programs, that Congress when enacting the ADEA did not intend to subject *bona fide* apprenticeship programs to the prohibitions of the Act. Accordingly, it is the Commission's view that § 1625.13 clearly embodies the intent of Congress and therefore should remain in full force and effect.

EFFECTIVE DATE: July 30, 1987.

FOR FURTHER INFORMATION CONTACT: James E. Cooks, Attorney-Advisor, ADEA Division, Coordination and Guidance Services, Office of Legal Counsel, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, DC 20507, (202) 634–6423.

Signed this 1st Day of September, 1987 at Washington, DC.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 87–20552 Filed 9–4–87; 8:45 am]

BILLING CODE 6570–06–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 3, 67, 80, 100, 110, 147, 150, 161, 162, 165, 166, 167, and 177

[CGD 86–082]

Identification of the Horizontal Datum Referenced in the Coast Guard Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to inform the public that due to the ability to establish global reference systems that provide more accurate geographic positions (latitude and longitude), the horizontal datums referenced on maps and charts are being revised and during the interim, various horizontal datums may be encountered. The geographic positions listed in the regulations in Title 33, Parts 1–999 are referenced to various horizontal datums such as the North American Datum of 1927, U.S. Standard Datum, Old Hawaiian Datum, Puerto Rican Datum, Local Astronomic Datum, and others; however, the datum is not identified. The National Oceanic and Atmospheric Administration (NOAA) has identified the North American Datum of 1983 (NAD 83) to replace the various horizontal datums currently in use. The rulemaking inserts cautionary reminders that during the conversion there may be discrepancies between the positions described in the existing regulations and the charted positions.

EFFECTIVE DATE: September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Parker, (202) 267–0357.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking has not been published for this regulation; and it is being made effective in less than 30 days. This rulemaking is not changing any of the information contained in the regulations, but is merely providing a means of identifying when the geographic positions are referenced to NAD 83. Therefore, the Coast Guard finds that an opportunity for notice and comment is unnecessary under 5 U.S.C. 553(b)(B). Because of the different datums referenced on the many maps and charts that are produced, and in view of the necessity for individuals to be able to identify the horizontal datum referenced in the published geographic positions, it has been determined that good cause exists under 5 U.S.C. 553(d)(3) to make this rule effective in less than 30 days.

Drafting Information

The principle persons involved in drafting this rulemaking are Mr. Frank Parker, Project Manager, and Lieutenant S.R. Sylvester, Project Attorney, Office of the Chief Counsel.

Discussion of the Regulation

Through the use of satellites and other modern surveying techniques, it is now possible to establish global reference systems which provide more accurate geographic positions. Currently, several datums such as the North American Datum of 1927, U.S. Standard Datum, Old Hawaiian Datum, Puerto Rican Datum, Local Astronomic Datum, and others are in use. The National Oceanic and Atmospheric Administration (NOAA) has identified the North American Datum of 1983 (NAD 83) to replace the various datums used in the past on maps and charts. NOAA has begun converting geographic positions to NAD 83. Over time, all maps and charts will reference NAD 83, except for nautical charts of the Pacific Territory Islands, which will be compiled on World Geodetic Systems 1984 (WGS 84). For the accuracy required for charting purposes, geographic positions referenced to WGS 84 are essentially equivalent to the geographic positions referenced to NAD 83. The entire conversion is expected to be accomplished over a ten-year period.

During the period of conversion, some maps and charts will be referenced to the new NAD 83, while others will still be referenced to the former datums, such as the North American Datum of 1927, U.S. Standard Datum, Old Hawaiian Datum, Puerto Rican Datum, Local Astronomic Datum, and others. Corrections must be made to the geographic positions from the previous referenced datum to NAD 83. As a result of applying these corrections the geographic positions will change; however, the location of objects in relation to surrounding land does not change.

The regulations in Title 33, Parts 3, 67, 80, 100, 110, 147, 150, 161, 162, 165, 166, 167, and 177 are being amended to include a notice that indicates when the datums of the geographic positions in these regulations are referenced to NAD 83.

Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rule is merely adding information to clarify the existing regulations. This final rule will not have a quantifiable cost impact. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 3

Coast Guard areas, Districts, Marine inspection zones, Captain of the Port zones.

33 CFR Part 67

Aids to navigation on artificial islands and fixed structures.

33 CFR Part 80

COLREGS demarcation lines.

33 CFR Part 100

Safety of life on navigable waters.

33 CFR Part 110

Anchorage regulations.

33 CFR Part 147

Safety zones.

33 CFR Part 150

Operations.

33 CFR Part 161

Vessel traffic management.

33 CFR Part 162

Inland waterways navigation regulations.

33 CFR Part 165

Regulated navigation areas and limited access areas.

33 CFR Part 166

Shipping safety fairways.

33 CFR Part 167

Offshore traffic separation schemes.

33 CFR Part 177

Correction of especially hazardous conditions.

For reasons set out in the preamble, Title 33, Chapter 1, Parts 3, 67, 80, 100, 110, 147, 150, 161, 162, 165, 166, 167, and 177 of the Code of Federal Regulations, are amended as set forth below.

PART 3—[AMENDED]

1. The authority citation for Part 3 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

2. Section 3.01–1(h) is revised and redesignated as paragraph (g) to read as follows:

§ 3.01–1 General description.

* * * * *

(g) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

PART 67—[AMENDED]

3. The authority citation for Part 67 is revised to read as follows:

Authority: 14 U.S.C. 85, 633; 43 U.S.C. 1333; 49 CFR 1.46.

All other authority citations are deleted.

4. Section 67.50–1 is revised to read as follows:

§ 67.50–1 Scope.

(a) The regulations in this subpart shall apply to the structures which are located within the boundaries of the Coast Guard districts hereinafter defined.

(b) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

* * * * *

PART 80—[AMENDED]

5. The authority citation for Part 80 is revised to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.46.

6. Section 80.01(c) is added to read as follows:

§ 80.01 General basis and purpose for demarcation lines.

* * * * *

(c) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on

maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

PART 100—[AMENDED]

7. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46; 33 CFR 100.35.

8. Section 100.01(b) is added to read as follows:

§ 100.01 Purpose and intent.

* * * * *

(b) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

PART 110—[AMENDED]

9. The authority citation for Part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 2071; 49 CFR 1.46, 33 CFR 1.05–1(g).

10. Section 110.1(d) is added to read as follows:

§ 110.1 General.

* * * * *

(d) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose reference horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

PART 147—[AMENDED]

11. The authority citation for Part 147 is revised to read as follows:

Authority: 14 U.S.C. 85; 33 U.S.C. 2071; 49 CFR 1.46.

12. Section 147.10(d) is added to read as follows:

§ 147.10 Establishment of safety zones.

* * * * *

(d) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts reference to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

PART 150—[AMENDED]

13. The authority citation for Part 150 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1509; 49 CFR 1.46.

14. Appendix A to Part 150 is amended by adding a new paragraph V to read as follows:

Appendix A—Deepwater Port Safety Zone Boundaries

* * * * *

V. Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

PART 161—[AMENDED]

15. The authority citation for Part 161 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

16. Section 161.101(d) is added to read as follows:

§ 161.101 Purpose and applicability.

* * * * *

(d) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose reference horizontal datum is the North American Datum of 1983 (NAD 83), uless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

PART 162—[AMENDED]

17. The authority citation for Part 162 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

18. Section 162.1 is added to read as follows:

§ 162.1 General.

Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

PART 165—[AMENDED]

19. The authority citation for Part 165 is revised to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

20. Section 165.8 is added to read as follows:

§ 165.8 Geographic coordinates.

Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

PART 166—[AMENDED]

21. The authority citation for Part 166 is revised to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

22. Section 166.103 is added to read as follows:

§ 166.103 Geographic coordinates.

Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

PART 167—[AMENDED]

23. The authority citation for Part 167 is revised to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

24. Section 167.3 is added to read as follows:

BEST COPY AVAILABLE

§ 167.3 Geographic coordinates.

Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

PART 177—[AMENDED]

25. The authority citation for Part 177 is revised to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

26. Section 177.08 introductory text is revised to read as follows:

§ 177.08 Regulated boating areas.

For the purpose of this part, the following are regulated boating areas.

Note: Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

* * * * *

Dated: August 3, 1987.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 87-20332 Filed 9-4-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD5 87-035]

Drawbridge Operation Regulations; Christina River, Wilmington, DE

AGENCY: Coast Guard, DOT.

ACTION: Final rule; revocation.

SUMMARY: This amendment revokes the regulations for Conrail's Christina River drawbridge, mile 5.4, because the swing bridge has been removed. Regulations for the other bridges on the Christina River remain unchanged. Notice and public procedure have been omitted from this action due to the removal of the bridge concerned.

EFFECTIVE DATE: These regulations become effective September 8, 1987.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, Bldg. 135A, Governors Island, New York 10004 (212) 668-7994.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes regulations for a swing bridge that no longer exists. Consequently, this action is considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). However, this action will not have significant economic impact on a substantial number of small entities.

Drafting Information

The drafters of these regulations are Sylvia L. Bowens, project officer, and Cdr. Robert J. Reining, project attorney.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.237(c) is revised to read as follows:

§ 117.237 Christina River.

* * * * *

(c) The draws of he Conrail bridges, at miles 4.1 and 4.2, both at Wilmington, shall open on signal from 6 a.m. to 8 p.m. if at least 24 hours notice is given. From 8 p.m. to 6 a.m., the draws need not be opened for the passage of vessels.

* * * * *

Dated: August 18, 1987.

R.M. Polant,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 87-20539 Filed 9-4-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 305 and 306

[FRL-3249-2]

Withdrawal of Arbitration Procedures and Natural Resource Claims Procedures for Hazardous Substance Superfund

AGENCY: Environmental Protection Agency.

ACTION: Final rule; removal of regulations.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is withdrawing two procedural rules promulgated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). The rules concern: (1) The submission and evaluation of natural resource claims against the Hazardous Substance Superfund (Superfund) (40 CFR Part 306), and (2) the arbitration of both natural resource and response claims (40 CFR Part 305). EPA is withdrawing these two regulations because the authority for financing natural resource claims and for arbitrating claims has been revoked by provisions of the Superfund Amendments and Reauthorization Act of 1986 (SARA).

EFFECTIVE DATE: October 8, 1987.

ADDRESS: *Docket*—The public docket for the arbitration and claims procedures is available for public inspection at the U.S. Environmental Protection Agency, Waterside Mall, Lower Garage, 401 M Street, SW., Washington, DC 20460. The docket is available for viewing by appointment only, (202) 382-3046, from 9:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: William O. Ross, Office of Emergency and Remedial Response (WH-548), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 382-4645, or The RCRA/CERCLA Hotline, (800) 424-9346 (or 382-3000 in the Washington, DC metropolitan area).

SUPPLEMENTARY INFORMATION:

I. Natural Resource Claims Procedures Rule

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, Pub. L. 96-510, authorized the assertion of two types of claims against the Superfund: Response claims

authorized by section 111(a)(2) of CERCLA and natural resource claims authorized by section 111(a)(3) of CERCLA. Response claims are to reimburse private parties for at least part of their costs in responding to a release, or threat of a release, of a hazardous substance, pollutant or contaminant. Natural resource claims are submitted by Federal, State, or Indian tribe trustees for reimbursement of the costs of assessing damage to a natural resource, or for the restoration, rehabilitation, replacement or acquiring the equivalent of a natural resource that has been injured, destroyed or lost. The submission and evaluation of natural resource claims was the subject of a rule promulgated by EPA on December 13, 1985. 50 FR 51196 *et seq.*, 40 CFR Part 306. The Agency is today withdrawing this rule because CERCLA, as amended by SARA, does not authorize the appropriation of funds for the payment of natural resource claims.

SARA treats natural resource claims in different ways. Section 111(c)(1) of SARA amends section 111(b) of CERCLA to prohibit payment from the Superfund of a natural resource claim unless the President determines that the claimant has exhausted all administrative and judicial remedies for recovering such claims from parties liable under section 107 of CERCLA. This restriction applies only to claims for restoration, rehabilitation, replacement or acquiring the equivalent of an injured natural resource—not to claims for damage assessments. Another provision, section 111(e) of SARA, amends section 111(e)(2) of CERCLA to prohibit payment from the Superfund in any fiscal year where the President determines that such funds are needed for response to threats to public health.

However, the above provisions are mooted by section 517(a) of SARA, which amends the Internal Revenue Code as follows:

> Amounts in the Superfund shall be available, as provided in the appropriation Acts, only for purposes of making expenditures—
>
> (A) To carry out the purposes of—
>
> (i) Paragraphs (1), (2), (5), and (6) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986,
>
> (ii) Section 111(c) of CERCLA (as so in effect), other than paragraphs (1) and (2) thereof * * *.

It can be seen that section 517(a) of SARA prohibits Superfund expenditures to carry out the purposes of sections 111 (a)(3), (b), (c)(1), (c)(2) of CERCLA. These are the authorizing provisions for natural resource claims. Therefore, even though the programmatic sections regarding natural resource claims still exist, the authority to spend money for those claims has been specifically revoked.

The legislative history is clear that Congress intended that natural resource claims not be paid. The conference report to SARA holds that: "[t]he conference agreement follows the House bill in deleting natural resource damage and assessment claims as a Superfund expenditure purpose." H.R. Rep. No. 962, 99th Cong. 2d Sess. 321 (Oct 3, 1986); *see* H.R. Rep. No. 253, 99th Cong. 2d Sess., pt. 2, at 54 (1985) (House Report). Because of section 517(a) of SARA, EPA is today withdrawing the regulatory procedures for natural resource claims.

II. Arbitration Rule

Section 112 of CERCLA (as amended by SARA) outlines procedures for asserting all claims against the Fund for response costs. Prior to the enactment of SARA, section 112(b)(4) of CERCLA required the creation of a Board of Arbitrators to review EPA's claim determinations if either the claim was denied or the claimant contests the amount of an award. Implementing this statutory mandate, the Agency promulgated a rule that formally established an arbitration board and set forth procedures for the consideration of contested claims. 50 FR 51196 *et seq.* (December 13, 1985), 40 CFR Part 305.

Section 112(b) of SARA revokes the statutory authorization for an arbitration board. In its place, section 112(b) of SARA amended section 112(b)(2) of CERCLA to allow a claimant to request an administrative hearing if all or part of his claim is denied. Paragraphs (3) through (5) of the revised subsection 112(b) outline the general parameters of the administrative hearing. In furtherance of this statutory mandate, EPA is currently drafting rules for such administrative hearings. Because all statutory authority for arbitration was specifically revoked, and the arbitration procedures were specifically replaced by an alternative administrative procedure, the Agency is withdrawing its rules for arbitration, currently found at 40 CFR Part 305.

III. Response to Public Comments

In the 30-day period after this rule was proposed on July 13, 1987 (52 FR 26160), the Agency received two public comments: One favoring the withdrawal of the regulations over suspension; the other opposed withdrawal of the regulations, questioning EPA's authority to do so in light of section 112 of CERCLA. The latter commenter stated that the filing of claims should be allowed given the strict time limit for such filings, and concluded that it would be less confusing to notify trustees that they may may "file such claims if they want to preserve them for *possible* future funding" (emphasis supplied).

Executive order 12580 delegates to EPA the President's authorities under section 112, including the responsibility to prescribe appropriate forms and procedures for response and natural resource claims. EPA takes seriously its responsibilities under section 112(b)(1) and will propose procedures for filing response claims in the near future. It is EPA's position, however, in view of the section 517 provision limiting the use of Fund monies, that it is inappropriate to maintain the regulation establishing natural resource claims procedures.

Since no Fund monies may be used to pay natural resource claims, EPA sees no reason to expend resources in processing such claims, against the uncertain prospect of future Congressional authorization. In addition, in order to process those claims, the Agency would need to develop procedures to determine the requirements for exhausting administrative and judicial remedies (CERCLA section 111(b)(2)(A)). EPA does not believe that such a use of governmental resources is now warranted.

To be sure, the 3-year period for filing natural resource claims may be running at some sites. However, that is of no significance so long as authorization to pay claims is lacking. Should Congress decide in the future to authorize the payment of Fund monies for natural resource claims, any necessary adjustments in the statute of limitations may be made at that time.

IV. Regulatory Status and Required Analysis

Final rules issued by Federal agencies are governed by several statutes and executive orders. These include Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

A. Executive Order 12291

Executive Order 12291 requires that proposed regulations be classified as major or non-major for purposes of review by the Office of Management and Budget. A regulatory impact analysis is required for a major rule. According to Executive order 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries,

federal, state, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Both the arbitration and natural resource claims regulations were determined to be non-major under Executive Order 12291, and this rule, which withdraws those two regulations, is also unlikely to result in any of the impacts identified above. Therefore, the Agency has not prepared a regulatory impact analysis for this regulation.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities."

The withdrawal of the natural resource claims regulation will only affect Federal and State governments or Indian tribes, since they were the only parties eligible to file such claims. The withdrawal of the arbitration regulation will have little impact, since it will be replaced by the rules for administrative procedures mandated by the statute. Therefore, EPA certifies that this rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Information Collection approved by OMB (2050–0043 (expiring April 30, 1988)) is withdrawn. The 201,600 approved hours have been taken out of the Information Collection Budgets for the year ending September 30, 1987, and thereafter.

List of Subjects in 40 CFR Parts 305 and 306

Administrative Practice and Procedure, Air pollution control, Chemicals, Claims, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Waste pollution control, Water supply.

Authority: 42 U.S.C. 9601 *et seq.* and E.O. 12580 secs. 4 and 9.

Dated: September 1, 1987.

Lee M. Thomas,

Administrator.

Chapter I, Title 40 of the Code of Federal Regulations is amended as set forth below.

PARTS 305 AND 306—[REMOVED AND RESERVED]

Title 40 of the Code of Federal Regulations is amended by removing and reserving Parts 305 and 306.

[FR Doc. 87–20547 Filed 9–4–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 361

Criteria for Earthquake Hazards Reduction Assistance to State and Local Governments

Date: September 1, 1987.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The purpose of this regulation is to establish policy and provide criteria for the provision of financial and technical assistance to States and local governments by the Federal Emergency Management Agency (FEMA), under the Earthquake Hazards Reduction Act of 1977 (Pub. L. 95–124, amended by Pub. L. 96–472). This regulation supersedes that portion of 44 CFR 300.6, Earthquake and Hurricane Plans and Preparedness, which pertains to earthquake preparedness.

In keeping with the trend of Federal programs of assistance to State and local governments toward increased cost sharing, FEMA intends to initiate cost sharing with States (and local governments, where appropriate) for their earthquake hazards reduction projects. These projects have in the past been (in most but not all cases) 100 percent federally funded. This rule sets out the requirements for cost sharing. The final objective is cost sharing on a 50-percent Federal-50 percent non-Federal basis, with the non-Federal contribution required to be cash.

FEMA realizes, however, that timing and other contingencies may preclude the availability of State cash contributions for earthquake hazards reduction activities in time for Fiscal Year (FY) 1988. In order to accommodate States, therefore, FEMA plans to phase in cost sharing over a period of three years. In FY 1988, FEMA will continue to fund State earthquake hazards reduction projects without requiring any State match. Of course, those States that have already planned to cost share, and/or have been sharing the costs with FEMA of their earthquake hazards reduction projects in previous years are encouraged to continue to do so. In FY 1989, minimum cost share requirements will be instituted. These will require States to contribute 25 percent of the total costs of their projects, with the Federal Government providing the remaining 75 percent. The State contribution may be cash or in-kind. Beginning in FY 1990, the full cost sharing provisions will be implemented, which will require States to provide a minimum of 50 percent of the costs of their projects, with this contribution required to be cash. The publication of this regulation at this time is intended to provide official notice to States of this pending requirement, in order to give them the time necessary to obtain their required matches for FY 1989 and FY 1990.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Terry Feldman, Earthquakes and Natural Hazards Programs Division, Office of Natural and Technological Hazards Programs, State and Local Programs and Support, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4145.

SUPPLEMENTARY INFORMATION: Congress enacted the Earthquake Hazards Reduction Act of 1977 with the purpose of reducing the loss of life and damage to property "from future earthquakes in the United States through the establishment and maintenance of an effective earthquake hazards reduction program." The Federal Emergency Management Agency (FEMA) has been designated as the lead Federal agency with responsibility for implementing this National Earthquake Hazards Reduction Program (NEHRP). FEMA exercises this responsibility in close cooperation with the three other principal Federal agencies of the program: U.S. Geological Survey, National Science Foundation, and the National Bureau of Standards. Each of these agencies is responsible for those specific aspects of the NEHRP that are most closely related to its own overall mission.

In addition to its lead agency responsibilities (Pub. L. 96–472, section 101(b)), FEMA is responsible under the Earthquake Hazards Reduction Act for supporting State and local earthquake hazards reduction projects, supporting the development and implementation of seismic design and construction standards, leading the Federal earthquake response planning effort, conducting mitigation and multihazard preparedness planning, and fostering earthquake education and information transfer. The support of State and local earthquake hazards reduction projects

focuses on the provision of financial and technical assistance to States, and, through them, to local governments upon occasion, in order to further the purposes of the Act. This includes making available the results of research and other activities carried out by FEMA and the other principal and participating Federal agencies under the NEHRP. (For simplicity and clarity of expression in the remainder of this discussion, where the term "State" is used alone, it is defined to mean local governments as well).

Guidance on earthquake hazards reduction projects is found in FEMA publication Civil Preparedness Guide (CPG) 2-18, *State and Local Earthquake Hazards Reduction: Implementation of FEMA Funding and Support.* Copies are available by writing to FEMA, P.O. Box 70274, Washington, DC 20424. Chapter 3 of that document delineates broad categories or program elements for State and local earthquake hazards reduction efforts and provides guidance for developing proposed activities for funding. The activities for which States may apply for funding fall into six major categories or program elements: State seismic advisory boards, hazard identification, vulnerability assessments, preparedness and response planning, mitigation planning, and public awareness/education.

The vehicle used by FEMA for providing financial and technical assistance to States is a Comprehensive Cooperative Agreement (CCA) with the State department of emergency management or another agency designated by the Governor as having responsibility for such a project. Funding is usually not provided by FEMA directly to local units of government. If it is determined through negotiations or other discussions with State and/or local officials that FEMA funding is to be provided to a local jurisdiction, the funding will generally be passed through the appropriate State agency to the local government. This will facilitate the coordination required to assure that local efforts are consistent with State requirements, policies, and related projects.

The following high-risk States have been identified by FEMA through the NEHRP as being eligible for earthquake hazards reduction financial assistance: California, Washington, Alaska, Hawaii, Utah, Massachusetts, South Carolina, New York, the Central United States (Arkansas, Mississippi, Tennessee, Kentucky, Illinois, Indiana, and Missouri), Puerto Rico and the Virgin Islands. This high-risk designation is determined by applying technical information generated by the NEHRP in the context of the following factors: Seismic risk (including the historic occurrence of damaging earthquakes and probable seisimic activity); total population and major urban concentrations in the risk area; and the presence of industrial facilities, vital natural resources, or other factors related to the national interest, in the risk area. It is important to note that a seismic risk area, and, hence, the project area for earthquake hazards reduction activities, may not necessarily include an entire State, although for convenience the name of the State will often be used to designate a particular earthquake hazards reduction project.

FEMA is presently focusing available earthquake hazards reduction funding on these seventeen high-risk States in order to obtain the greatest benefit in earthquake hazards reduction for the available funds. FEMA recognizes that many States are subject to low or moderate earthquake risk. As the NEHRP continues to generate technical data, FEMA realizes that additional States may be defined as high risk, and will, therefore, consider their eligibility accordingly. Because of the limited funding available, FEMA must give priority in the allocation of its earthquake hazards reduction assistance to those States with the greatest vulnerability.

The purpose of this rule is to formalize FEMA's program of State assistance for earthquake hazards reduction by providing criteria for State eligibility, defining those activities eligible for funding, and providing criteria for formal cost sharing with the States. This rule supersedes that portion of 44 CFR 300.6 which pertains to earthquake preparedness.

Cost sharing is being initiated to foster commitment within the States to ongoing earthquake hazards reduction efforts. State and local governments have the initial, direct responsibility for the protection of lives and property from earthquakes, as part of their overall responsibilities related to public health, safety, and welfare. It is, therefore, FEMA's policy to support and encourage development at the State level of an institutionalized capability in earthquake hazards reduction. This will also help assure that there will exist at the State level an infrastructure able to utilize, disseminate, and adapt the various products made available through the other elements of the NEHRP (e.g., seismic design provisions, and awareness/education materials). The success of these products is dependent upon a demonstrated commitment of State and local governments to utilize and implement them. FEMA believes that having States share the cost of their federally supported projects is an effective way of developing and sustaining their commitment to earthquake hazards reduction.

Cost sharing will be on a voluntary basis in Fiscal Year (FY) 1988. Cost share requirements will be formally initiated in FY 1989, with criteria designed to minimize disruption of ongoing State earthquake hazards reduction projects. In FY 1990 and beyond, however, the requirements for cost sharing will be increased. This rule is being published at this time so as to provide the States with sufficient notice to enable them to obtain the matches that FEMA will require in FY 1989 and beyond.

In FY 1988, FEMA will continue to fund State earthquake hazards reduction projects, with State matching only on a voluntary basis. Of course, those States that have already planned to cost share in FY 1988, and/or have been sharing the costs with FEMA of their earthquake hazards reduction projects in previous years are encouraged to continue to do so.

In FY 1989, FEMA will require a minimum of a 25 percent non-Federal contribution to the cost of earthquake hazards reduction projects. FEMA prefers that this contribution be cash, but an in-kind match is acceptable. A further condition of eligibility for FEMA earthquake funds for FY 1989 is documentation by the States, during the negotiation process, of the progress they are making towards obtaining the funds that will be required for FY 1990. This will provide FEMA with an accurate assessment of continued State participation in the earthquake program, enhancing sound program management. Beginning in FY 1990, cost sharing will be required on the basis of a minimum non-Federal contribution of 50 percent to the total cost of a State's earthquake hazards reduction project. This contribution must be cash; in-kind matching will no longer be acceptable.

On July 6, 1987, FEMA published in the **Federal Register** a proposed rule governing Criteria for Earthquake Hazards Reduction Assistance to State and Local Governments, with a 30 day comment period. In response to this notice of proposed rulemaking, seven comments were received from States or other governmental agencies. In preparing this final rule, FEMA has carefully considered these comments. As a result, several changes have been made in the Supplementary Information

and the rule itself. These are described below. One of the commenters objected to the reduction in the comment period from the usual 60 days to 30 days. Under the provisions of 44 CFR 1.4(e), it is within the authority of the Director of FEMA to make an exception to the 60 days normally allowed for comments on proposed rules. The reasons for this exception are required to be, and were, stated in the preamble to the notice of proposed rulemaking.

The remaining comments were substantive, and are addressed in the following paragraphs. Where comments have resulted in changes from the proposed rule to the final rule, these are indicated.

Four commenters expressed strong concern that implementation of cost sharing requirements in FY 1988, as established in the proposed rule, would threaten the objectives of the NEHRP. This is because those States unable to meet the requirements would be denied FEMA funds, without which they could not continue earthquake hazards reduction activities. FEMA acknowledges that the timetable required to implement cost sharing in FY 1988 would be prohibitive for some States, and has therefore deferred initiation of mandatory cost sharing until FY 1989. Accordingly, § 361.3(f) of the rule and relevant language in this Supplementary Information section have been appropriately amended.

Two comments expressed the view that FEMA's initiation of mandatory cost sharing represents a significant change in policy, contravenes Congressional intent in enacting the National Earthquake Hazards Reduction Act of 1977, and undermines the progress being made by States in their earthquake hazards reduction projects. FEMA disagrees with these contentions. It must be remembered that FEMA is not proposing to discontinue its financial support for State earthquake hazards reduction projects. While a cost share requirement for FY 1988 may have been prohibitive for some State projects, the decision to defer implementation of required cost sharing until FY 1989 (and allow in-kind matching for that year) should help prevent such occurrences. The major objective of FEMA's State assistance is to increase the capability of States and local governments to prepare for, respond to, and mitigate the effects of severe earthquakes; thus contributing to the purpose of the Act, which is to "reduce the risks of life and property from future earthquakes * * * through an effective earthquake hazards reduction program." Congress did not, however, envision a program completely supported by the Federal government. One of its findings and declarations, in section 2[3] of the Act, is that "An expertly staffed and adequately financed earthquake hazards reduction program, based on Federal, State, local and private research, planning, decisionmaking, and contributions would reduce the risk of such loss * * *." Congress also recognized, in section 2[8], that the reduction of earthquake losses "will depend on the actions of * * * governmental units at Federal, State, and local levels."

Another comment questioned why this rule is being applied only to programs administered by FEMA, and not to NEHRP programs managed by the United States Geological Survey and the National Science Foundation. FEMA has no authority over the programs of these other Federal agencies, its lead agency role in the NEHRP notwithstanding.

Two comments were received which pertained to the list of high risk areas in the Supplementary Information discussion. In response to these, FEMA has changed this list by deleting references to specific cities and including only States.

One local unit of government provided comments on the proposed rule, recommending that FEMA provide direct assistance to substate areas with particularly high population, urban, and industrial concentrations. Technical assistance, in the form of publications, audiovisual materials, curricula, workshops, etc. already is, and will continue to be, available from FEMA. Provision of financial assistance directly to local units of government, in addition to that provided to States, is, however, beyond FEMA's budgetary capability. FEMA believes that in order to obtain maximum benefits from the funds that are available, from a national perspective, it should work through State governments. If it should be determined during the course of routine discussions or more formal negotiations that the earthquake hazards reduction activities of one or more particular local jurisdictions should receive funding from FEMA, then, as indicated previously in this Supplementary Information section, such funding would be passed through the State, in order to facilitate coordination and consistency.

Two comments on the rule addressed the issue of the apportionment of FEMA's earthquake hazards reduction funds to the States. This is a complex issue, in that the rule defines criteria by which States are determined to be eligible for such assistance, as well as criteria that are used in determining States' target allocations. It was commented that the precise method, or formula, for calculating the amount that each State receives was not described in the rule. FEMA has, however, shared the methodology with the States through another document, and is responding to comments on it. It remains FEMA's intent not to include the methodology within the rule. While the initiation of cost sharing is clearly regulatory in nature, FEMA believes that the methodology by which it apportions its funds is more appropriately an administrative determination. FEMA recognizes that the state of the art of earthquake risk assessment is continually evolving; as new technical information becomes available, risk areas as well as their relative risk assessments will change. This is a significant factor in the complexity of the administering the State financial assistance element of the NEHRP. FEMA has only recently had sufficient experience with this element to be able to establish both criteria and a forumla for allocating funds. Consequently, in order to allow for periodic refinement of the apportionment approach, FEMA made the deliberate decision to only include the overall criteria for eligibility and target allocations in the rule, and to leave out the parameters for apportionment. FEMA plans to work with the States each year to adjust the methodology as circumstances warrant.

One set of detailed comments covered a number of issues related to the funding eligibility criteria outlined in the rule. In a number of cases, these comments overlap the apportionment issue. In discussing eligibility for FEMA State assistance under the NEHRP, § 361.3(c), concern was expressed about the high cost of "doing business" in certain States, due to salaries, goods and services. Another concern that falls into the same category related to increased costs due to "service distance and transportation network." This argument was that the State in question has an extraordinarily large planning area to serve, much of which lacks roads and must therefore be serviced via air. These concerns are more properly addressed through the apportionment process rather than eligibility criteria as described in this rule.

Another point made by this commenter was that there are factors other than simply the three (seismic risk, total population and urban concentrations, and industrial concentrations) included in § 361.3(c) that should be considered in determining eligibility for State assistance under the NEHRP. In response to this point, FEMA has

amended this section of the rule to list seismic risk, total population and urban concentrations (the major objective of the National Earthquake Hazards Reduction Act being reduction of loss of lives from earthquakes), and other factors, the loss, damage, or disruption of which would have serious national implications or impact upon national security, such as significant concentrations or occurrences of natural resources.

This commenter also made the point that FEMA appears to give no consideration to the prior performance of a State that has previously received State assistance in its determination of eligibility (§ 361.3(c)). The criteria for eligibility listed in the rule are reasonably self-evident and objective, and appropriate for the administration of a National program. FEMA believes, however, that the issue of prior performance is most appropriately addressed through the annual negotiations that occur between FEMA and each eligible State. Accordingly, FEMA has added a new section, § 361.3(i), to the rule to reflect its consideration of a State's prior performance in the determination of continued funding.

A major concern of this commenter pertained to the issue of what FEMA calls "collateral hazards." Collateral hazards are hazards in addition to ground shaking or movement along a fault which occur as a result of an earthquake. Examples are tsunamis, liquefaction, and flooding due to dam failures. The specific objection of this commenter was to the absence of any consideration of the tsunami hazard (which is a significant aspect of the seismic risk of this particular State) in FEMA's determination of the State's target allocation. This is a very complex problem. While FEMA does not dispute the seriousness of the tsunami hazard to this particular State, it has no choice but to also recognize that virtually every area or State subject to seismic risk is consequently also subject to one or a combination of collateral hazards. Because there is no known methodology for comparing these risks on a standardized, nationwide basis, FEMA will not consider collateral hazards at this time. The actual seismic risk can be, and therefore is, used because scientific information currently exists which can measure and compare this risk on a nationwide basis.

The requirement of § 361.3(g) in the proposed rule that at least 15 percent of the total State assistance allocation, as well as a matching amount from the State, must be spent for mitigation activities was the subject of another comment. FEMA continues to believe that mitigation activities hold out the best prospects, over the long term, and on a nationwide basis, for reducing the loss of life and property from future earthquakes. Hazard mitigation, whether for earthquakes or any other hazard, is a complex strategy involving many disciplines, economic and political choices, and the participation of the public and private sectors and the academic and scientific communities. Often, the short term costs may appear to exceed the benefits, and the benefits may not be apparent for a long time, or until an earthquake occurs. For these reasons, States are often reluctant to initiate mitigation programs, and tend to focus on preparedness, response, and public information efforts, all of which are vital, and for which it is generally easier to document short term progress.

FEMA's purpose in writing § 361.3(g) was to require those States that have not begun to develop or implement a program of earthquake hazard mitigation to do so. FEMA recognizes that in some States, one or more State agencies already are involved in mitigation activities, and that in a few cases substantial State resources are being devoted to this effort. FEMA administers a national program, however, and believes that the requirement is necessary from a national perspective. In order to lessen its burden on State resources, the provision has been changed by deleting the requirement that 15 percent of the State match (in addition to the 15 percent of State assistance) be dedicated to mitigation activities. The revised requirement is that at least 15 percent of the total State project (combined Federal and State funds, per cost sharing requirements) be used for mitigation activities.

The final comment pertains to § 361.8, "Ineligible Expenditures," specifically the restriction on the purchase or rental of equipment such as radio/telephone communications equipment, warning systems, and computers and related information processing equipment. The commenter believes that this is an unreasonable restriction, and that no such categorical exclusion should be made. The current Federal regulation requiring prior approval of equipment purchases exceeding $10,000 seems adequate to the commenter. FEMA disagrees.

The Agency is within its authority in imposing more stringent criteria for the expenditure of its NEHRP funds than the general Federal financial management criterion of $10,000. The first reason for its doing so is that the objective of FEMA's program of assistance to States for earthquake hazards reduction is to encourage the development of capability within the high risk States to deal with those aspects of preparedness, response, mitigation and recovery that are unique to earthquakes. Other Federal programs exist, both within and outside of FEMA, to assist States in developing more general emergency management capabilities, as well as capabilities in other specific hazards. Some of these programs pay for the type of equipment that the proposed rule restricted.

Regarding the existing Federal allowance of $10,000 for purchase of equipment, the amount of earthquake State assistance available to most States is so limited that, in almost every case, $10,000 is a substantial portion of the entire State program. FEMA believes the expenditure of such a proportion of available resources on equipment would be detrimental to the objectives of its earthquake assistance program. It is essential to spend these limited funds so as to most effectively contribute to the capability to deal with those aspects of emergency management most specific to the earthquake hazard, and use other funding sources to purchase equipment which may be utilized for a variety of purposes. FEMA realizes, of course, that such equipment may also be utilized in support of earthquake hazards reduction, and understands the desire of States for the flexibility to purchase what they need.

In order to be responsive to States regarding this issue, FEMA has modified the restriction in § 361.8 by permitting a State to apply funds from its match to the purchase of such equipment. The use of FEMA's State assistance funds for this purpose is still prohibited. If a State chooses to use some of its matching funds to purchase equipment, it must document how this equipment will support its earthquake hazards reduction activities (described in § 361.7(a)). Further, if the equipment will also be utilized for activities other than earthquake preparedness, only that proportion of its use that is dedicated to earthquake preparedness may be credited to the State's match.

Government-Wide Common Rule

On June 9, 1987, FEMA and other Federal agencies published a notice of proposed rulemaking in the **Federal Register**, Vol. 52, No. 110, pp. 21820–21862. The purpose of this proposed rulemaking is to reflect the update and revision of Office of Management and Budget (OMB) Circular A–102, "Uniform Requirements for Assistance to State

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and Local Governments," which establishes, among other things, the basic Federal administrative standards for implementing cost sharing in Federal assistance programs. (The standards of A–102 are referenced in § 361.5 of this earthquake assistance rule). FEMA and the other agencies plan to codify the proposed rule in each's portion of the Code of Federal Regulations, and publish it in final form in the **Federal Register** in March 1988, to become effective later in the same year. The effect of that action will be to rescind all grants and cooperative agreement administration provisions in program regulations, and supersede all grants administration provisions of noncodified program manuals, handbooks and other materials, which are inconsistent with the proposed rules, except to the extent they are required by legislation or approved after these rules are final as a deviation by OMB. At that time, those administrative aspects of FEMA's earthquake State assistance program element that are currently governed by A–102 will henceforth be governed by the new regulation.

Information Collection Requirements

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.* and has assigned OMB control numbers 3067–0123 and 3067–0142.

Environmental Considerations

Based on an Environmental Assessment prepared by FEMA, it has been determined that this action is not a major Federal action significantly affecting the quality of the human environment. Therefore, no environmental impact statement will be prepared. The Environmental Assessment and a finding of no significant impact are included in the formal docket file and are available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Regulatory Flexibility Act

The Agency has determined that this rule is not a major rule under Executive Order 12291, and I certify that the rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, so no regulatory impact analysis will be prepared.

List of Subjects in 44 CFR Part 361

Disaster assistance, Grant programs, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 44, Chapter 1 of the Code of Federal Regulations is amended by adding a new Part 361 as follows:

PART 361—CRITERIA FOR EARTHQUAKE HAZARDS REDUCTION ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Sec.

361.1 Purpose.
361.2 Definitions.
361.3 Project description.
361.4 Matching contributions.
361.5 Criteria for matching contributions.
361.6 Documentation of matching contributions.
361.7 General eligible expenditures.
361.8 Ineligible expenditures.

Authority: Reorganization Plan Number 3 of 1978; 42 U.S.C. 7701 *et seq.*, E. O. 12148 and 12381, and Earthquake Hazards Reduction Act of 1977 (Pub. L. 95–124) and amendments (Pub. L. 96–472).

§ 361.1 Purpose.

This part prescribes the policies to be followed by the Federal Emergency Management Agency (FEMA) and States in the administration of FEMA's earthquake hazards reduction assistance program, and establishes criteria for cost sharing.

§ 361.2 Definitions.

(a) "Cash Contribution" means the State cash outlay, including the outlay of money contributed to the State by other public agencies and institutions, and private organizations and individuals.

(b) "Cost Sharing" and "Matching" represent that portion of project costs not borne by the Federal Government.

(c) "Eligible Activities" are activities for which FEMA may provide funding to States on a cost-shared basis. They include specific activities and/or projects related to earthquake hazards reduction which fall into one or more of the following general categories: State seismic advisory boards, hazard identification, vulnerability assessments, preparedness and response planning, mitigation planning, and public awareness/education. The activities that will actually be funded shall be determined through individual negotiations between FEMA and the States (see criteria in § 361.3(e)).

(d) "In-kind Contributions" represent the value of noncash contributions provided by the States and other non-Federal parties. In-kind contributions may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the States' earthquake hazards reduction projects.

(e) "Project" means the complete set of earthquake hazards reduction activities undertaken by a State, or other jurisdiction, on a cost-shared basis with FEMA in a given fiscal year.

(f) "Project Period" is the duration of time over which an earthquake hazards reduction project is implemented. This generally corresponds to the Federal fiscal year, i.e., it begins on the first day of a given fiscal year (or as soon as that year's funds are obligated by FEMA to the State) and ends on the last day of that fiscal year. The project period may extend beyond the end of the fiscal year for which the funds are appropriated, as long as FEMA obligates all that year's funds to the State before the end of that year.

(g) "State" means one or more of the States of the United States of America, and includes Puerto Rico and the Virgin Islands. It also means local units of government and/or substate areas that include a number of local government jurisdictions.

(h) "State Assistance" means the funding provided by FEMA under the National Earthquake Hazards Reduction Program (NEHRP) to States to conduct projects and activities specifically related to earthquake hazards reduction. The term also includes assistance to local units of government and/or substate areas, such as a group of several counties.

(i) "Target Allocation" is the maximum amount of FEMA earthquake program funds available to a given high risk State in a fiscal year. It is based primarily upon the total amount of State assistance funds available to FEMA annually, the number of high risk States, and a nationally standardized comparison of these States' seismic risk and population-at-risk. The target allocation is not necessarily the amount of funding that a State will actually receive from FEMA. Rather, it represents a planning basis from which a State can develop its scope of work for the next year's effort. This scope of work then becomes the basis of negotiations between the State and its FEMA Regional Office which will ultimately determine the actual amount of earthquake State assistance to be provided by FEMA.

§ 361.3 Project description.

(a) An objective of the Earthquake Hazards Reduction Act is to develop, in areas of seismic risk, improved understanding of and capability with

respect to earthquake-related issues, including methods of controlling the risks, planning to prevent such risks, disseminating warnings of earthquakes, organizing emergency services, and planning for post-earthquake recovery. To achieve this objective, FEMA has implemented an earthquake hazards reduction assistance program for State and local governments in seismic risk areas.

(b) This assistance program provides funding for earthquake hazards reduction activities which are eligible according to the definition in § 361.2(c). The categories, or program elements, listed therein comprise a comprehensive earthquake hazards reduction project for any given seismic risk area. Key aspects of each of these elements are as follows:

(1) *State seismic advisory boards* provide State and local officials responsible for implementing earthquake hazards reduction projects with expert advice in a variety of fields. Boards can identify short- and long-term needs, and provide for interdisciplinary discussion of related topics and issues, in addition to developing a consistent statewide approach to earthquake hazards reduction at the local government level.

(2) *Hazard identification* defines the potential for earthquakes and their related geological hazards in a particular area. It may include:

(i) A presumed specific magnitude earthquake at a specified location, and

(ii) A description of the ground shaking, fault rupture, landslides, liquefaction, and other geologic hazards resulting from that magnitude event.

(3) *Vulnerability assessments,* also known as loss estimation studies, provide information on the impacts and consequences of an earthquake on an area's resources, as well as on opportunities for earthquake hazards mitigation. As such, they are necessary to the development of both preparedness and response plans, and mitigation strategies. They may include estimates of parameters such as:

(i) The number of people killed, injured, or left homeless by an earthquake,

(ii) Damage to critical facilities, lifelines, utilities, and transportation systems,

(iii) Medical needs and available resources,

(iv) Damages to structures and buildings, and

(v) Secondary impacts (fire, dam or levee failures, hazardous material spills, toxic releases, etc.)

(4) *Preparedness/response/planning* are closely related and usually considered as one comprehensive activity. They do differ, however, in that preparedness planning involves those efforts undertaken before an earthquake to prepare for and/or improve capability to respond to the event, while response planning can be defined as the planning necessary to implement an effective response once, the earthquake has occurred. Preparedness/response planning usually consider functions related to the following:

(i) Rescue and fire services,

(ii) Medical services,

(iii) Damage assessments,

(iv) Communications,

(v) Security,

(vi) Restoration of lifeline and utility services,

(vii) Transportation,

(viii) Sheltering,

(ix) Public health and information services,

(x) Post-disaster recovery and the return of economic-stability,

(xi) Secondary impacts, such as dam failures, toxic releases, etc., and

(xii) Organization and management.

(5) *Mitigation planning* involves developing and implementing strategies for reducing losses from earthquakes by incorporating principles of seismic safety into public and private decisions regarding the siting, design, and construction of structures; and regarding buildings' nonstructural elements, contents and furnishings. Mitigation also involves developing plans for identifying and retrofitting existing structures that pose threats to life or would suffer major damage in the event of a serious earthquake. Mitigation planning also may involve facilities other than buildings, e.g., dams, hazardous material storage sites, industrial plants, etc.

(6) *Public awareness/earthquake education* activities are designed to increase public awareness of earthquakes and their associated risks, and to stimulate behavioral changes to foster a self-help approach to earthquake preparedness, response, and mitigation. Audiences that may be targeted for such efforts include:

(i) The general public,

(ii) School populations (administrators, teachers, students and parents),

(iii) Special needs groups (e.g., elderly, disabled, non-English speaking),

(iv) Business and industry,

(v) Engineers, architects, builders,

(vi) The media, and

(vii) Public officials.

(c) State eligibility for FEMA State assistance under the NEHRP is based on a combination of the following criteria:

(1) Seismic risk, including the historic occurrence of damaging earthquakes, as well as probable seismic activity,

(2) Total population and major urban concentrations exposed to such risk, and

(3) Other factors, the loss, damage, or disruption of which by a severe earthquake would have serious national implications or impacts upon national security, such as industrial concentrations, concentrations or occurrences of natural resources, financial/economic centers and national defense facilities.

(d) Each fiscal year, FEMA will establish a target allocation of earthquake program funds for each eligible State.

(e) The specific activities, and the distribution of funds among them, that will be undertaken with this assistance will be determined during the annual Comprehensive Cooperative Agreement (CCA) negotiations between FEMA and the State, and will be based upon the following:

(1) The availability of information regarding identification of seismic hazards and vulnerability to those hazards,

(2) Earthquake hazards reduction accomplishments of the State to date,

(3) State and Federal priorities for needed earthquake hazards reduction activities, and

(4) State and local capabilities with respect to staffing, professional expertise, and funding.

(f) All State assistance will be cost shared. Cost sharing will be phased in over three years, beginning with Fiscal Year (FY) 1988. The full cost sharing requirements will be implemented in FY 1990. The sequence is as follows:

(1) For FY 1988, cost sharing will be voluntary. FEMA will continue to provide State assistance without requiring a State match, as it has done in the past. Those States that have previously cost shared with FEMA, or are able to in FY 1988, are encouraged to do so (on either a cash or in-kind basis).

(2) For FY 1989, the minimum acceptable non-Federal contribution is 25 percent of the total project cost.

(i) While FEMA prefers the State match to be cash, in-kind matching is acceptable.

(ii) States are encouraged to add cash to or increase the proportion of cash in their match, and to increase their total match to 50 percent (or more, if possible) of the total project.

(iii) A further condition of eligibility for State assistance in FY 1989 will be documentation by each State of its progress, through FY 1988, in securing the matching funds that will be required

to meet the full cost sharing requirements to be implemented in FY 1990.

(3) In FY 1990, full cost sharing will be implemented, requiring a minimum of a 50 percent non-Federal contribution to a State program, with this share required to be cash. In-kind matching will no longer be acceptable. Thus, every dollar FEMA provides to a State must be matched by one dollar from the State. States that can contribute an amount greater than that required by the match are permitted and encouraged to do so. State assistance will, however, not exceed the established target allocation.

(g) As a condition of receiving FEMA funding, at least 15 percent of the amount of the total State project (FEMA State assistance, combined with the State match) must be spent for activities under the Mitigation Planning element.

(h) The State match may be distributed among the eligible activities in any manner that is mutually agreed upon by FEMA and the State in the CCA negotiations.

(i) Negotiations between FEMA and the State regarding the scope of work and the determination of the amount of State assistance to be awarded shall consider earthquake hazards reduction activities previously accomplished by the State, as well as the quality of their performance.

§ 361.4 Matching contributions.

FEMA prefers that the State match be cash, although in FY 1988 and FY 1989 in-kind matches will be acceptable. Starting in FY 1990, however, a cash match will be required. The State contribution need not be applied at the exact time of the obligation of the Federal funds. However, the State full matching share must be obligated by the end of the project period for which the State assistance has been made available for obligation under an approved program or budget.

§ 361.5 Criteria for matching contributions.

(a) The value of any resources accepted as a matching share under one Federal agreement or program cannot be counted again as a contribution under another.

(b) The State seeking the match shall submit documentation sufficient for FEMA to determine that the contribution meets the following requirements. The match shall be:

(1) Necessary and reasonable for proper, cost-effective and efficient administration of the project, allocable solely thereto, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State and local governments;

(2) Verifiable from the recipient State's records;

(3) Not allocable to or included as a cost of any other Federally financed program in either the current or a prior period;

(4) Authorized under State law;

(5) Consistent with any limitations or exclusions set forth in these regulations, Federal laws or other governing limitations as to types or amounts of cost items;

(6) Accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances;

(7) Provided for in the approved budget/workplan of the State; and

(8) Consistent with OMB Circular A-87, "Cost Principles for State and Local Governments," and with OMB Circular A-102, "Uniform Requirements for Assistance to State and Local Governments," as revised or amended.

§ 361.6 Documentation of matching contributions.

(a) The statement of work provided by the State to FEMA describing the specific activities comprising its earthquake hazards reduction project, including the project budget, shall reflect a level of effort commensurate with the total of the State and FEMA contributions.

(b) The basis by which the State determines the value of an in-kind match must be documented and a copy retained as part of the official record.

(c) The State shall maintain all records pertaining to matching contributions for a three (3) year period after the date of submission of the final financial report required by the CCA, or date of audit, whichever date comes first.

§ 361.7 General eligible expenditures.

(a) Expenditures must be for activities described in the statement of work mutually agreed to by FEMA and the State during the annual negotiation process, or for activities that the State agrees to perform as a result of subsequent modifications to that statement of work. These activities shall be consistent with the definition of eligible activities in § 361.2(c).

(b) The following is a list of eligible expenditures. When items do not appear on the list they will be considered on a case-by-case basis for policy determinations, based on criteria set forth in § 361.5. All costs must be reasonable, and consistent with OMB Circular A-87.

(1) Direct and indirect salaries or wages (including overtime) of employees hired specifically for carrying out earthquake hazards reduction activities are eligible when engaged in the performance of eligible work.

(2) Reasonable costs for work performed by private contractors on eligible projects contracted for by the State.

(3) Travel costs and per diem costs of State employees not to exceed the actual subsistence expense basis for the permanent or temporary activity, as determined by the State's cost principles governing travel.

(4) Nonexpendable personal property, office supplies, and supplies for workshops; exhibits.

(5) Meetings and conferences, when the primary purpose is dissemination of information relating to the earthquake hazards reduction project.

(6) Training which directly benefits the conduct of earthquake hazards reduction activities.

§ 361.8 Ineligible expenditures.

(a) Expenditures for anything defined as an unallowable cost by OMB Circular A-87.

(b) Federal funds may not be used for the purchase or rental of any equipment such as radio/telephone communications equipment, warning systems, and computers and other related information processing equipment. If a State wishes to use its matching funds for this purpose, it must:

(1) Document during the annual negotiation process with FEMA how this equipment will support the earthquake hazards reduction activities in its scope of work (see § 361.7(a)), and

(2) Claim as credit for its match, if the equipment is to be used for purposes in addition to support of earthquake hazards reduction activities, only that proportion of costs directly related to its earthquake hazards reduction project.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

Date: August 24, 1987.

[FR Doc. 87-20391 Filed 9-4-87; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 543

[Docket No. T85-02; Notice 2]

Petitions for Exemption from the Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule is issued under Title VI of the Motor Vehicle Information and Cost Savings Act. Title VI provides that passenger motor vehicle manufacturers may petition the agency for an exemption from the parts marking requirements of the vehicle theft prevention standard for passenger motor vehicle lines whose standard equipment includes an antitheft device. In order for this agency to exempt a line, it must determine that the line's antitheft device is likely to be as effective as parts marking in reducing and deterring motor vehicle theft.

Part 543 currently sets out procedures for manufacturers to follow in preparing and submitting petitions for exemption for model year 1987 car lines from the parts-marking requirements. It also sets forth procedures which the agency will follow in processing those petitions and determining whether they should be granted. This final rule extends the Part to subsequent model years, while making minor changes to its provisions.

DATES: This final rule is effective on October 8, 1987. Petitions for reconsideration must be received within 30 days of the date of publication of this notice.

ADDRESS: Any petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Kurtz, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4807).

SUPPLEMENTARY INFORMATION:

Statutory Background

The Motor Vehicle Theft Law Enforcement Act of 1984, Pub. L. 98-547 (Theft Act), added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Under Title VI, by delegation from the Secretary of Transportation, NHTSA promulgated a vehicle theft prevention standard for high theft lines of passenger motor vehicles. On October 24, 1985, the agency published a final rule (49 CFR Part 541) that, among other things, set out performance requirements for making certain major originial equipment and replacement parts on high theft passenger vehicles with permanent identification numbers. 50 FR 43166.

Section 605 of Title VI permits a manufacturer of a high theft line to petition NHTSA to exempt it from the parts-marking requirements. NHTSA may grant such a petition if the petitioner installs an antitheft device (also called a "device" or "antitheft system") as standard equipment on the entire line for which it seeks an exemption, and if NHTSA determines that the antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as complying with the parts-marking requirements.

Section 605 allows the agency to grant an exemption for not more than two lines of any manufacturer for the initial model year to which the vehicle theft prevention standard applies. (Under the October 1985 final rule, the standard first applies to model year 1987.) For each subsequent model year, the agency may exempt not more than two additional lines of any manufacturer. Thus, it is possible for a manufacturer to receive two exemptions for model year 1987, two more for model year 1988 for a total of four, and so forth.

Section 605 contains these further provisions. First, a manufacturer must file an exemption petition with NHTSA not later than eight months before beginning production of the line for the first model year covered by the petition. Second, NHTSA may grant a petition in whole or in part. Third, the agency must grant or deny a petition within 120 days after the date the petition is filed. If the agency fails to make a determination within the specified time, section 605 states that the petition shall be considered approved, and the manufacturer shall be exempt from the standard's requirements for the subsequent model year. Fourth, section 605 allows the agency to terminate a manufacturer's exemption if NHTSA determines that the manufacturer's antitheft device has not been as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking standard.

On January 7, 1986, (51 FR 706), NHTSA published an interim final rule setting forth the procedures for obtaining an exemption from the theft prevention standard for model year 1987. NHTSA also published a notice of proposed rulemaking (NPRM) on January 7, 1986, (51 FR 715) that principally did two things. First, the Notice set out procedures for manufacturers to follow in preparing and submitting antitheft exemption petitions for model years after 1987. Second, it set out procedures the agency would follow in processing those petitions and determining whether to grant an exemption request. These procedures essentially were the same as those NHTSA established for the 1987 model year.

The procedures proposed in the January, 1986 NPRM specified the basic information and data which manufacturers must set out in their petitions. The required information included the identity of the line or lines for which exemption is sought, a detailed description of the standard equipment antitheft device, the means and processes by which the device is activated and functions, the reasons for the manufacturer's belief that the antitheft device would reduce and deter motor vehicle theft, and the manufacturer's reasons for believing that the agency should determine that the device would be as effective as compliance with Part 541 in reducing and deterring motor vehicle theft. The notice also proposed the agency's procedures for processing exemption petitions, and for modifying or terminating an existing exemption.

Nine vehicle manufacturers, one law enforcement group, an automobile dealers' association, and an aftermarket antitheft device manufacturers' association commented on these notices.

Continued Use of Model Year 1987 Procedures

In the 1986 NPRM, the agency requested public comment on using the model year 1987 procedures for subsequent model years. AMC/Renault objected primarily because the company was concerned that NHTSA's decisions on specific exemptions for model year 1987 would prejudice decisions for future years. AMC/Renault believed that the decision to grant or deny a petition would be based on the relative merits of the antitheft device described in one petition, compared with devices described in other petitions.

Carrying over the 1987 procedures to subsequent years will not prejudice any petitions made in those later years. Under section 605, the agency's decision whether to grant an exemption petition rests on NHTSA's determining that an antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as complying with

the parts-marking requirements. To determine whether an antitheft device meets the statutory test, the agency believes that the principal considerations are the petitioner's description of its device, any other data submitted in support of the petition, and the agency's engineering assessment of the device and supporting data. However, in making an exemption decision, the agency believes that it may also be helpful to consider the relative merits of various devices.

If one manufacturer petitions for an exemption asserting that its device is the same as a device for which the agency already has granted an exemption, it is evident that NHTSA must assess the information in the new petition in conjunction with information respecting the device to which the petitioner claims sameness. The agency already has granted an exemption for one manufacturer based on just such an assertion.

In other instances, a petitioner may note the similarity between its system and one for which the agency already has granted an exemption request. Such a circumstance not only invites comparison among systems, but necessitates it. At least one manufacturer has made such a comparison in giving its reasons why NHTSA should grant its exemption request.

Finally, if the agency is to apply the exemption provisions consistently, it must be conscious of what design and performance features previously led it to conclude that any given device would likely be as effective in reducing and deterring theft as the parts-marking requirements. NHTSA hopes to allay fears that a decision respecting the efficacy of one system will rest entirely on the merits of that system relative to another. On the other hand, the agency believes that factors such as those just described may make it necessary to compare devices, or may recommend that practice. In either event, the agency has the engineering expertise to use comparison appropriately, always giving primary consideration to the merits of the device under its scrutiny.

Public Comment on Petitions

In the 1986 NPRM, the agency sought comment on the desirability of changing the exemption process after model year 1987 to include publishing notice of receipt of petitions and providing a brief period for public comment on them. NHTSA contemplated the possibility of providing a similar opportunity for petitions to modify or terminate exemptions. At the same time, the agency noted its concern that making a petition's details publicly available in turn might make it easier for vehicle thieves to get information that would aid in disarming an antitheft system.

The agency received comments on this issue from AMC/Renault, Chrysler, the National Automobile Dealers Association (NADA), Ford, General Motors (GM), and Volkswagen of America (VWoA). The commenters expressed a belief that if seeking public comment resulted in even limited data disclosure, the disclosure could harm owners and manufacturers of high theft cars because even carefully edited data might inadvertently contain clues for disarming and defeating an antitheft device. Such a result would undermine the basic purpose of the Theft Act: to reduce and deter motor vehicle theft. Further, they noted that Congress did not require that NHTSA publish a notice and request public comment on each exemption petition it received.

VWoA stated that if the agency granted manufacturer requests for confidential treatment of antitheft data, there would be little information on which the public could comment because the information NHTSA could make public would be severely limited. One company said that releasing detailed information would shorten the life of any device, because the manufacturer would be obliged to alter the device after release, in order to ensure effectiveness in reducing and deterring motor vehicle theft.

The agency finds merit in these comments and notes that it never intended to release detailed information concerning antitheft systems. Indeed, in **Federal Register** notices granting model year 1987 exemption petitions, the agency endeavored to disclose as little as possible about the design specifications for a given antitheft device so that a potential thief would learn nothing of value about the device. The agency has decided against inviting public comment on exemption petitons because soliciting comments based on the general type of information released in the past would yield little of value, and soliciting comments based on more detailed information potentially could jeopardize the statutory purpose of reducing and deterring vehicle theft.

Exemption Status Statement on Certification Labels

Another issue on which NHTSA asked for comment in the NPRM was the value of requiring manufacturers to include on the vehicle certification label a statement of the vehicle's status relative to the parts-marking requirements. If the agency adopted such a requirement, a manufacturer would be required to print up different certifications for its various car lines to reflect the vehicle's status as subject to the antitheft standard, exempted from the standard, or not subject to the standard.

The agency received eight comments on certification label statements reflecting the exempt status of high theft vehicles. The respondents were AMC/Renault, Austin Rover, Chrysler, Ford, GM, VWoA, NADA, and the National Automobile Theft Bureau (NATB). Seven commenters opposed requiring such a statement, making three principal arguments. The first argument was that including this information on the certification label would be of little value to the primary audience for certification labels; i.e., the ultimate consumer. The second was that these labels might encourage schemes in which an unscrupulous person would remove a label indicating compliance, and replace it with a label indicating exemption. The Commenters noted that this practice would hamper law enforcement authorities in policing vehicle and equipment theft.

The third argument against requiring an exemption statement on the vehicle certification label was the one that these commenters generally found most compelling. That was that requiring a manufacturer to produce different labels for its product lines adds a cost to the manufacture of a vehicle by creating an obligation for which there is no apparent need. These commenters argued that the principal reason for the entire antitheft plan is to assist law enforcement organizations in vehicle theft investigations. They concluded, therefore, that NHTSA's Appendix A (to 49 CFR Part 541), published annually in the **Federal Register**, will supply law enforcement officials with a current list of high theft lines. NATB added further that they, along with the International Associations of Automobile Theft Investigators (IAATI), also circulate information to help vehicle theft investigators identify antitheft lines.

Of the eight commenters, only NADA endorsed requiring "a label noticing that a vehicle is exempt from the parts marking standard." NADA asserted that the agency's Appendix A may be inaccurate, less timely, and more burdensome to use than "properly marked certification labels." The Association further stated that an "exempt status certification label" would help people who repair cars to determine quickly whether the vehicle has an antitheft device installed.

After having considered these comments, NHTSA concludes that it is

unnecessary to require a statement on the certification label respecting the exemption status of high theft vehicles. First, the agency recognizes that there are a number of sources from which law enforcement groups can obtain data to update lists of exempt high theft lines. The commenters mention two such sources: NATB and IAATI. The agency believes that, taken together with these other sources of information, Appendix A serves the purpose of disseminating information to aid theft investigations with reasonable efficiency. Second, with respect to NADA's comment concerning facilitating repair, the agency assumes that exempt vehicle manufacturers will notify their dealers which lines are exempt; the dealer then will know that an antitheft system is among the car's standard features.

Direct Importers

In its interim final rule, NHTSA determined that a direct importer cannot apply for an exemption from the parts-marking requirements, and gave its reasons in support of this position. However, the agency made a further determination that there are some circumstances where a direct importer may have some parts-marking responsibilities. The agency considered the following scenario.

A manufacturer has an exemption for a given line of cars classified as high-theft vehicles, and makes some of these cars for sale in the United States, and some for sale outside this country. A direct importer wants to import a number of the cars that were manufactured for sale outside the United States, and that consequently do not have an antitheft device.

The agency stated that the direct importer would have to mark these vehicles according to antitheft parts-marking standard. NHTSA noted that there would exist a line of cars available for sale in the U.S., some of which were marked under parts-marking standard, and some of which were equipped with antitheft devices. NHTSA sought comments on the effects of this practice.

In response to the agency's discussion, BMW of North America and the National Automobile Dealers Association (NADA) stated that NHTSA should include language in the theft exemption rule explicitly stating that direct importers cannot apply for an antitheft exemption. These commenters asserted that without this language, Part 543 might permit a direct importer to petition for an exemption.

NHTSA restates its position that in order for a manufacturer to be exempted under Part 543, the manufacturer must be capable of installing an antitheft system as standard equipment on an entire vehicle line. (*See* 51 FR 706, 707.) A direct importer cannot install an item as standard equipment on a line because he does not control an entire line. Therefore, NHTSA concludes that it is unnecessary to amend Part 543 to state a prohibition against direct importers applying for an exemption. However, the agency has included language in §§ 543.6 and 543.7 that should alleviate the concerns of these commenters.

NADA made additional comments respecting direct importers. First, it stated that NHTSA should prohibit direct importers from installing " 'standard equipment antitheft devices' on exempt line automobiles which are not originally intended for sale in America." The agency believes that it lacks the authority to prohibit the installation of antitheft devices on such vehicles, including devices identical to those installed as standard equipment on other vehicles. There is nothing in Title VI that restricts a direct importer, or any other retail business, from retrofitting cars with antitheft systems. However, as implied above, a direct importer's installation of an antitheft device on a car not originally intended for sale in this country will not relieve that importer of the obligation of marking the parts of that car.

NADA also believes that if direct importers could install "standard equipment antitheft devices in exempted lines," this fact somehow would make design data more available to potential car thieves. NHTSA does not understand this comment. The agency discusses confidentiality at length in another part of this document. Suffice it to say here that if a manufacturer submits design data in support of a request for exemption, he may request confidential treatment for the data under 49 CFR Part 512. If the agency determines to grant such a request, the agency will treat the manufacturer's data consistent with the determination, and will restrict data access and dissemination. In any event, prohibiting or circumscribing a direct importer's ability to install an antitheft system is a matter outside the scope of agency authority.

Finally, with respect to direct importers, BMW stated that it should be impermissible for these importers to market more than two lines of exempt vehicles. The company stated that if NHTSA viewed a direct importer as a manufacturer, the agency should apply the same restrictions to a direct importer as it applied to an original manufacturer. BMW alluded to section 605 of Title VI in support of its position.

The agency disagrees. First, NHTSA recognizes in the preamble to the interim final rule and in this document that an exemption may only be sought by a manufacturer capable of installing an antitheft device on all cars in the exempted line. Direct importers cannot install standard equipment and are not likely to be able to persuade an original manufacturer to install such equipment on vehicles which the direct importer seeks to sell in this country. Second, section 605 does not prohibit any seller, including any direct importer, from marketing vehicles from more than two exempt lines at a time. The restriction is that not more than two model lines per manufacturer may be exempted for a given model year.

Confidential Information

NHTSA requested comment on whether, under 49 CFR Part 512, the agency properly may afford confidential treatment to all data a manufacturer might submit in connection with an exemption petition. More specifically, NHTSA asked whether there may be a class of "drawings and other information" that a manufacturer would have to submit in support of its antitheft petition, and that may be sensitive information without being protectable under Appendix B. Comments were received from five manufacturers, i.e., Austin Rover, Chrysler, Ford, GM, and Toyota. Three of these, i.e., Austin Rover, Chrysler, and Toyota, suggested that until the manufacturer introduces the exempt car line to the public, NHTSA should treat as confidential all data submitted in support of an antitheft exemption request.

Ford suggested that if the agency is concerned whether it might be compelled to disclose some exemption data to potential vehicle thieves, NHTSA could expand § 512.5, *Substantive standards for affording confidential treatment*, "to embrace the broader definition of confidentiality set forth in recent judicial opinions." Specifically, the company suggested amending § 512.5 by stating that NHTSA would withhold information as confidential if disclosing the information might harm a specific governmental or private interest Congress sought to protect under the Freedom of Information Act, 5 U.S.C. 552(b)(4), and if the information met other criteria set out in § 512.4.

GM expressed concern that neither NHTSA's confidentiality rules, nor the FOIA provision cited above, would justify the agency's withholding the kind of information most valuable to an auto thief.

The agency has considered these comments with substantial care because theft deterrence and reduction is at the heart of the antitheft standard, and because NHTSA wishes to avoid any practice that will encourage or assist a potential thief. With respect to Ford's suggested amendment to § 512.5, the agency notes that Part 512 is primarily a procedural mechanism for protecting information under section 552(b)(4) of the Freedom of Information Act. The agency is aware of the breadth of judicial opinions articulating what kinds of material a Federal agency may withhold under Exemption (b)(4). In particular, the agency is aware of the case law stating that Federal agencies may withhold information under Exemption (b)(4) in order to protect a governmental interest. NHTSA plans to examine § 512.5 and consider the need to make appropriate changes in a separate rulemaking.

Regarding GM's concern, the agency observes that many manufacturers who submitted information in connection with model year 1987 petitions for exemption requested confidential treatment for that information. The agency is withholding much of this information, having determined that disclosing it would result in commercial harm to the manufacturer. Further, before product introduction, the agency may withhold all exemption data from disclosure as "future model specific product plans" under 49 CFR Part 512, Appendix B.

When a manufacturer introduces a product subject to an antitheft exemption, NHTSA anticipates that the manufacturer itself will eventually disclose general information about the system in brochures and in the owner's manual. Other information concerning the device may become available through reverse engineering or studying a standard equipment antitheft device. The agency believes that it cannot withhold any information that becomes publicly available by any legitimate method when the manufacturer introduces its product.

If NHTSA has more detailed information such as wiring diagrams or blueprints, the agency can withhold these data under Appendix B provided that the manufacturer properly asserts a claim for confidential treatment. On the other hand, even data like a detailed diagram cannot be withheld once the diagram becomes publicly available because the manufacturer includes it in a service manual, or because the diagram otherwise is legitimately disclosed.

In letters to the agency concerning their petitions for exemption for model year 1988, several manufacturers raised concerns about the agency's timing in releasing the nameplate of a carline to be introduced in that model year. The manufacturers urged that NHTSA release the nameplates when the manufacturer introduced the exempt model rather than at the time the agency granted an exemption petition. The agency believes that these concerns have merit, but believes further that they must be balanced against the need of law enforcement agencies to know which carlines will be required to be marked under the theft prevention standard. If a manufacturer can show that it has not released a new model's nameplate either to dealers or to any other portion of the public, NHTSA will treat the nameplate as confidential until the June 1 immediately preceding the model year in which the model will be introduced. Then, NHTSA will release the nameplate to inform law enforcement agencies of those models that must be marked under the theft prevention standard.

Standardized Tests

In the preamble to the interim final rule, NHTSA discussed a proposal to require that a manufacturer give his reasons for believing in the theft reduction and deterrence capabilities of his system. The manufacturer must support his petition by discussing any information which underlies his belief that the antitheft device will be effective in reducing and deterring vehicle theft. That information may include theft data, demonstrations, and test results.

After stating that test information would be useful in helping the agency to make an exemption decision, the agency asked for comment on the feasibility of developing a standardized test or test subject to evaluate the efficacy of antitheft systems, and whether information based on nonstandardized tests would be of value in exemption deliberations.

The five manufacturers who responded, i.e., AMC/Renault, Chrysler, Ford, Toyota, and VWoA, all essentially argued that developing and applying a standardized test for the efficacy of antitheft devices is not feasible. Each of these manufacturers argued that there are a number of variables involved in car theft, e.g., the theft's skill and the sophistication of tools. Consequently, a test evaluating a given device probably will be reliable only for the device tested, and under the specific test circumstances. Chrysler commented further that standardizing tests might inhibit a manufacturer's developing independent antitheft systems and tests to evaluate those systems. That kind of a result, Chrysler stated, is inconsistent with NHTSA's assertion in the preamble to the interim final rule that the agency does not intend to specify a particular design.

With respect to the question of whether nonstandardized test data would be valuable in helping the agency reach an exemption decision, none of the commenters specifically addressed the point. Ford stated that the agency might find evaluating components more useful than a standardized test in determining the reduction and deterrence properties of an antitheft device. VWoA believed that comparing data for exempt devices with data for devices subject to a new petition "should be sufficient to determined effectiveness." VWoA also suggested that "the requirement to submit data from a test subject should be made optional and not mandatory as the preamble suggests."

On the matter of developing a standardized test or test subject for evaluating antitheft devices, NHTSA concludes that developing a test or test subject is not now feasible because, as the commenters assert, it may not be possible now to develop a test protocol that will produce valid and reliable results. However, this conclusion does not relieve the petitioner of its responsibility to demonstrate the relevant properties of his system under Parts 541 and 543.

NHTSA notes that it did not intend to require a petitioner to submit raw test data on the efficacy of a device in connection with an exemption petition. Rather, what NHTSA contemplated was that a manufacturer would submit a discussion showing how that test data objectively supported his belief in the deterrence and reduction properties of his system.

Diagrams

Ford and GM questioned NHTSA's use of the term "diagram" in § 543.6(a)(1) of the interim final rule. Ford inquired about the level of detail that would be required in a diagram. GM expressed particular concern about "the level of detail" that a manufacturer must submit when it seeks an exemption "for a new theft deterrent system(s)." The company stated that service manuals and other general information may not be available for a new system when a manufacturer petitions for an exemption. What GM fears apparently is the following situation: in lieu of such general information, a manufacturer submits sensitive information on its system, a thief requests that information under FOIA, and because of the

limitations seen by GM in 49 CFR Part 512, NHTSA releases the sensitive information. (As discussed in the section of this preamble on "Confidentiality," the agency's opinion is that under Appendix B, it can withhold data submitted in connection with an exemption petition.)

NHTSA's experience with exemption petitions for model year 1987 leads the agency to conclude that it does not need detailed component design specifications to make a finding on the capabilities of an antitheft system. On the other hand, the agency needs a diagram showing where the system components are, as well as information on what the manufacturer expects these components to do. The agency underscores its intent in proposed § 543.6 to require a petitioner to submit material naming each system component, and diagraming the location of those components within the vehicle. Therefore, to clarify its intent, the agency has revised § 543.6 to require petitioners to name each antitheft system component, and submit a diagram showing the location of those components within the vehicle. The agency retains the requirement that a petitioner, submit a narrative describing it antitheft system relative to types of functions mentioned in § 543.6.

Antitheft Device Attributes

GM and the National Automobile Theft Bureau (NATB) commented on NHTSA's discussion of certain antitheft device attributes that agency experience shows notably contribute to an antitheft system's effectiveness. These attributes are automatic activation of the antitheft device; an audible or visual signal that is tied to the hood, door, and trunk and draws attention to vehicle tampering; and a disabling mechanism designed to prevent a thief from moving a vehicle under its own power without a key.

GM stated that two attributes, i.e., automatic system activation and disabling mechanisms, "are truly important attributes." On the other hand, the manufacturer believed that NHTSA placed "undue emphasis on * * * the need for an alarm system and control of underhood access." GM stated that it was unaware of evidence demonstrating whether an alarm and hood access control made an antitheft system more effective.

In the preamble to the interim final rule, NHTSA discussed design features mentioned in GM's comment, and explained that most manufacturers incorporate such features in an antitheft device. However, § 543.6(a) does not require a specific design for any antitheft device. Instead, the section lists five functions that most system designs address, and requires petitioners to discuss any design feature that would facilitate those functions. A pettioner should discuss any feature of its system that forms the basis for his belief in the theft reduction and deterrent properties of the system.

NATB noted that among the attributes the agency should consider in evaluating how well a system will perform its function is whether the system inhibits moving the vehicle by towing or pushing. The Bureau asserted that these methods are among those commonly used to steal automobiles, and suggested that NHTSA add language to proposed § 543.6(a)(2) ((a)(3) in the final rule) specifically requiring a petitioner to describe system attributes that would deter these methods of vehicle theft.

The agency's consideration of an antitheft system is not limited to those elements expressly set out in paragraph (a)(3), and NHTSA does not believe the industry perceives the language so narrowly. Evidence of this is provided by the fact that the agency already has granted a BMW exemption petition for an antitheft system that included a description of motion sensors to inhibit theft by towing or pushing. (51 FR 36333.) The agency declines to incorporate NATB's suggestion because the language in § 543.6(a)(3) does not restrict NHTSA in its consideration of antitheft system design elements, and already requires the manufacturer to describe all of the means and processes by which a theft device is activated and functions. If new information and technology indicate that it is appropriate to expand this list to expressly require discussion of specific design elements, the agency will consider revising this list as NATB suggests.

Device Effectiveness

Section 605 of Title VI requires that a petition include "the reasons for the manufacturer's conclusion that such device will be effective in reducing and deterring theft of motor vehicles." In the first clause of proposed § 543.6(c), the agency proposed that a petition include the "reasons for the manufacturer's belief that the antitheft device will reduce and deter theft of passenger motor vehicles." Ford commented that NHTSA should make the language in the regulation conform to that in the statute. The company believed that the statutory language "suggests an element of cooperation between the antitheft device and other vehicle systems to reduce and deter theft," while parallel language in the regulation does not. Ford did not say specifically how its language showed a greater "element of cooperation" than the language NHTSA proposed.

NATB also suggested that the agency rephrase language in the first clause of proposed § 543.6(b) to avoid "confus(ing) the criterion with the class of motor vehicles which may be exempted (from the antitheft standards)." Therefore, the Bureau suggested, the agency should change the words "theft of passenger motor vehicles" to "motor vehicle theft." (For this same reason, the Bureau also suggested we add the words "motor vehicle theft" to the second sentence in proposed § 543.7(b), and to change the term "passenger motor vehicle theft" to "motor vehicle theft" in proposed § 543.9(f) (1) and (2).)

NHTSA never intended § 543.6(b) or any Part 543 provision impose any requirement inconsistent with the Cost Savings Act, nor does the agency believe that the language in the interim final rule had that effect. However, the agency has no objection to bringing the language in the regulation closer to that in the statute, and has amended § 543.6(b) and other provisions referenced above, to conform more nearly to the statutory language.

Ford also suggested that the agency modify the second clause of proposed § 543.6(b). In the interim final rule, that clause read: "including any data, including theft data and results of demonstrations and tests, which show that the antitheft device will be effective in reducing and deterring motor vehicle theft." Ford suggested that it is confusing to use the word "including" twice in such close proximity, and asked that the agency delete the second "including," and substitute "such as." The company further suggested that the agency insert "which are reasonably available to the manufacturer and," after "demonstrations and tests." This change would eliminate any suggestion that NHTSA arbitrarily would "require manufacturers to produce data which are not reasonably available to them." Finally, Ford suggested NHTSA insert the words "tend to" between "which show," because those words would show that a manufacturer may produce evidence beyond that described in proposed § 543.6(b) in demonstrating the deterrence and reduction properties of an antitheft system.

The agency has a number of responses. First, NHTSA substantially redrafted proposed § 543.6(b) to state simply what data the agency expects a petitioner to discuss in supporting the reduction and deterrence properties of its system. In the redraft, the second clause reads "including any theft data

and other data that are available to the petitioner and form a basis for that belief." This redrafted clause reflects each of Ford's concerns. The word "including" appears once.

On the matter of requiring a manufacturer to submit only "reasonably available" data, the agency repeats its statement in the preamble to the interim final rule of NHTSA's awareness that there may be no "empirical data bearing directly on the effectiveness of the antitheft devices" that are the subjects of these early petitions. On the other hand, to the extent that such data are available, the agency wants to encourage full use of this material to support a manufacturer's assertion that his device deters and reduces theft. However, the agency would not require a manufacturer to produce unavailable data, or to assume an undue burden in getting data. For that reason, the agency includes the word "available" in its redraft of proposed § 543.6(b).

In the redrafted § 543.6(b), NHTSA permits a petitioner to include a discussion of any data that form the basis of petitioner's belief in the deterrence and reduction properties of an antitheft system. While NHTSA chose against using the words "tend to" as Ford suggested, the agency finds the new language responsive to Ford's concern that a petitioner have the freedom to include data beyond that set out in proposed § 543.6(b) to support petitioner's belief in the properties of its system.

Toyota commented that NHTSA should not require the submission of statistical data because motor vehicle manufacturers do not have access to such data on their own. The company asserts that manufacturers must get theft data either from the insurance industry, from groups like the Highway Loss Data Institute, and from the Federal Bureau of Investigation. Toyota concludes that NHTSA will obtain statistical information from the FBI when the agency reviews and exemption petition, and therefore, that requiring a manufacturer to submit this data is redundant.

The agency has used the FBI's National Crime Information Center (NCIC) data base to make some high-theft designations, and probably will continue to use that data in assessing whether the entire antitheft program reduces and deters motor vehicle theft. However, NHTSA is uncertain why the manufacturer believes the agency will consult the FBI in the regular course of reviewing an exemption petition. In any event, the agency emphasizes that it is the manufacturer's burden to persuade NHTSA of the efficacy of an antitheft device relative to the criteria set out in the Cost Savings Act. This is a burden a petitioning manufacturer voluntarily assumes. NHTSA questions how a manufacturer can make any creditable showing of the deterrent properties of its device if the manufacturer fails to collect any available data comparing the theft rate for its line with the same or similar lines not equipped with an antitheft system.

Again, NHTSA appreciates that initially, there will not be a great deal of data given the newness of both the parts-marking and exemption programs. However, the agency finds it a reasonable requirement that a petitioner for an exemption discuss and such available data as a manufacturer may acquire.

With respect to proposed § 543.6(c), Ford suggested that the agency change language in the first clause from "will be as effective" to "is likely to be as effective." The agency agrees that this change will reflect the determination the statute requires NHTSA to make in comparing the efficacy of parts-marking and antitheft devices, and so changes the language in the final rule. At Ford's suggestion, and for the same reason, the agency also amends the phrase "which are not equipped with the device" to read "which have parts marked in compliance with (49 CFR) Part 541." Because section 605 requires only that vehicles equipped with an antitheft device be likely to be as effective as vehicles marked in compliance with Part 541, the agency is revising § 543.6(c) to provide for the submission of data showing the device-equipped vehicles to have a theft rate less than or equal to that of marked vehicles.

Filing and Processing Petitions

Section 605 of Title VI has two statutory deadlines. The first requires a manufacturer to file an exemption petition not later than eight months before commencing production for the first model year covered by the petition. The second statutory deadline gives NHTSA 120 days after the date on which the petition is filed to determine whether to grant it. As the agency explained in the interim final rule for model year 1987 (51 FR at 709), NHTSA's administrative practice is to consider the date on which it receives a manufacturer's complete petition as the filing date. Section 543.7(a) of the interim final rule reflects this position.

Ford commented that the agency should amend proposed § 543.7 to state that irrespective of whether it is complete, a petition is filed on the date NHTSA receives it, and therefore that the 120 day statutory limit for deciding the petition starts on the date of receipt. The company argued that to follow the practice NHTSA set out in proposed § 543.7(a) is to deny the manufacturer's submission "the status of a 'petition'." This result, Ford asserted, would be "unduly harsh," because if the agency were to declare a submission incomplete within the eight months before a car line's scheduled production, the manufacturer would lose the possibility of exemption for an entire model year.

The company argued further that filing a petition for exemption is analogous to a situation the U.S. Court of Appeals for the Third Circuit faced in *Dunn v. United States*, 775 F.2d 99 (1985). In *Dunn*, the Third Circuit reversed a district court ruling dismissing a petition for award of counsel fees in a class action for lack of subject matter jurisdiction. The statute under which the class petitioned for attorney's fees required, among other things, that the party apply for fees "within thirty days of final judgment in an action," and submit its attorney's itemized fee statement. The parties filed the petition before the 30-day deadline, but supplied the itemized fee statement after that deadline.

The court of appeals first stated that it must read the time bar in context with other language in the provision to determine what Congress intended to accomplish. The court found that requiring a party to file within a certain time serves to inform parties whether they can rely on the finality of an action. Once a claim is timely filed, the pleading requirements serve to "(flesh) out the details." As the adverse party, the government experiences no prejudice if these details come after the claim is filed, and the court has no interest in promptly receiving details because it will refrain from acting until the government responds. On the other hand, there is a strong interest in permitting "some degree of flexibility" in pleading because preparing these documents requires great care, and because the issue of fee awards frequently is hotly contested. The court concluded that a failure to file a complete pleading within 30 days could not be a jurisdictional bar.

NHTSA takes issue with Ford's assertion that the facts in *Dunn* are analogous to the facts the agency and a manufacturer face in an administrative proceeding to grant an exemption. An exemption petition is more than a document that serves to give the agency notice of a manufacturer's resolve to request an exemption. The petition is itself supposed to contain the detailed

matter that should objectively support the manufacturer's technical conclusions about the theft reduction and deterrence capabilities of its device. Much of the information that may provide substantial evidence for granting a petition is uniquely within the manufacturers competence to supply, and without that information, the agency can not exercise its responsibility. Further, unlike an adjudicatory proceeding resolving claims among competing parties, the time within which the agency must act is not open-ended.

If the agency were to accept Ford's argument, conceivably a manufacturer could give the barest notice that it was requesting an exemption, and then late in the 120-day period give NHTSA the necessary technical documentation to support the efficacy of the device. The agency then would have insufficient time to act. The agency does not interpret section 605 of the Cost Savings Act as contemplating this result.

On the other hand, the agency believes that having two statutory deadlines impacts upon processing exemption petitions in ways that neither the agency, nor most of the commenters gave particular attention in the January 1986 rulemaking proceedings. Having a clearer standard of whether an incomplete submission is a "petition," or whether an incomplete petition is a "filed" petition would facilitate processing exemption requests. Therefore, the agency will propose amendments to Part 543 that will focus specifically on what it means to "file" a "petition." In the meantime, the procedures set out in the final rule published today are in effect.

On the subject of the 120-day period for NHTSA to make its determination, VWoA commented that the agency should respond within 60 days of the filing date. The company remarked that while its petition is pending, a manufacturer will not know whether he can install an exempt device, or must comply with the parts-marking standard. If the manufacturer had to do the latter, he would need at least three months before production to process and set up assembly line stations.

NHTSA notes that after full consideration of the subject matter, Congress selected 120 days as the period for agency response. Although the agency does not expect to use the full amount of time allowed to process each petition, it has been necessary to use most of it in the early phase of implementing the exemption provisions. The agency anticipates that the processing time will decrease as the experience of the manufacturers and the agency increases. Further, manufacturers can ensure that final action is taken on their petitions three or more months in advance of a model year by submitting the petitions early enough so that the 120-day period is completed by that time.

One commenter objected to a manufacturer's having to file a petition eight months before beginning production. Because the 8-month requirement is statutory, the agency cannot consider changing it.

Finally, Ford commented that the agency should amend proposed § 543.7(d) (paragraph 543.7(e) in the final rule) to state that an exemption becomes effective on the date of issuance instead of the date on which the agency publishes notice of the exemption in the **Federal Register**. Ford argued that occasionally, there may be a substantial delay between issuing and publishing a document, and that the date of issuance would be the better reference date. The company stated that keying the reference date to issuance (which is earlier than publication) helps a manufacturer with product planning, and does not prejudice the agency or the public because NHTSA's deliberations are complete when it issues an exemption, and because the statute requires exemption decisions to be made not later than four months before the production run of an exempt car line.

The agency notes that the usual delay between issuing a document and publishing it in the **Federal Register** is three working days. However, having considered Ford's comment and the language set out in the proposed rule keying the effective date of an exemption to **Federal Register** publication, the agency agrees that publication is not the appropriate reference for an exemption's effective date. The agency has addressed this concern by amending the final rule to key the effective date either to issuance or to the date stated in the notice of exemption.

Terminating or Modifying an Exemption

Once NHTSA grants and exemption for a vehicle line, that exemption remains in effect unless the agency grants a petition to modify or terminates the exemption, or until the manufacturer stops manufacturing the exempted vehicle line. Under § 543.9, NHTSA may initiate a proceeding to terminate or modify and exemption granted under Part 543 either on the agency's motion, or in response to the petition of an interested person. The rules provide a manufacturer with an opportunity to present his views once a proceeding concerning him has been commenced. Ford commented that the agency should expand a manufacturer's procedural rights under proposed § 543.9. The company suggested that NHTSA provide a manufacturer with a copy of any petition to terminate or modify his exemption, a written statement of the agency's reasons for initiating a proceeding, and an opportunity to present orally its position during a meeting with the agency.

With respect to Ford's first two suggestions, the agency notes that its intention was to provide these procedural opportunities, even though it did not explicitly state them. The agency has addressed these matters expressly in the final rule. On the other hand, a decision whether to terminate or modify an exemption will depend on data showing the theft rate for the vehicle line in question before and after installing an antitheft device, and on other technical data regarding effectiveness. The agency thinks that data will be persuasive in these proceedings, and that, because of its technical nature, the data will be most effectively discussed in written submissions. Therefore, NHTSA declines to provide in § 543.9 for an opportunity to make an oral submission to the agency.

Proposed § 543.9(f) states that NHTSA will publish a notice in the **Federal Register** if the agency terminates or modifies an exemption. If NHTSA terminates an exemption, section 605 of the Cost Savings Act states that the termination is not effective until six months after the manufacturer receives a written termination notice. Ford suggests the agency include an express statement that it will notify a manufacturer in writing of any decision either to modify or terminate an exemption. The agency believes that this suggestion has merit. Therefore, the introductory language of § 543.9(f) has been amended to incorporate it. Similarly, NHTSA amends § 543.9(g)(1)(ii) to state expressly that a decision to terminate an exemption is effective no earlier than six months after the manufacturer receives written notice. This is a statutory condition, but the agency has no objection to incorporating it into the regulations.

AMC/Renault objected to the provision under which NHTSA could terminate an exemption. The agency declines to change this provision. Section 605 provides for termination, reflecting a legislative determination not to continue sanction of an antitheft device that proves to be less effective than parts-marking in reducing and deterring vehicle theft for a high theft line.

The company further commented that when NHTSA wholly grants an exemption and later terminates it, there will exist a supply of unmarked replacement parts that but for the exemption, would have been subject to the parts-marking standard. These unmarked parts will remain in commerce, and later manufactured replacement parts will be marked. AMC/Renault asserts that such a circumstance will compromise "the enforceability of the system." The company asks the agency to limit termination to instances where an exemption rests on incorrect or misrepresented data. NADA also expressed a concern about parts-marking in the wake of terminating an exemption, and suggested that NHTSA require parts-marking for all high theft vehicle replacement parts.

The agency is sympathetic to the commenters' concerns that if NHTSA were to terminate an exemption, there would be a residual supply of unmarked parts. That supply could enable a suspected thief to argue that the part in question came either from a pre-termination vehicle or replacement parts inventory.

Nevertheless, NHTSA cannot accommodate these concerns. First, section 602(d)(2)(A) of Title VI states that the vehicle theft prevention standard can not require "identification of any part which is not designed as a replacement for a major part *required to be identified* under such standard." (Emphasis added.) As long as a manufacturer is producing a car line under an exemption granted *in whole*, there is no requirement to identify major parts otherwise subject to the theft standard; therefore, NHTSA can not require marking replacement parts.

Second, the agency does not believe it would be appropriate to decide never to use its authority to terminate an exemption upon a negative finding on the theft deterrence and reduction properties of the system.

Granting Exemptions in Part

NATB noted that under section 605, the agency may grant an exemption petition "in whole or in part," and that no antitheft device will be "100% effective." The Bureau proposed that when NHTSA determines to grant an antitheft exemption, the agency should grant *all* such exemptions in part, and continue to require parts-marking for engines and transmissions. NATB reasoned that because parts for these systems are interchangeable among car lines, "the prospect of non-identifiable engines and transmissions in exempt lines would actually serve as an incentive for the theft of these vehicles."

While NHTSA appreciates the commenter's concern, the agency is aware of its authority to grant a partial exemption, and will do so where the evidence in support of an exemption petition so indicates. Further, neither the Cost Savings Act nor the regulations issued under it contemplate that any theft deterrent practice will be 100 percent effective. The criterion that must be satisfied is not the absolute efficacy of a device, but rather a likelihood that the petitioner's device will be as effective as parts-marking in reducing and deterring theft.

NATB also commented that some vehicles exempt from the parts-marking standard may have parts interchangeable with high theft lines that are subject to parts-marking. The organization asserts that granting a partial exemption is a way to address this circumstance. NATB suggests that when a petitioner seeks an exemption under Part 543 for a line that has two (or more, presumably) parts interchangeable with a line subject to the part-marking standard, NHTSA should require the petitioner to mark the interchangeable parts. The agency restates its position that it will grant partial exemptions where appropriate under the standards of the Cost Savings Act.

One commenter suggested that NHTSA require statements of intention from manufacturers regarding their plans to continue any voluntary parts identification techniques. The agency has no authority to require such statements.

Maintaining, Modifying, and Replacing Antitheft Devices

In connection with a comment on whether direct importers can petition for antitheft exemptions (discussed earlier in this preamble), NADA urged the agency to focus on proper installation, maintenance, and repair of antitheft devices. The Association stated that an improperly installed, maintained, or repaired device will be ineffective. It concluded that "each NHTSA petition review will be inadequate to the extent that someone other than the petitioner is allowed to attempt jerry-rigged retrofits of these devices."

The agency observes that exemptions are granted under section 605 only for installing antitheft devices as original standard equipment, and not for retrofitting such devices. Further, the continued application of exemptions would be premised upon the antitheft devices being so installed on the exempted cars. However, the agency has no authority to prohibit the retrofitting of a vehicle with an antitheft device. As to maintaining and repairing original standard equipment or retrofitted antitheft devices, such actions are outside the scope of this rulemaking, and beyond the agency's authority.

The Vehicle Security Association (VSA) commented that if an aftermarket antitheft system performs as well as or better than an original manufacturer-installed antitheft device, a retailer of a high theft vehicle line should be able to install or modify the original equipment system. Installing an antitheft device on an unexempted vehicle would contribute to the purposes of Title VI. However, with respect to an exempted car line, substituting a different or modified device for the standard equipment antitheft device on that line would eviscerate the legislative requirement that the entire line have the standard equipment device. The continued application of exemptions rests on the premise that antitheft devices will be standard on the exempted cars. Further, the substituted or modified device might or might not perform as well as the standard equipment device. Therefore, NHTSA cannot endorse such a practice.

Reliance on an Exemption for a Portion of a Model Year

In connection with several exemption petitions, an issue has arisen concerning the permissibility of a manufacturer marking an exempted line for a portion of a model year, and then ceasing marking and instead installing an antitheft device on the line for the balance of the year. Such practice is not permissible since if an antitheft device is to be installed in lieu of marking for any given model year, the device must be installed as standard equipment for the entire model year.

Other Comments

One manufacturer suggested that the agency amend proposed § 543.5(a) to state that a manufacturer could petition NHTSA for exemptions from parts-marking requirements for not more than two *addtional* lines after model year 1987. The agency declines to make this change because the request assumes that any manufacturer seeking an exemption for a car line for model year 1988 and thereafter will first have sought an exemption for another car line for model year 1987. However, some manufacturers may first submit a exemption petition for a later model year.

Fiat suggested that "Part 543 be re-examined to exempt from counting,

those lines presenting a theft rate under 10 or 20 cars per annum." This manufacturer produces some specialty car lines with low production levels where a small absolute number of thefts may determine whether the line becomes high-theft. Fiat reasoned that with so small a number of thefts, any vehicle theft data would be statistically unreliable. The agency understands this comment as suggesting that where the theft rate for a car line is 10 to 20 cars per year, NHTSA grant the car line exempt status without the manufacturer's having to petition under Part 543. The agency notes that it may grant exemptions only under the exemption process in section 605. The agency cannot excuse a manufacturer from this process if he seeks an exemption from parts-marking requirements.

Effective Date

This final rule will become effective 30 days after publication in the **Federal Register**.

Impacts

A. Costs and Benefits to Manufacturers and Consumers

This rule specifics the process by which a manufacturer of a high theft vehicle line may petition the agency for an exemption from the theft prevention standard. This is a voluntary process. No manufacturer is required to install antitheft devices in any vehicles. Therefore, the rule itself imposes no major costs on the passenger motor vehicle industry or consumers. In light of these facts, NHTSA determines that this rule is not a major rule under Executive Order 12291 because the rule will not have an effect on the economy of $100 million or more; will not result in a major increase in costs or prices for consumers, industries, government agencies, or geographic regions; and will not have significant adverse effects on competition, investment, productivity, or innovation.

The Administrator has determined that because the rule implicates none of the concerns set out in Department of Transportation publication "Improving Government Regulations," (44 FR 11034), the rule is not significant within the meaning of Department policies.

Any manufacturer of a high theft line must mark certain parts under Part 541, or obtain an exemption from the parts-marking requirements and install an antitheft device as standard equipment on the line. In the final rule establishing the vehicle theft prevention standard (50 FR 43166, October 24, 1985), NHTSA estimated that it costs less than the $15.00 per vehicle statutory limit (*see* section 604 of title VI) to comply with Part 541.

The agency has prepared a final regulatory evaluation which sets out the manufacturers' suggested retail price for an optional antitheft device on a model year 1985 passenger motor vehicle. The estimated cost of antitheft devices substantially exceeds the cost of parts marking. Most of these optional antitheft devices work only in conjunction with power door locks. The prices range from $159 to $360 for an antitheft device on a car already equipped with power door locks. From past experience, the agency is aware that there is no standard formula to relate manufacturing cost or the price of standard equipment to the price of optional equipment. Thus, the price that would be charged if antitheft devices were installed as standard equipment cannot be derived from the optional equipment price. However, the manufacturing cost and retail price of high-volume standard equipment generally is substantially less than the cost and price of low-volume optional equipment.

The agency has performed a teardown study to determine the consumer price of an antitheft device installed as standard equipment on a car line, and placed that study in the docket. The price estimates are based on the assumption that the system would be factory-installed as standard equipment on models with production volumes of 300,000 vehicles per year. Under the preceding conditions, NHTSA estimates that the consumer price would be about $70.00 per vehicle for an antitheft device with an alarm activated by sensors in the doors, trunk and hood, and a disabling device.

Increased vehicle production costs and consumer prices resulting from voluntarily installing a standard equipment antitheft device ultimately depend on the number of vehicle lines exempted and the production volume of these lines. For model year 1987, the agency granted seven exemption petitions covering 12 vehicle lines. For model year 1988, the agency has granted two exemptions covering three car lines. The agency has no way to estimate the total number of lines it may exempt for subsequent model years.

B. Small Business Impacts

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Because the rule is merely procedural, I certify that this rule will not have a significant economic impact on a substantial number of small entities. The installation of standard equipment antitheft devices may decrease the potential market for aftermarket antitheft devices. However, the decision to supply an antitheft device would not be an agency decision, but a voluntary manufacturer decision, and will not likely be affected by this rule or the theft prevention standard since antitheft devices are much more expensive than parts-marking. Therefore, no regulatory flexibility analysis has been prepared.

C. Environmental Impacts

As is required under the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of the rule and determined that this rule will not have any significant impact on the quality of the human environment.

D. Paperwork Reduction Act

The requirement that manufacturers desiring an exemption submit a petition containing the information set forth in this rule is considered to be an information collection requirement, as OMB defines that term in 5 CFR Part 1320. OMB approved this requirement through September 30, 1989, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501) *et seq.*) (OMB# 2127–0542).

List of Subjects in 49 CFR Part 543

Administrative practice and procedure, National Highway Traffic Safety Administration, Reporting requirements.

In consideration of the preceding, Part 543 of Title 49 of the Code of Federal Regulations is revised to read as follows:

PART 543—EXEMPTION FROM VEHICLE THEFT PREVENTION STANDARD

Sec.

543.1 Scope.
543.2 Purpose.
543.3 Application.
543.4 Definitions.
543.5 Petition: General requirements.
543.6 Petition: specific content requirements.
543.7 Processing an exemption petition.
543.8 Duration of exemption.
543.9 Terminating or modifying an exemption.

Authority: 15 U.S.C. 2025, delegation of authority at 49 CFR 1.50.

§ 543.1 Scope.

This part establishes procedures under section 605 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2025) for filing and processing petitions to exempt lines of passenger motor vehicles from Part 541 of this

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chapter, and procedures for terminating or modifying an exemption.

§ 543.2 Purpose.

The purpose of this part is to specify the content and format of petitions which may be filed by manufacturers of passenger motor vehicles to obtain an exemption from the parts-marking requirements of the vehicle theft prevention standard for passenger motor vehicle lines which include, as standard equipment, an antitheft device if the agency concludes that the device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. This part also provides the procedures that the agency will follow in processing those petitions and in terminating or modifying exemptions.

§ 543.3 Application.

This part applies to manufacturers of high-theft passenger motor vehicles; and to any interested person who seeks to have NHTSA terminate an exemption.

§ 543.4 Definitions.

(a) *Statutory terms.* All terms defined in sections 2, 601, and 605 of the Motor Vehicle Information and Cost Savings Act are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) of this section.

(b) *Other definitions.*

"Line" or "car line" means a name which a manufacturer applies to a group of motor vehicles of the same make which have the same body or chassis, or otherwise are similar in construction or design. A "line" may, for example, include 2-door, 4-door, station wagon, and hatchback vehicles of the same make.

"NHTSA" means the National Highway Traffic Safety Administration.

§ 543.5 Petition: General requirements.

(a) For each model year, a manufacturer may petition NHTSA to grant exemptions for up to two lines of its passenger motor vehicles from the requirements of Part 541.

(b) Each petition filed under this part for an exemption must—

(1) Be written in the English language;

(2) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590;

(3) State the full name and address of the petitioner, the nature of its organization (individual, partnership, corporation, etc.), and the name of the State or country under the laws of which it is organized;

(4) Be submitted at least 8 months before the commencement of production of the lines specified under paragraph (5) of § 543.5(b) for the first model year in which the petitioner wishes those lines to be exempted, and identify that model year;

(5) Identify the passenger motor vehicle line or lines for which exemption is sought;

(6) Set forth in full the data, views, and arguments of the petitioner supporting the exemption, including the information specified in § 543.6; and

(7) Specify and segregate any part of the information and data submitted which the petitioner requests be withheld from public disclosure in accordance with Part 512, *Confidential Business Information*, of this chapter.

§ 543.6 Petition: Specific content requirements.

(a) Each petition for exemption filed under this part must include:

(1) A statement that an antitheft device will be installed as standard equipment on all cars in the line for which an exemption is sought;

(2) A list naming each component in the antitheft system, and a diagram showing the location of each of those components within the vehicle;

(3) A discussion that explains the means and process by which the device is activated and functions, including any aspect of the device designed to—

(i) Facilitate or encourage its activation by motorists,

(ii) Attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key,

(iii) Prevent defeating or circumventing the device by an unauthorized person attempting to enter a vehicle by means other than a key,

(iv) Prevent the operation of a vehicle which an unauthorized person has entered using means other than a key, and

(v) Ensure the reliability and durability of the device;

(4) The reasons for the petitioner's belief that the antitheft device will be effective in reducing and deterring motor vehicle theft, including any theft data and other data that are available to the petitioner and form a basis for that belief;

(5) The reasons for the petitioner's belief that the agency should determine that the antitheft device is likely to be as effective as compliance with the parts-marking requirements of Part 541 in reducing and deterring motor vehicle theft, including any statistical data that are available to the petitioner and form a basis for petitioner's belief that a line of passenger motor vehicles equipped with the antitheft device is likely to have a theft rate equal to or less than that of passenger motor vehicles of the same, or a similar, line which have parts marked in compliance with Part 541.

(b) Any petitioner submitting data under paragraph (a) (4) or (5) of this section shall submit an explanation of its belief that the data are sufficiently representative and reliable to warrant NHTSA's reliance upon them.

§ 543.7 Processing an exemption petition.

(a) NHTSA processes any complete petition. If a manufacturer submits a petition that does not contain all the information required by this part, NHTSA informs the manufacturer of the areas of insufficiency and advises the manufacturer that the agency does not process the petition until it receives the required information.

(b) The agency grants a petition for an exemption from the parts-marking requirements of Part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541.

(c) The agency issues its decision either to grant or deny an exemption petition not later than 120 days after the date on which a complete petition is filed.

(d) Any exemption granted under this part applies only to the vehicle line or lines that are the subject of the grant, and are equipped with the antitheft device on which the line's exemption was based.

(e) An exemption granted under this part is effective for the model year beginning after the model year in which NHTSA issue the notice of exemption, unless the notice of exemption specifies a later model year.

(f) NHTSA publishes a notice of its decision to grant or deny an exemption petition in the **Federal Register**, and notifies the petitioner in writing of the agency's decision.

§ 543.8 Duration of exemption.

Each exemption under this part continues in effect unless it is modified or terminated under § 543.9, or the manufacturer ceases production of the exempted line.

§ 543.9 Terminating or modifying an exemption.

(a) On its own initiative or in response to a petition, NHTSA may commence a proceeding to terminate or modify any exemption granted under this part.

(b) Any interested person may petition the agency to commence a

proceeding to terminate or modify an exemption.

(c)(1) In a petition to terminate an exemption, the petitioner must:

(i) Identify the vehicle line or lines that are the subject of the exemption;

(ii) State the reasons for petitioner's belief that the standard equipment antitheft device installed under the exemption is not as effective as compliance with the parts-marking requirements of Part 541 in reducing and deterring motor vehicle theft;

(iii) Comply with § 543.5, paragraphs (b) (1) through (3) and (7).

(2) In a petition to modify an exemption, the petitioner must:

(i) Identify the vehicle line or lines that are the subject of the exemption;

(ii) Request permission to use an antitheft device similar to, but different from the standard equipment antitheft device which is installed under the exemption;

(iii) Comply with § 543.5, paragraphs (b) (1) through (3) and (7); and

(iv) Provide the same information for the modified device that is required under § 543.6 for a new device, except that the information specified by § 543.6(a)(3) need by provided only to the extent that the modified device differs from the standard equipment antitheft device installed under the exemption.

(d) NHTSA processes any complete petition. If a person submits a petition under this section that does not contain all the information required by it, NHTSA informs the manufacturer of the areas of insufficiency and advises the manufacturer that the agency does not process the petition until it receives the required information.

(e) If NHTSA denies a petition requesting a proceeding to terminate or modify an exemption, the agency notifies the petitioner by letter.

(f) If NHTSA commences a termination proceeding on its own initiative or in response to a petition, the agency provides the manufacturer of the exempted line with a copy of the petition, if any, a written statement of NHTSA's reasons for commencing the proceeding, and an opportunity to present its written views.

(g)(1) The agency terminates an exemption if it determines that the antitheft device installed under the exemption has not been as effective as parts-marking in reducing and deterring motor vehicle theft.

(2) Except as provided in paragraph (g)(3) of this section, a decision to terminate an exemption under this section takes effect on the later of the following dates:

(i) The last day of the model year in which NHTSA issues the termination decision, or

(ii) Six months after the manufacturer receives written notice of the termination.

(3) If a manufacturer shows good cause why terminating its exemption effective on a date later than the one specified in paragraph (g)(2) of this section is consistent with the public interest and the purposes of the Act, the agency may set such later date.

(h)(1) The agency modifies an exemption if it detemines, based on substantial evidence, that the modified antitheft device described in the petition is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541.

(2)(i) Except as provided in paragraph (h)(2)(ii) of this section, a decision to modify an exemption under this section takes effect on the first day of the model year following the model year in which NHTSA issued the modification decision.

(ii) If a manufacturer shows good cause why modifying its exemption effective on a date earlier than the one specified in paragraph (h)(2)(i) of this section is consistent with the public interest and the purposes of the Act, the agency may set such earlier date.

(i) [Reserved]

(j) NHTSA publishes notice in the **Federal Register** of any agency decision terminating or modifying an exemption, and notifies the affected manufacturer in writing.

Issued on: September 1, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-20568 Filed 9-3-87; 10:22 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket Number 70885-7185]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission, publishes notice of regulations promulgated by that Commission and approved by the United States Government to govern the Pacific halibut fishery. These regulations are intended to allow full harvest, within conservation constraints, of available Pacific halibut stocks in the northern Pacific Ocean.

EFFECTIVE DATE: September 2, 1987.

FOR FURTHER INFORMATION CONTACT: J. Craig Hammond, Special Agent in Charge, Law Enforcement, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, telephone 907-586-7225; or Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, WA 98105, telephone 206-624-1838.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC), under the convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (signed at Ottawa Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery. These regulations have been approved by the Secretary of State of the United States and by the Governor-General of Canada. On behalf of the IPHC, these regulations are published in the **Federal Register** to provide notice of their effectiveness and to inform persons subject to the regulations of their restrictions and requirements.

The current IPHC regulations (52 FR 16268, May 4, 1987), are amended by establishing a new twelve-hour commercial fishing season, beginning at 6:00 p.m. Alaska Daylight Time (ADT) on September 2, 1987, and ending at 6:00 a.m. ADT on September 3, 1987, in Regulatory Area 3B in the Gulf of Alaska. A trip limit of 25,000 pounds per vessel is also established for this opening. Under the current IPHC regulations, an amount of halibut up to the remaining unharvested combined quota for Areas 3A and 3B may be harvested in Area 3B.

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen* v. *National Marine Fisheries Service*, 512 F.2d 1189 (9th Cir. 1975), 5 U.S.C. 553 of the Administrative Procedure Act, Executive Order 12291, and the Regulatory Flexibility Act do not apply to this notice of the effectiveness and content of the regulations.

These regulations do not contain collection of information requirements subject to the Paperwork Reduction Act.

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List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Dated: September 1, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR 301 is amended as follows:

PART 301—[AMENDED]

1. The authority citation for Part 301 continues to read as follows:

Authority: 5 U.S.T. 5; T.I.A.S. 2900, 16 U.S.C. 773–773K.

2. In § 301.5, a new paragraph (f) is added to read as follows:

§ 301.5 Fishing periods.

* * * * *

(f) Notwithstanding paragraph (c) of this section, the 9/02–9/03 fishing period for Area 3B specified in paragraph (a) of this section shall begin at 1800 hours Alaska Daylight Time on September 2 and terminate at 0600 hours Alaska Daylight Time on September 3.

3. In § 301.8, paragraph (d) is revised and a new paragraph (i) is added to read as follows:

§ 301.8 Catch limits.

* * * * *

(d) If the Commission determines that the catch limit specified in paragraph (a) of this section would be exceeded in a 24-hour fishing period in any regulatory area, the catch limit for that area shall be considered to have been taken, except as provided in paragraph (i) of this section.

* * * * *

(i) If the Commission determined that the catch limit specified in paragraph (a) of this section would be exceeded in a 12-hour fishing period in Regulatory Area 3B, the catch limit for that area shall be considered to have been taken.

4. Section 301.9 is revised as follows:

§ 301.9 Trip limits.

(a) Vessels fishing in Area 4C shall be limited to a maximum catch of 10,000 pounds (4.5 metric tons) of halibut per fishing period until 25 percent (150,000 pounds) of the catch limit specified in § 301.8(a) has been taken.

(b) Vessels fishing in Regulatory Area 3B during a fishing period of less than 24-hours' duration shall be limited to a maximum catch of 25,000 pounds (11.34 metric tons) of halibut.

[FR Doc. 87–20555 Filed 9–2–87; 4:00 pm]

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Proposed Rules

Federal Register
Vol. 52, No. 173
Tuesday, September 8, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Amdt. No. 2]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Proposed Change in Handling Regulations To Limit Inspection Certificate Validity

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites written comments on the length of time for which inspection certificates required by the Federal marketing order for Idaho-Eastern Oregon potatoes shall be valid. Currently, there is no limit on the length of time for which inspection certificates remain valid for purposes of the handling regulation issued pursuant to the marketing order. Under certain circumstances, the condition of potatoes can deteriorate rapidly. The proposal would require handlers to obtain another inspection on potatoes not shipped from the production area within four days of the issuance of an inspection certificate. The purpose of this requirement is to help assure the condition of potatoes in the marketplace. This proposal is based on a unanimous recommendation of the Idaho-Eastern Oregon Potato Committee. The committee works the Department in administering the marketing order.

DATE: Comments must be received by September 28, 1987.

ADDRESS: Written comments concerning this proposal should be submitted in triplicate to the Docket Clerk, USDA, AMS, F&V Division, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. All comments submitted will be made available for public inspection in the above office during regular business hours. Comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, USDA, AMS, F&V Division, P.O. Box 96458, Room 2523–S, Washington, DC 20090–6456; telephone 202–447–5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such action in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601 through 674), and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 71 handlers of Idaho-Eastern Oregon potatoes will be subject to regulation under this marketing order during the coming season. In addition, there are about 3,400 producers in the production area. The majority of these handlers and producers may be classified as small entities as defined by the Small Business Administration (SBA). The SBA defines agricultural service firms, which would include handlers, as those whose gross annual receipts are less than $3.5 million and small agricultural producers as those having average annual gross revenues for the last three years of less than $100,000 (13 CFR 121.2).

This proposed rule is being issued under the maketing agreement and Marketing Order No. 945, both as amended, regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon (the order). The proposal would provide that inspection certificates for potatoes shipped outside the production area would not be valid for meeting the requirements of the handling regulation unless the inspection certificate is issued within four days of shipment of such potatoes. The industry has experienced some problems with poor condition potatoes arriving in the marketplace. This proposal is intended to improve the condition of potatoes in the marketplace. Shipments of consistently good quality and condition potatoes improve industry returns by increasing buyer confidence. Experience has shown that less desirable potatoes drive the price down for all shipments regardless of quality and condition. The authority for the proposal is contained in § 945.65(c) of the order, which provides that for purposes of the inspection and certification requirements of the order, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

The condition of potatoes can deteriorate rapidly after they are removed from a controlled temperature and moisture environment and exposed to extreme cold or hot temperatures. Condition defects are defects which are subject to change during shipment and storage, such as discoloration, bruising, and firmness. According to the committee, potatoes sometimes sit on shippers' loading docks outside of controlled storage waiting for transportation for up to 10 days after they are inspected and certified as meeting order quality and condition requirements. Currently, such potatoes do not have to be inspected and certified again as meeting the condition requirements established under the order even though the condition of the potatoes may deteriorate.

A time limitation on the validity of inspection certificates for potatoes being shipped from the production area would help prevent the shipment of potatoes which have deteriorated in condition after inspection, and thereby help assure the condition of potatoes in the marketplace. This should help provide potatoes that are more appealing and desirable to the consumer. The end result would provide greater economic returns to growers and handlers of Idaho-Eastern Oregon potatoes.

Exemptions to the inspection and certification requirements of the order

would continue to be available to handlers. Shipments of potatoes for canning, freezing, and other processing are exempt from such requirements. Also, each handler may ship up to five hundredweight of potatoes, except yellow fleshed Finnish-type potatoes, any day without regard to the quality, maturity, pack, inspection and assessment requirements of the program. Handlers of yellow fleshed Finnish-type potatoes may ship up to 200 hundredweight per day of such potatoes free from the inspection, quality, maturity and pack requirements of the order. Exemptions to the maturity requirements also are authorized under certain circumstances.

On the basis of the foregoing, the impact of this change on growers and handlers is expected to be positive and benefit the Idaho-Eastern Oregon potato industry as a whole. Additional costs will be incurred for new inspections when potatoes are not shipped within four days from the date of the original inspection. However, the anticipated benefits of assuring good quality and condition potatoes and thus increasing consumer confidence in the product should outweigh the potential additional costs of this proposal.

A 20-day comment period is deemed appropriate because the 1987 harvest and shipment of Idaho-Eastern Oregon potatoes already has begun, and it is important that any changes resulting from this rulemaking be in effect for as much of the current season as possible. Furthermore, handlers in the production area are already aware of this committee recommendation and are prepared to operate in accordance therewith.

List of Subjects in 7 CFR Part 945

Marketing agreements and orders, Potatoes, Idaho, Oregon.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 945 be amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 945.341 is amended by adding paragraph (d)(3) to read as follows:

§ 945.341 Handling regulation (Amendment No. 2).

* * * * *

(d)* * *

(3) Inspection certificates for potatoes to be shipped outside the area of production which are required by this section must be issued within four days of such shipment. Otherwise, such potatoes can only be shipped outside the area of production if another inspection is performed and the potatoes are certified as meeting the minimum grade, size, maturity, and pack requirements specified in paragraphs (a), (b), and (c) of this section and if the potatoes are then shipped within the four day period specified above.

* * * * *

Dated: September 1, 1987.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–20516 Filed 9–4–87; 8:45 am]

BILLING CODE 3410–02–M

Food and Nutrition Service

7 CFR Part 245

Revision of "Family" Definition To Include Certain Institutionalized Children

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, to revise the definition of "family" to include children that have been placed in the residential institution by the family. Currently, the definition of "family" excludes persons who are residents of an institution or boarding house. Further, Part 245 specifies that a child who is not a member of a family (e.g., an institutionalized child) shall be considered a "family of one." As a result, most children in residential child care institutions (RCCIs) are eligible for and receive free meals regardless of the financial need of their families. Under this proposal, a determination of family need would be required if free or reduced price meals/milk are desired for an institutionalized child that was placed in the institution by the family. The Department is proposing this rule as part of an ongoing effort to more effectively direct free and reduced price benefits to those most in need.

DATE: To be assured of consideration, comments must be postmarked no later than November 9, 1987.

ADDRESSES: Comments should be sent to Lou Pastura, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public inspection in Room 509, 3101 Part Center Drive, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Pastura at the address listed above or call (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an impact on the economy of more than $100 million. No major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. This proposal is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would affect the School Breakfast, National School Lunch, and Special Milk Programs which are listed in the Catalog of Federal Domestic Assistance under 10.553, 10.555 and 10.556. These programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This proposal has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of FNS has certified that this proposal will not have a significant economic impact on a substantial number of small entities.

This proposed action would impose no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520).

Background

Currently, § 245.2(b) of 7 CFR Part 245 defines "family" as "a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit." This definition has remained the same since Part 245 was first established in 1970. Under this

definition, institutionalized children, whether or not supported by their families, are not considered to be family members. On the other hand, students who are enrolled in boarding schools are considered to be family members. Free or reduced price meal or free milk eligibility for boarding school students or for other schoolchildren is based on family size and income in accordance with income eligibility guidelines prescribed by the Department or on the family's current receipt of food stamps or aid to families with dependent children (AFDC). In determining family income, no deductions are allowed for the support of any institutionalized children.

In 1975, the National School Lunch and Child Nutrition Acts were amended by Pub. L. 94–105 to allow public and licensed nonprofit private residential child care institutions (RCCIs) to participate in the National School Lunch, School Breakfast and Special Milk Programs. In implementing this legislation, the Department amended the definition of "school" in Parts 210, 215 and 220 to include RCCIs. In addition, § 245.3(c) was amended in 1976 to provide that when a child is not a member of a "family" as defined in Part 245, the child shall be considered a "family of one." Thus, children in RCCIs are treated as families of one with free or reduced price eligibility determinations based only on income received directly by these children. As a result, most children who reside in RCCIs are eligible for free meals or milk.

At the time the "family of one" concept was adopted by the Department, it was felt that the vast majority of children residing in eligible RCCIs were indigent. This is evidenced by the types of RCCIs that were used as examples when the definition of "school" was broadened in 1976 to cover RCCIs. Under that definition, RCCIs included but were not limited to: "Homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long term care facilities for chronically ill children; and juvenile detention centers." It was generally felt that, for the most part, these institutions served children that were either wards of the State or were indigent in their own right as in the case of abused or runaway children. Thus, the "family of one" concept was adopted to facilitate free or reduced price eligibility determinations for these children within existing law, regulations and procedures which required such determinations on a family size and income basis.

While the Department still feels that the majoity of the Nation's institutionalized children are not supported by their families, it acknowledges that some children in residential child care facilities are supported by their families. Furthermore, the Department believes that the number of such children has been increasing since 1976 due to the growing number of nonprofit private teenage drugs and alcohol rehabilitation centers and other similar institutions specializing in the psychiatric treatment and care of emotionally disturbed or unmanageable children. The high cost of elective treatment and care in such institutions makes them available primarily to middle or upper income families. However, under current regulations, these institutions are eligible to participate in the school nutrition prgrams and may receive Federal free meal or milk reimbursements for most meals or milk served to resident children since all are considered to be "families of one." Recent publicity concerning institutions of this type has focused attention on the free and reduced price eligibility determinations process for RCCI residents generally. The Department has reviewed that process and now feels that universal application of the "family of one" concept to RCCI residents can no longer be justified.

This proposed rule would revise the definition of "family" in § 245.2(b) to include a child that has been placed in a residential institution by the family and is being supported by the family. The "family of one" concept would continue for children who are *not* included in the "family" definition. Under this proposal, if a child is placed in an institution by a family, and continues to be supported by the family, the child would be considered a member of the family for purposes of determining free or reduced price eligibility.

Institutionalized children who are wards of the State or are otherwise not members of a family, as in the case of runaway children, would continue to be considered as "families of one" as would children who are placed in juvenile detention centers by the courts.

To implement this proposal, the Department is considering defining "supported by the family" to mean that the family provides, either directly or indirectly, at least fifty percent of all costs associated with the maintenance, care, treatment, education, etc. of the child. The Department would appreciate comments on this approach.

This proposal would require RCCIs to follow the same procedures as other schools in determining eligibility for free or reduced price meals or free milk. Free or reduced price eligibility determinations based on family size and income information or on appropriate food stamp or AFDC information would be required for each child for whom Federal reimbursement for free or reduced price meals or free milk is desired.

As in the case of private schools, RCCIs that have the necessary eligibility information in file as part of their enrollment or registration process could use such information to determine free or reduced price eligibility. Otherwise, a separate free and reduced price application would be completed by the family or, in the case of a child who is a "family of one," by the institution. Institutions that do not charge separately for meal service could also elect not to do free or reduced price eligibility determinations. However, RCCIs electing this option would only be eligible to receive the paid rate of Federal reimbursement for each eligible meal or half pint of milk served.

List of Subjects in 7 CFR Part 245

Food assistance programs, Grant programs—Social programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Reporting and recordkeeping requirements.

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

Accordingly, Part 245 is amended as follows:

1. The authority citation for Part 245 continues to read as follows:

Authority: Secs. 3, 4, and 10, 80 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); secs. 2–10, 80 Stat. 230, as amended (42 U.S.C. 1751–60), unless otherwise noted.

2. In § 245.2, paragraph (b) is revised as follows:

§ 245.2 Definitions.

* * * * *

(b) "Family" means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit, except that, a child that has been placed in a residential child care institution by a family and is being supported by the family shall be considered a member of that family.

* * * * *

Dated: September 1, 1987.

Anna Kondratas,

Administrator.

[FR Doc. 87-20579 Filed 9-4-87; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-143-86]

Income Tax; Continuation Coverage Requirements of Group Health Plans; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the requirement that a group health plan offer continuation coverage to people who would otherwise lose coverage as a result of certain events.

DATES: The public hearing will begin at 10:00 a.m. on Tuesday, November 4, 1987, and continue, if necessary, at the same time on Wednesday, November 5, 1987. Outlines of oral comments must be delivered or mailed by Friday, October 9, 1987.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW. Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (EE-143-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Angela D. Wilburn of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW. Washington, DC 20224, (202) 566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 106 (b), 162 (i) (2), and 162 (k) of the Internal Revenue Code of 1986. The proposed regulations conform the regulations to section 10001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (100 Stat. 222) and to section 1895 (d) of the Tax Reform Act of 1986 (100 Stat. 2936), which made technical corrections to the COBRA provisions. The proposed regulations appeared in the **Federal Register** for Monday, June 15, 1987 (52 FR 22716).

The rules of § 601.601 (a) (3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, October 9, 1987, an outline of the oral testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

James J. McGovern,

Director, Employee Plans and Exempt Organization Division.

[FR Doc. 87-20587 Filed 9-4-87; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-87-058]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, NC

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the U.S. Army Corps of Engineers, Wilmington, North Carolina, the Coast Guard is considering a change to the regulations governing the drawbridges across the Atlantic Intracoastal Waterway at mile 113.8 in Fairfield and at mile 157.2 in Hobucken, North Carolina, by restricting the number of bridge openings during the boating season. This proposal is being made to reduce were on the two 50 year old bridges and their machinery. This action should accommodate the needs of vehicular traffic, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before October 23, 1987.

ADDRESSES: Comments should be mailed to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, Room 609, between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Person submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer, and CDR Robert J. Reining, project attorney.

Discussion of Proposed Regulations

The U.S. Army Corps of Engineers has requested that the drawbridges be regulated to open on the hour and half hour, daily, between 7:00 a.m. and 7:00 p.m., from April 1 through November 30. This request is being made as a result of the steady increase of pleasure craft traffic on the AICWW since 1983, resulting in excessive draw openings, which are causing excessive wear and tear to the draws and their machinery on the two 50 year old bridges.

Mechanical engineers for the U.S. Army Corps of Engineers routinely inspect these bridges and they have made it clear that the bridge machinery is nearing the end of its reliability and machinery failures are becoming more frequent with the constant "on demand" openings. In order to prolong the life of the bridge and its machinery, the drawbridges should be regulated. These bridges have outlived their expected design life and have been slated for urgent replacement by the Corps of Engineers since prior to 1967. The requestor feels this change to the regulation will reduce the number of

machinery failures until a replacement bridge can be constructed.

From April through November 1983, the average monthly bridge openings for the drawbridge at Fairfield was 654 and at Hobucken it was 859.9. During the same months in 1985 the average drawbridge opening, at Fairfield was 689.4, and at Hobucken it was 942.5.

As part of this proposal the regulations for all of the drawbridges along the Atlantic Intracoastal Waterway within North Carolina will be consolidated in one section, 33 CFR 117.821. The common provision relating to opening the draws for public vessels, commercial vessels, and vessels in an emergency will be consolidated in paragraph (a). Paragraph (b) will contain the proposed regulations for the Fairfield and Hobucken bridges, as well as, the provisions relating to the reduced frequency of openings for pleasure vessels during certain times of the year for the Core Creek, Atlantic Beach, Surf City, and Wrightsville Beach bridges. The common provision permitting the delay of openings for ten minutes if a pleasure vessel approaching the bridge cannot reach the draw on the hour or half hour when there are restricted openings will be consolidated in paragraph (c).

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the proposed regulation will have no effect on commercial navigation, or on any industries that depend on waterborne transportation. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 is revised to read as follows:

Authority: 33 U.S.C. 449; 49 CFR 1.46; 33 CFR 1.05(g).

2. Section 117.821 is revised to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Wrightsville Beach, North Carolina.

(a) The drawbridges over the Atlantic Intracoastal Waterway in North Caroline shall open on signal for public vessels of the United States, state and local government vessels, commercial vessels, and any vessel in an emergency involving danger to life or property.

(b) The drawbridges over the Atlantic Intracoastal Waterway in North Carolina shall open on signal for pleasure vessels, except that the following drawbridges may remain closed to pleasure vessels during the specified periods if they open on signal for waiting pleasure vessels at the times specified:

(1) S.H. 94 bridge, mile 113.8, at Fairfield, NC, from April 1 to November 30, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour and half hour.

(2) S.R. 304 bridge, mile 157.2, at Hobucken, NC, from April 1 to November 30, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour and half hour.

(3) S.R. 101 bridge, mile 195.8, at Beaufort (Core Creek), NC, from April 1 to November 30, between 6:00 a.m. and 7:00 p.m., must open if signaled on the hour and half hour.

(4) S.R. 58 bridge, mile 206.7, at Atlantic Beach (Bogue Sound), NC, from March 15 to October 15, between 8:00 a.m. and 8:00 p.m., must open if signaled on the hour.

(5) S.R. 50 bridge, mile 260.7, at Surf City, NC, from May 1 to October 31, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour.

(6) S.R. 74 bridge, mile 283.1, at Wrightsville Beach, NC, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour.

(c) If a pleasure vessel is approaching a drawbridge, which is only required to open on the hour or on the hour and half hour, and cannot reach the draw on the hour or half hour, the drawtender may delay the required opening up to 10 minutes past the hour or half hour.

Dated: August 19, 1987.

R.M. Polant,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 87-20540 Filed 9-4-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Management of Municipal Watersheds

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: As required by Executive Order 12291, the Forest Service has reviewed its existing regulation at 36 CFR 251.9 governing agreements for the management of municipal watersheds. As a result of the review, the agency proposes to revise the rule to conform with changes in legislation and administrative procedures occurring since promulgation of the existing rule. The proposed regulation would transfer the approval authority for special management of municipal watersheds from the Chief to Regional Foresters, would integrate the management of municipal watersheds with regulations governing forest planning at 36 CFR Part 219, and would require special use authorizations when land use restrictions are imposed for management of municipal watersheds.

DATE: Comments must be received November 9, 1987.

ADDRESS: Send written comments to F. Dale Robertson, Chief (2500), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090

The public may inspect comments received on this proposed rule in the office of the Director, Watershed and Air Management Staff, Room 1210, Rosslyn Plaza E, 1621 North Kent Street, Rosslyn, Virginia, between the hours of 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Rhey Solomon, Watershed and Air Management Staff, (703) 235-8163.

SUPPLEMENTARY INFORMATION: The existing regulation at 36 CFR 251.9 was issued September 11, 1942, to provide guidance for implementing the Domestic Water Supply Act of 1940 (16 U.S.C. 552a). The regulation provides for the Chief of the Forest Service to enter into formal agreements with municipalities for the protection of watersheds on National Forests that provide municipal water supplies. The existing regulation anticipated mutual action (e.g.

enforcement assistance) by the municipality and the Forest Service for protection of municipal water supplies. The regulation states requirements to be contained in agreements, including the kinds of uses to be restricted, the nature and extent of restrictions, and special protective measures which may be necessary. The regulation also requires that any payment to compensate the United States for losses of revenue resulting from restrictions be clearly defined in agreements.

Since 1942, two significant laws were enacted which directly affect management of municipal watersheds: The National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

The Federal Land Policy and Management Act repealed a part of section 1 of the Domestic Water Supply Act of 1940 (16 U.S.C. 552a), which authorized the President to set aside National Forest lands from all forms of location and entry. The National Forest Management Act requires comprehensive land resource management plans for units of the National Forest System. These plans provide the detailed on-the-ground direction to guide the integrated management of the resources of these lands. Therefore, management of municipal watersheds must be reflected in and governed by these plans; not in separate formal agreements, the concept for which predates passage of the National Forest Management Act.

In addition, rules at 36 CFR Part 219 were developed to guide agency compliance with the planning requirements of the National Forest Management Act. These planning rules delegate approval of land and resource management plans to Regional Foresters. This creates a conflict between the forest plan approval authority delegated to the Regional Forester by 36 CFR 219.4, and the approval authority for municipal watershed agreements assigned to the Chief by 36 CFR 251.9. To provide consistency, the proposed regulation makes it clear that forest plans and special use authorizations—not formal agreements—are the primary mechanisms for managing municipal water supplies that originate on National Forest System lands. The proposed rule eliminates the requirement for the Chief's approval of municipal watershed agreements, thereby effectively delegating to the Regional Forester, as part of forest plan approval, the authority to approve special uses and land use restrictions related to municipal watersheds. This delegation will remove one level of administrative approval and better integrate decisions for management of municipal watersheds with other land use decisions made as part of forest planning.

The existing rule is unclear as to whether special use authorizations are required to effect municipal watershed agreements. This has led to inconsistent handling of these agreements. Many existing municipal watershed agreements are not accompanied by special use authorizations although the rules governing special uses—36 CFR part 251; Subpart B—clearly require such authorization. Therefore, the proposed rule makes it clear that special use authorizations are required (1) for all municipal watersheds where the local agency desires to impose restrictions on the use of the land and (2) for construction and maintenance of any facilities on National Forest System lands.

The stipulation in the existing regulation for reimbursement to the United States for revenues foregone is based on section 3 of the Domestic Water Supply Act (16 U.S.C. 552c) and was intended to be applied solely to National Forest System lands formally withdrawn by the President for exclusive use as municipal watersheds. Several water suppliers who offered comments on the existing rule have asked that this provision be removed. In reviewing this provision, we find that the language of the existing rule is flawed and has led to inconsistent application of the reimbursement stipulation. We agree that this provision to base fees on revenues foregone should be removed. However, it is important to retain the requirement that when use of forest land and multiple resources are substantially restricted to benefit a local group of users, the United States may be compensated for granting such a privilege. Therefore, the text of § 251.9 is proposed to be amended to clarify that a fee may be charged based on the rights and privileges granted.

This proposed rule has been reviewed under Executive Order 12291 and procedures of the Department of Agriculture. It has been determined that this is not a major rule. The regulation will have little or no effect on the economy since the changes are technical and administrative. Moreover, the Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this action will not have a significant economic impact on a substantial number of small entities, because it is principally a procedural, conforming regulation and does not substantially alter the existing regulation.

This proposal removes an administrative level of approval and integrates the protection and management of municipal watersheds with existing planning mechanisms. This should result in more efficient planning for municipal watersheds and reduce paperwork in connection with formal agreements.

Based on both past experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. The delegation of authority from the Chief to Regional Foresters, the requirements for the integration of municipal watersheds with forest planning, and the clarification for the requirement of a special use authorization, in and of themselves, will not result in any additional environmental impact on the watersheds. Therefore, this action is categorically excluded from any requirement for documentation in an environmental assessment or environmental impact statement (40 CFR 1508.4).

List of Subjects in 36 CFR Part 251

Environmental protection, National forests, Water resources, Watersheds.

Therefore, for the reasons set forth in the preamble, it is proposed to amend Subpart A of Part 251 of Title 36 of the Code of Federal Regulations as follows:

PART 251—LAND USES

Subpart A—Miscellaneous Land Uses

1. The authority citation for Subpart A continues to read as follows:

Authority: 7 U.S.C. 428a, 1011; 16 U.S.C. 460p–460p–5, 406q–460q–9, 460r–460r–5, 460v–460v–8, 485, 486, 513–519, 551, 552, 678a, 1131–1136, 1241–1249, 1271–1287; Pub. L. 76–867, 54 Stat. 1197.

2. Revise § 251.9 to read as follows:

§ 251.9 Management of municipal watersheds.

(a) The Forest Service shall manage National Forest watersheds that supply municipal water under multiple use prescriptions in forest plans (36 CFR Part 219). When a municipality desires special protection needs that exceed the level of protection provided in the forest plan, the municipality must apply to the Forest Service for a special use authorization (36 CFR 251.54). A special use authorization may allow the municipality to use the subject lands and restrict public access and resource uses within the watershed and may

provide special requirements of management for National Forest System lands producing the water.

(b) In any special use authorizations issued to protect municipal water supplies the authorized forest officer should describe the types of uses, if any, to be restricted, the nature and extent of any restrictions, any special land management protective measures and/or any necessary standards and guidelines, as well as any resources that are to be provided by the municipality.

(c) Special use authorizations issued pursuant to this section are subject to the same fees, conditions and procedures applicable to all other special uses as set forth in Subpart B of this part.

(d) Any municipal watershed management requirements and/or restrictions implemented through special use authorizations shall be consistent with forest plans.

George S. Dunlop,

Assistant Secretary, Natural Resources and Environment.

Dated: August 13, 1987.

[FR Doc. 87-20518 Filed 9-4-87; 8:45 am]

BILLING CODE 3410-11-M

36 CFR Part 251

Petersburg Watershed, Alaska

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: As required by E.O. 12291, the Forest Service has reviewed its existing regulation at 36 CFR 251.35 governing access into the Petersburg watershed in the Tongass National Forest, Alaska. As a result of the review, the Agency proposes to revise the rule to address concerns identified in the review and to conform with events that have occurred since the rule was originally promulgated.

DATE: Comments must be received by November 9, 1987.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2500), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on this proposed rule in the office of the Director, Watershed and Air Management Staff, Room 1210, Rosslyn Plaza E, 1621 North Kent Street, Rosslyn, Virginia, between the hours of 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Rhey Solomon, Watershed and Air Management Staff, (703) 235-8163.

SUPPLEMENTARY INFORMATION: The existing regulation governing access to the Petersburg watershed within the Tongass National Forest in Alaska, 36 CFR 251.35, was issued January 3, 1941, to implement the provisions of the Act of October 14, 1940 (54 Stat. 1197). That act authorized protection of the municipal water supply for the town of Petersburg, Alaska. The existing regulation permits Federal and territorial officials and employees of the town of Petersburg to enter the watershed to operate, maintain, and improve the town's water system. The regulation prohibits all other access within the watershed without a permit that has been approved by an official of the town of Petersburg and countersigned by a forest officer. The regulation also permits the removal of timber from the watershed, but only under such conditions as will adequately safeguard the town's water supply.

Since promulgation of the rule in 1941, Alaska has become a State, and Petersburg is now denominated as a city.

Therefore, the reference to "territorial" officials should be changed to "State" officials and reference to "town" should be changed to "city".

As a result of years of experience under the rule, forest officers and city officials have found that the requirement to issue individual permits for all public recreation uses within the watershed is burdensome for administrators and the public. Accordingly, the proposed rule would authorize public access of the Raven's Roost Trail for travel to the Raven's Roost public recreation cabin and the Alpine Recreation Area without the need for a permit. The review also revealed the possibility of interpreting the present language as prohibiting access by Forest Service officials and agents unless they obtain a permit; therefore, the proposed rule removes any interpretive ambiguity by expressly acknowledging the right of access by Forest Service and other Federal officials and their agents in the conduct of their official duties.

Because the rule prohibits unauthorized use, the proposed rule incorporates a penalty provision so that the public is fully aware of the penalties for violation of the rule. The penalty is not new; it has merely been incorporated into the rule to provide full disclosure to the public. Finally, the contextual sequence and the language of the regulation have been revised for ease of understanding and reference.

This proposed rule has been reviewed under E.O. 12291 and procedures of the Department of Agriculture. It has been determined that this is not a major rule. The regulation will have little or no effect on the economy since the changes are technical and administrative. Moreover, the Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this action will not have a significant economic impact on a substantial number of small entities, since it essentially affects only one community, Petersburg, Alaska, and it is principally a procedural conforming regulation that does not substantially alter the existing regulation.

Based on both past experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. The removal of the permit requirement for entrance to public recreation areas and the conformance of the timber removal provision to subsequent legislation will not, in and of themselves, result in any additional impacts on the watershed or management direction for the area. Therefore, this action is categorically excluded from any requirement for documentation in an environmental assessment or environmental impact statement (40 CFR 1508.4).

List of Subjects in 36 CFR Part 251

Environmental protection, National forests, Water resources, Watersheds.

For the reasons set forth in the preamble, it is proposed to amend Subpart A of Part 251 of Title 36 of the Code of Federal Regulations as follows:

PART 251—LAND USES

Subpart A—Miscellaneous Land Uses

1. The authority citation for Subpart A is revised to read as follows:

Authority: 7 U.S.C. 428a, 1011; 16 U.S.C. 460p-460p-5, 460q-460q-8, 460r-460r-5, 460v-460v-8, 485, 486, 513-519, 551, 552, 678a, 1131-1136, 1241-1249, 1271-1287; Pub. L. 76-867, 54 Stat. 1197.

2. Revise § 251.35 to read as follows:

§ 251.35 Petersburg Watershed.

(a) Except as authorized in paragraphs (b) and (c) of this section, access to lands within the Petersburg watershed, Tongass National Forest, as described in the Act of October 17, 1940 (54 Stat. 1197), is prohibited.

(b) Access to lands within the Petersburg watershed is hereby authorized, without further written approval, for the following routine purposes:

(1) The discharge of official duties related to management of the Tongass National Forest by Federal employees, holders of Forest Service contracts, or Forest Service agents;

(2) The operation, maintenance, and improvement of the municipal water system by Federal and State officials and employees of the City of Petersburg; and

(3) Public recreational use of the Raven's Roost Trail for access to and from the Raven's Roost public recreation cabin and the Alpine Recreation Area.

(c) Any person who wishes to enter upon the lands within the watershed for purposes other than those listed in paragraph (b) of this section must obtain a permit that has been signed by the appropriate city official and countersigned by the District Ranger.

(d) Unauthorized entrance upon the lands within the watershed is subject to punishment by a fine of not more than $500 or imprisonment for not more than six months or both pursuant to 16 U.S.C. 551.

(e) The Forest Supervisor of the Stikine Area of the Tongass National Forest may authorize the removal of timber from the watershed under the regulations governing disposal of national forest timber (36 CFR Part 223). In any removal of timber from the watershed, the Forest Supervisor shall provide adequate safeguards for the protection of the Petersburg municipal water supply.

George S. Dunlop,

Assistant Secretary, Natural Resources and Environment.

Date: August 13, 1987.

[FR Doc. 87-20517 Filed 9-4-87; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

[A-3-FRL-3233-4; EPA Docket No. AM606PA]

40 CFR Part 52

Disapproval of State Implementation Plan Revision; Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove a September 23, 1985 State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania pertaining to changes in the emissions inventory for sources of volatile organic compound (VOC) emissions in the southeastern part of the State (Pennsylvania portion of the Metropolitan Philadelphia Interstate AQCR). This proposed disapproval action is based on the fact that the Commonwealth has not adequately demonstrated progress toward meeting the 44 percent VOC emission reduction requirement stipulated in the June 30, 1982 Pennsylvania ozone and carbon monoxide SIP revision. The majority of the purported emissions reductions are not enforceable and, therefore, can not be relied upon in any demonstration of attainment. Ambient ozone levels resulting from Philadelphia area emissions are still well above the ozone standard, indicating that the standard will not be met by the December 31, 1987 statutory date or any date in the near term after 1987.

The proposed disapproval would not require any emission reductions beyond the 44 percent reduction requirement already stipulated in the 1982 SIP revision. That reduction requirement has been determined to be necessary in order for the ozone standard to be met in the areas affected by Philadelphia area emissions. This notice discusses the results of EPA's review of the Commonwealth's September 23, 1985 submittal and solicits public comments on the submittal and EPA's proposed disapproval action.

DATE: Comments must be submitted on or before October 8, 1987.

ADDRESSES: Copies of the submitted SIP revision proposal and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Esther Steinberg

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120, Attn: Gary Triplett

All comments on the proposed disapproval that are submitted within 30 days of publication of this notice will be considered and should be directed to Denis Lohman, Acting Chief of the PA/WV Section at EPA, Region III, 841 Chestnut Bldg., Philadelphia, PA 19107, EPA Docket No. AM606PA.

FOR FURTHER INFORMATION CONTACT: Larry Budney (3AM11) at the EPA, Region III address above or call (215) 597-0545.

SUPPLEMENTARY INFORMATION: In response to provisions of the 1977 Amendments to the Clean Air Act, the Commonwealth of Pennsylvania submitted to EPA several revisions to its SIP for ozone and carbon monoxide. EPA approved some of these revisions on May 20, 1980. However, because the Commonwealth requested and received an extension to December 31, 1987 for the attainment of the ozone standard in the Philadelphia, Pittsburgh, and Allentown-Bethlehem-Easton areas, and until June 30, 1983 in Philadelphia, and until December 31, 1985 in Pittsburgh for the attainment of the carbon monoxide standard, the Commonwealth was required to submit another SIP revision by July 1, 1982.

The Commonwealth submitted the required revisions to its ozone and carbon monoxide SIP on June 30, 1982. For the Philadelphia area (Pennsylvania portion of the Metropolitan Philadelphia Interstate AQCR), that SIP revision acknowledged a 5.5 percent shortfall in planned VOC emission reductions needed to attain the ozone standard there, i.e., a 38.5 percent reduction was projected, contrasted with the 44 percent reduction predicted to be necessary to attain the ozone standard.

The ozone standards (National Ambient Air Quality Standards) are specified in 40 CFR Part 50. The primary (and secondary) standard is defined to be violated when the annual average expected number of daily exceedances of the standard (0.12 parts per million (ppm), one hour average ozone concentration) is greater than 1.0. A daily exceedance occurs when the maximum hourly ozone concentration during a given day exceeds 0.124 ppm.

Due to certain deficiencies in the 1982 SIP revision, including the 5.5 percent shortfall in planned VOC emission reductions, on February 3, 1983 (48 FR 5096), EPA proposed to disapprove certain portions of the 1982 SIP revision for the Philadelphia area.

In a letter dated July 26, 1983, the Secretary of the Pennsylvania Department of Environmental Resources reaffirmed the Commonwealth's commitment to achieve the 44 percent VOC emission reduction requirement stipulated in the 1982 SIP revision. On October 24, 1983, the Commonwealth submitted a SIP revision correcting the deficiencies noted in the February 3, 1983 **Federal Register** proposed disapproval.

Among the actions to correct the deficiencies in the October 24, 1983 SIP revision, the Commonwealth committed to adopt and implement sufficient additional emission reduction measures to achieve the full 44 percent emission reduction requirement by December 31, 1987. The Commonwealth listed several potential new emission reduction measures under consideration, and

committed to implement the appropriate measures by March 15, 1985. Given the above actions by the Commonwealth, on February 26, 1985 (50 FR 7772), EPA approved the June 30, 1982 and October 24, 1983 SIP revisions.

On September 23, 1985, the Commonwealth submitted a proposed revision (Supplement No. 2) to its 1982 ozone and carbon monoxide SIP. Supplement No. 2 is the subject of today's notice. It contains an update to the point source emission inventory and projected (1987) total point, area and mobile source emissions inventory for the Pennsylvania portion (Bucks, Montgomery, Philadelphia, Chester and Delaware Counties) of the Metropolitan Philadelphia Interstate AQCR. It identifies specific VOC point sources and respective emissions for each year from 1980 through 1983 and revised source-specific emission projections for 1987. Supplement No. 2 suggests that there is no longer any need to implement additional control measures to make up the 5.5 percent VOC emission reduction shortfall projected in the 1982 SIP revision. That conclusion is based on a revised projection of 1987 VOC emissions, which the Commonwealth is using as the basis for its claim that control measures already implemented and planned, without any additional measures, will be sufficient to make up the shortfall. The revised projection is primarily based on the fact that VOC emissions between 1980 and 1983 are estimated to have decreased much more than originally anticipated.

EPA asked the Commonwealth to document the emission reductions cited in Supplement No. 2 and to demonstrate that they are due to permanent enforceable measures. It is important to document source-specific emission control measures that have been or are being implemented, along with specific reductions attributable to each measure. That is necessary in order to have reasonable assurance that any claimed emission reductions can be relied upon to continue beyond 1987, and to give creedance to the proposed SIP revision and the 1987 emission projection contained therein.

For the majority of the claimed emission reductions, the Commonwealth has failed to demonstrate that they result from permanent enforceable measures. It appers that most of the claimed reductions are based on production decreases and other factors that do not constitute permanent enforceable measures. The consequence is that there is nothing to prevent emissions from increasing as economic conditions and other factors change. Therefore EPA cannot approve the proposed SIP revision.

Proposed Action

EPA is proposing to disapprove the September 23, 1985 SIP revision submitted by the Commonwealth of Pennsylvania relating to control of VOC emissions in the southeastern part of the State. The consequence of this action is that the Commonwealth is still required to make up the VOC emission reduction shortfall through implementation of additional control measures.

Interested parties are invited to submit comments on this action. EPA will consider comments received within 30 days of publication of this notice.

Under 5 U.S.C. 605(b), I certify that this disapproval will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709) because it imposes no new regulations.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Date: March 31, 1987.

James M. Seif,

Regional Administrator.

[FR Doc. 87–20546 Filed 9–4–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

46 CFR Parts 38, 54, 98, and 151

[CGD 85–061]

Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks on Barges

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the regulations that govern internal inspection and hydrostatic test intervals for pressure vessel cargo tanks on barges that transport liquefied gaseous cargoes and Grade A flammable liquids. This proposal originated from industry requests that the Coast Guard review and amend existing inspection requirements. If this proposal is adopted, industry's compliance costs would decrease due to the lengthening of inspection intervals. The present level of safety is maintained by the incorporation into the standards of more sophisticated examination technologies.

DATES: Comments must be received on or before December 7, 1987.

ADDRESSES: Comments should be submitted to Commandant (G–CMC/21), U.S. Coast Guard Headquarters, Washington, DC 20593. Comments will be available for inspection or copying at the Marine Safety Council (G–CMC/21), Room 2110, 2100 2nd Street, SW., Washington, DC 20593–0001, between 7:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. A draft regulatory evaluation and environmental assessment have been prepared and placed in the rulemaking docket. The draft regulatory evaluation may be inspected or copied at the same location referred to in **ADDRESSES.** Copies may also be obtained by contacting LCDR Powers (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: LCDR Geoffrey D. Powers, Standards Development Branch, Office of Marine Safety, Security, and Environmental Protection, telephone (202)–267–1045. Normal working hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday except federal holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Each comment should include the name and address of the commenter, reference the docket number (CGD 85–061) and the specific section of the proposal to which each comment applies, and the reason for each comment.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if requests in writing are received from interested persons raising genuine issues and desiring to comment orally at a public hearing and the Coast Guard determines that the opportunity to make oral presentations will aid in the rulemaking process.

If an acknowledgment is desired, a stamped, self-addressed postcard or envelope should be enclosed.

Drafting Information

The principal persons involved in drafting this proposal are: LCDR Geoffrey D. Powers, Project Manager, and Mr. Stanley Colby, Project Counsel, Office of Chief Counsel.

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Background

The Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) in the December 3, 1985 issue of the **Federal Register** (50 FR 49563) requesting information on the effects of extending the intervals between internal examinations and hydrostatic tests of barge pressure vessel cargo tanks that carry liquefied gaseous cargoes or Grade A flammable liquids at ambient temperatures. Eight comments were received in response to the ANPRM. Also, at the meeting of the Towing Safety Advisory Committee (TSAC) on February 27, 1986 (of which the public was notified in the January 30, 1986 issue of the **Federal Register** (51 FR 3874)), participants expressed a desire that any rulemaking resulting from the ANPRM include a change in the inspection intervals for barges with pressure vessel tanks that are authorized to carry anhydrous ammonia under refrigerated conditions.

In preparing this proposal, the Coast Guard also considered ten comments which were submitted circa 1982 in response to a Coast Guard questionnaire which solicited from the members of the Chemical Transportation Advisory Committee (CTAC) information similar to the information sought by the ANPRM. Additionally, the Coast Guard reviewed existing rail car regulations and existing and proposed tank truck regulations as well as various industry standards in preparing this proposal.

Discussion of Comments

Information and comments were received on the following issues raised in the ANPRM.

Comments were received addressing the range of cargo temperatures the regulations would affect. Existing regulations in 46 CFR Part 151, for example, allow anhydrous ammonia to be carried at ambient temperatures under pressure, refrigerated in gravity tanks, or at some design condition between these two extremes. The Coast Guard has decided that the proposed inspection intervals could be applied to unmanned barges carrying liquefied compressed gases at temperatures warmer than −55°C (−67°F) without adversely affecting safety; however, the Coast Guard's concern with thermally induced cracking precluded it from proposing to amend the inspection intervals for tanks carrying cargoes at temperatures colder than −55°C. The proposed language in § 38.25–1(a)(1)(i), § 98.25–95(a)(1)(i), and § 151.04–5(b)(3)(i) reflects this decision.

Comments were received concerning the appropriate intervals for conducting internal inspections on pressure vessel cargo tanks. All but one party agreed that internal inspection intervals could be safely extended from the present requirement of 8 years and proposed intervals ranging from 10 to 15 years. The one party that disagreed recommended a 3 year interval. The Coast Guard experience in inspecting these tanks has shown that a 3 year interval is unnecessarily restrictive and the recommendation was rejected. In addition to considering those comments, the Coast Guard has considered DOT requirements for both rail and highway transportation of hazardous substances in pressure tanks. The Coast Guard has also reviewed the following standards: API 510 "Pressure Vessel Inspection Code—1985" and ANSI/NB–23 "National Board Inspection Code—1985". Those standards state that the maximum period between internal inspections of pressure vessels should not exceed one-half the remaining corrosion rate life or 10 years, whichever is less. Therefore, after considering the standards and the comments as well as the experience gained by allowing, on a case-by-case basis, some pressure vessel cargo tanks to remain in service up to 12 years before the first internal inspection, the Coast Guard is proposing in §§ 38.25–1(a)(1)(i), 98.25–95(a)(1)(i), and 151.04–5(b)(3)(i), to allow many pressure vessel cargo tanks to remain in service up to 10 years between internal inspections. This would allow the internal inspections to coincide with drydockings.

The Coast Guard is proposing in §§ 38.25–1(a)(3) and 98.25–95(a)(2) to amend the requirement for the removal of sufficient insulation from lagged tanks to permit spot external examination of the tank so that this procedure occurs at the same time as the tank internal inspection.

Tanks carrying cargoes which exhibit corrosive behavior or cargoes capable of forming corrosive by-products when contaminated by water will continue to be inspected more frequently than 10 years. Included are lined pressure vessel tanks carrying inorganic acids. Accordingly, there is no proposed change to these requirements.

Comments addressed the issue of the increased attention necessary to ensure that older pressure vessel cargo tanks are suitable to remain in service. One party stated that although it is the practice to increase the inspection frequency in proportion to the age of non-pressure tank rail cars carrying corrosive cargoes, the practice is not justified. One party stated that the inspection frequency for all pressure vessels should increase with age. This party also stated that the National Board Inspection Code contains a formula for calculating this frequency. The Coast Guard is not proposing to extend inspection intervals for tanks that carry corrosive cargoes. Present regulations allow the OCMI to require internal inspection more frequently than the intervals specified in the event that corrosion becomes a problem in a particular tank. In those cases where corrosion becomes a problem, the Coast Guard will consider using the recommended formula as a guide in determining inspection frequency.

One party stated that the Coast Guard should consider the service experience of the pressure vessel when establishing inspection frequencies. The Coast Guard agrees and has considered the service experience by reviewing the available inspection records for barges with pressure vessel cargo tanks, to ensure that the proposals would not affect safety.

One party stated that ultrasonic testing is useful in determining tank condition. This party further recommended that to be most effective such testing should be concentrated on locating potential problem areas. One party stated that ultrasonic testing is a useful aid but not a substitute for an internal inspection. One party stated that an adequate visual inspection supplemented by nondestructive testing procedures (NDT) can better requalify a tank than any number of hydrostatic tests. One party recommended careful external inspections supplemented by ultrasonic thickness measurements as viable alternatives to more frequent internal inspections as a vessel ages. The Coast Guard agrees with the recommendations to supplement the internal inspection with NDT and is proposing, in §§ 38.25–1(a)(5), 98.25–95(a)(3), and 151.04–5(k), to require each cargo tank subject to a 10 year internal inspection cycle be subject to NDT when it reaches twenty-five years after the date of delivery and at 5 year intervals thereafter. This NDT requirement is proposed for older vessels rather than proposing shorter internal inspection interval. In order to maximize the efficacy of NDT while containing costs, the proposed rules would require the owner to submit a proposed test procedure to the OCMI when NDT is required. If the proposed NDT is accepted by the OCMI, it would be required that the proposal be rigidly followed.

One party stated that the hydrostatic test made sense in the days of riveted tanks where leaks could occur in the luting material used to seal the seams or where rivets could work loose during service. This party further stated that hydrostatic testing now is valid only as a proof test after initial construction or welded repairs and that the number of tanks failing these proof tests is insignificant. The commenter felt a thorough internal inspection can better determine the quality of the tank in service, and questionable areas could be further evaluated by NDT methods. This party further recommended that the Coast Guard recognize the inability of hydrostatic tests to be requalify cargo tanks and emphasize proven NDT technology coupled with adequate visual examination. Two parties stated that requirements for periodic hydrostatic testing are unrealistic and that this test should only be required after initial construction, after repairs or when there is a question of the physical condition of the tank. The Coast Guard agrees and is not proposing a hydrostatic testing requirement as a condition for continued service, except for those instances when the marine inspector considers it necessary to determine the tank's condition.

Comments were received concerning the inspection of tanks carrying cargoes which are required to be periodically hydrostatically tested under present requirements (propylene oxide, ethylene oxide, chlorine, and sulfur dioxide). One party recommended that the required hydrostatic test of tanks in propylene oxide service be eliminated as it provides little benefit at substantial cost. One party stated that Coast Guard operational requirements for an inert pad gas and commercial product purity requirements for propylene oxide combine to prevent the buildup of rust in these tanks and minimize the danger of polymerization. The inspection record for these tanks supports this contention. One party stated that rail service tanks that carry ethylene oxide must be constructed from specific materials but no such limitations are placed on tanks carrying propylene oxide. The Coast Guard originally treated propylene oxide as equivalent to ethylene oxide, which is far more dangerous, and required that acetylide forming metals be kept to a minimum for both cargoes. Based on the above facts, documented inspections over the past 8 years, the comments received concerning the utility of the hydrostatic test, and an evaluation of the chemical hazards, the Coast Guard is proposing to increase the internal inspection interval for tanks in dedicated propylene oxide service from 4 years to 10 years by amending Table 151.05. The hydrostatic test requirement for tanks that carry propylene oxide would be removed. The hydrostatic test requirement would remain for ethylene oxide.

The Chlorine Institute recommended that the Coast Guard consider allowing the owner of a tank vessel to perform and certify the hydrostatic test and relief valve tests instead of having those tests witnessed by a Coast Guard inspector. The Coast Guard rejected this recommendation because of comments on the ANPRM which indicate that there have been problems with relief valves in rail service primarily due to stress corrosion cracking in the valve spring. One chlorine carrier stated that the hydrostatic test is the most effective method of proving tank integrity but recommended extending the interval to 3 years. One party indicated that hydrostatic testing is probably the biggest cause of tank deterioration. This party recommended extending the inspection test interval for chlorine tanks to 4 years. Since water is used to clean chlorine tanks, increasing the interval would reduce tank deterioration. The Coast Guard does not dispute the validity of this argument but is reluctant to propose regulatory requirements that are less stringent than existing industry standards and has not proposed changes in this area.

Ethylene oxide and sulfur dioxide are two other cargoes for which current regulations require hydrostatic testing of the tanks. No comments concerning these products were submitted and the Coast Guard is not proposing any changes to the current requirements.

One party recommended that the Coast Guard retain the authority of the Officer in Charge Marine Inspection to require a hydrostatic test when, in his opinion, tank conditions require it. The Coast Guard agrees and is proposing to clarify the present text in Part 38 and Part 151 that authorizes the marine inspector to require hydrostatic test or NDT if necessary to determine the tank's conditions.

Several comments were received concerning the relative advantages and disadvantages of various NDTs. One party stated that the American Society for Testing and Materials (ASTM) has an extensive bibliography of NDT standards. One party recommended the combined use of American Society for Non-destructive Testing (SNT-TC-1A), Section V of the ASME Code, and the National Board Inspection Code as being the most effective in locating accident producing discontinuities. The Coast Guard considered the comments and is proposing to incorporate the test methods and procedures of Section V of the ASME Code and SNT-TC-1A into the regulations by reference in § 38.25-3, § 98.25-97 and § 151.04-7.

One party stated that most NDTs, except acoustic emission testing, may either identify or miss an existing defect. The Coast Guard is proposing NDT requirements that should maximize the chance of locating a critical defect. These are preferable to hydrostatic pressure testing, which generally will not locate such defects. Acoustic emission testing is an option left open to the owner or operator; however defects detected would still need to be evaluated using other NTD methods. One party stated that NDT acceptance criteria are found in Sections V and VIII of the ASME Code. Although Sections V and VIII of the ASME Code contain acceptance criteria, they are acceptance criteria for new construction of a pressure vessel. It is generally recognized that fatigue will cause such defects to grow in service. Acceptance of a particular defect in existing construction may have to be evaluated on a case by case basis. The Coast Guard solicits further comment of this issue.

The Coast Guard is proposing to delete § 151.50-32(h) because it is redundant with § 151.04-5(c), and to delete § 151.50-35 because it is redundant with § 151.50-84.

The comments to the ANPRM that concerned failures of pressure vessel cargo tanks, and potential problems with these tanks were used as source material in developing the proposals in this notice. One party had experienced three separate failures on tank barge built for coastwise service but which was later modified and reclassed for ocean service. One failure involved a nozzle which sheared off at the tank penetration, which was attributable to rough weather and possibly excessive towing speed as evidenced by broken frames in the hull and broken hold down straps. Another failure involved a 12 inch crack of the cargo tank near the horn of one of the tank support saddles. A pinhole was also found which may have existed since the tank was fabricated. Both defects were repaired and the design of the saddle was modified to reduce stresses. There have been no recurrence of failure during the five years since the barge resumed service.

The above information supports the proposal in § 54.20-3(f)(2) to require full penetration welds at nozzles and other tank attachments. The saddle horn area

on the tank which had the twelve inch crack is a known high stress area. This supports Coast Guard proposals to require increased emphasis on nondestructive testing (NDT) in areas where local stresses and the probability of tank failure is highest.

The Coast Guard is proposing three modifications of the design and fabrication requirements for new pressure vessel cargo tanks. The first, proposed in § 54.25–8(c), would require class II and III pressure vessel welds to be spot radiographed. All intersections would need to be radiographed for a distance of 10 thicknesses from the intersection. Present regulations and the ASME Code are permissive in their radiography requirements for classes II and III pressure vessels with material thicknesses less than 1¼ inches. Radiography is not required if lower joint efficiencies are used in the design calculations. A review of DOT regulations for other transportation modes indicates that spot or full radiography is required for cargo tanks containing liquefied compressed gases. The second modification, proposed in § 54.20–3(f)(2), would require categories C and D welds to be full penetration welds. Presently, figures UW–13.2, UW–16, and appendix 2 of section VIII, division 1 of the ASME code permits partial penetration welds for nozzles, corner joints, and flanges for categories C and D joints. Partial penetration welds have an inherent crack which acts as a stress raiser, magnifying the local stresses. A review of pressure vessel cargo tanks built over the last 30 years showed that spot radiography was routinely performed and that all categories C and D joints had full penetration welds. Since the extended internal inspection intervals being proposed were based, in parts, upon the service experience of these same tanks, the Coast Guard feels that spot radiography and full penetration welds for categories C and D joints should be required for new tanks.

The third modification, proposed in § 54.25–10(d), would require material to have a nil-ductility transition temperature of at least −20 °F. Currently, Part 54 does not require toughness testing for pressure vessels operating at ambient temperatures. The proposed NDT temperature of −20 °F results from research conducted in fracture mechanics and industry trends over the past 15 years to require toughness consideration for low ambient temperatures. The ASME Boiler and Pressure Vessel Committee is considering adopting toughness criteria in the ASME Code.

Regulatory Evaluation

The proposed regulations are considered by the Coast Guard to be non-major under Executive Order 12291. In addition, these proposed regulations are considered to be non-significant under DOT regulatory policies and procedures [44 FR 11034; February 26, 1979]. A draft evaluation has been prepared and placed in the public docket as required by the Policies and Procedures for Simplification, Analysis, and Review of Regulations [DOT Order 2100.5, dtd May 22, 1980]. The economic inpact analysis was based on information supplied in response to the 1982 CTAC questionnaire and information provided in response to the ANPRM.

The annual savings for the barge industry is estimated to be $96,013 (in 1986 dollars). Persons interested in submitting information concerning the costs associated with meeting these inspection requirement are invited to do so. This information will be used in preparing the final evaluation.

The proposed design and fabrication regulation modifications (contained in Part 54) will also affect any self-propelled vessels that may be built with pressure vessel type tanks carrying cargoes at ambient temperatures. However, there are no existing vessels in this category, nor is it likely that any will be build in the foreseeable future. Therefore, the Coast Guard does not consider the economic impact on self-propelled vessels to be significant.

Environmental Assessment

The Coast Guard has assessed the environmental impacts of these proposed regulations and has determined that they will not be significant. Reduced tank cleaning will result in a slight reduction in air and water pollution. Due to the small number of barges that would be affected by these proposed regulations, this slight reduction is considered insignificant when compared to other potential sources of environmental pollution. The proposed use of more sophisticated examination methods on older cargo tanks is expected to decrease the probability of catastrophic tank failure and improve the reliability of these tanks. This effect is more important as a safety benefit because an uncontrolled release of the type of cargo generally carried in these tanks presents an immediate threat to life but the gases tend to rapidly dissipate, thereby posing no persistent environmental threat.

Paperwork Reduction Act

These proposed regulations would contain information collection requirements in 46 CFR 38.25–3, 98.25–97 and 151.04–7 (submission to the Coast Guard of proposed NDT methods, procedures and results). Requests have been submitted to the Office of Management and Budget (OMB) for approval of these requirements under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer, Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under **ADDRESSES.**

Regulatory Flexibility Act

These proposed regulations would affect all companies that own or operate barges within the scope of this rulemaking, some of which may be small entities. For this proposal, the Coast Guard considers a small entity to be a company operating a single barge. The proposed amendments would provide an economic benefit to these barge owners and operators by reducing the frequency of costly inspections. The Coast Guard does not consider this economic impact to be significant. The estimated cost savings of $686 per barge per year represents about 1 or 2 days revenue for this type of barge. The Coast Guard has identified ten companies as small entities and the cost savings associated with these proposals would not be significant. Accordingly, the Coast Guard certifies that these proposed regulations will not have a significant impact on a substantial number of small entities.

List of Subjects

46 CFR Part 38

Cargo vessels, Fire prevention, Gases, Hazardous materials transportation, Marine safety.

46 CFR Part 54

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Parts 38, 54, 98, and 151, of Chapter I, Title 46, Code of Federal Regulations, as follows:

PART 38—[AMENDED]

1. The authority citation for Part 38 is revised to read as follows:

Authority: 46 U.S.C. 3703, 49 CFR 1.46(n)(4).

2. By adding § 38.01–3 to read as follows:

§ 38.01–3 Incorporation by reference.

(a) In this part, portions or the entire text of certain standards are incorporated by reference as the governing requirements for materials, equipment, tests, or procedures to be followed. The standards and specification requirements specifically referred to in this part are the governing requirements for the subject matters covered, unless specifically limited, modified, or replaced by the regulations.

(b) These materials are incorporated by reference into this part under 5 U.S.C. 552(a) with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found citations to the particular sections of this part where the material is incorporated. To enforce any edition other than the ones listed in paragraph (c) of this section, notice of change must be published in the **Federal Register** and the material made available. All approved material is on file and available for examination at U.S. Coast Guard Headquarters, Room 1400, 2100 2nd St., SW., Washington, DC 20593–0001. Copies may be obtained from the sources indicated in paragraph (c) of this section.

(c) The materials approved for incorporation by reference in this part are:

American Society for Nondestructive Testing (ASNT), P.O. Box 21142, Columbus, OH. 43221

SNT–TC–1A "Recommended Practice for Nondestructive Testing Personnel Qualification and Certification" (1986).

American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017

ASME Boiler and Pressure Vessel Code Section V, Nondestructive Examination (1986).

3. By amending § 38.25–1 by revising paragraphs (a)(1), (a)(3) and (b), and by adding paragraphs (a)(4), (a)(5), and a note to follow paragraph (b) to read as follows:

§ 38.25–1 Tests and inspections—TB/ALL.

* * * * *

(1) An internal inspection of the tank is conducted within—

(i) Ten years after the last internal inspection if the tank is a pressure-vessel type cargo tank on an unmanned barge carrying cargo at temperatures of −67°F (−55°C) or warmer; or

(ii) Eight years after the last internal inspection if the tank is of a type other than that described in paragraph (a)(1)(i) of this section.

* * * * *

(3) The owner shall ensure that the amount of insulation deemed necessary by the marine inspector is removed from insulated tanks during each internal inspection to allow spot external examination of the tanks and insulation, or the thickness of the tank may be gauged by an nondestructive means accepted by the marine inspector without the removal of insulation.

(4) If required by the OCMI, the owner shall conduct nondestructive testing of each tank in accordance with § 38.25–3.

(5) If the tank has an internal inspection interval of 10 years, the owner shall conduct nondestructive testing of each pressure vessel cargo tank in accordance with § 38.25–3, during the 25th year after the date of delivery and during each fifth year thereafter.

(b) If the marine inspector considers a hydrostatic test necessary to determine the condition of the tank, the owner shall conduct the hydrostatic test at 1½ times the maximum allowable pressure, as determined by the safety relief valve setting. When cargo tanks operate at maximum allowable pressures reduced below the design pressure in order to satisfy special mechanical stress relief requirements, the owner shall conduct the hydrostatic test at a pressure of 1–½ times the design pressure.

Note.—See § 54.30–10 of Subchapter F (Marine Engineering) of this chapter for information on design pressure.

* * * * *

4. By adding § 38.25–3 to read as follows:

§ 38.25–3 Nondestructive testing—TB/ALL.

(a) Before nondestructive testing can be conducted to meet § 38.25–1(a)(4) and (a)(5), the owner shall submit a proposal to the OCMI that includes—

(1) The test methods and procedures to be used, all of which must meet section V of the ASME Boiler and Pressure Vessel Code (1986);

(2) Each location on the tank to be tested; and

(3) The test method and procedure to be conducted at each location on the tank.

(b) If the OCMI rejects the proposal, the OCMI informs the owner the reasons why the proposal is rejected.

(c) If the OCMI accepts the proposal, then the owner shall ensure that—

(1) The proposal is followed; and

(2) Nondestructive testing is performed by personnel meeting the "Recommended Practice for Nondestructive Testing Personnel Qualification and Certification," SNT–TC–1A (1986).

(d) Within 30 days after completing the nondestructive test, the owner shall submit a written report of the results to the OCMI.

PART 54—[AMENDED]

5. The authority citation for Part 54 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46(b).

6. In § 54.01–1, Table 54.01–1(a) is amended by changing the entry "USC–6" to read "UCS–6", "USC–56" to read "UCS–56", "USC–57" to read "UCS–57, UNF–57, UHA–33 and UHT–57", and "USC–65" to read "UCS–65" under the column heading "Paragraphs in Section VIII, ASME Code [1] and disposition".

54.01–5 [Amended]

7. In § 54.01–5, Table 54.01–5(b) is revised to read as follows:

TABLE 54.01-5(B)—PRESSURE VESSEL CLASSIFICATION [8]

Class and service contents	Class limits on pressure and temperature	Joint requirements [1] [3] [7]	Radiography requirements, section VIII, ASME Code [3] [7]	Post weld heat treatment required [5] [7]	Shop inspection required	Plan approval required
I:						
(a) Vapor or gas	Over 600 p.s.i. or 700 °F.	(1) For category A; (1) or (2) For category B. All categories C and D must have full penetration welds extending through the entire thickness of the vessel wall or nozzle wall.	Full on all butt joints regardless of thickness. Exceptions listed in Table UCS-57 of ASME Code do not apply.	For carbon or low alloy steel, in accordance with Table UCS-56, regardless of thickness. For other materials, in accordance with section VIII, ASME Code.	Yes [4]	Yes.[4]
(b) Liquid	Over 600 p.s.i. or 400 °F.					
(c) Hazardous materials [2].						
I-L low temperature:						
(a) Vapor or gas	Over 250 p.s.i. and service temperature below 0 °F.	(1) For categories A and B. All categories C and D must have full penetration welds extending through the entire thickness of the vessel wall or nozzle wall. No backing rings or strips left in place.	Full on all butt joints regardless of thickness. Exceptions listed in Table UCS-57 of ASME Code do not apply.	For carbon or low alloy steel, in accordance with Table USC-56, regardless of thickness. For other materials, in accordance with section VIII, ASME Code.	Yes	Yes.
(b) Liquid	Over 250 p.s.i. and service temperature below 0 °F.					
(c) Hazardous materials [2].						
II:						
(a) Vapor or gas	30 through 600 p.s.i. or 275 °F through 700 °F.	(1) or (2) for category A. (1), (2) or (3) for category B. Categories C and D in accordance with UW-16 of ASME Code.	Spot, unless exempted by UW-11(c) of ASME Code.	In accordance with section VIII of ASME Code.	Yes [4]	Yes.[4]
(b) Liquid	200 through 600 p.s.i. or 250 °F through 400 °F.					
(c) Hazardous materials [2] [3] [6].						
II-L low temperature:						
(a) Vapor or gas	0 through 250 p.s.i. and service temperature below 0 °F.	(1) For category A; (1) or (2) for category B. All categories C and D must have full penetration welds extending through the entire thickness of the vessell wall or nozzle wall.	Spot. The exemption of UW-11(c) of ASME Code does not apply.	Same as for I-L except that mechanical stress relief may be substituted if allowed under Subpart 54.30 of this chapter.	Yes [4]	Yes.[4]
(b) Liquid	0 through 250 p.s.i. and service temperature below 0 °F.					
(c) Hazardous materials [2].						
III:						
(a) Vapor or gas	Under 30 p.s.i. and 0 °F through 275 °F.	In accordance with Section VIII of ASME Code.	Spot, unless exempted by UW-11(c) of ASME Code.	In accordance with Section VIII of ASME Code.	Yes	Yes.
(b) Liquid	Under 200 p.s.i. and 0 °F through 250 °F.					
(c) Hazardous materials [2] [3] [6].						

[1] Welded joint categories are defined under UW-3 of the ASME Code. Joint types are described in Table UW-12 of the ASME Code, and numbered "(1)," "(2)," etc.
[2] See § 54.20-2.
[3] See § 54.25-8(c) and § 54.25-20(d).
[4] See §§ 54.01-15 and 54.10-3 for exemptions.
[5] Specific requirements modifying Table UCS-56 of the ASME Code are found in § 54.25-7.
[6] See § 54.20-3 (c) and (f).
[7] Applies only to welded pressure vessels.
[8] Does not include special requirements for heat exchanger. Section 54.01-2 contains an explanation of those special requirements.

8. By amending § 54.01-5 by revising paragraph (d)(2) to read as follows:

§ 54.01-5 Scope (modifies U-1 and U-2).

* * * * *

(d) * * *

(2) Meet § 54.01-35, § 54.20-3(c) and § 54.25-3 of this part;

* * * * *

9. By revising § 54.05-6 to read as follows:

§ 54.05-6 Toughness test temperatures.

Each toughness test must be conducted at temperatures not warmer than −20 °F or 10 °F below the minimum service temperature, whichever is lower, except that for service at or below −320

°F, the tests may be conducted at the service temperature in accordance with § 54.25–10(a)(2).

10. By amending § 54.20–3 by adding paragraphs (c) and (f) to read as follows:

§ 54.20–3 Design (modifies UW–9, UW–11(a), UW–13, and UW–16).

* * * * *

(c) A butt welded joint with one plate edge offset, as shown in Figure UW–13.1(k) of the ASME Code, may only be used for circumferential joints of Class II and Class III pressure vessels.

* * * * *

(f) Joints in Class II or III pressure vessel cargo tanks must meet the following:

(1) Category A and B joints must be type (1) or (2).

(2) Category C and D joints must have full penetration welds extending through the entire thickness of the vessel wall or nozzle wall.

11. By amending § 54.25–8 by revising the heading and adding paragraph (c) to read as follows:

§ 54.25–8 Radiography (modifies UW–11(a), UCS–57, UNF–57, UHA–33, and UHT–57).

* * * * *

(c) Each butt welded joint in a Class II or III pressure vessel cargo tank must be spot radiographed, in accordance with UW–52, regardless of diameter or thickness, and each weld intersection or crossing must be radiographed for a distance of at least 10 thicknesses from the intersection.

12. By amending § 54.25–10 by revising the paragraph that follows the formula in paragraph (a)(2), and by adding paragraph (d) and Table § 54.25–10(d) to read as follows:

§ 54.25–10 Low temperature operation—ferritic steels (replaces UCS–65 through UCS–67).

(a) * * *

(2) * * * Only temperatures due to refrigerated service usually need be considered in determining the service temperature, except pressure vessel type cargo tanks operating at ambient temperatures must meet paragraph (d) of this section. "Refrigerated service", for the purposes of this paragraph means a service in which the temperature is controlled by the process and not by atmospheric conditions.

* * * * *

(d) Weldments and all materials used in pressure vessel type cargo tanks operating at ambient temperatures and constructed of materials listed in Table UCS–23 must pass Charpy impact tests in accordance with UG–84 at a temperature of −20 °F or colder, except as provided by paragraphs (d)(1), (d)(2), and (d)(3) of this section. The average impact energies for each set of three Charpy specimens must not be less than the impact energy shown in Table 54.2510(d). Only one specimen in a set may have an impact energy below the average shown in the table and its impact energy must not be less than 75% of the average shown in the table.

(1) Charpy impact tests are not required for any of the following ASTM materials if the thickness for each is ⅝ inch or less, unless otherwise indicated.

(i) A–182, normalized and tempered.

(ii) A–302, Grades C and D.

(iii) A–336, Grades F21 and F22 that are normalized and tempered.

(iv) A–387, Grades 21 and 22 that are normalized and tempered.

(v) A–442, Grade 55 with a nominal thickness of 1" or less.

(vi) A–516, Grades 55 and 60.

(vii) A–553, Grades B anc C.

(viii) All other plates, structural shapes and bars, and other product forms, except for bolting, if produced to a fine grain practice and normalized.

(2) Charpy impact tests are not required for any of the following ASTM materials if the thickness for each is 1¼ inch or less:

(i) A–203.

(ii) A–442, produced to a fine grain practice and normalized.

(iii) A–508, Class 1.

(iv) A–516, normalized.

(v) A–524.

(vi) A–537.

(vii) A–612, normalized.

(viii) A–662, normalized.

(ix) A–724, normalized.

(3) Charpy impact tests are not required for any of the following bolt materials:

(i) A–193, Grades B5, B7, B7M, and B06.

(ii) A–307, Grade B

(iii) A–325, Type 1.

(iv) A–449.

TABLE 54.25–10(d)

[Charpy V-notch impact requirements for full size (10 x 10 mm) specimens]

Yield strength [1]	Nominal thickness of material [1] (in inches)	Charpy V-notch impact energy, foot-pounds, average for 3 specimens
<38,000 psi	<2⅜	15
	>3	18
45,000 psi	<1⅝	15
	>3	22.5
50,000 psi	<1⅜	15
	>3	26
55,000 psi	<1¾	20
	>3	30
>65,000 psi	<1¼	20
	>3	36.5

[1] For intermediate values, interpolate between yield strength and nominal thickness of material.

PART 98—[AMENDED]

13. The authority citation for Part 98 is revised to read as follows:

Authority: 46 U.S.C. 3703, 49 CFR 1.46(n)(4).

14. By revising the title of Subpart 98.01 to read as follows:

Subpart 98.01—General

15. By revising the title of § 98.01–1 to read as follows:

§ 98.01–1 Applicability.

16. By adding § 98.01–3 to read as follows:

§ 98.01–3 Incorporation by reference.

(a) In this part, portions or the entire text of certain standards are incorporated by reference as the governing requirements for materials, equipment, tests or procedures to be followed. These standards and specification requirements specifically referred to in this part are the governing requirements for the subject matters covered, unless specifically limited, modified, or replaced by the regulations.

(b) These materials are incorporated by reference into this part under 5 U.S.C. 552(a) with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found citations to the particular sections of this part where the material is incorporated. To enforce any edition other than the ones listed in paragraph (c) of this section, notice of change must be published in the **Federal Register** and the material made available. All approved material is on file and available for examination at U.S. Coast Guard Headquarters, Room 1400, 2100 2nd Street, SW., Washington, DC, 20593–0001. Copies may be obtained

from the sources indicated in paragraph (c) of this section.

(c) The materials approved for incorporation by reference in this part are:

American Society for Nondestructive Testing (ASNT), P.O. Box 21142, Columbus, OH, 43221, SNT-TC-1A "Recommended Practice for Nondestructive Testing Personnel Qualification and Certification" (1986).

American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017, ASME Boiler and Pressure Vessel Code Section V, Nondestructive Examination (1986).

17. By amending 98.25–95 by revising paragraph (a) to read as follows:

§ 98.25–95 Tests and inspections.

(a) Each tank shall be subjected to the tests and inspections described in this section in the presence of a marine inspector, except as otherwise provided in this part.

(1) An internal inspection of the tank is conducted within—

(i) Ten years after the last internal inspection if the tank is a pressure-vessel type cargo tank on an unmanned barge described under § 151.02–25(c) of this chapter and carrying cargo at temperatures of −67°F (−55°C) or warmer; or

(ii) Eight years after the last internal inspection if the tank is of a type other than that described in paragraph (a)(l)(i) of this section.

(2) An external examination of unlagged tanks and the visible parts of lagged tanks is made at each biennial inspection. The owner shall ensure that the amount of insulation deemed necessary by the marine inspector is removed from insulated tanks during each internal inspection to allow spot external examination of the tanks and insulation, or the thickness of the tanks may be gauged by a nondestructive means accepted by the marine inspector without the removal of insulation.

(3) If required by the OCMI, the owner shall conduct nondestructive testing of each tank in accordance with § 98.25–97.

(4) If the tank has an internal inspection interval of 10 years, the owner shall conduct nondestructive testing of each pressure vessel cargo tank in accordance with § 98.25–97, during the 25th year after the date of delivery and during each fifth year thereafter.

* * * * *

18. By adding § 98.25–97 to read as follows:

§ 98.25–97 Nondestructive testing.

(a) Before nondestructive testing can be conducted to meet § 98.25–95(a) (3) and (4), the owner shall submit a proposal to the OCMI that includes-

(1) The test methods and procedures to be used, all of which must meet section V of the ASME Boiler and Pressure Vessel Code (1986);

(2) Each location on the tank to be tested; and

(3) The test method and procedure to be conducted at each location on the tank.

(b) If the OCMI rejects the proposal, the OCMI informs the owner the reasons why the proposal is rejected.

(c) If the OCMI accepts the proposal, then the owner shall ensure that—

(1) The proposal is followed; and

(2) Nondestructive testing is performed by personnel meeting "Recommended Practice for Nondestructive Testing Personnel Qualification and Certification," SNT-TC–1A (1986).

(d) Within 30 days after completing the nondestructive test, the owner shall submit a written report of the results to the OMCI.

PART 151—[AMENDED]

19. The Authority citation for Part 151 is revised to read as follows:

Authority: 46 U.S.C. 3703, 49 CFR 1.46(n)(4).

20. By adding § 151.01–2 to read as follows:

§ 151.01-2 Incorporation by reference.

(a) In this part, portions or the entire text of certain standards are incorporated by reference as the governing requirements for materials, equipment, tests or procedures to be followed. These standards and specification requirements specifically referred to in this part are the governing requirements for the subject matters covered, unless specifically limited, modified, or replaced by the regulations.

(b) These materials are incorporated by reference into this part under 5 U.S.C. 552(a) with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found citations to the particular sections of this part where the material is incorporated. To enforce any edition other than the ones listed in paragraph (c) of this section, notice of change must be published in the **Federal Register** and the material made available. All approved material is on file and available for examination at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, DC 20593–0001, and at U.S. Coast Guard Headquarters, Room 1400, 2100 2nd Street, SW., Washington, DC 20593–0001. Copies may be obtained from the sources indicated in paragraph (c) of this section.

(c) the materials approved for incorporation by reference in this part are:

American Society for Nondestructive Testing (ASNT), P.O. Box 21142, Columbus, OH 43221, SNT-TC–1A "Recommended Practice for Nondestructive Testing Personnel Qualification and Certification" (1986).

American Society of Mechanical Engineers, United Engineering Center, 3345 East 47th Street, New York, NY 10017, ASME Boiler and Pressure Vessel Code, Section V, Nondestructive Examination (1986).

§ 151.01–5 [Removed and Reserved]

21. By removing and reserving § 151.01–5.

§ 151.03–37 [Amended]

22. By amending § 151.03–37 by changing the Arabic numeral "8" to the Roman numeral "VIII", in the first sentence.

23. By adding § 151.03–38 to read as follows:

§ 151.03–38 Nondestructive testing.

Nondestructive testing includes ultrasonic examination, liquid penetrant examination, magnetic particle examination, rediographic examination,and acoustic emission.

24. By amending § 151.04–5 by revising the introductory text of paragraph (b), revising paragraph (b)(3), removing and reserving paragraph (c)(2), redesignating paragraphs (d) through (i) as paragraphs (f) through (k) respectively, and adding paragraphs (d), (e), and (l) and a note that follows paragraph (e), to read as follows:

§ 151.04–5 Inspection for certification.

* * * * *

(b) Unless otherwise specified in Table 151.05, cargo tanks are internally examined as follows:

* * * * *

(3) If the tank is a pressure-vessel type cargo tank, an internal inspection of the tank is conducted within—

(i) Ten years after the last internal inspection on an unmanned barge carrying cargo at temperatures of −67° F (−55 °C) or warmer; or

(ii) Eight years after the last internal inspection if the tank is a pressure type cargo tank carrying cargo at temperatures colder than −67° F (−55 °C).

* * * * *

(d) If, in addition to the internal and external examinations required in paragraphs (b) and (c) of this section, the Office in Charge, Marine Inspection requires nondestructive testing of tanks, the owner shall conduct the nondestructive testing in accordance with § 151.04–7.

(e) If the Officer in Charge, Marine Inspection, considers a hydrostatic test necessary to determine the condition of the tanks, the owner shall perform a hydrostatic test in 1½ times the tank's maximum allowable pressure, as determined by the safety relief valve setting, or in the case of cargo tanks operating at maximum allowable pressures reduced below the design pressure in order to satisfy special mechanical stress relief requirements, the owner shall perform the hydrostatic test at a pressure of 1½ times the design pressure.

Note.—See § 54.30–10 of Subchapter F (Marine Engineering) of this chapter for information on design pressure.

* * * * *

(l) During the 25th year after the date of delivery and during each fifth year thereafter, the owner shall conduct nondestructive testing of each pressure vessel cargo tank in accordance with § 151.04–7, if the tank has an internal inspection interval of 10 years.

25. By adding § 151.04–7 to read as follows:

§ 151.04–7 Nondestructive testing.

(a) Before nondestructive testing can be conducted to meet § 151.04–5 (d) and (k), the owner shall submit a proposal to the OCMI that includes—

(1) The test methods and procedures to be used all of which must meet section V of the ASME Boiler and Pressure Vessel Code (1986);

(2) Each location on the tank to be tested: and

(3) The test method and procedure to be conducted at each location on the tank.

(b) If the OCMI rejects the proposal, the OCMI informs the owner the reasons why the proposal is rejected.

(c) If the OCMI accepts the proposal, then the owner shall ensure that—

(1) The proposal is followed: and

(2) Nondestructive testing is performed by personnel meeting "Recommended Practice for Nondestructive Testing Personnel Qualification and Certification," SNT–TC–1A (1986).

(d) Within 30 days after completing the nondestructive test, the owner shall submit a written report of the results of the OCMI.

§ 151.05 [Amended]

26. By amending Table 151.05—Summary of Minimum Requirements by amending the column entitled "Tank internal inspect. period—years" by changing the numeral "6" to the figure "G" for the following cargoes listed in the column entitled "Cargo identification/Name/Pressure/Temp.":

Ammonia, anhydrous/Press/Amb
Butadiene, butene mixture (inhibited)(containing acetylenes)/Press/Amb
Butadiene, inhibited/Press/Abm
Dichlorodifluoro-methane/Press/Amb
Dimethylamine/Press/Amb
Monochlorodifluoromethane/Press/Amb

27. By amending Table 151.05—Summary of Minimum Requirements by amending the column entitled "Tank internal inspect. period—years" for the cargo "Hydrogen fluoride (3)/Press/Amb" (listed in column "Cargo Identification/Name/Pressure/Temp") by changing the figure "G" to the numeral "8", for the cargo "Propylene oxide/Press/Amb" (listed in the column entitled "Cargo Identification/Name/Pressure/Temp") by changing the numeral "4" to the figure "G", and by amending the column entitled "Special Requirements (Section, " for the cargo "Sulfur dioxide/Press/Amb" (listed in the column entitled "Cargo Identification/Name/Pressure/Temp") by removing the section number "151.50–35" and inserting "151.50–84".

§ 151.50–10 [Amended]

28. Redesignate § 151.50–10(p) as § 151.50–12(o).

29. By amending § 151.50–10 by redesignating paragraphs (q) and (r) as (p) and (q) respectively.

§ 151.50–32 [Amended]

30. By amending § 151.50–32 by removing and reserving paragraph (h).

§ 151.50–35 [Removed]

31. By removing § 151.50–35.

Signed: August 31, 1987.

J.W. Kime,

RADM, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87–20336 Filed 9–4–87; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Six-Month Extension on the Proposed Rule for Eriogonum humivagans (Spreading Wild-buckwheat)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of deadline and comment period.

SUMMARY: The Service extends for 6 additional months the 1-year deadline on a proposed rule to list *Eriogonum humivagans* (spreading wild-buckwheat) as endangered under the authority of the Endangered Species Act of 1973, as amended (Act). Since the proposed rule was published, a Service botanist has made additional *Eriogonum* collections that provide new information on the taxonomic validity and distribution of *Eriogonum humivagans*. The extension period will allow time to send specimens to authorities for identification and then for a more complete analysis of the plant's taxonomic status and distribution. Comments are solicited.

DATES: With this six-month extension, the new deadline for a final determination of status will be October 7, 1987. A new comment period will commence with the publication of this notice and will close on October 8, 1987.

ADDRESSES: The file for this notice is available for inspection, by appointment, during normal business hours at the Fish and Wildlife Enhancement Office, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104, or at the Service's Fish and Wildlife Enhancement Office, Independence Plaza, Suite B113, 529 25 ½ Road, Grand Junction, Colorado 81505.

FOR FURTHER INFORMATION CONTACT: John L. Anderson, at the Grand Junction address above (303/241–0563 or FTS 322–0348), or John L. England at the Salt Lake City address (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

Eriogonum humivagans (spreading wild-buckwheat), a member of the buckwheat family, was proposed for listing as an endangered species in the April 7, 1986, **Federal Register** (51 FR 11880). This species had only been recognized from the vicinity of the type

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locality east of Monticello in San Juan County, Utah, where it occurs on outcrops of heavy clay soil of the Mancos shale. Much of the surrounding area is cultivated for dryland farming. The loss of habitat to intensive agriculture was cited in the proposed rule as the primary factor threatening the species.

Previous surveys for *Eriogonum humivagans* have been concentrated in Utah. The potential habitat of heavy clay soils is limited there, and few occurrences of *Eriogonum humivagans* have been found, making it a narrowly distributed endemic. In the type description, Reveal (1968) related *Eriogonum humivagans* to *Eriogonum scoparium* of western Colorado and *Eriogonum nudicaule* of northern New Mexico. These two species have subsequently been combined with *Eriogonum lonchophyllum*, a highly variable suffruticose species of western Colorado and northern New Mexico whose type locality is on the Rio Blanco River south of Pagosa Springs, Colorado (Reveal 1976, Torrey and Gray 1870). While discussing *Eriogonum humivagans*, Reveal (1967) stated that little fall botanizing had been done in the area from Monticello southeast to Cortez, Colorado. *Eriogonum humivagans* was then thought to be disjunct by at least 50 miles from the nearest known occurrences of *Eriogonum lonchophyllum* in Colorado. The type locality of *Eriogonum humivagans* is only 5 miles from the Colorado State line, and large outcrops of potential habitat extend eastward into Colorado. In the fall of 1986, a Service botanist made extensive *Eriogonum* collections between the type locality and Cortez and Naturita, Colorado, approximately 50 miles to the southeast and northeast, respectively. These collections narrow the geographic gap between *Eriogonum humivagans* and *Eriogonum lonchophyllum* and raise the question of the distinctness and overall distribution of the two species. More time is needed to analyze these new data. Therefore, the Service, under section 4(b)(6)(B)(i) of the Act, extends for 6 months the 1-year deadline for making a final status determination on the spreading wild-buckwheat. Future actions on the proposed listing of this species depend on the results of this analysis. After a thorough analysis of the data, the Service will decide either to continue with the final listing of the species or to withdraw the proposal for *Eriogonum humivagans* as provided under section 4(b)(6)(B)(ii) of the Act.

References Cited

Reveal, J.L. 1967. Notes on *Eriogonum*—V. A revision of the *Eriogonum corymbosum* complex. Great Basin Naturalist 27:183–229.
Reveal, J.L. 1968. New species of *Eriogonum* from Utah. Madrono 9:289–300.
Reveal, J.L. 1976. Eriogonum (Polygonaceae) of Arizona and New Mexico. Phytologia 34:409–484.
Torrey, J. and A. Gray 1870. A Revision of the Eriogoneae. Proc. Amer. Acad. Arts. 8:173.

Authors

The primary author of this notice is John Anderson, Botanist, Fish and Wildlife Enhancement Office, U.S. Fish and Wildlife Service, Grand Junction, Colorado. John England, Botanist, Fish and Wildlife Enhancement Office, U.S. Fish and Wildlife Service, Salt Lake City, Utah, served as editor (see addresses section above).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.;* Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 95–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: August 28, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–20515 Filed 9–4–87; 8:45 am]
BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Nonessential Experimental Population Status for Introduced Population of Yellowfin Madtom

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to reintroduce a small catfish, the yellowfin madtom (*Noturus flavipinnis*) (federally listed as a threatened species), into the North Fork Holston River, Smyth County, Virginia, and determine any resultant population in Virginia and Tennessee to be a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973, as amended. Section 10(j) of the Act authorizes nonessential populations to be treated as if they were proposed species for purposes of the review of other Federal agency actions under section 7 (see 50 CFR 17.83). The yellowfin madtom once likely inhabited many of the lower gradient streams of the Tennessee River basin upstream of Chattanooga, Tennessee. Presently, populations are confined to only three stream reaches in the Tennessee River valley. This action is being taken in an effort to reestablish the yellowfin madtom within its historic range. Comments and information pertaining to this proposal are sought from the public.

DATE: Comments from all interested parties, including the States of Tennessee and Virginia and the public, must be received by November 9, 1987.

ADDRESS: Interested parties or organizations are requested to submit comments to the Field Supervisor, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321). Comments and materials relating to this proposed rule are available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins (704/259–0321 or FTS 672–0321) at the above address.

SUPPLEMENTARY INFORMATION:

Background

Among the significant changes made by the Endangered Species Act Amendments of 1982, Pub. L. 97–304, was the creation of a provision (section 10(j)) which provides for the designation of specific populations of listed species as nonessential experimental populations. Under previous authorities in the Act, the Service was permitted to reintroduce populations into unoccupied portions of a listed species' historic range when it would foster the conservation and recovery of the species. Local opposition to reintroduction efforts, however, stemming from concerns about the restrictions and prohibitions on private and Federal activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of this as a management tool. Under section 10(j) of the 1982 Amendments, past and future reintroduced populations established outside the current range but within the species' historic range, may be designed, at the discretion of the Service, as experimental populations or nonessential experimental populations. Experimental population status allows the Service to treat an endangered species as threatened for the purposes of section 9 of the Act. Species listed as

threatened can be managed with greater flexibility, especially regarding incidental take and regulated taking. As the yellowfin madtom is already listed as a threatened species with special rules (50 CFR 17.43) which provide that the fish may be taken in accordance with applicable State law, the species' status relative to section 9 will remain the same for any introduced populations. Nonessential populations are experimental populations found to be nonessential to the continued existence of the species. These populations are treated as if the species were only proposed for listing under section 7 (except to subsection a(1)). Therefore, they are not subject to the provisions of section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species. However, two provisions of section 7 would apply on these non-Service lands: Section 7(a)(1), which authorizes all Federal agencies to establish conservation programs; and section 7(a)(4), which requires Federal agencies to confer informally with the Service on actions that are likely to jeopardize the continued existence of the species. Neither of these provisions will legally bar actions on projects which might impact this experimental population. The organisms used to establish an experimental population will only be removed from an existing source if (1) the removal will not jeopardize the continued existence of the species and (2) a permit has been issued for the take of the donor organisms in accordance with the requirements of 50 CFR 17.31.

The yellowfin madtom was listed as a threatened species with critical habitat on September 9, 1979 (42 FR 45527). The species was probably once widely distributed in many lower gradient streams of the Tennessee River drainage upstream of the Chattanooga, Tennessee, area (Jenkins 1975). The species' present distribution (Burkhead and Jenkins 1982, Shute 1984) is represented by only three known populations (Citico Creek, Monroe County, Tennessee; Powell River, Hancock County, Tennessee; and Copper Creek, Scott and Russell Counties, Virginia). Three other known populations (Chickamauga Creek, Catoosa County, Georgia; Hines Creek, Anderson County, Tennessee; and North Folk Holston River, Smyth County, Virginia) are believed to have been extirpated primarily due to human-related factors (impoundments, pollution, habitat modification, etc.).

The yellowfin madtom occupies small-to-medium-sized (25 to 135 feet wide) warm water streams with moderate current and clean water with little siltation (Jenkins 1975). The species is generally associated with cover (undersides of flat rocks, detritus, and stream banks) (Jenkins 1975, Shute 1984).

Good habitat for the yellowfin madtom is currently located in the North Fork Holston River, Smyth County, Virginia. The establishment of an experimental population in this now unoccupied historic habitat will greatly enhance the recovery potential of this species. It is proposed, during the late summer or early fall of 1987, that 100 to 200 captive-reared madtoms (taken in the spring and summer of 1987 from nests on Citico Creek, Monroe County, Tennessee) will be introduced into one or two pools on the North Fork Holston River, Smyth County, Virginia. The techniques for rearing and transplanting the species were developed in 1986 when a reintroduction was made into Abrams Creek, Blount County, Tennessee. The success of this introduction attempt will be evaluated in the summer and fall of 1987.

Based on studies conducted on the Citico Creek population (Shute 1984; David Etnier, Peggy Shute, and Randy Shute, personal communication, 1986), it is believed that approximately 125 yellowfin madtom clutches exist in the creek each year. The yellowfin madtom has a clutch size of about 90 eggs. Three to four nests would be taken, and, allowing for mortality, these would yield the desired 100 to 200 individuals for stocking. The removal of three to four nests represents only about 13 percent of the total clutches. This amount of loss is well within the limit of natural loss that would likely occur on an average reproductive year (D. Etnier, P. Shute, and R. Shute, personal communication, 1986). Therefore, the Service believes the removal of the animals from Citico Creek to be used in the North Fork Holston River transplant is not likely to jeopardize the continued existence and viability of the Citico Creek population. Furthermore, the creation of this experimental population, as proposed, will further the conservation of the species throughout its range.

Status of Reintroduced Population

This reintroduced population of yellowfin madtoms is proposed to be designated as a nonessential experimental population according to the provisions of section 10(j) of the Act. The nonessential experimental population status, which is necessary to gain the acceptance of the Virigina Commission of Game and Inland Fisheries, is appropriate for the yellowfin madtom for the following reasons: Reproducing populations of the yellowfin madtom presently exist in three river reaches. The removal of individuals from the extant population in Citico Creek, Monroe County, Tennessee, is not expected to adversely affect the viability of that population (see Background section above). Therefore, the loss of the introduced population would not reduce the likelihood of the survival of the species in the wild. In fact, the anticipated success of this reintroduction will enhance the species' recovery potential by extending its current range and reoccupying currently unutilized historic habitat.

Location of Reintroduced Population

The site proposed for reintroduction of the yellowfin madtom is totally isolated from existing populations of the species. The madtom will be released into the North Fork Holston River, Smyth County, Virginia. This site is separated from other existing populations by both Tennessee River and tributary reservoirs, and the fish is not known from any of these reservoirs or intervening river sections. These reservoirs and river sections will act as barriers to any movement by the fish and assure that the Holston River population will remain geographically isolated and easily identifiable as a distinct population.

Management

This translocation project will be a joint cooperative effort among the Virginia Commission of Game and Inland Fisheries, the Tennessee Wildlife Resources Agency, and the U.S. Fish and Wildlife Service. Present plans call for the release of 100 to 200 young-of-the-year animals in the late summer or early fall of 1987. Subsequent releases will be made contingent on funds in 1988 and 1989. Released animals will be monitored to determine survival, reproductive success, and general health.

This proposed nonessential experimental population would be treated as a threatened species under all provisions of the Act, except section 7. Under section 7 (other than subsection (a)(1) thereof) the nonessential experimental population shall be treated as a species proposed to be listed under the Act as a threatened species. All of the prohibitions referred to in 50 CFR 17.31 would apply to this population. In addition, members of this experimental

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population could be taken in accordance with applicable State laws. Thus, if a fisherman accidentally took a member of this experimental population based upon a misidentification of the species, there would be no violation of Federal law.

Public Comments Solicited

The Service intends that any rule finally adopted be as effective as possible. Therefore, comments or recommendations concerning any aspect of this proposed rule are hereby invited to be submitted (see **"ADDRESSES"** section) from the public, concerning government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible.

Final promulgation of a rule to implement this proposed action will take into consideration any comments or additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

National Environmental Policy Act

A draft environmental assessment under the National Environmental Policy Act has been prepared and is available to the public at the Service's Asheville Field Office (see **"ADDRESSES"** section), Atlanta Regional Office (U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303), or the Office of Endangered Species, U.S. Fish and Wildlife Service, 1000 N. Glebe Road, Arlington, Virginia 22201 (202/235–2760). This assessment will form the basis for a decision, to be made prior to the publication of a final rule, as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500 through 1508).

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The U.S. Fish and Wildlife Service has determined that this is not a major rule as defined by Executive Order 12291 and that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). No private entities will be affected by this action. The rule as proposed does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Reference Cited

Burkhead, N.M., and R.E. Jenkins. 1982. Five-year status review of the yellowfin madtom, *Noturus flavipinnis*, a threatened ictalurid catfish of the Tennessee drainage. Unpublished report to the U.S. Fish and Wildlife Service. 10 pp.

Jenkins, R.E. 1975. Status of the yellowfin madtom, *Noturus flavipinnis*. Unpublished report to U.S. Off. Endang. Spec. Internat. Activities, Washington. 11 pp.

Shute, P.W. 1984. Ecology of the rare yellowfin madtom *(Noturus flavipinnis)* Taylor, in Citico Creek, Tennessee. Masters thesis. University of Tennessee, Knoxville, TN. 100 pp.

Authors

The principal author of this proposal is Richard G. Biggins (see **ADDRESSES** section) (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; and Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 et seq.); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by revising the entry "Madtom yellowfin" under FISHES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Madtom, yellowfin	*Noturus flavipinnis*	U.S.A. (GA, TN, VA)	Entire, except [illegible] as experimental population below..	T	28	17.95(e)	17.44(c)
Do	do	do	North Fork Holston River and tributaries, VA, TN; South Fork Holston River and tributaries upstream to Ft. Patrick Henry Dam, TN; and Holston River and tributaries downstream to John Sevier Detention Lake Dam, TN..	XN			17.84(e)

§ 17.84 [Amended]

3. It is proposed that Title 50 CFR 17.84 be amended by adding new paragraph (e) as follows:

§ 17.84 Special rules—vertebrates

* * * * *

(e) Yellowfin madtom (*Noturus flavipinnis*). (1) The yellowfin madtom population identified in paragraph (e)(4) of this section is a nonessential experimental population.

(2) All prohibitions and exceptions listed in § 17.31 and 17.32 apply to this population identified in paragraph (e)(4)

of this section except that it may also be incidentally taken while engaging in fishing, river management, flood control, and other activities authorized by applicable State laws and regulations.

(3) Any violation of State law regulating the take of this species will also be a violation of the Endangered Species Act.

(4) The site for reintroduction of the yellowfin madtom is totally isolated from existing populations of this species by large Tennessee River tributaries and reservoirs. The reintroduction site is within the historic range of this species and is located in the North Fort Holston River in Smyth County, Virginia. It is possible that the species might become established throughout the North Fork Holston River and its tributaries in Virginia and Tennessee, and into the South Fort Holston River and tributaries in Tennessee as far upstream as Fort Patrick Henry Dam, and into the Holston River and tributaries in Tennessee as far as the John Sevier Detention Lake Dam. As the species is not known to inhabit reservoirs and it is unlikely that they could move 100 river miles through these large reservoirs, the possibility of this population contracting extant wild populations is unlikely.

(5) The reintroduced population will be checked periodically to determine its condition. Of special concern will be the annual reproductive success of the population. The movement patterns of the released individuals and the overall health of the population will also be observed.

Dated: June 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-20573 Filed 9-4-87; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 52, No. 173
Tuesday, September 8, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

Date: Monday, September 14, 1987.

Time: 2:00 p.m.

Location: Department of Commerce, 14th & Constitution Avenue, NW., Room 5859, Washington, DC.

Agenda: (1) Akin, Gump, Strauss, Hauer & Feld's project on agency use of settlement judges; (2) Professor Martin White's study of agency implementation of the Debt Collection Act; and (3) Other pending projects on agency use of alternative means of dispute resolution.

Contact: Charles Pou, Jr., 202–254–7065.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. These meetings are subject to the Federal Advisory Committee Act (Pub. L. 92–463).

Jeffrey S. Lubbers,

Research Director.

September 2, 1987.

[FR Doc. 87–20551 Filed 9–4–87; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of Advocacy and Enterprise; Citizens' Advisory Committee on Equal Opportunity; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), this announcement is made of the final FY 87 meeting of the following committee:

Name: Citizens' Advisory Committee on Equal Opportunity.

Date: September 28–30, 1987.

Place: Embassy Suites, 220 West 43rd Street, Kansas City, Missouri 64111.

Time: 8:30 a.m.–5:00 p.m.

Purpose:

—Review all aspects of the U.S. Department of Agriculture's policies, practices, and procedures on Equal Opportunity;

—Recommend changes in Department rules, regulations, and orders to ensure USDA activities are free of discrimination;

—Advise the Secretary on the effectiveness of compliance program directives;

Additionally, the Committee will focus on:

—Employment, constituent services, and operational programs in the Agricultural Stabilization and Conservation Service (ASCS).

—Follow-up reports on implementation strategies to make Secretary Lyng's initiative on equal opportunity a reality, and;

—An in-depth discussion of compliance reviews completed thus far.

The meeting is open to the public. Persons may participate in the meeting as time and space permit. Persons who wish to address the Committee at the meeting or who wish to file written comments before or after the meeting should contact: Naomi Churchill, Esq., Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, 14th & Independence Avenue, SW., Room 1226 South Building, Washington, DC 20250 (202) 447–5681.

Written statements may be submitted until September 21.

Naomi Churchill,

Associate Director, Equal Opportunity.

[FR Doc. 87–20570 Filed 9–4–87; 8:45 am]

BILLING CODE 3410–94–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Survey of Income and Program Participation 1988 Panel Core, Waves 108
Form Number: Agency—SIPP–8100 to 8800, SIPP–8001, and SIPP–8105; OMB—0607–0425
Type of Request: Revision of a currently approved collection
Burden: 24,360 respondents; 24,360 reporting hours
Needs and Uses: This survey is needed to provide statistics, not previously available, for the Executive and Legislative Branches, such as multiple recipiency of benefits of major government programs, to support policy analyses, and monthly program participation. The data requirements include income, employment and household composition, taxes, assets, in-kind income, and related subjects to estimate the effects of Executive and Legislative decisions.
Affected Public: Individuals or households
Frequency: Three times per year
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult, 395–7340

Agency: Bureau of the Census
Title: Duplicate Address Followup Questionnaire—1988 Dress Rehearsal Census
Form Number: Agency—DX–1000; OMB—NA
Type of Request: New collection
Burden: 500 respondents; 42 reporting hours
Needs and Uses: This survey will collect data which will be used to determine how well Census Bureau staff can resolve duplicate addresses in the field without access to the identification information recorded by the postal service. Results will be used in planning ways to simplify the role of the USPS in the 1990 Census.
Affected Public: Individuals or households

Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Francine Picoult

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Francine Picoult, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: September 1, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–20574 Filed 9–4–87; 8:45 am]

BILLING CODE 3510–07–M

Bureau of the Census

Intercity, Rural, and Charter Bus Transportation Survey; Consideration

The Bureau of the Census hereby gives notice that we plan to conduct the 1988 Intercity, Rural, and Charter Bus Transportation Survey. This annual mandatory survey will be conducted under authority of Title 13, United States Code, sections 131, 182, 224, and 225, and will collect data on 1986 and 1987 revenues and expenses of firms engaged in providing intercity, rural, and charter bus transportation services.

This survey will be a continuing and timely source of economic data for the intercity, rural, and charter bus industries. Such a survey, if conducted, shall begin not earlier than March 1, 1988.

Information and recommendations received by the Bureau of the Census show that the data have significant application to the information needs of the public; the intercity, rural, and charter bus industries; and governmental agencies. The data are not publicly available from nongovernmental or other governmental sources on a continuing basis.

Copies of the proposed forms and a description of the collection methods are available upon request to the Director, Bureau of the Census, Washington, DC 20233

Any suggestions or recommendations concerning this proposed survey will receive consideration if submitted in writing to the Director, Bureau of the Census, within 30 days of publication of this notice in the **Federal Register**. For additional information, you may call Michael S. McKay, Chief, Organization and Management Systems Division, Bureau of the Census, on (301) 753–7452.

Dated: August 31, 1987.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 87–20531 Filed 9–4–87; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Order No. 358]

Resolution and Order Approving Application of City of Salem Port Authority for Foreign-Trade Zone in Salem, NJ, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Salem Port Authority, filed with the Foreign-Trade Zones Board (the Board) on April 30, 1985, and amended on June 30, 1986, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at sites in Salem and Millville, New Jersey, within the Philadelphia Consolidated Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in the Salem, NJ, Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the City of Salem Port Authority (the Grantee), has made application (filed April 30, 1985, Docket 8–85, 50 FR 20816, and amended on June 30, 1986, 51 FR 24427) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Salem and Millville, New Jersey, within the Philadelphia Consolidated Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 142 at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance

of said zone, and in no event shall the United States be liable.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 25th day of August 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board

Clarence J. Brown,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-20575 Filed 9-4-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-427-098]

Final Results of Antidumping Duty Administrative Review; Anhydrous Sodium Metasilicate From France

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 24, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The review covers one manufacturer of this merchandise and the period January 1, 1985 through December 31, 1985.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, the final results have not changed from those presented in the preliminary results of review.

EFFECTIVE DATE: September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 9320) the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate from France (46 FR 1667, January 7, 1981). The petitioner, PQ Corporation, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of anhydrous sodium metasilicate ("ASM"), a crystalline silicate (Na_2SiO_3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. ASM is currently classifiable under item number 421.3400 of the Tariff Schedules of the United States Annotated.

The review covers one exporter of French ASM, Rhone Poulenc, and the period January 1, 1985 through December 31, 1985.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the respondent.

Comment 1: Rhone Poulenc contends that it submitted adequate information on the record to support a preliminary determination. Despite the fact that the information was unclear, awkward to use, and not in the format requested, it is the best information available and the Department therefore must use it.

Department's Position: Rhone Poulenc's submissions remain unclear and/or inadequate in various respects, as described more fully in response to *Comment 3*, despite the Department's efforts to obtain clarification and all data needed to calculate accurate U.S. prices and foreign market values. It is the respondent's responsibility to submit all requested information in a timely manner in a form which permits the Department to analyze it. The Department is not obligated to use inadequate, untimely, or incomplete information.

Comment 2: Rhone Poulenc maintains that for any portions of its response which were deficient the Department should use data from the most recently completed administrative review covering 1982, or its submission for the 1983 period. In addition, it contends that under the *Freeport* rule, the Department must use the most recent information available in an antidumping proceeding. Therefore, if the Department determines that the 1985 response is inadequate, for this review it must use information from the 1982 or 1983 responses.

Department's Position: The Department is properly using the margin from the fair value investigation for this review as best information available due to our inability to get adequate cooperation from the respondent in submitting information. In conducting our reviews we are dependent upon the cooperation of the respondent in supplying information for our analysis. Section 776 of the Tariff Act, which authorizes our use of the best information available in certain situations, is intended to encourage cooperation from parties in a proceeding. To use information from the previous two reviews, as respondent suggests, would, in effect, reward the respondent for its failure to provide adequate and timely responses during this review.

Respondent's reliance upon *Freeport Minerals* v. *United States*, 776 F.2d 1029 (CAFC 1985), is misplaced. That case simply held that the Department must look at up-to-date information in deciding whether to revoke an antidumping duty order. The *Freeport* case is irrelevant to the issue here, which is what data should be used as best information available where a respondent has not provided adequate information. In such cases we are authorized to use information that may be adverse to the interests of a respondent.

Comment 3: Rhone Poulenc argues that, even though the Department did not verify the 1985 questionnaire response, it is the best information available. The response was not inadequate and was submitted in the same format used for the prior review. Furthermore, the Department had ample time prior to publication of the preliminary results notice to inquire about further deficiences.

Department's Position: We are not declining to use Rhone Poulenc's 1985 submission as the best information available simply because it was not verified; rather, we are not using it because it was inadequate, incomplete, and untimely submitted. The Department acknowledges that a listing of U.S. resales was submitted in the supplementary response; however, the response remains inadequate for several reasons. Despite several requests,

Rhone Poulenc declined to submit computer tapes of its home market sales, citing the "relatively considerable expense." We note that portions of the response were in a computerized format and that a response for an earlier period is on a computer tape. We consider as inadequate any response not submitted in the request format (in this case, on a computer tape), absent the Department's approval of an exemption given prior to receipt of a response. We did not receive some requested financial statements, while others which were received after the preliminary results notice were submitted too late to be considered in this review. Also, since information regarding U.S. selling expenses was submitted only after publications of the preliminary results notice, it was untimely. Irrespective of its untimeliness, it was also inadequate because Rhone Poulenc did not adequately identify or quantify the U.S. expenses.

Comment 4: Rhone Poulenc contends that it is not required to submit the sales information on a computer tape if the firm does not maintain records in a computerized form or if it is an unreasonable additional burden to do so. Failure to submit the data on a computer tape should not be considered an inadequacy.

Department's Position: We disagree. See our position on *Comment 3*. Although Rhone Poulenc did finally submit home market sales information on a computer disk on May 12, 1987, this was almost two months after publication of the preliminary results notice. This submission was received too late to be considered in this review.

Final Results of the Review

Based on our analysis of the comments received, the final results have not changed from those presented in the preliminary results of review, and we determine that a margin of 60 percent exists for Rhone Poulenc for the period January 1, 1985 through December 31, 1985.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 60 percent shall be required. This deposit requirement is effective for all shipments of French anhydrous sodium metasilicate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

Date: August 20, 1987.

[FR Doc. 87-20576 Filed 9-4-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-701]

Postponement of Final Antidumping Duty Determination; Potassium Chloride From Canada

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On August 24 and 25, 1987, we received requests from two respondents in the antidumping duty investigation of potassium chloride from Canada that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Pursuant to these requests, we are postponing our final antidumping duty determination as to whether sales of potassium chloride from Canada have been made at less than fair value until not later than January 8, 1988.

EFFECTIVE DATE: September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp or Michael Ready, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 377-1769, (202) 377-2613.

SUPPLEMENTARY INFORMATION: On March 5, 1987, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of potassium chlorida from Canada are being, or are likely to be, sold at less than fair value (52 FR 6336). We issued our preliminary affirmative determination on August 20, 1987 (52 FR 32151, August 26, 1987). This notice stated that we would issue a final determination on or before November 3, 1987. On August 24 and 25, 1987, two respondents requested that we extend the period for the final determination until January 8, 1988, in accordance with section 735(a)(2)(A) of the Act. These respondents account for a significant proportion of exports of the subject merchandise to the United States, and thus are qualified to make these requests. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than January 8, 1988.

The public hearing is also being postponed until 9:30 a.m. on November 16, 1987, at the U.S. Department of Commerce, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted in at least ten (10) copies to the Deputy Assistant Secretary by November 9, 1987.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

August 31, 1987.

[FR Doc. 87-20577 Filed 9-4-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-104]

Preliminary Results of Antidumping Duty; Administrative Review and Intent To Revoke; Strontium Nitrate From Italy

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke.

SUMMARY: In response to a request by petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on strontium nitrate from Italy. The review covers the one manufacturer/exporter of this merchandise and the period June 1, 1985 through May 31, 1986. The review indicates the existence of no dumping margins for the firm during the period.

As a result of the review, the Department intends to revoke the order.

Interested parties are invited to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Richard P. Bruno or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 20354) a tentative determination to revoke the antidumping duty order on strontium nitrate from Italy (46 FR 32864, June 25, 1981).

On June 1, 1987, the Department published in the **Federal Register** (52 FR 20444) the final results of its last administrative review of the antidumping duty order on strontium nitrate from Italy. After the promulgation of our new regulations, the petitioner requested in accordance with § 353.53(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation on July 17, 1986 (51 FR 25923). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs Nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The Written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultations in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of strontium nitrate, a chemical compound $Sr(NO_3)_2$, currently classifiable under TSUSA item 421.7400 and under HS item 2834.29.20. The review covers the one manufacturer/exporter of Italian strontrium nitrate, Societa Bario e Derivati S.p.A. ("SABED"), and the period June 1, 1985 through May 31, 1986.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act, since all sales were made to unrelated purchasers in the United States prior to importation. Purchase price was based on the packed ex-factory price to an unrelated purchaser in the United States. No adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used third-country (Mexican) prices, as defined in section 773 of the Tariff Act, since insufficient quantities of such or similar merchandise were sold in the home market during the period to provide a basis for comparison. Third-country price was based on the packed delivered warehouse price, Hamburg, West Germany, to unrelated purchasers in Mexico. We made adjustments, where applicable, for inland freight, and differences in credit expenses and packing costs. No other adjustments were claimed or allowed.

Preliminary Results of Review and Intent To Revoke

As a result of our comparison of United States price to foreign market value, we preliminarily determined that no dumping margins exist for SABED for the period June 1, 1985 through May 31, 1986.

Consequently, we intend to revoke the order on strontium nitrate from Italy. SABED made all sales at not less than fair value during the period June 25, 1981 through May 14, 1984, the date of our tentative determination to revoke, and during the additional review period June 1, 1985 through May 31, 1986. As provided for in § 353.54(e) of the Commerce Regulations, SABED has agreed in writing to an immediate suspension of liquidation and reinstatement of the order under circumstances as specified in the written agreement. If this revocation is made final it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after May 14, 1984.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication and may request a hearing within 8 working days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review, intent to revoke, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and sections 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Date: August 28, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–20578 Filed 9–3–87; 8:45 am]

BILLING CODE 3510–DS–M

National Technical Information Service

Intent To Grant Exclusive Patent License to Milton P. Radosevich

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Milton P. Radosevich, having a place of business at P.O. Box 3495, Peoria, IL 61614–0495, an exclusive right in the United States to practice the invention embodied in U.S. Patent Application S.N. 6–903,879, "Preparation of Multiple Gradients." The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87–20497 Filed 9–4–87; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information:

(1) Type of submission;
(2) Title of Information Collection and applicable OMB Control Number and Form Number;
(3) Abstract statement of the need for and the uses to be made of the information collected;
(4) Type of Respondent;
(5) An estimate of the number of responses;
(6) An estimate of the total number of hours needed to provide the information;
(7) To whom comments regarding the information collection are to be forwarded; and
(8) The point of contact from whom a copy of the proposed information collection may be obtained.

This information collection is as follows:

(1) New;
(2) Production Company Information Requirements;
(3) Producers wanting assistance from DoD in the production of entertainment-oriented projects must request it by letter. The producer must submit to DoD a copy of the script and a list of their needs from DoD. A determination will be made as to the feasibility and qualification of the project. If assistance is provided, the producer must provide promotional material/photos to DoD for historical documentation.
(4) Businesses and non-profit institutions;
(5) Current responses of 100;
(6) Current burden hours of 100.

ADDRESSES: (7) Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

FOR FURTHER INFORMATION CONTACT: (8) A copy of the information collection proposal may be obtained from Mr. Vitiello, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

Linda Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
September 2, 1987

[FR Doc. 87–20582 Filed 9–4–87; 8:45 am]
BILLING CODE 3810–01–M

Defense Logistics Agency

Privacy Act of 1974; Compute Matching Program Between the Department of Defense (DoD)/ Department of Education (ED)

AGENCY: Defense Manpower Data Center (DMDC), Defense Logistics Agency (DLA), Department of Defense.

ACTION: This action constitutes notice for public comment on a proposed new ongoing computer matching program between the Department of Defense (DoD) and the Department of Education (ED) for debt collection.

SUMMARY: The Department of Defense, under an interagency agreement with the Office of Management and Budget, Department of the Treasury and the Office of Personnel Management, announces a proposal to match by computer DoD employment records of active and retired military members, including the Reserve and Guard, and the OPM government-wide Federal civilian and retired civilian records with the records of individuals who are delinquent debtors in various Department of Education loan programs. The purpose of the match is to identify and locate Department of Education delinquent debtors who are receiving Federal salary or benefit payments so as to permit the Department of Education to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will be effective without further notice October 8, 1987, unless comments are received which would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202. Telephone: (202) 694–3027; Autovon: 224–3027.

SUPPLEMENTARY INFORMATION: This computer matching program is being conducted in order to identify and locate those individuals indebted and delinquent in their repayment to the U.S. Government under certain various Department of Education programs.

The Office of Management and Budget (OMB) has designated the Department of the Treasury, Financial Management Service, as the Lead Agency to coordinate and monitor the implementation of the government's Federal Salary Offset program. An interagency agreement, restricted exclusively to the implementation of the Debt Collection Act of 1982 (Pub. L. 97–365), established an Interagency Working Group to facilitate computer matching and subsequent salary offset throughout the Federal government under the auspices and oversight of the OMB. At the outset, this Interagency Working Group consists of the Department of the Treasury, Office of Personnel Management and the Department of Defense. As a result, a centralized computer data base for computer matching consisting of Department of Defense and Office of Personnel Management records has been established for debt collection purpose in order to have a data bank record of active and retired military members, including the Reserve and Guard, and the OPM government-wide civilian and retired civilian personnel that are receiving salaries or other Federal benefit payments. This established data bank is hosted and maintained by the Defense Manpower Data Center of the Department of Defense.

Set forth below is the information required by the paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656 May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget on August 27, 1987, pursuant to the cited OMB matching guidelines.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
September 2, 1987.

Report of a New Ongoing Computer Matching Program Between the Department of Defense (DoD) and the Department of Education (ED)

a. Authority

The legal authority under which this computer match is being conducted is the Debt Collection Act of 1982 (Pub. L. 97–365); 5 U.S.C. 5514 (Installment deduction for indebtedness) the Privacy Act of 1974 (5 U.S.C. 552a); 10 U.S.C. 136; 4 CFR Chapter II; 34 CFR Part 31; and the Office of Management and Budget Revised Supplemental Guidance for Conducting Matching Programs (47 FR

21656, May 19, 1982) and Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982 (48 FR 15556, April 11, 1983).

b. Program Description

The purpose of this computer matching program is to identify and locate individuals who are receiving Federal salaries or benefit payments that are indebted and delinquent in their repayment of debts to the United States Government under certain programs administered by the Department of Education in order to collect the debts by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

The Department of Education, as the source agency, will provide the Defense Manpower Data Center (DMDC) of the Department of Defense, the matching agency, a computer tape of all the individual delinquent debt records of those indebted to the U.S. Government under certain Department of Education programs.

Upon receipt of the computer tape file of debtor accounts, the DMDC will perform a computer match using all nine digits of social security numbers of delinquents against a DMDC computer data base. The DMDC computer data base, established under an interagency agreement, consists of records of active duty and retired military members including the Reserve and Guard and the OPM government-wide Federal civilian and retired civilian records.

Matching records, "hits" based on the SSN, will be furnished to the Department of Education consisting of the member's name, service or agency, category of employee, salary or benefit, and current work or home address from DMDC's data base records.

The Department of Education is responsible for reviewing the "hit" records to assure that the individual is positively identified in the match as the debtor; to assure that the debtor is afforded proper due process under Department of Education regulation (34 CFR Part 31) and that a proper accounting of any disclosures shall be maintained by in accordance with 5 U.S.C. 552a(c) of the Privacy Act. Department of Education will ensure that the debt is valid and the information is accurate, complete, timely and relevant. The notification shall include information concerning the amount to be collected, the amount of monthly deductions, and the debtor shall be given an opportunity to enter into voluntary agreement to repay the debt before any administrative or salary offset measures are initiated. The debtor shall be given an opportunity to inspect and copy records related to the debt and for review of the decision related to the debt. If not collection action is needed, the DoD record will not be used by the Department of Education for any other purposes.

c. Records to be Matched

The systems of records subject to the Privacy Act of 1974 to be matched are as follows:

(1) Department of Education (Source Agency)

System Identification: 18–40–0045.
System Name: Student Financial Assistant Collection Files (ED/OPE/OSFA).
Federal Register Citation: 46 FR 29649, June 2, 1981.
Amended: 47 FR 16833, April 20, 1982.
Amended: 47 FR 27885, June 28, 1982.

(2) Department of Defense (Matching Agency)

System Identification: S5322.10 DLA–LZ.
System Name: Defense Manpower Data Base.
Federal Register Citation: 51 FR 30104, August 22, 1986.
System Identification: OPM/GOVT–1.
System Name: General Personnel Records.
Federal Register Citation: 49 FR 36954, September 20, 1984.
System Identification: OPM/CENTRAL–1.
System Name: Civil Service Retirement and Insurance Records.
Federal Register Citation: 49 FR 36950, September 20, 1984.

d. Period of the Match

The initial match will begin as soon as possible after this public notice becomes effective as set forth under "**DATE**" in the preamble of this notice and then conducted no more often than semiannually thereafter.

e. Security Safeguards

Automated records are accessible only by password and access to the computer center is by key or picture identification. Hard copy records are maintained in Federal office buildings in lockable file cabinets and accessed only by authorized Federal employees on a need to know basis.

f. Retention and Disposition of Records

Under a written Memorandum of Understanding (MOU) agreement between the DoD and the Department of Education, it is agreed that records provided by Department of Education for the match shall be destroyed or returned to the Department of Education upon successful completion of the match and shall be used only for debt collection puroposes. DoD shall not duplicate or disseminate within or without the DoD the data provided by the Department of Education or any other source agencies. Non-hit records will not be used for any purposes. Hard copy matched records (hits) will be used by the Department of Education to conduct an individual review to determine continued benefit entitlement level and to contact the benefit recipient if necessary pursuant to the Debt Collection Act of 1982. The Department of Education will maintain a disclosure accounting, as required by 5 U.S.C. 552(c) of the Privacy Act as a result of the match.

[FR Doc. 87–20580 Filed 9–4–87; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.061F]

Invitation of Applications for New Awards; Indian Education Act of 1972, as Amended, Part B—Educational Personnel Development, Section 422 for Fiscal Year 1988

Purpose: Provides grants to (1) prepare persons to serve Indian students as educational personnel or ancillary educational personnel; (2) improve the qualifications of persons serving Indian students in these capacities; or (3) provide in-service training to persons serving Indian students in these capacities.

Deadline for Transmittal of Applications: November 16, 1987.

Applications Available: September 30, 1987.

Available Funds: The President's budget request for this program for fiscal year 1988 is $1,093,000, which would provide approximately $183,000 for new awards. The remaining funds would be used for continuation awards. The Congress has not yet passed the fiscal year 1988 appropriation for this program. The estimates below assume passage of the President's request

Estimated Range of Awards: $183,000.

Estimated Average Size of Awards: $183,000.

Estimated Number of Awards: 1.

Estimated Amounts for Stipends: For projects that involve the payment of stipends to participants, the estimated maximum stipend in fiscal year 1988 will be $600 per month for graduate students and $375 per month for undergraduate students. An estimated maximum allowance of $90 per month will be paid for each dependent.

Project Period: 12 months.

Applicable Regulations: (a) The Indian Education Program Regulations, 34 CFR Parts 250 and 256, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77 and 78.

For Applications or Information Contact: Elsie Janifer U.S. Department of Education, 400 Maryland Avenue, S.W., Room 2116, Washington, DC 20202. Telephone: (202) 732–1918.

Program Authority: 20 U.S.C. 3385a.

Dated: September 1, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87–20541 Filed 9–4–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.061F]

Invitation of Applications for New Awards; Indian Education Act of 1972, as Amended, Part B—Educational Personnel Development, Section 1005(d) for Fiscal Year 1988

Purpose: Provides grants to (1) prepare persons to serve Indian students as educational personnel or ancillary educational personnel; (2) improve the qualifications of persons serving Indian students in these capacities; or (3) provide in-service training to persons serving Indian students in these capacities.

Deadline for Transmittal of Applications: November 16, 1987.

Applications Available: September 30, 1987.

Available Funds: The President's budget request for this program for fiscal year 1988 is $1,169,000, which would provide approximately $153,000 for new awards. The remaining funds would be used for continuation awards. The Congress has not yet passed the fiscal year 1988 appropriation for this program. The estimates below assume passage of the President's request.

Estimated Range of Awards: $153,000.

Estimated Average Size of Awards: $153,000.

Estimated Number of Awards: 1.

Estimated Amounts for Stipends: For projects that involve the payment of stipends to participants, the estimated maximum stipend in fiscal year 1988 will be $600 per month for graduate students and $375 per month for undergraduate students. An estimated maximum allowance of $90 per month will be paid for each dependent.

Project Period: 12 months.

Applicable Regulations: (a) The Indian Education Program Regulations, 34 CFR Parts 250 and 256, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77 and 78.

For Applications or Information Contact: Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2166, Washington, DC 20202. Telephone: (202) 732–1918.

Program Authority: 20 U.S.C. 3385(d).

Dated: September 1, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87–20542 Filed 9–4–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Restriction of Eligibility for Cooperative Agreement Award

AGENCY: Savannah River Operations Office, U.S. Department of Energy.

ACTION: Notice of restriction of eligibility for cooperative agreement award.

SUMMARY: DOE announces that it plans to award a cooperative agreement to the South Carolina Institute of Archaeology and Anthropology, University of South Carolina in the amount of $921,000 over a 5 year period beginning October 1, 1987 in support of archaeological research, collections management, and archaeological resource management on the Savannah River Plant. Pursuant to § 600.7(b) of the Financial Assistance Rules, 10 CFR Part 600, DOE has determined that eligibility for this cooperative agreement award shall be limited to the South Carolina Institute of Archaeology and Anthropology, University of South Carolina.

Procurement Request Number: 09–87SR15199.000.

Project Scope

South Carolina Institute of Archaeology and Anthropology (SCIAA), an agency of the State of South Carolina housed at the University of South Carolina, and the Savannah River Operations Office, DOE have cooperatively worked toward the development of an archaeological management plan for the Savannah River Plant (SRP) which to date has identified and evaluated 840 archaeological sites. The current effort will include research to better understand the significant character of archaeological resources on the SRP and the development of human cultural systems in the region over the past 12,000 years; guidance and advice in the preparation and implementation of a Programmatic Memorandum of Agreement for the protection of archaeological and historical resources; and the curation and management of archaeological collections derived from the SRP research. Research results will be disseminated to the scientific and non-professional communities to enhance public knowledge. The primary goals of these efforts will be the investigation of innovative archaeological research problems and assistance to DOE in archaeological resource management.

The SCIAA has as its primary mission the identification, investigation and interpretation of prehistoric and historic archaeology within South Carolina. It has been cooperatively involved with DOE at SRP since 1973 to provide guidance and recommendations for archaeological resource management. It has assembled a group of research personnel and developed capabilities for research on the archaeology of this area that does not exist, so far as we can determine, in any other organization.

The proposed work represents the operation of the Savannah River Archaeological Research Program and a continuation of advisement and guidance to the Department of Energy on the archaeological resource management needs at SRP. The DOE is interested in the investigation of archaeological resources on the SRP and in maintaining full compliance with the archaeological resource management requirement of Federal law. Thus, the DOE has determined that this cooperative agreement award to the SCIAA, University of South Carolina on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Ronald D. Jernigan, Contracts and Services Division, U.S. Department of Energy, Savannah River Operations Office, P.O. Box, A, Aiken, SC 29802. Telephone: 803–725–2685.

Issued at Aiken, South Carolina, on: July 21, 1987.

Bruce G. Twining,

Acting Manager, Savannah River Operations Office.

[FR Doc. 87–20554 Filed 9–4–87; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Policy to Implement the Model Conservation Standards Surcharge Policy

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: The Bonneville Power Administration (Bonneville) is releasing the policy to implement the Model Conservation Standards (MCS) surcharge recommendations made by the Northwest Poser Planning Council (Council). The Council's recommendations are contained in their document title "Model Conservation Standards for New Residential and Commercial Construction," issued on January 30, 1987, and published in the **Federal Register** on March 26, 1987.

SUMMARY: In accordance with the Pacifc Northwest Power Act, the Council developed MCS and recommended to the Bonneville Administrator that a surcharge be imposed on those portions of a customer's loads within the region that are not covered by a Bonneville MCS Program or other conservation measures which achieve savings comparable to those programs. Enclosed is the Administrator's policy on implementation of the surcharge. The policy describes how the policy will be applied, how utility plans will be evaluated, the calculation and collection of a surcharge, and seven ways that a utility can avoid a surcharge. Also contained in the policy are summaries of the policy's purposes, its statutory direction, and past and present surcharge activities.

In their July 15, 1987, letter, the Council reiterated their performance standard for alternative plans to be designed to achieve all cost-effective and economically feasible measures. Their letter stresses the importance of this standard to ensure that the region meets the goal of utility programs and codes achieving at least 85 percent of the saving from new residences by the end of 1989. As a result, utilities submitting alternative plans are requested to submit as part of their initial plan, a narrative describing how they will move to full MCS construction levels on a building-by-building basis by the end of 1989.

FOR FURTHER INFORMATION CONTACT: John D. Carr, Director, Division of Planning and Evaluation, Office of Conservation, at 503–230–7500; or, Robert J. Procter, Public Utilities Specialist, at 503–230–4304. you may also contact the Public Involvement office at the above address or 503–230–3478. Oregon callers outside of Portland may use the toll-free number 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048.

SUPPLEMENTARY INFORMATION:

I. Background of Policy
A. Introduction
B. Statutory Direction
II. Past and Present Surcharge Policy Development Efforts
A. Council Activities to Date
B. Bonneville Activities to Date
C. Council's 1987 Surcharge Recommendation
III. Surcharge Policy
Section 1: Definitions
Section 2: Application of the Surcharge Policy
Section 3: Evaluation of Alternative Utility Plans
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Appendix 1: Achieving Electrical Savings by Adopting the Bonneville/Utility MCS Support Program
Appendix 2: Achieving Electrical Savings by Adopting an Alternative Utility Program
Appendix 3: Achieving Electrical Savings by Participating in the Early Adopter Program
Appendix 4: Achieving Electrical Savings by Adopting a Codified Version of the MCS
Appendix 5: Achieving Electrical Savings by Adopting Alternative or Equivalent Building Codes
Appendix 6: Achieving Electrical Savings by Adopting a Codified Version of the MCS as a Utility Service Standard
Appendix 7: Achieving Electrical Savings by Adopting an Alternative or Equivalent Utility Service Standard

I. Background of Policy

A. Introduction

The Surcharge Policy is a response to recommendations made by the Northwest Power Planning Council (Council) in its 1986 Northwest Conservation and Electric Power Plan (Plan) and its Model Conservation Standards (MCS) for New Residential and Commercial Construction (Plan Amendment). The purpose of this policy is to encourage utilities to achieve additional electrical savings through improved residential and commercial building construction which can ultimately result in regionwide adoption of the Council's MCS in codes. There are two additional policy objectives: (1) Identify what criteria will be used to evaluate a utility's proposed approach to achieving MCS level electrical savings; and (2) identify how a surcharge would be calculated and collected.

As the Council states in their Plan Amendment, "By the end of 1989, the Council expects the region to achieve residential sector savings equivalent to at least 85 percent of those that would be achieved with full implementation of the MCS." One long run goal is to achieve MCS level savings through code adoption. In order to emphasize this goal, Bonneville requests, but is not requiring, utilities to provide a narrative description of how they plan to move to full MCS construction levels on a building-by-building basis by the end of 1989.

B. Statutory Direction

Section 4(e)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (Act) provides for the development of MCS as part of the Council's Plan. These standards, as described in section 4(f)(1) of the Act, are to include standards applicable to new and existing structures and to utility and government conservation programs. Such standards should reflect geographic and climatic differences and produce all power savings that are cost effective for the region and economically feasible for consumers.

Section 4(f)(2) of the Act provides that the Council may recommend to the Bonneville Administrator the imposition of a surcharge on customers of the Administrator for those portions of their loads within the region that are within States or political subdivisions which have not, or on the Administrator's customers which have not, implemented the standards or other conservation measures that the Administrator determines achieve energy savings comparable to the standards. Finally, section 4(e)(3)(G) of the Act mandates that the Council develop a methodology for calculating the surcharge.

II. Past and Present Surcharge Policy Development Efforts

Part A of this section summarizes past MCS and surcharge actions undertaken by the Council. Part B summarizes Bonneville's past surcharge-related activities. Part C describes the Council's 1987 surcharge recommendation as contained in their Plan Amendment of January 30, 1987.

A. Council Activities to Date

On April 27, 1983, the Council adopted its first Northwest Conservation and Electric Power Plan. As required by the Act, the Council's 1983 Plan contained MCS for newly constructed residential and commercial buildings and for conversion of existing residential and commercial buildings to electric space heating and conditioning.

In the 1983 Two-Year Action Plan (Chapter 10 of the 1983 Plan), the Council identified tasks to be undertaken by Bonneville, the Council, and other regional entities. That Plan mandated that Bonneville include it its Surcharge Policy a consistent procedure for certifying compliance with MCS and a procedure for reviewing and evaluating alternative plans.

In accordance with the 1983 Plan, State governments, local governments,

or utilities were to adopt and enforce the MCS as building codes or utility service standards by January 1, 1986. Where such standards were not adopted, an alternative plan to achieve comparable savings should have been in place by January 1, 1986. Where neither action had occurred, the Council recommended that the Administrator impose a surcharge.

The Council voted on October 31, 1984, to adopt an amendment which greatly simplified the surcharge calculation. The Council recommended that a 10-percent surcharge be levied on the customer's power bill for that portion of its loads which were not complying with the standard.

On July 26, 1985, the Council proposed to enter rulemaking to amend the MCS. On December 4, 1985, the Council voted to amend that portion of the 1983 Plan dealing with the MCS. The amended MCS thermal performance levels for both new residential and commercial buildings were equivalent to the MCS set forth and amended by the Council in its 1983 Plan. The Council also recommended that Bonneville develop a surcharge policy based on MCS implementation and performance.

In the 1986 Action Plan, the Council identified specific actions that Bonneville should take towards regionwide implementation of the MCS. Bonneville was to (1) have utilities submit to Bonneville a plan declaring how they intended to comply with the MCS, (2) design a process to collect utility-specific data on the savings that would be achieved if all buildings were constructed to MCS levels, (3) continue development and implementation of a procedure to measure compliance with the MCS, (4) review alternative plans for achieving compliance with the MCS, and (5) develop a new surcharge policy.

On November 20, 1986, the Council proposed to enter further rulemaking to amend part of their 1986 Plan dealing with MCS and the surcharge. After public comment, the Plan Amendment was published on January 30, 1987. Notice of the Plan Amendment, which included the Council's 1987 MCS, was published in the **Federal Register** on March 26, 1987, (52 FR 9738, March 26, 1987).

B. Bonneville Activities to Date

Bonneville began the development of a Surcharge Policy in early 1984 through a series of informal meetings with State government, local government, utility, and Council representatives. Bonneville staff informally discussed the various issues that might surround the development of a policy to implement the Council recommendation to impose a surcharge. These informal discussions formed the basis of a **Federal Register** Notice of Intent to develop a policy to implement the Council-Recommended Conservation Surcharge. The notice (49 FR 34891, September 4, 1984) was mailed to the public on August 28, 1984.

Bonneville elected to delay publication of a proposed policy until after final Council action on amendment of the surcharge methodology. Public review and comment on the proposed policy took place between March 13, 1985, and May 17, 1985.

Bonneville suspended action on the Surcharge Policy when the Council entered rulemaking to amend the MCS in the summer of 1985. After the Council amended its MCS recommendation in December 1985, Bonneville developed a revised proposed Policy and received public comment on that proposal during July and August 1986. As part of the Administrator's decision about whether or not to finalize the revised proposed Surcharge Policy, Bonneville undertook an analysis of the cost-effectiveness and consumer economic feasibility of the MCS contained in the Council's 1986 Plan. Bonneville concluded that some of the recommended measures were not cost effective and on December 19, 1986, Bonneville's MCS findings were published.

Based in part on that analysis, the Council entered rulemaking to amend their MCS and surcharge recommendations. In turn, Bonneville suspended the development of a final Surcharge Policy. Following publication of the Council's Plan Amendment on January 30, 1987, Bonneville undertook a second revision of the proposed Surcharge Policy. Over the last several months, Bonneville has been in contact with the Council, utilities, and conservation interest groups to develop a final policy.

On May 26, 1987, Bonneville released its Proposed Surcharge Policy for public comment. The comment period closed on July 15, 1987. During the comment period, there was one public meeting, which was held on June 22, 1987. A number of changes have been made in the proposed version of this Policy, based on the public comment received. This Surcharge Policy, entitled "Model Conservation Standard Surcharge Policy," is Bonneville's response to Council recommendations to develop a surcharge policy.

C. Council's 1987 Surcharge Recommendation

The Council's Plan Amendment of January 30, 1987, made several major changes to their 1986 Plan. The most significant change in their surcharge recommendation was a move away from a performance-based surcharge, where utilities could face a surcharge if their performance was poor relative to the performance of other utilities. A summary of the Council's 1987 surcharge recommendation appear below.

1. Residential surcharge recommendation

The Council recommended that a 10 percent surcharge be imposed on utilities which do not submit, by a deadline set by Bonneville: (1) An initial plan for implementation of the Bonneville/Utility Residential MCS Program; (2) a plan for implementation of an alternative program which is approved by Bonneville as being equivalent; or (3) a declaration, approved by Bonneville, that the MCS for residential buildings will be met by building codes. This surcharge would continue in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

2. Commercial surcharge recommendation

The Council recommended that a 10 percent surcharge be imposed on utilities which do not submit, by a date set by Bonneville: (1) An initial plan for implementation of the Bonneville/Utility Commercial MCS Program; (2) a plan for implementation of an alternative program which is approved by Bonneville as equivalent, or (3) a declaration, approved by Bonneville, that the MCS for commercial buildings will be met by bulding codes at the MCS levels. The Council recommended that the surcharge continue in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

3. Conversion surcharge recommendation

The Council's MCS for residential and commercial buildings converting to electric space heating/conditioning stated that State or local governments or utilities should take actions through codes and/or alternative programs to achieve electric power savings from buildings which convert to electric space heating/conditioning. The savings should be comparable to those savings that would be achieved if each building converting to electric space heating/conditioning were upgraded to include all cost-effective electricity conservation measures. The Council highly recommended this conversion standard, but did not recommend that a surcharge be imposed for failure to adopt the standard.

4. Combined commercial/residential code

One provision of the Plan Amendment allowed for a combined residential/commercial MCS strategy by a utility. This approach allowed for less than MSC program savings to be achieved in one sector as long as the shortfall is recouped in the other sector. This alternative was to be applicable only to the submission of alternative codes or utility service standards.

5. Exemptions

The Council has determined that no exemptions are needed at this time.

6. Federal loads and generic MCS.

The Council did not make any surcharge recommendation in these areas.

III. Surcharge Policy

Section 1: Definitions

A. Administrator

Administrator of the Bonneville Power Administration or his designated representative.

B. Alternative Code

Codes implemented in the residential and commercial sectors which, in aggregate, achieve total electrical savings at least as large as would have been expected had the Council's illustrative MCS been implemented in the residential and commerical sectors. The Council's illustrative MCS are contained in the Council's Plan Amendment of January 30, 1987, as published in the **Federal Register** on March 26, 1987.

c. Alternative utility plan

Any plan which either partially or wholly relies on an approach to conservation savings discussed in Appendix 2, 4, 5, 6, or 7 of this policy.

D. Alternative utility program

For the residential sector, a utility operated MCS support program designed to achieve at least the same level of total expected electrical savings while complying with the IAQ and ventilation goals of Bonneville's Super GOOD CENTS Program. For the commercial sector, a utility MCS support program designed to promote at least the same MCS measures as contained in the Council's commercial MCS and providing comparable design assistance services as contained in the Bonneville-Utility MCS support program.

E. Customer

For purposes of this policy, a utility existing in the Pacific Northwest region which purchases firm power from Bonneville under a utility Metered or Computed Requirements Contract, or a utility which purchases firm capacity under a pre-Northwest Power Act contract, or a utility which participates in the Residential Purchase and Sales Agreement/Exchange Transmission Credit Agreement, as an active exchanger or deemer.

F. Equivalent code

In the residential sector, a code which can be expected to achieve at least the same level of total electrical savings within the jurisdiction as would have been achieved had the utility serving that jurisdiction participated in Bonneville's Super GOOD CENTS Program. For the commercial sector, the Council's MCS will be used.

G. Jurisdiction

For purposes of this policy, any unit of government including Indian Tribes, State and local governments, and municipal corporations.

H. Region

The Pacific Northwest Region, region, or regional means the area consisting of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the State of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and any contiguous areas, not in excess of seventy-five air miles from the area referred to above, which are part of the service area of a rural electric cooperative customer served by the Administrator on the effective date of the Act which has a distribution system from which it serves both within and without such region.

I. Service Area

The service area of a utility is that portion of its service territory which is both subject to the Surcharge Policy and to which the utility provides electric power service to the residential or commercial sectors.

J. Total System Load

The number of firm kilowatt hours (kWh's) sold by a customer during the last 12-month period prior to the effective date of this policy.

Section 2: Application of the Surcharge Policy

For the residential sector, by November 1, 1987, utilities are to either (a) submit a plan to implement the Super GOOD CENTS Program, or (b) submit an alternative utility program, or utility service standard for Bonneville approval, or (c) submit a plan certifying that jurisdictions within its service area will implement and enforce the MCS via participation in the Early Adopter Program or adoption of a Bonneville-approved building code. A utility's residential sector plan may contain any combination of these approaches. In developing a sector plan, those utilities who are customers of the Administrator, for purposes of this policy, should understand that the utility's entire service area must be covered by some combination of the conservation strategies described in the appendices to this policy.

A utility's residential sector plan will be evaluated on the basis of the utility's proposed efforts for the residential sector during calendar year 1988. Bonneville is also requesting that utilities indicate how their alternative plans may be modified between 1988 and 1990 to assure that residential construction is occurring at full MCS levels on a building-by-building basis, by the end of 1989.

Customers who do not implement a Bonneville-approved residential MCS plan by February 1, 1988, are subject to a surcharge, as calculated in Section 4 of this policy. Customers who have been granted a grace period, as provided for either in section 3 or the appendix relevant to the utility's conservation strategy, will not face a surcharge until the end of any such period.

For the commercial sector, by May 1, 1988, utilities must either (a) submit a plan to implement Bonneville's Commercial MCS Program, or (b) submit an alternative utility commercial program or utility service standard in the commercial sector, or (c) submit a plan certifying that jurisdictions within its service area have met the Council's commercial MCS through codes. A utility's commercial sector plan may contain any combination of these approaches. In developing a sector plan, those utilities who are customers of the Administrator, for purposes of this policy, should understand that the utility's entire service area must be covered by some combination of the conservation strategies described in the appendices to this policy.

Customers who have not implemented a Bonneville-approved commercial MCS plan by August 1, 1988 are subject to a surcharge, as calculated in Section 4 of this policy. Customers who have been granted a grace period, as provided for in either section 3 or the appendix relevant to the utility's conservation strategy, will not face a surcharge until the end of any such period.

If a utility plans on achieving MCS level electrical savings by relying on a jurisdictions' adoption of alternative codes or alternative utility service standards, then that utility must submit both its residential and commercial sector plans by November 1, 1987. Only in this case would a utility have to submit commercial sector plans by that date.

Customers of Bonneville without service areas as defined in this policy, need only submit evidence of their lack of such a service area by the November 1, 1987 and May 1, 1988 deadlines. This provision exists for those customers who have voluntarily adopted a policy to not serve the residential or commercial sectors, or who are prohibited from serving the residential or commercial sector. If the customer serves one of these two sectors, then this provision will only apply to the one sector not served. Customers who have neither submitted this information, nor a plan for achieving conservation in these sectors, will be subject to a surcharge on February 1, 1988, for the residential sector, and August 1, 1988, for the commercial sector.

Each of the appendices to this policy represents a different approach to achieve electrical savings from improved construction practices. These appendices contain more specific submission and evaluation criteria for each of the MCS plan options and are part of this policy. It is very important that customers carefully review this document including the appendices, to fully understand what actions utilities must take to achieve conservation savings in ways which also comply with this policy.

Once any plan is approved and implemented, Bonneville will assume that the utility and/or jurisdiction(s) within its service area will carry out that plan in good faith. During the period for which this policy is in effect, Bonneville reserve the right to revisit any utility's approved plan if Bonneville has reason to believe that the utility has not implemented their plan in good faith. This same provision applies to utilities who rely on jurisdictions to take actions to comply with this policy.

The next plan submission cycle is anticipated to occur in the fall of 1988. At that time, Bonneville expects that both commercial and residential plans will be submitted. Bonneville will announce the period of time which those plans will cover.

This policy is in effect from the date it is signed by the Administrator until December 31, 1988.

Section 3: Evaluation of Alternative Utility Plans

An alternative utility plan is any plan which relies wholly or in part on an approach to conservation savings presented in Appendix 2, 4, 5, 6, or 7 of this policy. These plans will be evaluated using three criteria: (1) Expected electrical savings, (2) enforcement, and (3) indoor air quality (IAQ) and ventilation. This section applies to all residential sector alternative plans and those commercial sector alternative plans relying on the adoption of commercial codes or commercial service standards.

If Bonneville concludes that the utility's proposed alternative plan cannot be accepted because of its failure to comply with any of the evaluation criteria described below, Bonneville will allow an additional grace period at least as long as Bonneville took to evaluate the utility's initial proposal. Subsequent grace period(s) may be allowed on a case-by-case basis. Only under the most extraordinary circumstances would Bonneville consider a grace period extending beyond March 31, 1988, for the February 1, 1988, implementation date, or September 30, 1988, for the August 1, 1988, implementation date.

A. Equivalent electrical savings

For the residential sector, if a utility is proposing to achieve electrical savings by implementing an alternative residential utility program, Bonneville will use the prospective total electrical savings of its Super GOOD CENTS Program to determine whether the utility's proposed approach will at least meet the appropriate residential electrical savings level for the period of time for which this policy is in force. Part of the equivalence determination procedure for an alternative residential utility program will involve a comparison between the utility's proposed marketing program and the marketing program they would have pursued had they enrolled in the Super GOOD CENTS Program for the period of time for which this policy is in force.

Utilities which rely on jurisdictional adoption of residential building codes, or which impose a residential service standard, to achieve additional energy savings in the residential sector will have to provide evidence supporting the claim that the code (or service standard) can be expected to achieve at least the same level of electrical savings within the jurisdiction (or utility, service area, depending on whether a code or service standard approach is used) as would have been achieved if the utility had participated in Bonneville's Super GOOD CENTS Program.

Utilities which rely on jurisdictional adoption of residential *and* commercial codes (or which impose residential and commercial service standards) to achieve additional savings beyond current practice, may "trade-off" savings achieved in one sector towards a deficit in the other sector. The utility would have to present evidence supporting its claim that the residential and commercial codes, in aggregate, can be expected to achieve at least the same total level of electrical savings as would have been achieved had the jurisdiction adopted the Council's full illustrative commercial and residential MCS for that climate zone. Such sectoral trade-offs are only allowed using enhanced building codes or service standards.

In addition, a utility may obtain equivalent savings by allocating savings achieved by advanced building codes in jurisdiction (or jurisdictions) within its service area throughout the service area. Such "jurisdictional trade-offs" are only allowed where the utility shows that the full Council MCS level of savings for both sectors are being attained, in aggregate, within the utility's service area.

Finally, those utilities relying on commercial code adoption by a jurisdiction within or covering their service area, or who will impose a commercial service standard, will have to provide evidence supporting their claim that the expected total electrical savings are at least equivalent to what would have been expected had the jurisdiction implemented the Council's illustrative commercial MCS. The only exception to these requirements is for utilities or jurisdictions who adopt a codified version of the Council's MCS.

Some utilities in Oregon and Washington will likely submit alternative plans which rely on an alternative utility program to achieve conservation savings and comply with this policy. These utilities will have to indicate what actions they will pursue to achieve additional savings equivalent to the savings that could have been expected to the residential sector had they implemented the Super GOOD CENTS Program for the period covered by the policy. As discussed in Appendix 2, an alternative utility program will always be compared to the effort that the utility would pursue had they enrolled in the Super GOOD CENTS Program.

Bonneville will analyze residential electrical savings from an alternative plan by assuming that, in the absence of MCS, a residence would have been built

to one of the following: (a) In Oregon, 1983 energy code; (b) in Washington, 1983 energy code; or (c) in either Idaho or Montana, HUD Minimum Property Standards.

Electrical savings in the commercial sector will be evaluated assuming: (a) 1986 code in Oregon and Washington, (b) 1983 National Energy Code in Montana, and (c) individual jurisdiction codes in Idaho.

All thermal performance evaluations will rely on good engineering practices. Bonneville will be guided by the assumptions, process, and housing prototypes contained in Bonneville's Code Equivalency Determination Procedure.

B. Enforcement

A utility will have more discretion in proposing an approach which will meet the second evaluation criterion—enforcement. Bonneville is recommending that any customer contemplating submission of an alternative utility plan refer to Bonneville's Super GOOD CENTS, Early Adopter, and Commercial MCS Program descriptions for guidance. Alternative utility plans, excluding an alternative utility commercial program, must contain a requirement for site inspection consistent with the effective date of the surcharge.

Referring to alternative utility programs, a utility will have to provide evidence adequate to assure Bonneville that the energy savings which are being claimed are attributable to the utility's program. Part of that evidence is some enforcement method to assure that the conversation savings the utility is claiming are attributable to the measures they are promoting and inspecting.

C. Indoor air quality and ventilation

For the residential sector, an alternative utility plan must contain information on how the utility and/or jurisdiction plans to achieve indoor air quality (IAQ) and ventilation rates at least comparable to those achieved in Super GOOD CENTS homes, which are designed to maintain IAQ and ventilation at 1983 levels. The approach to IAQ and ventilation in Bonneville's Super GOOD CENTS and Early Adopter Programs are aimed at maintaining IAQ and ventilation at 1983 levels. The approaches include informing the public about potential health risks from indoor pollutants, testing for selected pollutants, and mitigation measures if certain pollutants are detected to be present in unreasonable levels and/or ventilation rates are determined to be below .35 air changes per hour. For residential construction, all alternative plans will be examined to determine if the construction practices being promoted or required, when combined with comparable monitoring, information, and mitigation strategies are likely to assure that IAQ and ventilation are maintained at 1983 levels.

Section 4: Calculating a Surcharge

A. Not less than 30 days prior to a final decision on the imposition of a residential surcharge, the Administrator shall provide written notice to the customer including a determination of the amount of a customer's load not covered by a Bonneville-approved MCS residential plan. The amount of the load not covered by a Bonneville-approved MCS residential plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in the appendices to this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.

B. The level of the residential surcharge will be determined by dividing the customer's residential load not covered by a Bonneville-approved MCS residential plan by the customer's total system load, rounding the result to the nearest one-tenth of a percent. This resulting percentage is multiplied by 0.10.

C. Not less than 30 days prior to a final decision on the imposition of a commercial surcharge, the Administrator shall provide written notice to the customer including a determination of the amount of the load not covered by a Bonneville-approved MCS commercial plan. The amount of the load not covered by a Bonneville-approved MCS commercial plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in the appendices to this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.

D. The level of the commercial surcharge will be determined by dividing the customer's commercial load not covered by a Bonneville-approved MCS commercial plan by the customer's total system load, rounding the result to the nearest one-tenth of a percent. This resulting percentage is multiplied by 0.10.

E. The resulting level of the residential or commercial surcharges will be applied to all power purchases and/or exchanges made by the customer under the applicable rate schedules, using the Council's surcharge methodology, and will be applied subsequent to any other rate adjustments.

F. At no time will a customer simultaneously be assessed a surcharge for failure to comply with the requirements in the residential sector and a surcharge for failure to comply with the requirements in the commercial sector.

G. The customer and other interested parties shall be afforded an opportunity to provide comments regarding the determinations made in sections 4(A) to 4(D). Such comments may be made in writing or orally at a public meeting convened at the request of the customer for this purpose by Bonneville. This public meeting will be held between the time of the written Notice of Intent to surcharge and the final surcharge decision. Included in the Intent to Surcharge will be an initial determination of the fraction of a customer's load subject to the surcharge, based on sections 4(A) to 4(D). Following the receipt and evaluation of comments, the Administrator shall provide written notice to the customer of the final surcharge decision.

H. Beginning with the effective date of a surcharge, the Administrator shall review the findings made in sections 4(A) to 4(D) after the customer, or a jurisdiction served by the customer, has taken an action that affects those findings. Customers may request such review by providing evidence in accordance with this section that the customer or a jurisdiction served by that customer has taken actions subsequent to the effective date of the surcharge.

Section 5: Collecting a Surcharge

A. Those customers receiving a final written notice of a load subject to a surcharge shall be billed for the surcharge beginning with the first full billing period following issuance of such notice.

B. Any power purchases made on or after the effective date of the surcharge, but before receipt of final notice finding the load subject to a surcharge, may be retroactively billed to the effective date of the surcharge. Such retroactive billing shall collect the retroactive surcharge over a like number of billing periods as elapsed from the effective date of the surcharge to the receipt of final written notice of a surcharge.

C. The level of surcharge is applied to all power purchases and/or exchanges made by the customer under the applicable rate schedules and/or exchanges pursuant to the Residential Purchase and Sales Agreement/ Exchange Transmission Credit Agreement, using the Council's

surcharge methodology, and is applied subsequent to any other rate adjustments.

1. For firm requirements customers purchasing firm power under the rate schedules subject to the surcharge, the surcharge shall be applied monthly to the billing charges for all power purchased under these rate schedules during the billing period.

2. For customers participating in the residential exchange program, the surcharge shall be applied to the charges for determining the cost to the purchaser of buying firm power from Bonneville under the terms and conditions of the Residential Purchase and Sale Agreement.

3. For those firm requirements customers that both purchase power from Bonneville and participate in the Residential Purchase and Sales Agreement or Exchange Transmission Credit Agreement, the surcharge shall be applied in the following manner to avoid surcharging the same load twice:

a. All power purchases under a utility's Power sales Contract at rates subject to the surcharge shall include a charge for the surcharge equal to the application of the surcharge level to the billing charges for the billing period; and

b. The surcharge applied to the utility's totals exchange load shall be adjusted by multiplying the surcharge level by the percentage of a utility's exchange load served by a utility's own resources. The percentage of exchange load served by a utility's own resources shall be based on the difference between the utility's total retail load and firm power purchases from Bonneville divided by the total retail load and rounded to the nearest one-tenth of a percent. The adjusted surcharge level shall be applied to the charges for determining the cost to the purchaser of buying firm power from Bonneville under the terms and conditions of the Residential Purchase and Sales Agreement or in conformance with Exhibit E of the Exchange Transmission Credit Agreement.

D. If a customer participating in the Residential exchange is currently in a deemer status, the surcharge shall be accumulated in the account established for this purpose as specified in the respective agreement and shall be included in the obligation a utility must repay prior to receiving a direct payment from Bonneville. If a customer is not in a deemer status, the surcharge shall be included in the determination of the net payment made by Bonneville.

E. The collection of the surcharge shall continue until the Administrator determines that the surcharge is no longer required under the terms of this policy.

F. Surcharges collected on purchases for periods in which loads are subsequently found to be in compliance with this policy shall be credited to the customer in the first full billing period following final written notice of such finding. Surcharges on loads which are subsequently found not to have been in compliance with the terms of this policy for specified periods shall be billed to the customer in the first full billing period following final written notice of such findings.

Issued in Portland, Oregon, on August 27, 1987.

Steven G. Hickok,

Executive Assistant Administrator, Bonneville Power Administration.

Appendix 1.—Achieving Electrical Savings by Adopting the Bonneville/Utility MCS Support Program

A. Residential Sector

Bonneville customers opting for this path are assured that enrollment in and subsequent implementation of the Super GOOD CENTS Program throughout their service area will result in avoidance of a residential surcharge under the current surcharge policy. A utility which is considered a Super GOOD CENTS Program participant, but is only operating that program in a portion of its service area, will have to take actions to assure that those portions of its service territory not covered by Super GOOD CENTS are covered by some combination of the other conservation strategies presented in these appendices. Those utilities which implement the MCS measures contained in the Super GOOD CENTS Program, but do not implement the required incentives and/or implement a different advertising strategy will be treated as filing an Alternative Utility Plan. Those utilities should refer to Appendix 2 for a discussion of that option.

For utilities which on average over the last 3 years have had no more than (a) five site-built housing starts and (b) 2,000 residential accounts will be considered small utilities for purposes of this policy. These utilities will have the option of enrolling in Bonneville's Super GOOD CENTS Program for small utilities, referred to as the Small Utility Program. If a utility believes they qualify for this option, the utility is encouraged to contact the nearest Bonneville Area or District Office to obtain more information on this program option.

Those customers wishing to enroll in Super GOOD CENTS as a way of avoiding a surcharge must indicate this to the Bonneville by November 1, 1987. In addition, the utility shall have signed a Super GOOD CENTS grant agreement by February 1, 1988. Bonneville will consider Super GOOD CENTS Program implementation to have occurred when the utility is engaging in activities, particularly marketing and promotion activities, which can be considered consistent with the utility's agreement. A utility which is currently enrolled in and impementing the Super GOOD CENTS Program need only submit a letter, by November 1, 1988, indicating their continued commitment to implement Super GOOD CENTS throughout 1988.

Any customer who is either considered a Super GOOD CENTS Program participant for the purpose of this policy, or is proposing to become a program participant, shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total system load.

Bonneville will consider offering a grace period if Bonneville has not completed the customer's Super GOOD CENTS grant award by February 1, 1988. Any such grace period will be considered in the event that Bonneville has received a plan by November 1, 1987, and the approval delay is due solely to Bonneville internal delay.

B. Commercial Sector

Bonneville customers opting for this path are assured that enrollment in, and subsequent implementation of, the Bonneville Commercial MCS Program throughout the utility's service area will result in avoidance of a commercial surcharge under the current Surcharge Policy. All customers wishing to avoid a surcharge under this path must agree to comply with the IAQ and data reporting requirements and other technical specifications of that program.

Those customers wishing to avoid a surcharge under this path must agree by May 1, 1988, to enroll in the commercial program and must have enrolled in the program no later than August 1, 1988. Bonneville will consider offering a grace period if Bonneville has not completed the customer's grant award by August 1, 1988. Any such grace period will be considered in the event that Bonneville has received a plan by May 1, 1988, and the approval delay is due solely to Bonneville internal delay.

Any customer who is either considered a program participant, or is proposing to become a program participant, shall provide Bonneville with the following information: (a) Total

commercial load, (b) the portion of the customer's commercial load covered by this conservation strategy, and (c) total system load.

Appendix 2—Achieving Electrical Savings by Adopting an Alternative Utility Program

A. Residential

An Alternative Utility Residential Program is the customer's proposed approach to meeting the standards of Bonneville's Super GOOD CENTS Program. In order for Bonneville to verify that the proposed program will provide equivalent savings, the information listed below must be submitted.

1. The conservation measures that will be promoted.

2. Analysis of the thermal performance of the conservation measures using Bonneville's input assumptions and Bonneville prototypes. These results will be compared to the Super GOOD CENTS illustrative path for that climate zone, using a WATTSUN analysis.

3. The penetration levels expected for the proposed measure(s). These penetration levels should represent, subject to the qualifications below, the percent market penetration of each measure among electrically heated homes completed in that utility's service area during the period of time for which this policy is in force. Only those measures which the utility is promoting and inspecting the installation of should be included. Data indicating what penetration levels have been achieved in prior years with the proposed or a similar program will be considered when evaluating the likely success of the utility's proposed marketing plan.

4. A list of activities to be undertaken to achieve the targeted penetration, such as: promotion and sales, advertising, incentives (type and level), technical assistance, certification, and any other applicable information. In addition, customers will be required to submit quarterly reports listing the activities undertaken and resources utilized in the marketing effort.

5. A plan for how the utility will collect and provide to Bonneville by January 30 of the following year:

a. Total new homes (all fuels) constructed in the utility's service area during the past calendar year (broken out by single-family, multifamily, modular, and HUD-code homes).

b. Total new electrically heated homes constructed in the utility's service area during the past calendar year (broken out by single-family, multifamily, modular, and HUD-code homes).

c. Total new electrically heated homes constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (broken out by single-family, multifamily, modular, and HUD-code homes).

6. A list of activities to assure that 1983 levels of comparable IAQ measures and ventilation will at least be maintained.

7. The customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total system load.

The Alternative Utility Program path is not generally recommended for utilities without prior experience in operating such programs. An established track record with a well-defined package of measures will be extremely helpful, if not essential, in obtaining Bonneville approval for Alternative Utility Programs. Nonetheless, Bonneville staff will work with customers interested in pursuing this path to help explain the data submission requirements and the other complexities involved in this approach.

Because of these complexities, utilities interested in this path should submit their proposals to Bonneville at the earliest possible date, after the surcharge policy has been finalized. An approved program shall be implemented by February 1, 1988, unless a grace period, as provided for in section 3 of the policy, has been granted.

B. Commercial

An Alternative Utility Commercial Program is the customer's proposed approach to meeting the standards of the Bonneville/Utility Commercial MCS Program. A proposed alternative program will be evaluated relative to the (1) level and type of activities and services to be offered, (2) method of marketing and performing the services, (3) penetration levels expected for the proposed program activities, and (4) proposed inspection method. The types of design assistance offered in Bonneville's program will be used to evaluate the type of design assistance a utility is proposing to offer in its own commercial MCS design assistance program. The types of design assistance which Bonneville's Commercial MCS Program contains are:

—Promotion of services to commercial customers.
—Screening to determine design assistance needs;
—Depending on the size of the utility and the type of commercial construction, provision of building design handbooks, computer energy modeling, clearinghouse referral, or other building design analysis; and
—Designer recognition for specified levels of energy efficiency.

In order to perform the necessary review, Bonneville will require the following information:

1. A list of activities and services the customer plans on offering (i.e., modeling, design assistance, design handbook, information services, and training opportunities) to achieve the targeted penetration;

2. Management and oversignt consistent with Bonneville practices;

3. A proposed method to submit to Bonneville quarterly reports listing the activities undertaken and resources used in the marketing effort.

4. (a) The customer's total commercial load, (b) the portion of the customer's commercial load covered by this conservation strategy, and (c) the customer's total system load.

Finally, the utility shall collect and provide to Bonneville by January 30 of the following year:

1. Total new commercial buildings (all fuels) constructed in the utility's service area during the past calendar year.

2. Total new electrically heated commercial buildings constructed in the utility's service area during the past calendar year, broken out by Bonneville prototype.

3. Total new commercial building constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, broken out by Bonneville prototype.

For 1988, Bonneville is projecting that design assistance services will be offered to 20–30 percent of the new commercial building constructed in the service areas of utilities participating in Bonneville's Commercial MCS Program.

Those customers wishing to avoid a surcharge under this path shall submit their proposed plan by May 1, 1988, and shall have implemented the approved program no later than August 1, 1988, unless a grace period, as provided for in section 3 of the policy has been granted.

Appendix 3—Achieving Electrical Savings by Participating in the Early Adopter Program

This is a pre-approved path for avoidance of the surcharge if all the jurisdictions within the utility's service area, subject to the surcharge policy, are Early Adopter Program participants. Except for the one exception noted

below, if there are jurisdictions within a utility's service area which are not Early Adopter Program participants, then the utility will be subject to a surcharge unless those jurisdictions have implemented a Bonneville-approved building code or the utility has implemented a Bonneville-approved utility program or a Bonneville-approved service standard.

Utilities serving areas containing jurisdictions that have adopted advanced building codes may seek to allocate savings achieved by those jurisdictional codes to portions of their service areas not covered by another approved option. This will be permitted only if the utility shows that the full Council MCS level of savings for both sectors are being attained, in aggregate, within the utility's service area. In other words, the utility must achieve at least the same level of total electrical savings as would be achieved had the Council's full commercial and residential MCS been implemented throughout the utility's service areas.

The essential feature of the Early Adopter Program is the adoption by a jurisdiction of the MCS contained in the Early Adopter Program description. Additional program features include specific activities to ensure that no degradation in IAQ results, some form of enforcement method to assure MCS construction, and some data reporting requirements.

A. Residential

For customers with jurisdictions within their service area who are currently participating in the Early Adopter Program (EAP), the customer must submit a letter indicating (a) the jurisdictions who are EAP participants, (b) the award number for each jurisdiction, and (c) a copy of the ordinance adopted by each jurisdiction. In addition, customers must indicate what fraction of its residential load lies within Early Adopting jurisdictions. Remember, this information shall be submitted to Bonneville no later than November 1, 1987. Any jurisdiction considering adopting shall adopt and enforce the code by February 1, 1988, for the utility to avoid a surcharge, if the utility will not be operating an approved utility MCS program or residential service standard at that time. Bonneville will consider offering a grace period if Bonneville has not completed the Early Adopter Program grant award process by February 1, 1988. Any such grace period will be considered in the event that Bonneville has received a plan by November 1, 1988, and the approval delay is due solely to Bonneville internal delay.

The customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total system load.

Finally, the utility shall collect and provide to Bonneville by January 30 of the following year:

1. The new homes (all fuels) constructed in the utility's service area during the past calendar year (broken out by single-family, multifamily, modular, and HUD-code homes).

2. Total new electrically heated homes constructed in the utility's service area during the past calendar year (broken out by single-family, multifamily, modular, and HUD-code homes).

3. Total new electrically heated homes constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (broken out by single-family, multifamily, modular, and HUD-code homes).

Customers how are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

B. Commercial

To avoid a surcharge, customers with jurisdiction within their service area considering enrolling in this program shall notify Bonneville by May 1, 1988, of the jurisdiction's intent to enroll in the program and the jurisdiction shall have officially adopted and be able to enforce the MCS by August 1, 1988, if the utility is not operating an approved Commercial MCS Program or commercial service standard.

For customers with jurisdictions within their service area who are currently participating in the Early Adopter Program, the customer shall provide a copy of the ordinance adopted by each jurisdiction and include a copy of Bonneville's letter of approval. In addition, customers shall provide the following information:

(a) The customer's total commercial load, (b) the portion of the customer's commercial load covered by this conservation strategy, and (c) total system load.

Finally, the utility shall collect and provide to Bonneville by January 30 of the following year:

1. Total new commercial buildings (all fuels) constructed in the utility's service area during the past calendar year.

2. Total new electrically heated commercial buildings constructed in the utility's service area during the past calendar year.

3. Total new commercial buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, broken out by Bonneville prototype.

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

Those customers wishing to avoid a surcharge under this path shall agree by May 1, 1988, to enroll in the commercial program and shall have enrolled in the program no later than August 1, 1988. Bonneville will consider offering a grace period if Bonneville has not completed its Early Adopter Program grant award process by August 1, 1988. Any such grace period will be considered in the event that Bonneville has received a plan by May 1, 1988, and the approval delay is due solely to Bonneville internal delay.

Early Adopter application materials can be obtained by contacting your nearest Bonneville Area or District Office.

Appendix 4—Achieving Electrical Savings by Adopting a Codified Version of the MCS

A. Residential

Several codified versions of the MCX contained in the Early Adopter Program have been developed. These are pre-approved codified versions of the Council's illustrative MCS paths. The options discussed in this appendix pertain to jurisdictions considering adopting, or who have adopted, a codified version of the MCS, but are not participating in Bonneville's Early Adopter Program.

Under this alternative, the customer must submit the codified version of the MCS which any jurisdiction in its service area is proposing for adoption or which has been adopted. The enforcement methods should be specified. In addition, the customer must indicate what steps the jurisdiction will take to maintain IAQ and ventilation at 1983 levels. Finally, the customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total system load.

By November 1, 1987, the customer shall submit the above information to Bonneville. The statute or ordinance shall have been adopted and enforced by February 1, 1988, unless a grace

period, as provided for in section 3 of the policy, has been granted.

In order to comply with the Council MCS reporting requirements as specified in their Plan Amendment, the utility shall collect and provide to Bonneville by January 30 of the following year:

1. Total new homes (all fuels) constructed in the utility's service area during the past calendar year (broken out by single-family, multifamily, modular, and HUD-code homes).

2. Total new electrically heated homes constructed in the utility's service area during the past calendar year (brokenout by single-family, multifamily, modular, and HUD-code homes).

3. Total new electrically heated buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (broken out by single-family, multifamily, modular, and HUD-code homes).

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

B. Commercial Under this alternative, the customer must submit the codified version of the MCS which a jurisdiction in its service area is proposing for adoption or which has been adopted. The enforcement methods should be specified. In addition, the customer must indicate what steps the jurisdiction will take to address IAQ and ventilation requirements of Bonneville's Early Adopter Program. Finally, the customer shall provide the following information: (a) The customer's total commercial load (b) the portion of the customer's commercial load covered by this conservation strategy, and (c) total system load.

By May 1, 1988, the customer is to submit the above information to Bonneville. The statute or ordinance must be operative no later than August 1, 1988, unless a grace period, as provided for in Section 3 of the policy, has been granted.

Finally, the utility shall collect and provide to Bonneville by January 30 of the following year:

1. Total new commercial buildings (all fuels) constructed in the utility's service area during the past calendar year.

2. Total new electrically heated commercial buildings constructed in the utility's service area during the past calendar year.

3. Total new commercial buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, broken out by Bonnevile prototype.

Appendix 5—Achieving Electrical Savings by Adopting Alternative or Equivalent Building Codes

An alternative code is designed to achieve total electrical savings which, when both sector's savings are combined, are at least as large as the electrical savings expected had the Council's residential and commercial MCS been implemented. A jurisdiction proposing to adopt an alternative code, in which one sector's total electrical savings is expected to exceed the target electrical savings level for that sector, can use those excess electrical savings to offset electrical savings below the target in the other sector. The alternative code path may be pursued by a jurisdiction only when the sum of each sector's savings at least equals the aggregate electrical savings target, which itself is based on the sum of the level of savings for the two sectors calculated using the Council's MCS. Section 3 of this policy discusses how the utility should approach the electrical savings equivalency analysis.

As compared to alternative codes, equivalent codes examine each sector individually. They differ from the pre-approved codified versions mentioned earlier, but provide equivalent savings. An equivalent code must achieve at least the same level of total savings, in each sector separately, as would have been achieved by implementing Bonneville's Super GOOD CENTS Program in the residential sector, and the Council's commercial MCS.

A customer must submit a copy of the alternative or equivalent code which a jurisdiction has proposed. In addition, the customer must indicate how the jurisdiction plans on maintaining IAQ and ventilation at 1983 levels. Finally, the customer shall provide Bonneville with the following information: (a) Total residential load, (b) total commercial load, (c) the portion of the customer's residential load covered by this conservation strategy, (d) the portion of the customer's commercial load covered by this conservation strategy, and (e) total system load. Bonneville staff will attempt to assist customers and jurisdictions wishing to formulate improved building codes.

If an alternative code path is pursued, customers are encouraged to submit their alternative codes at the earliest possible date, but no later than November 1, 1987. Both codes would have to be implemeted and enforced by February 1, 1988, unless a grace period, as provided for in section 3 of the policy, has been granted.

If an equivalent code path is pursued, the customer must submit its residential plan by November 1, 1987, and its commercial plan by May 1, 1988. Then the residential code must be implemented and enforced by February 1, 1988, and the commercial code must be implemented and enforced by August 1, 1988, unless grace periods, as provided for in section 3 of the policy, have been granted.

Finally, the utility shall collect and provide to Bonneville, by January 30 of the following year:

A. Total new homes and commercial buildings (all fuels) constructed in the utility's service area during the past calendar year (for residential, broken out by single-family, multifamily, modular, HUD-code homes).

B. Total new electrically heated homes and commercial buildings constructed in the utility's service area during the past calendar year (for residential, broken out by single-family, multifamily, modular, and HUD-code homes).

C. Total new electrically heated homes and commercial buildings, constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (for residential, broken out by single-family, multifamily, modular, and HUD-code homes; for commercial, broken out by Bonneville prototype by square footage).

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

For a more complete discussion of the data required to evaluate an alternative or equivalent code, refer to the latest version of Bonneville's MCS Code Equivalency Determination Procedures. A copy of these procedures can be obtained by contacting your nearest Bonneville Area or District Office.

Appendix 6—Achieving Electrical Savings by Adopting a Codified Version of the MCS as a Utility Service Standard [1]

A. Residential

This path essentially involves adoption of a legally enforceable

[1] Many customers have questioned whether they have legal authority, under State laws, to impose such a service requirement. Bonneville has examined this question under the State laws of Oregon, Washington, Idaho, and Montana and have reached the tentative conclusion that no clear legal impediments exist in these States to conservation-oriented utility service requirements. While Bonneville does not offer legal advice to customers, particularly on questions of State law, Bonneville legal staff are available to discuss these preliminary conclusions with customers and their legal counsel.

Continued

electric utility hook-up standard for new electrically heated residential buildings. The customer would simply decline to serve new electrically heated buildings not built to the standard's specifications. A grace period would be allowed for buildings considered by Bonneville to be "under construction" at the time the standard was adopted. The adoption of a utility service standard may qualify the utility for participation in Bonneville's Early Adopter Program.

Customers wishing to avoid a surcharge with this approach shall submit a residential plan by November 1, 1987, and the residential service standard shall be adopted and enforced by February 1, 1988, unless a grace period, as provided for in Section 3 of the policy, has been granted. A plan must contain: (1) A copy of the standard to be imposed, (2) how the customer plans on monitoring compliance with the standard, and (3) what IAQ measures and activities will be pursued to assure that 1983 levels of IAQ and ventilation are at least maintained. Finally, the customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total system load.

No surcharge will be imposed on any customer relying on such a service requirement which is subsequently in joined or invalidated by court action. In such an event, the customer will be given a reasonable period of time to choose and implement another option.

Finally, the customer shall submit to Bonneville by January 30 of the following year:

1. Total new homes (all fuels) constructed in the utility's service area during the past calendar year (broken out by single-family, multifamily, modular, and HUD-code homes).

2. Total new electrically heated homes constructed in the utility's service area during the past calendar year (broken out by single-family, multifamily, modular, and HUD-code homes).

3. Total new electrically heated homes constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (broken out by single-family, multifamily, modular, and HUD-code homes).

B. Commercial

This path essentially involves adoption of a legally enforceable electric utility hook-up standard for new electrically heated commercial buildings at least equal to the Council's commercial MCS. The customer would simply decline to serve new electrically heated buildings not built to the standard's specifications. A grace period would be allowed for buildings considered by Bonneville to be "under construction" at the time the standard was adopted.

Customers wishing to avoid a surcharge with this approach shall submit a Commercial plan by May 1, 1988, and the commercial service standard shall be adopted and enforced by August 1, 1988, unless a grace period, as provided for in section 3 of the policy, has been granted. A plan must contain: (1) A copy of the standard to be imposed, and (2) indicate how the customer plans on monitoring compliance with the standard. Finally, the customer shall provide the following information: (a) The customer's total commercial load, (b) the portion of the customer's commercial load covered by this conservation strategy, and (c) total system load.

No surcharge will be imposed on any customer relying on such a service requirement which is subsequently in joined or invalidated by court action. In such an event, the customer will be given a reasonable period of time to choose and implement another option.

Finally, the customer shall submit to Bonneville by January 30 of the following year:

1. Total new commercial buildings (all fuels) constructed in the utility's service area during the past calendar year;

2. Total new electrically heated commercial buildings constructed in the utility's service area during the past calendar year (broken out by Bonneville prototype).

3. Total new electrically heated commercial buildings, constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (broken out by Bonneville prototype).

Appendix 7—Achieving Electrical Savings by Adopting an Alternative or Equivalent Utility Service Standard

This path is actually two alternative paths. If an equivalent utility service standard approach is pursued, a customer may choose to adopt a utility service standard which is not one of the codified versions, but which is expected to achieve at least the same level of total electrical savings in each sector separately as would have been achieved by adopting Bonneville's Super GOOD CENTS Program in the residential sector, and the Council's MCS for the commercial sector. Alternatively, the customer may choose to adopt utility service standards for the residential and commercial sectors which, when taken together, achieves at least the same level of total electrical savings as would have been achieved had the customer adopted the Council's commercial and residential MCS. This latter option is referred to as an alternative utility service standard.

If an alternative utility service standard approach is pursued, a customer shall submit to Bonneville (1) a copy of the proposed service standard(s), (2) a description of the enforcement method(s), (3) a description of the methods used to at least maintain IAQ and ventilation at 1983 levels, and (4) copy of the analysis used to verify that the proposed service standard(s) will achieve the required total electrical savings. The customer shall also provide Bonneville with the following information: (a) Total residential load, (b) total commercial load, (c) the portion of the customer's residential load covered by this conservation strategy, (d) the portion of the customer's commercial load covered by this conservation strategy, and (e) total system load. Bonneville staff will attempt to assist customers and jurisdictions wishing to formulate improved building codes. This material shall be submitted by November 1, 1987, and both service standards shall be adopted and enforced by February 1, 1988.

If an equivalent service standard approach is pursued, the above information shall be submitted by November 1, 1987, for the residential sector, and by May 1, 1988, for the commercial sector. The Residential sector service standard shall be adopted and enforced by February 1, 1988, and the commercial service standard shall be adopted and enforced by August 1, 1988, unless a grace period, as provided for in Section 3 of the policy, has been granted.

Finally, the customer shall submit to Bonneville by January 30 of the following year:

A. Total new homes and commercial buildings (all fuels) constructed in the utility's service area during the past calendar year (for residential, broken out the single-family, multifamily, modular, and HUD-code homes).

B. Total new electrically heated homes and commercial buildings constructed in the utility's service area during the past calendar year (for residential, broken out by single-family, multifamily, modular, and HUD-code homes).

C. Total new electrically heated homes and commercial buildings,

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Any utility considering such a path should obtain independent legal advice on this question.

BEST COPY AVAILABLE

constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (for residential, broken out by single-family, multifamily, modular, and HUD-code homes; for commercial, broken out by Bonneville prototype.

For a detailed decription of the data required to evaluate an alternative or equivalent code, and the evaluation criteria, the customer and/or jurisdiction is advised to consult the latest version of Bonneville's MCS Code Equivalency Determination Procedures. A copy of these procedures can be obtained by contacting your local Bonneville Area or District Office.

[FR Doc. 87-20450 Filed 9-4-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP87-98-000]

Proposed Changes in FERC Gas Tariff; Canyon Creek Compression Co.

September 2, 1987.

Take notice that on August 31, 1987, Canyon Creek Compression Company (Canyon) tendered for filing Fifth Revised Sheet No. 4 and Original Sheet Nos. 130 and 131 to be a part of its FERC Gas Tariff, Original Volume No. 1.

Canyon states that the above-mentioned tariff sheets were submitted in compliance with Commission Order No. 472, issued May 29, 1987. The proposed tariff provides a mechanism for Canyon to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations.

A copy of this filing was mailed to Canyon's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before September 9, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20560 Filed 9-4-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-100-000]

Tariff Filing; Mountain Fuel Resources, Inc.

September 2, 1987.

Take notice that on August 31, 1987, Mountain Fuel Resources, Inc. (MFR), pursuant to 18 CFR 154.38(d)(6) and Part 382 of the Commission's regulations, tendered for filing and acceptance revised tariff sheets to its FERC Gas Tariff as follows:

First Revised Volume No. 1

Second Revised Sheet No. 1
Ninth Revised Sheet No. 12
Original Sheet No. 70-A

Original Volume No. 1-A

Second Revised Sheet No. 5
First Revised Sheet Nos. 20, 43, 67, 79, and 111
Second Revised Sheet Nos. 117 and 132

Original Volume No. 3

Fifth Revised Sheet No. 8

MFR states that the purpose of this filing is to add language to its FERC Gas Tariff to provide for an Annual Charge Adjustment (ACA) clause, and to implement the annual charge unit rate of $0.00196/Dth in each of its rate schedules applicable to sales and transportation. MFR requests an effective date of October 1, 1987, for all tendered tariff sheets.

Copies of the filing were served upon MFR's jurisdictional customers and the Public Service Commissions of Utah and Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 9, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20561 Filed 9-4-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-99-000]

Change in Rates and Tariff Revisions; Northern Natural Gas Co., Division of Enron Corp.

September 2, 1987.

Take notice that on August 31, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing with the Commission to be effective October 1, 1987 the following tariff sheets to be included in Northern's FERC Gas Tariff:

Third Revised Volume No. 1

Forty-Seventh Revised Sheet No. 4b
Fifteenth Revised Sheet No. 4b.1
Second Revised Sheet No. 4g
Third Revised Sheet No. 4g.1
Second Revised Sheet No. 4g.2
First Revised Sheet No. 52c.5
First Revised Sheet No. 52f.6
Fourth Revised Sheet No. 72

Original Volume No. 2

Fifty-Fourth Revised Sheet No. 1c
Second Revised Sheet No. 1k

Northern states that the purpose of the revised tariff sheets is to adjust its jurisdictional natural gas sales and transportation rates to reflect the annual charge adjustment (ACA) unit charge, as authorized by the Commission for the fiscal year beginning October 1, 1987. An ACA unit charge of $.0021 per Mcf will be added to each of Northern's rate schedules applicable to sales or transportation deliveries.

Copies of the filing were served on all of Northern's jurisdictional customers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 9, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20562 Filed 9-4-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-89-000]

Tariff Changes, Northwest Alaskan Pipeline Co.

September 1, 1987.

Take notice that on August 21, 1987, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), tendered for filing in Docket No. RP87-89-000 the following tariff sheets to its FERC Gas Tariff Original Volume No. 2:

Second Revised Sheet No. 400
Second Revised Sheet No. 401
First Revised Sheet No. 411E
Second Revised Sheet No. 418
Third Revised Sheet No. 450
First Revised Sheet No. 467F
Second Revised Sheet No. 477A

Northwest Alaskan states that it is submitting these sheets to reflect a change in a pricing provision for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan-Alberta) and sold to Pacific Interstate Transmission Company ("PIT") under Rate Schedule X-4. Northwest Alaskan states that this change pertains to the pricing provision which specifies the procedure for determining the commodity charge for gas purchased on any day in excess of 100% of the annual average daily quantity by PIT from Northwest Alaskan. Without the change, the pricing provision would terminate October 31, 1987. Northwest Alaskan indicates that as a result of the change, the pricing provision will remain in effect unless changed at some future date.

Northwest Alaskan states that it is submitting the above tariff sheets pursuant to the provision of the amended purchase agreement dated August 1, 1987, between Northwest Alaskan and PIT. Northwest Alaskan requests that the above sheets become effective October 1, 1987. It states that a copy of this filing is being served on PIT.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 8, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20563 Filed 9-4-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP87-75-000]

Petition to Reopen and Vacate Well Category Determination; Transcontinental Gas Pipe Line Corp. v. Huffco Petroleum Corp. and Jerry Chambers Exploration Co.

September 1, 1987.

Take notice that on August 19, 1987, Transcontinental Gas Pipe Line Corporation (Transco) filed with the Commission pursuant to section 503(d) of the Natural Gas Policy Act of 1978 (NGPA) and § 275.205 of the Commission regulations a petition to reopen and vacate a final section 102(d) well category determination granted to Huffco Petroleum and Jerry Chambers Exploration Company (collectively referred to as Huffco) for Well No. A-9D (API #42-708-400460103) OCS-1831, located in High Island 206, Offshore Texas.

Transco requests the Commission to (1) reopen and vacate the determination made by the jurisdictional agency, the Minerals Management Service of the Department of the Interior (MMS), that the well qualifies under section 102 because the determination was made on the basis of incorrect information; (2) determine that the well should have been classified under NGPA section 104; and (3) order Huffco to refund to Transco, with interest, amounts by which Transco's payments to Huffco have exceeded the maximum lawful price for section 104 natural gas.

Transco maintains that the A-9D well is not entitled to a section 102(d) determination because it was completed in a reservoir (the K-7 sands) which was discovered before July 27, 1976. Transco alleges that Huffco's well determination application misstated production capability evidence for the K-7 sands and omitted well log data from a Texaco, Inc. well that would have demonstrated Huffco's well did not qualify under section 102(d). Transco states that as a result of Huffco's allegedly erroneous section 102(d) determination, it has paid Huffco an estimated $2,047,901.42 (excluding interest) in excess of the maximum lawful price Huffco would have received under a section 104 determination.

Any person desiring to be heard or to make any protest concerning Transco's petition should file a protest or petition to intervene in accordance with the requirements of Rules 211 or 214 of the commission's rules of practice and procedure (18 CFR 385.211 or 385.214). All such filings should be made not later than 30 days following publication of this notice in the **Federal Register** and should be addressed to Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Protests will be considered by the Commission in determining the action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with Rule 214.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20558 Filed 9-4-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-92-000]

Annual Charge Adjustment Filing; Williston Basin Interstate Pipeline Co.

September 1, 1987.

Williston Basin Interstate Pipeline Company (Williston Basin), on August 26, 1987, submitted for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

First Revised Sheet No. 2
Fourth Revised Sheet No. 10
First Revised Sheet No. 27
First Revised Sheet No. 36
First Revised Sheet No. 46
First Revised Sheet No. 115
Original Sheet No. 115A

Original Volume No. 1-A

First Revised Sheet No. 2

Original Volume No. 2

First Revised Sheet No. 1A
Seventh Revised Sheet No. 10
Eighth Revised Volume No. 11
First Revised Sheet No. 11B

The proposed effective date of the tariff sheet is October 1, 1987.

Williston Basin states that the filing institutes a Federal Energy Regulatory Commission Annual Charge Adjustment Provision (ACA) in its tariffs pursuant to § 154.38(d)(6)(i) of the Commission's Regulations. The filing incorporates an ACA surcharge of 0.210 cents per Mcf (0.201 cents per dkt on the Williston Basin system), as authorized by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 8, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-20564 Filed 9-4-87; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of July 31 Through August 7, 1987

During the Week of July 31 through August 7, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

August 31, 1987.

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 31 through August 7, 1987]

Date	Name and location of applicant	Case No	Type of submission
Mar 9, 1987	Highway Oil Co., Inc., Washington, DC	KRR-0031	Request for Modification/Rescission. *If granted:* The November 3, 1986 Decision & Order (Case No. KRZ-0035) issued to Highway Oil Company, Inc. would be modified regarding the supplemental information filed by Highway Oil Company into the record of the underlying enforcement proceeding (Case No. HRO-0123).
Mar 9, 1987	Highway Oil Co., Inc., Washington, DC	KRZ-0065	Interlocutory. *If granted:* The Proposed Remedial Order issued to Highway Oil Company (Case No. HRO-0123) would be dismissed.
Mar 16, 1987	Economic Regulatory Administration, Washington, DC	KRZ-0064	Interlocutory. *If granted:* The Office of Hearings and Appeals would accept recalculations of the amount of alleged overcharges in the enforcement proceeding with Highway Oil Co., Inc. (Case No. HRO-0123).
July 31, 1987	Charles Goss, Washington, DC	KRD-0026 & KRH-0026	Motion for Discovery & Request for Evidentiary Hearing. *If granted:* Discovery would be granted and an evidentiary hearing would be convened in connection with the statement of objections submitted by Charles Goss in response to the Proposed Remedial Order (Case No. HRO-0268).
July 31, 1987	Cities Service Oil & Gas Corp., Washington, DC	KRR-0030	Request for Modification/Rescission. *If granted:* The July 24, 1987 Decision and Order (Case No. KRD-0025) issued to Cities Service Oil & Gas Corporation would be modified regarding Cities motion for discovery.
Aug 3, 1987	Amoco II/Colorado, Denver, CO	RM251-74	Request for Modification/Rescission in the Amoco II Second Stage Refund Proceeding. *If granted:* The January 7, 1987 Decision and Order (Case No RQ251-11336) issued to Colorado would be modified regarding the state's application for refund submitted in the Amoco II second stage refund proceeding.
Aug 3, 1987	Amoco, Belridge & Palo Pinto/Tennessee, Nashville, TN	RM21-75, RM8-76, RM5-77	Request for Modification/Rescission in the Amoco, Belridge & Palo Pinto Second Stage Refund Proceeding. *If granted:* The December 17, 1984 Decision and Order (RQ21-131; RQ8-130 RQ5-141) would be modified regarding the state's application for refund submitted in the Amoco, Belridge & Palo Pinto second stage refund proceeding.
Aug 3, 1987	Environmental Policy Institute, Washington, DC	KFA-0112	Appeal of an Information Request Denial. *If granted:* The July 2, 1987 Freedom of Information Request Denial issued by the Nevada Operations Office would be rescinded, and Environmental Policy Institute would receive access to information relating to a document entitled Assessment of the Habitability of Rongelap Atoll.
Aug 3, 1987	Le Paul Oil Co., Inc., Troy, OH	KEE-0147	Exception to the Reporting Requirements. *If granted:* Le Paul Oil Co., Inc. would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Aug 4, 1987	Baker R. Littlefield & Robert L. McAdams, Lafayette, LA	KRD-0027 & KRH-0027	Motion for Discovery & Request for Evidentiary Hearing. *If granted:* Discovery would be granted and an evidentiary hearing would be convened in connection with the statement of objections submitted by Baker R. Littlefield & Robert L. McAdams in response to the Proposed Remedial Order (Case No. HRO-0268).
Aug 4, 1987	Washington State Energy Office, Olympia, WA	KEG-0016	Petition for Special Redress. *If granted:* The Office of Hearings and Appeals would review the proposed expenditures for Stripper-Well funds which were disapproved by the Assistant Secretary for conversation and Renewable Energy.
Aug 6, 1987	Tri-City Herald, Tri-Cities, WA	KFA-0113	Appeal of an Information Request Denial. *If granted:* The July 24, 1987 Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded, and Tri-City Herald would receive access to a proposal by the Westinghouse Electric Company to operate facilities at the Hanford Nuclear Plant.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/ name of refund applicant	Case No.
8/3/87	Amoco II/Georgia	RQ251-389
8/4/87	Coline/Georgia	RQ2-390

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/ name of refund applicant	Case No.
7/31/87-8/7/87	Crude Oil Applications Received.	RF272-3202-RF272-3554
8/4/87	Gibbs Gas Service, Inc	RF277-80

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/ name of refund applicant	Case No.
8/4/87	Robert H. Jackson	RF277-81
8/4/87	Flame-Rite Gas, Inc	RF277-82
8/4/87	Sears Roebuck and Company	RF295-6

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/ name of refund applicant	Case No.
8/4/87	Lodi Getty Station, Inc	RF265-2501
8/4/87	Reese, Inc	RF265-2502
8/4/87	Sparks Skelgas, Inc	RF275-2503
8/4/87	Kumm Gas Company, Inc	RF265-2504
8/4/87	Blass LP Gas, Inc	RF265-2505
8/4/87	Elwood Skelgas	RF265-2506
8/4/87	Modern Gas Company, Inc	RF265-2507
8/4/87	Modern Gas Company, Inc	RF208-20
8/4/87	Bobbett Gas Service, Inc	RF208-21
8/4/87	International Drilling Energy	RF208-22
7/24/87	General Motors Corp	RF277-79
8/3/87	Imperial Refineries Corp	RF295-5
7/28/87	Henry Oil Co	RF265-2495
7/28/87	Drake's Supply Co	RF265-2496
8/3/87	Tharp Skelgas	RF265-2497
8/3/87	Butler's L.P. & Fertilizer	RF265-2498
8/3/87	Diehl's Propane Service	RF265-2499
8/3/87	Grace's Skelgas & Appliancer	RF265-2500
8/7/87	Chapman Gases & Welding Surp.	RF277-83
8/7/87	Westlie Motor Co	RF265-2510
8/6/87	Hill Top Skelly	RF265-2511
8/6/87	Emil Wagner	RF265-2512
8/6/87	Pope's L.P. Gas Service Inc	RF265-2513
9/28/86	B.F. Mulderry, Inc.	RF225-10878
3/11/86	Ashby Oil Co	RF225-10879
7/2/86	Miller Oil Co	RF225-10880
7/21/86	Cahail Inc	RF225-10881
7/21/86	Home Oil Co	RF225-10882
7/21/86	Ketelsen Oil Co	RF225-10883
2/17/87	John B. Hartenstine, Jr., Inc	RF225-10884
8/1/86	Independent Oil Co	RF225-10885
8/1/86	Independent Oil Co	RF225-10886
8/6/87	Andrew J. Grenier	RF262-4
11/6/87	The Little Store	RF225-10877
8/6/87	R & J Getty, Inc	RF265-2508
8/5/87	Five Points Getty	RF265-2509
7/23/87	Pioneer Skelgas Co	RF265-2515
7/23/87	Shaw's Skelgas, Inc	RF265-2514

[FR Doc. 87-20509 Filed 9-4-87; 8:45 am]
BILLING CODE 6450-01

Issuance of Decisions and Orders During the Week of June 29 Through July 3, 1987

During the week of June 29 through July 3, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Alan Penan, 6/30/87; KFA-0099

Alan Penan filed an Appeal from a denial by the Director, Dallas Field Operations Office, Economic Regulatory Administration of a Request for Information which he had submitted under the Freedom of Information Act. The Request was denied because a search produced no documents responsive to the request. In his Appeal Penan supplied additional information that enabled the requested documents to be located and subsequently released. The Appeal was therefore dismissed.

Terra Technology Corp., 7/1/87; KFA-0098

The Terra Technology Corporation filed an Appeal from a partial denial by the Nevada Operations Office of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the requested document was never created, and that there was no obligation under the Act to create new documents. The DOE further found that the release to Terra of another document that might be responsive to the firm's request was appropriate.

Remedial Order

National Hydrocarbons Group, Inc. et al., 6/30/87; HRO-0164

The Department of Energy issued a Decision and Order denying the Statements of Objections to a Proposed Remedial Order issued to National Hydrocarbons Group, Inc., National Hydrocarbons Resources Inc., and its corporate officers Donald P. Lemone, Gregory P. Dillion and Warren E. Settegast. In the PRO, the Economic Regulatory Administration alleged that Respondents engaged in 141 crude oil "layering" transactions in violation of 10 CFR 212.186. While upholding the procedural and substantive validity of the layering regulation, the DOE deleted sixteen transactions at ERA's request, and four additional transactions involving sales to a refiner. The DOE rejected Respondents' claims that traditional and historical services were performed in the remaining 121 transactions. The DOE specifically determined that a per barrel charge of one-quarter of one cent paid by the PRO recipients to pipeline companies for tracking title through in-line transfers did not facilitate the movement of crude oil, and thus was not a traditional and historical service. Finally, the DOE found Lemoine, Dillion and Settegast personally liable for the layered overcharges, because they conducted, directed and controlled the business and benefitted financially from the layered transactions. Accordingly, the DOE found Respondents jointly and severally liable and ordered them to remit $6,803,699 plus interest to the DOE as restitution for overcharges.

Requests for Exception

Keneco, 7/2/87; KEE-0091

Keneco filed an Application for Exception from the requirement to submit Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." The DOE found that the firm failed to demonstrate that it was affected in a particularly adverse manner by the filing requirement. The DOE also found that the national interest in the energy data supplied by Keneco outweighed the firm's reporting burden. Accordingly, the Application for Exception was denied.

Rob-Lu Oil., Inc., 6/30/87; KEE-0109

Rob-Lu Oil Co., Inc. filed an Application for Exception seeking relief from the requirement to file Form EIA-821 "Annual Fuel Oil and Kerosene Sales Report." In considering the request, the DOE found that Rob-Lu had not demonstrated that it was inordinately burdened by the requirement, or that any burden on it outweighed the national interest in obtaining the energy data contained in the Form. Accordingly, the exception request was denied.

Refund Applications

Beacon Oil Co./Purmax Oil Co., Inc., Robert N. Rudolph Co., 7/2/87; RF238-49, RF238-80

The DOE issued a Decision and Order concerning two Applications for Refund filed by resellers of Beacon Oil Company petroleum products. Since both of the applicants were resellers that claimed refunds of $5,000 or less, they were presumed to have been injured by Beacon's alleged overcharges. After examining the applications and supporting documentation submitted by the claimants, the DOE concluded that they should receive refunds totaling $19,331, representing $9,952 in principal and $9,379 in accrued interest.

Dunlap Towing Co., 6/29/87; RF271-224

The DOE issued a Decision and Order concerning an Application for Refund from the Rail and Water Transporters Escrow that was received after the December 8, 1986 deadline established for the filing of such claims. The DOE found that the applicant, Dunlap Towing Company, had mailed its application on the deadline date and had therefore made a good faith effort to comply with that deadline. Dunlap Towing Company estimated that it had purchased 4,125,751 gallons of diesel fuel for use in its tug boats between August 19, 1973 and January 27, 1981. The DOE found Dunlap's method of estimation to be reasonable, and therefore approved a refund for the firm based on the entire gallonage claimed. The DOE stated that because the size of a Rail and Water Transporter applicant's refund will depend upon the total amount of gallons ultimately approved, the actual amount of Dunlap's refund will be determined at a later date.

Jamaica Buses, Inc., Green Bus Lines, Inc., Varsity Transit, Inc., Command Bus Co, Inc., 7/1/87; RF270-1191 RF270-1192, FR270-1193, FR270-1204

The Department of Energy issued a Decision approving applications submitted by four bus companies for refunds from the Surface Transporter Escrow, established as a result of the Stripper Well Agreement. Each appicant applied for a refund based on its purchases of motor gasoline and diesel fuel between August 19, 1973 and January 27, 1981. Each applicant demonstrated that it was a Surface Transporter and purchased a certain volume above the 250,000 gallon minimum established in the *Order Establishing Surface Transporter Escrow and Prescribing Provision for Administration of the Fund*, ¶ 16. Accordingly, all four applications were approved, and the respective volumes will be used to calculate each applicant's final refund. The DOE stated that because the size of a Surface Transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amount of the applicant's refund will be determined at a later date. The total number of gallons approved in this Decision is 43,764,163.

Marathon Petroleum Co./Auburn Dairy, Inc., Butler & Butler Construction, Inc., Chrysler Motors, 7/1/87; RF250-1833, RF250-1836, RF250-2288

The DOE issued a Decision and Order concerning three Applications for Refund filed by end-users of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Auburn Dairy, Inc. and Butler & Butler Construction, Inc. were indirect purchasers who had purchased Marathon products from a firm which has received a Marathon refund under the 35% presumption of injury formula. However, since both applicants were qualified indirect purchasers submitting small claims, the DOE presumed that they were injured by the full volumetric amount. As an end-user of residual fuel oil, Chrysler was also presumed injured in the full volumetric amount. The sum of the refunds approved in this Decision is $283, representing $257 in principal and $26 in interest.

Midwest Transportation Inc., et al., 8/30/87; RF270–403 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow account established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. The DOE approved the purchase volumes of refined petroleum products claimed by 10 private bus companies and will use those volumes as the bases for the refunds that will ultimately be issued to the 10 firms. The total number of gallons approved for refunds was 23,255,099. The Decision states that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the 10 firms' refunds will be determined at a later date.

Ole Man River Towing, Inc. et al., 6/30/87; RF271–89 et al.

The Department of Energy issued a Decision and Order approving applications submitted by six water transporters for refunds from the Rail and Water Transporters Escrow established as a result of the Stripper Well Settlement Agreement. Each of the six companies calculated its gallonage claims from purchase records. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Rail and Water Claims. The total number of gallons approved for refund in the Decision was 33,246,650.

The Arrow Carrier Co. et al., 8/29/87; RF270–397 et al.

The Arrow Carrier Company and 20 other for-hire and private motor carriers filed Applications seeking refunds from the Surface Transporters Escrow established pursuant to the Settlement Agreement in*In Re: The Department of Energy Stripper Well Exemption Litigation,* , M.D.L. 378. The DOE examined each claim, ascertained that each of the applicants is an eligible surface transporter, and that its claim did not exceed the gallons of petroleum products that the applicant consumed in vehicle operations. The total volume approved in this Decision and Order is 76,763,753 gallons. Because the size of a surface transporter applicant's refund will depend upon the total number of all surface transporter gallons that are eventually approved, the actual amount of the refunds of these 21 firms will be calculated at a later date.

Union Cab Co. et al., 7/2/87; FR270–345 et al.

The DOE issued a Decision and Order approving 13 Applications for Refund from the Surface Transporters Escrow established as a result of the Stripper Well Settlement Agreement. The applicants were taxicab companies that applied for refunds based on purchases of motor gasoline between August 13, 1973 and January 27, 1981. The Decision and Order approved each applicant's volumes and the total number of gallons approved for refund in this Decision was 32,916,685. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Surface Transporters claims.

Dismissals

The following submissions were dismissed:

Name and Case No.

I. DOI Hauling Contractor, Inc.; RF270–2414

Mt. Airy Refining Co. et al.; KRR–0029 Standard Oil Co. (IN)/N]; RQ251–304

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

August 31, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 87–20510 Filed 9–4–87; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Decision and Order During the Week of August 10 Through August 14, 1987

During the week of August 10 through August 14, 1987, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

August 31, 1987.

Glenn E. Wagoner Oil Co., Darlington, Pa.; KEE–0143, Reporting Req'MTS.

Glenn E. Wagoner Oil Company (Wagoner) filed an Application for Exception from the provisions of the reporting requirements of Form EIA–782B. The exception request, if granted, would permit Wagoner to stop filing the monthly report. On August 14, 1987, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 87–20511 Filed 9–4–87; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; ITO Corp. of Baltimore

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations.

Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–011092–001
Title: Maryland Port Administration Terminal Lease Agreement
Parties: Maryland Port Administration ITO Corporation of Baltimore
Synopsis: The proposed agreement modifies the acreage and annual rental rate provisions of the basic Lease to reflect a decrease in acreage and rental payment.

By Order of the Federal Maritime Commission.

Dated: September 2, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87–20581 Filed 9–4–87; 8:45 am]

BILLING CODE 6730–01–M

Survey of Shippers

The Federal Maritime Commission recently sent surveys to shippers seeking their views as to the impact of the U.S. Shipping Act of 1984. The survey is being conducted as part of a five-year study mandated in section 18 of the 1984 Act, and is the second in a series to be distributed on an annual basis through 1989. Substantital revisions have been made to the 1987 survey based upon responses to the 1986 questionnaire. The Commission has been directed by the U.S. Congress to "collect and analyze information concerning the impact of this Act upon the international shipping industry," and to present its findings to an Advisory Commission on Conference in Ocean Shipping, to be convened five and one-half years after enactment of the Act.

The Commission would like its survey to have the widest possible distribution. All interested shippers who have *not* received a copy of the survey are urged to contact: Ernest L. Worden, Bureau of Economic Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, Tel. (202) 523–5870.

Dated: September 1, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87–20556 Filed 9–4–87; 8:45 am]

BILLING CODE 6730–01

FEDERAL RESERVE SYSTEM

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Alton E. Blakley

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in action on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than September 23, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Alton E. Blakley* and Blaine S. Correll, both of Somerset, Kentucky; to acquire up to 74.7 percent of the voting shares of First & Farmers Bancshares, Inc., Somerset, Kentucky and thereby indirectly acquire First and Farmers Bank of Somerset, Somerset, Kentucky.

Board of Governors of the Federal Reserve System, September 2, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–20491 Filed 9–4–87; 8:45 am]

BILLING CODE 6210–01–M

Application To Engage de Novo in Permissible Nonbanking Activities; First Florida Banks, Inc.

The company listed in this notice has filed an application under § 225.23(a)(1) for the Board's Regulatory Y (12 CFR 225.23(a)(1)) of the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Florida Banks, Inc.*, Tampa, Florida; to engage *de novo* through its subsidiary, FFP, Co., Tampa, Florida, in marketing and selling certain bank related computer programs previously developed and currently utilized by Applicant's subsidiary banks pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 2, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–20492 Filed 9–4–87; 8:45 am]

BILLING CODE 6210–01–M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Laddonia State Bancshares, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute

and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 28, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Laddonia State Bancshares, Inc.*, Laddonia, Missouri; to become a bank holding company by acquiring at least 97.9. percent of the voting shares of Laddonia State Bank, Laddonia, Missouri.

2. *TJM Financial Corporation*, Lexington, Kentucky; to become a bank holding company by acquiring at least 94 percent of the voting shares of First Farmers Bank and Trust Company, Owenton, Kentucky.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Standard Chartered PLC*, London, England; Standard Chartered Bank, London, England; Standard Chartered Overseas Holdings Limited, London, England, Standard Chartered Holdings Inc., Los Angeles, California; and Union Bancorp. Los Angeles, California; to acquire 100 percent of the voting shares of Western Bank Holding Company, Bellevue, Washington, and thereby indirectly acquire the First Western Bank, Bellevue, Washington.

Board of Governors of the Federal Reserve System, September 2, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-20493 Filed 9-4-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Marshall & Ilsley Corp.

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; to acquire M&I Data Services, Inc., Milwaukee, Wisconsin, and thereby engage in credit card servicing activities of M&I Bank of Madison, Madison, Wisconsin, pursuant to § 225.25(b)(1)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 2, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-20494 Filed 9-4-87; 8:45 am]

BILLING CODE 6210-01-M

Proposed Acquisition of Kalvar Corp.; MCorp, Dallas, TX

The companies listed in this notice have filed an application under § 225.23(a)(2) of the Board's Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y (12 CFR 225.25(b)(7)). The proposed activities will be conducted nationwide.

A. Board of Governors of the Federal Reserve System, William W. Wiles, Secretary, Washington, DC 20551:

1. *MCorp, Dallas, Texas, and MCorp Financial, Inc., Wilmington, Delaware* ("Applicants"), through their subsidiary, MTech Corp, to acquire 100 percent of Kalvar Corporation, Minneapolis, Minnesota, and engage in data processing and computer output to microfilm ("COM") services, including offering enhanced COM services to MTech's current data processing customers, providing optical storage capability on optical digital disks, providing computer assisted retrieval for data stored on microfilm and microfiche, and providing in-house COM capability to data processing/COM customers. Applications also propose to sell solely to such customers, certain equipment and supplies, which would include reading machines, scanners and paper necessary to utilize the processed microfiche or microfilm, and, which, at all times, would constitute less than 30 percent of any packaged offering. Incidental to the above activities, Applicants propose to provide micropublishing (that is, a process involving the conversion of large volumes of banking, financial and economic data from paper onto microfilm or microfiche) and laser printing services. MTech does not intend to offer COM services as a "separate line of endeavor," but rather to offer such services "only as an output option for data otherwise being permissibly processed by the holding company system" as provided in the Board's interpretation regarding data processing activities found at § 225.13(e)(4) of the Board's Regulation Y (12 CFR 225.123(e)(4)).

Applicants maintain that the foregoing activities are permissible under section 4(c)(8) of the BHC Act and § 225.25(b)(7) of the Board's Regulation Y (12 CFR 225.25(b)(7)) as that section has been interpreted by § 225.123(e)(4) of the Board's Regulation Y. In addition, Applicants maintain that COM services have evolved to the point that such services standing alone should be deemed to constitute data processing services under § 225.25(b)(7) of the Board's Regulation Y.

Alternatively, this application raises the issue whether the combined offering of data processing and COM services, as proposed by Applicants, would constitute a new activity that would require the Board to determine whether, pursuant to section 4(c)(8) of the BHC Act, the proposed activity is closely related to banking or managing or controlling banks as to be a proper incident thereto.

Interested persons may express their views on whether the proposed activities are activities which the Board after due notice and opportunity for hearing has determined (by order or

regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto; or whether the Board is required to make a determination that the proposed activities are so closely related to banking or managing or controlling banks as to be a proper incident thereto. Interested persons also may express their views on whether consummation of the acquisition as a whole can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on these questions must be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically, any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Dallas.

Any views or requests for a hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than September 30, 1987.

Board of Governors of the Federal Reserve System, August 31, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-20490 Filed 9-4-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Availability of Funds for Fiscal Year 1987; Cooperative Agreement With Emory University

Introduction

The Centers for Disease Control announces the availability of funds in Fiscal Year 1987 to continue a cooperative agreement with the International Health Track of Emory University's MPH Program to support research in training methods in international health. This is not a formal request for application. Assistance will be provided only to Emory University for support of this support of this project. No other applications are solicited or will be accepted.

Authority

This cooperative agreement is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)) as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

Background and Purpose

The Centers for Disease Control (CDC) awarded a cooperative agreement to the International Health Track (IHT) of Emory University's MPH Program on September 29, 1985 to assist Emory in identifying and testing improved methods of preparing public health professionals for positions of major responsibility in developing countries. Methodologic research conducted included testing and evaluating the efficacy of various mixes of academic coursework at Emory University and specialized bench training at CDC in combination with structured periodic CDC seminars on international health, epidemiology, immunization and nutrition. Another purpose was to support the newly established International Health Track to institutionalize research findings and to became fully self-sustaining.

While substantial progress has been made toward achieving the project's goals, continued assistance is needed to fully implement and evaluate the efficacy of methodologic research and capacity-building activities initiated under this agreement.

Reasons for Proposing Emory University as Recipient of This Cooperative Agreement

The Centers for Disease Control provided assistance to the nascent International Health Track of Emory University's MPH Program starting in 1985 to conduct methodologic research and capacity-building activities aimed at improving public health skills and practices in developing countries. It is in the public interest to continue to support this unique research effort which can not be duplicated at other academic institutions because of the need for daily on-site interchange between the participating parties in order to determine the best mix of (1) academic coursework and research projects in international health, (2) specialized bench training at CDC, and (3) structured periodic CDC training seminars on epidemiology, international health, nutrition and immunization. These mutually dependent and reinforcing cooperative activities also require frequent lectures by CDC adjunct faculty and sharing of facilities, data bases and computer resources. In addition, the International Health Track is sufficiently new and flexible to enable the parties to this agreement to develop and test the efficacy of individualized short term, non-degree academic courses and research projects specially designed for public health professionals from developing countries whose schedules and short stay at CDC do not coincide with traditional academic semesters.

Availability of Funds

Approximately $140,000 will be available in Fiscal Year 1987 to continue this cooperative agreement. It is expected that the cooperative agreement will begin on or about September 30, 1987, and will be funded in 12 months budget periods within a 3-year project period. The estimated cost of the project will be $90,000 in FY 1988 and approximately $45,000 in FY 1989. Continuation awards will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The funding outlined above may vary and is subject to change.

Other Submissions and Review Requirements

The application will not be subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information may be obtained from Mr. Henry Cassell, Supervisory Grants Specialist, Grants Management Office, Procurement and Grants Office, Centers for Disease Control, 275 East Paces Ferry Road, NE., Atlanta, Georgia 30305, telephone (404) 265-6575. Technical assistance may be obtained from Mr. Billy G. Griggs, Director, International Health Program Office, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329-3111.

Dated: September 1, 1987.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87-20501 Filed 9-4-87; 8:45 am]

BILLING CODE 4160-18-M

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Office of Human Development Services

[Program Announcement No. 13600-872]

Head Start Programs; Availability of Grants

AGENCY: Administration for Children, Youth and Families, Office of Human Development Services, Department of Health and Human Services.

ACTION: Extension of due date for receipt of applications for Head Start innovative grant funds.

SUMMARY: This notice extends the closing date for receipt of applications submitted in response to the Administration for Children, Youth and Families/Head Start Bureau program announcement published in the **Federal Register** on Monday, August 3, 1987 (52 FR 28806). It also extends the time period for State review of such applications under Executive Order 12372.

FOR FURTHER INFORMATION CONTACT: Mary S. Lewis, Education Specialist, (202) 755–7710.

SUPPLEMENTARY INFORMATION:

On Monday, August 3, 1987, the Head Start Bureau published an announcement in the **Federal Register** (52 FR 28806). That announcement solicited applications from current Head Start grantees and delegate agencies that wish to compete for $2,000,000 in grant funds available in fiscal year 1988 to develop and implement innovative program options or innovative adjuncts to existing programs.

In order to allow prospective applicants more time to prepare and submit their applications, we are extending the due date for receipt of applications from September 17, 1987 to November 2, 1987.

This action also extends the due date for comments on applications from State Single Points of Contact under Executive Order 12372 from November 16, 1987 to December 30, 1987.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: August 12, 1987.

Joseph Mottola,

Acting Commissioner, Administration for Children, Youth and Families.

Approved: August 28, 1987.

Carolyn Doppelt Gray,

Acting Deputy Assistant Secretary for Human Development Services.

[FR Doc. 87–20520 Filed 9–4–87; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Availability of Planning Report/Draft Environmental Statement, San Jacinto Project, Texas

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a planning report/draft environmental statement (PR/DES) to evaluate alternative water supply sources within the San Jacinto River basin that can help meet water needs.

Copies of the PR/DES are available for inspection at the following locations:

University of Houston Library, 4800 Calhoun, Houston, TX 77004
Rice University Library, P.O. Box 1892, Houston, TX 77251
Montgomery County Library, P.O. Box 579, Conroe, TX 77305
Huntsville Public Library, 1212 Avenue M, Huntsville, TX 77340
Houston Public Library, Attn: Ms. Ruby Weaver, 500 McKinney, Houston, TX 77002
Harris County Public Library, 49 San Jacinto, Suite 200, Houston, TX 77002
Austin Memorial Library, 220 S. Bonham, Cleveland, TX 77327
Prairie View A&M University Library, Prairie View, TX 77446
Octavia Fields Library, 111 West Higgins, Humble, TX 77338
Harris County Library, 701 James Street, Tomball, TX 77375
Texas Southern University Library, 3100 Cleburne, Houston, TX 77004
Texas A&M University, Sterling Evans Library, College Station, TX 77843
University of Texas, General Libraries, P.O. Box P, Austin, TX 78713
Sam Houston State University, Newton Greshan Library, Huntsville, TX 77341
Magnolia Branch Library, 31350 Industrial Lane, Magnolia, TX 77355

Single copies of the PR/DES or summary may be obtained on request from the following:

Office of Environmental Affairs, Bureau of Reclamation, Room 7425, U.S. Department of the Interior, C Street Between 18th & 19th Streets, NW., Washington, DC 20240, Telephone (202) 343–4991
Office of the Regional Director, Bureau of Reclamation, U.S. Department of the Interior, 714 South Tyler, Suite 201, Amarillo, TX 79101, Telephone (806) 378–5468
Texas Representative, Bureau of Reclamation, U.S. Department of the Interior, 300 East 8th Street, P.O. Box 1946, Austin, TX 78767, Telephone (512) 482–5641

SUPPLEMENTARY INFORMATION: The primary purpose of the study was to evaluate alternative surface water supply sources within the San Jacinto River basin that can help meet water needs of the area. Various alternatives were evaluated. The recommended plan is a proposed multipurpose reservoir, Lower Lake Creek, on the west fork of the San Jacinto River, in Montgomery County. Project purposes include flood control, recreation, and municipal and industrial water supply. The project would provide 62,200 acre-feet of water annually. The PR/DES presents an evaluation of alternatives and the recommended plan, along with the probable environmental impacts and mitigation measures.

Date: September 1, 1987.

C. Dale Duvall,

Commissioner of Reclamation.

[FR Doc. 87–20430 Filed 9–4–87; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

Purpose of information collection: The proposed information collection is a "generic clearance" under which the Commission can issue questionnaires for the following types of investigations: countervailing duty, antidumping, escape clause, escape clause review, market disruption and "interference with programs of the USDA."

Summary of proposal:

(1) Number of forms submitted: three.

(2) Title of forms: *Sample Producer's, Sample Importer's and Sample Purchaser's questionnaires* (i.e., the "samples" are an aggregate of the information that is likely to be collected in a series of questionnaires issued under the generic clearance).

(3) Type of request: Extension.

(4) Frequency of use: On occasion.

(5) Description of respondents: Businesses or farms that produce, import and/or purchase products under investigation.

(6) Estimated annual number of respondents: 4,000.

(7) Estimated total annual number of hours to complete the forms: 100,000.

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional information or comment: A presumptive notice of the Commission having submittted its proposal to OMB appeared in the **Federal Register** of August 3, 1987. All other information in that notice, with the exception of the comment cutoff date which is extended by this notice, remains in effect. Copies of the proposed forms and supporting documents may be obtained from Lynn Featherstone (tel. no. 202–523–0301). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Ms. Francine Picoult). Any comments should be specific, indicating which part of the questionnaires or study plan are objectionable, describing the problem in detail, and including specific revisions or language changes.

Submission of comments: Comments should be sumbitted to OMB within two weeks of the date this notice appears in the **Federal Register**. If you are unable to submit them promptly you should advise OMB within the two week period of your intent to comment on the proposal and then submit your comments so as to be received by OMB by October 9, 1987. Ms. Picoult's telephone number is 202–395–7340. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, NW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Issued: September 2, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–20538 Filed 9–4–87; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Pollution Control; Lodging of Consent Decree Pursuant to Toxic Substances Control Act; Interior Steel Equipment Co., Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Interior Steel Equipment Company, Inc.*, Civil Action No. C 87–460, was lodged with the United States District Court for the Northern District of Ohio. The complaint filed by the United States alleged that Interior Steel Equipment Company has violated section 113 of the Clean Air Act, 42 U.S.C. 7413, by failing to comply with applicable provisions of the Ohio State Implementation Plan ("SIP") pertaining to the control of emissions of volatile organic compounds.

The proposed Decree establishes deadlines for achieving compliance with Ohio Administrative Code Rule 3745–21–09(U) (part of the Ohio ozone SIP) by reducing the volatile organic compound ("VOC") content of paints used by defendant. The proposed Decree also establishes deadlines for installation of VOC emissions capture and control equipment in the event that defendant does not meet deadlines for reducing the VOC content of its paints. In addition, the proposed Consent Decree requires defendant to pay a civil penalty of $15,000.

The proposed Consent Decree may be examined at the office of the United States Attorney, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Lands and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $1.70 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzullia,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–20498 Filed 9–4–87; 8:45 am]

BILLING CODE 4410–01–M

Pollution Control; Lodging of Consent Decree Pursuant to the Clean Water Act; City of Lowell, MI, and the State of Michigan

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 18, 1987 a proposed Consent Decree in *United States v. City of Lowell, Michigan and the State of Michigan*, Civil Action No. GB6–177–CA1, was lodged with the United States District Court for the Western District of Michigan. The proposed Consent Decree concerns the discharge of pollutants from the City's wastewater treatment plant. The proposed Consent Decree requires the City: To comply with the Clean Water Act and its implementing regulations; to eliminate effluent discharges that violate the City's National Pollutant Discharge Elimination System Permit; to operate and maintain the plant in a manner that ensures the best interim effluent quality possible pending completion of additions and improvements to the plant; to implement an approved industrial pretreatment program; and to pay a $25,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Lowell*, D.J. Ref. 90–5–1–1–2565.

The proposed Consent Decree may be examined at the office of the United States Attorney, 399 Federal Building, Grand Rapids, Michigan 49503, and at the Region 5 Office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

August 6, 1987.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–20499 Filed 9–4–87; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Johnson Matthey, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 3, 1987, Johnson Matthey, Inc., Custom

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Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Alfentanil (9737).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than October 8, 1987.

Dated: September 1, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-20543 Filed 9-4-87; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

[INS Number: 1031-87]

Verification of Immigration Status of Aliens Applying for Benefits Under Certain Programs

AGENCY: Immigration and Naturalization Service (INS), Justice.

ACTION: Public notice of INS procedures for verifying an alien's immigration status for various federal benefit programs, funds and services.

SUMMARY: This notice describes the Systematic Alien Verification for Entitlements (SAVE) Program as it relates to section 121 of the Immigration Reform and Control Act of 1986 (IRCA) which requires immigration status verification of alien applicants under certain federally subsidized entitlement programs. SAVE will provide a data base specifically designed to capture information contained in INS records which when used by the entitlement issuing authority will allow it to verify the alien's immigration status. This verification will assist the federal or state issuing authority in determining the eligibility of the alien applicant to receive federally subsidized benefits. Each overseeing agency affected by this provision will publish separate regulations, as necessary, describing the use of this system. Those agencies and the designated programs include: The Department of Agriculture—Food Stamp Programs; the Department of Housing and Urban Development—Housing Assistance Programs; the Department of Labor—Unemployment Compensation; the Department of Education—Title IV Educational Assistance; and the Department of Health and Human Services—Aid to Families with Dependent Children Program, Medicaid Program, and certain Territorial Assistance Programs. (Food Stamps are not an entitlement program. However, for purposes of this notice the term "entitlement program" will include food stamps.).

DATE: Written comments must be received by October 15, 1987.

ADDRESS: Please submit written comments, in triplicate, to: Policy Directives and Instructions, Immigration and Naturalization Service, 425 "I" Street, NW, Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Neville W. Cramer, Director, SAVE Program, Immigration and Naturalization Service, 425 "I" Street, NW, Room 7240, Washington, DC 20536.

SUPPLEMENTARY INFORMATION: On November 6, 1986, the President signed into law the Immigration Reform and Control Act, Pub. L. 99-603 ("IRCA"). This legislation, the most comprehensive reform of our immigration laws since the enactment in 1952 of the Immigration and Nationality Act, 66 Stat. 166, reflects a resolve to control illegal immigration. One of the themes in this legislation is to reduce incentives for aliens to come and remain in the United States illegally. Aside from the deterrence created by employer sanctions, illegal aliens must also be prevented from obtaining public assistance while in the United States. Section 121 of IRCA, "Verification of Immigration Status of Aliens Applying for Benefits Under Certain Programs," provides for the establishment and implementation of a system to verify the status of aliens applying for federally funded entitlements.

The Systematic Alien Verification for Entitlements (SAVE) Program is an intergovernmental information-sharing initiative designed to prevent unentitled aliens from receiving federally subsidized entitlement benefits. The INS has been operating long-term SAVE pilots throughout the United States and its territories for several years. INS estimates that nearly $3 billion in benefits are granted to aliens who are either in the United States illegally or, by reason of their status, are unentitled to the benefits.

The Administration strongly supports efforts to curb waste, fraud, and abuse within federal funded entitlement programs. Section 121 of IRCA mandates that the INS develop a cost-effective alien status verification system for use by entitlement agencies. Agencies that already have effective systems will be allowed to request and/or receive a waiver from this provision of IRCA in accordance with paragraph (c)(4) "Use of Verification System Not Required for a Program in Certain Cases" of section 20 "Payment for Implementation of Immigration Status Verification System." SAVE allows federal and state eligibility workers to verify both alien documentation and status within seconds of accessing the data base, and should prove to be a strong deterrent to those aliens attempting to gain benefits illegally.

Verification Procedures

(1) Citizenship or Alienage Declaration

All applicants for benefits under the designated programs in section 121 of IRCA will be required to declare under penalty of perjury whether they are citizens or nationals of the United States, or aliens.

(2) Documentary Requirements of Aliens

All aliens in the United States must present original alien registration documentation (alien registration number is equivalent to "A" file number) or other source of documentation that the issuing agency determines is reasonable evidence of the alien's immigration status. The documentation should contain an alien registration number or admission number. All applicants must present acceptable documentation or furnish a receipt from the INS indicating that an application for replacement documentation has been made.

(3) Maintaining Photocopies

INS suggests that the overseeing Federal agencies require that all original documentation presented by alien applicants be photocopied (front and back) and maintained with the alien's application for benefits or other suitable location that allows for immediate retrieval. If an office does not have access to photocopy equipment, the alien applicant should be required to present both the original and a copy (front and back) of all immigration documentation.

(4) Immigration Documentation (Examples)

Immigration documentation includes, but is not limited to, the following:

(a) Form I–151. Alien Registration Receipt card with photograph (for permanent resident aliens). This card was in use prior to 1979;

(b) Form I–551. Resident Alien card (for permanent resident aliens);

(c) Form AR–3a. Alien Registration Receipt card (Issued during 1941–1949 for permanent resident aliens);

(d) Form I–94. Arrival-Departure Record—(Annotated either "Section 207" or "Refugee," or "Section 208" or "Asylum");

(e) Form I–94. Arrival-Departure Record—Parole Edition (Annotated "Section 212(d)(5)," or "Conditional Entry" or "Section 203(a)(7)");

(f) Form I–94. Arrival-Departure Record (Annotated "Section 243(h)");

(g) Form I–94. Arrival-Departure Record (Annotated Cuban-Haitian Entrant);

(h) Form I–688. Temporary Resident card, Department of Justice, Immigration and Naturalization Service (Card issued pursuant to IRCA. Document expires);

(i) Form I–688A. Employment Authorization card, Department of Justice, Immigration and Naturalization Service (Card issued pursuant to IRCA. Document expires);

(j) A receipt from INS indicating that an application for replacement documentation has been made.

All immigration documentation presented that does not contain a photograph should be accompanied by another identity document bearing a photograph of the applicant.

(5) Access to the Alien Status Verification Index (ASVI)

The alien registration number located on the document shall be used to access ASVI. Alien registration numbers are either seven or eight numerical digits preceded by the letter *A*.

(6) ASVI Data Elements

ASVI verifies some or all of the following biographical data pertaining to the alien applicant. Each agency should identify, under separate regulation, the critical data elements that constitute a valid ASVI verification.

(a) "Last name".

(b) "First name".

(c) "Date of birth".

(d) "Country of birth" (not nationality).

(e) "Social Security Number" (if known).

(f) "Date of entry" (for last status entered into system).

(g) One of the following status displays:

(i) "Lawful Permanent Resident-Employment Authorized".

(ii) "Cuban/Haitian Entrant-Temporary Employment Authorized".

(iii) "Section 245(A) of IRCA Temporary Resident-Temporary Employment Authorized".

(iv) "Section 210 of IRCA Temporary Resident-Temporary Employment Authorized".

(v) "No Record of This A-Number—Institute Secondary Verification".

The biographical data and status information located in the ASVI must correspond to the data located on the original documentation presented by the alien applicant.

Copies of documented proof of immigration status that do not contain an alien registration number, copies of documented proof that do not correspond to the data in the ASVI, or documented alien registration numbers that result in the ASVI instruction "Institute Secondary Verification" should immediately be forwarded to the INS under the secondary verification procedures described below.

Secondary Verification

(1) Definition of "Secondary Verification"

Secondary verification signifies the forwarding of fully readable photocopies of original immigration documents attached to either Document Verification Request Form G–845 to a designated INS field office for review. It is instituted when the initial access to ASVI instructs the user to "Institute Secondary Verification" or when a document has been verified through the ASVI but has other questionable characteristics, such as photo-substitution, ink discoloration, etc. INS then completes the response portion of Form G–845, and returns both the form and the attached photocopies to the submitting office. The INS retains those records necessary to comply with the Freedom of Information and Privacy Act (see Privacy Act below). Copies of any documents submitted to INS, i.e., counterfeit or altered documentation, may be duplicated. Copies of documentation that indicate criminal misuse of government documents may be forwarded to the Investigations Division of INS, or other Federal and State law enforcement agencies.

(2) Use of Document Verification Request Forms G–845A and G–845B

(a) Form G–845A must be used by agencies requiring immigration document verification and work authorization status.

(b) Form G–845B must be used for agencies requiring immigration document and status verification only.

(3) INS Response to Secondary Verification

The INS Records Division will process all secondary verifications. Forms G–845A and G–845B should be returned to the submitting agency within seven to ten days after receipt by INS. The maximum response time should not exceed 21 work days. Delays in processing Form G–845 should not result in a denial of benefits.

G–845 forms sent to the INS without photocopies of the original immigration documentation will be returned to the submitting agency without a status determination.

Denials

(1) Benefit Denial Responsibility

Denial of benefits based on alien status and the establishment of a fair hearing process are the responsibility of the issuing agency.

Types of Access to the Alien Status Verification Index

(1) Access to ASVI

Each overseeing federal agency will determine the methods of access to ASVI as it will ultimately be responsible for these costs in accordance with section 121(b) "Providing 100 Percent Reimbursement for Costs of Implementation and Operation." ASVI may be used in one or more of the following methods; however, all of these methods may not be available in October 1, 1987, the date by which INS in mandated by Congress to provide SAVE access:

(a) User system to ASVI data base via dedicated telecommunication line (CRT display).

(b) User agency "personal computer" with modem to ASVI data base (CRT display).

(c) "Point-of-sale" equipment to ASVI data base (LED or LCD display). (Point-of-sale machines are key-pad terminals with digital response displays that use standard telephone lines and require cards with magnetic information strips to access data base.)

(d) Touch-tone telephone access to ASVI data base (Computerized voice data response).

(e) Magnetic tape match against ASVI data base (Magnetic tape response or paper print-out of results).

Access to ASVI may be achieved only after user agency is issued a security access number. User agencies will be provided a manual which will describe

the Systematic Alien Verification for Entitlements Program and the use of the ASVI.

Privacy Act

(1) Privacy Act Compliance

A "record of disclosure" shall be made on all alien registration numbers checked through the ASVI and will be maintained by the INS. This will allow the INS to fully comply with the requirements of section (c)(1), (3), and (4) of the Privacy Act (5 U.S.C. 552a). The following records will be maintained and disclosed in accordance with the Freedom of Information Act:

(a) Alien Registration Number.
(b) Date and time of disclosure.
(c) Agency accessing ASVI.
(d) Authorization Code (In those cases where the ASVI automatically issues a unique number for each inquiry, i.e., point-of-sale equipment or touch-tone voice data response, this number will be considered the authorization code and will be maintained on the "record of disclosure."

INS will protect an individual's privacy to the maximum degree possible, in accordance with the Immigration Reform and Control Act of 1986 and any other applicable statutes.

(2) Record of Disclosure for Documentation Which Does Not Contain an Alien Registration Number

If an immigration document does not contain an alien registration number, INS will run computer checks against all available INS data systems to determine the status of the alien applicant shown on the documentation. If an alien registration number exists for that applicant, the document appears bona fide, and the alien's status requires a disclosure accounting, INS will make the necessary "record of disclosure."

(3) Routine Use of Information

The records of disclosure created by checks made against the ASVI will be available to any person or agency that would normally have access to alien files maintained by the INS.

Audit Trails

(1) Profiles in Audit Trails

Audit trails will identify inordinate and extraordinary use of alien registration numbers, i.e., alien registration numbers checked several times in multiple localities within a short period of time, or non-existent alien registration numbers. This information may be used by the INS and other Federal and State fraud enforcement entities for investigation of possible criminal activity. It will not be used for non-criminal, administrative immigration enforcement purposes. Participating agencies and INS, through secondary verifications, will establish reporting procedures indicating cost avoidance figures and the number of aliens denied benefits.

Federal Entitlement Programs and Federally Assisted Entitlement Programs/Implementation

Preventing waste, fraud and abuse within Federal and federally subsidized entitlement programs is a primary goal of section 121 of IRCA and of the current Administration. Further, public policy demands that entitlement funds be accounted for and distributed only to eligible applicants. Most federal programs are required to obtain from alien applicants verifiable evidence of their immigration status. One of the most reliable methods to verify an alien applicant's immigration documentation and status is through the Systematic Alien Verification for Entitlements Program of the INS.

(1) Effective Verification System

Any Federal or State agency that administers Federal entitlement funds should have an effective and reliable alien status verification system to ensure that these funds are allocated appropriately and with integrity.

(2) Waivers

Under section 121(c)(4)(B)(i) of IRCA, states or other entities may request and/or a waiver from participating in the Systematic Alien Verification Program based on the determination that an alternative system is already in place that is as effective and timely as SAVE, and provides the appropriate hearing and appeals rights.

Under section 121(c)(4)(B)(ii) of IRCA, states or other entities may request and/or receive a waiver from participating in an alien status verification system based on the determination that the costs of administration of such a system would exceed the estimated savings. Such entities, therefore, granted a waiver under section 121(c)(4)(B)(ii) may have no system of verifying the immigration status of alien applicants.

(3) Impact Assistance

The INS recognizes that the Secretary of Health and Human Services has sole authority for determining State Legalization Impact Assistance Grants under section 204(b)(1)(C) of IRCA. However, in establishing regulations and in determining reimbursements under section 204(b)(1)(C) of IRCA, the Secretary of Health and Human Services should take into account whether a state or other entity within that state has been granted a waiver under section 121(c)(4)(B)(ii) of IRCA. The INS has witnessed through SAVE pilot programs that significant payments of Federal entitlement funds have been made to illegal and ineligible aliens in states having no proven method of determining an alien applicant's status. Such payments would have been avoided through the use of SAVE. The INS wants to ensure that funds allocated under section 204(b)(1)(C) of IRCA be disbursed properly, thereby furthering this Administration's goal of preventing abuse of federally subsidized entitlement programs.

Dated: August 31, 1987.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 87-20390 Filed 9-4-87; 8:45 am]
BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-18,886 et al.]

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance; BHP Petroleum (America) Inc., et al.

In the matter of BHP Petroleum (Americas) Inc., (formerly Monsanto Oil Co.), Plainville, KS and all other locations of BHP Petroleum (Americas) Inc., Mid-Continent region in the following States: Kansas TA-W-18,886A, Oklahoma TA-W-18,886B, and Texas TA-W-18,886C.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 13, 1987, applicable to all workers of BHP Petroleum, Inc., Plainville, Kansas. The Certification was published in the **Federal Register** on March 26, 1987 (52 FR 9725).

The Department collected data for the Mid-Continent Region of BHP Inc., under the subject petition. The certification notice is amended to identify the states in which the BHP Petroleum maintains operations in the Mid-Continent Region. The company has oil fields in the subject states as well as offices which support crude oil production. Worker separations have occurred throughout the Mid-Continent Region of BHP Inc.

The Department issued certifications to workers at BHP Petroleum, Houston, Texas, TA-W-19,758, Midland, Texas, TA-W-18,313; and Snyder, Texas, TA-

W-17,859 and issued a notice of negative determination to workers at BHP Petroleum, Great Bend, Kansas TA-W-18,677. The intent of this certification is to cover other workers of BHP Petroleum (Americas) Inc., in all locations of the Mid-Continent Region of BHP Petroleum in the states of Texas, Oklahoma and Kansas. The amended notice applicable to TA-W-18,886 is hereby issued as follows:

All workers of BHP Petroleum (Americas) Inc., Plainville, Kansas and all other workers of the Mid-Continent Region of BHP Petroleum in the states of Kansas, Oklahoma and Texas who became totally or partially separated from employment on or after December 24, 1985, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

This amended notice does not change the Department's decisions with respect to petitions TA-W-19,758 Houston, Texas; TA-W-18,313, Midland, Texas; TA-W-17,859 Snyder, Texas or TA-W-18,677 Great Bend, Kansas.

Signed at Washington DC, this 28th day of August, 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-20587 Filed 9-4-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,484 et al.]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Koch Exploration Co. et al.

In the matter of Koch Exploration Co., Denver, CO, TA-W-19,674, Koch Exploration Co., Buffalo, SD and all other locations of Koch Exploration Company in the following States: North Dakota TA-W-19,674A, South Dakota TA-W-19,674B, and Kansas TA-W-19,674C.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a notice of Certification of Eligibility to Apply for Worker Adjustment Assistance on June 5, 1987 applicable to all workers of Koch Exploration Company, Denver, Colorado and Buffalo, South Dakota. The Certification was published in the **Federal Register** on June 23, 1987 (52 FR 23615).

The company furnished new information to the Department which identified additional states where worker separations occurred in 1986 that were not included in the initial certification. Accordingly, the amended certification is changed to include the states of Kansas and North Dakota where additional worker separations occurred.

The intent of the certification is to cover all workers of Koch Exploration Company in all locations where worker separations occurred. The amended notice applicable to TA-W-19,484 and TA-W-19,674 is hereby issued as follows:

All workers of Koch Exploration Company, Denver, Colorado and Buffalo, South Dakota and all other workers of Koch Exploration Company in the states of Kansas, South Dakota and North Dakota who became totally or partially separated from employment on or after March 30, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of August, 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-20586 Filed 9-4-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,787 et al.]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Operators, Inc., et al.

In the matter of Operators, Inc., subsidiary of Tenneco Oil Co., Houston, TX, TA-W-19,787A San Antonio, TX, TA-W-19,787B Bakersfield, CA, TA-W-19,787C Oklahoma City, OK, TA-W-19,787D Lafayette, LA, and TA-W-19,787E Great Bend, KS.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a notice of Certification of Eligibility to Apply for Worker Adjustment Assistance on June 19, 1987 applicable to all workers of Operators, Incorporated, Subsidiary of Tenneco Oil Company, Houston, Texas. The Certification was published in the **Federal Register** on July 9, 1987 (52 FR 25930).

The company furnished new information to the Department which identified an additional location at Great Bend, Kansas where additional worker separations occurred in 1986 that were not included in the initial certification. Accordingly, the amended certification is changed to include Great Bend, Kansas.

The intent of the certification is to cover all workers of Operators, Inc., in all locations where worker separations occurred. The amended notice applicable to TA-W-19,787 is hereby issued as follows:

All workers of Operators, Incorporated, a subsidiary of Tenneco Oil Company, Houston, Texas; San Antonio, Texas; Bakersfield, California; Oklahoma City, Oklahoma; Lafayette, Louisiana and Great Bend, Kansas who became totally or partially separated from employment on or after May 13, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of August, 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-20585 Filed 9-4-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,064 et al]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Cities Service Oil and Gas Corp.

In the matter of: TA-W-18,064 Tulsa, OK, TA-W-18,064-A Oklahoma City, OK, TA-W-18,064-B Lindsay, OK, TA-W-18,064-C Houston, TX, TA-W-18,064-D Midland, TX, TA-W-18,064-E Bridgeport, TX, TA-W-18,064-F Robstown, TX, TA-W-18,064-G West Seminole, TX, TA-W-18,064-H Odessa, TX, TA-W-18,064-I Pratt, KS, TA-W-18,064-J El Dorado, KS, TA-W-18,064-K Bakersfield, CA, TA-W-18,064-L Ingleside, CA, TA-W-18,064-M Denver, CO, TA-W-18,064-N Jackson, MI, TA-W-18,064-O Anchorage, AL, TA-W-18,064-P Charleston, SC, TA-W-18,064-Q Niagara Falls, NY, TA-W-18,064-R Gillette, WY, TA-W-18,064-S Lake Charles, LA, TA-W-18,064-T Hobbs, NM, TA-W-18,064-U Hutchinson, KS, TA-W-18,064-V Hackberry, LA, TA-W-18,064-W Blackwell, OK, TA-W-18,064-X Waukomis, OK, TA-W-18,064-Y Longview, TX, TA-W-18,064-Z Chico, TX, TA-W-18,064AA Mont Belvieu, TX, TA-W-18,064AB Liberal, KS, TA-W-18,064AC Wichita, KS, and all other locations of Cities Service Oil and Gas Corporation in the following states: Arkansas TA-W-18,064AD, Nebraska TA-W-18,064AE, North Dakota TA-W-18,064AF, Kentucky TA-W-18,064AG, West Virginia TA-W-18,064AH.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 19, 1986 applicable to all workers of the Exploration and Production of Division of Cities Service Oil and Gas Corporation, Tulsa, Oklahoma. The Certification was published in the **Federal Register** on January 9, 1987 (52 FR 874). The Certification was amended on January 16, 1987 (52 FR 3359) and on May 1, 1987 (52 FR 17850) to reflect the correct worker group.

The company furnished new information to the Department which showed additional locations where worker separations occurred in 1987 that were not included in the amended certification. Accordingly, the amended certification is changed to include the following states where additional

worker separations occurred: Arkansas, Nebraska, North Dakota, Kentucky and West Virginia.

The intent of the certification is to cover all workers of Cities Service Oil and Gas Corporation headquartered in Tulsa, Oklahoma who were adversely affected by increased imports of crude oil. The amended notice application to TA-W-18,064 is hereby issued as follows:

All workers of Cities Service Oil and Gas Corporation in Tulsa, Oklahoma; Oklahoma City, Oklahoma; Lindsay, Oklahoma; Houston, Texas; Midland, Texas; Bridgeport, Texas; Robstown, Texas; West Seminole, Texas; Odessa, Texas; Pratt, Kansas; El Dorado, Kansas; Bakersfield, California; Ingleside, California; Denver, Colorado; Jackson, Mississippi; Anchorage, Alaska; Charleston, South Carolina; Niagara Falls, New York; Hobb, New Mexico; Gillette, Wyoming; Lake Charles, Louisiana; Hutchinson, Kansas; Hackberry, Louisiana; Blackwell, Oklahoma; Waukomis, Oklahoma; Longview, Texas; Chico, Texas; Mont Belvieu, Texas; Liberal, Kansas and Wichita, Kansas and all other workers in the states of Arkansas, Nebraska, North Dakota, Kentucky and West Virginia who became totally or partially separated from employment on or after August 29, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of August, 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-20590 Filed 9-4-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,167]

Revised Determination on Reconsideration; Crown Creative Industries, Greensburg, PA

On May 28, 1987, the Department made an Affirmative Determination Regarding Application for Reconsideration of workers and former workers at Crown Creative Industries, Greensburg, Pennsylvania. This determination was published in the **Federal Register** on June 9, 1987 (21778 Vol. 52).

The workers of the Greensburg Plant were denied eligibility to apply for adjustment assistance benefits on May 12, 1987. Declines experienced at the Plant were primarily attributable to the transfer of certain production operations to another company facility in Laredo, Texas.

The union claimed in its application for reconsideration that the company's production of lamps and shades formerly produced at Greensburg were transferred to both the Laredo facility and to a contractor located outside of the United States. Although an important portion of the declines experienced at the Greensburg Plant was due to the domestic transfer, the union alleged that the transfer to the Taiwanese contractor contributed importantly to the production declines and the worker layoffs.

The reconsideration findings revealed that production of a substantial portion of products was, in fact, transferred to a plant in Taiwan, contributing to the layoff of workers at the Greensburg Plant during the period applicable to the petition.

Conclusion

After careful review of the facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with portable lamps produced at Crown Creative Industries contributed importantly to the decline in production and to the total or partial separation of workers of the Company's Greensburg, Pennsylvania Plant. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of the Greensburg, Pennsylvania Plant of Crown Creative Industries who become totally or partially separated from employment on or after February 2, 1986 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of August, 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-20588 Filed 9-4-87; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Siemens Energy and Automation, Inc., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 24, 1987—August 28, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,863; Siemens Energy and Automation, Inc., Norwood, OH

TA-W-19,867; Totco Operating Corp., Norman, OK

TA-W-19,849; E.I. DuPont De Nemours & Co., Inc., Old Hickory, TN

TA-W-19,870; Crescent Brick Co., Altoona, PA

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,017; Mesabi Tire, Virginia, NM

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,830; Mazer Corp., Dayton, OH

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-19,901; Rohm & Hass Chemical Co., Redwood City, CA

A certification was issued covering all workers of the firm separated on or after July 8, 1986.

TA-W-19,986; Utica Cutlery Co., Utica, NY

A certification was issued covering all workers of the firm separated on or after June 22, 1986.

TA-W-19,862; Prestolite Electric, Inc., Syracuse, NY

A certification was issued covering all workers of the firm separated on or after June 12, 1986.

TA–W–19,879; Park Drop Forge Division of Park Ohio Industries, Inc., Cleveland, Ohio

A certification was issued covering all workers of the firm separated on or after June 22, 1986.

I hereby certify that the aforementioned determinations were issued during August 24, 1987–August 28, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D St., NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 1, 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87–20591 Filed 9–4–87; 8:45 am]

BILLING CODE 4510–30–M

Review Panel for the Job Training Partnership Act (JTPA) Presidential Awards; Establishment

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with the General Services Administration, the Secretary of Labor has determined that the establishment of the Review Panel for the JTPA Presidential Awards is in the public interest in connection with the performance of duties imposed on the Department by section 172 of the Job Training Partnership Act.

The Panel will advise the Secretary of Labor on the selection of the Presidential Awards recipients. The Panel will perform an expert review of the nominations for each of the four award categories and will provide the Secretary with its views and recommendations on the top nominations.

The Panel will consist of training and employment experts representing the private sector, labor, private industry councils, and Federal, State, and local governments. Other than the Federal Government members, the members shall not be compensated and shall not be deemed to be employees of the United States.

The Panel will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the Review Panel for the JTPA Presidential Awards. Such comments should be addressed to: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, U.S. Department of Labor, ETA, 200 Constitution Avenue, NW., Room N–4469, Washington, DC 20210, Telephone: (202) 535–0577.

Signed at Washington, DC, this 2nd day of September 1987.

William E. Brock,

Secretary of Labor.

[FR Doc. 87–20589 Filed 9–4–87; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; AT and T Technologies, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 18, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 18, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 31st day of August 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
AT&T Technologies, Inc. (IBEW)	Orlando, FL	8/31/87	8/26/87	20,037	Packaged devices.
Allen-Bradley Co. (U.E.)	Milwaukee, WI	8/31/87	8/24/87	20,038	Motor devices.
Allied Leather Corp. (UFCWU)	Pencook, NH	8/31/87	8/19/87	20,039	Leather.
Allied Leather Corp. (UFCWU)	Boscawen, NH	8/31/87	8/19/87	20,040	Leather.
Alzara Dress (ILGWU)	New York, NY	8/31/87	8/18/87	20,041	Dresses.
B&G Energy Corp. (Workers)	Midland, TX	8/31/87	7/30/87	20,042	Oil and gas.
Coleman Products, (Workers)	Coleman, WI	8/31/87	8/20/87	20,043	Wire harnesses.
Corner Fashions (Workers)	W. Wyoming, PA	8/31/87	8/17/87	20,044	Sportswear.
Eastland Woolen Mill, Inc. (Workers)	Comma, ME	8/31/87	8/20/87	20,045	Fabric.
Elm Coal Co. (UMWA)	Paintsville, KY	8/31/87	8/24/87	20,046	Coal.
General Electric Co. (Workers)	Warren, OH	8/31/87	8/15/87	20,047	Lamps.
General Electric Wiring Devices (IUE)	Warwick, RI	8/31/87	8/24/87	20,048	Wiring devices.
General Industries, Co. (IUE)	Forrest City, AK	8/31/87	8/12/87	20,049	Auto parts.
General Motors Corp. BOC Clark St. (UAW)	Detroit, MI	8/31/87	8/17/87	20,050	Auto assembly.
General Motors Corp. BOC Fleetwood (UAW)	Detroit, MI	8/31/87	8/17/87	20,051	Auto assembly.
General Motors Corp. BOC Flint Assembly (UAW)	Flint, MI	8/31/87	8/17/87	20,052	Auto assembly.
General Motors Corp. Truck & Bus St. Louis (UAW)	St. Louis, MO	8/31/87	8/17/87	20,053	Truck assembly.
General Motors Corp. Truck & Bus Flint Assembly (UAW)	Flint, MI	8/31/87	8/17/87	20,054	Truck assembly.
General Motors Corp. CPC Norwood (UAW)	Norwood, OH	8/31/87	8/17/87	20,055	Auto assembly.
General Motors Corp. Electro-Motive Chicago (UAW)	Chicago, IL	8/31/87	8/17/87	20,056	Locomotive components.
General Motors Corp. Fisher-Guide Fort St. (UAW)	Detroit, MI	8/31/87	8/17/87	20,057	Auto hardware.
General Motors Corp. Inland Div.-Tecumseh (UAW)	Tecumseh, MI	8/31/87	8/17/87	20,058	Auto seat covers.
Hughes Drilling Fluids (Milpark) (Workers)	Wharton, TX	8/31/87	8/18/87	20,059	Oil wells.
Jenkins Brothers Corp. (USWA)	Bridgeports, CT	8/31/87	8/19/87	20,060	Valves.
Kaiser Steel Corp. (Boilermakers)	Stockton, CA	8/31/87	8/19/87	20,061	Steel.
Monogahela Iron & Metal Co., Inc. (USWA)	Monogahela, PA	8/31/87	8/7/87	20,062	Steel.

APPENDIX—Continued

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Mosbacher Energy Co. (Workers)	Houston, TX	8/31/87	8/15/87	20,063	Oil and gas.
Specialty Metal Products (Workers)	Edmond, OK	8/31/87	7/28/87	20,064	Steel.
Starline Optical Mfg. (Workers)	Fairfield, NJ	8/31/87	8/21/87	20,065	Eyeglass frames.

[FR Doc. 87-20592 Filed 9-4-87; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Hearing

ACTION: Notice of hearing.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of a public hearing of the National Commission for Employment Policy at the Area Vocational, Technical, and Adult Education District One Facility, 620 West Clairemont Avenue, Eau Claire, WI 54701.

DATE: Friday, September 25, 1987, 9:00 a.m. to 12:00 p.m.

Status: This hearing is open to the public.

Matters to be discussed: Commission members will hear testimony on the condition of displaced farmers and the effectiveness of Title III JTPA programs in rural America.

FOR FURTHER INFORMATION CONTACT: Mr. Scott W. Gordon, Director, National Commission for Employment Policy, 1522 K St. NW., Suite 300, Washington, DC 20005, 202-724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97-300). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. No public testimony will be authorized except by those asked to do so prior to the hearing date. However, written testimony for the record will be accepted at the Commission offices through October 25, 1987. Copies of the testimony and materials prepared for the hearing will be available for public inspection at the Commission's offices, 1522 K St. NW., Suite 300, Washington, DC 20005.

Signed this 2nd day of September, 1987.

Scott W. Gordon,

Director.

[FR Doc. 87-20593 Filed 9-4-87; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978; David G. Ainley

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 8, 1987. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 24, 1987.

The applications received are as follows:

1. Applicant

David G. Ainley, Point Reyes Bird Observatory, Stinson Beach, California 94970.

Activity for Which Permit Requested

Taking (capture and release for banding, stomach pumping, weighing and affixing and removing radio transmitters). The applicant is a contractor to the National Marine Fisheries Service (Antarctic Marine Living Resources Program), and is inaugurating a program to investigate certain life history parameters of seabirds as indicators of changes in food web dynamics of the marine ecosystem. The aim is to quantify variability in food web dynamics before a krill fishery becomes fully established in the region, and then to monitor the fishery impacts on the system. The applicant proposes to monitor fledging weights, diet, foraging effort, breeding success and demography in seabirds. The species to be monitored are as follows:

Species	Number
Adelie Penguin	5,650
Blue-eyed Shag	250
Kelp Gull	200
South Polar Skua	200
Brown Skua	50
Antarctic Tern	200
Giant Fulmar	100
Wilson's Storm Petrel	200

Location

Palmer Station and nearby islands in Arthur Harbor, Antarctic Peninsula.

Dates

December 1987—March 1988.

2. Applicant

David G. Ainley, Point Reyes Bird Observatory, Stinson Beach, California 94970.

Activity for which permit requested

Enter Specially Protected Area. As part of the monitoring program described above (permit application no. 1), the applicant proposes to visit Litchfield Island Specially Protected Area for 3–5 hours on three different days during the period, December 1987 to March 1988, in order to count penguins and other seabirds.

Location

Litchfield Island, Antarctica.

Dates

December 1987–March 1988.

Charles E. Myers,

Permit Office.

[FR Doc. 87–20500 Filed 9–4–87; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–456–OL and 50–457–OL]
[Braidwood Station, Unit Nos. 1 and 2]

Reconstitution of Atomic Safety and Licensing Appeal Board; Commonwealth Edison Co.

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this operating license proceeding. As reconstituted, the Appeal Board for this proceeding will consist of the following members: Alan S. Rosenthal, Chairman, Dr. W. Reed Johnson, Howard A. Wilber.

Dated: September 1, 1987.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 87–20557 Filed 9–4–87; 8:45am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program; Proposed Amendments Regarding Umatilla Fish Hatchery; Hearings and Public Comment Period; Correction

AGENCY: Pacific Northwest Electric Power Conservation Planning Council.

ACTION: Notice of proposed amendments, hearings and opportunity to comment; correction.

SUMMARY: This document corrects the date for a public hearing scheduled by notice appearing in the **Federal Register** on August 31, 1987 at 52 FR 32858. The hearing originally scheduled for September 10, 1987 at 1:30 p.m. in Idaho Falls, Idaho has been changed to September 9, 1987 at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: Dulcy Mahar, director of public information and involvement, 850 S.W. Broadway, Suite 1100, Portland, Oregon 97205 (toll-free 1–800–222–3355 in Idaho, Montana and Washington; toll-free 1–800–452–2324 in Oregon; or 503–222–5161).

Edward Sheets,

Executive Director.

[FR Doc. 87–20522 Filed 9–4–87; 8:45 am]

BILLING CODE 0000–00–M

Northwest Conservation and Electric Power Plan; Proposed Model Conservation Standards; Hearing Schedule; Correction

AGENCY: Pacific Northwest Electric Power Conservation Planning Council.

ACTION: Notice of public hearings regarding model conservation standards for new and existing structures, utility, customer, and government conservation programs, and other consumer actions for achieving conservation except in areas for which model conservation standards already exist; correction.

SUMMARY: This document corrects the date for a public hearing scheduled by notice appearing in the **Federal Register** on August 5, 1987 at 52 FR 29105. The hearing originally scheduled for September 10, 1987 at 1:30 p.m. in Idaho Falls, Idaho has been changed to September 9, 1987 at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: Dulcy Mahar, director of public information and involvement, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205 (toll-free 1–800–222–3355 in Idaho, Montana and Washington; toll-free 1–800–452–2324 in Oregon; or 503–222–5161).

Edward Sheets,

Executive Director.

[FR Doc. 87–20523 Filed 9–4–87; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–15954; 812–6688]

Application for Exemption; Benjamin Franklin Financial Corp.

September 1, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: Benjamin Franklin Financial Corporation ("Applicant").

Relevant 1940 Act sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of application: Applicant seeks an order amending its existing order (Investment Company Act Release No. 15847, July 2, 1987) exempting Applicant, a limited purpose finance subsidiary, from all provisions of the 1940 Act in connection with its proposed issuance of collateralized mortgage obligations (the "Bonds") and the possible resale of its capital stock.

Filing date: The Application was filed on April 17, 1987 and amended on August 24, 1987.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 21, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Benjamin Franklin Financial Corporation, 6200 Meadowood Mall Circle, Suite 1145, Reno, Nevada 89502.

FOR FURTHER INFORMATION CONTACT: Paul Heaney at (202) 272–2847 or Karen L. Skidmore, Special Counsel, at (202) 272–3023, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Statements and Representations

1. Applicant, a Nevada corporation, is a direct, wholly-owned limited purpose finance subsidiary of Benjamin Franklin Savings Association, a Texas-chartered savings and loan association ("Franklin") which in turn is a wholly-

owned subsidiary of Security Capital Corporation, a publicly held savings and loan holding company registered under the National Housing Act. Applicant was organized solely for the purpose of issuing and selling Bonds (as defined below) secured by Mortgage Collateral (as defined below). However, a sale of Applicant's residual interests may be accomplished through the sale of its capital stock.

2. Applicant's activities will be limited to (i) issuing and selling Bonds in series ("Series") (A) rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency and (B) secured by any combination of certificates issued or guaranteed by the Government National Mortgage Association ("GNMA"), the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation ("FHLMC") evidencing interests in pools of mortgage loans secured by liens on one- to four-family residential properties (collectively referred to herein as "Federal Mortgage Certificates" or "Mortgage Collateral"); and (ii) acquiring, owning, holding, pledging and otherwise dealing with Mortgage Collateral and (iii) activities incidental to the foregoing. Applicant will not otherwise trade or deal in securities or engage in any other activity.

3. Each Series of Bonds will be issued pursuant to an indenture ("Indenture") between the Applicant and an independent trustee ("Bond Trustee"), as supplemented by one or more supplemental indentures. Each Series of Bonds will be sold to institutional or retail investors through one or more investment banking firms. Indentures for public offerings will be qualified under the provisions of the Trust Indenture Act of 1939. Each Series will consist of one or more classes ("Classes") which will have fixed (established at the time of issuance) or variable (adjusted periodically according to a fixed index set forth in the Indenture) interest rates.

4. Each Series of Bonds will be separately secured by (i) a portfolio of Federal Mortgage Certificates; (ii) monthly distributions received on such Mortgage Collateral and income derived from the reinvestment of such distributions; and (iii) certain funds and accounts including proceeds accounts, debt service funds, and reserve funds, described in the Prospectus Supplement for such Series ("Bond Collateral"). The Applicant will assign to the Bond Trustee as security for the relevant Series of Bonds its entire right, title and interest in the Bond Collateral.

5. At the time of issuance of a Series of Bonds as well as during the life of the Bonds, scheduled distributions on the mortgages underlying each portfolio of Mortgage Collateral together with reinvestment income thereon at assumed reinvestment rates acceptable to each rating agency rating the Bonds, and such reserve funds, if any, will be sufficient to make timely payments of principal of and interest on the Bonds in accordance with their terms, assuming the maximum interest rate in each class of variable interest rate Bonds, and to pay all of the fees and expenses of the Applicant with respect to such Series of Bonds.

6. To the extent permitted under the rules of the Federal Home Loan Bank Board, the Applicant may sell some or all of its equity interest ("Equity Interest") to one or more banks, savings and loan associations, pension funds, insurance companies or other investors which customarily engage in the purchase of mortgage or mortgage collateral ("Owners") in transactions not constituting a public offering under section 4(2) of the Securities Act of 1933 ("1933 Act").

7. The interests of the holders of the Bonds ("Bondholders") will not be compromised or impaired by the ability of the Applicant to sell the Equity Interest, and there will not be a conflict of interest between the Bondholders and Owners as: (a) The Bond Collateral will not be speculative in nature; (b) the Bonds will be issued only if at least one independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories; and (c) the Indenture subjects the Bond Collateral, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of all such collateral to a first priority perfected security interest in the name of the Bond Trustee on behalf of the Bondholders. Further, neither the Owners nor the Bond Trustee will be able to impair the security afforded by the Federal Mortgage Certificates because, without the consent of each affected Bondholder, neither the Owners nor the Bond Trustee will be able to: (a) Change the stated maturity on any Bond; (b) reduce the principal amount or rate of interest on any Bond; (c) change the priority of repayment on any Class of any Series; (d) impair or adversely affect the Federal Mortgage Certificates; or (e) permit the creation of a lien ranking prior to or on parity with the lien of the indenture with respect to the Federal Mortgage Certificates; or (f) otherwise deprive the Bondholders of the security afforded by the lien of the Indenture.

8. The sale of Equity Interests will not alter the payment of cash flow under the Indenture, including the amounts to be deposited in the collection account or any reserve funds. Pricing efficiencies mandate that the Bond Collateral does not substantially exceed the amount of collateral required to be pledged in order to satisfy the standards of the rating agency. In no event shall the Appliant pledge Bond Collateral with a collateral value which exceeds 110% of the aggregate principal amount of the Bonds. Thus, the excess cash flow from the Bonds Collateral which is available to Owners always will be far less than the cash flow from the Bond Collateral that is used to make principal and interest payments to Bondholders. Further, except for the limited right to substitute Mortgage Collateral, it will not be possible for Owners to alter the Bond Collateral, and, in no event will such right of substitution result in a diminution in the value or quality of the Bond Collateral. Although substitution may result in a different prepayment experience, the Bondholders' interests will not be impaired because: (a) The prepayment experience of any Collateral will be determined by market conditions beyond the Owners' control which market conditions are likely to affect similar Mortgage Certificates in similar fashion; (b) the Owners' interests are likely to be different from those of Bondholders with respect to prepayment experience; and (c) to the extent that the Owners may cause substitution which has a different prepayment experience than the original collateral, this situation is no different for the Bondholders than the traditional collateralized mortgage obligation structure where bonds are issued by an entity that is a wholly-owned subsidiary.

9. An election by the Applicant to be treated as a real estate mortgage investment conduit ("REMIC") will have no effect on the level of expenses that would be incurred by the Applicant. Administrative fees and expenses will be paid or provided for in a manner satisfactory to the agency rating the Series and subject to Condition D below.

10. Any Series of Bonds containing one or more Classes of variable rate Bonds will be structured with reference to the interest rate caps for that particular Series, ensuring that, at the time of issuance of such Series, the cash flow on the Federal Mortgage Certificates, plus the reinvestment earnings thereon at the assumed reinvestment rate specified in the

Indenture, together with the other Collateral pledged to secure such series, as described in the Application, will be sufficient to pay the principal of and interest on the variable rate Bonds, even if the interest rate on any class of variable rate Bonds climbed to the interest rate cap in the first interest period and remained constant throughout the life of the Bonds.

Applicant's Legal Conclusion

1. The proceeds from the sale of the Bonds will be used to facilitate the long-term financing of residential mortgage loans through the reinvestment of the proceeds in housing or housing-related assets. The relief requested is necessary and appropriate in the public interest because the Applicant is the type of entity to which the provisions of the 1940 Act were intended to be applied, the safeguards afforded to Bondholders fully protect investors, prospective purchases of Equity Interests will be sophisticated in the area of mortgages and mortgage-backed assets and limited in number, and the proposed activities will promote the public interest by facilitating the financing of housing by supplying capital for reinvestment in the real estate and mortgage markets.

Applicant's Conditions

Applicant agrees that the requested order may be expressly conditioned upon the following:

A. Conditions Relating to the Bond Collateral

1. Each Series will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. The Mortgage Collateral directly securing the Bonds will be limited to GNMA, FNMA and FHLMC Certificates.

3. If new Mortgage Collateral is substituted, the substitute Collateral must (i) be of equal or better quality than the Collateral replaced; (ii) have similar payment terms and cash flow as the Collateral replaced; (iii) be insured or guaranteed to the same extent as the Collateral replaced; and (iv) meet the criteria set forth in Conditions A(2) and (4). In addition, new Mortgage Collateral may not be substituted for more than 40% of the aggregate face amount of the Federal Mortgage Certificates initially pledged as Mortgage Collateral. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral. It will be a further condition of any such substitution that the rating of the Bonds of such series will not be affected by such substitution.

4. All Bond Collateral will be held by the Bond Trustee or on behalf of the Bond Trustee by an independent custodian. Neither the Bond Trustee nor custodian may be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant. The Bond Trustee for each Series will be granted a first priority perfected security or lien interest in and to all Bond Collateral securing such Series.

5. Each Series will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

6. At least annually, an independent public accountant will audit the books and records of the Applicant and will report on whether the anticipated payments of principal and interest on the Mortgage Collateral and other Collateral pledged to secure each Series of Bonds continue to be adequate to pay the principal and interest on each Series of Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Bond Trustee.

B. Conditions Relating to Variable Rate Bonds

1. Each Series of adjustable or floating interest rate Bonds will have set maximum interest rates (interest rate caps) which may vary from period to period as specified in the related Prospectus Supplement.

2. At the time of deposit of the Bond Collateral and during the life of the Bonds, the scheduled payments of principal and interest to be received by the Bond Trustee on all Federal Mortgage Certificates plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds (as described in the Application) will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each Series of adjustable or floating interest rate Bonds.[1] Such Collateral will be paid down as the mortgages underlying the Federal Mortgage Certificates are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds.

C. Conditions Relating to the Sale of Equity Interests

1. Any Equity Interest in the Applicant will be offered and sold to not more than 100 (i) institutions or (ii) non-institutions which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be capable to evaluate the risks of purchasing Equity Interests and understand volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15 of the 100 investors, will purchase at least $200,000 of such Equity Interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Further, non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing an Equity Interest in the Applicant and will have direct, personal and significant experience in making investments in mortgage-related securities and because

[1] In the case of a Series that contains a class or classes of adustable or floating rate Bonds, a number of mechanisms exist to ensure that this representation will be valid notwithstanding subsequent potential increases in the interest rate applicable to the adjustable or floating rate Bonds. Procedures that have been identified to date for achieving this result include the use of (i) interest rate caps for the adjustable or floating rate Bonds; (ii) "inverse" floating rate Bonds (which pay a lower rate of interest as the rate increases on the corresponding "normal" floating rate Bonds); (iii) floating rate collateral (such as FNMA adjustable rate Certificates) to secure the Bonds; (iv) interest rate swap agreements (under which the issuer of the Bonds would make periodic payments to a counterparty at a fixed rate of interest based on a stated principal amount, such as the principal amount of Bonds in the floating rate class, in exchange for receiving corresponding periodic payments from the counterparty at a floating rate of interest based on the same principal amount) and (v) hedge agreements (including interest rate futures and option contracts, under which the issuer of the Bonds would realize gains during periods of rising interest rates sufficient to cover the higher interest payments that would become due during such periods on the floating rate class of Bonds). It is expected that other mechanisms may be identified in the future. Applicant will give the Staff of the Division of Investment Management ("Staff") notice by letter of any such additional mechanisms before they are utilized, in order to give the Staff an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

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of such knowledge and experience, understand the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and residual interests therein. Owners will be limited to mortgage lenders, thrift institutions, commercial and investment bansk, savings and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts or other institutional or non-institutional investors as described above which customarily engage in the purchase of mortgages and mortgage-related securities.

2. Each sale of an Equity Interest will qualify as a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act.

3. Each sale of an Equity Interest will prohibit the transfer of such Equity Interest if there would be more than 100 beneficial Owners of Equity Interests in the Applicant at any time. Such prohibition will be enforced through contractual provisions in the applicable purchase and sale agreements, stop transfer orders to the transfer agent for the Equity Interests or other appropriate means.

4. Each sale of an Equity Interest will require each purchaser thereof to represent that it is purchasing for investment and not for distribution and that it will hold such Equity Interest in its own name and not as nominee for undisclosed investors.

5. Each sale of an Equity Interest will provide that (i) no Owner of such Equity Interest may be affiliated with the Bond Trustee and (ii) no holders of a controlling (as that term is defined in Rule 405) Equity Interest in the Applicant may be affiliated with either the custodian of the Bond Collateral or the agency rating the Bonds.

6. If the sale of the Equity Interests results in the transfer of control (as the term "control" is defined in Rule 405) of the Applicant, the relief afforded by any Commission Order granted on the Application would not apply to subsequent Bond offerings by that Applicant.

D. Conditions Relating to REMICs

The election by the Applicant to be treated as a REMIC will have no effect on the level of the expenses that would be incurred by the Applicant. If the Applicant elects to be treated as a REMIC, it will provide for the payments of administrative fees and expenses as set forth in the Application. The Applicant will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of the method selected.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20533 Filed 9-4-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-24865; File No. SR-MSTC-87-5]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Company; Filing

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 27, 1987, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. MSTC filed a letter amendment on August 11, 1987. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A is the text to a proposed amendment to MSTC's Article III, Rule 1, Section 1 which would authorize MSTC to charge a Participant for the failure to eliminate any negative balance remaining in such Participant's account, twenty-four hours after notification by MSTC of the existence of the negative balance. MSTC may either buy-in securities or charge Participant's account 130% of the market value of the equity security or face value of a municipal or corporate bond which constitutes the negative balance.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to both provide MSTC Participants with a stronger incentive to eliminate outstanding negative balances, and MSTC with adequate security should the Participant fail to promptly cover such negative balances. Existing MSTC Article II, Rule 1, Section 1 authorizes MSTC to institute buy-in procedures to eliminate negative balances caused by the failure to deliver securities that are valid, genuine or otherwise in good deliverable form. The proposed amendment would authorize MSTC to either buy-in securities or charge a Participant's account for the failure to eliminate any negative balance which may result from any reason, including a negative balance resulting from a partial redemption pursuant to Article IV, Rule 3.

It has been MSTC's experience that most negative balances are primarily a result of deposit rejects (securities submitted to MSTC which are not in good deliverable form), partial calls in redemption processing and miscellaneous account position adjustments. While the existing buy-in procedures have been adequate to limit MSTC's exposure in instances, those procedures are particularly inappropriate when, for example, a limited market exists for a security which is the subject of the negative balance. MSTC believes that the proposed charge will encourage Participants to continue to take steps to eliminate a negative balance, even though experiencing difficulty because of a limited market for the security. The rule change will also increase protection to MSTC should the Participant become insolvent with negative balances outstanding.

Participants with negative balances would be assessed a one-time charge of 130% of the market value of the equity security or face value of a municipal or corporate bond which constitutes the negative balance, twenty-four hours after notification by MSTC of the existence of the negative balance. Amounts collected will be placed in a separate escrow account and returned to Participants after elimination of the negative balance.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Other

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File Number SR–MSTC–87–5 and should be submitted by September 29, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 28, 1987.

Jonathan G. Katz,

Secretary.

Exhibit A

Rule 1—Delivery of Securities

Sec. 1. Participants may deliver or deposit Securities to the Corporation (or to such Correspondent Depository or Depositories as may from time to time be designated pursuant to Subsection (1) of Rule 3 of Article I) on any Business Day during such hours as may be prescribed from time to time by the Corporation (or by such Correspondent Depository). Securities received by the Corporation or by a Correspondent Depository after the prescribed cut-off time on any Business Day shall be processed as of the next Business Day. All Securities shall be accompanied by properly prepared delivery tickets and shall be in good deliverable form as prescribed by the Corporation with the appointment of such nominee, if applicable, as the Corporation may designate from time to time in its Procedures as attorney for the transfer thereof * * *. If the Corporation determines at any time that Securities previously delivered by a Participant to the Corporation or a Correspondent Depository were invalid, not genuine, or not in good deliverable form when received by the Corporation or the Correspondent Depository, the Corporation or the Correspondent Depository shall return such Securities to the Participant and debit the Participant's account accordingly. If any such debit, *or any other debit to the Participant's account for any other reason (including a debit resulting from a partial redemption pursuant to Article IV, Rule 3),* results in a negative balance in a Participant's account with respect to any class of Securities, the Participant shall immediately eliminate such negative balance by delivering to the Corporation a sufficient quantity of Securities of the same class. If the Participant fails to deliver such Securities within twenty-four hours after notification from the Corporation as to the existence of the negative balance, the Corporation may *either* cause such Securities to be brought in for the account of the Participant *or charge the account of the Participant in a manner and amount as the Corporation may prescribe in its Procedures.* When a Security is brought in for the account of a Participant pursuant hereto, the Corporation shall do so in the best market available and at the best price and terms then obtainable, taking into account the Corporation's need to receive prompt delivery of the Security, and neither the Corporation nor any officer, director or employee thereof shall have any liability in respect of a buy-in transaction executed in good faith under these Rules. The Corporation shall have the discretion to appoint such broker or brokers as it may desire to execute and clear the buy-in transaction, and the Participant for whose account the transaction is effected shall be responsible for the payment of all costs and expenses incurred in connection therewith. *When an amount is charged by the Corporation pursuant to this Rule, such amount collected shall be held by the Corporation and returned to such Participant after elimination of any such negative balance.*

[FR Doc. 87–20532 Filed 9–4–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0097]

Filing of Application for Transfer of Ownership and Control; Realty Growth Capital Corp.

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601(1987)) for Transfer of Ownership and Control of Realty Growth Capital Corporation (Licensee), 331 Madison Avenue, New York, New York 10017, a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

Pursuant to a Stock Purchase and Sale Agreement dated May 12, 1987, Mr. Alan Leavitt will purchase 30,400 shares of common stock owned by Mr. Lawrence A. Benenson, representing all of the issued and outstanding shares of capital stock of the Licensee.

In consideration of the sale, assignment and delivery of the Shares by Seller to Buyer, in full payment therefore Buyer shall deliver the following to Seller at the Closing:

a. A certified or official bank check payable to the order of the Seller for $250,000; and

b. A Promissory Note in the amount of the balance of the Purchase Price.

The Purchase Price shall be the net private capital including earned surplus ($759,569) reflected in the Licensee's Form 468 as of March 31, 1987, as filed with SBA. The amount of the Note shall be equal to the Licensee's private capital as of March 31, 1987, less $250,000. Upon approval of the Transfer of Ownership and Control, the officers, directors and shareholders of the Licensee will be as follows:

Name	Title or relationship	Percentage of share owned (in percent)
Alan Leavitt, 110 East End Avenue, New York, New York 10028.	President & Director	100
Lawrence A. Benenson, 60 Sutton Place South, New York, New York 10022.	Secretary & Director	
Claire B. Benenson, 60 Sutton Place South, New York, New York 10022.	Director	

At the time of approval, Mr. Leavitt will contribute approximately $250,000 to the Licensee thereby increasing the Licensee's private capital to $1,000,000. Also arrangements have been made to relocate the Licensee's office to 271 Madison Avenue, New York, New York 10016.

Lastly, the Licensee will lose its real estate exemption and will now maintain a diversified investment policy.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of the Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-20514 Filed 9-4-87; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Spokane, Washington, will hold a public meeting at 9:30 a.m., on Tuesday, October 20, 1987, in Room 485 U.S. Courthouse Building, West 920 Riverside Avenue, Spokane, Washington, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Valmer W. Cameron, District Director, U.S. Small Business Administration, Room 651 U.S. Courthouse Building, Post Office Box 2167, Spokane, Washington 92210, telephone (509) 456-3781.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 31, 1987.

[FR Doc. 87-20513 Filed 9-4-87; 8:45 am]

BILLING CODE 8025-01-M

National Small Business Development Center Advisory Board; Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Monday, September 28, 1987, from 2:00 p.m. to 3:30 p.m. and Tuesday, September 29, from 8:30 a.m. to 10:00 a.m. On Monday, the meeting will be held in Burlington, Vermont, at the Sheraton Burlington Inn, 870 Williston Road, telephone (802) 862-6576. On Tuesday, the meeting will be held in Durham, New Hampshire, at the New England Center, on Strafford Avenue, telephone (603) 862-2800.

The purpose of the meetings is to discuss such matters as may be presented by Advisory Board Members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Hardy Patten, SBA, Room 317, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416, telephone (202) 653-6315.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 2, 1987.

[FR Doc. 87-20565 Filed 9-4-87; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 01/01-5343]

Application for a 301(d) Small Business Investment Company License; the Argonauts MESBIC Corp.

An Application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended, (15 U.S.C. 661 *et seq.*) has been filed by The Argonauts MESBIC Corporation (Argonauts), 155 North Beacon Street, Brighton, Massachusetts 02135, with the Small Business Administration (SBA) pursuant to 13 CFR 107.103.

The officers, directors and major shareholders of the Applicant are as follows:

Chi Fu Yeh, 12 Doyle Circle, Framingham, MA 01701.	President & Director.	30% Stockholder.
Shih-Chun David Liu, 110 Algonquin Rd., Newton, MA 02167.	Secretary, Clerk, and Chairman of the Board.	40% Stockholder.
Yung Chi Chang, 17 Surrey Lane, Needham, MA 02192.	Treasurer and Director.	30% Stockholder

The Argonauts MESBIC Corporation, a Massachusetts Corporation will begin operations with $1,000,000 paid-in capital and paid-in surplus. Argonauts will conduct its activities primarily in the State of Massachusetts but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant.

Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Brighton, Massachusetts.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: September 2, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-20566 Filed 9-4-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 87-9-3; Docket 44717]

Aviation Proceedings; Application of Arctic Circle Air Service, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Arctic Circle Air Service, Inc., continues to be fit to engage in the air transportation authorized by its certificate.

DATES: Persons wishing to file objections should do so no later than September 17, 1987.

ADDRESSES: Responses should be filed in Docket 44717 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Air Carrier Fitness Division, P-56, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-9721.

SUPPLEMENTARY INFORMATION:

Dated: September 1, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-20529 Filed 9-4-87; 8:45 am]

BILLING CODE 4910-62-M

[Order 87-9-4]

Aviation Proceedings; Fitness Determination of Hub Express, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Hub Express, Inc. is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, Room 6420, Department of Transportation, 400 7th Street, SW., Washington DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Kathy A. Lusby, Air Carrier Fitness Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-2337.

Dated: September 1, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-20530 Filed 9-4-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

[FHWA Docket No. 87-14]

Construction and Maintenance; Use of Coal Ash

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comment.

SUMMARY: The purpose of this document is to set forth the text of an FHWA Notice which contains procedures to increase the Federal-aid matching share for highway construction projects using coal ash. Section 117(f), of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 (Pub. L. 100-17, 101 Stat. 132, 156) authorized the Secretary of Transportation to increase the Federal-aid matching share by 5 percent for certain highway projects, submitted by State highway departments, which would employ the use of coal ash. To be eligible, significant amounts of coal ash must be used in the project. The term "significant" was interpreted to mean a major quantity of coal ash. It was determined a minimum quantity should be set for project use instead of individual limits for each application. This was done to encourage multiple applications and reduce bookkeeping. A uniform nationwide minimum quantity will also ensure consistent interpretation of the law. The limit of 1,000 tons of coal ash was chosen since it will allow various applications in reasonable quantities while preventing the use of the provision for only minor quantities of coal ash. The 1,000 ton limit was also established as a quantity that would be of significant economic interest to the producers of coal ash. Approvals for increased Federal-aid shares under this program are authorized only through September 30, 1991. The implementation procedures are established by the FHWA Notice, which was issued on August 28, 1987. While the program will have effect only for a limited period, comments from the public are invited and will be fully considered should further guidance be deemed appropriate.

DATE: Comments must be received on or before November 9, 1987.

ADDRESS: Submit signed, written comments, preferably in triplicate to the Federal Highway Administration, FHWA Docket No. 87-14, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET, Monday through Friday. Those persons desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Weseman, Chief, Construction and Maintenance Division, (202) 366-0932, or Mr. Michael Laska, Office of the Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

Issued on August 28, 1987.

R.A. Barnhart,

Federal Highway Administrator.

Use of Coal Ash

1. Purpose

To describe the procedures to increase the Federal-aid matching share for projects as prescribed in section 117(f), of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 (Pub. L. 100-17, 101 Stat. 132, 156).

2. Definitions

Coal ash consists of the following materials:

a. Fly Ash

The finely divided residue that results from the combustion of ground or powdered coal and is transported from the combustion chamber by exhaust gases.

b. Bottom Ash

The heavy coarse graded residue that results from the combustion of coal in a dry bottom furnace which falls to the bottom of the furnace.

c. Boiler Slag

The heavy coarse graded glassy residue that results from the combustion of coal in a dry bottom furnace which falls to the bottom of the furnace.

3. Discussion

Coal ash has been shown to be cost effective and beneficial in many uses.

As such, Congress has found it to be in the national interest to encourage and promote the use of coal ash. In an effort to support these technologies, the Congress authorized a Federal-aid share increase of 5 per centum for projects using significant amounts of coal ash. Congress did not provide for an increase in the States' apportionment or allocation of funds but only for an increase in the Federal pro rata share of given projects.

a. All projects that fulfill the requirements in paragraph 4a are considered to be eligible for the 5 percent increase in Federal-aid matching ratio.

b. Projects which use coal ash in applications where the material is not combined with portland cement, lime, or asphalt cement must address environmental concerns to ensure that heavy metals will not leach from the roadway.

c. Bottom ash uses have not been included in this directive since there are significant concerns about the durability of the material as an aggregate. These concerns are documented in existing research reports.

d. The law specifically requires that a "significant amount" of coal ash be used on a project in order for the project to be eligible for the 5 percent increase in Federal-aid matching ratio. A significant use of coal ash is defined as a total of 1,000 tons or more of coal ash for all uses on a project. This would be based on the estimated use of coal ash at the time the plans, specifications, and estimate are approved or at project agreement if the contractor is given the option to use coal ash.

e. This provision does not eliminate the need to fulfill the requirements in the Federal-Aid Highway Program Manual (FHPM), Volume 6, Chapter 4, Section 2, Subsection 4, Construction Projects Incorporating Experimental Features, if appropriate.

f. The provisions in paragraph 4a are intended to enable the 5 per centum increase in Federal-aid matching ratio to apply to an entire highway or bridge project which incorporates the qualifying uses.

4. Procedures

The use of selected cost effective coal ash products which meet a State's needs for a particular project may be incorporated into the proposed plans and specifications. States with "permissive specifications" which allow the contractor, at his/her option, to incorporate coal ash products qualifying for this program should require the contractor to declare at bid opening the intended use of such coal ash products and the estimated amount of coal ash that will be used. This is necessary to determine if the 5 per centum increase in the Federal-aid matching ratio will be applicable.

a. *Approval.* (1) On or before September 30, 1991, the Division Administrator may approve a request by a State highway agency to increase the Federal-aid matching ratio by 5 per centum for the entire project cost if the project:

(a) Incorporates the use of fly ash, and/or

(b) The use of boiler slag, and

(c) A significant amount of coal ash is used as defined in paragraph 3d.

(2) In no case may the Federal-aid matching ratio be increased above 95 percent through the application of this provision.

b. *Fiscal procedures.* (1) Normal reporting procedures will be followed as prescribed in FHWA Order H 4500.2A, Fiscal Management Information System Handbook, except for the following:

(a) The amount of additional Federal funds approved by the FHWA will be entered on the Form FHWA-37, Project Status Record, and reported as a separate line item utilizing the miscellaneous work type code Y010—Coal Ash. No special appropriation codes will be used for the increased Federal share.

(b) An amount equal to the additional Federal funds reported on the separate line utilizing work type code Y010 will be deducted from the total cost column of the predominant line and entered as the total cost for the increased Federal share. (The amount in the summary Federal funds field must be no more than 95 percent of the amount in the summary total cost field.)

(c) Line item coded with work code Y010 will be coded the same as the line containing the predominant cost of paving materials, except data entered in the "miles" column will not be repeated on this line.

(2) The Form PR-2, Federal-Aid Project Agreement, will contain the following statement:

"Additional Federal funds of $_____ have been approved in accordance with Pub. L. 100-17, section 117(f). The Federal-aid participation is _____ percent.

5. Reporting

All projects covered by this Notice should be reported on form FHWA 1531, Coal Ash Utilization Report (Attachment). This form should be submitted to the Office of Highway Operations, Construction and Maintenance Division (HHO-30). This report will be completed by the FHWA Division Office (RCS No. HHO-33-01).

In addition, the projects may be subject to the reporting requirements of FHPM 6-4-2-4.

Attachment—RCS No. HHO-33-01; Expiration Date September 30, 1991

COAL ASH UTILIZATION REPORT

State	Construction project No	County
	Percent cement replaced	Tons used
Fly ash		
Portland cement concrete		
	Percent by total weight of mixture	
Soil stabilization		
Pozzolanic or Cement stabilized bases or subbases		
Grouting		
Mineral filler in asphalt mixes		
Embankments		
Others		
Boiler slag		
Aggregate		
Other		
Total tons used		

Form FHWA 1531 (7-87)

[FR Doc. 87-20506 Filed 9-4-87; 8:45 am]

BILLING CODE 4910-22-M

VETERANS ADMINISTRATION

Agency Form Letter Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form letter, (2) the title of the form letter, (3) the agency form letter number, if applicable, (4) a description of the need and its use, (5) how often the form letter must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form letter, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form letter and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to

the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 9, 1987.

Dated: September 1, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

EXTENSION

1. Department of Veterans Benefits.
2. Statement of Witness to Accident.
3. VA Form Letter 21–806.
4. This information is necessary to determine the veteran's entitlement to benefits due to accidental injury.
5. On occasion.
6. Individuals or households.
7. 13,200 responses.
8. 4,400 hours.
9. Not applicable.

[FR Doc. 87–20502 Filed 9–4–87; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 173
Tuesday, September 8, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 33314.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., September 22, 1987.

CHANGE IN THE MEETING: The meeting on the financial rule enforcement review is cancelled.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-20656 Filed 9-3-87; 3:54 pm]
BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, September 1, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Report of the Director, Division of Accounting and Corporate Services
Memorandum re: Investment Management Report, Quarter Ending June 30, 1987

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: September 2, 1987.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 87-20671 Filed 9-3-87; 3:54 pm]
BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, September 1, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 2, 1987.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 87-20672 Filed 9-3-87; 3:54 pm]
BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:10 a.m. on Tuesday, August 25, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointee), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 1, 1987.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 87-20673 Filed 9-3-87; 3:55 pm]
BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

September 2, 1987.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B.

TIME AND DATE: September 9, 1987, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 862nd Meeting—September 9, 1987, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 2142-008, Central Maine Power Company
CAP-2.
Project Nos. 9593-001, and 002, Pollock City Conservationists
Project No. 10097-001, Kingdom Energy Products, Inc.
Project Nos. 10299-001 and 10317-001 Nooksack River Hydro

Project Nos. 10142–001, 10181–001, 10186–001, 10193–001, 10194–001 and 10195–001, Sauk River Hydro
Project Nos. 10145–001, 10146–001, 10148–001, 10149–001, 10150–001, 10151–001, 10152–001, 10185–001, 10187–001, 10189–001, 10197–001, 10210–001, 10211–001, 10212–001, 10213–001, 10214–001, 10215–001, 10216–001 and 10217–001, Skykomish River Hydro
Project Nos. 10188–001 and 10192–001, Stillaguamish River Hydro
Project Nos. 10099–001, 10100–001, 10101–001, 10258–001, 10266–001, 10274–001 and 10288–001, Cascade River Hydro
Project No. 10129–001, Cranberrry Creek Hydro, Inc.
Project No. 10141–001, William C. Porter
Project No. 10166–001, Francis A. Smith
Project Nos. 10184–001, 10297–001, 10311–001 and 10313–001, Skagit River Hydro
Project No. 10190–001, Saulk River Hydro
Project Nos. 10257–001, 10269–001, 10270–001, 10272–001, 10273–001, 10292–001, 10305–001, 10307–001, 10308–001 and 10321–001, Washington Hydro Development Company
Project Nos. 10275–001 and 10279–001, Suiattle River Hydro

CAP–3.
Project No. 3749–008, Mitex, Inc.

CAP–4.
Project Nos. 8136–005 and 10062–001, Friends of Keeseville, Inc.
Project No. 9817–003, Cash Flow Systems, Inc.

CAP–5.
Project No. 8245–001, Bellows-Tower Hydro, Inc.

CAP–6.
Project No. 8546–001, Howard and Mildred Carter

CAP–7.
Project Nos. 3865–003, 005, 006, 007 and 008, Guadalupe-Blanco River Authority

CAP–8.
Project No. 3228–005, Atlantic Power Development Corporation

CAP–9.
Project Nos. 9690–001 and 002, Orange and Rockland Utilities, Inc.
Project No. 9754–001, Rio Hydroelectric Associates, Inc.

CAP–10.
Project No. 10341–002, Gem Irrigation District

CAP–11.
Project No. 9167–001, Pennsylvania Hydroelectric Development Corporation

CAP–12.
Project No. 9550–001, Lower Patterson, Inc.

CAP–13.
Project No. 5927–007, Goose Creek Hydro Associates

CAP–14.
Project No. 3195–015, Joseph M. Keating

CAP–15.
Project No. 5928–000, Cornell University
Project No. 6744–000, City of Ithaca, New York

CAP–16.
Project No. 7266–001, Colorado Hydro-Power Corporation

CAP–17.
Project Nos. 137–002, 1962–000 and 1988–007, Pacific Gas and Electric Company
Project Nos. 1388–001 and 1389–001, Southern California Edison Company

CAP–18.
Docket Nos. EL87–19–001 and 002, Florida Power & Light Company

CAP–19.
Docket Nos. ER84–560–002 and 003, Union Electric Company

CAP–20.
Docket No. ER86–684–003, Jersey Central Power and Light Company, Pennsylvania Electric Company, Metropolitan Edison Company, GPU Service Corporation and Niagara Mohawk Power Corporation

CAP–21.
Docket No. ER87–240–002, Carolina Power & Light Company

CAP–22.
Docket No. ER87–330–001, Monongahela Power Company, *et al.*

CAP–23.
Docket No. ER82–769–008, Minnesota Power & Light Company

CAP–24.
Docket No. ER87–310–002, Central Vermont Public Service Corporation

CAP–25.
Docket Nos. EL87–13–001 and 002, City of Holyoke Gas and Electric Department, City of Westfield Gas and Electric Light Department, Marblehead Municipal Light Department, Middleborough Municipal Gas and Electric Department, North Attleboro Electric Department, Peabody Municipal Light Plant, Shrewsbury Electric Light Department, Templeton Municipal Light Plant, Town of Boylston Municipal Light Department, Town of Hudson Light and Power Department, Town of Littletown Municipal Light and Water Department, Town of Wakefield Municipal Light Department, and West Boylston Municipal Lighting Plant v. Boston Edison Company

CAP–26.
Docket No. QF83–196–002, Big Horn Energy Partners

CAP–27.
Docket No. ER87–65–001, West Texas Utilities Company

CAP–28.
Docket No. ER86–701–001, Kansas City Power & Light Company

CAP–29.
Docket No. ER87–30–001, United Illuminating Company

CAP–30.
Docket No. ER87–263–001, Cambridge Electric Light Company

CAP–31.
Docket No. ER87–327–001, Pacific Gas & Electric Company

CAP–32.
Docket No. ER86–58–004, Louisiana Public Service Commission v. System Energy Resources, Inc.
Docket No. EL86–59–001 and 003, Louisiana Public Service Commission v. Middle South Service, Inc.
Docket Nos. ER82–616–030 and ER87–60–001, System Energy Resources, Inc.

CAP–33.
Docket No. EL86–11–003, Delmarva Power & Light Company

CAP–34.
Docket No. EL85–1–000, Greensboro Lumber Company v. Rayle Electric Membership Corporation and Oglethorpe Power Corporation
Docket No. EL85–8–000, Greensboro Lumber Company v. Oglethorpe Power Corporation, Altamaha EMC, Amicalola EMC, Canoochee EMC, Carroll EMC, Central Georgia EMC, Coastal EMC, Cobb EMC, Colquitt EMC, Coweta-Fayette EMC, Douglas County EMC, Excelsior EMC, Flint EMC, Grady County EMC, Habersham EMC, Hart County EMC, Irwin County EMC, Jackson EMC, Jefferson EMC, Lamar EMC, Little Ocmulgee EMC, Middle Georgia EMC, Mitchell EMC, Ocmulgee EMC, Oconee EMC, Okefenoke Rural EMC, Pataula EMC, Planters EMC, Rayle EMC, Satilla Rural EMC, Sawnee EMC, Slash Pine EMC, Snapping Shoals EMC, Sumter EMC, Three North EMC, Tri-County EMC, Troup County EMC, Upson County EMC, Walton EMC, Washington EMC, Municipal Electric Authority of Georgia, City of Adel, Georgia, City of Albany, Georgia, City of Barnesville, Georgia, City of Blakely, Georgia, City of Brinson, Georgia, City of Buford, Georgia, City of Cairo, Georgia, City of Calhoun, Georgia, City of Camilla, Georgia, City of Cartersville, Georgia, City of College Park, Georgia, City of Commerce, Georgia, City of Covington, Georgia, Crisp County Power Commission, City of Doerun, Georgia, City of Douglas, Georgia, City of East Point, Georgia, City of Elberton, Georgia, City of Ellaville, Georgia, City of Fairburn, Georgia, City of Fitzgerald, Georgia and City of Forsyth, Georgia

CAP–35.
Docket No. EL87–35–000, Savannah Electric and Power Company

CAP–36.
Docket No. EL87–27–000, Sycamore Cogeneration Company

Consent Miscellaneous Agenda

CAM–1.
Docket No. FA85–63–003, Long Island Lighting Company

CAM–2.
Docket No. FA86–19–001, System Energy Resources, Inc.

CAM–3.
Omitted

CAM–4.
Docket No. FA83–4–002, Duke Power Company

CAM–5.
Omitted

CAM–6.
Docket No. RM87–35–000, Generic Determination of Rate of Return on Common Equity for Public Utilities

CAM–7.
Docket No. RM87–32–000, Requirements of Landowner Notification under section 14 of the Electric Consumers Protection Act

CAM–8.
Docket Nos. RM87–3–002 through 018, Annual Charges under the Omnibus Budget Reconciliation Act of 1986

CAM–9.

Docket Nos. RM83–41–001, 002, 003 and 004, Rules of Discovery for Trial-Type Proceedings

CAM–10.
Docket No. GP86–40–000, Railroad Commission of Texas, Paramount Petroleum Corporation, David Pilot Gas Unit No. 1 Well, NGPA Section 108 Determination, FERC No. JD82–27133, NGPA Section 108-Enchanced Recovery, FERC No. JD82–29588

CAM–11.
Docket No. GP86–15–000, State of Louisiana, Section 102 Determination, Jeems Bayou Production Corporation, Martin A No. 1 Well, FERC JD No. 84–20414

CAM–12.
Docket No. GP87–11–000, ANR Pipeline Company v. Conoco Inc.

CAM–13.
Docket No. GP87–1–000, Arkla Energy Resources, a Division of Arkla, Inc., Complainant, v. Alice-Sidney Oil Company and Anthony Oil & Gas Company, Respondents

CAM–14.
Docket No. SA86–28–001, I & S Oil and Gas Company

CAM–15.
Docket No. RA85–6–002, Utex Oil Company

CAM–16.
Docket No. RA85–5–000, Little America Refining Company

Consent Gas Agenda

CAG–1.
Docket No. RP87–86–000, K N Energy, Inc.

CAG–2.
Docket No. RP85–112–002, Boundary Gas, Inc.

CAG–3.
Docket No. RP87–40–004, Western Transmission Corporation

CAG–4.
Docket No. RP87–70–001, East Tennessee Natural Gas Company

CAG–5.
Docket No. RP84–76–005, Alabama-Tennessee Gas Company

CAG–6.
Omitted

CAG–7.
Docket Nos. RP86–33–004 through 007 and RP86–91–003 through 005, Midwestern Gas Transmission Company

CAG–8.
Docket No. RP85–87–004, Consolidated Gas Transmission Corporation

CAG–9.
Docket Nos. TA87–2–2–000 and 001, East Tennessee Natural Gas Company

CAG–10.
Docket No.TA87–4–46–000, Kentucky West Virginia Gas Company

CAG–11.
Docket No. TA85–4–17–002, Texas Eastern Transmission Corporation

CAG–12.
Docket Nos. ST87–2155–000 and ST87–2229–000, Seagull Shoreline System

CAG–13.
Docket Nos. ST87–2245–000 and ST87–2263–000, Lear Gas Transmission Company

CAG–14.
Docket Nos. ST87–2667–000, ST87–3679–000 and ST87–3680–000, Washington Gas Light Company

CAG–15.
Docket No. ST87–350–000, Cabot Pipeline Corporation

CAG–16.
Docket No. RI87–1–001, Exxon Corporation

CAG–17.
Docket Nos. G–2602–002 and G–11630–001, Marathon Oil Company
Docket Nos. G–2895–001, G–9980–001, G–11587–001, G–13220–000, G–14832–001 and CI87–718–000, ARCO Oil and Gas Company, Division of Atlantic Richfield Company
Docket No. G–5663–000, Amoco Production Company
Docket Nos. G–14830–000, CI87–218–000 and CI87–521–000, Champlin Petroleum Company
Docket Nos. G–16134–001 and CI69–334–000, Sun Exploration and Production Company
Docket Nos. CI61–316–001 and CI87–88–000, Phillips Petroleum Company
Docket No. CI67–1602–003, CI78–1019–000 and CI87–73–000, BHP Petroleum (Americas), Inc.
Docket No. CI87–606–000, Union Texas Petroleum Corporation
Docket No. G–6352–002, Conoco, Inc.
Docket No. CI87–252–000, Chevron U.S.A., Inc.
Docket Nos. CI87–430–000 and CI87–671–000, Hamon Operating Company
Docket No. CI87–482–000, J.M. Huber Corporation

CAG–18.
Docket No. CI87–353–000, Kenrell Petroleum Resources, Inc.

CAG–19.
Docket No. CP87–108–002, Columbia Gas Transmission Corporation

CAG–20.
Docket Nos. CP87–451–001, 002 and 003, Northeast U.S. Pipeline Projects

CAG–21.
Docket No. CP86–709–001, Midwestern Gas Transmission Company

CAG–22.
Docket No. CP86–251–002, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG–23.
Docket Nos. CP86–747–003, CP86–265–002, CP86–406–002 and CP87–128–002, Transcontinental Gas Pipe Line Corporation

CAG–24.
Docket Nos. CP85–78–000 and 001, Mountain Fuel Resources, Inc.

CAG–25.
Docket No. CP87–225–000, South Jersey Gas Company, Complainant v. SunOlin Chemical Company, Respondent

CAG–26.
Docket No. CP87–6–000, Northwest Pipeline Corporation

CAG–27.
Docket No. CP87–22–000, Northwest Pipeline Corporation

CAG–28.
Docket Nos. CP83–63–000 and 001, Wyoming Interstate Company, Inc.
Docket No. CP83–70–000, Overthrust Pipeline Company
Docket No. CP83–222–000, Canyon Creek Compression Company
Docket No. CP84–480–000, Midwestern Gas Transmission Company
Docket No. CP84–514–000, Northern Natural Gas Company, Division of Enron Corporation
Docket No. CP84–572–000, ANR Pipeline Company
Docket No. CP85–11–000, Natural Gas Pipeline Company of America
Docket Nos. CP84–595–000, 002 and 003, Colorado Interstate Gas Company
Docket No. CP84–564–000, Tennessee Gas Pipeline Company, A Division of Tenneco Inc.

CAG–29.
Omitted

CAG–30.
Docket No. CP86–676–000, Equitable Gas Company, a Division of Equitable Resources, Inc. and Equitable Transmission Company

CAG–31.
Docket No. CP87–298–000, United Gas Pipe Line Company

CAG–32.
Docket No. CP86–246–000, United Gas Pipe Line Company

CAG–33.
Docket Nos. CP87–344–000, CP87–345–000, CP87–346–000, CP87–347–000, CP87–348–000, CP87–359–000, CP87–360–000, CP87–361–000, CP87–364–000, CP87–372–000, CP87–373–000, CP87–374–000, CP87–375–000, CP87–383–000, CP87–384–000 and CP87–385–000, United Gas Pipe Line Company

CAG–34
Docket Nos. CP87–55–000, CP87–180–000, CP87–220–000 and CP87–260–000, United Gas Pipe Line Company

CAG–35.
Docket Nos. CP87–234–000 and 001, Northern Border Pipeline Company
Docket Nos. CP87–299–000 and 001, Northern Natural Gas Company, Division of Enron Corporation

CAG–36.
Docket No. CP87–141–000, Colorado Interstate Gas Company

CAG–37.
Docket No. CP87–188–000, Transcontinental Gas Pipe Line Corporation

CAG–38.
Docket Nos. CP87–7–000 and 001, Texas Gas Transmission Corporation

CAG–39.
Docket No. CP87–43–000, Arkla Energy Resources, a Division of Arkla, Inc.

CAG–40.
Docket No. CP83–140–004, K N Energy, Inc.

CAG–41.
Docket No. CP70–7–033, Southern Natural Gas Company

CAG–42.
Docket Nos. RP86–105–004, 011, RP86–169–002 and 006, ANR Pipeline Company

CAG–43.
Docket No. TA87–2–9–002, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG–44.
Docket No. RP86–48–000, Columbia Gas Transmission Corporation v.

Transcontinental Gas Pipe Line Corporation
Docket No. RP87–7–012, Transcontinental Gas Pipe Line Corporation

I. Licensed Project Matters

P–1.
Project No. 5867–010, Long Lake Energy Corporation. Order on request for stay of license.

II. Electric Rate Matters

ER–1.
Docket No. ER76–205–003, Southern California Edison Company. Opinion and order determining just and reasonable rates.

Miscellaneous Agenda

M–1.
Docket Nos. RM86–6–004, 005 and 006, Construction Work in Progress. Order on rehearing.

I. Pipeline Rate Matters

RP–1.
Docket Nos. TA85–3–29–009, 016, 020, 025, TA86–1–29–006, TA85–1–29–006, TA86–5–29–007, RP83–137–025 and CP85–190–003, Transcontinental Gas Pipe Line Corporation. Order on initial decision concerning transition costs.

RP–2.
Omitted

II. Producer Matters

CI–1.
Reserved

III. Pipeline Certificate Matters

CP–1.
Reserved

Kenneth F. Plumb,
Secretary.
[FR Doc. 87–20666 Filed 9–3–87; 3:54 pm]
BILLING CODE 6717–01–M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Tuesday, September 8, 1987, 2:00 p.m.

PLACE: 1776 G Street, NW., Washington, DC, Conference Room 8C.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Alan B. Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, DC 20013 (202) 789–5097.

Matters To Be Considered

Closed: Corporate Direction and Related Business and Financing Activities.
Closed: Financial Report.
Closed: Position of President-CEO for Freddie Mac.

Date sent to **Federal Register:** September 3, 1987.

Maud Mater,
Secretary.
[FR Doc. 87–20648 Filed 9–3–87; 12:44 pm]
BILLING CODE 6719–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 7–87]

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Wednesday, September 30, 1987 at 10:30 a.m.: Consideration of Final Decisions on claims against the Government of Ethiopia.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street, NW., Room 400, Washington, DC 20579. Telephone: (202) 653–6155.

Dated at Washington, DC on September 2, 1987.

Judith H. Lock,
Administrative Officer.
[FR Doc. 87–20610 Filed 9–3–87; 10:47 am]
BILLING CODE 4410–01–M

INTERSTATE COMMERCE COMMISSION

DATE AND TIME: 10:00 a.m., Tuesday, September 15, 1987.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: Commission Voting Conference.

Matters To Be Discussed

Finance Docket No. 31000: Union Pacific Corporation and BTMC Corporation—Control—Overnite Transportation Company

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Government and Public Affairs, Telephone: (202) 275–7252.

Noreta R. McGee,
Secretary.
[FR Doc. 87–20583 Filed 9–2–87; 4:32 pm]
BILLING CODE 7035–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 7, 1987:

A closed meeting will be held on Wednesday, September 9, 1987, at 2:30 p.m. An open meeting will be held on Thursday, September 10, 1987, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, September 9, 1987, at 2:30 p.m., will be:

Litigation matter.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive action.
Settlement of administrative proceedings of an enforcement nature.
Regulatory matter regarding financial institution.
Opinion and Order.

The subject matter of the open meeting scheduled for Thursday, September 10, 1987, at 10:00 a.m., will be:

1. Consideration of whether to send to the Securities Industry Conference on Arbitration a letter which sets forth the findings of recent review of self-regulatory organization-sponsored arbitration. For further information, please contact Robert A. Love at (202) 272–3064.
2. Consideration of whether the Commission should issue a Memorandum Opinion and Order with regard to Mississippi Power & Light Company (MP&L) and System Energy Resources, Inc. ("SERI"), public utility subsidiaries of Middle South Utilities, Inc. ("MSU"), a registered holding company under the Public Utility Holding Company Act of 1935, authorizing MSU and SERI to guarantee potential rate refunding obligations of MP&L needed to obtain a bond for a stay pending appeal to the United States Supreme Court, on

grounds of federal preemption, of a Mississippi Supreme Court judgment concerning retail rates. For further information, please contact Martha C. Baker at (202) 272–2073.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jacqueline Higgs at (202) 272–2149.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20636 Filed 9–3–87; 12:47 pm]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1392]

TIME AND PLACE: 10 a.m. (CDT), Wednesday, September 9, 1987.

PLACE: Itawamba Community College, Large Startup Room, Multipurpose Building, 653 Eason Boulevard, Tupelo, Mississippi.

STATUS: Open.

Agenda

Approval of minutes of meeting held on August 26, 1987.

Discussion Item

1 Tupelo Education Model and the Related Principles of Adult Literacy System.

Action Items

B—Purchase Awards

B1. Invitation AA–453995-Reissue—Design and Construct Coal Hoppers at Paradise Fossil Plant.

B2. Amendment to Contract 81TJ3–609081 with IBM Corporation for Central Multiprocessing System and Services.

B3. Request for Proposal YB–204940—Indefinite Quantity Term Contract for Cadam Workstations, Associated Equipment, and Support.

C—Power Items

C1. Amendment to Interchange Agreement No. TV–49984A with Georgia Power Company to Modify Monthly Transmission Facilities Charge.

C2. Proposed Form Agreement Amending Revised Home Insulation Program Agreement to Permit Power Distributors to Use Independent Contractors to Conduct Surveys and Inspections.

C3. Proposed Form Agreement Amending Revised Home Insulation Program Agreement to Cover Deletion of Load Management Requirements for Heat Pump Water Heaters.

C4. Proposed Form Agreement Amending the Energy Saver Home Program Agreement to Cover Cost-sharing Arrangements for Special Advertising and Promotional Activities.

D—Personnel Items

D1. Supplement to Personal Services Contract No. TV–67944A with Aptech Engineering Services, Palo Alto, California, to Provide Services in Connection with Issues Related to Welding Review Activity at Watts Bar Nuclear Plant, Requested by Office of Nuclear Power.

D2. Supplement to Personal Services Contract No. TV–71021A with DiBenedetto Associates, Inc., North Andover, Massachusetts, for Technical and Engineering Assistance at Sequoyah Nuclear Plant, Requested by Office of Nuclear Power.

D3. Supplement to Personal Services Contract No. TV–69832A with Robert L. Cloud Associates, Inc. for Review of Sequoyah Alternate Analysis Program and Watts Bar Hangar Analysis Update Program, Requested by Office of Nuclear Power.

D4. Personal Services Contract for Upgrade of the Office of Nuclear Power's Management-level Position Descriptions, Requested by Office of Nuclear Power.

D5. Personal Services Contract with General Electric Company for Assistance in Addressing Remaining Engineering, Construction, Licensing and Quality Requirements Related to Restart of Browns Ferry Nuclear Plant, Requested by Office of Nuclear Power.

D6. Personal Services Contract with Associated Project Analysts for Assistance Relating to Restart Schedule and Licensing Activities at Sequoyah Nuclear Plant, Requested by Office of Nuclear Power.

E—Real Property Transactions

E1. Grant of Term Easement to Tennessee Wildlife Resources Agency for Management and Operation of a Waterfowl Refuge, Affecting 1,280 Acres of Tellico Reservoir Land in Monroe Country, Tennessee—Tract No. XTTELR–33E.

F—Unclassified

[1] F1. Supplement to Research and Development Agreement (TV–70363A) Among TVA, Department of Energy, and Solar Energy Research Institute.

F2. Supplement to Interagency Agreement (TV–59928A) between TVA and Agency for International Development Covering Arrangements for TVA's Assistance in the Bioenergy Program.

F3. Concept Plan for the Development of TVA's Land Between the Lakes through the Year 1999.

F4. Final Regulation to Amend the Regulation on Enforcement of Nondiscrimination on the Basis of Handicap in Tennessee Valley Authority Programs.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: September 2, 1987.

John G. Stewart,

Manager of Policy, Planning and Budget.

[FR Doc 87–20595 Filed 9–3–87; 9:22 am]

BILLING CODE 8120–01–M

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[1] Items approved by individual Board members. This would give formal ratification to the Board's action.

Corrections

Federal Register
Vol. 52, No. 173
Tuesday, September 8, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1250

Egg Research and Promotion

Correction

In rule document 87-19046 beginning on page 31376 in the issue of Thursday, August 20, 1987, make the following corrections:

1. On page 31377, in the first column, under **Effect on Small Entities**, in the eighth line , "FRA" should read "RFA".

2. On the same page, in the second column, in the second complete paragraph, in the fifth line from the bottom, after "timely" insert "manner".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300160A]

Daminozide; Revocation and Amendment of Tolerances

Correction

In rule document 87-16695 beginning on page 27551 in the issue of Wednesday, July 22, 1987, make the following correction on that page:

In the third column, in the **SUMMARY**, in the fourth line, "2,2-diemthylhydrazide)]" should read "2,2-dimethylhydrazide)]".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7F3535/R904; FRL-3239-9]

Pesticide Tolerance for Daminozide

Correction

In rule document 87-17184 beginning on page 28256 in the issue of Wednesday, July 29, 1987, make the following correction:

On page 28258, in the second column, in the first complete paragraph, in the first line, "not" should read "now".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7E3467/P428; FRL-3239-3]

Pesticide Tolerance for Benomyl

Correction

In proposed rule document 87-17185 beginning on page 28313 in the issue of Wednesday, July 29, 1987, make the following corrections on that page:

1. In the first column, the docket number should read as set forth above.

2. In the first column under **ADDRESS**, in the eighth line from the bottom, "Information" was misspelled.

3. In the second column, in paragraph number 2., in the sixth line, "50," should read "500,".

4. In the same column, in paragraph number 3., "rate" should read "rat".

BILLING CODE 1505-01-D

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federal register

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Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 172, 173, 174, 175, 176, 177, 178, and 179

Performance-Oriented Packaging; Miscellaneous Proposals; Postponement of Hearing Date and Extension of Comment Period

VOL 52 ISS 173 SE 8 1987 UMI

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178, and 179

[Docket No. 181, Notice No. 87-4]

Performance-Oriented Packaging Standards; Miscellaneous Proposals; Postponement of Hearing Date and Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public hearing and extension of comment period.

SUMMARY: RSPA is postponing the public hearing which was scheduled to be held on September 15 and 16, 1987 in Washington, DC and is extending the comment period for Docket HM-181, Notice No. 87-4, which was published in the **Federal Register** (52 FR 16482) on May 5, 1987. The hearing is rescheduled for November 17 and 18, 1987. The comment period is extended from November 2, 1987 until February 26, 1988. In order to have meaningful discourse at the hearing, it is necessary for RSPA to publish corrections and supplements to Notice No. 87-4 and to provide adequate time for interested persons to review the supplemental notice. RSPA is not able to publish the supplemental notice in sufficient time for review before the originally scheduled hearing dates. The hearing is being postponed and the comment period is being extended so that RSPA can publish a supplemental NPRM and to provide adequate time for review of the proposals contained therein.

DATES: *Comments:* Comments must be received on or before February 26, 1988.

Public hearing: A public hearing is scheduled to be held on November 17 and 18, 1987 from 9:30 a.m. to 5:00 p.m. daily.

ADDRESSES: *Comments:* Address comments to Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and be submitted, if possible, in 5 copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street SW., Washington, DC, 20590. Public dockets may be reviewed between the hours of 8:30 a.m. to 5:00 p.m., Monday through Friday.

Public hearing: The public hearing will be held at the FAA Auditorium, Third floor, Federal Office Building 10A, 800 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward T. Mazzullo or Helen L. Engrum, Standards Division, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh St. SW., Washington DC, 20590, telephone (202) 366-4545.

SUPPLEMENTARY INFORMATION: As indicated in the preamble to Notice No. 87-4, the proposals presented in that notice entail changes, both editorial and substantive, to substantial portions of the existing Hazardous Materials Regulations (49 CFR, Subchapter C). Due to the size (255 pages in the **Federal Register**) and scope of the NPRM, it was inevitable that there would be a large number of errors and omissions and RSPA indicated its intent to issue a supplemental NPRM to address these errors and omissions if brought to RSPA's attention in a timely manner. RSPA had anticipated publishing the supplemental notice before the public hearing originally scheduled for September 15 and 16, 1987. Due to the volume of corrections brought to RSPA's attention by commenters and because of administrative delays, RSPA is unable to publish the supplemental NPRM prior to September 15, 1987. Therefore, the public hearing is being postponed until November 17 and 18, 1987. Efforts are being made, through this notice and through other means, to inform persons planning to attend the public hearing of the postponement. However, because of the late publication of this notice, RSPA is aware that some persons may not be informed of the postponement and may show up at the hearing room on the originally scheduled dates. RSPA intends to have personnel at the hearing room to answer questions concerning the docket.

Due to postponement of the public hearing until after the scheduled closing date for comments (November 2, 1987) and having received two petitions from commenters for extension of the comment period, RSPA is extending the comment period until February 26, 1987 to provide adequate time for public review of the proposals contained in the docket.

Issued in Washington, DC, on September 4, 1987, under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 87-20702 Filed 9-4-87; 10:45 am]

BILLING CODE 4910-60-M

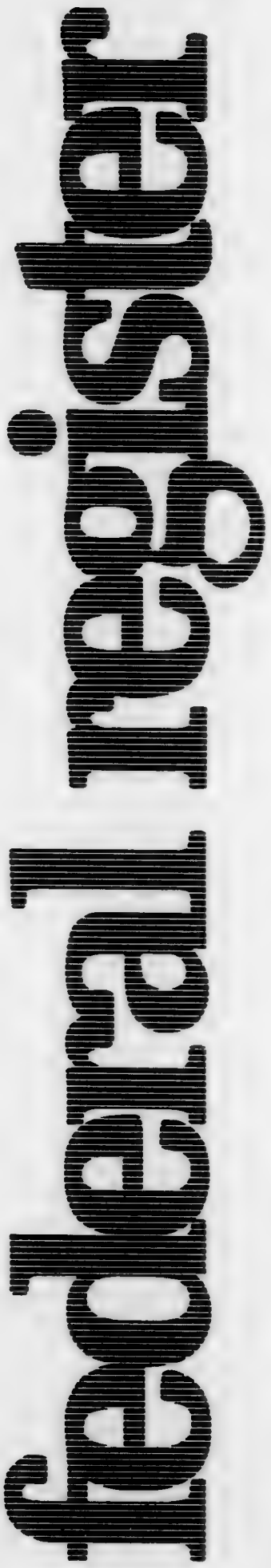

Tuesday
September 8, 1987

Part III

Department of Education

34 CFR Parts 602 and 603

Secretary's Procedures and Criteria for Recognition of Accrediting Agencies; Notice of Proposed Rulemaking

VOL 52 ISS 173 SE 8 1987 UMI

DEPARTMENT OF EDUCATION

34 CFR Parts 602 and 603

Secretary's Procedures and Criteria for Recognition of Accrediting Agencies

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the regulations concerning the criteria and procedures for the Secretary's recognition of accrediting agencies. These amendments are being made to clarify the regulations, and to require greater emphasis upon assessment of student achievement by accrediting bodies, upon the responsibilities of accrediting agencies for encouraging the truthfulness of institutional claims, and upon reciprocity by recognized accrediting agencies and associations of each other's accrediting actions. These changes are designed to strengthen the role of accrediting agencies in assessing educational quality. The amendments also reduce burdens on applicant accrediting agencies through the elimination or simplification of some current criteria. The Secretary continues to be concerned about administrative soundness and financial viability as well, and the Department will soon be publishing separately regulations designed in part to help ensure that accredited educational institutions eligible for the Department's student financial assistance programs will be well managed.

DATES: Comments must be received on or before October 23, 1987.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Kenneth D. Whitehead, Deputy Assistant Secretary for Higher Education Programs, Office of Postsecondary Education, U.S. Department of Education (Room 3082 ROB–3), 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: James B. Williams, telephone number (202) 245–9759.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

SUPPLEMENTARY INFORMATION: These proposed regulations would revise procedures and criteria for the Secretary's recognition of accrediting agencies. Recognition is based on the Secretary's determination that accrediting agencies are reliable authorities concerning the quality of education or training offered by the postsecondary educational institutions or programs within the agencies' respective scopes of operation.

Accreditation of postsecondary institutions or postsecondary programs of institutions by agencies or associations recognized by the Secretary is a prerequisite for eligibility for many types of Federal financial assistance for those institutions or programs and for the students enrolled in those institutions or programs.

An accrediting agency that desires to be recognized by the Secretary submits a petition prepared according to the criteria and procedures in these proposed regulations. If the Secretary recognizes an accrediting agency, the recognized agency will periodically need to petition for continued recognition.

To help ensure that Federal money devoted to postsecondary eduction is spent wisely, the Secretary intends to use his legal authority for recognition of accrediting agencies to improve the quality of postsecondary education. Although educational quality is primarily the responsibility of the institutions themselves, and secondarily of private regulatory bodies established by the institutions as well as of local and State governments, the Secretary has a stewardship responsibility to ensure that Federal monies are used at institutions or in programs that meet certain standards with regard to quality. As a principal means of accomplishing this objective, Congress has given the Secretary the statutory responsibility for periodically publishing a list of nationally recognized accrediting agencies or associations that he determines to be reliable authorities as to the quality of education offered. Accreditation by one of these Secretarially recognized agencies or one of the statutory substitutes for it is a prerequisite for eligibility for many Federal programs.

As the Secretary has said: "In recent years, when addressing postsecondary education, we have tended to concentrate on *quantity*. . . . We are the most educated people in the world. It is time to ensure we are the world's *best* educated people as well. Access is important, but equally important is that this be access to quality. As we assess American postsecondary education today, we must evaluate not only the *quantity*, but also the *quality* of our institutions; not only the quantity of the inputs, but the quality of the results."

With these objectives in mind, as one of his first initiatives upon taking office, the Secretary requested the National Advisory Committee on Accreditation and Institutional Eligibility (NACAIE) to undertake a comprehensive review of the criteria used by the Secretary to recognize accrediting agencies. A "working group" consisting of five members of the NACAIE drafted recommendations which were ratified by the NACAIE and submitted to the Secretary. The Secretary accepted these recommendations at the December 1986 meeting of the NACAIE and charged the Assistant Secretary for Postsecondary Education with preparing a Notice of Proposed Rulemaking based on the NACAIE recommendations. This is the product of that directive.

The NACAIE recommendations included a number of modifications in the existing criteria, but NACAIE concluded that the "triad" of institutional eligibility—the phrase used to describe the partnership of the Federal Government, State governments, and accrediting agencies—is working reasonably well and remains the most effective and workable system available for the evaluation of postsecondary educational institutions and practices. The intention of the proposed criteria developed by the NACAIE working group was to preserve the voluntary, self-regulatory character of accreditation, while providing those working within the system with the encouragement and the support to meet the challenge of improving the quality of postsecondary education, as measured by the educational attainment of students. The Secretary agrees with this basic strategy.

These regulations would become effective no earlier than sixty (60) days after they are published as final regulations in the **Federal Register**, and would apply to each accrediting body the first time it is reviewed by the Secretary or NACAIE following the effective date.

Explanation of Changes from Existing Procedures and Rules

The following is an explanation of the changes that would be made in existing procedures and rules by the proposed regulations.

Assessment of Student Achievement

There recently has been much emphasis within the postsecondary educational community on the effective assessment of student achievement as the principal measure of educational quality. The Secretary is in full accord with this trend and wishes to encourage it. Therefore, these revised regulations,

in § 602.17 in Subpart B, would place greater emphasis upon the consistent assessment of documentable student achievements as a principal element in the accreditation process. This emphasis would follow from an original justification for accreditation as the guarantor of the validity and reliability of educational degrees and credentials, and is in line with what Congress intended when it provided that the Secretary's recognition would help to assure that accrediting agencies were reliable authorities as to the quality of education or training offered.

The Secretary expects that accrediting agencies will respond to this emphasis on institutional quality as measured by student achievement in a variety of appropriate ways. Among other things the Secretary expects accrediting agencies to maintain full and accurate records. The Secretary invites comment about whether the provisions of this NPRM best ensure that accreditation standards and decisions reflect demonstrable student achievement.

Respect for Decisions of States and of Other Recognized Accrediting Bodies

The primary emphasis in § 602.19 in Subpart B would be on reciprocity among accrediting bodies. In an effort to uphold standards for the quality of training and education that are relatively commensurate among agencies accrediting similar institutions or programs, the Secretary would require that an institutional accrediting body refuse to accept for accreditation or preaccreditation an institution that is under adverse action from another institutional accrediting body during the 12 months following the initial adverse action. Correspondingly, an agency would have to accredit or preaccredit only those institutions that are legally authorized within a State to provide a program of education beyond secondary education.

The Secretary has determined that the requirement relating to reciprocity among accrediting agencies is useful on the basis of evidence that institutions and programs that lose their accreditation because of their inability to continue to meet the standards of the agencies that accredited them "shop around" for other accrediting bodies whose standards they can meet, rather than trying to correct their deficiencies.

The Secretary would also require, in cases of simultaneous accreditation of an institution or program by more than one institutional accrediting body, that an institutional accrediting body as a matter of reciprocity re-evaluate its accreditation of an educational institution or program that loses its institutional accreditation from another institutional accrediting body.

While it is in many cases legitimate, simultaneous accreditation of an institution or program by more than one institutional accrediting body is sometimes sought by an institution or program as a hedge against losing accreditation and, therefore, eligibility for Federal assistance. Multiple institutional or programmatic accreditation makes it much easier for an institution or program of questionable quality to manipulate the procedural protections inherent in the accreditation process and thus to frustrate attempts to promote quality through accreditation standards.

Regard for Institutional Integrity

The emphasis in § 602.18 is on the integrity of an institution or program and its practices as a component of the quality of education or training offered. In judging whether an accrediting agency is a reliable authority concerning institutional integrity, the Secretary would review the accrediting body's policies and practices concerning the accuracy and adequacy of the institution's representations with regard to its programs and practices, what it expects of students, and the methods and evidence by which it ascertains the degree of their fulfillment of these expectations. Diligence by an agency in requiring that each institution fully and accurately document its representations would be a major factor in the Secretary's determination, including the documentation of employment data related to the education or training by institutions or programs offering a program of training to prepare students for gainful employment in a recognized occupation.

Among the major items that any accrediting agency (or student or parent) needs when evaluating the quality of educational or training alternatives is accurate information about the content, typical results, and costs of each alternative. How much does a typical student gain from each alternative and at what cost? This section represents a reasonable attempt by the Secretary to ensure that the information is available to those who want to make comparisons.

Notice to the Department of Education

Under current regulations there is no provision for accrediting agencies to notify the Department of Education routinely of decisions that affect an institution's or program's Federal program eligibility status. In certain instances, recognized accrediting agencies have not provided timely notice of those actions. Therefore, under paragraph (f) of § 602.16 the Secretary would require recognized accrediting agencies to notify appropriate staff of the Department within 30 days of denying or withdrawing accreditation or preaccreditation or of placing an institution or program on public probation.

Ability to Benefit

This criterion implements the newly enacted legislative provision applicable to students entering a postsecondary educational institution or program under the "ability to benefit" provision, i.e., those students entering without a high school diploma or equivalency diploma or the commitment to earn an equivalency diploma within the time limit established by Congress, if the institution or program participates in the Title IV student financial assistance programs. These students must be administered a nationally recognized standardized test or an industry-developed test or be counseled about their ability to complete successfully their educational program before being admitted according to criteria developed by the cognizant accrediting body.

Scope of the Secretary's List

The revised regulations for the first time would specifically limit the Secretary's list of nationally recognized accrediting agencies only to agencies that accredit postsecondary educational institutions and programs. In that regard, the Secretary has determined that there is no necessity for recognition of accrediting bodies for evaluation of education at the elementary or secondary levels. Since the Secretary's list up to now has included agencies that accredit education below the postsecondary level, this limitation would result in a change in the character of the list. The Secretary also considers whether an accrediting agency demonstrates that the institutions or programs it accredits must be accredited by an accrediting agency recognized by the Secretary in order for those institutions or programs, or their students, to be eligible for participation in one or more Federal programs.

Burden Reduction

Although the proposed regulations include certain new criteria intended to strengthen the practice of accreditation in the United States, they would also include changes intended to eliminate some existing criteria. These proposed regulations would extend the maximum period of recognition from four to five years. This change would reduce the

frequency of the petitioning process. A number of other previous criteria, largely procedural and less directly related to the Secretary's authority to recognize an accrediting agency as a reliable authority concerning the quality of education or training, have been omitted.

Clarification and Reorganization

The Secretary is also clarifying and simplifying the existing regulations. Items have been reorganized and merged to eliminate repetition. The criteria now appear at sections 602.10—602.20.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. In general, these revised regulations would extend the recognition period, eliminate a substantial number of former requirements, and reinforce current trends among the nationally recognized accrediting agencies.

Paperwork Reduction Act of 1980

Section 602.18 contains an information collection requirement. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested parties are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3082, Regional Office Building 3, 7th and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 602 and 603

Colleges and universities, Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: September 2, 1987.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Chapter VI of Title 34 of the Code of Federal Regulations as follows:

PART 603—[AMENDED]

1. The authority citation for Part 603 continues to read as follows:

AUTHORITY: (20 U.S.C. 403(b), 1085(b), 1141(a), 1248(11); (42 U.S.C. 293a (b), 295f–3(b), 295h–4(1)(D), 298b(f); (8 U.S.C. 1101(a)(15)(f); (12 U.S.C. 1749c(b)); (38 U.S.C. 1775(a)), unless otherwise noted.

2. The title of Part 603 is amended by removing the words "National Acrediting Bodies And".

Subpart A—[Removed]

3. Subpart A of Part 603 is removed.

4. A new Part 602 is added to read as follows:

PART 602—SECRETARY'S PROCEDURES AND CRITERIA FOR RECOGNITION OF ACCREDITING AGENCIES

Subpart A—General Provisions

Sec.
602.1 Scope and purpose.
602.2 Definitions.
602.3 Recognition procedures.
602.4 Participation of National Advisory Committee.
602.5 Publication of List of recognized agencies.

Subpart B—Criteria for Secretarial Recognition

602.10 Criteria for recognition.
602.11 Experience.
602.12 Scope of activity.
602.13 Clarity of purpose, scope, and operational information.
602.14 National recognition.
602.15 Resources.
602.16 Integrity of process.
602.17 Focus on assessment of student achievement.
602.18 Regard for institutional integrity.
602.19 Regard for decisions of States and of other accrediting agencies.
602.20 "Ability to benefit" under Title IV student financial assistance programs.

Authority: 20 U.S.C. 1058, 1061, 1085, 1088, 1141, 1401, 2471, and 3381, unless otherwise noted.

Subpart A—General Provisions

§ 602.1 Scope and purpose.

(a) This part establishes procedures and criteria for the Secretary's recognition of accrediting agencies. Recognition is based on the Secretary's determination that accrediting agencies are reliable authorities concerning the quality of education or training offered by the postsecondary educational institutions and programs within the agencies' respective scopes of operation.

(b) Accreditation of postsecondary institutions or postsecondary programs by agencies or associations recognized by the Secretary is a prerequisite to eligibility for many types of Federal financial assistance for those institutions or programs and for the students enrolled in those institutions or programs.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.2 Definitions.

The following definitions apply to terms used in this part:

(a) *Definitions in the Education Department General Administrative Regulations.* The following terms used in this part are defined in 34 CFR 77.1:

Department
Secretary
State

(b) *Definitions that apply to this part.* The following definitions also apply to this part:

"Accrediting" and "accreditation" refer to the public recognition of the level of quality of an educational institution or program that is granted by an agency.

"Accrediting agency" and "agency" mean a legal entity, or a part of that entity, which conducts accrediting activities.

"Act" means the Higher Education Act of 1965, as amended.

"Educational program" means a program of organized instruction or study, offered by an educational institution or other organization, that leads to an academic, vocational, or professional degree or certificate.

"Preaccreditation" means an agency's formal grant of status to an educational institution or program that signifies that the agency expects the institution or program to obtain accredited status from that agency within a specified period of time.

"Recognized agency" means an agency currently recognized by the Secretary under this part.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.3 Recognition procedures.

(a) An accrediting agency that desires to be recognized by the Secretary under this part shall apply in writing to the United States Department of Education, Office of Postsecondary Education, Washington, DC 20202.

(b) For both initial recognition and continued recognition, the accrediting agency, with regard to its requested scope of recognition, shall provide or make available to the Secretary information and materials that pertain to each of the criteria in Subpart B.

(c) To the extent that the documentation submitted by an agency under paragraph (b) of this section does not demonstrate to the satisfaction of the Secretary that the agency meets one or more of the criteria contained in Subpart B, the Secretary may require that the agency—

(1) Submit any additional information and materials;

(2) Make its personnel available for interviews by Department personnel; and

(3) Make its facilities and records available for review by Department personnel.

(d) The Secretary does not deny or withdraw recognition of an agency, or limit recognition of an agency to a scope narrower than that requested, without first giving the agency an opportunity to show cause why that action should not be taken.

(e) The Secretary re-evaluates each recognized agency at the Secretary's discretion, but at least once every five years.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.4 Participation of National Advisory Committee.

In making determinations under this part, the Secretary considers the recommendations of the National Advisory Committee on Accreditation and Institutional Eligibility, which is established by section 1205 of the Act.

(Authority: 20 U.S.C. 1058 *et al.*, 1145)

§ 602.5 Publication of list of recognized agencies.

The Secretary periodically publishes in the **Federal Register** a list of recognized agencies, including the scope of recognition of each agency.

(Authority: 20 U.S.C. 1058 *et al.*)

Subpart B—Criteria for Secretarial Recognition

§ 602.10 Criteria for recognition.

(a) The Secretary recognizes an accrediting agency only if the Secretary determines that the agency is a reliable authority as to the quality of the education or training offered by postsecondary educational institutions or programs within the agency's scope of activity. In making this determination, the Secretary decides whether the agency possesses the characteristics and follows the procedures described in this subpart.

(b) To be recognized by the Secretary, an agency must satisfactorily meet each of the criteria in §§ 602.11–602.20 unless it can demonstrate to the Secretary's satisfaction why one or more criteria should not appropriately be applied.

(c) For purposes of the determination in paragraph (b) of this section, each section, taken as a whole, constitutes a criterion.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.11n Experience.

An accrediting agency must have at least two years of experience with respect to the scope of activity for which it seeks recognition.

(Authority: 20 U.S.C. 1508 *et al.*)

§ 602.12 Scope of activity.

The Secretary determines whether an accrediting agency—

(a)(1) Is national in the scope of its operation; or

(2) Conducts accreditation of entire educational institutions, as opposed to programs, throughout at least three States that are contiguous or that otherwise constitute a distinct geographical region; and

(b) Demonstrates that the institutions or programs it accredits must be accredited by an accrediting agency recognized by the Secretary in order for those institutions or programs, or their students, to be eligible for participation in one or more Federal programs.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.13 Clarity of purpose, scope, and operational information.

The Secretary determines whether an accrediting agency maintains, and makes publicly available, written material clearly describing each of the following matters:

(a) Its purposes and objectives.

(b) The geographical area and the types and academic levels of educational institutions and programs covered by the agency's accrediting activity.

(c) The definitions of each type of accreditation and preaccreditation status, including probationary status, that the agency grants.

(d) The procedures used by the agency in determining whether to grant, reaffirm, reinstate, deny, restrict, or revoke each type of accreditation and preaccreditation status that the agency grants.

(e) The procedures offered by the agency for appeal of its denials or revocations of accreditation or preaccreditation status.

(f) The standards against which the agency evaluates educational institutions or programs for the purpose of making the determinations described in paragraph (d) of this section, and the criteria used for making decisions on the basis of those standards.

(g) The current accreditation or preaccreditation status granted by the agency to each educational institution or program within the agency's scope of operation.

(h) The names of all members of the agency's policy and decision-making bodies responsible for its accrediting activities and their relevant employment or organizational affiliations, and the names of its principal administrative staff.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.14 National recognition.

The Secretary determines whether an accrediting agency demonstrates that its policies, evaluation methods and decisions are accorded recognition throughout the United States by, as appropriate—

(a) Educators and educational institutions;

(b) Licensing bodies, practitioners, and employers in the professional or vocational fields for which the educational institutions or programs within the agency's jurisdiction prepare their students; and

(c) Recognized agencies.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.15 Resources.

The Secretary determines whether an accrediting agency has and will have available sufficient resources to carry out its accreditation function in light of its requested scope of recognition, including—

(a) Administrative staff and financial resources; and

(b) Competent and knowledgeable personnel responsible for policy-making

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and decisions regarding accreditation and preaccreditation status.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.16 Integrity of process.

the Secretary determines whether an accrediting agency adheres to the following practices and procedures in making its determinations concerning accreditation and preaccreditation status:

(a) As an integral part of its accrediting activity—

(1) It requires self-analysis by each subject educational institution or program in accordance with guidance provided by the agency; and

(2) It conducts an on-site review of the institution or program, independently analyzes and evaluates the data furnished, and provides a written report on the view to the institution or program concerning—

(i) The strengths and weaknesses of the institution or program; and

(ii) The institution's or program's performance respecting the requirements related to assessment of student achievement described in § 602.17.

(b) It re-evaluates at reasonable intervals the institutions or programs to which it has granted accreditation or preaccreditation status.

(c) It bases its decisions regarding the award of accreditation or preaccreditation status upon its published standards.

(d) With regard to the award of preaccreditation status, it applies standards and follows procedures that are appropriately related to those used to award accreditation status.

(e) It offers appropriate and fair procedures for appeals of its denial or withdrawal of accreditation or preaccreditation status.

(f) It agrees in writing to provide written notice to the Secretary within 30 days of any decision, including any decision subject to appeal—

(1) To deny or withdraw the accreditation or preaccreditation status of an institution or program; or

(2) To place an accredited or preaccredited institution or program on public probationary status.

(g) Its organization, functions, and procedures include effective controls against conflicts of interest and against inconsistent application of its standards.

(h) It requires that each institution or program to which it has granted accreditation or preaccreditation status prominently and accurately disclose that status to the public, including the academic or instructional programs covered by that status.

(i) It maintains a systematic program of review designed to assess the validity and reliability of its standards for determining accreditation and preaccreditation status.

(j) It maintains full and accurate records of its reviews of institutions and its decisions with respect to preaccreditation, accreditation, and adverse actions.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.17 Focus on assessment of student achievement.

The Secretary determines whether an accrediting agency, in making its decisions, places substantial emphasis on the assessment of student achievement by educational institutions or programs, by requiring that each institution or program—

(a) Clearly specifies educational objectives that are appropriate in light of the degrees or certificates it awards;

(b) Adopts and implements effective measures, such as testing, for the verifiable and consistent assessment and documentation of the extent to which students achieve the educational objectives described in paragraph (a) of this section;

(c) Confers degrees or certificates only on those students who have demonstrated educational achievement as assessed and documented through appropriate measures described in paragrpah (b) of this section;

(d) Broadly and accurately publicizes, particularly in representations directed to prospective students, the objectives described in paragraph (a) of this section, the assessment measures described in paragraph (b) of this section, and the information obtained through those measures; and

(e) Systematically applies the information obtained through the measures described in paragraph (b) of this section toward steps to foster enhanced student achievement with respect to the degrees or certificates offered by the institution or program.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.18 Regard for institutional integrity.

The Secretary also determines whether an accrediting agency—

(a) Maintains, and disseminates to each institution or program to which it has granted status, guidelines designed to ensure—

(1) That any representations made, through catalogs, other publications, and advertisements, and through statements by representatives of the institution or program, that inform prospective students about such matters as the following are accurate and not misleading—

(i) The institution's or program's resources, admission policies and standards, academic offerings, fees and other charges, refund policies, and graduation rates and requirements;

(ii) The institution's or program's educational effectiveness (outcomes and results) as described in § 602.17, particularly with regard to students receiving its degrees or certificates; and

(iii) Data on alumni employment related to the education or training offered, in the case of an institution or program offering training to prepare students for gainful employment in a recognized occupation;

(2) The appropriate scope and content of information that should be provided to prospective students regarding their academic and financial responsibilities, including the institution's or program's expectations with regard to satisfactory academic progress and its cost and refund policies; and

(3) The kind of documentation that the institution or program should maintain to demonstrate its compliance with the guidelines described in paragraphs (a) (1) and (2) of this section;

(b) Uses site visits and periodic reviews of catalogs and other descriptive materials of the institutions or programs within its scope of operation, in order to ensure that the institutions or programs follow the guidelines described in paragraph (a) of this section; and

(c) Reviews and takes adverse action against accredited or preaccredited institutions or programs that either fail to meet its standards for award of accreditation or preaccreditation status or fail to follow its guidelines described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.19 Regard for decisions of States and of other accrediting agencies.

The Secretary determines whether an accrediting agency, in making its decisions, shows regard for the decisions of States and of other recognized accrediting agencies by conforming with the following practices:

(a) Recognizing only those institutions or programs that are legally authorized within a State to provide a program of education beyond secondary education.

(b) Declining to grant initial accreditation or preaccreditation status to an educational institution or program that has been denied accreditation or preaccreditation status or had its accreditation revoked by another recognized agency within the previous twelve months.

(c) If another recognized agency revokes an institution's accreditation,

promptly reviewing the institutional accreditation or preaccreditation status it has previously granted to that institution to determine if there is cause for it to withdraw that status.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.20 "Ability to benefit" under Title IV student financial assistance programs.

If an accrediting agency is seeking recognition with regard to institutions or programs that admit students on the basis of their "ability to benefit" from the education or training offered and that desire to participate in one or more student financial assistance programs under Title IV of Act, the Secretary determines whether that agency has developed criteria for preadmission counseling of prospective students or for the administration to prospective students of a nationally recognized standardized or industry-developed test measuring the aptitude of prospective students to complete successfully the program for admission to which they have applied.

(Authority: 20 U.S.C. 1058 *et al.* and 1091(d))

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[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[6] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

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Federal Register

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

Milk in the Iowa Marketing Area; Temporary Revision of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rule.

SUMMARY: This action temporarily relaxes for September, October and November 1987 the supply plant shipping requirements under the Iowa milk order. The revision is made in response to a request by the operator of a pool supply plant who ships milk to distributing plants regulated by the order. The revision would prevent uneconomic movements of milk.

EFFECTIVE DATE: September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Temporary Revision of Shipping Percentages: Issued August 13, 1987; published August 18, 1987 (52 FR 30922).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact on certain milk handlers and would tend to assure that the market would be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

This rule has been reviewed under Executive Order 12291 and Department Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1079.7(b)(1) of the Iowa order (7 CFR Part 1079).

Notice of proposed rulemaking was published in the **Federal Register** (52 FR 30922) concerning a proposed decrease in the shipping requirements for pool supply plants for the months of September, October and November 1987. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by August 25, 1987. Two comments were received.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice and other available information, it is hereby found and determined that the supply plant shipping percentage should be lowered by 10 percentage points from the present 35 percent to 25 percent for the months of September through November 1987.

Pursuant to the provisions of § 1079.7(b)(1), the supply plant shipping percentages set forth in § 1079.7(b) may be increased or decreased by up to 10 percentage points during any month to encourage additional milk shipments to pool distributing plants or to prevent uneconomic shipments.

Beatrice Companies, Inc. (Beatrice), on behalf of Beatrice Cheese, requested the action in order to prevent uneconomic shipments of milk during September through November 1987. Beatrice said that the market's producer milk receipts during the April through June 1987 period showed an increase each month over the same month of 1986. The monthly increases for this period cited by Beatrice were 6.4, 2.0 and 3.9 percent, respectively. Beatrice indicated that receipts at their supply plants, while slightly decreasing in April, had increased by 2.4 percent in June and that they expect their receipts for the balance of 1987 to increase about 3.0 percent. Beatrice also indicated that without a downward revision in the supply shipping standards, it would have to uneconomically backhaul approximately 3.4 to 3.7 million pounds of milk per month in order to pool this milk.

The petitioner stated that distributing plants could be adequately served if supply plant shipping requirements were lowered to 25 percent. Beatrice said that thus there will be no need for supply plants to ship as much as 35 percent of their producer receipts and that a temporary lowering of the supply plant shipping requirements to a 25 percent shipping standard, is needed to prevent uneconomic shipments of fluid milk.

Market data indicates that producer receipts for the period of January through July 1987 increased approximately 2.0 percent when compared to the same period of 1986. However, for the last four months of this seven-month period, producer receipts increased approximately 5.0 percent. Class I utilization as a percentage of producer receipts has been substantially below 30 percent for the last six months.

Two comments were received in response to the proposed action. Kraft, Inc., which operates a pool supply plant located in Earlville, Iowa, stated that producer receipts for June and July 1987 were substantially higher and that it expects producer receipts at their plant for the remainder of the year to be above the 1986 level. The other comment was for Wapsie Valley Creamery, Inc. who stated that their producer receipts were also substantially up for May, June, and July 1987.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing in the Iowa marketing area for the months of September, October and November 1987;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision. No comments were filed in opposition to this action.

Therefore, good cause exists for making this temporary revision effective upon publication of this notice in the **Federal Register.**

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1079.7(b) of the Iowa milk order are hereby revised for the months of September, October and November 1987.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

§ 1079.7 [Temporarily revised in part]

2. In § 1079.7(b), the provision "35 percent" is revised to "25 percent" for the months of September, October and November 1987.

Effective date: Upon publication in the **Federal Register.**

Signed at Washington, DC, on September 3, 1987.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 87–20685 Filed 9–8–87; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Telephone Reporting of Significant Events Involving Byproduct, Source, or Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations regarding the telephone reporting of certain significant events involving byproduct, source, or special nuclear material. The amendment applies to all holders of licenses issued for the receipt, possession, use, or transfer of licensed byproduct, source, or special nuclear material that do not have an installed Emergency Notification System. The amendment is being made because current procedures require telephone reporting to an NRC Regional Office, rather than a central NRC office, and consequently often result in unnecessary delays before the event is reported to an appropriate NRC official. The amendment will require that all telephone calls reporting these significant events be directed to the NRC Operations Center, thus ensuring facility, expertise, timeliness, and consistency in the NRC response. Since, about two-thirds of these licensee reports are already directed to the NRC Operations Center, and since only the point of contact is being changed, it is anticipated that the impact, if any, on affected licensees will be negligible.

EFFECTIVE DATE: September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Morton R. Fleishman, Senior Nuclear Engineer, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–443–7975.

SUPPLEMENTARY INFORMATION: The NRC requires that its nuclear power reactor licensees have an Emergency Notification System that provides a direct telephone link to the NRC Operations Center. Section 20.403(d)(1) of 10 CFR Part 20 requires all licensees who have an installed Emergency Notification System to make reports of various significant events involving byproduct, source, or special nulcear material to the NRC Operations Center in accordance with 10 CFR § 50.72. However, unlike nuclear power reactor licensees, most fuel cycle and materials licensees do not have a direct telephone link to the NRC Operations Center. Section 20.403(d)(2) requires these licensees to make their telephone reports of these significant events to the appropriate NRC Regional Administrator. Experience has shown that the current procedures often result in unnecessary delays before the event is reported to an appropriate NRC official. In order to provide fuel cycle and materials licensees with the same degree of facility, expertise, timeliness, and consistency in responding to the telephone notification that the NRC provides to reactor licensees, the Commission has decided to direct all telephone calls concerning these significant events involving licensed material to the NRC Operations Center. Since about two-thirds of these licensee reports are already directed to the NRC Operations Center, it is anticipated that the impact, if any, on affected licensees will be negligible.

Only the initial point of contact for telephone calls is being changed in 10 CFR 20.403(d)(2). The NRC is not changing the telegram, mailgram, or facsimile requirements in § 20.403(d)(2); licensees will still be required to send these to the appropriate NRC Regional Office listed in Appendix D of Part 20.

Because this is an amendment dealing with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendment is effective upon publication in the **Federal Register.** Good cause exists to dispense with the usual 30-day delay in the effective date because the amendment is of a minor and administrative nature dealing with a matter of agency conduct, i.e., a change in the location to which telephone calls should be placed concerning significant events involving licensed material.

Environmental Impact—Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

A regulatory analysis was not prepared for this amendment to the regulations. For the affected licensees, telephone notification for significant events is already required by the regulations and the amendment merely changes the initial point of contact. Hence, the economic impact on the licensees is insignificant.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because this amendment does not apply to 10 CFR Part 50 licensees.

List of Subjects in 10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment to 10 CFR Part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 20.403, paragraph (d)(2) is revised to read as follows:

§ 20.403 Notification of incidents.

* * * * *

(d) * * *

(2) All other licensees shall make the reports required by paragraphs (a) and (b) of this section by telephone to the NRC Operations Center [1] and by telegram, mailgram, or facsimile to the Administrator of the appropriate NRC Regional Office listed in Appendix D of this part.

Dated at Bethesda, Maryland, this 28th day of August 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87-20661 Filed 9-8-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-94-AD; Amdt. 39-5718]

Airworthiness Directives; Boeing Model 767 Series Airplanes and Model 757 Series Airplanes Equipped With Rolls Royce RB211 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Boeing Model 767 series airplanes and Model 757 series airplanes equipped with Rolls Royce RB211 series engines by individual telegrams. This AD requires the installation of a guard device between the two engine fuel control switches to preclude inadvertent simultaneous shutdown of both engines. This action is prompted by a recent incident that occurred when the flight crew inadvertently shut off the fuel control switches to each engine while intending to operate the electronic engine control (EEC) switches.

DATES: Effective September 14, 1987.

This AD was effective earlier to all recipients of telegraphic AD T87-13-51, dated July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Steven P. Clark, Propulsion Branch, FAA, Seattle Aircraft Certification Office; telephone (206) 431-1963. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On July 1, 1987, the FAA issued telegraphic AD T87-13-51, applicable to Boeing Model 767 series airplanes and Model 757 series airplanes equipped with Rolls Royce RB211 series engines, which requires the installation of a guard device between the two engine fuel control switches to inhibit simultaneous activation of the fuel control switches.

This action was prompted by an incident that occurred on June 30, 1987, where a Boeing Model 767, on climbout, had a cockpit message indicating a failure of the electronic engine control (EEC) on one engine. The flight manual procedure for such a failure message is to retard both thrust levers to a mid position and place both EEC switches to the "OFF" position. In following this procedure, the crew inadvertently shut off the fuel control switches to both engines instead of the EEC switches, which are located in the same vicinity on the control panel. The airplane was at approximately 1,600 feet at the time of the shutdown and engine restart was initiated immediately. Both engines were recovered at approximately 500 feet altitude.

This is the second incident in which both engines have been shut down while the crew was following a procedure that involves actuation of the EEC switches. The previous incident occurred on March 31, 1986, and involved a normal takeoff procedure where the EEC's were off for takeoff and then turned on after lift off. Both events occurred at low altitude and required immediate crew action to restart the engines.

Normal crew training emphasizes actuating only one engine control switch at a time; however, both the EEC and the fuel control switches on the Model 767 are located such that it is possible to actuate the switches of either one for both engines simultaneously with one hand.

In addition, the FAA has determined that Boeing Model 757 airplanes equipped with Rolls Royce RB211 series engines have similar engine limiter control (ELC) switches in the same location as the EEC switch on the Model 767; therefore, this action is being made applicable to those airplanes as well.

Since this condition is likely to develop in other airplanes of these type designs, this emergency airworthiness directive is being issued to require the installation of a guard device between the two engine fuel control switches which will inhibit simultaneous activation of the fuel control switches. This is considered to be an interim action until final action has been identified, at which time the FAA may consider further rulemaking action.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant or major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

[1] Commercial telephone number of the NRC Operations Center is (202) 951-0550.

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Boeing: Applies to Model 767 series, and Model 757 series airplanes equipped with Rolls Royce RB211 series engines, certificated in any category. Compliance is required within 10 days after the effective date of this AD, unless previously accomplished.

To preclude inadvertent simultaneous shutdown of both engines, accomplish the following:

Install a switch guard between the two engine fuel control switches in accordance with the following instructions.

A. Fabricate switch guard as follows:

1. Shape to be a half cylinder .7-inch radius or 1.4-inch diameter.

2. 1.0-inch long with curved edges rounded approximately .06-inch radius.

3. Material: Acrylic or other suitable material.

B. Bond switch guard to top of fuel control light plate, Part Number S233T100–503 or –532, using epoxy cement such as BAC 5010 Type 70 or EC 2216 from 3M Company or other suitable epoxy.

C. Locate switch guard as follows:

1. Centered between the two fuel control switches.

2. Rounded side up.

3. Flat sides facing switches.

4. Forward side flush with forward edge of light plate.

Note: All dimensions are approximate. Minor deviations in size, shape, or material are acceptable if approved by the assigned Air Carrier Principal Maintenance Inspector.

This amendment becomes effective September 14, 1987.

This AD was effective earlier to all recipients of telegraphic AD T87–13–51, issued July 1, 1987, which contained this amendment.

Issued in Seattle, Washington, on August 21, 1987.

Temple H. Johnson,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–20599 Filed 9–8–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 82–ANE–10; Amdt. 39–5707]

Airworthiness Directives; Garrett Turbine Engine Co. (GTEC), TSE331–3 and TPE331–1, –2, –3, –4, –5, and –6 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The amendment adopts a new airworthiness directive (AD) which requires periodic replacement/rework and x-ray inspection of third stage turbine stator assemblies on TSE/TPE331 series engines. The AD is needed to prevent thermal fatigue of the sheet metal inner seal support and/or failure of the outer sheet metal ring to nozzle casting butt weld which has resulted in uncontained third stage turbine wheel failures.

DATES: Effective—September 14, 1987.

Compliance—As required in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register of September 14, 1987.

ADDRESSES: The applicable Alert Service Bulletins may be obtained from: Garrett Airline Service Division, Technical Publications, Department 65–70, P. O. Box 29003, Phoenix, Arizona 85072; telephone (602) 225–2969/2973. A copy of the Alert Service Bulletins are contained in Rules Docket No. 82–ANE–10, Office of the Regional Counsel, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Frank L. Forster, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6327.

SUPPLEMENTARY INFORMATION: The FAA has determined that failure of either the inner seal support or outer ring to nozzle casting weld joint could cause an uncontained separation of the third stage turbine rotor assembly. Since this condition is likely to exist or develop on other engines of the same type design, an AD is being issued which requires periodic replacement/rework and x-ray inspection of the third stage turbine stator assembly on TSE/TPE331 series engines. After issuing AD 84–01–04, Amendment 39–4792 (49 FR 2467), in which paragraph (g) requires a one time replacement of P/N 868379–1 third stage stators with subsequently approved stators on certain TSE/TPE331 series engines, the FAA and manufacturer have determined, based on service experience, that the manufacturer's recommended replacement interval of 6,000 hours for the sheet metal inner seal support is inadequate. Therefore, a Notice of Proposed Rulemaking (NPRM) proposing the periodic replacement/rework of the third stage turbine stator assembly was published in the **Federal Register** on April 17, 1987 (52 FR 12545). The comment period closed on June 17, 1987, and no comments were received.

Since the above referenced action, another TPE331 series engine experienced an uncontained turbine wheel event attributed to failure of the third stage stator. This failure was determined to be due to inadequate weld penetration of the butt joint between the outer sheet metal and nozzle casting. This new failure mode was not addressed in the NPRM. Therefore, this AD contains an x-ray inspection requirement, in addition to the requirements proposed in the NPRM, to prevent the third stage stator from shifting aft and contacting the third stage turbine disk.

Since this condition is likely to exist or develop on other TSE/TPE331 series engines of the same type design, this AD requires periodic replacement/rework and x-ray inspection of the third stage stator assembly.

In view of the issuance of this AD, the requirements contained in paragraph (g) of AD 84–01–04, Amendment 39–4792, are no longer necessary and that AD will be amended by separate action to delete paragraph (g).

In view of the recent failure mentioned above, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that further notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

CONCLUSION: The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Garrett Turbine Engine Company (GTEC): Applies to GTEC engine models TSE331–3, and TPE331–1, –2, –3, –5, and –6 series engines with P/N 868379–1, or P/N 868379–3 third stage stators.

Compliance is required as indicated, unless already accomplished. To prevent uncontained turbine wheel failures, accomplish the following:

(a) Replace P/N 868379–1 (if installed) with P/N 868379–3 third stage stator assembly per schedule below. GTEC Alert Service Bulletin (ASB) No. TPE/TSE331–A72–0384 provides instructions for reidentification of third stage stator assemblies from P/N 868379–1 to P/N 868379–3. Rework P/N 868379–3 stator assembly per schedule below, and thereafter at intervals not to exceed 4,500 hours in service, in accordance with the accomplishment instructions in GTEC ASB No. TPE/TSE331–A72–0384, Revision 3, dated July 1, 1987. Rework of the third stage stator assembly must include installation of a new sheet metal inner seal support.

Third stage stator time in service since new or rework	Replacement and/or rework schedule
Less than 4,000 hours.	Prior to accumulating 4,500 hours in service.
4,000 to 5,000 hours.	Within 500 hours in service after the effective date of this AD, or prior to accumulating 5,200 hours in service, whichever occurs first.
Greater than 5,000 hours.	Within 200 hours in service after the effective date of this AD.
Time unknown...	Within 200 hours in service after the effective date of this AD.

(b) Perform a one-time x-ray inspection of all P/N 868379–1 and P/N 868379–3 third stage stators in accordance with the accomplishment instructions of GTEC ASB No. TPE331–A72–0559, dated July 1, 1987, except those stators listed by S/N in Table 1 of the above ASB, per the following schedule:

Third stage stator time in service since new	X-ray schedule
Less than 4,000 hours.	Prior to accumulating 4,500 hours in service.
4,000 to 5,000 hours.	Within 500 hours in service after the effective date of this AD, or prior to accumulating 5,200 hours in service, whichever occurs first.
Greater than 5,000 hours.	Within 200 hours in service after the effective date of this AD.
Time unknown...	Within 200 hours in service after the effective date of this AD.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Los Angeles Aircraft Certification Office, Federal Aviation Administration, Northwest Mountain Region, 4344 Donald Douglas Drive, Long Beach, California 90808.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Los Angeles Aircraft Certification Office, may adjust the compliance time specified in this AD.

Alert Service Bulletin Nos. TPE/TSE331–A72–0384, Revision 3, dated July 1, 1987, "Reidentify or Replace Third Stage Stator and Establish Rework Interval" and TPE331–A72–0559, dated July 1, 1987, "Inspect and/or Replace Third Stage Stator Assembly", identified and described in these documents, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Garrett Airline Service Division, Technical Publications, Department 65–70, P.O. Box 29003, Phoenix, Arizona 85072; telephone (602) 225–2969/2973. These documents also may be examined at the Office of the Regional Counsel, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket 82–ANE–10 , between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holiday.

This amendment becomes effective on September 14, 1987.

Issued in Burlington, Massachusetts, on August 6, 1987.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 87–20603 Filed 9–8–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–AWP–26]

Revision to Phoenix-Luke AFB, AZ, Control Zone; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY:

In FR document 87–19027 beginning on page 31384 in the issue of Thursday, August 20, 1987, make the following correction:

§ 71.171 [Corrected]

On page 31385, in the first column, in § 71.171, in the second line, under Phoenix-Luke AFB, AZ [Revised], "32°32'06" N., long. 112°22'56" N.); within 2" should read "33°32'06" N., long. 112°22'56" W.); within 2".

FOR FURTHER INFORMATION CONTACT: Mr. Frank T. Torikai at (213) 297–1648.

Deborah E. King,

Acting Manager, Program Management Staff.

[FR Doc. 87–20615 Filed 9–8–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 373 and 399

[Docket No. 70755–7155]

Editorial Corrections and Clarifications Based on Amendments to the Commodity Control List

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which lists those commodities subject to Department of Commerce export controls. This rule, which neither expands nor limits the provisions of the Export Administration Regulations, makes editorial clarifications that conform certain regulatory provisions to recent regulatory amendments to the Commodity Control List, as outlined below.

(1) Supplement No. 4 to Part 373 of the Regulations lists certain entries of the CCL that have special Distribution License restrictions. A reference to "aromatic polyamides" is amended in order to insert the correct paragraph

reference to the recently-revised CCL entry covering aromatic polyamides.

(2) Three entries of the CCL are amended by removing references to Spain. These entries have said that a validated export license is not required for exports to Spain or to countries listed in certain supplements to Part 373 of the Regulations; recent regulatory amendments have added Spain to these supplements and the specific reference to Spain is redundant.

(3) The "Technical Data" paragraph of several entries on the CCL is revised for the sake of clarity and consistency. The affected entries cover aircraft, helicopters, and other transportation equipment.

(4) Two CCL entries are amended by stating that exports under a GLV (limited value) license may be made to Canada. These changes, like the other regulatory amendments in this document, are editorial in nature and do not represent any change in export policy.

(5) Two CCL entries are amended by removing language incorrectly stating that they contain software related to the commodities covered by those entries. Such software is set forth in a recently-established Supplement No. 3 to Part 379. A Cross-reference to a nonexistent CCL entry is also removed.

EFFECTIVE DATE: This rule is effective September 9, 1987.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effect date. This rule also is exempt from these APA requirements because it involves a foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Public Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 694(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This collection has been approved by the Office of Management and Budget under control number 0625-0001.

List of Subjects in 15 CFR Parts 373 and 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

PARTS 373 AND 399—[AMENDED]

1. The authority citation for Parts 373 and 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. In Supplement No. 4 to Part 373, the entry "1746A: [2]" is amended by revising the phrase "as defined in paragraph (d)" to read "as defined in paragraph (c)".

§ 399.1 [Amended]

3. In Supplement No.1 to § 399.1 (the Commodity Control List) Commodity Group 3 (General Industrial Equipment), ECCN 3363A is amended by removing the phrase "Spain and" from the *Validated License Required* paragraph, and ECCN 4363B is amended by removing the phrase "Spain and to" from the *Validated License Required* paragraph.

4. In Supplement No.1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), the *Technical Data* paragraph(s) for ECCNs 1460A, 4460B, 5460F, 6460F, and 6499G is revised to read as follows:

Technical Data: Exports of most technical data relating to civil aircraft, civil aircraft equipment, and parts, accessories, or components thereof require a validated license to all destinations except Canada. See § 379.4(d)(1) for exceptions to this policy.

5. In Supplement No.1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 4530B is amended by revising the *GLV $ Value Limit* paragraph to read "$2,000 for Country Groups T & V and Canada; $0 for all other destinations."

6. In Supplement No.1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1532A is amended by removing the phrase "and Software Therefor" from the heading titled "List of Precision Linear and Angular Measuring Systems and Specially Designed Components * * * " that immediately follows the *G-COM Eligibility* paragraph.

7. In Supplement No.1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1567A is amended by revising the entry heading, the cross-reference immediately following the heading, and the cross-reference immediately before the "List of Stored Program Controlled Communication Switching Equipment or Systems * * * ", as follows:

ECCN 1567A Stored program controlled communication switching equipment or systems, and specially designed components therefor for the use of these equipment or systems.

(See also Part 379 for controls on technical data.)

* * * * *

Technical Notes: * * *

(For a complete list of definitions of terms used in this ECCN, see Advisory Note 8 below; see also ECCN 1565A for additional definitions relating to electronic computers and Supp. No. 3 to Part 379 for definitions relating to "software.")

List of Stored Program Controlled Communication Switching Equipment or Systems, and Specially Designed Components Therefor for the Use of these Equipment or Systems Controlled by ECCN 1567A:

* * * * *

8. In Supplement No.1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals and Their Manufactures), ECCN 4698B is amended

by removing the phrase "Spain and to" from the *Validated License Required* paragraph.

9. In Supplement No.1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 4721B is amended by revising the *GLV $ Value Limit* paragraph to read "$2,000 for Country Groups T & V and Canada; $0 for all other destinations."

Dated: August 24, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-20617 Filed 9-8-87; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9193]

Prohibited Trade Practices, and Affirmative Corrective Actions; Amerco et al.

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Phoenix, Ariz.-based respondent, U-Haul International, Inc., the nation's largest renter of trucks and trailers, and its Las Vegas, Nev.-based parent company, AMERCO, from initiating or participating in any judicial or administrative proceeding in which their main purpose is to harass or injure any competitor or potential competitor. Additionally, respondents are required for ten years: (1) To give the FTC prior notice before participating in any bankruptcy proceeding of a competitor; (2) to obtain FTC approval before filing a plan of reorganization to acquire a competitor in bankruptcy; (3) to provide the FTC with a copy of any lawsuit filed against a competitor; and (4) to obtain FTC approval before acquiring any competitor worth $5 million or more.

DATE: Complaint and Order issued May 18, 1987.[1]

FOR FURTHER INFORMATION CONTACT: Gerald T. Gregory, S-2115, Washington, DC 20580. (202) 326-2687.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On Friday, February 27, 1987, there was published in the **Federal Register**, 52 FR 6003, a proposed consent agreement with analysis In the Matter of AMERCO, a corporation, and U-Haul International, Inc., a corporation for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: Section 13.5 Acquiring corporate stock or assets; S.13.15 Competitors and their products. Subpart—Combining Or Conspiring: S.13.407 To disparage competitors or their products. Subpart—Corrective Actions And/Or Requirements: S.13.533-37 Formal regulatory and/or statutory requirements; S.13.533-50 Maintain means of communication. Subpart—Interfering With Competitors Or Their Goods: S.13.1080 Interfering with competitors or their goods; S.13.1085 Harassing.

List of Subjects in 16 CFR Part 13

Truck and trailer rental, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 87-20632 Filed 9-8-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

Disability Insurance and Supplemental Security Income; Qualifications of Medical Professionals Evaluating Mental Impairments

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: Section 8 of the Social Security Disability Benefits Reform Act of 1984, Pub. L. 98-460, requires that we make every reasonable effort to have a qualified psychiatrist or psychologist complete the medical portion of the case review and any residual functional capacity (RFC) assessment in unfavorable initial determinations in mental impairment cases. This provision is effective for initial disability determinations made on or after December 9, 1984. As a result of this new provision of the law, we are adding this requirement to the Social Security Administration (SSA) regulations and also explaining in these regulations the qualifications necessary to be considered a qualified psychologist and what we will consider as every reasonable effort to obtain the services of a qualified psychiatrist or psychologist.

DATES: These regulations will be effective September 9, 1987.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-7415.

SUPPLEMENTARY INFORMATION: Prior to the enactment of Pub. L. 98-460, there was no statutory requirement in the Social Security Act (the Act) specifying the qualifications of persons making disability determinations. The responsibility for making disability determinations in the State was delegated to a team consisting of a State agency medical consultant who was a physician and a State agency disability examiner. The medical consultant provided the professional expertise in evaluating the impairment and performed a variety of other medical functions associated with the disability decision, including assessing impairment severity and describing the functional capabilities allowed and limitations imposed by the impairment. For cases involving mental impairments, the medical consultant member of the State agency decisionmaking team was generally a psychiatrist.

Some States have experienced difficulties in attracting and retaining a sufficient number of psychiatrists as medical consultants. To help remedy this situation and to encourage States to use qualified mental health professionals to review all mental impairment cases, we authorized States to use program psychologists to review cases involving mental impairments. However, when a psychologist did the medical review or provided the residual

functional capacity (RFC) assessment, a physician's cosignature was needed, since our regulations required that medical judgments be made by a physician.

The Social Security Disability Benefits Reform Act of 1984 requires the Secretary to make every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable RFC assessment in unfavorable initial determinations where there is evidence of a mental impairment. This statutory requirement applies to disability determinations under section 221 (a), (c), (g), and (i) of the Act. In the legislative history of this law, Congress noted that, if the Secretary were unable to assure adequate compensation for the services of qualified psychiatrists or psychologists, it would be within the Secretary's authority to contract directly for those services. Thus, the congressional conference agreement has addressed those conditions which previously impeded the States from obtaining qualified medical professionals. Those conditions were the lack of availability of psychiatrists and inability to obtain their services because of inappropriate and inadequate provisions for their compensation. The new provision will help ensure that adequate and accurate disability decisions are made in the critical area of mental impairment case evaluation.

To implement this provision of the statute, we are issuing new and revised regulations which will require that State agencies and SSA make every reasonable effort to use a qualified psychiatrist or psychologist in making disability determinations in mental impairment cases before an unfavorable initial determination is made. They explain what is meant by "qualified" psychologist and permit a qualified psychologist to perform as a psychological consultant member of the disability determination team in cases involving mental disorders. These regulations discuss the responsibility for the disability determination in combined mental and nonmental impairment cases. They also describe State agencies' and SSA's responsibilities in ensuring that every reasonable effort is made to have qualified psychiatrists and psychologists review determinations involving mental impairments before an unfavorable initial determination is made. These regulations carry out the law by making clear the requirement that a qualified psychiatrist or psychologist must participate, if reasonably possible, in the determination of claims where the evidence indicates the existence of a mental impairment. This evidence may include the individual's specfic allegations of an emotional or mental disorder, information provided by medical and nonmedical sources with knowledge of the individual, and direct observations by State agency or SSA personnel describing the individuals behavior. These new sections explain who will make the overall determinations of impairment severity in combined mental and nonmental impairment cases. The language also clarifies the fact that SSA is also required to make every reasonable effort to have qualified psychiatrists or psychologists review State agency initial unfavorable determinations.

Under the statutory amendment, a qualified psychologist may now serve as a psychological consultant in mental impairment cases. For disability program purposes, a "qualified" psychologist must:

(1) Be licensed or certified as a psychologist at the independent practice level of psychology by the State in which he or she practices; and

(2)(a) Possess a doctorate degree in psychology from a program in clinical psychology of an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation; or

(b) Be listed in a national register of health service providers in psychology which the Secretary of Health and Human Services deems appropriate; and

(3) Possess 2 years of supervised clinical experience as a psychologist in health service, at least 1 year of which is post masters degree.

These qualifications are consistent with those promoted by the American Psychological Association and used by the Federal Employees Health Benefits Program, Civilian Health and Medical Programs for the Uniformed Services, and other health care programs. As a medical decisionmaker, a qualified psychologist will be permitted to review the medical evidence concerning a mental impairment, determine the existence or nonexistence of a severe mental impairment, make the determination as to whether the mental disorder meets or is medically equivalent to the criteria in the Listing of Impairments (20 CFR Part 404, Subpart P, Appendix 1), and assess RFC for mental disorders where required. This will have no adverse effect on the use of psychiatrists since, as physicians, they have always been "qualified" medical consultant members of the State agency disability determination team. Thus, psychiatrists will continue to function as before with respect to making disability determinations.

The regulations define what steps will be taken to ensure that every reasonable effort is made to obtain these specialists' services, including SSA contracting directly for the services.

In order to obtain the public's views and comments before proceeding with these amendments, we published these regulations along with a Notice of Proposed Rulemaking in the **Federal Register** (50 FR 50920) on December 13, 1985. We have carefully considered all the comments pertaining to the proposed amendments and we have answered the issues raised in these comments later in the preamble.

We are revising 20 CFR 404.1503, 404.1526, 404.1546, 404.1615, 416.903, 416.926, 416.946, and 416.1015 to reflect the statutory provision, which was effective on December 9, 1984. The revised regulations explain who will make the overall determinations of impairment severity in combined mental and nonmental impairment cases. We are clarifying the fact that SSA is also required to make every reasonable effort to have qualified psychiatrists and psychologists review State agency initial unfavorable determinations.

We are revising 20 CFR 404.1526(b) and (c) and 416.926(b) and (c) and 404.1546 and 416.946 to substitute, where appropriate, the term "medical consultant" for the term "physician". We define a qualified psychologist as a "psychological consultant". The Notice of Proposed Rulemaking defined medical consultants to include psychologists. We are separately designating psychologists in these final rules to clearly distinguish them from physicians. New §§ 404.1616 and 416.1016 explain what is meant by "qualified" psychologist and include a qualified psychologist as a psychological consultant for disability determinations in mental impairment cases.

We are reinserting in §§ 404.1615(e) and 416.1015(e) the statement that reads: "The State Agency will certify each determination of disability to us on forms we provide." This language was already in the regulations and we have decided to retain it in these final rules.

New §§ 404.1617 and 416.1017 specify the State and SSA responsibilities in meeting the "reasonable effort" requirement. Since the regional office (RO) is part of SSA, we have decided not to refer to the RO as a separate component of SSA.

The statute on which these regulations are based applies to disability determinations made on or after December 9, 1984, which is 60 days after the date of enactment, October 9, 1984.

Public Comments

We received comments from 16 people and organizations pertaining to specific changes and new rules we had proposed. Most of the comments came from individuals and professional organizations with expertise in the diagnosis and treatment of mental disorders. Some of the comments received were submitted by legal aid services involved in representing disability claimants. We also received suggestions from persons involved in administration of the disability program at the State level.

Most of the comments were favorable to our proposed rules to ensure that mental impairment cases are reviewed, if reasonably possible, by qualified psychiatrists and psychologists. These commenters believe that mandating psychiatrist or psychologist review before a mental impairment case is denied will prevent improper denials. Some commenters agree that only professionals with extensive experience in dealing with the chronically mentally ill can accurately assess the claimant's ability to cope with the demands of substantial gainful work. Both the American Psychiatric Association and the American Psychological Association supported our regulatory efforts to carry out the statutory mandate and restated their commitment to continue working with us in our recruitment efforts.

On the other hand, some commenters suggested that the final version of these regulations contain further or additional changes. We have carefully considered all of these suggestions and, where appropriate, made appropriate revisions in the regulations.

Following is a discussion of the suggestions made by the public in response to the NPRM and an explanation of our disposition of them. For ease of reference, we discuss these suggestions under the corresponding section headings of the regulation. Many of the comments received necessarily had to be condensed, summarized, or paraphrased. However, we have tried to express everyone's view adequately and to respond to the issues raised.

Sections 404.1503 and 416.903—Who makes disability and blindness determinations.

Comment: Two commenters suggest that we permit clinical social workers as well as psychiatrists or psychologists to review and evaluate mental impairment cases; one of these comments suggested that licensed clinical social workers be included with clinical psychologists as qualified to evaluate mental impairments and the other commenter suggested that social workers conduct a review in addition to that of the psychologist or psychiatrist.

Response: The statute upon which these regulations are based makes clear that a qualified psychiatrist or psychologist must review mental impairment cases, if reasonably possible, before an adverse decision is made. Therefore, we cannot adopt the suggestion that a licensed clinical social worker be considered "qualified" to act as a medical or psychological consultant. However, we recognize the value of evidence provided by clinical social workers regarding the claimant's mental impairment and daily functioning. Where appropriate, we do obtain information from social workers and utilize such evidence in making disability determinations.

Comment: One commenter suggests we change these proposed regulations to include any physician who has post-Board experience of at least 2 years in managing persons with a mental handicap. The commenter believes this would provide a pool of physicians who can make decisions on mental impairment cases.

Response: Because the law mandates review by a psychiatrist or psychologist, if reasonably possible, before an adverse decision is made in a mental impairment case, we are unable to adopt this suggestion.

Section 404.1526 and 416.926—Medical equivalence

We received no comments on these proposed regulations changes.

Sections 404.1546 and 416.946—(Amended)

Only favorable comments were received on our proposed revision to these existing regulations.

Sections 404.1615 and 416.1015—Making disability determinations

Comment: One commenter suggests we add a provision to proposed §§ 404.1615(d) and 416.1015(d) to indicate that in a combined impairments case, a psychologist is competent to determine the effects the nonmental impairment(s) have on the mental impairment.

Response: A psychologist, generally, does not have the necessary medical education, training and expertise to evaluate physical and other nonmental impairments. Therefore, we believe it is inappropriate to require a psychologist to render a medical judgment he or she may not be qualified to make. However, these regulations do not prohibit a qualified psychologist from considering the effects of a nonmental impairment on the mental impairment. Therefore, it is not necessary to add this statement to the regulations.

Comment: This same commenter believes that in cases of multiple mental and nonmental impairments, we should require a different physician to make the final RFC determination, taking into account the opinions of the psychiatrist or psychologist on the partial mental RFC assessment.

Response: As a physician, a psychiatrist is qualified by medical education, training and expertise to evaluate impairments due to mental and other medical conditions. Adoption of this suggestion would inappropriately imply otherwise. However, if a State agency feels it is necessary to refer a combined impairment case that has been reviewed by a psychiatrist to another physician for an additional review of the RFC, these regulations do not prevent it from doing so.

Comment: Two commenters state that SSA must take a more unified approach to assessing RFC in cases of multiple impairments. These commenters believe that proposed §§ 404.1615(d) and 416.1015(d) imply that the effects of a nonmental impairment on a mental impairment and vice versa are not considered in determining disability. They believe this is in violation of Pub. L. 98–460 and suggest the statutory requirement that we consider the combined effects of all impairments be built into these proposed regulations. These commenters also indicate that we should include a mechanism to ensure that all information is combined and considered before a final determination is made.

Response: The rules for evaluating multiple impairments are already in place in regulations §§ 404.1523 and 416.923. In those sections we state that "in the case of a medically severe combination of impairments, the combined impact of all the impairments will be considered throughout the disability determination process." We believe our proposal for deciding which consultant makes the overall determination of severity is an appropriate mechanism which will ensure that all information is considered in combined mental/nonmental impairment cases.

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Sections 404.1616 and 416.1016—Medical or psychological consultant

Comment: One commenter made favorable comments about our proposed standards for a qualified psychologist, but suggested we consider an added requirement for certification by the American Board of Professional Psychologists (ABPP).

Response: The qualifications we are adopting consider only education and experience. Moreover, because of the small number of psychologists who are ABPP diplomats, we believe this additional requirement would restrict unnecessarily the pool of qualified psychologists available to the State agencies.

Comment: One person objects to our proposed criteria for determining who is a "qualified" psychologist. The commenter states that a psychologist who does not have a doctorate degree in psychology will not be qualified to perform as a psychological consultant in mental impairment cases. This commenter suggests the proposed alternative provisions in §§ 404.1616(2)(b) and 416.1016(2)(b) for listing in a national register of health care providers in psychology be deleted because such a national register will include masters degree level psychologists.

Response: Since only three States license psychologists at the masters degree level, the vast majority of psychologists who will meet our proposed qualification standards involving licensing/certification at the independent practice level of psychology and supervised experience in health service will necessarily be those who possess a doctoral degree in psychology. We believe deletion of the proposed optional requirement involving a national register would inappropriately exclude those psychologists with a masters degree and more than two years experience who obtained a State license many years ago and were included in a national register under a "grandfather" clause. Therefore, we cannot adopt this comment.

Comment: This same commenter suggests doctorate level psychologists should also have 2 years of supervised clinical experience as a psychologist in "mental" health services.

Response: We believe this fine distinction is unnecessary since it is unlikely that the supervised clinical experience a psychologist at the doctoral level would pursue would be in a field other than mental health.

Comment: One commenter expressed concern that the proposed regulations will exclude health service providers in psychology whose doctorate degree in psychology is lettered other than Psy. D. or Ph. D.

Response: These regulations state no preference for one doctorate level psychologist over another. Therefore, an individual who possesses a doctorate degree in psychology, regardless of the way the degree is described or "lettered", and meets the other standards specified in the regulations may serve as a psychological consultant in mental impairment cases.

Comment: One commenter states that we should develop standards which prohibit discrimination by a medical consultant on the basis of race, color, national origin or sex.

Response: We believe this additional qualification standard is unnecessary because various civil rights laws and regulations are already in place elsewhere which prohibit discrimination on the basis of race, color, national origin or sex.

Comment: One commenter expressed concern about our proposed requirements involving a doctoral degree in psychology with a specialty in clinical psychology. This commenter points out that doctoral degrees in psychology are not awarded in subfields such as clinical or counseling, but, rather in psychology per se. The commenter believes that limiting eligibility to those psychologists who received doctoral degrees from "a program in clinical psychology" will inappropriately exclude otherwise qualified psychologists who successfully completed a doctoral program in counseling psychology, for example, and are as well qualified as clinical psychologists to provide assessment of and treatment services to individuals with mental disorders. This commenter also indicates the proposed standard will unduly restrict the pool of qualified mental health professionals to perform disability determinations involving mental impairments.

Response: We recognize that a number of individuals with specialties in closely allied subdisciplines of psychology may have the same or similar range of expertise as clinical psychologists. As a class, however, nonclinical psychologists are likely not as expert in assessing behavioral pathology. We believe the requirement for training in a program in clinical psychology will help ensure that only individuals who are fully qualified to evaluate the full-range of mental disorders are obtained. The States have been hiring psychologists under similar standards for some time and there is no indication that the pool of qualified professionals has been adversely affected.

Comment: This same commenter recommends we strengthen our proposed requirement of 2 years supervised clinical experience to specify that one of those years be post degree (rather than post "masters" degree). The commenter points out that this suggested modification should not be interpreted as solely post doctoral degree which would exclude those qualified psychologists who obtained licensing at the masters degree level with more than the required 2 years experience and are listed in a national register of health services providers in psychology. Rather, the commenter believes that retention of our proposed standard will not encourage psychologists to obtain an additional year of post doctoral supervision in the few States where it is not required for licensure or certification. In this commenter's view, the recommended deletion of the term "Masters" would enhance the qualifications of the pool of eligible psychologists.

Response: The post "masters" degree experience designation was made to ensure that the post degree experience requirement is not misinterpreted as 1 year of experience attained post baccalaureate degree. We believe that the NPRM language makes this clear and we have retained the "masters" degree designation in these final regulations. This will not adversely affect those qualified psychologists who are listed in an appropriate national register, nor will it discourage psychologists from obtaining additional clinical experience at the highest degree level possible.

Comment: One person objects to our proposed standards because they establish qualifications for doctoral degree psychologists over nondoctoral clinicians who, this commenter believes, may have as strong a set of credentials.

Response: In developing these proposed qualification standards, it was necessary to develop standards which can be met by only those psychologists with sufficient professional training and expertise in the evaluation of all types of mental disorders. In light of the differences in training, experience, and general level of expertise below the doctoral level in diagnosing and treating behavioral pathology, we believe the doctoral level of training to be the minimum standard necessary for psychologists to be considered as qualified to make decisions regarding mental disorder cases, for disability program purposes.

Comment: One commenter questions why physicians, but not psychologists, are exempt from qualification standards. While not criticizing the proposed standards for psychologists, this commenter believes the lack of comparable qualification requirements for physicians is not justified.

Response: The statutory provision upon which these regulations are based mandates review by a qualified psychologist (or psychiatrist), if reasonably possible, before a mental impairment case can be denied. In passing this legislation, however, the Congress did not indicate which psychologist(s) it considers as qualified to review disability cases. Because there are numerous subfields in which a professional psychologist may specialize, it is necessary for us to develop specific standards which indicate the qualifications we believe necessary to evaluate the full range of mental impairments. We have not developed qualifications for physicians, because, generally, all physicians are subject to specific premedical and medical education requirements, prior to being awarded a medical degree, and subsequent internship and residency training, before they can be licensed to practice medicine. Since these requirements are generally consistent in all States, we believe it is not necessary to develop specific qualification standards for disability program physicians.

Comment: One commenter recommends that physicians trained at an authorized University Affiliated Facility (UAF) as authorized under the Developmental Disabilities Act, be the only doctors of any discipline allowed to evaluate applicants with a developmental disability. This commenter states there are few psychiatrists and psychologists who are trained to evaluate the functional abilities of people who have developmental disabilities such as mental retardation, cerebral palsy, epilepsy, autism and severe learning disabilities.

Response: These regulations do not prevent the States from obtaining the services of UAF trained physicians to review cases involving developmental disabilities. However, because the statute mandates review of a mental impairment case by a qualified psychiatrist or psychologist, if reasonably possible, before an adverse decision is made, including developmental disability cases involving evidence of a mental impairment, we cannot adopt this suggestion.

Sections 404.1617 and 416.1017—Reasonable efforts to obtain review by a qualified psychiatrist or psychologist

Comment: One commenter feels that the regulations should provide that qualified professionals must review only cases of conflicting or inadequate medical evidence. This person suggested that an extension of time should be granted for mental impairment case reviews because of the shortages of available qualified professionals who could perform these reviews.

Response: The law does not give us an option of restricting psychiatrist or psychologist reviews to those cases with conflicting or inadequate medical evidence. The law requires that all initial mental impairment cases that are denied, if reasonably possible, must have these specialist reviews. The law does not address the issue of additional processing time requirements because of the use of specialist review. We do not believe that the use of specialists to review mental impairment cases must necessarily delay the processing of these cases where the State is adequately staffed with psychiatrists and/or psychologists. We are opposed to issuing a regulation that could result in less timely service to claimants with mental impairments, especially in the absence of any indications that this would be consistent with the will of Congress.

Comment: Several commenters are concerned that the rules were not specific enough in defining Federal and State roles in ensuring that every reasonable effort is made to obtain qualified psychiatrists and psychologists to review mental impairment claims. One commenter believes the regulations made the Federal role essentially passive. This person indicates that SSA should mandate coordinated activity between the State and SSA. According to this commenter, the State and SSA should work together to resolve any staffing problems, rather than handling the problem sequentially, i.e., the State taking its actions first, then SSA. Another commenter believes that SSA should become involved in assisting the State in its recruitment efforts at an earlier stage, i.e., not to wait to assist the State until after all the State's other efforts were exhausted. Another person believes the regulations were not clear on the extent of the State's or SSA's roles in ensuring that every reasonable effort is made.

Response: Our approach to ensuring that every reasonable effort is made to obtain psychiatrists and psychologists to perform mental impairment case reviews is to regulate only to the extent necessary to ensure the Secretary's responsible stewardship of the States' management responsibilities in this area. We decided not to regulate the States' responsibilities specifically, because it would interfere with our objective of giving the State flexibility in obtaining and maintaining their staffs. Since individual State resources and needs vary, we believe, with help from SSA, each State can best determine its own staffing needs in this area and how best to meet those needs.

The regulations do provide that SSA will coordinate action with the State in assessing the State's unmet needs for additional psychiatrists or psychologists and in taking specific actions for obtaining the psychiatrists and psychologists. SSA is responsible for approving the necessary State budget, closely monitoring the State's recruitment activities, and assisting the State whenever possible. In carrying out this responsibility SSA is closely involved throughout the process of the State's recruitment activities.

Comment: One commenter believes the rules do not explain how the overall costs will be accommodated and do not give details of the amount of resources or criteria required to define "every reasonable effort."

Response: We have amended the final rules to state that where Federal resources are used on behalf of a State to acquire reviews of qualified psychiatrists and psychologists, the State's budget, where appropriate, will be reduced accordingly. This was done because obtaining these reviews is a basic State responsibility. However, because of the differences in each State's needs and capabilities, as well as variations in overall State and Federal budgets, we did not provide details of specific amounts of resources or other criteria required to meet the "every reasonable effort" requirement.

Comment: Two commenters believe the States' levels of compensation for psychiatrist and psychologist services are meager; these persons believe that steps should be taken to insure otherwise.

Response: These regulations provide that if a State cannot obtain psychiatrists and psychologists because of low salary rates or fee schedules, it

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should attempt to raise the level of compensation to meet the prevailing rates for these services.

Comment: One commenter states that SSA should make provisions for direct contracting of specialist services where the State was unable to arrange for these services.

Response: These regulations provide that Federal contracts for the services of qualified psychiatrists or psychologists are included as Federal resources to be used where needed in obtaining these services.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. SSA estimates that these changes will have little or no impact on Title II or Title XVI benefit payments, since in most instances qualified psychologists and psychiatrists are already being used to evaluate disability cases involving mental disorders. The additional costs associated with these regulations will be less than $5 million in the first year that the regulations are effective. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only a small number of disability claimants under Title II and Title XVI of the Social Security Act.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: February 27, 1987

Dorcas R. Hardy,

Commissioner of Social Security.

Approval: June 11, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950——)

For the reasons set out in the preamble, Part 404, Subparts P and Q, Chapter III of Title 20, Code of Federal Regulations is amended as set forth below.

20 CFR Part 404, Subpart P, is amended as follows:

1. The authority citation for Subpart P continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225 and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425 and 1302; sec. 505(a) of Pub. L. 96–265; 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

2. Section 404.1503 is amended by adding a new paragraph (e) to read as follows:

§ 404.1503 Who makes disability and blindness determinations.

* * * * * *

(e) *Initial determinations for mental impairments.* An initial determination by a State agency or the Social Security Administration that you are not disabled (or a Social Security Administration review of a State agency's initial determination), in any case where there is evidence which indicates the existence of a mental impairment, will be made only after every reasonable effort has been made to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment. (See § 404.1616 for the qualifications we consider necessary for a psychologist to be a psychological consultant and § 404.1617 for what we consider "reasonable effort".) If the services of qualified psychiatrists or psychologists cannot be obtained because of impediments at the State level, the Secretary may contract directly for the services. In a case where there is evidence of mental and nonmental impairments and a qualified psychologist serves as a psychological consultant, the psychologist will evaluate only the mental impairment, and a physician will evaluate the nonmental impairment. The overall determination of impairment severity in combined mental and nonmental impairment cases will be made by a medical consultant and not a psychological consultant unless the mental impairment alone would justify a finding of disability.

3. In § 404.1526 the last sentence of paragraph (b) is amended by substituting the words "medical or psychological consultants" for the word "physicians" and by adding the reference "(See § 404.1616.)" at the end of the sentence, and paragraph (c) is revised to read as follows:

§ 404.1526 Medical equivalence.

* * * * * *

(c) *Who is a designated medical or psychological consultant.* A medical or psychological consultant designated by the Secretary includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations. A medical consultant must be a physician. A psychological consultant used in cases where there is evidence of a mental impairment must be a qualified psychologist. (See § 404.1616 for the qualifications we consider necessary for a psychologist to be a consultant.)

§ 404.1546 [Amended]

4. In § 404.1546 the first and second sentences are amended by substituting the words "medical or psychological consultant" for the word "physician" and the words "medical or psychological consultants" for the word "physicians" wherever they appear, and the third sentence is amended by substituting the words "any other medical or psychological consultant" for the words "any other physician".

20 CFR Part 104, Subpart Q, is amended as follows:

5. The authority citation for Subpart Q continues to read as follows:

Authority: Secs. 205(a), 221, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 421, and 1302.

6. Section 404.1615 is revised to read as follows:

§ 404.1615 Making disability determinations.

(a) When making a disability determination, the State agency will apply Subpart P, Part 404, of our regulations.

(b) The State agency will make disability determinations based only on the medical and nonmedical evidence in its files.

(c) Disability determinations will be made by a State agency medical or

psychological consultant and a State agency disability examiner. (See § 404.1616 for the definition of medical or psychological consultant.) The State agency disability examiner must be qualified to interpret and evaluate medical reports and other evidence relating to the claimant's physical or mental impairments and as necessary to determine the capacities of the claimant to perform substantial gainful activity. (See § 404.1572 of this part for what we mean by "substantial gainful activity.")

(d) An initial determination by the State agency that an individual is not disabled, in any case where there is evidence which indicates the existence of a mental impairment, will be made only after every reasonable effort has been made to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment. (See § 404.1616 for the qualifications we consider necessary for a psychologist to be a psychological consultant and § 404.1617 for what we mean by "reasonable effort".) If the services of qualified psychiatrists or psychologists cannot be obtained because of impediments at the State level, the Secretary may contract directly for the services. In a case where there is evidence of mental and nonmental impairments and a qualified psychologist serves as a psychological consultant, the psychologist will evaluate only the mental impairment, and a physician will evaluate the nonmental impairment. The overall determination of impairment severity in combined mental and nonmental impairment cases will be made by a medical consultant and not a psychological consultant unless the mental impairment alone would justify a finding of disability.

(e) The State agency will certify each determination of disability to us on forms we provide.

(f) The State agency will furnish us with all the evidence it considered in making its determination.

(g) The State agency will not be responsible for defending in court any determination made, or any procedure for making determinations, under these regulations.

7. A new § 404.1616 is added to read as follows:

§ 404.1616 Medical or psychological consultant.

A medical consultant must be a physician. A psychological consultant used in cases where there is evidence of a mental impairment must be a qualified psychologist. For disability program purposes a psychologist will not be considered qualified unless he or she:

(a) Is licensed or certified as a psychologist at the independent practice level of psychology by the State in which he or she practices; and

(b) (1) Possesses a doctorate degree in psychology from a program in clinical psychology of an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation; or

(2) Is listed in a national register of health service providers in psychology which the Secretary of Health and Human Services deems appropriate; and

(c) Possesses 2 years of supervised clinical experience as a psychologist in health service, at least 1 year of which is post masters degree.

8. A new § 404.1617 is added to read as follows:

§ 404.1617 Reasonable efforts to obtain review by a qualified psychiatrist or psychologist.

(a) The State agency must determine if additional qualified psychiatrists and psychologists are needed to make the necessary reviews (see § 404.1615(d)). Where it does not have sufficient resources to make the necessary reviews, the State agency must attempt to obtain the resources needed. If the State agency is unable to obtain additional psychiatrists and psychologists because of low salary rates or fee schedules it should attempt to raise the State agency's levels of compensation to meet the prevailing rates for psychiatrists' and psychologists' services. If these efforts are unsuccessful, the State agency will seek assistance from us. We will assist the State agency as necessary. We will also monitor the State agency's efforts and where the State agency is unable to obtain the necessary services, we will make every reasonable effort to provide the services using Federal resources.

(b) Federal resources may include the use of Federal contracts for the services of qualified psychiatrists and psychologists to review mental impairment cases. Where Federal resources are required to perform these reviews, which are a basic State agency responsibility, and where appropriate, the State agency's budget will be reduced accordingly.

(c) Where every reasonable effort is made to obtain the services of a qualified psychiatrist or psychologist to review a mental impairment case, but the professional services are not obtained, a physician who is not a psychiatrist will review the mental impairment case. For these purposes, every reasonable effort to ensure that a qualified psychiatrist or psychologist review mental impairment cases will be considered to have been made only after efforts by both State and Federal agencies as set forth in paragraphs (a) and (b) of this section are made.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

For the reasons set out in the preamble, Part 416, Subparts I and J, Chapter III of Title 20, Code of Federal Regulations, are amended as set forth below.

1. The authority citation for Subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631 (a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383 (a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.903 is amended by adding a new paragraph (e) to read as follows:

§ 416.903 Who makes disability and blindness determinations.

* * * * *

(e) *Initial determinations for mental impairments.* An initial determination by a State agency or the Social Security Administration that you are not disabled (or a Social Security Administration review of a State agency's initial determination), in any case where there is evidence which indicates the existence of a mental impairment, will be made only after every reasonable effort has been made to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment. (See § 416.1016 for the qualifications we consider necessary for a psychologist to be a psychological consultant and § 416.1017 for what we consider "reasonable effort".) If the services of qualified psychiatrists or psychologists cannot be obtained because of impediments at the State level, the Secretary may contract directly for the services. In a case where there is evidence of mental and nonmental impairments and a qualified psychologist serves as a psychological consultant, the psychologist willl evaluate only the mental impairment, and a physician will evaluate the nonmental impairment. The overall determination of impairment severity in combined mental and nonmental impairment cases will be made by a medical consultant other than a qualified psychologist unless the mental

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impairment alone would justify a finding of disability.

3. In § 416.926 the last sentence of paragraph (b) is amended by substituting the words "medical or psychological consultants" for the word "physicians" and by adding the reference "(See § 416.1016.)" at the end of the sentence, and paragraph (c) is revised to read as follows:

§ 416.926 Medical equivalence.

* * * * *

(c) *Who is a designated medical or psychological consultant.* A medical or psychological consultant designated by the Secretary includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations. A medical consultant must be a physician. A psychological consultant used in cases where there is evidence of a mental impairment must be a qualified psychologist. (See § 416.1016 for the qualifications we consider necessary for a psychologist to be a consultant.)

§ 416.946 [Amended]

4. In § 416.946 the first and second sentences are amended by substituting the words "medical or psychological consultant" for the word "physician" and the words "medical or psychological consultants" for the word "physicians" wherever they appear, and the third sentence is amended by substituting the words "any other medical or psychological consultant" for the words "any other physician".

20 CFR Part 416, Subpart J, is amended as follows:

5. The authority citation for Subpart J continues to read as follows:

Authority: Secs. 1102, 1614, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c, 1383, and 1383b.

6. Section 416.1015 is revised to read as follows:

§ 416.1015 Making disability determinations.

(a) When making a disability determination, the State agency will apply Subpart I, Part 416, of our regulations.

(b) The State agency will make disability determinations based only on the medical and nonmedical evidence in its files.

(c) Disability determinations will be made by a State agency medical or psychological consultant and a State agency disability examiner. (See § 416.1016 for the definition of medical or psychological consultant.) The State agency disability examiner must be qualified to interpret and evaluate medical reports and other evidence relating to the claimant's physical or mental impairments and as necessary to determine the capacities of the claimant to perform substantial gainful activity. (See § 416.972 of this part for what we mean by "substantial gainful activity".)

(d) An initial determination by the State agency that an individual is not disabled, in any case where there is evidence which indicates the existence of a mental impairment, will be made only after every reasonable effort has been made to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment. (See § 416.1016 for the qualifications we consider necessary for a psychologist to be a psychological consultant and § 416.1017 for what we mean by "reasonable effort".) If the services of qualified psychiatrists or psychologists cannot be obtained because of impediments at the State level, the Secretary may contract directly for the services. In a case where there is evidence of mental and nonmental impairments and a qualified psychologist serves as a psychological consultant, the psychologist will evaluate only the mental impairment, and a physician will evaluate the nonmental impairment. The overall determination of impairment severity in combined mental and nonmental impairment cases will be made by a medical consultant and not a psychological consultant unless the mental impairment alone would justify a finding of disability.

(e) The State agency will certify each determination of disability to us on forms we provide.

(f) The State agency will furnish us with all the evidence it considered in making its determination.

(g) The State agency will not be responsible for defending in court any determination made, or any procedure for making determinations, under these regulations.

7. A new § 416.1016 is added to read as follows:

§ 416.1016 Medical or psychological consultant.

A medical consultant must be a physician. A psychological consultant used in cases where there is evidence of a mental impairment must be a qualified psychologist. For disability program purposes, a psychologist will not be considered qualified unless he or she:

(a) Is licensed or certified as a psychologist at the independent practice level of psychology by the State in which he or she practices; and

(b) (1) Possesses a doctorate degree in psychology from a program in clinical psychology of an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation; or

(2) Is listed in a national register of health service providers in psychology which the Secretary of Health and Human Services deems appropriate; and

(c) Possesses 2 years of supervised clinical experience as a psychologist in health service, at least 1 year of which is post masters degree.

8. A new § 416.1017 is added to read as follows:

§ 416.1017 Reasonable efforts to obtain review by a qualified psychiatrist or psychologist.

(a) The State agency must determine if additional qualified psychiatrists and psychologists are needed to make the necessary reviews (see § 416.1015(d)). Where it does not have sufficient resources to make the necessary reviews, the State agency must attempt to obtain the resources needed. If the State agency is unable to obtain additional psychiatrists and psychologists because of low salary rates or fee schedules it should attempt to raise the State agency's levels of compensation to meet the prevailing rates for psychiatrists' and psychologists' services. If these efforts are unsuccessful, the State agency will seek assistance from us. We will assist the State agency as necessary. We will also monitor the State agency's efforts and where the State agency is unable to obtain the necessary services, we will make every reasonable effort to provide the services using Federal resources.

(b) Federal resources may include the use of Federal contracts for the services of qualified psychiatrists and psychologists to review mental impairment cases. Where Federal resources are required to perform these reviews, which are a basic State agency responsibility, and where appropriate, the State agency's budget will be reduced accordingly.

(c) Where every reasonable effort is made to obtain the services of a qualified psychiatrist or psychologist to review a mental impairment case, but the professional services are not obtained, a physician who is not a psychiatrist will review the mental impairment case. For these purposes, every reasonable effort to ensure that a qualified psychiatrist or psychologist review mental impairment cases will be considered to have been made only after

efforts by both State and Federal agencies as set forth in paragraphs (a) and (b) of this section are made.

[FR Doc. 87-20679 Filed 9-8-87; 8:45 am]
BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 178

[Docket No. 78N-0293]

Indirect Food Additives; Revocation of the Use of Hydrogenated 4,4'-Isopropylidene-Diphenolphosphite Ester Resins

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations by revoking the listing of hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins for use as an antioxidant and stabilizer in polymers in contact with food. FDA is taking this action because it has received adverse toxicological data on the additive, and because it has not received any studies that resolve the questions about the safety of the use of this substance that have been created by these data. The agency proposed to revoke the listing of this food additive in the **Federal Register** of April 16, 1974 (39 FR 13667), and of June 15, 1979 (44 FR 34513).

Elsewhere in this issue of the **Federal Register**, the agency is proposing to list the additive in Part 189, Subpart C—Substances Prohibited From Indirect Addition to Human Food Through Food-Contact Surfaces.

DATE: Effective October 9, 1987, except as to any provisions that may be stayed by the filing of proper objections; objections by October 9, 1987.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 17, 1968 (33 FR 569), FDA amended 21 CFR 178.2010 to provide for the use of hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins in vinyl chloride polymer resins when such polymer resins are used in the manufacture of rigid bottles intended for contact with edible oils and all types of dressings for salads. The regulation was amended two additional times, on August 8, 1969 (34 FR 12885) and on November 18, 1969 (34 FR 18382), to provide for additional uses of the additive.

In the **Federal Register** of April 16, 1974 (39 FR 13667), FDA proposed to revoke the listing of the use of hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins as an antioxidant and stabilizer because this compound bore a close chemical similarity to a compound that had caused neurological hindquarter paralysis during a dog feeding study. FDA received two comments on the proposal and additional toxicological data following publication of the 1974 proposed rule.

In the **Federal Register** of June 15, 1979 (44 FR 34513), FDA published a second proposed rule that responded to the comments on the 1974 proposal and discussed the new toxicological information that the agency had received. The new information included a study in which adverse neurological effects were observed in dogs fed hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins. The proposal also described the additional toxicological studies that would be required to determine a "no-effect" level to which appropriate safety factors could be applied to establish a safe level of use for the stabilizer.

During the comment period, a chemical company requested copies of the new toxicological studies that were used to support FDA's 1979 proposal. The company stated its intent to comment further on the proposal after it reviewed this information. However, the company did not comment on the proposal.

In view of the fact that no comments were received on the proposed rulemaking of June 15, 1979, concerning the revocation of the listing of the additive, and that no sponsor has agreed to perform the toxicology studies necessary to enable the agency to determine a safe level of use for this additive, the agency finds that § 178.2010 should be amended by revoking authorization for the use of hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins. In addition, the agency is proposing elsewhere in this issue of the **Federal Register** to add this substance to Part 189, Subpart C—*Substances Prohibited From Indirect Addition to Human Food Through Food-Contact Surfaces.*

The agency has previously considered the environmental effects of this rule as announced in the proposed rule published on June 15, 1979 (44 FR 34513). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12044, the agency previously analyzed the potential economic effects of this final rule as announced in the 1979 proposal. The agency determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination. Additionally, in accordance with the requirements of Executive Order 12291, FDA has reevaluated the economic impact of this final rule. The agency has determined that the final rule is not a major rule as defined by Executive Order 12291. The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

Any person who will be adversely affected by this regulation may at any time on or before October 9, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that

a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 178.2010 [Amended]

2. Section 178.2010 *Antioxidants and/or stabilizers for polymers* is amended in paragraph (b) by removing from the list of substances the item "Hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins * * *."

Dated: September 1, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–20609 Filed 9–8–87; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: In the **Federal Register** of July 2, 1987 (52 FR 24995), the Food and Drug Administration (FDA) published a final rule reflecting approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc., providing for use of a free-choice, mineral-vitamin Type C lasalocid feed for pasture cattle. The final rule inadvertently stated the incorrect "amount" of lasalocid in the regulation. This document corrects the "amount" of "68 grams per ton (0.0075 percent)" to read "1,440 grams per ton (0.16 percent)."

EFFECTIVE DATE: September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110, is sponsor of supplemental NADA 96–298 which provides for use of a 68-gram-per-pound Bovatec (lasalocid) Type A article to make a 0.16 percent free-choice, self-limiting Type C lasalocid feed for slaughter, stocker, feeder cattle, and dairy and beef replacement heifers on pasture for increased rate of weight gain (a feed containing 1.06 percent of a 68-gram-per-pound lasalocid Type A article). The drug is consumed at a rate of 60 to 200 milligrams per head daily. The "amount" in 21 CFR 558.311(e)(2)(ii) should read "1,440 grams per ton (0.16 percent)." This document amends the regulations accordingly.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.311 is amended by revising paragraph (e)(2)(ii) to read as follows:

§ 558.311 Lasalocid.

* * * * *

(e) * * *

(2) * * *

(ii) *Amount.* 1,440 grams per ton (0.16 percent).

* * * * *

Dated: September 1, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 87–20607 Filed 9–8–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8160]

Limitation on Foreign Tax Credit for Foreign Oil and Gas Taxes; Election Period for Foreign Tax Credit; Mailing Address for Withholding Exemption Statements and Forms

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the limitation on the foreign tax credit with respect to taxes paid on foreign oil related income. The Tax Reduction Act of 1975 changed the applicable tax law. The regulations provide the public with the guidance needed to comply with the subject limitation added by that Act and will affect all taxpayers claiming a foreign tax credit for taxes paid with respect to foreign oil related income. In addition, this document contains final Income Tax Regulations relating to the period during which a taxpayer may elect to claim the foreign tax credit. Also, this document contains final Income Tax Regulations relating to the mailing address to be used for filing Forms 1078 or withholding exemption statements.

DATES: The amendments to § 1.907(c)–1 are applicable for taxable years ending after December 31, 1974 and beginning before January 1, 1983. The amendment to § 1.901–1(d) is applicable for taxable years ending after December 31, 1953. The amendment to § 1.1441–5(c) is applicable October 9, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T. Telephone 202–566–6384 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Limitation

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 907(c) (1) and (2) of the Internal Revenue Code. Amendments were proposed to conform the regulations to section 601(a) of the Tax Reduction Act of 1975 (89 Stat. 54). They do not reflect the changes in

section 907(c) made by section 211(b) of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 449), hereafter referred to as TEFRA.

On June 27, 1984, the **Federal Register** published as final regulations amendments to the Income Tax Regulations (26 CFR Part 1) under section 907 of the Internal Revenue Code (49 FR 26208) (1984 final regulations). The notice which preceded the 1984 final regulations was published on November 17, 1980 (45 FR 75695) (1980 notice). Section 1.907(c)–1 (e) and (f) of the 1984 final regulations reserved certain rules that would apply in defining a taxpayer's foreign oil and gas extraction income and foreign oil related income. On June 27, 1984, the **Federal Register** published the notice of proposed rulemaking for those reserved rules (49 FR 26258) (1984 notice). A public hearing was neither requested nor held. After consideration of all comments regarding the 1984 notice, the amendments as set forth below are adopted by this Treasury decision.

Election Period

This document also contains an amendment to § 1.901–1(d) of the Income Tax Regulations (26 CFR Part 1) under section 901(a) of the Internal Revenue Code.

Mailing Address

In addition, this document amends § 1.1441–5(c) of the Income Tax Regulations (26 CFR Part 1) under section 1441 of the Internal Revenue Code.

Explanation of Provisions

Limitation

Prior to the enactment in 1975 of section 907, foreign oil and gas producers were generating excess foreign tax credits attributable to their producing operations. The excess credits arose because the effective foreign tax rate on income from the extraction of oil and gas often far exceeded the U.S. rate on that income. In addition, there were serious questions whether payments made to certain countries, that were called taxes and were claimed as foreign tax credits, were in reality deductible royalty payments. Moreover, the excess credits generated by extraction income could be used to offset the U.S. tax on the producer's other foreign-source income even though that other income was frequently low taxed income completely unrelated to the oil and gas business.

In order to address these problems, Congress enacted section 907 (a) and (b). In the first instance, section 907(a) limits the producer's creditable foreign oil and gas extraction taxes to a certain percentage of foreign oil and gas extraction income (FOGEI). FOGEI is foreign-source taxable income derived from the extraction of minerals from oil or gas wells or from the sale or exchange of assets used in the extraction activity.

Secondly, section 907(b) (as in effect prior to TAFRA) provides that these extraction taxes on FOGEI, as limited by section 907(a), along with the producer's creditable taxes on income from downstream trades or businesses (other FORI) may only be allowed by reason of section 904 as credits against the U.S. tax on foreign oil related income (FORI) (and not other income). FORI is composed of FOGEI and "other FORI." "Downstream" trades or businesses include the processing of minerals from oil or gas wells into primary products, marketing and transporting the minerals or primary products, and the selling or exchanging of assets used in these trades or businesses.

Interest Income

The 1980 notice of proposed rulemaking (45 FR 75695) generally defined FOGEI narrowly so as to include within the definition only income which a producing country would tax excessively. For example, in a situation where an oil and gas producer is required to make monthly payments of royalties and taxes to the producing country, the producer may temporarily invest the funds which it sets aside to make the monthly payments in assets that generate interest income. Under the 1980 notice, the interest income earned on those temporary investments would not have been either FOGEI or other FORI. The special section 907(b) foreign tax credit limitation would, therefore, not have applied with the result that foreign taxes, if any, paid on that income, even though attributable to the extraction activity, would have been creditable against income that was not foreign oil related income.

The 1984 notice provided, and this regulation adopts without change, the rule that FOGEI and other FORI is defined to include interest on reasonable amounts of working capital and other amounts that are directly related to the conduct by the taxpayer of extraction, processing, and other activities described in section 907(c) (1) and (2).

Service and Rental Income

The 1980 notice contained a rule (proposed § 1.907(c)–1(b)(2)) providing that income from the performance of extraction services would be extraction income even in the absence of an economic interest in the minerals in place, if the consideration received for those services depended in whole or in part on the amount of minerals discovered or extracted. The 1984 final regulations eliminated the above specific provision for extraction services. Those regulations provided, however, that income that is directly related to (rather than directly derived from) the conduct of the section 907(c) (1) and (2) activities may be FOGEI or other FORI. The definition of directly related income was reserved. The 1984 notice defined directly related income to include only income derived from the performance of certain described services and from the lease or license of property used by the lessor, licensor, or another person in the active conduct of the section 907(c) (1) and (2) activities. The earlier 1980 "income base on output" test was eliminated. These final regulations reinstate the income based on output test. Accordingly, the definition of directly related FOGEI includes income from extraction services which is based on output.

Election Period

This provision amends § 1.901–1(d) to state that a taxpayer may elect the foreign tax credit at any time during the 10-year period of limitations prescribed by section 6511(d)(3)(A) of the Internal Revenue Code.

Mailing Address for Withholding Exemption Statements and Forms 1078

Section 1.1441–5 provides that a person claiming to be exempt from withholding shall provide a withholding agent duplicate copies of either Form 1078 or a statement asserting citizenship or residency in the United States. This provision revises § 1.1441–5(c) to provide that the withholding agent shall mail one copy of the filed document to the Internal Revenue Service Center, Philadelphia, PA 19255.

Discussion of Comments

Limitation

The comments from the public received on the 1984 notice stated that the income based on output test which was abandoned in the 1984 notice should be reinstated. The commentators asserted that the income based on output test is supported by the legislative history of section 907. They pointed out that the House Report on section 907 as introduced in 1974 reflects the intention that FOGEI should be interpreted broadly to include income from any arrangement where the facts

demonstrate that the income is "essentially profits from the extraction of crude oil." H.R. Rep. No. 1502, 93rd Cong. 2d Sess. 45 (1974). This intention was expressed in the context of the specific recognition by the Ways and Means Committee of "the changing relationships between the foreign governments of the countries where oil and gas wells are located and the petroleum companies operating in those countries . . . ." H.R. Rep. No. 1502, *supra* at 64.

In this regard and in response to the comments, these final regulations reinstate the income based on output test.

One commentator requested that the final regulations clarify that the proceeds (including interest) received from the nationalization (or expropriation) of an asset (or oil concession) of a petroleum company used in an activity described in section 907(c) (1) or (2) may be either FOGEI or other FORI. In response to this comment, these final regulations so provide that those proceeds will be FORGEI or other FORI under § 1.097(c)-1(e)(6).

Special Analyses

It has been concluded that these regulations are interpretative and that the notice and public comment procedural requirements of 5 USC 553 do not apply. Accordingly, these regulations are not subject to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. Chapter 6), and a Regulatory Flexibility Analysis is not required and has not been prepared. It has been determined that these regulations are not major regulations subject to Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required and has not been prepared.

Drafting Information

The principal author of these final regulations is Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices in the Service and Treasury Department participated in the development of these regulations.

List of Subjects

26 CFR 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, FSC, Foreign Investment in U.S., Foreign tax credit, Source of income, United States investment abroad.

26 CFR 1.1441–1 Through 1.1465–1

Income taxes, Aliens, Foreign corporations.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 1.1441–5 (c) also issued under 26 U.S.C. 1441 (c). * * *

Par. 2. Section 1.901–1 is amended by revising paragraph (d) to read as follows:

§ 1.901–1 Allowance of credit for taxes.

* * * * * *

(d) *Period during which election can be made or changed.* The taxpayer may, for a particular taxable year, claim the benefits of section 901 (or claim a deduction in lieu of a foreign tax credit) at any time before the expiration of the period prescribed by section 6511(d)(3)(A) (or section 6511(c) if the period is extended by agreement).

* * * * * *

Par. 3. Section 1.907(c)–1 is amended by adding the text of paragraphs (e) (3), (4), (5), and (6) and (f) to read as set forth below.

§ 1.907(c)–1 Definitions relating to FORI and FOGEI.

* * * * *

(e) *Terms and items common to other FORI and FOGEI.*

* * * * * *

(3) *Interest on working capital.* Other FORI and FOGEI may include interest on bank deposits or on any other temporary investment which is not in excess of funds reasonably necessary to meet the working capital requirements and the specifically anticipated business needs of the person that is engaged in the conduct of the activities listed in paragraphs (b) and (c) of this section.

(4) *Exchange gain or loss.* Exchange gain (and loss) may be other FORI and FOGEI.

(5) *Allocation.* Interest income and exchange gain (or loss) described, respectively, in paragraphs (e) (3) and (4) of this section are allocated among other FORI, FOGEI, and any other class of income relevant for purposes of the foreign tax credit limitations under any reasonable method which is consistently applied from year-to-year.

(6) *Facts and circumstances.* Income not described elsewhere in this section may be FOGEI or other FORI if, under the facts and circumstances in the particular case, the income is in substance directly attributable to the activities described in section 907(c) (1) or (2). For example, assume that a producer in the North Sea suffers a casualty caused by an explosion, fire, and resulting destruction of a drilling platform. Insurance proceeds received for the platform's destruction in excess of the producer's basis is extraction income if the excess constitutes income from sources outside the United States. In addition, income from an insurance policy for business interruption may be extraction income to the extent the payments under the policy are geared directly to the loss of income from production and are treated as income from sources outside the United States. Also, if an oil company's oil concession or assets used in extraction activities described in section 907(c)(1)(A) and located outside the United States are nationalized or expropriated by a foreign government, or instrumentality thereof, income derived from that nationalization or expropriation (including interest on the income paid pursuant to the nationalization or expropriation) is FOGEI. Likewise, if a company's assets used in the activities described in section 907(c)(2) (B) through (D) and located outside the United States are nationalized or expropriated by a foreign government, or instrumentality thereof, income (including interest on the income paid pursuant to the nationalization or expropriation) derived from the nationalization or expropriation will be other FORI. For this purpose, nationalization or expropriation is deemed to be a sale or exchange. In further example, assume that an oil company has an exclusive right to buy all the oil in country X from Y, an instrumentality of the foreign sovereign which owns all of the oil in X. The oil company does not have an economic interest in any oil in country X. Y has a temporary cash-flow problem and demands that the oil company make advance deposits for the purchase of oil not yet delivered. In return, Y grants the oil company a discount on the price of the oil when delivered. Income represented by the discount on the later disposition of the oil is other FORI described in section 907(c)(2)(D). The result would be the same if Y credited the oil company with interest on the advance deposits, which had to be used to purchase oil (the interest income would be other FORI).

(f) *Directly related income*—(1) *In general.* This paragraph (f) includes in other FORI and FOGEI income from the

performance of directly related services (as defined in paragraph (f)(2) of this section) or from the lease or license of related property (as defined in paragraph (f)(3) of this section). This paragraph (f) does not apply to a person if—

(i) Neither that person nor a related person (as defined in paragraph (f)(4) of this section) has FOGEI described in paragraph (b) of this section (other than paragraph (b)(4) thereof) or other FORI described in paragraph (c) of this section (other than paragraph (c)(7) thereof), or

(ii) Less than 50 percent of that person's gross income from sources outside the United States which is related exclusively to the performance of services and from the lease or license of property described in paragraph (f) (2) and (3) of this section, respectively, is attributable to services performed for (or on behalf of), leases to, or licenses with, related persons, but

(iii) Subdivision (ii) of this paragraph (f)(1) will not apply to a person if 50 percent or more of that person's total gross income from sources outside the United States is FOGEI and other FORI (as both described in subdivision (i) of this paragraph (f)(1)).

A person described in subdivisions (i) or (ii) of this paragraph will, however, have directly related services income which is FOGEI if the income is so classified by reason of the income based on output test set forth in paragraph (f)(2)(i)(B) of this section.

(2) *Directly related services*—(i) *FOGEI.* (A) Income from directly related services will be FOGEI, as that term is defined in paragraphs (b) (1) and (3) of this section, if those services are directly related to the active conduct of extraction (including exploration) of minerals from oil and gas wells. Paragraph (b)(1) of this section provides that, in order to have extraction income, a person must have an economic interest in the minerals in place. However, paragraph (b)(3) of this section recognizes that income arising from "other circumstances" is extraction income if that income is in substance attributable to the extraction of minerals.

(B) An example of "other circumstances" under paragraph (b)(3) of this section is the "income based on output test." This income based on output test provides that, if the amount of compensation paid or credited to a person for services is dependent on the amount of minerals discovered or extracted, the income of the person from the performance of the services will be directly related services income which is FOGEI. This test will apply whether or not the person performing the services has, or had, an economic interest in the minerals discovered or extracted.

(ii) *Other FORI.* With regard to the determination of directly related services income which is other FORI, directly related services are those services directly related to the active conduct of the operations described in section 907(c)(2) (B) through (D). Those services include, for example, services performed in relation to the distribution of minerals or primary products or in connection with the operation of a refinery, or the types of services described in § 1.954–6(d) (other than paragraph (d)(4) thereof) which relate to foreign base company shipping income.

(iii) *Recipient of the services.* Directly related services described in paragraph (f)(2) (i) and (ii) of this section may be performed for any person without regard to whether that person is a related person.

(iv) *Excluded services.* Directly related services do not include insurance, accounting or managerial services.

(3) *Leases and licenses.* A lease or license of related property is the lease or license of assets used (or held for use) by the lessor, licensor, or another person (including the lessee or a sublessee) in the active conduct of the activities described in section 907(c)(1)(A) or (c)(2) (A) through (D). The leases or licenses described in this paragraph (f)(3) include, for example, a lease of a means of transportation under a bareboat charter hire, of drilling equipment used in extraction operations, or the license of a patent, know-how, or similar intangible property used in extracting, transporting, distributing or processing minerals or primary products. This paragraph (f)(3) applies without regard to whether the parties are related persons.

(4) *Related person.* A person will be treated as a related person for purposes of this paragraph (f) if (i) that person would be so treated within the meaning of section 954(d)(3) (as applied by substituting the word "corporation" for the word "controlled foreign corporation"; or (ii) that person is a partnership or partner described in section 707(b)(1).

(5) *Gross income.* A foreign corporation shall be treated as a domestic corporation for the purpose of applying the gross-income rules in paragraph (f)(1)(ii) and (iii) of this section.

Par. 4. Section 1.1441–5 (c) is revised to read as follows:

§ 1.1441–5 Claiming to be a person not subject to withholding.

* * * * *

(c) *Disposition of statement and form.* The duplicate copy of each statement and form filed pursuant to this section shall be forwarded with a letter of transmittal to Internal Revenue Service Center, Philadelphia, PA 19255. The original statement shall be retained by the withholding agent.

* * * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: August 21, 1987.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87–20677 Filed 9–8–87; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL–3167–8; NC–023]

Approval and Promulgation of Implementation Plans; North Carolina; Control of Conical Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 12, 1986, the North Carolina Division of Environmental Management submitted a request for approval of 15 NCAC 2D.0523, Control of Conical Incinerators. This regulation sets forth requirements relating to the use of conical incinerators in the burning of wood and agricultural waste; in particular, the regulation addresses the elimination of airborne pollutants and the monitoring of ambient particulate concentrations.The new regulation fulfills a need for more definitive control of conical incinerator usage by strengthening the existing regulations currently being enforced.

DATES: This action will be effective on November 9, 1987, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. Such a notice may be submitted to Ms. Pamela Adams at the EPA Regional Office address listed below.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit,
Library Systems Branch,

Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365
Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611

FOR FURTHER INFORMATION CONTACT: Pamela E. Adams, Air Programs Branch, EPA Region IV at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Regulation 15 NCAC 2D.0523, Control of Conical Incinerators, is an entirely new regulation that strengthens the existing regulations currently being enforced. Currently, officially adopted regulations 2D.0521 (Control of Visible Emissions) and 2D.0505 (Control of Particulates from Refuse Burning Equipment) apply to conical incinerators. Section (f) of the new regulation states that conical incinerator shall not violate Regulation 2D.0521.

With respect to particulate emissions, the new regulation dictates a conical incinerator design scheme capable of reducing the particulate emissions to one pound per ton of feed material burned. Therefore, the new control of conical incinerator regulation complies with regulation 2D.0505. Actual application of the current incinerator regulation to conical incinerators would be extremely difficult since no practical method of source testing these incinerators has yet been devised. Approval of 15 NCAC 2D.0523, Control of Conical Incinerators, fulfills a need for more definitive control of conical incinerator usage by establishing equipment and monitoring specifications designed to eliminate airborne pollutants.

Final Action

Since 15 NCAC 2D.0523, Control of Conical Incinerators, serves to strengthen existing regulatory provisions, and since the current regulatory provisions are capable of causing the national ambient air quality standards to be achieved and maintained, approval of 15 NCAC 2D.0523, Control of Conical Incinerators, is technically consistent with EPA policy and requirements. Therefore 15 NCAC 2D.0523 is hereby approved.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective November 9, 1987, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 9, 1987.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 9, 1987. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Incorporation by reference, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan (SIP) for North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Date: March 9, 1987.

Lee M. Thomas,

Administrator.

Subpart II, Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart II—North Carolina

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1770 is amended by adding paragraph (c)(51) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(51) Revisions to the North Carolina State Implementation Plan were submitted by the State of North Carolina Division of Environmental Management on June 12, 1986.

(i) Incorporation by reference.

(A) A new regulation entitled Control of Conical Incinerators, 15 NCAC 2D.0523, which became effective on January 1, 1985.

(B) A letter dated July 7, 1987, from the State of North Carolina Division of Environmental Management clarifying the adoption and effective dates of 15 NCAC 2D.0523.

(ii) Other material—none.

[FR Doc. 87-20550 Filed 9-8-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[FRL-3258-6]

Standards of Performance for New Stationary Sources; Delegation of Authority for the States of Connecticut, Maine, New Hampshire and Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: Section 111(c) of the Clean Air Act permits EPA to delegate to the States the authority to implement and enforce the new source performance standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS). The EPA hereby notifies the public that it has delegated the authority for certain recently promulgated Subparts of 40 CFR Part 60 to four of the State Air Pollution Control Agencies in Region I.

EFFECTIVE DATE: See supplementary information.

ADDRESSES: Applications and/or reports required under all NSPS source categories for which EPA has delegated authority to respective States should be addressed to:

State of Connecticut

Air Compliance Unit, Department of Environmental Protection, 165 Capitol Avenue, Hartford, CT 06106

State of Maine

Bureau of Air Quality Control, Department of Environmental Protection, State House, Station No. 17, Augusta, ME 04333

State of New Hampshire

Air Resources Division, Department of Environmental Services, 64 North Maine Street, Caller Box 2033, Concord, NH 03302-2033

State of Rhode Island

Division of Air and Hazardous Materials, Department of Environmental Management, 75 Davis Street, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: Janet M. Sessions (APS–2311), EPA Region I, Air Management Division, JFK Federal Building, Boston, MA 02203, (617) 565–3249; FTS 835–3249.

SUPPLEMENTARY INFORMATION: The States of Connecticut, Maine, New Hampshire and Rhode Island were delegated authority for the General Provisions and specified Subparts of 40 CFR Part 60 in letters from EPA dated September 30, 1982. These letters detailed the conditions of each delegation, and thereby established a mechanism of automatic delegation of newly promulgated standards when specifically requested by the States. In accordance with this mechanism, requests for delegation were submitted to EPA and subsequently granted. The effect of these delegations is to shift primary program responsibility for the newly promulgated Subparts of 40 CFR Part 60 from EPA to State governments. Some States do not have full authority over the programs; limitations are noted where appropriate.

Delegations for each State are listed below:

State of Connecticut

Limitations: None; full authority delegated.

Delegations: Subparts of 40 CFR Part 60 as follows:

Db (Industrial-Commercial-Institutional Steam Generating Units), effective January 27, 1987,

Kb (Volatile Organic Liquid Storage Vessels for which Construction, Reconstruction, or Modification Commenced after July 23, 1984), effective June 10, 1987.

State of Maine

Limitations: None; full authority delegated.

Delegations: Subparts of 40 CFR Part 60 as follows:

Db (Industrial-Commercial-Institutional Steam Generating Units), effective May 12, 1987,

Kb (Volatile Organic Liquid Storage Vessels for which Construction, Reconstruction, or Modification Commenced after July 23, 1984), effective June 10, 1987.

State of New Hampshire

Limitations: None, full authority delegated.

Delegations: Subparts of 40 CFR Part 60 as follows:

Db (Industrial-Commercial-Institutional Steam Generating Units), effective January 29, 1987,

Kb (Volatile Organic Liquid Storage Vessels for which Construction, Reconstruction, or Modification Commenced after July 23, 1984), effective June 10, 1987.

State of Rhode Island

Limitations: Administrative delegation only.

Delegation: Subpart of 40 CFR Part 60 as follows:

Db (Industrial-Commercial-Institutional Steam Generating Units), effective April 8, 1987.

Effective immediately, all applications, reports, and other correspondence required under the NSPS standards should be sent to the above State addresses, as well as to the EPA.

This notice announces the delegations granted since December 1986. In addition, these delegation agreements provide that authority over future revisions to previously delegated standards will automatically be delegated to the State agency. Also, these delegation agreements provide for automatic delegation of new standards. These delegations do not create any new regulatory requirements affecting the public.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 60

Air pollution control, Electric utility steam generators, Petroleum refineries.

Dated: August 25, 1987.

Paul Keough,

Acting Regional Administrator, Region I.

[FR Doc. 87–20651 Filed 9–8–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 5E3269/R907; FRL 3258–8]

Pesticide Tolerances for Oxyfluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide oxyfluorfen and its metabolites in or on the raw agricultural commodities broccoli, cabbage, and cauliflower. This regulation to establish maximum permissible levels for residues of oxyfluorfen in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: September 9, 1987.

ADDRESS: Written objections, identified by the document control number, [PP 5E3269/R907], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1806.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of July 29, 1987 (52 FR 28314), in which it was announced that the Interregional Research Project No. (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 5E3269 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Stations of Florida, Hawaii, Illinois, Maryland, North Carolina, Tennessee, Virginia, and the U.S. Department of Agriculture. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in or on the new agricultural commodities broccoli, cabbage, and cauliflower at 0.05 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation

deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 28, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.381 is amended by adding and alphabetically inserting the raw agricultural commodities broccoli, cabbage, and cauliflower in paragraph (a), to read as follows:

§ 180.381 Oxyfluorfen; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Broccoli	0.05
* * * * *	
Cabbage	0.05
* * * * *	
Cauliflower	0.05

[FR Doc. 87–20653 Filed 9–8–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 270

[FRL–3258–4]

Development of Corrective Action Programs After Permitting Hazardous Waste Land Disposal Facilities; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This notice corrects an error in regulations which appeared in the **Federal Register** on June 22, 1987 [52 FR 23447] which related to RCRA permit application requirements for corrective action from regulated units.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Fagan at (202) 382–4497.

SUPPLEMENTARY INFORMATION: Under a final regulatory amendment published on June 22, 1987, RCRA facility owner/operators may now develop, at the discretion of the Regional Administrator, ground water corrective action programs after issuance of the RCRA permit to the facility, under a schedule of compliance. The June 22 **Federal Register** notice contained an inadvertent omission which requires correction. Specifically, 40 CFR 270.14(c)(8)(v) specified that written authorization to develop a corrective action program under a permit schedule of compliance must be obtained "prior to submittal of the permit application." The word "complete" was mistakenly omitted; the provision should have read "prior to submittal of the complete permit application."

* * * * *

Date: August 27, 1987.

Thaddeus L. Juszczak,

Acting Assistant Administrator for Office of Solid Waste and Emergency Response.

The following correction is made in FRL–3184–9, Development of Corrective Action Programs After Permitting Hazardous Waste Land Disposal Facilities published in the **Federal Register** on June 22, 1987 [52 FR 23447].

§ 270.14 [Amended]

§ 270.14(c)(8)(v) on page 23450 which reads, "The permit may contain a schedule for submittal of the information required in paragraphs (c)(8) (iii) and (iv) provided the owner or operator obtains written authorization from the Regional Administrator prior to submittal of the permit application" is revised to read as follows:

"The permit may contain a schedule for submittal of the information required in paragraphs (c)(8) (iii) and (iv) provided the owner or operator obtains written authorization from the Regional Administrator prior to submittal of the complete permit application."

* * * * *

[FR Doc. 87–20652 Filed 9–8–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Part 581

[Docket No. 86–29]

Filing of Service Contracts and Availability of Essential Terms

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: The Federal Maritime Commission is amending its rules governing service contracts to address problems the Commission has experienced in obtaining adequate service contract records. This rule defines service contract records and requires ocean common carriers and conferences to maintain these records in a readily accessible or retrievable manner for a period of five years from the termination of each contract. Further, service contract records must be made available to the Commission within 30 days from the date of a written request. Two additional provisions of the final rule are being held in abeyance until further notice by the Commission. One requires service contract records to be maintained in the United States unless a responsible official of a carrier or conference certifies in writing that they will be supplied to the Commission on request. The other permits the Commission to cancel a carrier's or conference's right to maintain records outside the United States, if service contract records are not made available to the Commission.

DATE: Effective November 9, 1987, except for § 581.10 (c) and (d) which are indefinitely stayed.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street

NW., Washington, D.C. 20573–0001, (202) 523–5796.
Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573–0001, (202) 523–5740.

SUPPLEMENTARY INFORMATION: Section 8(c) of the Shipping Act of 1984 ("1984 Act" or "Act"), 46 U.S.C. app. 1707(c), authorizes ocean common carriers or conferences to enter into service contracts with shippers or shippers' associations, subject to the requirements of the Act and the regulations of the Federal Maritime Commission ("Commission"). The Commission's rules governing the use of service contracts presently require, among other things, that ocean common carriers and conferences maintain service contract shipment records for a period of five years from the termination of each contract. 46 CFR 581.10(a). In addition, service contracts are required to include "[a] description of the shipment records which will be maintained to support the contract"; and "[t]he address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under § 581.10." 46 CFR 581.4(a)(2)(ii) (A) and (B).

The Commission's interim rules implementing the 1984 Act, 49 FR 18852, May 3, 1984, 22 S.R.R. 813, required service contract shipment records to be maintained by a resident representative *in the United States* for a period of five years from the completion of the contract. However, when the Commission adopted final service contract rules, it decided against requiring records to be kept in the United States, because there appeared to be no compelling necessity to do so at the time. The Commission made it clear, however, that if any difficulties were encountered in obtaining service contract information in the future, it would consider reimposing a United States recordkeeping requirement. Docket No. 84–21, *Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States—Service Contracts and Time/Volume Contracts*, 49 FR 45370, November 15, 1984, 22 S.R.R. 1424.

The Commission initiated this rulemaking proceeding on November 13, 1986, 51 FR 41132, to address problems experienced by the Commission in obtaining service contract records. Approximately twenty-five percent of the service contract audits scheduled by the Commission's Bureau of Investigations had been delayed for varying periods of time. In some cases, the Commission had to wait over eight months to receive the requested information from carriers or conferences. Moreover, the fact that some service contract records were located overseas resulted in additional delays caused by foreign government involvement in the process of producing requested records. In addition, the kinds of records maintained by carriers have not always proven to be sufficient to enable the Commission to verify compliance with a contract.

The proposed rule would define "service contract records" and require that ocean common carriers and conferences: (1) Maintain service contract records in the United States in an organized, readily accessible manner; (2) identify the location of records and recordkeeper(s); and (3) produce service contract records within 15 days from the date of a written Commission request.

Comments to the proposed rule were submitted by: (1) U.S. Atlantic—North Europe Conference, North Europe—U.S. Atlantic Conference, Gulf-European Freight Association, and North Europe—U.S. Gulf Freight Association ("North Europe Conferences" or "NEC"); (2) Asia North America Eastbound Rate Agreement, Australia/Eastern U.S.A. Shipping Conference, and Mediterranean—U.S.A. Freight Conference ("Asia/Australia/Med Conferences"); (3) Trans-Pacific Freight Conference of Japan and Japan-Atlantic and Gulf Freight Conference ("Japanese Conferences"); (4) North Europe—U.S. Pacific Freight Conference ("NEUSPFC"); (5) Sea-Land Service, Inc. ("Sea-Land"); (6) United States Lines, Inc. ("USL"); (7) American President Lines, Ltd. ("APL"); [1] (8) Council of European and Japanese National Shipowners' Associations ("CENSA"): and (9) U.S. Department of Transportation ("DOT"). In addition, the Commission received a copy of a Note Verbale from the U.S. Department of State that had been presented to it by the Embassy of Japan.[2]

Subsequent to the initiation of this rulemaking proceeding and the submission of comments, the Commission adopted a final rule in Docket No. 86–6, *Service Contracts*, 52 FR 23989, June 26, 1987, that substantially revised its existing service contract regulations and placed them in a separate part of the Code of Federal Regulations. As a result, many of the provisions addressed by the proposed rule have been renumbered and in some instances modified to accommodate the final rule in Docket No. 86–6.

The following is a section-by-section summary and analysis of the various comments received. Any comment not specifically addressed has nonetheless been fully considered by the Commission and found to be unnecessary to the disposition of this proceeding.

Proposed § 580.7(a)(5)

Section 580.7(a)(5) of the proposed rule defines "service contract records" as:

> . . . such information as will enable the Commission to verify compliance with the terms of a service contract and shall include freighted ocean bills of lading, or equivalent shipping documents, with riders, attachments, invoices, and corrections, and any other documents which establish that the terms of the contract are being or have been met.

Most commenting parties believe the proposed definition is too broad and therefore in need of some modification. The North Europe Conferences have proposed an alternative definition of the term service contract records.

The Asia/Australia/Med Conferences believe that the proposed definition of service contract records is unnecessary, contending that conferences should retain the discretion and flexibility to maintain the records they believe are necessary, e.g., bills of lading or summaries of shipments under a contract. They further contend that if the Commission needs documents other than those maintained by a conference, it can make a specific request directed to the party in actual possession of such documents.

The Japanese Conferences express concern over the volume of documents the Commission expects contract parties to maintain in support of their contracts, and the storage space that this would require. Similarly, NEUSPFC states that retention of member line shipping and accounting records by the conference would require doubling or tripling the present conference staff. NEUSPFC also claims that additional space would be needed to store records, and argues that additional costs would have to be borne by a depressed liner industry. Additionally, NEUSPFC states that it is not a depository for member line records and does not have underlying documents in the usual course of business.

Sea-Land states that a carrier should preserve the minimum documentation necessary to confirm performance of the contract, which would include a freighted ocean bill of lading. Sea-Land

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[1] Sea-Land, USL and APL are members of one or more of the above-referenced conferences, but filed individual comments to the proposed rule.

[2] This document was received by the Commission after the close of the comment period.

suggests that by deleting some of the documents specified in the proposed definition, the rule would be more workable and effective.

CENSA believes the proposed definition of service contract records may introduce confusion as to whether a conference or its member lines bears the responsibility for maintaining different type of records. CENSA, therefore, proposes that the final rule only require the maintenance of those records "customarily maintained as business records in the ordinary course of business." CENSA Comments Apendix at 1.

The Commission proposed a broad definition of contract records in view of the apparent diversity of records that are maintained by carriers and conferences. The Commission did not intend to require that *all* of the records mentioned in the definition be maintained by each conference or carrier. Rather, it intended that a conference or carrier maintain its own "unique set of records," whatever they may be. The Commission is only concerned that the records enable it to verify that the terms of the contract are being or have been met. However, in light of comments received and in order to avoid any misinterpretation of the rule, the definition of service contract records has been modified by deleting the terms "riders," "attachments," "invoices," and "corrections" from the proposed definition. We are retaining, however, reference to "freighted ocean bills of lading," because the Commision considers them to be standard documents involved in the shipment of cargo under service contracts. In addition, because the Commission has recently adopted a final rule in Docket No. 86-6 which revises the general service contract regulations and places them in a new part, the definition of "service contract records" will now appear at 46 CFR 581.1(o).

Proposed § 580.7(b)(3)(vi)

Section 580.7(b)(3)(vi) of the proposed rule requires that the service contract clearly state "[t]he types of service contract records which will be maintained" by the ocean common carrier or conference.

The North Europe Conferences argue that the Commission should not require such provisions in service contracts, because they are neither "essential terms" as defined by statute and regulation, nor are they commercial terms which contracting parties normally negotiate.

NEUSPFC also maintains that the proposed rule should not be adopted. It argues that a conference may not always receive specific records from member lines and that, in some cases, the records received will consist of copies of relevant bills of lading and, in others, a computerized statement from the member line's accounting department. The other commenters, however, offer no objections to the rule's proposed requirement that the service contract state the type of records which will be maintained.

The Commission continues to believe that information as to the type of records a carrier or conference must maintain and make available should be set forth in the service contract. This procedure ensures that both parties to the contract are aware of the Commission's recordkeeping requirements. A clear statement regarding the types of records that a carrier or conference must maintain and make available will also avoid future misunderstandings and confusion and should allow records to be produced more conveniently and expeditiously. Therefore, the Commission will continue the requirement it recently adopted in Docket No. 86-6, *i.e.* that service contracts contain "[a] description of the shipment records which will be maintained to support the contract." 46 CFR 581.4(a)(2)(ii)(A).

Proposed § 580.7(b)(3)(vii)

Section 580.7(b)(3)(vii) of the proposed rule requires service contracts to state:

> The specific location in the United States of service contract records; and the name, title, address and telephone number of the individual who will make records available to the Commission pursuant to § 580.7(j).

In response to comments, the Commission's recently adopted rule in Docket No. 86-6 also contains the requirement that service contracts include "[t]he address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under § 581.10." 46 CFR 581.4(a)(2)(ii)(B). This provision will therefore remain in effect. The only other aspect of proposed § 580.7(b)(3)(vii) that generated comment was its reference to the "specific location in the United States of service contract records." These comments are treated below in the discussion of proposed section 580.7(j)(1).

Proposed § 580.7(j)(1)

Proposed § 580.7(j)(1) states that:

> Every ocean common carrier or conference shall maintain in the United States service contract records in an organized, readily accessible manner for a period of five years from the termination of each contract.

The North Europe Conferences, Asia/Australia/Med Conferences, the Japanese Conferences, NEUSPFC, Sea-Land, and CENSA object to the requirement of proposed § 580.7(j)(1) that carriers and conferences maintain service contract records in the United States. In general, the conference commenters argue that there are legal problems with a U.S. record location requirement. They assert that such a requirement would interfere with the sovereignty of a foreign nation by requiring removal of documents regarding transactions occurring within the territory of that nation. NEC further states that Congress intended the Commission to administer the 1984 Act with sensitivity to the interest of the United States' trading partners. Many commenters believe that the Commission can utilize its subpoena authority under section 12 of the 1984 Act, 46 U.S.C. app. 1711, to compel the production of documents, if necessary. In addition, NEC, the Asia/Australia/Med Conferences, the Japanese Conferences, NEUSPFC, Sea-Land, and CENSA contend that a U.S. record retention requirement would create immense administrative and economic burdens.

DOT offers an alternative approach to the U.S. record location requirement. DOT proposes that an exemption pursuant to section 16 of the Act, 46 U.S.C. app. 1715, be granted to carriers or conferences that agree to produce the documents requested by the Commission, whether located in the United States or not.

The primary intent of these rules is to ensure the timely availability of service contract records to the Commission. Although the Commission could obtain such records under section 12 and section 15 of the 1984 Act, 46 U.S.C. app. 1711 and 1714, it could also require that such records be mantained within the United States. Imposition of such a requirement would be a proper exercise of the Commission's authority to issue regulations necessary to carry out the 1984 Act.

The final rule, therefore, contains a variant of the alternative suggested by DOT—service contract records must be maintaned in the United States, but can be kept elsewhere if a responsible official certifies that they will be made available to the Commission upon request. In addition, the rule will provide that if service contract records are not made available, a carrier's or conference's right to maintain such records outside the United States, pursuant to the certification process, can be cancelled by the Commission. The

Commission does not, however, wish to impose unnecessary administrative or economic burdens on the ocean transportation industry or on itself. Recent audits of service contract records undertaken by the Commisson's staff have not met with significant difficulties. Moreover, no instance of foreign government resistance to the production of such records has been encountered during this period. For these reasons, and based on indications of cooperation provided by commenting conferences and carriers with respect to the voluntary production of service contract documents, the Commission has decided to impose a U.S. recordkeeping requirement, but not to implement it at this time. The Commission will accordingly stay the effective date of § 581.10 (c) and (d) of the final rule for an indefinite period of time. This will provide the Commission an opportunity to more fully assess the administrative burdens that a certification procedure will place upon it. Moreover, additional experience under a non-U.S. recordkeeping requirement may indicate that the Commission is able to obtain all necessary documents as carriers and conferences improve their recordkeeping processes and follow through on their offers of cooperation. In the event that the Commission decides to terminate the stay of these provisions, it will afford all affected parties ample advance notice.

As for the remainder of the proposed section, commenters generally believe that the five-year recordkeeping requirement is too long. NEC suggets that the five-year recordkeeping provision be reduced to a period of two years. Further, NEC suggests that the rule require the maintenance of relevant records in a "readily retrievable manner," rather than "in an organized and readily accessible manner."

The Commission is adopting the five-year retention requirement. This requirement is consistent with the five-year period within which the Commission can begin a proceeding to assess a civil penalty for violations under the Act. *See* 46 U.S.C. app. 1712(f)(2). The maintenance of service contract records for five years will permit the Commission to carry out its regulatory responsibilities and will permit it to assess and collect civil penalties for any violations of the 1984 Act. However, the rule has been amended to provide that the records maintained be either "accessible" *or* "retrievable" for a period of five years.

Proposed § 580.7(j)(2)

Proposed § 580.7(j)(2) states that:

Every ocean common carrier or conference shall submit upon written request of the Director, Bureau of Investigations or the Director of any District Office, requested service contract records within 15 days of the date of request of the Commission.

All commenters believe that a 15-day period for the production and submission of service contract records is unreasonable, and suggest that a 30-day period would be more appropriate. In support of the 30-day period, Sea-Land states that additional time is needed because conferences must obtain relevant documents from each of their constitutent members in order to present an aggregated record. USL and APL state that similar time problems exist when several offices of a single carrier are involved.

The Commission is enlarging the period for the production of service contract records to 30 days. Allowing additional time to produce such records is particularly appropriate given the Commission's stay of the requirement that service contract records be maintained in the United States. Carriers and conferences are cautioned, however, that failure to submit the requested documents or information within the prescribed period could result in the Commission issuing compulsory process, invoking the civil penalty procedure, revoking the stay of the U.S. document retention requirement, or taking other appropriate action. In addition, the Commission notes that in the case of a conference service contract, whether or not including all members, the conference has the responsibility to collect and make available requested service contract records. The Commission will look to the conference in such instances.

The Federal Maritime Commission has determined that the final rule adopted is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission certifies that the final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organization units, and small governmental jurisdictions.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget ("OMB") for review under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h). This collection was approved by OMB through April 30, 1987, and later extended to October 31, 1987, under OMB control number 3072–0009. However, in its Notice of Action, dated January 7, 1987, OMB suggested that the Commission submit a new supporting statement in justification of paragraph (j)(1) of the proposed rule. OMB questioned the need to maintain duplicate service contract records in the United States, when paragraph (j)(2) of the proposed rule requires carriers or conferences to produce such records within 15 days of a Commission request. Inasmuch as the Commission's final rule has stayed the requirement that service contract records be maintained in the United States, it is no longer necessary to submit additional justification for this requirement at this time. The Commission's stay action should obviate OMB's concerns. Should the Commission determine to remove the stay in the future, it will resubmit the rule for OMB clearance.

List of Subjects in 46 CFR Part 581

Administrative practice and procedure, Antitrust, Automatic data processing, Cargo vessels, Confidential business information, Contracts, Exports, Freight, Imports, Maritime carriers, Penalties, Rates and fares, Reporting and recordkeeping requirements.

Therefore, for the reasons set forth above, Part 581 of Title 46, Code of Federal Regulations, is amended as follows:

PART 581—[AMENDED]

1. The authority citation to Part 581 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716 and 1718.

2. Section 581.1 is amended by redesignating paragraphs (o), (p), (q), (r), (s) and (t) as paragraphs (p), (q), (r), (s), (t) and (u) and by adding a new paragraph (o) as follows:

§ 581.1 Definitions.

* * * * *

(o) *Service contact records* means such documents and information as will enable the Commission to verify compliance with the terms of a service

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contract and shall include freighted ocean bills of lading or equivalent shipping documents which establish that the terms of the contract are being or have been met.

* * * * *

3. Section 581.10 is amended by revising paragraphs (a) and (b) and adding new paragraphs (c) and (d) as follows:

§ 581.10 Record keeping and audit.

(a) Every common carrier or conference shall maintain service contract records in an organized, readily accessible or retrievable manner for a period of five years from the termination of each contract.

(b) Every common carrier or conference shall, upon written request of the Director, Bureau of Investigations or the Director of any District Office, submit requested service contract records within 30 days from the date of the request.

(c) Service contract records shall be maintained in the United States; provided, however, that service contract records may be maintained outside the United States if the Chairman or Secretary of a conference or President or Chief Executive Officer of a carrier certifies annually by January 1, on a form to be supplied by the Commission, that service contract records will be made available as provided in paragraph (b) of this section.

(d) If service contract records are not made available to the Commission as provided in paragraph (b) of this section, the Commission may cancel any carrier's or conference's right to maintain records outside the United States pursuant to the certification procedure of paragraph (c) of this section.

4. Paragraphs (c) and (d) of § 581.10 are stayed until further notice of the Commission.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-20452 Filed 9-8-87; 8:45 am]

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Proposed Rules

Federal Register
Vol. 52, No. 174
Wednesday, September 9, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 413

[Amendment No. 2; Doc. No. 4644S]

Texas Citrus Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Texas Citrus Crop Insurance Regulations (7 CFR part 413), effective for the 1989 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Texas Citrus Crop Insurance Regulations only through the 1988 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations § 401.115, Texas Citrus Endorsement, effective for the 1989 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 9, 1987, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 413 will be effective only through the end of the 1988 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Texas Citrus Endorsement will be published as an endorsement to 7 CFR Part 401 (§ 401.115, Texas Citrus Endorsement), and become effective for the 1989 and succeeding crop years. Upon final publication, the provisions of the Texas Citrus Crop Insurance Regulations, now contained in 7 CFR Part 413, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 413 be effective for the 1987 and 1988 crop years only.

List of Subjects in 7 CFR Part 413

Crop insurance, Texas citrus.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Subpart heading to the Texas Citrus Crop Insurance Regulations (7 CFR Part 413), as follows:

PART 413—[AMENDED]

1. The authority citation for 7 CFR Part 413 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 413 is revised to read as follows:

Subpart—Regulations for the 1987 and 1988 Crop Years

Done in Washington, DC, on August 19, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–20693 Filed 9–8–87; 8:45 am]

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7 CFR Part 432

[Amendment No. 2; Doc. No. 4640S]

Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Corn Crop Insurance Regulations (7 CFR Part 432), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Corn Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations as § 401.111, Corn Endorsement, effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 9, 1987 to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 432 will be effective only through the end of the 1987 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Corn Endorsement will be published as an endorsement to 7 CFR Part 401 (*§ 401.111, Corn Endorsement*), and become effective for the 1988 and succeeding crop years. Upon final publication, the provisions of the Corn Crop Insurance Regulations, now contained in 7 CFR Part 432, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 432 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 432

Crop insurance, Corn.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Subpart heading to the Corn Crop Insurance Regulations (7 CFR Part 432), as follows:

PART 432—[AMENDED]

1. The authority citation for 7 CFR Part 432 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 432 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years.

Done in Washington, DC, on August 19, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-20694 Filed 9-8-87; 8:45 am]

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Agricultural Stabilization and Conservation Service

7 CFR Part 724

Tobacco Acreage Allotment and Marketing Quota Regulations; Correction

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed Rule, Correction.

SUMMARY: This action corrects the preamble of the proposed rule published at 52 FR 27203 on Monday, July 20, 1987, to set forth the date by which comments on the proposed rule must be received.

FOR FURTHER INFORMATION CONTACT: Donald M. Blythe, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013 (202) 382-0200.

The preamble for the proposed rule which would amend CFR Part 724 which was published on July 20, 1987, at 52 FR 27203 is corrected by revising the paragraph captioned "Dates" to read as follows: "**DATES**: Comments must be received on or before October 9, 1987, to be assured of consideration."

Signed in Washington, DC, on August 24, 1987.

Milt Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 87-20624 Filed 9-8-87; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 1068

[Docket No. AO-178-A41]

Milk in the Upper Midwest Marketing Area; Emergency Partial Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts on an expedited basis a change in the pool distributing plant definition of the Upper Midwest order. The change would permit the operator of one or more distributing plants and one or more soft-products (cream items, cottage cheese and yogurt but excluding ice cream) plants located within the marketing area to treat such plants as one plant, or unit, for pooling purposes. The change was considered at a public hearing held July 7-8, 1987, in Minneapolis, Minnesota.

The change is necessary to reflect current marketing conditions and to insue orderly marketing in the marketing area. Marketing conditions are such that prompt amendatory action is required with respect to this issue. Therefore, a recommended decision and opportunity to file exception thereto have been omitted. Other issues considered at the July hearing will be dealt with in a later decision on this record.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Only one multi-plant handler operation is expected to elect unit pooling in order to achieve greater efficiencies in the procurement of raw milk supplies. The amended order will promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceding: Notice of Hearing: Issued June 19, 1987; published June 25, 1987 (52 FR 23843).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Upper Midwest marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice (7 CFR Part 900) at Minneapolis, Minnesota, on July 7-8, 1987. Notice of such hearing was issued on June 19, 1987, and published June 25, 1987 (52 FR 23843).

Interested parties were given until July 20, 1987, to file post-hearing briefs on whether the proposals considered at the hearing should be handled on an expedited basis, and until August 14 to file post-hearing briefs on the merits of the proposals as published in the hearing notice.

The material issues on the record of the hearing relate to:

1. Pool plant qualification standards for reserve supply plants.
2. Pool plant qualification standards for distributing plants.
3. Whether an emegency exists to warrant the omission of a recommended decision on issues No. 1 and 2.

This decision deals only with issues No. 2 and 3. The remaining issues of the hearing will be considered in a later decsion on this record.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

2. *Pool plant qualification standards of distributing plants.* The pool distributing plant qualification standards under the Upper Midwest order should be changed to allow the operator of one or more distributing plants and one or more soft-products plants (plants which process cream items, cottage cheese and yogurt, but not ice cream) that are located within the marketing area to treat such plants as one plant, or unit, for pooling purposes. In order to be part of such a unit, each plant in the unit that does not meet the Class I route disposition requirements for distributing plants must use at least 50 percent of the bulk Grade A fluid milk received at or diverted from the plant to produce packaged cream products, yogurt and cottage cheese. Also, all plants within a unit must be located within the marketing area, and the unit operator must file a written request for unit status before such status would be effective.

The current order provisions require a pool distributing plant to distribute a percentage of its Grade A bulk fluid milk receipts as fluid milk products on routes in an amount at least equal to the marketwide Class I utilization percentage for the same month of the preceding year. In addition, at least 15 percent of a distributing plant's bulk fluid milk receipts must be disposed of on routes in the marketing area for the plant to qualify for pooling.

Marigold Foods, a proprietary handler regulated under the Upper Midwest

order, proposed that the order provide for unit pooling of distributing plants and plants processing some Class II products when the plants in the unit are all operated by the same handler, are located within the marketing area, and unit status is requested in advance. Marigold operates three distributing plants pooled under the Upper Midwest order and located at Rochester, Minneapolis and Duluth, Minnesota; an ice cream plant at Rochester, and a Class II soft-products plant at Farmington, Minnesota.

According to the spokesman for Marigold, the handler formerly processed its Class II soft products on the premises of its Rochester, Minnesota, distributing plant. The witness stated that when Marigold approached the large cooperative from which it leases the Rochester plant about the possibility of building an addition to accommodate expansion of Marigold's soft-product production, the cooperative declined. The witness said that Marigold then leased, and later purchased, the premises in Farmington, Minnesota, at which Marigold processes its Class II soft products and skims approximately 25 percent of the Farmington plant's receipts for the shipment of skim milk to Marigold's Minneapolis distributing plant.

The Marigold spokesman testified that the regular supply of milk to the combined fluid milk/Class II soft-product operation in Rochester was uninterrupted by the relocation of the Class II soft-product portion of the plant's output to Farmington. He stated that a portion of the previously combined milk supply for Rochester was shipped instead to Farmington, establishing patterns of milk movements to that facility as well as to the Rochester distributing plant. However, the witness pointed out, under the terms of a "call" for milk to supply the fluid, or Class I market, deliveries to the Farmington plant do not qualify as a shipment by a supplier to a distributing plant as would deliveries to the formerly combined operation in the Rochester plant.

The witness for Marigold stated that during the fall months of 1986, when the market administrator issued a "call" for additional milk supplies for fluid use, Marigold incurred costs of approximately $20,000 in moving packaged fluid milk products from its Minneapolis plant to be distributed from the Farmington plant. According to the witness, the objective of such costly inefficient movements of milk was to qualify the Farmington plant as a distributing plant. With distributing plant status, the witness said, the Farmington plant was able to attract a supply of raw milk from suppliers who needed to meet the percentage of deliveries to pool distributing plants required by activation of the "call" provisions during the months of September through November 1986. The witness testified that during the same period it was necessary for one of Marigold's regular raw milk suppliers to incur costs of $10,000 in order to provide skim milk for Marigold's Minneapolis plant due to the difficulty of obtaining supplies for the Farmington plant, from which skim milk had been shipped to Minneapolis.

The witness concluded that the proposed amendment to the pool distributing plant definition would restore Marigold to the same position that existed vis-a-vis the order when all of the handler's Class II soft products were produced in the Rochester distributing plant. In addition, he said, adoption of the proposal would allow avoidance of the unnecessary and inefficient hauling and handling practices that otherwise would be necessary to obtain the supply of milk needed for Marigold's entire operation in the event of future activation of the order's "call" provision. According to the witness, Marigold would be the only handler affected by adoption of the proposed amendment.

The Marigold proposal was supported by spokesmen for Land O'Lakes, Mid-America Dairymen, Associated Milk Producers, Inc., Farmers Union Milk Marketing Cooperative and National Farmers Organization. The Land O'Lakes witness testified that formation of a distributing plant unit would be a more efficient and less costly means of assuring a milk supply to Marigold's total operation than the unnecessary hauling and handling practices used to retain a milk supply for the Farmington plant during the months of 1986 when the "call" provision was in effect. He also stated that adoption of the proposal would make it simpler for raw milk suppliers to maintain existing supply relationships with their customers. The Mid-American Dairymen representatives pointed out that adoption of Marigold's proposal would not affect the use value of milk pooled under the order. No opposition to the proposal was expressed in testimony at the hearing or in post-hearing briefs.

The proposed change in the pool distributing plant definition should be adopted. The changes in the pool status of Marigold's Class II soft-products processing caused only by the relocation of those activities clearly has impaired Marigold's ability to obtain an adequate and reliable supply of milk for its operation as a whole during times when a "call" is in effect. Marigold apparently can continue to obtain a supply of milk for its Farmington plant at such times, but only by engaging in inefficient and uneconomic hauling and handling practices. The problem of obtaining a sufficient milk supply at Farmington apparently arises only during a "call" situation. While it is evident that "calls" for fluid milk supplies have been an infrequent occurrence, it is also likely that they will occur regularly during the fall months of short milk production while milk supplies are expected to be tight.

Order provisions should not impede the ability of a multi-plant handler to achieve operational efficiencies by specializing in the processing of fluid milk products in one plant and Class II soft products in another. With the ability to form a unit of plants processing fluid and Class II products at different locations, a handler may achieve economies of scale while maintaining an adequate supply of milk for the complete operation.

As proposed by Marigold, each plant within the unit that would not be a pool distributing plant on the basis of its own disposition would have to use at least 50 percent of its receipts for the disposition of fluid milk products, cream products, yogurt, eggnog and cottage cheese. Under cross-examination, the Marigold witness stated that adoption of the proposal with a percentage higher than the proposed 50 percent would meet Marigold's needs. However, no reason was given for increasing the proposed percentage. Adoption of the proposed 50-percent level will assure that the plant is used primarily for processing the specified items, with some flexibility to divert unneeded producer milk to other outlets and to accommodate the continued skimming of bulk milk receipts at Farmington for the shipment of skim milk to Marigold's Minneapolis plant.

Only plants located inside the marketing area would be eligible for inclusion in a unit. This will provide some assurance that the plant is associated with the Upper Midwest market in terms of its milk procurement area. Multi-plant handlers often operate plants in more than one market. It would not be appropriate to pool a plant under the order if it were located beyond the procurement area of regulated plants. A similar qualification provision applies to pool reserve supply plants.

As a condition to qualify for unit pooling, a handler would be required to

notify the market administrator in writing prior to the first day of the month in which plants are to be considered as a unit for pooling purposes. Unit pooling would be continued in each following month without further notification. If any change such as the addition or subtraction of plants to or from the unit or termination of the unit is desired, the handler would be required to notify the market administrator prior to the month in which such a change is to be effective.

3. *Need for emergency action.* The notice of hearing provided for taking evidence to determine whether emergency marketing conditions exist that would warrant ommission of a recommended decision with respect to the issues considered at the hearing. The request for emergency action by proponents was based on the view that the Department would not have sufficient time after the hearing to issue both a recommended decision and a final decision and make any resulting action effective in time to affect the availability of milk supplies to pool distributing plants during the fall 1987 months of expected short production. A decision on Proposal No. 1, which would require that reserve supply plants meet mandatory shipping percentages in order to be pooled during the months of August through December, should not omit the opportunity for interested persons to file exceptions. Proposal No. 3 would merely remove obsolete language from the pool plant definition. There were no testimony on any need for adoption of Proposal No. 3 on an emergency basis, and no emergency is seen to exist. Emergency action should be taken only with respect to Proposal No. 2, which allows a multi-plant handler with at least one distributing plant and one or more Class II soft-products plants located within the marketing area to treat such plants as a unit for pooling purposes.

At the hearing and in post-hearing briefs, the six cooperative association proponents of Proposal No. 1 and another cooperative association urged prompt action with respect to establishing mandatory shipping percentages for reserve supply plants. Proponents argued that "calls" for milk were issued for the months of September through November 1986 and that market supply conditions in the fall of 1987 will be similar to those that occurred in the fall of 1986. The proponents therefore advocated emergency action for the purpose of avoiding the need for a "call" during the fall months of 1987. Proponents asserted that the "call" mechanism is appropriate only under emergency conditions, and is cumbersome and defective as a mechanism for routine use. Use of the "call" provision was characterized as creating uncertainty, lack of planning between suppliers and customers, and resulting uneconomic marketing conditions.

Emergency action on Proposal No. 1 was opposed by two cooperative associations and an association of proprietary handlers who opposed adoption of mandatory shipping percentages. The opponents of mandatory shipping standards cited the market administrator's authority to call on suppliers for needed milk supplies as an emergency means of assuring that the Class I needs of the market will be met.

A recommended decision on the issue of mandatory shipping percentages for reserve supply plants should not be omitted. Although there may be a need for more milk deliveries to distributing plants this fall than reserve supply plants are willing to ship, that emergency can be dealt with as well by use of the "call" provision as by the adoption of shipping requirements. The imposition of mandatory shipping percentages during the 1987 season of short supply will do no more to assure advance planning and coordination between suppliers and customers than the "call" provision does. If mandatory shipping requirements are adopted, they will serve to encourage suppliers and their customers to plan ahead to meet bottling needs only if the market participants are aware of such requirements well in advance of having to operate under them. The "call" provisions currently existing in the order should be as appropriate for dealing with the emergency supply conditions expected this fall as would hastily adopted mandatory shipping standards.

In addition to the fact that the tight supply conditions expected this fall do not warrant emergency adoption of required shipping percentages, the degree of disagreement between hearing participants over the merits of adopting mandatory shipping standards makes a recommended decision, with opportunity to file exceptions, desirable. Whether performance standards for reserve supply plants are adopted or not, interested persons should have an opportunity to comment on the decision.

Expedited action on Proposal No. 2 is warranted on the basis that, according to the post-hearing brief filed by Marigold Foods, an emergency does exist with regard to propoentnt's procurement of milk supplies this fall. Marigold states that it is evident that the market administrator will have to issue a "call" to suppliers in order to obtain an adequate supply of milk for the market's fluid needs for the fall months of 1987 as he did for the same period of 1986. In such circumstances, Marigold obviously will encounter the same difficulty in securing a supply of milk for its total operation as it encountered last fall. There are no provisions in the order that would assist Marigold in obtaining a supply of milk for its total operation in the way that the "call" provisions operate to secure an adequate supply of milk for fluid use. Emergency action on Proposal No. 2 is the only means of assuring that Marigold will be able to obtain a supply of milk for its entire operation without resorting to inefficient and uneconomic methods of handling and hauling milk.

Although the need for omission of a recommended decision regarding Proposal No. 2 was not discussed at the hearing, that possibility was included in the hearing notice. In addition, proponent Marigold Foods argued for emergency action on Proposal No. 2 in its post-hearing brief, as did the six cooperative proponents of Proposal No. 1 and Associated Milk Producers, Inc. Although the opponents of mandatory shipping percentages submitted briefs opposing emergency action in the proceeding, their comments were directed toward emergency action on Proposal No. 1. Those persons supported adoption of Proposal No. 2 in testimony at the hearing. Therefore, there appears to be no real opposition to the expedited adoption of a unit pooling provision for a multi-plant handler, and such action appears to be justified.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Upper Midwest order was first issued and when it was amended. The previous

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findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating and handling of milk, and an Order amending the order regulating the handling of milk in the Upper Midwest marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

June 1987 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Upper Midwest marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1068

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on September 2, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the Upper Midwest Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Midwest marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the miminum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Upper Midwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. The authority citation for CFR Part 1068 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1068.7, Pool plant, add a new paragraph (a)(3) as follows:

§ 1068.7 Pool plant.

* * * * *

(a) * * *

(3) A unit consisting of at least one pool distributing plant and one or more additional plants of a handler shall be considered as one plant for the purpose of meeting the requirements of this paragraph, subject to the following conditions:

(i) For each plant within the unit which does not qualify as a pool distributing plant pursuant to paragraphs (a)(1) and (2) of this section, the combined disposition of skim milk and butterfat in products specified in § 1068.40(a), § 1068.40(b)(1) in packaged form, and § 1068.40(b)(4)(i) is 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator;

(ii) All plants within the unit are located within the marketing area; and

(iii) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month-to-month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

* * * * * *

United States Department of Agriculture,
Agricultural Marketing Service

Marketing Agreement Regulating the Handling of Milk in the Upper Midwest Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1068.1 to 1068.86, all inclusive, of the order

regulating the handling of milk in the Upper Midwest marketing area 7 CFR Part 1068 which is annexed hereto; and

II. The following provisions:

§ 1068.87 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of June 1987, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1068.88 Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

By _____ (Signature)

_____ (Name) (Title)

_____ (Address)

Attest _____

Date _____

[FR Doc. 87-20625 Filed 9-8-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-96-AD]

Airworthiness Directives: Boeing Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which would require inspection of the indicator switches in the wing and engine anti-ice control panel, replacement of the panel if certain switches are installed, and repetitive functional testing of the panel. This proposal is prompted by reports of incomplete switch latching and switch contamination in installations of these switches in applications other than the anti-ice control panel. This condition, should it occur on the anti-ice control panel, could result in inoperative wing and engine anti-ice systems with no annunciation to the flight crew.

DATE: Comments must be received no later than October 12, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-96-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Donald L. Kurle, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communciations should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications recieved on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-96-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Certain lighted push-button indicator switches used in the wing and engine anti-ice control panel on Boeing Model 757 series airplanes have been found to exhibit malfunctions in service, including incomplete latching and contamination in applications other than the anti-ice control panel.

The switches are of the alternate on-off type and they determine the position of valves that control the flow of hot engine bleed air to areas of the wing and engine cowling where ice can accumulate during flight. Incomplete latching or contamination can result in loss of continuity through a switch although the indication is that it is on. Should this occur, the selected anti-ice system could become inoperative and that condition would not be annunciated to the flight crew.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-30A0013, dated April 30, 1987, which describes inspection of switches in certain wing and engine anti-ice control panels to determine which switches are installed, replacement of the anti-ice control panel with a panel incorporating improved switches, and functional testing of the anti-ice control panel to ensure correct switch operation.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of switches in certain Boeing Model 757 anti-ice control panels, replacement of the panel if certain switches are installed, and repetitive functional testing in accordance with the service bulletin previously mentioned.

It is estimated that 80 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,600.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 757 airplanes are operated by small entities.

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A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, equipped with Boeing P/N 233N3204–11 and 233T3241–1 Wing and Engine Anti-Ice Control Panels, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inoperative wing or engine anti-ice system with no annunciation to the flight crew, accomplish the following:

A. Within the next 500 hours time-in-service after the effective date of this AD, inspect the switches in the wing and engine anti-ice control panel in accordance with paragraph III.B. of Boeing Alert Service Bulletin 757–30A0013, dated April 30, 1987, or later FAA-approved revisions. If Korry switches are installed which are not marked with green dots next to the date code on the lens cap assembly and on top of the master module, prior to further flight, replace the control panel with one having serviceable switches, in accordance with paragraph III.C. of the service bulletin.

B. Upon completion of the inspection, and replacement if necessary, required by paragraph A., above, and thereafter at intervals not to exceed 500 hours time-in-service, perform a functional test of the wing and engine anti-ice control panel, in accordance with paragraph III.D. of Boeing Alert Service Bulletin 757–30A0013, dated April 30, 1987, or later FAA-approved revisions. If any functional test is unsatisfactory, prior to further flight, replace the control panel in accordance with the service bulletin and continue to accomplish functional tests, as required by this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and FAR 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 12, 1987.

Frederick M. Isaac, Acting Director,
Northwest Mountain Region.

[FR Doc. 87–20602 Filed 9–8–87; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–84–AD]

Airworthiness Directives: McDonnell Douglas Model DC–9–81, –82, and –83 Airplanes, Fuselage Numbers 909 Through 1369

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC–9–80 series airplanes, which would require the inspection and modification of the power feeder cable installation to preclude premature chafing. This proposal is prompted by a report of an APU generator feeder cable electrically shorting to the airplane structure. This condition, if not corrected, could lead to a fire on board the airplane below the cabin floor.

DATE: Comments must be received no later than October 9, 1987.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–84–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–L65 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Alan T. Shinseki, Aerospace Engineer, Systems & Equipment Branch, ANM–132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–84–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

A McDonnell Douglas Model DC–9 operator reported that, while taxiing in to the terminal area, sparks were emitting from the aft end of the airplane through the outflow valve opening. The flightcrew also reported that the "APU Generator Feeder Fault" annunciation was illuminated. Subsequent maintenance inspection revealed that the Auxiliary Power Unit (APU) generator feeder cable had chafed at the clamped location (transitioning below the floor, and had electrically shorted to the supporting clamp. Follow-up investigation by the manufacturer revealed that the supporting clamp, although mounted on non-conductive type material, had been installed using

an oversized screw which was contacting the airplane structure. The investigation also indicated that abnormal stress imposed by the power feeder cable routing caused the insulating pad to separate from the metal portion of the clamp which initiated the chafing action.

Eleven cases of chafed generator power feeder cables resulting in shorting to the airplane structure have been reported by U.S. operators. In six of those cases, the requirements of AD 85–25–06, Amendment 39–5177 (50 FR 49833; December 5, 1985), to correct power feeder cable routing discrepancies, had been accomplished, but the power feeder cable trough and trough cover did not extend sufficiently through the below-floor transition location and caused the cable to contact the airplane structure. This condition, if not corrected, could result in a fire.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 24–94, dated May 28, 1987, which describes the inspection procedures and modification instructions to correct the generator power feeder cable installation on McDonnell Douglas Model DC–9–81, –82, and –83 model airplanes.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require a one-time inspection and modification of the generator power feeder cable installation on McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes in accordance with McDonnell Douglas Model DC–9 Service Bulletin 24–94, Revision 1, dated May 28, 1987, and concurrently verify that the power feeder cable trough and trough cover extends properly below the floor at the forward and aft locations, as prescribed by Item F of the Accomplishment Instructions in McDonnell Douglas DC–9 Service Bulletin 24–78, Revision 2, dated March 20, 1986, or its production equivalent.

It is estimated that 248 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplished the required actions, and that the average labor cost would be $40 per manhour. The modification parts are being provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $89,280.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, McDonnell Douglas Moded DC–9 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for the action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9–81, –82, and –83 airplanes, Fuselage Numbers 909 through 1369, certificated in any category. Compliance required within 12 months after the effective date of this airworthiness directive (AD), unless previously accomplished.

To eliminate a potential fire ignition source from the generator power feeder cable installation, accomplish the following:

A. Inspect for power feeder cable damage and modify the power feeder cable installation in accordance with the Accomplishment Instructions of McDonnell Douglas Model DC–9 Service Bulletin 24–94, Revision 1, dated May 28, 1987, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Verify that the power feeder cable trough and trough cover extend correctly through both forward and aft below-floor transition areas, and correct, if necessary, in accordance with Item F of the Accomplishment Instructions in McDonnell Douglas DC–9 Service Bulletin 24–78, Revision 2, dated March 20, 1986, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–L65 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on August 10, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–20604 Filed 9–8–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–107–AD]

Airworthiness Directives: Boeing Model 737–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 737–300 series airplanes, which would require replacing the existing Electronic Flight Instrument System (EFIS) symbol generators with updated symbol generators. This proposal is prompted by a report of the EFIS display going blank during certain flight conditions. This condition, if not corrected, could lead to blanking of the primary EFIS display during critical phases of flight.

DATE: Comments must be received no later than October 12, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–107–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the

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FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Habbestad, Systems & Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-1942. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited in participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-107-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

It has been reported that the EFIS display on a Model 737-300 airplane went blank during certain electrical power transient conditions. The electrical transient caused by switching power, in combination with certain internal settings of the EFIS display unit, prevents the symbol generator computer from sending the necessary digital data to keep the EFIS display active, resulting in the display going blank. This condition, if not corrected, could result in the loss of the primary EFIS display during a critical phase of flight. The display can be recovered by manually cycling the EFIS Instrument Transfer Switch located on the pilot's overhead panel.

The FAA has reviewed and approved Boeing Service Bulletin 737-34-1220, dated April 30, 1987, which describes replacement of the existing EFIS symbol generator with an updated symbol generator.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the symbol generator in accordance with the service bulletin previously mentioned.

It is estimated that 18 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,880.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 737-300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737-300 series airplanes listed in Boeing Service Bulletin 737-34-1220 dated April 30, 1987, certificated in any category. Compliance required within one year after the effective date of this AD, unless previously accomplished.

To prevent loss of the primary Electronic Flight Instrument System (EFIS) displays, accomplish the following:

A. Replace the EFIS symbol generators in accordance with Boeing Service Bulletin 737-34-1220 dated April 30, 1987, or later FAA-approved revisions.

B. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 12, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-20600 Filed 9-8-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-101-AD]

Airworthiness Directives: McDonnell Douglas Model DC-10-10, -10F, -15, -30,-30F, -40, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) series airplanes, which would require inspections and repair, as necessary, of the horizontal stabilizer constant and outer section integrally-machined skin panels, plus inspections and replacement of H-11 material bolts used for attachment of the horizontal

stabilizer constant section to the spar caps. This proposal is prompted by reports of cracks in the horizontal stabilizer skin panel and a failed bolt. This condition, if not corrected, could lead to structural failure of the horizontal stabilizer.

DATE: Comments must be received no later than October 12, 1987.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-101-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contract concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-101-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

This proposed AD is prompted by reports from four operators of cracks in the constant section of the integrally-machine skin panels (planks) of the horizontal stabilizer on one DC-10-10 and four DC-10-30 airplanes. One DC10-30 airplane also had a crack in the outer section of the rear skin panel. The airplanes had accumulated from 18,400 to 56,665 flight hours and 3,431 to 15,415 landings when the cracks were detected. Also, one opeator reported the failure of one H-11 material bolt used for the attachment of the horizontal stabilizer constant section upper rear spar cap to the outer section. These cracks have been attributed to stress corrosion. If not detected, extensive cracks of this type could significantly reduce the strength of the horizontal stabilizer, which could result in structural failure.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletins A55-16, dated May 8, 1987, which describes the skin panel inspection procedures, the application of a corrosion inhibiting compound, and repair procedures; and A55-17, dated May 8, 1987, which describes the bolt inspection procedure and replacement instructions.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection and repair, if necessary, of the horizontal stabilizer constant and outer section integrally-machined skin panel, plus inspections and replacement of H-11 material bolts used for attachment of the horizontal stabilizer constant section to the spar caps, in accordance with the service bulletins previously mentioned.

It is estimated that 196 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7 manhours per airplane to accomplish the required inspections, and that the average labor cost would be $40 per manhour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $54,880.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-10 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of a horizontal stabilizer skin panel or a spar cap bolt due to stress corrosion, accomplish the following:

A. Within the next 6 months after the effective date of this AD, unless already accomplished within the last 18 months, and thereafter at intervals not to exceed 2 years, inspect the horizontal stabilizer upper outer rear skin panel and apply LPS-3 (or equivalent) corrosion-inhibiting compound in accordance with mcDonnell Douglas Alert Service Bulletin A55-16, dated May 8, 1987, or later FAA-approved revision.

B. Within the next 6 months after the effective date of this AD, unless already accomplished within the last 6 months, and thereafter at intervals not to exceed one year, inspect the horizontal stabilizer spar cap bolts made from H-11 material in accordance with McDonnell Douglas Alert Service Bulletin A55-17, dated May 8, 1987, or later FAA-approved revision.

C. If a broken bolt is found, prior to further flight, replace the broken bolt with a new bolt in accordance with mcDonnell Douglas Alert Service Bulletin A55-17, dated May 8, 1987, or later FAA-approved revision.

D. If a crack is found in a skin panel:

1. Prior to further flight, repair or replace in accordance with mcDonnell Douglas Alert Service Bulletin A55-16, dated May 8, 1987, of later FAA-approved revision; or

2. If the crack is within limits defined in McDonnell Douglas Alert Service Bulletin A55-16, dated May 8, 1987, or later FAA-approved revision, accomplish the following:

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a. Prior to further flight, apply LPS–3 (or equivalent) corrosion inhibiting compound in accordance with McDonnell Douglas Alert Service Bulletin A55–16, dated May 8, 1987, or later FAA-approved revision; and

b. Prior to further flight, inspect the horizontal stabilizer spar cap bolts and, if necessary, replace broken attachment bolts in accordance with McDonnell Douglas Alert Service Bulletin A55–17, dated May 8, 1987, or later FAA-approved revision; and

c. At intervals not to exceed 3 months from the last inspection, reinspect the skin panel and horizontal stabilizer spar cap bolts in accordance with paragraph A. and paragraph B., above.

E. If, at any inspection, a crack is found int he skin panel which is outside acceptable limits defined by paragraph D.2., above, prior to further flight, repair or replace in accordance with McDonnell Douglas Alert Service Bulletin A55–16, dated May 8, 1987, or later FAA-approved revision.

F. Installation of a new inconel or multiphase bolt, as applicable, to replace an H–11 material bolt constitutes terminating action for the repetitive inspections required by this AD for that bolt.

G. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). The documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long beach, California.

Issued in Seattle, Washington, on August 12, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–20601 Filed 9–8–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–CE–68–AD]

Petition of Mackey, Rozanski and Friedland for Modification of Airworthiness Directive 87–14–03

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Petition for rulemaking.

SUMMARY: This notice publishes for public comment a summary of the Mackey, Rozanski and Friedland petition dated August 12, 1987. This petition seeks the modification of Airworthiness Directive (AD) 87–14–03. The AD requires a wing spar inspection of Gulfstream Aerospace Corporation Model 112 and 114 series airplanes, and was issued as a result of reports of spar cracks. The petitioner contends that the specified modification does not constitute a permanent fix, and that it is inadequate in several areas including, but not limited to, the following:

1. That corner blocks are necessary to tie together the upper spar cap to the upper spar cap leg at selected locations to stabilize the outstanding leg of the upper spar cap;

2. That the fasteners used in connecting the intermediate rib to the square support tube are inadequate and should be enhanced due to a risk that the bolt/fasteners have an inherent risk of failure in bearing and shear, with an attendant risk of rupture in the wing tank fuel lines due to the proximity of the fasteners to the fuel lines;

3. That the forward square support tube attached to the intermediate rib in that the square support tube should be heat-treated;

4. That the use of blind fasteners creates a "soft spar plane" in the area of the aft rib at wing station 47.3;

5. That bucked rivets should be used instead of pole rivets; and,

6. That in installing the repair/modification, there is a more effective method of cutting the spar cap (the modification recommending cutting with a saw, which runs a risk of causing damage in the spar area).

DATE: Comments must be received on or before October 9, 1987.

FOR FURTHER INFORMATION CONTACT: Tom Dragset, Airplane Certification Branch, ASW–150, DOT, FAA, Fort Worth, Texas 76193–0150 Telephone (817) 624–5155.

ADDRESSES: Send comments on this petition in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket, Docket No. 86–CE–68–AD, 601 East 12th Street, 1558 Federal Building, Kansas City, Missouri 64106. Comments may be inspected in Room 1558 weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Comments may be inspected in Room 915G weekdays, except Federal holidays, between the hours of 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments on the petition as they may desire. Communications should identify the docket and petition number and be submitted in triplicate to the Office of Regional Counsel, Kansas City, Missouri, at the above address. All communications received on or before the closing date for comments will be considered before taking action on the petition. All comments will be available for examination in the FAA docket.

Interested persons may obtain a copy of the petition by contacting the person listed above in the paragraph entitled "**FOR FURTHER INFORMATION CONTACT:**."

Although this notice refers to the contents of the petition as received by the FAA, it should be understood that the purpose of the reference is to receive public comments in accordance with FAA procedures governing petitions for rulemaking, and it does not propose a regulatory rule for adoption or recision, represent an FAA position, or otherwise commit the FAA on the merits of the petition. The FAA intends to consider the merits of the proposal after it has had an opportunity to evaluate the petition matters presented and all comments received from the public.

The Petition

Accordingly, the Federal Aviation Administration publishes this notice for public comment on Mackey, Rozbanski and Friedland petition for modification of AD 87–14–03.

Issued in Kansas City, Missouri, on August 25, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87–20605 Filed 9–8–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 189

[Docket No. 87N–0055]

Substances Prohibited From Use in Human Food; Hydrogenated 4,4'-Isopropylidene-Diphenolphosphite Ester Resins

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to add hydrogenated 4,4′-isopropylidene-diphenolphosphite ester resins to the list of substances that are prohibited from use in human food. Elsewhere in this issue of the **Federal Register**, the agency is removing the listing for hydrogenated 4,4′-isopropylidene-diphenolphosphite ester resins from the food additive regulations because of the absence of appropriate studies establishing safe conditions of use for this additive.

DATE: Comments by November 9, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HHF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 16, 1974 (39 FR 13667), FDA proposed to revoke the use of hydrogenated 4,4′-isopropylidene-diphenolphosphite ester resins as an antioxidant and stabilizer because of this compound's close chemical similarly to a related compound. When fed at a high level, the related compound caused neurological hindquarter paralysis in a dog feeding study.

In the **Federal Register** of June 15, 1979 (44 FR 34513), FDA published a second proposed rule that responded to comments received on the 1974 proposal and that discussed new toxicological information concerning the additive itself. As discussed elsewhere in this issue of the **Federal Register**, the agency has no evidence that would establish that there is a safe level of use for this additive, and the agency is therefore revoking the authorization for use of hydrogenated 4,4′-isopropylidene-diphenolphosphite ester resins in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010). Because there is no evidence of a safe level of use for this additive, the agency is also proposing to add this substance to the list of substances that are prohibited from use in food (21 CFR 189.300).

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the Regulatory Flexibility Act, FDA has considered the effect that this regulation would have on small entities, including small businesses. The agency has determined that, although the proposed regulation would remove an approved additive from food, the effect of this action on small entities will be minimal. The agency certifies that the publication of this proposal will not have a significant economic impact on a substantial number of small entities.

Interested persons may, on or before November 9, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 189

Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 189 be amended as follows:

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

1. The authority citation for 21 CFR Part 189 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10.

2. By adding new § 189.300 to Subpart C to read as follows:

§ 189.300 Hydrogenated 4,4′-isopropylidene-diphenolphosphite ester resins.

(a) Hydrogenated 4,4′-isopropylidene-diphenolphosphite ester resins are the condensation product of 1 mole of triphenyl phosphite and 1.5 moles of hydrogenated 4,4′-isopropylidene-diphenol such that the finished resins have a molecular weight in the range of 2,400 to 3,000. They are synthetic chemicals not found in natural products and have been used as antioxidants and as stabilizers in vinyl chloride polymer resins when such polymer resins are used in the manufacture of rigid vinyl chloride polymer bottles.

(b) Food containing any added or detectable level of these substances is deemed to be adulterated in violation of the act based upon an order published in the **Federal Register** of (*insert date of publication in the* **Federal Register**) (——).

Dated: September 1, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–20608 Filed 9–8–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 5h and 55

[LR–104–86]

Excise Taxes Relating to Real Estate Investment Trusts and Regulated Investment Companies Under the Tax Reform Act of 1986

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations relating to the manner and method of reporting and paying the 4% excise tax imposed on real estate investment trusts (REITs) and regulated investment companies (RICs). These excise taxes were added to the Internal Revenue Code by the Tax Reform Act of 1986. The proposed regulations would provide REITs and RICs with the guidance necessary to comply with the reporting requirements for these new excise taxes. This document also contains a proposed amendment to the Temporary regulations relating to certain elections by RICs under the Tax Reform Act of 1986.

DATES:

Dates for comments and requests for a public hearing. Written comments and requests for a public hearing must be delivered or mailed by November 9, 1987.

Proposed effective date. The proposed regulations would apply to REITs and RICs for calendar years beginning after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T LR–104–86], Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Thomas J. Kane of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone 202–566–3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Excise Tax Regulations (26 CFR Part 55) under chapter 44 of the Internal Revenue Code of 1986. These amendments provide guidance for the proper manner and method of reporting and paying the 4% excise tax imposed on REITs and RICs. The regulations are proposed to reflect the amendment to section 4981 and the addition of section 4982 made by sections 668 and 651, respectively, of the Tax Reform Act of 1986 ("Act") (Pub. L. No. 99–514, 100 Stat. 2085). This document also contains a proposed amendment to the temporary regulations relating to certain elections under the Act (26 CFR 5h.5). T.D. 8124, which added 26 CFR 5h.5, was published in the **Federal Register** (52 FR 3623) on February 5, 1987. The proposed amendment to the temporary regulations relates to the time for making the election available to RICs under section 4982(e)(4).

Explanation of Provisions

Excise Tax Procedures

Section 4981 imposes a nondeductible excise tax on any REIT which is equal to four percent of the excess, if any, of the required distribution for any calendar year over the distributed amount for such calendar year. New section 4982 imposes a similar nondeductible four percent excise tax on RICs. In general, these provisions require a REIT or a RIC to distribute an amount equal to the sum of specified percentages of its ordinary income and capital gain net income to its shareholders prior to the end of any calendar year in order to avoid the excise tax liability. A REIT generally must distribute within the calendar year 85 percent of its ordinary income and 95 percent of its capital gain net income, whereas generally a RIC must distribute within the calendar year 97 percent of its ordinary income and 90 percent of its capital gain net income. Amounts not required to be distributed currently must be distributed before the end of the following calendar year.

The regulations proposed by this document prescribe the manner and method of paying the excise taxes imposed under sections 4981 and 4982. If either a REIT or a RIC is liable for the excise tax imposed by sections 4981 or 4982, respectively, the excise tax must be reported on Form 8612 (REITs) or Form 8613 (RICs). The excise tax return must be filed on or before March 15 of the first calendar year subsequent to the calendar year to which the excise tax liability applies. Full payment of the excise tax liability must accompany the excise tax return. The excise tax return, together with the payment satisfying such excise tax, are to be filed at the place specified in the existing regulations under Part 55. District directors and directors of service centers have the discretion to grant extensions of time for filing the excise tax return of up to six months. However, an extension of time for filing the excise tax return generally shall not operate to extend the time for the payment of the excise tax or any part thereof. Thus, payment satisfying the excise tax liability must still be made on or before the prescribed due date for the excise tax return, *i.e.*, March 15.

Section 4981, as in effect prior to the amendments made by the Act, imposed an excise tax on the undistributed income of a REIT determined on the basis of the REIT's taxable year. The amendments made to section 4981 by the Act impose an excise tax on the undistributed income of a REIT determined on the basis of a calendar year, effective for calendar years after 1986. The proposed regulations interpret the amendments made to section 4981 by the Act so that a REIT with a taxable year ending after December 31, 1986, will not be liable for the excise tax under the pre-Act version of section 4981 for that year.

The proposed regulations do not address the determination of the proper amount of the excise tax imposed by sections 4981 and 4982. Any such issues which may be appropriately addressed by regulations will be considered when regulations are developed to reflect other amendments to the REIT and RIC provisions made by the Tax Reform Act of 1986.

Section 4982(e)(4) Election

Section 4982(e)(4) allows a RIC to elect to use the period ending November 30 or December 31 for purposes of computing capital gain net income under section 4982 if that date corresponds to the end of the RIC's taxable year. Once an election under section 4982(e)(4) has been made by a RIC, the election can only be revoked with the consent of the Secretary. Section 5h.5(a)(2)(vi) provides for the election under section 4982(e)(4) to be made on the excise tax return for RICs (Form 8613), and that the election must be made on or before March 15 of the first calendar year beginning after the end of the first excise tax period for which the election is to be effective. Because RICs must also use Form 8613 to report and pay the excise tax imposed under section 4982, and because RICs are permitted to request an extension of time to file Form 8613, the proposed amendment to § 5h.5(a)(2)(vi) would permit an extension of time for making the election under section 4982(e)(4) in those situations where a RIC is granted an extension of time to file Form 8613.

Regulatory Flexibility Act; Executive Order 12291; and Paperwork Reduction Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply because the rules provided herein are interpretative. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments to OMB also send copies of the comments to the Service.

Drafting Information

The principal author of this document is Thomas J. Kane of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated on matters of both substance and style.

List of Subjects

26 CFR Part 5h

Income taxes, elections under various public laws: Deficit Reduction Act of 1984, Tax Reform Act of 1986.

26 CFR Part 55

Excise taxes, Real estate investment trusts, Regulated investment companies.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Parts 5h and 55 are as follows:

PART 5h—[AMENDED]

Paragraph 1. The authority for Part 5h continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * * Section 5h.5 also issued under 26 U.S.C. 4982(e)(4).

Par. 2. Section 5h.5(a)(2)(vi) is revised to read as follows:

§ 5h.5 Time and manner of making certain elections under the Tax Reform Act of 1986.

(a) *Miscellaneous elections.* * * *

(2) *Time for making elections.* * * *

(vi) *Time for making certain elections by regulated investment companies.* The election under Act section 651 (Code section 4982(e)(4)) shall be made on a statement attached to the form prescribed by the Internal Revenue Service which is used to report and pay the excise tax liability under section 4982. The election shall be filed on or before the later of—

(A) March 15 of the first calendar year beginning after the end of the first excise tax period for which the election is to be effective, or

(B) If the regulated investment company has been granted an extension of time to file a return for the excise tax under Code section 4982 for such excise tax period, the due date (including extensions thereof) for such return.

The statement of election under section 4982(e)(4) shall be attached to the prescribed form regardless of whether the regulated investment company is liable for the excise tax imposed by section 4982 for the excise tax period in question.

* * * * *

PART 55—[AMENDED]

Par. 3. The authority for Part 55 is revised to read as follows (and the authority section under § 55.4981–1 is removed):

Authority: Sections 6001, 6011, 6071, 6091, and 7805 of the Internal Revenue Code of 1954 (68A Stat. 731, 732, 749, 752, 917; 26 U.S.C. 6001, 6011, 6071, 6091, and 7805). Section 55.4981–1 also issued under section 860(e), 92 Stat. 2849 (26 U.S.C. 860(e); section 860(g), 92 Stat. 2850 (26 U.S.C. 860(g)); and section 7805, 68A Stat. 917 (26 U.S.C. 7805) of the Internal Revenue Code of 1954). 26 U.S.C. 7805. Section 55.6011–1 also issued under 26 U.S.C. 6011(a); Section 55.6071–1 also issued under 26 U.S.C. 6071(a); Section 55.6091–1 also issued under 26 U.S.C. 6091(a); Section 55.6151–1 also issued under 26 U.S.C. 6151.

Par. 4. The title of Part 55 is revised to read as follows:

PART 55—EXCISE TAX ON REAL ESTATE INVESTMENT TRUSTS AND REGULATED INVESTMENT COMPANIES

Par. 5. The title to Subpart A of Part 55 is revised to read as follows:

Subpart A—Excise Tax On Real Estate Investment Trusts

Par. 6. The heading of § 55.4981–1 is revised to read as follows:

§ 55.4981–1 Imposition of excise tax on certain real estate investment trust taxable income not distributed during the taxable year; taxable years ending on or before January 1, 1987.

Par. 7. Section 55.4981–1 is amended by:

(1) Inserting the words, "as in effect before amendment by the Tax Reform Act of 1986," immediately following the words "Section 4981" and "section 4981" wherever those words appear, and

(2) Inserting "and ending before January 1, 1987," immediately after "1979," in the last sentence.

Par. 8. A new § 55.4981–2 is added immediately after § 55.4981–1 to read as follows:

§ 55.4981–2 Imposition of excise tax with respect to certain undistributed income of real estate investment trusts; calendar years beginning after December 31, 1986.

Section 4981, as amended by the Tax Reform Act of 1986, imposes an excise tax on a real estate investment trust in the amount of four percent of the excess, if any, of the required distribution for a calendar year over the distributed amount for such calendar year. Section 4981, as so amended, applies only to calendar years that begin after December 31, 1986. For provisions relating to the imposition of an excise tax with respect to certain undistributed income of real estate investment trusts for taxable years ending before January 1, 1987, see § 55.4981–1.

Par. 9. Subpart B—*Procedure and Administration* is redesignated as Subpart C—*Procedure and Administration.*

Par. 10. A new subpart B is added to read as follows:

Subpart B—Excise Tax on Regulated Investment Companies

§ 55.4982–1 Imposition of excise tax on undistributed income of regulated investment companies.

Section 4982 imposes an excise tax on a regulated investment company in the amount of four percent of the excess, if any, of the required distribution for a calendar year over the distributed amount for such calendar year. Section 4982 applies only to calendar years beginning after December 31, 1986.

Par. 11. Section 55.6011–1 is revised to read as follows:

§ 55.6011–1 General requirement of return, statement, or list.

Every person liable for tax under Chapter 44 shall file an annual return with respect to the tax on the form prescribed by the Internal Revenue Service for such purpose and shall include therein the information required by the form and the instructions issued with respect thereto. For calendar years beginning after December 31, 1986, the return, which must be made on a calendar year basis, shall be filed by a real estate investment trust on Form 8612 and by a regulated investment company on Form 8613.

Par. 12. Section 55.6061–1 is revised to read as follows:

§ 55.6061–1 Signing of returns and other documents.

Any return required to be made by a real estate investment trust or a regulated investment company with respect to the tax imposed by chapter 44 shall be signed by a person authorized by section 6062 of the Code to sign the income tax return of the real estate investment trust or the regulated investment company. Any statement or other document required to be made with respect to the tax imposed by chapter 44 shall be signed by the person required or duly authorized to sign in accordance with the regulations, forms, or instuctions prescribed with respect to such statement or document. An individual's signature on a return, statement, or other document made by or for the real estate investment trust or the regulated investment company shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

Par. 13. Section 55.6071–1 is revised to read as follows:

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§ 55.6071–1 Time for filing returns.

(a) *Returns for calendar years beginning after December 31, 1986.* A return required by § 55.6011–1 for any calendar year beginning after December 31, 1986, shall be filed on or before March 15 of the following calendar year. See § 55.6081–1 for rules relating to extensions of time for filing a return required by § 55.6011–1.

(b) *Returns for excise tax under section 4981 as in effect before amendment by the Tax Reform Act of 1986.* A return required by § 55.6011–1 for any excise tax under section 4981, as in effect before amendment by the Tax Reform Act of 1986, shall be filed at the time (including any extension of time granted or allowed under section 6081) that the real estate investment trust is required to file its income tax return under section 6012 for the taxable year for which the tax under section 4981, as in effect before amendment by the Tax Reform Act of 1986, is imposed.

§ 55.6091–1 [Amended]

Par. 14. Section 55.6091–1(a) is amended by adding the words "or regulated investment company" immediately after the words "real estate investment trust".

Par. 15. A new § 55.6151–1 is added to read as follows:

§ 55.6151–1 Time and place for paying of tax shown on returns.

The tax shown on any return which is imposed by Chapter 44 shall, without notice or assessment and demand, be paid to the internal revenue officer with whom the return is filed at the time and place for filing such return (determined without regard to any extension of time for filing the return). For provisions relating to the time and place for filing such return, see §§ 55.6071–1 and 55.6091–1. For provisions relating to the extension of time for paying the tax, see § 55.6161–1.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87–20460 Filed 9–8–87; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administation

30 CFR Part 57

Ionizing Radiation Standards for Underground Metal and Nonmetal Mines; Extension of Comment Period

AGENCY: Mine Safety and Health Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In response to requests from the mining community, the Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed revisions to its ionizing radiation standards for underground metal and nonmetal mines.

DATE: Comments must be received on or before October 30, 1987.

ADDRESS: Send comments to the Office of Standards, Regulations, and Variances; MSHA: Room 631; Ballston Tower #3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey; Acting Associate Assistant Secretary for Mine Safety and Health; MSHA; (703) 235–1910.

SUPPLEMENTARY INFORMATION: On December 19, 1986 (51 FR 45678), MSHA published proposed revisions to its existing standards in 30 CFR Part 57 which address ionizing radiation hazards at underground metal and nonmetal mines. On August 13 and 14, 1987, MSHA held a public hearing in Denver, Colorado to allow all interested parties to present their points of view and submit supporting materials. The close of the record was scheduled for September 11, 1987. At the hearing, several participants agreed to submit substantial supplementary information to the Agency before September 11.

The Agency is aware that the National Institute for Occupational Safety and Health (NIOSH) is preparing a criteria document on radon daughters. Also, the National Academy of Sciences Committee on the Biological Effects of Ionizing Radiation, "BEIR IV," may soon release its study on the effects of internal alpha radiation.

MSHA has been requested by both labor and industry groups to extend the comment period to allow for evaluation of these documents and supplementary submissions in their post-hearing comments. The Agency agrees that the complex issues in this rulemaking merit a full discussion on the record and is extending the comment period to October 30,1987.

Date: September 2, 1987.

Alan C. McMillan,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 87–20659 Filed 9–8–87; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

Public Comments and Opportunity for Public Hearing on Proposed Modifications to the New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of program amendments submitted by the State of New Mexico to modify the New Mexico Permanent Regulatory Program (hereinafter referred to as the New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to extending the time set for abatement of a Notice of Violation.

This notice sets forth the times and locations that the New Mexico program and the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before 4:00 p.m. October 9, 1987, will not necessarily be considered.

If requested, a public hearing on the proposed amendment will be held on October 5, 1987, beginning at 10:00 a.m., at the location shown under **ADDRESSES.**

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Robert H. Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102.

If a public hearing is requested, it will be held at the OSMRE Albuquerque Field Office at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the New Mexico program, the proposed amendment to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Albuquerque Field Office listed under **ADDRESSES.** The aforementioned documents are available for review at the following locations:

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, New Mexico 87102.

Office of Surface Mining Reclamation and Enforcement, Room 5315 A, 1100 L Street, NW., Washington, DC 20240.

New Mexico Energy and Minerals Department, Mining and Minerals Division, 525 Camino de los Marquez, Sante Fe, New Mexico 87501, Telephone: (505) 827–5970.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSMRE Albuquerque, New Mexico Field Office will not necessarily be considered and included in the Administrative Record for this proposed rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business September 29, 1987. If no one requests to comment, a public hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those persons scheduled. The hearing will end after all persons who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under **ADDRESSES** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the New Mexico State Program

Information regarding the general background on the New Mexico State Program, including the Secretary's findings, the disposition of comments and detailed explanation of the conditions of approval of the New Mexico program, can be found in the December 31, 1980 **Federal Register** (45 FR 86459–86490).

Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 931.10, 30 CFR 931.11, 30 CFR 931.12, 30 CFR 931.13, 30 CFR 931.15, and 30 CFR 931.16.

III. Discussion of the Proposed Amendments

Section 30–12(c) of New Mexico's program requires that the total time for abatement under a Notice of Violation, including all extensions, shall not exceed ninety (90) days from the date of issuance. New Mexico proposes to amend its program to include provisions for extending the time set for abatement under a Notice of Violation for a period of more than ninety days when failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. New Mexico proposes to accomplish this regulatory change by deleting the current language found at Section 30–12(c) of New Mexico's program and replacing it with language which is nearly identical to the Federal language found at 30 CFR 843.12(c) and 843.12(f) through 843.12(i). New Mexico proposes to codify this amended language as 30–12 (c) through (h), and recodify existing sections 30–12(d) through (g) as 30–12 (i) through (l).

Therefore, OSMRE is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address the issue of whether the proposed amendments are in accordance with SMCRA and are no less effective than its implementing regulations.

IV. Procedural Matters

1. Compliance with the National Environmental Policy Act: The Secretary has determined that, pursuant to section 702(d) of *SMCRA*, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act: On Agust 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by *SMCRA* and the Federal rules will be met by the State.

3. Paperwork Reduction Act: This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 28, 1987.

Raymond L. Lowrie

Assistant Director, Western Field Operations.

[FR Doc. 87–20660 Filed 9–8–87; 8:45 am]

BILLING CODE 4310–05–M

AMERICAN BATTLE MONUMENTS COMMISSION

36 CFR Part 404

Freedom of Information Act; Implementation

AGENCY: American Battle Monuments Commission.

ACTION: Proposed rule.

SUMMARY: The American Battle Monuments Commission proposes changes in its procedures for responding to public requests for access to records or information maintained by the Commission. The proposed regulations would implement and reflect recent amendments to the Freedom of Information Act.

DATE: Comments must be received on or before September 24, 1987.

ADDRESS: Comments may be mailed to: Colonel William E. Ryan, Jr., Freedom of Information Officer, American Battle Monuments Commission, Room 5127, Casimir Pulaski Building, 20 Massachusetts Avenue, NW., Washington, DC 20314.

FOR FURTHER INFORMATION CONTACT: Martha Sell at (202) 272–0537, Freedom of Information Act Representative.

SUPPLEMENTARY INFORMATION: The American Battle Monuments Commission proposes to revise 36 CFR Part 404, its regulations for responding to public requests for access to records or information under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The proposed regulations would implement and reflect recent amendments to the FOIA made by the Freedom of Information Act of 1986, Publ. L. 99–570, 1801–1804. They also reflect guidelines issued by the Office of Management and Budget by 52 FR 10012, March 27, 1987. The proposed regulations would also update and amplify the Commission's current regulations. The Commission invites public comment under 5 U.S.C. 552(a)(4)(A)(i), which requires notice and an opportunity for public comment. Only a fifteen day comment period has been established because much of the Commission's proposal follows the guidelines of the Office of Management and Budget, which have already been subject to notice-and-comment rulemaking, and because the adoption of these regulations is already overdue.

The Commission proposes to revise CFR 36 Part 404 to read as follows:

List of Subjects in 36 CFR Part 404

Freedom of information.

PART 404—PROCEDURES AND GUIDELINES FOR COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

Sec.

404.1 Purpose.
404.2 General policy.
404.3 Response to requests.
404.4 Denial of access.
404.5 Appeals.
404.6 Fees to be charged.
404.7 Assessment and collection of fees.
404.8 Categories of requesters.
404.9 Waiver of fees.
404.10 Maintenance of statistics.

Authority: 5 U.S.C. 552 as amended.

§ 404.1 Purpose.

These guidelines prescribe procedures to obtain information and records of the American Battle Monuments Commission under the Freedom of Information Act of 1986, 5 U.S.C. 552(a)(4)(A)(i). This act requires each agency to promulgate regulations that specify the schedule of fees for processing FOIA requests and the guidelines when fees may be waived. It applies only to records and information of the Commission which are in the Commission's custody.

§ 404.2 General policy.

(a) Public requests for information from the records of the American Battle Monuments Commission should be sent to the Freedom of Information Representative, American Battle Monuments Commission, Room 5127, Casimir Pulaski Building, 20 Massachusetts Ave., NW., Washington, DC 20314. They may also be sent to its field offices at the address listed below:

(1) Officer-in-Charge, European Office, American Battle Monuments Commission, APO New York 09777.

(2)Officer-in-Charge, Mediterranean Office, American Battle Monuments Commission, APO New York 09794.

(3) Superintendent, Manila American Cemetary, FPO San Francisco 96528.

(4) Superintendent, Corozal American Cemetery, The American Battle Monuments Commission, Attn: AFZU–AG–CRB, Drawer #38, APO Miami, FL 34004–5000.

(5) Superintendent, Mexico City National Cemetery, American Battle Monuments Commission, c/o U.S. Embassy, Mexico, P.O. Box 3087, Laredo, TX 78044–3087.

§ 404.3 Response to requests.

(a) Except for records and information exempted from disclosure by 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them.

(b) Requests for information from the public will be honored within ten working days unless the confidentiality of such information is protected by law, or when it is necessary to search and/or collect records in separate offices or another office of the Commission, which would usually require more than ten working days.

(c) Whenever information cannot be dispatched within ten work days after receipt of request, an interim reply will be sent informing the requester of the status of the request.

(d) The records of the ABMC may be examined and copied between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday under the supervision of the Freedom of Information representative.

§ 404.4 Denial of access.

(a) Letters denying confidential information will be dispatched within ten working days of receipt of the request and will be signed by one of the below listed personnel:

(1) Officer-in-Charge, ABMC European Office,

(2) Officer-in-Charge, ABMC Mediterranean Office,

(3) Directors, ABMC Washington Office,

(4) Secretary, ABMC.

(b) Letters denying access to information will:

(1) Provide the requester with the reason for denial,

(2) Inform the requester of his or her right to appeal the denial within 30 days,

(3) Give the name of the official to whom the appeal may be sent.

(c) If an unusual circumstance delays a decision concerning access to information, the requester will be informed of the delay within ten working days of the request's initial receipt. In no case will the decision be delayed more than 20 working days from initial receipt of the request.

(d) A copy of each denial of information will be furnished to the Secretary, ABMC at the time of its dispatch.

§ 404.5 Appeals.

(a) The Secretary is the appellate authority for all denials except those which he authors. The Chairman is the appellate authority for denials authored by the Secretary.

(b) The requester will be informed of the decision on his or her appeal within 20 working days after its receipt. If the denial is upheld, the requester will be advised that there are provisions for judicial review of such decisions under the Freedom Information Act.

(c) In the event a court finds that the American Battle Monuments Commission has arbitrarily and capriciously withheld information from the public and a subsequent Office of Personnel Management investigation finds agency personnel responsible, these personnel will be subject to disciplinary action by the American Battle Monuments Commission.

§ 404.6 Fees to be charged.

(a) While most information will be furnished promptly at no cost as a service to the general public, fees will be charged if the cost of search and duplication warrants. In those instances where ABMC deems it necessary to charge a fee, ABMC shall use the most efficient and least costly methods to comply with requests for documents, drawings, photographs, and any other materials made available under the FOIA. The Freedom of Information Representative shall charge the fees stated in paragraph (a)(1)(i)—(a)(1)(vii) of this section. The Freedom of Information Representative shall, however, waive the fees in the circumstances stated in 404.9.

(1) The specific fees which ABMC shall charge the requester when so required by the FOIA are as follows:

(i) Manual searches of records. $9.00 per hour for clerical personnel; $15.00 per hour for supervisory personnel.

(ii) Computer searches for records. Fees for searches of computerized records shall be the actual cost to the Commission but shall not exceed $12.00 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer printouts shall be $.40 per page. The word "page" refers to paper copies of standard computer size, which normally are 11 x 15 inches.

(iii) Copying fee. The machine copy fee for each page up to 8½ x 14 shall be $.25 per page. Copying fee shall not be charged for the first 100 pages of copies unless the copies are requested for commercial purposes.

(iv) $2.00 for each 8 x 10 inch black and white photograph.

(v) $3.00 for each 8 x 10 inch color photograph.

(vi) $1.75 per cemetery booklet.

(vii) $1.50 per lithograph.

§ 404.7 Assessment and collection of fees.

(a) *Assessment of fees.* (1) ABMC shall assess interest charges on an unpaid bill starting on the 31st day following the day on which the billing was dispatched. Once the fee has been received by ABMC, even if not processed, accrual of interest will cease. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code and will accrue from the date billing is sent.

(2) Charges for unsuccessful searches. If ABMC estimates that charges for an unsuccessful search may exceed $10.00, it shall so inform the requester unless the requester has indicated in advance a willingness to pay fee as high as those anticipated. Such notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet the requester's needs at a lower cost. Dispatch of such a notice shall temporarily suspend the ten day period for response by ABMC until a reply is received from the requester.

(3) Aggregating requests. Except for requests that are for a commercial use, ABMC shall not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When ABMC believes that a group of requesters are acting in concert and attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, ABMC shall aggregate any such requests and charge accordingly. One element to be considered is the time period in which the requests have been made. Before aggregating requests from more than one requester, ABMC must be reasonably certain that the requesters are acting specifically to avoid payment of fees. In no case shall ABMC aggregate multiple requests on unrelated subjects from one requester.

(4) Advance payments. ABMC shall not require payment for fees before work has commenced or continued on a request unless:

(i) ABMC estimates that the charges may exceed $25.00. In such an event, ABMC shall notify the requester of the estimated cost and may require an advance payment of an amount up to the full amount of estimated charges; or

(ii) A requester has previously failed to pay a fee within 30 days of the date of billing. In this event, ABMC shall require the requester to pay the full amount owed plus any applicable interest and make an advance payment of the full amount of the estimated fee before ABMC begins to process a new request or a pending request from that requester.

(iii) When ABMC acts under paragraphs (a)(4) (i) or (ii) of this section, the administrative time limits prescribed in § 404.3 will begin only after ABMC has received fee payments described above.

(5) Form of payment. Remittances shall be in the form of a personal check or bank draft drawn on any bank in the United States, a postal money order, or cash. Remittances shall be made payable to the American Battle Monuments Commission.

(6) ABMC will not defray cost sending records by special methods such as express mail or for transportation of personnel.

(b) *Restrictions on assessing fees.* With the exception of requesters seeking documents for commercial use, action (a)(4)(A)(iv) of the Freedom of Information Act, as amended, requires ABMC to provide the first 100 pages of duplication and the first two hours of search time without charge. ABMC shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. ABMC will not begin to assess fees until it has first provided the free search and reproduction authorized.

§ 404.8 Categories of requesters.

(a) There are four categories of FOIA requesters: Commercial; educational and noncommercial scientific institutions; representatives of the news media; and all others. The fees to be charged each of these categories of requesters are as follows:

(1) *Commercial.* When ABMC receives a request for documents for commercial use, it shall assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters are not entitled to two hours of free search time or 100 free pages of reproduction. ABMC shall recover the cost of searching for the records even if ultimately there is no disclosure of records. Requesters must provide a reasonable description of the records sought.

(2) *Educational and non-commercial scientific institutions.* ABMC shall provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, except there will be no charge for the first 100 pages of duplication. To be eligible for inclusion in this category, requesters must show that the request is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must provide a reasonable description of the records being sought;

(3) *Representatives of the news media.* ABMC shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, except there will be no charge for the first 100 pages. A request for records supporting the news-dissemination function of the requester shall not be considered commercial use.

Requesters must provide a reasonable description of the records sought;

(4) *All other requesters.* ABMC shall charge requesters who do not fit into any of the above categories fees that recover the full reasonable costs of direct search and reproduction records responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requesters must provide reasonable description of the records sought.

(b) [Reserved]

§ 404.9 Waiver of fees.

The Freedom of Information Representative shall waive all fees assessed under 404, if the following two conditions are satisfied: disclosure of the information is in the public interest as it is likely to contribute significantly to public understanding of the operations or activities of the government; and disclosure is not primarily in the commercial interest of the requester. The Freedom of Information Representative shall afford the requester the opportunity to show that he satisfies these two conditions.

§ 404.10 Maintenance of statistics.

(a) The Freedom of Information Representative shall maintain records of:

(1) The total amount of fees collected by ABMC under this part;

(2) The number of denials of requests for records or information made under this part and the reason for each;

(3) The number of appeals from such denials, together with the results of such appeals, and the reasons for the action upon each appeal that results in a denial of information or documents;

(4) The name and title or position of each person responsible for each denial of records and the number of instances of each;

(5) The results of each proceeding conducted under 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action against the official or employee primarily responsible for improperly withholding records, or an explanation of why disciplinary action was not taken;

(6) A copy of every rule made by this agency affecting or implementing 5 U.S.C. 552;

(7) A copy of the fee schedule for copies of records and documents requested under this part; and

(8) All other information that indicates efforts to administer fully the letter and spirit of the Freedom of Information Act and the above rules.

(b) The Freedom of Information Act Representative shall annually, within 60 days following the close of each calendar year, prepare a report covering each of the categories of records to be maintained in accordance with the foregoing and submit the same to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress.

William E. Ryan, Jr.,

Colonel, AD, Freedom of Information Officer.

[FR Doc. 87-20622 Filed 9-8-87; 8:45 am]

BILLING CODE 5120-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22 and 24

[FRL-3259-8]

Issuance of and Administrative Hearings on RCRA Section 3008(h) Corrective Action Orders for Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period for proposed rule.

SUMMARY: On August 6, 1987, at 52 FR 29222 EPA proposed a rule governing the conduct of administrative hearings requested by recipients of administrative enforcement orders issued pursuant to section 3008(h) of the Solid Waste Disposal Act as amended by the Resource Conversation and Recovery Act. That notice indicated that comments on the proposed rule would be accepted if received on or before September 8, 1987. Several interested parties have requested that the comment period be extended. In response to these requests EPA had decided to extend the comment period for an additional two weeks.

DATES: Comments on the proposed rule will be accepted if received on or before September 22, 1987.

ADDRESS: Interested members of the public must submit an original and two copies of their comments to: Steve Botts, mail code LE-134S, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steve Botts at (202) 382-5787.

Date: September 5, 1987.

Edward E. Reich,

Associate Enforcement Counsel for Waste, Office of Enforcement and Compliance Monitoring.

[FR Doc. 87-20867 Filed 9-8-87; 9:19 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 5

Implementation of Executive Order 12600 of June 23, 1987, Predisclosure Notification Procedures for Confidential Commercial Information

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) proposes to amend its Freedom of Information Act (FOIA) regulations to add a new section regarding predisclosure notification procedures for confidential commercial information as required by Executive Order (E.O.) 12600 of June 23, 1987.

DATE: Comments are due on or before November 9, 1987.

ADDRESS: Address comments to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

Comments received will be available for public inspection at the above address from 8:30 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 646-3840.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to issue proposed implementing regulations in conformance with the requirements of Executive Order 12600 which was published in the **Federal Register** on June 25, 1987, 52 FR 23781. Section 7 of E.O. 12600 of June 23, 1987, requires that the designation and notification procedures required by this Executive Order shall be established by regulation, after notice and public comment.

FEMA has determined that this document is not a major rule under E.O. 12291 since it will not have a significant economic effect on a substantial number of small entities. The basis for this determination is that any economic impact on small entities resulting from this proposed rule would be attributable to E.O. 12600, not to these regulations.

This proposed rule does not contain information collection requirements

which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

The publication of this notice is made in accordance with the requirements of 5 U.S.C. 553 of the Administrative Procedure Act.

List of Subjects in 44 CFR Part 5

Freedom of Information Act, Production or Disclosure of Information.

Accordingly, for reasons set out in the preamble it is proposed to amend 44 CFR Chapter I, Subchapter A, as set forth below:

PART 5—[AMENDED]

1. The authority citation for Part 5 is revised to read as follows:

Authority: 5 U.S.C. 552 as amended by the Freedom of Information Reform Act of 1986 (Pub. L. 99–570); Reorganization Plan No. 3 of 1978; E.O. 12127; and E.O. 12600.

§ 5.52 [Amended]

2. Section 5.52 is amended by removing paragraph (c).

§§ 5.58, 5.59 and 5.60 [Redesignated as §§ 5.59, 5.60 and 5.61]

3. Sections 5.58, 5.59 and 5.60 are redesignated as § 5.59, § 5.60 and § 5.61 respectively.

§ 5.57 [Redesignated as § 5.58]

4. Section 5.57 *Exhaustion of administrative remedies* is redesignated as § 5.58 *Exhaustion of administrative remedies.*

5. A new § 5.57 is added to read as follows:

§ 5.57 Predisclosure Notification Procedures for Confidential Commercial Information.

(a) *In general.* Business information provided to FEMA by a business submitter shall not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to business submitters.* FEMA shall provide a submitter with prompt notice of receipt of a Freedom of Information Act request encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as provided in paragraph (g) of this section. The written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* (1) For confidential commercial information submitted prior to January 1, 1988, FEMA shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The records are less than 10 years old and the information has been designated by the submitter as confidential commercial information;

(ii) FEMA has reason to believe that disclosure of the information could reasonably result in commercial or financial injury to the submitter; or

(iii) The information is subject to prior express commitment of confidentiality given by FEMA to the submitter.

(2) For confidential commercial information submitted to FEMA on or after January 1, 1988, FEMA shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The submitter has in good faith designated the information as commercially or financially sensitive information; or

(ii) FEMA has reason to believe that disclosure of the information could reasonably result in commercial or financial injury to the submitter.

(3) Notice of a request for confidential commercial information falling within paragraph (c)(2)(i) of this section shall be required for a period of not more than ten years after the date of submission unless the submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(4) Whenever possible, the submitter's claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (b) of this section, FEMA shall afford a submitter seven working days within which to provide FEMA with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemptions of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information which is considered privilege or confidential. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, FEMA shall notify the requester that such notice has been given to the submitter. The requester will be further advised that a delay in responding to the request, i.e., 10 working days after receipt of the request by FEMA or 20 working days after receipt of the request by FEMA if the time limits are extended under unusual circumstances permitted by the FOIA, may be considered a denial of access to records and the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that FEMA may review the submitter's objection to disclosure.

(e) *Notice of intent to disclose.* FEMA shall consider carefully submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever FEMA decides to disclose business information over the objection of a submitter, FEMA shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which is seven working days after the notice of the final decision to release the requested information has been mailed to the submitter. FEMA shall inform the submitter that disclosure will be made by the specified disclosure date, unless the submitter seeks a court injunction to prevent its release by that date. When notice is given to a submitter under this section, FEMA shall notify the requester that such notice has been given to the submitter and the proposed date for disclosure.

(f) *Notice of lawsuit.* (1) Whenever a requester brings legal action seeking to compel diclosure of business information covered by paragraph (c) of

this section, FEMA shall promptly notify the submitter.

(2) Whenever a submitter brings legal action seeking to prevent disclosure of business information covered by paragraph (c) of this section, FEMA shall promptly notify the requester.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) FEMA determines that the information shall not be disclosed;

(2) The information has been published or otherwise officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The information was acquired in the course of a lawful investigation of a possible violation of criminal law.

Date: September 1, 1987.

Julius W. Becton, Jr.,

Director.

[FR Doc. 87-20611 Filed 9-8-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[CC Docket No. 87-313; FCC 87-263]

Policy and Rules Concerning Rates for Dominant Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has initiated a proceeding to reexamine the way it regulates the rates charged by dominant carriers for their interstate basic service offerings. The Commission proposes replacing rate-of-return regulations of dominant carriers other than Comsat with a system of direct price regulation by means of caps. The Commission tentatively concludes that in theory the price cap method of regulation would benefit consumers, promote innovation, and further the public interest more effectively than rate-of-return regulation. The Commission also tentatively concludes that the price cap method of regulation would be implemented for AT&T before being implemented for the local exchange carriers. The Commission seeks comments on these conclusions and other implementation issues and problems.

DATES: Comments must be filed on or before October 19, 1987, and reply comments on or before November 19, 1987.

ADDRESS: Federal Communications Commission, Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Regina Harrison, Common Carrier Bureau, (202) 632-6917.

SUPPLEMENTARY INFORMATION:

In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313.

Adopted: August 4, 1987.

Released: August 21, 1987.

By the Commission.

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I. Introduction

1. The Federal Communications Commission bears a continuing obligation to review its policies and rules to determine whether they continue to further the public interest by promoting the objectives they were originally designed to achieve.[1] Either experience or changed circumstances may trigger such a review. In this case both experience and changed circumstances cause us now to open this proceeding, in which we shall rexamine the way we regulate the rates charged by dominant carriers for their interstate basic services offerings.

2. We begin this Notice with a brief history of the Commission's regulation of interstate common carriers. We then discuss the relative advantages and disadvantages of the cost-of-service or rate-of-return model of regulation that we now use to regulate the charges for dominant carriers' interstate services. We tentatively conclude that we are under no legal obligation to continue to use cost-of-service regulation, particularly if another method of regulation will lead to just and reasonable rates at a lower cost to society.[2] We then consider a different model for regulating dominant carriers, one we shall refer to as the "price cap" model. The essence of this approach is to regulate prices directly by means of caps.

3. Preliminary examination of the price cap model suggests that it could simultaneously protect consumers of less competitive services from exorbitant rates and encourage competition's continued growth in those market segments where it has already taken hold, accomplishing this at a lower cost to society than our current regulatory regime. Our goal in this proceeding is to determine if the price cap model could be adapted so that it better protects and promotes consumer welfare and the public interest in an efficient and reasonably priced telecommunications network than does cost-of-service regulation. We will not adopt any price cap method of regulating rates if we conclude, after review of the comments filed in

[1] *See generally Geller v. FCC*, 610 F. 2d 973, 979-80 (D.C. Cir. 1979).

[2] *See* 47 U.S.C. 151, 201(b) and 202(a).

response to this Notice, that the price cap model cannot be so adapted. If we find, however, that implementation of a price cap approach would further the public interest, we tentatively conclude that it would be implemented for AT&T before it would be for the local exchange carriers (LECs), in large part because its implementation for the LECs would raise administrative issues that appear to be more complex than those for AT&T.

II. Background

4. Section 1 of the Communications Act mandates that this Commission shall regulate interstate telecommunications services "so as to make available * * * to all the people of the United States * * * efficient, Nation-wide * * * communication service, with adequate facilities at reasonable charges * * *." [3] Within this mandate we find our responsibilities: (1) To protect universal service; (2) to foster technological advancement in the public communications network; (3) to protect ratepayers against a carrier's exercise of market power; and (4) to promote efficient provision of interstate services at reasonable rates. Title II makes the last obligation even more explicit by declaring unlawful "any unjust or unreasonable" "charge, practice, classification, or regulation" for interstate common carrier services. In order to meet these responsibilities, we currently rely upon a mix of tools, including competition, market rules,[4] and the powers given us by Titles I and II of the Act.[5]

5. Over the past twenty-five years we have on several occasions acted to revise or alter this mix of rules and policies. In each case, experience and market evolution were the catalysts prompting us to reexamine how we regulated providers of interstate telecommunications services. For example, the convergence of the communications and computer industries brought about by technological advances caused us to undertake our *First Computer Inquiry*; [6] experience and changing technology compelled us to reexamine the decisions we made there on two subsequent occasions. In the *Second Computer Inquiry*,[7] we separated interstate communications services using common carrier facilities into two distinct categories; basic services and enhanced services. We concluded that only the former should be regulated under Title II. We also concluded that the provision of customer premises equipment was not a common carrier service. We permitted AT&T to offer enhanced services and customer premises equipment only through affiliates separate from its common carrier operations. The *Third Computer Inquiry* [8] modified the rules governing participation of AT&T and the Bell Operating Companies (BOCs) in the basic and enhanced services markets. Finding that the disadvantages of the structural separation between these operations compelled by the *Second Computer Inquiry* far outweighed the advantages, the last proceeding concluded that non-structural safeguards would better serve the public interest.

6. In our *Competitive Carrier Docket*,[9] we focused upon providers of domestic basic services. Recognizing that not all of these service providers possessed the ability to control service prices, we reexamined the rules and policies we relied upon to assure that their service rates were just and reasonable. In a series of orders spanning five years, we identified those carriers unable to exert such market power, which we labelled non-dominant.[10] For these non-

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[3] 47 U.S.C. 151.

[4] "Market rules" refer to direct constraints on regulatees' behavior, as opposed to indirect constraints, such as pricing rules. *See generally* Separate Statement of Commissioner Mimi Weyforth Dawson re: Am. Tel. and Tel. Co. Manual and Procedures for the Allocation of Costs, 94 FCC 2d 1118, 1146–47 (1983) (proposing a market rules approach for regulation of AT&T); R.L. Morris & R.S. Preece, FCC OPP Working Paper Series No. 7, *Negotiating for Improved Interconnection: The Incentives To Bargain* (Apr. 1982 rev.) (proposing a market values approach toward regulating interconnection between local telephone companies and other telecommunications firms). The separate subsidiary requirement for the provision of enhanced services formerly imposed on AT&T and the Bell Operating Companies (BOCs) in the *Second Computer Inquiry* and the requirement that AT&T and the BOCs provide open network architecture and comparably efficient interconnection to other enhanced service providers imposed by the *Third Computer Inquiry* are instances in which we have applied a market rules approach to regulating the behavior of these carriers. *See* para. 5, *infra*.

[5] Under section 4(i), the Commission "may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Act], as may be necessary in the execution of its functions," while section 4(j) permits it to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." 47 U.S.C. 154(i)–(j). Section 201(b) of the Act also authorizes the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this [Act]." 47 U.S.C. 201(b). Title II also contains provisions granting the Commission the powers commonly associated with public utility regulation. These powers include the authority to require a carrier to interconnect with other carriers and to establish through routes (47 U.S.C. 201(a)), to determine whether carriers' rates and conditions of service are just and reasonable (47 U.S.C. 201(b)) and without unreasonable preferences or discriminations (47 U.S.C. 202(a)). Section 203 authorizes the Commission to determine the information that must accompany carriers' tariff filings while section 204 of the Act empowers the Commission to suspend and investigate proposed changes in rates on its own initiative or in response to a petitioner's request. Should investigation establish the unlawfulness of rates, the Commission may prescribe just and reasonable terms to replace the offending conditions. 47 U.S.C. 205. Section 214 enables the Commission to control entry into and exit from the interstate services market and to control to some extent a carrier's expansion of its rate base. Title II also permits the Commission to: determine the value of the property a carrier includes in its rate base (47 U.S.C. 213); prescribe depreciation rates as well as accounting systems to be used by carriers subject to the Act (47 U.S.C. 220) and require such carriers to file any additional information the Commission may need to fulfill its statutory mandate (47 U.S.C. 218 and 213(f)).

[6] Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities, Tentative Decision, 28 FCC 2d 291 (1970); Final Decision and Order, 28 FCC 2d 267 (1971), *aff'd on recon.*, 34 FCC 2d 557 91972, *aff'd in principal part sub nom.* GTE Serv. Corp. v. FCC, 474 F. 2d 724 (2d Cir. 1973); *on remand*, 40 FCC 2d 293 (1973).

[7] Amendment of § 64.792 of the Commission's Rules and Regulations (Second Computer Inquiry), Final Decision, 77 FCC 2d 384, *modified on recon.*, 84 FCC 2d 50 (1980), *modified on further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom.* Computer and Communications Indus. Ass'n v. FCC, 693 F. 2d 198 (D.C. Cir. 1982), *cert. denied sub nom.* Louisiana Pub. Serv. Comm'n v. United States, 461 U.S. 938 (1983), *aff'd on second further recon.*, FCC 84–190, released May 4, 1984.

[8] Amendment of § 64.702 of the Commission's Rules and Regulations (*Third Computer Inquiry*), Report and Order, 104 FCC 2d 958 (1986), *clarified on recon.*, 2 FCC Rcd 3035 (1987).

[9] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79–252, Notice of Inquiry and Proposed rulemaking, 77 FCC 2d 308 (1979); First Report and Order (*First Report*), 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Report and Order (*Second Report*), 91 FCC 2d 59 (1982), *recon. denied*, 93 FCC 2d 54 (1983); Second Further Notice of Proposed Rulemaking, 47 FR 17308 (Apr. 22, 1982); Third Report and Order (*Third Report*), 48 FR 46791 (Oct. 14, 1983); Third Further Notice Of Proposed Rulemaking, 47 FR 28292 (June 21, 1983); Fourth Report and Order (*Fourth Report*), 95 FCC 2d 554 (1983); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984); Fifth Report and Order (*Fifth Report*), 98 FCC 2d 1191 (1984); Sixth Report and Order, 99 FCC 2d 1020 (1985), *rev'd and remanded sub nom.* MCI Telecommunicaitons Corp. v. FCC, 765 F. 2d 1186 (D.C. Cir. 1985).

[10] *See First Report*, 85 FCC 2d 1 (1980) (specialized common carriers and resellers of terrestrial common carrier services operating in the contiguous 48 states designated non-dominant henceforth subject to streamlined regulation); *Second Report*, 91 FCC 2d 59 (1982), *recon. denied*, 93 FCC 2d 54 (1983) (forebearance from even streamlined regulation appropriate for terrestrial resellers whenever it furthers the purposes of the Communications Act); *Third Report*, 48 FR 46791 (Oct. 14, 1983) (specialized common carriers and resellers of terrestrial common carrier services operating between any U.S. offshore points or Alaska and the contiguous states now covered by same regulatory policies as those operating within the contiguous states); *Fourth Report*, 95 FCC 2d 554 (1983) (forebearance applicable to all resellers of domestic common carrier services and specialized common carriers; domestic satellite carriers, miscellaneous common carriers and facilities-owning interexchange carriers affiliated with

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dominant carriers we concluded that market forces enabled us to rely upon a less rigorous and less costly regulatory regime to protect ratepayers against unjust or unreasonable conduct.[11] Subsequently we found that changes in the international service markets warranted our applying our *Competitive Carrier* analysis to those markets with a concomitant change in how we regulated most of the entrants to those markets.[12] At the present time, only the interstate and foreign basic services of the local exchange carriers, AT&T, Alascom and Comsat remain subject to "cost-of-service" or "rate-of-return" regulation.[13] Both experience and changed circumstances now prompt us to begin a reexamination of how we regulate the service rates of AT&T, Alascom and the local exchange carriers (LECs).[14] Before we discuss in greater detail these forces for change, we begin with a brief description of our current regulatory procedures.

III. The FCC Approach to Cost-of-Service Regulation

A. Description of the Current Process

7. Under our statutory scheme, dominant carriers file tariffs prior to offering any new service or to changing the terms and conditions under which they offer an already tariffed service. While we have by rule shortened the notice period required before most tariff filings may become effective,[15] we may not require the carrier to give its subscribers more than a ninety-day notice period.[16] Before a tariff becomes effective, both Commission staff and interested members of the public review the proposed tariff, as well as what is frequently voluminous economic support filed to comply with our rules.[17] The purpose of the economic support data is to expedite that review. Frequently a tariff filing triggers petitions to reject the filing as unlawful or to suspend it while the Commission conducts a more extensive investigation into its lawfulness. Unless this Commission finds the filing patently unlawful, we do not reject it. We may, however, exercise our authority under section 204 and delay the effective date of the tariff for up to five months while we conduct a more extensive inquiry into its lawfulness. If at the end of the five months we have been unable to complete our investigation, the tariff will become effective, subject in certain cases, however, to an accounting order, which offers subscribers some measure of protection.[18] If we neither suspend nor reject the tariff, it becomes effective automatically when the notice period expires. There is no finding of lawfulness attached to the effective filing, however, and, under section 208, any person may file a complaint challenging the tariff's lawfulness.

8. For the past twenty years, in both the initial tariff review process and the Section 208 complaint process, our touchstone for determining whether rate levels were lawful has been costs. "Costs" are an elusive concept, however. The concept becomes even more elusive when we discuss the costs of providing a service that shares joint or common costs with a plethora of other services. Even in a pure monopoly environment, effective cost-of-service regulation would require us to be able to determine whether: (1) The part of the carrier's rate base allocated to an individual service is properly calculated; [19] (2) the level of cash and noncash expenses is properly assigned and reasonable; (3) the forecasted demand for the service is reasonable; and (4) the rates proposed or in effect would appear to cover those costs and produce a fair rate of return. In order to make these determinations, we have conducted and must continue to conduct many proceedings. Some are undertaken routinely; others undertaken only in response to a specific request or need. These actions, only some of which we now briefly describe, all affect, directly or indirectly, the costs dominant carriers may recover through revenue from a specific interstate service.

9. Part 63 of our rules includes the procedures with which a dominant carrier must comply before we would authorize it to construct, acquire or operate new interstate transmission facilities.[20] We adopted these rules to prevent carriers from inflating their rate bases with facilities, the costs of which could be recovered from interstate ratepayers even though such facilities were not necessary to the continued provision of quality service.[21] We also

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certain of the independent telephone companies classified as nondominant carriers eligible for streamlined regulation): *Fifth Report*, 98 FCC 2d 1191 (1984) (forebearance extended to domestic satellite carriers, miscellaneous common carriers, interexchange carriers affiliated with certain independent telephone companies and certain carriers providing DEMS).

[11] We subsequently found that common carriers providing domestic public land mobile service were nondominant and that forebearance from federal tariff regulation of these carriers would be in the public interest. Preemption of State Entry Regulation in the Public Land Mobile Service, CC Docket No. 85–89, 51 FR 15498 (Apr. 24, 1986), *vacated and remanded on other grounds sub nom.* National Assoc. of Regulatory Util. Comm'rs v. FCC, Civ. No. 86–1205 (D.C. Cir. Mar. 30, 1987).

[12] International Competitive Carrier Policies, CC Docket No. 85–107, Report and Order, 102 FCC 2d 812 (1985), *recon. denied*, FCC 86–339 (released Aug. 7, 1986). In this proceeding we found that international services consisted of two distinct product markets: the international message telephone service (IMTS) market and the non-IMTS market; moreover, each country comprised a separate geographic market. We found all providers of non-ITMS services to be nondominant and eligible for streamlined regulation. In the IMTS market, only AT&T, the primary service providers of IMTS for noncontiguous domestic points and foreign owned or controlled providers of this service were found to be dominant. All other providers of IMTS were designated nondominant and henceforth subject to our streamlined tariff review process. As a result of this proceeding Comsat is considered a dominant carrier with respect to the provision of international space segment, multipurpose earth stations and television service.

[13] We use these terms to describe a comprehensive form of regulation developed to control not only the profit levels of these carriers, but also the contribution that each of their services may lawfully make to those profits. "Cost-of-service" regulation requires that we not only determine their allowable rate of return, but also whether: (1) Their investment is properly calculated and efficiently incurred; (2) the level of cash expenses is efficiently and economically incurred; (3) the level of noncash expenses such as depreciation and other accruals is properly reflected in the rate calculations; and (4) the rates proposed or in effect would cover these costs and produce a fair rate of return. Nader v. FCC, 520 F.2d 182, 204 (D.C. Cir. 1975). Through procedures and proceedings set forth in Part 65 of our rules, 47 CFR Part 65, we now make these determinations for total interstate operations of AT&T and the access services of the local exchange carriers. Through our tariff review process we make similar determinations for dominant carriers' individual service offerings. For a more thorough discussion of what this entails for both this Commission and these dominant carriers, see paras. 7–8, *infra*.

[14] We intend to restrict the application of any rule or policy changes resulting from this rulemaking proceeding to the interstate and international basic services of these carriers. When we discuss regulatory reform for AT&T specifically in this Notice, *see e.g.* paras. 59 and 62, we intend that our discussion cover regulation of Alascom too, even if we do not mention it explicitly. We recognize that if we adopt any of the pending proposals to alter our loading policy, the resulting impact upon the international facilities market might justify our considering a revision of the rules governing regulation of Comsat's jurisdictional services. *See* Policy for the Distribution of United States International Carrier Circuits Among Available Facilities During the Post–1988 Period, Notice of Proposed Rulemaking, 2 FCC Rcd 2109 (1987). For this reason, we intend to address the issue of regulatory reform for Comsat in a separate proceeding.

[15] *See* CFR 61.58.

[16] *See* 47 U.S.C. 203(b)(2).

[17] *See* 47 CFR 61.38.

[18] Section 204 permits the Commission to require a carrier to "keep accurate account of all amounts received by reason of [the previously suspended] charge for a new service or increased charge." 47 U.S.C. 204(a). If the investigation leads to the conclusion that some or all of the charges are unreasonable, the Commission may order the carrier to refund, with interest, to the affected subscribers that part of the charges that was found unreasonable

[19] By rate base, we mean the net value of the carrier's property used and useful in providing regulated services.

[20] *See* 47 CFR part 63.

[21] *But see* para. 18, *infra*.

represcribe depreciation rates for the equipment used by AT&T and at least some of the LECs to provide interstate services.[22] Our represcription process, performed annually for one-third of these carriers, includes three-way meetings among our accounting staff, state commission staff, and each affected carrier, public notice of the proposed new depreciation rates and an opportunity for public comment before represcription occurs.

10. In CC Docket No. 86–111, we have directed dominant carriers to develop cost allocation manuals (CAMs) for apportioning costs between regulated and unregulated services. We have required that these CAMs comply with guidelines based upon a fully distributed cost (FDC) methodology.[23] The Separations Manual, now codified as Part 67 of our rules,[24] prescribes the rules these carriers must use to apportion costs between their interstate and intrastate operations. The cost studies required to apply these rules are very expensive. Rather than incur this cost, some of the smaller LECs use "average schedules" to determine the compensation to which they are entitled for their interstate access services. Using the proccedures set forth in Part 65, we represcribe on a biennial basis the rate of return that the LECs and AT&T must target their interstate services to earn.[25] With all these steps taken it becomes possible to define an interstate revenue requirement for these carriers.

11. The next step in the cost-of-service ratemaking process is to apportion that interstate revenue requirement among the carrier's interstate services. For AT&T, our Interim Cost Allocation Manual apportions its interstate costs among three service categories: MTS, WATS, and private line services.[26] Within these categories, AT&T is expected to allocate costs among services based upon FDC principles.[27] Its MTS Optional Calling Plans and volume discounts for private line services are excepted from this general costing requirement. Both the MTS Optional Calling Plans Guidelines Order and the Private Line Rate Structure Guidelines Order establish standards against which tariff filings covering these services will be measured to determine the reasonableness of the rate structure AT&T would propose.[28] If either AT&T's private line service offerings or its MTS and WATS offerings combined earn more than 50 basis points more than its prescribed target rate of return, Part 65 imposes a refund obligation upon the carrier.[29]

12. Part 69 of our rules allocates the interstate costs of a LEC among access elements and a category called interexchange operations.[30] It also prescribes the method by which several access elements' rates are to be computed. For the remaining elements, the LECs retain some flexibility to target individual access offerings above or below rates projected to earn the prescribed rate of return.[31] Part 65, however, groups the access elements into three categories and requires the LECs to refund earnings for these categories to the extent they exceed the prescribed target rate of return by more than a specified amount.[32]

B. Market Structure and Cost-of-Service Regulation

13. Though incomplete, the preceding description of our activities related to cost-of-service regulation clearly shows that the framework erected to support this mode of regulation is elaborate and often cumbersome. We have nonetheless needed this framework to conduct effective cost-of-service regulation. While we may think of cost-of-service regulation with this elaborate infrastructure as "traditional" regulation for dominant carriers, in fact, we did not turn to this form of regulation until the mid 1960's. For the preceding thirty years, we relied upon "continuing surveillance" of earnings levels to assure that the Bell System monopoly on interstate services would not lead to AT&T's earning monopoly profits from those services.[33] We found this to be an

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[22] Section 220(b) authorized us to make such prescriptions only for carriers "subject to [the] Act." 47 U.S.C. 220(a)-(b). Under section 2(b)(2), connecting carriers are "not subject to the Act" for purposes of depreciation represcription. *See* 47 U.S.C. 152(b)(2).

[23] *See* Separation of Costs of Regulated Telephone Service From Costs of Nonregulated Activities, Amended of Part 31, the Uniform System of Accounts of Class A and Class B Telephone Companies, to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and Their Affiliates, 2 FCC Rcd 1298 (1987).

[24] The Federal-State Joint Board established in CC Docket No. 86–297 has recommended that we adopt a comprehensive revision of Part 67 and codify the revised manual in a new Part 36 of our rules. *See* Amendment of Part 67 (new Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, Recommended Decision and Order, 2 FCC Rcd 2582 (Fed.-St. Jt. Bd. 1987). The Board recommended this action in order to make the separations process simpler and to make it conform to our recently revised Uniform System of Accounts, which will become effective as new Part 32 of our rules, binding on all dominant carriers, on January 1, 1988. *See* Common Carrier Services; Revsion; Uniform System of Accounts; Classes A, B and C Telephone Companies, 47 CFR Parts 31, 32 and 33, CC Docket No. 78–196, FCC 86–221 (released May 15, 1986), 51 FR 43,493 (Dec. 2, 1986). We have adopted the Board's recommendation. *See* MTS and WATS Market Structure, Amendments of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, 2 FCC Rcd 2639 (1987)

[25] *See* CFR 65.701.

[26] We prescribed the ICAM in Am. Tel & Tel. Co., CC Docket No. 79–245, 84 FCC 2d 384, *recon. granted in part and denied in part*, 86 FCC 2d 667 (1981), *aff'd sub nom.* MCI Telecommunications Corp. v. FCC, 675 F. 2d 408 (D.C. Cir. 1982), *modified*, 94 FCC 2d 1118 (1983).

[27] Am. Tel. and Tel. Co., Long Lines Dep't, 61 FCC 2d 587 (1976), *recon. denied in part and granted in part*, 64 FCC 2d 971 (1977), *further recon. denied in part and granted in part*, 67 FCC 2d 1441 (1978), *aff'd in pertinent pat sub nom.*, Aeronautical Radio, Inc. v. FCC, 642 F.2d 1221 (1980), *cert. denied*, 451 U.S. 920 (1981); AT&T Equalization Filing, 89 FCC 2d 1000 (1982).

[28] Guidelines for Dominant Carriers' MTS Rates and Rate Stucture Plans, CC Docket No. 84–1235, FCC 85–540, 50 FR 42,945 42,951–52 (Oct. 23, 1985), 59 Rad. Reg. 2d 70, 81–83 (1985). Private Line Rate Structure and Volume Discount Practices, 97 FCC 2d 923, 948–49 (1984).

[29] *See* 47 CFR 65.700, 65.703.

[30] *See* 47 CFR Part 69, § 69.2(a) and (r); Subparts D and E.

[31] Carriers have been permitted to exercise some flexibility in their pricing of individual special access services, "especially where the proposed rates are designed in part to discourage service bypass," provided that the overall special access category is targeted to the prescribed rate of return. 47 CFR 69.113(b); Annual 1985 Access Tariff Filings, Mimeo No. 7401 (released Sept. 30, 1985) at paragraph 62, *aff'd on review*, FCC 86–379 (released Sept. 2, 1986) *appeal pending sub nom.* Western Union Telegraph Co. v. FCC, No. 86–1592 (D.C. Cir.). Some downward flexibility is permitted dominant carriers offering MTS service under an optional calling plan, or nontraditional pricing mechanism, in response to competition, provided that the plan results in a net increase in the carrier's revenues for switched services. Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans, *supra* n. 28, 50 FR at 42,951–52, 59 Rad. Reg. 2d at 82–83. In Private Line Rate Structure and Volume Discount Practices, *supra* n. 28, 97 FCC 2d at 949, we declined to adopt a specific cost standard for the reasonableness of volume discounts. We indicated that instead we would concentrate our review primarily on "whether the discount fits into an integrated rate structure of similar service offerings," weighing this along with other factors, such as whether the volume discount contributes to meeting competition and to bringing reasonable rates and efficient services to all users.

[32] If a LEC's earnings for any of the three access categories designated in Part 65 exceed the "maximum allowable rate of return" during any two-year period of review, it must refund, either directly to customers, or by means of subsequent reductions in its revenue requirements, the amount necessary to bring the earnings of the category down to the maximum allowable rate of return, plus interest. 47 CFR 65.700–.703. "Maximum allowable rate of return" refers to the prescribed rate of return—now 12% for the LECs—plus a "margin" of four-tenths of one percent or 40 basis points. 47 CFR 65.700(a); Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, Phase III, FCC 86–354, CC Docket No. 84–800 (released August 25, 1986) at paragraph 52, 51 FR 32, 920 (Sept. 17, 1986). In addition, if a LEC's overall interstate earnings exceed the authorized return by one-quarter of one percent (25 basis points), then the carrier must refund an amount necessary to bring the overall return down to the overall maximum. 47 CFR 65.700(b), 65.703.

[33] We have previously described continuing surveillance as "a process by which many previous

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"effective and highly efficient method of regulation," for the Bell System during a period when the domestic interstate telecommunications market was a monopoly. By the early 1960's, however, we had become concerned about the possibility that AT&T could and would use revenue from its MTS and WATS monopoly services to subsidize its private line services, which at that time were just beginning to confront the threat of competition from private microwave systems, the specialized common carriers, and Western Union. It was only in response to that concern that we began the series of investigations that led us to construct the regulatory edifice that we now rely upon to regulate the prices charged by dominant carriers.[34]

14. We adopted the cost-of-service model as our regulatory paradigm at a point in time when competition appeared to be confined to one segment of the interstate market, a segment representing only a relatively small share of dominant carriers' revenues and costs. AT&T, undivested and in partnership with the independent telephone companies, operated essentially as a monopoly enterprise, providing all but a miniscule share of interstate communications services. The subsequent open availability of technological advances like digital switches, domestic satellite facilities, packet switches, mini and micro computers and fiber optic cable reduced the partnership's ability to sustain that monopoly without regulatory support. Decisions supportive of competition at both the federal and the state level have further eroded its monopoly power.

15. At the federal level, the courts paved the way for competition's growth in the interstate MTS and WATS markets.[35] Commission initiatives like the *Computer Inquiries* and *Competitive Carrier* also strengthened competition's foothold in the interstate market.[36] Significant Impetus for change in the market also came from AT&T's 1984 divestiture of the Bell Operating Companies in compliance with the terms of the Modification of Final Judgment (MFJ), the consent decree that brought to a close the federal government's seven-year-old antitrust suit against the company.[37] With divestiture came equal access to local exchange carriers' local networks for AT&T's interexchange service competitors [38] and access charges, the post-divestiture compensation mechanism that replaced the amalgam of tariffs and contracts through which interexchange carriers paid for access local network facilities they needed to originate or terminate their interstate services.[39] More recently we have concluded that the public interest would be served by our modifying the cost standards we apply when reviewing the lawfulness of dominant carriers' proposals to offer volume discounts for private line services or optional MTS calling plans.[40]

16. The states too have begun to revise their approach to regulating providers of intrastate common carrier services. In some cases through legislation, in others through the initiative of their utility commissions, many states have recently reexamined or reformed how they regulate intrastate communications services.[41] The net

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interstate rate adjustments have been brought about without formal proceedings . . . [in which] either the Commission or [AT&T] [would] initiate discussions looking toward appropriate rate changes whenever the level of . . . total interstate earnings has appeared to warrant such action." Am. Tel & Tel. Co., Docket No. 16258, 2 FCC 2d 173, 177, *recon denied*, 2 FCC 2d 173 (1965).

[34] In 1965 we opened an investigation of the rates and services of the Bell System in Docket 16258. Am. Tel. and Tel. Co., *supra* n. 33, 2 FCC 2d 173 (1965). Phase 1–A of that investigation culminated in our prescription of a rate of return for all of AT&T's interstate operations. Am. Tel. and Tel. Co., 9 FCC 2d 30 (1967). Phase 1–B was intended to establish general ratemaking principles. Eventually this phase of Docket 16258 was "folded into" Docket No. 18128, in which we selected FDC "Method 7" as the method of determing costs for ratemaking purposes. Am. Tel. and Tel. Co., 18 FCC 2d 761 (1969); Am. Tel. and Tel. Co., Long Lines Dep't, *supra* n.27, 61 FCC 2d 587. For other consequences of our initial decision to replace continuing surveillance with this more rigorous form of rate regulation, see discussion *supra* at paras. 7–11.

[35] MCI Telecommunications Corp. v FCC, 561 F.2d 365 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978) (Execunet I) (Section 214 of the Communications Act of 1934, as amended, required affirmative determination that public interest, convenience and necessity mandated restriction of MCI's service to private line services); MCI Telecommunications Corp. v. FCC, 580 F.2d 590 (D.C. Cir.) *cert. denied*, 439 U.S. 980 (1978) (Execunet II) (AT&T required to provide interconnections for MCI's Execunet service); Order (filed May 11, 1978) (D.C. Cir.) (per curiam), *printed in* Lincoln Tel. and Tel. Co. v. FCC, 659 F.2d 1092 (D.C. Cir. 1981), at 659 F.2d 1109 (D.C. Cir. 1978) (per curiam (Execunet III) (reaffirming holdings of Execunet I and Execunet II upon motions for stay).

[36] These proceedings are discussed in paras. 5–6, *supra*.

[37] United States v. Am. Tel. and Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

[38] The MFJ required that upon "bona fide request, every [BOC] end office . . . offer . . . [equal] access by September 1, 1986." 552 F. Supp. at 233. It did recognize an exception for end offices with "switches technologically antecedent to electronic, stored program control switches" and for small end offices if the BOC could demonstrate that the "costs [of conversion] . . . outweigh the potential benefits to users." *Id.* While the conversion of all end offices required to bring them into compliance with the terms of the MFJ is still ongoing, as of October 1, 1986, the BOCs had converted over 67 million access lines (to be distinguished from end offices) to equal access. *See* FCC Public News Notice # 1290, released Dec. 31, 1986. The court will determine shortly guidelines for reasonable conversion schedules for the remaining offices. Another consent decree binds the General Telephone Operating Companies to offer equal access under a schedule calling for complete conversion no later than 1990. *See* United States v. GTE Corp., 603 F. Supp. 730 (D.D.C. 1984). Materials filed with its October 1986 access tariff filings indicated that by the end of 1986, GTE should have converted over 50% of its access lines to equal access. In the third phase of our access charge docket, we imposed an equal access requirement upon the remaining LECs. *See* MTS and WATS Market Structure, Phase III, CC Docket No. 78–72, 100 FCC 2d 860 (1985). For a summary of the percentage of total access lines that each of the major independent telephone companies has already converted or anticipates converting to equal access in 1987, *see* FCC Public News Notice # 1291, released Dec. 31, 1986.

[39] Before divestiture, AT&T compensated the BOCs for access services through the division of revenues process and the independent telephone companies through the settlements process. Tariffs through which its competitors paid for access services included those covering Foreign Exchange, or FX service, local business service and ENFIA service. ENFIA, or Exchange Network Facilities for Interstate Access, service was the result of negotiations between AT&T and its switched service competitors, establishing and interconnection rate for ENFIA higher than FX rates but lower than AT&T had proposed. *See* Exchange Network Facilities, 71 FCC 2d 440 (1979), *extended*, 90 FCC 2d 6 (1982). The MFJ, however, required that the division of revenues process be replaced with a system of nondiscriminatory access tariffs through which the BOCs would receive compensation from all the interexchange carriers using their facilities to originate or terminate interLATA traffic. 552 F. Supp. at 233–34. Subsequently in December 1982, and as a consequence of its independent investigation into the appropriate market structure for the MTS and WATS market, this Commission imposed access charges as the industry-wide mechanism for compensating exchange carriers providing interstate access services. *See* MTS and WATS Market Structure, CC Docket No. 78–72, Phase I, 93 FCC 2d 241, *modified on recon.*, 48 FR 42,987 (Sept. 21, 1983), *modified on further recon. (Reconsideration Order)*, 97 FCC 2d 682 (1983), *modified on further recon.*, 97 FCC 2d 834 (1984), *aff'd in pertinent part sub nom.* National Ass'n of Regulatory Util. Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985), *modified on further recon.*, 99 FCC 2d 708 (1984), *appeal pending sub nom.* Am. Tel. and Tel. Co., v. FCC, No. 84–1148 (D.C. Cir.), *modified on further recon.*, 101 FCC 2d 1222 (1985), *aff'd on further recon.*, 102 FCC 2d 849 (1985).

[40] *See* Private Line Rate Structure and Volume Discount Practices, *supra* n.28, 97 FCC 2d 293; Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans, *supra* n.28, 50 FR 42,945.

[41] Some multi-LATA states such as Virginia have legislatively provided for removal of rate-of-return constraints on competitive inter-LATA toll service. *Telephone Competition and Deregulation: A Survey of the States*, Office of Policy Analysis and Development, National Telecommunications and Information Administration, U.S. Department of Commerce (Oct. 1986) (NTIA State Survey) at 6. In others, such as Kansas, interexchange carriers are permitted to adjust rates (referred to as "banded rates") within a certain range without regulatory approval. *Id.* at 10. In certain states, such as Minnesota, where a deregulatory initiative was signed by the Governor on June 1, 1987, "steamlined" regulation, in the form of reduced

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result of these changes and the federal policy changes described above is that fewer and fewer of dominant carriers' service offerings are subject to the constraints of cost-of-service regulation. There is a substantial body of economic literature suggesting that cost-of-service regulation is particularly ineffective when it is not or cannot be applied to all business endeavors of a dominant carrier.[42] This literature strongly implies that in such an environment, cost-of-service regulation may impose very high costs and impair our ability to achieve our statutory goal of just and reasonable rates for those services we do regulate. In the next section we examine in greater detail the costs associated with cost-of-service regulation.

Some states have adopted a "social contract" approach to deregulation of local exchange service, requiring a measure of price stability from the local telephone company in return for regulatory freedom. In Nebraska, for example, telephone companies can raise local rates as much as 10% during any 12-month period without seeking approval from the Nebraska Public Service Commission. If 2% to 5% of a company's customers petition against the increase, however, regulators will review it. *Nebraska Law Deregulating Phone Rates May Spur Some Changes in Other States,* Wall Street Journal, May 12, 1986, at 7; *Nebraska Court Finds New Telecommunications Law Constitutional; Appeal Expected,* Telecommunications Reports, Mar. 23, 1987, at 7. *See also* Telecommunications Reports, June 15, 1987, at 42; NTIA State Survey at 33–34 (Vermont approach to social contract legislation). Other states have broadened the pricing flexibility local companies are permitted for particular services. Iowa, for example, has deregulated Centrex and private line digital services, while Arkansas and other states permit long-term customer contracts for Centrex service and numerous states have detariffed Centrex. NTIA State Survey at 23, 26.

C. Advantages and Disadvantages of Cost-of-Service Regulation

17. Cost-of-service regulation is intended to prevent a firm with market power from exercising monopoly power. Regulators have been attracted to this mode of controlling the behavior of monopoly service providers because conceptually it seems fair to both the regulated company and its customers. Cost-of-service regulation promises to the regulated firm the opportunity to earn sufficient revenues to cover its costs, including a fair rate of return on equity. It also promises to shield ratepayers from the exorbitant rates that a monopoly, left unregulated, could otherwise impose. Experience with cost-of-service regulation has taught us, however, that, even if done correctly and well, it nevertheless imposes significant costs on regulated firms and on those they serve. The policies and rules we have developed to make this method of regulation work are complicated; their application and enforcement are a resource intensive activity for the regulator, the regulated firm, and other interested parties.

18. More important than the direct administrative costs, cost-of-service regulation appears to impose other economic losses. Under cost-of-service regulation the carrier can increase its dollar earnings only by enlarging its rate base. Thus cost-of-service regulation can foster an incentive to inflate the rate base.[43] Regulators are, however, in a poor position to second-guess carriers when they claim that a particular capital expenditure is necessary to assure continued high quality service. Nor can regulators routinely perform the kind of micromanagement of these firms needed to detect whether the work force is bloated, the equipment overdesigned, or the network overbuilt. The carrier itself has little incentive to undertake such an inquiry. Pure cost-of-service regulation fails to reward the carrier for doing the "same old thing" in a more efficient way because it fails to distinguish increased earnings attributable to increased efficiency from increased earnings attributable to an exercise of market power. Prevention of the latter is the *raison d' etre* of common carrier regulation.

19. In a mixed market, like today's interstate communications market, cost-of-service regulation imposes other costs as well. This method of regulation can create a strong incentive for a dominant carrier to shift costs from those services for which it faces competition to those services for which its market power enables it to recover revenues above the economic costs of providing the service. Rate-of-return regulation may inadvertently legitimize that overrecovery because its methods of identifying costs are at best imperfect.[44] Cost allocation rules may limit a carrier's ability to respond to this incentive, but can do nothing to destroy the incentive. As the share of the carrier's costs and revenues associated with competitive offerings grows, the potentially adverse impact on captive ratepayers from misallocations grows concomitantly. Cost-of-service regulation may also impede the Commission "from acquiring the information it needs to make a reasoned determination about the long-term viability of competition in the long-distance business." [45] We cannot determine whether competitors are entering a regulated service market merely because of some pricing distortions created by our regulatory procedures. A rate-of-return set too high creates an umbrella to shelter competitors less efficient than a dominant carrier; a rate-of-return set too low will exclude its competitors unless they are more efficient.

IV. Legal Issues

20. Before we begin to weigh and to compare the costs and benefits of alternative forms of regulation for dominant carriers, we must first determine whether we are under any statutory obligation to continue using cost-of-service regulation for such carriers. Our preliminary review of the Communication Act, its legislative history and relevant case law has revealed no such legal compulsion. For this reason we tentatively conclude that we are under no legal obligation to rely upon cost-of-service regulation to assure just and reasonable rates for customers of these carriers and that we could lawfully replace cost-of-service regulation with another regulatory model consistent with the Act's substantive and procedural requirements, as long as we found,

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notice periods, is applied. *Cf. Minnesota Interagency Bill Awaits Governor's Signature, Includes Provision for AT&T,* Telecommunications Reports, June 1, 1987, at 8 (describing subsequently approved bill which enumerates 23 categories of "emerging competitive" services, including toll, private line and Centrex, for which carriers can raise rates after 30 days' notice and decrease them after 10 days' notice). Several states have used existing interexchange rates as a ceiling below which rates can be changed pursuant to streamlined procedures, but above which changes must be justified pursuant to full rate-of-return requirements. NTIA State Survey at 10–11. *See generally States Adopt Three Primary Approaches to Easing AT&T's Regulation,* State Telephone Regulation Report, June 18, 1987, at 6–7; *How States Have Relaxed Regulation of AT&T Intrastate Service, id.* at 7–10.

[42] *See* 2 A.E. Kahn, *The Economics of Regulation* ch. 6 (1971)

[43] This is called the Averch-Johnson effect, named after the two economists that first described the incentives rate-of-return regulation can create to inflate the rate base. *See* H. Averch and L. Johnson, *Behavior of the Firm under Regulatory Constraints,* 52 Amer. Econ. Rev. 1052 (1962).

[44] *See generally* In Re Hugoton-Anadarko Area Rate Case v. FPC, 466 F. 2d 974, 985 (9th Cir. 1972); H. Averch and L. Johnson, *supra* n. 43, 1064–65.

[45] J. Haring & E. Kwerel, Working Paper, *Competition Policy in the Post-Equal Access Market,* 2 FCC Rcd 1486, 1489 (1987).

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based upon an adequately developed administrative record, that adoption of the alternative would be in the public interest.

21. The Communications Act of 1934 unquestionably imposes upon us the affirmative obligation to "execute and enforce (its) provisions." [46] In particular it imposes upon us a duty to see that rates for interstate common carrier services are just and reasonable. To enable us to meet this responsibility, the Act has given us not only specific regulatory powers,[47] but also the broad powers of section 4(i).[48] While Title II of the Act vests this Commission with certain explicit powers that are essential if we are to perform cost-of-service regulation effectively, the Act does not mandate its use; nor does the legislative history of the Act indicate that Congress intended the Commission to use this particular form of regulation to assure just and reasonable rates.[49]

22. Courts have consistently found in the Act's statutory scheme a congressional intent to vest in this Commission broad discretion in selecting the tools upon which it will rely to regulate the telecommunications industry.[50] This broad discretion has explicitly been found to extend to the Commission's "selecti[on of] methods for the exercise of its powers to make and oversee rates."[51] We may make any reasonable selection from available alternatives.[52] As the courts have held for other federal agencies,[53] acceptable alternatives may include regulatory schemes that do not adhere rigidly to a cost-based determination of rates, much less one based on an individual service provider's own costs. The touchstone for determining whether rates are just and reasonable is whether those rates fall within a zone of reasonableness.[54] That zone is "bounded at [the lower] end by investor interest against confiscation and at [the upper] end by the consumer interest against exorbitant rates."[55] Thus a reasonable alternative to cost-of-service regulation must "result in a reasonable balance between consumer and investor interests".[56] Our discretion, while broad, is not, however, unbounded. Any method for regulating rates for the common carrier services of dominant carriers should include mechanisms either capable of driving the carrier's rates into the zone of reasonableness of able to detect and to correct for the failure of market forces to achieve this result.[57]

23. It has been over twenty years since we asked that fundamental question that caused us to reexamine how we regulate the rates of AT&T and the local exchange carriers: Is there a better way to discharge our obligations under the Communications Act? We pose that question again based upon our tentative conclusion that neither the Communications Act nor its legislative history erects any bar to our replacing cost-of-service regulation with a method of regulation through which we can better meet our obligation to protect customers of dominant carriers against unreasonable rates. We have presented the preliminary legal analysis that forms the basis for that tentative conclusion, as well as our tentative conclusions about the characteristics that an alternative to cost-of-service regulation must possess to be legally acceptable. We invite interested parties to comment on that analysis.

V. Regulation by Price Caps

A. The Price Cap Model

24. Based on our tentative conclusion that we are under no legal compulsion to continue using cost-of-service regulation for dominant carriers if a more effective or a comparably effective, but less costly, alternative exists, our goal in this proceeding is to determine whether we can achieve such regulatory reform. The model offering the greatest promise is one under which ceilings would be imposed on a carrier's service rates.[58] Those ceilings would be periodically adjusted to reflect easily observable changes in costs generally lying beyond the carrier's control. In particular, this approach would include a rate adjustment factor that would lower caps to reflect expected increases in industry-wide or nationwide productivity. Within these limits, a carrier would be permitted to adjust the rates for capped services with little or no prior regulatory intervention.

B. Experience with Price Cap Regulation

25. Recent regulatory reform in Great Britain has been based on the price cap model. Before 1984, British Telecom (BT) was a government-owned monopoly providing both domestic and international telecommunications services to British customers. The Telecommunications Act 1984

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[46] 47 U.S.C. 151.

[47] *See* n. 5, *supra.*

[48] 47 U.S.C. 154(i); *see* n.5, *supra.*

[49] In 1910 Congress enacted the Mann-Elkins Act which placed interstate telephone and telegraph services under the supervision of the Interstate Commerce Commission. *See* Commerce Court (Mann-Elkins) Act, Pub. L. No. 218, ch. 309, section 7, 36 Stat. 544 (1910) (amending the Interetate Commerce Act of 1887, ch. 104, section 1, 24 Stat. 379 (1887)) (provisions relating to telegraph, telephone, and cable companies repealed in 1934). The ICC never did attempt to impose rate-of-return regulation upon carriers providing interstate communications services. *See* Loeb, *The Communications Act Policy Toward Competition: A Failure to Communicate*, 1978 Duke L.J. 1, 17 (hereafter referred to as "Loeb"). *See generally* G. Brock, *The Telecommunications Industry: The Dynamics of Market Structure* 159–61 (1981). In 1934 President Roosevelt urged Congress to consolidate in a single independent agency the federal regulatory authority over telecommunications services at that time scattered among the ICC, the Federal Radio Commission and the Postmaster General. *See* Message to Congress, Feb. 26, 1934, *reprinted in* H.R. Rep. No. 1850, 73d Cong., 2d Sess. 1–2 (1934). The legislative history of the Communications Act of 1934 would suggest that this consolidation, rather than any great desire to change the way the telecommunications industry was regulated, was the primary impetus for the legislation's passage. *See* H.R. Rep. No. 1850, 73d Cong., 2d Sess. 3 (1934); Loeb, *supra*, at 26 n.128 and accompanying text.

[50] *See, e.g.*, Western Union Int'l v. FCC, 804 F.2d 1280, 1292 (D.C. Cir. 1986) "[t]he FCC's judgment about the best regulatory tools to employ in a particular situation is . . . entitled to considerable deference from the generalist judiciary."); Computer and Communications Indus. Ass'n v. FCC, 693 F.2d 198, 212 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983); Am Tel. and Tel Co. v. Co. v. FCC, 572 F.2d 17, 26 (2d Cir.), *cert. denied, 439 U.S. 875 (1978); Note, Recent Federal Actions Affecting Long Distance Telecommunications: A Survey of Issues Concerning the Microwave Specialized Common Carrier Industry*, 43 Geo. Wash. L. Rev. 878, 896 n.89 and cases cited therein (1975).

[51] Aeronautical Radio, Inc. v. FCC *supra* n. 27, 642 F.2d at 1228.

[52] MCI Telecommunications Corp. v. FCC, 675 F.2d 408, 413 (D.C. Cir. 1982).

[53] *See* FERC v. Pennzoil Producing Co., 439 U.S. 508, 517 (1979); Permian Basin Area Rate Cases, 390 U.S. 747, 769, 797–98, 800–805 (1968); Wisconsin v. FPC, 373 U.S. 294, 309 (1963); FPC v. Natural Gas Pipeline Co., 315 U.S. 575, 585–86 (1942).

[54] FERC v. Pennzoil Producing Co., 439 U.S. at 519.

[55] Jersey Cent. Power and Light Co. v. FERC, 768 F.2d. 1500, 1503 (D.C. Cir. 1985), *aff'd on rehearing*, 810 F. 2d 1168 (D.C. Cir. 1987) (en banc) (*quoting* Washington Gas Light Co. v. Baker, 188 F.2d 11, 15 (D.C. Cir. 1950) *cert. denied*, 340 U.S. 982 (1951)).

[56] *Id.* at 1504.

[57] Farmers Union Cent. Exch., Inc. v. FERC, 734 F.2d 1486, 1509 (D.C. Cir.), *cert. denied sub nom.* Williams Pipe Line Co. v. Farmers Union Cent. Exch., Inc. 469 U.S. 1034 (1984). In this case, the court was reviewing the decision of the Federal Energy Regulatory Commission to adopt a methodology for setting ceilings on profits of oil pipeline operators that permitted a range of allowable prices that would have been excessively high "unless competition in the oil pipeline market dr[ove] the actual prices back down [to reasonable levels]." *Id. at* 1509. Because it found that "nothing in [FERC's] regulatory scheme itself act[ed] as a monitor to see if this [would] occur[] or to check rates if it [did] not," the court held the methodology fatally flawed and inconsistent with the agency's statutory mandate to assure just and reasonable rates. *Id.*

[58] Recent papers by Haring and Kwerel and by Baumol and Willig discuss two variations on the price cap approach to regulating rates. *See* J. Haring & E. Kweral, *Supra* n. 45. W.J. Baumol & R.D. Willig, Paper, "Toward Rational Deregulation in Telecommunications", attached to Letter to William J. Tricarico, Secretary, FCC, from S.B. Levenson, AT&T Communications Inc. re: Decreased Regulation of Certain Basic Telecommunications Services, CC Docket No. 86–421 (Apr. 16, 1987). These variations differ from the price cap approach we propose here to the extent that they would rely on marketplace forces, rather than price caps, to regulate directly the rates of competitive common carrier services.

simultaneously abolished BT's exclusive franchise over telecommunications services and mandated its privatization through the sale to the public of 51 percent of its stock. The Act authorized the licensing of BT and (until 1990) only one competitor, Mercury, to provide basic voice telephony.[59] It also established a new regulatory agency, the Office of Telecommunications (OFTEL), headed by a Director General of Telecommunications (DGT) and created to issue the authorized licenses, to enforce their terms, and, if necessary, to modify them.

26. Prior to the enactment of the 1984 legislation, the question of whether and how to regulate the privatized BT's profits received extensive debate. Government officials, economists and consultants examined and proposed several alternatives for exercising control over BT's market power. These alternatives included variations on the traditional rate-of-return model, a profit ceiling scheme and the novel "output-related profits levy" approach.[60] The *Littlechild Report*, which was commissioned by the British Department of Industry, analyzed each of these alternatives in terms of its ability: (1) To protect against exercise of monopoly power; (2) to promote efficiency and innovation; (3) to minimize the burden of regulation; (4) to promote competition; and (5) to maximize the anticipated proceeds from the initial sale of BT stock and the prospects for successful operation of the privatized BT. The *Littlechild Report* found each of these regulatory approaches to be substantially ineffective with respect to one or more of these criteria. The report then presented the price cap approach, or "local tariff reduction scheme," [61] which it found to be far better able than any of the other regulatory schemes under consideration to meet the five stated objectives.

27. The British price cap approach required the identification of those services over which BT exercised monopoly power.[62] The *Littlechild Report* identified "rentals, local calls and other services of particular concern (e.g., call boxes)" as meeting this requirement. Under the price cap approach presented in the *Littlechild Report*, these services as a group would be made subject to the constraint that the weighted [63] average of their prices should not increase by a factor of more than the rate of inflation, as measured by the Retail Price Index, or RPI, less some fixed percentage that was to be negotiated by BT and the regulators.[64] Tying the average rate for these services to the RPI assured that the average cost of service to consumers would not increase in real terms; the reduction differential would result in actual cost savings to customers and would give the carrier an incentive to increase its productivity. Rates for services not included in the basket would not be subject to explicit price constraints. The *Littlechild Report* proposed that the formula, as well as the basket of services to which it would apply, be subject to review by Her Majesty's Monopoly and Mergers Commission at the end of a five year period. At that point, either the formula or the basket of services to which it applied could be revised or even eliminated, depending on the extent and strength of competition. The *Report* also called for license provisions prohibiting unreasonable discriminations or preferences among classes of customers as well as tariffing requirements similar to those found in sections 203(a) and 203(c) of the Communications Act.[65]

28. The Telecommunications Act 1984 ultimately enacted by Parliament adopted the price cap proposal model presented in the *Littlechild Report*. The set of services to which it applied, however, encompasses not only the rentals of business and residential exchange lines mentioned explicitly in the *Littlechild Report*, but also direct dialed inland services, which include both local and domestic toll direct dial calling. Rates for connection charges, international calls, operator services, pay phones and private line services are not subject to the cap. The price cap rule finally adopted is easily stated: The average annual price increase for rental of business and residential exchange lines and for direct dialed inland telephone calls (except those made from public pay phones) must be limited to 3 percentage points below the rate of inflation, as measured by the Retail Price Index, or RPI–3.[66] This constraint does not apply separately to each of the services within this basket of services, but rather to the group. Thus the rule gives BT the flexibility to raise rates for an individual service within the basket of services subject to this pricing constraint as long as the average price of all services in the basket does not exceed RPI–3. It also permits BT to restructure rates for services within the basket, as long as the resulting rates also comply with the price constraint.[67] BT's license also contains a provision prohibiting undue preferences or discrimination against particular persons or groups of persons; another provision requires that BT publish its rates for services covered by the pricing constraint on 28 days' notice and, for each of those services, charge only the published rate.

29. At the present time, the British approach focuses on price levels and imposes no additional constraint on BT's profits. The reasoning behind the decision to impose no explicit constraint on the profits that BT could realize was that, because the price cap already protects those services for whch

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[59] *See* I.M. Stelzer, *Regulating Telecommunications in Britain: A New Alternative to the U.S. Approach*, Telematics, Vol. 3, No. 9 at 7 (Sept. 1986).

[60] For descriptions of these alternatives, *see* S.C. Littlechild, *Regulation of British Telecommunications Profitability: A Report to the Secretary of State for Trade and Industry (Littlechild Report)*, submitted Feb. 1983.

[61] *Id.* at 37.

[62] *Id.*

[63] The weighting factors proposed and subsequently adopted were the "revenues that BT reasonably believes to have been received from each relevant class of [service]." *Review of British Telecom's Tariff Changes, November 1986 (OFTEL Report)*, "Report" section, at para. 12.

[64] *Littlechild Report*, *supra* n.60 at 38.

[65] 47 U.S.C. 203(a), 203(c).

[66] *OFTEL Report*, *supra* n.63, at para. 12. The average price increase authorized under this formula in a given year is computed using historical data. If the RPI fell below three percent, so that RPI–3 would be less than zero, BT would have to lower rates for services within the basket. BT would have one year in which to adjust prices downward as long as no increases in individual service rates occur in this period. In addition, if BT did not take full advantage of the price increases authorized for a given year, it could also carry the unused "credit" forward a period of two years during which it might use the credit to justify additional rate increases.

[67] While the regulatory constraints imposed by the terms of its license clearly leave BT with substantial discretion with respect to both rate structure and rate levels for individual services, BT has committed itself independent of the licensing process to refrain from raising rates for an individual service within the basket by more than 2 percentage points above the RPI, *i.e.*, RPI + 2. When competition from Mercury caused BT to threaten to abandon its voluntary RPI + 2 constraint, the DGT concluded that even in the absence of specific authority, he had a duty to see that rate rebalancing "is not carried beyond the point that is justified on economic grounds." I.M. Stelzer, *supra* n.59, at 9–10 & n.7 (quoting *Report of the Director General of Telecommunications* for the period Jan. 1 to Dec. 31, 1985 to the Secretary of State for Trade and Industry presented to Parliament in pursuance of Section 55 of the Telecommunications Act 1984. London: Her Majesty's Stationery Office, June 25, 1986, p. 10). In September 1986, BT announced major changes to the prices for services subject to the pricing constraints. It proposed to change not only the price levels but also the units of service to which they applied. The DGT subsequently reviewed the proposal to determine whether the rates as restructured still satisfied both the RPI–3 constraint for the designated services overall and the RPI + 2 constraint for each of those services individually. *See OFTEL Report*, *supra* n.63, "Report" Section, at paras. 13–17, 98–112. Since he found the restructured rates satisfied both constraints, he did not indicate how he would propose to fulfill his responsibility to see that rate rebalancing did not lead to unreasonable results.

competition is thought to be inadequate, profit ceilings would offer no additional benefit.[68] The use of profit ceilings would, however, impose the additional burdens associated with allocating joint costs and calculating rates of return.[69] There was also concern that, set too low, the ceilings could restore all the disincentives to efficiency that traditional rate-of-return regulation is thought to introduce.[70] As the DGT has observed, however, "the distinction between price control regulation and rate of return regulation is not and cannot be clear-cut." [71] Noting that any assessment of how effectively a price control approach is working must take into account the reasonableness of the return the carrier is actually earning and the extent to which those earnings are attributable to gains in efficiency,[72] the DGT recently completed an examination of BT's earnings following regulatory reform. Finding that BT was not earning an excessive rate of return, the DGT concluded that the current price constraints were meeting regulatory objectives and that there was therefore no basis for changing the price control formula.[73]

30. In the United States there has been testing of variation on the price cap model. In its Docket No. 85–17, the New York Public Service Commission separated New York Telephone Company's (NYT's) "discretionary" services and new revenue sources from the remainder of its services.[74] It imposed a moratorium on general rate cases until late 1988 that had the effect of capping rates for services in the last category.[75] The carrier was permitted to pass through to customers only pre-specified cost increases, including the effects of wage contract negotiations, certain tax changes, separations changes and depreciation rate changes, subject to certain set-offs. The amount of the overall adjustment to rates to reflect changes in these factors, as well as the share of this amount that would be recovered through increased rates for both capped and non-capped services, would be determined by Public Service Commission order.[76] The rate moratorium did not extend to discretionary services or new services. Discretionary services include: custom calling services; remote call forwarding; optional calling plans; TOUCH-TONE Calling; INTELLIPATH Service; Centrex lines and optional features designated as non-stabilized.[77] The PSC found that NYT has a "virtual monopoly on most if not all of the services it listed as 'discretionary,' and w[ould] retain this market dominance during the moratorium." [78] Thus, while the British price cap approach sought to include those services over which BT enjoyed monopoly power in the basket of protected services, the New York approach did not. Under the New York plan, the Public Service Commission did state, however, that it would permit rate increases for discretionary services only if they involve innovative marketing/pricing concepts or cost-based rate restructurings.[79]

31. Recently the Public Service Commission extended the rate case moratorium until 1991. The terms of the order extending the moratorium permit NYT to file rate adjustments in August 1988 and August 1989, after hearing, to reflect increases to its intrastate revenue requirement, not to exceed $100 million, attributable to changes in employee compensation contracts, New York City ad valorem taxes and separations changes. There would, however, be no adjustment for inflation. The proposed August 1988 adjustments must also reflect a further offset of a "200 basis point reduction in the yield component of the equity return allowance [from 14% to 12%]." [80] The moratorium extension order authorized NYT to retain one-half of any earnings it makes during this period that exceed its authorized return of 14% on the equity portion of its intrastate rate base.[81]

32. In explaining its decision to prolong the rate moratorium, the Public Service Commission listed the benefit it provided. First, ratepayers would enjoy stable rates that would most likely be lower than those following a general rate case. Second, by limiting the costs that NYT could flow through to ratepayers to certain known and unavoidable costs, this approach tied NYT's finnacial success to the efficiency of its operations.[82] Third, the moratorium freed both the company and the Public Service Commission's staff from the burden of the constant cycle of rate cases, permitting the former to devote its energies to improving service and efficiency and the latter to pursue "more creative aspects of regulation." [83] These benefits, which the British plan would also appear to offer, are clearly consistent with our federal mandate. We seek comments on whether either the British, the New York or other regualtory approaches adopted by various states or advocated by other policymakers [84] could be adapted to federal use in such a way that it would produce a more efficient and effective method of regulating rates for interstate services provided by dominant carriers.

C. Advantages and Disadvantages of the Price Cap Model

33. The price cap model promises many benefits to consumers. Because it would permit the carrier to retain at least some of the profits arising from increased efficiency or creativity, this method of regulating would encourage greater efficiency and innovation than exists now, especially in less competitive markets. This approach would substantially decrease incentives to shift costs from more to less competitive service offerings. The rules governing the periodic revision of the caps could reduce, if not eliminate, any perverse incentives to inflate rate bases. Carriers would no longer be able to exploit factors within their control to increase their earnings at ratepayers' expense. Price caps might also offer ratepayers greater protection against sudden steep rate increases than cost-of-service regulation can provide. This model could also prove to be simpler to administer than our current cost-of-

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[68] *Littlechild Report, supra* n.60, at 38.

[69] *Id.*

[70] *Id.*

[71] *OFTEL Report, supra* n.63, "Report" section, at para. 25.

[72] *Id.*, "Report" section, at paras. 22–31.

[73] *Id.*, "Report" section, at para. 65.

[74] New York Tel. Co., Case 28691, Opinion No. 85–17 (N.Y.P.S.C. Oct. 11, 1985); *on reh.*, Opinion No. 85–17(A), 74 PUR 4th 590 (N.Y.P.S.C. 1986); Opinion No. 85–17(B), 77 PUR 4th 119 (N.Y.P.S.C. 1986) (Opinion and Order granting second-stage adjustments to rate caps and specifying how they should be reflected in revised tariffs); Opinion No. 85–17(C) (N.Y.P.S.C. Jan. 5, 1987); Opinion 85–17(D) (N.Y.P.S.C. May 11, 1987) (Opinion and Order extending rate case moratorium).

[75] *See* New York Tel. Co., Case No. 28961, Opinion No. 85–17(A), *supra* n.74, 74 PUR 4th at 595. Thus rates for basic local services will not rise during the moratorium.

[76] *See, e.g.*, New York Tel. Co. Opinion 85–17(B), *supra* n.74, 74 PUR 4th 119.

[77] New York Telephone Co., Case No. 28961, Opinion No. 85–17 (D), *supra* n.74, at 29.

[78] *Id.* at 42.

[79] *Id.*

[80] Appendix to New York Tel. Co., Opinion 85–17(D), *supra* n.74, at 2.

[81] *Id.* at 3.

[82] Here too the New York and the British approaches deviate. The British price cap formula called for adjustments based solely on factors beyond the carrier's control, albeit loosely tied to its costs of operation. The criteria used by New York in selecting the adjustment factors for its price cap approach were that the factors be either externally imposed or readily verifiable and be of the sort allowable in a general rate proceeding. New York explicitly excluded costs attributable to general inflation, however. New York Tel. Co., Opinion 85–17(A), *supra* n.74, 74 PUR 4th at 594.

[83] New York Tel. Co., Opinion 85–17(D), *supra* n.74, at 34.

[84] See discussion *supra* at para. 16 and n.41; *NTIA Regulatory Alternatives Report*, National Telecommunications and Information Administration, U.S. Department of Commerce (July 1987).

service approach. The price cap model could also reduce the resources competitors feel compelled to commit to participation in the administrative process. This would permit them to bring to competition in the marketplace resources they now have diverted to competition in judicial, regulatory, and political arenas.

34. In its purest form, the price cap model does have some potential weaknesses. Its primary focus is on rate levels, not profits. It protects ratepayers through controlling the level of rates, not the level of carrier profits. As noted earlier,[85] the Communications Act requires that rates for telecommunications services not be unjust or unreasonable or unreasonably discriminatory.[86] The provisions of the Communications Act are also to be read in light of the statement of purpose found in Section 1 of the Act.[87] Even with fixed or declining rates a carrier conceivably could earn profits so excessive that they fell beyond the "zone of reasonableness." Under the model described above, this could occur, for example, if the carrier's costs of production fell substantially more sharply than industry-wide or nationwide productivity factors used to adjust its price ceilings.[88] At the other extreme, the price cap model described above may need modification to comply with the constitutional prohibition against confiscatory rates.[89] We also seek comment on whether the price cap model might adversely affect service quality or technological innovation resulting in a feature-rich network, especially for small business and residential users. We tentatively conclude, however, that these possible flaws could be addressed without fatally undermining the advantages that a price cap approach appears to possess.[90]

35. We tentatively find that the advantages of the price cap model appear to outweigh its disadvantages. We seek comment on the validity of this tentative finding and welcome commenting parties' assessment of: (1) The likelihood that enhanced carrier efficiency or innovation will result from the possibility of the carrier's retaining, in whole or in part, incremental revenues resulting from these factors; and (2) the likelihood that projected increases in carrier innovation and/or efficiency that may result from the possibility of higher earnings would lead to lower prices for the tariffed services from which those earnings would be derived.

36. Based on our tentative finding, we turn our attention in the next section to developing a set of rules and procedures based on the price cap model that would incorporate its advantages and mitigate its disadvantages. In particular we seek to define a set of rules to discharge our respective constitutions [91] and statutory obligations.

37. In subsequent paragraphs we discuss the questions that need to be addressed before the price cap model can be transformed into a legal, workable and potentially more efficient method of regulation than the one under which we now operate. We present several, but certainly not all, possible answers to these questions and explore some of the apparent strengths and weaknesses of the options we discuss. We seek comment on which combinations, if any, of these possible answers would lead to a methodology that would be better able to protect ratepayers than cost-of-service regulation. We are also prepared to examine other regulatory approaches that could be shown to meet these two objectives. We anticipate that we will need to compare our present cost-of-service approach with such alternatives to determine which would best serve the public interest.[92] To the extent that commenters can quantify the relative costs and benefits of alternative forms of regulation for the Commission, the regulated carrier, and the public, such data would aid our deliberations.

D. Finding an Acceptable Alternative

38. To establish a method of regulating rates based upon the price cap model requires a set of rules and procedures that would answer the following three major questions (as well as a myriad of related minor questions): 1. How do we set price limits and measure when a carrier's service rates comply with those limits; 2. how do we identify those factors changes in which would warrant adjusting price limits; 3. how (and when) would we adjust price limits to reflect changes in those factors. This method of regulating rates should retain the principal advantages of the price cap model: ratepayer protection, promotion of service efficiency and technological innovation; reduction, if not elimination, of incentives to cross-subsidize, and administrative simplicity. We seek to develop in this proceeding a price cap approach that strikes an optimal balance among these potentially conflicting goals.

39. We now discuss alternative ways we might answer the three questions set forth above. We identify potential advantages and disadvantages associated with each. We invite comments on those advantages and disadvantages we describe as well as on others we may have overlooked. We also invite comments discussing other ways of answering the three questions, and request that parties presenting such alternatives include an assessment of their relative advantages and disadvantages, defined in terms of the goals identified above.

1. General Regulatory Requirements

40. There are several ways that we might answer the three questions posed above and still achieve a reasonable alternative to cost-of-service regulation. There are, however, some features that we would anticipate that all of these alternatives would share. We tentatively conclude that any reasonable alternative would continue to require dominant carriers to file tariffs for their common carrier services. We find as a policy matter that, particularly as we initiate such significant regulatory reform as contemplated here, these filings would provide us with information essential to our ability to assess the impact of that reform on ratepayers and fulfill our statutory responsibility to assure that rates are just, reasonable and not discriminatory. As discussed further below, we would anticipate applying the streamlined review process and standards developed in our *Competitive Carrier Docket* to tariff filings of dominant carriers proposing to set rates below the cap levels established for those services.[93] Revisions that would result

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[85] *See* para. 4, n.5 *supra*.

[86] *See* 47 U.S.C. 201–202.

[87] 2A Sutherland Stat. Const. Sections 45.09, 47.01–47.02, 47.04 (4th ed.); *see* 47 U.S.C. 151.

[88] *See* paras. 62 and 71 and n.126, *infra*. We would propose that any price cap plan we might adopt would include procedures, both routine and extraordinary, to correct for unreasonably high levels of earnings.

[89] *See* para. 43, n.99 *infra*.

[90] *See* discussion in para. 22 and n.57, *supra*.

[91] *See* discussion in n.99 *infra*.

[92] *See* para. 32, *supra*.

[93] Under the streamlining rules established in our *Competitive Carrier Docket*, n. 9 *supra*, the tariffs filed by nondominant carriers are presumed to be lawful. Further, the tariffs of non-dominant carriers may take effect on only 14 days notice, and they need not be accompanied by the economic support data generally required by § 61.38 of our rules. The streamlining rules we established for purposes of *Competitive Carrier* go beyond the tariff filing and review process. They also provide non-dominant carriers greater flexibility under Section 214 of the Communications Act to install or lease additional circuits without prior Commission approval, and provide for automatic grant of their applications to discontinue service after 30 days notice. *See First Report*, *supra* n.10.

in rates above the cap would, however, continue to receive full scrutiny. Thus, the dominant carrier's own practice, *i.e.*, choosing to file a rate below the cap established by the Commission for that service or above that level, would be the trigger for application of either streamlined or full rate regulation.[94] We would also propose to continue to prohibit tariff restrictions that would limit resale or shared use. The ban on such practices offers significant protection against the sort of unreasonable discriminations and classifications prohibited by section 202(a) of the Act.

41. Under the streamlined tariff procedures we are here contemplating, dominant carriers' filings for capped services which propose rates below the applicable cap would be subject to reduced tariff filing requirements, and a presumption of lawfulness would attach to those filings. Consistent with *Competitive Carrier*, the effect of this presumption for purposes of these tariff filings would be to require a substantial showing from the party seeking suspension of a tariff proposing a below cap rate that such suspension is warranted.[95] This presumption, which operates for purposes of the commission's initial consideration of a tariff revision, does not, however, amount to an affirmative finding that the rates, once permitted to go into effect, are lawful. Indeed, as with all carrier-initiated filings, once effective, these "streamlined" rates would remain subject to investigation by the Commission on its own initiative, upon petition under section 204 of the Act, or pursuant to a section 208 complaint by any person challenging their lawfulness at any time, once they become effective.[96] Furthermore, if such hearings into their lawfulness were to be instituted under either section 204 or 208, no presumption of lawfulness would attach, and the burden of proof in a Section 204 proceeding would remain on the carrier to show that the charge is just and reasonable. We propose here no changes to the way we conduct tariff investigations or the section 208 complaint process.

42. We tentatively conclude that, as in *Competitive Carrier*, the streamlining we propose represents a reasonable exercise of the Commission's broad discretion to decide when and whether to suspend a tariff filing.[97] The price caps coupled with the additional requirements described above would provide reasonable assurance that tariffs satisfying these constraints would not be unjust, unreasonable or unreasonably discriminatory. Furthermore, while this streamlining approach would eliminate those tariff burdens and filing requirements which are not necessary to protect the public interest in just and reasonable rates, *i.e.*, where the filed rates are below cap, it would nonetheless ensure that customers have a meaningful opportunity to challenge a particular filed rate and establish that it is unjust, discriminatory or otherwise unreasonable.[98] While we tentatively conclude that the standards established in *Competitive Carrier* for the streamlining of tariff filings will achieve this balance, we request comments on the extent to which adjustments, if any, will need to be made to those standards and procedures or to those of our complaint process to accommodate the particular regulatory approach here being proposed. In particular we seek comment on the need to adjust standards of review for a filing that would propose to modify a rate structure substantially or that would adversely affect a particular group of users.

43. One of the fundamental premises of a price cap approach is that during the periods in which a given price cap is in effect, consumers have a legitimate expectation that they will not be paying rates in excess of those caps. A proposal to raise rates above the capped levels, even if justifiable on constitutional grounds,[99] would threaten that reasonable expectation and thus would seem to warrant thorough regulatory scrutiny. We invite comment on what the procedures, tariff filing requirements and standard for review should be in such circumstances. We ask in particular whether we should have a policy of suspending and investigating any proposal to revise a tariff that would violate the preset pricing constraints for that service, and if so, what sort of showing should we require of the carrier to warrant a conclusion that the proposed revisions should become effective. We seek comment on whether the substantial cause standard applied in *RCA Americom Communications, Inc.*,[100] would be an

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[94] We discuss in paragraphs 48–51 *infra*, whether under a price cap approach to regulating rates, it would still be necessary to place a floor on rate decreases eligible for streamlined review.

[95] *First report supra* n.10 at 37. *See also* 47 CFR 1.773(a)(1)(ii) which provides that a petitioner seeking suspension of a tariff filed by a non-dominant carrier must demonstrate that: (a) there is a high probability the tariff would be found unlawful after investigation; (b) the harm alleged to competition would be more substantial than the injury to the public arising from the unavailability of the service pursuant to the rates and conditions proposed in the tariff filing; (c) irreparable injury will result in the tariff filing is not suspended; and (d) the suspension would not otherwise be contrary to the public interest.

[96] Thus, the presumption of lawfulness, which is an incident of the streamlined regulation we are proposing here, operates in effect as a rebuttable presumption against suspension. Our proposal here, therefore, would establish esentially the same kind of regulatory approach as was affirmed by the Court of Appeals in Advanced Micro Devices v. CAB, 742 F. 2d 1520 (D.C. Cir. 1984). In that case, the court upheld a decision by the CAB to establish a "no-suspension zone" for international cargo rate filings. Under CAB rules, cargo rates falling within such a zone would not be suspended, except in extraordinary circumstances. CAB rules also placed the burden on opponents of the rate changes to show reasonable grounds for investigating, or extraordinary circumstances for suspending a new rate within the zone. The court found these CAB rules to be reasonable and not contrary to the CAB's statutory obligation to ensure just, reasonable and non-discriminatory cargo rates.

[97] *See First Report supra* n.10 at 38.

[98] *See* Advanced Micro Devices v. CAB, where the court rejected arguments that the CAB's no-suspension zone policy, coupled with its elimination of the requirement for economic data to justify rate filings within the established zone, precluded shippers from a meaningful opportunity to challenge the reasonableness of those rates. While recognizing that opposing shippers would likely have limited access to cost data, the court found no reason to believe that the CAB would not properly respond to reasonable showings by the shippers that an investigation was warranted. 742 F. 2d at 1534.

[99] Our preliminary examination of the relevant law leads us to the tentative conclusion that if a carrier could demonstrate that rules or practices establishing rate ceilings for some or all of its services were confiscatory in their effect, the carrier would be entitled to adjust at least some of those rates above the levels defined by those rules or practices. *See* Fed. Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944); Jersey Cent. Power and Light Co. v. FERC, *supra* n.55, 810 F. 2d at 1178; *but cf.* Connolly v. Pension Benefit Guaranty Corp., 89 L. Ed 2d 166, 179–80 (1986) (identification of three factors with "particular significance" in taking cases: (1) "the economic impact of the regulation on the claimant"; (2) "the extent to which the regulation has interfered with distinct investment backed expectations"; and (3) "the character of the governmental action") (citing Penn Central Transportation Co. v. New York, 438 U.S. 104, 178 (1978)).

[100] 86 FCC 2d 1197, 1201–02 (1981), *remanded sub nom. RCA American Communications, Inc. v. FCC*, Case Nos. 81–1558, et. al. (judgment entered July 21, 1982), *clarified on remand*, 94 FCC 2d 1338 (1983). In that proceeding we were investigating the reasonableness of a proposed revision to RCA Americom's tariff for fixed term transponder service. A preliminary issue we had to resolve was the appropriate standard for deciding the reasonableness of revisions to material provisions of the tariff midway through the fixed term of service. We found that because service subscribers had a legitimate expectation of stability in the material terms and conditions of service, the reasonableness of a proposal to change any of those terms "must hinge to a great extent on the carrier's explanation of the factors necessitating the desired changes at [the] particular time." *Id.* at 1201 (footnote omitted). We concluded that if a carrier could make a showing that substantial cause existed for departure from the original tariff terms, its decision to alter tariff terms could be considered reasonable. *Id.* at 1201–02.

appropriate standard for judging the reasonableness of such tariff revisions. We would propose to retain our current policy governing geographically averaged toll rates.[101] We would not permit geographical deaveraging of service rates prior to the completion of a comprehensive inquiry by this Commission into the relationship among geographic deaveraging, universal service and competitive pressures on dominant carriers.[102] We seek comment on the legal and policy justifications for these modifications to the price cap model.

2. Setting Price Limits

44. In this section of the *Notice*, we discuss different ways of defining what we mean by capping rates. We also discuss how we might set caps for existing and new services. Finally we discuss whether a price cap plan would need additional safeguards to protect against a dominant carrier underpricing some of its services. We seek comment on all the issues raised in the following paragraphs.

(A). The meaning of price caps. 45. Under a price cap approach, there is a presumption that as long as a carrier's adjusting rate levels for a capped service does not result in rates exceeding the preset cap, the new rates are not unlawful. For this reason, how we interpret the concept of price cap could have significant consequences both for ratepayers and carriers. Different ways of interpreting what is meant by a price cap could offer ratepayers different degrees of protection against rate increases and give carriers different degrees of protection against rate increases and give carriers different degrees of flexibility to change rate levels or even rate structures for capped services. We now present some different kinds of price caps and discuss the advantages and disadvantages associated with them.

46. At one extreme, the cap requirement could be interpreted to impose a ceiling on the average rates of capped services overall. This interpretation of the cap concept, which is the one the British plan adopts,[103] would give the carriers broad discretion to adjust its rate levels and structures for such services. All rate adjustments to capped services that were revenue neutral would be eligible for streamlined tariff review. In particular, tariff provisions that altered the rate structure for a capped service but were revenue neutral would be presumed lawful for tariff review purposes and eligible for streamlined treatment. At the other extreme, the cap requirement could mean a ceiling on the rate associated with each rate element of a service. Under this approach, if a tariff filing for a service proposed to leave the rate structure for that service unchanged and also either to lower or to leave unchanged the charge for each of its rate elements, it would be eligible for streamlined regulation. How proposals to change rate structures would be treated would still need to be resolved.[104]

47. In between the two extremes are a myriad of possibilities for defining the concept of price caps. For example, we might impose individual rate caps for certain services while grouping other services together and subjecting them only to a limit on how much their rates could on average increase, an approach similar to the British "RPI–3" constraint.[105] For some groups of services, we might supplement such a group rate constraint with one that limited the amount by which any individual service's rates could rise, a price constraint similar to the British "RPI+2" limitation.[106] Clearly the issue here is which interpretation of price cap strikes the best balance between our primary objective of protecting ratepayers against unreasonable charges for services and our giving carriers both the flexibility to introduce new, innovative services quickly and to provide the most efficient mix of services their networks permit and the incentive to do so. The optimal balance may, moreover, vary among services or groups of services. For example, because residential and small business customers have fewer alternatives than do large business customers, price caps for services upon which the former group depends should emphasize rate protection over carrier flexibility. For services upon which large users depend and which are subject to competition, a price cap allowing the carrier more flexibility to respond quickly to the specific needs of those customers may be a better choice. Commenters should identify the definition of price cap they would recommend be applied to the specific services or groups of services and discuss the factors that cause them to propose this formulation instead of others.

(B). Setting price floors. 48. Traditionally we have been concerned with protecting ratepayers from rates that were too high or unreasonably discriminatory. With the growth of competition, however, we have recognized that we must also consider whether rates are too low.[107] Under any regulatory reform we would adopt, both our section 208 complaint process and the antitrust law would provide forums for airing claims that rates for a particular service were predatorily priced. These are after-the-fact remedies for anticompetitive conduct, however. The price cap model has the potential to reduce, if not eliminate, the carrier's incentive to engage in predation. For predatory pricing to be profitable the predator must be able to raise its prices once it has driven its competitors from the market. Only in this way will it be able to recoup the losses it incurred during the period of below-cost pricing. Effective price ceilings, however, would reduce, if not eliminate, a carrier's ability to raise its rates to reap the benefits of predation.

49. Price cap regulation could also limit a carrier's ability to engage in predation. Under such regulation, a carrier should be unable to offset revenue shortfalls from one service with excess earnings from another service. How effective the protection offered by safeguards intrinsic to a price cap approach would be would depend, however, upon the way we defined price caps. A price cap defined in terms of a ceiling on the average rate of a group of services might, in theory, permit a carrier to price one service at predatory levels and to recoup the shortfall from other services for which it has market power. Price caps, even set on a rate element by rate element basis, could create an opportunity for predation if they were set too high. We seek a regulatory approach based on the price cap model that could avoid these flaws.

50. We have tentatively concluded that an acceptable price cap approach would retain our bar against resale restrictions.[108] Such a bar offers

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[101] *See* MTS and WATS Market Structure, CC Docket No. 78–72, Phase I, *Reconsideration Order*, *supra* n.39, 97 FCC 2d at 740; MTS and WATS Market Structure, CC Docket No. 78–72, Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 FCC 2d 179, 188–95 (1980).

[102] *Reconsideration Order*, *supra* n.39, 97 FCC 2d at 740.

[103] *See* description of the British plan *supra*, at paras. 28–29.

[104] We discuss the issues raised under these circumstances in para. 54, *infra*.

[105] *See* para. 28 *supra*.

[106] *See* n.67, *supra*.

[107] *See* Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans, CC Docket No. 84–1235, Memorandum Opinion and Order, *supra* n.28, 50 FR at 42,946.

[108] *See* para. 40, *supra*.

additional protection against predatory rates. Another safeguard that would complement a price cap approach to regulating rates would be imposition of a minimum duration requirement on any proposal that would reduce rates. In our *OCP Guidelines* proceeding, some commenting parties suggested that a combination of price caps and a duration requirement might offer an effective check on predatory pricing.[109] A third alternative would be to establish price floors for certain services. The economic literature presents several potential standards we might use in setting such floors. These include long run incremental cost, marginal cost and average variable costs.[110] Our MTS optional calling plan guidelines rely on a fourth standard, the net revenue test, to assure that rates are not too low. Any of these standards is likely to be costly and time-consuming to apply. It might also be possible to define a floor in terms of a fixed percentage of the price cap, so that a carrier could vary rates for a service under streamlined regulation as long as the rates were not greater than the cap nor below some fixed fraction of the cap. To the extent that price caps already provide some protection against predation by reducing both a carrier's ability and its incentive to engage in predation, this more mechanistic approach to setting floors might be an adequate auxiliary safeguard.

51. We seek comment on the degree to which predation remains a threat and how we could best prevent predation under a price cap approach to regulating rates. Those concluding that additional safeguards are necessary to achieve this result should identify the least intrusive requirements that they believe could meet this goal. We recognize that the additional safeguards commenters may propose are likely to depend upon how price caps would be defined and applied. For this reason, we ask parties commenting on the need for additional safeguards against predation to identify any assumptions they have made about how caps would be defined or applied. Those supporting the use of a duration requirement should identify those services or groups of services to which they would apply it, as well as indicating the time constraint they would impose on a carrier's ability to raise those rates without being subject to comprehensive regulatory review.[111] We also invite comment on the need for floors for some or all services, as well as which method of setting those floors would best balance our interests in preventing predation, in bringing to the public services at the lowest reasonable rates, and in reducing the time and cost associated with achieving the first two objectives.

(C). Introducing regulation by price caps. 52. (1) *Services subject to price caps.* Preliminary to introducing a comprehensive regulatory regime based on price caps, we must determine to which services a price cap would apply. We recognize that it might be possible to rely on market forces to reduce the set of services to which we would apply price cap regulation. This is a possibility that we will explore briefly in this Notice, with the expectation that it will receive closer scrutiny in a subsequent proceeding.[112] It is our tentative conclusion, however, that if a price cap approach to regulating rates for dominant carriers' interstate services is introduced, all services offered by such carriers should initially by subject to a price cap constraint, however that is defined.[113] In particular, we would propose that a cap constraint be applied to all services with effective tariffs on the date that any price cap approach to regulation would be introduced. While this might be a more conservative approach to regulatory reform than necessary to fulfill our statutory obligations, we tentatively find that this approach would offer ratepayers the most complete protection against a dominant carrier's overpricing its services. Its administrative simplicity would also facilitate prompt introduction of a regulatory reform that we have tentatively found to be in the public interest, thus bringing to the public as quickly as possible the benefits of this reform.

53. We would also need to determine whether we should cap rates for services introduced after regulatory reform became effective. We tentatively conclude that these services too should be capped. Capping new services would extend the protection against unreasonably high rates to subscribers of those services. A decision to cap services would, however, require that there be some predetermined procedures and mechanisms for setting caps, which could prove to be a substantially more difficult task than setting caps for existing services.[114] We seek comment on our tentative conclusion that new services should be capped and on the procedures to be used to determine such caps. We also seek comment on whether we could, consistent with our obligations under the Communications Act, apply streamlined regulation to such services if we decided not to impose a price cap constraint on them.

54. Finally, we might need to decide how to treat a dominant carrier's proposal to restructure the rates of a previously capped service. Depending upon how the price cap constraint governing the original service had been defined, it could become necessary not only to determine the price cap constraint that should govern the restructured service, but also whether the rates proposed by the carrier met their constraint. Whether we had, for example, decided to impose price limits on each rate element of that service, or instead had defined the concept of price limits to give the carrier more flexibility to adjust rates without triggering rigorous scrutiny would determine how difficult these tasks would be, as well as how we would attempt to execute them. Aside from the practical problems posed by a decision to cap the restructured service, permitting the restructered

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[109] *See* Comments of MCI Telecommunications Corporation filed in Guidelines for Dominant carriers' MTS Rates and Rate Structure Plans, CC Docket No. 84–1235, at 15; Comments of RCI Corporation filed in the same proceeding at 8–9.

[110] In our *Private Line Rate Structure* decision, *supra* n.28, we reviewed the relevant antitrust case law seeking to discover the antitrust standard for determining predation. We found that virtually every court and commentator agreed that prices exceeding both average and incremental cost were at least presumptively lawful. 97 FCC 2d at 945–46, n.61 (citing P. Areeda & D. Turner, *Antitrust Law*, para. 711.1c at 118 (1982 Supp.)). Recognizing that our concerns under our public interest standard were somewhat different than those of the antitrust courts, however, we declined to adopt any specific standard for determining the reasonableness of volume discounts for private line services. *See id.* at 949. Instead we decided to review filings proposing volume discounts on a case-by-case basis, judging them in light of our concern that the discounts fit into an integrated rate structure of similar service offerings and contribute to meeting competition and to reasonable rates and efficient services for all users. *Id.*

[111] *See* para. 43, *supra*, for a discussion of what "comprehensive regulatory review" might entail under a price cap approach to regulating rates.

[112] Reliance on market forces to reduce the set of services subject to direct regulation through price ceilings was an intrinsic part of the price cap plans presented in both the Haring and Kwerel paper and the Baumol and Willig paper on the same subject. *See* Haring & Kwerel, *supra* at n.45, and W. Baumol & R.D. Willig, *supra* at n.58.

[113] For purposes of this *Notice*, we have used the term "service" as a synonym for each schedule of rates and carrier-prescribed rules appearing in tariff filings with this Commission. We would consider two services to be distinct if their corresponding tariffs contain different sets of terms and conditions under which the dominant carrier offers either a class or subclass of interstate facilities or services available to the public. Thus while Direct Distance Dialing and Reach-Out-America are both included in AT&T's Tariff F.C.C. No. 1, its MTS tariff, we would consider each to be a separate service because each is governed by a distinct schedule of rates and carrier-prescribed rules.

[114] *See* para. 57 *infra*.

service to replace the original service could raise policy questions such as whether the public interest would be enhanced or harmed by replacing the old service with the new service. Some rate restructuring, even if made subject to price caps, could conceivably still endanger universal service, constitute unreasonable rate discrimination among different classes of customers or expose some classes of ratepayers to exorbitant charges for the services they would receive.[115]

55. As we gain experience with this mode of regulation, it might become possible to narrow the set of services to which the price cap constraint applied without endangering the public interest. For example, we might be able to designate a set of "core" services to which we would continue to apply the price cap constraint. These services might be chosen in such a way that every service over which the carrier has market power would either be in the core itself or would have a chosen substitute within that core.[116] Thus, services not designated "core", while remaining subject to streamlined tariff review, would no longer be, or need to be, subject to the price cap constraint. We have tentatively concluded that if a price cap approach to regulating rates is introduced, a price cap constraint, however that is defined, should initially apply to all services. We seek comment on that tentative conclusion. We also seek comment on whether it would be possible to define such a set of capped services consistent with our statutory obligation, as well as on the standards we might apply to identify them. We would anticipate, therefore, that the record we develop on this issue in this proceeding would enable us to revisit this question at a later date, at which time we might be better prepared to formulate such a proposal for reduced regulation. Such a proposal would clearly be in the public interest to the extent that it could simultaneously increase both carrier's incentives to seek greater efficiencies in their operations and their flexibility to respond promptly to consumer demand without creating a significant risk that the resulting rates would be unreasonably high.

56. (2) *Setting caps initially.* A second question we would need to answer before we could introduce any price cap approach to regulating carriers' rates is how to set the initial caps. The simplest option would be to start from the *status quo.* An adjustment to a service's rates would meet the ceiling requirement if it did not exceed the cap defined by rates in effect on the day price cap regulation became effective. While the fact that these rates were effective would not imply that they were just and reasonable, it would imply that they had been already scrutinized closely by competitors, subscribers and Commission staff and had been found not patently unlawful. For this reason they would appear to be a reasonable point of departure for the new regulatory approach.[117] To the extent interested parties had raised questions about the justness or reasonableness of those rates that were the subject of either an ongoing investigation under section 204 of the Act or our section 208 complaint process at the time price caps were introduced, any prescribed changes to rate levels could be reflected by appropriate dollar for dollar adjustments to the existing price caps.[118] Replacing our current form of regulation with a price cap approach might also require that we determine how a carrier meets refund obligations that may have arisen under our current form of regulation. For example, a carrier may have refund obligations arising from operation of our Part 65 rules for periods preceding the introduction of the price cap approach [119] or from an accounting order that antedated our use of price cap regulation. These refund obligations may become certain only after the price cap approach had become effective. Perhaps the most straightforward way to assure that the customers to whom a refund was owed would receive it would be to require the carrier to give those customers either a direct refund or a credit on their current bill equal to the amount owed. Another approach would be to modify the associated cap, either temporarily or permanently. We seek comment on the relative advantages and disadvantages of both these approaches.

57. Another option would be to seek only to develop a general standard for setting initial price caps in this proceeding. Baumol has suggested that "stand-alone costs" might be used for this purpose.[120] The development of such a standard might be prudent regardless of how we might decide to set initial caps. If we must subsequently determine price caps for new or restructured services,[121] an established standard or methodology for setting them could reduce the delay in the introduction of the services caused by the need to make these calculations. For this reason, we seek comments discussing the advantages and disadvantages of adopting the Baumol proposal as such a standard. In particular we seek comment on whether the use of a stand-alone cost standard would lead to unreasonably high price caps. Parties may also suggest other possible candidates for use in defining price caps for specific services. Parties proposing such alternatives should indicate the kind of information that we would need to apply the standard they suggest as well as the precedent, if any, for reliance on the standard to define the caps they propose. Because this option would require an additional proceeding to establish price caps, it would appear to be more time-consuming than using current rates to

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[115] For example, a proposal to replace the current MTS rate schedule with a two-part tariff structure like the Pro-America tariff could have such an undesirable result.

[116] The core concept is discussed by Haring and Kwerel. *See* J. Haring & E. Kwerel, *supra* at n.45. *See also,* Statement of Commissioner Mimi Weyforth Dawson re: Decreased Regulation of Certain Basic Telecommunications Services, CC Docket No. 86-421, 1 FCC Rcd 645, 657-59 (1987).

[117] Such an approach would be similar to the one now routinely followed when the LECs must amend access tariff rates to reflect changes in the prescribed levels of subscriber line charges or attributable to amended separations procedures. *See* FCC Public Notice, "Commission Specifies Procedures and Support Information for Tariff Filings to Implement July 1 Increase in Subscriber Line Charge and Corresponding Reductions in Long Distance Rates", Mimeo No. 3037 (released Apr. 30, 1987). In these cases the determination of whether the revised rates may become effective turns on the Commission's review of changes to the rates, not on a review of the underlying rates themselves.

[118] We are presently investigating certain special access rates which have been characterized by some as examples of "strategic pricing." *See* Annual 1985 Access Tariff Filings, Mimeo No. 7401 (released Sept. 30, 1985) at para. 62, *aff'd on review,* FCC 86-379 (released Sept. 2, 1986), *appeal pending sub nom.* Western Union Telegraph Co. v. FCC, No. 86-1592 (D.C. Cir.).

[119] *See* 47 CFR 65.700-65.703.

[120] Stand-alone costs represent the theoretical maximum rate that a firm could charge for a product without substantial diversion of business to a new competitivde entrant in a market. W.J. Baumol, Paper, "Modified Regulation of Telecommunications and the Public Interest Standard" Presented at the Offices of the FCC, at 28 (dated Aug. 25, 1986; presented Dec. 5, 1986) (available in FCC Library). Such costs are relevant to "contestable markets" or markets where economies of scale may make perfect competition impossible, but in which the threat of competitive entry exerts effective competitive pressure. *Id.* at 13-14. They are "stand-alone" costs because they represent what it could cost to provide a given product, if it were the only product produced and had to bear all fixed costs otherwise shared by additional products. *Id.* at 26-28, notes at bottom of page. Even if we were to adopt a price cap approach in which we used existing rates to set the initial price caps, we could still face the need to define price caps for new or restructured services. If we had already established standards or an approved methodology for their calculation, this could hasten the introduction of the service needing to be capped. For this reason the development of such a standard may be in the public interest regardless of the way we might select to set initial caps.

[121] *See* discussion at paras. 53-54, *supra.*

define the initial price caps. We also note that this option could increase the need to establish price floors. The generic approach would, however, set standards that we could apply to calculate a price cap for any service or group of services. We invite interested parties to propose other methods by which we might set price caps initially. We invite commenting parties to present their own analysis comparing the relative advantages and disadvantages of the two options we have presented and any other method they would propose for setting initial price caps. We ask commenting parties to identify the assumptions they have made about how these issues would or should be resolved.

3. Selecting Adjustment Factors

58. The price cap model anticipates periodic revisions to the price ceilings on services. The model would tie the need for such revisions to readily quantifiable changes to specific factors affecting the carrier's costs of providing service, but generally beyond its direct control. The object of the last qualification is to remove from the carrier any significant ability to affect the level of the adjustments to the price caps. We tentatively conclude that this should be a characteristic that we would generally wish any adjustment factor we might adopt to possess.[122] For this reason, as a first step toward identifying such factors, we seek to separate the cost factors over which a carrier may exert direct control from those which are exogenous. In the former category we would include those resource expenditures that are controllable by each carrier (for example, construction, maintenance, advertising, or charitable contributions). In the latter category we would include changes in the general level of prices, changes in national tax policies and rates, changes in jurisdictional separations, and rate changes imposed by regulatory fiat (for example, subscriber line charges). We tentatively conclude that adjustment factors should be drawn from those cost factors falling into the latter category. In the paragraphs that follow, we present several additional tentative conclusions and concerns about how we should select adjustment factors and when and how we should use them to revise price ceilings and specifically seek comment on the topics we discuss there. By doing this, however, we have not intended to foreclose comment on other facets of these proposals. For this reason we repeat our invitation to all interested persons to comment fully upon all the issues related to the topics discussed in this *Notice*.

59. Applying the price cap model to ATT's interstate operations, Haring and Kwerel had proposed indexing price caps to reflect changes to the purchasing price of money, projected trends in industry productivity and changes in access charges.[123] In the following paragraphs, we discuss additional factors, changes to which might warrant adjusting price ceilings to assure that rates remain within the "zone of reasonableness." We tentatively conclude that any price cap plan we might adopt should provide for periodic adjustment of price caps to reflect the factors identified by Haring and Kwerel as well as some other factors that directly affect dominant carriers' cost of providing their interstate services. The carriers would also have little direct control over these additonal factors. Such additional factors would include changes in tax laws, in the Separations Manual and, for AT&T in access charge levels. The use of these factors would continue to tie the lawfulness of rates to costs, at least on an industry-wide basis, because these factors are themselves clearly tied either directly to changes in the carrier's costs of operation (*e.g.*, access charges, separations, tax code changes) or to changes in industry-wide costs of operation (*e.g.*, inflation, growth in productivity). We seek comment on the suitability of these factors as bases for adjusting the rates of some or all capped services. We also invite commenting parties to identify other factors reflecting or affecting a carrier's costs of providing services that could or should be added to the list presented above.

(A) *Generalized price level adjustments.* 60. A decision to use the purchasing power of money as an adjustment factor would require that we select some measure of or surrogate for this concept, or more important, changes in it. Ideally the surrogate would have several properties. Most important, changes to it over a recent fixed period would provide a reasonable measure of changes to the purchasing power of money over the same period. Its determination should be straightforward and not subject to reasonable challenge. Two possible candidates for the surrogate are the consumer price index, or CPI, and the producer price index, or PPI.[124] We note that while the CPI is perhaps the better known measure of inflation, the PPI is perhaps a more accurate measure of changes in the carrier's cost of producing its services. We seek comment on our tentative conclusion that any price cap plan should require periodic adjustments to price ceilings (or floors) to reflect changes in the purchasing power of money. We also seek comment on the relative advantages and disadvantages of the indices we mention above as well as any other indices a commenting party would propose to measure changes to the purchasing power of money. We also invite comment on whether we could or should use the same inflation index for AT&T and the LECs.

61. Having selected an index, the next task would be to determine the change in that index over some fixed period that would form the basis for our adjusting price caps. We could simply take the difference between its value at the beginning and the end of that fixed period; another option would be to take the difference between the value of the index at the beginning of the period and the average of the index over that period. While not as simple as the first approach, the method using averages mitigates the effect of one-time aberrations. We seek comment on the advantages and disadvantages of either approach, as well as of other ways to measure the change in the index that would be used to compute an adjustment to price caps. Interested parties should also discuss what would be a suitable period over which to examine changes to the index and whether we should consider forecasts of changes to the index.

(B). Measurements of changes in productivity. 62. All other things being equal, increases in productivity, whether resulting from technological change or from other factors that increase efficiency, should result in lower prices for telecommunications services than would otherwise be the case. For this reason, we would also propose to include an adjustment factor designed to reflect the rate at which productivity is increasing either within the exchange, interexchange or entire telecommunications industry or within a comparable industry. The purpose of such an adjustment would be to pass on to consumers the benefits of anticipated increases in productivity and the resulting reductions in costs. We note that the price cap approach to regulating rates of British Telecom applied the RPI–3 formula, an annual price cap

[122] *But see* n. 126, *infra*.

[123] J. Haring & E. Kwerel, *supra* n. 45, 2 FCC Rcd at 1493.

[124] For a discussion of how these indices are defined and computed, *see* J.L. Lande & P.L. Wynns *Primer and Sourcebook on Telephone Price Indexes and Rate Levels*, Industry Analysis Division, Common Carrier Bureau, FCC (1987).

adjustment derived by deducting an assumed productivity measurement from a macroeconomic price measurement analogous to our Consumer Price Index. While data relating to British Telecom's past productivity appears to have set the bounds within which the productivity figure would fall,[125] the selection of 3 percent for the assumed productivity factor was the result of negotiations between the British government and British Telecom. We seek comment on whether this approach to selecting a productivity factor could be adapted for our use in revising price caps for domestic and international services.[126] We also seek to identify other indices that we might consider using as a measure of productivity as well as possible sources of information generally available to the public from which we might calculate such a factor. In particular, we invite comment on whether there should be a different productivity factor for AT&T and the LECs, and, if so, how they could and should be developed. As with the generalized price adjustment factor, we seek an index that is straightforward to calculate and not susceptible to reasonable challenge. We invite comment addressing how changes in productivity should be measured with respect to regulated services and, for operations that have some fixed costs, how changes in productivity may be separated accurately from exogenous changes in demand. We request comment on how we may properly remove, or make allowance for, the effects of inconsistent accounting data or endogenous changes in the measurements of demand that result from the application of the flexibility in pricing that would be inherent in any capping approach.[127]

(C) Other factors. 63. For the remaining factors we have discussed above,[128] a dominant carrier should be able to quantify the impact on its operations of specific changes. We request commenting parties suggesting that price ceilings be adjusted to reflect other factors indicate the method by which they would propose we measure changes to those factors. In particular we solicit comment on whether the list of adjustment factors should be enlarged to include international accounting rates for AT&T and those LECs providing international services to which such rates apply.

4. Adjusting Price Caps

(A) Methodology for calculating cap adjustments. 64. We tentatively conclude that a comprehensive price cap plan should also specify guidelines for adjusting price caps based on changes in previously identified factors like those we discussed above. While our ability to specify such a procedure would be a function of the factors ultimately selected, we can identify certain questions that would have to be answered regardless of the factors finally chosen. In this section we pose those questions and discuss the advantages and disadvantages associated with some of the different ways we might answer them. We also discuss specific issues that would arise as we sought to develop a formula for adjusting price limits to reflect changes in the factors described in the preceding section.

65. A formula or methodology for adjusting price caps to reflect a change in a specific factor requires two generic steps. First we must identify those services for which a change in the factor would warrant a change in the associated price caps. Then we must determine how much these price ceilings should be raised or lowered to reflect an incremental change in that factor. We tentatively conclude that any adjustment formula should, to the extent possible, match specific adjustment factors with those services the costs of which are most directly affected by those factors. Changes to that factor could lead to adjustments of only the price ceilings associated with those services. Under this approach, a change in the purchasing power of money could be reflected in adjustment to all price caps, while a change in switched access charges could result in an adjustment only to price caps associated with interexchange switched service offerings.

66. We now focus on the second step of the process, development of a set of rules for transmuting changes in a specific adjustment factor into a revised price cap for a related service. The initial issue arising here is the extent to which we should require a carrier to revise price ceilings to reflect a change in the adjustment factors. We tentatively conclude that for AT&T, in particular, changes in the rates for an access service it used to provide a given service should result in a dollar for dollar flow through of the increase or decrease in that service's associated price cap. We also tentatively conclude that for any dominant carrier subject to price cap regulation, a change in the index of productivity should be reflected by a corresponding percentage change in the caps for all its services.

67. For other adjustment factors it might be reasonable to leave the carrier with some discretion concerning the extent to which its price caps would be revised to reflect changes in those factors. For example it might be reasonable to leave to the carrier's discretion whether its price caps would be revised to reflect either changes in the purchasing power of money as long as inflation continued or cost increases for interstate services attributable to changes in separations or tax liability. We also seek comment on whether it would be reasonable to key the obligation to revise caps to reflect changes in separations or tax liability on those changes exceeding some threshold limit. Moreover, we might not require adjustments to price caps when changes to separations rules or tax codes did not lower the costs of interstate operations by more than a preset dollar amount. We solicit comments on the proposals we present in this paragraph as well as on our proposal that in certain circumstances it might be advisable to leave the carrier with some discretion concerning the changes in adjustment factors that would trigger a revision of its price caps. Commenting parties should identify the adjustment factors for which they believe such flexibility could be given as well as the limits they would impose on that discretion. They should discuss why the flexibility they support would be consistent with our obligation to assure that rates are just and reasonable. We also ask for

[125] *See* Littlechild Report, *supra* n.60, at 35.

[126] One possible adaptation might be to use a ten year moving average of the firm's (or the economy's) historical productivity. This rolling average would permit the carrier in a given year to retain any productivity gain, while in subsequent years ratepayers would subsequently share in those gains. This might be one way to assure that subscribers to a given service would share in the benefits created by any efficiency gains made in the provision of that service. (It might also lead to their sharing in the effects of any decline in productivity associated with the service to which they subscribed). It would be necessary to define the formula by which we would propose to measure productivity gains for the firm (or the economy). Because it would be based upon historical data rather than projections, however, the actual calculation would be quite straightforward and, assuming the arithmetic was correct, unlikely to be subject to debate. On the other hand the use of the firm's own record of productivity could lead to the sort of gaming that we would seek to avoid through a price cap approach. We are also uncertain about the extent to which use of the firm's own productivity record would dampen its incentive to maximize efficiency.

[127] Inconsistencies may arise, for example, from the use of different accounting principles at different points in time by the same firm, the inconsistent application in practice of the same principles over time by the same firm or by different firms, or from the use of historical costs for telecommunications plant of different vintages by the same firm or by different firms.

[128] *See* para. 58, *supra*.

commenters' views on whether a carrier should be able to carry forward unused allowable adjustments for use in later years, as the British plan permits.[129] For each adjustment triggering a change to price caps, we would also need to determine the extent to which we would take into account the stimulation or repression of demand likely to arise from the change in rates allowed as a consequence of the change to the price cap. Again there may be some adjustment factors, for example, increases in subscriber line charges, for which we would be more concerned that we accurately estimate those effects. We invite comment on the extent to which we should take stimulation and repression into account in determining price cap adjustments associated with a change to each of the adjustment factors we discussed in paragraphs 58 and 62 *supra*, as well as any additional factors that a commenting party has proposed.

68. Changes to some of the adjustment factors we have identified would probably be expressed in percentages. This index or some fraction of this index could then be applied directly to existing price caps to define new price caps. For example, if the measure of inflation we were relying upon had increased by 2% over the specified fixed period used to measure changes in the purchasing power of money, this could easily translate into a 2% (or less) [130] increase to price caps to reflect inflation.

69. For other adjustment factors, computing the appropriate price cap revision is likely to be more complicated. Changes to rates for a given access service cause changes in the costs of providing those interexchange services using it. Before the associated price caps for those services could be revised, it would be necessary to apportion those cost changes among the affected services and possibly even among the rate elements of individual services. At one extreme, this could be achieved through cost allocation rules leaving little discretion to the carrier as to how it should make the apportionment. At the other extreme, this could be left to the carrier's discretion. That extreme, however, would at least in theory permit the carrier to revise price caps so that the cap associated with the service for which it possessed the greatest market power received a disproportionate adjustment upward. The result could be unreasonably high rates for customers of that service. Depending upon how we defined the price caps associated with different services or groups of services, it seems likely that a prescribed cost allocation approach may not be necessary to protect ratepayers against unreasonable rates. Even now the carriers possess flexibility in the way they reflect changes in access costs and to separations rules in their tariff filings.

70. We seek comments discussing ways to achieve an allocation of costs that strike a fair balance between ratepayer protection against unreasonable rates and carrier flexibility. We also seek comment upon how caps should be adjusted when changes occur in jurisdictional separations, tax rates or policy, and, in the case of interexchange carriers, when changes occur in access charges. In this regard, we are particularly interested in ascertaining how such adjustments could be made without our becoming mired in the cost accounting and rate of return assessments associated with traditional rate-of-return regulation.

(B) Procedural issues. 71. We note that the price cap model anticipates periodic adjustments to existing price caps to reflect changes to designated factors. Either the passage of a specific period of time, for example, one or two years, or the occurrence of a specific event, for example specified changes in economic conditions, changes in productivity, or the filing of new access charges, might be a reasonable trigger for such review of existing caps. It might also be reasonable to require annual price cap adjustments to reflect changes to specific adjustment factors, like access charges for AT&T or other adjustment factors for some or all carriers subject to price cap regulation. We also forsee a need periodically to conduct a more general reexamination of the price cap levels set for each carrier subject to this form of regulation to assure that adjustments to those caps made based upon changes to the specified factors were continuing to protect adequately the interests of both that carrier's ratepayers and its shareholders. We seek comment on how frequently price caps should be reevaluated or adjusted to reflect changes to each of the adjustment factors we described in paragraphs 58 and 62, *supra*, as well as to any other adjustment factors that a commenting party has suggested we add to our list. We also seek comment on whether the general reexamination should be scheduled with prescribed frequency (*e.g.*, every five years) or should occur when the Commission or a carrier preceives a need for such review.

5. Impact of Price Caps Regulation on Current Commission Procedures

72. We at present have many regulations and procedures designed to help us perform cost-of-service regulation.[131] If we were to adopt a price cap approach to regulating the rates of AT&T or the LECs, we would need to review these regulations and procedures to determine what their continuing role should be in the new regulatory environment. It is possible that some might have no role. For example, the rules and procedures directly related to our rate of return represcription and enforcement would seem to fulfill no useful function under a price cap approach to regulating rates. For other rules there would be a continuing need regardless of how we regulated rates. In this category would fall our Uniform System of Accounts (USOA) because the carriers would still be obligated to separate the costs of their regulated operations between the federal and state jurisdictions. The rules for accomplishing this are framed in terms of the USOA.

73. Into a less certain area fall the rules and procedures governing represcription of depreciation rates, the rules governing circuit additions and even the cost allocation rules of regulated and unregulated activities of carriers. In theory, with a price cap approach there should be no need to control the carrier's rate base or expenses, nor should there be a need to worry about cross subsidies between regulated and unregulated service offerings or among regulated service offerings. The price cap model in its purest form would eliminate the incentive for rate base inflation or cross subsidization. In that we intend to continue monitoring for excess earnings, however, we have departed form the pure model. While we believe that this modification to the price cap model is necessary for legal and policy reasons, we also recognize that it has the unfortunate side effect of restoring some of the incentive to misallocate between regulated and unregulated service offerings and reducing the incentive to maximize efficiency. It also may create

[129] *See* n.66, *supra*.

[130] *See* discussion *supra* at paras. 60–61. We note that annual revisions to access charges, whether cost-based or subject to price cap regulation, might already reflect changes in the purchasing power of money. For example, to the extent that AT&T's price caps would already be adjusted to reflect changes in access charge rate level, the effect of inflation on this share of its operating costs would already be reflected by an adjustment to its price caps. In this case it might be more appropriate to limit any adjustment to its price caps to reflect changes in the inflation rate not already reflected in the access charge adjustment.

[131] *See* discussion *supra* at paras. 7–12, describing these rules and procedures at greater length.

a need for the retention of some regulatory tools that would be superfluous under a pure price cap method. Even if there were no need for some of these rules in the long term, it might be prudent to retain them until experience with the new approach to regulating rates offered us reasonable assurance that there would be no need to return to cost-of-service regulation. We also solicit comment on the impact a price cap approach to regulating rates for basic services would have upon the rules and policies governing the provision of CPE and enhanced services by AT&T and the BOCs.[132]

74. We seek comment on the extent to which we should continue to apply existing rules in Parts 63 and 65; as well as the Interim Cost Allocation Manual, the cost allocation requirements of CC Docket No. 86–111 and the depreciation rate represcription procedures to AT&T if we were to decide to regulate this carrier under a price cap approach. Commenting parties should indicate whether they support the long term retention, the short term retention or the elimination of each specific category of rules or procedures listed above and should provide the basis for their position. We also seek comment on the extent to which we should continue to apply existing rules in Parts 63, 65, and 69, as well as the cost allocation requirements of CC Docket No. 86–111 and the depreciation represcription procedures to the LECs now subject to them if we were to decide to regulate these carriers under a price cap approach. Again commenting parties should indicate whether they support the long term retention, the short term retention or the elimination of each specific category of rules or procedures listed above and should provide the basis for their position.

VI. Application of the Price Cap Approach

75. We tentatively conclude that a price cap approach to regulating rates promises many benefits to consumers which outweigh the disadvantages it may possess. As discussed above,[133] we now seek to determine whether a price cap approach can be implemented that would result in a more effective means of regulating rates than our current form of regulation. If our analysis of the benefits offered by this model is correct for all markets, its prompt applications to both AT&T and the LECs would clearly be in the public interest.[134] Implementation of this form of regulation for the LECs, however, raises administrative issues that appear to be more complex than those for AT&T. First, there is the issue of implementing a price cap method of regulation while current pooling arrangements continue among the LECs. Presently our access charge scheme call for two different pools, the mandatory one associated with non-traffic sensitive (NTS) costs and the voluntary one associated with traffic sensitive costs. In addition to the two pools themselves, there are also two depooling dates associated with the NTS pool.[135] The existence of the two pools and the two different depooling dates may complicate efforts to implement price caps for the LECs.

76. Second, there is the difficulty of implementing a price cap method of regulation for a large number of widely differing companies. There are now approximately 1400 LEC.[136] Some are very large, both in terms of annual revenues and in terms of number of access lines they provide; others are very small.[137] Some are private corporations, others are cooperatives obtaining at least some of their capital from the federal government. A few are government owned and operated. Some of these carriers file individual tariffs based on their costs of providing interstate services. Others, while participating in the NECA tariff filing and pooling arrangements permitted under Part 69, are compensated for the access services they provide based on their individual costs of service. Still others participate in the NECA tariff filings but are compensated by NECA under the average schedules designed for carriers that do not compute their interstate costs. With such rich diversity in the capital structure and legal nature of the LECs as well as in the manner in which they determine the rates they charge for their interstate services and receive compensation for those services, a price cap approach to regulating their interstate basic service rates that accounted for or reflected that diversity would likely take longer to develop and would be more difficult to implement than would a price cap approach developed for only a single interexchange carrier.[138]

77. Thus we tentatively conclude that we would implement a price cap approach to regulating the rates for AT&T's interstate and international basic services before we did so for the LECs. We seek comment on this and on any other implementation issues and problems. We also invite comment on the timing of the implementation of such regulatory reform for both the LECs and AT&T.

VII. Regulatory Flexibility Act Initial Analysis

78. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), it is certified that the rule change proposed in this proceeding is exempt from application of the statute because it will not have a significant impact on a substantial number of small entities. A small business concern is defined in section 3 of the Small Business Act as a concern which is not dominant in its field of operations. 15 U.S.C. 32; 13 CFR 121.3(c). The rules proposed in this proceeding would apply to dominant carriers only and hence would not have a significant impact on small entities.[139] This certification shall be provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Analysis

79. The rulemaking proposed herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements as contemplated under that statute. It will not increase the collection of information burden imposed on the public.

IX. Ex Parte Requirements

80. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* § 1.1206(a). The Sunshine Agenda period

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[132] *See* n.8 *supra*; Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone and Telegraph Co., CC Docket No. 85–26, *Order*, 102 FCC 2d 655 (1985), *modified on recon.*, FCC 86–341 (released Aug. 7, 1986); Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies, CC Docket No. 86–79, *Report and Order*, 2 FCC Rcd 143 (1987).

[133] *See* Section V.D., *supra*.

[134] Should the comments indicate a need to tailor the price cap model to the characteristics of the LECs, we stand ready to adopt the form of alternative regulation supported by the record that is consistent with our desire to capture for consumers and carriers the benefits of more effective regulation.

[135] MTS and WATS Market Structure, CC Docket No. 78–72, *Report and Order*, 2 FCC Rcd 2953 (1987).

[136] *See* Phone Facts 1987 at 16, United States Telephone Ass'n (1987).

[137] *See e.g., id.* at 17–22.

[138] We also note that a staggered implementation schedule would enable us to use our own resources more efficiently.

[139] Although the Regulatory Flexibility Act is not applicable, we are always anxious to obtain comments on the possible impact of any proposed rule on small entities, including small telephone companies.

is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases a final order; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

81. In general an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of that presentation to the Commission's secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner to staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

82. All relevant and timely comments and reply comments will be considered by the Commission. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Order.

X. Ordering Clauses

83. Pursuant to our authority under sections 4(i), 4(j), 201–205, and 403 of the Communication Act of 1934 as amended, 47 U.S.C. 154(i), 154(j), 201–205 and 403, *it is ordered* that this rulemaking proceeding is instituted. Comments on the proposed rulemaking shall be due on October 19, 1987 with reply comments due on November 19, 1987.

84. In accordance with the provisions of § 1.419(b) of the Commission's Rules, 47 CFR 1.419(b), *it is ordered* that an original and five copies of all comments, replies, pleadings, briefs and other documents filed in the proceeding shall be furnished to the the Commission. Members of the public who wish to express their views by participating informally may do so by submitting one or more copies of their comments without regard to form (as long as the docket number is clearly stated in the heading). Copies of all filings will be available for public inspection during regular business hours in the Commission's Docket Reference Room (Room 239) at its headquarters at 1919 M Street, NW., Washington, DC.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–20584 Filed 9–8–87; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Comment Periods on the Proposed Endangered Status for the Shasta Crayfish and for the Tipton Kangaroo Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rules; notice of extension of comment periods.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment periods will be extended for two separate proposed rules to determine endangered status for the Shasta crayfish, which occurs only in Shasta County, California, and the Tipton kangaroo rat, which is restricted to the Tulare Lake Basin of south-central California. The extension of the comment periods will allow comments on both of these separate proposals to be submitted from all interested parties.

DATES: The comment periods for both proposals, which originally closed on September 8, 1987, are extended to November 8, 1987.

ADDRESSES: Written comments and materials on each of the separate proposals should be sent to the Regional Director, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hour at the Regional Endangered Species Office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The Shasta crayfish (*Pacifastacus fortis*) is a decapod crustacean of the family Astacidae. The species is presently found only in Shasta County, California, in the Pit River drainage and two tributary systems, the Fall River and Hat Creek Subdrainages. A proposal of endangered status was published in the **Federal Register** (52 FR 26036) on July 10, 1987. The comment period on the proposal originally closed on September 8, 1987. There was not a timely request for a public comment hearing. The comment period is now extended an additional 60 days, to November 8, 1987. Written comments may now be submitted until November 8, 1987, to the Service office in the Addresses section.

The Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), a small mammal, was distributed historically in the Tulare Lake Basin of the San Joaquin Valley, encompassing portions of Fresno, Kings, Tulare, and Kern counties. Conversion of native wildlands for agriculture production has seriously reduced its habitat. A proposal of endangered status was published in the **Federal Register** (52 FR 26040) on July 10, 1987. There was not a timely request for a public comment hearing. The comment period on the proposal originally closed on September 8, 1987. The comment period is now extended an additional 60 days, to November 8, 1987. Written comments may now be submitted until November 8, 1987, to the Service office in the Addresses sections.

Author

The primary author of this notice is Ms. Robyn Thorson, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–

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159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 2, 1987.

David F. Riley,

Acting Regional Director.

[FR Doc. 87–20723 Filed 9–8–87; 8:45 am]

BILLING CODE 4310–55–M

VOL
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Notices

Federal Register
Vol. 52, No. 174
Wednesday, September 9, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 87-110]

Availability of Environmental Assessment and Finding of No Significant Impact for Field Testing of a Recombinant Derived Live Pseudorabies Virus Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service concerning its authorization given to SyntroVet, Inc., to conduct limited field trials of a veterinary biological product, for a recombinant derived live pseudorabies virus vaccine. The assessment indicates that the field testing of the live recombinant derived pseudorabies virus vaccine will not cause any significant impact on the environment. based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

DATE: The field trials will commence October 9, 1987.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. Copies of the environmental assessment are also available upon request at this same address.

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Senior Staff Veterinarian, Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436-8245.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment and finding of no significant impact relative to its authorization to conduct limited field trials of a recombinant derived live pseudorabies virus vaccine under the Virus-Serum-Toxin Act, (VSTA) (21 U.S.C. 151 *et seq.*) produced by SyntroVet, Inc.

Under the VSTA, before a veterinary biological product can be licensed, it must be shown to be pure, safe, potent, and efficacious. Field testing is necessary in order to satisfy vaccine safety requirements as a prerequisite to licensing of the live virus vaccine under the VSTA. In the course of reviewing the testing protocol for the recombinant derived live pseudorabies virus vaccine, APHIS assessed the impact to the environment of authorizing the manufacturer to conduct field testing of the product in three States as set forth in the environmental assessment.

The environmental assessment and finding of no significant impact provides the public with documentation of APHIS' review and analysis of environmental effects which may be associated with the gathering of information in these limited field trials.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Genetic engineering procedures were employed to facilitate three gene deletions and one gene insertion in the pseudorabies virus genome. One deletion destroyed the viral thymidine kinase (tk) gene which is required for the virus to replicate in the host's nervous system and hence cause disease. A second deletion destroyed a gene coding for a viral glycoprotein (gpX) which then prevents antibodies from being elicited to this glycoprotein, thus allowing vaccinated animals to be distinguished from those infected with a wild-type virus. The third deletion removed portions of the internal and terminal repeat regions, producing an attenuating effect. A gene for lactase was inserted as a marker, to further facilitate differentiation of this vaccine virus from the wild virus or other pseudorabies vaccine viruses.

2. The recombinant derived live pseudorabies vaccine virus was shown to be avirulent and yet fully capable of eliciting an immune response that protects pigs from the pseudorabies virus, but was not able to elicit antibodies to gX which allows the differentiation between infected pigs and vaccinates. The addition of the lactase gene confered no increase in virulence.

3. Transmission of the vaccine virus could not be demonstrated in that vaccine virus was not detected on tonsil swabs taken from either vaccinated pigs or from sentinel animals.

4. The tk gene deletion is a stable characteristic of the vaccine virus with a probability of reversion being essentially zero.

5. The wild-type pseudorabies virus is found widely distributed in nature and it does not contain an oncogene or cancer-causing substance. The lactase gene, inserted as a marker, does not contain any oncogenes. There is no likelihood that this vaccine virus is oncogenic.

6. The wild-type pseudorabies virus is not considered pathogenic to man. Since the recombinant vaccine differs from wild-type pseudorabies by three gene deletions and one insertion, it is also considered nonpathogenic in man.

Based on the foregoing, APHIS has determined that the field testing of the recombinant derived live pseudorabies virus vaccine would have no significant environmental impact on the human environment.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) Regulations of the Council of Environmental Quality for implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500-1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381-50384 and 44 FR 51272-51274).

Done in Washington, DC, this 3rd day of September, 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-20686 Filed 9-8-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate
Form Number: Agency BE-13 and BE-14; OMB-0608-0035
Type of Request: Revision of a currently approved collection
Burden: 1,275 respondents; 1,275 reporting hours
Needs and Uses: This survey secures data on U.S. companies at the time they are established or acquired by foreign persons, and information on the foreign parent. The information consists of data on assets and income, amount of investment, acres of land owned, and numbers of employees. The information is required for the preparation of the interantional investment accounts and balance of payments of the United States.
Affected Public: Farms, businesses or for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Francine Picoult 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Dest Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: September 2, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-20658 Filed 9-8-87; 8:45 am]

BILLING CODE 3510-CW-M

National Technical Information Service

Intent To Grant Co-Exclusive Patent License; SmithKline Beckman et al.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to SmithKline Beckman of Philadelphia, Pa., MicroGeneSys Inc. of West Haven, CT, American Cyanamid Company of Wayne, NJ and Amgen of Thousand Oaks, CA, a co-exclusive right in the United States to practice the invention embodied in U.S. Patent Application S.N. 6-843,727, "Pertussis Toxin Gene: Cloning and Expression of Protective Antigen." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87-20682 Filed 9-8-87; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

September 4, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 10, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of polyester yarn, containing cotton, in Category 600pt., produced or manufactured in the People's Republic of China and exported during the twelve-month period which begins on September 10, 1987 and extends through September 9, 1988 in excess of the designated level of restraint.

Background

On July 23, 1987, a notice was published in the **Federal Register** (52 FR 27698) which established an import restraint limit for polyester yarn, containing cotton, in Category 600pt., produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on June 12, 1987 and extends through September 9, 1987. The notice also stated that the Government of the People's Republic of China is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, if no mutually satisfactory solution is reached on a level for this category during consultations, to limit its imports during the twelve-month period immediately following the ninety-day period.

No solution has been reached in consultations on a mutually satisfactory limit for this category. The United States Government has decided, therefore, to control imports of polyester yarn, containing cotton, in Category 600pt. during the twelve-month period which begins on September 10, 1987 and extends through September 9, 1988 at the designated level.

The United States remains committed to finding a solution concerning this

category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

In the event the limit established for the ninety-day period has been exceeded, such excess amounts, if allowed to enter, will be charged to the level established for the designated twelve-month period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

September 4, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 10, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of polyester yarn, containing cotton, in Category 600pt.[1], produced or manufactured in the People's Republic of China and exported during the twelve-month period which begins on September 10, 1987 and extends through September 9, 1988, in excess of 2,867,981 pounds.

[1] In Category 600pt., only TSUSA number 310.6034

Textile products in Category 600pt. which are in excess of the ninety-day level previously established shall be subject to this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-20851 Filed 9-8-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Date and Time: Thursday, October 22, 1987, 1:30 p.m.-5:30 p.m. Friday, October 23, 1987, 9:00 a.m.-2:30 p.m.

Place: Omni Shoreham, 2500 Calvert Street, NW., Washington, DC 20008.

Contact: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI-74, Washington, DC 20585, Telephone: (202) 586-2088.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda

Thursday, October 22, 1987

A. Opening Remarks
B. Major Topics:
1. Crude Oil Production Volumes
2. Coal Strike Monitoring System (Public Comments)

Friday, October 23, 1987

3. Simultaneous Estimation of Nuclear Power Plant Operating Costs and Performance
4. Multipurpose Sampling
5. Imputation for Missing Consumption Data in the Nonresidential Buildings Energy Consumption Survey
6. Session on PCs: How to Define An Optimal Set of Software and Plan PC Versus Mainframe Applications
7. The *Annual Energy Outlook* Spreadsheet Model (Public Comments)

C. Topics for Future Meetings

Public Participation: The meeting is open to the public. The chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Ms. Carole Patton at 202-586-2222. Requests must be received at least five days prior to the meeting. Reasonable provisions will be made to include such presentations on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, (Room 1E-190), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6025, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. Issued at Washington, DC on September 2, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87-20647 Filed 9-8-87; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Committee on Petroleum Storage and Transportation; National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Committee on Petroleum Storage and Transportation of the National Petroleum Council.

Date and Time: Wednesday, September 30, 1987 from 10:00 a.m. to 12 noon.

Place: Marathon Oil Company, Conference Rm. 1012, 5555 San Felipe Road, Houston, Texas.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the meeting: For the Committee to discuss and plan the scope of the study on petroleum storage and transportation.

Tentative Agenda

- Discuss the Study's scope and plan in response to the February 20, 1987 request from the Secretary of Energy.
- Discuss and approve the organizational structure and functions of a coordinating subcommittee and task groups.
- Discuss the timetable for completion of the study.
- Discuss any other matters pertinent to the overall assignment.

Public Participation: The meeting is open to the public. The Chairman of the Committee on Petroleum Storage and Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 2, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87-20646 Filed 9-8-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER87-463-000]

Boston Edison Co.; Notice of Filing

September 2, 1987.

Take notice that on August 12, 1987, Boston Edison Company (Edison) of Boston, Massachusetts (Edison) tendered for filing its response to a deficiency letter which was issued by the Commission on July 13, 1987, in response to Edison's May 26, 1987 filing regarding additional support charges related to Cambridge Electric Light Company's (Cambridge) use of Edison's Substation 509.

These charges are filed pursuant to Boston Edison Company FPC Rate No. 101 as approved by the Commission on March 11, 1975 in Docket No. E-9254.

Edison requests waiver of the Commission's notice requirements to permit the Support charges to become effective June 1, 1987.

Copies of the filing have been served upon Cambridge and on the Department of Public Utilities of the Commonwealth of Massachusetts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 9, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20668 Filed 9-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-500-000 et al.]

El Paso Natural Gas Co. et al.; Natural Gas Certificate Filings

September 1, 1987.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP87-500-000]

Take notice that on August 18, 1987, El Paso Natural Gas Company (El Paso), a Delaware corporation, whose mailing address is P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP87-500-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization permitting and approving abandonment of approximately 9.81 miles of pipeline in Pinal County, Arizona. El Paso further seeks a certificate of public convenience and necessity, pursuant to section 7(c) of the Natural Gas Act, authorizing the construction and operation of a 2⅜" O.D. tie-in and approximately 3.07 miles of new 8⅝" O.D. pipeline also in Pinal County, Arizona. El Paso states that the proposed abandonment and construction activities are designed to allow: (1) increased mining activities projected by Magma Copper Company (Magma); and (2) the continuation of natural gas service by El Paso to the cities of Mammoth and San Manuel, Arizona, and Magma's San Manuel Power Plant and Smelter facilities, all as more fully set forth in the application on file with the Commission and open for public inspection.

El Paso states that as a direct result of Magma's increased mining activities, certain segments of El Paso's existing 2⅜" O.D. and 6⅝" O.D. pipeline, which serve Magma's power plant and smelter facilities and the city of Mammoth, are facing encroachment and potential exposure from Magma's routing of its equipment across said facilities. In addition, El Paso states that the projected expansion of Magma's mining area will increase the traffic and related exposure of said pipelines and also will place a segment of the 8⅝" O.D. San Manuel pipeline presently serving the city of San Manuel and Magma's smelter directly in an area to be mined.

As a result of the said potential encroachment and exposure problem, El Paso specifically proposes to abandon in place: (1) Approximately 1.56 miles of 2⅜" O.D. and 1.60 miles of 6⅝" O.D. pipeline, which comprise segments of those pipelines presently serving Magma's power plant and smelter facilities and the city of Mammoth; and (2) approximately 6.65 miles of 8⅝" O.D. pipeline, which comprises a segment of the pipeline presently serving the city of San Manuel and Magma's smelter facilities. In order to continue the natural gas service to Magma and the cities of Mammoth and San Manuel, El Paso specifically proposes to construct and operate: (1) Approximately ten (10) feet of 2⅜" O.D. tie-in pipeline interconnecting the existing 6⅝" O.D. San Manuel to Hayden Line with the existing 2⅜" O.D. Mammoth Line to permit the sale of natural gas to the city of Mammoth; and (2) approximately 3.07 miles of 8⅝" O.D. pipeline extending from a point on El Paso's existing 30" O.D. Waha-Ehrenburg pipeline to a point on the 8⅝" O.D. San Manuel Crossover Line.

El Paso states that under the existing operating parameters there will be no reduction in operating pressures or throughputs to Magma or the cities of Mammoth or San Manuel as a result of the proposed abandonment and construction activities. Further, El Paso states that there would be no change in the maximum deliveries under the present Gas Sales Agreement dated February 1, 1983, as amended, between El Paso and Magma, nor any change in the contract demand or maximum deliveries to the cities of San Manuel and Mammoth as a result of the proposed abandonment and construction activities under the currently effective Service Agreement dated August 15, 1970, between El Paso and Southwest. Therefore, El Paso states that there will be no interruption, reduction or termination of natural gas service presently rendered by El Paso to any of its customers.

Comment date: September 22, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Interstate Power Company

[Docket No. CP86-679-008]

Take notice that on August 27, 1987, Interstate Power Company (Petitioner), 1000 Main Street, Dubuque, Iowa 52001,

filed in Docket No. CP86–679–008 a petition to amend the order issued October 7, 1986, pursuant to section 7 of the Natural Gas Act so as to authorize the transportation of natural gas on a firm basis for Hawkeye Chemical Company (Hawkeye) for an extended term ending October 7, 1989, and for USI Chemicals Company (USI) for an extended term ending April 30, 1989, all as more fully set forth in the petition, which is on file with the Commission and open to public inspection.

Petitioner indicates it was authorized in Docket No. CP86–679–000, as amended in Docket No. CP86–679–002 to transport up to a maximum of 22,000 MMBtu equivalent per day for Hawkeye for a term ending on October 7, 1987. Petitioner now seeks to extend the transportation service authorized in Docket No. CP986–679–000, as amended until October 7, 1989.

Petitioner indicates it was authorized in Docket. No. CP86–678–002 to transport up to a maximum of 18,000 MMBtu equivalent per day for USI for a term ending on March 12, 1988. Petitioner now proposes to extend the transportation service authorized in Docket No. CP986–679–002 until April 30, 1989.

No other changes are proposed.

Comment date: September 21, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Distrigas of Massachusetts Corporation and Distrigas Corporation

[Docket No. CP87–509–000]

Take notice that on August 25, 1987, Distrigas of Massachusetts Corporation and Distrigas Corporation (Applicants), 950 Winter Street, Waltham, Massachusetts 02254–9073, jointly filed in Docket No. CP87–509–000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing a new boil-off service and a new Rate Schedule BO–2 and the abandonment of Rates Schedule BO–1 and the current boil-off service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to the stipulation and agreement between the Applicants and Boston Gas Company (Boston Gas) the BO–1 service agreement, dated October 29, 1979, terminated March 31, 1987, and such service as well as the Rate Schedule BO–1 should be abandoned on the same date on which Rate Schedule BO–2 is certificated.

It is further stated that the rate for boil-off deliveries taken by Boston Gas in April, May, June, July, and August 1987 shall be the commodity rate under Rate Schedule F–1 of the Algonquin Gas Transmission Company in effect at the time deliveries were made, subject to refund as required by final Commission order.

The Applicants state that the rate for BO–2 service for Boston Gas should be the lesser of the commodity rate under Rate Schedule F–1 of Algonquin Gas Transmission Company or any successor rate schedule for equivalent service provided by Algonquin or the actual cost of LNG at the time of delivery of boil-off gas, such actual cost of LNG to be determined in accordance with the FIFO method of inventory accounting.

The Applicants further state that the revenues received from sales under Rate Schedule BO–2 shall be credited in a manner as provided in paragraph six of Fourth Revised Sheet No. 19 of DOMAC's FERC Gas Tariff.

Comment date: September 16, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. El Paso Natural Gas Company

[Docket No. CP77–604–018]

Transwestern Pipeline Company

[Docket No. CP77–658–003]

Take notice that on August 18, 1987, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978 and Transwestern Pipeline Company (Transwestern), 1400 Smith, Suite 4837, Houston, Texas 77002, jointly filed at Docket Nos. CP77–604–018, and CP77–658–003, respectively, pursuant to section 7(c) of the Natural Gas Act and Rules 212 and 2001, *et seq.*, of the Commission's Rules of Practice and Procedure, a petition to amend the order heretofore issued February 13, 1978, as amended, to authorize the expansion of the specified area of interest under the authorized exchange of natural gas from such area, all as more fully set forth in the joint motion to amend, which is an file with the Commission and open to public inspection.

The instant joint motion states that by Commission order issued February 13, 1978, as amended, at Docket Nos. CP77–604 and CP77–658 (2 FERC ¶ 61,125), El Paso and Transwestern received permanent certificate authorization for: (1) The transportation and delivery of natural gas, on an exchange basis, pursuant to a Gas Exchange Agreement dated February 8, 1977, ("Exchange Agreement"); (2) the operation of certain existing facilities necessary to facilitate the exchange of gas; and (3) the exchange of gas from future wells attached to either party's system in certain specified areas of interest in the states of Texas, New Mexico and Oklahoma.

The instant joint motion further states that El Paso and Transwestern wish to include certain Texas wells under the Exchange Agreement, so El Paso's natural gas can continue to be gathered without requiring a large expenditure to repair El Paso's deteriorating gathering lines in that area. Petitioners state that certain producing wells located in Pecos County, Texas, which is located outside the area of interest specified in the Exchange Agreement, are presently tied to both the El Paso and Transwestern gathering systems. Transwestern has been advised that El Paso's gathering lines are in a deteriorating condition and will require excessive maintenance in the future. Therefore, El Paso states it believes its gathering system can no longer be utilized continuously without major repairs. These major repairs if made, are estimated by petitioners to cost approximately $250,000.00. Petitioners state that this situation is the direct result of failures caused by: (1) General and pitting-type corrosion due to water, carbon dioxide and some hydrogen sulfide collecting in low areas of the gathering lines; and (2) severe cyclic loading swings on the gathering lines. El Paso believes it is more economical to utilize Transwestern's existing gathering system facilities to gather volumes of natural gas from these wells. This change would allow continued gathering of El Paso's natural gas, without incurrence by El Paso of a large expenditure for repairs to its deteriorating gathering lines, it is stated.

To accomplish this change, El Paso and Transwestern have executed in Amendatory Agreement dated June 26, 1987, petitioners assert. It is stated that the Amendatory Agreement provides for the expansion of the specified area of interest in the Exchange Agreement to include any wells in Pecos County, Texas. Specifically, petitioners note that the wells, which are presently connected to El Paso's deteriorating gathering lines and are located outside the presently authorized area of interest, are identified in the Amendatory Agreement as the Butz Gas Unit No. 1, Sibley State Gas Unit 2 No. 1 and the Sibley State Unit 1 No. 1, all located in Pecos County, Texas.

Petitioners assert that grant of the amended authorization sought herein will permit continued receipt of El Paso's volumes of natural gas in the expanded areas of interest, without necessity of incurring a large expenditure to refurbish El Paso's existing gathering pipeline facilities. It is

stated that avoidance of this expenditure will benefit El Paso's customers through the elimination of a rate base increase and the holding down of El Paso's cost-of-service. El Paso and Transwestern therefore, believe that the present and future public convenience and necessity will be served by grant of the requested amended authorization, it is stated.

El Paso and Transwestern will file, pursuant to Part 154 of the Commission's Regulations, the Amendatory Agreement dated June 26, 1987, necessary to effectuate the proposed amended arrangements, upon receipt of the amended authorizations requested herein.

Comment date: September 22, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP87–502–000]

Take notice that on August 19, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84110, filed in Docket No. CP87–502–000 an application, pursuant to Section 7(b) of the Natural Gas Act, and Section 157.18 of the Federal Energy Regulatory Commission's Regulations thereunder, for an order granting permission and approval to abandon certain leasehold properties, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests that the Commission issue an order granting permission and approval for Northwest to abandon by transfer to Mobil Oil Corporation (Mobil), effective April 1, 1987, 100 percent of its working interest in certain oil and gas leases and options for oil and gas leases located in the San Juan Basin area of Colorado. The proposed transfer of working interest would be effectuated in accordance with a Settlement Agreement between Northwest and Mobil dated July 17, 1987, it is stated. Under the terms of the Settlement Agreement and subject to Commission and Department of the Interior approval, Northwest indicates it has agreed to assign and reconvey to Mobil 100 percent of Northwest's current interest in the PLA–13 leasehold properties originally conveyed by General Petroleum Company (predecessor of Mobil) to Pacific Nortwest Pipeline (predecessor of Northwest) and to make a one-time payment to Mobil of $1.3 million. It is asserted that this payment would be made after Department of the Interior approval of the assignment of the subject leases. Northwest states that, as of April 1, 1987, its net investment in the PLA–13 properties was $1,057,150. It is further stated that this reconveyance is to be made effective April 1, 1987, with no reimbursement of Northwest's undepreciated investment in the PLA–13 properties.

Northwest states that the Agreement provides that, upon approval of the proposed reconveyance of PLA–13 properties, the revenues, operating expenses, any additional capital costs, and the interest applicable thereto would be calculated for the assigned properties based upon an effective transfer date of April 1, 1987. This effective date of transfer of the subject properties is an integral part of the settlement, it is stated. Northwest requests that the Commission approve the abandonment by transfer of its PLA–13 leasehold interests to Mobil to be effective as of April 1, 1987.

It is further stated that the PLA–13 Agreements cover approximately 6,326 gross acres in La Plata County, Colorado. Northwest indicates that at the present time, there are approximately 28 gas wells associated with the PLA–13 leases in which Northwest has an ownership interest. For the twelve-month period ending May 31, 1987, Northwest states that its PLA–13 production from these wells was approximately 437 MMcf.

Northwest avers that the subject leasehold production properties are not included in Northwest's rate base and the production therefrom has been deemed to be sold to the transmission division of the Company at the wellhead. It is indicated that each of the PLA–13 wells in which Northwest has an interest either has received final Commission approval for a maximum lawful price under sections 103 or 108 of the NGPA or presently is subject to a ceiling price under section 104 of the NGPA.

It is stated that Northwest and Mobil have entered into a Gas Purchase Contract (GPR) dated April 1, 1987 to provide for the continued purchase by Northwest of volumes of gas to be produced from PLA–13 interests proposed to be transferred to Mobil. It is further stated that the price to be paid by Northwest for gas purchased under the GPK would be the lowest of the applicable NGPA maximum lawful price or the current alternate fuel price. For pre-1973 production, Northwest state that the applicable NGPA ceiling price is to be the Section 104 replacement contract rate unless such production qualifies for a higher NGPA price. It is indicated that the alternative fuel price is defined as 65 percent of the quarterly average of the high and low weekly quotes for Bunker C fuel oil in Seattle, Washington and Portland, Oregon, reduced by any third-party costs incurred by Northwest. Northwest states that the GPK also contains a market-out provision for further price adjustments if deemed necessary to enable Northwest to continue purchasing gas thereunder.

Northwest asserts that the assignment described above is consistent with the public convenience and necessity. The Settlement Agreement represents a fair and reasonable compromise by the parties of disputed issues which would conclude long and costly litigation, it is stated. Northwest maintains that the implementation of the Settlement Agreement eliminates any future exposure which Northwest would otherwise have with respect to potential gas price increases resulting from escalating PLA–13 overriding royalties. It is stated that the PLA–13 leasehold production which is currently committed to Northwest and its customers, including potential future development on the subject leases, would remain committed to Northwest and its customers under the GPK between Mobil and Northwest. Northwest indicates that the price to be paid for the gas purchased under the GPK does not exceed the value which Northwest otherwise would have placed on the gas as pipeline production in its PGA filings. Thus, the transfer of the assigned interest to Mobil would not increase the cost of gas produced from the assigned interest in the PLA–13 properties to Northwest's customers, it is stated.

Comment date: September 22, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Texas Gas Transmission Corporation

[Docket No. CP87–504–000]

Take notice that on August 20, 1987, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP87–504–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport up to 10,000 MMBtu of natural gas per day on an interruptible basis for Transcontinental Gas Pipe Line Corporation (Transco). Texas Gas would receive natural gas purchased by Transco in the Lake Arthur Field at an existing meter station on Texas Gas' system in Jefferson Davis Parish,

BEST COPY AVAILABLE

Louisiana, and redeliver to Transco at existing points of interconnection between Transco and Texas Gas in Evangeline and Acadia Parishes, Louisiana, known respectively, as Mamou and Transco-South Richie, it is explained. Texas gas further explains that the rate charged Transco would be the filed rate applicable to such service under Rate Schedule T, as well as the applicable FERC ACA unit charge. Texas Gas states that such rates are currently 2.80 cents/MMBtu for deliveries to Mamou and 2.46 cents/MMBtu for deliveries to Transco-South Richie. The currently effective FERC ACA charge is 0.2 cents/MMBtu, it is explained.

Texas Gas proposes to render the transportation service for five years from the date of initial delivery. Texas Gas explains that the transportation service is currently being rendered for Transco under an Order 60 "grandfathered" agreement that will expire on October 9, 1987. The requested authorization is necessary in order for the transportation service to continue beyond that date, it is explained.

Comment date: September 22, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules and Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20667 Filed 9-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC87-7-000]

Florida Gas Transmission Co.; Notice of Compliance Filing

September 2, 1987.

Take notice that on August 26, 1987, Florida Gas Transmission Company filed tariff sheets in compliance with Ordering Paragraphs (a) and (c) of the Commission's order issued July 16, 1987 in Docket No. SA87-44-000 granting adjustments in the provisions of 18 CFR 281.204(b)(2) for priority 2 entitlements index and extension of the annual filing requirements of 18 CFR 281.204(b)(2).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 9, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person not previously granted intervention in this proceeding and wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20669 Filed 9-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-94-000]

Transcontinental Gas Pipe Line Corp., Notice of Tariff Filing

September 2, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on Aug. 27, 1987, tendered for filing revised tariff sheets under its Rate Schedule FT and Rate Schedules X-265 through X-278 proposed to become effective April 1, 1987 and July 1, 1987.

Transco states that the purpose of this filing is to revise its firm transportation rates effective April 1, 1987 under Rate Schedule FT and Rate Schedules X-265 through X-278 on the basis of the cost and throughput determinants contained in its filings of October 6, 1986 in Docket No. RP87-7-000 as adjusted by Transco's April 1, 1987 filing in Docket No. RP87-7-007. Furthermore, the firm transportation rates proposed to become effective July 1, 1987 reflect the April 1, 1987 rates as adjusted for the change in the corporate federal income tax rate from 46% to 34%.

Transco further states that copies of the filing have been mailed to each of its customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before Sept. 9, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20670 Filed 9-8-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50673; FRL-3258-2]

Issuance of Experimental Use Permits; Dow Chemical et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits.

464–EUP–76. Renewal. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 5,050 pounds of the insecticide chloropyrifos on alfalfa, cotton, and grain sorghum to evaluate the use of various insects. A total of 1,920 acres are involved; the program is authorized only in the States of Arizona, Arkansas, California, Louisiana, Mississippi, New Mexico, and Texas. the experimental use permit was previously effective from May 29, 1986 to May 29, 1987; the permit is now effective from June 26, 1987 to June 26, 1988. A permanent tolerance for residues of the active ingredient in or on alfalfa, cotton, and grain sorghum has been established (40 CFR 180.342) (Dennis Edwards, PM 12, Rm. 202, CM#2, (703–557–2386))

464–EUP–95. Issuance. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 75 pounds of the herbicide triclopyr on rice to evaluate the control of broadleaf weeds. A total of 100 acres are involved; the program is authorized only in the States of Arkansas, Louisiana, Mississippi, and Texas. The experimental use permit is effective from July 15, 1987 to July 15, 1988. This permit is issued with the limitation that all treated rice will be destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

464–EUP–96. Issuance. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 46.5 pounds of the insecticide chloropyrifos on pastures to evaluate the control of grasshoppers. A total of 1,000 acres are involved; the program is authorized only in the State of South Dakota. The experimental use permit is effective from July 1, 1987 to July 1, 1988. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Dennis Edwards, PM 12, Rm. 202, CM#2, (703–557–2386))

45639–EUP–36. Issuance. Nor-Am Chemical Company, 3509 Silverside Road, P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 113.75 pounds of the herbicides diuron and thidiazuron on cotton to evaluate the control of various weeds. A total of 725 acres are involved; the program is authorized only in the States of Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina. The experimental use permit is effective from July 22, 1987 to November 30, 1987. Permanent tolerances for residues of the active ingredients in or on cottonseed have been established (40 CFR 180.106 and 180.403). (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830)).

34704–EUP–3. Amendment. Platte Chemical Company, P.O. Box 667, Greeley, CO 80632. In the **Federal Register** of August 6, 1986 (51 FR 28273), EPA issued on EUP pertaining to the issuance of 34704–EUP–3 to Platte Chemical Company. At the request of the company, the permit has been amended to add the State of Arizona, additional acreage and pounds of the active ingredient. The experimental use permit allows the use of 985.8 pounds of the insecticide malathion on pastures and rangeland to evaluate the control of grasshoppers. A total of 2,700 acres are involved (this includes 1,020 acres remaining under the previous program); the program is now authorized in the States of Arizona, Colorado, Idaho, New Mexico, North Dakota, and South Dakota. The experimental use permit is still effective until September 30, 1987. A permanent tolerance for residues of the active ingredient in or on grass and grass hay has been established (40 CFR 180.111). (William Miller, PM 16, Rm. 211, CM#2, (703–557–2600))

264–EUP–73. Issuance. Union Carbide Agricultural Products Company, Inc., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 9,805 pounds of the insecticide thiodicarb on broccoli, cabbage, cauliflower, and head lettuce to evaluate the control of lepidopterous larvae, flea beetles, and lygus. A total of 2,775 acres are involved; the program is authorized only in the States of Arizona, California, Colorado, Florida, Michigan, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Texas, Washington, and Wisconsin. The experimental use permit is effective from July 22, 1987 to July 22, 1988. Temporary tolerances for residue of the active ingredient in or on broccoli, cabbage, cauliflower, and head lettuce have been established. (Dennis Edwards, PM 12, Rm. 202, CM#2, (703–557–2386))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: August 27, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87–20545 Filed 9–8–87; 8:45 am]
BILLING CODE 6560–50–M

[PP 6G3438/T550; FRL–3258–3]

Thiodicarb; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the insecticide thiodicarb and its metabolite methomyl in or on certain agricultural commodities. These temporary tolerances were requested by Union Carbide Agricultural Products Co., Inc.

DATE: These temporary tolerances expire July 22, 1988.

FOR FURTHER INFORMATION CONTACT:

By mail: Dennis Edwards, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 205, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2386).

SUPPLEMENTARY INFORMATION: Union Carbide Agricultural Products Co., Inc., T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, has requested in pesticide petition PP 6G3438 the establishment of temporary tolerances for residues of the insecticide thiodicarb (dimethyl-N,N′-[thiobis[[(methylimino) carbonyl] oxy]]bis[ethanimidothioate] and its metabolite methomyl, (S-methyl-N-[(methylcarbamoyl)oxy]thioacetimidate) in or on the raw agricultural commodities broccoli, cabbage, and cauliflower at 7.0 parts per million (ppm); and head lettuce at 25.0 ppm.

These temporary tolerances will permit the marketing of the above-named raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 264-EUP-73, which is being issued under the Federal Insecticide, Fungicide,

and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Union Carbide Agricultural Products Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire July 22, 1988. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: August 27, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87–20544 Filed 9–8–87; 8:45 am]

BILLING CODE 6560–50–M

[OPP–100047; FRL–3257–3]

PEI Associates, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). PEI Associates, Inc. (PEI) has been awarded a contract to perform work for the EPA Office of Research and Development, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. Contractor access to FIFRA and FFDCA CBI is authorized by 40 CFR 2.307(h) and 40 CFR 2.308(h)(2), respectively. This action will enable PEI to fulfill the obligations of the contract and serves to notify affected persons.

DATE: PEI will be given access to this information no sooner than September 14, 1987.

FOR FURTHER INFORMATION CONTACT: By mail: William C. Grosse, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2613).

SUPPLEMENTARY INFORMATION: Under Contract No. 68–03–4037, PEI will provide technical support to the Office of Research and Development, which will conduct quality assurance audits on information on worker exposure studies, permeation resistance studies, and Confidential Statements of Formula for liquid formulations of pesticides listed below. This contract involves no subcontractors.

Ortho Phosphamidon Spray
Formulations with dicrotophos as active ingredient
Monocrotophos
EPN (Technical)
Formulations with EPN as active ingredient
Formulations with ethyl parathion as active ingredient
Dialifor
Cygon 2-E
Diazinon 4EC
Thiodan 3EC
Thiodan 50WP
Dimethoate 267EC
Methyl Parathion 4E
Parathion 8E
Diazinon 14G
Monitor 4
Monitor Technical
Guthion 2L
Guthion 2S
Guthion 50% WP
Guthion Technical
DEF 6
DEF Technical
Oftanol 5% GR
Oftanol 2
Di-Syston 8
Di-Syston 15% GR
Di-Syston Technical
MetaSystox-R Spray Concentrate
MetaSystox-R 50% Concentrate
Demeton/Systox
Aminocarb/Matacil
Lasso
Lasso Microtech
Lasso Atrazine
Lasso II
Ethyl Parathion
Methyl Parathion
Bidrin Technical
Azodrin Technical
Phosdrin Technical
Chlorfenvinphos/Birlane 24
Methyltrithion
Formulations with DNBP as active ingredient

The Office of Research and Development and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions udner FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.301(h)(2), the contract with PEI prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency of affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, PEI is reuqired to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this cotnractor until the above requirements have been fully

satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the Office of research and Development. All information supplied to PEI by EPA for use in connection with this contract will be returned to EPA when PEI has completed its work.

Dated: August 21, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 87-20419 Filed 9-8-87;8:45am]

BILLING CODE 6560-50-M

[OPP-100048; FRL-3257-1]

SRA Technologies; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). SRA Technologies has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SRA Technologies consistent with the requirements of 40 CFR 2.307(h) and 2.308(h)(2), respectively. This action will enable SRA Technologies to fulfill the obligations of the contract and this notice serves to notify affected persons.

DATE: SRA Technologies will be given access to this information no sooner than September 14, 1987.

FOR FURTHER INFORMATION CONTACT: By mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2613).

SUPPLEMENTARY INFORMATION: Under Contract No. 68-01-7379 (Delivery Order No. 036), SRA Technologies will analyze residue chemistry data that has been submitted to the Agency in support of pesticide tolerance petitions. This project is to develop a statistically sound basis for tolerance setting and to statistically examine other potential uses of residue data. This contract involves no subcontractor.

OPP has determined that access by SRA Technologies to information on the following pesticide chemicals is necessary for the performance of this contract:

acephate
acifluorifen
alachlor
aldicarb
aluminum phosphide
aluminum tris(O-ethylphosphonate) (fosetyl-A1)
amiben
atrazine
benomyl
bromoxynil
captafol
captan
carbaryl
carbofuran
carbosulfan (no established tolerances)
chlordane
chlorodimeform 2-(-4-chloro-6-(ethylamino)S-trizin-2-yl)amino)-2-methylpropionitrile (cyanazine)
chlorothalonil
chlorpyrifos
chlorsulfuron
cyano (3-phenoxyphenyl)methyl 4-chloro-alpha-methylethyl benzeneacetate (fenvalerate)
cypermethrin
cyromazine
DDT
demeton
daminozide
dicamba
O,O-diethyl(methylsulfinyl)phenyl phosphorothioate (fensulfothion)
dinoseb
diquat
ethalfluralin
ethephon
ethylene dibromide
hexakis(2-methyl-2-phenylpropyl) distannoxane
imazalil
iprodione
metalaxyl
methamidophos
methomyl
methoprene
metolachlor
oxyfluorfen
paraquat
picloram
propargite
ronilan 2-[1-ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one (sethoxydim)
simazine
terbacil
thiabendazole
thiophanate methyl
trichlorpyr
trifluralin
triforine
triphenyltin hydroxide

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.301(h)(2), the contract with SRA Technologies prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, SRA Technologies is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to SRA Technologies by EPA for use in connection with this contract will be returned to EPA when SRA Technologies has completed its work.

Dated: August 21, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 87-20420 Filed 9-8-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00244; FRL-3258-7]

FIFRA Scientific Advisory Panel Subpanel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) Subpanel to review a set of scientific issues being considered by the Agency in connection with the National Pesticide Survey, which is the first nationwide survey of pesticide contamination in domestic and community drinking water wells in the United States.

DATES: The meeting will be held Tuesday and Wednesday, September 29 and 30, 1987, from 8:30 a.m. to 5 p.m. on

Tuesday and ending about 1:30 p.m. on Wednesday.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS–769C), 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, Arlington, VA (703–557–7695).

SUPPLEMENTARY INFORMATION: The agenda for the meeting is: 1. Review of a set of scientific issues in connection with the Agency's National Pesticide Survey. This survey is the first nationwide survey of pesticide contamination in domestic and community drinking water wells in the United States. In March 1987, EPA began a pilot study to field test the major components of the survey and to provide an opportunity for any necessary revisions or modifications before the full survey begins. The National Pesticide Survey has been designed to yield results that are statistically representative of over 13 million domestic wells and some 51,000 community water systems. EPA expects to sample approximately 1500 drinking water wells in the course of the survey, which will run from the Fall of 1987 through 1989. The National Pesticide Survey has two principal objectives: (1) To determine the frequency and concentration in the drinking water wells of the nation; and (2) to improve our understanding of how pesticide contamination is associated with patterns of agricultural pesticide usage and the vulnerability of ground water to pollution.

Copies of documents relating to item 1 may be obtained by contacting: By mail: Information Services Branch (TS–757C), Program Management Support Division, Office of Pesticide Programs, 401 M Street, SW., Washington, DC.

Office location and telephone number: Rm. 236, Crystal Mall Building No. 2, Arlington, VA. (703–557–2805).

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or telephone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit 10 copies of a summery no later than September 22, 1987, in order to ensure appropriate consideration by the Panel.

Dated: September 2, 1987.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances

[FR Doc. 87–20654 Filed 9–8–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3259–7]

Science Advisory Board; Environmental Engineering Committee, Mining Waste Risk Screen Subcommittee; Open Meeting

Under Public Law 92–463, notice is hereby given that the Mining Waste Risk Screening Subcommittee of the Science Advisory Board's Environmental Engineering Committee will hold a two-day meeting on September 21–22, 1987 at the U.S. Environmental Protection Agency, in the Administrator's Conference Room, Room 1103 of the West Tower. The meeting will begin at 9:00 a.m. on Monday, September 21, and adjourn no later than 5:00 p.m. on Tuesday, September 22.

The purpose of this meeting is to enable the Subcommittee to independently review the Office of Solid Waste's technical support document entitled: "Draft Risk Screening Analysis of Mining Wastes," dated July 23, 1987. Copies of the document may be obtained from Cliff Rothenstein on 202–382–2791 or write to the U.S. Environmental Protection Agency, Office of Solid Waste, Room 2817, Washington, DC 20460 c/o Cliff Rothenstein.

The meeting is open to the public. Any member of the public wishing to attend or submit written comments should notify Mrs. Kathleen Conway, Deputy Director, Science Advisory Board, at 202/382–2552 or Joanna Foellmer at 202/382/4126 by September 16, 1987.

Dated: September 4, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–20757 Filed 9–8–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket 83–523]

FCC Form 330 for the Instructional Television Fixed Service; Availability

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of availability of new form.

SUMMARY: This action gives notice of the availability of FCC Form 330, which replaces FCC Form 330–P. The new form is to be used by applicants and licensees in the Instructional Television Fixed Service for new stations, modifications of existing stations, receive/response/relay stations and license assignments. Form 330 effects revisions to conform to rules and policies adopted in *Second Report and Order*, MM Docket 83–523, FCC 85–294; *Memorandum Opinion and Order*, MM Docket 83–523, FCC 86–66 (51 FR 9796; 3/21/86).

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Stuart B. Bedell, Mass Media Bureau, FCC, telephone 632–9356.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–20433 Filed 9–8–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Determination of National Defense Stockpile Goal for Germanium

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of determination of national defense stockpile goal for germanium.

SUMMARY: Pursuant to section 3 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*) and E.O. 12155, I have determined that, effective July 24, 1987, the National Defense Stockpile goal for germanium is increased from 30,000 kilograms to 146,000 kilograms.

DATED: June 23, 1987.

FOR FURTHER INFORMATION CONTACT: Paul K. Krueger, Assistant Associate

Director, Office of Mobilization Preparedness, Federal Emergency Management Agency (202) 646–3544.

SUPPLEMENTARY INFORMATION: The Committees on Armed Services of the Senate and House of Representatives were notified in writing of this proposed action under date of June 23, 1987.

Julius W. Becton, Jr.,

Director.

[FR Doc. 87–20612 Filed 9–8–87; 8:45 am]

BILLING CODE 6718–01–M

National Defense Stockpile Policy Determination

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of national defense stockpile policy determination.

SUMMARY: Notice is hereby given that I have determined, pursuant to authority delegated to me under section 1–101 of E.O. 12155 of September 10, 1979, that, in addition to statutory or other policy guidance issued for this purpose, any future analyses conducted or coordinated by the Federal Emergency Management Agency of requirements for materials for the National Defense Stockpile in support of determinations under section 3 of the Strategic and Critical Materials Stock Piling Act (50. U.S.C. 98b) are to be conducted in accordance with the following principles:

1. Analyses will be directed and performed by the individuals and organizations with subject-area experience and expertise.
2. Input will be obtained from the industries involved in materials mining and processing.
3. Analyses will consider a reasonable range of assumptions, with the results of major options provided to decision makers.
4. Study participants' inputs will be fairly presented and major dissenting views, if any, are to be clearly reported.
5. Economic models will be verified and supplemented, where practical, by the best available direct measures of material requirements.
6. Assumptions and planning factors will be consistent with those used by Federal departments and agencies for similar purposes.

DATED: July 23, 1987.

FOR FURTHER INFORMATION CONTACT: Paul K. Krueger, Assistant Associate Director, Office of Mobilization Preparedness, Federal Emergency Management Agency (202) 646–3544.

SUPPLEMENTARY INFORMATION: Compliance with these principles is to be certified to in any recommendations presented to or by the Federal Emergency Management Agency for determinations to be made under section 3 of the Stock Piling Act.

Julius W. Becton, Jr.,

Director.

[FR Doc. 87–20613 Filed 9–8–87; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 050387 AND 050587

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
TI Group plc, : Houdaille Industries, Inc., Houdaille Industries, Inc..	D87–1430D	05/04/87

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87–20633 Filed 9–8–87; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement Supplement To Investigate the Scientific Basis and Issues Arising From Monitoring a Community of Workers Exposed to Toxic Substances; Availability of Funds for Fiscal Year 1987

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC) announces the availability of funds for a supplement to its cooperative agreement (460–CCU100929) with the Center for Technology, Policy and Industrial Development/ Massachusetts Institute of Technology (CTPID/MIT) to support an investigation of the scientific basis as well as the legal and ethical issues arising form the monitoring of communities and workers exposed to toxic substances. The Catalog of Federal Domestic Assistance number is 13.262.

Program Objectives

The objectives of this supplement to the existing cooperative agreement are from scientific, legal, and ethical perspectives:

1. to determine methods of monitoring populations exposed to environmental and occupational hazards;
2. to determine methods of assessing risk based on such data or other existing data;
3. to determine effective means for involving the affected worker and communities in the monitoring decision, risk evaluation and decisions to communicate predicted risks.

Authority

This program is authorized under sectin 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(A)(1)).

Eligibility Requirements

Assistance will be provided only to the Center for Technology, Policy and Industrial Development at the Massachusetts Institute of Technology.

Justification

The depth of academic disciplines and technical training possessed by the CTPID/MIT staff, teamed with their

accrued experience in (1) conducting risk assessments, (2) incorporating biological monitoring data in assessment of risk, and (3) evaluating the scientific, legal, and ethical considerations involved in both biological monitoring and risk assessment, make CTPID/MIT the only group of scientists, lawyers, and ethicists who can develop and conduct this program. This group has acquired unparalleled insight by completing an extensive number of risk assessment projects, the majority of which have incorporated biological monitoring data and have addressed considerable related issues of social and legal concern.

Availability of Funds

It is expected that $200,000 in funds will be available during Fiscal Year 1987 to support this supplement. It is anticipated that the cooperative agreement will be funded for an additional budget period of 2 years. Continuation awards for those 2 years to cover this supplemental project and the efforts described in the initial cooperative agreement will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. the funding estimate is subject to change.

Reviews

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information on this program may be obtained from: Henry Cassell, Grants Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, Atlanta, Georgia 30333, Telephone (404) 262–6575.

Technical information may be obtained from: Theodore J. Meinhardt, Assistant to the Director, Division of Standards Development and Technology Transfer, National Institute for Occupational Safety and Health, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone (513) 533–8302.

Dated: September 2, 1987.

Diane D. Porter,

Assistant Executive Officer, National Institute for Occupational Safety and Health.

[FR Doc. 87–20597 Filed 9–8–87; 8:45 am]

BILLING CODE 4160–19–M

Public Health Service

Smokeless Tobacco Products; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of August 10, 1987 (52 FR 31088) by the Secretary of Health and Human Services to the Assistant Secretary for Health, the Assistant Secretary for Health has delegated to the Director, Centers for Disease Control, with authority to redelegate, all the authorities delegated to the Assistant Secretary for Health under sections 2, 4, and 8(a) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Pub. L. 99–252), as amended hereafter, concerning Public Education, Ingredient Reporting, and Reports, excluding the authorities to issue regulations and to submit reports to the Congress.

The delegation to the Director, Centers for Disease Control, became effective on August 31, 1987.

Dated: August 31, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87–20657 Filed 9–8–87; 8:45 am]

BILLING CODE 4160–18–M

Centers for Disease Control

Minority AIDS Prevention Initiatives in Fiscal Year 1988 Draft Program; Meeting

ACTION: Notice of Meeting. Funds will be available to the Centers for Disease Control (CDC) for minority AIDS prevention initiatives in Fiscal Year 1988 to supplement cooperative agreements with State and local health departments. CDC will convene a meeting to discuss the Fiscal Year 1988 draft program announcement for minority AIDS initiatives to be supported within the AIDS Surveillance and Prevention Projects.

Time and date: 9:00 am—2:00 pm—September 14, 1987.

Place: Center for Prevention Services Conference Room, CDC, Freeway Office Park, 1600 Tullie Circle, NE., Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available.

Contact person for more information: Mr. John Lehnherr, Resource Analysis, Office of the Director, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, telephone: commercial—(404) 329–1823; FTS 236–1823.

Dated: September 4, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87–20872 Filed 9–8–87; 10:08 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

All Billings Area Irrigation Projects: Interest and/or Penalty Notices

AGENCY: Blackfeet, Crow, Fort Belknap, Fort Peck, and Wind River Agencies, Bureau of Indian Affairs, Interior.

ACTION: Public notice.

SUMMARY: Interest and/or penalty fees will be assessed on all (Indian, Non-Indian, and individual corporations) delinquent operation and maintenance charges as prescribed in the Code of Federal Regulations, Chapter 4, Part 102. The exception to this rule are the government agencies, such as Federal, State and Tribal Governments.

This notice will be published, and posted at the local U.S. Post Offices, Irrigation Camps, local Newspapers, area Water Users Associations and the Bureau of Indian Affairs agencies.

Comments: All comments are to be written and mailed to the local Bureau of Indian Affairs irrigation project. Comments must be received by the end of the business day on October 9, 1987.

EFFECTIVE DATE: The interest and/or penalty fees will become effective January 1, 1987, and remain in effect until such notice is given in the **Federal Register.**

SUPPLEMENTARY INFORMATION: This notice issued pursuant to Code of Federal Regulations, Chapter 25, Part 171 under the authority delegated to the Area Director, Assistant Secretary for Indian Affairs and the Deputy Assistant Secretary of the Interior.

Richard Whitesell,

Billings Area Director.

[FR Doc. 87–20692 Filed 9–8–87; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[NV–930–07–4212–11; N–43395]

Realty Action; Lease/Purchase for Recreation and Public Purposes, Clark County, NV

Notice document 87–16621 appearing on page 27591 in the issue of Wednesday, July 22, 1987, is hereby amended to extend the comment period

to September 21, 1987, to allow for receipt of additional comments on this proposed action.

Interested parties may submit coments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, NV 89126.

Dated: September 2, 1987.

Charles Frost,

Acting District Manager.

[FR Doc. 87-20628 Filed 9-8-87; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Outer Continental Shelf Development Operations Coordination Document; Conoco, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2857, Block 42, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 31, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: August 31, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-20620 Filed 9-8-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 29, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 24, 1987.

Beth Grosvenor,

Acting Chief of Registration, National Register.

ALABAMA

Calhoun County

Jacksonville, *Woods, Alexander, House*, 517 N. Pelham Rd.

Talladega County

Sylacauga, *Watters, William, House*, Co. Hwy. 8

COLORADO

Jefferson County

Denver, *Tower of Memories*, 8500 W. Twenty-ninth Ave.

DISTRICT OF COLUMBIA

Washington

Mount Pleasant Historic District, Roughly bounded by Sixteenth & Harvard Sts., Rock Creek Church Rd., & Adams Mill Rd.

MISSOURI

Howard County

Fayette, *Wright, Dr. Uriel S., Office*, 120 Church St.

RHODE ISLAND

Bristol County

Barrington, *Nayatt Point Lighthouse (Lighthouses of Rhode Island TR)*, Nayatt Point

Bristol, *Bristol Ferry Lighthouse (Lighthouses of Rhode island TR)*, Ferry Rd.

Newport County

Newport, *Ida Lewis Rock Lighthouse (Lighthouses of Rhode Island TR)*, On Lime Rock in Newport Harbor off Wellington Ave.

Jamestown, *Conanicut Island Lighthouse (Lighthouses of Rhode island TR)*, 64 N. Bay View Ave.

Jamestown, *Dutch Island Lighthouse (Lighthouses of Rhode Island TR)*, S end of Dutch Island

Washington County

North Kingstown, *Poplar point Lighthouse (Lighthouses of Rhode Island TR)*, Poplar Ave.

SOUTH DAKOTA

Fall River County

Hot Springs, *Jensen, Governor Leslie, House*, 309 S. Fifth St.

Kingsbury County

Oldham, *Oldham Methodist Church*, Main St. & Epton Ave.

Minnehaha County

Sioux Falls, *Glidden, Josephine Martin, Memorial Chapel*, 2121 E. Twelfth St.

Walworth County

Selby, *Selby Opera House*, 3409 Main St.

Yankton County

Yankton, *Banton, Dr. B. M., House*, 517 Locust St.

TEXAS

Collin County

McKinney, *Beverly—Harris House (McKinney MPS)*, 604 Parker

McKinney, *Bingham, John H., House (McKinney MPS)*, 800 S. Chestnut

McKinney, *Board—Everett House (McKinney MPS)*, 507 N. Bradley

McKinney, *Brown, John R., House (McKinney MPS)*, 509 N. Church

McKinney, *Burrus—Finch House (McKinney MPS)*, 405 N. Waddill

McKinney, *Clardy, U.P., House (McKinney MPS)*, 315 Oak

McKinney, *Cline—Bass House (McKinney MPS)*, 804 Tucker

McKinney, *Coggins, J.R., House (McKinney MPS)*, 805 Howell

McKinney, *Collin County Mill and Elevator Company (McKinney MPS)*, 407 E. Louisiana

McKinney, *Crouch, John P., House (McKinney MPS)*, 302 S. Tennessee

McKinney, *Crouch—Perkins House (McKinney MPS)*, 205 N. Church

McKinney, *Davis, H.L., House (McKinney MPS)*, 705 N. College

McKinney, *Davis—Hill House (McKinney MPS)*, 710 N. Church

McKinney, *Dowell, J. S., House (McKinney MPS)* 608 Parker

McKinney, *Dulaney, Joe E., House (McKinney MPS)*, 311 S. Chestnut

McKinney, *Dulaney, Joseph Field, House (McKinney MPS)*, 315 S. Chestnut

McKinney, *Faires, F. C., House (McKinney MPS)*, 505 S. Chestnut

McKinney, *Faires-Bell House (McKinney MPS)*, S side Chestnut Sq.

McKinney, *Ferguson, John H., House (McKinney MPS)*, 607 N. Church

McKinney, *Foote—Crouch House (McKinney MPS)*, 401 N. Benge
McKinney, *Fox, S. H., House (McKinney MPS)*, 808 Tucker
McKinney, *Gough—Hughston House (McKinney MPS)*, 1206 W. Louisiana
McKinney, *Herod-Craig House (McKinney MPS)*, 205 W. Hunt
McKinney, *Hill, Ben, House (McKinney MPS)*, 509 Tucker
McKinney, *Hill, John B., House (McKinney MPS)*, 605 N. College
McKinney, *Hill, Moran, House (McKinney MPS)*, 203 N. Waddill
McKinney, *Hill, W. R., House (McKinney MPS)*, 601 N. College
McKinney, *Hill-Webb Grain Elevator (McKinney MPS)*, 400 E. Louisiana
McKinney, *House at 1303 W. Louisiana (McKinney MPS)*, 1303 W. Louisiana
McKinney, *House at 201 N. Graves (McKinney MPS)*, 201 N. Graves
McKinney, *House at 301 E. Lamar (McKinney MPS)*, 301 E. Lamar
McKinney, *House at 610 Tucker (McKinney MPS)*, 610 Tucker
McKinney, *House at 704 Parker (McKinney MPS)*, 704 Parker
McKinney, *Houses at 406 and 408 Heard (McKinney MPS)*, 406 & 408 Heard
McKinney, *Johnson, John, House (McKinney MPS)*, 302 Anthony
McKinney, *Johnson, Thomas, House (McKinney MPS)*, 312 S. Tennessee
McKinney, *King, Mrs. J. C., House (McKinney MPS)*, 405 E. Louisiana
McKinney, *Kirkpatrick, E. W., House (McKinney MPS)*, 903 Parker
McKinney, *McKinney Cotton Compress Plant (McKinney MPS)*, 300 blk. Throckmorton
McKinney, *McKinney Cotton Mill Historic District (McKinney MPS)*, Roughly bounded by Elm, RR tracks, Burrus, Fowler, & Amscott
McKinney, *McKinney Hospital, Old (McKinney MPS)*, 700—800 S. College
McKinney, *McKinney Residential Historic District (McKinney MPS)*, Roughly bounded by W. Lamar, N. Benge, W. Louisiana, & N. Oak
McKinney, *Neathery, Sam, House (McKinney MPS)*, 215 N. Waddill
McKinney, *Nenney, J. P., House (McKinney MPS)*, 601 N. Church
McKinney, *Newsome, R. F., House (McKinney MPS)*, 609 Tucker
McKinney, *Newsome—King House (McKinney MPS)*, 401 W. Louisiana
McKinney, *Rhea, John C., House (McKinney MPS)*, 801 N. College
McKinney, *Scott, A. M., House (McKinney MPS)*, 1109 W. Louisiana
McKinney, *Scott, L. A., House (McKinney MPS)*, 513 W. Louisiana
McKinney, *Smith, W. D., House (McKinney MPS)*, 703 N. College
McKinney, *Taylor, J. H., House (McKinney MPS)*, 211 N. Waddill
McKinney, *Thompson House (McKinney MPS)*, 1207 W. Louisiana
McKinney, *Waddill, R.L., House (McKinney MPS)*, 302 W. Lamar
McKinney, *Wiley, Thomas W., House (McKinney MPS)*, 105 S. Church
McKinney, *Wilson, A. G., House (McKinney MPS)*, 417 N. Waddill

VIRGINIA

Greene County

Amicus vicinity, *Locust Grove*, VA 641

WISCONSIN

Milwaukee County

Milwaukee, *Christ Evangelical Lutheran Church*, 2235 W. Greenfield Ave.
Milwaukee, *St. Peter's Evangelical Lutheran Church*, 1204, 1213, 1214, & 1215 S. Eighth St.
Milwaukee, *St. Vincent's Infant Asylum*, 809 W. Greenfield Ave.
Milwaukee, *St. Martini Evangelical Lutheran Church*, 1557 W. Orchard St.

Monroe County

Sparta, *Sparta Masonic Temple*, 200 W. Main St.

[FR Doc. 87-20614 Filed 9-8-87; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Docket No. AB-31 (Sub-No. 26X)

Grand Trunk Western Railroad Co.; Exemption; Discontinuance in Green and Montgomery Counties, OH

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to discontinue [1] its 14.6-mile line of railroad consisting of overhead trackage rights obtained from Consolidated Rail Corporation between milepost 0.00 near Xenia, OH and milepost 14.6 near Dayton, OH.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed a petition for waiver of environmental reporting requirements since the discontinuance of its trackage rights will have no physical impact on the environment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective October 9, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by September 21, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 29, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert I. Schellig, Jr., Grand Trunk Western Railroad Company, 131 West Lafayette Boulevard, Detroit, MI 48226.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 1, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20626 Filed 9-8-87; 8:45 am]
BILLING CODE 7035-01-M

[1] While applicant has characterized the above action as an abandonment, since service pursuant to trackage rights is being terminated, the involved action is actually a discontinuance.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment on the Arts

Theater Advisory Panel (Playwrights Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Playwrights Section) to the National Council on the Arts will be held on September 22, 1987, from 9:00 a.m.-5:30 p.m. in room M0-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of

section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–20621 Filed 9–8–87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Bi-weekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all notices of amendments issued, or proposed to be issued from August 17, 1987 through August 28, 1987. The last bi-weekly notice was published on August 26, 1987 (52 FR 32188).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO FACILITY OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 9, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure

to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: July 16, 1987

Description of amendments request: The proposed amendments would remove the fire protection requirements from the Technical Specifications (TS) and relocate the fire protection program to the Final Safety Analysis Report (FSAR). These changes would also revise the existing license condition relating to the Fire Protection Program (License Condition 2.C.(4) to NPF-2 and License Condition 2.C.(6) to NPF-8) to allow the licensee to make changes to the approved program in accordance with 10 CFR 50.59. Commission Generic Letter (GL) 86-10, dated April 24, 1986, requested licensees to take the action described above. In addition to these changes, changes in format to agree with the FSAR format, deletion of special reporting requirements and other associated administrative changes would achieve consistency with current Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided a detailed description and analysis based on a review of the requirements of 10 CFR 50.92, as it relates to the proposed changes to the fire protection TS and the license conditions. Based on their analysis, the licensee has determined that the proposed changes do not involve a significant hazards consideration. The staff agrees with the licensee's determination.

In addition, the staff has determined that the requested amendment: (1) would not involve a significant increase in the probability or consequences of an accident previously evaluated because no changes are being made to the Fire Protection Program, except for minor administrative changes and the generic relocation to the FSAR of the Fire Protection Program, (2) would not create the possibility of a new or different kind of accident from any accident previously evaluated because no physical plant changes are made by this amendment, and (3) would not involve a significant reduction in the margin of safety because any future change to the existing Fire Protection Program will still be subject to a controlled review process in accordance with 10 CFR 50.59 and Section 6 of the Technical Specifications.

Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

Attorney for licensee: Ernest L. Blake, Esquire, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Elinor G. Adensam

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, Maricopa County, Arizona

Date of amendment request: May 25, 1987, as supplemented by letter dated August 7, 1987.

Description of amendment request: The proposed amendment consists of 212 specific proposed changes to the Technical Specifications (Appendix A to Facility Operating License No. NPF-41), which are identified in the licensees' amendment request. The changes are being proposed to make the Technical Specifictions for PVNGS, Unit 1 consistent with the previously reviewed and approved Specifications for PVNGS, Units 2 and 3 (Appendices A to Facility Operating License Nos. NPF-51 and NPF-65, respectively), since the three units are of the same design.

The proposed changes can be categorized as those which (1) respond to changes in the regulations or regulatory guidance, (2) are more restrictive than the current Technical Specifications, or (3) are administrative changes since they are either editorial, provide clarification, remove redundancy or correct errors.

(1) The proposed changes which respond to changes in the regulations or regulatory guidance are as follows:

(a) Item 103 deals with Specification 3/4.4.7 regarding specific activity limits for the primary coolant. The proposed change would bring the Action Statement for specific activity in the primary coolant into conformance with Generic Letter 85-19. Item 209 deals with Specification 6.8.1.5 regarding annual

reports for the facility. This proposed change would add to the annual reporting requirements the results of primary coolant specific activity analysis in which the primary coolant exceeds the limits of Specification 3/4.4.7. Included with the above changes are the associated administrative changes due to the revised bases section, revised table of contents and renumbered pages; these are Items 6, 7, 8, 16, 17, 18, 19, 21, 22, 104, 105, 106, 108, 110, 112, 113, 114 and 119.

(b) Item 206 deals with Specification 6.7.1.c regarding the Safety Limit Violation Report. The proposed change would revise the time for submitting such a report from within 14 days to within 30 days, which is in conformance with the requirements specified in 10 CFR 50.73(a).

(2) The proposed changes which are more restrictive than the current Technical Specifications are as follows.

(a) Item 35 deals with the bases section for boration systems (Specification 3/4.1.2). The proposed change would add to the list of components required to perform boron injection by including the volume control tank and an associated valve.

(b) Item 96 deals with Specification 4.4.3.2 regarding the surveillance requirements for the auxiliary spray system. The proposed change would include surveillance requirements for two additional valves associated with the system.

(c) Item 126 deals with Specification 4.5.2.e regarding 18-month surveillances for emergency core cooling subsystems. The proposed change would add components to the surveillances by including piping outside containment which is in contact with sump water during loss-of-coolant accident conditions.

(d) Items 159 and 160 deal with Specification 4.8.1.3 regarding surveillance requirements for the cathodic protection system. The proposed changes would modify the surveillance intervals from 92 to 61 days and from 18 to 12 months.

(e) Item 207 deals with Specification 6.8.1.g regarding limitations on making modifications to the core protection calculator software. The proposed change would include additional limitations on making modifications to the software. Item 80 is an associated administrative change to the bases section for the core protection calculator to make it consistent with the proposed change to Specification 6.8.1.g.

(3) The remaining items of proposed changes are either editorial, provide clarification, remove redundancy or correct errors. Examples of these types of changes are as follows:

(a) Item 203 deals with Specification 6.5.3.5.l regarding the audit of the Pre-planned Alternate Sampling Program (PASP) and its implementing procedures. The proposed change would delete this redundant Specification since the controls for PASP and its procedures are addressed in Specification 6.8.1. Item 211 deals with Specification 6.16 regarding (i) NRC approval of PASP by Region V prior to implementation and (ii) reporting changes to PASP in the Semiannual Radioactive Effluent Release Report. The proposed change would delete this Specification since (i) NRC approval for PASP was granted on January 14, 1986 and (ii) Specification 6.9.1.8, which defines the content for the Semiannual Radioactive Effluent Release Report, doesn't require that changes to PASP be reported therein.

(b) Item 92 deals with the footnotes for Specifications 3.4.1.4.1 regarding operability of the shutdown cooling loops. The proposed editorial change would move one footnote ahead of the other two since it appears first in the text.

(c) Item 115 deals with Specification 3.4.10 regarding reactor coolant system vent paths. The proposed change would clarify the locations for verifying the operability of the reactor coolant system vent paths by specifically stating that the locations are the reactor vessel head and the pressurizer steam space.

(d) Item 155 deals with a misspelled word on page 3/4 7-22. The proposed change would correctly spell the word "susceptible."

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided guidance for determining whether a proposed amendment involves a significant hazards consideration (51 FR 7751). Examples of amendments that are not likely to involve a significant hazards consideration are as follows: (i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature; (ii) A change that constitutes an additional limitation, restriction or control not presently included in the technical specifications: for example, a more stringent surveillance requirement; and (vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

The staff considers Items 103, 206 and 209 of the proposed amendment to be similar to example (vii) since they are being proposed to make the specifications conform with 10 CFR 50.73(a) and Generic Letter 85-19.

The staff considers Items 35, 96, 126, 159, 160 and 207 of the proposed amendment to be similar to example (ii) since they involve more restrictive limitations and requirements not presented included in the technical specifications.

The staff considers the remainder of the 212 items to be similar to example (i) since they involve changes which are editorial, provide clarification, remove redundancy or correct errors.

Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards determination.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: May 1, 1987, as supplemented June 22, 1987 and July 7, 1987

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for the Brunswick Steam Electric Plant (BSEP), Units 1 and 2 to incorporate test frequency changes for the Rosemount Analog Trip Unit Systems. A change in frequency from monthly to semiannually is proposed for the functional and calibration tests for these instruments in TS Tables 4.3.1-1, 4.3.2-1, 4.3.3-1, 4.3.6.1-1 and 4.3.7.1-1.

During the period from 1981 to 1984, the direct pressure and differential pressure switches that provide the input intelligence to safety system logic for the Reactor Protection System (RPS), Nuclear Steam Supply Shutoff System (NSSSS) and Emergency Core Cooling System (ECCS) were replaced with Rosemount transmitters and the Rosemount Analog Trip System. These changes were based on the General Electric Company (GE) Licensing Topical Report NEDO-21617-A, "Analog Transmitter/Trip Unit System for Engineered Safeguard Sensor Trip Inputs," issued in late 1978 as an approved method for improving safety

system instrumentation. A monthly testing requirement was established by NEDO-21617-A and, subsequently, incorporated into the BSEP TS.

In the May 1, 1987 submittal, the licensee states that observations made by both maintenance and operating personnel during the past five years of operation of the Rosemount Analog Trip System have indicated that the system has a very low failure rate and requires little, if any, calibration. A study of drift and failure rates of these instruments indicates that a test interval of six months could be used while maintaining an exceptional availability of 0.9999. The licensee concludes that the demonstration of Rosemount Analog Trip System stability over the past five years supports an increase in test interval. Of 6177 calibrations, 96 percent of the sampled surveillance test results fell within the manufacturer's trip point repeatability specifications. In fact, approximately 2400 showed absolutely no drift in setpoint values. The trip units, over their operating history, have exhibited a slight drift in and around their setpoint; however, they have stayed well within the manufacturer's specifications. The licensee states further that increasing the present monthly surveillance interval to a six-month test interval would provide the following:

1. Exceptional system availability of 0.9999 with simultaneous testing,
2. A reduction in number of half scrams taken for testing (reduced from 288/year to 48/year),
3. A reduction in number of half group isolations taken for testing (reduced from 912/year to 152/year),
4. Reduction of out of service time for safety systems (isolation reduced from 192/year to 32/year),
5. Decreased stroking of valves in the drywell,
6. Less potential for personnel error during testing.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed surveillance frequency change will not decrease the Rosemount Analog Trip Unit System availability below the .999 specified in the GE Topical Report NEDO-21617-A. The study of the drift and failure rates of the Rosemount Analog Trip System in use at BSEP indicates that the trip points are highly repeatable and this equipment has a much lower actual failure rate than assumed in NEDO-21617-A, which provided the basis for monthly surveillance. The study shows that a test interval of six months could be used while maintaining an exceptional availability of 0.9999. Increasing the surveillance interval would reduce the number of half scrams and half group isolations required for testing, reduce out-of-service time for safety systems, decrease potential drywell leakage and potential valve failures by stroking valves inside the drywell less often, and reduce the potential for personnel error. A net reduction in risk (gain in safety) would be realized with the increased interval. In addition, the consequences of an accident will remain unchanged since no equipment or function of any piece of equipment will be changed.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. No equipment or function of any piece of equipment will be changed; therefore, no possibility of a new or different kind of accident is created.

3. The proposed amendment does not involve a significant reduction in the margin of safety. In fact, it involves a net increase in the margin of safety by providing a reduction in half scrams, half group isolations, out-of-service time for safety systems, drywell leakage and potential valve failures, and personnel error. Moreover, availability is improved, thus the margin of safety is improved.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore, proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: Thomas A. Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Elinor G. Adensam

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: July 30, 1987

Description of amendment request: This amendment would revise the Technical Specifications to change the diesel generator inspection interval from every 18 months to every refueling outage. It would also correct a reference to an NRC staff Safety Evaluation Report of July 8, 1986, in Attachment 2 to Facility Operating License NPF-58 for the Perry facility concerning 10 CFR 50.59 changes to the maintenance and surveillance program for Transamerica Delaval, Inc. (TDI) diesels.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of significant hazards considerations in its July 30, 1987, request for a license amendment.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the Transamerica Delaval Inc. (TDI) Owners Group Design Review and Quality Revalidation (DR/QR) Report requires inspections that are more thorough than the inspections normally being performed in accordance with manufacturers recommendations. CEI's commitment to the DRQR Report is designed to increase reliability of the Division I and II diesel generators.

Thus, there is no increase in the probability or consequences of any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the change clarifies existing commitments presently being adhered to. Perry Nuclear Power Plant Unit 1 Facility Operating License NPF-58 currently contains a condition that CEI shall implement the TDI requirements as incorporated within the license. By implementing the recommendations of Revision 2 of Appendix II of the TDI DRQR Report, CEI will be implementing a program that has undergone extensive industry and regulatory review. (Re: Safety Evaluation Report Re: The Operability/Reliability of the Emergency Diesel Generators Manufactured by Transamerica Delaval, Inc. - Perry Nuclear Power Plant (Unit 1 and 2) - W. R. Butler to Murray R. Edelman dated July 8, 1986).

Thus, no new or different kind of accident scenario is introduced.

The proposed change does not involve a significant reduction in the margin of safety because the change makes the Technical Specifications consistent with the approved program which ensures generators for nuclear standby service is (sic) within the range normally assumed for diesel engines designed and manufactured in accordance with General Design Criterion (GDC) 17 and 10 CFR Part 50, Appendix B.

Thus, there is not a significant reduction in the margin of safety.

Accordingly, based on the licensee's findings with which the Commission's staff concurs, the Commission's staff has made a proposed determination that the application involves no significant hazards consideration.

The change to Attachment 2 of Facility Operating License NPF-58 for the Perry facility merely provides a corrected reference to the Commission's most recent safety evaluation related to maintenance and surveillance of the TDI diesels. This change is administrative in nature and therefore matches Example (i) of the Commission's guidance for determining amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). Example (i) is a purely administrative change to the technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. Thus, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20007.

NRC Project Director: Martin J. Virgilio.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; and Docket No. STN 50-456 Braidwood Station, Unit No. 1, Will County, Illinois

Date of application for amendments: June 17, 1987

Description of amendments request: These amendments would revise Technical Specification Section 3.4.6.1 to relax certain action statements that apply when some of the reactor coolant system (RCS) leakage detection systems are inoperable. It is the staff's intention to apply this amendment, if it is found acceptable, to Braidwood Station, Unit 2, when it receives its operating license.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated these proposed amendments and determined that they involve no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin or safety.

This proposed amendment would allow unit operation to continue for up to 30 days with any one of the three reactor coolant pressure boundary leakage detection systems inoperable. Sufficient leakage detection capability will still exist under the provision of the proposed action statements to allow operators to detect and monitor any RCS pressure boundary and take action to prevent further degradation of the RCS pressure boundary. As a result, the probability of previously evaluated accidents will not be significantly increased by a revision to the action statement for inoperable leakage detection systems.

The consequences of previously evaluated accidents are not affected by the availability of the RCS leakage detection systems because the RCS leakage detection systems do not function to mitigate the consequences of previously evaluated accidents. Their purpose is only to monitor and detect leakage from the RCS pressure boundary.

This proposed amendment only affects the availability of redundant RCS leakage detection systems. It does not allow any new modes of operation beyond those normally performed at operating PWR's. Additionally, this amendment does not allow any modifications to the plant. For these reasons, this proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The leakage detection systems are designed to detect a one gpm leak in one hour. According to a Westinghouse leak-before-break study performed for Byron/Braidwood, the calculated leak rate through the postulated flaw results in a factor of at least 10 relative to the sensitivity of the leakage detection systems. This margin is not affected by the proposed amendment.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room location: For Byron Station the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael Miller, Isham, Lincoln & Beal, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

Commonwealth Edison Company, Docket No. 50-373, La Salle County Station, Unit 1, LaSalle County, Illinois

Date of application for amendment: June 16, 1987

Description of amendment request: The proposed one-time-only amendment to Operating License No. NPF-11 would allow performance of the snubber surveillance for LaSalle Unit 1 (LSCS-1), to correspond to the scheduled second refueling.

This change is desired due to the extended interval between completion of snubber functional test surveillance for Technical Specification 3/4.7.9 and the scheduled second refueling outage. Without the proposed amendment, the surveillance schedule requirements of Technical Specification 3/4.7.9 would dictate that the next snubber surveillance for LSCS-1 be done during the course of the second fuel cycle.

Commonwealth Edison is proposing to make a one time amendment to Unit 1

Technical Specification 3/4.7.9. The amendment would allow the second required surveillance to be done at the second refueling outage, rather than during the course of the second fuel cycle.

The licensee's technical justification for the proposed technical specification amendment is based on the following:

- the safety-related snubber population of LSCS-1 was fully operable at the start of the second fuel cycle;
- there is a greatly reduced failure potential for snubbers when the unit is in cold shutdown conditions;
- in a majority of cases, the mechanical snubber will be able to perform its primary function (limit piping motion and stress during dynamic events) while in a degraded/failed condition;
- all safety-related mechanical snubbers in LSCS-1 are to be visually inspected during the second fuel cycle; and
- a snubber reduction program is being implemented at LSCS-1.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluation; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated because there still exists a high level of snubber protection for safety related piping systems against postulated dynamic loads and load combinations given in Section 3.9 of the Updated FSAR (UFSAR). All safety related snubbers in LSCS-1 were fully operable at the start of the second LSCS-1 fuel cycle, providing protection to plant piping against postulated events as defined in Section 3.9 of the UFSAR. The snubber population will undergo regularly scheduled visual inspections during the second fuel cycle, to provide a high level of assurance that the units are in good mechanical condition, and have not been damaged by unanticipated service conditions not postulated in the UFSAR, such as a system water hammer due to an improper system lineup.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed amendment merely extends the time interval between snubber surveillances, and does not change the testing requirements or acceptance limits for insuring snubber operability over plant life. Snubbers which fail the upcoming test at second refuel will still be evaluated as before for their impact on the structural integrity of associated system piping, using the design loads and acceptable limits specified in Chapter 3.0 of the UFSAR.

(3) Involve a significant reduction in the margin of safety as defined in the bases of Technical Specification 3/4.7.9. The complete test of the LSCS-1 snubber population at first refueling restored the population to the same level of operability as it had prior to the first cycle. The Technical Specification does not place a time on the first cycle for when snubber testing must occur, but merely requires it to be done at first refueling. In addition, the plant remained in cold shutdown for approximately four months following the first refuel snubber surveillance. This was a period of greatly reduced potential for snubbers to fail, since the pipe vibratory and transient loads and plant environmental conditions which are known to degrade snubbers are absent, and because plant systems are generally shutdown and out of service for maintenance. Therefore, the additional four months of snubber service being added to the current surveillance period during reactor operation is offset by an equal time period of no snubber degradation at the beginning of the surveillance period. Finally, the mechanical snubbers used exclusively on LSCS-1 display a tendency to fail by becoming harder to stroke or by becoming rigid when degradation of the units occur in service. The snubbers still serve to prevent excessive pipe accelerations and displacement in this condition. Therefore, the structural integrity of plant piping can be expected to be maintained during design basis dynamic events, as specified in the bases of Techncial Specification 3/4.7.9.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Beale, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036

NRC Project Director: Daniel R. Muller

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 20, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications relating to the limiting conditions for operation of the Auxiliary Feedwater Pumps to be consistent with the Standard Technical Specifications. Currently the IP-2 Technical Specifications require that three feedwater pumps be operable when the RCS is above 350° F. If this requirement can not be met within 72 hours, then the Technical Specification requires the reactor to be placed in a hot shutdown condition within the next 12 hours and subsequently cooled below 350° F using normal operating procedures. The proposed changes will add limiting conditions for operation for up to three auxiliary feedwater pumps that may be in an inoperable condition.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (March 6, 1986, 51 FR 7751) of amendments that are not likely to involve a significant hazards consideration. The proposed change is enveloped by example (ii) which relates to changes that constitute an additional limitation, restriction or control not presently included in the Technical Specifications. The staff proposes to determine that the amendment does not involve a signification hazards consideration since it adds restrictions not currently in the Technical Specifications.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Acting Director

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: June 22, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications concerning Steam Generator tube inservice inspection. The amendment would allow sleeving as a repair technique provided an NRC-approved methodology is applied. Sleeving is a repair technique in which a smaller, shorter tube is placed inside the existing steam generator tube. It is sealed to the original tube at both ends of the sleeve effectively forming a new barrier. This process allows the tube to remain in service in contrast to plugging which removes the tube from service.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will involve a no significant hazards consideration if the proposed amendment does not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different king of accident previously evaluated, or (3) involve a significant reduction in margin of safety.

The licensee provided the following analysis: "... operation of Indian Point Unit No. 2 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated, since the integrity of the steam generator tubes after sleeving will be equivalent to that of the original tubes. Thus, since the structural integrity of the tubes will not be affected by this change, there is no increase in the probability of any accident previously evaluated. In addition, the steam generator will remain capable of performing its required heat transfer function. The act of placing a sleeve in the steam generator tube results in a more efficient steam generator relative to plugging the affected tubes. Thus, the consequences of any accident previously evaluated is unaffected because the heat transfer capability of the steam generators will not be significantly altered.

(2) Create the possibility of a new or different kind of accident from any accident evaluated, as both the structural integrity and the heat transfer capability of Indian Point 2 steam generators will not be significantly affected by the use of an approved sleeving process. In addition, the steam generator tube sleeves do not interact with any IP2 steam generators.

(3) Involve a significant reduction in a margin of safety. The heat transfer capabilities of IP2 steam generators will be improved by utilizing the sleeving process rather than the currently required plugging. The sleeving process will allow a repaired steam generator tube to remain in service, rather than completely blocking the tubes flow with plugs. Since the structural integrity of the steam generators tubes will be unaltered, the net effect of utilizing a steam generator tube sleeving process, rather than the currently required plugging procedure, will be an increase in the margin of safety. This increase is due to the relatively improved heat transfer characteristics of the steam generator."

Based on the above, and based on the provisions of the proposed amendment requiring use of NRC approved sleeving repair techniques, the staff proposes to determine that the change would not involve a significant hazards determination.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Acting Director

Duke Power Company, et.al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 27, 1987

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 2.2.1, Table 2.2-1 and TS 3/4.3.1, Tables 3.3-1, 3.3-2 and 4.3-1 to reflect a modification to the Unit 1 turbine trip circuitry. This modification has already been installed on Unit 2 as indicated by the current TSs. Although amendments will be issued for both Units, changes are proposed for Unit 1 only. Unit 2 is included only because the TSs are combined in one document for both units.

The licensee's planned modification intends to move the four pressure switches and associated control packs from the main control valves to the main stop valves. Thus, a main Turbine Power-Load Unbalance signal will still result in the closure of control and intercept valves but an unnecessary reactor trip will not be generated because the main stop valves will not produce the trip signal.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the anticipatory reactor trip on turbine trip will continue to be functional. The proposed modification would not significantly affect the design or operation of Unit 1 but would eliminate unnecessary reactor trips and challenges to the reactor protection system. Also, the licensee's proposed modification would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the changes do not significantly affect the design or operation of Unit 1. The reactor trip on turbine trip signal will still be generated when it is needed. Finally, the proposed modification would not (3) involve a significant reduction in a margin of safety because of the reasons stated above in items (1) and (2).

Accordingly, the Commission has determined that the above changes involve no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Darl S. Hood, Acting Director

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: July 31, 1987

Description of amendment request: The proposed amendments would correct Technical Specification (TS) 3/4.7.4, Nuclear Service Water System (NSWS), by changing the action sections to reflect that some portions of the NSWS are shared between the two McGuire units, but that the system is not shared in its entirety. The shared and unshared portions of the NSWS would be identified by adding a new Figure 3/4 7-1. TS Bases 3/4.7.4 would be supplemented with additional text and a new Table B 3/4 7-1 listing Unit 1 and 2 shared NSWS valves.

Separate action statements (a. and b.) would be specified to clarify the actions and allowed outage times for the situations in which an inoperable component affects a single unit or both

units. However, the allowed outage time for an inoperable loop for either situation would remain unchanged. The revised Action Statements would state:

a. With the unit specific portion of only one nuclear service water loop per unit Operable, restore both unit specific loops to Operable status within the next 72 hours or place the affected unit at least in Hot Standby within the next 6 hours and in Cold Shutdown within the following 30 hours.

b. With only one of the shared portions as defined by Figure 3/4 7-1 of the Unit 1 and Unit 2 nuclear service water loops Operable, restore the shared portion of the loops to Operable status within 72 hours or place both units in at least Hot Standby within the next 6 hours and in Cold Shutdown within the following 30 hours.

Additionally, Surveillance requirement 4.7.4, which requires that at least two nuclear service water loops be demonstrated operable, would be clarified to indicate that the reference to two loops means two loops per unit.

Basis for proposed no significant hazards consideration determination: Existing TS 3/4.7.4 is based upon two independent NSWS loops per unit. However, the NSWS is described in the McGuire FSAR (Sections 1.2.2 and 9.2.2) to be a system with some shared components. Specifically, the design consists of common suction piping (train A of both units share suction as do train B of both units), discharge piping, and cross-connect piping. The unshared portion of the systems consists of four loops (two per unit) to ensure redundancy and the availability of cooling to both units, even if a single failure were to render two loops inoperable (i.e., such a failure could involve train A of both units or train B of both units, but not both trains of the same unit). In the event of a safety injection or blackout signal on either unit, train A of both units would align to take suction from Lake Norman and train B of both units would align to the ultimate heat sink; all train A to train B cross-connects would close on both units as would non-safety to safety related cross-connects. The NSWS is, thus, designed to tolerate the combination of a single failure following a LOCA, a seismic event causing loss of Lake Norman, and loss of station power plus offsite power. The staff reviewed and approved the NSWS design as stated in SER Section 9.2.2 which is not changed by the proposed amendments. The proposed amendments would correct the inconsistency between the TS and design.

The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that the proposed change would be of a corrective nature and would not result in a change in system design or design criteria, operability requirements or plant operation as previously approved by the staff. Therefore, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to find that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC) Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Darl S. Hood, Acting

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: August 17, 1987

Description of amendment request: The amendment would change a surveillance requirement dealing with a special test exception on shutdown margin. The time period within which a scram test must be performed prior to reducing the shutdown margin below specified limits would be increased from 24 hours to 7 days.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The plant is essentially operated in the same manner as before and no change in plant configuration has occurred. Therefore, there is no increase in the probability of accidents previously evaluated.

The proposed Technical Specification change modifies the Surveillance [Requirement] prior to entry into the Special Test Exception for Shutdown Margin. The safety evaluation has been performed to demonstrate that the proposed change in [the] Surveillance [Requirement] provides essentially the same assurance that the requirement to provide the reactivity equivalent to at least the highest estimated CEA worth is available for trip insertion from Operable CEAs described in the Technical Specifications is fulfilled. Therefore, it is determined that the consequences of an accident previously evaluated has not significantly increased.

In connection with the second standard, the licensee provided the following analysis.

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously analyzed.

The plant is operated essentially in the same manner as before and no change in plant configuration is involved. Therefore, there will be no possibility of a new or different accident [from any accident previously analyzed].

With regard to the third standard, the licensee stated:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The Technical Specification for the minimum required Shutdown Margin during the Special Test Exception has not been modified. The proposed change only addresses the Surveillance Requirement of trip testing of CEAs 24 hours prior to entering the Special Test Exception. The safety evaluation has determined that the change in [the] Surveillance Requirement will have no significant change in the probability that sufficient CEA worth is available in the event of a transient. Therefore, the proposed change will not cause a significant reduction in any margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this

review, the staff believes that the licensee has met the three standards.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: August 17, 1987

Description of amendment request: The amendment would upgrade the technical specifications (TS) dealing with the structural integrity of ASME Code Class 1, 2, and 3 components. In addition, the amendment would make the proposed Unit No. 1 TS similar to the Unit No. 2 TS and the Combustion Engineering Standard Technical Specifications (STS), thereby promoting consistency between the units.

The licensee proposes to delete Tables 4.4-6, 4.4-7, and 4.4-8 from the TS. Table 4.4-6 contains the inservice inspection (ISI) program for safety class 1 components. Table 4.4-7 contains the ISI program for safety class 2 components. Table 4.4-8 contains the ISI program for safety class 3 components. The combination of these three tables is commonly referred to as the licensee's ISI program. The ISI program for most licensees is usually contained in a licensee-controlled document, and the actual program is not usually reproduced in the TS. Although the program will be removed from the TS, the program will remain in effect as a licensee-controlled document, subject to the ISI rules of the Commission.

The licensee proposes to combine the limiting conditions of operation (LCO), action statements, and surveillance requirements for the Code Class 1, 2 and 3 components (TS 3.4.10.1). Presently, Code Class 1 components are the subject of TS 3.4.10.1 and Code Class 2 components are the subject of TS 3.4.10.2. TS 3.4.10.3 contains the Code Class 3 component requirements. In regard to the proposed LCO statement, the licensee proposes to change the statement to read: "The structural integrity of ASME Code Class 1, 2, and 3 components (except steam generator tubes) shall be maintained in accordance with Specification 4.4.10.1." The licensee proposes to have this LCO applicable in all modes, versus the current requirement for applicability in modes 1 through 4. The proposed LCO and its applicability are similar to the Unit 2 TS and the STS. The licensee proposes the same action statements as contained in the Unit 2 TS and STS. In addition, the licensee proposes the surveillance requirement to read: "No additional surveillance requirements other than those required by Specification 4.0.5." Lastly, all remaining LCO's, applicability modes, action statements, and surveillance requirements will be deleted.

In order to reference the ISI program as a licensee-controlled document, the licensee proposes a new TS 4.0.5, which consists of five sections. Section a. will reference 10 CFR 50.55a(g) (Codes and Standards-Inservice Inspection Requirements), which in turn references the ASME Code/ISI program. Section b. will illustrate the surveillance intervals. Section c. will provide for interval extensions. Section d. will state that the ISI activities are in addition to other specified surveillance requirements. Section e. will specify that nothing in the Code shall be construed to supersede the requirements of any technical specifications. The new TS 4.0.5 is essentially the same as what is contained in the Unit 2 TS and the STS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis.

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change to Technical Specification Section 4.0, Surveillance Requirements, is a change to achieve consistency between the St. Lucie Unit 1 Technical Specifications and the St. Lucie Unit 2 Technical Specifications. The intent of the [s]pecifications has not been changed. The change incorporates the format/wording of the Combustion Engineering - Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications.

The change to Technical Specification 3.4.10 - Structural Integrity - ASME Code Class 1, 2 and 3 Components is proposed to achieve consistency between the St. Lucie Unit 1 Technical Specifications and the St. Lucie Unit 2 Technical Specifications. Three (3) separate Limiting Conditions for Operation [LCO] have been incorporated into one (1) LCO. Reference to Inservice Inspection Tables and Surveillance Requirements of a specific Edition and Addenda of Section XI of the ASME Boiler and Pressure Vessel Code have been deleted. Reference to Specification 4.0.5 has been added to provide Surveillance Requirements for Inservice Inspection of ASME Code Class 1, 2 and 3 Components in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and applicable Addenda as required by 10 CFR 50.55a(g). Also, the St. Lucie Unit 1 ISI program contains the requirment as provided in the appropriate Edition and Addenda of Section XI of the Code. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

In connection with the second standard, the licensee provided the following:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to Technical Specification Section 4.0, Surveillance Requirements, is a change to achieve consistency between the St. Lucie Unit 1 Technical Specifications and the St. Lucie Unit 2 Technical Specifications. The intent of the [s]pecifications has not been changed. The change incorporates the format/wording of the Combustion Engineering - Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications.

The change to Technical Specification 3.4.10 - Structural Integrity - ASME Code Class 1, 2 and 3 Components is proposed to achieve consistency between the St. Lucie Unit 1 Technical Specifications and [the] St. Lucie Unit 2 Technical Specifications. Three (3) separate Limiting Conditions for Operation [LCO] have been incorporated into one (1) LCO. Reference to Inservice Inspection Tables and Surveillance Requirements of a specific Edition and Addenda of Section XI of the ASME Boiler and

Pressure Vessel Code have been deleted. Reference to Specification 4.0.5 has been added to provide Surveillance Requirements for Inservice Inspection of ASME Code Class 1, 2 and 3 Components in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and applicable Addenda as required by 10 CFR 50.55a(g). Also, the St. Lucie Unit 1 ISI Program contains the requirements as provided in the appropriate Edition and Addenda of Section XI of the Code. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

The licensee addressed the third standard as follows:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The change to Technical Specification Section 4.0, Surveillance Requirements, is a change to achieve consistency between the St. Lucie Unit 1 Technical Specifications and the St. Lucie Unit 2 Technical Specifications. The intent of the [s]pecifications has not been changed. The change incorporates the format/wording of the Combustion Engineering - Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications.

The change to Technical Specification 3.4.10 - Structural Integrity - ASME Code Class 1, 2 and 3 Components is proposed to achieve consistency between the St. Lucie Unit 1 Technical Specifications and [the] St. Lucie Unit 2 Technical Specifications. Three (3) separate Limiting Conditions for Operation [LCO] have been incorporated into one (1) LCO. Reference to Inservice Inspection Tables and Surveillance Requirements of a specific Edition and Addenda of Section XI of the ASME Boiler and Pressure Vessel Code have been deleted. Reference to Specification 4.0.5 has been added to provide Surveillance Requirements for Inservice Inspection of ASME Code Class 1, 2 and 3 Components in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and applicable Addenda as required by 10 CFR 50.55a(g). Also, the St. Lucie Unit 1 ISI Program contains the requirements as provided in the appropriate Edition and Addenda of Section XI of the Code. Therefore, use of the modified specification would not involve a significant reduction in [a] margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards of 10 CFR 50.92 because:

(1) the ISI program will remain in effect as a licensee-controlled document referenced in the TS instead of the program itself being a TS,

(2) the ISI program will still be governed by the Commission's rules and regulations,

(3) the combining of the LCO's, applicability modes, action statements, and surveillance requirements is basically a reformatting of the TS,

(4) the addition of a new TS 4.0.5 will establish the relationship between the TS and the Code of Federal Regulations that deal with ISI and the ASME Code itself, and

(5)the proposed TS are basically those contained in the Unit 2 TS and STS, which have been previously approved by the staff.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: July 28, 1987 (TSCR 112, Rev. 1) Supersedes September 9, 1986 request (TSCR 112)

Description of amendment request: The proposed amendment would revise the Radiological Effluent Technical Specifications (RETS) to improve clarity, make the RETS more specific to TMI-1 without changing intent or substance, and to improve consistency with Standard Technical Specifications (STS). Examples of changes include grammatical improvements, inclusion of plant-specific instrument identification numbers, and to eliminate certain time limits on inoperable channels for certain radiation monitors provided compensating actions are taken, consistent with STS. The Systems covered by the RETS do not include emergency systems intended to protect against core-melt accidents or their consequences. Rather, the RETS are intended to help control the normal and routine operation of Rad Waste Systems and the normal and routine releases of small amounts of radioactivity to the environment.

Basis for proposed no significant hazards consideration determination: The licensee proposed Technical Specification Change Request (TSCR) No. 112, Rev. 1 to revise the RETS for TMI-1. It has evaluated TSCR 112, Rev. 1 to determine if a significant hazards consideration exists. The licensee has concluded, based upon the evaluation presented below, that this license amendment request involves no significant hazards considerations.

The results of the licensee's evaluation are given below in terms of the criteria in 10 CFR 50.92(c):

The proposed changes provide clarity and consistency with the current NRC Guidance and:

1. does not affect plant design or operation, and therefore would not involve a significant increase in the probability or consequences of an accident previously evaluated;

2. does not involve modification to existing plant equipment, and therefore would not create the possibility of a new or different kind of accident from any accident previously evaluated;

3. does not involve changes which would affect the safety analysis of the plant, and therefore would not involve a significant reduction in a margin of safety.

The proposed amendment combines Example (i) and Example (vii) of amendments that are considered not likely to involve significant hazards consideration (48 FR 14870) in that the changes are purely administrative or are changes to conform with the current NRC guidance which result in minor changes to operations clearly in keeping with the Standard Radiological Effluent Technical Specifications, NUREG-0472, Rev. 3.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's conclusion. Because of the large number of RETS changes included in the proposed amendment, a public meeting was held on August 24, 1987 to clarify and discuss the changes so that the staff could assure itself that each of the changes, and all of the changes taken collectively, was minor and did not involve significant hazards. Most of the changes are administrative in nature. The remaining changes do not involve emergency safety systems or core melt accidents but relate to routine operation of Rad Waste Systems and/or Effluent Systems (some of which interface with the environment). Minor changes are proposed to make the TMI-1 RETS more consistent with STS. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: July 24, 1987 (TSCR 174)

Description of amendment request: The proposed amendment would revise the technical specifications to incorporate updated reactor coolant system heatup and cooldown limits for operation to 10 effective full power years. The updated limits will account for irradiation effects on the reactor pressure vessel nil ductility temperature based on surveillance capsule data.

Basis for proposed no significant hazards consideration determination: The licensee proposed Technical Specification Change Request (TSCR) No. 174 to incorporate updated reactor coolant system heatup and cooldown limits for operation to 10 effective full power years. It has evaluated TSCR 174 to determine if a significant hazards consideration exists. The licensee has concluded, based upon the evaluation presented below, that this license amendment request involves no significant hazards considerations in that operation of TMI-1 in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

The results of the evaluation are given below in terms of the criteria in 10 CFR 50.92(c):

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The design basis event related to this change is nonductile failure of the reactor coolant pressure boundary. The updated pressure-temperature limits have been established in accordance with the requirements of 10 CFR Part 50, Appendix G. Extending the curves for applicability to 10 EFPY is based on maintaining the design margin assumed in the original curves. Operation of the facility in accordance with the proposed amendment provides assurance of protection against nonductile failure of the reactor coolant pressure boundary for operation of 10 EFPY. Therefore, operation in accordance with the proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The design basis event related to the change is nonductile failure of the reactor coolant pressure boundary. The proposed amendment provides assurance of protection against nonductile failure of the reactor coolant pressure boundary for operation of 10 EFPY and is unrelated to the possibility of creating a new or different kind of accident.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment revises the heatup and cooldown curves to reflect information gained from the analysis of Capsule TMI-1-C, and to extend the curves to cover 10 EFPY of operation. The results of the analysis of this capsule were reported in GPUN letter to NRC dated May 5, 1986 (5211-86-2080). The report provided additional information on the neutron fluence and Reference Temperature Nil Ductility Temperature (RT_{NDT}) for the reactor vessel material. The updated information is reflected in the revised heatup and cooldown curves. Extending the curves for applicability to 10 EFPY is based on maintaining the margin of safety assumed in the original curves. This margin of safety is assured by the results of the surveillance capsule analysis. The updated pressure-temperature limits have been established in accordance with the requirements of 10 CFR Part 50 Appendix G. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The Commission has provided guidelines pertaining to the application of the three standards by listing specific examples in 48 FR 14870. The proposed amendment is considered to be in the same category as example (ii) of amendments that are considered not likely to involve significant hazards consideration in that the proposed change constitutes an additional control not presently included in the technical specifications. This change is similar in that it involves a change to the heatup and cooldown curves that places more restrictions on heatup and cooldown than previously existed. Thus, operation of the facility in accordance with the proposed amendment involves no significant hazards considerations.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The change will revise the technical specifications to be applicable for 10 EFPY (currently 5 EFPY), based on new surveillance data, to protect against the same potential accident which has been previously evaluated. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 18, 1987 as supplemented July 31, 1987.

Description of amendment request: The proposed amendment would revise Section 6.0, Administrative Controls, of the Technical Specifications (TSs). The proposed amendment would modify the TSs as follows:

(1) Delete the organizational charts, Figures 6.2.1-1 and 6.2.2-1;

(2) Change the requirements (TS 6.2.4) for dedicated and dual role functions of the Shift Technical Advisor to comply with the Commission's policy statement on "Engineering Expertise on Shift";

(3) Delete the position of Vice-President-Safety and Environmental with the Manager-River Bend Oversight to assume the direction of the Independent Safety Engineering Group (ISEG), TSs 6.2.3.1 and 6.2.3.4;

(4) Increase the number of members of the Facility Review Committee (FRC) by two and change the titles of the Assistant Plant Manager-Operations, Radwaste and Chemistry and Assistant Plant Manager-Maintenance and Material, TS 6.5.1.2;

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(5) Specify that the Senior Vice President (currently Vice President)-River Bend Nuclear Group, shall receive reports of the investigation of TS violations and related reports produced by the FRC (TS 6.5.1.6) and written notification within 24 hours of disagreements between the FRC and the plant managers (TS 6.5.1.7.c), and that the Senior Vice President-RBNG (currently Vice President) shall be included in the Emergency Plan and implementing procedures (TS 6.5.2.1);

(6) Reduce the total number of members of the Nuclear Review Board (NRB) from twelve to eleven. This change also would designate the Manager-River Bend Oversight as Chairman of the NRB (currently Vice President-Safety and Environment) and the Manager-Quality Assurance as Member and Vice Chairman (currently Vice President-RBNG). The Outage Manager and the Director-Joint Ownership Participation would be added to the NRB. Several title changes and deletions from the NRB are also proposed.

(7) Change TSs 6.9.1 and 6.9.2 to reflect the revisions to 10 CFR 50.4.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

The offsite organization for unit management and technical support is identified in Chapter 13 of the current Safety Analysis Report. The proposed change to the Technical Specification Section 6 deletes organizational charts (Figures 6.2.1-1 and 6.2.2-1). A 10 CFR 50.59 unrevieved safety question determination (USQD) will be performed on future proposed changes per River Bend Station procedures.

The proposed change of requirements for the dedicated and dual role function of Shift Technical Advisor as shown in Section 6.2.4, is being requested to comply with the Nuclear Regulatory Commission Policy Statement dated October 28, 1985, concerning "Engineering Expertise on Shift". This proposed change will enhance the required level of engineering expertise composite in the minimum shift crew complement.

The addition of two (2) members to the FRC, the Chemistry Supervisor and the Process Systems Supervisor, will provide a representative forum of respective areas of plant operations. This proposed change will intensify the level of review and add additional experience not presently provided in the Technical Specifications. The proposed change of Assistant Plant Manager-Operations, Radwaste, and Chemistry to Assistant Plant Manager-Operations and Radwaste accompanied with the creation of the position of Chemistry Supervisor (mentioned above) is a functional change of responsibility that will enhance the level of administrative control and the effectiveness of the chemistry program. This enhancement is administrative in nature only and has no impact on any accident analysis or safety margin.

The proposed change of Assistant Plant Manager-Maintenance and Material to Assistant Plant Manager-Maintenance involves the functional change of relieving responsibilities associated with the control of materials and offers greater administrative control and effectiveness concerning selected maintenance activities.

Reporting of the investigation of Technical Specification violations and related reports produced by the FRC shall be forwarded to the Senior Vice President-RBNG as shown in the proposed change to Technical Specifications Section 6.5.1.6. Written notification within 24 hours shall be provided to the Senior Vice President-RBNG of disagreements between the FRC and the Plant Manager as shown in proposed changed to Section 6.5.2.1. These changes enhance the level of management involvement and attention on the subject reporting and approval responsibilities.

The NRB is composed of a Chairman, Member and Vice Chairman, and nine (9) other members, with the Chairman, Member and Vice Chairman being manager level positions.

These revisions provide a total of eleven (11) NRB members, down from the previous twelve (12). The level of independent review and expertise is maintained, while ensuring that a split vote does not occur and that the simple majority vote rules.

The proposed changes to the NRB membership are title changes in nature except for the addition of the Outage Manager and the Director-Joint Ownership Participation. The addition of these members provides an independent representation on the NRB to reflect experience from these respective disciplines in the NRB function of independent review and audit of its responsible activities and areas as specified in Section 6.5. In addition, the change to the NRB membership does not affect the level of expertise represented since the technical and management responsibilities are still embodied. The experience level is sufficient to implement the NRC responsibilities.

Routine Reports and Special Reports will be submitted to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the Regional Office and a copy to the NRC Resident Inspector as shown in the proposed changes to Sections 6.9.1 and 6.9.2. These changes are being requested to comply with NRC rules and regulations (final rule) effective January 5, 1987 concerning addressing and delivery of correspondence from licensees to the NRC.

These proposed changes affect administrative controls, organizational modifications, and enhancements and, as such, have no effect on plant equipment or the technical qualifications of plant personnel. In addition, they do not change any safety limit or safety analysis. Therefore, no increase in the probability or the consequences of an accident previously evaluated exits.

These proposed changes do not create the possibility of a new or different kind of accident. Plant design and operation is not affected by the new organizational structure. No physical changes are being implemented as a result of the proposed changes in administrative controls. No change in performance criteria exists which would deviate from the technical specification limiting conditions for operation. These changes do not effect the qualifications of personnel who operate RBS nor do they involve any change to the overall operating philosophy of RBS.

No technical limits are being changed or reduced as a result of the proposed changes in administrative controls. They do not change NRB responsibilities and organizational modifications alone do not reduce the margin of safety. No significant reduction in the margin of safety will occur.

Since the proposed amendment does not change any safety analysis as described in the FSAR nor does it create the possibility of a new or different type or accident or significantly reduce the

margin of safety, GSU proposes that no significant hazards are involved.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: August 5, 1987.

Description of amendment request: The proposed amendment would revise Table 3.7.10-1, Total Predicted Settlements of Major Structures, of the Technical Specifications (TSs). The proposed amendment would (1) reduce the total predicted settlement for E Tunnel, Settlement Marker No. 28, from 3.8 inches to 3.3 inches; and (2) increase the total predicted settlement for G Tunnel, Settlement Marker No. 34 from 0.4 inch to 1.3 inches.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

This change in predicted settlement to 1.3 inches for Marker No. 34 is based on actual observation and comparison and remains well within the previously evaluated design envelope of 1.32 inches. Additionally, no adverse differential settlement has occurred between the G Tunnel and the Unit 1 Fuel Building.

Settlement readings at most markers, excluding Marker No. 34, have indicated approximately 60% of their total predicted values. If this were also the case at Marker No. 34, a total settlement of 1.3 inches would be expected. The total settlement as calculated for Marker No. 34 in the original analysis (before adjustment for construction schedule) is 1.32 inches. Since receiving an operating license on August 29, 1985, quarterly settlement measurements for Marker No. 34 have indicated 0.85, 0.84, 0.91, 0.94, 0.99, 1.03, 0.99 and 1.01 inches, respectively. No abnormal indications have occurred. Additionally, Marker No. 32 (which the adjustment to Marker No. 34 was based on) had settled 79% of its total predicted value (more than the 60% average) primarily due to the structure size and a bearing pressure of approximately 2.25 times that of a Marker No. 34. This factor also influenced the overly conservative adjustment made to Marker No. 34.

Marker No. 34 is located at the unconstructed Unit 2 end (west) of the G Tunnel. Therefore, it is of no concern with respect to differential settlement. However, data from other comparable markers (i.e. Marker No. 33 at the east end of the G Tunnel) indicates that no adverse differential settlement has occurred and settlement has remained within the Technical Specification allowable ranges. Therefore, modification of the predicted settlement for Marker No. 34 will not adversely impact these design assumptions.

The change from 3.8 inches to 3.3 inches for Marker No. 28 is in accordance with the design calculations. This change will provide for a more conservative limit on the settlement allowed at this marker. The change to 3.3 inches for Marker No. 28 will make the Technical Specifications agree with the design calculations as originally performed. The surveillance test procedure is being revised to incorporate the more conservative administrative total settlement limit of 3.3 inches until revised in the Technical Specification.

This change does not involve a design change or physical change to the plant, and does not alter the initial assumptions made in the static design of major safety related structures as defined in the Technical Specification bases. Thus, there is no significant increase in the probability or consequences of any accident previously evaluated.

2. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

This change in predicted settlement for Marker No. 34 remains within the previously evaluated design envelope of 1.32 inches and does not involve a design change or physical change to the plant.

The G Tunnel contains safety-related piping for the Standby Cooling Tower. The G Tunnel was to be used to interconnect the Standby Service Water loops of River Bend Station Units 1 and 2. However, since Unit 2 has been cancelled, the piping running to Unit 2 has been terminated near the Unit 1 Standby Cooling Tower. Thus, there is no safety-related equipment within at least 150 feet of settlement Marker No. 34 in the west end of the G Tunnel which could be affected.

The change to 3.3 inches for Marker No. 28 is in accordance with the original design calculations. These changes do not involve a design change or physical change to the plant, and do not alter the initial assumptions made in the static design of major safety related structures as defined in the Technical Specification bases.

Thus, no new accident scenario is introduced by this change of total predicted settlement to 1.3 inches for Marker No. 34 or to 3.3 inches for Marker No. 28.

3. This change would not involve a significant reduction in the margin of safety because:

The predicted settlement is based on actual observation and comparison with other markers. Revising the prediction for Marker No. 34 ensures consistency with the predicted values of other markers and remains within the previously evaluated design envelope of 1.32 inches. No adverse differential settlement has occurred between the G Tunnel and the Unit 1 Fuel Building. Calculations for Marker No. 32 show that the structural bearing load is approximately 2.25 times that of Marker No. 34's structure. This conservatism, plus the fact that most major settlement occurs within the first few years, suggests that the remaining predicted structural settlement will be consistent with the proposed 1.3 inches. The change to 3.3 inches for Marker No. 28 is in accordance with the original design calculations and is conservative with respect to the current value. These changes do not involve a design change or physical change to the plant, and do not alter the initial assumptions made in the static design of major safety related structures as defined in the Technical Specification bases. Additionally, the Technical Specification bases do not define any margin of safety for structural settlement.

Thus, the margin of safety is not significantly reduced.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Connor, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: August 7, 1987.

Description of amendment request: The proposed amendment would revise Section 3.8.1., AC Sources-Operating, of the Technical Specifications. The proposed amendment would modify the Action statement relating to demonstrating the operability of the diesel generators with offsite circuits inoperable or onsite diesel generators inoperable as follows:

(1) Delete the requirements to start the diesel generators (DGs), synchronize and load them to the safety buses during periods when offsite power is in a degraded condition as currently required by Action statements a and f of TS 3.8.1.1;

(2) Modify the requirement to start, synchronize and load the remaining diesel generators when one diesel generator is inoperable due to any cause other than preplanned maintenance or testing, as required by Action statements a, b, d and g of TS 3.8.1.1. The proposed change would revise these Actions to require the operability of the remaining diesel generators be demonstrated only if the other diesel generator became inoperable as the result of a "valid failure" as defined in Regulatory Guide 1.108, "Periodic Testing of Diesel Generator Units Used as Onsite Elective Power Systems at Nuclear Power Plants", Revision 1, August 1977. The section 3/4.8.1 Bases would also be modified to include a proposed definition of a valid failure.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

This change does not affect the availability or function of equipment and/or systems. The reduction in DG testing would not subject the remaining redundant operable DGs to periods of inoperability and reduced reliability while connected to offsite and nonvital loads which occur during the required testing when one other DG is already inoperable. This would tend to decrease the probability or consequences of an accident previously evaluated.

2. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

By not testing the remaining operable DGs as currently required by Technical Specification 3.8.1.1, no possibility of a new or different accident previously evaluated is created because no new modes of operation are introduced. All equipment functions remain as previously evaluated in the River Bend Station FSAR and SER. Conformance with applicable Regulatory Guides is maintained as indicated in FSAR Section 1.8.

3. This change would not involve a significant reduction in the margin of safety because:

The perceived gain in safety from demonstrating the operability of the remaining redundant DGs upon the loss of one DG is, in part, to identify potential common mode/generic failures. If a DG were discovered inoperable while in the standby service mode (i.e., no failure during a "valid test") then the potential common mode/generic failure can be investigated and operability of the remaining DGs verified without increased testing. Furthermore, the increased testing represents a reduction of the margin safety due to the vulnerability of the DG when connected to offsite and nonvital loads. Additionally, the Technical Specification bases do not define any margin of safety for this surveillance requirement.

The proposed amendment, as discussed above, has not changed the system design, function or operation as discussed in the FSAR and therefore, will not increase the probability or the consequences of a previously evaluated accident and will not create a new or different accident. Adequate assurance of DG availability is maintained by the testing frequencies specified in the normal Technical Specification surveillance requirements. Also, the results of the change are clearly within acceptable criteria with respect to system components, design requirements and applicable Regulatory Guides. As a result, the ability to perform as described in the FSAR is maintained and therefore, the proposed change does not result in a significant reduction in the margin of safety. Therefore, GSU proposes that no significant hazards considerations are involved.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: August 14, 1987.

Description of amendment request: The proposed amendment would revise the minimum critical power ratio (MCPR) for the second cycle, delete the maximum average planar linear heat generation rate (MAPLHGR) information for the fuel being discharged at the end of cycle 1, and add the reload bundle MAPLHGR information for fuel being added for cycle 2 operation. The plant-specific information used to determine reactor limits was submitted by the licensee by letter dated July 31, 1987. In addition, the fuel bundles that are being recycled would have their alpha-numeric identification updated to be consistent with the identification in the General Electric Standard Application for Reload Fuel (GESTAR), and various Technical Specification (TS) Bases would be modified to reflect the updated information. The TSs would be modified as follows:

(1) The MCPR for cycle 2 operation would be changed to 1.07 compared to 1.06 as required by TS 2.1.2 for cycle 1 operation. Pages B 2-1, B 3/4 1-2, B 3/4 2-2 and B 3/4 2-4 of the TS Bases would also be modified to reflect this revised MCPR;

(2) The MAPLHGR (current Figure 3.2.1-1) for core fuel type P8SIB071 would be deleted because this fuel is to be removed from the reactor at the end of cycle 1;

(3) Current Figures 3.2.1-2 through 3.2.1-5 would be renumbered 3.2.1-1 through 3.2.1-4 and the alpha-numeric identification of the fuel bundles would be updated to be consistent with the identification in GESTAR;

(4) The MAPLHGR versus average planar exposure would be modified for core fuel type BP8SRB278;

(5) Figures 3.2.1-5 and 3.2.1-6, MAPLHGR versus average planar exposure, would be added for new bundle types BP8SRB299 and BP8SRB305. These new bundle types will be added to the core in Reload 1. TSs 3.2.1 and 4.2.1 and Bases Page B 3/4 2-1 would be modified to reference the MAPLHGR versus average planar exposure Figures 3.2.1-1 through 3.2.1-6;

(6) Bases Tables B 2.1.2-1 and B 2.1.2-2 would be deleted and Bases Pages B 2-1, B 2-2, B 3/4 2-4 and B 3/4 2-5 would be revised to reference GESTAR which documents the bases for the Safety Limit MCPR including the uncertainties used and the nominal values of parameters used in the MCPR statistical analysis, and the approved transient methods used to analyze Reload 1. These are administrative changes which update the Bases for River Bend Reload 1.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

Safety Limit MCPR for Reload Cores and MAPLHGRs For New Bundles

Safety Limit MCPR is 1.07 for this reload core as opposed to 1.06 for the initial core; the difference is due to increased uncertainties. The bases for the Safety Limit MCPR appear in GESTAR as approved in the NRC's letter dated March 22, 1986 to Ms. J.S. Charnley from Gus C. Lainas. This report has been referenced in the Technical Specifications in place of the redundant information currently in the Bases. Plant-specific information used to determine reactor limits has been submitted to the NRC by GSU in a letter dated July 31, 1987 (RBG-26368).

The 10 CFR 50.46 establishes acceptance criteria for fuel and Emergency Core Cooling Systems (ECCS). MAPLHGR limits are established to ensure that the acceptance criteria are met.

Two new bundle enrichments are added to the River Bend core in Reload 1. MAPLHGR limits are added to the Technical Specifications for these two bundles. The natural enrichment bundle type has been removed and therefore, the MAPLHGR limit has been deleted for these bundles.

The new bundles are similar to other bundles currently in the River Bend core.

(1) The Safety Limit MCPR is set such that no fuel damage is calculated to occur if the limit is not violated. It is determined using the NRC approved methods (See GESTAR), which is a statistical model that combines uncertainties in operating parameters with uncertainties used to calculate critical power. For reload cores, some of the uncertainties used in the determination of the Safety Limit MCPR are larger than for initial cores. The higher Safety Limit MCPR for reload cores accounts for these increased uncertainties. The Safety Limit MCPR for reload cores has received previous NRC approval and is documented in GESTAR. Because the new Safety Limit MCPR is set such that 99.9% of the fuel rods in the core are expected to avoid boiling transition and thereby accomplishes the same purpose as the previous limit, this change does not increase the probability or consequences of an accident previously evaluated.

This change provides MAPLHGR limits for the BP8SRB299 and BP8SRB305 bundles. The MAPLHGRs have been calculated using NRC approved methods (SAFE/REFLOOD; see GESTAR), and the results of the analysis provided in the River Bend Reload 1 Licensing Submittal demonstrate that the acceptance criteria of 10 CFR 50.46 are met with substantial margin.

Therefore, this change does not increase the probability or consequences of an accident previously evaluated.

(2) MCPR and MAPLHGR do not represent an initiating event for an accident. The Safety Limit MCPR is adjusted in the conservative direction because of calculational uncertainties and no changes or modifications are made to the River Bend facility, so this change does not create the possibility of a different kind of accident than previously evaluated.

MAPLHGR limits are provided for each bundle type and no changes or modifications are made to the River Bend facility, so this change does not create the possibility of an accident different than previously evaluated.

(3) The Safety Limit MCPR is the point at which no fuel damage is expected to occur as discussed in GESTAR. The Safety Limit MCPR is combined with the most limiting transient change to the critical power ratio to establish the operating limit MCPR. The Safety Limit MCPR and the change resulting from the most limiting transient have been calculated by methods described in GESTAR. These methods have received previous NRC approval. Therefore, the proposed amendment does not reduce the margin of safety.

MAPLHGR's are determined by analysis to ensure the acceptance criteria of 10 CFR 50.46 are met and establish the margins of safety for fuel and the ECCS. Calculations using NRC approved models described in GESTAR yield results well within these acceptance criteria. Therefore, the proposed amendment does not result in a reduction in the margin of safety.

Change in Bundle Names

Retained bundle names are updated to be consistent with the names appearing in GESTAR.

This change is an administrative editorial change in which the names of the bundles in the River Bend core are changed to be consistent with the names appearing in GESTAR. The bundles themselves are not changed or are the limits applied to these bundles. Thus, there is no change or modification of River Bend, and no change to any existing Limiting Condition for Operation, Surveillance Requirement, or margin of safety. Therefore, this change: (1) does not increase the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any previously evaluated, or (3) reduce a margin of safety.

The proposed amendment will not increase the probability or the consequences of a previously evaluated event and will not create a new or different kind of accident from any previously evaluated. Also, the results of this proposed change are clearly within all acceptable criteria with respect to system components and design requirements. The ability to perform as described in the FSAR is maintained and therefore, the proposed change does not involve a significant

reduction in the margin of safety. GSU proposes that no significant hazards are involved.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: July 31, 1987.

Description of amendments request: The proposed amendments would add to the Technical Specifications the requirements for a post-accident sampling system, sampling and analysis of plant effluents or, specifically, noble gas monitors, and containment high range radiation monitors. These additions are to satisfy requirements of the TMI Action Items (NUREG-0737) IIB3, II F.1.2, and II F.1.3 respectively, in accordance with the guidance provided in Generic Letter 83-37.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (51 FR 7751). One of the examples, (ii), of actions involving no significant hazards considerations relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. This amendment application relates directly to the example in that the requirements and surveillances for the post-accident sampling system, noble gas monitors, and containment high-range radiation monitors are additional limitations for operation.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: January 30, 1987

Description of amendment request: The proposed license amendment would revise the Duane Arnold Energy Center (DAEC) Facility Operating License No. DPR-49, extending the DAEC Integrated Plan (Plan) two years beyond the current expiration date of May 3, 1987. The Plan requires that the Iowa Electric Light and Power Company (IELP/the licensee) follow the schedule of the DAEC plant modifications mandated or proposed by NRC, or identified by the licensee. The proposed amendment does not involve changes to plant systems, components, or Technical Specifications.

The Integrated Plan was originally approved in Amendment No. 91, dated May 3, 1983, and extended by Amendment No. 125, dated July 9, 1985. The objective of the Integrated Plan is to integrate all planned DAEC plant modification schedules over a period of five years to assure that individual tasks are performed in an efficient and cost/resource-effective manner.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning determination if significant hazards considerations exist, by providing certain standards (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The extension of the DAEC Integrated Plan beyond its current expiration date of May 3, 1987, is intended to assure continuation of reliable and efficient plant modifications intended to enhance plant safety. In addition, the extension is purely administrative in nature and has no effect on existing plant systems or equipment. Therefore, the Plan may reduce, but not increase, the probability or the consequences of an accident previously evaluated, will not create a new or different kind or accident from any previously evaluated, and will not involve any reduction in a margin of safety.

Based on the above, the Commission's staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Martin J. Virgilio, Acting.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 29, 1987.

Description of amendment request: The proposed amendment will increase the maximum allowable internal containment pressure at Waterford 3 based on a reanalysis of the limiting Main Steam Line Break (MSLB) event. Technical Specification Figure 3.6-1 presently defines the maximum containment pressure for Modes 1-4 as a curve from 15.4 psia at 80° F to 14.9 psia at 120° F. The proposed change will replace the curve with a single pressure value to account for a lower analyzed peak containment pressure and revise the measurement units from "psia" to "inches water gauge" to facilitate performance of the surveillance requirements.

As noted in the Bases, the maximum containment pressure allowed under Technical Specification 3.6.1.4 ensures that the containment peak pressure resulting from either a LOCA or MSLB event will not exceed the containment design pressure of 44 psig. To satisfy this condition, LP&L conducted a series of analyses for LOCAs (a spectrum of break sizes) and MSLBs (a spectrum of break sizes and initial power levels) to determine the event which would produce the peak pressure in containment. These analyses, summarized in FSAR Tables 6.2-1 and 6.2-2, demonstrated that the peak containment pressure of 43.76 psig occurred for a 7.4765 ft^2 MSLB from 75% power with the concurrent failure of a containment cooling train. The containment design pressure of 44 psig, therefore, allowed a margin of 0.2 psig over the calculated peak pressure. Because the allowable pressure range was small and, in anticipation of operational difficulties in maintaining containment pressure in such a narrow band, LP&L proposed (and the NRC accepted) Technical Specification 3.6.1.4 to define the maximum allowable

containment pressure as a function of containment temperature, thereby allowing an operating pressure range slightly larger than 0.2 psig for containment temperatures below 120° F.

Although some operational flexibility was afforded through expressing maximum allowable containment pressure as a function of containment temperature, the narrow pressure range has placed undue operator attention on maintaining containment pressure within Technical Specification limits. To resolve this concern, LP&L has reanalyzed the limiting MSLB event.

The peak containment pressure analyses (those presently in Section 6.2 of the FSAR and the MSLB reanalysis) are performed using a modified version of the CONTEMPT-LT Mod 26 computer code. A description of the computer code and modification is contained in FSAR Appendix 6.2B. In the Waterford 3 SER (Section 6.2.1.1) the NRC reviewed the modified computer code and found it acceptable for containment analysis.

Peak containment pressure is a sensitive function of the amount of passive containment heat sink. To support various Cycle 1 and 2 analyses, LP&L had updated the pre-licensing estimates of passive containment heat sink and exposed surface area to reflect final construction activities and other station modifications. This updated information was used in the reanalysis of the limiting 75% power MSLB. All other analysis assumptions and input data described in FSAR Section 6.2.1.1.3 were unchanged from the original analysis. Due primarily to condensation on the increased surface area, the peak containment pressure for the limiting MSLB case was reduced from 43.76 psig to 42.3 psig.

With this reduction of MSLB peak pressure, the worst peak LOCA pressure can be considered as the limiting containment accident pressure. Referring to FSAR Table 6.2-2, the new peak pressure of 43.2 psig occurs for the 9.82 ft^2 DESLS LOCA with minimum safety injection. This value in conjunction with the containment design pressure of 44.0 psig, defines a potential Technical Specification pressure range of 0.8 psig.

The proposed change places a limit of 20 inches water gauge (INWG), or approximately 0.72 psig, on the maximum containment pressure during normal operating conditions. As described in the proposed change to Bases Section 3/4.6.1.4, the calculated peak LOCA pressure margin of 0.8 psig (22.14 INWG) has been reduced by 1.20 INWG to account for potential instrument error and 0.94 INWG for conservatism. Because of the increase in pressure margin operating range, the variation of initial containment pressure due to containment temperature has been ignored in the proposed change, providing additional conservatism.

By using the peak LOCA pressure of 43.2 psig to define the allowable initial containment pressure range, LP&L is introducing conservatism into Technical Specification 3.6.1.4 well beyond instrument error concerns. Unlike the limiting MSLB case, the LOCA events have not been reanalyzed utilizing the updated containment heat sink information, primarily because of the extended schedule necessary for the analyses. While the additional cases may be analyzed in the future, operational concerns with the narrow pressure range presently in Technical Specification 3.6.1.4, coupled with the lengthy NRC analyses required, dictate submittal of this proposed change based only on the limiting MSLB reanalysis. Should the LOCA cases be reanalyzed, LP&L expects the peak LOCA pressure to be reduced to less than or equal to the reanalyzed MSLB pressure of 42.3 psig, which would provide more than double the pressure range requested by this proposed change.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes that the proposed changes does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The proposed change introduces no new effect into the previously evaluated accidents (MSLB/LOCA) other than updating the MSLB to reflect plant changes in passive heat sinks. The MSLB consequences (i.e., peak pressures) are reduced while still preventing overall peak containment pressure due to the limiting LOCA from exceeding containment design pressure. Therefore, there is no increase in probability or consequences for previously analyzed events.

(2) The purpose of Technical Specification 3.6.1.4 is to prevent the maximum containment pressure during any MSLB/LOCA from exceeding the containment design pressure. The proposed change is the direct result of incorporating as-built passive heat sink data into the MSLB analysis and thereby reducing the MSLB peak pressure. No new plant systems, modes of operation or setpoint changes have been introduced which could have an effect on the course of an accident. Therefore, the proposed change will not create the possibility of a new or different accident from any previously evaluated.

(3) Technical Specification 3.6.1.4 prevents exceeding the containment design pressure. The proposed change ensures that design pressure is not exceeded by placing a limit on maximum containment pressure during Modes 1-4, based on the most limiting containment pressure event, thereby preserving safety margin. In fact, the margin from the limiting event peak pressure (calculated peak pressure plus maximum allowable containment pressure) to the containment design pressure increases from 0.04 psig under the existing Technical Specification to 0.08 psig under the proposed change. Additionally, reanalaysis of the LOCA event would be expected to result in a peak containment pressure much lower than that credited by the proposed change. Therefore, the proposed change does not involve a reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based on the review and above discussions the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: July 31, 1987

Description of amendment request: This amendment would change the Technical Specifications to reflect changes in the quality assurance organization and in the projects and operational analysis organizations. The proposed changes to the quality assurance organization will provide a two-manager system that will have a clear separation of the department's in-line functions of nondestructive examination, inspection, review and

deficiency control from the independent oversight functions of audits, procurement quality, support and observations/assessments. The proposed changes to the projects area under the Site Director will provide a more equal distribution of workload and a more effective management chain of command for plant projects. Other changes involve title changes to more accurately reflect the present level of responsibility. The following specific changes are proposed:

(1) For the quality assurance organization:

a. Change the position of Director, Quality Assurance to Director, Quality Programs on Figure 6.2.1-1 and in Section 6.5.2.2.

b. Change the position of Manager, Nuclear Site QA to Manager, Quality Services on Figure 6.2.1-1 and in Section 6.5.1.2.

c. Change the position of Manager, Audits QA to Manager, Quality Systems on Figure 6.2.1-1.

d. Delete the position of Manager, Programs QA from Figure 6.2.1-1.

(2) For the projects and operations analysis organizations:

a. Add the position of Manager, Special Projects, to Figure 6.2.1-1. This position will report directly to the Site Director, GGNS.

b. Delete the position of Manager, GGNS Unit 1 Projects from Figure 6.2.1-1 and have the Manager, Plant Modification and Construction report directly to the Site Director.

c. The block in Figure 6.2.1-1 entitled "Operational Analysis Group (ISEG)" would be replaced with that entitled "Manager, Operations Analysis Group (ISEG)." The SRC Composition Section 6.5.2.2 would be revised to indicate the change in title.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment satisfies the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. The licensee's analysis is reproduced below for the two proposed changes.

(1) Quality assurance organizational changes

These changes are primarily administrative in nature. The individuals assigned to the newly created positions will meet the relevant qualifi cation requirements specified in UFSAR Chapter 13.

SERI has evaluated the proposed changes and considers them not to in volve a significant hazards consideration for the following reasons:

Standard 1

The proposed changes will not significantly increase the probability or consequences of an accident previously evaluated, because the changes are administrative in nature. The proposed changes to the quality assurance organization will not delete any functions currently performed by the quality assurance organization but will consolidate certain functions in order to increase the effectiveness of the department['s] internal operation. Therefore, the proposed changes to the organization will not increase the probability or consequences of any accident previously evaluated because the quality assurance function will be performed more effectively through the revised organization.

Standard 2

The proposed changes will not create the possibility of a new or different accident from any accident previously evaluated because the proposed changes will not affect the managerial and administrative controls utilized to assure safe operations of the plant. The quality assurance requirements for the design, construction and operation of safety[-]related equipment will not be affected by changes to the quality assurance organization. Therefore the proposed changes to the organization will not affect the performance of the plant as previously analyzed in the FSAR.

Standard 3

The proposed change[s] will not involve a significant reduction in [a] margin of safety. The proposed changes to the quality assurance organization involve only the realignment of existing function and the addition of the new functional area of observation[s]/assessments. These changes are intended to enhance the effectiveness of the quality assurance organization. Therefore, no safety margins are affected by the proposed changes.

(2) Projects and operations analysis organization [changes]

These changes are primarily administrative in nature. The individuals assigned to the newly created positions will meet the relevant qualification requirements specified in UFSAR Chapter 13.

The proposed change[s] [do] not involve a significant hazards consideration because operation of Grand Gulf Unit 1 in accordance with this change would not:

Standard 1

Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change[s] [do] not involve a change in plant hardware, plant operating procedures, or plant emergency procedures. The changes to the [o]ffsite [o]rganization are administrative in nature in that they more equally distribute the workload among the Site Director's staff. The changes to the [o]ffsite [o]rganization are administrative in nature in that they provide a more effective management chain of command for [n]uclear [p]lant [e]ngineering support groups.

Standard 2

Create the possibility of a new or different kind of accident from any previously analyzed. It has been determined that a new or different kind of accident will not be possible due to this change. Th[ese] change[s] [are] administrative in nature and [require] individuals assigned to the newly created positions to meet qualifications specified in the UFSAR.

Standard 3

Involve a significant reduction in a margin of safety. No margins of safety are affected by the proposed change[s] due to their administrative nature. [The] [p]lant and offsite organization[s] [are] strengthened and qualification requirements for [the] positions are retained.

The NRC staff has made a preliminary review of the licensee's analysis and agrees with the licensee's conclusions that the three standards in 10 CFR 50.92 are met for the proposed operating license amendment for Grand Gulf Nuclear Station, Unit 1.

Accordingly, the Commission proposes to determine that the requested changes to the Technical Specifications do not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, N.W., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: July 8, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications and associated bases relating to the minimum reactor vessel temperature for pressurization to be consistent with the measured nil-ductility temperature shifts of irradiated Nine Mile Point Unit 1 reactor vessel material specimens.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has presented its determination of no significant hazards consideration as follows:

1. The operation of Nine Mile Point 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment incorporates the results of testing of Nine Mile Point Unit 1 reactor vessel material surveillance specimens which have been irradiated during station operation. Testing of the material surveillance specimens was performed in accordance with 10 CFR Part 50 Appendix H.

Components of the reactor primary coolant system are operated so that no substantial pressure is imposed unless the reactor vessel materials are above nil-ductility transition temperature. The nil-ductility transition temperature increases as a function of the integrated neutron dose. The proposed amendment incorporates (1) the results of testing of irradiated Nine Mile Point Unit 1 reactor vessel material, (2) calculation of stress intensity factors according to Appendix G of Section III of the ASME Boiler and Pressure Vessel Code 1980 Edition with Winter 1982 Addenda and (3) the Regulatory Guide 1.99 (Proposed Revision 2) method for extrapolation with the exception of the recommended addition of one standard deviation to the nil-ductility shifts.

Operation of Nine Mile Point Unit 1 in accordance with the proposed pressure/temperature operating limits will preclude brittle failure of the reactor vessel material. Safety margins for brittle failure will be in accordance with those specified in 10 CFR 50 Appendix G and Appendix G of the ASME Code.

Therefore, the proposed amendment will not involve a significant increase in the probability of consequences of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment incorporates pressure/temperature operating limits based on analysis of irradiated samples. No modification to the plant is required in order to implement the proposed amendment. The NRC staff notes that the existing limits are also based on analysis of irradiated samples. Therefore, the proposed limits will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Implementation of the proposed pressure/temperature operating limits will ensure station operations are conducted with the reactor vessel materials above nil-ductility transition temperature. Operation in accordance with the proposed pressure/temperature operating limits and proposed surveillance program will preclude brittle failure of the reactor vessel material, since safety margins specified in 10 CFR Part 50 Appendix G and the ASME Code Appendix G will be maintained.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Acting Director

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: July 31, 1987

Description of amendment request: The licensee has proposed to revise certain of the Environmental Monitoring Technical Specifications to make them more consistent with those for Nine Mile Point Unit 2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has presented its determination of no significant hazards consideration as follows:

1. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

None of the proposed changes affects the probability or consequences of an accident. The changes to the Environmental Monitoring Program are only administrative. Release limits will not be increased by this change. Therefore, the proposed changes will not increase the probability or consequence of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

None of the proposed changes affects the operation of any safety system. This is strictly an administrative change for consistency with Unit 2 Technical Specifications. Therefore, there is no possibility of a new or different kind of accident created by this change.

3. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The changes to the Environmental Monitoring Program are only administrative. Release limits are not increased by this change, and plant safety systems are not affected. Consequently, there will be no reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Acting Director

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: August 21, 1986

Description of amendment request: The proposed amendment would: (1) revise the end-of-cycle thermal power limit to "forty (40) percent minimum", (2) revise the existing end-of-cycle limiting condition for operation from license condition 2.C.(3), and (3) add the new end-of-cycle limiting condition for operation to Technical Specification (TS) Section 3.1.7h.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The original intent of the end-of-cycle thermal power limit was to provide a precautionary measure to prevent operation in unanalyzed areas. The proposed revision takes credit for the General Electric generic BWR analysis which is a part of Amendment No. 7 to GESTAR (NEDE-24011-P-A-7-US) dated August 1985. GESTAR is the licensing topical report for reload analysis applicable to Nine Mile Point Unit 1 which has received NRC approval. General Electric concluded that the end-of-cycle licensing analysis conservatively bounds coastdown operation to 40 percent power. The proposed change does not change the original intent of License Condition 2.C.(3), but revises it to reflect more recent analyses. Removing this limiting condition for operation from the license and adding it to Section 3.1.7H of the TS is requested for administrative purposes. This change also provides clarification that this limiting condition for operation applies to coastdown operations for all fuel cycles.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment would restrict plant operation to the area analyzed and approved for end-of-cycle coastdown, thus precluding the possibility of an unanalyzed accident or malfunction.

(3) Involve a significant reduction in the margin of safety. The General Electric analysis was performed over a range of power with the safety limits analyzed including MCPR, Peak Heat Flux and peak vessel pressurization. The margin to all safety limits analyzed increased linearly as power decreased. The change to 40 percent power merely reflects the boundary conditions of the end-of-cycle licensing analysis.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Acting Director

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: July 31, 1987

Description of amendment request: The amendment would revise Technical Specification 4.7.10.e.(2) to require the test results on each snubber sequentially in its assigned order in the random sample and to replace the "reject" region on Figure 4.7-1 with an expanded "continue testing" region.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.92, the licensee has concluded that the amendment does not involve a significant hazards consideration because the changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes alleviate any possibility of unnecessary 100 percent testing of the Millstone Unit No. 3 snubber populations during future refueling outages. Deletion of the "reject" region does not reduce the confidence level in the snubber population because that is set by "accept" region.

2. Create the possibility of a new or different kind of accident from any previously evaluated. There are no new failure modes associated with the proposed changes as no design changes have been made. The acceptance criteria for a population of snubbers has not changed. Therefore, the proposed changes will not increase the possibility of an accident or malfunction of a different type than any evaluated previously in the safety analysis report.

3. Involve a significant reduction in a margin of safety. Because there is no change to the safety limits and there is no impact on the basis of the Technical Specification.

The staff has reviewed the licensee's submittal and agrees with its no significant hazards determination.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: December 5, 1986.

Description of amendment request: The amendment would: (1) Revise Tables 4.1.1, 4.1.2, and 4.2.1 to reflect the installation of new analog trip units for reactor water level reactor protection system and ECCS initiation instrumentation (NUREG-0737, Item II.F.2 Inadequate Core Cooling Instrumen tation); (2) Revise the Technical Specifications to reflect logic changes made to implement the requirements of NUREG-0737, Item II.K.3.18. A bypass timer was added to the reactor low pressure permissive start switch contacts for each Core Spray and LPCI System division and the high drywell initiation signal was removed from the Auto Pressure Relief System; and (3) Lower the Safety/Relief Valve Discharge Pipe Pressure Switch Settings and related items.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has addressed the above three standards as they relate to the proposed changes to determine whether they constitute a significant hazards consideration. The licensee's evaluation is provided below:

1. Inadequate Core Cooling Instrumentation - NUREG-0737, Item II.F.2.

(1) These proposed changes would revise the Technical Specifications to reflect the upgrading of reactor vessel water level instrumentation used for the ECCS and reactor protection systems at Monticello. The installation of this instrumentation was recommended by the NRC Staff in Generic Letter 84-23 dated October 24, 1984. The specific Monticello modification of the level columns and installation of analog instrumentation was approved by the NRC staff in a letter dated May 28, 1985. The proposed Technical Specification changes revise the surveillance specified for water level instrumentation to make it applicable to the new analog instrumentation instead of the originally-installed mechanical level switches. Since these changes will result in more reliable reactor vessel water level instrumentation for initiation of ECCS equipment and tripping the reactor, plant safety will be enhanced and the probability or consequences of an accident involving a failure or malfunction of this instrumentation will be reduced.

There are a small number of corrections to information provided on Tables 4.1.1 and 4.2.1 to make them accurately describe installed instrumentation. These are purely administrative changes and cannot affect the probability or consequences of any accident.

(2) These changes deal with surveillance testing requirements, specifically calibration intervals applicable to upgraded reactor water level instrumentation. The revised surveillance is consistent with NRC staff guidelines previously applied to similar instrumentation installed for recirculation pump trip and alternate rod injection initiation. For these reasons the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) As discussed above, the proposed changes revise the Technical Speci fications installed for reactor vessel water level. The new instrumentation replaces less reliable instrumentation provided in the original plant design. All of the original ECCS and reactor protection system functions are accomplished by the new instrumentation. The margin of safety is therefore increased by the installation of this instrumentation and the issuance of Technical Specifications appropriate to the new equipment. There are a small number of administrative changes which add clarification and which are descriptive in nature. They have no effect on any safety margin.

2. ADS Logic Modifications - NUREG-0737, Item II.K.3.18.

(1) The proposed Technical Specification changes reflect the completion of a modification to the Automatic Pressure Relief System at the Monticello Nuclear Generating Plant required by the NRC's TMI Action Plan and previously reviewed and found acceptable by the NRC staff. The changes permit automatic actuation of the Automatic Pressure Relief System on small reactor coolant system breaks which do not increase drywell pressure. The original plant design required both low-low reactor water level and high drywell pressure signals for actuation of the Automatic Pressure Relief System.

These changes will allow the Automatic Pressure Relief System to respond automatically to a wider range of small break accidents and plant safety will be improved. An additional surveillance test of the inhibit switch is also added which will increase the reliability of this function and reduce the probability of spurious operation. For this reason the changes will not result in any increase in the probability or consequences of an accident.

(2) As discussed above, the proposed Technical Specifications changes accommodate a modification made to the plant which was a requirement of the TMI Action Plan. The modification makes the Automatic Pressure Relief System less dependent on operator action. Response to analyzed accidents requiring reactor depressurization is improved. Spurious operation is prevented by including a new timer in the logic design. Inhibit switch surveillance further reduces the probability of spurious operation. No new type or different type of accident is introduced by adding additional requirements related to this logic change to the Technical Specifications.

(3) As discussed above, the proposed changes are related to a TMI Action Plan modification which increases margins of safety by making the Automatic Pressure Relief System less dependent on operator action. Design features intended to reduce unwanted low pressure ECCS pump starts on water level transients are preserved.

3. Safety/Relief Valve Discharge Pipe Pressure Switches and Related Items.

(1) The proposed amendment would revise the Technical Specifications to lower the setpoint specified for the safety-relief valve discharge pipe pressure switches to permit them to function as valve position detection instrumentation at low reactor pressures. This setpoint change has been evaluated and found to have no effect on the low-low set logic function. The switches will detect a safety/relief valve actuation on sensing 30 psid in the discharge line instead of 50 psid. Since there will be no change in the operation of the low-low set logic, and the pressure switches will be more responsive at low reactor pressures for valve position indication purposes, this change will enhance the accident monitoring function. There will be no increase in the probability or consequences of any accident previously evaluated.

The change in function description in Table 3.2.7, the additions to Table 4.2.1, and the revision to Specification 3.6.E.2 are administrative changes. They have no effect on any component. They provide clarification and eliminate redundancy. For these reasons they can have no effect on the probability or consequences of any previously analyzed accident.

(2) The proposed reduction in pressure switch setpoint will make the switches more response valve position indicators at low reactor pressures. No new accidents or different types of accidents are created by this setpoint change.

(3) The proposed administrative changes are for purposes of clarification and elimination of redundancy. No actual revisions in equipment or procedures will result from these changes. They cannot create the possibility of a new or different kind of accident from any previously evaluated.

As discussed above, the proposed changes revise a Technical Specification setpoint and provide clarification and elimination of redundancy. The changes will result in a more responsive safety/relief valve position indication system at low reactor pressures and clearer Technical Specification requirements. Margins of safety are, therefore, enhanced.

The staff has reviewed the licensee's evaluation and concurs with its conclusions. Based on the information provided, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Sacramento Muncipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: June 29, 1987

Description of amendment request: The proposed Technical Specification amendment would add requirements for the meteorological monitoring instrumentation to the Rancho Seco Nuclear Generating Station Technical Specifications. There are no meteorological instrumentation requirements in the existing Specifications. The proposed addition to the Specifications includes limiting conditions for operation, surveillance requirements, and the bases associated with the meteorological monitoring instrumentation.

Meteorological monitoring requirements are included in Technical Specifications to ensure that the capability exists to estimate radiation doses offsite in the event of an airborne radioactive release from the site. The proposed amendment also includes revisions to the table of contents to accommodate the additional specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751). Examples of actions involving no significant hazards considerations include: (i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature, and (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

The changes included in the proposed amendment fall into the two categories referenced above. The majority of the changes include additional limitations and surveillances associated with the meteorological monitoring instrumentation (example ii). The proposed change to the table of contents is encompassed by example (i), a purely administrative change.

On this basis, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 C Street, P. O. Box 15830, Sacramento, California 98513

NRC Project Director: George W. Knighton

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: June 29, 1987

Description of amendment request: The proposed amendment would modify the surveillance requirements of Specification 4.10 "Control Room/ Technical Support Center Emergency Filtering System," and its related Bases. One proposed change would add a surveillance to assure that the system is capable of maintaining the Control Room and the Technical Support Center at a temperature of no more than 80° F for at least 3 hours. Another proposed change would delete the requirement to perform post maintenance associated surveillances of the system's automatic actuation features. The automatic actuation features would be tested once per refueling period or once every 18 months whichever occurs first. A surveillance would be added to assure that the makeup air flow entering the system does not exceed 1760 CFM.

The other changes associated with the proposed amendment involve changes in nomenclature for specifying surveillance parameters and changes to the bases section which describe the rationale for the surveillance requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility does not involve a significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated since the functional requirements of the Essential Filtering System are not changed by the proposed amendment. Although the proposed amendment does include a request to delete certain post maintenance associated surveillances of system automatic actuation features, the requirement to test the automatic actuation during the refueling interval will be retained. This is not a significant reduction in surveillance requirements and does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed since the functional requirement of the system have not changed and existing accident analyses remain applicable.

The proposed changes do not involve a significant reduction in the margin of safety. The amendment addresses only surveillance requirements and the proposed changes are minor. The impact on the margin of safety is insignificant.

The Commission has also provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751). The examples of actions involving no significant hazards considerations include (i) a purely admini strative change to the technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature and (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. Except for reduction in the surveillances described above, most of the proposed changes impose additional limitations, restrictions, and surveillance. Therefore, the proposed changes are similar to the second example and do not involve significant hazards considerations. The remainder of the proposed changes are changes in nomenclature and are similar to the first example; therefore, they do not involve a significant hazards consideration.

Based on the above discussion, the staff agrees with the licensee's findings that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813

NRC Project Director: George W. Knighton

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: July 6, 1987

Description of amendment request: The amendment would revise Technical Specification (TS) Sections 6.2, "Organization," and 6.4, "Training." The changes delete the organization charts from the Technical Specifications and revise the retraining and replacement training program. The proposal to delete the charts has been endorsed by the Westinghouse Owner's Group as a lead plant item. Shearon Harris is the lead plant for this item.

Previously, organization changes have resulted in South Carolina Electric and Gas Company (SCE&G) processing and NRC review of license amendment requests. Consistent with the NRC and industry commitment to improve TS, SCE&G proposes to delete the organization charts from the TS, thereby eliminating needless expenditure of both NRC and utility resources. As in the past, the NRC will continue to be informed of organizational changes through other required submittals.

For example, Chapter 13 of the Final Safety Analysis Report provides a description of the organization, as well as detailed organization charts. As required by 10 CFR 50.71(e), SCE&G submits annual updates to the FSAR. 10 CFR 50.54(a)(3) and 10 CFR 50, Appendix B, govern changes to the organization described in the Quality Assurance Program; some of these organizational changes require prior NRC approval. The NRC resident inspector will also be made aware of any changes in the organization.

The proposed change to the training section revises the retraining and replacement training program to meet or exceed the requirements of amended 10 CFR 55 effective May 26, 1987. The Final Safety Analysis Report is being revised to reflect this change.

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves a significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has determined for the deletion of organization charts that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts does not affect plant operation in any manner.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

3. The proposed amendment does not involve a significant reduction in a margin of safety. Through SCE&G's Quality Assurance programs and efforts to maintain only the most qualified personnel in positions of responsibility, it is assured that safety functions performed by the on-site and the corporate organizations will continue to be performed at a high level of competence. Also, for the revision of training requirements, the licensee has determined that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed TS change only revises the administrative section to incorporate the new 10 CFR 55 requirements which improve the operator licensing process and examination content.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The revised 10 CFR Part 55 improves the safety of the nuclear power plant by improving the operator licensing process and examination content.

The staff has reviewed these determinations and is in agreement with them.

Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of amendment request: April 17, 1987 (TS 87-12)

Description of amendment request: The proposed amendment would modify Technical Specification (TS) Section 6.8.5.a, "Primary Coolant Sources Outside Containment," by deleting references to the charging system, iodine cleanup system, and the hydrogen recombiner system and by adding the Reactor Coolant System (RCS) Sample System to the list of primary coolant sources outside containment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide to the Commission its analysis, using the standards in Section 50.92 about the issue of no significant hazards considerations. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

A review of Sequoyah technical specifications revealed some unjustified discrepancies between Section 6.8.5.a of unit 1 technical specifications and the same section of unit 2 technical specifications Section 6.8.5.a contains a list of systems which have portions outside containment that could contain highly radioactive primary coolant fluids during a serious transient or accident. The list given in the unit 1 technical specifications erroneously includes the charging system, iodine cleanup system, and hydrogen recombiner system. At Sequoyah the charging system is part of the chemical and volume control system (CVCS). Because the CVCS is included in the list, the charging system should not be listed separately. An iodine cleanup system does not exist at Sequoyah, therefore, it should not be included in the list. The hydrogen

recombiner system does exist at Sequoyah, but this system does not have portions outside containment, therefore, it should not be included in the list.

The RCS sample system is listed in this section in the unit 2 technical specifications, but it is not listed in the unit 1 technical specifications. The RCS sample system is appropriate for the section, and it should be added to the list given in the unit 1 technical specifications.

In its conclusion, the licensee addressed the issue of no significant hazards consideration as follows:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This change will correct an erroneous and apparently inadvertent amendment made to Section 6.8.5.a of Sequoyah's unit 1 technical specifications. This change will make the systems listed in Section 6.8.5.a appropriate for the design at Sequoyah and will reestablish consistency between the list of systems shown in the unit 1 and unit 2 technical specifications.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change does not change the plant's design, procedures, or testing; therefore, it will not create any new accidents.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed change does not affect the plant's design basis or its operation.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: May 12, 1987 (TS 87-15)

Description of amendment requests: The proposed amendments would modify Technical Specification (TS) Table 3.6-2, "Containment Isolation Valves," as follows:

1. Add two flow solenoid valves, designated as FSV-30-134 and -30-135, to Table 3.6-2, Section A, "Phase 'A' Isolation," in both the unit 1 and unit 2 TS.

2. Relist in sequential order the listing of the valves in Table 3.6-2, Section A, so that the valves are presented in sequential order of both system number and valve number in both the unit 1 and unit 2 TS.

3. For the unit 1 TS only, correct the valve designations of entries 14 through 30 of Table 3.6-2, Section C, "Containment Vent Isolation," to include a hyphen between the alpha code descriptor and the system number, and between the system number and the valve sequence number.

4. Correct the function description of entries 26 through 30 of Table 3.6-2, Section C, to read "Cntmt Bldg UPR Compt Air Mon" in both the unit 1 and unit 2 TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment to the technical specifications changes table 3.6-2 to include flow solenoid valves FSV-30-134 and -30-135 in the listing of containment vent isolation valves that receive a Phase "A" containment isolation signal. The omission of the subject valves from table 3.6-2 was an oversight. The subject valves currently undergo testing as containment isolation valves as identified in surveillance instructions SI-158.1 (leak rate testing), SI-166.1 (stroke time testing), and SI-166.4 (functional testing). The proposed technical specification change would provide for the two valves to be subjected to the limiting condition for operation (LCO) for containment isolation valves (LCO 3.6.3) and the corresponding surveillance requirements (SRs) (SR-4.6.3.1, -4.6.3.2, -4.6.3.3, and -4.6.3.4). Thus, the proposed amendment would provide for increased administrative controls over the subject valves. Also, the other changes are administrative in nature, involving relisting in sequential order the valves listed in table 3.6-2 and the correction of typographical errors. The proposed amendment affects no changes in equipment, setpoints, limits, or operating procedures.

Therefore, the proposed amendment involves no significant increase in either the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Flow solenoid valves FSV-30-134 and -30-135 are designed, installed, and maintained as containment isolation valves. Safety analyses reported in chapter 15 of the Sequoyah Final Safety Analysis Report (FSAR) take credit for the isolation function of the subject valves. As stated above, other changes that would be affected by the proposed amendment are strictly administrative in nature. The proposed amendment does provide for the two valves of interest to be subjected to the appropriate LCO and associated SRs for containment isolation valves. The proposed amendment does not involve either a change in hardware capabilities or a modification in the operation of the plant. Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed amendment would subject flow solenoid valves FSV-30-134 and -30-135 to the LCO for containment isolation valves (LCO 3.6.3) and the associated four SRs (SR-4.6.3.1, -4.6.3.2, 4.6.3.3, and -4.6.3.4]. This action would provide additional assurance that the two valves would perform their intended function and provide for remedial action should it be determined that the valves are inoperable. Again, as stated above, the proposed amendment also provides for correcting typographical errors and organizing the entries into a more readily usable format and thereby reduces the potential for errors in using the subject table. Thus, the proposed amendment provides for an increase in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: March 10, 1987

Description of amendment request: This amendment, if approved, will modify the WNP-2 Technical Specifications by revising the new fuel storage vault criticality monitor alarm/trip setpoint value in Table 3.3.7.1-1 from less than or equal to 10R/h(a) to a revised value of less than equal to 5R/h(a).

As discussed in the WNP-2 Final Safety Analysis Report Section 12.3.4.5, the criticality monitor alarm setpoints are calculated using the criteria from 10 CFR 70.24(a)(1) which require detecting a dose rate of 20 rads per minute of combined neutron and gamma radiation at 2 meters. The current alarm setpoint value of less than or equal to 10R/h(a) was determined by calculations using criteria from the appendix of ANSI Standard 16.2 1969, "Criticality Accident Alarm System." This proposed change reflects utilization of the revised criteria presented in Appendix B to ANSI/ANS Standard 8.3 1979, "Criticality Accident Alarm System." The calculated dose rate using the methodology as defined in the revised Bases is 5.05 R/hr. The allowable value for the alarm setpoint was therefore established at less than or equal to 5R/hr. This setpoint will meet or exceed the criteria set forth in 10 CFR 70.24(a)(1).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the new calculational method is considered to predict more accurately the combined gamma and neutron dose rate that the criticality monitors would sense in the dry storage area for new fuel. The proposed change does not create the possibility of a new or different kind of accident than previously evaluated because no new systems or procedures are introduced by this request. The proposed change does not involve a significant reduction in a margin of safety because the currently accepted criteria in ANSI/ANS 8.3 1979 result in an alarm/trip setpoint value that is more conservative than that resulting from the previously accepted criteria.

Based on our review of the proposed modification, the Commission proposes to determine that the proposed change to the WNP-2 Technical Specifications involves no significant hazards consideration.

Local Public Document Room: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire, Bishop, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW, Washington, DC 20036

NRC Project Director: George W. Knighton

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: April 21, 1987

Description of amendment request: The licensee has proposed a modification to the "Administrative Controls" section of the WNP-2 Technical Specifications. The proposed amendment involves changes of position titles and changes in responsibilities of designated positions. The licensee has also asked to remove from the organization charts in the Technical Specifications certain positions which they believe represent unnecessary level of detail.

The position of Technical Director (Technical Specifications Section 6.8.2 and Figure 6.2.1-1) has been eliminated. This was a support position which reported directly to the Managing Director. This support is now provided by the Deputy Managing Director and the other supporting Directors.

The position title, Support Services Director (Figure 6.2.1-1 and in Section 6.8.2), has been changed to Support Services Manager to provide consistency throughout the Supply System. No deletion of support to WNP-2 or change of personnel is represented in this proposed change.

The position title, Audits Manager (Figure 6.2.1-1), has been changed to Programs & Audits Manager due to a consolidation of resources in the Licensing and Assurance Directorate. No deletion of support to WNP-2 is represented in this change. The performance of the audits of unit activities as described in Section 6.5.2.8 will not be adversely affected by this proposed change.

The position title, Plant Quality Assurance Manager (Figures 6.2.1-1, 6.2.2-1a, and page 6-8), has been changed to Quality Assurance/Quality Control (QA/QC) Manager to reflect more accurately total responsibility. No deletion of support to WNP-2 or change of personnel is represented in this proposed change.

The licensee has also proposed to delete certain positions from the Organization Charts (Figures 6.2.2-1a. and b.) that are not explicitly required by NRC to be listed in the Technical Specifications. The responsibilities of these organizational units are maintained at the Managerial level. Deletion of the level of detail of the organizational charts will enable the Supply System to make title changes at the supervisory level without requiring a change to the technical specifications. The Instrumentation and Control (I&C) technicians are used for general work and provide assistance as requested but do not report directly to the Control Room Supervisor nor are they required to. No deletion of support to WNP-2 is represented in this change.

Basis for proposed no significant hazards determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not increase the probability or consequences of an accident previously evaluated because the changes are administrative changes only and overall commitments and functional capabilities are not reduced. The proposed changes do not create the possibility of a new or different kind of

accident because the section of the technical specifications affected by the changes does not enter into the postulation of accident scenarios. The proposed changes do not involve a significant reduction in a margin of safety because the changes do not represent a reduction of support to WNP-2. The program requirements do not change.

Based on our review of the proposed modifications, the Commission proposes to determine that the proposed changes to the WNP-2 Technical Specifications involve no significant hazards consideration.

Local Public Document Room: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire, Bishop, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW, Washington, DC 20036

NRC Project Director: George W. Knighton

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of Amendment Request: June 1, 1987

Description of Amendment Request: The licensee has proposed amending Table 4.3.2.1-1 in the Technical Specifications (TSs) to delete the requirement to perform a periodic channel check on certain reactor water level isolation switches. The Supply System stated that the isolation actuation instruments originally installed were replaced by other instruments in order to comply with environmental qualification requirements set forth in 10 CFR 50.49. However, the Supply System stated that the new instruments are of a design not readily amenable to the monitoring specified in Table 4.3.2.1-1.

As part of the actions taken to comply with 10 CFR 50.49, the Supply System replaced four non-environmentally-qualified level indicating trip switches that provide the Reactor Water Level 2 containment isolation function. Table 4.3.2.1-1, "Isolation Actuation Instrumentation Surveillance Requirements," Items 1.a.2, 2.c, and 3.g. require that a channel check be performed once per shift during operational conditions 1, 2, 3, and 4. This requirement is typical for those types of devices that provide both a trip and indicating function or those devices that can be checked by derivation of the sensed parameter. The new design configuration relies upon non-indicating level switches for the isolation function only. The Supply System stated that the new design does not require or support the performance of a channel check.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The replacement devices are specifically applied to perform the design bases function during the previously evaluated accident.

The proposed amendment does not create the possibility for an accident or malfunction of a different type than any previously evaluated. The logic design configuration is not altered, thus providing similar component failure protection.

The amendment does not involve a significant reduction in a margin of safety. The replacement trip switches were recognized as an improvement over the existing components by nature of being environmentally qualified and as such, represent an improvement in the margin of safety.

Based on its review of the proposed modification the Commission proposes to determine that the proposed change to the WNP-2 Technical Specifications involves no significant hazards consideration.

Local Public Document Room: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire, Bishop, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW, Washington, DC 20036

NRC Project Director: George W. Knighton

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Reactor Projects.

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: December 23, 1985, as revised by letters dated September 15, 1986 and February 19, 1987.

Brief descripiton of amendment: The amendment revises the Technical Specifications relative to the licensee's Nuclear Safety Review and Audit Committee (NSRAC). The position of Senior Vice-President, Nuclear will report directly to the President and Chief Executive Officer of Boston Edison Company.

Date of issuance: August 25, 1987

Effective date: August 25, 1987
Amendment No.: 104
Facility Operating License No. DPR-35. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 12, 1986 (51 FR 5271). Subsequent notice was made on June 17, 1987 (52 FR 23096). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 1987.
No significant hazards consideration comments received: No.
Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: March 27, 1987
Brief description of amendments: The amendments changed the Technical Specifications to include operability requirements for the pressurized nitrogen system that has been installed as a backup to the plant instrument air system.
Date of issuance: August 20, 1987
Effective date: August 20, 1987
Amendments Nos.: 111 and 138
Facility Operating Licenses Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.
Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18973)
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 1987.
No significant hazards consideration comments received: No.
Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendments: December 4, 1986, as supplemented March 3, 1987
Brief description of amendments: These amendments clarify Sections 3.5 and 4.5 - Reactor Containment Fan Coolers following a recent modification to the reactor containment fan coolers and convert the entire section into the Standardized Technical Specification format.
Date of issuance: August 17, 1987
Effective date: August 17, 1987
Amendment Nos.: 107 and 97
Facility Operating License Nos. DPR-39 and DPR-48. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13334)
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 17, 1987.
No significant hazards consideration comments received: No
Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: December 8, 1986
Brief description of amendment: The amendment revises the surveillance requirement contained in the Technical Specifications for testing the partial movement of control rods. The proposed change clarifies the term "partial movement." In addition, it changes the testing frequency from a nominal two week surveillance interval to a nominal 31 day interval.
Date of issuance: August 21, 1987
Effective date: August 21, 1987
Amendment No.: 121
Facilities Operating License No. DPR-26: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9565)
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1987.
No significant hazards consideration comments received: No
Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 17, 1986, as supplemented July 1, 1987
Brief description of amendments: The amendments modified the Technical Specifications (TSs) to add two containment penetration conductor over current protective devices to TS Table 3.8-1A for Unit 1 and two to TS Table 3.8-1B for Unit 2.
Date of issuance: August 18, 1987
Effective date: August 18, 1987
Amendment Nos.: 30 and 21
Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26583)
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 18, 1987
No significant hazards consideration comments received: No
Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: April 29, 1987
Brief description of amendment: The amendment corrects errors and restates some specifications in the same way they are stated in the Unit 2 Technical Specifications.
Date of issuance: August 14, 1987
Effective date: August 14, 1987
Amendment No. 112
Facility Operating License No. DPR-66. Amendment revised the license and the Technical Specifications.
Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24549)
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 1987.
No significant hazards consideration comments received: No
Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: February 10, 1987 and supplemented by letter dated April 10, 1987
Brief description of amendment request: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to (1) revise the meteorological monitoring instrumentation specification to include both the primary and redundant instruments, and (2) revise the specification to allow an alternative to grab sampling. The requested changes regarding radiation monitoring setpoints are still under review.
Date of issuance: August 27, 1987
Effective date: August 27, 1987
Amendment No.: 113
Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 8, 1987 (52 FR 11362)

The April 10, 1987 letter provided supplemental information which did not change the initial determination of no significant hazards as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application of amendment: December 23, 1986, as supplemented May 29, 1987

Brief description of amendment: The amendment permits the allowable peak linear heat rate to be 15 kw/ft for all axial fuel elevations for all times in core life.

Date of Issuance: August 13, 1987

Effective Date: August 13, 1987

Amendment No.: 84

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 28, 1987 (52 FR 2881)

The May 29, 1987 letter was in response to the staff's request for additional information, and did not change the initial determination of no significant hazards as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: May 8, 1987

Brief description of amendment: The amendment modified the Technical Specifications by deleting Surveillance Requirement 4.3.7.2.a.2 which required that the extraction steam non-return valves be cycled through one complete test cycle of partial closure at least once per seven days.

Date of issuance: August 20, 1987

Effective date: August 20, 1987

Amendment No.: 81

Facility Operating License No. NPF-5. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23099)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1987

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: March 27, 1987

Brief description of amendments: The amendments modified the Technical Specifications by revising the alarm setpoint for the Unit 2 core spray sparger differential pressure and adding this setpoint for Unit 1.

Date of issuance: August 24, 1987

Effective date: August 24, 1987

Amendment Nos.: 146 and 82

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 3, 1987 (52 FR 20800)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 24, 1987

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366 Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: March 31, 1986

Brief description of amendments: The amendments modified the Technical Specifications related to testing of the onsite emergency diesel generators.

Date of issuance: August 25, 1987

Effective date: August 25, 1987

Amendment Nos.: 147 and 83

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1986 (51 FR 22237)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 25, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: November 4, 1986 (corrected on February 25, 1987 and May 29, 1987)

Brief description of amendment: Changed the administrative section of the Technical Specifications to revise the organizational reporting structure for the Radiological and Environmental Controls department.

Date of Issuance: August 14, 1987

Effective date: August 14, 1987

Amendment No.: 131

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17, 1986 (51 FR 45203) and March 12, 1987 (52 FR 7683)

The May 29, 1987 submittal provided additional clarifying information and did not change the findings of the initial notices.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 14, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania, 17126

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: November 26, 1986

Brief description of amendment: The Duane Arnold Energy Center Technical Specifications are revised to allow the Standby Gas Treatment System tests to be performed in the flowrate range of 3600-4000 cubic feet per minute.

Date of issuance: August 18, 1987

Effective date: August 18, 1987

Amendment No.: 145

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 26, 1987, 52 FR 5858

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1987

No significant hazards consideration comments received: No

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of application for amendment: November 16, 1985 and December 9, 1985

Brief description of amendment: This amendment changed the footnote of Surveillance Requirement 4.4.3.1.c on Reactor Coolant System Leakage Detection Systems and TS Section 3.3.7.9 on Fire Detection Instrumentation.

Date of issuance: August 14, 1987

Effective date: August 14, 1987

Amendment No.: 7

Facility Operating License No. NPF-36. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 18, 1985 (50 FR 51625)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 23212.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: December 18, 1986

Brief description of amendment: The amendment revises the Technical Specification Section 3.3.3.1 to delete the control building inlet ventilation signal from Tables 3.3-6, 4.3.3 and corresponding action statement no. 27.

These requirements were deleted because they duplicate requirements in Technical Specification Section 3.3.2 (functional unit 7e of Tables 3.3-3 and 4.3-2).

Date of issuance: August 21, 1987

Effective date: August 21, 1987

Amendment No.: 9

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1987 (52 FR 7689)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station Unit No. 3, Town of Waterford, Connecticut

Date of application for amendment: May 5, 1987

Brief description of amendment: The amendment revised the Technical Specification Sections 4.8.1.1.2 and 3.3.2 (Table 3.3-5, item 11.a) to increase the emergency diesel generator startup time from 10 seconds to 11 seconds and to increase the 4 KV Bus undervoltage response time from 12 seconds to 13 seconds.

Date of issuance: August 24, 1987

Effective date: August 24, 1987

Amendment No.: 10

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23103)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: February 4, 1987

Brief description of amendment: The amendment established new Rod Block Monitor (RBM) setpoints as a result of Monticello-specific analyses performed by General Electric. The setpoints replace existing RBM setpoints that were determined from a generic analysis. Table 3.2-3 of the Technical Specifications is changed to reflect the new RBM Upscale Setpoints. The minimum critical power ratio (MCPR) is changed to 1.30 in the associated bases.

Date of issuance: August 26, 1987

Effective date: August 26, 1987

Amendment No.: 49

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24542 at 24555)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: February 18, 1987, supplemented June 18, 1987.

Brief description of amendment: The amendment revised Table 3.1.1 to eliminate the requirement for IRM operability while in the Run Mode and to eliminate the APRM downscale scram. The change provides relief to the licensee from the previous Technical Specification requirement of placing the plant in a "half scram" condition while performing required APRM channel testing and maintenance activities.

Date of issuance: August 26, 1987

Effective date: August 26, 1987

Amendment No.: 50

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24542 at 24556).

The June 18, 1987 letter replaced information that had originally been proposed to be deleted from the Bases of the TS in the February 18, 1987 change request. It also provided some additional information (from GE) and clarification related to placing the mode switch in the Run position. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 13, 1987

Brief description of amendments: The amendments revise the steam generator water level low reactor trip setpoint

from 25 to 15 percent of the narrow range instrument span.

Date of Issuance: August 27, 1987

Effective date: August 27, 1987

Amendment Nos.: 17 and 16

Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13344)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: April 8, 1987

Brief description of amendment: This amendment changed the Susquehanna Steam Electric Station (SSES), Unit 1 Technical Specifications to delete the requirements that the mechanical snubbers' functional test shall verify that, "the drag force shall not have increased more then 50% since the last surveillance test."

Date of issuance: August 17, 1987

Effective date: As of its date of issuance to be implemented by October 1, 1987.

Amendment No.: 67

Facility Operating License No. NPF-14. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 3, 1987 (52 FR 20804)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: December 9, 1986

Brief description of amendment: This amendment revised the Susquehanna Steam Electric Station, Unit 1 Technical Specifications to include operational control on modifications to improve the containment isolation function and testability of the feedwater system.

Date of issuance: August 17, 1987.

Effective date: Upon startup following the third refueling outage.

Amendment No.: 68

Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26592)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 8, 1987

Brief description of amendments: These amendments revised the Susquehanna Steam Electric Station (SSES) Units 1 and 2 Technical Specifications to increase Sodium Pentaborate concentration in the Standby Liquid Control System.

Date of issuance: August 25, 1987

Effective date: Unit 1 is effective upon startup for Cycle 4 operation. Unit 2 is effective upon startup for Cycle 4 operation of Unit 1.

Amendment Nos.: 69 and 38

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18984)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 25, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: April 3, 1987

Brief description of amendment: This amendment revises the Technical Specifications (TSs) to: (1) incorporate the operating limits (e.g., core physics, thermal and hydraulic limits, etc.) for all fuel types for Cycle 2 operation of Limerick, Unit 1; (2) incorporate a change in slope of the flow-biased Average Power Range Monitor (APRM) scram and rod block setpoints for operating flexibility or margin improvement options and (3) modify the Bases associated with core reloads.

Date of issuance: August 14, 1987

Effective date: Prior to startup of Limerick Unit 1 in Cycle 2

Amendment No.: 7

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23104)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 11 and October 27, 1986, and as consolidated and revised June 4, 1987.

Brief description of amendment: The amendment revises TS Sections 6.2 and 6.3 which pertain to the plant operating shift organization and qualifications.

The June 4, 1987 submittal combines and revises the submittals of July 11 and October 27, 1986 and containe no substantive changes.

Date of issuance: August 21, 1987

Effective date: August 21, 1987

Amendment No.: 111

Facility Operating License No. DPR-59: The amendment revised the echnical Specifications.

Dates of initial notices in **Federal Register:** October 8, 1986 (51 FR 36102) and December 3, 1986 (51 FR 43685).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: May 22, 1987, as supplemented June 30, 1987

Brief description of amendment: The amendment permitted a temporary increase in the Main Steam Line Radiation-High-High scram and isolation trip setpoints to allow operation with expected higher radiation levels resulting from hydrogen injection testing.

Date of issuance: August 17, 1987
Effective date: August 17, 1987
Amendment No.: 8
Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24557) and July 15, 1987 (52 FR 26596)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 30, 1987
Brief description of amendment: The amendment increased the minimum critical power ratio limits provided in Technical Specification Figure 3.2.3-1 for operable end-of-cycle recirculation pump trip and main turbine bypass systems.

Date of issuance: August 25, 1987
Effective date: August 25, 1987
Amendment No.: 9
Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24557)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: April 20, 1987
Brief description of amendment: This amendment adds License Condition 2.I. regarding the implementation of the International Atomic Energy Agency (IAEA) Safeguards at Salem Nuclear Generating Station, Unit 1.

Date of issuance: August 24, 1987
Effective date: August 24, 1987
Amendment No.: 81
Facility Operating License No. DPR-70. This amendment revised the License.
Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24559)

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: February 6, 1987 (TS 225)
Brief description of amendments: The amendments clarify the applicability of definition 1.0.C.2 so that the definition will not be erroneously applied while in Cold Shutdown condition or Refuel mode. Definition 1.0.C.2 for Units 1, 2 and 3 is changed by adding the word "definition" and by deleting the phrase "if the unit is already" so that the sentence beginning on the thirteenth line of the Browns Ferry Technical Specifications definition 1.0.C.2 reads, "This definition is not applicable in Cold Shutdown or Refueling."

Date of issuance: August 20, 1987
Effective date: August 20, 1987, and shall be implemented within 60 days.
Amendments Nos.: 134, 131, 106
Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13350)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: December 15, 1986 (TS 222)
Brief description of amendments: The amendments change the Technical Specifications to add drywell leakage measurement and recording requirements in response to NRC Generic Letter 84-11.

Date of issuance: August 26, 1987
Effective date: August 26, 1987, and shall be implemented within 60 days.
Amendments Nos.: 137, 133, and 108
Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 28, 1987 (52 FR 2891)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 16, 1987 (TSC 87-21)
Brief description of amendments: The amendments correct the line items alignment for functional units 20, reactor trip breakers, and 21, automatic trip logic, of Table 3.3-1, "Reactor Trip System Instrumentation." Additionally, the channels to trip, minimum channels operable, and applicable mode requirements for the same functional units are revised to be consistent with the Standard Technical Specifications (NUREG 0452).

Date of issuance: July 20, 1987
Effective date: July 20, 1987
Amendment Nos.: 56, 48
Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26598)

These amendments were inadvertently issued in advance of the comment period expiration date. The licensee was notified and no action was taken until the expiration of the comment period. The State of Tennessee was also notified. No State or public comments were received.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 20, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Bethesda, Maryland this 3rd day of September, 1987.

BEST COPY AVAILABLE

For the Nuclear Regulatory Commission
Dennis M. Crutchfield,
Director, Division of Reactor Projects—III, IV, V and Special Projects,
Office of Nuclear Reactor Regulation.
[Doc. 87-20665 Filed 9-8-87; 8:45 am]
BILLING CODE 7590-01-D

[Docket No. 70-1257]

Finding of No Significant Impact; Renewal of Materials License No. SNM-1227 Advanced Nuclear Fuels Corp.

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Materials License No. SNM-1227 for the continued operation of the Advanced Nuclear Fuels Corporation (ANF) fuel fabrication facility at Richland, Washington.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of the license which allows ANF to continue operating the fuel fabrication facility, including a new incinerator.

The Need for the Proposed Action

The ANF facility is one of several industrial facilites dedicated to the fabrication of fuel elements for light-water reactors. Although the demand for nuclear reactors has declined, there is a continuing demand to meet the needs for operating reactors. Because ANF is a supplier of fuel for reactors, denial of the license renewal would necessitate expansion of similar activities at another existing fuel fabrication facility or the construction and operation of a new plant. Although denying the renewal of the SNM license for ANF is an alternative available to the NRC, it would be considered only if issues of public health and safety cannot be resolved.

Environmental Impacts of the Proposed Action

The radiological impacts of the ANF facility were assessed by calculating the maximum dose to the individual living at the nearest residence and to the local population living within a 80-km (50 mile) radius of the plant site. Effluent release data was used to estimate the 50-year dose commitment to the maximally exposed individual living at the nearest residence; the committed doses are: whole body 1.4×10^{-4} mrem; bone 7.1×10^{-4} mrem; and lung 3.3×10^{-3} mrem. The doses are well below the environmental radiation dose limits established by the Environmental Protection Agency (40 CFR Part 190). The collective whole-body dose to the population within a 80-km (50 mile) radius of the plant is 4.8×10^{-3} man-rem which is only about 1.4×10^{-5} percent of the population dose of 33,750 man-rem resulting from the natural background radiation dose in the area. Liquid effluents are discharged to the Richland Municipal Sewer and are considered minor. Therefore, the staff concludes that there will be no significant impacts associated with the proposed action.

Alternatives to the Proposed Action

One alternative would be to deny the renewal application. This would result in the facility shutting down. Although denial is an alternative available to the Commission, it would be considered only if significant issues of public health and safety could not be resolved.

Agencies and Persons Consulted

In addition to reviewing the applicant's request, the staff contacted the Department of Ecology and the Air Pollution Control Authority in the State of Washington.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the license renewal of Materials License No. SNM-1227. On the basis of this assessment, the Commission has concluded that environmental impacts created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment for the proposed action, on which this Finding of No Significant Impact is based, relied on the following documents: (1) Supplement to Applicant's Environmental Report, September 1986, (2) Revised Application for Renewal, July 1987 submitted by letter dated August 7, 1987, and (3) Responses to NRC questions, April 30, and May 18, 1987.

This Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 427-4510 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U. S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Silver Spring, Maryland, this 2nd day of September 1987.

For the Nuclear Regulatory Commission.
Leland C. Rouse, Chief,
Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.
[FR Doc. 87-20664 Field 9-8-87; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-366]

Environmental Assessment and Finding of No Significant Impact; Georgia Power Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.73 to the Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensee) for the Edwin I. Hatch Nuclear Plant, Unit 2 (the facility), located at the licensee's site in Appling County, Georgia. The exemption is needed for the licensee to comply with other requirements of the Commission.

Environmental Assessment

Identification of Proposed Action

The exemption will permit the licensee to comply with the requirements of section 3.3.6.2.a. of the facility Technical Specifications.

The existing Technical Specifications require that when seismic monitoring instrumentation has been inoperable for a period of 30 days, a special report is to be submitted to the Commission within the next 10 days. This special report is in lieu of the Licensee Event Reports that otherwise would be required by the facility Technical Specifications.

A revised Licensee Event Report system was established by 10 CFR 50.73, which became effective on January 1, 1984. Licensees of operating nuclear power plants were advised by Generic Letter 83-43 to change their plant Technical Specifications to conform to the revised reporting requirements. However, the Generic Letter also stated that any existing Technical Specification requirements for special reports should be continued. The exemption will permit the licensee to comply with 10 CFR 50.73 except for the special report regarding inoperable seismic monitoring instrumentation.

The Need for the Proposed Action

The exemption is needed to enable the licensee to comply with the special reporting requirements regarding inoperable seismic instrumentation without being in violation of the reporting requirements of 10 CFR 50.73.

Environmental Impact of the Proposed Action

The proposed aciton is administrative only and will have no environmental impact.

Alternative to the Proposed Action

Not granting the exemption also would have no environmental impact.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2," dated March 1978.

Agencies and Persons Consulted

The NRC staff initiated this exemption action. No other agencies or persons were consulted.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see Generic Letter 83–43, "Reporting Requirements of 10 CFR Part 50, Sections 50.72 and 50.73, and Standard Technical Specifications," dated December 19, 1983; and the licensee's letter to the NRC dated February 13, 1987, file SL–1878, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Bethesda, Maryland, this 3rd day of September 1987.

For the Nuclear Regulatory Commission.

Lawrence P. Crocker,

Acting Project Director, Project Directorate II–3, Division of Reactor Projects–I/II.

[FR Doc. 87–20662 Filed 9–8–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–247]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Consolidated Edison Company of New York, Inc.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR–26, issued to Consolidated Edision Company of New York, Inc. (the licensee), for operation of Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York.

The proposed amendment would revise the Technical Specifications to permit the Residual Heat Removal pumps to remain operable during the performance of the Safety Injection System Test. The change is being proposed to facilitate outage planning. The proposed amendment is in accordance with the licensee's application dated May 29, 1987, as supplemented August 3, 1987.

10 CFR 50.92 states that a proposed amendment will involve a no significant hazards consideration if the proposed amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident previously evaluated, or (3) involve a significant reduction in margin of safety.

The license provided the following analysis:

". . . operation of Indian Point Unit No. 2 in accordance with this change would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not involve any physical change in plant equipment. Maintaining an RHR pump in an operable condition during the performance of the safety injection system test will actually decrease the probability of a postulated accident and will leave unchanged the consequences of such an accident. There are two parameters that must be reviewed to yield this conclusion. First, the Safety Injection Ssytem test will not be functionally different from that which has been performed in the past. Therefore, with respect to this parameter, which does not change, the probabilities and consequences of postulated accidents remain identical. The second parameter inherent in the proposed change is the maintenance of RHR cooling during the Safety Injection System test. By maintaining an RHR pump operable during the test, decay heat removal is retained and need not be disrupted at any time during the test. Having an operable RHR System is always as safe or safer than having it inoperable for any period of time. With respect to this parameter, there is, therefore, an actual decrease in the probability of an accident and no change has been introduced in the consequences of that accident. The overall result, therefore, of the proposed change is the summation of the above which results in a slight decrease in the probability of an accident and no increase (or decrease) in the consequences of that accident.

2. increase the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the proposed change does not involve any physical change in plant equipment and the Safety Injection System test is functionally no different than that performed in the past. The basic difference will be that a RHR pump will be operable and, if this should fail, both RHR pumps will be inoperable which is the same condition under which the test has always been performed in the past. The proposed change, therefore, introduces no new or different kind of accident from any previously evaluated.

3. involve a significant reduction in a margin of safety. But not disrupting decay heat removal at any time during the Safety Injection System test, the margin of safety inherent in the RHR systems use is actually increased. Once again, having the system operable at all times is always at least as safe or safer than disrupting it for any period of time. Any failure in the system, with the proposed change in effect, renders the plant condition identical to what it would have been without the change and, therefore, the margin of safety in the system, as well as overall, cannot decrease and may well increase."

In addition, the licensee has indicated the RHR pumps were blocked from starting during the system actuation test to minimize the potential wear associated with frequent testing. The RHR pumps are tested quarterly during reactor operation. As a result, the blockage was considered acceptable.

Based on the above, the staff proposes to determine that proposed changes will not result in a significant hazards determination.

The Commission is seeking public comment on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regultory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice.

By October 9, 1987, the licensee may file a request for a hearing with respect

to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to particiapte as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention would be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra, Acting Director, Project Directorate I–1, Division of Reactor Projects, I/II: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and Mr. Brent L. Brandenburg, 4 Irving Place, New York, New York 10003, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a) (1) (i)–(v) and 2.714 (d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York.

Dated at Bethesda, Maryland, this 2nd day of September 1987.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Acting Director, Project Directorate I–1, Division of Reactor Projects, I/II.

[FR Doc. 87–20663 Filed 9–8–87; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24869; File No. SR-Amex-86-27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc.; System Modification to the Amex/Toronto Stock Exchange Trading Linkage

The American Stock Exchange, Inc. ("Amex") submitted, on October 16, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to implement a modification to the electronic trading linkage between the Amex and the Toronto Stock Exchange

("TSE").[1] The modification will enable Exchange terminals on the Amex floor to display the TSE quote on issues traded through the linkage in both Canadian and U.S. dollars, reflecting current currency conversion rates. Prior to the modification, the Amex specialist has had to convert manually the TSE quote into U.S. dollars using the conversion rate and the Canadian equity price.

As originally intended, the converted Canadian quote was to be displayed on Bridge Data terminals on the Amex floor. Bridge would also supply the currency conversion rate, capturing the best bid and offer on the Toronto currency market, which consists of a number of competing Canadian banks. The Amex has since further developed the modification to allow its Exchange terminals to receive both the Canadian equity quote and the Toronto currency market quote. The Exchange terminal automatically computes the quotes, thereby allowing the specialist to display simultaneously the TSE quotes in Canadian and U.S. dollars.[2]

Notice of the proposed rule change, together with the terms of substance of the proposal, was given by the issuance of a Commission release (Securities Exchange Act Release No. 24016, January 20, 1987) and by publication in the **Federal Register** (52 FR 3070, February 2, 1987). No Comments were received regarding the proposal.

The concept of automatic currency conversion is consistent with the goal of the facilitation of trading through international linkages. In approving the Amex-TSE linkage, the Commission anticipated the need for, and eventual implementation of, such a currency conversion mechanism. In its initial application to establish the linkage, the Amex noted that an automatic currency conversion mechanism would help minimize any U.S. dollar/Canadian dollar exchange rate risk, and would allow the settlement of transactions effected on the TSE through the linkage to be effected in the United States in U.S. currency.[3]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the proposal will facilitate transactions in securities, consistent with the purposes of section 6(b)(5) of the Act,[4] by allowing the TSE quote to be displayed automatically in both U.S. and Canadian dollars, thereby eliminating the need for the specialist to convert manually the Canadian price into U.S. dollars in order to compare prices in the Amex and TSE markets.[5] The conversion factor to be used—the inside quote from the Toronto currency market—is a fair and recognized standard for determining Canadian dollar conversion rates.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 2, 1987.

[FR Doc. 87-20687 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24870; File No. SR-MSRB-87-8]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Books and Records

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1987, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board ("Board") is filing amendments to rule G-8 on books and records which would require dealers complying with SEC rule 17a-3, instead of rule G-8, to make and keep records of deliveries of rule G-32 disclosures as required by rule G-8(a)(xiii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the proposed Rule Change

(a) Rule G-32 prohibits a dealer from selling during the underwriting period new issue municipal securities to a customer unless the dealer delivers to the customer by settlement of the transaction a copy of the final official statement if one is prepared by or on behalf of the issuer. Rule G-8(a)(xiii) requires dealers to make and keep records of all deliveries of official statements or other disclosure documents required under rule G-32. This recordkeeping requirement was adopted by the Board in August 1985 to encourage dealers to formalize their procedures for delivering disclosures to their customers and to aid the enforcement organizations in determining compliance with the rule.

Rule G-8(f) provides that municipal securities brokers and dealers (other than bank dealers) which are in compliance with rule 17a-3, the recordkeeping rule of the Commission, will be deemed to be in compliance with the requirements of rule G-8, provided that certain additional records required by rule G-8 are in any event maintained. Rule 17a-3, however, does not require brokers and dealers to make and keep records of deliveries of rule G-32 disclosures. The Board has been informed by the NASD that certain firms, acting pursuant to rule G-8(f) and SEC rule 17a-3, are not maintaining records of such deliveries. The Board believes that, since firms must be able to

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[1] The Commission approved the Amex-TSE linkage on September 20, 1985. The Amex-TSE linkage is the only electronic linkage between a primary market in the United States and a primary market in a foreign country. *See* Securities Exchange Act Release No. 22442 (September 20, 1985), 50 FR 39201.

[2] The Amex explained the changes to the system in an amendment to the filing. *See* letter from J. Bruce Ferguson, Assistant Vice President, Amex, to Stephen Luparello, Staff Attorney, Division of Market Regulation, SEC, dated August 4, 1987. ("Amendment No. 1")

[3] *See* Amendment No. 1 at 2. The currency quote received by the Amex from the Toronto currency market will constitute the exchange rate for transactions effected through the linkage on the TSE. When the TSE specialists receives an order, he will note the price of the order and the conversion rate specified by the Amex specialist. The TSE specialist will check the Toronto currency market to confirm the currency quote, and then execute simultaneously both the equity trade and currency transaction. If either the currency or equity quote price is no longer available, the TSE specialist will bounce the trade back to the Amex specialist. According to the Amex, the currency transaction minimizes the risk resulting from fluctuations in the U.S./Canadian dollar exchange rate between the time of execution and the time of settlement. At present, the Amex and TSE are formulating further modifications to the linkage to eliminate the manual aspect of the currency transaction.

[4] 15 U.S.C. 78f(b)(5).

[5] The Commission emphasizes that the form and method by which quotes and trades are sent and received, including foreign currency conversion factors, are the most important aspects of a trading linkage. therefore, in order to ensure the protection of investors utilizing international linkages, it is necessary for the exchanges to submit all such modifications, prior to their implementation, to the Commission for review.

prove to examiners that rule G–32 disclosures were made to customers, compliance with rules G–8(f) and 17a–3 will not excuse the obligation to keep some kind of record of rule G–32 disclosures. The proposed rule change would calrify this matter by amending rule G–8(f) to require dealers complying with SEC rule 17a–3, instead of rule G–8, to make and keep records of deliveries of official statements as required by rule G–8(a)(xiii).

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to foster competition and coordination with persons engaged in regulating transactions in municipal securities, and in general, to protect investors and the public interest, and section 15B(b)(2)(G) of the Act, which authorizes the Board to adopt rules to prescribe records to be made and kept by municipal securities brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change, which will have an equal impact on all participants in the municipal securities industry, will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 30, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 2, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20688 Filed 9–8–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24871; File No. SR–MSRB–87–9]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Suitability

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1987, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board ("Board") is filing amendments to rule G–19 on suitability which would require a dealer effecting a transaction in municipal securities with or for a discretionary account, to make an affirmative determination of the suitability of the transaction based upon information available from both the issuer and the customer.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G–19 on suitability prohibits a municipal securities professional from recommending a transaction in municipal securities to a customer unless the professional makes certain determinations with respect to the suitability of the transaction. Rule G–19(c) permits a municipal securities professional to make recommendations only if, after making a reasonable inquiry, he has reasonable grounds to believe and does believe that the recommendation is suitable for the customer in terms of information available from the issuer of the security, and the customer's financial background, tax status, and investment objectives.

Rule G–19(d)(ii), requires a dealer to determine that a transaction in municipal securities is suitable for the customer in light of information supplied by the customer as set forth in paragraph (c)(ii) before effecting a transaction with or for a discretionary account. Rule G–19(d)(ii) does not, however, require that the transaction be suitable in light of information available from the issuer as required by paragraph (c)(i). When rule G–19 was amended in 1985, the Board failed to revise rule G–19(d)(ii) to reference new section (c)(i). The proposed rule change would amend paragraph (d)(ii) to prohibit dealer from recommending a transaction for a discretionary account unless the dealer first determines that the transaction is suitable in terms of both customer and issuer information.

In addition, rule G–19(d)(ii) references subparagraph (c)(ii)(B), which permits a dealer to recommend a transaction in municipal securities when information about the customer is not known or furnished, if the dealer has no reasonable grounds to believe and does not believe that the recommendation is unsuitable. The Board, however, has consistently interpreted rule G–19(d) to bar a professional from effecting a transaction in municipal securities with or for a discretionary account if the professional does not have sufficient information to make an affirmative determination with respect to the suitability of the transaction for the customer. The proposed rule change would require a dealer to make an affirmative determination of the

suitability of a transaction for a discretionary account.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to foster competition and coordination with persons engaged in regulating transactions in municipal securites, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change, which will have an equal impact on all participants in the municipal securities industry, will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 30, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 2, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20689 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24867; File No. SR-MSRB-87-7]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Uniform Practice and Customer Confirmations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1987, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board ("Board") is filing amendments to Board rule G-12 on uniform practice and G-15 on confirmation, clearance, and settlement of transactions with customers (hereafter referred to as the "proposed rule change") which would correct the cross-references in the good delivery requirements of rules G-12(e) and G-15(c) to the confirmation provisions of rule G-12(c) and G-15(a).

II. A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rules G-12(e) and G-15(c) specify the requirements for physical deliveries of securities on inter-dealer and customer transactions, respectively. Among other things, the rules require all certificates delivered on a transaction to be identical with respect to certain features and to be accompanied by a delivery ticket containing a description of the securities. These requirements are stated by cross-reference to certain items of information required on confirmations by rules G-12(c) and G-15(a).

In 1986, the Board amended rules G-12(c) and G-15(a) to require a disclosure on the confirmation if securities are subject to federal taxation or the federal alternative minimum tax. In adding these disclosure requirements, certain provisions in rules G-12(c)(vi) and G-15(a)(iii) were renumbered. The proposed rule change would amend rules G-12(e) and G-15(c) to correct the cross-references to these confirmation provisions.

The proposed rule change also would amend rules G-12(e)(iii) and G-15(c)(ii) to require delivery tickets to include the same designations regarding taxability and alternative minimum tax as are required on confirmations under rules G-12(c)(vi) and G-15(a)(iii). This will conform the securities description required on the delivery ticket by rules G-12(e) and G-15(c) with the descriptions required on confirmations.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which requires and empowers the Board to adopt rules—

> designed . . . to foster cooperation and coordination with persons engaged in . . . clearing, settling, processing information . . . and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition since it will apply to all brokers, dealers and municipal securities dealers equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has not solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such

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longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 30, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 1, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20690 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 2, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

AMC Government Income Fund
Common Stock, $.01 Par Value (File No. 7-0373)

I.A-Z-Boy Chair Company
Common stock, $1.00 Par Value (File No. 7-0374)

Real Estate Investments Trust of California
Shares of Beneficial Interest, No Par Value (File No. 7-0375)

Roebling Property Investors Inc.
Common stock, $.01 Par Value (File No. 7-0376)

British Airways PLC
Final Installment American Depository Receipts (File No. 7-0377)

Carteret Bancorp, Inc. (Holding Co.)
Common stock, $.01 Par Value (File No. 7-0378)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 24, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20640 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 2, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

V.F. Corporation
Common Stock, No Par Value (File No. 7-0372)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 24, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20691 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15962; 812-6774 and 812-6775]

Application; Bankers Life Assurance Co. of Nebraska

September 2, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

Applicants: Bankers Life Assurance Company of Nebraska ("Bankers"), Bankers Life Assurance Company of Nebraska Separate Account VA-1 and Bankers Life Assurance Company of Nebraska Separate Account VA-2 ("Account(s)"), and BLN Investment Corp ("Investment Corp").

Relevant 1940 Act sections: Exemption requested *under* section 6(c) *from* sections 26(a)(2) and 27(c)(2) of the 1940 Act.

Summary of application: Applicants seek an order to permit them to issue variable annuity contracts ("contracts") which will deduct a Mortality and Expense Risks Charge.

Filing date: The applications were filed on June 25, 1987, and amended on August 25, 1987.

Hearing or notification of hearing: If no hearing is ordered, the applications will be granted. Any interested person may request a hearing on the applications, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and

the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Julian H. Hopkins, Esq., 5900 "O" Street, Lincoln, Nebraska 68510.

FOR FURTHER INFORMATION CONTACT: Margaret Warnken, Financial Analyst (202) 272–2058 or Lewis B. Reich, Special Counsel (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the applications; the complete applications are available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–2382 (in Maryland (301) 258–4300).

Applicants' Representations

1. Bankers is a stock life insurance company incorporated under the laws of the State of Nebraska on June 22, 1983 and is a wholly-owned subsidiary of Bankers Life Assurance Company of Nebraska ("Bankers Life Nebraska"). Bankers is licensed to sell life insurance in 32 states and the District of Columbia. Investment Corp is a wholly-owned subsidiary of Bankers Life Nebraska and a registered broker-dealer. Investment Corp will serve as the principal underwriter for the contracts.

2. Bankers established the Accounts on May 28, 1987, under the laws of the State of Nebraska, and the Accounts are registered as unit investment trusts under the 1940 Act. Account VA–1 was established by Bankers to act as the funding entity for certain flexibility premium variable annuity contracts. Account VA–2 was established to act as the funding entity for certain single premium variable annuity contracts.

3. Premium payments, less any applicable premium tax, are allocated to Account VA–1. Account VA–1 is currently divided into four Subaccounts, each of which invests in one portfolio of the Sowers Series Fund, Inc. The Fund, a diversified, open-end management investment company, was organized as a Maryland corporation on November 6, 1985. The Fund currently has four portfolios: the Bond Portfolio; the Growth Portfolio; the Money Market Portfolio; and the Discretionary Portfolio. Bankers may, from time to time, establish additional Subaccounts. Bankers may substitute or add additional portfolios of the Fund or, where appropriate, of other registered open-end investment companies. Ameritas Investment Advisors, Inc., an affiliate of Bankers, is the adviser for the Fund.

4. The Premium payment, less any applicable premium tax, is allocated to Account VA–2. Account VA–2 is currently divided into five (5) Subaccounts, each of which invests in one portfolio of the Variable Insurance Products Fund. The Fund, a diversified, open-end management investment company, was organized as a Massachusetts Business Trust on November 13, 1981. The Fund currently has five portfolios: the Equity-Income Portfolio; the Growth Portfolio; the Money Market Portfolio; the High-Income Portfolio; and the Overseas Portfolio. Bankers may, from time to time, establish additional Subaccounts. Bankers may substitute or add additional portfolios of the Fund or, where appropriate, of other registered open-end investment companies. Fidelity Management & Research Company is the adviser for the Fund.

5. The contracts offered by Account VA–1 are flexible premium variable annuity contracts. The contracts offered by Account VA–2 are single premium variable annuity contracts. Both are designed to aid individuals in long-term financial planning and provide for the accumulation of capital on a tax-deferred basis for retirement or other long-term purposes. The contracts provide for the accumulation of the contract values on a variable basis and payment of monthly annuity payments on a fixed basis. The contracts may or may not qualify for any special tax treatment under the Internal Revenue Code. The minimum premium payment Bankers will accept for the flexible premium contract is $50.00; the minimum premium payment for the single premium contract is $5,000.

6. Bankers assumes mortality and expense risks under both contracts. The mortality risk borne by Bankers under the contracts is that the annuitants under the contracts may live longer as a group than has been anticipated in setting the annuity rates guaranteed in the contracts and thus, the actual future costs Bankers will incur in making the annuity payments may exceed the amounts Bankers will derive from the contracts. In addition, Bankers bears a mortality risk under the contracts in that Bankers guarantees the purchase rates for the annuity income options available under the contracts and it guarantees that, prior to the annuity date, the amount of the death benefit under the contracts will be the greater of the current accumulation value of the contracts, less any applicable withdrawal charge and any applicable annual contract fee (cash surrender value), and the sum of the premium payments made or the premium payment made in the case of the single premium contract. The expense risk undertaken by Bankers is that the charge for administration costs under the contracts may be insufficient to cover the actual future costs incurred by Bankers for providing contract administration services.

7. By assuming the mortality and expense risks, Bankers assures the annuitant that neither annuitant's own longevity, nor an improvement in life expectancy greater than allowed for in setting the annuity rates, will have any adverse effect on the monthly annuity payments the annuitant will receive under the contracts. It, therefore, relieves the annuitant of the risk that he will outlive the funds he has accumulated for retirement.

8. Bankers imposes a daily charge against the assets of the Subaccounts to compensate Bankers for costs incurred by assuming these risk equal 0.003425% of the average daily net assets of the respective Account. The annual rate of the charge, which is compounded daily, is 1.25%, consisting of approximately .55% for the mortality risk and .70% for the expense risk. Bankers guarantees that this charge will never increase. If this charge is insufficient to cover the assumed risks, the loss will fall on Bankers. Conversely, if the charge proves more than sufficient, any excess will be added to Bankers' general account funds.

9. Applicants represent that the charge under the contracts for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. Applicants do not concede the applicability of sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the mortality and expense risks charge. In order to avoid any possibility that questions may be raised as to the potential applicability of those provisions to this charge, however, Applicants request exemption from those provisions to the extent necessary to permit the assessment of a charge for mortality and expense risks against the assets of each respective Account. Applicants submit that the mortality and expense risks charge is a reasonable charge to compensate Bankers for the risk that annuitants under the contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the contracts and for the risk that administrative expenses will be

greater than the amounts derived from the administration charge(s).

Bankers represents that the charge of 1.25% for mortality and expense risks assumed by Bankers is within the range of industry practice with respect to comparable annuity products. This representation is based upon Bankers' analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. Bankers will maintain at its Home Office, available to the SEC, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and result of, its comparative survey.

10. A withdrawal charge is imposed on certain partial and full withdrawals and upon certain annuitizations. These charges reimburse Bankers for expenses it incurs in selling contracts, including commissions to registered representatives and other promotional expenses. No withdrawal charge will be assessed against a withdrawal of accumulation value or annuitization after the contract has been in force more than nine contract years in the case of the flexible premium contract, and six contract years for the single payment contract. Similarly, no withdrawal charge will be assessed against the first withdrawal in any contract year of an amount up to 10% of the accumulation value as of the date of the withdrawal.

Where a partial or full withdrawal is made or amounts are applied under an annuity option, the amount withdrawn or annuitized (less any amount entitled to the 10% exception) will be subject to a withdrawal charge expressed as a percentage of the accumulation value withdrawn or annuitized as follows:

For account VA-1		For account VA-2	
Percnt	Policy year	Percent	Policy year
9	1	5	1
8	2	5	2
7	3	4	3
6	4	3	4
5	5	2	5
4	6	1	6
3	7	0	7+
2	8		
1	9		
0	10+		

In the case of a partial withdrawal or annuitization, the withdrawal charge will be allotted pro rata among the Subaccounts based on the accumulation value in each Subaccount prior to the withdrawal or annuitization. In the case of a full withdrawal or annuitization, the withdrawal charge is deducted from the amount paid to the owner. A withdrawal charge will not be assessed if after the first five contract years for the flexible premium contract, nor after the first two contract years for the single premium contract, any portion of the accumulation value is applied under the certain Annuity Income Option C, as a life annuity. Further, the sum of all withdrawal charges will not exceed 9.0% of the premium payments made as of the time of the withdrawal or annuitization for the flexible payment contract. The sum of all withdrawal charges will not exceed 6.5% of the premium paid for the single premium contract.

The amount derived from these charges may not be sufficient to cover all of the distribution expenses. Should the actual amounts derived from the withdrawal charges prove insufficient to cover actual distribution expenses, any deficiency will be met from Bankers' general account funds, including amounts derived from the mortality and expense risks charge.

Bankers has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the contracts will benefit each Account and its contract owners. The basis for such conclusion is set forth in memoranda which will be maintained by Bankers at its Home Office and will be available to the SEC. Moreover, Bankers represents that the Accounts will invest only in an underlying investment company which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such a plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such investment company within the meaning of section 2(a)(19) of the 1940 Act.

11. Bankers deducts an annual contract fee of $30 from the accumulation value of the contract to reimburse Bankers for the administrative costs of maintaining the contract on Bankers' computer system. Additionally, a charge of .20% of the accumulation value of the single premium contract is calculated and deducted from the accumulation value of that contract on the last valuation date of each contract year. This charge is designed to reimburse Bankers for administrative expenses incurred in connection with issuing the contracts and ongoing administrative expenses incurred in connection with servicing and maintaining the single premium contracts. These administrative charges are guaranteed not to increase, and Bankers does not expect to make a profit on these charges.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20631 Filed 9–8–87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22–17374]

Application and Opportunity for Hearing; Citicorp

September 1, 1987.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "1939 Act") for a finding that the trusteeships of United States Trust Company of New York (the "Trust Company") under four existing indentures, and a Pooling and Servicing Agreement dated as of June 1, 1987, under which certificates evidencing interests in a pool of mortgage loans have been issued, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under any of such indentures or the Agreement.

Section 310(b) of the 1939 Act provides, in pertinent part, that if a trustee under an indenture qualified under the 1939 Act has or shall acquire any conflicting interest, it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same obligor are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

Applicant Alleges That

(1) The Trust Company currently is acting as Trustee under four indentures

under which Applicant is the obligor. The indenture dated February 15, 1972 involved the issuance of Floating Rate Notes due 1989; the indenture dated March 15, 1977 involved the issuance of various series of unsecured and unsubordinated Notes; the indenture dated August 25, 1977 involved the issuance of Rising-Rate Notes, Series A; and the indenture dated April 21, 1980 involved the issuance of various series of unsecured and unsubordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2–42915, 2–58355, 2–59396 and 2–64862 filed under the Securities Act of 1933 (the "1933 Act"), and have been qualified under the Trust Indenture Act of 1939. The four indentures are hereinafter called the "Indentures" and the securities issued pursuant to the Indentures are hereinafter called the "Notes".

(2) Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On June 25, 1987, the Trust Company entered into a Pooling and Servicing Agreement dated as of June 1, 1987 (the "1987–9 Agreement") with Citicorp Mortgage Securities, Inc. ("CMSI"), Packager Servicer, under which there were issued on June 25, 1987 Mortgage Pass-Through CitiCertificates, Series 1987–9, 9.00% Pass-Through Rate (the "Series 1987–9 Certificates"), which evidence fractional undivided interests in a pool of conventional one-to four-family mortgage loans (the "1987–9 Mortgage Pool") originated by Citibank, N.A. and having adjusted principal balances aggregating $75,033,788.82 at the close of business on June 1, 1987, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1987–9 Certificates. On June 25, 1987, Applicant, the parent of CMSI, entered into a Guaranty of even date (the "1987–9 Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1987–9 Certificates, to be liable for 7.00% of the initial aggregate principal balance of the 1987–9 Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1987–9 Guaranty. The 1987–9 Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1987–9 Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1987–9 Certificates were registered under the 1933 Act (Registration Statement of CMSI, Citicorp and the Originators named therein on Forms S–11 and S–3, File No. 33–12788) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through CitiCertificates pursuant to Rule 415 under the 1933 Act. The Series 1987–9 Certificates were offered by a Prospectus Supplement dated June 10, 1987, supplemental to a Prospectus dated June 10, 1987. The 1987–9 Agreement has not been qualified under the 1939 Act.

(4) The obligations of Applicant under the Indentures and the 1987–9 Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1987–9 Guaranty are unlikely to cause any conflict of interest in the trusteeships of the Trust Company under the Indentures and 1987–9 Agreement.

(5) Applicant has waived notice of hearing, hearing, and any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22–17374, which is a public document on file in the Commission's Public Reference Section, 450 5th Street NW., Washington, DC 20549.

Notice is further given that an interested person may, not later than September 25, 1987 request in writing that a hearing be held on such matter, stating the nature of the interest, the reasons for such request, and the issues of law or fact raised by said application that are controverted, or request notification if the Commission should order a hearing. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549.

At any time after said date, the Commission may issue an Order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20634 Filed 9–8–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15960; (File No. 812–6757)]

Application; Discover Credit Corp.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption from all provisions of the Investment Company Act of 1940 ("1940 Act").

Applicant: Discover Credit Corp.

Relevant 1940 Act sections: Exemption requested pursuant to section 6(c) from all provisions.

Summary of application: Applicant seeks an order permitting it to operate as a finance subsidiary of Sears, Roebuck and Co. ("Sears") by borrowing money in domestic and foreign debt markets and lending the proceeds thereof to certain subsidiaries of Sears in exchange for such subsidiaries' unsecured notes.

Filing dates: The application was filed on June 11, 1987, and amended on August 17, 1987.

Hearing or notification of hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on September 25, 1987. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Discover Credit Corp., 12 Read's Way, New Castle, Delaware 19720.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272–3033, or Brion R. Thompson, Special Counsel (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a wholly-owned subsidiary of Sears and its primary business will be to finance various

activities of certain direct and indirect subsidiaries of Sears operating within the Dean Witter Financial Services Group ("DWFSG") by advancing funds to DWFSG in exchange for their unsecured notes. Applicant presently intends to raise funds for such financing by offering and selling short-term commercial paper notes without registration under the Securities Act of 1933 ("1933 Act"), in reliance upon the exemption provided in section 3(a)(3) thereof. Applicant will not offer or sell such commercial paper notes to the general public, but instead will market these notes only to an institutional customer base. Applicant will remit to DWFSG at least 85 percent of the proceeds of the commercial paper program as soon as practicable after receipt thereof, but in no event later than six months after Applicant receives such proceeds.

2. Although it has no present plans to do so, Applicant may also issue medium and long-term debt securities in the future, which will either be registered under the 1933 Act or be subject to a statutory exemption therefrom. In the case of a public offering of securities not exempt from registration under the 1933 Act, Applicant will not sell such securities until the registration statement pertaining thereto has been declared effective by the SEC. Applicant will comply with the prospectus delivery requirements of the 1933 Act in connection with the offer and sale of such securities. Further, prior to issuance, the commercial paper notes and any other debt instruments issued by Applicant will have received one of the three highest available investment grade ratings from at least two nationally recognized rating services; however, no such rating will be required if, in the opinion of Applicant's counsel, an exemption from registration is available under section 4(2) of the 1933 Act.

3. In the case of an offering of debt securities not requiring registration under the 1933 Act, Applicant will provide each offeree with disclosure materials which will include a description of the business of Sears and other data of the character customarily supplied in such offerings. These disclosure materials will be updated as soon as practicable to reflect any material changes in the financial condition of Sears and its subsidiaries taken as a whole.

Applicant's Legal Analysis

1. Applicant notes that because a majority of its assets will consist of the unsecured notes of the DWFSG borrowers, it may be deemed to be an investment company within the meaning of section 3(a) of the 1940 Act. Therefore, Applicant requests an order exempting it from all provisions of the 1940 Act asserting that such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicant contends that purchasers of its commercial paper and other debt securities will be protected in a manner that renders the protections provided by the 1940 Act unnecessary. In this regard, Applicant notes that prior to borrowing funds from Applicant, each of the DWFSG borrowers will agree, absent regulatory restrictions, to pay interest to Applicant on its borrowings at rates sufficient to maintain Applicant's earnings (before income taxes and fixed charges) at a level of at least 1.25 times Applicant's aggregate interest costs and fixed charges. The amounts and maturities of Applicant's notes from the DWFSG borrowers will, in any case, be sufficient to allow Applicant to make timely payments of principal and interest to the holders of its debt securities.

3. In addition, prior to issuance of any debt securities by Applicant, Sears and Applicant will enter into a Net Worth Maintenance Agreement which will provide that (i) Sears will continue to hold all legal title to and beneficial interest in all of the outstanding voting stock of Applicant; (ii) Sears will cause Applicant to have a tangible net worth (defined to mean the sum of the capital stock, paid-in capital and retained earnings of Applicant plus subordinated indebtedness of Applicant held by Sears or its subsidiaries after deducting the book value of all intangible assets of Applicant) of at least $1.00 until the retirement of all outstanding debt of, and all outstanding debt guaranteed by, Applicant; (iii) such agreement is for the benefit of the holders of all outstanding debt securities issued or guaranteed by Applicant; (iv) Applicant will, for the benefit of such holders, timely take all necessary action under such agreement to require Sears to perform its obligations thereunder; (v) each holder will have a direct and immediate right of action against Sears to enforce Sears' obligations under such agreement should Applicant fail to take such action, and (vi) such agreement may not be amended in a manner so as to relieve Sears of its obligations thereunder, and may only be amended in ways no less favorable to Applicant and its creditors.

4. Applicant asserts that, although the Net Worth Maintenance Agreement will provide that it shall not be construed as a direct or indirect guarantee by Sears of Applicant's obligations, the protections afforded holders of Applicant's debt securities by such agreement as well as other terms and limitations to which Applicant has expressly consented (which are described fully in the application), provide investor protection sufficient to render a direct or indirect guarantee unnecessary. Accordingly, Applicant submits that the limited nature of its activities coupled with the protections afforded by the Net Worth Maintenance Agreement alleviate the need to regulate it as a registered investment company under the 1940 Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 2, 1987.

[FR Doc. 87-20629 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15955; 812-6738]

Application; MONY Life Insurance Co. of America et al.

September 1, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: MONY Life Insurance Company of America (MONY America") and MONY Legacy Life Insurance Company ("MONY Legacy"); MONY America Variable Account S and MONY Legacy Variable Account S ("Account(s)"); and The Mutual Life Insurance Company of New York ("MONY").

Relevant 1940 Act sections: Exemption requested *under* section 6(c) *from* sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2), and 27(d), and Rules 6e-3(T)(b)(12), 6e-(T)(b)(13) and 22c-1 thereunder.

Summary of application: Applicants seek an order to permit a charge for state premium taxes of state franchise taxes incurred in connection with the premiums paid under certain Variable Life Insurance with Additional Premium Option contracts and any successor contracts ("contracts") to be deducted in ten equal annual installments beginning on the first contract anniversary following each premium payment, with any unpaid balance to be deducted upon

surrender, maturity or exchange of the contracts.

Filing date: The application was filed on May 28, 1987, and amended on August 28, 1987.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on September 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC, 20549. MONY Life Insurance Company of America and MONY Legacy Life Insurance Company, c/o Willard G. Eldred, 1740 Broadway, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Margaret Warnken (202) 272–2058 or Special Counsel Lewis B. Reich (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300)).

Applicants' Representations

1. MONY America is the corporate successor to Vico Credit Life Insurance Company, which was incorporated under the laws of Arizona on March 6, 1969. MONY Legacy was organized under the laws of New York on December 29, 1983. MONY America and MONY Legacy are wholly-owned subsidiaries of MONY, a mutual life insurance company organized under the laws of New York in 1842.

2. Each of the Accounts is registered under the 1940 Act as a unit investment trust. There are currently six subaccounts within each of the Accounts, and each subaccount invests only in a corresponding portfolio of MONY Series Fund, Inc.

3. MONY, the principal underwriter for the contracts, is registered with the SEC as a broker-dealer, and is a member of the National Association of Securities Dealers.

4. MONY America and MONY Legacy will deduct 2.5 percent of each premium payment to compensate Applicants for state taxes imposed on premiums or based on premiums received by Applicants. For each premium the charge will be deducted in ten equal annual installments beginning on the first contract anniversary following each premium payment. Upon surrender, maturity or exchange of a contract, the balance of any unpaid installments will be deducted from the value of the contract in computing the cash value and surrender value of the contract.

5. Imposition of the charge for premium taxes in the form of an amortized deferred charge with any unpaid balance charged at surrender, maturity or exchange is more favorable than a charge that is deducted when the premium is paid. The account of the contracholder's investment in the Account is not reduced as when the charge is taken in full upon payment of a premium. The total amount charged to any contractholder is no greater than if the charge were taken from the premiumn when paid.

6. The Applicants do not anticipate making a profit on the deferred charge for premium taxes. The charge does not take into account the time value of money (which would increase the charge to factor in the investment cost to MONY America and MONY Legacy of deferring collection of the charge).

7. Applicants submit that greanting exemptive relief for the deferred premium tax charge is supported by relevant SEC precedent. In adopting Rule 6e–3(T) the SEC allowed issuers of flexible premium variable life insurance contracts to deduct sales loads upon surrender or lapse of the contract. The same reasoning that justifies the exemptive relief in Rule 6e–3(T) for deferred sales loads also justifies exemptive relief for deferred premium tax charges. The SEC has issued several exemptive orders that permit a contingent deferred premium tax charge on flexible premium variable life insurance contracts.

8. Accordingly, Applicants request an exemption from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act and Rules 6e–3(T)(b)(12), 6e–3(T)(b)(13) and 22c–1 thereunder to the extent necessary to permit the charge for premium taxes to be deducted in the manner described above. Applicants submit that the exemption requested is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

Applicants represent in connection with the relief requested that, if Rule 6e–3(T) is amended, they either will comply with the rule as amended or seek additional appropriate exemptive relief.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20635 Filed 9–8–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15961; File No. 812–6836]

Application; Pacific Select Fund

September 2, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption and approval under the Investment Company Act of 1940 (the "Act").

Applicant: The Pacific Select Fund ("Applicant").

Relevant 1940 Act sections: Exemption requested under section 6(c) from the provisions of sections 13(a)(2), 18(f)(1) and 22 (f) and (g) of the Act and approval requested under section 17(d) of the Act and Rule 17d–1 thereunder.

Summary of application: Applicant seeks an order of the SEC granting exemptions from the Act to the extent necessary to implement a proposed Trustees' Deferred Compensation Plan (the "Plan") for its trustees and to permit certain joint transactions related to the Plan.

Filing date: August 18, 1987.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issue you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, c/o Jeffrey S. Puretz, Esq. or Wendy B. Finck, Esq., 1730 Pennsylvania Avenue NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272–

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3017 or Lewis B. Reich, Special Counsel (202) 272–2061, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 252–4300).

Applicant's Representations

1. Applicant is a series-type open-end, diversified management investment company comprising eight series (the Money Market Series, the Bond Series, the Government Security Series, the High Yield Bond Series, the Growth Series, the Multi-Strategy Series and the International Series) (collectively, the "Series") each of which has its own investment objective and policies.

2. Shares of Applicant are currently offered only to the Pacific Mutual Life Insurance Company Separate Account (the "Separate Account") of Pacific Mutual Life Insurance Company ("Pacific Mutual"). The Separate Account, which is registered as a unit investment trust under the Act, funds the variable death benefits and policy values of variable life insurance policies offered by Pacific Mutual. Pacific Mutual serves as investment adviser of Applicant.

3. Applicant's Board of Trustees consists of five individuals. Each of the trustees who is not an "interested person" of Applicant within the meaning of section 2(a)(19) of the Act currently receives $8,000 annually, $1,500 per Board of Trustees meeting attended, and $500 per Audit Committee or Nominating Committee meeting attended, in addition to expenses incurred in attending such meetings. Applicant pays no other remuneration to its trustees. The amounts paid to the trustees are expected to be insignificant in comparison to the total net assets of Applicant.

4. The purpose of the Plan is to permit individual trustees who are not interested persons of Applicant to elect to defer receipt of their trustees' fees, in order to avoid diminution or loss of social security benefits to which the trustees may otherwise be entitled, to enable the trustees to defer payment of income taxes, or for other reasons. Applicant further submits that the availability of such a defereed fee arrangement will enhance Applicant's ability to attract and retain trustees of high caliber.

5. Plan will allow individual trustees to elect to defer receipt of fees which otherwise would become payable to them for services performed after the date of the election. The election shall continue in effect until terminated in writing and any such termination shall take effect on the first day of the calendar year beginning after receipt of the notice of termination. An election shall be irrevocable as to payments deferred in conformity with that election. Each deferred fee will be credited at the time when it otherwise would have been payable to an account on Applicant's books that will be established for each electing trustee. Interest on each trustee's account will be compounded on the first day of each quarter based upon the balance of each trustees's account as of the first day of the peceding quarter. The interest rate used will be the prevailing 90-day U.S. Treasury bill rate at the beginning of the preceding quarter, and will be used for the entire succeeding quarter.

6. All amounts credited to the account of a trustee shall be paid to the trustee in accordance with the payment option selected by the trustee at the time the trustee makes an election to defer compensation. An election takes effect at the beginning of the calendar year next following the year in which an election is made. In the event of the trustee's death, amounts payable to him under the Plan will thereafter be payable to his designated beneficiary; in all other events, the trustee's right to receive payments will be non-transferable.

7. Applicant's obligation to make payments of amounts accrued under the Plan will be a general unsecured obligation payable solely from its general assets and property. None of Applicant's shares will be purchased for any trustee's account, nor will any special fund or separate account be established for deferred fees. The Plan does not obligate Applicant to retain a trustee in such capacity, nor will it obligate Applicant to pay any (or any particular level of) trustee's fees to any trustee.

8. Applicant's requests exemption from sections 13(a)(2, 18(f)(1), 22(f) and 22(g) of the Act, and an approval pursuant to section 17(d) and Rule 17d–1 thereunder, to the extent necessary to permit implementation of the Plan described above.

9. Applicant contends that the requested exemption is necessary and appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant further contends that its participation in the proposed Plan is consistent with the provisions, policy and purposes of the Act and is not less advantageous to Applicant than to its participating trustees.

10. With respect to the requested exemptions from sections 18(f)(1) and 13(a)(2), Applicant submits that the Plan contains none of the characteristics of senior securities,[1] which led Congress to enact the restrictions on the issuance of such securities set forth in section 18 and 13(a)(2) of the Act. Applicant contends that it would not be "borrowing" from its trustees in the sense that concerned Congress, *e.g.*, borrowing for securities speculation. Additionally, Applicant asserts that all liabilities created by accruals under the Plan would be offset by essentially equal assets which would not otherwise exist if the fees were paid on a current basis. Applicant further asserts that the Plan would not induce speculative investments or provide the opportunity for manipulative allocation of Applicant's expenses and profits; control of Applicant would not be affected; and, given the common existence of deferred compensation agreements today, the Plan would not confuse investors, make it difficult for them to value Applicant's shares or convey a false impression of safety.

11. As to section 22(f) of the Act, Applicant contends that it was designed to bar only those restrictions on transferability or negotiability either not disclosed to the holder of the subject security or expressly prohibited by SEC rule or regulation, neither of which circumstance would apply to the restriction on transferability of a trustee's benefits under the Plan. Applicant asserts that the restrictions under the Plan would be clearly set forth in the Plan and would not adversely affect the interests of the trustee or of any of Applicant's shareholders.

12. Applicant contends that the legislative history of section 22(g) of the Act indicates that Congress was primarily concerned with the dilutive effect on the equity and voting power of the common stock of, or units of beneficial interest in, an open-end company if securities were issued for consideration not readily valued. Applicant submits that the Plan would not have this effect, particularly in view of current disclosure requirements applicable to trustee compensation. Applicant further submits that Applicant's obligation to make payments under the Plan would not be "issued" for services or for property other than cash or securities. Applicant

[1] Applicant does not concede that the Plan is a "security" as defined in section 2(a)(36) of the Act.

contends that although any trustee's fees which might become payable to a trustee would clearly be for services, any such fees would become payable independent of the Plan. Applicant further contends that the plan would provide for deferral of payment of such fees and thus, should not be viewed as being "issued" in return for services but in return for Applicant not being required to pay such fees on a current basis.

13. Applicant asserts that section 17(d) of the Act and Rule 17d–1 thereunder are designed to limit or prevent a registered investment company's joint or joint and several participation with an affiliated person in a transaction "on a basis different from or less advantageous than that of" the affiliated person. Applicant submits that the Plan is not a joint transaction between Applicant and its trustees within the meaning of these provisions as the interest to be accured on the deferred amounts is to be based on the objectively determinable interest rate applicable to 90-day Truasury bills, so that the Plan will possess none of the profit-sharing characteristics of a joint transaction. Applicant contends that the effect of the Plan would be to defer the payment of fees that Applicant otherwise would be obligated to pay on a current basis as services are performed by the trustees. Applicant further contends that liabilities create by the accruals under the agreement would be offset by essentially equal fund assets, which would not otherwise exist if the trustee's fees were paid on a current basis (that is, the fees otherwise payable to the trustee would remain as part of Applicant's general assets and property). Applicant contends that there is no expectation of profits being generated through Applicant or other investments on behalf of the trustees since Applicant would be undertaking no funding or investment commitment under the Plan and the interest earned by the trustees during the deferral period would not be tied to Applicant's investment performance but rather to the objectively determinable interest rate applicable to 90-day Treasury bills during the immediately preceding quarter.

14. Applicant asserts that deferral of a trustee's fees in accordance with the Plan would essentially maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the fees were paid on a current basis. Additionally, Applicant asserts that it is expected that deferral would have a negligible effect on its assets, liabilities, net assets and net income per share. Applicant further asserts that when all payments under the agreement have been made to the trustee, the trustee would be in a position no better than if any deferred fees had been paid to him on a current basis.

15. Applicant believes that its ability to recruit and retain highly qualified trustees would be enhanced if it were able to offer its trustees the option of deferred payment of thier trustee's fees. Applicant contends that this bEN%F)t to Applicant and its shareholders outweighs any tax or other benefit that may be realized by an individual trustee under the prop/sed Plan.

16. Applicant submits that the exemption requested is necessary and appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant further submits that its participation in the Plan is consistent with the provisions, policies and purposes of the Act and is not less advantageous to Applicant than to its participating trustees.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20630 Filed 9–8–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1025]

Public Information Collection Requirements; Submission to the Office of Management and Budget (OMB) for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

Title of information collection: Application for Diplomatic Exemption From Taxes on Utilities/Gasoline.
Originating office: Office of Foreign Missions.
Form number: DSP–99.
Type of request: New.
Frequency: On occasion.
Respondents: Foreign missions and personnel.
Estimated number of responses: 8,000.
Estimated number of hours needed to respond: 2,800.

Section 3504(h) of Pub. L. 96–511 does not apply.

Additional information or comments: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 647–4086. Comments and questions should be directed to (OMB) Francine Picoult (202) 395–7340.

Dated: August 26, 1987.

Donald J. Bouchard,

Assistant Secretary for Administration.

[FR Doc. 87–20618 Filed 9–8–87; 8:45 am]

BILLING CODE 4710–24–M

[Public Notice CM–8/1113]

Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on October 6, 1987 at the U.S. Naval Observatory, Room 300, Building 52, 34th and Massachusetts Avenue, NW., Washington, DC. The meetng will begin at 9:30 a.m.

Study Group 7 deals with time-signal services by means of radiocommuncations. The purpose of the meeting is to review preparations for the international meeting of Study Group 7 in the Spring of 1988.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520 (telephone (202) 647–2592).

Dated: August 27, 1987.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 87–20619 Filed 9–8–87; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to the Office of Management and Budget

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements

imposed upon the public which were transmitted by the Department of Transportation on September 3, 1987, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on September 3, 1987.

DOT No: 2974
OMB No: 2125–0072
Administration: Federal Highway Administration
Title: Speed Monitoring Program Procedural Manual (Annual and Quarterly Vehicular Speed Data Reporting Requirements)
Need for Information: For each state to meet the requirements of 23 U.S.C. 141(a) to annually certify enforcement of the speed limit described in 23 U.S.C. 154(a).
Proposed Use of Information: For FHWA to judge the effectiveness of the State's speed limit enforcement program.
Frequency: Quarterly/Annually
Burden Estimate: 53,040 hours
Respondents: State highway agencies
Form(s): None

DOT No: 2975
OMB No: 2120–0514
Administration: Federal Aviation Administration
Title: Aviation Insurance
Need for Information: The information is included on air carriers applications for insurance when insurance is not available for private sources.
Proposed Use of Information: To provide insurance to air carriers when during national emergencies (wark risk) insurance is not available from private companies.
Frequency: On occasion
Burden Estimate: 30 hours
Respondents: Air carriers
Form(s): None

DOT No: 2976
OMB No: New
Administration: Office of the Secretary
Title: Airline Service Quality Performance
Need for Information: To provide air travelers more adequate data on performance of the carriers in meeting published schedules and in handling baggage.
Proposed Use of Information: To make information on airline performance available to the public.
Frequency: Monthly
Burden Estimate: 654,055 hours
Respondents: Air carriers
Form(s): RSPA Form 234 and addendum

DOT No: 2977
OMB No: 2125–0536
Administration: Federal Highway Administration
Title: Motor Carrier Safety Assistance Program
Need for Information: For FHWA to determine State compliance with specific legislative and administrative requirements for grants funds.
Proposed Use of Information: For FHWA to monitor and evaluate the progress of each State's program for grants and to justify grants for succeeding years.
Frequency: Quarterly
Burden Estimate: 1,764 hours
Respondents: State highway agencies
Form(s): FHWA Form MCSAP–3

Issued in Washington, DC, on September 3, 1987.

Richard B. Chapman,
Acting Director of Information Resource Management.

[FR Doc. 87–20681 Filed 9–8–87; 8:45 am]
BILLING CODE 4910–62–M

[Order 87–9–7; Dockets 43655, 45057, 45058, 45059, and 45094]

Aviation Proceedings; Order Instituting Show-Cause Proceeding To Allocate Frequencies Under U.S.-Philippines Air Transport Agreement

AGENCY: Department of Transportation.

ACTION: Order instituting show-cause proceeding.

SUMMARY: The Department has tentatively decided to allocate the U.S.-Philippines Route 2 frequencies available to U.S. air carriers on October 1, 1987, as follows: (a) Renew Northwest Airlines' current allocation of 11 weekly frequencies and United Airlines' current allocation of seven weekly frequencies; (b) allocate to Continental Airlines for operation independently, in its own name, two weekly frequencies for its proposed Honolulu-Manila service, and (c) make these allocations effective through September 30, 1990. The attached order also tentatively grants Continental Airlines' request for exemption authority to provide scheduled combination service between Honolulu and Manila, provided that it starts service by October 28, 1987, its proposed startup date. Since the bilateral agreement limits to three the number of carriers which may be designated to serve U.S. Route 2 and limits to 20 the number of weekly roundtrip frequencies which can be operated on Route 2 through September 30, 1990, the order also tentatively denies the requests of Northwest, United, Air Micronesia, and Hawaiian Airlines for allocation of the newly available U.S.-Philippines frequencies and the applications of Air Micronesia and Hawaiian for exemption authority.

DATES: Answers and/or objections to the Department's tentative findings and conclusions as set forth in Order 87–9–7 should be filed by September 10, 1987. Replies to any answers and/or objections are due by September 15, 1987.

ADDRESSES: Answers and/or objections and replies should be filed in Docket

43655, addressed to the Documentary Services Division (C–55), U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served on all parties in Dockets 43655, 45057, 45058, 45059, and 45094.

Dated: September 3, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–20691 Filed 9–8–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[AC No. 105–2B]

Proposed Revision to Advisory Circular on Sport Parachute Jumping

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on draft Advisory Circular (AC) 105–2B.

SUMMARY: The draft advisory circular provides a substantial degree of updated information and some of the new terminology now used in sport parachuting. Other areas include revised information pertaining to the assembly of major parachute components, as well as the installation and removal of equipment.

DATES: Comments must be received on or before November 9, 1987.

ADDRESSES: Mail or deliver comments on the draft advisory circular to: Federal Aviation Administration, Office of Flight Standards, Aircraft Maintenance Division, Attention: AFS–340, AC No. 105–2B, Room 340, 800 Independence Avenue SW., Washington, DC. 20591. Comments may be inspected in Room 340 weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: John R. Woods, AFS–340, at the above address, telephone: (202) 267–3803.

SUPPLEMENTARY INFORMATION:

Comments Invited

Comments are solicited from all interested parties. A copy of the draft advisory circular referenced herein may be obtained by contacting the person identified under "For Further Information Contact."

Discussion of the Draft Advisory Circular

The draft circular is intended to provide general information and clarify any misunderstandings by the parachute industry pertaining to the assembly of major parachute components and the removal and installation of aircraft equipment.

In preparing the draft advisory circular, the FAA has received favorable comments from key organizations of the parachute industry. However, in rewriting the paragraph entitled Assembly of Major Parachute Components, many questions were asked by these key organizations. Therefore, the FAA has concluded that it is in the public interest to solicit as many comments as possible from the general public pertaining to the entire draft advisory circular.

Issued in Washington, DC, on July 9, 1987.

William Brennan,

Acting Director of Flight Standards.

[FR Doc. 87–20598 Filed 9–8–87; 8:45 am]

BILLING CODE 4910–13–M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement; San Francisco Public Utilities Commission

SUMMARY: Pursuant to the National Environmental Policy Act (42 U.S.C. 4321) and the Council on Environmental Quality's implementing regulations (40 CFR Part 1500), the Urban Mass Transportation Administration (UMTA) gives notice that an Environmental Impact Statement is being prepared for the proposed San Francisco Municipal Railway (MUNI) Metro Turnaround Project in downtown San Francisco, California. The MUNI, an operational branch of the City and County of San Francisco's Public Utilities Commission (PUC), proposes to construct a turnaround facility for the Market Street subway with UMTA Federal capital grant assistance and local funding. The proposed action would provide a more efficient and flexible track configuration beyond the downtown terminus of the existing MUNI Metro subway.

FOR FURTHER INFORMATION CONTACT: Ms. Carmen C. Clark, UMTA Region IX, 211 Main Street, Suite 1160, San Francisco, California 94105; telephone (415) 974–7317 or Mr. Everett M. Hintze, Utilities Engineering Bureau, San Francisco PUC, 1155 Market Street, San Francisco, California 94103; telephone (415) 554–0706.

Project Description/Objectives

The existing stub and track arrangement at the San Francisco Municipal Railway Metro level of the Embarcadero Station constrains the Metro from meeting existing and future headways during peak hours. The MUNI Metro Turnaround Project is designed to construct a turnaround facility for the Market Street subway to provide a more efficient turnaround arrangement. This will allow MUNI to:

Provide additional capacity to accommodate the growth in ridership on the existing Metro System as forecast by the City for the year 2007.

Provide the opportunity to reduce coupling of trains at West Portal and Duboce Portal, thus reducing passenger delays and operating expenses.

Improve operating reliability by nominal cost changes to the vehicles and signal system.

While the proposed action would allow for a future southerly extension of the MUNI Metro System, such extension is not being considered as part of this proposed action.

Alternatives

A previous scoping meeting was held on March 5, 1986 to consider four all-underground alternatives based on the City's preliminary operating requirements. Studies since then have finalized these requirements and have allowed the development of simpler and less costly alternatives including the location of the turnaround on the surface.

A range of alternatives will be considered and evaluated in the EIS:

No action alternative.

A transportation system management alternative consisting of operational improvements to existing infrastructure.

Surface turnaround facility in the median of the realigned Embarcadero Parkway.

Underground turnaround facility beneath the Embarcadero.

Probable Effect

Construction of both the surface and underground alternatives would involve tunneling under lower Market Street and Justin Herman Plaza to minimize surface impacts. The surface alternative would use open cut construction from the south side of the Plaza to Howard Street and surface construction in the median of the realigned Embarcadero from Howard to Bryant Streets. The construction of the underground alternative involves open cut construction from the south side of the Plaza to Howard Street with a short tail track on the surface south of Folsom Street. Construction impacts would include noise and vibration, traffic and pedestrian disruption, interruption of access to businesses and parking areas.

potential for movements of BART tunnels, potential for settling of some adjacent buildings, and potential disturbance of buried archaeological resources that could be in the area. Construction of the surface facility along the Embarcadero would also include potential impacts to the Embarcadero freeway structures and existing buildings within the proposed alignment; and facility operations could have long term effects of circulation disruptions and increased noise. Beneficial impacts resulting from improved transit service will also occur.

Several other transportation projects are planned within, or adjacent to, the project area. While the proposed MUNI Metro extension to the CALTRAIN Station at Fourth and Townsend Streets is considered a secondary impact, other related projects such as the Embarcadero Parkway Project from King Street to North Point Street, the proposed MUNI F-Line extension northward to Fisherman's Wharf, and construction of new on and off ramps to the I–280 freeway, while not dependent on the turnaround project will be implemented within the same time frame and therefore the cumulative effects of these projects will be addressed.

Scoping

A scoping meeting is scheduled for September 22, 1987 at 7 p.m., Port Commission Hearing Room 3100, Ferry Building, Embarcadero at Market Street. An information packet which gives more detail on the project and expected impacts is available to the public at the Utilities Engineering Bureau, San Francisco Public Utilities Commission, 1115 Market Street. Written comments germane to the scope of the EIS will be accepted by UMTA for a period of thirty (30) days from the date of this notice. Commentors may comment on the alternatives to be considered or propose additional social, economic, or environmental impacts to be evaluated. Commentors proposing additional impacts to be evaluated should indicate which alternatives are expected to generate these impacts and give specific reasons why the impacts may be significant. Comments may be sent to UMTA or San Francisco PUC at the informational addresses given above.

Issued on: September 2, 1987.

Henry Nejako,

Deputy Regional Administrator.

[FR Doc. 87–20683 Filed 9–8–87; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: September 2, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th the Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: New
Form number: 8582
Type of review: Resubmission
Title: Passive Activity Loss Limitations

Description: Under section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return. The worksheets 1 and 2 in the instructions are used to figure the amount to be entered on lines 1 and 2 of Form 8582 and worksheet 3 through 6 are used to allocate the loss allowed back to individual activities.

Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated burden: 17,920,307 hours

OMB number: 1545–0051
Form number: 990–C
Type of review: Resubmission
Title: Farmers' Cooperative Association Income Tax Return

Description: Form 990–C is used by farmers' cooperative to report the tax imposed by section 1381. IRS uses the information to determine whether the tax is being properly reported.

Respondents: Farms, Businesses or other for-profit
Estimated burden: 74,120 hours

OMB number: 1545–0139
Form number: 2106
Type of review: Resubmission
Title: Employee Business Expenses

Description: Internal Revenue Code section 62 allows employees to deduct their business expenses to the extent of reimbursement, in computing Adjusted Gross Income. Expenses in excess of reimbursements are allowed as an itemized deduction. Meals and entertainment in excess of reimbursement are allowed to the extent of 80% of adjusted gross income. Form 2106 is used to figure these expenses.

Respondents: Individuals or households
Estimated burden: 8,497,650 hours
Clearance officer: Garrick Shear (202) 535–4297, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87–20623 Filed 9–8–87; 8:45 am]

BILLING CODE 4810–25–M

Fiscal Service

Bureau of the Public Debt; Securities and Accounting Services Reorganization

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Notice of reorganization.

SUMMARY: Effective September 27, 1987, the Bureau of the Public Debt will reorganize the Office of Securities and Accounting Services (OSAS). After reorganization, OSAS will be comprised of the Office of the Assistant Commissioner (SAS) and the following components: (1) Division of Public Debt Accounting, (2) Divison of Customer Services, (3) Division of Securities Accounts, and (4) Division of Review and Analysis.

FOR FURTHER INFORMATION CONTACT: Michael Smiley, Director, Division of Management Analysis, Bureau of the Public Debt, E Street Building, Washington, DC 20239–0001, 202–376–4135.

SUPPLEMENTARY INFORMATION: The OSAS reorganization was undertaken because the Department of the Treasury is converting to a full book-entry environment for its offerings of marketable securities. This reorganization reflects the reduction in workload associated with handling definitive securities, and increases OSAS' technical and professional responsibilities for managing a highly-automated nationwide book-entry securities program. The reorganization will improve operations along functional lines, and enhance internal and external lines of communication.

Under the general authority vested in the Secretary of the Treasury in 5 U.S.C. 301 and 31 U.S.C. 321, approval for the reorganization was granted on April 2, 1987, by the Assistant Secretary of the Treasury (Management).

Dated: August 10, 1987.

Van Zeck,

Deputy Commissioner.

[FR Doc. 87-20637 Filed 9-8-87; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 174
Wednesday, September 9, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PREVIOUSLY ANNOUNCEMENT TIME AND DATE OF MEETING: 9:30 a.m. (eastern time) Tuesday, September 8, 1987. [52 FR 32642 August 28, 1987]

CHANGE IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634–6748.

Date: September 3, 1987.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued September 3, 1987.

[FR Doc. 87–20721 Filed 9–4–87; 11:33 am]

BILLING CODE 6570–06–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 2, 1987.

TIME AND DATE: 10:00 a.m., Thursday, September 10, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *White County Coal Corporation,* Docket No. LAKE 86–58–R, etc. (Issues include consideration of requirements for taking enforcement action under section 104(d) of the Mine Act, 30 U.S.C. 814(d).)
2. *Greenwich Collieries,* Docket No. PENN 85–188–R, etc. [Issues are same as above.)

It was determined by a unanimous vote of Commissioners that these items be considered in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87–20733 Filed 9–4–87; 12:47 pm]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, September 14, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Issues regarding the qualifications of Federal Reserve Bank and Branch directors.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: September 4, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–20809 Filed 9–4–87; 4:00 pm]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 52, No. 174
Wednesday, September 9, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 85F-0441]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 87-18267 beginning on page 29841 in the issue of Wednesday, August 12, 1987, make the following correction:

§ 178.1010 [Corrected]

On page 29842, in the second column, in § 178.1010(c)(29), in the 14th line, "(HFF-310)," should read "(HFF-330),".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 341, and 369

[Docket No. 76N-052T]

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for OTC Antitussive Drug Products

Correction

In rule document 87-18144 beginning on page 30042 in the issue of Wednesday, August 12, 1987, make the following correction:

On page 30043, in the first column, in the first complete paragraph, in the eighth line, "antacid" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 78N-2830 et al.]

Medical Devices; Withdrawal of 67 Proposed Rules Classifying Dental Devices

Correction

In proposed rule document 87-18266 beginning on page 30107 in the issue of Wednesday, August 12, 1987, make the following correction:

On page 30107, in the table, in the first column, in the 38th entry, "highlight" should read "headlight".

BILLING CODE 1505-01-D

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federal register

Wednesday
September 9, 1987

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 842 and 843

Surface Coal Mining and Reclamation Operations; Evaluation of State Responses to Ten-Day Notices; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 842 and 843

Surface Coal Mining and Reclamation Operations; Evaluation of State Responses to Ten-Day Notices

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) proposes to amend its regulations in response to a petition for rulemaking. The proposed rule would establish a uniform standard for OSMRE's evaluation of responses by State regulatory authorities to notifications of possible violations (ten-day notices or TDN's). Under the proposed rule, OSMRE would accept a State regulatory authority's response to a TDN as constituting appropriate action to cause a possible violation to be corrected or showing good cause for failure to act, in accordance with the Surface Mining Control and Reclamation Act of 1977 (the Act), unless OSMRE makes a written determination that such response was arbitrary, capricious, or an abuse of discretion under the State program. The proposed rule would also establish a process by which a State regulatory authority could request informal review of a written determination to inspect by OSMRE's authorized representative.

DATES: *Written comments:* OSMRE will accept written comments on the rule until 5 p.m. Eastern time on November 9, 1987.

Public hearings: Upon request, OSMRE will hold a public hearing on the proposed rule in Washington, DC at 9:30 a.m. on October 14, 1987.

Individuals wishing to attend, but not testify at the hearing should contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that it will be held.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street, NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearing: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC.

Request for public hearing: Submit requests orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: George M. Stone, Jr., Chief, Branch of Inspection and Enforcement, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–4295 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period or delivered to addresses other than those listed above (see **"DATES"**) may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold a public hearing on the proposed rule on request only. The time, date and address scheduled for the hearing are previously specified in this notice (see **"DATES"** and **"ADDRESSES"**).

Any person interested in participating in the hearing should inform Mr. Stone (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing by 5 p.m. Eastern time October 9, 1987. If no one has contacted Mr. Stone to express an interest in participating in a hearing by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at the hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

On May 30, 1986, the Mining and Reclamation Council of America (now part of the National Coal Association), and the Regulatory Assistance Program, comprised of ten State coal associations, presented a petition for rulemaking to OSMRE. The petitioners requested OSMRE to repeal its existing regulations authorizing the issuance of Federal notices of violation (NOV's) in States with regulatory programs approved by the Secretary (primacy States). The Director denied that part of the petition. 52 FR 21598, (June 8, 1987). The petitioners also requested OSMRE to adopt a uniform Federal standard for the evaluation of a State regulatory authority's response to a TDN, and specifically asked for an "arbitrary, capricious, and abuse of discretion" standard in 30 CFR Part 842. The Director granted that part of the petition. *Id.* Under Federal regulations, approval of part of the petition requires OSMRE to commence a rulemaking proceeding.

Several sections of the Act relate to the evaluation and enforcement of State regulatory programs. In section 101(f) Congress found that "* * * the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States; * * *." Section 201(c) authorizes the Secretary, acting through OSMRE, to make those investigations and inspections necessary to ensure compliance with the Act, and to publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of the Act. Section 517(a) specifies that the Secretary shall make such inspections of any surface coal mining and reclamation operations as are necessary to evaluate the administration of State programs.

Section 521(a)(1) provides that if the Secretary has reason to believe that any person is in violation of the Act, or any permit condition required by the Act, he must notify the State regulatory authority. It further provides that the Secretary shall immediately order a Federal inspection if the State fails, within ten days after notification, to take appropriate action to cause the violation to be corrected or to show good cause for such failure. This statutory provision is implemented in the Federal regulations at 30 CFR 842.11(b). If the violation continues to exist at the time of inspection or, in situations involving a TDN issued following the initial inspection, at the time of reinspection, OSMRE issues an

NOV unless a cessation order is required pursuant to section 521(a)(2). 30 CFR 843.12(a)(2). Section 521(a)(2) requires the Secretary to issue cessation orders whenever any condition or practices exist which create an imminent danger to the health or safety of the public or a significant imminent environmental harm to land, air, or water resources. When a State regulatory authority has taken appropriate action to cause a violation to be corrected or has shown good cause for failure to take such action, section 521(a)(1) does not require OSMRE to inspect an operation or to issue an NOV.

The petitioners argued that the lack of a uniform standard for the evaluation of responses to TDN's has led to considerable disparity in the treatment of coal operators and State regulatory authorities. The petitioners also argued that the absence of a standard for the evaluation of a TDN response also causes a lack of deference to a State's discretionary authority in the interpretation and enforcement of its regulatory program and results in the substitution of OSMRE's judgment for that of the State if there is a disagreement over the interpretation of the approved State program. This, they asserted, is contrary to the intent and purposes of the Act and undermines the principle of State primacy.

After consideration of the petitioners' concerns, the public comments on the petition, including those of five States, and other analyses performed by OSMRE and included in the Administrative Record, OSMRE believes that a uniform standard for TDN evaluation is necessary in order to assure consistent and even-handed treatment of all operators and all State regulatory authorities.

III. Discussion of Proposed Rule

A. TDN Standard of Review

The terms "appropriate action to cause a violation to be corrected" and "good cause for such failure" appear in the Act as the criteria for evaluating a State regulatory authority's response to a TDN. 30 U.S.C. 1271(a)(1). However, neither the Act nor the regulations define those terms. In the past, OSMRE evaluated State responses on a case-by-case basis in determining whether State actions constituted "appropriate action" or "good cause." With regard to appropriate action, OSMRE stated in 1982 that the "crucial response of a State is to take whatever enforcement action is necessary to secure abatement of the violation." 47 FR 35627–8 (Aiugust 16, 1982). The 1982 preamble did not discuss when good cause would exist for failure to take appropriate action.

OSMRE has tentatively concluded that the 1982 approach was unreasonably rigid in suggesting that only enforcement action would be considered appropriate. Other kinds of State actions, such as requiring permit revisions, could secure correction of the violation. Under a true primacy concept, a State should be given discretion to decide which actions are appropriate in a given situation.

The proposed rule would recognize the discretion given to States under primacy and require OSMRE to determine in writing that the State regulatory authority's response to a TDN was arbitrary, capricious, or an abuse of discretion under the State program before OSMRE would order an inspection or reinspection.

The proposed rule would create a uniform standard for evaluating a response by a State regulatory authority to a TDN, both under 30 CFR 840.11(b)(1)(ii)(B) and 843.12(a)(2). It would be consistent with the en banc decision of the United States Court of Appeals, which noted, "[O]nce a state program has been approved, the state agency plays the major role, with its greater manpower and familiarity with local conditions. It exercises front-line supervision and the Secretary will not intervene unless its discretion is abused." *In Re: Permanent Surface Mining Regulation Litigation*, 653 F. 2d 514, 523 (D.C. Cir. 1981) (en banc), *cert. denied*, 454 U.S. 822 (1981). The proposed rule would require OSMRE to determine in writing that a State has abused its discretion before ordering an inspection that could lead to Federal enforcement.

This proposal would not affect a decision to inspect based upon § 840.11(b)(1)(ii)(C) when adequate proof is supplied that an imminent danger to the public health and safety or a significant imminent environmental harm exists. In addition, this rule is not intended to interfere with OSMRE issuance of NOV's as required by orders in *Save Our Cumberland Mountains v. Clark*, No. 81–2134 (D.D.C. 1985) and *Save Our Cumberland Mountains v. Clark*, No. 81–2238 (D.D.C. 1985).

An arbitrary or capricious response, or one that is an abuse of discretion under the State program, would be one in which the State regulatory authority has acted irrationally, or without adherence to correct procedures, or inconsistently with applicable law, or without proper evaluation of relevant criteria. To add perspective to this proposed TDN evaluation standard, OSMRE would also provide guidance in the rule as to specific kinds of situations which would constitute appropriate action or good cause under the State program.

B. Appropriate Action

The proposed rule would identify "appropriate action" as enforcement or other action authorized under the State program to cause the violation to be corrected. Enforcement would include, but would not be limited to, the issuance of an NOV to the operator. "Other action" authorized under the State program to cause the violation to be corrected could include the initiation of the process to require a revision or modification to the operator's permit, 30 CFR 774.11(b), or the commencement of a formal proceeding to forfeit the performance bond if adequate to correct the violation and achieve reclamation, 30 CFR 800.50. The above examples are not meant to be an exhaustive list of acceptable responses.

By this rule, OSMRE would reject the concept that appropriate action to cause a violation to be corrected would only include responses showing that at the time of the State response either the condition constituting the possible violation of the Act no longer exists or the State has issued an NOV or cessation order. This proposal would recognize that sometimes situations would be complex and that, although the State must respond to OSMRE within ten days, State actions to resolve the situation and eliminate conditions constituting violations of the Act could take more than ten days. Direct OSMRE enforcement against an operation would not be utilized when no imminent danger to the public health or safety, or significant imminent environmental harm exists and when the State is acting reasonably to correct a possible violation. Under the proposed rule, appropriate action would mean that certain conditions may continue in the short term, but ultimately the violation of the State program will be resolved. OSMRE invites public comments on other responses by a State regulatory authority which may constitute "other action."

C. Good Cause

The proposed rule includes six categories of good cause. Unlike the concept of appropriate action, when good cause exists for failure to take appropriate action to cause a violation to be corrected, conditions which constitute a site-specific violation could continue in certain circumstances, when the State regulatory authority is acting

properly in implementing and enforcing its State program. A discussion of each category follows.

(1) Under the State program, the possible violation did not or does not exist. This would include situations where at the time of the State regulatory authority's inspection, the violation did not exist. If the State regulatory authority, based on its inspection of the site or its interpretation of the approved State program, determines that a violation did not or does not exist, it is the responsibility of OSMRE to demonstrate that the State's decision was arbitrary, capricious, or an abuse of discretion under the State program.

If OSMRE were to conclude that the State had not abused its discretion in concluding that conditions which OSMRE believes constitute a violation of the Act or Federal rules are not covered by the State program, then OSMRE would notify the State regulatory authority of a program deficiency under 30 CFR 732.17.

Thus OSMRE would respect primacy in that the State would be the front-line enforcement authority. At the same time, OSMRE would continue to fulfill its oversight role of assuring that State regulatory authorities effectively implement, maintain and enforce all provisions of their State programs and that such programs are consistent with the Act and Federal regulations.

(2) The proposed rule would accept a response by the State regulatory authority identifying a need for a reasonable and specified additional time to investigate whether a violation of the State program did or does exist. The determination of whether a violation exists occasionally is not readily apparent, particularly when the operation is in compliance with a permit, but the permit may be inadequate to assure compliance with the performance standards. This provision is not intended to allow prolonged delays in enforcement actions, but recognizes that it may take more than ten days to develop a rationale needed to require a permit modification or to sustain an enforcement action. OSMRE believes that it would be unreasonable to expect a State regulatory authority to act prematurely against a possible violation until it can sustain its decision.

(3) The State regulatory authority lacks jurisdiction under the State program over the violation or operation. Under the proposed rule, a State regulatory authority would not be required to take action against a violation or operation not covered by its program. In these situations, like those discussed above, OSMRE will confer with the State regulatory authority concerning any deficiencies in its approved program and take any actions necessary under § 732.17, such as program amendments, to assure that the State program is in accordance with the Act and consistent with the Federal regulations.

(4) The proposed rule would provide that when a State regulatory authority is restrained by an injunction or other order from acting on the possible violation, good cause would exist. Courts may, at times, enjoin enforcement or other actions in order to maintain the status quo, thereby preserving their jurisdiction to hear the case and consider the necessary relief. Such orders may arise when an administrative or judicial tribunal has placed an operation on a schedule to correct the violation or to reclaim the site. In the past, certain orders restraining enforcement may not have been consistent with the Act. If a State is seeking to overturn the injunction, good cause would exist. If a State regulatory authority were not seeking to overturn the restraint, OSMRE would examine the State action and determine whether it was arbitrary, capricious or an abuse of discretion under the State program.

(5) If a State regulatory authority is diligently pursuing or has exhausted other appropriate enforcement provisions of the State program, it would also be considered to have shown good cause. For example, the State regulatory authority might find that the operator has failed to correct other violations, and that it is now pursuing or has completed a permit revocation or suspension or a performance bond forfeiture proceeding.

(6) The State regulatory authority demonstrates that extraordinary circumstances preclude enforcement or render it futile. Enforcement action would not likely cause the correction of a violation in such circumstances, or serve any other useful purpose.

D. Informal Review of Written Determinations

To further assure that OSMRE exercises a consistent national policy that protects a State regulatory authority and an operator against unnecessary Federal interference in a primary State, the proposed rule would establish a process by which a State regulatory authority could request informal review of the written determination of OSMRE's authorized representative who made the initial decision that the State's response to a TDN was arbitrary, capricious, or an abuse of discretion under the State program. The proposed rule would require OSMRE's authorized representative to immediately notify the State regulatory authority in writing of his determination that the State regulatory authority had failed to take appropriate action to cause the possible violation to be corrected or had not shown good cause for such failure. Typically the initial decision would be made at the field level by a Field Office Director. The notification could be by any method which produces a written document showing receipt by the State regulatory authority. The State regulatory authority would then have five days from receipt of the written determination to file a request for informal review of that determination by the Deputy Director of OSMRE.

An initial decision concluding that the State regulatory authority failed to take appropriate action or show good cause would not be considered to be the decision of the Secretary triggering the immediate Federal inspection requirement in section 521(a)(1) of the Act, unless the State decided not to request informal review. When informal review is sought, the OSMRE Deputy Director would make the determination contemplated by section 521(a)(1).

During the time when a State regulatory authority could exercise its review rights under the proposed rule, and after such exercise until the Deputy Director has completed such review, the authorized representative would not conduct an inspection or issue an NOV on the TDN. This proposed provision would not affect OSMRE's ability or responsibility to issue cessation orders in situations involving imminent danger to the public health or safety, or involving imminent significant environmental harm. After reviewing the written determination of the OSMRE authorized representative, and the material included in the request for informal review submitted by the State regulatory authority, the Deputy Director of OSMRE would render a decision within 15 days. The Deputy Director's decision would affirm, reverse, or modify the authorized representative's written determination.

If the Deputy Director concluded that the State regulatory authority had failed to take appropriate action or to show good cause for such failure, he would immediately order a Federal inspection. A written explanation of the Deputy Director's decision would be provided to the State regulatory authority.

If the decision resulted from a request for a Federal inspection under 30 CFR 842.12, the requestor would be notified of the Deputy Director's decision. A decision of the Deputy Director

reversing the authorized representative's initial determination would be subject to the informal review procedures of 30 CFR 842.15.

Finally, OSMRE would amend 30 CFR 843.12(a)(2) to include a reference to the proposed rule's informal review process at 30 CFR 842.11(b)(1)(iii), clarifying that the informal review process applies in such instances, and that OSMRE would not reinspect or issue an NOV during the pendency of that process. Although OSMRE is proposing to amend a portion of § 843.12(a)(2), OSMRE is not reopening the issue of its authority to issue NOV's in primacy States. For OSMRE's position in that regard, see 52 FR 21598–603 (June 8, 1987).

OSMRE specifically welcomes public comments concerning the concept and method of a process by which a State regulatory authority may request informal review of an OSMRE authorized representative's written determination on its response to a TDN.

Procedural Matters

Federal Paperwork Reduction Act

The rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. These determinations are based on the findings that the regulatory additions proposed by the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competiton, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

OSMRE has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA is on file in the OSMRE Administrative Record at the address specified previously (see "**ADDRESSES**"). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal authors of this rule are Daniel Stocker, Division of Regulation and Inspection, Office of Surface Mining Reclamation and Enforcement; and Hugo Fleischman, Regulatory Development and Issues Management Staff; 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–5385 (Commercial or FTS).

List of Subjects

30 CFR Part 842

Law enforcement, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly it is proposed to amend 30 CFR Parts 842 and 843 as follows:

Dated: August 5, 1987.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 842—FEDERAL INSPECTIONS AND MONITORING

1. The authority citation of Part 842 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 120 *et seq.*; and Pub. L. 100–34.

2. In § 842.11, paragraph (b)(1)(ii)(B) is revised and paragraph (b)(1)(iii) is added to read as follows:

§ 842.11 Federal inspections and monitoring.

* * * * *

(b)(1) * * *

(ii) * * *

(B)(*1*) The authorized representative has notified the State regulatory authority of the possible violation and more than ten days have passed since notification and the State regulatory authority has failed to take appropriate action to cause the violation to be corrected or to show good cause for such failure and to inform the authorized representative of its response. After receiving a response from the State regulatory authority, before inspecting, the authorized representative shall determine in writing whether the standards for appropriate action or good cause for such failure have been met.

(*2*) For purposes of this Part, an action or response by a State regulatory authority that is not arbitrary, capricious, or an abuse of discretion under the State program shall be considered "appropriate action" to cause a violation to be corrected or "good cause" for failure to do so.

(*3*) Appropriate action includes enforcement or other action authorized under the State program to cause the violation to be corrected.

(*4*) Good cause includes: (*i*) Under the State program, the possible violation did not or does not exist; (*ii*) the State regulatory authority requires a reasonable and specified additional time to determine whether a violation of the State program did or does exist; (*iii*) the State regulatory authority lacks jurisdiction under the State program over the possible violation or operation; (*iv*) the State regulatory authority is precluded by an administrative or judicial order from acting on the possible violation; (*v*) the State regulatory authority is diligently pursuing or has exhausted other appropriate enforcement provisions of the State program, or (*vi*) extraordinary circumstances preclude or render futile enforcement against the possible violation.

* * * * *

(iii)(A) The authorized representative shall immediately notify the State regulatory authority in writing when in response to a ten day notice the State regulatory authority fails to take appropriate action to cause a violation to be corrected or to show good cause for such failure. If the State regulatory authority disagrees with the authorized representative's written determination, it may file a request, in writing, within 5 days from receipt of such written determination for informal review of that written determination by the Deputy Directory.

(B) Unless a cessation order is required under § 843.11, no Federal inspection action shall be taken or notice of violation issued regarding the ten day notice until the time to request informal review as provided in § 842.11(b)(1)(iii)(A) has lapsed, or if informal review has been requested, until the Deputy Director has completed such review.

(C) After reviewing the written determination of the authorized representative and the request for informal review submitted by the State regulatory authority, the Deputy Director shall, within 15 days, render a decision on the request for informal review. He shall affirm, reverse, or modify the written determination of the authorized representative. Should the Deputy Directory decide that the State

regulatory authority did not take appropriate action or show good cause, he shall immediately order a Federal inspection or reinspection. The Deputy Director shall provide to the State regulatory authority a written explanation of his decision, and if the ten day notice resulted from a request for a Federal inspection under § 842.12 of this Part, he shall send written notification of his decision to the person requesting such inspection after completing informal review.

* * * * *

PART 843—FEDERAL ENFORCEMENT

4. The authority citation for Part 843 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*; and Pub. L. 100–34.

5. Section 843.12(a)(2) is revised to read as follows:

§ 843.12 Notices of violation.

(a) * * *

(2) When, on the basis of any Federal inspection other than one described in paragraph (a)(1) of this section, an authorized representative of the Secretary determines that there exists a violation of the Act, the State program, or any condition of a permit or exploration approval required by the Act which does not create an imminent danger or harm for which a cessation order must be issued under § 843.11, the authorized representative shall give a written report of the violation to the State and to the permittee so that appropriate enforcement action can be taken by the State. Where the State fails within ten days after notification to take appropriate action to cause the violation to be corrected, or to show good cause for such failure, subject to the procedures of § 842.11(b)(1)(iii) of this chapter, the authorized representative shall reinspect and, if the violation continues to exist, shall issue a notice of violation or cessation order, as appropriate. No additional notification to the State by the Office is required before the issuance of a notice of violation, if previous notification was given under § 842.11(b)(1)(ii)(B) of this chapter.

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[FR Doc. 87–20596 Filed 9–8–87; 8:45 am]
BILLING CODE 4310–05–M

VOL 52 ISS 174 SEP 9 1987 UMI

Federal Register

Wednesday
September 9, 1987

Part III

Department of Transportation

Office of the Secretary

14 CFR Parts 234 and 255

Airline Service Quality Performance; Final Rule and Amendment

VOL 52 ISS 174 SE 9 1987 UMI

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 234 and 255

[Docket No. 44827 Amdt. Nos. 234-1 and 255-4]

Airline Service Quality Performance

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: Certain air carriers will be required to submit certain flight data to the Department of Transportation (DOT or Department) for public dissemination, and to vendors of computerized reservations systems (CRS) for incorporation into their CRS system displays. Upon request, these same carriers also must supply the information directly to consumers on a flight-by-flight basis. In addition, these air carriers will be required to submit information on mishandled baggage to the Department. In the notice of proposed rulemaking published in the **Federal Register** on June 10, 1987, (52 FR 22046), the Department proposed a series of regulatory and non-regulatory options to address airline delays and other service quality performance problems. The disclosure requirement and the CRS requirement, made final by this rule, are but two of the proposals that were discussed. No final decision on most other regulatory proposals has been made yet. Additional information on these and other issues may be requested shortly. Non-regulatory options, while still under consideration by the Department, are no longer being considered in the context of this rulemaking.

EFFECTIVE DATE: The final rule is effective September 9, 1987. The disclosure portions of the regulation require the submission of information beginning with September, 1987, to the Department by October 15, 1987. On or before December 15, 1987, air carriers will be required to submit certain data for CRS vendors to display in accordance with the provisions of this rule.

FOR FURTHER INFORMATION CONTACT: Sam Whitehorn or Gwyneth Radloff, at 400 7th St. SW., Washington, DC 20590 or by phone at (202) 366-9307; Barry Molar, at the above address or by phone at (202) 366-9285; Shelton Jackson, at the above address or by phone at (202) 366-5397; or Robin Caldwell, at the above address or by phone at (202) 366-9059.

SUPPLEMENTARY INFORMATION:

I. Background

On June 10, 1987, the Department published a notice of proposed rulemaking (NPRM) (52 FR 22046) which proposed regulatory and non-regulatory approaches to alleviate airline delays and consumer dissatisfaction with services provided by airlines. The basis for this rulemaking, discussed more fully in the NPRM, includes information gathered in the Department's ongoing investigation into air carrier scheduling practices (Orders 87-2-4 and 87-4-17/18/19/20), consumer complaints, and documents filed by several air carriers and a public interest organization.

The proposal presented a series of alternatives and posed 70 questions for commenters to address. A thirty-day comment period was provided and more than 200 responses were filed.

The scheduling reliability regulatory proposals included:

- *A disclosure rule*, which would provide information on the reliability of carriers' service, in terms of delays and cancellations. Five alternative rules were proposed:

1. Air carriers would report flight performance and cancellation data monthly to DOT in specified markets;
2. Air carriers would report the percentage of flights by hub and system-wide that depart from the gate more than 15 minutes late and report system-wide cancellation data based on available seat miles;
3. Air carriers would report flight arrival, departure and cancellation data for specified markets to DOT monthly, in a computerized format, and CRS vendors would either be encouraged or required to put the information in their CRS displays;
4. Air carriers would be required to adjust flight times of delayed flights in schedules held out to the public; and,
5. The Department, based on data provided by air carriers, would issue an "Airline Rating".

- *A performance standard*, which would establish parameters for determining when failure to meet published schedules would be considered an unfair or deceptive practice under section 411 of the Federal Aviation Act, as amended ("Act") (49 U.S.C. 1381).
- *A computerized reservation system ("CRS") rule*, which would impose requirements on CRS vendors. This operation included four alternatives:

1. Require vendors to identify consistently late flights in the primary display screen;
2. Require vendors to display flight schedule reliability information in secondary displays;
3. Require vendors to assign a penalty factor to frequently late flights for display ranking purposes; and,
4. Require CRS vendors to modify flight ranking algorithms.

The NPRM also proposed other service quality performance regulations governing matters such as telephone reservation response time, lost baggage, denied boardings, misconnections, cabin amenities and discount fare marketing paractices.

Finally, the NPRM posed non-regulatory options on the problems of airline scheduling delays and the other consumer issues. These alternatives focused on legislative authority to require or oversee peak hour pricing at airports, provision for the Federal Trade Commission to have authority over aviation consumer matters, and non-legislative option to encourage peak-hour pricing by airports.

II. The Problem

As is evident from the data cited in the NPRM and comments in the docket, flight delays are a major concern to consumers and to those providing services to the consumers, from air carriers to travel agents. The vast majority of comments filed by individual consumers, totaling nearly 200, express problems with flight delays and cancellations, and assert that some form, of additional regulation is necessary. Consumer complaints filed with the Department, as detailed in the NPRM, also have risen. Petitions for rulemaking filed by American, Continental, and Aviation Consumer Action Project (ACAP), and responses by United, Delta, and Trans World too recognize that delays are a serious problem and that disclosure of additional information to consumers would be valuable.

Our own investigation into airline scheduling practices at Atlanta, Boston, Chicago's O'Hare, and Dallas/Ft. Worth airports (Orders 87-2-4 and 87-4-17/18/19/20) indicates that delays are a widespread problem. Preliminary data show that arrival delays of 15 minutes or more occurred on 25 to 60 percent of all flight operations, depending upon the particular air carrier and airport involved. These delay data include mechanical-related delays, which under the rule, discussed below, are not required to be reported. Even discounting such delays from the preliminary data, delay rates remain significant.

The information above indicates that delays do exist and that consumers are dissatisfied with the product being offered to them by carriers. As

explained more fully in the NPRM, delays are a function of a number of interrelated elements, including carrier scheduling practices, inclement weather and air traffic control. Mechanical problems also can result in flight delays or cancellations.

Each party to the air traffic control system, including the government and the users, is striving to reduce delays in the safest and most effective manner. On the government's part, billions of dollars are being expended annually for safety improvements, capacity expansion, construction and related projects at the nation's airports. Operational and technological changes are also being made, such as the recently implemented Expanded East Coast Plan, which, among other improvements, increased the number of arrival and departure paths from the New York airports. In addition, the National Airspace System Plan is a multi-billion dollar on-going effect directed at improving the efficiency and capacity of the air traffic control system. Air traffic flow control procedures also are being upgraded to improve the system in the safest manner possible.

Carriers, for their part, have cooperated in scheduling discussions in 1984 and again in 1987 directed at spreading out operations at a number of airports to ease congestion. As detailed more fully in comments submitted by Northwest, carriers are aware that delays can cause a loss of business and they also are making efforts to address the problem on an individual basis.

In addition, CRS vendors recently agreed individually to eliminate elapsed flight times from among the factors used to rank flights in CRS displays for non-stop markets. This should help remove one incentive that air carriers now have to publish unrealistic schedules.

However, many of the delays are predictable or recurrent. Based on historical operations, carriers know or should know that certain times of the day, days of the week, and seasons of the year are more congested than others. Yet, carrier schedules too often fail to take account of likely or predictable delay factors.

This problem of unrealistic scheduling, which most commenters agree is also a significant cause of airline delays, is clearly within the carriers' control; however, delays may be a problem that no carrier individually can totally solve.

Despite the recent movement by CRS vendors to eliminate the elapsed time factor from their display algorithms for some types of flights, carriers still may have CRS-based incentives to publish unrealistic schedules. For example, the vendors' action does not cover connecting flights or direct flights with stops and does not change the use of displacement from requested departure time in the algorithm. Thus, some CRS-based incentives may still remain. In addition, the Civil Aeronautics Board's (CAB) experience with scheduling practices attests that carriers have always had non-CRS incentives to shave schedule time. Further, because of a lack of information, existing marketplace forces provide little or no incentives against such practices. Carriers that schedule unrealistically may face little risk that the practice will result in a loss of business because consumers do not have the information they would need to choose flights on the basis of on-time performance. Correspondingly, carriers who perform well in this respect are unable to capitalize on their good performance because there are no reliable data available that would allow them to compare their performance to that of their competitors.

Without solid on-time performance information, consumers can be left with a misimpression that a particular flight will arrive at a given time when the carrier knows, or should reasonably know, that this is less then likely to occur. This can result in great inconvenience, disruptions in travelling plans and frustration for the consumer. In many cases, consumers doubtless would have made other travel arrangements had they been apprised of the flight's past reliability. As commenters to this rulemaking indicate, consumers are aware that weather and air traffic control problems can cause a delay. This rule, though, addresses that aspect of scheduling practices that falls under the control or is within the knowledge of the carrier—giving consumers a reasonable estimate of when they can expect a flight to depart or arrive given factors within the carriers' knowledge. This is something the consumer expects and deserves.

No commenter questions our authority to take the actions proposed. Under section 411 of the Act, the Department has broad authority to address unfair or deceptive practices or unfair methods of competition in air transportation. The distribution of misleading information, such as unrealistic schedules, constitutes a violation. The Department, in an effort to curb possible abuses in the distribution of scheduling information through a variety of sources, including through CRSs, has authority to take appropriate regulatory and enforcement action under sections 204, 407 and 411 of the Act. Our regulations, 14 CFR 399.81, already provide that unrealistic scheduling of flights by air carriers is an unfair or deceptive practice or unfair method of competition and enforcement action based on that section and section 411 of the Act will be pursued by the Department's Enforcement Office where the facts so warrant.

While the need to address the problem is well recognized, the matter of how has been a subject of debate. Through the rulemaking process the Department has sought to focus the debate to develop a practical and effective solution.

III. Summary of Final Rule

A. Disclosure

The final rule requires that certain air carriers, limited at this time to those with 1 percent or more of the total domestic scheduled-service passenger revenues for the 12 month period ended March 31, 1987 as reported in the Form 41 report, provide monthly flight operations data for domestic non-stop flights that serve certain airports, currently limited to those in the contiguous 48 states that had 1 percent or more of the industry's annual domestic scheduled service passenger enplanements, via computer tape to the Department. Flights delayed or cancelled for mechanical reasons would not be reported. The Secretary retains discretion under the rule to modify the list of air carriers subject to the rule, the list of airports for which they must report data and the data to be reported. This discretion would be exercised, for example, if a particular air carrier or airport not covered by the rule experienced a significant delay problem. Carriers (through their reservation agents) are also required to provide information on their flights' on-time performance to consumers upon request.

B. CRS

The second aspect of the rule requires that carriers provide monthly on-time performance information by flight to the CRS vendors and that CRS vendors display this information on their primary display screens. The information provided to vendors would be a single digit on-time performance code calculated from the data reported to the Department. We are no longer considering as part of this rulemaking the NPRM proposals to regulate algorithms used by CRS vendors to rank flights. However, we intend to monitor both delay rates and the impact of the algorithms closely, and will propose further action on this issue if necessary in the future.

C. Mishandled-Baggage Reports

In addition, the rule requires that the air carriers subject to the schedule performance reporting requirement also provide monthly data on their total number of enplaned domestic scheduled passengers and the number of mishandled-baggage reports filed by such passengers. These data are to be reported with the carrier's cover letter transmitting its schedule performance data tapes to the Department.

D. Other Issues

Other issues addressed in the NPRM, including misconnections, telephone response time, denied boardings, cabin amenities and discount fare seat availability, may be addressed at a later date. Except where otherwise noted, the other regulatory alternatives for addressing the delay and baggage issues, including establishing a performance standard, are still under consideration within the Department. On certain issues, a supplemental notice of proposed rulemaking may be issued. Non-regulatory options raised in the NPRM also remain under consideration, but will no longer be considered in the context of this rulemaking.

IV. Disclosure Rule

Under the rule, certain air carriers will be required to submit flight information to the Department for all their domestic nonstop flights serving airports with 1 percent or more of the total enplanements in the U.S. as reported in the Form 41 report. At present this includes 27 airports. The data required to be filed are discussed more fully below and detailed in a reporting directive contained in Appendix I.

The information collected will be useful to the Department for two purposes: first, to check the accuracy of information supplied to CRS vendors; and second, to make it available to the public. A delay will be defined as a flight that arrives 15 minutes or more past the scheduled arrival time.

The NPRM, in addition to proposing five disclosure alternatives, posed five general and 18 specific questions on these alternatives. Most commenters did not address the questions specifically, but instead reacted to the concept of a disclosure rule and what elements should be incorporated into it.

A. Alternative Approach/ATA

In addition to comments on the NPRM, the Air Transport Association (ATA) submitted an alternative voluntary inter-carrier agreement, with a request for prior approval of the agreement and a grant of antitrust immunity under sections 412 and 414 of the Act, to address disclosure and performance issues. The ATA comments were filed on behalf of 11 air carriers: Continental Airlines, Inc.; Delta Air Lines, Inc.; Eastern Air Lines, Inc.; Northwest Airlines, Inc.; Pacific Southwest Airlines; Pan American World Airways, Inc.; Piedmont Airlines; TranStar Airlines, Inc.; Trans World Airlines, Inc.; United Air Lines, Inc.; and USAir, Inc.

The ATA agreement, signed by the carriers listed above and Jet America and Alaska Airlines, Inc.; would be open to certificated air carriers, and any U.S. citizen tht has an exemption under section 416 of the Act and that operates regularly scheduled passenger service, on a voluntary basis. (This would include commuter air carriers.) Parties to the agreement would report to DOT by domestic airport pair the total number of scheduled flights, and the number of those flights which departed on-time and late, arrived on-time and late, and were cancelled. Parties to the agreement could submit explantory information to DOT for any late arrival, late departure, or cancellation. Information would be submitted within 30 days after the end of the month, and, at the party's discretion, be filed on computer tape, disc or in print. CRS vendors that sign the agreement would be prohibited from using the reported information to bias the CRS display of flights or fare information. However, uch vendors could display the flight performance information in an unbiased fashion in the CRSs. The agreement would be effective for two years, and continue on a year-to-year basis; carriers could withdraw in the third year with 45 days' notice.

ATA argues that the inter-carrier agreement is preferable to rulemaking since the carriers are better able to determine pertinent consumer information. This also would avoid government regulation in this area. ATA further notes that informed consumers are better able to make judgments on airline service than the government. Finally, ATA argues that the voluntary arrangement would avoid the "intractable" question of flight performance standards, adherence to which often is beyond the control of the carrier. The ATA comments also addressed other issues, which are discussed below.

Because of the decision announced in this final rule, the ATA's application is essentially rendered moot. No further review of this request, therefore, will be taken and we will dismiss the application.

B. General Comments on Disclosure

Generally, most commenters support a disclosure rule, although differences exist as to the details on what, how, when and to whom disclosure should be made. Three of the five disclosure options are basically the same, with the real distinction being what type of information should be disclosed and to whom and how disclosure should be made. The discussion that follows, therefore, does not address specifically each of the first three alternatives, but rather addresses the questions raised in the NPRM and responses concerning the details of how the regulation should be structured. The fourth and fifth alternatives take slightly different approaches and are addressed separately.

With the exception of TranStar and Jet America, each of the signatories to the ATA agreement filed separate comments, which generally support ATA's approach. Eastern, Northwest, and America West Airlines, Inc. assert that the Department did not stress enough the importance of upgrading the air traffice control (ATC) system, and the effect weather and ATC have on delays. Eastern notes that the problem is not merely a function of "unrealistic scheduling practices" and cautions that the Department should not promote its proposal as *the* answer to delays. Eastern states, though, that carriers can and should take into account weather and ATC in developing schedules.

Northwest and America West claim that some delays also are the result of recent consolidations within the industry, which have caused transitory operational problems that are now being worked out. Northwest notes that after its merger with Republic, it experienced a deterioration in service as a result of combining the operations of the two carriers. It spent millions of dollars correcting these problems to respond to the marketplace.

Northwest specifically cautions that any data collection should not have an anticompetitive effect and argues that the NPRM did not demonstrate a need for any of the options to protect the public because the marketplace does function. Nonetheless it does not oppose the disclosure of information.

Continental favors uniform and mandatory disclosure of information by all carriers because it will enhance service competition. Continental claims that individual carrier disclosure on a voluntary basis would not be useful to consumers since they would have no meaningful basis to compare one

carrier's claims with those of another carrier.

Southwest, also a signatory to the ATA agreement, supports ATA's basic position, but argues that DOT should accomplish the same result through regulation, rather than granting blanket antitrust immunity. It also asserts that the requirement should sunset automatically after two years unless affirmatively extended.

Midway Airlines argues that sweeping regulations would increase cost without justification since the delay problem is a function of mergers, air traffic control problems and inclement weather, and because no pattern of industry-wide abuse exists. Carriers are now required to publish realistic schedules and the proposal would not reduce incentives to shave schedules. It favors increased enforcement action. In addition, a rule could place it in an untenable position—being targeted for responsibility for delays when, as a small carrier, it often is dependent upon others, over whom it has little control, to provide airport handling services.

American Airlines supports an on-time reporting requirement because such a requirement would provide benefits to consumers. It points to a competitor's published flight times to suggest that unrealistic scheduling does occur. American argues against both a regulatory standard and a rating system.

A number of other groups also generally support a disclosure rule, including the Massachusetts Port Authority (Massport), the Port Authority of New York and New Jersey (Port Authority), the Aviation Consumer Action Project (ACAP) (which initially filed a rulemaking petition in this proceeding), the New York City Department of Consumer Affairs (NYCDCA), the Michigan Department of Transportation, and the City and County of Denver.

Nearly 200 consumer comments were filed. These comments express personal complaints and experiences with certain airlines. More than 70% of these comments support some form of re-regulation of the airlines by the government. The majority believe there has been a decrease in airline service quality since deregulation and, therefore, assert the quickest solution would be re-regulation. Some typical service problems cited include lost luggage, overbookings, flight delays, and misleading advertisements on discount fares.

Although most consumer commenters suggest that direct regulation of airlines would be the best solution, a few provide some alternatives, such as adding incentives to carriers to improve performance. One commenter suggests supplying loans to those airlines that provide exemplary service. Others suggest fining those airlines that are consistently late. Other suggestions range from making airlines post their delays on the computer screens to docking the pay of airline crew members.

Response: The Department recognizes, as indicated in the NPRM and discussed above, that airline delays are a complex phenomenon with many causes that at times are not capable of being identified precisely. Certainly, as Northwest and others assert, mergers can exacerbate delays in the short term while carriers consolidate operations. Weather and ATC clearly play a role in airline delays as well.

The rule seeks to address one aspect of the problem—that portion that is under the control of the air carrier. This, as Eastern suggests, includes the ability of a sophisticated and computerized business to account for historical seasonal variations and ATC delays in determining schedules. The existence of chronically late flights, as documented in the airline delay investigation, suggests that unrealistic scheduling practices deserve a significant part of the blame for the current high level of delays.

We disagree with Midway's claim that airline delays are not an industry-wide problem. Evidence from the delay investigation shows that delays are widespread. More than 30 percent of all flights during a number of good weather sample weeks in 1986–87 in and out of Atlanta operated by two carriers arrived 15 minutes or more late. An analysis of data on flights to and from Atlanta, Boston, Chicago O'Hare and Dallas/Ft. Worth this year also indicates the depth of the delay problems: nearly 25 to 60 percent of all operations, depending upon the carrier and airport, were delayed by 15 minutes or more based on a comparison of the scheduled gate arrival time versus actual gate arrival time as reported by the pilot or gate dispatcher.

While we believe the problem to be serious and wide-spread enough to warrant intervention at this time, we see no reason to consider wholesale re-regulation of airline services. The action we take here should help bring marketplace pressures and incentives to bear on the problem by improving the availability and accuracy of consumer information. We are also continuing to study other regulatory and non-regulatory approaches to this and other current consumer service problems, and will not hesitate to implement appropriate solutions if the problems persist. However, we have every expectation that these matters can be addressed effectively by measures far less drastic than re-regulation.

Finally, Southwest's proposal for an automatic sunset provision has merit, and the final rule consequently provides for termination on December 31, 1990. The termination date could be extended, if necessary, through rulemaking. This termination date is consistent with the termination date for all of the CRS rules (14 CFR 255.10(b)), and, rather than have different sections of CRS regulation terminate at different periods, one date will be used. The disclosure portion of the rule will follow the same termination date.

C. Specific Questions

1. What must be disclosed?

The rule requires that certain air carriers submit flight data to the Department. The format, specified in Appendix I, is essentially identical to that used in the Department's investigation into airline delays at Atlanta, Boston, Chicago O'Hare and Dallas/Ft. Worth, Orders 87–2–4 and 87–4–17/18/19/20. One-half of the carriers that will be subject to the rule's requirements are already familiar with it. This format should assure that the costs to carriers of submitting information are relatively small and provide the Department with the data necessary to provide information to the traveling public. The data for each scheduled operation of a scheduled domestic non-stop passenger flight generally include:

—The name of the carrier;

—The flight number;

—The airport codes;

—The date and day of the scheduled flight operation;

—Scheduled arrival and departure times;

—The actual arrival and departure time (if a scheduled operation was cancelled, that fact is to be noted as well);

—Scheduled and actual elapsed times; and,

—The differences between actual and scheduled departure, arrival and elapsed times.

A scheduled flight operation that has been delayed or cancelled for mechanical reasons will not be reported as a flight. Arrival and departure time will be measured by the time of arrival at or departure from the gate.

Comments: ATA, as detailed above, favors disclosure of information on the number of scheduled domestic flights and the number that depart on-time and

late, arrive on-time and late and are cancelled, on an airport-pair basis.

Florida Express, a large regional air carrier, argues that the data should include only the percentage of flights that depart and arrive within 15 minutes of the scheduled departure and arrival times and the percentage of scheduled available seat miles completed. It argues that the figures should be provided for each non-stop market and for the carrier's entire system. Anything less than all non-stop markets would not be useful to the consumer in selecting a flight.

American intially proposed disclosure of data on the top 250 markets. It now favors disclosure for all flights and suggests this would not be burdensome. This information then could be used in CRS displays. It specifically believes that the percentage and number of times each flight was cancelled or failed to operate and information on arrivals and departures should be disclosed. If a choice is made between arrivals and departures, it favors arrivals because the disclosure of departure information would not discourage elapsed time competition. In addition, it suggests that data aggregated by hub also be reported to encourage realistic scheduling. Concerning a percentage definition of a frequently late flight, American favors a 90 percent on-time threshold, but it argues that the best solution would be to require reports on flights and let the consumers decide.

Eastern claims that information should be provided on a system-wide basis, and that reporting for any subset would be too much of a burden on some carriers. Pan Am specifically supports the ATA's information proposal. The Association of Retail Travel Agents (ARTA) also favors disclosure of flight information for all city-pairs, although if the Department decides to narrow the scope of the data, information on the top 300 city-pairs could be required. The Michigan Department of Transportation suggests that reporting be limited to an on-time arrival percentage and the average delay in arrival, and time should be measured "gate-to-gate." It would not provide a 15 minute grace period for defining a late flight.

Delta favors information on a market-by-market basis for all markets and for all air carriers. Delta also argues that DOT should not adopt the old Civil Aeronautics Board on-time arrival formula, if ATA's alternative is rejected. Instead, it asks that disclosure be based on the average time in minutes a carrier's flights are delayed, based on the schedules for flights in particular markets. It claims that the 15 minute delay standard would not be useful since it could indicate that all of a carrier's flights were late, even when each delay was 16 minutes. Another carrier could have 75 percent of its flights listed as on-time, when the 25 percent of flights that were late were delayed more than 30 minutes. Thus, the information for the consumer may not be helpful and an average would be more useful. It suggests information be submitted quarterly.

Northwest indicates that it has no objection to measuring the percentage of flights within 15 minutes of schedule, or the use of an average figure for domestic flights. The information could be provided by flight, city-pair market, or system-wide. Northwest suggests that we could consolidate any arrival and departure flight data at a later point.

Response: The Department does not believe that the scope of the information requirement ATA proposes would provide enough useful information to the consumer. Under the ATA proposal, consumers' ability to assess the reliability of advertised schedule times and to make informed choices among available flights would be limited because they could not determine whether a particular flight had a poor performance record. Consumers would only be able to determine in a given market how the carrier's flights generally performed. Both on-time performance and carriers' incentives to hold out unreasonably short flight times can vary greatly within a given market depending on the time of day. Thus, we have decided to require information on a flight-by-flight basis instead.

The Delta average-time idea has some advantages in that it gives consumers more specific data than a 15-minute late standard. However, it would not give consumers data on a specific flight, which we believe is extremely valuable.

Initially, we will limit the airport pairs for which the information must be reported to domestic segments involving the 27 airports listed in Appendix I. These airports represent the largest airports in the contiguous 48 states, each having enplanements of 1 percent or more of the total U.S. domestic scheduled passenger enplanements. Together, these airports account for approximately 66% of all domestic scheduled enplanements at U.S. airports, and enplanements of passengers travelling to these airports from smaller points likely constitute a large percentage of total enplanements as well. While information on all markets could be of some use to consumers, we believe that our focus on the segments involving the designated airports will provide substantial benefits and will help limit the costs of reporting and dissemination. Even with the limitation, the reports will cover approximately 1500 airport pairs. Unlike proposed limitations that focus on market size (*e.g.*, the 200 or 500 largest markets), this limitation will not screen out all information on smaller, thinner markets. This, in turn, should help minimize carrier incentives to shift delays to the less dense routes out of the 27 airports.

In addition, directing our attention to these specific airports should aid all consumers, and not just those flying to, from and through the designated 27 airports. If unrealistic scheduling practices are curtailed for flights serving the largest (and most congested) airports, all consumers including passengers flying between cities not covered by this rule will benefit because of the interrelationships within the air transportation system created by carriers' massive hubbing operations (most of which are located at the largest airports). For example, if an aircraft is used for a segment between Denver and Kansas City, which is not among the 27 airports, and then for a segment between Kansas City and West Palm Beach, which is not among the 27 airports, the second segment should also receive a better on-time performance as a result of improvements in the on-time performance for the first segment. In a sense, a "domino" effect should result for flights throughout the country. Moreover, delays and misconnections associated with the large hub complexes appear to be a significant cause of the current consumer dissatisfaction. Giving consumers better information on the flights into and out of these complexes should help them anticipate and avoid such problems. At the same time, limiting the number of markets for which data are reported should help reduce the costs of reporting and disseminating the data.

The decision to limit the airports for which information is reported to those within the contiguous 48 states has the effect of excluding Honolulu. We have no indication that Honolulu has encountered significant delay problems. Moreover, we will receive delay information on almost all mainland-Hawaii airport pairs in any event, since most flights to Hawaiian destinations depart from the 27 largest mainland airports.

If evidence suggests that additional airports should be covered by this rule, the Department reserves the right to alter the list of airports in Appendix I.

Some carriers argue that submission of data on a subset of all flights would be more difficult than reporting on all of

their flights. The final rule provides carriers with the option to submit the required data on all of their flights. Voluntary information will be accepted by the Department if it is provided in the form specified by the rule and it is accompanied by a written statement describing in detail the data that are being volunteered. Once a carrier begins to file voluntary information, it must continue to do so for at least a 12-month period.

Response on other issues: We do not include a reporting requirement on misconnections, as Massport requests. This option is not foreclosed by this final rule and will continue to be reviewed. An industry average similar to the one Massport seeks may be provided by the Department in its published summaries. Carriers, of course, will be free to use the information to compare their service to the industry average in their advertising, subject to the existing on-time performance advertising requirements in 14 CFR 399.81.

Eastern and Continental suggest that the term "cancellation" should be defined to exclude those flights cancelled 48 hours prior to scheduled departure where passenger notification has been completed. Northwest notes that flight cancellation and completion data are now reported to the Department on a quarterly basis by city of origin, but it does not object to providing the information monthly. The Department will not adopt the Continental standard at this time. Instead, the data for cancelled flights will include all flights cancelled, except those cancelled for mechanical reasons, as discussed below, in order to provide the consumers with a broader picture of a carrier's performance.

2. Who will have to disclose the information?

A specific list of carriers that must file data is listed in Appendix I. The Secretary, or the Secretary's delegate, can revise the list if evidence suggests that other carriers are experiencing delay problems. Air carriers not required to file data may do so voluntarily if their submissions comply with the same format, content and timeliness requirements as apply to the larger carriers. If such carriers elect to file data, they must cover either all flights serving the airports covered by the rule or all of the carrier's flights. In addition, if such carriers begin filing such data, they must continue to do so for at least a 12-month period.

Collectively, the reporting carriers account for about 90 percent of domestic operating revenues. A review of the June 1987, *Official Airline Guide* reveals that their flights to and from the 27 largest airports account for approximately 63% of all domestic scheduled flights. These airports enplane about 66% of the total domestic passenger enplanements. At this point, it does not appear to be necessary to have all carriers report information, particularly since the carriers directed to report this information account for a large percentage of the domestic scheduled service. By limiting the number of carriers that are required to report data, the burdens on smaller carriers of reporting information are eliminated and the costs of processing and disseminating the information by the Department also are reduced. In addition, we note that the carriers that must report information and the airports specified represent a large percentage of delays nationwide.

a. *Size Exemption. Comments:* The Regional Airline Association argues that the disclosure rule should not be applied to carriers who provide service with aircraft having 60 or fewer seats, generally serve short-haul markets, and experience competition from other modes of transportation. The last factor forces RAA members to be particularly sensitive to on-time performance since, if their flights consistently experience delays, potential passengers can choose other means of travel. In addition, RAA points out that the old CAB reporting requirements did not apply to small carriers, and that most do not maintain delay data and not in the format required. The costs of doing so, it argues, would be burdensome. Excluding these carriers from the rule it claims, therefore, is appropriate.

Eastern argues that code-sharing carriers should report data as separate entities. It also notes that a late flight affects passengers without regard to the size of the carrier or the length of the flight. American shares this opinion. Pan Am claims that placing additional burdens on smaller carriers and on commuter operators is not necessary. ARTA argues that all scheduled air carriers should submit information, and small carriers should be exempt when their service is not competitive with another carrier. Eastern and American assert that size is no reason for exempting carriers from a reporting requirement. Michigan DOT also argues that all carriers including commuter airlines should report information.

Response: Eastern and American are generally correct in arguing that delays affect passengers on small planes as well as passengers on large planes. However, as an initial matter, we will limit the application of this rule to large air carriers. First, large carriers are much more likely then small carriers to maintain their flight performance data in a computerized form that makes it relatively easy for them to supply us with the required information. Thus, compliance with the rule is likely to be much more costly for small carriers than for the large carriers. Second, there may be some validity to RAA's argument that the availability of surface transportation alternatives for many of the small carriers' flights provides a significant discipline on the scheduling practices of these carriers. Given the likely cost disparity, we will refrain from requiring reports from these carriers at this time. However, we will continue to review the coverage issue, and will extend the reporting requirements to the smaller carriers if it becomes necessary.

b. *Intra-Alaskan Service. Comments:* MarkAir, an intra-Alaskan carrier, argues against applying the disclosure requirement to operations within Alaska. It cites past actions where Alaskan service has been treated differently and suggests that, because of climatic differences, a disclosure rule could adversely affect the safety of operations within the State.

Response: No airport in Alaska is among the 28 largest U.S. airports, or among the largest 27 airports in the contiguous 48 states. Thus, our reporting requirements will not mandate the submisson of any data on any intra-Alaska airport pairs.

c. *Applicability to International Operations. Comments:* American and ACAP argue that international operations, including those conducted by foreign air carriers, should be disclosed. However, most commenters agree that on-time performance for international operations should not be reported. The International Air Transport Association argues that only "air carriers," which is specifically defined in the Act to exclude foreign air carriers, should disclose the information. ATA concurs that international operations should not be included in the disclosure rule. TWA filed a response to American's comments and asserts that the rules should not be applied to international markets. It argues that operating rules differ from country to country and these rules may have an adverse affect on on-time performance. Other factors also could affect on-time performance for international operations, such as foreign labor disputes and sub-par check-in facilities. TWA claims U.S.-flag carriers "have unfairly been denied sufficient or adequate check-in and reservation facilities" at foreign airports, which

adversely affects a U.S.-flag carrier's on-time performance vis-a-vis the performance of that country's national carrier. It also cautions that if information is required from foreign air carriers, foreign carriers would object, leading to international friction.

Responses: We will not require foreign air carriers or U.S. air carriers to file data on their international flights. Under the NPRM, the proposed regulatory language suggested that "air carriers" would be subject to the rule. Thus, the NPRM did not envision this aspect of the rule applying to foreign carriers. In addition, disclosure by U.S. carriers on internaitonal flights could place them at a competitive disadvantage vis-a-vis their non-repoting foreign carrier competitors.

3. To whom must information be disclosed?

The information required to be disclosed must be submitted to the Department and, as discussed below, to CRS vendors although in a different format. In addition, upon request, carriers required to submit data to the Department and to CRS must provide on-time performance information to consumers.

Comments: Most commenters agree that information should be disclosed to DOT. The ATA alternative proposal also relies on information being provided to the Department. Massport asks that the information be summarized, distributed by the Department, and made available to airport operators.

Response: The Department will act as a collection point for the data, and will make the information available to the public as discussed below. Carriers also are free to use the information in advertising (subject to the procedures of 14 CFR 399.81(b)). As Northwest argues, this may be an effective method to distribute general information carrier performance to consumers. In addition, and as discussed below, we are requiring direct disclosure to consumers upon request during the course of reservation transaction and inquiries and disclosures to CRS vendors in order to put specific flight performance information into the hands of consumers through travel agents. Finally, the published data will be available to airport operators.

4. How should disclosure be made?

Data must be provided to the Department on computer tape. The methods by which data will be provided to CRS vendors are discussed below.

Comments: Most commenters agree that the information should be made available on computer tape to the Department. Florida Express suggests that we also permit it to be submitted in hard copy. The proposed ATA agreement also gives signatories the option of providing us a hard copy.

Response: In today's computerized airline industry, and in particular with respect to those carriers that must report information under this rule, the need for (and usefulness of) voluminous data in hard copy is less than clear. These volumes would not be easy to "skim" through for a consumer, or anyone else interested in such information. Thus, we will require that the information be submitted on computer tape. Information in this format will enable the Department to make it available to the public in a timely manner. Air carriers can utilize the waiver procedures if this format, as opposed to supplying the data by disc, is burdensome. Carriers are free to make hard copies available in addition to the computer tape, but we will not require it.

5. When and how frequently must disclosure be made?

Carriers will be required to submit the data to the Department fifteen days after the last day of each month.

Comments: The dispute in this area centers on whether to use a 10, 15 or 30 day time frame. All carriers agree that 30 days is feasible, and some note that 15 days is sufficient for carriers to compile and submit the data to the Department. ARTA argues that 10 days is sufficient.

Response: Based on our experience in the delay investigation, and because of the type of information requested, the Department believes that a 15-day reporting period is more than workable for the affected carriers. If particular problems are encountered with this requirement, they can be worked out on a case-by-case basis.

d. Specific Disclosure Options (Alternatives four and five).

Alternative Four: Under this alternative, carriers would be required to adjust flight times of delayed flights in schedules held out to the public.

At this point, the Department will reserve action on this proposal.

Alternative Five: Under this option, the Department would compile specific data, assign it a weighted factor and issue an airline rating.

At this point, the Department will reserve action on this proposal.

e. Specific Questions Raised in the NPRM on Disclosure. The NPRM also specifically asked eighteen questions on disclosure. A number of these questions have been subsumed in the earlier discussions and we do not repeat the discussion here. The Department's response with respect to each remaining issue is set out below.

1. Safety: Would the regulation adversely affect safety?

The data requirements will not adversely affect airline safety. The air carriers owe the highest duty to their passengers to provide safe air transportation. The regulation in no way seeks to interfere with that obligation. However, to avoid any possibility of penalizing carriers for their conscientiousness and concern for the safety of their passengers, we are providing that delays and cancellations caused by mechanical problems be excluded from the reported data. The intent of the rule is to provide consumers with useful information, and not to create negative incentives or to compromise safety in any way.

Comments: Eastern argues that if our rule covers each carrier's system, it would not affect safety. Pan Am claims the disclosure proposals will not affect safety.

Northwest notes that the importance of safety considerations is correctly stated in the NPRM. It indicates that what is disclosed, how the information is disclosed, and to what purpose the information is used, will affect the safety implications for any rule. Northwest states that the CAB was particularly concerned that a pilot who began a flight late not be under undue pressure to make up time to meet a specific arrival time requirement. The CAB concluded in promulgating 14 CFR Part 234 that safety considerations required special formulation of a performance standard for enforcement purposes, but that this was not necessary for disclosure purposes. Thus, CAB's disclosure rule did not allow carriers to excuse delays caused by normal seasonal variabilities, weather or ATC. The CAB's performance (or enforcement) standard, however, recognized that sometimes carriers could anticipate weather and ATC delays, but at times they could not. Northwest also claims that too much focus on elapsed or arrival time in any type of disclosure rule may create safety risks. From a safety standpoint it prefers a disclosure rule based on arrivals and departures, or departures only, which eliminates pressure to operate an aircraft to improve an arrival time rating. It also argues that disclosures in CRSs will affect safety.

American asserts that on-time disclosure would not affect safety. ARTA, which supports an updated CAB-type disclosure rule, asserts that there are no incentives for carriers to ignore

safety. Continental claims that if we exclude certain information from disclosure, particularly mechanical delays, our rules would avoid even the slightest possibility that carriers would compromise safety.

ACAP states that the airlines would not take unsafe actions, and the Department has sufficient authority to investigate if a safety concern does arise, particularly in cases where a carrier's performance shifts substantially.

Response: The disclosure rule will not adversely affect safety. First, the rule requires only disclosure of information, which no commenter argues is a safety concern. While the CRS disclosure aspect could be viewed as a measure of performance, it does not set a "make-or-break" performance standard for carriers. Instead, it provides straightforward factual information on carrier on-time performance. Further reducing any incentives to compromise safety is the increased ability of carriers to establish their own achievable realistic schedules that should result from this rule and the recent action by CRS vendors to eliminate the elapsed time factor from their display algorithm.

While requiring disclosure, the Department is not adopting a performance standard. This option remains open, as noted below, and the concerns raised by Northwest will be addressed if such a standard is adopted. Concerning disclosure in CRS's, we do not see how the dissemination of information through the CRS will affect safety any more than the disclosure of the same information by DOT, which Northwest admits will have no impact on safety. Northwest's arguments on the safety implications of CRS disclosure are discussed more fully below.

We believe that, as a general matter, the rule is structured so that perverse safety incentives are minimized; however, the rule also makes special provisions for mechanical-related delays and cancellations to eliminate any possibility that the rule might adversely affect safety. Last-minute mechanical difficulties are frequently unanticipated and obviously can have serious safety implications. Thus, as Continental suggests, the rule excludes the reporting of data relating to flight operations that are delayed or cancelled because of mechanical problems reported to FAA under 14 CFR 121.703 and 121.705. Under the rule, mechanical-based delays will include delays on both the flight on which the mechanical problem was encountered and subsequent delayed flights performed by the same aircraft, or the aircraft substituted for it, where the delay was attributable to the initial mechanical problem. We recognize that the exclusion of this data will affect carrier on-time performance percentages, but in balancing the need for information versus safety, safety concerns are paramount. In addition, the exclusion on this information will not penalize carriers for being conscientious with respect to the safety of their passengers.

2. *Explanatory detail: Should carriers also be required to provide a breakdown of reasons for a delayed or cancelled flight?*

The Department will not require that explanatory information on delayed or cancelled flights be provided.

Comments: Most carriers agree that such information would be cumbersome and unnecessary. Pan Am claims that it maintains such information for departures but not arrivals, and notes that it does not determine the precise cause of a specific delay, which may actually have been due to an earlier delay experienced by that aircraft. Northwest states it maintains the information internally, but not in the DOT format. The Department, it claims, would have to standardize the explanatory information to make it useful. American asserts it is too hard to assign a cause to a particular delay for internal purposes let alone to report such causes. Florida Express argues that delay information should be given without any excuses for the cause of the delays. Massport too asks that this information not be collected. Under the ATA agreement, carriers would not be required to file this information but could do so on a voluntary basis.

ARTA agrees that the information should not be submitted. Instead, carriers should be required to maintain records and provide the information to consumers, if requested. This would apply to cancellation information too. The Department would then spot check carrier records.

Response: The Department agrees that the required reporting of explanatory details on why a flight was late or cancelled would be extremely cumbersome and might not prove useful, except perhaps in an enforcement case. We see no reason to collect the data for such use at this time; it could be provided by the affected carrier, if needed. Therefore, we will not require the submission of this information at this time. In the future, if such information does prove necessary, we can require its submission.

3. *Dissemination of data to the public: How will the data be distributed?*

The Department intends to expand the current monthly report on consumer complaints to include summaries of the data required to be reported pursuant to this rule. The summaries for each carrier will include overall on-time, cancellation and baggage performance data and may include summary data for specific flights. We expect that the summaries will take about two weeks to compile. Thus, for example, the September data would be filed with the Department by October 15, and the summaries should be available by approximately October 30. In addition to the monthly summaries, the Department will make more detailed data available for public review, and flight-by-flight performance data also must be provided through CRS's, on approximately the same schedule. Of course, carriers must also provide the latest available information to consumers when they request it during reservation transactions.

Comments: Most commenters favored dissemination on a monthly basis by the Department. Northwest argues that no further dissemination is necessary since, in those instances where one carrier outperforms another, the better performing carrier will advertise its service. This avoids the necessity of requiring that information be displayed in CRS's. Florida Express agrees that there is no need to disseminate the information further since carriers will use it in advertising. American wants the information made available to carriers and CRS vendors.

Response: In addition to the Department's report and as explained in the discussion on CRS, to put this information to its fullest use, it must be displayed in CRS's. We agree that our dissemination of the reports will aid consumers and that carriers will use the information to advertise better service. However, additional disclosure is necessary to assure that passengers have access to flight-specific information at the time they make travel decisions. Disclosure in CRS's and through airline reservation clerks will meet that need. Concerning Northwest's and Florida Express' arguments on dissemination through advertising, we would hope that carriers do use the information in advertisements.

We note that the data and monthly reports on on-time performance will not be comparable to similar data maintained by the FAA, since the FAA's data measures departures from the gate and arrival at the runway, while the data reported under this rule will measure arrival and departure at the gate.

4. *Consumer benefits: What benefits will flight information provide to consumers?*

The Department strongly believes that for the marketplace to function properly, information must be available to the consumer. As the NPRM noted, though, consumers obtain information in a number of ways and in fact, as Northwest also argues, consumers now may be making choices on their general perceptions.

Comments: Eastern, Pan Am, American, ARTA and ACAP agree that consumers will benefit from having available additional information upon which to base travel decisions. The information also will give carriers an incentive to improve the service performance factors under their control, which too will aid consumers.

Response: As indicated earlier, carriers now have incentives to provide unrealistic schedules. Consumers often are confronted with such misinformation in making travel arrangements and unrealistic scheduling will influence their decisions, often in an unfair and deceptive manner. Through disclosure, carrier incentives to post unrealistic schedules should diminish and the incentives should shift to providing realistic schedules. In time, the development of more realistic schedules should reduce the delay rates, which should in turn reduce consumer frustration with airline delays. These benefits, while not computable, are real, and the rule is directed at obtaining those benefits for consumers.

5. Costs: How costly would it be for carriers to disclose the information?

Comments: Pan Am suggests that compliance with the Department's regulations, as opposed to ATA's voluntary agreement, would be more costly, although no specific data are provided. American notes that costs should not be a factor in this decision, and similar information had been submitted to the CAB for 20 years. United, Northwest, Continental and Eastern argue against requiring disclosure by ticket agents, contending that such requirement would be very costly and would produce minimal benefits. The primary cost element these carriers point to is the increased agent time that would be needed to search for and convey the on-time information to customers. United estimates its own increased personnel costs at $30 million the first year and $17 million per year thereafter. Northwest, Eastern and Continental estimate that their annual personnel costs would increase by $30 million, $40 million, and $16 million, respectively. These estimates are based on the assumption that the rule would require "flagging" of late flights in primary displays, and detailed flight performance information in secondary displays. American comments that ticket agents are already having to take time to respond to customer inquiries about flight performance, and that an effective rule could, in the long run, actually decrease this element of costs.

Response: As noted in the regulatory evaluation, the costs of our disclosure rule will not be significant. Most direct costs are related to compiling and processing a large volume of data. Computers are, of course, well-suited to performing such tasks economically. RAA's arguments concerning the costs to its members need not be addressed at this point since commuter carriers are not required to report under the rule and therefore no costs will be borne by those carriers or other small carriers.

As is discussed in greater detail in the regulatory evaluation, the reservations personnel cost estimates of United, Northwest, Eastern and Continental are overstated. They are based on the assumption that the disclosure mechanism will be much more complex and burdensome than that adopted here, and also assume that every reservations transaction would be lengthened substantially by the disclosure requirement. They also fail to recognize the fact, noted by American, that ticket agents are already spending time dealing with the on-time performance issue. The cost of that time should be excluded from any estimate. Our estimate of $7 million in added personnel costs for the industry as a result of this rule appears to be a reasonable approximation. It also appears to be an acceptable cost given the rule's likely benefits.

6. Impact on competition: What kind of impact, if any, will our rule have on competition?

As noted above, competiton can only be enhanced if the consumer has information on carriers' schedule reliability. The precise effects are difficult if not impossible to quantify, and no commenter does so. However, as ARTA notes, the information will allow consumers to weigh costs and the quality of service in making purchasing decisions.

Comments: Eastern suggests that disclosure should enhance competition. Pan Am notes that at this point it cannot determine the effects on competition. American claims it would increase service quality competition and would not affect fare competition.

Response: As noted under the discussion on consumer benefits, the disclosure of information should permit consumers to make more informed choices. By doing so, the rule will permit more effective competition on the basis of service quality as well as price.

V. Air Carrier Disclosure

The Department will require that all air carriers subject to this rule also have available the same information on their on-time performance that they are required to provide to CRS vendors, as discussed below. This information must be passed on to customers during the course of reservations and ticketing transactions upon reasonable request. Through the NPRM, we sought to determine the best methods to provide consumers with on-time performance information. The rule takes a number of avenues to achieve that solution. As discussed above, disclosure of information must be made to the Department, and as discussed below, must also be made available to CRS vendors. With the latter requirement, consumers will be able to make inquiries about, and travel agents will have available, air carrier on-time performance data. The requirement that air carrier agents too have available this same information is an obvious corollary.

We note that American suggests such disclosure is needed, and we agree. The costs of such a requirement are addressed above. We are not specifying the manner in which carriers must make the information available to their reservations agents; they may choose the method that is the most economical and effective for their circumstances. We are also not requiring that carriers' agents volunteer the information to every customer. This approach should help minimize the costs of this requirement while insuring that the consumers to whom reliable performance is most important have access to the information they need at the point of sale.

Finally, we are not imposing any explicit requirement that travel agents provide the on-time information upon request because we consider it unnecessary. Travel agents hold themselves out as impartial representatives of all airlines, and they have little incentive to refuse a request for information if it is easily available.

VI. Regulation of CRS Displays

The NPRM proposed four possible rules for modification of CRS displays to address the problem of unrealistic scheduling. Two proposals would have required display of on-time performance data in CRS's. Under one proposal, we would have required vendors to "tag" frequently late flights in primary schedule and availability displays (flights that were more than 15 minutes late would be considered late). The

proposed rule did not specify how the flights were to be "tagged," but most commenters assumed that an asterisk or similar character would be used. Under the second proposal, we would have required vendors to develop secondary screens providing more detailed information about on-time performance and cancellations.

The other proposed CRS rules would have required vendors to modify CRS algorithms to reduce CRS-generated incentives for unrealistic scheduling. Under one proposal, we would have required vendors to add 60 minutes to the elapsed time of frequently late flights for purposes of constructing schedule and availability displays. Under the other algorithm proposal, we would have required vendors to modify their flight display algorithms so that (a) differences in elapsed time of less than 30 minutes between two flights would not affect the relative ranking of those flights against each other, and (b) no penalties would be assigned to flights with departure times that were less than 30 minutes before and 30 minutes after a passenger's requested departure time.

A. The Final Rule

The Department has decided to adopt a version of the first alternative, presentation of on-time performance data in primary displays. The final rule contains two elements. The first is a requirement that carriers provide appropriate on-time performance data to vendors for inclusion in primary schedule and availability displays. The second requires CRS vendors to include this information in primary schedule and availability displays.

Two sections have been included in the new Part 234 requiring carriers to disclose certain data to vendors, as follows: For each flight segment for which carriers are required to submit on-time performance data to DOT, carriers will also calculate the percentage of operations that arrived within 15 minutes of scheduled arrival time. The calculation will be based on the performance data as reported to DOT. Delays and cancellations caused by mechanical problems will be treated as they are for reporting purposes; that is, flights affected by such problems will not be included in the calculations. Flights that are cancelled for non-mechanical reasons are to be counted as having not arrived on time. Carriers will then assign a single digit on-time performance code based on the percentile ranking of on-time performance indicated by the calculations. For example, flights with on-time performance records of between ninety and one hundred percent would be assigned a "9", and flights with on-time performance records between eighty and eighty-nine percent would be assigned an "8"

The calculation process will be repeated monthly based on the data filed with DOT. Once the calculations are made, carriers must supply the vendor with the performance code either as part of their basic schedule tape submissions, or in separate tapes that will permit vendors to match performance codes with schedules in the CRS displays. New flights will be coded with an N. Carriers that provide basic schedule data to vendors through third parties are required to provide the data to third parties no later than the same time they would provide it to CRS vendors. We anticipate that the third parties would supply it to the vendors in the normal course of supplying them flight schedule data.

Carriers are required to calculate the performance code and submit it to vendors for each flight segment for which they are required to report data to the Department and for any multistop flights that they intend to have listed in CRS's that have any such nonstop flight segment as their last leg. For a multistop or one-stop flight, the performance code should be that assigned to the last relevant nonstop flight segment. For example, the flight performance codes would be assigned to a New York-Chicago-Seattle one-stop flight as follows: the New York-Chicago nonstop flight is assigned a performance code based on performance over the New York-Chicago nonstop segment; the Chicago-Seattle nonstop flight is assigned a performance code based on performance over the Chicago-Seattle segment; the New York-Seattle one-stop flight is assigned the performance code for Chicago-Seattle nonstop flight segment—the last relevant segment.

The rule permits carriers to calculate performance codes and submit them to vendors for all flights for which data is reported to the Department. Such submissions must continue for at least a 12-month period. This requirement is consistent with the provision on voluntary reporting to DOT and will help assure that carriers do not use voluntary disclosure solely to highlight good performances. Carriers therefore have a choice: either provide the on-time performance code for flights serving the 27 airports or for all flights.

The second element of this rule amends Part 255. CRS vendors will be required to include all performance codes supplied by carriers in primary schedule and availability displays. Codes for one-stop or multistop service will be displayed as set forth above. For connecting flights, the code for each segment will be displayed. Vendors must revise their displays of the code monthly within 5 days after receiving updated information from participating carriers.

The amendment otherwise prohibits the use of flight performance data in construction of schedule and availability displays. The rule also prohibits vendors from providing additional information about on-time performance unless the information is based on data submitted to DOT pursuant to the new Part 234 and the same information is presented in the same fashion for all carriers.

B. Comments

Commenters that addressed regulation of CRS generally do not support regulations. American, ARTA, ACAP, Massport, Eastern and Northwest are the exceptions, but they do not support the same type of regulation. American and ACAP support mandatory disclosure of flight performance data in secondary screens. ARTA supports the primary screen option. Massport supports a DOT data bank on flight performance with mandatory inclusion in CRS's as well. Northwest, Eastern and American support regulation of CRS algorithms to reduce incentives for unrealistic scheduling.

1. The Need For a CRS Rule

A number of commenters oppose the concept of any regulation of CRS's in addition to criticizing DOT's specific proposals. Some commenters (Delta, Northwest) object that CRS regulation is premature, and that the problem of delays and scheduling does not require more than reporting of flight performance information to DOT at this time. Commenters, including Florida Express, United, Alaska Airlines, Mr. J. Kenneth Brubaker and the RAA, also argue that CRS regulation might not be effective. They contend that travel agents could not be relied on to assure that information actually reached customers; disclosure of information contained in CRS's would increase the time and hence the cost to travel agents of individual transactions. The cost considerations would discourage travel agents from taking the time to explain the on-time performance data in CRS's.

Commenters also complain that a CRS display regulation would exacerbate other CRS problems. USAir, PSA, Alaska Airlines, Continental, Delta, Eastern, RAA and Northwest fear that inclusion of flight performance information in CRS's would permit

vendors to reinstate carrier identity bias into CRS displays by manipulation of the performance data. Northwest, ATA, Southwest, Delta, Continental, Alaska Airlines, USAir, and PSA request that the Department prohibit the use of performance data in construction of schedule and availability displays, or at least prohibit use in a biased manner.

Florida Express, Delta, Pan American, Alaska Airlines, USAir, and PSA also object that inclusion of any flight performance data in CRS's would give vendors an excuse to raise participation fees, which they claim are already too high. They argue that the Department should not promote fee increases by requiring vendors to incorporate data on flight performance into their CRS's. In this connection, vendors United, Delta, and Eastern also note that a rule on CRS disclosure would increase programming and operating costs of CRS's. United also claims that regulations would damage delicate relationships with CRS participants. The United and Delta cost predictions focus on the proposals for secondary screens or regulations of display algorithms that the Department is not adopting at this time. On August 3, 1987, Continental and Eastern separately filed supplemental comments (we hereby grant their requests for leave to file those comments) in which they each contend that the inclusion of performance data would be inordinately costly for smaller CRS vendors. They state that their CRS vendor (presumably SystemOne) estimates the costs of including extensive performance data in CRS displays to be in excess of $2 million, with an implementation time of one to two years. The two carriers caution that a CRS requirement could have an adverse impact on smaller CRS vendors because they do not currently have as much computer capacity as the larger vendors. As discussed below, the cost estimate reported by Eastern and Continental appears to be based either on the proposed secondary display option or on the assumption that the rule would require the maintenance of a substantial amount of performance information on every flight in the system.

American claims in a letter to the Assistant Secretary for Policy and International Affairs that it can add a single character code to primary displays at a reasonable cost. American also asserts in its letter that, because of current publicity, its own reservations agents are already spending a substantial amount of time responding to requests for schedule dependability information from customers. A copy of this letter has been placed in the docket.

2. Tagging of Frequently Late Flights

Except for ARTA, no commenter supports the proposal to identify frequently late flights with an asterisk or other symbol. Opponents argue that simply identifying late flights in this manner would not provide customers with much useful information, and that it would not permit a meaningful comparison among flights. American contends that the use of some form of flag could, for some flights in some CRS's, require more than one line on the display screen to be used for the display of each flight segment. Therefore "tagging" frequently late flights would reduce the number of flight segments that could be displayed on any one screen. American requests that the Department require the tagging of flights in all displays, including carriers' individual direct access displays, if we adopt this alternative. Northwest argues that the tagging approach might put undue pressure on carriers and crews to accomplish on-time performance in order to avoid having a flight stigmatized as frequently late.

In contrast, ARTA argues that on-time performance history is valuable information that assists passengers in choosing options. It claims that "frequently late" flights should be tagged in primary screens rather than on a secondary screen, which it believes would be less effective and efficient.

3. Flight Performance Data In Secondary Screens

With respect to disclosures on secondary screens, American and ACAP argue that such disclosures will provide information needed by consumers to make performance comparisons. In addition, American argues that this approach more closely reflects consumer interests than the tagging option because it permits the agent to use primary displays that are not burdened with on-time performance data for those passengers for whom on-time performance is not a concern. The secondary screen would make the data available when agents are dealing with a customer to whom performance matters. However, opponents state that there are strong disincentives for travel agents to look to secondary displays in the course of booking a reservation; therefore, they assert that customers will rarely get the benefit of the information from secondary screens. United claims that a secondary screen approach would be very costly. Its CRS, Apollo, would assertedly incur $6.4 million in capital costs and $3 million a year in operating costs under a combination primary and secondary screen display rule, the only type of rule that United considers to be effective. Eastern and Continental state that their CRS vendor estimates the direct costs to itself of a CRS disclosure requirement at more than $2 million. The two commenters differ somewhat in their descriptions of the information they received from their vendor, but the estimate is apparently based on the secondary display option. They state that the primary source of the increased costs is the increased computer capacity they believe a CRS disclosure rule would necessitate. Eastern states that the vendor's capacity requirements would be increased by eight to ten percent. This estimate assumes that the vendor would be required to maintain detailed arrival, departure and cancellation information for every one of the 285,000 world-wide nonstop flight segments contained in the vendor's system. The two carriers also state that, unlike larger vendors, their vendor currently has no available excess computer capactiy.

4. Penalizing Frequently Late Flights in Display Algorithms

No commenter supports the proposal to add penalty minutes to elapsed time of frequently late flights. Commenters contend that a uniform penalty such as DOT proposed could be unduly harsh. Vendors argued that this alternative would be extremely costly. Some commenters also argue that inclusion of an elapsed time penalty would reduce the utility of the CRS because the CRS would contain potentially inaccurate data about the elapsed time of flights. Northwest argues that the elapsed time penalty might put undue pressure on flight crews to maintain good on-time performance records in order to avoid the penalty and maintain higher rankings in CRS displays.

5. Regulation of Display Algorithms

Four commenters, American, ARTA, Eastern and Northwest support regulation of display algorithms to reduce incentives for flight delays. These commenters argue that the use of elapsed time as a ranking factor provides incentives for carriers to publish unrealistic schedules, and that regulation is therefore necessary.

However, none supports DOT's proposal to prohibit the use of differences in elapsed time between two flights of less than 30 minutes as a factor to determine their relative display positions and to prohibit penalties for displacement from requested departure time for flights departing within 30 minutes of the requested time. Eastern

and ARTA support the Department's proposed rule on use of elapsed time, but not the restriction on treatment of displacement from requested departure time. American argues that our proposal on elapsed time would be insufficient to correct the problem and urges that DOT prohibit the use of elapsed time altogether. It further argues that the rule on displacement would have little effect on bunching of departure times because carriers have substantial non-CRS related incentives to schedule flights close together. Northwest argues that the elapsed time rule proposal is deficient because it calls for flight by flight comparison. Northwest suggests that, instead, the FAA should establish minimum elapsed times for each city-pair and DOT should prohibit carriers from publishing schedules with shorter elapsed times than the FAA minimum. Northwest supports the proposed requirement on displacement from requested departure time, but it contends that the use of 30 minutes as proposed would provide increased incentives to schedule departures on the half-hour. A 29 minute standard would avoid this result.

United specifically objects to regulation of the use of elapsed time in algorithms because such regulation would make CRS's less efficient in allowing consumers to exercise their preferences for minimizing the elapsed time of flights.

C. Response

The Department has concluded that a rule on display of performance ratings in CRS's as outlined above is justified at this time. The publication of unrealistic schedules is an unfair and deceptive practice under 14 CFR 399.81. CRS's are the primary source by which consumers get information on airline schedules, albeit indirectly, through travel agents. To permit carriers to publish potentially unrealistic schedules through CRS's without providing notice on the reliability of those schedules would permit carriers, including CRS vendors themselves, to use CRS's to deceive the public. In addition, travel agents are the primary outlet for airline tickets as well as being by far the most significant neutral source of travel information. The need to provide consumers with meaningful flight-by-flight performance information in a manner that allows them to use it in making their purchasing decisions can only be met by providing the information to travel agents in a usable form. Finally, although vendors' recent commitment to eliminate elapsed time as a ranking factor in their display algorithms for nonstop flights may reduce CRS-generated incentives, it will not necessarily eliminate them. The use of displacement from requested departure time may still provide incentives for bunching flights, which can in turn lead to delays. Moreover, elapsed time will still be a factor for multi-stop and connecting flights. To the extent that CRS's are part of the problem, the effective use of CRS's as part of the solution appears to be reasonable.

The Department has determined that its final rule on CRS displays is an effective and efficient response to the delay problem; it will ensure that information on performance reliability is available to interested customers at the primary point of sale, i.e., the travel agent. Other sources of information may provide consumers with generalized performance information. The CRS rule will insure that information on specific flights is available to consumers at the time that purchase decisions are made. Moreover, this approach addresses many of the criticisms of the four specific proposals in the NPRM and of the concept of CRS regulation in this area.

1. Efficacy of the Rule

The use of a single digit percentile ranking on the primary screen should address the complaint that simple flagging of flights would not allow meaningful comparisons. Such a performance code will permit meaningful flight by flight comparisons without resorting to secondary display screens. Therefore the extra time and expense to use secondary screens should not act as a disincentive to travel agents to provide on-time performance information to customers. In addition, travel agents may have competitive incentives to use the information. American claims that consumers are already seeking reliability information. Once it is known that data is available to travel agents through CRS's, a travel agent may risk losing business if he or she refuses to use that information. To the extent that additional information will be useful to consumers, the rule permits vendors to establish quality of service displays in an unbiased fashion.

We recognize that the use of a single-digit code has some drawbacks. Because each number encompasses a ten percentage-point range, flights with the same performance number could differ in actual performance by as much as nine percentage points. Conversely, two flights whose on-time performance differed by as little as one percent could be assigned different codes. This outcome is an unavoidable consequence of using a single digit for the code. However, we anticipate that travel agents will explain what the code means. Moreover, although a coding system allowing for more detail might be preferable, cost considerations lead us to reject an approach requiring the use of more than one digit at this time. American states that it can add a single character code to its Sabre displays at a reasonable cost, and we believe the same to be true for other vendors. We have no basis to conclude that the expense of adding multiple characters to primary displays would be similarly reasonable and, therefore, are hesitant to require vendors to make such an undertaking without testing the efficacy of the single-digit code.

This approach should also reduce the possibility that a CRS rule might adversely affect safety. Northwest's concerns stemmed largely from the use of an "arbitrary" definition of frequently late flights. The final rule specifies an on-time performance code for all flights on which data is reported. We recognize that this code will, in a sense, provide a performance measure for consumers. Incentives to achieve the highest grade will exist, but not nearly to the same degree as if we had employed a "tagging" system using one make or break standard. Without a category of "frequently late flights" or any penalty for flights falling into that category, carriers and flight crews should not feel strong pressures to avoid the stigma of such a classification. Similarly, we are not requiring vendors to adjust elapsed time of flights based on historic on-time performance at this time, and we are prohibiting vendors from using on-time performance as a ranking factor in flight displays. Since historic performance will not affect display position, it will not provide any undesirable incentives with respect to safety.

Northwest also suggests that any disclosure requirement that focuses solely on arrival time might put pressure to compromise safety. The CRS rule does focus on arrival time. However, no other commenter has suggested that arrival time reporting creates undue safety risks. Moreover, the CAB for many years required reporting of arrival time performance without any effect on safety. Even Northwest acknowledges that the Board's approach to arrival time performance, which like this rule, entailed a reporting requirement without standards, did not raise safety problems. Finally, the CRS rule accommodates safety concerns by excluding maintenance related delays from the calculation of the on-time performance code.

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2. Potential for Abuse by CRS Vendors

The final rule specifically addresses the fear that a CRS rule would permit vendors to introduce bias into their displays. It prohibits the use of performance data as a factor in display algorithms, and it requires that any secondary service quality displays be constructed in an unbiased fashion based on data supplied to DOT. The rule specifies the type of data that must be included in primary displays and how it is to be included. In addition, carriers themselves will perform all data manipulations to establish the code to be included in the CRS. These features of the rule substantially reduce the risk of bias. The rule permitting carriers to calculate on-time performance codes based on voluntary reporting to DOT, and requiring vendors to display those codes should also reduce the risk of bias. It provides carriers with even greater control over how the on-time performance of their flights is reported in primary CRS displays.

Concerning the CRS fee issue, DOT is currently studying CRS fee levels in its inquiry in Docket 44643. The fee questions raised by the commenters in this rulemaking should not be studied in isolation, and we will address questions relating to overall fee levels in the general CRS inquiry. In any event, the direct costs to vendors for complying with the rule should be modest. In these circumstances, increased compliance costs should not provide vendors with any justification for substantial increases in fee levels.

3. Costs of the CRS Requirement

Vendor commenters (except for American) also expressed concerns over the cost of the rule. As shown in the Regulatory Evaluation, the direct costs of providing information to DOT and in CRS displays should be modest. Moreover, as shown in the evaluation, the costs to vendors should be a relatively minor portion of this total. In addition, DOT has fashioned the rule in a way to minimize the cost impact on vendors. The final rule avoids the programming costs of a second screen. United's estimate of substantial CRS costs is based in large measure on a secondary screen requirement and the need to process requests to view the secondary screen. Continental's and Eastern's estimates of substantial additional capacity costs also appear to be based on their anticipation of a rule that would require detailed secondary displays. Otherwise, Eastern's estimate that a CRS disclosure rule would increase its system's capacity requirements by eight to ten percent would not be credible. The inclusion of a single-digit data field for a limited number of the system's displays could not represent such a large proportion of the system's overall capacity requirements. With a primary display requirement involving only a single digit, CRS capacity and operating expenses should be much less than United, Eastern and Continental estimated.

The rule also is designed to reduce programming burdens on vendors. The rule requires carriers to calculate the on-time performance code for their operations and supply it to vendors as part of basic schedule tapes or on a separate tape. As discussed in the Regulatory Evaluation, if carriers do the former, vendors would be required only to undertake a one-time reprogramming to include the code on their schedule and availability displays. If carriers do the latter, then at most, vendors would be required to develop and operate a program to merge schedule tapes with the performance data tapes. American states that SABRE can provide a primary display of the type specified in the rule for a reasonable cost. The decision to require display of a single on-time performance code also acts to reduce the burden on vendors. Arrival performance was chosen because the comments indicate that consumers are likely to be more concerned about on-time arrivals than on-time departures.

Commenters also expressed concern that a CRS display rule would substantially increase transaction costs for travel agents. Obviously some cost increases can be expected. When passengers ask about on-time performance, the travel agent likely will be required to take additional time to answer questions. Moreover, if addition of the performance code does reduce the number of flights that can be displayed on a screen, then the search time might increase. Precise quantification is difficult, but it does not appear that the cost impact on travel agents will be substantial, nor that it will exceed the benefits from the rule.

We note that none of the travel agent commenters complained that a CRS rule would impose a substantial burden on agents.

For a variety of reasons, the specific estimates of United and Northwest appear to be excessive. United's projection of potentially millions of dollars in increased transaction costs is based on a secondary screen rule. Since DOT's rule will not require travel agents to consult secondary screens, United's estimate of the amount of increased transaction time appears to be excessive. In addition, United apparently assumes that every transaction will include a discussion of performance information, and Northwest clearly does. However, our rule does not require travel agents to disclose performance data during each transaction, only that the data be available. Therefore, United's and Northwest's assumption may not be reasonable. In addition, their argument appears to assume that the availability of data in CRS's should be treated as the cause of inquiries from passengers and hence the source of increased costs. However, American's comments suggest that the publicity on flight delays has already caused consumers to ask for performance data from reservations agents. The same is likely true for travel agents. Such a trend can be expected to continue, even with a simple DOT disclosure rule, if customers know tht data is available from some source. The CRS rule may well provide the most efficient way for agents to obtain the information. Travel agents could more easily determine the relative performance levels of two flights by consulting the CRS primary display than by consulting a printed report published by DOT or a third party.

4. Regulation of Flight Display Algorithms

DOT is not at this time giving further consideration to adopting regulations governing schedule and availability display algorithms. In this connection, we note that at least one proposed alternative in this area, establishment of minimum elapsed times by the FAA, is outside the scope of the NPRM. With respect to the proposals listed in the NPRM, the CRS vendors recently agreed voluntarily to eliminate the elapsed time factor for nonstop flights from their display algorithms. This action may address many of the concerns raised in connection with the NPRM's proposal on algorithms. However, as noted above, there is a change that CRS algorithms may continue to create incentives for carriers to publish unrealistic schedules. We intend to monitor both the delay situation and vendors' algorithms closely, and will not hesitate to initiate action in this area if warranted.

VII. Baggage Handling Performance Reports

The Department is requiring that those air carriers subject to the schedule performance reporting requirements of this rule also file a monthly report with the Department disclosing the total number of scheduled service passengers enplaned on their domestic systems and the total number of reports on

mishandled baggage received over their domestic system. Mishandled baggage is defined to include all baggage reported as lost, delayed, damaged or pilfered. Carriers must report this information with the letter transmitting their schedule performance data tapes to the Department as specified in the Reporting Directive issued by the Office of Aviation Information Management attached as Appendix I. The Department will publish comparative baggage handling information as part of a monthly consumer report.

The Department's current regulations in 14 CFR Part 254 establish a minimum carrier liability limit ($1,250.00) for loss, damage or delay in the carriage of baggage in interstate and overseas air transportation and require carriers to provide notice of their limits to passengers. Minimum liability limits for foreign air transportation are set by the Warsaw Convention, and 14 CFR 221.176 provides for notice about these limits. The Department currently has no reporting requirements on mishandled baggage.

The NPRM requested comments on baggage handling performance disclosure in response to Continental's petition for rulemaking to require carriers to report data on, among other things, the number of customers whose baggage is improperly handled per 1,000 passengers enplaned systemwide and for each hub. The NPRM specifically asked whether consumers view problems with baggage service as significant enough to warrant regulatory action and whether dissemination of baggage handling data would be useful. The Department proposed to require carriers to file monthly baggage reports that include the total number of bags checked, and the percentage of bags either lost or delayed, compared to total bags checked. It asked questions on what information would be useful, how the information should be consolidated (by flight, hub), who should disseminate it, how it could be made comparative, and the costs of reporting the information.

A. Specific Questions

1. Is There a Need for Disclosure?

The Department believes that there is a need for consumers to have available comparative information on carriers' baggage handling performance in order to assist in making flight selection decisions; consumers clearly expressed this need in their comments. Reporting of these statistics also will provide benefits by giving carriers the incentive to redress their baggage handling problems and to reap the rewards for exemplary performance.

Comments: Several carriers, including signatories to ATA's intercarrier agreement, industry associations, civic and consumer organizations, and individuals favor disclosure of comparative performance statistics on lost/misdirected baggage, which they consider the most significant area of service competition after on-time performance.

RAA, America West and Midway oppose the disclosure of baggage statistics because they see no need for that information. In their view, any increase in baggage-handling problems is transitory, a result of integration difficulties following recent mergers. Midway believes that disclosure of this data would have anticompetitive effects.

Response: The Department believes that baggage handling problems exist irrespective of recent merger activity and that consumers interested in avoiding these problems will find comparative information useful. The fact that a carrier has merged, and is correcting a baggage problem, is not necessarily of concern to a customer whose baggage is mishandled. If Midway is correct, baggage handling performance reflected in the data should improve after merging air carriers have become fully integrated. The simple report that we are requiring will enable consumer comparison of carriers' general performance in this area.

2. Who Must Submit Data?

We are restricting the application of the baggage reporting requirement to the carriers required to file schedule performance reports.

Comments: Eastern believes that baggage handling data should be submitted by all air carriers. American argues that mandatory reports are necessary from all scheduled passenger service carriers. Other commenters did not address this issue.

Response: We agree that the reports must be mandatory to ensure that enough comparable information is received to be useful to consumers. However, we have decided to require that only large carriers report this information to reduce the reporting burden of the rule and to conform with its other reporting requirements. If this coverage does not prove to be satisfactory, we can extend the requirement later.

3. What Type of Comparative Data Must be Submitted?

Under ATA's voluntary intercarrier agreement, parties agreed to file monthly missing baggage information that would include each carrier's total number of enplaned passengers traveling between points in the fifty states, and the number of such passengers who arrived at their respective destinations without one or more pieces of their checked baggage and who filed a missing-baggage trace report.

Comments: In addition to the ATA and DOT proposals, commenters suggest other ways of reporting carriers' baggage handling performance. Northwest suggests that baggage handling should be reported as the number of passengers who arrived at their destination whose checked baggage did not arrive with them and who notified the air carrier of the loss. The New York Department of Consumer Affairs suggests that airlines should disclose the percentage of total checked bags lost or involuntarily delayed. Pan American notes that only information on the number of passengers filing a missing baggage trace report would be useful.

ARTA argues that simple statistical information is all this is necessary to provide consumers with information to compare their chances of experiencing baggage problems by carrier. Both American and Northwest assert that baggage data should be aggregated on a domestic systemwide basis, but Northwest is amenable to including the international sector. It believes, however, that requiring flight-by-flight information is not realistic because of the interline problem. Continental requests that baggage mishandling involving any handling by another carrier through interline service or through ramp handling agreements be excluded from the reported data. There is no effective way to assess blame and carriers' actions to shift blame may result in more lost baggage. For similar reasons, Eastern and Northwest also request that baggage handling problems involving another carrier should be excluded.

Response: We have decided not to require a baggage report on the ratio between the number of bags checked and the number of bags received intact, because it does not necessarily reveal the number of passengers who may be affected or what their experience is likely to be on a given carrier (one person may lose all five bags checked). Also, as Pan American points out, these data are not normally kept by carriers and would be costly to produce.

We agree with ARTA, American and Northwest that simple statistical data are all that is necessary. Figures on total enplaned passengers in the domestic

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system, exclusive of charters, and the total number of reports filed on mishandled baggage are normally kept and easily derived. A percentage derived from these two figures is useful to consumers as a general indicator of their chances of experiencing baggage handling problems with a particular carrier, without any need to develop a new report system or to substantially process the data. Requiring carriers to report total enplaned passengers and number of baggage mishandling reports on a domestic system basis involves less data manipulation than requiring data to be broken out by hub, airport, or type of baggage problem. Although data aggregated by hub, for example, would reveal to consumers that a particular carrier has more baggage problems at a certain hub, it could be much more burdensome to produce. Even restricting the data required to only checked baggage would make additional data manipulation necessary. Aggregation of data by carriers' domestic systems will reflect their individual baggage handling performance sufficiently for consumer comparison.

We agree with Eastern, Northwest and Continential that, if we were to require aggregation of data by flight, it would be difficult to assign reponsibility for mishandled baggage on interline flights or where a carrier contracts with another carrier for baggage handling. Carriers have less control over baggage service in those situations, which are the most likely to cause baggage problems.

Domestic system reporting will not completely resolve this problem. Requiring a carrier to report all reports on mishandled baggage it receives may still result in the inclusion of reports for mishandling caused by other carriers; however, claims that are the responsibility of that carrier similarly will be reported by other carriers. The information should even out so that the domestic system percentage provides consumers with a reliable indicator. This assumption is used by the carriers, themselves, in their standard industry interline agreement, which generally assigns responsibility to the final carrier on the interline trip to process any baggage claims regardless of fault.

We also recognize that the data on total mishandled baggage reports made will include more than those for lost or misdirected checked baggage. Carriers also receive reports on pilferage, damage and mishandling of carry-on baggage; consumers want their baggage delivered on time and intact. The use of total reports filed, including damage and pilferage reports and reports for carry-on baggage, results in a simpler report, with no need for the carriers to break out loss, delay or checked baggage figures. It also more accurately reflects all baggage mishandling problems likely to inconvenience passengers and of which they are entitled to be informed.

4. How Should the Information be Submitted or Disseminated?

We are requiring the carriers covered by this rule to submit their baggage handling information to the Department with the cover letter accompanying the schedule performance data tapes submitted to the Department each month as specified in the Reporting Directive attached as Appendix I. The Department will publish this information monthly as a rate of mishandled-baggage reports filed per 100,000 domestic passengers.

Comments: The NPRM and most commenters contemplate DOT collection and dissemination of baggage handling information on a monthly basis. ARTA supports DOT collection and dissemination of this information on a quarterly basis. The Competitive Enterprise Institute favors giving antitrust immunity to travel agents to collect and disseminate this information. ACAP believes that carriers' carry-on baggage policies should be described on the back of ticket jackets. The NYDCA suggested that baggage data be disclosed through the CRS's.

Response: We have chosen to require monthly reports because the information provided will be more recent and more useful to consumers. With quarterly reports, the information when finally published could be as much as four months out of date, which would be less useful to consumers. Also, this lag time would reduce the incentive for carriers to fix baggage problems, if they could not quickly benefit from improved statistics. ACAP's proposal to include carriers' carry-on baggage policies on the backs of ticket jackets is beyond the scope of this rulemaking. We are not requiring disclosure of this information through the CRS, because it would involve an unnecessary break-down of the data by flight and significant additional costs in using another space on the display screen. In any event, the Department will disseminate this information through a monthly consumer report. Travel agents are free to provide this information to consumers. We believe this action should be sufficient, but will continue to monitor the situation.

5. What Are the Costs of Disseminating This Information?

Comments: Eastern, ARTA and American believe that the cost of providing and disseminating simple statistical data on passenger enplanements and baggage reports will be low, because carriers already collect it. Pan American, on the other hand, claims that, if the NPRM's approach were adopted, it would need to develop a new reporting system to determine the percentage of baggage checked and lost, since it currently does not collect data on the total number of bags checked. This new system and the additional time needed at check-in to record the data would be expensive, according to Pan American. Markair, a small intra-Alaskan carrier, argues that the cost of collecting this data would be substantial. Midway asserts that the expected benefits do not justify the costs of imposing these reporting requirements. None of the commenters provided any figures.

Response: The costs of reporting baggage information will not be significant. We have estimated that it will cost the industry a total of $33,600 per year, based on $200 per month per carrier and 14 carriers. In response to Pan American's concerns, we are not requiring carriers to break out data on the total number of bags checked, something that many carriers do not now keep.

That, we agree, would be more costly than requiring disclosure of data already collected or readily ascertained by carriers. We agree with ARTA that, after experience with the rule, benefits can be quantified by comparing statistics over a period of time. To the extent that there is service competition, we should see a gradual improvement in baggage handling.

VIII. Performance Standards

The Department is not adopting a standard for on-time performance at this time, but will continue to review the necessity for such a standard and may address this issue in a subsequent rulemaking document. Under 14 CFR 399.81, the Department can take enforcement action against individual carriers for unrealistic scheduling practices and in fact, as noted above, investigations of delays at several airports are now underway and enforcement action may result.

IX. Other Service Quality Indicators

The Department also proposed to require disclosure of information on air carrier telephone response time, lost or misdirected baggage, denied boardings, misconnections and cabin amenities. With the exception of the baggage proposal, the Department at this time is not adopting disclosure rules on these

items. These issues will continue to be reviewed and may be addressed in a subsequent rulemaking.

We note that the Department currently has regulations governing domestic baggage liability and oversales (denied boardings). 14 CFR Part 250 requires extensive reporting of denied boarding information on a quarterly basis (RSPA Form 251), and the Department publishes this information quarterly.

X. Discount Fare Marketing Practices

The Department at this time will not adopt a rule governing discount fare marketing practices. This issue will continue to be reviewed and may be addressed through a subsequent rulemaking document.

XI. FAA Peak Hour Authority/FAA Authority To Require Airports To Impose Peak Hour Pricing

The Department also sought comments on two legislative efforts to impose peak hour pricing. These alternatives will continue to be considered, but will no longer be considered in the context of this rulemaking.

XII. Federal Trade Commission Authority

This alternative will continue to be reviewed, but will no longer be considered in the context of this rulemaking.

XIII. Non-Legislative Option: Peak Hour Pricing by Airports

This alternative will continue to be considered, but will no longer be considered in the context of this rulemaking.

Department Regulatory Policies and Procedures

The Department has considered the impacts of the final rule and proposals still under review and determined that they are not major within the meaning of Executive Order 12291. The final rule and the proposals are considered significant under DOT regulatory policies and procedures because of substantial public and Congressional interest and because they involve important Departmental policies. A regulatory evaluation has been prepared and placed in the rulemaking docket.

The Department has also considered the economic impact of this rule for the purposes of the Regulatory Flexibility Act. I certify that it will not have a significant economic impact on a substantial number of small entities. None of the affected certificated air carriers are small businesses within the meaning of the Act. The Department, in the NPRM, sought specific comments on the effect of any action on smaller airlines and asked how any impact could be lessened. This final rule does not require information to be filed with us by smaller air carriers, including those that RAA argues might be considered small businesses. Any other possible effects on small businesses (i.e. travel agents) may be an indirect result of this rule only, and thus the rule itself will not have a significant economic impact on these entities.

The Department has concluded that none of these proposals would represent a major federal action having a significant impact on the environment under the National Environmental Policy Act.

The final rule and some of the proposed alternatives still under consideration would impose information collection requirements that are subject to section 3504(h) of the Paperwork Reduction Act. We have submitted these requirements to the Office of Management and Budget for review and comment. The OMB approval number is 2106–0042.

Effective Date

Under section 553(d) of the Administrative Procedure Act, the Department finds good cause to make the rule effective immediately. In effect, this means that only the record keeping requirement will begin immediately. This requirement will not impose a burden on most of the carriers required to provide data to DOT by October 15, since 10 of the 14 now are providing data for 8 of the airports covered by this rule. The other requirements of the rule do not require action by the carriers until October 15 at the earliest, and thus making the rule effective immediately will not impose a significant burden on these carriers. In addition, requiring carriers to maintain data immediately will benefit consumers at the earliest possible time.

List of Subjects

14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents.

14 CFR Part 255

Advertising, Air carriers, Air transportation-foreign, Antitrust, Consumer protection, Essential air service, Travel agents.

Issued in Washington, DC, on September 2, 1987.

Elizabeth Dole,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends Title 14, Chapter II, Subchapters A and B of the Code of Federal Regulations as follows:

Part 234 is added to read as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

Sec.

234.1 Purpose.
234.2 Definitions.
234.3 Applicability.
234.4 Reporting of on-time performance.
234.5 Form of reports.
234.6 Baggage-handling statistics.
234.7 Voluntary reporting.
234.8 Calculation of on-time performance codes.
234.9 Reporting of on-time performance codes.
234.10 Voluntary disclosure of on-time performance codes.
234.11 Disclosure to consumers.
234.12 Waivers.
234.13 Sunset.

Authority: 49 U.S.C. 1302, 1324, 1374, 1377 and 1381; 5 U.S.C. 553(e) and 14 CFR 302.38.

OMB Control Number: The recordkeeping requirements contained in this part have been approved by the Office of Management and Budget under control number 2106–0042.

§ 234.1 Purpose.

The purpose of this part is to set forth required data that certain air carriers must submit to the Department and to computer reservations system vendors in computerized form, except as otherwise provided, so that information on air carriers' quality of service can be made available to consumers of air transportation. This part also requires that service quality data be disclosed directly to consumers.

§ 234.2 Definitions.

For the purpose of this part:

"Flight" means any nonstop scheduled passenger flight segment with a specific flight number scheduled to be operated pursuant to a published schedule within a specific origin-destination city pair, other than transborder or foreign air transportation. In the case of reporting to computer reservations system vendors, "flight" also means one-stop or multi-stop single plane scheduled operations that include any flight segments for which performance is reported pursuant to this part.

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"Late" or "late flight" means a flight that arrives at the gate 15 minutes or more after its published arrival time.

"Mechanical delay" and "mechanical cancellation" mean, respectively, the arrival delay (by 15 minutes or more) or cancellation of a flight scheduled to be operated with a particular aircraft on a particular day due to mechanical problems on that aircraft that are reported to the Federal Aviation Administration pursuant to 14 CFR 121.705 or 14 CFR 121.703. Mechanical delays will include delays in both the flight on which the mechanical problem was encountered and subsequent delayed flights performed by the same aircraft, or the aircraft substituted for it, on the same day, where the delay was attributable to the initial mechanical problem.

"Mishandled-Baggage Report" means a report filed with a carrier by or on behalf of a passenger that claims loss, delay, damage or pilferage of baggage.

"New Flight" means a flight added to a carrier's schedule to operate in a specific origin-destination city pair and not scheduled to depart within 30 minutes of any discontinued flight that was contained in the carrier's published schedules for the same city pair during the previous month.

"On-Time" means a flight that arrives less than 15 mintues after its published arrival time.

"On-Time Performance" means the percentage of scheduled operations of a specific flight that an air carrier operates on-time during a month.

"On-Time Performance Code" means a single character determined in accordance with the provisions of this part that reflects the monthly on-time performance of certain nonstop flights and single plane one-stop or multi-stop flights, the schedule and availability of which are listed in a computer reservation system ("CRS") regulated by 14 CFR Part 255.

"Reportable Flight" means any nonstop flight to or from any airport within the contiguous 48 states that accounted for at least 1 percent of domestic scheduled passenger enplanements in the previous calendar year, as reported in reports submitted to the Department pursuant to Part 241 of this Title. Qualifying airports will be specified periodically in reporting directives issued by the Office of Aviation Information Management.

"Reporting Carrier" means an air carrier certificated under section 401 of the Federal Aviation Act of 1958 that accounted for at least one percent of domestic scheduled passenger revenues in the 12 months ending March 31 of each year, as reported in reports submitted to the Department pursuant to Part 241 of this Title. Reporting carriers will be identified periodically in reporting directives issued by the Office of Aviation Information Management.

§ 234.3 Applicability.

This part applies to certain domestic scheduled passenger flights that are held out to the public by certificated air carriers that account for at least 1 percent of domestic scheduled passenger revenues. Certain provisions also apply to voluntary reporting to on-time performance by carriers.

§ 234.4 Reporting of On-Time Performance.

(a) Each reporting carrier shall file RSPA Form 234 "On Time Flight Performance Report" with the Department's Office of Aviation Information Management (OAIM), on a monthly basis, setting forth information for each of its reportable flights held out in the *Official Airline Guide*, in computer reservations systems, or other in schedule publications. The report shall be made in the form and manner set forth in reporting directives issued by the Director, OAIM, and shall contain the following information:

(1) Carrier and Flight Number.

(2) Origin and destination airport codes.

(3) Published OAG departure and arrival times for each scheduled operation of the flight.

(4) CRS scheduled arrival and departure time for each scheduled operation of the flight.

(5) Actual departure and arrival time for each operation of the flight.

(6) Date and day of week of scheduled flight operation.

(7) Scheduled elapsed time, according to CRS schedule.

(8) Actual elapsed time.

(9) Amount of departure delay, if any.

(10) Amount of arrival delay, if any.

(11) Amount of elapsed time difference, if any.

(b) A reporting carrier shall not report any of the information specified in paragraph (a) of this section for any scheduled operation that was late or cancelled due to a mechanical cancellation or mechanical delay.

(c) Actual arrival, departure and elapsed times shall be measured by the times at which the aircraft arrived at and departed from the gate or passenger loading area.

(d) The published arrival time and departure time of a flight shall be, respectively, the scheduled arrival and departure times in effect on the date of the scheduled operation of the flight, as shown in the most recent *Official Airline Guide*, and in computer reservations systems. Each carrier shall designate a single computer reservations system in addition to the *Official Airline Guide* as the sources of scheduled arrival time and departure time data in its reports to the Department and shall report the scheduled arrival times and departure times listed in those sources for each flight. Scheduled elapsed times, amount of departure and/or arrival delay, and elapsed time difference shall be calculated using the scheduled times shown in the designated CRS source.

§234.5 Form of Reports.

Except where otherwise noted, all reports required by this part shall be filed with the Department on ADP computer tape in the format specified in reporting directives issued by the Director, OAIM, within 15 days of the end of the month for which data are reported.

§234.6 Baggage-Handling Statistics.

Each reporting carrier shall report monthly to the Department on a domestic system basis, excluding charter flights, the total number of passengers enplaned systemwide, and the total number of mishandled-baggage reports filed with that carrier. The information shall be submitted to the Department within 15 days of the end of the month to which it applies and must be submitted with the transmittal letter accompanying the data for on-time performance.

§234.7 Voluntary reporting.

(a) In addition to the data for each reportable flight required to be reported by this part, a reporting carrier may report to DOT for every other nonstop domestic flight that it schedules, the reportable flight data specified in this part.

(b) Any air carrier that is not a reporting carrier may file the data specified in this part for every reportable flight that it schedules, or for every nonstop domestic flight that it schedules.

(c) Voluntary reports containing information not required to be filed (1) must be submitted in the same form and manner, and at the same time, as reports containing data required to be filed, and (2) must be accompanied by a written statement describing in detail the information that is being voluntarily submitted. A carrier that files a voluntary report must continue to do so for a period of not less than 12 consecutive months.

§234.8 Calculation of on-time performance codes.

(a) Each reporting carrier shall calculate an on-time performance code in accordance with this section and as provided in more detail in reporting directives issued by the Director, OAIM. The calculations shall be performed for each reportable flight. In addition, each reporting carrier shall assign an on-time performance code to each of its single plane one-stop or multi-stop flight, or portion thereof, that it holds out to the public through a CRS, the last segment of which is a reportable flight.

(b) The on-time performance code shall be calculated as follows:

(1) Based upon reportable flight data provided to the Department, calculate the percentage of on-time arrivals of each nonstop flight. Calculations shall not include flight operations affected by mechanical delays or mechanical cancellations for which data are not reported to the Department.

(2) Based upon the on-time performance percentage calculated in paragraph (b)(1) of this section, assign a single digit code to each flight that reflects the percentile of on-time performance achieved by the flight, as set forth in the following table:

ON TIME PERFORMANCE

	Percentage
Code:	
9	90–100
8	80–89.9
7	70–79.9
6	60–69.9
5	50–59.9
4	40–49.9
3	30–39.9
2	20–29.9
1	10–19.9
0	0–9.9

(3) For a one-stop or multi-stop flight, or portion thereof, listed in a CRS, the performance code for the nonstop flight segment arriving at the destination listed in the CRS shall be used.

(4) In the case of a new flight, carriers shall assign a performance code consisting of the letter "N." A flight that is not a new flight shall be assigned the performance code calculated for the flight that it replaces, even if the two flights do not have the same flight number.

(c) Carriers shall calculate on-time performance percentages and assign on-time performance codes on a monthly basis. This process shall be completed no later than the 15th day of each month, when the reports required by this part are due to the Department, and the codes shall reflect the previous month's operations.

§ 234.9 Reporting of on-time performance codes.

No later than the 15th day of each month, each reporting carrier shall deliver, or arrange to have delivered, to each system vendor, as defined in 14 CFR Part 255, the on-time performance codes required to be determined above. Carriers may report the codes by insuring that they are included in basic schedule tapes provided to CRS vendors or by providing a separate tape that will permit the CRS vendors to match the performance codes with basic schedule tapes.

§ 234.10 Voluntary disclosure of on-time performance codes.

(a) Any air carrier may determine, in accordance with the provisions of 14 CFR 234.8, the on-time performance codes for the flights for which it voluntarily provides flight information to the Department pursuant to 14 CFR 234.7.

(b) A carrier may supply these additional on-time performance codes to system vendors at the same time and in the same manner as the required disclosures are made to system vendors, provided that voluntary disclosures must continue for a period of not less than 12 consecutive months, and must be supplied either (1) for each of the carrier's reportable flights and each of its single plane one-stop or multi-stop flights, or portions thereof, that it holds out to the public through a CRS, the last segment of which is a reportable flight or (2) for each of the carrier's domestic flights.

§ 234.11 Disclosure to consumers.

During the course of reservations or ticketing discussions or transactions, or inquiries about flights, between a carrier's employees and the public, the carrier shall disclose upon reasonable request the on-time performance code for any flight that has been assigned a code pursuant to this part.

§ 234.12 Waivers.

Any air carrier may request a waiver from the reporting requirements of this part. Such a request, at the discretion of the Secretary, or his or her delegate, may be granted for good cause shown. The requesting party shall state the basis for such waiver.

§ 234.13 Sunset.

The provisions of this part shall terminate on December 31, 1990.

PART 255—CARRIER-OWNED COMPUTER RESERVATION SYSTEMS

1. The authority of Part 255 continues to read:

Authority: 49 U.S.C. 1302, 1324, 1374, 1381, 1389, and 1502.

2. Part 255 is amended by adding a definition of "on-time performance code" to § 255.3 and a new paragraph (e) to § 255.4, as follows:

§ 255.3 Definitions.

* * * * *

"On-time performance code" means a single-character code supplied by a carrier to the vendor in accordance with the provisions of 14 CFR Part 234 that reflects the monthly on-time performance history of a non-stop flight or one-stop or multi-stop single plane operation held out by the carrier in a CRS.

* * * * *

§ 255.4 Display of information.

* * * * *

(e) System vendors shall use or display information concerning on-time performance of flights only in accordance with the provisions of this part.

(1) Within 5 days after receiving the information from participating carriers, each vendor shall include in all primary schedule and availability displays the on-time performance code for each nonstop flight segment and one-stop or multi-stop single plane flight, for which a participating carrier provides a code.

(2) A system vendor shall not use on-time flight performance as a ranking factor in ordering information contained in a primary display.

(3) Except as otherwise specifically provided in this part, a system vendor shall not provide any information about on-time performance in a CRS on any air carrier or foreign air carrier unless that information is based on data reported to the Department. Any such information shall be displayed in an unbiased fashion and in the same manner for all participating carriers that report to the Department.

(Approved by the Office of Management and Budget under control number 2106–0042.)

Appendix I—Reporting Directive—Office of Aviation Information Management, RSPA

[Editorial Note.—This appendix will not appear in the Code of Federal Regulations.]

I. Introduction
II. Applicability
III. Definitions
IV. Data Requirements for DOT On-Time Disclosure Reports
V. Report Format and Instructions for On-Time Disclosure Reports and Mishandled-Baggage Reports
VI. Submission of Reports

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VII. Record Retention
VIII. Data Requirements and Instuctions for CRS Disclosure

I. Introduction

Part 234 of the Department's Regulations, "Airline Service Quality Performance Reports," requires certain U.S. air carriers to submit scheduled flight performance data and mishandled-baggage information to the Department, and to provide certain on-time performance codes to CRS vendors. These data will be used to monitor each carrier's on-time performance and baggage handling, and to provide information to consumers. The scheduled flight performance data will be filed on RSPA Form 234, "On-Time Flight Performance Report." The mishandled-baggage information will be submitted as a one-page addendum to Form 234 with the required certification and transmittal letter. The on-time performance codes will not be filed with the Department, but shall be computed and supplied to CRS vendors in accordance with the procedures set forth in §§ 234.8 and 234.9 and in this reporting directive.

II. Applicability

1. Each reporting air carrier providing scheduled domestic passenger operations at a reportable airport shall file RSPA Form 234, "On-Time Flight Performance Report," if its share of the industry's total domestic scheduled-service passenger revenues exceeds one percent, based on Form 41 data for the 12 months ended March 31, 1987.

2. The reporting air carriers are Alaska Airlines, American Airlines, America West Airlines, Continental Airlines, Delta Air Lines, Eastern Air Lines, Northwest Airlines, Pacific Southwest Airlines, Pan American World Airways, Piedmont Aviation, Southwest Airlines, Trans World Airlines, USAir, and United Air Lines.

3. The reportable airports with respect to which data must be submitted to the Department are those airports located within the 48 contiguous states enplaning one percent or more of the industry's domestic scheduled-service passengers, as reported on Form 41, Schedule T–3(a), and summarized in the publication *Airport Activity Statistics of Certificated Air Carriers for the 12 Months Ended December 31, 1986 (Preliminary)*. The 27 reportable airports are:

Atlanta, Hartfield Intl.	ATL
Boston, Logan Intl.	BOS
Charlotte, Douglas	CLT
Chicago, O'Hare	ORD
Dallas-Ft. Worth Intl.	DFW
Denver, Stapleton Intl.	DEN
Detroit, Metro Wayne Cnty.	DTW
Houston Intercontinental	IAH
Los Angeles International	LAX
Las Vegas, McCarran Intl.	LAS
Memphis International	MEM
Miami International	MIA
Minneapolis-St.Paul Intl.	MSP
Newark International	EWR
New York, LaGuardia	LGA
New York, JFK Intl.	JFK
Orlando Intl.	MCO
Phoenix, Sky Harbor Intl.	PHX
Pittsburgh, Greater Intl.	PIT
Philadelphia Intl.	PHL
San Francisco Intl.	SFO
St. Louis, Lambert	STL
Seattle-Tacoma Intl.	SEA
Salt Lake City Intl.	SLC
San Diego Intl., Lindbergh Fld.	SAN
Tampa International	TPA
Washington, National	DCA

4. The reportable flight operations for which data must be submitted to the Department are all scheduled nonstop domestic passenger operations by a reporting air carrier to or from any reportable airport, except that reporting carriers shall not submit data to the Department for any scheduled flight operation that was delayed or cancelled due to a mechanical delay or mechanical cancellation as defined in § 234.2 of the Department's Regulations.

5. In addition to the required data for each reportable flight which must be submitted to the Department, a reporting carrier may also submit the required data for every other nonstop domestic passenger flight it holds out to the public pursuant to a published schedule. In addition, any carrier not included in paragraph II.2. of this reporting directive may voluntarily become a reporting carrier and submit Form 234 for its reportable flights or for every nonstop domestic passenger flight it holds out to the public pursuant to a published schedule, provided that the Director, Office of Aviation Information Management (OAIM), is advised beforehand. Such voluntary data must be submitted for a minimum of 12 consective months. The voluntary submissions must meet the exact reporting specifications set forth in this reporting directive. Volunteering carriers that wish to discontinue reporting after one year must advise the Director, OAIM, a minimum of 30 days before discontinuance, so that the necessary changes can be made to the Department's data programs.

6. Changes in reporting air carriers and reportable airports will be made as necessary by the Director, OAIM, under authority delegated in § 385.27 of the Department's Regulations.

III. Definitions

Definitions used in this directive include those in § 234.1 as well as the following:

1. "CRS"means a "system" as defined in § 255.3 of the Department's Regulations.

2. "Domestic operation" means a flight operation within or between the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Transborder operations are not included.

3. "Flight," for purposes of the data to be reported to the Department, means one or more scheduled nonstop operations identified by a specific flight number in conjunction with a specific origin-destination city-pair designation; e.g., flight 102 DCA–ATL–MIA includes two separate flights (DCA–ATL, ATL–MIA).

4. "Flight," for purposes of CRS disclosure, means nonstop operations as defined above, plus scheduled one-stop and multi-stop operations identified by a specific flight number in conjunction with a specific origin-designation city-pair designation; e.g., flight 102 DCA–ATL–MIA includes three separate flights for purposes of CRS disclosure (DCA–ATL, ATL–MIA, DCA–MIA).

5. "Flight operation" means a specific operation of a given flight on a given day; e.g., if flight 102 DCA–ATL operated daily, it had 31 flight operations in July.

IV. Data Requirements for DOT On-Time Disclosure Reports

1. Each reporting air carrier shall file Form 234 for each calendar month beginning with the month of September 1987. Each report shall include all nonstop domestic passenger scheduled flight operations by the reporting carrier that serve one or more of the reportable airports except operations that were delayed or cancelled because of a mechanical problem as defined in § 234.2.

2. For each nonstop flight operation serving a reportable airport, the following data elements shall be reported:

A. Carrier (Two Letter Code)
B. Flight Number
C. Departure Airport (Three Letter Code)
D. Arrival Airport (Three Letter Code)
E. Date of this Flight Operation (Year/Month/Day)
F. Day of Week of this Flight Operation (Monday = 1, . . . Sunday = 7)
G. Scheduled Departure Time as Shown in the Official Airline Guide (OAG) Pursuant to § 234.4(d)

H. Scheduled Departure Time as Shown in the CRS Selected by the Carrier as Its Data Source Pursuant to § 234.4(d)
I. Gate Departure Time (Actual) in Local Time
J. Scheduled Arrival Time as Shown in OAG
K. Scheduled Arrival Time as Shown in CRS
L. Gate Arrival Time (Actual) in Local Time
M. Difference in Minutes Between OAG and CRS Scheduled Departure Time: G minus H
N. Difference in Minutes Between OAG and CRS Scheduled Arrival Time: J minus K
O. Scheduled Elapsed Time Per CRS in Minutes: K minus H
P. Actual Gate to Gate Time in Minutes: L minus I
Q. Departure Delay (Difference in Minutes Between Actual Departure Time and CRS Scheduled Departure Time): I minus H
R. Arrival Delay (Difference in Minutes Between Actual Arrival Time and CRS Scheduled Arrival Time): L minus K
S. Elapsed Time Difference (Difference in Minutes Between Actual Elapsed Time and CRS Scheduled Elapsed Time): P minus O

3. The data format for the elements listed in paragraph 2 above shall comply exactly with the flight record field specifications set forth in Section V of this reporting directive.

4. All scheduled and actual arrival and departure times shall be reported in local time using a 24 hour clock; e.g. 3:15 p.m. shall be 1515. In using local time, the reporting carrier must adjust for time zone differences in computing data elements O, P, and S.

5. Minutes shall be reported in whole minutes; e.g., two hours = 120.

6. Flight operations that begin and end in different months shall be reported in the month in which they begin.

7. Extra section flight shall not be reported.

8. Flight cancellation information (other than mechanical cancellations as defined in § 234.2) shall be incorporated in the appropriate flight record for the cancelled flight operations by entering four zeros in data field I (Gate Departure Time) and four zeros in data field L (Gate Arrival Time).

9. Information on flights which operated but were diverted to an alternate destination shall be incorporated in the appropriate flight record for the diverted flight operation by entering the actual departure time in data field I (Gate Departure Time), and four zeros in data field L (Gate Arrival Time).

10. All numeric fields for which data are unavailable shall be zero-filled.

11. Any data field resulting from calculations involving such zero-filled fields shall also be zero-filled.

12. For data fields Q, R, and S, use positive numbers to indicate time in minutes for departure/arrival/elapsed time delays. Use negative numbers to indicate time in minutes for departures, arrivals ahead of schedule and elapsed times less than scheduled.

13. Fields M, N, Q, R, and S, which may contain either a positive or a negative value, should indicate this attribute with the appropriate hexadecimal characters in the zone portion of the unit's position in the field, as follows:

For positive values: Use the hexadecimal character "C" (bit configuration 1100). Example: Positive 23 is coded as: FO FO F2 C3.

For negative values: Use the hexadecimal character "D" (bit configuration 1101). Example: Negative 138 is coded as: FO F1 F3 D8.

If the field has a zero value, code it as FO FO FO FO.

14. All numeric fields shall be right justified, with leading zeros.

V. Report Format and Instructions for On-Time Disclosure Reports and Mishandled-Baggage Reports

1. *Transmittal Letter.* A transmittal letter shall accompany each carrier's data submission. The transmittal letter must identify the carrier and the month and year for which the data are being submitted, and contain the following information:

(A) A certification statement signed by an appropriate official of the reporting carrier. The certification statement shall read:

> I, the undersigned (Title) of the above-named air carrier, certify that the attached ADP tape of RSPA Form 234, "On-Time Flight Performance Report," and the attached Mishandled-Baggage Report, are to the best of my knowledge and belief, true, correct and complete reports for the period stated.
> Date: _____
> Signature: _____
> Name (Please Type or Print): _____

(B) the name(s) and telephone number(s) of the air carrier's staff who can be contacted to resolve problems regarding both carrier data and ADP technical matters.

(C) for control purposes, a statement indicating the total number of flight operations and unique flight numbers in the Form 234 ADP tape submission.

(D) a mailing address for tape returns.

(E) for the initial submission, a description of the data submitted, specifying whether the tape includes data only for the reportable airports or for all domestic scheduled nonstop flight operations.

(F) for the initial submission and for subsequent changes, a statement identifying the sources of the scheduled arrival and departure times used in the report: (1) Official Airline Guide in effect as of (date) ; and (2) the computer reservation system used for reporting purposes, pursuant to § 234.4(d).

2. *Mishandled-Baggage Report.* The reporting carrier's Mishandled-Baggage Report shall be attached on a separate sheet of paper to the transmittal letter. This report shall show the mishandled-baggage information for the reporting month and include the following items:

Name of Carrier _____
Month and Year of the Data Included in the Report _____
Number of Domestic Scheduled Passengers Enplaned _____
Number of Mishandled-Baggage Reports Filed with Carrier _____

3. *ADP Tape Requirements.* (A) Form 234, "On-Time Flight Performance Report," shall be filed on ADP magnetic tape. The data will be reported without summarization, with a separate flight record for each reportable flight operation. Flight records shall be sequenced by date of flight (field E) within market (fields C and D), within flight number (field B).

(B) The format for the ADP magnetic tape shall be:

(1) Magnetic tape specifications.

IBM compatible 9-track EBCDIC recording tape.

Recording density of 6250 or 1600 bpi.

Record Length = 71, Block size = 14200.

(2) External tape lable information.

- Carrier name.
- Month and year of data reported.
- File identification.
- Name and Phone Number of ADP Contact.

(3) The order of recorded information.

- Volume label.
- Header labels.
- Data records.
- Trailer labels.

(4) Volume, header, and trailer label formats.

Use standard IBM label formats.

The file identifier field of the header labels shall be ON TIME SYSTEM XX, where XX is the carrier's two letter code.

(5) Magnetic tape nonstop segment record layout.

FIELD SPECIFICATIONS FOR FORM 234, DOT ON-TIME DISCLOSURE REPORTS

Field and description	Type	Location	Length	Remarks
A—Carrier code	Alpha	1-2	2	
B—Flight number	Num	3-6	4	
C—Origin airport code	Alpha	7-9	3	
D—Destination airport code	Alpha	10-12	3	
E—Date of flight operation	Num	13-18	6	Format: yymmdd.
F—Day of the week of this flight operation	Num	19	1	Mon = 1, Sun = 7.
G—Scheduled departure time per OAG	Num	20-23	4	Local time, 24-hr clock.
H—Scheduled departure time per CRS	Num	24-27	4	Local time, 24-hr clock
I—Gate departure time (actual)	Num	28-31	4	Local time, 24-hr clock
J—Scheduled arrival time per OAG	Num	32-35	4	Local time, 24-hr clock
K—Scheduled arrival time per CRS	Num	36-39	4	Local time, 24-hr clock
L—Gate arrival time (actual)	Num	40-43	4	Local time, 24-hr clock
M—Difference between OAG and CRS sched. departure time	Num	44-47	4	In minutes (2 hrs = 120)
N—Difference between OAG and CRS sched. arrival time	Num	48-51	4	In minutes
O—Scheduled elapsed time per CRS	Num	52-55	4	In minutes.
P—Actual gate to gate time	Num	56-59	4	In minutes.
Q—Departure delay time (actual minus CRS)	Num	60-63	4	In minutes.
R—Arrival delay time (actual minus CRS)	Num	64-67	4	In minutes.
S—Elapsed time difference (actual minus CRS)	Num	68-71	4	In minutes.

(6) Standards. It is the policy of DOT to support the American National Standards Institute and the Federal Standards activity in all data processing and telecommunication matters. It is our intention that all specifications in this reporting directive are in compliance with standards promulgated by these organizations.

VI. Submission of Reports

1. *Address.* The address for the Form 234 data submission and the Mishandled-Baggage Report is:

Office of Aviation Information Management, DAI–1, Room 4125, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590

2. *Due Dates.* The due date for Form 234 and the Mishandled-Baggage Report is the 15th day of the month following that to which the data are applicable. If the 15th day falls on a weekend or Federal holiday, the submission will be due at the beginning of the next work day.

3. *Enforcement.* Penalties for late filing or noncompliance with these reporting requirements will be assessed in accordance with sections 901 and 902 of the Federal Aviation Act of 1958, as amended.

4. *Missing or Incomplete Records.* Any carrier subject to this directive which does not file the required data for any period, or files incomplete data, shall submit a sworn statement of an officer that the carrier was unable to provide the data because it did not have and could not obtain the necessary records. That statement, as well as the veracity of the information and data submitted, will be subject to 18 U.S.C. 1001, regarding criminal penalties for false statements made to a government agency. The statement shall be filed with the Director, Office of Aviation Information Management, at the address in paragraph 1 above.

5. *Special Circumstances.* Requests for waivers, exceptions, extensions or other considerations shall be submitted in written form to the Director, Office of Aviation Information Management, at the address in paragraph 1 above.

6. *Return of Tapes.* ADP tapes will be returned to the carrier after the data have been reviewed and any problems resolved.

VII. Record Retention

Form 234 and the Mishandled-Baggage Report shall be considered statistical reports by the Department. The record retention requirements for statistical reports are governed by Part 249 "Preservation of Air Carrier Records" of the Department's Regulations. Specifically, § 249.20–6 requires the information supporting a statistical report to be maintained by the carrier for 3 years.

VIII. Data Requirements and Instructions for CRS Disclosure

As required by § 234.8 of the Department's Regulations, each reporting carrier providing data pursuant to this directive shall calculate a on-time performance code for each reportable (nonstop) flight included in its monthly data submission to the Department, and for each one-stop or multi-stop flight that includes a reportable flight segment as specified below. That calculation shall be carried out as follows:

1. Each reporting carrier shall compute the arrival delay in minutes for each reported (nonstop) flight operation in its monthly data submission by subtracting the scheduled arrival time for each flight operation per its CRS records (data field K) from the actual gate arrival time (data field L).

2. Using the data derived from the computation in paragraph 1 above, each reporting carrier shall calculate, for each nonstop flight in its data submission, the percentage of that flight's operations during the month that were on time (i.e., arrived within 15 minutes of the CRS scheduled arrival time). The calculation shall be performed by dividing the number of reported operations of each flight that arrived less than 15 minutes after the scheduled arrival time, by the total number of reported operations of that flight during the month.

3. For purposes of this calculation, any flight operation that was delayed or cancelled due to a mechanical delay or mechanical cancellation as defined in § 234.2, shall be excluded from both the numerator and the denominator. All cancelled and diverted flight operations not attributable to mechanical problems as defined in § 234.2 shall be included in both the numerator and the denominator and counted as late flights.

4. Each reporting carrier shall convert the percentage derived from the computations in paragraphs 2 and 3 into a one digit CRS on-time performance code for each reportable flight operated during the month, as follows:

Percent of operations of the flight that were on-time	*CRS on-time performance code*
90 to 100.0	9
80 to 89.9	8
70 to 79.9	7
60 to 69.9	6
50 to 59.9	5
40 to 49.9	4
30 to 39.9	3
20 to 29.9	2
10 to 19.9	1
0 to 9.9	0

5. New flights as defined in § 234.2 for which no on-time percentage is

available yet shall be designated with the CRS data code "N" (no record).

6. Each reporting carrier shall include the appropriate one digit CRS code (0 through 9, or "N") as a standard data element in each flight schedule it provides to the OAG and/or any CRS vendor(s), for every reportable flight.

7. In addition, using the procedure illustrated in this paragraph, each reporting carrier shall include the appropriate one digit CRS code (0 through 9, or "N") as a standard data element in each flight schedule it provides to the OAG and/or any CRS vendor(s), for every one-stop or multi-stop flight, or portion thereof, that includes a reportable flight as a final flight segment:

Examples:

If flight 102 operates EWR–DCA–ATL–MIA, provide one-time performance codes for:

102 EWR–DCA (calculated per paragraphs 1–5 above)
102 DCA–ATL (calculated per paragraphs 1–5 above)
102 ATL–MIA (calculated per paragraphs 1–5 above)
102 EWR–ATL: assign 102 DCA–ATL performance code
102 EWR–MIA: assign 102 ATL–MIA performance code
102 DCA–MIA: assign 102 ATL–MIA performance code

If flight 103 operates BUF–SYR–EWR–DCA, provide on-time performance codes for:

103 SYR–EWR (calculated per paragraphs 1–5 above)
103 EWR–DCA (calculated per paragraphs 1–5 above)
103 BUF–EWR: assign 103 SYR–EWR performance code
103 BUF–DCA: assign 103 EWR–DCA performance code
103 SYR–DCA: assign 103 EWR–DCA performance code

If flight 103 operates MKE–DTW–CMH–LEX, provide on-time performance codes for:

104 MKE–DTW (calculated per paragraphs 1–5 above)
104 DTW–CMH (calculated per paragraphs 1–5 above)
104 MKE–CMH: assign 104 DTW–CMH performance code

8. A flight that is not a new flight shall be assigned the on-time performance code calculated for the flight that it replaces, even if the two flights do not have the same flight number.

9. No later than the 15th day of each month, each reporting carrier shall deliver or arrange to have delivered in its CRS vendor(s), updated on-time performance codes. If a carrier relies on a third party to supply such flight information to CRS vendor(s), the carriers shall provide their flight information, including the appropriate CRS on-time performance codes, at the same time that the carrier submits its monthly flight data to the Department.

10. The calculation and assignment of on-time performance codes for flights other than reportable flights, as permitted in § 234.10, shall follow the procedures set forth above. Carriers are required to perform those calculations only for reportable flights, and for one-stop or multi-stop flights, or portions thereof, that include a reportable flight as a final flight segment, but may do so for all flights at their option.

11. No carrier may provide on-time performance codes to the OAG or to any CRS vendor(s) for any flight during any month unless the carrier also provides the required flight data for the month to the Department as specified in Part 234 and in this reporting directive.

[FR Doc. 87–20527 Filed 9–3–87; 4:35 pm]
BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 234

[Docket No. 44827 Amdt. No. 234–2]

Airline Service Quality Performance

AGENCY: Office of the Secretary, DOT.

ACTION: Amendment to final rule.

SUMMARY: Under a rule issued September 2, 1987, and published elsewhere today in this edition of the **Federal Register** the Department of Transportation (DOT or Department) required 14 air carriers to submit certain flight data to the Department for public dissemination, and to vendors of computerized reservations systems (CRS) for incorporation into their CRS system displays. The final rule provided a specific termination date of December 31, 1990. However, this amendment deletes that termination date.

EFFECTIVE DATE: The amendment to the final rule is effective September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Sam Whitehorn or Gwyneth Radloff, at 400 7th St., SW., Washington, DC 20590 or by phone at (202) 366–9307; Barry Molar, at the above address or by phone at (202) 366–9285; Shelton Jackson, at the above address or by phone at (202) 366–5397; or Robin Caldwell, at the above address or by phone at (202) 366–9059.

I. Supplementary Information

On September 2, 1987, the Department issued a final rule that required 14 air carriers to submit certain data to the Department and to CRS vendors. In addition, these carriers were required to provide on-time performance data to consumers, upon request to the carriers' ticketing agents.

The September 2 final rule affected two parts of the Code of Federal Regulations, Part 234 and Part 255. It added Part 234 to require carriers to provide certain data to the Department, consumers and to computerized reservations systems vendors. It also had a specific termination date of December 31, 1990. Thus, after that date carriers would no longer be required to report data to the Department or to a CRS vendor under Part 255. This automatic termination date should not have been included in the final rule. Therefore, by this amendment, Part 234 is amended to reflect that Part 234 will not have a termination date. However, the Department will review the implementation of this rule 2 years after its effective date.

Because the September 2 final rule was effective upon publication, to eliminate any confusion, this amendment is also effective upon publication.

List of Subjects in 14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents.

Issued in Washington, DC on September 3, 1987.

Jim Burnley,

Acting Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends Title 14, Chapter II, Subchapter A of the Code of Federal Regulations as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

1. The authority for Part 234 continues to read as follows:

Authority: 49 U.S.C. 1302, 1324, 1374, 1377 and 1381; 5 U.S.C. § 553(e) and 14 CFR 302.38

§ 234.13 [Removed]

2. Part 234 is further amended by removing § 234.13.

[FR Doc. 87–20680 Filed 9–3–87; 4:35 pm]
BILLING CODE 4910–62–M

VOL
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ISS
1
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Federal Register

Wednesday
September 9, 1987

Part IV

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Deposit of Biological Materials for Patent Purposes; Advance Notice of Proposed Rulemaking

VOL 52 ISS 174 SE 9 1987 UMI

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 70635-7135]

Deposit of Biological Materials for Patent Purposes

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advanced notice of proposed rulemaking sets forth proposed rules and guidelines that the Patent and Trademark Office (PTO) is considering to govern the deposit of biological materials for patent purposes.

Every patent must contain a written description of the invention adequate to instruct a person skilled in the art to which the invention pertains how to make and use the invention. In certain instances, such as with some biotechnological inventions, the written description of the invention may not in itself be adequate to permit reproduction of the invention. In these cases, the written description must be supplemented by a deposit of the biological material which constitutes the invention or on which the invention depends if the biological material is not otherwise known and readily available to those skilled in the art. The deposited material becomes unconditionally available to the public at the time the patent is granted.

The rules being considered for proposal by the PTO prescribe the conditions under which a deposit must be made, the kinds of materials that may be deposited, the type of depository which is acceptable to the Office, the time for making an original deposit, the procedures and obligations applicable to the making and maintaining of a deposit and its possible replacement, the term of a deposit and other matters relating to the deposit of a biological material. In general, the rules being considered by the PTO would continue and clarify both long-standing practices of the Patent and Trademark Office and judicially developed principles of patent law. The explanations associated with the rules that are ultimately adopted along with the substantive content of the comments and responses will be incorporated into a set of guidelines that will be published in the Manual of Patent Examining Procedure.

In response to a draft policy statement on the deposit of biological materials for patent purposes, which was circulated among interested bar and industry groups and published in the BNA-Patent, Trademark and Copyright Journal on May 22, 1986, the PTO received twenty five (25) written comments directed to that draft statement. This advance notice addresses the comments received. Interested persons are invited to comment on the rules being considered for proposal. A proposed rulemaking could be made as early as January 1988. A hearing could be held as early as March 1988.

DATE: Comments must be received on or before November 30, 1987 to insure consideration.

ADDRESS: Address written comments to: Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

Mark to the attention of Stanley D. Schlosser (703) 557-3065. All comments received will be publicly available for inspection in the PTO in room 11C28, Crystal Plaza Building 3 (2021 Jefferson Davis Highway, Arlington, Virginia).

FOR FURTHER INFORMATION CONTACT: Mr. Stanley D. Schlosser by telephone at (703) 557-3065.

SUPPLEMENTARY INFORMATION: An applicant for a patent involving biological material must meet the same requirements for disclosing the invention as apply to other kinds of technology. These requirements are set forth in the first paragraph of § 112 of the patent law (Title 35, United States Code). The invention must be described in such full, clear, concise and exact terms as to enable a person skilled in the relevant technology to make and use the invention. The best mode contemplated by the inventor for carrying out the invention must also be disclosed. The statutory requirements for claiming inventions set forth in the second paragraph of 35 U.S.C. 112 also apply to inventions involving biological material. That is, claims must particularly point out and distinctly claim that which applicants for patent regard as their invention.

Where the invention involves a biological material and words alone are not sufficient to describe the invention adequately to meet the requirements of 35 U.S.C. 112, the required biological material completing the written description must either already be known and readily available and likely to continue to be available or be deposited into a suitable depository. Samples of the deposited material must be publicly and unconditionally available upon issuance of the patent. The deposit will be considered part of the patent disclosure and taken into account in determining the scope of the invention and related questions of infringement. As indicated above, the requirement for making a deposit only applies in situations where the biological material is essential to a complete disclosure and either is not known and readily available to the public, or cannot be readily produced from publicly available material according to the information contained in the patent.

A new chapter of rules of practice devoted exclusively to biological inventions, entitled "Deposit of Biological Materials for Patent Purposes", would be added, beginning with proposed new rule 1.200. This new chapter would specifically incorporate into patent practice judicially developed principles applicable to the deposit of biological materials and would be consistent with the duties and responsibilities of the United States as a signatory country to the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. It must be recognized, however, that a comprehensive body of patent law has not yet been developed by the courts dealing with the treatment of inventions relating to biological material. In situations where the courts have not provided specific guidance, appropriate rules and procedures are extracted or implied as far as possible from available decisions and existing practices.

The rules being considered for proposal are intended to apply to patent rights pursued under section 101 of the patent law (Title 35, United States Code). Patent applications filed under the Plant Patent Act (35 U.S.C. 161-164) would be unaffected by this advanced notice. However, comments are solicited on the question of whether the Office should consider requiring a deposit of plants in appropriate circumstances where it is clear that a deposit is possible and is necessary to complete the description of an invention under 35 U.S.C. 162, first paragraph.

New rule 1.200 would be proposed to define the nature of biological material that falls within the scope of the rules. The definition is not intended to provide an exhaustive list of materials which may be deposited in accordance with these procedures. Rather, the need for a deposit and the types of material which must be deposited will be developed through experience and judicial decisions. Meanwhile, some guidelines can be provided.

First, biological material includes material that is capable of self-replication, either directly or after insertion into a host. Assuming the continued viability of the samples

deposited, this should provide a reproducible supply of the biological material for the term of the deposit.

Chemical compounds, no matter how important or defined their biological activity, are not regarded as biological material within the scope of these regulations. Chemical compounds are capable of description at least through the identification of starting materials and explanation of appropriate procedures used in making the compounds. It must not require undue experimentation in order to make or use the chemical compound from the written description in the patent application. Thus, materials such as proteins, enzymes, or other complex organic materials need not be deposited where the written description alone is adequate to enable those skilled in the art to make and use the claimed invention.

Plant material must be deposited when the patent application is filed outside the Plant Patent Act if needed to meet the requirements of 35 U.S.C. 112. As with other biological material, the deposit of plant material together with the written specification must enable those skilled in the art to make and use the claimed invention. Thus, if a plant itself is claimed, deposit of plant cells can be accepted only if the deposited cells will develop into the plant for which a patent is sought through the exercise of procedures either known in the art or taught in the application disclosure. Seeds may be deposited, but must be deposited in sufficient quantity to insure an adequate and timely supply once a patent is granted. The PTO solicits comments on the setting of an appropriate minimum number of seeds to ensure availability of the seed through the enforceable life of the patent. The replacement provisions of proposed rule 1.204 would also apply to replenishing the supply of seeds but may require special provisions because of the time required to provide new seeds—e.g. the replacement provision could be coupled with a terminal disclaimer provision for appropriate reasons. If a hybrid variety is claimed, the PTO will take a position that applicant must deposit the parent lines of the hybrid variety unless applicant is able to establish that propagation of the variety can be achieved by micropropagation or other techniques from the hybridized seed or plants grown from such seed. In the latter case, the deposit of the hybrid seed itself would make an adequate deposit.

While the proposed rules under consideration would be applicable to multicellular living organisms other than plants, including animals, it is anticipated that inventions relating to the development of animals having new and otherwise patentable characteristics will rely on the identification and description of a known and readily available animal that will be treated in a reproducible process to obtain the new animal variety. The PTO is presently not aware of any organization that is willing and able to undertake the responsibilities of a suitable depository for live animals.

Rule 1.201 would be proposed to provide an operative definition of when a deposit is required and also define when a biological material would be considered to be known and readily available to the public so that a separate deposit would not be required. The third paragraph of this rule would provide that there is no presumption that a specific biological material is required for the practice of an invention simply because it is mentioned in an application disclosure. The need to make a deposit of a biological material in accordance with these rules is necessitated only where the biological material is essential to meet one or more of the requirements of 35 U.S.C. 112 and is not known and readily available and cannot be obtained through procedures known in the art or described in the application from known and readily available materials.

If a biological material is known and readily available at the time the patent is granted, and there is no reasonable basis to believe that the biological material will cease to be available during the life of the patent, no requirement for a separate deposit would be made.

While it is not possible to list all circumstances under which a biological material may be considered to be known and readily available to the public, it is clear that the written description in the specification should be sufficient to allow one of ordinary skill in the art to identify and to obtain the known and readily available material. The present commercial availability of the biological material through normal commercial suppliers, particularly suppliers not under the control of those relying on the availability of the biological material, would make the material known and readily available. The mere fact that the biological material is commercially available only through the patent holder or the patent holder's agents or assigns shall not by itself justify a finding of non-availability, absent a reason to believe that access to the biological material would later be improperly restricted. Since the public has a continuing interest in the availability of information and materials necessary to make and use an invention claimed in a patent, regardless of the patent holder's interest, actual distribution of the biological matter in the marketplace may be required if commercial availability is to be relied on to establish that a specific biological material is known and readily available to the public.

Evidence that a biological material is known and readily available may also take the form of a reference in printed publications or a declaration of accessibility by those working in the field to which the invention relates which establishes wide distribution and ready availability of the biological material. The probative value of this type of evidence will depend on whether the evidence establishes that the biological materials are known and accessible without restriction to those who desire to obtain and test the biological material.

Evidence that a biological material is known and readily available may take the form of a statement showing that it is readily identifiable and available in nature in useful form or that it is available in nature coupled with the existence of a reliable screening test or procedure defined in the specification disclosure or known to those skilled in the art that could be used to isolate the required biological material with reasonable predictability from an identified genus of biological material. See *Tabuchi v. Nubel*, 194 USPQ 521 (CCPA 1977). A deposit made of a biological material that was known and accessible without restriction to those who desired to obtain and test the biological material would also satisfy the definition of being known and readily available to the public. However, since a mere reference to a biological material deposit in a patent would not necessarily mean that it was accessible without restriction to the public the burden would be on the applicant to establish its ready availability without restriction as through a statement from the depository.

New rule 1.202 would be proposed to define an acceptable depository for the deposit of biological materials for patent purposes for applications before the United States Patent and Trademark Office. This rule states that a deposit may be made either in an International Depositary Authority (IDA) as established under the Budapest Treaty or a depository recognized to be suitable by the Patent and Trademark Office. The depository may be domestic or

foreign to the United States, public or private. While it would be administratively convenient for the Patent and Trademark Office to limit acceptable depositories to an IDA, such a restricted policy would not provide a patent applicant with the type of flexibility and availability necessary in the event no available IDA would accept a deposit of a particular biological material. Nevertheless, a depository other than an IDA would be called upon to essentially establish compliance with the administrative and technical requirements set forth in the Budapest Treaty for IDAs in order to establish suitability of the depository to the Office. While there is a desire to provide flexibility to a patent applicant in selecting an appropriate depository, these guidelines are not intended to permit each patent applicant to become its own depository since both the patent owner and the public have an interest in the continued availability and accessibility of the deposit during the enforceable life of a patent and the public has a continuing interest in its availability when the patent is no longer enforceable.

Paragraph (c) of new rule 1.202 indicates that the Office will recognize the transfer of a sample to a suitable depository from a depository which either defaults or discontinues the performance of any of the tasks it should perform. Where such a transfer takes place after a patent issues, a suitable Certificate of Correction would be acceptable to identify the new depository and/or accession number. An appropriate amendment to a pending application to identify the new depository and/or accession number would not constitute new matter. Cf. *In re Lundak*, 227 USPQ 90 (Fed. Cir. 1985).

Paragraph (d) of new rule 1.202 sets forth the procedure for notifying the Commissioner of the intent to be recognized as a suitable depository by the Patent and Trademark Office. The depositories recognized as suitable by the Office will be published in the Official Gazette of the Patent and Trademark Office as will the identity of a depository which has defaulted or discontinued its performance under these rules.

New rule 1.203 would be proposed to set forth the time for making an original deposit. An original deposit may be made at any time before the application is filed or during pendency pursuant to a requirement that will be made no later than the date the Notice of Allowance and Issue Fee Due is mailed. The decision in *Lundak* indicated that a specification disclosure need not be enabling until such time as a patent is granted. Unless the examiner and applicant agree on whether a deposit is required, what must be deposited and the appropriate conditions, the deposit issues will be resolved pursuant to a rejection under 35 U.S.C. 112. The time specified in this particular rule for making a suitable deposit is the last practical moment that the Office can insure that a deposit has been made in accordance with these regulations before a patent is granted. After the issue fee is paid in an application the application undergoes preparation for printing for a period of 8 to 10 weeks so that all the information necessary for printing should be in the application file and should have been approved by the examiner as conforming to these regulations at the time the issue fee is paid. Where a deposit is made after the Notice of Allowance and Issue Fee Due is mailed, applicant would be required to file an amendment under 37 CFR 1.312 to add a description of the accession number and depository together with any required statement.

Unless the regular deposit is made before the effective filing date of an application for patent in the United States, a verified statement will be required from a person in a position to corroborate that the biological material described in the application as filed is the same biological material which is deposited in a suitable depository. The nature of this corroboration will depend on the circumstances in the particular application under consideration including the length of time between the application filing date and the date of deposit.

New rule 1.204 would be proposed to define the circumstances and procedures for replacing a deposit which is necessary for patent purposes. Failure to replace a deposit within three (3) months after learning or receiving notice from a depository that a replacement is needed may cause the application or patent involved to be treated by the PTO as if no deposit were made. The Patent and Trademark Office will apply a rebuttable presumption of an identity between the original and the replaced sample in the event a deposit is replaced where the application or patent making reference to the deposit is relied upon during any Patent and Trademark Office proceeding.

New rule 1.205 would be proposed to define the term of a deposit to be a minimum of 5 years after the most recent request for the furnishing of a sample of the deposited biological material and at least 30 years after the date of deposit. Any deposit which is made pursuant to the Budapest Treaty will be for a term acceptable to the Office. However, where a deposit is not made under the Budapest Treaty, samples must be stored under an agreement that would make them available for at least the term specified in the Budapest Treaty so long as it extended beyond the enforceable life of the patent for which a deposit was made. The enforceable life of a patent includes the original term of seventeen years, shortened by any terminal disclaimer or lengthened by any patent term extension, plus six (6) years to cover the statute of limitations and any additional time beyond this period where the enforceability of the patent remains in litigation.

The period for storing a deposit as literally stated in the Budapest Treaty is likely to cover almost all of the circumstances before the Patent and Trademark Office. However, in the event that the period of storage would expire before the earliest possible expiration date of the enforceable life of the patent, one of the basic intents of Congress to insure that the public can practice the invention claimed in an expired patent may be frustrated, and it is not believed that the period set forth in the Budapest Treaty intended for such a situation to arise. The availability of the deposited biological material which is essential for making and/or using the subject matter claimed in the patent is a legitimate ground for concern on the part of the Patent and Trademark Office. *Ex parte Lundak* (decided August 21, 1984, reversed on other grounds *In re Lundak*, 227 USPQ 90 (Fed. Cir. 1985)). The Board of Patent Appeals considered the possibility that an initially enabling disclosure might become non-enabling over a period of time. *In re Metcalfe*, 410 F2d. 1378, 161 USPQ 789 (CCPA 1969). Suggesting that a rule of reason approach similar to that applied by the Court in *Metcalfe* should continue to inhere in the deposit procedure of the Patent and Trademark Office, the Board suggested that it was appropriate to insist that the depository be contractually obligated to maintain the deposit for at least a reasonable time after expiration of the patent rights. In determining whether the period is sufficient to extend beyond the enforceable life of the patent, neither the possibility of patent term extension nor the possibility of protracted litigation will be considered. Where the minimum period of storage would not extend beyond the enforceable life of the patent, as where there is prolonged pendency of an application or continuation or divisional applications

are involved, one approach would be to require applicant to undertake to request a sample every five years beyond the 30 years measured from the date of deposit so that the deposit would be stored for a period beyond the enforceable life of the patent.

A non-viable deposit cannot be relied upon to supplement a written description in a patent application. Experience has shown that as many as 10% of the deposits made with American Type Culture Collection (ATCC) on which a viability test was conducted were not viable when received at the depository. The requirement for verification of the viability of deposits is consistent with the Budapest Treaty and is a subject of proposed new rule 1.206.

The viability of a deposit made under the Budapest Treaty is a requirement. Thus, a mere statement by applicant, an authorized representative of applicant or assignee that the deposit has been accepted under the Budapest Treaty would satisfy this rule. Otherwise, viability may be tested by the depository or any other entity provided that the material tested is received from the depository. The viability test must conclude that the deposited biological material is capable of reproduction directly or indirectly and no evidence will be required to satisfy the deposit requirement relative to the ability of the deposited material to perform any function described in the application. However, as with any other issue of description or enablement, if the examiner has evidence or reason to question the objective statements made in the application, applicants may be required to demonstrate that the deposited biological material will perform in the manner described.

A viability statement for each deposit which is not made under the Budapest Treaty must be filed in the patent application and contain the information identified in paragraph (b) of proposed new rule 1.206. The examiner shall not question the conclusion in a viability statement issued by a depository recognized under either proposed new rule 1.202 (a) or (b). If the viability test indicates that the deposit is not viable upon receipt, or the examiner cannot for scientific or other valid reasons accept a statement of viability received from the applicant, the examiner shall so notify the applicant stating the reasons for not accepting the statement and proceed with the examination process as if no deposit had been made.

New rule 1.207 would be proposed to address the conditions under which a deposit must be made in order to satisfy access to the deposit. First, access during the pendency of an application to a deposit must be available to one determined by the Commissioner to be entitled thereto under 37 CFR 1.14 and 35 U.S.C. 122. A deposit pursuant to the Budapest Treaty meets this requirement. Secondly, the deposit must be made under conditions that all restrictions on the availability to the public of the deposited biological material will be irrevocably removed upon the granting of the patent. Conditions on the release of a deposited biological material such as identifying the ultimate recipient of the material, or a provision on the further transfer of the material, or any other stipulation that acts as a precondition to the release of the biological material referenced in an issued patent will be considered to be a prohibited restriction on the availability to the public of the biological material so deposited. The depository may be asked to provide to the depositor such information as the identity of sample recipients but not as a precondition to release after the patent is granted.

Since the mere description of a deposit or identity of a deposit in a patent specification is not necessarily an indication that a requirement for deposit or compliance with these rules has been made, the Office will certify whether a deposit was stated as having been made under conditions which make it available to the public provided the request contains the information set forth in Paragraph (c) of proposed new rule 1.207.

New rule 1.208 would be proposed to set forth the procedures which would be followed by an examiner once the examiner determines that a specific biological material is both essential to make and use the claimed invention and is not known and readily available within the meaning of rule 1.201(b). It is only when the examiner has made these determinations based on the record in the application being considered that the need for a deposit of the identified biological material must be considered. A deposit accepted by an IDA under the Budapest Treaty shall be accepted for patent purposes by the PTO if additional statements are made that all restrictions on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent, and the deposit will be replaced if viable samples cannot be dispensed by the depository.

A deposit under the Budapest Treaty would mean that a viable deposit has been made (Budapest Rule 10) in an acceptable depository (IDA) for a period of five years after the most recent request and at least 30 years from the date of deposit (Budapest Rule 9) under conditions that access to the deposit will be available during pendency of the patent application to one determined by the Commissioner to be entitled thereto under 37 CFR 1.14 and 35 U.S.C. 122 (Budapest Rule 11.1). Assurance of reasonably permanent availability of the deposited material through the depository is reasonably assured through the deposit of a viable culture under the Budapest Treaty and the requirement to make a new deposit in § 1.204(a). It is sufficient if a written statement is made by applicant, an attorney or agent prosecuting the application or a person representing the assignee that a deposit has been accepted by an IDA under the Budapest Treaty under conditions that all restrictions on the availability to the public of the deposit will be irrevocably removed upon the granting of the patent. A suitable statement would be as follows:

(1) I am (relationship to application)
(2) Viable samples of—
Material:
Accession Number:
Deposit Date:
were deposited and will be maintained with
(3) (Name and Address of Depository)
(4) Under terms which are in accordance with the provisions of the Budapest Treaty.
(5) Upon issuance of a patent on this application, all restrictions on the availability of the deposited material to the public will be irrevocably removed.

Date _____

Name _____

If the examiner determines that a deposit is required and has not been made in compliance with these rules, the examiner shall reject all the affected claims in the application under the appropriate provision of 35 U.S.C. 112, explaining why a deposit is needed or why a deposit which was made cannot be accepted for patent purposes. Although the Court in *Lundak* indicated that the enablement requirement of 35 U.S.C. 112 need not be satisfied until the patent issues, the only way the Office can efficiently and effectively address the deposit issue is during the examination of the application. After the examiner has determined that a deposit is required, and until a deposit in accordance with these rules is made, or until the Office is assured in writing that a deposit in accordance with these rules will be made up to and including the date the issue fee is paid, or the examiner is convinced that a deposit is not required under the circumstances of the application being considered, the rejection will be made and maintained

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by the examiner. Written assurance may take the form that an identified specimen will be deposited and maintained in an IDA under the Budapest Treaty before the issue fee is paid under conditions that all restrictions on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent, or any other specific assurance that the examiner can recognize and accept that there are no outstanding issues to be resolved on the deposit question.

In the circumstances where the Office has received written assurance that an acceptable deposit will be made before or on the date of payment of the issue fee, and there are no other outstanding matters to be considered relative to the patentability of the claims, the Office will mail to the applicant a Notice of Allowance and Issue Fee Due together with a requirement that the required deposit be made within three (3) months. The period for satisfying the requirement for deposit will be extendable under 37 CFR 1.136(a), as is the case with a requirement for drawing corrections made at the time the Notice of Allowance and Issue Fee Due is mailed. In appropriate circumstances, relief also may be available under 37 CFR 1.136(b) if sufficient cause is shown for an extension of time in order to make the appropriate deposit. Sufficient cause would be decided by the appropriate Group Director. Failure to make the required deposit in accordance with the requirement will result in abandonment of the application for failure to prosecute. Since the opportunity exists to request extensions of time under 37 CFR 1.136 to make a viable deposit, no application should go abandoned for failure to make a viable deposit. However, the Office reserves the right to require the filing of a terminal disclaimer where the time required to make a viable deposit unreasonably delays the issuance of a patent.

The contents of the specification regarding any deposit made are specified in new rule 1.208(d). In addition to such identifying criteria as accession number for the deposit and the name and address of the depository, the specification should include the date of deposit (i.e. the date from which the term of deposit specified in new rule 1.205 is to be measured) and a taxonomic description of the deposit. This written description is that required by 35 U.S.C. 112, first paragraph and should be sufficient to characterize and distinguish the biological material deposited. This written description will serve to inform the public of the essential characteristics of the deposited material once the patent is granted, and will facilitate the examination process which necessarily involves comparisons with prior art biological material.

Other Considerations

The rule change being considered for proposal is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The rule changes being considered for proposal are not expected to have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The proposed deposit practice will not impose extra work on patent applicants (whether small or large businesses or individuals).

The Patent and Trademark Office has determined that this rule change being considered for proposal is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Any information collection requirements that may be contained in the proposed rulemaking resulting from proceedings under this advance notice will be submitted for OMB approval at the time the proposed rulemaking is announced.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patents.

For the reasons set out, 37 CFR Part 1 is being considered for proposed amendment as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Centered heading and new §§ 1.200 to 1.208 are added as set forth below:

* * * * *

Deposit of Biological Material

Sec.
1.200 Biological material
1.201 Need to make a deposit
1.202 Acceptable depository.
1.203 Time of making an original deposit
1.204 Replacement of deposit
1.205 Term of deposit.
1.206 Viability of deposit.
1.207 Furnishing of samples.
1.208 Examination procedures.

Deposit of Biological Material

§ 1.200 Biological material.

For the purposes of these regulations pertaining to the deposit of biological material for patent purposes, the term biological material shall include material that is capable of self-replication either directly or after insertion into a host. Representative examples include bacteria, fungi including yeast, algae, protozoa, cell lines, plant tissue cells and seeds. Viruses, vectors, cell organelles and other non-living material existing in and reproducible from a living cell may be deposited by deposit of the host cell capable of reproducing the non-living material. Materials analogous to conventional chemical compounds such as proteins and enzymes are not subject to these regulations.

§ 1.201 Need to make a deposit.

(a) Where a claimed invention is, or relies on, a biological material, the requirements of the first and second paragraphs of 35 U.S.C. 112 apply. Applicant is required to comply with these requirements in the written description of the invention, which may include reference to known and readily available biological material. If the written description does not meet the requirements of 35 U.S.C. 112, the specification may be supplemented by a deposit of samples of the biological material necessary to meet those requirements in a depository and under conditions complying with these regulations.

(b) Biological material need not be deposited if it is known and readily available to the public or can be made or isolated in a reproducible manner from known and readily available material. Biological material will be considered to be known and readily available to the public if samples of the biological material are known and accessible without restriction to those who desire to obtain and test the biological material. Samples will be considered to be accessible even though some requirement of law or regulation of the United States or of the country in which the depository institution is

located permits access to the material only under conditions imposed for safety, public health or similar reasons.

(c) The reference to a specific organism or other biological material in a specification disclosure does not create any presumption that the specific material is necessary to satisfy one or more requirements of 35 U.S.C. 112 or that a deposit in accordance with these regulations is required.

§ 1.202 Acceptable depository.

(a) A deposit may be made in any International Depositary Authority (IDA) as established under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

(b) A deposit may be made in any depository recognized to be suitable by the Office. Suitability will be determined by the Commissioner on the basis of the administrative and technical competence, and agreement of the depository to comply with the terms and conditions applicable to deposits for patent purposes. The Commissioner may seek the advice of impartial consultants from the biotechnology industry on the suitability of a depository. The depository must:

(1) Have a continuous existence;

(2) Exist independent of the control of the depositor;

(3) Possess the staff and facilities sufficient to enable it to examine the viability of a deposit and store it in a manner which ensures that it is kept viable and uncontaminated;

(4) Provide for sufficient safety measures to minimize the risk of losing biological material deposited with it;

(5) Be impartial and objective; and

(6) Furnish samples of the deposited material in an expeditious and proper manner.

(c) If any depository under (a) or (b) defaults or discontinues the performance of any of the tasks it should perform, the Office will recognize as a substitute in any pending application or patent a viable deposit made with an IDA or depository recognized to be suitable by the Office which is transferred to said depository from the defaulting depository in the manner required for replacing a deposit under § 1.204.

(d) A depository seeking status under paragraph (b) of this section must direct a communication to the Commissioner which shall:

(1) Indicate the name and address of the depository to which the communication relates;

(2) Contain detailed information as to the capacity of the depository to comply with the requirements of paragraph (b) of this section, including information on its legal status, scientific standing, staff and facilities;

(3) Indicate that the depository intends to be available, for the purposes of deposit, to any depositor under these same conditions;

(4) Where the depository intends to accept for deposit only certain kinds of biological material, specify such kinds;

(5) Indicate the amount of any fees that the said depository will, upon acquiring the status of suitable depository under paragraph (b) of this section, charge for storage, viability statements and furnishing of samples of the deposit.

(e) Once a depository is recognized to be suitable by the Commissioner or has defaulted or discontinued its performance under this section, notice thereof will be published in the Official Gazette of the Patent and Trademark Office.

§ 1.203 Time of making an original deposit.

(a) An original deposit may be made at any time before filing an application for patent or during pendency of the application for patent pursuant to a requirement that will be made by the examiner no later than the date the Notice of Allowance and Issue Fee Due is mailed.

(b) When the original deposit is made in a depository defined in §§ 1.202 (a) or (b) after the effective filing date of an application for patent, a verified statement will be required from a person in a position to corroborate the fact that the biological material described in the application as filed is the same biological material which is deposited in the depository defined in §§ 1.202 (a) or (b).

§ 1.204 Replacement of deposit.

(a) Where a depository possessing the original deposit cannot furnish samples of the deposit for any reason, the depository shall, promptly after having noted its inability to furnish samples, notify the depositor of such inability, indicating the cause thereof, and the depositor shall be required to make a new deposit of the biological material which was originally deposited within three months of receiving notification that the depository cannot furnish samples. The replacement shall be made in the same depository as the original deposit except:

(1) Where the original depository has lost its status under §§ 1.202 (a) or (b) or no longer carries out its obligations applicable to the involved deposit; or

(2) Where the depository for health or other legitimate reasons is unable to provide samples to requesters outside of the jurisdiction where the depository is located.

(b) An applicant or patent owner shall notify the Office in writing as soon as reasonably possible after a replacement deposit is made in each application or patent affected. This notification shall state the name and address of the depository, the accession number for the deposit, the date of making the deposit, the results of a viability test (as provided for in § 1.206), the reason for making the replacement deposit, and a statement that the replacement deposit is to the best of the depositor's knowledge identical to the original deposit. The notification shall be placed in each application or patent file.

(c) A depositor's failure to replace a deposit within three months after learning or after receiving written notice from a depository that a replacement is needed may cause the application or patent involved to be treated in any Office proceeding as if no deposit were made.

(d) In the event a deposit is replaced, the PTO will apply a rebuttable presumption of an identity between the original and the replaced sample where the application or patent making reference to the deposit is relied upon during any Office proceeding.

§ 1.205 Term of deposit.

A deposit shall be made for a term of at least thirty (30) years after the date of a viable deposit and at least five (5) years after the most recent request for the furnishing of a sample of the deposited biological material was received by the depository. In any case, samples must be stored under agreements that would make them available beyond the enforceable life of the patent for which the deposit was made.

§ 1.206 Viability of deposit.

(a) A deposit of biological material must be viable at the time of deposit and during the term of deposit. Viability may be tested by the depository or by another provided the material tested is received from the depository. The test must conclude only that the deposited material is capable of reproduction. No evidence is necessarily required relative to the ability of the deposited material to perform any function described in the patent application.

(b) A viability statement for each deposit not made under the Budapest Treaty must be filed in the application and must contain:

(1) Name and address of the depository;

(2) Name and address of the depositor;

(3) The date of deposit;

(4) The identity of the deposit and the accession number given by the depository;

(5) The date of the viability test;

(6) The procedures used to obtain a sample if the test is not done by the depository; and

(7) A statement that the deposit is capable of reproduction.

(c) If a viability test indicates that the deposit is not viable upon receipt, or the examiner cannot, for scientific or other valid reasons, accept the statement of viability received from the applicant, the examiner shall proceed as if no deposit has been made. The examiner will accept the conclusion set forth in a viability statement issued by a depository recognized under §§ 1.202 (a) or (b).

§ 1.207 Furnishing of samples.

The deposit must be made under conditions that assure that:

(a) Access to the deposit will be available during pendency of the patent application making reference to the deposit to one determined by the Commissioner to be entitled thereto under § 1.14 and 35 U.S.C. 122, and

(b) All restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent.

(c) Upon request, the Office will certify whether a deposit has been stated to have been made under conditions which make it available to the public as of the issue date of the patent grant provided the request contains:

(1) The name and address of the depository;

(2) The accession number given to the deposit;

(3) The patent number and issue date of the patent referring to the deposit; and

(4) The name and address of the requesting party.

§ 1.208 Examination procedures.

(a) The examiner shall determine in each application for an invention if a deposit is needed, in case one has not been made, or if a deposit actually made is acceptable for patent purposes. A deposit accepted in any depository under the Budapest Treaty shall be accepted for patent purposes if made under conditions complying with § 1.207(b). If a deposit is required and has not been made in accordance with these regulations, the examiner shall in an Office action reject the affected claims in the application under the appropriate provision of 35 U.S.C. 112, explaining why a deposit is needed and/or why a deposit actually made cannot be accepted.

(b) The applicant shall respond to a rejection under paragraph (a) of this section by—

(1) making an acceptable deposit or assuring the Office in writing that an acceptable deposit will be made on or before the date of payment of the issue fee or;

(2) Establishing that the involved biological material is known and readily available to the public or;

(3) Arguing why a deposit is not required under the circumstances of the application considered.

Other replies to the examiner's action shall be considered non-responsive. The rejection will be repeated until either paragraph (b)(1) or (b)(2) of this section is satisfied or the examiner is convinced that a deposit is not required.

(c) If an application is otherwise in condition for allowance except for the required deposit and the Office has received a written assurance that an acceptable deposit will be made on or before payment of the issue fee, the Office will mail to the applicant a Notice of Allowance and Issue Fee Due together with a requirement that the required deposit be made within three months. The period for satisfying this requirement is extendable under 37 CFR 1.136. Failure to make the required deposit in accordance with this requirement will result in abandonment of the application for failure to prosecute.

(d) For each deposit made pursuant to these regulations, the specification shall contain:

(1) Accession number for the deposit;

(2) Date of the deposit;

(3) Taxonomic description of the deposit; and

(4) Name and address of the depository.

Comments and Responses:

(Editorial Note.—These comments and responses will not appear in the Code of Federal Regulations)

The following responses are directed to the comments received in response to the draft policy statement on the deposit of biological materials for patent purposes. The comments are arranged to generally correspond to the order of topics addressed in the draft guidelines.

Comment: The guidelines should make explicit that it is the Examiner's, not the applicant's, burden to show that a written description is not adequate to describe the invention as claimed. This has been a real problem in that simply because a microorganism or other biological material is involved in a particular claimed invention, it is automatically assumed that a deposit should be required. This is, of course, quite out of touch with reality especially when it comes to inventions relating to recombinant technology.

Response: This suggestion has been in effect, since the PTO clearly has the initial burden of giving reasons, supported by the record as a whole, as to why the written description is not sufficient to enable one skilled in the art to make and use the claimed invention in the absence of a particular microorganism or other biological material. All assertions that the written description is not enabling without a deposit must be supported by the examiner with (1) evidence or (2) reasons to support the conclusion of noncompliance. New rule 1.201(c) being considered for proposal also provides explicitly that there is no presumption that a specific material is required simply because it is described in the specification.

Comment: If enablement and description requirements can be met with a written description, is a deposit required solely for compliance with the best mode requirement?

Response: The best mode requirement of the first paragraph of 35 U.S.C. 112 is a separate and distinct requirement from the enabling requirement. *In re* Newton, 414 F2d 1400, 163 USPQ 34 (CCPA 1969). The best mode requirement is a safeguard against the possible selfish desire on the part of some people to obtain patent protection without making a full disclosure. The requirement does not permit an inventor to disclose only what is known to be the second-best embodiment, retaining the best as a trade secret. The fundamental issue that should be addressed is whether there was evidence to show that the quality of an applicant's best mode disclosure is so poor as to effectively result in concealment. *In re* Sherwood, 615 F2d 809, 204 USPQ 537 (CCPA 1980). If a deposit is the only way to comply with the best mode requirement then the deposit must be made.

Comment: We regret that the PTO has not attempted to provide some guidance as to the circumstances under which a biotechnology invention will be deemed to be reproducible from the written description alone. One such circumstance would appear to be where sequence data for the transcriptional unit of rDNA vector is available either directly from the specification, or from the published literature.

Response: While such guidance may be of some assistance, it may be of momentary value because of the changing nature and development of technology. In addition, useful guidelines would be difficult in view of the tremendous variety of factual circumstances that play a role in determining whether the claimed invention can be practiced without undue experimentation. Some guidance is available in *Ex Parte Forman*, 230 USPQ 546 (BPAI 1986) where the Board of Patent Appeals and Interferences summarized eight (8) factors to be considered in a determination of "undue experimentation."

Comment: Please consider replacing the word "define" in the phrase "define the metes and bounds of the claimed invention" with the word—support—because applicant should be allowed to select representative biological samples to place on deposit which support rather than define the "metes and bounds" of the claimed invention.

Moreover, the deposited biological sample which applicant demonstrates, by the description in the application, to be operable should be deemed sufficient by the PTO to satisfy the deposit requirement and provide adequate basis for applicant to claim variants of the deposited material. Another comment expressed concern that limiting claims to the deposited material (*Ex Parte Jackson*) may become the norm in patent examination practice if such language is included.

Response: Claims are required to set out and circumscribe a particular area with a reasonable degree of precision and particularity. 35 U.S.C. 112, second paragraph. This requirement is separate and distinct from the requirement of the first paragraph of 35 U.S.C. 112 that the specification disclosure enable one skilled in the art to make and use the invention to a degree commensurate in scope with the claims. Under appropriate circumstances, it may be necessary to specially recite and limit the claims to the deposited biological material in order to adequately define the metes and bounds of the claimed invention. *Ex parte* Jackson, 217 USPQ 804 (Bd. App. 1982). However, the mere facts that a claimed invention requires the use of a living organism or that samples of a living organism that may be used in the claimed invention have been deposited are *never alone* sufficient to require applicant to comply with the deposit guidelines or limit any claim to the deposited material.

Comment: There is some interest that the Patent and Trademark Office be requested to print deposit information on the front page of the issued patent—analogous to the cited references rather than buried in the general text.

Response: At the last meeting of the WIPO Permanent Committee on Patent Information, a revised standard was approved recommending use of INID (*I*nternationally agreed *N*umbers for The *I*dentification of *D*ata) codes to identify bibliographic data on the front page of patent documents. A new INID Code (83) has been approved to identify information concerning the deposit of microorganisms, e.g., under the Budapest Treaty.

The PTO is not considering the publication of deposit information on the front page of an issued patent because of the substantial administrative burden that would be involved for a relatively small number of patents. No compelling need or rationale is apparent that would justify the cost for the rare case where such a format may be more convenient.

Comment: The practice of presenting a microorganism for deposit in connection with a patent application was initially adopted as a means for complying with the requirements of section 112. The PTO's current proposal would make a deposit mandatory under administrative rulemaking, for compliance with the requirements of 35 U.S.C. 112 in an invention which "depends on the use of biological material".

Response: The PTO proposal does *not* make a deposit mandatory for an invention which depends on the use of biological material. The PTO policy and deposit requirements are intended to provide guidance in those situations when it is determined that a deposit is necessary to satisfy one or more requirements of 35 U.S.C. 112. The proposed rules concern the requirements and procedures for making a suitable deposit if it is determined that a deposit is required before a patent can be granted. The guidelines associated with the proposed rules recognize that the specification may properly rely on information which is publicly available.

Comment: Some recognized culture collections do not make their strains readily available. What can a requester do if it is found that the biological material is not readily available. Most of us do not have access to legal recourse.

Response: The PTO will assume that any deposit made according to these regulations will be readily available upon the granting of the patent. This is a rebuttable presumption that could be overcome only by evidence of the nature which would show that the patent relied upon is inoperative. Since every patent is presumed valid and since that presumption includes the presumption of operability, the burden of proof is high. The PTO does not have the resources to police the depositories such that the depositor must assume the risk that the depository selected will preserve and maintain the deposit made.

Comment: It was suggested that the statement that the availability of the biological material must be such that there is no reasonable basis to question the continued availability of the biological material beyond the enforceable life of a patent was overly stringent. Citing *In re Metcalfe*, 410 F.2d 1378, 161 USPQ 789 (CCPA 1969).

Response: The suggestion that the proper perspective should be whether there is reasonable basis to believe that the biological material will cease to be available during the life of the patent has been adopted.

Comment: The draft guidelines indicated that a material would be considered to be known and readily available to the public even though some requirement of law or regulation restricted access to material for safety, public health or similar reasons. It has been suggested that the term "national security" be specifically defined in the list of exceptions since this constitutes the basis which precludes making available to the public significant amounts of governmental information. It was further suggested that the phrase "of either of the United States or of the state in which the depositor or the depository institution is located" be added after regulation in the acknowledgment of the fact that biotechnology is an international industry. Finally, it was noted that companies may find it advisable to restrict access even in the absence of any formal legal requirement for product liabilty reasons so that the PTO should regard more leniently restrictions which are fully imposed for public health reasons even if not required by law or regulation, and particularly if they are required by an insurer.

Response: First, the PTO has not seen fit to add national security as a specific item which would permit restriction on access to a biological material which would still be considered to be known and readily available. It is difficult to determine with any degree of certainty what any country may consider to be national security. Further, an invention which involved national security matters would not be published before the restrictions on access to that invention involving national security were removed.

Secondly, while the international scope of the biotechnology industry is clearly recognized, the proposal to include the country or state in which the

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depositor is located would appear to be unnecessary so long as the requirement of law or regulation would apply to the depository institution where the deposit is located. accordingly, the suggestion has been adopted to this extent.

Finally, it is believed inappropriate for the PTO to accept a biological material to be known and readily available to the public on the basis of what some private insurer may require of the depositor. Unless the restriction is based on some requirement of law or regulation which restricts access to the material for safety, public health or similar reasons, the PTO will not consider that a biological material is known and readily available to the public.

Comment: It was suggested that a biological material should not have to be deposited if it could be readily reproduced from materials known and available to the public based on the description of how to make and use found in the disclosure.

Response: This suggestion has been adopted in the first sentence of new rule 1.201(b) being considered for proposal which includes the statement that the biological material need not be deposited if it can be made or isolated in a reproducible manner from known and readily available material.

Comment: The guidelines had stated that the fact that the biological material had multiple known uses would tend to provide assurance that the required biological material would continue to be available. It was noted that this might be construed to mean that a recitation of multiple uses in applicant's disclosure is evidence that the biological material would be readily available to the public which clearly it is not.

Response: The person making the comment accurately noted that the two have no bearing one to the other. However, if there was evidence that the biological material had been put to use for more than one purpose by a variety of people, it would be considered to constitute at least an indication that the biological material in question was known and accessible to those who desire to obtain at least a sample of the subject biological material. It would have been evidence of distribution in commerce, consistent with the idea that it was known and readily available.

Comment: With respect to biological material that is known and readily available, the initial guidelines indicated that the written description in the specification should contain information on the biological material to the extent available. This, according to the comment, could be construed as requiring an enormous amount of information.

Response: This comment is well taken. Accordingly, new rule 1.201(b) would be proposed to require that the written description of the biological material should be sufficient to allow one of ordinary skill in the art to identify and obtain the publicly available material.

Comment: The initial guidelines stated that material would be considered to be known and readily available if the biological material was known and accessible to those who would desire a sample to practice the invention. The comment indicated that the word "practice" implies a right to utilize the deposited materials and thus the invention. This right does not exist absent a license if the material is protected by a patent. Experimental use is not a right but rather an exception to a finding of infringement and thus subject to different burdens of proof. It was suggested that the word "test" be substituted for practice.

Response: This suggestion would be adopted in new rule 1.201(b) since the concept of whether a biological material is known and readily available to the public is not determined on the basis of whether or not its manufacture, use or sale would infringe an existing patent.

Comment: There is no statutory basis in U.S. law for supporting the position that availability of the biological material must extend beyond the enforceable life of a patent. To require otherwise is to inequitably place a patentee in a position that amounts to guaranteeing a supply of the "manufacturing facilities" to competitors at little or no cost and at a time when the competitors are free to use the deposited material without an accompanying benefit to the ex-patentee.

Response: This provision finds specific basis in the decision of *Ex Parte Lundak*, and is based on one of the basic principles of the patent system—i.e. that a patent is an exclusionary right granted for a "limited" time and that the public is not excluded from practicing the invention once the patent expires. This does not mean that the patentee must be a perpetual supplier of the biological materials that may be necessary to practice the invention. However, it does mean that the patentee should not be permitted to place a limitation on the accessibility of the necessary biological material once the patent expires. As noted by the Court in *In re Metcalfe*, 410 F2d. 1378, 161 USPQ 789 (CCPA 1969) it is always possible that the practice of a given patented invention may become impossible because an essential material becomes unavailable due to a lack of raw materials, public disaster, or other occurrence not within the control of the patentee. The proposed regulations contemplate that the patentee would not control the availability of the biological material once the patent has expired.

Comment: The phrase "known and readily available" should be in the disjunctive. There is no case regarding regular chemical inventions that chemicals used by an applicant need to be both known and readily available.

Response: The phrase "known and readily available" was selected to indicate public accessibility to those wishing to test the biological material. A material may be known in the sense that its existence has been published, but is not available to those who wish to test that particular known biological material. In addition, a biological material may be available in the sense that those having possession of it would make it available upon request, but no one has been informed of its existence. Consequently, the concept of known and readily available is considered to accurately define the level of public accessibility to the biological material intended.

Comment: An examination of the PTO policy statement on the deposit of biological materials suggests that the only safe procedure for satisfying the requirements of 35 U.S.C. 112 would be to require a deposit or to establish that the biological material is readily available in nature or can be obtained by some type of screening procedure. The other criteria set forth pertaining to "known and readily available to the public" did not appear to have sufficient safeguards for access during the term of the patent and after its expiration date.

Response: While there is clearly an element of risk involved in trying to preserve living matter over an extended period of time even with a deposit, the Office believes that where there is a sufficient indication that the biological material has reached a sufficient level of accessibility and availability for distribution which is intended to be captured by the concept of "known and readily available" the public interest has been served as necessary to support a patent grant. The incentives provided by the patent system should not be constrained by the possibility that a disclosure that was once enabling would become non-enabling over a period of time through no fault of the patentee. *In re Metcalfe.*

Comment: Several people made comments relative to the commercial availability of the biological material being an indicator that the material was known and readily available.

Suggestions were made to substitute "applicant or applicant's assignee" for those relying on the availability of the biological material and to clarify the "patent holder's agent".

Response: The PTO does not want to guess or be constrained by any particular business relationship that may be created to control accessibility of the biological material to the public. The concept was intended to embrace the situation where an applicant or a patentee before the Patent and Trademark Office relying on the public availability of the biological material through a commercial supplier is not likely to restrict access once the patent is granted.

Comment: While some characterize the PTO's concern for commercial suppliers under the control of those relying on the availability of the biological material as almost insulting, others indicated that they could appreciate the PTO's concern when the patent holder controls commercial availability. One person suggested that a patent owner who tried to restrict access after a decision was made not to enforce the patent would run the risk that a disgruntled requester would seek treble damages anti-trust action based on patent misuse, or a requester might file a complaint with the FTC or the anti-trust division of the U.S. Department of Justice. Moreover, it was suggested that a disappointed requester could certainly notify the PTO of the incident which might result in a disciplinary proceeding against the patent counsel, and would certainly discredit subsequent attempts by the same patent owner to rely on an allegation of commercial availability. It was also suggested that it would be appropriate for the PTO to suggest one or more means by which a patent owner could provide acceptable assurance that the biological materials would remain available such as by deposit of a performance bond which would be forfeited if the biological material is not provided to a lawful customer upon tender of payment.

Response: The PTO does not have the resources or expertise to engage in the type of enforcement procedures suggested in these comments. Further, there is clearly no evidence at this point in time to provide for the mere possibility that a commercial supplier may be motivated to eliminate or otherwise restrict access to the biological material once the patent is no longer enforceable or a decision is made not to enforce the patent.

The PTO will accept commercial availability as evidence that a biological material is known and readily available only when the evidence is clear and convincing that the public has unrestricted access to the material. A product could be commercially available but only at a price which effectively eliminates its accessibility to those desiring to obtain a sample. The relationship between an applicant relying on a biological material and the commercial supplier relied upon is simply one factor that would be considered in determining whether the biological material was known and readily available. However, the mere fact that the biological material is commercially available only through the patent holder or the patent holder's agents or assigns shall not by itself justify a finding of non-availability, absent reason to believe that access to the biological material would later be improperly restricted.

Comment: Several comments were received directed to the use of printed publications providing evidence that the biological material is known and available to the public. It was suggested that the probative value of this type of evidence should depend not only on the number of publications but also the character and institutional affiliation of the publications. It was also suggested that foreign applicants would rightfully object to consideration of whether the publications are domestic or foreign. One comment stated that the concept of peer review should be eliminated and that inquiry be made into whether the publication policy of the journal makes references to the availability of cited material, and whether that policy is in fact enforced. Finally, it was indicated that it was impractical to expect an applicant to provide a tally or comprehensive search of technical journals and patent literature to establish availability of biological materials.

Response: The PTO does not believe that it is possible to list all the possible factors that might be considered relevant or how they would be weighed under any particular factual circumstances to determine whether a biological material is known and readily available to the public. However, it is considered appropriate to list exemplary factors that might be considered in determining the probative value of this type of evidence. There was no intent to discriminate between domestic and/or foreign applicants or publications, but the reference to domestic and foreign publications could be an indication of the scope of distribution of the biological material in question. Thus, publications in a single country, whether it be domestic or foreign to the United States, would suggest more limited distribution than references and publications of both domestic and foreign origin. Finally, there is no requirement to demonstrate that a biological material is known and readily available by any particular set of facts, but the PTO has provided some guidance in proposed rule 1.201(b) and associated text as to the variety of circumstances that an applicant may use to establish that a biological material is known and readily available to the public.

Comment: The language pertaining to declarations of accessibility which indicate a preference for those who are not members of the same organization as applicants in the application should be deleted because it suggests a higher level of credibility attaches to the declaration of such an individual.

Response: While it is recognized that the declaration executed by any declarant is subject to the same penalties under § 1001 of Title 18 of United States Code, it can be agreed that the evaluation of declarations should be based solely on their merit and not the organizational relationship between the inventor and the declarant. However, the preference was directed not to the credibility of the declarant, but whether accessibility was known beyond the confines of the organization of which both the applicant and the declarant were members. The knowledge might be compared to an uncataloged manuscript in a library that was distributed among the staff of an organization which included that library but was unknown to people outside that organization. Again, the mere fact that applicant and declarant were members of the same organization should not by itself justify a finding that the biological material in question is not known and readily available. Other factors such as the nature of the organization, distribution of the biological material, and procedures or mechanisms for access would also be considered.

Comment: The meaning of the term "abundantly" as modifying the availability in nature of the biological material was not understood. It was pointed out that a rare microorganism might be readily obtained if a good screening procedure was available. It was also pointed out that it was not understood what is meant by evidence of being available in nature since a description in the patent of a precise geographic location should be sufficient because this is an instance when a deposit is not required.

Response: These suggestions have been essentially adopted. As noted in one of the comments, the decision by the

PTO Board of Patent Appeals and Interferences (Reinhardt, US Patent 4.548.814) held that a description of the precise geographic location of Marine Tunicates used in the patent was adequate to satisfy the enablement requirement. However, use of the term "readily" to define availability is considered appropriate to define that degree of availability which would be reasonable under the circumstances. For example, when an applicant tried to rely on patent applications which had been opened for public inspection in Rhodesia, Panama and Luxembourg to fulfill the enabling requirement, the Court held that when no guide at all has been given in the application, an applicant must show that anyone skilled in the art would actually possess the requisite knowledge or would reasonably be expected to check the source which the applicant relies upon to complete his disclosure and would be able to locate the information with no more than reasonable diligence. In re *Howarth*, 210 USPQ 689 (CCPA 1981).

Comment: It was suggested that there is no good reason why a previous deposit can be relied upon only when it is referred to in a United States patent or statutory invention registration as opposed to a foreign patent. One person went so far as to suggest that any reference to a microorganism deposited in one of the recognized depositories should be sufficient in and of itself.

Response: Since the arrangement made with the depository is one between the depository and the depositor, the simple deposit of a biological material in a recognized depository is not sufficient in and of itself to satisfy the requirement of the biological material to be known and readily available. However, if the deposit has been accepted under the Budapest Treaty and made under conditions that all restrictions on its accessibility will be irrevocably removed upon the granting of the patent, whether the deposit is referenced in a United States or foreign patent document would not make any difference. However, there may be limitations on release of the biological materials that are permitted in other countries but which are not within the scope of the conditions accepted in the United States once the patent has been granted. Consequently, the mere reference in any document, be it a United States patent or a patent in a country foreign to the United States is not in and of itself sufficient to establish that it is known and readily available unless the deposit has been made under conditions which are consistent with those specified in these proposed rules.

Comment: It would be very helpful if you included a statement to the effect that if a deposit meets the requirement of the Budapest Treaty, the Office will accept the deposit.

Response: An explicit provision to this affect would be included in new rule 1.208(a). It would state that a deposit accepted in any depository under the Budapest Treaty shall be accepted for patent purposes if made under the conditions complying with 1.207(b)—that all restrictions on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent. The additional requirement of 1.207(b) must be stated since the Budapest Treaty leaves to the national laws the specific provisions to obtain access to a sample after the patent has issued. The requirement to maintain a viable deposit of the biological material (1.204a) recognizes the public interest in the availability of the information and materials to make and use the claimed invention.

Comment: The inventor of a biological invention should not be hostilely discriminated against by satisfying a higher burden to prove enablement but should instead be treated on the same basis as are all other applicants. The proposed guidelines should allow for and recognize that in many instances a deposit simply is not required.

Response: There was no intent in the proposed guidelines nor in the proposed rules to alter in any way the standard of enablement required by 35 U.S.C. 112, first paragraph. The rules being considered by the PTO specifically indicate that a biological material need not be deposited if the written description is sufficient to meet the requirements of 35 U.S.C. 112 or if the biological material is known and readily available to the public or can be made or isolated in a reproducible manner from known and readily available materials. See new rules 1.202 (a) and (b) being considered for proposal. In addition, it is specifically stated that the mere reference to a specific organism or other biological material in a specification disclosure does not create any presumption that the specific material is necessary to satisfy one or more requirements of 35 U.S.C. 112 or that a deposit is required to be made. See new rule 1.201(c) being considered for proposal.

Comment: Requiring that the deposits be made in an IDA is excessively burdensome, particularly to a small inventor and those academic institutions which generate in the course of a typical research program dozens or even hundreds of hybridomas which must then be deposited if the institution is to comply with PTO deposit guidelines. Depositing of biological materials (when required) at any location should be sufficient providing that the averments for appropriate access and supply of viable material can be made. The patentee has the most at stake in insuring that the deposit is maintained and available during the life of the patent. If the deposit is permanently lost, the patent will be lost also. The entire rationale for requiring an independent depositor is to remove the responsibility from the patentee and place it in the hands of an independent third party. If the depository is required to replace a strain if it becomes non-viable, it would appear that double depositing is necessary. The logical thing, according to one comment, is either to have the third party depository entirely responsible for the culture or to permit the depositor to maintain his own cultures.

Response: The concept of an independent depository or an IDA as an acceptable depository is based on the need and desire to ensure the safe and reliable storage of a deposited biological material under circumstances that are free of the opportunity for intentional or negligent handling of the deposited material. The use of an independent depository or an internationally recognized depository will tend to preserve the integrity of the deposit process against those that may accidently alter the deposited material, may wish to tamper with the deposited material or may wish to resume control of its availability when the patent is no longer enforceable, and to preserve the interest of the public in the free access to the biological material for any purpose once the term of the patent expires. Further, while the PTO is constrained to approve independent depositories other than an IDA, the PTO has neither the resources nor capability to assess the individual capability of any party that wishes to act as its own depository. The rules under consideration are intended to minimize depositories that will be found acceptable.

The concept of having an independent depository in addition to the requirement of the depositor to replace a culture which is no longer viable is based on the premise that the patent owner has an interest in maintaining the accessibility of the deposit during the enforceable life of the patent for its own protection, and has an obligation to the public to ensure access to that deposit

during the period of enforceability so that a third party could test the biological material, and availability to the public after the patent expires. A patentee should not be able to intentionally convert a patented biological material to a trade secret merely because it was no longer interested or able to enforce the patent.

Comment: A depository does not normally notify the depositor when his strains are supplied to third parties except under the Budapest Treaty. Does this mean we must now change our policy.

Response: No.

Comment: Several comments were received to the effect that due to the nature of deposits, and the ease with which harmful infringing acts can be practiced following access to deposited material, it is reasonable to require that minimum restrictions be made before a request for access to a deposit is satisfied. Such minimum restrictions should include (1) identification of the ultimate recipient and (2) an averment that the ultimate recipient will not use the deposited materials for any uses which would infringe a valid claim and (3) a prohibition against transfer to third parties. The thrust of these arguments is that a patentee has a definite interest in knowing to whom the deposited material is being released and such restrictions would provide the patentee with some measure of protection against those who would unfairly profit from the required deposit. It was concluded that these provisions would not in any substantive way interfere with the purpose of a deposit under 35 U.S.C. 112 or the public disclosure function served by the patent system.

Response: While the unique nature of a deposit in satisfying the enabling or other requirements of 35 U.S.C. 112 is recognized, every patent is required to place in the hands of those skilled in the art to which the invention pertains the information required to make and use the invention without undue experimentation. The PTO does not restrict or otherwise monitor the sale of other patent documents containing an enabling disclosure nor place any limits on the further disposition of patents that it sells. Consequently, there is no basis in the law for treating a patent directed to an invention requiring the use of a deposited biological material in any manner different from a patent which does not require a deposit. Patents not requiring a deposit may involve subject matter which is just as difficult to detect infringement as it may be where no deposit is required.

The PTO recognizes the unique nature of an invention which requires the deposit of a sample of a biological material as part of the disclosure, particularly as it relates to the attendant risks that the sample may be used in a way or location that would avoid infringement of the patent. The PTO, however, solicits comments on the advisability of and rationale for seeking a provision in the law that would permit the type of restrictions on access to a deposit after the patent issues that are recommended in the April 8, 1987 WIPO report on the Industrial Property Protection of Biotechnological Inventions. These recommendations, on which we are seeking comment, were as follows:

Samples shall be furnished only if the requesting party has undertaken vis-a-vis the owner of the patent on which the request is based, for the period during which the patent is in force:

(i) Not to make the deposited biological material or any biological material derived therefrom available to any third party;

(ii) To use the deposited biological material or any biological material derived therefrom only for experimental purposes concerning the invention;

(iii) Not to export the deposited biological material or any biological material derived therefrom to any other country or, if the sample was obtained in the country where the depository institution is located and that country is not the country in or for which the patent on which the request was based has been granted, to any other country than the country in or for which the relevant patent has been granted;

(iv) The requesting party shall have the burden of proof concerning compliance with the undertakings referred to in subparagraphs (i–iii); and

(v) For the purposes above, any biological material shall be deemed to be derived from the deposited biological material if it is derived therefrom by culturing or in any other way of replication, provided that the derived matter still exhibits those characteristics of the deposited biological which are essential for the carrying out of the invention.

Comment: The guidelines appear to ignore that the identification of ultimate recipient and limitations on further transfer are required in many cases under the export control laws administered by the Commerce Department. Depositories such as the ATCC regularly apply for licenses before releasing strains. It would appear entirely consistent, therefore, to allow depositors to require that requesters comply with the export control laws since the depository must do so in any event.

Response: The rules being considered by the PTO require only that the depositor make the deposit under such conditions that all restrictions made by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent. This condition does not affect laws or regulations that restrict access for public health or safety reasons.

Comment: The requirement for the patentee to notify the depository promptly after issuance of the patent is unwise and unnecessary. One comment suggested that the use of the word "promptly" is vague and presents the opportunity for problems to arise. The provision was considered unnecessary because the depository releases the deposit when the requester provides the depository with a copy of the issued patent.

Response: This provision has been removed from the rules being considered by the PTO. However, it should be noted (new rule 1.201(c) being considered for proposal) that the mere reference to a specific biological material in the specification disclosure does not create any presumption that the specific material is necessary to satisfy one or more requirements of 35 U.S.C. 112 or that a deposit in accordance with Office policy has been made. A procedure is defined in new rule 1.207(c) being considered for proposal whereby the Office would certify whether a deposit has been made under conditions which make it available to the public as of the issue date of the patent grant.

Comment: Some of the comments received on the requirement for a viability statement provide an adequate response to other comments received. For example, some comments indicated that there should be a presumption that the microorganism is alive and that such testing should not be required. On the other hand, one comment was received to the effect that we should be aware of the problem that material shipped to depositories which, presumably, was viable when shipped, is received and when tested is not viable. This is not uncommon at the ATCC. Another comment indicated that if a viability statement is required it should be done by the depository if the biological material is deposited in a public depository. Another comment indicated that this person was pleased that we have included the third party competent to test for viability option. In some cases tests for viability can require expertise which might not be available at a depository. This option could be very helpful.

Response: Based on the evidence and comments received to date, the PTO is convinced that the requirement for a viability test is appropriate.

Comment: A deposit for either the enforceable life of the patent or for the 30/5 years of the Budapest Treaty should be considered acceptable. While the Budapest Treaty is an executive agreement, and therefor cannot override any clear dictate of 35 U.S.C. 112, it seems presumptuous for an office of an executive department to adopt a policy which is contrary to that embodied in an executive agreement.

Response: The period literally defined in the Budapest Treaty is considered acceptable for a deposit made under that Treaty. However, it is not difficult to imagine a situation where the period defined in the Budapest Treaty would not necessarily extend beyond the enforceable life of the patent. In the Board's decision in Ex Parte *Lundak*, it was noted that one of the basic principles of the patent system was that the public would not be prohibited from practicing the invention after the enforceable life of the patent. Implicit in that basic principle is the logic that a depositor should not be able to make a deposit under conditions that do not provide for storage beyond the enforceable life of the patent. Nor do we believe that the Budapest Treaty contemplated that the deposit would not be available while the patent is in force. The patentee need not be a guarantor of the availability of the deposited material after the enforceable life of the patent, but neither should the patentee be permitted to provide for storage only up to the date the patent expires.

Comment: The requirement for corroboration goes beyond the holding in *Lundak*. The requirement is unprecedented in ex parte prosecution. The PTO has regularly accepted Rule 131 declarations without corroboration, and to require it in the deposit situation would be completely inconsistent. The guidelines also fail to address what would be sufficient corroboration.

Response: The degree of corroboration required would depend on circumstances in the individual application. For a situation such as *Lundak* where a mistake was made relative to the presence of a deposit at the time of filing followed by a deposit within a week to ten days, a verified statement tracing the steps undertaken to deposit the biological material from the point of time of the filing date of the application to the actual deposit would be sufficient. It is the function of the description requirement to ensure that the subject matter that is later claimed in the patent was described in the application as originally filed. Consequently, an applicant who waits to make the deposit until sometime after the filing date of the application has the burden of showing that which is later deposited was the same biological material as existed and was described in the application as originally filed. Corroboration can take any form which is suitable to establish the fact, as opposed to a bare statement made on information and belief, that the deposited material is the same as that which existed as of the filing date of the application. If the material was viable and capable of reproduction as of the time of deposit, the verified statement should indicate that the material was viable and capable of reproduction as of the filing date.

Comment: It would seem that the two month formalities notice under Ex Parte *Quayle* would be appropriately used in instances where an application is allowable but assurance of public accessibility has not yet been made. There is no statutory authority for setting a three month period for response which would not be extendable upon payment of the appropriate fee.

Response: The PTO believes that once the issue of deposits has been either resolved or is in dispute, no additional time should be necessary. The basic concern is an adverse impact on pendency and disclosure to the public for no apparent reason. If an applicant is going to dispute the necessity of a deposit or the conditions under which it is made, then an appropriate appeal can be taken on that issue. If applicant agrees that a deposit is necessary, the three month period to pay the issue fee is considered adequate to get that job done. Nevertheless, provision has been made in new rule 1.208(c) being considered for proposal for an extension of time under 37 CFR 1.136.

Comment: There should be more specific guidelines as to the form of assurances that will be accepted for making an appropriate deposit. An averment by the applicant, assignee or attorney, in papers submitted during pendency of the application should be acceptable to the PTO. Deceit by such applicant, attorney or assignee should be dealt with in the same manner as deceit in conventional chemical cases.

Response: The Office will accept any assurance made in the record with the intent that the PTO rely on applicant to fulfill the deposit requirement as set forth in these proposed rules. The PTO will ensure that applicants have filed a statement that all conditions have been satisfied before the application is allowed to become a patent.

Comment: The PTO policy and guidelines should not make statements or predictions as to burden of proof during enforcement or other actions in a court of law. The indication that the burden of proof to establish an identity between the replaced sample and the original deposit may be on those seeking to enforce the patent outside the PTO goes against a statutory presumption of validity.

Response: The rules being considered by the PTO are limited to the presumption that the PTO will make in any proceeding involving the patent before the PTO.

Comment: It has been suggested that the procedure to be followed when biological material becomes unavailable be separate from the rest of the paragraph dealing with replacement deposits so that these separate situations are not viewed as one. For example, cessation of availability of biological material not previously deposited can result from, for example, the bankruptcy of the sole commercial supplier of the material. Under such circumstance, a deposit of no longer readily available material would be required.

Response: Since the necessity or desirability of replacing a deposit may arise from a number of circumstances, the PTO does not consider it appropriate to define separate rules or procedures for making a replacement under each circumstance. The rules being considered by the PTO are limited to a replacement right only for the original depositor. As one comment observed, the law on property rights in biological materials is somewhat unclear at this time and redeposit by a party other than the original depositor might be considered an act of conversion, depending on the precise circumstances. Moreover, the PTO has indicated an intention of applying a rebuttable presumption that once a biological material has been deposited for the term and under conditions specified in these rules under consideration by the PTO, the biological material deposited would be considered to be known and readily available to the public.

Comment: The guidelines are unclear as to the ability to obtain the benefit of a foreign priority date. Apparently, the PTO is aware that *Lundak* held that 35 U.S.C. 112 requires that a deposit be made and a reference added to the specification before the U.S. patent issues. Thus, 35 U.S.C. 119 affords the benefit of the priority date even if the priority document fails to mention a deposit and even if a deposit had not been made.

Response: The PTO will follow the same procedures for handling a claim for foreign priority in all applications. The examiner will acknowledge a claim for foreign priority when all formal requirements are met and will not consider the merits of an applicant's claim of priority unless a reference is found with an effective date between the date of foreign filing and the date of filing in the United States or when an interference situation is under consideration. Where the merits of a claim for priority need to be determined, the examiner will follow the guidelines in § 201.15 of the Manual of Patent Examining Procedure in making that determination. It must also be emphasized that applicants may not be granted priority in applications filed in countries foreign to the United States if they fail to make a deposit in a permanent depository acceptable to that foreign country before the filing date of the application in the United States.

Comment: If a deposit is found to be contaminated, what option does a depositor have? Can the deposit be replaced and the original deposit date be retained?

Response: If a deposit can still be considered to be viable, even though contaminated, the rules being considered by the PTO would not permit replacement of the original deposit. While there may be an appropriate mechanism for substitution of a deposit number in an existing application, the original deposit, even though contaminated, would provide the best evidence of whatever it was that was originally deposited and should be preserved.

Comment: If a deposit does not produce the product for which it was deposited (antibiotic, for instance), what option does a depositor have? Can the deposit be replaced and the original date retained?

Response: Any deposit which is made in accordance with the rules being considered by the PTO would have only a viability statement associated with it. There is absolutely no proof that the material originally deposited was capable of producing the product for which it was deposited. While it's clearly in the interest of the public to have a deposit available to it which is capable of making the product for which it was deposited, the destruction or replacement of the best evidence of what was originally deposited should not be lost if made in association with an existing patent. Perhaps the depositories should consider preservation of samples of the original deposit in conjunction with a deposit which is neither contaminated nor incapable of producing the product for which it was deposited.

Dated: June 19, 1987.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 87-20528 Filed 9-8-87; 8:45 am]

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federal register

Wednesday
September 9, 1987

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43, 45, and 91

Aircraft Identification and Retention of Fuel System Modification Records; Final Rule

VOL
52
ISS
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 45, and 91

[Docket No. 25033; Amendment Nos. 43–29, 45–17, and 91–206]

Aircraft Identification and Retention of Fuel System Modification Records

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Aviation Regulations to require: (1) that 12-inch high nationality and registration marks be displayed on all aircraft that penetrate an Air Defense Identification Zone or a Defense Early Warning Identification Zone; (2) that a civil aircraft identification data plate be displayed on the exterior surface of each U.S.-registered aircraft; and (3) that a copy of the form which authorizes the alteration of an aircraft with fuel tanks within the passenger or a baggage compartment be kept on board the modified aircraft.

These amendments are necessary because of the increased dangers to civil aviation resulting from the major increase in illegal drug importations into the United States by air. They are intended to expand the effectiveness of narcotic interdiction and, thereby, provide for improvement in safety of civil aviation operations, while at the same time reducing the flow of drugs by air into the United States.

EFFECTIVE DATE: December 8, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph J. Gwiazdowski, Aircraft Manufacturing Division (AWS–200), Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9541.

SUPPLEMENTARY INFORMATION:

Background

Although the Federal Aviation Airworthiness (FAA) does not enforce the anti-drug smuggling and related criminal statutes, it is concerned with the hazards to air commerce in the United States arising from the use of aircraft to escape detection while importing illegal, contraband substances (narcotic drugs, marijuana, and depressant or stimulant drugs) into the United States. The hazards to air commerce have increased consistent with the growing number of pilots who are willing to risk the carriage of these illegal goods despite escalating law enforcement activities. The U.S. Customs Service (Customs) reports that the vast majority of illegal drug trafficking by air into the United States passes through an Air Defense Identification Zone (ADIZ) or Defense Early Warning Identification Zone (DEWIZ). The means for detection of these aircraft include low altitude radar, law enforcement pursuit aircraft, and advanced police techniques. Those pilots committed to evading detection by pursuit aircraft may engage in extremely dangerous flight techniques, such as very low flight to avoid radar; landing and taking off from unprepared landing areas; operation without lights; and operation in weather conditions beyond the capability and/or qualifications of the aircraft or pilot. These flight techniques create a safety hazard for all other aircraft in the area and for persons and property on the ground. Additionally, many of the aircraft used for such operations have been equipped with extended-range fuel tanks which are not installed in accordance with the Federal Aviation Regulations (FAR), posing an additional safety hazard. Thus, while other agencies are responsible for criminal law enforcement concerning illegal substances (narcotic drugs, marijuana, and depressant or stimulant drugs), the hazardous aeronautical activities of pilots engaged in smuggling and the potential increase in volume of these substances into the United States pose a direct threat to air commerce. This threat was a basis for the FAA adopting § 91.12 of the FAR, which provides that no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marijuana, and depressant or stimulant drugs are carried in the aircraft, unless authorized under Federal or State law. During several meetings, the FAA and Customs representatives focused on actions required to develop more effective means to reconcile specific drug enforcement problems involving aircraft. In a July 11, 1985, letter to the FAA, the Assistant Secretary of the Department of Treasury outlined and proposed the specific regulatory amendments which Customs considered to be necessary to assist it in curbing use of aircraft carrying illegal substances and to identify those aircraft which may be used for drug smuggling. Customs believes that their proposed amendments represent a significant step toward curbing the use of aircraft for drug smuggling. The proposed amendments are based on the increase of illegal drug importation by aircraft and on the value to law enforcement officials of positive identification of all aircraft including those aircraft which may be involved in such activities. The problems identified by Customs include:

1. Positive air-to-air identification of aircraft penetrating an ADIZ or DEWIZ is hindered by the difficult-to-read 3-inch identification marks displayed on some of these aircraft;

2. Aircraft with identification (I.D.) plates which cannot readily be seen hamper the prompt identification of stolen or falsely numbered aircraft; and

3. Inability to readily verify unapproved aircraft modifications involving unauthorized fuel tanks in the passenger compartment or a baggage compartment because the records for approved aircraft modifications are not required to be kept aboard the aircraft.

On July 3, 1986, the FAA issued Notice of Proposed Rulemaking (NPRM) No. 86–9 (51 FR 25174; July 10, 1986) proposing responses to these three problems raised by Customs.

Registration Numbers

As discussed in the notice, Customs and other law enforcement groups, in combating drug trafficking by air, frequently must attempt to identify, from a high-performance aircraft, a small low-performance aircraft including aircraft suspected of being used in the illegal activity. Often these operations must be performed at night using special devices and capabilities to enhance identification and to apprehend smugglers. Many of the suspected aircraft have small, 3-inch nationality and registration marks (N-numbers) which are difficult to see or detect when attempting air-to-air identification. This requires maneuvering relatively close to these aircraft so that positive identification can be made. The use of larger registration marks makes identification easier and results in safer operation by maintaining a larger (up to six times greater) separation between the aircraft.

Customs has found that many aircraft flying into the United States display the small, 3-inch marks, making it difficult to identify aircraft, including suspect aircraft. The vast majority of the suspected aircraft, which are not limited to a particular type of aircraft, pass through an ADIZ or DEWIZ prior to entering the United States. It is these aircraft for which Customs, or other law enforcement or military organizations, are likely to attempt air-to-air identification.

Identification Plates

The FAA has adopted several related amendments concerning I.D. plates based on the needs and comments of the aviation community. Section 45.11 of the

FAR was changed by Amendment 45–3 (52 FR 187; January 10, 1967) to require the I.D. plate to be in an accessible location "near an entrance," not necessarily an *external* location, to allow for maximum I.D. plate protection and to facilitate normal aircraft inspection. Based on information presented by small aircraft manufacturers, the FAA again changed § 45.11 of the FAR by adopting Amendment 45–7 (33 FR 14402; September 25, 1968) to provide an optional location for an aircraft I.D. plate. Under this option, the I.D. plate may be affixed permanently on the exterior of the fuselage near the tail surfaces, if it is legible to an observer on the ground. Additionally, FAA Advisory Circular AC 45–2, Identification and Registration Markings, which provides guidance and information concerning the identification and marking requirements for aircraft, includes a provision that, if under certain conditions the I.D. plate had to be covered or enclosed in any manner, its accessibility is considered acceptable if it can be revealed without the use of tools.

The Customs Service indicates that when investigating aircraft, including those suspected of being used for smuggling, it is difficult to determine quickly whether the FAA assigned N-number is displayed appropriately on the aircarft. Furthermore, false numbers may be used on stolen aircraft, which frequently are used for smuggling. Cross-checking the N-number with the I.D. plate data, which is an integral part of identification for the aircraft, assists in determining whether the N-number is false. The I.D. plates for many aircraft, however, are located in the aircraft interior so that they cannot be read from outside the aircraft, making it difficult for investigators to make an on-the-spot check of a suspected aircraft. Customs contends that the repositioning of existing I.D. plates, or placement of another I.D. plate on the exterior of the aircraft near the main entrance, would enable investigators to compare quickly the serial number with the N-number to help determine whether suspect aircraft have been stolen or the N-numbers falsified.

Additional Fuel Tank Installation

The FARs prescribe requirements for the approval of major alterations to aircraft type designs, which include such installations as additional fuel tanks in an aircraft. The FARs also prescribe recordkeeping requirements for such approvals. Most fuel tank installations performed on aircraft operating under Part 91 require an appropriate approval for the type design change and recording of the completion of the modification on FAA Form 337. Those aircraft operated under Part 121, 127, and 135 of the FARs may have additional fuel tanks installed in accordance with applicable requirements, of the particular continuous airworthiness program and prepare the documentation for the alteration other than an FAA Form 337, in accordance with the continuous airworthiness program.

Customs reports that aircraft used to smuggle drugs are often modified with fuel tanks which are installed in the passenger or a baggage compartment and which are not authorized by the FAA. These fuel tanks are installed to permit the aircraft to make long unrefueled flights, such as from the United States to South America. This long-range unrefueled capability adds to the difficulty in pursuing suspected aircraft. These unauthorized, usually haphazard, fuel tank installations create a safety hazard because there is no assurance that they meet the safety standards established by the FAA.

One problem with attempting to identify the unauthorized extended-range fuel tank installation is that it is difficult to check, on the spot, whether the tanks have been installed in accordance with FAA requirements. The FAR type certification procedures require FAA approval for any changes to type design of a U.S. civil aircraft, such as modifications to install extended-range fuel tanks. Documentation evidencing such approval may vary depending upon the nature of the change to the aircraft's type design.

One way that approval can be evidenced is for an authorized person performing the work to execute an FAA Form 337 in accordance with Appendix B of Part 43 of the FAR. However, there is currently no requirement for records of such authorization to be on board the aircraft. Customs contends that a regulation requiring an FAA Form 337 to be aboard the aircraft when extended-range fuel tanks are installed within the passenger or a baggage compartment would assist Customs in concentrating interdiction efforts on suspicious aircraft not authorized to have such installations. Customs investigators can make an on-the-spot check of the suspected aircraft's FAA Form 337. In addition, this action would assist the FAA in identifying aircraft with unauthorized fuel tanks, and thus avoid a potential hazard to the aviation community and the public.

Participation in Rulemaking

Notice No. 86–9 gave interested persons an opportunity to participate in amending these rules. Due consideration was given to all information submitted by the commenters. Except as discussed in this preamble, the revisions adopted by these amendments and the reasons for them are the same as those in Notice No. 86–9.

Discussion of Amendments

The FAA has determined that the amendments proposed in Notice No. 86–9 should be adopted. The comments received in response to the notice are discussed below.

A. Improve Indentification of Aircraft Penetrating the ADIZ and DEWIZ—§§ 45.21 and 45.29

This amendment requires that all aircraft penetrating the ADIZ or DEWIZ display 12-inch markings. However, if any surface authorized to be marked is not large enough for full-size marks, marks as large as practicable shall be placed on the largest of the authorized surfaces in accordance with § 45.29(f).

To ease the burden on owners of affected aircraft which penetrate the defense zones, under the provision of § 45.21(d), this amendment permits the 12-inch markings to be temporary on those "grandfathered" aircraft and certain aircraft which are currently authorized to operate with small markings as specified in § 45.29(b). Moroever, to avoid any burden due to downtime, ferrying, or loss of revenue associated with marking the affected aircraft, a 90-day period is allowed for compliance.

Adoption of this amendment provides for the improvement in safety associated with air-to-air identification of *all aircraft* which penetrate the ADIZ or DEWIZ. It has no impact on the majority of other aircraft operators since most aircraft currently displaying marks less than 12 inches high under Part 45 do not penetrate these zones and thus pose no problem at this time. Those aircraft with smaller marks operating solely within one of these zones, e.g., the Alaska DEWIZ or ADIZ, also will not be affected if they do not depart and reenter (penetrate) the zone.

B. Change I.D. Plate Location—§ 45.11

This amendment requires that all aircraft display an I.D. plate, as specified by § 45.11(a), on the aircraft fuselage exterior surface, in a location legible to an observer on the ground. It must be located adjacent to and aft of the rear-most entrance door or on the exterior surface near the tail. An aircraft

I.D. plate affixed in an easily accessible area, legible to an observer on the ground, facilitates verification of aircraft identification by FAA inspectors, Customs investigators, and other law enforcement officials. The amendment provides for ready access to the I.D. plate data without having to enter the aircraft. It makes the I.D. plate information and N-number available simultaneously to provide a cross reference to help determine whether the aircraft may have been stolen or to determine if the registration number has been falsified. It also facilitates FAA inspectors' identification of aircraft for verification of maintenance, modification, and other airworthiness requirements to assure safe aircraft operation.

This amendment is not retroactive since this could result in a major change which would pose an undue burden on many aircraft owners. For example, if the I.D. plates currently affixed to aircraft, as required, were to be removed (i.e., repositioned) from the existing locations, this could result in damage to the aircraft and I.D. plate, and might require burdensome engineering and manufacturing changes such as structural, interior or exterior repair, or repainting.

As a cost-saving alternative for aircraft manufactured prior to 90 days after the effective date of this amendment, this final rule allows the display of just the model designation and builder's serial number on the fuselage exterior, adjacent to and aft of the rear-most entrance. This may be done if the identification plate is secured at an accessible exterior or interior location near an entrance. The model designation and serial number are required to be affixed in such a manner that they are not likely to be defaced or removed during normal service. Unlike the required fireproof I.D. plate, this "supplemental" identification does not have to be affixed in a manner such that it is not likely to be lost or destroyed in an accident. Thus, the data may be affixed in a relatively low-cost manner, such as by painting or decal.

C. Illegal Fuel Tank Installation—Part 43, Appendix B(a) and (d); § 91.27(c); and § 91.173(a) and (d)

This amendment requires that all affected aircraft modified with additional fuel tanks in the passenger or a baggage compartment, under Part 43 of the FAR, physically have on board the aircraft a copy of the required FAA Form 337. This includes aircraft previously not required to have an FAA Form 337 for fuel tank installations when operating with a special flight permit for the purpose of delivery or export. This amendment also requires that the owner or operator of an aircraft with such fuel tanks present the FAA Form 337 for inspection by any law enforcement officer.

This amendment provides one means for FAA, Customs, and other investigators to quickly obtain evidence as to whether the additional tanks in the aircraft are authorized or possibly illegally installed. Enforcement action can then be taken by the FAA and the appropriate agency against persons operating such aircraft. Action can also be taken to prevent the aircraft from being flown. This rule makes it possible for Customs to concentrate interdiction efforts on those aircraft modified with unathorized fuel tank installations and which are possibly being used for illegal drug trafficking. By limiting this rule to aircraft modified with fuel tanks in the passenger or baggage compartments, which requires an FAA Form 337 under Part 43, operators of aircraft with FAA-approved extended-range fuel tanks located elsewhere in the aircraft (e.g., wing tip tanks) would not be required to keep that authorization on board the aircraft.

Discussion of Comments

General

Eighty commenters, representing the views of the aviation community, participated in this rulemaking. Comments were submitted by individual pilots and owners and operators of aircraft including representatives of some aviation and aircraft manufacturers associations. Generally, the commenters support Customs' objective to stop the flow of illegal drugs into the United States by air. However, most commenters disagree as to what amendments should be adopted and who should comply with them. Some commenters disagree with all the amendments or recommend proposals which are outside the scope of the NPRM. The majority of the commenters address the proposed amendments separately and give reasons which oppose a particular issue and either concur in or withhold comments on the other issues.

The comments from aviation association representatives on the amendments also range from full support as noted by the Airline Pilots Association (ALPA) to "no merit" as the Aircraft Owners and Pilots Association (AOPA) contends. Many commenters contend that the FAA action will not stop drug trafficking and question the value of these amendments. They contend that there are more effective ways to stop drug smugglers such as direct legislation against smugglers. The commenters, however, fail to recognize or acknowledge that the FAA action proposed in Notice No. 86-9 is only a part of the total U.S. Government on-going effort to actively suppress drug smuggling, which includes law enforcement agencies efforts of other Departments such as the Treasury, Justice, and Defense. These initiatives carry out the mandates of Congress, such as the Anti-Drug Abuse Act (Pub. L. 99-570, October 27, 1986).

The pertinent comments and commenters' recommendations concerning each amendment are discussed in the following paragraphs. In addition, comments concerning the time and cost of compliance are discussed separately.

Registration Numbers

The majority of commenters object to the requirement for displaying 12-inch N-numbers on certain aircraft that penetrate an ADIZ or DEWIZ. The commenters contend that the amendment imposes unnecessary costs on owners and operators of aircraft allowed to display smaller N-numbers under § 45.29(b), with no benefit to legitimate operators who must pay for an ineffective law which drug smugglers can easily circumvent with temporary and false markings. Also, operators of some aircraft such as experimental amateur-built, rotorcraft, gliders, airships, and balloons feel that this amendment should be limited to twin-engine, fixed-wing aircraft.

The FAA disagrees because, as stated in the notice, there is an urgent need for positive identification of *all aircroft* that penetrate the defense zones, regardless of size and configuration. However, it should be noted that this amendment only affects those aircraft that display the ineffective small N-numbers and penetrate the ADIZ or DEWIZ. Additionally, to avoid unnecessary costs to operators of the affected aircraft, a 90-day time period is provided for compliance. This provides for sufficient time in which the temporary or permanent 12-inch N-numbers can be affixed to aircraft affected.

A few commenters questioned why all aircraft operating in Alaska must display 12-inch marks since Alaska lies entirely within an ADIZ while aircraft in the contiguous United States may display small N-numbers. However, the rule applies to those aircraft that *penetrate* the ADIZ or DEWIZ. Accordingly, aircraft allowed to display small N-numbers in accordance with

regulations, whether in the United States or elsewhere, must affix 12-inch N-numbers only if they are going to penetrate an ADIZ or DEWIZ. Thus, aircraft operating solely within the State of Alaska will not be required to display 12 inch N-numbers unless they depart on and reenter the ADIZ.

Some commenters contend that the amendment penalizes legitimate aircraft operators while drug smugglers can easily circumvent or violate the regulation. The FAA disagrees because most aircraft operators are required to display 12-inch N-numbers under Part 45. Further, the FAA, in conjunction with other law enforcement agencies, aggressively investigates and takes appropriate action on incidents involving violations of the FAR. Furthermore, under the new Anti-Drug Abuse Act, increased civil and criminal penalties may be imposed on aircraft operators involved in drug smuggling. These penalties range up to $250,000 and 20 years in prison and include the seizure and forfeiture of the aircraft. The amendments to §§ 45.21 and 45.29 have been adopted as proposed.

Identification Data Plates

With regard to the exterior location of I.D. plates and/or data, most commenters contend generally that this amendment is ineffective, impractical, or redundant. A majority of the commenters contend that the amendments would be ineffective because the rule can be easily circumvented by falsifying the data on the exterior surface of the aircraft. The FAA does not agree since the FAA penalties and the more recent legislation, cited previously, are expected to deter such violations.

Some commenters maintain that the rule is impractical because repositioning the existing I.D. plates or affixing a second I.D. plate could damage the aircraft, especially those covered with fabric. The FAA does not agree since the rule does not require repositioning of the original I.D. plates, which conceivably could result in damage to the aircraft. Also, both old and new aircraft can have I.D. plates affixed on the exterior surface, as required, without damaging even fabric-covered aircraft.

Some commenters claim that I.D. plates affixed to the exterior surface of large aircraft would be too high to read by an observer on the ground. Others argue that there is no need to change the I.D. plate location on some rotor-craft, open cockpit aircraft, and balloons where the required I.D. plate can be viewed by an observer outside the aircraft.

However, although I.D. plates can be viewed from the outside of some aircraft, the FAA has determined that I.D. plates in a *standard* location on the exterior surface adjacent to and aft of the rear-most entrance door of an aircraft provides for quick access to the I.D. information, in addition to precluding the need to gain access to the inside of an aircraft.

With regard to the redundant data, commenters contend that there is no need to affix the same data in two places on the same aircraft, therefore, the status quo should be maintained or the NPRM withdrawn.

The FAA disagrees because the I.D. information which is secured inside an aircraft cannot be obtained readily, as some contend, without gaining access to the aircraft. The FAA has determined that the standard exterior location is the most effective location for I.D. plates and/or data. A standard location provides quick access to the identification data with the least impact on the aviation community since most aircraft owners and operators already comply with that requirement, while others can mark their aircraft inexpensively as discussed in Notice No. 86–9.

Additional Fuel Tank Installations

The majority of commenters responding to this amendment agreed with the requirement to have the completed FAA Form 337 aboard an aircraft modified in accordance with Part 43 with fuel tanks in the passenger or baggage compartments. Those opposed contend that the amendment imposes an unnecessary burden on operators of aircraft that may be modified with fuel tanks in accordance with regulations which do not require the use of an FAA Form 337 for documenting major alternations. Accordingly, they maintain that the rule should exempt operators under Parts 121, 127, or 135, as applicable.

The FAA considered the regulations governing aircraft modified under other applicable provisions. However, approved documentation under a continuous airworthiness maintenance program may not be as suitable for carriage on an aircraft as the FAA Form 337. For that reason, the proposed amendment applied only to aircraft modified pursuant to part 43 with fuel tanks installed in the passenger or baggage compartments. This amendment adopts that proposal. The new rule does not require documentation for aircraft modified under other provisions of the FAR.

Some commenters state that the FAA Form 337 can be easily falsified or that an approved installation could be used by a smuggler and that, either way, the amendment has little value. The FAA does not agree since violations of the applicable regulations, such as unapproved equipment installations, are vigorously pursued and enforced by the FAA to maintain safety in air operations. In addition, Customs considers this amendment to be a significant step toward curbing the use of aircraft for drug smuggling.

Time for Compliance

Some commenters object that the proposal does not provide sufficient time for compliance and that this creates an undue burden on owners and operators because of the requirements for ferrying and downtime. The FAA agrees with these commenters. It was planned to allow a period of 90 days after the effective date for compliance with the requirements for the display of 12-inch N-numbers and for the affixing of I.D. plate and/or data. In the NPRM, however, the "October 8, 1986" date was published in error apparently by using the published date of July 10, 1986, as the start of the 90-day period. A correction is made to allow sufficient time for compliance.

To preclude an undue burden on aircraft owners and operators, the 90-day period provides time for appropriate N-numbers and the I.D. plate and/or data to be affixed. The delayed compliance time only applies to the requirements for the display of 12-inch N-numbers and the I.D. plate and/or data. The display of temporary 12-inch markings is permitted for N-numbers, as appropriate, and the method for affixing data plate information on the exterior surface of an aircraft is purposely undefined to allow for economic alternatives, such as painting or decals.

Cost of Compliance

The majority of commenters object to the cost that would be imposed by the proposed 12-inch N-numbers and I.D. plate amendments. They contend that the cost of compliance estimates are too low. In addition, the commenters indicate that the FAA cost estimates do not reflect a loss of revenue caused by ferrying and downtime.

The FAA disagrees with the commenters that its cost estimates are too low. The FAA believes its cost estimates to be a good indicator of what aircraft operators/owners impacted would, on the average, incur. Moreover, after careful examination of the comments received on NPRM No. 86–9, it has become apparent to the FAA that the majority of the commenters

apparently failed to consider the FAA assumptions noted in the NPRM or as detailed in the draft regulatory evaluation in the docket. This evaluation fully explains how the cost of compliance estimates, which range between $100 and $215, were derived and contains a number of assumptions on which these cost estimates are based. Briefly, some of these assumptions are based on the fact that only those aircraft displaying small N-numbers under § 45.29, which includes aircraft "grandfathered" by Amendments 45–13 and 45–15, would be impacted by the 12-inch N-numbers requirement when penetrating the ADIZ or DEWIZ. It is further assumed that all operators of those "grandfathered" aircraft will be required to display 12-inch N-numbers only 1 or 2 years sooner than they otherwise would be required because of repainting, restoring, or changing the marks. Therefore, the FAA evaluation accurately reflects only that small portion of the estimated $550 cost of displaying 12-inch N-numbers. The net result is that this rule will impact very few aircraft since most aircraft would switch to permanent 12-inch N-numbers in that period.

The cost of compliance for the I.D. plate amendment assumes that this data information would be painted on the designated exterior of all existing impacted aircraft for about $100 based on conversations between FAA and fixed base operators.

With regard to downtime and ferrying, the FAA allows impacted aircraft operators and owners a period of 90 days after the effective date of the final rule to come into compliance. This period of 90 days provides sufficient time for impacted operators and owners to comply with the rule without incurring additional costs attributed to downtime and ferrying. The intent of the FAA has always been to allow a reasonable period of time for impacted parties to comply with the rule. It has always been the policy of the FAA *not* to impose undue cost burdens on parties impacted by its regulatory efforts.

Summary of Comments

Most commenters oppose the adoption of the amendments; however, they have neither provided sufficient justification for their positions nor shown that withdrawing Notice No. 86–9 is in the public interest. It appears that many commenters failed to consider the reasons for adopting the amendments provided in the NPRM. Many comments objected that they must comply with the amendments when, in fact, they are not affected. For example, their aircraft will not penetrate an ADIZ or DEWIZ, or the I.D. plates are already affixed as required. The new requirement for the appropriate FAA Form 337 to be aboard aircraft modified with certain fuel tanks under Part 43 is favored by the majority of the commenters and poses no problem.

The FAA agrees with comments requesting that it clarify and correct errors. Therefore, the comments that the FAA is accepting, and which the final rule reflects, include an appropriate compliance date and editorial changes suggested to clarify the amendments as proposed. Also, in response to comments, the FAA has also reevaluated and clarified the cost impact where necessary.

Regulatory Evaluation Summary

The regulatory evaluation prepared for this rule examines the benefit and cost aspects of the establishment of identification, registration marking and recording of major repair requirements that impact general aviation aircraft. The rule includes amendments to Parts 43, 45, and 91 of the FAR, which respond to the Department or Treasury's request for the following:

1. That, 90 days after the effective date of this rule, 12-inch high nationality and registration marks (N-numbers) must be displayed on aircraft that penetrate an ADIZ or a DEWIZ;
2. That, 90 days after the effective date of this rule, a civil aircraft identification (I.D.) plate or its information must be displayed in a legible area on the fuselage exterior of an aircraft either adjacent to and aft of the rear-most entrance, or on the fuselage near the tail surfaces; and
3. That, after the effective date of this rule, a copy of the FAA Form 337 completed upon installation of fuel tanks installed within the passenger compartment or a baggage compartment under Part 43 of the FAR be kept in the aircraft by the owner or operator.

Costs

Estimates of the cost of compliance with the amendments to Parts 43, 45, and 91 have been developed by the FAA. Cost estimates were obtained primarily from civil aircraft manufacturers and fixed based operators.

This evaluation estimates that the one-time cost of compliance associated with the amendments to § 45.11 (I.D. plate amendment) and § 45.29 (12-inch N-number amendment) are expected to range between $7 million and $8 million (present discounted value of cost at 10 percent, 1987). The amendment to § 45.11 will impact an estimated 79,300 to 82,000 fixed-wing aircraft, rotorcraft, and other types of affected civil aircraft (blimps, balloons, and gliders) at a cost of $100 each. Moreover, the amendment to § 45.29 will affect an estimated 3,900 to 13,500 fixed-wing aircraft and rotorcraft at a cost of $55 to $115 each, respectively. Collectively, the cost of compliance will range between $100 and $215 per aircraft (1985 dollars). Conversely, the amendments to Appendix B of Part 43 (Recording of Major Repairs and Major Alterations), § 91.27 (Civil Aircraft: Certifications Required), and § 91.173 (Maintenance Records) are estimated to impose no additional cost. Under this amendment, this form is filled out in triplicate, rather than duplicate, to provide for a copy to be kept on board an aircraft modified with a fuel tank in the passenger compartment or a baggage compartment. In addition, the amendment to § 45.21 (General) is estimated to impose no additional cost to owners and operators of aircraft which may penetrate a defense zone because it merely provides for the option of using temporary or permanent 12-inch markings rather than an additional requirement.

Benefits

The anticipated benefits of the amendments include the following: (1) improved positive identification of those aircraft previously allowed to display small N-numbers when penetrating the ADIZ or DEWIZ; (2) improved verification of aircraft identification and enhanced ability of inspectors to determine noncompliance, such as whether a suspect aircraft had been stolen or the N-numbers falsified; and (3) increased effectiveness of Customs in concentrating interdiction efforts on suspicious aircraft not authorized to operate with fuel tanks installed in the passenger compartment or a baggage compartment. The FAA has been unable to quantitatively determine the extent to which Customs' drug interdiction efforts will be enhanced by this rule and resulting benefits. This difficulty is largely attributed to the fact that benefits of Customs' drug enforcement efforts represent a public good. This good does not subject itself to market evaluation. Thus, it is extremely difficult to evaluate these benefits in monetary terms. An indication of the potential benefits that could accrue from reduced drug abuse activity, due to enhanced drug interdiction, is shown in a 1984 report by the Research Triangle Institute. The report revealed that the economic cost to society of drug abuse amounts to approximately $64 billion annually.

Safety benefits are also expected to accrue from this rule. These benefits are related to the lowering of fatalities and serious injuries associated with operation of civil aircraft in active drug trafficking areas. A review of the National Transportation Safety Board's data base for drug-related accidents revealed that 127 fatalities and 33 serious injuries occurred between 1975 and 1984. During this period, these statistics equated to an annual average of 13 fatalities and 3 serious injuries related to drug trafficking activity. The rule is expected to have a positive impact on these grim statistics, though to what extent is not known by the FAA.

The regulatory evaluation that has been placed in the docket contains information in more detail related to costs and benefits that are expected to accrue from the implementation of this rule.

Regulatory Flexibility Determination

The FAA has determined that, under the criteria of the Regulatory Flexibility Act of 1980, the amendments contained in this rule are not expected to have a significant economic impact on a substantial number of small entities. The responsibility for marking or providing I.D. plate information on existing aircraft is placed directly on the owner or operator of the aircraft. However, for new aircraft, the I.D. plate responsibility is placed on the applicant for airworthiness certificate, usually the manufacturer. This amendment will impose no additional cost on manufacturers since it only requires that the I.D. plate be located on the exterior rather than interior of the aircraft. The majority of small entities impacted by this rule represent operators of unscheduled aircraft for hire. These operators are expected to incur a one-time compliance cost ranging between $155 and $215. These costs are far below the annualized threshold of significant regulatory cost of $3,540. Therefore, this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

All foreign and domestic manufactured aircraft sold in the United States need to be identified in accordance with the provisions of this rule. The cost of marking the aircraft is borne by individual domestic owners or operators only. This rule will not have an impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Conclusion

The amendments contained in this FAA document involve only the cost of affixing N-numbers or data to aircraft belonging to a minor part of the aviation community. The benefits are unquantifiable in that the amendment will enhance safety as well as assist Customs in its drug interdiction efforts as requested. The cost imposed on small entities are below the annualized threshold of significant regulatory costs. Therefore, I certify that under the criteria of the Regulatory Flexibility Act, these amendments do not have a significant economic impact, positive or negative, on a substantial number of small entities, and a regulatory flexibility analysis is not required. In addition, for the same reasons, the amendments do not involve a major rule under Executive Order 12291. Because it involves important DOT policy, the rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects

14 CFR Part 43

Aircraft.

14 CFR Part 45

Nationality.

14 CFR Part 91

Aircraft, Airworthiness directives and standards.

Adoption of the Amendments

In consideration of the foregoing, Parts 43, 45, and 91 of the Federal Aviation Regulations (14 CFR Parts 43, 45, and 91) are amended as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. The authority citation for Part 43 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Appendix B is amended by revising the introductory text of paragraph (a) and adding a new paragraph (d) to read as follows:

Appendix B—Recording of Major Repairs and Major Alterations

(a) Except as provided in paragraphs (b), (c), and (d) of this appendix, each person performing a major repair or major alteration shall—

* * * * *

(d) For extended-range fuel tanks installed within the passenger compartment or a baggage compartment, the person who performs the work and the person authorized to approve the work by § 43.7 of this part shall execute an FAA Form 337 in at least triplicate. One (1) copy of the FAA Form 337 shall be placed on board the aircraft as specified in § 91.173 of this chapter. The remaining forms shall be distributed as required by paragraph (a) (2) and (3) or (c) (1) and (2) of this paragraph as appropriate.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

3. The authority citation for Part 45 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, 1401, 1402, 1421, 1423, and 1522; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

4. Section 45.11 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 45.11 General.

(a) *Aircraft and aircraft engines.* Aircraft covered under § 21.182 of this chapter must be identified, and each person who manufacturers an aircraft engine under a type or production certificate shall identify that engine, by means of a fireproof plate that has the information specified in § 45.13 of this part marked on it by etching, stamping, engraving, or other approved method of fireproof marking. The identification plate for aircraft must be secured in such a manner that it will not likely be defaced or removed during normal service, or lost or destroyed in an accident. Except as provided in paragraphs (c) and (d) of this section, the aircraft identification plate must be secured to the aircraft fuselage exterior so that it is legible to a person on the ground, and must be either adjacent to and aft of the rear-most entrance door or on the fuselage surface near the tail surfaces. For aircraft engines, the identification plate must be affixed to the engine at an accessible location in such a manner that it will not likely be defaced or removed during normal service, or lost or destroyed in an accident.

* * * * *

(d) On aircraft manufactured before December 8, 1987, the identification plate required by paragraph (a) of this section may be secured at an accessible exterior or interior location near an entrance, if the model designation and builder's serial number are also displayed on the aircraft fuselage exterior. The model designation and

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builder's serial number must be legible to a person on the ground and must be located either adjacent to and aft of the rear-most entrance door or on the fuselage near the tail surfaces. The model designation and builder's serial number must be displayed in such a manner that they are not likely to be defaced or removed during normal service.

5. Section 45.21 is amended by revising paragraph (d)(3) to read as follows:

§ 45.21 General.

* * * * *

(d) * * *

(3) It is marked temporarily to meet the requirements of § 45.22(c)(1) or § 45.29(h) of this part, or both.

6. Section 45.29 is amended by revising the introductory text of paragraph (b) and adding a new paragraph (h) to read as follows:

§ 45.29 Size of Marks.

* * * * *

(b) *Height.* Except as provided in paragraph (h) of this part, the nationality and registration marks must be of equal height and on—

* * * * *

(h) After December 8, 1987, each operator of an aircraft penetrating an ADIZ or DEWIZ shall display on that aircraft temporary or permanent nationality and registration marks at least 12 inches high.

PART 91—GENERAL OPERATING AND FLIGHT RULES

7. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 S A . 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

8. Section 91.27 is amended by adding a new paragraph (c) to read as follows:

§ 91.27 Civil aircraft: Certifications required.

* * * * *

(c) No person may operate an aircraft with a fuel tank installed within the passenger compartment or a baggage compartment unless the installation was accomplished pursuant to Part 43 of this chapter, and a copy of FAA Form 337 authorizing that installation is on board the aircraft.

9. Section 91.173 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 91.173 Maintenance records.

* * * * *

(c) The owner or operator shall make all maintenance records required to be kept by this section available for inspection by the Administrator or any authorized representative of the National Transportation Safety Board (NTSB). In addition, the owner or operator shall present the Form 337 described in paragraph (d) of this section for inspection upon request of any law enforcement officer.

(d) When a fuel tank is installed within the passenger compartment or a baggage compartment pursuant to Part 43, a copy of the FAA Form 337 shall be kept on board the modified aircraft by the owner or operator.

Issued in Washington, D.C., on September 1, 1987.

T. Allan McArtor,

Administrator.

[FR Doc. 87–20606 Filed 9–8–87; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Wednesday
September 9, 1987

Part VI

Department of Education

Office of Special Education and Rehabilitative Services

Postsecondary Education Program for Handicapped Persons; Notice of Proposed Annual Funding Priority and Grant Availability

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Postsecondary Education Program for Handicapped Persons

AGENCY: Department of Education.

ACTION: Notice of Proposed Annual Funding Priority.

SUMMARY: The Secretary proposes an annual funding priority for the Postsecondary Education Program for Handicapped Persons-Demonstration Projects component. This priority will support projects that provide development or refinement of employment-related skills to youths with mild and moderate handicaps in community colleges, vocational-technical institutes, and other postsecondary educational settings.

DATE: Comments must be received on or before October 9, 1987.

ADDRESS: Comments should be addressed to Dr. Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 4092), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Rosenstein. Telephone: (202) 732-1176.

SUPPLEMENTARY INFORMATION: The Postsecondary Education Program for Handicapped Persons is authorized by Section 625 of Part C of the Education of the Handicapped Act (20 U.S.C. 1424a) to develop, operate, and disseminate specially designed or adapted model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities. Consideration is given, under a separate competition, to four regional centers for individuals who are deaf. This notice concerns support for model projects for individuals with handicapping conditions other than deafness, for the purpose of developing and adapting educational programs that meet the special needs of these individuals. These projects are to coordinate, facilitate, and encourage education of persons with handicaps with their nonhandicapped peers. Under this program, the Secretary makes awards to State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies.

Proposed Priority

(a) In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3) and with 34 CFR 338.30 (b) and (c) and 338.10(a)(2)(i), the Secretary proposes to give an absolute preference to applications submitted under this priority for model projects of supportive services to individuals with mild or moderate handicapping conditions other than deafness that (a) focus on specially adapted or designed educational programs that coordinate, facilitate, and encourage education of handicapped individuals with their nonhandicapped peers, and (2) are targeted to vocational outcomes for youth who have recently completed or left secondary educational programs. Applicants must develop strategies for locating and serving young adults with handicaps who are in need of continued educational services to secure and maintain competitive employment. Applicants must establish or make use of existing formal cooperative relationships between secondary schools and potential employers, and must assure that these young adults will have individualized educational plans that detail the goals and objectives for obtaining the skills requisite for employment. Job placements and follow-along activities are expected as basic components of proposed activities. This priority is focused on short-term educational interventions necessary to assist youth to secure competitive employment. In addition to entry-level employment, interventions may include training in aspects of adjustment to the community as well as to the workplace. Applications for multi-year awards will have graduates entering the work force; these applications may reflect follow-up and follow-along data from worker-graduates in their evaluation plans.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism by relying on State and local processes for State and local government coordination review of proposed Federal financial assistance.

In accordance with the order, this document provides early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to the priority will be available for public inspection, during and after the comment period, in Room 4092, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1424a)

(Catalog of Federal Domestic Assistance No. 84.078: Postsecondary Educational Programs for Handicapped Persons)

Dated: August 18, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-20642 Filed 9-8-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.078]

Notice Inviting Applications for New Awards Under the Postsecondary Education Program for Handicapped Persons—Demonstration Projects for Fiscal Year 1988

Purpose: To develop, operate, and disseminate specially designed or adapted model programs of postsecondary, vocational, technical, continuing, or adult education for persons with handicapping conditions other than deafness.

Deadline for Transmittal of Applications: December 18, 1987.

Deadline for Intergovernmental Review: February 16, 1988.

Applications Available: November 2, 1987.

Estimated Range of Awards: $1,000,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 10.

Project Period: From 1 to 3 years.

Applicable Regulations: (a) The Postsecondary Education Program for Handicapped Persons Regulations, 34 CFR Part 338, (b) the Education Department General Administrative Regulations, 34 CFR 74, 75, 77, 78, and 79, and (c) when adopted in final form, the annual funding priority for this program. A notice of proposed annual funding priority is published in this issue of the **Federal Register.** Applicants should prepare their applications based on the proposed priority. If there are any changes made when the final annual funding priority is published, applicants will be given the opportunity to amend or resubmit their applications.

For Applications or Information Contact: Dr. Joseph Rosenstein, Telephone: (202) 732-1176, Office of Special Education Programs,

Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094–M/S 2313), Washington, DC 20202.

Program Authority: 20 U.S.C. 1424a.

Dated: September 3, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87–20643 Filed 9–8–87; 8:45 am]

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Part VII

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 215, 236, 813, 882, 912 and 913

Rent Supplement, Section 236, Section 8 and Public and Indian Housing Programs; Definition of Income Final Rule and Federally Mandated Exclusions From Income Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 215, 236, 813, 882, 912 and 913

[Docket No. R-87-1345; FR-2184]

Definition of Income in the Rent Supplement, Section 236, Section 8 and Public and Indian Housing Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule makes a few adjustments in the definition of income used in HUD's assisted housing programs. Exclusions from income are made in response to enactment of the Higher Education Amendments of 1986 and in response to inquiries about the interaction of various State and Federal programs with HUD's income and rent provisions. The exclusions involve scholarships—in the case of the Higher Education Amendments, training program grants, and, in the case of the public housing rule, a conforming exclusion for the income of a live-in aide. In addition, there are minor changes to conform definitions in the public housing rule to those made in the Section 8 program as part of a rule that permits shared housing in one of the Section 8 programs, to clarify the treatment of assets, to remove from the public housing rule the obsolete definition of "nonimmigrant student-alien", to clarify a provision of the Section 8 Certificate rule that has appeared to conflict with income restrictions, and to reorganize all exclusions by combining two paragraphs concerning exclusions from income. (The preamble also notes in passing the decision that shared housing in public housing will not be covered by a regulation.)

EFFECTIVE DATE: November 1, 1987.

FOR FURTHER INFORMATION CONTACT: For Rent Supplement, Section 236, and Section 8 programs administered under 24 CFR Parts 880, 881, 883–886: James J. Tahash, Director, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 426–3944.

For Section 8 programs administered under 24 CFR Part 882 (Existing Housing, Moderate Rehabilitation and the Housing Voucher programs) and for Public and Indian Housing programs: Edward Whipple, Chief, Rental and Occupancy Branch, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 426–0744. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

Comprehensive final rules for the definition of income were published for the Section 8 programs on May 10, 1984 (49 FR 19925); for the Public and Indian Housing programs on May 21, 1984 (49 FR 21475); and for the Rent Supplement and Section 236 programs on July 23, 1984 (49 FR 29580—an interim rule; see also final rule published June 16, 1986, 51 FR 21850). The definitions of income in these various rules are nearly identical.

The rules are structured so that the definition of "Annual Income" includes income from all sources except those specifically excluded. Therefore, when it has come to our attention that a new provision of Federal law requires that a particular source of income must be disregarded or a particular deduction from income must be allowed, we have amended our income rules accordingly. In addition to our rules' recognition of exclusions from income required by other Federal statutes and mandatory deductions from income, the rules also contain exclusions of certain other sources of income—as an exercise of the Secretary's discretion. In the category of discretionary exclusions, the rules exclude certain portions of scholarships. This rulemaking is being initiated to simplify the method of notice of the exclusions required by Federal statute, to modify a few of the discretionary exclusions, and to make minor clarifying changes.

Justification for Final Rule

It is the policy of this Department to publish for comment, rules relating to public property, loans, grants, benefits, or contracts, despite the exemption for these rules contained in 5 U.S.C. 553 from the requirement to solicit public comment. However, under 24 CFR Part 10, in a particular case, the Department may omit solicitation of public comment before publishing a final rule if such comment is not required by statute and solicitation and consideration of public comment are "impracticable, unnecessary or contrary to the public interest."

In this case, the amendments being made to the income definition rules are minor changes to clarify existing policy or to extend existing policy to income sources that have come to our attention since the issuance of the rule in 1984, or to clarify the applicability of a new Federal statute (the Higher Education Amendments of 1986) to our programs. To the extent the amendments constitute substantive changes, they are favorable to the program beneficiaries. They are supportive of the self-sufficiency of disabled persons and unemployed persons. We also note that, because of the limited applicability of the changes that are not statutorily required, e.g., to beneficiaries of programs targeted to disabled persons or unemployed persons receiving training, the changes will not have a significant effect on program cost. Therefore, the Department has concluded that solicitation of comment is unnecessary and that the delay in effectiveness that would be caused by the process would be contrary to the public interest.

Specific Changes

1. Reorganization of Definitions

In each of the definition sections—§§ 215.21, 236.3, 813.106 and 913.106—there is a paragraph (c) of enumerated exclusions that are described as "temporary, nonrecurring or sporadic income" and a paragraph (d) of enumerated exclusions that are not given a unifying description. This rule reorganizes the exclusions so that they are all contained in one paragraph (c), which does not attempt a unified descriptive title. However, the category of "temporary, nonrecurring or sporadic income" is retained and the existing subcategory of "casual, sporadic or irregular gifts" is eliminated as duplicative. Cross-references in the definition of "live-in-aide" to the paragraph that excludes the live-in-aide's income are corrected to conform to the reorganized paragraph numbering.

2. Scholarships

Under paragraph (c)(4) of the current definition of income, there is an exclusion for "[a]mounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books and equipment." However the exclusion is limited to the amount used for those purposes, and any amount not so used that is available for subsistence is specifically directed to be included in income.

Section 479B of the Higher Education Amendments of 1986, Pub. L. 99–498, approved October 17, 1986, (Education Amendments) requires that no portion of a college scholarship provided under Title IV of the Higher Education Act of

1965 used to cover the cost of attendance at the educational institution can be considered as "income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds." The Education Amendments define "cost of attendance" very broadly, to cover not only tuition, fees, books and equipment (items for which scholarship amounts are excluded under paragraph (c)(4) of our rules) but also amounts used for "supplies, transportation, and miscellaneous personal expenses" and for materials.

Thus, paragraph (c)(4) as currently written would not exclude scholarship amounts, (or veteran's benefits) used to cover the cost of materials, supplies, transportation and miscellaneous personal expenses, while paragraph (d)(3)—as applied since the Education Amendments—would appear to exclude scholarship amounts used to cover these items, but only for scholarships funded under Title IV of the Higher Education Act of 1965. Examples of Title IV programs are Basic Educational Opportunity Grants (Pell Grants), Supplemental Opportunity Grants, State Student Incentive Grants, College Work-Study, and Byrd Scholarships.

Although the Education Amendments only require exclusion from income of Title IV scholarships (in amounts as described above), HUD has decided that, for ease of administration, the income rules for these programs will exclude scholarships funded from any source to the extent they are used to cover the expenses described above.

Amounts of scholarships intended as a subsistence allowance to cover the costs of room and board are not excluded from income by the Education Amendments. Therefore, the language of paragraph (c)(4), specifically including amounts available for subsistence, is being retained.

The Education Amendments exclude sholarships from "income or resources in determining eligibility for assistance under any other [federally funded] program." Historically in the Section 8 Housing Assistance Payments program, HUD applied separate income and resources tests for dertermining eligibility than it did for determining the level of benefits. The Education Amendments could have been construed to apply only to initial eligibility when there were two different standards for determining income. However, since 1984 the Department has had just one definition of income for both purposes for the Section 8 program, as well as for other subsidized housing programs covered by this rule. Therefore, the exclusion is being applied under this rule to calculations of tenants' required rental payments as well as to initial eligibility.

Since the revision of paragraph (c)(4) encompasses the entire exclusion required by the Education Amendments, a revision to paragraph (d)(3) (on statutory exclusions) to include the substance of section 479B of the Education Amendments would have no practical effect. However, revision of that paragraph is needed for other reasons.

The current rule's language in paragraph (d)(3) could be interpreted either (1) to contain an all-inclusive list of the programs under which benefits are to be excluded from income, or (2) to contain a list of examples of such programs. The problem with the first interpretation is that no exclusion will be recognized without an amendment to the rule, which can be a time-consuming process. The problem with the second interpretation is that housing managers and PHAs appear to be on their own in keeping abreast of enactment of Federal statutes that might excluse a benefit from income for the purpose of HUD programs.

The Department has decided that the best method of implementing changes in Federal law concerning benefits that must not be considered in determining income for purposes of HUD programs, is for the Department to publish periodically in the **Federal Register** a notice of the programs that qualify for exclusion under paragraph (d)(3) and to distribute the notice to PHAs and housing managers in the same way as the Department distributes other program instructions. This method will assure adequate public notice and adequate actual notice to affected parties.

Consequently, paragraph (d)(3) is being revised to acknowledge the exclusion required under other Federal statutes, to remove the listing of excluded programs, and to state that the list of programs qualifying for the exclusion is to be published and distributed periodically, as described above. A companion Notice containing the current list of qualifying programs is published elsewhere in today's issue of the **Federal Register**, and it will take effect on the effective date of this rule. We expect that PHAs and housing owners will implement the provisions of future notices beginning with income determinations effective 60 days following the date of publication of the notice in the **Federal Register**.

3. Training Programs

Payments to trainees under the Job Training Partnership Act (JTPA) are required by that Act to be disregarded for purposes of income determinations under other Federal benefit programs. Our rules (Parts 215, 236, 813, and 913) currently provide (in paragraph (d)(3)(vii)) for exclusion of payments *received from* (813 and 913) or *made under* (215 and 236) the Job Training Partnership Act. The JTPA itself contemplates exclusion of all payments to trainees participating in programs funded by that Act. Since training payments are often funded jointly by JTPA and other sources, it is important to clarify that all such payments are to be treated the same way—excluded from income for purposes of these HUD programs.

Another training program to which the Department has decided to give similar treatment is tenant training funded by HUD. An example of such a training program is the one in the Public Housing Program, funded under the Comprehensive Improvement Assistance Program (CIAP). Tenant trainees need the amounts they are paid to cover the added costs associated with participation in the training, such as day care, transportation and clothing. For a public housing agency to pay tenant trainees with CIAP funds and then increase the family's rent by 30 percent of that payment would be likely to cause many potential trainees to reconsider participating in the program. In the case of youths 18 years old and older who live with their parents, the disincentive to the family would be particularly strong if the increased rent came from the parents' resources. When this training ends and the trainee obtains new employment, that income would be treated as other employment income—included in the family's annual income.

A third type of training program given recognition under this rule is one encouraged by the Supplemental Security Income (SSI) program, administered by the U.S. Department of Health and Human Services (HHS) under 42 U.S.C. 1381 through 1383c. The SSI program provides support for certain aged, blind and disabled individuals. For persons pursuing a Plan for Achieving Self-Support (PASS) that has been approved by the Secretary of HHS, income necessary to fulfill the plan is disregarded by HHS. (See paragraphs (b)(4)(A)(iii) and (b)(4)(B)(iv) of section 1382a.)

Under HHS regulations (20 CFR 416.1112(c)(8) and 416.1180–416.1182), while a qualified SSI recipient (*i.e.*, blind or disabled person) participates in a training or educational program, income that is set aside under an approved PASS to help the person attain a specific

occupational goal is disregarded for purposes of SSI eligibility and benefits. The period of time during which this income may be disregarded is initially no more than 18 months. However, if the person pursues a program that takes longer, the period may be extended up to three years or, in some cases, up to four years.

The goals of the PASS program are similar to the other training programs, in which a source of income is being disregarded for a limited period of time. The Department believes that this income related to pursuit of training—disregarded for purposes of SSI eligibility and benefits—should also be excluded for purposes of housing assistance eligibility and benefits. (See § 215.21(c)(8)(i) and comparable provisions.)

4. Reimbursements for Program-Related Expenses

Reimbursements are provided by various publicly assisted programs to cover a person's out-of-pocket expenses incurred in connection with participation in the program. Where these payments are made solely to allow participation in the program, we believe the payments should be excluded. In fact, under the rule in effect before July 1, 1984 in the Public and Indian Housing programs, these reimbursements were excluded. (See § 960.403(n)(7) (1984 ed.).) Examples of such reimbursements are payments made to cover transportation, child care and other work-related expenses when a welfare recipient, as a condition of continuing to receive welfare benefits, works in a nonprofit agency to acquire job skills (Community Work Experience Program) or, if skilled, looks for a job (Employment Search Program). Another example would be payments to cover the transportation of a volunteer firefighter. A change to the new paragraph (c) restores the old Public and Indian Housing provision (See § 215.21(c)(8)(ii) and comparable provisions in other parts).

5. Clarification of Treatment of Assets, Child Care Expenses and Military Pay

The definition of "Net family assets" is found in §§ 215.1, 236.2, 813.102 and 913.102. That definition currently includes property such as equity in a home, except for § 913.102, which excludes equity in HUD homeownership programs. HUD is specifically authorized by statute to provide housing assistance to buyers of cooperative units, and to buyers of manufactured homes who must pay rental for the land that the home occupies. (See 12 U.S.C. 1701s(c), 12 U.S.C. 1715z–1(k), and 42 U.S.C. 1437f(f)(2), 1437f(j).) To avoid frustrating these statutory objectives, the rules for the Rent Supplement, Section 236 and Section 8 programs (Parts 215, 236 and 813) are being revised to exclude the value of the family's equity in the cooperative unit in which it resides. The Section 8 rule, which deals with manufactured homes, is also being changed to exclude the value of the manufactured home in which the family resides. The public housing rule is being clarified by adding the limiting words "in which the family resides" to the exclusion from assets, to conform to the other rules.

In addition, the question has arisen whether the costs that would be incurred in disposing of an asset should be deducted in the determination of its value. The answer is yes, and we are clarifying this by revising the definition of "Net Family Assets" in all the rules. "Value of" the assets is being changed to the "Value of the assets after deducting cost that would be incurred in disposing of the asset" (such as real estate or stock broker's commissions or penalty for early withdrawal of a time deposit).

Although the deduction for medical expenses contains language limiting it to unreimbursed expenses, the deduction for "child care expenses" has not contained such limiting language. Now that a category of reimbursement is being added (for out-of-pocket expenses associated with participation in a publicly assisted program—see item 4) which may cover child care expenses, the definition of "child care expenses" is being revised to clarify that the deduction applies only to unreimbursed expenses.

Paragraph (b) of the income definition section for each program deals with specific types of income that *do* constitute income under the rule. Unlike the other subparagraphs in the paragraph, subparagraph (8)—dealing with military pay—contains a characterization of the type of person receiving this pay: "a member of the Armed Forces (whether or not living in the unit) who is head of the Family, spouse, or other Family member whose dependents are residing in the unit".

Paragraph (a) already describes the persons whose income is to be included. The language in paragraph (b)(8) appears to be broader in reach than that of paragraph (a), which applies to all other sources of income listed in paragraph (b). To eliminate this disparity and improve the organization of the section, the language describing the relationship of the service member to other family members is being deleted.

6. Clarification of Certificate Program Rule.

The Section 8 program rule that generally restricts the income level of persons admitted to the program to those qualifying as very low-income, § 813.105, has a specific provision dealing with the Certificate program. Section 813.105(c)(1) requires that a PHA obtain HUD approval before issuing a new Certificate to a participating family that wishes to move to a new unit with continued assistance (except for families continuously assisted since before July 1, 1984). On the other hand, the rule dealing with continued participation in the Certificate program, § 882.209(m), provides that a PHA must issue a participating family a new Certificate when the family wants to move to a new unit if the PHA has sufficient funding and is legally able to enter into contracts for units in the area where the family wants to move, unless the family is ineligible for continued assistance (under § 882.210 because if its own "action or inaction." Section 882.209(m) is silent with respect to the effect of the participating family's income level at the time of the request for issuance of a new certificate. An amendment to § 882.209(m) that would have clarified the relationship to § 813.105(c) was included in the "Alien rule" published on April 1, 1986 (51 FR 11198, 11226), but has not yet been made effective because of litigation and Congressional action directed at the primary effect of that rule—to restrict housing assistance to citizens and eligible aliens.

There is not any actual conflict between §§ 813.105(c) and 882.209(m). The income restriction under § 813.105 is a limitation on the family's right to a Certificate under § 882.209(m)(1). Except with advance HUD approval in accordance with § 813.105(c), the PHA has *no duty* under § 882.209(m) to issue a Certificate to a non-very low income family. Indeed, unless HUD has granted approval, the PHA *may not* issue a Certificate to a non very low income family who wants to move with assistance. The PHA may not issue a Certificate to the family, even if the PHA would otherwise be required to issue a Certificate under § 882.209(m)(1).

To clarify this issue, this rule includes an amendment to § 882.209(m) to refer to the limitation on a PHA's authority to issue a Certificate to a family whose income is above the limit for very low-income families. (This amendment is the same as the amendment attempted for the same purpose in the April 1, 1986 Alien rule.)

7. Conforming Changes

In a prior rulemaking, the "definitions" and "annual income" sections of Parts 812 and 813 were amended, in the context of a rule dealing primarily with shared living arrangements among assisted families in the Section 8 Certificate program, to add a definition of "live-in aide" and to exclude the income of the live-in aide, to remove the definition of "nonimmigrant student-alien", and to make minor word changes to the definitions of "disabled person", "displaced person", "elderly family", "elderly person", "family", "handicapped person", and "single person" (51 FR 21300, June 11, 1986). That rule's effective date is expected to be announced soon. Since the existing policy and practice in the Public Housing program has been to permit shared housing, no regulatory barriers prevent shared housing in that program, and no statute requires that regulations be issued on the topic, the Department has determined that regulations are unnecessary. (A handbook giving suggestions about operating shared housing in this program is to be issued soon.) Since no shared housing rule will make the conforming changes to Parts 912 and 913, applicable to Public Housing, this rule is making changes parallel to those made earlier in Parts 812 and 813, by the shared housing rule for the Section 8 program.

The definition of nonimmigrant student-alien is now being removed from Part 912 (as it has been for Parts 215 and 236) and the restriction against a nonimmigrant student-alien being a member of a "family" eligible for assistance is being removed from Part 912, because the law restricting admission of such persons, section 214 of the Housing and Community Development Act of 1980, has been amended to delete that restriction. The statutory restriction against admission of nonimmigrant student-aliens was replaced by the broader restriction against assistance to ineligible aliens in the amendment to section 214 found in section 329(a) of the Housing and Community Development Amendments of 1981. Regulations enforcing the 1981 changes have not been implemented because of various impediments, including statutory constraints included in HUD's 1987 appropriation, and because of enactment of a new statute, the Immigration Reform and Control Act of 1986. (See Alien Rule Notice published on November 21, 1986 (51 FR 42088).)

In this final rule, a live-in aide is defined as a person essential to the care and well-being of an elderly, disabled or handicapped person, whether or not the elderly, disabled or handicapped person is a member of an "elderly family". The addition of this definition and the addition of an exclusion of the aide's income comport with current policy of permitting a live-in aide to reside in the unit with an elderly family, or with a nonelderly family which includes a handicapped member who needs assistance.

In response to public comments on the proposed rule to add this definition to Part 913, 49 FR 48006 (December 7, 1984), the final rule does not automatically exclude a relative from serving as a live-in aide, but in addition to bring essential to the care and well-being and not being obligated for support of a family member, the final rule requires (in § 913.102) that a person be one who would not be living in the unit except to provide the necessary supportive services in order to qualify as a "live-in aide". Thus, a relative or other individual may be classified as a live-in aide if he or she would not be living in the unit except in that capacity. However, a live-in aide qualifies for occupancy only so long as the person for whom the aide provides supportive services resides in the unit, and the aide does not qualify for continued occupancy in his or her own right as a "remaining member of a tenant family". The Department believes that this approach strikes a reasonable balance between permitting relatives and others to act as live-in aides and ensuring that this privilege is not subject to abuse.

8. Inapplicability of 10 Percent Cap (On Increases in Rental Payment)

The changes to the United States Housing Act of 1937 made by the Housing and Community Development Amendments of 1981 included a ceiling of ten percent per year on rental increases resulting from changes in Federal law. "Changes in Federal law" includes both statutory and regulatory changes. Whenever there is reason to believe that such changes would produce an increase in tenant rental payments, additional calculations must be performed.

However, in the case of this rule, all the changes to the definition of income have the effect of decreasing rather than increasing income, and thereby decreasing, not increasing, rental payments. Therefore, the cap on rent increases would have no effect and no additional calculations are necessary.

Effectiveness of Changes

This rule is being published as a final rule with a specified effective date. However, with respect to any particular family participating in the programs covered by this rulemaking, the rule will be effective at the next reexamination of income after the effective date of this rule, whether it is the annual one or an interim one based on a change in family circumstances.

Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981 (E.O. 12291). Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

Impact on Small Entities

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because it consists of technical refinements to existing rules defining income for various assisted housing programs.

Regulatory Agenda

This rule was listed as sequence number 892 in the Department's Semiannual Regulatory Agenda published on April 27, 1987 (52 FR 14362, 14374), under Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule contains no information collection requirements, as described in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520).

Intergovernmental Consultation

The Department has consulted the Secretary of Agriculture concerning these changes to the definition of income, as required by 42 U.S.C. 1437a(b)(4).

Catalog

The Catalog of Federal Domestic Assistance Program Numbers are 14.103, 14.146, 14.149, and 14.156.

CFR Parts Affected

List of Subjects

24 CFR Part 215

Grant programs, Housing and community development, Rent subsidies.

24 CFR Part 236

Low and moderate income housing, Mortgage insurance, Rent subsidies, Taxes, Utilities, Projects.

24 CFR Part 813

Lower income housing, Loan programs, Housing and community development, Utilities.

24 CFR Part 882

Grant programs, Housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 912

Public housing.

24 CFR Part 913

Public housing.

Accordingly, HUD amends 24 CFR Parts 215, 236, 813, 882, 912 and 913 as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for Part 215 continues to read as follows:

Authority: Sec. 101(g), Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 215.1 [Amended]

2. Section 215.1 is amended: (a) By adding before the period in the first sentence of the definition of "*Child Care Expenses*", the words, "and only to the extent such amounts are not reimbursed"; (b) by removing the words "Value of equity in" at the beginning of the definition of "*Net Family Assets*" and substituting the words "Net cash value after deducting reasonable costs that would be incurred in disposing of"; (c) by adding before the period in the first sentence of the definition of "*Net Family Assets*" the words, "and the equity in a housing cooperative unit in which the family resides"; and (d) by removing from the definition of "*Live-in Aide*" the reference to "§ 215.21(d)" and substituting for it a reference to "§ 215.21(c)".

3. Section 215.21 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d); by removing from paragraph (b)(8) the phrase "(whether or not living in the dwelling) who is head of the Family, spouse, or other Family member whose dependents are residing in the unit"; by removing the reference in paragraph (b)(8) to "paragraph (c)(5)" and substituting for it "paragraph (c)(7)"; and by revising paragraphs (a) and (c) to read as follows:

§ 215.21 Annual income.

(a) Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of certain types of income as provided in paragraph (c) of this section.

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in § 215.1;

(6) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(9) Temporary, nonrecurring or sporadic income (including gifts); or

(10) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under section 101 of the Housing and Urban Development Act of 1965. A notice will be published in the **Federal Register** and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

4. The authority citation for Part 236 continues to read as follows:

Authority: Secs. 211 and 236 of the National Housing Act (12 U.S.C. 1715b and 1715z–1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 236.2 [Amended]

5. Section 236.2 is amended: (a) By adding before the period in the first sentence of the definition of "*Child Care Expenses*", the words, "and only to the extent such amounts are not reimbursed"; (b) by removing the words "Value of equity in" at the beginning of the definition of "*Net Family Assets*" and substituting the words "Net cash value after deducting reasonable costs that would be incurred in disposing of"; (c) by adding before the period in the first sentence of the definition of "*Net Family Assets*" the words, "and the equity in a housing cooperative unit in which the family resides"; and (d) by removing from the definition of "*Live-in Aide*" the reference to "§ 236.3(d)" and substituting for it a reference to "§ 236.3(c)".

6. Section 236.3 is amended by removing paragraph (d) and

redesignating paragraph (e) as paragraph (d); by the removing from paragraph (b)(8) the phrase "(whether or not living in the dwelling) who is head of the Family, spouse, or other Family member whose dependents are residing in the unit"; by removing the reference in paragraph (b)(8) to "paragraph (c)(5)" and substituting for it "paragraph (c)(7)"; and by revising paragraphs (a) and (c) to read as follows:

§ 236.3 Annual income.

(a) Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of certain types of income as provided in paragraph (c) of this section.

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in § 236.2;

(6) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(9) Temporary, nonrecurring or sporadic income (including gifts); or

(10) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under section 236 of the National Housing Act. A notice will be published in the **Federal Register** and distributed to housing owners identifying benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS

7. The authority citation for Part 813 continues to read as follows:

Authority: Secs. 3, 5(b), 8 and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, and 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 813.102 [Amended]

8. Section 813.102 is amended: (a) by adding before the period in the first sentence of the definition of "*Child Care Expenses*", the words, "and only to the extent such amounts are not reimbursed"; (b) by removing the word "Value of equity in" at the beginning of the definition of "*Net Family Assets*" and substituting the words "Net cash value after deducting reasonable costs that would be incurred in disposing of"; (c) by adding before the period in the first sentence of the definition of "*Net Family Assets*" the words, "and the equity in a housing cooperative unit or in a manufactured home in which the family resides".

9. Section 813.106 is amended: by removing paragraph (d) and redesignating paragraph (e) as paragraph (d); by removing from paragraph (b)(8) the phrase "(whether or not living in the dwelling) who is head of the Family, spouse, or other Family member whose dependents are residing in the unit"; by removing the reference in paragraph (b)(8) to "paragraph (c)(5)" and substituting for it "paragraph (c)(7)"; and by revising paragraphs (a) and (c) to read as follows:

§ 813.106 Annual income.

(a) Annual income is the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of certain types of income as provided in paragraph (c) of this section.

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the Family, that are specifically for, or in reimbursement of, the cost of medical expenses for any Family member;

(5) Income of a live-in aide, as defined in § 813.102;

(6) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income;

(7) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a Disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.)

and which are made solely to allow participation in a specific program;

(9) Temporary, nonrecurring or sporadic income (including gifts); or

(10) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice will be published in the **Federal Register** and distributed to PHAs and owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

10. The authority citation for part 882 continues to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

11. Section 882.209(m)(1) is revised to read as follows:

§ 882.209 Selection and participation.

* * * * *

(m) * * *

(1) If a participant in the PHA's Section 8 Housing Certificate Program notifies the PHA that the Family wants another Certificate so that the Family can move to another dwelling unit within the area in which the PHA has determined that the PHA is not legally barred from entering into Contracts, the PHA shall (unless the PHA determines it does not have sufficient funding for continued Section 8 assistance for the Family or is unable to get HUD approval if needed under § 813.105(c) to issue a Certificate to a Family that is not a Very Low-income Family) either—

(i) Issue another Certificate, or

(ii) Deny issuance of a Certificate in accordance with § 882.210.

* * * * *

PART 912—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

12. The authority citation for Part 912 is amended to read as follows:

Authority: Sec. 3, United States Housing Act of 1937 (42 U.S.C. 1437a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

13. Section 912.2 is revised to read as follows:

§ 912.2 Definitions.

Disabled person. A person under a disability, as defined in Section 223 of the Social Security Act (42 U.S.C. 423) or in Section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (42 U.S.C. 2691(*1*)).

Displaced person. A person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized under Federal disaster relief laws.

Elderly family. A family whose head or spouse (or sole member) is an elderly, disabled, or handicapped person. It may include two or more Elderly, Disabled, or Handicapped persons living together, or one or more of these persons living with one or more Live-in Aides.

Elderly person. A person who is at least 62 years of age.

Family. "Family" includes but is not limited to (a) an elderly family or single person as defined in this part, (b) the remaining member of a tenant family, and (c) a displaced person.

Handicapped person. A person having a physical or mental impairment that—

(a) Is expected to be of long-continued and indefinite duration,

(b) Substantially impedes the person's ability to live independently, and

(c) Is of such a nature that such ability could be improved by more suitable housing conditions.

Live-in Aide. A person who resides with an Elderly, Disabled, or Handicapped person or persons and who (a) is determined by the PHA to be essential to the care and well-being of the person(s); (b) is not obligated for support of the person(s); and (c) would not be living in the unit except to provide necessary supportive services. (See § 913.106(c) for treatment of a Live-in Aide's income.)

Single person. A person who lives alone or intends to live alone, and who does not qualify as an elderly family or displaced person or as the remaining member of a tenant Family.

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC AND INDIAN HOUSING PROGRAMS

14. The authority citation for Part 913 continues to read as follows:

Authority: Secs. 3, 6 and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

15. Section 913.102 is amended: by adding before the period in the first sentence of the definition of *"Child care expenses"*, the words, "and only to the extent such amounts are not reimbursed"; by removing the words "Value of equity in" at the beginning of the definition of *"Net Family Assets"* and substituting the words "Net cash value after deducting reasonable costs that would be incurred in disposing of"; by adding a definition of *"Live-in Aide"*, and by revising the definitions of *Disabled person* and *Elderly family*, to read as follows:

§ 913.102 Definitions.

* * * * *

Disabled person. A person under a disability, as defined in Section 223 of the Social Security Act (42 U.S.C. 423) or in Section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (42 U.S.C. 2691(*1*)).

Elderly family. A family whose head or spouse (or sole member) is an Elderly, Disabled, or Handicapped person. It may include two or more Elderly, Disabled, or Handicaped persons living together, or one or more of these persons living with one or more Live-in Aides.

* * * * *

Live-in Aide. A person who resides with an Elderly, Disabled, or Handicapped person or persons and who (a) is determined by the PHA to be essential to the care and well-being of the person(s); (b) is not obligated for support of the person(s); and (c) would not be living in the unit except to provide necessary supportive services. (See § 913.106(c) for treatment of a Live-in Aide's income.)

* * * * *

16. Section 913.106 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d); by removing from paragraph (b)(8) the phrase "(whether or not living in the dwelling) who is head of the Family, spouse, or other Family member whose dependents are residing in the unit"; by removing the reference in paragraph (b)(8) to "paragraph (c)(5)" and substituting for it "paragraph (c)(7)"; and by revising paragraphs (a) and (c) to read as follows:

§ 913.106 Annual income.

(a) Annual income is the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family, including all net income derived from assets for the 12-month period following the effective date of the initial determination or reexamination of income, exclusive of certain types of

income as provided in paragraph (c) of this section.

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the Family, that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a Live-in Aide, as defined in § 913.102;

(6) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income;

(7) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a Disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(9) Temporary, nonrecurring or sporadic income (including gifts); or

(10) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice will be published in the **Federal Register** and distributed to PHAs and IHAs identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

Dated: August 4, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87-20465 Filed 9-8-87; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-87-1715; FR-2184]

Federally Mandated Exclusions From Income in the Rent Supplement, Section 236, Section 8 and Public and Indian Housing Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: Elsewhere in this issue of the Federal Register, a final rule concerning the definition of income used in HUD's Rent Supplement, Section 236, Section 8 and Public and Indian Housing Programs is published. That rule provides that, for each of these programs, income does not include amounts of other benefits precluded by Federal law from being considered in HUD assistance programs. This notice provides a current list of program benefits excluded under that provision.

EFFECTIVE DATE: November 1, 1987.

FOR FURTHER INFORMATION CONTACT: For Rent Supplement, Section 236, and Section 8 programs administered under 24 CFR Parts 880, 881, 883–886: James J. Tahash, Director, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 426–3944.

For Section 8 programs administered under 24 CFR Part 882 (Existing Housing, Moderate Rehabilitation and the Housing Voucher programs) and for Public and Indian Housing programs: Edward Whipple, Chief, Rental and Occupancy Branch, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 426–0744. (These are not toll-free numbers).

Any member of the public who becomes aware of any other benefit believed to be excluded from consideration as income in these programs should submit information about the other benefit program to one of the persons listed as a contact or to the Rules Docket Clerk, Attention R–87–1345, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

SUPPLEMENTARY INFORMATION: Excluded from the definition of "annual income" under 24 CFR 215.21(c)(9), 236.3(c)(10), 813.106(c)(10) and 913.106(c)(10) are "amounts specifically excluded by any other Federal statute from consideration for purposes of determining eligibility or benefits under a category of assistance programs that includes [these HUD programs]." The following is a list of types of benefits that qualify for that exclusion:

(i) Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4636);

(ii) The value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));

(iii) Payment to volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5044(g), 5058);

(iv) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));

(v) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(vi) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(vii) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b));

(viii) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94–540, 90 Stat. 2503–2504);

(ix) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407–1408) or from funds held in trust for an Indian tribe by the Secretary of the Interior (25 U.S.C. 117); and

(x) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965 that are used to cover the cost of attendance at an educational institution (See 24 CFR 215.1(c)(6), 236.3(c)(6), 813.106(c)(6), and 913.106(c)(6)).

Dated: August 4, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87–20505 Filed 9–8–87; 8:45 am]

BILLING CODE 4210–32–M

federal register

Wednesday
September 9, 1987

Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

Section 8 Housing Assistance Payments Program; Contract Rent Annual Adjustment Factors

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-87-1719; FR-2384]

Section 8 Housing Assistance Payments Program; Contract Rent Annual Adjustment Factors

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice updating Contract Rent Annual Adjustment Factors.

SUMMARY: The United States Housing Act of 1937 requires that the assistance contracts signed by owners participating in the Department's Section 8 Housing Assistance Payments Programs provide for annual or more frequent adjustment in the maximum monthly rentals for units covered by the contract to reflect changes based on fair market rents prevailing in a particular market area, or on a reasonable formula. This notice announces revised Annual Adjustment Factors, which are based on a formula using rent and utility data from the Consumer Price Index and using the Bureau of the Census American Housing Surveys. The revised Factors are to be used to adjust contract rents in the Section 8 Housing Assistance Payment Programs.

EFFECTIVE DATE: November 8, 1987.

FOR FURTHER INFORMATION CONTACT: Shirley C. Stone, Existing Housing Division, Office of Elderly and Assisted Housing (202) 755–6887; James Tahash, Program Planning Division, Office of Multifamily Housing Management (202) 426–3970; for technical information regarding the development of the schedules for specific areas or the method used for calculating the Adjustment Factors, Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research (202) 755–5577. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)) requires the Department to provide for adjustments in the maximum monthly rents for units covered by the Section 8 Housing Assistance Payments (HAP) Contracts. Adjustments must reflect changes in the fair market rents prevailing in particular market areas or be based on a reasonable formula.

This notice establishes revised Annual Adjustment Factors (AAFs), based on a formula using rent and utility data from the Consumer Price Index (CPI) and using the Bureau of the Census American Housing Surveys (AHS) (formerly called Annual Housing Survey). The revised AAFs are to be used to adjust Contract Rents under the Section 8 Housing Assistance Payments Programs. HUD regulations (see 24 CFR 888.202) provide that the AAFs will be published annually in the **Federal Register**. The annual anniversary date for publication of the Factors is November 8. These revised AAF's apply (subject to the limitations on applicability discussed below) to adjust Contract Rents on or after November 8, 1987.

Applicability of AAFs to Various Section 8 Programs

In general, AAFs established by this notice are used to adjust Contract Rents for Section 8 units. The following provides a general description as to how AAFs apply under the several Section 8 Housing Assistance Payments Programs. The application of the AAFs should be determined by reference to the HAP Contract and to appropriate program regulations.

In certain cases, however, AAFs are not used to adjust Contract Rents. AAFs are not used for Section 8 Certificate Program units subject to 24 CFR 882.110(d), which applies to units in certain otherwise subsidized projects that are rented to Section 8 Certificate Program families. (The housing assistance payment for such a unit is equal to the difference between the subsidized rent and the rent payable by the eligible family. Adjustments to the subsidized rents are made in accordance with rules and procedures governing the particular subsidized housing program involved.) In addition, AAFs are not used for units placed under HAP contract in recent years under the Section 202/Section 8 Program. Instead, rents are based on a HUD-approved budget for the project.

Contract Rents for many projects receiving Section 8 subsidies under the Loan Management provisions of 24 CFR Part 886, Subpart A, and for projects receiving Section 8 subsidies under the Property Disposition provisions of 24 CFR Part 886, Subpart C, are adjusted, at HUD's option, either by applying the AAFs or by adjusting rents in accordance with 24 CFR 207.19 (e)(2) and (e)(4).

The AAFs developed by the formula apply to rental units of all bedroom sizes in each rent interval. Under the Section 8 Moderate Rehabilitation Program, the Public Housing Agency should use the base rent, not the Contract Rent, to select the correct AAF to apply to the base rent.

Each AAF applies to a particular geographical area, as indicated in the Tables at the end of this document. However, application of a Factor to the prior Contract Rent for a unit may not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by the Secretary. (See 42 U.S.C. 1437f(c)(2)(C), and applicable program regulations in 24 CFR Chapter VIII.) Thus, an AAF for an entire PMSA may not be uniformly applicable to all rental housing within the geographical area, if the rent comparability test cannot be met.

In certain cases, however, the AAF established for a particular area may result in rents that are substantially lower than rents charged for comparable units not receiving assistance under the Section 8 Program. If this occurs, a PHA or private owner may apply to the field office for consideration by HUD of a revised Adjustment Factor for the area, as provided for in 24 CFR 888.204.

Calculation of Adjustment Factors

Different AAFs are provided for the four Census Regions, the States of Alaska and Hawaii, and 72 metropolitan areas. A list of the counties (and cities and towns in New England) that are included in each metropolitan area is being published as part of this Notice.

Except for rent adjustments for manufactured home space rents under the Section 8 Certificate Program, the formula for calculating the Adjustment Factors for each area was developed as follows: (1) The increases in the residential rent component and the fuel and utilities component of the CPI were based on the most recent available average annual changes; (2) a shelter rent increase factor was calculated by eliminating the effect of heating costs on the CPI residential rent component as determined by Bureau of Labor Statistics data; (3) a gross rent factor for each of the metropolitan areas covered by the CPI and for each of the four Census Regions was calculated by weighting the shelter rent and the fuel and utility increases in accordance with updated 1980 Census State weights of these component parts of rent, as derived from 1983 AHS data; (4) Adjustment Factors for Contract Rents including the highest cost utility were calculated by adjusting the gross rent factors to reflect variations by rent

range in each area, based on variations developed from 1983 national AHS data as applied to the local FMR levels; and (5) Adjustment Factors for Contract Rents excluding the highest cost utility were calculated by developing updated shelter rents from the updated gross rents, by rent ranges, and then dividing the updated shelter rents by that of the previous year.

Section 8 Certificate Program AAFs for Manufactured Home Spaces

This notice (as did the notice published on March 25, 1987) contains a separate set of AAFs for adjusting Contract Rents for manufactured home spaces. There is one factor for each area, which represents the change in the median rent for the area. These factors were derived by following steps one and two in the formula described above.

Other Matters

An Environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(l).

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance Programs (Section 8) is 14.156.

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d); sec. 8(c)(2)(A), U.S. Housing Act (U.S.C. 1437f(c)(2)(A)).

Dated: August 28, 1987.

James E. Schoenberger,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Accordingly, the Department publishes these Contract Rent Annual Adjustment Factors for the Section 8 Housing Assistance Payments Program as set forth in the following Tables:

BILLING CODE 4210-27-M

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 062987

NORTH EAST CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.083	1.098
$ 230 TO 279	1.060	1.090
$ 280 TO 339	1.056	1.087
$ 340 TO 399	1.054	1.084
$ 400 TO 449	1.052	1.082
$ 450 TO 509	1.050	1.071
$ 510 TO 569	1.049	1.063
$ 570 TO 619	1.043	1.063
$ 620 TO 679	1.040	1.063
$ 680 PLUS	1.035	1.063

WEST CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.081	1.076
$ 240 TO 299	1.059	1.070
$ 300 TO 359	1.055	1.067
$ 360 TO 419	1.053	1.064
$ 420 TO 479	1.051	1.060
$ 480 TO 539	1.049	1.053
$ 540 TO 609	1.048	1.049
$ 610 TO 669	1.042	1.042
$ 670 TO 729	1.039	1.042
$ 730 PLUS	1.034	1.042

PMSA AKRON, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.054	1.056
$ 180 TO 219	1.039	1.055
$ 220 TO 259	1.036	1.050
$ 260 TO 309	1.035	1.050
$ 310 TO 349	1.034	1.045
$ 350 TO 399	1.033	1.037
$ 400 TO 439	1.032	1.037
$ 440 TO 489	1.028	1.037
$ 490 TO 529	1.026	1.037
$ 530 PLUS	1.023	1.037

MSA ATLANTA, GA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.096	1.087
$ 220 TO 269	1.070	1.078
$ 270 TO 319	1.065	1.075
$ 320 TO 379	1.063	1.071
$ 380 TO 429	1.060	1.062
$ 430 TO 489	1.059	1.057
$ 490 TO 539	1.056	1.047
$ 540 TO 589	1.050	1.047
$ 590 TO 649	1.046	1.047
$ 650 PLUS	1.040	1.047

MIDWEST CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.051	1.065
$ 180 TO 229	1.037	1.054
$ 230 TO 269	1.034	1.052
$ 270 TO 319	1.033	1.051
$ 320 TO 359	1.032	1.044
$ 360 TO 409	1.031	1.036
$ 410 TO 449	1.030	1.035
$ 450 TO 499	1.026	1.035
$ 500 TO 539	1.024	1.035
$ 540 PLUS	1.021	1.035

STATE ALASKA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.000	1.000
$ 270 TO 339	1.000	1.000
$ 340 TO 399	1.000	1.000
$ 400 TO 469	1.000	1.000
$ 470 TO 539	1.000	1.000
$ 540 TO 599	1.000	1.000
$ 600 TO 669	1.000	1.000
$ 670 TO 739	1.000	1.000
$ 740 TO 799	1.000	1.000
$ 800 PLUS	1.000	1.000

PMSA ANAHEIM-SANTA ANA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 320	1.110	1.091
$ 320 TO 409	1.080	1.082
$ 410 TO 489	1.074	1.080
$ 490 TO 569	1.071	1.077
$ 570 TO 649	1.069	1.072
$ 650 TO 729	1.067	1.062
$ 730 TO 809	1.064	1.057
$ 810 TO 889	1.057	1.049
$ 890 TO 969	1.053	1.049
$ 970 PLUS	1.046	1.049

PMSA AURORA-ELGIN, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.056	1.059
$ 250 TO 309	1.041	1.057
$ 310 TO 369	1.038	1.056
$ 370 TO 429	1.036	1.052
$ 430 TO 489	1.035	1.043
$ 490 TO 549	1.034	1.038
$ 550 TO 609	1.033	1.038
$ 610 TO 679	1.029	1.038
$ 680 TO 739	1.027	1.038
$ 740 PLUS	1.023	1.038

SOUTH CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.052	1.048
$ 170 TO 219	1.038	1.041
$ 220 TO 259	1.035	1.041
$ 260 TO 299	1.034	1.039
$ 300 TO 349	1.033	1.034
$ 350 TO 389	1.032	1.032
$ 390 TO 429	1.031	1.029
$ 430 TO 479	1.027	1.029
$ 480 TO 519	1.025	1.028
$ 520 PLUS	1.022	1.028

STATE HAWAII

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.052	1.061
$ 260 TO 319	1.038	1.055
$ 320 TO 379	1.035	1.054
$ 380 TO 449	1.034	1.053
$ 450 TO 509	1.033	1.052
$ 510 TO 569	1.032	1.052
$ 570 TO 639	1.031	1.046
$ 640 TO 699	1.027	1.040
$ 700 TO 769	1.025	1.040
$ 770 PLUS	1.022	1.040

PMSA ANN ARBOR, MI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.073	1.085
$ 230 TO 289	1.053	1.081
$ 290 TO 349	1.049	1.078
$ 350 TO 409	1.047	1.074
$ 410 TO 469	1.046	1.068
$ 470 TO 529	1.044	1.056
$ 530 TO 589	1.043	1.055
$ 590 TO 649	1.038	1.055
$ 650 TO 699	1.035	1.055
$ 700 PLUS	1.031	1.055

MSA BALTIMORE, MD

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.071	1.072
$ 210 TO 269	1.052	1.071
$ 270 TO 319	1.048	1.068
$ 320 TO 369	1.046	1.067
$ 370 TO 429	1.045	1.065
$ 430 TO 479	1.043	1.059
$ 480 TO 529	1.042	1.050
$ 530 TO 589	1.037	1.050
$ 590 TO 639	1.034	1.049
$ 640 PLUS	1.030	1.049

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE
PREPARED ON 062987

PMSA BEAVER COUNTY, PA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.064	1.069
$ 180 TO 219	1.047	1.065
$ 220 TO 259	1.043	1.058
$ 260 TO 309	1.042	1.058
$ 310 TO 349	1.040	1.048
$ 350 TO 389	1.039	1.043
$ 390 TO 439	1.038	1.043
$ 440 TO 479	1.033	1.043
$ 480 TO 529	1.031	1.043
$ 530 PLUS	1.027	1.043

PMSA BERGEN-PASSAIC, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	1.108	1.111
$ 310 TO 389	1.079	1.106
$ 390 TO 469	1.073	1.102
$ 470 TO 549	1.070	1.096
$ 550 TO 619	1.068	1.092
$ 620 TO 699	1.066	1.083
$ 700 TO 779	1.063	1.078
$ 780 TO 859	1.056	1.070
$ 860 TO 939	1.052	1.070
$ 940 PLUS	1.045	1.070

PMSA BOSTON, MA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 330	1.076	1.097
$ 330 TO 409	1.055	1.095
$ 410 TO 489	1.051	1.089
$ 490 TO 569	1.049	1.087
$ 570 TO 649	1.048	1.085
$ 650 TO 729	1.046	1.078
$ 730 TO 809	1.045	1.069
$ 810 TO 899	1.040	1.069
$ 900 TO 979	1.036	1.068
$ 980 PLUS	1.032	1.068

PMSA BOULDER-LONGMONT, CO

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.025	1.015
$ 230 TO 289	1.018	1.015
$ 290 TO 349	1.017	1.015
$ 350 TO 409	1.016	1.013
$ 410 TO 459	1.016	1.013
$ 460 TO 519	1.015	1.012
$ 520 TO 579	1.015	1.011
$ 580 TO 639	1.013	1.008
$ 640 TO 699	1.012	1.008
$ 700 PLUS	1.011	1.008

PMSA BRAZORIA, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.000	1.000
$ 190 TO 239	1.000	1.000
$ 240 TO 279	1.000	1.000
$ 280 TO 329	1.000	1.000
$ 330 TO 379	1.000	1.000
$ 380 TO 419	1.000	1.000
$ 420 TO 469	1.000	1.000
$ 470 TO 519	1.000	1.000
$ 520 TO 569	1.000	1.000
$ 570 PLUS	1.000	1.000

PMSA BRIDGEPORT-MILFORD, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.101	1.114
$ 250 TO 309	1.074	1.111
$ 310 TO 369	1.068	1.106
$ 370 TO 429	1.066	1.102
$ 430 TO 499	1.064	1.090
$ 500 TO 559	1.062	1.083
$ 560 TO 619	1.059	1.076
$ 620 TO 679	1.053	1.075
$ 680 TO 739	1.049	1.075
$ 740 PLUS	1.043	1.075

PMSA BROCKTON, MA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.076	1.100
$ 260 TO 319	1.055	1.093
$ 320 TO 389	1.051	1.087
$ 390 TO 449	1.049	1.087
$ 450 TO 509	1.048	1.085
$ 510 TO 579	1.046	1.079
$ 580 TO 639	1.045	1.069
$ 640 TO 709	1.040	1.068
$ 710 TO 769	1.036	1.068
$ 770 PLUS	1.032	1.068

PMSA BUFFALO, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.052	1.055
$ 170 TO 219	1.038	1.051
$ 220 TO 259	1.035	1.050
$ 260 TO 299	1.034	1.046
$ 300 TO 349	1.033	1.043
$ 350 TO 389	1.032	1.041
$ 390 TO 429	1.031	1.037
$ 430 TO 479	1.027	1.037
$ 480 TO 519	1.025	1.036
$ 520 PLUS	1.022	1.035

PMSA CHICAGO, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.063	1.062
$ 240 TO 299	1.046	1.056
$ 300 TO 359	1.042	1.055
$ 360 TO 419	1.041	1.054
$ 420 TO 479	1.039	1.047
$ 480 TO 539	1.038	1.043
$ 540 TO 599	1.037	1.039
$ 600 TO 659	1.033	1.038
$ 660 TO 719	1.030	1.038
$ 720 PLUS	1.026	1.037

PMSA CINCINNATI, OH-KY-IN

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 160	1.044	1.050
$ 160 TO 199	1.032	1.050
$ 200 TO 239	1.030	1.050
$ 240 TO 279	1.029	1.050
$ 280 TO 319	1.028	1.043
$ 320 TO 359	1.027	1.041
$ 360 TO 399	1.026	1.039
$ 400 TO 439	1.023	1.039
$ 440 TO 479	1.021	1.039
$ 480 PLUS	1.018	1.039

PMSA CLEVELAND, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.054	1.058
$ 180 TO 229	1.039	1.054
$ 230 TO 279	1.036	1.051
$ 280 TO 319	1.035	1.050
$ 320 TO 369	1.034	1.043
$ 370 TO 409	1.033	1.038
$ 410 TO 459	1.032	1.037
$ 460 TO 499	1.028	1.037
$ 500 TO 549	1.026	1.036
$ 550 PLUS	1.023	1.036

PMSA DALLAS, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.041	1.045
$ 180 TO 229	1.030	1.044
$ 230 TO 269	1.027	1.040
$ 270 TO 319	1.026	1.040
$ 320 TO 369	1.025	1.038
$ 370 TO 409	1.025	1.031
$ 410 TO 459	1.024	1.030
$ 460 TO 499	1.021	1.029
$ 500 TO 549	1.019	1.029
$ 550 PLUS	1.017	1.029

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE
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PMSA DANBURY, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.101	1.119
$ 270 TO 339	1.074	1.108
$ 340 TO 399	1.068	1.103
$ 400 TO 469	1.066	1.101
$ 470 TO 539	1.064	1.091
$ 540 TO 599	1.062	1.084
$ 600 TO 669	1.059	1.076
$ 670 TO 739	1.053	1.075
$ 740 TO 799	1.049	1.075
$ 800 PLUS	1.043	1.075

PMSA DENVER, CO

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.025	1.015
$ 220 TO 269	1.018	1.015
$ 270 TO 319	1.017	1.015
$ 320 TO 379	1.016	1.014
$ 380 TO 429	1.016	1.012
$ 430 TO 479	1.015	1.011
$ 480 TO 539	1.015	1.010
$ 540 TO 589	1.013	1.007
$ 590 TO 649	1.012	1.007
$ 650 PLUS	1.011	1.007

PMSA DETROIT, MI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.072	1.089
$ 210 TO 269	1.053	1.079
$ 270 TO 319	1.049	1.078
$ 320 TO 369	1.047	1.075
$ 370 TO 429	1.046	1.065
$ 430 TO 479	1.044	1.057
$ 480 TO 529	1.043	1.055
$ 530 TO 589	1.038	1.055
$ 590 TO 639	1.035	1.055
$ 640 PLUS	1.031	1.055

PMSA FORT LAUDERDALE-HOLLYWOOD-POMPANO BEAC

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.019	1.024
$ 230 TO 279	1.014	1.024
$ 280 TO 339	1.013	1.023
$ 340 TO 399	1.012	1.022
$ 400 TO 449	1.012	1.019
$ 450 TO 509	1.011	1.019
$ 510 TO 559	1.011	1.017
$ 560 TO 619	1.010	1.015
$ 620 TO 679	1.009	1.015
$ 680 PLUS	1.008	1.015

PMSA FORT WORTH-ARLINGTON, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.041	1.045
$ 180 TO 229	1.030	1.044
$ 230 TO 269	1.027	1.040
$ 270 TO 319	1.026	1.040
$ 320 TO 369	1.025	1.038
$ 370 TO 409	1.025	1.031
$ 410 TO 459	1.024	1.030
$ 460 TO 499	1.021	1.029
$ 500 TO 549	1.019	1.029
$ 550 PLUS	1.017	1.029

PMSA GALVESTON-TEXAS CITY, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.000	1.000
$ 180 TO 219	1.000	1.000
$ 220 TO 259	1.000	1.000
$ 260 TO 309	1.000	1.000
$ 310 TO 349	1.000	1.000
$ 350 TO 399	1.000	1.000
$ 400 TO 439	1.000	1.000
$ 440 TO 479	1.000	1.000
$ 480 TO 529	1.000	1.000
$ 530 PLUS	1.000	1.000

PMSA GARY-HAMMOND, IN

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 200	1.056	1.061
$ 200 TO 239	1.041	1.055
$ 240 TO 289	1.038	1.053
$ 290 TO 339	1.036	1.053
$ 340 TO 389	1.035	1.044
$ 390 TO 439	1.034	1.039
$ 440 TO 489	1.033	1.039
$ 490 TO 539	1.029	1.037
$ 540 TO 589	1.027	1.037
$ 590 PLUS	1.023	1.037

PMSA HAMILTON-MIDDLETOWN, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.044	1.056
$ 180 TO 219	1.032	1.055
$ 220 TO 269	1.030	1.053
$ 270 TO 309	1.029	1.048
$ 310 TO 359	1.028	1.048
$ 360 TO 399	1.027	1.039
$ 400 TO 449	1.026	1.039
$ 450 TO 489	1.023	1.039
$ 490 TO 539	1.021	1.039
$ 540 PLUS	1.018	1.039

PMSA HOUSTON, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.000	1.000
$ 170 TO 209	1.000	1.000
$ 210 TO 249	1.000	1.000
$ 250 TO 289	1.000	1.000
$ 290 TO 339	1.000	1.000
$ 340 TO 379	1.000	1.000
$ 380 TO 419	1.000	1.000
$ 420 TO 459	1.000	1.000
$ 460 TO 499	1.000	1.000
$ 500 PLUS	1.000	1.000

PMSA JERSEY CITY, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.106	1.111
$ 210 TO 269	1.077	1.105
$ 270 TO 319	1.072	1.105
$ 320 TO 379	1.069	1.100
$ 380 TO 429	1.067	1.094
$ 430 TO 479	1.065	1.086
$ 480 TO 539	1.062	1.073
$ 540 TO 589	1.055	1.073
$ 590 TO 639	1.051	1.072
$ 640 PLUS	1.045	1.072

PMSA JOLIET, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.063	1.064
$ 250 TO 309	1.046	1.057
$ 310 TO 369	1.042	1.056
$ 370 TO 429	1.041	1.052
$ 430 TO 489	1.039	1.048
$ 490 TO 559	1.038	1.044
$ 560 TO 619	1.037	1.037
$ 620 TO 679	1.033	1.037
$ 680 TO 739	1.030	1.037
$ 740 PLUS	1.026	1.037

PMSA KANSAS CITY, MO-KS

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.035	1.044
$ 180 TO 219	1.026	1.040
$ 220 TO 269	1.024	1.037
$ 270 TO 309	1.023	1.037
$ 310 TO 359	1.022	1.033
$ 360 TO 399	1.022	1.029
$ 400 TO 449	1.021	1.029
$ 450 TO 489	1.018	1.029
$ 490 TO 539	1.017	1.029
$ 540 PLUS	1.015	1.029

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 062987

PMSA KENOSHA, WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.061	1.067
$ 190 TO 239	1.044	1.056
$ 240 TO 289	1.041	1.056
$ 290 TO 329	1.040	1.052
$ 330 TO 379	1.038	1.045
$ 380 TO 429	1.037	1.044
$ 430 TO 479	1.036	1.040
$ 480 TO 519	1.032	1.038
$ 520 TO 569	1.029	1.038
$ 570 PLUS	1.026	1.038

PMSA LAKE COUNTY, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.063	1.064
$ 250 TO 309	1.046	1.057
$ 310 TO 379	1.042	1.055
$ 380 TO 439	1.041	1.055
$ 440 TO 499	1.039	1.047
$ 500 TO 569	1.038	1.043
$ 570 TO 629	1.037	1.038
$ 630 TO 689	1.033	1.038
$ 690 TO 749	1.030	1.037
$ 750 PLUS	1.026	1.037

PMSA LAWRENCE-HAVERHILL, MA-NH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.076	1.102
$ 260 TO 329	1.055	1.095
$ 330 TO 399	1.051	1.090
$ 400 TO 459	1.049	1.086
$ 460 TO 529	1.048	1.085
$ 530 TO 599	1.046	1.078
$ 600 TO 659	1.045	1.068
$ 660 TO 729	1.040	1.068
$ 730 TO 789	1.036	1.068
$ 790 PLUS	1.032	1.068

PMSA LORAIN-ELYRIA, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.054	1.062
$ 170 TO 219	1.039	1.056
$ 220 TO 259	1.036	1.050
$ 260 TO 299	1.035	1.050
$ 300 TO 349	1.034	1.046
$ 350 TO 389	1.033	1.038
$ 390 TO 429	1.032	1.037
$ 430 TO 479	1.028	1.037
$ 480 TO 519	1.026	1.036
$ 520 PLUS	1.023	1.036

PMSA LOS ANGELES-LONG BEACH, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.110	1.090
$ 280 TO 349	1.080	1.086
$ 350 TO 419	1.074	1.081
$ 420 TO 489	1.071	1.077
$ 490 TO 559	1.069	1.070
$ 560 TO 629	1.067	1.064
$ 630 TO 699	1.064	1.057
$ 700 TO 769	1.057	1.049
$ 770 TO 839	1.053	1.049
$ 840 PLUS	1.046	1.049

PMSA LOWELL, MA-NH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.076	1.095
$ 250 TO 309	1.055	1.093
$ 310 TO 369	1.051	1.088
$ 370 TO 429	1.049	1.087
$ 430 TO 499	1.048	1.084
$ 500 TO 559	1.046	1.074
$ 560 TO 619	1.045	1.069
$ 620 TO 679	1.040	1.068
$ 680 TO 739	1.036	1.068
$ 740 PLUS	1.032	1.068

PMSA MIAMI-HIALEAH, FL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.019	1.024
$ 230 TO 279	1.014	1.024
$ 280 TO 339	1.013	1.023
$ 340 TO 389	1.012	1.022
$ 390 TO 449	1.012	1.019
$ 450 TO 509	1.011	1.019
$ 510 TO 559	1.011	1.017
$ 560 TO 619	1.010	1.015
$ 620 TO 679	1.009	1.015
$ 680 PLUS	1.008	1.015

PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 290	1.106	1.114
$ 290 TO 359	1.077	1.105
$ 360 TO 429	1.072	1.099
$ 430 TO 499	1.069	1.097
$ 500 TO 569	1.067	1.093
$ 570 TO 649	1.065	1.085
$ 650 TO 719	1.062	1.072
$ 720 TO 789	1.055	1.072
$ 790 TO 859	1.051	1.072
$ 860 PLUS	1.045	1.072

PMSA MILWAUKEE, WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.025	1.047
$ 190 TO 229	1.018	1.047
$ 230 TO 279	1.017	1.047
$ 280 TO 329	1.016	1.046
$ 330 TO 379	1.016	1.042
$ 380 TO 419	1.015	1.040
$ 420 TO 469	1.015	1.038
$ 470 TO 519	1.013	1.038
$ 520 TO 559	1.012	1.038
$ 560 PLUS	1.011	1.038

MSA MINNEAPOLIS-ST. PAUL, MN-WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.047	1.058
$ 220 TO 279	1.034	1.056
$ 280 TO 329	1.032	1.049
$ 330 TO 389	1.031	1.049
$ 390 TO 439	1.030	1.048
$ 440 TO 499	1.029	1.040
$ 500 TO 549	1.028	1.038
$ 550 TO 609	1.025	1.038
$ 610 TO 659	1.023	1.038
$ 660 PLUS	1.020	1.038

PMSA MONMOUTH-OCEAN, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.106	1.113
$ 260 TO 319	1.077	1.107
$ 320 TO 389	1.072	1.101
$ 390 TO 449	1.069	1.098
$ 450 TO 519	1.067	1.093
$ 520 TO 579	1.065	1.085
$ 580 TO 649	1.062	1.072
$ 650 TO 709	1.055	1.072
$ 710 TO 769	1.051	1.072
$ 770 PLUS	1.045	1.072

PMSA NASHUA, NH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.074	1.098
$ 260 TO 329	1.054	1.095
$ 330 TO 389	1.050	1.089
$ 390 TO 459	1.048	1.089
$ 460 TO 519	1.047	1.086
$ 520 TO 589	1.045	1.076
$ 590 TO 649	1.044	1.071
$ 650 TO 719	1.039	1.069
$ 720 TO 779	1.036	1.069
$ 780 PLUS	1.031	1.069

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE
PREPARED ON 062987

PMSA NASSAU-SUFFOLK, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	1.108	1.113
$ 310 TO 379	1.079	1.104
$ 380 TO 459	1.073	1.102
$ 460 TO 529	1.070	1.097
$ 530 TO 609	1.068	1.093
$ 610 TO 689	1.066	1.085
$ 690 TO 759	1.063	1.079
$ 760 TO 839	1.056	1.070
$ 840 TO 919	1.052	1.070
$ 920 PLUS	1.045	1.070

PMSA NEW YORK, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.108	1.110
$ 230 TO 289	1.079	1.104
$ 290 TO 339	1.073	1.102
$ 340 TO 399	1.070	1.095
$ 400 TO 459	1.068	1.093
$ 460 TO 519	1.066	1.084
$ 520 TO 569	1.063	1.079
$ 570 TO 629	1.056	1.070
$ 630 TO 689	1.052	1.070
$ 690 PLUS	1.045	1.070

PMSA NEWARK, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.106	1.114
$ 240 TO 299	1.077	1.104
$ 300 TO 359	1.072	1.100
$ 360 TO 419	1.069	1.097
$ 420 TO 479	1.067	1.093
$ 480 TO 539	1.065	1.086
$ 540 TO 599	1.062	1.072
$ 600 TO 659	1.055	1.072
$ 660 TO 719	1.051	1.071
$ 720 PLUS	1.045	1.071

PMSA NIAGARA FALLS, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.052	1.060
$ 170 TO 209	1.038	1.053
$ 210 TO 249	1.035	1.052
$ 250 TO 289	1.034	1.048
$ 290 TO 329	1.033	1.045
$ 330 TO 369	1.032	1.040
$ 370 TO 409	1.031	1.036
$ 410 TO 459	1.027	1.034
$ 460 TO 499	1.025	1.034
$ 500 PLUS	1.022	1.034

PMSA NORWALK, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.101	1.117
$ 280 TO 359	1.074	1.106
$ 360 TO 429	1.068	1.106
$ 430 TO 499	1.066	1.101
$ 500 TO 569	1.064	1.090
$ 570 TO 639	1.062	1.083
$ 640 TO 709	1.059	1.076
$ 710 TO 779	1.053	1.075
$ 780 TO 849	1.049	1.075
$ 850 PLUS	1.043	1.075

PMSA OAKLAND, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 320	1.117	1.104
$ 320 TO 399	1.085	1.094
$ 400 TO 479	1.079	1.091
$ 480 TO 559	1.076	1.088
$ 560 TO 639	1.073	1.087
$ 640 TO 719	1.071	1.074
$ 720 TO 799	1.068	1.067
$ 800 TO 879	1.061	1.060
$ 880 TO 959	1.056	1.059
$ 960 PLUS	1.049	1.059

PMSA ORANGE COUNTY, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.108	1.110
$ 230 TO 289	1.079	1.104
$ 290 TO 339	1.073	1.102
$ 340 TO 399	1.070	1.095
$ 400 TO 459	1.068	1.093
$ 460 TO 509	1.066	1.085
$ 510 TO 569	1.063	1.080
$ 570 TO 629	1.056	1.070
$ 630 TO 679	1.052	1.070
$ 680 PLUS	1.045	1.070

PMSA OXNARD-VENTURA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.110	1.090
$ 280 TO 349	1.080	1.086
$ 350 TO 419	1.074	1.081
$ 420 TO 489	1.071	1.077
$ 490 TO 559	1.069	1.070
$ 560 TO 619	1.067	1.063
$ 620 TO 689	1.064	1.056
$ 690 TO 759	1.057	1.050
$ 760 TO 829	1.053	1.050
$ 830 PLUS	1.046	1.050

PMSA PHILADELPHIA, PA-NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.066	1.081
$ 210 TO 259	1.048	1.077
$ 260 TO 319	1.044	1.069
$ 320 TO 369	1.043	1.067
$ 370 TO 419	1.041	1.061
$ 420 TO 479	1.040	1.058
$ 480 TO 529	1.039	1.051
$ 530 TO 579	1.034	1.051
$ 580 TO 629	1.032	1.051
$ 630 PLUS	1.028	1.051

PMSA PITTSBURGH, PA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.064	1.065
$ 190 TO 229	1.047	1.062
$ 230 TO 279	1.043	1.062
$ 280 TO 319	1.042	1.060
$ 320 TO 369	1.040	1.052
$ 370 TO 419	1.039	1.043
$ 420 TO 459	1.038	1.043
$ 460 TO 509	1.033	1.043
$ 510 TO 559	1.031	1.043
$ 560 PLUS	1.027	1.043

PMSA PORTLAND, OR

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.032	1.042
$ 190 TO 239	1.023	1.037
$ 240 TO 279	1.022	1.037
$ 280 TO 329	1.021	1.037
$ 330 TO 379	1.020	1.037
$ 380 TO 429	1.020	1.035
$ 430 TO 469	1.019	1.031
$ 470 TO 519	1.017	1.030
$ 520 TO 569	1.015	1.030
$ 570 PLUS	1.013	1.029

PMSA RACINE, WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.025	1.050
$ 180 TO 219	1.018	1.045
$ 220 TO 269	1.017	1.045
$ 270 TO 309	1.016	1.045
$ 310 TO 359	1.016	1.045
$ 360 TO 399	1.015	1.042
$ 400 TO 439	1.015	1.040
$ 440 TO 489	1.013	1.039
$ 490 TO 529	1.012	1.039
$ 530 PLUS	1.011	1.039

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 062987

PMSA RIVERSIDE-SAN BERNARDINO, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.110	1.088
$ 230 TO 279	1.080	1.082
$ 280 TO 339	1.074	1.081
$ 340 TO 399	1.071	1.076
$ 400 TO 449	1.069	1.071
$ 450 TO 509	1.067	1.065
$ 510 TO 569	1.064	1.057
$ 570 TO 619	1.057	1.050
$ 620 TO 679	1.053	1.049
$ 680 PLUS	1.046	1.049

PMSA ST. LOUIS, MO-IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.066	1.059
$ 190 TO 229	1.048	1.057
$ 230 TO 279	1.044	1.055
$ 280 TO 329	1.043	1.052
$ 330 TO 369	1.041	1.046
$ 370 TO 419	1.040	1.043
$ 420 TO 469	1.039	1.036
$ 470 TO 509	1.034	1.036
$ 510 TO 559	1.032	1.036
$ 560 PLUS	1.028	1.036

PMSA SALEM-GLOUCESTER, MA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 290	1.076	1.102
$ 290 TO 359	1.055	1.092
$ 360 TO 429	1.051	1.091
$ 430 TO 509	1.049	1.087
$ 510 TO 579	1.048	1.086
$ 580 TO 649	1.046	1.073
$ 650 TO 719	1.045	1.069
$ 720 TO 789	1.040	1.069
$ 790 TO 869	1.036	1.069
$ 870 PLUS	1.032	1.069

MSA SAN DIEGO, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.108	1.094
$ 270 TO 339	1.079	1.092
$ 340 TO 399	1.073	1.086
$ 400 TO 469	1.070	1.085
$ 470 TO 539	1.068	1.081
$ 540 TO 599	1.066	1.072
$ 600 TO 669	1.063	1.066
$ 670 TO 739	1.056	1.058
$ 740 TO 809	1.052	1.057
$ 810 PLUS	1.045	1.057

PMSA SAN FRANCISCO, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 350	1.117	1.102
$ 350 TO 439	1.085	1.096
$ 440 TO 529	1.079	1.093
$ 530 TO 609	1.076	1.088
$ 610 TO 699	1.073	1.085
$ 700 TO 789	1.071	1.074
$ 790 TO 879	1.068	1.067
$ 880 TO 959	1.061	1.059
$ 960 TO 1049	1.056	1.059
$1050 PLUS	1.049	1.059

PMSA SAN JOSE, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 320	1.117	1.104
$ 320 TO 399	1.085	1.094
$ 400 TO 479	1.079	1.091
$ 480 TO 549	1.076	1.089
$ 550 TO 629	1.073	1.086
$ 630 TO 709	1.071	1.073
$ 710 TO 789	1.068	1.068
$ 790 TO 869	1.061	1.059
$ 870 TO 949	1.056	1.059
$ 950 PLUS	1.049	1.059

PMSA SANTA CRUZ, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	1.117	1.104
$ 310 TO 389	1.085	1.094
$ 390 TO 469	1.079	1.093
$ 470 TO 549	1.076	1.088
$ 550 TO 629	1.073	1.083
$ 630 TO 699	1.071	1.074
$ 700 TO 779	1.068	1.068
$ 780 TO 859	1.061	1.060
$ 860 TO 939	1.056	1.059
$ 940 PLUS	1.049	1.059

PMSA SANTA ROSA-PETALUMA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.117	1.102
$ 270 TO 339	1.085	1.095
$ 340 TO 409	1.079	1.093
$ 410 TO 479	1.076	1.088
$ 480 TO 549	1.073	1.085
$ 550 TO 619	1.071	1.074
$ 620 TO 689	1.068	1.067
$ 690 TO 759	1.061	1.059
$ 760 TO 819	1.056	1.059
$ 820 PLUS	1.049	1.059

MSA SCRANTON--WILKES-BARRE, PA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 150	1.025	1.038
$ 150 TO 189	1.018	1.038
$ 190 TO 229	1.017	1.038
$ 230 TO 269	1.016	1.036
$ 270 TO 299	1.016	1.035
$ 300 TO 339	1.015	1.028
$ 340 TO 379	1.015	1.028
$ 380 TO 419	1.013	1.028
$ 420 TO 449	1.012	1.028
$ 450 PLUS	1.011	1.028

PMSA SEATTLE, WA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 200	1.041	1.053
$ 200 TO 259	1.030	1.048
$ 260 TO 309	1.027	1.048
$ 310 TO 359	1.026	1.048
$ 360 TO 409	1.025	1.047
$ 410 TO 459	1.025	1.041
$ 460 TO 509	1.024	1.039
$ 510 TO 559	1.021	1.037
$ 560 TO 609	1.019	1.037
$ 610 PLUS	1.017	1.036

PMSA STAMFORD, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 300	1.101	1.117
$ 300 TO 369	1.074	1.107
$ 370 TO 449	1.068	1.105
$ 450 TO 519	1.066	1.101
$ 520 TO 599	1.064	1.091
$ 600 TO 669	1.062	1.083
$ 670 TO 749	1.059	1.075
$ 750 TO 819	1.053	1.075
$ 820 TO 889	1.049	1.075
$ 890 PLUS	1.043	1.075

PMSA TACOMA, WA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.041	1.050
$ 180 TO 219	1.030	1.050
$ 220 TO 269	1.027	1.049
$ 270 TO 309	1.026	1.045
$ 310 TO 349	1.025	1.045
$ 350 TO 399	1.025	1.040
$ 400 TO 439	1.024	1.040
$ 440 TO 489	1.021	1.037
$ 490 TO 529	1.019	1.037
$ 530 PLUS	1.017	1.036

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 062987

PMSA TRENTON, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.071	1.079
$ 270 TO 329	1.052	1.073
$ 330 TO 399	1.048	1.071
$ 400 TO 469	1.046	1.069
$ 470 TO 529	1.045	1.066
$ 530 TO 599	1.043	1.057
$ 600 TO 669	1.042	1.052
$ 670 TO 729	1.037	1.051
$ 730 TO 799	1.034	1.051
$ 800 PLUS	1.030	1.051

PMSA VALLEJO-FAIRFIELD-NAPA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.117	1.105
$ 240 TO 299	1.085	1.096
$ 300 TO 359	1.079	1.091
$ 360 TO 419	1.076	1.090
$ 420 TO 479	1.073	1.087
$ 480 TO 539	1.071	1.075
$ 540 TO 599	1.068	1.068
$ 600 TO 659	1.061	1.059
$ 660 TO 719	1.056	1.059
$ 720 PLUS	1.049	1.059

PMSA VANCOUVER, WA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.034	1.040
$ 170 TO 209	1.025	1.040
$ 210 TO 249	1.023	1.039
$ 250 TO 289	1.022	1.037
$ 290 TO 339	1.021	1.035
$ 340 TO 379	1.021	1.033
$ 380 TO 419	1.020	1.032
$ 420 TO 459	1.018	1.030
$ 460 TO 499	1.016	1.030
$ 500 PLUS	1.014	1.030

PMSA VINELAND-MILLVILLE-BRIDGETON, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.071	1.083
$ 210 TO 269	1.052	1.071
$ 270 TO 319	1.048	1.071
$ 320 TO 379	1.046	1.071
$ 380 TO 429	1.045	1.062
$ 430 TO 479	1.043	1.057
$ 480 TO 539	1.042	1.051
$ 540 TO 589	1.037	1.051
$ 590 TO 639	1.034	1.051
$ 640 PLUS	1.030	1.051

MSA WASHINGTON, DC-MD-VA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.083	1.084
$ 250 TO 319	1.060	1.077
$ 320 TO 379	1.056	1.074
$ 380 TO 439	1.054	1.071
$ 440 TO 509	1.052	1.069
$ 510 TO 569	1.050	1.063
$ 570 TO 629	1.049	1.058
$ 630 TO 699	1.043	1.051
$ 700 TO 759	1.040	1.051
$ 760 PLUS	1.035	1.051

PMSA WILMINGTON, DE-NJ-MD

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.059	1.079
$ 220 TO 279	1.043	1.076
$ 280 TO 339	1.040	1.071
$ 340 TO 389	1.038	1.068
$ 390 TO 449	1.037	1.060
$ 450 TO 499	1.036	1.055
$ 500 TO 559	1.035	1.053
$ 560 TO 619	1.031	1.053
$ 620 TO 669	1.028	1.053
$ 670 PLUS	1.025	1.053

SCHEDULE C - ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - FOR MANUFACTURED HOME SPACE

PREPARED ON 062987

AREA	FACTOR	AREA	FACTOR
NORTH EAST CENSUS REGION	1.086	MIDWEST CENSUS REGION	1.051
SOUTH CENSUS REGION	1.042	WEST CENSUS REGION	1.060
STATE ALASKA	1.000	STATE HAWAII	1.055
PMSA AKRON, OH	1.051	PMSA ANAHEIM-SANTA ANA, CA	1.072
PMSA ANN ARBOR, MI	1.078	MSA ATLANTA, GA	1.070
PMSA AURORA-ELGIN, IL	1.053	MSA BALTIMORE, MD	1.068
PMSA BEAVER COUNTY, PA	1.061	PMSA BERGEN-PASSAIC, NJ	1.098
PMSA BOSTON, MA	1.095	PMSA BOULDER-LONGMONT, CO	1.013
PMSA BRAZORIA, TX	1.000	PMSA BRIDGEPORT-MILFORD, CT	1.106
PMSA BROCKTON, MA	1.095	PMSA BUFFALO, NY	1.050
PMSA CHICAGO, IL	1.053	PMSA CINCINNATI, OH-KY-IN	1.052
PMSA CLEVELAND, OH	1.051	PMSA DALLAS, TX	1.040
PMSA DANBURY, CT	1.106	PMSA DENVER, CO	1.013
PMSA DETROIT, MI	1.078	PMSA FORT LAUDERDALE-HOLLYWOOD-POMPANO BEAC	1.021
PMSA FORT WORTH-ARLINGTON, TX	1.040	PMSA GALVESTON-TEXAS CITY, TX	1.000
PMSA GARY-HAMMOND, IN	1.053	PMSA HAMILTON-MIDDLETOWN, OH	1.052
PMSA HOUSTON, TX	1.000	PMSA JERSEY CITY, NJ	1.100
PMSA JOLIET, IL	1.053	PMSA KANSAS CITY, MO-KS	1.039
PMSA KENOSHA, WI	1.053	PMSA LAKE COUNTY, IL	1.053
PMSA LAWRENCE-HAVERHILL, MA-NH	1.095	PMSA LORAIN-ELYRIA, OH	1.051
PMSA LOS ANGELES-LONG BEACH, CA	1.072	PMSA LOWELL, MA-NH	1.095
PMSA MIAMI-HIALEAH, FL	1.021	PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ	1.100
PMSA MILWAUKEE, WI	1.049	MSA MINNEAPOLIS-ST. PAUL, MN-WI	1.050
PMSA MONMOUTH-OCEAN, NJ	1.100	PMSA NASHUA, NH	1.096
PMSA NASSAU-SUFFOLK, NY	1.098	PMSA NEW YORK, NY	1.098
PMSA NEWARK, NJ	1.100	PMSA NIAGARA FALLS, NY	1.050
PMSA NORWALK, CT	1.106	PMSA OAKLAND, CA	1.085
PMSA ORANGE COUNTY, NY	1.098	PMSA OXNARD-VENTURA, CA	1.072
PMSA PHILADELPHIA, PA-NJ	1.071	PMSA PITTSBURGH, PA	1.061
PMSA PORTLAND, OR	1.039	PMSA RACINE, WI	1.049
PMSA RIVERSIDE-SAN BERNARDINO, CA	1.072	PMSA ST. LOUIS, MO-IL	1.052
PMSA SALEM-GLOUCESTER, MA	1.095	MSA SAN DIEGO, CA	1.081
PMSA SAN FRANCISCO, CA	1.085	PMSA SAN JOSE, CA	1.085
PMSA SANTA CRUZ, CA	1.085	PMSA SANTA ROSA-PETALUMA, CA	1.085
MSA SCRANTON--WILKES-BARRE, PA	1.039	PMSA SEATTLE, WA	1.049
PMSA STAMFORD, CT	1.106	PMSA TACOMA, WA	1.049
PMSA TRENTON, NJ	1.070	PMSA VALLEJO-FAIRFIELD-NAPA, CA	1.085
PMSA VANCOUVER, WA	1.039	PMSA VINELAND-MILLVILLE-BRIDGETON, NJ	1.070
MSA WASHINGTON, DC-MD-VA	1.072	PMSA WILMINGTON, DE-NJ-MD	1.073

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SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF REGIONS

AREA TITLE	DEFINITION
NORTHEAST CENSUS REGION	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont
MIDWEST CENSUS REGION	Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin
SOUTH CENSUS REGION	Alabama, Arkansas, Delaware, Dist. Of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia
WEST CENSUS REGION	Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming
OUTLYING AREAS	Puerto Rico and Virgin Islands use the south census region factors Guam and Trust Territories use the west census region factors

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Akron, Oh	COUNTY(IES) Portage, Summit Oh
Anaheim-Santa Ana, Ca	COUNTY(IES) Orange Ca
Ann Arbor, Mi	COUNTY(IES) Washtenaw Mi
Atlanta, Ga	COUNTY(IES) Barrow, Butts, Cherokee, Clayton, Cobb, Coweta, De Kalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, Spalding, Walton Ga
Aurora-Elgin, Il	COUNTY(IES) Kane, Kendall Il
Baltimore, Md	COUNTY(IES) Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Annes, Baltimore Ct Md
Beaver County, Pa	COUNTY(IES) Beaver Pa
Bergen-Passaic, Nj	COUNTY(IES) Bergen, Passaic Nj
Boston, Ma	COUNTY Bristol, Ma (PART): TOWNS OF Mansfield, Norton, Raynham COUNTY Essex, Ma (PART): TOWNS OF Lynn, Lynnfield, Nahant, Saugus COUNTY Middlesex, Ma (PART): TOWNS OF Acton, Arlington, Ashland, Ayer, Bedford, Belmont, Boxborough, Burlington, Cambridge, Carlisle, Concord, Everett, Framingham, Groton, Holliston, Hopkinton, Hudson, Lexington, Lincoln, Littleton, Malden, Marlborough, Maynard, Medford, Melrose, Natick, Newton, North Readin, Reading, Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury, Townsend, Wakefield, Waltham, Watertown, Wayland, Weston, Wilmington, Winchester, Woburn COUNTY Norfolk, Ma (PART): TOWNS OF Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Dover, Foxborough, Franklin, Holbrook, Medfield, Medway, Millis, Milton, Needham, Norfolk, Norwood, Quincy, Randolph, Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth, Wrentham COUNTY Plymouth, Ma (PART): TOWNS OF Carver, Duxbury, Hanover, Hanson, Hingham, Hull, Kingston, Lakeville, Marshfield, Middleboroug, Norwell, Pembroke, Plymouth, Plympton, Rockland; Scituate COUNTY Suffolk, Ma (PART): TOWNS OF Boston, Chelsea, Revere, Winthrop COUNTY Worcester, Ma (PART): TOWNS OF Berlin, Bolton, Harvard, Hopedale, Lancaster, Mendon, Milford, Southborough, Upton

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Boulder-Longmont, Co	COUNTY(IES) Boulder Co
Brazoria, Tx	COUNTY(IES) Brazoria Tx
Bridgeport-Milford, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull COUNTY New Haven, Ct (PART): TOWNS OF Ansonia, Beacon Falls, Derby, Milford, Oxford, Seymour
Brockton, Ma	COUNTY Bristol, Ma (PART): TOWNS OF Easton COUNTY Norfolk, Ma (PART): TOWNS OF Avon COUNTY Plymouth, Ma (PART): TOWNS OF Abington, Bridgewater, Brockton, East Bridgew, Halifax, West Bridgew, Whitman
Buffalo, Ny	COUNTY(IES) Erie Ny
Chicago, Il	COUNTY(IES) Cook, Du Page, Mchenry Il
Cincinnati, Oh-Ky-In	COUNTY(IES) Dearborn In; Boone, Campbell, Kenton Ky; Clermont, Hamilton, Warren Oh
Cleveland, Oh	COUNTY(IES) Cuyahoga, Geauga, Lake, Medina Oh
Dallas, Tx	COUNTY(IES) Collin, Dallas, Denton, Ellis, Kaufman, Rockwall Tx
Danbury, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Bethel, Brookfield, Danbury, New Fairfiel, Newtown, Redding, Ridgefield, Sherman COUNTY Litchfield, Ct (PART): TOWNS OF Bridgewater, New Milford
Denver, Co	COUNTY(IES) Adams, Arapahoe, Denver, Douglas, Jefferson Co
Detroit, Mi	COUNTY(IES) Lapeer, Livingston, Macomb, Monroe, Oakland, St Clair, Wayne Mi
Fort Lauderdale-Hollywood-Pompano Beach, Fl	COUNTY(IES) Broward Fl
Fort Worth-Arlington, Tx	COUNTY(IES) Johnson, Parker, Tarrant Tx
Galveston-Texas City, Tx	COUNTY(IES) Galveston Tx
Gary-Hammond, In	COUNTY(IES) Lake, Porter In
Hamilton-Middletown, Oh	COUNTY(IES) Butler Oh
Houston, Tx	COUNTY(IES) Fort Bend, Harris, Liberty, Montgomery, Waller Tx
Jersey City, Nj	COUNTY(IES) Hudson Nj
Joliet, Il	COUNTY(IES) Grundy, Will Il
Kansas City, Mo-Ks	COUNTY(IES) Johnson, Leavenworth, Miami, Wyandotte Ks; Cass, Clay, Jackson, Lafayette, Platte, Ray Mo
Kenosha, Wi	COUNTY(IES) Kenosha Wi
Lake County, Il	COUNTY(IES) Lake Il

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Lawrence-Haverhill, Ma-Nh	COUNTY Essex, Ma (PART): TOWNS OF Amesbury, Andover, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, Newbury, Newburyport, North Andove, Salisbury, West Newbury COUNTY Rockingham, Nh (PART): TOWNS OF Atkinson, Brentwood, Danville, Derry, East Kingsto, Hampstead, Kingston, Newton, Plaistow, Salem, Sandown, Seabrook, Windham
Lorain-Elyria, Oh	COUNTY(IES) Lorain Oh
Los Angeles-Long Beach, Ca	COUNTY(IES) Los Angeles Ca
Lowell, Ma-Nh	COUNTY Middlesex, Ma (PART): TOWNS OF Billerica, Chelmsford, Dracut, Dunstable, Lowell, Pepperell, Tewksbury, Tyngsborough, Westford COUNTY Hillsborough, Nh (PART): TOWNS OF Pelham
Miami-Hialeah, Fl	COUNTY(IES) Dade Fl
Middlesex-Somerset-Hunterdon, Nj	COUNTY(IES) Hunterdon, Middlesex, Somerset Nj
Milwaukee, Wi	COUNTY(IES) Milwaukee, Ozaukee, Washington, Waukesha Wi
Minneapolis-St. Paul, Mn-Wi	COUNTY(IES) Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Washington, Wright Mn; St Croix Wi
Monmouth-Ocean, Nj	COUNTY(IES) Monmouth, Ocean Nj
Nashua, Nh	COUNTY Hillsborough, Nh (PART): TOWNS OF Amherst, Brookline, Hollis, Hudson, Litchfield, Merrimack, Milford, Mont Vernon, Nashua, Wilton COUNTY Rockingham, Nh (PART): TOWNS OF Londonderry
Nassau-Suffolk, Ny	COUNTY(IES) Nassau, Suffolk Ny
New York, Ny	COUNTY(IES) Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, Westchester Ny
Newark, Nj	COUNTY(IES) Essex, Morris, Sussex, Union Nj
Niagara Falls, Ny	COUNTY(IES) Niagara Ny
Norwalk, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Norwalk, Weston, Westport, Wilton
Oakland, Ca	COUNTY(IES) Alameda, Contra Costa Ca
Orange County, Ny	COUNTY(IES) Orange Ny
Oxnard-Ventura, Ca	COUNTY(IES) Ventura Ca
Philadelphia, Pa-Nj	COUNTY(IES) Burlington, Camden, Gloucester Nj; Bucks, Chester, Delaware, Montgomery, Philadelphia Pa
Pittsburgh, Pa	COUNTY(IES) Alleghany, Fayette, Washington, Westmoreland Pa
Portland, Or	COUNTY(IES) Clackamas, Multnomah, Washington, Yamhill Or
Racine, Wi	COUNTY(IES) Racine Wi

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Riverside-San Bernardino, Ca	COUNTY(IES) Riverside, San Bernadin Ca
St. Louis, Mo-Il	COUNTY(IES) Clinton, Jersey, Madison, Monroe, St Clair Il; Franklin, Jefferson, St Charles, St Louis, St Louiscity Mo
Salem-Gloucester, Ma	COUNTY Essex, Ma (PART): TOWNS OF Beverly, Danvers, Essex, Gloucester, Hamilton, Ipswich, Manchester, Marblehead, Middleton, Peabody, Rockport, Rowley, Salem, Swampscott, Topsfield, Wenham
San Diego, Ca	COUNTY(IES) San Diego Ca
San Francisco, Ca	COUNTY(IES) Marin, San Francisc, San Mateo Ca
San Jose, Ca	COUNTY(IES) Santa Clara Ca
Santa Cruz, Ca	COUNTY(IES) Santa Cruz Ca
Santa Rosa-Petaluma, Ca	COUNTY(IES) Sonoma Ca
Scranton--wilkes-Barre, Pa	COUNTY(IES) Columbia, Lackawanna, Luzerne, Monroe, Wyoming Pa
Seattle, Wa	COUNTY(IES) King, Snohomish Wa
Stamford, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Darien, Greenwich, New Canaan, Stamford
Tacoma, Wa	COUNTY(IES) Pierce Wa
Trenton, Nj	COUNTY(IES) Mercer Nj
Vallejo-Fairfield-Napa, Ca	COUNTY(IES) Napa, Solano Ca
Vancouver, Wa	COUNTY(IES) Clark Wa
Vineland-Millville-Bridgeton, Nj	COUNTY(IES) Cumberland Nj
Washington, Dc-Md-Va	COUNTY(IES) Washington Dc; Calvert, Charles, Frederick, -columbia(u), Montgomery, Prince Georg Md; Arlington, Fairfax, Loudoun, Princewillia, Stafford, Alexandria, Fairfax City, Falls Church, Manassas, Manassas Prk Va
Wilmington, De-Nj-Md	COUNTY(IES) New Castle De; Cecil Md; Salem Nj

[FR Doc. 87-20639 Filed 9-8-87; 8:45 am]
BILLING CODE 4210-27-C

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federal register

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Part IX

National Archives and Records Administration

36 CFR Parts 1220 and 1228
Records Disposition; Final Rule

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1220 and 1228

Records Disposition

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration is revising the regulations for the disposition of Federal records to simplify the procedures followed by Federal agencies to propose immediate transfer of records to the National Archives. Previously, agencies scheduled recurring records and nonrecurring disposable records by submission of an SF 115, Request for Records Disposition Authority. However, to offer nonrecurring records for immediate transfer, agencies submitted an SF 258, Request to Transfer, Approval and Receipt of Records to the National Archives of the United States. Agencies will now schedule all records, recurring and nonrecurring, permanent and temporary, by submission of an SF 115. The SF 258 will be executed only to document the actual physical and legal transfer of records accepted by the National Archives.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202–523–3214 (FTS 523–3214).

SUPPLEMENTARY INFORMATION: This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Parts 1220 and 1228

Archives and records.

For the reasons set forth in the preamble, Chapter XII of Title 36 of the Code of Federal Regulations is amended as follows:

PART 1220—FEDERAL RECORDS; GENERAL

1. The authority citation for Part 1220 continues to read as follows:

Authority: 44 U.S.C. 2104(a) and Chapter 29.

2. Section 1220.14 is amended by adding the following definitions of "Records schedule" and "Unscheduled records" in alphabetical order:

§ 1220.14 General definitions.

* * * * *

"Records schedule" or "Schedule" means an SF 115, Request for Records Disposition Authority, that has been approved by NARA to authorize the final disposition of Federal records, or a printed agency manual or directive containing the records descriptions and disposition instructions approved by NARA on an SF 115. A comprehensive records schedule means a schedule covering all documentary materials of an agency or major component of a department, including records, the disposition of which must be approved by NARA on an SF 115, and nonrecord materials whose disposition is determined by the agency.

* * * * *

"Unscheduled records" means records whose final disposition has not been approved by NARA. Unscheduled records are those that either have never been described on an SF 115 approved by NARA; those included on an SF 115 approved prior to May 14, 1973, for which no final disposition was established, i.e., the disposition instruction was "permanent," "retain," "disposal not authorized," or the like; and those described on an SF 115 but not approved by NARA (withdrawn, cancelled, or disapproved).

PART 1228—DISPOSITION OF FEDERAL RECORDS

3. The authority citation for Part 1228 is revised to read as follows:

Authority: 44 U.S.C. 2101–2111, 2901–2909, 3101–3107, 3301–3314.

4. Section 1228.32 is revised to read as follows:

§ 1228.32 Agency recommendations for the permanent retention of records.

(a) Federal agencies recommend the permanent retention of records by submitting Standard Form 115, Request for Records Disposition Authority, to the National Archives and Records Administration (NIR). An SF 115 is used for requesting authority to schedule permanent records, either on a recurring or one-time basis.

(b) Each item proposed for permanent retention shall include an arrangement statement; statement on any restrictions on access which NARA should impose in conformity with the Freedom of Information Act, if the records are proposed for immediate transfer; and an estimate of the volume of records accumulated annually if the records series is current and continuing, as well as the total volume to date.

(c) If the records series is current and continuing, the SF 115 will include a disposition instruction specifying the period of time after which the records will be transferred to the National Archives of the United States.

(d) If the series is nonrecurring, i.e., no additional records will be created or acquired, the agency may propose either immediate or future transfer to the National Archives of the United States in the disposition instruction.

5. Section 1228.34 is revised to read as follows:

§ 1228.34 Determination of permanent retention of records.

(a) The National Archives and Records Administration will determine whether or not records are of permanent value and when the transfer of the permanent records will take place.

(b) If NARA determines that records are not of permanent value, it will notify the agency and negotiate an appropriate disposition. The disposition instruction on the SF 115 will be modified prior to NARA approval.

(c) If NARA determines that records are permanent, but that the transfer instructions are not appropriate, it will negotiate appropriate transfer terms with the agency. The disposition instruction on the SF 115 will be modified prior to NARA approval.

(d) NARA may determine that a records series proposed for disposal merits permanent retention and transfer to the National Archives. In such cases, NARA negotiates with the agency to change the disposition instruction prior to approval of the SF 115.

(e) All records series found to be permanent should be transferred to the National Archives of the United States after the period specified on the SF 155 in accordance with procedures specified under Subpart I.

§ 1228.36 [Removed]

6. Section 1228.36 is removed.

7. Section 1228.190 is revised to read as follows:

§ 1228.190 Transfer of records.

(a) *Policy.* Federal records will be transferred to the National Archives of the United States only if they are listed as permanent on an SF 115, Request for Records Disposition Authority approved by NARA since May 14, 1973, or if they are accretions (continuations of series already accessioned) to holdings of the National Archives. Transfers are initiated by submission of an SF 258, Request to Transfer, Approval and Receipt of Records to the National Archives of the United States.

(b) *Initiation of request to transfer—*(1) *Nonrecurring series scheduled for immediate transfer.* NARA will provide the SF 258 for records scheduled for

immediate transfer on an SF 115 approved after September 30, 1987. NARA will send the SF 258 to the agency with the approved SF 115. The agency will sign and return the SF 258 to the Office of the National Archives (NN), National Archives and Records Administration, Washington DC 20408, or to the appropriate National Archives Field Branch if so provided on the SF 115.

(2) *Future transfers of series in agency space.* Sixty days before the scheduled date of transfer to the National Archives of the United States, the transferring agency shall submit an SF 258 to the Office of the National Archives (NN) or to the appropriate National Archives Field Branch if so provided on the SF 115. NARA will determine whether specified restrictions are acceptable and whether adequate space and equipment are available.

(3) *Future transfers of series in Federal Records Centers.* NARA will initiate the SF 258 and send it to the agency 90 days before the scheduled transfer date. The agency shall approve or disapprove the SF 258 and send it to the address indicated on the form 60 days before the scheduled transfer date.

(c) *Physical and legal transfer.* The Office of the National Archives will provide shipping or delivery instructions to the agency or Federal Records Center. Legal custody of the records passes to NARA when the NARA official signs the SF 258 acknowledging receipt of the records.

§ 1228.192 [Removed]

8. Section 1228.192 is removed.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 87-20674 Filed 9-8-87; 8:45 am]

BILLING CODE 7515-01-M

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Federal Register

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Part X

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Parts 456 and 458

Residential Energy Conservation Program and Commercial and Apartment Conservation Program; Notice of Final Rulemaking

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DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Parts 456 and 458

[Docket No. CAS-RM-81-130-A-B]

Residential Energy Conservation Program and Commercial and Apartment Conservation Program

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of final rulemaking.

SUMMARY: The Department of Energy (DOE) is today issuing final amendments to the regulations of the Residential Conservation Service (RCS) program (10 CFR Part 456). These amendments are under the authority of the National Energy Conservation Policy Act, (NECPA), as amended by Title I of the Conservation Service Reform Act (CSRA) (Pub. L. 99-412).

The RCS program requires large natural gas and electric utilities to perform energy audits of their customers' homes upon request and to provide other related information to their residential customers. These final amendments to 10 CFR part 456 affect the regulations covering the regular RCS program and the RCS Federal Standby Plan (FSP). The primary regulatory changes required by the new legislation include the deletion of some program services, the official termination of the program on June 30, 1989, and the addition of flexibility for States and utilities in designing their residential energy conservation programs.

In addition, DOE is issuing final amendments to the regulations of the RCS program which apply to alternative State plans under Section 226 of NECPA, as amended by Title I of CSRA. Subpart K recognizes the new flexibility States have to design residential energy conservation plans suitable to their needs and sets forth procedures under which eligible customers may apply to the Secretary to review the adequacy of State implementation of alternative State plans in operation for at least one year.

DOE is also issuing final rules to implement Title II of CSRA which repeals Title VII of NECPA - the statutory basis for the Commercial Apartment Conservation Service (CACS) - except for CACS State plans approved prior to August 1, 1984, which may continue in effect until January 1, 1990. The final rule complies with the repeal of Title VII of NECPA by removing 10 CFR Part 458 and takes into account the CACS State plans falling under the exemption from repeal by adding a new Subpart M to 10 CFR Part 456 which, among other things, provides for reporting on any CACS State plan which continues in effect.

10 CFR Part 456 has been retitled the Energy Conservation Service Program.

EFFECTIVE DATE: September 9, 1987.

FOR FURTHER INFORMATION CONTACT:

Edna M. Jones, CE-222, U.S. Department of Energy, Residential and Commercial Conservation Program, Office of Conservation and Renewable Energy, 1000 Independence Avenue, SW., Room 6B-113, Washington, DC 20585 (202) 586-8224.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Discussion of Comments, Technical Changes, and Clarifications
III. Regulatory Impact Analysis
IV. Regulatory Flexibility Act
V. Environmental Impacts
VI. Paperwork Reduction Act

I. Introduction

The Residential Conservation Service (RCS) program was established by Part 1 of Title II of the National Energy Conservation Policy Act (NECPA), Pub. L. No. 95-619, November 9, 1978, as amended by Subtitle B of Title V of the Energy Security Act (ESA), Pub. L. No. 96-294, June 30, 1980, 42 U.S.C. 8211 et seq. Implementation of the program was begun November 7, 1979, with the issuance of a final rule (44 FR 64602, November 7, 1979), and continued under a revised final rule (47 FR 27752, June 25, 1982). The RCS program, as mandated by statute, requires large electric and natural gas utilities to inform their residential customers of the benefits of certain energy conservation and renewable resource measures, and to offer their customers energy audits of their homes. The legislation provides for substantial and detailed State involvement, under State plans approved by the Department of Energy (Department or DOE). Furthermore, the legislation requires implementation of a Federal Standby Plan where States are unwilling or unable to carry out their role under the law.

The Energy Security Act of 1980 also amended NECPA by adding a new Title VII which created the Commercial and Apartment Conservation Service (CACS). The CACS was designed to provide RCS-type services for all multi-family and small commercial buildings. DOE implemented the CACS by rules codified at 10 CFR Part 458.

The Conservation Service Reform Act of 1986 (CSRA) also amended NECPA. Title I of CSRA provided for changes to Title II of NECPA, as amended. Title II of CSRA repealed Title VII of NECPA, the statutory basis for CACS, except for CACS State plans approved prior to August 1, 1984, which may continue in effect until January 1, 1990. To conform to the repeal of Title VII of NECPA, 10 CFR Part 458 is being deleted.

Title I of CSRA made significant alterations to the NECPA provisions applicable to the RCS. With respect to standard RCS plans, CSRA provides for issuance of one more program announcement before Federal program termination on June 30, 1989, eliminates the requirements to arrange for installation and financing of conservation measures and to provide a list of suppliers, contractors, and financial institutions, continues present State plans with certification, requires that the Department provide technical assistance, and requires States, utilities, and the Department to prepare more extensive reports. CSRA also permits exemption from standard RCS requirements for utilities granted waivers and for States which certify alternative State plans.

Title II of CSRA repealed Title VII of NECPA, effective immediately, with one significant exception. States with CACS plans approved under 10 CFR Part 458 prior to August 1, 1984, were authorized to continue those plans in effect until January 1, 1990. To conform to the repeal of Title VII of NECPA, DOE is removing 10 CFR Part 458. To provide for those plans which CSRA permits to remain in effect, DOE today has amended 10 CFR Part 456 by adding a new Subpart M containing the rules which may be needed for those plans actually continued in effect.

On March 4, 1987, the Department issued a notice of interim final amendments and a notice of proposed rulemaking on the Residential Energy Conservation program and Commercial and Apartment Conservation Service program, 52 FR 6[illegible], 6[illegible]. Today the Department is issuing a notice of final rulemaking responding to comments received relative to the March 4, 1987 notices, and setting forth the final regulations to implement Titles I and II of the Conservation Service Reform Act of 1986 (CSRA), Pub. L. 99-412.

The final rule reflects the Department's ongoing effort to meet its legislative responsibilities without imposing unnecessary burdens on affected parties. There are two objectives: (1) To provide a regulatory framework within which States and, to a lesser degree, DOE may carry out their responsibilities under NECPA and CSRA; and (2) to allow States and utilities the maximum flexibility to

design an effective residential conservation program consistent with legislative intent.

DOE has reserved all deleted Sections so that all portions of the rule which continue in force under CSRA can be found in the same Section number as in the previous rule.

II. Discussion of Comments, Technical Changes, and Clarifications

DOE received 40 written comments on the notice of interim final amendments and the notice of proposed rulemaking published on March 4, 1987. No one appeared to present oral comments at the public hearing held in Washington, D.C., on April 21, 1987. During the comment period DOE inserted into the public file a memorandum of an oral communication from a staff attorney in the Small Business Administration (SBA) which raised a significant issue not previously addressed in any comments. After the close of the comment period, SBA transmitted official comments. A staff member of the SBA Office of the Chief Counsel for Advocacy submitted unofficial staff comments which were treated in the same manner as other late-filed comments by members of the public.

DOE chose to consider and respond to relevant late-filed comments. Suggestions for change in the interim final amendments and the proposed rule, which might have led to reopening the comment period, were advanced. However, since DOE was not inclined to accept these suggestions, it was not necessary to reopen the comment period and delay issuing today's final rule.

Twenty-five of the 40 comments received dealt, in whole or in part, with the reporting requirements for the RCS program which are set forth in Section 456.316 and for the alternative State plans (ASP) which are set forth in Section 456.1106. Most of the comments objected to items of information, such as low and moderate income households served, which DOE indicated might be required as a matter of discretion. As a result of the number of comments addressed to reporting issues, DOE has elected to deal with those issues first.

A. Subpart C—Content of State Plans and Subpart K—Alternative State Plans

1. The cause of most concern to commenters (primarily utilities) was the indication that DOE would require reporting on low and moderate income households. Commenters taking issue with the desirability of such reporting argued that they did not maintain income information on their customers; that such information would be costly and burdensome to collect; and that customers would consider it an invasion of privacy to be asked for the information. Also, utilities stated that they would have no way to verify the accuracy of such information.

To avoid imposing significant, new information collection burdens when possible, DOE has decided not to seek reports on low and moderate income households served as a reporting requirement for a standard RCS program. However, under Section 226(e)(2)(C) of the NECPA, as amended by the CSRA, States which adopt an ASP are required as a matter of law to report information on the percentage of individuals with low and moderate incomes who receive benefits under the ASP.

The second issue raised by commenters concerned the portion of DOE's preamble interpreting "low income" to include those households having less than $15,000 annual income and "moderate income" to include those households having an annual income between $15,000 and $30,000. Some commenters suggested that since these definitions were inconsistent with established guidelines which are used for the Weatherization Assistance Program for Low-Income Persons (10 CFR Part 440), the RCS program should adopt the Weatherization Program guidelines for the ASP program in order to minimize confusion. Still other commenters suggested that the RCS lead agency in each State collect income level information from surveys. A uniform definition of the terms "low income" and "moderate income" would be useful but not absolutely necessary for meaningful reporting on households served by income level. DOE indicated its intent to seek reporting on the percentage of "low income" and "moderate income" households served to facilitate aggregation of data and reporting by the Secretary to the Congress. The comments have persuaded DOE that no single definition of these terms is completely satisfactory. To ease the reporting burden as much as possible, DOE has elected to permit those States which adopt an ASP to develop their own definition of the terms "low income" and "moderate income" and the methodology for establishing the percentages of households served (including estimates based on voluntary responses to surveys.) Under provisions of Section 456.1106(d), DOE intends to ask States to include a description of the income level definition they are using and how they will collect the information on the number of households in the low and moderate income groups that are being served by the utility.

2. A number of commenters expressed concern about the possible expansion of reporting responsibilities for the States. Specifically, there were a number of comments about the probable cost of collecting information about estimated actual and predicted energy savings resulting from any standard RCS plan or ASP. Respondents appeared to be concerned that they would be required to engage in extensive field examinations of quantified energy use before and after an audit. In its reporting guidance to States, DOE is providing simple methodologies for use in determining estimated actual and predicted energy savings. Respondents may also use other suitable methodologies, so long as they provide DOE with a description of the methodology they use. DOE must require reporting this minimum information in order to meet its reporting obligations to Congress, under Section 225 of the NECPA, as amended by the CSRA.

3. A third concern expressed by commenters was about reporting the number of buildings and occupants receiving benefits. The commenters, primarily utilities, stated they had no information base on the number of buildings in which individual units had requested program services. Additionally, utilities state they do not know how many residents reside in individual dwelling units. Again, under CSRA, States that adopt an ASP are required to report this information. States continuing a standard RCS plan are not required to report on number of buildings and occupants receiving benefits and States have not been asked to provide that information in the annual reports.

4. The fourth major concern of commenters was reporting on energy savings of additional residential conservation measures. Commenters felt this would be difficult because so many factors have to be taken into account, such as weather, use of alternative fuels and customer lifestyles. Commenters suggested that data be collected on a few important energy measures or that a random survey be made among residential customers. Section 225 of NECPA, as amended by CSRA, requires that "an analysis, based on completed audits, and other relevant data of the energy saving potential of additional residential conservation measures" be reported by DOE in its annual report to Congress. In its annual reporting guidance, DOE has asked, but not required, States to share information on the energy-saving potential of residential conservation measures with

DOE, to the extent that qualitative or quantitative information is available. There is no intent to require States or utilities to perform onerous studies in order to address this subject.

5. One comment suggested drastically expanding the reporting requirements applicable to an ASP under proposed Section 456.1106 and to a utility waiver under Subpart L by altering those provisions to require a utility to report to DOE and the State the same detailed information about costs that is required under a Federal Standby Plan pursuant to Section 456.1020(b). The rationale for this suggestion seems to be that the information would be useful to DOE and the State in ascertaining whether a utility is engaging in unfair or anti-competitive activities such as cross-subsidization which provides an advantage in competing with small business. (This comment was not supported by any small business concerns or by the official SBA comments.)

The reporting requirements applicable under Federal Standby Plans pursuant to Section 456.1020(b) are far more demanding in terms of specific details than those which apply to utility activities under standard RCS State plans, CSRA alternative State plans, and CSRA utility waivers. Compare 10 CFR Section 456.1020(b) with 10 CFR Section 456.316, proposed Section 456.1106 and Section 456.1204. The requirements under Section 456.1020(b) are so much more demanding because, for Federal Standby Plans, DOE is directly regulating in a role usually played by State authorities. Although DOE does intend to request reports regarding the nature of and complaints about direct financing activities, or exempted or waived supply and installation activities, it is not appropriate to be as demanding as Section 456.1020(b), with regard to Subpart K alternative State plans or Subpart L utility waivers because Congress intended for the States to play the primary role in establishing adequate requirements to assure that utilities do not engage in unfair, deceptive, or anti-competitive acts. See 10 CFR Section 456.1103 and 456.1203. In addition, given the more circumscribed enforcement role against such acts assigned to DOE by CSRA, it is also not appropriate to impose significant reporting burdens when there is limited regulatory need for the information by DOE.

6. General comments about the reporting requirements were that only information which was already available and/or readily collectible be supplied; that expanded reporting requirements were well beyond normal data collection capabilities of utilities; and that it would be costly to collect additional information. DOE did examine several alternatives to be used in obtaining this information, and chose those which were deemed to be the least burdensome while still allowing DOE to fulfill the Congressional reporting requirements imposed by CSRA.

B. Subpart A—General Provisions and Definitions and Subpart B—Preparation, Submission, and Approval of State Plans and Temporary Programs

Section 215(g) of NECPA now provides: "The provisions of this Section shall not apply to any building which has five or more dwelling units and which does not contain individual meters for the dwelling units therein." Two comments were received concerning the program coverage for the multi-family buildings containing five or more units. Both commenters pointed out that the definition contained in Section 456.105(e)(2) states that buildings with five or more units are not included unless they contain an individual meter for heating or cooling, while Section 456.208(c) states that the dwellings are covered when the dwelling units are individually metered for all energy sources. One commenter stated that the provisions of Section 456.105(e)(2) requiring meters for heating or cooling should be the definitive language, while the other commenter felt that Section 456.208(c) with its provision for meters for all energy sources should be retained. Under Section 215(g) of NECPA, as amended by CSRA, if a dwelling unit in a building with five or more dwelling units is individually metered for either heating or cooling, then the occupant has the right to have an audit performed on his unit. Accordingly the language from Section 456.105(e)(2) has been retained and Section 456.208(c) has been amended to make the definitions consistent.

C. Subpart E—Supply, Installation, and Financing by Utilities

With respect to the provisions contained in Section 456.505(c) regarding the status of requests for recertification of an exemption which has been received, but not acted upon, by the Secretary by the July 1, 1987, deadline, one commenter suggested that the exemption be suspended until a determination is made by the Secretary. Under provisions of the CSRA, an exemption which has not been acted upon by the July 1, 1987, deadline is automatically suspended until such time as the Secretary makes a determination.

One commenter recommended that notice of a utility's request for recertification from the general prohibition against supplying and installing energy conservation or renewable resource measures be published in the **Federal Register** to enable interested parties to comment to the Secretary.

The recertification determination under Section 456.505(c) is subject to the procedures set forth in Section 456.509. Subsection (b) of that Section requires a utility applicant to give notice to the Governor, State Energy Office, and State Regulatory Authority of the State in which the recertified exemption would be applicable, informing them that they may submit comments to DOE within 10 days. Subsection (b) also provides that, as a matter of discretion, opportunity to comment may be provided by DOE to other interested persons.

The procedures under Section 456.509 have proved adequate over a long period of time to insure that assertions made by utility applicants are brought to the attention of those in the best position to check their veracity. It will be a rare case where an interested person from the general public could provide additional useful information which would have a significant bearing on a recertification determination. Altering Section 456.509(b) to provide for mandatory, rather than discretionary, notice and opportunity for general public comments would produce delay without much likelihood of benefit to compensate for real losses sustained by utilities waiting for a decision.

One other late-filed comment on Subpart E was received which dealt with the "supporting documentation" required under Section 456.505(c) for establishing entitlement to recertification. Although the preamble to the notice of interim final rulemaking gave examples of what might be included in "supporting documentation", the comment argued in favor of requirement in the rule that a utility must submit a copy of a contract to establish its claim. While a copy of an appropriate contract would tend to show that the installation and supply activities in question were taking place during the 12-month time period specified in Section 456.505(c), other documentary information may be just as satisfactory. In some instances, DOE may require submission of a copy of a contract, but there is no adequate reason to require such a submission by rule in every case. It is preferable to interpret the phrase "supporting documentation" on a case-by-case basis.

D. Subpart J—Residential Conservation Service Federal Standby Plan

1. Supply, installation and financing by utilities. One commenter suggested that since the word "financing" was referred to only once in Section 456.1017(b)(2)(iii) that it should be removed from the Section title. As "financing" is one of the subjects covered by this Subpart, it is appropriate to leave it in the title.

2. Complaints processing procedures. One commenter suggested that the langauge in Section 456.1018(a)(1) should be modified to clarify that program measures are installed or supplied as part of an RCS program. The CSRA requires inclusion of procedures for resolving complaints against persons who sell or install measures under an RCS program. The language of Section 456.1018(a)(1) provides that information about complaint processing procedures must be supplied regarding "program measures." To clarify the phrase "program measures", DOE has added to the end of the sentence in paragraph (a)(1) the words "under the RCS program."

E. Subpart K—Alternative State Plans

1. One commenter urged the inclusion in proposed Section 456.1102 of a prohibition against fuel switching in the implementation of an ASP. The definitions contained in Section 456.105 are, by reference, applicable to Subpart K - Alternative State Plan. The definition of program measures for replacement furnaces and boilers contained in Section 456.105(f)(3)(i) and for replacement central air conditioners contained in Section 456.105(4) exclude fuel switching.

2. With respect to utilities operating under a Subpart L utility waiver, one commenter raised the following question: if a State certified an ASP (which would include all regulated, covered utilities), would those utilities which had been granted a waiver under Subpart L be required to comply with the ASP or could they continue their programs under their previously granted waivers. The commenter did not present enough information to make a determination, and the answer may vary from case to case. This question will be handled on a case-by-case basis upon presentation of the facts.

3. One commenter expressed support of the DOE suggested guidance in determining the 2 percent residential energy savings goal consistent with proposed Section 456.1103(a). DOE is, therefore, restating the language from the preamble of the March 4, 1987, Notice of Proposed Rulemaking which suggests the 2 percent energy savings requirement be interpreted, at a minimum, as 2 percent of the energy used in a State's eligible customer's residences, reduced by the energy used in residences already served under the RCS plan. However, States are permitted to determine if another interpretation of the 2 percent residential energy savings goal would best suit their individual circumstances.

4. Three comments were received with respect to treatment of utility waivers in proposed Section 456.1103(c). One of them was a request that DOE relax its procedure for applying for a utility waiver by treating an alternative State plan as a utility waiver request from individual utilities when the alternative State plan requires installation and supply activities. Under the provisions of the CSRA, the DOE cannot accept this recommendation because utility waiver requests must be submitted by a utility. In processing a utility waiver request, a State is not and cannot be an agent of the utility submitting such a request. The State role is more like that of a rulemaking authority. However, in a case where a State adopts an ASP requiring its utilities to provide supply and installation services, the State many coordinate preparation and submission of a consolidated waiver request from its utilities.

The second request is for clarification of guidance in the preamble to the March 4, 1987, notice of proposed rulemaking on the applicability of Section 216 of the NECPA to ASP provisions for utility supply and installation activities which can only be undertaken pursuant to a Section 216(e) waiver issued by the DOE. This preamble guidance explained proposed Section 456.1103(c). The commenter wanted to verify that all ASP supply and installation options are subject to the waiver requirements under Section 216. As far as DOE is aware, the only supply and installation options are in fact energy conservation measures. Since proposed Section 456.1103(c) provides that ASP's must contain procedures to assure that supply and installation of energy conservation measures are consistent with Section 216 of the NECPA, all supply and installation options to which the commenter alluded were proposed to be subject to the Section 216(e) waiver provisions. To clarify the cross reference to Section 216 of the NECPA in the text Section of Section 456.1103(c), the DOE is adding an additional cross reference to Subpart E of Part 456 which contains the regulations implementing Section 216 of the NECPA.

The third comment suggested amending parts of the rule including proposed Section 456.1103(c) to make clear that, pursuant to an ASP, a utility could not undertake an installation and supply activity prohibited by NECPA without obtaining a CSRA utility waiver under Subpart L. The language of Section 456.1103 which comes from Section 226(c) of the NECPA, as amended by CSRA, is directed at States and not utilities. It clearly provides that an ASP certified under Subpart K must "contain procedures to assure, that if a public utility supplies or installs residential energy conservation measures such actions shall be consistent with Section 216 of NECPA". Section 216 of NECPA sets forth the prohibitions on utility installation and supply activities, and it should be obvious to a careful reader that a State cannot include provisions in an ASP inconsistent with Section 216 prohibitions. A utility desiring a waiver from such a prohibition has no choice under the regulations but to submit a formal request for it.

5. Only one comment was received on proposed Section 456.1104, concerning the use of incentives in developing and implementing an alternative State plan. The commenter suggested that the effect of incentives in meeting goals of an ASP would be difficult to determine and felt that participating utilities should be allowed to pursue those avenues which would help them meet their goals. It appears the commenter misunderstood Section 456.1104, and thought that it mandated use of incentives. Section 456.1104 permits, but does not require, the use of incentives by State lead agencies or State regulatory authorities to assist in achieving the goals of an ASP.

6. One commenter suggested that proposed Section 456.1107(c) be changed to allow 30 days rather than 20 days, from the date of receipt, for the entity in charge of an ASP to file an answer to a petition claiming that an ASP has been inadequately implemented. DOE has retained the provision that 20 days is a reasonable time for a State to respond to a petition. Allowing additional time would be inconsistent with the 60 statutory day deadline on the Secretary to act on a request for hearing in a petition.

F. Subpart L—Utility Waiver Process

Two comments suggested amending Section 456.1203 to specifically require a State to provide public notice and a public hearing on a request for utility waiver. It was argued that, without such an amendment, lack of full participation

would deprive the States of valuable input. It was also argued that an amendment with such procedures is important because DOE rules would serve as a model for the States upon expiration of the RCS program. DOE has decided against promulgating the suggested amendment for two reasons. The amendment is not necessary because adequate public notice and an open hearing in virtually all circumstances are implicit requirements of the language providing for an opportunity for hearing. Any questions regarding the legal sufficiency of State hearing procedures can be dealt with on a case-by-case basis in an appropriate forum. Furthermore, the amendment is not desirable because it might be regarded by States as the acceptable least common denominator. States should use the flexibility provided by CSRA utility waiver provisions to develop procedures which they regard as appropriate for processing utility waiver applications consistent with law. It is not appropriate for DOE to insert procedural details when the statutory language is largely self-explanatory and appears intended for States to interpret and apply in the first instance.

G. Subpart M—Commercial Buildings and Multifamily Dwelling

There were no comments received on this Subpart, which provides for annual reports by States that elect to continue CACS plans adopted under Title VII of NECPA, and therefore the Subpart M will stand as written.

H. Technical Changes

DOE is making six revisions to correct technical errors which were contained in the **Federal Register** publication of March 4, 1987. Some of these errors were pointed out in written comments received by DOE, but it appears no one was misled.

1. Appeals and other relief. DOE is providing a technical clarification to Section 456.103(a) by inserting the words "except from Subparts K, L, and M" which is desirable because any applicable appeal provisions for those subparts are specifically set forth therein.

2. Termination. A sentence has been added at the end of Section 456.107 to make clear that the termination provision (which covers RCS regulations) does not apply to CACS regulations under Subpart M which specifically provides in effect for termination at the date provided by Title II of CSRA for any CACS State plan excepted from repeal of Title VII of NECPA.

3. Program announcement. Paragraph (a) of Section 456.305 has been revised to include language that was omitted in printing which was supposed to repeat the language of Section 215(a) of NECPA, as amended by CSRA, almost word for word. The words and 'every two years thereafter' has been inserted so that the paragraph reads: "....approval of the State plan and every two years thereafter, but not more than once during the period from August 28, 1986 to June 30, 1989, with the following:"

4. Accounting and payment of costs. Paragraph (b)(2) of Section 456.309 has been revised to correct a typographical error with respect to the limit on the recovery cost of program elements. That limit is $15 per dwelling unit rather than the $1.5 per dwelling unit printed in the March 4, 1987, interim final amendments.

5. Prohibition. Paragraph (b) of Section 456.502 has been revised to include language that was inadvertently omitted in printing. The words 'or finance the supply or installation of' have been inserted so that the paragraph reads: "....no covered utility may supply, install, or finance the supply or installation of any energy conservation..."

6. Qualification procedures for auditors. Paragraph (a) of Section 456.1014 has been revised to include language that was inadvertently omitted in printing. The words 'auditor training program or passed a DOE approved' has been inserted so that the paragraph reads: "....using either the DOE auditor training manual or any other DOE approved auditor training program or passed a DOE approved certification examination."

7. Program measures. Paragraph (a)(1)(i) of Section 456.1016 has been revised to correct a typographic error in which the formula for determining a program measure payback period was misprinted. The formula should have read

$$P = \frac{F-T}{S} \qquad P>7 \text{ years}$$

8. Reporting requirements. The cross reference to Section 104 of the CSRA in proposed Section 456.1106(d) has been corrected to read Section 225 of the NECPA. Section 104 added Section 225 to the NECPA.

I. Other Comments

Several commenters provided suggestions for changes in provisions of the RCS rule which were not amended by the March 4, 1987, interim regulations or were irrelevant to changes required by CSRA. Those comments were considered out of scope and have not been addressed in the final rule. Only provisions which are subject to amendment as a result of CSRA were within the scope of this rulemaking.

III. Regulatory Impact Analysis

Section 3 of Executive Order (E.O.) 12291 (46 FR 13193, February 19, 1981) requires that DOE determine whether a rule is a "major rule", as defined by Section 1(b) of E.O. 12291, and prepare a regulatory impact analysis for rules which fall within that definition.

The principal impacts of the final rule will be to decrease the costs of administering and complying with RCS plans, to establish procedures applicable to applications under CSRA by eligible customers complaining about allegedly inadequate implementation of alternative State plans, and to provide for reporting on program progress by a State which continues in effect a CACS State plan, approved before August 1, 1984. The final rule is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumer, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. DOE has concluded therefore that the final rule is not a "major rule".

The changes in the final rule directly and mainly impact on States and utilities. The impact on small businesses, if any, will be indirect and is not likely to be widespread throughout the Nation. To the extent that small businesses have complaints about alleged anti-competitive activities, CSRA and other law provide for remedies outside the scope of DOE regulatory authority.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires, in part, that an agency prepare a regulatory flexibility analysis for any rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for

a particular rule, the agency must publish a certification and explanation of that determination in the **Federal Register**. The majority of the revisions in this rule would impact mainly upon the States and utilities. The procedures for complaints against the adequacy of implementation of alternative State plans, for reporting annually on progress under a CACS State plan which continues in effect under Title II of CSRA, elimination of the above described program services and the addition of provisions for granting utility waivers upon State recommendation are expected to have minimal, indirect impacts in a relatively small number of cases. Accordingly, pursuant to Section 605(b) of the Regulatory Flexibility Act, DOE certifies that the final rule will not have a significant impact on a substantial number of small entities.

V. Environmental Impacts

In accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), DOE prepared an Environmental Impact Statement (EIS) for the entire Residential Conservation Service Program (DOE/EIS-0050). The notice of availability was published in the **Federal Register** on November 7, 1979. The subject matter of this rulemaking is within the scope of this programmatic Environmental Impact Statement and the impacts of the rule were adequately addressed in the EIS. Copies may be obtained by writing: National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

VI. Paperwork Reduction Act

The reporting and recordkeeping requirements contained in Sections 456.316, 456.1020, 456.1103 and 456.1105 through 456.1108 were submitted to the Office of Management and Budget (OMB) for review and clearance under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The removal of 10 CFR Part 458 is expected to result in reductions in reporting and recordkeeping requirements, which will be reported to OMB, as provided in 5 CFR Part 1320, "Controlling Paperwork Burden on the Public."

List of Subjects in 10 CFR Parts 456 and 458

Energy audits, Energy conservation, Housing, Insulation, Intergovernmental relations, Renewable energy resources, Reporting and recordkeeping requirements, Utilities.

Issued in Washington, DC, August 25, 1987

Donna R. Fitzpatrick

Assistant Secretary, Conservation and Renewable Energy

1. 10 CFR Part 456 is revised to read as follows:

PART 456—ENERGY CONSERVATION SERVICE PROGRAM

Subpart A—General Provisions and Definitions

Sec.

456.101 Purpose and scope.
456.102 Petitions concerning conflicts of laws.
456.103 Appeals and other relief.
456.104 List of covered utilities.
456.105 Definitions.
456.106 [Reserved]
456.107 Termination.

Subpart B—Preparation, Submission, and Approval of State Plans and Temporary Programs

Sec.

456.201 Scope.
456.202 Initial submission.
456.203 Notice, comment, and public hearing.
456.204 Procedures for submission and approval of State plans.
456.205 Home heating suppliers.
456.206 Tennessee Valley Authority (TVA).
456.207 Temporary Programs.
456.208 Status of plans approved prior to CSRA.

Subpart C—Content of State Plans

Sec.

456.301 Scope.
456.302 Coverage of State Plan.
456.303 Procedures for enforcing compliance with the State Plan.
456.304 State monitoring of utility supply, installation and financing.
456.305 Program announcement.
456.306 Requirements for program audits.
456.307 [Reserved]
456.308 [Reserved]
456.309 Accounting and payment of costs.
456.310 Customer billing, repayment of loans, and termination of service.
456.311 [Reserved]
456.312 Complaints processing and redress procedures.
456.313 Coordination.
456.314 Home heating suppliers.
456.315 Program measures.
456.316 Reporting and recordkeeping.
456.317 Quality assurance.

Subpart D—Nonregulated Utility Plans

Sec.

456.401 Scope.
456.402 Coverage.
456.403 Notice, comment, and public hearing.
456.404 Procedures for submission and approval of Nonregulated Utility Plans.
456.405 Temporary Programs.
456.406 Content of plans.

Subpart E—Supply, Installation, and Financing by Utilities

Sec.

456.501 Scope and definitions.
456.502 Prohibition.
456.503 Exemption for certain measures.
456.504 Exemption for utility subcontractor supply and installation.
456.505 Exemption for existing supply and installation.
456.506 Exemption for supply and installation authorized by State or local law.
456.507 Waivers.
456.508 Notification.
456.509 Procedure for obtaining determination and waivers.
456.510 Appeals.
456.511 Certain exempt activities and compliance with accounting, costing, billing, and repayment provisions.

Subpart F—Federal Standby Authority and Enforcement Provisions

Sec.

456.601 Scope.
456.602 Conditions under which standby authority shall be invoked.
456.603 Standby authority in lieu of State Plans.
456.604 Standby authority for nonregulated utilities.
456.605 Failure to comply with orders.
456.606 Enforcement provisions; Penalties; Election of review procedures.

Subparts G–I—[Reserved]

Subpart J—Residential Conservation Service Federal Standby Plan

Sec.

456.1000 Introduction.
456.1001 Definitions.
456.1002 Coverage of RCS Federal Standby Plan.
456.1003 Procedures for investigating and enforcing compliance with the RCS Federal Standby Plan.
456.1004 [Reserved]
456.1005 [Reserved]
456.1006 Program announcement.
456.1007 Requirements for program audits.
456.1008 [Reserved]
456.1009 [Reserved]
456.1010 Accounting and payment of costs.
456.1011 Customer billing, repayment of loans, and termination of service.
456.1012 [Reserved]
456.1013 Quality assurance.
456.1014 Qualification procedures for auditors.
456.1015 Home heating suppliers.
456.1016 Program measures.
456.1017 Supply, installation, and financing by utilities.
456.1018 Complaints processing procedures.
456.1019 Coordination.
456.1020 Reporting and recordkeeping.
456.1021 Information which a utility and participating home heating supplier shall report to the Assistant Secretary.
456.1022 Exceptions.
456.1023 Waivers.

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Subpart K—Alternative State Plans

Sec.
456.1101 Scope.
456.1102 Definitions.
456.1103 Content of plan.
456.1104 Incentives.
456.1105 Certification process.
456.1106 Reporting requirements.
456.1107 Procedures for administrative and judicial enforcement.
456.1108 Amendments.

Subpart L—Utility Waiver Process

Sec.
456.1201 Scope.
456.1202 Coverage.
456.1203 Approval process.
456.1204 Annual Report to Governor.
456.1205 Revocation procedures.

Subpart M—Commercial Buildings and Multifamily Dwellings

Sec.
456.1301 Scope.
456.1302 Authority to continue plans.
456.1303 Reporting.

Appendix I to Part 456—Program Measures.

Appendix II to Part 456—Prototypical House Assumptions.

Appendix III to Part 456—Multifamily Applicability Criteria and Procedures for Determining Usage Cutoff Levels.

Authority: Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206 et seq. (42 U.S.C. 8211 et seq.), as amended by Title V, Subtitle B of the Energy Security Act, Pub. L. 96–294, 94 Stat. 611 et seq. and of the Conservation Service Reform Act of 1986, Pub. L. 99–412; Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 et seq. (42 U.S.C. 7101 et seq.).

Subpart A—General Provisions and Definitions

§ 456.101 Purpose and scope.

This part contains the regulations of the Energy Conservation Service Program. This program is mandated by Titles II and VII of the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619 as amended by Subtitle B of Title V of the Energy Security Act (ESA), Pub. L. 96–294, and by Title I of the Conservation Service Reform Act of 1986 (CSRA), Pub. L. 99–412.

§ 456.102 Petitions concerning conflicts of laws.

(a) A utility filing a petition to determine whether the utility—

(1) Is prohibited by a State or local law or regulation from taking any action required to be taken under NECPA, or

(2) Is required or permitted by a State or local law or regulation to take any action prohibited by NECPA, shall file the petition with the Assistant Secretary for Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Any such petition shall contain a copy of the applicable State or local laws or regulations and a description of the action the utility believes it is prohibited from taking or is permitted or required to take under such laws or regulations.

(b) The Assistant Secretary shall give notice of the petition to the Governor, State Energy Office, and State Regulatory Authority of the applicable State, and such other persons as the Assistant Secretary deems appropriate. Any such person or entity may file comments with the Assistant Secretary with respect to such petition within 30 days of receipt of the notice.

(c) If the Assistant Secretary determines pursuant to such petition that a State or local law or regulation prohibits a utility from taking any action required to be taken under NECPA or permits or requires a utility to take any action prohibited by NECPA, the Assistant Secretary shall issue an order superseding such State or local laws or regulations to the extent the laws or regulations are inconsistent with NECPA. Such an order shall be effective with respect to all utilities otherwise subject to such State or local laws or regulations and shall moot any outstanding petitions under this section by such utilities.

§ 456.103 Appeals and other relief.

(a) Any person seeking relief from the application of this rule, except from Subparts K, L, and M of this part may submit a request for relief in accordance with Subpart R of 10 CFR Part 205. When applicable, such a request shall contain the approval of the Governor.

(b) Any person aggrieved by any order, finding, or determination made under §§ 456.102, 456.502–456.505, or 456.507 may appeal that order, finding, or determination in accordance with Subpart H of 10 CFR Part 205. Any person so aggrieved has not exhausted his administrative remedies until an appeal has been filed under Subpart H of 10 CFR Part 205 and an order granting or denying the appeal has been issued.

§ 456.104 List of covered utilities.

(a) Before the beginning of each calendar year, the Department of Energy shall publish in the **Federal Register** a list of all covered utilities for that calendar year.

(b) Not later than 60 days after publication of the list, each State Regulatory Authority shall forward to the Assistant Secretary a copy of such list with designations as to which covered utilities on the list are under the jurisdiction of that Regulatory Authority.

(c) The publication of the list is for informational purposes, and the failure to include a covered utility on the list or the failure of a State Regulatory Authority to designate a covered utility subject to its jurisdiction in no way affects the duties of or requirements upon such covered utility under these rules or any plan promulgated pursuant to these rules.

§ 456.105 Definitions.

For purposes of this part—

(a) *Alternative State Plan.* The term "alternative State plan" means a plan developed pursuant to Subpart K of this part.

(b) *Assistant Secretary.* The term "Assistant Secretary" means the Assistant Secretary for Conservation and Renewable Energy of the U.S. Department of Energy.

(c) *Covered Utility.* The term "covered utility" means in any calendar year a public utility which during the second preceding calendar year had either—

(1) Sales of natural gas for purposes other than resale which exceeded 10 billion cubic feet, or

(2) Sales of electric energy for purposes other than resale which exceeded 750 million kilowatt-hours.

(d) *CSRA.* The term "CSRA" means Title I of the Conservation Service Reform Act of 1986, Pub. L. 99–412, which amended Part 1 of Title II of the National Energy Conservation Policy Act (NECPA).

(e) *Eligible Customer.* The term "eligible customer" means a person who owns or occupies a residential building or dwelling unit therein and receives a bill or bills based on individually metered energy use from a covered utility or participating home heating supplier for energy used in such residential building or individual dwelling unit, except that—

(1) The owner of the common area within a residential building containing five or more dwelling units shall not be treated as an eligible customer for the purpose of the common area; and

(2) This definition shall not apply to any building which has five or more dwelling units and which does not contain an individual meter for heating or cooling energy sources used in such dwelling unit.

(f) *Energy Conservation Measures.* The term "energy conservation measures" means the following measures in a residential building—

(1) *Caulking.* The term "caulking" means pliable materials used to reduce the passage of air and moisture by filling small gaps which may include (i) at fixed joints on a building, (ii) under

baseboards inside a building, (iii) in exterior walls at electric outlets, (iv) around pipes and wires entering a building, and (v) around dryer vents and exhaust fans in exterior walls. Caulking includes, but is not limited to, materials commonly known as "sealants," "putty," and "glazing compounds."

(2) *Weatherstripping.* The term "weatherstripping" means narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

(3) *Furnace Efficiency Modifications.* The term "furnace efficiency modification" means—

(i) *Replacement Furnaces or Boilers.* The term "replacement furnaces or boilers" means a furnace or boiler, including a heat pump, which replaces an existing furnace or boiler of the same fuel type and which reduces the amount of fuel consumed due to an increase in combustion efficiency, improved heat generation, or reduced heat losses.

(ii) *Furnace Replacement Burner (Oil).* The term "furnace replacement burner (oil)" means a device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and which, because of its design, achieves a reduction in the oil used from that used by the device which it replaces.

(iii) *Flue Opening Modification (Vent Damper).* The term "flue opening modification (vent damper)" means an automatically operated damper installed in a gas-fired furnace which—

(A) Is installed downstream from the drafthood; and

(B) Conserves energy by substantially reducing the flow of heated air through the chimney when the furnace is not in operation.

(iv) *Intermittent Pilot Ignition Devices (IID).* The term "intermittent pilot ignition device (IID)" means a device which, when installed in a gas-fired furnace or boiler, automatically ignites the gas burner and replaces a gas pilot light.

(4) *Replacement Central Air Conditioner.* The term "replacement central air conditioner" means a central air conditioner which replaces an existing central air conditioner of the same fuel type and which reduces the amount of fuel consumed due to an increase in efficiency.

(5) *Ceiling Insulation.* The term "ceiling insulation" means a material, primarily designed to resist heat flow, which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roof, the term "ceiling insulation" also applies to such material used between the underside and upperside of the roof. The term "ceiling insulation" also includes such material installed on the exterior of the roof.

(6) *Wall Insulation.* The term "wall insulation" means a material, primarily designed to resist heat flow, which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside.

(7) *Floor Insulation.* The term "floor insulation" means a material, primarily designed to resist heat flow which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the outside beneath it. Where the first level conditioned area of a building is on a ground level concrete slab, the term "floor insulation" also means such material installed around the perimeter of or on the slab. In the case of mobile homes, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

(8) *Duct Insulation.* The term "duct insulation" means a material, primarily designed to resist heat flow, which is installed on a heating or cooling duct in an unconditioned area of a building.

(9) *Pipe Insulation.* The term "pipe insulation" means a material, primarily designed to resist heat flow, which is installed on a heating or cooling pipe in an unconditioned area of a building.

(10) *Water Heater Insulation.* The term "water heater insulation" means a material, primarily designed to resist heat flow, which is suitable for wrapping around the exterior surface of the water heater casing.

(11) *Storm Window.* The term "storm window" means a window or glazing material placed outside or inside an ordinary or prime window, creating an air space, to provide greater resistance to heat flow than the prime window alone.

(12) *Thermal Window.* The term "thermal window" means a window unit with improved thermal performance through the use of two or more sheets of glazing material affixed to a window frame to create one or more insulated air spaces. It may also have an insulating frame and sash.

(13) *Storm Door.* The term "storm door" means a second door, installed outside or inside a prime door, creating an insulating air space.

(14) *Thermal Door.* The term thermal door" means—

(i) A door with enhanced resistance to heat flow through the glass area by affixing two or more sheets of glazing material; or

(ii) A prime exterior door with an R-value of at least 2.

(15) *Heat Reflective and Heat Absorbing Window or Door Material.* The term "heat reflective and heat absorbing window or door material" means a window or door glazing material with exceptional heat reflecting or heat absorbing properties; or reflective or absorptive films and coatings applied to an existing window or door which thereby result in exceptional heat reflecting or heat absorbing properties.

(16) *Devices Associated with Electric Load Management Techniques.* The term "devices associated with electric load management techniques" means devices that reduce the maximum kilowatt demand on an electric utility and which are either—

(i) Part of a radio, ripple or other utility controlled load switching system on the customer's premises;

(ii) Clock-controlled load switching devices on major appliances;

(iii) Interlocks, and other load actuated, load-limiting devices; or

(iv) Energy storage devices with control systems.

(17) *Clock Thermostat.* The term "clock thermostat" means a device which is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed and which uses—

(i) A temperature control device for interior spaces incorporating more than one temperature control level, and

(ii) A clock or other automatic mechanism for switching from one control level to another.

(g) *Energy Conserving Practices.* The term "energy conserving practices" means low or no cost practices designated by the Governor in a State Plan which save energy, do not require the installation of energy conservation or renewable resource measures, and do not adversely impact the RCS Program. Such practices may include, but are not limited to—

(1) Furnace Efficiency Maintenance and Adjustments, which means cleaning and combustion efficiency adjustment of gas or oil furnaces, periodic cleaning or replacement of air filters on forced-air heating or cooling systems, lowering the bonnet or plenum thermostats to 80 °F. on gas or oil forced-air furnaces, and turning off the pilot light on a gas furnace during the summer;

(2) Nighttime Temperature Setback, which means manually lowering the thermostat control setting for the furnace during the heating season to a maximum of 55, during sleeping hours;

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(3) Reducing Thermostat Settings in Winter, which means-limiting the maximum thermostat control setting for the furnace to 68 °F. during the heating season;

(4) Raising Thermostat Setting in Summer, which means setting the thermostat control for an air conditioner to 78 °F. or higher during the cooling season;

(5) Water Flow Reduction in Showers and Faucets, which means placing a device in a shower head or faucet to limit the maximum flow to three gallons per minute, or replacing existing shower heads or faucets with those having built-in provisions for limiting the maximum flow to three gallons per minute;

(6) Reducing Hot Water Temperatures, which means manually setting back the water heater thermostat setting to 120 °F., and reducing the use of heated water for clothes washing;

(7) Reducing Energy Use When a Home is Unoccupied, which means reducing the thermostat setting to 55 °F. when a home is empty for four hours or longer in the heating season, turning an air conditioner off in the cooling season when no one is home, and turning a water heater off when a home is vacant for two days or longer;

(8) Plugging Leaks in Attics, Basements, and Fireplaces, which means (i) installing scrap insulation or other pliable materials in gaps around pipes, ducts, fans, or other items which enter the attic or basement from a heated space, (ii) installing fireproof material to plug any holes around any damper in a fireplace, and (iii) adding insulation to an attic or basement door;

(9) Sealing Leaks in Pipes and Ducts, which means installing caulking in any leak in a heating or cooling duct, tightening or plugging any leaking joints in hot water or steam pipes, and replacing washers in leaking water valves; and

(10) Efficient Use of Shading, which means using shades or drapes (i) to block sunlight from entering a building in the cooling season, (ii) to allow sunlight to enter during the heating season, and (iii) to cover windows tightly at night during the heating season.

(h) *ESA.* The term "ESA" means Subtitle B of Title V of the Energy Security Act, Pub. L. 96–294, which amended Part 1 of Title II of the National Energy Conservation Policy Act (NECPA).

(i) *Governor.* The term "Governor" means the Governor or chief executive officer of a State or his designee; or, if a State agency is specifically designated by State law to carry out any function under the RCS Program, then the term "Governor" means that State agency for that function.

(j) *Home Heating Supplier.* The term "home heating supplier" means a person who sells or supplies home heating fuel (including No. 2 heating oil, kerosene, butane, and propane) to an eligible customer for consumption in a residential building.

(k) *Measure Warranties.* (1) The term "manufacturer's measure warranty" means, at a minimum, a written warranty by the manufacturer of an energy conservation or renewable resource measure that the eligible customer for whom the measure is installed, the installation contractor who installs the measure, and the seller of the measure shall be entitled to obtain, within a reasonable period of time and at no charge, appropriate replacement parts or materials for those measures found within one year from the date of installation to be defective due to materials, manufacture, or design;

(2) The term "supplier's measure warranty" means, at a minimum, a written warranty equivalent to that referred to in paragraph (1) of this definition provided by the supplier of an energy conservation or renewable resource measure to persons who purchase the measure from the supplier;

(3) The term "contractor's measure warranty" means, at a minimum, a written warranty by a contractor installing an energy conservation or renewable resource measure that any defect in materials, manufacture, design, or installation found within one year from the date of installation shall be remedied without charge and within a reasonable period of time.

(l) *NECPA.* The term "NECPA" means Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 95–619, as amended by Subtitle B of Title V of the Energy Security Act (ESA) and by Title I of the Conservation Service Reform Act of 1986 (CSRA).

(m) *Nonregulated Utility.* The term "nonregulated utility" means a public utility which is not a regulated utility.

(n) *Nonregulated Utility Plan.* The term "nonregulated utility plan" means a plan developed pursuant to Subpart D of this part.

(o) *Participating Home Heating Supplier.* The term "participating home heating supplier" means a home heating supplier that has elected to participate in a State Plan which includes home heating suppliers.

(p) *Program Announcement.* The term "program announcement" means the RCS program information and offer of services required to be provided by a covered utility or participating home heating supplier to each eligible customer by § 456.305.

(q) *Program Audit.* The term "program audit" means an audit in which the estimates of costs and energy savings are based on an adequate assessment, including actual measurements or inspections, as appropriate, performed on-site by the auditor, of the building shell and of the space heating, space cooling, and water heating equipment of the residence of an eligible customer. In the case of residential buildings containing more than four dwelling units, the program audit may mean an audit in which the estimates of costs and energy savings are based on a sampling of the types of units in the building.

(r) *Program Information.* The term "program information" means the program announcement and any information dissemination activities related to an RCS program.

(s) *Program Measures.* The term "program measures" means those energy conservation or renewable resource measures which the Assistant Secretary has by rule determined to be appropriate by climatic region and fuel use category and which are found in Appendix I to this part, or which are determined to be program measures by a Governor in accordance with § 456.315(b).

(t) *Public Utility.* The term "public utility" means any person, State agency, or Federal agency which is engaged in the business of selling natural gas or electric energy, or both to residential customers for use in residential buildings.

(u) *Rate.* The term "rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to sales of electric energy or natural gas, any rule, regulation, or practice respecting any such rate, charge or classification, and any contract pertaining to the sales of electric energy or natural gas.

(v) *Ratemaking Authority.* The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(w) *RCS Program.* The term "RCS Program" (Residential Conservation Service Program) means the program required to be implemented by covered utilities pursuant to an approved State Plan, an alternative State plan, an approved Nonregulated Utility Plan, or a Federal Standby Plan.

(x) *Regulated Utility.* The term "regulated utility" means a public utility with respect to whose rates a State regulatory authority has ratemaking authority.

(y) *Renewable Resource Measure.* The term "renewable resource measure" means the following measures in or with respect to a residential building—

(1) *Solar Domestic Hot Water Systems.* The term "solar domestic hot water systems" means equipment designed to absorb the sun's energy and to use this energy to heat water for use in a residential building other than for space heating, including thermostat hot water heaters.

(2) *Active Solar Space Heating Systems.* The term "active solar space heating systems" means equipment designed to absorb the sun's energy and to use this energy to heat living space by use of mechanically forced energy transfer devices, such as fans or pumps.

(3) *Combined Active Solar Space Heating and Solar Domestic Hot Water System.* The term "combined active solar space heating and solar domestic hot water system" means equipment designed to perform both of the functions described in paragraphs (1) and (2) of this definition.

(4) *Wind Energy Devices.* The term "wind energy devices" means equipment that uses wind energy to produce energy in any form for residential purposes.

(5) *Replacement Solar Swimming Pool Heaters.* The term "replacement solar swimming pool heaters" means a device which uses the sun's energy solely for the purpose of heating swimming pool water and which displaces the use of a swimming pool heater using electricity, gas or other fossil fuels.

(z) *Residential Building.* The term "residential building" means any building used for residential occupancy which—

(1) Is not a new building to which final standards under section 304(a) of the Energy Conservation and Production Act apply; and

(2) Has a system for heating or cooling, or both.

(aa) *Secretary.* The term "Secretary" means the Secretary of Energy.

(bb) *State.* The term "State" means a State, the District of Columbia and Puerto Rico.

(cc) *State Agency.* The term "State agency" means a State, a political subdivision thereof, or any agency or instrumentality of either.

(dd) *State Plan.* The term "State Plan" means a plan developed pursuant to Subpart B and C of this part.

(ee) *State Regulatory Authority.* The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sales of electric energy or natural gas by any public utility (other than by such State agency), except that in the case of a public utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

(ff) *TVA.* The term "TVA" means the Tennessee Valley Authority.

§ 456.106 [Reserved]

§ 456.107 Termination.

Effective June 30, 1989, in accordance with Section 228 of NECPA, all authority, including the authority to enforce any prohibitions, under this part shall terminate, except that such expiration shall not affect any action or proceeding based upon an act committed prior to midnight June 30, 1989, and not finally determined by such date. This section shall not apply to Subpart M of this part

Subpart B—Preparation, Submission, and Approval of State Plans and Temporary Programs

§ 456.201 Scope.

This subpart identifies the responsibilities of the States and the Tennessee Valley Authority (TVA) in the preparation and submission of State Plans; the procedures for approval of the State Plan by the Assistant Secretary; and the procedures for submission and criteria for approval of Temporary Programs.

§ 456.202 Initial submission.

If a State intends to submit a State Plan, the Governor shall submit by January 6, 1980, a list of nonregulated covered utilities, if any, operating in the State which will be subject to the State Plan.

§ 456.203 Notice, comment, and public hearing.

Prior to submission of the State Plan to the Assistant Secretary for approval, the Governor shall provide for meaningful public notice, an opportunity for public comment, and public hearing.

§ 456.204 Procedures for submission and approval of State Plans.

(a) *Who shall submit.* Three (3) copies of the proposed State Plan shall be submitted to the Assistant Secretary by either:

(1) The Governor of the State; or

(2) The TVA with respect to all covered utilities over which the TVA has ratemaking authority and, in the discretion of TVA, with respect to any covered utility over which the TVA and another State Regulatory Authority have ratemaking authority.

(b) *Time for submission.* The proposed State Plan shall be submitted by June 4, 1980, unless the time for submission has been extended by the Assistant Secretary, upon request of the Governor, for good cause shown.

(c) *Approval.* If a proposed State Plan meets the criteria of Subparts B and C of this part, the Assistant Secretary shall approve it within 90 days of the date the proposed State Plan was submitted.

(d) *Disapproval.* (1) If a proposed State Plan does not meet the criteria of Subparts B and C of this part, the Assistant Secretary shall, within 90 days of the date the proposed State Plan was submitted, disapprove the proposed State Plan in writing and shall specify in writing the grounds for disapproval.

(2) Within 60 days of the date of disapproval of a proposed State Plan, or such longer period as the Assistant Secretary may determine, for good cause shown, the Governor may submit another proposed State Plan.

(e) *Amendments.* The Governor may submit proposed amendments to an approved State Plan at any time. The Assistant Secretary shall approve or disapprove a proposed amendment within 90 days of receipt of the proposed amendment.

§ 456.205 Home heating suppliers.

If the Governor submits a plan applicable to home heating suppliers in the State, it shall be a part of the State Plan and shall be submitted in accordance with the procedures of this subpart applicable to the submission of the State Plan.

§ 456.206 Tennessee Valley Authority (TVA).

In this part, except as otherwise specified, references to the Governor shall be deemed to refer also to the TVA and references to the State Plan shall be deemed to refer also to the TVA Plan. References in this part to a State as a geographic area shall, with respect to the TVA Plan, be referenced to the service areas of the covered utilities subject to the TVA Plan. Reference in this part to a State as a governmental entity (other than references to State laws or regulations) or to any State Agency or officer shall be deemed to refer also to the TVA.

§ 456.207 Temporary Programs.

(a) *Definition of Temporary Program.* A Temporary Program is a plan or a part of a State Plan which exempts in whole or in part for a specified period, to be determined by the Assistant Secretary, one or more utilities from one or more of the following provisions—

(1) The requirements for preparing and distributing the Program Announcement described in § 456.305;

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(2) The requirements for offering and performing, audits described in § 456.306;

(3) The requirements concerning accounting and payment of costs described in § 456.309;

(4) The requirements regarding billing of costs, repayment of loans, and termination of service described in § 456.310; and

(5) The prohibition against supplying and installing by covered utilities described in § 456.502(a).

(b) *Continuation.* Temporary programs approved by the Secretary prior to August 28, 1986, may be extended until such date as determined by the Secretary.

(c) *Federal Standby Authority.* The Federal Standby Authority described in Subpart F shall not be exercised with respect to a covered utility which either—

(1) Is subject to an approved Temporary Program; or

(2) Was subject to an approved Temporary Program which has terminated and such covered utility will be subject, within a reasonable time to be determined by the Assistant Secretary, to an adequately implemented approved State Plan or Nonregulated Utility Plan.

§ 456.208 Status of Plans Approved Prior to CSRA.

Any residential energy conservation plan approved by the Secretary before August 28, 1986, shall continue as approved, provided certification is made to the Secretary that—

(a) The plan will continue until June 30, 1989, and one more program announcement will be made;

(b) The definition of "residential building" will be amended to "any building used for residential occupancy which is not a new building to which final standards under section 304(a) of the Energy Conservation and Production Act apply and which has a system for heating or cooling, or both; and

(c) Program coverage will include multi-family buildings containing five or more units when the dwelling units are individually metered for heating or cooling.

Subpart C—Content of State Plans

§ 456.301 Scope.

This subpart prescribes the minimum requirements for the content of State Plans. The State may include additional information and provide additional requirements in the State Plan for the RCS Program if such information and requirements are not specifically prohibited by these rules or by any applicable law or regulation. All references in this subpart to covered utilities apply to regulated and nonregulated covered utilities subject to the State Plan.

§ 456.302 Coverage of State Plan.

(a) *Regulated utilities.* All regulated utilities providing utility service in a State which meet the definition of "covered utility" in § 456.105 shall be subject to the State Plan and shall be identified in the State Plan.

(b) *Nonregulated utilities.* The State Plan shall identify which nonregulated covered utilities, if any, are covered under the State Plan.

(c) *Home heating suppliers.* The State Plan shall state whether it includes an RCS Program for home heating suppliers.

(d) *Temporary Programs.* The State Plan shall identify any covered utilities for which a request for a Temporary Program provision has been submitted, and describe or attach such provision for each such utility.

§ 456.303 Procedures for enforcing compliance with State Plan.

(a) For the purposes of this section the term "RCS participant" means any person or entity directly governed by the State Plan, including covered utilities, and participating home heating suppliers.

(b) The State Plan shall require each RCS participant to comply with the State Plan.

(c) The State Plan shall contain adequate procedures for enforcing compliance with the State Plan by each RCS participant.

§ 456.304 State monitoring of utility supply, installation, and financing.

The State Plan shall—

(a) Contain procedures to ensure that covered utilities which supply, install or finance the sale or installation of energy conservation or renewable resource measures shall—

(1) Charge fair and reasonable prices and interest rates, which shall be determined by periodic review of comparative prices and interest rates by a State designated agency;

(2) Conduct such activities in a manner which does not have a substantial adverse effect upon competition or involve the use of unfair, deceptive, or anticompetitive acts of practices;

(3) When undertaking to finance a lending program for such measures through financial institutions, seek funds for such financing from financial institutions located throughout the area covered by the lending program (to the extent each such utility determines feasible, consistent with good business practice, and not disadvantageous to its customers); and

(4) Meet the requirements of § 456.504 if they undertake supply or installation activities under § 456.504.

(b) Require any utility undertaking a program involving the supply or installation of any energy conservation or renewable resource measure as permitted by § 456.504, or providing financing for the purchase or installation of any such measure, to notify the Assistant Secretary when such program becomes effective.

§ 456.305 Program announcement.

(a) *Distribution and content.* The State Plan shall require each covered utility and each participating home heating supplier to provide each eligible customer, no later than six months after approval of the State Plan and every two years thereafter, but not more than once during the period from August 28, 1986 to June 30, 1989, with the following:

(1) A list of the program measures for the category of residential buildings owned or occupied by such eligible customer.

(2) A reasonable estimate (or range of estimates) of the savings in energy costs for a specified period of time which are likely to result from installation of each of the program measures in a typical building or buildings in such category.

(3) A list of the energy conserving practices which shall be developed by the Governor. Such practices may include the practices defined in § 456.105.

(4) A reasonable estimate (or range of estimates) of the savings in energy costs for a specified period of time which are likely to result from the adoption of the practices, individually or as a group.

(5) An offer to perform the service required to be offered under § 456.306 (Program Audits) and a description of the service. The offer of the program audit may be conditioned upon a nondiscriminatory factor such as serving one geographic area at a time or serving a certain type of energy user first.

(b)(1) The State Plan shall specify whether a covered utility or participating home heating supplier is permitted or prohibited from including with the program information any advertising for the sale, installation or financing by any supplier, contractor, or lender (including the covered utility) of any program measure.

(2) If advertising is permitted, the State Plan shall contain procedures to ensure that such advertising does not

unfairly discriminate against any person.

(c) *Calculation procedures.* The State Plan shall, with respect to estimates of the savings required under § 456.305(a)(2), describe the procedures by which such estimates shall be made.

(d) *New customers.* (1) A new customer is a person who becomes an eligible customer after a distribution of the Program Announcement but before June 30, 1989.

(2) The State Plan shall require,that each covered utility and participating home heating supplier provide each new customer within 60 days of such customer becoming a new customer with the information required in § 456.305(a).

(3) The State shall require that a covered utility or participating home heating supplier retain in its files for not less than five years a copy of each report of each program audit performed pursuant to the State Plan which shall be available to any subsequent owner without charge. The State Plan shall require that a covered utility or participating home heating supplier inform each subsequent eligible customer who is an owner of a residential building, or dwelling unit therein, of the availability of this report.

(e) The State Plan shall prohibit unfair discrimination among measures, eligible customers, suppliers, contractors, and lenders in the content of, and in the providing of, information required under this section.

§ 456.306 Requirements for program audits.

(a) *Timing of program audit.* The State Plan shall require that each covered utility participating home heating supplier shall provide a program audit to each eligible customer within a reasonable time after the request for an audit.

(b) *Content of program audit.* (1) The State Plan shall describe the program audit services to be offered by utilities and participating home heating suppliers and shall require at a minimum that covered utilities and participating home heating supplier provide (either directly or through one or more auditors under contract), upon request, to each eligible customer a program audit which addresses the applicable program measures and identifies the applicable energy conserving practices which shall be developed by the Governor. Such practices may include those practices defined in § 456.105.

(2) The State Plan may allow the auditor in each program audit to determine the applicability of each program measure in that residence based on applicability criteria set forth in the State Plan subject to DOE approval; and, in the case of residential buildings containing more than four dwelling units, based on either the above or DOE applicability criteria and usage cut-off procedures, as set forth in Appendix III. If a program measure is not applicable, then the requirements of this section to provide estimates of the cost and savings of installation of such measure in such residence do not apply.

(3) The State Plan shall contain procedures to assure the validity of the program audit with respect to all program measures.

(4) The State Plan shall require the auditor to offer at the time of the audit to provide the customer at a minimum with a written sample of the typical format of the audit results and a brief explanation of how to interpret such results.

(5) The State Plan shall allow auditors to perform a program audit only for those measures or products approved by the Governor.

(c) *Results of program audit.* (1) The State Plan shall require that the utility provide the following information in writing to each eligible customer who receives a program audit—

(i) An estimate of the total cost, expressed in dollars or a range of dollars, of installation by a contractor of each applicable program measure as designated in the Table of Program Measures (Appendix I);

(ii) An estimate of the total cost, expressed in dollars or a range of dollars, of purchase by the customer of each applicable program measure as designated in the Table of Program Measures (Appendix I);

(iii) An estimate of the energy savings, expressed in dollars or a range of dollars, of each applicable program measure addressed by the program audit.

(2) The State Plan shall require any utility which does not provide in-person results of audits to provide customers with the opportunity to discuss the results of the audit with a qualified person.

(3) The State Plan shall allow utilities to provide audit results only for those measures or products approved by the Governor.

(d) *Prohibitions.* (1) The State Plan shall prohibit covered utilities and participating home heating suppliers from discriminating unfairly among eligible customers in providing program audits.

(2) The State Plan shall prohibit any auditor from recommending any supplier, contractor, or lender who supplies, installs, or finances the sale or installation of any program measure if such recommendation would unfairly discriminate among such suppliers, contractors, or lenders.

(3) The State Plan shall prohibit any unfair discrimination among program measures.

(e) *Program audits of furnaces.* The State shall require that, in order for an auditor of a covered utility or participating home heating supplier to provide cost and savings estimates for furnace efficiency modifications with respect to a furnace which uses as its primary source of energy any fuel or source of energy other than the fuel or source of energy sold by that covered utility or participating home heating supplier, the eligible customer must request such audit in writing.

(f) *Qualifications for program auditors.* The State Plan shall require that each person who performs a program audit pursuant to the State Plan shall be qualified to perform the necessary measurements and inspections to determine the estimated cost of purchasing and installing the recommended program measures and the savings in energy costs that are likely to result from the installation of such measures.

§ 456.307 [Reserved]

§ 456.308 [Reserved]

§ 456.309 Accounting and payment of costs.

(a) *Accounting.* The State Plan shall require with respect to Federally mandated measures, and may permit with respect to costs or revenues directly associated with State measures, that all amounts expended or received by a covered utility which are attributable to the RCS Program, including any penalties paid under Subpart F (Federal Standby Authority), shall be accounted for on the books and records separately from amounts attributable to all other activities of the covered utility.

(b) *Payment of costs.* The State Plan shall require that covered utilities treat costs as described below and shall describe how the costs described in paragraph (b)(2) of this section will be treated:

(1) All amounts expended by a covered utility in providing the information required under § 456.305(a) and in conducting all public education and program promotion directly related to providing information about a utility's RCS Program shall be treated as a current expense of providing utility service and be charged to all ratepayers of the covered utility in the same manner as other current operating

expenses of providing such utility service;

(2) The cost of the following program elements shall be recovered in the manner specified by the State regulatory authority (in the case of a regulated utility) or the nonregulated utility (except that the amount that may be recovered directly from a residential customer for whom the activities described in § 458.309(b)(2)(ii) are performed shall not exceed a total of $15 per dwelling unit or the actual cost of such activities, whichever is less):

(i) Administrative and general expenses, including those associated with program audits and customer billing services, and

(ii) Project management requirements, including the providing of program audits; and

(3) In determining the amount to be recovered directly from customers as provided in paragraph (b)(2) of this section, the State regulatory authority (in the case of a regulated utility) or the nonregulated utility shall take into consideration, to the extent practicable, the eligible customers' ability to pay and the likely levels of participation in the utility program which will result from such recovery.

(c) *Duplication of audits.* (1) In areas where a residential customer is an eligible customer of more than one covered utility, the Governor, or the covered nonregulated utility, as appropriate, may include in a State Plan or a Nonregulated Utility Plan procedures to ensure that each eligible customer may receive an RCS audit from only one of these covered utilities.

(2) No utility should be required to make more than one audit of a residential building or dwelling unit therein unless a new owner requests a subsequent audit.

§ 456.310 Customer billing, repayment of loans, and termination of service.

The State Plan shall require that—

(a) *Customer billing.* Every charge by a covered utility or a participating home heating supplier to a customer for any portion of the costs of carrying out any activity pursuant to the State Plan that is charged to the residential customer for whom such activity is performed (including repayment of a loan) and that is included on a billing for utility service submitted by the utility or home heating supplier to such residential customer shall be stated separately on such billing from the cost of providing utility or fuel service. Nothing in this paragraph shall be construed so as to require that charges to the customer for activities performed pursuant to the State Plan must be included on the bill for periodic utility service.

(b) *Repayment of loans.* (1) In the case of any loan by a covered utility, the utility, with the approval of the customer, shall permit repayment of the loan as part of the periodic utility bill.

(2) In the case of any loan for the purchase or installation of program measures made by a participating home heating supplier under the RCS Program—

(i) The participating home heating supplier shall permit the eligible customer to include repayment of the loan in such customer's payment of his periodic fuel bill over a period of not less than three years, unless the eligible customer chooses a shorter repayment period;

(ii) A lump-sum payment of outstanding principal and interest may be required by the lender upon default in payment (as determined under applicable law) from the eligible customer; and

(iii) No penalty shall be imposed by a home heating supplier for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

(c) *Termination of service.* No covered utility or participating home heating supplier shall terminate utility or fuel service to any customer for any default by such customer for payments due for any services under the RCS Program.

§ 456.311 [Reserved]

§ 456.312 Complaints processing and redress procedures.

The State Plan shall contain procedures—

(a) For resolving complaints against persons who sell or install energy conservation or renewable resource measures under the RCS Program; and

(b) To assure that any person who alleges any injury resulting from a violation of any State Plan provision shall be entitled to redress.

§ 456.313 Coordination.

The State Plan shall provide procedures to ensure effective coordination between the RCS Program and all local, State, and Federal energy conservation programs within and affecting the State.

§ 456.314 Home heating suppliers.

(a) *Consideration of limited resources.* If a State Plan covers home heating suppliers, it shall, within the terms of the requirements of this subpart, take into account the limited resources of small home heating suppliers.

(b) *Participation and withdrawal.* The State Plan, if it includes home heating suppliers, shall include a procedure by which the Governor shall allow a home heating supplier to participate in the RCS Program. The State Plan shall also allow a home heating supplier to withdraw voluntarily from the RCS Program.

(c) *Waiver of requirements.* The State Plan shall contain a procedure by which the Governor may waive for any participating home heating supplier any requirement of the State Plan, except those listed below, upon a demonstration to the Governor's satisfaction that the resources of such supplier do not enable it to comply with the particular requirement. The requirements which the Governor shall not waive are the following sections which prohibit anticompetitive activities or unfair discrimination by covered utilities or participating home heating suppliers—

(1) Section 456.306(c) (Prohibitions concerning program audits); and

(2) Section 456.306(d) (Furnace audits).

§ 456.315 Program measures.

(a) The State Plan shall contain a list of the program measures. This list shall contain either those energy conservation and renewable resource measures identified in Appendix I to this rule as program measures for that State, or a list of energy conservation and renewable resource measures determined to be program measures by the Governor in accordance with paragraph (b) of this section.

(b)(1) The Governor may exclude from the State RCS Program, any program measure identified in Appendix I as a program measure for that State on the following bases:

(i) When, by substituting State derived data, the program measure has a payback period (P) of more than seven years, as determined by dividing the installed first cost (F) less any Federal and State (at the discretion of the Governor) tax credits (T), by the first year energy savings in dollars (S),

$$P = \frac{F-T}{S} \quad P>7 \text{ years, and/or}$$

(ii) When, by substituting a State specific prototypical house, it is determined that the program measure has a payback period (P) of more than seven years pursuant to the formula in paragraph (b)(1)(i) of this section.

(2) The State Plan shall contain data to substantiate any exclusion pursuant to paragraphs (b)(1) (i) or (ii) of this section.

(c) The Governor may add any measure not identified in Appendix I as a program measure for that State, to the State RCS Program without DOE approval.

§ 456.316 Reporting and recordkeeping.

(a) The State Plan shall contain provisions to assure that a report is submitted to the Assistant Secretary no later than July 1, 1982, and annually thereafter through June 30, 1989, covering the twelve-month period ending the preceding April 1.

(b)(1) The report shall include—

(i) The number of energy audits requested, and/or provided;

(ii) The nature and status of any direct financing activities or exempted or waived supply or installation activities engaged in by the utilities;

(iii) Estimated State costs and utility costs of implementing the program; and

(iv) The general nature and approximate number of complaints received about the program and the operation of the complaints processing procedures of § 456.309 in the State.

(2) The report shall also contain a copy of any program announcement not already provided.

(c) The State Plan shall contain procedures to assure that a copy of the data collected during each audit and a copy of the costs and savings presented to the customer receiving the audit are retained on file for five years from the date of the audit.

(d) Any other provisions of this section notwithstanding, the Assistant Secretary may, as he deems essential to Departmental implementation of program responsibilities and subject to approval of OMB under the provisions of the Paperwork Reduction Act (Pub. L. 96–511)—

(1) Require additional information; and

(2) Waive any reporting and recordkeeping requirements, except the recordkeeping requirements in paragraph (c) of this section.

§ 456.317 Quality assurance.

The State Plan shall contain procedures to ensure that reasonable levels of effectiveness and safety are maintained in the supply and installation of measures under the RCS Program.

Subpart D—Nonregulated Utility Plans

§ 456.401 Scope.

This subpart identifies the responsibilities of covered nonregulated utilities not subject to a State Plan for the preparation and submission of Nonregulated Utility Plans, the procedures for approval of Nonregulated Utility Plans by the Assistant Secretary, and the minimum requirements for the content of Nonregulated Utility Plans.

§ 456.402 Coverage.

This subpart shall apply to all nonregulated utilities which are not covered by a State Plan.

§ 456.403 Notice, comment, and public hearing.

Prior to submission of the Nonregulated Utility Plan to the Assistant Secretary for approval, the nonregulated utility shall—

(a) *Notice and comment.* Provide meaningful public notice of the requirement for the nonregulated utility to submit a Nonregulated Utility Plan.

(b) *Hearing.* Hold at least one public hearing in the nonregulated utility's service area for the purpose of hearing testimony and receiving comments on the content of the proposed Nonregulated Utility Plan.

§ 456.404 Procedures for submission and approval of Nonregulated Utility Plans.

(a) *Submission.* Each utility subject to this subpart shall submit to the Assistant Secretary a proposed Nonregulated Utility Plan by June 4, 1980, unless the time for submission has been extended by the Assistant Secretary for good cause shown upon request, of the nonregulated utility.

(b) *Approval.* If a proposed Nonregulated Utility Plan meets the criteria of this subpart, the Assistant Secretary shall approve it within 90 days of the date the proposed Nonregulated Utility Plan was submitted.

(c) *Disapproval.* (1) If a Nonregulated Utility Plan does not meet the criteria of this subpart, the Assistant Secretary shall, within 90 days of the date the proposed Nonregulated Utility Plan is submitted, disapprove the proposed Nonregulated Utility Plan and specify in writing grounds for disapproval.

(2) Within 60 days of the date of disapproval of a proposed Nonregulated Utility Plan, or such longer period as the Assistant Secretary may determine pursuant to the criteria of paragraph (a) of this section, the nonregulated utility shall submit another proposed Nonregulated Utility Plan.

(d) *Amendments.* The nonregulated utility may submit proposed amendments to an approved Nonregulated Utility Plan at any time. The Assistant Secretary shall approve or disapprove a proposed amendment within 90 days of receipt of the proposed amendment.

§ 456.405 Temporary Programs.

A nonregulated utility may operate a Temporary Program as defined in § 456.207(a) in accordance with the provisions of § 456.207.

§ 456.406 Content of plans.

(a) *General requirements.* (1) Except as provided in this section, each Nonregulated Utility Plan shall meet all the requirements for State Plans in Subpart C.

(2) Except as otherwise provided in this section, all references in Subpart C to—

(i) Covered utilities shall be deemed to refer to utilities subject to this subpart;

(ii) A State Plan shall be deemed to refer to a Non-Regulated Utility Plan;

(iii) Participating home heating suppliers shall not apply;

(iv) A State (as a governmental entity, other than references to State laws or regulations) or any State Agency or officer shall be deemed to refer to the nonregulated utility submitting the Plan; and

(v) A State (as a geographic area) shall be deemed to refer to the nonregulated utility's service area.

(b) *Utilizing State services.* (1) In a State submitting a State Plan, a nonregulated utility may, by written understanding with the appropriate State agency, utilize services which have been provided for in the State Plan.

(2) If a Nonregulated Utility Plan utilizes services as permitted by this paragraph, all references in the State Plan to those services with regard to utilities subject to the State Plan shall be deemed to refer to the nonregulated utility.

(3) If a Nonregulated Utility Plan proposes to utilize any of the services pursuant to this paragraph, the Plan shall so state and copies of the written agreements with the appropriate State agencies shall be included with the Nonregulated Utility Plan in the submission to the Assistant Secretary.

Subpart E—Supply, Installation, and Financing by Utilities

§ 456.501 Scope and definitions.

(a) This subpart contains the prohibition against a utility's supply and installation of energy conservation and renewable resource measures. It specifies the exemptions to this prohibition and the procedures, where applicable, for obtaining these exemptions. It also sets forth certain

requirements concerning utility financing programs.

(b) For purposes of this subpart—(1) A "covered utility" means a covered utility, any company which is owned or controlled by such a utility, or any company which owns or controls such a utility:

(2) A covered utility "installs" a measure whenever the contract for installation obligates the covered utility to install the measure;

(3) A covered utility "supplies" a measure when it sells a measure at retail or leases a measure to an eligible customer; and

(4) A covered utility "finances" the supply or installation of a measure when the loan contract names the utility as the lender.

§ 456.502 Prohibition.

(a) Except as provided in this subpart, no covered utility may supply or install any energy conservation or renewable resource measure.

(b) Notwithstanding §§ 456.503–456.507, no covered utility may supply, install, or finance the supply or installation of any energy conservation or renewable resource measure if the Federal Trade Commission, pursuant to Section 216(h) of NECPA, or a State regulatory authority, pursuant to State law, has determined that such activity involves—

(1) Charging unfair or unreasonable prices or rates of interest with respect to the supply and installation of residential energy conservation measures; or

(2) Engaging in unfair methods of competition or unfair or deceptive acts or practices with respect to such supply and installation.

(c) Violations of this section are subject to a civil penalty of not more than $25,000 for each day of violation assessed by order of the Assistant Secretary pursuant to Section 216(h) and 219 of NECPA and § 456.606 of these rules.

§ 456.503 Exemption for certain measures.

The prohibition in § 456.502(a) shall not apply to the supply or installation of (a) furnace efficiency modifications, (b) clock thermostats, and (c) devices associated with load management techniques for the type of energy sold by the utility.

§ 456.504 Exemption for utility subcontractor supply and installation.

(a) The prohibition contained in § 456.502(a) shall not apply to any energy conservation measure or renewable resource measure supplied or installed by a public utility through contracts between such utility and independent suppliers or contractors where the customer requests such supply and installation and each supplier or contractor—

(1) Is not subject to the control of the public utility, except as to the performance of such contract, and is not an affiliate or a subsidiary of such utility; and

(2) If selected by the utility, is selected in a manner consistent with § 456.504(b).

(b) Activities of a public utility conducted pursuant to paragraph (a)(2) of this section—

(1) May not involve unfair methods of competition;

(2) May not have a substantial adverse effect on competition in the area in which such activities are undertaken nor result in providing to any supplier or contractor an unreasonably large share of contracts for the supply or installation of energy conservation or renewable resource measures;

(3) Shall be undertaken in a manner that provides, subject to reasonable conditions the utility may establish to ensure the quality of supply and installation of energy conservation or renewable resource measures, that any financing by the utility of such measures shall be available to finance the supply or installation by any contractor or to finance the purchase of such measures to be installed by the customer;

(4) Shall be undertaken, to the extent practicable and consistent with paragraphs (b)(1)–(3) of this section, in a manner that minimizes the cost of energy conservation and renewable resource measures to such customers; and

(5) Shall include making available upon request a current estimate of the average price of supply and installation of energy conservation and renewable resource measures subject to the contracts entered into by the public utility under paragraph (a) of this section.

(c) Before a utility can undertake a supply or installation program permitted by this section, the State Plan must contain procedures to ensure that such a program will be undertaken in full compliance with requirements described in paragraphs (a) and (b) of this section.

§ 456.505 Exemption for existing supply and installation.

(a) The prohibition in § 456.502(a) shall not apply to any supply or installation of any energy conservation or renewable resource measure in which the covered utility was engaged on November 9, 1978—

(1) During such time as applications for determinations with respect to such activities, filed in accordance with § 456.509, are pending; and

(2) Upon a final determination that, on or by November 9, 1978, such energy conservation or renewable resource measure was being supplied or installed by the utility seeking such determination.

(b) The prohibition in § 456.502(a) shall not apply to any supply or installation of any energy conservation or renewable resource measure which the covered utility had by November 9, 1978, broadly advertised that it would supply or install, or with respect to which the utility had by November 9, 1978, completed substantial preparations for supplying or installing—

(1) During such time as applications for determinations with respect to such activity filed in accordance with § 456.509 are pending; and

(2) Upon a final determination that, on or by November 9, 1978, such energy conservation or renewable resource measure had been broadly advertised or for which substantial preparations had been completed by the utility seeking such determination.

(c) Effective July 1, 1987, paragraphs (a) and (b) shall not apply to the supply or installation of residential energy conservation measures other than measures which the Secretary determines, pursuant to a request by a covered utility with supporting documentation, were being installed or supplied during the 12 month period ending June 1, 1985.

§ 456.506 Exemption for supply and installation authorized by State or local law.

(a) The prohibition in § 456.502(a) shall not apply to any supply or installation of any energy conservation or renewable resource measure—

(1) In which a State or local law or regulation in effect on November 9, 1978, required or explicitly permitted a covered utility to engage; or

(2) Which the Attorney General of the appropriate State certifies to the Assistant Secretary was intended by a State law or regulation in effect on November 9, 1978, to be required or permitted.

(b) A covered utility is exempt from any Federal requirement to include in its RCS Program any supply or installation of any energy conservation or renewable resources measure in which it is engaged by reason of a State law or regulation in effect prior to November 9, 1978, permitting or requiring such activities. However, a covered utility that includes supply and installation in its RCS Program pursuant to the

exemption in paragraph (a) of this section shall be subject to all the requirements of the State Plan with respect to those activities in the same manner as any contractor, supplier, or lender, except that it shall be exempt from the requirements of § 456.309 (Accounting and Payment of Costs) and § 456.310 (Customer Billing, Repayment of Loans, and Termination of Service) with respect to such activities.

§ 456.507 Waivers.

(a) The Assistant Secretary may waive any prohibition of § 456.502(a) upon petition by a covered utility pursuant to § 456.509 and a finding that—

(1) The petition, in the case of a covered utility subject to a State Plan, is supported by the Governor; and

(2) If such waiver were granted—

(i) Fair and reasonable prices and rates of interest would be charged; and

(ii) The otherwise prohibited activities would not involve or result in unfair or deceptive acts or practices.

(b) Before the Assistant Secretary makes the finding described in paragraph (a)(2)(i) of this section, he or she shall consult with the Federal Trade Commission.

§ 456.508 Notification.

Each utility undertaking a program involving the supply or installation of any energy conservation or renewable resource measure as permitted under § 456.504, or providing financing for the purchase or installation of any such measure, must notify the Assistant Secretary when such program becomes effective.

§ 456.509 Procedure for obtaining determinations and waivers.

(a) A utility making an application for a determination under § 456.505 or a petition for a waiver under § 456.507 shall file such application or petition clearly labeled as such with the Assistant Secretary for Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All such petitions shall contain all information necessary for the determination under § 456.505 or the findings required by § 456.507.

(b) In addition to any other requirement that may be applicable, any utility making an application or petition under this section shall give direct notice to the Governor, State Energy Office, and State Regulatory Authority of any State in which such exemption or waiver would be applicable, informing them that they may within ten days submit comments on the application or petition to the Assistant Secretary. The application or petition filed with the Assistant Secretary shall include a certification that the applicant or petitioner has complied with the requirements of this paragraph. In the discretion of the Assistant Secretary, opportunity to comment may be provided to other interested persons.

§ 456.510 Appeals.

Any person adversely affected by any decision made pursuant to this subpart by the Assistant Secretary may appeal that decision in accordance with Subpart H of 10 CFR Part 205. All such appeals shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

§ 456.511 Certain exempt activities and compliance with accounting, costing, billing, and repayment provisions.

Any covered utility conducting activities pursuant to the exemptions provided for in § 456.503, § 456.504 or § 456.505(b) or the waiver provisions of § 456.507 shall comply with the requirements of §§ 456.309 (a), (b)(2), and (b)(3), and § 456.310 with respect to those activities. Any covered utility carrying out activities pursuant to the exemptions provided for in § 456.505(a) shall, within such reasonable time as the Secretary prescribes, comply with the requirements of §§ 456.309 (a), (b)(2), and (b)(3), and § 456.310 with respect to such activities.

Subpart F—Federal Standby Authority and Enforcement Provisions

§ 456.601 Scope.

This subpart specifies the procedures to be followed to ensure that eligible customers receive the services of the Residential Conservation Service Program when a State or nonregulated utility does not submit an acceptable Residential Conservation Service Plan within the necessary time or fails to implement adequately an approved RCS or Alternative plan. These procedures are required to be implemented by the Secretary pursuant to the provisions of section 219 of NECPA. All of the Secretary's responsibilities under this subpart, except for the authority to bring actions in any court of the United States, have been delegated to the Assistant Secretary. Section 456.602 specifies the conditions under which the Assistant Secretary shall invoke standby authority for covered regulated utilities and covered nonregulated utilities. Sections 456.603 and 456.604 specify the content of the Federal plans for States and nonregulated utilities, respectively. Section 456.605 specifies the procedures to be followed by the Secretary if a public utility fails to comply with a Federal standby order issued pursuant to §§ 456.603 or 456.604. Section 456.606 specifies the civil penalties which the Assistant Secretary may assess and the enforcement provisions.

§ 456.602 Conditions under which standby authority shall be invoked.

The Assistant Secretary shall invoke standby authority if he concludes:

(a) That a State fails to submit a Residential Conservation Service Plan meeting the requirements of Subparts B and C by September 2, 1980, or within such additional period as the Assistant Secretary allows pursuant to § 456.204 (b) or (d);

(b) That a nonregulated utility fails to submit a Residential Conservation Service Plan meeting the requirements of Subpart D by September 2, 1980, or within such additional period as the Assistant Secretary allows pursuant to § 456.404 (a) or (c);

(c) That 30 days have elapsed after a determination that an approved State RCS or alternative plan is not being adequately implemented in a State is final and may not be appealed under section 226(f)(2) of NECPA; or

(d) After notice and opportunity for a public hearing, that an approved plan is not being adequately implemented by a covered nonregulated utility.

§ 456.603 Standby authority in lieu of State plans.

When the Assistant Secretary determines that one of the conditions specified in §§ 456.602 (a) or (c) exists:

(a) The Assistant Secretary shall promulgate a Residential Conservation Service Plan which meets the appropriate requirements of Subpart B and C of this part and which is applicable to each covered regulated utility in the State;

(b) The Assistant Secretary shall, by order, require each covered regulated utility in the State to carry out a Residential Conservation Service Program, which meets the requirements of the plan promulgated pursuant to paragraph (a) of this section, within 90 days of the issuance of the order; and

(c) If the State had an approved plan which included nonregulated utilities, the Assistant Secretary shall take the actions described in §§ 456.604 (a) and (b) with respect to such nonregulated utilities.

§ 456.604 Standby authority for nonregulated utilities.

When the Assistant Secretary determines that one of the conditions specified in §§ 456.602 (b) or (d) exists:

(a) The Assistant Secretary shall, by order, require the covered nonregulated utility to promulgate a plan which meets the requirements of Subpart D of this part; and

(b) The Assistant Secretary shall, by order, require such nonregulated utility to carry out a Residential Conservation Service Program, which meets the requirements of the plan promulgated pursuant to paragraph (a) of this section, within 90 days of the issuance of the order.

§ 456.605 Failure to comply with orders.

If the Secretary determines that any covered utility to which an order has been issued pursuant to §§ 456.603(b), 456.604(a), or 456.604(b) has failed to comply with such order, the Secretary may file a petition in the appropriate United States district court to enjoin such utility from violating the order.

§ 456.606 Enforcement provisions; Penalties; Election of review procedures.

(a) Any covered utility which violates any requirement of a plan promulgated under §§ 456.603(a) or 456.604(a), or which fails to comply with an order under §§ 456.603(b), 456.604(a), or 456.604(b) within 90 days from the issuance of such order, or which violates the prohibition in § 456.502 concerning supply, installation, or financing by covered utilities, shall be subject to a civil penalty of not more than $25,000 for each violation.

(b) Each day that such violation continues shall be considered a separate violation.

(c) A civil penalty under this section shall be assessed by an order of the Assistant Secretary.

(d) Before issuing an order assessing a civil penalty against any person under this section, the Assistant Secretary shall provide to such person notice of the proposed penalty. The notice of proposed penalty shall inform the person of the opportunity to make an election, in writing, within 30 days after receipt of the notice. The election involves deciding whether to have the procedures of paragraph (f) of this section apply, in lieu of the procedures in paragraph (e) of this section, with respect to the assesment of a civil penalty.

(e)(1) Unless the election described in paragraph (d) of this section is made within 30 calendar days after receipt of the notice given under paragraph (d) of this section, the Assistant Secretary shall assess the penalty, by order, after a determination of violation has been made on the record. Such determination of violation shall be made after an opportunity has been afforded for an agency hearing pursuant to section 554 of Title 5, United States Code, before an administrative law judge appointed under section 3105 of Title 5. The assessment order shall include the administrative law judge's findings and the basis for such assessment.

(2) Any person against whom a civil penalty is assessed under this paragraph (e) may, within 60 calendar days after the date of the order of the Assistant Secretary assessing the penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with Chapter 7 of Title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside, in whole or in part, the order of the Assistant Secretary, or the court may remand the proceedings to the Assistant Secretary for such further action as the court may direct.

(f)(1) In any case where the procedures of this paragraph (f) have been elected, as described in paragraph (d) of this section, the Assistant Secretary shall assess such penalty by order. The order shall be made not later than 60 calendar days after the alleged violator's date of receipt of notice of the proposed penalty under paragraph (d) of this section.

(2) If the civil penalty assessed by order under paragraph (f)(1) of this section has not been paid within 60 calendar days after the assessment order was made, the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(3) Any election to have this paragraph (f) apply may not be revoked except with the consent of the Assistant Secretary.

(g) If any person, fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (e) of this section, or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (f) of this section, the Secretary shall recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of the respective final order or judgment imposing the civil penalty shall not be subject to review.

(h) Notwithstanding the provisions of Title 28, United States Code, or of section 502 of the Department of Energy Organization Act, the Secretary shall be represented by the General Counsel of the Department of Energy (or any attorney or attorneys with the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which this section applies (including any related collection action) in a court of the United States or in any other court,except the Supreme Court. However, the Secretary or the General Counsel shall consult with the Attorney General concerning such litigation and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

Subparts G–I—[Reserved]

Subpart J—Residential Conservation Service Federal Standby Plan

§ 456.1000 Introduction.

(a) The RCS Federal Standby Plan (FSP or Plan) specifies the procedures to be followed to ensure that eligible customers receive the services of the RCS Program when a State does not submit an acceptable RCS Plan within the necessary time or fails to implement adequately an approved plan.

(b) This Plan sets forth the functions which utilities subject to the Plan will be ordered to perform. The core of the Plan is the offer of an on-site energy audit of an eligible customer's residence.

(c) In implementing the Federal Standby Plan, the Assistant Secretary shall have the discretion to allow a utility which is currently complying in good faith with an approved RCS State plan to continue to operate under that plan even though the State lead agency has relinquished or been relieved of its responsibilities. Furthermore, the Assistant Secretary shall have the discretion to allow any utility in a Federal Standby State which is currently operating under an approved RCS Program in a separate State to operate a similar program in the Standby State. In accordance with § 456.1022, the utility shall submit to DOE for approval a copy of the RCS Plan under which it is currently operating.

§ 456.1001 Definitions.

All definitions set forth in § 456.105 are applicable where relevant to this subpart, except as set forth below.

(a) *Energy Conserving Practices.* The term "energy conserving practices" means low or no cost practices designated by the Assistant Secretary which save energy, do not require the installation of energy conservation or

renewable resource measures, and do not adversely impact the RCS Federal Standby Plan. Utilities may add to or delete from the practices set forth in § 456.105, as specified in § 456.1022.

(b) *Participating Home Heating Supplier.* The term "participating home heating supplier" means a home heating supplier that has elected to participate in the RCS Federal Standby Plan.

(c) *Program Announcement.* The term "program announcement" means the RCS Program information and offer of services required to be provided by a covered utility or participating home heating supplier to each eligible customer by § 456.1006.

(d) *Program Measures.* The term "program measures" means those energy conservation or renewable resource measures which the Assistant Secretary has by rule determined to be appropriate by climatic region and fuel use category and which are found in Appendix I of this part, or which are determined to be program measures by a utility or participating home heating supplier in accordance with § 456.1016.

(e) *RCS Federal Standby Plan.* The term "RCS Federal Standby Plan" (FSP or Plan) means a plan developed pursuant to Subpart F of this part and section 219 of the National Energy Conservation Policy Act (NECPA).

§ 456.1002 Coverage of RCS Federal Standby Plan.

(a) *Regulated utilities.* All regulated utilities providing utility service in a State where the FSP is ordered to be enforced and which meet the definition of "covered utility" shall be subject to the FSP.

(b) *Home heating suppliers.* Any home heating supplier in a State where the FSP is ordered to be enforced and which wishes to participate in the FSP may so notify the Assistant Secretary.

§ 456.1003 Procedures for investigating and enforcing compliance with the RCS Federal Standby Plan.

(a) *Investigation and enforcement.* (1) The Assistant Secretary requires each utility and each participating home heating supplier subject to the FSP to comply with the Plan pursuant to the authority given the Assistant Secretary in section 219 of NECPA (42 U.S.C. 8220).

(2) Individuals or groups wishing to report possible noncompliance with this Plan shall inform the Assistant Secretary. Each utility and participating home heating supplier shall inform their customers on how to notify the Assistant Secretary with respect to such reports. This information shall be contained in the program announcement distributed pursuant to § 456.1008. The Assistant Secretary may investigate any allegation of noncompliance or any complaint concerning the RCS Program or this Plan submitted to DOE, or on his own initiative may review the activities of utilities or participating home heating suppliers subject to the FSP to determine compliance with the Plan.

(b) *Conflicts of laws.* Each utility subject to the FSP shall petition the Assistant Secretary in accordance with § 456.102 whenever the utility believes it is prohibited by a State or local law or regulation from taking any action required to be taken under NECPA or any rule or FSP promulgated pursuant to NECPA, or whenever the utility believes it is required or permitted by a State or local law or regulation to take any action prohibited by NECPA or any rule or FSP promulgated pursuant to NECPA.

(1) The petition shall contain a copy of the applicable State or local laws or regulations and a description of the action the utility believes it is prohibited from taking or is permitted or required to take under such laws or regulations.

(2) The Assistant Secretary shall give notice of the petition to the Governor, State Energy Office, and State Regulatory Authority of the applicable State and such other persons as the Assistant Secretary deems appropriate. Any such person or entity may file comments with the Assistant Secretary with respect to such petition within 30 days of receipt of the notice.

(3) If the Assistant Secretary determines pursuant to such petition that a State or local law or regulation prohibits a utility from taking any action required to be taken under NECPA or any rule or FSP promulgated pursuant to NECPA or permits or requires a utility to take any action prohibited by NECPA or any rule or FSP promulgated pursuant to NECPA, the Assistant Secretary shall issue an order superseding such State or local laws or regulations to the extent inconsistent with NECPA or any rule or FSP promulgated pursuant to NECPA. Such an order shall be effective with respect to all utilities subject to such State or local laws or regulations and shall moot any outstanding petitions under this section by such utilities.

(c) *Appeals.* (1) Any person aggrieved by any order, finding, or determination made under paragraph (b) of this section or § 456.1017 may appeal that order, finding, or determination within 30 days in accordance with 10 CFR, Subpart H of Part 205. All such appeals shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

(2) Any person so aggrieved has not exhausted his administrative remedies until an appeal has been filed under that subpart and an order granting or denying the appeal has been issued.

§ 456.1004 [Reserved]

§ 456.1005 [Reserved]

§ 456.1006 Program announcement.

(a) *Distribution and content.* Each utility subject to the FSP shall send to each eligible customer a copy of the program announcement no later than 90 days after the issuance of an order from the Assistant Secretary to comply with the FSP. Each participating home heating supplier shall send to each eligible customer a copy of the program announcement no later than the date set forth in the notice from the Assistant Secretary approving participation by the home heating supplier in the FSP. A program announcement must, at a minimum—

(1) List the program measures identified in Appendix I or the program measures developed by the utility pursuant to § 456.1016, for the category of residential building owned or occupied by such eligible customer;

(2) List the energy conserving practices defined in § 456.105 and § 456.1001 or the practices developed by the utility and approved by the Assistant Secretary pursuant to § 456.1022 and state that they are of low or no cost;

(3) Include a reasonable estimate (or a range of estimates) of the savings in energy costs for a period of one year, which are likely to result from installation of each of the applicable program measures and adoption of the energy conserving practices in a typical building or buildings in such category;

(4) Include an offer to perform the service required to be offered under § 456.1007 (Program Audits);

(i) The offer of the program audit may be conditioned upon a nondiscriminatory factor such as serving one geographic area at a time or serving a certain type of energy user first. An unconditional offer, however, shall be offered to eligible customers within one year of a conditional offer.

(ii) The offer must explain that an eligible customer may request the service offered in the program announcement by a request card included in the program announcement, or by any other appropriate method which is the most convenient for the utility.

(iii) The offer must list the direct costs, if any, of receiving the service, which are to be charged to the eligible customer.

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(5) Include the following disclosure or a similar statement: "The estimates contained in this program announcement are based on estimates for typical houses and local fuel prices which were in effect at the time this program announcement was published. The energy audit which we offer will provide more specific estimates for your home".

(b) *Calculation procedures.* Each utility or participating home heating supplier shall provide the Assistant Secretary, pursuant to § 456.1021, with a copy of the procedures used for determining the estimates of the savings in energy costs referred to in paragraph (a)(3) of this section.

(c) *New customers.* (1) A new customer is a person who becomes an eligible customer after a distribution of the program announcement but before June 30, 1989.

(2) Each utility and participating home heating supplier subject to the FSP shall send a program announcement which meets the requirements of this section to each new customer within 60 days of such customer becoming a new customer.

(3) Each covered utility or participating home heating supplier shall retain in its files for not less than five years a copy of each report of each program audit performed pursuant to an RCS Program. Within 60 days of becoming a new customer, each new eligible customer, who is an owner of a residential building or dwelling unit therein, shall be informed by the utility or participating home heating supplier subject to the FSP that, upon request and without charge, the customer may receive a copy of the results of any program audit of the customer's residence which the utility or participating home heating supplier may have performed pursuant to the RCS Program.

(d) *Prohibitions.* (1) The program announcement shall not include any advertising, unless approved by the Assistant Secretary pursuant to § 456.1022, for the sale, installation, or financing by any supplier, contractor, or lender (including the utility and participating homeheating supplier) of any energy conservation measure, renewable resource measure, energy conserving practice, or product. The utility or home heating supplier shall submit to DOE evidence which reasonably assures that such advertising shall not be anticompetitive or unfairly discriminate against any person.

(2) The utility or participating home heating supplier is prohibited from unfairly discriminating among measures, eligible customers, suppliers, contractors, and lenders in the content of, and in the providing of, information required under this section.

§ 456.1007 Requirements for program audits.

(a) *Timing and preconditions.* (1) Each utility or participating home heating supplier subject to the FSP that unconditionally offers an audit to an eligible customer shall provide such audit within 90 days after the customer's request for the audit.

(2) Each utility or participating home heating supplier subject to the FSP that conditionally offers an audit to an eligible customer shall provide an audit within 45 days after the customer's request.

(3) Each utility or participating home heating supplier subject to the FSP is prohibited from requiring any precondition for providing a program audit to an eligible customer and is prohibited from discriminating unfairly among eligible customers in providing program audits.

(b) *Contents of program audit.* (1) Each utility and participating home heating supplier subject to the FSP shall provide (either directly or through one or more auditors under contract) to each eligible customer, upon request, a comprehensive program audit which addresses the applicable program measures and identifies the appropriate energy conserving practices referred to in § 456.105 and § 456.1001 or those practices approved by the Assistant Secretary pursuant to § 456.1022.

(2) The auditor shall determine in each program audit the applicability of each program measure in that residence based on applicability criteria set forth below or in the case of residential buildings containing more than four dwelling units, based on the DOE applicability criteria set forth in Appendix III of this part. Additionally, any utility or participating home heating supplier may establish its own applicability criteria, subject to the approval of the Assistant Secretary pursuant to § 456.1022. If a program measure is not applicable then the requirement of this section to provide estimates of the cost and savings of installation of the measure in such residence does not apply. A program measure is applicable in a residence if:

(i) The measure is not already present in the residence and the measure can be installed practically;

(ii) Installation of the measure is not a violation of Federal, State, or local law or regulations;

(iii) With respect to ceiling insulation, the difference between the existing level of insulation in the residence and the appropriate insulation level, as determined by the Assistant Secretary, is R–11 or more;

(iv) With respect to pipe and duct insulation, there are hot water pipes and heating and cooling ducts which extend through unconditioned spaces;

(v) With respect to wall insulation, there is no insulation in a substantial portion of the exterior walls;

(vi) With respect to floor insulation, no floor insulation is present;

(vii) With respect to flue-opening modifications, the furnace combustion air is taken from a conditioned area;

(viii) With respect to clock thermostats, the residence currently has a thermostat and the existing furnace or central air conditioner is compatible with a clock thermostat;

(ix) With respect to heat-absorbing or heat-reflective window and door material, the residence has an existing central or room air conditioner;

(x) With respect to direct gain glazing systems and indirect gain systems, the living space of the residence has either a south-facing (+ or −45° of True South) wall or an integral south-facing (+ or −45° of True South) roof, which is free of major obstruction to solar radiation;

(xi) With respect to active solar domestic hot water systems, a site exists on or near the residence which is free of major obstruction to solar radiation;

(xii) With respect to active solar heating systems, or combined active solar systems, a site exists on or near the residence which is free of major obstruction to solar radiation;

(xiii) With respect to replacement solar swimming pool heaters, there is an existing heated swimming pool and a location exists on the premises which is free of major obstruction to solar radiation;

(xiv) With respect to solaria/sunspace systems, the living space of the residence has a south-facing ground-level wall, which is free of major obstructions to solar radiation;

(xv) With respect to window heat gain retardants, the living area has a window that is not shaded from summer sunshine and the residence has substantial use of energy for air conditioning;

(xvi) With respect to window heat loss retardants, the living area has a window with fewer than three panes; and

(xvii) With respect to wind energy devices:

(A) The estimated average annual wind resource in the vicinity of the site is 10 miles per hour, or greater, at 10 meters (32 feet) above ground level; and

(B) There are no major wind obstructions over 55 feet high, greater than 30 feet wide, within 100 feet of a potential location for the wind energy device.

(3) Each utility and participating home heating supplier subject to the FSP shall use as program audit procedures those obtained in the DOE Model Audit or any other audit procedures approved by DOE, pursuant to § 456.1022. For the purposes of this paragraph, the term "program audit procedures" means the measurements or inspections which the auditor must make in a customer's residence and the calculations which must be performed in making energy cost savings estimates.

(4) The auditor is required to base any cost and savings estimates for any applicable furnace efficiency modification of a gas or oil furnace or boiler on an evaluation of the seasonal efficiency of such furnace or boiler. This season efficiency shall be based on estimated peak (tuned-up) steady state efficiency corrected for cycling losses. Steady state efficiency shall be derived from the manufacturer's design data and observation of the furnace components, or by a flue gas analysis of measured flue gas temperature and carbon dioxide content.

(5) The auditor shall offer, at the time of the audit, to provide the eligible customer, at a minimum, with a written sample of the typical format of the audit results and a brief explanation of how to interpret such results.

(c) *Results of program audit.* Each utility or participating home heating supplier subject to the FSP is required to provide the following information in writing to each eligible customer who receives a program audit:

(1) An estimate of the total cost, expressed in dollars or a range of dollars, of installation by a contractor of each applicable program measure.

(2) An estimate of the total cost, expressed in dollars or a range of dollars, of purchase by the customer of each applicable program measure.

(3) An estimate of energy savings, expressed in dollars or a range of dollars, of each applicable program measure addressed by the program audit.

(4) In the case of a utility or participating home heating supplier which does not provide in-person results of audits, the customer must be given the opportunity to discuss the results of the audit with a qualified person.

(d) *Prohibitions and disclosure required for program audits.* (1) Unless otherwise approved by the Assistant Secretary pursuant to § 456.1022, the auditor is prohibited from estimating, as part of any program audit provided pursuant to the FSP, the costs or energy cost savings of installing any measure or product which is not a program measure.

(2) Auditors are prohibited from recommending any supplier, contractor, or lender who supplies, installs, or finances the sale or installation of any program measure if such recommendation would unfairly discriminate among such suppliers, contractors, or lenders.

(3) No utility, participating home heating supplier, or auditor may unfairly discriminate among program measures.

(4) Each auditor must provide the eligible customer with a written statement of any substantial interest which the person or the person's employer has, directly or indirectly, in the sale or installation of any program measures.

(e) *Program audits of furnaces.* In order for an auditor of a utility or participating home heating supplier subject to the FSP to provide cost and savings estimates for furnace efficiency modifications with respect to a furnace which uses as its primary source of energy any fuel or source of energy other than the fuel or source of energy sold by that utility or participating home heating supplier, the eligible customer must request such audit by signing a form which includes the following statement:

> If your home is heated by a source of fuel other than (state the type of fuel supplied by the utility or participating home heating supplier), only the supplier of the other fuel may audit your furnace unless you specifically request us to audit your furnace. Federal law requires that the request be in writing. If you want us to audit your furnace, although we do not supply the fuel for it please sign below.

(f) *Qualifications for program auditors.* Each auditor who performs a program audit pursuant to FSP shall:

(1) Be qualified according to the applicable procedures in § 456.1014 of this subpart; and

(2) Be under contract or subcontract to, be a employee of, or be an employee of a contractor or subcontractor to, a utility or participating home heating supplier subject to the FSP.

§ 456.1008 [Reserved]

§ 456.1009 [Reserved]

§ 456.1010 Accounting and payment of costs.

(a) *Accounting.* All amounts expended or received by a utility subject to the FSP which are attributable to the RCS Program, including any penalties paid under 10 CFR Part 456 Subpart F (Federal Standby Authority), shall be separately accounted for on the books and records from amounts attributable to all other activities of the utility.

(b) *Payments of costs.* Utilities subject to the FSP shall treat costs as described below and shall notify the Assistant Secretary, pursuant to § 456.1020, how the costs described in paragraph (b)(2) of this section will be treated.

(1) All amounts expended by a utility subject to the FSP for the program announcement and all public education and program promotion directly related to providing information about a utility's RCS Program shall be treated as a current expense of providing utility service and be charged to all ratepayers of the utility subject to the FSP in the same manner as other current operating expenses of providing such utility service.

(2) The cost of the following program elements shall be recovered in the manner specified by the State regulatory authority for all regulated utilities subject to the FSP (except that the amount that may be recovered directly from a residential customer for whom the activity described in paragraph (b)(2)(ii) of this section is performed shall not exceed $15 per dwelling unit, or the actual cost of such activities, whichever is less):

(i) Administrative and general expenses, including those associated with program audits and customer billing services.

(ii) Project manager requirements, including the providing of program audits.

(3) In determining the amount to be recovered directly from customers as provided under paragraph (b)(2) of this section, the State regulatory authority shall take into consideration, to the extent practicable, the customers' ability to pay and the likely levels of participation in the utility program which will result from such recovery.

(c) *Duplication of audits.* (1) In areas where a residential customer is an eligible customer of more than one utility or participating home heating supplier, such customer is entitled to an RCS audit from only one of these utilities or home heating suppliers.

(2) No utility or participating home heating supplier subject to the FSP shall be required to make more than one audit of a residential building or dwelling unit therein, unless a new owner, who is an eligible customer, requests a subsequent audit.

§ 456.1011 Customer billing, repayment of loans, and termination of service.

(a) *Customer billing.* Every charge to a customer by a utility or a participating

home heating supplier, subject to the FSP, for any portion of the costs of carrying out any activity pursuant to the FSP that is charged to the residential customer for whom such activity is performed (including repayment of a loan) and that is included on a billing for utility service submitted by the utility or home heating supplier to such residential customer, shall be stated separately on such billing from the cost of providing utility or fuel service. Nothing in this paragraph shall be construed so as to require that charges to the customer for activities performed pursuant to the FSP must be included on the periodic utility or fuel bill.

(b) *Repayment of loans.* (1) In the case of any loan by a utility, the utility, with the approval of the customer, shall permit repayment of the loan as part of the periodic utility bill.

(2) In the case of any loan for the purchase or installation of program measures made by a participating home heating supplier under the FSP—

(i) The participating home heating supplier shall permit the eligible customer to include repayment of the loan in the customer's payment of his periodic fuel bill over a period of not less than three years, unless the eligible customer chooses a shorter repayment period;

(ii) A lump-sum payment of outstanding principal and interest may be required by the lender upon default (as determined under applicable law) in payment by the eligible customer; and

(iii) No penalty shall be imposed by a participating heating supplier for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

(c) *Termination of service.* No utility or participating home heating supplier subject to the FSP shall terminate or otherwise restrict utility or fuel service to any customer for payments due for any services under the FSP.

§ 456.1012 [Reserved]

§ 456.1013 Quality assurance.

(a) To ensure that reasonable levels of effectiveness and safety are maintained in the supply and installation of measures under the FSP, each utility or participating home heating supplier shall develop and offer to each customer at the time of the audit or with the audit results the following:

(1) Information on how to recognize the most common type of improper installation; and

(2) Information on the availability and responsibilities of independent (public or private) inspection services and the means of contacting these services.

(b) Pursuant to § 456.1021 each utility and participating home heating supplier shall submit to the Assistant Secretary for approval, the information to be provided to eligible customers required under paragraph (a) of this section.

(c) Any utility or participating home heating supplier may request an exception from the requirements of paragraph (a) of this section pursuant to § 456.1022. Such requests must demonstrate that existing mechanisms are sufficient to ensure reasonable levels of effectiveness and safety in the installation of measures.

§ 456.1014 Qualification procedures for auditors.

(a) Each utility and participating home heating supplier subject to the FSP must provide an adequate number of auditors for the RCS program who have successfully completed an auditor training program using either the DOE auditor training manual or any other DOE approved auditor training program or passed a DOE approved certification examination.

(b) Paragraph (a) of this section shall not applicable to any auditor who has previously operated under an approved RCS State Plan unless the utility or participating home heating supplier decides otherwise.

(c) Pursuant to § 456.1021, each utility and participating home heating supplier subject to the FSP shall provide to the Assistant Secretary for approval, procedures for training auditors, a description of the training materials, and a reasonable timetable for the implementation of the qualification procedures for auditors.

§ 456.1015 Home heating suppliers.

(a) *Participation and Withdrawal.* Any home heating supplier in a State subject to the RCS Federal Standby Plan wishing to participate in the Plan may contact the Assistant Secretary.

(1) Notwithstanding any other provision of this part, any participating home heating supplier may request a waiver of certain requirements in this Plan as provided in paragraph (b) of this section.

(2) Any participating home heating supplier may voluntarily withdraw from the FSP by submitting to the Assistant Secretary a written notification.

(3) Prior to withdrawal, the participating home heating supplier shall give notice of its withdrawal to those customers who have either requested RCS audits or otherwise have been involved in RCS services and shall refer them to the appropriate utility in the same service area.

(4) The withdrawal notice to the Assistant Secretary shall give assurance that the home heating supplier has performed the requirements in paragraph (a)(3) of this section.

(b) *Waiver of requirements.* (1) The Assistant Secretary will consider individual requests for waivers of FSP requirements from participating home heating suppliers on the basis of the limited resources of the home heating suppliers.

(2) The Assistant Secretary will not waive the following requirements for any home heating supplier who chooses to participate in the program:

(i) Section 456.1003 (Investigation and enforcement).

(ii) Section 456.1007(d) (Prohibitions and disclosures required for program audits).

(iii) Section 456.1007(e) (Furnace audits).

§ 456.1016 Program measures.

(a)(1) Each utility or participating home heating supplier subject to the FSP may exclude any program measure for its service area on the following basis:

(i) When, by substituting utility or home heating supplier derived data, the program measure has a payback period (P) of more than seven years, as determined by dividing the installed first cost (F) less any Federal and State tax credit (T), by the first year energy savings in dollars (S),

$$P = \frac{F-T}{S} \quad P>7 \text{ years, and/or}$$

(ii) When, by substituting a utility or home heating supplier specific prototypical house, it is determined that the program measure has a payback period (P) of more than seven years pursuant to the formula in paragraph (a)(1)(i) of this section.

(2) The utility or participating home heating supplier shall provide to the Assistant Secretary data to substantiate any exclusion pursuant to paragraph (a)(1) (i) or (ii) of this section.

(b) The utility or participating home heating supplier may add, with DOE's approval, pursuant to § 456.1022, any measure not identified in Appendix I as a program measure for its service area, to the Plan.

§ 456.1017 Supply, installation and financing by utilities.

(a) *General.* Except as provided below, the provisions of the paragraphs (b)(2) (i)–(iii) of this section, shall be undertaken in a manner which minimizes the cost of residential energy conservation measures to such customers.

(b) *Exemption for utility subcontractor supply and installation.* The Assistant Secretary shall grant an exemption to the prohibition contained in § 456.502(a) to a utility to supply or install any energy conservation or renewable resource measure through contracts between such utility and independent suppliers or contractors where the customer requests such supply and installation and the following conditions are met:

(1) The utility certifies to DOE that each supplier or contractor;

(i) Shall not be subject to the control of the utility, except as to the performance or such contract and shall not be an affiliate or subsidiary of such utility and;

(ii) If selected by the utility, shall be selected in a manner consistent with paragraph (b)(2) of this section.

(2) The utility submits to DOE a description of the proposed utility activities which shall include evidence that such activities:

(i) Shall not involve unfair methods of competition;

(ii) Shall not have a substantial adverse effect on competition in the area in which such activities are undertaken nor result in providing to any supplier or contractor an unreasonably large share of contracts for the supply or installation of energy conservation or renewable resource measures;

(iii) Shall be undertaken in a manner that provides, subject to reasonable conditions to utility may establish to ensure the quality of supply and installation of energy conservation or renewable resource measures, that any financing by the utility of such measures shall be available to finance the supply or installation by any contractor or to finance the purchase of such measures to be installed by the customer; and

(iv) To the extent practicable and consistent with paragraphs (b)(2) (i)–(iii) of this section, shall be undertaken in a manner which minimizes the cost or residential energy conservation measures to such customers.

(3) Any covered utility wishing to obtain an exemption to the prohibition contained in § 456.502(a) shall obtain approval by sending the request for exemption along with the required conditions and evidence described in paragraphs (b) (1) and (2) of this section to the Assistant Secretary for Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(4) Upon request, a utility conducting activities pursuant to this section shall provide DOE with a current estimate of the average price of supply and installation of energy conservation and renewable resource measures subject to the contracts entered into by the utility under paragraph (b) of this section.

§ 456.1018 Complaints processing procedures.

(a) *Conciliation services for customer complaints.* (1) Each utility or participating home heating supplier subject to the FSP is required at the time of the audit or with the audit results to offer to provide to eligible customers information on available conciliation services for the purpose of resolving complaints by eligible customers against persons who install or supply program measures under the RCS program.

(2) Each utility and participating home heating supplier shall establish procedures to resolve complaints by eligible customers against the utility or home heating supplier under the FSP.

(b) *Redress proceedings.* Each utility or participating home heating supplier subject to the FSP shall offer to provide to eligible customers, at the time of the audit or with the audit results, information on available redress proceedings for use by all persons alleging injury arising from an activity carried out under the FSP or from a violation of the FSP.

(c) *Additional requirement with respect to conciliation and redress.* Each utility or participating home heating supplier shall submit to the Assistant Secretary pursuant to § 456.1021, the information that will be made available to inform eligible customers of available conciliation services and redress proceedings. If such services are unavailable, the Assistant Secretary shall be notified and shall take appropriate action.

§ 456.1019 Coordination.

The Assistant Secretary shall contact annually the cognizant Federal, State, and local officials responsible for energy conservation programs within and affecting a State which is covered by the FSP.

§ 456.1020 Reporting and recordkeeping.

(a) Each utility and participating home heating supplier subject to the FSP shall submit a report to the Assistant Secretary no later than six months after the date of DOE approval of all procedures submitted pursuant to § 456.1021. An annual report shall subsequently be submitted no later than each July 1 and thereafter until July 1, 1989, unless the initial six month report is required to be submitted less than 90 days prior to July 1. In such a case, the annual report shall be submitted the following July 1 and annually thereafter through June 30, 1989.

(b) The six month report or annual report or both, as indicated, shall include the following information:

(1) The approximate number of eligible customers (6 month report only).

(2) A copy of the program announcement if not already provided (6 month report only).

(3) The number of program announcements provided to eligible customers, including the number of those making conditional audit offers (6 month report and annual report).

(4) The number of energy audits requested and provided.

(5) The nature of any direct financing activities and exempted or waived supply or installation activities engaged in by the utilities, including:

(i) Where applicable, any copy of any State or local law or regulation in effect on November 9, 1978 which requires or explicitly permits the utility to engage in any supply or installation of any energy conservation or renewable resource measures (6 month report);

(ii) The procedures used to select products to be supplied, installed, or financed (6 month report and annual report);

(iii) The procedures used to select installers to perform utility supported work (6 month report and annual report);

(iv) Steps the utility has taken to ensure that the activities have no adverse effect on competition (6 month report and annual report); and

(v) The price and interest rates charged by utilities in conjunction with the supply, installation and financing services offered pursuant to exemptions or waivers granted under section 216 (b), (c), (d)(1), (d)(2), and (e) of NECPA (6 month report and annual report).

(6) Description of the treatment of costs described in § 456.1010(b)(2) (utility only) (6 month report or annual report).

(7) The estimated utility or home heating supplier costs of implementing the RCS Program incurred during the reporting period (6 month report and annual report).

(8) The number and description of complaints against the utility or

participating home heating supplier (6 month report and annual report).

(c) Each covered utility and participating home heating supplier shall keep for five years from the date of the program audit a copy of the audit report, and shall make such report available upon request to the Assistant Secretary.

(d) Any provisions of this section notwithstanding, the Assistant Secretary may, as he deems essential to the Departmental implementation of program responsibilities and subject to approval of the OMB under provisions of the Paperwork Act (Pub. L. 96–511)—

(1) Require additional information; or

(2) Waive any reporting and recordkeeping requirements, except the recordkeeping requirement in paragraph (c) of this section.

§ 456.1021 Information which a utility and participating home heating supplier shall report to the Assistant Secretary.

Utilities and participating home heating suppliers subject to the FSP shall report the following procedures to the Assistant Secretary for his approval on a date specified in the order:

(a) Procedures for determining the estimates of energy costs savings (§ 456.1006(b)).

(b) Procedures for ensuring that reasonable levels of effectiveness and safety are attained in the supply and installation of measures under the RCS Program (§ 456.1013(b)).

(c) Training procedures and a description of the training materials for auditors, including the timetable for the implementation of the qualification procedures for auditors § 456.1014(c)).

(d) The information to be offered to eligible customers on available conciliation services and redress proceedings §§ 456.1018(a)(1) and (b)).

(e) Procedures for handling complaints against a utility or participating home heating supplier (§ 456.1018(a)(2)).

§ 456.1022 Exceptions.

As provided for in the applicable sections, any utility or participating home heating supplier wishing to seek an exception from one or more of the following sections shall obtain approval from the Assistant Secretary by sending the request for approval, along with supporting documents, to the Assistant Secretary for Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

(a) Section 456.1000(c). (Exception for existing RCS programs);

(b) Section 456.1006(a)(2). (Listing substitute energy conserving practices in the program announcement);

(c) Section 456.1006(d). (Allowing advertising in the program announcement);

(d) Section 456.1007(a)(3). (Extending the time for the performance of an audit after a customer's request);

(e) Section 456.1007(b)(1). (Identifying substitute energy conserving practices during the program audit);

(f) Section 456.1007(b)(2). (Developing substitute applicability criteria);

(g) Section 456.1007(b)(3). (Developing substitute program audit procedures);

(h) Section 456.1007(e)(1). (Estimating costs or energy cost savings of installing any measure or product which is not a program measure);

(i) Section 456.1013(c). (Developing quality assurance procedures);

(j) Section 456.1016(a)(2). (Substantiating exclusion of program measures in calculating payback period); or

(k) Section 456.1016(b). (Adding program measures to the FSP not identified in Appendix I).

§ 456.1023 Waivers.

As provided for in Subpart L, any utility or participating home heating supplier wishing to petition for a waiver from any requirement under this subpart shall follow the procedures contained under section § 456.1203.

Subpart K—Alternative State Plans

§ 456.1101 Scope.

This subpart identifies the responsibilities of States and covered utilities under an Alternative State Plan authorized under section 103(a) of CSRA including the plan content, certification procedure, reporting requirements, enforcement procedures, and the amendment process.

§ 456.1102 Definitions.

(a) For purposes of this subpart, an "entity" means the Governor of any State or the designated State regulatory authority, or agency or instrumentality of the State authorized under State law to formulate and certify an alternative State plan for residential buildings under this subpart.

(b) "Covered utilities" are those regulated utilities which meet the definition of "covered utility" in § 456.105, and in addition, to the extent authorized by State law or agreed to by the organizations, includes non-regulated utilities and home heating suppliers. For purposes of this subpart, any utility with a retail service territory in more than one State shall be considered to be a separate utility with respect to each State in which its retail service territory is located.

§ 456.1103 Content of plan.

An alternative State plan certified pursuant to this subpart shall—

(a) Be designed to result in annual residential energy conservation savings of 2 percent or more.

(b) Contain the goals established for the plan and an analysis of the data and rationale used by the certifying entity to determine that the plan is likely to achieve such goals.

(c) Contain adequate procedures to assure that, if a public utility supplies or installs residential energy conservation measures, such actions shall be consistent with section 216 of NECPA and Subpart E of this part and prices and rates of interest charged shall be fair and reasonable.

(d) Contain adequate procedures for preventing unfair, deceptive, and anticompetitive acts or practices affecting commerce which relate to the implementation of such plan.

§ 456.1104 Incentives.

The entity in charge of a plan under this subpart, or a State regulatory authority, may, to the extent permitted under State law, provide incentives for utilities to meet the goals contained in the State's alternative State plan, including providing such utilities that meet or exceed such goals with a rate of return on expenditures made for the purpose of accomplishing such goals.

§ 456.1105 Certification process.

(a) *Certification.* (1) The entity which elects to certify a plan under this section shall certify, pursuant to a form prescribed by the Secretary (except as provided by paragraph (a)(2) of this section), to the Secretary that—

(i) The plan meets the requirements of § 456.1103;

(ii) The plan is likely to achieve the goals established for the plan if it is adequately implemented; and

(iii) The plan will be adequately implemented.

(2) If a form is not made available by the Secretary within 90 days after the date of the enactment of the CSRA and until such form is made available, the certifying entity may make such certification on a form prescribed by such entity.

(3) Any certification under this section shall include a copy of the plan and a detailed explanation of the manner in which the contents of the plan will be implemented.

(b) *Consequences.* (1) Beginning with the certification date of a plan under this section and ending with the date on which a plan is no longer in effect—

(i) Subsections (a) through (c)(3) of section 212, sections 213 through 215 and sections 217 and 218 of NECPA shall not apply with respect to regulated utilities in such State and nonregulated utilities which are included in the plan; and

(ii) Section 219 of NECPA shall apply to utilities described in subparagraph (a) only to the extent provided for under § 456.1107.

(2) Except as provided under § 456.1108, any State for which a plan is certified under this section shall continue to have such plan in effect until June 30, 1989.

§ 456.1106 Reporting requirements.

(a) The certifying entity shall submit an annual report to the Secretary, within 60 days after the end of the 1-year period to which the report relates, describing the implementation of the plan and the results thereof.

(b) Such report shall include—

(1) A statement of the number of residential buildings receiving benefits under the plan;

(2) An estimate of the actual energy savings resulting from the plan and a description of sources of such savings;

(3) A statement of the percentage of individuals with low and moderate incomes who receive benefits under the plan;

(4) A detailed description of the benefits provided under the plan and of how the plan is implemented;

(5) Estimated State costs and utility costs of implementing the plan; and

(6) The names of the entities carrying out the plan.

(c) The first such report shall be made by the certifying entity within the 14-month period that begins with the plan certification date.

(d) Subject to approval of the Office of Management and Budget under the provisions of the Paperwork Reduction Act (Pub. L. 96–511), the Secretary may, to meet the requirements under section 225 of the NECPA, require additional information from entities.

§ 456.1107 Procedures for administrative and judicial enforcement.

(a) *Rights to petition.* At any time more than 1 year after an Alternative State plan has been certified under § 456.1105, any customer of a utility subject to such Alternative State plan may petition the Secretary of Energy to conduct a public hearing to determine if the Alternative State plan has been adequately implemented.

(b) *Content of petition.* Any petition mailed by the Secretary shall be received for filing only if such petition—

(1) Sets forth the petitioner's name and address;

(2) States that the petitioner is a customer of a named utility subject to an alternative State plan that was certified under § 456.1105 more than one year prior to the date of the petition;

(3) Explains how the alternative State plan has not been adequately implemented with sufficient specificity to give reasonable notice of any failure constituting grounds for complaint and any supporting allegations of relevant facts;

(4) States how the petitioner has been injured by any failure to adequately implement the alternative State plan stated as a ground for complaint;

(5) States whether and to what extent a hearing is desired;

(6) Contains a certificate verifying that a copy of the petition was transmitted, on the same date of transmittal to the Secretary to the entity which certified the alternative State plan, by certified mail, return-receipt requested; and

(7) Is signed by the petitioner before a Notary Public.

(c) *Answer.* The entity in charge of the alternative State plan shall have 20 days from the date of receipt to file an answer to the petition.

(d) *Denial of hearing.* Within 60 days of the date the petition is received for filing, the Secretary may deny a hearing, in whole or in part, in a written statement including supporting reasons if such a hearing is not justified in the public interest.

(e) *Prehearing dismissal.* Within 60 days after a petition is received for filing, the Secretary may dismiss such petition for failure to state adequate injury in fact or sufficient grounds for complaint which, if supported by the record, would warrant the conclusion that the alternative State plan has not been adequately implemented.

(f) *Notice of hearing.* Within 60 days of the date the petition is received for filing, the Secretary shall give advance notice to the public of any hearing to be carried out on a petition under this section including but not limited to—

(1) A description of the grounds for complaint in the petition;

(2) A date certain by which the public may submit written comments;

(3) Procedures for submission of evidence; and

(4) Such additional procedures as may be appropriate for the conduct of the hearing.

(g) *Making the determination.* Any determination by the Secretary concerning the adequacy of the implementation of any alternative State plan shall be on the record and shall be published in the **Federal Register** within 60 days after such determination is made.

(h) *Appeal.* Any person alleging that he is likely to be injured as a result of a determination by the Secretary under this section may, within 60 days after publication or notification of such determination, institute an action appealing the determination in the United States Court of Appeals for the appropriate judicial circuit. The court shall review the determination of the Secretary in accordance with Administrative Procedures Act, a' . shall have jurisdiction to affirm, t. odify, set aside, in whole or in part, or to remand such determination to the Secretary for such other action as the court may direct.

(i) *Enforcement.* Except as provided in paragraph (f) of this section, if any determination by the Secretary that the alternative State plan has not been adequately implemented becomes final and may not be appealed, the Secretary shall, within 30 days of the date on which the determination may no longer be appealed, initiate standby authority under Subpart J with respect to such State.

(j) *Exception.* If a State which had an approved plan in effect under subpart B on the day before the date on which certification was made under § 456.1105 informs the Secretary in writing, within 30 days after receiving a copy of the petition described in paragraph (a) of this section, that it will no longer implement a plan certified under this subpart and that it will implement the approved plan which was in effect in the State on the day before certification of the alternative State plan under this subpart, then—

(1) The determinations and actions described in paragraphs (b) through (d) of this section may not be carried out; and

(2) Sections 212 through 219 of NECPA shall apply in such State except to the extent that waivers are provided for utilities under Subpart L in such State.

§ 456.1108 Amendments.

(a) Except as provided by paragraph (b) of this section, a plan certified under this subpart may be amended by any amendment—

(1) Consistent with the requirements of § 456.1103; and

(2) Certified to the Secretary of Energy in a manner consistent with the requirements applicable to the certification of a plan under § 456.1104.

(b) A plan certified under this subpart may not be amended—

(1) During the first year after it is certified; or

(2) More than once a year thereafter.

Subpart L—Utility Waiver Process

§ 456.1201 Scope.

This subpart specifies the procedures to be followed by covered utilities to request a waiver from the Secretary from any provision of this part or any provision of a State residential energy conservation program under this part. For purposes of this section, the term "residential energy conservation program" means any program carried out by a utility that has as its purpose—

(a) Increasing the efficiency with which petroleum, natural gas or electric energy is consumed in residential buildings served by such utility; or

(b) Utilizing solar or other forms of renewable energy in residential buildings served by such utility.

§ 456.1202 Coverage.

This subpart shall apply to all regulated and nonregulated utilities which meet the definition of "covered utility" in § 456.105.

§ 456.1203 Approval process.

(a) *Criteria.* A waiver may be approved under this subpart if a covered utility shows in appropriate State proceedings and the appropriate State officials find that—

(1) The existing and planned residential energy conservation programs that will be implemented by the utility if a waiver from such provision is approved will result in savings in petroleum, natural gas or electric energy consumed in residential buildings served by the utility that are equal to or greater than the savings that would be achieved in connection with a properly implemented State residential conservation service plan under this part; and

(2) Adequate procedures are in effect that prevent unfair, deceptive or anticompetitive acts or practices affecting commerce that relate to the implementation of such residential energy conservation programs, including provisions to assure that any person who alleges any injury resulting from unfair, deceptive or anticompetitive acts or practices in connection with such programs shall be entitled to redress under such procedures as may be established by the Governor in the State in which the utility provides the service.

(b) *Approval.* The Secretary shall approve a request of a utility for a waiver under paragraph (a) of this section if the Secretary determines that—

(1) Opportunity for a hearing on the request for a waiver has been provided in the State in which the utility provides utility service; and

(2) In the case of a regulated utility, the Governor of the State in which the utility provides utility service and the State regulatory authority that has ratemaking authority with respect to such utility both—

(i) Find that the showings under paragraphs (a) (1) and (2) of this section are sufficient; and

(ii) Support the request by the utility for the waiver.

(3) In the case of a nonregulated utility, the Governor of the State in which the utility provides utility service—

(i) Finds that the showings under paragraphs (a) (1) and (2) of this section are sufficient; and

(ii) Supports the request by the utility for the waiver.

(c) *Submittal.* (1) Utilities seeking a waiver shall prepare a request documenting their proposal and showing how the approval criteria of § 456.1203(a) are met. The request shall be submitted to the Governor and, in the case of regulated utilities, to the State regulatory authority.

(2) The Governor, and, in the case of regulated utilities, the State regulatory authority, shall, for those waiver requests supported, submit to the Assistant Secretary a statement concerning the opportunity for a hearing on the request and a brief summary of findings concerning the sufficiency of the utility showings regarding the criteria in paragraphs (a) (1) and (2) of this section together with the utility waiver request.

§ 456.1204 Annual Report to Governor.

Any utility that receives a waiver under this section shall provide the Governor of the State in which that utility provides utility service with an annual report describing the performance of its residential energy conservation programs in relation to the showings of such utility under paragraphs (a)(1) and (2) of this section.

§ 456.1205 Revocation procedures.

(a) The Secretary shall revoke any waiver granted to a covered utility subject to a State plan under this subpart upon a request under this section by the Governor of the State in which the utility provides utility service.

(b) The Governor, with the concurrence of the State regulatory authority in the case of a regulated utility, may request such a revocation on the basis that the savings described under § 456.1203(a)(1) on an annual basis are less than the savings in the year prior to approval of the waiver or that the procedures specified under § 456.1203(a)(2) are no longer adequate.

(c) A request for revocation may be made only after a review and opportunity for public hearing on the performance of the residential energy conservation programs of the utility. In order to facilitate such review and hearing, the utility shall provide the Governor such information as the Governor requests about such residential energy conservation program.

(d) The revocation request submitted to the Secretary shall contain a statement concerning the review and hearing discussed in paragraph (c) of this section, and a brief summary of the findings leading to the request to paragraph (b) of this section.

Subpart M—Commercial Buildings and Multifamily Dwellings

§ 456.1301 Scope.

This subpart applies to any State energy conservation plan for commercial buildings and multifamily dwellings approved under section 721 of the National Energy Conservation Policy Act before August 1, 1984.

§ 456.1302 Authority to continue plans.

Any State energy conservation plan to which this subpart applies may, with respect to regulated utilities, continue in effect until January 1, 1990.

§ 456.1303 Reporting.

The administering agency for any State energy conservation plan to which this subpart applies may report annually at such time as may be appropriate with respect to activities carried out under the authority of section 201 of CSRA.

Appendix I to Part 456—Program Measures

(a) *General.* (1) The measures table was developed by evaluating program measures with respect to a prototypical house (see Appendix II) for all HUD/MPS climate zones and categories of residential fuel use. A measure was determined to be a program measure for a climate zone and category of residential fuel use if the ratio of installed first cost, less any Federal and State income tax credits, divided by first year energy savings in dollars was less than or equal to 7 years. The RCS Model Audit procedures were used to determine energy savings.

(2) DOE applied only resident-installed costs to those measures which are not likely to be installed by a contractor: caulking and weatherstripping. Resident-installed and contractor costs were used to determine installed first cost for those measures which DOE believes could be easily installed by homeowners without encountering safety hazards or without conflicting with most building code requirements. These measures

include ceiling insulation, floor insulation, water heater insulation, clock thermostats, heat reflective and heat absorbing window and door materials, and pipe and duct insulation. Contractor-installed costs alone were used for those measures where local codes or regulations and safety considerations are likely to preclude homeowner installations or where a measure is not easily installed by a homeowner. These measures include: wall insulation, storm and thermal windows and doors, replacement heating systems, oil burner replacements, vent dampers, intermittent ignition devices (IID's), replacement central air-conditioners, active solar space heating systems, combined active solar space heating and hot water heating systems, solar domestic water heating systems, replacement solar pool heaters, and wind energy devices.

(b) *Climate Zones of Program Measures.* In the table of program measures, the climate zones for heating degree-days are as follows:

Climate	Heating degree-days
1	0 to 1000.
2	1001 to 2500.
3	2501 to 3500.
4	3501 to 4500.
5	4501 to 5000.
6	5001 to 6000.
7	6001 to 7000.
8	7001 and above.

The cooling degree-days utilized in the evaluation of program measures for each climate zone within each State are the cooling degree-days for the weather station which is specified for that climate zone in the DOE Model Audit.

(c) *Category of Residential Fuel Use.* The program measures are designated in the following tables by categories of residential fuel use. These categories are:

(1) For ceiling insulation, wall insulation, floor insulation, duct insulation, pipe insulation, storm or thermal windows, storm or thermal doors, replacement heating systems, replacement oil burners, vent dampers, IID's, active solar space heating systems, and combined solar space heating and solar domestic hot water systems:

(i) "Electricity," which includes all residential buildings in which the principal source of space heating is an electric resistance heating system;

(ii) "Gas," which includes all residential buildings in which either natural gas, or propane, or butane is the principal space heating fuel;

(iii) "Oil," which includes all residential buildings in which either #2 heating oil or kerosene is the principal space heating fuel and includes all other residential buildings not included in the categories "Electricity," "Gas," or "Heat Pump";

(iv) "Heat Pump," which includes all residential buildings in which the principal source of space heating is an electric heat pump.

(2) For water heater insulation and solar domestic hot water:

(i) "Electricity" includes all residential buildings in which the principal fuel for water heating is electricity;

(ii) "Gas" includes all residential buildings in which the principal fuel for water heating is either natural gas, or propane, or butane;

(iii) "Oil" includes all residential buildings for which the principal fuel for water heating is either #2 heating oil, kerosene, or a fuel not included under "Electricity" or "Gas" in this subsection.

(3) For heat reflective and heat absorbing window and door material, "Electricity" includes all residential buildings in which electricity is used for air-conditioning and includes buildings that are cooled with a heat pump.

(4) For replacement central air-conditioners, "Electricity" includes all residential buildings in which electricity is used by a central air-conditioner.

(5) For replacement solar swimming pool heaters:

(i) "Electricity" includes all swimming pools for which the principal fuel for pool heating is electricity;

(ii) "Gas" includes all swimming pools for which the principal fuel for pool heating is natural gas, or propane, or butane;

(iii) "Oil" includes all swimming pools for which the principal fuel for pool heating is either #2 heating oil, kerosene, or a fuel not included under "Electricity" or "Gas" in this subsection.

(6) For wind energy devices:

(i) "Electricity" includes all residences in which the principal source of space heating is an electric resistance heating system and which have electric domestic water heating;

(ii) "Heat Pump" includes all residences in which the principal source of space heating is an electric heat pump and which have electric domestic hot water heating.

(d)(1) *Caulking, Weatherstripping, and Clock Thermostats.* Caulking and weatherstripping fell within the 7-year payback in all climate zones for all fuel use categories for resident-installed costs and are considered program measures in all States. Clock thermostats fell within the 7-year payback in all climate zones for all fuel use categories for resident- and contractor-installed costs. (For the sake of simplicity, these measures do not appear in the tables.)

(2) *Devices Associated with Electric Load Management Techniques.* Devices associated with electric load management techniques are program measures for all categories of fuel use if the local electric utility offers a residential rate that reflects any differences in the utility's cost of service (either energy or demand costs) between peak and off-peak periods, or if a residential electric rate comprised of an integrated peak measured demand and an energy use component is applied.

(3) *Ceiling Insulation.* Where indicated as a program measure in Table 2, the R-Value for ceiling insulation shall be determined by the State.

(4) *Floor Insulation.* Where indicated as a program measure in Table 2, the R-Value for floor insulation shall be determined by the State.

(5) *Replacement Solar Swimming Pool Heaters.* These are evaluated as a program measure as indicated in Table 2. This analysis assumed a pool blanket or cover is also used. The measure should be audited for as indicated in Table 2 whenever the residence has a heated pool.

(6) *Intermittent Ignition Devices (IID's).* IID's are not displayed as program measures in Table 2, but are program measures for the category "Gas" in the Oregon climate zone "8."

(7) *Active Solar Space Heating Systems and Combined Solar Space Heating and Hot Water Systems.* Active solar space heating systems and combined solar space heating and hot water systems are program measures as indicated by Table 1 below.

TABLE 1

State	HUD/MPS region	Fuel	Active solar systems	Combined [1]
Arizona	3	Electric	C	C
		Gas		
		Oil		
		H.P.		
Arizona	4	Electric	C	C
		Gas	[C]	
		Oil	C	
		H.P.	[C]	
California	3	Electric		C
		Gas		
		Oil		
		H.P.		
New Mexico	3	Electric	C	C
		Gas		
		Oil		
		H.P.		
New Mexico	4	Electric	C	C
		Gas		
		Oil		
		H.P.	[C]	
New Mexico	5	Electric	C	
		Gas		
		Oil		
		H.P.		

[1] Combined solar space heating and hot water systems.

(8) *Wind Energy Devices.* A State that does not change its audit requirements by deleting measures based on the amended RCS measures table shall, whenever a wind energy device appears in Table 2 with brackets and is also asterisked, continue to include a wind energy device as a program measure in its State Plan. Whenever a wind energy device is bracketed or bracketed and asterisked, a State that changes its audit requirements by deleting measures based on the amended RCS measures table shall include in its State Plan the requirement that utilities audit for the appropriate type of wind energy device identified in Table 2. Where both types of wind energy devices are identified in Table 2, an audit is required for only one of these devices.

(e) *Bracketed Measures.* A State is required to include in its State Plan those measures that appear in brackets in Table 1 or 2 only when a State changes its audit requirements by deleting any measures from its State Plan based upon the amended RCS measures tables.

(f) *Table of Program Measures by State.* All other program measures are displayed in Table 2 organized by State where:

R = Resident-installed costs
C = Contractor-installed costs
X = 2-kW nonutility interconnected DC wind machine without battery storage
Y = 2-kW interconnected AC wind machine without battery storage.

TABLE 2

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
AL	2																
	Electric	RC	C	[RC]	RC	RC	RC			RC				C		C	
	Gas	RC		[RC]	RC	R	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC					C				C	
	H.P.	RC		[R]		R	R									C	
AL	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC				C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC										
AK	6																
	Electric	RC	C	RC		RC	RC	C		RC							
	Gas	RC	C	RC		RC	RC				C		C				
	Oil	RC	C	RC		RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
AZ	1																
	Electric	RC	C	[R]	RC	R	R	[C]		RC				C			
	Gas	RC	C	[R]	RC	R	R	[C]									
	Oil	RC	C	[R]	RC	R	R	[C]									
	H.P.	RC	C			R	R	[C]									
AZ	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC	[C]			C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
AZ	3																
	Electric	RC	C	RC	RC	RC	RC	C	[C]	RC	C			C			[X]
	Gas	RC	C	[RC]	RC	RC	RC	[C]			C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									[X]
AZ	4																
	Electric	RC	C	RC	RC	RC	RC	C	[C]	RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
AZ	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C	C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C			C	
	Oil	RC	C	RC	RC	RC	RC	C			C	C				C	
	H.P.	RC	C	RC		RC	RC	C								C	
AZ	6																
	Electric	RC	C	RC	RC	RC	RC	C	C	RC	C			C	C		
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
AZ	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C	C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
AR	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[R]	RC	R	R										
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
AR	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
CA	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC	[C]					C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
CA	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC				C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC										
CA	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					

State	
CA	
CA	
CA	
CA	
CO	
CO	
CO	
CT	
DE	
DC	
FL	
FL	
GA	
GA	
GA	

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
CA	H.P.	RC	C	RC		RC	RC	C									
	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
CA	H.P.	RC	C	RC		RC	RC	C									
	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
CA	H.P.	RC	C	RC		RC	RC	C									
	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C		
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
CA	H.P.	RC	C	RC		RC	RC	C									
	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
CO	H.P.	RC	C	RC		RC	RC	C								C	
	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C	C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C				C	
	H.P.	RC	C	RC		RC	RC	C								C	
CO	7																[X]
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C		
	Gas	RC	C	RC	RC	RC	RC	C			C		C				[X]
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
CO	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC					C	C	[XY]
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	[XY]
CT	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	[X]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	[X]*
DE	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
DC	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
FL	1																
	Electric	RC	C	[R]	RC	R	R	[C]		RC				C		C	
	Gas	RC	C		RC	R	R										
	Oil	RC	C	[R]	RC	R	R	[C]								C	
	H.P.	RC	C			R	R									C	
FL	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[RC]	RC	R	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		R	R									C	
GA	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC				C		C	
	Gas	RC	C	[R]	RC	R	R										
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[R]		R	R									C	
GA	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[RC]	RC	RC	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C				C	
	H.P.	RC	C	[R]		RC	RC									C	
GA	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC				C		C				

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation: Ceiling	Wall	Floor	Water heater	Duct	Pipe	Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC									C	
HI	1																
	Electric	RC	C	[RC]	RC	RC	RC	[C]	[C]	RC				C			[xy]*
	Gas	RC	C	[RC]	RC	RC	RC	[C]	[C]				C				
	Oil	RC	C	[R]	RC	R	R	[C]	[C]								
	H.P.	RC	C	[R]		R	R	[C]	[C]								[xy]*
ID	7																
	Electric	RC	C	RC	RC	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
ID	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
IL	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
IL	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
IL	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
IL	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
IN	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC									C	
IN	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
IN	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
IN	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
IA	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
IA	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
IA	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
KS	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Gas	RC	C	RC	RC	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
KS	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		
	Gas	RC	C	RC	RC	RC	RC	C					C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
KS	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[X]*
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									[X]*
KS	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[X]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									[X]*
KY	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC		RC	RC	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC										
KY	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC		RC	R	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
KY	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC		RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
LA	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[R]	RC	RC	R										
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC									C	
LA	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC	[C]					C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
ME	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							[X]*
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	R	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									[X]*
MD	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
MD	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
MD	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
MA	6																
	Electric	RC	C	RC	RC	RC	RC	C	C	RC	C					C	[X]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	[X]*
MA	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
MI	7																

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TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
MI	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
MN	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
MS	2																
	Electric	RC	C	[RC]	RC	RC	RC			RC				C			
	Gas	RC		[R]	RC	R	R										
	Oil	RC	C	[RC]	RC	RC	RC					C					
	H.P	RC	C	[R]		R	R										
MS	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P	RC	C	[RC]		RC	RC										
MO	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P	RC	C	RC		RC	RC	C								C	
MO	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
MO	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
MT	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NB	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NB	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NB	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
NV	2																
	Electric	RC	C	[RC]	RC	RC	RC			RC	C						
	Gas	RC		[RC]	RC	RC	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC					C					
	H.P	RC		[RC]		R	RC										
NV	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	[RC]	RC	RC	RC				C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P	RC	C	[RC]		RC	RC										
NV	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P	RC	C	RC		RC	RC										

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
NV	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P	RC	C	RC		RC	RC	C									
NV	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NV	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NV	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
NH	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
NH	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	[x]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C			C					C	[x]*
NJ	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
NJ	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
NM	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[x]*
	Gas	RC	C	[RC]	RC	RC	RC	[C]					C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P	RC	C	[RC]		RC	RC	[C]									[x]*
NM	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[x]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P	RC	C	RC		RC	RC	C									[x]*
NM	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C	C	[x]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P	RC	C	RC		RC	RC	C								C	[x]*
NM	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[xy]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									[xy]*
NM	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NM	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C	C	[x]*
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	[x]*
NY	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C	C	[x]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation: Ceiling	Wall	Floor	Water heater	Duct	Pipe	Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
NY	H.P	RC	C	RC		RC	RC	C								C	[x]*
NY	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C	C	[xy]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	[xy]*
NY	8																
	Electric	RC	C	RC	RC	RC	RC	C	C	RC	C				C	C	[xy]*
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	R	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	[xy]*
NC	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC				C		C	
	Gas	RC		[RC]	RC	R	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P	RC		[R]		R	R									C	
NC	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[RC]	RC	RC	RC				C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P	RC	C	[RC]		RC	RC									C	
NC	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P	RC	C	RC		RC	RC									C	
NC	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC										
ND	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
OH	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
OH	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
OH	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
OK	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			[x]*
	Gas	RC	C	[RC]	RC	RC	RC	[C]					C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P	RC	C	[RC]		RC	RC	[C]									[x]*
OK	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			[xy]*
	Gas	RC	C	RC	RC	RC	RC	C					C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P	RC	C	RC		RC	RC	C									[xy]*
OK	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[xy]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									[xy]*
OK	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C	C	[xy]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C				C	
	H.P	RC	C	RC		RC	RC	C								C	[xy]*
OR	4																
	Electric	RC	C	RC	RC	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC		RC		RC	RC										
OR	5																
	Electric	RC	C	RC	RC	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC		RC		RC	RC										
OR	6																
	Electric	RC	C	RC	RC	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
OR	7																
	Electric	RC	C	RC	RC	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
OR	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
PA	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
PA	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
PA	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	R	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
PA	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	R	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
RI	6																
	Electric	RC	C	RC	RC	RC	RC	C	C	RC	C					C	[x]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	[x]*
SC	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC				C		C	
	Gas	RC		[RC]	RC	R	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC		[R]		R	R									C	
SC	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[RC]	RC	RC	RC				C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C				C	
	H.P.	RC	C	[RC]		RC	RC									C	
SC	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC									C	
SD	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
SD	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
TN	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Gas	RC		[RC]	RC	RC	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC										
TN	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC										
TN	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC		RC	RC	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
TX	1																
	Electric	RC	C	[R]	RC	R	R	[C]		RC				C			
	Gas	RC	C		RC	R	R	[C]									
	Oil	RC	C	[R]	RC	R	R	[C]									
	H.P.	RC	C			R	R	[C]									
TX	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC	[C]					C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
TX	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC	[C]			C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
TX	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C				C	
	H.P.	RC	C	RC		RC	RC	C								C	
TX	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C				C	
	H.P.	RC	C	RC		RC	RC	C								C	
UT	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
UT	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
UT	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C		
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
UT	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC					C		
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
VT	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						[x]*
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									[x]*
VT	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	[x]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	[x]*
VA	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			G		C	
	Gas	RC	C	[RC]	RC	RC	RC	[C]			C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]								C	
VA	4																

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
VA	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
VA	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
VA	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
WA	6																
	Electric	RC		RC		RC	RC			RC							
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	R	RC	RC	C			C	C					
	H.P.	R		RC		RC	RC										
WA	7																
	Electric	RC		RC	R	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC		RC		RC	RC										
WA	8																
	Electric	RC	C	RC	R	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
WV	5																
	Electric	RC	C	RC	RC	RC	RC			RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
WV	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
WI	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
WI	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
WY	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
WY	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
PR	1																
	Electric	RC	C	[RC]	RC	RC	RC	[C]	[C]	RC				C	C		
	Gas	RC	C	[R]	RC	R	R	[C]	[C]								
	Oil	RC	C	[R]	RC	R	R	[C]	[C]								
	H.P.	RC	C	[R]		R	R	[C]	[C[								

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solana sunspace	Window heat loss retardants	Window heat gain retardants [1]
Alabama	2	Electric				R	R, C.
		Gas					
		Oil				R	

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
		H.P.					
	3	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P.					
Alaska	8	Electric				R, C	R, C.
		Gas				R	
		Oil				R, C	
		H.P.				R, C	
Arizona	1	Electric			R		R, C.
		Gas			R		
		Oil			R		
		H.P.					
	2	Electric	R	R	R, C	R	R, C.
		Gas	R		R, C		
		Oil	R		R, C		
		H.P.			R		
	3	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas	R	R	R, C	R	
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
	4	Electric	R	R, C	R, C	R, C	R, C.
		Gas	R	R	R, C	R	
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
	5	Electric	R	R	R, C	R, C	R, C.
		Gas		R	R, C	R	
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
	6	Electric	R, C	R	R, C	R, C	R, C.
		Gas	R	R	R, C	R	
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas			R, C	R	
		Oil		R	R, C	R	
		H.P.	R	R	R, C	R, C	
Arkansas	3	Electric	R		R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
	4	Electric			R	R, C	R, C.
		Gas					
		Oil			R	R	
		H.P.			R	R	
California	2	Electric	R	R	R, C	R	R, C.
		Gas			R	R	
		Oil		R	R	R	
		H.P.			R	R	
	3	Electric	R, C	R	R, C	R, C	R, C
		Gas	R		R	R	
		Oil	R	R	R, C	R, C	
		H.P.	R		R	R	
	4	Electric	R, C	R	R, C	R, C	R, C.
		Gas	R	R	R	R	
		Oil	R, C	R	R, C	R, C	
		H.P.	R	R	R	R, C	
	5	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas	R	R	R	R	
		Oil	R, C	R	R, C	R, C	
		H.P.	R, C	R	R, C	R, C	
	6	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas	R	R	R	R	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	
	7	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas	R	R	R	R, C	
		Oil	R, C	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	
	8	Electric	R	R	R, C	R, C	R, C.
		Gas	R		R	R, C	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	
Colorado	6	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R	
	8	Electric	R	R	R, C	R, C	R, C.

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solana sunspace	Window heat loss retardants	Window heat gain retardants [1]
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.	R	R	R, C	R, C	
Connecticut	6	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R, C	
Delaware	4	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
District of Columbia	4	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
Florida	1	Electric					R, C.
		Gas					
		Oil					
		H.P.					
	2	Electric			R	R	R, C.
		Gas					
		Oil			R		
		H.P.					
Georgia	2	Electric					R, C.
		Gas					
		Oil					
		H.P.					
	3	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.					
	4	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
Hawaii	1	Electric					R, C.
		Gas					
		Oil					
		H.P.					
Idaho	7	Electric				R	R, C.
		Gas			R	R	
		Oil			R	R, C	
		H.P.				R	
	8	Electric				R	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R		
Illinois	4	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	6	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R	
Indiana	4	Electric			R	R	RC
		Gas					
		Oil			R	R	
		H.P.			R	R	
	5	Electric			R, C	R	R, C.
		Gas			R	R	
		Oil			R, C	R	
		H.P.			R	R	
	6	Electric			R, C	R	R, C.
		Gas				R	
		Oil			R, C	R	
		H.P.			R	R	
	7	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R	R	
Iowa	6	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solana sunspace	Window heat loss retardants	Window heat gain retardants [1]
		H.P.			R	R	
	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	8	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R, C	
Kansas	4	Electric	R		R, C	R, C	R, C.
		Gas					
		Oil			R	R	
		H.P.			R	R	
	5	Electric	R	R	R, C	R, C	R, C.
		Gas					
		Oil			R	R	
		H.P.			R	R	
	6	Electric	R	R	R, C	R, C	R, C.
		Gas					
		Oil	R	R	R	R	
		H.P.			R	R	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas					
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
Kentucky	4	Electric				R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
	5	Electric			R, C	R	R, C.
		Gas					
		Oil			R, C	R	
		H.P.			R	R	
	6	Electric				R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
Louisiana	2	Electric			R	R	R, C.
		Gas					
		Oil					
		H.P.					
	3	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.			R	R	
Maine	8	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R, C	
Maryland	4	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P				R	
	6	Electric		R	R	R, C	R, C.
		Gas				R	
		Oil		R	R	R	
		H.P				R	
Massachusetts	6	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R	
		H.P			R, C	R, C	
	7	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P			R, C	R, C	
Michigan	7	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P			R	R	
	8	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
Minnesota	8	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P			R, C	R, C	
Mississippi	2	Electric					R, C.

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solana sunspace	Window heat loss retardants	Window heat gain retardants [1]
		Gas					
		Oil					
		H.P.					
	3	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.					
Missouri	4	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	6	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
Montana	8	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R	
Nebraska	6	Electric			R	R, C	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	8	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R, C	
Nevada	2	Electric			R	R	R, C.
		Gas					
		Oil			R		
		H.P.					
	3	Electric	R		R, C	R	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
	4	Electric			R	R	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
	5	Electric			R, C	R	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
	6	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R	
		H.P.			R	R	
	8	Electric			R, C	R, C	R, C.
		Gas			R	R, C	
		Oil			R	R, C	
		H.P.			R	R, C	
New Hampshire	7	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R, C	
	8	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R, C	R, C	
New Jersey	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	6	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R, C	
New Mexico	3	Electric	R, C	R	R, C	R, C	R, C.
		Gas			R		
		Oil	R	R	R, C	R	

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants[1]
		H.P	R	R	R, C	R	
	4	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R	R	R, C	R	
		H.P	R	R	R, C	R	
	5	Electric	R, C	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R	R	R, C	R	
		H.P	R	R	R, C	R, C	
	6	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R	R	R, C	R	
		H.P	R	R	R, C	R, C	
	7	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas			R, C	R	
		Oil	R	R	R, C	R	
		H.P	R	R	R, C	R, C	
	8	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P	R	R	R, C	R, C	
New York	6	Electric	R, C	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R		R	R	
		H.P	R	R	R, C	R, C	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R		R	R, C	
		H.P	R	R	R, C	R,C	
	8	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R		R	R, C	
		H.P	R	R	R, C	R, C	
North Carolina	2	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P					
	3	Electric			R	R	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P			R	R	
	4	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P			R	R	
	5	Electric			R, C	R, C	R, C
		Gas			R	R	
		Oil			R, C	R, C	
		H.P			R	R	
North Dakota	8	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
Ohio	5	Electric			R	R, C	R.
		Gas				R	
		Oil			R	R	
		H.P				R	
	6	Electric			R	R, C	R.
		Gas				R	
		Oil			R	R	
		H.P			R	R	
	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R	
Oklahoma	3	Electric		R	R, C	R	R, C.
		Gas			R		
		Oil		R	R, C	R	
		H.P			R, C	R	
	4	Electric			R, C	R, C	R, C.
		Gas			R		
		Oil			R, C	R	
		H.P			R, C	R	
	5	Electric		R	R, C	R, C	R, C.
		Gas			R		
		Oil		R	R, C	R	
		H.P			R, C	R	
	6	Electric		R	R, C	R, C	R, C.
		Gas			R		
		Oil		R	R, C	R	
		H.P		R	R, C	R	
Oregon	4	Electric			R	R	R, C.

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solarex sunspace	Window heat loss retardants	Window heat gain retardants [1]
		Gas			R	R, C	
		Oil			R, C	R, C	
		H.P					
	5	Electric			R	R	R, C.
		Gas			R, C	R, C	
		Oil			R, C	R, C	
		H.P				R	
	6	Electric			R	R	R, C.
		Gas			R, C	R, C	
		Oil			R, C	R, C	
		H.P			R	R	
	7	Electric			R	R	R, C.
		Gas			R, C	R, C	
		Oil	R		R, C	R, C	
		H.P			R	R	
	8	Electric			R	R	R, C.
		Gas			R, C	R, C	
		Oil			R, C	R, C	
		H.P			R	R	
Pennsylvania	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P				R	
	6	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P				R	
	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R	
	8	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
Rhode Island	6	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
South Carolina	2	Electric					R, C.
		Gas					
		Oil					
		H.P					
	3	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P					
	4	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P				R	
South Dakota	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	R, C.
	8	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
Tennessee	3	Electric				R	R, C.
		Gas					
		Oil			R	R	
		H.P					
	4	Electric				R	R, C.
		Gas					
		Oil			R	R	
		H.P					
	5	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P				R	
Texas	1	Electric					R, C.
		Gas					
		Oil					
		H.P.					
	2	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.					
	3	Electric			R, C	R	R, C.
		Gas					
		Oil			R	R	

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
		H.P.			R	R	
	4	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
	5	Electric		R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R	
		H.P.			R	R	
Utah	5	Electric	R		R, C	R, C	R, C.
		Gas					
		Oil			R	R	
		H.P.			R	R	
	6	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R, C	R, C	
	8	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.	R	R	R, C	R, C	
Vermont	7	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R, C	R, C	
	8	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R, C	R, C	
Virginia	3	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
	4	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	6	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
Washington	6	Electric					R.
		Gas			R	R	
		Oil			R	R	
		H.P.					
	7	Electric					R.
		Gas			R	R	
		Oil			R	R, C	
		H.P.					
	8	Electric				R	R.
		Gas			R	R	
		Oil			R	R, C	
		H.P.					
West Virginia	5	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
	6	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
Wisconsin	7	Electric			R	R, C	R, C.
		Gas			R	R	
		Oil			R	R, C	
		H.P.			R	R	
	8	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R	R, C	
Wyoming	7	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R	
	8	Electric			R	R, C	R, C.

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solana sunspace	Window heat loss retardants	Window heat gain retardants [1]
Puerto Rico	1	Gas				R	R, C.
		Oil			R	R, C	
		H.P.			R	R	
		Electric					
		Gas					
		Oil					
		H.P.					

[1] This measure is only applicable for homes where the air-conditioning system is powered electrically.

Appendix II to Part 456—Prototypical House Assumptions

(a) *Reference House.* (1) The prototypical house, on which the RCS measures table is based, is the ranch style home developed in the National Bureau of Standards document NBSIR 77–1309. This house is based upon a National Association of Home Builders (NAHB) survey of 84,000 homes built by 1,600 builders selected randomly from the builder members of NAHB. The house is typical of ranch style houses built in 1974.

(2) The house has been slightly modified to make it more representative of existing housing stock and to allow for the calculation of all RCS measures. DOE has elected to reduce the insulation levels from the NAHB survey (1974) level of R–19 ceiling and R–11 walls to R–7 insulation in the ceiling and no insulation in the walls as a basis for the measures table. Insulation manufacturers' data on residential retrofit applications for ceiling insulation indicate that the majority of existing attics that have not been reinsulated have an existing R-Value of between R–5 and R–9. The furnace/hot water space has been enlarged to accommodate oil furnaces and storage for solar domestic water heaters. The prototypical house, to provide the basis for audits, is assumed to have the features necessary for the application of renewable energy measures. For example, it was assumed to have a south-facing roof suitable for solar collectors, no obstruction to wind energy systems, and a swimming pool that could use a solar pool heater. It is recognized that many residences do not have these features.

(3) The prototypical house and assumptions were chosen as representative of typical homes in the Nation which could benefit from RCS measures. States are encouraged to review the prototypical house relative to construction practices on the local level. A State may submit an amended RCS measures table based upon modifications to the prototypical house if documentation supports such requests.

(b) *Characteristics of the Prototypical House.* (1) *Infiltration.* The prototypical house is assumed to have deteriorated caulking on window and door frames, no weatherstripping, and no gaskets on electrical outlets. Some minor cracks are assumed to exist in ceiling and floor joints. Some wiring and pipe penetration is assumed through the attic floor.

Existing conditions also include undampered vents, no fireplace, and at least 13 entrances and exits through the home per average day. The infiltration category of the prototypical house is essentially the "poor" category listed in the RCS Model Audit.

(2) *Insulation.* As indicated above, the prototypical house is assumed to have no wall insulation, R–7 ceiling insulation in a vented attic, and no floor or crawl space insulation. The walls with 2 x 4 studs on 16-inch centers have a thermal conductance of 0.21 Btu per hour per square foot per degree Fahrenheit (Btu/h/ft²/° F). The thermal conductance of the ceiling with joists or truss cords on 24-inch centers is 0.12 Btu/h/ft²/° F. The thermal conductance of the floor with 2 x 10 floor joists on 24-inch centers and carpeting and vented crawl space is 0.19 Btu/h/ft²/° F.

(3) *Windows.* All glazing is assumed to be single pane with a thermal conductance of 1.13 Btu/h/ft²/° F.

(4) *Water Heater.* The water heater is assumed to be more than 3 years old and is in conditioned space with adequate clearance for an insulation jacket.

(5) *Space Heating and Cooling.* Primary space conditioning equipment for the prototypical home includes one of the following: electric resistance furnace, electric resistance baseboard, electric resistance radiant ceiling or wall panels, electric heat pump, electric boiler, natural gas-fired boiler, gas-forced air, or oil-fired furnace. An electric drive central air-conditioner is assumed. Industry accepted seasonal efficiencies for existing systems more than 5 years old, and new commercially available systems are used in the calculations. In the prototypical house, combustion air is taken from conditioned space, if required. Oil burners are not retention or wet base types. Natural gas pilot lights are assumed to be on for the heating season. All existing systems in the reference house are more than 5 years old.

(6) *Distribution Systems.* Distribution ducting and hydronic pipe are assumed to be in unconditioned areas and are uninsulated.

(7) *Heating and Cooling System Controls.* The prototypical house is assumed not to have a clock thermostat. It is also assumed that there is no manual nighttime temperature setback.

(8) *Heat Reflecting and Heat Absorbing Window and Door Material.* The prototypical house has 127 sq. ft. of unshaded windows which face east and west. For purposes of calculation, the house was oriented so that the ends of the house which contained no glazing face north and south.

(9) *Solar Domestic Hot Water Systems.* It is assumed that 80 gallons of hot water are used per day by a family of four (ASHRAE Systems Handbooks, 1980). The hip roof is not shaded and has an adequate south-facing area for collectors.

(10) *Replacement Solar Pool Heaters.* The 450 sq. ft. swimming pool is assumed to have a cover that is put in place in nonuse hours.

(11) *Wind Energy Systems.* There is no major obstruction to wind. The size of the wind generator is 2 kW, and all energy generated is used. The analysis was performed for residences that used electricity for heating and water heating.

(c) *Thermal Envelope.*

—Glazing
Single panel U-Value = 1.13
East area + sliding glass door = 72 ft²
West area = 55 ft²
Total area = 127 ft²
—Walls
No insulation
U wall = 0.24—excludes the stud cross section and represents 75 percent of the exposed area
U studs = 0.13—which is 25 percent of the exposed area
U overall = 0.21—which is the weighted value of the U of the wall and the U of the stud cross section
South wall area = 224 ft²
North wall area = 224 ft²
East wall area = 264 ft²
West wall area = 260 ft²
—Ceiling
R–7 insulation
U ceiling = 0.115—excludes the truss cord and represents 90 percent of the exposed area
U truss = 0.17—which is 10 percent of the exposed area
U overall = 0.12
Area = 1,176 ft²
—Front Entry Door
U = 0.47 (hardwood door)
Area = 21 ft²
—Floor Above Crawl Space
No insulation
U floor = 0.2—excludes the joist and represents 90 percent of the exposed area
U joist = 0.09—which is 10 percent of the exposed area
U overall = 0.19
Area = 1,176 ft²

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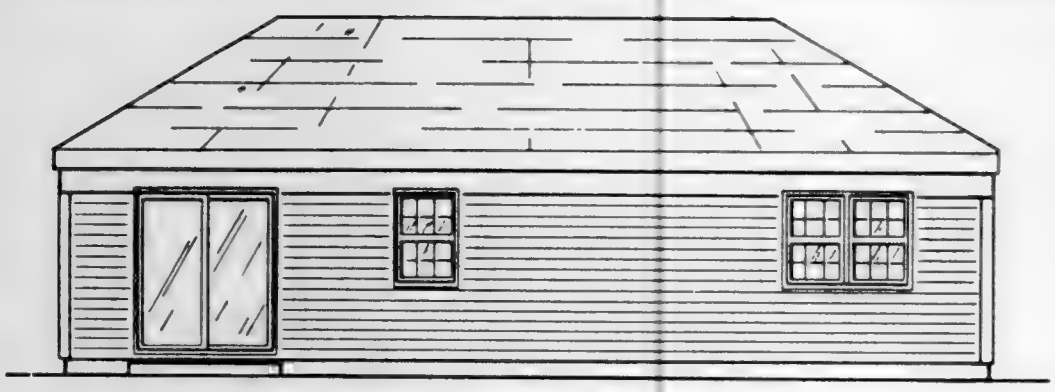

Rear Elevation of a Typical Ranch House

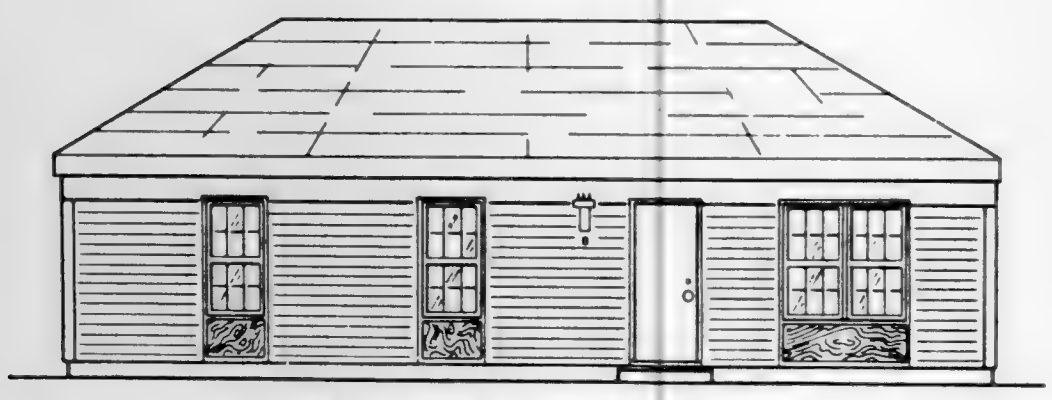

Front Elevation of a Typical Ranch House

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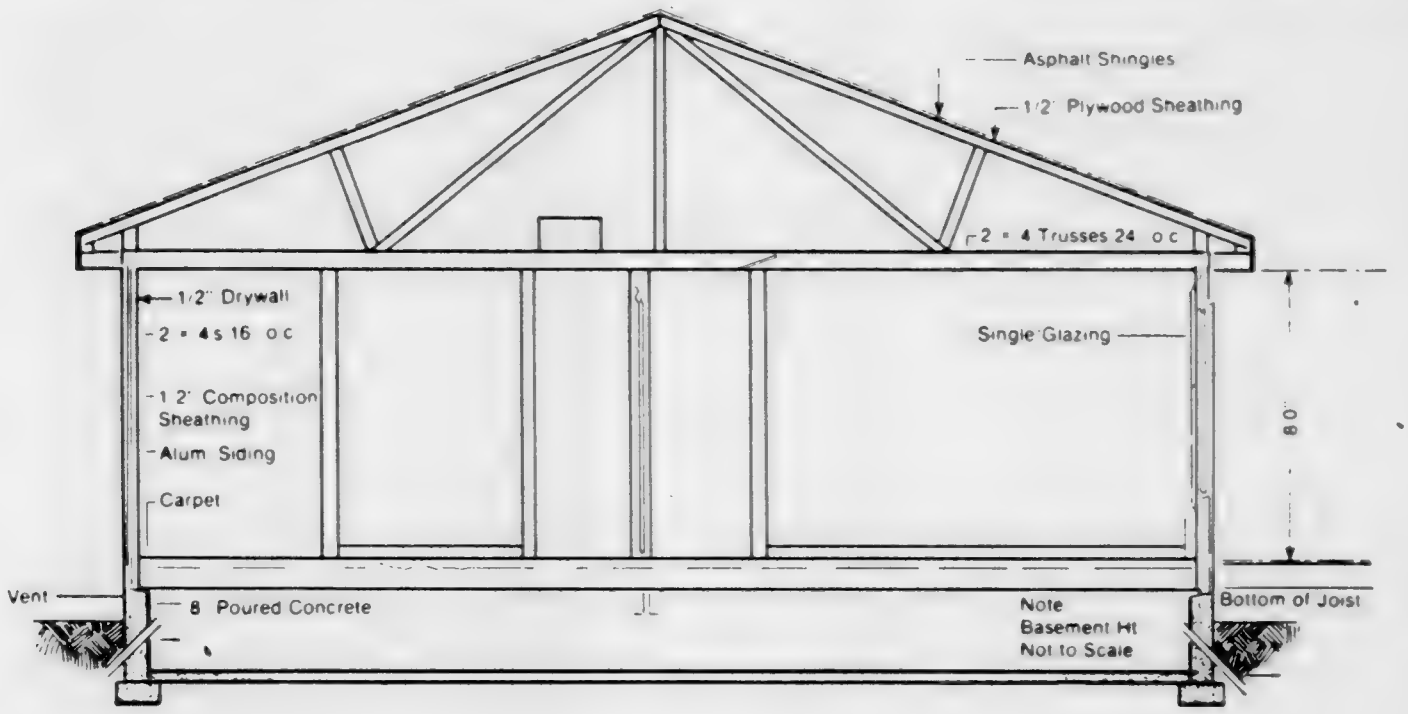

Section Thru Typical Ranch

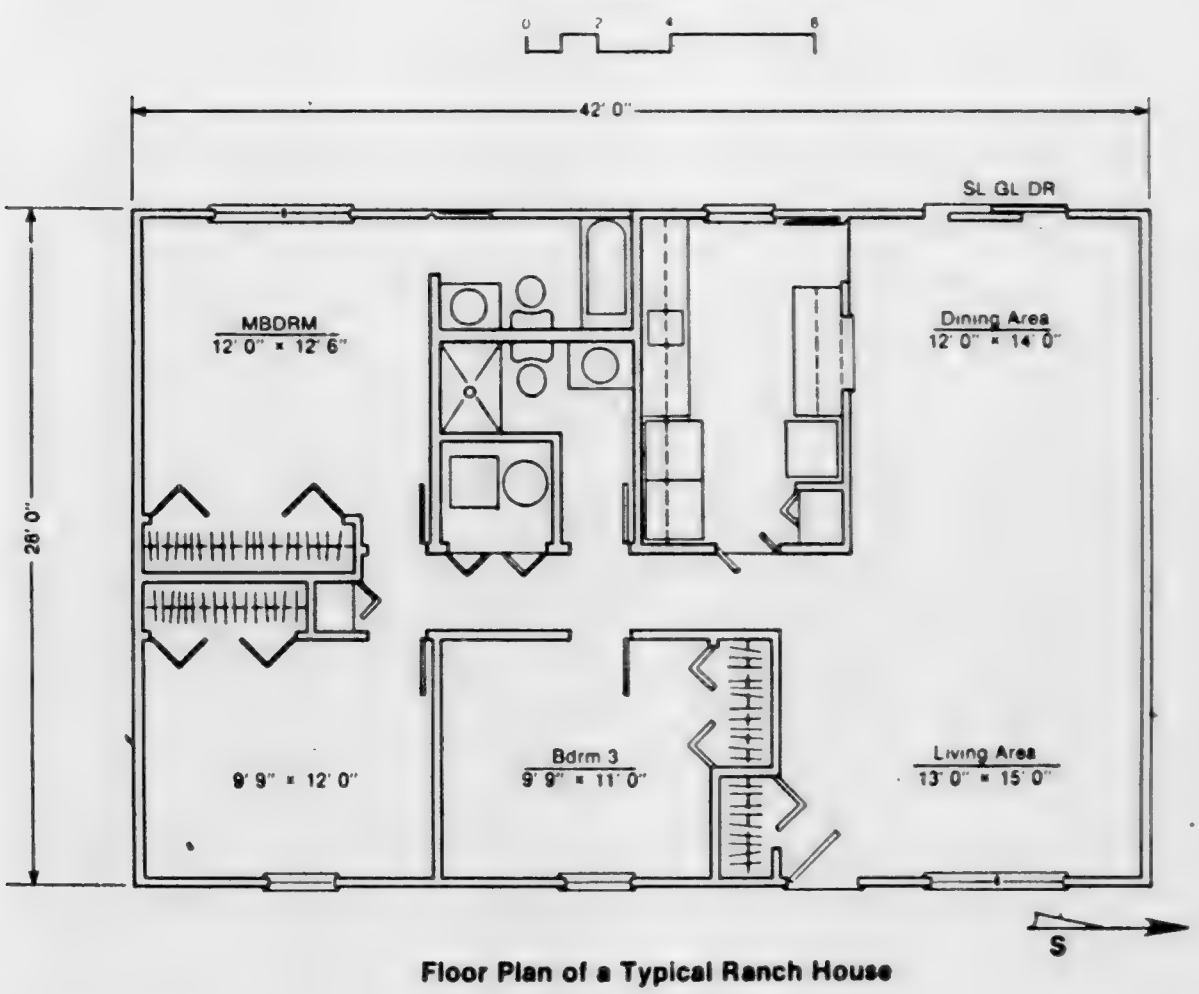

Floor Plan of a Typical Ranch House

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Appendix III to Part 456—Multifamily Applicability Criteria and Procedures for Determining Usage Cutoff Levels

(a) *General.* (1) For those program measures identified in Appendix I, a State or nonregulated utility has the following options regarding audits for dwelling units in residential buildings containing more than four dwelling units (multifamily dwelling units):

(i) Accept the measures indicated by Appendix I for use in multifamily dwelling units.

(ii) Use the DOE multifamily applicability criteria and/or procedures for determining specific cutoffs for heating energy use, cooling energy use, or domestic hot water use in paragraphs (b), (c), (d), and (e) of this appendix for all or some of the program measures identified in Appendix I.

(iii) Develop a method for determining applicability and submit it to DOE for approval in accordance with § 456.306(b).

(2) DOE has not developed multifamily applicability criteria or methods for determining usage cutoff levels for caulking, weatherstripping, duct and pipe insulation, storm or thermal windows, heat reflective and heat absorbing window materials, and IID's. DOE has determined that these measures have the same applicability in multifamily dwelling units as in the prototypical house.

(3) DOE has developed specific applicability criteria for ceiling insulation, floor insulation, wall insulation, clock thermostats, storm or thermal doors, water heater insulation, solar domestic water heaters, replacement solar swimming pool heaters, combined active solar space heating and solar domestic hot water systems, wind energy devices, direct gain systems, window heat gain retardants, window heat loss retardants, solaria/sunspace systems and indirect gain systems.

(4) In addition to the applicability criteria, methods for determining usage cutoff levels have been developed for replacement furnaces or boilers, replacement oil burners, flue dampers, replacement central air-conditioners, solar domestic water heaters, active solar space heating systems and combined active solar space heating and solar domestic hot water systems because they may have significantly different simple paybacks for multifamily dwelling units than for the single family prototypical house. The payback for these measures is dependent on heating energy use, cooling energy use, or hot water use. An audit for each of these measures is required if the annual energy usage or hot water usage in a multifamily dwelling unit is high enough such that a 7-year payback is probable. That level of usage for which a 7-year payback is probable is the cutoff level for that measure.

(b) *Applicability criteria.* (1) *Ceiling Insulation.* Ceiling insulation is applicable when the audit is for ceilings separating a conditioned space from an unconditioned space and when it is physically practical to insulate the ceiling.

(2) *Floor Insulation.* Floor insulation is applicable for floors separating a conditioned space from an unconditioned space and when it is physically practical to insulate the floor.

(3) *Wall Insulation.* Wall insulation is applicable for walls separating a conditioned space from an unconditioned space and when it is physically practical to insulate the walls.

(4) *Storm or Thermal Doors.* A storm or thermal door is applicable if the door separates a conditioned space from an unconditioned space.

(5) *Clock Thermostats.* A clock thermostat is applicable when the thermostat is not part of the furnace.

(6) *Water Heater Insulation.* Water heater insulation is applicable when there is an individual water heater for that multifamily dwelling unit.

(7) *Solar Domestic Water Heaters.* A solar domestic water heater is applicable when there is an individual water heater for that multifamily dwelling unit. This measure may also be subject to a hot water usage cutoff.

(8) *Combined Active Solar Space Heating and Solar Domestic Hot Water Systems.* A combined active solar space heating and solar domestic hot water system is applicable when there is an individual water heater for that multifamily dwelling unit. This measure may also be subject to a hot water usage cutoff.

(9) *Wind Energy Devices.* A wind energy device is not applicable for multifamily dwelling units.

(10) *Replacement Solar Swimming Pool Heaters.* A replacement solar swimming pool heater is not applicable for multifamily dwelling units.

(11) *Direct Gain Systems.* A direct gain systems is applicable when the living area has either a south-facing (+ or −45° of true south) or an integral south-facing (+ or−45° of true south) roof with tilt angle measured from the horizontal greater than the local latitude that is free from major obstruction to solar radiation.

(12) *Window Heat Gain Retardants.* A window heat gain retardant is applicable when the living area has a window that is not shaded from summer sunshine and the residence has substantial use of energy for air conditioning.

(13) *Window Heat Loss Retardants.* A window heat loss retardant is applicable when the living area has a window with fewer than three panes.

(14) *Solaria/sunspace Systems.* A solaria/sunspace system is applicable when the living area has either a south-facing (+ or −45° of true south), ground level wall, or a south-facing adjacent patio, porch or balcony that is free from major obstruction to solar radiation and can support the weight of a retrofit solaria/sunspace.

(15) *Indirect Gain Systems.* A Thermosyphon Air Panel is applicable when the living area has a south-facing (+ or −45° of true south) wall which is not solid masonry construction, which is accessible for installation from the outside and is free from major obstruction to winter insulation. A Trombe wall is applicable when the living area has a south-facing (+ or −45° of true south) solid masonry wall that is accessible for installation from the outside and is free from major obstruction to solar radiation. A water wall is applicable when the living area has a south-facing (+ or −45° of true south) ground level wall that is free from major obstruction to solar radiation, and the ground level floor is slab on grade or has sufficient structural strength to support a water wall.

(c) *Heating Energy Use Cutoffs.* Heating energy use cutoffs shall be determined for replacement furnances or boilers, replacement oil burners, flue dampers, active solar space heating, and combined solar space heating and solar domestic hot water systems. After all heating energy use cutoff levels for each category of fuel type have been determined, a State has the option to use the lowest of these levels as the cutoff for all of the heating measures. The auditor will audit for a measure if the annual heating energy use of the dwelling is greater than the heating energy use cutoff for that measure. The annual heating energy use of a dwelling unit must be determined by removing the contribution of nonspace heating sources (such as water heating or lighting) from the total energy usage.

(1) *Replacement Furnace or Boiler.* The following formula shall be used to determine the heating energy use cutoff for oil, gas, electric, and heat pump heating systems:

$$E_{RFCO} = \frac{C_{RF}}{7\ (LEP)\ (\Delta n)}$$

Where

E_{RFCO} = annual heating energy consumption (based on assumed worst existing system) necessary to give a 7-year simple payback on replacement furnaces or boilers (replacement furnace or boiler energy cutoff)

C_{RF} = installed capital cost − tax credit

7 is the payback period in years

LEP = local energy price, $/unit energy (same energy units as E_{RFCO})

$$\Delta = 1 - \frac{n_{existing}}{n_{new}}$$

Where

$n_{existing}$ = assumed efficiency of existing heating system, varies by climate zone and fuel type,

n_{new} = efficiency of new improved heating system, also varies by climate zone and fuel type.

Use the values in the following table for Δn. The values in this table were calculated based on the assumption of a relatively inefficient existing furnace or heat pump. All existing efficiencies were taken from the RCS Model Audit.

Δn

HUD MPS Zone

Fuel	1	2	3	4	5	6	7	8
Electric	.55	.51	.44	.41	.35	.31	.26	.09
Gas	.36	.36	.36	.36	.36	.36	.36	.36
Oil	.20	.20	.20	.20	.20	.20	.20	.20
H.P.	.20	.20	.20	.20	.20	.20	.20	.20

(2) *Replacement Oil Burner.* The following formula shall be used to determine the heating energy use cutoff for replacement oil burners.

$$E_{RBCO} = \frac{C_{RB}}{(LEP)\ (7)\ (0.18)}$$

Where

E_{RBCO}=annual heating energy consumption necessary to give a 7-year payback on a replacement oil burner (replacement oil burner energy cutoff)
C_{RB}=cost of installed replacement oil burner − tax credit
LEP=local energy price, $/unit energy (same energy units as E_{RBCO})
7 is the payback period in years
0.18 is a high estimate of the proportion of heating energy that may be saved due to a replacement oil burner.

(3) *Flue Damper.* The following formula shall be used to determine the heating energy use cutoff for flue dampers for gas heating systems.

$$E_{FDCO} = \frac{C_{FD}}{(LEP)\ (7)\ (0.1)}$$

Where

E_{FDCO} =annual energy consumption necessary to give a 7-year payback on a flue damper (flue damper energy cutoff)
C_{FD}=installed flue damper cost − tax credit
LEP=local energy price, $/unit energy (same energy units as E_{FDCO})
7 is the payback period in years
0.1 is a high estimate of the proportion of heating energy that may be saved due to a flue damper.

(4) *Active Solar Space Heating.* (i) The cost of active solar space heating systems depends on insulation as well as heating energy use, which makes it difficult to produce a generic formula that will indicate the annual heating energy use cutoff level which corresponds to a 7-year simple payback. Therefore, a State shall determine the heating energy use cutoff level by calculating the simple payback associated with a range of annual heating energy uses and then, by successive approximation, determine the heating energy use cutoff level that corresponds to a 7-year simple payback.

(ii) Use the following procedure to determine the heating energy use cutoff for solar space heating:

(A) Determine savings (using each heating fuel type) and costs for active solar space heating using an approved audit procedure, such as the Model Audit, for a range of annual heating energy uses. For each fuel, choose an annual heating energy use cutoff level, based on these calculations, which corresponds to a 7-year simple payback.

(B) Calculations should assume: no obstruction to solar radiation; due south orientation of collectors; a solar savings fraction consistent with the values given in the Model Audit for the climate (solar savings fraction is the percent of the heating load provided by the solar system); enough roof area to provide the solar savings fraction indicated above; and the tilt of the collector should be optimal for the specified latitude.

(5) *Combined Solar Space Heating and Solar Domestic Hot Water Systems.* (i) The cost of combined active solar space heating and solar domestic hot water systems depends on insulation as well as heating energy use which makes it difficult to produce a generic formula that will indicate the annual heating energy use cutoff level which corresponds to a 7-year simple payback. Therefore, a State shall determine the heating energy use cutoff level by calculating the simple payback associated with a range of annual heating energy uses and then by successive approximations determine the heating energy use cutoff level that corresponds to a 7-year simple payback.

(ii) Use the following procedures to determine the cutoff for combined solar space heating and domestic hot water systems.

(A) Determine savings (using each heating fuel type) and costs for active solar space heating using an approved audit procedure, such as the Model Audit, for a range of annual heating energy uses. For each fuel, choose an annual heating energy use cutoff level, based on these calculations, which corresponds to a 7-year simple payback.

(B) Calculations should assume: no obstruction to solar radiation; due south orientation of collectors; a solar savings fraction consistent with the values given in the Model Audit for the climate (solar savings fraction is the percent of the heating load provided by the solar system); enough roof area to provide the solar savings fraction indicated above; the tilt of the collector should be optimal for the specified latitude; and the hot water usage is 80 gallons per day with the water temperature set at 120° F.

(d) *Cooling Energy Use Cutoffs.* (1) Cooling energy use cutoffs shall be determined for replacement central air-conditioners.

(2) *Replacement Central Air-Conditioners.* (i) The following formula shall be used to determine the cooling energy use cutoff for replacement central air-conditioners:

$$E_{ACCO} = \frac{C_{RAC}}{7\ (LEP)\ (\Delta COP)}$$

Where

C_{RAC}=installed cost of replacement central air-conditioner

$$\Delta COP = 1\ \frac{COP_{existing}}{COP_{new}}$$

7 is the payback period in years
LEP=local energy price $/unit energy
$COP_{existing}$=assumed coefficient of performance of existing system
COP_{new}=improved coefficient of performance of new system.

(ii) The value of 0.46 may be used for ΔCOP. This value is based on an assumed existing SEER of 6.6 (COP of 1.9) and a new SEER of 12.0 (COP of 3.5).

(iii) An audit should be conducted for replacement central air-conditioners if the annual cooling energy use of the dwelling unit is greater than the cooling energy cutoff. The annual cooling energy use of the dwelling unit shall be determined by removing the contribution of noncooling sources, (such as lighting, appliances, and water heating) from the total energy consumption.

(e) *Domestic Hot Water Use Cutoff.* (1) A domestic hot water use cutoff level shall be determined for solar domestic hot water systems. The cost of solar domestic water heater systems depends on insulation as well as hot water use which makes it difficult to produce a generic formula which will indicate the hot water use cutoff level which corresponds to a 7-year simple payback. Therefore, a State shall determine the simple payback associated with a range of daily hot water uses and then by successive approximation determine the hot water use cutoff level that corresponds to a 7-year simple payback.

(2) *Solar Domestic Hot Water System.* Use the following procedures to determine the domestic hot water use cutoff for solar domestic hot water systems.

(i) Determine savings (for each water heating fuel type) and costs for solar domestic hot water, using an approved audit procedure, such as the DOE Model Audit, for a range of gallons per day of hot water usage.

(ii) Based on the sample calculations, determine what is the gallons-per-day cutoff level for each fuel type which corresponds to a 7-year simple payback. Calculations should assume: no obstruction to solar radiation; due south orientation of collectors; a solar savings fraction consistent with the values given in the Model Audit for the climate (the solar savings fraction is the percent of the water heating load provided by the solar system); enough roof area to provide the solar savings fraction indicated above; and the tilt of the collector should be optimal for the specified latitude.

(iii) This gallons-per-day number shall be used as a cutoff level for determining whether to audit for a solar domestic hot water system in a multifamily dwelling unit. A method must be developed for auditors to determine gallons-per-day usage at the dwelling unit. (For example, the DOE Model Audit determines gallons-per-day usage using the number of people in residence and the presence of a dishwasher and/or a washing machine.)

PART 458—[REMOVED]

2. 10 CFR Part 458 is removed.

[FR Doc. 87–20306 Filed 9–8–87; 8:45 am]
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federal register

Wednesday
September 9, 1987

Part XI

The President

EO 12606—The Family

EO 12607—President's Commission on Privatization

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Federal Register
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Wednesday, September 9, 1987

Presidential Documents

Title 3—

The President

Executive Order 12606 of September 2, 1987

The Family

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that the autonomy and rights of the family are considered in the formulation and implementation of policies by Executive departments and agencies, it is hereby ordered as follows:

Section 1. *Family Policymaking Criteria.* In formulating and implementing policies and regulations that may have significant impact on family formation, maintenance, and general well-being, Executive departments and agencies shall, to the extent permitted by law, assess such measures in light of the following questions:

(a) Does this action by government strengthen or erode the stability of the family and, particularly, the marital commitment?

(b) Does this action strengthen or erode the authority and rights of parents in the education, nurture, and supervision of their children?

(c) Does this action help the family perform its functions, or does it substitute governmental activity for the function?

(d) Does this action by government increase or decrease family earnings? Do the proposed benefits of this action justify the impact on the family budget?

(e) Can this activity be carried out by a lower level of government or by the family itself?

(f) What message, intended or otherwise, does this program send to the public concerning the status of the family?

(g) What message does it send to young people concerning the relationship between their behavior, their personal responsibility, and the norms of our society?

Sec. 2. *Governmentwide Family Policy Coordination and Review.*

(a) Executive departments and agencies shall identify proposed regulatory and statutory provisions that may have significant potential negative impact on the family well-being and provide adequate rationale on why such proposal should be submitted. The head of the department or agency, shall certify in writing that, to the extent permitted by law, such measure has been assessed in light of the criteria in Section 1 of this Order and how such measures will enhance family well-being. Such certification shall be transmitted to the Office of Management and Budget. Departments and agencies shall give careful consideration to family-related concerns and their impact in notices of proposed rulemaking and messages transmitting legislative proposals to the Congress.

(b) The Office of Management and Budget shall, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are applied in light of the criteria set forth in Section 1 of this Order.

(c) The Office of Policy Development shall assess existing and proposed policies and regulations that impact family well-being in light of the criteria established by Section 1 of this Order, provide evaluations on those measures that have significant potential impact on the family to the Office of Management and Budget, and advise the President on policy and regulatory actions that may be taken to strengthen the institutions of marriage and family in America.

Sec. 3. *Report.* The Office of Policy Development shall submit preliminary reports including specific recommendations to the Domestic Policy Council and shall submit a final report to the President no later than 180 days from the date of this Order. Each year thereafter, a report, including recommendations shall be submitted, through the Domestic Policy Council to the President.

Sec. 4. *Judicial Review.* This Order is intended to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Ronald Reagan

THE WHITE HOUSE,
September 2, 1987.

[FR Doc. 87-20895
Filed 9-8-87; 11:56 am]
Billing code 3195-01-M

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Presidential Documents

Executive Order 12607 of September 2, 1987

President's Commission on Privatization

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), a Commission to review the appropriate division of responsibilities between the Federal government and the private sector, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the President's Commission on Privatization. The Commission shall be composed of not more than 13 members appointed or designated by the President. The members shall be drawn from among a bipartisan cross-section of distinguished leaders.

(b) The President shall designate a Chairman from among the members of the Commission.

Sec. 2. *Functions.* (a) The Commission shall study and evaluate:

(1) Past and current privatization efforts by the Federal government, State and local governments, and foreign governments, including asset sales by the Federal government;

(2) Literature and writing on privatization; and

(3) The environment for additional privatization efforts by the Federal government.

(b) The Commission shall review the current activities of the Federal government, including asset holdings, and identify those functions that:

(1) Are not properly the responsibility of the Federal government and should be divested or transferred to the private sector, with no residual involvement by the Federal government; or

(2) Require continuing oversight by an Executive Branch agency but can be performed more efficiently by a private entity, including the use of vouchers as an alternative to direct service.

(c) The Commission shall develop the framework for a privatization program, identifying:

(1) Privatization opportunities, including those identified in (b) above, listed in order of priority;

(2) Legislative and administrative actions necessary to effect the privatization initiatives or remove existing privatization restrictions;

(3) Needed improvements to personnel and administrative policy to create an environment conducive to privatization;

(4) Organizational and resource requirements necessary to implement successfully the privatization program; and

(5) Actions necessary to create broad-based support for privatization efforts.

(d) The Commission shall submit its findings and recommendations to the President and the Director of the Office of Management and Budget by March 1, 1988. Interim recommendations shall be transmitted to the Director for consideration in the formulation of the President's FY 1989 budget.

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Sec. 3. *Administration.* (a) The heads of Executive departments, agencies, and independent instrumentalities shall, to the extent permitted by law, provide the Commission, upon request, with such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. While engaged in the work of the Commission, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(c) To the extent provided by law and subject to the availability of appropriations, the Director of the Office of Management and Budget shall provide the Commission with such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions.

Sec. 4. *General Provision.* (a) Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act that are applicable to the Commission, except that of reporting annually to the Congress, shall be performed by the Director of the Office of Management and Budget, in accordance with guidelines and procedures established by the Administrator of General Services; and

(b) The Commission shall terminate 30 days after submitting its final report to the President.

Ronald Reagan

THE WHITE HOUSE,
September 2, 1987.

[FR Doc. 87–20896
Filed 9–8–87; 11:57 am]
Billing code 3195–01–M

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Vol. 52 No. 175

federal register

Thursday
September 10, 1987

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SECOND CLASS NEWSPAPER
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U.S. Government Printing Office
(ISSN 0097-6326)

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Pages 34193-34372

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

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Title 3—

The President

Proclamation 5697 of September 8, 1987

National Reye's Syndrome Week, 1987

By the President of the United States of America

A Proclamation

Reye's Syndrome is a deadly disease that can strike a child or teenager during recovery from a relatively innocuous viral illness—from the flu, for example, or from chicken pox. Suddenly, instead of continuing to gain strength and health, the child becomes lethargic or disoriented, unusually excitable, hyperactive, irritable, or even combative. A frequent symptom is uncontrollable vomiting, and violent headaches and delirium may occur. Tragically, 30 percent of the victims of Reye's Syndrome die; another 15 to 25 percent are left with brain damage.

Any child can develop Reye's Syndrome, but research strongly indicates that children given aspirin as treatment for the flu or chicken pox may be particularly vulnerable. To protect their children, parents must learn to "think Reye's": *do not* use aspirin to treat children with chicken pox or influenza-like illness; *do* recognize the early symptoms of Reye's Syndrome; and *do* seek medical attention for a child immediately at the first sign of those symptoms.

Over the past several years, the United States Department of Health and Human Services, the National Reye's Syndrome Foundation, the American Reye's Syndrome Foundation, and other professional and voluntary health agencies have alerted American families to the dangers of Reye's Syndrome. They have stressed the need to avoid the use of aspirin to treat flu-like illness and chicken pox. The result has been a marked decline in the annual incidence of the disorder. According to a report published last year, the average annual incidence of Reye's Syndrome from 1981 to 1984 was lower than that of the previous five years, with the decrease identified among children younger than 10 years of age. The incidence in 1985 was much lower than during any previous year since surveillance of Reye's Syndrome was initiated in the 1970's.

All Americans welcome such encouraging news. We look for further advances to come from the scientific studies of Reye's Syndrome being supported by the Federal government's National Institute of Allergy and Infectious Diseases, National Institute of Child Health and Human Development, and Centers for Disease Control.

To enhance public awareness of Reye's Syndrome, the Congress, by House Joint Resolution 335, has designated the week of September 13 through September 19, 1987, as "National Reye's Syndrome Week" and authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of September 13 through September 19, 1987, as National Reye's Syndrome Week, and I call upon the people of the United States to observe that week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-20927
Filed 9-8-87; 2:57 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5698 of September 8, 1987

Mental Illness Awareness Week, 1987

By the President of the United States of America

A Proclamation

Mental illnesses afflict the rich and the poor, the young and the old. They respect neither race nor gender, robbing millions of Americans of full, productive, and happy lives. Millions more—relatives, friends, and co-workers—share the pain.

This pain is all the more regrettable because much of it is needless. Stigma, rooted in fear and ignorance, keeps many mentally ill citizens from getting the help they need. Adults in the prime of life are incapacitated by symptoms that could be prevented or ameliorated with appropriate treatments. Children, our most important resource for the future, are unable to reach their full potential because early symptoms are ignored and manifestations like alcohol and drug abuse often go unrecognized. Elderly citizens, the fastest growing segment of our population, are prematurely relegated to long-term care facilities due to improper diagnosis and lack of treatment.

The costs of inappropriate or inadequate response to mental illness are enormous. Economic losses alone can be measured in the billions of dollars, but the cost in human suffering is incalculable. Untreated mentally ill adults cannot work, ignored mentally ill children cannot learn, and misdiagnosed older citizens cannot contribute. Worst of all, young and old, bereft of hope, sometimes take their lives. Appropriate treatments can relieve suffering and save lives. They can also restore productivity and increase independence—helping Americans to continue contributing to, rather than become dependent on, society.

Americans can avoid the temptation to stigmatize those with mental illnesses by learning more about their causes and treatments. They must recognize that mental disorders are not due to personal weakness, but are heavily influenced by environmental stresses, genetic vulnerabilities, and biochemical and brain dysfunctions. Americans should know about, and use to its potential, the scientific progress that has brought an array of new treatments. Symptoms that once disabled can be alleviated. Dysfunctional behavior and thinking patterns that once crippled can be corrected. Psychological disorders that once undermined personal happiness can be ameliorated through counseling and therapy.

Further, Americans can take hope in a future enlightened by today's research. New technologies permit study of the living brain, shedding light on the neurochemical processes that underlie emotion, behavior, and thought. Genetic studies delve into the very substance of life, opening new insights into the causes and possible prevention of some of our most devastating mental illnesses. With knowledge, there is hope. With hope, there is progress.

In recognition that Americans need to know more about mental illnesses and their treatments, the Congress, by Public Law 100–81, has designated the week of October 4 through October 10, 1987, as "Mental Illness Awareness Week" and authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 4, 1987, as Mental Illness Awareness Week. I call upon the people of the United States to observe this week with ceremonies and activities that will enhance the well-being of this Nation by increasing understanding and knowledge of mental illnesses and their treatments.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-20928
Filed 9-8-87; 2:58 pm]
Billing code 3195-01-M

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Proclamation 5699 of September 8, 1987

National Diabetes Month, 1987

By the President of the United States of America

A Proclamation

Diabetes affects the health of perhaps 11 million Americans. It can strike suddenly or it can do subtle long-term damage to major organs. Fully half the people with diabetes do not know they have the disease.

During the last decade, our knowledge of diabetes has increased in the research laboratory. We now have a better understanding of this disease and its burdensome complications, but there is still much to learn. In addition, we still face the major challenge of transforming research advances into practical benefits for diabetes patients.

Diabetes is a public health problem that affects both sexes and all ages and races. Given the disability, the emotional toll, and the economic loss from diabetes—estimated at $14 billion per year in the United States—our priorities should continue to be research on this disease, how best to treat it, and how best to communicate this knowledge to those who need it most. Through the continued commitment and cooperation of private citizens and organizations, the scientific community, and Federal, State, and local government in the fight against diabetes, we will come closer to a cure and to better health for millions of Americans.

To increase public awareness of diabetes and to emphasize the need for continued research and educational efforts aimed at controlling and curing this disease, the Congress, by Senate Joint Resolution 44, has designated the month of November 1987 as "National Diabetes Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of November 1987 as National Diabetes Month. I call upon all government agencies and the people of the United States to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-20929
Filed 9-8-87; 2:59 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5700 of September 8, 1987

Geography Awareness Week, 1987

By the President of the United States of America

A Proclamation

Fascination with the Earth and a desire to learn and record information about it inspired the early explorers of our land and today remain part of our national heritage. This legacy is carried on for us in the science of geography, the study of the surface of the globe and the people, environments, resources, political boundaries, and characteristics of every area.

For generations, comprehension of world and national geography has been considered essential to the education of Americans. Yet today, in an interdependent world where knowledge of other lands and cultures is increasingly important, studies show that Americans need more geographical knowledge. Citizens, especially young people, should be fully acquainted with our country and our neighbors around the globe and aware of geography's expanding study of the oceans and the universe; the increasing wealth of knowledge provided by research in the disciplines that support geography; and geography's physiographic, historical, social, economic, and political aspects.

The Congress, by Public Law 100–78, has designated the week of November 15 through November 21, 1987, as "Geography Awareness Week" and authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 15 through November 21, 1987, as Geography Awareness Week, and I call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-20930
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Rules and Regulations

Federal Register
Vol. 52, No. 175
Thursday, September 10, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

Programs for Specific Positions and Examinations (Miscellaneous); Appointment, Pay, and Removal of Administrative Law Judges

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing the appointment, pay, and removal of administrative law judges. These regulations update and revise outdated terminology. They also clarify OPM's responsibilities concerning administrative law judges. The regulations continue the basic thrust of the previous regulations—to make administrative law judges largely independent in matters of tenure and compensation as required by the Administrative Procedure Act (APA) of 1946.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Craig B. Pettibone, Assistant Director for Administrative Law Judges, (202) 632–5677.

SUPPLEMENTARY INFORMATION: In the March 20, 1987, **Federal Register** (52 FR 8909), OPM proposed to update, revise and clarify OPM's responsibilities concerning the appointment, pay and removal of administrative law judges, as provided in Subpart B, Part 930, Title 5, Code of Federal Regulations. Interested parties were given until May 19, 1987, to submit written comments.

Eleven written comments were received by OPM. The Federal Administrative Law Judges Conference, the Forum of Administrative Law Judges, and the Government Personnel Committee of the Section of Administrative Law of the American Bar Association submitted comprehensive comments. Several agency chief administrative law judges and personnel officers from agency hearing programs also submitted brief comments.

The commenters generally supported the promulgation of the revised regulations. However, the commenters raised the following issues that are listed and discussed below.

1. Periodic Open Competition

One agency employing administrative law judges objected to OPM holding periods of open competition for receipt of applications for examination of applicants' qualifications for administrative law judge positions. However, with hundreds of applicants for only 25–50 positions a year, it is not an efficient use of scarce Government resources to keep the examination open on a continuous basis.

2. Referral of Eligible Applicants

A proposed new concluding sentence to § 930.203(e) provided that OPM would certify at least 3 eligible applicants to an employing agency for consideration for each vacant administrative law judge position. Some commenters recommended referral of additional names. OPM will refer additional names as they are needed by employing agencies, but sees no need to change the proposed regulation.

3. Appointment of Administrative Law Judges

Some commenters raised a concern that applicants could be appointed to administrative law judge positions under § 930.203a without meeting the examination requirements provided in OPM Examination Announcement No. 318. All applicants, including incumbents of new established positions, under paragraph (c) as stated therein, would still be required by OPM to meet examination requirements. Also, legislative and judicial employees would be required by OPM to meet current examination requirements, rather than suitable noncompetitive examination requirements, and paragraph (d) of this section has been modified to make this clear. The authority in paragraph (c) of this section for conditional appointments in emergency situations is not meant to waive examination requirements, but is meant to allow conditional appointment of examined applicants who may still be undergoing investigation or security clearance as required by paragraph (a) of this section.

4. Title of Administrative Law Judge

One commenter noted correctly that while the changes to § 930.203b lifted the previous prohibition on use of the title "judge" for all positions other than administrative law judge, the remaining provisions of this regulation continue to require agencies to use only the official class title "administrative law judge" for personnel, budget, and fiscal purposes.

5. Detail and Assignment to Other Duties

Some commenters objected that proposed new § 930.209(d), permitting agencies to detail administrative law judges from one administrative law judge position to another without obtaining the prior approval of OPM, could be used by employing agencies in retaliation for decisions they did not like, thereby influencing the decisional independence of administrative law judges. OPM does not believe that this is a problem. This proposal was simply intended to confirm past practice that agencies could detail an administrative law judge from one administrative law judge position to another, in the same agency, without prior approval of OPM, provided the detail was in accord with regular civil service procedures.

Years ago, regular civil service procedures generally limited agency details to 120 days or less and required OPM approval for extensions beyond 120 days. However, in recent years, detail procedures have been liberalized to give agencies more flexibility in their use. Current detail procedures in Subchapter 8 of FPM Chapter 300, as amended March 26, 1987, by FPM letter 300–32, generally permit agencies to detail employees to classified positions, such as administrative law judge positions, at the same or higher grade in increments of no more than 120 days up to a maximum of one year.

It is OPM's understanding that agency details of administrative law judges from one administrative law judge position to another have been relatively infrequent. We are not aware of any instance where an administrative law judge has complained that he or she was, in fact, detailed from one administrative law judge position to another in retaliation for a decision that the agency did not like. In the absence

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of a problem to regulate, we see no need to establish the kind of restrictions—120 days in the aggregate in a year—on agency details among administrative law judge positions as we found necessary to impose several years ago on agency details to nonjudge positions under § 930.209 (b) and (c).

Accordingly, § 930.209(d), permitting agencies to detail administrative law judges from one administrative law judge position to another without obtaining the prior approval of OPM, is being promulgated as proposed.

6. Definition of Removal

One commenter asked if in defining "removal" in § 930.202(f), OPM meant to provide that in addition to discharge of an administrative law judge, an involuntary reassignment, involuntary demotion or involuntary promotion to a position other than that of an administrative law judge would constitute removal. Such "involuntary" personnel actions to a position other than that of an administrative law judge have long been defined by OPM as constituting removal from the position of administrative law judge. Clearly, in all three cases, the administrative law judge is removed from an administrative law judge position without his or her consent. Therefore, in accordance with 5 U.S.C. 7521, such actions should only be taken for good cause established on the record after an opportunity for a hearing before the Merit Systems Protection Board (MSPB).

7. Status During Removal Proceedings

Section 930.204(b) has provided for some time that "in exceptional cases when there are circumstances by reason of which the retention of an administrative law judge in his or her position, pending adjudication of the existence of good cause for his or her removal, would be detrimental to the interests of the Government, the agency shall either (1) assign the administrative law judge to duties in which these conditions would not exist; or (2) place him or her on annual leave for the period that will be covered by the annual leave to his or her credit." This section further provided that "an agency may take action under this paragraph only with the prior approval of the Board."

In view of the establishment of separate OPM and MSPB agencies under the Civil Service Reform Act of 1978, some commenters now question whether this regulation improperly asked MSPB to prematurely review a pending agency action against an administrative law judge before the action was fully heard and decided on the record in accordance with 5 U.S.C. 7521. One commenter suggested that the act of an agency placing an administrative law judge on annual leave would be tantamount to a suspension, an action which since 1978 has been specifically prescribed by 5 U.S.C. 7521 in the absence of a decision on the record after an opportunity for a hearing before the MSPB.

Several commenters recommended that OPM should simply recognize that an agency may place an administrative law judge in a paid, non-duty or administrative leave status, rather than on annual leave, pending MSPB's adjudication of an action against the administrative law judge. Administrative leave with pay would cover the several months MSPB's action would be expected to take, rather than only the few weeks which an administrative law judge's accrued annual leave would cover.

OPM believes that it would be appropriate for agencies to consider placing an administrative law judge on administrative leave with pay, pending adjudication of a removal action before MSPB, but only after agencies have considered: (1) Assigning the administrative law judge to duties not inconsistent with his or her normal duties where retention of the judge would not be detrimental to the interests of the Government; (2) placing the administrative law judge on leave with his or her consent; or (3) carrying the administrative law judge on appropriate leave (annual or sick leave, leave without pay, or absence without leave) if he or she is voluntarily absent for reasons not originating with the agency.

Accordingly, § 930.214(b) has been revised to permit the use of administrative leave with pay, after other leave options are considered. The requirement for MSPB approval has also been deleted. Since the ultimate removal action and possible alternative remedies are subject to MSPB review, OPM thinks that it is unlikely that an agency will abuse the limited discretion given under this regulation as some commenters suggested might happen.

8. Reduction in Force

The commenters generally welcomed the provisions of § 930.215 which clarified the status of administrative law judges in an agency as a separate retention group for reduction-in-force (RIF) purposes, entitled to preferential consideration for placement without additional retention credit based on performance appraisals which are prohibited. Like FPM Letter 93015, issued May 27, 1982, new provisions in this regulation generally proposed to limit priority referral of administrative law judges separated by RIF to a period of 2 years. In addition, new provisions in this regulation proposed to allow an administrative law judge separated by RIF to state a geographic preference in priority referral for vacant positions at any grade level, rather than (as under the FPM Letter) only at one grade lower than the grade level held when reached for RIF. Further, the new provisions proposed to allow a RIF'd administrative law judge one declination of an offer of reemployment at or above the grade level held when reached for RIF, without removal from the OPM priority referral list.

Two commenters recommended that OPM further revise the regulation to delete any limitation on the number of times a RIF'd administrative law judge could decline an offer of reemployment at the judge's former grade level. However, with the relatively limited number of administrative law judge positions to be filled from time to time, OPM does not believe it is appropriate for a RIF'd administrative law judge to have more than one opportunity to decline an offer of reemployment at his or her former grade and pay and in a geographic area chosen by him or her.

One commenter also objected to keeping established provisions in § 930.215(c)(3) which proposed to continue to permit an agency, with the prior approval of OPM, to nonselect a RIF'd administrative law judge on OPM's priority referral list and to select instead a judge by appointment from OPM's register of applicants, by promotion or transfer of an incumbent judge, or by reinstatement of a former judge. As further provided in language taken from the FPM Letter, OPM proposed to grant such approval "only under the extraordinary circumstance that the candidate(s) not on the OPM priority referral list possesses experience and qualifications superior to the displaced administrative law judge(s) on the list." Thus, such approval would be granted rarely, if at all, and only after the RIF'd judge was referred for consideration. Accordingly, OPM believes that the regulation should be finalized as proposed.

9. Reemployment

Some commenters requested that the previously established provisions of § 930.216 governing temporary reemployment of retired administrative law judges be modified to bar such reemployment not only in cases where underutilized judges in other agencies are available under 5 CFR 930.213, but also in cases where RIF'd judges on

OPM's priority referral list established under § 930.215 are available for such temporary work. The temporary reappointment of a retired administrative law judge to hear a case or cases for a specific period or periods of time is specifically authorized by 5 U.S.C. 3323(b), whereas the temporary appointment of anyone else—including a RIF'd administrative law judge—is inconsistent with the provisions of the APA requiring that individuals be permanently appointed and subject to removal for good cause only after a hearing on the record before MSPB. Accordingly, OPM has no authority to make the recommended change in this regulation.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they only affect the personnel provisions under which Federal administrative law judges are appointed, paid, and removed.

List of Subjects in 5 CFR Part 930

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

PART 930— PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Accordingly, OPM is revising Subpart B of Part 930 to read as follows:

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

General Provisions

Sec.

930.201 Coverage.
930.202 Definitions.
930.203 Examination.
930.203a Appointment.
930.203b Title of administrative law judge.
930.204 Promotion.
930.205 Reassignment.
930.206 Transfer.
930.207 Reinstatement.
930.208 Restoration.
930.209 Detail and assignment to other duties.
930.210 Pay.
930.211 Performance rating.
930.212 Rotation of administrative law judges.
930.213 Use of administrative law judges on detail from other agencies.
930.214 Actions against administrative law judges.
930.215 Reduction in force.
930.216 Temporary reemployment: senior administrative law judges.

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

Authority: 5 U.S.C. 1104(a)(2), 1305, 3105, 3323(b), 3344, 4301(2)(D), 5335(a)(B), 5372, 7521.

General Provisions

§ 930.201 Coverage.

(a) This subpart applies to people appointed under 5 U.S.C. 3105 for proceedings required to be conducted in accordance with 5 U.S.C. 556 and 557, and to administrative law judge positions.

(b) Except as otherwise provided in this subpart, the rules and regulations applicable to positions in the competitive service apply to administrative law judge positions.

§ 930.202 Definitions.

In this subpart—

(a) "Agency" has the same meaning as given in 5 U.S.C. 551.

(b) "Detail" means the temporary assignment of an employee from one position to another position without change in civil service or pay status. The assignment to an administrative law judge of a case of the level of difficulty that would ordinarily be assigned to an administrative law judge of a different grade does not of itself constitute a detail within the meaning of this subpart.

(c) "Administrative law judge position" means a position in which any portion of the duties includes those which require the appointment of an administrative law judge under 5 U.S.C. 3105.

(d) "Promotion" means a change in grade from one position to a higher graded position, whether newly created or left vacant because of promotion, demotion, transfer, reassignment, retirement, separation of the last incumbent, or reclassification to a higher grade of the position to which the administrative law judge was absolutely appointed.

(e) "Reinstatement" means reemployment authorized on the basis of the appointee's absolute status as administrative law judge after an earlier separation from an administrative law judge position.

(f) "Removal" means discharge of an administrative law judge from the position of administrative law judge or involuntary reassignment, demotion, or promotion to a position other than that of administrative law judge.

§ 930.203 Examination.

(a) *Periodic open competition.* Applicants for entrance into the competitive service as administrative law judges will be examined periodically in open competition as announced by OPM. Applications received by OPM during such periods of open competition will be reviewed as a group. Applicants in each group become eligible for consideration in the preparation of certificates of final eligibles when OPM has had an adequate opportunity to determine basic ratings for all applicants and to determine final ratings for as many applicants as OPM determines is sufficient to produce an adequate register of final eligibles for appointment.

(b) *Basic rating.* All applicants will initially be considered for a basic rating. To receive a basic rating, applicants must—

(1) Demonstrate in their written applications and supporting materials that they meet the qualifying experience requirements in OPM Examination Announcement No. 318; and

(2) Receive a minimum score on the supplemental qualifications statement described in the examination announcement.

(c) *Final rating.* Applicants who are assigned a basic rating become eligible to compete for a final rating through participating in three additional examining procedures described in the examination announcement:

(1) A written demonstration;

(2) A panel interview; and

(3) A personal reference inquiry.

(d) *Participation in examination procedures.* As many of the applicants with the highest basic ratings, augmented by veteran preference if applicable, as are needed to meet anticipated agency hiring needs in various geographic areas will be invited to participate in the additional examining procedures. Applicants who complete the examination will be assigned a final numerical rating based on a weighted sum of the scores for each of the four parts, transmuted to a scale of 0 to 100, with 70 required to pass. For applicants entitled thereto, the final passing score will include 5 or 10 veteran preference points.

(e) *Preparation of certificates.* As agencies request certificates of applicants from registers to consider in filling vacant administrative law judge

positions in various geographic areas, all applicants who are eligible and available for those positions will be ranked to identify the best qualified applicants to be certified. Eligible applicants who have not completed the final rating process will be ranked on the basis of projected maximum ratings, augmented by veteran preference points if applicable. Eligible applicants who have completed the final rating process will be ranked on the basis of assigned final ratings, augmented by veteran preference points if applicable. For a given vacancy, only those applicants who have completed the final rating process and achieved a final examination rating which is higher than the projected maximum rating that applicants not fully examined can be expected to achieve will be certified to the requesting agency. At least three eligible applicants will be certified to the employing agency for consideration for each vacancy.

(f) *Ineligible rating.* Applicants who obtain an ineligible rating or applicants who are dissatisfied with their final ratings may appeal the rating to the Administrative Law Judge Rating Appeals Panel, Office of Personnel Management, Washington, DC 20415, within 30 days from the date of final action by the Office of Administrative Law Judges, or such later time as may be allowed by the Panel.

§ 930.203a Appointment.

(a) *Prior approval.* An agency may make an appointment to an administrative law judge position only with the prior approval of OPM, except when it makes its selection from a certificate of eligibles furnished by OPM. When requesting OPM approval of an appointment to an administrative law judge position or the issuance of a certificate of eligibles, the requesting agency must demonstrate that its hearing workload requires the appointment of an additional administrative law judge(s) to get necessary work done. An appointment is subject to investigation in accordance with §§ 731.201 through 731.303 of this chapter and subject to security clearance by the agency.

(b) *Probationary and career-conditional periods.* The requirement of a probationary and career-conditional period before absolute appointment does not apply to an appointment to an administrative law judge position.

(c) *Appointment of incumbents of newly classified administrative law judge positions.* An agency may appoint as an administrative law judge an employee who is serving in a position which is classified as an administrative law judge position on the basis of legislation, Executive order, or decision of a court, if—

(1) The employee has a competitive status or was serving in an excepted position under a permanent appointment;

(2) The employee was serving in the position on the date of the legislation, Executive order, or decision of the court, on which the classification of the position is based;

(3) OPM receives a recommendation for the employee's appointment from the agency concerned not later than 6 months after classification of the position on the basis of the legislation, Executive order, or decision of the court; and

(4) OPM finds that the employee meets the current examination requirements for the position under OPM Examination Announcement No. 318. In an emergency situation, when the needs of an agency require it, OPM may authorize the conditional appointment of an employee to an administrative law judge position pending final decision on the employee's eligibility for absolute appointment under this paragraph.

(d) *Appointment of legislative and judicial employees.* An agency may appoint a former employee of the legislative or judicial branch to an administrative law judge position if OPM finds that the employee meets current examination requirements under OPM Examination Announcement No. 318 and is otherwise eligible under the provisions of 5 U.S.C. 3304(c).

(e) *Appointment of incumbents of nonadministrative law judge positions.* Except as provided in paragraphs (c) and (d) of this section, an agency may not appoint an employee who is serving in a position other than an administrative law judge position to an administrative law judge position other than by selection from a certificate of eligibles furnished by OPM from the open competitive register.

§ 930.203b Title of administrative law judge.

The title "administrative law judge" is the official class title for an administrative law judge position. Each agency will use only this official class title for personnel, budget, and fiscal purposes.

§ 930.204 Promotion.

(a) When OPM classifies an occupied administrative law judge position at a higher grade on the basis of the position's substantive and technical nature, OPM will direct the promotion of the incumbent administrative law judge. The promotion will be effective on the date named by OPM.

(b) When OPM classifies one of an agency's administrative law judge positions at a higher grade on the basis of the position's managerial and administrative nature, an agency may promote one of its administrative law judges to such a position, provided the promotion is in accordance with regular civil service procedures.

(c) No more than twice during a calendar year, an agency may notify OPM that it wishes to fill a specific number of its higher grade administrative law judge vacancies from among its administrative law judges at the next lower grade who meet all current examination requirements for appointment at the higher grade as provided in OPM Examination Announcement No. 318 and who have served as administrative law judges at the agency for at least 1 year. OPM will select from the next lower grade administrative law judges of that agency those administrative law judges who it determines are best qualified for appointment to the higher grade administrative law judge positions and will direct their appointment by the agency to such higher grade administrative law judge positions.

§ 930.205 Reassignment.

An agency may reassign an administrative law judge who is serving under absolute appointment from one administrative law judge position to another administrative law judge position at the same grade in the same agency, with the prior approval of OPM on a noncompetitive basis, provided the assignment is for bona fide management reasons and in accordance with regular civil service procedures and merit system principles.

§ 930.206 Transfer.

(a) An agency may transfer an administrative law judge from another agency, with a promotion, with the prior approval of OPM, provided the administrative law judge meets all current examination requirements for appointment at the next higher grade under OPM Examination Announcement No. 318.

(b) An agency may transfer an administrative law judge from another agency, when this does not involve a promotion, with the prior approval of OPM on a noncompetitive basis in accordance with regular civil service procedures, provided the administrative law judge meets all current examination requirements for appointment as an

administrative law judge under OPM Examination Announcement No. 318.

(c) An agency may not transfer a person from one administrative law judge position to another administrative law judge position under paragraph (a) or (b) of this section sooner than 1 year after the person's last appointment.

§ 930.207 Reinstatement.

An agency may reinstate former administrative law judges who have served with absolute status under 5 U.S.C. 3105, only after they have established their eligibility at the grade to which they are to be reinstated, in accordance with all current examination requirements of OPM Examination Announcement No. 318. Reinstatement is subject to investigation by, and the prior approval of, OPM.

§ 930.208 Restoration.

Parts 352 and 353 of this chapter governing reemployment rights and restoration to duty after military service or recovery from compensable injury, also apply to reemployment and restoration to administrative law judge positions.

§ 930.209 Detail and assignment to other duties.

(a) An agency may not detail an employee who is not an administrative law judge to an administrative law judge position.

(b) An agency may assign an administrative law judge (by detail or otherwise) to perform duties that are not the duties of an administrative law judge without prior approval of OPM only when—

(1) The other duties are not inconsistent with the duties and responsibilities of an administrative law judge;

(2) The assignment is to last no longer than 120 days; and

(3) The administrative law judge has not had an aggregate of more than 120 days of those assignments or details within the preceding 12 months.

(c) On a showing by an agency that it is in the public interest to do so, OPM may authorize a waiver of paragraphs (b) (2) and (3) of this section.

(d) An agency may detail an administrative law judge from one administrative law judge position to another in the same agency, without the prior approval of OPM, provided the detail is in accordance with regular civil service procedures.

§ 930.210 Pay.

(a) OPM will classify administrative law judge positions in accordance with the regulations and procedures adopted by OPM for classifications under 5 U.S.C. Chapter 51. OPM will make these classifications independently of agency recommendations and ratings.

(b) An administrative law judge is entitled to within-grade increases in accordance with Part 531 of this chapter, except that the requirement that the work be at an acceptable level of competence as determined by the head of the agency does not apply.

(c) An agency may not grant a quality step-increase under 5 U.S.C. 5336(a), or a monetary or honorary award under 5 U.S.C. 4503, for superior accomplishment by an administrative law judge in the performance of adjudicatory functions.

(d) Upon appointment, an administrative law judge will be paid at the minimum rate of the grade approved by OPM, unless in accordance with Subpart B of Part 531 of this chapter, the administrative law judge is eligible for a higher rate because of prior service or superior qualifications, as follows—

(1) An agency may offer an administrative law judge applicant with prior Federal service a higher than minimum rate, without obtaining the prior approval of OPM, if it determines that the administrative law judge applicant is entitled to such higher rate.

(2) An agency may offer an administrative law judge applicant with superior qualifications a higher than minimum rate, only if it first obtains approval from OPM to offer such a higher rate to an applicant who is within reach on a certificate of eligible administrative law judge applicants, and whose existing pay or earning power exceeds the minimum rate. "Superior qualifications" for applicants includes having legal practice before the hiring agency, having practice in another forum with legal issues of concern to the hiring agency, or having an outstanding reputation among others in the field. OPM will approve such payment of a higher than minimum rate for superior qualifications only when it is clearly necessary to meet the needs of the Government.

§ 930.211 Performance rating.

An agency shall not rate the performance of an administrative law judge.

§ 930.212 Rotation of administrative law judges.

Insofar as practicable, an agency shall assign its administrative law judges in rotation to cases.

§ 930.213 Use of administrative law judges on detail from other agencies.

(a) An agency that is occasionally or temporarily insufficiently staffed with administrative law judges may ask OPM to provide for the temporary use by the agency of the services of an administrative law judge of another agency. The agency request should—

(1) Identify and describe briefly the nature of the case(s) to be heard (including parties and representatives when available):

(2) Specify the legal authority under which the use of an administrative law judge is required; and

(3) Demonstrate that the agency has no administrative law judge available to hear the case(s).

(b) OPM, with the consent of the agency in which an administrative law judge is employed, will select the administrative law judge to be used, and will name the date or period for which the administrative law judge is to be made available for detail to the agency in need of his or her services.

(c) Such details generally will be reimbursable by the agency requesting the detail.

§ 930.214 Actions against administrative law judges.

(a) *Procedures.* An agency may remove, suspend, reduce in grade, reduce in pay, or furlough for 30 days or less, an administrative law judge only for good cause, established and determined by the Merit Systems Protection Board on the record and after opportunity for a hearing before the Board as provided in 5 U.S.C. 7521 and §§ 1201.131 through 1201.136 of this title. Procedures for adverse actions by agencies under Part 752 of this chapter are not applicable to actions against administrative law judges.

(b) *Status during removal proceedings.* In exceptional cases when there are circumstances by reason of which the retention of an administrative law judge in his or her position, pending adjudication of the existence of good cause for his or her removal, would be detrimental to the interests of the Government, the agency may either:

(1) Assign the administrative law judge to duties not inconsistent with his or her normal duties in which these conditions would not exist;

(2) Place the administrative law judge on leave with his or her consent;

(3) Carry the administrative law judge on appropriate leave (annual or sick leave, leave without pay, or absence without leave) if he or she is voluntarily absent for reasons not originating with the agency; or

(4) If none of the alternatives in paragraphs (b) (1), (2) and (3) of this section is available, agencies may consider placing the administrative law

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judge in a paid, non-duty or administrative leave status.

(c) *Exceptions from procedures.* The procedures in this subpart governing the removal, suspension, reduction in grade, reduction in pay, or furlough of 30 days or less of administrative law judges do not apply in making dismissals or taking other actions requested by OPM under § 5.2 and § 5.3 of this chapter; nor to dismissals or other actions made by agencies in the interest of national security under 5 U.S.C. 7532; nor to reduction-in-force action taken by agencies under 5 U.S.C. 3502; nor any action initiated by the Special Counsel of the Merit Systems Protection Board under 5 U.S.C. 1206.

§ 930.215 Reduction in force.

(a) *Retention preference regulations.* Except as modified by this section, the reduction-in-force regulations in Part 351 of this chapter apply to reductions in force of administrative law judges.

(b) *Determination of retention standing.* In determining retention standing in a reduction in force, each agency will classify its administrative law judges in groups and subgroups according to tenure of employment, veteran preference, and service date in the manner prescribed in Part 351 of this chapter. However, as administrative law judges are not given performance ratings, the provisions in Part 351 of this chapter referring to the effect of performance ratings on retention standing are not applicable to administrative law judges.

(c) *Placement Assistance.* (1) Administrative law judges who are reached by an agency reduction in force and who are notified they are to be separated are eligible for placement assistance under—

(i) Agency reemployment priority lists established and maintained by agencies under Subpart J of Part 351 of this chapter for all agency tenure group I career employees displaced in a reduction in force;

(ii) Agency and OPM priority placement programs under Subpart C of Part 330 of this chapter for all agency tenure group I, career employees displaced in a reduction in force.

(2) On request of administrative law judges who are reached by an agency in reduction in force and who are notified they are to be separated, furloughed for more than 30 days, or demoted, OPM will place their names on OPM's priority referral list for administrative law judges displaced in a reduction in force for the grade in which they last served and for all lower grades.

(3) An administrative law judge may file a request under paragraph (c)(2) of this section, for placement on the OPM priority referral list, at any time after the receipt of the specific reduction-in-force notice, but not later than 90 days after the date of separation, furlough for more than 30 days, or demotion. Placement assistance through the OPM priority referral list continues for 2 years from either the effective date of the reduction-in-force action, or the date assistance is requested if a timely request is made. Eligibility of the displaced administrative law judge for the OPM priority referral list is terminated earlier upon the administrative law judge's written request, acceptance of a non-temporary, full-time administrative law judge position, or declination of more than one offer of full-time employment as an administrative law judge at or above the grade level held when reached for reduction in force at geographic locations previously indicated as acceptable.

(4) The displaced administrative law judge will file with the request for priority referral by OPM a Standard Form 171, Application for Federal Employment, and a copy of the reduction-in-force notice. Also, the displaced administrative law judge may ask OPM to limit consideration for vacant positions at any grade level for which qualified to specific geographic areas.

(5) When there is no administrative law judge on the agency's reemployment priority list, but there is an administrative law judge who has been placed on the OPM priority referral list (paragraph (c)(2) of this section), the agency may fill a vacant administrative law judge position only by selection from the OPM priority referral list, unless it obtains the prior approval of OPM for filling the vacant position under § 930.203a (a), (c), (d) and (e); § 930.204; § 930.205, § 930.206; or § 930.207 of this subpart. OPM will grant such approval only under the extraordinary circumstance that the candidate(s) not on the OPM priority referral list possesses experience and qualifications superior to the displaced administrative law judge(s) on the list.

(6) Referral, certification, and selection of administrative law judges from OPM's priority referral list are made without regard to selective certification or special qualification procedures which may have been applied in the original appointment in accordance with OPM Examination Announcement No. 318.

§ 930.216 Temporary reemployment: senior administrative law judges.

(a)(1) Subject to the requirements and limitations of this section, the following annuitants, as defined by 5 U.S.C. 8331, who are receiving an annuity from the Civil Service Retirement and Disability Fund may be temporarily reemployed as administrative law judges by an agency that has temporary, irregular workload requirements for conducting proceedings in accordance with 5 U.S.C. 556 and 557:

(i) Annuitants who have served with absolute status as administrative law judges under 5 U.S.C. 3105; and

(ii) Annuitants who have met current examination requirements set forth in OPM Examination Announcement 318 (including the requirement to maintain a current license to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution).

(2) These retired administrative law judges who are so reemployed will be known as senior administrative law judges.

(b) Retired administrative law judges who meet the requirements of paragraph (a) of this section and who are available for temporary reemployment must notify OPM in writing of their availability, giving their full names, addresses, telephone numbers, names of the agencies where they served as administrative law judges, and jurisdictions in which they are currently licensed to practice law. OPM will maintain a master list of such retired administrative law judges for use in responding to agency requests for such administrative law judges.

(c) An agency that wishes to temporarily reemploy administrative law judges must submit a written request to OPM. The request will—

(1) Identify the statutory authority under which the administrative law judge is expected to conduct proceedings;

(2) Demonstrate that the agency is occasionally or temporarily understaffed;

(3) Specify the tour of duty, location, period of time, or particular case(s), for the requested reemployment; and

(4) Describe any special qualifications desired in the retired administrative law judge that it wishes to reemploy, such as experience in a particular field, agency, or substantive area of law.

(d) OPM will approve agency requests for temporary reemployment of retired administrative law judges for a specified period or periods provided—

(1) The requesting agency fully justifies the need for an administrative law judge for formal proceedings and demonstrates that it is occasionally or temporarily understaffed; and

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(2) No other administrative law judge with the appropriate qualifications is available through OPM under § 930.213 of this subpart to perform the occasional or temporary work for which reemployment is requested.

(e) Upon approval of an agency request to reemploy a retired administrative law judge, OPM will select from its master list of retired administrative law judges, in rotation to the extent practicable, those retired judges who it determines meet agency requirements. OPM will then provide a list of such individuals to the requesting agency and the agency must then select from that list a retired administrative law judge for reemployment.

(f) Reemployment of retired administrative law judges is subject to investigation of suitability in accordance with §§ 731.201 through 731.303 of this chapter. It is also subject to conflict of interest and security investigation requirements by the appointing agency.

(g) Reemployment as senior administrative law judges will be for either a specified period not to exceed 1 year; or such periods as may be necessary for the reemployed administrative law judge to conduct and complete the hearing of one or more specified cases and issue decisions therein. Upon agency request, OPM may either reduce or extend such period of reemployment, as necessary, to coincide with changing staffing requirements, but not to exceed 1 year.

(h) An agency may assign its senior administrative law judges to either (1) hear one or more specific cases; or (2) hear, in normal rotation to the extent practicable, a number of cases on its docket and issue decisions therein.

(i) Hours of duty, administrative support services, and travel reimbursement for senior administrative law judges will be determined by the employing agency in accordance with the same rules and procedures that are generally applicable to employees.

(j) A senior administrative law judge serves subject to the same limitations on performance appraisal and reduction in pay or removal as any other administrative law judge employed under this subpart and 5 U.S.C. 3105. An agency will not rate the performance of a senior administrative law judge. Reduction-in-pay or removal actions may not be taken against senior administrative law judges during the period of reemployment, except for good cause established and determined by the Merit Systems Protection Board after opportunity for a hearing on the record before the Board as provided in 5 U.S.C. 7521 and §§ 1201.131 through 1201.136 of this title.

(k) A senior administrative law judge will be paid by the employing agency the current rate of pay for the grade at which the duties to be performed have been classified and at a step of that grade that is nearest (when rounded up) to the highest previous grade and step attained as an administrative law judge before retirement. However, an amount equal to the annuity allocatable to the period of actual employment will be deducted from his or her pay and deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund.

[FR Doc. 87-20786 Filed 9-9-87; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 87-106]

Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that changed the program status of Connecticut, New Jersey, New York, and Ohio to validated brucellosis-free states. This action is necessary because these states meet the criteria for validated brucellosis-free states. This action relieves certain restrictions on moving breeding swine from Connecticut, New Jersey, New York and Ohio.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Program Planning Staff, VS, APHIS, USDA, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5961.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective on May 19, 1987 (52 FR 18687-18688, Docket Number 86-115), we amended the regulations in 9 CFR Part 78 concerning the interstate movement of swine by changing the program status of Connecticut, New Jersey, New York, and Ohio to validated brucellosis-free states. We did not receive any comments, which are required to be postmarked or received on or before July 20, 1987. The facts presented in the interim rule still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action allows breeding swine to move interstate from these states without testing for brucellosis. The groups affected by this action will be herd owners in Connecticut, New Jersey, New York, and Ohio, and the effect will be beneficial because restrictions are being relieved. This action will have no effect on the market swine identification programs in these states.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant adverse economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 78 and that was published at 52 FR 18687-18688 on May 19, 1987.

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 4th day of September 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-20819 Filed 9-9-87; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 166

[Docket No. 87-088]

Swine Health Protection Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that removed Oklahoma from the list of states that have primary enforcement responsibility under the Swine Health Protection Act (the Act). As a result of this action, the Secretary of Agriculture of the United States is now responsible for enforcing the Act and federal regulations concerning swine health protection in Oklahoma. This is necessary to help ensure that requirements under the Act for the feeding of garbage to swine are enforced in Oklahoma.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. G.H. Frye, Chief Staff Veterinarian, Program Planning Staff, Veterinary Services, Room 839, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective April 22, 1987 (52 FR 13230-13231, Docket Number 87-052), we amended the regulations in 9 CFR Part 166, "Swine Health Protection," by removing Oklahoma from the list of states that have primary enforcement responsibility under the Swine Health Protection Act. We did not receive any comments before the comment period closed on June 22, 1987. The facts presented in the interim rule still provide a basis for the amendment.

Executive Order 12291

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Regulatory Flexibility Act

This rule will not cause significant changes in requirements for affected persons, but will only change the government entity that will enforce certain regulations guarding against certain diseases of swine.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 166

African swine fever, Animal diseases, Foot-and-mouth disease, Hog cholera, Hogs, Garbage, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 166 and that was published at 52 FR 13230-13231 on April 22, 1987.

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51 and 371.2(d).

Done in Washington, DC., this 4th day of September, 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-20820 Filed 9-9-87; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 310

Privacy Act Regulations

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations implementing the Privacy Act of 1974 so that appeals of adverse agency determinations on requests for access to or amendment of records will be considered by the FDIC's General Counsel (or designee). In addition, the FDIC is removing its "Legal Compliance and Enforcement Records" system from the list of systems of records exempt by regulation from certain provisions of the Privacy Act because the system itself has become obsolete and is being withdrawn elsewhere in this issue of the **Federal Register**. Finally, the FDIC is retitling the heading of Part 310 to read "Privacy Act Regulations" in order to provide a better description of the contents of the part.

DATE: Effective September 10, 1987.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Assistant Executive Secretary, FDIC, 550 17th Street NW., Washington, DC 20429, telephone (202) 898-3811.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a) provides certain rights of access to or amendment of records pertaining to an individual maintained in a system of records. The FDIC's regulations implementing the Privacy Act provide, among other things, that an individual may appeal a record system manager's denial of a request for access to or amendment of his or her own records to the FDIC's Board of Directors (12 CFR 310.9). The FDIC's Board of Directors is amending its Privacy Act regulations to delegate to the FDIC's General Counsel (or designee) its authority to make determinations on appeals. The amendment will provide administrative efficiency in the processing of such appeals as well as consistency with the appeals procedure the FDIC follows under the Freedom of Information Act ("FOIA") (5 U.S.C. 552). Under the FDIC's existing FOIA regulations, appeals are made to the General Counsel (or designee) (12 CFR 309.5(d)).

The FDIC is also making a technical change to 12 CFR 310.13. Elsewhere in this issue of the **Federal Register**, the

FDIC is providing notice that it is withdrawing an obsolete system of records—the Legal Compliance and Enforcement Records system. The system is currently listed in 12 CFR 310.13(a) as a system exempt from certain provisions of the Privacy Act. Because the system is being withdrawn, reference to it in § 310.13(a) as an exempt system is being deleted. Finally, the FDIC is changing the heading of Part 310 to "Privacy Act Regulations" to provide a better description of the contents of the part.

The designation of the General Counsel (or designee) as the party to decide Privacy Act appeals does not alter any rights or obligations of the appellant and relates solely to internal FDIC procedures. The removal of an obsolete system from mention as an exempt system and the revision of the heading of Part 310 are simply "housekeeping" matters. The amendments are, therefore, being published in final form without opportunity for public comment on the basis of the above under authority of section 553(b)(A) of the Administrative Procedure Act, which exempts from required publication for comment interpretive rules, general statements of policy, and rules of agency practice and procedure, and are being made immediately effective inasmuch as the requirement found in section 553(d) of the Administrative Procedure Act that substantive rules be published not less than 30 days prior to their effective date is inapplicable. As these amendments neither alter any existing nor create any new recordkeeping or reporting requirements, the Paperwork Reduction Act is inapplicable. Finally, the requirements of the Regulatory Flexibility Act are inapplicable as the amendments are not subject to required public comment under the Administrative Procedure Act.

List of Subjects in 12 CFR 310

Privacy.

For the foregoing reasons, 12 CFR Part 310 is amended as follows:

PART 310—PRIVACY ACT REGULATIONS

1. The heading to Part 310 is revised to read as set forth above.

2. The authority citation for Part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

3. Section 310.9 is revised to read as follows:

§ 310.9 Appeal of adverse initial agency determination on access or amendment.

(a) A system manager's denial of an individual's request for access to or amendment of a record pertaining to him/her may be appealed in writing to the Corporation's General Counsel (or designee) within 30 business days following receipt of notification of the denial. Such an appeal should be addressed to the Office of the Executive Secretary, FDIC, 550 17th Street NW., Washington, DC 20429, and contain all the information specified for requests for access in § 310.3 or for initial requests to amend in § 310.7, as well as any other additional information the individual deems relevant for the consideration by the General Counsel (or designee) of the appeal.

(b) The General Counsel (or designee) will normally make a final determination with respect to an appeal made under this part within 30 business days following receipt by the Office of the Executive Secretary of the appeal. The General Counsel (or designee) may, however, extend this 30-day time period for good cause. Where such an extension is required, the individual making the appeal will be notified of the reason for the extension and the expected date upon which a final decision will be given.

(c) If the General Counsel (or designee) affirms the initial denial of a request for access or to amend, he or she will inform the individual affected of the decision, the reason therefor, and the right of judicial review of the decision. In addition, as pertains to a request for amendment, the individual may at that point submit to the Corporation a concise statement setting forth his or her reasons for disagreeing with the Corporation's refusal to amend.

(d) The General Counsel (or designee) may on his or her own motion refer an appeal to the Board of Directors for a determination, and the Board of Directors on its own motion may consider an appeal.

§ 310.13 [Amended]

4. Paragraph (a) of § 310.13 is amended by removing the word "systems" and adding, in its place, the word "system", and by removing the phrase " '30–64–0011'—Legal compliance and enforcement records."

By order of the Board of Directors.

Dated at Washington, DC, this 1st day of September 1987.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–20772 Filed 9–9–87; 8:45 am]

BILLING CODE 6714–01–M

12 CFR Part 346

Foreign Banks, U.S. Branches; African Development Bank Obligations Pledged as Collateral

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulations governing FDIC–insured United States branches of foreign banks to permit those branches to pledge obligations of the African Development Banks as collateral to meet FDIC deposit insurance requirements. In the event the FDIC is required to pay the insured deposits of an insured United States branch of a foreign bank, the pledged assets would become the property of the FDIC to be used to the extent necessary to protect the FDIC's deposit insurance fund. As a result of this amendment, African Development Bank obligations would join the obligations of three other multilateral development banks (the Asian Development Bank, the Inter-American Development Bank, and the International Bank for Reconstruction and Development) as assets eligible to be pledged by United States branches of foreign banks.

EFFECTIVE DATE: This amendment becomes effective on September 10, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph Duffy, Senior Financial Analyst, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 Seventeenth Street, NW., Washington, DC 20429. Telephone: (202) 898–6821.

SUPPLEMENTARY INFORMATION:

Consideration of this amendment arose after a rulemaking petition requesting this change was submitted on behalf of the African Development Bank.

Section 346.19 of the FDIC's regulations (12 CFR 346.19) requires insured domestic branches of foreign banks to pledge assets for the benefit of the FDIC in an amount equal to five percent of the insured branch's liabilities. These assets are to be used to protect the deposit insurance fund in the event the FDIC becomes obligated to pay the insured deposits of the branch. The intent of this requirement is to ensure that the assets pledged to the benefit of the FDIC are of high quality and marketability so that they may be easily converted to cash in the event the FDIC is obligated to satisfy the claims of insured depositors.

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Section 346.19(d) lists assets that the FDIC has determined to be eligible for pledging purposes. More specifically, paragraph (d)(6) provides that obligations of the Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development (World Bank) are acceptable for pledging purposes. In drawing up the list of eligible investments, the drafters of the regulation consulted 12 U.S.C. 24, which details securities eligible for investment by national banks and state-chartered banks that are members of the Federal Reserve System. The three multilateral development banks currently mentioned in § 346.19(d)(6) are specifically cited in 12 U.S.C. 24(7) as eligible investments by national and state member banks. However, when Part 346 was promulgated, membership in the African Development Bank was limited to African states and the African Development Bank issued no debt obligations in the United States. Therefore, obligations of the African Development Bank were not included in the approved list for purposes of either Part 346 or 12 U.S.C. 24(7).

Since that time, however, the African Development Bank has been added to the list in 12 U.S.C. 24(7), and its membership has been expanded to include non-regional members. Current membership consists of 75 countries, of which 25 are non-regional countries, including the United States. In addition, it has been determined that the African Development Bank enjoys a legal status virtually identical to that of the three other multilateral development banks listed in § 346.19(d)(6).

Based on an analysis of the African Development Bank's financial condition and other pertinent information, the FDIC believes that the obligations issued by the African Development Bank offer sufficient quality and marketability to warrant inclusion in the list of eligible investments for purposes of pledging under Part 346.

Pursuant to 5 U.S.C. 553(b)(B), the Board of Directors finds that good cause exists for dispensing with notice and public procedure. First, the Board finds that notice and comment are unnecessary because the amendment is minor and merely technical with respect to the banking industry and the public at large, and, second, notice of and comment on this amendment would be duplicative of past proceedings. Accordingly, the amendment is being published in final form without opportunity for public comment. Thus, the requirements of the Regulatory Flexibility Act are inapplicable, since the amendment is not subject to required public comment. See 5 U.S.C. 601.

Furthermore, the Board finds that good cause exists to dispense with a thirty day delayed effective date. See 5 U.S.C. 553(d)(3). The waiting period is waived because, as mentioned above, the amendment is minor and merely technical. As a consequence, this amendment will become effective upon publication.

Finally, as these amendments do not entail the creation of any new recordkeeping or reporting requirements, the Paperwork Reduction Act is inapplicable. See 44 U.S.C. 3501.

List of Subjects in 12 CFR Part 346

Bank, Banking, Federal Deposit Insurance Corporation, Foreign Banks, Insured Branches, Pledges.

For the reasons set out above, Part 346 of Title 12 of the Code of Federal Regulations is amended as set forth below.

PART 346—FOREIGN BANKS

1. The authority citation for Part 346 continues to read as follows:

Authority: Secs. 5, 6, 13, Pub. L. 95–369, 92 Stat. 613, 614, 624 (12 U.S.C. 3103, 3104, 3108); Secs. 5, 7, 9, 10, Pub. L. 797, 64 Stat. 876, 877, 881, 882 (12 U.S.C. 1815, 1817, 1819, 1820).

2. Paragraph (d)(6) of § 346.19 is revised as follows:

§ 346.19 Pledge of assets.

* * * * *

(d) * * *

(6) Obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development; or

* * * * *

By Order of the Board of Directors.

Dated at Washington, DC, this 1st day of September, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–20774 Filed 9–9–87; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–AWP–23]

Amendment to Various Transition Areas; California; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Correction to final rule.

SUMMARY: An error was noted in the final rule amending various transition areas in California that was published in the **Federal Register** on August 4, 1987, (52 FR 28818) (Airspace Docket No. 87–AWP–23). The amendment to the San Francisco, CA., transition area should not have been included in this final rule. This action corrects that error.

EFFECTIVE DATE: 0901 U.T.C., September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297–1648.

SUPPLEMENTARY INFORMATION:

History

Federal Register document (87–17590), published on August 4, 1987 amended various transition areas in California. An error was discovered in the final rule. The amendment to the San Francisco, CA., transition area should not have been included in this final rule. This action corrects that error.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 77

Control zone, Transition area.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, Federal Register Document (87-17590), as published in the Federal Register on August 4, 1987, is corrected as follows:

§ 71.181 [Amended]

Remove the § 71.181 amendment to the San Francisco, CA., transition area.

Issued in Los Angeles, California, on August 24, 1987.

James A. Holweger,

Assistant Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 87-20747 Filed 9-9-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 372

[Docket No. 60972-7163]

District Offices; Removal of Amendment Authority

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Presently under 15 CFR 372.11(g), certain types of requests to amend individual validated licenses may be submitted to the Department of Commerce District Offices. This rule removes the authority of the District Offices to authorize these requests. This action is being taken to implement the recommendation of the Department's Inspector General (IG). An IG audit of District Office functions determined that the Under Secretary for International Trade should formally withdraw all authority from the International Trade Administration's District Offices to process and approve applications for amendments to export licenses and require that such processing be done only by Export Administration.

The audit revealed that the District Offices do not have access to all the basic information needed to make a thorough review. This missing information includes the original license, subsequent amendments approved by Export Administration, and the screening list that identifies the names of firms and individuals requiring a higher level of scrutiny during the application review process. Also, the audit disclosed that there were delays in sending the information on amendments approved by the District Offices back to Washington, DC. Centralizing the function in Washington, DC, will result in uniform processing of amendment requests and will keep International Trade Administration's computerized data base on licenses current.

EFFECTIVE DATE: September 10, 1987.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Regulations Branch, Export Administration, Department of Commerce, Washington, DC 20230 (Telephone: (202) 377-2440).

SUPPLEMENTARY INFORMATION:

Presently, District Offices are authorized to take on requests to amend licenses involving correction of obvious errors, changes in quantity or dollar value as a result of factors beyond the control of the licensee, and changes in or addition of intermediate consignees. On November 5, 1986, an interim rule was published in the Federal Register that established 24-month validity periods for individual validated export licenses and reexport authorizations (51 FR 40156). That rule also requested comments on a proposal under consideration to remove the authority of the District Offices to take action on amendment requests. Two comments on the removal of District Office amendment authority were received in response to that request, and reaction to the proposal was mixed. One commenter favored the proposal based on experiences with an understaffed District Office without "sufficient expertise in the Export Administration Regulations to act expeditiously on amendment requests." A commenter with an opposing view stated that "reducing the authority of the District Offices would be counterproductive and against the best interests of the national economy." After consideration of these two comments, the International Trade Administration has decided to follow the recommendation of the IG.

The public record of the comments is maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4104, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Information about the inspection and copying of the public comments may be obtained from Patricia Mann, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Nevertheless, in this instance, such an opportunity was provided, and this rule is now being issued in final form. As with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection was approved by the Office of Management and Budget under control number 0625-0003.

List of Subjects in 15 CFR Part 372

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 372 of the Export Administration Regulations (15 CFR Parts 368 through 399) is amended as follows:

1. The authority citation for 15 CFR Part 372 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. In § 372.11, paragraph (g) and the heading to paragraph (i) are revised to read as set forth below; the second

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sentence in paragraph (h)(1), paragraph (i)(1) heading, and all of paragraph (i)(2) are removed; and paragraphs (i)(1)(i), (i)(1)(ii), and (i)(1)(iii) are redesignated as paragraphs (i)(1), (i)(2), and (i)(3).

§ 372.11 Amending export licenses.

* * * * *

(g) *Where to file*—(1) *Addresses.*—(i) *Submission by mail.* Mail amendments and related documents to: Office of Export Licensing, P.O. Box 273, Washington, DC 20044.

(ii) *Hand-carried submissions.* Hand carry amendments and related documents in an envelope with the notation "Case Amendment" on the envelope to: Exporter Assistance Staff, Room 1099, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

(2) *Duplicate request covering same license.* A request for amendment shall not be submitted to the Office of Export Licensing if an identical request to amend the same license is already pending with the Office of Export Licensing.

* * * * *

(i) *Action on amendment request by the Office of Export Licensing.* * * *

* * * * *

Dated: September 4, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-20768 Filed 9-9-87; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Parts 374 and 375

[Docket No. 70860-7160]

Establishment of Import Certificate and Delivery Verification Procedure for Singapore

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration requires a foreign importer to file an Import Certificate (IC) in support of certain individual export license applications. The IC is required in support of those applications to export certain commodities controlled for national security reasons to specified destinations. By issuing an IC, the government of a country confirms that it has legal control over the disposal of those commodities covered by the IC that are being exported to that country.

Export Administration also requires a Delivery Verification Certificate (DV) on a selective basis as described in 15 CFR 375.3(i). By issuing a DV, the government of a country to which an export has been made confirms that the exported commodities have either entered the export jurisdiction of that country or are otherwise accounted for by the importer.

The United States and Singapore have agreed to establish an IC/DV procedure for U.S. exports of certain strategic goods to Singapore. These goods are identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List, a listing of those items subject to Department of Commerce export controls. The government of Singapore has combined the IC/DV and calls it the Import and Delivery Verification Certificate.

This rule amends the Export Administration Regulations by adding Singapore to a list of countries that issue Import Certificates and by adding the name and address of the office in Singapore that administers the IC/DV system.

DATES: This rule is effective September 10, 1987.

However, the requirement for submitting the IC for Singapore with export license applications will take effect on December 9, 1987. Before that date, applications will be accepted if supported by either a Form ITA-629P or the IC.

FOR FURTHER INFORMATION CONTACT: Robert Spruell, Country Policy, Export Administration, Department of Commerce, Washington, DC 20230 (Telephone (202) 377-3205).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final regulatory impact analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final regulatory flexibility analysis has to be or will be prepared.

4. The Import and Delivery Verification Certificate requirements set forth in Part 375 supersedes the requirement for Form ITA-629P, Statement by Ultimate Consignee and Purchaser (approved by the Office of Management and Budget under control number 0625-0136) to accompany license applications for exports and reexports to Singapore. The Certificate is issued by the Government of Singapore and does not constitute a collection of information requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 15 CFR Parts 374 and 375

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 374 and 375 of the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

1. The authority citations for 15 CFR Parts 374 and 375 continue to read as follows:

Authority: Pub. L. 96-72, 93 Stat 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 374—[AMENDED]

§ 374.3 [Amended]

2. In § 374.3, paragraph (c)(1)(ii) is amended by adding the words ", a Singapore Import and Delivery Verification Certificate" between "a People's Republic of China End-User Certificate" and "or an Indian Import License" in the second sentence.

PART 375—[AMENDED]

§ 375.1 [Amended]

3. The table in § 375.1 is amended by adding "Singapore," between "Portugal," and "Spain," under the

column titled "and the country of destination is:".

§ 375.3 [Amended]

4. The list of "Destinations" in paragraph (b) of § 375.3 is amended by adding "Singapore" between "Portugal" and "Spain".

5. The first sentence in § 375.3(c)(1) is amended by adding the words "Singapore Import and Delivery Verification Certificate," before the words "and 'Landing Certificate' ".

Supplement No. 1—[Amended]

6. Supplement No. 1 to Part 375 is amended by inserting the following information between the information on "Portugal" and that on "Spain":

A. Under the column heading "Country", insert "Singapore";

B. Under the column heading "IC/DV Authorities", insert "Controller of Imports and Exports, Trade Development Board, World Trade Centre, 1 Maritime Square, Telok Blangah Road, Singapore"; and

C. Under the column heading "System administered", insert "IC/DV".

Dated: September 4, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-20770 Filed 9-9-87; 8:45 am]

BILLING CODE 3510-DT-M

15 CFR Part 399

[Docket No. 70757-7157]

Induction Furnaces; Removal of Unilateral Control

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which specifies those items controlled for export by the Department of Commerce. On October 9, 1986, Export Administration published a final rule (51 FR 36212) amending Export Control Commodity Number (ECCN) 1203A on the CCL. Specifically, ECCN 1203A was amended to control vacuum induction furnaces incorporating susceptors designed to operate at temperatures in excess of 2,273K and having a working diameter of greater than five inches. Inclusion of this coverage in ECCN 1203A renders export controls in effect under ECCN 4203B unnecessary. This rule removes that entry.

EFFECTIVE DATE: September 10, 1987.

FOR FURTHER INFORMATION CONTACT: John Black or Patti Muldonian, Regulations Branch, Export Administration, Department of Commerce, Washington, DC 20230. Telephone: (202) 377-2440.

For questions of a technical nature regarding induction furnaces, contact Surendra Dhir, Capital Goods and Production Materials Technology Center, Export Administration, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-8550.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final regulatory impact analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final regulatory flexibility analysis has to be or will be prepared.

4. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 et seq.); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 et seq.); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1—[Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power-Generating Equipment), ECCN 4203B is removed.

Dated: September 4, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-20769 Filed 9-9-87; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3109]

Prohibited Trade Practices and Affirmative Corrective Actions; Allied Corp.

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified a 1983 consent order (48 FR 26597) by requiring that, until 1993 and with certain exceptions, the successors to Allied must obtain prior FTC approval before acquiring any interests or assets of a high-purity acid maker.

DATES: Consent Order issued May 17, 1983. Modified Order issued Mar. 18, 1987.

FOR FURTHER INFORMATION CONTACT: FTC/S-2115, Elliot Feinberg, Washington, DC 20580. (202) 326-2687.

SUPPLEMENTARY INFORMATION: In the Matter of Allied Corporation. The prohibited trade practices and/or

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corrective actions, as set forth at 48 FR 26597, remain unchanged.

List of Subjects in 16 CFR Part 13

High-purity acids, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; Sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Order Reopening the Proceeding and Modifying Cease and Desist Order

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, and Andrew J. Strenio, Jr.

In the Matter of Allied Corporation, a corporation.

On July 29, 1986, Allied Corporation ("Allied") filed a document entitled "Petition By Allied Corporation Pursuant to section 5(b) of the FTCA and Rule 2.51 To Reopen and Terminate Paragraph III of the Consent Order Entered in Docket No. C-3109." The petition requests that the Commission reopen the order and terminate Paragraphs III and IV. In the alternative, Allied requests that the Commission relieve Allied of its compliance obligations under those paragraphs. Paragraph III prohibits Allied from acquiring for ten years without prior Commission approval "any assets of or any stock interest in any company engaged in the manufacture of high-purity acid in the United States * * *." Paragraph IV requires Allied to file annual reports respecting its compliance with Paragraph III. The preamble to the order defines "respondent" to mean "Allied Corporation, its subsidiaries, affiliates, divisions, successors, and assigns."

On September 19, 1985, Allied merged with The Signal Companies, Inc. ("Signal"). They formed a new parent corporation, Allied Signal Inc. ("Allied-Signal"), with Allied becoming a wholly owned subsidiary of Allied-Signal. In December 1985, Allied-Signal restructured itself by forming a new corporation containing thirty-five former businesses of Allied or Signal. The new corporation was named The Henley Group, Inc. and included the entire high-purity acid business of Allied. On May 28, 1986, Allied-Signal spun-off Henley. Seventy percent of the equity of Henley was distributed to the shareholders of Allied-Signal as a stock dividend ("Distribution"). The remaining thirty percent was retained by Allied-Signal. The formation agreement between Allied-Signal and Henley dated February 26, 1986, included a schedule of enumerated liabilities which stated that Henley may be liable for the Commission's order in this matter. On January 28, 1987, Allied-Signal sold nearly all of its remaining Henley stock to Henley.

Allied requests that the Commission terminate Paragraphs III and IV on the basis of changed conditions of fact and the public interest. In the alternative, it requests that Allied be relieved of its obligations under those paragraphs. Allied states that Allied-Signal has divested itself of all of the businesses and assets that gave rise to the order and, therefore, there are no longer competitive concerns that would justify the need for prior Commission approval for any acquisition that Allied may wish to make of a high-purity acid business.

After reviewing Allied's petition and other information, including a December 18, 1986, letter from Henley, the Commission has concluded that termination of Paragraphs III and IV is not warranted. The creation of Henley and transfer to it of Allied's high-purity acid business is not a changed condition of fact warranting such action. The business appears to be continuing in an essentially identical form, and there is consequently reason to believe that Henley may be a successor to Allied for purposes of the order. *See Golden State Bottling Co., Inc. v. NLRB*, 414 U.S. 168, 171 n.2, 181, 182 n.5 (1973).

In view of the foregoing, the Commission has concluded that changed conditions of fact and the public interest warrant a modification to the order relieving Allied of its compliance obligations under Paragraphs III and IV. Allied is no longer engaged in the manufacture and sale of high-purity acids as a result of the transfer of that business to Henley. Furthermore, Allied states that it does not intend now to reenter the market.

Accordingly, it is hereby ordered that the proceeding be, and it hereby is, reopened and the order modified to relieve Allied of its compliance obligations under Paragraph III and IV.

By direction of the Commission.

Emily H. Rock

Secretary

[FR Doc. 87-20758 Filed 9-9-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[Att'y Gen. Order No. 1215-87]

List of Field Offices

AGENCY: Antitrust Division, Department of Justice.

ACTION: Final rule.

SUMMARY: Pursuant to 5 U.S.C. 552(a)(1), each agency is required to publish a list of its field offices. The purpose of this order is to comply with these requirements of the Freedom of Information Act so that the public can be better served.

EFFECTIVE DATE: September 10, 1987.

FOR FURTHER INFORMATION CONTACT: Leo D. Neshkes; FOIA/PA Control Officer; Antitrust Division, Room 3232; 10th & Pennsylvania Avenue, NW., Washington, DC 20530; (202) 633-2692. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant impact on a substantial number of small entities. It is not a major rule within the meaning of Exec. Order No. 12291.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure.

By virtue of the authority vested in me by 28 U.S.C. 509 and 5 U.S.C. 301 and 552, it is hereby ordered as follows:

PART 16—[AMENDED]

1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 9701.

2. Appendix I to Part 16 is amended by adding the following offices at the end of the list:

Field Offices

Antitrust Division:

Richard B. Russell Building, 75 Spring Street, SW., Suite 1394, Atlanta, Georgia 30303, (404) 331-7100

John C. Kluczynski Building, 230 South Dearborn Street, Room 3820, Chicago, Illinois 60604, (312) 353-7530

995 Celebrezze Federal Building, 1240 East 9th Street, Cleveland, Ohio 44199-2089, (216) 522-4070

Earle Cabell Federal Building, 1100 Commerce Street, Room 8C6, Dallas, Texas 75242, (214) 767-8051

26 Federal Plaza, Room 3630, New York, New York 10278-0096, (212) 264-0390

11400 U.S. Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106, (215) 597-7405

450 Golden Gate Avenue, Box 36046, San Francisco, California 94102, (415) 556-6300

Date: August 28, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87-20716 Filed 9-9-87; 8:45 am]

BILLING CODE 4410-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Designation

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule; amendment.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges, within their jurisdictions, filed with the Commission. Publication of this amendment effectuates the designation of the Lee County (Florida) Department of Equal Opportunity as a 706 Agency.

EFFECTIVE DATE: September 10, 1987.

FOR FURTHER INFORMATION CONTACT: Beatrice Rivers, Equal Employment Opportunity Commission, Office of Program Operations, Systemic Investigations and Individual Compliance Programs, 2401 E Street NW., Washington, DC, 20507, telephone (202) 634–6806.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

PART 1601—[AMENDED]

1. The authority citation for Part 1601 is revised to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17.

§ 1601.74 [Amended]

Accordingly, 29 CFR Part 1601 is amended in § 1601.74(a) by adding in alphabetical order, the Lee County (Florida) Department of Equal Opportunity.

Signed at Washington, DC, this 26th day of August 1987.

For the Commission.

James H. Troy,

Director, Office of Program Operations.

[FR Doc. 87–20616 Filed 9–9–87; 8:45 am]

BILLING CODE 6570–06–M

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29 CFR Part 1601

706 Agencies; Designation

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule; amendment.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges, within their jurisdictions, filed with the Commission. Publication of this amendment effectuates the designation of the Anderson, Indiana Human Relations Commission as a 706 Agency.

EFFECTIVE DATE: September 10, 1987.

FOR FURTHER INFORMATION CONTACT: Beatrice Rivers, Equal Employment Opportunity Commission, Office of Program Operations, Systemic Investigations and Individual Compliance Programs, 2401 E Street, NW., Washington, DC 20507, telephone (202) 634–6806.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

1. The authority citation for Part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17.

PART 1601—[AMENDED]

§ 1601.74 [Amended]

Accordingly, 29 CFR Part 1601 is amended in § 1601.74(a) by adding in alphabetical order, the Anderson, Indiana Human Relations Commission.

Signed at Washington, DC, this 24th day of August, 1987.

For the Commission.

James H. Troy,

Director, Office of Program Operations.

[FR Doc. 87–20548 Filed 9–9–87; 8:45 am]

BILLING CODE 6570–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 59

[DOD Directive 7330.1]

Voluntary Military Pay Allotments

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Final rule.

SUMMARY: This rule updates guidance on voluntary military pay allotments from the pay and allowances of active duty and retired service members.

DATES: Effective date: September 3, 1987. Comments must be received 30 days from publication.

FOR FURTHER INFORMATION CONTACT: Mr. James T. Jasinski, Office of the Deputy Assistant Secretary of Defense (Management Systems), Washington, DC 20301–1100. Telephone 202–697–0536.

SUPPLEMENTARY INFORMATION: The prior publication of this part was made on April 8, 1982 (47 FR 15124). Since the changes in this part are administrative in nature, public comments were not sought prior to release of the final rule. Written comments may be submitted to the addressee above. DOD reserves the right to acknowledge or to respond to individual comments directly or address all comments through the **Federal Register.**

Executive Order 12291

DOD has determined that this rule is not a major rule for the purpose of E.O. 12291, because it is not likely to have an annual effect on the economy of $100 million or more, and therefore, does not require a regulatory impact on analysis.

Paperwork Reduction Act

This rule imposes no information requirements.

Regulatory Flexibility Act of 1980

I certify that this rule shall be exempt from the requirements under 5 U.S.C. 601–612. In addition, the rule does not have a significant economic effect on small entities as defined in the Regulatory Flexibility Act.

Copies of this Directive and other DOD publications referenced in this Directive may be obtained from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

List of Subjects in 32 CFR Part 59

Military personnel, Wages.

Accordingly, 32 CFR Part 59 is revised to read as follows:

PART 59—VOLUNTARY MILITARY PAY ALLOTMENTS

Sec.

59.1 Purpose.
59.2 Applicability.
59.3 Policy.
59.4 Responsibilities.

Authority: 37 U.S.C. Chapter 13.

§ 59.1 Purpose.

This part updates the policies that implement Title 37 of United States Code, Chapter 13 and govern voluntary allotments of pay and allowances for active and retired members.

§ 59.2 Applicability.

This part applies to the Office of the Secretary of Defense and the Military

Departments. The term "Military Service," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 59.3 Policy.

(a) *General.* (1) The voluntary allotment system is provided primarily as a means to assist military members in accommodating their personal and family financial responsibilities to the exigencies of military service. It is a convenience and privilege not to be exploited or abused. To avoid unjustifiable expense to the Government, its use shall be limited to the purposes outlined in the following paragraphs.

(2) All existing approved registered allotments of military pay and allowances for active duty and retired members that were authorized previously by this part at the time registered may be continued as approved allotments. However, if any such allotments are discontinued, they may not be reestablished except as a new allotment in accordance with the requirements of this part. Any change in the allotment that is initiated by the service member is considered a discontinuance, except those that are beyond the control of the service member.

(3) Changes beyond the control of the service member are changes that are of an administrative nature dictated by events incidental to the purpose of the allotment. Examples of administrative changes that are beyond the control of the service member are: name and address changes by the payee or amount changes due to contractual obligation existing at the time the allotment was executed, such as a mortgage payment change because of a variable rate mortgage or changing escrow requirements. Although the changes given above do not constitute a discontinuance, such administrative changes that adjust the amount of the allotment shall be accepted only when communicated by the service member on a new allotment request. Discontinuance occurs with any mortgage refinancing action.

(4) A change in allotment initiated by an organizational allottee may be accepted when the change is documented properly, is of an administrative nature, and does not increase the amount allotted.

(b) *Active Military Service.* Voluntary allotments of military pay and allowances of service members in active military service shall be limited to the following:

(1) The purchase of U.S. savings bonds.

(2) The payment of premiums for insurance on the life of the allotter, including U.S. Government Life Insurance, National Service Life Insurance, Veterans Group Life Insurance, Navy Mutual Aid Insurance, Army Mutual Aid Insurance, and commercial life insurance.

(i) Allotments for insurance on the lives of a spouse or children.

(ii) Allotments for health, accident, or hospitalization insurance or other contracts that, as a secondary or incidental feature, include insurance on the life of the service member are not authorized.

(iii) Requests to initiate commercial life insurance allotments shall be processed only after compliance with requirements of 32 CFR Part 276.

(3) The repayment of loans to the Navy Relief Society, Army Emergency Relief, Air Force Aid Society, and American Red Cross.

(4) Allotments to a spouse, former spouses, other dependents, and relatives who are not designated legally as dependents. The payment of such an allotment to a financial institution or association shall not deprive a service member of the use of the allotments authorized by § 59.3(b)(6).

(5) The voluntary liquidation of indebtedness to the United States.

(i) This includes indebtedness incurred by reason of defaulted notes insured by the Federal Housing Administration or guaranteed by the Veterans Administration (VA); payment of amounts due under the Retired Serviceman's Family Protection Plan, in the case of retired service members serving on active duty; payment of delinquent Federal income taxes; and other indebtedness to any department or agency of the U.S. Government, except to the department paying the service member.

(ii) This includes repayment of debts owed to an organization for funds administered on behalf of the U.S. Government and any such debts assigned to a collection agency.

(6) The payment to a financial organization for credit to an account of the service member. A financial organization is any bank, savings bank, savings and loan association or similar institution, or Federal or state chartered credit union. Monies thus credited to the service member's account may then be used for any purpose in accordance with the desires and direction of the service member. No more than two such allotments under this paragraph shall be allowed any service member at any one time.

(7) Repayment of loans obtained for the purchase of a home, including a mobile home or house trailer used as a residence by the service member. This does not authorize repayment of loans for business purposes or for additions or improvements to homes, mobile homes, or house trailers. Allotments authorized herein are in addition to those authorized under § 59.3(b)(6). Only one such allotment shall be allowed any service member at any one time.

(8) Charitable contributions to the following:

(i) A Combined Federal Campaign, in accordance with DOD Directive 5035.1, "Fund-Raising Within the Department of Defense," April 7, 1978, and DOD Instruction 5035.5, "DoD Combined Federal Campaign-Overseas Areas (CFC–OA)," August 23, 1978.

(ii) Army Emergency Relief, Navy Relief Society, or affiliates of the Air Force Assistance Fund.

(9) Deposits to the account of a service member participating in the Uniformed Services Savings Deposit Program under 10 U.S.C. 1035. This program is limited to service members in a missing status as a result of the Vietnam conflict.

(10) Allotments to the VA for deposit to the Post-Vietnam Era Veterans Education Account within the periodic and cumulative depository limitations specified in DOD Directive 1322.8, "Voluntary Educational Programs for Military Personnel," July 23, 1987. Once authorized by the service member, the allotments must run a minimum of 12 consecutive months, unless the service member suspends participation or disenrolls from the program because of personal hardship

(11) Payment of delinquent state or local income or employment taxes.

(12) Dental and health insurance allotments for the benefit of the families of service members.

(c) *Retired Military Personnel.* (1) Voluntary allotments be service members receiving retired or retainer pay shall be limited to the following:

(i) Purchase of U.S. savings bonds.

(ii) Payment of premiums for insurance on the life of the service member including U.S. Government Life Insurance, National Service Life Insurance, Veterans Group Life Insurance, Navy Mutual Aid Insurance, Army Mutual Aid Insurance, and commercial life insurance, subject to the limitations prescribed in § 59.3(b)(2) (i) and (ii).

(iii) Voluntary liquidation of indebtedness to the United States, subject to the limitations prescribed in § 59.3(b)(5)—

(iv) Allotments to a spouse, former spouse, and/or children of the retired

service member having a permanent residence other than that of the retired service member.

(v) Charitable contributions to the Army Emergency Relief, Navy Relief Society, or affiliates of the Air Force Assistance Fund.

(vi) The repayment of loans to the Army Emergency Relief, Navy Relief Society, Air Force Aid Society, or American Red Cross.

(2) To assist personnel in the transition from active duty to retired status, all allotments authorized for active duty service members may be continued, except those allotments in § 59.3(b)(8)(i), (9) and (10). However, if an allotment continued from active duty, but not authorized by § 59.3(c)(1) is discontinued by the retiree, such an allotment may not be reestablished.

(d) *Exclusions and Restrictions.* (1) The amount of pay and allowances that may be allotted shall exclude amounts required to be withheld for taxes, liquidations of indebtedness determined under applicable provisions of law to be chargeable against the service member's pay account, or required premiums on Servicemen's Group Life Insurance.

(2) The total amount that may be allotted shall comply with the restrictions in the DOD Military Pay and Allowances Entitlements Manual and DOD 1340.12–M, "DOD Military Retired Pay Manual."

(e) *Control and Use of Forms.* (1) Allotment requests shall be accepted only on authorized allotment forms, unless otherwise provided in this part. Supplies of allotment forms shall not be made available to non-Federal organizations, except that each Military Department may authorize issuance of forms to the Army Emergency Relief, Navy Relief Society, the Air Force Aid Society, and American Red Cross.

(2) Active duty enlisted service members shall sign the allotment authorization form in the presence of the service member's commanding officer, personnel or disbursing officer, or one of their representative who shall witness the signature. The Military Departments may waive this requirement for senior enlisted service members and loan repayment allotments payable to the Army Emergency Relief, Navy Relief Society, the Air Force Aid Society, and American Red Cross.

(3) Charitable contribution allotment requests by enlisted members may be accepted without a witnessing official, when submitted on contribution forms in accordance with DOD Directive 5035.1 and DOD Instruction 5035.5.

(4) Retired military personnel need not submit allotment requests on the prescribed forms. A signed personal letter may be used to support an allotment request, change, or cancellation by retired military members as long as all required information is provided.

§ 59.4 Responsibilities.

(a) The Assistant Secretary of Defense (Comptroller) shall exercise primary management responsibility for the voluntary military pay allotment program and provide assistance to the Military Departments in the form of instructions, requirements, reviews, and other guidance.

(b) The Secretaries of the Military Departments shall ensure that this part is implemented by the Military Services concerned.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 4, 1987.

[FR Doc. 87–20838 Filed 9–9–87; 8:45 am]

BILLING CODE 3810–01–M

VETERANS ADMINISTRATION

38 CFR Part 36

Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is increasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also increased. These increases are necessary because previous rates were not competitive enough to induce lenders to make guaranteed or insured home loans without substantial discounts, or to make manufactured home loans. The increase in the interest rates will assure a continuing supply of funds for home mortgages, home improvement and manufactured home loans.

EFFECTIVE DATE: September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202–233–3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), Title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general increase in interest rates charged on conventional manufactured home loans, and the increase in other short-term and long-term interest rates—have shown that the manufactured home capital markets have become more restrictive. It is now necessary to increase the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans in order to assure an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), Title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and for loans for home improvement purposes. Recent market indicators—including the rate of discount charged by lenders on VA loans and the general increase in interest rates charged by lenders on conventional loans, have shown that the mortgage money market has become more restrictive. The maximum rates in effect for VA guaranteed home and condominium loans and those for energy conservation and home improvement purposes have not been sufficiently competitive to induce private sector lenders to make these types of VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program, it has been determined that an increase in the maximum permissible rates applicable to home and improvement loans is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to Chapter 37 of Title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 through 612.

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These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they do not come within the definition of a "major rule" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured, and direct home and condominium loans, loans for energy conservation and other home improvement purposes, and loans for manufactured home purposes would create an acute shortage of funds pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of Title 38, United States Code. The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These increases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c), and 36.4503(a), Title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured Homes, Veterans.

Approved: September 4, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 36, Loan Guaranty, is amended as follows:

PART 36—[AMENDED]

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date: (38 U.S.C. 1819(f)).

(1) Effective September 8, 1987, 13 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective September 8, 1987, 12½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) September 8, 1987, 12½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10½ per centum per annum, effective September 8, 1987, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 10 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10¾ per centum per annum, effective September 8, 1987, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 10¾ per centum per annum. (38 U.S.C. 1803(c)(1))

(c) Effective September 8, 1987, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 12 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 10½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 12 percent per annum. (38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

[FR Doc. 87-20864 Filed 9-9-87; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[OW-6-FRL-3257-9]

Ocean Dumping; Designation of Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates four existing dredged material disposal sites ("the Sabine-Neches sites") located in the Gulf of Mexico offshore of Texas Point and Louisiana Point for the continued disposal of dredged material removed from the Sabine-Neches Waterway. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of this material. This final site designation is for an indefinite period of time but is subject to continued monitoring in order to insure that unacceptable adverse environmental impacts do not occur.

DATE: This designation shall become effective October 13, 1987.

ADDRESSES: The file supporting this designation is available for public

inspection at the following locations: U.S. EPA, Region VI (6E–FF), 1445 Ross Avenue, 10th Floor, Dallas, Texas 72202–2733, Corps of Engineers, Galveston District, 444 Barracuda Avenue, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Norm Thomas (214) 655–2260 or (FTS) 255–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was extended on August 19, 1985 (50 FR 33338). That list established the four Sabine-Neches sites as interim sites.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA has prepared a Draft and Final Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Sabine-Neches, Texas Dredged Material Ocean Disposal Site Designation." On August 20, 1982, a notice of availability of the Draft EIS for public review and comment was published in the **Federal Register** (47 FR 36468). The public comment period on this Draft EIS closed October 4, 1982. The Agency received 11 comments on the Draft EIS and responded to them in the Final EIS. Editorial or factual corrections required by the comments were incorporated in the text and noted in the Agency's response. Comments which could not be appropriately treated as text changes were addressed point by point in the Final EIS, following the letters of comment. On April 1, 1983, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register** (48 FR 14037). The public comment period on the Final EIS closed on May 9, 1983. One comment was received on the Final EIS which favored final designation of the existing sites. The EIS is available for review at the addresses given above.

The action discussed in the EIS is designation for continuing use of ocean disposal sites for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The EIS discussed the need for the action and examined ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in a memorandum to the Record (March 18, 1987) by the Corps of Engineers. The nearest available land disposal area is 600 acres in size and is located 6 miles away from the shoreward end of the project and over 23 miles from the seaward end. Because of the high costs of transport as well as the limited capacity of the area, this alternative is not feasible. Also since the surrounding land areas are wetlands, development and use of a suitably sized replacement area would result in a significant loss of quality wetlands.

Three ocean disposal alternatives—a shallow water area (including the proposed sites), a mid-shelf area and a deepwater area—were evaluated. The mid-shelf area contained numerous fixed structures (e.g., oil platforms) presenting navigational hazards to the hopper dredge used and increasing the possibility of collisions and oil spills. Both the mid-shelf and deepwater areas involved increased transportation costs. Because of safety and economic disadvantages and due to a lack of environmental benefit, the mid-shelf area and the deepwater area were eliminated from further consideration.

The EIS evaluates the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

In accordance with the requirements of Section 7 of the Endangered Species Act, EPA requested a list of species that may be affected from the U.S. Fish and Wildlife (FWS) and the National Marine Fisheries Service (NMFS). The FWS documented that there were no endangered or threatened species in the project area under their jurisdiction. The NMFS provided a list of five species of sea turtles that may be affected by the proposed site designation. EPA prepared a biological assessment of the effects of disposal of dredged material on the green, hawksbill, loggerhead, leatherback, and Kemp's ridley sea turtles. Based on this assessment, EPA determined that the proposed action does not constitute an adverse effect on the five listed species.

EPA has completed coordination with the State of Louisiana, Department of Natural Resources concerning consistency with the Louisiana Coastal Resource Program. The State indicated by letter dated May 14, 1987, that the project was found to be consistent with their coastal zone program.

This final rulemaking notice serves the same purpose as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On June 11, 1987 (52 FR 22352), EPA proposed designation of these sites for the continuing disposal of dredged material from the Sabine-Neches Waterway. The public comment period on this proposed action closed July 27, 1987. Three comment letters were received on the proposed rule. A private citizen requested that no dumping of dredged material be allowed stating that ocean disposal would be harmful to shrimp reproduction and would interfere with fishing, shipping and recreation. The U.S. Department of Interior (DOI) expressed concern about impacts to fishery resources, including shrimp, from contaminated sediment and recommended a specific monitoring program be established for sites 3 and 4. Tenneco Oil Company provided information on oil production activities near disposal site 2 and requested that consideration be given to limiting disposal to the southern third of the site.

In response to each of these comments, EPA offers the following. Interference with shipping, fishing and recreation from dredged material disposal has been evaluated. EPA has concluded that site designation will not adversely affect the referenced uses. Regarding the concern for impacts to fishery resources, water, sediment and elutriate data as well as bioassays and

bioaccumulation assessments conducted to date at the disposal areas and in the channels indicate no adverse impacts to the aquatic environment from the dredging and disposal operations. Based on this historic data, EPA believes that an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, a monitoring program for all four sites is proposed. The program will consist of the following: (1) Assessment of channel sediment quality (i.e., sediment and elutriate chemistry and bioassays and bioaccumulation studies) to determine if polluted material will be discharged; (2) assessment of water column and sediment quality of the disposal sites (i.e., sediment and elutriate chemistry and grain-size analysis) to determine if the quality of water and sediment is deteriorating with time; (3) assessment of the health of the biological communities of the sites and down current from the sites; and (4) macrobenthic infauna sampling. The proposed monitoring program will be specified in a site management and monitoring plan to be developed between EPA and the Galveston District, Corps of Engineers. Tenneco's request for limiting disposal in site 2 will be considered in development of this plan.

All four sites are located along the west side of the Sabine Bank Channel and fairway in depths ranging from five to 13 meters. These sites receive dredged material from the channel, and the dredged material is dumped at the site closest to the point of dredging. All dredging is done by hopper dredge. Four sites are used in order to minimize the length of time the dredges are present in the shipping channel and the potential hazard to navigation.

Site 1 is located approximately 16 nautical miles from shore, is triangular in shape and occupies an area of approximately 2.4 square nautical miles. Water depths within the area average 12 meters. The corner coordinates are as follows: 29°28'03" N., 93°41'14" W.; 29°26'11" N., 93°41'14" W.; 29°26'11" N., 93°44'11" W.

Site 2 is located approximately 11.8 nautical miles from shore, is trapezoidal in shape and occupies an area of approximately 4.2 square nautical miles. Water depths within the area range from 9 to 13 meters. The corner coordinates are as follows: 29°30'41" N., 93°43'49" W.; 29°28'42" N., 93°41'33" W.; 29°28'42" N., 93°44'49" W.; 29°30'08" N., 93°46'27" W.

Site 3 is located approximately 6.8 nautical miles from shore, is pentagonal in shape and occupies an area of approximately 4.7 square nautical miles. Water depths within the area average 10 meters. The corner coordinates are as follows: 29°34'24" N., 93°48'13" W.; 29°32'47" N., 93°46'16" W.; 29°32'06" N., 93°46'29" W.; 29°31'42" N., 93°48'16" W.; 29°32'59" N., 93°49'48" W.

Site 4 is located approximately 2.7 nautical miles from shore, is hexagonal in shape and occupies an area of about 4.2 square nautical miles. Water depths within the area range from 5 to 9 meters. The corner coordinates are as follows: 29°38'09" N., 93°49'23" W.; 29°35'53" N., 93°48'18" W.; 29°35'06" N., 93°50'24" W.; 29°36'37" N., 93°51'09" W.; 29°37'00" N., 93°50'06" W.; 29°37'46" N., 93°50'26" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on the completed EIS process, that the four existing sites are acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing four sites has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the proposed sites are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* (40 CFR 228.6(a)(1))

Geographical positions, average water depths, and distance from the coast for each existing site are given above. Bottom topography within each existing site is flat with no unique features or relief. Each site varies only in distance from shore and depth.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2))

The sites are between the shrimp spawning grounds of the mid-shelf and the important nursery area of Sabine Lake and therefore could be passageways of commercially valuable species. However, the sites represent only a minor portion of the entire range of shrimp along the Gulf Coast. Many commercially and recreationally important species of fish also occur in this region. However, most recognized breeding and spawning grounds occur in the productive marshes and estuaries of the coastal region or in the mid-water areas of the Gulf.

Studies summarized in the EIS have found that free-swimming animals (nekton) are generally not affected by the disposal of dredged material. Abundances of nekton, including shrimp, are only temporarily displaced after disposal operations, but abundances appeared to return to normal within one month. Some nekton indigenous to areas in the vicinity of the disposal site, including fish, may actually be attracted to the turbid waters which result from disposal activities to seek food or protection from predators. Fishery resources have not been shown to be adversely affected.

3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3))

Activities in the vicinity of the sites include fishing and boating. Disposal of dredged material has not adversely affected these activities because effects were limited to a turbidity plume at the site which disperses through the settlement of the majority of particles within a few hours after disposal.

Of the four disposal sites, Site 4 (located closest to shore) is 2.7 nautical miles south of the nearest land (Texas Point) and thus would have the highest potential to affect beaches. However, the beaches there have not been adversely affected by disposal activities because a prevailing southwesterly current carries material away from shore.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* (40 CFR 228.6(a)(4))

Dredged material released at approved dredged material disposal sites must conform to the EPA criteria in the Ocean Dumping regulations (40 CFR Part 227). Sediments to be dumped at the sites result from the dredging of the Sabine-Neches entrance channels. Materials dredged from the entrance channels are dumped at the sites closest to the area of dredging. Existing Site 4

has been in use since 1931 for the disposal of dredged material. Prior to 1960 dredging did not occur seaward of Existing Site 1 and the other three sites were not used prior to that time. The average annual amount dumped at all four sites from 1960 to 1979 was 4.5 million cubic yards.

Dredged sediments from the Sabine-Neches entrance channels are the only materials presently dumped at the four sites. The dredged materials are primarily silts and clays, which are suitable for ocean disposal. Although the natural sediment texture within and beyond the sites exhibits seasonal changes, it is similar to that of the dredged material disposed at the four sites. A hopper dredge has been used for the dredging of the Sabine-Neches entrance channels. The unpacked dredged material is released when the bottom doors on the hoppers are opened.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5))

Surveillance and monitoring at the existing sites is feasible considering transportation costs to and from the sites as well as costs associated with acquiring samples from the shallow water-depths. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, a monitoring program consisting of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and benthic infaunal analyses is proposed.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6))

In shallow-water areas of the existing disposal sites, most dredged material falls to the bottom immediately after dumping and only a small portion of the finer fraction is lost from the main settling surge. This small portion disperses as individual particles. Bottom currents measured 6.5 nautical miles (nmi) off Texas Point average 0.23 knots and flow in a south-southwesterly direction. These currents are capable of transporting the dispersed dredged material over a wide area; thus, no major sediment accumulation is expected.

Bottom currents become quite strong during storms, when powerful rip currents redistribute coarse sediments along the Texas-Louisiana coast. Periodically, hurricanes also produce currents strong enough to prevent any significant shoaling due to the accumulation of dredged material. Evidence of this is the lack of shoaling at any of the sites despite the approximately 88 million cubic yards of material that have been dumped in the past 50 years.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7))

No major changes in benthic diversity have occurred in the sites off Texas Point based on a comparison of 1974, 1979, and 1980 samples with samples taken from 1951 to 1954. However, minor reductions in abundances of benthic infauna are apparent. Studies have shown that the reduced populations are capable of recolonization within a few months. In addition, trawl data indicated that populations of free-swimming animals in the disposal area did not differ from animals occurring in adjacent unimpacted areas upcurrent of the disposal sites.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8))

Sites 2, 3, and 4 partially extend into the navigational safety fairway; however, they do not present hazards to shipping. Sediments dredged from the channel are dumped within site boundaries but outside the safety fairway. Fairways were "established to control the erection of structures therein to provide safe approaches through oil fields in the Gulf of Mexico to entrances to the major ports along the Gulf Coast." (33 CFR 209.135)

Sites 1 and 2 are near Sabine Bank, a major commercial and recreational fishery area. Prevailing bottom currents may carry dumped material at Site 2 toward Sabine Bank, but the rise at the bottom edge of the Bank will cause the material to be transported along rather than over the central portion of the Bank.

Sites 1, 2, and 3 are in an area of important commercial shrimping (Grid Zone 17), which extends 60 nmi along the Texas-Louisiana coast, and from the shoreline to about 90 nmi offshore. The disposal sites are in waters 10 to 13 meters deep, a primary shrimping area of this zone. A 1977 study reported in the EIS showed that 25 percent of the catch effort for shrimp in zone 17 resulted in a catch of approximately 24 percent of the total shrimp catch for zone 17, an amount closely proportional to the catch effort. Thus, it does not appear that dredged material disposal operations at these sites during preceding years (1960–1976) significantly interfered with or altered the shrimping activities studied.

Oil and gas exploration and production could potentially be affected by disposal activities. Sites 2 and 3 are presently being leased for oil and gas exploration and already contain oil production platforms and pipelines. As long as the density of the platforms and pipelines and associated marine traffic in these areas remains low, no major conflict between the two uses of the disposal area should occur. No areas of special scientific importance, aquaculture, or desalination activities are known to occur or are known to be planned in the vicinity of the existing sites.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9))

Phytoplankton and zooplankton studies conducted southwest of the sites revealed seasonal differences in species composition. Diatoms dominate the phytoplankton community and copepods dominate the zooplankton community. Fish and shrimp dominate the nekton community of the sites, and species are typical of those reported from western Gulf coastal waters. Several of these species are commercially and/or recreationally important, including croaker, spotted sea trout, menhaden, redfish, flounder, and brown shrimp. The benthic community of the sites is characteristic of sand and mud habitats and is dominated by worms, the most abundant of which are acorn and proboscis worms. Chemical constituents in the water at the sites are below EPA water quality criteria. Concentrations of all measured constituents in the water (except dissolved ammonia, nitrate, and organic nitrogen) are below analytical detection limits. These three exceptions occurred in relatively low concentrations; however, no appropriate water quality criteria apply to these constituents.

10. *Potentiality for the development of recruitment or nuisance species in the disposal site.* (40 CFR 228.6(a)(10))

No long-term changes in species composition at the site have resulted from disposal operations. Trawl and benthic data also indicated that the disposal area at the time of sampling did not differ from other adjacent unimpacted areas upcurrent of the disposal sites. Disposal of dredged material has contributed little to changing the character of the faunal communities in the vicinity of Sabine Pass. Previous surveys at the site did not detect the development or recruitment of nuisance species, and the similarity of the dredged material with the existing sediments suggests that the

development or recruitment of nuisance species is unlikely.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6(a)(11))

Neither the Texas Historical Commission nor the Louisiana Division of Archaeology and Historic Preservation Office has found evidence of natural or cultural features of historic importance in the area, but they noted that unknown sunken prehistoric sites may exist. Sunken vessels which exist in or near the offshore disposal area should not be permanently affected by disposal operations.

E. Action

Based on the completed EIS process and available data, EPA concludes that the four Sabine-Neches sites may appropriately be designated for continuing use. The existing sites are compatible with the general criteria and specific factors used for site evaluation. The designation of the four Sabine-Neches sites as EPA approved Ocean Dumping Sites is being published as final rulemaking.

Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 28, 1987.

Robert E. Layton, Jr.,

Regional Administrator of Region VI.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing and reserving paragraphs (a)(1)(ii) (D) and (N) and adding paragraphs (b) (42), (43), (44), (45) for four ocean dumping sites to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(42) Sabine-Neches Dredged Material Site 1—Region VI.

Location: 29°28'03" N., 93°41'14" W.; 29°26'11" N., 93°41' 14" W.; 29°26'11" N., 93°44'11" W.

Size: 2.4 square nautical miles.

Depth: Ranges from 11–13 meters.

Primary Use: Dredged material.

Period of Use: Continuing Use.

Restriction: Disposal shall be limited to dredged material from the Sabine-Neches area.

(43) Sabine-Neches Dredged Material Site 2—Region VI.

Location: 29°30'41" N., 93°43'49" W.; 29°28'42" N., 93°41'33" W.; 29°28'42" N., 93°44'49" W.; 29°30'08" N., 93°46'27" W.

Size: 4.2 square nautical miles.

Depth: Ranges from 9–13 meters.

Primary Use: Dredged material.

Period of Use: Continuing Use.

Restriction: Disposal shall be limited to dredged material from the Sabine-Neches area.

(44) Sabine-Neches Dredged Material Site 3—Region VI.

Location: 29°34'24" N., 93°48'13" W.; 29°32'47" N., 93°46'16" W.; 29°32'06" N., 93°46'29" W.; 29°31'42" N., 93°48'16" W.; 29°32'59" N., 93°49'48" W.

Size: 4.7 square nautical miles.

Depth: 10 meters.

Primary Use: Dredged material.

Period of Use: Continuing Use.

Restriction: Disposal shall be limited to dredged material from the Sabine-Neches area.

(45) Sabine-Neches Dredged Material Site 4—Region VI.

Location: 29°38'09" N., 93°49'23" W.; 29°35'53" N., 93°48'18" W.; 29°35'06" N., 93°50'24" W.; 29°36'37" N., 93°51'09" W.; 29°37'00" N., 93°50'06" W.; 29°37'46" N., 93°50'26" W.

Size: 4.2 square nautical miles.

Depth: Ranges from 5–9 meters.

Primary Use: Dredged material.

Period of Use: Continuing Use.

Restriction: Disposal shall be limited to dredged material from the Sabine-Neches area.

[FR Doc. 87–20549 Filed 9–9–87; 8:45 am]

BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 52, No. 175
Thursday, September 10, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Revision of Backfitting Process for Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering amendments to its rule for backfitting of nuclear power plants. This action is necessary in order to bring the backfit rule into unambiguous conformance with the August 4, 1987 decision of the U.S. Court of Appeals for the District of Columbia Circuit in Union of Concerned Scientists, et al. v. U.S. Nuclear Regulatory Commission. This action is intended to clarify when economic costs may be considered in backfitting nuclear power plants.

DATES: Comment period expires October 13, 1987.

Comments received after this date will be considered if it is practicable to do so, but assurance of consideration can be given only for comments filed on or before this date.

ADDRESSES: Interested persons are invited to send written comments or suggestions to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Comments may also be delivered to: Room 1121, 1717 H Street, NW., Washington, DC between 7:30 a.m. and 4:15 p.m. weekdays. Copies of any comments received may be examined at the NRC Public Document Room, 1717 H Street, NW.,Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven F. Crockett, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC. Telephone (202) 634–1465.

SUPPLEMENTARY INFORMATION: On September 20, 1985 (50 FR 38097), after an extensive rulemaking proceeding which included sequential opportunities for public comment on an advanced notice of proposed rulemaking (48 FR 44217, September 28, 1983), and a notice of proposed rulemaking (49 FR 47034, November 30, 1984), the Commission adopted final amendments to its rules in 10 CFR 50.109 for backfitting of nuclear power plants. Backfitting is defined in some detail in the rule, but for purposes of discussion here it means measures which are directed by the Commission or by NRC staff in order to improve the safety of nuclear power reactors, and which reflect a change in a prior Commission or staff position on the safety matter in question. Backfits may be imposed either to ensure the adequate protection of public health and safety, or to provide additional safety requirements beyond the level of adequate protection.

Judicial review of the amended backfit rule and a related internal NRC manual chapter which partially implemented it was sought and, on August 4, 1987, the U.S. Court of Appeals for the D.C. Circuit rendered its decision vacating both the rule and Manual chapter, Union of Concerned Scientists, et al. v. U.S. Nuclear Regulatory Commission, D.C. Cir. Nos. 85–1757 and 86–1219 (August 4, 1987). The Court concluded that the rule, when considered along with certain statements in the rule preamble published in the **Federal Register**, did not speak unambiguously in terms that constrained the Commission from considering economic costs in establishing standards to ensure adequate protection of the public health and safety as dictated by section 182 of the Atomic Energy Act of 1954 as amended, 42 U.S.C. 2011 ff. At the same time, the Court agreed with the Commission that once an adequate level of safety protection had been achieved under section 182, the Commission was fully authorized under section 161i of the Atomic Energy Act to consider and take economic costs into account in ordering further safety improvements. The Court therefore rejected the position of petitioners in the case, Union of Concerned Scientists, *et al.*, that economic costs may never be a factor in safety decisions under the Atomic Energy Act.

Because the Court's opinion regarding the circumstances in which costs may be considered in making safety decisions on nuclear power plants is completely in accord with the way in which the Commission has always interpreted this rule, the Commission will not appeal the decision. Instead, the Commission has decided to amend both the rule and the related manual chapter (Chapter 0514) so that they conform unambiguously to the Court's opinion.

By this rulemaking the Commission intends to apply the following safety principle in all of its backfitting decisions. The Atomic Energy Act commands the Commission to ensure that nuclear power plant operation provided adequate protection to the health and safety of the public. In defining, redefining or enforcing this statutory standard of adequate protection, the Commission will not consider economic costs. However, adequate protection is not absolute protection or zero risk. Hence safety improvements beyond the minimum needed for adequate protection are possible. The Commission empowered under section 161i of the Act to impose additional safety requirements that go beyond adequate protection and to consider economic costs in doing so.

The amended backfit rule which was the subject of the Court's decision required, with certain exceptions (relating to backfits necessary to ensure the adequate protection of public health and safety), that backfits be imposed only upon a finding that they provided a substantial increase in the overall protection of the public health and safety or the common defense and security and that the direct and indirect costs of implementation were justified in view of this increased protection. The proposed amendments which follow would restate the exceptions to this requirement for a finding so that the rule would clearly be in accord with the safety principle stated above.

Comments are requested on the proposed amendments which follow. In addition, interested persons are welcome to comment on other possible approaches to conform the backfit rule to the Court's decision.

The Commission has also instructed its staff to amend its manual chapter on plant specific backfitting to ensure consistency with the Court's opinion and to reissue it. The manual chapter will be revised and issued following adoption of a final rule. Upon completion of that task copies of the

revised chapter will be available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(i). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Regulatory Analysis

The proposed revision to 10 CFR 50.109 will bring it into conformance with the holding in Union of Concerned Scientists, et al. v. U.S. Nuclear Regulatory Commission, D.C. Cir. Nos. 85–1757 and 86–1219 (August 4, 1987). The revision clarifies the backfit rule to reflect NRC practice that, in determining whether to adopt a backfit requirement, economic costs will be considered only when addressing those backfits involving safety requirements beyond those needed to ensure the adequate protection of public health and safety. Such costs are not considered when establishing the adequate protection of public health and safety. This proposed amendment does not have a significant impact on State and local governments and geographical regions, public health and safety, or the environment; nor does it represent substantial costs to licensees, the NRC, or other Federal agencies. This constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The affected facilities are licensed under the provisions of 10 CFR 50.21(b) and 10 CFR 50.22. The companies that own these facilities do not fall within the scope of "small entities" as set forth in the Regulatory Flexibility Act or the Small Business Size Standards set forth in regulations issued by the Small Business Administration in 13 CFR Part 121.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this proposed rule because these amendments do not impose requirements on 10 CFR Part 50 licensees.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR Part 50.

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.7(a), 50.10(a)–(c), 50.34(a) and (e), 50.44(a)–(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i–1), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62((c), 50.64(b), and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49(d), (h), and (j), 50.54(w), (z), (bb), and (cc), 50.55(e), 50.59(b), 50.61(b), 50.62(d), 50.70(a), 50.17 (a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 50.109, is amended by revising paragraphs (a) (2), (3) and (4) and footnote 3 to read as follows:

§ 50.109 Backfitting.

(a) * * *

(2) Except as provided in paragraph (a)(4), the Commission shall require a systematic and documented analysis pursuant to paragraph (c) for backfits which it seeks to impose.

(3) Except as provided in paragraph (a)(4), the Commission shall require the backfitting of a facility only when it determines, based on the analysis described in paragraph (c) of this section, that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section are inapplicable and, therefore, backfit analysis is not required and the standard does not apply where the Commission or staff, as appropriate, finds and declares, with appropriate documented evaluation for its finding, either:

(i) That a modification is necessary to bring a facility into compliance with a license or the rules or order of the Commission, or into conformance with written commitments by the licensee; or

(ii) That regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security; or

(iii) That the regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate. Such documented evaluation shall include a statement of the objectives of and reasons for the modification and the basis for invoking the exception.[3] The Commission shall

[3] If immediately effective regulatory action is required, then the documented evaluation may follow rather than precede the regulatory action. If there are two or more ways to achieve compliance with a license or the rules or orders of the Commission, or with written licensee commitments, or there are two or more ways to reach a level of protection which is adequate, then ordinarily the applicant or licensee is free to choose the way which best suits its purposes. Should it be necessary or appropriate for the Commission to prescribe one of these ways to comply with its requirements or to achieve adequate protection, then cost may be a factor in selecting the way, provided that the objective of compliance or adequate protection is met.

always require the backfitting of a facility if it determines that such regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security.

* * * * *

Dated at Bethesda, MD, this 4th day of September, 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87-20784 Filed 9-9-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-110-AD]

Airworthiness Directives: British Aerospace Model H.S. 748 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to all British Aerospace H.S. 748 series airplanes, that would require inspection of the jet pipe retention assemblies, and repair, if necessary. This proposal is prompted by numerous reports of jet pipe retention and fuel drain plates which were incorrectly fitted, nonconforming to original dimensions, or missing completely. These conditions, if not corrected, could lead to inflight loss of the jet pipe or restricted fuel drainage, with resultant fire or heat damage to the nacelle and wing.

DATE: Comments must be received no later than October 15, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-110-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, Seattle Aircraft Certification Office, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed nle. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-110-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of a number of jet pipe retention and fuel drainage plate assemblies on British Aerospace Model H.S. 748 series airplanes, which were found to be incorrectly installed, improperly dimensioned, or missing entirely. These conditions, if not corrected, could lead to inflight loss of the jet pipe or restricted fuel drainage, with resultant fire or heat damage to the nacelle and wing.

British Aerospace (BAe) issued Service Bulletin 78/9, Revision 1, dated September 1985, which describes inspection and repair procedures for the jet pipe retention assemblies on all Model H.S. 748 series airplanes. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspections and repair, if necessary, to ensure correct installation of the jet pipe retention assemblies in accordance with the service bulletin previously mentioned.

It is estimated that 3 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $240.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

BEST COPY AVAILABLE

British Aerospace: Applies to all Model H.S. 748 series airplanes as listed in BAe Service Bulletin 78/9, Revision 1, dated September 1985, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inflight loss of the jet pipe or restricted fuel drainage through the jet pipe retention assemblies, with resultant fire or heat damage to the nacelle and wing, accomplish the following:

A. Within the next 60 days after the effective date of this AD, perform an inspection to ensure correct installation of the three retaining plate assemblies, which secure the jet pipe inside the jet pipe manifold, in accordance with British Aerospace Service Bulletin 78/9, Revision 1, dated September 1985. Any discrepancies found must be corrected prior to further flight.

B. Repeat the inspection required by paragraph A. above, any time the jet pipe is replaced.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 28,1987.

Frederick M. Isaac,

Deputy Director, Northwest Mountain Region.

[FR Doc. 87-20745 Filed 9-9-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-104-AD]

Airworthiness Directives; British Aerospace 125-800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain British Aerospace Model 125-800A series airplanes, that would require the addition of drain holes in the aileron tab and the inboard aileron hinge to prevent water accumulation within the tab. This action is prompted by a report that the aileron tabs on certain airplanes were not fitted with drain holes, and this could result in entrapment of water within the tab, possibly causing the tab to exceed its mass balance limits. This condition, if not corrected, could lead to flutter if control surface mass balance limits are exceeded.

DATES: Comments must be received no later than October 15, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-104-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-104-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain British Aerospace Model 125-800A airplanes. Drain holes were not provided in the aileron tabs of certain airplanes, and entrapment of water within the tab can occur. The accumulation of water in control surfaces can adversely affect their mass balance. This condition, if not corrected, could lead to flutter if control surface mass balance limits are exceeded.

British Aerospace (BAe) issued Service Bulletin 57-64-(3067), dated November 29, 1985, which describes rework instruction to add drainage provisions to the aileron tabs of certain Model 125-800A airplanes. The CAA has classified the service bulletin as mandatory.

This airplane model is manufactured in United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist on airplanes of this model registered in the United States, an AD is proposed that would require rework of the aileron tabs and the inboard aileron hinges in accordance with the service bulletin previously mentioned.

It is estimated that 30 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,400.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26,

1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to certain British Aerospace Model 125-800A series airplanes, listed in British Aerospace (BAe) Service Bulletin 57-64-(3067), dated November 29, 1985, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent entrapment of water within the aileron tab accomplish the following:

A. Within the next 100 landings or within one year after the effective date of this AD, whichever occurs sooner, modify the aileron tab and the inboard aileron hinge to provide drainage in accordance with BAe Service Bulletin 57-64-(3067), dated November 29, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 28, 1987.

Frederick M. Isaac,

Deputy Director, Northwest Mountain Region.

[FR Doc. 87-20746 Filed 9-9-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-103-AD]

Airworthiness Directives; British Aerospace Model H.S. 748 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all British Aerospace Model H.S. 748 series airplanes with Modification 1472 incorporated, but without Modification 7513 incorporated, which would require replacement of certain nose landing gear jack support bracket bearing cap attachment studs. This proposal is prompted by reports of incidents where the nose landing gear has malfunctioned due to the failure of the nose landing gear jack support bracket bearing cap attachment studs. This condition, if not corrected, could result in the inability to lower or lock down the nose gear for landing.

DATE: Comments must be received no later than October 15, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-103-AD, Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Donald L. Kurle, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-103-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain BAe Model H.S. 748 series airplanes. There have been several reports of incidents where the nose landing gear malfunctioned due to the failure of a nose landing gear jack support bracket bearing cap stud. This condition, if not corrected, could result in the inability to lower or lock down the nose gear for landing.

British Aerospace (BAe) issued Alert Service Bulletin A53/53, Revision 1, dated May 1987, which establishes a fatigue life of 7,000 landings for the nose landing gear jack support bracket bearing cap attachment stud, recommends stud replacement after stud has experienced 7,000 landings, and introduces an interim inspection to ensure continued security and integrity of the nose landing gear support structure until replacement of the stud is

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completed. The CAA has classified the service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreements.

Since this condition is likely to exist or develop on airplanes of this same type design registered in the United States, an AD is proposed which would require replacement of nose landing gear jack support bracket bearing cap attachment studs which have exceeded 7,000 landings, and interim inspections of the nose landing gear jack support structure until studs exceeding 7,000 landings have been replaced, in accordance with the service bulletin previously sentioned.

It is estimated that 3 airplanes of U.S. registry would be affected by this AD, that it would take approximately 0.2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S.operators is estimated to be $24.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($8). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all Model H.S. 748 series airplanes with Modification 1472 incorporated, but without Modification 7513 incorporated, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inability to lower or lock down the nose gear for landing, accomplish the following:

A. Prior to the accumulation of 7,000 landings or within the next 90 days after the effective date of this AD, whichever occurs later, replace nose landing gear jack support bracket bearing cap attachment studs, Part Number 2cD13248, in accordance with British Aerospace Alert Service Bulletin A53/53 Revision 1, dated May 1987.

B. Replacement studs must, in turn, be replaced prior to accumulation of 7,000 landings.

C. Until studs exceeding a life of 7,000 landings have been replaced, nose landing gear jack support structure must be inspected prior to each day's first flight to ensure each stud and bearing cap are secure and correctly fitted in accordance with British Aerospace Alert Service Bulletin A53/53, Revision 1, dated May 1987.

D. On assemblies where the bearing caps or studs are found loose, all four bearing cap attachment studs must be replaced before the next flight, in accordance with British Aerospace Alert Service Bulletin A53/53, Revision 1, dated May 1987.

E. Incorporation of Modification 7513, as described in British Aerospace Alert Service Bulletin A53/53, Revision 1, dated May 1987, constitutes terminating action for the requirements of paragraphs A., B., C., and D., above.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington on August 28, 1987.

Frederick M. Isaac,

Deputy Director, Northwest Mountain Region.

[FR Doc. 87-20748 Filed 9-9-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-102-AD]

Airworthiness Directives; British Aerospace Model H.S. 748 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to all Model H.S. 748 airplanes, that would require inspections of the engine subframe/wing attachment assembly, and repair, if necessary. This proposal is prompted by service experience which has shown that abnormal movement and wear of the engine subframe/wing attachment assembly can lead to the failure of the split-bush and/or taper bolt. This condition, if not corrected, could lead to severe stress and damage to the engine support structure.

DATE: Comments must be received no later than October 15, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-102-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, Seattle Aircraft Certification Office, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-102-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of service experience where abnormal movement and wear of the engine subframe/wing attachment assembly could lead to the failure of the split-bush and/or taper-bolt on British Aerospace H.S. 748 series airplanes. This condition, if not corrected, could lead to severe stress and damage to the engine support structure.

British Aerospace (BAe) issued Service Bulletin No. 54-29, dated October 1986, which describes a series of periodic inspections to detect and repair worn assemblies on all H.S. 748 aircraft. The CAA has classified the service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspections of the engine subframe/wing attachment assembly in accordance with the service bulletin previously mentioned. Any excessive movement or wear found must be repaired in a manner approved by the FAA before further flight.

It is estimated that 3 airplanes of U.S. registry would be affected by this AD, that it would take approximately 23 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,760.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($920). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all Model H.S. 748 airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent severe stress and damage to the engine support structure, accomplish the following:

A. Within the next 6 months after the effective date of this AD, or prior to accumulating 6,000 landings, whichever is later, and thereafter at intervals not to exceed 2,000 landings, perform a visual inspection of the engine subframe/wing attachment assemblies in accordance with Paragraph 2A of British Aerospace Service Bulletin 54-29, dated October 1986. Any assembly found to exhibit excessive movement or wear must be repaired, prior to further flight, in a manner approved by the FAA.

B. No later than the next scheduled engine removal after the effective date of this AD or prior to accumulating 6,000 landings, whichever is later, and thereafter at intervals not to exceed 6,000 landings, perform a visual inspection of the engine subframe/wing attachment assemblies while trying to induce movement, in accordance with paragraph 2C of British Aerospace Service Bulletin 54-29, dated October 1986. Any components found to be unserviceable must be repaired prior to further flight in a manner approved by the FAA.

C. Prior to the next scheduled engine removal after the effective date of this AD, or prior to accumulating 12,000 landings, whichever is later, and thereafter at intervals not to exceed 12,000 landings, perform an inspection with the taper bolt and taper split-bush removed from the engine subframe/wing attachment assemblies in accordance with paragraph 2D of British Aerospace Service Bulletin 54-29, dated October 1986. Any components found to be unserviceable must be repaired prior to further flight in a manner approved by the FAA.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414 Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 28, 1987.

Frederick M. Isaac,

Deputy Director, Northwest Mountain Region

[FR Doc. 87-20749 Filed 9-9-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AGL-17]

Proposed Establishment of Transition Area; Solon Springs, WI

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Solon Springs, WI, transition area to accommodate a new NDB Runway 19 Standard Instrument Approach Procedure (SIAP) to Solon Springs Municipal Airport, Solon Springs, WI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before October 9, 1987.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 87-AGL-17, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AGL-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Solon Springs, WI.

The development of a new NDB Runway 19 SIAP requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace.

The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Solon Springs, WI [New]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Solon Springs Municipal Airport (lat. 46°18'30" N., long. 91°48'45" W.), and within 3 miles each side of the 003° bearing from the Solon Springs Municipal Airport extending from the 5 mile radius area to 8.5 miles north of the airport.

Issued in Des Plaines, Illinois, on August 26, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87-20743 Filed 9-9-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 301

[INTL-55-86]

Definition of Resident Alien

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the definition of a resident alien. Changes to the applicable tax law were made by the Tax Reform Act of 1984. The regulations would provide the public with guidance needed to comply with that Act and would affect the federal income tax liability of alien individuals.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 9, 1987. The amendments are proposed to be effective for taxable years beginning after December 31, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL–55–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Marnie J. Carro of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3499) not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 871, 904, 953, 1301, 1441 and 6013, the Employment Tax Regulations (26 CFR Part 31) under sections 3121 and 3306 and the Regulations on Procedure and Administration (26 CFR Part 301) under section 7701 (b) of the Internal Revenue Code of 1954. These amendments are proposed to provide regulations under Section 7701 (b), which was added to the Code by section 138 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 672) and to amend the regulations under sections 871, 904, 953, 1303, 1441, 6013, 3121 and 3306 to reflect the addition of section 7701 (b) by the Act.

Prior Law

Section 7701 (b) was added by the Tax Reform Act of 1984 to provide a statutory definition of the terms "resident alien." and "nonresident alien." The issue of an individual's status as a resident or a nonresident is central to a determination of his United States federal income tax liability. Resident aliens are taxed on worldwide income in much the same manner as United States citizens. In contrast, nonresidents are taxed in a far more restrictive manner and are subject to tax on foreign source income only under very limited circumstances.

Prior to the addition of section 7701 (b), definitions of resident alien and nonresident alien were provided only in the Income Tax Regulations. These regulations applied a subjective test and defined the terms on the basis of an individual's intentions with regard to the length and nature of his stay in the United States. Residence depended on whether the alien was "a mere transient or sojourner" in the United States. An alien who lacked a definite intention as to the length and nature of a stay was considered to be a resident. An alien who possessed a visa that limited his stay to a definite period was considered to be a nonresident, absent "exceptional circumstances."

Statutory Provisions

The Tax Reform Act of 1984 added section 7701 (b) to the Code to provide a definition of the term "resident alien." Under section 7701 (b) (1), and alien individual is considered to be a resident of the United States if he statisfies either of two tests: the green card test of the substantial presence test. As provided in section 7701 (b) (1) (A) (i) and (b) (6), an alien individual is considered to be a resident under the green card test if he is lawful permanent resident of the United States at any time during the calendar year. Under the substantial presence test provided in section 7701 (b) (3), and alien individual is treated as a resident if (1) he is physically present in the United States for 183 days or more during the current year, or (2) the sum of the days the alien is physically present in the United States during the current year, plus one-third the number of days the alien is physically present in the United States during the first preceding calendar year, plus one sixth the number of days the alien is physically present in the United States during the second preceding year equals or exceeds 183 days. Section 7701 (b) (3) also provides that an individual shall not be considered to meet the substantial presence test if the individual is present in the United States for fewer than 183 days in the current year, has a tax home in a foreign country, and maintains a closer connection to that foreign country than the United States.

Section 7701 (b) (2) provides special rules for determining an individual's residency starting date and residency termination date. If an individual was not a resident during the preceding calendar year, an individual's residency starting date will be the first day during the calendar year that is present for purposes of the substantial presence test or as a lawful permanent resident (green card test). A special residency starting date rule is provided for certain electing taxpayers who arrive in the United States too late in the calendar year to meet the substantial presence test for that year. An individual's residency termination date will be the last day that an individual is present in the United States (or is a lawful permanent resident) if he has a closer connection to a foreign country for the remainder of the year, and is not considered to be a resident at any time during the following calendar year. Section 7701 (b) (2) provides that presence of 10 days or less will be disregarded in certain cases for purposes of the residency starting and termination dates.

Section 7701 (b) (4) provides that an alien individual, who is not a resident under the substantial presence test or the green card test during the current year, will be deemed to be resident for a portion of the current year if the individual (1) was not a resident during the preceding calendar year; (2) is a resident under the substantial presence test in the calendar year following the current year; (3) is present in the United States during the current year for both 31 consecutive days and 75 percent of the days starting with the first day of such 31-day period; and (4) elects to be treated as a resident.

Section 7701(b) (3), (5) and (7) provide that certain days of presence in the United States will be excluded for purposes of the computation required by the substantial presence test. An individual's presence in the United States will be disregarded if he is (1) a foreign government-related individual; (2) a teacher or trainee; (3) a student; (4) a professional athlete; (5) unable to leave the United States because of a medical condition that arose while he was present in the United States; (6) a regular commuter from Mexico or Canada; or (7) in transit between two foreign points.

Section 7701(b)(9) provides that, unless an individual establishes otherwise, he will be considered to be a calendar year taxpayer. If an individual is a resident for any calendar year and has previously established a fiscal year, he will be treated as a resident with respect to any portion of his taxable year that is within such calendar year.

Section 7701(b)(10) provides a limited anti-avoidance rule directed at long term residents of the United States who interrupt their United States residency briefly. Under this section, an alien who is a resident for three calendar years and interrupts his United States residency for fewer than three calendar years will be subject to tax under section 877 during his period of

nonresidency if the tax imposed by that section is greater than the tax imposed by section 871 on nonresident alien individuals generally. Section 877 subjects a nonresident former United States citizen to tax on all of his United States source income for the ten year period following his expatriation at the rates that apply to United States residents. For this purpose, gain from the sale of property located in the United States and gain from the sale of stock of United States corporations and certain securities is treated as United States source income regardless of where the sale occurs or title is transferred. Because section 7701(b)(10) is effective for taxable years beginning after December 31, 1984, section 877, thus, could not apply in this context before 1988.

Explanation of Provisions

Section 301.7701(b)–1 provides rules for determining whether an alien individual is a resident or a nonresident of the United States. Paragraph (b) provides rules for determining whether an individual is a lawful permanent resident of the United States. Paragraph (c) provides rules for determining whether an individual meets the substantial presence test. These rules include definitions of the terms "physical presence," "current year," and "United States."

Section 301.7701(b)–2 provides rules for determining whether an individual who otherwise meets the substantial presence test will be considered to be a nonresident because he meets the closer connection/tax home exception to the substantial presence test. Paragraph (b) defines the term "tax home." Paragraph (d) provides examples of significant contacts that should be maintained with the individual's foreign country for purposes of the closer connection exception. Paragraph (e) provides rules for determining when the closer connection/tax home exception is unavailable.

Section 301.7701(b)–3 provides rules for determining whether certain individuals may exclude days of presence in the United States for purposes of the substantial presence test. Paragraph (b) defines the term "exempt individual." In this context, the terms "foreign government-related individual," "international organization," "teacher/trainee," "student," "immediate family" and "professional athlete" are defined. Paragraph (c) provides rules for determining whether a medical condition will be considered to arise in the United States. Paragraph (d) defines the term "in transit" and "foreign point." Paragraph (e) specifies which individuals will be considered to be regular commuters from Mexico or Canada.

Section 301.7701(b)–4 provides rules for determining an individual's residency starting date and residency termination date. These rules include definitions of the terms "residency starting date" and "residency termination date." Rules are provided for de minimis presence prior to an individual's residency starting date and after an individual's residency termination date. Special rules are provided for determining the residency starting date for an individual who elects to be treated as a resident.

Section 301.7701(b)–5 provides rules for determining whether an individual will be taxed in the same manner as a United States citizen who renounces citizenship for tax avoidance purposes. In contrast to section 877, the regulations do not require an individual to have a tax avoidance motive.

Section 301.7701(b)–6 provides rules for determining an individual's taxable year. The rules are intended to prevent a resident alien from reducing United States tax by shifting income from one taxable year to another.

Section 301.7701(b)–7 clarifies the effect that the definition of resident alien will have on an alien individual who is also a resident of a treaty partner of the United States. The rules require such individuals to determine their tax liability as if they were nonresident aliens under the Code if they choose to claim any treaty benefits as residents of a treaty country. The Internal Revenue Service particularly invites comments about the operation of these rules on such dual residents.

Section 301.7701(b)–8 provides procedural rules for establishing that an individual is qualified to exclude days of presence from the computation required by the substantial presence test. A statement must be filed with the Internal Revenue Service by an individual who is seeking to exclude days from the computation required by the substantial presence test as an exempt individual or as an individual who is unable to leave the United States because of a medical condition that arose while he was present in the United States. A different statement must be filed by an individual who is claiming the closer connection/tax home exception to the substantial presence test.

Section 301.7701(b)–9 provides the effective dates for the proposed regulations. Paragraph (b) provides a transitional rule for purposes of determining the residency starting date for an individual who held a green card in 1984. Paragraph (c) provides a transitional rule for determining whether days of presence in 1983 and 1984 will be included in the computation required by the substantial presence test.

The proposed regulations amend §§ 31.3121(b)(19)–1 and 31.3306(c)(18)–1 (relating to services of certain nonresident aliens that do not constitute employment for purposes of the employment tax and the unemployment tax, respectively) which provide that an alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act is deemed to be a nonresident alien individual. The proposed amendments preclude characterizing an individual as a nonresident for purposes of the employment tax and unemployment tax if such individual is considered to be a resident alien pursuant to section 7701(b) and the regulations thereunder.

The regulations under sections 871 (relating to taxation of nonresident alien individuals), 904 (relating to the foreign tax credit), 953 (relating to income from insurance of United States risks), 1303 (relating to individuals who qualify for income averaging), 1441 (relating to the withholding of tax on nonresident aliens), and 6013 (relating to the filing of a joint return) would be revised to reflect the addition of section 7701(b).

Special Analysis

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of a proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any

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person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**. The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of this regulation is Marnie J. Carro of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects

26 CFR 1.861–1—1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

26 CFR 1.1301–0—1.1348–3

Income taxes, Readjustment between years, Income averaging, Maximum tax on earned income.

26 CFR 1.1441–1—1.1465–1

Income taxes, Aliens, Foreign corporations.

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Parts 1, 31, and 301 are as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Sections 1.871–9, 1.904(b)–3, 1.953–2, 1.1303–1, 1.1441–5, and 1.6013–6 also issued under 26 U.S.C. 7701(b)(11). * * *

§ 1.871–9 [Amended]

Par. 2. Paragraph (a) of § 1.871–9 is amended by removing "§ 1.871–2" in the second sentence and inserting in its place "§ 301.7701(b)–1 through § 301.7701(b)–9".

§ 1.904 [Amended]

Par. 3. Paragraph (f) of § 1.904(b)–3 is amended by removing "the rule under § 1.871–2(b)" and inserting in its place "§ 301.7701(b)–1 through § 301.7701(b)–9".

§ 1.953–2 [Amended]

Par. 4. Paragraph (d) of § 1.953–2 is amended by removing "§§ 1.871–2 to 1.871–5, inclusive" in the sixth sentence and inserting in its place "§ 301.7701(b)–1 through § 301.7701(b)–9".

§ 1.1303–1 [Amended]

Par. 5. Paragraph (b) of § 1.1303–1 is amended by removing "§ 1.871–2 through § 1.871–4" in the second sentence and inserting in its place "§ 301.7701(b)–1 through § 301.7701 (b)–9".

§ 1.1441–5 [Amended]

Par. 6. Paragraph (d) of § 1.1441–5 is amended by removing "§ 1.871–2 in the first sentence and inserting in its place "§ 301.7701(b)–1 through § 301.7701–9".

§ 1.6013–6 [Amended]

Par. 7. Paragraph (a)(2)(ii) of § 1.6013–6 is amended by removing "§§ 1.871–2 through § 1.871–5" and inserting in its place "§ 301.7701(b)–1 through § 301.7701(b)–9".

PART 31—[AMENDED]

Employment Tax Regulations

Par. 8. The authority for Part 31 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Sections 31.3121(b) (19)–1 and 31.3306(c)(18)–1 also issued under 26 U.S.C. 7701(b)(11). * * *

§ 31.3121 [Amended]

Par. 9. Paragraph (a)(1) of § 31.3121(b)(19)–1 is amended by inserting after the second sentence the following sentence: "The preceding sentence does not apply to the extent it is inconsistent with section 7701(b) and the regulations thereunder."

§ 31.3306 [Amended]

Par. 10. Paragraph (a)(1) of § 31.3306(c)(18)–1 is amended by inserting after the second sentence the following sentence: "The preceding sentence does not apply to the extent it is inconsistent with section 7701(b) and the regulations thereunder."

PART 301—[AMENDED]

Regulations on Procedure and Administration

Par. 11. The authority for Part 301 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Sections 301.7701(b)–1 through 301.7701(b)–9 also issued under 26 U.S.C. 7701(b)(11). * * *

Par. 12. New § 301.7701(b)–1 through § 301.7701(b)–9 are added immediately after § 301.7701–16. The added sections read as follows:

§ 301.7701(b)–1 Resident alien.

(a) *Scope.* Section 301.7701(b)–1 (b) provides rules for determining whether an alien individual is lawful permanent resident of the United States. Section 301.7701(b)–1 (c) provides rules for determining if an alien individual satisfies the substantial presence test. Section 301.7701(b)–2 provides rules for determining when an alien individual will be considered to maintain a tax home in a foreign country and to have a closer connection to that foreign country. Section 301.7701(b)–3 provides rules for determining if an individual is an exempt individual because of his status as a foreign government-related individual, teacher, trainee, student, or professional athlete. Section 301.7701(b)–3 as provides rules for determining whether an individual may exclude days of presence in the United States because the individual was unable to leave the United States because of a medical condition. Section 301.7701(b)–4 provides rules for determining an individual's residency starting and termination dates. Section 301.7701(b)–5 provides rules for applying section 877 to a nonresident alien individual. Section 301.7701(b)–6 provides rules for determining the taxable year of an alien. Section 301.7701(b)–7 provides rules for determining the effect of these regulations on rules in tax conventions to which the United States is a party. Section 301.7701(b)–8 provides procedural rules for establishing that an individual is a nonresident alien. Section 301.7701(b)–9 provides the effective dates of section 7701(b) and the regulations thereunder. Unless the context indicates otherwise, the regulations under §§ 301.7701(b)–1

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through 301.7701(b)–9 apply for purposes of determining whether a United States citizen is also a resident of the United States. (This determination may be relevant, for example, to the application of section 861(a)(1) which treats income from interest-bearing obligations of residents as income from sources within the United States.) The regulations do not apply for purposes of section 911.

(b) *Lawful permanent resident*—(1) *Green card test.* An alien is a resident alien with respect to a calendar year if he is a lawful permanent resident at any time during the calendar year. A lawful permanent resident is an individual who has been lawfully granted the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws. Resident status is deemed to continue unless it is rescinded or administratively or judicially determined to have been abandoned.

(2) *Rescission of resident status.* Resident status is considered to be rescinded if a final administrative or judicial order of exclusion or deportation is issued regarding the alien individual. For purposes of this paragraph, the term "final judicial order" means an order that is no longer subject to appeal to a higher court of competent jurisdiction.

(3) *Administrative or judicial determination of abandonment of resident status.* An administrative or judicial determination of abandonment of resident status may be initiated by the alien individual, the Immigration and Naturalization Service (INS), or a consular officer. If the alien initiates this determination, resident status is considered to be abandoned when the individual's application for abandonment or other appropriate form is filed with the INS or a consular officer. If the INS or a consular officer initiates this determination, resident status will be considered to be abandoned upon the issuance of a final administrative order of abandonment. If an individual is granted an appeal to a federal court of competent jurisdiction, a final judicial order is required.

(c) *Substantial presence test*—(1) *In general.* An alien individual is a resident alien if he meets the substantial presence test. An individual satisfies this test if he has been present for at least 183 days during a three year period that includes the current year. For purposes of this test, each day of presence in the current year is counted as a full day. Each day of presence in the first preceding year is counted as one-third of a day and each day of presence in the second preceding year is counted as one-sixth of a day. For purposes of this paragraph, fractional days of presence will be counted as whole days. (See § 301.7701(b)–9 (b)(2) for transitional rules for calendar years 1985 and 1986.)

(2) *Determination of presence*—(i) *Physical presence.* For purposes of the substantial presence test, an individual shall be treated as pressent in the United States on any day that he is physically present in the United States at any time during the day. (But see § 301.7701 (b)–(8) relating to days of presence that may be excluded for purposes of the substantial presence test.)

(ii) *United States.* For purposes of section 7701(b) and the regulations thereunder, the term "United States" when used in a geographical sense includes the states and the District of Columbia. It also inlcudes the territorial waters of the United States, the air space over the United States, and the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources. It does not nclude the possessions and territories of the United States.

(3) *Current year.* The term "current year" means any calendar year for which an alien individual is determinig his resident status.

(4) *Thirty-one day minumum.* If an individual is not physically present for more than 30 days during the current year, the substantial presence test will not be applied for that year even if the three-year total is 183 or more days. For purposes of the substantial presence test, it is irrelevant that an individual was not present for more than 30 days in the first of second year preceding the current year.

(d) *Application of section 7701(b) to the possessions and territories.* Section 7701(b) provides the basis for determining whether an alien individual is a resident alien of a United States possession or territory that administers income tax laws that are identical (except for the substitution of the name of the possession or territory for the term "United States" where appropriate) to those in force in the United States. If, after the application of section 7701(b) and the regulations thereunder, an alien individual is a resident of the United States and a resident of a United States possession or territory, the principles of § 301.7701(b)–2 (d) (relating to significant contacts maintained by an individual with a foreign county) shall be applied in order to establish that the individual is a resident alien of either the United States or a United States possession or territory, but not both.

(e) *Examples.* This section may be illustrated by the following examples:

Example (1). B an alien individual, is present in the United States for 122 days in the current year. He was present in the United States for 122 days in the first preceding calendar year and for 122 days in the second preceding calendar year. In determining his status for the current year, B counts all 122 days in the United States in the current year plus ⅓ of the 122 days in the United States in the first preceding calendar year year (40 ⅔ days) and ⅙ of the 122 days in the United States during the second preceding calendar year (20⅓ days). The total of 122 + 40 ⅔ + 20⅓ equals 183 days. B meets the substantial presence test and is a resident alien for the current year.

Example (2). C, an alien individual, is present in the United States for 25 days during the current year. He was present in the United States for 365 days during the first preceding year and 365 days during the second preceding year. The substantial presence test does not apply because C is present in the United States for fewer than 31 days during the current year.

§ 301.7701(b)–2 Closer connection exception.

(a) *In general.* An alien individual who meets the substantial presence test may nevertheless be considered a nonresident alien for the current year if the following conditions are satisfied:

(1) The individual is present in the United States for fewer than 183 days in the current year,

(2) The individual maintains a tax home in a foreign country during the current year, and

(3) The individual has a closer connection to the foreign country in which he maintains a tax home than to the United States.

(b) *Foreign country.* For purposes of section 7701(b) and the regulations thereunder, the term "foreign country" when used in a geographical sense includes any territory under the sovereignty of the United Nations or a government other than that of the United States. It inlcudes the territorial waters of the foreign country (determined in accordance with the laws of the United States), the air space over the foreign country, and the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the foreign country and over which the foreign country has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources. It also includes the possessions and territories of the United States.

(c) *Tax home*—(1) *Definition.* For purposes of section 7701(b) and the regulations thereunder, the term "tax home" has the same meaning that it has for purposes of section 911(d)(3) (without regard to the second sentence therein) and the regulations thereunder. Thus, under section 7701(b), an individual's tax home is considered to be located at his regular or principal (if more than one regular) place of business, or if the individual has no regular or principal place of business because of the nature of the business, then at his regular place of abode in a real and substantial sense.

(2) *Duration and nature of tax home.* The tax home maintained by the alien individual must be in existence for the entire current year. The tax home must be located in the same foreign country for which the individual is claiming to have the closer connection described in paragraph (d) of this section.

(d) *Closer connection to a foreign country.* An alien individual will be considered to have a closer connection to a foreign country than the United States if the individual or the Commissioner establishes that such individual has maintained more significant contacts with the foreign country than with the United States. In determining whether an individual has maintained more significant contacts with a foreign country than the United States, the facts and circumstances to be considered include (but are not limited to):

(1) The location of the individual's permanent home;

(2) The location of the individual's family;

(3) The location of personal belongings, such as automobiles, furniture, clothing and jewelry owned by the individual and his family;

(4) The location of social, political, cultural or religious organizations in which the individual has a current relationship;

(5) The location of the individual's personal bank accounts;

(6) The type of driver's license held by the individual;

(7) The country of residence designated by the individual on forms and documents;

(8) The types of official forms and documents filed by the individual, such as Form 1078 (Certificate of Alien Claiming Residence in the United States) or Form W–9 (Payer's Request for Taxpayer Identification Number); and

(9) The location of the jurisdiction in which the individual votes.

For purposes of this paragraph, it is immaterial whether a permanent home is a house, an apartment, or a furnished room. It is also immaterial whether the home is owned or rented by the alien individual. It is material, however, that the dwelling be available at all times, continuously, and not solely for stays of short duration.

(e) *Closer connection exception unavailable.* An alien individual who has personally applied, or taken other affirmative steps, to change his status to that of a permanent resident during the current year or has an application pending for adjustment of status during the current year will not be eligible for the closer connection exception. An affirmative step to change status to that of a permanent resident includes (but is not limited to):

(1) The filing of Immigration and Naturalization Form I–508 (Waiver of Immunities) by the alien,

(2) The filing of Immigration and Naturalization Form I–485 (Application for Status as Permanent Resident) by the alien, or

(3) The filing of Department of State Form OF–230 (Application for Immigrant Visa and Alien Registration) by the alien.

§ 301.7701 (b)-3 Days excluded for purposes of the substantial presence test.

(a) *In general.* In computing days of presence in the United States for purposes of the substantial presence test, an alien is considered to be present if the individual is physically present in the United States at any time during the day. However the following days may be excluded and will not count as days of presence in the United States:

(1) Days that an individual is present in the United States as an exempt individual,

(2) Days that an individual is prevented from leaving the United States because of a medical condition that arose while the individual was present in the United States,

(3) Days that an individual is in transit between two points outside the United States, and

(4) Days on which a regular commuter residing in Canada or Mexico commutes to and from employment in the United States.

(b) *Exempt individuals*—(1) *In general.* An exempt individual is an individual who is either a —

(i) Foreign government-related individual,

(ii) Teacher or trainee,

(iii) Student, or

(iv) Professional athlete who is temporarily present in the United States to compete in a charitable sports event described in section 274(l)(1)(B).

(2) *Foreign government-related individual*— (i) *In general.* A foreign government-related individual is an individual or a member of the immediate family of an individual who is temporarily present in the United States (A) as a full-time employee of an international organization, (B) by reason of diplomatic status, or (C) by reason of a visa that the Secretary of the Treasury or his delegate (after consultation with the Secretary of State when appropriate) determines represents full-time diplomatic or consular status. An individual described in this paragraph shall be considered to be temporarily present in the United States if such individual is not a lawful permanent resident as described in paragraph (b)(1) of § 301.7701 (b)-(1) and regardless of the actual amount of time that the individual is present in the United States.

(ii) *Definition of international organization.* The term "international organization" means any public international organization that has been designated by the President by Executive Order as being entitled to enjoy the privileges, exemptions, and immunities provided for in the International Organizations Act (22 U.S.C. 288).

(iii) *Full-time diplomatic or consular status.* An individual is considered to have full-time diplomatic or consular status if:

(A) He has been accredited by a foreign government recognized de jure or de facto by the United States;

(B) He intends to engage primarily in official activities for such foreign government while in the United States; and

(C) He has been recognized by the President, or by the Secretary of State, or by a consular officer acting on behalf of the Secretary of State as being entitled to such status.

(3) *Teacher or Trainee.* A teacher or trainee includes any individual (and such individual's immediate family), other than a student, who is admitted temporarily to the United States as a nonimmigrant under subparagraph (J) (relating to the admission of teachers and trainees into the United States) of section 101 (a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(15)(J)) and who substantially complies with the requirements of being admitted.

(4) *Student.* A student is any individual (and such individual's immediate family) who is admitted temporarily to the United States as a nonimmigrant under subparagraph (F) (relating to the admission of students into the United States) or subparagraph

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(J) (relating to the admission of teachers and trainees into the United States) of section 101 (a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(15) (F), (J)) who substantially complies with the requirements of being admitted.

(5) *Professional athlete.* A professional athlete is an individual who is temporarily present in the United States to compete in a charitable sports event described in section 274(l)(1)(B). For purposes of computing the days of presence in the United States, only days on which the athlete actually competes in a charitable sports event described in section 274(l)(1)(B) shall be excluded. Thus, days on which the individual is present to practice for the event, or to perform promotional or other activities related to the event, shall not be excluded for purposes of the substantial presence test.

(6) *Substantial compliance.* An individual described in paragraph (b) (3) or (4) of this section will be deemed to substantially comply with the visa requirements relevant to residence for tax purposes if the individual has not engaged in activities that are prohibited by the Immigration and Nationality Act and the regulations thereunder and could result in the loss of F or J visa status. An individual will not be deemed to comply substantially with the visa requirements relevant to residence for tax purposes merely by showing that the individual's visa has not been revoked. An independent determination of substantial compliance may be made by the Internal Revenue Service for any individual claiming to be an exempt individual under paragraph (b) (3) or (4) of this section. For example, if an individual with an F visa (student visa) is found to have accepted unauthorized employment or to have maintained a course of study that is not considered by the Internal Revenue Service to be full time, he will not be considered to comply substantially with his visa requirements regardless of whether his visa has been revoked.

(7) *Relationship between student exemption and teacher/trainee exemption*—(i) *In general.* Except as otherwise provided, an individual will not be able to exclude days of presence from the substantial presence test as a teacher, trainee if the individual has been exempt as a teacher or trainee if the individual has been exempt as a teacher, trainee, or student for any part of two of the six preceding calendar years. If all of an individual's compensation in the current year and for four of the six preceding calendar years is income described in section 872(b)(3), such individual will not be able to exclude days of presence from the substantial presence test as a teacher or trainee if the individual has been exempt as a teacher, trainee, or student for any part of four of the six preceding calendar years. An individual will not be able to exclude days of presence from the substantial presence test as a student if the individual has been exempt as a teacher, trainee, or student for any part of more than five calendar years, unless it is established to the satisfaction of the district director that the individual does not intend to reside permanently in the United States and has substantially complied with the requirements of the student visa providing for the individual's temporary presence in the United States.

For purposes of this paragraph (b)(7), the facts and circumstances to be considered in determining if an individual has demonstrated an intent to reside permanently in the United States include (but are not limited to):

(A) Whether the individual has maintained a closer connection with a foreign country as described in § 301.7701(b)–2, and

(B) Whether the individual has taken affirmative steps within the meaning of paragraph (e) of § 301.7701(b)–2 to adjust the individual's status from nonimmigrant to lawful permanent resident.

The rules in this paragraph (b)(7) relating to stated periods of exempt status apply only for those stated periods that occur after 1984. Thus, an alien who is present as a student during the calendar years 1982–1990 will not be subject to the five year rule for students until 1990.

(ii) *Example.* The following example illustrates the application of paragraph (b)(7)(i) of this section.

Example. B is temporarily present in the United States during the calendar year as a teacher, within the meaning of subparagraph J of section 101(15) of the Immigration and Nationality Act. B did not receive compensation described in section 872(b)(3) in any of the preceding 6 years. B has been treated as an exempt student for the past 4 years. Although this is the first year that B is seeking to be exempt as a teacher, he will not be considered an exempt individual for the year because he has been exempt as a student for at least 2 of the preceding 6 years.

(8) *Immediate family.* The immediate family of an exempt individual includes the individual's spouse and unmarried children (whether by blood or adoption) who are under 21 years of age, who reside regularly in the household of the exempt individual, and who are not members of some other household. The immediate family of a foreign government-related individual does not include attendants, servants, and personal employees of such individual.

(c) *Medical condition*—(1) *In general.* An individual will not be considered present on any day that the individual intends to leave and is unable to leave the United States because of a medical condition or medical problem that arose while the individual was present in the United States. A day of presence will not be excluded if the individual, who was initially prevented from leaving, is subsequently able to leave the United States and then remains in the United States beyond a reasonable period for making arrangements to leave the United States. A day will also not be excluded if the medical condition arose during a prior stay in the United States (whether or not days of presence during the prior stay were excluded) and the alien returns to the United States for treatment of the medical condition or medical problem that arose during the prior stay.

(2) *Preexisting medical condition.* A medical condition or problem will not be considered to arise while the individual is present in the United States, if the condition or problem existed prior to the individual's arrival in the United States, and the individual was aware of the condition or problem, regardless of whether the individual required treatment for the condition or problem when the individual entered the United States.

(d) *Days in transit.* An alien may exclude days of presence in the United States if he is in transit between two foreign points, and is physically present in the United States for fewer than 24 hours. For purposes of this paragraph, and individual will be considered to be in transit if he pursues activities that are substantially related to completing his travel to a foreign point of destination. For example, an alien who travels between airports in the United States in order to change planes en route to his destination will be considered to be in transit. However, if he attends a business meeting while he is present in the United States, whether or not such meeting is within the confines of the airport, he will not be considered to be in transit. For purposes of this paragraph, the term "foreign point" means any areas that are not included within the definition of the term "United States" provided in paragraph (c)(2)(ii) of § 301.7701(b)–1.

(e) *Regular commuters from Mexico or Canada.* An alien will not be considered to be present in the United States on days that the individual commutes to the individual's residence

in Mexico or Canada if the individual regularly commutes from Mexico or Canada. For purposes of this paragraph, the term "commutes" means to travel to employment or self-employment and to return to one's residence within a 24-hour period. An alien individual will be considered to commute regularly if he commutes to his location of employment of self-employment in the United States from his residence in Mexico or Canada on more than 80% of the workdays during the current year.

(f) *Determination of excluded days applies beyond year of determination.* If an alien individuals determines that he is permitted to exclude a day of presence pursuant to paragraph (b), (c), (d), or (e) of this section, then that day shall not be taken into account in the current year or the first of second preceding year.

§ 301.7701(b)–4 Residency time periods.

(a) *First year of residency.* An alien who was not a United States resident during the preceding calendar year and who is a United States resident for the current year will begin to be a resident for tax purposes on the alien's residency starting date. The residency starting date for an alien who meets the substantial presence test is the first day during the calendar year on which the individual is present in the United States. The residency starting date for an alien who meets the green card test is the first day during the calendar year of which the individual is physically present in the United States as a lawful permanent resident. The residency starting date for an alien who satisfies both the substantial presence test and the green card test will be the earlier of the first day the individual is physically present in the United States as a lawful permanent resident of the United States or the first day during the year that the individual is present for purposes of the sustantial presence test. (See § 301.7701(b)–9(b)(1) for the transitional rule relating to the residency starting date of an alien individual who was a lawful permanent resident in 1984.)

(b) *Last year of residency.* An alien who is a United States resident during the current year but who is not a United States resident at any time during the following calendar year will cease to be a resident for tax purposes on the individual's residency termination date. Generally, the residency termination date will be the last day of the calendar year. Notwithstanding the preceding sentence, the residency termination date for an alien who meets the substantial presence test is the last day during the year that the alien is physically present in the United States if the alien establishes a closer connection to a foreign country (as defined in § 301.7701 (b)–2 (d)) than the the United States for the remainder of the year. Similarly, the residency termination date for an alien who meets the "green card" test is the first day during the year that the alien is no longer a lawful permanent resident if the alien establishes a closer connection to a foreign country than the the United States for the remainder of the year. The residency termination date for an alien who satisfies both the substantial presence test and the "green card" test for the current year, will be the later of the first day the individual is no longer a lawful permanent resident of the United States or the last day the individual was a resident under the substantial presence test if the alien establishes a closer connection to a foreign country than to the United States for the remainder of the year.

(c) *Rules relating to residency starting date and residency termination date—*(1) *De minimis presence.* An alien may be present in the United States for up to 10 days without triggering the residency starting date (for purposes of the substantial presence test) or extending the residency termination date (for purposes of the substantial presence test and the green card test) if the individual is able to establish a closer connection to a foreign country (as defined in § 301.7701 (b)–2 (d)) than the United States during that period. Days from more than one period of presence may be disregarded for purposes of determining an individual's residency starting date or termination date so long as the total is not more than 10 days. However, an individual may not disregard any days that occur in a period of consecutive days of presence, if all the days that occur during that period cannot be excluded. An individual must include days of presence for purposes of determining whether the individual meets the substantial presence test even though the days may be disregarded for purposes of determining the individual's residency starting date or residency termination date.

(2) *Proration.* If an individual's residency starting date does not fall on the first day of the tax year, or the individual's residence termination date does not fall on the last day of the tax year, the individual's income tax liability should be calculated in accordance with § 1.871–13 dealing with the taxation of individuals who change residence status during the taxable year.

(3) *Residency starting date for certain individuals—*(i) *In general.* If an alien individual (who otherwise does not meet the substantial presence test or the green card test for the current year) is physically present in the United States for at least 31 consecutive days during the current year, and also for a period of continuous presence beginning with the first day of such thirty-one day period, the individual shall be considered to be a resident during the current year, and the individual's residency starting date shall be the first day of such thirty-one day period, if—

(A) The individual was not a resident of the United States under the substantial presence test or the green card test in the year preceding the current year;

(B) The individual is a resident of the United States in the subsequent year under the substantial presence test (whether or not the individual is also a resident of the United States under the green card test); and

(C) The individual elects to be treated as a resident during the current year.

(ii) *Determination of presence.* Except as otherwise provided in paragraph (c)(3)(iii) of this section, an individual shall be treated as present in the United States on any day that he is physically present in the United States at any time during the day.

(iii) *Thirty-one day period and period of continuous presence.* For purposes of this paragraph (c)(3), the term "thirty-one day period" means any period of 31 consecutive days during which an individual is actually present in the United States during each day of the period. The term "continuous presence" means a period of presence in the United States that includes 75 percent of the days (rounded to the nearest day) in the current year following (and including) the first day of the individual's thirty-one day period of presence. Only for purposes of the continuous presence requirement, an individual will be deemed to be present in the United States for up to 5 days on which the individual is absent from the United States. These days will not be deemed to be days of presence for purposes of the thirty-one day period of presence requirement. If an individual is present for more than one thirty-one day period of presence and satisfies the continuous presence requirement with regard to each period, the individual's residency starting date shall be the first day of the first thirty-one day period of presence. If an individual is present for more than one thirty-one day period of presence but satisfies the continuous presence requirement only for a later thirty-one day period, the individual's residency starting date shall be the first day of the later thirty-one day period of

presence. For purposes of this paragraph (c)(3), days of presence that are otherwise excluded under section 7701(b)(3)(D)(i) and § 301.7701(b)–3(a)(1), (3), and (4) shall not be counted as days of presence for purposes of either the thirty-one day period or continuous presence requirement.

(iv) *Election procedure—(A) Filing requirements.* An alien individual shall make an election to be treated as a resident under paragraph (c)(3) of this section by attaching a statement (decribed in paragraph (c)(3)(iv)(B)) to the individual's income tax return (Form 1040) for the taxable year for which the election is to be in effect (the election year). The alien individual may not make this election until such time as he has satisfied the substantial presence test of section 7701(b)(1)(A)(ii) for the year following the election year. If an alien individual has not satisfied the substantial presence test for the year following the election year as of the due date (not including extensions) of the tax return for the election year, the alien individual may request an extension of time for filing the return until after he has satisfied such test, provided that he pays with his extension application the amount of tax he expects to owe for the election year computed as if he were a nonresident alien throughout the election year. If the alien individual has not satisfied the substantial presence test of section 7701(b)(1)(A)(ii) as of the due date and has not requested an extension of time until he has satisfied that test, then the alien individual must file as a nonresident alien for the current year. The alien individual may subsequently elect to be treated as a resident by filing an amended return (on Form 1040) for the election year. An election made under paragraph (c)(3) of this section may not be revoked without approval of the Commissioner of his delegate.

(B) *Statement.* The statement required by paragraph (c)(3)(iv)(A) of this section shall include the name and address of the alien individual and contain a signed declaration that the election is being made. It must specify—

(*1*) That the alien individual was not a resident in the year immediately preceding the election year;

(*2*) That the alien individual is a resident under the substantial presence test in the year following the election year and the individual's number of days of presence in the United States during such year;

(*3*) The date or dates of the alien individual's thirty-one day period of presence and continuous presence in the United States during the election year; and

(*4*) The date or dates of absence from the United States during the election year that are deemed to be days of presence.

(d) *Examples.* The following examples illustrate the operation of this section.

Example (1). B, a citizen of foreign country X, is an alien who has never before been a United States resident for tax purposes. B comes to the United States on January 6, 1985, to attend a business meeting and returns to country X on January 10, 1985. B is able to establish a closer connection to country X for the period January 6–10. On March 1, 1985, B moves to the United States and resides here until August 20, 1985, when he returns to country X. On December 12, 1985, he comes to the United States for pleasure and stays here until December 16, 1985 when he returns to country X. B is able to establish a closer connection to country X for the period December 12–16. B is not a United States resident for tax purposes during the following year and can establish a closer connection to country X for the remainder of calendar year 1985. B is a resident of the United States under the substantial presence test because B is present in the United States for 183 days (5 days in January plus 173 days for the period March 1–August 20 plus 5 days in December). B's residency starting date is March 1, 1985, and his residency termination date is August 20, 1985.

Example (2). The facts are the same as in example (1) except that B does not come to the United States in December, 1985. B comes to the United States to attend a business meeting on August 21, 1985 and leaves the United States on August 25. B's residency termination date will be August 25, 1985.

Example (3). C, a citizen of foreign country Y, is an alien who has never before been a United States resident for tax purposes. C comes to the United States for the first time on February 10, 1985, and attends a business conference until February 24, 1985, when he returns to country Y. On April 20, 1985, C enters the United States as a lawful permanent resident. On November 10, 1985, C surrenders his green card but stays on in the United States until November 20, 1985 when he returns to country Y. On December 8, 1985, C comes to the United States and stays here until December 17, 1985 when he returns to country Y. He can establish a closer connection to country Y for that period. C is not a resident of the United States during the following calendar year and can establish a closer connection to country Y for the remainder of calendar year 1985. C qualifies as a United States resident under both the green card test and the substantial presence test. C's residency starting date under the green card test is April 20, 1985. Under the substantial presence test, C's residency starting date is February 10, 1985, because he is present for more than 10 days in February and cannot take advantage of the de minimis presence rule. Therefore, C's residency starting date is February 10, 1985. C's residency termination date under the green card test is November 10, 1985. His residency termination date under the substantial presence test is November 20, because B can disregard 10 days of presence in December. Thus, his residency termination date is November 20, 1985, the later of his residency termination date under the substantial presence test or the green card test.

Example (4). The facts are the same as in example (3) except that C is initially present in the United States on business from February 5 to February 9, 1985. C is able to establish a closer connection to country Y for that period. C may take advantage of only 10 days of de minimis presence and may exclude days from a continuous period of presence only if he can exclude all the days that occur during that period. Thus, C may choose either of the following periods of residency: residency starting date February 5, 1985, and residency termination date November 20, 1985, or residency starting date April 20, 1985, and residency termination date December 17, 1985.

Example (5). D, a citizen of foreign country Z, is an alien who has never before been a United States resident for tax purposes. D comes to the United States on November 1, 1985 and is present in the United States for 31 consecutive days (from November 1 to December 1, 1985). D returns to country Z on December 1 and does not come back to the United States until December 17, 1985. He remains in the United States for the rest of the year. During 1986, D is a resident of the United States under the substantial presence test. D may elect to be treated as a resident of the United States for 1985 because he was present in the United States in 1985 for a 31 consecutive day period of presence (November 1–December 1, 1985) and for 75 percent of the days following (and including) the first day of D's 31 consecutive day period of presence. If D makes the election to be treated as a resident, his residency starting date will be November 1, 1985.

Example (6). The facts are the same as in example (5) except that D is absent from the United States on December 24, 25, 29, 30 and 31. D may make the election to be treated as a resident for 1985 because up to 5 days of absence will be deemed to be days of presence for purposes of the continuous presence requirement.

Example (7). F, a citizen of foreign country M, is an alien individual who has never before been a United States resident for tax purposes. F comes to the United States on January 1, 1985 and remains in the United States until January 31, 1985, when he returns to country M. F comes back to the United States on October 1, 1985 and is present in the United States until November 1, 1985. From November 1, 1985 until December 31, 1985, F is present in the United States for 38 days. Although F satisfies two 31 consecutive day periods of presence, (January 1–January 31 and October 1–November 1), he satisfies the continuous presence requirement only with regard to the later period of presence. Thus, is F makes the election to be treated as a resident, his residency starting date is October 1, 1985.

(e) *No lapse—(1) Residency in prior year.* An alien who was a United States resident during the preceding calendar year and who is a United States resident

for the current year will continue to be taxable as a resident at the beginning of the current year. For purposes of this paragraph (e)(1), it is immaterial whether an individual is considered to be a resident under the substantial presence test or the green card test.

(2) *Residency in following year.* An alien who is a United States resident for any part of the current year and who is also a United States resident for any part of the following year (regardless of whether the individual has a closer connection to a foreign country than the United States during the current year) will be taxable as a resident through the end of the current year. For purposes of this paragraph (e)(2), it is immaterial whether an individual is considered to be a resident under the substantial presence test or the green card test.

(3) *Example.* The following example illustrates the application of this paragraph (e).

Example. B, an alien individual who is a citizen of foreign country M, comes to the United States for the first time on May 1, 1985, and remains in the United States until November 5, 1985, when he returns to country M. B comes back to the United States on March 5, 1986 as a lawful permanent resident and remains in the United States until September 10, 1986, when he surrenders his green card and returns to country M. B does not qualify as a resident in calendar year 1987. B's United States residency in calendar year 1985 continues through December 31, 1985, because he is a United States resident in the following calendar year. In calendar year 1986, B's United States residency is deemed to begin on January 1, 1986 because B qualified as a resident in the preceding calendar year. Thus, B's residency period in the United States begins on May 1, 1985, and ends on September 10, 1986.

§ 301.7701 (b)–5 Coordination with section 877.

(a) *General rule.* An alien individual will be subject to United States income tax in the manner provided by section 877, regardless of whether the individual has a tax avoidance motive, if the alien:

(1) Is a resident alien of the United States pursuant to paragraph (b) or paragraph (C) of § 301.7701 (b)–1 (or by virtue of an election to be treated as a resident pursuant to § 301.7701 (b)–4 (c) (3)) for at least three consecutive calendar years (the initial residency period) beginning after December 31, 1984;

(2) Is once again a nonresident; and

(3) Is a resident of the United States before the close of the third calendar year beginning after the individual's residency termination date in the initial residency period.

For purposes of paragraph (a) (1) of this section, the term "consecutive years" means a consecutive year or any part of a consecutive year.

(b) *Tax imposed.* The tax provided for under paragraph (a) of this section will be imposed only if the amount of tax would exceed the amount of tax that would be imposed under section 871, relating to the taxation of noresident aliens.

(c) *Example.* The following example illustrates the application of this section.

Example. B, a citizen of foreign country F, enters the United States on December 10, 1985, as a lawful permanent resident. On February 5, 1987, B surrenders his green card and returns to country F. B meets the initial residency period requirement because he is a resident of the United States for part of 3 consecutive years (1985, 1986 and 1987). B returns to the United States on October 5, 1990, as a lawful permanent resident. Because B became a resident of the United States before the close of the third calendar year (1990) beginning after the close of the initial residency period (February 5, 1987), he is subject to tax under section 877(b) for the intervening period of nonresidency, February 6, 1987 through October 4, 1990, if the amount of the tax imposed under section 877 is more than the tax imposed under section 871.

§ 301.7701(b)–6 Taxable year.

(a) *In general.* An alien who has not established the fiscal year as his taxable year prior to the period that the individual is subject to United States income tax as a resident or a nonresident shall adopt the calendar year as his taxable year. An individual will be considered to have established a fiscal year (whether in the United States or a foreign country) if the annual period on which the individual computes his income is a fiscal year, the individual keeps his books in accordance with such fiscal year, and the requirements of section 441 and § 1.441–1(e) are otherwise satisfied. An alien who has established a fiscal year and is a resident alien during the calendar year will be treated as a resident alien with respect to any portion of his taxable year (beginning with the individual's residency starting date and ending with the individual's residency termination date) that falls within such calendar year.

(b) *Example.* The following example illustrates the operation of this section.

Example. B, a citizen and resident of foregin country F, was engaged in a United States business during 1982 and filed a return on a fiscal year basis. B's fiscal year runs from October 1 to September 30. B comes to the United States on March 8, 1985 and remains in the United States until October 10, 1985, when he returns to country F. B, who is not a United States resident at any time in 1986, is a United States resident for the period that begins on March 8, 1985, and ends on October 10, 1985. For his fiscal year that ends on September 30, 1985, B will be taxed as a United States resident for the period that begins on March 8, 1985 and ends on September 30, 1985. For his fiscal year that ends on September 30, 1986, B will be taxed as a United States resident for the period that begins on October 1, 1985 and ends on October 10, 1985.

§ 301.7701(b)–7 Coordination with income tax treaties.

(a) *Consistency requirement.* If an alien individual is considered to be a resident of the United States pursuant to section 7701(b) and the regulations thereunder and is also considered to be a resident of a country with which the United States has an income tax convention pursuant to the convention, then the rules on residency provided in such convention shall apply for purposes of determining the individual's residence for treaty purposes. If the alien individual determines that he is a resident of the foreign country for treaty purposes, and the alien individual claims a treaty benefit (as a nonresident of the United States) so as to reduce his United States income tax liability with respect to any item of income covered by an applicable tax convention during a taxable year, such individual shall be treated as a nonresident alien of the United States for purposes of computing such individual's United States income tax liability under the provisions of the Internal Revenue Code and the regulations thereunder with respect to that taxable year. The application of this section shall be limited to an alien individual who is considered to be a resident of a treaty country pursuant to a provision of a treaty that provides for resolution of conflicting claims of residence by the United States and its treaty partner. Such an individual shall be treated as a United States resident for all purposes of the Internal Revenue Code other than the computation of such individual's United States income tax liability.

(b) *Filing requirements.* An alien individual described in paragraph (a) of this section shall make a return on Form 1040 on or before the date prescribed by law (including extensions) for making an income tax return as a resident. Such individual shall prepare such return and compute his tax liability as a resident alien, without regard to any treaty benefit to which he may be entitled. If the individual has any item of income for the taxable year covered by a treaty with respect to which the individual is claiming a treaty benefit to reduce his United States income tax liability, he shall attach Form 1040NR to this return. Such individual shall complete Form 1040NR and compute his tax liability as

a nonresident alien. He shall indicate on Form 1040NR (or on a statement attached thereto) any item of income for which he is claiming a treaty benefit. The full return, consisting of Form 1040 and Form 1040NR (with any attached statements), shall be filed with the Internal Revenue Service Center with which Form 1040 of such individual is required to be filed.

(c) *Examples.* The following examples illustrate the application of this section.

Example (1). B, an alien individual, is a resident of foreign country X, under X's internal law. Country X is a party to an income tax convention with the United States. B is also a resident of the United States under United States law. B is considered to be a resident of country X under the articles of the convention. The convention does not specifically deal with characterization of foreign corporations as controlled foreign corporations or the taxability of United States shareholders on inclusions of subpart F income, but it provides, in an "Other Income" article similar to Article 21 of the 1981 draft of the United States Model Income Tax Convention (U.S. Model), that items of income of a resident of country X that are not specifically dealt with in the articles of the convention shall be taxable only in country X. B owns 80% of the one class of stock of foreign corporation R. The remaining 20% is owned by C, a United States citizen who is unrelated to B. In 1985, corporation R's only income is interest that is foreign personal holding company income under § 1.954–2. Because the United States-X income tax convention does not deal with characterization of foreign corporations as controlled foreign corporations, United States internal income tax law applies. Therefore, B and C are United States shareholders within the meaning of § 1.951–1(g), corporation R is a controlled foreign corporation within the meaning of § 1.957–1, and corporation R's income is included in C's income as subpart F income under § 1.951–1. B may avoid current taxation on his share of the subpart F inclusion by filing as a nonresident (*i.e.*, by following the procedure in § 301.7701(b)–7(b)). If B files as a nonresident, then his share of the subpart F income will not be subject to tax in the United States because the "Other Income" article of the convention reserves to the state of residence the exclusive right to tax income other than those items specifically covered in the convention.

Example (2). The facts are the same as example (1) except that B also earns United States source dividend income. The United States-X income tax convention provides that the rate of United States tax on United States source dividends paid to residents of country X shall not exceed 15 percent of the gross amount of the dividends. B's United States tax liability with respect to the dividends would be smaller if he were treated as a resident alien, subject to tax on a net basis (*i.e.*, after the allowance of deductions) than if he were treated as a nonresident alien. If, however, B chooses to file as a nonresident in order to claim treaty benefits with respect to his share of R's subpart F income, his overall United States tax liability, including the portion attributable to the dividends, must be determined as if he were a nonresident alien.

Example (3). C, a married alien individual with three children, is a resident of foreign country Y, under Y's internal law. Country Y is a party to an income tax convention with the United States. C is also a resident of the United States under United States law. C is considered to be a resident of country Y under the articles of residency of the convention. The convention specifically covers, among other items of income, personal services income, dividends and interest. C is sent by his country Y employer to work in the United States from January 1, 1985 until December 31, 1985. During 1985, C also earns United States source dividends and interest and incurs mortgage interest expenses on his personal residence. The United States-Y treaty provides that remuneration for personal services performed in the United States by a country Y resident is exempt from United States tax if, among other things, the individual performing such services is present in the United States for a period that is not in excess of 183 days. The treaty provides that the rate of United States tax on United States source dividends paid to residents of Y shall not exceed 15 percent of the gross amount of the dividends and it exempts residents of Y from United States tax on United States source interest. In filing his 1985 tax return, C may choose to file either as a resident alien without claiming any treaty benefits or as a nonresident alien if he desires to claim any treaty benefit. C files as a nonresident (*i.e.*, by following the procedure described in § 301.7701(b)–7(b)). Because C does not satisfy the requirements of the United States-Y treaty with regard to exempting personal services income from United States tax, C will be taxed on his personal services income at graduated rates under section 1 of the Code pursuant to section 871(b) of the Code. He will not be entitled to deduct his mortgage interest expenses or to claim more than one personal exemption because he is taxed as a nonresident alien under the Code by virtue to his decision to claim treaty benefits, and section 873 of the Code denies nonresidents the deduction for personal residence mortgage interest expense and generally limits them to only one personal exemption. C will be subject to a tax of 15 percent of the gross amount of his dividend income under section 871(a) of the Code as modified by the treaty, and he will be exempt from tax on his interest income. C is not entitled to file a joint return with his spouse even if she is a resident alien under the Code for 1985.

Example (4). The facts are the same as in example (3) except that C does not choose to claim treaty benefits with respect to any items of income covered by the treaty (*i.e.*, he files as a resident). Therefore, he is taxed as a resident under the Code and pays tax at graduated rates on his personal services income, dividends, and interest. In addition, he is entitled to deduct his mortgage interest expenses and to take personal exemptions for his spouse and three children. C will be entitled to file a joint return with his spouse if she is a resident alien for 1985 or, if she is a nonresident alien, C and his spouse may elect to file a joint return pursuant to section 6013.

§ 301.7701(b)–8 Procedural rules.

(a) *Who must file*—(1) *Closer connection exception.* An alien individual who otherwise meets the substantial presence test must file a statement to explain the basis of the individual's claim that he is able to satisfy the closer connection exception described in § 301.7701(b)–2.

(2) *Exempt individuals and individuals with a medical condition.* An alien individual must file a statement to explain the basis of the individual's claim that he is able to exclude days of presence in the United States because the individual—

(i) Is an exempt individual as described in § 301.7701(b)-3 (b)(3) (teacher/trainee), § 301.7701(b)-3 (b)(4) (student), or § 301.7701(b)-3 (b)(5) (professional athlete), or

(ii) Has a medical condition or problems as described in § 301.7701(b)-3 (c).

(3) *De minimus presence and residency starting and termination dates.* A statement must be filed by an individual who is seeking to establish—

(i) That a period of de minimus presence of ten or fewer days should be disregarded for purposes of the individual's residency starting or termination date, or

(ii) A residency termination date.

(b) *Contents of statement*—(1) *Closer connection exception.* The statement filed by an individual described in paragraph (a)(1) of this section shall be dated, signed by the individual claiming the exception, and verified by a declaration that the statement is made under penalties of perjury. The statement shall contain the following information:

(i) The individual's name, address, United States taxpayer identification number, if any, and United States visa number, if any;

(ii) The country that issued the individual's passport and number of such passport;

(iii) The taxable year for which the statement is to apply;

(iv) The total number of days of presence in the United States during the current year, during the first preceding calendar year, and during the second preceding calendar year;

(v) Whether the individual has applied for, or has taken other affirmative steps to apply for, permanent resident status during the current year or whether the individual has an application pending for adjustment of status to that of a permanent resident during the current year; and

(vi) Sufficient facts to determine whether the individual has maintained a closer connection to a foreign country and a tax home in such foreign country for the entire current year as described in § 301.7701(b)-2.

(2) *Exempt individuals and individuals with a medical condition.* The statement filed by an individual described in paragraph (a)(2) of this section shall be dated, signed by the individual who is claiming that days of presence in the United States should be excluded from the computation required by the substantial presence test, and verified by a declaration that the statement is made under the penalty of perjury. The statement shall contain items (i) through (iv) described in paragraph (b)(1) of this section and the following information (as applicable):

(i) A brief description of the medical condition or problem that prevented the individual from leaving the United States;

(ii) A written statement from the individual's physician or other medical official (including the name, address, and telephone number of the physician or other medical official) verifying that the individual was unable to leave the United States because of the medical condition or problem described in paragraph (b)(2)(i) of this section and that there was no indication that the individual's condition or problem was preexisting as defined in § 301.7701 (b)-3 (c)(2);

(iii) The name, address, and telephone number of the academic institution attended by an F or J visa holder during the current year;

(iv) The name, address, and telephone number of the director of the academic or other specialized program that a J visa holder has participated in during the current year;

(v) the type of visa held by a J or F visa holder during the six preceding calendar years.

(vi) The charitable sports event or events in which the individual competes during the calendar year and the dates of competition;

(vii) The section 501(c)(3) organization or organizations benefitted by the sports event; and

(viii) Sufficient facts to verify that all of the net proceeds of the charitable sports event are contributed to the organization or organizations described in paragraph (b)(2)(vii) of this section.

(3) *De minimis presence and residency starting and termination dates.* The statement filed by an individual described in paragraph (a)(3) of this section shall be dated, signed by the individual seeking to exclude de minimis presence for purposes of the individual's residency starting or termination data or to establish a residency termination date, and verified by a declaration that the statement is made under the penalty of perjury. The statement shall contain the information described in items (i), (ii) and (iii) described in paragraph (b)(1) of this section and the following information (as applicable):

(i) The first day that the individual was present in the United States during the current year;

(ii) The last day that the individual was present in the United States during the current year;

(iii) Dates of de minimis presence that the individual is seeking to exclude from his residency starting or termination dates;

(iv) Sufficient facts to establish that the individual has maintained a closer connection to a foreign country during a period of de minimis presence;

(v) Sufficient facts to establish that an individual has maintained a closer connection to a foreign country following the individual's last day of presence in the United States during the current year or following the abandonment or rescission of an individual's green card during the current year;

(vi) Date that the individual's status as a lawful permanent resident was abandoned or rescinded; and

(vii) Sufficient facts (including copies of relevant documents) to establish that the individual's status as lawful permanent resident has been abandoned or rescinded.

(c) *How to file.* Individuals described in paragraph (a) of this section who are required to make a return on Form 1040 or 1040NR pusruant to § 1.6012-1(b) must attach the statement described in paragraph (b) of this section to the return. An individual who is not required to file either Form 1040 or 1040NR must file the statement with the Internal Revenue Service Center, Philadelphia, PA 19255 on or before the date prescribed by law (including extensions) for making an income tax return for the calendar year for which the statement applies.

(d) *Penalty for failure to file statement.* If an individual is required to file a statement pursuant to paragraph (a)(1), (a)(2)(ii), or (a)(3) of this section and fails to file such statement on or before the date prescribed by law (including extensions) for making an income tax return, the individual will not be eligible for the closer connection exception described in § 301.7701(b)-2 and will be required to include all days of presence in the United States (calculated without the benefit of § 301.7701(b)-3(b)(3), (4), or (5), § 301.7701(b)-3(c), and § 301.7701(b)-4(c)(1)) for purposes of the substantial presence test and for determining the individual's residency starting and termination dates. If an individual is considered to be a resident because of this paragraph and the individual is also a resident of a country with which the United States has an income tax convention pursuant to that convention, the individual shall be treated in the manner provided in of § 301.7701(b)-7(a) (relating to the treatment of individuals who are dual residents).

§ 301.7701(b)-9 Effective dates of §§ 301.7701(b)-1 through 301.7701(b)-9.

(a) *In general.* Except as indicated in paragraph (b) of this section, §§ 301.7701(b)-1 through 301.7701(b)-9 apply to taxable years beginning after December 31, 1984. For the rules applicable to earlier taxable years, see §§ 1.871-2 through 1.871-5.

(b) *Special rules*—(1) *Green card test-residency starting date.* If an alien was a lawful permanent resident throughout 1984 (regardless of whether he was physically present in the United States), or was physically present in the United States at any time during 1984 while a lawful permanent resident, the individual will be considered to have been a resident of the United States during 1984 for purposes of applying the provisions of section 7701(b)(2)(A) and § 301.7701(b)-4 such that the individual will, if he meets the substantial presence or green card test in 1985, be considered a resident of the United States as of January 1, 1985, regardless of when the individual is first present in the United States in 1985.

(2) *Substantial presence test-years included.* For purposes of applying the substantial presence test for calendar years 1985 and 1986, days of presence in 1984 will only be counted for aliens who had been residents under prior law (§§ 1.871-2 through 1.871-5) at the end of calendar year 1984. Days of presence in 1983 will only be counted for aliens who had been residents under prior law at the end of both calendar year 1983 and 1984.

(3) *Professional athletes.* For purposes of applying the substantial presence test, only days of presence in the United States after October 22, 1986, shall be excluded for individuals described in § 301.7701(b)-3(1)(iv) (professional athletes).

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-20779 Filed 9-9-87; 8:45 am]

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DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[Order No. 1217-87]

28 CFR Parts 20 and 50

Identification Division; Policy Changes

AGENCY: Federal Bureau of Investigation, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule changes FBI Identification Division policy in effect since July 1, 1974, relating to the exchange of identification records with federally chartered or insured banking institutions, officials of state and local governments for purposes of employment and licensing, and certain segments of the securities industry. In addition, the rule reflects the amendment to Title 7, United States Code (U.S.C.), section 21(b)(4)(E) as provided for in Public Law 97-444 which permits registered futures associations access to all data on identification records. The policy restricting the dissemination of arrest data more than one-year old with no disposition was originally placed in effect to reduce possible denials of employment opportunities or licensing privileges. However, this restriction may prevent agencies legally authorized to access the Criminal File of the Identification Division from receiving relevant arrest information concerning the potential employee or licensee. For example, an arrest for rape or child abuse which is over one-year old and not accompanied by a disposition cannot be provided to a state agency authorized by law to determine an individual's suitability for employment in a child-care center. Also, as currently implemented, the one-year rule makes it impossible to determine with finality when an applicant has no criminal record even though 90 percent of the replies relate to individuals with no criminal record. All negative responses receive the same reply, i.e., "No Record or No Record Meeting Dissemination Criteria." Therefore, the Identification Division user never knows whether the applicant has no criminal record or whether he/she has a record that cannot be disseminated because of the one-year rule. The new rule will make it possible for the FBI to disseminate all data on identification records, answer with finality the question of whether an individual has a criminal record, provide for the public safety, and yet protect the privacy interests of the individual with the record by giving him/her the opportunity to complete and/or challenge the accuracy of the information contained in the identification record prior to a determination being made that the individual is not suitable for a license or employment based on the challenged or incomplete information in his/her FBI identification record.

DATE: Comments must be received on or before November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Melvin D. Mercer, Jr., Chief of the Recording and Posting Sections, Identification Division, FBI, Washington, DC 20537-9700, telephone number (202) 324-5454.

SUPPLEMENTARY INFORMATION: The procedure to obtain change, correction or updating of an FBI identification record is set forth in § 16.34 of Title 28 of the Code of Federal Regulations (CFR).

This is not a major rule within the meaning of Executive Order Number 12291. This rule will not have a substantial impact on a significant number of small businesses.

This proposed rule change necessitates changes to §§ 50.12 and 20.33(a)(3) of Title 28 of the CFR and the Commentary to § 20.33 appearing in the appendix immediately following Part 20, as the one-year restriction rule is referred to in those sections and the Commentary.

List of Subjects in 28 CFR Parts 20 and 50

Administrative practice and procedure, Law enforcement, Authority delegations (Government agencies).

By virtue of the authority vested in me as Attorney General under 28 U.S.C. 534, 15 U.S.C. 78q, 7 U.S.C. 21(b)(4)(E), and Pub. L. 92-544 (86 Stat. 1115), Part 20, Subpart C, and Part 50 of Title 28 of the CFR are proposed to be amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Sections 501 and 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Pub. L. 93-83, 87 Stat. 197, 42 U.S.C. 3701, et seq. (Act), 28 U.S.C. 534, and Pub. L. 92-544, 86 Stat. 1115.

2. In § 20.33, paragraph (a)(3) is revised to read as follows:

§ 20.33 Dissemination of criminal history record information.

(a) * * *

(3) Pursuant to Public Law 92-544 (86 Stat. 1115) for use in connection with licensing or local/state employment or for other uses only if such dissemination is authorized by Federal or state statutes and approved by the Attorney General of the United States. Refer to § 50.12 for dissemination guidelines relating to requests processed under this subsection.

* * * * *

Appendix—[Amended]

3. In the "Appendix—Commentary on Selected Sections of the Regulations on Criminal History Record Information System", the commentary for § 20.33 is revised to read as follows:

* * * * *

Section 20.33 Incorporates provisions cited in 28 CFR 50.12 regarding dissemination of identification records outside the Federal Government for noncriminal justice purposes:

* * * * *

PART 50—[AMENDED]

4. The authority citation for Part 50 continues to read as follows:

Authority: 28 U.S.C. 508, 509, 510; 5 U.S.C. 301, 552, 552a; 15 U.S.C. 16(d).

5. Section 50.12 is revised to read as follows:

§ 50.12 Exchange of FBI identification records.

(a) The Federal Bureau of Investigation, hereinafter referred to as the FBI, is authorized to expend funds for the exchange of identification records with officials of federally chartered or insured banking institutions and with officials of state and local governments for purposes of employment and licensing, pursuant to section 201 of Public Law 92-544 (86 Stat. 1115). Also, pursuant to 15 U.S.C. 78q and 7 U.S.C. 21(b)(4)(E) respectively, such records can be exchanged with certain segments of the securities industry and with registered futures associations.

(b) The Director of the FBI is authorized by 28 CFR 0.85(j) to approve procedures relating to the exchange of identification records with federally chartered or insured banking institutions, officials of state and local governments for purposes of employment and licensing, certain segments of the securities industry, and registered futures associations. Under this authority, effective [date will be set when final rule is published], the FBI Identification Division will make all data on identification records available for such purposes. Records obtained under this authority may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities. Officials at the

governmental institutions and other entities authorized to submit fingerprints and receive FBI identification records under this authority must notify the individuals fingerprinted that the fingerprints will be used to check the criminal history records of the FBI. The officials making the determination of suitability for licensing or employment shall provide the applicants the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record. These officials cannot deny the license or employment based on information in the record until the applicant has been afforded a reasonable time to correct or complete the record, or has declined to do so. Those officials making such determinations must advise the applicants that procedures for obtaining a change, correction, or updating of an FBI identification record are set forth in § 16.34 of Title 28 of the CFR. A statement incorporating these use and challenge requirements will be placed on all records disseminated under this program. This policy is intended to ensure that all relevant criminal record information is made available to provide for the public safety and further, to protect the interests of the prospective employee/licensee who may be affected by the information or lack of information in an identification record.

(c) There will be no change in FBI Identification Division procedures for dissemination of all criminal record information for law enforcement purposes and to agencies of the Federal Government as currently authorized by 28 U.S.C. 534.

Date: August 19, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87-20738 Filed 9-9-87; 8:45 am]

BILLING CODE 4410-01-M

POSTAL SERVICE

39 CFR Part 111

Supplements to Second-Class Publications; Extension of Time for Comment

AGENCY: Postal Service.

ACTION: Proposed rule; extension of time.

SUMMARY: On July 22, 1987, the Postal Service published in the **Federal Register** (52 FR 27565) a proposed rule change intended to provide the mailing industry with an additional opportunity to furnish ideas and suggestions on the shape of future regulations on the use of supplements to second-class publications. The Postal Service requested comments on the proposed rule change on or before September 7, 1987.

Certain mailer representatives requested a twenty day extension of the comment period in order to make a more complete assessment of the proposal and its potential effects.

The Postal Service believes that the requested extension is reasonable and will serve the public interest in this case.

Accordingly, the Postal Service is extending the deadline for comments on the proposed rule change until October 5, 1987.

DATE: Comments on the proposed rule change must be received on or before October 5, 1987.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service 475 L'Enfant Plaza West SW., Washington, DC 20260-5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Young, (202) 268-5321.

Paul J. Kemp,

Supervisory Attorney, Legislative Division.

[FR Doc. 87-20785 Filed 9-9-87; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 52

[AD-FRL-3259-2]

PM_{10} Fugitive Dust Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period for proposed policy statement.

SUMMARY: On July 1, 1987, at 52 FR 24716, EPA proposed three alternatives to its existing fugitive dust policy to address the new particulate matter standard known as PM_{10}. That notice requested that comments be filed on or before July 31, 1987. At the request of the American Mining Congress (AMC), EPA extended the comment period to August 31, 1987. At the request of the Natural Resources Defense Council (NRDC) EPA is now extending the comment period to September 30, 1987.

DATE: All comments must be submitted on or before September 30, 1987.

ADDRESSES: Comments on the alternative fugitive dust policies should be submitted (in triplicate if possible) to the Central Docket Section (LE-132), U.S. Environmental Protection Agency, Attention: Docket Number A-87-01, 401 M. Street, SW., Washington, DC 20460. The Docket is located in Room 4, South Conference Center, and is available for public inspection between 8:00 a.m. and 3:00 p.m. on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Kenneth Woodard, Standards Implementation Branch (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Telephone: (919) 541-5351 (FTS 629-5351).

SUPPLEMENTARY INFORMATION:

Since 1977, EPA has allowed States with rural fugitive dust areas (RFDA's) to discount fugitive dust in developing and enforcing a State implementation plan (SIP) for attainment and maintenance of the national ambient air quality standards (NAAQS) for particulate matter (PM).

On July 1, 1987, at 52 FR 24634, EPA announced its final decisions concerning the idicator and levels of the NAAQS for PM and the requirements for implementing those new standards. Also, on July 1, 1987, EPA solicited comments on alternative SIP requirements for RFDA's and on the adequacy of the definitions which are used in identifying RFDA's. The EPA requested that comments be submitted within 30 days or by July 31, 1987. At the request of counsel for AMC, EPA extended the comment period by 30 days to allow members of that organization to develop meaningful comments. The NRDC has requested by letter of August 14, 1987, from their senior attorney, David D. Doniger, that they be given until September 30, 1987, to submit their comments. (A copy of the letter from NRDC has been placed in the docket.) The EPA believes that NRDC's request is reasonable and is therefore again extending the comment period on the proposal for the Fugitive Dust Policy until September 30, 1987.

Authority: Sections 110 and 301 of the Clean Air Act give the Administrator authority to adopt policies necessary to implement NAAQS.

Dated: September 2, 1987.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 87-20761 Filed 9-9-87; 8:45 am]

BILLING CODE 6560-50-M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 410

[BERC-327-P]

Medicare Program; Medicare Coverage of Hepatitis B Vaccine for High and Intermediate Risk Individuals, Hemophilia Clotting Factors and Certain X-Ray Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 2323 of Pub. L. 98–369, the Deficit Reduction Act of 1984, which provides Medicare coverage for hepatitis B vaccine for those individuals who are eligible for Medicare and at high or intermediate risk of contracting hepatitis B. The proposed rule solicits public comment on our definition of those individuals who are at high or intermediate risk of contracting hepatitis B. It would also implement section 2324 of Pub. L. 98–369, which provides coverage for the self-administration of hemophilia clotting factors and the items necessary for their administration to Medicare eligibles. In addition, this proposal would clarify regulations governing Medicare coverage of certain x-ray services.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on November 9, 1987.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–327–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–327–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT:

James Hannon, 301–597–1734, for issues relating to Hepatitis B vaccine and Hemophilia Clotting Factors.

Kenneth Dickinson, 301–594–9406, for issues relating to X-ray services.

SUPPLEMENTARY INFORMATION:

I. Hepatitis B Vaccine

A. Background

Hepatitis B virus causes major public health problems in the United States, particularly in debilitated patients. On November 16, 1981, the Food and Drug Administration (FDA) approved the hepatitis B vaccine for combating debilitating liver disease caused by the hepatitis B virus. FDA recognizes the vaccine as effective for people at high risk of acquiring the disease. However, section 1862(a)(1)(A) of the Social Security Act (the Act) excludes Medicare payments for items and services that are not reasonable and necessary for the diagnosis or treatment of illness or injury, or to improve the functioning of a malformed body member. Further, prior to the July 18, 1984 enactment of the Deficit Reduction Act of 1984 (DRA) (Pub. L. 98–369), section 1862(a)(7) of the Act specifically precluded payment for immunizations, except as allowed under section 1861(s)(10) of the Act for coverage of pneumococcal vaccine. Currently, regulations at 42 CFR 405.310(e) preclude payment for vaccinations or inoculations unless directly related to the treatment of an injury or direct exposure, such as antirabies treatment, tetanus antitoxin or booster vaccine, botulin antitoxin, antivenom sera, or immune globulin. Thus, in the past, Medicare program coverage has been limited by statute to treatment of hepatitis B patients, rather than prevention of hepatitis B.

Section 2323 of DRA amended section 1861(s)(10) of the Act to provide Medicare coverage for hepatitis B vaccine to the extent that it is reasonable and necessary for the prevention of illness for those individuals who are at high or intermediate risk of contracting hepatitis B. The statute requires the Secretary to determine, by regulations, criteria for identifying individuals who are at high or intermediate risk of contracting hepatitis B.

For Medicare reimbursement purposes, the vaccine may be administered—upon the order of a doctor of medicine or osteopathy—by qualified staff of home health agencies, skilled nursing facilities, ESRD facilities, hospital outpatient departments, persons recognized under the "incident to physician's services" provision of the law (section 1861(s)(2)(A)), as well as, doctors of medicine and osteopathy.

Section 2323 did not require Medicare entitlement for individuals outside the universe of Medicare beneficiaries, and an individual who is otherwise not eligible for Medicare cannot be considered entitled to Medicare coverage for the hepatitis B vaccine simply by virtue of belonging to one of the groups defined as high or intermediate-risk.

The Conference Report accompanying DRA (H.R. Rep. No. 861, 98th Cong., 2d Sess. 1310 (1984)) reflects congressional intent that regulations governing coverage of Hepatitis B vaccine be developed using specifically, but not necessarily exclusively, the information developed by the Centers for Disease Control (CDC) for identification of high and intermediate risk groups. A copy of the 1985 hepatitis recommendations by the Immunization Practices Advisory Committee of CDC is included as an addendum for your reference.

B. Recommendations Received From CDC, FDA and the Manufacturer

1. High Risk Groups

The CDC, FDA and the manufacturer of Hepatitis B vaccine all recommended identifying the following categories of individuals as being at high risk of contracting hepatitis B:

- Hemodialysis patients;
- Hemophiliacs who receive Factor VIII or IX concentrates,
- Clients of institutions for the mentally retarded;
- Persons who live in the same household as hepatitis B carriers;
- Homosexual men; and
- Illicit injectable drug abusers.

We also propose including Pacific Islanders on this list, based on a subsequent CDC recommendation. Pacific Islanders would be defined as those Medicare beneficiaries residing on Pacific Islands under U.S. jurisdiction. Residents of the Hawaiian Islands would not fall under this definition, and would be covered only if they qualified under one of the other high or intermediate risk categories.

With the concurrence of the CDC and FDA, because persons on hemodialysis are not the only End-Stage Renal Disease (ESRD) patients who are exposed to hepatitis B, we propose to include all ESRD patients in the high-risk group.

CDC, FDA and the manufacturer also suggested that infants born to women

who are hepatitis B carriers or have acute hepatitis B be included in the high-risk group. We decided not to accept this recommendation since it is unlikely, because of age, that an infant would be a Medicare beneficiary.

The manufacturer also included the following individuals in their high-risk grouping:

- Alaskan Eskimos;
- Recipients of pooled blood; and
- Immigrants/refugees from areas of high hepatitis B endemicity.

However, we have not accepted these recommendations. "Alaskan Eskimos" are receiving the vaccine through a program of the Indian Health Service under a CDC recommendation that covers special high risk populations. (CDC terms the "Alaskan Eskimos" as "Native Americans living in Alaska.") "Recipients of pooled blood" are included within the definition of Factor VIII or IX concentrate users. Immigrants/refugees would be included under "persons who live in the same household as carriers". Also, there are refugee programs that provide vaccination services to eligible enrollees.

2. Intermediate Risk Groups

Recommendations from CDC, FDA and the manufacturer included the following individuals in the intermediate-risk group:

- Staff in institutions for the mentally retarded;
- Workers in health care professions who have frequent contact with blood-derived body fluids during routine work;
- Prisoners;
- Classroom/home contacts of mentally retarded carriers; and
- Military or other personnel assigned to areas of high endemicity (for example, Korea).

Based on a subsequent CDC recommendation, we also propose including on this list heterosexually active persons with multiple sexual partners. In order to qualify on this basis, claims for such services would have to include documentation of the individual having at least two episodes of sexually transmitted diseases within the preceding 5 years.

We have decided not to accept the recommendation to include prisoners in the intermediate risk group because the Medicare statute excludes from coverage expenses incurred by individuals who have no legal obligation to pay. In this regard, the governmental entity operating the prison is responsible for providing the inmates' medical needs.

We also decided not to create a separate category for classroom/home contacts of mentally retarded carriers as an intermediate risk group. Since the mentally retarded are included in the classification of hepatitis B carriers and the household members of the hepatitis B carrier are already considered a high risk group, the creation of a separate group for home contacts of mentally retarded carriers would generally not identify additional individuals for vaccination. Moreover, it has been difficult to determine the risk for other contacts of the mentally retarded, namely, the classroom contacts. Staff members (faculty and institutional employees) are considered as intermediate risk because of their close continued contact with the mentally retarded and are identified in one of the pre-named groups. However, the risk of classmate contacts, because of their casual contact, has been more difficult to assess.

Studies are being done to determine which individuals who come in contact with the mentally retarded should be vaccinated. Since there is a limited supply of the vaccine and classmates are at different levels of risk, we believe that recommendations will suggest limiting vaccination to highly infected individuals and those whose level of exposure might suggest need for vaccination.

We decided not to accept the recommendation to include military or other personnel assigned to areas of high endemicity since it is highly unlikely that such persons would be Medicare beneficiaries.

3. Other Recommendations.

CDC and FDA recommended prevaccination screening for antibodies to hepatitis B for all persons in high-risk groups except infants of hepatitis B carrier mothers. We cannot include coverage of such screening since there is no statutory authority to permit coverage of routine screening. In accordance with CDC's and FDA's advice that "persons shown to have protective antibodies (anti-HBs) need not be vaccinated", we would not cover and reimburse for hepatitis B vaccine in those cases where there is known to be laboratory evidence positive for antibodies to hepatitis B.

The manufacturer suggested that the term "susceptible" be used to distinguish those individuals who require the vaccine from those who would not benefit because of pre-formed antibodies. However, we concluded that use of the term "susceptible" to describe those in the high and intermediate risk group who qualify for Medicare coverage of the hepatitis B vaccine could be interpreted as requiring laboratory evidence of susceptibility in every case. It is our view that the patient's physician generally is in the best position to decide the need for laboratory testing to determine susceptibility and will not provide the vaccine unless he or she believes the individual is susceptible. Therefore, we decided not to specifically include the term "susceptible" and to provide that beneficiaries in the high and intermediate risk groups would be eligible for coverage in the absence of laboratory evidence that is positive for antibodies to hepatitis B.

C. Proposed High and Intermediate Risk Individuals Identified by HCFA

We propose to identify the following groups of individuals as being at high or intermediate risk of contracting hepatitis B:

High Risk Groups:

a. ESRD patients;

b. Hemophiliacs who receive Factor VIII or IX concentrates;

c. Clients of institutions for the mentally retarded;

d. Persons who live in the same household as an hepatitis B carrier;

e. Homosexual men;

f. Illicit injectable drug abusers; and

g. Pacific Islanders (except residents of Hawaii).

Intermediate Risk Groups:

a. Staff in institutions for the mentally retarded;

b. Workers in health care professions who have frequent contact with blood or blood-derived body fluids during routine work; and

c. Heterosexually active persons with multiple sexual partners (that is, Medicare beneficiaries having at least two or more documented episodes of sexually transmitted diseases within the preceding 5 years).

Persons in the above-listed groups would *not* be considered at high or intermediate risk of contracting hepatitis B if they have undergone a prevaccination screening and found to be positive for antibodies to hepatitis B, such as the screening of ESRD patients who are routinely tested for hepatitis B antibodies as part of their continuing monitoring and therapy.

II. Hemophilia Clotting Factors

A. Background

Antihemophilic clotting factor (AHF) is a clot-promoting procoagulation protein found in the plasma of normal individuals. It provides a critical component of the coagulation system

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and is essential for normal coagulation and hemostasis (arrest of bleeding) to take place. The AHF is used as needed to stop bleeding or, in certain high-risk individuals, to prevent certain predictable adverse bleeding complications. AHF is infused before surgical procedures involving hemophiliac patients. AHF is also infused to stop or prevent bleeding of traumatic or spontaneous origin in patients with congenital disorders of coagulation.

AHF may be self-infused by patients in the home setting, or may be administered or self-infused in centers, clinics, emergency rooms or hospitals. A wide base of experience now exists regarding self infusion of AHF in both institutional and home use settings. In 1975 Congress passed an amendment to the Public Health Service Act, section 606 of Pub. L. 94–63, Special Health Revenue Sharing Act of 1975, enabling the establishment of the Comprehensive Hemophilia Diagnostic and Treatment Centers (CHDTC), of which 24 such centers exist nationwide. Since the establishment of these centers, self-infusion of AHF by selected patients who are specially trained to do so has become a readily accepted practice. This experience with self-administration has demonstrated significant reductions in cost of managing hemophiliacs.

Section 2324 of the DRA added subparagraph (I) to section 1861(s)(2) of the Act to provide Medicare coverage for blood clotting factors for hemophilia patients competent to use such factors to control bleeding without medical or other supervision, and items related to the administration of those factors, subject to utilization controls deemed necessary by the Secretary for the efficient use of the factors.

B. Proposed Revision

We would amend § 405.231 to provide for Medicare coverage of blood clotting factors for hemophilia patients competent to use those factors to control bleeding without medical or other supervision, and for items related to the administration of those factors. We propose that the statutorily required utilization controls, deemed necessary for the efficient use of the factors, would be controls on the amount of clotting factors determined to be necessary to have on hand. These amounts would be determined by the carrier, based on the historical utilization pattern or profile developed by the carrier for each patient.

III. Diagnostic X-Ray Services

A. Supervision of X-Ray Services

1. Background

Section 1861(s)(3) of the Act provides Medicare coverage for "diagnostic x-ray tests (including tests under the supervision of a physician, furnished in a place of residence used as the patient's home, if the performance of such tests meets health and safety conditions as the Secretary may find necessary)". The parenthetical language was added to the Act by section 134(a) of Pub. L. 90–248, the Social Security Amendments of 1967.

In accordance with the Social Security Amendments of 1965, regulations were previously published at what is now 42 CFR 410.32, which require that in order to be covered, all x-rays must be performed under the direct supervision of a physician. The Social Security Amendments of 1967 mandate, however, that Medicare cover portable x-ray services even when furnished without direct physician supervision. Thus, the Secretary established an exception to the general provisions governing x-ray services which permits coverage of portable x-ray services when furnished under the general supervision of a physician. The term direct supervision refers to those diagnostic x-ray services that require the immediate personal supervision of a physician. However, general supervision is when x-ray procedures are performed by technicians without direct personal physician supervision.

On the advice of medical consultants, we limited coverage of x-ray services furnished under general physician supervision to skeletal films involving the extremities, pelvis, vertebral column or skull, and chest or abdominal films that do not involve the use of contrast media. At a later date, we recognized that this policy was not uniformly applied to owners of stationary x-ray equipment because the services that were covered when furnished by portable x-ray suppliers with general physician supervision still required direct physician supervision when furnished in a stationary x-ray unit.

2. Proposed Revision

We propose to revise § 410.32 to provide Medicare coverage for certain diagnostic x ray procedures performed by technologists under general physician supervision, if those technicians are employees of the physician and their general supervision and training, as well as the maintenance of the necessary equipment and supplies, are the continuing responsibility of the physician. Such procedures are limited to skeletal films involving the extremities, pelvis, vertebral column or skull and chest or abdominal films which do not involve the use of contrast media.

In allowing coverage of this service, we recognize that the Secretary has no specific authority to promulgate health and safety conditions for the provision of this hazardous service as the Secretary does for portable x-ray services. As a result, we must rely on the traditional safeguards found in the physician's responsibility for his or her patient. Thus, we would require that these x-ray facilities must be operated by a physician and that claims for stationary x-ray services must be included in a physician's or physician directed clinic's bill.

B. Routine Chest X-Ray Examinations

We are taking this opportunity to clarify that Medicare does not cover routine chest x-rays performed for purposes other than treatment or diagnosis of a specific illness, symptom, complaint or injury. This is a technical clarification of our exclusion regulations at § 405.310(a), and will not result in any change in payments.

IV. Proposed Revisions to Regulations Text

We propose to make the following revisions to the regulations text:

- We propose to revise § 405.310(a) to clarify that routine chest x-rays are excluded from Medicare coverage.
- We propose to revise §§ 405.310 (e) and (k) to provide Medicare coverage for the administration of hepatitis B vaccine to the extent that it is reasonable and necessary for the prevention of illness.
- We propose to revise § 410.10 to include hepatitis B vaccine and blood clotting factors for hemophilia patients in the term "medical and other health services".
- We propose to revise § 410.29(a) to exclude from the term "medical and other health services", any drug or biological that can be self-administered, except hemophilia clotting factors that would be covered as provided in § 410.63(b).
- We propose to revise § 410.32(a) to provide Medicare coverage for certain diagnostic x-ray procedures performed by technicians in a physician's office without direct personal physician supervision.
- We propose to add a new 42 CFR 410.63(a) to include criteria for identifying those individuals at high or intermediate risk of contracting hepatitis

B, and also add a new § 410.63(b) to provide Medicare coverage of blood clotting factors for hemophilia patients competent to use those factors to control bleeding without medical or other supervision, and for items related to the administration of those factors.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to result in: (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

We estimate that coverage of hepatitis B vaccine under section 2323 of Pub. L. 98–369 will increase Medicare expenditures but not by a significant amount. We are unable to isolate the effects of this proposed rule from the effects of the statute since some amount of coverage is required by the Act.

It was stated in an article that was published in *The New England Journal of Medicine* on September 9, 1982, entitled "Indications for Use of Hepatitis B Vaccine Based on Cost-Effectiveness Analysis", that hepatitis B vaccine has the potential not only to prevent substantial morbidity and mortality but also, when administered selectively, to produce net savings in hepatitis-associated medical-care costs. Vaccination will result in the greatest savings when it is performed before or early during a period of unavoidable high risk when the prevalence of immunity is likely to be low despite high attack rates.

Regarding Medicare coverage of self-administered hemophilia clotting factors, the National Hemophilia Foundation estimates, that of approximately 20,000 hemophiliacs in the United States, only about 1,300 are eligible for Medicare. There may be a slight net savings resulting from this new coverage as a result of fewer complications leading to hospitalization and less consumption of blood products. Additional benefits may accrue to beneficiaries due to reductions in unemployment and absenteeism, and less out-of-pocket medical expenses. However, because of the small number of persons affected, we believe the total effects to be negligible.

The proposed revision of requirements for x-ray services should not result in any changes in provider behavior that would have an economic impact.

Because the annual economic impact of these provisions would not exceed $100 million, and because no other threshold criterion under Executive Order 12291 would be exceeded, this proposed rule is not considered a major rule and an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. Sections 601 through 612), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities. All facilities treating Medicare patients identified at high or intermediate risk of hepatitis B infection would be considered small entities under the RFA, as would owners and operators of stationary x-ray units.

The effects of increased coverage for vaccinations would be felt primarily by facilities furnishing dialysis services since this is the largest patient population at high risk and health professionals treating these patients would be included in the intermediate-risk group. While we conclude that program payments to such facilities would be increased and that some efficiencies would be realized, we do not believe that the payments or types of savings associated with the vaccinations would represent a significant portion of these facilities' total program payments.

Regarding coverage of hemophilia clotting factors, the number of beneficiaries affected (approximately 1,300) would be small and, therefore, the impact on providers or suppliers would be negligible. As noted above, the economic effects of the proposed clarification on coverage of x-ray services would also be negligible.

For the above reasons, we have determined, and the Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

These proposed changes would not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.).

VII. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

VIII. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Cost-based reimbursement, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reasonable charges, Reporting requirements, Rural areas, Prospective payment system, X-rays.

42 CFR Part 410

Medical and other health services, Medicare.

I. We are proposing to amend 42 CFR Part 405 as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

Subpart C is amended as follows:

1. The authority citation for Subpart C continues to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 13951, 1395u, 1395x, 1395y, 1395cc, l395gg, 1395hh, 1395pp), and 31 U.S.C. 3711.

2. In § 405.310 the introductory language is republished; paragraphs (a)(1) and (e) are revised; and a new paragraph (k)(4) is added to read as follows:

§ 405.310 Particular services excluded from coverage.

The following services are excluded from coverage.

(a) *Routine physical checkups such as—*

(1) Examinations (including, routine chest x-rays) performed for a purpose other than treatment or diagnosis of a

specific illness, symptom, complaint, or injury; or

* * * * *

(e) *Immunizations, except for*—

(1) Vaccinations or inoculations directly related to the treatment of an injury or direct exposure such as antirabies treatment, tetanus antitoxin or booster vaccine, botulin antitoxin, antivenom sera, or immune globulin;

(2) Pneumococcal vaccinations that are reasonable and necessary for the prevention of illness; and

(3) Hepatitis B vaccinations that are reasonable and necessary for the prevention of illness for those individuals who are at high or intermediate risk of contracting hepatitis B as defined in § 410.63(a) of this part.

* * * * *

(k) *Any services that are not reasonable and necessary for one of the following purposes:*

* * * * *

(4) In the case of hepatitis B vaccine, for the prevention of illness for those individuals at high or intermediate risk of contracting hepatitis B. (Section 410.63(a) of this part sets forth criteria for identifying those individuals.)

* * * * *

II. We are proposing to amend 42 CFR Part 410 as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

Subpart B—Medical and Other Health Services

Subpart B is amended as follows:

1. The authority citation for Part 410 continues to read as follows:

Authority: Secs. 1102, 1823, 1833, 1835, 1861 (r), (s) and (cc), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 13951, 1395n, 1395x, (r), (s) and (cc), 1395hh, and 1395rr).

2. The table of contents is amended by adding a new § 410.63 to read as follows:

Subpart B—Medical and Other Health Services

* * * * *

§ 410.63 Exceptions to certain exclusions from coverage.

3. In § 410.10, the introductory language is republished and new paragraphs (p) and (q) are added to read as follows:

§ 410.10 Medical and other health services: Included services.

Subject to the conditions and limitations specified in § 410.12 of this part, "medical and other health services" includes the following services:

* * * * *

(p) Hepatitis B vaccine.

(q) Blood clotting factors for hemophilia patients.

4. In § 410.29, the introductory language is republished and paragraph (a) is revised to read as follows:

§ 410.29 Limitations on drugs and biologicals.

Medicare Part B does not pay for the following:

(a) Except as provided in § 410.28(a) of this part, any drug or biological that can be self-administered, except hemophilia clotting factors, as provided in § 410.63(b) of this part.

* * * * *

5. In § 410.32, the introductory language is republished and paragraph (a) is revised to read as follows:

§ 410.32 Diagnostic X-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions.

(a) *Diagnostic X-ray services*—(1) *Basic rule.* Except as provided in paragraphs (a)(2) and (a)(3) of this section, diagnostic x-ray tests are covered only if performed under the direct personal supervision of a physician.

(2) Portable x-ray services furnished in a place of residence used as the patient's home, are covered if—

(i) These services are furnished under the general supervision of a physician; and

(ii) The supplier of these services meets the requirements set forth in Subpart N of Part 405 of this Chapter.

(3) Diagnostic x-ray procedures performed by technologists under general physician supervision are covered, if—

(i) The general supervision and training of the technologists, as well as the maintenance of the necessary equipment and supplies, are the continuing responsibility of the physician; and

(ii) The procedures are limited to skeletal films involving the extremities, pelvis, vertebral column or skull and chest or abdominal films which do not involve the use of contrast media.

* * * * *

6. A new § 410.63 is added to read as follows:

§ 410.63 Exceptions to certain exclusions from coverage.

Notwithstanding the exclusion from coverage of vaccines (see § 405.310) and self-administered drugs (see § 410.29), the following services are included as medical and other health services covered under § 410.10, subject to the specified conditions:

(a) *Hepatitis B vaccine: Conditions.* Effective September 1, 1984, hepatitis B vaccinations that are reasonable and necessary for the prevention of illness for those individuals who are at high or intermediate risk of contracting hepatitis B as listed below:

(1) *High risk groups.* (i) End Stage Renal Disease (ESRD) patients;

(ii) Hemophiliacs who receive Factor VIII or IX concentrates;

(iii) Clients of institutions for the mentally retarded;

(iv) Persons who live in the same household as a hepatitis B carrier;

(v) Homosexual men;

(vi) Illicit injectable drug abusers; and

(vii) Pacific Islanders (that is, those Medicare beneficiaries who reside on Pacific islands under U.S. jurisdiction, other than residents of Hawaii).

(2) *Intermediate Risk Groups.* (i) Staff in institutions for the mentally retarded;

(ii) Workers in health care professions who have frequent contact with blood or blood derived body fluids during routine work; and

(iii) Heterosexually active persons with multiple sexual partners (that is, those Medicare beneficaries who have had at least two documented episodes of sexually transmitted diseases within the preceding 5 years).

(3) *Exception.* Individuals described in paragraphs (a)(1) and (2) of this section would *not* be considered at high or intermediate risk of contracting hepatitis B if they have undergone a prevaccination screening and have been found to be currently positive for antibodies to hepatitis B.

(b) *Blood clotting factors.* Effective July 18, 1984, blood clotting factors to control bleeding, for hemophilia patients competent to use these factors, without medical or other supervision, and items related to the administration of those factors. The amount of clotting factors covered under this provision is determined by the carrier based on the historical utilization pattern or profile developed by the carrier for each patient.

(Catalog of Federal Domestic Assistance Program No. 13–774, Medicare—Supplementary Medical Insurance Program)

Dated: January 13, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: June 11, 1987.

Otis R. Bowen,

Secretary.

ADDENDUM

Recommendation of the Immunization Practices Advisory Committee (ACIP)

Recommendations for Protection Against Viral Hepatitis

June 7, 1985

The following statement updates all previous recommendations on use of immune globulins for protection against viral hepatitis (MMWR 1981; 30:423–35) and use of hepatitis B vaccine and hepatitis B immune globulin for prophylaxis of hepatitis B (MMWR 1982;31:317–28 and MMWR 1984;33:285–90).

Introduction

The term "viral hepatitis" is commonly used for several clinically similar diseases that are etiologically and epidemiologically distinct (*1*). Two of these, hepatitis A (formerly called infectious hepatitis and hepatitis B (formerly called serum hepatitis) have been recognized as separate entities since the early 1940s and can be diagnosed with specific serologic tests. The third, currently known as non-A, non-B hepatitis, is probably caused by a least two different agents, and lacking specific diagnostic tests, remains a disease diagnosed by exclusion. It is an important form of acute viral hepatitis in adults and currently accounts for most post-transfusion hepatitis in the United States. An epidemic type of non-A, non-B hepatitis, which is probably spread by the fecal-oral route and is different from the types seen in the United States, has been described in parts of Asia and North Africa (*2*).

A fourth type of hepatitis, delta hepatitis, has recently been characterized as an infection dependent on hepatitis B virus. It may occur as a coinfection with acute hepatitis B infection or as superinfection of a hepatitis B carrier (*3*).

Hepatitis surveillance

Approximately 21,500 cases of hepatitis A, 24,300 cases of hepatitis B, 3,500 cases of non-A, Non-B hepatitis, and 7,100 cases of hepatitis type unspecified were reported in the United States in 1983. Most cases of each type occur among young adults. Since reporting from many localities is incomplete, the actual number of hepatitis cases occuring annually is thought to be several times the reported number.

Immune Globulins

Immune globulins used in medical practice are sterile solutions of antibodies (immunoglobulins) from human plasma. They are prepared by cold ethanol fractionation of large plasma pools and contain 10%–18% protein. In the United States, plasma is primarily obtained from professional donors. Only plasma shown to be free of hepatitis B surface antigen (HBsAg) is used to prepare immune globulins.

Immune globulin (IG), (formerly called "immune serum globulin," ISG, or "gamma globulin") produced in the United States contains antibodies against the hepatitis A virus (anti-HAV) and the hepatitis B surface antigen (anti-HBs). Tests of IG lots prepared since 1977 indicates that both types of antibody have uniformly been present. Hepatitis B immune globulin (HBIG) is an IG prepared from plasma containing high titers of anti-HBs.

Netither IG nor HBIG commercially available in the United States transmits hepatitis or other viral infections. There is no evidence that the causative agent of AIDS (human T-lymphotropic virus type III/lymphadenopathy-associated virus [HTLV–III/LAV]) has been transmitted by IG or HBIG (*4*).

Serious adverse effects from immune globulins administered as recommended have been exceedingly rare. Standard immune globulins are prepared for intramuscular use and should not be given intravenously. Two preparations for intravenous use in immunodeficient and other selected patients have recently become available in the United States but are not recommended for hepatitis prophylaxis. Immune globulins are not contraindicated for pregnant women.

Hepatitis A

Hepatitis A is caused by the hepatitis A virus (HAV), a 27-nm ribonucleic acid (RNA) agent that is a member of the picornavirus family. The illness caused by HAV characteristically has an abrupt onset with fever, malaise, anorexia, nausea, abdominal discomfort, and jaundice. Severity is related to age. In children, most infections are asymptomatic, and illness is usually not accompanied by jaundice. Most infected adults become symptomatically ill with jaundice. Fatality among reported cases is infrequent (about 0.6%).

Hepatitis A is primarily transmitted by person-to-person contact, generally through fecal contamination. Transmission is facilitated by poor personal hygiene, poor sanitation, and intimate (intrahousehold or sexual) contact. Common-source epidemics from contaminated food and water also occur. Sharing utensils or cigarettes or kissing are not believed to transmit the infection.

The incubation period of hepatitis A is 15–50 days (average 28–30). High concentrations of HAV (10^8 particles/g) are found in stools of infected persons. Fecal virus excretion reaches its highest concentration late in the incubation period and early in the prodromal phase of illness, and diminishes rapidly once jaundice appears. Greatest infectivity is during the 2-week period immediately before the onset of jaundice. Viremia is of short duration; virus has not been found in urine or other body fluids. A chronic carrier state with HAV in blood or feces has not been demonstrated. Transmission of HAV by blood transfusion has occurred but is rare.

The diagnosis of acute hepatitis A is confirmed by finding IgM-class anti-HAV in serum collected during the acute or early convalescent phase of disease. IgG-class anti-HAV, which appears in the convalescent phase of disease and remains detectable serum thereafter, appparently confers enduring protection against disease. Commercial tests are available to detect IgM anti-HAV and total anti-HAV in serum.

Although the incidence of hepatitis A in the United States has decreased over the last 15 years, it is still a common infection in older children and young adults. About 38% of reported hepatitis cases in this country are attributable to hepatitis A.

Recommendations for IG prophylaxis of hepatitis A. Numerous field studies conducted in the past 4 decades confirm that IG given before exposure or during the incubation period of hepatitis A is protective against clinical illness (5–7). Its prophylactic value is greatest (80%–90%) when given early in the incubation period and declines thereafter (*7*).

Preexposure prophylaxis. The major group for whom preexposure prophylaxis is recommended is international travelers. The risk of hepatitis A for U.S. citizens traveling abroad varies with living conditions, incidence of hepatitis A infection in areas visited, and length of stay (*8,9*). In general, travelers to developed areas of western Europe, Japan, and Australia are at no greater risk of infection than in the United States. In contrast, travelers to developing countries may be at significant risk of infection. In such areas, the best way to prevent hepatitis A and other enteric diseases is to avoid potentially contaminated water or food. Drinking water (or beverages with ice)

of unknown purity and eating uncooked shellfish or uncooked fruits or vegetables that are not peeled (or prepared) by the traveler should be avoided.

IG is recommended for travelers to developing countries if they will be eating in settings of poor or uncertain sanitation (some restaurants or homes) or will be visting extensively with local persons, especially young children, in settings with poor sanitary conditions. Persons who plan to reside in developing areas for long periods should receive IG regularly if they anticipate exposure as described above or will be living in rural areas with poor sanitation.

For such travelers, a single dose of IG of 0.02 ml/kg is recommended if travel is for less than 2 months. For prolonged travel, 0.06 ml/kg should be given every 5 months. For persons who require repeated IG prophylaxis, screening for total anti-HAV antibodies before travel may be useful to define susceptibility and eliminate unnecessary doses of IG in those who are immune.

Postexposure prophylaxis. A serologic test for the diagnosis of acute hapatitis A is now widely available. Since only 38% of acute hepatitis cases in the United States result from hepatitis A, serologic confirmation of hepatitis A in the index case is recommended before treatment of contacts. Serologic screening of contacts for anti-HAV before giving IG is not recommended because screening is more costly than IG and would delay its administration.

IG should be given as soon as possible after exposure; giving IG more than 2 weeks after exposure is not indicated.

Specific recommendations for IG prophylaxis of hepatitis A depend on the nature of the HAV exposure:

1. *Close personal contact.* IG is recommended for all household and sexual contacts of persons with hepatitis A.

2. *Day-care centers.* Day-care facilities with children in diapers can be important settings for HAV transmission (10–12). IG should be administered to all staff and attendees of day-care centers or homes if: (a) one or more hepatitis A cases are recognized among children or employees; or (b) cases are recognized in two or more households of center attendees. When an outbreak (hepatitis cases in three or more families) occurs, IG should also be considered for members of households whose diapered children attend. In centers not enrolling children in diapers, IG need only be given to classroom contacts of an index case.

3. *Schools.* Contact at elementary and secondary schools is usually not an important means of transmitting hepatitis A. Routine administration of IG is not indicated for pupils and teachers in contact with a patient. However, when epidemiologic study clearly shows the existence of a school- or classroom-centered outbreak, IG may be given to those who have close personal contact with patients.

4. *Institution for custodial care.* Living conditions is some institutions, such as prisons and facilities for the developmentally disabled, favor transmission of hepatitis A. When outbreaks occur, giving IG to residents and staff who have close contact with patients with hepatitis A may reduce the spread of disease. Depending on the epidemiologic circumstances, prophylaxis can be limited in extent or can involve the entire institution.

5. *Hospitals* Routine IG prophylaxis for hospital personnel is not indicated. Rather, sound hygienic practices should be emphasized. Staff education should point out the risk of exposure to hepatitis A and emphasize precautions regarding direct contact with potentially infective materials (13).

Outbreaks of hepatitis A among hospital staff occur occasionally, usually in association with a unsuspected index patient who is fecally incontinent. Large outbreaks have occurred amoung staff and family contacts of infected infants in neonatal intensive-care units. In outbreaks, prophylaxis of persons exposed to feces of infected patients may be indicated.

6. *Offices and factories.* Routine IG administration is not indicated under the usual office or factory conditions for persons exposed to a fellow worker with hepatitis A. Experience shows that casual contact in the work setting does not result in virus transmission.

7. *Common-source exposure.* IG might be effective in preventing foodborne or waterborne hepatitis A if exposure is recognized in time. However, IG is not recommended for persons exposed to a common source of hepatitis infection after cases have begun to occur in those exposed, since the 2-week period during which IG is effective will have been exceeded.

If a foodhandler is diagnosed as having hepatitis A, common-source transmission is possible but uncommon. IG should be administered to other foodhandlers but is usually not recommended for patrons. However, IG administration to patrons may be considered if (a) the infected person is directly involved in handling, without gloves, foods that will not be cooked before they are eaten; (b) the hygienic practices of the foodhandler are deficient; and (c) patrons can be identified and treated within 2 weeks of exposure. Situations where repeated exposures may have occurred, such as in institutional cafeterias, may warrant stronger consideration of IG use.

For postexposure IG prophylaxis, a single intramuscular dose of 0.02 ml/kg is recommended.

Hepatitis B

Hepatitis B virus (HBV) infection is a major cause of acute and chronic hepatitis, cirrhosis, and primary hepatocellular carcinoma worldwide. The frequency of HBV infection and patterns of transmission vary markedly in different parts of the world. In the United States, western Europe, and Australia, it is a disease of low endemicity, with only 0.1%–0.5% of the population being virus carriers and infection occurring primarily during adulthood. In contrast, HBV infection is highly endemic in China and Southeast Asia, sub-Saharan Africa, most Pacific islands, and the Amazon Basin; in these areas, 5%–15% of the population carry the virus, and most persons acquire infection at birth or during childhood. In other parts of the world, HBV is moderately endemic, and 1%–4% of persons are HBV carriers. Recommendations for prophylaxis of hepatitis B will vary in accordance with local patterns of HBV transmission. The recommendations that follow are intended for use in the United States.

Hepatitis B infection is caused by the HBV, a 42-nm, double-shelled deoxyribonucleic acid (DNA) virus. Several well-defined antigen-antibody systems have been associated with HBV infection (Table 1). HBsAg, formerly called "Australia antigen" or "hepatitis-associated antigen," is found on the surface of the virus and on accompanying 22-nm spherical and tubular forms. HBsAg can be identified in serum 30–60 days after exposure to HBV and persists for variable periods. The various subtypes (adr, adw, ayw, ayr) of HBsAg provide useful epidemiologic markers. Antibody against HBsAg (anti-HBs) develops after a resolved infection and is responsible for long-term immunity. Anti-HBc, the antibody to the core antigen (an internal component of the virus), develops in all HBV infections and persists indefinitely. IgM anti-HBc appears early in infection and persists for 6 or more months; it is a reliable marker of acute or recent HBV infection. The hepatitis B e antigen (HBeAg) is a third antigen, presence of which correlates with HBV replication and high infectivity. Antibody to HBeAg (anti-HBe) develops is most HBV infections and correlates with lower infectivity.

The onset of acute hepatitis B is generally insidious. Clinical symptoms and signs include various combinations of anorexia, malaise, nausea, vomiting, abdominal pain, and jaundice. Skin rashes, arthralgias, and arthritis can also occur. Overall fatality rates for reported cases generally do not exceed 2%. The incubation period of hepatitis B is long—45–160 days (average 60–120).

TABLE 1.—HEPATITIS NOMENCLATURE

Abbreviation	Term	Comments
	Hepatitis A	
HAV	Hepatitis A virus	Etiologic agent of "infectious" hepatitis; a picornavirus; single serotype.
Anti-HAV	Antibody to HAV	Detectable at onset of symptoms; lifetime persistence.
IgM anti-HAV	IgM class antibody to HAV	Indicates recent infection with hepatitis A; positive up to 4–6 months after infection
	Hepatitis B	
HBV	Hepatitis B virus	Etiologic agent of "serum" or "long-incubation" hepatitis; also known as Dane particle.
HBsAg	Hepatitis B surface antigen	Surface antigen(s) of HBV detectable in large quantity in serum; several subtypes identified.
HBeAg	Hepatitus B e antigen	Soluble antigen; correlates with HBV replication, high titer HBV in serum, and infectivity of serum.
HBcAg	Hepatitis B core antigen	No commercial test available.
Anti-HBs	Antibody to HBsAg	Indicates pst infection with and immunity to HBV, passive antibody from HBIG, or immune response from HBV vaccine.
Anti-HBe	Antibody to HBeAg	Presence in serum of HBsAg carrier suggests lower titer of HBV.
Anti-HBc	Antibody to HBcAg	Indicates past infection with HBV at some undefined time.
IgM anti-HBc	IgM class antibody to HBcAg	Indicates recent infection with HBV; positive for 4–6 months after infection
	Delta Hepatitis	
δ virus	Delta virus	Etiologic agent of delta hepatitis; may only cause infection in presence of HBV.
δ-ag	Delta antigen	Detectable in early acute delta infection.
Anti-δ	Antibody to delta antigen	Indicates past or present infection with delta virus.
	Non-A, Non-B Hepatitis	
NANB	Non-A, Non-B Hepatitis	Diagnosis of exclusion. At least two candidate viruses; epidemiology parallels that of hepatitis B.
	Epidemic Non-A, Non-B Hepatitis	
Epidemic NANB	Epidemic non-A, non-B hepatitis	Causes large epidemics in Asia, North Africa; fecal-oral or waterborne.
	Immune Globulins	
IG	Immune globulin (previously ISG, immune serum globulin, or gamma globulin).	Contains antibodies to HAV, low titer antibodies to HBV.
HBIG	Hepatitis B immune globulin	Contains high tier antibodies to HBV.

TABLE 2.—PREVALENCE OF HEPATITIS B SEROLOGIC MARKERS IN VARIOUS POPULATION GROUPS

Population group	Prevalence of serologic markers of HBV infection	
	HBsAg (%)	All markers (%)
High risk:		
Immigrants/refugees from areas of high HBV endemicity	13	70–85
Clients in institutions for the mentally retarded	10–20	35–80
Users of illicit parenteral drugs	7	60–80
Homosexually active men	6	35–80
Household contacts of HBV carriers	3–6	30–60
Patients of hemodialysis units	3–10	20–80
Intermediate risk:		
Health-care workers: frequent blood contact	1–2	15–30
Prisoners (male)	1–8	10–80
Staff of institutions for the mentally retarded	1	10–25
Low risk:		
Health-care workers: no or infrequent blood contact	0.3	3–10
Healthy adults (first-time volunteer blood donors)	0.3	3–5

IG and HBIG. IG and HBIG contain different amounts of anti-HBs. IG is prepared from plasma that is not preselected for anti-HBs content. Since 1977, all lots tested have contained anti-HBs at a titer of at least 1:100 by radioimmunoassay (RIA). HBIG is prepared from plasma preselected for high-titer anti-HBs. In the United States, HBIG has an anti-HBs titer of higher than 1:100,000 by RIA. There is no evidence that the causative agent of AIDS (HTLV-III/LAV) has been transmitted by IG OR HBIG (*4*).

Hepatitis B vaccine. Hepatitis B vaccine licensed in the United States is a suspension of inactivated, alum-adsorbed 22-nm surface antigen particles that have been purified from human plasma by a combination of biophysical (ultracentrifugation) and biochemical procedures. Inactivation is a threefold process using 8M urea, pepsin at pH 2, and 1:4000 formalin. These treatment steps have been shown to inactivate representatives of all classes of viruses found in human blood, including the causative agent of AIDS (HTLV-III/LAV) (*14*). HB vaccine contains 20 μg/ml of HBsAg protein.

After a series ot three intramuscular doses of hepatitis B vaccine, over 90% of healthy adults develop protective antibody (*15, 16*). A course of three 10-μg doses induces antibody in virtually all infants and children from birth through 9 yearss of age. The deltoid (arm) is the recommended site for hepatitis B vaccination in adults: immunogenicity of vaccine in adults is significantly lower when injections are given in the buttock (81%) (*17*). The immunogenicity of the intradermal route has not yet been cleary established.

Field trials of the U.S.-manufactured vaccine have shown 80%–95% efficacy in preventing infection or hepatitis among susceptible persons (*16, 18*). Protection against illness is virtually complete for persons who develop adequate antibody levels * after vaccination. The duration of protection and need for booster doses are not yet defined. However, only 10%–15% of persons who develop adequate antibody after three vaccine doses will lose antibody within 4 years, and among those who lose antibody, protection against viremic infection and liver inflammation appears to persist. Immunogenicity and efficacy of the licensed vaccine in hemodialysis patients is much lower than in normal adults; protection may last only as long as adequate antibody levels persist (*19*).

* Adequate antibody is 10 or more sample ratio units (SRU) by RIA or positive by enzyme immunoassay

Vaccine usage. Primary vaccination consists of three intramuscular doses of vaccine, with the second and third doses givern 1 and 6 months, respectively, after the first. Adults and older children should be given 20 μg (1.0 ml) per dose, while children under 10 years should receive 10 μg (0.5 ml) per dose. For patients undergoing hemodialysis and for other immunosuppressed patients, a 40-μg (2.0–ml) dose should be used. Vaccine doses administered at longer intervals provide equally satisfactory protection, but optimal protection is not conferred until after the third dose. Hepatitis B vaccine should only be given in the deltoid muscle in adults and children or in the anterolateral thigh muscle in infants and neonates. Since hepatitis B vaccine is an inactivated (noninfective) product, it is presumed that there will be no interference with other simultaneously administered vaccines.

Data are not available on the safety of the vaccine for the developing fetus. Because the vaccine contains only noninfectious HBsAg particles, there should be no risk to the fetus. In contrast, HBV infection in a pregnant woman may result in severe disease for the mother and chronic infection for the newborn. Pregnancy should not be considered a contraindication to the use of this vaccine for persons who are otherewise eligible.

Vaccine storage. Vaccine should be stored at 2 C–8 C (36 F–46 F) but not frozen. *Freezing destroys the potency of the vaccine.*

Side effects and adverse rections. The most common side effect observed in prevaccination trials was soreness at the injection site. Among an estimated 750,000 vaccinees, approximately 100 episodes of severe illness have been reported after receipt of vaccine. These have included arthralgias, neurologic reactions (such as Guillain-Barré syndrome), and other illnesses. The rate of Guillan-Barré syndrome following HB vaccine does not appear to be significantly increased above that observed in normal adults. Such temporally associated illnesses are not considered to be etiologically related to heatitis B vaccine.

Effect of vaccination on carriers and immune persons. The vaccine produces neither therapeutic nor adverse effects in HBV carriers (*20*). Vaccination of individuals who possess antibodies against HBV from a previous infection is not necessary but will not cause adverse effects. Such individuals will have a postvaccination increase in their anti-HBs levels. Passively acquired antibody, whether from HBIG or IG administration or from the transplacental route, will not interfere with active immunization (*21*).

Prevaccination serologic screening for susceptibility. The decision to screen potential vaccine recipients for prior infection depends on three variables: (1) The cost of vaccination; (2) the cost of testing for susceptibility; and (3) the expected prevalence of immune individuals in the group. Figure 1 shows the relative cost-effectiveness of screening, given different costs of screening tests and the expected prevalence of immunity. In constructing the figure, the assumption was made that the cost of three doses of vaccine is $100 and that there are additional costs for administration. For any combination of screening costs and immunity to hepatitis, the cost-effectiveness can be estimated. For example, if the expected prevalence of serologic markers for HBV is over 20%, screening is cost-effective if costs of screening are no greater than $30 per person. If the expected prevalence of markers is less than 8%, and if the costs of screening are greater than $10 per person, vaccination without screening is cost-effective.

HBV infection in the United States. The estimated lifetime risk of HBV-infection in the United States varies from almost 100% for the highest-risk groups to approximately 5% for the population as a whole. An estimated 200,000 persons, primarily young adults, are infected each year. One-quarter become ill with jaundice; more than 10,000 patients require hospitalization; and an average of 250 die of fulminant disease each year. Between 6% and 10% of young adults with HBV infection become carriers. The United States currently contains an estimated pool of 500,000–1,000,000 infectious carriers. Chronic active hepatitis develops in over 25% of carriers and often progresses to cirrhosis. Furthermore, HBV carriers have a risk of developing primary liver cancer that is 12–300 times higher than that of other persons. It is estimated that 4,000 persons die from hepatitis B-related cirrhosis each year in this country and that more than 800 die from hepatitis B-related liver cancer.

The role of the HBV carrier is central in the epidemiology of HBV transmission. A carrier is defined as a person who is HBsAg-positive on at least two occasions at least 6 months apart. Although the degree of infectivity is best correlated with HBeAg-positivity, any person positive for HBsAg is potentially infectious. The likelihood of developing the carrier state varies inversely with the age at which infection occurs. During the perinatal period, HBV transmitted from HBeAg-positive

mothers results in HBV carriage in up to 90% of infected infants, whereas 6%–10% of acutely infected adults become carriers.

Carriers and persons with acute infection have highest concentrations of HBV in the blood and serous fluids; less is present in other body fluids, such as saliva and semen. Transmission occurs via percutaneous or permucosal routes. Infective blood or body fluids can be introduced by contaminated needles or through sexual contact. Infection can occur in settings of continuous close personal contact, such as in households or among children in institutions for the mentally retarded, presumably via inapparent or unnoticed contact of infectious secretions with skin lesions or mucosal surfaces. Transmission of infection by transfusion of contaminated blood or blood products has been greatly reduced since the advent of routine screening with highly sensitive tests for HBsAg. HBV is not transmitted via the fecal-oral route or by contamination of food or water.

Serologic surveys demonstrate that, although HBV infection is uncommon among adults in the general population, it is highly prevalent in certain groups. Those at risk, based on the prevalence of serologic markers of infection, are described in Table 2. Immigrants/refugees and their descendants from areas of high HBV endemicity are at high risk of acquiring HBV infection. Homosexally active men and users of illicit injectable drugs are among the highest-risk groups, acquiring infection soon after adopting these lifestyles (10%–20%/year). Inmates of prisons have high prevalence of HBV markers usually because of prior parenteral drug abuse; actual risk of transmission in prisons is also associated with parenteral drug abuse in prisons. Patients and staff in custodial institutions for the mentally retarded are also at increased risk of having HBV infection. Classroom contacts, particularly teachers or instructors, of some deinstitutionalized carriers may also be at higher risk than the general population. Household contacts and sexual partners of HBV carriers are at increased risk, as are hemodialysis patients and recipients of certain pooled plasma products.

There is increased risk for medical and dental workers and related laboratory and support personnel who have contact with blood. Employment in a hospital without exposure to blood carries no greater risk than that for the general population.

Hepatitis B prophylaxis. Two types of products are available for prophylaxis against hepatitis B. Hepatitis B vaccine, licensed in 1981, provides active immunization against HBV infection, and its use is recommended for both pre- and postexposure prophylaxis. IG products provide temporary, passive protection and are indicated only in certain postexposure settings.

FIGURE 1. Cost-effectiveness of prevaccination screening of hepatitis B virus vaccine candidates*

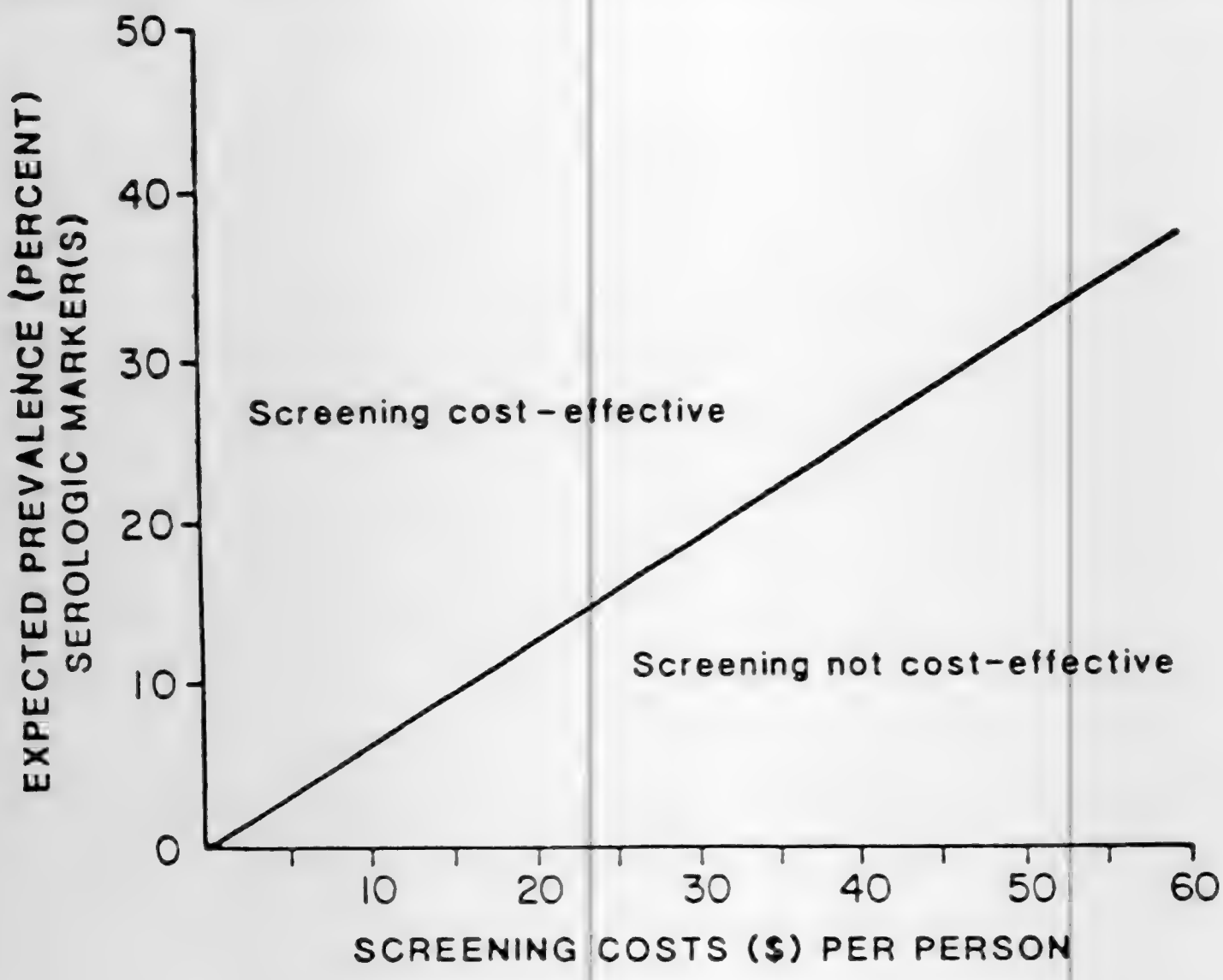

Screening in groups with the highest risk of HBV infection (Table 2) will be cost-effective unless testing costs are extremely high. For groups at intermediate risk, cost-effectiveness of screening may be marginal, and vaccination programs may or may not utilize screening. For groups with a low expected prevalence of HBV serologic markers, such as health professionals in their training years, screening will not be cost-effective.

For routine screening, only one antibody test, either anti-HBc or anti-HBs, need be used. Anti-HBc will identify all previously infected persons, both carriers and noncarriers, but will not discriminate between members of the two groups. Anti-HBs will identify those previously infected, except carriers. For groups expected to have carrier rates of under 2%, such as healthcare workers, neither test has a particular advantage. For groups with higher carrier rates, anti-HBc may be preferred to avoid unnecessary vaccination of carriers. If the RIA anti-HBs test is used for screening, a minimum of 10 RIA sample ratio units should be used to designate immunity (2.1 is the usual designation of a positive test). If enzyme immunoassay (EIA) is used, the manufacturers' recommended positive is appropriate.

Serologic confirmation of postvaccination immunity and revaccination of nonresponders. When given in the deltoid, hepatitis B vaccine produces protective antibody (anti-HBs) in more than 90% of healthy persons. Testing for immunity following vaccination is not recommended routinely but is advised for persons whose subsequent management depends on knowing their immune status, such as dialysis patients and staff, and for persons in whom a suboptimal response may be anticipated, such as those who have received vaccine in the buttock.

Revaccination of persons who do not respond to primary series

(nonresponders) producer adequate antibody in only one-third when the primary vaccination has been given in the deltoid. Therefore, revaccination of nonresponders to deltoid injection is not recommended routinely. For persons who did not respond to a primary vaccine series given in the buttock, preliminary data from two small studies suggest that revaccination in the arm induces adequate antibody in over 75%. Revaccination should be strongly considered for such persons.

Preexposure vaccination. Persons at substantial risk of acquiring HBV infection who are demonstrated or judged likely to be susceptible should be vaccinated. They include:

1. *Health-care workers.* The risk of health-care workers acquisition HBV infection depends on the frequency of exposure to blood or blood products and on the frequency of needlesticks. These risks vary during the training and working career of each individual but are often highest during the professional training period. For this reason, it is recommended that vaccination be completed during training in schools of medicine, dentistry, nursing, laboratory technology, and other allied health professions.

The risk of HBV infection for hospital personnel can vary both among hospitals and within hospitals. In developing specific immunization strategies, hospitals should use available published data about the risk of infection (22–24) and may wish to evaluate their own clinical and institutional experience with hepatitis B. Studies in urban centers have indicated that occupational groups with frequent exposure to blood and/or needles have the highest risk of acquiring HBV infection, including (but not limited to) the following groups: medical technologists, operating room staff, phlebotomists and intravenous therapy nurses, surgeons and pathologists, and oncology and dailysis unit staff. Groups shown to be at increased risk in some hospitals include: emergency room staff, nursing personnel, and staff physicians.

Other health-care workers based outside hospitals who have frequent contact with blood or blood products are also at increased risk of acquiring HBV infection. These include (but are not limited to): dental professionals (dentists, oral surgeons, dental hygienists), laboratory and blood bank technicians, dialysis center staff, emergency medical technicians, and morticians.

2. *Clients and staff of institutions for the mentally retarded.* Susceptible clients and staff who work closely with clients of institutions for the mentally retarded should be vaccinated. Risks for staff are comparable to those for health-care personnel in other high-risk environments. However, the risk in institutional environments is associated, not only with blood exposure, but also with bites and contact with skin-lessions and other infective secretions. Susceptible clients and staff who live or work in smaller (group) residential settings with known HBV carriers should also receive hepatitis B vaccine

3. *Hemodialysis patients.* Numerous studies have established the high risk of HBV transmission in hemodialysis units. Although recent data have shown not only a decrease in the rate of HBV infection in hemodialysis units but also a lower vaccine efficacy in these patients, vaccination is recommended for susceptible patients. Environmental control measures and regular serologic screening (based on immune status) of patients should be maintained.

4. *Homosexually active men.* Susceptible homosexually active men should be vaccinated regardless of their ages or duration of their homosexual practices. It is important to vaccinate persons as soon as possible after their homosexual activity begins. Homosexually active women are not at increased risk of sexually transmitted HBV infection.

5. *Users of illicit injectable drugs.* All users of illicit injectable drugs who are suspectible to HBV should be vaccinated as early as possible afer their drug use begins.

6. *Recipients of certain blood products.* Patients with clotting disorders who receive clotting factor concentrates have an elevated risk of acquiring HBV infection. Vaccination is recommended for these and should be initiated at the time their specific clotting disorder is identified. Screening is recommended for patients who have already received multiple infusions of these products.

7. *Household and sexual contacts of HBV carriers.* Household contacts of HBV carriers are at high risk of acquiring HBV infection. Sexual contacts appear to be at greatest risk. When HBV carriers are identified through routine screening of donated blood, diagnostic testing in hospitals, prenatal screening, screening of refugees, or other screening programs, they should be notified of their status and their susceptible household contacts vaccinated.

Families accepting ophans or unaccompanied minors from countries of high HBV endemicity should have the child screened for HBsAg, and if positive, family members should be vaccinated.

8. *Other contacts of HBV carrers.* Persons in causual contact with carriers at schools, offices, etc., are at minimal risk of acquiring HBV infection, and vaccine is not routinely recommended for them. However, classroom contacts of deinstitutionalized mentally retarded HBV carriers who behave aggressively or have special medical problems that increase the risk of exposure to their blood or serous secretions may be at risk. In such situations, vaccine may be offered to classroom contacts.

9. *Special high-risk populations.* Some American populations, such as Alaskan Eskimos, native Pacific islanders, and immigrants and refugees from areas with highly endemic disease (particularly eastern Asia and sub-Saharan Africa) have high HBV infection rates. Depending on specific epidemiologic and public health considerations, more extensive vaccination programs should be considered.

10. *Immates of long-term correctional facilities.* The prison environment may provide a favorable setting for the transmission of HBV because of the frequent use of illicit injectable drugs and homosexual practices. Moreover, it provides an access point for vaccination of parenteral drug abusers. Prison officials should consider undertaking screening and vaccination programs directed at those who abuse drugs before or while in prison.

11. *Heterosexually active persons.* Heterosexually active persons with multiple sexual partners are at increased risk of acquiring HBV infection; risk increases with increasing sexual activity. Vaccination should be considered for persons who present for treatment of sexually transmitted diseases and who have histories of sexual activity with multiple partners.

12. *International travelers.* Vaccination should be considered for persons who plan to reside more than 6 months in areas with high levels of endemic HBV and who will have close contact with the local population. vaccination should also be considered for short-term travelers who are likely to have contact with blood from or sexual contact with residents of areas with high levels of endemic disease. Hepatitis B Vaccination of travelers ideally should begin 6 months before travel in order to complete the full vaccine series; however, a partial series will offer some protection against HBV infection.

Postexposure prophylaxis for hepatitis B. Prophylactic treatment to prevent hepatitis B infection after exposure to HBV should be considered in the following situations: perinatal exposure of an infant born to an HBsAg-positive mother; accidental percutaneous or permucosal exposure to HBsAg-positive blood; or sexual exposure to an HBsAg-positive person.

Recent studies have established the relative efficacies of immune globulins and/or hepatitis B vaccine in various exposure situations. For perinatal exposure to an HBsAg-positive, HBeAg-positive mother, a regimen combining one dose of HBIG at birth with the hepatitis B vaccine series started soon after birth is 85%–90% effective in preventing development of the HBV carrier state (25.27). Regimens involving either multiple doses of HBIG alone, or the vaccine series alone, have 70%–75% efficacy, while a single dose of HBIG alone has only 50% efficacy (28).

For accidental percutaneous exposure or sexual exposure, only regimens including HBIG and/or IG have been studied. A regimen of two HBIG doses, one given after exposure and one a month later, is about 75% effective in preventing hepatitis B following percutaneous exposure; a single dose of HBIG has similar efficacy when used following sexual exposure (29–31). IG may have some effect in preventing clinical hepatitis B following percutaneous exposures and can be considered as an alternative to HBIG when it is not possible to obtain HBIG.

Recommnendations on postexposure prophylaxis are based on the efficacy data discussed above and on the likelihood of future HBV exposure of the person requiring treatment. In perinatal exposure and percutaneous exposure of high-risk health-care personnel, a regimen combining HBIG with hepatitis B vaccine will provide both short- and long-term protection, will be less costly than the two-dose HBIG treatment alone, and is the treatment of choice.

Perinatal exposure. One of the most efficient modes of HBV transmission is from mother to infant during birth. If the mother is positive for both HBsAg and HBeAg, about 70%–90% of infants will become infected, and up to 90% of these infected infants will become HBV carriers. If the HBsAg-positive carrier mother is HBeAg-negative, or if anti-HBe is present, transmission occurs less frequently and rarely leads to the HBV carrier state. However, severe acute disease, including fatal fulminant hepatitis in the neonate, has been reported (32,33). Prophylaxis of infants from all HBsAg-positive mothers is recommended, regardless of the mother's HBeAg or anti-HBe status.

The efficacy of a combination of HBIG plus the hepatitis B vaccine series has been confirmed in recent studies. Although the following regimen is recommended (Table 3), other schedules have also been effective (25–27, 34). The major consideration for all these regimens is the need to give HBIG as soon as possible after delivery.

TABLE 3—Hepatitis B Virus Postexposure Recommendations

Exposure	HBIG		Vaccine	
	Dose	Recommended timing	Dose	Recommended timing
Perinatal	0.5 ml IM	Within 12 hours	0.5ml (10μg) IM of birth	Within 12 hours of birth *; repeat at 1 and 6 months.
Sexual	0.06 ml/kg IM	Single dose within 14 days of sexual contact	(†)	

* The first dose can be given the same time as the HBIG dose but at a different site.
† Vaccine is recommended for homosexual men and for regular sexual contacts of HBV carriers and is optional in initial treatment of heterosexual contacts of persons with acute HBV.

HBIG (0.5 ml [10 μg]) should be administered intramuscularly after physiologic stabilization of the infant and preferably within 12 hours of birth. Hepatitis B vaccine should be administered intramuscularly in three doses of 0.5 ml (10 μg) each. The first dose should be given concurrently with HBIG but at a different site. If vaccine is not available at birth, the first vaccine dose may be given within 7 days of birth. The second and third doses should be given 1 month and 6 months, respectively, after the first. Testing for HBsAg and anti-HBs is recommended at 12–15 months to monitor the final success or failure of therapy. If HBsAg is not detectable, and anti-HBs is present, the child has been protected. Testing for anti-HBc is not useful, since maternal anti-HBc may persist for more than 1 year; the utility of testing for †gM anti-HBc is currently being evaluated. HBIG adminstered at birth should not interfere with oral polio and diphtheria-tetanus-pertussis vaccines administered at 2 months of age.

Maternal screening. Since efficacy of the treatment regimen depends on administering HBIG on the day of birth, it is vital that HBsAg-positive mothers be identified before delivery. Mothers belonging to groups known to be at high risk of acquiring HBV infection (Table 4) should be tested routinely for HBsAg during a prenatal visit. If a mother belonging to a high-risk group has not been screened prenatally, HBsAg screening should be done at the time of delivery, or as soon as possible thereafter, and the infant treated as above if the mother is HBsAg-positive. If the mother is identified as HBsAg-positive more than 1 month after giving birth, the infant should be screened for HBsAg, and if negative, treated with hepatitis B vaccine and HBIG.

The appropriate obstetric and pediatric staff should be notified directly of HBsAg-positive mothers, so the staff may take appropriate precautions to protect themselves and other patients from infectious material, blood, and secretions, and so the neonate may receive therapy without delay after birth.

TABLE 4—WOMEN FOR WHOM PRENATAL HBSAG SCREENING IS RECOMMENDED

1. Women of Asian, Pacific island, or Alaskan Eskimo descent, whether immigrant or U.S.-born.
2. Women born in Haiti or sub-Saharan Africa.
3. Women with histories of:
   a. Acute or chronic liver disease.
   b. Work or treatment in a hemodialysis unit.
   c. Work or residence in an institution for the mentally retarded.
   d. Rejection as a blood donor.
   e. Blood transfusion on repeated occasions.
   f. Frequent occupational exposure to blood in medico-dental settings.
   g. Household contact with an HBV carrier or hemodialysis patient.
   h. Multiple episodes of veneral diseases.
   i. Percutaneous use of illicit drugs.

Acute exposure to blood that contains (or might contain) HBsAg. For accidental percutaneous or permucosal exposure to blood that is known to contain or might contain HBsAg, the decision to provide prophylaxis must take into account several factors: (1) the hepatitis B vaccination status of the exposed person; (2) whether the source of blood is known or unknown; and (3) whether the HBsAg status of the source is known or unknown. Such exposures usually occur in persons who are candidates for hepatitis B vaccine; for any exposure in a person not previously vaccinated, hepatitis B vaccination is recommended.

The following outline and table summarize prophylaxis for percutaneous (needlestick or bite), ocular or mucous-membrane exposure to blood according to the source of exposure and vaccination status of the exposed person (Table 5). For greatest effectiveness, passive prophylaxis with HBIG (or IG) should be given as soon as possible after exposure (its value beyond 7 days of exposure is unclear).

TABLE 5.—RECOMMENDATION FOR HEPATITIS B PROPHYLAXIS FOLLOWING PERCUTANEOUS EXPOSURE

Source	Exposed person	
	Unvaccinated	Vaccinated
HBsAg-positive	1. HBIG x 1 immediately *	1. Test exposed person for anti-HB.§
	2. Initiate HB vaccine † series	2. If inadequate antibody, ¶ HBIG (x1) immediately plus HB vaccine booster dose.
Known source:		
High-risk HBsAg-positive	1. Initiate HB vaccine series	1. Test source for HBsAg-only if exposed is vaccine nonresponder; if source is HBsAg-positive, give HBIG x 1 immediately plus HB vaccine booster dose.
	2. Test source for HBsAg. If positive, HBIG x 1.	
Low-risk HBsAg-postiive	Initiate HB vaccine series	Nothing required.
Unknown source	Initiate HB vaccine series	Nothing required.

* HBIG dose 0.06 ml/kg IM.
† HB vaccine dose 20 μg IM for adults; 10 μg IM for infants or children under 10 years of age. First dose within 1 week; second and third doses, 1 and 6 months later.
§ See text for details.
¶ Less than 10 SRU by RIA, negative by EIA.

1. *Exposed person not previously vaccinated* Hepatitis B vaccination should be considered the treatment of choice. Depending on the source of the exposure, HBsAg testing of the source and additional prophylaxis of the exposed person may be warranted (see below). Screening the exposed person for immunity should be considered if such screening is cost-effective (as discussed in preexposure prophylaxis) and if this will not delay treatment beyond 7 days.

a. *Source known HBsAg-positive.* A single dose of HBIG (0.06 ml/kg) should be given as soon as possible after exposure and within 24 hours, if possible. The first dose of hepatitis B vaccine (20 μg) should be given intramuscularly at a separate site within 7 days of exposure, and the second and third doses given 1 month and 6 months later (Table 5.† If HBIG cannot be obtained, IG in an equivalent dosage (0.06 ml/kg) may provide some benefit.

b. *Source known, HBsAg status unknown.* The following guidelines are suggested based on the relative probability that the source is HBsAg positive and on the consequent risk of HBV transmission:

(1) *High risk that the source is HBsAg-positive, such as patients with a high risk of HBV carriage (Table 2) or patients with acute or chronic liver disease (serologically undiagnosed).* The exposed person should be given the first dose of hepatitis B vaccine (20 μg) within 1 week of exposure and vaccination completed as recommended. The source person should be tested for HBsAg. If positive, the exposed person should be given HBIG (0.06 ml/kg) if within 7 days of exposure.

† For persons who are not given hepatitis B vaccine, a second dose of HBIG should be given 1 month after the first dose.

(2) *Low risk that the source is positive for HBsAg.* The exposed person should be given the first dose of hepatitis B vaccine (20 μg) within 1 week of exposure and vaccination completed as recommended. Testintg of the source person is not necessary.

c. *Source unknown.* The exposed person should be given the first dose of hepatitis B vaccine (20 μg) within 7 days of exposure and vaccination completed as recommended.

2. *Exposed person previously vaccinated against hepatitis B.* For percutaneous exposures to blood in persons who have previously received one or more doses of hepatitis B vaccine, the decision to provide additional prophylaxis will depend on the source of exposure and on whether the vaccinated person has developed anti-HBs following vaccination.

a. *Source known HBsAg-positive.* The exposed person should be tested for anti-HBs unless he/she has been tested within the last 12 months. If the exposed person has adequate § antibody, no additional treatment is indicated.

(1) If the exposed person has not completed vaccination and has inadequate levels of antibody, one dose of HBIG (0.06 ml/kg) should be given immediately and vaccination completed as scheduled.

(2) If the exposed person has inadequate antibody on testing or has previously not responded to vaccine, one dose of HBIG should be given immediately and a booster dose of vaccine (1 mi or 20 μg) given at a different site

(3) If the exposed person shows inadequate antibody on testing but is known to have had adequate antibody in the past, a booster dose of hepatitis B vaccine (1 ml or 20 μg) should be given.

§ Adequate antibody is 10 SRU or more by RIA or positive by EIA.

b. *Source known, HBsAg status unkown.*

(1) *High risk that the source is HBsAg-positive.* Additional prophylaxis is necessary only if the exposed person is a known vaccine nonresponder. In this circumstance, the source should be tested for HBsAg and, if positive, the exposed person treated with one dose of HBIG (0.06 ml/kg) immediately and a booster dose of vaccine (1 ml or 20 μg) at a different site. In other circumstances, screening of the source for HBsAg and the exposed person to anti-HBs is not routinely recommended because the actual risk of HBV infection is very (less than 1 per 1,000).¶

(2) *Low risk that the source is HBsAg-positive.* The risk of HBV infection is minimal. Neither testing of the source for HBsAg, nor testing of the exposed person for anti-HBs, is recommended.

c. *Source unknown.* The risk of HBV infection is minimal. No treatment is indicated.

Sexual contacts of person with acute HBV infection. Sexual contacts of HBsAg-positive persons are at increased risk of acquiring HBV infection, and HBIG has been shown to be 75% effective in preventing such infections (31). Because data are limited, the period after sexual exposure during which HBIG is effective is unknown, but extrapolation from other settings makes it unlikely that this period would exceed 14 days. Prescreening sexual partners for susceptibility before treatment is recommended if it does not delay treatment beyond 14 days after last

¶ Estimated by multiplying the risk of vaccine nonresponse in the person (.10) by the risk of the needle source being HBsAg-positive (05) by the risk of HBV infection in a susceptible person having an HBsAg positive needle-stick injury (20).

exposure. Testing for anti-HBc is the most efficient prescreening test to use in this population group.

A single dose of HBIG (0.06 ml/kg) is recommended for susceptible individuals who have had sexual contact with an HBsAg-positive person, if HBIG can be given within 14 days of the last sexual contact, and for persons who will continue to have sexual contact with an individual with acute hepatitis B before loss of HBsAg in that individual. In exposures between heterosexuals, hepatitis B vaccination may be initiated at the same time as HBIG prophylaxis; such treatment may improve efficacy of postexposure treatment. However, since 90% of persons with acute HBV infection become HBsAg-negative within 15 weeks of diagnosis, the potential for repeated exposure to HBV is limited. Hepatitis B vaccine is, therefore, optional in initial treatment for such exposures. If vaccine is not given, a second dose of HBIG should be given if the index patient remains HBsAg-positive for 3 months after detection. If the index patient is a known carrier or remains positive for 6 months, hepatitis B vaccine should be offered to regular sexual contacts. For exposures among homosexual men, the hepatitis B vaccine series should be initiated at the time HBIG is given, since hepatitis B vaccine is recommended for all susceptible homosexual men. Additional doses of HBIG are unnecessary if vaccine is given. IG is an alternative to HBIG when it is not possible to obtain HBIG.

Household contacts of persons with acute HBV infection. Prophylaxis for other household contacts of persons with acute HBV infection is not indicated unless they have had identifiable blood exposure to the index case, such as by sharing toothbrushes or razors. Such exposures should be treated similarly to sexual exposures. If the index patient becomes a hepatitis B carrier, all household contacts should be given hepatitis B vaccine.

Delta Hepatitis

The delta virus (also known as hepatitis D virus [HDV] by some investigators) is a defective virus that may only cause infection in the presence of active HBV infection. The delta virus has been characterized as a particle of 35-37 nm in size, consisting of RNA (mw 500,000) as genetic material and an internal protein antigen (delta-antigen), coated with HBsAg as the surface protein (*3*). Infection may occur as either coinfection with hepatitis B or superinfection of a hepatitis B carrier, each of which usually cause an episode of acute hepatitis. Coinfection usually resolves, while superinfection frequently causes chronic delta infection and chronic active hepatitis. Both types of infection may cause fulminant hepatitis.

Delta infection may be diagnosed by detection of delta-antigen in serum during early infection and by the appearance of delta antibody during or after infection. Routes of delta transmission appear to be similar to those of hepatitis B. In the United States, delta infection occurs most commonly among persons at high risk of acquiring HBV infection, such as drug addicts and hemophilia patients.

A test for detection of delta antibody is expected to be commercially available soon. Other tests (delta antigen, IgM anti-delta) are available only in research laboratories.

Since the delta virus is dependent on hepatitis B for replication, prevention of hepatitis B infection, either preexposure or postexposure, will suffice to prevent delta infection in a person susceptible to hepatitis B. Known episodes of perinatal, sexual, or percutaneous exposure to sera or persons positive for both HBV and delta virus should be treated exactly as such exposures to hepatitis B alone.

Persons who are HBsAg carriers are at risk of delta infection, especially if they participate in activities that put them at high risk of repeated exposure to hepatitis B (parenteral drug abuse, homosexuality). However, at present there are no products available that might prevent delta infection in HBsAg carriers either before or after exposure.

Non-A, Non-B Hepatitis

United States. Non-A, non-B hepatitis that presently occurs in the United States has epidemiologic characteristics similar to those of hepatitis B, occurring most commonly following blood transfusion and parenteral drug abuse. Multiple episodes of non-A, non-B hepatitis have been observed in the same individuals and may be due to different agents. Chronic hepatitis following acute non-A, non-B hepatitis infection varies in frequency from 20% to 70%. Experimental studies in chimpanzees have confirmed the existence of a carrier state, which may be present in up to 8% of the population.

Although several studies have attempted to assess the value of prophylaxis with IG against non-A, non-B hepatitis, the results have been equivocal, and no specific recommendations can be made (*35,36*). However, for persons with percutaneous exposure to blood from a patient with non-A, non-B hepatitis, it may be reasonable to administer IG (0.06 ml/kg) as soon as possible after exposure.

Epidemic (fecal-oral) non-A, non-B hepatitis. In recent years, epidemics of non-A, non-B hepatitis spread by water or close personal contact have been reported from several areas of Southeast Asia (Indian subcontinent, Burma) and north Africa (*2*). Such epidemics generally affect adults and cause unusually high mortality in pregnant women. The disease has been transmitted to experimental animals, and candidate viruses have been identified; however, no serologic tests have yet been developed (*37*).

Epidemic non-A, non-B hepatitis has not been recognized in the United States or western Europe, and it is unknown whether the causative agent is present in these areas.

Travelers to areas having epidemic non-A, non-B hepatitis may be at some risk of acquiring this disease by close contact or by contaminated food or water. The value of IG in preventing this infection is unknown. The best prevention of infection is to avoid potentially contaminated food or water, as with hepatitis A and other enteric infections.

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[FR Doc. 87–20649 Filed 9–9–87; 8:45 am]

BILLING CODE 4120–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–268; RM–5811; FCC 87–246]

Television Broadcasting Services; Advanced Television Technology

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry.

SUMMARY: This action considers the technical and public policy issues surrounding the use of advanced television technologies by television broadcast licensees. The proceedings is being initiated at this time in view of the number of television technologies designed to improve significantly picture and sound quality that are in various stages of planning and development.

DATE: Comments must be filed on or before November 16, 1987, and reply comments on or before January 19, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Kreisman, Mass Media Bureau, (202) 632–5414.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry, MM Docket No. 87–268, adopted July 16, 1987, and released August 20 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this document may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of the Report and Order

1. Numerous new television technologies designed to improve significantly upon television picture and sound quality are in various stages of planning and development. These systems use different amounts of spectrum and different transmission and reception methods, many of which, to some extent, cannot be decoded or displayed by existing television receivers. Many such advanced television systems could be used by either broadcast or non-broadcast media. For these reasons, the Association of Maximum Service Telecasters, Inc. and 57 other broadcast organizations and companies filed a joint "Petition for Notice of Inquiry" requesting the Commission to initiate a proceeding to explore the issues arising from the introduction of these advanced technologies and their possible impact, in either broadcast or non-broadcast uses, on the existing television broadcast service, especially as they relate to the Commission's spectrum allocation and television channel allotment policies.

2. By this *Notice of Inquiry* (*Notice*), the Commission initiates a wide-ranging inquiry to consider the technical and public policy issues surrounding the use of advanced television technologies by television broadcast licensees. In the

Notice, the Commission discusses the interlace/color and quality defects in the present NTSC System and the advantages and disadvantages of various improved NTSC systems and other enhanced television systems. The *Notice* indicates that most of the work relating to ATV technologies is concentrated in one or all of three areas: (a) Video/audio quality performance, (b) compression of transmission bandwidth, and (c) compatibility with the NTSC system. Thus, to assist in its deliberations on the spectrum management and compatibility issues, the *Notice* sets forth numerous questions and urges commenters to focus on the quality-for-bandwidth tradeoffs that distinguish the numerous advanced TV systems.

3. Further, comments are solicited as to whether advanced television systems should be instituted: (1) As a new service separate and distinct from the existing television broadcast service; (2) as service that augments, wherever feasible, existing NTSC service with no provision for full replacement of NTSC service or, (3) as a service integrated fully whth the existing television broadcast service which over time would replace entirely the NTSC service. The Commission did state that, to the extent that such an approach is both technically and economically efficient, it would be inclined toward the latter approach of a replacement service. In addition, the Commission requests comments on the desired technical features for this new service.

4. The *Notice* also discusses the full range of spectrum options and poses questions including: should the Commission implement ATV service at UHF only, or at both VHF and UHF in a comprehensive plan; how much additonal bandwidth can be made available for ATV, and what would be the interference implications if the Commission; (a) Adjusted the co-channel interference protection ratio, (b) adjusted the adjacent channel protection ratio, (c) established standards to permit TV licensees to access a channel (or part of a channel) adjacent to their assignment. Other questions include whether the Commission should modify or eliminate some or all of the UHF taboos channel protection standards; "repack" the VHF and UHF spectrum using adjusted protection criteria to accommodate (for example) 9, 10 or 12 MHz-wide channels; and what would be the technical and economic impact on existing NTSC service if the Commission modified or eliminated the existing protection criteria. The Notice also includes a discussion as to whether the Commission should accommodate ATV in non-broadcast spectrum allocations. Further, various illustrative approaches for implementation of ATV are set forth. Finally, comments are requested on such issues as mutual agreements for waivers of interference protection and taboo restrictions.

5. This is a nonrestricted notice and comment rule making proceeding. See § 1.1231 of the Commission's Rules, 47 CFR § 1.1231, for rules governing permissible *ex parte* contacts.

6. Pursuant to applicable procedures set forth in §§ 1.415, 1.419 and 1.430 of the Commission's Rules, 47 CFR §§ 1.415, 1.419 and 1.430, interested parties may file comments on or before November 18, 1987, and reply comments on or before January 19, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-20789 Filed 9-9-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-333, RM-5749

Radio Broadcasting Services; Millbrook, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Mac Carter, seeking the allotment of FM Channel 246A to Millbrook, Alabama, as that community's first local broadcast service.

DATES: Comments must be filed on or before October 19, 1987, and reply comments on or before November 3, 1987.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554 In addition to filing comments with the FCC, interested parties should serve the petitioner's consultant, as follows: Paul Reynolds, AmeriMedia, 415 N. College St., Greenville, AL 36037.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making MM Docket No. 87-333, adopted August 5, 1987, and released August 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NE., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-20787 Filed 9-19-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-307, RM-5909]

Radio Broadcasting Services; Wadesboro, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Justine Hope Lambert proposing the allocation of Channel 228A to Wadesboro, NC, as the community's first local FM service. Channel 228A can be allocated to Wadesboro in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) northwest to avoid a short-spacing to the construction permit for Station WZNS, Channel 225, Dillon, South Carolina (BPH-850214IF).

DATES: Comments must be filed on or before October 13, 1987, and reply comments on or before October 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Justine Hope Lambert, 2613 Craig Avenue, Concord, North Carolina 28025 (Petitioner); York David Anthony, 2613 Craig Avenue, Concord, North Carolina 28025 (Engineering Consultant to the Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–307, adopted July 27, 1987, and released August 27, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service. (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–20788 Filed 9–9–87; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 52, No. 175
Thursday, September 10, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 4, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Food and Nutrition Service
- School Lunch Recipe Field Test
- FNS–1163
- Single Time
- State or local governments; 1,411 responses; 700 hours; not applicable under 3504(h)

Anita Manka, (703) 756–3556

New

- Food and Nutrition Service
- Study of Food Stamp Program Certification Costs
- One-time survey
- State or local governments; 13,276 responses; 3,223 hours; not applicable under 3504(h)

Christine Kissmer, (703) 756–3133

Revision

- Food and Nutrition Service
- State Plan and Operating Guidelines, Forms and Waivers
- FNS–366A, FNS–366B
- Annually
- State or local governments; 159 responses; 3,863 hours; not applicable under 3504(h)

Anne Gariazzo, (703) 756–3385

Larry K. Roberson,
Acting Departmental Clearance Officer.
[FR Doc. 87–20821 Filed 9–9–87; 8:45 am]
BILLING CODE 3410–01–M

Commodity Credit Corporation

Proposed Determinations With Regard to the 1988 Program for Extra Long Staple Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1988 crop of extra long staple (ELS) cotton: (a) The loan level; (b) the established "target" price; (c) the national program acreage; (d) whether a voluntary reduction percentage should be proclaimed and, if so, the amount of such percentage reduction; (e) whether an acreage limitation program should be implemented and, if so, the percentage reduction under such acreage limitation program; (f) whether an optional land diversion program should be established and, if so, the percentage of diversion required under such program; (g) the loan level for seed cotton; and (h) other related determinations. These determinations are to be made in accordance with the Agricultural Act of 1949, as amended, (the "1949 Act"), and the Commodity Credit Corporation Charter Act, as amended (the "Charter Act").

EFFECTIVE DATE: Comments must be received on or before October 13, 1987 in order to be assured of consideration.

ADDRESS: Director, Commodity Analysis Division, USDA–ASCS, Rm. 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major" since the proposed provisions are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal assistance programs to which this notice applies are: Title—Cotton Production Stabilization, Number 10.052 and Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation ("CCC") is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with

respect to the subject matter of this notice.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It is necessary that the determinations for the 1988 crop of ELS cotton be made in sufficient time to permit ELS cotton producers to make plans for the production of their crop. Therefore, comments with respect to the following proposed determinations must be received by October 13, 1987 in order to allow the Secretary an adequate period to consider the comments before making the program decisions.

Proposed Determinations

a. *Loan Level.* Section 103(h)(2) of the 1949 Act provides that the Secretary shall determine and announce the loan level for the 1988 crop of ELS cotton by December 1, 1987. The loan level must be established at 85 percent of the simple average price received by producers of ELS cotton during 3 years of the 5-year period ending July 31 in the year in which the loan level is announced, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period. Based on data through March, 1987, the 1988 loan level is calculated as follows:

(1) Simple average price received by producers for ELS cotton: [1]

August 1, 1982–July 31, 1983—101.00 cents/lb.

August 1, 1983–July 31, 1984—107.00 cents/lb.

August 1, 1984–July 31, 1985—92.80 cents/lb.

August 1, 1985–July 31, 1986—91.80 cents/lb.

August 1, 1986–March 31, 1987—88.40 cents/lb.

(2) Five year average excluding the high and low years:

(101.00+92.80+91.80)/3=95.20 cents/lb.

(3) Multiply result by 0.85:

95.20×0.85=80.92 cents per pound=estimated 1988 loan rate for ELS cotton.

b. *The Established (Target) Price.* Section 103(h)(3)(B) of the 1949 Act provides that the established "target" price for the 1988 crop of ELS cotton shall be 120 percent of the 1988-crop ELS loan level. Based on data as of March, 1987, the 1988 target price equals 1.20×80.92 or 97.10 cents per pound.

[1] Prices do not include an allowance for outstanding loans and Government purchases.

c. *National Program Acreage.* Section 103(h)(4) of the 1949 Act provides that the Secretary shall proclaim a national program acreage (NPA) for the 1988 crop of ELS cotton. Such NPA may, however, be revised for the purpose of determining the allocation factor if the Secretary determines it necessary based upon the latest information. Any revision in the NPA shall be announced as soon as it has been made. The 1988 NPA shall be the number of harvested acres the Secretary determines will be necessary, based on the estimated weighted national average of the farm program payment yields for the 1988 crop, to produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the 1988–89 marketing year.

The NPA shall be subject to such adjustment as the Secretary determines necessary, taking into consideration the estimated carryover supply and the stocks not accounted for by official domestic consumption and export data, so as to provide an adequate but not excessive supply of ELS cotton for the 1988–89 marketing year. In no event shall the national program acreage be less than 60,000 acres. If an acreage limitation program is established for the 1988 crop of ELS cotton, the NPA determination will not be applicable.

A carryover of 65,000 bales is considered to provide an adequate, but not excessive, supply. If required, the national program acreage for the 1988 crop of ELS cotton is currently estimated to be:

(a) Estimated domestic consumption, 1988–89 (480 lb. net wt. bales)	75,000
(b) Plus estimated exports, 1988–89 (480 lb. net wt. bales)	135,000
(c) Minus estimated imports, 1988–89 (480 lb. net wt. bales)	0
(d) Minus adjustment to bring stocks to desired level (480 lb. net wt. bales) [2]	4,000
(e) Plus adjustment for stocks estimated not accounted for by official domestic consumption and export data (480 lb. net wt. bales)	10,000
(f) Times 480 lbs. per bale	103,680,000
(g) Divided by estimated national average of farm program payment yields (lbs./acre)	992
(h) Equal 1988 calculated National Program Acreage (acres)	104,516

A NPA was not announced for the 1987 crop of ELS cotton since an acreage limitation program was implemented for such crop.

Comments from interested persons on the NPA calculations, along with appropriate supporting data, are requested.

[2] The 1988 beginning stock level is estimated to be 69,000 bales. Therefore, the stock adjustment is 69,000 bales minus 65,000 bales or 4,000 bales.

d. *Voluntary Reduction Percentage.* Section 103(h)(6) of the 1949 Act provides that the 1988 individual farm program acreages of ELS cotton eligible for payments shall not be further reduced by application of an allocation factor if the producer reduces the acreage of ELS cotton planted for harvest on the farm from the 1988-crop ELS cotton acreage base established for the farm by at least the percentage recommended by the Secretary in the proclamation of the national program acreage for the 1988 crop. If an acreage limitation program is implemented for the 1988 crop of ELS cotton, the voluntary reduction percentage shall not be applicable to such crop. If required, the recommended national reduction percentage for the 1988-crop of ELS cotton is currently estimated to be:

(a) 1988 estimated ELS cotton acreage base	100,000
(b) Minus 1988 NPA	104,516
(c) Equals reduction needed from acreage base	0
(d) Divided by 1988 ELS cotton acreage base	100,000
(e) Equals 1988 crop reduction percentage	0 percent

Comments from interested persons with respect to the voluntary reduction percentage are requested.

e. *Acreage Limitation Program.* Section 103(h)(8)(A) of the 1949 Act provides that, with respect to the 1988 crop of ELS cotton, if the Secretary determines that the total supply of ELS cotton, in the absence of an acreage limitation program (ALP), will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable prices and to meet a national emergency, the Secretary may provide for an ALP. Such limitation shall be achieved by applying a uniform percentage reduction to the acreage base for each ELS-cotton-producing farm. Producers who knowingly produce ELS cotton in excess of the permitted ELS cotton acreage shall be ineligible for ELS cotton loans and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of an acreage limitation shall be the average acreage planted on the farm to ELS cotton for harvest in the three crop years immediately preceding the year prior to the year for which the determination is made. For the purpose of determining the acreage base, the acreage planted to ELS cotton for harvest shall include any acreage which producers were prevented from planting

to ELS cotton or other nonconserving crops in lieu of ELS cotton because of drought, flood, or other natural disaster or other condition beyond the control of the producers. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines necessary to establish a fair and equitable base. A number of acres on the farm determined by dividing (a) the product obtained by multiplying the number of acres required to be withdrawn from the production of ELS cotton times the number of acres actually planted to ELS cotton, by (b) the number of acres authorized to be planted to ELS cotton in accordance with the acreage limitation established by the Secretary, shall be devoted to approved conservation uses in accordance with regulations issued by the Secretary. If an ALP is in effect for the 1988 crop of ELS cotton, the national program acreage, program allocation factor, and voluntary reduction provisions of section 103(h) of the 1949 Act will not be applicable to such crop. The individual farm program acreage shall be the acreage planted on the farm to ELS cotton for harvest within the permitted ELS cotton acreage established for the farm under the ALP.

The need for an ALP for the 1988 crop of ELS cotton will depend upon the projected level of ending stocks for the 1987–88 marketing year and the likely demand for ELS cotton in 1988–89. Estimates as of August 1987 indicate that production may equal utilization in 1987–88, resulting in ending stocks of an estimated 69,000 bales, 4,000 bales above the desirable level of 65,000 bales. Demand for the 1988–89 season is projected to drop; therefore, some reduction in production may be needed to keep stocks near the 65,000-bale level. Options under consideration at this time include a 5-percent ALP, a 10-percent ALP and a 15-percent ALP. However, future developments in weather conditions, market trends, and projections of supply and use could affect the suitability of various production adjustment programs. Options considered at the final determination stage may vary depending upon conditions in existence and information available at that time.

Interested persons are encouraged to comment on whether an ALP should be implemented for the 1988 crop of ELS cotton, and, if so, the appropriate percentage level of such limitation.

f. *Land Diversion Program.* Section 104(h)(8)(B) of the 1949 Act provides that the Secretary may make land diversion payments to producers of ELS cotton, whether or not an ALP for ELS cotton is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage to desirable goals. Such land diversion payments shall be made to producers who devote to conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers. The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers or in such manner as the Secretary determines appropriate.

Interested persons are encouraged to address the need for a land diversion program and the appropriate terms and conditions of such a program.

g. *Loan Level for ELS Seed Cotton.* Section 103(h)(17) of the 1949 Act provides that in order to assist producers in the orderly ginning and marketing of their ELS cotton production, the Secretary shall make recourse loans available to such producers on seed cotton in accordance with authority vested in the Secretary under the Charter Act. Consideration is being given to the level at which loans should be made available for seed cotton under the 1988 program. The loan level presently being considered for seed cotton is 100 percent of the loan level which is applicable for lint cotton. Such loans would be made on the value of the seed cotton adjusted to a lint basis.

Comments from interested persons are requested on the appropriate loan level for seed cotton and the method of adjustment of the value of such cotton to a lint basis for the purpose of determining loan value.

h. *Other Related Provisions.* A number of other determinations must be made in order to carry out the ELS cotton loan program such as: (1) Commodity eligibility; (2) micronaire discounts; (3) loan levels for the individual qualities of 1988-crop ELS cotton; and (4) such other provisions as may be necessary to carry out the program.

Consideration will be given to any data, views and recommendations that may be received relating to the above items.

Authority: Sec. 103(h) of the Agriculture Act of 1949, as amended, 97 Stat. 494 (7 U.S.C. 1444(h)); secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c).

Signed at Washington, DC, on August 27, 1987.

Vern Neppl,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87-20140 Filed 9-9-87; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Tongass Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement regarding a proposal to revise the Forest Land and Resource Management Plan for the Tongass National Forest (Region 10–Alaska).

Responsible Official: Michael A. Barton, Regional Forester, Alaska Region, Juneau, Alaska.

Public Participation: Comments concerning the scope of the analysis and the issues to be addressed will be requested in the fall of 1987 through formal public participation, at which time the process used to revise a Forest Land and Resource Management Plan will be presented. A newsletter and other media sources will be used to notify the public of scheduled meeting times, dates, and locations. Those interested in receiving the newsletter are invited to write to the individual listed below and request they be added to the Forest Plan mailing list.

Information Contact: Written questions, comments and suggestions concerning the scope of the analysis, the issues to be addressed, and/or the proposed action are to be sent to: Donald C. Lyon, Forest Plan Interdisciplinary Team Leader, 8465 Old Dairy Road, Juneau, Alaska 99801. (Telephone 907/789–3111).

Purpose for the Action: The National Forest Management Act of 1976 directs the Forest Service to prepare Forest Land and Resource Management Plans (hereafter referred to as Forest Plans) for National Forest System lands. The Tongass Forest Plan was completed in March 1979, and amended in July 1986. The National Forest Management Act implementing Regulations (36 CFR Part 219), state:

A forest plan shall ordinarily be revised on a 10-year cycle or at least every 15 years. It may also be revised whenever the Forest Supervisor determines that conditions or demands in the area covered by the plan

have changed significantly. . . (36 CFR 219.11(g)).

The intended purpose of this action is to complete a revision of the forest plan according to the ordinary 10- to 15-year cycle. The process will include an assessment of the degree to which conditions and demands have changed since the forest plan was first developed in 1979, and then amended in 1986, to assist in determining the degree to which the existing plan should be revised. A range of Forest Plan alternatives will be formulated and considered. One of these alternatives will be referred to as the "No Change" alternative and will be based upon current direction, as amended, and projected into the future. Other alternatives will be formulated and evaluated based upon the public issues, management concerns, and resources use and development opportunities identified through public participation. During the revision process, and until a revised Forest Plan is approved under 36 CFR 219.10(c)(1), the amended Forest Plan will remain in effect and continue to be implemented.

Public Participation

Public participation activities will be used throughout the planning process, beginning with this Notice of Intent, the issuance of a newsletter, notices to the news media, and public presentations intended to:

1. Describe the affected area, the process for revising the amended Forest Plan, and the types of issues expected to be addressed.
2. Describe the anticipated public participation activities and identify the times, dates, and locations of activities already scheduled.
3. Identify the Forest Service official who may be contacted for further information.

The public scoping process for the revision begins with this Notice of Intent. Further public participation activities will be initiated by the Forest Supervisors during the scoping process (40 CFR 1501.7) when the Forest Service will seek information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the land management activities on the Tongass National Forest. The public scoping process is intended to:

1. Describe the revision process to the interested public.
2. Identify public issues, management concerns, and resource use and development opportunities (commonly referred to as "issues").
3. Determine which of the issues will be addressed in detail during the revision process and which of the issues have already been adequately covered by a relevant and previous environmental analysis.
4. Identify the information needed to adequately address the issues.
5. Determine potential cooperating agencies and task assignments.

The information, comments, and assistance provided during the scoping process will be used later in the planning process to analyze the management situation, formulate alternatives, estimate the effects of implementing the different alternatives, and prepare the draft Environmental Impact Statement (DEIS). Further public participation activities will be conducted following the issuance of the DEIS and draft Forest Plan in order to provide the interested public an opportunity to review and comment. Throughout the process, the public will be advised of the location and availability of documents pertaining to the planning process.

Cooperating Agencies

The State of Alaska, through such agencies as it deems appropriate, will be invited to participate as a cooperator in the revision of the Forest Plan. Federal agencies that have jurisdiction by law or special expertise with respect to any environmental impact involved with this proposal will be invited to participate as cooperating agencies.

Review of the Environmental Impact Statement

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December 1989. At that time, EPA will publish a notice of availability of the DEIS in the **Federal Register.** The comment period on the DEIS and draft Forest Plan will be 90 days from the date the EPA's notice of availability appears in the **Federal Register.** During the review period, the Forest Supervisors will publicize and hold public participation activities in order to obtain adequate public comment. It is very important that reviewers participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Envirnmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC.* 435 U.S. 519, 553 (1978). NEPA case law supports the proposition that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *Wisconsin Heritages, Inc.* v. *Harris.* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends, the comments will be analyzed and considered by the Forest Service in preparing the final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by December 1990. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding the Forest Plan alternative selected. The responsible official, in selecting an alternative, will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Dated: August 28, 1987.

G. Lynn Sprague,

Deputy Regional Forester.

[FR Doc. 87-20703 Filed 9-9-87; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration
Title: Public Telecommunications Facilities Program Grant Monitoring
Form Number: Agency—SF 269, 270, 272, 1194, CD 442; OMB—0660-0001
Type of Request: Extension of the expiration date of a currently approved collection

BEST COPY AVAILABLE

Burden: 2,040 respondents; 8,295 reporting and recordkeeping hours
Needs and Uses: The Public Broadcasting Act authorizes grants to be awarded for the planning and construction of public telecommunications facilities. In order to monitor the use of grant funds and process payment requests, grantees are required to submit certain reports and forms periodically.
Affected Public: State or local governments; non-profit institutions
Frequency: Quarterly, annually, recordkeeping
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395–3785

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Officer Building, Washington, DC 20503.

Dated: September 3, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–20725 Filed 9–9–87; 8:45 am]

BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Docket No. 14–87]

Foreign-Trade Zone 26, Atlanta, GA; Application for Reorganization

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Georgia Foreign-Trade Zone, Inc., (GFTZ), grantee of Foreign-Trade Zone 26 in Atlanta, Georgia, requesting authority to reorganize and relocate its zone project. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 27, 1987.

On January 17, 1977, the Board authorized GFTZ to establish a foreign-trade zone project in the Atlanta Port of Entry area (Board Order 115, 42 FR 4186, 1/24/77). The zone is located on 33 acres within a 1200-acre industrial park in Shenandoah, Coweta County, Georgia, some 23 miles southwest of Atlanta. Zone operations at the site were suspended in September 1985.

The reorganization would involve relocating the zone to a 300-acre site adjacent to Atlanta's Hartsfield International Airport in Clayton and Fulton Counties. The site is bounded by I–75, I–285 and U.S. Highway 19–41, and on the east by the airport's runways. The site, known as the Atlanta Tradeport, is owned by the Wilma Tradeport Joint Venture, a Georgia general partnership, and will be operated by one of its subsidiaries, Wilma Foreign-Trade Zone, Inc. No approvals for manufacturing operations are being sought at this time.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph E. Lowry (Chairman), Foreign-Trade Zone Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 99 Southeast Fifth Street, Miami, Florida 33131–2595; and Colonel C. Hilton Dunn, Jr., District Engineer, U.S. Army Engineer District Mobile, P.O. Box 2288, Mobile, Alabama 26628–0001.

Comments concering the proposed zone reorganization are invited in writing from interested parties and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 23, 1987.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, Suite 504, 1365 Peachtree Street, NE., Atlanta, Georgia 30309.
Office of the Executive Secretary, Foreign-Trade Zones Board, Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: September 3, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87–20818 Filed 9–9–87; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) is extending the closing date from September 21, 1987 to October 1, 1987 for the announcement to solicit competitive applications under its Minority Business Development Center program to operate a MBDC for a three (3) year period, starting January 1, 1988 to December 31, 1988 in the New England Standard Metropolitan Statistical Area (SMSA) excluding the state of Connecticut. Refer to the **Federal Register** dated August 18, 1987 Vol. 52, No. 159, page 30943.

Levi Pace,

Chief, Business Development Group, New York Regional Office.

Date: September 2, 1987.

[FR Doc. 87–20697 Filed 9–9–87; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Amended Meeting Notice

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The dates and location as published in the **Federal Register** (52 FR 32959, September 1, 1987) for separate public meetings of the North Pacific Fishery Management Council's Crab Management and Bycatch Committees have been changed as follows:

Crab Management Committee—From September 21, 1987, in Anchorage, AK, to September 14 at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 San Point Way, N.E., Room 2079, Building 4, Seattle, WA.

Bycatch Committee—From September 25, 1987, in Anchorage, AK, to September 15–17 at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way, N.E., Room 2079, Building 4, Seattle, WA.

All other information as published originally remains unchanged.

For further information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Date: September 3, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–20858 Filed 9–9–87; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council's Scientific and Statistical Committee will convene a public meeting on September 23, 1987, at 1 p.m. at the Council's Headquarters (address below), and adjourn at noon, September 25, to discuss plan development format and operational guidelines, the Spiny Lobster and Swordfish Fishery Management Plans, the mackerel charterboat evaluation study, fish traps, and other fishery management business. A detailed agenda will be available to the public on or about September 14, 1987.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Date: September 3, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–20859 Filed 9–9–87; 8:45 am]

BILLING CODE 3510–22–M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will convene its 59th public meeting at 10 a.m., September 21, 1987, and on September 22 from 9 a.m. to noon at the State Department of Land and Natural Resources, Board Room, 1151 Punchbowl Street, Honolulu, HI. The Council also will convene a closed session (not open to the public), September 21 from 8:30 a.m. to 9:30 a.m. to discuss personnel matters.

The September 21 session will include discussion of routine fisheries reports from state, territorial, and Federal Government representatives on the Council, from private sector Council members from Hawaii, Guam and American Samoa, and from the observer from the Commonwealth of the Northwestern Mariana Islands. Election of officers for 1987–1988 will be held, members will be appointed to standing committees, and a chairman for each committee will be named. The Council's Ad Hoc Committee on Advisory Panel review will make recommendations to the full Council. The Council will review the updated handbook on its operating policies and procedures, and also will review and make recommendations to the revised 601 regulations and guidelines that are to be followed by the Regional Fishery Management Councils.

The September 22 session will begin with a report from the Precious Corals Plan Monitoring Team on unresolved management issues for the proposed amendment to the Plan: (1) quota for selecting harvesting method and (2) whether or not to include dead coral in the harvesting quotas. The Council also will review the status of amendments to the Crustaceans and Bottomfish Fishery Management Plans, as other projects and elements of the Council's program.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368 or FTS 541–1974.

Date: September 3, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–20860 Filed 9–9–87; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit to Dr. Steven L. Swartz and Dr. Randall S. Wells

On February 20, 1987, notice was published in the **Federal Register** (52 FR 5326) that an application had been filed by Dr. Steven L. Swartz and Dr. Randall S. Wells for a permit to take humpback (*Megaptera novaeangliae*), blue (*Balaenoptera musculus*), and fin whales (*Balaenoptera physalus*) for scientific research.

Notice is hereby given that on September 4, 1987 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issues a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

This permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731–7415.

Date: September 4, 1987.

Henry R. Beasley,

Director, International Affairs, National Marine Fisheries Service.

[FR Doc. 87–20861 Filed 9–9–87; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit to the Aquarium of Niagara Falls (P99C)

On July 10, 1987, notice was published in the **Federal Register** (52 FR 26056) that an application had been filed by the Aquarium of Niagara Falls, 701 Whirlpool Street, Niagara Falls, New York 14301, for a permit to take three (3) Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display.

Notice is hereby given that on September 4, 1987 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: September 4, 1987

Henry R. Beasley

Director Office of International Affairs National Marine Fisheries Service.

[FR Doc. 87–20862 Filed 9–9–87; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Co-Exclusive Patent License; Cancer Prognostics, Inc. et al.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Cancer Prognostics Inc., having a place of business at 1250 Broadway, New York, NY 10001, and American Biosystems,

Inc., Marine on St. Croix, MN, a co-exclusive right in the United States to practice the invention embodied in U.S. Patent Application S. N. 6–314,477, "Vitro Cellular Interaction With Amnion Membrane Substrate." The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7 The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87–20704 Filed 9–9–87; 8:45 am]

BILLING CODE 3510–04–M

Notice of Intent To Grant Co-Exclusive Patent License; Cyclex, Inc. et al.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Cyclex Inc., of Los Altos, CA 94002, and Pharmatec, Inc., of Alachua, FL 32615, a co-exclusive right in the United States to practice the invention embodied in U.S. Patent Application S.N. 6–738,749, "Pharmaceutical Preparation Containing Cyclodextrin Derivatives." The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Association Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87–20705 Filed 9–9–87; 8:45 am]

BILLING CODE 3510–04–M

Travel and Tourism Administration

Meeting; Travel and Tourism Advisory Board

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on September 28, 1987, 9:00 a.m. at the British Tourist Authority, 24 Grosvenor Gardens, London SWIW OET, England.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97–63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order
II. Introduction of Board Members
  A. Review of new administrative procedures
  B. Election of Vice Chairman
III. Approval of the Minutes
  A. Approval of Draft Resolution
IV. Old Business
  A. Marketing Operations
  B. Marketing Initiatives
  C. International Marketing Conference
  D. Subcommittee reports on Visa Waiver and User Fees
IV. New Business
  A. Foreign Economic Trends
  B. Sectoral Review on Tourism for Uruguay Round
  C. 1994 Soccer Proposal
  D. USTTA Budget '88
V. Miscellaneous
  A. Establish next meeting date
VI. Adjournment

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation Marketing of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202–377–0140) will respond to public requests for information about the meeting.

Donna Tuttle,

Under Secretary for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 87–20781 Filed 9–9–87; 8:45 am]

BILLING CODE 3510–11–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of a New Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

September 4, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 11, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota reopenings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish a new import restraint limit for man-made fiber textile products in Category 645/646, produced or manufactured in Bangladesh.

Background

A CITA directive dated June 10, 1987 (52 FR 22668) established an import restraint limit for man-made fiber textile products in Category 645/646, produced or manufactured in Bangladesh and exported during the twelve-month period which began on October 30, 1986 and extends through October 29, 1987.

The Governments of the United States and Bangladesh have agreed in consultations to further amend their

Bilateral Cotton and Man-Made Fiber Textile Agreement of February 19 and 24, 1986, as amended, to establish a new limit for man-made fiber sweaters in Category 645/646, produced or manufactured in Bangladesh and exported during the fifteen-month period which began on November 1, 1986 and extends through January 31, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (49 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

September 4, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: The directive, amends but does not cancel, the directive of June 10, 1987 from the Chairman of the Committee for the Implementation of Textile Agreements, which established a restraint limit for certain man-made fiber textile products in Category 645/646, produced or manufactured in Bangladesh and exported during the twelve-month period which began on October 30, 1986 and extends through October 29, 1987.

Effective on September 11, 1987, the directive of June 10, 1987 is hereby amended to include a new limit for man-made fiber textile products in Category 645/646, produced or manufactured in Bangladesh and exported during the new restraint period which began on November 1, 1986 and extends through January 31, 1988, at a level of 227,500 dozen[1].

Textile products in Category 645/646 which have been exported to the United States prior to November 1, 1986 shall not be subject to this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-20853 Filed 9-9-87; 8:45 am]

BILLING CODE 3510-DR-N

[1] The limit has not been adjusted to account for any imports exported after October 31, 1986.

Continuation of an Import Restraint Limit and Cancellation of Staged Entry for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

September 4, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 11, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota reopenings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to renew the import restraint limit for man-made fiber textile products in Category 611, produced or manufactured in the People's Republic of China and exported durint the period which began on July 24, 1987 and extends through July 23, 1988. Staged entry for goods in Category 611 exported in excess of the previous restraint limit is being cancelled.

Background

On July 23, 1986 a notice was published in the **Federal Register** FR 26459) which announced the establishment of import restraint limits for certain man-made fiber textile products, including Category 611, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on July 24, 1986 and extended through July 23, 1987.

A further notice was published on July 22, 1987 (52 FR 27573) which announced the establishment of staged entry for certain man-made fiber textile products, including Category 611, produced or manufactured in the People's Republic of China and exported in excess of the restraint limit established in the directive of July 18, 1986 (51 FR 26459).

To avoid continued risk of market disruption, the Committee for the Implementation of Textile Agreements, in accordance with section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, and extended by protocols on December 14, 1977, December 22, 1981 and July 31, 1986; and the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, has decided to renew the restraint limit for the twelve-month period which began on July 24, 1987 and extends through July 23, 1988.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

A description of the textile in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584) April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorizations of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

Federal Register.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Septemer 4, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 202209.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on September 11, 1987, you cancel the staged entry period established in the directive of July 18, 1987 for man-made fiber textile products in Category 611, produced or manufactured in the People's Republic of China and exported in excess of the import restraint limit established for the twelve-month period which began on July 24, 1986 and extended through July 23, 1987.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 11, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 611, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on July 24, 1987 and extends through July 23, 1988, in excess of 3,748,238 square yards.[1]

Goods shipped in excess of the previous twelve-month period established in the directive of July 18, 1986, which began on July 24, 1986 and extended through July 23, 1987 shall be subject to the level set forth in this letter.

In carrying out the above directions, the Commissioner of Customs should construe entry in the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Arthur Garbel,

Acting Chairman, Committee for the Implemenation of Textile Agreements.

[FR Doc. 87-20854 Filed 9-9-87; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of Import Restraint Limits for Certain Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

September 4, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 11, 1987. For futher information contact Pamela Smith, International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6496. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to include shipments of certain silk blend and other vegetable fiber textiles and textile products in Categories 831, 832, 834 and 838, produced or manufactured in Malaysia and exported during 1987 within the limit established for Group II.

Background

A CITA directive dated July 6, 1987 (52 FR 26061) established import restraint limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, including a limit for Group II products not subject to specific limits.

Under the term of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of July 1 and 11, 1985, as amended and extended, between the Government of the United States and Malaysia, the Committee for the Implementation of Textile Agreements has decided to control silk blend and other vegetable fiber textiles and textiles products in Categories 831, 832, 834 and 838, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. Categories 831, 832, 834 and 838 will be subject to the existing Group II limit established in the directive of July 6, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

September 4, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of July 6, 1987, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on September 11, 1987, the directive of July 6, 1987 is amended to control imports of silk blend and other vegetable fiber textiles and textile products in Categories 831, 832, 834 and 838, as part of the existing Group II limit, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Textile products in Categories 831, 832, 834 and 838 which have been exported to the United States prior to January 1, 1987 shall not be subject to this directive.

Textile products in Categories 831, 832, 834 and 838 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

There are no charges to be made to the Group II limit for Categories 831, 832, 834 and 838 for the import period January 1, 1987 through May 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-20855 Filed 9-9-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after July 23, 1987.

Reduction of an Import Limit for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in the Northern Mariana Islands (CNMI) From Imported Parts

September 4, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 11, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to reduce the limit on imports of cotton, wool and man-made fiber sweaters in Category 345/445/446/645/646 which have been assembled in the Northern Mariana Islands and exported during the period November 1, 1986 through October 31, 1987 to 77,910.

Background

On November 3, 1986, a notice was published in the **Federal Register** (51 FR 39902) which continued and increased the limit for cotton, wool and man-made fiber sweaters in Category 345/445/446/645/646, which were determined by the U.S. Customs Service to be products of foreign countries or foreign territories and exported from the Commonwealth of the Northern Mariana Islands (CNMI) during the period which began on November 1, 1986 and extends through October 31, 1987. The increase of this limit was based upon certification by the United States that 40 percent of local labor was used in production of these textile products.

The purpose of this notice is to advise the public that this requirement has not been fulfilled. Consequently, the limit for cotton, wool and man-made fiber sweaters in Category 345/445/446/645/646, exported from the CNMI during the period November 1, 1986 through October 31, 1987 is being reduced from 100,000 dozen to the prior years limit. This action will overfill the limit and cause an embargo.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

September 4, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of October 29, 1986 issued to you by the Chairman of the Committee for the Implementation of Textile Agreements concerning imports of cotton, wool and man-made fiber sweaters in Category 345/445/446/645/646, assembled in the Commonwealth of the Northern Mariana Islands from foreign parts and exported to the United States during the twelve-month period which began on November 1, 1986 and extends through October 31, 1987.

Effective on September 11, 1987, the directive of October 29, 1986 is hereby amended to reduce the limit for cotton, wool and man-made fiber sweaters in Category 345/445/446/645/646 to a level of 77,910 dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–20856 Filed 9–9–87; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Philippines

September 4, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 11, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–6735. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the restraint limit Category 433 for the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Background

A CITA directive dated March 11, 1987 (52 FR 7918) established limits for certain specified categories of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, including a limit for Group II categories and a limit for Category 433, produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1987 and extends through December 31, 1987. Pursuant to a request from the Government of the Republic of the Philippines and under the terms of the Bilateral Textile Agreement on March 7, 1987, between the Governments of the United States and the Republic of the Philippines, Category 433 is being increased by application of swing and carryforward. The 1987 limit for Group II is being reduced to account for the swing applied to Category 433.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR

13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

September 4, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on March 11, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on September 11, 1987, the directive of March 11, 1987 is amended to include the following adjusted restraint limits, under the terms of the Bilateral Textile Agreement of March 7, 1987 [1]

Category	Adjusted 12-month limit [1]
433	3,371 dozen
Group II	
300–320, 330, 332, 349, 350, 353, 354, 359–0 [2], 360–363, 369–0 [3], 400–429, 432, 434–442, 444, 448–459, 464–469, 600–603, 605–627, 630, 632, 644, 653, 654, 659–0 [4], 665–670 and 831–859, as a group.	67,196,310 square yards equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[2] In Category 359–0, all TSUSA numbers except 384.0439, 384.0441, 384.0442, 384.0444, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.5162, 384.5163, 384.5167, 384.5169, 384.5172, 384.3451, 384.3452, 384.3453 and 384.3454.

[3] In Category 369–0, all TSUSA numbers except 366.2840.

[4] In Category 659–0, all TSUSA numbers except 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8633, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359, 384.9365, (659–I), 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560 703.1000, 703.1610, 703.1620, 703.1630, 703.1640, and 703.1650 (659–H).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–20857 Filed 9–9–87; 8:45 am]

BILLING CODE 3510–DR–M

[1] The agreement provides, in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for swing, carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Committee on Integrated Long-Term Strategy; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Advisory Committee on Integrated Long-Term Strategy will meet in closed session on 29–30 September 1987 in the Pentagon, Washington, DC.

The mission of the Advisory Committee on Integrated Long-Term Strategy is to provide the Secretary of Defense and the Assistant to the President for National Security Affairs with an independent, informed assessment of the policy and strategy implications of advanced technologies for strategic defense, strategic offense and theater warfare, including conventional war. At this meeting the Committee will hold classified discussions of national security matters dealing with long term strategy and policy.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended [U.S.C. App. II, (1982)], it has been determined that this Advisory Committee meeting concerns matters listed in 5 U.S.C. section 522b(c)(1)(1982), and that accordingly these meetings will be closed to the public.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 4, 1987.

[FR Doc. 87–20839 Filed 9–9–87; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Land Loss and Marsh Creation Feature of the Louisiana Coastal Area, Louisiana, Project

AGENCY: U.S. Army Corps of Engineers, DOD, New Orleans District.

ACTION: Notice of intent to prepare a draft EIS.

SUMMARY:

1. Proposed Action

The project purpose is to identify feasible measures to reduce land loss and create marsh in order to improve fish and wildlife habitat and productivity, as well as preserve the marsh's capacity to buffer hurricanes. The study was authorized by a resolution adopted by the Senate Committee on Public Works on 19 April 1967, and the House Committee on Public Works on 19 October 1967. An Initial Evaluation Study (IES) in 1984 was conducted to determine causes and extent of land loss in the Coastal Area, as well as identify feasible measures to reduce land loss and create marsh. The extensive and rapid loss of coastal wetlands in Louisiana, up to 60 square

miles annually, is the result of the combination of natural processes (compaction, subsidence, sea level rise, saltwater intrusion, erosion) and man's activities (oil and gas exploration and production activities; levee building; channelization; and agricultural, urban and industrial expansion). Continued land loss will result in serious detrimental effects on fish and wildlife productivity, as well as on cultural and recreational resources. Existing coastal residential and industrial developments are also threatened. Four major areas were identified in the IES: Chandeleur and Breton Sound Basin, Barataria Basin, Terrebonne Basin, and Atchafalaya to Sabine River Basin. The document currently in preparation will consider Chandeleur and Breton Sound Basin and Barataria Basin, concentrating on marsh creation in St. Bernard, Plaquemines, and Jefferson Parishes.

2. Alternatives

Alternatives to be considered include uncontrolled sediment diversions within the active delta of the Mississippi River; controlled sediment diversions at selected sites along the Mississippi River; marsh creation using maintenance-dredged material from the Barataria Waterway and Mississippi River Navigation Projects; and marsh creation by non-maintenance dredging in the Mississippi River.

3. Scoping Process

a. Public meetings were held in Belle Chasse, Houma, and Cameron, Louisiana, in August 1984. Initial evaluation study results were discussed and local concerns and ideas obtained. Intra-agency scoping meetings have been conducted with the U.S. Fish and Wildlife Service, Soil Conservation Service, Louisiana Geological Survey, and the Louisiana Department of Natural Resources. The public involvement program will include a scoping letter and also meetings to obtain input regarding alternatives under consideration and significant resources to be evaluated in the EIS. The participation of affected Federal, state, and local agencies, and other interested private organizations and parties will be invited.

b. Significant issues to be analyzed in the EIS include impacts of the proposed project on biological, cultural, historical, social, and economic factors; also water quality and human resources, as well as project costs.

c. The U.S. Fish and Wildlife Service will provide Planning Aid Information and a Coordination Act Report for the draft EIS.

d. The draft EIS will be coordinated with all required Federal, state, and local agencies, as well as environmental groups, landowner groups, and interested individuals. All review comments received will be considered and responses to these comments will be presented in the final EIS.

4. Public Meeting(s)

Public meetings were initially conducted in 1968, and other meetings were held in August 1984 in Belle Chasse, Houma, and Cameron, Louisiana, to inform the public about this study.

5. Availability

The draft EIS is scheduled to be available to the public in August 1988.

ADDRESS: Questions concerning the proposed action and draft EIS may be directed to Ms. Diane E. Ashton, U.S. Army Corps of Engineers, Environmental Quality Section (CELMN-PD-RE), P.O. Box 60267, New Orleans, Louisiana 70160-0267, telephone (504) 862-1735.

Date: August 31, 1987.

Lloyd K. Brown,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87-20706 Filed 9-9-87; 8:45 am]

BILLING CODE 3710-84-M

Department of the Navy

Decision To Proceed With Private Land Acquisitions and Land Management of Range Safety Zones; Naval Air Facility (NAF), El Centro, CA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR Part 1500), the U.S. Navy announces its decision to proceed with the acquisition of privately owned lands within the "A" target range safety zones, (RSZs), the acquisition of easements on lands within the "B" RSZs and the obtaining of height and development controls in the "C" RSZs at NAF El Centro, California and through a cooperative agreement with Imperial County, CA. The proposed action is an administrative change and does not involve surface disturbance or a change in existing Federal Aviation Administration (FAA) flight restrictions. For purposes of classification the current "RSZ" categories for flight operations are as follows:

RSZ "A"—Surface impact target areas; areas of high hazard and subject to impact from dropped ordnance.

RSZ "B"—Designated areas subject to significant overflight conditions where jet aircraft are operating. While ordnance release does not normally occur in this area, an occasional inadvertent drop is possible. Within the "B" areas aircraft are flying at low elevations and traveling at speeds in excess of 500 knots which severely limits the range of possible surface activities.

RSZ "C"—The "C" area is intended to provide an adequate area of protected space in which military training exercises can be safely conducted without interference from general aviation. Height of structures and population density are safety and compatibility concerns.

This report addresses only the non-federal land within the two Target Ranges Attached. The Bureau of Land Management (BLM) has prepared the appropriate environmental documentation for the Federally owned lands within the Ranges described.

This action will increase the level of safety to the public, thereby conforming with the goals of local, state and federal agencies. It would also complement the action assessed by the BLM for the federally owned lands that are interspersed throughout the Target Ranges.

This action will retain the present land uses and would have no adverse impacts on water resources. It could have beneficial impacts by restricting private development in sensitive areas such as the San Sebastian Marsh area. In addition, the use of the targets in the "A" RSZs precludes more intensive development that might require more water.

No new impacts to biological resources will occur. However, there are sensitive plant and animal species found and/or expected within the areas and subsequent Navy management is expected to protect these species.

The lands in question are privately owned. Desert recreation on the federally owned lands does sometimes spill over onto private lands, however, it is unauthorized. Since this action does not propose a change in existing land uses, there will be no increased impacts on recreation.

There are many recorded archeological and cultural sites within the areas, including the "A" RSZs where land is to be acquired. Proposed controls on future and ongoing Navy management procedures should be beneficial to those resources. If the Navy proposes any change in land use in the future, additional environmental

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studies will be conducted and appropriately made public.

The Navy examined the alternative of no project, acquisition of all lands within the RSZs, reduction of mission activity and the relocation of the El Centro targets.

The alternative of acquisition in fee of privately held land in the "A" RSZs, the acquisition of restrictive easements from landowners in the "B" RSZs, and the control of heights of structures and certain types of development in the "C" RSZs was selected as the alternative that best suited mission requirement, cooperation with other land management initiatives and having no additional, significant or adverse environmental effects.

Typical structures in the area of impact are scattered residences, canals and irrigation structures. Also utility lines, roads, mining equipment, apiaries and farming equipment. The Ranges consist of desert land, rugged mountains/hills, sand dunes, and agricultural areas. This action will retain the land within Ranges as they are.

Unavoidable Adverse impacts include: minor increased restrictions in the "A" RSZs for off-road vehicle recreationists, increased controls on heights of structures and certain developments such as public facilities (schools, churches) heavy agriculture (feedlots), and mineral exploration (drill rigs) and development (power plants) in the "B" and "C" RSZs.

Although the action increased the level of land use controls, variances and special-use permits may be obtained on a case-by-case basis.

Date: August 21, 1987.

Jane M. Virga,

Lt, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 87-20766 Filed 9-9-87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on the Role of Space Based Activities in Support of Naval Warfare will meet on September 17, 1987. The meeting will be held at the Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. on September 17, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to conduct an Executive Session to finalize the review of space activities related to naval operations, identify efforts of concern and provide suggestion for validating the utility of those efforts, prepare an independent warfare assessment of space based surveillance and targeting alternatives, and assess the potential for inexpensive reconstitution of wartime space assets. The agenda will include technical discussions related to space technology. These discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Date: September 4, 1987.

Jane Virga,

LT, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 87-20767 Filed 9-9-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Education Appeal Board; Notice of Applications for Review Accepted for Hearing

AGENCY: Department of Education.

ACTION: Notice of applications for review accepted for hearing by the education appeal board.

SUMMARY: This notice lists the applications for review accepted for hearing by the Education Appeal Board (the Board) between May 27, 1987 and August 11, 1987. The Chairman has prepared a summary of each appeal to help potential intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: The Honorable Ernest C. Canellos, Chairman, Education Appeal Board, 400 Maryland Avenue SW. (Room 1065, FOB-6), Washington, DC 20202. Telephone: (202) 732-1756.

SUPPLEMENTARY INFORMATION. Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*), the Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education (the Secretary), and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds, and cease and desist actions for most grant programs administered by the Department of Education (the Department). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most Department-administered programs that involve (a) a determination that a grant is void, (b) the disapproval of a request for permission to incur an expenditure during the term of a grant, or (c) determinations regarding cost allocation plans or special rates negotiated with specified grantees.

Regulations governing Board jurisdiction and procedures are codified in 34 CFR Part 78.

Applications Accepted

Appeal of the California Department of Education, Docket No.: 9(245)87, ACN: 09-63014

The State appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education, the Acting Assistant Secretary for Vocational and Adult Education, and the Acting Director, Financial Management Service. As pertinent, the underlying audit, a single State audit, reviewed the migrant education program conducted by the State during the fiscal year ending June 30, 1984.

The Assistant Secretary for Elementary and Secondary Education sustained the auditor's findings and disallowed specific costs attributed to employee salaries and training which allegedly exceeded the scope of the previously approved State plan.

The State denies liability for the refund of $43,200, the amount the Department seeks to recoup for expenses unauthorized allegedly charged to the migrant education program.

Appeal of Miles College (AL), Docket No.: 10(246)87, ACN: 04–55051

The College appealed a final letter of determination issued by the Chief, Audit Review Branch (ARB), Division of Certification and Program Review. The underlying audit reviewed the various student financial aid programs conducted at the College between July 1, 1983 and June 30, 1984.

ARB sustained the auditor's findings, concluding that the College had excess draw-downs against its Federal account. The College proposed an offset against the excess draws, using the College's Title III-Strengthening Developing Institutions program matching funds. Although the offer was initially accepted by the ARB, it was later rejected and the College was advised that the matching funds could not serve as an offset against excess draw-downs.

The Department seeks a refund of $547,831. The College challenges the Department's interpretation of "matching funds" and disputes liability in the amount of $340,070.

Appeal of Western Kentucky University, Docket No.: 11(247)87, ACN: 04–65281

The University appealed a final letter of determination issued by the Grants and Contracts Service (GCS). The underlying audit reviewed costs associated with a discretionary grant program conducted by the University between July 1, 1984 and June 30, 1985.

GCS sustained the auditor's findings that the University failed to apply project income to the conduct of its school-based technology demonstration project, thus violating the cost sharing/matching funds requirements of the grant.

The Department seeks a refund of $40,864 and the University disputes all liability.

Appeal of Capital School District (DE), Docket No. 12(248)87, ACN: 03–63017

The District appealed a final letter of determination issued by Grants and Contracts Service (GCS). The underlying audit reviewed the expenditures attributed to the Teacher Center Project funded between July 1, 1981 and June 30, 1983.

GCS sustained the auditor's findings that expenditures associated with the project were improperly charged to the Federal grant after expiration of the statutory period of availability.

The Department seeks a refund of $9,659. The District disputes all liability.

Appeal of the State of Colorado, Docket No. 13(249)87, ACN: 08–62056

The State appealed a final letter of determination issued by the Acting Assistant Secretary for Elementary and Secondary Education. As pertinent, the underlying audit reviewed Chapter 1 and Chapter 2 programs conducted by the State during the fiscal year ending June 30, 1985.

The Acting Assistant Secretary sustained the auditor's findings, concluding that the State failed to properly document the distribution of salary charges between the two programs.

The Department seeks a refund of $32,935. The State disputes all liability.

Appeal of Franklin Northwest Supervisory Union (VT), Docket No. 14(250)87

The Union appealed a final letter of determination issued by Grants and Contracts Service (GCS) voiding its FY 1986 grants. The Union also appealed the GCS' determination that it may not incur additional expenditures under these grants and must repay all FY 1986 funds expended to date.

GCS determined, based upon a site visit, that the Union failed to provide services to limited English proficient students, failed to maintain appropriate records, and failed to conduct a transitional bilingual education program in violation of the provisions of the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act of 1965 (as amended).

The Department seeks a repayment of funds amounting to $400,061. The Union challenges the Department's authority to void a grant and seek repayment of grant funds in the absence of an audit.

Appeal of the State of Arkansas, Docket No. 15(251)87, ACN: 06–60505

The State appealed a final letter of determination issued jointly by the Acting Assistant Secretary for Elementary and Secondary Education and the Assistant Secretary for Special Education and Rehabilitation Services. The underlying audit reviewed unemployment costs charged to Federal grants between July 1, 1982 and June 30, 1985.

The Assistant Secretary sustained the auditor's findings that the unemployment costs charged the Chapter 1, Chapter 2, and the Education of the Handicapped Act programs were excessive, and that the overcharges were improperly added to the local education agency's general operating fund.

The Department seeks a refund of $515,098. The State challenges the Department's methods of computation of overcharges and argues that charges to other programs, not previously considered, should be used as an off-set against only properly calculated overcharges.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to, the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

Applications to intervene, or questions, should be addressed to the Board Chairman at the address provided above.

(20 U.S.C. 1234)

(Catalog of Federal Domestic Assistance No. not applicable)

Dated: September 3, 1987.

Peter R. Greer,

Deputy Under Secretary Intergovernmental and Interagency Affairs.

[FR Doc. 87–20742 Filed 9–9–87; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council on Educational Research and Improvement; Full Meeting

AGENCY: National Advisory Council on Educational Research and Improvement; Education.

ACTION: Full Council meeting of the National Advisory Council on Educational Research and Improvement.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required under section 10 (a)(2) of the Federal Advisory Committee Act.

DATE: September 22 and 23, 1987.

ADDRESS: The Council will meet on September 22 from 10 a.m. to 2:45 p.m. in the Indian Treaty Room of the Old Executive Office Building, 17th and Pennsylvania Avenue NW., Washington,

DC 20500, and from 3 p.m. to 4:45 p.m. in the Folger Shakespeare Library, 201 E. Captiol St., SE., Washington, DC 20003. The Council will meet on September 23 in the Mayflower Hotel (meeting room as posted), 1127 Connecticut Avenue NW., Washington, DC 20036, from 9 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 2000 L St., NW., Suite 617 B, Washington, DC 20036, (202) 254–7490.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Educational Research and Improvement is established under section 405 of the General Education Provisions Act (20 U.S.C. 1221 e); Department of Education organization plan implemented pursuant to section 413 of Pub. L. 96–88 and notice to Congress dated July 2, 1985. The Council is established to advise the Secretary of Education on policies and priorities for the Office of Educational Research and Improvement (OERI), and to review the conduct of OERI and to advise the Secretary of Education and the Assistant Secretary for OERI on the development of programs to be carried out by OERI.

Meetings of the Council are open to the public. The agenda for September 22 includes briefings on educational policy by administration officials and an address by Mr. Robert Slavin of the Center for Effective Elementary and Middle Schools, John Hopkins University. The agenda for September 23 includes a discussion of the enlargement of the National Assessment of Educational Progress, revision of the Council by-laws, and other Council business.

Security considerations require that members of the public who wish to attend the meeting on September 22 obtain prior clearance by telephoning the Council's office at (202) 254–7490 by close of business on September 17.

Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 2000 L. St. NW., Suite 617 B, Washington, DC 20036, from the hours of 9 a.m. to 5 p.m. Monday through Friday.

Dated: September 3, 1987.

Mary Grace Lucier,

Executive Director.

[FR Doc. 87–20722 Filed 9–9–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent To Award a Cooperative Agreement; Continued Assistance to State and Local League Groups and to State Legislatures in Their Consideration of Radioactive Waste Siting Issues in the Implementation of the Nuclear Waste Policy Act of 1982

AGENCY: Department of Energy (DOE).

ACTION: Notice of restricted eligibility for award of Cooperative Agreement Number DE–FC01–87RW00141 to the League of Women Voters Education Fund (LWVEF).

SUMMARY: The United States Department of Energy (DOE), Office of Civilian Radioactive Waste Management, announces that pursuant to 10 CFR 600.7(b) it intends to award, on a restricted eligibility basis, a Cooperative Agreement to the LWVEF. The purpose of the Cooperative Agreement is to encourage public understanding and participation in the first repository site selection process and provide technical data and in-depth background information on radioactive waste repository siting and related issues.

Eligibility

The League of Women Voters Education Fund (LWVEF) has unique qualifications and a recognized national reputation which qualifies it to accomplish the objective of this Cooperative Agreement. Negotiation of a Cooperative Agreement with only the Fund is recommended because of the organization's national membership, special expertise, and familiarity with the ongoing implementation of the NWPA and experience in developing public information on radioactive waste issues. As an independent but complementary organization to the League of Women Voters of the United States, the Fund has direct access to 1200 State and local League groups representing the 50 states, Puerto Rico, and the District of Columbia. This well developed and long-standing network is a resource that has been successfully employed in the U.S. High-Level Waste Program public hearings and briefings conducted in the past. The Fund's broad range of social and institutional affiliations can continue to significantly assist in public education and promote informed public participation in siting decisions that are national in scope and impact.

In summary, through the Fund's unique access to the League's national membership, and experience with technical and complex radioactive waste issues, the Fund's organization demonstrates an existing expertise and proficiency necessary to conduct a pilot public information project to promote involvement in the waste program. Therefore, a Cooperative Agreement to conduct public information/education activities should be negotiated only with the Fund because it has the singular qualifications and capability to provide the required and timely assistance to fully implement the NWPA mandated public participation. The period of this Cooperative Agreement will be 20 months with an estimated cost of $274,287.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Calvin Lee, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Stephen J. Michelsen,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 87–20846 Filed 9–9–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 87–40–NG]

Application To Amend Authorization To Import Natural Gas From Canada; Northwest Alaskan Pipeline Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application to extend blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 17, 1987, of an application from Northwest Alaskan Pipeline Company (Northwest Alaskan) to amend its authorization to import natural gas. The application requests that the ERA approve the extension of its authority to import natural gas from Canada under its "Western Contract" with Pan-Alberta Ltd. from October 31, 2001, through October 31, 2012.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Chuck Boehl, Natural Gas Division, Economic Regulatory Administration,

Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6050
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION:

Authority to import the Canadian gas was first issued by the Federal Energy Regulatory Commission (FERC) on January 11, 1980. (*Northwest Alaskan Pipeline Company*), Docket Nos. CP78–123, *et al.* 10 FERC ¶ 61,032 (January 11, 1980)). The volume of the authorized import was increased from 240,000 Mcf to 300,000 Mcf through October 31, 1988, by a FERC order dated June 13, 1980. (*Northwest Alaskan Pipeline Company*, Docket Nos. CP78–123, *et al.* 11 FERC ¶ 61,279 (June 13, 1980)). By an order issued December 15, 1983, the FERC extended the duration of the authorized imports through October 31, 1992, with certain conditions. (*Northwest Alaskan Pipeline Company*, Docket Nos. CP78–123–021, *et al.*, 25 FERC ¶ 61,384 (December 15, 1983)). On December 13, 1984, the ERA issued DOE/ERA Opinion and Order No. 68 (Order No. 68) removing the conditions and further extending the import authorization to October 31, 2001. (*Northwest Alaskan Pipeline Company*, 1 ERA ¶ 70,580).

Northwest's current application is merely for an extension of the authorization which the ERA approved in Order No. 68. That import arrangement established a rate structure comprised of a demand and a commodity component. The demand component consists of a combination of (1) administrative costs incurred by Pan-Alberta in connection with securing the gas and arranging transportation and sale of the gas from the Province of Alberta; (2) the charge for transporting the volumes resold to Pacific Interstate Transmission Company (PIT) of the Alaskan Natural Gas Transportation System (ANGTS) prebuilt facilities of Foothills Pipe Lines (Yukon) Ltd. (Foothills); (3) the charge by NOVA, AN ALBERTA CORPORATION (NOVA); and (4) the administrative costs incurred by Northwest Alaskan for purchase and resale of the gas at the U.S.-Canadian border. The demand charge would be redetermined every six months.

The commodity charge, also subject to recalculation every six months, is a price at the U.S.-Canadian border based on a formula which takes into consideration changes in the recent cost of all other gas supplies purchased by Southern California Gas Company (SoCal), the ultimate purchaser, or its affiliates for resale in the Southern California gas market. The amendment also establishes an incentive price of $2.30 (U.S.) per MMBtu for volumes purchased per year in excess of 85 percent but not exceeding 100 percent of the contract volume. The incentive rate will be renegotiated at the same time the base commodity rate is redetermined.

The amendment further provides for a reduction in the minimum daily and annual volume purchase obligations from 85 percent of contract volume to a 60 percent take-*and*-pay requirement daily and yearly. There is no take-*or*-pay requirement. This is another factor, including all contract provisions, that can be reopened every six months.

Northwest Alaskan maintains that the extension of its authority to import Canadian gas from November 1, 2001, through October 31, 2012, is in the public interest, because: (1) The contract agreement assures that the imported gas will be market responsive; (2) the gas will be going to one of the most gas-reliant areas of the United States and the contract extension ensures those customers of long term supplies at competitive prices; (3) the extension will not create undue reliance on Canadian imports; and (4) Canadian imports represent a secure energy supply.

The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (496 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notices of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notice of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. October 13, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northwest Alaskan's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., on September 4, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–20847 Filed 9–9–87; 8:45 am]

BILLING CODE 6450–01–M

VOL 52 ISS 175 SE 10 1987 UMI

Federal Energy Regulatory Commission

[Docket Nos. ER87-605-000, et al.]

Electric Rate and Corporate Regulation Filings; Iowa Power and Light Co. et al.

Take notice that the following filings have been made with the Commission:

1. Iowa Power and Light Company

[Docket No. ER87-605-000]

September 2, 1987.

Take notice that on August 28, 1987, Iowa Power and Light Company (Iowa Power) tendered for filing, pursuant to Rule 602 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.602, a Stipulation along with a proposed order that is intended to settle the rate issue brought about by the Tax Reform Act of 1986.

Iowa Power states that the Stipulation was agreed to by Iowa Power and the Cities of Neola and Carlisle (Cities) in response to the Commission's rulemaking "Rate Changes Relating to Federal Corporate Income Tax Rate for Public Utilities" Docket No. RM87-4-000.

Copies of this filing has been served upon all parties affected by this filing.

Comment date: September 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Delmarva Power & Light Company

[Docket No. ER87-606-000]

September 2, 1987.

Take Notice that on August 28, 1987, Delmarva Power & Light Company (Delmarva) tendered for filing proposed Supplement No. 9 to its FERC Rate Schedule No. 52. This Supplement, filed at the request of Old Dominion Electric Cooperative (Old Dominion), provides for an additional 69KV delivery point at Tanyard Substation.

Copies of this filing were served upon Choptank Electric Cooperative, Old Dominion Electric Cooperative and the Maryland Public Service Commission.

Comment date: September 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Citizens Utilities Company

[Docket No. EC87-22-000]

September 2, 1987.

Take notice that on August 28, 1987, Citizens Utilities Company (Citizens) tendered for filing its application with the Federal Energy Regulatory Commission (Commission), pursuant to section 203 of the Federal Power Act seeking an order (1) authorizing it to purchase, acquire and take securities of public utilities, (2) modifying the reporting requirement of 18 CFR 33.8 to require only an annual report and (3) waiving the Exhibit D filing requirements in part. Purchases of utility securities will be part of a passive investment program and are not designed to obtain or exercise control over any public utility.

Comment date: September 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Central Maine Power Company

[Docket No. ER87-611-000]

September 4, 1987.

Take notice that on September 1, 1987, Central Maine Power Company tendered for filing proposed changes in its FERC Electric Tariff, 10th Revised Volume No. 1, wholesale Electric Rate for Other Utilities. Under the rate increase effective October 1, 1987, CMP would be permitted to increase its current wholesale rates by $109,554 for Period I.

The filing also requests a waiver of the FERC fuel clause regulations to permit recovery of costs associated with purchases from qualifying facilities within the meaning of the Public Utility Regulatory Policies Act of 1978 effective as of January 1, 1979.

In addition, the filing includes a provision for standby power purchases by the Wholesale Customers.

The proposed tariff implements a Stipulation and Contracts between CMP and its Wholesale Customers, Kennebunk Light and Power District, Inhabitants of the Town of Madison (Madison Electric Works), and Fox Islands Electric Cooperative, Inc. Copies of the filing have been served on CMP's above-named Wholesale Customers, and on the Maine Public Utilities Commission.

Comment date: September 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corporation

[Docket No. ER87-607-000]

September 4, 1987.

Take notice that on August 28, 1987, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in the following rate schedules:

Customer	Rate schedule FERC No.
Vermont Electric Generation and Transmission Cooperative, Inc.	88
Lyndonville Electric Department	92
Village of Ludlow Electric Light Department	96
Village of Johnson Water and Light Department	106
Village of Hyde Park Water and Light Department	111

The proposed changes would increase revenues from jurisdictional sales and service by $219,996 for the twelve month period ending October 31, 1987.

Central Vermont states that the change is proposed in accordance with Article V of Central Vermont's Power Purchase Contracts which provide that charges will be updated annually to incorporate Central Vermont's purchased power cost experience for the preceding twelve months ending October and Central Vermont's capacity cost associated with company-owned generating facilities for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1987.

Copies of this filing were served upon the customers and the Vermont Public Service board.

Comment date: September 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER87-549-000]

September 4, 1987.

Take notice that on August 31, 1987, Florida Power & Light Company (FPL) tendered for filing an amended page 6 to Amendment Number Five to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company And City of Tallahassee.

As requested by the Commission, this amended page 6 has been revised to reflect the current rate for Schedule TX—Extended Economy Transmission Service. The amended page 6 supersedes and replaces in its entirety the page 6 which was initially filed in Docket No. ER87-549-000. Copies of this filing were served upon the City of Tallahassee. FPL request that this amended page 6 be made effective on July 13, 1987.

Comment date: September 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Kanawha Valley Power Company

[Docket No. ER87-608-000]

September 4, 1987.

Take notice that on August 31, 1987, Kanawha Power Company (Kanawha) tendered for filing modifications to its 1935 and 1937 Agreements (Schedule FPC Nos. 1 and 2, respectively) with Appalachian Power Company

(Appalachian) providing for the supply of power and energy from Kanawha's Marmet and London (Project No. 1175) and Winfield (Project No. 1290) hydro-electric plants, respectively, to be effective November 1, 1987.

The modifications would increase annual revenues to Kanawha for sales to Appalachian by $751,245 based on the twelve month period ending June 30, 1987.

The proposed changes are required due to increases in the cost of providing service under the 1935 and 1937 Agreements since the last rate modification in 1985. The rates under the proposed modification are designed to provide Kanawha with the opportunity to earn a 10.77% overall return. Both Kanawha and Appalachian are affiliates of the American Electric Power System.

Kanawha states that a copy of the filing has been provided to the Public Service Commission of West Virginia, the Virginia State Corporation Commission and Appalachian Power Company.

Comment date: September 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER87-612-000]

September 4, 1987.

Take notice that on September 1, 1987, Niagara Mohawk Power Corporation tendered for filing proposed changes to rate schedules to increase charges for delivery of power and energy to municipal and cooperative customers of the Power Authority of the State of New York (Power Authority) located either in Niagara Mohawk's franchise area or in the remaining areas of New York State which are served in whole or in part through Niagara Mohawk's transmission system; affected also are certain of Power Authority's industrial customers who receive FitzPatrick power and energy. The new rates are proposed to be effective November 1, 1987.

Niagara Mohawk presently has on file agreements with the Power Authority dated March 1, 1987, designated Rate Schedule 18; dated February 10, 1961, designated Rate Schedule FERC No. 19; and dated July 28, 1975, designated Rate Schedule 95. These provide for, among other service, transmitting power and energy from the Power Authority over Niagara Mohawk's transmission facilities to customers of the Power Authority, including those customers identifed in the preceding paragraph.

Copies of the filing were served upon the attached service list.

Comment date: September 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Company Services, Inc.

[Docket No. ER87-609-000]

September 4, 1987.

Take notice that on August 31, 1987, Southern Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (Southern Companies), tendered for filing a notice of termination of the following rate schedules:

1. Schedule E (Long Term Power Sale) to the Interchange Contract between Florida Power Corporation and Southern Companies dated December 15, 1968, as amended. (FERC Rate Schedule—Southern No. 37).

2. Revised Service Schedule E (Long Term Power Sale) and the Addendum to Revised Service Schedule E to the Interchange Contract between Florida Power & Light Company and Southern Companies dated October 18, 1979, as amended. (FERC Rate Schedule—Southern No. 47)

3. Service Schedule E (Long Term Power Sale) to the Interchange Contract dated February 27, 1981, as amended, between Jacksonsville Electric Authority and Southern Companies. (FERC Rate Schedule—Southern No. 53).

4. Service Schedule E (Long Term Power Sale) to the Interconnection Agreement dated August 1, 1953, as amended, between Mississippi Power & Light Company and Southern Companies. (FERC Rate Schedule—Southern No. 15).

In each instance, Service Schedule E sets forth the terms, conditions and rates under which Southern Companies agreed to deliver power and energy to the respective purchaser. In each instance, Service Schedule E expired by its terms on December 31, 1986.

Comment date: September 21, 1987, in accordance with Standard Paragraph E at the end of this document.

10. Western Area Power Administration and the Southwestern Power Administration

[Docket No. EL87-63-000]

September 4, 1987.

Take notice that on August 31, 1987, Western Area Power Administration and Southwestern Power Administration tendered for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2), a petition for a declaratory order to remove uncertainty with regard to Commission Order No. 472.

Copies of this filing have been served upon each party affected by this filing.

Comment date: September 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20810 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-3-1-000]

Proposed PGA Rate Adjustment, Alabama-Tennessee Natural Gas Co.

September 4, 1987.

Take notice that on August 31, 1987, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

First Revised Sheet No. 40
Original Sheet No. 40-A
First Revised Sheet No. 41
First Revised Sheet No. 42
Original Sheet No. 42-A

Alabama-Tennessee proposes an effective date of August 1, 1987 for these tariff sheets.

Alabama-Tennessee also tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 46
First Revised Sheet No. 47
Original Sheet No. 47-A
First Revised Sheet No. 50
Original Sheet No. 50-A

These tariff sheets are proposed to become effective on September 1, 1987.

Alabama-Tennessee states that the purpose of these tariff sheets is to implement the "as billed" principle to reflect the implementation of the Modified Fixed Variable methodology by Tennessee Gas Pipeline Company, one of its suppliers of natural gas.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any persons desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20823 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST87-3154-000 et al.]

Self-Implementing Transactions; ANR Pipeline Co. et al.

September 1, 1987.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G-S" indicates transportation by an interstate pipeline company on behalf of any shipper pursuant to a § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to a transaction reflected in this notice should on or before September 18, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST87-3154	ANR Pipeline Co	Wisconsin Natural Gas Co	07-01-87	B		
ST87-3155	do	Southeastern Michigan Gas Co	07-01-87	B		
ST87-3156	do	Wisconsin Natural Gas Co	07-01-87	B		
ST87-3157	do	Eastex Gas Transmission Co	07-01-87	B		
ST87-3158	Columbia Gas Transmission Corp	Northeastern Gas Pipeline	07-01-87	B		
ST87-3159	do	Consolidated Edison Co. of NY, Inc.	07-01-87	B		
ST87-3160	do	Constitution Gas Transport, Inc	07-01-87	B		
ST87-3161	Dow Pipeline Co	Natural Gas Pipeline Co. of America.	07-01-87	C	11-28-87	07.31
ST87-3162	Northern Natural Gas Co	Peoples Gas Light & Coke Co	07-01-87	B		
ST87-3163	do	NGC Intrastate Pipeline Co	07-01-87	B		

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST87-3164	do	Phillips Natural Gas Co	07-01-87	B		
ST87-3165	do	Southern California Gas Co	07-01-87	B		
ST87-3166	Panhandle Eastern Pipeline Line Co.	Illinois Power Co	07-01-87	B		
ST87-3167	do	Richmond Gas Corp	07-01-87	B		
ST87-3168	do	Northern Indiana Public Service Co.	07-01-87	B		
ST87-3169	do	Victoria Gas Corp	07-01-87	B		
ST87-3170	do	Consumers Power Co	07-01-87	B		
ST87-3171	do	Battle Creek Gas Co	07-01-87	B		
ST87-3172	do	Consumers Power Co	07-01-87	B		
ST87-3173	do	Peoples Gas Light & Coke Co., et al.	07-01-87	B		
ST87-3174	do	Consumers Power Co	07-01-87	B		
ST87-3175	Ringwood Gathering Co	Reliance Pipeline Co	07-01-87	B		
ST87-3176	Texas Eastern Transmission Corp	Philadelphia Electric Co	07-01-87	B		
ST87-3177	do	Philadelphia Gas Works	07-01-87	B		
ST87-3178	do	Long Island Lighting Co	07-01-87	B		
ST87-3179	do	Connecticut Natural Gas Corp	07-01-87	B		
ST87-3180	do	Michigan Consolidated Gas Co	07-01-87	B		
ST87-3181	do	Philadelphia Electric Co	07-01-87	B		
ST87-3182	do	do	07-01-87	B		
ST87-3183	do	Tennessee River Intrastate Gas Co.	07-01-87	B		
ST87-3184	do	New Jersey Natural Gas Co	07-01-87	B		
ST87-3185	do	Elizabethtown Gas Co	07-01-87	B		
ST87-3186	Trunkline Gas Co	Consumer Power Co	07-01-87	B		
ST87-3187	do	do	07-01-87	B		
ST87-3188	do	do	07-01-87	B		
ST87-3189	do	do	07-01-87	B		
ST87-3190	do	do	07-01-87	B		
ST87-3191	do	do	07-01-87	B		
ST87-3192	do	do	07-01-87	B		
ST87-3193	do	do	07-01-87	B		
ST87-3194	do	Bridgeline Gas Distribution Co., 35 al.	07-01-87	B		
ST87-3195	United Gas Pipe Co	Polo Energy Corp	07-01-87	B		
ST87-3196	do	Polaris Corp	07-01-87	B		
ST87-3197	Valero Interstate Transmission Co	Valero Transmission, L.P	07-01-87	B		
ST87-3198	Williams Natural Gas Co	KPL Gas Service Co	07-01-87	B		
ST87-3199	do	City of Garnett	07-01-87	B		
ST87-3200	Columbia Gulf Transmission Co	Tennessee Gas Pipeline Co	07-02-87	G		
ST87-3201	Cranberry Pipeline Corp	do	07-02-87	C	11-29-87	43.00
ST87-3202	Panhandle Eastern Pipe Line Co	Michigan Consolidated Gas Co	07-02-87	B		
ST87-3203	do	Indiana Gas Co., Inc	07-02-87	B		
ST87-3204	do	Union Electric Co	07-02-87	B		
ST87-3205	Tennessee Gas Pipeline Co	Monterey Pipeline Co	07-02-87	B		
ST87-3206	Trunkline Gas Co	Louisiana State Gas Corp	07-02-87	B		
ST87-3207	United Gas Pipe Line Co	Sabine-DeSoto Pipeline Co., Inc	07-02-87	B		
ST87-3208	Mountain Fuel Resources, Inc	Mountain Fuel Supply Co	07-06-87	B		
ST87-3209	Northern Natural Gas Co	Texline Gas Co	07-06-87	B		
ST87-3210	do	Southern California Gas Co	07-06-87	B		
ST87-3211	Seagull Energy Corp	Seagull Interstate Corp	07-06-87	C		
ST87-3212	Seagull Interstate Corp	Seagull Energy Corp	07-06-87	B		
ST87-3213	Trunkline Gas Co	Pontchartrain Natural Gas System	07-06-87	B		
ST87-3214	Colorado Interstate Gas Co	Llano, Inc	07-06-87	B		
ST87-3215	Tennessee Gas Pipeline Co	Channel Industries Gas Co	07-06-87	B		
ST87-3216	do	Eastex Gas Transmission Co	07-06-87	B		
ST87-3217	do	Orange and Rockland Utilities, Inc	07-06-87	B		
ST87-3218	do	Niagara Mohawk Power Corp	07-06-87	B		
ST87-3219	do	Nashville Gas Co., et al	07-06-87	B		
ST87-3220	do	Bridgeline Gas Distribution Co	07-06-87	B		
ST87-3221	United Gas Pipeline Line Co	Louisiana State Gas Corp	07-06-87	B		
ST87-3222	Tennessee Gas Pipeline Co	New York State Electric and Gas Co.	07-07-87	B		
ST87-3223	United Gas Pipeline Co	Wintershall Pipeline Corp	07-07-87	B		
ST87-3224	Williams Natural Gas Co	City of Iola	07-07-87	B		
ST87-3225	do	KPL Gas Service Co	07-07-87	B		
ST87-3226	Mountain Fuel Resources, Inc	Mountain Fuel Supply Co	07-08-87	B		
ST87-3227	Phillips Gas Pipeline Co	Phillips Natural Gas	06-29-87	B		
ST87-3228	Sea Robin Pipeline Co	Louisiana Gas Marketing Co	07-08-87	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST87-3229	do	Pontchartrain Natural Gas System	07-08-87	B		
ST87-3230	Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc.	07-08-87	B		
ST87-3231	do	Pennsylvania Gas and Water Co	07-08-87	B		
ST87-3232	Trunkline Gas Co	Delhi Gas Pipeline Corp	07-08-87	B		
ST87-3233	United Gas Pipeline Line Co	KGS Intrastate, Inc	07-08-87	B		
ST87-3234	do	Dal-Gas Inc	07-08-87	B		
ST87-3235	do	LGS Intrastate, Inc	07-08-87	B		
ST87-3236	ANR Pipleine Co	Michigan Gas Utilities, Co	07-09-87	B		
ST87-3237	do	Michigan Consolidated Gas Co	07-09-87	B		
ST87-3238	do	Ohio Gas Co	07-09-87	B		
ST87-3239	do	Michigan Gas Utilities Co	07-09-87	B		
ST87-3240	do	Wisconsin Natural Gas Co	07-09-87	B		
ST87-3241	do	Illinois Power Co	07-09-87	B		
ST87-3242	do	Northern Indiana Fuel & Light Co	07-09-87	B		
ST87-3243	Colorado Interstate Gas Co	West Texas Gas, Inc	07-09-87	B		
ST87-3244	Northern Natural Gas Co	Southern California Gas Co	07-09-87	B		
ST87-3245	Panhandle Eastern Pipe Line Co	Indiana Gas Co., Inc	07-09-87	B		
ST87-3246	do	Consumers Power Co	07-09-87	B		
ST87-3247	Sabine Pipe Line Co	Natural Gas Pipeline Co. of America.	07-09-87	G		
ST87-3248	do	ANR Pipeline Co	07-09-87	G		
ST87-3249	Texas Gas Transmission Corp	Columbia Gas of Ky, Inc., et al	07-09-87	B		
ST87-3250	do	Western Kentucky Gas Co	07-09-87	B		
ST87-3251	Trunkline Gas Co	Consumers Power Co	07-09-87	B		
ST87-3252	Trunkline Line Gas Co	Consumers Power Co	07-09-87	B		
ST87-3253	Williams Natural Gas Co	Union Gas System, Inc	07-09-87	B		
ST87-3254	do	Reliance Pipeline Co	07-09-87	B		
ST87-3255	Columbia Gulf Transmission Co	Tennessee Gas Pipeline Co	07-10-87	G		
ST87-3256	Iowa-Illinois Gas & Electric Co	Natural Gas Pipeline Co. of America.	07-10-87	C		
ST87-3257	Northern Natural Gas Co	Southern California Gas Co	07-10-87	B		
ST87-3258	do	Columbia Gas of Pennsylvania, Inc.	07-10-87	B		
ST87-3259	Sea Robin Pipeline Co	Yankee Pipeline Co	07-10-87	B		
ST87-3260	do	Columbia Gas of Ohio, Inc., et al	07-10-87	B		
ST87-3261	Tennessee Gas Pipeline Co	Excel Intrastate Pipeline Co	07-10-87	B		
ST87-3262	do	Teco Pipeline Company	07-10-87	B		
ST87-3263	do	New Jersey Natural Gas Co	07-10-87	B		
ST87-3264	do	Cincinnati Gas & Electric Co., et al.	07-10-87	B		
ST87-3265	do	New Jersey Natural Gas Co	07-10-87	B		
ST87-3266	Texas Gas Transmission Co	Long Island Lighting Co., et al	07-10-87	B		
ST87-3267	Transwestern Pipeline Co	Eastex Gas Transmission Co	07-10-87	B		
ST87-3268	El Paso Natural Gas Co	Houston Pipe Line Co	07-13-87	B		
ST87-3269	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp	07-13-87	C	12-10-87	54.31
ST87-3270	do	Natural Gas Pipeline Co. of America.	07-13-87	C	12-10-87	35.00
ST87-3271	do	ANR Pipeline Co	07-13-87	C	12-10-87	25.00
ST87-3272	do	Columbia Gas Transmission Corp	07-13-87	C	12-10-87	21.00
ST87-3273	do	Texas Eastern Transmission Corp	07-13-87	C		
ST87-3274	Gas Co. of NM (Div. Public Serv. Co. NM).	El Paso Natural Gas Co	07-13-87	G(HT)		
ST87-3275	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	07-13-87	B		
ST87-3276	Tennessee Gas Pipeline Co	Creole Gas Pipeline Corp	07-13-87	B		
ST87-3277	Transcontinental Gas Pipe Line Corp.	Public Service Co. of N. Carolina	07-13-87	B		
ST87-3278	do	North Carolina Natural Gas Corp	07-13-87	B		
ST87-3279	do	Long Island Lighting Co	07-13-87	B		
ST87-3280	do	Public Service Co. of N. Carolina	07-13-87	B		
ST87-3281	do	Louisiana Resources Co	07-13-87	B		
ST87-3282	do	Public Service Co. of N. Carolina	07-13-87	B		
ST87-3283	do	El Paso Natural Gas Co., et al	07-13-87	B		
ST87-3284	do	North Carolina Natural Gas Corp	07-13-87	B		
ST87-3285	do	do	07-13-87	B		
ST87-3286	do	Long Island Lighting Co	07-13-87	B		
ST87-3287	do	do	07-13-87	B		
ST87-3288	do	United Texas Transmission Co	07-13-87	B		
ST87-3289	do	Lynchburg Gas Co	07-13-87	B		
ST87-3290	do	City of Social Circle	07-13-87	B		
ST87-3291	do	Brooklyn Union Gas Co	07-13-87	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBTU)
ST87-3292	Williams Natural Gas Co	KPL Gas Service Co	07-13-87	B		
ST87-3293	do	City of Chanute	07-13-87	B		
ST87-3294	Seagull Energy Corp	Enron Industrial Natural Gas Co	07-14-87	C		
ST87-3295	Seagull Interstate Corp	do	07-14-87	B		
ST87-3296	Tennessee Gas Pipeline Co	Oceana Heights Gas Co	07-14-87	B		
ST87-3297	do	Peoples Natural Gas Co., et al	07-14-87	B		
ST87-3298	Texas Eastern Transmission Corp	Public Service Electric and Gas Co.	07-14-87	B		
ST87-3299	do	Philadelphia Electric Co	07-14-87	B		
ST87-3300	Valero Transmission, L.P	Transwestern Pipeline Co	07-15-87	C		
ST87-3301	Northern Natural Gas Co	Coastal States Gas Transmission Co.	07-15-87	B		
ST87-3302	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	07-15-87	B		
ST87-3303	do	Central Illinois Light Co	07-15-87	B		
ST87-3304	do	do	07-15-87	B		
ST87-3305	do	Central Illinois Service Co	07-15-87	B		
ST87-3306	do	do	07-15-87	B		
ST87-3307	Tennessee Gas Pipeline Co	Pennsylvania Gas and Water Co	07-15-87	B		
ST87-3308	do	Valley Gas Co	07-15-87	B		
ST87-3309	Trunkline Gas Co	Michigan Gas Utilities Co	07-15-87	B		
ST87-3310	Williams Natural Gas Co	Golden Gas Energies, Inc	07-15-87	B		
ST87-3311	do	KPL Gas Service Co	07-15-87	B		
ST87-3312	El Paso Natural Gas Co	Coastal States Gas Transmission Co.	07-16-87	B		
ST87-3313	Northern Natural Gas Co	Duluth Water & Gas Co	07-16-87	B		
ST87-3314	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	07-16-87	B		
ST87-3315	Tennessee Gas Pipeline Co	Atlanta Gas Light Co., et al	07-16-87	B		
ST87-3316	do	Enron Industrial Natural Gas Co	07-16-87	B		
ST87-3317	Williams Natural Gas Co	Union Gas System, Inc	07-16-87	B		
ST87-3318	Lear Gas Transmission Co	Panhandle Eastern Pipe Line Co	07-17-87	C	12-14-87	29.00
ST87-3319	do	ANR Pipeline Co	07-17-87	C	12-14-87	29.00
ST87-3320	do	Northern Natural Gas Co	07-17-87	C	12-14-87	29.00
ST87-3321	do	El Paso Natural Gas Co	07-17-87	C	12-14-87	29.00
ST87-3322	do	K N Energy, Inc	07-17-87	C	12-14-87	29.00
ST87-3323	ONG Transmission Co	Northern Natural Gas Co	07-17-87	C	12-14-87	10.00/12.00
ST87-3324	do	do	07-17-87	C	12-14-87	10.00/12.00
ST87-3325	do	Natural Gas Pipeline Co. of America.	07-17-87	C	12-14-87	10.00/10.00
ST87-3326	Transwestern Pipeline Co	Southern California Gas Co	07-17-87	B		
ST87-3327	do	Colony Pipeline Corp	07-17-87	B		
ST87-3328	do	Southern California Gas Co	07-17-87	B		
ST87-3329	do	do	07-17-87	B		
ST87-3330	do	do	07-17-87	B		
ST87-3331	Colorado Interstate Gas Co	Peoples Natural Gas Co	07-20-87	B		
ST87-3332	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp	07-20-87	C		
ST87-3333	El Paso Natural Gas Co	Pacific Gas and Electric Co	07-20-87	B		
ST87-3334	do	Southern California Gas Co	07-20-87	B		
ST87-3335	do	Pacific Gas and Electric Co	07-20-87	B		
ST87-3336	Panhandle Eastern Pipe Line Co	Michigan Consolidated Gas Co	07-20-87	B		
ST87-3337	do	Consumers Power Co	07-20-87	B		
ST87-3338	do	Michigan Consolidated Gas Co	07-20-87	B		
ST87-3339	do	Central Illinois Public Service Co	07-20-87	B		
ST87-3340	do	Southeastern Michigan Gas Co	07-20-87	B		
ST87-3341	do	Golden Gas Energies, Inc	07-20-87	B		
ST87-3342	Tennessee Gas Pipeline Co	East Ohio Gas Co., et al	07-20-87	B		
ST87-3343	do	National Gas and Oil Corp	07-20-87	B		
ST87-3344	do	Valley Gas Co	07-20-87	B		
ST87-3345	do	Berkshire Gas Co	07-20-87	B		
ST87-3346	do	Western Kentucky Gas Co	07-20-87	B		
ST87-3347	do	Columbia Gas of PA, Inc., et al	07-20-87	B		
ST87-3348	do	By State Gas Co	07-20-87	B		
ST87-3349	do	Nashville Gas Co., et al	07-20-87	B		
ST87-3350	Williams Natural Gas Co	Arkansas Louisiana Gas Co	07-20-87	B		
ST87-3351	do	Peoples Natural Gas Co	07-20-87	B		
ST87-3352	Channel Industries Gas Co	Amoco Gas Co	07-21-87	C		
ST87-3353	do	Tennessee Gas Pipeline Co	07-20-87	C		
ST87-3354	United Gas Pipe Line Co	Texas Southern Pipeline, Inc	07-20-87	B		
ST87-3355	do	Washington Gas Light Co., et al	07-20-87	B		
ST87-3356	Panhandle Eastern Pipe Line Co	Peoples Natural Gas Co	07-21-87	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST87-3357	do	Citizens Gas Fuel Co	07-21-87	B		
ST87-3358	Texas Eastern Transmission Corp	Public Service Electric and Gas Co.	07-21-87	B		
ST87-3359	El Paso Natural Gas Co	West Texas, Inc	07-22-87	B		
ST87-3360	Natural Gas Pipeline Co of America.	Peoples Gas Light & Coke Co	07-22-87	B		
ST87-3361	Phillips Gas Pipeline Co	Phillips Natural Gas Co	07-22-87	B		
ST87-3362	Tennessee Gas Pipeline Co	North Penn Gas Co	07-22-87	B		
ST87-3363	do	Colony Pipeline Corp	07-22-87	B		
ST87-3364	do	National Gas and Oil Corp	07-22-87	B		
ST87-3365	Texas Eastern Transmission Corp	Public Service Electric and Gas Co.	07-22-87	B		
ST87-3366	do	Village of Tamms	07-22-87	B		
ST87-3367	do	Associated Natural Gas Co	07-22-87	B		
ST87-3368	do	Central Hudson Gas and Electric Co.	07-22-87	B		
ST87-3369	do	City of Cairo	07-22-87	B		
ST87-3370	do	Public Service Electric and Gas Co.	07-22-87	B		
ST87-3371	do	Lavaca Pipe Line Co	07-22-87	B		
ST87-3372	do	do	07-22-87	B		
ST87-3373	do	Union Electric Co	07-22-87	B		
ST87-3374	do	Public Service Electric and Gas Co.	07-22-87	B		
ST87-3375	do	Philadelphia Gas Works	07-22-87	B		
ST87-3376	Trunkline Gas Co	Consumers Power Co	07-22-87	B		
ST87-3377	do	do	07-22-87	B		
ST87-3378	do	do	07-22-87	B		
ST87-3379	do	do	07-22-87	B		
ST87-3380	do	do	07-22-87	B		
ST87-3381	do	do	07-22-87	B		
ST87-3382	do	do	07-22-87	B		
ST87-3383	do	do	07-22-87	B		
ST87-3384	do	do	07-22-87	B		
ST87-3385	do	do	07-22-87	B		
ST87-3386	do	do	07-22-87	B		
ST87-3387	Valero Transmission, L.P.	Texas Eastern Transmission Corp	07-22-87	C		
ST87-3388	Williams Natural Gas Co	Kansas Gas Supply Corp	07-22-87	B		
ST87-3389	do	City of Auburn	07-22-87	B		
ST87-3390	El Paso Natural Gas Co	Southern California Gas Co	07-23-87	B		
ST87-3391	do	Pacific Gas and Electric Co	07-23-87	B		
ST87-3392	do	Houston Pipe Line Co	07-23-87	B		
ST87-3393	Natural Gas Pipeline Co. of America.	Northern Indiana Public Service Co.	07-23-87	B		
ST87-3394	do	Northern Illinois Gas Co	07-23-87	B		
ST87-3395	ONG Transmission Co	Arkla Energy Resources	07-23-87	C	12-20-87	10.00
ST87-3396	Transcontinental Gas Piple Line Corp.	Longhorn Pipeline Co	07-23-87	B		
ST87-3397	do	Fort Hill Natural Gas Authority	07-23-87	B		
ST87-3398	El Paso Natural Gas Co	El Paso Hydrocarbons Co	07-24-87	B		
ST87-3399	Trunkline Gas Co	Consumers Power Co	07-24-87	B		
ST87-3400	do	Michigan Gas Utilities Co	07-24-87	B		
ST87-3401	do	Consumers Power Co	07-24-87	B		
ST87-3402	do	do	07-24-87	B		
ST87-3403	Panhandle Eastern Pipe Line Co	Associated Intrastate Pipeline Co	07-24-87	B		
ST87-3404	do	Austin Utility Dept	07-24-87	B		
ST87-3405	do	Llano, Inc	07-24-87	B		
ST87-3406	do	Michigan Consolidated Gas Co	07-24-87	B		
ST87-3407	Valero Transmission, L.P.	Valero Interstate Transmission Co	07-24-87	C		
ST87-3408	do	Northern Natural Gas Co	07-24-87	C		
ST87-3409	Northern Natural Gas Co	Austin Utility Dept	07-24-87	B		
ST87-3410	Tennessee Gas Pipeline Co	North Penn Gas Co	07-24-87	B		
ST87-3411	do	Central Hudson Gas and Electric Co.	07-24-87	B		
ST87-3412	Williams Natural Gas Co	Associated Intrastate Pipeline Co	07-24-87	B		
ST87-3413	do	City of Altamont	07-24-87	B		
ST87-3414	do	Quivira Gas Co	07-24-87	B		
ST87-3415	do	Kansas Gas Supply Corp	07-24-87	B		
ST87-3416	Arkla Energy Resources	Philadelphia Gas Works	07-27-87	B		
ST87-3417	Colorado Interstate Gas Co	Reliance Pipeline Co	07-27-87	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST87-3418	Natural Gas Pipeline Co. of America.	Midven Pipeline Co	07-27-87	B		
ST87-3419	do	North Shore Gas Co	07-27-87	B		
ST87-3420	Texas Sea Rim Pipeline, Inc	Apache Intrastate	07-27-87	B		
ST87-3421	Williams Natural Gas Co	Kansas Power and Light Co	07-27-87	B		
ST87-3422	Arkla Energy Resources	Boston Gas Co	07-28-87	B		
ST87-3423	El Paso Natural Gas Co	Southern California Gas Co	07-28-87	B		
ST87-3424	do	Pacific Gas and Electric Co	07-28-87	B		
ST87-3425	do	Southern California Gas Co	07-28-87	B		
ST87-3426	do	do	07-28-87	B		
ST87-3427	Mountain Fuel Resources, Inc	Mountain Fuel Supply Co	07-28-87	B		
ST87-3428	Natural Gas Pipeline Co. of America.	Central Illinois Light Co	07-28-87	B		
ST87-3429	do	Delhi Gas Pipeline Corp	07-28-87	B		
ST87-3430	do	Peoples Gas Light & Coke Co	07-28-87	B		
ST87-3431	Tennessee Gas Pipeline Co	City of Richmond Dept. of Pub. Util.	07-28-87	B		
ST87-3432	Natural Gas Pipeline Co. of America.	Northern Indiana Public Service Co.	07-29-87	B		
ST87-3433	do	Commonwealth Gas Services, Inc	07-29-87	B		
ST87-3434	Tennessee Gas Pipeline Co	Commonwealth Gas Co	07-29-87	B		
ST87-3435	do	Nashville Gas Co	07-29-87	B		
ST87-3436	Texas Gas Transmission Corp	Louisville Gas & Electric Co	07-30-87	B		
ST87-3437	do	City of Alexandria	07-30-87	B		
ST87-3438	do	Community Natural Gas Co., Inc	07-30-87	B		
ST87-3439	do	Central Illinois Light Co., et al	07-30-87	B		
ST87-3440	do	NGC Intrastate Pipeline Co	07-30-87	B		
ST87-3441	Transcontinental Gas Pipe Line Corp.	Mountaineer Gas Co	07-29-87	B		
ST87-3442	do	Connecticut Natural Gas Corp	07-29-87	B		
ST87-3443	Valero Transmission, L.P	Transwestern Pipeline Co	07-29-87	C		
ST87-3444	do	El Paso Natural Gas Co	07-29-87	C		
ST87-3445	ANR Pipeline Co	Michigan Consolidated Gas Co	07-30-87	B		
ST87-3446	do	Michigan Power Co	07-30-87	B		
ST87-3447	do	Wisconsin Natural Gas Co	07-30-87	B		
ST87-3448	do	do	07-30-87	B		
ST87-3449	do	City Gas Co	07-30-87	B		
ST87-3450	do	West Ohio Gas Co	07-30-87	B		
ST87-3451	El Paso Natural Gas Co	Southern California Gas Co	07-30-87	B		
ST87-3452	do	Texline Gas Co	07-30-87	B		
ST87-3453	do	El Paso Gas Transportation Co	07-30-87	B		
ST87-3454	do	Pacific Gas and Electric Co	07-30-87	B		
ST87-3455	do	GGSI Gas Co	07-30-87	B		
ST87-3456	do	El Paso Hydrocarbons Co	07-30-87	B		
ST87-3457	do	Pacific Gas and Electric Co	07-30-87	B		
ST87-3458	do	Southern Union Gas Co	07-30-87	B		
ST87-3459	do	Pacific Gas and Light Co	07-30-87	B		
ST87-3460	Natural Gas Pipeline Co. of America.	Northern Illinois Gas Co	07-30-87	B		
ST87-3461	do	Peoples Gas Light and Coke Co	07-30-87	B		
ST87-3462	Panhandle Eastern Pipe Line Co	Michigan Consolidated Gas Co	07-30-87	B		
ST87-3463	do	Baltimore Gas & Electric Co., et al.	07-30-87	B		
ST87-3464	Trunkline Gas Co	Consumer Power Co	07-30-87	B		
ST87-3465	Winnie Pipeline Co	Natural Gas Pipeline Co. of America.	07-30-87	C		
ST87-3466	ANR Pipeline Co	Madison Gas & Electric Co	07-30-87	B		
ST87-3467	do	Wisconsin Gas Co	07-31-87	B		
ST87-3468	do	Wisconsin Natural Gas Co	07-31-87	B		
ST87-3469	do	Coastal States Gas Transmission Co.	07-31-87	B		
ST87-3470	do	Michigan Gas Utilities Co	07-31-87	B		
ST87-3471	do	Michigan Consolidated Gas Co	07-31-87	B		
ST87-3472	do	Wisconsin Natural Gas Co	07-31-87	B		
ST87-3473	do	Madison Gas & Electric Co	07-31-87	B		
ST87-3474	do	Michigan Consolidated Gas Co	07-31-87	B		
ST87-3475	do	Quivira Gas Co	07-31-87	B		
ST87-3476	do	Peoples Gas Light & Coke Co	07-31-87	B		
ST87-3477	do	Columbia Gas of Maryland, Inc	07-31-87	B		
ST87-3478	do	Corning Natural Gas Corp	07-31-87	B		
ST87-3479	Northern Natural Gas Co	Northern Illinois Gas Co	07-31-87	B		

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST87-3480	do	VHC Pipeline Co	07-31-87	B		
ST87-3481	do	Iowa-Illinois Gas & Electric Co	07-31-87	B		
ST87-3482	do	Pacific Gas and Electric Co	07-31-87	B		
ST87-3483	ONG Transmission Co	Northern Indiana Public Service Co.	07-31-87	C	12-28-87	10.00
ST87-3484	do	Panhandle Eastern Pipe Line Co	07-31-87	C	12-28-87	10.00
ST87-3485	Panhandle Eastern Pipe Line Co	Eastex Gas Transmission Co	07-31-87	B		
ST87-3486	do	Woodward Pipeline, Inc	07-31-87	B		
ST87-3487	do	Eastex Gas Transmission Co	07-31-87	B		
ST87-3488	do	do	07-31-87	B		
ST87-3489	do	do	07-31-87	B		
ST87-3490	Taft Pipeline Co	Peoples Natural Gas Co	07-31-87	C	12-28-87	09.60
ST87-3491	Texas Eastern Transmission Corp	Corpus Christi Industrial Pipeline Co.	07-31-87	B		
ST87-3492Trunkline Gas Co.		Consumers Power Co	07-31-87	B		
ST87-3493	do	do	07-31-87	B		
ST87-3494	do	do	07-31-87	B		
ST87-3495	do	do	07-31-87	B		
ST87-3496	do	do	07-31-87	B		
ST87-3497	do	do	07-31-87	B		
ST87-3498	Seagull Energy Corp	Transcontinental Gas Pipe Line Corp.	07-31-87	C	12-28-87	10.00

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 87-20559 Filed 9-9-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA88-1-31-000 (PGA 88-1)]

Filing of Revised Tariff Sheets Reflecting Tariff Adjustment; Arkla Energy Resources

(September 3, 1987)

Take notice that on September 1, 1987 Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets:

Rate Schedule No. X-26
Original Volume No. 3
44th Revised Sheet No. 185

Rate Schedule No. G-2
First Revised Volume No. 1
45th Revised Sheet No. 4

The purpose of the above described tariff sheets reflecting AER's regular semi-annual PGA changes is to (1) reflect the projected average cost of purchased gas for the six-month period commencing October 1, 1987; and (2) recover or refund the accumulated deferred purchase gas costs as of June 30, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-20824 Filed 9-9-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP87-93-000]

Filing; Columbia Gas Transmission Corp.

September 3, 1987.

Take notice that, on August 25, 1987, Columbia Gas Transmission Corporation (Columbia), a Delaware corporation having its principal place of business at 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) requesting the Commission to issue an order authorizing Columbia, during the contract year commencing November 1, 1987, to waive the demand adjustment and penalty charges applicable to sales to its wholesale customers under the CDS and G Rate Schedules in excess of their Seasonal Entitlements, subject to the condition that such excess sales have the effect of reducing Columbia's weighted average commodity cost of gas. Copies of Columbia's petition are on file with the Commission and are available for public inspection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 17, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-20825 Filed 9-9-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP87-112-000]

Proposed Changes in FERC Gas Tariff, Columbia Gas Transmission Corp.

September 3, 1987.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 31, 1987, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1987:

One hundred and twentieth Revised Sheet No. 16
Eleventy Revised Sheet No. 16A2
Ninth Revised Sheet No. 31
Original Sheet No. 46E
Third Revised Sheet No. 67

Columbia states that the listed tariff sheets set forth the adjustment to its sales and transportation rates, as well as applicable tariff provisions, applicable to the Annual Charge Adjustment, pursuant to the Commission's Regulations as set forth in Order Nos. 472 and 472-A issued May 29, 1987 and June 17, 1987, respectively.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20811 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-113-000]

Proposed Changes, in FERC Gas Tariff; Columbia Gulf Transmission Co.

September 3, 1987.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on August 31, 1987 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1987:

Second Revised Sheet No. 5A
Third Revised Sheet No. 31

Columbia Gulf states that the listed tariff sheets set forth the transportation rates and applicable tariff provisions required to place the rates into effect, applicable to the Annual Charge Adjustment, pursuant to the Commission's Regulations as set forth in Order No. 472 and 472-A issued May 29, 1987 and June 17, 1987, respectively.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must fiile a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20812 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-111-000]

Proposed Changes in FERC Gas Tariff; Consolidated Gas Transmission Corp.

September 4, 1987.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on August 31, 1987, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff: Fifteenth Revised Sheet No. 31; Second Revised Sheet No. 33; Second Revised Sheet Nos. 121, 126, 128, 134, and 135; Third Revised Sheet No. 136; and First Revised Sheet No. 137.

These tariff sheets are being filed to be effective on October 1, 1987, in compliance with Commission Order No. 472 issued May 29, 1987, in Docket No. RM87-3-000.

The revised tariff rates reflect an increase in the commodity portion of Current Rates of 0.20 cents per Dt to include the FERC Annual Charge Adjustment. A new section 14 has been added to the General Terms and Conditions of Consolidated's tariff to include provisions for the FERC Annual Charge Adjustment.

Additionally, Footnote 1 on Sheet No. 121 has been revised to permit the adjustment of rates to reflect FERC Annual Charges estimated to be billed to Consolidated by other pipelines for sales and transportation of gas for Consolidated.

Consolidated states that the annual charge billing of $887,609 from the Commission for fiscal year 1987 was paid under protest.

Consolidated reserves its right to file alternate tariff sheets in the event the Commission rejects the primary tariff sheets tendered for filing on July 31, 1987, in Docket No. TA87-3-22-000.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20813 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP82-124-006, RP87-70-004, and CP86-275-004]

Compliance Filing; East Tennessee Natural Gas Co.

September 4, 1987.

Take notice that East Tennessee Natural Gas Company (East Tennessee) on August 31, 1987 tendered for filing the following tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Thirtieth Revised Sheet No. 4
Substitute First Revised Sheet No. 139
Substitute First Revised Sheet No. 140
Substitute First Revised Sheet No. 278

East Tennessee states that the purpose of the tariff sheets is to (1) revise certain tariff sheets in compliance with the Commission's June 29, 1987 order in Docket No. RP87-70-004, which directed East Tennessee to reflect the use of the three day peak to allocate purchased gas costs (This revision includes an adjustment, as a known and measurable change during the test

period, of the actual three day peak to account for its newly certificated resale customer, Atlanta Gas Light Company), (2) reflect the elimination of East Tennessee's minimum commodity bill and the 50–50 weighing of the Mcf-mile and the historical zone rate factors, consistent with the Commission's Opinion No. 282, which issued on August 21, 1987 in Docket Nos. RP82–124–000, et al., (3) reflect an annual quantity entitlement of 10,950,000 dth for Atlanta Gas Light Company, consistent with the Commission order issuing certificate issued June 5, 1987 in Docket No. CP86–275–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–20826 Filed 9–9–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–149–010]

Tariff Filing; East Tennessee Natural Gas Co.

September 3, 1987.

Take notice that East Tennessee Natural Gas Company (East Tennessee) on August 31, 1987 tendered for filing the following tariff sheet to Original Volume No. 1 of its FERC Gas Tariff:

Twenty-Ninth Revised Sheet No. 4

East Tennessee states that the purpose of this filing is to implement sections 3.3 and 6.2 of the Stipulation and Agreement dated December 30, 1986, in Docket No. RP82–124–000, *et al.* East Tennessee proposes that the tariff sheet become effective on September 1, 1987, in order to comply with the provisions of the Stipulation, and without prejudice to East Tennessee's right to seek rehearing of Opionion No. 282.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 10, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–20827 Filed 9–9–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA88–1–33–000]

Proposed Change in Rates Pursuant to Purchased Gas Cost Adjustment; El Paso Natural Gas Co.

September 4, 1987.

Take notice that on August 31, 1987, El Paso Natural Gas Company (El Paso) filed a notice of change in rates for jurisdictional gas service rendered under rate schedules affected by and subject to section 19, Purchased Gas Cost Adjustment Provision (PGA), of the General Terms and Conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

On June 19, 1987, El Paso filed an Offer of Settlement in the ongoing proceeding at *El Paso Natural Gas Co.*, Docket No. RP86–157–000, which, if approved, will permit El Paso to remove from the PGA surcharge component of its commodity rates certain liquid revenue deficiency amounts effective July 1, 1987, and to use a revised billing procedure to recover those past and certain stipulated future costs related to liquid revenues. Therefore, El Paso states that the proposed rate adjustment has been determined based upon projected purchased gas costs, estimated jurisdictional sales and an Account No. 191 jurisdictional balance that presupposes approval of the Offer of Settlement effective July 1, 1987. The filing reflects an increase of $0.0201 per dth in the base purchased gas cost rate and an increase of $0.3784 per dth in the surcharge rate for a net increase in El Paso's rates from those proposed to be effective July 1, 1987 under the Offer of Settlement at Docket No. RP86–157–000 of $0.3985 per dth attributable to the PGA.

To implement the notice of change in rates, El Paso tendered for filing and acceptance the following revised sheets to its FERC Gas Tariff:

Tariff volume	Tariff sheet
First Revised Volume No. 1	Fourteenth Revised Sheet No. 100, Second Revised Sheet No. 100–A, Ninth Revised Sheet No. 540
Original Volume No. 1–A	Eighth Revised Sheet No 24.
Third Revised Volume No. 2	Thirty-eighth Revised Sheet No. 1–D.
Original Volume No. 2A	Fortieth Revised Sheet No 1–C.

El Paso requests that the Commission grant such waiver of its applicable rules and regulations as may be necessary to permit the tendered tariff sheets to become effective on October 1, 1987.

In the event the Commission does not act on or rejects the Offer of Settlement at Docket No. RP86–157–000 prior to the proposed effective date of the notice of PGA rate change, El Paso also tendered alternate tariff sheets to be made effective in lieu of their above-designated counterparts, as appropriate. The alternate sheets reflect an adjustment that does not give effect to implementation on July 1, 1987 of the Offer of Settlement in Docket No. RP86–157–000, and provide for a net increase of $1.0448 per dth in El Paso's rates placed in effect on April 1, 1987.

El Paso states that copies of the filing have been served upon all of its interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–20828 Filed 9–9–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA85-2-4-002, TA87-5-4-000 and RP87-116-000]

Proposed Changes in Rates and Tariff Provisions; Granite State Gas Transmission, Inc.

September 4, 1987.

Take notice that on August 31, 1987, Granite State Gas Transmission, Inc. (Granite State), tendered for filing certain revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2.

Granite State states that the proposed changes in rates and other tariff provisions are applicable to wholesale sales, to storage services and to storage-related transportation services provided for its two affiliated distributor company customers: Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities).

According to Granite State the proposed changes in rates for its sales to Bay State and Northern Utilities result from the combination of (1) its compliance with an order of the Commission issued July 20, 1987, in Docket Nos. TA85-2-4-000, *et al.*, directing Granite State, in flowing through in its rates the cost of gas purchased through the medium of Boundary Gas, Inc. to reclassify the demand and commodity components for such purchases in accordance with the requirements of Opinion Nos. 256 and 256-A in the matter of *Natural Gas Pipeline Company of America* and (2) tracking changes in the cost of gas purchased from Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) that Tennessee filed on August 17, 1987 in compliance with the requirements of Opinion No. 249-A and the settlement in Docket Nos. RP85-178, *et al.* Granite State states that its revised sales rates in this filing result in a reduction of $2,641,000 annually for sales to Bay State and $880,725 annually for sales to Northern Utilities. It also states that the Tennessee filing reduced costs incurred by Granite State for transportation of gas for system supply and storage-related transportation services which are reflected in the tariff changes.

Granite State further states that the revised tariff sheets submitted with its filing eliminate provisions related to Incremental Pricing which Regulations the Commission cancelled on July 27, 1987 in Docket No. RM87-28-000 (40 FERC ¶ 61,095) and establish an Annual Charges Adjustment provision applicable to sales and transportation services in accordance with Order No. 472, Docket No. RM87-3-000.

According to Granite State copies of its filing were served upon its customers, Bay State and Northern Utilities, and the regulatory commissions of the States of Maine and Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20829 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9021-002]

Surrender of Preliminary Permit; JDJ Energy Co.

September 1, 1987.

Take notice that JDJ Energy Company, permittee for the National Fish Hatchery Conduit at Greers Ferry Dam Project No. 9021, has requested that its preliminary permit be terminated. The preliminary permit was issued on September 27, 1985, and would have expired on August 31, 1988. The project would have been located on the Greers Ferry Lake in Cleburne County, Arkansas.

The permittee filed the request on July 20, 1987, and the preliminary permit for Project No. 9021 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20822 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-122-000]

Proposed Tariff Changes; National Fuel Gas Supply Corp.

September 4, 1987.

Take notice that on August 31, 1987, National Fuel Gas Supply Corporation ("National") tendered for filing Tenth Revised Sheet No. 4 and Original Sheet No. 72-A as part of its FERC Gas Tariff, First Revised Volume No. 1, to become effective October 1, 1987.

National states that the only purpose of these revised tariff sheets is to reflect an adjustment in National's rates for recovery of the costs associated with the Annual Charges Adjustment Clause as authorized by the Commission.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Procedural Rules (18 CFR 385.214). All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20830 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-3-16-002]

Proposed Tariff Changes; National Fuel Gas Supply Corp.

September 3, 1987.

Take notice that on August 31, 1987, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Ninth Revised Sheet No. 4 to become effective August 1, 1987, in compliance with FERC Order dated July 31, 1987.

National states the purpose of Substitute Ninth Revised Sheet No. 4 is to reflect a net increase of 38.81 cents per Dth. This change consists of a decrease in current purchase gas cost of 5.09 cents per Dth, and an increase in

the purchase gas cost surcharge adjustment of 43.9 cents per Dth.

National states that copies of this filing were served upon the company's jurisdictional customers and the regulatory commissions of the states of New York, Ohio, Pennsylvania, Delaware, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Procedural Rules (18 CFR 385.214). All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20831 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TF87-8-59-000]

Rate Change Pursuant to Purchased Gas Cost Adjustment Provision; Northern Natural Gas Co., Division of Enron Corp.

September 4, 1987.

Take notice that on August 31, 1987, Northern Natural Gas Company, Division of Enron Corporation (Northern) tendered for filing the following tariff sheets:

THIRD REVISED VOLUME NO. 1

Substitute Forty-Sixth Revised Sheet No. 4b.

Substitute Fourteenth Revised Sheet No. 4b.1.

ORIGINAL VOLUME NO. 2

Substitute Fifty-Third Revised Sheet No. 1c.

Northern states that the above-referenced tariff sheets are being filed pursuant to section 18.61 of the Third Revised Volume No. 1 (applying to market area sales) and section 1.61 of the Original Volume No. 2 (applying to field area sales) (Interim Adjustments Between Regular Adjustment Dates) of Northern's Tariff to reflect a decrease in its base average commodity cost of purchased gas due to a reduction in its average cost of gas purchased from that reflected in its currently effective rates.

In accordance with the provisions of Northern's tariff, Northern states that copies of its transmittal letter and attachments have been mailed to each of Northern's gas utility customers and interested state commissions. A copy of Northern's filing is available for public inspection in Northern's office in Omaha, Nebraska.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20832 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-126-000]

Proposed Changes in FERC Gas Tariff; Pelican Interstate Gas System

September 4, 1987.

Take notice that on September 1, 1987, Pelican Interstate Gas System (Pelican) tendered for filing the below listed tariff sheets to be a part of its FERC Gas Tariff.

First Revised Sheet No. 1.

Original Sheet No. 2A.

Pelican states that the above-mentioned tariff sheets were submitted in compliance with Commission Order No. 472, issued May 29, 1987. The proposed tariff provides a mechanism for Pelican to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations.

A copy of this filing was mailed to Pelican's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20833 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA88-1-7-000 and RP87-108-000]

Proposed Changes in FERC GAS Tariff; Southern Natural Gas Co.

September 3, 1987.

Take notice that Southern Natural Gas Company (Southern) on August 31, 1987, tendered for filing certain proposed changes to its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Volume No. 2 and First Revised Volume No. 2A. Southern states that the purposes of the filing are:

(1) to reflect a net increase in Southern's rates effective October 1, 1987, pursuant to Section 17 (Purchased Gas Adjustment) of the General Terms and Conditions of Southern's FERC Gas Tariff;

(2) to reflect the cancellation of Southern's Flexible Discount Rate Schedule effective September 30, 1986;

(3) to reflect the cancellation of Southern's Rate Schedule T-IS and related Form of Service Agreement effective October 9, 1987, consistent with Section 284.105(a) of the Commission's Regulations;

(4) to reflect the elimination of the incremental pricing provisions of Southern's tariff pursuant to the Commission's Order No. 478 effective October 1, 1987;

(5) to add an Annual Charge Adjustment Clause effective October 1, 1987, as permitted by Section 154.38(d)(6) of the Commission's Regulations and to assess the charge under all of Southern's sales for resale and transportation rate schedules; and

(6) to revise the Index of Contract Quantities to reflect certain recent increases in Contract Demand authorized by the Commission effective October 1, 1987.

Complete copies of the filing were served upon the Company's jurisdictional customers and interested state commissions and copies of the transmittal letter and the portion of the filing relating to Southern's implementation of the Annual Charge Adjustment Clause were served upon all shippers on behalf of whom Southern transports gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20814 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-128-000]

Proposed Changes in FERC Gas Tariff; Texas Eastern Transmission Corp.

September 3, 1987.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on Sept. 1, 1987 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 and Original Volume No. 2, certain tariff sheets listed on Appendix A of the filing.

The Commission by Order No. 472 issued May 29, 1987 implemented procedures providing for the assessment and collection from interstate pipelines, *inter alia* of annual charges as required by the Omnibus Budget Reconciliation Act of 1986. Pursuant to Order No. 472, the Commission authorized the tracking for automatic pass through to pipeline customers of the annual charges under an Annual Charge Adjustment ("ACA") clause. Texas Eastern is making this instant filing pursuant to § 154.38(d)(6) of the Commission's Regulations in order to include in its FERC Gas Tariff the procedure for collecting its assessed amount from its customers.

The ACA Adjustment Provision shall apply to Texas Eastern's Rate Schedules identified in section 26.2 of proposed section 26-Annual Charge Adjustment Clause set forth on Sheet No. 118. The Volume No. 2 tariff sheets have been modified to specify that these Volume No. 2 rate schedules are subject to the proposed section 26 of Texas Eastern's General Terms and Conditions, Volume No. 1.

The ACA Unit Surcharge authorized by the Commission in $0.0021 per Mcf. As permitted by Order No. 472 Texas Eastern converted this Mcf rate to a dekatherm rate of $0.0020 per dth. At Appendix B of the filing, Texas Eastern supports the derivation of such conversion to the proposed rates.

The proposed effective date of the tariff sheets listed on Appendix A is October 1, 1987.

Copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and affected parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before Sept. 10, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20815 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-10-M

[Docket No. TA87-5-29-000]

Proposed Changes in FERC Gas Tariff; Transcontinental Gas Pipe Line Corp.

September 3, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on August 27, 1987 tendered for filing Forty-Sixth Revised Sheet No. 12 and Forty-Seventh Revised Sheet No. 12 to its FERC Gas Tariff Second Revised Volume No. 1. The proposed effective dates are July 1, 1987 and August 1, 1987, respectively. The revised tariff sheets reflect a storage "tracking" rate decrease effective July 1, 1987 and a storage "tracking" rate increase effective August 1, 1987 in accordance with section 26 of Transco's General Terms and Conditions. Section 26 provides for, among other things, changes in rates for storage service rendered under Transco's Rate Schedule S-2 to reflect changes in charges by Texas Eastern Transmission Corporation (Texas Eastern) under Texas Eastern's Rate Schedule X-28.

On May 29, 1987, Texas Eastern filed a revision to its jurisdictional rates in Docket No. RP83-35 to reflect a reduction in the statutory federal corporate income tax rate from 46% to 34% effective July 1, 1987. Included therein was a decrease in annual charges payable by Transco under Rate Schedule X-28 of approximately $313,000. Subsequently, on June 30, 1987, Texas Eastern filed an Electric Power Cost (EPC) Adjustment in Docket No. TA87-3-17-000. Included therein was an increase in annual charges payable by Transco under Rate Schedule X-28 of approximately $87,000. The proposed effective date of this rate change is August 1, 1987. Transco's Forty-Sixth Revised Sheet No. 12 and Forty-Seventh Revised Sheet No. 12 reflect the revised demand charges under Transco's Rate Schedule S-2 based on the aforementioned rate changes of Texas Eastern effective July 1, 1987 and August 1, 1987 respectively.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 10, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20816 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-125-000]

Tariff Filing; Transco Gas Supply Co.

September 3, 1987.

Take notice that Transco Gas Supply Company (Gasco) on August 31, 1987 tendered for filing Seventh Revised Sheet No. 106 and Original Sheet No. 106-A to Original Volume No. 2 of its FERC Gas Tariff. The proposed effective date of the tariff sheets is October 1, 1987.

On May 29, 1987, the Commission issued Order No. 472 in Docket No. RM87-3-000. Order No. 472 established that cost responsibility for Commission budgetary expenses would be assessed against gas pipelines and others through annual charges and further provided

that pipelines could pass through the annual charges assessed by the Commission to their respective customers through an Annual Charge Adjustment (ACA) Provision.

The purpose of the instant filing is to establish pursuant to Order No. 472 (1) a revision to the amounts which Gasco is allowed to charge its affiliate Transcontinental Gas Pipe Line Corporation (Transco) to include a unit charge per Mcf which will be added to the cost of gas which Transco purchases from Gasco in order for Gasco to recover the annual charges assessed to it by the Commission and (2) to reflect an initial ACA charge of $0.0021 per Mcf of gas purchased by Gasco.

Gasco states that copies of the filing have been served upon Transco, and for information purposes, upon each of Transco's customers and interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 10, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20817 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA88-1-42-000 and RP87-120-000]

Proposed Changes in FERC Gas Tariff; Transwestern Pipeline Co.

September 4, 1987.

Take notice that Transwestern Pipeline Company (Transwestern) on August 31, 1987 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Exhibit A

39th Revised Sheet No. 5

Exhibit B

30th Revised Sheet No. 6
1st Revised Sheet No. 30B
1st Revised Sheet No. 34A
2nd Revised Sheet No. 48
Original Sheet No. 82
3rd Revised Sheet Nos. 83-104

Exhibit C

16th Revised Sheet No. 6A
5th Revised Sheet No. 73
10th Revised Sheet No. 74
6th Revised Sheet No. 75
6th Revised Sheet No. 76
2nd Revised Sheet No. 76B
2nd Revised Sheet No. 76C
2nd Revised Sheet No. 76D
1st Revised Sheet No. 76E

The tariff sheet listed in Exhibit A is being filed pursuant to Transwestern's Purchased Gas Adjustment provision set forth in Article 19 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The Purchased Gas Cost Adjustment reflected herein represents a decrease of $0.0234/dth as measured against Transwestern's last regular semi-annual PGA filing at Docket No. TA87-3-42-000 (PGA87-3), which became effective on April 1, 1987.

The tariff sheets listed in Exhibit B are being filed to establish a unit commodity surcharge to implement the Commission's new Annual Charge Adjustment (ACA), pursuant to Commission Order No. 472 in Docket No. RM87-3-002, *et al.*, dated May 29, 1987.

The tariff sheets listed in Exhibit C are being filed to eliminate the Incremental Pricing provisions and references contained in Transwestern's FERC Gas Tariff. Order No. 478 issued on July 27, 1987 in Docket No. RM87-28-000, *et al.*, revoked the Commission's incremental pricing rules effective January 1, 1988. However, since Transwestern has no incremental surcharges currently outstanding nor projects any to be effective during October-December, 1987, Transwestern is requesting a waiver of the Commission's regulations to make such tariff sheets effective October 1, 1987.

The rate change herein consists of:

1. A decrease in the Cost of Gas Adjustment of $0.1281/dth as measured against Transwestern's last regular PGA filing, Docket No. TA87-3-42-000, which became effective on April 1, 1987;

2. An increase in the currently effective Surcharge Adjustment of $0.1047/dth due to a decrease in the balance in the Gas Cost Adjustment Account as of June 30, 1987;

3. Establishment of the new unit commodity charge of $.0020/dth to implement the Commission's new ACA charge.

The proposed effective date of all tariff sheets listed above is October 1, 1987.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20834 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-124-000]

Tariff Filing; U-T Offshore System

September 4, 1987.

Take notice that U-T Offshore System (U-TOS) on August 31, 1987 tendered for filing certain original and revised tariff sheets to Original Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The proposed effective date of the tariff sheets is October 1, 1987.

On May 29, 1987, the Commission issued Order No. 472 in Docket No. RM87-3-000. Order No. 472 established that cost responsibility for Commission budgetary expenses would be assessed against gas pipelines and others through annual charges assessed by the that pipelines could pass through the annual cahrges assessed by the Commission to their respective customers through an Annual Charge Adjustment (ACA) Provision.

The purpose of the instant filing is to establish, pursuant to Order No. 472, a new Article 8.9 in Rate Schedules T-1 through T-10 contained in U-TOS' FERC Gas Tariff, Original Volume No. 2, which Article will provide for an Annual Charge Adjustment (ACA) Provision to permit U-TOS to recover from its transportation customers the annual charges assessed against U-TOS by the Commission. The instant filing also establishes the initial ACA charge of

$0.0021 per Mcf in the commodity portion of U-TOS' transportation rates.

U-TOS states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20835 Filed 9-9-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Open Meeting; Energy Research Advisory Board, Research & Technology Utilization Panel

Notice is hereby given of the following meeting:

Name: Research and Technology Utilization Panel of the Energy Research Advisory Board (ERAB).

Date & Time: September 28, 1987, Noon-5:00 p.m., September 29, 1987, 8:30 a.m.-5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue, SW., Room 6A-110, Washington, DC 20585.

Contact: Charles E. Cathey, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2263.

Purpose of the Parent Board

To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel

The Research and Technology Utilization Panel is a subgroup of ERAB and reports to the parent Board. The Research and Technology Utilization Panel will: Review the process and effectiveness of the movement of scientific research and technology from DOE and its contractors to industry, universities, and state and local governments; review the technology transfer objectives and efforts of the major Departmental programs; evaluate the significance of past activities in this area; and make recommendations to improve the activities.

Tentative Agenda

- The agenda for this meeting will be to hear presentations from DOE officials in the Office of Energy Research, the Office of Defense Programs, the Office of Nuclear Energy, the Office of Fossil Energy, the Office of Conservation and Renewable Energy, and the Office of the General Counsel. In addition, representatives are expected from the Department of Defense, the National Bureau of Standards, the Office of Naval Research, and the National Aeronautics and Space Administration.
- Public Comment (10 minute rule).

Public Participation

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 1, 1987.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs, Office of Energy Research.

[FR Doc. 87-20848 Filed 9-9-87; 8:45 am]

BILLING CODE 6450-01-M

Open Meeting; Energy Research Advisory Board; Education Panel

Notice is hereby given of the following meeting:

Name: Education Panel of the Energy Research Advisory Board (ERAB).

Date & Time: October 9, 1987, 8:30 a.m.-5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue, SW., Room 4A-110, Washington, DC 20585.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5767.

Purpose of the Parent Board

To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel

The purpose of the Panel is to review DOE's activities with the education community to ensure that the Department is playing its proper role with other Federal agencies and the private sector in the support of scientific and technical education and training.

Tentative Agenda

- Review of Staff Reports.
- Distribution of Other Agencies' Education Programs.
- Future Staff Assignments.
- Future Meeting Schedule.
- Public Comment (10 minute rule).

Public Participation

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 1, 1987.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs, Office of Energy Research.

[FR Doc. 87-20849 Filed 9-9-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL-3259-5]

Water Quality Act Steering Committee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under ongoing activities to implement Pub. L. 100-4, the Water Quality Act of 1987 (WQA), and in accordance with Pub. L. 92-463 the Federal Advisory Committee Act, notice is hereby given that a meeting of the WQA Steering Committee will be held at the Environmental Protection Agency Headquarters Building, Waterside Mall EPA Auditorium, 401 M St. SW., Washington, DC 20460, beginning at 9:00 a.m. on October 14, 1987 and ending at about 3:00 p.m. on the same day (with a break for lunch).

The agenda will include review and discussion of WQA implementation activities and developments to date and a discussion and development of recommendations for future implementation activities. The agenda will also include a status report on public comments received as a result of the September 4, 1987 **Federal Register** notice of availability for public comment of five draft WQA guidance documents. These five documents are: "Final Draft: Nonpoint Source Guidance," "Final Draft: Clean Lakes Program Guidance," "Draft: State Water Quality-based Toxics Control Program Review Guidance," "Draft: Initial Guidance—State Water Pollution Control Revolving Fund," and "State Clean Water Strategies: Meeting The Challenges Of The Future."

The meeting will be open to the public. Additional information on the meeting can be obtained from Ms. Victoria Price at The Environmental Protection Agency, WH-556, 401 M Street SW., Washington, DC 20460, Telephone number: (202) 382-5695.

Date: September 2, 1987.

Lawrence J. Jensen,

Assistant Administrator for Water (WH-556).

[FR Doc. 87-20763 Filed 9-9-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3259-3; FIFRA Docket No. 590]

Notice of Hearing; Cedar Chemical Co., et al. Petitioner (Pesticide Products Containing Dinoseb)

Notice is hereby given in accordance with 40 CFR 164.8 that a hearing in the above matter pursuant to section 6 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. 136(d), will begin at 10:00 a.m., Monday, September 28, 1987, Waterside Mall, 401 M Street SW., Washington, DC, Room 2409. Issues to be considered are set forth in the Notice published by the Administrator, 51 FR 36650 (October 14, 1986). Interested persons may examine the file in this proceeding in the office of the Hearing Clerk, Room 3708, Waterside Mall, 401 M Street SW., Washington, DC, for additional information.

J.F. Greene,

Administrative Law Judge.

August 31, 1987, Washington, DC.

[FR Doc. 87-20764 Filed 9-9-87; 8:45 am]

BILLING CODE 6560-50-M

[WH-FRL-3259-4]

Drinking Water Health Advisories Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of drinking water health advisories.

SUMMARY: This notice announces the availability of 49 EPA Drinking Water Health Advisories (HAs). Health Advisories are available for the following contaminants:

Pesticides

Alachlor
Aldicarb (sulfoxide and sulfone)
Carbofuran
Chlordane
1,2-Dibromo-3-chloropropane (DBCP)
2,4-Dichlorophenoxyacetic acid
1,2-Dichloropropane
Endrin
Ethylene dibromide
Heptachlor and Heptachlor epoxide
Lindane
Methoxychlor
Oxamyl
Pentachlorophenol
Toxaphene
2,4,5-Trichlorophenoxypropionic acid

Organics

Acrylamide
Benzene
Carbon tetrachloride
Chlorobenzene
o,m,p-Dichlorobenzenes
1,2-Dichloroethane
1,1-Dichloroethylene
cis-1,2-Dichloroethylene
trans-1,2-dichloroethylene
Dichloromethane
Epichlorohydrin
Ethylbenzene
Ethylene glycol
Hexachlorobenzene
n-Hexane
Methyl ethyl ketone
Styrene
Tetrachloroethylene
Toluene.
1,1,1-Trichloroethane
Trichloroethylene
Vinyl chloride
Xylenes

Inorganics

Barium
Cadmium
Chromium
Cyanide
Mercury
Nickel
Nitrate/nitrite

Microbial

Legionella

Health Advisories are sponsored by the EPA Office of Drinking Water (ODW). These documents provide information on the health effects, analytical methodology and treatment technology that would be useful in dealing with emergency spills or contamination situations involving drinking water. The HAs describe nonregulatory concentrations of drinking water contaminants that would not result in adverse health effects over specific exposure durations. A margin of safety is incorporated into the HAs to protect sensitive members of the population.

ADDRESSES: To obtain copies of the Health Advisories, interested parties should contact the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (800) 336-4700. Please refer to the following accession numbers: PB87-200176/AS for 16 pesticide HAs; PB87-206306/AS for 25 organic HAs; and PB87-205613/AS for 7 inorganic HAs and the Legionella HA.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Orme, Health Advisory Program Coordinator, Office of Drinking Water (WH-550D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or call (202) 382-7571.

SUPPLEMENTARY INFORMATION: The Office of Drinking Water issued draft Health Advisories for these contaminants September 30, 1985. Public comments were received until June 1, 1986. In addition, the appropriate subcommittees of EPA's Science Advisory Board and FIFRA Scientific Advisory Panel reviewed the draft Health Advisories. The comments received were reviewed and

incorporated where appropriate. These advisories will be updated as new data becomes available.

August 31, 1987.

Lawrence J. Jensen,

Assistant Administrator for Water.

[FR Doc. 87-20765 Filed 9-9-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. CL-87-327]

Common Carrier Public Mobile Services Information; Reminder of Requirements for Maps in Public Mobile Services (Part 22)

September 1, 1987.

Applicants and their representatives are hereby reminded that § 22.2 defines "map" as, "[a] representation on a flat surface, of a part or the whole of the Earth's surface. All maps submitted under this part shall include latitude, longitude and scale." 47 CFR 22.2 (1986).

We will not hesitate to dismiss applications with maps that fail to meet the requirements of § 22.2.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-20790 Filed 9-9-87; 8:45 am]

BILLING CODE 6712-01-M

Window Notice for The Filing of FM Broadcast Applications; Radio

[Report No. W-23]

Release: August 31, 1987.

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning August 31, 1987 and ending October 8, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—231 A

Buras Triumph, LA
New Bern, NC
Whitehall, NY
Myrtle Point, OR
Kingstree, SC
Ripley, TN
Tazewell, TN
Pearsall, TX

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-20792 Filed 9-9-87; 8:45 am]

BILLING CODE 6712-01-M

[DA 87-1231]

Private Radio Bureau Requests for Comments on San Bernardino County's Petition for Waiver of the 800 MHz Rules

The County of San Bernardino filed a number of applications (File Nos. 569744-569750) for an 800 MHz public safety radio communications systems. The applications are for a wide-area integrated communications system consisting of approximately twenty-three sites utilizing a maximum of sixty-four frequencies at any one site. Both trunked and conventional modes of operation are proposed.

In conjunction with the applications San Bernardino also filed a request for waiver of §§ 90.362, 90.615 and 90.617 of the Rules. Specifically, San Bernardino requested that the Commission allow it to (1) use 12.5 kHz offset channels with a 25 kHz bandwidth in non-border areas, (2) trunk among channels designated for conventional use only, (3) permit short-spaced assignments, and (4) use offset channels in frequency categories other than the one set aside for public safety. According to San Bernardino, because it is contiguous with the Los Angeles Metropolitan Area, there are currently no frequencies available for use in the county. San Bernardino states that extensive research has been done in an attempt to identify spectrum that could be used. It argues that the frequencies requested are the only channels available to satisfy its growing communication needs. The County submitted engineering and field tests to show that current licensees on regularly assignable channels will not suffer harmful interference by allowing the proposed offset operation.

The Commission currently provides for the use of offset channels in the 450-470 MHz band, but generally on a secondary non-interference basis to the primary channels. Offset assignments at 800 MHz are currently made only along the U.S.-Mexico border. The Commission solicits comments on the various waiver requests and, in particular, whether the new public safety 800 MHz spectrum should be used to satisfy San Bernardino's needs.

Comments on San Bernardino's waiver requests should be filed no later than September 20, 1987. Comments should refer to reference number DA 87-1231.

Copies of the San Bernardino filing may be obtained from International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20036, (202) 857-3800. A copy is also available for public inspection in Room 5126, 2025 M Street, NW., Washington, DC 20554.

For further information contact Herb Zeiler at (202) 634-2443.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-20791 Filed 9-9-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-3212; File Nos. BPCT-870304KF et al.]

Applications for Consolidated Hearing; Mack D. Blair

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant and city/state	File No	MM Docket No
A. Mack D. Blair; Hammond, LA.	BPCT-870304KF	87-3212
B. Pontchartrain Broadcasting Co., Inc.; Hammond, LA.	BPCT-870330KT	.....
C. Philip A. Campolo, d/b/a Airwave Media, Ltd., Hammond, LA.	BPCT-870331LG	.....
D. Hammond Broadcasting Limited Partnership, Hammond, LA.	BPCT-870331LG	.....
E. Louis E. Jenkins, Jr., d/b/a Florida Parishes Television; Hammond, LA.	BPCT-870421KI	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The test of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard, B, C, D, E
Misrepresentation, A, C
Comparative, A, B, C, D, E
Ultimate, A, B, C, D, E

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription

Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Steward,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87–20793 Filed 9–9–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–3214; File Nos. BP–860402AF et al.]

Applications for Consolidated Hearing; John A. McAulay

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant and city/state	File No.	MM Docket No.
A. John A. McAulay; Apple Valley, CA.	BP–860402AF	87–344
B. Mary S. Volken, d/b/a San Jacinto Radio; San Jacinto, CA.	BP–860603AF	
C. Delbert L. Van Voorhis; Yucaipa, CA.	BP–860630AU	

2. Pursuant to section 309(a) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Site Availability, A
2. Contingent Comparative; All Applicants
3. 307(b), All Applicants
4. Ultimate, All Applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800.)

W. Jay Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–20794 Filed 9–9–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; William S. Page

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM docket No.
A. William S. Page; Grifton, NC.	BPH–850624MB	87–346
B. Jan B. Greene; Grifton, NC.	BPH–850712WP	
C. A. Hartwell Campbell; Grifton, NC.	BPH–750712WQ	
D. Columbia Women's Radio, Inc., Grifton, NC.	BPH–850712WR	
E. Constance Stormer & Rose Bontzer, d/b/a/ Grifton Communications, a Partnership; Grifton, NC	BPH–850712WS	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, ALL
2. Ultimate; ALL

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–20795 Filed 9–9–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; Proposed New System of Records, Amendment to Existing System of Records, and Withdrawal of System of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed system of records—Telephone Call Detail Records; amendment to existing system of records—Consumer Complaint and Inquiry Records; and withdrawal of system of records—Legal Compliance and Enforcement Records.

SUMMARY: In accordance with the Privacy Act of 1974, the FDIC is giving notice of the establishment of a new system of records, entitled Telephone Call Detail Records. The FDIC is also making minor changes to an existing system, entitled Consumer Complaint and Inquiry Records, and withdrawing its Legal Compliance and Enforcement Records system, which has become obsolete.

DATES: Comments on the establishment of the Telephone Call Detail Records system must be submitted by October 13, 1987. The system will become effective on November 24, 1987 unless a superseding notice to the contrary is published before that date. The amendments to the Consumer Complaint and Inquiry Records system and the withdrawal of the Legal Compliance and Enforcement Records system are effective on September 10, 1987.

ADDRESSES: Comments on the Telephone Call Detail Records system should be addressed to Hoyle L. Robinson, Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429, or hand-delivered to Room 6108 of the same address between 9:00 a.m. and 5:00 p.m., MOnday-Friday. Comments are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Assistant Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429, telephone (202) 898–3811.

SUPPLEMENTARY INFORMATION: The FDIC is beginning a comprehensive review of its Privacy Act systems of records notices. Periodically, throughout the course of the next year, the FDIC will be publishing in the **Federal Register** changes that ensure the accuracy of its existing systems and establishing new systems as the need arises. As the first step of this review, the FDIC is today establishing a new system, making minor changes to an

existing system, and withdrawing an obsolete existing system.

The new system, The Telephone Call Detail Records system, is being established in furtherance of the Office of Management and Budget's recommendation that agencies create systems of records to maintain telephone call detail records that contain information about individuals and are used to determine accountability for telephone usage. *See* 52 FR 12,990 (April 20, 1987). Information in the system will be derived primarily from telephone assignment records and call detail listings and includes records relating to the use of FDIC telephones to place long distance and local calls.

The FDIC is also making nonsubstantive administrative changes to update its Consumer Complaint and Inquiry Records system. Finally, the FDIC is formally withdrawiang a system which has become obsolete and no longer exists—its Legal Compliance and Enforcement Records system.

Accordingly, the Board of Directors of the FDIC proposes to establish the Telephone Call Detail Records system, publishes the amended Consumer Complaint and Inquiry System, and withdraws the Legal Compliance and Enforcement Records system.

FDIC 30–64–0020

SYSTEM NAME:

Telephone Call Detail Records.

SYSTEM LOCATION:

Corporate Services Branch, Division of Accounting and Corporate Services, FDIC, 550 17th Street NW., Washington, D.C. 20429 and designated FDIC regional offices, consolidated field offices, and field offices. A list of the designated offices is available from the Corporate Services Branch at the above address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals assigned telephone numbers by the FDIC, including current and former FDIC employees, and other individuals provided telephone services by the FDIC, such as current and former employees of FDIC's cafeteria and credit union, who make long distance and local calls placed from FDIC telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of FDIC telephones to place long distance and local calls; records indicating assignment of telephone numbers to individuals covered by the system; records relating to location of telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information in the system may be disclosed, as is necessary:

(1) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(2) To representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections.

To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

(4) To the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, or by particular program statute, or by regulation, rule, or order issued pursuant thereto.

(5) To FDIC current and former employees and other individuals currently or formerly provided telephone services by the FDIC to determine their individual responsibility for telephone calls.

(6) To respond to a federal, state, or local agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license, or other benefit by the requesting agency, or in response to a private employer's request made in connection with the hiring or retention of an employee, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's or private employer's decision of the matter.

(7) To a telecommunications company providing telecommunications support to permit servicing the account.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system, pursuant to 5 U.S.C. 552a(b)(12), to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Maintained in the telephone system's memory and on magnetic tape; may also be maintained on printout produced from the system's memory or magnetic tapes.

RETRIEVABILITY:

Records are retrieved by telephone number.

SAFEGUARDS:

Records are locked in telephone equipment rooms accessible only to authorized personnel. To retrieve information from the system's memory, a password is required.

RETENTION AND DISPOSAL:

Records are destroyed after the close of the fiscal year in which they are audited or after three years, whichever occurs first.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Corporate Services Branch, Division of Accounting and Corporate Services, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Requests must be in writing and addressed to the Office of the Executive Secretary, FDIC, 550 17th Street NW., Washington, DC 20429. The request must contain the individual's name and the telephone number assigned to the individual by the FDIC.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance and local calls.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FDIC 30–64–0005

SYSTEM NAME:

Consumer Complaint and Inquiry System.

SYSTEM LOCATION:

Office of Consumer Affairs, FDIC, 550 17th Street NW., Washington, DC 20429, and designated FDIC regional offices (supervision) for complaints or inquiries originating within or involving a bank located in an FDIC region. A list of FDIC's regional offices (supervision) is available from the Corporate Communications Office, FDIC, 550 17th Street NW., Washington, DC 20429, (202) 898–6996.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed complaints or inquiries concerning activities and practices of FDIC-insured banks.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence and records of other communications between the FDIC and the individuals filing complaints or making inquiries, including copies of supporting documents supplied by the individual. May contain correspondence between the FDIC and the bank in question and/or intragency or interagency memoranda or correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 202(f) of title II of the Federal Trade Improvement Act (15 U.S.C. 57a(f)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in the system may be disclosed:

(1) To the institution which is the subject of the complaint or inquiry when necessary to investigate or resolve the complaint or inquiry.

(2) To third party sources during the course of the investigation in order to resolve the complaint or inquiry. Information that may be disclosed under this routine use is limited to the name of the complainant or inquirer and the nature of the complaint or inquiry.

(3) To the federal or state supervisory authority that has direct supervision over the financial institution that is the subject of the complaint or inquiry.

(4) To the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order issued when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

(5) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

(6) To a congressional office in response to an inquiry made at the request of the individual to whom the records pertain.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Maintained in file folders and on computer discs and tapes.

RETRIEVABILITY:

Indexed by name of complainant or inquirer and/or specialized identifying number.

SAFEGUARDS:

Maintained in lockable metal file cabinets; computer tapes and discs are accessed by authorized personnel.

RETENTION AND DISPOSAL:

Records are retained by the Office of Consumer Affairs for two years after receipt unless updated by correspondence received during the previous year. Retention periods in the designated FDIC regional offices vary but may be ascertained by contacting the appropriate system manager.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Consumer Affairs, FDIC, 550 17th Street, NW., Washington, D.C. 20429. The appropriate FDIC regional director (supervision) for records maintained in FDIC regional offices.

NOTIFICATION PROCEDURE:

Requests must be in writing and addressed to the Office of the Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429. The request must contain the name and address of the complainant or inquirer.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual on whom the record is maintained; institutions that are the subject of the complaint; the appropriate agency, whether federal or state, with supervisory authority over the institution; congressional offices that may initiate the inquiry; and other parties providing information to the FDIC in an attempt to resolve the complaint or inquiry.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FDIC 30–64–0011

[Reserved].

Dated at Washington, D.C., this 1st day of September, 1987.

By direction of the Board of Directors.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–20773 Filed 9–9–87; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–798–DR]

Amendment to Notice of a Major-Disaster Declaration; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–798–DR), dated August 21, 1987, and related determinations.

DATED: August 31, 1987.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

Notice: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn F. Garcelon of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Ronald Buddecke as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 87–20724 Filed 9–9–87; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL HOME LOAN BANK BOARD

[No. AC-658]

Final Action; Approval of Conversion Application; Greenwich Federal Savings & Loan Association, Greenwich, CT

Date: September 3, 1987.

Notice is hereby given that on August 31, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Greenwich Federal Savings and Loan Association, Greenwich, Connecticut for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Boston, One Financial Center, 20th Floor, Boston, Massachusetts 02110.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-20771 Filed 9-9-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 204-010064-013.

Title: U.S. Gulf/Colombia Equal Access Agreement.

Parties:

Flota Mercante Grancolombiana, S.A.
Lykes Bros. Steamship Co., Inc.
Crowley Caribbean Transport, Inc.
CTMT, Inc.
New York Navigation Company, Inc.
O S & L of Louisiana, Inc.

Synopsis: The proposed amendment would add Dock Express Contractors, Inc. as a member of the agreement. The parties have requested a shortened review period.

Agreement No.: 204-010066-013.

Title: United States Atlantic & Pacific/Colombia Equal Access Agreement.

Parties:

Crowley Caribbean Transport, Inc.
CTMT, Inc.
Flota Mercante Grancolombiana, S.A.
Lykes Bros. Steamship Co., Inc.
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would add Dock Express Contractors, Inc. as a member of the agreement. The parties have requested a shortened review period.

Agreement No.: 203-011075-003.

Title: Central America Discussion Agreement.

Parties:

United States/Central America Liner Association
Nordana Line, Inc.
Concorde Shipping Inc.
Nexos Line
Marine Bulk Carriers, Inc.

Synopsis: The proposed amendment would admit Thompson Shipping Co., Ltd. as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 217-011146.

Title: The "K" Line-Hyundai Space Charter Agreement.

Parties:

Hyundai Merchant Marine Co., Ltd. (Hyundai)
Kawasaki Kisen Kaisha, Ltd. ("K" Line)

Synopsis: The proposed agreement would permit "K" Line to charter space to Hyundai for the carriage of Hyundai cargo from ports in Korea to ports in Puerto Rico.

Agreement No.: 203-011147.

Title: Greece/U.S. Stabilization Agreement.

Parties:

Greece/U.S. Atlantic & Gulf Conference
Ocean Star Container Line A.G.

Synopsis: The proposed agreement would permit the parties to agree upon rates, charges, rules, service contracts and practices governing the transportation of cargo in the trade from ports and points in Greece to U.S. Atlantic and Gulf coast ports and U.S. interior and coastal points via such ports. The parties have requested a shortened review period.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: September 4, 1987.

[FR Doc. 87-20741 Filed 9-9-87; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement Nos.: 224-002758-003 and 224-002758-C-001.

Title: Port of Oakland Terminal Agreements.

Parties:

Port of Oakland (Port)
United States Lines, Inc. (U.S. Lines)

Synopsis: The proposed agreements provide for the Port's consent to the assignment of Agreement Nos. 224-002756 and 224-002756-C from U.S. Lines to American President Lines, Ltd., the Port's waiver of claims against U.S. Lines and the waiver by U.S. Lines of certain claims.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: September 4, 1987.

[FR Doc. 20703 Filed 9-9-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Applications To Engage de Novo in Permissible Nonbanking Activities; Compagnie Financiere de Suez, et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation

Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subisidary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 30, 1987.

A. Federal Reserve Bank of New York (Williamn L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Comagnie Financiere de Suez*, Paris, France, and Banque Indosuez, Paris, France; to engage *de novo* through its subsidiary, W.I. Carr Futures & Options Corp., Chicago, Illinois, in the execution and clearance on the Chicago Mercantile Exchange and Chicago Board of Trade of orders involving futures contracts (and options on futures contracts) on bullion, foreign exchange, government securities, certificates of deposit and other money market instruments that banks may purchase and sell for their own accounts; and the provision of incidental advice regarding the above-specified futures and options contracts to financial institutions and other financially sophisticated customers that have significant dealings or holdings in the underlying commodities, securities or instruments.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mount Sterling National Holding Corporation*, Mount Sterling, Kentucky; to engage *de novo* through its subsidiary, Independence Financial, Inc., Mount Sterling, Kentucky, a *de novo* company, in consumer finance business activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Boca Bancorp, Inc.*, Boca Raton, Florida; to engage *de novo* through its subsidiary, Boca Bank Mortgage Company, Boca Raton, Florida, in processing mortgage applications for other financial institutions pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. These activities will be conducted in Palm Beach, Broward and Martin Counties, Florida.

D. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Continental Illinois Corporation*, Chicago, Illinois; to expand the service area of its subsidiaries, Continental Illinois Trust Company of Florida, N.A., Boca Raton, Florida, and Continental Illinois Trust Company of Sarasota, N.A., Sarasota, Florida, through the establishment of trust services pursuant to § 225.25(b)(3) of the Board's Regulation Y. This activity will be conducted in the State of Florida.

2. *Northern Trust Corporation*, Chicago, Illinois; to engage *de novo* in leasing personal or real property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Corporation*, Henderson, Kentucky; to engage *de novo* through its subsidiary, Peoples Security Finance Company, Inc., Henderon, Kentucky, in generating owner occupied single family mortgage loan applications and accompanying mortgage loan redemption insurance applications pursuant to § 225.25(b)(1) and (b)(8) of the Board's Regulation Y. These activities will be conducted in the State of Kentucky.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Affiliated Bancshares of Colorado, Inc.*, Denver, Colorado; to engage *de novo* in the activities of underwriting and dealing in government general obligation bonds under § 225.25(b)(16) and to offer financial advice to state and local governments pursuant to § 225.25(b)(4)(v) and to offer stock brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y. Comments on this application must be received by September 18, 1987.

Board of Governors of the Federal Reserve System, September 4, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-20840 Filed 9-9-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Co.; The Farmers and Merchants Bank Employee Stock Ownership Plan & Trust

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be

accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 30, 1987.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *The Farmers & Merchants Bank Employee Stock Ownership Plan & Trust,* Beach, North Dakota; to become a bank holding company by acquiring 34.01 percent of the voting shares of Farmers & Merchants Bancshares, Inc., Beach, North Dakota, and thereby indirectly acquire Farmers & Merchants Bank, Beach, North Dakota.

In connection with this application, Applicant also proposes to engage in making and servicing loans for its own account pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 4, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-20841 Filed 9-9-87; 8:45 am]

BILLING CODE 6210-10-M

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; First Empire State Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 30, 1987.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *First Empire State Corporation,* Buffalo, New York; to acquire 100 percent of the voting shares of The East New York Savings Bank, New York, New York, which operates a savings bank life insurance department.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bank Maryland Corp.,* Towson, Maryland; to acquire 100 percent of the voting shares of Maryland State Bank, Salisbury, Maryland.

C. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bank of Montreal,* Montreal, Quebec, Canada; Bankmont Financial Corp,, New York, New York; and Harris Bankcorp, Inc., Chicago, Illinois; to acquire 100 percent of the voting shares of Commercial State Bank, Phoenix, Arizona.

2. *First of America Bank Corporation,* Kalamazoo, Michigan; to acquire 100 percent of the voting shares of Erie Financial Corp., Monroe, Michigan, and thereby indirectly acquire Erie State Bank, Monroe, Michigan.

3. *MBT Corp.,* Forest, City, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Manufacturers Bank & Trust Company, Forest City, Iowa.

4. *Mid America Banks, Inc.,* Atlanta, Iowa; to become a bank holding company by acquiring 94 percent of the voting shares of Exchange State Bank, Collins, Iowa.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Tennessee National Corporation,* Memphis, Tennessee; to acquire at least 90 percent of the voting shares of Peoples and Union Bank, Lewisburg, Tennessee.

2. *Security Bancshares of Marion County, Inc.,* Springfield, Kentucky; to become a bank holding company by acquiring at least 88.07 percent of the voting shares of Peoples Bank, Gravel Switch, Kentucky.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Omnibancorp,* Denver, Colorado; to acquire 100 percent of the voting shares of Cherry Creek National Bank, Denver, Colorado.

F. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *United New Mexico Financial Corporation,* Albuquerque, New Mexico; to acquire 75.1 percent of the voting shares of United Bancshares, Incorporated, Lubbock, Texas, and thereby indirectly acquire United Bank of Lea County, Hobbs, New Mexico.

G. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Cerritos Valley Bancorp,* Norwalk, California; to become a bank holding company by acquiring 100 percent of the voting shares of Cerritos Valley Bank, Norwalk, California.

Board of Governors of the Federal Reserve System, September 4, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc 87-20842 Filed 9-9-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Sovran Financial Corp.

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition,

conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 1987.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to acquire Dresser Leasing Corporation, Pittsburgh, Pennsylvania, and thereby engage in the leasing and financing of equipment and vehicles pursuant to § 225.25(b)(1)(iv) and 225.(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 4, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-20843 Filed 9-9-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; M.L. Wooldridge

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 25, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *M.L. Wooldridge*, Carrollton, Missouri; to acquire an additional 0.89 percent of the voting shares of First Carrollton Bancshares, Inc., Carrollton, Missouri, and thereby indirectly acquire First National Bank of Carrollton, Carrollton, Missouri.

2. *M.L. and Jamie Wooldridge*, Carrollton, Missouri; to acquire an additional 4.31 percent of the voting shares of First Carrollton Bancshares, Inc., Carrollton, Missouri, and thereby indirectly acquire First National Bank of Carrollton, Carrollton, Missouri.

Board of Governors of the Federal Reserve System, September 4, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-20844 Filed 9-9-87; 8:45 am]

BILLING CODE 6210-01-M

Application To Engage de Novo in Permissible Nonbanking Activities; Yardlong Investment Trust

The company listed in this notice has filed an application under §225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and §225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any reguest for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 1987.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Yardlong Investment Trust*, Geneva, Switzerland; Pastock Holdings Limited, Geneva, Switzerland; and International Capital Trust Limited, Geneva, Switzerland; to engage in making acquiring loans and other extensions or credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 4, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-20845 Filed 9-9-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Grant of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 081587 AND 090187

Name of acquiring person, name of acquired person, name of acquired entity	PMN No	Date terminated
(1) Ryobi Limited, Inertia Dynamics Corp., Inertia Dynamics Corp	87-2097	08/15/87
(2) Contel Corporation, Communications Satellite Corporation (COMSAT), COMSAT Intl. Communication/COMSAT Technology Products	87-1999	08/16/87
(3) Brierley Investments Limited, Del E. Webb Corporation, Del E. Webb Corporation	87-2037-	08/17/87
(4) South Timbers Ltd. Partnership-West-Timbers Ltd. Part., Royal Dutch Petroleum Company, Royal Dutch Petroleum Company	87-2116	08/17/87
(5) Helig-Meyers Company, Reliable Stores, Inc., Reliable Stores, Inc.	87-2124	08/17/87
(6)THORN EMI plc, Rent-A-Center, Inc., Rent-A-Center, Inc.	87-2169	08/17/87
(7) THORN EMI plc, Rent-A-Center, Inc., Renta-A-Center, Inc.	87-2170	08/17/87
(8) The Henley Group, Inc., Santa Fe Southern Pacific Corp., Santa Fe Southern Pacific Corp.	87-2019	08/18/87
(9) Great Northern Nekoosa Corporation, Owens-Illinois, Inc., OI Forest Products FTS Inc.	87-2034	08/18/87
(10) John Crowther Group plc, LDBrinkman Corporation, L.D. Brinkman & Co.	87-2060	08/18/87
(11) Blue Arrow plc, Manpower, Inc., Manpower, Inc.	87-2119	08/18/87
(12) Chrysler Corporation, William A. Castellano, NFC Leasing, Inc.	87-2122	08/18/87
(13) Chrysler Corporation, Laurence R. Saslaw, NFC Leasing, Inc.	87-2123	08/18/87
(14) Welsh, Carson, Anderson & Stowe IV, AMSCO Holdings, Inc., AMSCO Holdings, Inc.	87-2129	08/18/87
(15) General Electric Company, p.l.c., Gilbarco Inc., Gilbarco Inc.	87-2135	08/18/87
(16) Southlife Holding Company, Robert T. Shaw, Security Trust Life Insurance Company	87-2143	08/18/87
(17) FL Industries Holdings, Inc., Sybron Corporation, Midwestern Division of Nalge	87-2156	08/18/87
(18) Entertainment Marketing, Incorporated, Crazy Eddie, Inc., Crazy Eddie, Inc.	87-2030	08/19/87
(19) BellSouth Corporation, Prime Motor Inns, Inc., Universal Communications Systems, Inc.	87-2054	08/19/87
(20) Eastman Kodak Company, Steve Bostic and Alice J. Bostic, Photo Resources Corporation	87-2105	08/19/87
(21) Norman J. Pattiz, General Electric Co., NBC Subsidiary (Radio Network), Inc., NBC Subsidiary	87-2020	08/20/87
(22) Mayo Foundation, St. Luke's Health Systems, Inc., St. Luke's Health Systems, Inc.	87-2150	08/20/87
(23) Colgate-Palmolive Company, BTR plc, Veterinary Companies of America, Inc.	87-2066	08/21/87
(24) Charif Souki, Berkshire Hathaway, Inc., Associated Retail Stores, Inc.	87-2085	08/21/87
(25) Brunswick Corporation, Techsonic Industries, Inc., Techsonic Industries, Inc.	87-2101	08/21/87
(26) M. Thomas Grumbacher, Robert Campeau, Pomeroy Retail Stores Corporation	87-2116	08/21/87
(27) MLGFA Fund I, L.P., Morton Lapides, Service America Corporation	87-2134	08/21/87
(28) St. Luke's Samaritan Health Care, Inc., Mount Sinai Medical Center, Inc., Mount Sinai Medical Center, Inc.	87-2138	08/21/87
(29) Costain Group PLC, Valero Energy Corporation, Valero Offshore, Inc.; Valero Producing Company	87-2151	08/21/87
(30) ESCO Corporation, Richard E. Gray, Gray-Syracuse, Inc.	87-2154	08/21/87
(31) Torchmark Corporation, Energy Assets International Corporation, Energy Assets International Corporation	87-2171	08/21/87
(32) Sun Alliance and London Insurance plc, Wm. H. McGee & Co., Inc., Wm. H. McGee & Co., Inc.	87-2179	08/21/87
(33) Cable TV Fund 14-A, Ltd., Glenn R. Jones, Jones Intercable, Inc.	87-2181	08/21/87
(34) TPI Holding Co., Vincent C. Kanowsky and Dorothy M. Kanowsky, Allied Fine Furniture, Inc.	87-2185	08/21/87
(35) Marshall S. Cogan-Minerest Acquisition Corp., Marshall S. Cogan-GFI NEAC, Inc., NFAC Partnership	87-2188	08/21/87
(36) Marshall S. Cogan-Minerest Acquisition Corp., Marshall S. Cogan-GFI NEAC, Inc., NEAC Partnership	87-2189	08/21/87
(37) Marshall S. Cogan-Minerest Acquisition Corp., Marshall S. Cogan-CTA Acquisition Corp., Color Tile Associates, L.P.	87-2190	08/21/87
(38) New World Entertainment, Ltd., Kenner Parker Toys Inc., Kenner Parker Toys Inc.	87-2191	08/21/87
(39) Lomas & Nettleton Financial Corporation, Kelly, Coffey & Associates, Ltd., Texas First Brokerage Services, Inc.	87-2199	08/21/87
(40) Commercial Credit Company, Gulf & Western Inc., Associates Financial Services Co. of Texas, Inc.	87-2201	08/21/87
(41) Servico, Inc., Aluminum Company of America, Wilpen, Inc.	87-2203	08/21/87
(42) Subaru of America, Inc., Geo. Byers Sons, Inc., Great Lakes Subaru	87-2204	08/21/87
(43) nv Verenigd Bezit VNU, nv Verenigd Bezit VNU Disclosure Information Group, a General Partnership	87-2206	08/21/87
(44) W. Canning plc, Beverly Enterprises, Beverly Enterprises	87-2048	08/24/87
(45) Dr. Ghaith R. Pharaon, CenTrust Savings Bank, CenTrust Savings Bank	87-2067	08/24/87
(46) Continental Illinois Corporation, The Travelers Corporation, Securities Settlement Corporation	87-2105	08/24/87
(47) Brierly Investments Limited, Quaker State Corporation, Quaker State Corporation	87-2115	08/24/87
(48) J.M. Huber Corporation, Textron Inc., Textron Inc.	87-2164	08/24/87
(49) Leonard J. Russo, Frank B. Hall & Co., Inc., Adjustco, Inc.	87-2174	08/24/87
(50) Office Commercial Pharmaceutique, Ketchum & Co., Inc., Ketchum & Co., Inc.	87-2192	08/24/87
(51) Shugart Corporation, Allegheny International, Inc., Kennedy Company and Kennedy International Limited	87-2197	08/24/87
(52) Entregrowth International Limited, Standard Brands Paint Company, Standard Brands Paint Company	87-2104	08/25/87
(53) Sudbury, Inc., Wagner Acquiring Group, Inc., Wagner Acquiring Group, Inc.	87-2207	08/25/87
(54) 3Com Corporation, Bridge Communications, Inc., Bridge Communications, Inc.	87-2107	08/26/87
(55) Warburg, Pincus Capital Partners, L.P., Warburg, Pincus Capital Company, L.P., Troy Publishing Co., Inc.	87-2173	08/26/87
(56) Dentsply Holdings Inc., Robert I. Schattner, Robert I. Schattner	87-2186	08/26/87
(57) Atlantic Richfield Company, Ashland Oil, Inc., Arch of Utah, Inc., Mahogany Point Minerals Company	87-2195	08/26/87
(58) American Cyanamid Company, Ronald O. Perelman, Ronald O. Perelman	87-2148	08/27/87
(59) Westinghouse Electric Corporation, McClatchy Newspapers, Inc., McClatchy Newspapers, Inc.	87-2175	08/27/87
(60) Frank Stronach, Christine McAllister Wardell, Multicraft Enterprises, Inc. Multicraft Industries Inc.	87-2180	08/27/87
(61) Italmobiliare, S.p.A., R. C. Cement Co., Inc., R. C. Cement Co., Inc.	87-2194	08/27/87
(62) Lomas & Nettleton Financial Corporation, Citicorp, Citicorp Homeowners, Inc., Citicorp Homeowners	87-2210	08/27/87
(63) Amerada Hess Corporation, American Exploration Company, American Exploration Company	87-2222	08/27/87
(64) Breeko Corporation, The Stanley Works, Stanley Structures Inc.	87-2226	08/27/87
(65) Rosenkranz and Company, Dresser Industries, Inc., Reliance Standard Life Insurance Company	87-2232	08/27/87
(66) Birmingham Steel Corporation, Peko-Wallsend Ltd., Judson Steel Corporation	87-2233	08/27/87
(67) ConAgra, Inc., CHS Partners, II, L.P. Swift Independent Holding Corporation	87-1685	08/28/87
(68) BICC plc, Cablec Corporation, Cablec Corporation	87-2064	08/28/87
(69) ICN Pharmaceuticals, Inc., F. Hoffman-LaRoche & Co. Limited Company, F. Hoffman-LaRoche & Co. Limited Company	87-2111	08/28/87
(70) Eugene S. Rosenfeld, Eugene S. Rosenfeld, ESR Corporation	87-2152	08/28/87
(71) Eugene S. Rosenfeld, Eugene S. Rosenfeld, The Anden Group	87-2153	08/28/87
(72) Seagull Energy Corporation, Liberty Natural Gas Company, Liberty Natural Gas Company	87-2202	08/28/87
(73) Tosho Kinoshita, The Hongkong and Shanghai Banking Corporation, The Grenelefe Corporation	87-2223	08/28/87
(74) Reginald F. Lewis, BCI Associates, L. P., Beatrice International Food Company	87-2227	08/28/87
(75) Westvaco Corporation, Peter Kiewit Sons', Inc., KMI Continental Garnett, Inc., KMI Continental Clinton	87-2240	08/28/87
(76) Masco Corporation, Young-Hinkle Corporation, Young-Hinkle Corporation	87-2077	08/29/87
(77) Edwards-Warren Tire Company, The Firestone Tire & Rubber Company, The Firestone Tire & Rubber Company	87-2120	08/31/87
(78) New York Venture Fund, Inc., The O-W Fund, The O-W Fund	87-2208	08/31/87
(79) C. A. Sammons, Lumbermens Mutual Casualty Company, Lumbermens Mutual Casualty Company	87-2224	08/31/87
(80) KKR Associates, c/o Kohlberg Kravis Roberts & Co., Jim Walter Corporation, Jim Walter Corporation	87-2231	08/31/87
(81) KKR Associates, Jim WALTER Corporation, Jim Walter Corporation	87-2236	08/31/87
(82) Meredith Corporation, Emmet J. Cashin, Jr., Fox & Carskadon, Inc.	87-2260	08/31/87
(83) Robert L. Parker, General Instrument Corporation, Optoelectronics Division of General Instrument Corp.	87-2241	09/01/87

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87-20759 Filed 9-9-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86P-0483]

Canned Wax Beans Deviating From Identity Standard; Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is amending a temporary permit, issued to the Seymour Canning Co. to market test experimental packs of canned wax beans containing added glucono delta-lactone, to increase the quantity of the test product to be distributed and the area of distribution. This amendment will provide the permit holder with a broader base for the collection of data on consumer acceptance of the test product.

FOR FURTHER INFORMATION CONTACT: Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0121.

SUPPLEMENTAL INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to the Seymour Canning Co., 530 East Wisconsin St., P.O. Box 5, Seymour, WI 54165, to market test canned wax beans containing added glucono delta-lactone to measure consumer acceptance of the new food. This food deviates from the requirements of 21 CFR 155.120 (canned green beans and canned wax beans), a standard of identity that was promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to the Seymour Canning Co. was published in the **Federal Register** of January 8, 1987 (52 FR 706). The Seymour Canning Co. is now requesting that the permit be amended to (1) increase the quantity of the test product from 400 cases to 10,000 cases containing 24 No. 303 by 406 cans each and by adding 20,000 cases containing six No. 603 by 700 cans each to be distributed and (2) expand the area of distribution from one to five States to include Indiana, Michigan, Minnesota, Ohio, and Wisconsin. The company states that these changes are necessary to collect adequate data to complete the market test.

Accordingly, under the provisions of 21 CFR 130.17(f), FDA is amending the Seymour Canning Co.'s temporary permit to increase the quantity of test product to 10,000 cases containing 24 No. 303 by 406 cans each and 20,000 cases containing six No. 603 by 700 cans each and to expand the area of distribution to include the States of Indiana, Michigan, Minnesota, Ohio, and Wisconsin. All other terms and conditions of this permit remain unchanged.

Dated: September 2, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-20698 Filed 9-9-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[ORD-58-N]

Medicare and Medicaid Programs; Health Care Financing Research and Demonstration; Availability of Funds for Cooperative Agreements and Grants

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice announces the availability of HCFA funds for certain priority research and demonstration cooperative agreements and grants. HCFA makes funds available for activities that will help to resolve major health care financing issues or to develop innovative methods for the administration of Medicare and Medicaid. This notice contains information about the subject areas for cooperative agreements and grants that will be given priority; project requirements; application procedures and other pertinent information.

DATES: Closing dates for submission of grant applications are presented in section VII. of this notice.

Application Kits: Standard application forms and guidance for the completion of the forms are available from: Paul McKeown, Health Care Financing Administration, Office of Management and Budget, Administrative Contracts and Grants Branch, Room 364 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207-5187, (301) 594-3342.

FOR FURTHER INFORMATION CONTACT: Michael Spodnik, Health Care Financing Administration, Office of Research and Demonstrations, Program Support & Administrative Services Branch, 2-D-6 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187, (301) 594-3825.

SUPPLEMENTARY INFORMATION: This notice solicits cooperative agreement and grant applications for HCFA research and demonstration projects in certain priority areas.

The notice describes the application procedures; general policy considerations; criteria to be used in reviewing applications; and selection criteria for HCFA cooperative agreements and grants. This notice replaces the notices previously published in the **Federal Register** on January 30, 1985 (50 FR 4480) and October 16, 1986 (51 FR 36856).

HCFA is also requiring a letter of intent from all organizations intending to submit an application in response to this solicitation (see section IV.A Application Procedures).

This statement reflects our current priorities and emphasizes our primary interest in the following five areas:

1. Increased competition and consumer choice and continued growth of Medicare capitated systems;

2. Continued access to quality care under Medicare and Medicaid and improved methods for measuring quality of care;

3. Refinement of the current Medicare physician payment methodology through the study of the causes for the growth in Medicare outlays for physician services;

4. Continued improvement to the current Medicare hospital prospective payment system, and the study of the outpatient delivery system; and

5. Analysis of other Medicare program services and issues leading to increased efficiency in health care delivery and financing, particularly in the areas of clinical laboratories, home health care, and treatment of acquired immunodeficiency syndrome (AIDS).

We also are interested in continuing our efforts in the areas of Medicaid research, programs for long-term care, and beneficiary awareness and prevention.

After fulfilling our obligations to conduct congressionally mandated studies and reports, we plan to conduct a balanced research program focusing on short term (0-2 years), mid term (2-4 years), and long-term (4-8 years) priorities. Depending on the final FY

1988 budget, we hope to allocate approximately one third of our funds to new projects. We are also particularly interested in receiving proposals from individuals and institutions who have not previously applied and who are representative of a wide variety of geographic areas and technical subjects.

We will continue to direct significant effort to designing and testing alternative payment methods for services that will increase competition in the health care marketplace, while ensuring the continued quality of care. Most notably, as part of our goal to increase the opportunities for beneficiary choice, we will be investigating the growth of health maintenance organizations (HMOs) and competitive medical plans (CMPs) under the current capitation system, and designing demonstration projects to test different capitation systems.

We will be expanding our efforts directed toward measuring quality of care and ensuring that quality health care remains accessible to beneficiaries, particularly as the nature of the payment system changes. We will place major emphasis on studies designed to develop ways to measure patient outcomes in a variety of treatment settings and under different payment systems. We also will be directing our efforts at studying the impact that the provision of preventive services to individuals has on their current and future utilization of health care services. We will also be looking at the longer-range impact of program changes on segments of the health care delivery and financing system. Finally, we will be focusing on major structural changes to the payment and delivery systems under the Medicare and Medicaid programs to promote increased competition and choice and cost-effective delivery of health care, while ensuring access to quality health care.

We will be placing increased emphasis on efforts aimed at refining the current physician payment system, particularly under medicare. We will be expanding current efforts to develop data bases and models that will allow us to better understand policy alternatives and test their impact.

We will be continuing our efforts to refine the current Medicare hospital prospective payment system. We will also be continuing our assessment of the impact of the Medicare hospital prospective payment system on varied segments of the health care delivery and financing system, especially on beneficiary access to quality care.

This notice also announces the new closing dates for cooperative agreements and grants for FYs 1988, 1989, and 1990. The schedule is as follows:

FY 1988 (10/1/87–9/30/88)

Friday, November 20, 1987: Waiver-only applications and applications requesting discretionary funds. Monday, May 2, 1988: Waiver-only applications.

FY 1989 (10/1/88–9/30/89)

Monday, November 7, 1988: Waiver-only applications and applications requesting discretionary funds.

Monday, May 1, 1989: Waiver-only applications.

FY 1990 (10/1/89–9/30/90)

Monday, November 6, 1989: Waiver-only applications and applications requesting discretionary funds.

Monday, May 7, 1990: Waiver only applications.

You should be aware that, while this notice gives closing dates for three fiscal years, the specific areas to be given priority are reconsidered annually. Should we change our priority areas, these changes will be announced in the **Federal Register** at least 60 days prior to the closing date.

I. Current Priorities for HCFA Funding of New Grants and Cooperative Agreements

The statement of current priorities for HCFA research and demonstration grant/cooperative agreement applications is as follows:

A. Alternative Payment Systems

Our overall goal is to identify, develop, demonstrate, and evaluate effective alternative health care delivery and/or payment systems to control costs and offer expanded consumer choices under the Medicare and Medicaid programs. At the same time we wish to ensure continued access to quality health care, and to move towards payment systems based on capitation and competition in the marketplace. In general, projects should have the prospect of reducing costs in either the short or longer term; at a minimum, they must be budget neutral.

As part of this effort, we are interested in supporting research and demonstration projects that develop and test payment systems that provide incentives to Medicare and Medicaid beneficiaries to be more informed purchasers of health care plans and services, including payment systems based on capitation and competition in the marketplace and consumer information projects that support such systems. Specific examples of these types of projects are as follows:

1. Private Health Plan Option (PHPO) Pricing Issues

a. *Refinements to Adjusted Average Per Capita Cost Formula.* Medicare reimbursement to HMOs and CMPs is based on the Adjusted Average Per Capita Cost (AAPCC) formula. The current formula uses age, sex, welfare status, and institutional status as factors to per capita amount that would be payable if Medicare services for HMO members were furnished in the local fee-for-service market. Two major issues of interest with regard to the AAPCC are the adequacy of the adjustors and the adequacy of the county as the geographic unit for pricing

Past and current work on possible new adjustors has examined functional status, disability, prior use of health services (discretionary and non discretionary), and physiologic risk factors. In an effort to further refine the AAPCC methodology by making it a more accurate predictor and minimizing the chance for bias, we are interested in projects that, refine and expand the above-mentioned efforts or develop new adjustors, as well as projects that explore alternate geographic configurations. Group adjustors, in addition to individual rate factor adjustors, might also be developed when the group is well-defined (such as a retiree employment group). We are also interested in developing and testing AAPCC-based payment models that adjust for catastrophic cases. Those models could include fee-for service blending or limited reinsurance. Projects should consider the practical aspects of implementing new adjustors. We intend to test refined AAPCC payment models in existing HMOs and CMPs, and may issue a separate solicitation to specify the details of the models to be tested.

We are interested in projects that:

(1) Examine whether the use of alternative geographic units in determining the AAPCC would simplify the payment system and induce providers to join the HMO/CMP market;

(2) Determine how to encourage HMO development in low-AAPCC areas.

b. *Alternative, Market-Oriented Pricing Methods for Payments in Capitated Systems.* Medicare's payment for services provided in HMOs is based on per capita costs in the fee-for-service sector. One issue we are interested in addressing is what happens to pricing mechanisms when Medicare s at-risk penetration is large and the number of fee-for-service beneficiaries is diminished. Particularly, what distortions occur in the pricing mechanisms and what alternatives for pricing benefit packages exist, such as

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negotiated pricing in areas that experience high HMO/CMP market penetration?

For some beneficiary subgroups, such as retirees of employer groups, the AAPCC (community-based) type of payment may not be appropriate. We are interested in projects that investigate the feasibility and appropriateness of experience-based payments. We are particularly concerned with the issue of updating payment rates beyond the period for which experience-based rates are available. There are several ways that future rates could be set, such as blending actual experience with comparable fee-for service payments, using general medical inflation factors, and using community-rated AAPCC experience. Refinements and developments of these and other innovative methods are encouraged. In each proposed method, attention should be given to data requirements for supporting an efficient application of proposed experience-based rating methods.

2. Enrollment and Disenrollment Issues.

a. *Studies of the Behavior of Health Plans and Enrollees.* Per capita health care costs in HMOs/CMPs are generally lower than in the fee-for-service sector. The capitation approach contains incentives for efficiency and resource-use awareness. Recent studies have also suggested that part of the reason for lower rates in HMOs/CMPs may be favorable selection of or by low users of health care. We are interested in projects which examine how HMOs/CMPs achieve their savings, including comparisons of the types and quality of services received in HMO/CMP and fee-for-service populations. We are interested in:

(1) Studies of health plan behavior (including marketing) that may result in favorable selection, as well as strategies to minimize or offset preferential selection. We are interested in how types of services offered by HMOs/CMPs and access to services affects favorable or unfavorable selection;

(2) Studies of factors that explain enrollment and disenrollment in HMOs/CMPs and their relation to biased selection; and

(3) Studies that measure the difference in health status among HMO/CMP enrollees and beneficiaries in the fee-for-service sector and analyze any difference in terms of the health status of new enrollees, disenrollees, and continuing members.

(4) Economic analyses of the behavior of health plans within the context of the local market for health care. Competitive behavior in terms of pricing, benefits, marketing, expansion, and mergers are areas of interest.

b. *Long-Term Effects of Competition.* It has been argued that competition among health plans will reduce cost. However, lack of understanding of the effects of switching among plans, of possible biased selection of low cost plans by healthy persons, and of exactly how HMOs/CMPs achieve their savings, makes it difficult to estimate the long-term effects of competition. We are interested in analyses of the competitive process among health plans to understand better what a competitive environment might lead to in terms of costs, provider behavior, organization of health services, and impact on Medicare and Medicaid beneficiaries.

3. Other Alternative Payment Systems and Issues.

a. *Preferred Provider Organizations.* We are interested in projects that study and test the applicability of private-sector practices to control health care costs for the highest use/cost Medicare services and areas, while also ensuring quality of care. Such projects would be patterned after private-sector initiatives and would develop, test, and evaluate alternative market-oriented methods of pricing for hospital and/or physician services. These would not be capitation demonstrations. We are particularly interested in projects that test the cost-effectiveness and feasibility of the preferred provider concept in a fee-for-service setting for Medicare beneficiaries.

The prime objectives of the projects must be to maintain quality and access to care, as well as to generate real Medicare savings. Applicants must propose a method to monitor payment and practice patterns and utilization intensity by both preferred and nonpreferred providers. Medicare savings from elimination of unnecessary utilization and/or payment reductions must be validated by comparison of a project site with a control group.

Employers, physician groups, hospitals, insurors, or any other agents may be considered as administrators of a preferred provider arrangement. Another alternative would involve using independent brokers to promote beneficiary and/or provider utilization of providers exhibiting cost-effective practice patterns. The project could also be developed as an insurance plan option, possibly as a joint venture with a Medigap insuror.

Proposals should delineate both provider and beneficiary incentives for participation. Individual beneficiary participation must be voluntary. However, preferred provider arrangements may reduce or waive coinsurance and deductible requirements or offer other acceptable incentives (such as increased benefits or reduced Medigap premium rates) to encourage beneficiary participation.

Applicants should be aware that HCFA may issue a separate solicitation for proposals in this area.

b. *Factors Affecting HMO/CMP Participation in Medicare.* We are interested in better understanding the major factors affecting HMO participation in the Medicare program. Such studies should address the following: the AAPCC pricing system and its predictability each year; and any administrative burdens which reduce the incentive for HMOs/CMPs to participate in Medicare.

c. *Medicaid Capitation Rates.* Capitated arrangements are becoming more prevalent as a mechanism for States to purchase and/or finance health care under the Medicaid program. Such arrangements may be with counties, health insuring organizations, or other prepaid organizations. One area of particular interest is coverage of joint Medicare and Medicaid beneficiaries under Medicare-qualified capitated HMOs and CMPs. The equity of the rate-setting methodology is critical, particularly as more capitation arrangements are established. A variety of rate-setting methodologies have been employed, and we are interested in discerning the factors and the methodologies which result in fair and accurate capitation rates. We are also interested in testing refinements in the capitation payment models developed by States.

d. *Barriers to Transition.* Shifting to a Medicaid prepaid capitated system may involve some one-time costs of switching from a retrospective reimbursement to a prospective capitation system. We are interested in exploring innovative financing approaches that address this prob1em without undermining cost-effectiveness.

B. Quality of Care

Section 603(a)(2)(A) of the Social Security Amendments of 1983 (Pub. L. 98–21) mandated that we study and report on the impact of the hospital prospective payment system on Medicare beneficiaries. A major aspect is the impact of prospective payment system on the quality of care provided to beneficiaries. The decreased inpatient hospital resource utilization resulting from this system has raised concerns as to whether the quality of care provided has been adversely affected; or whether access to needed levels of care has been

limited. The rapid changes in other Medicare and Medicaid program areas make it even more critical that we ensure that the level of care provided under Medicare and Medicaid is of high quality. We have divided the quality of care research agenda into two major areas (a) hospital care (including access to subsequent post-hospital sub-acute care) and (b) quality issues in long term care, physician care, ambulatory care, and care in capitated systems.

1. *Hospital Care.* Research on the quality of hospital care is divided into three broad categories, (a) access to hospital care, (b) quality of care while in the hospital and (c) access to needed post-hospital sub-acute care.

a. *Access to Hospital Care.* The reduction in Medicare and Medicaid overall admissions has put pressure on providers to cut back on available beds, consolidate resources and in some cases may even result in hospital closings. In terms of the entire health care system these changes probably reflect improvements in efficiency. However, it is possible that certain groups of beneficiaries may have difficulty in getting needed inpatient care. We are interested in studies examining the extent to which beneficiary access to hospital care may have changed as a result of the prospective payment system.

b. *Quality of Care While in the Hospital.* Quality of inpatient care could be greatly affected by prospective payment system incentives, particularly in light of shortened lengths of stay, personnel reductions, and incentives to reduce ancillary services. We are interested in studies addressing a number of specific problems within this area:

(1) There is considerable variation across hospitals and over time in such quality of care outcome measures as mortality and rehospitalization. Other than basic covariates such as diagnosis, age and sex there is little information on variations in severity of illness that may account for these differences. Projects that address the issue of severity of illness and its effects on outcomes of care will be considered.

(2) There are many changes taking place in the provision of medical care that are outside of the hospital setting, yet could impact on the assessment of quality of care in the hospital. One is the movement of many surgical procedures to the outpatient setting. A second is a trend toward the placement of terminal patients out of the hospital into long term care facilities and to home settings (i.e., hospices). Studies are needed that examine the impacts these and other health care delivery trends have on the provision of inpatient care and the assessment of that care.

(3) Little advancement has been made in the development of improved measures of patient outcomes that can be used in quality of care studies. Most studies currently use mortality or rehospitalization rates. Research is needed to develop reliable and valid measures of patient outcome that are more sensitive to variations in the quality of care than currently used measures.

(4) We are interested in projects that directly test the relationships between the processes of medical care and the resultant outcomes of care.

(5) We are interested in projects that develop nationally representative expected outcomes for selected groups of diagnoses and/or procedures. We are interested not only in the outcomes, but also in severity adjustments and process indicators which can be of direct use to health care providers in the assessment of their own performance. Priority will be given to projects that center on diagnoses and/or procedures which account either for significant proportions of hospital case load or significant proportions of negative outcomes (e.g., deaths, readmissions, complications, etc.).

c. Access to Needed Post-hospital Sub-acute Care. Perhaps the greatest concern occurring as a result of reduced lengths of stay is that patients are being discharged to the home from hospitals before they have recovered sufficiently. This concern revolves largely around the issue of access to post-discharge services. We are interested in projects that examine the levels of need for post-hospital care, the extent to which these needs are being met, and the sources providing post-discharge services (home health agencies, skilled nursing and intermediate care facilities, physicians, outpatient departments, and informal care networks).

2. *Quality Issues in Long Term Care, Physician Care, Ambulatory Care, and Capitated Systems.* We are interested in developing and refining reliable and valid quality of care measures for different payment systems and different treatment settings. Therefore, we are interested in the following:

a. Projects that develop, demonstrate, and evaluate quality of care outcome measures and monitoring systems for nursing homes, home health agencies, and physician services.

b. Projects that develop an overall approach to quality standards, monitoring, and improvement in the area of ambulatory care (including both surgical and non-surgical services). Such an approach should be designed to move towards minimum quality standards applicable across the various ambulatory care settings and across various payment mechanisms. We are interested in projects which also focus on specific issues related to the quality of ambulatory care, including the appropriateness of services rendered for specific conditions.

c. Development and demonstration of monitoring systems and outcome measures for quality of care in capitated environments.

C. Physician Payment

Our major goal in this area is to identify, develop, demonstrate, and evaluate effective refinements and alternatives to control the costs of physician care under Medicare and Medicaid, while maintaining a high quality of care. We are very interested in projects that develop data bases and models which will allow us to better understand and test policy alternatives to the current Medicare physician payment system.

1. *Analysis of Physician Costs Related to Changes in Volume and Intensity of Services.* We are very interested in determining and explaining the procedures and specialties for which volume and intensity changes have been the largest. In addition, we are interested in better understanding how changes in intensity of physician services, including the introduction of new procedures, changing the number of services per procedure, and increasing the intensity of medical examinations, have affected Medicare expenditures. Finally, we would like to examine, on a static and dynamic basis, the volume and intensity of physician services per beneficiary.

2. *Analysis of Physician Responses to the Changing Medical Environment.* With the increase in the number of physicians per capita and the more competitive structure of the health care system, changes in physician practice style have occurred. We are interested in obtaining information on how physicians have responded to the more competitive health care environment. We are interested in gathering data on the following items and examining how these data have changed over time:

a. Physician employment arrangements including solo practices, hospital-based physicians, group practices, HMOs/CMPs, IPAs, and PPOs.

b. Medicare's share of the physician's practice by specialty and procedure. We are interested in the distribution of Medicare payment within each specialty and major procedure.

c. The specialties that graduate medical students are entering and the reasons for changes.

d. Whether physicians' net receipts per Medicare patient are higher or lower than those for patients of other payors, and the impact such differences have on Medicare's share of physicians' practice income.

3. *Analysis of Overpriced Procedures.* We are interested in developing methodologies to determine if Medicare's payment for certain procedures is excessive. We are interested in studying specific overpriced procedures. Such projects might include procedures that are overpriced due to decreasing costs, difficulty and/or risk for the procedure. The analysis could include a comparison of the procedure for which Medicare payment is too high compared to related procedures, to procedures in other geographic areas, or to payment by other payors. We are also interested in studying whether global fees for surgical cases are too high (for example, because of decreases in lengths-of-stay).

4. *Redistributive Impact of Refinements to Current Physician Payment Methods.* We are interested in analyses that examine the redistributive impact of refinements to current physician payment methods on beneficiaries and their out-of-pocket costs; physicians and their practice revenues; and participation and assignment rates by geographic areas (carriers, states, localities, within localities), specialty, site of service, type of services, etc. We are interested in projects that analyze charge distributions within areas and among areas, for example, the percent of customary charges at and above the prevailing charge.

5. *Study of Private Sector Physician Initiatives.* We are interested in gathering information on private sector initiatives for controlling physician expenditures. Specifically, we are interested in the following:

a. Descriptions of how private sector plans control the rapidly growing volume and cost of physician services;

b. Determinants of how private sector initiatives can be applied to Medicare;

c. A better understanding of the changing relationship between physicians and capitated plans, hospitals, nursing homes, home health agencies, and other providers; and

d. A comparison of the Medicare payment allowances and private sector payment allowances.

6. *Simplification of the Current Medicare Physician Payment System.* Section 9331 of the Omnibus Budget Reconciliation Act of 1986 requires the Secretary to collapse the physician procedure coding system for payment purposes. We are interested in analyses that examine the feasibility of simplifying the coding system through collapsing codes for payment purposes. In addition, we are interested in the impact of collapsing codes on a physician's practice income. We also are interested in determining whether a group of procedures performed by a single physician can be bundled into a single payment for an episode of care.

7. *Effect of Payment Method on Physician Services.* We are interested in studies of the effect(s) of different payment methods (e.g., HMO, PPO, fee-for-service) on the volume and composition of physician services for different medical conditions.

D. Hospital Payment

The Social Security Amendments of 1983 (Pub. L. 98–21) established a prospective payment system for inpatient services furnished by most hospitals participating in the Medicare program. During the past few years, this system has undergone continuous refinement through regulatory and legislative changes. Other areas of hospital reimbursement, including outpatient care, capital, and excluded units, have also been changed through regulatory and legislative action. We are interested in studies that continue refinement of hospital payment systems, along with studies of the potential for paying for other services (for example, outpatient services) under a prospective payment method.

1. *Financial Impact of the Prospective Payment System and Other Payor Systems on Hospitals.* We are very interested in studies of the financial status of hospitals prior to and during the prospective payment system. The studies should address the impact of the Medicare prospective payment system on different types of hospitals; with the analysis using such variables as hospital size, market share, occupancy rates, rural/urban status, teaching status, and disproportionate share status. We are also interested in studies analyzing the impact of the prospective payment system on hospital revenues and resultant cost-shifting dynamics, particularly as they relate to the incidence and cost of administratively necessary days, facility conversions, patient transfers to swing beds or excluded units, and business arrangements or provider affiliations. The analysis should also include the effect that private and public (non-Medicare) payors have on a hospital's financial status. To the extent possible, non-inpatient revenues and costs should be included in the study.

2. *Refinement of Specific Prospective Payment Factors.* We are interested in studies which address refinement of the current prospective payment system's outlier payment policy, systems which examine severity of illness within a given Diagnosis-Related Group, and other areas of potential refinement (such as development of a non-labor input price index).

3. *Analyses of Hospital Case-Mix.* HCFA has supported research and demonstration projects that would improve case-mix measurement and test alternative case-mix measurement systems for prospective payment of inpatient hospital care or other health care providers and test alternative case-specific payment systems for Medicare or other payors. We are especially interested in examining the impact of case-mix growth variation on different types of hospitals (for example, urban/rural hospitals, teaching hospitals, and large/small hospitals).

4. *Hospital Capital Payments.* We plan to continue our study of the historical captial investment patterns of different types of hospitals. We are interested in further understanding the capital investment patterns (including an analysis of interest, principal, and depreciation) of different types of hospitals on both a historical and a projected basis. We also are interested in understanding how hospitals finance different types of investment. Examples of these investments are movable (equipment) and fixed (plant and building). We also seek analyses that further refine HCFA's capital construction cost index.

5. *Refinements of Disproportionate Share Adjustment.* Section 9105 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–369), requires the Secretary to pay an additional payment to hospitals that have a disproportionately high percentage of low-income patients. We are interested in projects that could improve "disproportionate share" measurement, with specific emphasis on approaches that combine:

a. An understanding of the underlying disproportionate share issues; and

b. A statistical methodology to address these issues.

In particular, we are interested in whether low income patients have higher Part A costs but lower Part B costs.

6. *Analysis of Medical Education Payments.* We are interested in projects that examine the components of the Medicare direct medical education

payment and possible ways to refine the current payment methodology. We are also interested in better understanding the underlying factors that relate to the indirect medical education adjustment factor.

7. *Examination of Excluded Hospital Payment Methodologies.* We are interested in projects that would examine appropriate alternative payment systems for categories of hospitals currently excluded from the Medicare prospective payment system, particularly psychiatric hospitals.

8. *Analysis of Hospital Outpatient Care.* We are interested in projects that will help us better understand the rapid growth in hospital outpatient costs. Specifically, we are interested in the following:

a. Analyzing the increase in the volume of procedures provided in the outpatient department prior to and during PPS, with emphasis on clinical laboratory, radiology, and ambulatory surgical procedures;

b. Studying the shift of Medicare cases from the inpatient to the outpatient department prior to and during PPS; and

c. Studying the portions of hospital capital devoted to outpatient or ambulatory care.

9. *Alternative Payment Methodologies for Outpatient/Ambulatory Services.* We are interested in projects that will assist us in working toward prospective payment for ambulatory services provided in hospital outpatient and other ambulatory care settings. Although we currently have several projects that are working toward the development of prospective payment for ambulatory surgery, we would consider additional projects that might propose new and innovative concepts in this area.

We are particularly interested in projects that address nonsurgical services (such as emergency services, general medical services, and other clinic services typically utilized by Medicare patients) provided in a hospital outpatient setting. Among the issues that need to be addressed are: Refinement and application of existing patient classification systems; the possibility of applying payment limits; bundling of services for payment; identification of justifiable cost differences between hospitals and across all ambulatory care settings for similar care; and innovative payment methodologies.

We are also interested in projects that would study and develop competitive strategies utilizing market forces in setting prices overall or for selected high volume/cost services. For example, we are interested in projects designed to study variations in practice patterns and costs/payments for ambulatory care services provided in different geographic locations and by the various types of providers overall, or for selected services such as radiation therapy or physical therapy. Our interest is in controlling payments while providing incentives for appropriate utilization and quality medical care.

E. Program Efficiencies, Analysis, and Refinements

In the past 5 years, several legislative and regulatory changes have been implemented which have improved the effectiveness and efficiency of the Medicare and Medicaid programs. We are very interested in better understanding how the health care market has responded to these changes in order to determine the necessity for further policy reforms. We are particularly interested in market analyses for clinical laboratory, home health, durable medical equipment (DME), end-stage renal disease, ambulatory surgical center, parenteral and enteral nutrition, and ambulance services. These analyses should be broken down by payor-type (i.e., Medicare, Medicaid, and private payors). Data sources which will be used for these analyses should be clearly explained.

1. *Clinical Laboratory Services.* We are interested in determining whether clinical laboratory tests are appropriately priced. Areas of study include:

a. An analysis to determine the relationship between the resources used to perform clinical laboratory services and the actual Medicare payment for such services. The analysis would include an examination of the impact of technological changes on the costs of clinical laboratory tests.

b. A comparison of Medicare and private payor payments for clinical laboratory tests; large volume discounts and other special financial relationships should be explored.

2. *Durable Medical Equipment Services.* We are interested in a number of durable medical equipment issues related to Medicare's current payment policies. Areas of interest include the following:

a. An examination of current Medicare rental/purchase payment policies to determine if a more appropriate financial arrangement should be established.

b. A better understanding of the factors underlying geographic variations in Medicare's rental and purchase payments for major types of equipment.

c. An analysis of Medicare's market share for major types of equipment.

d. A study comparing Medicare payment for durable medical equipment with other payors' payment systems.

e. An analysis of the extent to which Medicare expenditures for DME are reimbursed on a cost basis compared to DME provided by suppliers and reimbursed under Part B. This analysis should assist in examining how Medicare DME expenditures vary when similar equipment is furnished through different types of providers.

3. *Home Health and Skilled Nursing Facility Services.* We are interested in analyses that examine changes in Medicare and non-Medicare payments and utilization in the home health care and skilled nursing facility markets. Utilization and expenditures for these services vary widely across States. We are interested in exploring the differences in Medicare payment and utilization by geographic area, and how differences in market characteristics (demographics, numbers and types of providers, etc.) influence utilization of these services. Studies in this area should include time series analyses of Medicare s market share for these services.

4. *Ambulatory Surgical Center Services.* We are interested in studies that compare the resource utilization for major surgical procedures in freestanding ambulatory surgical centers and outpatient hospital surgical centers.

5. *Parenteral and Enteral Nutrition and Ambulance Services.* We are interested in examining the factors underlying variations in Medicare charges and payments for parenteral and enteral services. In addition, we are interested in examining the differences in payment rates and methodologies used by carriers to pay for ambulance services.

6. *Acquired Immunodeficiency Syndrome (AIDS).* We are interested in studies to determine the implications of AIDS for the Medicare and Medicaid programs. Specifically, we are interested in studies of the incidence and prevalence of AIDS, and the utilization and cost of services for the treatment of AIDS patients. For example, we are interested in a study that examines the use of hospice care to provide cost effective care for AIDS patients. We are interested also in studying the inter-relationships between the various sources of payment for the treatment of AIDS patients, the extent of private insurance coverage and other third party payor coverage, as well as public sources of payment. We are interested

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in studies that help synthesize the many AIDS studies being conducted at local levels.

7. *Catastrophic Health Insurance.* If legislation is enacted to provide a catastrophic cap on out-of-pocket liability for Medicare beneficiaries, we would be interested in understanding the impact of the new provision. Studies that analyze the impact on beneficiaries (e.g., how they perceive the new provision and how it affects their decisions on supplementary insurance) would be of interest. We would also be interested in the response of the private insurance sector, especially how insurors have altered the supplementary benefit packages they market to the elderly and how retiree benefit packages have been affected. We are interested also in studies of the use and cost consequences of any new benefits, such as prescription drugs.

8. *Employee Retirement Health Plans.* We are interested in better understanding the characteristics of employee health plans for retirees over age 65. We would like to know the extent to which these plans provide benefits for retirees in excess of the current Medicare package. We are also interested in determining the effect that retiree health plans have on Medicare expenditures.

9. *Health Care in Rural Areas.* We are interested in projects that examine the quality of health care delivered in rural areas, access to such care, and whether specific efforts are necessary to improve access to quality health care in these areas.

10. *Other Program Services.* We are interested in projects designed to assist in the refinement of various program areas, including analyses of program data for end-stage renal disease, hospices, and comprehensive outpatient rehabilitation services. We are interested also in analyses of added costs to the Medicare and Medicaid programs of smoking, drug abuse, and excessive alcohol consumption.

F. Beneficiary Awareness and Prevention

As part of our long range efforts to study and move toward some form of capitation system for payment of health care services, we are interested in projects which examine the understanding beneficiaries have with respect to the Medicare and/or Medicaid programs, and the impact beneficiary awareness/education efforts have on program understanding, selection of health care alternatives, and selection of treatment modalities.

We are interested in projects that facilitate more informed Medicare beneficiary choice through the awareness of costs and service options available in specific geographic areas. For example, an independent broker could be responsible for a variety of tasks including marketing and enrolling beneficiaries for specific offerings. Such a model might mitigate against self-selection or HMO/CMP selection bias. Applicants should indicate the extent to which cooperation would be obtained from HMOs/CMPs and other providers offering to participate in the project. Any proposal in this area must address how the concept could be implemented within HCFA s current HMO risk contract program.

As a result of a special solicitation published in 1983, HCFA has funded two 6-year projects to test the cost-effectiveness of providing Medicare prevention services. The projects are located at the University of North Carolina at Chapel Hill and Blue Cross/Blue Shield of Massachusetts in Boston. In addition, a special solicitation for Medicare prevention demonstration sites was published on May 29, 1987 (52 FR 20147) in response to section 9314 of Pub. L. 99–272. We plan to fund five 4-year projects beginning in early fiscal year 1988 from that solicitation.

G. Subacute and Long Term Care

1. *State Programs for Long-Term Care.* Medicaid is a principal source of funding for long term care (LTC) in the United States. Between 1973 and 1984, LTC expenditures under Medicaid increased by over $12 billion, an average annual rate of increase of about 18 percent. This growth rate is the fastest for any health service area, and is expected to continue to increase in the future, due in part to demographic trends. Medicaid is a program operated and funded by States. The Federal government shares in the funding of the Medicaid program through the Federal matching percentage rate established for each State. Since we share in the financing of this program, and in view of the anticipated growth in costs, we share the States' interest in projects that would provide a better understanding of the current LTC delivery and financing systems under Medicaid and that would design and test alternatives to these systems.

Various researchers have conducted initial descriptive efforts concerning the design of alternative payment systems, case-mix methodologies, and other approaches that affect cost and quality of LTC. Examples of these studies are: Birnbaum et al., Abt Associates, Inc., (1981); Grimaldi, American Enterprise Institute (1981); Spitz and Urban Institute (1981); and Shaughnessy et al., Center for Health Services Research, University of Colorado (1980, 1982). More recently, several reports have described the results of demonstrations that tested the ability of expanded home and community-based care to substitute for institutional care (Kemper et al., 1986; Berkeley Planning Associates, 1985). Other recent projects are developing and testing case-mix-based prospective payment systems for nursing home care. In addition, some States are beginning to link nursing home case-mix payment systems to innovative quality assurance systems. We are interested in projects that build upon the results of previous research to provide new knowledge or test innovative approaches to cost-effective delivery of and payment for long term care services. Specifically, there is interest in the following types of projects.

a. Projects that test alternative financing schemes for LTC services, including capitation, patient-related or case-mix-based prospective payment, and Medicaid competitive bidding systems for skilled nursing facility and intermediate care facility levels of care; projects that demonstrate the intergration of payment for the continuation of services under an episode of care; and approaches that expand private risk-sharing for LTC costs, such as private LTC health insurance models, life care centers, and various State tax incentive programs. We are looking for State and local entities to test, over a multi-year period, innovative managed care systems with Federal funding provided under various nontraditional payment arrangements.

b. Projects that assess the effects of innovative State, local, and private programs to promote home care by the family or by other community support arrangements.

For example, research and demonstration projects that focus on specific LTC populations such as Alzheimer's patients, AIDS patients, the institutionalized elderly, the mentally retarded and developmentally-disabled, or persons at risk of institutionalization because they have no family network; the purpose of these projects being to provide information about the types and costs of services needed by these groups and about cost-effective ways of providing services. (We note that section 9342 of the Omnibus Budget Reconciliation Act of 1986 Pub. L. 99–509, mandated that at least 5 and not more than 10 demonstration projects be conducted to determine the effectiveness, cost, and impact on health status of providing comprehensive

services to Medicare beneficiaries who are victims of Alzheimer's disease and related disorders. We plan to conduct a separate solicitation for these sites.)

We are interested in projects that test new methods and information systems to target services more precisely to at-risk population subgroups to ensure cost-effectiveness.

We are interested in analyzing how States are using preadmission screening programs to prevent unnecessary nursing home admissions and to help target in-home services toward appropriate persons; and in determining the factors that may affect their potential for cost savings.

c. We are interested in projects that examine how State and local area variations in patient demand (e.g., population distributions of age, income, and functional and cognitive impairments), supply (availability of nursing home beds and community and home care services), and program characteristics (e.g., coverage and payment policies) affect total use and cost of long term care services under Medicaid. We are interested in how these variables interact and what approaches or combinations of characteristics appear to be associated with efficient and rational allocations of resources across institutional and community settings.

d. We are interested in projects that examine more closely the costs and financing for home and community care across payors to enable us to better estimate total expenditures for these services, the sources of funding, and the types of entities furnishing these services.

e. We are interested in learning more about the number and characteristics of patients who spend down their resources and become Medicaid eligible after admission to nursing homes, particularly the length of time involved in this spend-down process and the amounts and types of assets and resources that commonly are divested to spend down.

2. *Medicare Subacute Care.* The Medicare program provides payment for skilled home health services and short-term post hospital care in a skilled nursing facility. We are interested in new projects that study cost-effective approaches to the delivery and payment for subacute care. For example, projects that test whether carefully targetted reconfiguration of current Medicare home health benefits (e.g., modifications of the Federal policies in the following areas: homebound requirement, limitation to intermittent and part-time care, or exclusion of coverage of drugs) would be cost-effective by reducing Medicare expenditures for inpatient hospital, skilled nursing facility, outpatient hospital, or other services. Applicants should describe clearly how services would be targetted to cases where cost savings are most likely and what mechanisms would be used to assess whether the provision of these additional services at home affects the quality of care.

II. Availibility of Funds for Cooperative Agreements and Grants

A. General

A review of the requirements for existing projects and our expected FY 88 budget indicates that approximately $4 million may be available to HCFA's Office of Research and Demonstrations to fund new cooperative agreements and grants for research and demonstration projects in the priority areas listed in section I.

Applications for cooperative agreements and grants may be submitted to HCFA by private or public non-profit agencies or organizations, including State agencies that administer the Medicaid program. Private for-profit organizations may apply for cooperative agreements and grants (discretionary funds) under section 1110(a)(1) of the Social Security Act, 402(a)(1) of the Social Security Amendments of 1967 (Pub. L. 90–248), as amended, and section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92–603), as amended.

B. Authorities

Our authority for making these awards is based on the following:

1. The Social Security Act, section 1110, 42 U.S.C. 1310, "Cooperative Research or Demonstration Projects" and section 1115(a), 42 U.S.C. 1315(a), "Demonstration Projects";

2. The Social Security Act, section 1875, 42 U.S.C. 1395ll, "Studies and Recommendations"—for cooperative agreements only and section 1881(f), 42 U.S.C. 1395rr(f), "End Stage Renal Disease Experiment and Pilot Projects";

3. Section 402 of the Social Security Amendments of 1967 (Pub. L. 90–248), as amended. 42 U.S.C. 1395b–1, "Experiments and Demonstration Projects"; and

4. Section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92–603), as amended, 42 U.S.C. 1395b–1 (note), "Experiments and Demonstration Projects".

In the discussion below, we refer to the Social Security Act simply as "the Act".

C. Regulations

General policies and procedures that govern the administration of all Department of Health and Human Services (HHS) cooperative agreements and grants are located in Title 45 of the Code of Federal Regulations (CFR), Part 74. All applicants are urged to review the requirements contained in those regulations.

D. Number and Size of Projects

Most awards range from $75,000 to $300,000 per year. We may also award some projects for larger amounts. The number of cooperative agreements and grants depends on the availability of funds; needs of projects that are continuing from prior years; priority interest areas established by HCFA; and technical quality of applications.

E. Duration of Funding

We fund projects for a period of one year at a time and may continue funding on a non-competitive basis, generally for up to three years, if we made the original award as a multiple year project. Continuation funding is contingent on the availability of future year funds, the applicant's ability to meet prior year project objectives, and the continued relevance of the project to HCFA.

We treat applications that seek to continue a project for a longer period of time than that stated in the original award as new projects. Thus, they must compete for available funds, and we will review these applications competitively along with all other new applications.

F. Special Solicitations

As the need arises for special projects, we may announce special solicitations in the **Federal Register**.

III. Cooperative Agreements and Grants Subject Matter

A. General Considerations

The cooperative agreements and grants we award are intended to assist in the resolution of major health financing issues or in developing new methods for the administration of HCFA programs.

The HCFA cooperative agreement and grants program focuses primarily on analyses, experiments, pilot projects and demonstrations that provide information useful for the Medicare and Medicaid programs. For FY–1988 we have identified a number of areas where specific information or operational experience is necessary to improve program effectiveness or guide decisions anticipated in the near future. A detailed

description of these priority areas is set forth in section I.

Applications for priority area cooperative agreements and grants should be limited to one priority. Applications that fit one of the priority areas will be considered as solicited. Applications that do not fit one of the priority areas will be considered unsolicited applications and will be reviewed by a special panel, or by a panel appointed for a priority area that has the technical expertise most closely related to the subject of the unsolicited application.

B. Cooperative Agreements and Grants

The principal purpose of HCFA's cooperative agreements and grants program is to stimulate and support statutorily authorized research and demonstration projects.

All cooperative agreements will include an explicit statement of the nature, character, and intent of anticipated Federal programmatic involvement to ensure that the responsibilities of both parties are understood. Each cooperative agreement will incorporate the requirements of 45 CFR Part 74 among its terms and conditions.

Cooperative agreements will not be awarded to a State Medicaid agency for section 1115 projects in which only waivers of Federal regulations or costs not otherwise matchable under section 1115(a)(2) are approved to carry out a demonstration. The instrument to be used for such an award will be a grant without discretionary funds for waivers and costs authorized under section 1115(a)(2).

Cooperative agreements may be awarded for section 1115 projects with discretionary funds, even if waivers, and costs under section 1115(a)(2) are also involved. In such cases, the cooperative agreement conditions will apply to the entire operation and management of the project. Cooperative agreements may be used for projects awarded under all other authorities listed in section II B.

HCFA may suspend or terminate any cooperative agreement or grant in whole, or in part, at any time before the date of expiration, whenever it determines that the awardee has materially failed to comply with the terms of the cooperative agreement or grant. HCFA will promptly notify the awardee in writing of the determination and the reasons for the suspension or termination together with the effective date. In addition, HCFA reserves the right to withdraw waivers at any time if it determines that continuing the waivers would no longer be in the public interest. If a waiver is withdrawn, HCFA will be liable only for normal close-out costs.

C. Waivers

Researchers who wish to conduct demonstrations that would require Medicaid rules to be waived must coordinate their applications with the appropriate State Medicaid agency. State or privale agencies that wish to ask for Medicaid or Medicare waivers are strongly encouraged to coordinate with researchers or research firms in order to ensure that the experimental design and evaluation protocol are of the highest quality.

1. *Section 1115(a) Projects.* Under section 1115(a)(1) of the Act, compliance with statutory Medicaid State plan requirements (section 1902 of the Act) may be waived in order to enable a State Medicaid agency to carry out a demonstration project that will further the general objectives of the Medicaid program.

Under section 1115(a)(2) of the Act, we may consider costs of an 1115(a) project that otherwise would not properly be included as expenditures under the State plan and thus subject to Federal financial participation.

Unless they are specifically waived, all requirements of the Act, the Code of Federal Regulations, and other issuances that pertain to the Title XIX program apply to a project approved under section 1115(a).

If a State Medicaid agency applies for a section 1115(a) project, it should give special attention to the preparation of the budget. The agency must provide estimates of the cost or savings attributable to the demonstration project, contrasted with the normal Federal program costs. That is, the agency must furnish the estimated yearly cost before waivers, and after waivers, for both service costs and administrative costs. These budgets are substantially more extensive than the budget for other applications (see HCFA–PG–11A, Instructions for Completion of Federal Assistance Application, form HCFA–PG–11). (See paragraph 3 below for methodology for estimating costs.)

If the application is approved, the quarterly expenditures must be reported to the Office of Research and Demonstrations (ORD), HCFA, in the form to be designated in the special terms and conditions of approval.

2. *Other Waivers.* Waivers of the requirements of titles XVIII and XIX of the Act, and of corresponding HCFA regulations, may be requested for projects conducted under section 222(a) of the Social Security Amendments of 1972, as amended, and section 402 of the Social Security Amendments of 1967, as amended. The waivers requested must relate to an experimental or demonstration project that involves changes in the benefit package or method of payment. In applying for these waivers or changes in reimbursement or Federal financial participation, the applicant must provide sufficient budgeting information to permit estimates of the likely cost or savings of the project compared to the normal Federal program costs. That is, the application must furnish the estimated yearly cost, before waivers and after waivers, for both program and administrative costs. (See paragraph 3 below for methodology for estimating costs.)

If the application is approved, the awardee must furnish quarterly expenditures in the manner designated by ORD, HCFA in the special terms and conditions of the cooperative agreement or grant.

3. *Methodology for Estimating Gross Cost of Projects Involving Waivers.* HCFA will define the methodology to be used in estimating gross and net waiver costs. A description of this methodology may be obtained by contacting the individuals named at the beginning of this notice. This methodology is subject to change and applicants are therefore instructed to ensure they are using the most current methodology for future solicitations.

IV. Application Procedures

A. Letter of Intent

To receive full consideration, potential applicants must submit a letter, stating their intent to file an application, 45 days prior to the closing date of each cycle (see VII, Closing Date and Times). The letter should be submitted to the address listed below (section IV.B.) Attention: Paul McKeown. At a minimum, this letter should contain the following:

1. Identification of the priority area to which the application responds;
2. Title of project;
3. Brief abstract (description of project);
4. Estimated cost (by project year); and
5. A statement as to whether waivers will be required.

Failure to submit a letter of intent may result in the application receiving less than full consideration.

B. Application Forms

A standard application form is available for the HCFA research and demonstration cooperative agreement

and grants program. Application kits and guidance for the completion of the forms are available from: Health Care Financing Administration, Office of Management and Budget, Administrative Contracts and Grants Branch Room 364, East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207–5187, (301) 594–3342.

Each application must be limited to one priority area. The application must include, in the project title block, the priority area title to which the applicant is responding. The priority area designation must also be clearly marked on the outside of the package or envelope. Where we determine a different priority area is a more appropriate area for consideration of a proposal, HCFA reserves the right to change priority area designation without notifying the applicant.

C. Criteria for Screening and Reviewing Applications

1. *Screening Requirements.* In order for an application to be in conformance, it must meet all of the following requirements:

a. Length: The applicant should provide a brief (1 or 2 paragraph) abstract summarizing the objectives of the proposal. A summary, not to exceed 5 pages, of the proposed project must be included. This summary should discuss the project objectives, hypotheses to be examined, data to be used and its source(s), model type(s) and structure(s) to be used in analyses, resources available to conduct the project, and amount and duration of support requested. The narrative portion of the application should be printed single-sided, double-spaced, and should not exceed 80 double spaced pages, exclusive of resumes, forms, etc. Applications should neither be unduly elaborative nor contain voluminous or unnecessary documentation

b. Number of copies: An original signed application and 12 copies must be submitted. Medicaid State agencies are required to submit an original signed application and 2 copies.

c. HCFA Priorities: Those projects which specifically address a priority area/topic stated in this announcement will receive preference. Non-priority area applications which relate to the goals and objectives of Titles XVIII or XIX will be considered for funding pending available funds.

d. Title XIX Demonstration Proposals: Demonstration proposals involving the Medicaid program must be submitted by the single State agency responsible for administration of the Medicaid program in that State.

APPLICATIONS THAT DO NOT MEET THESE SCREENING REQUIREMENTS GENERALLY WILL NOT BE REFERRED TO REVIEW PANELS.

2. *Evaluation Criteria.* Applications which meet the screening criteria will be reviewed by a technical review panel composed of at least three individuals. Reviewers will score the applications basing their scoring decisions and approval recommendations on the following criteria. Relative weights are shown in parentheses.

a. Project Methodology/Design: (40 Points). The application describes specific plans for conducting the project in terms of the tasks to be performed. It includes relevant information about (i) hypotheses to be tested (if applicable); (ii) concise and clear statement of goals and measurable/achievable objectives; (iii) what the project will do be conducted; (v) data to be collected (including specification of data sources); (vi) plan for data analysis; (vii) milestones/phases in the progress of the project.

Specifically, the proposal should contain the following:

i. A clear, quantifiable statement of the project goals and objectives.

ii. An explicit description of the research design, including the questions to be addressed and the methods and data to be used. The methodology must be well defined and scientifically valid.

iii. If the project is a demonstration proposal, the applicant should include separate sections on both the research design and the evaluation design. The research design section should include a detailed description of the reimbursement methodology and other programmatic changes. The evaluation section should provide an indication of the applicant's understanding of the evaluation issues and the various approaches to them. Should an award be made, the applicant may be required to collect data in a standardized manner to facilitate evaluation efforts. HCFA will have the option of determining whether the applicant or HCFA will be responsible for the evaluation.

iv. Demonstrations must contain a phase-down/phase-out plan that: (a) Ensures that Medicare and Medicaid beneficiaries, as well as any other project participants, are phased out of any special programs which were initiated and exist as reimbursable or covered health services only under the auspices of the project, or ensures that plans are in effect to provide other care for the project participants by the date the project is scheduled to end; and (b) ensures that any new payment methods initiated by the project will cease to apply at the scheduled end of the project, i.e., the project in and of itself cannot commit the Medicare or Medicaid programs to an indefinite use of the payment methodology beyond the scheduled end of the project.

v. The tasks and milestones must be clearly described and scheduled and must include a schedule of reports to be submitted to HCFA. (Progress and Financial Reports as required by 45 CFR Part 74)

vi. The application must contain information specifying the availability of the data to be used, if data are to be collected. The discussion must describe the nature of the data sought, the sample design and size, controls and comparisons (if any), and the problems that might be encountered in collection. Data that are collected under a HCFA cooperative agreement or grant must be available to HCFA or its agents. However, the applicant must ensure the confidentiality of any personally identifiable information collected under the auspices of any HCFA cooperative agreement or grant. The application must contain detailed plans to protect the confidentiality of all information that identifies individuals under the project. The plan must specify that such information is confidential, that it may not be disclosed directly or indirectly except for purposes directly connected with the conduct of the project, and that in all cases where disclosure takes place the informed written consent of the individual must be obtained.

vii. Projects that require waivers (for example, those under section 1115(a) of the Act, section 222(a) of the Social Security Amendments of 1972, as amended, and section 402(a) of the Social Security Amendments of 1967, as amended) must define the services, list the waivers, discuss the implications if such waivers are granted, and state the effect on Federal, State, and local laws as well as the effect (beneficial or adverse) on individuals enrolled in the project.

If the project involves both Medicare and Medicaid waivers, a request for Medicaid waivers from the State agency administering the Medicaid program must be included with the application. Applicants should contact HCFA for further information if questions arise in these cases.

b. Knowledge/Experience/Capability in Area: (20 Points). The application describes the applicant's prior experience in the area, or in related areas. The principal investigator and other key staff are qualified and possess the experience in this or related areas and the variety of skills required to

produce final results that are readily comprehensible and usable. The application should provide evidence of understanding and knowledge of prior and ongoing work in the area. Specific information must also be provided concerning how the personnel are to be organized in the project, to whom they will report, and how they will be used to accomplish specific objectives or portions of the project.

c. Level of Effort: (20 Points). The resources that will be needed to conduct the project are specified, including personnel, time, budget, and facilities. The staffing pattern clearly links responsibilities/levels of efforts to project tasks. The project's costs are reasonable in view of the anticipated results. Any collaborative effort (including subcontracts) with other organizations is clearly identified and written assurances included. A description by category (personnel, travel, consultants, etc.) of the total of the Federal funds required is included. Funds are specified for each budget period.

Specifically, the application should contain the following:

i. Information specifying the availability of adequate facilities and equipment for the project or clearly state how these are to be obtained.

ii. The budget must be developed in detail with justification and explanations for the amounts requested. The estimated costs must be reasonable considering the anticipated results.

iii. Applicants are expected to contribute towards the project costs. Generally, 5 percent of the total costs is considered acceptable. No demonstration project will be awarded that covers 100 percent of the project's costs. The budget may not include costs for construction or remodeling, or for project activities that take place before the applicant has received official notification of HCFA approval of the project.

iv. For demonstration projects involving waivers, budget estimates for the administrative and service costs must be prepared in accordance with the methodology specified in III.C.3.

Waiver-only applications must also contain estimates prepared in accordance with the methodology specified in section III.C.3. of this notice, of the amount of program and administrative expenditures that will occur under the waivers and a comparison of these expenditures to those that are projected to occur in the programs in the absence of the waivers.

v. Each application must include a statement that if the project is awarded, the awardee will furnish quarterly expenditures for administrative and program costs (and, for demonstration projects involving waivers, for service costs) for the project within the approved budget, in the format to be specified under special terms and conditions in the cooperative agreement or grant.

d. Project Objectives and Expected Outcomes: (20 points)

How closely do the project objectives fit those of the solicitation? What is the intrinsic merit of the research/study? The need for the project is discussed in terms of the importance of the issues to be addressed and the particular project proposed, as well as how the proposed project builds on and expands previous work in the area. The potential usefulness of the anticipated results and expected benefits to HCFA and other target groups. The application should discuss plans for utilization of the project's results.

V. Other Considerations

A. Selection Criteria for Funding New Projects

Although the recommendations of the technical review panels are a major factor in making the decision about an application, review scores and recommendations are not the only factors. The compatibility of applications to HCFA priorities as judged by HCFA Senior Staff, the availability of HCFA resources, and the comments of other HCFA and Department staff are considered in making funding decisions.

B. Other Requirements

1. While HCFA does not require review under Executive Order 12372, Intergovernmental Review of Federal Programs (47 FR 30959), all applicants must, nevertheless, determine whether review by the appropriate State and area-wide clearinghouse is required.

2. Applications approved by HCFA for funding will contain a specific set of special terms and conditions that must be approved by the applicant as a condition of award. These include the following:

a. The HCFA Project Officer shall be notified prior to formal presentation of any report or statistical or analytical material based on information obtained through this cooperative agreement. Formal presentation includes papers, articles, professional publications, speeches, and testimony. In the course of this research, whenever the Principal Investigator determines that a significant new finding has been developed, he will immediately communicate it to the HCFA Project Officer before formal dissemination to the general public.

The final report of the project may not be released or published without permission from the HCFA Project Officer within the first 4 months following the receipt of the report by the HCFA Project Officer. The final report will contain a disclaimer that the opinions expressed are those of the awardee and do not necessarily reflect the opinions of HCFA.

b. At any phase of the project, including the project's conclusion, the awardee, if requested by HCFA, must submit the analytic data file(s), with appropriate documentation, representing the data developed/used in end-product analyses generated under the award. The analytic file(s) may include primary data collected, acquired or generated under the award and/or data furnished by HCFA. The content, format, documentation, and schedule for production of the data file(s) will be agreed upon by the principal investigator and the HCFA Project Officer. The negotiated format(s) could include both file(s) that would be limited to HCFA internal use and file(s) which HCFA could make available to the general public.

c. At any phase of the project, including at the project's conclusion, the awardee, if so requested by HCFA, must deliver to HCFA any material, system, or other items developed, refined or enhanced in the course of or under the award. The awardee agrees that HCFA shall have royalty-free nonexclusive and irrevocable rights to reproduce, publish or otherwise use and to authorize others to use the items for Federal Government purposes.

d. Additional specific project requirements may be included in special cooperative agreement or grant solicitations.

3. *Final Reports.* When a project is completed, the awardee must submit a final report. As a minimum, the report must contain the following:

a. Identification of the project director, principal investigator, cooperative agreement or grant number, awardee, and title of the project.

b. Acknowledgment of the support received from HCFA, and a disclaimer to the effect that the findings do not necessarily reflect the opinions or policies of HCFA.

c. An executive summary (one or two pages) that provides an overview of the project and highlights significant findings.

d. A description of the initial hypotheses, objectives, and scope of the project.

e. An explanation of the study methodology.

f. A discussion of significant findings and demonstration or research results (and the implications of these results, if any).

On a semi-annual basis during the course of the project, the awardee must provide a list and copies of all papers presented, and of all articles, reports, and other types of publications that result from the project, for inclusion in a subject bibliography system maintained by the Office of Research and Demonstrations, HCFA. It is further requested that the awardee continue to provide the updated information for 2 years after the project's completion.

The ORD Author's Guidelines for Cooperative Agreements, Grants, and Contracts should be used in preparing the final report. This document is available on request from the ORD Publications Coordinator, Room 1–C–9 Oak Meadows, 6325 Security Boulevard, Baltimore, Md, 21207, (301) 594–7270.

D. Multiple Applications

The applicant must indicate when the same or a similar application is submitted to another HHS agency; for example, the Social Security Administration, the Office of Human Development Services, or to one of the Public Health Service programs.

E. Cooperative Agreement and Grant Policies

Projects are funded through a competitive process and chosen from among the applications submitted in response to this notice. In the case of demonstration projects, all awardees are expected to share directly in the costs of the projects. Normally, this sharing must be at least 5 percent of the total project costs. For section 1115(a) projects, the amount that the single State agency will be expected to provide generally must be at least 5 percent of the special Federal project funds. This amount may not be in-kind contributions.

If, following review of a proposed activity, HCFA determines that a research or demonstration project presents a danger to the physical or mental well-being of a participant of the project, then Federal funds will not be made available for that project without the written, informed consent of each participant.

Other policies including responsibilities, awarding and payment procedures, special provisions, and assurances may be found in 45 CFR Part 74, Administration of Grants, a reprint of which is included in the application kit.

It is a national policy to place a fair share of purchases with small, minority-owned, and woman-owned business firms (45 CFR Part 74, appendices G and H). DHHS is strongly committed to the objectives of this policy and encourages all recipients of its cooperative agreements and grants to take affirmative steps to ensure such fairness. In particular, recipients should:

1. Place small, minority-owned, and woman-owned business firms on bidders mailing lists;

2. Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services;

3. Where feasible, divide total requirements into smaller needs, and set delivery schedules that will encourage participation by these firms; and

4. Use the assistance of the Minority Business Development Agency of the Department of Commerce, the Office of Small and Disadvantaged Business Utilization, DHHS, and similar available State and local governmental agencies.

VI. Review of Applications

An independent review will be conducted by a panel of not less than three experts. The panel will include experts from both DHHS and the private sector.

In most cases, there will be at least one independent review panel for each priority area, including, if necessary, one designated to review applications that do not fit in a priority area. An ORD chairperson will coordinate the panel's review but will not vote. The chairperson will also prepare the panel's recommendation (summary statement) to the Director, ORD. The panel's recommendation will contain numerical ratings (based on the rating criteria specified in section IV), ranking of all applications, and a written assessment of each application. These will be summarized in a ranking and approval list and a matrix will be prepared for each application.

Applicants may request in writing a copy of the summary statement on the review of their application after they have received from HCFA the letter announcing approval or disapproval. Summary statements will be made available subject to the applicable limitations of the Freedom of Information Act (5 U.S.C. 552), the Federal Advisory Committee Act (5 U.S.C. App. I.), the Privacy Act (5 U.S.C. 552a), and 45 CFR Parts 5, 5b, and 11.

VII. Closing Date and Times

We will process cooperative agreement and grant applications once a year and make award announcements approximately five to six months after the closing date. The following closing dates apply for cooperative agreement and grant applications with or without requests for waivers:

FY 1988

Friday, November 20, 1987 (Waiver only and discretionary funds awards)
Monday, May 2, 1988 (Waiver-only)

FY 1989

Monday, November 7, 1988 (Waiver-only and discretionary funds awards)
Monday, May 1, 1989 (Waiver-only)

FY 1990

Monday, November 6, 1989 (Waiver-only and discretionary funds awards)
Monday, May 7, 1990 (Waiver-only)

Applications mailed through the U.S. Postal Service or a commercial delivery service will be "on time" if they are received on or before the closing date, or sent on or before the closing date and received in time for submission to the independent review group (see section VI, Review of Applications). Applicants are cautioned to request a legible U.S. Postal Service postmark or to obtain a legibly dated receipt from the commercial carrier or the U.S. Postal Service. Privately metered postmarks will not be acceptable as proof of timely mailing.

Applications that do not meet the above criteria will be considered late applications. Those submitting late applications will be notified that the applications were not considered in the current competition.

(Sec. 1110, 1115(a), 1875, and 1881(f) of the Social Security Act (42 U.S.C. 1310, 1315(a), 139511, 1395rr(f); section 222(a) of the Social Security Amendments of 1972, as amended (42 U.S.C. 1395b–1 (note)); section 402 of the Social Security Amendments of 1967, as amended (42 U.S.C. 1395b–1); section 603 of the Social Security Amendments of 1983 (Pub. L. 98–21); section 605(b) of the Social Security Amendments of 1983 (42 U.S.C. 1395x(v)(1)(E)(note))

(Catalog of Federal Domestic Assistance Programs No. 13.766 Health Financing Research, Demonstrations and Experiments)

Dated: July 28, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87–20650 Filed 9–9–87; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

Acquired Immunodeficiency Syndrome Program Advisory Committee; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972, [Pub. L. 92–463, 86 Stat. 770–776] the Director, National Institutes of Health, announces the establishment by the Secretary, Department of Health and Human Services, of the Acquired Immunodeficiency Syndrome Program Advisory Committee.

The Acquired Immunodeficiency Syndrome Program Advisory Committee will advise the NIH on all aspects of AIDS research. The Committee will identify opportunities to further research on AIDS and recommend initiatives that should be undertaken to advance knowledge in diagnosing, preventing, and treating the disease. The Committee will also advise on research directions and identify areas of research requiring additional effort.

Unless renewed by appropriate action prior to its expiration, this Committee shall terminate two years from the date the charter is approved.

Dated: September 3, 1987.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 87–20732 Filed 9–9–87; 8:45 am]

BILLING CODE 4140–01–M

Animal Resources Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the subcommittee on Primate Research Centers of the Animal Resources Review Committee, Division of Research Resources, October 30, 1987, Chateau LeMoyne Holiday Inn, 301 Rue Dauphine, New Orleans, Louisiana 70112.

This meeting will be open to the public from 8:30 a.m. to 9:00 a.m. for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provision set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub., L. 92–463, the meeting will be closed to the public from 9:00 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications submitted to the Animal Resources Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly warranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B13, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the committee members upon request. Dr. David L. Madden, Executive Secretary of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health, Building 31, Room 5B55, Bethesda, Maryland 20892, (301) 496–5175, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Laboratory Animal Sciences, National Institutes of Health)

Dates: August 31, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–20729 Filed 9–9–87; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Clinical Trials Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, October 25–27, 1987, at the Days Inn Hotel, 1775 Rockville Pike, Rockville, Maryland 20852.

The meeting will be open to the public on October 25, from 7:30 p.m. to approximately 8 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on October 25 from approximately 8 p.m. to recess, and from 8 a.m. on October 26 to adjournment on October 27, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Therefore, this meeting is concerned with matters exempt from mandatory disclosure under sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Norman S. Braveman, Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, Room 550B, Bethesda, Maryland 20892, phone (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: August 31, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–20730 Filed 9–9–87; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute, National Heart, Lung, and Blood Advisory Council and Its Research Subcommittee and Training Subcommittee; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, October 22–23, 1987, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, Maryland 20892. In addition, the Research Subcommittee and the Training Subcommittee of the above Council will meet on October 21, 1987, at 1 p.m. and 8 p.m. respectively, in Building 31, Conference Room 4.

The Council meeting will be open to the public on October 22 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., section 10(d) of Pub. L. 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. on October 22 to adjournment on October 23 for the review, discussion, and evaluation of individual grant applications. The meetings of the Research Subcommittee and the Training Subcommittee of the above Council on October 21, will be

closed from 1 p.m. and 8 p.m., respectively, to adjournment for the review, discussion, and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Council members.

Dr. David M. Monsees, Jr., Executive Secretary of the Council, Westwood Building, Room 7A–15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7548, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: August 31, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–20731 Filed 9–9–87; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following study sections for October through November 1987, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5 U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	October-November 1987 meetings	Time	Location
Allergy & Immunology, Dr. Eugene Zimmerman, Rm. 320, Tel. 301–496–7380	Oct. 15–17	8:30	Crowne Plaza, Rockville, MD
Bacteriology & Mycology–1, Dr. Timothy J. Henry, Rm. 304, Tel. 301–496–7340	Oct. 21–23	8:30	Holiday Inn, Bethesda, MD
Bacteriology & Mycology–2, Dr. William Branche, Jr., Rm 306, Tel. 301–496–7682	Oct. 21–23	8:30	Marbury House, Georgetown, DC.
Behavioral Medicine, Dr. Joan Rittenhouse, Rm. 438, Tel. 301–496–7109	Oct. 7–9	8:00	Canterbury, Hotel, Washington, DC.
Biochemical Endocrinology, Dr. Janos Varga, Rm. 226, Tel. 301–496–7430	Oct. 19–21	8:30	Holiday Inn, Bethesda, MD
Biochemistry–1, Dr. Adolphus P. Toliver, Rm. 318B, Tel. 301–496–7516	Oct. 26–29	8:30	Crowne Plaza, Rockville, MD
Biochemistry–2, Dr. Alex Liacouras, Rm. 318A, Tel. 301–496–7517	Oct. 14–16	8:30	Holiday Inn, Bethesda, MD
Bio-Organic & Natural, Products Chemistry, Dr. Michael Rogers, Rm. 5, Tel. 301–496–7107	Oct. 22–24	9:00	Holiday Inn, Bethesda, MD
Biophysical Chemistry, Dr. John B. Wolff, Rm. 236B, Tel. 301–496–7070	Oct. 22–24	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Bio-Psychology, Dr. A. Keith Murray, Rm. 220, Tel. 301–496–7058	Oct. 5–8	9:00	Ramada Inn, Bethesda, MD
Cardiovascular & Pulmonary, Dr. Anthony C. Chung, Rm. 2A–04, Tel. 301–496–7316	Oct. 28–30	8:30	Holiday Inn, Georgetown, DC
Cardiovascular & Renal, Dr. Rosemary Morris, Rm. 321, Tel. 301–496–7901	Oct. 19–21	8:30	Howard Johnson Plaza Hotel, Washington, DC.
Cellular Biology and Physiology–1, Dr. Gerald Greenhouse, Rm. 336, Tel. 301–496–7396.	Oct. 7–9	8:30	Room 4, Bldg. 31A, Bethesda, MD
Cellular Biology and Physiology–2, Dr. Frank Collins, Rm. 306, Tel. 301–496–7681	Oct. 19–21	8:30	Room 10, Bldg. 31C, Bethesda, MD
Chemical Pathology, Dr. Edmund Copeland, Rm. 353, Tel. 301–496–7078	Nov. 5–7	8:00	Marco Beach Hilton, Marco Island, FL.
Diagnostic Radiology, Dr. Catharine Wingate, Rm. 219B, Tel. 301–496–7650	Oct. 21–23	8:30	Historic Inns, Annapolis, MD
Endocrinology, Dr. Harry Brodie, Rm. 333, Tel. 301–496–7346	Oct. 12–14	8:30	Holiday Inn, Bethesda, MD
Epidemiology & Disease Control–1, Dr. Nathan Watzman, Rm. 203C, Tel. 301–496–7246	Oct. 14–16	8:00	Crowne Plaza, Rockville, MD
Epidemiology & Disease Control–2, Dr. Horace Stiles, Rm. 340, Tel. 301–496–7248	Oct. 14–16	8:00	Crowne Plaza, Rockville, MD
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Rm. 234, Tel. 301–496–7940	Oct. 20–22	9:00	Holiday Inn, Chevy Chase, MD
Experimental Immunology, Dr. Hugh Stamper, Rm. 222B, Tel. 301–496–7238	Oct. 14–16	9:00	Linden Hill Hotel, Bethesda, MD
Experimental Therapeutics–1, Dr. Morris Kelsey, Rm. 221, Tel. 301–496–7839	Oct. 21–23	8:30	Holiday Inn, Bethesda, MD
Experimental Therapeutics–2, Dr. Marcia Litwack, Rm. 2A03, Tel. 301–496–8848	Oct. 29–30	8:30	Holiday Inn, Bethesda, MD
Experimental Virology, Dr. Garrett V. Keefer, Rm. 206, Tel. 301–496–7474	Oct. 19–21	8:30	Room 8, Bldg. 31C, Bethesda, MD
General Medicine A–1, Dr. Harold Davidson, Rm. 354A, Tel. 301–496–7797	Oct. 21–23	8:30	Wellington Hotel, Washington, DC.
General Medicine A–2, Dr. Donna J. Dean, Rm. 354B, Tel. 301–496–7140	Oct. 21–23	8:30	Holiday Inn, Bethesda, MD
General Medicine B, Dr. Daniel McDonald, Rm. 322, Tel. 301–496–7730	Oct. 7–9	8:00	Crowne Plaza, Rockville, MD
Genetics, Dr. David Remondini, Rm. 349, Tel. 301–496–7271	Oct. 15–17	9:00	Room 6, Bldg. 31C, Bethesda, MD.
Hearing Research, Dr. Joseph Kimm, Rm. 225, Tel. 301–496–7494	Oct. 7–9	8:30	Omni Shoreham Hotel, Washington, DC
Hematology–1, Dr. Clark Lum, Rm. 355A, Tel. 301–496–7408	Oct. 22–24	8:00	Hyatt Regency Hotel, Bethesda, MD
Hematology–2, Dr. Joel Solomon, Rm. 355B, Tel. 301–496–7508	Oct. 28–30	8:00	Marbury House, Georgetown, DC
Human Development & Aging–1, Dr. Teresa Levitin, Rm. 303, Tel. 301–496–7025	Oct. 28–30	9:00	Omni Shoreham Hotel, Washington, DC
Human Development & Aging–2, Dr. Louis Quatrano, Rm. 305, Tel. 301–496–7640	Oct. 14–16	8:30	Marbury House, Georgetown, DC
Human Development & Aging–3, Dr. Anita Sostek, Rm. 203A, Tel. 301–496–9403	Oct. 26–27	8:30	Guest Quarters Hotel, Bethesda, MD
Human Embryology & Development, Dr. Arthur Hoversland, Rm. 319A, Tel. 301–496–7597	Oct. 20–23	8:30	Wellington Hotel, Washington, DC
Immunobiology, Dr. William Stylos, Rm. 222A, Tel. 301–496–7780	Oct. 14–16	8:30	Wellington Hotel, Washington, DC
Immunological Sciences, Dr. Anita Weinblatt, Rm. 233A, Tel. 301–496–7179	Oct. 7–9	8:30	Wellington Hotel, Washington, DC
Mammalian Genetics, Dr. Jerry Roberts, Rm. 349, Tel. 301–496–7271	Oct. 22–24	8:30	Room 4, Bldg. 31A, Bethesda, MD
Medicinal Chemistry, Dr. Ronald Dubois, Rm. 5, Tel. 301–496–7107	Oct. 14–17	9:00	Holiday Inn, Chevy Chase, MD
Metabolic Pathology, Dr. Marcelina Powers, Rm. 435, Tel. 301–496–5251	Oct. 28–30	9:00	Holiday Inn, Georgetown, DC
Metabolism, Dr. Krish Krishnan, Rm. 339A, Tel. 301–496–7091	Oct. 22–24	8:30	Room 8, Bldg. 31C, Bethesda, MD
Metallobiochemistry, Dr. Edward Zapolski, Rm. 310, Tel. 301–496–7733	Oct. 22–24	8:30	St. James Hotel, Washington, DC
Microbial Physiology & Genetics–1, Dr. Martin Slater, Rm. 238, Tel. 301–496–7183	Oct. 28–30	8:30	Sheraton Potomac, Rockville, MD
Microbial Physiology & Genetics–2, Dr. Gerald Liddel, Rm. 357, Tel. 301–496–7130	Oct. 28–30	8:30	Crowne Plaza, Rockville, MD
Molecular & Cellular Biophysics, Dr. Patricia Jost, Rm. 236A, Tel. 301–496–7060	Oct. 22–24	8:30	Governor's House, Washington, DC.

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Study section	October-November 1987 meetings	Time	Location
Molecular Biology, Dr. Zain Abedin, Rm. 328, Tel. 301-496-7830	Oct. 15-17	8:30	Holiday Inn, Bethesda, MD
Molecular Cytology, Dr. Ramesh Nayak, Rm. 233B, Tel. 301-496-7149	Oct. 15-17	8:00	Room 8, Bldg. 31C, Bethesda, MD.
Neurological Sciences-1, Dr. Allen C. Stoolmiller, Rm. 437B, Tel. 301-496-7279	Oct. 14-16	8:00	Wellington Hotel, Washington, DC.
Neurological Sciences-2, Dr. Stephen Gobel, Rm. 1A05, Tel. 301-496-8808	Oct. 13-15	8:30	Holiday Inn, Georgetown, DC.
Neurology A, Dr. Catherine Woodbury, Rm. 326, Tel. 301-496-7095	Nov. 12-14	8:00	Days Inn, New Orleans, LA.
Neurology B-1, Dr. Jo Ann McConnell, Rm. 152, Tel 301-496-7846	Oct. 20-23	8:30	Governor's House, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, Rm. 152, Tel. 301-496-7422	Oct. 6-9	8:00	Wellington Hotel, Washington, DC.
Neurology C, Dr. Kenneth Newrock, Rm 232, Tel. 301-496-5591	Oct. 21-24	8:30	Governor's House, Washington, DC.
Nursing Research, Dr. Gertrude McFarland, Rm. A18, Tel. 301-496-0558	Oct. 26-29	8:00	Marriott Hotel, Bethesda, MD.
Nutrition, Dr. Ai Lien Wu, Rm. 204, Tel. 301-496-7178	Oct. 19-21	8:30	Holiday Inn, Bethesda, MD.
Oral Biology & Medicine-1, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	Oct. 12-15	8:30	Hyatt Arlington, Arlington, VA.
Oral Biology & Medicine-2, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	Oct. 5-8	8:30	Hyatt Arlington, Arlington, VA
Orthopedics & Musculoskeletal, Ms. Ileen Stewart, Rm. 350, Tel. 301-496-7581	Oct. 21-23	8:30	Ramada Inn, Bethesda, MD.
Pathobiochemistry, Dr. John Mathes, Rm A26, Tel. 301-496-7820	Oct. 21-23	8:30	Holiday Inn, Bethesda, MD.
Pathology A, Dr. John L. Meyer, Rm. 337, Tel. 301-496-7305	Oct. 14-16	8:00	Holiday Inn, Chevy Chase, MD
Pathology B, Dr. Nathan Watzman, Rm. 340, Tel. 301-496-7248	Oct. 21-23	8:30	Holiday Inn, Georgetown, DC
Pharmacology, Dr. Joseph Kaiser, Rm. 206, Tel. 301-496-7408	Oct. 20-22	8:30	American Inn, Bethesda, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Rm. 218B, Tel. 301-496-7120	Oct. 26-28	8:30	Crowne Plaza, Rockville, MD
Physiological Chemistry, Dr. Stanley Burrous, Rm. 339B, Tel. 301-496-7837	Oct. 22-24	8:00	Holiday Inn, Bethesda, MD.
Physiology, Dr. Michael A. Lang, Rm. 209, Tel. 301-496-7878	Oct. 20-22	8:30	Holiday Inn, Chevy Chase, MD.
Radiation, Dr. John Zimbrick, Rm. 219A, Tel. 301-496-7073	Oct. 12-14	8:30	Holiday Inn, Bethesda, MD
Reproductive Biology, Dr. Dharam Dhindsa, Rm. 307, Tel. 301-496-7318	Oct. 5-8	8:30	Holiday Inn, Bethesda, MD.
Reproductive Endocrinology, Dr. Bela Gulyas, Rm. 325B, Tel. 301-496-8857	Oct. 21-23	8:30	Marbury House, Georgetown, DC
Respiratory & Applied Physiology, Dr. Clyde Watkins, Rm. 218A, Tel. 301-496-7320	Oct. 5-7	8:30	Ramada Inn, Bethesda, MD.
Safety & Occupational Health, Dr. Richard Rhoden, Rm. 154, Tel. 301-496-6723	Oct. 14-16	8:30	Ramada Inn, Bethesda, MD.
Sensory Disorders & Language, Dr. Michael Halasz, Rm. 3A-07, Tel. 301-496-7550	Oct. 14-16	8:30	Capitol Holiday Inn, Washington, DC.
Social Sciences & Population, Ms. Carol Campbell, Rm. 210, Tel. 301-496-7906	Oct. 8-10	9:00	Marbury House, Georgetown, DC
Surgery & Bioengineering, Dr. Paul F. Parakkal, Rm. 303A, Tel. 301-496-7506	Oct. 19-20	8:30	Hyatt Regency Hotel, Bethesda, MD.
Surgery, Anesthesiology & Trauma, Dr. Keith Kraner, Rm. 319B, Tel. 301-496-7771	Oct. 22-23	8:30	Ramada Inn, Bethesda, MD.
Toxicology, Dr. Alfred Marozzi, Rm. 205, Tel. 301-496-7570	Oct. 21-23	8:00	Holiday Inn, Georgetown, DC.
Tropical Medicine & Parasitology, Dr. Jean Hickman, Rm. 334, Tel. 301-496-1190	Oct. 13-15	8:30	Holiday Inn, Georgetown, DC.
Virology, Dr. Bruce Maurer, Rm. 309, Tel. 301-496-7605	Oct. 8-10	8:30	Room 10, Bldg. 31C, Bethesda, MD
Visual Sciences A-1, Dr. Luigi Giacometti, Rm. 207, Tel. 301-496-7000	Oct. 14-16	9:00	Holiday Inn, Georgetown, DC.
Visual Sciences A-2, Dr. Jane Hu, Rm. 439A, Tel. 301-496-7795	Oct. 27-30	8:30	Wellington Hotel, Washington, DC
Visual Sciences B, Dr. Earl Fisher, Jr., Rm. 325, Tel. 301-496-7251	Oct. 7-9	8:30	Wellington Hotel, Washington, DC.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: August 31, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-20728 Filed 9-9-87; 8:45 am]

BILLING CODE 4140-01-M

Health of Biomedical Research Institutions; Meeting

Notice is hereby given that the National Institutes of Health (NIH) will hold the first two of a series of regional public briefing meetings to be conducted under the auspices of the Advisory Committee to the Director, NIH, on "The Health of Biomedical Research Institutions." The purpose of the meetings is two-fold:

(1) To provide current information concerning the activities of the NIH by describing the broad political context in which the NIH operates, discussing the Federal budget process as it affects the formulation of the NIH budget, demonstrating recent trends in the funding of NIH programs, discussing the broad strategies adopted by NIH to meet emerging needs, and describing new NIH policies and programs designed to achieve program objectives; and

(2) To solicit through public testimony the views of biomedical researchers, university faculty and administrators, representatives of professional societies, and other interested parties concerning the impact of the Federal system of sponsored research on the health of biomedical research institutions.

The first meeting will be held on Thursday, November 5, 1987, from 8:30 a.m. to 5:00 p.m. at the University of California, Los Angeles. The second will be held on November 6, 1987, from 8:30 a.m. to 5:00 p.m. at the University of California, San Francisco. Notice of the time and location of additional meetings will be published later.

Following presentations by the Director, NIH, and his senior staff, a panel comprised of members of the Advisory Committee to the Director, NIH; representatives of NIH national advisory councils; and senior NIH staff will spend the remainder of the day receiving testimony from public witnesses. Each witness will be limited to a maximum of ten minutes. Attendance and the number of presentations will be limited to the time and space available. Consequently, all individuals wishing to attend or to present a statement at this public meeting should notify, in writing, Jay Moskowitz, Ph.D., Executive Secretary, National Institutes of Health, Shannon Building, Room 137, Bethesda, Maryland 20892. Those planning to make a presentation should file a one-page summary of their remarks with Dr. Moskowitz by September 30, 1987; a copy of the full text of these remarks should be submitted for the record at the time of the meeting. Please indicate which of the two meetings you plan to attend. Additional information may be obtained by calling Mr. Edward Lynch, Division of Program Analysis, Office of Program Planning and Evaluation, National Institutes of Health, at (301) 496-1454.

Date: September 3, 1987.

William F. Raub,

Deputy Director, National Institutes of Health.

[FR Doc. 87-20726 Filed 9-9-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases, Microbiology and Infectious Diseases Research Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on October 14, 15 and 16, 1987, in Building 31C, Conference Room 7, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 9 a.m. to 11 a.m. on October 14, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the Microbiology and Infectious Diseases Research Committee

will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 11 a.m. on October 14 until recess, on October 15 from 9 a.m. until recess, and from 9 a.m. until adjournment on October 16. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. M. Sayeed Quraishi, Executive Secretary, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301–496–7465), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: August 31, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–20727 Filed 9–9–87; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Statement of Organization, Functions and Delegations of Authority; Health Resources and Services Administration

On July 24, 1987, a notice was published in the **Federal Register** (52 FR 27854–27855) abolishing the *Office of Debt Management (HBP14), Bureau of Health Professions (HBP),* Health Resources and Services Administration.

Notice is hereby given that the fiscal debt management functions previously performed by the Office of Debt Management, Bureau of Health Professions, are being transferred to the Division of Fiscal Services, Office of Operations and Management, Health Resources and Services Administration, and that the program debt management functions previously performed by the Office of Debt Management, Bureau of Health Professions, are being transferred to the Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration.

These transfers will be implemented by September 1, 1987.

Date: August 14, 1986.

John H. Kelso,

Acting Administrator, Health Resources and Services Administration.

[FR Doc. 87–20699 Filed 9–9–87; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D–87–861]

Phoenix Office, Region IX; Designation and Order of Succession

AGENCY: Department of Housing and Urban Development.

ACTION: Designation and order of succession.

SUMMARY: The Manager of the Phoenix Office in Region IX is designation officials who may serve as Acting Manager during the absence, disability, or vacancy in the position of Manager.

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Beverly G. Agee, Regional Counsel, Department of Housing and Urban Development, Region IX, 450 Golden Gate Avenue, Box 36003, San Francisco, CA 94102. Telephone (415) 556–6110. This is not a toll-free number.

Designation of Acting Manager

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of Manger, with all the powers, functions, and duties redelegated or assigned to the Manager:

Provided, That no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unable to act by reason of absence, disability, or vacancy is said position:

1. Deputy Manager,
2. Director of Housing Development,
3. Director of Housing Management,
4. Chief Attorney,
5. Chief of Housing Programs Branch.

This designation supersedes and cancels any previous designation, published or unpublished, that may be in effect prior to the effective date of this document.

Authority: Delegation of Authority by the Secretary of Housing and Urban Development effective October 1, 1970; 36 FR 3389, February 23, 1971.

Dated: July 24, 1987.

Dwight A. Peterson,

Manager, Phoenix Office, Department of Housing and Urban Development, Region IX.

Concur:

William Y. Nishimura,

Acting Regional Administrator-Regional Housing Commissioner, Region IX.

[FR Doc. 87–20836 Filed 9–9–87; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the Machis Lower Alabama Creek Indian Tribe

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 DM8.

Pursuant to 25 CFR 83.9(f) (formerly 25 CFR 54.9(f)), notice is herby given that the Assistant Secretary proposes to decline to acknowledge that the Machis Lower Alabama Creek Indian Tribe, Inc., c/o Mrs. Pennie Wright, 708 S. John Street, New Brockton, Alabama 36351.

Exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group does not meet four of the mandatory criteria set forth in 25 CFR 83.7 and, therefore, does not meet the requirements necessary for a government-to-government relationship with the United States.

The Machis Lower Alabama Creek Indian Tribe contends that it is descended from those Creek Indians who took land allotments rather than remove to Indian Territory in the 1830s and that their ancestors purportedly then fled to a cave in Covington County, Alabama to hide from hostile whites and soldiers. No documentation has been found to substantiate the existence of a predecessor tribe or Indian Community to the group. The Machis Lower Alabama Creek Indian Tribe has only been identified as Indian and as Creek since its incorporation as a non-profit organization in 1982. The tribe which inhabited the Lower Creek town of Tamali, which the group claims was the aboriginal home of the "Machis Indians," emigrated to northwestern Florida around the year 1800 and was absorbed in the Seminole tribe. No historical reference could be found to document the existence of a Lower

Creek Indian named Machis, who the Group claims descent from and from whom the group derives its name. No evidence could be found to verify any linkage between the early 19th-century Lower Creek individuals in Alabama whom the petitioner claims were its ancestors and the family lines of the group's membership.

The group holds that its ancestors managed to escape forced removal from Alabama by hiding in a cave in Covington County. Federal census records indicate that most of the group's ancestors did not take up residence in Alabama until long after the period of Creek removal and that none of the primary families were living in Covington County prior to the 1880s. While Federal census and county records show there has been some residential clustering and interaction among the principal families in the group from 1850 to the present at various and somewhat scattered locations in southeastern Alabama, these family enclaves have never been regarded by others as being Amerian Indian communities.

There is no evidence that tribal political influence or authority has been exercised or maintained over its members or that tribal decision-making processes have been carried out by group leaders either prior to or after the formal incorporation of the group in 1982. Bylaws adopted in 1982 as the group's governing document set forth the formal governing procedures. A membership criterion is stated in the bylaws, but a statement concerning membership submitted with the petition appears to provide a more accurate description of the current membership. Although the majority of the membership does share common ancestry, no documentation was submitted nor was any documentation located to establish that the common ancestors of the group were identified as Indian or were members of any historical tribe or tribes.

No evidence was found that the members of the group are enrolled in any other Indian tribe or that the group or its members have been subject of Federal legislation which has expressly terminated or forbidden a relationship with the United States Government.

Based on this preliminary factual determination, we conclude that the MaChis Lower Alabama Creek Indian Tribe meets criteria d, f, and g, but does not meet criteria a, b, c, and e of § 83.7 of the Acknowledgment regulations (25 CFR Part 83).

Section 83.9(g) of the regulations provides that any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 120-days from the date of publication of this notice.

Under § 83.9(f) of the Federal regulations, a report summarizing the evidence for the proposed decision will be available to the petitioners and interested parties upon written request. Comments and requests for a copy of the report should be addressed to the Office of the Assistant Secretary—Indian Affairs, 1951 Constitution Avenue NW., Washington, DC 20245, Attention: Branch of Acknowledgment and Research, Mail Stop 32–SIB.

After consideration of the written arguments and evidence rebutting the proposed finding and within 60 days after the expiration of the 120-day response period, the Assistant Secretary will publish the final determination regarding the petitioner's status in the **Federal Register** as provided in § 83.9(h).

If at the expiration of the 120-day response period this proposed finding is confirmed, the Assistant Secretary, in accordance with § 83.9(j), will analyze and forward to the petitioner other options, if any, under which the petitioner might make application for services or other benefits.

Hazel E. Elbert,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 87–20707 Filed 9–9–87; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[ID–020–07–4322–12]

Burley District Grazing Advisory Board Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting and agenda for Burley District Grazing Advisory Board.

SUMMARY: Notice is hereby given that the Burley District Grazing Advisory Board will meet on October 13, 1987. The meeting will convene at 9:00 a.m. on October 13, 1987 in the conference room of the Bureau of Land Management Office, 200 South Oakley Highway, Burley, Idaho.

Agenda items for the meeting will include: (1) Management recommendations for the Samaria Allotment. (2) Use of 8100 funds for pre-project work. (3) Review of FY–87 Range Improvement projects. (4) Review FY–88 proposed Range Improvement projects. (5) Items of information: (a) review of 1987 noxious weed control efforts; (b) review of 1987 grasshopper control efforts. The public is invited to attend the meeting. Interested persons may make an oral statement to the Board beginning at 1:00 p.m. or they may file written statements for the Board's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Anyone wishing to make an oral statement or file a written statement must contact the District Manager by October 9, 1987 for inclusion in the meeting schedule.

Detailed minutes of the Board meeting will be maintained in the District Office, 200 South Oakley Highway, Burley, Idaho, and will be available for public inspection during regular business hours, (7:45 a.m. to 4:30 p.m., Monday thru Friday) within 30 days following the meeting.

DATE: October 13, 1987.

ADDRESS: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: John Davis, Burley District Manager, (208) 678–5514.

Dated: September 1, 1987.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 87–20709 Filed 9–9–87; 8:45 am]

BILLING CODE 4310–GG–M

[CO–505–4410–02]

Canon City District Advisory Council Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 that the Canon City District Advisory Council Meeting will be held on Wednesday, October 7, 1987, 10:30 a.m. to 4:30 p.m. and on Thursday, October 8, 1987, 8 a.m. to 12 noon, at the Canon City District Office, 3170 East Main, Canon City, Colorado.

The meeting agenda will include:

1. Results of the study on Effectively Utilizing BLM District Multiple Use Advisory Councils.
2. Video on the wild horse program.
3. Arkansas River Recreation Area Management Plan workshop.
4. Quail Mountain update.
5. San Luis Valley Resource Management Plan update.
6. Reports from Area Managers on current programs.
7. Demonstration of new digitizing equipment.

8. Public presentations to the council (open invitation).

The meeting is open to the public. Persons interested may make oral presentations to the council at 9:30 a.m. on Thursday or they may file written statements for the council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

ADDRESS: Anyone wishing to make an oral or written presentation to the council should notify the District Manager, Bureau of Land Management, P.O. Box 311, 3170 East Main, Canon City, Colorado 81212 by October 6, 1987.

SUPPLEMENTARY INFORMATION: Summary minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office approximately 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (303) 275-0631.

Donnie R. Sparks,

District Manager.

[FR Doc. 87-20710 Filed 9-9-87; 8:45 am]

BILLING CODE 4310-JB-M

[NV-050-07-4322-13]

Las Vegas District Grazing Advisory Board Meeting; Nevada

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Las Vegas District Grazing Advisory Board will be held Wednesday, October 7, and Thursday, October 8, 1987 beginning at 1:00 p.m. in the conference room of the Caliente Nevada Department of Agriculture complex. The meeting will continue into Thursay, October 8, 1987 beginning at 8:00 a.m.

The agenda is as follows:

1. Welcome and Introductions
2. Reading and Approval of Minutes from Previous Meeting
3. Range Improvement Program, Status Update, and Proposals
4. Allotment Management (AMPs) and Rangeland Monitoring
5. Proposed Rule Making Update
6. Wild Horse and Burro Program Update
7. Wilderness Program Update
8. South Nye Rangeland Program Summary Update
9. Public Comments
10. Other Business
11. Arrangements for the Next Meeting

The meeting is open to the public. Interested persons may make oral comments to the board during the public comment period on the day of the meeting or they may file written statements for the board's consideration during the meeting. Notify the District Manager, BLM, 4765 West Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, if you wish to make an oral statement to the Board. Summary minutes of the board meeting will be maintained at the Las Vegas District Office. The minutes will be available for public inspection during regular office hours (7:30 a.m. to 4:15 p.m.) within 30 days after the meeting.

Charles Frost,

Associate District Manager.

[FR Doc. 87-20711 Filed 9-9-87; 8:45 am]

BILLING CODE 4310-HC-M

[WY-920-07-4111-15; W-99439]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-99439 for lands in Hot Springs County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-99439 effective June 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Fred O'Ferrall,

Acting Chief, Leasing Section.

[FR Doc. 87-20712 Filed 9-9-87; 8:45 am]

BILLING CODE 4310-22-M

[AZ-050-07-4333-11]

Yuma District, AZ, and California Desert District, CA, Long-Term Visitor Permit Program for 1987-1988 and Subsequent Use Seasons; Closure of Long-Term Visitor Area and Revision and Establishment of Supplementary Rules

AGENCY: Bureau of Land Management, Interior.

ACTION: Changes to the Long-Term Visitor Permit Program for the 1987-1988 and subsequent use seasons, closure of the Vidal Junction Long-Term Visitor Area for long-term camping, and revisions to an establishment of supplementary rules in the Yuma District, Arizona, and the California Desert District, California.

SUMMARY: The Bureau of Land Management's (BIM) Yuma District and California Desert District announce revisions to the "Long-Term Visitor Program" for the 1987-1988 and subsequent use seasons. The program, which was instituted in 1983, established an annual long-term use season. During the use season, visitors who wish to camp on public lands in one location for extended periods must stay in designated Long-Term Visitor Areas (LTVAs) and purchase a $25 LTVA permit. Beginning with the 1987-1988 use season, the following modifications are being made to the Long-Term Visitor Program:

1. The dates for the long-term use season are being changed from October 1 through May 31, to September 15 through April 15. Between September 15 and April 15, visitors who wish to camp in an LTVA are required, regardless of length-of-stay, to obtain an LTVA permit except a) in designated areas within LTVAs specifically identified for short-term camping use of up to 14 days, b) in the Mule Mountain LTVA where visitors may stay up to 14 days before a permit is required, or c) when campers are registered as a guest of an LTVA permittee. Person using an LTVA under the exceptions listed above must obtain the necessary short-term or guest registration forms.

2. The waiver period allowing visitors to the La Posa LTVA to stay without a permit during the period of operation of the annual Quartzsite Pow Wow is abolished. In the 1987-1988 winter visitor season, all overnight visitors to the La Posa LTVA must obtain either an LTVA permit or guest registration form.

3. The Vidal Junction Long-Term Visitor Area is closed to long-term camping. Beginning with the 1987–1988 season, long-term camping is prohibited at Vidal Junction. Visitors may stay a maximum of 14 days in any 28-day period at this area.

4. LTVA permittees who have resided in an LTVA for 5 days or longer may have overnight guests provided the guests are registered with the BLM. Guests may stay a maximum of 7 consecutive days during any 28-day period within the LTVA system in Arizona and California.

5. In addition to rules of conduct set forth in CFR Title 43, Chapter II, 8365.1–5, the following supplementary rules apply to designated LTVAs. These rules revise and supplement those published in the **Federal Register** on August 14, 1986.

a. Pets must be kept on a leash at all times.

b. No wood collection is permitted within the boundaries of Imperial Dam and La Posa LTVAs. Outside these LTVAs and in all other LTVAs, only dead and down wood may be collected for firewood or hobby purposes.

c. In Pilot Knob, Dunes Vista, Midland, Tamarisk, and Hot Spring LTVAs, camping is restricted to self-contained camping units only. The La Posa LTVA is restricted to self-contained camping units except within 500 feet of a BLM vault toilet. The Imperial Dam LTVA is also restricted to self-contained camping units except in the South Mesa area.

d. Camping or dwelling units must not be left unoccupied within any LTVA for periods of greater than 5 days unless approved in advance by the authorized officer.

e. The authorized officer may revoke without reimbursement any LTVA permit issued to any person when the permittee violates any BLM rule or regulation, or when the permittee, permittee's family, or guests' conduct is inconsistent with the goals of BLM's Long-Term Visitor Program. Failure to return any LTVA permit or sticker to any authorized officer upon demand is a violation of this supplemental rule. Any permittee whose permit is revoked must remove all property and leave the LTVA system within 12 hours of notice.

EFFECTIVE DATE: September 15, 1987.

FOR FURTHER INFORMATION CONTACT: David Mensing, Outdoor Recreation Planner, California Desert District, 1695 Spruce Street, Riverside, California 92507, (714) 351–6402; or Dennis Turowski, Outdoor Recreation Planner, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, (602) 726–6300.

SUPPLEMENTARY INFORMATION: The purpose of the Long-Term Visitor Program is to provide areas for long-term winter camping use. The sites designated as LTVAs are, in most cases, the traditional use areas of long-term visitors. Designated sites were selected using criteria developed during the management planning process, and environmental assessments were completed for each site location.

The program was established to properly accommodate the increasing demand for long-term winter visitation and to provide natural resource protection through improved management of this use.

Visitors may camp without a Long-Term Visitor Permit outside of LTVAs on public lands not otherwise closed to camping for up to 14 days in any 28-day period unless posted otherwise. The Mule Mountain LTVA is also open to short-term camping without an LTVA permit for a period not to exceed 14 days.

Authority for the designation of LTVAs is contained in CFR Title 43, Chapter II, 8372.0–5(g). Authority for the establishment of a Long-Term Visitor Permit Program is contained in CFR Title 43, Chapter II, 8372.1, and for the payment of fees in CFR Title 36, Chapter I, Part 71.

The authority for establishing supplementary rules is contained in CFR Title 43, Chapter II, 8365.1–6. The LTVA supplementary rules have been developed to meet the goals of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected and will be posted near and/or within the lands, sites, or facilities affected. Violations of supplementary rules are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Maps showing the location of all LTVAs are available at both the California Desert District and Yuma District Offices.

Ed Hastey,

State Director, California.

August 17, 1987.

D. Dean Bibles,

State Director, Arizona.

August 10, 1987.

[FR Doc. 87–20708 Filed 9–9–87; 8:45 am]

BILLING CODE 4310–32–M

Bureau of Reclamation

Environmental Impact Statement; Los Banos Grandes Offstream Storage Project, Merced County, CA

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of intent to prepare a joint environmental impact statement/environmental impact report for the Los Banos Grandes Offstream Storage Project.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (as amended), and Section 21100 of the California Environmental Quality Act, the Bureau of Reclamation, Department of the Interior, and the California State Department of Water Resources (DWR) intend to prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Los Banos Grandes Offstream Storage Project. The primary purpose of the project is to provide dependable water supplies for the State Water Project (SWP) and the Federal Central Valley Project (CVP) and to help spawning and migrating fish through more timely water diversions from the Sacramento-San Joaquin Delta. Additional benefits may include added flood protection for farmland adjacent to Los Banos Creek and the community of Los Banos, additional storage space to develop water for wildlife refugees in the San Joaquin Valley, additional recreation opportunities, and potential pumped-storage power generation. The project would capture water from the Delta during high flood flows in the winter.

The DWR has been studying Los Banos Grandes since May 1984. The Bureau has been evaluating Los Banos Grandes along with many other reservoir sites as part of the Bureau's Offstream Storage Investigation. The Bureau will expedite the Los Banos Grandes portion of the Offstream Storage study and jointly examine the development potential with DWR.

DWR held a public meeting to solicit public input in determining the scope of the EIS/EIR and the significant issues involved. This scoping session was held on May 29, 1986, in Santa Nella, California. Any additional comments on the scope and content of the EIS/EIR may be sent to the addresses listed below. Comments should identify significant issues, reasonable alternatives, and possible mitigation measures which should be considered in the EIS/EIR.

FOR FURTHER INFORMATION CONTACT:

Mr. Douglas Kleinsmith (Attn: MP–750), Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825–1898, Phone (916) 978–5121

Mr. Michael Cooney, California Department of Water Resources, 1416 9th Street, Sacramento, CA 94236–0001, Phone (916) 323–7456

SUPPLEMENTARY INFORMATION: The reservoir site is on Los Banos Creek in western Merced County, southwest of the city of Los Banos. Surplus flows from the Sacramento-San Joaquin Delta would be pumped south, through the California Aqueduct, primarily during the wet winter months (November to April) and stored in Los Banos Grandes. Stored water would be released during water-short periods for use by agencies contracting for water from the SWP and CVP. Reservoir sizes from 1.25 to 2.25 million acre-feet are being studied.

Five alternatives are being evaluated:

1. State-Only Project—DWR would construct and operate Los Banos Grandes to provide water for the SWP.

2. State/Electric Utility Project—This would be a jointly developed project by the State and one or more electric utility companies to be operated for SWP water supply and as a pumped-Storage power generator to produce electricity during the periods of peak electrical demand.

3. State/Federal Project—DWR and the Bureau of Reclamation would construct and operate Los Banos Grandes as an integrated feature of the CVP and SWP to provide water for both projects. This would be a larger reservoir than for Alternative 1.

4. State/Federal/Electric Utility Project—Same as Alternative 3 except that the project would also be operated through the pumped-storage power generator as described in Alternative 2.

5. No Action—Los Banos Grandes would not be constructed.

An existing structure, Los Banos Detention Dam, is located 5 miles downstream from the Los Banos Grandes site. The detention dam was constructed to protect portions of the California Aqueduct and downstream areas from flooding. With the potential project, the flood control space in the detention reservoir would be transferred to the Los Banos Grandes Reservoir. The detention reservoir would be modified and used as an integral part of the pump-generator conveyance connection between the California Aqueduct and the Los Banos Grandes Reservoir, and it would serve as an afterbay for pumped-storage power generation.

Date: September 1, 1987.

C. Dale Duvall,

Commissioner.

[FR Doc. 87–20553 Filed 9–9–87; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Klamath River Basin Fisheries Task Force Meeting

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Task Force meeting will be held from 9:00 A.M. to 4:00 P.M., Wednesday, September 23, 1987.

ADDRESS: The meeting will be held at the headquarters of the Klamath National Forest, 1312 Fairlane Road, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, Klamath Field Office, U.S. Fish and Wildlife Service, Yreka, CA, (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Klamath River Basin Fisheries Task Force, please refer to the notice of its initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). During the September 23 meeting, the Task Force will elect a chairperson, discuss standards for non-Federal contributions to the Klamath River Basin Conservation Area Restoration Program, review fishery restoration projects and studies now in place or underway in the Klamath River Basin, and address other pertinent topics.

Dated: September 3, 1987.

Sam Marler,

Acting Director, U.S. Fish and Wildlife Service

[FR Doc. 87–20850 Filed 9–9–87; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Development Operations Coordination Document; Sohio Petroleum Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Sohio Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 5793, 5799, and 5800, Blocks 782, 825, and 826, respectively, Ewing Bank Area, offshore Lousiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on September 1, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans Louisiana (Office Hours: 8 a.m. to 4:30 p.m. Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised 250.34 of Title 30 of the CFR.

Date September 2, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-20735 Filed 9-9-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3965, Block 239, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on August 28, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 31, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-20713 Filed 9-9-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document, Seagull Energy E&P Inc.

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Seagull Energy E&P Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 8131, Block 388, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on August 28, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline, Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected local governments, and other interested parties become effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 31, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-20714 Filed 9-9-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-379 and 380 (Preliminary)]

Certain Brass Sheet and Strip From Japan and the Netherlands

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan and the Netherlands of certain brass sheet and strip,[2] provided

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] For purposes of these investigations the term "certain brass sheet and strip" refers to brass sheet and strip, other than leaded brass and tin brass sheet and strip, of solid rectangular cross section over 0.006 inch but not over 0.188 inch in thickness, in coils or cut to length, whether or not corrugated or crimped, but not cut, pressed, or stamped to nonrectangular shape, provided for in items 612.3960, 612.3982, and 612.3986 of the *Tariff Schedules of the United States Annotated* (TSUSA). The chemical compositions of the products under

Continued

for in item 612.39 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 20, 1987, petitions were filed with the Commission and the Department of Commerce by counsel on behalf of American Brass, Buffalo, NY; Bridgeport Brass Corp., Indianapolis, IN; Chase Brass & Copper Co., Solon, OH; Hussey Copper, Ltd., Leetsdale, PA; The Miller Company, Meriden, CT; Olin Corp.-Brass Group, East Alton, IL; and Revere Copper Products, Inc., Rome, NY; domestic producers of brass sheet and strip, and on behalf of International Association of Machinists and Aerospace Workers, Washington, DC; International Union, Allied Industrial Workers of America (AFL–CIO), Milwaukee, WI; Mechanics Educational Society of America (Local 56), Rome, NY; and United Steelworkers of America (AFL–CIO/CLC), Pittsburgh, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain brass sheet and strip from Japan and the Netherlands. Accordingly, effective July 20, 1987, the Commission instituted preliminary antidumping investigations Nos. 731–TA–379 and 380 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 29, 1987 (52 FR 28352). The conference was held in Washington, DC, on August 12, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 3, 1987. The views of the Commission are contained in USITC Publication 2011 (September 1987), entitled "Certain Brass Sheet and Strip from Japan and the Netherlands: Determinations of the Commission in Investigations Nos. 731–TA–379 and 380 (Preliminary) Under the Tariff Act of 1930, together With the Information Obtained in the Investigations."

investigation are currently defined in the Copper Development Association (CDA) 200 series or the Unified Numbering System (UNS) C20000 series. Products whose chemical compositions are defined by other CDA or UNS series are not covered by these investigations.

By Order of the Commission.

Issued: September 3, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–20801 Filed 9–9–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–183]

Change of the Commission Investigative Attorney; Certain Indomethacin

Notice is hereby given that, as of this date, Lynn I., Levine, Esq., of the Office of Unfair Import Investigations will be the Commission Investigative Attorney in the above-cited investigation instead of Deborah S. Strauss, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: September 4, 1987.

Arthur Wineburg,

Director, Office of Unfair Import Investigations.

[FR Doc. 87–20802 Filed 9–9–p87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. TA–603–10]

Industrial Forklift Trucks

AGENCY: United States International Trade Commission.

ACTION: Postponement of the hearing in preliminary investigation No. TA–603–10.

SUMMARY: The Commission hereby postpones the hearing in connection with the preliminary investigation No. TA–603–10, concerning Industrial Forklift Trucks pursuant to a request by certain parties to the investigation.

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Rausch (202–523–0300), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

Background: On August 28, 1987, the Commission received a request from counsel for Clark Equipment Company, on behalf of certain parties to investigation No. TA–603–10, that the Commission postpone the hearing to be held in connection with this investigation for a period of 90 days. On September 1, 1987, the Commission decided to postpone the hearing for a nonrenewable period of 45 days and cancelled its public hearing scheduled for September 2, 1987. All parties that had filed an entry of appearance were notified of this postponement. The date for the rescheduled hearing will be announced at a later date.

By order of the Commission.

Issued: September 1, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–20803 Filed 9–9–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–384 (Preliminary)]

Nitrile Rubber From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–384 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of nitrile rubber, not containing fillers, pigments, or rubber-processing chemicals, provided for in item 446.15 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value.[1]

As provided in section 733(a), the Commission must complete a preliminary antidumping investigation in 45 days, or in this case by October 16, 1987.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–523–0296), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002. Information may also be obtained via electronic mail by calling

[1] For purposes of this investigation, nitrile rubber refers to the synthetic rubber that is made from the polymerization of butadiene and acrylonitrile and that does not contain any type of additive or compounding ingredient having a function in processing, vulcanization, or end use of the product.

BEST COPY AVAILABLE

the Office of Investigations' remote bulletin board system for personal computers at 202–523–0103. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on September 1, 1987, by Uniroyal Chemical Co., Inc., Middlebury, CT.

Participation in the investigation.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on September 23, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–523–0296) not later than September 21, 1987, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before September 28, 1987, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: September 4, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–20804 Filed 9–9–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–374 (Final)]

Potassium Chloride From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–374 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of potassium chloride, provided for in item 480.50 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before November 3, 1987, and the Commission will make its final injury determination by December 21, 1987, (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: August 25, 1987.

FOR FURTHER INFORMATION CONTACT: Jim McCLure (202–523–1793), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of potassium chloride from Canada are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on February 10, 1987, by Lundberg Industries, Ltd., of Dallas, TX, and the New Mexico Potash Corp. of Memphis, TN, U.S. producers of potassium chloride. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 10641, April 2, 1987).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on October 27, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on November 10, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary of the Commission not later than the close of business (5:15 p.m.) on October 30, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on November 3, 1987, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 5, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 16, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 16, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: September 4, 1987

Kenneth R. Mason,

Secretary.

[FR Doc. 87–20805 Filed 9–9–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–190]

Change of the Commission Investigative Attorney; Certain Softballs and Polyurethane Core Therefor

Notice is hereby given that, as of this date, Steven H. Schwartz, Esq., of the Office of Unfair Import Investigations will be the Commission Investigative Attorney in the above-cited investigation instead of Deborah S. Strauss, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: September 4, 1987.

Arthur Wineburg,

Director, Office of Unfair Import Investigations.

[FR Doc. 87–20806 Filed 9–9–87; 8:45 am]

BILLING CODE 7020–02–M

[Inv. No. 337–TA–274]

Change of the Commission Investigative Attorney; Certain Toggle Clamps for Clamping, Fixturing, Processing, and Orginal Equipment Manufacturing

Notice is hereby given that, as of this date, David A. Guth, Esq., of the Office of Unfair Import Investigations will be the Commission Investigative Attorney in the above-cited investigation instead of Juan Cockburn, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: September 4, 1987.

Arthur Wineburg,

Director, Office of Unfair Import Investigations.

[FR Doc. 87–20807 Filed 9–9–87; 8:45 am]

BILLING CODE 7020–02–M

Appointment of Individuals to Serve as Members of Performance Review Boards

AGENCY: United States International Trade Commission.

ACTION: Appointment of Individuals to Serve as members of Performance Review Boards.

EFFECTIVE DATE: September 10, 1987.

FOR FURTHER INFORMATION CONTACT: Terry P. McGowan, Director of Personnel, U.S. International Trade Commission, (202) 523–0182.

SUPPLEMENTARY INFORMATION: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB).

Chairman of PRB: Anne E. Brunsdale, Vice Chairman

Member: Commissioner Seeley G. Lodwick

Member: Charles W. Ervin

Member: Lorin L. Goodrich

Member: Eugene A. Rosengarden

Member: Lyn M. Schlitt

Member: John W. Suomela

Member: Erland H. Heginbotham

Notice of these appointments is being published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Chairman.

Issued: September 4, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-20808 Filed 9-9-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31098]

Burlington Northern Railroad Co. and the Atchison, Topeka and Santa Fe Railway Co.; Joint Renewal of Trackage Rights Exemption

Burlington Northern Railroad Company (BN) and The Atchison, Topeka and Santa Fe Railway Company (ATSF) have agreed to renew and modify reciprocal local and bridge trackage rights between Denver and Pueblo, CO, including: (1) The ATSF line between the southern yard limits of the Pueblo Terminals (Joint Line); (2) the BN and ATSF Denver Terminals and the BN Denver Consolidated Facilities of the former Colorado and Southern Railway Company and the Chicago, Burlington and Quincy Railroad Company; (3) portions of the BN and ATSF Terminals at Pueblo; (4) portions of the BN and ATSF Terminals at Colorado Springs, CO; and (5) the Denver and Rio Grande Western Railroad Company (DRGW) rail lines and properties as described in the 1936 DRGW-ATSF Agreement, as amended. This renewed and modified agreement, the BN-ATSF 1986 Joint-Line Agreement (entered July 31, 1986), replaces the BN-ATSF 1940 Agreement approved by the Commission in Finance Docket No. 13017, *Atchison, T. & S.F. Ry. Co. Operation*, 244 I.C.C. 32 (1940). Dedication of rail properties by DRGW was approved in Finance Docket No. 11450, *Atchison, T. & S.F. Ry. Co. Operation*, 221 I.C.C. 145 (1937). *See* Finance Docket No. 13017, Fourth Supplemental Order (not printed), served August 7, 1969. The trackage rights transaction was consummated on August 18, 1987, effective September 1, 1985 (the date the 1940 agreement technically expired).

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).[1]

Dated: September 1, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20627 Filed 9-9-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31061]

The Straits Corp.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval, under 49 U.S.C. 11343, the continuance in control by The Straits Corporation of Detroit and Mackinac Railway Company and Central Michigan Railway Company, subject to standard labor protective conditions.[1]

DATES: The exemption is effective on September 20, 1987.

Petitions to reopen must be filed by September 30, 1987.

ADDRESSES: Send pleadings referring to Finance Docket No. 31061 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' Representative: Mark M. Levin, Suite 800, 1350 New York Avenue NW., Washington, DC 20005-4797.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

(TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357 (assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: August 24, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20655 Filed 9-9-87; 8:45 am]

BILLING CODE 7035-01-M

[1] The Railway Labor Executives' Association and the United Transportation Union have filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 11343, whereby the imposition of labor protective conditions is mandatory, those conditions have been routinely imposed.

[1] The decision granting this exemption also denies a petition to reopen and revoke a notice of exemption filed in Finance Docket No. 31059, *Central Michigan Railway Company—Acquisition and Operation—Certain Lines of Grand Trunk Western Railroad Company*, published July 13, 1987, 52 FR 26189.

DEPARTMENT OF JUSTICE

Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; General Motors Corp. et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *General Motors Corporation, et al.*, Civil Action No. 87-464, was lodged with the United States District Court for the District of Delaware September 3, 1987. The Consent Decree concerns cost recovery and clean-up actions at the Harvey & Knotts hazardous waste site located in New Castle County, Delaware. The complaint in this action alleges that certain parties, including General Motors Corporation, contributed to the contamination of the site. The Consent Decree provides that General Motors Corporation will undertake a remedial program to abate the contamination at the site. General Motors Corporation also agrees to reimburse the United States $979,688.08 for costs the federal government expended in regard to the site. General Motors Corporation, in addition, agrees to pay two-thirds of the future costs of the United States in regard to the site. Pursuant to a schedule contained in the Consent Decree, General Motors Corporation may request reimbursement from the Hazardous Waste Superfund for one-third of its costs in cleaning up the site.

Comments should be addressed to the Assistant Attorney General, Washington, DC 20530 and should refer to *United States* v. *General Motors Corporation, et al.*, D.J. Ref. No. 90-11-2-34A.

The Stipulation for Compromise Settlement may be examined at the Office of the United States Attorney, District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Room 5110, Wilmington, Delaware 19801; at the Region III office to the Environmental Protection Agency, 841 Chestnut Street, Philadelphia,

Pennsylvania 19107; and the Environmental Enforcement Section, Land and Natural Resources Division, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the Stipulation for Compromise Settlement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Please enclose a certified check payable to "Treasurer, United States of America" for $4.00 (10 cents per page) to cover the costs of copying.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-20736 Filed 9-9-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Berger Industries, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree and Final Judgment in *United States v. Berger Industries, Inc.*, Civil Action No. CV87-0011 (MAC), has been lodged with the United States District Court for the Eastern District of New York. The complaint filed by the United States alleged that Berger Industries, Inc. violated the Clean Air Act, 42 U.S.C. 7401 *et seq.*, by failing to comply with applicable provisions of the New York State Implementation Plan ("SIP") pertaining to the control of emissions of volatile organic compound.

The proposed Consent Decree and Final Judgment requires Berger Industries, Inc. to pay a civil penalty of $19,600 and enjoins Berger Industries, Inc. from further violations of the Clean Air Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree and Final Judgment. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Berger Industries, Inc.*, D.J. Ref. 90-5-2-1-988.

The proposed Consent Decree and Final Judgment may be examined at the office of the United States Attorney, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278. Copies of the Consent Decree and Final Judgment may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree and Final Judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to the referenced case name and D.J. Ref. number.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-20739 Filed 9-9-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; Zemco Builders et al.

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on August 31, 1987, a proposed consent decree in *United States v. James Zemlicka d/b/a Zemco Builders; and Terry P. Hanson*, C.A. No. 87-1060, was lodged with the United States District Court for the District of Idaho. The Complaint filed by the United States alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos by both defendants. The complaint sought injunctive relief to require the defendants to comply with the Clean Air Act and the NESHAP for asbestos and civil penalties for past violations. The decree requires defendants to comply with the Clean Air Act and the NESHAP for asbestos in the future and imposes a $12,000 civil penalty for past violations of the Act and standards.

The Department of Justice will receive, for a period of thirty days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. James Zemlicka d/b/a Zemco Builders; and Terry P. Hanson*, Department of Justice Reference 90-5-2-1-1042.

The proposed consent decree may be examined at the office of the United States Attorney, and the Region X Office of 550 W. Fort Street, Boise, Idaho, and at the Region X Office of the Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. When requesting a copy, please refer to *United States v. James Zemlicka d/b/a Zemco Builders; and Terry P. Hanson*, D.J. Ref. 90-5-2-1-1042.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-20737 filed 9-9-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

[Att'y. Gen. Order No. 1216-87]

List of Publications

Pursuant to 5 U.S.C. 552(a)(2), each agency is required to maintain and make available for public inspection current indexes to the agency's materials relating to certain final opinions and orders, statements of policy and interpretations, and administrative staff manuals and instructions. These indexes are required to be published at quarterly or more frequent intervals, unless the agency determines by order published in the **Federal Register** that such publication is unnecessary or impractical. See Att'y. Gen. Order No. 768-78, 43 FR 10447 (1978). The purpose of this order is to comply with this requirement of the Freedom of Information Act by providing additions to the list of documents that are not published on a quarterly basis.

By virtue of the authority vested in me by 28 U.S.C. 509 and 5 U.S.C. 301 and 552, it is hereby ordered as follows:

1. It is determined that it is unnecessary and impracticable to publish quarterly or more frequently the indexes to the Department of Justice materials indicated below. This determination is made because (a) there is insufficient interest to justify such publication; (b) with respect to some of the indexes listed continual updating and revision is required to reflect the frequent addition of materials; (c) with respect to other indexes changes are too infrequent to warrant quarterly publication; and (d) the practical utility of the indexes does not warrant such publication.

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2. Indexes to the materials listed below can be inspected at the Department of Justice Reading Room, Room 1266, 10th and Pennsylvania Avenue, NW., Washington, DC 20530, except that there are separate public reading rooms maintained by certain Departmental organizations at other locations as noted below. With respect to those materials which are individual documents and not part of a series of similar documents, the list set forth below, together with the headings under which such materials are listed, itself constitutes an index to such materials. In the interests of facilitation of public availability of information, the list set forth below has been prepared with a view to inclusiveness, and accordingly it is possible that a few of the documents or portions thereof referred to below are not of an (a)(2) character or are exempted by subsection (b) of the Act.

(a) Report to the President and the Attorney General of the National Commission for the Review of Antitrust Laws and Procedures. January 22, 1979; Volumes I and II.

(b) Competition in the Coal Industry: Report of the Department of Justice Pursuant to section 8 of the Federal Coal Leasing Amendments Act of 1976. May, 1979; November, 1980; March, 1982; December, 1982; April, 1983; March, 1984; and March, 1985.

(c) Report of the Department of Justice to the President Concerning the Gasoline Shortage of 1979. July 1, 1980.

(d) Research Joint Venture Guide. November, 1980.

(e) Digest of Business Reviews, 1968–1982. May, 1983.

(f) Competition in the Oil Pipeline Industry: A Preliminary Report. May, 1984.

(g) Antitrust Merger Guidelines. June 14, 1984.

(h) Antitrust for Small Business. A joint report with the Small Business Administration and the Federal Trade Commission. January, 1985.

(i) Vertical Restraints Guidelines. January 23, 1985.

(j) Digest of Business Reviews, 1968–1984; Updated Indexes. September 13, 1985.

(k) Digest of Business Reviews, 1985 Update. March 21, 1986.

(i) Oil Pipeline Deregulations; Report of the U.S. Department of Justice. May, 1986.

Date: August 28, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87–20717 Filed 9–9–87; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration

Questionnaire for Compendium of State Unemployment Insurance Operations, Organizations and Relationships
Annually
State or local governments
53 respondents; 318 burden hours; no forms

For comparison, analysis and answering inquiries, UIS needs to know how the 53 State Employment Security Agencies UI system operates in specific activity areas, links with other programs and how UI activity areas are managed. No reporting mechanism exists with this information that will be obtained with this questionnaire.

Employment and Training Administration

Fiscal Year 1987 Unemployment Insurance Program Budget Reduction Impact Survey
New; no forms
One-time survey
53 respondents; 636 burden hours; no forms

Questionnaire is a tracking device for gathering data from SESAs whose UI Financial/Administrative/Management programs were affected by FY 1987 Congressional budget reductions. The need is maintenance of current information facilitating making up-to-date assessments of reductions impact, and input for FY 1989 Administration considerations of budgetary resources.

Employment and Training Administration

Survey to Evaluate the Impact of a Dislocated Worker Project
Single-time
Individuals or households
2,400 respondents; 1,400 burden hours; no forms

A survey is to be conducted among 2,400 workers dislocated by multiple plant closings, who are applying for assistance from the Metropolitan Re-Employment Project of St. Louis. Applicants will be randomly assigned to a treatment group (receiving services) or the control group. The survey will gather benchmark data on work history and wages. A follow-up survey 18 months

later will gather information on the effects of the program.

Bureau of Labor Statistics

December 1987 Agricultural Work Force Supplement—Supplement to CPS
Biennally
Individuals and households
Survey universe is 71,000 households
Respondent burden is estimated at approximately 1,550 hours

The purpose of this survey is to obtain from the agricultural work force (hired farmworkers, farmers, and unpaid farmworkers) data on monthly farm days worked, monthly farm earnings and the workers' major crop or livestock activity during the year. Migrant questions are asked of hired farm workers who say they did some other hired farm work in different localities. Data will be used by the U.S. Department of Labor to analyze policy issues relating to the U.S. farm force.

Employment and Training Administration

Unemployment Insurance Quality Control Alternative Methods Pilots

No forms
One-time pilot study
Individuals or households; State or local governments; Businesses or other for-profit
1,800 respondents; 1,000 hours; no forms

This pilot project is designed to help the Department decide how best to incorporate the use of the telephone into the investigative process, and second to provide information on the impact of the method on the integrity of the data collected.

Revision

Bureau of Labor Statistics

Occupational Wage Survey Program
1220–0007 BLS
275138A,BLS2752A,BLS2752B, BLS2753F,BLS2753G,552, BLS275AF,BLS2752C
Annually; biennially; other

State or local governments; business or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations.

27,640 responses; 76,660 hours; 8 forms

Occupational wage survey data serve a variety of uses, including wage administration, negotiations, mediation, plant location decisions, and general economic analysis. The data are also used in the administration of the Federal Pay Comparability Act of 1970 and the Service Contract Act of 1965.

Extension

Employment and Training Administration

Claims and Payment Activities
1205–0010; ETA 5159
Monthly
State or local governments
53 respondents; 1,836 burden hours; 1 form

Measures workload and provides quantitative measurement for budget estimates, administrative planning and program evaluation; main vehicle for accounting to public.

Mine Safety and Health Administration

Training Plan Regulations
1219–0009
On occasion
Businesses or other for profit; small businesses or organizations
1,229 respondents; 9,832 hours

Requires coal and metal and nonmetal mine operators to submit to MSHA for approval plans containing programs for training new miners, training newly-employed experienced miners, training miners for new tasks, annual refresher training, and hazard training.

Reinstatement

Occupational Safety and Health Administration

Hazard Communication, OSHA
245,1218–0072
OSHA 174
Recordkeeping; On occasion
Businesses and other for-profit; Federal agencies or employees; Small businesses or organizations.
3,892,371 respondents; 34,780,000 burden hours; 1 form

The Hazard Communication Standard requires all employers to establish hazard communication programs to transmit information on the hazards associated with chemicals to their employees by means of container labels, material safety data sheets and training programs. This action will reduce the incidence of chemical related illness and injury in American workplaces.

Signed at Washington, DC this 3rd day of September, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87–20701 Filed 9–9–87; 8:45 am]

BILLING CODE 4510–30–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24875; File No. SR–MSRB–87–10]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to CUSIP Numbers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 26, 1987, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board ("Board") is filing an amendment to Board rule G–34 on CUSIP numbers and dissemination of initial trade date information (hereafter referred to as "the proposed rule change"). The proposed rule change would require dealers to apply for new CUSIP numbers for secondary market municipal securities if the CUSIP number assigned to the securities no longer designates a single, fully fungible group of securities. The full text of the proposed rule change is available for inspection and copying at the Commission's Public Reference Room and at the offices of the Board.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G–34 requires dealers to apply to the Board or its designee for CUSIP numbers for new issues of municipal securities and to apply for new CUSIP numbers for secondary market municipal securities in two circumstances. Section (a) states that, if a new issue will be used to refund a maturity of an outstanding issue to more than one date or price, the underwriter of the new issue must apply for new CUSIP numbers for the outstanding issue. Section (b) requires dealers that arrange for an enhancement of the security or source of payment for part of

a maturity of an outstanding issue (*e.g.*, bond insurance or a put option) to apply for new CUSIP numbers for that portion of the maturity. New CUSIP numbers are required in these cases because the CUSIP number orginally assigned to the maturity no longer designates securities that are interchangeable in the market, *i.e.*, securities that are fungible.

Recently, the Board has been made aware of other circumstances, not specifically addressed by rule G–34, that may cause secondary market securities previously having identical features no longer to be fungible. For example, some issues of municipal securities have provisions that allow portions of the issue to be remarketed after a put date as different groups of securities, subject to different put options. In other cases, a transferable secondary market security enhancement for portions of a maturity may be arranged by an investor, rather than a dealer, and thus not covered under rule G–34(b).

The proposed rule change would require dealers to apply for new CUSIP numbers in connection with the sale or offering of any secondary market municipal securities if the CUSIP number assigned no longer designates a group of securities that are identical with respect to certain features. These features are those included in the eight items of information, listed in rule G–34(a)(i)(A), that must be supplied to obtain the assignment of CUSIP numbers for new issues. They are:

(1) Complete name of issue and series designation, if any;

(2) Interest rate(s) and maturity date(s);

(3) Dated date;

(4) Type of issue (*e.g.*, general obligation, limited tax or revenue);

(5) Type of revenue, if the issue is a revenue issue;

(6) Details of all redemption provisions;

(7) Name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to the debt service on all or part of the issue; and

(8) Any distinction(s) in the security or source of payment of the debt service on the issue.

If new CUSIP numbers are needed, the proposed rule change would require the dealer to apply to the Board or its designee (currently the CUSIP Service Bureau), and to provide the CUSIP number previously assigned to the securities and other information necessary to ensure appropriate CUSIP number assignment to the secondary market securities. The proposed rule change would require dealers to apply for new CUSIP numbers only if the secondary market securities are eligible for new CUSIP number assignment.

Dealers and the automated clearance and settlement systems depend upon CUSIP numbers to identify municipal securiteis and the usefulness of the CUSIP numbering system to identify securities is deiminished if the same CUSIP number is assigned to two or more types of securities having different features. The Board believes that the proposed rule change is necessary to ensure that each CUSIP number assigned to secondary market securities designates a single, fully fungible group of securities.

(b) The proposed rule change is adopted pursuant to section 15B(b)(2)(C) of the Securities Exchange Act ("the Act") which authorizes the Board to adopt rules:

> designed to . . . foster cooperation and coordination with persons engaged in . . . clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and, in general, to protect investors and the public interest.

The proposed rule change would ensure accurate and efficient identification of municipal securities by CUSIP numbers when such securities are altered in the secondary market and therefore is consistent with the purposes of the Act. Because CUSIP numbers are necessary for the inclusion of municipal securities in automated clearance systems, the proposed rule change also is consistent with section 17A of the Act, which mandates the creation of a national clearing system for securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change would impose no burden on competition since it would apply uniformly to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board solicited comments on the proposed rule change in an exposure draft published in March 1987. The Board received four comment letters on the exposure draft and one oral comment. Three of the commentators supported the proposed rule change without change and noted that it would facilitate the identification of municipal securities in the secondary market.

Two commentators, while not opposing the proposed rule change, suggested that the Board limit it to secondary market securities that will be in existence for a specified minimum time period. One of the commentators noted that certain types of municipal securities have a nominal long-term maturity, but are remarketed with short mandatory tender periods, individually set through negotiations with customers. This commentator suggested that new CUSIP numbers would not be appropriate for such remarketed securities. The Board has determined that it is appropriate to rely on the CUSIP Service Bureau to set standards of eligibility for municipal securities and the Service Bureau has stated that remarketed securities in which the mandatory tender periods are negotiated individually with customers are ineligible for new CUSIP number assignment in the secondary market.

One commentator suggested that the entity responsible for causing a modification of the features of secondary market municipal securities, rather than the dealer offering or selling the securities, should be responsible for obtaining new CUSIP numbers. The Board, however, does not have authority to adopt rules that would require entities other than dealers to obtain CUSIP numbers for municipal securities, and believes that the proposed rule change generally will not place a burden on dealers that are not participating in a program to modify the features of an issue.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments,

all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 1, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 3, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20796 Filed 9-9-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24876; File No. SR-PSE-87-24]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc.; Relating to Termination of Technology Index Options Trading

Pursuant to section 19(b) (1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b) (1), notice is hereby given that on August 20, 1987, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("Act"), hereby proposes to delete its Rule XXI, section 3(j). (Brackets indicate language to be deleted.)

Rule XXI—Index Options

Designation of the Index

Sec. 3(a) through 3(i). No change.

[(j). For purposes of this Rule, the PSE Technology Index shall be considered a broad based Index.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A). Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The Exchange has determined to cease to permit the trading of options on the PSE Technology Index once the current open interest has been closed through trading or expiration. As a result, the Exchange is deleting reference to the product in its Rules. To continue the reference to the product may cause investor confusion.

As a result, the Exchange believes that this proposed amendment is specifically consistent with section 6(b) (5) of the Act in that it will foster cooperation and coordination with persons engaged in regulation, clearing, settling and processing information with respect to the market and will protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competion

The Exchange does not believe that the proposed rule change imposes a burden on competiton.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 1, 1987.

For the Commission by the Division of Marketing Regulation, pursuant to delegated authority.

Dated: September 3, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20797 Filed 9-9-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15963; File No. 812-6584]

Application; Computer Memories Inc.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for a Temporary Order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Computer Memories Incorporated ("Applicant").

Relevant Sections: Amended order requested pursuant to section 6(c) exempting Applicant from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an amended order exempting it from all provisions of the 1940 Act during the period ending October 31, 1987.

Filing Dates: Applicant's original application was filed December 31, 1986, and amended on April 9 and 27, 1987, and an order granting the application

was issued on May 27, 1987 (Investment Company Act Release No. 15756). The amendments to which this notice relates were filed on August 6 and September 1, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this amended application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Computer Memories Incorporated, 9811 Independence Avenue, Chatsworth, California 91311, Attention: President and Chairman of the Board; with a copy to Wilson, Sonsini, Goodrich & Rosati, Two Palo Alto Square, Suite 900, Palo Alto, California 94306, Attention: Douglas H. Collom, Esq.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272–3033, or Brian R. Thompson, Special Counsel (202) 272–3016, (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the amended application. The complete amended application is available for a fee from either the SEC's public reference branch in person, or the SEC's commercial copier (telephone no. 800–231–3282; in Maryland, 301–258–4300).

Applicant's Representations

1. Applicant was exempted from all provisions of the 1940 Act based upon its intent to acquire Hemdale Film Corporation ("Hemdale") and thereby cease to be an investment company under either section 3(a)(1) or 3(a)(3) of the 1940 Act. Thereafter, Applicant was unable to consumate such transaction within the time frame originally contemplated and, thus, requests additional, temporary exemptive relief for the purpose of completing the acquisition without being subject to the provisions of the 1940 Act. Applicant has incorporated by reference the information contained in its original application filed December 31, 1986, as amended April 9 and April 27, 1987, which was the basis for temporarily exempting Applicant from all provisions of the 1940 Act. The prior order granting such exemptive relief expired on August 14, 1987.

2. Applicant states that on July 31, 1987, an agreement and plan of reorganization ("Reorganization Agreement") was entered into among the Applicant, Hemdale, Hemdale Holdings, Ltd. ("HHL"), and Derek Gibson. Pursuant to the Reorganization Agreement, each share of Hemdale will be exchanged for shares of the Applicant's Common Stock ("Exchange") and Hemdale will thereby become a wholly-owned subsidiary of the Applicant. Preliminary proxy materials relating to the Exchange pursuant to Rule 14a–6(a) of the Securities Exchange Act of 1934 have been filed with the SEC, in anticipation of soliciting the approval of Applicant's shareholders.

3. Upon completion of the Exchange, the combined companies will continue the business presently conducted by Hemdale. Based on the pro forma balance sheet of the combined companies reflecting the Exchange, the investment securities of the combined companies will represent a nominal percentage of the total assets (exclusive of cash items) of the combined companies. Accordingly, the Exchange will relieve Applicant of any literal or perceived investment company status under the 1940 Act.

4. Applicant states that its inability to conclude its acquisition of Hemdale by such date was due to factors beyond its control. The principal factors in this regard included (i) settlement of a class action securities litigation against the Applicant and related parties; (ii) difficulties in providing comfort to HHL, a located in, and subject to the tax laws of, the United Kingdom concerning the tax consequences of the acquisition under English law; and (iii) efforts of the Applicant and its representatives to conclude an extensive due diligence investigation of Hemdale.

5. Applicant believes that the period ending October 31, 1987, will provide an adequate amount of time to conclude its acquisition of Hemdale pursuant to the Reorganization Agreement.

Condition To Order: If the requested exemptive order is granted, Applicant agrees to the following condition:

1. Pending completion of the acquisition as contemplated in the Reorganization Agreement, Applicant will refrain from the business of investing, reinvesting, owning, holding or trading in securities for speculative purposes.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Dated: September 3, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20798 Filed 9–9–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24455]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 3, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 28, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Fuel, Inc., et al. (70–6688)

Alabama Power Company ("Alabama"), an electric utility subsidiary company of The Southern Company, a registered holding company, and Alabama's subsidiary company, Columbia Fuels, Inc. ("Columbia"), both located at 600 North 18th Street, Birmingham, Alabama 35291 have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a), and 10 of the Act.

By prior Commission orders in this matter, Alabama was authorized to acquire the capital stock of Columbia, a

special purpose subsidiary organized to finance the nuclear fuel requirements of Alabama's Farley Nuclear Plant, and Columbia was authorized to enter into two credit agreements with Credit Suisse and Bank of America for credit lines of up to $30 million and $100 million, respectively. (HCAR Nos. 22786 and 23047, December 20, 1982 and August 31, 1983). Columbia now proposes to increase the credit arrangement with Credit Suisse by up to $20 million. Under the amended Credit Agreement, Credit Suisse will provide credit of up to $50 million to Columbia through (i) the issuance of an irrevocable letter of credit ("Letter of Credit") in support of the contemplated issuance by Columbia of its commercial paper and (ii) direct loans to Columbia against the issuance and delivery by Columbia of its promissory notes.

Allegheny Power System, Inc. (70–7420)

Allegheny Power System, Inc. ("Allegheny"), 320 Park Avenue, New York, New York 10022, a registered holding company, has filed an application pursuant to section 6(b) of the Act and Rule 50(a)(5) thereunder.

Allegheny seeks to issue and sell through September 30, 1989 up to $110 million of bank notes and commercial paper. This amount will include any short-term debt presently outstanding.

Each bank note will be dated as of the date of the borrowing which it evidences, will mature not more than 270 days after the date of issuance or renewal thereof, and will bear interest at no greater than the then current prime commercial credit or equivalent interest rate of the bank at which the borrowing is made. The commercial paper will have varying maturities, none more than 270 days. The notes will be sold directly to dealers at a discount not in excess of the discount rate per annum prevailing at time of issuance for commercial paper of comparable quality and of the particular maturity sold by issuers to dealers in commercial paper.

Allegheny requests authorization to issue and sell the commercial paper pursuant to an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5).

The Southern Company (70–7427)

The Southern Company ("Southern"), a registered holding company, 64 Perimeter Center East, Atlanta, Georgia 30346, and its subsidiaries, Alabama Power Company, 600 North 18th Street, Birmingham, Alabama 35291, Georgia Power Company, 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, Gulf Power Company, 500 Bayfront Parkway, Pensacola, Florida 32501, Mississippi Power Company, 2992 West Beach, Gulfport, Mississippi 39501, Southern Company Services, Inc., 800 Shades Creek Parkway, Birmingham, Alabama 35202, Southern Electric Generating Company, 600 North 18th Street, Birmingham, Alabama 35291, Southern Electric International, Inc., 100 Ashford Center North, Atlanta, Georgia 30338, have filed an application-declaration pursuant to section 6(a) and 7, 9(a) and 10 of the Act and Rule 50(a)(5) thereunder.

Southern proposes to issue up to $6,000,000 in value of its authorized but unissued shares of common stock, par value $5 per share, to fund The Southern Company system's employee stock ownership plan ("the plan"). Southern will apply the proceeds of the sale to further equity investments as authorized by the Commission in File No. 70–7340 and as may be hereafter authorized and for other corporate purposes. Cash contributions to the plan may also be invested in Southern's common stock through open market purchases or private purchases from parties other than Southern.

Southern requests an exception from competitive bidding requirements pursuant to Rule 50(a)(5). Southern states that the purchase price per share of additional common stock acquired from Southern by the plan with cash contributions shall be the fair market value as of the date of acquisition.

EUA Service Corporation (70–7428)

EUA Service Corporation ("EUA Service"), P.O. Box 2333, Boston, Massachusetts 02107, A subsidiary of Eastern Utilities Associates, a registered holding company, has filed an application pursuant to section 6(b) of the Act and Rule 50(a)(5) thereunder.

EUA Service proposes to issue and sell up to $20,000,000 aggregate principal amount of secured or unsecured notes maturing in not less than 5 nor more than 25 years to one or more institutional investors.

EUA Service seeks an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) to issue and sell the notes on a negotiated basis. EUA states that the company is unknown in the financial community and that the size of the offering makes it unlikely that prospective purchasers would be willing to do the necessary preparatory work for competitive bidding given the uncertain result of the bidding. EUA may proceed to negotiate the terms of the proposed notes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20799 Filed 9–9–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15964; 812–6701]

Application; The Stanger Partnership Fund, L.P.

Date: September 3, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Stanger Partnership Fund, L.P. (the "Partnership").

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act from certain provisions of section 2(a)(19) of the 1940 Act.

Summary of Application: The Partnership seeks an order determining that the independent general partners of the Partnership are not "interested persons" of the Partnership solely by reason of being general partners thereof.

Filing Date: The application was filed on May 1, 1987 and amended on August 18, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on September 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. The Partnership, 1129 Broad Street, Shrewsbury, New Jersey, 07701.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application; the complete Application is available for a fee from either the Commission's Public Reference Branch

in person, or the Commission's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Partnership is a newly formed Delaware limited partnership and will be governed by an Agreement of Limited Partnership (the "Partnership Agreement"). The investment objectives of the Partnership will be to seek a high current yield and long-term capital appreciation by investing primarily in a diversified portfolio of securities of publicly-traded limited partnerships, commonly referred to as master limited partnerships. The Partnership will also invest up to 20% of its assets in securities of limited partnerships that are not readily marketable.

2. The Partnership has filed a registration statement under the Securities Act of 1933, as amended, on Form N–2 with respect to a proposed public offering of units of limited partnership interests ("Shares").

3. The general partners of the Partnership (the "General Partners") will consist of a managing general partner (the "Managing General Partner") and individual general partners (the "Individual General Partners"). The Managing General Partner will be responsible for certain administrative responsibilities on behalf of the Partnership, subject to the supervision of the Individual General Partners. The initial Managing General Partner to the Partnership will also be the Partnership's initial investment advisor.

4. The Partnership Agreement provides that after the initial public offering of Shares, the number of Individual General Partners will be fixed from time to time by the Individual General Partners then in office, but such number may not be less than three or more than nine. Initially, there will be four Individual General Partners, who will include the Independent General Partners (individuals who are not "interested persons" of the Partnership within the meaning of the 1940 Act other than by virtue of being a General Partner of the Partnership) and one General Partner who is an individual and an affiliated person of the Partnership's Managing General Partner. If at any time the number of Independent General Partners is less than the number of Independent General Partners required by the 1940 Act, within 90 days therafter specified action shall be taken to restore the number of Independent General Partners to the number required by the 1940 Act. The Partnership Agreement will also provide that the Independent General Partners may be removed either (i) for cause by the action of two-thirds of the remaining Individual General Partners or (ii) by the Consent of at least 80% in Interest of the Limited Partners. The Managing General Partner may be removed either (i) by a majority vote of the Independent General Partners or (ii) by the Consent of at least 80% in Interest of the Limited Partners. The General Partners have determined that the 80% voting requirements described above, which are greater than the minimum requirements under Maryland law or the 1940 Act, are in the best interest of the Limited Partners generally.

5. The role of the Individual General Partners will be to provide overall guidance and supervision with respect to the operations of the Partnership. The Individual General Partners will perform all duties which the 1940 Act imposes on directors of companies organized in corporate form and will monitor the investments of the Partnership. The persons who serve as Independent General Partners will assume the responsibilities and obligations which the 1940 Act and the regulations thereunder impose on the non-interested directors of an investment company. The Partnership Agreement will provide that the Individual General Partners will, within one year after the Partnership commences operations, call a meeting of Limited Partners for the purpose of voting upon the approval and election of General Partners. Thereafter, the Partnership normally will not conduct annual meetings of Limited Partners for the purpose of electing General Partners.

The Partnership Agreement will generally provide that the General Partners are not personally liable to the Partnership or any Limited Partner for losses suffered by the Partnership, so long as the General Partners acted in good faith and in the best interest of the Partnership, and so long as the General Partners' conduct did not constitute gross negligence, willful misfeasance, bad faith or reckless disregard of the duties involved in the conduct of his office. A General Partner is entitled to indemnification from the Partnership against liabilities and expenses to which he or she may be subject in his or her capacity as a General Partner, so long as the General Partner acted in good faith and for a purpose that the General Partner reasonably believed to be in the best interests of the Partnership, and so long as the expenses were not the result of gross negligence, willful misfeasance, bad faith or reckless disregard of the duties involved in the conduct of his office.

The Partnership presently does not have an insurance policy which would provide coverage to persons who become Limited Partners in the Partnership, and believes that such insurance may not be necessary.

Management of the Partnership will consider the possibility of obtaining errors and omissions insurance. In light of the view of the staff of the Commission that generous insurance coverage is appropriate in view of the special problems of using the limited partnership form for registered investment companies, the Individual General Partners will review periodically the question of the appropriateness of obtaining an errors and omissions insurance policy for the Partnership.

6. The Managing General Partner will undertake in the Partnership Agreement that it will not resign or withdraw from the Partnership unless a successor Managing General Partner has been appointed and consented to by the Limited Partners.

7. The Limited Partners of the Partnership have no right to control the Partnership's business, but may exercise certain rights and powers of a Limited Partner under the Partnership Agreement and the Delaware Revised Limited Partnership Act, including voting rights and the giving of consents and approvals provided for in the Partnership Agreement. Subject to certain limitations, the Partnership Agreement authorizes Limited Partners to vote on certain matters, including the election or removal of General Partners, approval or termination of management arrangements, ratification or rejection of the appointment of the independent certified public accounts of the Partnership, and approval of certain amendments to the Partnership Agreement. The Partnership will receive an opinion of Delaware counsel for the Partnership substantially to the effect that the existence or exercise of these voting rights does not subject the Limited Partners to liability as general partners under The Delaware Revised Uniform Limited Partnership Act.

8. The Independent General Partners may be deemed "interested persons" of the Partnership for two reasons. First, by virtue of being partners of the Partnership, the Independent General Partners may be considered "affiliated persons" of the Partnership and thus "interested persons" of the Partnership. Second, the Independent General Partners also could be deemed "interested persons" of an investment advisor to the Partnership. The Independent General Partners are

"affiliated persons" of the Partnership's investment advisor by virtue of being "co-partners" of the investment advisory in the Partnership.

9. The Partnership has been structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company, and that the protections under the 1940 Act non-interested directors offer shareholders of registered management companies organized in the corporate form are provided to the Limited Partners of the Partnership. Section 2(a)(19) excludes from the definition of "interested persons" of an investment company those individuals who would be "interested persons" solely because they are directors of such investment company. Similarly, the Independent General Partners of the Partnership should not be considered "interested persons" of the Partnership merely because they serve in that capacity. Thus, it is submitted that granting the requested exemption from the provisions of section 2(a)(19) is consistent with the purposes fairly intended by the policy and provisions of the 1940 Act.

10. Other than by virtue of being a general partner of the Partnership, by definition, the Independent General Partners will not be interested persons of the Partnership, as that term is defined in section 2(a)(19) of the 1940 Act. The compensation of the Independent General Partners for serving in that capacity will not be tied to the financial fortunes of the Partnership, the Partnership's investment advisor, any principal underwriter of the Partnership or any other affiliated or interested person of the Partnership. In addition, the Independent General Partners will not have any other material financial relationship with the Partnership's investment advisor, any principal underwriter of the Partnership or any other person (other than the Partnership iteslf) which would cause the Independent General Partners to be intrested persons of the Partnership. Because the Independent General Partners will not have any other relationship with the Partnership, and since the Independent General Partners will be performing the same functions as those performed by the board of directors of an investment company organized in the corporate form, the Partnership believes that the Independent General Partners should not be considered interested persons of the Partnership, just as the directors of investment companies organized in the corporate form are not considered interested persons of such companies, solely for serving as directors.

Applicant's Conditions

The Partnership agrees that if the order is granted, such order will be expressly conditioned on the Partnership's compliance with the representations set forth above.

For the SEC, by the Division of Investment management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20800 Filed 9-9-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83s), supporting statements, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

AGENCY CLEARANCE OFFICER: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Reporting and Recordkeeping Requirements on Non-Bank Lenders
Frequency: On occasion
Description of Respondents: The SBA requires Small Business Lending Companies (SBLCs) to maintain and report essential records and information of their activities in the interest of protecting SBA's interest in their guaranteed loan portfolio.
Annuel Reponses: 16
Annual Burden Hours: 960
Type of Request: Extension

Title: Tax Information Authorization
Frequency: On occasion
Description of Respondents: This information is collected from corporations and individuals applying for assistance. This information would verify the accuracy of the information given by the corporation or individual regarding Federal taxes and their status.
Annual Responses: 38,250
Annual Burden Hours: 38,250
Type of Request: New

Title: Application for membership in Small Business Production or Research and Development Pool
Form No.: SBA 419
Frequency: On occasion
Description of Respondents: The SBA is mandated by Pub. L. 85-536, to assist and encourage small firms to undertake joint programs for research and development and to form Defense production pools, in order to maintain and strengthen the competitive free enterprise system and the national economy and to expand and maintain a strong industrial production base. SBA Form 419 is needed and used by small firms to voluntarily apply for pool membership approval.
Annual Responses: 11
Annual Burden Hours: 22
Type of Request: Extension

September 3, 1987.

William Cline,

Chief, Administrative Information Branch, Small Business Administration.

[FR Doc. 87-20755 Filed 9-9-87; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2289]

Declaration of Disaster Loan Area; Mississippi

Harrison and Marion Counties and the adjacent County of Jackson in the State of Mississippi constitute a disaster loan area because of damage from severe storms, torrential rains, flooding and flash flooding which occurred between August 10 and August 15, 1987. Applications for loans for physical damage may be filed until the close of business on November 2, 1987, and for economic injury until the close of business on June 3, 1988, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, Georgia 30308.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.500

The number assigned to this disaster is 228906 for physical damage and for economic injury the number is 654700.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: September 3, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-20756 Filed 9-9-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on September 23, 1987 at 10:00 a.m. at NTIA/ITS, 325 Broadway, Boulder, Colorado.

The purpose of the meeting will be to review, prepare and approve U.S. contributions to upcoming special Rapporteur and Editorial Group meetings of Study Group VII.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 653-6102.

Date: August 21, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 87-20719 Filed 9-9-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee (ATPAC) to be held from October 19, at 9 a.m., through October 23, 1987, at 4 p.m., in the Administrator's Round Room on the 10th floor, at FAA headquarters, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting is as follows: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify, not later than October 16, 1987, Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic Operations Service, 800 Independence Avenue, SW., Washington, DC, 20591, telephone (202) 267-9378. Information may be obtained from the same source.

The next quarterly meeting of the FAA ATPAC is planned to be held from January 26 through January 29, 1988, at Embry-Riddle, Daytona, FL.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on September 1, 1987.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 87-20750 Filed 9-9-87; 8:45 am]

BILLING CODE 4910-13-M

Informal Airspace Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of informal airspace meetings.

SUMMARY: This notice announces informal airspace meetings to discuss the proposed alteration of the Los Angeles, CA, Terminal Control Area (TCA) (Airspace Docket No. 87-AWA-31; August 10, 1987, 52 FR 29612).

DATES AND ADDRESSES:

Date: November 12, 1987
Time: 7:00 p.m.
Location: Performing Arts Center, Birmingham High School, 17000 Hayes Street, Van Nuys, CA

Date: November 16, 1987
Time: 7:00 p.m.
Location: El Segundo High School 640 Main Street, El Segundo, CA

Date: November 19, 1987
Time: 7:00 p.m.
Location: Building Six Theater, Armed Forces Reserve Center, Katella Avenue and Lexington, Los Alamitos, CA

Date: November 24, 1987
Time: 7:00 p.m.
Location: Merton E. Hill Auditorium, Chaffey Joint Union High School, 211 West Fifth Street, Ontario, CA

FOR FURTHER INFORMATION CONTACT: Ron Debelak, Airspace and Procedures Branch (AWP-530), Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Hawthorne, CA; telephone: (213) 297-1658.

Issued in Washington, DC, on September 3, 1987.

Sid Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-20751 Filed 9-9-87; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautical (RTCA) Special Committee 150; Meeting

This Notice announces the change in meeting date of RTCA Special Committee 150 on Minimum System Performance Standards for Vertical Separation above Flight Level 290, which was scheduled for September 21-

23, 1987, and announced in the **Federal Register** on August 13, 1987, (52 FR 30275). This meeting has been rescheduled for September 22–24, 1987.

Issued in Washington, DC on September 1, 1987.

Herb Goldstein,

AES–3.

[FR Doc. 20752 Filed 9–9–87; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Charles and Prince George's Counties, MD

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement is being prepared for the proposed construction of Maryland Route 228 Extended between US Route 301 and MD Route 210 in Charles and Prince George's Counties.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Terry, Jr., Field Operations Engineer, Federal Highway Administration, The Rotunda, Suite 220, 711 W. 40th Street, Baltimore, Maryland 21211, telephone 301/962–4010, and/or Mr. Louis Ege, Jr., Deputy Director, Project Development division, Maryland State Highway Administration, 707 North Calvert Street, Room 310, Baltimore, Maryland 21202, telephone 301/333–1130.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration, is preparing an environmental impact statement to develop acceptable alternatives to provide an improved four-lane arterial highway between existing US Route 301 in Waldorf and Maryland Route 210 (Indian Head Highway). This facility would accommodate a major travel desire between the Waldorf/St. Charles City area and I–95.

In addition to the No-Build Alternate, four build alternates are under consideration. Alternate 2/3 follows existing MD Route 228 from US 301 westward to Sharperville Road. It then diverges northward from MD Route 228, following the approximate alignment of Sharperville Road to its existing terminus at Livingston Road. From Livingston Road to MD Route 210, the facility would be on new location for one-half mile.

Alternate 5/6 follows existing MD Route 228 from US 301 westward to Bealle Hill Road. It then diverges northwesterly from MD Route 228, on new location for one and one-half miles, intersecting MD Route 210 in the vicinity of Manning Road.

Alternate 7 would create an extension of existing Smallwood Drive from Middletown Road, extending westward on new location for approximately four miles, intersecting MD Route 210 near Pine road.

Alternate 8 would follow existing MD Route 228 to the point where Alternate 7 would intersect existing MD Route 228. From this point, Alternate 8 would follow the same alignment as Alternate 7, intersecting MD Route 210 near Pine road.

All build alternates include options for either an at-grade intersection or an interchange connection at Maryland Route 210.

All build alternates include the widening of a portion of MD Route 210 to six lanes, utilizing the existing median, in order to accommodate the substantial traffic volume entering the MD Route 210 corridor at the new connection with MD Route 228 Extended.

Potential impacts of particular concern include encroachments on Mattawoman Creek and tributaries of both Mattawoman and Piscataway Creeks, archeological sites, woodlands, and residential displacements.

A public meeting to discuss the preliminary alternates has been held. A public hearing will be held after circulation of the DEIS. A public notice will give the time and place of the public hearing, and individual notices will be sent to those agencies, groups, and individuals on the mailing list. The DEIS will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues relating to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested persons.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program)

Emil Elinsky,

Division Administrator, Baltimore, Maryland.

[FR Doc. 87–20720 Filed 9–9–87; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[FRA Waiver Petition Docket Number RSRM–87–1]

Petition for Relief from the Requirements of Rear End Marking Device Regulation; Central of Georgia Railroad Company

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that Central of Georgia Railroad Company (CG) has petitioned the Federal Railroad Administration (FRA) for permanent relief from the requirements of 49 CFR 221.13. This section requires that trains which occupy or operate on main track shall (1) be equipped with, (2) display on the trailing end of the rear car of that train, and (3) continuously illuminate or flash a marking device prescribed in Subpart B of Part 221.

The permanent relief is requested for those regular trains operating on the Tennille Wye and Dublin District of the CG, a part of the coastal division of Southern Railway System (a trade name of affiliated carriers including CG). The carrier feels that the establishment of an absolute block to prevent entry of another train, the ordinarily short train length, the limited train speed (25 mph), and the CG's record of no major accidents or incidents on the Tennille-Dublin Line over the last 6 years, together support a premise that safety would not be compromised were their request to be granted.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning these proceedings should identify the appropriate Docket Number (Docket Number RSRM–87–1) and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before October 28, 1987 will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

VOL 52 ISS 175 SE 10 1987 UMI

Issued in Washington, DC on August 26, 1987.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87-20863 Filed 9-9-87; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 3, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0086
Form Number: 1040C
Type of Review: Revision
Title: U.S. Departing Alien Income Tax Return
Description: Form 1040C is used by aliens departing the U.S. to report income received or expected to be received for the entire tax year. The data collected is used to insure that the departing alien has no outstanding U.S. Tax liability. Affected public are aliens departing the U.S.
Respondents: Individuals or households
Estimated Burden: 7,800 hours

OMB Number: 1545-0779
Form Number: 5617
Type of Review: Revision
Title: Understanding Taxes Teacher's Evaluation
Description: Redesign of course materials into a teacher's resource package that includes software, videos, transparencies, and teaching modules demands substantive input from educators to determine the effectiveness of the Understanding Taxes course materials. This course evaluation will aid in improving/revising existing materials to improve the quality of the teacher's resource package.
Respondents: Individuals or households
Estimated Burden: 1,500 hours

OMB Number: 1545-0897
Form Number: None
Type of Review: Extension
Title: IRS Outreach Brochure
Description: Publication 1224, Community Outreach Tax Assistance Brochure includes the Outreach Interest Card which is completed by taxpayers to make the Service aware of those interested in community tax assistance sessions.
Respondents: Individuals or households, Farms, Small businesses or organizations
Estimated Burden: 10,000 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Financial Management Service

OMB Number: 1510-0004
Form Number: TFS 285-A
Type of Review: Extension
Title: Schedule of Excess Risks
Description: Listing of Excess Risks written or assumed by Treasury certified companies showing compliance with Treasury regulations to assist Treasury in determining solvency of certified companies for benefit of writing Federal surety bonds.
Respondents: Businesses or other for-profit, Small businesses of organizations
Estimated Burden: 24,880 hours
Clearance Officer: Hector Leyva (301) 436-5300, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20783
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87-20734 Filed 9-9-87; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Performance Review Board; Membership

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

DATE: Performance Review Board effective September 1, 1987.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, Room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 566-4633, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives other than Assistant Commissioners, Regional Commissioners and executives in Inspection are as follows:

Michael J. Murphy, Senior Deputy Commissioner, Chairperson
Michael P. Dolan, Assistant Commissioner (Human Resources Management and Support)
Percy P. Woodard, Jr., Assistant Commissioner (International)
Thomas P. Coleman, Regional Commissioner, Western Region
Richard C. Voskuil, Regional Commissioner, Southwest Region
Robert I. Brauer, Assistant Commissioner (Employee Plans & Exempt Organizations), Alternate
Cornelius J. Coleman, Regional Commissioner, North Atlantic Region, Alternate

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 87-20780 Filed 9-9-87; 8:45 am]

BILLING CODE 4830-01-M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 175
Thursday, September 10, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 15, 1987 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEM TO BE DISCUSSED:

Explanation and Justification of the Delegate Selection Regulations (11 CFR 110.14)

DATE AND TIME: Tuesday, September 15, 1987 following the open meeting.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be open to the public.

ITEM TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 87-20915 Filed 9-8-87; 2:20 pm]

BILLING CODE 6715-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda

TIME AND DATE: 9:30 a.m., Tuesday, September 15, 1987.

PLACE: Board Room (Room 812A), Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first four items will be open to the public. The last item will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report: Derailment of Steam Excursion Train of the Norfolk and Western Railway Company, Train Extra 611 West, Suffolk, Virginia, May 18, 1986.
2. Marine Accident Report: Engineroom Flooding of U.S. Tankship PRINCE WILLIAM SOUND, Puerto Vallarta, Mexico, May 9, 1986.
3. Marine Accident Report: Fires on Board the Panamanian Tankship SHOUN VANGUARD and the U.S. Tank Barge HOLLYWOOD 3013, Deer Park, Texas, October 7, 1986.
4. Recommendation to Review the British Columbia Safety Education Program to Determine if it is Feasible for Use in the United States. (Calendared by Chairman)
5. Opinion and Order: Administrator v. Watkins, Docket SE-7595; Disposition of the Appeals of Respondent and the Administrator. (Calendared by Chairman)

FOR MORE INFORMATION CONTACT: Bea Hardesty, Federal Register Liaison Officer.

Bea Hardesty,

Federal Register Liaison Officer.

September 4, 1987.

[FR Doc. 87-20869 Filed 9-8-87; 9:13 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 7, 14, 21, and 28, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 7

Wednesday, September 9

2:00 p.m.
Briefing on Performance of Sandia Containment Tests (Public Meeting)

Thursday, September 10

2:00 p.m.
Discussion of Integration of AEOD Reports into the Regulatory Process (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Jurisdiction over Kress Creek (Tentative)

Week of September 14—Tentative

Monday, September 14

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)
2:30 p.m.
Briefing on the Status of Peach Bottom (Public Meeting)

Thursday, September 17

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 21—Tentative

Thursday, September 24

2:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 28—Tentative

Thursday, October 1

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)
2:00 p.m.
Briefing on Technical Specifications Improvement Project (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (If needed)

Note—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker, (202) 634-1410.

Andrew L. Bates,

Office of the Secretary.

September 3, 1984.

[FR Doc. 87-20914 Filed 9-8-87; 2:08 pm]

BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:30 p.m. (closed portion), 3:30 p.m. (open portion), Tuesday, September 22, 1987.

PLACE: Offices of the Corporation, fourth floor Board Room, 1615 M Street NW., Washington, DC.

STATUS: The first part of the meeting from 1:30 p.m. to 3:30 p.m. will be closed to the public. The open portion of the meeting will commence at 3:30 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:30 p.m. to 3:30 p.m.):

1. Finance Project in Middle Eastern Country
2. Finance Project in South American Country
3. Finance Project in West Asian Country
4. Finance Project in East Asian Country
5. Report of Trade Policy Review Group
6. Legislative Renewal
7. Worker Rights in China

8. Board Membership
9. Claims Report

FURTHER MATTERS TO BE CONSIDERED:
(Open to the public 3:30 p.m.)

1. Approval of the Minutes of the Previous Board Meeting
2. Approval of Proposed Regular Meetings of the Board
3. Information Reporters

CONTACT PERSON FOR INFORMATION:
Information with regard to the meeting may be obtained from the Secretary of the Corporation, on (202) 457–7079.

Margaret A. Kole,
OPIC Corporate Secretary.
September 4, 1987.

[FR Doc. 87–20894 Filed 9–8–87; 11:52 am]
BILLING CODE 3210–01–M

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Corrections

Federal Register
Vol. 52, No. 175
Thursday, September 10, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5E3269/P426; FRL-2239-2]

Pesticide Tolerance for Oxyfluorfen

Correction

In proposed rule document 87-17186 beginning on page 28314 in the issue of Wednesday, July 29, 1987, make the following corrections:

1. On page 28315, in the first column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the sixth line, "oxyfluorfen" was misspelled.

2. On the same page, in the second column—

a. On the third line, "880" should read "800".

b. On the fourth line, "at 57" should read "at week 57".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 233

Aid to Families With Dependent Children—Treatment of Utility Payments by Applicants or Recipients Living In Certain Federally Assisted Housing

Correction

In proposed rule document 87-19628 beginning on page 32323 in the issue of Thursday, August 27, 1987, make the following corrections:

1. On page 32323, in the third column, under **DATES**, the date in the last line should read "October 26, 1987".

2. On page 32324—

a. In the second column, in the third complete paragraph, in the seventh line, "as separate" should read "as a separate".

b. In the third column, in the last paragraph, in the third line, "family have" should read "family shall have"

§ 233.20 [Corrected]

3. On page 32325, in the third column, in § 233.20(a)(2)(ix)—

a. In the fourth line, "the" should read "be".

b. In the 18th, 19th and 20th lines remove "Utility payments are made in garbage collection.".

c. In the last line after "housing" insert a period.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

Dental Devices; Proposed Exemptions From Premarket Notification

Correction

In proposed rule document 87-18268 beginning on page 30120 in the issue of Wednesday, August 12, 1987, make the following corrections:

1. On page 30120, in the first column, the heading should read as set forth above.

2. On the same page, in the same column, in the **SUPPLEMENTARY INFORMATION**, in the fifth line, "for medical" should read "of medical".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction Of Inmates; Inmate Discipline and Special Housing Units

Correction

In proposed rule document 87-19687 beginning on page 32478 in the issue of Thursday, August 27, 1987, make the following corrections:

1. On pages 32484 and 32485, in Table 3, in the top of the columns, remove the following language:

"[The UDC shall * * * appropriate disposition.]"

2. On page 32484, in the first column, insert "**HIGH CATEGORY**" as a centered heading before entry "200".

3. On the same page, in the third column, insert "**MODERATE CATEGORY**"as a centered heading before entry "300".

4. On the same page, in the same column, in entry "308" in the third line move "N. Extra duty" from the second column of the table to the third column of the table.

5. On page 32485, in Table 3, in the second column, insert "**LOW MODERATE CATEGORY**" as a centered heading before entry "400".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 602

Federal-State Unemployment Compensation Program; Unemployment Insurance Quality Control Program

Correction

In rule document 87-20151 beginning on page 33520 in the issue of Thursday, September 3, 1987, make the following correction:

§ 602.41 [Corrected]

On page 33530, in the second column, in § 602.41, in the 10th line, "Actions" should read "sections".

BILLING CODE 1505-01-D

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revisions to Freedom of Information Act (FOIA) Regulations

Correction

In proposed rule document 87-19706 appearing on page 32573 in the issue of Friday, August 28, 1987, make the following correction:

§ 1301.1 [Corrected]

In § 1301.1(c)(3), in the third column, in the first line, the paragraph designation"(iii)" should read "(ii)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[T.D. 8152]

Excise Taxes on Gasohol and Other Alcohol Mixture Fuels, Tread Rubber and Inner Tubes

Correction

In rule document 87-18851 beginning on page 31614 in the issue of Friday, August 21, 1987, make the following correction:

§48.4081-2 [Corrected]

On page 31619, in the second column, in § 48.4081-2(a)(5), in the first line, the designation "(1)" should have read "(i)".

BILLING CODE 1505-01-D

VOL 52 ISS 175 SE 10 1987 UMI

federal register

Thursday
September 10, 1987

Part II

Department of the Interior

Minerals Management Service

Outer Continental Shelf; Proposed Notice of Sale; Central Gulf of Mexico Sulphur and Salt Lease Sale; Notice

BEST COPY AVAILABLE

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Proposed Notice of Sale
Central Gulf of Mexico
Sulphur and Salt Lease Sale

By publication of this proposed Notice of Sale, the Department of the Interior provides the public and potential bidders an opportunity to review the proposed terms and conditions for a sulphur and salt lease sale on the Federal Outer Continental Shelf (OCS) in the Central Gulf of Mexico. The proposed Notice for this sale was preceded by a Notice in the Federal Register (June 29, 1987, at 52 FR 24264) which included a query regarding tentative terms and conditions for a sale. Responses to that Notice were employed in the decisions on the terms and conditions in this proposed Notice of Sale.

The Minerals Management Service is requesting further comment by October 26, 1987, on scheduling of the sale, royalty rates, and lease terms. See paragraph 16 of this Notice.

Acting Director, Minerals Management Service

David W. Crow

Approved:

Acting Assistant Secretary - Land and Minerals Management

James E. Cason

9/2/87
Date

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Proposed Notice of Sale
Central Gulf of Mexico
Sulphur and Salt Lease Sale

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356, (1982)), as amended by the OCS Lands Act Amendments of 1985 (100 Stat. 147), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m.) until the Bid Submission Deadline at 10 a.m., January __, 1988. Hereinafter, all times cited in this Notice refer to Central Standard Time (c.s.t.) unless otherwise stated. Bids will not be accepted the day of Bid Opening, January __, 1988. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to 10 a.m., January __, 1988. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m., January __, 1988. Bid Opening Time will be 9 a.m., January __, 1988, at _____. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256.

3. Method of Bidding. A separate bid in a sealed envelope labeled "Sealed Bid for Sulphur and Salt Lease Sale (bidding unit number, map number, map name, and block number(s)), not to be opened until 9 a.m., c.s.t., January __, 1988," must be submitted for each prescribed bidding unit bid upon. It is recommended that all numbers of blocks and applicable portions (as described in paragraph 12) comprising the bidding unit appear on the sealed envelope. A bid form for this sale is available from the Gulf of Mexico Regional Office as provided in paragraph 14(a). In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of any bidding unit as described in paragraph 12 will be considered.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Gulf of Mexico Regional Office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder in percent to a maximum of five decimal places after the decimal point, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus in the amount of $144,000 or more per bidding unit. All leases awarded will provide for a yearly rental payment of $3 per acre or fraction thereof. All leases will provide for a minimum royalty of $3 per acre or fraction thereof. A cash bonus/fixed royalty bidding system with a sulphur royalty rate of 12 1/2 percent will be employed on all bidding units offered in this sale. No royalty will be collected on salt used for operations or production purposes on the lease itself. A royalty rate applicable to salt produced for off-site usage will be determined prior to the final Notice of Sale.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Representation Form, Form MMS-2032 (June 1985). See paragraph 14(d).

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Bidding Units or Portions Thereof. The United States reserves the right to withdraw any bidding unit or portion thereof from this sale prior to issuance of a written acceptance of a bid for the bidding unit.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any bidding unit will be awarded to any bidder, unless:

a) the bidder has complied with all requirements of this Notice and applicable regulations;

b) the bid is the highest valid bid; and

c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $144,000 or more per bidding unit. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as

specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment, for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155.

11. Leasing Maps and Official Protraction Diagrams. Most of the bidding units offered for lease may be located on the Outer Continental Shelf Leasing Maps--Louisiana Nos. 1 through 12. This is a set of 27 maps which sells for $17 and which may be purchased from the Gulf of Mexico Regional Office (see paragraph 14(a)). Two of the bidding units contain blocks which are located on the Official Protraction Diagram NH 16-10, Mississippi Canyon (revised December 2, 1976). This map sells for $2 and also may be purchased from the Regional Office.

12. Description of the Areas Offered for Bids. The sale will include 51 bidding units as described below. Bidding units are based upon the MMS geologic outline of potential sulphur deposits and are formed by combining several quarter blocks. The following table contains the bidding units offered in this sale as well as their block composition and acreage. The map abbreviations used therein and their associated map names are:

WC-West Cameron
WCS-West Cameron South
ECS-East Cameron South
SMI-South Marsh Island
SMIS-South Marsh Island South
SS-Ship Shoal
PL-South Pelto
GI-Grand Isle
WD-West Delta
MC-Mississippi Canyon
SPSE-South Pass South and East
MPSE-Main Pass South and East
WCW-West Cameron West
EC-East Cameron
VR-Vermilion
SMIN-South Marsh Island North
EI-Eugene Island
SSS-Ship Shoal South
ST-South Timbalier
GIS-Grand Isle South
WDS-West Delta South
SP-South Pass
MP-Main Pass

CENTRAL GULF OF MEXICO
SULPHUR AND SALT LEASE SALE BIDDING UNITS

Bidding Unit #	Bidding Unit Description	Acreage
1	WCW 306	5,000.00
2	WCS 521;522;544	11,428.74
3	EC 104;115	10,000.00
4	EC 118;119	10,000.00
5	EC 126	5,000.00
6	EC 154;155; WC 263;272NE/4	16,250.00
7	EC 178;179W/2;184NW/4;185N/2	11,250.00
8	EC 229	5,000.00
9	ECS 293;304N/2	7,500.00
10	VR 124	5,000.00
11	VR 161;162	9,792.53
12	VR 164;179	10,000.00
13	VR 189;190;193;194	20,000.00
14	VR 199SW/4;200;203;204NW/4	12,500.00
15	VR 217;218;225;226	20,000.00
16	SMI 8; SMIN 288	6,315.57
17	SMI 33;38	10,000.00
18	SMI 58;69;70; SMIS 71NE/4;72;73	23,719.57
19	SMIS 121,132N/2	7,500.00
20	EI 62S/2;63S/2;76;77	15,000.00
21	EI 89;94;95W/2;110NW/4;111N/2	16,250.00
22	EI 116S/2;128;128A;129;129A	12,500.00
23	EI 119;120;125;126	20,000.00
24	EI 157SE/4;158;175;176E/2	13,750.00
25	EI 172;184	10,000.00
26	EI 188S/2;189S/2;190;191	15,000.00
27	EI 205;218;227N/2	12,500.00
28	EI 208	5,000.00
29	EI 237;238;252N/2;253N/2	15,000.00
30	SS 30;31;32;33	20,000.00
31	SS 149;154	10,000.00
32	SS 208SE/4;209S/2;214;215W/2	11,250.00
33	SS 218;219E/2;229;230W/2; SSS 242N/2	17,500.00
34	SSS 268;269E/2;274;275W/2	15,000.00
35	PL 11;12;19NW/4;20N/2	13,750.00
36	ST 63;86	10,000.00
37	ST 131;132N/2; GIS 86	7,762.58
38	ST 134W/2;135;151N/2	10,000.00
39	ST 160SW/4;161;176;177	16,250.00
40	GI 72	5,000.00
41	WD 30;31	10,000.00
42	WDS 121SE/4;122S/2;133;134E/2	11,250.00
43	WDS 137;138; MC 267	12,258.68
44	WDS 152S/2; MC 357;358	8,629.27
45	SPSE 88;89;93;94	17,080.90
46	SP 60;61N/2; SPSE 67;70N/2	14,999.94
47	MP 72(seaward of Federal/State boundary)	3,750.80
48	MP 144;145; MPSE 295;296	19,110.72
49	MPSE 289	4,560.81
50	MPSE 299	4,560.81
51	MPSE 305;306	9,999.92

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13. Lease Terms and Stipulations.

a) Leases resulting from this sale will have a primary lease term of 5 years with an automatic extension to 10 years in cases where drilling has occurred before the end of the fifth year pursuant to, and meeting the critieria established in an approved exploration plan. The availability of lease forms for this sale will be announced in the Federal Register at a later date.

b) The stipulations to be applied are as described in the following paragraphs:

Stipulation No. 1—Protection of Archaeological Resources.

(This stipulation applies to all bidding units leased in this sale.)

(1) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (Section 301(5), National Historic Preservation Act, as amended, 16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(2) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (a) through (c).

(a) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RD for review.

(b) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(c) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(3) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

Stipulation No. 2—Military Areas.

(This stipulation applies only to Bidding Unit No. 49, i.e. Main Pass South and East Addition Block 289, which is located in the Eglin Water Test Area 1 (EWTA-1), an area used by the U.S. Air Force for rocket and missile testing. This bidding unit is located on the western boundary of EWTA-1.)

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf, to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U. S. Government, its contractors or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters for Eglin Water Test Area 1 (EWTA-1), address provided below.

Notwithstanding any limitation of the lessee's liability in the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from EWTA-1 in accordance with requirements specified by the commander of the command headquarters for EWTA-1, address provided below, to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing or operational activities conducted within EWTA-1. Necessary monitoring control and coordination with the lessee, its agents, employees, invitees, independent contractors, or subcontractors will be affected by the commander of the aforementioned onshore military

installation conducting operations in EWTA-1, provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors, or subcontractors and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf, boat or aircraft traffic in EWTA-1, shall enter into an agreement with the commander of the command headquarters for EWTA-1, address provided below, upon utilizing the area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating in EWTA-1 at all times.

EWTA-1 Contact Officer: Commander
Armament Division
Attention: Howard Dimmig/CCN
Eglin AFB, Florida 32542
Telephone: (904) 882-5558

Stipulation No. 3—Hydrocarbon Discovery Stipulation.

(This stipulation applies to all bidding units leased in this sale).

Sulphur and salt leases are granted separately from oil and gas leases. Therefore, any hydrocarbons discovered by the sulphur and salt lessee cannot be produced under this lease. If the lessee discovers hydrocarbons while conducting sulphur and salt operations on the lease area, the lessee shall report the discovery immediately to the Regional Director (RD). If the RD determines that the discovery is significant, and the Director determines that release of the information is necessary for the proper development of the field or area, then a public announcement of the significant hydrocarbon discovery will be made pursuant to 30 CFR 250.3.

14. Information to Lessees.

a) Supplemental Documents. For copies of the various documents identified as available from the Gulf of Mexico Regional Office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, either in writing or by telephone (504) 736-2519. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736-2755.

b) Navigation Safety. Operations on some of the bidding units offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. U.S. Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with Section 4(e) of the OCS Lands Act, as amended.

c) Offshore Pipelines. Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

d) Affirmative Action. Revision of the Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5 (a)(1) and 60-1.7(a)(1). Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

e) Ordnance Disposal Areas. The U.S. Air Force has released an indeterminable amount of unexploded ordnance throughout Eglin Water Test Area 1, which is shown on a map available from the MMS Gulf of Mexico Regional Office. The exact location of the unexploded ordnance is unknown, and lessees are advised that all bidding units included in this sale in or near this water test area should be considered potentially hazardous to drilling and platform and pipeline placement.

f) Operational Constraints.

(1) Sulphur and salt exploration or development activities will be permitted in such a manner that they will not unduly interfere with prior rights or approvals for oil and gas exploration and/or development activities.

(2) Exploration or development and production plans submitted in accordance with 30 CFR 250.34 for proposed sulphur and salt activities will be required to include the showing of notice to existing oil and gas operators or pipeline permittees whose existing or approved activities may be affected by the proposed sulphur activities. Information regarding existing pipelines and other oil and gas appurtenances and structures is available from the Regional Office. See paragraph 14(a).

(3) The MMS may, if determined necessary as a means of safeguarding life and the environment and the carrying out of oil and gas operations, impose appropriate operational constraints or requirements, including but not limited to the following:

(a) The establishment of "no activity zones" in the vicinity of certain existing or approved oil and gas activities; and

(b) The delaying of sulphur development activities until such time that the potential for negative impact upon oil and gas activities is at an acceptable level.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico OCS Orders, as of their effective dates, and any other applicable OCS Order as it becomes effective.

16. Request for Comments. Further comments are requested from interested parties on the subjects listed below. Comments are requested by October 26, 1987, and should be sent to the Deputy Associate Director for Offshore Leasing, Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Room 4230 (MS-645), Washington, D.C. 20240.

a) The MMS acknowledges recommendations from some interested parties for a delay of the sale to some time after January 1988. However, the MMS has decided to proceed with the sale and will re-evaluate the delay alternative at the time of the final Notice of Sale. Additional comments on the timing of the sale are requested.

b) Additional comments specific to the recommended terms and conditions in this proposed Notice of Sale are requested, particularly on royalty rates and lease terms.

c) As noted in paragraph 4 of this proposed Notice, the MMS is planning to assess a royalty on salt produced in this sale for usage off the lease site. Specific comments regarding an appropriate royalty rate are hereby requested.

[FR Doc. 87-20638 Filed 9-9-87; 8:45 am]
BILLING CODE 4310-MR-C

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federal register

Thursday
September 10, 1987

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 31, 301, and 602

Penalty for Failure To Include Correct Information on Information Returns and Payee Statements; Temporary Regulations and Notice of Proposed Rulemaking

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31, 301, and 602

[T.D. 8155]

Penalty for Failure to Include Correct Information on Information Returns and Payee Statements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations on the penalty for failure to provide correct information on information returns and payee statements. Congress enacted this penalty in section 1501 of the Tax Reform Act of 1986 (Pub. L. 99–514). These regulations affect persons who are required to file information returns with the Internal Revenue Service and furnish statements to payees. The text of these temporary regulations also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

DATES: These regulations are effective January 1, 1987, as applicable to information returns and payee statements the due date for which (determined without regard to extensions) is after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Renay France of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3459, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations on the penalty under section 6723 for failure to include correct information on information returns and payee statements. Section 6723 was added to the Internal Revenue Code by the Tax Reform Act of 1986. These temporary regulations will remain in effect until superseded by final regulations on this subject.

Explanation of Provisions

Section 6723 imposes a penalty on any person who files an information return (as defined in section 6724(d)(1)), or furnishes a payee statement (as defined in section 6724(d)(2)), and fails to include all of the required information or includes incorrect information. The amount of the penalty is $5 for each return to statement for which there is a failure to include correct information. However, the total penalty imposed on any person for all such failures during a calendar year is limited to $20,000.

The statute provides higher penalties for intentional disregard of the correct information reporting requirement, and these higher penalties are not subject to the $20,000 maximum. Likewise, pursuant to section 6724, the $20,000 maximum does not apply with respect to interest or dividend returns or statements.

The temporary regulations provide that for purposes of the penalty for failure to include correct information, the information that is required to be included correctly on a return or statement is the information required by the applicable information reporting statute or by any administrative pronouncement issued thereunder (such as a regulation, revenue ruling, revenue procedure, or information reporting form).

Exception for Inconsequential Omissions and Inaccuracies

The temporary regulations provide an exception from the penalty for inconsequential omissions and inaccuracies. Under this exception, the penalty will not be assessed for any failure to include correct information on an information return if the failure does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. Similarly, the penalty will not be assessed with respect to a payee statement if the failure cannot reasonably be expected to prevent or hinder the payee from receiving correct information and reporting it on his or her tax return.

Exception for Corrected Omissions and Inaccuracies

To encourage the reporting of correct information, the temporary regulations also provide an exception for corrected failures. Under this exception, the penalty generally will not be assessed for omissions and inaccuracies that are corrected timely. To be considered timely, a correction must occur by the earliest of: (1) 30 days after the person who filed the return or furnished the statement discovers the failure; (2) 30 days after the date of a written request from the Internal Revenue Service for corrected information; or (3) October 1 (March 1 for payee statements) of the calendar year in which the return or statement is due. Under the regulations, timely correction does not prevent assessment of the penalty for any failure that is part of a pattern of conduct of repeatedly failing to include correct information, or for any failure that is intentional.

The October 1 deadline for correcting information returns reflects the Internal Revenue Service's need to receive corrected returns in time to process them with other information returns. The March 1 deadline for correcting payee statements reflects the need of payees to include correct information in their tax returns due April 15. Note that these deadlines for qualifying for the exception from the penalty differ from the deadlines contained in § 31.6051–1(d) and –2(b) with respect to the separate requirements to furnish corrected Forms W–2 (Wage and Tax Statements).

Waiver for Reasonable Cause or Due Diligence

Section 6724 waives the penalty for failure to include correct information if it is shown that the failure is due to reasonable cause and not to willful neglect (or, for interest and dividend returns and statements, if it is shown that due diligence was exercised). The temporary regulations set forth the procedure to be followed in seeking a waiver for reasonable cause or due diligence.

Intentional Disregard of the Correct Information Reporting Requirement

As mentioned above, section 6723 provides higher penalties for intentional disregard of the correct information reporting requirement. The temporary regulations provide rules regarding the circumstances in which a failure to include correct information on an information return will be treated as due to intentional disregard. Under the regulations, the failure to include correct information on payee statements will not be treated as due to intentional disregard.

Coordination with Other Penalties

The temporary regulations also provide rules for coordinating the penalty for failure to include correct information with other penalties, such as the section 6676 penalty for failure to supply identifying numbers. Section 6723(c) and the temporary regulations provide that no penalty for failure to include correct information will be imposed with respect to a return or statement if a penalty is imposed under section 6676 with respect to such return or statement. The temporary regulations also provide a comparable rule for coordinating the penalty for failure to include correct information with the

penalties under sections 6721 and 6722 for failure to file information returns and furnish payee statements.

Executive Order 12291

The Commissioner of Internal Revenue has determined that these temporary regulations are not a major rule as defined in Executive Order 12291 and that therefore a regulatory impact analysis is not required.

Paperwork Reduction Act

The collection-of-information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0909.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these temporary regulations is Renay France of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 31, 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for Part 301 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 301.6723–1T is added immediately after § 301.6708–1T to read as follows:

§ 301.6723–1T Failure to include correct information (temporary).

(a) *General rule.* If any person files an information return (as defined in section 6724(d)(1)) or furnishes a payee statement (as defined in section 6724(d)(2)), and such person fails to include all of the information required to be shown on such return or statement or includes incorrect information, such person will be considered to have failed to include correct information. For this purpose, information required to be shown on a return or statement is the information required by the applicable information reporting statute or by any administrative pronouncement issued thereunder (such as a regulation, revenue ruling, revenue procedure, or information reporting form). Except as otherwise provided in this section, any person who fails to include correct information shall pay $5 for each return or statement with respect to which such failure occurs; however, the total amount imposed on any person for all such failures during any calendar year shall not exceed $20,000. See paragraph (e) of this section regarding the higher penalties for intentional disregard of the correct information reporting requirement and for interest and dividend returns and statements.

(b) *Exception for inconsequential omissions and inaccuracies*—(1) *Exception.* The penalty imposed by paragraph (a) of this section will not be assessed for any failure to include correct information on an information return if the failure does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. Similarly, the penalty imposed by paragraph (a) of this section will not be assessed for any failure to include correct information on a payee statement if the failure cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return.

(2) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples:

Example (1). A payor files a Form 1099–MISC (relating to miscellaneous income) with the Internal Revenue Service and furnishes a corresponding statement to the payee. Both the Form 1099–MISC and the payee statement are complete and correct, except that the word "Street" is misspelled in the payee's address. The error does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. In addition, the error cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return. Therefore, the penalty imposed by paragraph (a) will not be assessed.

Example (2). Assume the same facts as in Example (1), except that the only error on the Form 1099–MISC and the payee statement is that the payee's first name, "William," is misspelled as "Willaim." The penalty imposed by paragraph (a) will not be assessed, for the reasons set forth in Example (1).

Example (3). Assume the same facts as in Example (1), except that the only error on the Form 1099–MISC and the payee statement is that the payee's street address, 4821 Main Street, is incorrectly reported as 8421 Main Street. The penalty imposed by paragraph (a) will not be assessed with respect to the Form 1099–MISC if the error does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. However, the penalty will be assessed with respect to the payee statement because the error can reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return. See paragraph (d) of this section regarding waiver of the penalty for reasonable cause or due diligence.

(c) *Exception for corrected omissions and inaccuracies*—(1) *Exception.* The penalty imposed by paragraph (a) of this section generally will not be assessed for a failure to include correct information on an information return or payee statement if the person who filed the return or furnished the statement corrects the failure by the earliest of—

(i) The date that is 30 days after the date that the person discovers the failure; or

(ii) The date that is 30 days after the date of a written request, from the Internal Revenue Service to the person, for corrected information; or

(iii) October 1 (March 1 for payee statements) of the calendar year in which the return or statement is due.

(2) *Limitations on exception.* Notwithstanding paragraph (c)(1) of this section, timely correction of a failure to include correct information on a return or statement will not prevent assessment of the penalty for any failure

that is part of a pattern of conduct, by the person who filed the return or furnished the statement, of repeatedly failing to include correct information. Further, correction of a failure to include correct information will not prevent assessment of the penalty for intentional disregard of the correct information reporting requirement. See paragraph (e)(1) of this section with respect to intentional disregard.

(3) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example (1). In January 1987, Bank M prepares Forms 1099–INT (relating to interest income) with respect to interest income earned by its depositors in calendar year 1986. M timely files the forms with the Internal Revenue Service and timely furnishes copies to its depositors. On March 16, 1987, M discovers that the amount of backup withholding tax (Federal income tax withheld) was inadvertently omitted from several of the forms and payee copies. Several days later M files corrected forms with the Service and furnishes corrected copies to the affected payees. The penalty for failure to include correct information will not be due with respect to the incomplete Forms 1099–INT filed with the Internal Revenue Service, since they were corrected within 30 days after M discovered the omission and before October 1, 1987. However, the penalty will be due with respect to the incomplete copies furnished to the payees, since they were not corrected by March 1, 1987.

Example (2). In January 1987, Corporation N files Forms 1099–DIV (relating to dividends and distributions) for calendar year 1986 and furnishes copies to its shareholders. A significant number of the forms and payee copies do not include the amount of backup withholding tax. On December 1, 1987, the Internal Revenue Service provides N with a written request for corrected information. On December 15, 1987, N files corrected forms with the Service and furnishes corrected copies to the payees. The penalty for failure to include correct information will be due with respect to the incomplete forms, since they were not corrected by October 1, 1987. In addition, the penalty will be due with respect to the incomplete copies furnished to the payees, since they were not corrected by March 1, 1987. However, N's correction of the forms is a fact to be considered, along with other facts, in determining whether the higher penalty for intentional failures will be imposed; see paragraph (e)(1)(ii)(B) of this section.

Example (3). In January 1987, Corporation O files Forms 1099–DIV for calendar year 1986 and furnishes copies to its shareholders. O intentionally does not include the amount of backup withholding tax for any shareholder. Since the omissions represent an intentional disregard of the correct information reporting requirement, correction of the omissions will not prevent assessment of the penalty for intentional failure to include correct information.

(d) *Waiver for reasonable cause or due diligence*—(1) *Reasonable cause.* Except as provided in paragraph (d)(2) (relating to interest or dividend returns or statements), the penalty imposed by paragraph (a) of this section will be waived for any failure to include correct information if it is established to the satisfaction of the district director or the director of the internal revenue service center that such failure was due to reasonable cause and not to willful neglect.

(2) *Due diligence.* Paragraph (d)(1) of this section will not apply in the case of any interest or dividend return or statement (as defined in section 6724(c)(5)). However, in such a case, the penalty imposed by paragraph (a) of this section will be waived for any failure to include correct information if it is established to the satisfaction of the district director or the director of the internal revenue service center that the person otherwise liable for such penalty exercised due diligence in attempting to include such information. The requirement to exercise due diligence imposes a higher standard to conduct than required under the reasonable cause defense.

(3) *Procedure for seeking waiver.* Reasonable cause (or due diligence) may be established only by submitting a written statement that sets forth all the facts alleged as reasonable cause (or due diligence) and makes an affirmative showing of reasonable cause (or due diligence). The statement must be signed by the person required to file the information return or furnish the payee statement to which the penalty imposed by paragraph (a) of this section relates, and must contain a declaration that it is made under the penalties of perjury. See § 31.6061–1 for rules on the signing of returns.

(e) *Higher penalties in certain cases*—(1) *Intentional disregard of the correct information reporting requirement*—(i) *Application of section 6723(b).* If a person fails to include correct information on an information return and such failure is due to intentional disregard of the correct information reporting requirement, the penalty imposed by paragraph (a) of this section with respect to such return will be determined under section 6723(b). The penalty prescribed by section 6723(b) for such a return is $100 or, if greater, the amount equal to 10 percent (or, in some cases, 5 percent) of the aggregate amount of the items required to be reported correctly on the return. In the case of any penalty determined under section 6723(b), the $20,000 limitation of paragraph (a) of this section will not apply. In addition, such penalty will not be taken into account in applying the $20,000 limitation to penalties not determined under section 6723(b).

(ii) *Meaning of intentional disregard.* A failure to include correct information on an information return will be treated as due to intentional disregard of the correct information reporting requirement if the person who filed the return knowingly or willfully failed to include correct information at the time the return was filed. Whether a person knowingly or willfully failed to include correct information will be determined on the basis of all of the facts and circumstances in the particular case. Facts and circumstances to be considered for this purpose include, but are not limited to, the following—

(A) Whether the failure to include correct information is part of a pattern of conduct, by the person who filed the return, of repeatedly failing to include correct information on information returns;

(B) Whether the person who filed the return corrects the failure within 30 days after the date of any written request from the Internal Revenue Service for corrected information; and

(C) Whether the person who filed the return can reasonably be expected to have discovered the failure during the calendar year the return was due and, if so, whether timely correction was made.

(2) *Interest and dividend returns and statements.* In the case of any interest or dividend return or statement (as defined in section 6724(c)(5)), the $20,000 limitation of paragraph (a) of this section will not apply. In addition, any penalty imposed by paragraph (a) with respect to such a return or statement—

(i) Will not be taken into account in applying the $20,000 limitation of paragraph (a) with respect to other returns or statements, and

(ii) Will not be taken into account in applying the $100,000 limitations of sections 6721(a) and 6722(a) with respect to any return or statement.

(f) *Manner of payment*—(1) *In general.* Except as provided in paragraph (f)(2) (relating to interest and dividend returns and statements), any penalty imposed by paragraph (a) shall be paid on notice and demand by the Internal Revenue Service and in the same manner as a tax liability is paid.

(2) *Self-assessment for interest and dividend returns and statements.* Any penalty imposed by paragraph (a) with respect to an interest or dividend return or statement will be assessed and collected in the same manner as an excise tax imposed by subtitle D of the Internal Revenue Code, and the deficiency procedures of subchapter B of chapter 63 of the Code will not apply. In

such a case, the penalty must be self-assessed and will be due and payable on April 1 of the calendar year following the calendar year for which the return or statement is required. The penalty should be remitted with a properly executed Form 8210 (Self-Assessed Penalties Return).

(g) *Coordination with other penalties*—(1) *Penalty for failure to supply identifying numbers.* Pursuant to section 6723(c), no penalty shall be imposed under paragraph (a) of this section with respect to any return or statement if a penalty is imposed under section 6676 (relating to the failure to supply identifying numbers) with respect to such return or statement.

(2) *Penalty for failure to file information returns or furnish payee statements.* No penalty shall be imposed under paragraph (a) of this section with respect to any return or statement if a penalty is imposed under section 6721 (relating to the failure to file certain information returns) or section 6722 (relating to the failure to furnish certain payee statements) with respect to such return or statement.

(3) *Examples.* The provisions of this paragraph (g) may be illustrated by the following examples:

Example (1). Corporation P timely files Forms 1099-DIV (relating to dividends and distributions) for a calendar year and furnishes copies to its shareholders. Several of these forms and shareholder copies do not include correct taxpayer identification numbers (TINs), and Corporation P does not show that it exercised due diligence in attempting to include correct TINs; therefore, a penalty is imposed under section 6676 (b) with respect to these several forms and shareholder copies. Since a penalty is imposed under section 6676, no penalty is imposed under paragraph (a) of this section with respect to the same several forms and shareholder copies.

Example (2). Corporation Q, a bank, fails to file certain required Forms 1099–INT (relating to interest income of its depositors) in a timely fashion. Corporation Q claims that it exercised due diligence in attempting to file the forms on time and that therefore no penalty under section 6721 or 6723 should apply. If the Internal Revenue Service finds that Corporation Q did not exercise due diligence and imposes the failure-to-file penalty under section 6721 with respect to the forms, no penalty will be imposed under paragraph (a) of this section.

Example (3). Corporation R files with the Internal Revenue Service a document purporting to be an information return. The document contains so many omissions and inaccuracies that its utility as an information return is minimized or eliminated. The Service imposes the failure-to-file penalty under section 6721 with respect to the document. Since the failure-to-file penalty is imposed, no penalty will be imposed under paragraph (a) of this section.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 3. The authority for Part 31 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§ 31.605 [Amended]

Par. 4. Section 31.6051–1 (h) is amended by adding the following new sentence at the end thereof: "See section 6723 and § 301.6723–1T for provisions relating to the penalty for failure to include correct information on an information return or payee statement and for the exceptions to the penalty, particularly the exception for timely correction."

§ 31.6051-2 [Amended]

Par. 5. Section 31.6051–2(c) is amended by adding the following new sentence at the end thereof: "See section 6723 and § 301.6723–1T for provisions relating to the penalty for failure to include correct information on an information return or payee statement and for the exceptions to the penalty, particularly the exception for timely correction."

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 7. Section 602.101(c) is amended by inserting the following in the appropriate place in the table:

"§ 301.6723–1T(d) . . . 1545–0909".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved

J. Roger Mentz,

Acting Assistant Secretary of the Treasury.

August 25, 1987.

[FR Doc. 87–20675 Filed 9–9–87; 8:45 am]

BILLING CODE 4830–01–M

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31, 301, and 602

Penalty for Failure to Include Correct Information on Information Returns and Payee Statements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the penalty for failure to include correct information on information returns and payee statements. The text of those temporary regulations also serves as the common document for this notice of proposed rulemaking.

DATES: The regulations are proposed to be effective as final regulations January 1, 1987, as applicable to information returns and payee statements the due date for which (determined without regard to extensions) is after December 31, 1986. Written comments and requests for a public hearing must be delivered or mailed by November 9, 1987.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–142–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Renay France of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3459, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** add new § 301.6723–1T to Part 301 of Title 26 of the Code of Federal Regulations. When § 301.6723–1T is promulgated as a final regulation, it will be renumbered as § 301.6723–1.

For the text of the proposed regulations, see new § 301.6723–1T. The preamble to the temporary regulations explains this addition to the Income Tax Regulations.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably nine copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection-of-information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

The principal author of these proposed regulations is Renay France of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87–20676 Filed 9–9–87; 8:45 am]

BILLING CODE 4830–01–M

federal register

Thursday
September 10, 1987

Part IV

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for April 1987

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53096; FRL-3243-1]

Premanufacture Notices; Monthly Status Report for April 1987

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for April 1987.

Nonconfidential portions of the PMNs and exemption requests may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53096]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during April; (b) PMNs received previously and still under review at the end of April; (c) PMNs for which the notice review period has ended during April; (d) chemical substances for which EPA has received a notice of commencement to manufacture during April; and (e) PMNs for which the review period has been suspended. Therefore, the April 1987 PMN Status Report is being published.

Dated: July 28, 1987.

Denise Devoe,

Acting Director, Information Management Division.

Premanufacture Notices Monthly Status Report, April 1987

I. 150 Premanufacture Notices and Exemption Requests Received During the Month

PMN No.	
P 87-914	P 87-979
P 87-915	P 87-980
P 87-916	P 87-981
P 87-917	P 87-982
P 87-918	P 87-983
P 87-919	P 87-984
P 87-920	P 87-985
P 87-921	P 87-986
P 87-922	P 87-987
P 87-923	P 87-988
P 87-924	P 87-989
P 87-925	P 87-990
P 87-926	P 87-991
P 87-927	P 87-992
P 87-928	P 87-993
P 87-929	P 87-994
P 87-930	P 87-995
P 87-931	P 87-996
P 87-932	P 87-997
P 87-933	P 87-998
P 87-934	P 87-999
P 87-935	P 87-1000
P 87-936	P 87-1001
P 87-937	P 87-1002
P 87-938	P 87-1003
P 87-939	P 87-1004
P 87-940	P 87-1005
P 87-941	P 87-1006
P 87-942	P 87-1007
P 87-943	P 87-1008
P 87-944	P 87-1009
P 87-945	P 87-1010
P 87-946	P 87-1011
P 87-947	P 87-1012
P 87-948	P 87-1013
P 87-949	P 87-1014
P 87-950	P 87-1015
P 87-951	P 87-1016
P 87-952	P 87-1017
P 87-953	P 87-1018
P 87-954	P 87-1019
P 87-955	P 87-1020
P 87-956	P 87-1021
P 87-957	P 87-1022
P 87-958	P 87-1023
P 87-959	P 87-1024
P 87-960	P 87-1025
P 87-961	P 87-1026
P 87-962	P 87-1027
P 87-963	P 87-1028
P 87-964	P 87-1029
P 87-965	P 87-1030
P 87-966	P 87-1031
P 87-967	P 87-1032
P 87-968	P 87-1033
P 87-969	P 87-1034
P 87-970	P 87-1035
P 87-971	P 87-1036
P 87-972	P 87-1037
P 87-973	P 87-1038
P 87-974	P 87-1039
P 87-975	P 87-1040
P 87-976	P 87-1041
P 87-977	P 87-1042
P 87-978	P 87-1043
P 87-1044	Y 87-135
P 87-1045	Y 87-136
P 87-1046	Y 87-137
P 87-1047	Y 87-138
P 87-1048	Y 87-139
P 87-1049	Y 87-140
P 87-1050	Y 87-141
P 87-1051	Y 87-142
P 87-1052	Y 87-143
P 87-1053	Y 87-144

II. 193 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	
P 87-721	P 87-783
P 87-722	P 87-784
P 87-723	P 87-785
P 87-724	P 87-786
P 87-725	P 87-787
P 87-726	P 87-788
P 87-727	P 87-789
P 87-728	P 87-790
P 87-729	P 87-791
P 87-730	P 87-792
P 87-731	P 87-793
P 87-732	P 87-794
P 87-733	P 87-795
P 87-734	P 87-796
P 87-735	P 87-797
P 87-736	P 87-798
P 87-737	P 87-799
P 87-738	P 87-800
P 87-739	P 87-801
P 87-740	P 87-802
P 87-741	P 87-803
P 87-742	P 87-804
P 87-743	P 87-805
P 87-744	P 87-806
P 87-745	P 87-807
P 87-746	P 87-808
P 87-747	P 87-809
P 87-748	P 87-810
P 87-749	P 87-811
P 87-750	P 87-812
P 87-751	P 87-813
P 87-752	P 87-814
P 87-753	P 87-815
P 87-754	P 87-816
P 87-755	P 87-817
P 87-756	P 87-818
P 87-757	P 87-819
P 87-758	P 87-820
P 87-759	P 87-821
P 87-760	P 87-822
P 87-761	P 87-823
P 87-762	P 87-824
P 87-763	P 87-825
P 87-764	P 87-826
P 87-765	P 87-827
P 87-766	P 87-828
P 87-767	P 87-829
P 87-768	P 87-830
P 87-769	P 87-831
P 87-770	P 87-832
P 87-771	P 87-833
P 87-772	P 87-834
P 87-773	P 87-835
P 87-774	P 87-836
P 87-775	P 87-837
P 87-776	P 87-838
P 87-777	P 87-839
P 87-778	P 87-840
P 87-779	P 87-841
P 87-780	P 87-842
P 87-781	P 87-843
P 87-782	P 87-844

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P 87-912
P 87-913

III. 144 Premanufacture Notices and Exemption Requests for Which the Notice Review Period Has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical Had Been Added to the Inventory)

PMN No.

P 87-414
P 87-415
P 87-416
P 87-417
P 87-418
P 87-419
P 87-420
P 87-421
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Y 87-134
Y 87-135
Y 87-136
Y 87-137
Y 87-138
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Y 87-140
Y 87-141
Y 87-142
Y 87-143
Y 87-144

IV. 74 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity and generic name	Date of commencement
P 81-245	Generic name: Carbocyclic sulfonic acid salt	Oct. 2, 1981.
P 84-936	Generic name: Aromatic keto-ester	Apr. 1, 1987.
P 84-1175	Generic name: Polyester polyol	Feb. 5, 1987.
P 85-128	Generic name: Butanamide, N-substituted alkyl	Mar. 2, 1987.
P 85-146	Generic name: Biphenyl,3,3'-dichloro-4-(substituted azo)-4'((((phenylamino)carbonyl)2-oxoprop-1-yl)azo)-	Mar. 9, 1987.
P 85-322	2-Propanamine, N-(1-methylethyl)-, lithium salt	Feb. 16, 1987.
P 85 1323	Generic name: Nitrogen containing alkyl phenol	Apr. 8, 1987.
P 85-1325	Generic name: Alkyl phenol	Do.
P 86-11	Generic name: Reaction product of bismaleimide with amino aryl hydrazide	Feb. 3, 1987.
P 86-103	Generic name: Polyester of aliphatic polyols and aliphatic and aromatic dibasic and monobasic acids	Feb. 11, 1987.
P 86-271	Generic name: Chlorinated polymer latex	Mar. 18, 1987.
P 86-364	Generic name: Aryl substituted lactone	Apr. 8, 1987.
P 86-376	Generic name: Caprolactam-blocked TDI prepolymer	Mar. 20, 1987.
P 86-391	Generic name: Azoxy bis(substituted phenyl)azo bis substituted naphthalenesulfonic acid, salt	Mar. 11, 1987.
P 86-406	Generic name: Water reducible acrylic copolymer alkyd	Apr. 22, 1987.
P 86-590	Generic name: Thermoplastic polyurethane	Feb. 21, 1987.
P 86-833	Generic name: Polyurethane resins	Feb. 10, 1987.
P 86-886	Generic name: Polymer of acrylic and acrylates	Feb. 18, 1987.
P 86-903	Generic name: Succinate ester amide	Mar. 9, 1987.
P 86-905	Generic name: Functionalized ethane copolymer	Mar. 4, 1987.
P 86-923	Generic name: Zirconium (4+) alkanolamine complex	Feb. 19, 1987.
P 86-986	Generic name: Hydrocarbon resin	Feb. 26, 1987.
P 86-1035	Generic name: Polymer of aromatic diisocyanate, aliphatic diacid and alkanediols	Mar. 26, 1987.
P 86-1088	Generic name: Urethane acrylate with pendant hydroxy and carboxyl groups	Feb. 27, 1987.
P 86-1095	Generic name: Aryliminonaphthalenon	Mar. 2, 1987.

IV. 74 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity and generic name	Date of commencement
P 86-1096	Generic name: Substituted naphthol	Feb. 25, 1987.
P 86-1143	Generic name: Cationic copolymer	Apr. 2, 1987.
P 86-1183	Generic name: Substituted (substituted phenyl) alkanamide	Feb. 26, 1987.
P 86-1312	Polymer of epsilon-caprolactone and polyethylene glycol, 1,3-benzenedicarboxylic acid, polymer with 1,6-hexanediol and nonanedioic acid, 1,1' biphenyl, 4,4'-diisocyanato-3,3' dimethyl, poly(oxy-1,4-butanediyl), a-[[(3-isocyanatomethyl carbonyl)amino] carbonyl]-omega- [[[(3-isocyanatomethyl phenyl)amino] carbonyl]oxy]-, polytetramethylene amide-di-p-aminobenzoate, and 1,4 butanediol.	Jan. 1, 1987.
P 86-1358	Generic name: Hydroxy substituted benzoic acid derivative	Mar. 14, 1987.
P 86-1502	Generic name: Polyester-imide resin	Apr. 8, 1987.
P 86-1557	Generic name: Oxepanone polymer with polyalkoxy compound, tri functional polyol, substituted propanoic acid, a diamine and a diisocyanate.	Mar. 10, 1987.
P 86-1571	Generic name: Alkylalkoxysilane	Mar. 28, 1987.
P 86-1605	Generic name: N-alkylaminoacrylamide quaternary salt	Mar. 25, 1987.
P 86-1636	Generic name: Unsaturated aldehyde	Mar. 13, 1987.
P 86-1693	Generic name: Phenyl substituted nitrogen heterocycle	Mar. 2, 1987.
P 86-1774	Methylene bis-(4-cyclohexyl isocyanate)	Mar. 16, 1987.
P 87-22	Generic name: Aliphatic aromatic polyester	Mar. 1, 1987.
P 87-30	Generic name: Prepolymer of ethanol, 2, 2'-thiobis, ethanol, 2-mercapto, oxirane, methyl, and methylene bis-(4-cyclohexyl isocyanate).	Mar. 16, 1987.
P 87-49	Generic name: Modified acrylic polymer	Do.
P 87-93	Generic name: Alkylene diol alkyl ether	Mar. 13, 1987.
P 87-96	Generic name: Blocked isocyanate polymer B	Feb. 25, 1987.
P 87-97	Generic name: Blocked isocyanate polymer A	Do.
P 87-109	Generic name: Perfluoroalkyl ester	Jan. 22, 1987.
P 87-153	Generic name: Salt of substituted (phenylpyrazole)	Mar. 12, 1987.
P 87-161	Generic name: Disubstituted quinoline hydrochloride	Apr. 1, 1987.
P 87-204	Generic name: Aqueous polyurethane dispersion	Mar. 31, 1987.
P 87-232	Generic name: Cyclohexane carbanol acetate	Feb. 16, 1987.
P 87-237	Generic name: Water based acrylic copolymer solution	Mar. 16, 1987.
P 87-258	Generic name: Polymer of carboxy terminated acrylonitrile/butadiene reacted with an epoxy ester, mono- and dibasic fatty acids and poly alkylene polyamines.	Feb. 23, 1987.
P 87-278	Generic name: Inert perflurorcarbon liquid	Mar. 2, 1987.
P 87-280	Generic name: Modified polyacrylate polymer	Mar. 23, 1987.
P 87-283	Generic name: Epoxy modified alkyd resin	Mar. 19, 1987.
P 87-289	Generic name: Alkoxyamine/RE-32626	Apr. 6, 1987.
P 87-290	Generic name: Trione/RE-45550	Mar. 31, 1987.
P 87-341	Generic name: Modified epoxy resin	Mar. 17, 1987.
P 87-363	Polymer of trichloromethylsilane, dichlorodimethyl-silane, trichlorophenylsilane, and dichlorodi-phenylsilane	Apr. 2, 1987.
P 87-365	Polymer of trichloromethylsilane, and dichlorodimethylsilane	Do.
P 87-371	Generic name: Partially fluorinated polyamic acid	Apr. 7, 1987.
P 87-372	Generic name: Partially fluorinated polyamic acid	Mar. 27, 1987.
P 87-379	Generic name: Methacrylated polybutadiene	Apr. 8, 1987.
P 87-380	Generic name: Saturated Polyester polymer	Mar. 23, 1987.
P 87-381	Generic name: Urethane ester polymer	Do.
P 87-382	Generic name: Zinc-o-branched octyl-o-isopropyl phosphorodithioate	Apr. 6, 1987.
P 87-385	Generic name: 3,4-Hydroxyamino substituted benzenesulfonamide	Mar. 24, 1987.
Y 86-19	Generic name: Silicone modified alkyd	Mar. 13, 1987.
Y 86-179	Generic name: Linseed oil dicyclopentadiene, mixed C_{10}, C_{15}, C_{20} hydrocarbon, fumuric acid polymer	June 28, 1987.
Y 8-115	Generic name: Aliphatic polyether urethane	Mar. 24, 1987.

V. 0 Premanufacture Notices for Which the Period Has Been Suspended

[FR Doc. 87-17886 Filed 9-9-87; 8:45 am]
BILLING CODE 6560-50-M

federal register

Thursday
September 10, 1987

Part V

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for May 1987

VOL 52 ISS 175 SE 10 1987 UMI

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53097; FRL-3241-7]

Premanufacture Notices; Monthly Status Report for May 1987

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for May 1987.

Nonconfidential portions of the PMNs and exemption requests may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53097]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during May; (b) PMNs received previously and still under review at the end of May; (c) PMNs for which the notice review period has ended during May; (d) chemical substances for which EPA has received a notice of commencement to manufacture during May; and (e) PMNs for which the review period has been suspended. Therefore, the May 1987 PMN Status Report is being published.

Dated: July 27, 1987.

Denise Devoe,

Acting Director, Information Management Division.

Premanufacture Notices Monthly Status Report May 1987

I. 149 Premanufacture Notices and Exemption Requests Received During the Month

PMN No.	
P 87-1054	P 87-1119
P 87-1055	P 87-1120
P 87-1056	P 87-1121
P 87-1057	P 87-1122
P 87-1058	P 87-1123
P 87-1059	P 87-1124
P 87-1060	P 87-1125
P 87-1061	P 87-1126
P 87-1062	P 87-1127
P 87-1063	P 87-1128
P 87-1064	P 87-1129
P 87-1065	P 87-1130
P 87-1066	P 87-1131
P 87-1067	P 87-1132
P 87-1068	P 87-1133
P 87-1069	P 87-1134
P 87-1070	P 87-1135
P 87-1071	P 87-1136
P 87-1072	P 87-1137
P 87-1073	P 87-1138
P 87-1074	P 87-1139
P 87-1075	P 87-1140
P 87-1076	P 87-1141
P 87-1077	P 87-1142
P 87-1078	P 87-1143
P 87-1079	P 87-1144
P 87-1080	P 87-1145
P 87-1081	P 87-1146
P 87-1082	P 87-1147
P 87-1083	P 87-1148
P 87-1084	P 87-1149
P 87-1085	P 87-1150
P 87-1086	P 87-1151
P 87-1087	P 87-1152
P 87-1088	P 87-1153
P 87-1089	P 87-1154
P 87-1090	P 87-1155
P 87-1091	P 87-1156
P 87-1092	P 87-1157
P 87-1093	P 87-1158
P 87-1094	P 87-1159
P 87-1095	P 87-1160
P 87-1096	P 87-1161
P 87-1097	P 87-1162
P 87-1098	P 87-1163
P 87-1099	P 87-1164
P 87-1100	P 87-1165
P 87-1101	P 87-1166
P 87-1102	P 87-1167
P 87-1103	P 87-1168
P 87-1104	P 87-1169
P 87-1105	P 87-1170
P 87-1106	P 87-1171
P 87-1107	P 87-1172
P 87-1108	P 87-1173
P 87-1109	P 87-1174
P 87-1110	P 87-1175
P 87-1111	P 87-1176
P 87-1112	P 87-1177
P 87-1113	P 87-1178
P 87-1114	P 87-1179
P 87-1115	P 87-1180
P 87-1116	P 87-1181
P 87-1117	P 87-1182
P 87-1118	P 87-1183
P 87-1184	Y 87-150
P 87-1185	Y 87-151
P 87-1186	Y 87-152
P 87-1187	Y 87-153
P 87-1188	Y 87-154
Y 87-145	Y 87-155
Y 87-146	Y 87-156
Y 87-147	Y 87-157
Y 87-148	Y 87-158
Y 87-149	

II. 140 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	
P 87-914	P 87-976
P 87-915	P 87-977
P 87-916	P 87-978
P 87-917	P 87-979
P 87-918	P 87-980
P 87-919	P 87-981
P 87-920	P 87-982
P 87-921	P 87-983
P 87-922	P 87-984
P 87-923	P 87-985
P 87-924	P 87-986
P 87-925	P 87-987
P 87-926	P 87-988
P 87-927	P 87-989
P 87-928	P 87-990
P 87-929	P 87-991
P 87-930	P 87-992
P 87-931	P 87-993
P 87-932	P 87-994
P 87-933	P 87-995
P 87-934	P 87-996
P 87-935	P 87-997
P 87-936	P 87-998
P 87-937	P 87-999
P 87-938	P 87-1000
P 87-939	P 87-1001
P 87-940	P 87-1002
P 87-941	P 87-1003
P 87-942	P 87-1004
P 87-943	P 87-1005
P 87-944	P 87-1006
P 87-945	P 87-1007
P 87-946	P 87-1008
P 87-947	P 87-1009
P 87-948	P 87-1010
P 87-949	P 87-1011
P 87-950	P 87-1012
P 87-951	P 87-1013
P 87-952	P 87-1014
P 87-953	P 87-1015
P 87-954	P 87-1016
P 87-955	P 87-1017
P 87-956	P 87-1018
P 87-957	P 87-1019
P 87-958	P 87-1020
P 87-959	P 87-1021
P 87-960	P 87-1022
P 87-961	P 87-1023
P 87-962	P 87-1024
P 87-963	P 87-1025
P 87-964	P 87-1026
P 87-965	P 87-1027
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P 87-1048
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P 87-1051
P 87-1052
P 87-1053

III. 259 Premanufacture Notices and Exemption Requests for Which the Notice Review Period Has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical Had Been Added to the Inventory)

PMN No.

P 83-634
P 85-67
P 85-194
P 85-882
P 85-1149
P 85-1239
P 85-1240
P 85-1335
P 86-36
P 86-282
P 86-283
P 86-331
P 86-466
P 86-477
P 86-478
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P 86-1162
P 86-1252
P 86-1299
P 86-1322
P 86-1660
P 86-1708
P 87-50
P 87-311
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IV. 67 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity and generic name	Date of commencement
P 79-11	Benzene, ethenyl-, tribromo derivative, homopolymer	July 1, 1980.
P 80-1	3-Alkoxy(C_{10}-C_{14})-2-hydroxypropylester of dimer/trimer acid	Oct. 15, 1981.
P 81-447	Generic name: Polyester based urethane	May 4, 1987.
P 83-333	Generic name: Reaction product of polycycle-sulfonic acid salt with phosphorous halide/halogen, subsequent reaction with an amine, subsequent reaction with an aldehyde/sodium bisulfite/alkali.	Apr. 28, 1987.
P 83-846	Generic name: CI Basic Blue 54	Apr. 5, 1987.
P 83-1119	Generic name: Salt of alpha olefin/2,5- furandione polymer	Apr. 27, 1987.
P 85-649	Generic name: Sulfurized alkyl phenol	Oct. 7, 1985.
P 85-961	Generic name: Amine polyglycol	Mar. 26, 1987.
P 85-971	Generic name: Tetrafunctional mercaptoester reaction with propylene dicarboxylic acid	Aug. 14, 1985.
P 85-1097	Generic name: Metal salt of hydroxynaphthalene sulfonic acid ((substituted-naphthyl)azo)	Sept. 26, 1985.
P 85-1099	Generic name: Alkoxy borated polybutylsuccinamide	Apr. 20, 1987.
P 86-208	Generic name: Aromatic MDI polyether polyurethane	Apr. 10, 1987.
P 86-252	Generic name: Polyoxyalkylene-, polymethylalkyl-polysiloxane	Apr. 25, 1986.
P 86-269	1,2-Dimethyl-3-(1-methylethenyl)-cyclopentanol propionate mixture	Mar. 11, 1986.
P 86-392	Methyl carbamic acid, phenyl ester	Apr. 9, 1987.
P 86-534	Generic name: Substituted bis 1,3,2-dioxa-phosphorinane, 2,2'-dioxide	Apr. 21, 1987.
P 86-544	Generic name: Butanedioic acid, sulfo-,1,4-bis (3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl)ester, sodium salt	Aug. 26, 1986.
P 86-1123	Generic name: Acrylate methacrylate styrene polymer	Apr. 20, 1987.
P 86-1151	Generic name: Styrenated acrylic polymer	Apr. 13, 1987.

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IV. 67 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity and generic name	Date of commencement
P 86-1169	Generic name: Polyester modified epoxy resin	Apr. 23, 1987.
P 86-1170	Generic name: Polyamide/acrylic copolymer	Apr. 3, 1987.
P 86-1171	Generic name: Substituted phenylazo naphthalene	Apr. 23, 1987.
P 86-1234	Generic name: Poly(hydroxyether)thiol	Sept. 29, 1986.
P 86-1238	Generic name: Lactam capped polyurethane	Apr. 22, 1987.
P 86-1239	Generic name: Amino functional paintable silicone wax	Mar. 31, 1987.
P 86-1285	Generic name: 3-Hydroxy-2-naphthalene-carboxylic acid benzeneamine, 2,4-dimethoxy-	Apr. 15, 1987.
P 86-1286	Generic name: 2-Naphthalenecarboxamide,3-hydroxy-N-phenyl-3-hydroxy-7-methoxy-2-naphthalenecarboxylic acid aniline.	Do.
P 86-1287	2-Naphthalenecarboxamide, 3-hydroxy-N-(2 methylphenyl)-potassium salt	Do.
P 86-1499	Generic name: Branched fatty alcohols	Apr. 22, 1987.
P 86-1622	Polymer of: siloxane DC1248, 2,4-toluene diisocyanate, and hydroxy ethyl acrylate	Apr. 30, 1987.
P 86-1690	Generic name: Phenyl substituted nitrogen heterocycle	Apr. 8, 1987.
P 86-1765	Generic name: Acrylic modified alkyd resin	Apr. 1, 1987.
P 86-1766	Generic name: Alkyd resin	Do.
P 86-1767	Generic name: Alkyd resin	Apr. 2, 1987.
P 86-1768	Generic name: Alkyd resin	Do.
P 86-1769	Generic name: Modified alkyd resin	Apr. 3, 1987.
P 87-51	Generic name: Hydroxylated substituted phenol	Apr. 4, 1987.
P 87-52	Generic name: Oil modified polyurethane	Do.
P 87-53	Generic name: Oil modified polyurethane	Apr. 5, 1987.
P 87-54	Generic name: Oil modified polyurethane	Do.
P 87-55	Generic name: Acrylic resin	Apr. 6, 1987.
P 87-95	Generic name: Acrylonitrile copolymer	Apr. 16, 1987.
P 87-124	Bicyclo[2.2.1] heptane-2-methanol, 5,6-dimethyl-(1-methylethenyl)	Apr. 2, 1987.
P 87-190	Generic name: Alkyd resin	Apr. 6, 1987.
P 87-209	Generic name: Pentenenitrili nickel (11) cyanoborate complex	Apr. 2, 1987.
P 87-269	Generic name: Rosin and phenolic modified alkyd resin	Apr. 7, 1987.
P 87-281	Generic name: Acrylated alkyd resin	Do.
P 87-362	Trichloromethylsilane	Apr. 2, 1987.
P 87-390	Generic name: Modified alkyd resins	Apr. 8, 1987.
P 87-392	Generic name: Modified alkyd resins	Do.
P 87-393	Generic name: Modified alkyd resins	Apr. 9, 1987.
P 87-394	Generic name: Modified alkyd resins	Do.
P 87-395	Generic name: Modified alkyd resins	Apr. 10, 1987.
P 87-397	Generic name: Modified acrylic polymer	Do.
P 87-428	Generic name: Polyester	Apr. 28, 1987.
P 87-465	Generic name: Phosphite derivative	Apr. 20, 1987.
P 87-501	Generic name: Organo-aluminum compound	Apr. 27, 1987.
P 87-506	Generic name: Ammonium bis 1-(3,5-disubstituted-2-hydroxy phenol)azo-3-(N-monosubstituted)-2-naphtalenolate (2-) chromate (1).	Do.
P 87-514	Generic name: 2,6-bis(substitutedamino)-3-methyl-fluoran	Apr. 29, 1987.
P 87-515	Generic name: Poly ether glycol	Do.
P 87-535	Generic name: Vinyl silicone resin	May 4, 1987.
Y 87-22	Generic name: Polyester resin of aryl of dicarboxylic acids and alkane diols	Apr. 22, 1987.
Y 87-52	Generic name: Polyesterimide polymer B	Feb. 25, 1987.
Y 87-54	Generic name: Polyesterimide polymer A	Do.
Y 87-118	Generic name: Polyurethane	Apr. 15, 1987.
Y 87-132	Generic name: Saturated polyester resin	Do.
Y 87-133	Generic name: Water reducible alkyd resin	Do.

V. 25 PREMANUFACTURE NOTICES FOR WHICH THE PERIOD HAS BEEN SUSPENDED

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[FR Doc. 87-17748 Filed 9-9-87; 8:45 am]

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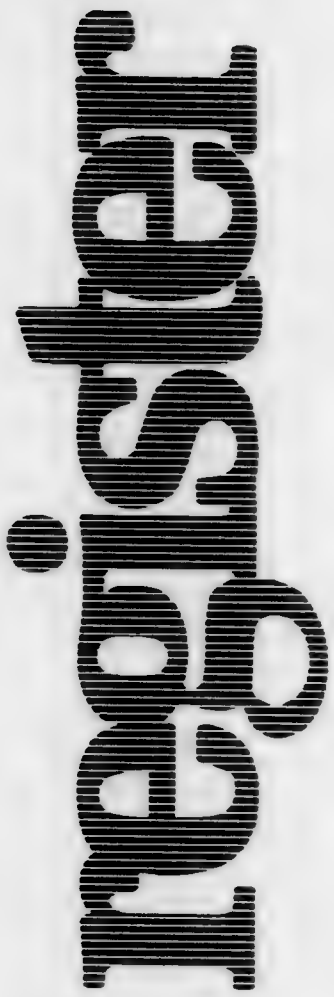

Thursday
September 10, 1987

Part VI

Department of Education

34 CFR Part 326

Handicapped Youth Program; Secondary Education and Transitional Services; Final Rule and Notices

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DEPARTMENT OF EDUCATION

34 CFR Part 326

Secondary Education and Transitional Services for Handicapped Youth Program

AGENCY: Department of Education.

ACTION: Technical amendments.

SUMMARY: The Secretary issues final regulations for the Secondary Education and Transitional Services for Handicapped Youth Program in order to implement the amendments to section 626 of the Education of the Handicapped Act (EHA) included in the EHA Amendments of 1986, Pub. L. 99–457.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. William Halloran, Secondary and Transitional Services for Handicapped Youth Program, Division of Educational Services, Office of Special Education Programs, U.S. Department of Education, MES Room 4094, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 732–1112.

SUPPLEMENTARY INFORMATION: The Secondary Education and Transitional Services for Handicapped Youth Program was established under Pub. L. 98–199 and is currently authorized by section 626 of Part C of the Education of the Handicapped Act (20 U.S.C. 1425). Section 626 was amended by Pub. L. 99–457, enacted October 8, 1986. Section 626(e) now authorizes the Secretary to make grants to, or enter into contracts or cooperative agreements with, such organizations or institutions determined by the Secretary to be appropriate for the development or demonstration of new or improvements in existing methods, approaches, or techniques that will contribute to the adjustment and education of handicapped children and youth and the dissemination of materials and information on effective practices. The Secretary has decided that exercise of this authority would probably be through individual Requests for Proposals and not through this Part. Changes in the regulations include expansion of the definition of handicapped youth to include individuals who were enrolled in the seventh or higher grade in school and recently left school; allowance for the support of projects to stimulate the improvement of the vocational and life skills of handicapped students to enable them to be better prepared for transition to adult life and services; and the establishment of special application requirements for projects other than studies and evaluations. The listing of priority areas has also been expanded to include dropout studies, curriculum development, and specially designed therapeutic recreation programs. These amendments to the regulations governing this program are technical in nature, and are inserted to implement new legislation.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Because the changes made in the regulations merely incorporate statutory changes into existing regulations and do not establish new substantive policy, public comment could have no effect on the content of these amendments. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking on these amendments is unnecessary and contrary to the public interest.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 326

Education, Education of handicapped, Education—research, Grants Program—education, Secondary Education and Transitional Services.

(Catalog of Federal Domestic Assistance Number 84.158; Secondary Education and Transitional Services for Handicapped Youth Program)

Dated: August 28, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 326 of Title 34 of the Code of Federal Regulations as follows:

PART 326—SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR HANDICAPPED YOUTH PROGRAM

1. The authority citation for Part 326 is revised to read as follows:

Authority: 20 U.S.C. 1425, unless otherwise noted.

2. In § 326.1, paragraphs (a)(2) (i) and (ii) are revised and (a)(2)(iii) is added to read as follows:

§ 326.1 What is the Secondary Education and Transitional Services for Handicapped Youth Program?

(a) * * *

(2) * * *

(i) Strengthen and coordinate education and related services that assist handicapped youth currently in school or who recently left school to assist them in the transition to competitive or supported employment, postsecondary education, vocational training, continuing education, or adult services;

(ii) Stimulate the improvement and development of programs for secondary special education; or

(iii) Stimulate the improvement of the vocational and life skills of handicapped students to enable them to be better prepared for transition to adult life and services.

* * * * *

3. In § 326.4, paragraphs (c)(1) (i) and (ii) are revised and (c)(1)(iii) is added to read as follows:

§ 326.4 What definitions apply to this program?

* * * * *

(c) * * *

(1) * * *

(i) Is twelve years of age or older;

(ii) Is enrolled in the seventh or higher grade in school; or

(iii) Was enrolled in the seventh or higher grade in school and recently left school.

(Authority: 20 U.S.C. 1401(b), 1425(a)(1))

* * * * *

4. In § 326.10, paragraph (a)(3) is amended by removing the word "training" the first time it appears, and adding in its place "education" and paragraph (a)(4) is revised to read as follows:

§ 326.10 What kinds of projects are authorized under this part?

(a) * * *

(4) To stimulate the improvement of the vocational and life skills of handicapped students to enable them to be better prepared for transition to adult life and services.

* * * * *

5. Section 326.20 is amended by revising paragraph (b) to read as follows:

§ 326.20 What must an applicant include in its application?

* * * * *

(b) Each applicant, other than for the purpose of conducting studies or evaluation, shall—

(1) Describe the procedures to be used for disseminating relevant findings and data to regional resource centers, clearinghouses, and other interested persons, agencies, or organizations;

(2) Describe the procedures to be used for coordinating services among agencies for which handicapped youth are or will be eligible;

(3) To the extent appropriate, provide for the direct participation of handicapped students and the parents of handicapped students in the planning, development, and implementation of such projects.

* * * * *

6. Section 326.30 is amended by adding in paragraph (b) the words "individualized education" before the word "programs", in paragraph (e) by removing the words "public employment" and adding in their place "and public employment agencies", and by adding new paragraphs (i), (j), and (k) to read as follows:

§ 326.30 What priorities are considered for support by the Secretary under this part?

* * * * *

(i) *Drop Out Studies.* This priority supports studies which provide information on the numbers, age levels, types of handicapping conditions and reasons why handicapped youth drop out of school.

(j) *Curriculum Development.* This priority supports the development of special education curriculum and instructional techniques that will improve handicapped students' acquisition of the skills necessary for transition to adult life and services.

(k) *Physical Education and Therapeutic Recreation.* This priority supports specially designed physical education and therapeutic recreation programs to increase the potential of handicapped youth for community participation.

(Authority: 20 U.S.C. 1425)

7. A new § 326.34 is added to read as follows:

§ 326.34 Are awards in this program geographically dispersed?

As much as feasible, the Secretary, in addition to using the criteria in §§ 326.32 and 326.33, geographically disperses awards throughout the Nation in urban as well as rural areas.

(Authority: 20 U.S.C. 1425)

[FR Doc. 87-20775 Filed 9-9-87; 8:45 am]
BILLING CODE 4000-01-M

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Secondary Education and Transitional Services for Handicapped Youth Program

AGENCY: Department of Education.

ACTION: Notice of proposed annual funding priorities.

SUMMARY: The Secretary proposes annual funding priorities for the Secondary Education and Transitional Services for Handicapped Youth Program to ensure effective use of funds and to direct funds to areas of identified need during fiscal year 1988.

DATE: Comments must be received on or before October 13, 1987.

ADDRESS: Comments should be addressed to Dr. Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 4092) Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Edward Wilson, Telephone: (202) 732-1121.

SUPPLEMENTARY INFORMATION: The Secondary Education and Transitional Services for Handicapped Youth Program is authorized by section 626 of Part C of the Education of the Handicapped Act (20 U.S.C. 1425), as amended by Pub. L. 99-457. This program supports research, development, demonstration, evaluation, and other types of projects that: (1) Strengthen and coordinate activities to assist in the transition to postsecondary education, vocational training, competitive employment, continuing education, or adult services for handicapped youth; (2) stimulate the improvement and development of programs for secondary special education; and (3) stimulate the improvement of the vocational and life skills of handicapped students to enable them to be better prepared for transition to adult life and services.

These proposed annual funding priorities target: (1) Projects for youth with severe handicaps to be prepared for and placed in supported work prior to their leaving school, and (2) projects to improve existing tracking systems for youth who complete or leave secondary education and to improve secondary education practices based on continued analysis of outcome data.

Eligible Applicants

Awards are made under this program to institutions of higher education, State educational agencies, local educational agencies, and other public and private nonprofit institutions or agencies (including the State job training coordinating councils and services delivery area administration entities established under the Job Training Partnership Act).

Proposed Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105 (c)(3), the Secretary proposes to give an absolute preference to applications addressing the following priorities:

(a) *Priority 1: Training and employment models for youth with severe handicaps.* This priority supports school and community based projects for youth with severe handicaps to be prepared for and placed in supported work prior to leaving school. Models funded under this competition are expected to emphasize the following: (1) Collaboration with employers and measurement of employer satisfaction; (2) program evaluation with outcome measures to determine initial and continuing employment status; (3) working relationships between education agencies and supported work efforts at the State and/or local level; and (4) working partnerships with families that demonstrate a commitment to maximizing independence. The outcome of these models is to place youth with severe handicaps in supported employment. Supported employment must include paid employment in integrated work settings and ongoing support from adult service agencies.

(b) *Priority 2: Secondary and Transition Services follow-up/follow-along projects.* This priority supports school and community based projects to improve tracking systems for youth who complete or leave secondary programs and to revise curriculum and/or program options based on continued analysis of outcome data. Models funded under this competition are expected to emphasize the following: (1) A commitment to enhance existing procedures for a follow-up/follow-along system for all youth who complete or leave secondary education, and (2) revision of existing program options to improve outcomes for youth with handicaps completing or leaving school. Placement status of youth in the community must be the performance standard used to target these outcomes.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism by relying on State and local processes for State and local government coordination review of proposed Federal financial assistance.

In accordance with the order, this document provides early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 4092, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1455)

(Catalog of Federal Domestic Assistance No. 84.158; Secondary & Transitional Services Education Programs for Handicapped Persons)

Dated: August 28, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-20776 Filed 9-9-87; 8:45 am]

BILLING CODE 4000-01-M

Notice Inviting Applications for New Grant Awards Under the Secondary Education and Transitional Services Program for Fiscal Year 1988

This notice includes two competitions: Training and Employment Models for Youth with Severe Handicaps (CFDA Number 84.158N) and Secondary and Transitional Services Follow-up/Follow-along Projects (CFDA Number 84.158R).

Purpose: To strengthen and coordinate activities that assist in the transition to postsecondary education, vocational training, competitive employment, continuing education, or adult services for handicapped youth; to stimulate improvement of secondary special education programs; and to stimulate the improvement of vocational and life skills of handicapped students to enable them to be better prepared for the transition to adult life and services.

Deadline for Transmittal of Applications: For 84.158N, February 12, 1988; for 84.158R, April 15, 1988.

Deadline for Intergovernmental Review Comments: N-4/12/88, R-6/15/88.

Applications Available: November 2, 1987.

Estimated Range of Awards: For 84.158N, $80,000–$120,000: for 84.158R, $110,000–$130,000.

Estimated Size of Awards: For 84.158N, $100,000; for 84.158R, $120,000.

Estimated Number of Awards: For 84.158N, 10; for 84.158R, 7.

Average Project Period: 3 years for 84.158N, and 4 years for 84.158R.

Applicable Regulations: (a) The regulations for the Secondary Education and Transitional Services for Handicapped Youth Program, 34 CFR Part 326, including the amendments to the regulations published in this issue of the **Federal Register**; (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 76, 77, and 78; and (c) when adopted in final form, the notice of proposed annual priorities published in this issue of the **Federal Register.** Applicants should prepare their applications based on the proposed priorities. If there are any substantive changes made when the final priorities are published, applicants will be given the opportunity to amend or resubmit their applications.

For Applications or Information Contact: Edward Wilson, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3092–M/S 2313), Washington, DC 20202. Telephone: (202) 732–1121.

Program Authority: 20 U.S.C. 1455.

Dated: September 4, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87–20777 Filed 9–9–87; 8:45 am]

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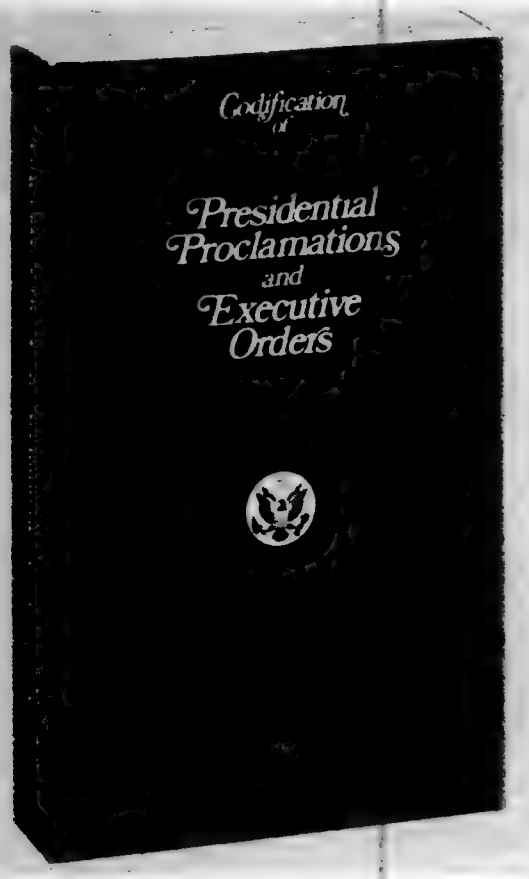

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NATIONAL CAPITAL PLANNING COMMISSION

1 CFR Part 456

Freedom of Information Reform Act of 1986 (Pub. L. 99–570); Uniform Fee Schedule and Administrative Guidelines

AGENCY: National Capital Planning Commission.

ACTION: Final rule.

SUMMARY: On April 30, 1987 at 52 FR 15729, the National Capital Planning Commission (the Commission) published a proposed rule change to its Freedom of Information Act Regulations, 1 CFR Part 456, published as amended at 47 FR 44229, to implement the Freedom of Information Reform Act of 1986 (Pub. L. 99–570) in accordance with the Office of Management and Budget guidelines and schedule of fees and to reflect minor changes in NCPC duty assignments. We have received no public comments prior to the closing date; however, upon further consideration, in this final rule, clarification of the fee waiver provisions, consistent with the Department of Justice guidelines issued to Federal agencies on this issue, has been provided in a new paragraph § 456.4(j)(5). In addition, §§ 456.2 and 456.4(j)(1) have been amended.

DATE: This rule is effective October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Katherine Barns Soffer, General Counsel/FOIA Officer, National Capital Planning Commission, 1325 G Street NW., Washington, DC 20576. Telephone: (202) 724–0174.

SUPPLEMENTARY INFORMATION: This rule is not a major rule for the purpose of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 1 CFR Part 456

Freedom of information.

For the reasons set forth in the preamble, NCPC amends 1 CFR Part 456 as follows:

PART 456—NATIONAL CAPITAL PLANNING COMMISSION (FREEDOM OF INFORMATION ACT REGULATIONS)

1. The authority for Part 456 is revised to read:

Authority: 5 U.S.C. 522, as amended.

2. The table of contents for Part 456 is revised to read as follows:

Sec.
456.1 Introduction.
456.2 Organization.
456.3 Definitions.
456.4 Public access to information.

3. In Part 456 all references to "Commission's Records Management Officer" are revised to read "Freedom of Information Officer."

§ 456.2 [Amended].

4. Section 456.2 (a) through (f) are revised, and (g), (h), and (i) are added to read as follows:

* * * * *

(a) Office of the Executive Director;
(b) Legal Section;
(c) Secretariat Section;
(d) Management Services Section;
(e) Planning and Programming Division;
(f) Review and Implementation Division;
(g) Planning Services Division;
(h) Carto/Graphics Division; and,
(i) Public Affairs Division.

§ 456.3 [Redesignated as § 456.4]

5. Section 456.3 is redesignated as § 456.4, and a new § 456.3, Definitions, is added as follows:

§ 456.3 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Direct costs.* This term means those expenditures which the Commission actually incurs in searching for, duplicating and reviewing records.

(b) *Search.* This term includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(c) *Duplication.* This term refers to the process of making a copy of a document necessary to respond to a Freedom of Information Act request.

(d) *Review.* This term refers to the process of examining documents located in response to a request that is for commercial use to determine whether any portion of any document located is permitted to be withheld, and includes processing any documents for disclosure.

(e) *Commercial use request.* This term refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made.

(f) *Educational institution.* This term refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(g) *Non-commercial scientific institution.* This term refers to a non-profit institution which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(h) *Representative of the news media.* This term refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A request for records supporting the news dissemination function of the requester

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shall not be considered to be a request that is for a commercial use.

6. Section 456.4(j)(1)(vii) is revised; (j)(1)(viii) is amended to add a sentence to the end of the paragraph; and (j)(1)(ix) is added to read as follows:

§ 456.4 Public access to information.

* * * * *

(j) *Schedule of fees.* (1) * * *

(vii) Map publications—microfilm printout—$1.00/each; ozalid maps—$0.30/linear foot.

(viii) * * * The Commission may charge for search costs, where applicable, even if there is ultimately no disclosure of records.

(ix) Review charges: $5.00 per quarter hour. The Commission may charge for review costs, where applicable, even if there is ultimately no disclosure of records.

* * * * *

7. Section 456.4(j) (2) and (3) are redesignated as (j) (3) and (4); a new (j)(2) is added; newly redesignated (j)(4) is revised; and (j)(5) is added as follows:

* * * * *

(j) * * *

(2) The Commission may charge the above-stated fees for the production of information pursuant to the Act, based upon the following requester classifications:

(i) *Commercial use requester.* The Commission may charge requesters in this category for all the direct costs of searching for, reviewing for release, and duplicating the records sought. In determining whether a request is for commercial use, the Commission will look to the use to which a requester will put the documents requested. Where a requester does not explain the use or where the explanation is insufficient, the Commission may draw reasonable inferences from the requester's identity.

(ii) *Educational and non-commercial scientific institution requesters.* The Commission shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. Requesters must show that the request is being made as authorized by or under the auspices of a qualifying institution and that the records sought are not for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or non-commercial scientific research (if the request is from a non-commercial scientific institution).

(iii) *Representatives of the news media.* The Commission shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages.

(iv) *All other requesters.* The Commission may charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct costs of searching for and reproducing records that are responsive to the request, excluding the first 100 pages and first two hours of search time. Requests from record subjects for records about themselves filed in the Commission's system of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(3) * * *

(4) The Commission may not charge fees to any requester if the cost of collecting the fee would be equal to or greater than the fee itself. The minimum fee for the production of information will be $2.00 (over and above the first free 100 pages and 2 hours search time, where applicable). The Commission's Freedom of Information Officer shall provide documents furnished under the Act without any charge or at a charge reduced below the fees established under § 456.3(j)(1) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and it is not primarily in the commercial interest of the requester.

(5) In deciding whether a fee waiver or reduction under § 456.4(j)(4) is justified, the Commission will consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(v) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest disclosure, that disclosure is "primarily in the commercial interest of the requester."

* * * * *

8. Section 456.4(k)(1) is amended to add a sentence at the beginning of the paragraph; (k)(2) is revised; and (k)(4) is added to read as follows:

* * * * *

(k) *Prior approval or advance deposit of fees.* (1) Where the agency estimates that duplication, review or search charges are likely to exceed $25.00, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those estimated. * * *

(2) Where the Freedom of Information Officer determines that fees are likely to exceed $250.00, the Commission may require advance payment of the fee in whole or in part. Where a requester has previously failed to pay a fee charged in a timely manner or is presently in arrears, the Commission may require the requester to pay the full amount owed and to make an advance payment of the full amount of the estimated fees before the agency begins to process a new request or completes a pending request.

* * * * *

(4) A requester may not file multiple requests at the same time, each seeking portions of a document(s), solely in order to avoid payment of fees. When the Commission reasonably believes a requester(s) is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Commission may aggregate any such requests and charge accordingly.

* * * * *

9. Section 456.4(l) is amended by removing the second sentence therein.

Reginald W. Griffith,

Executive Director.

[FR Doc. 87-20718 Filed 9-10-87; 8:45 am]

BILLING CODE 7520-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 25368; Amdt. No. 339]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on September 3, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910–13–M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 339 EFFECTIVE DATE, SEPTEMBER 24, 1987

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.		
IS AMENDED TO DELETE		
BLINK, PA FIX	JASEN, PA FIX	7000
JASEN, PA FIX	LANCASTER, PA VORTAC	3000
§95.6007 VOR FEDERAL AIRWAY 7		
IS AMENDED TO READ IN PART		
PETTY, WI FIX *2200 - MOCA	CYNDI, WI FIX	*9000
§95.6011 VOR FEDERAL AIRWAY 11		
IS AMENDED TO READ IN PART		
WELDO, IN FIX	MARION, IN VOR	2800
§95.6012 VOR FEDERAL AIRWAY 12		
IS AMENDED TO READ IN PART		
JOHNSTOWN, PA VORTAC	HARRISBURG, PA VORTAC	5000
§95.6019 VOR FEDERAL AIRWAY 19		
IS AMENDED TO READ IN PART		
CIMARRON, NM VORTAC *13500 - MCA GOSIP FIX, SW BND **10200 - MOCA	*GOSIP, CO FIX	**11000
PUEBLO, CO VORTAC *8000 - MOCA	HANKO, CO FIX	*8900
§95.6024 VOR FEDERAL AIRWAY 24		
IS AMENDED TO READ IN PART		
ALMAY, MN FIX *2700 - MOCA	MEINZ, MN FIX	*3400
IS AMENDED TO DELETE		
ABERDEEN, SD VOR/DME VIA N ALTER.	WATERTOWN, SD VORTAC VIA N ALTER	3600
ROCHESTER, MN VOR/DME VIA S ALTER.	WAUKON, IA VORTAC VIA S ALTER	3000
WAUKON, IA VORTAC VIA S ALTER.	LONE ROCK, WI VORTAC VIA S ALTER.	3000
§95.6027 VOR FEDERAL AIRWAY 27		
IS AMENDED TO READ IN PART		
MENDOCINO, CA VORTAC	OLRIO, CA FIX	6700
OLRIO, CA FIX	FORTUNA, CA VORTAC NW BND	4000

FROM	TO	MEA
§95.6027 VOR FEDERAL AIRWAY 27—Continued		
	SE BND	6700
§95.6030 VOR FEDERAL AIRWAY 30		
IS AMENDED TO DELETE		
BADGER, WI VORTAC VIA S ALTER	PETTY, WI FIX VIA S ALTER	2700
PETTY, WI FIX VIA S ALTER	RAINE, MI FIX VIA S ALTER	4000
RAINE, MI FIX VIA S ALTER	PULLMAN, MI VORTAC VIA S ALTER	2200
§95.6031 VOR FEDERAL AIRWAY 31		
IS AMENDED TO READ IN PART		
HARRISBURG, PA VORTAC	SELINSGROVE, PA VORTAC	3000
§95.6053 VOR FEDERAL AIRWAY 53		
IS AMENDED TO READ IN PART		
HOLSTON MOUNTAIN, TN VORTAC	HAZARD, KY VOR/DME	6400
HAZARD, KY VOR/DME	IRVIN, KY FIX	4000
IRVIN, KY FIX	LEXINGTON, KY VORTAC	3000
§95.6060 VOR FEDERAL AIRWAY 60		
IS AMENDED TO READ IN PART		
OTTO, NM VOR	LAS VEGAS, NM VORTAC	10000
§95.6082 VOR FEDERAL AIRWAY 82		
IS AMENDED TO DELETE		
DELLS, WI VORTAC	TIMMERMAN, WI VOR	3000
§95.6083 VOR FEDERAL AIRWAY 83		
IS AMENDED TO READ IN PART		
PUEBLO, CO VORTAC *8000 - MOCA	HANKO, CO FIX	*8900

FROM	TO	MEA

§95.6103 VOR FEDERAL AIRWAY 103

IS AMENDED TO READ IN PART

GREENSBORO, NC VORTAC	MAYOS, NC FIX	3000

§95.6115 VOR FEDERAL AIRWAY 115

IS AMENDED TO READ IN PART

KNOXVILLE, TN VORTAC	MALIN, TN FIX	4500
MALIN, TN FIX	ROSAR, KY FIX	5500
ROSAR, KY FIX	HAZARD, KY VOR/DME	5200
HAZARD, KY VOR/DME	WHIRL, WV FIX	4000
WHIRL, WV FIX	CHARLESTON, WV VORTAC	3000

§95.6127 VOR FEDERAL AIRWAY 127

IS AMENDED TO DELETE

BRADFORD, IL VORTAC VIA E ALTER. *2400 - MOCA	MALTA, IL FIX VIA E ALTER	*3500
MALTA, IL FIX VIA E ALTER.	NOAHE, IL FIX VIA E ALTER	2700
NOAHE, IL FIX VIA E ALTER.	ROCKFORD, IL VORTAC VIA E ALTER	2700

§95.6140 VOR FEDERAL AIRWAY 140

IS AMENDED TO READ IN PART

LONDON, KY VORTAC	HAZARD, KY VOR/DME	4000
HAZARD, KY VOR/DME	STACY, VA FIX	4700
STACY, VA FIX *7000 - MRA **4700 - MOCA	*KENYA, WV FIX	**6000
KENYA, WV FIX	BLUEFIELD, WV VORTAC	6000

§95.6143 VOR FEDERAL AIRWAY 143

IS AMENDED TO READ IN PART

GREENSBORO, NC VORTAC	LEAKS, NC FIX	3000

§95.6162 VOR FEDERAL AIRWAY 162

IS AMENDED TO READ IN PART

HARRISBURG, PA VORTAC	HWANG, PA FIX	3000
HWANG, PA FIX	AUDIT, PA FIX	3400

§95.6164 VOR FEDERAL AIRWAY 164

IS AMENDED TO READ IN PART

BUFFALO, NY VORTAC *1900 - MOCA	BULGE, NY FIX	*2800

FROM	TO	MEA

§95.6170 VOR FEDERAL AIRWAY 170

IS AMENDED TO READ IN PART

BADGER, WI VORTAC	PETTY, WI FIX	2700
PETTY, WI FIX	RAINE, MI FIX	4000
RAINE, MI FIX	PULLMAN, MI VORTAC	2200

§95.6171 VOR FEDERAL AIRWAY 171

IS AMENDED TO READ IN PART

JOLIET, IL VORTAC	NOAHE, IL FIX	2700

§95.6190 VOR FEDERAL AIRWAY 190

IS AMENDED TO READ IN PART

LAS VEGAS, NM VORTAC *9000 - MOCA	DALHART, TX VORTAC	*9500

§95.6191 VOR FEDERAL AIRWAY 191

IS AMENDED TO READ IN PART

NORTHBROOK, IL VORTAC	BADGER, WI VORTAC	2900

§95.6210 VOR FEDERAL AIRWAY 210

IS AMENDED TO READ IN PART

BLINK, PA FIX	HARRISBURG, PA VORTAC	4000
HARRISBURG, PA VORTAC	LANCASTER, PA VORTAC	3000

§95.6214 VOR FEDERAL AIRWAY 214

IS AMENDED TO READ IN PART

GLOOM, OH FIX	ZANESVILLE, OH VOR/DME	3000

IS AMENDED TO DELETE

RICHMOND, IN VORTAC *3000 - MOCA	SHIRT OH FIX	*5000
SHIRT, OH FIX	GLOOM, OH FIX	3000

§95.6217 VOR FEDERAL AIRWAY 217

IS AMENDED BY ADDING

FARMM, IL FIX	BESIE, IL FIX	2500
BESIE, IL FIX	BADGER, WI VORTAC	2700

IS AMENDED TO DELETE

CHICAGO O'HARE, IL VOR/DME *2100 - MOCA	TALOR WI FIX	*4000

FROM	TO	MEA
§95.6217 VOR FEDERAL AIRWAY 217—Continued		
TALOR, WI FIX	*PETTY, WI FIX	**7000
*7000 - MCA PETTY FIX, S BND		
**1700 - MOCA		
PETTY, WI FIX	BADGER, WI VORTAC	2700
§95.6228 VOR FEDERAL AIRWAY 228		
IS AMENDED TO READ IN PART		
MADISON, WI VORTAC	*DEBOW, WI FIX	7000
*7000 - MRA		
DEBOW, WI FIX	BESIE, IL FIX	7000
BESIE, IL FIX	FARMM, IL FIX	2500
§95.6263 VOR FEDERAL AIRWAY 263		
IS AMENDED TO READ IN PART		
ALBUQUERQUE, NM VORTAC	*SANTA FE, NM VORTAC	9000
*11600 - MCA SANTA FE VORTAC, E BND		
§95.6265 VOR FEDERAL AIRWAY 265		
IS AMENDED TO READ IN PART		
WESTMINSTER, MD VORTAC	HARRISBURG, PA VORTAC	3400
§95.6331 VOR FEDERAL AIRWAY 331		
IS AMENDED TO READ IN PART		
HAZARD, KY VOR/DME	NEWCOMBE, KY VORTAC	*4000
*3500 - MOCA		
§95.6339 VOR FEDERAL AIRWAY 339		
IS AMENDED TO READ IN PART		
HAZARD, KY VOR/DME	TRENT, KY FIX	*4000
*3500 - MOCA		
TRENT, KY FIX	FALMOUTH, KY VOR/DME	*3000
*2600 - MOCA		
§95.6361 VOR FEDERAL AIRWAY 361		
IS AMENDED TO READ IN PART		
FARMINGTON, NM VORTAC	VETTS, CO FIX	
	N BND	16200
	S BND	9000
VETTS, CO FIX	UNLAP, CO FIX	
	N BND	*16200
	S BND	*11000
*9500 - MOCA		
UNLAP, CO FIX	SPARS, CO FIX	16200
SPARS, CO FIX	LYZZA, CO FIX	
	S BND	*16200
	N BND	*13000
*11500 - MOCA		
LYZZA, CO FIX	MONTROSE, CO VOR/DME	
	S BND	16200

FROM	TO	MEA
§95.6361 VOR FEDERAL AIRWAY 361—Continued		
	N BND	11000
§95.6392 VOR FEDERAL AIRWAY 392		
IS AMENDED TO READ IN PART		
SACRAMENTO, CA VORTAC	ROZZY, CA FIX	*3000
*1600 - MOCA		
ROZZY, CA FIX	*HAGAN, CA FIX	4000
*7500 - MCA HAGAN FIX, N BND		
HAGAN, CA FIX	*AUDIO, CA FIX	
	N BND	**11000
	S BND	**7000
*9000 - MCA AUDIO FIX, NE BND		
**3700 - MOCA		
AUDIO, CA FIX	CONYO, CA FIX	7000
§95.6398 VOR FEDERAL AIRWAY 398		
IS ADDED TO READ		
ABERDEEN, SD VOR/DME	WATERTOWN, SD VORTAC	3600
WATERTOWN, SD VORTAC	REDWOOD FALLS, MN VORTAC	*3800
*3200 - MOCA		
REDWOOD FALLS, MN VORTAC	*ALMAY, MN FIX	**3400
*4600 - MRA		
**2700 - MOCA		
ALMAY, MN FIX	MEINZ, MN FIX	*3400
*2700 - MOCA		
MEINZ, MN FIX	ROCHESTER, MN VOR/DME	3000
ROCHESTER, MN VOR/DME	WAUKON, IA VORTAC	3000
WAUKON, IA VORTAC	LONE ROCK, WI VORTAC	3000
§95.6411 VOR FEDERAL AIRWAY 411		
IS AMENDED BY ADDING		
LONE ROCK, WI VORTAC	WAUKON, IA VORTAC	3000
WAUKON, IA VORTAC	ROCHESTER, MN VOR/DME	3000
§95.6420 VOR FEDERAL AIRWAY 420		
IS AMENDED BY ADDING		
BRADFORD, IL VORTAC	MALTA, IL FIX	*3500
*2500 - MOCA		
MALTA, IL FIX	ELGIN, IL FIX	2700
§95.6452 VOR FEDERAL AIRWAY 452		
IS AMENDED TO READ IN PART		
GALENA, AK VORTAC	HORSI, AK FIX	*6000
*4500 - MOCA		

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FROM	TO	MEA
§95.6469 VOR FEDERAL AIRWAY 469		
IS AMENDED TO READ IN PART		
ST THOMAS, PA VORTAC	BADDI, PA FIX	*5000
*4000 - MOCA		
BADDI, PA FIX	HARRISBURG, PA VORTAC	3000
§95.6474 VOR FEDERAL AIRWAY 474		
IS AMENDED TO READ IN PART		
ST THOMAS, PA VORTAC	NOENO, PA FIX	*5000
*4000 - MOCA		
NOENO, PA FIX	PADRE, PA FIX	2800
§95.6488 VOR FEDERAL AIRWAY 488		
IS AMENDED TO READ IN PART		
GALENA, AK VORTAC	CHOKK, AK FIX	6000
CHOKK, AK FIX	TANANA, AK VOR/DME	3000
GALENA, AK VORTAC	ROSII, AK FIX	
VIA S ALTER.	VIA S ALTER.	*6000
*4500 - MOCA		
ROSII, AK FIX	TANANA, AK VOR/DME	
VIA S ALTER.	VIA S ALTER.	3000
TANANA, AK VOR/DME	REEBA, AK FIX	4000
REEBA, AK FIX	GOLLY, AK FIX	*7000
*4600 - MOCA		

FROM	TO	MEA
§95.6494 VOR FEDERAL AIRWAY 494		
IS AMENDED TO READ IN PART		
SACRAMENTO, CA VORTAC	ROZZY, CA FIX	*3000
*1600 - MOCA		
ROZZY, CA FIX	*HAGAN, CA FIX	4000
*7500 - MCA HAGAN FIX, N BND		
HAGAN, CA FIX	*AUDIO, CA FIX	
	S BND	**7000
	N BND	**11000
*9000 - MCA AUDIO FIX, NE BND		
**3700 - MOCA		
§95.6517 VOR FEDERAL AIRWAY 517		
IS AMENDED TO READ IN PART		
KNOXVILLE, TN VORTAC	MALIN, TN FIX	4500
MALIN, TN FIX	LONDON, KY VORTAC	5500
§95.6531 VOR FEDERAL AIRWAY 531		
IS AMENDED TO READ IN PART		
CENSE, AK FIX	ELCON, AK FIX	*6500
*6000 - MOCA		
ELCON, AK FIX	TANANA, AK VOR/DME	5000

FROM	TO	MEA	MAA
§95.7113 JET ROUTE NO. 113			
IS AMENDED TO DELETE			
NORTHBROOK, IL VORTAC	DUBUQUE, IA VORTAC	18000	45000
§95.7152 JET ROUTE NO. 152			
IS AMENDED TO READ IN PART			
HARRISBURG, PA VORTAC	JENNO, PA FIX	18000	45000

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§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
V-12			
IS AMENDED TO DELETE			
JOHNSTOWN, PA VORTAC	HARRISBURG, PA VORTAC	73	JOHNSTOWN
V-115			
IS AMENDED TO DELETE			
WHITESBURG, KY VORTAC	CHARLESTON, WV VORTAC	40	WHITESBURG
V-228			
IS AMENDED BY ADDING			
MADISON, WI VORTAC	NORTHBROOK, IL VORTAC	56	MADISON

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
J-152			
IS AMENDED TO READ IN PART			
JOHNSTOWN, PA VORTAC	HARRISBURG, PA VORTAC	46	JOHNSTOWN
J-220			
IS AMENDED TO DELETE			
ARMEL, VA VORTAC	STONYFORK, PA VORTAC	111	ARMEL

[FR Doc. 87-20744 Filed 9-10-87; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 47

[T.D. ATF-257]

Importation of Articles on the United States Munitions Import List

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule amends regulations in 27 CFR Part 47 to implement a provision in the Arms Export Control Act of 1976, Pub. L. No. 94–329 (90 Stat. 744), 22 U.S.C. 2778, prohibiting the importation into the United States of military firearms or ammunition of United States (U.S.) manufacture which were sold to a foreign government under a sales program of the United States.

EFFECTIVE DATE: September 11, 1987.

FOR FURTHER INFORMATION CONTACT: Carmen Alston, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226. ATTN: Firearms and Explosives Imports Branch, Telephone No. (202) 566–7151.

SUPPLEMENTARY INFORMATION:

Background

In 1958, section 414 of the Mutual Security Act of 1954 was amended to impose a restriction on importation of U.S. manufactured military firearms previously furnished under a foreign assistance program. In 1976, section 414 was repealed by section 38 of the Arms Export Control Act, but the prohibition of U.S. manufactured military firearms furnished under a foreign assistance program was re-enacted as 22 U.S.C. 2778(b)(1). At that time Congress expanded the law to also prohibit the importation of U.S. manufactured military firearms which were furnished to foreign governments under a sales program of the United States.

Current regulations in 27 CFR 47.57 prohibit the importation of firearms or ammunition which were furnished to foreign governments under a foreign assistance program such as lend-lease or mutual security agreements. Section 47.57 is amended to make it clear that the prohibition extends to all foreign sales programs of the United States. Enumeration of specific foreign assistance programs is deleted because the prohibition applies to U.S. military firearms and ammunition furnished to foreign governments under any foreign assistance or sales program of the United States.

Administrative Procedure Act

Under § 47.54, the functions conferred under section 38 of the Arms Export Control Act of 1976 are excluded from the operation of Chapter 5 (Administrative Procedure) of Title 5, United States Code, with respect to Rule Making and Adjudicating. Such functions are concerned with "a military or foreign affairs function of the United States." Accordingly, this regulation may be adopted without prior publication of a notice of proposed rulemaking or opportunity for hearing.

Drafting Information

The principal author of this final rule is Teri Byers, Procedures Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 566–7602.

Executive Order 12291

This document is not subject to Executive Order 12291 of February 17, 1981 (46 FR 13193 (1981)) because it concerns a military or foreign affairs function of the United States.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget pursuant to 3507 of the Paperwork Reduction Act of 1980 (OMB Control No. 1512–0017).

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required for this final rule under 5 U.S.C. 553(b), the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1165, 5 U.S.C. 601 et seq.) relating to the preparation of a regulatory flexibility analysis are not applicable to this final rule.

List of Subjects in 27 CFR Part 47

Administrative practice and procedures, Arms control, Arms and munitions, Authority delegations, Customs duties and inspection, Imports, Penalties, Reporting requirements.

PART 47—[AMENDED]

Authority and Issuance

Paragraph 1. The authority citation for Part 47 continues to read as follows:

Authority: 22 U.S.C. 2778; 44 U.S.C. 3504(h).

Par. 2. Section 47.57 is revised to read as follows:

§ 47.57 U.S. military firearms or ammunition.

(a) Notwithstanding any other provision of this part or of 27 CFR Part 178, no military firearms or ammunition of U.S. manufacture may be imported for sale in the United States (other than for the Armed Forces of the United States and its allies or for any State or local law enforcement agency) if such articles were furnished to foreign governments under a foreign assistance or sales program of the United States.

(b) The above restriction covers firearms which are advanced in value or improved in condition in a foreign country, but it does not include those which have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(c) A person desiring to import military firearms and ammunition which were manufactured in the United States must certify that the importation of such firearms or ammunition is not prohibited by the provisions of paragraph (a) of this section. The certification statement must be accompanied by documentary information on the original foreign source of the firearms or ammunition.

(Approved by the Office of Management and Budget under control number 1512–0017)

Signed: September 1, 1987.

W.T. Drake,

Acting Director.

Approved: September 2, 1987.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 87–20782 Filed 9–10–87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T–021]

Nevada State Plan; Approval of Revised Compliance Staffing Benchmarks

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Approval of revised compliance staffing benchmarks.

SUMMARY: This document amends Subpart W of 29 CFR Part 1952 to reflect the Assistant Secretary's decision to approve revised compliance staffing requirements for the Nevada State plan.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of

Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523–8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act", 29 U.S.C. 651 et seq.) provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Section 18(c) of the Act sets forth the statutory criteria for plan approval and among these criteria is the requirement that the State's plan provide satisfactory assurances that the State agency or agencies responsible for implementing the plan have "* * * the qualified personnel necessary for the enforcement of * * * standards," 29 U.S.C. 667(c)(4).

A 1978 decision of the U.S. Court of Appeals for the District of Columbia and the resultant implementing order issued by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406) interpreted this provision of the Act to require States operating approved State plans to have sufficient compliance personnel necessary to assure a "fully effective" enforcement effort. The Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) was directed to establish "fully effective" compliance levels, or benchmarks, for each State Plan.

In 1980, OSHA issued a *Report to the Court* containing these benchmarks and establishing the compliance staffing requirements for the Nevada State plan, among others. Attainment of the 1980 benchmark levels or subsequent revision thereto is a prerequisite for State plan final approval consideration under section 18(e) of the Act.

Both the 1978 Court Order and the 1980 *Report to the Court* explicitly contemplated subsequent revision to the benchmarks in light of more current data, including State-specific information, and other relevant considerations. In August 1983, OSHA, together with State plan representatives, initiated a comprehensive review and revision of the 1980 benchmarks. The State of Nevada participated in this benchmark revision process, which resulted in a methodology whereby a State could submit data that would justify revision of its 1980 benchmarks. In July 1986, Nevada proposed to the Assistant Secretary revised compliance staffing levels for a "fully effective" program responsive to the occupational safety and health needs of the State. (A complete discussion of both the 1980 benchmarks and the benchmark revision process is set forth in the June 13, 1985 **Federal Register** (50 FR 24884) on the Kentucky occupational safety and health plan.)

Benchmarks for Nevada

In 1980, OSHA submitted a report to the Court containing the benchmarks and requiring Nevada to allocate 7 safety compliance officers and 9 industrial hygienists. Pursuant to the initiative begun in August 1983 by the State plan designees as a group, and in accord with the formula and general principles established by that group for individual State revision of benchmarks, Nevada reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State.

In July 1986, Nevada, in conjunction with OSHA, completed a review of the components and requirements of the 1980 compliance staffing benchmarks established for the State. This reassessment resulted in proposals to OSHA of revised compliance staffing benchmarks of 11 safety and 5 health compliance officers for the State of Nevada.

History of the Present Proceedings

On March 23, 1987, the Occupational Safety and Health Administration published notice in the **Federal Register** of its proposal to approve revised compliance staffing benchmarks for Nevada (52 FR 9185). A detailed description of the methodology and State-specific information used to develop the revised compliance staffing levels for Nevada was included in the notice. In addition, OSHA submitted, as a part of the record, detailed submissions containing both narrative explanation and supporting data for Nevada's proposed revised benchmarks (Docket No. T–021). A summary of the benchmark revision process is set forth in the January 16, 1985, **Federal Register** notice concerning the Wyoming State plan (50 FR 2491). An informational record was established in a separate docket (Docket No. T–018) and contained background information relevant to the benchmark issue in general and the current benchmark revision process.

To assist and encourage public participation in the benchmark revision process, a copy of Nevada's complete record was maintained in the OSHA Docket Office in Washington, DC. Copies of Nevada's record were also maintained in the OSHA Region IX office in San Francisco, California, and in the office of the Nevada Department of Industrial Relations, Division of Occupational Safety and Health, in Carson City.

The March 23 proposal invited interested persons to submit, by April 30, 1987, written comments and views regarding whether Nevada's proposed revised compliance staffing levels should be approved. No comments were received regarding Nevada's proposed benchmarks.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings. In light of all the facts presented on the record, including the absence of any objections from interested parties, the Assistant Secretary has determined that the revised compliance staffing levels proposed for Nevada meet the requirements of the 1978 Court Order in *AFL–CIO* v. *Marshall* in providing the number of safety and health compliance officers for a "fully effective" enforcement program. Therefore, the revised compliance staffing of 11 safety and 5 health for Nevada are approved.

Effect of Decision

The approval of the revised staffing levels for Nevada, set forth elsewhere in this notice, establishes the requirement for a sufficient number of adequately trained and qualified compliance personnel as set forth in section 18(c) of the Act and 29 CFR 1902.37(b)(1). These benchmarks are established pursuant to the 1978 Court Order in *AFL–CIO* v. *Marshall* and define the compliance staffing levels necessary for "fully effective" enforcement programs in Nevada. The allocation of sufficient staffing to meet benchmarks is one of the conditions necessary for States to receive an 18(e) determination (final State plan approval) with its resultant relinquishment of concurrent Federal enforcement jurisdiction.

Explanation of Changes to 29 CFR Part 1952

29 CFR Part 1952 contains, for each State having an approved plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. This notice makes several changes to Subpart W to reflect the approval of Nevada's revised compliance staffing benchmarks, as well as to reflect minor editorial modifications to the structure of the Subpart.

A new § 1952.293, *Compliance staffing benchmarks*, has been added to Subpart

W to reflect the approval of the revised benchmarks for Nevada.

While most of the existing Subparts have been retained, paragraphs within the subpart have been rearranged and renumbered so that the major steps in the development of the plan (initial approval, developmental steps and certification of completion of developmental steps) are set forth in chronological order.

Related editorial changes to the subparts include modification of the heading of § 1952.290 to clearly identify the initial plan approval of Nevada. The addresses of locations where State plan documents may be inspected have been updated and are found at § 1952.296.

Regulatory Flexibility Act

OSHA certifies, pursuant to the Regulatory Act of 1980 (5 U.S.C. 601, *et seq.*), that this rulemaking will not have significant economic impact on a substantial number of small entities. Approval of the revised compliance staffing levels for Nevada will not place small employers in the State under any new or different requirements nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 (U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, DC, this 2nd day of September, 1987.

John A. Pendergrass,

Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, Subpart W of 29 CFR Part 1952 is hereby amended as follows:

Subpart W—Nevada

1. The authority citation for Part 1952 continues to read:

Authority: Sec.18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (48 FR 35736).

2. Section 1952.290 is amended by revising the heading to read:

§ 1952.290 Description of the plan as initially approved.

§ 1952.295 [Removed]

3. Section 1952.295 is removed.

§ 1952.292 [Redesignated as § 1952.295]

4. Section 1952.292 is redesignated as § 1952.295.

§ 1952.292 [Redesignated from § 1952.294]

§ 1952.294 [Reserved]

5. Section 1952.294 is redesignated as § 1952.292 and a new § 1952.294 is added and reserved.

6. Section 1952.291 is redesignated as § 1952.296 and revised to read as follows:

§ 1952.296 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3700, Washington, DC 20210; Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 11249 Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102; and Nevada Department of Industrial Relations, Division of Occupational Safety and Health, Capitol Complex, 1370 South Curry Street, Carson City, Nevada 89710.

§ 1952.291 [Redesignated from § 1952.293]

7. Section 1952.293 is redesignated as § 1952.291 and a new § 1952.293 is added to read as follows:

§ 1952.293 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall* compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In July 1986 Nevada, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 11 safety and 5 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on September 2, 1987.

[FR Doc. 87–20684 Filed 9–10–87; 8:45 am]

BILLING CODE 4510–26–M

LIBRARY OF CONGRESS

36 CFR Part 701

Procedures and Services; Contracting Officers

AGENCY: Library of Congress.

ACTION: Final rule.

SUMMARY: The Library of Congress is amending its regulations by updating the list of officers authorized to contract for materials and services. The revised list is intended to provide information of interest to the public and other parties in dealing with the Library of Congress.

EFFECTIVE DATE: September 11, 1987.

FOR FURTHER INFORMATION CONTACT: Howard Blancheri, Executive Officer, Management Services Department (202–287–5560).

SUPPLEMENTARY INFORMATION:

List of Subjects in 36 CFR Part 701

Libraries.

For reasons set out in the preamble, Chapter VII, Title 36 of the Code of Federal Regulations is amended as shown:

PART 701—[AMENDED]

1. The authority citation for Part 701 continues to read as follows:

Authority: Sec. 1, 29 Stat. 544, 546 (2 U.S.C. 136).

2. Section 701.34 is revised to read as follows:

§ 701.34 Contracting officers.

Incumbents of the following positions are authorized to contract for materials and services on behalf of the Library of Congress and to execute contracts in the areas as specified below. The Librarian of Congress may further delegate contracting authority in specific situations.

Library officers	Area of contracting authority
The Librarian of Congress	All areas.
The Deputy Librarian of Congress.	All areas.
The Associate Librarian of Congress	All areas
Associate Librarian for Management	All areas except materials for the Library's collections.
Director, Congressional Research Service (CRS).	Agreements to procure experts or consultants (including stenographic reporters) pursuant to 2 U.S.C. 166(h)(2)
Assistant Librarian for Research Services.	Performance fees for readings, lectures, dramatic fees, and the Council of Scholars.
Director, Library Environment Resources Office	Rental/space agreements with Government agencies.
Director, Acquisitions and Overseas Operations, Processing Services.	Agreements for bibliographic services.
Director, National Library for the Blind and Physically Handicapped.	Collection materials for the Library's blind and physically handicapped program
Director of Publishing	Agreements directly related to publications of the Publishing Office
Chief, Procurement and Supply Division	All areas except materials for the Library's collections.
Chief and Assistant Chief, Order Division	Purchased materials for the Library's collections.

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Library officers	Area of contracting authority
Chief and Assistant Chief, Exchange and Gift Division.	Agreements involving all non-purchase materials for the Library's collections (exchanges, gifts, deposits, and so forth).
Chief, Financial Management Office, and Budget Officer.	Interagency agreements, entertainment performance of services by the Library and interdepartmental charges.
Chief, Manuscript Division	Agreements involving the Library's literature programs (nonappropriated funds).
Chief, Music Division	Agreements involving the Library's music programs (nonappropriated funds).
Exhibits Officer	Agreements involving loans of exhibits.
Staff Training and Development Officer	Training agreements with educational institutions.

Glen A. Zimmerman,

Associate Librarian for Management, Library of Congress.

[FR Doc. 87-20988 Filed 9-10-87; 8:45 am]

BILLING CODE 1410-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Part 903

Privacy Act Update; Disclosure of Personal Information During Litigation

AGENCY: Pennsylvania Avenue Development Corporation (PADC).

ACTION: Interim rule.

SUMMARY: This rule provides guidelines governing the routine use of records contained in PADC records systems for disclosure to the Department of Justice and to PADC during the course of litigation. It is intended to make nonconsensual disclosure of personal information, routinely used in litigation, more consistent with the requirements of the Privacy Act. Recent court decisions require that routine uses of records in Government Record Systems be narrow in scope and protect against unbridled discretion in allowing disclosures as a routine use. The rule sets forth the specific routine uses that support disclosure of Privacy Act records to the Department of Justice and for PADC disclosure in litigation. The rule conforms to Office of Management and Budget memorandum of Privacy Act Guidance—dated May 24, 1985.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Talbot J. Nicholas II, Attorney, Pennsylvania Avenue Development Corporation, (202) 724-9088.

SUPPLEMENTARY INFORMATION: PADC published this rule for comment on November 4, 1985 (50 FR 45841). No comments were received.

The Privacy Act of 1974 requires Government agencies to obtain the written consent of record subjects before disclosing personal information from an agency systems of records. The Act provides twelve specific exceptions to this requirement. One of the enumerated exceptions provides for the nonconsensual disclosure of records for "routine uses" of the data collected.

In the context of litigation, the government generally initiates disclosures of personal information as routine use exceptions. A 1984 federal court decision held that such routine uses must be narrowly drawn to preclude the government from disclosing, as a routine use, personal and embarrassing information about an individual in retaliation for suit being brought against it. Such routine use by the government could discourage meritorious claims from being filed by aggrieved parties.

The Office of Management and Budget (OMB) has selectively reviewed existing routine uses for disclosures in support of litigation and has found that such uses could be for purposes that are inconsistent with the intent of the Privacy Act.

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not constitute a "major rule" under Executive Order 12291.

List of Subjects in 36 CFR Part 903

Privacy.

For the reasons set out in the preamble, Part 903 of Chapter IX of Title 36 of the Code of Federal Regulations is amended as follows.

PART 903—[AMENDED]

1. Authority citation for Part 903 is revised to read as follows:

Authority: 5 U.S.C. 552a; 40 U.S.C. 870.

§§ 903.11 and 903.12 [Redesignated as 903.12 and 903.13 respectively]

2. Sections 903.11 and 903.12 are redesignated as §§ 903.12 and 903.13 respectively. A new § 903.11 is added to read as follows:

§ 903.11 Routine uses of records maintained in the system of records.

(a) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(1) The Corporation, or any component thereof; or

(2) Any employee of the Corporation in his or her official capacity; or

(3) Any employee of the Corporation in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(4) The United States, where the Corporation determines that litigation is likely to affect the Corporation or any of its components, is a party to litigation or an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Corporation to be relevant and necessary to the litigation, provided, however, that in each case, the Corporation determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(b) It shall be a routine use of records maintained by the Corporation to disclose them in a proceeding before a court or adjudicative body before which the Corporation is authorized to appear, when:

(1) The Corporation, or any component thereof; or

(2) Any employee of the Corporation is his or her individual capacity;

(3) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(4) The United States, where the Corporation determines that litigation is likely to affect the Corporation or any of its components is a party to litigation or has an interest in such litigation and the Corporation determines that use of such records is relevant and necessary to the litigation, provided, however, that, in each case, the Corporation determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

* * * * *

Date: September 4, 1987.

M.J. Brodie,

Executive Director.

[FR Doc. 87-20991 Filed 9-10-87; 2:52 pm]

BILLING CODE 7630-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3256-1]

North Carolina Emissions Trading Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency regarding State rules.

SUMMARY: On December 4, 1986 (51 FR 43814), EPA published its revised Emission Trading Policy (ETP). The policy states that existing state generic bubble rules should be reviewed. Notices should then be published identifying any deficiencies and the means to correct them. That is the purpose of this notice. This notice informs the State of North Carolina and the public of the needed revisions to the State's generic bubble rules, 15 NCAC 2D.0501(f) and 15 NCAC 2H.0603(g)(2). The notice indicates the means to correct the deficiencies and a timetable for the accomplishment of this.

ADDRESSES: Copies of the State's bubble rule and the ETP are available for review during normal business hours at the following locations:

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611.

Air Programs Branch, Region IV, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Bob Peddicord of the Region IV EPA Air Programs Branch at the above address and the following phone: (404) 347–2864, or (FTS) 257–2864.

SUPPLEMENTARY INFORMATION: EPA's revised ETP was published on December 4, 1986 (51 FR 43814). The policy indicates that existing state generic bubble rules should be reviewed. Notices should be published identifying any deficiencies and a means to correct them. This notice serves that purpose for the State of North Carolina's bubble rule, set forth in the state regulations at 15 NCAC 2D.0501(f) and 15 NCAC 2H.0603(g) (1) and (2).

North Carolina's bubble rule is split into two parts. A portion of the rule is in section 2D.0501(f). This section contains the requirements that all bubbles in the State must meet. It outlines what types of facilities are allowed to bubble and what those facilities must do in order to bubble. All sources wishing to bubble must get a permit to do so.

The bubble permit requirements are contained in section 2H.0603(g) (1) and (2). In 2H.0603(g)(1) the requirements for all bubble permits are laid out, including a stipulation that the permits must become part of the SIP. That means they must be submitted to EPA for approval. Regulation 2H.0603(g)(2) allows an exception to the EPA review requirement. If a bubble only affects VOC's and the source(s) involved in the trade voluntarily allow the rule to be federally enforceable, the bubble does not have to go to EPA for review. This gives the State generic authority for VOC bubbles.

North Carolina's bubble rule was originally approved by EPA on July 26, 1982 (47 FR 32118). There have been several amendments to the rule since that time. EPA is currently acting on a proposed change to 2D.0501(f), and that action will appear in another notice. This notice, however, will only focus on the needed revisions to the current federally approved generic bubble rule.

Since 2D.0501(f) is part of the generic rule along with 2H.0603(g)(2), both were reviewed for completeness. The following paragraphs outline the requirements that North Carolina needs to adopt from the ETP.

In order to bubble any source, the reduction of emissions from one of the sources must be a reduction not covered by any other regulations. To ensure this, baselines must be set. North Carolina's rule has no methods for setting baselines. According to the ETP, baseline emissions for any source are the product of three factors—emission rate, capacity utilization, and hours of operation. In attainment areas (the only areas in which bubbles are currently allowed by the State) the lower of the actual or allowable values for all three baseline factors must be used (51 FR 43838, col. 1). North Carolina's rule does not specify this and needs to do so.

North Carolina needs to incorporate visibility and PSD increment protection into their State regulations. No trades, including generic trades, can interfere with timely attainment and maintenance of ambient air quality standards, or jeopardize PSD increments or visibility (51 FR 43850 col. 2).

It is stated in the ETP that the reduction of emissions by one of the sources involved in a bubble must have four characteristics. The reduction must be quantifiable, surplus, enforceable, and permanent. These are further defined by the ETP and should be incorporated by North Carolina to insure bubble reductions are legitimate (51 FR 43831, col. 3).

North Carolina's rule also lacks adequate notification procedures. The new ETP requires that the State provide EPA with all the pertinent documents by the first day of the comment period. North Carolina is also required to provide to the EPA regional office two copies of any emission trades approved under generic rules immediately after their issuance (51 FR 43854, col. 2). The State is also required to notify the relevant Federal Land Manager if an emissions trade will take place within 100 km of a PSD Class I area (51 FR 43854, col. 1).

Regarding the generic authority that the State has for VOC bubbles only, there are several specific requirements to be added (51 FR 43850, col 3). Generic VOC trading rules must require that surface coating emissions be calculated on a solids-applied basis. The rule should also specify the maximum time period over which emissions may be averaged in an acceptable compliance demonstration. For VOC, that averaging time should not exceed 24 hours unless the rule is modified to contain language approved by EPA that expressly allows a longer averaging period (51 FR 43851, col. 1 and Appendix D, 51 FR 43857, col. 1).

One of the general principles for the evaluation of generic rules is that the rule be replicable. That is, two decision-makers applying the rule to a given trade would reach the same conclusion (51 FR 43850, col. 3). As a result of the discrepancies outlined above it is unclear whether the "replicable" requirement can be met.

To date, only one bubble has been issued by the State. This review of the generic rule and the subsequent revision to it will have no effect on that previously issued bubble.

The discrepancies between the ETP and North Carolina's rule must be resolved. North Carolina must, within nine months of the publication of this notice, submit to EPA the changes necessary to bring its bubble rule into compliance with all the conditions of the ETP.

If the State fails to submit the changes in the prescribed time, EPA may either withdraw its original approval of the regulation or issue a notice of SIP deficiency.

Authority: 42 U.S.C. 7401–7642.

Dated: July 28, 1987.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 87–20299 Filed 9–10–87; 8:45 am]

BILLING CODE 6560–50–M

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DEPARTMENT OF DEFENSE

48 CFR Parts 203, 209 and 252

Department of Defense Federal Acquisition Regulation Supplement; Implementation of Recommendations Made by the President's Blue Ribbon Commission on Defense Management

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulatory Council has amended the Defense Federal Acquisition Regulation Supplement, Subparts 203.70, 209.4, and 252.2 to implement certain recommendations made by the President's Blue Ribbon Commission on Defense Management. The final rule adopts a policy which promotes rather than mandates the establishment of contractor programs to improve compliance with law, regulations, and contract commitments and provides criteria for responsibility determinations in suspension and debarment decisions. The rule also includes a clause that, when inserted in contracts, will require contractors to display DoD Hotline posters unless the contractor has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD (P)/DARS, c/o OASD (P&L), Room 3D139, The Pentagon, Washington, DC 20301-3062.

SUPPLEMENTARY INFORMATION:

A. Background

On June 30, 1986, the President's Blue Ribbon Commission on Defense Management (the Packard Commission) rendered a Final Report to the President concerning its study of defense management and acquisition practices. The Commission's Report has been strongly endorsed by the Department of Defense (DoD). The purpose of this rule is to implement recommendations contained in sections I and III.C.2. of chapter four of the Report concerning contractor self-governance programs and debarment and suspension.

B. Regulatory Flexibility Act

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Although the rule contains a requirement to display DoD Hotline posters, this requirement only applies to contractors who receive an award amounting to $5 million or more and who do not meet the criteria for exception contained in the rule. Approximately 464 contracts exceeding $5 million were awarded to small businesses in 1986. Small businesses receiving such awards and not meeting the exception criteria will be required on a one time basis to obtain free copies of the DoD Hotline poster from the DoD Inspector General's office in Washington, DC and to display such posters.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 203, 209 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore the DoD FAR Supplement is amended as set forth below.

1. The authority citation for 48 CFR Parts 203, 209, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. The Table of Contents of Part 203 is amended by adding at the end thereof the following new subpart and section titles, as follows:

Subpart 203.70—Contractor Responsibility To Avoid Improper Business Practices

203.7000 Policy.
203.7001 Display of DoD Hotline Poster.
203.7002 Contract Clause.

3. Subpart 203.70, consisting of sections 203.7000, 203.7001, and 203.7002, is added to read as follows:

Subpart 203.70—Contractor Responsibility To Avoid Improper Business Practices

203.7000 Policy.

It is essential that companies with whom the Government contracts conduct themselves only with the highest degree of integrity and honesty. Therefore, contractors should have standards of conduct and internal control systems, suitable to the size of the company and the extent of their involvement in Government contracting, that are designed to promote such standards, to facilitate the timely discovery and disclosure of improper conduct in connection with Government contracts, and assure that corrective measures are promptly instituted and carried out. For example, a contractor's system of management controls should provide for—

(a) A written code of business ethics and conduct and an ethics training program for all employees;

(b) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting;

(c) A mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports (but see 203.7001 below);

(d) Internal and/or external audits as appropriate;

(e) Disciplinary action for improper conduct;

(f) Timely reporting to appropriate Government officials of any suspected or possible violation of law in connection with Government contracts or any other irregularities in conncetion with such contracts; and

(g) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

203.7001 Display of DoD Hotline Poster.

Contractors who are awarded a DoD contract of $5 million or more and who have not established an internal reporting mechanism and program, as described in 203.7000(c) above, shall be required to display prominently in common work areas within business segments performing work under DoD contracts, DoD Hotline posters prepared by the Office of the Inspector General, DoD.

203.7002 Contract clause.

The contracting officer shall insert the clause at 252.203-7003, Display of DoD Hotline Poster, in solicitations and contracts expected to exceed $5 million.

PART 209—CONTRACTOR QUALIFICATIONS

4. Section 209.406-1 is amended by revising paragraph (d) and by adding paragraph (e) to read as follows:

209.406–1 General.

* * * * *

(d) If the cause for debarment as listed in FAR 9.406–2 is based on a felony conviction, the debarment period should be commensurate with the seriousness of the crime. The period of debarment should afford adequate time for the contractor to eliminate the circumstances within the contractor's organization that encouraged the belief that the acts or omissions on which the organization's conviction was based would escape accountability or be condoned. Mitigating factors should be considered in making the debarment decision. However, for any decision not to debar or to debar for one year or less, the mitigating factors must demonstrate clearly to the debarring official's complete satisfaction, that the contractor has eliminated such circumstances and has implemented or agrees to implement remedial measures. The debarring official should consider the following mitigating factors, among others, in making a debarment decision:

(1) Whether the contractor had effective standards of conduct and internal control systems, as outlined in section 203.7000, in place at the time of the activity on which the felony conviction was based or has adopted such procedures prior to any government investigation leading to the suspension or debarment proceedings;

(2) Whether the contractor made timely disclosure to the appropriate government agency;

(3) Whether the contractor cooperated fully with government agencies during the investigation and any court or administrative action;

(4) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity;

(5) Whether the contractor has made or has agreed to make full restitution, including any investigative or administrative costs incurred by the government;

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity upon which the conviction was based, including dismissal when such action is warranted based on a consideration of all the available facts;

(7) Whether the contractor has implemented or agreed to implement remedial measures; and

(8) Whether the contractor has agreed to institute new or revised review and control procedures and ethics training programs.

(e) Whenever, following a felony conviction, the debarring official determines that debarment is not necessary to protect the government's interests, the debarring official shall require the contractor to enter into a written agreement, which includes (i) a requirement for the contractor to establish (if the contractor has not already established such standards for conduct and internal control systems) and/or maintain effective standards of conduct and internal control systems as outlined in DFARS 203.7000, and (ii) other requirements as the debarring official deems to be appropriate.

5. Section 209.406–4 is amended by revising paragraph (a) and by adding paragraph (b) to read as follows:

209.406–4 Period of debarment.

(a) If a decision is based upon a felony conviction, the period shall be commensurate with the seriousness of the crime and will generally be for more than one year but not more than three years. A decision by the debarring official not to debar or to debar for one year or less than one year and the agreement required by DFARS 209.406–1(e) must be approved in writing by the Secretary concerned or, in the case of the defense agencies, by the Assistant Secretary of Defense (Production & Logistics), except where the debarring official determines that all of the enumerated mitigating factors set out in DFARS 209.406–1(d) are applicable and have been accomplished.

(b) If suspension precedes debarment, the suspension period shall be considered in determining the debarment period.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.203–7003 is added to read as follows:

252.203–7003 Display of DoD Hotline Poster.

As prescribed in 203.7002, insert the following clause.

Display of DoD Hotline Poster (Oct 1987)

(a) Except as provided in paragraph (c) below, the Contractor shall display prominently in common work areas within business segments performing work under DoD contracts, DoD Hotline posters prepared by the Office of the Inspector General, DoD.

(b) DoD Hotline posters may be obtained from the DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202–2884.

(c) The Contractor need not comply with paragraph (a), above, if the Contractor has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourages employees to make such reports (See DFARS 203.7000(c)).

(End of clause)

[FR Doc. 87–20912 Filed 9–10–87; 8:45 am]

BILLING CODE 3810–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 519 and 553

[APD 2800.12 CHGE 48]

General Services Administration Acquisition Regulation; Subcontracting Plan Reporting Requirements

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to revise Part 519 to provide a checklist for use in reviewing subcontracting plans, to require the contracting officer to send appropriate reporting forms to the contractor at the time of award, to provide that small business technical advisors be notified of contract awards that contain subcontracting plans and to identify to whom the contracting officer is to send copies of notices of award or checklists, to provide information on the report forms and procedures to be used under the subcontracting assistance program, to outline the responsibilities and procedures related to subcontracting data collection; to revise section 553.173(c) to add the GSA Form 3584, Checklist for Review of Subcontracting Plan; and to add section 553.370–3584 to illustrate GSA Form 3584, Checklist for Review of Subcontracting Plan. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: September 2, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations on (202) 566–1224.

SUPPLEMENTARY INFORMATION:

Background

The General Services Administration published GSAR Notice 5–86 in the **Federal Register** (50 FR 14122) on April 10, 1985, inviting comments from interested parties. Comments received from the American Bar Association,

University of California, Small Business Administration, and various offices within GSA have been reviewed, reconciled, and incorporated when appropriate, in this final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule amends the regulation to provide contracting officers instructions and procedures on reviewing subcontracting plans and on notifying contractors of their obligations for reporting subcontracting under FAR 52.219–9. Therefore, no regulatory flexibility analysis has been prepared. The rule does not establish any new information collection requirements. The information collection requirements referred to in this rule are imposed by the Federal Acquisition Regulation and have been approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned OMB Control Number 9000–0006 (SF–294) and 9000–0007 (SF–295).

List of Subjects in 48 CFR Parts 519 and 553

Government procurement.

1. The authority citation for 48 CFR Parts 519 and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. The table of contents for Part 519 is amended by adding sections 519.705, 519.705–4, 519.705–5, 519.770, 519.770–1 and 519.770–2 to read as follows:

Subpart 519.7—Subcontracting With Small and Small Disadvantaged Business Concerns

Sec.

519.705 Responsibilities of the contracting officer under the subcontracting assistance program.
519.705–4 Reviewing the subcontracting plan.
519.705–5 Awards involving subcontracting plans.
519.770 Reporting requirements under subcontracting assistance program.
519.770–1 Report forms.
519.770–2 Responsibilities for subcontracting data collection.

3. Sections 519.705, 519.705–4 and 519.705–5 are added to read as follows:

519.705 Responsibilities of the contracting officer under the subcontracting assistance program.

519.705–4 Reviewing the subcontracting plan.

Prior to award, the agency small business technical advisors and the SBA procurement center representatives (if any) shall be given the opportunity to review subcontracting plans and provide recommendations in accordance with FAR 19.705–4. The GSA Form 3584, Checklist for Review of Subcontracting Plan, must be used by procuring contracting officers (PCO's) and small business technical advisors (SBTA's) when reviewing subcontracting plans. Its use by SBA procurement center representatives is optional.

519.705–5 Awards involving subcontracting plans.

(a) When the contractor has submitted an individual contract plan, the contracting officer shall transmit copies of Standard Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report, to the contractor at the time of contract award. A letter which reads substantially as follows should be used for this purpose:

Name
Address
City, State, Zip Code
Re: Subcontracting Plan Reports
Contract No. _____
Dear _____:

Your individual contract plan, submitted pursuant to the Small Business and Small Disadvantaged Business Subcontracting Plan clause of your contract, has been approved. The clause also requires you to submit periodic subcontracting reports on Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and Standard Form (SF) 295, Summary Subcontract Report. The SF 294 report is used to report subcontracting activity under this contract. The report is due semiannually (within 25 days after March 31st and September 30th) and at contract completion.

The SF 295 report is used to report the aggregate of subcontracting activity under all your GSA contracts. The report is due quarterly (within 25 days after December 31st, March 31st, June 30th, and September 30th). The report is cumulative from quarter to quarter, and the final report for the year should cover the period from October 1–September 30, which is the Government fiscal year. A new reporting cycle begins October 1st of each year.

Please send the SF 294 report to: *(address of contracting office administering the contract),* and send a copy to: *(address of regional Business Service Center in the region of contract award, or appropriate Central Office small business technical advisor for Central Office awards).*

Please send the SF 295 to the GSA Office of Small and Disadvantaged Business Utilization, (AU), 18th and F Streets, NW, Washington, DC 20405. The SF 294 and SF 295 report forms are enclosed.

Sincerely,

Contracting Officer
Enclosures (SF 294's and SF 295's)

(b) When the contractor has submitted a company-wide plan for commercial products, the contracting officer shall transmit copies of the Standard Form 295, Summary Subcontract Report, to the contractor at the time of contract award. (See 519.770–1(b)(2) for exception.) A letter which reads substantially as follows should be used for this purpose:

Name
Address
City, State, Zip Code
Re: Subcontracting Plan Reports
Contract No. _____
Dear _____:

Your company-wide plan for commercial products, submitted pursuant to the Small Business and Small Disadvantaged Business Subcontracting Plan clause of your contract, has been approved by *(name, address, and telephone number of approving official).* The clause also requires you to submit periodic subcontracting reports on Standard Form (SF) 295, Summary Subcontract Report.

The SF 295 is an annual report and is due on or before October 25th of each year. The reporting period is October 1–September 30, i.e., the Government fiscal year. The report should summarize subcontracting activity under company-wide plans for commercial products in effect during the reporting period.

Please send this report to: *(address of contracting office administering the contract),* and send a copy to the GSA Office of Small and Disadvantaged Business Utilization (AU), 18th & F Streets, NW., Washington, DC 20405. SF 295 report forms are enclosed.

Sincerely,

Contracting Officer
Enclosure (SF 295's)

4. Section 519.705–6 is revised to read as follows:

519.705–6 Postaward responsibilities of the contracting officer.

(a) In addition to the requirements of FAR 19.705–6, contracting officers shall notify the GSA Business Service Center in the region of contract award or the appropriate Central Office small business technical advisor (for Central Office awards) of each contract award or contract modification of $500,000 or more ($1 million or more for construction) that contains a subcontracting plan.

The notice of award must contain the following information:

(1) Contractor's name, address, phone number.

(2) Subcontracting plan, administrator's name, address, phone number.
(3) Contract number.
(4) Place of performance.
(5) Dollar amount of contract award.
(6) Period of contract performance.
(7) Description of contract items.
(8) Contracting officer's name, address, phone number.
(9) Administrative contracting office address, phone number.
(10) Type of plan (individual or company-wide).

(b) The subcontracting plan checklist may serve as the notice of award, except in the case of contracts incorporating previously approved company-wide plans. In this case, notice of award as described in paragraph (a) of this section will be necessary as there will be no subcontracting plan checklist. The Business Service Centers and the small business technical advisors shall retain these documents in their files.

5. Sections 519.770, 519.770–1 and 519.770–2 are added to read as follows:

519.770 Reporting requirements under subcontracting assistance program.

519.770–1 Report forms.

(a) *Standard Form 294, Subcontracting Report for Individual Contracts.* This report is required for reporting subcontracting activity under contracts with individual contract plans. A separate report must be made on this form for each contract with an individual contract plan. This report is not required for company-wide plans for commercial products.

(1) Contractors shall submit the SF 294 report to the contracting office administering the contract and a copy to the GSA Business Service Center in the region of contract award or, for Central Office awards, to the appropriate Central Office small business technical advisor.

(2) Reports are due semiannually (within 25 days after March 31st and September 30th) and at contract completion.

(b) *Standard Form 295, Summary Subcontract Report.* This form is required for reporting subcontracting activity under both individual contract plans and company-wide plans for commercial products.

(1) *Individual contract plans.* (i) Contractors shall submit the SF 295 reports to the Office of Small and Disadvantaged Business Utilization (AU).

(ii) The reports are quarterly, and are due 25 days after the end of each Government quarter (December 31st, March 31st, June 30th, and September 30th).

(iii) The reports are cumulative from quarter to quarter and aggregate subcontracting activity under all GSA contracts held by the contractor, except those covered by company-wide plans for commercial products.

(2) *Company-wide plans for commercial products.* (i) Contractors shall submit the SF 295 reports to the contracting office administering the contract and a copy to the Office of Small and Disadvantaged Business Utilization (AU). *Note:* This instruction applies only for the first GSA contract covered by a company-wide plan awarded during the contractor's fiscal year. Contractors are not required to submit SF 295 reports for subsequent contracts awarded during their current fiscal year and covered by the same commercial products plan.

(ii) When a contractor has a commercial products plan previously approved by another GSA contracting activity or another Federal agency for the company's fiscal year, the GSA contracting officer shall request a copy of the plan and the agency approval document and include them in the contract file. The plan must also be included in and made a part of the resultant contract.

(iii) Reports are due annually, on or before October 25th of each year. The reports should cover the contractor's subcontracting activity under company-wide plans for commercial products in effect during the reporting period, which is October 1st to September 30th (Government fiscal year).

519.770–2 Responsibilities for subcontracting data collection.

(a) The Office of Small and Disadvantaged Business Utilization (AU) is responsible for collecting subcontracting data from the regional Business Service Centers and Central Office small business technical advisors.

(b) The regional Business Service Centers and Central Office small business technical advisors are responsible for forwarding copies of all notices of contract awards and subcontracting plan checklists to the Office of Small and Disadvantaged Business Utilization (AU) by the 20th day after the end of each Government quarter.

PART 553—FORMS

6. The table of contents for Part 553 is amended by adding section 553.370–3584 to read as follows:

Subpart 553.3 Illustration of Forms

Sec.

* * * * *

553.370–3584 GSA Form No. 3584, Checklist for Review of Subcontracting Plan.

* * * * *

7. Section 553.173 is amended by revising paragraph (c) to read as follows:

553.173 Responsibility for maintenance of forms.

(c) * * *

GSA Form No.	Responsible office
. . . . .	
3584	V
. . . . .	

Editorial Note.—The new GSA Form 3584, Checklist for Review of Subcontracting Plan, is illustrated and made a part of the regulation. However, the form is not illustrated in the **Federal Register** or the Code of Federal Regulations. A copy of the form may be obtained from any GSA contracting activity or the Director of the Office of GSA Acquisition Policy and Regulations (VP), 18th & F Streets, NW., Washington, DC 20405.

Dated: September 2, 1987.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 87–20978 Filed 9–10–87; 8:45 am]

BILLING CODE 6820–01–M

DEPARTMENT OF JUSTICE

48 CFR Parts 2801, 2806, 2808, 2809, 2827, 2834, and 2852

[Justice Acquisition Circular 85–1]

Amendments to the Justice Acquisition Regulation Concerning Competition in Contracting

AGENCY: Justice Management Division, Office of the Procurement Executive, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Justice Acquisition Regulation, 48 CFR, Chapter 28. The purpose of the amendment is to implement as a final rule the Competition in Contracting Act of 1984, the Small Business and Federal Procurement Competition Enhancement Act of 1984, and Attorney General Order 1085–85 which created the Department's Office of the Procurement Executive and set review requirements for Department of Justice contracts.

EFFECTIVE DATE: September 11, 1987.

FOR FURTHER INFORMATION CONTACT: W.L. Vann, Procurement Executive,

Department of Justice, Room 6406, 601 D Street, NW., Washington, DC 20530 or telephone (202) 272–8354.

SUPPLEMENTARY INFORMATION: This rule was originally published in the **Federal Register** on July 22, 1985 as an interim rule with a 60 day public comment period. The Department of Justice (DOJ) received comments, from a federal agency and a university, directed to the data rights provisions (Subparts 2827.4 and 2852.2). In addition, several comments were received from DOJ entities. The following paragraphs discuss these comments and our response. Editorial suggestions or corrections are addressed in the rule as appropriate. The Department appreciates the attention given by commentators in reviewing this rule.

A DOJ commentator recommended that the contract file checklist in 2804.803–70 be revised to include several specific references to construction and Architect and Engineering (A&E) contracting. The Office of the Procurement Executive (OPE) has plans to develop a separate checklist for construction and A&E contracting and will include the recommendations at that time.

A second DOJ commentator recommended an exemption from the Office of Management and Budget (OMB) Circular A–109 (Major Systems Acquisitions) process be added to § 2834.002–70, for "major" systems utilizing off-the-shelf items. OMB Circular A–109 requires that "major" systems acquisitions receive special management attention during the acquisition cycle. The recommendation to exempt "major" systems consisting of off-the-shelf items from the OMB Circular A–109 process has been accepted and § 2834.002–70 has been amended by the addition of a new paragraph.

Several commentators recommended changes to Part 2827 Patents Data and Copyrights and associated clauses in Subpart 2852.227. On May 13, 1987, the General Services Administration published Federal Acquisition Circular (FAC) 84–27 (52 FR 18140) which sets forth policies, procedures and instructions for civilian agencies with respect to rights in data and copyrights and the acquisition of data. The Department of Justice will follow FAC 84–27, and is therefore withdrawing Part 2827 and Subpart 2852.227.

The Director, OMB, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291 except for selected areas. The exemption applies to these revisions. The Department of Justice certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act.

(5 U.S.C. 60 et seq).

List of Subjects in 48 CFR Parts 2801, 2806, 2808, 2809, and 2834

Government procurement.

Harry Flickinger,

Assistant Attorney General for Administration.

Accordingly, the interim rule published on July 22, 1985 (50 FR 29798) is adopted as final with the following changes.

1. The authority citation for 48 CFR Parts 2801, 2806, 2808, 2809 and 2834 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATIONS SYSTEM

2801.602–70 [Correction]

2. In section 2801.602–70, paragraph (f) is amended by revising "Bureau of Prison" to read "Bureau of Prisons".

PART 2806—COMPETITION REQUIREMENTS

2806.502 [Amended]

3. In section 2806.502, paragraph (b)(1) is amended by revising the reference to "section 21(a) of the Office of Federal Procurement Policy Act" to read "section 23 of the Office of Federal Procurement Policy Act".

PART 2808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2808.1102–70 Procedure.

4. Section 2808.1102–70 *Procedure* is amended by revising "Chief Operations Section, Administrative Services Staff" to read "General Services Staff, Justice Management Division".

PART 2809—CONTRACTOR QUALIFICATIONS

2809.400 [Amended]

5. In section 2809.400, paragraph (b) is amended by removing the words "the office of".

2809.470 [Amended]

6. In section 2809.470, paragraph (a)(4) is amended by removing the words "the office of".

PART 2827—[REMOVED]

7. Part 2827 is removed.

PART 2834—MAJOR SYSTEM ACQUISITION

2834.002–70 [Amended]

8. Section 2834.002–70(b)(1) is amended by removing "$12 million." and inserting "$60 million."

9. Section 2834.002–70(e) is further amended by removing the word "agency" and inserting the words "contracting activity".

10. Section 2834.002–70(f) is added to read as follows:

2834.002–70 Policy.

* * * * *

(f) *Exemption.* The Assistant Attorney General for Administration, upon recommendation by the head of the contracting activity responsible for the system, may determine that, because of the routine nature of the acquisition, the system (e.g., an information system utilizing only off-the-shelf hardware or software) will be exempt from the OMB Circular A–109 process, although by virtue of its life cycle costs, it would otherwise be identified as "major" in response to OMB Circular A–11.

PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2852.2—Texts of Provisions of Clauses

11. Sections 2852.227–70 through 2852.227–74 are removed.

[FR Doc. 87–20715 Filed 9–10–87; 8:45 am]
BILLING CODE 4410–01–M

Proposed Rules

Federal Register
Vol. 52, No. 176
Friday, September 11, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 85

[Docket No. 87-076]

Official Pseudorabies Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the pseudorabies regulations by adding the Latex Agglutination Test to the list of official tests for pseudorabies. This is necessary in order to permit faster diagnostic testing and help reduce pseudorabies in the United States.

DATE: Consideration will be given only to comments postmarked or received on or before September 28, 1987.

ADDRESSES: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-076. Comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Robert R. Ormiston, Program Planning Staff, VS, APHIS, USDA, Room 846, Federal Buildings, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8378.

SUPPLEMENTARY INFORMATION:

Background

Pseudorabies, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus and is primarily a disease of swine. The regulations in 9 CFR Part 85 (referred to below as the regulations) govern the interstate movement of swine and other livestock (cattle, sheep, goats) in order to help prevent the spread of pseudorabies.

Official pseduorabies tests are used under certain circumstances for determining the pseudorabies status of swine. The regulations require that testing negative by an official pseudorabies test is a condition for allowing certain interstate movements of swine.

A new serologic test for pseudorabies, the Latex Agglutination Test (LAT), has been carefully evaluated at 33 cooperating diagnostic laboratories in the United States and has received the endorsement of the American Association of Veterinary Laboratory Diagnosticians. The increase in both pseudorabies infection and testing to locate infected swine stimulated the need for a more rapid and efficient test. The LAT, which we believe to be an accurate test, would permit faster diagnostic testing than other official tests and thereby help reduce pseudorabies in the United States. Several major state diagnostic laboratories already use the LAT as their primary pseudorabies serological test. Therefore, we are proposing to amend the regulations by adding the LAT to the list of official pseudorabies tests.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action only provides for the use of an additional official pseudorabies test as an option for use in determining whether an animal is infected with the disease. The testing requirements for pseudorabies will not change. Moreover, use of the LAT would not affect the market price for swine. Although the date of sale may change, the economic effect upon swine owners would not be significant. Nor would the economic effect upon laboratories that wish to use the LAT be significant. Although the cost of this test may be more than other official tests for pseudorabies, using it would result in faster diagnostic testing.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant ecomomic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Public Comment

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited be allowing a 15-day comment period on this proposal. The LAT has been carefully evaluated at 33 cooperating diagnostic laboratories in the United States and has received the endorsement of the American Association of Veterinary Laboratory Diagnosticians. Moreover, several major state diagnostic laboratories already use the LAT as their primary pseudorabies serologic test. Finally, use of the this test would enable herd owners to expedite the interstate movement of their animals. This test would take 8 minutes to perform compared with 24 to 48 hours for other approved pseudorabies tests.

List of Subjects in 9 CFR Part 85

Animal diseases, Livestock and livestock products, Pseudorabies, Quarantine, Transportation.

PART 85—PSEUDORABIES

Accordingly, 9 CFR Part 85 is amended as follows:

1. The authority citation for Part 85 would continue to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 85.1 [Amended]

2. In § 85.1, the definition of "Official pseudorabies test" would be amended by changing "and 4. Enzyme-Linked Immounosorbent Assay (ELISA) Test.[3] to read "4. Enzyme-Linked Immunosorbent Assay (ELISA) Test;" and 5. Latex Agglutination Test (LAT).

Done in Washington, DC, on this 8th day of September, 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-20994 Filed 9-10-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-143-86]

Income Tax; Continuation Coverage Requirements of Group Health Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of public hearing on proposed regulations.

SUMMARY: This document contains corrections to a notice of a public hearing on proposed regulations relating to the requirement that a group health plan offer continuation coverage to people who would otherwise lose coverage as a result of certain events.

DATE: These corrections are effective September 11, 1987.

FOR FURTHER INFORMATION CONTACT: Angela D. Wilburn of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone: 202–566–3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 8, 1987, the **Federal Register** published a notice of a public hearing on proposed regulations under sections 106(b), 162(i)(2), and 162(k) of the Internal Revenue Code of 1986. The notice of public hearing appeared in the **Federal Register** for Tuesday, September 8, 1987 (52 FR 33836).

Need for Correction

As published, the notice of public hearing contains misinformation concerning the correct days of the week the public hearing will be held.

Correction of Publication

Accordingly, the publication of the notice of public hearing in the **Federal Register** for Tuesday, September 8, 1987, at page 33836, column 1, under the subheading "Dates", the first sentence is corrected to read: "The public hearing will begin at 10:00 a.m. on Wednesday, November 4, 1987, and continue, if necessary, at the same time on Thursday, November 5, 1987."

James J. McGovern,

Director, Employee Plans and Exempt Organizations Division.

[FR Doc. 87-20943 Filed 9-10-87; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Paroling Policy Guidelines Revisions; Republication

[Editorial Note:The following document was originally published at page 33431 in the issue of Thursday, September 3, 1987. The document is being republished in its entirety because of typesetting errors in some of the dollar amount thresholds.]

AGENCY: Parole Commission, Justice.

ACTION: Proposed rules and request for comments.

SUMMARY: The Parole Commission proposes to make a number of revisions to the dollar amount thresholds in its paroling policy guidelines contained in 28 CFR 2.20. These changes are intended to make the guidelines more comprehensive and more fair.

DATE: Public comment must be received by October 5, 1987.

ADDRESS: Comments should be addressed to: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5980.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, Telephone (301) 492–5980.

SUPPLEMENTARY INFORMATION: The Commission proposes to adjust the dollar thresholds for the following property offenses: Offense Example 303 (Property Destruction Other Than Listed Above); Offense Example 331 (Theft, Forgery, Fraud, Trafficking in Stolen Property, Interstate Transportation of Stolen Property, Receiving Stolen Property, Embezzlement, and Related Offenses); Offense Example 341 (Passing or Possession of Counterfeit Currency or Other Medium of Exchange); Offense Example 363 (Insider Trading); Offense Example 501 (Tax Evasion [income tax and other taxes]); Offense Example 1161 (Reports or Monetary Instrument Transactions; and Offense Example 1172 (Knowing Disposal and/or Storage and Treatment of Hazardous Waste Without a Permit; Transportation of Hazardous Waste to an Unpermitted Facility [Re: U.S.C. 6928(d) (1-2)]. The Commission's proposal would have the effect of lowering the offense severity ratings (and the corresponding guideline ranges) for a number of property offenses by raising the dollar value threshold required for rating offenses in the various severity categories.

The Parole Commission is proposing these changes for a number of reasons, the primary reason, however, being fairness. The guidelines for property offenses have remained basically unchanged since the first set of parole release guidelines was implemented in 1973. In the intervening 14 years, no adjustment for inflation has been made for property offenses over $2,000 and the proposed modification of severity category thresholds is, therefore, only proportional to the amount of inflation during this period of time. More specifically, the degree of economic harm caused by a $20,000 property crime in 1987 is substantially less than that caused by a $20,000 crime in 1973, and the diminution in the severity ratings now proposed merely cancels the incidental increase in severity ratings which had crept into the guidelines since 1973. In addition, the change is more comparable to the Sentencing Commission's guidelines.

Further, the Bureau of Prisons is presently more than 50% over rated capacity and these changes will assist in providing some relief for the overcrowding problems. It should be noted that the overwhelming majority of large scale property offenders have been found to be very good parole risks, and release of these offenders would not endanger the community. The changes will allow for release, in some cases, of

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[3] Copies of the test protocols (Recommended Minimum Stardards for Diagnostic Tests Employed in the Diagnosis of Pseudorabies (Aujeszky's Disease)) published as a Veterinary Services Notice, May 17, 1987, are available upon request from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

these non-dangerous persons and thus, by assisting in the overcrowding problem, will make available more prison space for individuals who are dangerous to the community, specifically assaultive types, drug dealers, etc.

These proposed rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.20 [Amended]

2. It is proposed to revise Offense Example 303 in Chapter Three, Subchapter A of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

303 *Property Destruction Other Than Listed Above*

(a) If the conduct results in bodily injury *, or if 'serious bodily injury is the result intended'*, grade as if 'assault during commission of another offense';

(b) If damage of more than $1,000,000 is caused, grade as Category Six;

(c) If damage of more than $200,000 but not more than $1,000,000 is caused, grade as Category Five;

(d) If damage of at least $40,000 but not more than $200,000 is caused, grade as Category Four;

(e) If damage of at least $2,000 but not less than $40,000 is caused, grade as Category Three;

(f) If damage of less than $2,000 is caused, grade as Category One;

(g) *Exception:* If a significant interruption of a government or public utility function is caused, grade as not less than Category Three.

3. It is proposed to amend Offense Example 331 in Chapter Three, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 by revising paragraphs (a)–(e) to read as follows:

331 *Theft, Forgery, Fraud, Trafficking in Stolen Property *, Interstate Transportation of Stolen Property, Receiving Stolen Property, Embezzlement, and Related Offenses*

(a) If the value of the property * is more than $1,000,000, grade as Category Six;

(b) If the value of the property * is more than $200,000 but not more than $1,000,000, grade as Category Five;

(c) If the value of the property * is at least $40,000 but not more than $200,000, grade as Category Four;

(d) If the value of the property * is at least $2,000 but less than $40,000, grade as Category Three;

(e) If the value of the property * is less than $2,000, grade as Category One.

* * * * *

4. It is proposed to revise Offense Example 341 of Chapter Three, Subchapter E of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

341 *Passing or Possession of Counterfeit Currency or Other Medium of Exchange**

(a) If the face value of the currency or other medium of exchange is more than $1,000,000, grade as Category Six;

(b) If the face value is more than $200,000 but not more than $1,000,000, grade as Category Five;

(c) If the face value is at least $40,000 but not more than $200,000, grade as Category Four;

(d) If the face value is at least $2,000 but less than $40,000, grade as Category Three;

(e) If the face value is less than $2,000, grade as Category Two.

5. It is proposed to revise Offense Example 363 of Chapter Three, Subchapter F of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

363 *Insider Trading*

(a) If the estimated economic impact is more than $1,000,000, grade as Category Six;

(b) If the estimated economic impact is more than $200,000 but not more than $1,000,000, grade as Category Five;

(c) If the estimated economic impact is at least $40,000 but not more than $200,000, grade as Category Four;

(d) If the estimated economic impact is at least $2,000 but less than $40,000, grade as Category Three;

(e) If the estimated economic impact is less than $2,000, grade as Category Two.

(f) *Note:* The term 'economic impact' includes the damage sustained by the victim whose information was unlawfully used, plus any other illicit profit resulting from the offense.

6. It is proposed to amend Offense Example 501 of Chapter Five, Subchapter A of the Offense Behavior Severity Index of 28 CFR 2.20 by revising paragraphs (a)—(e) to read as follows:

501 *Tax Evasion [income tax or other taxes]*

(a) If the amount of tax evaded or evasion attempted is more than $1,000,000, grade as Category Six;

(b) If the amount of tax evaded or evasion attempted is more than $200,000 but not more than $1,000,000, grade as Category Five;

(c) If the amount of tax evaded or evasion attempted is at least $40,000 but not more than $200,000, grade as Category Four;

(d) If the amount of tax evaded or evasion attempted is at least $2,000 but less than $40,000, grade as Category Three;

(e) If the amount of tax evaded or evasion attempted is less than $2,000, grade as Category One.

* * * * *

7. It is proposed to revise Offense Example 1161 of Chapter Eleven, Subchapter G of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

1161 *Reports on Monetary Instrument Transactions*

(a) If the very large scale (e.g., the estimated gross amount of currency involved is more than $1,000,000), grade as Category Six;

(b) If large scale (e.g., the estimated gross amount of currency involved is more than $200,000 but not more than $1,000,000), grade as Category Five;

(c) If medium scale (e.g., the estimated gross amount of currency involved is at least $40,000 but not more than $200,000), grade as Category Four;

(d) If small scale (e.g., the estimated gross amount of currency involved is less than $40,000), grade as Category Three.

8. It is proposed to revise Offense Example 1172 of Chapter Eleven, Subchapter 4 of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

1172 *Knowing Disposal and/or Storage and Treatment of Hazardous Waste Without a Permit; Transportation of Hazardous Waste to an Unpermitted Facility [Re: 42 U.S.C. 6928(d) (1–2)]*

(a) If death results, grade as Category Six;

(b) If (1) serious bodily injury results; or (2) a substantial potential for death or serious bodily injury in the future results; or (3) a substantial disruption to the environment results (e.g., estimated cleanup cost exceeds $200,000, or a community is evacuated for more than 72 hours), grade as Category Five;

(c) If (1) bodily injury results, or (2) a significant disruption to the environment results (e.g., estimated cleanup costs of $40,000–$200,000, or a community is evacuated for 72 hours or less), grade as Category Four;

(d) Otherwise, grade as Category Three;

(e) *Exception:* Where the offender is a non-managerial employee (i.e., a truckdriver or loading dock worker) acting under the orders of another person, grade as two categories below the underlying offense, but not less than Category One.

Dated: August 20, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87–20286 Filed 9–2–87; 8:45 am]

BILLING CODE 1505–01–D

*Terms marked by an asterisk are defined in Chapter Thirteen.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 750

Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Federal Program for Indian Lands; Performance Standards

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of decision on petition for rulemaking.

SUMMARY: the Office of Surface Mining Reclamation and Enforcement (OSMRE) is making available to the public its final decision on a petition for rulemaking from the Peabody Coal Company. The petitioner requested that OSMRE amend the applicable performance standards regarding stabilization of surface areas for existing operations not yet permitted under OSMRE's Federal program for Indian lands. On September 4, 1987, the Director made a decision to deny the petition.

ADDRESS: Copies of the petition, and other relevant materials comprising the administrative record of this petition are available for public review and copying at OSMRE, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of Regulatory Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone (202) 343–5351 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Petition for Rulemaking Process

Pursuant to section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), any person may petition the Director of OSMRE for a change in OSMRE's regulations. Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, if the Director determines that the petition has a reasonable basis, the Director shall publish a notice in the **Federal Register** seeking comments on the petition, and may hold a public hearing, conduct an investigation, or take other action to determine whether the petition should be granted. If the petition is granted, the Director initiates a rulemaking proceeding. If the petition is denied, the Director notifies the petitioner in writing, setting forth the reasons for denial. Under 30 CFR 700.12(d), the Director's decision constitutes the final decision for the Department of the Interior.

II. The Peabody Coal Co. Petition of April 30, 1987

OSMRE received a letter dated April 30, 1987, transmitting a petition for rulemaking on behalf of the Peabody Coal Company to amend OSMRE's existing regulations at 30 CFR 750.16 concerning the applicable performance standards for surface coal mining and reclamation operations on Indian lands. Specifically, the petitioner sought to revise the regulatory requirements regarding stabilization of surface areas for existing operations not yet permitted under OSMRE's Federal program for Indian lands at 30 CFR Part 750.

On June 5, 1987, OSMRE published a notice in the **Federal Register** (52 FR 21328) requesting public comment on the petition. The comment period closed on July 6, 1987. One comment letter was submitted in response to this request.

For the reasons discussed in the appendix to this notice, the Director is denying the petition.

The Director's letter to the petitioner on this rulemaking petition appears as an appendix to this notice. This letter reports the Director's decision to the petitioner. It also contains a summary description of the issues raised by the petitioner, a discussion of the applicable statutory provisions and OSMRE's current regulatory program, an analysis of the petitioner's proposed regulatory change and justification for the proposed amendment, and a summary of the comments received on the petition.

Dated: September 4, 1987.

Jed Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

Appendix

The Director's response to the petition from the Peabody Coal Company is as follows:

Mr. Kenneth R. Moore,
President, Western Division, Peabody Coal Company, 1300 South Yale, Flagstaff, Arizona 86001.

Dear Mr. Moore: This letter is in response to the April 30, 1987, petition for rulemaking submitted to the Office of Surface Mining Reclamation and Enforcement (OSMRE) on behalf of the Peabody Coal Company. The petition requested that OSMRE amend its existing regulations governing surface coal mining and reclamation operations on Indian lands with respect to stabilization of surface areas.

On June 5, 1987, OSMRE published a notice in the **Federal Register** (52 FR 21328) requesting public comment on the petition. The comment period closed on July 6, 1987. Comments were submitted by the Hopi Tribe.

After careful consideration of the positions and arguments presented in the petition, I have decided to deny the petitioner's request to initiate rulemaking. The requested amendment to the regulations would not significantly alter current regulatory requirements pertaining to the stabilization of surface areas and the proposed rule change is thus unwarranted. Therefore, no rulemaking proceeding will be initiated on this subject. The reasons for my decision are discussed in the enclosed analysis. As provided in 30 CFR 700.12, my decision constitutes the final decision for the Department of the Interior.

I appreciate your interest in the surface coal mining and reclamation program.

Sincerely,

Jed Christensen,

Director.

Enclosure

Decision on Petition To Initiate Rulemaking To Amend Surface Stabilization Performance Standards Under the Federal Program for Indian Lands (30 CFR Part 750)

I. Background on Petition

On May 18,1987, the Office of Surface Mining Reclamation and Enforcement (OSMRE) received a petition to initiate rulemaking from Mr. Kenneth R. Moore, President of the Western Division of the Peabody Coal Company. The petitioner, Peabody Coal Company, proposed that OSMRE amend its existing regulations under 30 CFR Part 750 concerning the applicable performance standards for surface coal mining and reclamation operations on Indian lands. Specifically, Peabody sought to revise the interim regulatory requirements at 30 CFR 750.16 with respect to surface stabilization on Indian lands.

On June 5, 1987, OSMRE published a notice in the **Federal Register** (52 FR 21328) announcing the availability of the petition and requesting public comment. The 30 day comment period closed on July 6, 1987. OSMRE received one comment letter from the Hopi Tribe.

II. Substance of Petition

The petitioner proposed that OSMRE amend its regulations at 30 CFR 750.16 to authorize all surface coal mining operations on Indian lands to comply with the surface stabilization requirements of 30 CFR 816.95. Presently, existing operations that have not yet been issued a permanent program permit pursuant to 30 CFR Part 750 must adhere to the performance standards codified at 25 CFR Part 216, Subpart B, including the regulation at 25 CFR 216.105(i)—Regrading or stabilizing rills and gullies. Under the petitioner's proposal, the provisions of 30 CFR 816.95 would apply uniformly to all surface coal mining operations on Indian

lands including existing operations not yet permitted under 30 CFR Part 750.

III. Applicability Statutory Provisions

The Secretary of the Interior, through OSMRE, exercises exclusive regulatory jurisdiction over Indian lands with respect to surface coal mining and reclamation operations. OSMRE's statutory obligations as the regulatory authority on Indian lands are set forth in section 710 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

Section 710(d) requires all surface coal mining operations on Indian lands to comply with requirements at least as stringent as those imposed by sections 507, 508, 509, 510, 515, 516, 517, and 519 of SMCRA. With respect to stabilization of surface areas, section 515(b)(4) requires, at a minimum, that all such areas affected by the mining operation be stabilized and protected so as to effectively control erosion and attendant air and water pollution. Section 515(b)(19) further requires reestablishment on the regraded areas, and all other lands affected, of a diverse, effective, and permanent vegetative cover.

IV. Current OSMRE Regulatory Program

OSMRE's existing regulations at 30 CFR 750.16 establish the applicable performance standards for surface coal mining and reclamation operations on Indian lands. Existing operations are subject to the requirements of 25 CFR Part 216, Subpart B—Surface Exploration, Mining, and Reclamation of Lands—Coal Operations—until OSMRE issues a permanent program permit pursuant to 30 CFR Part 750. Accordingly, such operations must comply with the provisions of 25 CFR 215.106(i)—Regrading or stabilizing rills and gullies. The regulations at 25 CFR 216.105(i) require that when rills and gullies deeper than nine inches form in areas that have been regraded and have had the topsoil replaced, but where vegetation has not yet been established, the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the area according to 25 CFR 216.110. The rules also specify that rills and gullies of lesser size must be stabilized if they will disrupt the approved postmining land use or may result in additional erosion.

The revegetation regulations at 25 CFR 216.110 require the establishment of a diverse, effective, and permanent vegetative cover, capable of stabilizing the soil surface with respect to erosion and supportive of the approved postmining land use, on all lands that have been disturbed. Areas containing rills and gullies must meet all applicable requirements of 25 CFR 216.110 before full release of bond or operator liability can occur.

In addition to the regulations, OSMRE has issued a policy directive entitled "Interpretation of Initial Program and Indian Lands Regulations Concerning Rills and Gullies" for distribution to its field personnel. The July 9, 1987, directive provides intepretative clarification regarding the requirements of 25 CFR 216.105(i) for purposes of on-site inspection.

After obtaining a Federal permit pursuant to 30 CFR Part 750, mining operations on Indian lands are subject to the applicable performance standards of 30 CFR Subchapter K, including Parts 816, 817, 819, 822, 823, 824, 827, and 828. The regulations at 30 CFR 816.95—Stabilization of surface areas—are the permanent regulatory program counterpart to 25 CFR 216.105(i). The regulations state that rills and gullies which form in areas that have been regraded and topsoiled and which either (1) disrupt the approved postmining land use or the reestablishment of the vegetative cover, or (2) cause or contribute to a violation of water quality standards for receiving streams shall be filled, regraded, or otherwise stabilized; topsoil shall be replaced; and the areas shall be reseeded or replanted. Like the Indian lands rules at 25 CFR 216.110, the permanent program regulations at 30 CFR 816.111 require the permittee to establish a vegetative cover or regraded areas that is diverse, effective, permanent, and capable of stabilizing the soil surface from erosion.

V. Analysis of Petitioner's Proposal

As stated previously, the regulations at 30 CFR 750.16 establish the applicable performance standards for surface coal mining and reclamation operations on Indian lands. The petitioner proposed that OSMRE amend the current regulatory requirements of 30 CFR 750.16 as follows. (The underlined portion represents the revised language proposed by Peabody.)

Section 750.16 Performance standards.

After OSM issues a permit under this part, a person conducting surface coal mining operations on Indian lands shall do so in accordance with Parts 816, 817, 819, 822, 823, 824, 827, and 828 of this chapte. Prior to that time, the person conducting surface coal mining operations shall adhere to the performance standards of 25 CFR Part 216, Subpart B *except 216.105(i). Stabilization of surface areas shall be governed by 30 CFR 816.95.*

For the reasons set forth below, OSMRE does not believe that the change sought by Peabody would substantively alter current regulatory requirements. Proper application of the provisions of 25 CFR 216.105(i), as explained in the OSMRE directive defining agency policy on this topic, would ultimately render on-site differences between the permanent program standards contained in 30 CFR 816.95 and the requirements of 25 CFR 216.105(i) insignificant.

The regulations at 25 CFR 216.105(i) and 216.110, when considered in conjunction with each other, require that rills and gullies which form on regraded and topsoiled areas on Indian lands where vegetation has not yet been established, be filled, graded, or otherwise stabilized unless they have naturally stabilized and will not interfere with the postmining land use. Where vegetation sufficient to control overall erosion has not yet been established on the site, the presence of active rills and gullies constitutes a violation only when the rills and gullies are greater than nine inches in depth, or where they would be disruptive to the postmining land use or are of such areal extent as to preclude successful establishment of vegetation. Operators are encouraged to initiate appropriate soil conservation measures before erosion occurs to this degree.

The principal difference between the regulations at 30 CFR 816.95 and 25 CFR 216.105(i) is that the latter prescribe a specific numerical depth at which the presence of unstabilized rills and gullies constitute a definite violation on areas where vegetation has not been reestablished. The regulatory programs are similar in requiring that rills and gullies which will disrupt the approved postmining land use or interfere with vegetative establishment be regraded or otherwise stabilized. Likewise, both sets or regulations require that surface areas be stabilized so as to effectively control additional erosion or sedimentation. Neither regulatory program requires regrading of stabilized rills and gullies which do not disrupt the postmining land use, or redisturbance of successfully revegetated areas.

Under either regulatory provision, as the policy directive indicates, observation of a rill or gully is not itself evidence that erosion is presently occurring or that site utility is being impaired. Where an erosional channel appears stabilized, based upon a technical evaluation of active versus inactive channel characteristics, and the channel does not interfere with the postmining land use, the permittee is

advised to monitor the site for any change in status, but is not required to take any corrective action. When remedial action is required, the action should allow the use of the environmentally least disruptive method of stabilization consistent with the approved postmining land use.

VI. Analysis of Petitioner's Justification for Proposed Amendment

The Petitioner requested the proposed amendment on the basis that:

1. The design criteria at 25 CFR 216.105(i) are unnecessarily stringent and only applicable to operators on Indian lands;

2. Rill and gully development is expected in reclaimed areas in the semiarid west as a natural part of the drainage system evolution process;

3. The repair of "minor" rills and gullies is costly and counterproductive in that it requires the redisturbance of considerable amounts of revegetated and reclaimed lands;

4. The permitting process for the petitioner's Black Mesa and Kayenta Mines will be unduly prolonged by the preparation of an environmental impact statement (EIS), thus precluding the possibility of "programmed relief" from the regulation at 25 CFR 216.105(i) within a reasonable timeframe.

OSMRE disagrees that the regulation at 25 CFR 216.105(i) is overly stringent and applicable only on Indian lands. The provisions of 25 CFR 216.105(i) are identical to those promulgated by OSMRE at 30 CFR 715.14(i) under the initial regulatory program which was adopted as an interim measure pending approval of permanent State of Federal regulatory programs and completion of permitting actions under these programs. All operations subject to the initial program standards must meet the specified regulatory requirement.

OSMRE agrees with the petitioner that rill and gully development is to be expected in reclaimed areas under semiarid climatic conditions, but disagrees that rill and gully repair requires redisturbance of considerable amounts of revegetated and reclaimed lands. OSMRE believes that the existing regulations reasonably provide for such situations in that the operator must redisturb regraded areas to the minimal extent necessary to achieve compliance with the regulatory program in a manner that is least disruptive to the environment. The regulations allow for stabilization methods which required no redisturbance such as heavy mulch application in rills and gullies. Areas that have been successfully revegetated are not subject to redisturbance under 25 CFR 216.105(i).

Finally, the petitioner maintained that preparation of the Black Mesa-Kayenta EIS would inordinately delay the regulatory "relief" provided by 30 CFR 816.95. While application of 30 CFR 816.95 would remove the specific criteria of nine inch depth for rills and gullies in areas where vegetation is not reestablished, OSMRE does not agree that 30 CFR 816.95 would grant substantial "relief" to the petitioner since the standards are similar to those in 25 CFR 216.105(i) when properly applied. OSMRE will continue to make every effort to ensure that standards are consistently applied by its field inspections.

VII. Public Comment

In response to the request for comments, a comment letter was submitted by the Hopi Tribe's Office of General Counsel opposing the proposed rule change and recommending denial of the petition. The tribe commented that inadequate reclamation at the Black Mesa-Kayenta mining complex had led to excessive rill and gully development and that the petitioner sought the proposed rule change merely to avoid the costs associated with improved reclamation practices.

To the extent that there may be problems with reclamation at the Black Mesa-Kayenta mining complex, these are matters which are appropriately dealt with during the mine site inspection process. OSMRE cannot speculate as to the petitioner's motivation for seeking the rule change and must consider the petition solely on its merits. As noted above, OSMRE finds that the standards of 30 CFR 816.95 are not substantively different than those of 25 CFR 216.105(i) when properly applied and would anticipate no material difference in costs associated with reclamation under the respective standards.

VIII. Final Decision

Based upon the foregoing analysis, I am denying the petition to initiate rulemaking. OSMRE does not believe that a rulemaking, as proposed by the petitioner, would substantially change the application of standards concerning stabilization of rills and gullies. Moreover, in light of the limited applicability of 25 CFR 216.105(i), the resources which would be needed to effect a regulatory change would be better expended on other agency priorities. OSMRE will continue to assure that its inspectors apply regulatory criteria in a consistent manner. The petitioner has not persuaded me that the issues that concern them warrant revision of the regulations.

[FR Doc. 87-20903 Filed 9-10-87; 8:45 am]
BILLING CODE 4310-05-M

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Petition Finding and Initiation of Status Review, Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The Service announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife by adding the northern spotted owl (*Strix occidentalis caurina*). A status review is initiated for the northern spotted owl. Comments and data on this species are requested.

DATES: The finding announced in this notice was made July 23, 1987. Comments and information on the status of the northern spotted owl must be submitted by November 10, 1987.

ADDRESSES: Information, comments or questions should be submitted to Mr. Rolf Wallenstrom, Regional Director, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. The petition, 90-day finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service's (Service) Region 1 Office of Endangered Species at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species , at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly

commence a review of the status of the involved species.

A petition from Max Strahan, Campaign Director, Green World, Cambridge, Massachusetts, dated November 28, 1986, was received by the Service January 28, 1987. The petition requested the Service to list the northern spotted owl, *Strix occidentalis caurina*, as an endangered species. The owl is known to chiefly inhabit the forests of British Columbia, Washington, Oregon and northwestern California.

The petition stated that the northern spotted owl population is in decline due to habitat destruction. The petition and references cited therein stated that (a) the northern spotted owl is closely associated with dense old-growth forests, (b) timber operations have greatly reduced the available owl habitat, and (c) most of the remaining suitable habitat for the owl is on public lands. The petition, along with additional information available to the Fish and Wildlife Service, presented substantial information to call for a status review of the species to determine whether listing the northern spotted owl is actually warranted. Therefore, the finding was that the petition presented substantial information that the action requested may be warranted. A formal status review of the northern spotted owl is initiated herewith.

The Service would appreciate any additional data, comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of the northern spotted owl, *Strix occidentalis caurina*.

Within one-year from the date the petition was received (January 28, 1987), a finding as to whether the petitioned action is warranted is required by section 4(b)(3)(B) of the Act. Data received on or before November 10, 1987, will be considered in making the finding on the merits of the petition.

Author

This notice was prepared by Ms. Robyn Thorson, U.S. Fish and Wildlife Service, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 of FTS 429–6131).

Authority

The authority for this notice is the Endangered Species Act of 1973, as amended Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

Dated: September 9, 1987

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–21066 Filed 9–10–87; 8:45 am]

BILLING CODE 4310–55–M

VOL
52
ISS
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Notices

Federal Register
Vol. 52, No. 176
Friday, September 11, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection Request Under OMB Review

AGENCY: ACTION.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency.

Background: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [requests for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents] may be obtained from the agency clearance officer.

Need and Use: Pre-Application Inquiry form will be used to screen applicants with minimum chance of approval and thereby prevent more extensive effort in preparing and reviewing the complete application form (ACTION Form A–1421—OMB Approval 3001–0098.)

To obtain information about or to submit comments on this proposed information collection, please contact both:

Melvin E. Beetle, ACTION Clearance Officer, ACTION, Room M–601, 806 Connecticut Ave., NW., Washington, DC 20525, Tel: (202) 634–9318

and

Joseph Lackey, Desk Officer for ACTION, Office of Management and Budget, New Executive Office Bldg., Room 3002, Washington, DC 20503, Tel: (202) 395–7316

Office of ACTION issuing the Proposal: ACTION/Domestic Operations.

Title of Form: ACTION/VISTA Pre-Application Inquiry.

Type of Request: Reinstatement.

Frequency of Collection: On Occasion.

General Description of Respondents: Public agencies and private non-profit including small organizations.

Estimated Number of Annual Responses: 100.

Estimated Annual Reporting or Disclosure Burden: Total hours 200.

Respondent's Obligation to Reply: None.

Melvin E. Beetle,

ACTION Clearance Officer.

Date: September 4, 1987.

[FR Doc. 87–20889 Filed 9–10–87; 8:45 am]

BILLING CODE 6050–28–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 10:00 to 1:00, on Wednesday, September 16, 1987, to take place in Department of Transportation (DOT) Conference Room 2230, 400 Seventh Street SW., Washington, DC.

Items on the Agenda: Changes to the Board's Statement of Organization and Procedures to implement Rehabilitation Act amendments of 1986; Freedom of Information Act regulation amendments; research and technical assistance funding priorities for FY 1988 and FY 1989; amendment to compliance and enforcement procedures; and contingency uses of FY 1987 Object Class 25 funds. The meeting will go into closed session for Board members only upon completion of the above agenda items.

DATE: Wednesday, September 16, 1987—10:00 AM—1:00 PM.

ADDRESS: Department of Transportation Conference Room 2230, 400 Seventh Street, SW., Washington, DC.

Committees of the ATBCB will meet on Monday and Tuesday, September 14 and 15, 1987, also in DOT Conference Room 2230, 400 Seventh Street SW.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Communications Manager, (202) 245–1591 (voice or TDD).

Margaret Milner,

Executive Director.

[FR Doc. 87–20868 Filed 9–10–87; 8:45 am]

BILLING CODE 6820–BP–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 15–87]

Foreign-Trade Zone 102, St. Louis, Mo; Application for Subzone General Motors Auto Assembly Plant in Wentzville, Mo

An application has been submitted to the Foreign-Trade Zones Board (the board) by the St. Louis County Port Authority (Port Authority) requesting special-purpose subzone status for the General Motors Corporation (GM) auto assembly plant in Wentzville, Missouri, adjacent to the St. Louis Customs port of entry. The application was submitted pursuant to the provisions of the Foregin-Trade Zones Act, as amended (19 CFR Part 400). It was formally filed on September 4, 1987.

The 440-acre GM plant is located at 1500 State Highway "A" in Wentzville, some 45 miles west of St. Louis. It is used to assemble Oldsmobile and Buick automobiles, employing 6,350 workers. Most components used at the plant are of domestic origin. Some 2 percent are sourced aboard, including radios, radio-cassettes, wire harnesses, instrument panel pads and steering wheels.

Zone procedures will exempt GM from duty payments on the foreign parts it uses in its exports. On domestic sales, the company will be able to defer duty and to take advantage of the same duty rate available to importers of finished autos. Overall, the average duty rate on the foreign components used by GM is 4.3 percent compared with the rate for finished autos of 2.5 percent. The savings from subzone status will contribute to the company's overall cost

reduction program, helping its U.S. plants become more competitive with auto production plants offshore.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zone Staff, U.S. Department of Commerce, Washington, DC 20230; Theodore Galantowicz, District Director, U.S. Customs Service, North Central Region, 7911 Forsyth Blvd. (Suite 625), Clayton, Missouri 63105; and Colonel Daniel M. Wilson, District Engineer, U.S. Army Engineer District St. Louis, 210 Tucker Blvd. North, St. Louis, Missouri 63101–1986.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 23, 1987.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 7911 Forsyth Boulevard, Suite 610, St. Louis, Missouri 63105

office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW. Room 1529, Washington, DC 20230

Dated: September 4, 1987.

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 87–20938 Filed 9–10–87; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–588–703]

Postponement of Preliminary Antidumping Duty Determination; Certain Internal-Combustion, Industrial Forklift Trucks From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioners in this investigation to postpone the preliminary determination as permitted by section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our preliminary determination of whether sales of certain internal-combustion, industrial forklift trucks from Japan have occurred at less than fair value until not later than October 29, 1987.

EFFECTIVE DATE: September 11, 1987.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Rick Herring, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377–0161 or 377–0187.

SUPPLEMENTARY INFORMATION: On May 18, 1987 (52 FR 18588), we published the notice of initiation of an antidumping duty investigation to determine whether certain internal-combustion, industrial forklift trucks from Japan are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determination by September 29, 1987

On August 21, 1987, petitioners (the Hyster Company, the Independent Association of Machinists and Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL-CIO), the United Shop and Service Employees, and a group of workers employed by the Hyster Co. in its Berea, Kentucky and Sulligent, Alabama facilities) requested that the Department postpone the preliminary determination by 30 days, *i.e.*, until not later than 190 days after the date of receipt of the petition, in accordance with section 733(c)(1)(A) of the Act. Accordingly, the period for the preliminary determination in this case is hereby extended. We intend to issue a preliminary determination not later than October 29, 1987

This notice is published pursuant to section 733(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 8, 1987.

[FR Doc. 87–20939 Filed 9–10–87; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 70870–7170]

Status of Investigations Into Charges of Violations of Administrative Protective Orders in Antidumping and Countervailing Duty Proceedings

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In recent months, the International Trade Administration has completed a number of investigations into charges that the terms of administrative protective orders issued in connection with antidumping and countervailing duty proceedings have been violated. The results of these investigations are summarized below.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Acting Deputy Chief Counsel for International Trade, (202) 377–8915.

SUPPLEMENTARY INFORMATION: The International Trade Administration of the Department of Commerce (ITA) wishes to remind those members of the bar who appear before it in antidumping and countervailing duty proceedings of the extreme importance of protecting the confidentiality of business proprietary information obtained from ITA during the course of those proceedings. In order that the gravity with which ITA views violations of its administrative protective orders might be better appreciated, ITA is publishing the following report on eight recent allegations that the provisions of ITA protective orders have been violated. Several of these investigations were closed with the dismissal of the charges. (In the case of one dismissal, ITA cautioned the accusing party against bringing such serious allegations without basis.) In other cases, although the charges were dismissed, ITA warned the parties who were investigated of the need to protect proprietary information. In addition, some parties to ITA proceedings have agreed to additional safeguards in order to obtain proprietary data. In two cases, the violations were considered serious enough to warrant sanctions. One investigation is still pending.

The specific charges that we have investigated, and actions that we would regard as violations of protective orders, include the following:

1. Failure to follow the detailed procedures outlined in the protective order applications for safeguarding proprietary information, including maintaining a log showing the custody of each proprietary document and requiring all consultants who obtain access to proprietary information to sign and date a copy of the protective order application acknowledging their understanding of its terms;

2. Loss or inadvertent destruction of proprietary information;

3. Failure to return all proprietary data to the ITA at the close of the proceeding for which those data were obtained;

4. Failure to delete proprietary information from the public version of a brief or other correspondence filed with the ITA;

5. Use of proprietary data for any purpose whatsoever other than the proceeding for which it was obtained, including an administrative review of

the same product from the same company, but for a different period than the one for which the data were obtained;

6. Disclosure of proprietary information in an ITA public hearing, whether overtly or indirectly;

7. Disclosure of proprietary information to any person not granted access to that information by protective order, including a member of Congress.

Serious harm can result from inadvertent or other disclosures of proprietary business information obtained under administrative protective order. ITA will continue to investigate vigorously allegations that the provisions of administrative protective orders have not been faithfully observed, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to proprietary information, or debarment from practice before the ITA.

Dated: September 4, 1987.

Paul Freedenberg,

Assistant Secretary, for Trade Administration.

[FR Doc. 87-20940 Filed 9-10-87; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments, University of Washington et al.; Correction

In FR Doc. 87-19958 at page 32825 in the **Federal Register** of August 31, 1987, column 1, line 35, "Docket Number: 87-270" should read: "Docket Number: 87-271".

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-20941 Filed 9-10-87; 8:45 am]

BILLING CODE 3510-DS-M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Comittee will be held October 1, 1987, 9:30 a.m., in the Herbert C. Hoover Building, Room 1092, 14th Street & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology & Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of the latest changes in the regulations.
4. Report on accomplishments in 1987.
5. Discussion of plans for 1988.
6. Continue work on technical tutorials.
7. Reports by Subcommittees.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt for the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at 202/377-2583.

Dated: September 4, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87-20922 Filed 9-10-87; 8:45 am]

BILLING CODE 3510-DT-M

Hardware Subcommittee of The Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held September 30, 1987, 1:30 p.m. in the Herbert C. Hoover Building, Room 1092, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Open Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Comments in the form of a tutorial or presentation are invited on:
   a. CAD/CAM hardware.
   b. Computer Networks.
   c. Signal processing—ATP.
   d. Optical computers, optical recorders.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at 202/377-2583.

Dated: September 4, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff Office of Technology & Policy Analysis.

[FR Doc. 87-20920 Filed 9-10-87; 8:45 am]

BILLING CODE 3510-D1-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held September 30, 1987, 9:30 a.m. in the Herbert C. Hoover Building, Room 1092, 14th Street & Constitution Avenue, NW., Washington, DC. The Software committee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

General Session

1. Opening remarks by the Chairman.

2. Presentation of papers or comments by the public.

3. Comments in the form of a tutorial or presentation are invited on CAD/CAM software.

Executive Session

4. Discussion of matters poperly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further informaton or copies of the minutes, call Betty Ferrell at 202/377–2583.

Date: September 4, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87–20921 Filed 9–10–87; 8:45 am]

BILLING CODE 3510–DT–M

Patent and Trademark Office

Interim Protection for Mask Works of Nationals, Domiciliaries, and Sovereign Authorities of Finland

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of initiation of proceeding.

SUMMARY: By Amendment 1 to Department Organization Order 10–14, the Secretary of Commerce has delegated the authority under section 914 of title 1 of the United States Code to make findings and issue orders for interim protection of mask works to the Assistant Secretary and Commissioner of Patents and Trademarks. Guidelines for the submission of petitions for the issuance of interim orders were published on November 7, 1984, in the **Federal Register**, 49 FR 44517–9, and on November 13, 1984, in the *Official Gazette*, 1048 O.G. 30.

On August 28, 1987, the Patent and Trademark Office received a petition for the issuance of an interim order from the Confederation of Finnish Industries. Consequently, in accordance with paragraph F of the guidelines, this notice announces the initiation of a proceeding for consideration of the issuance of an interim order.

In the interests of time a date is being set for the submission of comments in accordance with paragraph F(a), and a public hearing is being scheduled.

DATES: Comments and requests to testify must be received in the Office of the Commissioner of Patents and Trademarks before 5:00 P.M. on September 28, 1987. A public hearing has been scheduled for October 7, 1987, at 1:30 P.M.

ADDRESS: Address written comments to: Commissioner of Patents and Trademarks, Attention: Assistant Commissioner for External Affairs, Box 4, Washington, DC 20231. The hearing will be held in the Commissioner's Conference Room, 11th Floor, Crystal Plaza Building 3, Room 11–C–10, 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557–3065 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> a series of related images, however, fixed or encoded
>
> (A) having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and
>
> (B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 further provides for a 10-year term of protection for original mask works measured from their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection.

Foreign mask works are eligible for protection under this chapter under basic criteria set out in section 902; first, that the owner of the mask works is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of the mask works to which the United States is also a party, or a stateless person wherever domiciled; second, that the mask work is first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> a foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

Although this chapter generally does not provide protection to foreign owners of mask works unless the works are first

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commercially exploited in the United States, it is contemplated that foreign nationals, domiciliaries, and sovereign authoritites may obtain full protection if their nation enters into an appropriate treaty or enacts a mask works protection legislation. To encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the protection under chapter 9 to nationals, domiciliaries and sovereign authorities of foreign nations if the Secretary finds:

(1) that the foreign nation is making good faith efforts and reasonable progress toward—

(A) entering into a treaty described in section 902(a)(1)(A), or

(B) enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

(2) that the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and

(3) that issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask workers.

On August 28, 1987, a petition for the issuance of an interim order under 17 U.S.C. 914 was submitted to the Commissioner by the Confederation of Finnish Industries on behalf of its 23 member organizations, including all major Finnish manufacturers of semiconductor chips. The petition, including the supplemental information, is sufficient to permit the initiation of proceedings under the guidelines and is reproduced as part of this notice.

In remarks in the *Congressional Record* of October 3, 1984, at page S12919 and of October 10, 1984, at page E4434, both Senator Mathias and Representative Kastenmeier suggested that "[i]n making determinations of good faith efforts and progress * * *, the Secretary should take into account the attitudes and efforts of the foreign nation's private sector, as well as its Government. If the private sector encourages and supports action toward chip protection, that progress is much more likely to continue * * * With respect to the participation of foreign nationals and those controlled by them in chip piracy, the Secretary should consider whether any chip designs, not simply those provided full protection under the Act, are subjected to misappropriation. The degree to which a foreign concern that distributes products containing misappropriated chips knows or should have known that it is selling infringing chips is a relevant factor in making a finding under section 914(a)(2). Finally, under section 914(a)(3), the Secretary should bear in mind the role that issuance of the order itself may have in promoting the purposes of this chapter and international comity."

We are considering issuing an interim order extending the protection of chapter 9 of title 17 of the United States Code to the nationals, domiciliaries, and sovereign authorities of Finland. Written comment on the request of the petitioners and requests to testify must be received in the Office of the Commissioner of Patents and Trademark on or before 5:00 P.M., September 28, 1987. A public hearing is scheduled for October 7, 1987, at 1:30 P.M. to receive further public comment on this petition.

Date: September 4, 1987.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

The United States Commissioner
of Patents and Trademarks
Box 4,
Washington D.C. 20231,
U.S.A.

Petition to the Secretary of Commerce To Issue an Order Extending the Previlege of Interim Protection Under the Semiconductor Chip Protection Act to Nationals, Domiciliaries and Sovereign Authorities of Finland

Section 914(a) of the Semiconductor Chip Protection Act of 1984 (Chapter 9 of Title 17 of the United States Code) provides that the Secretary of Commerce may upon the petition of any person issue an order extending protection under the said chapter to foreign nationals, domiciliaries and sovereign authorities, if the Secretary finds

(1) that the foreign nation is making good faith efforts and reasonable progress toward—

(A) entering into a treaty described in section 902(a)(1)(A); or

(B) enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

(2) that the nationals, domiciliaries and sovereign authorities of the foreign nation and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation, of mask works; and

(3) that issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

The Confederation of Finnish Industries represents the interests of Finnish industry in general. The Confederation includes 23 member organizations covering all branches of industry. Some 2000 enterprises are affiliated to the Confederation, among them all major Finnish manufacturers of semiconductor chips. Chip production was started in Finland a few years ago, and it appears likely that the design and production of integrated circuits will expand. Finnish enterprises market their products in the United States, among other countries.

The Confederation of Finnish Industries considers the arrangement of legal protection for mask works important on both the national and international levels. The Confederation of Finnish Industries presented in December 1985 a proposal to the Finnish government concerning the arrangement of protection for microcircuits in national legislation and between Finland and United States (Enclosure 1).

The preparation of legislation has progressed in 1986 and 1987. The State Copyright Committee issued a report entitled "Data Technology and Copyright" on April 8, 1987. The report proposes the passing of a special Act concerning the right to mask works for integrated circuits. The proposal is presently being circulated for comments. The content of the proposal is, in the opinion of the Confederation of Finnish Industries, acceptable and provides at least the same level of protection as the Semiconductor Chip Protection Act of 1984 in the United States. According to the information available to the Confederation of Finnish Industries, further preparation of legislation is progressing rapidly.

The Confederation of Finnish Industries is not aware of any cases in which Finnish citizens, domiciliaries or sovereign authorities have been guilty of unauthorized copying or other misappropriation or unfair exploitation of mask works or semiconductor chip products.

Citing the above and having negotiated with the Ministry of Education, the Ministry of Trade and Industry and the Ministry for Foreign Affairs, the Confederation of Finnish Industries requests that the United States Assistant Secretary of Commerce and Commissioner of Patents and Trademarks issue an Order extending the privilege of interim protection under the Semiconductor Chip Protection Act of 1984 to nationals, domiciliaries and sovereign authorities of Finland.

The issuing of such an Order would promote the purposes of the Semiconductor Chip Protection Act and international comity with respect to the protection of mask works.

In support of its petition the Confederation of Finnish Industries refers to the accompanying statement issued by the Ministry of Education (Enclosure 2).

Confederation of Finnish Industries.

Timo Relander,

President.

Enclosure 1

[Translation from the Finnish]

[18 December 1985]

[Letter No. 53/85]

Ministry of Education,
Kirkkokatu 3, 00170 Helsinki.

Semiconductor chips have become one of the focal points of technology policy for countries producing high technology. Chip production involves extremely high costs. The unfair exploitation of production investments through piracy is possible with the help of current technology. Copying without the permission of the original

manufacturer cannot in principle be allowed. Consequently the Confederation of Finnish Industries respectfully requests that the Ministry of Education take the necessary measures to arrange the legal protection of semiconductor circuits in Finnish legislation.

It is also of significance that in developing legislation in this field Finland can be included among the nations in which the copying of chips without permission is not allowed. Legislative means can ensure the importation of the most highly advanced products in this special field and their distribution in Finland in protected conditions.

The Confederation of Finnish Industries draws the attention of the Ministry of Education to the fact that the development of "chip protection" began with a change in legislation in the United States in 1984, when regulations concerning the protection of "mask work" were added to American copyright laws. In Japan this question has also been in the fore, and a law giving legal protection to chips was approved during the summer of 1985. Closer to Finland legal protection for semiconductor circuits is being arranged in Sweden, where a committee report was recently published which proposes protecting computer software and semiconductor circuits through provisions in copyright legislation.

The WIPO programme for 1984–85 brings up the question of protecting computer software, including semiconductor circuits. Within the framework of the WIPO an expert conference was held in November in order to achieve a new international convention concerning the arrangement of protection for semiconductor circuits. The need to achieve an international agreement is underlined by the fact that the United States has in the above-mentioned 1984 legislation adopted a system for international protection which is based on agreement-based reciprocity and bilateral arrangements with other countries.

Australia, Japan, Sweden and the countries of the European Economic Community have on the basis of reciprocity obtained legal protection for their semiconductor products in the United States. The arrangement has required that it can be shown that measures are under way in these countries to achieve legislation preventing piracy in this field.

It is indispensable that Finland in its national legislative work and participation in international cooperation within the framework of the UN take part in development which is in accordance with Finland's national interests in the field of industry, technology and international trade.

In view of the above the Confederation of Finnish Industries also proposes that the Ministry of Education together with the other ministries responsible for this matter and in cooperation with the Confederation of Finnish Industries take measures to achieve an agreement for the protection of semiconductor products between the United States and Finland.

Respectfully

Confederation of Finnish Industries

Timo Relander.

Copies: Ministry of Trade and Industry
Ministry of Justice
Ministry of Foreign Affairs

By virtue of the authority vested in me by the Finnish Ministry of Justice, I hereby certify this a faithful translation of the original Finnish document. Helsinki, 15 June 1987

David Morris.

[13853/920/85]

Helsinki, August 12, 1987

The United States Commissioner of Patents and Trademarks,
Box 4, Washington D.C. 20230, U.S.A.

Statement by the Ministry of Education on Protection of Integrated Circuits

Finland is preparing legal protection of mask works of integrated circuits at present. The preparative work is being done by the Ministry of Education, which is the authority responsible for copyright in Finland.

In January 1986 the Ministry of Education consulted the Ministry of Trade and Industry and the Ministry for Foreign Affairs on extending legal protection to integrated circuits. Following the consultation, the Ministry of Education assigned to the State Copyright Committee the task of preparing a proposal for a draft bill on the protection of integrated circuits. A copy of the decision is enclosed.

The State Copyright Committee published its report "Information Technology and Copyright" on 8 April 1987. The Report deals with the following subjects:

- creation of works on computers
- use of protected materials on computers
- protection of files and databases
- protection of computer software, and
- protection of integrated circuits.

When preparing the report, the State Copyright Committee cooperated with the copyright committees of the other Nordic countries. The Nordic ministries have continued their cooperation in preparing the legislation with a view ot making the legal protection as harmonious as possible.

The report of the State Copyright Committee is currently on an opinion round. On receiving the written statements, the Ministry of Education will urgently prepare the government proposal for a law. At present it seems that the draft bill will be introduced to Parliament during the spring session 1988. It is not possible to foretell with any certainty how long the parliamentary procedure will take. The average time for a bill to pass Parliament is a few months.

In its report, the State Copyright Committee proposed that a *sui generis* law be given on the right to a mask work of an integrated circuit. The proposed bill is enclosed.

The draft bill is based on protection of integrated circuits by exclusive rights. Under the law, protection would not presuppose registration or other formalities. The protection would be extended automatically under the provisions of the law. The rights include the right to authorize or prohibit the reproduction of the mask work and the right to decide on the distribution of the mask work to the public.

However, it would be permissible to copy the mask work for private use and for purposes of teaching and analysis without the right holder's authorization. As for reverse engineering, the draft bill does not allow direct copying of mask works or their original parts in the design of new mask works. It is the intention of the Ministry of Education to harmonize this provision with the existing international interpretation of the concept of reverse engineering. Likewise the relevant provision of the US Act will be taken into account.

According to the draft bill, and integrated circuit that has been distributed with the right holder's consent to the public could be further distributed without authorization.

The right to a mask work would be valid for ten years, starting from the date the mask work was first distributed to the public. The Committee's proposal also contains penalty and damages provisions.

The law is applied to mask works which are created by a Finnish citizen or a person permanently resident in Finland, or to mask works that are first distributed in Finland. The application of the law can be extended reciprocally to foreign mask works by a decree.

In further preparations, the Council of State intends to take into account legislation passed on the protection of mask works in other countries, WIPO's draft treaty on the Protection of Intellectual Property in Respect of Integrated Circuits and the EC Council Directive on the Legal Protection of Topographies of Semiconductor Products.

The Finnish legislation on protection of integrated circuits is intended as permanent.

The Ministry of Education has no knowledge of cases in which Finland, its nationals, domiciliaries, sovereign authorities or persons controlled by them have engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works.

Christoffer Taxell,

Minister of Education.

Jukka Liedes,

Special Adviser.

[Official Translation]

Helsinki, 9 January, 1985

[13853/920/85]

Subject: Protection of Integrated Circuits

State Copyright Committee

After having consulted the Ministry of Trade and Industry and the Ministry for Foreign Affairs, the Ministry of Education had decided on this date to assign to the State Copyright Committee the task of preparing a draft Bill on the protection of integrated circuits. In executing this task, the Committee should take account of the eventual copyright protection of the patterns used for integrated circuits. The aim should be compatibility of the legislation with the protective measures to be adopted by other countries and with eventual international instruments of protection.

Kaarina Suonio,

Minister of Education.

Jaakko Numminen,

Secretary General.

For information:

Minister of Culture and Science Gustav Bjorkstrand
Minister of Trade and Industry Seppo Lindblom
Minister for Foreign Affairs Paavo Väyrnen of
Minister Jermu Laine
Director of Legal Department Eero Kekomäki
National Board of Patents and Registration
State Copyright Council

[Official translation]

Proposal for an Act on the Right to the Layout-Design of an Integrated Circuit

State Copyright Committee, 8 April, 1987

The following is stipulated in accordance with the decision of the Parliament:

§ 1 Definitions

For the purposes of this Act

(1) an *integrated circuit* means a circuit whose elements have been placed inseparably on semiconductor material or any other material and which has been designed to perform electronic circuitry functions; and

(2) a *layout-design* means any pattern for the elements of an integrated circuit, however expressed or implemented.

§ 2 Scope of the right

The right to an integrated circuit pertains to an original layout-design and any part of a layout-design. The right to a layout-design includes the exclusive right

(1) to produce intergrated circuits or otherwise reproduce the layout-design; and

(2) to distribute the layout-design or any reproduction thereof to the public by offering it for sale, lease or loan or by any other means of distribution.

§ 3 Original right owners

The right to a layout-design belongs to its creator. If two or more persons create a layout-design in callaboration, the right to it belongs to them jointly. Each one of them has the right to bring legal action for any infringement.

§ 4 Reproduction of a layout-design for certain purposes

A layout-design may be reproduced for private use, teaching and analysis of the layout-design. Such copies may not be used for other purposes.

§ 5 Exhaustion of distribution right

An integrated circuit originally distributed to the public with the consent of the right owner may be distributed further.

§ 6 Transfer of the right

The right to a layout-design may be transferred entirely or partially. The transfer of a copy of a layout-design does not include the transfer of the right to the layout-design.

If a layout-design has been created within the scope of a person's employment, the right to the layout-design is deemed to be transferred to the employer, unless otherwise agreed.

§ 7 Duration of the right

The right to a layout-design shall exist to the end of the tenth year from the year when the layout-design or a copy thereof was first distributed to the public.

The right to a layout-design which, or copies of which have not been distributed to the public within ten years of the year of its creation shall exist to the end of the tenth year from the year when an integrated circuit was produced from the layout-design.

The right to any other layout-design than one referred to in paragraph 1 or 2 shall exist to the end of the tenth year from the year when the layout-design was created.

§ 8 Penalty provisions

Any person who wilfully or out of gross negligence violates the provisions of this Act issued for the protection of the right to a layout-design shall be sentenced for an *infringement of the right to a layout-design* to a fine or to an imprisonment of a maximum of two years.

Any person who imports into the country a layout-design or a copy of a layout-design which he knows or has reasonable grounds to suspect to have been produced outside the country under such circumstances as would make similar production in Finland punishable under this Act, shall be sentenced for *importing an unlawfully produced layout-design* to a fine or an imprisonment of a maximum of two years.

§ 9 Damages

Any person who reproduces a layout-design in violation of the provisions of this Act is liable for a reasonable compensation to the owner of the right.

Any person who wilfully or out of negligence reproduces a layout-design or distributes a layout-design or a copy thereof in violation of the provisions of this Act is liable to compensate of to the right owner all the damages caused.

The provisions of the Act regarding Damages and Tort Liability (412/74) also apply to the compensation provided under the second paragraph of this Article.

§ 10 Applicability of the Act

The provisions of this Act shall apply to a layout-design,

(1) the original right owner of which, as defined in Article 3, is a Finnish citizen or a person with a permanent residence in Finland; or

(2) which, or copies of which have for the first time been distributed to the public in Finland.

A decree may be enacted to extend the application of this Act reciprocally to a layout-design other than one referred to in paragraph 1.

§ 11 Entry into force and transitional provision

This Act shall come into force on _____ 198__.

This Act shall also apply to a layout-design created before this Act comes into force.

[FR Doc. 87-20935 Filed 9-10-87; 8:45 am]

BILLING CODE 3510-16-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Mercantile Exchange ("CME") has applied for designation as a contract market in the Morgan Stanley Capital International EAFE (Europe, Australia and Far East) Stock Index. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 10, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME EAFE Stock Index futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7227.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions, can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME is support of the application for contract market designation may be available upon request pursuant to the Freedom of Informaiton Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commissions's

headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by November 10, 1987.

Issued in Washington, DC, on September 8, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87-20919 Filed 9-10-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) on a Department of the Army Permit Application Under Section 10 of the Rivers and Harbors Act, 1899, and Section 404 of the Clean Water Act for Little Cypress Utility District's Little Cypress Reservoir on Little Cypress Creek, Harrison County, TX

AGENCY: U.S Army Corps of Engineers, DOD, Fort Worth District.

ACTION: Notice of intent to prepare a draft Environmental Impact Statement.

SUMMARY: 1. The reservoir is proposed for municipal and manufacturing water supply. It would have a normal pool elevation of 230 feet NGVD. conservation storage of 193,485 acre-feet, and a surface area of 13,760 acres. Construction of the proposed dam would require foundation excavation of 1,123,000 cubic yards, and placement of compacted fill in the amount of approximately 2,480,000 cubic yards. The damsite would be located at river mile 19.7 of Little Cypress Creek, approximately two miles upstream of the FM 3001 crossing of Little Cypress Creek in Harrison County, Texas.

2. Reasonable Alternatives. Alternatives to be evaluated include: Issuing of the permit, not issuing the permit, or issuing the permit with conditions.

3. Scoping Process.

a. *Public Involvement.* A comprehensive public involvement program will be conducted locally by the Fort Worth District and the utility district as a means of soliciting public views and disseminating information. Techniques will include formal public meetings, informal public information sessions as necessary, and continuing dialogue with Federal, State, and local agencies, organizations, and the interested public.

b. *Significant Issues.* At present, significant issues to be addressed in depth in the DEIS include hydrologic impacts on Little Cypress Creek and its attendant wetlands as well as downstream impacts to bottomland forests and Caddo Lake, social and economic effects on local residents, and effects on cultural resources.

c. *Assignments.* Other than normal coordination, no cooperating agency assignments have been made.

d. *Environmental Review and Consultation Requirements.* The DEIS will be circulated for review and all comments will be incorporated into a final environmental impact statement.

4. A public scoping meeting will be held at: 7:00 p.m. on October 22, 1987, Marshall Civic Center, Marshall, Texas.

A public notice announcing the scoping meeting will be mailed to the project mailing list prior to the meeting.

5. The DEIS is expected to be available to the public by July 1988.

ADDRESS: For additional information, contact Mr. Jim Townsend, Project Manager, Permits Section, Operations Division, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, Texas 76102. Telephone (817) 334-3552.

John G. Rigby,

Major, Corps of Engineers, Deputy District Engineer.

[FR Doc. 87-20916 Filed 9-10-87; 8:45 am]

BILLING CODE 3710-FR-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Enlarging the Channel in Miami Harbor, Dade County, FL

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The Jacksonville District U.S. Army Corps of Engineers intends to prepare an Environmental Impact Statement on the feasibility of enlarging the entrance channel, south channel, and turning basin in Miami Harbor, Dade County, Florida. The existing entrance channel and its turning basin have a controlling depth of 36 feet m.l.w. while the south channel has depths of 25 to 38 feet m.l.w. In order for the port to accommodate larger ships with a deeper draft, these channels and the turning basin would need to be deepened.

The following alternatives are being considered:

a. No action.

b. Deepening the channels and turning basins.

Scoping has been accomplished by letter with those individuals and organizations that have expressed interest or are known to have an interest and by the solicitation of comments from affected Federal, State, and local agencies.

Consultation will be accomplished with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in accordance with section 7 of the Endangered Species Act as well as the State Historic Preservation Officer in accordance with the Archeological and Historic Preservation Act. Discharges of materials into waters of the United States will be specified by application of the criteria of section 404(b) of the Federal Water Pollution Control Act or section 103 of the Marine Protection, Research, and Sanctuaries Act.

The DEIS will be made available to the public in October 1987 unless circumstances warrant additional time for preparation.

Questions concerning the DEIS can be answered by: Mr. Dan Malanchuk CESAJ-PD-ES, U.S. Army Corps of Engineers, Jacksonville District, P.O. Box 4970, Jacksonville, Florida 32232-0019; Telephone: (904) 791-1689, FTS 946-1689.

Dated: August 13, 1987.

Robert L. Herndon,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87-20977 Filed 9-10-87; 8:45 am]

BILLING CODE 3710-AJ-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Southeast Alaska Harbors of Refuge Under a General Investigation Study

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The proposed action is to determine the feasibility of constructing additional harbors or harbor improvements in several communities in Southeast Alaska: Sitka, Haines,

BEST COPY AVAILABLE

Petersburg, Ketchikan, Craig, Klawock and Wrangell.

In Sitka there are two alternatives to providing needed additional moorage space: Thomsen Harbor expansion and new construction at Jamestown Bay. Thomsen Harbor expansion would occur directly north of the existing harbor, providing 200 mooring slips in a 9-acre mooring basin. An additional 1,500-foot rubblemound breakwater is proposed to slightly overlap the existing floating breakwater. An intertidal fill is proposed for a staging area adjacent to the existing harbor. Approximately 120,000 cubic yards of dredging is required. Rubblemound construction materials would be obtained from existing quarries. The Jamestown Bay site is located south of town where both industrial and residential properties exist. The harbor here would be the same size as the Thomsen Harbor expansion. A rubblemound and/or floating breakwater 1,140 feet in length would be required. An intertidal parking area of 2.5 acres is proposed. Approximately 29,000 cubic yards of dredging is required.

A proposed expansion to the existing harbor in Haines would add 800 feet onto the existing rubblemound breakwater providing approximately 200 new mooring slips. The approximate amount of dredging is 220,000 cubic yards. Additional parking is proposed in an upland area.

In Petersburg, additional moorage space is proposed adjacent to the existing harbor by dredging 163,000 cubic yards of material. An intertidal staging and parking area may be part of the project, encompassing 2.5 acres. 140 new mooring slips would be provided.

Improvements to Ketchikan's Bar Point harbor entail moving an existing 120-foot detached floating breakwater and attaching it to an existing 923-foot floating breakwater. An additional 240 feet of floating breakwater would be added to close off the gap between the floating and rubblemound breakwaters.

A breakwater is proposed as wave protection for Craig's existing float system. Dredging additional moorage space and installing a new float system is an option. An alternative to a breakwater is an outer transient float that would be used for mooring during the summer.

An ice diversion system is proposed in Klawock to be installed south of the float system to divert outgoing ice from impacting the float system. This would either be a rubblemound or steel pipe structure. An option is to modify the float system to reduce the ice loads.

To improve navigation, Wrangell harbor is proposed to be dredged deeper.

2. A regional reconnaissance report was completed in September 1983. Scoping of the DEIS will include continued coordination with interested local, State and Federal agencies, and other interested parties. Scoping meetings are not planned at this time. Some of the study sites may be eliminated due to economic infeasibility during the initial study period.

Anticipated subjects to be addressed include, but are not limited to: impacts to marine habitats, water quality, socioeconomic impacts, cultural resources, aesthetics, fisheries, alternatives and measures to minimize adverse impacts.

3. Completion of the Draft Feasibility Report and DEIS is anticipated in FY 88.

ADDRESS: Questions regarding the proposed action and the DEIS should be addressed to: U.S. Army Engineer District, Alaska Environmental Resources Section, William D. Lloyd, P.O. Box 898, Anchorage, Alaska 99506–0898.

Dated: August 28, 1987.

Wilbur T. Gregory, Jr.,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87–20878 Filed 9–10–87; 8:45 am]

BILLING CODE 3710–NL–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Tuesday, September 22, 1987 beginning at 1:30 p.m. in the Banquet Room of the Larry Holmes Commodore Inn, U.S. Highway 22, Phillipsburg, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

Current Expense and Capital Budgets. A proposed current expense budget for the fiscal year beginning July 1, 1988, in the aggregate amount of $2,293,800 and a capital budget for the same period in the amount of $1,199,600 in revenue and $1,075,200 in expenditures. Copies of the current expense and capital budget are available from the Commission on request.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Holdover Project: Audubon Water Company D–80–73 CP.* A well water supply project to serve portions of Lower Providence Township, Montgomery County, Pennsylvania. Designated as Well No. 13, the new facility was expected to yield 300,000 gallons per day (gpd), and has been pumped on a long-term basis in excess of 120,000 gpd. The well will continue to be used to increase pressure in the system and for fire protection. This hearing continues that of August 5, 1987.

2. *Holdover Project: Township of Falls Authority D–86–17 CP.* An application for revision of the Comprehensive Plan to include expansion of the existing Falls Township Authority Sewage Treatment Plant from 3.2 million gallons per day (mgd) secondary treatment to 5.0 mgd tertiary treatment. The existing facility is located at Newportville Road and Ford Road in Bristol Township, Bucks County, Pennsylvania. Treated effluent will continue to be discharged to Neshaminy Creek, 350 feet downstream of the existing point of discharge. The expanded plant is designed to serve projected flows through the year 2010. This hearing continues that of August 5, 1987.

3. *Schwenksville Borough Authority D–78–33 CP Renewal.* An application to renew the permitted withdrawal of ground water from existing Well Nos. 3, 4 and 5 and emergency use of Well No. 6, to supply water to the applicant's system. The proposed 30-day withdrawal limit remains at 8.1 million gallons (mg) from all wells. The project is located in the Borough of Schwenksville, Montgomery County, in the Ground Water Protected Area of Southeastern Pennsylvania.

4. *Philadelphia Suburban Water Company D–80–88 CP Renewal (Well No. 22) and D–83–28 CP Renewal (Well No. 23).* Application for renewal of two ground water withdrawal projects to supply 2.58 mg/30 days from Well No. 22 and 9.72 mg/30 days from Well No. 23. Commission approval for Well No. 22 was on September 22, 1982 and will expire on September 22, 1987 unless renewed. Renewal for Well No. 23 was required to be reconsidered in conjunction with Well No. 22. Applicant requests that the withdrawal from the wells remain limited to the current allocation. The projects are located in East Goshen Township, Chester County

in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Town of Milton D–83–22 CP.* An application for approval of a gound water withdrawal project to supply up to 10 mg/30 days of water to the applicant's distribution system from existing Well Nos. 4 and 5 and to increase the existing withdrawal limit of 6 mg/30 days from all wells to 10 mg/30 days. The project is located in the Town of Milton, Sussex County, Delaware.

6. *Town of Clayton D–84–34 CP Renewal.* An application for the renewal of a ground water withdrawal project to supply up to 7.5 mg/30 days of water to the applicant's distribution system from Well Nos. 1, 2R and 3. Commission approval on September 25, 1984 was limited to three years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 7.5 mg/30 days. The project is located in the Town of Clayton, Kent County, Delaware.

7. *Rollins Environmental Services (NJ), Inc. D–84–38 (Phases II and III).* An application to modify the industrial waste treatment works proposal approved by Docket No. D–84–38 on December 12, 1984 to serve the applicant's hazardous waste processing facility in Logan Township, Gloucester County, New Jersey. Scrubber wastewater is treated for solids removal in facilities constructed as approved for Phase I. A cooling tower will be constructed as planned for Phase II; however, the applicant is proposing to construct above ground tankage in place of the lined basins for Phase III. The storage tankage is needed as the discharge is only allowed during a portion of the outgoing tide. The three tanks will provide 1.2 mg each of storage. The effluent will continue to be discharged to tidal Raccoon Creek in Water Quality Zone 4 through the existing outfall.

8. *Warwick Township Water and Sewer Authority D–84–76 CP.* An application for approval of a ground water withdrawal project (Well No. 5) to back-up an existing system (Well Nos. 2 and 8) that is already approved for a maximum withdrawal of 4.68 mg/30 days. The total approved withdrawal will not be changed. This system supplies the applicant's 334-unit Hedgerows Development, which is located in Warwick Township, Bucks County in the Southeastern Pennsylvania Ground Water Protected Area.

9. *Municipal Authority of the Borough of Morrisville D–87–8 CP.* An application to upgrade and expand the Morrisville Wastewater Treatment Plant located just off Sough Delmar Avenue in Morrisville Borough, Bucks County, Pennsylvania. The existing 5.6 mgd secondary treatment plant will be upgraded and expanded to provide tertiary treatment for a total design average flow of 7.1 mgd. The project is designed to provide service to an equivalent population of 71,000 persons in Morrisville and Yardley Boroughs, plus portions of Lower Makefield and Falls Townships. Treatment plant effluent will continue to be discharged to the Delaware River in Water Quality Zone 2 through the existing outfall.

10. *Whitehall Township Authority D–87–16 CP (Revised).* An application for revision of a previously approved ground water withdrawal project to revise the service area description in order to permit the installation of service connections to existing homes abutting Mechanicsville Road east of the intersection with Seiple's State Road. The project is located in Whitehall Township, Lehigh County, Pennsylvania.

11. *Smithkline Chemicals D–87–34.* An application to modify an industrial wastewater treatment plant discharge at the applicant's Riverside Plant located in Upper Merion Township, Montgomery County, Pennsylvania. The applicant requests that its 0.049 mgd treatment plant be rerated to treat 0.06 mgd of chemical pharmaceuticals, batch process wastewater. Less than 10 percent of this flow is transported by tank truck to the treatment plant from the applicant's nearby Research and Development Laboratory located in Conshohocken Borough. The applicant is also requesting a seasonal waiver from DRBC effluent quality requirements regarding ammonia, and an increase in the discharge limitations for color, total dissolved solids and total suspended solids. Treatment plant effluent will continue to discharge to the Schuylkill River via the Matsunk Creek culvert.

12. *City of Salem D–87–37 CP.* An application for a wastewater treatment plant upgrading and expansion to serve the City of Salem and a portion of Mannington Township, both in Salem County, New Jersey. The existing 1.25 mgd primary treatment plant will be upgraded and expanded to provide high quality secondary treatment of 1.4 mgd. The proposed plant is designed to serve the year 2005 flow from a projected population of 7,535 persons. The plant is located off Grieves Parkway in Salem City, and discharges to the Salem River. The proposed facilities will continue to discharge to the Salem River, but a new 24-inch diameter outfall pipe will be provided.

13. *Antietam Valley Municipal Authority D–87–45 CP.* An application to upgrade a 1.225 mgd secondary treatment plant to remove ammonia nitrogen from sanitary wastewater. The Mount Penn Sewage Treatment Plant was formerly rated at 1.205 mgd, as approved by DRBC Docket No. D–68–4 CP. The proposed upgrade is designed to serve the year 2000 flow from 8,143 persons in portions of Mount Penn Borough, Exeter, and Lower Alsace Townships, all within Berks County, Pennsylvania. Treatment plant effluent will continue to be discharged to Antietam Creek through the existing outfall. The plant is located in St. Lawrence Borough near the junction of U.S. Route 422 and PA Route 562.

14. *Eagle Lake Community Association, Inc. D–87–55.* A sewage treatment project to serve a 4,200 site campground straddling the Delaware River Basin divide in Covington Township, Lackawanna County, Pennsylvania. The treatment plant will be designed to provide teritary level treatment to a sewage flow of 0.4 mgd. Treated effluent will discharge to an unnamed tributary of Tamarack Creek in Covington Township, Pennsylvania. The water supply for the campground will come from two existing and one proposed well, all of which are located outside the Delaware River Basin.

15. *Borough of Alpha D–87–62 CP.* An application for approval of a ground water withdrawal project to supply up to 10.5 mg/30 days of water to the applicant's distribution system from new Well No. 3, and to limit the withdrawal from all wells to 10.5 mg/30 days. The project is located in Alpha Borough, Warren County, New Jersey.

16. *Hankin Group D–87–64.* An application to construct a sewage treatment plant to serve a proposed commercial business park. The Intertech Corporate Center and the proposed wastewater treatment facilities are to be constructed less than one mile south of the intersection of U.S. Route 76 and Pennsylvania Route 100 in Uwchlan Township, Chester County, Pennsylvania. The applicant proposes to provide high quality secondary treatment of 0.05 mgd of wastewater from 5,000 office workers. Equalization will be provided to handle peak flows during business hours. Treatment plant effluent will be discharged to Shamona Creek, a tributary of East Branch Brandywine Creek.

17. *National Park Service, Delaware Water Gap National Recreation Area General Management Plan D–87–65 CP.* An application for inclusion in the DRBC's Comprehensive Plan, a General Management Plan which provides for development of natural, scenic and historic features of the Delaware Water

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Gap National Recreation Area. The Plan addresses facility development, visitor activities, resource management and land protection efforts. The Plan will guide overall management and use of the area's resources over the next ten years, and provide the foundation for subsequent detailed implementation plans, programs and operation.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

September 4, 1987.

[FR Doc. 87-20975 Filed 9-10-87: 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before October 13, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Officer Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public and early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Fequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margarete Webster at the address specified above.

Dated: September 8, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Vocational Education

Type of Review: Revision
Title: Stated Administered Vocational Education Program Improvement Projects
Agency Form Number: ED 590
Frequency: On Occasion
Affected Public: State or local governments
Reporting Burden:
Responses: 969
Burden Hours: 727
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used to collect data from State Departments of Vocational Education, on State administered projects for research, personnel development and curriculum development in vocational education. The Department will use this information to analyze program inprovement activities of the States.

Office of Elementary and Secondary Education

Type of Review: Extension
Title: State Application under Chapter 2 of the Education Consolidation and Improvement Act
Agency Form Number: ED 1000
Frequency: Every three years
Affected Public: State or local governments
Reporting Burden:
Responses: 52
Burden Hours: 104
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This application will be used by State educational agencies to apply for grants under Chapter 2 of the Education Consolidation and Improvement Act, as amended. The Department uses the information collection to ensure that the States are fulfilling the satutory requirements of Chapters.

Office of Elementary and Secondary Education

Type of Review: Reinstatement
Title: Annual Report on the Number of Full Time Equivalent Migratory Children
Agency Form Number: NA
Frequency: Annually
Affected Public: Individuals or households; State or local governments
Reporting Burden:
Responses: 52 Burden Hours: 137,176
Recordkeeping Burden:
Recordkeepers: 0 Burden Hours: 0
Abstract: State educational agencies are required to submit and report the number of eligible migratory children, ages 5-17, and the full time equivalents of part time residents that reside in the State. The Department uses this information to allocate funds under Chapter 1 Migrant Education Programs.

Office of Postsecondary Education

Type of Review: Extension
Title: New and Continuation Application for Grants Under the Talent Search Program
Agency Form Number: ED 872
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 300 Burden Hours: 10,200
Recordkeeping Burden:
Recordkeepers: 0 Burden Hours: 0
Abstract: This form will be used by institutions of higher education, public and private agencies and organizations, and in exceptional cases, secondary schools to apply for funding under the Talent Search program. The Department uses the information collected to make grant awards.

Office of Special Education and Rehabilitative Services

Type of Review: New
Title: Study of Vocational Rehabilitation Services to Severely Mentally Ill Individuals
Agency Form Number: B20-33P

Frequency: One time only
Affected Public: State or local governments
Reporting Burden:
Responses: 1,921 Burden Hours: 2,803
Recordkeeping Burden:
Recordkeepers: 0 Burden Hours: 0
Abstract: This study will collect information to assess State programs for improving the employment status of severely mentally ill persons. The Department will collect this information from State agencies and use these data to evaluate the programs and make recommendations concerning improvement of services to this group.

Office of Educational Research and Improvement

Type of Review: New
Title: Teacher Lists for the Schools and Staffing Surveys
Agency Form Number: G50–38P
Frequency: On occasion
Affected Public: State or local governments
Reporting Burden:
Responses: 12,800, Burden Hours: 6400
Recordkeeping Burden:
Recordkeepers: 0, Burden Hours: 0
Abstract: This form will be used by sample schools involved in the Schools and Staffing Surveys to provide to the Department a list of teachers to be used as a sample for the Teacher Survey. The Department will use these lists to assist in the collection of information for the Teacher Survey.

Office of Educational Research and Improvement

Type of Review: Revision
Title: 1987 High School Transcript Study Based on the 1985–86 Eleventh Grade Sample of the National Assessment of Educational Progress (NAEP)
Agency Form Number: G50–37P
Frequency: Once only
Affected Public: Individuals or households; State or local governments
Reporting Burden:
Responses: 10,564, Burden Hours: 541
Recordkeeping Burden:
Recordkeepers: 0, Burden Hours: 0
Abstract: This study will collect transcript data from schools whose students were sampled in the 1986 NAEP assessment. The Department plans to use this data to assess the status of the school reform movement and the extent to which the recommendations of the National Commission on Educational Excellence have been implemented in the Nation's schools.

Office of Planning, Budget and Evaluation

Type of Review: Reinstatement
Title: Longitudinal Study of Immersion Program for Language Minority Children
Agency Form Number: P75–1P
Frequency: Once only
Affected Public: Individuals or households; State or local governments
Reporting Burden:
Responses: 20,800, Burden Hours: 7862
Recordkeeping Burden:
Recordkeepers: 0, Burden Hours: 0
Abstract: This study will collect information from personnel in various school districts about English Immersion Strategy Programs in the schools. The Department will use the information collected to analyze the effectiveness of immersion programs.

[FR Doc. 87–20906 Filed 9–10–87; 8:45 am]
BILLING CODE 4000–01–M

[CFDA No. 84.094B]

Invitation of Applications for New Awards under the Patricia Roberts Harris Fellowships Program; Graduate and Professional Study Fellowships for Fiscal Year 1988

Purpose: Provides grants to institutions of higher education to support fellowships for graduate and professional study to students who demonstrate financial need and who are predominantly from groups which are traditionally underrepresented in graduate and professional study areas of high national priority.

Deadline for Transmittal of Applications: November 12, 1987.

Applications Available: September 25, 1987.

Available Funds: The Administration's budget for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow for sufficient time to evaluate applications and complete the grant process prior to the end of the fiscal year, should the Congress appropriate funds for this program.

The following estimates are based on the 1987 appropriation:

Estimated Range of Awards: $16,000—$112,000.

Estimated Average Size of Awards: $64,000.

Estimated Number of Awards: 147.

Project Period: 9 to 12 months.

Applicable Regulations: (a) The Patricia Roberts Harris Fellowships Program Regulations, 34 CFR Part 649, and (b) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, and 77, as provided in 34 CFR 649.3.

For Applications or Information Contact: Dr. Charles H. Miller on (202) 732–4395 or Mrs. Barbara J. Harvey on (202) 732–4863, U.S. Department of Education, Mail Stop 3327, 400 Maryland Avenue, SW., Room 3022. ROB–3, Washington, DC 20202.

Program Authority: 20 U.S.C. 1134d–1134g.

Dated: August 31, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–20907 Filed 9–10–87; 8:45 am]
BILLING CODE 4000–01–M

National Advisory Council on Adult Education; Meeting

AGENCY: Education Department.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: September 29–30, 1987, 8:30 a.m. to 5:00 p.m., Full Council Meeting.

ADDRESS: Penn Tower Hotel, Civic Center Boulevard at 34th Street, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Karen S. Saunders, National Advisory Council on Adult Education, 2000 L Street, NW., Suite 570, Washington, DC 20036, (202) 634–6300.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under section 313 of the Adult Education Act (20 U.S.C. 1209). The Council is established to:

Advise the Secretary in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress

together with his comments and recommendations.

The Council meeting is open to the public and follows a symposium on literacy co-sponsored with the University of Pennsylvania. The Council meeting agenda includes: Oath of Office Ceremony, Standing Committee Meetings and Reports, Program Visitations, Reauthorization of Adult Education Act, Fiscal Year 1987 Annual Report, Federal Legislative Update, Proposed Publications.

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Adult Education, 2000 L Street, NW., Suite 570, Washington, DC 20036, from the hours of 8:30 a.m. to 5:30 p.m.

Signed at Washington, DC, on September 8, 1987.

Lynn Ross Wood,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 87-20954 Filed 9-10-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Coordinating Subcommittee on Petroleum Storage & Transportation, National Petroleum Council; Open Meeting

Notice if hereby given of the following meeting:

Name: Coordinating Subcommittee of Petroluem Storage and Transportation of the National Petroleum Council

Date and Time: Wednesday, September 30, 1987 from 1:00 p.m. to 3:00 p.m.

Place: Marathon Oil Company, Conference Rm. 1012, 5555 San Felipe Road, Houston, Texas

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Review the study's scope, organization, and timetable.

Tentative Agenda:

—Review the study's scope, organization, and timetable
—Discuss membership of proposed task groups for the study
—Discuss any other matters pertinent to the overall assignment

Public Participation: The meeting is open to the public. The Chairman of the Subcommittee of Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff of the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on September 2, 1987.

Jeremiah E. Walsh, Jr.,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 87-20891 Filed 9-10-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF86-891-001 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc. Borough of Seven Springs et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

September 8, 1987.

Take notice that the following filings have been made with the Commission.

1. Borough of Seven Springs

[Docket No. QF86-891-001]

On August 21, 1987, the Borough of Seven Springs (Applicant), of Champion, Pennsylvania submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 10 MW hydroelectric facility (FERC P. 3623) will be located on the Youghiogheny River in Fayette and Somerset Counties, Pennsylvania.

Recertification is requested due to a change in the electric power production capacity of the facility. Under the instant application, the electric power production of the facility will increase from 7 MW to 10 MW.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State, or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. Chevron U.S.A., Inc.

[Docket No. QF86-662-001]

On August 11, 1987, Chevron U.S.A., Inc. (Applicant), of P.O. Box 1392, Bakersfield, California 93302 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Fresno County, California. The facility, as originally proposed, was to consist of two combustion turbine generators and two supplementary fired heat recovery steam generators. Thermal energy in the form of steam was to be used in a thermal enhanced oil recovery process. The electric power production capacity of the facility, as originally proposed, was 4800 kW. The primary source of energy was natural gas.

By order issued June 11, 1986, the Director of the Office of Electric Power Regulation granted certification of the facility as a qualifying cogeneration facility (35 FERC ¶ 62,465).

The recertification is requested due to an increase in the number of combustion turbine generators and supplementary fired heat recovery steam generators to four each. The electric power production capacity of the facility will increase to 9600 kW. All other facility characteristics remain unchanged.

3. First Cogeneration Asset Corporation

[Docket No. QF87-614-000]

On August 21, 1987, First Cogeneration Asset Corporation (Applicant), of 41 Madison Avenue, 36th Floor, New York, New York 10010 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Mahwah, New Jersey. The facility will consist of three dual fueled internal combustion engine-generators each equipped with a heat recovery steam generator and other auxiliary equipment. Thermal energy recovered from the facility will be used by International Crossroads Corporate Park for space heating and cooling, and domestic hot water. The primary energy source of the facility will be natural gas and fuel oil. The net electric power production capacity of the facility will be 3.51 MW. Installation of the facility began in June 1987.

4. J-W Gathering Company

[Docket No. QF87-616-000]

On August 24, 1987, the J-W Gathering Company (Applicant) of 2715 Mackey Lane, Shreveport, Louisiana 71118, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near the Town of Eckley in Yuma County, Colorado. The facility will consist of a combustion turbine generator, a waste heat recovery steam generator and a condensing steam turbine generator. Thermal energy recovered from the facility will be used for the production of ammonia and carbon dioxide. The primary energy source will be natural gas. The electric power production capacity of the facility will be 25 MW. Construction of the facility is expected to begin in February 1988.

5. Little Company of Mary Hospital

[Docket No. QF87-619-000]

On August 24, 1987, Little Company of Mary Hospital (Applicant), of 2800 West 95th Street, Evergreen Park, Illinois 60642 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Evergreen Park, Illinois and will consist of a combustion turbine generator and a heat recovery steam generator. Thermal energy recovered from the facility will be used for space heating and cooling, sterilization, and domestic hot water. The electric power production capacity of the facility will be 3700 kW. The primary source of energy will be natural gas. Construction of the facility will commence November, 1987.

6. Philadelphia Corporation and Prudential Interfunding Corp.

[Docket No. QF85-673-001]

On August 6, 1987, Philadelphia Corporation and Prudential Interfunding Corp. (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 and Three Gateway Center, 100 Mulberry Street, Newark, New Jersey 01702 respectively submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has beem made that the submittal constitutes a complete filing.

The small power production facility will be located on the Indian River in Jefferson County, New York. The facility will consist of a run-of-the-river hydroelectric generator. The electric power production capacity will be 3 MW.

By order issued December 2, 1985, the Director of Office of Electric Power Regulation granted certification of the facility as a small power production facility (33 FERC ¶ 62,295).

The recertification is requested due to change in ownership from Philadelphia Corporation, to Philadelphia Corporation and Prudential Interfunding Corp.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

7. SJE Cogeneration, Inc.

[Docket No. QF87-613-000]

On August 20, 1987, SJE Cogeneration, Inc. (Applicant), c/o SJE Investments, 1960 Lincoln Park West, Suite 2702, Chicago, Illinois 60614 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near the town of Linville, in Rockingham, County, Virginia. The facility will consist of two combustion turbine generators, two heat recovery steam generators and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used by the Valley Proteins Corporation in its rendering operation. The primary energy source for the facility will be synthetic gas mixed with natural gas. The net electric power production capacity of the facility will be 173 MW. Installation of the facility was expected to begin in July 1987.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20956 Filed 9-10-87; 8:45 am]

BILLING CODE 6717-01-M

Request for Limited Waiver of Tariff; Florida Gas Transmission Co.

September 8, 1987.

Take notice that Florida Gas Transmission Corporation (FGT) on August 10, 1987, tendered for filing its requested authorization for a limited waiver of section 4 (Minimum Bill) of FGT's Rate Schedule Gas behalf of Gevena County Gas District, Geneva, Alabama (Geneva County) and the Utilities Board of the City of Florala, Alabama (Florala) for the contract year October 1, 1985-September 30, 1986. FGT states that it desires to grant the waiver which Geneva County and Florala requested. FGT states that granting the waiver will permit Florada and Geneva County to avoid paying for gas not taken for reasons beyond their control.

Any person desiring to be heard or to protest said filing should file a motion to intervene a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 15, 1987. Protests will be considered by the Commission in

determinating the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20957 Filed 9-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-121-000]

Proposed Tariff Changes; Gas Transport, Inc.

September 4, 1987.

Take notice that on August 31, 1987, Gas Transport, Inc. ("Gas Transport") tendered for filing Fourth Revised Sheet No. 5 and First Revised Sheet No. 82 as part of its FERC Gas Tariff, First Revised Volume No. 1, to become effective August 1, 1987.

Gas Transport states that the only purpose of these revised tariff sheets is to reflect an adjustment in Gas Transport's rates for recovery of the costs associated with the Annual Charges Adjustment Clause as authorized by the Commission.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Procedural Rules (18 CFR 385.214). All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20958 Filed 9-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-129-000]

Filing of FERC Gas Tariff; Great Lakes Gas Transmission Co.

September 8, 1987.

Taken notice that Great Lakes Gas Transmission Company, on September 1, 1987, tendered for filing six copies of the following tariff sheets to its FERC Gas Tariff.

First Revised Volume No. 1

Original Sheet No. 56-C
Original Sheet No. 57(iv)

Original Volume No. 2

First Revised Sheet No. 55-A
Second Revised Sheet No. 79
First Revised Sheet No. 80
Eighth Revised Sheet No. 123
Alternate-C Twelfth Revised Sheet No. 151
First Revised Sheet No. 224
Second Revised Sheet No. 246
Alternate-C Third Revised Sheet No. 270
First Revised Sheet No. 295
First Revised Sheet No. 324
First Revised Sheet No. 353
First Revised Sheet No. 437
First Revised Sheet No. 439

The above tariff sheets incorporate the provisions for the Annual Charges Adjustment Clause, as permitted under Order No. 472 Original Sheet No. 57(iv), First Revised Volume No. 1, specifies the rate to be collected commencing October 1, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure on or before September 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20973 Filed 9-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-836-000]

Application for Permanent Abandonment and Limited-Term Certificate with Pregranted Abandonment; Marathon Oil Co.

September 8, 1987.

Take notice that on August 18, 1987, Marathon Oil Company (Marathon) of P.O. Box 3128, Houston, Texas 77253 filed an application pursuant to section 7(b) of the Natural Gas Act, 15 U.S.C. 717(b), and §§ 157.30 and 2.77 of the Commission's Regulations, 18 CFR 157.30 and 2.77, for (1) authorization of permanent abandonment of sales of gas to Texas Eastern Transmission Corporation (Texas Eastern) from the South Marsh Island Block 141 Field, South Addition, Offshore Louisiana, and (2) a blanket certificate of public convenience and necessity authorizing, for a three-year period, the sale for resale in interstate commerce of the natural gas previously dedicated to Texas Eastern and authorizing pregranted abandonment of any and all sales made pursuant to such blanket certificate.

Marathon states that its sale to Texas Eastern is subject to a gas purchase contract dated April 10, 1985 and that by order dated September 19, 1985, ENSTAR Corporation, *et al.*, Docket Nos. CI69-1027-001, *et al.*, the Commission authorized Marathon's sale to Texas Eastern. By letter dated September 26, 1985, Marathon accepted its certificate. However, deliveries of gas to Texas Eastern have never commenced because transportation arrangements have never been completed. By agreement dated May 29, 1987, Texas Eastern agreed to temporarily release all gas committed under the April 10, 1985 contract to permit Marathon to sell the gas elsewhere. Further, Texas Eastern and Marathon mutually agreed to a termination of the contract covering sale of the subject gas, upon Commission approval of Marathon's permanent abandonment application. The gas qualifies as NGPA section 102 and 104 gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a

petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20959 Filed 9-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-130-000]

Proposed Changes in FERC Gas Tariff; Michigan Consolidated Gas Co. Interstate Storage Division

September 8, 1987.

Take notice that on September 1, 1987, Michigan Consolidated Gas Company—Interstate Storage Division (ISD) tendered for filing proposed changes to the following tariff sheets in its FERC Gas Tariff, Original Volume No. 1, Original Volume No. 2 and Original Volume No. 3:

	Rate schedule
Original Volume No. 1	
Original Sheet No. 1B	
Seventh Revised Sheet No. 63	X-7
Seventh Revised Sheet No. 87	X-9
Seventh Revised Sheet No. 110	X-11
Seventh Revised Sheet No. 132	X-13
Seventh Revised Sheet No. 155	X-15
Eleventh Revised Sheet No. 192	X-19
Tenth Revised Sheet No. 216	X-20
Second Revised Sheet No. 282	X-20-1
Original Volume No. 2	
Original Sheet No. 1A	
Sixth Revised Sheet No. 7	X-23
Sixth Revised Sheet No. 29	X-24
Sixth Revised Sheet No. 52	X-25
Sixth Revised Sheet No. 74	X-26
Sixth Revised Sheet No. 96	X-27
Sixth Revised Sheet No. 117	X-28
Fifth Revised Sheet No. 154	X-30
Original Volume No. 3	
Third Revised Sheet No. 2	S-1, S-2
Second Revised Sheet Nos. 3, 5, 7, 10, 12, 14, 16, 19 & 30.	S-3, S-4, S-5, S-6, S-7 & T-1

The proposed changes reflect the implementation of an Annual Charge Adjustment (ACA) clause and an ACA unit charge of $.0021 in ISD's FERC Gas Tariffs. The proposed changes are pursuant to the Commission's regulations promulgated in Order No. 472.

ISD requests that these proposed tariff sheets become effective on October 1, 1987. ISD states that copies of its filing have been served upon its customers and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20906 Filed 9-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-131-000]

Tariff Filing and Rate Changes; Midwestern Gas Transmission Co.

September 8, 1987.

Take notice that on September 1, 1987, Midwestern Gas Transmission Company (Midwestern), tendered for filing the following tariff sheets to Original Volume No. 1 of its FERC Gas Tariff, to be effective October 1, 1987.

Original Volume No. 1

Twenty-Sixth Revised Sheet No. 5
Twenty-Fifth Revised Sheet No. 6
First Revised Sheet No. 191
Original Sheet No. 191A.

Midwestern states that it is filing these tariff sheets in response to and in compliance with Order No. 472. Midwestern states that its filing includes a new Article XXIV, which provides for customer funding of annual charges assessed Midwestern by the Federal Energy Regulatory Commission pursuant to Order No. 472.

Midwestern states that copies of the filing have been mailed to all its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20961 Filed 9-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-97-000]

Proposed Changes in FERC Gas Tariff; Natural Gas Pipeline Company of America

September 8, 1987.

Take notice that on August 31, 1987, Natural Gas Pipeline Company of America (Natural) tendered for filing the below listed tariff sheets to be a part of its FERC Gas Tariff.

Third Revised Volume No. 1

Sixty-seventh Revised Sheet No. 5
Thirty-fourth Revised Sheet No. 5A
Fifth Revised Sheet No. 5F
Original Sheet No. 155
Original Sheet No. 156

Original Volume No. 1A

Fourth Revised Sheet No. 2
First Revised Sheet No. 3

Natural states that the above-mentioned tariff sheets were submitted in compliance with Commission Order No. 472, issued May 29, 1987 (39 FERC ¶ 61,206). The proposed tariff provides a mechanism for Natural to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's regulations.

A copy of this filing was mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before September 15, 1987.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20962 Filed 9-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-114-000]

Proposed Changes in FERC Gas Tariff; Ozark Gas Transmission System

September 8, 1987.

Take notice that on August 31, 1987, Ozark Gas Transmission System (Ozark) tendered for filing Third Revised Sheet No. 5 and First Revised Sheet No. 32 to be a part of its FERC Gas Tariff, Original Volume No. 1.

Ozark states that the tariff sheets were submitted in compliance with Commission Order No. 472, issued May 29, 1987. The proposed tariff sheets provide a mechanism for Ozark to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations. Ozark requests all necessary waivers to permit this filing to become effective October 1, 1987.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions or protests should be filed on or before September 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20963 Filed 9-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-41-000]

Change in Rates Pursuant to Purchased Gas Cost Adjustment; Southwest Gas Corp.

September 4, 1987.

Take notice that Southwest Gas Corporation (Southwest) on August 31, 1987, tendered for filing Thirty-fifth Revised Sheet No. 10 and Fourteenth Revised Sheet No. 10A pursuant to Section 9, Purchased Gas Adjustment Clause (PGAC) of the General Terms and Conditions contained in its FERC Gas Tariff, Original Volume No. 1. The purpose of said filing is to reflect an increase in rates occasioned by an increase in rates from Northwest Pipeline Corporation, Southwest's sole supplier of gas in northern Nevada, effective October 1, 1987.

Southwest states that a copy of this filing has been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company and CP National Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20964 Filed 9-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-132-000]

Tariff Filing and Rate Changes; Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.

September 8, 1987.

Take notice that on September 1, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), tendered for filing the following tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of the FERC Gas Tariff, to be effective October 1, 1987.

Second Revised Volume No. 1

Fourth Revised Sheet No. 20
First Revised Sheet No. 20A
Third Revised Sheet No. 22
Third Revised Sheet No. 23
Third Revised Sheet No. 24
First Revised Sheet No. 246
Original Sheet No. 246A
Original Sheet No. 246B

Original Volume No. 2

Fifth Revised Sheet No. 5
Fourth Revised Sheet No. 6
Third Revised Sheet No. 7
Fourth Revised Sheet No. 8
Fourth Revised Sheet No. 9
First Revised Sheet No. 10

Tennessee states that it is filing these tariff sheets in response to and in compliance with Order Nos. 472 and 473. Tennessee states that its filing includes a new Article XXIX, which provides for customer funding of annual charges assessed Tennessee by the Federal Energy Regulatory Commission pursuant to Order No. 472, and a new Article XXX, which provides for a compression allowance adjustment to direct bill the costs for retroactive compression allowances paid by Tennessee to the producers, pursuant to Order No. 473.

Tennessee states that copies of the filing have been mailed to all its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20965 Filed 9-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-3-18-001]

Filing of Revised Tariff Sheets; Texas Gas Transmission Corp.

September 8, 1987.

Take notice that on September 2, 1987, Texas Gas Transmission Corporation (Texas Gas) tendered for filing Substitute Eight Revised Sheets Nos. 10 and 10A to its FERC Gas Tariff, Original Volume No. 1.

The revised tariff sheets are being filed to reflect rate revisions from Texas Eastern Transmission Corporation and Tennessee Gas Pipeline Company, pursuant to Ordering Paragraph (b) of the Commission's Order issued July 30, 1987 in Docket No. TA87-3-18-001.

Copies of the revised tariff sheets are being mailed to Texas Gas's

jurisdictional customers, interested state commissions, and parties of record in this proceeding.

Any person desiring to be heard or protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20966 Filed 9-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-96-000]

Proposed Changes in FERC Gas Tariff; Trailblazer Pipeline Co.

September 8, 1987.

Take notice that on August 31, 1987, Trailblazer Pipeline Company (Trailblazer) tendered for filing Fourth Revised Sheet No. 4 and Original Sheet Nos. 130 and 131 to be a part of its FERC Gas Tariff, Original Volume No. 1.

Trailblazer states that the above-mentioned tariff sheets were submitted in compliance with Commission Order No. 472, issued May 29, 1987 (39 FERC ¶ 61,206). The proposed tariff provides a mechanism for Trailblazer to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's regulations.

A copy of this filing was mailed to Trailblazer's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practices and Procedure. All such motions or protests must be filed on or before September 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20967 Filed 9-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-117-000]

Tariff Filing; Transcontinental Gas Pipe Line Corp.

September 4, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on August 31, 1987 tendered for filing certain original and revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The proposed effective date of the tariff sheets is October 1, 1987.

On May 29, 1987, the Commission issued Order No. 472 in Docket No. RM87-3-000. Order No. 472 established that cost responsibility for Commission budgetary expenses would be assessed against gas pipelines and others through annual charges and further provided that pipelines could pass through the annual charges assessed by the Commission to their respective customers through an Annual Charge Adjustment (ACA) Provision.

The purpose of the instant filing is to establish, pursuant to Order No. 472, a new Section 27 in the General Terms and Conditions of Transco's FERC Gas Tariff, Second Revised Volume No. 1, which Section will provide for an Annual Charge Adjustment (ACA) Provision to permit Transco to recover from its sales and transportation customers the annual charges assessed against Transco by the Commission. The instant filing also establishes the initial ACA charge of $0.0020 per dt in the commodity portion of Transco's sales and transportation rates.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20968 Filed 9-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-123-000]

Proposed Changes in FERC Gas Tariff; Wyoming Interstate Co., Ltd.

September 4, 1987.

Take Notice that Wyoming Interstate Company, Ltd. (WIC), on August 31, 1987, tendered for filing Sixth Revised Sheet No. 5, First Revised Sheet No. 29, and Original Sheet No. 29A to its FERC Gas Tariff, Original Volume No. 1. These tariff sheets are being filed in compliance with Commission Order No. 472, issued May 29, 1987.

Sixth Revised Sheet No. 5 to WIC's FERC Gas Tariff, Original Volume No. 1, reflects an increase in the Current Effective Rates of .21 cents per Mcf to include the FERC Annual Charge Adjustment per Order No. 472.

First Revised Sheet No. 29 and Original Sheet No. 29A to WIC's FERC Gas Tariff, Original Volume No. 1, reflect the addition of section 20 to the General Terms and Conditions. Section 20 includes the provision for the FERC Annual Charge Adjustment.

WIC states that copies of this filing were serve on all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before Sept. 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20969 Filed 9-10-87; 8:45 am]

BILLING CODE 6717-01-M

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-3259-9]

Approvals of PSD Permits and Extensions of PSD Permits; Region VI

Notice is hereby given that the Environmental Protection Agengy (EPA), Region VI, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-654M-2—Marathon Oil Co.

Natural gas processing plant located approximately two miles southwest of Iraan, Pecos County, Texas. PSD-TX-654M-2 modifies PSD-TX-654M-1 to authorize the deletion of the gas turbines from the requirements of oxygen measurement and air/fuel ratio adjustment as specified in Special Provision No. 5. The modified permit was issued on April 2, 1987.

2. PSD-TX-636M-1—Exxon Co., U.S.A.

PSD-TX-636M—1 modifies PSD-TX-636 to authorize the reduction of the frequency of inlet carbon monoxide manual monitoring on each of the permitted catalytic converter controlled engines, from daily to twice a month, at the existing natural gas processing plant located approximately five and one-half miles southeast of Conroe, Montgomery County, Texas. The modified permit was issued on April 7, 1987

3. PSD-TX-637M—1—Marathon Oil Co.

PSD-TX-637M-1 modifies PSD-TX-637 to authorize the monitoring of the inlet air pressure in lieu of monitoring exhaust oxygen content of the two Clark TLAB-6 gas-fired compressor engines at the existing natural gas processing plant located approximately two miles southwest of Iraan, Pecos County, Texas. The modified permit was issued on April 7, 1987.

4. PSD-LA-521M-1—Agrifuels Refining Corp.

PSD-LA-521M-1 modifies PSD-LA-521 to authorize changes in the plant design and proposed boiler fuel for the fuel-grade ethanol plant being constructed on Louisiana Highway 344, approximately 3.7 miles east of New Iberia, Iberia Parish, Louisiana. The modified permit was issued on April 15, 1987.

5. PSD-TX-617M-1—Valley View Energy Corp.

PSD-TX-617M-1 modifies PSD-TX-617 to authorize a change in design of the fuel handing system and the addition of a bed additive handling system at the cow manure-fired electrical generating station being constructed immediately south of State Highway 66, approximately five miles northeast of Hereford, Deaf Smith County, Texas. The modified permit was issued on April 23, 1987.

6. PSD-TX-474M-3—Exxon Co., U.S.A.

PSD-TX-474M-3 modifies PSD-TX—474M-2 to authorize the additional firing of 355 MMBtu/hr of low Btu gas in hydroformer 4 Furnaces, F-403 and F-404 at the existing refinery located at 2800 Decker Drive, Baytown, Harris County, Texas. The modified permit was issued on May 1, 1987.

These permits have been issued under EPA's Prevention of Significant Deterioration of Air Quality Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any question of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Notice is hereby given that the Environmental Protection Agency (EPA), Region VI, has extended the expiration date of the following Prevention of Significant Deterioration (PSD) permits:

1. PSD-TX-635—Lower Colorado River Authority

This permit, issued on July 12, 1985, authorized the construction of a 451 MW lignitefired steam generating unit and associated lignite handling equipment at the existing Fayette Power Project located approximately seven miles east of LaGrange, Fayette County, Texas. The company has postponed construction to reevaluate the need and scope of this project. The extension was granted on May 12, 1987, to a new expiration date of July 12, 1988.

2. PSD-TX-664—Union Texas Petroleum Corp.

This permit, issued on December 11, 1985, authorized the construction of a cryogenic unit and installation of two 2000 horsepower engines at the existing Benedum Gas Processing Plant located on Ranch Road 1555, approximately 11 miles northwest of Rankin, Upton County, Texas. The company has postponed their program of modification due to the current economic conditions. The extention was granted on June 2, 1987, to a new expiration date of November 26, 1987.

The PSD regulation at 40 CFR 52.21(r)(2) states that the Administrator may extend the 18-month period in which construction must commence if the company shows that an extension is justified.

A notice of EPA's proposed action to extend these PSD permits was published in a newspaper in the affected area of each facility.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Divisions, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue Dallas, Texas 75202.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for a review in the United State Fifth Circuit Court of Appeals, within 60 days of September 11, 1987. Under secton 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

The office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

Dated: August 24, 1987.

Robert E. Layton Jr.,

Regional Administrator, Region VI.

[FR Doc. 87-20911 Filed 9-10-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3260-1]

Availability of Environmental Impact Statements Filed August 31, 1987 Through September 4, 1987

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 870301, Draft, IBR, TX, San Jacinto River Basin Water Supply Project, Municipal and Industrial Water Use, Due: November 30, 1987, Contact: Nicolas Pelacios (806) 378-5474.

EIS No. 870302, Final, OSM, TN, North Chickamauga Creek Watershed, Designation of Land Unsuitable for Surface Coal Mining Operations, Hamilton County, Due: October 13, 1987, Contact: Willis Gainer (615) 673-4348.

EIS No. 870303, Draft, COE, GA, Savannah Harbor Comprehensive Study and Harbor Deepening, Chatman County, Due: October 26, 1987, Contact: Stanley (912) 944-5816.

Amended Notice

EIS No. 870257, Draft, USN, NJ, Naval Weapons Station Earle, Family Housing Development, Construction, Colts Neck, Due: September 21, 1987, Published FR 9–4–87—Incorrect due date.

Dated: September 8, 1987.

William Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 87–20997 Filed 9–10–87; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3260–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared August 24 Through 28, 1987

Availability of EPA comments prepared August 24, 1987 through August 28, 1987 pursuasnt to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D–UMT–E54006–FL, Rating EC1, Miami Metromover System, Automated Transportation System, Construction and Improvement, FL. SUMMARY: EPA's review of the draft EIS did not identify any major environmental impacts that could not be addressed by appropriate mitigation and best management practices. Additional air quality analysis and noise impact comparative documentation was requested for the final EIS.

Final EISs

ERP No. F–BLM–J70011–ND, North Dakota Resource Mgmt. Plan, ND. SUMMARY: EPA recommended written agreements by BLM with state and Federal management agencies, especially the National Park Service, for early identification of resource conflicts, and suggested that BLM select several watersheds as demonstration areas in accordance with BLM's Riparian Area Management Policy as alternate water sources for cattle. EPA also asked that gas fields near Park Service boundaries be identified for non-compliance with State hydrogen sulfide emission standards, and means found to improve the situation in cooperation with the North Dakota State Health Department.

ERP No. F–FHW–L40143–WA, Monroe and Lincoln Couplet Construction, Main Avenue to Wall and Monroe Streets, WA. SUMMARY: EPA made no formal comments. The final EIS adequately addressed the concerns that EPA had raised on the draft EIS and the project has been found to be satisfactory.

ERP No. FA–NRC–A06162–PA, Three Mile Island Nuclear Power Station, Unit 2, Decontamination Disposal of Radioactive Wastes Resulting From March 28, 1979 Accident Disposal of Accident Generated Water, PA. SUMMARY: EPA believes that there are no significant radiation impacts from the proposed alternatives, including the licensee's proposed alternative of evaporation.

Regulation

ERP No. RR–FHA–A99172–00, 7 CFR Part 12, Highly Erodible Land and Wetland Conservation (52 FR 24132) SUMMARY: EPA believes that the amendment has the potential to significantly reduce the erosion control and environmental benefits envisioned from the "Sodbuster" program. Therefore, EPA requests that USDA withdraw the amendment as proposed. EPA also offers to meet with USDA to develop an alternative that provides national consistency to the "Sodbuster" program, standardizes an equitable and legitimate procedure for granting exemptions in special cases where the soil erosion factor cannot be met, gives consideration to State-identified critical watersheds, and includes State water quality agencies in developing mechanisms to reach the goals of erosion reduction.

September 8, 1987.

William Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 87–20998 Filed 9–10–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59830; FRL–3258–9]

Certain Chemicals Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. The notice announces receipt of eighteen such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 87–222, 87–223, 87–224, 87–225 and 87–226 September 10, 1987

Y 87–227, 87–228, 87–229, 87–230, 87–231, 87–232, 87–233, 87–234, 87–235 and 87–236 September 14, 1987

Y 87–237, 87–238 and 87–239 September 15, 1987.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notices contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87–222.

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (S) Spray applied coatings. Prod. Range: Confidential.

Y 87–223

Manufacturer. The McCloskey Corporation.
Chemical. (G) Alkyd resin.
Use/Production. (S) Industrial dispersion vehicle used to make concentrated colorants for paint. Prod. range: 22,246 to 31,780 kg/yr.

Y 87–224

Manufacturer. The McCloskey Corporation.
Chemical. (G) Alkyd Resin.
Use/Production. (S) Industrial enamel for metal parts. Prod. range: 22,700 to 45,400 kg/yr.

Y 87–225

Manufacturer. The McCloskey Corporation.
Chemical. (G) Alkyd resin.

Use/Production. (G) Non-drying alkyd. Prod. range: 2,951 to 8,853 kg/yr.

Y 87-226

Manufacturer. The McCloskey Corporation.
Chemical. (G) Alkyd resin.
Use/Production. (S) Industrial plasticizing resin used to make polyester resin and/or nitrocellulose lacquer more flexible. Prod. range: 127,120 to 181,600 kg/yr.

Y 87-227

Manufacturer. Confidential.
Chemical. (G) Polyester polyol.
Use/Production. (S) Component of industrial adhesive. Prod. range: 16,000 to 18,000 kg/yr.

Y 87-228

Manufacturer. Confidential.
Chemical. (G) Linseed modified tall oil alkyd resin.
Use/Production. (G) Linseed modified tall oil alkyd resin.

Y 87-229

Manufacturer. Confidential.
Chemical. (G) Linseed modified tall oil alkyd resin.
Use/Production. (S) Industrial baking finishes. Prod. range: Confidential.

Y 87-230

Manufacturer. Confidential.
Chemical. (G) Linseed modified tall oil alkyd resin.
Use/Production. (S) Industrial baking finishes. Prod. range: Confidential.

Y 87-231

Manufacturer. Confidential.
Chemical. (G) Linseed modified tall oil alkyd resin.
Use/Production. (S) Industrial baking finishes. Prod. range: Confidential.

Y 87-232

Manufacturer. Confidential.
Chemical. (G) Linseed modified tall oil alkyd resin.
Use/Production. (S) Industrial baking finishes. Prod. range: Confidential.

Y 87-233

Manufacturer. Confidential.
Chemical. (G) Modified polymer of bisphenol A derivatives and benzene di- and tricarboxylic acid derivatives.
Use/Production. (G) Binder resin. Import range: Confidential.
Toxicity Data. Acute oral: <5 g/kg.
Toxicity Data. Acute oral: <5 g/kg.

Y 87-234

Manufacturer. The Dow Chemical Company.
Chemical. (G) Modified polycarbonate.
Use/Production. (S) Industrial and commercial thermoplastic resin for sheet, film, transportation, recreational, electronics appliance and medical ophthalmic media storage. Prod. range: Confidential.

Y 87-235

Importer. Confidential.
Chemical. (G) Saturated polyester resin.
Use/Import. (G) Polymeric industrial coating material. Import range: Confidential.

Y 87-236

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Industrial component of implement finish. Prod. range: 26,000 to 53,000 kg/yr.

Y 87-237

Manufacturer. The Dow Chemical Company.
Chemical. (G) Styrene, butadiene, polymer with alkanedioic acid and alkane ester.
Use/Production. (G) Industrial adhesive. Prod. range: Confidential.

Y 87-238

Manufacturer. The Dow Chemical Company.
Chemical. (G) Styrene, butadiene, polymer with alkanoic acid and alkane ester.
Use/Production. (G) Industrial adhesive. Prod. range: Confidential.

Y 87-239

Manufacturer. The Dow Chemical Company.
Chemical. (G) Styrene, butadiene, polymer with alkanedioic acid and alkane ester.
Use/Production. (G) Industrial adhesive. Prod. range: Confidential.

Date: September 1, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-20655 Filed 9-10-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-010027-018.

Title: Brazil/U.S. Atlantic Coast Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritima Netumar
American Transport Lines, Inc. (AmTrans)
A/S Ivarans Rederi
Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
Van Nievelt, Goudriaan and Co., B.V.

Synopsis: The proposed amendment would reallocate the pool shares of the parties for the period of April 1, 1987 to September 30, 1987, and would provide for a separate pool period including revenue earned by AmTrans beginning October 1, 1987, together with minimum sailings and port call requirements for AmTrans for this period. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: September 8, 1987.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 87-20932 Filed 9-10-87; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The

requirements for comments and protests are found in § 560.7 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200029.

Title: New Orleans Terminal Agreement.

Parties:

Port of New Orleans

New Orleans Cold Storage and Warehouse Company (NOCS)

Synopsis: The proposed agreement provides for the lease of a tract of land north of Florida Avenue and west of Alvan Street, New Orleans, to be used for the operation by NOCS of a warehouse for storage, handling and processing refrigerated and non-refrigerated commodities moving in the domestic or foreign water-borne commerce of the United States.

Filing Party: Mr. Herbert R. Haar, Jr., Port of New Orleans, P.O. Box 60046, New Orleans, LA 70160.

By Order of the Federal Maritime Commission.

Dated: September 8, 1987.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 87–20937 Filed 9–10–87; 8:45 am]

BILLING CODE 6730–01–M

Performance Review Board Membership

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: William J. Herron, Jr., Director of Personnel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Section 4315 (c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office Personnel Management, one or more performance review boards. The board shall review and evaluate the intitial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

James J. Carey,

Vice Chairman.

The Members of The Performance Review Board Are

1. James J. Carey, Vice Chairman
2. Thomas F. Moakley, Commissioner
3. Edward J. Philbin, Commissioner
4. Francis J. Ivancie, Commissioner
5. Charles E. Morgan, Chief, Administrative Law Judge
6. Norman D. Kline, Administrative Law Judge
7. Joseph N. Ingolia, Administrative Law Judge
8. Edward P. Walsh, Managing Director
9. Robert D. Bourgoin, General Counsel
10. John Robert Ewers, Director, Bureau of Administration
11. Wm. Jarrel Smith, Jr., Director, Bureau of Investigations
12. Robert A. Ellsworth, Director, Bureau of Economic Analysis
13. Seymour Glanzer, Director, Bureau of Hearing Counsel
14. Robert D. Drew, Director, Bureau of Domestic Regulation
15. Joseph C. Polking, Secretary

[FR Doc. 87–20933 Filed 9–10–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 2, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within ten working days of the date of publication in the **Federal Register**.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below: Federal Reserve Board Clearance Officer Nancy Steele, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal to approve under OMB delegated authority the discontinuance of the following report:

1. *Report title:* Report of Other Demand Deposits

Agency Form Number: FR 2019

OMB Docket Number: 7100–0059

Frequency: daily

Reporters: Foreign-related institutions in New York City

Annual Reporting Hours: 1,404

Small businesses are not affected.

General Description of Report:

This report contains daily levels of "other demand deposits" for 26 foreign-related institutions in New York City. These deposits, available with only a two-day lag, are used in projecting a component of Ml. The need for this report has been reduced, owing to a substantial improvement in projection procedures.

This information collection is authorized by law (12 U.S.C. 248(a), 353 et seq., 3105(b)(2)). Individual

respondent data are exempt from disclosure (5 U.S.C. 552(b)(4)).

Board of Governors of the Federal Reserve System, September 2, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-20877 Filed 9-10-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 28, 1987.

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

1. Request for Waiver and Recovery Questionnaire—0960-0037—The SSA-632 is needed by the Social Security Administration to collect information which is used to determine whether a person who has been overpaid benefits has the ability to repay them, or if SSA can authorize a waiver of the overpayment. Respondents: Individuals or households. Number of Respondents: 500,000; Frequency of Response: Occasionally; Estimated Annual Burden: 333,333 hours.

2. MEDDIC Data Collection—0960-0383—This form is used by SSA to collect information which aids them in developing national cost standards for State Disability Determination Services, determine the cost-effectiveness of those offices, predict trends in subprocesses, and allocate budget resources. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Occasionally; Estimated Annual Burden: 23,977 hours.

3. Reporting Changes that Affect Your Social Security Payment—0960-0073—This form is used by the Social Security Administration to determine whether a beneficiary can continue to be entitled to payment, and, if so, whether his or her payment amount should be adjusted based on the change reported. Respondents: Individuals or households. Number of Respondents: 70,000; Frequency of Response: Occasionally; Estimated Annual Burden: 5,833 hours.

Desk Officer: Elana Norden.

Office of the Secretary

(Call Reports Clearance Officer on 202-245-6511 for copies of package)

1. HHS Acquisition Regulations—HHSAR Part 342—Contract Administration—0990-0131—HHSAR Part 342 establishes requirements for notification by contractors of anticipated cost overruns or contract delays. These requirements are necessary for proper Departmental administration of contracts. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Numbers of Respondents: 150; Frequency of Response: Occasionally; Estimated Annual burden: 1,050 hours.

2. HHS Acquisition Regulations—HHSAR Part 333—Disputes and Appeals—0990-0133—Contractors for cost-reimbursement contracts are required to provide written notification to the HHS Contracting Officer of actions filed against the contractor arising out of the performance of the specific HHS contract. The information is used by HHS staff to Assess potential liability. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 100; Frequency of Response: Occasionally; Estimated Annual Burden: 50 hours.

3. HHS Acquisition Regulations—HHSAR Part 332—Contract Financing—0990-0134—The Cost Sharing clause and letter of credit clause contain reporting and/or recordkeeping requirements for affected contractors. The requirements are necessary to assure proper monitoring of costs charged to HHS. Respondents: State or local governments, Non-profit institutions, Small businesses or organizations. Number of Respondents: 274; Frequency of Response: Occasionaly; Estimated Annual Burden: 1,216 hours.

4. HHS Acquisition Regulations—HHSAR Part 328—Bonds and Insurance—0990-0135—Contractors are required to provide information on insurance pertaining to the contract. HHS uses the information to assure that adequate protection is provided, minimizing the risk of unforseen costs due to inadequate insurance cover. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 1,642; Frequency of Response: Occasionally; Estimated Annual Burden: 1,642 hours.

5. HHS Acquisition Regulations—HHSAR Part 316—Types of Contracts—0990-0130—The contract clause Negotiated Overhead Rates—Fixed requires contractors to submit proposed fixed overhead rates. HHS uses the information to negotiate fixed rates. Respondents: Non-profit institutions. Number of Respondents: 372; Frequency of Response: Occasionally; Estimated Annual Burden: 3,720 hours.

6. HHS Acquisition Regulations—HHSAR Part 324—Protection of Privacy and Freedom of Information—0990-0136—Contractors are required to provide written notification to the HHS Contracting Officer prior to the release of confidential information. HHS uses the notification to prevent improper disclosure of confidential information. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 514; Frequency of Response: Occasionally; Estimated Annual Burden: 4,112 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Information Collection Requirements Contained in BERC-356-F "Limits on Payments for Drugs"—NEW—These rules set limits on payments for drugs supplied under certain Federal health programs. Respondents: State or local governments. Number of Respondents: 52; Frequency of Response: 3; Estimated Annual Burden: 208 hours.

2. ESRD Beneficiary Selection—0938-0372—ESRD facilities have each new home dialysis patient select one of two methods to handle Medicare reimbursement. This system was developed to avoid duplicate billing by both intermediary and carrier. Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 4,000; Frequency of Response: 1; Estimated Annual Burden: 67 hours.

3. Conditions of Participation for Outpatient Clinics—0938-0336—This information is needed to determine whether the clinic is in compliance with published health and safety requirements. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 853; Frequency of Response: Annually; Estimated Annual Burden: 38,583 hours.

OMB Desk Officer: Allison Herron.

Office of Human Development Services

(Call Reports Clearance Officer on 202–472–4415 for copies of package)

1. Impact Measures for the RAP Management Support Contract Agency—0980–0103—The Administration for Children, Youth and Families, Head Start funds a National network of 16 Resource Access Project to serve as a resource of materials, information and technical assistance and to train head start staff to mainstream young children with handicaps. Respondents: State or local governments, Nonprofit institutions. Number of respondents: 369; Frequency of Response: Annual; Estimated Annual Burden: 60 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

Alcohol, Drug Abuse and Mental Health Administration

1. Targeted Outreach Demonstration Project—AIDS Initial Assessment—NEW—The Targeted Outreach Demonstration Project data instrument is designed to obtain information on intravenous drug use, and sexual behaviors of populations at high risk of AIDS and to test the effectiveness of community-based outreach and intevention strategies in reducing the spread of AIDS among IV drug users, their sexual partners, and prostitutes. Respondents: Individuals or households. Number of Respondents: 12,000; Frequency of Response: Occasionally; Estimated Annual Burden: 12,000 hours.

2. Community Mental Health Services for the Homeless Block Grant Requirements and Guidelines—NEW—The Community Mental Health Services Block Grant (Pub. L. 100–77) requires States to submit applications for the receipt of funds, certify assurance that funds will be spent appropriately, describe the planned use of funds, and submit annual reports on the use of these funds to provide community mental health services to homeless individuals who are chronically mentally ill. Respondents: State or local governments. Number of Respondents: 52; Frequency of Response: Annually; Estimated Annual Burden: 6,240 hours.

3. Confidentiality of Alcohol and Drug Abuse Patient Records—0938–0092—The Confidentiality statute requires that federally-conducted, regulated, or directly or indirectly assisted alcohol and drug abuse programs maintain the confidentiality of patient records. Information requirements are (1) to obtain written patient consent, (2) to document the "medical personnel" status of individuals to whom a disclosure is made, and (3) to notify each patient of the Federal requirement. Respondents: Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 4,000; Frequency of Response: Other (Per patient Admission); Estimated Annual Burden: 190,067 hours.

Office of Assistant Secretary for Health

1. National Medical Expenditure Survey (Round 4 of Household Survey and Survey of American Indians and Alaska Natives and Phase III of Institutional Population Component—0937–0163—NMES) will survey the civilian noninstitutionalized population and population in nursing homes and facilities for the mentally retarded, providing national estimates of use and expenditures for health care and health insurance coverage to evaluate current and proposed health policy decisions. Respondents: Individuals or households, businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 49,750; Frequency of Response: Occasionally; Estimated Annual Burden: 52,325 hours.

National Institutes of Health

1. Small Business Innovation Research Grant Applications—Phase I and Phase II—0925–0195—The purpose of the Small Business Innovation Research (SBIR) Phase I and Phase II applications is to provide a vehicle by which small businesses can apply for available research funds. This information is used by PHS to determine those applicants scientifically and administratively qualified to receive public funds and those projects relevant to PHS programs. Respondents: Small businesses or organizations. Number of Respondents: 2,850; Frequency of Response: Occasionally; Estimated Annual Burden: 36,900 hours.

2. Survey of Former NIH International Research Fellows—NEW—The FIC will analyze the information obtained from a sample of 1,020 former IRF recipients to evaluate the effectiveness of the fellowship in promoting scientific collaboration and research productivity and to identify any important policy issues that imply needed action on program refinement. Respondents: Individuals or households. Number of Respondents: 1,020; Frequency of Response: Single-time study; Estimated Annual Burden: 765 hours.

Centers for Disease Control

1. 1988 National Health Interview Survey—0937–0021—The National Health Interview Survey, an ongoing survey of the civilian, noninstitutionalized population, monitors the Nation's health. The 1988 NHIS will include supplements on Occupational Health, Child Health, Medical Device Implants, Alcohol and AIDS knowledge and Attitudes. Respondents. Individuals or households. Number of Respondents: 48,500; Frequency of Response: One-time; Estimated Annual Burden: 64,990 hours.

2. Interim Procedures for Requesting Health Assessments—NEW—The Agency for Toxic Substances and Disease Registry is authorized to perform health assessments where individuals have been exposed to a hazardous substance. This data collection (to be published in the Federal Register) describes procedures by which the public may request ATSDR to conduct health assessments. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 100; Frequency of Response: Occasionally; Estimated Annual Burden: 50 hours.

Food and Drug Administration

Infant Formula Recall Regulations—0910–0188—The subject regulations establish certain reporting procedures and operating protocol necessary to perform an effective recall. Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 4; Frequency of Response: Occasionally; Estimated Annual Burden: 11,118 hours.

OMB Desk Officer: Shanna Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
SSA: 301–594–5706
OS: 202–245–6511
HDS: 202–472–4415
HCFA: 301–594–1238

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington,

DC 20503, ATTN: (name of OMB Desk Officer).

Date: September 4, 1987.

James F. Trickett,

Deputy Assistant Secretary, Office of Administrative and Management Services.

[FR Doc. 87-20970 Filed 9-10-87; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Interagency Committee on Smoking and Health; Meeting

ACTION: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Centers for Disease Control announces the following committee meeting.

Name: Interagency Committee on Smoking and Health

Time and date: 9:00 a.m.–4:00 p.m., October 15, 1987

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201

Status: Open.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health on the: (a) Coordination of all research and education programs and other activities within the Department and with other Federal, State, local and private agencies, and (b) establishment and maintenance of liaison with appropriate private entities, Federal agencies, and State and local public health agencies, with respect to smoking and health activities.

Agenda: The entire meeting will be open to the public. It will include discussion of the implementation of the General Services Administration Smoking Regulations within Federal agencies.

Contact person for more informaiton: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from John Bagrosky, Executive Secretary, Interagency Committee on Smoking and Health, Park Building, Room 1-10, 5600 Fishers Lane, Rockville, Maryland 20857, Telephones: FTS: 443-1575; Commercial: 301/443-1575.

Dated: September 4, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-20873 Filed 9-10-87; 8:45 am]

BILLING CODE 4160-18-M

Standardized Motor and Sensory Neural Conduction Techniques; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: October 23, 1987

Time: 9 a.m.–3:30 p.m.

Place: Room 138-B, Appalachian Laboratory for Occupational Safety and Health (ALOSH), 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888

Purpose: To review a training manual used to standardize the techniques for collecting motor and sensory neural conduction values. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Mr. David E. Nestor, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888. Telephones: FTS: 923-4810, Commercial: 304/291-4810.

Dated: September 4, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-20874 Filed 9-10-87; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 87N-0303]

Drug Export; Abbott HIV Antigen EIA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Diagnostics Division, Abbott Laboratories has filed an application requesting approval for the export of the unapproved biological product, Abbott HTLV III [HIV] Antigen EIA to France.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contract person identified below. Any future inquiries concerning the export of human drugs and biological products under the Drug Export Amendments Act of 1987 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of human biological products that are not currently licensed in the United States. The export approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Abbott Diagnostics Division, Abbott Laboratories, Abbott Park, IL 60064, has filed an application requesting approval for the export of the biological product Abbott HIV Antigen EIA to France. This product is an in vitro enzyme immunoassay for the detection of Human T-Lymphotropic Virus Type III (HTLV III) [HIV] antigens in human serum, plasma, or tissue culture. The application was received and filed in the Center for Drugs and Biologics on August 12, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. This submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 21, 1987, and to provide an additional copy of the submission directly to the contact person identified above, the facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commission

of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: August 14, 1987.

Daniel L. Michels,

Director Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87-20890 Filed 9-10-87; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Delegation of Authority; Health Resources and Services Administration

Notice is hereby given that the Administrator, Health Resources and Services Administration, has delegated to the Director, Bureau of Resources Development, with authority to redelegate, all the authorities delegated to him relating to Public Health Emergencies, under section 319, Title III, of the Public Health Service Act, as amended, insofar as they pertain to the award to States of the $30 million supplemental appropriation for covering the cost of Azidothymidine and other drugs approved by the Food and Drug Administration for the treatment of patients with acquired immune deficiency syndrome (AIDS).

This delegation became effective on August 6, 1987.

Date: August 28, 1987.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 87-20893 Filed 9-10-87; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-87-862]

Delegation of Authority, Order of Succession; Pittsburgh Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence, disability or vacancy in the position of the Manager.

EFFECTIVE DATE: This designation is effective August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Peter M. Campanella, Regional Counsel, Philadelphia Regional Office, Department of Housing and Urban Development, Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106-3392. Phone Number (215) 597-2655 (This is not a toll-free number).

Designation: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability or vacancy in the position of the Manager, with all the powers, functions and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager.
2. Director, Housing Management Division.
3. Special Assistant to the Manager.
4. Chief Counsel.
5. Director, Housing Development Division.
6. Director, Community Planning and Development Division.

This designation supersedes the designation effective September 6, 1983. (48 FR 52983).

Authority: Delegation of Authority by the Secretary 50 FR 18742, May 2, 1985.

Concur:

Kenneth J. Finlayson,

Regional Administrator-Regional Housing Commissioner, Region III.

John E. Pisano,

Manager, Pittsburgh Office.

August 24, 1987.

[FR Doc. 87-20837 Filed 9-10-87; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

State/Federal Auburn Dam Task Force; Reestablishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is reestablishing the State/Federal Auburn Dam Task Force immediately so that its coordinating and advisory functions can continue.

The purpose of the Task Force is to assist the Secretary in reviewing project formulation and financial plans, to make recommendations on partnership agreements, to allocate costs based on benefits to be derived, to determine financial capabilities of the beneficiaries, and to recommend contractual/organizational mechanisms for completion of the Auburn Dam.

The Task Force will be comprised of the following individuals: Assistant Secretary of the Interior for Water and Science; Assistant Secretary of the Interior for Fish, Wildlife, and Parks; the Commissioner of Reclamation; Senator Pete Wilson and Representative Norman Shumway (California), and a maximum of eight members recommended by the Governor of California.

Further information regarding the committee may be obtained from the Assistant Secretary for Water and Science, Department of the Interior, 18th and C Sts, NW., Washington, DC 20204

Certification

I hereby certify that the State/Federal Auburn Dam Task Force is in the public interest in connection with the performance of duties imposed on the Department of the Interior by Pub. L. 89-161.

Dated: July 17, 1987.

Donald P. Hodel,

Secretary of the Interior.

[FR Doc. 87-20696 Filed 9-10-87; 8:45 am]

BILLING CODE 4310-09-M

Bureau of Land Management

[WY920 07 4121-11; W-106486 Wyoming]

Invitation for Coal Exploration License; Powder River Coal Co.

Powder River Coal Company hereby invites all interested parties to participate on a pro rata sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Campbell County, Wyoming:

T. 41 N., R. 70 W., 6th P.M., WY
Sec. 11: Lot 12.

Containing 40.36 acres.

All of the coal in the above land consists of unleased Federal coal, within the Powder River Basin known coal leasing area. The purpose of the exploration program is to establish the cropline and thickness of the Wyo-Dak Anderson coal seam.

A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number W-106486): Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; and Bureau of Land Management, 1701 East "E" Street, Casper, Wyoming 82601.

This notice of invitation will be published in the Gillette newspaper once each week for two consecutive weeks beginning the week of September 14, 1987, and in the **Federal Register.** Any party electing to participate in this exploration program must send written notice to both the Bureau of Land

Management and Powder River Coal Company no later than 30 days after publication of this invitation in the **Federal Register.** The written notice should be sent to the following addresses: Mr. Ronald J. Braig, Powder River Coal Company, Caller Box 3034, Gillette, Wyoming 82716, and the Bureau of Land Management, Wyoming State Office, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003.

The foregoing is published in the **Federal Register** pursuant to Title 43, Code of Federal Regulations, § 3410.2-1(c)(1).

F. William Eikenberry,

Associate State Director.

[FR Doc. 87-20979 Filed 9-10-87; 8:45 am]

BILLING CODE 4310-22-M

Availability of Draft Environmental Impact Statement for the Proposed Trans-Alaska Gas System; Alaska

AGENCIES: Bureau of Land Management, Alaska State Office, U.S. Army Corps of Engineers, Alaska District, Interior.

ACTION: Notice of availability and public hearings.

SUMMARY: The Bureau of Land Management (BLM) and U.S. Army Corps of Engineers (USACE) announce the Draft Environmental Impact Statement (DEIS) for the Trans-Alaska Gas System (TAGS) will be available for public review and comment on or about September 21, 1987. This document evaluates the effects in Alaska for construction and operation of a 796.5 mile long, 36-inch outer diameter, buried, chilled natural gas pipeline system between Prudhoe Bay and a tidewater Liquid Natural Gas (LNG) plant at Anderson Bay near Valdez, Alaska. This natural gas pipeline and related facilities are wholly within Alaska. The BLM and USACE are proposing to authorize the TAGS project and related facilities on a route from Prudhoe Bay that generally parallels the Trans-Alaska Pipeline System (oil pipeline). TAGS would be located on the west side of Galbraith Lake and would follow the highway through Keystone Canyon. The LNG plant and marine terminal would be located on State owned lands at Anderson Bay. The U.S. Forest Service has identified certain National Forest lands near the Anderson Bay LNG plant as suitable for transfer to State ownership. In the event land ownership has not been completed, the U.S. Forest Service proposes to issue appropriate land use authorizations.

Proposed authorizations by BLM and USACE would be conditioned upon an export license being issued by the Economic Regulatory Administration and upon review and approval of detailed site specific information on the TAGS design.

The TAGS DEIS is tiered in accord with the provisions of 40 CFR 1502.20, with initial decisions by BLM related to the siting of the proposed TAGS project on Federal lands in accord with 43 CFR Part 2880 and the USACE for permits under section 404 of the Clean Water Act and section 10 of the River and Harbor Act of 1899 for the discharge of dredged or fill material into waters of the United States (including adjacent wetlands) and for work (including structures placed) in navigable waters of the United States. The TAGS DEIS also forms the basis for subsequent action by the U.S. Forest Service for certain lands in the Chugach National Forest that are in close proximity to the LNG plant, and for action by the Department of Energy, Economic Regulatory Administration to evaluate whether a license should be granted for export of Alaskan North Slope natural gas to Pacific Rim Countries. The TAGS DEIS further is intended to fulfill the NEPA requirements of the Federal Energy Regulatory Commission in its actions to approve or disapprove the proposed place of export.

No National Conservation System Unit lands are crossed with the proposed TAGS project to Anderson Bay.

In addition to the proposed Anderson Bay alignment, an alternative route to an LNG plant at Boulder Point on Cook Inlet and a "No Action" scenario are evaluated. The Boulder Point alternative requires crossing Denali National Park and Preserve. Selection of the Boulder Point alternative will require compliance with procedures set forth in 43 CFR Part 36. Those procedures for crossing National Conservation System Units in Alaska would be implemented only if it is concluded that the proposed TAGS route to Anderson Bay is not feasible or would result in more or more severe adverse impacts than the Boulder Point alternative.

SUPPLEMENTARY INFORMATION:

Due to an influx of workers during the construction phase of the proposed TAGS project to Anderson Bay, it has been determined that there would be a significant restriction on subsistence uses by rural residents living between Livengood and Wiseman/Coldfoot and the Glennallen area. A similar finding has been made for rural residents living between Nenana and Minto, should the Boulder Point alternative be selected.

It initially has been determined that the proposed TAGS project to Anderson Bay would be compatible with the existing Trans-Alaska Pipeline System operated by Alyeska Pipeline Service Company and compatible with the authorized but unconstructed Alaska Natural Gas Transportation System sponsored by Northwest Alaskan Pipeline Company.

Yukon Pacific Corporation also has filed an application with the State of Alaska Department of Natural Resources (ADNR) to use State lands for the proposed TAGS project. Actions by the BLM and USACE have been coordinated with ADNR and other State permitting agencies. Representatives of the State will be present at the BLM/USACE public hearings to answer questions on pending State actions.

Comments on the TAGS/DEIS will be accepted if they are submitted or post-marked no later than November 20, 1987. All comments must be sent to: Jules V. Tileston, TAGS Project Officer, Bureau of Land Management, Alaska State Office, 701 C Street, Box 30, Anchorage, Alaska 99513, phone (907) 267-1268.

There will be public hearings on the adequacy of the TAGS DEIS and findings on subsistence at the following locations and times:

Date	Time	Meeting location
Oct. 23, 1987	7:00 p.m. to 10:00 p.m.	Soldotna, Alaska, Kenai Peninsula, Borough Assembly Room
Oct. 24, 1987	1:30 p.m. to 5:00 p.m.	Anchorage, Alaska, Anchorage Museum of Natural History Auditorium
Oct. 26, 1987	7:00 p.m. to 10:00 p.m.	Valdez, Alaska, City Council Chambers
Oct. 27, 1987	7:00 p.m. to 10:00 p.m.	Glennallen, Alaska,[1] Glennallen High School Gymnasium
Oct. 28, 1987	7:00 p.m. to 10:00 p.m.	Fairbanks, Alaska, Hutchinson Career Center
Oct. 29, 1987	2:00 p.m. to 6:00 p.m.	Barrow, Alaska, North Slope Borough Assembly Room
Oct. 30, 1987	10:00 a.m. to noon.	Stevens Village, Alaska,[1] Community Center
Oct. 30, 1987	2:00 p.m. to 5:00 p.m.	Cold foot, Alaska,[1] Coldfoot Services

[1] Location for Hearings required by Section 810 Alaska National Interest Lands Conservation Act.

Oral testimony at these meetings will be limited to 10 minutes per person. A copy of the TAGS DEIS will be sent to individuals, companies, Federal and State and Local agencies, and groups which have expressed interest in the TAGS project.

For further information or copies of the TAGS DEIS contact Jules V. Tileston at the address noted above.

Dated: August 30, 1987.

Michael J. Penfold,

Alaska State Director,
Bureau of Land Management.

Col. Wilbur T. Gregory, Jr.,

District Engineer, Alaska,
U.S. Army Corps of Engineers.

[FR Doc. 87-20871 Filed 9-10-87; 8:45 am]

BILLING CODE 4310-JA-M

[NV-932-07-4333-02; NV-040-8501]

Nevada Off-Road Vehicle Designations

AGENCY: Ely District Office, Bureau of land Management, Interior.

ACTION: Notice of Off-Road Vehicle Designation Decisions.

SUMMARY: Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340. The following described lands under administration of the Bureau of Land Management are designated as open or limited to off-road motorized vehicle use.

The 3,842,216 acre area affected by the designation is known as the Egan Resource Area located in the BLM's Ely District and encompassing lands in White Pine, Lincoln, and Nye Counties, Nevada. These designations are a result of a resource management decision made in the 1984 Egan Resource Management Plan and finalized in the Egan Record of Decision dated February 3, 1987. These designations are published as final today. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Land Appeals.

A. Open Designation

Areas which are designated open comprise approximately 3,790,136 acres. Open designation was determined to be appropriate for these public lands because of the light off-road vehicle use which the area receives, and because of the high importance attached to such use by local residents.

B. limited Designation

Two area totalling 52,080 acres have been designated as limited to existing roads and trails. The first, the Sheep Pass Canyon Area, 37,800 acres, was designated because casual road extension is beginning to damage the wilderness character of a portion of the South Egan Range Wilderness Study Area. The second area, 14,280 acres, located just south of Wells Station Summit was designated because ORV use associated with unpermitted woodcutting is beginning to damage the wilderness character of the Riordan's Well Wilderness Study Area.

These designations become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the authorized officer. The Environmental Impact Statement for the Egan Resource Management Plan is available for inspection at the Ely District Office, listed below.

ADDRESS: For further information, contact either the Ely District Mnager or the Egan Area Manager at the following address:

District Manager, Ely District Office, Star Route 5, Box 1, Ely, NV 89301, 702-289-4865

Area Manager, Egan Resource Area, Star Route 5, Box 1, Ely, NV 89301, 702-289-4865

Date: August 27, 1987.

Kenneth G. Walker,

District Manager.

[FR Doc. 87-20980 Filed 9-10-87; 8:45 am]

BILLING CODE 4310-HC-M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska State Office

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48414-K has been received covering the following lands:

Fairbanks Meridian, AK

T. 18 S., R. 4 E.,
Sec. 24 SE¼
(160 acres).

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from January 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48414-K as set out in section 31 (d) and (e) of the Mineral Lease Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective January 1, 1987, subject to the terms and conditions cited above.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

Dated: September 4, 1987.

[FR Doc. 87-20981 Filed 9-10-87; 8:45 am]

BILLING CODE 4310-JA-M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska State Office

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48414-CX has been received covering the following lands:

Fairbanks Meridian, AK

T. 18 S., R. 4 E.,
Sec. 28 SE¼SW¼
(40 acres).

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from January 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48414-CX as set out in section 31 (d) and (e) of the Mineral Lease Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective January 1, 1987, subject to the terms and conditions cited above.

Dated: September 4, 1987.

Kay F. Kletka

Chief, Branch of Mineral Adjudication.

[FR Doc. 87-20981 Filed 9-10-87; 8:45 am]

BILLING CODE 4310-JA-M

[ID-030-4212-14]

Realty Action; Idaho Falls District, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, Cancellation of Public Land Sales I-20355 and I-23363, Bingham County, Idaho.

SUMMARY: The proposed sales of public land parcels I-20355 and I-23363, originally scheduled for June 30, 1987 (**Federal Register**, Vol. 52, No. 83, published April 30, 1987) and later rescheduled for September 22, 1987 (**Federal Register**, Vol. 52, No. 156, published August 13, 1987) are cancelled due to an appeal filed by the Idaho Department of Fish and Game. Any rescheduling of the sale offering date will depend upon the outcome of the appeal as determined by the Interior

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Board of Land Appeals, Washington, DC.

Gary L. Bliss,

Acting District Manager

[FR Doc. 87-20995 Filed 9-10-87; 8:45 am]

BILLING CODE 4310-GG-M

[OR-080-07-4212-14: GP7-269; OR 42870]

Realty Action; Direct Sale; Benton County, OR

September 4, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value of $1,475.00:

Willamette Meridian, OR

T. 15 S., R. 8 W.,
Sec. 4 Lot 19

Containing 1.55 acres in Benton County, Oregon.

Upon publication of this notice in the **Federal Register**, the above-described land will be segregated from appropriation under the public land laws, including the mining laws, except the mineral leasing laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation, or 270 days from the date of publication, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. The parcel is suitable for cemetery-related uses, such as a vehicle parking area and maintanance of a tree-windfall zone. The sale is consistent with the Westside Management Framework Plan and the public interest will be served by offering this parcel for sale.

The parcel is being offered to the Lobster Valley Church of Christ (LVCC), using direct sale procedures authorized under 43 CFR 2711.3-3. The parcel will be sold to LVCC at the fair market value without competitive bidding.

Terms and Conditions of the Sale

The terms, conditions, and reservations applicable to the sale are as follows:

1. The sale will be held not less than 60 days from the date of publication of this notice in the **Federal Register** in the Lobby Level Conference Room, Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306-1208. If the parcel is not sold, it will be withdrawn from public sale.

2. LVCC will be required to submit a deposit of either cash, bank draft, postal money order, or any combination of these for not less than 20 percent of the appraised value. The remainder of the full appraised price must be submitted prior to the expiration of 180 days from the date of the sale. Failure to submit the remainder of the full appraised price shall result in the cancellation of the sale and the forfeiture of the deposit.

3. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with section 209 of the Federal Land Policy and Management Act (43 U.S.C. 1719). LVCC must include with its bid deposit a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

4. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945.

5. The patent will be issued subject to all valid existing rights and reservations of record.

Detailed information concerning the sale is available for review at the Salem District Office.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Alsea Area Manager, Salem District Office, address above. Objections will be reviewed by the Salem District Manager who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

John H. Mears,

Alsea Area Manager.

[FR Doc. 87-20983 Filed 9-10-87; 8:45 am]

BILLING CODE 4310-33-M

[U-54654; UT-040-07-4212-13]

Realty Action; Exchange of the Surface Estate of Public and Private Land, Iron County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: The surface estate of the following described lands have been determined to be suitable for disposal by exchange under section 206 of the *Federal Land Policy and Management Act of 1976* (43 U.S.C. 1716): S½ NE¼ NE¼ Sec. 18, T. 38 S., R. 12 W., SLM, containing 20 acres more or less.

In exchange for the surface estate of these lands, the United States will acquire the surface estate of the following described lands from David B. Davies and Jolynn S. Davies: N½ NW¼ NE¼ Sec. 8, T. 38 S., R. 12 W., SLM containing 20 acres more or less.

The purpose of this exchange is to promote the orderly administration of public land. This exchange is an equal value exchange and a monetary equalization will not be necessary. The public lands described are hereby segregated from the operation of the Federal mining laws pending disposition of this action.

ADDRESS: Detailed information concerning this exchange is available at the Bureau of Land Management, Beaver River Resource Area Office, 444 South Main Street, Cedar City, Utah 84720, (801) 586-2458. Comments should be sent to the same address.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the exchange are:

1. There is reserved to the United States a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, (43 U.S.C. 945).

2. The exchange will be of the surface estate only with all mineral rights being retained by the United States.

3. Title transfer will be subject to valid existing rights.

DATES: Interested parties have until October 30, 1987 to submit comments. Any objections received during the comment period will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Realty Action Notice will become the final determination of the Department of the Interior.

Date: September 3, 1987.

George H. Peternel

Acting District Manager.

[FR Doc. 87-20984 Filed 9-10-87; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-020-07-4220-10]

Proposed Withdrawal of Public Lands; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed withdrawal of public lands.

The Bureau of Land Management is proposing to withdraw the following

public lands from appropriation under the land laws and from the mining and mineral leasing laws.

Gila and Salt River Meridian, Arizona

T. 12 S., R. 9 E.,
Sec. 29, lot 3, that portion of lot 4 outside PLO 4260, S½NW¼, N½SW¼, N½S½SW¼, S½SE¼SW¼, SE¼.
Sec. 30, S½, lots 1, 2, 3, 4, 5, 9, 10, and 11, N½N½SE¼, SW¼NW¼SE¼, SW¼SE¼SE¼, SE¼NE¼SE¼.
Sec. 31, lots 3, 4, portions of lots 5 and 8 lying outside mineral entry patents, NW¼NE¼NE¼, N½NW¼NE¼, SW¼NW¼NE¼, NW¼SW¼NE¼, S½S½NE¼, NE¼SE¼NE¼, SE¼NE¼NE¼, SE¼, SW¼NW¼, and E½SW¼.
Sec. 33, NE¼, N½NW¼, N½SW¼NW¼, SE¼NW¼, N½SE¼SW¼, S½S½SW¼, E½SE¼, N½NW¼SE¼, SE¼NW¼SE¼.
T. 13 S., R. 9E.,
Sec. 5, W½SW¼.
Sec. 6, lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼.

The subject lands are essential habitat for the protection and recovery of the Nichol Turk's Head Cactus, which BLM is required to manage and protect because this cactus is listed as an endangered species by the U.S. Fish and Wildlife Service.

In accordance with the regulations of 43 CFR 2300.0–3(a)(1), publication of this notice will segregate the public lands described in this notice from appropriation under the public land laws or the mining laws.

The segregation of the above described lands shall terminate upon issuance of a document withdrawing these lands, upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date shown below, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Date: September 3, 1987.

Kirby Boldan,

Acting District Manager.

[FR Doc. 87–20985 Filed 9–10–87; 8:45 am]

BILLING CODE 4310–32–M

[CO–940–07–4220–10; C–4390]

Partial Cancellation of Withdrawal Application; Colorado

September 2, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture has cancelled their withdrawal application insofar as it affects 710 acres of National Forest System land within the Roosevelt National Forest. This notice terminates the segregation imposed by this application and opens the land to operation of the U.S. mining laws. The land has been and will remain open to mineral leasing and to Forest Service management.

EFFECTIVE DATE: September 11, 1987.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215, 303–236–1768.

Withdrawal application C–4390 is hereby cancelled in part and the segregation imposed on the following described lands by Notice of Proposed Withdrawal published July 25, 1968, 33 FR 10582 (1968) (FR Doc. 68–8863), is hereby terminated:

Roosevelt National Forest Sixth Principal Meridian

T. 1 N., R. 73 W.,
Sec. 4, S½S½SW¼, NE¼SW¼SE¼, and S½SW¼SE¼;
Sec. 8, N½S½NE¼,
Sec. 9, W½E½NW¼, W½NW¼, NE¼SW¼, and S½N½SE¼;
Sec. 10, NW¼SW¼, S½NE¼NW¼, S½NW¼NE¼, SE¼NW¼, E½NE¼, and SW¼NE¼;
Sec. 11, W½W½.

The area described aggregates 710 acres in Boulder County.

Richard D. Tate,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–20879 Filed 9–10–87; 8:45 am]

BILLING CODE 4310–JB–M

[OR–943–07–4220–11; GP–07–282 ORE–010616, WASH–04065]

Proposed Continuation of Withdrawal; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers proposes that a land withdrawal of approximately 560 acres continue for an additional 100 years and requests that the National Forest System lands remain closed to mining and that the lands outside the National Forest System remain closed to surface entry and mining. All the lands have been and will remain open to mineral leasing subject to Department of Army Concurrence.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office; P.O. Box 2965, Portland, Oregon 97208; 503–231–6905.

The U.S. Army Corps of Engineers proposes that Public Land Order No. 3966 continue for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands involved are located within the following townships and are partially located within the Mt. Hood and Gifford Pinchot National Forests:

Willamette Meridian

T. 2 N., Rs. 7, 8, 12, 13 and 14 E., and T. 3 N., Rs. 8, 9, 10 and 12 E.

The lands involved contain approximately 560 acres in Multnomah, Hood River and Wasco Counties, Oregon and Skamania and Klickitat Counties, Washington.

The purpose of the withdrawal is to protect the Bonneville Lock and Dam Project. The withdrawal currently segregates the National Forest System lands from operation of the mining laws and the lands outside the National Forest System from surface entry and mining. The U.S. Army Corps of Engineers requests no change in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 31, 1987

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–20986 Filed 9–10–87; 8:45 am]

BILLING CODE 4310–33–M

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Bureau of Reclamation

Operating Policy for the Green Mountain Reservoir, Colorado-Big Thompson Project; Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of amendment of the operating policy for Green Mountain Reservoir.

SUMMARY: On December 22, 1983, the Bureau of Reclamation published the operating policy for the Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado. It was, and is, the intent of the operating policy to facilitate the marketing of water from Green Mountain Reservoir. In order to facilitate that action, the Bureau of Reclamation submits the proposed changes. Except for the proposed changes contained herein, all other provisions of the operating policy will remain in full force and effect.

Item 4 of the operating policy will be changed to read:

4. When water is released for purposes other than those specified in paragraph 2 to meet certain western Colorado users' needs rather than for power generation at Green Mountain Powerplant (although power may be generated with such releases), an agreement will be required between the user and the Regional Director, Missouri Basin Region (MB), or other person or entity designated by the Secretary of the Interior. Water service charges, including power interference charges, when appropriate relative to such agreements, will be established by the Regional Director, MB, or by such other person or entity designated by the Secretary of the Interior, after review and approval by the Regional Director, MB, after consultation with the Regional Director, Upper Colorado Region.

Further, all other references in the Operating Policy to "Regional Director, LMR" shall be changed to read, "Regional Director, MB."

RECLAMATION CONTACT: Written requests for the policy document or written comments should be addressed to the Regional Director, Missouri Basin Region, Bureau of Reclamation, 316 North 26th Street, Billings, Montana, 59107–6900. Telephone inquiries may be made to Mr. Roger Patterson at (406) 657–6214.

Date: September 3, 1987.

C. Dale Duvall,

Commissioner.

[FR Doc. 87–20870 Filed 9–10–87; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Orangutan Research & Conservation Project, Sacramento, CA—PRT–721268.

The applicant requests a permit to import blood samples taken from up to 24 rehabilitant orangutans (*Pongo pygmaeus*) in Tanjung Puting National Park, Borneo, Indonesia for analysis of genetic variability.

Applicant: Rocky Waters Farm, Winston, GA—PRT–721278.

The applicant requests a permit to export endangered species of artificially propagated cacti *Echinocereus, engelmannii, E. fendleri, E. kuenzleri, E. inermis, E. triglochidiatus, E. triglochidiatus arizonicus* and *E. viridiflorus davisii* to Leonardo Gavazzi, Pistoia, Italy.

Applicant: William S. Sachse, Polk City, IA—PRT–721285.

The applicant requests a permit to purchase in interstate commerce two pairs of Hawaiian (=nene) geese (*Nesochen* (=*Branta*) *sandvicensis*) from Charles Nugent, Kimbolton, Ohio for the purpose of enchancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: September 8, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87–20892 Filed 9–10–87; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Development Operations Coordination Document; Conoco, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Conoco, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2857, Block 42, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 2, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 2, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–20917 Filed 9–10–87; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 8139, BLock A–96, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on September 3, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCSA Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: September 3, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–20880 Filed 9–10–87; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Smuggler Gulch, San Ysidro, CA and Tijuana, Mexico and Sewage Collection and Pumping Facility; Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: Based on an environmental assessment, the U.S. Section finds that the proposed action to construct a facility in Smuggler Gulch on the international boundary to capture fugitive sewage flows from the City of Tijuana, Mexico is not a major Federal action that would have a significant adverse affect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing section 102 of the National Environmental Policy Act (NEPA), published in the **Federal Register** September 2, 1981 (46 FR 44083); the U.S. Section hereby gives notice that an environmental impact statement is not being prepared for the joint international project.

FOR FURTHER INFORMATION CONTACT: Mr. M. R. Ybarra, U.S. Section Secretary International Boundary and Water Commission, United States and Mexico, United States Section; The Commons, C–310; 4171 North Mesa; El Paso, Texas 79902. Telephone: (915) 534–6698, FTS 570–6698.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is that the Government of the United States join with the Government of Mexico, through the International Boundary and Water Commission (Commission), to construct a surface flow collection facility in Smuggler Gulch on the international boundary. The proposed project is designed to capture fugitive sewage spills from Tijuana flowing through this canyon into the Tijuana River flood plain on the United States side of the international boundary and to return the fugitive flows to the Tijuana sewage system.

The proposed action fulfills, for Smuggler Gulch, resolution number 9 in Commission Minute Number 270 (April 30, 1985), where Mexico agrees to accept in its treatment and disposal system uncontrolled sewage captured in the United States. The U.S. Section adopted in April 1985 a finding of no significant impact based on a final environmental assessment for the agreement to solve the border sanitation problem in the Tijuana-San Diego area. The IBWC interceptor system was placed in operation for this same purpose on three drains east of Smuggler Gulch following a finding of no significant impact based on a final environmental assessment in September 1985.

Alternatives Considered

Two alternatives were considered:

The Proposed Action Alternative provides for construction of a diversion dike and sediment settling pond located within Mexico and a pump station with about 2,000 linear feet of 12-inch steel pipeline along and parallel to the international boundary within the United States.

The proposed facility is planned to capture up to four (4) million gallons per day of fugitive sewage flows from Smuggler Gulch. Solids and sediment will settle out in Mexico prior to being pumped along the United States side to a location atop Spooner's Mesa where the captured flows will be returned to the Tijuana sewage system in Mexico.

The No Action Alternative will result in no anticipated change in existing conditions. Fugitive flows of raw sewage will continue to enter the lower Tijuana River Valley from Smuggler Gulch. Because the present situation is unacceptable and will only worsen if nothing is done, the "no action" alternative has been rejected.

Environmental Assessment

The U.S. Section completed the Draft Environmental Assessment on September 1, 1987.

Findings of the Environmental Assessment

The Draft Environmental Assessment finds that:

1. The proposed action would capture and return to Mexico fugitive sewage flows from Tijuana that enter the United States through Smuggler Gulch.

2. Construction activities would have a minimal impact on wildlife and habitat in the area which has been highly disturbed due to both natural and human occurrences.

3. No endangered and/or threatened species in the area or habitat critical to the continued existence of these species would be affected by the proposed action.

4. No properties listed or eligible for listing on the National Register of Historical Places or any known archaeological resources are expected to be affected by the proposed action.

5. The proposed action is expected to benefit the Tijuana River National Estuarine Sanctuary, a listed property on the National Registry of Natural Landmarks, by reducing the amount of pollution from untreated sewage entering the estuary.

6. Pollution of the lower Tijuana River Valley and San Diego County properties would continue from Smuggler Gulch under the no action alternative creating a potentially serious public health threat.

On the basis of the Draft Environmental Assessment, the U.S. Section determines that an environmental impact statement is not required for construction of a facility in Smuggler Gulch on the international boundary designed to capture fugitive sewage flows from Mexico and to return them to the Tijuana sewage system and hereby supplies notice of a finding of no significant impact.

An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice.

The Draft Finding of No Significant Impact (FONSI) and Draft Environmental Assessment (EA) have been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the Draft FONSI and Draft EA are available to fill single copy requests at the above address.

Date: September 1, 1987.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 87-20987 Filed 9-10-87; 8:45 am]

BILLING CODE 4710-03-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

September 8, 1987.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent corporation and address of principal office: Mid States Steel Products, 2044 Buck Lane, P.O. Box 1128, Lexington, KY 40511.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: M-S Transfer, Inc., a Kentucky corporation.

B.1. Parent Corporation and mailing address of principal office: American Home Products Corporation, 685 Third Avenue, New York, New York 10017.

2. Wholly owned divisions and subsidiaries which will participate in the operations, and state(s) of incorporation:

Ayerst Laboratories Inc.—New York
Whitehall Laboratories Inc.—Delaware
Wyeth Laboratories Inc.—New York
Fort Dodge Laboratories Inc.—Iowa
Corometrics Medical Systems, Inc.—Delaware
American Home Food Products, Inc.—Delaware
Boyle-Midway Household Products Inc.—Delaware
Quantum Pharmics, Ltd.—New York
Sherwood Medical Company—Delaware
Whitehall-Boyle International Inc.—New York
Lucks Incorporated—Delaware
Wyeth International—New York
American Home Foods, Inc.—Delaware

Kathleen M. King,

Acting Secretary.

[FR Doc. 87-20924 Filed 9-10-87; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-18544]

E. Jack Walton; Continuance in Control Exemption; Walton & Sons Stevedoring and Contracting Co. and Walton Terminal, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: E. Jack Walton seeks an exemption from the requirement of prior regulatory approval for his continuance in control of water carrier Walton & Sons Stevedoring and Contracting Co. (WSSC) (W-1393) and Walton Terminal, Inc. (WTI), which is seeking an initial grant of motor common and contract authority in No. MC-201951.

DATES: Comments must be received by October 13, 1987.

ADDRESSES: Send comments (an original and 10 copies), referring to docket No. MC-F-18544, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioners' representative: Joe G. Fender, 9601 Katy Freeway, Suite 320, Houston, TX 77024

FOR FURTHER INFORMATION CONTACT:

Ken Schwartz (202) 275-7956

TDD for hearing impaired: (202) 275-1721

SUPPLEMENTARY INFORMATION: E. Jack Walton seeks, under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982), an exemption from the requirement of prior regulatory approval for his continuance in control of WSSC and WTI.

Mr. Walton is sole owner of WSSC, which is authorized to operate as a water common carrier by towing vessel, transporting general commodities, serving all ports on the Gulf Intracoastal Waterway between and including Mobile, AL, and Brownsville, TX. Mr. Walton also is sole owner of WTI, which is seeking initial grants of motor carrier authority to transport lubricating oil, asphalt, and residual petroleum fuels: (1) As a contract carrier, between points in the contiguous United States; and (2) as a common carrier, between points in Texas.

Upon the issuance of authority to WTI, Mr. Walton will control both a water carrier and a motor carrier. Acquisition of control of a carrier by a person that is not a carrier but controls any number of carriers may be carried out only under Commission regulation or under an exemption from regulation. *See* 49 U.S.C. 11343(a)(5) and 11343(e). Mr. Walton states that approval of the transaction will be consistent with the national transportation policy in that it will promote competitive and efficient transportation services to: (a) Meet the needs of shippers and receivers; and (b) allow a variety of quality and price options. Mr. Walton asserts that the transaction is of limited scope because WSSC holds limited authority and WTI is a new carrier proposing to transport only a few specified commodities either under contract or within a limited territory. Finally, Mr. Walton argues that the transaction will not threaten shippers with an abuse of market power because the rates and services of the involved carriers are so radically different as to be noncompetitive. He adds that WSSC has not been active for the past 12 months.

A copy of the petition may be obtained from petitioners' representative, or it may be inspected at the Washington, DC, offices of the Interstate Commerce Commission during normal business hours.

Decided: September 3, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Chairman Gradison did not participate. Commissioner Andre was absent and did not participate.

Kathleen M. King,

Acting Secretary.

[FR Doc. 87-20925 Filed 9-10-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31103]

Boston and Maine Corp. and Delaware and Hudson Railway Co.; Lease and Trackage Rights Exemption; Springfield Terminal Railway Co.; Exemption

Boston and Maine Corporation (B&M), Delaware and Hudson Railway Company (D&H), and Springfield Terminal Railway Company (ST) filed a notice of exemption for:

(1) B&M's lease to ST of: (a) The Freight Main Line between milepost 111.22, at South Portland, ME, and milepost 36.45, at the Massachusetts-New Hampshire state line, a distance of approximately 74.6 miles; (b) the Freight Main Line between milepost 19.85 (Lowell Junction, MA) and milepost 17.5 (Bleachery), a distance of approximately 7.3 miles; (c) the Freight Main Line between milepost 13.45, at North Chelmsford, MA, and milepost 2.23 (Willows), a distance of approximately 11.2 miles; (d) the Freight Main Line between milepost 49.60, at Fitchburg, MA, and milepost 153.72, at North Pownal, VT, a distance of approximately 104.1 miles; (e) the Tewksbury Branch between milepost 19.5, at Wamesit, MA, and the End of Track, a distance of approximately 1.9 miles; (f) the Conway Branch between milepost 70.0, at Rollinsford, NH, and milepost 80.3, at Rochester, NH, a distance of approximately 10.8 miles; (g) the Gonic and Farmington freight track between milepost 7.8 (Gonic), and milepost 17.25, at Farmington, NH, a distance of approximately 9.4 miles; (h) the M&L Branch between milepost 3.72, at the Massachusetts-New Hampshire state line, and milepost 7.60, at the End of Track, a distance of approximately 3.9 miles; (i) the Connecticut River Main Line betaeen milepost S–9.45 (Holyoke North), and milepost S–35.89, at Greenfield, MA, a distance of approximately 26.4 miles; (j) the Monadnock Branch between a connection with the Freight Main Line at milepost 59.90, at South Ashburnham, MA, and milepost 60.60, at the End of Track, a distance of approximately 0.7 miles; (k) the East Deerfield Loop between a connection with the Connecticut River Main Line at milepost 0.00 (Deerfield Junction), and milepost 1.04 at East Deerfield, MA, a distance of approximately 1 mile; (l) the Gardner-Heywood track between a connection with the Freight Main Line at milepost 64.70, at Gardner, MA, and the End of Track, a distance of approximately 1.2 miles; (m) the Dover Sawyer Freight Track between a connection with the Freight Main Line at milepost 67.08, at Dover, NH, and the End of Track, a distance of approximately 1.53 miles; (n) the Alfred Road to Saco Freight Track in Maine between a connection with the Freight Main Line at milepost 98.01 (Alfred Road) and the End of Track, a distance of approximately 2.45 miles; and (o) the Cold River to Bellows Falls Freight Track between a connection with the Connecticut River Main Line at milepost 83.99, at Bellows Falls, VT, and Cold River, NH, a distance of approximately 0.78 miles;

(2) B&M's assignment to ST of the right to use B&M's freight easement over the following lines of the Massachusetts Bay Transportation Authority: (a) the Freight Main Line between milepost 36.45 at the Massachusetts-New Hampshire state line and milepost 24.76 (Lowell Junction), a distance of approximately 16.5 miles; (b) the Freight Main Line between milepost 17.50 (Bleachery) and milepost 13.45, at North Chelmsford, MA, a distance of approximately 3.8 miles; (c) the Freight Main Line between milepost 2.23 (Willows) and milepost 49.60, at Fitchburg, MA, a distance of approximately 15.7 miles; (d) the M&L Branch between a connection with the Freight Main Line at milepost 0.00, at Andover Street in Lawrence, MA, and milepost 3.72, at the Massachusetts-New Hampshire state line, a distance of approximately 3.7 miles; and (e) the Greenville Branch between a connection with the Freight Main Line at milepost 36.05, at Ayer, MA, and milepost 46.30, at the End of Track, a distance of approximately 10.3 miles; and

(3) B&M's and D&H's grant to ST of trackage rights to operate over their lines between North Pownal, VT, and Crescent, NY.

B&M, D&H, and ST are wholly-owned subsidiaries of Guilford Transportation Industries, Inc. (GTI), which also owns the Maine Central Railroad Company (MEC). As a result of the proposed transaction, it is intended that ST will provide service as good as, or better than, service now provided.

Since B&M, D&H, and ST are members of the same corporate family, the lease falls within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(3). The carriers anticipate that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in competitive balance with carriers operating outside the corporate family.

Any employee affected by the lease transaction would normally be protected by the labor conditions set forth in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978), and 360 I.C.C. 653 (1980) (*Mendocino*). These conditions satisfy the statutory requirements of 49 U.S.C. 10505(g)(2) for lease transactions. However, in a decision in Finance Docket No. 30965, *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company* (not printed), served May 18, 1987, the Commission set for modified procedure a series of notices filed by the GTI carriers because labor interests raised issues related to the level of employee protection for the transactions. The Commission asked the parties to that proceeding to address several issues and present additional evidence, including similar existing and future notices and transactions, such as this one, involving the GTI carriers.

Since the May 18, 1987 decision, the Commission has published in the Federal Register three related notices of exemption (Finance Docket Nos. 31015, 31023, and 31086) by various GTI carriers and indicated that the underlying transactions will be considered in the Finance Docket No. 30965 proceeding. The Brotherhood of Locomotive Engineers has filed a petition asking that the transaction in Finance Docket No. 31103 be governed by the Commission's ruling in Finance Docket No. 30965. The Commission will issue a separate decision disposing of that request.

If, prior to the Commission's determination of the appropriate level of labor protection for these GTI transactions, B&M and D&H consummate this transaction and provide employees with *Mendocino* protection, they do so at their own risk. Should the Commission subsequently determine that a higher level of protection is required, B&M and D&H will be required to provide employees with that greater protection.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of petitions to revoke will not stay the transaction.

Decided: September 4, 1987

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–20928 Filed 9–10–87; 8:45 am]
BILLING CODE 7135–01–M

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[Finance Docket No. 31101]

Exemption; The Colorado & Wyoming Railway Co.; Trackage Rights; The Atchison, Topeka and Santa Fe Railway Co.

The Atchison, Topeka and Santa Fe Railway Company (ATSF) has agreed to grant overhead trackage rights to the Colorado and Wyoming Railway Company between ATSF milepost 635 + 4291.4 feet at Trinidad, CO and ATSF milepost 638 + 4185.4 feet at Jansen, CO. The trackage rights will be effective on August 31, 1987.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: September 3, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20923 Filed 9-10-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notification; Material Handling Research Center

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("the Act"), Material Handling Research Center ("MHRC") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to MHRC, and (2) the nature and objectives of MHRC. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to MHRC and its general areas of planned activities are given below.

MHRC is a non-profit organization, the members of which are the following:

Adolph Coors Company
AT&T Technologies
Boeing Commercial Airplane Company
Burlington Industries
Burroughs Corporation
Caterpillar Tractor Company
The Coca-Cola Company
Data General Corporation
Digital Equipment Corporation
E.I. duPont deNemours & Co., Inc.
Eastman Kodak Company
Eaton Kenway
Ford Motor Company
General Dynamics Corporation
General Electric Company
General Motors Corporation
Georgia Tech Research Corporation
Grumman Aerospace Corporation
IBM Corporation
Intech Systems
The Kroger Co.
Litton Unit Handling Systems, Inc.
Lockheed-Georgia Company
Logan/Figgie International
Lyon Metal Products, Inc.
Sears, Roebuck and Company
SI Handling Systems, Inc.
Stanley/Vidmar, Inc.
TRW, Inc.
Texas Instruments, Inc.
The Union Metal Manufacturing Company
Unisys Corporation
3M Company
Westinghouse Electric Corporation
Xerox Corporation

The objectives of MHRC are (1) to sponsor research which is focused on theoretical and practical developments in material handling, concentrating on areas that will significantly improve the productivity, reliability, and safety of industrial systems and processes; (2) to serve as a focal point for technology transfer and information exchange for the material handling field; and (3) to train graduate level students in the field of material handling.

Joseph H. Widmar,

Director of Operations, Antitrust Division

[FR Doc. 87-20931 Filed 9-10-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comment on the reporting and recordkeeping requirements that will affect the public.

List of recordkeeping/reporting requirements under review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entires grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should be also sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Bureau of Labor Statistics

Survey of displaced workers
CPS 1
Other—one-time survey, to be conducted as a special supplement to

the January 1988 Current Population Survey.
Individuals or households
Survey universe is 58,000 households; respondents burden is estimated at approximately 14,500 hours; supplement will utilize available space on regular CPS questionnaire.

The Current Population Survey (CPS) is the monthly household survey that provides the basic data on the labor force, total employment, and unemployment. The special CPS supplement on displaced workers, proposed for January 1988, would provide data on the persons who lost jobs over the 1983–87 period due to plant closing, companies going out of business, or layoffs from which they were not recalled. A similar survey was conducted in January 1986 (1220–0092).

Occupational Safety and Health Administration

Tremolite, Actinolite and Anthophyllite Survey
Nonrecurring
Businesses and other for-profit
2627 respondents; 669 burden hours; 0 forms

The information for which this request has been submitted is required for regulatory impact analysis of a proposed revision of the Asbestos standard. The information will be requested of businesses who use tremolite, actinolite, or anthophyllite in the manufacture of products. Data on finances, employee exposures, process and exposure uniting practices will be sought.

Revision

Employment and Training Administration

Business Confidential Data Request
1205–0197; ETA 9014
On Occasion
Businesses or other for-profit; Small businesses or organizations 1,125 respondents; 6,975 burden hours; 1 form

Statutory requirements under the Trade Act of 1974 as amended require complete and accurate business confidential data in order to make determinations as to whether imports have contributed to worker separation. The Secretary of Labor's determinations decide if petitioning workers are eligible to apply for worker adjustment assistance.

Extension

Bureau of Labor Statistics

Labor Force Questionnaire—CP–1
Monthly
Individuals and households
Survey universe is 57,000 households
Respondent burden is estimated at approximately 79,180 hours

The labor force questionnaire (CPS–1) contains all the questions used to obtain the monthly information on the labor force status of the population. The most important use of the information is to determine the month-to-month changes in total employment and in the jobless rate and to see how these affect the various components of the population.

Signed at Washington, DC this 8th day of September, 1987.

Marizetta L. Scott,
Acting Departmental Clearance Officer.

[FR Doc. 87–20972 Filed 9–10–87; 8:45 am]
BILLING CODE 5410–24

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veterans' Employment was established under section 308, Title III, Pub. L. 97–306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment will meet on Thursday, October 8, 1987, at 2:00 p.m., in the Secretary's Conference Room, S–2508, FPB.

The topic to be discussed is the status of veterans' employment in the year 2000.

The public is invited.

Signed at Washington, DC, this 8th day of September, 1987.

Donald E. Shasteen,
Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 87–20953 Filed 9–10–87; 8:45 am]
BILLING CODE 4510–79–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by

contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Pennsylvania:
PA87-1 (Jan. 2, 1987) ..... pp. 844-846.
West Virginia:
WV87-3 (Jan. 2, 1987)..... p. 1212.

Volume II

Michigan:
MI87-7 (Jan. 2, 1987)..... p. 487.

Volume III

Oregon:
OR87-1 (Jan. 2, 1987)..... p. 283.
Utah:
UT87-1 (Jan. 2, 1987) ..... pp. 309-314.
UT87-3 (Jan. 2, 1987) ..... pp. 321-328.
Washington:
WA87-1 (Jan. 2, 1987) ..... p. 339.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, on this 4th day of September 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-20865 Filed 9-10-87; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-19,369, et al.]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Champlin Petroleum Co. et al.

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 13, 1987 applicable to all workers of Champlin Petroleum Company's Exploration and Production Units in Denver, Colorado, Coalville, Utah, and Rock Springs, Wyoming and the headquarters in Fort Worth, Texas. The certification was published in the **Federal Register** on May 27, 1987 (52 FR 19784).

The company furnished new information to the Department which showed an additional location where worker separations occurred in 1986 which was inadvertently omitted from data previously furnished. The additional location is Coalville, Utah. All of the company data on production and sales previously provided included that produced in Utah. The notice is amended to include the Coalville, Utah location of Champlin Petroleum Company.

The intent of this amended certification is to cover all workers of Champlin Petroleum Company in Coalville, Utah under the certification previously issued to workers of Champlin Petroleum Company under petition TA-W-19,428. The amended notice applicable to TA-W-19,428, TA-W-19,369 and TA-W-19,426 is hereby issued as follows:

All workers of Champlin Petroleum Company's Production Units in Denver, Colorado; Rock Springs, Wyoming and Coalville, Utah and the headquarters facility in Fort Worth, Texas who became totally or partially separated from employment on or after March 2, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 3rd day of September 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-20944 Filed 9-10-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,963]

Termination of Investigation; Rohm & Haas Co., Redwood City, CA

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in reponse to a worker petition which was filed on July 27, 1987 on behalf of workers at Rohm and Haas Company, Redwood City, California.

An active certification covering the petitioning group of workers remains in effect (TA-W-19,901). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 31st day of August 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-20945 Filed 9-10-87; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-194-C]

Petition for Modification of Application of Mandatory Safety Standard; Clinchfield Coal Co.

Clinchfield Coal Company, P.O. Box 7, Dante, Virginia 24237 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Open Fork Mine (I.D. No. 44-00267) located in Dickenson County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Upper Banner coalbed with undulations in the height of the coal seam, ranging from 24 to 60 inches in thickness accompanied with very uneven haulage roadways.

3. Petitioner states that the use of a cab or canopy on the mine's electric face equipment would result in a dimunition

of safety to the miners affected because the cabs or canopies would cause roof supports to be dislodged, decrease the equipment operator's visibility, and create discomfort to the operator.

4. For these reasons, petitioner requests a modification of standard.

Requests for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 62, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: September 3, 1987.

[FR Doc. 87-20946 Filed 9-10-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-113-C]

Petition for Modification of Application of Mandatory Safety Standard (Amendment); Gateway Coal Co.

Gateway Coal Company, Box 107, R.D. 2, Prosperity, Pennsylvania 15329 has filed an amendment to a petition for modification. On April 27, 1987, Gateway Coal Company submitted a petition to modify the application of 30 CFR 75.1303 (permissible explosives, detonators, blasting devices and shotfiring units; stemming boreholes) to its Gateway Mine (I.D. No. 36-00906) located in Greene County, Pennsylvania. On June 5, 1987, MSHA published notice of this petition in the **Federal Register** (52 FR 21389), allowing interested parties 30 days to submit comments. On July 15, 1987, petitioner submitted a request to amend the originally submitted petition for modification to change the proposed alternate method of compliance. Paragraph 3 is hereby amended to read:

3. As an alternate method, petitioner proposes to store certain explosives in excess of forty-eight hours as specified below. In support of this request, petitioner states that—

(a) Portable magazines will be used to store explosives on a section or in other designated areas;

(b) Only gelatinous-type class A permissible explosives will be stored underground in excess of forty-eight hours. No explosives will be stored underground for more than six months. The explosives will be stored in the original container supplied from the manufacturer with the inner plastic wrapper kept closed;

(c) No more than 400 pounds of explosives will be kept in the portable section magazines. Explosives allowed to remain in the underground magazines for periods in excess of the time specified in paragraph (b) above will be deemed nonpermissible and removed from the mine promptly.

(d) Each box of explosives and detonators will be legibly marked with an indelible marker, with 3-inch high letters indicating the date the explosives or detonators were taken underground and stored; and

(e) The area around the portable section magazines will be examined daily by a certified person, and the area inside the magazines, including the exterior surfaces of the shipping containers, will be examined weekly. The records of the examinations will be maintained at the magazines.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1987. Copies of the amendment and the original petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: September 3, 1987.

[FR Doc. 87-20947 Filed 9-10-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-177-C]

Petition for Modification of Application of Mandatory Safety Standard; K. and H. Coal Co.

K. and H. Coal Company, Route 25, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 1 Slope (I.D. No. 36-07558) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: September 3, 1987.

[FR Doc. 87-20948 Filed 9-10-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-154-C]

Petition for Modification of Application of Mandatory Safety Standard; Kelly Mining Co.

Kelly Mining Company, P.O. Box 310, Minersville, Pennsylvania 17954 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Kelly Mining No. 1 Mine (I.D. No. 36-07790) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Acting Associate Assistant Secretary for Mine Safety and Health.

Dated: September 2, 1987.

[FR Doc. 87-20949 Filed 9-10-87; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-87-195-C]

Petition for Modification of Application of Mandatory Safety Standard; Oakwood Mining Co.

Oakwood Mining Company, 109 Broad Bottom Road, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 2 Mine (I.D. No. 15-14344) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket and a metal locking screw in lieu of padlocks. These locking devices will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the locking screws will be securely attached to the brackets to prevent accidental loss of the screws.

3. Petitioner states that the spring-loaded metal locking devices wil be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Acting Associate Assistant Secretary for Mine Safety and Health.

Dated: September 3, 1987.

[FR Doc. 87-20950 Filed 9-10-87; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-87-197-C]

Petition for Modification of Application of Mandatory Safety Standard; W. W. & B. Coal Co.

W. W. & B. Coal Company, R. D. #1, Box 1183, Pottsville, Pennsylvania 17901 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 3 Slope (I.D. No. 36-02028) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments most be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1987. Copies of the petition are available for inspection at the address.

Patricia W. Silvey,

Acting Associate Assistance Scretary for Mine Safety and Health.

Date: September 3, 1987.

[FR Doc. 87–20951 Filed 9–10–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–87–9–M]

Petition for Modification of Application of Mandatory Safety Standard; Ziegler Chemical & Mineral Corp.

Ziegler Chemical & Mineral Corporation, 100 Jericho Quadrangle, Jericho, New York 11753 has filed a petition to modify the application of 30 CFR 57.4760 (shaft mines) to its Bonanza No. 11 & 12 Mine (I.D. No. 42–01716), its Independent No. 4 & 5 Mine (I.D. No. 42–01743), its Bonanza No. 3 Mine (I.D. No. 42–01446), its Little Emma No. 7 Mine (I.D. No. 42–01712), and its Cottonwood No. 1 Mine (I.D. No. 42–01770), all located in Uintah County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that shaft mines be provided with either control doors, reversal of mechanical ventilation, or effective evacuation procedures to control the spread of fire, smoke, and toxic gases in the event of a fire underground.

2. The method of mining used for gilsonite mines is stull stope. It is a method where the entire vein is removed, and the hanging wall is supported by randomly placed timbers. This mining method requires the sinking of shafts, which vary in depth, and may go as deep as 1,000 feet. Ziegler's involvement covers an area of approximately 3 miles, and has approximately 50 shafts over that distance. Four of the shafts are presently being mined. The ore is mined with pneumatic chipping hammers on a face, having a 40–45 degree slope. The ore rolls down the slope, where it is pneumatically conveyed to the surface.

3. Petitioner states that the mining operation is not amenable to the use of fire doors. The open stope does not provide a facility for the use of a fire door.

4. Petitioner further maintains that the mining method used does not provide a physical means to comply with the standard since only pneumatic equipment is used; no electical, diesel or gasoline powered equipment is used on the face, and no explosives are detonated while persons are underground. Therefore, safety is achieved equal to that provided by the standard.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate assistant Secretary for Mine Safety and Health.

Date: September 3, 1987.

[FR Doc. 87–20952 Filed 9–10–87; 8:45 am]

BILLING CODE 4510–43–M

Occupational Safety and Health Administration

Nevada State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 4, 1974, notice was published in the **Federal Register** (39 FR 1008) of the approval of the Nevada plan and the adoption of Subpart W to Part 1952 of Title 29 containing the decision. The Nevada plan provides for the adoption of Federal standards as State standards by reference.

By letter dated February 10, 1987, from Nancy C. Barnhart to Raymond J. Owen and incorporated as part of the plan, the State submitted State standard revisions identical to 29 CFR 1910.145, Accident Prevention Tags (September 19, 1986, 51 FR 33251); 29 CFR Parts 1910 and 1915, Recordkeeping Requirements for Tests, Inspections, and Maintenance Checks (September 29, 1986, 51 FR 34553), 29 CFR 1910.1047, Ethylene Oxide (July 10, 1986, 51 FR 25053), and 29 CFR 1910.1200, Hazard Communications: Definition of Trade Secrets and Disclosure of Trade Secrets to Employees, Designated Representatives and Nurses (September 30, 1986, 51 FR 34590). These standards are contained in the Division of Occupational Safety and Health Standards for General Industry. The subject standards, 29 CFR 1910.145, Accident Prevention Tags (September 19, 1986, 51 FR 33251); 29 CFR Parts 1910 and 1915, Recordkeeping Requirements for Tests, Inspections, and Maintenance Checks (September 29, 1986, 51 FR 34553), 29 CFR 1910.1047, Ethylene Oxide (July 10, 1986, 51 FR 25053), and 29 CFR 1910.1200, Hazard Communicaitons: Definition of Trade Secrets and Disclosure of Trade Secrets to Employees, Designated Representatives and Nurses (September 30, 1986, 51 FR 34590) were adopted by reference on September 19, 1986; September 29, 1986, July 10, 1986, and September 30, 1986 pursuant to Nevada State law, section 618.295.

2. Decision

Having reviewed the State submission in comparison with Federal Standards, it has been determined that the standards are identical to the Federal standards and accordingly are approved.

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3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11349, San Francisco, California 94102; and Director; Division of Occupational Safety and Health, 1370 South Curry Street, Carson City, Nevada 89710; and Directorate of Federal/State Operations, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Nevada State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal Standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with procedural requirements of State law and further participation would be unnecessary.

This decision is effective September 11, 1987.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at San Francisco, California, this 10th day of June, 1987.

James W. Lake,

Acting Regional Administrator.

[FR Doc. 87–20700 Filed 9–10–87; 8:45 am]

BILLING CODE 4510–26–M

LEGAL SERVICES CORPORATION

Notice and Request for Comments on a Grant Award; Bar Association of San Francisco Volunteer Legal Services Program

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces that it is considering awarding a special one-time grant of $33,316 in 1987 to the Bar Association of San Francisco to provide legal services to the indigents in the San Francisco, California, metropolitan area through the *pro bono* services of individual practitioners.

DATE: All comments and recommendations must be received by the Office of Field Services on or before October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Legal Services Corporation, Office of Field Services, Victoria O'Brien, Acting Assistant to the Director, 400 Virginia Avenue, SW., Washington, DC 20024–2751, (202) 863–1837.

SUPPLEMENTARY INFORMATION: The Bar Association of San Francisco Volunteer Legal Services Program has designed an Enhanced Access Project to provide legal services to indigent persons who are least able to access a typical legal services program site or *pro bono* attorney office. The Enhanced Access Project offers a systematic way to address the special physical access problems of three indigent client groups, including: (1) Local Spanish-speaking clients whose language and/or cultural barriers prevent them from applying for legal assistance; (2) home-bound senior citizens and handicapped clients, and those who are terminally ill; and (3) clients with civil legal problems who are incarcerated in county jails. This project relies exclusively on panels of *pro bono* attorneys to deliver them legal services.

Interested persons are invited to submit written comments and/or recommendations concerning this grant action to Victoria O'Brien.

Dated: September 8, 1987.

Mary C. Higgins,

Acting Director, Office of Field Services.

[FR Doc. 87–20942 Filed 9–10–87; 8:45 am]

BILLING CODE 6820–35–M

LIBRARY OF CONGRESS

American Folklife Center Board of Trustees; Meeting

AGENCY: Library of Congress.

ACTION: Notice of Meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Pub. L. 94–463.

DATE: September 26, 1987, 9:00 a.m. to 3:30 p.m.

ADDRESS: Conference Room, Second Floor, Lowell National Historic Park Market Mills Visitors Center, Lowell, MA 01852.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540.

SUPPLEMENTAL INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader, (202) 287–6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94–201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistant, and model projects for the field of American folklife.

Dated: September 1, 1987.

Glen A. Zimmerman,

Associate Librarian for Management.

[FR Doc. 87–20918 Filed 9–10–87; 8:45 am]

BILLING CODE 1410–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Advancement/Challenge III Section) to the National Council on the Arts will be held on September 28, 1987, from 9:00–6:00 p.m. and on September 29, 1987, from 9:00 a.m.–5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the

determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4) and (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

September 4, 1987.

[FR Doc. 87–20989 Filed 9–10–87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978; Arthur L. DeVries et al.

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On July 24, 1987, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued to the following individuals on September 1, 1987.

Arthur L. DeVries
G.L. Kooyman
Gary D. Miller
D.B. Siniff
Wayne Z. Trivelpiece

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 87–20990 Filed 9–10–87; 8:45 am]

BILLING CODE 7555-01-M

Research Experiences for Undergraduates Program

Inquiries. Questions not addressed in this publication may be directed to the NSF staff by contacting: Research Experiences for Undergraduates Program, Office of Undergraduate Science, Engineering and Mathematics Education, Directorate for Science and Engineering Education, Room 639, National Science Foundation, Washington, DC 20550, (202) 357–7051.

Research Experiences For Undergraduates Program (REU) is an integral part of NSF's overall plan to strengthen undergraduate science, engineering and mathematics education throughout the United States. This NSF plan also includes support for undergraduate laboratory development, faculty enhancement, curriculum development in mathematics and engineering, and the Research in Undergraduate Institutions Program (RUI) for FY 1988.

REU will be centrally coordinated by the newly established Office of Undergraduate Science, Engineering, and Mathematics Education (USEME), in the Directorate for Science and Engineering Education, but proposals will be managed locally in the research programs throughout the NSF.

Research Experiences for Undergraduates

I. Program Description

A. Purpose and Scope

One of the National Science Foundation's principal goals is to assure an adequate supply of high quality mathematicians, scientists and engineers for the future. This requires continuing efforts to attract talented students into research careers in these fields, and to help ensure that they receive the best education possible. The undergraduate years are critical in the educational sequence, as career choice points and as the first real opportunities for in-depth study.

There is wide-spread agreement [1] that active research experience is one of the most effective techniques for training undergraduates for careers in mathematics, science and engineering, and that too few such experiences are now available. NSF has established the *Research Experiences for Undergraduates Program* (REU) to meet this need.

REU plans to provide opportunities annually to several thousand undergraduate students to participate in active mathematics, science and engineering research experiences. REU projects will involve students in meaningful ways in either ongoing research programs or research projects specially designed for this purpose.

NSF is particularly interested in increasing the participation in research of women, minority [2] and disabled students. Projects involving students who are members of these groups are particularly solicited.

Although the categories of awards that are described in this announcement are expected to include the majority of projects supported through the REU program, additional mechanisms for providing undergraduate research experiences will be considered by the NSF.

Proposals are invited for support of projects that typically will fit into two major categories: (1) *REU Sites* and (2) *REU Supplements.*

- *Sites* grants will be based on independent proposals to initiate and conduct undergraduate research participation projects for a number of students appropriate to the discipline and the setting. Most REU Sites projects are expected to be within the scope of a single discipline and/or single academic department. However, interdisciplinary proposals are also acceptable, but multiple discipline or multiple department proposals without a common project focus or orientation are discouraged.
- *Supplements* to ongoing NSF research grants to provide research experiences for a small number of undergraduate students are also encouraged.

Projects may be carried out during the summer months, during the academic year, or both. The Foundation will consider requests for support of one, two or three years duration.

B. Eligibility Criteria and Limitations

1. Eligible institutions. All U.S. institutions conducting research in the disciplines normally supported by NSF are eligible to apply. Thus, proposals will be accepted from colleges and universities, from such nonacademic research institutions as government or industrial laboratories, or from combinations thereof. There is no restriction on the number of proposals that may be submitted per institution.

2. Eligible fields. All science and engineering disciplines normally supported by NSF are eligible for REU support.

[1] *Undergraduate Science, Mathematics and Engineering Education,* Report of the National Science Board Task Committee on Undergraduate Science and Engineering Education, National Science Foundation, March 1986; *National Priorities for Undergraduate Science and Engineering Education,* National Higher Education Associations Task Force, American Council on Education, 1985.

[2] For the purpose of this announcement, minorities are defined as members of those racial and ethnic groups underrepresented in science and engineering: American Indian, Blacks, Hispanics, Native Alaskan or Native Pacific Islander.

3. Eligible Individuals. Principal Investigator. A single individual should be designated as Principal Investigator. This individual will be responsible for overseeing all aspects of the award. However, it is expected that additional investigators will be involved in many of these projects, particularly in projects involving development and operation of REU Sites.

Student participants. Student participants must be citizens or permanent residents of the United States and its possessions.

4. Eligible activities and costs. REU award costs, expected to average $4,000 per student for Sites and somewhat less for Supplements, may include stipends for students, salaries of involved faculty, relevant student housing costs, indirect costs, and a modest allowance for supplies. For example, an REU Site award involving 10 students would be on the order of $40,000, while a typical REU Supplement involving one or two students would average less than $4,000 per student. Student stipends for full time summer activity should be at least $2,000, for either type of award, with pro rata equivalent stipends for part-time academic year participation.

C. Deadlines

Proposals for the support of REU Sites are due no later than December 1, 1987. Award notification will be made to the extent possible by late February, 1988.

Proposals for REU Supplements will be accepted at any time, and require 2–3 months processing time. Supplement requests should be submitted as early in the fiscal year as possible.

II. Preparation and Submission of Proposals

A. REU Sites

Funds for the establishment of REU Sites may be requested from any of NSF's major research directorates: Biological, Behavioral and Social Sciences; Computer and Information Science and Engineering; Engineering; Geosciences; and Mathematical and Physical Sciences.

Proposals should be prepared following the guidelines contained in the NSF document "Grants for Research and Education in Science and Engineering" (NSF 83–57, rev. 1/87) and the following instructions. Fifteen copies of the proposal should be submitted. Each copy of the proposal should contain:

—The Cover Sheet (found in Appendix II [3] of this announcement, *clearly indicating the NSF research directorate and/or division to which the proposal is directed)*

—The Budget form 1030 (found in Appendix III) [3]

—The Project Summary Form (found in Appendix IV) [3]

—The Current and Pending Support Form (found in Appendix V) [3]

—Statement of prior support. If either *the Principal Investigator or the Co-principal Investigator received support from NSF's REU Program in 1986,* the proposal must include a section entitled *"Results from prior NSF Support".* This section must describe the earlier REU project and its outcomes in sufficient detail to permit reviewers to reach an informed conclusion regarding the value of the results achieved. The following information must be included in this summary statement:

- The NSF award number, amount, and period of support;
- Title of the project;
- A summary of the results of the completed work. (To facilitate review, this summary must not exceed for REU—three double-spaced pages); and
- A list of publications and/or formal presentations acknowledging the NSF award (copies of such papers are not to be submitted with the proposal).

Each proposal should reflect the unique combination of the proposing institution's interests and capabilities. Cooperative regional arrangements among institutions will be considered so that a project might increase the quality or availability of undergraduate research experiences.

REU Sites projects must have a well defined common focus. This is usually achieved within the scope of a single discipline or academic department, although an interdisciplinary proposal with cohesively integrated projects is acceptable. In general, multiple-discipline or multiple-department proposals are not encouraged.

The proposal should discuss the features of the proposed project in sufficient detail that it can be evaluated in accordance with the goals of the REU program and the criteria articulated above. The narrative description of the program should not exceed 15 double-spaced pages in length.

Nature of student activities. NSF believes undergraduate research experiences have their greatest impact in situations that lead the participants from a relatively dependent status to an independent one as great as their competence warrants. In this context, proposals must present plans that will ensure the regular development of student-faculty interaction and student-student communication. Proposals should address the philosophy of the approach taken to undergraduate research training, and should provide detailed descriptions of examples of projects in which students will become involved.

The research environment. The facilities and equipment available to support these undergraduate research experiences should be summarized. A tabular summary or similar indication of graduates continuing their education at the graduate level may be incorporated here.

Student participants. Student recruitment and selection processes and criteria should be clearly described. A major goal of the program is to involve students in research who might not otherwise have the opportunity, particularly those from institutions where research programs are limited. This especially includes women, minority, and disabled students. For this reason, projects whose student participants include significant fractions from outside the host institution, and that present convincing plans for involving underrepresented student groups will receive special consideration in the award selection process.

The number of students per project should be appropriate to the institutional setting and to the manner in which research is conducted in the discipline. However, developing collegial relationships and interactions is an important part of the project opportunity. Therefore the Foundation expects that the norm for supported projects will be about 8 students, and proposal involving fewer than 4–6 students are discouraged.

Budget. The proposal should include a detailed project budget and budget justification, as described in NSF 83–57, rev. 1/87. Use the NSF Form 1030 in Appendix III. As a guide to budget development, student stipends for summer projects are expected to be at least $2,000 with academic year stipends comparable on a pro rata basis. All student costs should be entered at line F. of Form 1030. Total costs are expected to average around $4,000 per student. Indirect costs are allowed at a flat rate of 25% of student stipends. Institutional commitment to the project should be clearly described and identified.

Biographical sketches and individual support. A biographical sketch (not to exceed 1 page) for each of the key personnel and list of recent publications (last five years), *involving and identifying undergraduate authors,* should be included. An asterisk should be used to identify undergraduate students who served as co-authors. A

[3] Appendices are not published in this document They are available from the National Science Foundation. See address for inquiries at the beginning of this document.

table must be provided which summarizes each individual's current and pending research support from all sources.

Note: The Principal Investigator must have submitted NSF form 98A for all completed NSF funded projects.

Proposals must be received in the Foundation by 5:00 p.m. on December 1, 1987 to insure inclusion in the competitive review process established for this program.

Materials required:

15 legible copies of the complete proposal;

One copy of NSF form 1225 (found in Appendix I [4] of this announcement) attached to the signature copy of the proposal only;

Three sets of (extra) forms, each stapled into a unit and containing
One copy of the Cover Sheet
One copy of the Budget, and
One copy of the Project Summary Form.

These materials should be submitted to: Data Support Services Section, REU, National Science Foundation, Room 223, 1800 G St., NW., Washington, DC 20550.

B. REU Supplements

Funding may be requested from any of NSF's major directorates to supplement an ongoing NSF research grant or contract. As with other supplement requests, these should be sent directly to the cognizant NSF Program Director.

Requests for supplemental funding should be in the form of a letter, signed by both the principal investigator and the appropriate institutional official. This letter should state clearly that this is a REU Supplement request, and should articulate in some detail the form and nature of the prospective student(s)'s involvement in the research project(s). If the student(s) has not been preselected, a brief description of the selection process and criteria should be included. If the student(s) has been preselected, the grounds for selection and a brief biographical sketch of the student should be included. Normally funds will be available for up to two students, but exceptions will be considered for training additional minority, physically disabled and women students.

The request letter should be accompanied by a signed budget page including information about the funds requested and their proposed use. Use NSF Form 1030 in Appendix III for this purpose. Attach the letter of request and form 1030 to the Cover Sheet (Appendix II of this Announcement) and a Project Summary Form (Appendix IV) and mail to the appropriate NSF Program Director.

III. Proposal Evaluation

REU Sites proposals will be evaluated by external merit review, involving scientists, engineers and mathematicians drawn from the academic and industrial community.

REU Supplements proposals will be evaluated by NSF program staff.

The same general evaluation criteria will be applied to all REU proposals:

- The appropriateness and value of the educational experience for the student(s), particularly the appropriateness of the research project(s) for undergraduate involvement and the nature of student participation in these activities.
- The quality of the supervisor(s) and attendant facilities, including any specialized equipment and its availability to student participants, and the proposer's experience with undergraduate research activities.
- The overall merit of the research activities.

Additional criteria will be applied to proposals to establish REU Sites:

- The adequacy of procedures for selecting participants, and for matching selected participants with research supervisors;
- The quality of plans for student preparation and follow-through designed to promote continuation of student interest and involvement in research;
- The effectiveness of arrangements for managing the project;
- The record of the institution in motivating students to pursue careers in mathematics, science or engineering;
- The degree of institutional commitment to the project.

IV. NSF Contacts

General inquiries about REU may be directed either to the Office of Undergraduate Science, Engineering, and Mathematics Education at 1800 G St. NW., Washington, DC 20550, telephone 202 357–7051, or to the relevant NSF research program.

Inquiries related specifically to some research aspects of a particular proposal should be directed to the relevant research program.

Key NSF organizational contact telephone numbers are as follows:

Office of Undergraduate Science, Engineering, and Mathematics Education: 202–357–7051.
Biological, Behavioral, and Social Sciences: 202–357–9830.
Computer and Information Science and Engineering: 202–357–7936.
Engineering: 202–357–5102.
Geosciences: 202–357–7615.
Mathematical and Physical Sciences:
  Astronomical Sciences: 202–357–7622.
  Chemistry: 202–357–7503.
  Materials Research: 202–357–9737.
  Mathematical Sciences: 202–357–3695.
  Physics: 202–357–7611.
Scientific, Technological, and International Affairs: 202–357–7560.

V. Other Programs

NSF Guide to Programs (NSF 87–57) briefly describes all Foundation programs, most of which are open to all institutions. It is available at most institutions or may be obtained at no cost by contacting the Forms and Publications Unit, Room 232, NSF, Washington, DC 20550 (202/357–7861). Some programs of special interest to undergraduate faculty are described below.

- The NSF has several programs directed toward improving *precollege* science, mathematics and technology education. In most cases, college and university faculty write proposals and direct the projects supported by these programs. For information on *Applications of Advanced Technologies, Informal Science Education, Instructional Materials Development, or Research in Teaching and Learning,* contact the Division of Materials Development, Research and Informal Science Education, Room 635, NSF, Washington, DC 20550 (202/357–7452). For information on *Science and Mathematics Education Networks, Teacher Preparation, Teacher Enhancement, or Presidential Awards for Excellence in Science and Mathematics Teaching,* contact the Division of Teacher Preparation and Enhancement, Room 635, NSF, Washington, DC 20550 (202/357–7073).
- Information on *Graduate Research Fellowships* and *Minority Graduate Research Fellowships* may be obtained by contacting the National Research Council, 2101 Constitution Avenue, Washington, DC 20418.
- The *Undergraduate Faculty Enhancement Program* (UFE) offers Grants for Undergraduate Faculty Seminars and Conferences provide opportunities for groups of faculty to learn about new techniques and new developments in their fields. Awards are made to conduct seminars, short courses, workshops or similar activities for groups of faculty members from outside the grantee institution. For further information about the the Undergraduate Faculty Enhancement

[4] Appendix is not published with this document. It is available from the National Science Foundation. See addresss for inquiries at the beginning of this document.

Program, contact the Office of Undergraduate Science, Engineering, and Mathematics Education, Room 639, NSF, Washington, DC 20550 (202/357–7051).

• Through *Research Opportunity Awards* (ROA), faculty members at institutions with limited research opportunities may work with investigators who already hold or are applying for an NSF research grant. The experience gained under ROA may help the faculty member from the participating institution to become more competitive in submitting an independent research proposal, and may provide experience that will be reflected in improved teaching at the home institution. Full-time faculty members interested in ROA collaborations must make their own arrangements with a host investigator and institution. Formal application to NSF is made by the host institution as part of an initial proposal to NSF or, if an award already is in progress, as a supplement to that award. For further information about Research Opportunities Awards, contact Research Opportunities Awards Program, Room 1225, NSF, Washington, DC 20550 (202/357–7456).

• The *Research in Undergraduate Institutions* (RUI) activity is part of the Foundation's effort to broaden the base for science and engineering research and to enhance the scientific and technical training of students. The objectives of the RUI activity are to strengthen the research environments in academic departments that are oriented primarily to undergraduate education in science and engineering, and to promote the coupling of research and education at predominantly undergraduate institutions. RUI provides support for research and research equipment for investigators in non-doctoral departments in predominantly undergraduate institutions. RUI proposals are evaluated and funded on a competitive basis by NSF's research programs. For further information contact the Division of Research Initiation and Improvement, Room 1225 NSF, Washington, DC 20550 (202/357–7456).

• NSF's *Facilitation Awards for Handicapped Scientists and Engineers* (FAH) activity enhances opportunities for disabled individuals to participate in research. Funds are provided to purchase special equipment, modify equipment, or provide other services required specifically for the work undertaken on an NSF-supported project (see NSF 84–62, Rev 5–87). Funds from regular program budgets are provided for handicapped senior personnel, other professionals, and students, as a supplement to an existing award or as part of a new award. General inquiries may be made to the Coordinator, Facilitation Awards for Handicapped Scientists and Engineers, Room 1225, NSF, Washington, DC 20550 (202/357–7456).

• The *Minority Research Initiation* Program (MRI) supports research by minority scientists and engineers who hold full-time faculty or research-related positions, who (1) are members of ethnic minority groups that are significantly underrepresented in the science and engineering career pool; (2) have not previously received Federal research support as faculty membes; and (3) wish to initiate research efforts on their campuses, thereby increasing their ability to compete successfully for other research support. Information about programs for minority scientists and engineers may be obtained from the MRI Program Director, Room 1225, NSF, Washington, DC 20550 (202/357–7350).

• The *Visiting Professorships for Women* Program (VPW) enables experienced women scientists and engineers to undertake advanced research at a host instituiton—a university or 4-year college which has the necessary facilities. In addition to her research responsibilities, the visiting professor undertakes lecturing, counseling and other activities to increase the visibility of women scientists in the academic environment of the host institution, and to provide encouragement for other women to pursue science, mathematics or engineering careers. Additional information may be obtained by contacting the VPW Program Director, Room 1225, NSF, Washington, DC 20550 (202/357–7734).

• The *Research Opportunities for Women Scientists and Engineers* Program (ROW) is designed to provide opportunities for independent research for women who previously have not been principal investigators, or who are reentering the research community. Additional information may be obtained by contacting the ROW Coordinator, NSF, Washington, DC 20550 (202/357–7734).

• The *Undergraduate Curriculum Development Program* includes two components: Engineering Curriculum Development and Calculus Curriculum Development.

—The *Undergraduate Engineering Curriculum Development Program* is designed to revise and improve undergraduate engineering education. There is a pressing need to revise the curricula of undergraduate engineering education with a view toward more emphasis on the laboratory experience and on technology driven fields such as design, manufacturing, and computer integrated engineering. There is also a need to explore the use of new technologies to improve the quality and productivity of the undergraduate engineering education system. Additional information about this program may be obtained from the Undergraduate Engineering Curriculum Development Program, Room 1238, NSF, Washington, DC, 20550 (202/357–9834).

—The *Division for Mathematical Sciences Undergraduate Curriculum Program* supports proposals that will have significant impact on the nature of calculus instruction in this nation through the development of model curricula and prototypical instructional materials. For additional information contact the Division of Mathematical Sciences, Room 339, NSF, Washington, DC 20550 (202/357–9669).

• MOSIS is a joint NSF/DARPA Program that allows qualifying universities to use the DARPA fast turnaround VLSI implementation facility as part of university based research and educational programs. Students taking undergraduate VLSI design courses can now have digital systems that they design, fabricated and packaged and returned to them for testing and experimentation. For more information, contact the Division of Microelectronic Information Processing Systems, Room 504, NSF, Washington, DC 20550 (202/357–7853).

• The goal of the *Instrumentation and Laboratory Improvement Program* is to improve the quality of the undergraduate curriculum by supporting projects to develop new or improved instrument-based undergraduate laboratory and/or field courses in science, mathematics or engineering. For additional information contact the Office of Undergraduate Science, Engineering and Mathematics Education, Room 639, NSF, Washington, DC 20550 (202/357–7051).

• The *Career Access Opportunities in Science and Technology for Women, Minorities and the Disabled* is an undergraduate program that supplements efforts at the pre-college level to address the underrepresentation of women, minorities and the disabled in the Nation's ranks of science and engineering professionals. There are two activities:

—*Comprehensive Projects for Minorities* supports the establishment of regional centers designed to increase the minority presence in science and engineering and to strengthen such

efforts in institutions with significant minority enrollments, and

—*Prototypical Model Projects for Women, Minorites and the Disabled* encourages institutions to create special outreach programs for these target audiences.

For additional information, contact the Office of Undergraduate Science, Engineering, and Mathematics Education, NSF, Washington, DC 20550 (202/357–7051).

The Foundation welcomes proposals on behalf of all qualified scientists and engineers, and strongly encourages women, minorities, and the disabled to compete fully in any of the programs described in this document.

In accordance with Federal statutes and regulations and NSF policies, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for information relating to NSF programs, employment, or general information. This number is (202) 357–7492.

The Foundation provides awards for research in the sciences and engineering. The awardee is wholly responsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

Catalogue of Federal Domestic Assistance Numbers:
47.041 Engineering
47.049 Mathematical and Physical Sciences
47.050 Geosciences
47.051 Biological, Behavioral and Social Sciences
47.053 Scientific, Technological and International Affairs
47.070 Computer and Information Sciences and Engineering

Animal Welfare

If any REU activity is likely to involve experiments using non-human vertebrate animals or in maintaining such animals in captivity, the "Animal Welfare" block on the cover sheet must be checked. In such proposals, the narrative also must contain an assurance that the proposing institution complies with the relevant guidelines issued by the National Institutes of Health in the *Guide for the Care and Use of Laboratory Animals* (NIH Publication 85–23, Revised 1985). The particular attention of proposers is directed to "U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training" to be found in the appendix to that Guide. Individuals desiring a copy of these Guidelines can obtain one from the Division of Research Services, Building 31, Room 4B59, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. (NSF does not maintain a supply of this document.)

Dated: September 2, 1987.

Robert F. Watson,

Acting Head, Office of Undergraduate Science, Engineering and Mathematics Education.

[FR Doc. 87–20644 Filed 9–10–87; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee on Earth Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Earth Sciences

Date: September 28, 29 and 30, 1987.

Time: 8:30 a.m. to 5:00 p.m. each day

Place: The National Science Foundation, Room 1242, 1800 G Street, NW., Washington, DC 20550

Type of Meeting: Open: Sept. 28—8:30 a.m. to 9:30 a.m.; Sept. 29—1:00 p.m. to 5:00 p.m.

Closed: Sept. 28—9:30 a.m. to 5:00 p.m.; Sept. 29—8:30 a.m. to 1:00 p.m.; Sept. 30—8:30 a.m. to 5:00 p.m.

Contact Person: Dr. Ian MacGregor, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550, telephone: (202) 357–7958.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research and research-related activities in the Earth Sciences.

Agenda: Closed: Oversight review of the Experimental and Theoretical Geophysics, Experimental and Theoretical Geochemistry, Volcanology and Mantle Geochemistry, and Seismology Programs, including examination of proposals, reviewer comments, and other privileged material.

Open: Presentations on the Foundation's Cross-Directorate Programs, review of Long-Range Plan for Earth Sciences, and general discussion.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87–20955 Filed 9–10–87; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–320; License No. DPR–73 EA 84–137; ASLBP No. 86–534–01–OL (Civil Penalty)]

Memorandum and Order Setting Prehearing Conference; General Public Utilities Nuclear Corporation (Three Mile Island, Unit No. 2)

September 3, 1987.

Counsel for the parties are directed to appear at a prehearing conference on September 30, 1987 at 10:00 a.m. EDT at the Commission's hearing room, Fifth Floor, 4350 East West Highway, Bethesda, Maryland.

The agenda for the conference will include:

1. Consideration of all pending motions, disputes, and discovery matters.

2. Matters raised by the parties.

3. Final identification and refinement of issues.

4. Evidentiary stipulations, *e.g.*, "cast of characters."

5. Date, place and expected length of evidentiary hearing.

6. Form and content of trial briefs.

7. Schedule for the filing of written testimony, exchange or identification of proposed exhibits, and trial briefs.

8. Housekeeping details such as procedures for offering written testimony, other transcript inserts and exhibits.

Bethesda, Maryland, September 3, 1987.

Ivan W. Smith,

Administrative Law Judge.

[FR Doc. 87–20936 Filed 9–10–87; 8:45 am]

BILLING CODE 7590–01–M

VOL 52 ISS 176 SE 11 1987 UMI

OFFICE OF PERSONNEL MANAGEMENT

Director's Task Force on the Combined Federal Campaign; Open Meetings; Correction

AGENCY: Office of Personnel Management.

ACTION: Correction: notice of open meetings.

SUMMARY: On September 3, 1987 (52 FR 33484), OPM published a notice of open meetings concerning the future of the Combined Federal Campaign. The address for the meeting to be held in Chicago, Illinois on September 23, 1987 was listed in error. The correct address for the meeting of the Director's Task Force on the Combined Federal Campaign is:

DATES: September 23, 1987, 1:00 p.m., Federal Office Building, Room 350, 230 South Dearborn, Chicago, Ill.

FOR FURTHER INFORMATION CONTACT: Jeremiah J. Barrett, Secretary, Director's Task Force on the Combined Federal Campaign, 1900 E Street NW., Room 7354, Washington, DC 20415, (202) 632–5564.

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 87–21014 Filed 9–10–87; 8:45 am]

BILLING CODE 6325–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Notice of meeting.

SUMMARY: The Pennsylvania Avenue Development Corporation announces a forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, September 16, 1987, at 10:00 a.m.

ADDRESS: The meeting will be held at the Parkview Room, Hotel Washington,15th Street and Pennsylvania Avenue NW.,Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901. The agenda of this meeting is: (a) Square 407—Revised Preliminary Approval; (b) Square 459—601 Pennsylvania Avenue Phase II, Revised Preliminary Approval; (c) Report on the International Culture and Trade Center at the Great Plaza.

The meeting is open to the public. The Board encourages the submission of written statements to the Chairman prior to the date of the meeting, particularly addressing items on the agenda. The Chairman shall circulate to the Members responsible statements received from the public on items on the agenda. To the extent that time permits, the Chairman and Members of the Board may address such statements at the meeting.

Summary minutes of the meeting will be maintained at the Corporation and will be available for public inspection and reproduction (during regular business hours) within 90 days following the meeting. Notification of written statements and requests for summary minutes should be sent to:Barbara Austin, Suite 1220 North, 1331 Pennsylvania Avenue NW.,Washington, DC 20004–1703.

Date: September 4, 1987.

M.J. Brodie,

Executive Director.

[FR Doc. 87–20992 Filed 9–10–87; 8:45 am]

BILLING CODE 7630–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted, Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

September 4, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Rowan Co., Cumulative Convertible Exch. Preferred $2.125 $.12½ Par Value (File No. 7–0379)
Sequa Corp., Preferred A, No Par Value (File No. 7–0380)
Sequa Corp., Preferred B, No Par Value (File No. 7–0381)
Electrospace Systems Inc., Common Stock, $.01 Par Value (File No. 7–0382)
Penn Real Estate Invt. Tr., Shares of Beneficial Interest, $1.00 Par Value (File No. 7–0383)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 28, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20897 Filed 9–10–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

September 4, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Advanced Systems Inc., Common Stock, $.10 Par Value (File No. 7–0384)
American Hoist & Derrick Co., Common Stock, $1.00 Par Value (File No. 7–0385)
Anchor Glass Container Corp., Common Stock, $1.00 Par Value (File No. 7–0386)
Armtek Corp., Common Stock, $1.00 Par Value (File No. 7–0387)
Asia Pacific Fund, Common Stock, No Par Value (File No. 7–0388)
Banco Santander, American Depository Receipts, No Par Value (File No. 7–0389)
Barnes Group, Common Stock, $1.00 Par Value (File No. 7–0390)
B.F. Goodrich Co., $7.85 Cumulative A Preferred, $1.00 Par Value (File No. 7–0391)
Broken Hill Proprietory Co., Common Stock, No Par Value (File No. 7–0392)
Brush Wellman Inc., Common Stock, $1.00 Par Value (File No. 7–0393)
Burndy Corp., Common Stock, $1.00 Par Value (File No. 7–0394)
Calmat Co., Common Stock, $1.00 Par Value (File No. 7–0395)

Chemical New York Corp., Adj. Rt. 8.05% Cumulative B Preferred (File No. 7–0396)
Chemical New York Corp., Adj. Rt. 7.70% Cumulative C Preferred (File No. 7–0397)
Claires Stores Inc., Common Stock, $5.00 Par Value (File No. 7–0398)
Davis Water &Waste Industry, Common Stock, $1.00 Par Value (File No. 7–0399)
Diamond Shamrock R & M, Common Stock, $1.00 Par Value (File No. 7–0400)
Environmental System Co., $1.75 Cum. Conv. Exch. A Pfd., $1.00 Par Value (File No. 7–0401)
Federal National Mortgage Association, Warrants (File No. 7–0402)
Fieldcrest Cannon Inc., Common Stock, $1.00 Par Value (File No. 7–0403)
First Republic Bancorp, Class A Common Stock, $1.00 Par Value (File No. 7–0404)
Freeport McMoran Gold Co., Common Stock, $.10 Par Value (File No. 7–0405)
Freeport McMoran Inc. $1.875 Cumulative Convertible Exchangable Preferred, $1.00 Par Value (File No. 7–0406)
Hancock Fabrics Inc., Common Stock, $1.00 Par Value (File No. 7–0407)
Harcourt Brace Javanovich Inc., Preferred 12% Cumulative Preferred, $1.00 Par Value (File No. 7–0408)
Hughes Supply Inc., Common Stock, $1.00 Par Value (File No. 7–0409)
La Maur Inc., Common Stock, $3.33 ⅓ Par Value (File No. 7–0410)
Lee Enterprises Inc., Common Stock, $2.00 Par Value (File No. 7–0411)
Logicon Inc., Common Stock, $.10 Par Value (File No. 7–0412)
McDermott International, Warrants (File No. 7–0413)
MFS Government Market Income Trust, Common Stock, No Par Value (File No. 7–0414)
National Semiconductor, Warrants (File No. 7–0415)
Par Pharmeceuticals, Common Stock, $1.00 Par Value (File No. 7–0416)
Phelps Dodge Corp., Dep. Conv. Exch. Pref., No Par Value (File No. 7–0417)
Southmark Corp., 9¼% Cumulative Convertible H Preferred, $2.00 Par Value (File No. 7–0418)
Sterling Bancorp, Common Stock, $1.00 Par Value (File No. 7–0419)
Toro Co., Common Stock, $1.00 Par Value (File No. 7–0420)
Trans Canada Pipeline, Common Stock, No Par Value (File No. 7–0421)
Trans World Airlines, $2.25 Cumulative Prefered, $.001 Par Value (File No. 7–0422)
USX Corp., Warrants (File No. 7–0423)
Valero Natural Gas LP, Common Stock, No Par Value (File No. 7–0424)
West Co., Inc., Common Stock, $.25 Par Value (File No. 7–0425)
Weyerhaeuser Co., $2.265 Cumulative Convertible Exchangeable Preferred, $1.00 Par Value (File No. 7–0426)
World Corp., Inc., Common Stock, $1.00 Par Value (File No. 7–0427)
Adams Russell Inc., Common Stock, $.50 Par Value (File No. 7–0428)
Camco Inc., Common Stock, $1.00 Par Value (File No. 7–0429)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 28, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications is it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20898 Filed 9–10–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 4, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Compania Telefonica de Espana, S.A., (National Telephone Company of Spain), American Depositary Shares (File NO. 7–0435)
United Kingdom Fund, Inc. (The), Common Stock, $.01 Par Value (File No. 7–0436)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 28, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20900 Filed 9–10–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 4, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f) (1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

AGS Computers, Inc., Common Stock, $0.10 Par Value (File No. 7–0430)
Dreyfus Corp. (The), Common Stock, $0.10 Par Value (File No. 7–0431)
Ecolab Inc., Common Stock, $1.00 Par Value (File No. 7–0432)
Fleming Companies, Inc., Common Stock, $2.50 Par Value (File No. 7–0433)
Safety-Kleen Corp., Common Stock, $0.10 Par Value (File No. 7–0433)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 28, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission

BEST COPY AVAILABLE

will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20899 Filed 9-10-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15965; 811-2821]

Application for De-Registration; CIGNA High Yield Fund, Inc.

September 4, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for de-registration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: CIGNA High Yield Fund, Inc. ("Applicant").

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on May 21, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 28, 1987. Requests a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 1600 Arch Street, Philadelphia, PA 19101.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, (202) 272-2847, or Special Counsel Karen L. Skidmore, (202) 272-3032 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Applicant filed a Notification of Registration on Form N-8A and a registration statement pursuant to section 8(b) of the 1940 Act on April 27, 1978, to register as an open-end, diversified management investment company. It also filed a registration statement pursuant to the Securities Act of 1933 on Form S-5 in order to make a public offering of common stock, and this registration statement became effective on June 8, 1978.

2. Applicant is a Maryland corporation in good standing and anticipates filing Articles of Dissolution with the State of Maryland and an Application for Withdrawal of a Foreign Corporation with the State of Connecticut.

3. On February 6, 1987, Applicant's Board of Directors passed a resolution which authorized Applicant to enter into the Agreement and Plan of Reorganization and Liquidation ("Agreement"). On April 24, 1987, over 50% of the shareholders of Applicant approved the Agreement in which Applicant became a separate series of shares known as the CIGNA High Yield Fund series of CIGNA Funds Group ("Series"), a business trust organized under the laws of the Commonswealth of Massachusetts, and each share of Applicant was exchanged for a share of Series. On April 27, 1987, the effective date of the reorganization, all assets and liabilities of Applicant were transferred to Series.

4. No expenses of the reorganization were incurred by Applicant but instead, were borne by Series and did not exceed $10,000. All shareholders of Applicant became shareholders of Series and, therefore, all expenses of the reoganization were shared by all of the shareholders. No brokerage commissions were paid on the transfer of assets.

5. Applicant is not a party to any litigation or administrative proceedings. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20901 Filed 9-10-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15966; 811-3497]

Application for De-Registration; GIT Cash Trust

September 4, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for de-registration under the Investment Company Act of 1940 ("1940 Act").

Applicant: GIT Cash Trust ("Applicant").

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 4, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1655 North Fort Myer Drive, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst, (202) 272-2847, or Karen L. Skidmore, Special Counsel, (202) 272-3023 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier, (800) 231-3282 (in Maryland, (301) 258-4300).

Applicants' Representations

1. Applicant filed a registration statement pursuant to section 8(b) of the 1940 Act on June 25, 1982, to register as an open-end, diversified management investment company. It also filed a registration statement pursuant to the Securities Act of 1933 in order to make a public offering of common stock, and this registration statement became effective on December 30, 1982. The

initial public offering of Applicant's stock was on January 20, 1983.

2. Applicant was incorporated in the State of Massachusetts as a Massachusetts business trust and has filed copies of its Form N–8F and Form N–14 with the Department of Corporations in order to terminate its registration as a Massachusetts business trust.

3. On October 20, 1986, the Trustees of Applicant voted unanimously to approve an Agreement and Plan of Acquisition ("Plan") whereby Applicant would be acquired by Government Investors Trust ("Trust"), an affiliated, open-end, diversified management investment company. The Trustees also authorized a solicitation of Applicant's shareholders to obtain approval for the Plan.

4. Form N–14, which included proposed proxy materials, was filed with the SEC and became effective on February 14, 1987. That Prospectus/Proxy Statement stated that under the Plan, Trust would acquire all of the assets of Applicant in exchange for assumption by Trust of all of the liabilities of Applicant and Applicant would receive Trust shares to be distributed pro rata by Applicant to its shareholders in complete liquidation and termination of the Applicant; that as a result of the Plan, each shareholder of Applicant would become the owner of Trust shares equal in value to his or her holdings in Applicant.

5. On February 24, 1987, proxies were sent to all shareholders of Applicant's Government Money Market Portfolio and on February 25, 1987, proxies were sent to all shareholders of Applicant's Regular Money Market Portfolio. At a meeting held on March 24, 1987, the shareholders of both portfolios approved the Plan and the acquisition of Applicant by Trust subsequently occurred on March 27, 1987. On March 26, 1987, shareholders had received a distribution of all dividends accrued during the period of March 1, 1987, through March 26, 1987. Applicant did not incur any costs in connection with the liquidation.

6. Applicant does not have any shareholders. No assets have been retained by Applicant and no liabilities remain outstanding. Applicant is not a party to any litigation or administrative proceedings. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–20902 Filed 9–10–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/1103]

Chairman's Ad Hoc Group for Communications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Chairman's Ad Hoc Group on International Communications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet September 22, 1987 at 10:00 a.m. in Room 1207, Department of State, 2201 C Street, NW., Washington, DC.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities. The Ad Hoc Group on International Communications Development reviews issues pertaining to the improvement and/or expansion of the communications infrastructure in developing countries.

This meeting will review recent developments concerning the Center for Telecommunications Development, including the status of U.S. fundraising support, and discuss issues that will be considered by the Center's Advisory Board at its October 29-30 session. It will also hear a report on the bilateral consultations that Ambassador Diana Lady Dougan held with African officials in July. In addition, interested participants will be invited to serve on a special group to prepare U.S. positions on communications development for the 1989 Plenipotentiary Conference of the International Telecommunication Union.

Members of the general public, specifically representatives of the telecommunications industry and those who are concerned with telecommunications development issues in developing countries, are invited to attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. All attendees must use the C Street entrance to the building. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. All persons wishing to attend should call (202) 647–1007.

Request for further information should be directed to Mr. D. Clark Norton, State Department, Washington, DC, telephone (202) 647–1007.

Date: September 2, 1987.

Earl S. Barbely,

Office of Technical Standards and Development.

[FR Doc. 87–20883 Filed 9–10–87; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1114]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee will conduct an open meeting on Monday, 28 September 1987 at 0930 in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593. The purpose of the meeting is to review the results of the 57th Regular Session of the International Maritime Organization Legal Committee, and to consider the U.S. position for the 58th Regular Session and the 1st Extraordinary Session. The Regular Session will be held in London on 12–16 October 1987, and the Extraordinary Session will also be held in London on 19–20 October 1987.

58th Regular Session, IMO Legal Committee: The principal focus of the Regular Session will be the matters considered at the 52nd–57th Sessions relating to marine salvage, in particular the revision of the 1910 Convention on Salvage and Assistance at Sea, and related issues. The following additional topics are also on the 58th Session agenda: proposed Resolution on Cooperation in Maritime Casualty Investigations submitted by Liberia and the United States; question of liability for damage caused by the maritime carriage of hazardous and noxious substances; possible revision of the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea; and five pending applications for consultative status.

With respect to marine salvage, the Legal Committee is expected to finalize its work on a draft convention based on the text prepared by the Comite Maritime International. The draft convention imposes duties upon both shipowners and salvors to protect the marine environment, and adopts a new system of financial incentives to salvors to engage in salvage activities where the

environmental risks are great. The convention also establishes uniform rules for the conduct of salvage acivities. The emphasis is on constructing an international legal framework, within the traditional principles of admiralty law, that will support a viable private salvage industry while at the same time encouraging efforts to protect the environment.

The principal salvage issues remaining for the Legal Committee to address at the 58th session are as follows:

1. The scope of convention application, especially with respect to offshore platforms and government-owned, non-commercial cargoes;

2. The scheme for compensating salvors who conduct operations which prevent or minimize, or which in certain circumstances are intended to prevent or minimize, damage to the marine environment, specifically, the amount of compensation and how the cost should be apportioned;

3. The method and extent to which salvors may seek to limit their liability; and

4. The appropriate jurisdictional principles, especially with respect to actions to enforce salvage awards.

At its Regular Session the Legal Committee will also consider the proposed Resolution on Cooperation in Maritime Casualty Investigations first submitted by Liberia and the United States at the 56th Session. After brief discussion of the proposal at the 57th Session, the U.S. agreed to accept comments from interested governments in the intersessional period. After consultation with other interested governments and coordination with co-sponsor Liberia, the U.S. has submitted a revised resolution text for the 58th Session.

Liability for damage caused by the maritime carriage of hazardous and noxious substances (HNS) is also on the current agenda for the Regular Session. It is expected that a coalition will submit a new liability proposal in an effort to develop an alternative regime for the failed 1984 draft HNS Convention.

The Regular Session agenda also includes five applications for consultative status. The applicants are as follows: The International Association of European Average Adjustors; the European Boatmen's Association; the International Ship Suppliers Association; the Seamen's Church Institute of New York and New Jersey; and the International Christian Maritime Organization.

First Extraordinary Session, IMO Legal Committee: The Extraordinary Session has been called for the express purpose of considering briefly the draft Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation prepared by the Ad Hoc Preparatory Committee. The Ad Hoc Committee concluded its work in Rome on 22 May 1987, and the IMO Council subsequently endorsed the draft Convention and the accompanying Protocol. The Council then referred the draft to the Legal Committee for a two-day review, and scheduled a Diplomatic Conference to adopt the Convention for early 1988.

In referring the draft Convention to the Legal Committee, the Council directed the Committee's attention to the following issues:

1. The application of the Convention to demise or bareboat charterers;

2. A proposal to require post states to accept alleged offenders in the custody of vessel masters;

3. The question regarding the handling of crew discipline and its relationship with the scope of the Convention; and

4. Harmonization of Convention terminology with that of the United Nations Convention on the Law of the Sea.

Members of the public are invited to attend, up to the seating capacity of the room.

For further information pertaining either to the issues to be discussed at the Shipping Coordinating Committee meeting, contact Captain Frederick F. Burgess, Jr. or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G-LMI), Washington, DC 20593, telephone (202) 267-1527.

Date: September 2, 1987.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87-20882 Filed 9-10-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Order Instituting Reconsideration of Proceeding To Allocate Japan Charters

AGENCY: Department of Transportation.

ACTION: Affirmation of Order 87-8-5 [1] instituting the *Japan Charter Authorization Proceeding* in Docket 43446, (Order 87-9-12).

SUMMARY: On reconsideration of Order 87-8-5, which instituted the Japan Charter Authorization Proceeding in Docket 43446, the Department has (a) affirmed the eligibility criterion for participation in the *Proceeding* (specifically, that applicants must have underlying authority to perform Japan charters); (b) clarified that the presiding Administrative Law Judge can consider various approaches to allocating the charters consistent with the objectives of the proceeding; and (c) assigned to the *Proceeding* four additional charters. (The order also affirms an initial, interim allocation of 100 charters outside the Proceeding, and disposes of petitioner requests for additional reporting requirements for the initially allocated charters.)

Dated: September 4, 1987.

Philip W. Haseltine,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-20881 Filed 9-10-87; 8:45 am]

BILLING CODE 4910-62-M

[1] Published at 52 FR (29463), August 7, 1987.

Federal Aviation Administration

[Summary Notice No. PE-87-23]

Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: October 1, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on September 2, 1987.

Deborah E. King,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No	Petitioner	Regulations affected	Description of relief sought
25294	Polar International Airlines	14 CFR 121.61(d)	To allow petitioner to use the services of Mr. John B. Laner as Chief Inspector (Director of Quality Control) without his meeting the experience requirements of § 121.61(d)
25260	National Air Transportation Association	14 CFR 135.169 and 25.853	To allow petitioner members to operate certain aircraft without complying with the seat cushion flammability standards of § 25.853 for a period of two years
25307	Precision Airlines	14 CFR 135.429(a) and 135.435	To allow petitioner to use on its German built DO229-210 aircraft, certain components, parts, and accessories repaired, overhauled, or otherwise maintained by respective original equipment manufacturers
25325	World Jet Corporation	14 CFR 135.169, 25.853, and 121.312(b)	To allow petitioner to operate certain aircraft without complying with the seat cushion flammability standards of § 25.853 until each of the aircraft affected has a new interior installed
25302	Flight International	14 CFR 135.169 and 25.853	To allow petitioner to operate certain aircraft without complying with seat cushion flammability standards of §25.853 for a period of two years beyond the implementation date of November 26, 1987
25954	Seattle Jet Center	14 CFR 135.267(d)	Seattle Jet Center petitioned for reconsideration of Denial of Exemption No. 4705, to permit Seattle Jet Center to assign a flight crewmember and for its flight crewmembers to accept duty during flight time without having had at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion of the assignment. *Denied, August 17, 1987*
20254	Royale Airlines	14 CFR 135.225(e)(1)	To allow petitioner to take off from Polk Army Air Field, Fort Polk, Louisiana, when the visibility is less than 1 mile, but not less than one-fourth mile. *Granted, August 20, 1987*

[FR Doc. 87-20887 Filed 9-10-87; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-87-22]

Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: October 1, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on September 2, 1987.

Deborah E. King,

Acting Manager,

Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No	Petitioner	Regulations affected	Description of relief sought
25335	Mr. Leon Corky Smith and Mr. John Rudy Ruhwedel.	14 CFR 105.43.	To allow petitioners, their employees and representatives, and other volunteer experimental parachute test jumpers under their direction and control, to make parachute jumps, and for pilots in command of aircraft to allow these persons to make parachute jumps from aircraft while these persons are wearing a dual harness parachute pack
23139	Wylie Aircraft Corporation	14 CFR 91.31(a)	To allow petitioner to operate its McDonnell Douglas DC-6 series aircraft at a 5 percent increased zero fuel and landing weight for the purpose of competing with foreign operators operating under Part 129 who are authorized to use the 5 percent increase in zero fuel and landing weight. *GRANTED, August 26, 1987*
25313	Salair, Inc.	14 CFR 135.2	To allow petitioner to operate aircraft with a maximum payload capacity of 18,000 pounds under Part 135. *DENIED, August 21, 1987*
24540	Union Camp Corporation	14 CFR 91.45	To allow petitioner to conduct ferry flights, with one engine inoperative, on its Lockheed JetStar 731 aircraft, N47UC, N48UC, and N49UC, without obtaining a special flight permit for each flight. *GRANTED, August 26, 1987*

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
25217	Kenmore Air Harbor, Inc	14 CFR 135.265 (a)(3) and (d)	To allow petitioner to schedule a flight crewmember and to allow its flight crewmembers to accept an assignment for flight time in excess of 34 hours in any 7 consecutive days and to allow petitioner to schedule flight crewmembers to fly without 24 hours of rest during any 7 consecutive days and, instead, to allow petitioner to conduct operations under the appropriate paragraphs of § 135.267. *DENIED, August 26, 1987*
25348	Regional Airline Association	14 CFR 135.173 (a) and (c)	To allow petitioner member air carriers and any other Part 135 passenger-carrying air carrier to operate their Douglas DC-3 airplanes or any other non-transport category multiengine airplane having a passenger seating configuration, excluding any pilot seat, of 10 seats or more in passenger-carrying operations without being equipped with either approved thunderstorm detection equipment or approved airborne weather radar equipment for 120 days to provide sufficient time to install such equipment. *GRANTED, August 25, 1987*
24093	Albuquerque International Balloon Fiesta, Inc.	14 CFR 61.3(b) and 91.27	To allow petitioner to permit foreign balloon pilots and foreign balloons to participate in the 16th Annual Albuquerque International Balloon Fiesta on October 3–11, 1987, and also in the 17th Annual Albuquerque International Balloon Fiesta in 1988 without those pilots and balloons having to comply with the FAA's pilot certification and airworthiness requirements. *GRANTED, August 21, 1987*

[FR Doc. 87–20888 Filed 9–10–87; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Pitkin County, CO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Pitkin County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Leon Witman, Division Administrator, Federal Highway Administration, 555 Zang Street, Room 250, Lakewood, Colorado 80228, Attention: Mr. Mike Herron, Telephone: (303) 236–3366.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Colorado Department of Highways (CDOH) will prepare an Environmental Impact Statement (EIS) on a proposal to improve State Highway 82 in Pitkin County, Colorado. The proposed improvement would involve the reconstruction of the existing SH 82 between the towns of Basalt and Aspen for a distance of about 15 miles. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand.

A Final Environmental Impact Statement and section 4(f) Statement (FEIS) was adopted by FHWA in November, 1981 under project CS 57–0082–29, Carbondale-East. That project study area included the segment of SH 82 from a point 1.9 miles east of SH 133 intersection near Carbondale in Garfield County to the West Aspen City limits, a total of 27 miles. Based on information used in the development of that Draft EIS and comments received as a result of the circulation of that Draft EIS and testimony entered during the holding of two formal location public hearings, a No-Build alternative from Wingo to Aspen was selected. That No-build segment is the segment which will be re-examined for potential improvements.

Alternatives under consideration include (1) taking no action; (2) widening the existing two-lane highway to four lanes on the existing alignment; and (3) widening the existing two-lane highway to four lanes partially on the existing alignment and partially on new alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who express interest in this proposal. A series of public meetings will be held in the Basalt-Aspen corridor between September, 1987 and November, 1988. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. A newsletter updating the project status will also be prepared periodically and sent to all those on the mailing list. the draft EIS will be available for public agency review and comment.

To ensure that the full range of issues related to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: September 1, 1987.

Leon Witman,

Division Administrator, Lakewood, CO.

[FR Doc. 87–20993 Filed 9–10–87; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 4, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 1120–REIT
Type of Review: Resubmission
Title: U.S. Income Tax Return for Real Estate Investment Trusts

Description: Form 1120–REIT is filed by a corporation, trust, or association electing to be taxed as a REIT in order to report its income and deductions and to compute its liability. IRS uses Form 1102–REIT to determine whether the REIT has correctly reported its income, deductions, and tax liability.

Respondents: Businesses or other for-profit
Estimated Burden: 2,327 hours

Clearance Officer: Garrick Shear, (202) 535–4297, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management

and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87-20884 Filed 9-10-87; 8:45 am]

BILLING CODE: 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 4, 1987.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0023
Form Number: 720
Type of Review: Revision
Title: Quarterly Federal Excise Tax Return

Description: Form 720 is used to report excise taxes due from retailers and manufacturers on the sale or manufacture of various articles to report taxes on facilities and services, and taxes on certain products and commodities (gasoline and windfall profit taxes, etc.). It enables IRS to monitor excise tax liability for various categories on a single form and to collect the tax quarterly in compliance with the law and regulations (Internal Revenue Code section 6011).

Respondents: Individuals or households, Businesses or other for-profit
Estimated Burden: 514,376 hours

OMB Number: 1545-0416
Form Number: 5302
Type of Review: Extension
Title: Employee Census

Description: This form is used in conjunction with Forms 5300 and 5307 when applying to IRS for a determination letter stating the pension or profit-sharing plan of the employer meets the requirements of section 401(a) of the Internal Revenue Code. The data submitted allows the IRS to determine that the plan does not discriminate in favor of the prohibited group.

Respondents: Businesses or other for-profit, Small Businesses or organizations

Estimated Burden: 419,396 hours

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0133
Form Number: ATF F 5400.8 (4721)
Type of Review: Extension
Title: Explosives Delivery Record

Description: This information collection activity is used to verify distributors' compliance with the Federal law and regulations, thereby documenting the flow of explosives in commerce, and as a tracing tool to prevent misuse and traffic in stolen explosives.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 2,500 hours

Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87-20885 Filed 9-10-87; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; El Lissitzky

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359,, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "El Lissitzky" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Harvard University Art Museums in Cambridge Massachusetts, beginning on or about September 26, 1987, to on or about November 29, 1987, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

John A. Lindburg,

Acting General Counsel.

Date: September 9, 1987.

[FR Doc. 87-21035 Filed 9-10-87; 8:45 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; King Herod's Dream: Caesarea on the Sea

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "KING HEROD'S DREAM: CAESAREA ON THE SEA" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the tempoary exhibition or display of the listed exhibit objects at the Evans Gallery, National Museum of Natural History in Washington, DC, beginning on or about March 23, 1988, to on or about June 19, 1988; at the Museum of Natural History in Los Angeles, California, from on or about July 16, 1988, to on or about October 9, 1988; at the Denver Museum of Natural History in Denver, Colorado, from on or about November 5, 1989, to on or about January 29, 1989; at the Science Museum of Minesota in St. Paul, Minnesota, from on or about February 25, 1989 to on or about May 21, 1989; at the Museum of Science in Boston, Massachusetts, from on or about June

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202-485-7976, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202-485-7976, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

17, 1989, to on or about September 10, 1989; at an undetermined location, from on or about October 7, 1989, to on or about December 31, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

John A. Lindburg,

Acting General Counsel.

Date: September 9, 1987.

[FR Doc. 87-21033 Filed 9-10-87; 8:45 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Zurbaran and Fragonard

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibits "Zurbaran" and "Fragonard" (see below [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. I also determine that the temporary exhibition or display of the objects at the Metropolitan Museum of Art in New York City, beginning on or about September 16, 1987 to on or about December 14, 1987 for the Zurbaran exhibit and beginning on or about February 2, 1988 to on or about May 8, 1988 for the Fragonard exhibit, is in the national interst.

Public notice of this determination is ordered to be published in the **Federal Register.**

John A. Lindburg,

Acting General Counsel.

Date: September 9, 1987.

[FR Doc. 87-21034 Filed 9-10-87; 8:45 am]

BILLING CODE 8230-01-M

[1] Details concerning these objects may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202-485-7976, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a revision and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Oficer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 3, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Revision

1. Department of Veterans Benefits
2. Report of Home Loan Processed on Automatic Basis
3. VA Form 26-1820
4. This information is used by lenders who meet the requirements for automatic VA guaranteed home loans and by VA prior to issuance of guaranty.
5. On occasion
6. Individuals or households
7. 200,000 responses
8. 100,000 hours
9. Not applicable.

[FR Doc. 87-20875 Filed 9-10-87; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Women Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Women Veterans will be held at the Dolphin Beach Resort, 4900 Gulf Boulevard, St. Petersburg Beach, Florida, on October 7, 1987, and October 9, 1987. The purposes of the Advisory Committee on Women Veterans is to advise the Administrator regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Veterans' Administration; and the activities of the Veterans Administration designed to meet such needs. The Committee will make recommendations to the Administrator regarding such activities.

The sessions will convene at 12 noon October 7, 1987, and at 8:30 a.m. on October 9, 1987. These sessions will be open to the public up to the seating capacity for the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Program Assistant, AIDS Working Group, Veterans Administration Central Office (phone 202/233-2621) prior to September 30, 1987.

Dated: September 2, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87-20876 Filed 9-10-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 176
Friday, September 11, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, September 15, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Discussion of minutes of previous meetings.

Applications for consent to merge and establish two branches:

Citizens Bank and Trust of West Georgia, Carrollton, Georgia, an insured State nonmember bank, for consent to merge, under its charter and title, with The Carrollton State Bank, Carrollton, Georgia, and for consent to establish the two offices of The Carrollton State Bank as branches of the resultant bank.

State Bank of Bernie, Bernie, Missouri, an insured State nonmember bank, for consent to merge, under its charter and title, with Malden State Bank, Malden, Missouri, and for consent to establish the two offices of Malden State Bank as branches of the resultant bank.

Request for waiver of a condition imposed in approval of application for consent to merge and establish eight branches:

Apple Bank for Savings, New York City (Manhattan), New York.

Request for waiver of the qualification examination requirement pursuant to Municipal Securities Rulemaking Board Rule G-3 (e)(v):

Central Bank, Walnut Creek, California.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets.

Case No. 47-089-L
The First National Bank of Midland, Midland, Texas

Reports of the actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
Sunshine State Bank, South Miami, Florida (6694) (Memo dated August 5, 1987)
Audit Report re:
Central Bank and Trust of Tulsa, Tulsa, Oklahoma (2597) (Memo dated July 29, 1987)
Audit Report re:
Des Moines Consolidated Office, Cost Center—203 (Memo dated August 5, 1987)
Audit Report re:
San Jose Consolidated Office, Cost Center—604 (Memo dated July 31, 1987)
Audit Report re:
Audit of Loan Management and Liquidation, Knoxville Consolidated Office (Memo dated July 31, 1987)
Audit Report re:
Audit of Real Estate Owned Assets—Atlanta Regional Office (Memo dated July 31, 1987)
Audit Report re:
Case Management System Audit Report (Memo dated July 31, 1987)
Audit Report re:
Wire Transfer Controls Audit Report (Memo dated August 20, 1987)

Discussion Agenda:

Memorandum and resolution re: Withdrawal of a proposed amendment to Part 332 of the Corporation's rules and regulations, entitled "Powers Inconsistent with Purposes of Federal Deposit Insurance Law," which amendment would have, among other things, prohibited insured banks, subject to certain exceptions, from directly engaging in real estate development activities or insurance underwriting activities and would have established certain restrictions on the indirect conduct of such activities.

Memorandum and resolution re: Final amdendments to Part 303 and 308 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," and "Rules of Practice and Procedures," respectively, which amendments would redelegate authority to act on (1) those applications and administrative enforcement matters formerly exercised by the Board of Review to officials in the Corporation's Division of Bank Supervision; and (2) certain applications and administrative enforcement matters to the Director of the Division of Bank Supervision and, where confirmed in writing by the Director, to other appropriate officials in the Division of Bank Supervision.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: September 8, 1987.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 87-21028, Filed 9-9-87; 11:26 am]
BILLING CODE 6710-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, September 15, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Revision of the Corporation's Bylaws.

Resolution reconstituting the standing committees of the Corporation.

Resolution amending the delegations of authority with respect to personnel matters.

Resolution amending the delegations of authority with respect to regulation and supervision expenditures.

Memorandum regarding request that the FDIC submit an amicus brief in Wells Fargo Asia Limited v. Citibank, N.A.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: September 8, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–21029 Filed 9–9–87; 11:26 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, September 16, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed amendment to Regulation U (Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks) to exempt banks, when making loans of $100,000 or less, from executing Form U–1. (Proposed earlier for public comment; Docket No. R–0608)

Discussion Agenda

2. Consideration of whether to seek comment on a proposed amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) regarding acquisitions of thrift institutions by bank holding companies.

3. Any items carried forward from a previously announced meeting.

Note. This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: September 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–21003 Filed 9–9–87; 10:32 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wendesday, September 16, 1987, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on September 14, 1987.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: September 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–21004 Filed 9–9–87; 10:32 am]

BILLING CODE 6210–01–M

INTER-AMERICAN FOUNDATION

Advisory Council Meeting

TIME AND DATE:
September 16, 1987
6:00–9:00 p.m.
September 17, 1987
9:00 a.m–4:00 p.m.

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

September 16, 1987

1. Opening Remarks by Chairman of the Board, Chairman of the Advisory Council, and the Foundation's President
2. Introduction of Advisory Council Members
3. Introduction of Foundation Staff and Presentation of Program Overview

September 17, 1987

4. Briefings on Foundation Programs
5. Organization of Advisory Council

CONTACT PERSON FOR MORE INFORMATION: Charles M. Berk, Secretary to the Board of Directors, (703) 841–3812.

Date: September 9, 1987.

Charles M. Berk,

Sunshine Act Officer.

[FR Doc. 87–21047 Filed 9–9–87; 2:23 pm]

BILLING CODE 7025–01–M

INTER-AMERICAN FOUNDATION

Board of Directors Meeting

TIME AND DATE:
September 17, 1987
6:00–9:00 p.m.
September 18, 1987
9:00 a.m.–12:00 noon

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

September 17, 1987

1. The Chairman's Report
2. The President's Report

September 18, 1987

3. Report of the Committees of the Board
4. Other Business

CONTACT PERSON FOR MORE INFORMATION: Charles M. Berk, Secretary to the Board of Directors, (703) 841–3812.

Date: September 9, 1987.

Charles M. Berk,

Sunshine Act Officer.

[FR Doc. 87–21048 Filed 9–9–87; 2:23 pm]

BILLING CODE 7025–01–M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 10:30 a.m. Monday, October 26, 1987.

PLACE: National Press Club, 14th & F Streets, NW., Washington, DC 20045.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Call meeting to order.
2. Adoption of proposed agenda.
3. Approval of minutes of April 14, 1987 meeting.
4. Report of the Chairman.
   a. Discussion of any proposed changes in 1988 or 1989 scholarship program.
   b. Discussion of the Public Service Conference in Lexington, VA.
   c. Report on Awards Ceremony Speakers.
5. Report of the Executive Secretary.
   a. Status of the Trust Fund.
   b. Comments on Faculty Representatives.
   c. Regional Review and Panel update.
   d. Outlook for 1988 nominations.
6. Resolution to empower the Chairman/Executive Secretary to enter/renew contracts, conclude agreements, etc.
7. Resolution to elect Senator Thomas F. Eagleton and Congressman Richard Bolling as trustees-emeritus.
8. New Business.
9. Discuss and set date, time and place of Spring Board meeting.
10. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Malcolm C. McCormack, Executive Secretary, Telephone 202/395–4831.

Malcolm C. McCormack,

Executive Secretary.

[FR Doc. 87–21043 Filed 9–9–87; 1:12 pm]

BILLING CODE 9500–01–M

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Corrections

Federal Register
Vol. 52, No. 176
Friday, September 11, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 87-006]

Cattle From Canada

Correction

In proposed rule document 87-19759 beginning on page 32561 in the issue of Friday, August 28, 1987, make the following correction:

On page 32562, in the first column, in the fifth line from the bottom, "expected" should read "exported".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51688; FRL-3247-4]

Certain Chemicals Premanufacture Notices

Correction

In notice document 87-18490 beginning on page 30431 in the issue of Friday, August 14, 1987, make the following corrections:

1. On page 30431—

a. In the first column, under **DATES**, in the fifth line, "87,1519" should read "87-1519".

b. In the same column, in the fifth line from the bottom, "87,1529" should read "87-1529".

c. In the second column under **P 87-1511**, in the second line, "*Substance.* (g)", should read "*Substance.* (G)".

d. In the third column, in the first line, "*Use/Import.* (g)", should read "*Use/Import.* (G)".

e. In the same column, under **P 87-1513**, in the third line, "*Chemical.* (s)" should read "*Chemical.* (S)".

f. And in the same column, the 17th line from the bottom should read, **P 87-1517**.

2. On page 30432—

a. In the first column, the third line from the bottom should read, "(5-hexenylthio).".

b. In the second column, under **P 87-1530**, in the fifth and ninth lines, "disulfo" was misspelled.

c. In the third column, under **P 87-1534**, in the second line, "*Chemical.*", should read "*Chemical.* (G)".

3. On page 30433, in the first column, under **P 87-1540**, in the seventh line "bis-,m", should read "bis-,".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 78-2830]

Dental Devices; General Provisions and Classifications of 110 Devices

Correction

In rule document 87-18265 beginning on page 30082 in the issue of Wednesday, August 12, 1987, make the following corrections:

1. On page 30084, in the table, in the entry for "872.3600", the Docket No. should read "78N-2886".

2. On page 30086, in the table—

a. The fourth entry under "Device" should read, "Dental electrosurgical unit and accessories".

b. In the fifth line, in the heading for "Subpart F", "Therapeutic" was misspelled.

3. On page 30088, in the third column, in the table—

a. In the entry for "872.3490", in the right hand column, in the third paragraph, in the second line, "salt car-" should read "salt and car-".

b. In the entry for "872.4565", in the right hand column, the last line should read "No. 78N-2945).".

c. In the entry for "872.5410", in the right hand column, the first entry should read "Orthodontic appliances and accessories.".

4. On page 30096—

a. In the second column, in the table, in the right hand column, in the 12th line, "January 26, 1972" should read "January 26, 1982".

b. In the third column, in the second complete paragraph, in the fifth line, "any detection" should read "any caries detection".

§ 872.3680 [Corrected]

5. On page 30102, in the second column, in § 872.3680(a), in the seventh line, "cost" should read "coat".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[Circular No. 2596; AA-330-07-4211-02-NCPF-2410]

Rights-of-Way, Principles and Procedures; Recovery of Costs

Correction

In rule document 87-15483 beginning on page 25802 in the issue of Wednesday, July 8, 1987, make the following corrections:

1.On page 25808, in the second column, in the table of contents of Subpart 2808, in the entry for § 2808.3-3, "withdraws" should read "withdrawn".

§ 2808.1 [Corrected]

2.On the same page, in the same column, in § 2808.1(b), in the first line, "the subpart" should read "this subpart".

§ 2808.5 [Corrected]

3.On page 25810, in § 2808.5, in the third column, in paragraph (c), in the ninth line, "§ 2808.8" should read "§ 2808.6".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-07-4212-12; A-22448]

Realty Action; Reconveyed Land; Mohave County, AZ

Correction

In notice document 87-19912 beginning on page 32849 in the issue of Monday, August 31, 1987, make the following corrections:

1. On page 32849, in the second column, under **GILA AND SALT RIVER MERIDIAN, ARIZONA**, the seventh line should read, "Sec. 32, all:".

2. On the same page, in the third column, in the 33rd line, "T." should read "Sec."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ASW-11]

Removal of Control Zone; Killeen, TX, Designation of Control Zone; Robert Gray Army Airfield (AAF), TX, Designation of Control Zone; Hood Army Airfield (AAF), TX

Correction

In rule document 87-19382 beginning on page 31984 in the issue of Tuesday, August 25, 1987, make the following correction:

§ 71.171 [Corrected]

On page 31984, in the third column, in § 71.171, under *Robert Gray Army Airfield (AAF), TX [New]*, in the ninth line, "(Lat. 31°8'13" N.," should read "(Lat. 31°08'13" N.,".

BILLING CODE 1505-01-D

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federal register

Friday
September 11, 1987

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Benzene; Final Rule

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Benzene

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final Rule.

SUMMARY: By this action, the Occupational Safety and Health Administration (OSHA) amends its existing standard for occupational exposure to benzene. The revised standard reduces the permissible exposure limit (PEL) from 10 parts benzene per million parts of air (10 ppm) to an eight (8)-hour time-weighted average (TWA) of 1 ppm and a short-term exposure limit (STEL) of 5 ppm. An action level of 0.5 ppm is established to encourage lower exposures for employees and to reduce administrative burdens on employers. This standard applies to all industries covered by the Occupational Safety and Health Act, including the construction and maritime industries and general industry subject to certain partial exemptions where exposures are very low.

The basis for promulgation of this regulation is a determination by the Assistant Secretary that employees exposed to benzene face a significant health risk and that this standard will substantially reduce that risk. The record in this rulemaking demonstrates that employees occupationally exposed to benzene are at risk of developing pancytopenia, aplastic anemia, multiple myeloma, leukemia and other blood dyscrasias.

This standard also provides for methods of compliance, personal protective equipment, employee monitoring, medical surveillance, medical removal protection, communication of hazards to employees, regulated areas, and recordkeeping. When the action level is exceeded, employers must initiate certain compliance activities, such as monitoring and medical surveillance. Where the employer can demonstrate, by means of exposure monitoring results or historical data, that the exposures of his or her employees do not exceed the action level, the employer is not obligated to comply with many of the requirements of this standard. The 1 ppm 8-hour TWA substantially reduces significant risk from exposure and is considered by OSHA, based upon substantial evidence in the record, to be the lowest level feasible.

EFFECTIVE DATE: The amended standard published today takes effect on December 10, 1987.

ADDRESS: For additional copies of this final standard, contact: OSHA Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523–9667.

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SUPPLEMENTARY INFORMATION: This notice of final action is divided into 13 parts, numbered I through XIII. Numbers I through XI is the preamble of the standard.

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References to the rulemaking record are cited in the text. The following abbreviations have been used:

1. *Ex. No.:* Exhibit number in the benzene dockets. The dockets are located in the OSHA Docket Office, Room N–3670, Department of Labor. The benzene record includes Dockets H–059, H–059A, H–059B and H–059C. H–059 includes exhibits entered into the record prior to the publication of February 10, 1978, standard for benzene. H–059A includes the information and comments on benzene in liquid mixtures. H–059B includes documents submitted in reference to the Advance Notice of Proposed Rulemaking of July 8, 1983. H–059C includes documents submitted in response to the Proposal of December 10, 1985.

2. *Tr.:* Transcript date and page number.

I. Executive Summary

The 1987 final benzene standard lowers the 8-hour time-weighted average (TWA) for occupational exposures to benzene from 10 parts per million (ppm) to 1 ppm and the short-term exposure limit (STEL) from 25 ppm to 5 ppm. Various important industrial hygiene provisions including monitoring, engineering controls, respiratory protection, medical surveillance and hazard communication are incorporated.

The standard will result in a substantial reduction in the workers' risk of developing leukemia and other diseases of the blood and blood-forming organs. According to OSHA's best estimates, a working lifetime of exposure to benzene at 10 ppm would cause an excess leukemia risk of 95 leukemia deaths per 1000 exposed workers. Other reasonable estimates of risk range from 8 to 160 deaths per 1000 workers. These are clearly significant risks, greatly exceeding the excess risks of occupationally related accident deaths in high and average risk industries which are 30 and 3 per 1000 workers, respectively.

The new standard will create a minimum reduction in excess risk of 90 percent, a very substantial reduction based on comparing exposures at 10 ppm to 1 ppm. On the basis of the

current distribution of exposures, OSHA estimates that the new standard will prevent a minimum of 326 deaths from leukemia and diseases of the blood and blood-forming organs over a working lifetime of 45 years.

In reality, the reduction in risk will be much greater. The standard incorporates an action level of 0.5 ppm, below which many industrial hygiene and medical surveillance provisions are not required. Many employers having workplaces in which such reductions are feasible will reduce employee exposures to below 0.5 ppm in order to have a high degree of confidence that they are protecting their employees, to avoid the costs of the industrial hygiene and medical surveillance provisions, and to have an adquate margin for exposure variability when there is an inspection.

Employers with exposures above the action level are required to implement a variety of industrial hygiene provisions which will increase employee protection. The monitoring provisions increase the probability that overexposures will be detected and reduced. The medical surveillance provisions will aid in the early detection of employees with abnormal blood counts.

The combination of these provisions, when carried out, assures OSHA that workers will be substantially better protected than the numbers estimated by the risk assessments indicate. Indeed, OSHA believes employers who fully comply with the standard's provisions as intended will provide substantial protection to their benzene-exposure workers.

OSHA wishes to commend industry, labor and public interest groups whose combined efforts have already led to substantial lowering of benzene exposures. These groups have also assisted OSHA in analyzing the data and coming to better decisions through the rulemaking process. OSHA sincerely hopes that the remaining, relatively narrow differences of opinion regarding practical issues of workers protection will not prevent the rapid implementation of the standard.

OSHA also believes that the standard, in addition to being protective, is cost-effective. A carefully developed series of practial exclusions for industry sectors where technology assures that exposures will be under the action level, concentrates industrial hygiene resources in areas of need. Similarly, a series of provisions reflective of industrial hygiene experience permits employers the choice of compliance strategies in maintenance and repair activities, when exposures are intermittent or are for a short term, where respirators are sometimes the control of choice. However, engineering and work practice controls are given preference in production activities and more continual exposures where they are generally the most effective control strategy.

OSHA is confident that the standard is technically feasible and that engineering controls, where required, can generally achieve the 1 ppm 8-hour TWA and 5 ppm STEL, consistently, with a high degree of confidence in most production operations in the covered industries. This conclusion is based on an extensive contractor survey, evidence submitted to the record and detailed analyses. Types of controls available include leak detection and repair, vapor recovery, automated sampling, dual seal valves, enclosures and many others. Exposures are already quite low as benzene and mixtures containing substantial amounts of benzene are handled in closed systems. Where one control may not be successful, others are available.

OSHA has concluded that the 1 ppm TWA is the lowest feasible level for industry in general. The action level will strongly encourage those employers who can do so to achieve exposures below 0.5 ppm

The standards will cost approximately $24 million in annualized costs (annual costs plus annualized costs of capital). This is clearly economically feasible, representing less than 0.2 percent of the annual revenues in the various industry sectors. See Tables A, C and D in Section VIII below for exposure and cost data.

A number of changes have been made from the proposal. Several additional sectors (natural gas and coke production) have been generally exempted from the standard. Data indicate that exposures in these sectors are consistently below the action level.

OSHA has decided to reduce the current short term exposure limit of a 25 ppm ceiling and a 50 ppm peak to a 5 ppm limit averaged over a 15-minute period. This decision is based on human and animal data indicating that intermittent or peak exposures appear to cause greater effects than continual exposures of the same or lower levels.

Animal studies indicate that intermittent exposures (a good model for dose rate effects) caused greater decreases in certain blood counts than continual exposures at the same level. Several case control studies of refinery workers show excess leukemia risk among pipefitters, maintenance workers and employees in other jobs which probably involved intermittent peak exposures to benzene. This limit is feasible and adds little to costs because the 1 ppm PEL, in general, will be achieved through controlling peaks. It will also reduce cumulative dose in some circumstances.

The frequency of medical examinations has been reduced based on the advice of medical experts. The examinations are important to protect health and there is evidence of employee reluctance to take an examination if there is a possibility of job loss. Therefore, provisions are included to provide jobs in areas where benzene exposure is lower than the action level or if none are available, wage rate retention for a limited time, for employees who are removed from benzene exposure based on abnormal blood counts and physician recommendations.

The final standard retains a percentage exclusion. Where the only benzene exposure is from a mixture or solvent with less than a fraction of a percent of benzene, the work operation is excluded from the standard. This is both protective and cost-effective. Suppliers will be encouraged to refine solvents to keep benzene contamination low. This protects the many workers exposed to solvents from substantial benzene exposure, and employers using solvents with low benzene contamination will not have compliance expenses. The final standard reduced the period to achieve a 0.1 percent level of contamination from 5 years to 2 years. Initially the exclusion is at 0.5 percent. Record evidence indicates that liquid mixtures with less than 0.1 percent benzene are unlikely to cause exposures through dermal absorption and inhalation equivalent to the amount inhaled at the action level. Mixtures with less than 0.1 percent benzene are currently feasible.

In 1980, the Supreme Court in *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute* (*IUD* v. *API*), 448 U.S. 607 (1980), held that before OSHA issued a new health standard it must attempt to quantify risk, if possible, and determine whether the risk is significant. It must also determine that the new standard would achieve a substantial reduction in significant risk. OSHA had not performed a quantitative risk assessment on benzene prior to issuing the 1978 standard. In addition, the Supreme Court's analysis indicated that it desires a more careful economic analysis. The Fifth Circuit also had vacated the skin protection parts of the standard based on the belief that a study to definitively determine whether

there was skin absorption could be quickly and easily performed.

Since the issuance of the 1978 standard and 1980 Supreme Court decision, there have been a number of major scientific developments. The two major epidemiologic studies available at the time have been upgraded and extended. (Infante/Rinsky and Ott/Bond). Several additional major epidemiologic studies have been completed (Wong, Decoufle et al.). These continue to demonstrate that benzene exposure causes increased risk of leukemia and other blood disorders. Several recent studies have demonstrated that benzene causes multiple-site specific cancers in animals. Other studies, which took substantially longer and proved to be more complex than predicted, have definitively demonstrated that benzene is absorbed through the skin. In addition, a number of risk assessments have been performed.

A series of studies (Infante 1977, Rinsky 1981, Rinsky 1986), analyzing the mortality of workers exposed to benzene at two rubber hydrochloride manufacturing locations, demonstrated excess risk of leukemia. The most recent demonstrated a Standardized Mortality Ratio (SMR) of 337 leukemia and 409 for multiple myeloma (An SMR of 100 is the normal value if an excess is not observed. An SMR of 200 represents a 100% excess risk over normal). The Rinsky 1986 study has excellent follow-up, 98.6% of the employees were traced to determine whether they were dead or alive and if dead, the cause of death. The study also carefully analyzed extensive past exposure data and was able to assign doses to individuals exposed 10 to 40 years in the past.

The Rinsky 1986 study also demonstrates a dose-response relationship. Workers who had lower exposure to benzene had a smaller excess risk (SMR=105). Medium exposure workers experienced medium excess risks (SMR=322 & 1186) and high exposure workers, very high excess risk (SMR=6637). The dose-response relationship increases the confidence in the results, provides a stronger basis for risk assessment and provides measured as opposed to extrapolated evidence that lowering exposure substantially reduces risk.

The Ott 1978 study and the Bond 1986 follow-up study demonstrate myelogenous leukemia risks about 4 times greater for benzene-exposed workers than for the general population. Because these studies were of small numbers of employees, the confidence intervals of the relative risks are large. However, the workers were exposed to low levels of benzene with average exposure being about 5 ppm of benzene.

The Chemical Manufacturers Association sponsored a study, Wong, 1983, of workers in chemical plants. The mortalities of the benzene-exposed workers at the plant were compared to the mortalities or workers at the plants who were not exposed to benzene and to the general population. A statistically demonstrable dose response relationship between benzene exposure and leukemia was observed. The workers exposed to benzene had an excess risk of leukemia and all lymphatic and hematopoietic cancer (which includes leukemia) as compared to the workers who were not exposed to benzene. The low exposure group (180 ppm months, or 15 ppm-years of exposure; the equivalent of 5 ppm exposure for 3 years) demonstrated a relative risk of 2.10; the medium exposure group (15-60 ppm-years), a relative risk of 2.95; and the higher exposure workers (more than 60 ppm-years), a relative risk of 3.93. (Relative risk (RR) is a concept similar to SMR; 3.93 RR can be considered equivalent to a 393 SMR).

OSHA believes these studies clearly demonstrate an association between benzene exposure and increased risk of leukemia. The Agency does not believe this conclusion is now seriously challenged.

Since the 1978 standard, three animal studies have demonstrated that benzene is carcinogenic in animals. For example, the National Toxicology Program study demonstrated excess risk of several types of cancers in both sexes of rats and mice. There was clear dose response for many sites of cancer. For example, among the male rats for oral squamous cell carcinoma (cancer of the oral cavity), there were no cancers in the controls, 6 percent in the low exposure group, 10 percent in the medium exposure group and 14 percent in the high exposure group. There was excess cancer incidence down to an equivalent of 20 ppm inhalation, the lowest exposure level tested.

Benzene has also been associated with several other diseases and various toxic effects in both human beings and animals. This includes multiple myeloma, aplastic anemia, an often fatal blood disease and various other sometimes reversible blood disorders, such as leukopenia and thrombocytopenia. Benzene also has been shown to cause damage to the genetic material in both human and animal cells resulting in chromosomal aberrations.

Both the human and animal studies furnish excellent bases for risk assessment, providing far more high quality data than would be necessary for a reasonable assessment. In addition to providing better human exposure data than is normally available, the studies show clear, measured dose-response and demonstrate increased leukemia risk as a result of exposures not much above the existing levels. Morever, the estimates of excess cancer risk from different studies are similar.

Risk assessment on benzene have been performed by a number of authoritative organizations and distinguished scientists. For example, the Environmental Protection Agency-Carcinogen Assessment Group (EPA-CAG) estimate, adjusted to occupational exposures, shows that benzene presents a risk of 34 excess leukemia deaths per 1000 workers exposed at 10 ppm and 3.4 per 1000 at 1 ppm. The International Agency for Research on Cancer's assessment, based on the Rinsky 1981 study, converted to an occupational setting, shows an excess risk of 14–140 at 10 ppm and 1.4–14 at 1 ppm. The White et al. risk assessment estimated excess leukemia risks of 44–156 at 10 ppm and 5–16 at 1 ppm.

Crump and Allen performed risk assessments using data from the three major epidemiologic studies that evaluated benzene and leukemia. Among various analyses, they use data from the Rinsky and Ott studies and a weighted cumulative dose and relative risk model. They also combined data from the Ott, Wong and Rinsky studies, and used a cumulative dose and relative risk model. This analysis utilized the most detailed exposure data available for the Rinsky study. That assessment indicated an excess risk per 1000 exposed workers of 95 leukemia deaths at 10 ppm and 10 at 1 ppm. The confidence intervals were also computed and are quite narrow. There is 95% confidence that for 1000 benzene-employees the risk is between 37 and 186 at 10 ppm and between 4 and 22 at 1 ppm.

NIOSH (Rinsky 1986) and the American Petroleum Institute (API) presented assessments utilizing a conditional logistic regression analysis. This type of analysis is more commonly used for differentiating between influencing variables than for risk assessment. It has an exponential term resulting in very large changes in risk over small changes in exposure. The NIOSH estimate of risk converted to the method of presentation used here is 634 per 1000 at 10 ppm and 5 at 1 ppm.

The API presented an assessment by Chinchilli as analyzed by Rodricks and Brett. Their preferred estimate, based on

the Rinsky study, utilizing a conditional logistic regression analysis, the initial Crump exposure assessment and various adjustments, is 8 excess leukemia deaths per 1000 at 10 ppm and 0.6 at 1 ppm. However, they argued the risk will probably be lower because they believe past exposures might have been higher.

Several risk assessments based on animal data have been performed. EPA-CAG estimated 30 excess human deaths per 1000 exposed workers at 10 ppm and 3 at 1 ppm based on Zymbal gland carcinoma in female rats. This estimate is virtually identical to the risk CAG projected based upon epidemiologic data. Crump, estimated 20 and 2 excess deaths based on all squamous cell carcinomas in male mice.

OSHA concludes that it is more appropriate to utilize the human data for significant risk analysis since it avoids the need to convert animal results into human terms. Most participants in the proceeding recommended this approach. However, the animal data are strong and are better able to control variables than the human studies. The animal estimates are also consistent with the human estimates and would be a strong basis for risk assessment if good human data were not available.

OSHA concludes that the Crump and Allen estimate based on the three epidemiologic studies with use of the cumulative dose and relative risk model is its preferred estimate. That estimate is based on the most data of any available risk assessment. Because of possible unique factors at one location or mistakes in estimation of exposure or relative risk, consistent results from several good studies add to the confidence in the estimate of risk. Crump and Allen made use of the most extensive exposure data with an approach preferred by API. They also used a model for epidemiologic data which is widely accepted for risk assessment purposes and the data fit the model acceptably. The model is also supported by biological data, as discussed below. Moreover, the Crump and Allen projection of 95 excess leukemia death per 1000 exposed employees for a working lifetime of exposure to 10 ppm benzene and 10 excess deaths per 1000 at 1 ppm is in the middle of the range of other reasonable estimates presented. The other reasonable estimates projected risks ranging from 8–634 at 10 ppm and from 0.6 to 16 at 1 ppm. These are maximum likelihood estimates not upper confidence bounds.

OSHA has followed a consistent approach for determining the significance of risk since 1982 when it first put into practice the directions of the Supreme Court in *IUD* v. *API*, the benzene decision. The approach has been used for the arsenic and ETO final standards which have been upheld by 2 Courts of Appeal. The approach was also used in the asbestos final standard and in the ethylene dibromide and formaldehyde proposals.

OSHA pointed out in the benzene proposal that the risk per 1000 workers associated with 10 ppm benzene of 95, was similar to the risk OSHA found significant at the old exposure limits in arsenic (148–425), ETO (69–109) and EDB (70–110). The lifetime occupational risk of death from accident or acute illness is 20 to 30 per 1000 in high risk occupations like mining and fire fighting, and 2 to 3 in occupations of average risk (all service and all manufacturing). OSHA stated in the preamble to those standards and in the benzene proposal.

> Congress passed the Occupational Safety and Health Act of 1970 because of a determination that occupational safety and health risks were too high. Based on this it is clear that Congress gave OSHA authority to reduce risks of average or above average magnitude when feasible. Further the Supreme Court stated that "if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal a reasonable person might well take the appropriate steps to decrease or eliminate it" (50 FR 50539).

Within this context OSHA concludes as it preliminarily concluded in the proposal that significant risk exists at the 10 ppm level. Based on the best supported estimates of 95 excess deaths per 1000, the risk from exposure to benzene at 10 ppm is clearly greater than that in the riskiest occupations and greater than the risk of one in 1000 which the Supreme Court found a reasonable person might find significant. Even the lowest estimate of risk, 8 per 1000 at 10 ppm, is greater than both the risks of average occupations and the one in 1000 risk example given by the Supreme Court. Therefore, based on any of these estimates, OSHA would determine that the risk is significant. No major party challenged OSHA's decision to reduce exposures from 10 ppm.

OSHA also concludes that the new benzene standard will result in a substantial reduction in significant risk. All the risk assessments indicate that the reduction in risk will be at least 90 percent, a clearly substantial reduction. In addition, several of the human and animal studies conclusively demonstrate that lowering exposures substantially lowers risk. The large majority of commenters agreed to the appropriateness of not having average exposure over 1 ppm. (Several stated the exposure limit should be set at 2 ppm, but that this would result in average exposures under 1 ppm). In addition, the standard at a minimum, will save *326* lives over a working lifetime, a substantial number.

OSHA believes that the actual reduction in risk will be substantially greater than the 90 percent predicted by its preferred risk assessment. The action level, industrial hygiene and medical provisions further reduce risk.

OSHA also finally concludes after reviewing all the evidence and comments and as it preliminarily concluded in its proposal, that the final

> standard is carrying out Congressional intent within the limits of feasibility and does not attempt to reduce insignificant risks * * * [and that its final] benzene standard will protect employees and that employers who fulfill the provisions of the standard will be taking reasonable steps to protect their employees from the hazards of benzene. Indeed many employers have already reduced exposures of employees to below those of the proposed standard (50 FR 50539).

Several oil and peotrochemical companies raised the issue of exposure variability. Typically, exposures randomly fluctuate somewhat around the average in industry. They contended it fluctuates more than is usual in their segment because of the outdoor location of their facilities. They argued that because of the large random variation, employers might be cited based on a single measurement taken by a compliance officer (CO) that would be above the 8 hour TWA exposure limit, when in fact average exposures were consistently under the limit.

One recommendation they made was that OSHA might utilize an averaging scheme. If the CO measured an exposure above the PEL, the CO would review the employer's previous measurements and if they were under the limit, the CO would not cite but would remeasure.

OSHA has carefully reviewed the voluminous evidence introduced on the issue and concluded that its present approach to enforcement is correct. This permits the issuance of citations based on one measurement if the exposure is over the limit. However, CO's are to review employer data and if the data indicate the CO's measurement was not typical, the CO may take additional samples.

A number of industrial hygienists, including several employed by industry, testified that causes of variability can be identified by an industrial hygienist and that much variability is controllable. In addition, analysis indicates that

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variability is not as great as has been suggested for those sectors.

Secondly, Dr. Harris, an expert on monitoring, pointed out that the implications of a high degree of random variability are different than some assume. If there is a high degree of variability it is unlikely that the CO will measure on a day that exposures are above the arithmetic average for that establishement. The most likely statistical implication of a high measurement is that exposures are high.

In addition, OSHA's present approach encourages employers to measure on high days and keep average exposures low by reducing peak exposures, a protective approach. An averaging approach encourages employers to measure on low days, to balance a possible high exposure that may be identified by the CO rather than identifying and controlling the sources and causes of high exposures.

As discussed in the feasibility section, OSHA has concluded that employers can consistently meet a 1 ppm level, taking into account uncontrollable random variation. Indeed one of the reasons for OSHA's confidence that risk will be reduced substantially below those predicted at 1 ppm is that employers will reduce controllable variability (eliminating many high fluctuations) and will keep exposures somewhat under a 1 ppm average to take into account normal random variation.

This final benzene standard applies to all occupational exposures to benzene except some subsegments of industry where exposures are consistently under the action level and are therefore exempt or partially exempt. These include distribution and sale of fuels, sealed containers and pipelines, coke production, oil and gas drilling and production, natural gas processing and the percentage exclusion for liquid mixtures. Exemption from methods of compliance and some monitoring provisions are included for barge cleaning and repair. Further consideration will be given to this sector.

The action level eliminates various industrial hygiene provisions such as routine monitoring and medical surveillance when exposures are under 0.5 ppm as an 8-hour TWA. The purpose is to concentrate industrial hygiene provisions where there is greatest need and encourage employers to reduce exposure below the 8 hour permissible exposure limit when feasible to do so. OSHA has incorporated action levels in its prior health standards, and they have worked well.

The standard requires employers to set up regulated areas where exposures are over 1 ppm or the STEL. This is to warn employees of the need to wear respirators and discourage employees who have no need to do so, from entering those areas.

The standard requires initial monitoring, semi-annual monitoring if exposures are over 1 ppm and annual monitoring if exposures are between 0.5 and 1 ppm. Periodic monitoring is not required when exposures are under 0.5 ppm, but remonitoring is required if products or processes change which might lead to increased exposures. This frequency of monitoring is consistent with OSHA's experience and is appropriate.

The standard places a preference on engineering and work practice controls for production activities or where exposures to benzene over 1 ppm are more frequent than intermittent. However, the employer may choose a compliance strategy including use of respirators in maintenance and repair activities, when exposures are intermittent in nature and limited in duration, during the time before engineering controls can be installed or where they are not feasible, and when benezene will be present in the area less than 30 days a year. This approach was supported almost without exception in the record and reflects industrial hygiene expertise as the best approach to protecting employees.

The standard requires employers with 8-hour TWA exposure over 1 ppm or 15 minute short-term exposures over 5 ppm to have a compliance program to indicate a schedule for and the methods to be used to reduce exposure below the limits. No program is required if exposures are under the limits.

The standard sets forth requirements for selection of proper respirators, their use, proper fit-testing, and other elements of a good respirator program. The provision reflects expert recommendations and field experience and record comments. Several appendices set forth protocols for fit-testing.

Protective clothing and equipment must be worn to prevent eye exposure and limit skin exposure to benzene. Benzene is absorbed through the skin. However, as the preamble indicates, it is not feasible for tire builders to wear gloves. Their explosure to benzene will be controlled by the industry utilizing solvents with less than 0.1 percent benzene contamination.

A medical surveillance program is required for employees exposed over the action level. This requires an initial medical examination to establish a baseline, subsequent yearly examinations and also examinations after exposures resulting from emergency situations. A complete blood count is required to determine if the blood elements remain normal. Since abnormal blood levels are a possible indicator of the development of a benzene-related blood disease, an additional examination by a hematologist or internist is required if an abnormal blood count persists.

If the physician believes it medically justified, employees will be removed from benzene exposure in order to improve the chance that blood disease will not progress. To encourage employees to participate in medical surveillance, employers are to provide alternate jobs in areas where the benzene exposure does not exceed the action level, if available. Certain medical removal protection provisions are included for a short period of time or until it is determined whether the condition is permanent.

The emergency medical examination includes a urinary phenol test to establish whether an employee has been exposed to high levels of benzene. If so, a further medical examination is required to determine if blood counts have become abnormal.

A medical evaluation also is required to determine if an employee who must, can safely wear a respirator. However, requirements for a chest x-ray have been eliminated based on medical advice.

The standard makes appropriate provisions for signs and labels, training, communication of benzene hazards to employees and observation of monitoring. They are necessary so that employees will be aware of the risks of benzene, will be better able to take precautions to protect themselves, and will understand the need for the standard's provisions. The provisions are designed to be consistent with OSHA's hazard communication standard.

There are requirements to keep and make available medical and exposure monitoring records. These are necessary to better diagnose possible disease and to review the success of the standard.

The standard is to become effective 90 days after issuance pursuant to statute and to permit interested parties time to learn about it and commence compliance activities. All provisions except for engineering controls must be completed 60 days after the effective date. This is adequate time, 5 months after the publication of the standard, to complete initial monitoring and medical surveillance, purchase respirators, etc.

Employers may use monitoring data taken within a year of the effective date to satisfy initial monitoring requirements.

Engineering controls require a longer period to design and install. Consequently, the completion of their installation is not required until 2 years after the effective date of the standard. In view of the already relatively low exposures, this is clearly a feasible time period for their installation.

The steel industry is currently having financial difficulties. Based on the recommendation of the United Steelworkers of America and the American Iron & Steel Institute, and extended compliance period of 5 years is provided for the installation of engineering controls in by-product plants and BTX units at coke facilities.

State Plan Revisions

The 23 States and 2 territories with their own OSHA-approved occupational safety and health plans must revise their existing standards within 6 months of this publication date or show OSHA why there is no need for action, such as in the case that an existing State standard covering occupational exposure to benzene is already "at least as effective" as the revised Federal standard. These states or territories are: Alaska, Arizona, California, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, the Virgin Islands, Washington, and Wyoming. (In Connecticut and New York, the plan covers only State and local government employees.)

II. Pertinent Legal Authority

The publication of a final standard is authorized by sections 6(b), 8(c), and 8(g)(2) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655 (b), 657(c) and 657(g)(2). Section 6(b)(5) governs the issuance of occupational safety and health standards dealing with toxic materials or harmful physical agents.

It states:

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

Section 3(8) defines an occupational safety and health standard as "a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment."

The Supreme Court has held under the Act that the Secretary, before issuing any new standard, must determine that it is reasonably necessary and appropriate to remedy a significant risk of material health impairment. *Industrial Union Department v. American Petroleum Institute*, 448 U.S. 607 (1980). The court stated that "* * * before he can promulgate *any* permanent health or safety standard, the Secretary is required to make a threshold finding that a place of employment is unsafe—in the sense that significant risks are present and can be eliminated or lessened by a change in practices" (448 U.S. at 642). The Court also stated "that the Act does limit the Secretary's power to requiring the elimination of significant risks" (448 U.S. 644, n. 49).

The Court indicated, however, that the significant risk determination is "not a mathematical straitjacket," and the "OSHA is not required to support its finding that a significant risk exists with anything approaching scientific certainty." The Court ruled that "a reviewing court [is] to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge (and that) . . . the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection rather than underprotection" (448 U.S. at 655, 656). The Court also stated that "while the Agency must support its finding that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is 'significant' will be based largely on policy considerations." (448 U.S. at 655, 656, n. 62).

After OSHA determined that a significant risk exists and that such risk can be reduced or eliminated by the proposed standard, it must set a standard "which most adequately assures, to the extent feasible on the basis of the best available evidence, that no employees will suffer material impairment of health * * *." Section 6(b)(5) of the Act. The Supreme Court has interpreted this section to mean that OSHA must enact the most protective standard possible to eliminate a significant risk of material health impairment, subject to the constraints of technological and economic feasibility. *American Textile Manufacturers Institute, Inc. v. Donovan*, 452 U.S. 490 (1981). The Court held that "cost-benefit analysis is not required by the statute because feasibility analysis is" (452 U.S. at 509). The Court further stated that the Agency could use cost-effectiveness analysis and choose the least costly of two equally effective standards. (452 U.S. 531, n. 32).

Two Courts of Appeals recently have upheld OSHA standards regulating carcinogens which, following the Supreme Court's guidance in *Industrial Union Department v. American Petroleum Institute* (Supra), were based on risk assessments and significant risk analysis. The standards were for inorganic arsenic (48 FR 1864, January 14, 1983) upheld in *ASARCO v. OSHA*, 746 F. 2d 483 (9th Cir., 1984) and ethylene oxide (49 FR 25734, June 22, 1984) upheld in *Public Citizen Health Research Group v. Tyson*, 796 F. 2d 1479 (D.C. Cir., 1986). The D.C. Circuit, however, remanded to OSHA for reconsideration OSHA's decision not to include a short term exposure limit (STEL) for ethylene oxide.

Section 8(c)(3) gives the Secretary authority to require employers to "maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6." Section 8(g)(2) gives the Secretary authority to "prescribe such rules and regulations as he may deem necessary to carry out (his) responsibilities under this Act." Section 4(b)(2) gives the Secretary power to apply this standard through the contract powers of the government and to make it applicable under other statutes.

OSHA concludes that the new benzene standard substantially reduces a significant risk of leukemia and other adverse health effects, is feasible, is necessary and appropriate to carry out OSHA's responsibilities under the Act, and meets all statutory requirements.

III. History of Regulation

Benzene has been recognized as a toxic substance capable of causing acute or chronic effects since 1900. An initial exposure limit of 100 ppm was recommended in 1927 by Winslow. In

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the 1940s, as a result of blood abnormalities and one death among rubber coating workers exposed to benzene concentrations ranging from 40 to 80 ppm, the state of Massachusetts lowered its permissible limit for benzene exposure to 35 ppm.

The American Conference of Governmental Industrial Hygienists (ACGIH) recommended a threshold limit value (TLV) for benzene exposure of 100 ppm in 1946. This TLV was reduced in 1947 to 50 ppm. In 1948, following Massachusetts' lead, ACGIH adopted a TLV of 35 ppm. In 1963, a TLV of 25 ppm was proposed by the ACGIH. At this time, reports of benzene induced blood changes, aplastic anemia, and other blood dyscrasias served as a basis for this action. No mention was made of any association of leukemia with benzene exposure. In 1974, the ACGIH adopted the TLV of 10 ppm which had sometime earlier been recommended by the American National Standards Institute.

The present OSHA standard for benzene (29 CFR Part 1910.1000. Table Z–2) was adopted in 1971 from the then current ANSI standard without rulemaking under the authority of section 6(a) of the Act. Neither the ANSI standard nor the resultant OSHA standard was based on the possible leukemogenic effects of exposure to benzene.

On May 3, 1977, the Assistant Secretary for OSHA issued an Emergency Temporary Standard (ETS) for Occupational Exposure to Benzene (42 FR 22516), pursuant to sections 6(c) and 8(c) of the Act. A temporary stay of that standard before it took effect was issued May 20, 1977 in the case *American Petroleum Institute et al. v. Occupational Safety and Health Administration et al.* (Fifth Circuit, No. 77–1973). No decision on the merits of the Emergency Temporary Standard was ever issued but the ETS never took effect because of various stays. A decision on jurisdiction was issued December 7, 1977 by the D.C. Circuit in *Industrial Union Dept. AFL–CIO v. Bingham*, 570 F. 2d 965 (D.C. Cir. 1977).

On May 27, 1977, OSHA published a proposed permanent standard to control occupational exposure to benzene (42 FR 27452). Public hearings on the benzene proposal were held July 19 through August 10, 1977.

On February 10, 1978 (43 FR 59181), OSHA promulgated a permanent standard for occupational exposure to benzene, 29 CFR 1910.1028. This standard was based on a determination by OSHA that the available scientific evidence qualitatively established that employee exposure to benzene presented the cancer hazard of leukemia. In accordance with OSHA's regulatory approach to the control of employee exposure to carcinogens at that time, OSHA had set the PEL at the lowest feasible level once qualitative evidence of carcinogencity was demonstrated. The standard, therefore, limited employee exposure to benzene to 1 ppm as an 8-hour time-weighted average concentration, with a ceiling level of 5 ppm for any 15 minute period during an 8-hour workday. The standard also prescribed limits on eye and skin contact with benzene and included monitoring, medical surveillance, training and other provisions.

The standard was challenged in the case of *American Petroleum Institute et al. v. Occupational Safety and Health Administration et al.*, 581 F.2d 493 (Fifth Cir. 1978). The Fifth Circuit vacated the standard on the basis that the Act required OSHA to perform a cost benefit analysis which it had not performed to demonstrate substantial benefits. The Court vacated the skin absorption provisions on the basis that the agency should have waited for a further study which the Court believed would be definitive and would only take a few months to complete.

On July 2, 1980, the U.S. Supreme Court upheld the decision of the Fifth Circuit, vacating the new benzene standard in *Industrial Union Dept. v. American Petroleum Institute*, 448 U.S. 607 (1980). The Supreme Court did not reach the issue of cost-benefit analysis. (It was later decided in *American Textile Manufacturing Institute, v. Donovan*, 452 U.S. 490 (1981), that OSHA standards were not to be based on cost benefit analysis.) However, the Supreme Court held that before OSHA issued a new standard under section 6(b), it must determine that a significant risk existed (based on quantitative estimates, if possible) and that a new standard would substantially reduce or eliminate that risk. It held that OSHA's qualitative determination for benzene did not meet that requirement. (See the discussion under Legal Authority above.) After vacating the new standard, the old benzene 10 ppm standard remained in effect.

On April 14, 1983, OSHA received a petition from the Oil Chemical and Atomic Workers Union; the Industrial Union Dept, AFL–CIO; the International Union of Allied Industrial Workers; the International Chemical Workers Union; the United Rubber, Cork, Linoleum and Plastics Workers of America; the United Steel Workers of America; the Public Citizen Health Research Group and the American Public Health Association requesting an Emergency Temporary Standard reducing benzene exposures to 1 ppm (Ex. No. 126). In support of their position, the petitioners presented quantitative risk assessments which they argued demonstrated significant risk at 1 ppm.

In a letter on July 1, 1983, Assistant Secretary Auchter denied the petition for several reasons (Ex. No. 150). First, the risk assessments presented needed additional review prior to a decision. Second, exposure data indicated that more than 90 percent of benzene exposed workers were working in industries where exposures were below 1 ppm and most of the rest were experiencing exposures between 1 and 3 ppm. Consequently, the additional risk remaining in the interval before a thorough review could be completed was much less than if exposures were higher. Third, as the Supreme Court has noted, Congress has "narrowly circumscribed the Secretary's power to issue temporary emergency standards." (For example, OSHA issued an ETS for asbestos on November 4, 1983 (48 FR 51086). The Fifth Circuit U.S. Court of Appeals stayed the ETS on November 23, 1983 and ruled on March 7, 1984, that the ETS on asbestos was invalid. *Asbestos Information Ass'n. v. OSHA*, 727 F2d 415.) Finally, the Supreme Court's benzene decision indicated that a more thorough analysis was needed on feasibility issues. However, the Assistant Secretary stated that OSHA would review on an expedited basis the quantitative risk assessments performed on benzene and the new scientific evidence, and that the Agency intended to proceed with an expedited rulemaking. A feasibility analysis commenced immediately.

On July 8, 1983, OSHA published in the **Federal Register** a Request for Information and Regulatory Schedule (48 FR 31412). The Agency requested information about benzene generally and answers to twenty-three questions regarding a variety of relevant issues concerning current occupational exposures to benzene. Among the areas covered was information developed since 1977 concerning the health effects of benzene, its toxicologic properties, estimates of the risk presented, current occupational exposure levels, approaches and costs for reducing exposures and their cost-effectiveness. Comments were due by August 22, 1983. On August 26, 1983, OSHA extended the comment period to September 6, 1983 (48 FR 38858) at the request of several interested parties, so that they would have sufficient time to respond. OSHA received thirty-five comments in response to the Request for Information.

OSHA contracted with the Institute for Environmental Mediation in September, 1983, to encourage interested trade unions, trade associations and other interested non-governmental parties to enter into discussions among themselves to see if they could narrow issues on benzene regulation. On February 13, 1984, OSHA was notified that the trade unions, trade associations and other non-governmental parties had not agreed on a joint document, though they agreed that informal discussions by the interested non-governmental parties were useful.

Later information indicated that there might be a possibility of agreement. Meetings commenced in June. However, OSHA was notified on July 16, 1984 that agreement had not been reached.

On December 10, 1984, several trade unions and a public health organization filed a petition for a writ of mandamus in the United States Court of Appeals for the District of Columbia Circuit under the name *United Steelworkers of America, AFL–CIO–CIC, et al. v. Raymond J. Donovan, Secretary of Labor, et al.* (Ex. No. 163). The petition requested the Court to direct OSHA to proceed with benzene rulemaking on an expedited basis.

OSHA, on December 10, 1985, published a proposed rule for a revised standard covering occupational exposure to benzene (50 FR 50512). The proposal, based on the entire benzene record, presented OSHA's preliminary determination that the risks of leukemia and other benzene-related health effects needed to be reduced, lowered the permissible exposure limit (PEL) and including other provisions designed to reduce the risk. Several public hearings were scheduled.

Following oral argument on the petition for a writ of mandamus, the Court ordered OSHA to submit a rulemaking schedule for issuance of a standard. In the schedule OSHA presented to the Court, the Agency stated that it expected to issue a final determination on the rulemaking record by approximately February, 1987.

On February 25, 1986, the Court rejected the petition for mandamus holding that the writ was not appropriate to compel OSHA to undertake more expedited rulemaking than the proposed 14-month timetable and that the past delay in issuing a permanent standard, even if the delay was unreasonable, was not grounds to impose a mandatory timetable. However, the Court stated that the petitioners could refile the law suit if the Agency subsequently delayed excessively.

In light of federal budget reductions two of the public hearings were cancelled and a new schedule set (51 FR 3474). Subsequently, OSHA received a number of requests to extend the comment period. Consequently, the Agency extended the date to receive public comments, notices of intention to appear and prehearing documentary evidence to March 6, 1986 (51 FR 5090). The commencement date for the Washington hearing was also changed to March 18, 1986 (50 FR 5090).

The benzene hearings, were held March 18–27, 1986 in Washington, DC and April 2 and 3, 1986 in Los Angeles, California, providing interested parties the opportunity to comment on the proposed revisions, pursuant to section 6(b)(3) of the Act (29 U.S.C. 655(b)(3)). Administrative Law Judge Stuart A. Levin presided over the hearings. The deadline for filing post-hearing submissions of data and comments was May 9, 1986. Post-hearing briefs were received through June 10, 1986.

The record, of H–059 C alone includes over 280 exhibits many of which contain multiple attachments and more than 36,000 pages of material. It was certified by Judge Levin on June 16, 1986, in accordance with 29 CFR 1911.17. Copies of materials contained in the record may be obtained from the OSHA Docket Office, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

This final benzene standard is based on a thorough consideration of the entire record of this proceeding, including materials relied upon in all previous notices, the record of the informal hearings, and all written comments and exhibits received.

IV. Chemical Identification, Production and Use

Benzene (C_6H_6) is a clear, colorless, non-corrosive, highly flammable liquid with a strong, rather pleasant odor. The low boiling point and high vapor pressure of benzene cause rapid evaporation under ordinary atmospheric conditions, giving off vapors nearly three times heavier than air.

Benzene is produced primarily by the petrochemical and petroleum refining industries by a process called catalytic reformation, which converts certain lower octane hydrocarbon into higher octane aromatics. These two industries are responsible for 98 percent of the total U.S. production of benzene. Recovery through catalytic reformation and thermal cracking of petroleum hydrocarbons, including the benzene formed from the dealkylation of toluene, accounts for approximately 75 percent of the total quantity produced. Recovery of coal-derived benzene, primarily as a by-product of the coking process in steel mills, was once the major source of benzene. Today, however, this process accounts for only 2 percent of the total United States production.

The first major industrial use of benzene was as a solvent in the rubber industry just preceding World War I. During World War I, benzene production was stimulated greatly by the demand for and resulting production of toluene in the manufacture of explosives. Large quantities of benzene are used to manufacture other organic compounds such as ethylbenzene, styrene, cumene, and cyclohexanol. This situation led to greatly increased uses of benzene as a solvent in the artificial leather, rubber goods, and rotogravure industries.

Many products contain benzene exclusively as the result of contamination. Benzene is a naturally occurring compound in crude oil and natural gas (e.g., the benzene content of these streams varies by geographical location and is ususally between 0.1 and 3.0 percent by volume), and some degree of benzene contamination occurs in products refined from crude oil and natural gas (e.g., solvents, fuels, and oils) because of the nature of the fractional distillation process by which these substances are produced. Benzene generally does not improve the performance of these materials.

Unreacted benzene may also be present in major benzene derivatives (e.g., methylbenzene) or in other specialty chemicals that use benzene as feedstock (e.g., dicyclopentadiene). The presence of unreacted benzene in major derivatives or other specialty chemicals is undesirable from the producer's point of view and is not generally useful to product users.

Industries and processes currently using benzene or liquids containing benzene include the chemical, printing, lithograph, rubber cement, rubber fabricating, paint, varnish, stain remover, adhesive, and petroleum industries. Benzene is also used extensively in chemical laboratories as a solvent and as a reactant in numerous chemical applications. Where benzene is produced, used or stored in large amounts, it is generally contained in enclosed systems, although exposures can occur during liquid transfer operations, from equipment leakage and carryover losses, and in maintenance operations.

V. Health Effects

A. Introduction

Benzene has been known to be a bone marrow poison since the report of aplastic anemia by Santesson (1897, Ex. No. 159–70) and the report of a blood abnormality that is thought to have been a case of leukemia by LeNoir and Claude (1897, Ex. No. 159–50). The first case associating leukemia with benzene exposure was reported by Delore and Borgomano in 1928 (Ex. No. 159–23).

Over the years, reports in the literature have linked hundreds of cases of aplastic anemia, leukemia and other diseases of the blood to benzene exposure. It has been established that benzene exposure is causally linked to leukemia, to aplastic anemia (an often fatal disease of the bone marrow) and to suppression of various cellular elements of the peripheral blood, i.e., decreases in white cells or leukocytes (leukopenia), red cells (anemia), platelets or thrombocytes (thrombocytopenia) and all three of these cellular elements (pancytopenia). In the early stages of leukopenia, anemia, thrombocytopenia or pancytopenia, the effects may be reversible.

Since the 1970's, formal epidemiologic studies have evaluated the relative risk of leukemia among benzene exposed individuals. One study demonstrates a significant excess of myelogenous leukemia among a cohort of workers exposed to average benzene concentrations of about 5 ppm. Additional studies, along with numerous case reports, have shown that benzene alone or in combination with other chemicals is associated with several hematological disorders including myelogenous leukemia and its variants, lymphatic leukemia, multiple myeloma, paroxysmal nocturnal hemoglobinuria, various forms of lymphoma, aplastic anemia and various cytopenias. The basic mechanism by which benzene affects bone marrow precursor cells is still unclear. Evidence in the record indicates that cytogenetic changes are likely to be involved (Ex. Nos. 128–46, 128–47, 252–A–17–95, Tr. 4/2/86, pp. 12–54).

The scientific literature includes many case reports, case series, and epidemiologic studies which qualitatively link benzene exposure with chromosomal damage in humans. This literature has been reviewed and summarized in several places (NAS, 1976; Goldstein, 1977; OSHA, 1978; IARC, 1982; and others; Ex. Nos. 128–5,7,8,59). Information also indicates that chromosomal damage in workers is associated with benzene exposures below 10 ppm. Recent experimental studies have demonstrated chromosomal damage in experimental animals exposed by inhalation for six hours to 1 ppm benzene.

Although suspicion of types of cancers other than of the lymphohematopoietic system has been raised, these have not been adequately evaluated from epidemiologic cohort or case-control studies of workers exposed to benzene. However, since 1978, experimental studies have demonstrated that benzene experimental studies have demonstrated that benzene administered either by oral gavage or by inhalation induces cancers of multiple sites in experimental animals. The major reports of these findings are presented in more detail below.

Several consensus groups have confirmed the carcinogenic potential of benzene, including the American Conference of Governmental Industrial Hygienists (ACGIH–TLV, 1983, Ex. No. 159–5), the International Agency for Research on Cancer (IARC) (1982, Ex. No. 128–8), and the National Toxicology Program (NTP) (Ex. No. 148).

B. Hematotoxic and Carcinogenic Effects in Humans

1. Non-malignant Blood Disorders

The toxic effects of benzene on the human hematopoietic system are well documented in the literature. A common clinical finding in benzene hematotoxicity is a decrease in various cellular elements of the circulating blood, called cytopenia. This decrease may manifest itself as pancytopenia and aplastic anemia or as unicellular cytopenias such as leukopenia or thrombocytopenia (Goldstein, 1977, Ex. No. 59).

Aplastic anemia or hypoplastic anemia is a rare disorder, characterized by a reduction of all cellular elements in the peripheral blood and in the bone marrow. Aplastic anemia has a poor prognosis. It has a high case-fatality rate of about 30–50% within one year of diagnosis. Aplastic anemia caused by benzene exposure is also associated with an increased risk of developing acute nonlymphocytic leukemia (ANLL) for those individuals who do not die from the anemia. Vigliani and co-workers in Italy and Aksoy and co-workers in Turkey have described several series of cases of leukemia and aplastic anemia attributed to occupational benzene exposure. Aksoy (1980, Ex. No. 144–039) reported on 44 cases of pancytopenia among 28,500 benzene exposed workers in Istanbul, Turkey during the years 1967 to 1979. Twenty-three of the 44 cases (52%) experienced remission of the aplastic anemia. Fourteen of the 44 cases (32%) died from complications of aplastic anemia or pancytopenia. Six of the 44 cases (14%) of pancytopenia later died from leukemia. Aksoy also reported that in twenty-six percent of 42 leukemia cases, the leukemia was preceded by a period of pancytopenia. The interval between the pancytopenic period and the onset of leukemia varied between 6 months and 6 years.

Vigliani (1976, Ex. No. 128–15) summarized cases of benzene hemopathy seen at the Institutes of Occupational Health of Pavia and Milano. At the Institute in Milano from 1942 to 1976, 66 cases of chronic benzene poisoning were seen. Of 18 deaths in this group, 7 were from aplastic anemia and 11 were from leukemia. All cases were employed at rotogravure plants, shoe factories, and other industries using benzene as a solvent. At the Institute at Pavia from 1959 to 1974, 135 cases of benzene hemopathy among workers in shoe manufacturing were enumerated. Of 16 deaths, 3 were from aplastic anemia and 13 were from leukemia. With data from both clinics combined, there were 24 deaths from leukemia and 10 deaths from aplastic anemia. In other words, there were 0.42 aplastic anemia deaths for each leukemia death. OSHA used this fraction for purposes of estimating the number of aplastic anemia deaths the new standard would prevent.

Some commenters have argued that this ratio may be too high for use in OSHA estimates because the cases of aplastic anemia observed may have resulted from higher exposures to benzene than have been seen in other cohorts of workers. For example, the Chemical Manufacturers Association (Ex. No. 258) considered the estimated benzene exposures in the Vigliani study to range between 200 and 500 ppm and not relevant to current low level occupational exposures in the United States.

Ott et al. (1978, Ex. No. 128–33) reported two deaths from leukemia and one from aplastic anemia among benzene exposed employees of a chemical manufacturing facility. Workers had relatively low average exposures in this study, about 5 ppm. Bond et al. (Ex. No. 256) reported in the update of the cohort study by Ott et al. that in addition to the death from aplastic anemia, one death was observed from myelofibrosis and one from pernicious anemia. The diagnosis of death from pernicious anemia (Ex. No. 170) may, in fact, have been due to megaloblastic anemia. If this is the case, then the ratio of leukemias to other

diseases of the blood and blood-forming organs for this cohort would be four to three (two additional leukemia deaths were observed in the update by Bond et al.). Consequently, there would be 0.75 cases of diseases of the blood and blood-forming organs, such as aplastic anemia, for each leukemia case.

In testimony at the OSHA hearing, API's (the American Petroleum Institute) witness, Dr. John Bennett commented that OSHA's estimate of 0.42 for the ratio of aplastic anemia to acute myelogenous leukemia (AML) seemed, in his view, inappropriate and that an appropriate ratio would be one aplastic anemia for every five or six AMLs (Tr., 3/26/86, 126–127) (0.17 aplastic anemia for each leukemia), and could be as low as 1 to 15 or 1 to 20 at current benzene exposures. Dr. Bennett did not indicate the number of cases upon which his estimate is based, nor did he indicate whether his estimate of this ratio is based on measured benzene exposures of patients he has seen.

OSHA concludes that its original estimate of 0.42 aplastic anemia (or the somewhat broader category of diseases of the blood and blood-forming organs) for each leukemia is reasonable. It is supported by one relatively large study. The Ott/Bond study with low worker exposure had a ratio of 0.75. Dr. Bennett's estimate is about 0.17. OSHA's estimate is also approximately the average of the two studies and Dr. Bennett's estimate. (It should be noted that OSHA's risk assessment and significant risk analysis is based on leukemia deaths alone.)

The Chemical Manufacturers Association has commented (Ex. No. 258, p. 9) "signs of hematotoxicity (including bone marrow depression, pancytopenia, aplastic anemia and less severe blood abnormalities) have not been associated with short-or-long-term exposure to benzene at levels below the range of 25 ppm–40 ppm." However, as discussed in the study of DOW employees by Ott et al. (1978), updated by Bond et al. (1986), three deaths due to diseases other than leukemia of the blood and blood-forming organs were observed as compared to 0.7 expected among a cohort of employees exposed to an average benzene concentration of 5 ppm. For the specific individuals who died from other diseases of the blood, their average exposures were 30 ppm (megaloblastic anemia), 19.3 ppm (myelofibrosis) and 4.6 ppm (aplastic anemia). Furthermore, Shell (Ex. No. 160–12) recently reported one person with thrombocytopenia as a result of average exposures between 1.3–2.2 ppm who was removed from benzene exposure on the advice of an hematologist.

This information strongly suggests that there are hematologic effects of benzene exposures well below 25 ppm and is indicative of effects below 10 ppm. Adding support to this suggestion, Shell, in its studies of refinery workers, has observed excesses of both total leukemias and myelogenous leukemias. It has been estimated (Runion and Scott, 1983), Ex. No. 159–67) that refinery workers have low average exposures to benzene.

2. Cancer

The classification of neoplastic diseases of the hematropoietic system has developed out of their gradual historical recognition. The major disease categories differ with respect to morphologic and clinical manifestations and often in their response to therapy. Leukemia may be divided into granulocytic leukemias (which include myelocytic, monocytic and erythroblastic cell types) and lymphocytic leukemias. Both granulocytic and lymphocytic leukemia may in turn be separated into acute and chronic forms. The designations "acute" and "chronic" are related to the rapidity of development of symptoms, signs and complications in these forms of leukemia (Wintrobe, 1974, Ex. No. 159–103). Lymphoma may be divided into Hodgkin's disease and non-Hodgkin's lymphomas. Other cancers of the hematopoietic system include multiple myeloma, a neoplasm affecting plasma cells in the bone marrow, and myelofibrosis.

A substantial amount of evidence on morbidity and mortality associated with benzene exposure has accumulated in the epidemiologic literature during the past decade. The epidemiologic literature during the past decade. The epidemiologic studies employ standard methods, which are briefly explained here to assist the general reader who is not familiar with epidemiologic terms. A proportionate mortality ratio (PMR) compares the proportion of observed deaths from a specific cause, such as leukemia, in the group under study to the proportion of deaths expected from this cause in a standard or comparison population. A PMR of 2.0 indicates a 2-fold increase in the proportion of individuals that died from a specific disease in the exposed group as compared to the expected proportion derived from the standard population.

A standardized mortality ratio (SMR) compares the ratio of the observed number of deaths from a specific cause in the study population to the number of deaths from this cause that would be expected in the general or standard population. This ratio is then multiplied by 100. For example, if 8 deaths from leukemia were observed and 4 were expected, the SMR is 200 (8 divided by 4 times 100). The number of expected deaths is usually calculated from the known death rates in the standard population, adjusted to the study population for age, sex, race and calendar-time-period. A SMR of 100 indicates that the observed number of deaths equals the expected, 200 indicates twice as many deaths are observed as expected. Sometimes the ratio of the disease frequencies is expressed as the relative risk (RR). It represents how many times more (or less) likely disease occurs in the exposed group as compared with the unexposed. In the above example where the SMR was 200, the RR would be 2.0.

A case-control study compares individuals who have a specific disease (cases) with similar individuals who do not have the disease (controls). The purpose is to determine if the two groups differ in relation to exposure to a specific factor, in this case, benzene. The statistic calculated is called the odds ratio (OR) or the relative odds. For rare diseases such as cancer the OR approximates the RR. For purposes of discussion in this preamble an SMR of 200 will be equated with a RR of 2.0, an OR of 2.0, and a PMR of 2.0.

Statistical power (or power) is related to the number of individuals in the study population and is the ability of the study to detect a statistically significant increase in an effect, such as leukemia, if, in fact, it exists in the population. Most epidemiological studies are observational and differ from experimental studies in the degree of control of extraneous variables. Their advantage over experimental studies is that the effects are observed in humans.

In order to make public health decisions, statistical associations from observational data can be interpreted as cause-effect relationships when certain factors add to our confidence in the conclusion. In general, the stronger the association, the more likely it represents a cause-effect relationship. The strength of an association can be measured by the RR, the OR, the PMR, or the SMR which all essentially represent the ratio of the disease rate in those with a factor (e.g. exposure to benzene) to the rate in those without it. If the association makes sense in terms of biological plausibility, if there is a dose-response relationship, or, if the same association is found in several studies, confidence in the conclusion that there is a cause-effect relationship is increased. Other

factors to be considered when determining whether an association is real, or spurious, are discussed in the description of individual studies.

The concept of statistical significance relies upon arbitrarily chosen but traditional significance levels (e.g., 0.05. 0.01, etc.) indicating that the statistical relationship observed has a less than 5% (or 1%) probability of being due to chance. OSHA's expert witness, epidemiologist Dr. David Savitz, pointed out that "Such a cutoff is arbitrary in that risk estimates which do not attain such a level of statistical significance still contribute to a characterization of the presence of a potential threat to human health. For example, an 80% level of certainty may be sufficiently convincing that a result is not likely to be due to chance" (Ex. No. 222, p.12).

An association between occupational exposure to benzene and the occurrence of leukemia was suggested in 1928 by Delore and Borgomano (Ex. No. 144–178), who described acute lymphoblastic leukemia in a worker who had been exposed to benzene for five years. Since that time, numerous reports of cases and case series have described leukemia in workers exposed to benzene, either alone or in combination with other chemicals (Hunter, 1939, Ex. No. 144–143; DeGowin, 1963, Ex. No. 144–155; Tareef et al., 1963, Ex. No. 2–28; Vigliani and Saita, 1964, Ex. No. 128–12; Goguel et al., 1967, Ex. No. 144–146; Aksoy et al. 1972 1974, 1976, Ex. Nos. 128–9, 10, 11; Vigliani, 1976, Ex. No. 128–5; Girard and Revol, 1970, Ex. No. 144–177; Aksoy, 1977, 1980, Ex. Nos. 144–39, 160; and those reviewed by Goldstein, 1977, Ex. No. 128–59). The leukemia cases reported have been myelogenous, monocytic, erythroblastic, and lymphocytic leukemias. Reports of other diseases associated with benzene exposure have included malignant lymphoma, multiple myeloma, myeloid metaplasia, myelofibrosis, and paroxysmal nocturnal hemoglobinuria.

Aksoy and coworkers (1974, 1976, 1977, 1980, Ex. Nos. 22, 128–72, 11, 43) reported the crude incidence of leukemia between 1967–1973 among 28,500 shoe, slipper and handbag workers exposed to benzene in Istanbul to be approximately 13.5 per 100,000, compared to an estimated annual leukemia incidence of 6 per 100,000 for the general population of Turkey, resulting in a relative risk of 2 for all cell types of leukemia combined. This risk estimate was based upon the diagnosis of leukemia in 26 shoeworkers at the Internal Clinic of Istanbul Medical School and did not take into consideration differences in the age structure of the population of shoeworkers and the general population. From the several reports by Aksoy et al., peak benzene exposures for the 28,500 shoeworkers were estimated to have varied between 210 and 640 ppm. Average exposure concentrations were estimated to be between 150–210 ppm when adhesives containing benzene were being used and between 15–30 ppm during other times. Duration of exposure is estimated to be 9.7 years based on the average length of exposure for the leukemia cases.

On the basis of the series of reports by Aksoy et al, the Carcinogen Assessment Group (CAG) of the Environmental Protection Agency (EPA) calculated a relative risk of 20 for non-lymphoblastic leukemia among Istanbul shoeworkers exposed to average benzene levels ranging from 15–250 ppm (CAG, 1979, Ex. No. 128–6). The difference between the relative leukemia risk of 2 as estimated by Aksoy et al. and 20 as estimated by CAG is related to adjustments made by CAG for the background incidence of leukemia in Turkey, attributed differences between the age structure of Turkish shoeworkers and the general population on which the national rate was based and adjustment for cell types of leukemia on which the CAG relative leukemia risk was based. These factors contributed equally to the difference between the Aksoy and the CAG estimates of risk. IARC (1982, Ex. No. 128–8) also evaluated the reports of Aksoy et al. and determined that the relative risk of acute non-lymphocytic leukemia among Istanbul shoeworkers was 24. This evaluation by IARC resulted in a relative risk 12 times higher than the 2-fold elevated risk reported by Aksoy et al. and is based on the ratio of acute non-lymphocytic leukemia to chronic forms of leukemia for benzene exposed versus non-benzene exposed individuals in the Aksoy studies of shoeworkers.

Vigliani and Saita (1964, Ex. No. 128–12) estimated the incidence of acute leukemia attributed to benzene exposure in the Provinces of Milan and Pavia during 1962 and 1963 to be at least 20 times higher than expected when compared to the general population, based on 11 cases among approximately 5,000 persons exposed to benzene in the rotogravure and shoe industries. Data were not presented in the report to allow for validation of the estimated risk.

Vigliani (1976, Ex. No. 128–14) summarized the cases of benzene hemopathy (leukemia and other blood disorders) treated at two clinics in Italy. Between 1942 and 1975, 66 cases of benzene hemopathy, 11 of which were leukemia, were seen at the Institute of Occupational Health in Milan. The affected individuals worked in rotogravure plants, shoe factories and other industries using benzene as a solvent. Benzene concentrations in air near rotogravure machines were calculated to range between 200 to 400 ppm, with peaks up to 1500 ppm.

At the Institute of Pavia, 135 workers with benzene hemopathy were seen, 13 of which were leukemia, during the period 1959–1974. All of these cases came from shoe manufacturing occupations where benzene concentrations in the workplace were reported to have ranged from 25–600 ppm but mostly in the range of 200–500 ppm.

Girard and Revol (1970, Ex. No. 144–177) examined the relationship between hematologic diseases and history of exposure to toxins, including benzene and toluene, by interviewing 401 patients hospitalized at their Hematology Department (cases) and several other groups of patients who had non-hematological diseases (124 "control" patients). Samples of toxic substances mentioned in the survey were collected from patients or their families. Information regarding exposure was also collected at workplaces. Hematology patients and controls were similar in distribution of age and gender. Exposure was defined as use of products containing benzene or toluene. The frequency of toxin exposure was statistically significantly greater than in controls for acute leukemia, chronic lymphoid leukemia, and aplasias. Among 257 patients with leukemia, 140 were identified as acute leukemias, 61 were chronic lymphocytic leukemias (CLL), 56 were myeloid leukemias. Thirteen cases of myelofibrosis were also observed. The exposure histories were compared with those for 124 control patients. Seventeen cases (12.1%) of acute leukemia, nine cases (14.7%) of CLL, 4 cases (7.1%) of myeloid leukemia, and 2 cases (15.3%) of myelofibrosis had evidence of previous exposure to benzene and toluene as compared with 5 (4.0%) controls, for relative risks (odds ratios) of 3.3, 4.1, 1.8, and 4.3, respectively. Regarding the possibility of these effects being due to exposure to toluene, it is assumed that hematologic effects are more likely to be due to benzene contained as a contaminant in toluene.

Studies of rubber workers. Because of numerous case reports of leukemia and other blood disorders associated with occupational benzene exposure, NIOSH

conducted a cohort mortality study to evaluate the relative risks of leukemia among workers exposed to benzene. Infante et al. (1977, Ex. No. 128–17) reported on a cohort of 748 white male workers occupationally exposed to benzene at any time between 1940 and 1949 in two manufacturing facilities producing rubber hydrochloride (Pliofilm ®). Vital status ascertainment at the time of the initial report was 75% complete. In order not to overestimate the risk, the authors conservatively assumed that those with undetermined vital status were alive until the follow-up cut-off date. (The resulting relative risks from cause-specific mortality were subsequently shown to have been underestimated when the follow-up was continued (Rinsky et al., 1981, Ex. No. 128–32)). Causes of death were ascertained from diagnoses given on death certificates as underlying cause of death. Although there were fewer deaths from all causes reported among the benzene exposed workers (140) than the number expected based on age and calendar period adjusted death rates for U.S. white males (187.6), a significant excess of leukemia deaths was observed (7 observed vs. 1.38 expected). All 7 leukemia deaths were from myelogenous or monocytic leukemia, constituting a 10-fold relative risk for deaths from the two cell types combined, based on estimates of leukemia cell-type distribution derived from incidence data from the Connecticut Tumor Registry. Monitoring data and existing industrial hygiene assessments led to the conclusion that the environment of the workers in Pliofilm ® production was not contaminated with other materials known to be associated with the induction of blood disorders. Infante et al. further stated that workers' exposures to benzene were generally within the recommended limits in effect at the time of employment, that is, they were between 100 ppm and 10 ppm during the years 1941–1975.

In reply to questions raised by Tabershaw and Lamm (1977, Ex. No. 159–81), the NIOSH investigators evaluated past exposures in both facilities in further detail, and reported that, although other solvents were used in various areas, benzene was found to be the only solvent used in the manufacture of rubber hydrochloride, except for chloroform, which was used between 1936 and 1949 in one plant (Ex. Nos. 128–17; 128–32). The authors agreed with Tabershaw and Lamm that occasional high excursions occurred in airborne benzene levels (up to several hundred ppm). They found, however, that the estimates of airborne concentrations for most of these excursions were based on area samples and not personal samples and occurred in areas entered only infrequently by workers. They estimated that workers' actual eight-hour time-weighted average breathing-zone exposures fell generally within then accepted limits of 10 to 100 ppm.

To evaluate the relative risk of death from leukemia at each of the two locations, the NIOSH investigators separately analyzed leukemia mortality in each (Ex. No. 128–17; 128–32). They found excess mortality in both locations: in one, 2 cases were observed versus 0.58 expected for a standardized mortality ratio (SMR) of 345; and in the other, 5 cases were observed versus 0.67 expected (SMR=746). However, the authors noted that the decision to examine mortality separately for the two locations was not made prior to initial analysis and therefore should not be given undue emphasis. In OSHA's opinion, it seems appropriate to combine data for the two facilities because the operations through which workers were exposed to benzene were virtually identical.

NIOSH agreed with Tabershaw and Lamm that the estimated 10-fold relative risk of death from myeloid and monocytic leukemias combined as presented initially (1977) was too high. The re-analysis by NIOSH resulted in a relative risk of 8.5 for these types of leukemia (Ex. No. 128–17). In OSHA's opinion, the slight reduction in the excess relative risk does not greatly influence the interpretation of the study results.

In their reply to Tabershaw and Lamm, the NIOSH Investigators (Ex. No. 128–17) also indicated that "pipefitters, mechanics, and maintenance personnel were not included because company records did not show which men had responsibilities in Pliofilm ® production." During the follow-up, it was learned that at least one pipefitter who had responsibilities in Pliofilm ® was known to have died from acute myelogenous leukemia. This leukemia death, however, could not be included in the statistical analyses because it did not fit the initial cohort definition.

Dr. Marvin Sakol, a hematologist who practiced in the community where one of the studied facilities was located, presented information during the 1977 OSHA benzene hearing indicating that at least five individuals, of whom 3 died from leukemia, one from thrombocytopenia and one from lymphosarcoma, were not included as such in the statistical analyses of the NIOSH study (Sakol, OSHA 1977, TR 285–329). If these individuals were included, the estimated excess risk would increase substantially. OSHA sought comment on whether these individuals should be included in the analyses for purposes of determining a "maximal estimate" of relative risk for lymphohematopoietic disease in the NIOSH cohort. In comments from the State of Wyoming, Occupational Health and Safety Administrator, Donald Owsley, stated:

> The 5 individuals should have been included in the statistical risk analyses for the determination of the maximal estimate. It is apparent from the information presented by Dr. Sakol, that benzene exposure played a significant role in attributing to their deaths (Ex. No. 201–2, p. 1).

Rinsky et al. (1981, Ex. No. 128–32) continued the follow-up of the cohort of Pliofilm ® workers through June 30, 1975. They reported a statistically significant excess of leukemias. There were seven cases observed, as compared to 1.25 expected resulting in a SMR of 560. The authors indicated that 58% of the cohort members had been employed for less than one year. When the data were analyzed by length of employment, a significant excess in leukemia was observed among workers employed 5 or more years, but not among workers employed for less than 5 years. Among the latter group, 2 workers had died from leukemia compared to 1.02 expected, an excess which was not statistically significant. However, among workers employed for 5 or more years, 5 had died from leukemia compared to 0.23 expected, yielding a SMR of 2100. Five additional cases of leukemia, four of them myelogenous, were reported among workers who had responsibilities in Pliofilm ® manufacturing. These deaths were not included in the statistical analysis of the original cohort (employed sometime between 1940–49) because they occurred either after the study end date of June 30, 1975 (one case), began employment in Pliofilm ® after 1950 (one case), were salaried rather than hourly employees (one case) or had incorrect underlying cause of death indicated on the death certificate (2 cases). (Four of these deaths are in addition to those mentioned by Dr. Sakol as not being included in the analysis. Case number 12 in Rinsky et al. (1981) was mentioned by Sakol.)

Rinsky et al. (1981, Ex. No. 128–32) provided further detail on atmospheric benzene concentrations to which the cohort was exposed. For one Pliofilm ® manufacturing facility, location 1, information on benzene concentrations between 1946 and 1976 was available

from a series of reports by the Industrial Commission of Ohio, the Ohio Department of Health, the company, the University of North Carolina and a NIOSH survey. According to NIOSH investigators, most of the data in these reports appears to have been derived from area samples taken with detector tubes with the exception of the company surveys of 1973–75 and the NIOSH walk-through survey conducted in 1976 when personal breathing zone air samples were measured. While the short-term area samples measured over the years indicated that some benzene levels were above 100 ppm, most were below 100 ppm. Furthermore, short-term area peak exposures may not be indicative of actual breathing zone exposures. The Rinsky et al. (1981, Ex. No. 128–32) report cites several documents indicating that workers were required to wear respirators when exposed "even momentarily" to exposures considered above the recommended level at the time. For example, a report from 1955, when the recommended limit was an 8-hour average of 35 ppm, indicated that when workers entered areas where benzene exposures ranged from 19–680 ppm, respirator usage was required. However, one evaluation of benzene exposure made in 1973–74 at the same facility, when the exposure limit was 10 ppm as an 8-hour average, indicated that respirators were required but were often not worn when workers entered areas where high benzene levels were found (Rinsky, et al. 1981, Ex. No. 128–32). Thus, available information indicates that respirators were generally used when workers entered areas above the recommended limit.

Limited information on exposure levels was available for the second location. One report from the Ohio Department of Health dated 1948 indicated there were "a few conditions wherein an employee might be subjected to an extremely high concentration of benzol," but that employees were "well aware of the toxicity of benzol and have been instructed to, and do, wear respirators when they are required to enter" these areas. Environmental data from this location believed to have been derived around 1957, when the recommended 8-hour TWA was 25 ppm, indicate atmospheric levels of benzene ranging between zero and 100 ppm based presumably on short-term area samples. Because respirators were used in this facility and management was aware of the toxicity of benzene, OSHA considers NIOSH's assessment reasonable that personal exposure to benzene at this facility as well as at Location 1 was generally within the recommended limits at the time of exposure.

Rinsky et al. (1986, Ex. No 250A) evaluated mortality from benzene exposure based on an estimate of cumulative dose for each individual in this cohort. Cumulative benzene exposures were calculated for each member of the cohort in ppm-years. They were also able to extend the follow-up of cohort members to 1982. A total of 1,165 white males with at least one ppm-day of cumulative exposure to benzene through December 31, 1965 were included in the cohort, for a total of 31,612 person-years at-risk. 16 persons (1.4%) lost to follow-up were considered to be alive as of the study end date.

A statistically significant increase in deaths from all lymphatic and hemopoietic neoplasms was observed in this cohort (15 deaths observed versus 6.6 expected, SMR=227). The SMR for leukemia in this cohort was 337 (9 observed vs. 2.7 expected); the SMR for multiple myeloma was 409 (4 observed vs. 1 expected); both were statistically significantly elevated. According to Rinsky et al. increases in cumulative exposure were associated with marked, progressive increases in the SMR for leukemia: among workers with less than 40 ppm-years cumulative exposure, the SMR=109; with 40 to 199.99 ppm-years cumulative exposure, the SMR=322; with 200 to 399.99 ppm-years, the SMR=1,186; with 400 or more ppm-years, the SMR=6,637 (400 ppm-years=40 years at 10 ppm average per year). Boundaries of the cumulative exposure categories were varied in order to check this trend and it remained strongly positive. Cumulative exposure, duration of exposure, and rate of exposure were each evaluated using a conditional logistic regression analysis to determine which measure of exposure most closely influenced the risk of death from leukemia. Cumulative exposure to benzene (ppm-years) was found to be the strongest predictor of death from leukemia. With regard to the latency, defined by Rinsky et al. as the time in years from the date of first exposure until death, seven of the nine leukemia deaths ocurred less than 20 years from initial exposure. All four deaths from multiple myeloma occurred after 20 years of latency. Three of the four multiple myeloma cases had less than 40 ppm-years of exposure. All four of these individuals had worked at location 1.

To further examine the exposure-response relationship, a case-control analysis was performed on a subset of the Pliofilm cohort, using a conditional logistic regression model. Ten controls were chosen from the cohort to match each leukemia death by year of birth and year first employed. In the analysis, cumulative exposure was found to be the strongest single predictor of death from leukemia.

The NIOSH investigators concluded from this study that a strongly positive exposure-response relationship exists between benzene and leukemia that extends downward to mean annual exposure levels of less than 1 ppm accumulated over a 40-year working lifetime. According to the model selected for the analysis, the odds of dying from leukemia for a worker occupationally exposed to average daily benzene concentrations of 10 ppm for 45 years would be 290 to one. In other words their risk of dying from leukemia would be 290 times that of a population not exposed to benzene. At 1 ppm the odds would be about 1.7 to 1; at 0.5 ppm the odds would be 1.3 to 1.

Rinsky et al. (1986) also concluded that a statistically significant excess of deaths from multiple myeloma has occurred in this population of benzene exposed workers. Because three of the four persons who died from multiple myeloma had cumulative benzene exposures of less than 40 ppm-years, and all four cases had >20 years latency, these investigators hypothesized that "relatively low cumulative exposures to benzene may produce a relatively well differentiated malignancy such as multiple myeloma * * * " (Ex. No. 250A, p. 20).

During the 1986 hearings on the proposal, there was considerable discussion of the NIOSH study of rubber hydrochloride workers. In particular, the API was concerned that errors had occurred in exposure estimation. As a result of questions submitted by API to NIOSH during and following the hearings (Ex. No. 237) exposures to a small number of cohort members were corrected by Rinsky et al. Because some of the revisions were upward and some were downward, these changes did not result in any significant alterations to the findings of the study. The results described in this preamble are based on the draft of the report dated April 22, 1986, submitted to the record by NIOSH with its post-hearing comments, and based on the corrected exposure estimates for the cohort (Ex. No. 250A). In discussing the exposure estimates made for this study, the authors point out that although they are based on existing environmental data which are invariably incomplete in studies of this kind, these "data are unusually comprehensive in comparison to those typically available for retrospective

cohort studies" and "permit a reasonable estimate of cumulative benzene exposure during rubber hydrochloride production for each member of this study population." (p. 17) Furthermore, they state:

> If the environmental data are in error, we believe they likely err by overestimating actual average exposures, for two reasons. First, the majority of the measurements were taken by industrial hygienists looking for trouble spots within the process rather than trying to document typical personal exposures. Second, the economic viability of the rubber hydrochloride manufacturing process depended upon efficient recovery of costly solvent; indeed, much of the process was dedicated toward this end. Continuous high level contamination by benzene of a large ventilated area would not have been economically acceptable (Ex. No. 250, p. 18).

In 1984, after the date set for the end of follow-up for this study, a tenth death from leukemia occurred among the cohort. This man had worked as a neutralizer operator at location 2 for approximately 3½ years. His cumulative benzene exposure was estimated to be 90.56 ppm-years. Because vital status for the cohort was determined only through 1981, this case did not meet the criteria for inclusion in the study cohort but the death was included in a subsequent regression analysis. The inclusion resulted in a slightly lower odds ratio, but increased the statistical significance of the dose response. Rinsky et al. did not include this 10th leukemia death in their preferred analysis because it occurred beyond the study cut-off date and the controls selected may not have met the criterion of being alive at the time of the case's death as did the controls matched to other cases. The analysis including the 10th case mentioned as additional corroborating evidence.

A number of studies have noted excesses of mortality from lymphatic leukemia, myelogenous leukemia and lymphosarcoma among persons exposed to benzene and benzene containing solvents while employed in the rubber industry (McMichael et al. 1975, Ex. No. 128–18; Monson and Nakano, 1976, Ex. No. 128–20; Tyroler et al. 1976, Ex. No. 144–21; Delzell and Monson, 1982 Ex. No. 144–32). The International Agency for Research on Cancer (IARC) (1982, Ex. No. 159–38A) has reviewed many of the epidemiologic studies of cancer risk among workers in the rubber industry. Excesses of cancer of the lymphoid and hematopoietic systems were observed among rubber workers in both the U.S. and the U.K. IARC concluded that there is sufficient evidence to indicate an excess occurrence of leukemia in rubber workers and to indicate a causal association with occupational exposures, presumably to solvents.

Studies of chemical workers. Ott et al. (1978, Ex. No. 128–33) conducted an historical prospective study of mortality among 594 white males occupationally exposed to benzene in a chemical manufacturing facility and employed at any time between 1940 and 1970. Two deaths from leukemia were observed versus one expected. The authors noted that a third death was categorized on the death certificate as bronchopneumonia with myeloblastic leukemia listed under "other significant conditions." (Since individuals with terminal leukemia often die from bronchopneumonia, the underlying cause of this death was listed incorrectly on the death certificate as due to pneumonia.) Ott et al. (1978) included this third case of myelogenous leukemia in their analyses and noted that 3 cases of myelogenous leukemia compared to 0.8 expected cases based on incidence data from the Third National Cancer Survey are statistically significant. With regard to other findings of interest in relation to benzene toxicity, the authors indicated that a fourth cohort member died from aplastic anemia while a fifth died from pernicious anemia. The time-weighted-average (TWA) exposures ranged from 0.1–35 ppm for various job categories.

Assessment of atmospheric benzene levels in the three production areas from which workers were selected for study indicated that exposures to the cohort had always been fairly low reflecting the use of closed, continuous systems. In production area one (I), estimated TWA benzene exposure based on breathing zone samples ranged between 0.1 and 6.2 ppm for the years 1944 to 1973. In production area two (II), TWAs ranged between 0.3 and 14.7 ppm between 1953 and 1972, while in production area three (III), the averages ranged between 4 and 35.5 ppm for the years 1952–1974. Ott et al. calculated cumulative dosage for each employee by multiplying the mean TWA exposure for each job category by the number of months spent exposed to each level.

Several witnesses and/or working groups have judged this study as having been well conducted. Dr. MacMahon, who was the major consultant for CMA on the epidemiologic evidence of leukemia risk at low benzene concentrations, commented that in the Ott study "there seems to be reasonably clear evidence of increased leukemia risk following benzene exposures at levels below the present standard of 10 ppm. Exposure measurements have been maintained over an unusually long period and there seems no reason to believe that the characterizations of exposure are inaccurate" (Ex. No. 201–33, p. 22).

Bond et al. (1986, Ex. No. 201–28) updated the mortality study conducted by Ott et al. (1978, Ex. No. 128–33) by extending the cohort definition to include employees who worked for at least one month between 1938 and 1978, by extending the observation period through 1982, and by examining monthly as well as annual census data for those employed at the facility. As a result, an additional 362 benzene exposed workers not studied originally were added to the cohort. Four deaths due to myelogenous leukemia were observed with 2.1 expected total leukemia deaths (SMR = 194) and 0.9 expected myelogenous leukemia deaths (SMR=444; $p<0.011$).

A fifth person with myeloblastic leukemia was classified as a death due to bilateral bronchopneumonia because it was listed as such on the death certificate. (This is the same case observed by Ott. et al.). Standard epidemiologic methodology required, therefore, that it be coded to pneumonia. A statistically significant excess of deaths due to myelogenous leukemia (4 observed versus 0.9 expected, $p=0.011$) was observed among these 956 benzene exposed workers.

Ott et al. had previously reported one death due to aplastic anemia and one due to pernicious anemia. After examination of the pathologist's report (Ex. No. 170A), OSHA is of the opinion that the latter cause of death was actually megaloblastic anemia. In the update, one additional death was observed due to myelofibrosis, a condition thought to be similar to myelogenous leukemia in overgrowth of fibroblasts (Ex. 201–28; Ex. 159–103). The identification of the latter death brings to three the total number of observed deaths from diseases of the blood or blood forming organs among these benzene exposed workers, as compared to 0.7 expected deaths from these causes ($p<0.05$, one-sided Fishers Exact Test), a statistically significant excess of deaths (Ex. No. 252A–19).

One case of multiple myeloma was also observed among these workers. The authors (Bond et al.) considered it noteworthy that the deaths from myelofibrosis and multiple myeloma occurred among workers from the same area of the plant (Alkyl benzene unit) where four out of the five individuals who had developed leukemia had worked. This observation is also noteworthy in view of the NIOSH study in which a significant excess of mortality due to multiple myeloma among benzene exposed workers was

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demonstrated (Rinsky et al., 1986, Ex. No. 250) as well as the excess of multiple myeloma cases observed by Decoufle et al. (1983, Ex. No. 128–30; 1984, Ex. No. 159–22) among a cohort of workers exposed to benzene in a chemical plant, the excess incidence of multiple myeloma cases observed by Shottenfeld et al. (Ex. 128–6) among petrochemical workers, and the excess of deaths due to multiple myeloma observed by Wong among benzene exposed chemical workers (Ex. No. 151A).

The mean duration of exposure for the Bond update of the Ott cohort was only 7 years, with half of the employees exposed for 2.6 years or less. OSHA has estimated the average exposure to benzene for the entire Dow cohort to be 5.5 ppm (Ex. No. 252A–19). Thus, this study demonstrates a significant excess of mortality from leukemia as well as from other diseases of the blood and blood-forming tissues as a result of average benzene exposures of about 5 ppm.

Robert Rinsky of NIOSH (Ex. No. 256) reviewed the update by Bond et al. In his comments, he pointed out that:

> four of the five leukemia cases (or three of the four if you do not count the pneumonia death) had cumulative exposures far less than one would receive under the current OSHA PEL of 10 ppm over a 40 year working career (400 ppm-years). Case 1, had only 54 ppm-years; case 2 had 1.5 ppm-years; case 3 had 25.4 ppm-years; case 5 had 28.5 ppm-years. Only Case 4 had a cumulative exposure greater than that which would be allowed with a PEL of 2 ppm TWA. It would be difficult for any trend to be seen under such fine stratification. For this reason, if the objective is to evaluate a dose/response relationship, it would be more desirable to have conducted analyses using continuous exposure data rather than categorical data. I believe that the observation of the other hematopoietic diseases (specifically the multiple myeloma and the myelofibrosis) is very important * * * Multiple myeloma is and has been consistently associated with benzene exposure.

In a post-hearing statement submitted to OSHA by the Chemical Manufacturers Association, G.G. Bond stated, "I do not believe it is appropriate to interpret the Dow Update as demonstrating a significant increase in deaths from non-malignant blood abnormalities among workers exposed to low levels of benzene" (Ex. No. 242, Appendix 1). OSHA concludes that the study does demonstrate a significant excess of mortality from these diseases, using a one-sided Fisher Exact Test. OSHA concludes that this test is more appropriate than the two-sided test used by the authors (Ex. No. 252A–19).

Bond also argued that arsenic exposure may have been a cause of the leukemia and non-malignant blood disease deaths. There is, however, relatively little evidence in the many arsenic studies indicating that arsenic is associated with leukemia. Bond refers to an earlier study of a cohort of Dow workers exposed to arsenicals (Ott et al., Arch. Environ. Health 29:205–55, 1974). However, OSHA notes that in that study, the increased risk among these arsenical exposed workers was due largely to four cases of Hodgkins disease out of the six total lymphopoietic cancers (with no leukemias observed). Furthermore, the report of this study of arsenic exposed workers does not indicate any increase in the risk of aplastic anemia.

OSHA concludes that this study represents direct observation of a leukemogenic risk from low level benzene exposure. The average benzene exposure of the group was low and exposures of the employees who died from leukemia were low. Only one had an average exposure greater than 55 ppm years (5 ppm for 11 years).

Decoufle et al. (1983, Ex. No. 128–30) reported on an historical cohort mortality study of 259 male employees employed from January 1, 1947 through December 31, 1960 at a chemical plant where benzene had been used in large quantities. Followed to December 31, 1977, four deaths from lymphoreticular cancers had occurred when 1.1 would have been expected based on the national rate, for a relative risk of 3.7 (SMR=364). Three of the deaths were due to leukemia as compared to 0.4 expected, resulting in a relative risk of 6.8. One of the leukemia deaths had initiated treatment for multiple myeloma 2 years prior to his development of leukemia. The authors did not present information on benzene exposure levels for these workers.

The expected number of deaths from multiple myeloma, polycythemia vera, and other neoplasms of lymphoid tissue combined which was not presented in the published study was estimated by the authors to be 0.23 (Decoulfe, 1984, Ex. No. 159–22). The two cases of multiple myeloma observed in the study plus previous reports of multiple myeloma associated with benzene exposure suggested to the authors an etiologic role for benzene in the pathologies of tumors of B-cell lineage (multiple myeloma and chronic lymphatic leukemia. Evidence that benzene plays a role in alterations of B-cell populations and in immunosuppression has also been obtained from experimental studies of animals exposed to benzene.

An historical prospective mortality study was conducted by Wong et al. (1983) for the Chemical Manufacturers Association (CMA) (Ex. No. 151–A). The mortality experience of 4602 male chemical workers from seven plants who were occupationally exposed to benzene for at least 6 months between 1946 and 1975 was compared with that of 3074 chemical workers from the same or similar plants who had no known occupational exposure to benzene. Vital status was followed through December 31, 1977. Death certificates were obtained for 1013 (97.8%) of the 1036 deceased employees. Those lost to follow-up were included in the analysis only until the last date of contact and their mortality experience was assumed to be similar to the rest of the cohort.

Exposure to benzene was divided into continuous (with some intermittent) exposure (3536 men) and intermittent or casual exposure (1066 men). Continuous exposure was divided into 4 categories of 8-hour TWAs and 3 categories of peak exposures:

8-hour TWA

Low	<1 ppm
Medium	1–10 ppm
High	11–50 ppm
Very High	>50 ppm

Peak

Low	<25 ppm
Medium	25–100 ppm
High	>100 ppm

Intermittent exposure was characterized by peaks only. Each job was divided into 34 uniform tasks and the amount of time spent at each task was determined. Benzene exposure for each task was based on available industrial hygiene measurements and production and process changes. These were summed for each job. Industrial hygiene data for some plants were limited prior to 1970. Two plants (6 and 7) did not use the uniform task approach and exposures were estimated by supervisors or an industrial hygienist.

The standardized mortality ratio (SMR) was used to compare cause-specific mortality for both those exposed and unexposed to benzene with the general U.S. population. Expected values were based on U.S. national age-cause-race-specific mortality rates for 5-year time periods from 1946–1977. For some site-specific cancers that appeared to be in excess among the benzene exposed cohort, further analyses were conducted contrasting observed deaths in the exposed group with observed deaths among workers at the same plants who were not exposed to benzene. The Mantel-Haenszel chi-

square and relative risks were used for these comparisons.

Age and race adjusted Mantel-Haenszel chi-squares and relative risks, for all lymphatic and hematopoietic cancers combined, indicated a significantly increased risk for benzene exposed (continuous and intermittent) white males (RR=4.66, p=0.03) when compared to the non-exposed workers. This excess was primarily due to seven leukemia deaths observed in the exposed group and none observed in the nonexposed group. When only continuously benzene exposed workers were compared with the nonexposed group, the excess of lymphopoietic cancer was significant for white males and all males, respectively (RR=5.3, p=0.02, RR=3.2, p=0.04). None of the seven leukemia deaths were of the acute myelogenous cell type. Two were chronic myeloid leukemia, two were chronic lymphatic leukemia, and one each was from unspecified lymphatic leukemia, acute lymphatic leukemia, and acute other unspecified leukemia. The remaining lymphatic and hematopoietic cancer deaths in benzene exposed workers were due to multiple myeloma (3), reticulum cell sarcoma (3), Hodgkin's disease (2), lymphosarcoma (1), and other lymphoid tissue neoplasms (3).

Of the 3 deaths from multiple myeloma observed among the benzene exposed workers, 2 were identified among the intermittent exposure group as compared to 0.56 expected (RR=3.8) based on U.S. rates. Deaths from multiple myeloma were not observed among the non-benzene exposed workers.

Analysis by length of exposure indicated to the authors that it was not a particularly sensitive parameter for quantification of either leukemia or lymphopoietic cancer mortality risk. However, when the data were analyzed by cumulative exposure, statistically significant dose-response relationships were detected for leukemia as well as for the broader category of all lymphopoietic cancer. (Rinsky et al. (1986, Ex. No. 250) also have found that cumulative exposure is the best predictor of leukemia risk.) Wong et al. found that for those with less than 180 ppm-months of exposure, a 2-fold risk of all lympho-hematopoietic cancers was observed, whereas for those with more than 720 ppm-months of benzene exposure, a 4-fold relative risk of all lymphatic and hematopoietic cancers combined was observed when compared to the mortality experience of non-benzene exposed employees. The Mantel-Haenszel chi-square was significant for an upward trend analysis for all lymphohematopoietic cancers (p=0.02) and for leukemia (p=0.01) and of borderline significance (p=0.057) for non-Hodgkin's lymphopoietic cancer.

Analyses were also performed to determine the relationship between peak exposure to benzene, i.e., maximum peak below 25 ppm, or between 25–100 ppm, or about 100 ppm, and relative risk. No significant peak exposure-response relationship was observed. These findings suggest that a cumulative dose concept may be better than a maximum peak exposure concept when trying to determine dose-response relationships. It should be noted, however, that those experiencing peak exposures below 25 ppm had a relative risk of 3.4 while those subjected to peaks exceeding 100 ppm had a relative risk of 3.1. Thus, lack of a peak exposure-response relationship in the study may be the reflection of a high relative risk among those experiencing relatively lower peak benzene exposures.

As a result of the analyses, Wong et al. concluded that there was a significant association between occupational exposure to benzene and leukemia, all lymphopoietic cancers, as well as non-Hodgkin's lymphopoietic cancer.

It has been suggested that the seven deaths from leukemia observed in the study by Wong and his associates (1983, Ex. No. 151–A) do not really represent an excess, the relative risk being inflated because of a deficit of deaths in the comparison group. However, the comparison group is the most appropriate group one can compare, a group of workers at the same plants, differing only in not having benzene exposure. It is a better comparison group than the general population because it has clearly more similar environmental, socioeconomic and other characteristics. The general population also includes sick people (workers are a healthy group overall) which tends to minimize excess risk. Wong et al. have made it clear in their report that "the overall SMRs for the occupationally exposed groups and the comparison group were not dissimilar (86.6 vs. 75.2)" (Ex. 151–A, p. 66). As expected, both groups overall were healthier than the general population. Most important, the clear dose-response demonstrates a strong relationship between benzene exposure and leukemia in this study. This relationship is confirmed by many other studies.

Several individuals commented on the CMA study conducted by Wong et al. (Ex. No. 151A). Drs. MacMahon and Enterline were asked by CMA and Drs. Lilienfeld and Rockette were asked by Dr. Wong to comment on an earlier draft of the report of this study (Ex. No. 151A–4, 3, 1, 2), and many of these comments were addressed in the final report. Drs. MacMahon and Enterline also commented on the final report at the request of CMA (Ex. No. 201–33, Appendix B; review cited by Wong in Ex. No. 235). Dr. Wong responded to the comments of these and other reviewers in his testimony for the OSHA hearing (Ex. No. 235). The major comments of these reviewers and Dr. Wong's response are summarized below.

In response to Dr. MacMahon's contention that analyses of leukemia and lymphatic cancers together might be inappropriate. Dr. Wong replied that a good deal of overlap occurs, not only in diagnoses and through changes in nomenclature, but through transitions from one of these cancers to another. He cites examples from the medical literature of transitions from lymphoma or multiple myeloma to leukemia, a leukemic phase in non-Hodgkin's lymphomas, or a leukemic transformation of lymphoid cells in lymphoma. Dr. Wong cited the views of hematologists that certain lymphomas and leukemias "simply represent different clinical expressions of the same neoplastic process" (Berard et al. 1976) and that lymphoma and lymphoblastic leukemia "simply seem to be different initial manifestations of a single neoplastic disorder" (Jaffee and Berard, 1978). Furthermore, Dr. Wong points out that recent research indicates that there are hemopoietic stem cells which have the capacity to develop into different cell lines and that transformation events at an early multi-potential stem cell level is indicated by the demonstration by Bakhshi et al. (1983) that "the major clone in chronic myelocytic leukemia involved cells capable of lymphocyte, granulocyte and erythrocyte differentiations." Based on these considerations, Wong et al. considered it appropriate to combine lymphoma and leukemia for some of the analyses.

Dr. MacMahon and some other reviewers commented about the lack of leukemia deaths in the non-exposed group, suggesting it might indicate problems with the data collection. Dr. Wong responded that the data had been carefully gathered and checked. Participating companies collected the data according to a common protocol and supplied the data to Dr. Wong and his colleagues at Environmental Health Associates. Data audits included verification of completeness of cohort and of coding accuracy. Dr. MacMahon

found these checks to be satisfactory. Furthermore, 95% completeness of follow-up was required for each plant. Thus, Dr. Wong stated, "although questions could be raised regarding the validity of the data, no obvious problems could be detected through our extensive data audits" (Ex. No. 235, p. 5).

Dr. Wong pointed out that both the exposed and comparison groups were very close in characteristics. The comparison group was slightly younger, had slightly shorter length of employment, and percentage of missing death certificates was similar. According to Dr. Wong, all of the analyses were age-adjusted so a minor age difference should not be important. The impact of a difference of two years in average length of employment was not clear to Dr. Wong, and some bias might have been introduced, particularly if one or more of the 14 deaths without death certificates in the comparison group were due to leukemia (Ex. No. 235, p. 6). If this were so, "then we would have overestimated the risk of the exposed group when we use the nonexposed group as comparison. On the other hand, some the (9) unobtainable death certificates in the exposed group could have been leukemia as well. So it goes both ways . . . Then the risk would be even higher" (Tr. 4/2/86, p. 107).

Dr. MacMahon suggested that cancer in general tends to have a less marked "healthy worker effect" than other causes of death (Ex. No. 151A–4). Dr. Wong reviewed several studies of industrial cohorts and found that this generalization did not hold: some groups of workers including some subgroups at petroleum refineries had been observed to have deficits in leukemia mortality or in overall lymphopoietic cancer mortality. Dr. Wong concluded from his review of these other studies that similar deficits (to that in his unexposed comparison group) have been reported by other investigators, raising the question of whether internal or external comparison groups are more appropriate. They both appear to have advantages and disadvantages for epidemiologic studies.

Dr. Wong compared SMRs for a number of diseases for the comparison and exposed groups (Ex. No. 151A, Table 24) and found that both groups "were similarly healthy with regard to a large number of diseases," and "there was no obvious reason to suspect that the comparison group was any different from the exposed group." (Ex. No. 235, p. 6). With regard to selection related to which of the seven plants an employee was from, Dr. Wong found it "unlikely that some unrecognized bias could affect the comparison group and not the exposed group to a similar extent for each and every plant." (p. 7) Dr. MacMahon had recommended a plant specific analysis in his comments on the earlier draft, as had Dr. Enterline. A plant-adjusted analysis was done on a preliminary data set. The results were very similar to those without plant-adjustment. "In the final data set, at CMA's request, no plant adjustment was made" (Ex. No. 235, p. 7).

At the hearings, the American Petroleum Institute questioned Dr. Wong about the possibility that the unexposed comparison group was predominantly from 2 other plants than the one from which much of the benzene exposed group was drawn, and thus may have experienced exposures to different other chemicals than the benzene exposed group. The API's concern was the chemicals other than benzene may have been responsible for the differences in mortality between exposed and unexposed groups. Dr. Wong replied that in order to examine this possibility, comparisons were made between benzene exposed and unexposed employees within each plant, for a "plant-adjusted" analysis. No differences were found between the results of this analysis and an analysis without such an adjustment for plant. The investigaters concluded that differences between plants did not confound the differences between exposed and unexposed groups (Tr. 4/2/86, pp. 101–103). The study was a proper comparison between benzene exposed and non-exposed employees, and other chemicals had not confounded the results.

Dr. MacMahon argued that he did not believe the dose-response relationship to be impressive. Dr. Wong replied that even though it was not impressive to Dr. MacMahon, "the trend in all lymphatic and hematopoietic cancer was statistically significant * * *. There was still a positive trend, even after the comparison group was removed (SMR=91.3, 146.8 and 175.2 by cumulative exposure; Table 37). My opinion is that a dose-response relationship for all lymphatic and hematopoietic cancer has been demonstrated" (p.7).

Finally, in response to Dr. MacMahon's comment that Dr. Wong and his associates had done too thorough an analysis, Dr. Wong pointed out that "All the analyses done were specified in our proposal to CMA prior to the start of the project, which were accepted by CMA and made part of the subsequent contract. It should also be pointed out that Dr. Enterline, the second CMA reviewer, commented that more analyses should be done * * *" (p. 7). These extra samples were not done because they would have involved further reductions in sample size.

Dr. Philip Enterline found the data on cumulative benzene exposure (Table 37) to be the most impressive evidence in favor of a relationship between benzene exposure and lymphatic and hematopoietic cancer.

Dr. Lilienfeld suggested adding 0.5 leukemia death to the comparison group so the relative risks could be calculated. Dr. Rockette, however, felt that this procedure might result in unacceptable bias.

Mr. Rinsky of NIOSH suggested that the latency for the cohort may have been too short, that is, the time available between first benzene exposure and the end of study follow-up dates for observation of deaths due to leukemia was too short. Dr. Wong replied that 67% of the exposed cohort had a latency longer than 17 years which he assumed was quite an adequate latency for leukemia.

Dr. Kenneth Rothman, a consultant to Texaco, Inc., commented that bias was introduced by "unsupervised data collection" by the participating companies. Dr Wong disagreed that data collection was unsupervised: "Many of the individuals at the companies responsible for data collection are professional epidemiologists" (Ex. No. 235, p. 11). Dr Rothman also commented that SMRs should not be used when comparing two groups. Dr. Wong replied that, in order to avoid a problem of comparing SMRs when age distributions of the group being studied are very dissimilar, "the age distributions were examined thoroughly in the study and found to be similar. In our study, we used the same standard population (U.S.), which should further minimize any problems associated with comparing SMRs. Furthermore, direct comparisons based on the Mantel-Haenszel chi-square were also made" (p. 11).

In his concluding remarks Dr. Wong stated.

> I believe that I have responded to all the major comments on the study in this document. It is my opinion that none of the comments would detract or invalidate the major conclusion of the study * * * the study has demonstrated that chemical workers occupationally exposed to benzene experienced significant mortality excess from leukemia, as well as the broader category of all lymphatic and hematopoietic cancer, when compared to chemical workers who were not occupationally exposed to benzene

. . . . The data further show statistically significant dose-response relationships between cumulative benzene exposure and excess mortality from leukemia and the broader category of all lymphatic and hematopoietic cancer (Ex. No. 235, p. 12).

OSHA agrees with these conclusions.

Studies of refinery and petrochemical workers. Several epidemiological studies of refinery workers have been reported since 1977. It should be noted that several of these were studies of all employees or hourly employees at a facility, not just of benzene exposed employees. Consequently, any excess risk of leukemia would be diluted and possibly not identified because many of the employees studies would not have been exposed to benzene over background. The details of some of the studies which have been discussed in the proposal (50 FR 50520–50524) have not been repeated here.

Thomas et al. (1982, Ex. No. 144–71) studied the proportional mortality for 2,509 active and retired members of the Oil, Chemical and Atomic Workers International Union (OCAW) who worked at three oil refineries in the Beaumont-Port Arthur, Texas area for Texaco, Mobil and Gulf Oil. With data for the three refineries combined, deaths due to leukemia (PMR=1.83), multiple myeloma (PMR=1.96), Hodgkin's disease (PMR=1.34), and non-Hodgkin's lymphoma (PMR=1.32) were elevated, especially among retired workers. Deaths from cancers of the brain (PMR=2.21), prostate (PMR=1.38), stomach (PMR=1.52), pancreas (PMR=1.42) and circulatory disease (PMR=1.04) were significantly elevated.

Thomas et al. (1984, Ex. No. 159–84) followed this cohort mortality study with a case-control study to examine work histories of cases for evidence of any unusual distributions of cause-specific mortality by work category. The relative risk (odds ratio) of leukemia was elevated among persons exposed to two job categories: treating and boilermaking. The risk of leukemia increased with increasing duration of employment. Stomach cancer risk was elevated among maintenance workers and workers exposed to lubricating oils and paraffin wax processing. No strong associations for brain tumor risk were seen with any work category. In comparisons with pooled controls, no unusual distributions with work category were noted for the cases of multiple myeloma, Hodgkin's disease, or non-Hodgkin's lymphoma. For this study the number of cases of each cancer type was small; consequently the ability to detect excess risk was low unless the actual risk was very high. The authors stated several limitations about the ability to associate specific cancers with specific chemicals because of changes in job classifications over time, lack of sensitivity and specificity of chemical exposures associated with job categories, and job mobility resulting in study subjects being classified as exposed to multiple work categories.

Wen et al. (1983, Ex. No. 159–100) studied male hourly and salaried workers employed for any length of time on any job at a refinery in Port Arthur, Texas, between January 1937 and January 1978. Thirty deaths from leukemia were observed among male hourly workers employed for one year or more, whereas 21.3 would have been expected. Using the Poisson distribution in a one-tailed test of significance, a statistically significant excess of leukemia is indicated.

The study by Wen et al. was comprised of all Gulf employees and included many non-benzene exposed persons in the population at risk, such as clerical and managerial employees. Because Wen et al. did not identify the population at risk of exposure to the refinery process, the SMR's might have been diluted.

Theriault and Goulet (1979, Ex. No. 159–81A) reported the results of a mortality study of 1205 men who had worked at an oil refinery in Quebec, not necessarily exposed to benzene, for more than 5 years between 1928 and 1975. Sixteen percent (190) were lost to follow-up, a relatively high amount. An increase in deaths due to leukemia and lymphoma (SMR=127) was observed among these workers when compared with the number expected among the Quebec population, although this excess was not statistically significant.

Hanis et al. (1979, Ex. No. 159–34A) studied the risk of mortality from cancer among 15,032 men who were active employees or annuitants of Imperial Oil Limited during 1964 to 1973. 865 employees with 5 to 15 years of service were lost to follow-up. 6,681 short-term employees with less than 5 years of employment were excluded from the study population because it was not considered practical to trace these employees. Information on job title, function, and location was used to classify workers as to exposure, moderate exposure or nonexposure to petroleum or its products, but not specifically to benzene, or as refinery/non-refinery workers. (Some petroleum contains benzene and some does not.) Mortality rates for cancers of the lymphatic and hematopoietic system were increased among those moderately exposed employees as compared with nonexposed (RR=1.88) but not among those exposed every day to petroleum or its products. No analysis was done specifically for leukemia deaths in this cohort.

Hanis et al. (1982, Ex. No. 159–34B) examined the mortality experience of 8,666 employees and retirees of Exxon's Baton Rouge, Louisiana refinery and chemical plant who worked at least one month between 1970 and 1977. Among these employees, there were 1,199 known deaths and 835 persons (9.6% of the cohort) were lost to follow-up. Mortality due to all causes was less than expected when compared with age, gender, race, and calendar-year specific U.S. death rates. Although not statistically significant, increases were observed for deaths due to diseases of the blood and blood forming organs (SMR=222), all lymphopoietic cancers (SMR=109), lymphoreticular sarcoma (SMR=119), and several other cancer sites.

In a preliminary report of a prospective study of the morbidity and mortality of petroleum industry employees in the U.S., Schottenfield et al. (1981, Ex. No. 128–26) observed statistically significant increases in the incidence of acute and chronic lymphocytic leukemias among refinery workers, of multiple myeloma among petrochemical workers, and of cutaneous melanoma among workers in the Middle Atlantic region of the U.S. Expected values were derived from U.S. age-specific cancer incidence rates from the Surveillance, Epidemiology, and End Results (SEER) program of the National Cancer Institute for 1977. Seven cases of acute and chronic lymphocytic leukemias were observed among refinery workers compared with 2.6 expected for a standardized incidence ratio (SIR) of 274. Nonlymphocytic leukemias were increased in petrochemical and refinery workers (SIR=113) but not significantly. Multiple myeloma was elevated significantly among the petrochemical workers (SIR=552). The authors stated that these results should be viewed as preliminary because the period of observation was quite short, the number of older workers included in the analysis was limited, and the degree of underreporting of mortality was unknown. In other words, the observed risks may have been underestimated.

OSHA believes that the evidence for an association between benzene exposure and multiple myeloma continues to be replicated. Multiple myeloma has been observed in several cohorts of workers potentially exposed to benzene (Rinsky et al., 1986, Bond et al., 1986, Decoufle et al., 1983, Wong et

al., 1983, Thomas et al., 1982, Schottenfield et al., 1981).

Rinsky et al. (Ex. No. 250A) demonstrated a significant excess of deaths from multiple myeloma among their cohort of workers exposed to benzene. Wong et al. (Ex. No. 235) and Decoufle et al. (Ex. No. 128–30) also commented on elevated risk of multiple myeloma in their studies of benzene exposed workers. While the relative risks of multiple myeloma were elevated, the excesses were not statistically significant because the number of observations were small. Decoufle suggested a link between benzene exposure and multiple myeloma because of his study findings and the findings of McMichael et al. (1975, Ex. No. 128–18) of increased risk of chronic lymphatic leukemia among rubber workers exposed to organic solvents (containing benzene). Because multiple myeloma and chronic lymphatic leukemia are disorders of B-lymphocyte lineage, Decoufle concluded that low level organic solvent exposure may induce B-cell neoplasms through a chronic immunosuppressive mechanism.

The study by Bond (Ex. No. 201–28) identified one multiple myeloma death. It occurred among workers who were employed in the same area of the facility where a death from myelofibrosis (also related to benzene exposure) occurred and where the signficant excess of leukemia was observed. Thus, the observations of Wong, Decoufle and Bond support the findings by Rinsky of an excess risk of multiple myeloma related to benzene exposure.

In the four cohort studies of workers exposed specifically to benzene (Rinsky, Bond, Decoufle and Wong), the ratio of leukemia to multiple myeloma is 22:10 or 0.45. If multiple myeloma is included, the cancer risk of workers exposed to benzene would be increased by an estimated 45%. OSHA did not include death from multiple myeloma in its estimates of cancer risk related to benzene exposure. The lack of inclusion of these data gives the Agency further confidence that the projected cancer risks (based on leukemia only) would be unlikely to overestimate the risk of total cancer among workers exposed to benzene.

Rushton and Alderson (1981, Ex. No. 159–69) reported the results of a case-control study of leukemia deaths among men employed at 8 oil refineries in the United Kingdom. Two sets of controls were selected from the total refinery population: one was matched with cases by refinery and year of birth, the other was matched by refinery, year of birth and length of service. Job histories obtained from refinery personnel records were used to categorize each person's benzene exposure as low, medium, or high, and the potential benzene exposure of cases was compared with that of controls. Although no overall excess of deaths from leukemia was found when compared with expected numbers based on national rates, the risk of leukemia for men with medium or high benzene exposure was significantly greater ($p=0.05$) than the risk for men with low benzene exposure.

Devine and Barron (1983) reported the results of a case-control study (Ex. No. 142–32B) within a cohort mortality study (Ex. No. 142–32A) of white male employees at a Texaco refining, petrochemical or research facility. Among 19,077 white males, slightly elevated SMRs were observed for leukemia (SMR=113), cancer of other lymphatic tissue (SMR=111) and other sites. The case-control study demonstrated significantly elevated rate ratios for leukemia deaths among workers in utilities (RR=4.6); and among pipefitters (RR=2.7) and utilities controlmen (RR=5.1). A significantly elevated rate ratio for other lymphatic cancer was found among persons employed in fluid catalytic cracking units (RR=3.1). It is highly likely that pipefitters and utility personnel have the relatively highest intermittent exposures to benzene.

In 1983, Shell Oil Company reported the results of an evaluation of mortality among active employees and retirees from two manufacturing locations (Ex. No. 142–13–A). Deaths occurred between January 1, 1973 and December 31, 1982. At the Deer Park, Texas Refinery facility, 6 deaths from all forms of leukemia were noted among refinery workers as compared to 2.60 expected, SMR=230. Three acute myelogenous leukemia deaths were observed versus about 0.8 expected, SMR=375. These results were of borderline statistical significance. The study of mortality at both of these facilities examined causes of death for "active" employees and retirees and excluded "terminees" who were not followed after termination of employment at Shell. Thus, the actual number of cases of leukemia related to exposure in this occupational setting may have been greater.

At the Wood River, Illinois Refinery, a significant excess of deaths due to leukemia was observed (14 observed; 6.4 expected) resulting in a SMR of 219 for all leukemia. Eight deaths were observed from acute myelogenous leukemia (AML) whereas 2.0 were expected, resulting in a SMR of 400. On the basis of these observations, an epidemiologic consultant to the company concluded:

> There is no reasonable possibility that the data are the result of any error or errors or random variations of consequence; nor is it likely that these findings can be attributed to confounding by a non-occupational cause of AML * * *. The specific cause of the excess of AML at Wood River is unknown. However, benzene is an established cause of AML, and there is anecdotal evidence that in years past benzene was present in the ambient air at Wood River at levels that exceed the current standard. Thus, benzene is the most likely cause of the excesses seen (Ex. No. 142–13–A).

Further analysis by job category for the 14 leukemia deaths identified among the 3,976 white males included in the Wood River Refinery was submitted to OSHA in May 1984 (Ex. No. 160–12). Of 14 leukemia deaths identified (versus 6.6 expected) in the study, 3 had worked in laboratory jobs where benzene was used, 5 spent most of their careers as maintenance workers, but it was not known if they were assigned to benzene units, while 6 were categorized as probably having no benzene exposure above refinery background levels.

In December 1984, the results of a case control study of the 14 leukemia deaths identified between 1973–1982 at the Wood River Refinery were submitted to OSHA (Ex. No. 165). A statistically significant relative risk of 9.5 for acute myelogenous leukemia was observed for engineering field foremen. Relative risks for leukemia for other department/job categories ranged between 1.5 and 4.6, but were not statistically significant. In the authors' opinion, the former observation met all criteria for a positive result. However, they felt its interpretation remained unclear. As a result of the statistical analyses presented, the authors concluded that the study produced no distinctly positive result and that the reason for the excess leukemia among the refinery workers remained unexplained. The authors raised several possible explanations for what they viewed as a failure to statistically associate the leukemia with any specific chemical. Among the limitations listed were small sample size, the jobs and departments described did not specify distinct substance exposures, and the substance of greatest interest to the authors, benzene, is volatile and could have drifted from location to location causing ostensibly unexposed jobs actually to entail exposure.

Dr. David Savitz of the Department of Epidemiology of the University of North Carolina School of Public Health evaluated and commented on the

epidemiologic studies concerning occupational benzene exposure and lymphatic and hematopoietic cancers, especially leukemia, with special emphasis on the studies of cancer risks among oil refinery workers (Ex. No. 222). Dr. Savitz updated a previous review of the literature (Savitz and Moure, 1984, Ex. No. 252A–17–69) to include studies reported through 1985. Regarding the studies of refinery workers, he concluded that "several studies . . . show notably elevated rates of mortality from lymphatic and hematopoietic cancers, . . . convincingly linked to benzene exposure (Ex. No. 222, p. 2). In hearing testimony he summarized his findings:

A number of the studies of refinery workers have indicated an increased risk of lymphatic and hematopoietic cancers. The studies most convincing of excess risk are: (1) Rushton and Alderson's (1981b) case-control study indicating risk ratios of 2.0–2.3 for benzene exposure among refinery workers with leukemia; (2) Schottenfeld et al.'s (1981) data on excess incidence of several lymphatic and hematopoietic cancers, including leukemia (standardized incidence ratio of 145); (3) Thomas et al.'s (1982) elevated PMRs for lymphatic and hematopoietic cancers and specifically for leukemias (PMR=189); (4) Tabershaw, Occupational Medicine Associates (1980) data on increased leukemia (SMR=322) in the 10% cohort sample; (5) Morgan and Wong's (1984) leukemia excess (SMR=173); (6) McCraw et al.'s (1985) observation of a 4-fold excess of acute myelogenous leukemia; and (7) Decoufle et al.'s (1983) report of a 4-fold excess of lymphatic and hematopoietic cancers among oil refinery and chemical plant workers exposed to the benzene. Other studies of refinery workers have provided data which does not indicate increased risk of lymphatic and hematopoietic cancers; most of these made little or no attempt to pinpoint persons exposed to benzene, so that the results may accurately reflect the overall experience of refinery employees but do not specifically address the effects of benzene.

Even though some of the refinery studies have limitations in exposure characterization, they provide presumptive evidence that benzene operates as a leukemogen in this workforce. The more direct evidence regarding benzene's leukemogenic properties as demonstrated by studies of benzene-exposed cohorts per se and case series (Aksoy et al., 1974; Vigliani & Saita, 1964) provides the other critical line of evidence to indicate that benzene in particular is the agent which is responsible. The complexity of the refinery environment leaves open the possibility that some other solvent or refinery product is also a leukemogen, but no other agent has the degree of laboratory or epidemiologic data which exists for benzene to support this possibility (Ex. No. 222, pp. 13–14).

Neal King, representing CMA, questioned Dr. Savitz as to whether he was just speculating that the methodological difficulties in the refinery studies have masked an increase in cancer. Dr. Savitz replied that, "* * * based on epidemiologic principles * * *" and "the known inaccuracies that would occur, one can predict with a high degree of confidence which direction the error would tend to be in, and for a number of those problems which I have cited . . . , the direction of that error is towards a failure to find associations with benzene that may be present. So it is * * * speculation with a rather firm methodologic basis" (Tr. 3/24/86, p. 57).

It is OSHA's opinion that the elevated risks of leukemia observed among the studies of refinery workers are most likely the result of exposure to benzene, the only substance found in refineries that is known to cause leukemia. Some studies of refinery workers did not demonstrate elevated risks of leukemia. In these situations, the studies suffered from methodologic deficiencies such as, but not limited to, dilution of results through inclusion in the study of those individuals not exposed to benzene (the large majority) along with those exposed to benzene. For some of the studies of refinery workers where an elevated risk of leukemia was not observed overall, nested case-control studies of leukemia deaths demonstrated significant associations with benzene exposure or with jobs likely to experience a relatively greater amount of benzene exposure.

Some case-control studies were not able to link leukemia deaths among refinery workers to benzene exposure. The authors of these studies, however, gave several possible explanations for why an association may not have been detected. Consequently, study results of refinery workers that do not demonstrate an increased risk of leukemia do not challenge the causal connection between low dose benzene exposure and leukemia.

Epidemiologic studies demonstrate that benzene exposure can cause leukemia, multiple myeloma and perhaps other hemopoietic and lymphatic cancers. Aplastic anemia and several other blood diseases are also known to be caused by benzene exposure. Observations related to the above findings have been demonstrated by a number of high quality epidemiologic studies and case reports, such as those by Rinsky, Wong, Ott, Decoufle, Infante, Aksoy, Vigliani and others. The more ambiguous studies had serious methodologic weaknesses or were not specific studies of benzene exposed workers but rather of industrial workers, some of whom may have been exposed to benzene. Consequently, for these studies it was difficult to evaluate the effect of benzene exposure on the study populations. The conclusion that leukemia is caused by benzene exposure is agreed upon by most scientists and was not seriously contested during this rulemaking proceeding.

C. Cytogenetic Effects in Humans

Cytogenetic changes indicate an alteration in the genetic material (DNA) of a cell. An increasing amount of evidence indicates that latent diseases such as cancer, birth defects, and genetic disease may be initiated by alterations in cellular DNA (Bloom et al., 1981, Ex. No. 159–12). Thus, cytogenetic studies analyze alterations in the structure or number of chromosomes, called chromosomal aberrations, and exchanges of segments between the two chromatids or arms of a chromosome, called sister chromatid exchanges (SCE). These changes in the chromosomes indicate that the DNA or genetic material of the cell has been altered by some geotoxic agent.

Induced cytogenetic changes in lymphocytes have been shown to be a sensitive indicator of low level exposure, brought about by such factors as occupational exposure to radon daughters and exposure to ionizing radiation. Although such undesirable changes cannot be used to predict specific health effects in an individual, they do give an estimate of the magnitude of an exposure that could increase the risk of disease in the exposed population. Consequently, as stated by an expert panel on cytogenetics, "* * * cytogenetic study of both chromosomal aberrations and SCEs has a clear place in the evaluation of human populations exposed to known or suspected mutagens * * *. Furthermore, many, if not most, agents causing aberrations, or clastogens, are also carcinogens, at least in animals" (Bloom et al., 1981, Ex. No. 159–12). In addition to benzene, several substances known to cause chromosomal aberrations in humans are also known to cause cancer in humans, i.e., vinyl chloride, radon daughters, ionizing radiation arsenic, myleran, melphalan, and chromium (IARC, Suppl. 4, 1982, Ex. No. 159–38). Moreover,

(e)vidence for the involvement of chromosomal rearrangement in human carcinogenesis also stems from the finding that the nonmalignant somatic cells of patients with one of several syndromes that predispose them to cancer have a high incidence of chromosomal rearrangement. The three best characterized of the so-called chromosomal breakage syndromes are Bloom's syndrome, Fanconi's anemia, and ataxia telangiectasia. The type of

chromosomal rearrangement present in cells of patients with each of these syndromes (homologous exchange, nonhomologous exchange, and increased chromosomal breaks, respectively) is found in all patients with the syndrome (Yunis, 1986, p. 120, Ex. No. 252A–17–95).

Yunis (1986, Ex. No. 252A–17–95) summarizes the recent evidence regarding the mechanistic relationship between specific rearrangements of the genetic material and human cancers.

Until recently, little was known about how specific chromosome defects occur in cancer and why some people and families have a higher incidence of the disease. Now it is possible to suggest how this may occur.

Oncogenes and some very active genes of differentiated cells may be located at or near hypersensitive or fragile sites where carcinogenic agents can act and where chromosomes break and rearrange in cancer. Some of these chromosomal rearrangements may be random but provide the cell with a proliferative advantage. Others may recur preferentially and characterize a given disease (p. 117).

The initial DNA damage induced by radiation, chemicals, viruses, or unknown agents often may occur at chromosomal fragile sites. As a result, specific chromosome defects, often following breakage and rearrangement at fragile sites, may lead to monoclonal proliferation of a cell with a specific reciprocal translocation or deletion that has a proliferative advantage. In subsequent cell divisions of uncontrolled growth, random and nonrandom secondary chromosome defects (more frequently a duplication or deletion) or point mutations that represent advantageous changes, or both, are selected. Finally, in the advanced stage of cancer, gene amplification or a cascade of genomic rearrangements may generate new phenotypes and treatment resistance (p. 121).

The best understood mechanism operates in leukemias and non-Hodgkin's lymphomas in which a specific clonal structural chromosomal defect is often observed in malignant cells. This defect may be a reciprocal translocation, an inversion, or a partial deletion, each involving two precise breakpoints—one of them the likely site of a proto-oncogene that becomes deregulated as a result of a chromosomal rearrangement. . . We now suspect that some proto-oncogenes and very active genes of differentiated cells may have a hypersensitive or fragile site that facilitates such chromosomal rearrangements and may represent sites where carcinogens often attack. . . In the lymphohematopoietic malignancies, such [specific chromosomal] defects are so important to the disease process that they have made it possible to subdivide leukemias and myelodysplasias into distinct categories * * * (p 93).

Due to advances during the past ten years in the techniques for identifying structural defects in chromosomes.

[m]ore than 70 clinical types of neoplasia are now known to have one of more than 40 specific recurrent chromosomal lesions * * * . These lesions generally fall into four categories: [1] a reciprocal translocation, in which segments from two chromosomes break and exchange places; [2] a deletion, in which a piece of a chromosome breaks off and is lost; [3] a trisomy or extra copy of a chromosome; and [4] an inversion in which a segment flips over in the same chromosome * * * . A translocation is seen more often in leukemias and non-Hodgkin's lymphoma, and a deletion is found more frequently in myelodysplasia and solid tumors (Yunis, 1986, pg. 97).

Because of new techniques, it is now possible to find specific chromosomal defects in more than two thirds of patients with acute leukemia, myelodysplasia, or non-Hodgkin's lymphoma. Many carcinomas have multiple chromosomal aberrations that appear to play an important role in tumor invasiveness and resistance to chemotherapy. Yunis' analysis of leukemias and lymphomas revealed that the cytogenetic abnormality in these well-studied malignancies is shared by related disorders; the best known of these abnormalities is a translocation identified as t(9:22) (also known as the Philadelphia chromosome) found in most patients with chronic myelogenous leukemia and in some patients with either acute nonlymphocytic leukemia or acute lymphocytic leukemia. Commonly, two to five related malignancies share a primary chromosomal defect. Furthermore, at the molecular level, different activated transforming genes have been found in human pre-B, B, and mature B-cell malignancies. This observation may explain why malignancies with a shared chromosomal defect may differentiate into one or another type of related tumor. Such activated genes may be involved in the control of cell proliferation. A specific genomic rearrangement, therefore, can be seen as a crucial event that sets a stem cell toward malignancy or commits a stem cell to one or another type of cancer (Yunis, 1986, Ex. No. 252A–17–95).

The finding of recurrent chromosomal defects in so many human cancers supports the idea that chromosomal rearrangements play a crucial role in carcinogenesis. Such rearrangements also have been found to be associated with tumors induced in laboratory animals. In rodents, these rearrangements appear to be characteristic of the type of tumor and the particular compound or treatment used (Yunis, 1986, p. 119–120).

Numerous investigators have studied chromosomal aberrations in bone-marrow cells and peripheral lymphocytes from persons known to have been exposed to benzene, including patients with either a current or a past history of benzene-induced blood dyscrasias. Studies have repeatedly demonstrated significant increases in chromosomal aberrations in both bone marrow cells and in peripheral lymphocytes of workers exposed to benzene. This literature has been reviewed by IARC (1982, Ex. No. 128–8). The earlier studies demonstrated chromosomal aberrations not only in workers who had severe benzene-induced pancytopenia, but also in workers who had recovered from benzene hemopathy and in workers exposed to benzene who did not manifest overt signs of blood damage (Forni et al., 1971, Ex. No. 128–48). These individuals had been exposed to benzene levels exceeding 10 ppm as the reports indicate their benzene exposures ranged between 25 and 530 ppm.

Forni and collaborators (Forni et al., 197la,b, Ex. Nos. 128–48, 144–93) examined two groups of workers with chronic benzene poisoning. One group included 25 subjects who had recovered from benzene hemopathy one to 18 years previously, plus four others showing acute toxicity at the time of first chromosome examination. The other group was comprised of 34 workers in a rotogravure plant who had been exposed in 1952–1953 to concentrations of 125–532 ppm benzene in air, leading to toxic effects. Lymphocytes from both groups showed significantly higher levels of chromosomal aberrations than those from age-matched controls. Follow-up cytogenetic studies indicated a tendency toward a decrease in unstable aberrations and a persistence or increase in stable aberrations (Forni et al., 1971, Ex. No. 128–48), indicating that the genetic lesions induced by benzene may persist for years after the cessation of exposure (Legator, 1986, Ex. No. 233).

The finding of significant increases in chromosomal aberrations in blood and bone marrow (Forni and Moreo, 1967, 1969, Ex. Nos. 128–46, 128–47) and in lymphocytes from clincially symptomatic subjects exposed to benzene has been confirmed in several other investigations (Hartwich et al., 1969, Ex. No. 128–51; Sellyei and Kelemen, 1971, Ex. No. 128–58; Erdogen and Aksoy, 1973, Ex. No. 128–53; Hudak and Gombosi, 1977, Ex. No. 128–54; Van den Berghe et al., 1979, Ex. No. 128–55). Forni and Moreo (1967, 1969, Ex. Nos. 128–46, 128–47) hypothesized that such aberrations are involved in the eventual development of leukemia in benzene-exposed individuals.

Tough and others (Tough and Court Brown, 1965. Ex. No. 144–136; Tough et al., 1970, Ex. No. 128–49) studied workers in three different factories who had been exposed to benzene in the atmosphere for approximately one to 25

years. The workers showed no evidence of acute benzene toxicity. Among the 38 workers who had been exposed to 25–150 ppm benzene until two to four years prior to blood sampling, the incidence of cells with unstable chromosomal aberrations was higher than was expected in the general population. Other workers exposed intermittently to approximately 12 ppm benzene for 2–26 years showed no increase in chromosomal abnormalities in their lymphocytes. The authors hesitated, however, to relate these effects to benzene exposure alone, since there was evidence that age and other environmental factors may also have been contributory.

Other studies report increased levels of chromosomal aberrations in asymptomatic workers who had been exposed to benzene (Hartwich and Schwanitz, 1972 (Ex. No. 128–52); Khan and Khan, 1973 (Ex. No. 128–56), Fredga et al., 1979 (Ex. No. 128–57)). In one study, although the rate in individual workers was at the upper limit of normal (Hartwich and Schwanitz, 1972 (Ex. No. 128–52)), the mean aberration rate of cells from nine refinery workers exposed to relatively low levels of benzene was significantly elevated when compared with that in controls. In a study of lymphocytes from 12 industrial gasworks workers exposed to benzene, a statistically significant increase in chromosomal aberrations was found (Fredga et al., 1979, Ex. No. 128–57) among 12 industrial workers exposed to benzene for several hours a day at levels between five and ten ppm, when compared to 15 control subjects.

Watanabe et al. (1980, Ex. No. 144–46) found no evidence of an increased frequency of chromosomal aberrations but reported a low frequency of sister chromatid exchange among nine female workers engaged in painting ceramics who had been exposed to 1–9 ppm for 1–20 years or in seven female workers who had been exposed to 3–50 ppm benzene for 2–12 years. However, urinary excretion of phenol was not elevated in post-shift samples when compared with pre-work samples in the same workers, indicating atmospheric exposures below 10 ppm at the time of the survey (NIOSH, 1974, Ex. No. 84B–3).

A study of Dow Chemical Company workers indicates a significant increase in chromosomal aberrations in workers whose average benzene exposures were below 10 ppm (Kilian and Daniel, 1978, Ex. No. 159–45). 52 benzene exposed workers whose average exposure was less than 10 ppm were compared with 44 pre-employment controls. Workers who had been exposed to low-level benzene for an average of 56.6 months were found to have twice the percentage of chromosomal breaks and three times more marker chromosomes than the control group. Almost twice as many benzene workers as controls had both breaks and markers (p less than 0.01).

In 1978, when DOW Chemical company released the results of its cytogenetic studies of workers exposed to benzene (Holder, 1978, Ex. No. 159–45), Dow stated, "since increased rates of chromosomal aberrations are often associated with increased risk of malignancies—including leukemias—we have cytogenetically studied a group of 52 employees exposed to benzene for one month to 26 years." The results demonstrate a significant excess of chromosomal aberrations among the benzene exposed workers as compared to controls. Average benzene exposures of these workers were initially reported as being below 10 ppm with peak exposures exceeding 100 ppm, but the frequency of peaking was unknown (Holder, 1978, Ex. No. 159–45).

In response to a request from OSHA in 1980, Dow supplied more detailed supplemental information on benzene exposures for these individuals (Docket No. H–059, Ex. No. 230X–10). The report states that sufficient data, defined as one data point per person-year experience, were available to characterize exposures for 32 of the 52 individuals in the benzene-exposed group. Personal monitoring data from 1973 to 1976 showed that average 8-hr TWA exposures ranged from less than 0.1 ppm to 7.4 ppm, with the maximum TWA observed for one job classification being 18.3 ppm. Because the job classifications that were selected for the monitoring were those where the estimated potential for benzene exposure was greatest, it is possible that the exposures for job classifications without monitoring data, such as foreman and production superintendent, were less than those measured for other job classifications. In addition, the report states that 9 of the 52 examined workers were employed in job classifications where they may have been exposed to benzene at levels of 35 ppm to 100 ppm for periods of several minutes. It is not stated, however, whether respirators were worn during these operations. There is no evidence to indicate that any of the remaining 43 workers had ever been exposed to similar peak exposures. In addition, 9 of the 52 workers had been previously employed in another ethylbenzene plant, but no exposure data were provided for that plant.

Picciano (1979, Ex. No. 144–118) further analyzed the data from the Dow study; he addressed the distribution of individuals with both chromosome breaks and markers by benzene exposure levels and compared them with data for controls. Thirty-eight exposed workers (73.1 percent) had chromosome breaks as compared to 18 nonexposed individuals (40.9 percent) with chromosome breaks. When individuals with both chromosome breaks and markers were compared, less than 3 percent of the non-exposed individuals showed changes while 27% of the workers exposed to benzene revealed such aberrations (p less than 0.001). These workers were also exposed to other aromatic hydrocarbon solvents. The degree of contact with those solvents was less than with benzene. Moreover, less than three percent of non-exposed individuals showed these aberrations in contrast to more than 20 percent of those exposed to average levels below 1 ppm, to more than 25 percent of those exposed to average benzene levels between 1–2.5 ppm, and to more than 30 percent of those exposed to levels averaging between 2.5–10 ppm. Thus, a linear dose-response relationship between chromosomal damage and benzene levels ranging between less than one ppm and 10 ppm was observed. This study demonstrates an exposure level-response for chromosomal breakage resulting from average benzene exposures below 10 ppm and perhaps below 1 ppm. Whether this damage to chromosomes is due to average low level exposure or to short-term peak exposures is not known. Dow is of the opinion that the damage may be the result of short-term peak exposures to benzene and stated "considering the peak exposure levels for the group as a whole, the results appear consistent with indications of cytogenetic effects previously reported in the literature" (Holder, 1978, Ex. No. 159–45).

Sarto and his colleagues (1984, Ex. No. 252A–17–68) performed a cytogenetic study of 22 healthy employees working in a benzene production plant. Concentrations of benzene ranged between 0.2 and 12.4 ppm. A paired T-test was used to compare aberration frequency with controls from another factory who were unexposed to benzene but were matched for age, sex, residence, and smoking habits with each benzene exposed worker. A statistically significant increase in chromosome-type aberrations (breaks, acentric fragments, and 2 dicentrics). This increase was still significant when gaps were discarded. The majority of these workers had only been working since airborne benzene

levels in the factory were reduced in 1971 by automation of processes, so they were exposed only to low levels of benzene. Furthermore, most of the aberrations seen were unstable and would not have persisted since 1971 among those few workers employed previous to 1971.

As mentioned earlier, there is expert scientific opinion that the induction of chromosomal aberrations serves as an estimate of the magnitude of an exposure that could increase the risk of disease (Bloom et al. 1981). Thus, OSHA has concluded that the cytogenetic studies by Fredga et al. (1979, Ex. No. 128–57) and Dow Chemical Company (Holder, 1978; Picciano, 1979; Venable, 1980; Daniel, 1980; Ex. Nos. 159–45, 144–118, Docket H–059, Ex. Nos. 230X–9, 230X–10) and Sarto et al. (1984, Ex. 252A–17–68), showing increased incidence of chromosomal aberrations for workers exposed to benzene, add to the growing body of evidence that there is an elevated risk of disease associated with average benzene exposure levels at and below 10 ppm.

D. Experimental Evidence of Carcinogenicity

Since the publication of the 1978 benzene standard, new experimental results demonstrating benzene induced cancer in animals have been reported. These studies were carried out in three independent research centers: the University of Bologna, Italy, under Dr. C. Maltoni, the New York University under Dr. C.A. Snyder and the National Toxicology Program (NTP) with Dr. James Huff as project manager. All three studies found benzene to be carcinogenic in animals.

Maltoni and Scarnato (1979, Ex. No. 144–76) reported that doses of 50 and 250 mg/kg of body weight of benzene given orally to Sprague-Dawley rats 4 to 5 days weekly for 52 weeks were carcinogenic, in a dose-response manner. Benzene was found to cause Zymbal gland carcinomas, mammary carcinomas and leukemias. Among the female rats, 0/30, 2/30 and 8/22 of the control, low and high dose groups, respectively, developed Zymbal gland carcinomas. Using the Cochran-Armitage test, the positive trend was statistically significant ($p=0.001$). Using the Fisher exact test, the difference in frequency of Zymbal gland carcinomas between the control and high-dose group was also significant, $p=0.003$. Among the same groups of female rats 3/30, 4/30 and 7/32, respectively developed mammary gland carcinomas, and 1/30, 2/30 and 1/32, respectively, developed leukemias.

Male rats developed leukemias (unspecified) as follows: control (0/30), low dose (0/30) and high dose (4/33). Using the Cochran-Armitage test the positive trend was statistically significant ($p=0.008$) but the difference between the control and high dose groups was not significant using the Fisher exact test ($p=0.069$) (IARC, 1982, Ex. No. 128–8). No Zymbal gland carcinomas were observed in either the control or benzene treated male rats. In the high dose group, Maltoni and Scarnato (1979, Ex. No. 144–76) also observed two female rats with skin carcinomas and one male rat each with a hepatoma and a subcutaneous angiosarcoma. These types of tumors were not observed in the control or low dose groups.

In another study by Maltoni et al. (1982, Ex. No. 144–30), Zymbal gland carcinomas were induced in rats exposed to airborne concentrations of benzene. In these studies benzene was administered by inhalation at a concentration of 200 ppm, 4-hours daily, 5-days a week to pregnant Sprague Dawley rats from the 12th day of pregnancy up to the delivery of the offspring. The offspring were then exposed by inhalation to 200 or 300 ppm of benzene for 4 or 7 hours per day, respectively, for 5 days a week for up to 104 weeks. At 104 weeks, of the 137 male and female rats at risk, eight (5.87%) had developed Zymbal gland carcinomas as compared to 0% for the concurrent controls.

Snyder et al. (1978, Ex. No. 144–127) published a preliminary report on inhalation studies of benzene in CD–1 mice. Groups of 40 CD–1 mice were exposed for 6 hours/day, 5 days/week, for life to atmospheric concentrations of 0 (control), 100 ppm or 300 ppm benzene. Two mice in the 300 ppm benzene exposed group developed myelogenous leukemia. No leukemias were observed in the control or 100 ppm benzene exposed groups.

Snyder et al. (1980, Ex. No. 128–77) reported 8 cases of lymphoreticular neoplasm (6 thymic lymphocytic lymphomas, 1 plasmocytoma, and 1 hemocytoblastic leukemia) among 40 C–57 black mice exposed to airborne concentrations of 300 ppm benzene for 6 hours a day, 5 days a week for life. Among the control mice, two developed hemolymphoreticular neoplasms (lymphocytic lymphomas). The increase in these neoplasms among the treated mice was statistically significant ($p=0.005$).

In 1983, the National Toxicology Program (NTP) completed a 2-year chronic toxicity study of benzene in mice and rats (Ex No. 148). Male rats were administered benzene doses of 50, 100 and 200 mg/kg of body weight by oral gavage for two years. Female rats were administered 25, 50 and 100 mg/kg. Mice of both sexes were administered benzene doses of 25, 50 and 100 mg/kg. There were 50 animals per sex per treated group plus 50 animals per sex for the control group. Benzene was carcinogenic for male and female F344 rats and male and female B6C3F1 mice. Leukopenia also was induced in both sexes of mice and rats.

Because the body weights of the female and male mice throughout the experiment were approximately 32 and 42 grams respectively and their minute volumes were approximately 27 and 34 ml of air, assuming 100% absorption of benzene, the mice were given doses of benzene equivalent to an 8-hour inhalation of 18.9 ppm (low dose female mice) to 80 ppm (high dose male mice).

Because the body weights of the female and male rats were approximately 250 and 400 grams respectively and they breath either 168 ml (females) or 251 ml (males) of air per minute, their doses of benzene were equivalent to 8-hour exposures ranging from 24.2 ppm (low dose female rats) to 234 ppm (high dose male rats). This conversion does not take into consideration adjustments for differences in surface area between rodents and humans which would result in lower equivalent doses to humans and therefore higher risks.

Significantly increased incidences of neoplasms were observed at multiple sites for both sexes of mice and rats. In addition to the findings of benzene induced cancers of the Zymbal gland, oral cavity and skin in rats, six sites or types of tumors such as malignant lymphoma and lung cancer were induced in male mice while seven sites or types of tumors such as lymphoma, lung cancer, ovarian cancer, mammary (breast) cancer and liver cancer were induced by benzene in female mice. Such multiple site carcinogenic response in both sexes of two species of rodents is unusual and should be considered as further evidence of the carcinogenic potency of benzene. Further concern for the carcinogenic potency of benzene is raised in the NTP study by the observation of effects at multiple sites at the lowest dose tested in mice (equivalent to 8-hour, 19 ppm exposure to humans without correction for surface area).

NTP (Ex. No. 148) concluded the following:

> Under the conditions of these studies, there was clear evidence of carcinogenicity of

benzene for male F344/N rats, female F344/N rats, male B6C3F$_1$ mice and female B6C3F$_1$ mice. For male rats, benzene caused increased incidences of Zymbal gland carcinomas, squamous cell papillomas and squamous cell carcinomas of the oral cavity, and squamous cell papillomas and squamous cell carcinomas of the skin. For female rats, benzene caused significantly increased incidences of Zymbal gland carcinomas and squamous cell papillomas and squamous cell carcinomas of the oral cavity. For male mice, benzene caused increased incidences of Zymbal gland squamous cell carcinomas, malignant lymphomas, alveolar/bronchiolar carcinomas and alveolar/bronchiolar adenomas or carcinomas (combined), Harderian gland adenomas, squamous cell carcinomas of the preputual gland. For female mice, benzene caused increased incidences of malignant lymphomas, ovarian granulosa cell tumors, ovarian benign mixed tumors, carcinomas and carcinosarcomas of the mammary gland, alveolar/bronchiolar adenomas, and alveolar/bronchiolar carcinomas.

Tables I through IV summarize the major increases in the incidence of tumors found in the NTP study.

TABLE I.—INCIDENCE OF SELECTED TUMORS IN THE MALE F344/N RAT *

Types of tumor	Dose			
	Vehicle control (0 ppm)	50 mg/kg (57 ppm)+	100 mg/kg (117 ppm)	200 mg/kg (234 ppm)
Zymbal Gland Carcinoma	2/50 (4%)	6/50 (12%)	10/50 (20%)	17/50 (34%)
Squamous Cell Papillomas (Oral Cavity)	1/50 (2%)	6/50 (12%)	11/50 (22%)	13/50 (26%)
Squamous Cell Carcinomas (Oral Cavity)	0/50 (0%)	3/50 (6%)	5/50 (10%)	7/50 (14%)
Squamous Cell Papillomas (Skin)	0/50 (0%)	2/50 (4%)	1/50 (2%)	5/50 (10%)
Squamous Cell Carcinomas (Skin)	0/50 (0%)	5/50 (10%)	3/50 (6%)	8/50 (16%)

* NTP Study, 1983.
+ Equivalent 8-hour atmospheric exposure level for 5 days per week assuming 100% absorption.

TABLE II.—INCIDENCE OF SELECTED TUMORS IN THE FEMALE F 344/N RAT *

Types of tumor	Dose			
	Vehicle control (0 ppm)	25 mg/kg (24 ppm) +	50 mg/kg (48 ppm)	100 mg/kg (97 ppm)
Zymbal Gland Carcinomas	0/50 (0%)	5/50 (10%)	5/50 (10%)	14/50 (28%)
Squamous Cell Papillomas (Oral Cavity)	1/50 (2%)	4/50 (8%)	8/50 (16%)	5/50 (10%)
Squamous Cell Carcinomas (Oral Cavity)	0/50 (0%)	1/50 (2%)	4/50 (8%)	5/50 (10%)

* NTP Study, 1983.
+ Equivalent 8-hour atmospheric exposure level for 5 days per week assuming 100% absorption.

TABLE III.—INCIDENCE OF SELECTED TUMORS IN THE MALE B6C3F1 MOUSE *

Types of tumor	Dose			
	Vehicle control (0 ppm)	25 mg/kg (20 ppm) +	50 mg/kg (40 ppm)	100 mg/kg (80 ppm)
Zymbal Gland Squamous Cell Carcinomas	0/49 (0%)	1/48 (2%)	4/50 (8%)	21/49 (43%)
Malignant Lymphomas	4/49 (8%)	9/48 (19%)	9/50 (18%)	15/49 (31%)
Alveolar/Bronchiolar Carcinomas	5/49 (10%)	11/48 (23%)	12/50 (24%)	14/49 (29%)
Alveolar/Bronchiolar Adenomas or Carcinomas (combined)	10/49 (20%)	16/48 (33%)	19/50 (38%)	21/49 (43%)
Harderian Gland Adenomas	0/49 (0%)	9/48 (19%)	13/50 (26%)	11/49 (22%)
Squamous Cell Carcinomas (preputual gland)	0/49 (0%)	3/48 (6%)	18/50 (36%)	28/49 (57%)

* NTP Study, 1983.
+ Equivalent 8-hour atmospheric exposure level for 5 days per week assuming 100% absorption.

TABLE IV.—INCIDENCE OF SELECTED TUMORS IN THE FEMALE B6C3F1 MOUSE *

Types of tumor	Dose			
	Vehicle control (0 ppm)	25 mg/kg (19 ppm) +	50 mg/kg (38 ppm)	100 mg/kg (76 ppm)
Malignant Lymphomas	15/49 (31%)	24/25 (53%)	24/50 (48%)	19/49 (39%)
Ovarian Granulosa Cell Tumors	1/47 (2%)	1/44 (2%)	6/49 (12%)	7/48 (15%)
Ovarian Benign Mixed Tumors	0/47 (0%)	1/44 (2%)	12/49 (24%)	7/48 (15%)
Mammary Gland Carcinomas	0/49 (0%)	2/45 (4%)	5/50 (10%)	10/49 (20%)

TABLE IV.—INCIDENCE OF SELECTED TUMORS IN THE FEMALE B6C3F1 MOUSE *—Continued

Types of tumor	Dose			
	Vehicle control (0 ppm)	25 mg/kg (19 ppm) +	50 mg/kg (38 ppm)	100 mg/kg (76 ppm)
Alveolar/Bronchiolar Adenomas	4/49 (8%)	2/42 (5%)	5/50 (10%)	9/49 (18%)
Alveolar/Bronchiolar Carcinomas 6/49 (12%)		0/49 (0%)	3/42 (7%)	6/50 (12%)

* NTP Study, 1983.
+ Equivalent 8-hour atmospheric exposure level for 5 days per week assuming 100% absorption.

At the time of the 1978 rulemaking, there was controversy on whether benzene had been clearly demonstrated to cause cancer in experimental animal studies. The studies conducted at the University of Bologna, New York University and the National Toxicology Program have clearly demonstrated that benzene is a carcinogen at multiple sites in animals through the oral and inhalation routes. CMA and API as well as the scientific reports submitted by their consultants are in agreement that benzene is a carcinogen in animals (Ex. Nos. 201–33, 204–7, 258, 260).

Dr. James Huff, the toxicologist in charge of the study, testified on the effects of benzene in the NTP animal bioassay study. He indicated that the consistency and magnitude of the responses in their studies would lead him to speculate that there may be other types of cancers as well as leukemia that one would suspect to occur in humans (Tr. 3/19/86, pp. 186–7). Dr. Huff pointed out that it is very unusual to have leukemia in the B6C3F1 mouse. The study demonstrated a substantial increase in lymphoma at all dose levels of benzene in mice. Dr. Huff pointed out that both leukemia and lymphoma have their origin in the hematopoietic system and there is a reasonable correlation between lymphoma in mice in this case and leukemia in humans (Tr. 3/19/86, p. 190).

Dr. Huff summarized the results of the NTP study by stating,

> under the conditions of these four separate yet concurrent experiments (male rats, female rats, male mice, female mice), there was clear evidence of carcinogenicity that benzene induced a variety of malignant and benign neoplasms in these rodents . . . To place these results in some program perspective, of the 330 chemicals studied since the early 1970s using experimental designs similar to that described for benzene only 33 have given positive results in each of the four experiments. The number of organs/systems affected in the benzene studies are also unusually many, showing positive effects in 11 sites (Huff, 1986, Ex. No. 215).

Dr. Huff further noted, the lowest dose that was used in the experiments was 25 mg/kg which is somewhere in the range of 20 to 25 ppm if one would expose animals by inhalation. Carcinogenic responses were observed at that level (Tr. 3/19/87, p. 195).

Dr. Kim Hooper, a toxicologist with the California Department of Health Services, stated in his prepared testimony that:

> In the NTP animal cancer bioassay, benzene produced significant increases in malignant tumors at several sites in rats and mice of both sexes. Significant sites in these test animals included lung, ovary, mammary, skin, lip, oral cavity, hematopoietic system, preputial gland, Zymbal gland, and Harderian gland. Thus, benzene is clearly a multi-tissue carcinogen in test animals (Ex. No. 236).

Dr. Hooper also pointed out the linearity of the dose-response effects of benzene on the tumor incidence in the NTP study. OSHA's analysis of the NTP data shows that the incidence of preputial gland carcinomas and malignant lymphomas in male mice and mammary gland carcinomas in female mice show statistically significant linear dose-response relationships. The other responses demonstrated significant excesses of tumors but the shape of the curves varied. Data from the study by Maltoni et al. (1985, Ex. No. 252 A–17–46) showed that the incidence of Zymbal gland carcinomas in male and female rats gave a linear dose response with oral levels of 250 and 50 mg/kg benzene. OSHA concludes that the data on tumor incidence show good dose-response and several cancers showed linearity in the response to dosage.

Cronkite et al. (1984, 1985, Ex. Nos. 252A–17–15, 252A–17–17) demonstrated that exposure of mice for 16 weeks to benzene by inhalation followed by cessation of exposure resulted in a high incidence of benzene-induced lymphomas. The animals were exposed to 300 ppm benzene by inhalation for 6 hr/day, 5 days/week for 16 weeks and then held for lifetime observation. Among the exposed animals that dies, there were 6 with thymic lymphoma and 2 with unspecified lymphoma. This represented an overall lymphoma-leukemia incidence of 8%. No cases of lymphoma-leukemia were observed in the control group. A comparison of 118 benzene-exposed mice with 354 historical controls revealed that benzene exposure was the significant variable ($p < 0.0001$) leading to death due to lymphoma-leukemia as described in these studies.

Snyder and Laskin (1986, Ex. No. 248) concluded in their report to CMA that a comprehensive evaluation of the evidence indicates that benzene is, in fact, a carcinogen. In man, this carcinogenic activity is expressed as one of several types of leukemia. Lymphomas are a variety of leukemia, and the fact that they are seen, as the predominant form of benzene-induced hematological neoplasia in rodents may represent species-specificity. They also stated that it is not known which of the benzene metabolites is responsible for the induction of leukemia in man. However, the finding that guanine-hydroquinone and guanine-benzoquinone are the major DNA adducts detected following benzene exposure (Jowa *et al.*, 1985) suggests that these metabolites might be involved in leukemogenesis.

OSHA concludes there is evidence that benzene is a potent carcinogen in animals on the basis of multiple site carcinogenicity in both sexes of 2 species of experimental animals and at the lowest dose tested, which is equivalent in humans to 19–24 ppm benzene inhaled over an 8-hour workday. This is further supported by the clear dose-response relationships for many of the cancers. These findings add support to the evidence that benzene is a human carcinogen and suggest that cancers other than of the lympho-hematopoietic system also may be involved in humans.

E. Experimental Evidence: Subchronic Effects

The reader is referred to the discussion in the preamble to the proposed standard at 50 FR 5027.

F. Experimental Evidence: Cytogenetic and Other Effects

Numerous studies have demonstrated the induction of chromosomal aberrations as a result of benzene exposure in several species of experimental animals. These data have been reviewed by IARC (1982, Ex. No. 128–8). Several recent experimental studies, completed since the IARC review, have demonstrated adverse effects on chromosomes and bone marrow cells resulting from low level benzene exposure.

At a meeting of the Permanent Commission and International Association on Occupational Health in August 1983 (Ex. No. 159–87), Tice summarized results from a series of cytogenetic studies in mice exposed to benzene by various routes of administration at Brookhaven National Laboratory. Among the findings were the observations that:

1. One four-hour inhalation exposure to benzene at concentrations ranging from 28 ppm to 3000 ppm induced a linear increase in SCEs in mouse bone marrow cells as benzene exposure level increased. A single atmospheric exposure to 28 ppm, the lowest dose tested in this experiment, resulted in a 2-fold elevation in SCEs (Tice et al., 1982, Ex. No. 159–88). 2. Modification of the magnitude of the SCE response to inhaled benzene by age (3–12 mo.), gender (male vs female), and genetic constitution (DBA/2 vs C57B1/6) emphasized the importance of these factors when attempting to extrapolate animal data to human health risks and suggested that segments of the population sensitive to one or more of the genotoxic/cytotoxic effects of benzene probably exist (Tice et al., 1982, Ex. No. 159–88). 3. Exposure to benzene at concentrations ranging from 10 to 400 ppm for 9 days (6 hr/day) induced a significant increase in micronuclei (a measure of bone marrow chromosomal damage) in peripheral blood cells of C57B1/6 male mice (Ex. No. 159–87).

Tice commented on the ability of benzene to induce genotoxic/cytotoxic damage in mice and provided additional data from which he concluded that more bone marrow damage can result from less exposure to benzene (Ex. No. 201–37). C57B1/6, B6C3F1, and DBA/2 mice were exposed to 300 ppm benzene for 6 hours per day for 13 weeks. Two exposure regimens were used: either 3 or 5 exposure days per week. The frequency of micronucleated polychromatic erythrocytes (MN–PCEs) and normochromatic erythrocytes (MN–NCEs) reflect damage to the DNA of bone marrow cells, induced recently (1–2 days earlier for PCEs) or accumulated throughout the duration of the exposure period up to a maximum of 7 weeks (the lifespan of an NCE). The percentage of PCEs in the peripheral blood reflects the rate of erythrocyte (red blood cell) production. In DBA/2 mice, a sex difference in response was observed, with male mice exhibiting more damage (100 MN–PCEs/1000 cells) than female mice (20 MN–PCEs/1000 cells). The benzene induced frequency of micronucleated PCEs did not change significantly over the 13 week period, nor did it differ between exposure regimens. However, depression of the bone marrow erythropoiesis, as measured by a decrease in the percentage of circulating PCEs themselves, was greater when animals were exposed to benzene for 3 days/week than for 5 days/week, particularly in male DBA/2 mice. Tice concluded that "more bone marrow cytotoxic damage occurs in mice under the more intermittent exposure conditions." A comparison of micronucleated NCE results from male B6C3F1 mice used in Tice's study and in the NTP gavage cancer bioassay lead Tice to conclude that "exposure by inhalation induces about 8 times more bone marrow damage than an oral exposure." He assumed that 400 mg/kg by gavage for 5 days/week for 120 days is approximately equal to 300 ppm benzene for 6 hours/day, 5 days/week by inhalation.

During hearing testimony, there was discussion of Tice's conclusions regarding the comparative toxicity of inhalation versus gavage exposure (Tr. 89–90, 3/26/86). In response to these comments, Dr. Tice provided data (Ex. No. 252A–15) from a recently completed experiment, designed specifically to compare the two routes of exposure, and to avoid potential confounding by differences in laboratory protocols. Using the same dose of benzene (400 mg/kg) and strain of mice (male B6C3F1) used in the NTP bioassay, the results confirmed the earlier conclusions: the frequency of micronucleated polychromatic erythrocytes (MN–PCE) induced by 400 mg/kg benzene by gavage remained constant at a frequency of 23.4 per 1000 cells throughout the duration of the exposure period and was 5 times lower than the level of MN–PCE (approximately 100 per 1000 cells scored) observed in male B6C3F1 mice exposed by inhalation to 300 ppm benzene over the same duration of exposure.

Toft et al. (1982, Ex. No. 252A–17–81) exposed male NMRI mice to benzene in air at concentrations between one and 200 ppm. They examined the bone marrow to determine the number of nucleated cells, the number of colony forming granulopoietic stem cells (CFU–C) and the frequency of micronuclei in polychromatic erythrocytes at various exposure levels. Highly significant effects on all three parameters were observed with continuous exposure (24 hours/day) to benzene concentrations of 21 ppm, 50 ppm, and 95 ppm for 4 to 10 days. Toxicity was dose-dependent. At 14 ppm, the frequency of micronuclei was significantly elevated over control values. Exposures at 21 ppm, 50 ppm, 95 ppm, and 107 ppm for 8 hrs/day, 5 days/week, for 2 weeks resulted in significant toxicity as indicated by CFU–C and the fequency of micronuclei. Dose-response relationships were linear for both of these parameters. Cellularity was significantly decreased with 8 hrs/day exposures of 50, 95 and 107 ppm. Short peak exposures increased the proliferation rate of the bone marrow. The three parameters measured in this study reflect different functions of the bone marrow. Measurement of CFU–C examines the ability of the granulopoietic stem cells to undergo cell division. The authors observed that this parameter appeared more sensitive to prolonged exposure to low levels of benzene than did the majority of bone marrow cells, as measured by the cellularity or the number of nucleated cells. At high exposures of short duration, the situation was reversed. Exposure to 95 or 201 ppm for 2 hours/day suppressed cellularity but not CFU–C, indicating that short exposures caused rapid injury to the bone marrow. The proliferation rate of the bone marrow responded to the exposures by an increase, so the number of granulopoietic cells (CFU–U) was higher than in controls.

The frequency of micronuclei in PCE is a sensitive measure of genetic toxicity due to low background rates and ease of observation. The production of micronuclei is thought to be dependent on the actions of toxic chemicals on the DNA, DNA-associated proteins, or the spindle apparatus (Ex. No. 252A–17–81). Toft et al. pointed out that "since it is assumed that somatic mutations precede most chemically induced cancers, it is worth noticing that exposures to low benzene concentrations gave rise to increased frequency of micronuclei." (p. 301).

Recent work at New York University Medical Center (Ex. Nos. 146–1, 159–66, 146–2) has demonstrated that exposure of C57B1 mice to 10 ppm benzene for 6 days reduced the mitogen-induced blastogenesis of femoral B-cells to 30%

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of control values. Moreover, 6 days exposure to 10 ppm was just as effective at reducing blastogenesis as 6 days exposure to higher benzene concentrations. In addition, splenic T-cell mitogen-induced blastogenesis was reduced to about 40% of control values after 6 days of exposure to concentrations of 31 ppm benzene. These results indicated to the authors that exposures to benzene at or near the current occupational exposure limit may affect certain immune functions and may be hematotoxic.

In the study by Baarson et al. (1983, Ex. No. 146–2), C57B1 mice were exposed 6 hours a day, 5 days a week to 10 ppm of benzene for 32, 66, and 178 days. Benzene was found to cause a progressive depression in the *in vitro* colony forming ability of one of the erythroid progenitor cells, the colony forming unit-erythroid (CFU–E). Colony growth of cells from exposed mice was only 5% of control colony growth after 178 days of exposure. Burst forming cell growth was depressed to 55% of control growth after 66 days but returned to control growth values at 178 days. The benzene exposed mice also exhibited depressions in the number of splenic nucleated red cells and in the numbers of circulating red cells and lymphocytes. The authors suggest that these results demonstrate that low level exposure to benzene may be hematotoxic. In the second study, short term exposure (6 hours/day for 6 days) to 10 ppm benzene in air significantly depressed mitogen-induced blastogenesis of both B- and T-lymphocytes in mice (Rozen et al., 1984, Ex. Nos. 146–1, 159–66). Moreover, 6 days exposure to 10 ppm benzene was just as effective at reducing blastogenesis as 6 days exposure to higher benzene concentrations. The authors concluded that benzene exposure at or near the current occupational limit may affect certain immune functions. OSHA interprets these studies in animals as indicating that less than one week of exposure to the current permissible exposure limit for benzene may be associated with consequential damage to human health, i.e., significant depression of the bone marrow and disturbances of immune system function, all of which represent a potential significant hazard to human health.

Gad-El-Karim et al. (1983, Ex. No. 159–32) also reported a dose response and a 2-fold increase in micronuclei in CD–1 mice administered two oral doses of benzene at concentrations as low as 8.8 mg/kg body weight. Assuming that the CD–1 mice weighed 25 grams and their minute volume of air intake is 24 ml, this dosage would be equivalent to two eight-hour atmospheric exposures of approximately 6 ppm.

Dr. Andrew Kligerman reported findings at the International Symposium on Sister Chromatid Exchange held at Brookhaven National Laboratory (Kligerman et al. 1983, Ex. No. 159–47). Male DBA/2 mice exposed to 10 ppm benzene by inhalation for only 6 hours demonstrated a significant increase in SCE and in micronuclei.

Erexson et al. (1986, Ex. No. 252A–17–25) published the results of that study, showing the induction of cytogenetic damage in rodents after short-term inhalation exposure to benzene. Inhalation of benzene for 6 hours also induced statistically significant, concentration-related, increases in the frequency of sister chromatid exchanges (SCE) in peripheral blood lymphocytes of male DBA/2 mice at 10, 100, or 1000 ppm, and of male Sprague-Dawley rates at 1, 3, 10, or 30 ppm, as compared to air-exposed controls. Inhalation of benzene for 6 hours also induced statistically significant, concentration-related increases in micronuclei (MN) in bone marrow polychromatic erythrocytes of mice of 10, 100, or 1000 ppm, and of rats exposed to 1, 3, 10, or 30 ppm, when compared to air-exposed controls. These data, showing parallel induction of SCE and MN in both mice and rats, suggest that a common benzene metabolite or metabolites may be involved. Erexson et al. point out that, since the formation of micronuclei "is indicative of either spindle disruption or chromosome breakage leading to lagging acentric fragments or entire chromosomes at anaphase" (part of the cell division cycle), the "formation of MN in bone marrow might be a result of either the accumulation of phenol, hydroquinone, and catechol" or the minor metabolism of benzene and its metabolites in the bone marrow, "leading to disruption of the spindle and aneuploidy." The idea that chromosome loss is involved in micronuclei induction by benzene is supported by the work of Irons. Several other studies showing benzene induction of chromosomal aberrations in rodent bone marrow cells support the idea that micronuclei are the result of chromosome breakage.

Barale et al. (1985, Ex. No. 252A–17–6) examined the induction of micronucleated circulating erythrocytes in the peripheral blood of CD–1 Swiss mice being chronically treated with benzene by oral intubation at daily doses ranging between 0.03 to 0.5 ml/kg body weight, for 5 days per week for 42 days (about 6 weeks) for chronic treatment; and in a single dose of 0.250 ml/kg body weight in acute treatments for bone marrow analysis. Chronic treatment with benzene for up to 42 days resulted in decreased body weight and decreases in the ratio of polychromatic erythrocytes (PCE) to normochromatic erythrocytes (NCE) (an indicator of toxicity) in the males treated with the highest dose (0.50 ml/kg body weight). Dose-related significant increases in micronucleated NCE were observed after 21 days of treatment. The frequency of micronucleated PCE in bone marrow cells after a single dose of benzene (0.25 ml/kg body weight) was of the same order of magnitude as that obtained in circulating NCE after chronic treatment. Females were observed to be less sensitive than males to these effects, a finding consistent with those of other investigators. A decline in micronuclei after longer periods of treatment was thought by these investigators to be possibly due to a decreased ability to metabolize benzene to genotoxic metabolites or due to an increased capability to detoxify benzene metabolites.

Choy et al. (1985, Ex. No. 252A–17–10) analyzed peripheral blood smears from the National Toxicology Program (NTP) carcinogenesis bioassay of benzene in B6C3F1 mice for the induction of micronuclei. They demonstrated that the frequency of micronuclei in circulating normochromatic erythrocytes reflects the clastogenic effect and sex-related sensitivity reported previously in acute cytogenetic studies. Blood smears from both subchronic (120 days) and chronic studies (54 weeks and 103 weeks) were analyzed, at benzene doses delivered 5 days per week by gavage of 25, 50, 100, 200, 400, or 600 mg/kg for the subchronic studies, and 25, 50, or 100 mg/kg for the chronic studies. In benzene treated mice, a statistically significant, dose-dependent increase in the frequency of micronucleated normochromatic erythrocytes was found at all sampling times as compared with control mice. At each dose and time, the frequency was higher in males than in females, consistent with other reports of greater male sensitivity to benzene-induced chromosomal damage.

Erexson et al. (1985, Ex. No. 252A–17–26) have demonstrated the induction of sister chromatid exchanges (SCE) in human peripheral blood T-lymphocytes exposed to benzene and its metabolites *in vitro*.

In summary, the above studies show chromosomal damage from benzene exposures equivalent to 28 ppm for only 4 hours (Tice, 1983) (Ex. No. 159–87), 1 ppm for 6 hours (Erexson et al., 1986, Ex. No. 252A–17–25), 6 ppm for two 8-hour

exposures (Gad-el-Karim, 1983, Ex. No. 159–32), or 10 ppm for 6 hours/day for 9 days (Tice, 1983, Ex. No. 159–87). The Dow cytogenetic study demonstrates significant chromosomal breakage among workers exposed to TWA benzene concentrations below 10 ppm.

Until recently, the data available from short-term tests on the mutagenic potential of benzene indicated that benzene induces chromosomal damage but not mutations. These data have been the subject of several reviews (IARC, 1982, Ex. No. 128–8; Von Halle, 1983, Ex. No. 159–94; Dean, 1978, Ex. No. 128–50, 1985, Ex. No. 252A–17–20). *In vivo* and *in vitro*, benzene has been shown to cause chromosome breaks, aberrations, and sister chromatid exchanges. Benzene has been found to be negative in the Salmonella/microsome assay and in other prokaryotes. No evidence could be found in the published literature reviewed by Von Halle for the induction of point mutations in lower organisms and in mammalian cell culture systems (1983, Ex. No. 159–94). Kale and Baum (1983, Ex. No. 159–44) found that benzene did not induce significant increases in sex-linked recessive lethal mutations or translocations in Drosophila or crossovers in Drosophila spermatocytes when compared with unexposed controls. However, induction of crossing-over in spermatogonia was several times more than that in controls. The authors concluded from these findings that benzene may be a stage-specific chemical and that if mutations can also be induced in spermatogonial cells, then replication may be required for mutation induction by benzene.

Snyder and Laskin (1986, Ex. No. 248), in comments prepared for the Motor Vehicle Manufacturers Association, pointed out that the equivocal results sometimes seen in the *in vitro* mutagenicity studies may be "due to technical difficulties with the test systems. For example, benzene may produce negative results in *in vitro* systems since it is extremely volatile and may evaporate before sufficient time has elapsed for the test to be completed. In addition, in some of the test systems, benzene may exert cytotoxic effects on the bacteria or mammalian cell culture which may mask its mutagenic effects" (p. 9). Furthermore, Dr. Marvin Legator, in testimony presented at the hearings (Tr. 4/2/86, p. 18) pointed out that the complex metabolic patterns seen with benzene may not be mimicked well by the *in vitro* microbial and cell culture tests since the latter tests are not carried out in intact animals.

Crespi and Penman (1984, Ex. No. 159–19A) reported at the 15th Annual Meeting of the Environmental Mutagen Society that benzene was found to be mutagenic in human cells in a recently developed gene-locus mutation assay utilizing a metabolically competent human lymphoblastoid cell line. This assay measures the induction of mutations at the hypoxanthine guanine phosphoribosyl transferase locus via resistance to the purine analog 6-thioguanine (6TG). The mutant frequency in the benzene treated cultures was statistically greater than both the concurrent negative controls (p less than 0.005) and the historical negative control data base for this cell line and locus (p less than 0.0001).

Dr. Carroll Snyder reported the results of a study (Ex. No. 201–42, Attachment 5) demonstrating adverse effects on the hematopoietic system of mice exposed *in utero* to 5, 10, and 20 ppm benzene. Dramatic effects were observed in the growth of erythrocytic and granulocytic/macrophage precursor cell populations. Long-term effects of *in utero* benzene hematotoxicity were demonstrated by reduction in neonatal weight gain and by increased sensitivity to the hematopoietic stress caused by low-level (10 ppm), short-term re-exposure to benzene when the pups became adults. For this study, pregnant Swiss-Webster mice were exposed to either 0, 5, 10, or 20 ppm benzene by inhalation for 6 hours per day, for 10 consecutive days, from day 6 through day 18 of gestation. Parallel air-exposed fetuses were maintained and examined as controls throughout the study. Dr. Snyder concluded:

> Our results demonstrate that *in utero* exposures to all concentrations of benzene studied induce marked changes in the fetal hematopoietic system. Although changes were observed in granulopoietic populations, the erythron was particularly affected by the exposures. Moreover, the hematopoietic system was still responding to the exposures in the 2-day neonates (8 days after exposure) and in the 6 week old adults (7 weeks after exposure). Moreover, we acquired evidence that the *in utero* benzene exposures induced persistent changes in the hematopoietic reserve for at least 11 weeks after exposure (Ex. No. 201–42, Attachment 5).

G. Absorption of Benzene through the Skin

Several recent studies, both in animals and in humans, conclusively demonstrate that benzene is absorbed through the skin. OSHA concludes that the best estimate is that approximately 1% of the benzene in a solution would be absorbed through the intact skin and about 5% through cracked and calloused skin.

Two of the earliest studies on skin absorption of benzene in humans were carried out in Italy in 1946 and 1955. Cesaro (1946, Ex. No. 2–47) exposed human volunteers for 20–30 minutes in an airtight box saturated with benzene. The subjects' heads were outside the box. Benzene was not detected in the breath of these subjects. The ratio of inorganic sulfate to total sulfate excreted in urine remained unchanged. Thus, benzene absorption was not detected in the study.

Conca and Maltagliati (1955, Ex. No. 2–46) carried out measurements of benzene in breath and urinary sulfate ratio of three human volunteers. Subjects were fitted with fume masks to prevent inhalation of benzene, and their hands and forearms were immersed in benzene for 25–35 minutes. Skin irritation with burning and painful sensations occurred after 5–10 minutes. No benzene was detected in the breath and no change in urinary sulfate ratio was found.

Both studies used limited analytical methodology. The determination of breath benzene level used a colorimetric method that could not detect trace or very low levels of benzene. The urinary sulfate ratio measurements are not sensitive enough to detect benzene absorption unless considerable amounts of benzene are absorbed.

Maibach reported in 1979 the results of studies of skin absorption in the rhesus monkey using carbon ^{14} labeled benzene (Ex. No. 143–2a,b). The studies addressed single and multiple exposures of intact skin of the forearm to full strength (100%) benzene and a benzene containing (0.35%) rubber solvent used in passenger tire manufacturing. One study protocol addressed a single exposure to stripped skin with 100% benzene. A single exposure to the palmar surface of the hand with the tire rubber solvent (0.35% benzene) was also evaluated. (This study was published in 1981. In the latter report, some of the values for the percentage of benzene absorbed through the skin changed. OSHA will use the values from the 1981 report in its discussion of the study). A single application of full strength benzene to intact skin of the forearm resulted in 0.172% of the benzene being absorbed while multiple exposures resulted in 0.848% being absorbed. A single exposure of full strength benzene to stripped skin of the forearm resulted in 0.909% absorption. A single exposure to 0.35% benzene in a rubber solvent to the palmar surface of the hand resulted in 0.651% benzene absorption, whereas a single exposure to the same solvent on intact skin of the forearm resulted in

0.080% absorption. Multiple exposure to the solvent on the forearm resulted in 0.431% benzene absorption. These studies suggest that multiple exposures to rubber solvent containing 0.35% benzene on the skin of the forearm result in about 5-times as much benzene being absorbed as compared to a single exposure (0.43% vs. 0.08%). They also indicate about 8-times greater skin penetration for the palm as compared to forearm skin following single applications of rubber solvent (0.651% vs. 0.080%). A single application of undiluted benzene to stripped skin resulted in a 5-times greater penetration of benzene as compared to absorption through intact forearm skin (0.909% vs. 0.172%).

On the basis of these results, Rodricks and Brett (Ex. No. 204–7, III–B) estimated that about 3.4% of benzene applied as a 0.35% benzene containing solvent to the palm of the monkey would be absorbed. See Table A. For example, the Maibach and Anjo (1981) reports indicates that a multiple application of 0.35% benzene in petroleum naphtha to the monkey forearm resulted in 0.431% of the benzene being absorbed. Since 8-times as much benzene was absorbed through the palm as compared to the forearm of the monkey, the amount absorbed through the palm is 3.4% (0.431% × 8.08 adjustment factor = 3.448%).

In September 1983, OSHA requested that NIOSH undertake a study of the amount of benzene absorbed through the skin as a result of skin contact with petroleum naphtha, a solvent commonly used in tire building operations. The results of the study by Susten et al. were submitted to OSHA in April 1984 (Ex. No. 156A) and published in 1985 (Ex. No. 252A–17–78).

TABLE A.—DERMAL ABSORPTION IN MONKEYS

Percent Absorption		Site	
		Single application	Multiple application
Diluted	Palm	0.651	* (3.448)
Benzene (0.35%)	Arm	0.0805	0.431
Undiluted	Palm	* (1.376)	* (6.784)
Benzene	Arm	0.172	0.848

Source: Rodricks and Brett (Ex. No. 204–7, III–B)

* Assuming the same relationship as found after single application of diluted benzene.

The NIOSH study was conducted on hairless mice using dermal application of petroleum naphtha containing 0.5 percent benzene radiolabeled with carbon 14. Under the conditions of the experiment, approximately 1 percent of the applied benzene was absorbed through the skin. On the basis of these results, NIOSH calculated that a worker building 150 tires per day using a rubber solvent containing 0.5% benzene could absorb approximately 6 mg of benzene daily through intact skin; the upper and lower 95 percent confidence limits are 8.4 and 3.7 mg/day. The 6 mg of benzene absorbed through the skin may be compared to an estimated 14 mg of benzene that would result from inhalation of 1 ppm over an 8-hour day. According to the NIOSH investigators these quantitative findings are consistent with those of Maibach who studied benzene absorption through the intact skin of rhesus monkeys.

Workers building tires are known to have cracked and fissured skin on their hands as a result of daily contact with tire building solvents. Thus, evaluation of benzene absorption through skin that is not intact may have a bearing on the actual benzene skin penetration of workers building tires. In this regard, the study by Maibach (Ex. No. 143–2b) indicated that benzene exposure to stripped skin in the rhesus monkey results in 5.3 times the absorption as compared to exposure to intact skin. If this factor is applied to the study results of NIOSH, approximately 32 mg (6 mg × 5.3) of benzene could be absorbed daily through the skin as a result of exposure to petroleum naphtha in tire building operations.

Several studies have also evaluated dermal absorption of benzene to human skin. In one study Maibach (Ex. No. 231–6) reported the results from a single application of C–14 labled benzene to a 2x2 inch surface area of the forearm of four human volunteers. Urine was collected for six days following benzene application. C–14–CO_2 was captured and counted in a scintillation counter. Penetration values were corrected for incomplete urinary excretion using the values obtained from the experiments on the rhesus monkey. (In the latter experiment it was determined that 41% of absorbed benzene would be excreted in the urine). Thus, benzene urinary excretion values were adjusted by a factor of 2.4 (1/0.41). The results indicated that 0.065% of the applied benzene dose was absorbed through the forearm of humans. In a similar experiment (Ex. No. 231–7), Maibach estimated that 0.128% of the applied benzene dose was absorbed through the palm of humans. Thus, twice as much benzene was absorbed through the palm as compared to the forearm. The author noted that many of the scintillation counts of radioactivity in the urine were close to background levels and that the experiments approached the detection limits of the methodology.

Hanke et al. (1961, Ex. No. 144–175) estimated the rate of undilated benzene absorption through the forearm skin of human volunteers following 1.25–2.0 hours of continuous contact with 8–45 cm^2 of skin surface area. Using two different analytical methodologies, the absorption rates of benzene ranged from 0.24–0.4 mg/cm^2/hr. The authors preferred the absorption rate of 0.4 mg/cm^2/hr as it was based on a direct method of measurement which they felt was quantitatively more definitive. If one were to apply the assumptions of Susten et al to these findings as done by Rodricks and Brett (Ex. No. 204–7, III–B) and account for a 2-fold difference in skin absorption between the forearm and the palm of the human hand, about 4.8 mg of benzene [0.4 mg/cm^2/hr. × 0.005 (benzene % in solvent) × 150 cm^2 (surface area of hands exposed) × 8 hrs/day × 2 (adjustment for palms) would be absorbed per day.

Franz (1982) published an evaluation of dermal absorption following a single application of undiluted C–14 benzene to the forearm of four human volunteers and six monkeys (Ex. No. 159–30). The amount of benzene absorbed was 0.05% for humans and 0.14% for monkeys. Franz noted by direct observation that

liquid benzene was undetectable within 30 seconds of its application. He concluded that the high volatility of benzene made the contact time with the skin a critical factor for controlling percutaneous absorption.

Franz also conducted *in vitro* experiments with human and monkey skin. The amount of benzene absorbed was 0.10% for human skin and 0.19% for monkey skin. He concluded that the *in vitro* results correlated well with the above mentioned *in vivo* results. Franz observed that the diffusion of benzene through the skin is very rapid with the peak absorption occurring at 15–20 minutes. From Figure 4 of his data, one can calculate an absorption rate of 0.2–0.3 mg/cm² hr. Using the assumptions of Susten et al. and adjusting for benzene penetration of the palms versus the forearm of humans from the Maibach study (2-fold adjustment factor) would result in 2.4–3.6 mg of benzene absorbed per day through tirebuilding.

In 1985, Blank and McAuliffe (Ex. No. 204–7, III-B) reported the results of dermal absorption of undiluted benzene through human abdominal skin *in vitro*. From Figure 1 of their data, the benzene absorption rate can be calculated to be 0.56 mg/cm²/hr [0.64 ul/cm² × 0.88 g/ul (density of benzene) = 0.56]. [Note: the authors incorrectly stated that the absorption rate was 2.11 ul/cm²/hr rather than 0.64 ul/cm²/hr]. Using the assumptions of Susten et al. and the correct benzene absorption rate as done by Rodricks and Brett (Ex. No. 204–7, III–B) results in an estimated daily benzene absorption of 6.7 mg per day through tire building with a 0.5% benzene containing solvent.

Since the 1977 OSHA benzene rulemaking, at least nine studies have become available which demonstrate the dermal absorption of benzene in both experimental animals and humans. These studies are difficult to conduct and some of them are limited because of the methodology employed and the volatile nature of the benzene or rubber solvents used in the study. These limitations for the most part would bias the results toward an underestimate of the amount of benzene absorbed through the skin when extrapolating to working conditions. For example, the studies in which benzene was applied as a single application would suffer from benzene being evaporated from the skin so that it would remain in skin contact for a very short period of time. Franz noted that liquid benzene was undetectable within 30 seconds of its application. In a working situation, evaporation does not take place as rapidly when clothing becomes soaked with a solvent containing benzene in comparison to bare skin being splashed with a solvent, or when the solvents are splashed inside of impermeable gloves, etc. In the Maibach studies, the doses of radioactivity chosen for cutaneous application were in general too low to provide scintillation count rates sufficiently over background for reliable calculations and conculsions. For accuracy, count rates should be at least twice the background levels in the urine. for the most part, they were less than twice background levels.

The NIOSH study of dermal absorption of benzene in hairless mice is considered the most thorough of the reports available for evaluation. The methodology was more detailed; the radioactive dose administered to the animals was much greater than that used in other studies resulting in more accuracy and better sensitivity; the direct method used for summing the levels of radioactivity in the carcass, expired breath and excreta did not require the use of adjustment factors.

Nevertheless, the results from studies of dermal benzene absorption are remarkably similar. NIOSH estimated 6.19 mg of benzene would be absorbed per day through tire building operations using a 0.5% solvent based on the hairless mouse. Studies of the monkey result in an estimated 21.3 mg [6.19 mg (for 1% absorption) × 3.4% (percent absorption for palm of monkey)] of benzene being absorbed per day. The Rubber Manufacturers Association were of the opinion that the Rhesus monkeys as used in the Maibach studies provide "a reasonable model for percutaneous absorption where relevance to man is sought." (Ex. No. 201–27, p. 10).

Studies of benzene absorption through human skin even in light of the methodologic problems mentioned above still result in estimates ranging from 3.6–6.7 mg of benzene absorbed per day using the assumptions for tire builders as reported by Susten et al. of NIOSH. Thus, the NIOSH study seems to provide a mid-range estimate of the studies evaluated based on mice, monkeys and humans. Therefore, the estimate of 1% of benzene being absorbed through intact skin seems well supported. However, OSHA acknowledges that the corresponding resultant daily dose of 6.19 mg may be underestimated by as much as 5-fold for individuals who have cracked and fissured skin. An additional daily amount of benzene absorption can also be absorbed through splashing of solvents containing benzene on clothing. This results in large amounts of additional surface area of skin being exposed and at the same time slower evaporation of benzene from the skin due to overlying clothing.

Thus, OSHA is of the opinion that benzene absorption through the skin as a result of benzene contamination in rubber solvents is a major route of exposure in tire building operations. This problem, however, can be dealt with adequately through use of low level benzene containing solvents (less than 0.1%) and proper training, education work practices and appropriate protective clothing.

H. Metabolism and Body Burden

The metabolism of benzene in humans and animals follows many similar pathways (Rusch et al., 1977, Ex. No. 159–68). Benzene is metabolised in the liver and its primary oxidative products include phenol, catechol and quinol. Further oxidation may produce hydroxyquinol and muconic acid. Subsequently, these oxidative products are transformed to phenylsulfuric and phenylgluconic acids, which are excreted as their alkaline salts.

The primary oxidation of benzene occurs via the cytochrome p–450–dependent monooxygenase system, resulting in biologically reactive intermediates, such as benzene oxide which spontaneously forms phenol (Irons and Pfieffer, 1982 Ex. No. 159–41). Evidence indicates that benzene per se dose not represent the principal structural moiety causing the identified toxic effects on the bone marrow or lymphoid system (Irons and Pfeiffer, 1982, Ex. No. 159–41).

The metabolism and elimination of benzene in humans appear to be similar to those in rats and mice; the amounts of various metabolites, the extent of metabolism, and the nature of the phenol conjugates depend on the species, strain, and route of administration (Rusch et al., 1977, Ex. No. 159–68). The similarities in the metabolism of benzene and similar effects on bone marrow toxicity in both animals and humans would tend to support the use of rats and mice for bioassay studies on the carcinogenicity of benzene.

Irons (1983, Ex. No. 159–41A), has shown that hydroquinone, a benzene metabolite, does cause bone marrow suppression in the mouse and under an appropriate experimental regimen will produce symptomatology that is consistent with aplastic anemia. Irons (1983, Ex. No. 159–41A) also reported that intermittent exposure appears to be much more potent at producing bone marrow aplasia than continuous exposure to a relatively greater amount

of benzene and suggested that protection of workers in an occupational setting requires prevention of peak exposures rather than the progressive lowering of the TWA in the absence of regulating or limiting transient exposure situations.

NIOSH (Ex. 250) pointed out that, "cumulative dose is an important consideration in benzene induced cancer." The studies by NIOSH of rubber hydrochloride workers and Wong of chemical workers both demonstrate that cumulative benzene dose is significantly associated with mortality from cancers of the lymphoid and hemopoietic systems. "Thus, the ability of benzene to accumulate in the body and manifest adverse biologic effects should be carefully examined." From its analysis of current data on the absorption, distribution, and metabolic fate of benzene and its metabolites in the body, NIOSH concluded that:

- Regardless of the exposure regimen, as long as it is routine, benzene and its metabolites will accumulate in the body;
- Benzene is lipophilic, thus it is not surprising to find three times more benzene in the bone marrow than in the blood;
- Bone marrow can metabolize benzene to phenol and quinone at a rate four times that found in liver. Therefore, production of toxic metabolites in the liver and their subsequent transport to bone marrow does not appear to be a necessary step in the mechanism of benzene induced bone marrow toxicity
- Benzene metabolites are toxic to bone marrow *stromal* cells, they bind to bone marrow DNA and inhibit synthesis of both mtRNA and mRNA and may interfere with DNA replication. Benzene metabolites also form adducts with d-adenosine and d-guanosine.
- Single exposures to benzene at low doses produced increases in the numbers of micronuclei and SCEs in rats.
- Benzene metabolites produce an increased frequency of SCEs in cultured human lymphocytes.

Furthermore, based on these data, NIOSH concluded that a:

plausible mechanism for benzene induced toxicity following exposures at either low concentrations or perhaps intermittent peak concentrations would involve inhalation, preferential deposition in the bone marrow, metabolism to phenol and other metabolites, inhibition of MRNA synthesis, inhibition of DNA replication and formation of DNA adducts; possibly resulting to transformation of normal cells to cancer cells. The fact that an increased frequency of SCEs is found apparently among only those exposed at relatively high concentrations is not inconsistent with this proposed mechanism. At higher exposures DNA alkylation may be so wide spread that even under conditions of diminished repair and replication, exchanges are still occurring at a detectable rate.

NIOSH concluded that, "The need for a limit on high exposures over short periods of time (i.e., peak exposures) is clear" (Ex. No. 250).

The preamble discusses in considerable detail the various biological effects of benzene. For regulatory purposes, though, the studies which are most important are the major epidemiological studies which demonstrate the association between benzene exposure and human leukemia. Those studies are sufficient by themselves to justify the regulation.

VI. Quantitative Risk Assessment for Benzene

As discussed in the following section, OSHA's best estimate of risk is that 95 excess leukemia deaths per 1000 workers are associated with an average of 10 ppm for 45 years (occupational lifetime) and 10 excess leukemia deaths per 1000 workers are associated with exposure to 1 ppm benzene. These estimates are based on high quality epidemiologic studies, and represents the mid-range of estimates presented to the Agency. They are also based on a risk assessment model that is well supported for cancer risk assessment.

A. Introduction

The scientific literature has documented hundreds of cases of leukemia, aplastic anemia, and other blood abnormalities which have been associated with benzene exposure. Epidemiologic studies of workers exposed to benzene have demonstrated significant excesses of leukemia, multiple myeloma, and lymphatic cancers as well as chromosomal aberrations. Several of these studies have provided a reasonable basis for quantitative cancer risk assessment. More recently, experimental animal studies have demonstrated the induction of cancer, chromosomal damage and bone marrow toxicity in relation to specific benzene exposure levels. All of this information has been used to the extent feasible in OSHA's evaluation of risk associated with benzene exposure levels. In its proposal OSHA requested comments on various risk assessments based on epidemiologic and experimental studies for purposes of determining quantitative estimates of disease associated with benzene exposure.

Although benzene exposure has been associated with leukemia, aplastic anemia, multiple myeloma, various forms of lymphoma, myelofibrosis, pancytopenia, and depression of singular blood cell lines. OSHA presented risk assessments based preferentially on epidemiologic study results of leukemia only and upon experimental studies involving the induction of solid tumors in mice and rats. OSHA did not include in its quantitative risk assessments the other above mentioned conditions because they were for the most part identified in case reports and relative risks could not be quantified. As a result, the total disease risk associated with benzene exposure may be underestimated. OSHA requested opinion on the methodology for inclusion of mortality from disease other than leukemia in its assessment of quantitative disease associated with benzene exposure. It also requested opinion on whether experimental results of cancer in animals should be used in risk assessment calculations.

A succinct explanation of the rationale and basis for quantitative risk assessment in general had been presented in the benzene proposal and in previous OSHA proceedings and is reiterated here. (See the benzene proposal, 50 FR 50512, 12/10/85; Arsenic 48 FR 1864, 1/14/83; ethylene dibromide, 48 FR 45956, 10/7/83; ethylene oxide, 49 FR 25734, 6/22/84; asbestos, 51 FR 22612 6/20/86).

Several approaches have been used to estimate cancer risk from exposure to toxic agents. A standard approach uses mathematical models that were developed for cancer risk assessment in an attempt to fit curves to data points that represent relative risks observed at different exposure levels and from these curves to predict the risk at other, usually lower, exposures. These curves range from linear extrapolations to zero exposure and zero risk to curves which are non-linear and may have an effective threshold. The use of a particular model or curve can be justified in part by statistical measures of "fit" to available data points. These considerations have been reviewed from the statistical standpoint (Krewski and Van Ryzin, 1981) (Ex. No. 159–48).

It is theorized that the mathematical curves are reflective of biological processes that control the biological fate and action of the toxic compound. The models preferred do have a basis for cancer risk assessment. However, the underlying science has not advanced far enough to fully confirm the models biologically and it is unlikely to advance that far in the near future.

Studies can contribute useful information in the development of a quantitative risk assessment if they provide reasonable estimates of excess risk and dose. Such assessments might be improved by incorporating additional biological factors, though these are not necessary to obtain an estimate of disease risk. Information on several

biological factors which, if available, might possibly have a bearing on the risk assessment include: (1) dose of the material at the sensitive tissue(s); (2) rates and sites of biotransformation; (3) toxicity of metabolites; etc.

With present knowledge, few of these factors can be determined easily or incorporated into a single mathematical model. Even if they could be identified, it would be difficult to determine the weight that should be given to each factor. In the specific case of benzene and leukemia, while the basic mechanism whereby benzene affects the bone marrow cells is still unclear, evidence in the record as reviewed in the health effects section indicates that cytogenetic changes may be involved. The influence of some of the above factors on the cytogenetic changes, however, is not known.

Quantitative cancer risk estimates based on epidemiologic data require assumptions about the shape of the dose-response relationship and the duration of exposure. Epidemiologists have frequently assumed a linear model for dose-response (IARC, 1982). Although it is recognized to be a rather simplified model which may vary with the biological factors mentioned above, the linear model has scientific plausibility (Crump *et al.*, 1976 (Ex. No. 217–32–H7); Acheson and Gardner, 1980 (Ex. No. 159–1); Committee on the Biological Effects of Ionizing Radiation, 1980) (Ex. No. 159–55).

In developing its criteria for arsenic, the Arsenic Working Group (WHO, 1981; Ex. No. 159–104) of the World Health Organization stated:

> The use of the linear non-threshold model is recommended for extrapolation of risks from relatively high dose levels, where cancer responses can be measured, to relatively low dose levels, which are of concern in environmental protection where such risks are too small to be measured directly either through animal or human epidemiological studies.
>
> The linear non-threshold model has been generally accepted among regulatory bodies in the USA for chemical carcinogens (IRLG) and for ionizing radiation on an international basis (ICRP). The linear non-threshold philosophy was accepted by a Task Group on Air Pollution and Cancer in Stockholm in 1977 (Task Group on Air Pollution and Cancer, 1978). The scientific justification for the use of a linear non-threshold extrapolation model stems from several sources: the similarity between carcinogenesis and mutagenesis as processes which both have DNA as target molecules, the strong evidence of the linearity of dose-response relationships for mutagenesis, the evidence for the linearity of the DNA binding of chemical carcinogens in the liver and skin, the evidence for the linearity in the dose-response relationship in the initiation stage of the mouse 2-stage tumorigenesis model, and the rough consistency with the linearity of the dose-response relationships for several epidemiological studies; for example, aflatoxin and liver cancer, leukemia and radiation.

While the multistage model also seems plausible, the linear model is a reasonable approximation of the multistage model at the response rates of concern. The linear model seems biologically sensible since it assumes risk is linearly proportional to dose.

The issue of the effects of cessation of exposure and subsequent follow-up on risk is also a problem in modeling dose response relationships from epidemiologic studies. As stated by IARC (1982) (Ex. No. 159–38):

> If on the one hand, the exposure acts as an early-stage initiator, then the risks remain somewhat the same after cessation. If, on the other hand, the chemical is a promoter, then the risk decreases after elimination of the exposure . . . The typical occupational study involves continued follow-up of workers after they have left the workplace. The resulting risk ratios may thereby misrepresent the true risks for a continued exposure.

The "misrepresentation" referred to would be an underestimate of the risk from continuous exposure. Since most of the epidemiologic studies used for risk estimation are based on working populations exposed for relatively short periods of time and the dose calculated for those studies is spread over an entire occupational lifetime, the risk of death from leukemia for those continuously exposed may be underestimated if benzene is a promoter as well as an initiator.

In order to estimate the potential quantitative risk of cancer for workers exposed to benzene, OSHA requested comments on several quantitative risk assessments and other epidemiological and toxicological studies in its proposal of December 1985 (50 FR 50512, December 10, 1985). In response, OSHA received various comments on the risk assessment for benzene. Additional risk assessments were also introduced into the hearing record. The following discussion gives a description of each of the major risk assessments, evaluates the comments on these assessments and presents OSHA's determination of the cancer risk posed by occupational exposure to benzene.

B. Terminology and Definitions

Several statistical/technical terms are defined here for reference in reading this section.

(1) *Mathematical model:* A well-defined mathematical equation describing the relationship between dose (e.g. parts per million of benzene) and response (e.g. number of cancer deaths among workers or number of tumor-bearing animals). The biological data are used to define the relationship; that is, a curve is "fit" to the data.

(2) *Mathematical fit:* A term used to describe how close a predicted dose-response curve is to the actual observed points. Fit is often measured by a Chi-squared goodness-of-fit statistic and its corresponding p value. Using the Chi-squared test, the closer the p value is to one, the better the fit.

(3) *Types of Models:* Several different mathematical models have been developed for high dose to low dose extrapolation. Most of the models are based on theories of cancer development, such as the one-hit, the linear, the multistage, and the gamma multihit model.

a. Linear model: This model assumes that the expected number of chemical-cell interactions is directly proportional to dose. This is a very common biologic presumption. However, this model does not account for repair, detoxification reactions and metabolic activation as well as the multi-stage model.

b. Multistage model: This model assumes that the toxic response is the result of an ordered series of biological events and that the occurrence of each event is linearly related to the dose. (Note: At doses relevant to occupational exposure, the linear or one-hit model is a reasonable approximation of the multistage model.)

c. Probit model: Use of this model results in a typical sigmoid-shaped curve; strongest in the 5% to 95% response area. Zero responses are approached very rapidly as the dose decreases.

d. Logit model: Use of this model also results in a sigmoid-shaped curve symmetric about the 50% response point. It approaches zero response more slowly than the probit model.

3. Weibull model: This quadratic model is a generalization of the one-hit model which allows for non-linear responses in the low dose region. The response may be concave or convex depending on estimates from the observed data sets.

f. Gamma Multihit model: This also assumes that an expected number of chemical-cell interactions is related to dose, but it further assumes that a number of responses is needed to produce the cellular response. Thus, the model may fit data observed at higher doses better than the one-hit model.

(4) *Extrapolation/interpolation:* Once a mathematical model is fit to a set of data points, one may wish to predict the risk at other points along the curve.

Extrapolation is the prediction of risk outside the range of the observed data; interpolation is the prediction of risk within the range of the observed data. The term interspecies extrapolation refers to the prediction of risk in one species (e.g. humans) based on observations in other species (e.g. rodents).

C. Summary of Risk Assessments

1. Risk Assessments Based on Experimental Bioassays

Experimental bioassays have served as a basis for the majority of quantitative cancer risk assessments. While risk estimates based on single compound exposures to experimental animals can readily determine dose and response, they pose some difficulty in extrapolation to humans for a number of reasons including factors associated with interspecies variability in metabolism, and human insult by a host of other chemicals in the environment which may interact to potentiate the carcinogenic response.

The Carcinogen Assessment Group (CAG) of the EPA conducted a quantitative cancer risk assessment for benzene based on the results of experimental bioassays (CAG 1983, Ex. No. 159–15). The preliminary results of its analyses were based upon the report of benzene exposure by oral gavage to Spraque-Dawley rats by Maltoni in 1982 (Ex. No. 128–75) and the report of benzene induced hematopoietic neoplasms in male C57BL mice following inhalation exposure by Snyder *et al.* in 1980 (Ex. No. 128–77). See the lengthier discussion in the proposal at 50 FR 50535.

With the multistage or one-hit models which are linear at low responses rates, CAG calculated the maximum likelihood estimate resulting from lifetime exposure to 1 μg/cubic meter of benzene to be 6.52×10^{-6} which is equivalent to 0.0212 for lifetime exposure to one ppm. Using the probit model, the MLE gave virtually the same result as the multistage and one-hit models. The Weibull model gave a higher MLE. The MLE of risk from the multistage was approximately 0.030 or 30 excess leukemia deaths per 1,000 workers exposed for an occupational lifetime to 10 ppm benzene. The risk at 1 ppm would be one-tenth or 3 per 1,000.

Dr. Kim Hooper presented risk assessments based on results of the NTP Cancer Bioassay (Ex. No. 236). He used the linearized multistage model. He adjusted the dose administered to the experimental animals to an equivalent dose to humans using a scaling factor that corrects for differences in surface area between rodents and humans. [Some researchers like Crump and Allen use a dose correction factor based on a μg of toxic substance per unit of body weight basis, while others such as the Carcinogen Assessment Group of EPA use a correction factor based on μg per surface area. There has been justification for use of either method in the literature and OSHA does not have a preference for one scaling factor over the other.]

The MLEs associated with lifetime occupational exposure to 10 ppm benzene ranged from 26 excess cancer deaths per 1,000 workers based on Zymbal gland carcinomas in male mice to 170 excess cancer deaths per 1,000 workers based on preputial gland cancers in male mice. Cancer risks associated with lifetime occupational exposure to 1 ppm ranged from 1.3 to 13 excess cancer deaths per 1,000 workers depending upon the tumor selected for risk assessment from the bioassay. Some of these results along with those calculated by CAG and Crump and Allen are shown in Table A.

TABLE A.—MAXIMUM LIKELIHOOD ESTIMATES OF OCCUPATIONAL LIFETIME EXCESS CANCER RISK PER 1000 WORKERS BASED ON EXPERIMENTAL STUDY RESULTS BY EXPOSURE LEVELS AND AUTHOR

Author	Exposure Level	
	10 ppm	1 ppm
CAG (1983): Zymbal Gland Carcinoma in female rat	30	3
Crump & Allen (1984): All SqCC in male mice	20	2
All SqCC in male rats	5	1
Hooper (1986): Preputial Gland in male mice	170	13
Mammary Carcinoma in female mice	57	5.4

SqCC = squamous cell carcinoma.

OSHA requested Dr. Kenny Crump, an expert in the field of quantitative cancer risk assessment, to perform a quantitative risk assessment based on the NTP data. Crump and Allen (Ex. No. 152) estimated excess risk of dying from leukemia and other cancers based on experimental data. Estimates of excess risk from 40 years of occupational exposure to 10 ppm benzene derived from application of the linearized multistage model to animal data on leukemia ranged from 0.4 to 1.5 per 1000. (It should be noted, however, that a good animal model for benzene and leukemia has not yet been developed.) When data from the NTP bioassay on all squamous cell carcinomas were used, the corresponding estimates of MLE ranged from 8.0 per 1000 in male rats to 20.0 per 1000 in male mice as shown in Table A. The estimates by Crump and Allen are somewhat lower than those based on epidemiologic data.

In discussing the results of their analyses, Crump and Allen stated that the estimates made from human data should take precedence over those from animal data in the case of benzene, because the former estimates are derived from reasonably good studies involving both the species (man) and the route of exposure (air) of interest. The National Research Council of the NAS Committee on the Institutional Means for Assessment of Risks to Public Health has stated recently that "well-conducted epidemiologic studies that show a positive association between an agent and a disease are accepted as the most convincing evidence about human risk" (NAS. 1983. Ex. No. 159–57).

Both CMA (Ex. No. 201–33) and API (Ex. No. 260) concluded that the experimental bioassays have demonstrated the ability of benzene to cause cancer in both mice and rats. Both groups also stated that it is not appropriate to use the animal data for purposes of quantitatively estimating the risk of cancer (leukemia) to workers exposed to benzene given the availability of reasonably good epidemiologic data for risk assessment purposes (Ex. No. 247–F, p. 16). In post hearing comments, API stated that whatever degree of reliance is placed on the animal bioassay results is essentially immaterial "since the results of quantitative analyses of these studies reveal that they do not produce carcinogenic potency estimates substantially different from those derived from human data" (Ex. No. 260, p. 21a).

OSHA agrees with Crump and Allen, API and CMA that the quantitative risk assessment for benzene and leukemia should be based on epidemiologic data, given the good quality of the data. Virtually, all parties who commented on the experimental cancer data were of the opinion that the studies were of good quality, or that they confirmed the carcinogenicity of benzene as demonstrated in the epidemiologic studies. As stated by Dr. Huff, who was the project officer of the National Toxicology Program's animal cancer study on benzene, if there was no epidemiological evidence on benzene related to carcinogenesis, the results of the animal studies would firmly

establish benzene as a potential human carcinogen since the results from the animal groups tested were so overwhelmingly positive. The fact that no leukemias were seen should not be grounds for diminishing the importance of the animal toxicity test results. Both Dr. Hooper and Dr. Huff were of the opinion that it is not unusual for carcinogenic agents to produce different tumor types in animals and humans (Tr. 3/18/86, pp. 189–190; Tr., 4/3/86, p. 40, 63). In past rulemaking, OSHA has relied upon similar experimental cancer data to estimate cancer risks to humans. If such good quality epidemiologic data were not available to the Agency, OSHA would then rely upon the experimental cancer data to estimate cancer risk of benzene to humans.

2. Risk Assessments Based on Epidemiologic Data

In order for an epidemiologic study to contribute useful information to the development of a quantitative risk assessment, it must meet two minimum requirements. First, the study must provide an estimate of the excess risk in a population which was exposed to the substance in question, based on the experience of an appropriate control population. Second, industrial hygiene and employment data must be available to permit a reasonable characterization of previous exposure conditions for the cohorts of workers being studied.

From epidemiologic studies, relative risk values and corresponding exposure estimates are used with a mathematical model to predict cancer risk. In studies of occupationally exposed persons, the relative risk (RR) of a given cause of death can be approximated by a standardized mortality ratio (SMR) in a cohort study. In a case-control study, the relative odds ratio (OR) of developing the disease for those exposed versus those not exposed can be estimated. For practical purposes, the OR and RR will be considered equivalent measures of risk. An SMR divided by 100 will be considered equal to the RR or OR. For example, a SMR of 250 will be similar to an RR or OR of 2.5 (250/100). If the number of workers who die from a particular cause of death in a population is small, the confidence interval surrounding the SMR or OR may be quite large. In other words, the actual risk may be much higher or much lower than the estimated risk. However, the maximum likelihood estimates would still be the best estimate.

Exposure levels for the time periods of interest must also be determined. These are not always available and estimates of exposure quite often have to be made on the basis of the best available data. Since epidemiologic mortality studies of occupationally exposed workers are usually historically prospective in nature, exposure information for specific individuals comprising the study groups, or exposure data for the agency as a whole, usually have to be estimated. From a combination of data based on personal samples and area samples related to some members of the cohorts being studied during specific time periods, and knowledge of process changes or industrial hygiene practices that may have taken place over time, exposure to individual workers or to groups of individuals can be estimated. These estimates are also used to characterize exposure for those individuals involved in the same types of jobs over the same periods of time, but for whom actual exposure data are not available. This process of exposure estimation usually involves interpolation to time periods between exposure measurements and extrapolation to earlier or later time periods for which exposure data are not available. Such a process may result in either overestimation or underestimation of dose. However, reasonable or approximate estimates are sufficient for risk assessment purposes; precise estimates are not necessary and never will be available.

Risk assessments based on epidemiologic studies must apply observations made under one set of conditions to other and sometimes different sets of conditions. As a result certain assumptions have to be made for several unknown variables. The use of these assumptions may result in a degree of uncertainty. The uncertainty of several of these assumptions has been discussed by White *et al.* (1982). This is an inherent situation with risk assessments based upon epidemiologic studies. Some of these limitations can be minimized in the case of benzene by deriving data for risk assessment from cohorts of workers who have experienced exposure in different types of occupations or by including data from different studies.

Confidence in the dose estimates from epidemiologic studies can be strengthened when separate estimates of exposure data by different investigators result in similar findings. Confidence in dose response determinations are strengthened if the results can be reproduced. If the analyses of different investigators result in similar dose response relationships, in this case dose of benzene in relation to the risk of developing leukemia, or cancer, such reproducibility lends confidence to the predicted dose response relationship.

The strength of epidemiologic study lies in its ability to evaluate and determine dose response in humans. Hence, any concerns with scientific issues related to inter-species extrapolation are eliminated.

IARC (1982) (Ex. No. 159–38) conducted a quantitative risk assessment of workers exposed to benzene based on four studies. The first study chosen was that of Rinsky *et al.* (1981) (Ex. No. 128–32) who completed the follow-up begun by Infante *et al.* (1977) (Ex. No. 128–17). IARC also selected the study of benzene exposed workers by Ott *et al.* (1978, Ex. No. 128–33), (Vigliani (1976, Ex. No. 128–5) and Aksoy (1971, Ex. No. 144–160) to determine an estimate of leukemia risk.

A detailed discussion of the IARC study was presented in the benzene proposal at 50 FR 50531. A summary of the IARC benzene risk assessment data along with a range of OSHA estimated excess risks based on IARC methodology for exposure levels of 10 ppm and 1 ppm using linear extrapolation is shown in Table B. Dropping the two extreme values on both the upper and lower ends of the estimates, the excess risk per 1000 workers from lifetime occupational benzene exposure to 10 ppm ranges from 17–140, while the risk from exposure to 1 ppm ranges from 1.7–14. Of the four studies used for risk estimation, estimates of relative risk and exposure level were considered more exact for the studies by Ott *et al.* (1978) (Ex. No. 128–33) and Infante-Rinsky (1977, 1981) Ex. Nos. 128–7, 32). However, the upper range of the excess leukemia risk based on Ott *et al.* using IARC methodology as published in the proposal seems too high. When one considers that the Ott *et al.* total cohort was exposed for an average of 9.9 years to an average of about 5.5 ppm, the excess leukemia risk associated with lifetime occupational exposure to 10 ppm and 1 ppm would be 122 ($3.75-1\times45/9.2\times5/1000\times10/5.5$) and 12 per 1000, respectively.

TABLE B.—ANALYSIS OF RELATIVE RISK AND EXCESS LEUKEMIA RISK PER 1,000 WORKERS EXPOSED TO BENZENE FOR AN OCCUPATIONAL LIFETIME BY STUDY, BASED ON IARC METHODOLOGY (1982)

Authors	RR	Estimated exposure to cohort	Occupational lifetime excess risk per 1,000	Excess risk per 1,000 exposed to—	
				10 ppm	1 ppm
Ott *et al.* (1978)	3.75	1–30 ppm for 8–9 yrs	[1] 72	24–720	2.4–72
		5.5 ppm for 9.2 yrs	[2] 67	[2] 122	[2] 12
Infante *et al.* (1977)	5.6	10–100 ppm 8.5 yrs average exposure for cases [3]	170	17–170	1.7–17
Rinsky *et al.* (1981)	21	5 yrs average exposure	140	14–140	1.4–14
Vigliani (1976)	20	200–500 ppm 9 yrs average exposure for cases	475	9.5–23.8	1.0–2.4
Aksoy (1977)	25	150–210 ppm [4] 9.7 yrs average exposure for cases	534	25.4–35.6	2.5–3.6

[1] Based on exposure of 8.5 yrs.
[2] Based on actual average length of employment (9.2 yrs) and average cohort exposure (5.5 ppm).
[3] IARC extrapolated average exposure of cases (8.5 yrs.) to average exposure for cohort.
[4] Based on testimony of Aksoy at 1977 OSHA Hearing.

Note: IARC did not perform all calculations in last three columns. These were performed by OSHA using IARC methodology for the infante-Rinsky study and IARC opinion that "risk calculations . . . reflect the degree of uncertainty in the estimates of dose rate . . . by citing upper and lower bounds of such estimates (IARC, 1982).

Little substantive comment was received in relation to the IARC risk assessment. CMA (Ex. No. 201–33, pp. 59–65) felt the brief IARC risk assessment was less reliable than the "lengthy careful and detailed analysis presented by Crump and Allen." It also contended that IARC's basing its estimates on group exposure data rather than on estimates of exposure to individual workers was a limitation.

The MVMA (Ex. No. 248) discussed the IARC risk assessment stating that the quantitative estimates for benzene are relatively crude and reflect the present early stage of development of the field or risk estimation and that the aim was to demonstrate how risk assessment could be written and to promote working sessions on risk assessment. MVMA then used the IARC portion of the risk assessment based on the NIOSH study to conclude that an extrapolation of the estimated risk 170/1000 excess leukemia deaths for lifetime occupational exposure to levels between 10–100 ppm results in a greater than 5-fold overestimate of risk as compared to a rate (31/1000 workers) it calculated from a summary of case-reports of leukemia deaths from the published literature by Goldstein in 1977 (Ex. No. 128–59).

OSHA is of the opinion that the above comparison is invalid for the following reasons. The 170 excess leukemia deaths per 1000 workers calculated by IARC based on the NIOSH study referred to an occupational lifetime (45 years) length of exposure, while the rate of 31 per 1000 by MVMA was not based on a working lifetime of exposure. Hence, any difference in the excess risk between the two groups could be due to a difference in length of exposure. Second, the authors of the MVMA report acknowledged that "many individual case reports were not published once benzene toxicity was recognized as being fairly common in the 1920's and 1930's. Thus, accuracy of total reporting presents a problem." The "accuracy" referred to by the authors would represent an underascertainment of cases and result in a lower leukemia mortality rate based on the literature review calculation. Thus, the leukemia rate calculated from the literature review suffers from exclusion of leukemia deaths in the numerator and too short a follow up to determine leukemia mortality among individuals comprising the groups over an occupational lifetime.

MVMA also questioned the IARC procedure for risk assessment, which assumed that the risk of developing leukemia in relation to benzene exposure was linear down to 1–10 ppm. This opinion was based on part on the comparison referred to above and in part on MVMA's opinion that there are likely to be levels of benzene exposure below which benzene cannot be metabolized to a toxic or carcinogenic metabolite (Ex. No. 248).

However, MVMA provided no substantial evidence to demonstrate the existence of a threshold, or on what the shape of the dose-response curve would be at these levels, nor on what the implied threshold level for benzene toxicity might be. Moreover, evidence in the record demonstrates many biologic effects below 10 ppm including a significant excess in chromosomal damage to bone marrow cells as a result of 1 ppm benzene exposure for only six hours and the Ott study showing excess risk of leukemia in humans at average exposures of 5 ppm.

OSHA is of the opinion that the excess leukemia risks calculated by IARC based on the NIOSH study and the Ott *et al.* study are preferred to those based on the Vigliani (1976) report or the Aksoy (1977) report.

The latter two reports are limited for quantitiative risk assessment because of the inability to reasonably define the numerator (actual number of leukemia deaths that may have occurred in the population), the denominator (the actual number of people exposed to benzene in the populations studied) and the average exposure levels to which the workers in the occupations studied actually experienced. White *et al.* (1982), Crump and Allen (1984) and API (Ex. No. 260) all expressed an opinion that the Aksoy and Vigliani reports were less suitable for quantitative risk assessment. OSHA agrees. It is noteworthy, however, that the excess risks in relation to benzene dose calculated from each of the four studies are similar. The mid-point of the range of estimates is about 8 excess leukemia deaths per 1000 workers exposed to 1 ppm for an occupational lifetime.

It is OSHA's opinion that IARC made reasonable assumptions and methodology for the data available at the time its analysis was conducted. More confidence, however, should be placed in the estimates derived from the NIOSH (Infante, 1977; Rinsky, 1981) and DOW studies (Ott, 1978) because of the methodology used to determine estimates of relative risk and dose in those studies. It is noted that the estimates of leukemia risk derived from all of the studies are of similar

magnitude. The findings of four separate studies providing similar estimates of risk provide confidence in the estimates. Even though risk assessments conducted subsequent to the IARC evaluation are more detailed and are used for OSHA's best estimate, the results of those best estimates are similar to the ones derived by IARC.

OSHA also requested comments on the risk assessment performed by the Carcinogen Assessment Group (CAG) of the Environmental Protection Agency. CAG estimated leukemia risk associated with ambient benzene exposure using a linear non-threshold model (Albert *et al.* 1979, Ex. No. 128–6). This assessment was based on the occupational studies by Infante *et al.* (1977) (Ex. No. 128–17), several studies by Aksoy reported between 1974–77 and the study by Ott *et al.* (1978) (Ex. Nos. 128–7, 33, 43; 144–5, 160). These estimates were presented in detail in the proposal at 50 FR 50534. Converting the CAG risk estimate into an estimate for lifetime occupational exposure (45 years, 240 work days per year, 8 hours per day) would result in 33.8 excess leukemia deaths per 1000 workers exposed to 10 ppm benzene, or 3.38 per 1000 exposed to 1 ppm for an occupational lifetime.

A number of scientists believe the CAG assumptions on dose and relative risk are reasonable and well supported. The CAG risk assessment establishes an estimate of leukemia risk among benzene exposed individuals that is similar to the estimates made by IARC (1982) (Ex. No. 159–38) and White *et al.* (1982) (Ex. No. 127).

After reviewing comments on this risk assessment, OSHA is of the opinion that CAG conducted a reasonably good risk assessment for the data available at the time (1979). However, more data have become available for the NIOSH (Infante, 1977/Rinsky, 1986) and Dow (Ott, 1978/Bond, 1986) studies pertaining to estimates of individual cohort members' benzene exposure. In addition, the Wong study was not available to EPA in 1979 as it was not completed until 1984. Thus, OSHA prefers risk estimates based on the latter studies and particularly those calculated by Crump and Allen who used data from all three epidemiologic studies combined. Nevertheless, OSHA notes that the risk calculated by CAG of EPA based on epidemiologic data are not substantially different from these calculated by Crump and Allen.

The EPA-CAG risk assessment can best be summed up by Dr. Goldstein, testifying for API, who stated:

> I think it's a pretty good risk assessment and I think the fact that there are so many different risk assessments out there which all seem to come up with roughly the same number is very reassuring for those of us who were involved in trying to develop risk assessment tools which would be of value (Tr., 3/26/86, p. 140).

Dr. Goldstein supported this opinion in a post-hearing correspondence with API in which he attached a paper he published in 1985. Based upon three epidemiologic studies, the results were characterized as showing "reasonably good agreement" in estimating excess leukemia risk associated with 1 ppm benzene exposure. There was a 3-fold difference in results. The average cancer risk projected from 1 ppm exposure to experimental animals was virtually the same as the average cancer risk calculated from the three epidemiologic studies used in the EPA risk assessment. Thus, Dr. Goldstein also concluded that there was excellent agreement between the assessments based upon epidemiologic data and experimental animal data (Ex. No. 247E–C).

White *et al.* (1982, Ex. No. 128–37) reported a quantitative estimate of leukemia mortality associated with occupational benzene exposure. They selected the NIOSH (Infante *et al.* 1977; Rinsky *et al.* 1981) and DOW (Ott *et al.* 1978) (Ex. Nos. 128–7, 32, 33) studies for their risk assessment as they felt these studies more adequately met their requirements of providing both an estimate of relative risk and a reasonable characterization of previous exposure conditions.

For the NIOSH study, White *et al.* (1982) (Ex. No. 128–37) based the risk assessment on the experience of workers who had 5 or more years of employment, because the elevated risk was statistically significant only for this group. The standardized mortality ratio (SMR) was 2100 (5 observed leukemia deaths versus 0.23 expected). Workers who had been employed for less than 5 years were not included in the assessment. For these individuals the SMR was 200 (2 leukemia deaths observed versus 1.02 expected). The range of duration of exposure for those workers with more than 5 years of employment was estimated to be 5 to 30 years. The authors calculated that workers could have been exposed for 5 years to an average of 83 ppm benzene or 415 ppm-years, or they could have been exposed for 30 years to an average of 50 ppm, or 1500 ppm-years. The estimates of levels of exposure were based on industrial hygiene information from the report by Rinsky *et al.* (1981) (Ex. No. 128–32) for the period 1941–1975. Since some workers had been exposed to benzene as early as 1937, White *et al.* assumed exposures from 1937–1941 to have been 150 ppm benzene, which is 50% above the maximum allowable concentration or peak exposure level recommended in 1941.

For the Ott *et al.* study (1978) (Ex. No. 128–32), White *et al.* based their risk assessment on the 3 observed cases of leukemia as compared to 0.8 expected (SIR is 375, p less than 0.05). Based on data in the Ott *et al.* study, the average benzene dose for the entire cohort was estimated to have ranged from 500 to 1500 ppm-months, or 42–125 ppm-years. White *et al.* (1982) (Ex. No. 127) noted that the cumulative dose of benzene for the three leukemia cases ranged between 1.6 ppm-year and 45 ppm-years.

To describe the relationship between benzene dose and the probability of developing leukemia, White *et al.* selected a linear model as they felt the epidemiologic evidence available for benzene exposure and leukemia did not include the detail needed to test the appropriateness of more complex models.

To determine the excess probability of developing leukemia for a given dose of benzene over a defined period of time, White *et al.* (1982) determined the lifetime adult white male (ages 20–84 years) probability of death from leukemia (0.0070 for all cell types and 0.0050 for myelogenous leukemia) and the rate at which the excess probability of leukemia increased with each increment in dose. Separate risk estimates were then calculated for both studies using the above mentioned values.

As shown in Table C, based on the NIOSH study, the excess leukemia risk was estimated to be 44 to 152 per 1,000 workers exposed for an occupational lifetime (45 years) to an average of 10 ppm benzene. The excess risk of death from leukemia associated with exposure to 1 ppm for 45 years ranged from 5 to 16 per 1000 workers.

TABLE C.—ESTIMATE OF EXCESS LEUKEMIA DEATHS PER 1,000 WORKERS EXPOSED TO BENZENE BY NUMBER OF YEARS EXPOSED AND EXPOSURE LEVEL

Years exposed	Exposure levels			
	10 ppm		1 ppm	
	NIOSH study	DOW study	NIOSH study	DOW study
45	44–152	48–136	5–16	5–15
30	30–104	32–93	3–11	3–10
15	15–54	16–48	1.5–5	2–15
5	5–18	5–16	0.5–2	0.5–2

TABLE C.—ESTIMATE OF EXCESS LEUKEMIA DEATHS PER 1,000 WORKERS EXPOSED TO BENZENE BY NUMBER OF YEARS EXPOSED AND EXPOSURE LEVEL—Continued

Years exposed	Exposure levels			
	10 ppm		1 ppm	
	NIOSH study	DOW study	NIOSH study	DOW study
1	1–4	1–3	0.1–0.4	0.1–0.3

Source: White *et al.* 1982 (Ex. No. 128–37).

Based on the study by Ott *et al.* (1978) (Ex. No. 128–33), the excess risk of death from leukemia was estimated to be 48 to 136 per 1000 workers exposed for an occupational lifetime to 10 ppm, while the excess risk was 5 to 15 per 1000 for those exposed to 1 ppm for 45 years. In discussing their results, White *et al.* (1982) (Ex. No. 127) noted that the range of excess risk was based on the uncertainty in the benzene exposure levels from the NIOSH and DOW studies, but that the projected risk did not reflect uncertainty associated with the relative risks for death from leukemia observed in the studies. For instance, they stated,

> the upper 95% confidence interval for the SMR of 2100 from the Rinsky *et al.* report is 5073. The use of this value would have resulted in much higher risk estimates. Thus, even though these risk estimates are expressed as ranges, the upper range of the risk estimates actually would have been greater if the uncertainty of the SMRs had been included in the analysis.

OSHA solicited opinion on the risk assessment by White *et al.* 1982 from a number of recognized experts in the field of occupational health, or risk assessment, representing government, academia, or industry (Ex. No. 137). Opinions of the assessment varied. Dr. Brian MacMahon (Ex. No. 137–5) and Dr. Bruce Karrh (Ex. No. 137–1) felt that the underlying studies upon which the assessment was based were too limited for purposes of conducting a quantitative cancer risk assessment. Dr. Philip Cole, stated "it is only an opinion that epidemiologic evidence regarding the leukemogenicity of benzene is 'conclusive.' " (Ex. No. 137–3) Dr. Cole's statement was based on his view that most of the epidemiologic studies of benzene and leukemia have methodological limitations and that the case reports of leukemia among benzene workers "are of limited scientific value." However, several consensus groups including IARC and the National Toxicology Program have concluded that there is sufficient evidence that benzene is carcinogenic to humans. No party to the hearing challenged the conclusion that benzene is a known human leukemogen.

Dr. Irving Kessler (Ex. No. 137–2) was of the opinion that the underlying studies represented the best available information. Dr. Kessler and Dr. David Gaylor (Ex. No. 137–9) stated that the results of the assessment seemed plausible and were well documented. Dr. Karrh criticized the NIOSH study on the basis of the critique of Tabershaw and Lamm (1977) (Ex. No. 159–81) and Van Raalte and Grasso (1982) (Ex. No. 159–91). Comments on these critiques have been addressed in the section on epidemiologic study results.

Dr. Norman Breslow, Dr. Cole, Dr. Charles Brown and Dr. Gaylor all thought the linear model used by White *et al.* (1982) was acceptable and that other more complex models were not justified (Ex. Nos. 137–3, 4, 7, 9). However, Dr. William Rowe felt other models should be evaluated in addition to the linear model while Dr. Karrh (Ex. No. 137–1) felt the linear model was unverifiable. The issue of model selection was also addressed by Dr. Charles Brown (Ex. No. 137–7) who stated:

> The "correct" model is unknown, and will remain so until we know the mechanistic relationship between benzene exposure and leukemia; however, I do not believe that the data warrant more sophistication than the simple linear model (to which the one-hit model is a very close approximation at low response rates); in addition, since the range over which the dose extrapolation is performed appears to be relatively small (one order of magnitude?), the dose-response model should have a small effect on the risk assessment results.

Dr. Cole and Dr. Brown (Ex. Nos. 137–3, 7) felt that the exclusion from the risk assessment of individuals in the NIOSH study who had less than 5 years of benzene exposure and a relative risk of 2 for death from leukemia resulted in a bias toward an overestimate of the quantitative risk based on the NIOSH study. In the benzene proposal OSHA was of the opinion that the latter data should have been included in the assessment, but that inclusion of these data would not change the dose response. For example, individuals with less than 5 years of exposure had a median duration of exposure of about 0.5 years (Rinsky, 1983, Ex. No. 159–65A). If one assumed that these individuals were exposed to a TWA of 100 ppm benzene (an estimate related to their time of employment), their cumulative dose of benzene would have been 50 ppm-years associated with a relative risk of 2, or 7 per 1000 excess leukemia deaths. This estimate would fit comfortably within the estimate of 5 to 16 excess leukemia deaths per thousand workers exposed for an occupational lifetime to 1 ppm., e.g., 45 ppm-years of exposure.

Three reviewers raised the issue of the cumulative dose concept of exposure used by White *et al.* (1982) (Ex. No. 127). Dr. Bruce Karrh was of the opinion that short-term, high intensity exposure was the mode of exposure to benzene (Ex. No. 137–1). Dr. Brown was of the opinion that the cumulative dose model may not be a valid measure but that the epidemiologic data would not provide the proper measure of exposure. He suggested the use of animal studies to resolve the issue of dose rates and duration of exposure. (Ex. No. 137–7). In contrast, Dr. Norman Breslow stated that dose additivity and low dose linearity should be adopted as biologically reasonable and scientifically prudent assumptions in the absence of specific evidence to the contrary (Ex. No. 137–4).

In response to questioning at the hearing, Dr. White stated that the 2-fold risk observed for those who were exposed for less than 5 years is about what you would expect to be associated with a 102 ppm years dose of benzene exposure that she had estimated for this group of individuals (Tr., 3/18/86, pp 176–183). In response to a hypothetical question raised by Mr. King of CMA, Dr. White also stated that had the average benzene exposure for these individuals been 5 times higher, the 2-fold risk of death from leukemia for those exposed for less than 5 years might not fit as comfortably within the estimate based upon the group of workers exposed for 5 or more years. Rather than speculating on what the dose was for individuals from the NIOSH cohort who were exposed for less than 5 years, White suggested that currently available NIOSH data for these workers, that was not available to her, be used to answer the question on their dose in relation to leukemia response.

In evaluating the White *et al.* risk assessment, API (Ex. No. 260, p. 27) and CMA (Ex. No. 201–33) were of the opinion that risk assessments based upon individual exposure data are preferable to those based on group exposure data as done by White *et al.* In response to questioning from Mr. King, who inquired whether risk assessment performed later on, on the basis of more comprehensive data, by Crump and Allen would perhaps be a more reliable reflection of what the actual risk was in the total cohort, Dr. White stated

"no * * *. Because we did a group estimate of exposure, there may be a wider range of confidence in terms of what the exposure was for the * * *. Crump * * * may have a narrow confidence interval around his estimates of exposure * * *. Our estimates may have been less precise. They may not have been necessarily less accurate "(Tr., 3/20/86, p. 172). March 20 at 172). Dr. White is speaking in technical terms. She is pointing out that her estimates of exposure could be as accurate as those derived by Crump, that is as close to reality, but that they are not as precise meaning that the confidence intervals surrounding her estimates of exposure are wider.

In response to the same questioning, Dr. Savitz stated that individual exposure data would be better than group exposure data, if indeed the individual exposure measures were more accurately reflective of what the individuals had received "(Tr., 3/24/86, p. 65). On this same issue, Dr. Crump responded that individual profiles give you more latitude in defining dose groups and searching for a dose response pattern although frequently it turns out that you'll get about the same risk estimate in an overall average (Tr., 3/24/86, p. 131).

Because of differences of opinion about the individual exposure data in the NIOSH cohort, quantitative risk assessment based on the individual exposure data in this study may or may not be more precise than those estimated from group exposure data. OSHA is of the opinion, however, that it is better to attempt quantitative risk assessment using as much data as available to determine dose response. Hence, the Crump and Allen risk assessment using individual exposure data for the entire cohort to define dose group may be given preference over the risk assessment performed by White *et al.* OSHA notes, however, that the results obtained by Crump and Allen are similar to those derived by White *et al.*

Under OSHA contract, Crump and Allen (1984) (Ex. No. 152) estimated excess leukemia deaths among workers exposed to benzene based on three epidemiologic studies that they considered most suitable for developing quantitative estimates of risks, the Rinsky *et al.* 1981 (NIOSH) study, the Ott, *et al.* 1978 (Dow) study and the Wong, 1984 study. A summary of their risk assessment follows.

Using the relative risk model and cumulative dose, the maximum likelihood estamate (MLE) based on data solely from the NIOSH study indicated that occupational exposure to 10 ppm benzene for 40 years would result in 63 excess leukemia deaths per 1000 workers. See Table D. Using the MLE and the weighted cumulative dose and relative risk model and based solely on data from the Rinksy and Ott studies combined, Crump and Allen estimated that the excess leukemia risk per 1000 workers exposed to benzene for 40 years would range from 29 associated with 10 ppm (400 ppm-yrs) and 3 associated with 1 ppm (40 ppm-yrs). The excess risk based on data from the Wong study resulted in an MLE of 121 excess leukemia deaths per 1000 workers exposed to 10 ppm for 40 years. With data for all three studies combined, Crump and Allen estimated a maximum likelihood of 88 excess leukemia deaths per 1000 workers exposed to 10 ppm for 40 years. The MLE associated with 40 years of exposure to 1 ppm was 6.6 per 1000 based on the NIOSH study, 13 per 1000 based on the Wong study and 9.5 per 1000 based on data for all three studies combined. For all studies combined the risk associated with 45 years of exposure (Occupational lifetime) to 10 ppm would be 95 per 1000 and to 1 ppm would be 10 per 1000. The risk associated with 0.5 ppm for 45 years is 5 excess leukemia deaths per 1000 workers.

TABLE D.—ESTIMATED EXCESS LEUKEMIA DEATHS PER 1000 WORKERS EXPOSED TO BENZENE FOR 40–45 YEARS (1 PPM OR 10 PPM) USING RELATIVE RISK AND CUMULATIVE EXPOSURE MODEL CRUMP AND ALLEN, 1984

Study	40 ppm-yrs		400 ppm-yrs	
	MLE	(95% CI)	MLE	(95% CI)
Rinsky (NIOSH)	6.6	(2.1–15)	63	(21–129)
Wong (CMA)	13	(0.1–31)	121	(1–243)
Rinsky, Wong and Ott	10	*(4–22)	95	*(37–186)

Source: Ex. No. 152.
*Indicates 45 ppm-yrs and 450 ppm-yrs, respectively.

A detailed analysis of the Crump and Allans study follows. In brief, OSHA concludes it is a high quality risk assessment. It utilizes the most data, utilizes the most appropriate model, utilizes sophisticated and appropriate statistical techniques and makes reasonable assumptions. The various criticisms made are responded to and do not call into question these conclusions.

Crump and Allen calculated dose for each individual cohort member in the NIOSH study. To do this, they used the NIOSH study data tape containing follow-up information on the cohort through 1978, plus various industrial hygiene reports and a NIOSH report detailing areas of work for each operation code listed on the computer tape (Ex. No. 152). The estimated concentrations in each area were then assigned to operation codes for each area. This procedure allowed them to construct a complete exposure profile for each worker.

Crump and Allen's estimates showed that the standards applicable to a given period were not in general exceeded, and thus corroborated the conclusion reached by Rinsky *et al.* Crump and Allen mentioned several aspects of their exposure estimation methods which influenced the dose estimates, but for which the direction of the bias was unknown: (1) use of data from two locations to arrive at one set of estimates; (2) averaging over years rather than interpolating values for each year; and (3) use of recommended standard concentrations to estimate concentrations when no data were available in a time period. They concluded:

> Given the variability in the measurements, in personal safety measures (e.g. use of respirators), in concentrations of benzene over time (within a day, perhaps), the estimates provided should not be considered to be precise. By the same reasoning, it seems that little could be done to refine the estimates given the information available.

Using their new estimates of individual benzene exposure and the NIOSH data tape, Crump and Allen evaluated the dose response relationship between benzene exposure and leukemia in the NIOSH study. Eight deaths from leukemia observed in the study were included in the risk assessment calculations. Four leukemia deaths were excluded from the analysis. One case was a leukemia coded as aplastic anemia on the death certificate to enhance the widow's chances of receiving compensation, a second decedant had a clinical diagnosis of leukemia and two cases died from leukemia but did not satisfy requirements for membership in the cohort.

In the Ott *et al.* study, jobs histories were combined with estimated average exposure levels in various work areas by company personnel to construct a complete exposure profile for each cohort member. Cohort members were categorized according to whether they were exposed to arsenicals, asbestos, or vinyl chloride as well as benzene. (Numerous epidemiologic studies of workers exposed to these latter substances have failed to demonstrate an increased risk of leukemia. Thus, OSHA does not consider exposure of the Ott *et al.* cohort members to these substances to be confounding the relationship between benzene exposure and leukemia.) The data tape from the Ott *et al.* study was furnished to Crump and Allen for their analysis. This data set, containing only two leukemia deaths, was not used independently to assess risk, but rather, as used only in conjunction with data from the other epidemiologic studies. A third case of leukemia among Ott *et al.* cohort members was not included in the Crump and Allen analysis as this leukemia was listed under "other significant conditions" on the death certificate.

For the Wong study, the Crump and Allen risk assessment used data for the cohort members categorized as continuously exposed to benzene and a comparison group of chemical workers not exposed to benzene from the same plants. A cumulative benzene exposure index was calculated for each cohort member. Data from the three epidemiologic studies, Rinsky *et al.* Ott *et al.* and Wong *et al.* were then used to estimate the relationship between benzene exposure and leukemia.

Two alternative linear models were used. A relative risk model and an absolute risk model. Crump and Allen stated:

> Although many other dose response forms could be posited, it was felt that the number of leukemias is too few (there are only 16 leukemias in Rinsky *et al.*, Ott *et al.*, and Wong *et al.* cohorts combined) to permit discrimination among alternative dose response models. A linear model provides an acceptable fit to all the data sets examined. There are scientific grounds for believing that the dose response for carcinogens such as benzene is likely to be linear and particularly that the risk is not apt to be much larger than that predicted by a linear model (cf., e.g. Crump, 1984). Consequently linear dose-response models provide what have been described as "plausible upper limits for the risk at very low exposure levels" (Ex. No. 152, p. 16).

It should be noted, however, that OSHA relied on Crump's maximum likelihood estimates (MLE) of risk and not on his upper 95% confidence limits. In addition, OSHA is not extrapolating leukemia risk to very low exposure levels when it estimates risk for workers exposed to 1 ppm. Consequently, OSHA concludes Crump's MLE estimates are best estimates, not upper bounds.

The relative risk models assumes that the age-specific mortality rate for leukemia among benzene exposed workers is proportional to the age-specific mortality rate for leukemia among the general population. The absolute risk model assumes that additional mortality due to benzene exposure is the same for all ages given equal doses.

Crump and Allen also used four measures of benzene exposure in their analyses. One measure was the simple cumulative exposure in ppm-years. Another measure was a weighted cumulative exposure in ppm-years. Here, Crump and Allen assigned zero weight to exposures occurring within 2½ years prior to the five-year age interval of interest; exposures in the next earlier five years are given full weight. Exposures occurring more than 7½ years before the age interval of interest were assigned progressively less weight depending on when they occurred. A third measure was a "window" exposure in ppm-years. For this measure, only exposures occurring between 2½ and 12½ years prior to the age interval of interest were counted. The last measure of exposure considered by Crump and Allen was peak exposure which they defined as cumulative exposure in ppm-years of all exposures greater than 100 ppm.

Crump and Allen (Ex. No. 152) indicated a slight preference for estimates based on the relative risk model over the absolute risk model because it seemed more plausible to them that the effect of benzene exposure should be larger when the background occurrences of leukemia are larger. They preferred estimates of risk based on the cumulative or weighted cumulative measure of dose over those based on the "window" dose because the "window" dose allowed the risk to disappear completely after 15 years. This was not consistent with the data on leukemia among Japanese atomic bomb survivors. They also had a slight preference for the weighted cumulative measure of dose over the cumulative measure of dose because the model using this measure of dose fit the data somewhat better than those with cumulative dose and it seemed somewhat implausible to them, based on the Japanese A-bomb data, that a brief exposure early in life would entail the same risk 50 years hence as 15 years hence.

OSHA does not agree with a preference for the weighted cumulative dose. In its proposal, OSHA noted that the mode of industrial benzene exposure is different than A-bomb exposure. Workers are exposed to low levels or intermittent bursts of benzene over many years, whereas, A-bomb survivors experienced a single burst of radiation exposure.

Furthermore, the epidemiologic studies of workers exposed to benzene indicate relative risks for myeloid and monocytic leukemias (the most predominant cell types associated with benzene exposure) to range from 3.75 to 8.7 for cohorts of predominantly active or terminated employees as compared to 4.0 for cohorts of predominately retired employees (Ex. No. 142–13A–Shell study). OSHA also notes that 2 of 4 leukemia deaths in the Ott Bond study occurred after retirement. Therefore, the relative risk of death from leukemia may remain high following cessation of exposure. API (Ex. No. 204–7, P. 56) stated "In our judgment, application of the relative risk model and cumulative dose measurements to the Rinsky *et al.* data, provides the risk estimates which are most plausible in the Crump and Allen assessment." Furthermore, Crump and Allen considered "the estimate based upon cumulative or weighted exposure to be the most reliable" (Ex. No. 152, p. 33). Thus, OSHA viewed the relative risk model with cumulative dose as being the most representative of the models used by Crump and Allen to determine dose response. OSHA also prefers the Crump and Allen cumulative dose model over their weighted cumulative dose model because the latter model was not able to accommodate all data available from the three major studies of benzene exposed workers. It could only accommodate from the Rinsky and Ott studies.

Some issues were raised about the Crump and Allen risk assessment regarding their exposure assessment based on the NIOSH study, their use of a linear model and their use of three epidemiologic studies to determine dose-response. These issues are discussed in sequence below.

Virtually all of those who commented on the Crump and Allen exposure assessment (Ex. No. 152) felt they did a good job of estimating dose for individuals in the cohort studied by Rinsky *et al.* (Ex. 250A). For example, API stated that "the record establishes overwhelmingly that Crump's exposure estimates for the Pliofilm cohort are superior" to those estimated by NIOSH (Ex. No. 260, p. 10) and that the Crump Assessment employed a more rational extrapolation procedure (Ex. No. 260, p. 36a).

Rodricks & Brett evaluated the exposure assessments of Rinsky *et al.* and Crump and Allen for API and concluded that "in the absence of additional monitoring data it is not possible to render a judgment as to which methodology best estimates the absolute exposure experienced by the cohort" because the differences between the estimates of the two groups were related to methodologies for estimating exposures when no industrial hygiene data were available (Ex. No. 204–7, p. 67). Dr. Goldstein, who testified for API also stated:

> We must remember through the efforts of Dr. Infante, Rinsky and their colleagues at NIOSH, the group of workers which we presented surveillance data on, is not only the most thoroughly studied of any group of benzene exposed individuals but perhaps the most thoroughly studied of any American workforce in terms of this retrospective exposure assessment. People really worked hard to try to figure out what the exposure was to these individuals (Tr., 3/26/87, pp. 119–120).

In response to a question by Dr. Miller, Dr. Rodricks stated:

> In our review of the available epidemiology data, we saw what Rinsky had done in 1981 with his very, very careful analysis of exposures in Pliofilm operation, being vastly superior to anything else available—not that the others do not suggest an effect. . . . So we relied very much on what Dr. Rinsky had done with those exposure data. They were as good as I have ever seen for epidemiologic data. Dr. Crump seemed to reach the same conclusion and also used the data, but made what were thought were some refinements in the way exposures were treated (Tr., 3/21/86, pp. 90–91).

Thus, Rodricks & Brett preferred Crump and Allen's methodology and felt an analysis by Kipen *et al.* on correlations of hematology data with pliofilm benzene exposure data added support for their preference.

OSHA is of the opinion that both Rinsky, and Crump and Allen made reasonable assumptions regarding individual exposures. The Crump and Allen assessment results in higher estimated benzene exposures particularly during the earliest years of the cohort's employment. This may result in lower estimates of risk. In determining its best estimate of leukemia risk, OSHA will use the exposure estimates by Crump and Allen.

Several commenters discussed the use of the Rinsky *et al.*, Ott *et al.* and the Wong studies by Crump and Allen for estimating the relationship between leukemia and benzene exposure. All commenters agreed on the appropriateness of using the Rinsky *et al.* study for risk assessment and most agreed on using the Ott study. Some commenters agreed on the appropriateness of using the Wong study for risk assessment and others did not.

API (Ex. No. 260, p 12a) contended that the NIOSH cohort studied by Rinsky *et al.* was superior to the other cohorts for risk assessment. First, API stated that the NIOSH cohort produced relatively more precise estimates of risk because it contained more leukemia deaths than either the Ott or Wong cohorts and hence less statistical uncertainty in its estimates of risk. It also noted that all three studies contained relatively small absolute numbers of leukemia deaths. There were 9 leukemia deaths in the NIOSH study, 7 in the Wong study and 4 in the update of the Ott study published by Bond *et al.* OSHA concludes that combining studies is a good way of responding to the fact that the studies do not have large numbers of deaths. The consistency of results as exists here further strengthens this conclusion.

Second, API argued that a dose response relationship, which is a favorable factor to have in a study selected for risk assessment, was observed in the NIOSH study, was not observed in the Ott study, and was observed in the Wong study but only because of a substantial decrease in leukemia rates for the control groups of workers. API also argued that the Ott and Wong studies both involved workers who had greater opportunity for exposure to other chemicals than did the NIOSH cohort members (Ex. No. 260, pp. 14–16). As mentioned earlier, none of the additional chemicals to which these workers were exposed have been demonstrated to cause leukemia.

Dr. Savitz testified (Ex. No. 222) that all three studies used by Crump and Allen are of sufficiently high quality and consistency to provide valid and credible estimates of the relationship between benzene and leukemia. He stated that the major limitation of the Ott/Bond study was the small number of expected leukemia deaths because this would result in wide confidence limits for the observed excess leukemia risk. He concluded "Nonetheless, the risk estimates for leukemia are comparable to those generated in the other studies of benzene and leukemia." With regard to the Wong study, Savitz testified that concerns about the exposed and unexposed workers and the low mortality rates in the unexposed workers have been raised, "but do not negate the value of the dose-response gradient which was seen" for those exposed to benzene. He felt the favorable mortality for lymphohematopoietic cancers in the workers unexposed to benzene may reflect the healthy worker effect or a chance finding. He stated that the "usual uncertainties about the accuracy of exposure data and the small number of cases upon which the dose-response function is based could be expected to mask rather than exaggerate the pattern, rendering the observed dose-response relationship an underestimate of the true effects of benzene" (Ex. No. 222).

In response to questioning about possible errors made in assigning dose, Dr. Savitz stated that "saying something is high when it's not, saying something is low when it's not, * * * will bias the risk ratio toward the value of 1.0. There is no way that that will bias it upwards [Note: a risk ratio of 1.0 would indicate no elevated risk] (Tr., 3/24/86, p. 92). In other words, misclassification of dose results in a bias toward finding no dose response. In response to a question about which epidemiologic study he would use for benzene risk assessment, Dr. Savitz stated that he would accept no single study as sufficiently definitive and that the more consistent the study results, the more confident one is in the overall pattern of the results (Tr., 3/24/86, p. 99).

Bond *et al.* (Ex. No. 201–28) updated the Ott study and concluded that their study provided support for an association between benzene exposure and leukemia but that the study should not be used for risk assessment because of competing exposures to other substances and the small number of leukemia deaths observed. In 1977, however, Dow lowered its benzene ceiling concentration to 10 ppm in all its plants worldwide on the basis of the identification of the third leukemia case in this study (Ex. No. 82). API (Ex. No.

247–F) conducted an analysis on the DOW data and were not able to demonstrate a dose response from these data. Dr. MacMahon (Ex. No. 201–33 at Appendix B), in a comment submitted by CMA, stated that these data provided the most convincing evidence for benzene being leukemogenic at concentrations of 10 ppm and below.

OSHA concludes that the Bond/Ott study is not large enough to attempt to establish several data points in the evaluation of dose/response. Either its data should be combined with other studies or a point estimate used. These approaches were followed by Crump and White. Crump and Allen combined data for the entire Ott cohort (characterized by individual exposure) with data from the Rinsky and Wong studies. White *et al.* as well as IARC and EPA used a point estimate of 3.75 for the relative risk of leukemia in relation to an estimated average dose for the entire Ott cohort. OSHA concludes that either of these approaches represent reasonable use of this data set and are consistent with approaches used by OSHA in its asbestos risk assessment (29 CFR 1910 and 1926, June 20, 1986).

CMA stated "that while the Rinsky and Ott studies may provide appropriate data for quantitative risk assessment, the Wong study should not be used for that purpose" (Ex. No. 258 p. 58). Citing Rinsky's critique of Wong's exposure assessment methodology, CMA stated that exposure assessment was not uniform because personnel from each plant were responsible for assembling their own data (Ex. No. 247, Attach 1).

Rinsky stated that Wong's results were not inconsistent with previous reports showing a relationship between benzene exposure and leukemia. In a letter to CMA from the Director of NIOSH transmitting NIOSH's review of the Wong study, Dr. Millar stated that the Wong study "adds information to our understanding of a possible dose-response relationship between cumulative exposure to benzene (ppm-months) and development of leukemia" (Ex. No. 247, Attach 1).

In both his written testimony and in his written report, Dr. Wong stated several times that his data were subject to thorough audits and no major errors were found (Ex. No. 235). "Our data audits indicated that the cohort was 99.2% complete, and the accuracy of coding was 97.4%. As such, we did not feel that the data had any major obvious problems." Dr. Wong also commented (Ex. No. 235) that he disagreed with a contention that data collection in his study was unsupervised. He stated that many of the individuals at the companies responsible for data collection are professional epidemiologists and that the uniform task approach used in his study "provided a procedure for the industrial hygienists to consider carefully the exposure level associated with each particular task" (Ex. No. 151–A, p. 19).

OSHA concludes that the exposure data in the Wong study is quite good. It was gathered by expert industrial hygienists based on exposure data and evaluation. The protocol was approved by CMA.

At the hearing, Dr. Wong stated that his study should not be used for risk assessment because he did not believe it was precise enough to give exact results. OSHA concludes that the data are reasonable and sufficient for risk assessment purposes. Crump and Allen Crump believed that the data were appropriate for risk assessment purposes. The results are consistent with assessments from other studies. The dose-response relationship in the study is an additional reason to support its use for risk assessment purposes. The preciseness that Dr. Wong believes necessary would seldom if ever be available for human studies.

All of the major risk assessments based on epidemiologic data done prior to the OSHA hearing had made use of the NIOSH (Infante/Rinsky) or DOW studies. The Wong study was not available at the time these risk assessments were performed. The Crump and assessment was done later and they chose to include it. Only the risk assessment conducted for API by Chinchilli and Rodricks limited itself to using the NIOSH study.

There was some discussion during the rulemaking that Crump and Allen's risk assessment did not include data from the most recent updates of the NIOSH and Ott cohorts. API (Ex. No. 260, p. 9) in its post-hearing submission argued that the Rinsky and Ott studies have been updated and all risk assessments completed prior to the hearing such as the White, *et al.*, Crump and Allen and the EPA's Carcinogen Assessment Group's (CAG) assessments are in practical effect superseded. While the CAG risk assessment published in 1979 used data from the initial NIOSH benzene study by Infante published in 1977, both White *et al.* and Crump and Allen used more updated data from the NIOSH study. However, the updates did not change the results substantially, so OSHA concludes assessments based or the earlier results are not superseded.

The Bond update of the Ott study included 134 additional workers first exposed after 1973 and 228 who were first exposed after 1965. The results of the update indicated a 4-fold risk of myelogenous leukemia (based on 4 deaths) for a group exposed to average benzene concentrations of about 5 ppm. The earlier Ott study demonstrated a 3.75-fold increase in myelogenous leukemia (based on 3 cases) for a group exposed to an average benzene concentration of about 5 ppm. Thus, risk assessments based on this cohort at the two different periods of follow-up would not be substantially different regardless of whether a point estimate of the relative risk was used as done by White *et al.*, IARC or CAG or whether leukemia deaths were combined with the data of other studies as done by Crump and Allen.

The Rinsky 1986 update (Ex. No. 250 A) of the Rinsky 1981 report added 165 workers first exposed between 1960–65 and followed the entire cohort through 1981. He observed 9 leukemia deaths during the follow-up period. Crump and Allen used data for the cohort followed through 1978 and based their risk assessment on the inclusion of eight leukemia deaths. Thus, the slight difference in the observations over the two follow-up periods (1950–1978 by Crump and Allen versus 1950–1981 by Rinsky *et al.*) would not change the conclusions of the risk assessment based on follow-up of the entire cohort through 1978 as conducted by Crump and Allen.

OSHA prefers the Crump and Allen estimates based on the three studies as its best estimate of risk. See the discussion in the Summary of Risk Assessment and conclusions below.

Rinsky *et al.* (Ex. No. 250A) performed a risk assessment based on the data in their study. It was based on a matched case control analysis on a subset of the Pliofilm cohort. They matched 10 controls to each of the nine leukemia deaths that occurred through 1981 by year of birth and year first employed. This analysis was performed in order to evaluate the effects of various measures of benzene exposure and other potential confounders and effect modifiers on the relationship between benzene and leukemia. They performed a conditional logistic regression to examine the relationships between leukemia and benzene xposure, duration of exposure and average exposure rate.

This model gives an odds ratio of the form: $OR = \exp(B.X. + B_2 + \ldots B_nXn)$ where the X_i's are exposure variables, potential confounders, and/or effect modifiers, and the B_i's are parameters to be estimated from the data. In other words, we assume there is a linear relationship between the log odds and

the independent variable as expressed by the equation:

$\log (OR) = B.X. + B_2X_2 \ldots + B_nXn$.

Cumulative exposure expressed in ppm-years was reported to be the strongest predictor of death from leukemia with B=0.0126; 95% CI=0.0028-0.0244; (X^2=6.4; P=0.011). The P value indicates that the slope of the line, beta or B, was significantly different from zero. The results for duration of benzene exposure and average exposure in relation to relative odds of leukemia death were not provided in the report.

The equation established by Rinsky *et al.*, OR=exp (0.0126 ppm x years of benzene dose), predicted an odds ratio of 1.7 (C.I.=1.1 to 2.5) associated with 40 ppm-years of benzene exposure, i.e., 1 ppm for 40 years, and an odds ratio of 154 (CI=3.1 to 7785) associated with 400 ppm-years of exposure. The odds ratio associated with 1 ppm or 10 ppm exposure for 45 years (occupational lifetime) would be 1.76 and 290, respectively.

Based on these odds ratios, the relative risk of leukemia associated with 450 ppm-years of benzene exposure would be 290 times that of the general population. The relative risk of death from leukemia associated with 45 ppm-years of benzene exposure would be 1.7 times the general population. Rinsky *et al.* noted the large confidence interval surrounding their estimate of risk associated with the 450 ppm dose level and the narrower confidence interval surrounding the odds ratio at the 45 ppm dose level.

OSHA is of the opinion that NIOSH conducted a high quality epidemiologic study which has been used by numerous groups for quantitative risk assessment. To our knowledge, there has not been a quantitative risk assessment on benzene and leukemia which has not used the NIOSH study (Infante *et al.* 1977; Rinsky *et al.* 1981; Rinsky *et al.* 1986). Use of log-linear model which relates benzene dose to an exponential increase in the relative risk of death from leukemia also seems appropriate for testing hypotheses regarding associations between various explanatory variables and disease. In applying this method, Rinsky *et al.* found a highly significant relationship between cumulative benzene exposure and leukemia.

Chinchilli (Ex. No. 226–II) performed several additional risk assessments from the Rinsky *et al.* data set using the log-linear model. Chinchilli selected 10 controls for each of the nine leukemia deaths identified by Rinsky using three separate criteria for selection, resulting in three separate control sets. He also used the controls selected by Rinsky for comparative purposes (control set #1). Control set #2 was selected using Rinsky *et al.* criteria; control set #3 added criteria for inclusion of plant location in addition to date of birth and date of first employment; control set #4 used the criterion for date of last employment in addition to the three criteria used in control set #3. Chinchilli then used three separate exposure matrices. Exposure matrix #1 involved a slight modificaiton to the Rinsky exposure estimation; exposure matrix #2 was similar to the Crump and Allen exposure matrix; exposure matrix #3 involved the revised Crump and Allen exposure matrix in which some exposure estimates were downgraded. In 11 of 12 analyses, the beta coefficient was significant, indicating a positive, non-zero dose response "relationship between benzene exposure and the odds of dying from leukemia." Chinchilli noted that the beta parameter did not change very much with changes of exposure matrices (Ex. No. 226–II, p. 13).

The Chinchilli approach was to take the data supplied by NIOSH and make various alternative assumptions. This led to a wide range of estimates from higher than OSHA's preferred estimate to lower. The higher estimates were from 137–819 per 1000 at 10 ppm to 2–7 per 1000 at 1 ppm. The lower were 5–11 per 1000 at 10 ppm at 0.4–0.7 per 1000 at 1 ppm. The higher range estimates were similar to those preferred by NIOSH. Chinchilli, Rodricks, and Brett, and API preferred the lower range estimates. Chinchilli preferred results based on control sets #3 and #4. See Table E. Rodricks and Brett (Ex. No. 204–7) preferred the use of control set #3 as they felt that control set #4, which matched on date of last employment, was not most appropriate since it is an indicator of exposure. API preferred the Chinchilli analysis based on Control set #3 and Crump and Allen's exposure estimates (exposure matrix #2).

TABLE E.—SUMMARY OF CHINCHILLI ANALYSIS OF RINSKY ET AL. (1986) USING CONDITIONAL LOGISTIC REGRESSION AND ALTERNATE EXPOSURE ASSUMPTIONS AND CONTROL SETS

Exposure matrix	Control set	Excess leukemia deaths per 1,000 workers exposed to benzene	
		45 ppm-years	450 ppm-years
1	1	5.1 (0.8–11.7)	634 (16–986)
1	2	6.4 (1.2–14.7)	819 (26–991)
1	3	4.2 (1.0–8.7)	449 (21–953)
1	4	2.6 (0.6–5.1)	137 (8–638)
2	1	0.5 (0.1–1.0)	8 (1–20)

TABLE E.—SUMMARY OF CHINCHILLI ANALYSIS OF RINSKY ET AL. (1986) USING CONDITIONAL LOGISTIC REGRESSION AND ALTERNATE EXPOSURE ASSUMPTIONS AND CONTROL SETS—Continued

Exposure matrix	Control set	Excess leukemia deaths per 1,000 workers exposed to benzene	
		45 ppm-years	450 ppm-years
2	2	0.7 (0.1–1.3)	11 (1–31)
2	3	0.6 (0.1–1.0)	8 (1–20)
2	4	0.4 (0.0–0.8)	5 (0–15)
3	1	1.3 (0.3–2.3)	30 (4–106)
3	2	1.6 (0.3–3.1)	47 (4–218)
3	3	1.2 (0.3–2.3)	28 (3–103)
3	4	0.9 (0.1–1.7)	16 (1–56)

Source: Ex. No. 226–II, Table 2A.
Numbers in parenthesis are 95% confidence intervals.

API submitted a report after the hearing record closed dated January 16, 1987 related to additional benzene exposure among cohort members in the Rinsky study. It urged OSHA not to delay issuance of a final standard while API was continuing to evaluate the NIOSH cohort benzene exposures. Furthermore, the issue of additional benzene exposure to the NIOSH cohort has been dealt with at length above. After reviewing the API recent submission (Ex. No. 261), OSHA is of the opinion that it does not contribute sufficient additional data that would justify reopening the record or change the Agency's conclusion on leukemia risk related to benzene exposure. OSHA agrees with API that the final benzene standard should not be delayed.

3. Choice of Model

Both the NIOSH and Chinchilli risk assessment used a conditional logistic regression analysis (log linear model). EPA–CAG, IARC, White, *et al.* and Crump utilized a linear mode. OSHA believes the linear model is preferable for benzene. (See also the discussion in the introduction).

A conditional logistic regression analysis has several limitations when used to predict lifetime risk from given exposure patterns. The exponential form of the dose response relationship was originally selected as a mathematical convenience by Cox (1972) and others who developed the method of analysis. It was not developed as a dose response model for cancer risk assessment. When used for testing hypotheses, the exact form of the model is generally not critical. However, in risk assessment,

the form of the dose response model is of greater importance. Also, there were no comments presented during the rulemaking that would support a biological basis for assumption of a log-linear relationship.

The assumption of a log-linear relationship between dose and relative odds of developing leukemia will cause any variation in the estimate of dose to result in an exponential change in the associated risk. This has just been shown in the NIOSH and Chinchilli assessments where there is a broad range in the estimates of risk from the different assumptions Chinchilli made.

More importantly, there is more of a biological basis for using a linear model. In the experimental setting where dose can be controlled, several cancer sites from the NTP study and Maltoni study demonstrate a linear relationship between dose of benzene and incidence of tumors such as malignant lymphomas and mammary gland carcinomas. Several cytogenetic studies also demonstrated a linear relationship between dose of benzene and chromosomal effects. Toft *et al.* 1982 (Ex. No. 252 A–17–81), Tice *et al.* 1982 (Ex. No. 159–88) and one epidemiologic study (Picciano, 1980, Ex. No. 128–60) have demonstrated a linear dose-response between benzene exposure and increased frequencies of sister chromatid exchanges (SCE's), micronuclei in bone marrow erythroblasts, chromosomal breakage in circulating lymphocytes and inhibition of cellular proliferation and suggest that a linear model may have the most reasonable biological basis. In contrast, an exponential increase in chromosomal changes or in site-specific cancers with an increase in benzene dose does not seem to be supported in experimental animal studies.

A linear model has also given the best fit in occupational carcinogen risk assessments based on epidemiologic data presented to OSHA in other proceedings where more studies and data were available to evaluate the form of the dose response relationship. The use of linear models with epidemiologic data have best represented the dose response for arsenic and lung cancer and for asbestos and lung cancer. A linear model also demonstrates an adequate fit to the data as shown by Crump and Allen. Thus, for the reasons mentioned above, OSHA is of the opinion that the relationship between cumulative benzene exposure and leukemia is more apt to be linear than log-linear and hence prefers estimates based on a linear model.

4. Other Issues on Benzene Dose Response for Cancer

Rodricks and Brett (Ex. No. 204–7) also argued that the risks projected by the Rinsky *et al.* study may be overestimated because the exposure estimations for the study cohort members did not include any atmospheric or skin exposure to benzene that may have occurred during times of employment in non-Pliofilm jobs. This would be the case for those employed at location 2 more so than for those employed at location 1, since the former location had more opportunity for non-Pliofilm benzene exposure. For example, three of the individuals who died from leukemia at location 2 had jobs in either tire building operations or jobs with potential exposure to solvents outside of the Pliofilm operations. However, it is not known which types of solvents were being used by which of these workers at the time of their employment in these jobs, nor is it known what percent volume benzene may have been in those solvents that contained benzene.

Dr. Harris, who has conducted numerous studies in the rubber industry testified that he would be reluctant to compute airborne concentrations based upon solvent composition and that it is not possible to generalize the experience from pure benzene to solvents containing benzene (Tr., 3/19/86 pp. 128–31). He indicated a number of atmospheric conditions and properties of specific solvents which would need to be evaluated in order to determine whether such an estimate of airborne benzene concentrations could be considered. Such data have not been provided to the hearing record.

Mr. Wright, an industrial hygienist with the Steelworkers, argued that undocumented atmospheric and skin exposures to the Pliofilm cohort members that may have occurred prior to their employment in Pliofilm operations can only be considered speculation (Ex. No. 262). In response to a question by Mr. Sampson, Mr. Rinsky (Ex. No. 250) stated that he attempted to determine solvent exposures in non-Pliofilm jobs by interviewing people and searching Goodyear files and "found nothing reliable on which to base any estimates of exposure outside of Pliofilm."

OSHA is of the opinion that some members of the NIOSH Pliofilm cohort experienced some degree of benzene exposure through inhalation and dermal absorption, but that it is not possible to estimate in any reliable sense the amount of benzene to which these individuals may have been exposed. Furthermore, OSHA agrees with Dr. Crump (Tr., 3/18/86, pp. 130–131) who stated that an addition to the total cumulative benzene exposure of the cohort could result in either a greater or lesser carcinogenic potency even if mortality stayed the same. He further stated "it would depend on how the specific exposure is distributed in the population. I could see where it would go either way."

Rodricks and Brett (Ex. No. 247–F, p. 7) argued that if non-Pliofilm benzene exposure was randomly distributed in the cohort, the nature of the dose response relationship would change in that the absolute additional risk based on total benzene exposure (incorporating non-Pliofilm exposure) would decrease. They relied primarily on an additional analysis by Chinchilli as mentioned below for this opinion.

Chinchilli (Ex. No. 247–F) performed an additional analysis after the hearing in order to evaluate whether unaccounted for non-Pliofilm benzene exposure had any effect on the dose-response for benzene and leukemia if cases and controls received exactly the same amount of non-Pliofilm benzene exposure. Chinchilli used the case-control data set based on Rinsky matching criteria and exposure assessments (exposure matrix 1, control set 1 from Table 1 in Ex. No. 226–II). He then developed three new data sets by adding 100 ppm-years, 250 ppm-years and 500 ppm-years cumulative benzene exposure to the Rinsky data set. Chinchilli concluded that the slope parameter, beta, does not change when the additional exposure is added to the analysis, but that the background leukemia rate, Po, decreases with the net result being a decrease in additional leukemia risk from benzene exposure. In this analysis, Chinchilli used Po differently than he used it to estimate risk in his earlier submission (Ex. No. 226–II). In the earlier analysis, Po was the lifetime probability of leukemia mortality estimated independently of the Rinsky data by applying a lifetable analysis to current death rates from all causes and leukemia. If Chinchilli had been consistent and applied this approach in his latter analysis (Ex. No. 247–F), he would have applied the unchanged slope parameter to the unchanged Po, based on the U.S. general population, and concluded that the estimates of additional leukemia risk are unchanged as well by including the additional exposure. Furthermore, Chinchilli did not explain how the new estimates of Po in this supplemental submission (Ex. No. 247–F) were derived.

If the estimate was derived from the Rinsky study itself, it would generally be unstable and statistically uncertain. Second, and more important, we are interested in estimating risk to future worker populations, not the cohort studied by Rinsky and exposed in past years. Even if there was an estimated deficit in background leukemia deaths in the Rinsky study, there is no reason to expect a comparable deficit to occur in future exposed populations and consequently such a deficit (or excess) should not be used to estimate the leukemia risk to future populations. In OSHA's opinion, the best estimate of background leukemia risk (Po) of future workers is that derived from leukemia death rates in the general population as calculated by White *et al.* or Crump and Allen. Thus, contrary to Rodricks and Brett's opinion, the supplemental analysis by Chinchilli demonstrates that an increase in the same amount of non-Pliofilm benzene exposure to cases and controls in the Rinsky study does not change the estimates of additional leukemia risk.

Several arguments were made by industry consultants that non-Pliofilm benzene exposure to Rinsky cohort members was not accounted for and that the inclusion of such benzene exposures would result in a lower slope or beta coefficient to the dose response curve and result in a lower absolute risk of death from leukemia (Ex. N. 247–F. p. 9). However, an increase in the same moderate amount of benzene to each dose group will not change the estimates of additional risk because the slope of the dose response will remain the same.

Rodrick and Brett (Ex. No. 247–F, p. 9) conducted an analysis with the assumption that non-Pliofilm benzene exposure would add 100 ppm-years of benzene exposure to each of the four dose groups presented in Table 3 of the unrevised Rinsky *et al.* report dated August 9, 1985 (Ex. No. 176 A). In this report, Rinsky *et al.* presented data by four dose categories and corresponding SMR's: <40 ppm-yrs. SMR=105; 40–200 ppm-yrs, SMR=314; 200–400 ppm-yrs, SMR=1757 and greater than 400 ppm-yrs, SMR=4535. Rodricks and Brett then calculated excess risk of leukemia per 1000 workers for each of the four point estimates given above; they then added 100 ppm-years to each dose group and calculated new estimates of excess leukemia risk. The excess risk associated with 1 ppm for 45 years using the data reported by Rinsky *et al.* (Ex. No. 176 A) ranged from an equivalent of 0.8–28.4 per 1000 workers. After the addition of 100 ppm-years to each dose category listed above, the excess risk for 1 ppm exposure over 45 years ranges from 0.1–23.4 per 1000 workers. Therefore, the hypothetical addition of 100 ppm-years of benzene dose from non-Pliofilm jobs results in little change in the range of the absolute excess risk of leukemia as a result of 1 ppm exposure for a 45 year period.

A major problem with this analysis, however, is that the range of estimates was based on four separate data points independently and the use of each data point separately results in more uncertainty in the estimate of risk. Therefore, on the bases of the Chinchilli and Rodricks and Brett analyses, the random distribution of non-Pliofilm benzene exposure (or unaccounted for additional Pliofilm benzene exposure) to the cohort in the Rinsky *et al.* study would have relatively little effect on the estimate of risk.

Several witnesses at the hearing also expressed the view that additional benzene exposure to the cohort during non-Pliofilm operations was probably random and as such would have relatively little effect on the risk estimate.

NIOSH testified that it made all efforts reasonably possible to estimate the benzene exposure to the individuals comprising the Rinsky cohort. API has also made exhaustive efforts to modify the cohort's benzene exposure, requesting additional information on dermal exposure, engineering records, non-Pliofilm operation etc. from Goodyear Tire and Rubber Company where the NIOSH cohort members were employed. The Vice President of Goodyear responded that the records (30–40 years old) API requested do not exist and that the use of incomplete data based upon ancedotal information could lead to serious misinterpretation and would not significantly improve the various risk assessments already available (Ex. No. 247–D–35).

OSHA hired a contractor, Crump and Allen to independently estimate individual's benzene exposure in the Rinsky study. Most witnesses, including those from industry, thought Crump and Allen did a good job of estimating benzene exposure. Rodricks and Brett and Chinchilli relied on Crump and Allen's exposure estimates for their preferred analyses.

Whether the data indicate there were significant amounts of unreported exposures are not easily studied with the retrospective approach used by Chinchilli, because it relates to the estimate of the intercept, which a retrospective analysis does not directly provide. However, it can be studied using the prospective method of analysis employed by Crump and Allen. Additional unreported exposures that occurred more or less uniformly across the population would manifest themselves in estimates of the intercept from the risk analyses as being larger than 1, and/or in an excess (relative to the control population) of leukemias in the lower exposure groups. In fact, neither of these conditions occurred. Estimates of the intercept in the five analyses that used only the Rinsky data are 0.87, 0.82, 0.88 (Table 12, Ex. No. 152) 0.18 (Table 14) and 1.11 (Table 16). All but one of these estimates of intercept is less than one and the exception is from the analysis that was considered the least reliable, the "window" dose analysis (Ex. No. 152). Thus the Rinsky *et al.* data provide evidence against uniform exposures from other sources of a magnitude sufficient to affect leukemia rates in the study.

OSHA concludes that there was some additional exposure, but the data indicate that it did not make any substantial difference in the risk estimates. There was a clear dose response in the NIOSH study and internal analysis of the data show that any extra dose received by the cohort was not large enough to make a difference in the estimates.

API has stated that the assumptions used by OSHA and its contractor in developing quantitative cancer risk assessments for benzene overestimate the risk. OSHA disagrees. The risk assessment OSHA has relied upon for this final standard is derived from epidemiologic studies which relate relative risks for leukemia to cumulative dose of benzene exposure. The study cohorts were derived from a comparison of mortality among employed populations (except for the Wong study) to that of the general population which is comprised of less healthy individuals. Because the study results do not take into consideration this phenomenon known as the "healthy worker effect," the relative risks estimated in the epidemiologic studies probably underestimate the true risk of disease in the industrial cohorts. Likewise, the cohorts used for the quantitative risk assessments were comprised of workers who were employed for relatively short periods of time. If benzene acts as a promoter as well as an initiator of the carcinogenic process, the resulting risks would be underestimated.

The risk estimates OSHA relied upon calculated maximum likelihood estimates (MLE) as well as 95% confidence intervals on those estimates. OSHA did not select the upper 95% confidence interval as an estimate of

risk which would lead to higher estimates of risk. Furthermore, the risks from blood diseases other than leukemia were not counted in the quantitative risk assessment, deaths from multiple myeloma were not included despite epidemiologic evidence for an association with benzene exposure and "other diseases of the blood and blood-forming organs" were not included in OSHA's quantitative estimate of risk. These exclusions serve to underestimate the risk of disease related to benzene exposure.

Lastly, that OSHA used epidemiologic data instead of animal data to quantify the risk further supports the Agency's contention that risk assessment understates rather than overstates the risks. Studies of experimental animals exposed to benzene have demonstrated the induction of multiple solid tumors, yet OSHA did not use these data as part of its quantitative estimate of risks. OSHA used data for leukemia in humans only and did not include solid tumors in its estimate of cancer risk.

The API submitted a risk assessment performed by Chinchilli as a basis for its preferred estimate of cancer risk. Chinchilli used the NIOSH study only for estimating cancer risk. Rodricks and Brett preferred the exposure estimate of the NIOSH study by Crump and Allen to that done by Rinsky *et al.* but on the other hand, they preferred the log-linear model used by Rinsky of NIOSH to the linear model used by Crump. Thus, they picked and chose various aspects of a single study rather than selecting all of the best available data for risk assessment.

OSHA prefers the risk assessment methodology used by Crump and Allen for several reasons as discussed above. They combined data from three separate epidemiologic studies for their risk assessment and thus used all of the best available data to determine excess risk. They demonstrated that the data from all three studies fit a linear model well. Furthermore, the linear model projected excess leukemia risks that were more mid-point estimates as compared to the log-linear model when considering both the high and low ranges of cumulative dose. A linear relationship has been demonstrated between benzene and several site-specific tumors in animals and chromosomal alterations in animals. Thus, there appears to be biological plausibility for a linear relationship as well as a statistical plausibility.

5. Studies Showing Effects on DNA and Bone Marrow

Studies have demonstrated chromosomal abberrations in workers exposed to benzene levels that averaged below 10 ppm. Fredga *et al.* (1979, Ex. No. 128–57) have demonstrated a significant increase in chromosomal aberrations among industrial workers exposed for several hours a day to benzene levels ranging between 5 and 10 ppm as compared to expected values.

The results of the DOW Chemical Company study (Holder, 1978, Ex. No. 159–45) demonstrate a significant excess of chromosomal aberrations among the benzene exposed workers as compared to controls. Average benzene exposures of these workers were reported as being below 10 ppm. This study also demonstrates an exposure level-response for chromosomal breakage resulting from average bezene exposures below 10 ppm and perhaps below 1 ppm.

As mentioned earlier, there is expert scientific opinion that the induction of chromosomal aberrations serve to give an estimate of the magnitude of an exposure that could increase the risk of disease (Bloom *et al.* 1981). Thus, chromosomal aberrations have been demonstrated in experimental animals subjected to a single six-hour exposure of 1 ppm benzene. Chromosomal aberrations also have been demonstrated in workers exposed to average concentrations of benzene averaging between 1 ppm and 10 ppm. These toxic responses had previously been observed at higher experimental doses or among workers exposed to higher levels of benzene concentrations. There was little, if any, dispute to these findings during the proceeding. An issue was raised, however, regarding the meaning of chromosomal aberrations in relation to benzene induced leukemia.

The exact mechanistic interaction of benzene and/or its metabolite(s) with cellular DNA which eventually leads to human cancer is not known. Nor is it known for any carcinogen. However, there is a substantial body of evidence relating chromosomal aberrations (errors in chromosomal number or in breakage) to an increased risk of cancer. Some of this evidence was presented in the introduction of the reports that justified the chromosomal studies being conducted. In the past 10 years there has been a substantial amount of data that has identified very specific breaks in chromosomes that have been related to specific tumors and particularly to leukemia in humans. While OSHA is of the opinion that the exact mechanism by which benzene causes leukemia is not known, as with all carcinogens, it is highly likely that benzene's effect on the DNA that results in chromosomal aberrations is a part of the process related to the eventual development of cancer. Thus, the Agency views the observations of benzene induced chromosomal aberrations in experimental animals and humans as a significant finding in relation to the toxicity of benzene.

Thus, the risks estimated using quantitative risk assessment procedures are consistent with empirical evidence demonstrating the induction of chromosomal aberrations and leukemia as a result of benzene exposures below 10 ppm.

6. Summary of Risk Assessment and Conclusions

OSHA concludes that there are good studies available to be used for the basis of risk assessment. A number of reasonable risk assessments have been performed. OSHA prefers the Crump and Allen estimates based on the cumulative dose and relative risk model and the results from the three studies which provide a good basis for risk assessment because it makes use of the most data, uses the most biologically plausible model and is in the middle of other estimates.

This estimate for a working lifetime of exposure (45 years) to 10 ppm is 95 excess leukemia deaths per 1000 workers and to 1 ppm is 10 excess deaths per 1000 workers. OSHA has also used these estimates in quantifying the number of lives saved from leukemia.

The NIOSH study was carried out in a detailed and careful manner with virtually complete follow-up and excellent and extensive efforts were used to characterize dose. The clear dose response relationship further strengthens the results. The Ott study is smaller, but there are reasonably good exposure data and the study clearly demonstrates an excess risk at low dose with average exposures of approximately 5 ppm for the cohort.

The Wong study had very complete follow-up and careful ascertainment of death. OSHA believes the estimates of exposure are reasonable having been performed by knowledgeable plant industrial hygienists based on a protocol approved by CMA. There was also a clear dose response.

Most risk assessments used a linear model (IARC, EPA–CAG, Crump and Allen, White *et al.*) They made estimates sometimes using the studies together and other times using the studies independently. Various differing assumptions of exposure were made, but the range of estimates was narrow. From 50–150 excess leukemia deaths per 1000 exposed workers were estimated over a working lifetime at 10 ppm, and 5–15 excess deaths per 1000 were estimated at 1 ppm. This narrow range adds further confidence to OSHA's best

estimate. OSHA prefers the linear model with epidemiologic data to the log-linear model.

In previous OSHA proceedings where the cancer being evaluated was more common (lung cancer) and there were more studies available for the substances of concern (arsenic and asbestos), the linear model best described the shape of the dose response curve. OSHA preferred the Crump and Allen risk assessment because it was based on data from all three major epidemiologic studies that were of the highest quality. They also used a linear relative risk model that has been widely used and accepted for cancer risk assessment with epidemiologic data. The estimated risk was also in the middle of the other estimates made.

All parties were of the opinion that the Rinsky study is a well conducted study that is appropriate for use in determining risk. API also agreed that it is appropriate for use in quantitative risk assessment. API also preferred the Crump and Allen exposure assessment. Therefore, the selection of the Crump and Allen quantitative risk assessment includes the Rinsky study and the Crump and Allen exposure assessment. Even if OSHA had relied only on the Rinsky study with the Crump and Allen quantitative risk assessment, as shown in Table D, the excess risk of leukemia per 1000 workers over an occupational lifetime is 64 per 1000 at 10 ppm and 6 per 1000 at 1 ppm. This risk is not appreciably different than the risks projected using data from all three studies and it is OSHA's opinion that it is better to use all of the available good quality data for estimating risks. More confidence in the projected risks can be gained by evaluating estimates of risk using all of the high quality studies.

Several questions were raised about additional dose from skin absorption and several different assumptions were made about dose. But as discussed above, the additional dose from skin absorption could have led to either higher or lower estimates of risk. The analyses performed indicate that in any event, such additional exposures would not substantially alter the estimates.

OSHA preferred to rely upon risks projected from epidemiologic data rather than upon those derived from animal cancer studies. However, the animal cancer studies were of high quality and if high quality epidemiologic studies had not been available, OSHA would have relied upon the animal studies to estimate quantitative cancer risk to workers exposed to benzene. As pointed out by one witness for the API, it was very reassuring that so many different risk assessments all seem to come up with roughly the same number. He went on to explain that the average risk projected by EPA from several animal studies was virtually identical to the average risk EPA estimated from three epidemiological studies. Therefore, cancer risks based upon either epidemiologic studies or animal cancer studies would have been similar.

Finally, it is unusual to have observational data demonstrating a significant increase in cancer so close to a new permissible exposure limit being promulgated by OSHA. The study conducted by Dow Chemical Company has been accepted as a well conducted study and has been relied upon (as well as the NIOSH study) by numerous prestigeous groups and individuals for conducting quantitative cancer risk assessment. This study demonstrates a significant 4-fold increase in myelogenous leukemia for workers who had been exposed to average benzene concentrations of about 5 ppm for an average of about nine years. Furthermore, two out of the four individuals in the study who died from leukemia were characterized as having been exposed to average benzene levels below 2 ppm. The major epidemiologist representing CMA during these proceedings also interpreted the Dow study as providing the most convincing direct evidence for benzene causing leukemia as a result of exposures below 10 ppm (Ex. No. 201–33, p. 22).

Likewise, cytogenetic studies have demonstrated chromosomal damage among workers exposed to benzene below 10 ppm and in animals exposed to 1 ppm for a single 6-hour period. Thus, OSHA concludes that a significant risk of cancer is associated with a 10 ppm exposure limit and that this risk can be significantly reduced through the promulgation of a 1 ppm average PEL and a 5 ppm short-term exposure limit along with other provisions of the standard.

VII. Significance of Risk

OSHA follows the direction of the Supreme Court in the Benzene decision (*Industrial Union Dept., AFL–CIO v. American Petroleum Inst.*, 448 U.S. (1980)) and its statute in deciding whether to issue a new or revised standard. In regulating toxic materials, OSHA must make a determination that a "significant" health risk exists and that the new or revised standard will substantially reduce or eliminate that risk.

In the Benzene decision, the Supreme Court indicated when a reasonable person might consider the risk significant and take steps to decrease it. The Court stated:

> It is the Agency's responsibility to determine in the first instance what it considers to be a "significant" risk. Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it. (*I.U.D.* v. *A.P.I.*, 448 U.S. at 655).

The Court stated that "while the Agency must support its findings that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is 'significant' will be based largely on policy considerations." The Court added that the significant risk determination required by the OSH Act is "not a mathematical straightjacket," and that "OSHA is not required to support its findings with anything approaching scientific certainty." The Court ruled that "a reviewing court (is) to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge (and that * * * the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection rather than underprotection" (448 U.S. at 655, 656).

As part of the overall significant risk determination, OSHA considers a number of factors. These include the type of the risk presented, the quality of the underlying data, the reasonableness of the risk assessments, the statistical significance of the findings and the significance of risk (See, for example, Arsenic, 48 FR 1864, January 14, 1983).

Benzene exposure causes a number of serious health risks. As discussed in section V–A benzene exposure is a cause of leukemia. Adult leukemia has a poor, survival rate (unlike childhood leukemia), and a shorter latency period than many types of cancer. It clearly is a fatal disease. Findings also indicate that benzene is assocated with multiple myeloma (plasma cell cancer of the bone marrow) and lymphatic cancers.

Benzene exposure is also known to cause aplastic anemia. This disease of the bone marrow reduces the body's oxygen transportation abilities, resistance to infection and clotting abilities. It can lead to death and often cannot be effectively treated. Even in those instances where the condition is

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responsive to therapy and the patient survives, the individual cellular elements of the blood rarely return to normal levels.

Benzene exposure is also associated with other forms of toxicity to the bone marrow. These conditions are serious, but often treatable and reversible if caught in their early stages.

As discussed in the health effects section, benzene exposure is also clearly associated with chromosomal damage. While such findings do not provide direct evidence for a genetic or carcinogenic effect, they do constitute indirect evidence for cancer because cellular DNA is being adversely affected.

Clearly both cancer, predominantly leukemia, and aplastic anemia are risks of the most serious and often fatal kind. The other disease risks are also serious, though not usually fatal. Although this significant risk discussion concentrates on the leukemia risk, and concludes that that risk alone is significant, the other risks, though not as readily quantifiable, add to the significance of the risk presented.

The underlying epidemiologic studies which provide a basis for the quantification of risk are in general of reasonable to high quality, clearly demonstrate a relationship between benzene exposure and leukemia, and provide a basis for risk assessment. There is a reasonable basis for determining the exposed population and excluding other agents. In the Rinsky, Ott and Wong studies there is excellent follow up. Follow up is not as extensive in the Askoy and Vigliani studies, but the methodology would tend to underestimate disease incidence. The Wong and Ott studies provide a reasonable basis for estimating dose with some contemporaneous exposure measurements and expert evaluations. The estimates of dose in some of the studies approach the level which currently exposed workers would experience over an occupational lifetime.

Subsequent to the proposal, the Rinsky 1986 study was completed. This study including a detailed evalution of contemporaneous exposure data and an assignment of cumulative exposure for each worker. All or virtually all participants in the rulemaking including API agreed it was an excellent evaluation of dose while the workers were at Pliofilm, far better than most retrospective epidemiology studies.

In addition, 2 of the studies, Wong, 1983 and Rinsky, 1986 demonstrated a clear dose response relationship, that is, higher exposures lead to higher risks of cancer. This strengthens the already high degree of confidence in utilizing the studies for risk assessment. In addition they are direct evidence that lowering exposure leads to substantial reduction in risk.

The studies which OSHA principally relies were statistically significant. The dose response relationship in Rinsky, 1986, and Wong, 1983, is statistically significant.

The International Agency for Research on Cancer and the Carcinogen Assessment Group of the Environmental Protection Agency concluded that the data available prior to the completion of Wong study and Rinsky, 1986 update were sufficient to perform risk assessments on the relationship between benzene exposure and leukemia.

OSHA concludes that the underlying epidemiologic studies provide a strong basis for risk assessment. There are several high quality epidemiologic studies with excellent follow-up and good to excellent exposure data. Two studies provide direct evidence of clear dose response. As discussed above the estimates of risk from the studies separately and taken together provide relatively close and consistent estimates of risk. A number of experts such as Dr. Crump agree that they provide a sound basis for risk assessment. (See also the extended discussion in the risk assessment section).

Since 1978, three major studies of high quality in experimental animals have confirmed the carcinogenicity of benzene. As discussed above, the National Toxicology Program (NTP) has demonstrated statistically significant, dose-dependent increases in cancers of multiple sites for both sexes of two species using its standard protocol. A minimum of nine tumor types or sites have been induced in mice and rats by benzene in the NTP study. Maltoni also demonstrated the induction of cancer in rats exposed to benzene through both inhalation and oral gavage as discussed above.

The animal data by themselves would provide a good basis for risk assessment. A number of the tumor sites demonstration clear dose-response down to the lowest level test. There was excess cancer incidence down to an equivalent of 20 ppm inhalation, the lowest exposure level tested in the NTP study.

Section VI, immediately above, discusses at length the risk assessments performed for benzene, the basis for those assessments and criticism of those assessments.

As analyzed above, a number of authoritative organizations and distinguished scientists have performed risk assessments on benzene. For example the Environmental Protection Agency-Carcinogen Assessment Group estimated, adjusted to occupational exposures for a working lifetime, that benzene presents a risk of 34 excess leukemia deaths per 1000 workers exposed to 10 ppm and 3.4 per 1000 at 1 ppm. The International Agency for Research on Cancer's assessment, based on the Rinsky, 1981 study, converted to occupational lifetime exposure, shows an excess risk of 14–140 per 1000 at 10 ppm and 1.4 per 1000 at 1 ppm.

(The estimates presented are based on a working lifetime of exposure of 40 to 45 years during working hours. Many employees in the chemical, petrochemical and refinery industries do spend a substantial part of their working lifetime in the industry. Section 6(b)(5) of the OSHA their act states that OSHA health standards, should create a situation such "that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.")

The White, et al. risk assessment estimated excess leukemia risk of 44–156 per 1000 at 10 ppm and 5–16 per 1000 at 1 ppm. This study has been extensively reviewed and the comments responded to as discussed above.

Crump and Allen performed risk assessments using data from the three major epidemiologic studies that evaluated benzene and leukemia. In one analysis, they combined the results of the Ott, Wong and Rinsky studies. This analysis utilized the most detailed exposure data available for the Rinsky and Ott, studies. That assessment indicated an excess risk per 1000 exposed workers of 95 leukemia deaths at 10 ppm and 10 at 1 ppm. The confidence intervals were also computed and are quite narrow. There is 95% confidence that the risk is between 37 and 186 per 1000 at 10 ppm and between 4 and 22 per 1000 at 1 ppm.

NIOSH and the American Petroleum Institute presented assessments utilizing the log-linear model. This model is more commonly used for measuring the effects of various confounding variables on dose response then for cancer risk assessment. It has an exponential term that can result in very large changes in risk over small changes in exposure. The NIOSH estimate of risk converted to the method of presentation used here as 634 at 10 ppm and 5 at 1 ppm.

The API presented an assessment by Chinchilli as analyzed by Rodricks and Brett. Their preferred estimate based on the Rinsky study, the log-linear model,

the initial Crump exposure assessment and various adjustments is 8 excess leukemia deaths per 1000 at 10 ppm and 0.6 at 1 ppm. However, they argued the risk will probably be lower because they believe exposures in the Rinsky study might have been higher then the estimates.

Several risk assessment based on animal data have been performed. EPA–CAG estimated 30 excess human deaths per 1000 exposed workers at 10 ppm and 3 at 1 ppm based on Zymbal gland carcinoma in female rats. This estimate is virtually identical to the risk CAG projected based upon epidemiologic data. Crump, estimated 20 and 2 based on all squamous cell carcinomas in male mice. Hooper estimated 79 and 8 based on mammary carcinoma in female rats. Hooper converted animal exposure to human exposure based on adjustment for surface area differences between animals and humans while Crump made the adjustment based on body weight differences. Both are accepted techniques.

OSHA concludes that it is more appropriate to utilize the human data for significant risk analysis since it avoids the need to convert animal results to human risk. Most participants in the proceeding recommended this approach. However, the animal data are strong and allow for better control of dose than epidemiologic studies. The animal estimates are consistent with the human estimates and would be a strong basis for risk assessment if good human data were not available.

OSHA concludes that the Crump and Allen estimates based on the three epidemiologic studies is its perferred maximum likelihood estimate. That estimate is based on the most data of any risk assessment. Because of possible unique factors at one location or mistakes in estimation of exposure or relative risk, consistent results from several good studies add to the confidence in the estimate of risk. Crump and Allen made use of the most extensive exposure data with an approach preferred by API. They also used a model for epidemiologic data which is widely accepted for cancer risk assessment purposes and the data fit the model acceptably. The model is also supported by biologic data which is discussed extensively above. A number of the chromosomal and blood element responses to benzene in both humans and animals are clearly linear. In addition, it is an estimated broadly in the middle range of other reasonable estimates presented.

The Crump and Allen assessment projects the risk as 95 excess leukemia death per 1000 exposed employees for a working lifetime of exposure to 10 ppm benzene and 10 excess deaths per 1000 at 1 ppm. The other reasonable estimates projected risks ranging from 8–634 per 1000 ppm and from 0.6 to 16 per 1000 at 1 ppm (The NIOSH estimate at 634 per 1000 is substantially higher than the next highest of 156 per 1000 at 10 ppm). These are maximum likelihood estimates not upper confidence bounds.

OSHA's best estimate of risk is approximately in the mid point of its best estimates at time of the proposal (44–152 per 1000 at 10 ppm). Subsequent to the proposal OSHA has had the benefit of additional data and time to analyze the Wong data and exposure analysis by Crump and Allen. The new best estimate takes all this evaluation into account. The Crump and Allen estimates incorporate modifications to the NIOSH exposure estimates which API recommended.

The American Petroleum Institute preferred the Chinchilli-Rodricks-Brett analysis of 8 at 10 ppm and 0.6 at 1 ppm. This is a reasonable estimate, but OSHA feels not as well supported. It uses a model that was not developed for cancer risk assessment. It does not make use of the data from several well conducted epidemiology studies which provide a reasonable basis for risk assessment. It is at the low range of a series of estimates made by experts and expert organizations.

OSHA has followed a consistent approach to significant risk analysis since 1982 when it first put into practice the directions of the Supreme Court in *IUD* v. *API*, the benzene decision. The approach has been used for the arsenic (48 FR 1869; Jan. 14, 1983) and ETO (49 FR 25734; 1984) final standards which have been upheld by 2 Courts of Appeal (ASARCO v. OSHA, 746 F.2d 483 (9th Cir. 1984)) and Public Citizen v. Tyson, 796 F.2d 1479 (D.C. Cir. 1986), the asbestos final (51 FR 22612; June 20, 1986) and the benzene, EDB and formaldahyde proposals.

OSHA pointed out that guidance for the Agency in evaluating significant risk is provided by an examination of occupational risk rates and legislative intent. For example, in the high risk occupations of fire fighting, and mining and quarrying the average risk of death from all causes of occupational injury or an acute occupationally related illness from a lifetime of employment (45 years) is 27.45 and 20.16 per 1,000 employees respectively. Typical occupational risk of death in occupations of average risk are 2.7 per 1,000 for all manufacturing and 1.62 per 1,000 for all service employment. Typical lifetime occupational risks of death in occupations of relatively low risk are 0.48 per 1,000 in electric equipment and 0.07 per 1,000 in retail clothing. These rates are derived from 1979 and 1980 Bureau of Labor Statistics data from employers with 11 or more employees adjusted to 45 years of employment for 46 weeks per year.

There are relatively few data on risk rates for occupational cancer as distinguished from occupational injury and acute illness. The estimated cancer fatality rate from the maximum permissible occupational exposure to ionizing radiation is 17 to 29 per 1,000 exposed employees. (47 years at 5 rems; Committee on the Biological Effects of Ionizing Radiation (BEIR) III predictions.) However most radiation standards require that exposure limits be reduced to the lowest level reasonably achievable below the exposure limit (the ALARA principle). Approximately 95% of radiation workers have exposures less than one-tenth the maximum permitted level. This risk at one-tenth the permitted level is 1.7 to 2.9 per 1,000 exposed employees.

OSHA pointed out in the benzene proposal that the fatality risk associated with 10 ppm benzene was similar to the risk OSHA found significant at the old exposure limit in arsenic of 148–425 per 1000 (48 FR 1864, 1896; Jan. 14, 1983), ETO of 69–109 per 1000 (49 FR 25734, June 22, 1984) and EDB of 70–110 per 1000 (48 FR 45975; Oct. 7, 1983). In addition in the recent asbestos final standard, OSHA found a risk of 64 per 1000 at the old exposure limit significant (Supra). OSHA stated in those standards and in the benzene proposal,

> Congress passed the Occupational Safety and Health Act of 1970 because of a determination that occupational safety and health risks were too high. Based on this it is clear that Congress gave OSHA authority to reduce risks of average or above average magnitude when feasible. Further the Supreme Court stated that "if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal a reasonable person might well take the appropriate steps to decrease or eliminate it (50 FR 50539).

Dr. Rodricks (testifying at the request of API) suggested that "lifetime risks (of death) in the range of 0.1, maybe even up to 3 per 1000, would likely be considered insignificant by most people." (Tr., 3/21/86, p. 29). As just stated OSHA believes Congress intended to reduce risks of average magnitude and the Supreme Court indicated a reasonable person might well take steps to reduce a risk of 1 per 1000. In addition, the benzene risk is an additive risk: it is in addition to the other risks from accidents, etc. that

benzene exposed workers face. The national risk figures are totals of all risks. OSHA continues to conclude that it's analysis is the better policy.

Within this context OSHA's final conclusion (as was the preliminary conclusion) is that significant risk exists at the 10 ppm level. Based on the best supported estimates of 95 excess deaths per 1000, the risk is clearly greater than the risks in riskiest occupations or the risk of one in 1000 the Supreme Court found a reasonable person might find significant.

The lowest estimate presented was 8 per 1000 at 10 ppm. That is greater than the risks of average occupations and greater than the risk the Supreme Court indicates a reasonable person might choose to reduce. Therefore even based on this estimate, OSHA would, as it also stated in its proposal, determine that the risk was significant. No major party challenged OSHA's decision to reduce exposures from 10 ppm.

OSHA also concludes that the new benzene standard will result in a substantial reduction in significant risk. All the risk assessments indicate that the reduction of risk will be at least 90 percent. In addition several of the human (Rinsky, Wong) and animal (NTP) studies conclusively demonstrate that lowering exposures substantially lowers risk. A 90 percent reduction of risk is clearly substantial.

Based on OSHA's preferred estimates of risk, the final standard would result in 85 fewer leukemia deaths per 1000 workers exposed at the current 10 ppm level for a working lifetime. Based on OSHA's current estimate of exposures, the final standard would save a minimum of 230 leukemia deaths over a working lifetime (45 year period). Using the API preferred estimate, the lowest estimate of risk reduction, the standard would result in 7.4 fewer leukemia deaths per 1000.

OSHA would find a substantial reduction in significant risk at 1 ppm based on the reduction in leukemia rates alone. However, OSHA concludes that there will also be substantial additional benefits. OSHA's best estimate is that there will be a reduction in 92 deaths from aplastic anemia and other diseases of the blood and blood-forming organs over the period and perhaps more as they may be eliminated as an occupational disease. There will also be a reduction in multiple myeloma. Similarly there will be reductions in pancytopenias and other blood diseases and in damage to the genetic material. These may be possibly eliminated as occupationally caused diseases in conjunction with the medical surveillance provisions. Medical surveillance will detect early some of the blood changes which are indicative of bone marrow toxicity. Treatment or removal may prevent those diseases from developing further or lead to their cure. Aplastic anemia and most other blood diseases related to benzene exposure (except acute adult leukemia) are treatable.

The remaining risk predicted by the Crump and Allen assessment at 1 ppm is 10 per 1000. This estimate does not take into account the benefits of medical surveillance and the industrial hygiene provisions of the standard or that the employers will lower exposures below a long term averages of 1 ppm, or where feasible below the action level, to have confidence they are not going above the PEL or where feasible above the action level.

As stated in the proposal, the Crump and Allen predicted level of risk at 1 is such that "OSHA would, if it were feasible, seek to reduce the level of risk estimated at 1 ppm by the risk assessment. "(Benzene proposal, 50 FR 50539). OSHA reached similar conclusions in the Arsenic, ETO and Asbestos final standards. It is above average levels of risk in industry and above the level of risk the Supreme Court indicated a reasonable person might decide to reduce. OSHA concludes that the final standard is carrying out congressional intent within the limits of feasibility and does not attempt to reduce insignificant risks.

However, as just stated the real reduction in risk is greater than the risk assessment estimates demonstrate and the remaining risk will be less than the risk assessment number indicates. They do not take into account the benefits of medical surveillance and the industrial hygiene provisions. Many employers where feasible will reduce exposures below the action level to avoid the expense of the monitoring and medical provisions. Employees exposed between the action level and PEL will have the benefits of those provisions. In both cases employers will achieve average exposures below the action level or PEL in order to take into account a normal degree of variability and have a reasonable degree of confidence they are achieving the level consistently.

Therefore, OSHA concludes that the final standard is protective of workers and as stated in the proposal "that employers who fulfill the provisions of the standard will be taking reasonable steps to protect their employees from the hazards of benzene. Indeed many employers have already reduced exposure of employees to below those of the proposed standard." (50 FR 50539)

The API (and several employers) though not dissenting from a 1 ppm level, have contended that OSHA must adopt the Rodricks and Brett analysis of the Chinchilli risk assessment (RBC analysis). They contend that OSHA must then find that 1 ppm has eliminated all significant risk.

API stated:

> It would not oppose a reduction in the PEL to a level as low as 1 ppm so long as two crucial conditions are met. "First, * * * a finding that workplaces in compliance with a 1 ppm PEL, and with appropriate ancillary requirements, will fully protect workers from significant risk * * *.
>
> *Second,* the ancillary requirements of the new standard must be practical and justified by a clear hygiene necessity. Although most of the provisions OSHA proposed meet the test, several do not. (Ex. No. 260, pp. 2–3).

As discussed in the risk assessment section, OSHA agrees the RBC analysis is reasonable. However, OSHA's best estimate is the Crump and Allen analysis for the reasons stated. Even the RBC 0.6 per 1000 estimate at 1 ppm is not very much lower than the level the Supreme Court stated a reasonable person might take action to reduce.

However, as a comparison between the API quotes and the OSHA conclusion demonstrate, the disagreement is not dramatically broad. All agree that the standard is more than an exposure limit. It also is a carefully worked out set of medical and industrial hygiene provisions. All agree that these provisions will reduce risk to a greater degree than the risk assessments predict: In addition, virtually all employers keep long term average exposures under the PEL by a margin and where feasible under the action level with a margin.

Those factors assure OSHA that there will be a substantially greater reduction in risk than the risk assessments estimate and will provide protection to benzene exposed workers. Employers who carry out the provisions of the standard conscientiously may have confidence they are protecting their employees and employees working for such employers can feel confident that they are receiving substantial protection.

VIII. Summary of the Regulatory Impact and Regulatory Flexibility Analysis, Feasibility Analysis, and Environmental Impact Assessment

A. Introduction

Executive Order 12291 (46 FR 13197, Feb. 19, 1981) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual

industries, geographical regions, or levels of government. Similarly, the Regulatory Flexibility Act (5 U.S.C. Subsection 601 et seq.) requires the Occupational Safety and Health Administration (OSHA) to consider the impact of the regulation on small entities.

Consistent with these requirements, OSHA has prepared a Regulatory Impact and Regulatory Flexibility Analysis for the benzene standard. This analysis describes the industries affected by the standard, some of the potential benefits that will accrue to employees exposed to benzene at their places of work and the costs of compliance with the standard.

The OSHA Act requires OSHA to demonstrate the technological and economic feasibility of the provision. This Section demonstrates that the final standard is feasible.

B. Industry and Exposure Profiles

Benzene is produced primarily by the petrochemical and petroleum refining industries by a process called catalytic reformation, which converts certain lower octane aliphatic hydrocarbons into higher octane aromatic hydrocarbons. These two industries are responsible for 98 percent of the total U.S. production of benzene. Recovery through catalytic reformation, including the benzene formed from the dealkylation of toluene, accounts for approximately 75 percent of the total quantity of benzene produced. Recovery through coal-derived benzene, primarily as a by-product of the coking process in steel mills was once a major source of benzene. Now it accounts for only 2 percent of the total United States production.

Industries Covered in the Preliminary Analysis

OSHA estimates that approximately 240,000 workers are exposed to benzene in seven major industry sectors that are under the Agency's jurisdiction. These sectors include the benzene producers (i.e., petrochemicals, petroleum refining, and coke and coal chemical manufacturing), the rubber tire manufacturing industry, and firms engaged in the bulk storage and transportation of benzene and petroleum products containing benzene.

In three industry sectors—petrochemicals, petroleum refineries, and coke and coal chemicals—the manufacturing processes likely to contribute to benzene exposures are either highly automated or are performed infrequently. Exposed employees are generally the unit operators, tankcar loaders and unloaders, laboratory technicians, and maintenance personnel.

In the manufacture of rubber tires, benzene exposures occur as a result of the use of benzene-contaminated solvents. Exposed employees include process operators, workers responsible for the storing, mixing, loading, and unloading of solvents, as well as laboratory technicians and maintenance personnel. Supervisory personnel may also be exposed to solvents containing benzene.

In three other industry sectors—bulk terminals (large wholesale storage facilities supplied by pipelines or barges), bulk plants (small wholesale storage facilities supplied by truck), and transportation—the exposed employee population consists primarily of those who load and unload benzene and material containing benzene. Employee exposures reach peak levels while these materials are being transferred; however, transfer operations may not occur daily.

OSHA believes that the exposure profile presented in Table A is representative of the industries analyzed. The data sources used to estimate the population at risk for each of these industry sectors are discussed in Chapter II of the Regulatory Impact Analysis.

TABLE A.—NUMBER OF EMPLOYEES EXPOSED TO BENZENE AND CURRENT EXPOSURE LEVELS (BY INDUSTRY DIVISIONS)

Industry sector	Percent of observations in each exposure category 8-hour time weighted average (TWA) benzene concentrations (ppm)						Total number of employees
	0.0–0.1	0.11–0.5	0.51–1.0	1.1–5.0	5.1–10	10+	
Petrochemical plants [a]		74.6		23.0	2.4	0.0	4,300
Petroleum refineries [b, c]	64.6	26.1	4.6	3.8	0.5	0.4	47,547
Coke and coal chemicals [d]	0.0	39.3	27.6	27.5	4.4	1.3	[e] 947
Tire manufacturers [f]	53.4	37.5	6.3	2.8	0.0	0.0	65,000
Bulk terminals [b]	57.8	32.8	5.3	3.7	0.3	0.1	27,095
Bulk plants [b]	57.8	32.8	5.3	3.7	0.3	0.1	45,323
Transportation via tank truck [b]	68.4	23.1	5.3	2.9	0.1	0.2	47,600
Total							237,812

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.
[a] Percentages represent the portion of workers whose average exposures are in each category. Data obtained from Ex. No. 242.
[b] Percentages represent the portion of sampling results in each exposure category. Data obtained from Ex. No. 159–67.
[c] Data do not reflect respirator use and sampling biases. (See Ex. No. 204–7).
[d] Percentages represent the portion of workers whose average exposures are in each category. Data obtained from Ex. No. 153.
[e] Excludes workers employed at the coke ovens.
[f] Percentages represent the portion of sampling results in each exposure category. Data obtained from Ex. No. 153.

Table A does not include workers employed by firms that are either covered by the exclusions (see the discussion of the exclusions under the scope section) or that are under the jurisdiction of other regulatory agencies. Additionally, the profile does not include workers employed in the miscellaneous industries that use products containing small quantities of benzene and tank maintenance firms because exposure data for these industries were not available.

OSHA believes that the firms that use solvents contaminated with benzene will be able to switch to solvents with very low concentrations of benzene. As these solvents are excluded from the scope of the proposed standard, this approach will provide the most cost-effective means of complying with the proposed standard. Tank maintenance firms have the problems of flammability and asphyxiation to contend with, which are general to most petroleum products in confined spaces. This standard does not specifically address

these problems. Those firms have not made comments in the rulemaking. OSHA believes the efforts to control flammability and asphyxiation will handle benzene inhalation problems.

Industries Not Covered in the Preliminary Study

OSHA based much of its preliminary analysis on a study conducted by JRB Associates in 1984 [Ex No. 153]. JRB identified seven major industry sectors in which employees have significant benzene exposures. The 1985 OSHA proposal, therefore, also focused on these industries. In response to the proposal, two additional sectors were identified as a source of significant benzene exposures, namely indoor dispensing of motor fuels and the cleaning and repairing of barges. These sectors are discussed in the following paragraphs.

Indoor Dispensing of Motor Fuel

OSHA proposed to exempt the retail sale of motor fuels based upon data that indicate exposures are well below the proposed level of 0.5 ppm (Ex. No. 200, p 50548; H–059, Ex. No. 93A). Dr. Franklin Mirer of the United Auto Workers (UAW) pointed out that indoor dispensing of gas could lead to higher exposures (Tr., 3/25/86, pp. 10–11).

OSHA agrees with the UAW that samples taken for outdoor operations should not be used to exclude indoor operations, since the possibility of higher exposures exists during indoor operations. See the discussion under Scope and Application. Thus, the indoor dispensing of gasoline is not excluded from the scope of the final benzene standard.

The Agency believes that the revision will have an insignificant impact on indoor gasoline dispensing operations. Most sites already provide adequate ventilation in order to avoid hazards such as carbon monoxide poisoning. Thus, in most cases initial monitoring will only be required in order to show that exposures are below the 0.5 ppm action level. According to JRB [Ex. No. 153], the cost of this monitoring is $62.40 per sample. So the cost of monitoring will be under $200 even for a site that runs three shifts. Where the present level of ventilation is not sufficient, employers will have at least two options to lower exposures. First, they may choose to increase the ventilation. (This is clearly feasible as is demonstrated in JRB analysis of the tire industry [Ex. No. 153, chapter 4]. Second, employers may choose to contain the benzene emissions by installing Stage II vapor recovery systems. This equipment is readily available and is currently required in many air quality control regions in order to meet the requirements of the Clean Air Act.

Shipyard Barge Cleaning and Repairing

Although OSHA did not specifically study ship or barge repair for the proposal, the Agency did request comments on this issue.

The repair of tankers may lead to high levels of benzene exposure often in confined spaces. Control is possible through tank flushing or via the use of supplied air respirators. Consequently, it is proposed to cover ship repairing. In other types of ship repair, there will be little impact, as compliance can be achieved through utilizing solvents with low benzene contamination. Comments are requested on this issue [Ex. No. 200, p. 50562].

In response to the request, OSHA received comments from two sources, the American Institute of Marine Shipping (AIMS) and the American Waterways Shipyard Conference (AWSC).

According to Joseph Cox of the AIMS.

With respect to inclusion of this proposal into part 1915, ship repairing, I suggest this be separated from this proposal and given more study for a number of reasons. In the preamble, OSHA states that control is possible through tank flushing or use of air supplied respirators and this is presumably the rationale for evaluating the standard as feasible in the ship repairing industry. In response to questioning on Monday, OSHA stated these control techniques are in use on shoreside tanks and this led to the determination that the same techniques could be or are presently applied to ships and barges. I respectfully disagree with this determination of feasibility in ship repairing and believe such determination is flawed since the experience with these control techniques is not transferrable to vessels. Ships and barges have complex internal structures. Shore tanks are relatively smooth compared with a vessels which has longitudinal and transverse internals necessary for strength. These separations within a vessel can be I-beam structural members or steel bulkheads that form complete separations from tank top to overhead. The suction points within tanks can be situated to discharge as much cargo or wash water as possible although substantial amounts can remain, or the trim of the vessel can leave substantial amounts of residue in a tank. Also for strength purposes, access to spaces aboard ship may be limited. Many access holes to spaces are just large enough to admit a person.

Tank washing aboard ship is performed for cleaning purposes to allow for carriage of the next cargo with acceptable contamination levels. It is not designed to clean a tank for personnel entry without extensive testing and continued monitoring by a trained professional [Ex. No. 219, pp. 2–3].

Neal Platzer of the AWSC also contended that it may not be feasible to clean to levels below 1 ppm benzene.

One extreme difficultry for cleaning facilities in complying with the proposal is the amount of benzene located in the rust of the steel tank barge. This residual benzene can regenerate as the heat from the day increases causing the concentration of benzene inside the tank to fluctuate wildly. Some 90 percent of the barge cleaning facilities are located in warm, humid areas [Tr., 3/21/86, pp. 109–110].

For these and other reasons, the ASWC formally requested that OSHA conduct a feasibility and regulatory flexibility analysis of the barge cleaning and repair industry. OSHA has concluded that it is appropriate to further study this sector and has contracted with Meridian Research to collect the relevant information. OSHA, therefore, intends to cover the barge cleaning and repair industry in a separate proceeding as is discussed elsewhere in this preamble and in the interim is exempting them from several of the major provisions of this standard.

C. Benefits Analysis

Benzene exposure causes a number of serious health risks, including leukemia, the most extensively studied. Adult leukemia has a low survival rate (unlike childhood leukemia), and a shorter latency period than many types of cancer. It clearly is a very serious disease. Findings also suggest that benzene is associated with multiple myeloma (cancer of the bone marrow) and lymphatic cancers. Benzene exposure is also associated with several blood diseases including aplastic anemia (often fatal), pancytopenia and others.

OSHA's estimate of risk of death from leukemia resulting from a working lifetime exposure to benzene at 10 ppm is 95 cases per 1000 exposed employees. The new standard will result in a reduction of at least 85 excess leukemia deaths per 1000 employees exposed at the current 10 ppm level, a 90 percent reduction. This is a substantial reduction in significant risk as discussed in the significant risk section. The actual reduction is likely to be greater. As a result of the action level, many employers may be motivated to reduce exposure where feasible below 0.5 ppm to reduce their industrial hygiene costs and the industrial hygiene and medical surveillance provisions will also further reduce risk. In addition, the lowering of exposure is likely to reduce the incidence of, if not eliminate, other sometimes fatal diseases of the blood

and blood-forming organs, such as aplastic anemia.

Other benefits which are likely to occur but cannot be as well quantified include:

—Leukemia cases that may not occur as a result of progression from nonmalignant blood disorders because of medical removal.

—Reduction in the number of other hemolymphopoietic cancers in the exposed population.

—Reduction in the number of chromosomal changes in the exposed populations.

—Reduction in the number of benzene-induced cases of leukemia and malignant and non-malignant blood disorders caused by percutaneous absorption of benzene.

Based on the quantitative risk assessment, OSHA estimates that by reducing the PEL to 1.0 ppm, the number of excess leukemia deaths occurring in the seven industries studied will be reduced by 230 deaths over the 45-year period. (See OSHA's final Regulatory Impact Analysis [RIA] for the calculations.) OSHA's estimate of 230 excess leukemia deaths prevented is approximately 60 percent lower than the 571 deaths estimated for the proposal. The primary reason for the lower estimate is that some exposure estimates were revised downward (particularly in the bulk storage sectors) based on data submitted after the publication of the proposal. Also, revisions were made to the quantitative risk assessment.

OSHA also estimates that a number of deaths from diseases of the blood and blood-forming organs (e.g., aplastic anemia) will be eliminated by the new standard. In the proposal, the number of these aplastic anemia deaths avoided was estimated to be 42 percent of the leukemia deaths avoided. While some comments stated that the ratio of 0.42 was too high, as discussed at length in the health effects section, OSHA has concluded that 0.42 is reasonable for aplastic anemia and other diseases of the blood and blood-forming organs. Based on this ratio, OSHA estimates that approximately 96 deaths from diseases of the blood and blood-forming organs, (i.e., 230 $\times$ 0.42) will be prevented as a result of the revised standard.

Because of the linear nature of the preferred models, it should be noted that the estimates of lives saved based on the models used would be the same whether based on average exposures or frequency distribution. In addition, OSHA has concluded that there will be a substantial reduction of significant risk based on the reduction in excess risk leukemia alone.

OSHA believes that proper medical examinations can identify blood abnormalities in workers exposed to benzene prior to the onset of more serious symptoms. Worker exposures can then be controlled (e.g., possibly by removal from high-risk areas), and in some cases, the abnormalities will be reversed before the workers' condition progresses to fatal diseases such as aplastic anemia or leukemia [H–059, Ex. No. 217–34]. OSHA believes that the medical surveillance provision will result in additional lives saved, although the Agency has not attempted to quantify these benefits.

OSHA estimates that the benzene proposal will save at least 326 lives during a 45-year period (i.e., 230+96). See OSHA's final RIA for the calculations.

D. Technological Feasibility

OSHA concludes that the final standard is technologically feasible with a high degree of confidence in the sectors covered. Existing exposures are not high. The large majority of exposures are under the PEL. Those that are over are generally in the 1–3 ppm range so that large reductions are not needed. The methods that can be used to reduce employee exposure to benzene include conventional technologies such as air monitoring, double mechanical seals, exhaust ventilation, leak detection and repair, and respiratory protection for intermittent exposures. Such technologies are commonly known and currently used to some degree in the affected industries. These controls can be used in combination. So if one engineering control is not sufficient, additional ones can be utilized. Consequently, engineering controls are available to generally reduce exposures below the PEL in most locations in each industry.

Respirators are specifically permitted for maintenance and repair operations, intermittent, short term operations and in those few production or continual operations when feasible engineering controls are not available to achieve the limit.

The OSHA feasibility analysis is based on a 1983 study conducted by JRB Associates [Ex. No. 153] and the other evidence in the record. The JRB study is one of the most comprehensive reports developed for OSHA during the last several years. It is based on a large amount of high quality data that were obtained in cooperation with industry and labor. Several parties (including API, CMA, AISI and UAW) provided detailed exposure data. In addition, JRB conducted mail and telephone surveys, visited numerous plants throughout the country [Ex. No. 240], and consulted with several industry experts to further refine the data. Overall, the study took almost a year to complete and cost the Agency over one-half million dollars.

The JRB report identified emission sources in the affected industries that had the potential for causing occupational exposure to benzene. Much of Chapter 4 of the JRB analysis consisted of determining the feasibility of various types of controls for these emission sources and estimating the efficiency of these controls in maintaining exposures below 1 ppm.

Many of the potentially affected sectors, including petrochemicals and coke chemical plants, are similar in that they utilize large, automated, enclosed systems comprised of process vessels, pipes, valves, pumps, and compressors. Although these systems are enclosed primarily to reduce product loss and the probability of fire, worker exposures may occur as a result of small leaks and the opening of the equipment for operations such as tank gauging, process sampling and maintenance. The JRB feasibility assessment was based on controlling these sources of worker exposure.

Because workers in these industries tend to move about constantly, specific estimates of reductions in benzene exposures due to installing specific controls were not critical to the determination. If one type of control is somewhat less effective than expected, another may be more effective. Thus, it is the interaction of several controls and work practices that is predicted to result in an overall reduction in exposure. The feasibility of maintaining an 8-hour TWA worker exposures below 1 ppm, therefore, is based on reducing emissions from many sources by a combination of controls and practices, so that the highs and lows average less than 1 ppm.

Based on its analysis, OSHA reached the preliminary determination that it is technologically feasible to reduce 8-hour TWA worker exposures to less than 1.0 ppm in these sectors though the use of some combination of the following engineering controls and work practices:

—Limiting exposures during tank gauging through the use of proper work practices (i.e., requiring the employee to stand upwind of the hatch) or, in some cases, the use of automated gauging equipment.

—Installing double seals and containment systems on pumps servicing liquids containing more than 10 percent benzene.

—Installing ventilated enclosures for process sampling.

—Enclosing wastewater collection systems, including open sumps and trenches.

Even if these controls were insufficient to reach 1.0 ppm, additional steps, such as the following, could be taken:

—Installing double seals and containment systems on all pumps.

—Installing closed hatch or automatic loading systems for the tank truck and railcar loading operations.

—Increasing the frequency of manual leak detection surveys and promptly repairing the leaks that are found.

—Installing automatic leak detection equipment to monitor problem areas.

Since current exposures are generally low (near the 1 ppm PEL), and since there is a great variety of controls available to reduce exposures, both OSHA and JRB conclude with a high degree of confidence that the 1 ppm PEL is feasible. JRB stated that it "has considerable confidence in its feasibility judgments of the controls necessary to achieve the proposed 1 ppm level" [Ex. No. 153, p 4–2].

OSHA's analysis was based on the professional "engineering judgment" of JRB and other expert consultants that some combination of engineering controls and work practices could be implemented to reduce the 8-hour TWA work exposure to below 1 ppm in most facilities of each sector. In order to illustrate how this might be accomplished, OSHA asked JRB to develop a scenario that a typical plant in each sector might implement in order to comply with the 1 ppm PEL. This scenario was presented in Chapter 4 of the JRB report [Ex. No. 153] and served as the basis for OSHA's preliminary compliance cost estimates. This scenario was not intended, however, to be a specific guide for each and every plant because OSHA's proposed and final standards did not require employers to institute the specific controls discussed by JRB.

On the contrary, OSHA intentionally drafted the rule in performance language in order to permit employers the latitude to develop a combination of engineering controls and work practices suited to particular facilities [Ex. No. 200, p. 50574]. Industry comments, noted in the preamble, to the proposal (Ex. No. 200, pp. 50559–60) supported this decision (See Ex. Nos. 142–1, 142–17, 142–609).

In addition, subsequent to the publication of the proposal, OSHA received several comments which supported the position that 1 ppm was the lowest feasible PEL. For example, Sohio stated:

> Sohio's experience with our benzene manufacturing facility indicates that we can achieve a TWA of 1 ppm with engineering controls * * *
>
> In 1984 Sohio constructed a benzene production facility at our petroleum refinery in Lima, Ohio. Best available control technology was used to minimize benzene emissions at all locations. This facility cannot consistently achieve 0.5 ppm 8-hour time weighted average exposures [Ex. No. 201–13, p. 2].

In response to the proposal, OSHA also received several negative comments regarding the Agency's preliminary feasibility analysis. In general, these comments can be divided into the following categories:

- OSHA's feasibility analysis failed to identify some benzene emission sources and overestimated the efficiency of controlling emissions at some of the sources that it did identify.
- OSHA's feasibility analysis failed to consider the use of the most efficient control technologies which could result in lower exposures.
- OSHA's feasibility analysis did not consider random exposure variability.

OSHA carefully considered these comments, before it reached its final feasibility conclusion. In the analysis that follows, OSHA explains why those points do not change the conclusion that the 8-hour time-weighted average (TWA) of 1 ppm PEL is technologically feasible with a high degree of confidence and is the lowest feasible level. In addition, OSHA makes the determination that compliance with a 5 ppm short-term exposure limit (STEL) is feasible.

In the final Regulatory Impact Analysis, OSHA discusses feasibility issues in greater depth. That discussion presents additional analysis demonstrating why the final standard is feasible.

The technological feasibility of the non-exposure level provisions (e.g., medical surveillance, exposure monitoring, respirators, protective clothing, training, etc.) was not disputed during the rulemaking.

Criticism that all of the Emission Sources were not Identified

CMA and AISI submitted comments contending that the JRB analysis was flawed and incomplete in a variety of respects. They argued that OSHA's feasibility conclusions were open to question.

For example, CMA listed seven operations (out of the scores of operations present in petrochemical plants) for which the association says that engineering controls are either infeasible or prohibitive from the standpoint of costs [Ex. No. 201–33, p. 95–100]. Thus, CMA faults JRB for failing to identify "benzene emission sources or tasks which, either regularly or from time-to-time, would require the use of respirators to achieve a PEL of 1 ppm or a short-term exposure limit (STEL) of 5 ppm averaged over 15 minutes."

JRB's primary task was to help OSHA determine the feasibility of meeting the proposal. The proposed standard (and the final rule) specified an 8-hour TWA PEL of 1 ppm. Meeting the PEL through the use of engineering controls and work practices is one way for an employer to comply, but is not the only way. Respirators are also permitted as a means of compliance in a number of circumstances. Specifically, paragraph (g)(1)(ii) permits the use of respirators for the following:

> In work operations for which the employer establishes that engineering and work practice controls are not feasible such as maintenance and repair activities, vessel cleaning, or operations where engineering and work practice controls are infeasible because exposures are intermittent in nature and limited in duration.

The JRB analysis did not address the feasibility of installing engineering controls for the seven activities cited by CMA, because these activities involved either maintenance or short-term intermittent operations where the use of respirators is specifically permitted. The confusion over this point apparently results from CMA's concern that use of respirators is not permitted by operating personnel. CMA stated that,

> JRB fails to recognize that, during some maintenance operations, operating personnel also may have to be provided with respirators to comply with a 1 ppm standard. While major maintenance typically is performed on a campaign basis when the unit is shut down, routine maintenance occurs on an on-going basis and is performed while the unit is running. This routine maintenance will increase background concentrations of benzene and may require respirator use by the operating personnel as well as by the maintenance workers themselves [Ex. No. 201–33, p. 100].

And examination of paragraph (g)(1)(ii), however, reveals that the use of respirators is tied to the type of activity or operation being performed and not the job title of the employee. Thus, in the situation cited by CMA, operating personnel would be permitted to use respirators.

CMA also criticizes the JRB conclusion that double mechanical seal pumps were an effective control, stating that "the use of double mechanical seals in pumps and compressors in petrochemical plants is not likely to

achieve a substantial reduction in emissions even on these pumps, that do lead" [Ex. No. 201–33, p. 107]. OSHA disagrees with CMA's conclusion. The Environmental Protection Agency (EPA), for example, reports that these seals have an efficiency of nearly 100 percent in controlling benzene emissions, although they are not the best available technology (BAT) [Ex. No. 240 B, Tables 6–2 and 7–4]. Thus, OSHA concludes that JRB was correct in asserting that the seals would be an effective control mechanism. Other examples of how controls developed for other chemicals or for other purposes can be used to control benzene exposures are provided in Chapter IV of the final RIA.

AISI also disagreed with several aspects of the JRB report. For example, AISI stated that "JRB's assessment of engineering controls used to reduce benzene exposures in light oil recovery units is based exclusively on information obtained during two site visits in 1983 [Ex. No. 201–44, p. 13]. This statement is inaccurate. While the two site visits were used in the JRB assessment, they were not the sole basis for JRB's statements. JRB used many other sources including materials submitted by AISI, analyses conducted by EPA [Ex. No. 153, p. 4–59], and the professional judgment of several consultants to arrive at its determination that 1 ppm was technologically feasible in this sector. Thus, the assessment was not "based exclusively on information obtained during two site visits."

AISI also stated that "JRB has not identified all of the major sources of benzene exposure in light oil recovery plants and has not properly evaluated the feasibility of controls on the sources it has identified" [Ex. No. 201–44]. AISI contended that these deficiencies "call into question OSHA's preliminary conclusion regarding the technological feasibility of complying with a 1 ppm standard" (Ex. No. 201–44, p. 14).

OSHA strongly disagrees with the AISI contention that these alleged inaccuracies in the JRB report mean that OSHA's conclusions are flawed. First, OSHA did not request JRB to identify all potential sources of benzene emissions, as would be required for an EPA study. Compliance with the OSHA standard does not require the control of all emission sources. Rather, OSHA asked JRB to identify sources of significant occupational exposure to benzene. It is only necessary to control emission sources where workers are routinely present. JRB did not discuss several emission sources, which they determined would not result in significant employee exposures.

In addition, even if some of these emission sources will result in exposures at some facilities, as AISI has claimed, it does not follow that compliance with 1 ppm PEL is infeasible. Controls are available to reduce emissions from the sources cited by AISI, so that the existence of these additional sources does not indicate that a PEL of 1 ppm is technologically infeasible in this sector.

Finally, JRB did not discuss all of the feasible methods to control emissions from the sources that it did identify in the report. Rather, JRB presented examples of the types of technologies that could be used to control the emissions. The fact that a specific set of circumstances may exist that would preclude the use of some of the controls discussed by JRB does not mean that compliance with the 1 ppm PEL is technologically infeasible under those circumstances. As discussed in Chapter IV of the RIA, other controls can be used under the circumstances of concern to AISI.

Failure to Identify the Most Efficient Controls

Although the AFL–CIO and USWA supported OSHA's preliminary determination that 1 ppm PEL was feasible in all sectors, they disagreed with the finding that a 0.5 ppm level was not feasible [Ex. No. 262, p. 23]. The basis for this position was their belief that (1) OSHA's preliminary analysis "adopted a far more stringent and conservative criteria for feasibility than OSHA has ever used in the past," and (2) little attempt was made to visit, evaluate, obtain sampling data from plants where 0.5 ppm is already being achieved. According to these parties, "A properly conducted feasibility analysis should examine the availability and effectiveness of state-of-the-art controls * * * [and] the authors of the JRB report did none of these things" [Ex. No. 262, pp. 31–32].

This section discusses these general comments made by the AFL–CIO and the USWA. (The industry-specific comments are covered in the final RIA.) JRB developed an exposure profile and a baseline of current practices by industry sector. Each was developed from different sources, for example, the industry profile primarily came from the Runion and Scott report [Ex. No. 159–167], and the baseline came from surveys and site visits [Ex. No. 240]. JRB relied on professional judgment, interviews with experts, consultants, equipment manufacturers, industry and union representatives and other sources including EPA documents [Ex. No. 240] to associate high exposure profiles with a lack of controls in developing the baselines estimates. JRB also used these sources to determine the additional steps that could be taken including engineering controls and work practices to lower exposures below those currently being achieved.

Based on this extensive study both JRB and OSHA concluded the 1 ppm was the lowest feasible level. It was the lowest achievable with confidence using current technology throughout the industry. Much more extensive use of existing technology could achieve 0.5 ppm in a substantial number of locations and attempting to force technology, if successful, might achieve 0.5 ppm in more locations. But neither OSHA nor JRB could be confident that 0.5 ppm could be achieved in a majority of locations where benzene or compounds with a high percentage of benzene are used.

OSHA concluded, as discussed extensively elsewhere in this preamble, that an action level would be a more effective approach to achieve 0.5 ppm with engineering controls where feasible rather than a technology-forcing approach. Quite extensive medical monitoring and other provisions take effect at 0.5 ppm and these create substantial expenses. Thus, there is a strong incentive for employers to reduce exposures to below the 0.5 ppm level either by more extensive and efficient use of current technology or by developing new technologies.

OSHA's conclusion that 1.0 ppm is the lowest feasible level is further reinforced by industry statements regarding the effectiveness of certain controls and the need for greater consideration of exposure variability. While OSHA does not believe these problems are as great as contended and variability is more controllable than has been argued (as is discussed below), these difficulties call into question the conclusion that the 0.5 ppm level is feasible without the use of technology-forcing techniques. Although OSHA does have the legal authority to force new technology, such an approach must be based upon predictions that have not always proved to be as accurate as hoped. In the case of the lead standard, for example, the approach resulted in the granting of variances and extensions, where appropriate. In addition, although the technology-forcing approach proved to be effective in the case of vinyl chloride, OSHA believes that such an approach would cause enforcement difficulties for the Agency in the case of benzene, because

unlike vinyl chloride, benzene is used in a variety of sectors and processes. (OSHA's conclusion regarding benzene is substance specific; in other circumstances, technology-forcing may be appropriate). Thus, OSHA concludes that it has utilized the right criteria for making feasibility judgments in this case.

A second point made by the AFL–CIO and the USWA was that the JRB report, and thus OSHA's feasibility analysis, did not consider the use of "state-of-the-art" equipment. This is not true. According to JRB.

> Achieving exposure levels of 0.5 or 0.1 ppm (TWA[a]) in all facilities in each sector would require that many facilities use remote control technologies and automation to isolate workers from benzene-contaminated areas. Except in the most modern chemical facilities, this would require redesign and major restructuring of production plants [Ex. No. 153, p. 4–2].

Given the age of most facilities in the petrochemical, petroleum refining, and coke and coal chemical sectors, OSHA does not believe that typical plants can be retrofitted to use this technology (i.e., OSHA does not believe that it is feasible to use this equipment across all industries at this time.) This does not mean, however, that some specific plants cannot install automated equipment.

The AFL–CIO and the USWA have also alleged that the JRB study was flawed because JRB did not visit the most modern plants. Specifically, in the case of coke and coal chemical by-product operations, these parties contend that the LTV Corporation's plant in Chicago, should have been used to show that a 0.5 ppm PEL is feasible. As will always be the case with a regulation covering many industries, some modern plant in one of the sectors may not be visited. But it must be reemphasized that the JRB study was extensive and utilized visits, data, and expert judgment to determine what is achievable. This is a sound basis on which to make feasibility judgments.

In addition, as was stated by Peter Hernandez of AISI, the LTV Chicago plant, which was built in 1981, is not a typical coke by-product recovery plant. Most existing plants are significantly older than the LTV plant. In fact, as Mr. Hernandez understands the situation, there is only one plant less than 10 years old, three plants that are between 10 and 25 years years old, and 25 plants that are more than 25 years old. Paul Hitcho of the United Steelworkers confirmed this point, stating that by-product recovery plants range in age from 5 years to 70 years with most of the plants being older than 40 years [Ex. No. 251A pp. 11–12]. According to AISI,

> it would be extremely difficult to install many of the controls that are in use at the LTV Chicago plant at some of the older plants where the equipment tends to be in far worse condition. "As Dr. Robert L. Harris testified, there is a big difference between [s]atisfying needs for hazard control in the initial design and construction of a process or plant" and the postconstruction retrofitting of controls at an old plant * * * benzene exposures at the vast majority of coke oven by-product recovery plants are significantly higher than * * * [at this] new by product recovery plant upon which the United Steel workers' suggestion of feasibility rests. [Ex. No. 259 pp. 12–14].

Thus, OSHA concludes that while a PEL of 0.5 ppm may be achievable at the LTV Chicago plant, it is not generally achievable at other facilities in the industry.

Exposure Variability

Representatives of some of the industry sectors affected by OSHA's revisions to the benzene standard have contended that these sectors have greater than average random variability in exposures. Random variability is a term used to describe the fact that when exposures are controlled to a certain average level, individual observations will not always be identical to that level each day. Rather, exposures will fluctuate randomly about the average. On some days exposure will be higher than the average and on others exposures will be lower depending on changes in the weather, minor changes in process flow or employee work practices, filter efficiency, and other similar events, which can not be fully controlled by the employers. Exposure variability is usually characterized by the geometric standard deviation (GSD). A low GSD (i.e., below 2) means that variability is well controlled and a high GSD (i.e., above 5) means that variability is great.

Due to random variability, employers facing an exposure limit, will almost universally control to an average exposure level somewhat below the limit, in order to ensure that random variations above the average will not exceed the limit.

Some variability, however, is not truly random or outside of the employers' control. For example, some high exposures may be the result of inadequate or poorly maintained controls, improper work practices or the lack of review by qualified industrial hygienists. Thus, a relatively high initial GSD does not mean that employers can not meet an exposure limit. Steps can be taken to control exposure and thus reduce the GSD.

A representative of the API presented the following reasons for variability in the petroleum refining industry (these may also apply to some extent in some of the other sectors including petrochemicals, coke, and bulk storage):

> The problem of day-to-day exposure variability is an especially great concern to API because of the realities of the working conditions in the petroleum industry. The overwhelming majority of work in our industry that involves potential exposures to benzene takes place outdoors. Accordingly, exposures can vary from day-to-day, and even hour-to-hour, depending on the workers; physical orientation to exposure sources, wind speed and direction, the presence or absence of precipitation, and other meteorological conditions.
>
> Moreover, as OSHA has recognized, encounters with benzene in the petroleum industry are by nature intermittent or sporadic. Unlike many other manufacturing sector workplaces involving routine process operations that produce exposures to essentially stationary workers in a fairly continuous basis, workers in our industry move about constantly and the exposure sources consist mainly of small leaks that occur unpredictably and go uncontrolled until detected by sophisticated monitoring equipment. These discrete and constantly changing exposure sources make each trip through the process vessels and equipment different in terms of the resulting 8-hour TWA [Ex. No. 204–7, p. 20].

API and others have stated that this variability has a significant impact on the feasibility of complying with the 1 ppm PEL. CMA, for example, stated that "JRB Associates did not perform an analysis of variability * * * [and] could not claim that the identified controls would have any effect on reducing random sources of variability" [Ex. No. 258, p. 105].

OSHA believes that the impact of variability on the feasibility of complying with the 1 ppm PEL was overstated by the commenters. As was noted by the API, some of this variability is the result of many small leaks in the process equipment that go undetected. (See, for example, Ex. No. 204–7, p. 20). OSHA has determined that a good leak detection and repair program can reduce the number of leaks and thereby lower the variability. The comments of Dr. Harris, Dr. Spear, and others, all emphasize that non-random exposure variability, as well as average exposure levels, can be reduced by controlled peaks or high intermittent exposures. Such exposures can occur as employees move about a chemical plant or spend time in an area close to emission sources. Because an employee's duties may vary from day to

day, he or she may come into contact with emission sources on different days, resulting in non-random day-to-day variability in his or her 8-hour TWA exposure levels. Non-random day-to-day exposure variability may also arise when emissions from a particular emission source increase because of a leak.

In assessing the feasibility of alternative PEL's for benzene, JRB staff took into account the effectiveness of various engineering and work practice controls for reducing both 8-hour average and peak exposures; some of the controls judged by JRB to be effective in reducing both average and peak exposures include dual pump seals, ventilated hoods on process sampling points, and leak detection programs.

During the course of the feasibility study, JRB engineers and industrial hygienists visited a number of facilities using these controls. During these site visits, plant personnel indicated that no special problems would be encountered in using these controls to achieve a 1 ppm 8-hour TWA PEL. Thus, the leak detection program, including employee training in hazard recognition and safety procedures, judged by JRB and Meridian to be necessary to achieve compliance with a 1 ppm 8-hour TWA benzene exposure limit will reduce both daily benzene exposure level and daily exposure variability [Ex. No. 252A–14, pp. 5, 6]. This position was supported by an EPA report [Ex. No. 240 B], which stated that a formalized leak detection program can significantly reduce benzene emissions.

There as some confusion in the questioning of Meridian. In the post hearing submission (Ex. No. 252A–14), Meridian clarified that they had considered variability when studying the effectiveness of controls. It was plant personnel who had not indicated in the visits that variability would create abnormal problems.

Furthermore, there are a number of methods that employers can take to minimize certain variability by controlling the peak or high level intermittent exposures. Dr. Harris, a professor of industrial hygiene, pointed out that there are methods to lowering the peak exposures that will reduce both the arithmetic mean exposure and the variability [Tr., 3/19/86, pp. 157–160]. Mr. Lynch, an industrial hygiene expert, testifying on behalf of CMA stated,

> the kinds of things—tasks, events episodes that are leading to the outliers, generally can be found.
>
> Two things happen if you can get rid of those events, identify and eliminate the high exposure events. One is that you reduce the variability and the other is you reduce the average [Tr., 3/26/86, p. 92].

This type of action, which will reduce the probability of a high benzene exposure, was not considered in the analysis conducted by API [Ex. Nos. 204–78; 218–B].

OSHA has carefully considered the impact of variability on feasibility (See also the discussions under methods of compliance and monitoring). There is much evidence that many sources of variability are detectable and controllable. In addition, OSHA's analysis of the API data indicates that the random variability problem is not as great in those sectors as API suggests. Consequently, OSHA concluded that variability which may remain outside of the employers' control does not make compliance with the 1 ppm PEL infeasible because control techniques are readily available to keep average exposures sufficiently below the 1 ppm PEL to ensure that the remaining variations will result in very few random exposures above the PEL.

Finally, as is discussed in the variability section under monitoring, there is no requirement to control exposures so far below the PEL so as to ensure that absolutely no random exposures exceed the PEL. OSHA's longstanding enforcement policy, in recognition of the existance of the "occasional outlier," is designed to prevent citations being issued under such circumstances.

Short-Term Exposure Limit

The final rule contains a 5 ppm 15-minute STEL. The health reasons for the STEL are explained above. OSHA concludes that it is technologically feasible.

An analysis of the record reveals that there are two important patterns of worker exposure in the industries discussed above. The first group moves about constantly and is exposed due to leaks that occur unpredictably [Ex. No. 204–7, p. 20]. For these workers, OSHA assumed that prudent employers will institute a leak detection program and install engineering controls in order to insure that the leaks will not cause a compliance problem for meeting the 8-hour TWA of a 1 ppm PEL. (This assumption is reflected in the cost chapter of the RIA.) As a result of these initiatives, it is extremely unlikely that random leaks will expose workers to ambient levels above the 5 ppm STEL.

The second group is exposed to high levels of benzene for relatively short periods of time during operations such as maintenance, product loading, process sampling, and tank gauging. For these workers, the 1 ppm PEL is ineffective in limiting short-term exposures because the peak exposures get lost in the average thus making the STEL an important requirement for controlling worker exposures. The method used to comply with the STEL is dependent on the specific type of operation involved. In some cases, it may be necessary to install engineering controls (e.g., for tank gauging, process sampling, and product loading), while in other cases, respirators are appropriate.

According to JRB,

> The engineering controls required to achieve a 5 ppm short-term exposure limit (STEL) are the same as those that can be used to achieve a 1 ppm 8-hour TWA exposure. The activities that can result in short-term exposures in the coke and coal chemicals, petroleum refinery, and petrochemical industry sectors are the following:
>
> • Process sampling
> • Loading railcars and tank trucks with benzene or benzene-containing liquids
> • Tank gauging
> • Laboratory work (quality control laboratories)
> • Maintenance.
>
> JRB has addressed the feasibility of controlling exposures for each of these activities in earlier sections * * *
>
> It is feasible to reduce short-term exposures during gasoline loading operations to below 5 ppm, measured as a 15-minute TWA. Data collected by Irving and Grumbles (1981) show that 20-minute exposures during tank truck loading of gasoline ranged from 1.1 ppm, for facilities that use bottom loading with vapor recovery, to 4.1 ppm, for those using top loading with vapor recovery * * *
>
> Short-term exposures are not typical in several operations in the rubber tire manufacturing industry sector; examples of these operations are tire building and tread cementing. Activities in which short-term exposures are likely include tire repair and the transfer of cements from the mixing area to the various areas where cements are used. Increasing local ventilation at tire repair stations can reduce benzene concentrations by approximately 95 percent, as stated in Section 4.2.4. Preventing spills and using closed containers should eliminate the sources of contamination that could lead to short-term exposures in these areas. JRB observed the use of closed containers during two site visits to tire manufacturing plants (JBR Site Visits, 1983) and considers their use to be current industry practice . . .
>
> Because of the intermittent, unpredictable, and varied nature of maintenance activities, JRB assumes that respirators would be the most appropriate control method to use for maintenance workers to achieve both the 1 ppm 8-hour TWA alternative PEL and 5 ppm 15-minute STEL [Ex. No. 153, p. 4–45].

Engineering controls are available to limit the short-term exposures of many workers, and the standard permits the use of respirators to control short-term

exposures for maintenance and similar types of operations where engineering controls may not be feasible. OSHA, therefore, concludes that compliance with the 5.0 ppm 15-minute STEL is technologically feasible.

E. Cost of Compliance

This section presents OSHA's estimate of the compliance costs that would be incurred by employers in the seven industry sectors primarily affected by the proposed benzene standard. Because there are industry-specific differences in exposure characteristics and equipment usage, cost estimates for each sector were developed separately.

First, a baseline of current industry practice was identified for each sector. This baseline was derived from information on current production methods and hazard control methods obtained during the JRB information collection efforts and from other submissions to the record. The costs of the engineering controls to achieve each successively lower PEL were then estimated based on the assumption that new controls could be added to those controls already in place.

Table B summarizes OSHA's compliance cost estimates of the revised benzene standard with a 1.0 ppm PEL and 0.5 ppm action level. Note that the "nonengineering costs" are those costs associated with the other provisions of the standard, such as medical surveillance, exposure monitoring, training, etc. The annualized capital costs are the yearly interest and depreciation costs needed to pay for a capital investment over the useful life or the equipment. This also takes into account variations in the useful life of each type of equipment. The compliance costs attributed to the tire industry are for solvents with low benzene concentrations. Table C provides a sector-by-sector breakdown of the nonengineering costs of the standard.

TABLE B.—ESTIMATED TOTAL ANNUALIZED COSTS ASSOCIATED WITH THE REVISED BENZENE STANDARD

(Millions of 1983 dollars)

Sector	Total annualized engineering costs	Total annualized nonengineering costs	Total annualized costs
Petrochemical	5.1	0.5	5.6
Petroleum refining	2.1	1.9	4.0
Coke and coal chemical	*6.8	0.3	7.1*
Tire manufacturers	1.0	0.2	1.2
Bulk terminals	0.2	0.6	0.8
Bulk plants	N/A	4.9	4.9
Tank truck	N/A	0.5	0.5
Total all sectors	15.3	8.8	24.1

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

N/A = Not Applicable (i.e., OSHA assumed that compliance with these provisions will not be required).

* The cost estimates for the coke and coal chemical sectors represent the upperbound because they were based on the assumption that industry would install the required engineering controls during the first year following the promulgation of the new benzene standard. However, coke and coal chemicals have been given a 5-year phase-in-period in order to lessen the potential impact. This provision will allow the industry to install the new equipment when old equipment wears out, reducing "upfront" compliance costs. Data were not available to estimate this reduction.

TABLE C.—SUMMARY OF ESTIMATED TOTAL ANNUALIZED NONENGINEERING COSTS ASSOCIATED WITH THE REVISED STANDARD

(1983 dollars)

Industry	Provision						
	Regulated area	Exposure monitoring	Compliance program	Respirator use	Training	Medical examination	Total annual costs
Petro chemicals	7,500	255,000	4,500	153,300	*0	117,700	538,200
Refining	11,800	279,400	7,100	414,000	*0	1,211,800	1,924,100
Coke and coal chemicals	2,100	62,900	1,200	130,500	*0	56,500	253,200
Bulk terminals	11,500	377,400	28,700	91,800	*0	52,100	561,500
Bulk plants	65,200	2,325,000	163,300	521,800	951,800	830,900	4,858,000
Trucks	N/R	51,600	7,800	N/R	281,300	122,200	462,900
Tire	N/R	N/R	N/R	N/R	N/R	209,900	209,900
Total	98,100	3,351,500	212,600	1,311,400	1,233,100	2,601,100	8,807,800

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

*OSHA assumed to be in compliance.

N/R=OSHA assumes that these provisions are not required.

The total annualized cost to comply with the revised standard is estimated to be $24 million. An analysis of these costs on a provision-by-provision basis shows that the installation of engineering controls and work practice modifications to comply with the 1.0 ppm PEL and 5.0 ppm STEL account for 65 percent of the compliance costs.

Exposure monitoring and medical surveillance are the two most expensive non-PEL-related provisions, each accounting for over 10 percent of the estimated compliance costs.

An analysis of the costs on a sector-by-sector basis reveals that the installation of engineering controls in the coke and coal chemical sector accounts for approximately 30 percent of the total annualized costs. This is probably due to the high current exposures in the industry (i.e., average exposure over 1.5 ppm) and the age of plants (i.e., average age from 20 years to 40 years).

F. Economic Feasibility Analysis

OSHA has determined that it is economically feasible for the seven industry sectors and solvent users (including tire manufacturers) to comply with the provisions of the revised benzene standard of a 1.0 ppm and a 0.5 ppm action level and that none of these sectors would experience a significant adverse economic impact because of the standard.

Typical Impacts

If none of the compliance costs were to be passed forward to consumers, an average firm would experience an after-tax profit decline of less than 2 percent in its product lines affected by the proposed benzene standard in all sectors except iron and steel which includes coke and coal chemicals. If all of the costs associated with the proposal were to be passed forward to the customers so that after-tax profits in these product lines were unchanged, then an average firm in each industry would require price increases of less than 0.1 percent (0.2 percent in iron and steel) to fully offset these costs (see Table D). OSHA believes that the economic impacts estimated under each of these scenarios represent extreme or bounding cases (it is likely that some of the costs will be passed on and some absorbed) and that these changes are clearly affordable to these industry sectors based on the small size of the costs in relation to both profits and sales. Consequently, no major impact are likely. The revised benzene standard is unlikely to have any significant impact on the long-term viability of otherwise productive facilities or to cause otherwise profitable firms to leave these industries. Thus, OSHA concludes that the revised benzene standard is economically feasible for typical firms in the industry sectors studied.

TABLE D.—ESTIMATED ECONOMIC IMPACTS OF THE BENZENE STANDARD ON AN AVERAGE FIRM IN EACH INDUSTRY SECTOR

Industry	After-tax profit decline of an average firm in each industry if revenues are unchanged (percent)	Increased revenues required to offset fully the compliance costs of an average firm in each industry (percent)
Petrochemical	1.64	0.07
Petroleum refining and bulk terminals	0.04	<0.01
Iron and steel	*0.24	0.02
Tire manufacturers	0.31	0.01
Bulk plants	0.61	<0.01
For-hire tank trucks	0.46	0.01

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.
*Since the iron and steel industry suffered a loss in 1983, this value represents an increase in the loss.

Solvent Users

Solvent users will probably comply with a revised benzene standard by using solvents that are excluded from the scope of the standard. There are processes available to reduce the benzene contamination in solvents to below 0.1 percent. The prices of the solvents with less than 0.1 percent benzene are only slightly higher than benzene-contaminated solvents. Consequently, OSHA concludes that the revised standard is economically feasible for solvent users.

Coke and Coal Chemicals

If the controls are installed during the first year following the promulgation of the new standard, OSHA estimates that the annualized compliance costs for this sector will be approximately $7.0 million, compared to gross revenues of approximately $40 billion. Consequently, the dollar amount of the costs are small in relation to the industry's size. According to the AISI, however, the iron and steel industry experienced a net after-tax loss of approximately $2.2 billion 1983 [Ex. No. 201–44, p. 39]. While much of this loss was due to one time write offs in the industry, the figures for 1984 still revealed a loss of almost $200 million. Thus, these data indicate that this sector is experiencing economic problems. In addition, AISI states:

> * * * imports constituted 25.2 percent of the U.S. apparent steel supply in 1985 (Second only to the 1984 record-high of 26.4 percent). With imports at such high levels, it is not likely that prices of steel products could be increased to cover regulatory costs that are applicable only to domestic producers [Ex. No. 201–44, p. 38].
>
> The domestic steel industry is facing a financial crisis. Industry debt and associated debt service costs continue to increase. The domestic steel industry can not afford additional regulation that are not flexible * * * [Ex. No. 201–44, p. 40].

On the other hand, imposition of various quotas on steel imports and a reduction in interest rates have offset these events. These two factors, as well as the closing of old and inefficient facilities, should reduce the losses experienced by the industry over the last several years.

Nevertheless, in view of the industry's current circumstances, both the USWA and AISI have recommended an extended phase-in period for the required engineering controls. Given this provision, both parties view compliance with the new standard to be economically feasible for the iron and steel industry. The USWA stated, for example.

> Despite these hard times in the industry, the AFL–CIO and USWA see no reason why any existing byproducts or BTX plant should have to close over the imposition of a new standard for benzene. While we would oppose a long phase-in period for the standard as a whole in this sector, certain expensive controls could be phased-in over time. For example the industry could be allowed to install double mechanically sealed or magnetically driven pumps as the current pumps wear out, so long as all such replacements were made within 5 years. Conversion sumps, gas blanketing systems, and the conversion of direct water final coolers where necessary [Ex. No. 262, pp. 35–36].

AISI stated:

> Allowing an extended compliance period for implementation of feasible engineering controls would enable the financially strapped steel industry to conserve scarce cash by installing engineering controls on a basis that corresponds more closely to a normal equipment replacement cycle. Such an implementation schedule (with use of respirators permitted in the interim) would represent a more feasible, practical and cost-effective course of action than OSHA has proposed. It also would lessen some of our concerns regarding the economic impact of the standard on the steel industry [Ex. No. 259, pp. 39–40].

For the reasons stated, therefore, OSHA has accepted these recommendations and has modified the method of compliance for the coke and coal chemical sector. Instead of

requiring the implementation of feasible engineering controls to reduce worker exposure no later than 2 years after the effective date of the standard, as is required for other sectors, coke and coal chemical will be permitted to phase-in these controls over a 5-year period, and the use of respirators is permitted during the interim. Thus, OSHA concludes that compliance with the new benzene standard is economically feasible for the coke and coal chemical sector.

Conclusion

OSHA has also determined that the revised benzene standard is economically feasible in each of the industry sectors.

G. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 [5 U.S.C. 601 et seq.]), OSHA has studied and has given special consideration to the mitigation of the economic impacts of the proposed standard on small entities. OSHA carefully considered size factors such as number of employees, total assets, and gross revenues when identifying any adverse economic impact of the revised benzene standard.

In the four industries characterized by large firms (i.e., petrochemical, refining, coke and tire), OSHA does not anticipate any differential impact on smaller firms, because most of the major costs are roughly proportional to the size of the facilities. For example, the total cost of improving pump seals at a benzene production facility depends on the number of pumps seals at the facility, and the total cost of reducing exposures at a tire manufacturing plant depends on either the amount of ventilation that must be provided or the amount of low-benzene-content solvent used. These factors vary directly with firm production levels. In addition, due to economies of scale, the smaller firms in these sectors are of substantial size in terms of gross revenues and numbers of employees.

Two sectors are characterized by small firms. This section, therefore, concentrates on assessing the economic impacts of the benzene proposal on small firms in the bulk plant and tank truck for-hire sectors.

Bulk plants average 19 full-time employees, have average gross assets of $1.3 million, average gross revenues of $10 million, and average after-tax profits of $55,000. Although these firms are not large, on average, they have substantial revenues. The fuels stored at these facilities are primarily contained in closed systems. Most bulk plants will incur only minor costs of about $450 associated with monitoring, respirators, training, and medical surveillance. The small firms in this sector (i.e., those with less than $500,000 in assets) will incur an after-tax decline in profits (and in the salary of the chief executive) of less than 1 percent assuming none of the costs are passed forward to consumers. The larger firms will have less of a profit decline. Under the assumption that costs are passed forward, small firms will require a price increase of approximately 0.02 percent in order to maintain their current level of profits. OSHA believes that these firms will be able to pass forward the 0.02-percent price increase because most of these firms are located in sparsely populated areas with less competition, and because all firms in this sector will experience similar compliance costs. (In densely populated areas, the facilities usually have vapor controls and are in large part exempted from the standard.

In the tank truck for-hire sector, OSHA has not attributed any costs for engineering controls, because they have been considered in the discussion of other sectors (i.e., refining, petrochemical, and bulk storage). OSHA believes that this sector will incur costs of approximately $1,900 per firm for training, medical surveillance, and monitoring. Compliance with the revised benzene standard for "small firms" in this sector (i.e., those with less than $5 million in annual revenue) will result in an average decline in after-tax profits of about 2 percent if no costs are passed forward or will require price increases of approximately 0.07 percent to leave profits unchanged. Once again, since most firms will experience similar compliance costs, it is likely that these costs will be passed forward to consumers.

OSHA, therefore, believes the impact on small businesses in both of these sectors will be minor.

Small businesses currently using solvents contaminated with benzene are expected to purchase solvents that initially have less than 0.5 percent benzene and, after 2 years, have less than 0.1 percent benzene. They will then be excluded from the other provisions of the standard.

As discussed above, there are a number of processes available to reduce the benzene concentration in liquids (see Chapter 4 of JRB report [Ex. No. 153]. Some of these solvents are already on the market in the same price range as solvents contaminated with higher concentrations of benzene. One large oil company, for example, presently markets petroleum naphtha with less than 0.1 percent benzene at the same posted price as untreated naphtha. Although JRB reports that some of low-benzene-content solvents are currently more expensive than high-benzene-content solvents (approximately 10¢ per gallon), after the promulgation of a new standard, the competitive advantage of solvents with a low-benzene content will probably lead to expanded production of such compounds and lower prices. This was OSHA's experience with a similar provision in the vinyl chloride standard.

Solvents typically represent a small cost for most businesses, and a small increase in these costs will not appreciably affect employers, since all competitors will be equally affected. The substantial increase in the costs of solvents during the 1975–1982 period due to the large increase in petroleum costs were successfully passed forward by solvent users because these solvents are generally a small cost of business.

For these reasons, OSHA believes that compliance with the benzene standard is technically and economically feasible and will have no significant impact on small businesses currently using benzene-contaminated solvents.

H. Environmental Impact Assessment—Finding of No Significant Impact

The proposed revisions to the benzene standard have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR Part 1500), and OSHA's DOL NEPA Compliance Procedures (29 CFR Part 11).

As a result of this review, the Assistant Secretary has determined that the proposed rule will not have a significant impact on the external environment. Impacts on the workplace environment are discussed in other portions of this preamble.

Under the present revisions to the benzene standard, there have been some changes in the scope of the standard, the definitions of benzene and benzene mixture, and in the monitoring provisions as well as some language modifications throughout. The final standard includes provisions for an 8-hour TWA of 1 ppm and a ceiling of 5 ppm over a 15-minute period.

The changes in time period for employers to reformulate products or to find substitutes to meet the PEL, or for coke ovens to implement engineering controls, should not have a significant impact on the external environment. Consequently, the conclusions drawn in OSHA's earlier finding of no significant impact (50 FR 237: 5070–5071, December 10, 1985) remain valid.

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IX. Conclusion and Permissible Exposure Limit

OSHA had considered 4 exposure limits, to 5.0 ppm, 1.0 ppm, 0.5 ppm and 0.1 ppm prior to proposing a 1 ppm 8-hour time weighted average (TWA) and a 0.5 ppm action level. Two additional limits were proposed in comments, 2 ppm and 1 ppm with a different compliance strategy which would permit higher average exposures. In addition, OSHA requested comments on whether a short-term exposure limit (STEL), possibly 5 ppm over a 15 minute-period, should be included.

OSHA has carefully considered all the evidence and comments. Based on this review OSHA concludes that a 1 ppm 8-hour TWA and a 5 ppm STEL over a 15 minute period are the appropriate exposure limits. They will substantially reduce a significant risk of leukemia and other blood diseases and do not attempt to further reduce an insignificant risk. These levels are technically and economically feasible and are the lowest feasible level generally achievable.

As discussed in depth in the significant risk section, the risk of leukemia death from a working lifetime of exposure at 10 ppm is 95 excess deaths per 1000 exposed employees. This is clearly a significant risk. The 1 ppm 8-hour TWA will achieve a greater than 90 percent reduction in that risk, clearly a substantial reduction in risk. The new standard will substantially reduce risks from other disease of the blood and blood-forming organs such as aplastic anemia, multiple myeloma and pancytopenia.

As discussed above in the technical and economic feasibility section a, 1.0 ppm 8-hour TWA is clearly generally technically feasible with engineering and work practice controls for the large majority of production and more continual operations in the segments regulated. The standard permits the use of respirators for maintenance and repair activities, short intermittant operations, operations where benzene is present for 30 days or less, and other operations where the employer can demonstrate that engineering and work practice controls are not feasible to achieve the exposure limits.

OSHA also concludes that this standard is clearly economically feasible. It would result, if no costs were passed on to purchasers, of no greater than a 2 percent reduction in profits of the sectors where the effects are greatest. If all the costs were passed on to the purchasers, the maximum average price increase in a sector would be 0.2 percent.

As discussed in the Economic Impacts Section, the coke and coal chemical industry faces the greatest potential adverse impact resulting from the standard. Since compliance costs for coke by product operations would be approximately 0.2 percent of sales for the steel industry and this industry is operating at a net loss, OSHA has granted this sector an extended 5 year period to comply with engineering controls. OSHA concludes that as drafted the standard is economically feasible for this sector since the industry agrees with the extended compliance period.

Obviously a 5.0 ppm level is also clearly feasible since the 1.0 ppm level is, however, based on the risk assessment a 5.0 ppm level would achieve only a 50 percent reduction in risk, not the 90 percent reduction in risk rates that a 1.0 ppm level achieves. The 1.0 ppm level substantially reduces a significant risk which would exist at 5 ppm further and is clearly feasible. Consequently, the 5 ppm level is not appropriate.

OSHA concludes that the same reasoning applies to a 2 ppm level as to a 5 ppm level. Therefore, 2 ppm is not appropriate.

Several participants recommended that OSHA set basically a 1 ppm long term exposure limit rather than a 1 ppm 8-hour TWA. This issue (referred to as variability) is discussed in much greater detail both in the technical feasibility and exposure monitoring sections.

There is a certain amount of random day to day fluctuation around the average exposure level. With a 1 ppm 8-hour TWA, employers must keep exposures on average somewhat below 1 ppm so that there are few random daily fluctuations over the 1 ppm 8-hour TWA limit.

With a 1 ppm long term average limit (which could be achieved by several mechanisms discussed under variability in the monitoring section), as long as long term average exposure were under 1 ppm, daily fluctuation could be over 1 ppm. Consequently, this approach can lead to higher average exposures than a 1 ppm TWA approach.

As discussed in the feasibility and monitoring sections OSHA does not believe variability in the regulated industries is as great as some participants claimed and concludes that the 1 ppm 8-hour TWA limit is clearly feasible. OSHA concludes that the 1 ppm 8-hour TWA is also appropriate because actual reduction in risk of the new standard is then substantially greater than 90%. See the discussion in the significant risk section.

As discussed in the technical feasibility section, many of the same types of engineering and work practice controls which would achieve a 1.0 ppm level could also be used to attempt to achieve a 0.5 ppm level in the industries covered. More extensive use of the same type of controls and some technology forcing might achieve the 0.5 ppm in some operations but the record is unclear how extensively 0.5 ppm would be achieved.

The AFL–CIO and United Steelworkers have contended that OSHA should set a 0.5 ppm 8-hour TWA level. They stated that OSHA has authority to force technology and has not paid enough attention to what is achieved in the most modern facilities.

On the other hand, several industry participants stated that OSHA has not give sufficient thought to variability and some other technical problems in achieving 1 ppm. These matters are discussed in detail in the technical feasibility section.

OSHA has carefully considered the evidence and arguments. OSHA concludes that it has correctly determined that a 1 ppm 8-hour TWA and not 0.5 ppm is the lowest feasible level. The unions have pointed out some situations where controls might do somewhat better than 1 ppm. Industry has suggested some techincal difficulties which might create more of a technical challenge to achieve 1 ppm. OSHA believes it has chosen the correct balance at 1 ppm, as the level it can have a high degree of confidence is generally achievable. OSHA believes the action level will achieve in the case of benzene much of what might be achieved through a greater attempt to force technology and the history of the standard suggests that a high degree of confidence in feasibility has value. See the discussion in the technical feasibility section.

OSHA concludes that a 1.0 ppm TWA level with a 0.5 ppm action level will be substantially as protective as and more cost-effective than a 0.5 ppm TWA level in these circumstances. As a result of the action level, OSHA believes many employers, where it is feasible to achieve 0.5 ppm, will choose to achieve this level with engineering and work practice controls, in order to save on the cost of monitoring and medical provisions which are required for employees exposed over the 0.5 ppm action level.

When it is not feasible to achieve levels below 0.5 ppm, OSHA concludes that the industrial hygiene, monitoring and medical provisions will provide substantial protection for employees

exposed between 1.0 ppm and 0.5 ppm. They will result in less exposure to employees through training, protective clothing and monitoring. The medical provisions will detect some abnormal blood conditions, which if detected early, make it possible to prevent or treat some conditions.

A 0.1 ppm permissible exposure limit does not, on the evidence now before OSHA appear to be technically feasible to achieve. To attempt to achieve it with engineering controls and work practices would appear to require major redesigns in large, capital intensive facilities such as refineries, coke operations and petrochemical plants and small business as well. Many large scale operations would need to be isolated or automated. Making major modifications for a large percentage of facilities in a number of the affected industries would not appear to be technically feasible at this time.

Short-Term Exposure Limit (STEL)

As discussed at greater length in the Permissible Exposure Limit part of the Summary and Explanation of the Standard, OSHA concludes it is appropriate to include a STEL of 5 ppm over a 15 minute period in the benzene standard. Animal studies indicate that intermittent exposures (a good model for fluctuating peaks) caused greater decreases in certain blood counts than continual exposures at the same level. Several case control studies of refinery workers show excess leukemia risk among pipefitters, maintenance workers and other jobs entailing exposure to benzene probably as intermittent peak exposures. This limit is feasible and adds little to costs because the 1 ppm limit will in general be achieved through controlling peaks. It will also reduce cumulative dose in some circumstances.

X. Summary and Explanation of the Final Standard

OSHA has determined that the requirements set forth in this final standard are those, based on currently available data, which are necessary and appropriate to provide protection to employees exposed to benzene. In the development of this standard OSHA has carefully considered the comments and data from interested parties submitted to the benzene docket. In addition, numerous reference works, journal articles, and other data in the record have been taken into consideration in the development of this standard.

The following sections discuss the specific provisions of the standard:

A. Scope and Application: Paragraph (a)

The standard is to apply to all occupational exposures to benzene with the specific exceptions set forth in the scope and application paragraph. The risk from benzene is, of course, dependent on the degree of exposure and not on the segment of industry where the employee may be employed. However, in some segments and operations, exposures are consistently below the action level because of the nature of the process. In those circumstances, OSHA is granting an exemption or partial exemption from the proposed new benzene standard. In general, initial monitoring for many operations where the evidence clearly demonstrates that exposures will be consistently below the action level does not appear necessary to protect employees nor cost-effective. The specific exemptions are discussed below.

It should be noted that OSHA has retained the 10 ppm level for sectors which OSHA has exempted from coverage of the new standard. This is not because OSHA believes the 10 ppm level is adequate for employee protection or that there will be employees approaching that level. OSHA believes that virtually all exposures in the sectors exempted form 29 CFR 1910.1028 will be under 0.5 ppm because of the nature of the process or other regulations and that is the basis for the exemption. However, there is a possibility that there may be an operation within the exempted sectors which OSHA is not aware of. The 10 ppm level will remain in backstop to prevent exposures from rising too high if such a situation exists in the interim until OSHA takes further regulatory action. The 10 ppm level is also retained as an interim engineering control level for reasons discussed below. This backstop approach has been recommended in several comments (Ex. No. 260, p. 7d).

Paragraph (a)(2)(i) *Fuels.* OSHA proposed to exempt from the benzene standard the storage, transportation, distribution, dispensing, sale and use of gasoline, motor fuels or other fuels containing benzene as a contaminant or small percentage constituent subsequent to its discharge from bulk wholesale facilities.

Based on data in the docket, OSHA determined that the benzene exposures in the retail gasoline sector were well under the proposed action level. In a 1977 NIOSH report (H–059, Exh. #93A), for example, the preponderance of the service stations surveyed had an 8-hour TWA of less than 0.1 ppm and only one of 37 stations surveyed had 8-hour TWA greater than 0.2 ppm (0.294 ppm). In a more recent survey submitted by Runion and Scott (Ex. No. 159–67), over 96 percent of the samples taken were below 0.5 ppm; and, although this survey does include some samples greater than the proposed 1.0 ppm PEL (0.9 percent), OSHA believes that the high readings were probably the result of improper work practices (i.e., standing downwind of the hatch during tank gauging, spills, etc.) and can easily be eliminated. The trend in recent years toward self service station, should also tend to reduce "occupational" exposures to benzene in this sector.

In addition to having low benzene exposure, the retail gasoline sector is characterized by a large number of facilities (an estimated 155 thousand in 1980 according to A.D. Little, H–059. Ex. No. 5A) with a largely transient work force, making it more difficult to implement many of the non-PEL requirements of the proposed standard (i.e., medical surveillance and training).

A number of comments were received on this proposed exemption. The API commented extensively supporting the exemption in their post-hearing comment (Ex. No. 260—Addendum D, pp., 5d–16d). They reviewed a number of studies of banzene exposures at gas stations and concluded that exposures were generally substantially under the action level and that the few exposures over the action level were rare random events which were not generally substantiated by repeat monitoring. They also argued that because a high employee turnover and the small business nature of the operations there might be feasibility problems with extensive regulation. They further argued that because of high turnover and the intermittent nature of pumping gas that cumulative exposures would be low. Finally, they noted that the EPA has taken a number of actions to reduce hydrocarbon emission from gas stations, which will also have the effect of further reducing potential employee exposures to benzene emissions. Similar comments were also received from individual petroleum companies and their associations (Ex. No. 201–39, for example).

The AFL–CIO and United Steel Workers agreed with the exemption for gas station and motor fuels (Ex. No. 262, p. 54). However, the reason they believed the exemption was appropriate was that they believed these operations could be better regulated by the EPA.

The Public Citizen Health Research Group opposed the exemption until further analysis of exposures was conducted. They pointed out that some exposures were over the action level and the possibility that benzene might

be used as an octane enhancer (Ex. No. 201–41, p. 7).

OSHA concludes after reviewing the record that the general exclusion for gas stations and the storage, transportation and dispensing of gasoline, motor fuels and other fuels after final discharge from bulk wholesale storage facilities is appropriate. Exposures are generally well below the action level and there are very few measurements over the action level. Keeping exposures low is the small percentage of benzene in the fuels generally and that the work is generally intermittent and outdoors. In addition, this is an area where EPA is actively involved in regulating to protect the environment. The EPA regulation and controls (such as boots over gasoline hoses and other vapor recovery systems) are good methods of keeping worker exposure low. Indeed, the EPA has mandated these requirements for urban areas where high volume stations and operations are located.

An exception to this general exposure pattern was pointed out during the hearings. Dr. Frank Mirer of the United Auto Workers (UAW) noted the following during the public hearings that:

> [T]he cited data do not apply to many situations where motor fuels are dispensed.
>
> Gas pumping in a retail gas station takes place outside. The operation is generally intermittent. The ambient air movement outdoors confers much better dilution ventilation than any general ventilation system dreamed of indoors.
>
> So, the UAW recommends at the very *limit* that indoor operations dispensing motor fuels not be excluded from the standard [Tr, 3/25/86, pp. 10–11].

The Motor Vehicle Manufacturers Association did not address this issue in its post hearing submission (Ex. No. 248).

OSHA accepts the reasoning of Dr. Mirer, who is an expert in industrial hygiene matters, that in situations where an employee is continually pumping gas indoors for a full work shift other factors should be considered. Since natural ventilation and intermittent exposures would not necessarily act to keep benzene exposure low during indoor operations, samples taken outdoors at filling stations are not relevant to characterize indoor exposure.

Consequently paragraph (a)(2)(i) of the final standard provides that this exemption does not apply where gasoline or motor fuels are dispensed more than 4 hours per day indoors. Four hours was chosen as a reasonable period to differentiate between intermittent and non intermittent operations.

It should be noted that the initial requirement for operations not covered by the exemption is to initially monitor. If the exposures determined by the initial monitoring are below 0.5 ppm, the only ongoing requirement on employers is to periodically train employees in the hazards of benzene and remonitor if evidence comes to the employer's attention that exposure to benzene may have risen. If exposures are above 0.5 or 1 ppm the employer must undertake the other required provisions of the standard depending on the level.

OSHA's proposal exempted in addition to motor fuels "other fuels," which would exempt jet fuel and aviation gasoline. This exemption was supported by the National Air Transportation Association (NATA) (Ex. No. 201–21). They referred to a study introduced in the earlier benzene rulemaking which they indicated demonstrated that benzene exposures were low while dispensing such fuels.

The NATA stated in the earlier exhibit that:

> On June 15, 1977, personnel of the Gollob Analytical Service Corporation, Berkeley Heights, New Jersey, recognized experts in the field of mass spectrometry gas chromatography and lead detection, visited the site of AirKaman, Inc. (an NATA member), located at Bradley International Airport, Windsor Locks, Connecticut. The purpose of their visit was to monitor the ambient air in the breathing zone of the employees, in order to help us in reaching a conclusion whether or not there was "grave danger" for employees engaged in the business of retail aviation fueling. During the monitoring period, employees were exposed to a wide range of fueling operations. The range included minimal, normal, and extreme. In all cases, no benzene was detected, with the threshold of detection at less than 0.1 ppm.
>
> In addition, we provided the OSHA hearing panel with a copy of the communique sent to aviation fuel dealers of Texaco, Inc.[8]. . . . This additional exhibit, further corroborated the findings of the Gollob Analytical Service Corporation, and should be used for present and future consideration [Docket H059, Ex. No. 217–37F].

In addition, OSHA received other comments (Ex. Nos. 142–3, 142–7, 142–10, 142–21, 142–31) urging the exclusion of other non-gasoline fuels, from the scope of the proposed standard. Although OSHA has not received any exposure data on their operations, the Agency believes employee exposures are well under the action level in the distribution of these other types of fuel because the operations are somewhat limited compared to the dispensing of motor fuel and the benzene content of these fuels is typically less than that of gasoline. Based on the evidence that exposures are low and the reasoning discussed for motor fuel, OSHA concludes that the proposed exemption for other fuels is warranted.

Paragraph (a)(2)(ii) Storage Facilities

In its 1978 benzene rulemaking process, OSHA proposed that marketing activities of fuels down stream of "bulk terminals" be excluded from the scope of the standard. This resulted in the exemption from the standard, as it was interpreted, of bulk plants which have the same type of operation and fulfill the same function as bulk terminals (the storage of fuel and the loading of trucks to distribute the fuel to service stations and larger scale users). The basis for not covering the bulk plants was that inadequate notice had been given for their coverage (43 FR 5943; Feb. 10, 1978).

The Agency received comments on the way the earlier exemption was drafted in response to its request for information under its current rulemaking process. Typical of the comments was the American Petroleum Institute's submission (Ex. No. 142–31) which states "OSHA's * * * contractor * * * concluded that this exemption was justified on the basis of very low benzene exposures at the worksites. The difficulty with this exemption was its arbitrariness. It did not cover gasoline 'bulk terminals' which are functionally identical (in terms of potential occupational benzene exposure) to the 'bulk plants' which were exempted."

Therefore, OSHA reexamined the basis of this exemption and concluded that the most appropriate basis for an exemption is exposure levels. If exposures are consistently substantially below the action level, then an exemption would be protective of employees. But if exposures are sometimes below the action level and other times above it or above the PEL, absent other compelling circumstances, a total exemption would not provide adequate protection since many employees would be exposed above the action level. (Obviously if the average exposure is approximately at the action level, approximately half of employees will be exposed above it).

The exemptions for the bulk storage facilities in the proposal were, therefore, based on the level of exposures. Two reports (Irving and Grumbles, 1979, Ex. No. 159–42 Phillips and Jones, 1978, Ex. No. 159–63) indicate that bulk plants and terminals with vapor control systems, either top or bottom loading, have average 8 hour TWA exposures substantially below 0.5 ppm (i.e. in the neighborhood of 0.1 ppm) with few 8-hour exposures above the action level,

and peak exposures averaging 1 ppm for a 15 minute period.

Thus, OSHA concluded that the use of either type of vapor control system would result in average exposures virtually always below the action level and proposed to exempt from this section loading operations at both bulk plants and terminals which use the vapor control systems on this basis.

However, the same data indicated that bulk plants and terminals without vapor control systems have average 8 hour TWA's in the range of the action level which means many employees would be exposed over the level, and some over the PEL. Therefore, OSHA did not propose an exemption for bulk plants and terminals which do not have vapor recovered because that would not be sufficiently protective of employees. There are a number of simple inexpensive techniques which can frequently lower exposures below the action level and thereby increase employee protection.

API during the rulemaking submitted additional, albeit limited, data documenting low levels of exposure in loading operations using vapor recovery. Companies D and P reported, in response to API's supplemental survey, that *all* of their operations employ vapor recovery systems. The survey data supplied by these two companies demonstrate low levels of benzene.

API removed maintenance employee samples from Company D's marketing terminal results to arrive at corrected figures for loading exposures, and added to this data Company P's marketing terminal data. Of 39 samples from the two companies, only 3 (7.7 percent) were between .5 and 1.0 ppm, and all the remaining samples fell between 0.1 and 0.5 (14=35.9 percent) or below 0.1 (22=56.41 percent). These data confirm OSHA's findings that vapor recovery systems consistently reduce exposures to very low levels. [Ex. No. 204–7, pp. 70–71]

API's conclusion is "there is little doubt about the merits of OSHA's proposal to exempt bulk facilities equipped with vapor controls," and they supported the exemption (Ex. No. 210, p. 29d). The Society of Independent Gasoline Marketing of America also supported this exemption (Ex. No. 201–39).

The Public Citizen Health Research Group objected to this exemption. They argued that average exposures were well under the PEL, but considered there was a possibility of high peak exposures in transfer operations (Ex. No. 201–41).

The AFL-CIO and USW (Ex. No. 262, p. 54) opposed all exemptions except for the sale and transportation of gasoline. They argued that for those operations where exposures are consistently below the action level, OSHA should only give an exemption from initial monitoring. If exposure are indeed consistently below the action level, the AFI-CIO and USW argued that the employer would as "a practical matter have no obligations." However, if an employer is found to have exposures above the action level, the employer would then be covered they contended.

OSHA concludes after reviewing the record and comments that the exemption for bulk plants and terminals with vapor control is warranted. The exposure data indicate that exposures are well under the action level with few exposures over the action level. The vapor controls limit exposures at the exact time when needed, when trucks are opened for loading and unloading. Because of this, OSHA believes the operation of vapor control is such that it will keep exposures well below the action level and will eliminate high peaks.

The Health Research Group objected to the exemption, specifically, because of concern about short-term peaks. However, in response, the controls which result in an exemption will prevent short term peak exposures. Thus, OSHA has a high degree of confidence in vapor control technology and has granted the exemption because vapor control technology will keep exposures low. In addition, since very low levels of benzene are ubiquitous, OSHA believes the standard will be more effective if both the standard and the employers' compliance activities are concentrated in areas where there is a likely possibility of exposures over the action level.

However, one clarification is needed to the exemption. The preamble to the proposal makes it clear that the exemption is intended to apply only to loading and unloading operations at vapor controlled bulk plants. It states, "Thus, OSHA * * * has proposed to exempt *loading operations* at both bulk plants and terminals which use the vapor control systems * * * " (50 FR 50549) It was not the intent of OSHA to exclude maintenance and repair operations at those facilities because during those operations the vapor control system may be closed down or tanks and pipes may be opened for cleaning and repair. OSHA in its Preliminary Regulatory Impact Analysis includes costs for covering maintenance and repair at these facilities (Ex. No. 202 p. 2–41,2) and the API recognized this in its comments (Ex. No. 204–7, p. 17).

The final standard changes the words "The work operations at bulk wholesale storage facilities" to "loading and unloading operations at bulk wholesale storage facilities * * *." This clarifies OSHA's intent that operations not protected by vapor controls are covered by the standard.

It should also be noted that the exemption does not cover the emergency provisions of the standard and hazard communication requirements. If a vapor controlled loading facility has a major rupture, the emergency provisions such as respirator use and special medical exams may apply. In addition, under the hazard communication standard which is referenced by the benzene standard, workers are to be trained about benzene hazards if there is more than 0.1 percent benzene in the fuels at a facility. Such requirements are needed to protect workers during major spills and to make them aware of benzene's possible hazards so they are aware of the importance of the controls.

Conoco commended "OSHA for recognizing that vapor control systems effectively remove vapors from the work areas of bulk wholesale storage facilities" (Ex No. 201–46, p. 2). Conoco also suggested OSHA revise its definition of vapor control system to include "any equipment used for containing the total vapor displaced during the loading and unloading * * * and removing it from the work area" (Ex. No. 201–45, p. 4). After careful consideration of the Conoco comments, however, OSHA has decided not to revise the definition of vapor control systems.

OSHA adopted the definition from the EPA definition of Stage I Vapor Control System and the monitoring data used to justify the exemption for vapor control systems were obtained with Stage I systems in use. (API specifically notes this in its comments (Ex. No. 60A, p. 26d). While other systems may be effective in maintaining employee exposures below the action level, OSHA can not properly evaluate this assertion without monitoring data. Thus, if Conoco decides to install the containment system described in its comments, it may do so. If the results of initial exposure monitoring obtained after the installation of the equipment show that employee exposures are indeed below the action level as Conoco asserts, then no further action need be taken.

OSHA, however, did not propose exemptions for bulk plants and terminals without vapor control systems. The data (Ex. Nos. 159–42 and 159–62) indicate that bulk plants and terminals without (Stage I) vapor control

systems have average 8 hour TWA's in the range of the action level which means many employees would be exposed over the level, and some over the PEL. Lack of vapor control creates the possibility of higher exposures while loading and unloading. Even if 8 hour TWA's are not high because of intermittent operations, the possibility of higher peaks exist.

OSHA received several comments about not including bulk plants without vapor recovery. The Society of Independent Gasoline Marketers of America (whose members own such facilities) while strongly support the exemptions for plants with vapor recovery, stated as to plants without vapor control equipment that they believe OSHA "overstates the cost-effectiveness" of the regulations and that OSHA should "revaluate" this issue (Ex. No. 201–3A) API stated "it is certainly possible to question" whether these operations should be covered but stated no firm view (Ex. No. 260, p. 28D). The Petroleum Marketers Association of America opposed mandatory conversion to bottom loading systems (Ex. No. 201–36). However, OSHA is not, of course, mandating that control or any system of vapor recovery, just granting an exemption if vapor recovery is used.

OSHA did have a contractor take measurements at three bulk plants without vapor recovery (Ex No. 240d). The plants did not know the benzene content of their fuels (If there is little or no benzene in the fuels, employees exposures would of course be low). The exposures measured were quite low the PMAA argued in a later submission that these data justified not covering those facilities (Ex. No. 230).

OSHA concludes that a total exemption for bulk plants and terminals without vapor recovery is not appropriate. There is the possibility of average exposures for some workers over the action level and of high peak exposures when loading and unloading fuels with more than a trace of benzene. The earlier studies indicate exposure averaged near the action level which means a substantial percentage of employee exposures over the action level. In addition, on engineering grounds these facilities do not have controls in a routine operation (loading and unloading) where exposures are likely to be higher.

The later monitoring results were on too small a scale to change this conclusion. OSHA agrees with PMAA that the later study does not justify coverage either, but OSHA believes the earlier data and sound engineering principles does not justify an automatic exemption.

OSHA has carefully crafted the provisions of the standard to minimize the impact of the standard on those bulk plants and terminals which are not exempted and to maximize the cost effectiveness of the standard while protecting employees. Those facilities not exempted must do initial monitoring. If exposures are below the action level, no further action is needed unless processes change. If exposures are above the action level, simple work practices may succeed in lowering them below the action level, employees will be protected and no further action need be taken by the employer. If these procedures do not succeed in reducing exposures below PEL, then simple engineering controls are available which will lower exposures to protect employees, reduce fire hazards and provide environmental benefits.

The PMAA states that the typical bulk plant averages $53,000 in net profits and some types of controls could cost several hundred thousand dollars. OSHA wishes to make clear it is not requiring any specific types of controls, is not requiring bottom loading and is not requiring vapor recovery. OSHA has carefully analyzed the costs and methods of compliance which are discussed above and in the Regulatory Impact Analysis. That analysis indicates that the average cost to come into compliance with the benzene standard is less than $450 per year per facility. Other facilities with the highest benzene exposures may need to make a capital expenditure as high as $20,000.

Paragraph (a)(2) (iii) and (iv) Containers and Pipelines

OSHA proposed to exempt from most provisions of the benzene standard sealed containers and transportation pipelines which contain or transport chemicals, which have benzene as a constituent or contaminant. Sealed containers and transportation pipelines with liquids containing more than 0.1 percent benzene would be covered by the emergency provisions of the standard requiring respirators and medical surveillance if there were an emergency. Sealed containers would also be covered by the Hazard Communication Standard, 29 CFR 1910.1200 (48 FR 53280; Nov. 29, 1983) if they contain more than 0.1 percent benzene. That standard would require, in conjunction with the benzene standard, labeling the containers to indicate that it contained benzene, a carcinogen: employee training specifying what to do if the container was opened or broken; and the supplying of material safety data sheets. Containers and pipelines, whether sealed or not, carrying substances containing less than 0.1 percent benzene were proposed to be completely exempt from this standard and would also be exempt from the Hazard Communication Standard because of the percentage of benzene present in the substance. (Obviously, the substance could be covered by the Hazard Communication Standard because of other chemicals present).

The basis for the exemption for sealed containers containing mixtures with more than 0.1 percent benzene was that it was unlikely on a regular basis for such containers to leak sufficient benzene to expose employees over the action level. The labeling and training provisions of the hazard communication standard already issued would provide sufficient protection in those situations where a container breaks so that employees will know how to handle and clean up a spill safely. The emergency provisions of this standard would cover major spills. The intention of this exemption was to cover warehouses, distributors, supply rooms and similar operations where the chemical containers are stored, transported or sold and not normally opened. However, operations where the containers are opened or the chemicals contained in them are used would be covered because of the possibility of exposure above the action level.

OSHA also proposed to exempt transportation pipelines for similar reasons. They are sealed and exposures tend to be low. This exemption was specifically designed for pipelines which transport gasoline, crude oil and other petroleum products, where the percentage of benzene tends to be under 5 percent so that irregular slight leaks will probably not lead to exposures over the action level on a regular basis. This exclusion does not apply to pipes in a manufacturing process which carry benzene or another chemical containing benzene. Unlike transportation pipelines, employees in a manufacturing process plant will likely be in the area on a regular basis and slight leaks may lead to regular benzene exposure over the action level. In addition, since benzene exposures of employees repairing or maintaining transportation pipelines could be substantial, the exemption does not extend to repair or maintenance operations. However, the exemption of pipes from labelling requirements in this standard and from the hazard communication standard does apply in all cases.

The emergency provisions of the benzene standard also would continue to apply to pipeline operators and the handling of sealed containers with more

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than 0.1 percent benzene. This is a performance oriented provision. No specific quantity of benzene spilled or exposure level is stated as constituting an emergency. It is not possible to state such provisions specifically because of the large number of parameters in terms of percentage of benzene, quantity of benzene, size of area and ventilation rate. However, employers who have sufficient benzene present so that a container or pipeline break will lead to higher concentration of benzene are to keep appropriate respirators present for employees who must clean up the spill (See section (g)(1)(iv)) and a specific medical examination is required for employees who have been exposed to benzene in emergency situations.

The API supported the exemption specifically for crude oil and gasoline pipelines (Ex. No. 260, p. 24d). They referred to Runion and Scott who found that almost 95 percent of reported samples were of 1 ppm or lower, and over 90 percent of samples were at or below 0.5 ppm. API also supplied a limited amount of more recent additional data obtained during its final telephone survey which documents more recent sampling that obtained results even lower than those reported by Runion and Scott regarding pipelines. Company O supplied the results of 22 pipelines samples taken during 1984 and 1985. One of these samples (4.5 percent) showed exposure in the 0.5–0.99 ppm range, while all other samples were lower: 2 (9.1 percent) between 0.25 and 0.49; 2 (9.1 percent) between 0.1 and 0.24; and 17 (77.3 percent) less than 0.1 ppm (Ex. No. 204–7, p. 68–69). API concluded the low exposures, especially of the more recent survey supported the exclusion.

In further clarification it should be noted that exemption (a)(2)(iii) only applies when the containers and pipelines are sealed. When the containers are opened or filled or the pipelines repaired, the exemption does not apply since there would be the possibility of high benzene exposures. The API understood and agreed with this interpretation as to repair (Ex. No. 260, p. 25d).

In addition, the loading or unloading of pipelines where the operation is not sealed, is not covered by the exemption. That would not be an operation where the "transportation pipeline (is) sealed in such a manner as to contain benzene vapors." Unloading a pipeline with more than 0.1 percent benzene could lead to high benzene concentrations (and the percentages can go up much higher) if it is not sealed to contain benzene vapors and loading and unloading operations from pipelines may go on for more than brief periods. API's interpretation that all loading and operations from pipelines would be covered by this exemption is incorrect and would not be good policy since high exposures are a possibility (Ex. No. 260, p. 25d).

The exemption for containers and pipelines with mixtures containing less than 0.1 percent benzene applies even if they are not sealed. The basis is that when concentrations of benzene are as low as this, airborne exposures are unlikely to exceed the action level. The 0.1 percent level also ties in with the Hazard Communication Standard which requires no listing of the presence of carcinogens which are present at less than 0.1 percent.

The Independent Petroleum Association of America (Ex. No. 201–12) and Texas Oil and Gas Corp. (Ex. No. 201–8) stated that an exemption should be granted for natural gas. They stated that natural gas contains no benzene after processing and before processing contains well under 0.1 percent. Texas Oil and Gas included data showing that the inlet stream at natural gas processing plants was well under 0.1 percent.

Paragraph (a)(2)(iv) already excludes pipelines with mixtures of less than 0.1 percent benzene. So pipelines carrying natural gas both processed and not processed would be exempted because according to the data supplied the natural gas has less than 0.1 percent benzene. However, that paragraph as proposed would not cover natural gas processing plants. The other exemptions refer to liquid (not gaseous) mixtures.

OSHA has reviewed the record and the reasoning in its proposal. OSHA concludes that the exemptions are appropriate for the reasons stated in the proposal and restated above. One change is made. Paragraph (a)(2)(iv) is expanded to indicate that natural gas processing plant with less than 0.1 percent benzene is exempted as the same reasoning applies.

Paragraph (a)(2)(v) Percentage Exclusion

Benzene is a naturally occurring constituent of crude oil and as such is present in trace quantities in many products made from it. In the proposal, OSHA reasoned the standard would be protective of employees and more cost effective if employers who utilize chemicals, generally solvents with trace amounts of benzene, can be excluded from the standard when there is a high degree of confidence that the trace amounts of benzene present will not lead to airborne exposures over the action level.

During its 1978 benzene rulemaking effort, OSHA received numerous comments on this issue which eventually resulted in the Agency amending its standard to include a "liquid exclusion" provision (43 FR 27962; June 27, 1978). OSHA summarized its position at that time as follows:

> OSHA recognizes that the scope of the permanent benzene standard (29 CFR 1910.1028), unamended, is so broad as to encompass work place operations utilizing liquid mixtures with any amount of benzene, however, small * * *. However, because of the ubiquitous nature of benzene, i.e., its presence in a myriad number and type of worksites (benzene is a contaminant in most, if not all petroleum-based liquid mixtures), OSHA believes that it is proper to focus industrial hygiene and medical resources on those operations with higher exposures and which present the greatest potential risk to worker health. This decision is in accord with the evidence developed during the recent rulemaking which revealed the need to and appropriateness of limiting the scope of the standard (43 FR 27962; June 27, 1979).

Prior to its 1985 proposal, OSHA requested additional information on this issue. Many of the comments which were received (Ex. Nos. 142–11, 142–12, 142–31, 142–32) stated that there was no precise scientific formula for setting a liquid exclusion. The American Petroleum Institute for example, stated "the benzene content of a liquid is not the sole—or even the predominant—factor in predicting airborne concentrations * * *. Other facts, including temperature, agitation, ventilation, open versus closed systems, employee work practices, and the relative vapor pressure of the chemical constituents of the mixture, are also important, and may well be the more dominant factors * * *" (Ex. No. 142–31). This position is supported by Elkins (Ex. No. 142–28) and others.

OSHA, in the proposal, agreed that there was no such precise chemical model that would predict an exact percentage of benzene in a mixture which would result in exposures that would remain under the action level. OSHA contracted with JRB to have chemists explore whether or not a simplified formula taking into account not only percentage, but quantity of benzene, room dimensions, and simplified assumptions on air exchange rates and temperatures, would give better correlation with airborne levels and be workable. However, the formulas explored proved to be impracticable and not particularly more likely to lead to better results than a percentage exclusion.

OSHA stated in the proposal that although no precise formula can be

stated, it was important that there be an exemption from the standard because benzene cannot be totally eliminated from many chemicals. The inclusion of all solutions containing benzene under the scope of the standard would require a large amount of industrial hygiene resources and would be very costly, since it would require every employer who uses a chemical with a tiny percentage of benzene present to monitor initially the employees who use that chemical. A properly determined percentage exclusion, however, would lead to lower employee exposures overall as suppliers are induced to market solvents and other chemicals with smaller percentages of benzene to meet the exclusion, thereby on average lowering benzene exposure for employees working with those chemicals. Thus, OSHA believed that it was necessary to make the best estimate of a percentage exclusion which is likely to keep employee exposure under the action level and yet feasible.

OSHA reviewed comments which addressed the issue of what percent liquid exclusion would result in airborne levels of less than the PEL under typical industrial conditions. Dr. Elkins, for example, stated that "for sake of simplicity, it is recommended * * * that the 0.5 percent exemption percentage be applied (to such liquids) if the airborne permissible exposure limit is 1 ppm * * *" (Ex. No. 142–28). This position was supported by the following: Uniroyal (Ex. No. 142–8), RMA (Ex. No. 142–9), and Firestone (Ex. No. 142–22).

In the proposal, OSHA preliminarily concluded that 0.5 percent level was too high for the long term. First, the percentage should be set to make it likely that exposures will be below the action level, since employees of exempt employers will not have the benefits of the medical and other provisions which are triggered by the action level.

Secondly, exposure data provided by the United Rubber Workers Union (Ex. No. 145) showed that even with solvents of less than 0.5 percent benzene some 2.8 percent of the workers are exposed to airborne benzene levels above 1.0 ppm. Data provided by the National Paint and Coating Association (NPCA) (Ex. No. 142–29) showed that almost one percent of the samples taken were above 1.0 ppm as the result of exposure to liquids with less than 0.1 percent benzene. Elkins (Ex. No. 142–28), also recommended that if operations involving heating of liquids or exposure of large surface areas are carried out, at least a one time monitoring of the area for benzene in air should be done, if the benzene content of the liquids exceeds 0.1 percent. Thus, OSHA determined that the additional protection of 0.1 percent exclusion was needed to assure that very few employees using excluded solvents are exposed over the action level.

Based on these comments, and the JRB analysis, which demonstrates the feasibility of reducing benzene contamination to below 0.1 percent in solvents, OSHA preliminarily concluded that excluding work operations which use liquids containing less than 0.1 percent benzene is both feasible and consistent with the employee exposure protection provided by the benzene standard. The proposal allowed a 5 year period before this provision would take effect in order to give time to adopt the processes which would achieve this level. In the interim, the exclusion level was proposed to be 0.5 percent which was being achieved at the time of the proposal.

Some comments were received on this issue. Several suggested that the percentage exclusion be 0.5 percent although no detailed analysis was provided. (See Conoco's comments (Ex. No. 201–46, p. 3).

Several major trade associations whose members would be directly affected supported OSHA's proposal. The National Paint and Coating Association (NPCA) (Ex. No. 201–40, pp. 3–4) agreed with it. They stated that 40–70 percent of solvents used in their industry contain benzene but predominantly the levels were already under 0.1 percent. They added that "some raw material used in the production of paints and coatings may contain slightly higher levels. For this reason, a five year phased reduction of benzene contamination is appropriate" (Ex. No. 201–40, p. 3).

NPCA presented an example which they argued was a worst case scenario. They calculated that a paint with 70 percent solvent containing 0.1 percent benzene spray applied in a 27 cubic meter room at 1 air change per hour would result in a benzene concentration of 0.2 ppm (The JRB report indicated that theoretical calculations and actual measurements frequently differ, however Ex. No. 153).

The Rubber Manufacturers Association whose members use solvents contaminated with a small amount of benzene supported the proposal (Ex. No. 201–27, pp. 10–12). They pointed out that they were already using solvents with below 0.5 percent benzene. They stated that corresponding airborne levels are almost always below 1 ppm. But they stated they support a 5 year phase down to 0.1 percent benzene in order to give the petroleum industry time to phase down to that level.

NIOSH stated that "since there is the potential for significant amounts of benzene to enter a workers body by dermal absorption, NIOSH urges producers to continue to make every effort possible to further reduce the benzene contamination of their solvents and other products" [Tr., 3/20/86, p. 8. NIOSH opposed the 0.5 percent benzene exclusion because "the data of Susten et al. clearly demonstrates significent benzene absorption can occur among workers who use solvents that contain about 0.5 percent benzene" [Tr., 3/20/86, p. 16].

Public Citizen Health Research Group opposed any percentage exclusion. They presented a worst case example which they argued indicated that a 0.1 ppm contaminant could lead to exposures as high as 20 ppm. They also stated that skin absorption data (which is discussed at length above in the section on skin absorption) indicating that 0.5 percent benzene might lead to absorption through stripped skin equivalent to that absorbed from 2 ppm benzene through 8 hours of inhalation. (Using the same calculations 0.1 percent benzene contaminants could lead to the equivalent benzene absorbed through the skin as 8 hours inhalation at the action level).

As discussed above, other calculation of skin absorption are less. But it is true that for workers who cannot wear gloves, skin absorption would add to the total benzene body burden.

The AFL–CIO and USW agreed with a percentage exclusion. They contended that in light of both airborne and skin data and their analysis of feasibility, that the 0.1 percent or less benzene contamination could be achieved quicker. They recommended that the percentage exclusion be set at 0.3 percent on the effective date of the standard in light of the purer solvents already available and reduced to 0.1 percent after 3 years. (Ex. No. 260, pp. 53–54)

Both they (Ex. No. 246) and the Painters and Allied Trades (Ex. 244) submitted a technical paper on the issue by Larson, *et al.* Attached to the paper were a "series of steady state calculations of the airborne concentrations in ppm for products consisting of" various benzene percentages, applied at various rates in a 1000 cubic foot room with different ventilation rates. The results of these calculations indicate that benzene concentrations from paints containing 0.1 to 0.5 percent benzene could result in

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exposures above the 1 ppm PEL under various conditions. For example, at an application rate of ½ gallon per hour, the predicted airborne benzene concentration ranged from 0.3 ppm (under 1,000 cfm of ventilation) to 3.1 ppm (under 100 cfm of ventilation) [Ex. No. 244]. Thus, the Printing and Allied Trades recommended that OSHA act to set a percentage exclusion.

OSHA has carefully studied this submission, and believes the analysis conducted by Larsen et al. represents a worse case scenario and that the theoretical results are based on somewhat unrealistic assumptions. For example, these authors assume that the products are continuously applied over 8-hour in one room. Thus, the benzene that is removed from the air by the ventilation, is continuously being replaced by benzene evaporating from the newly applied materials. OSHA believes that under actual conditions, the paint will be allowed to dry. This will allow the ventilation to remove the benzene from the room and will result in the airborne benzene concentrations below those calculated by the authors.

Dr. Harris, who was invited to testify by OSHA, reviewed a University of North Carolina study (Ex. No. 211, pp. 3–5). This study indicated that in certain circumstances airborne exposures of 2.6 ppm could be expected from solvents with 0.5 percent benzene. However, for 0.1 percent benzene solvents exposure would be 0.04 ppm to 0.6 ppm.

The PMA (Ex. No. 257) pointed out that the 1983 JRB data indicated that 97 percent of exposures in rubber manufacturing were already under 1 ppm and estimated that in 1986 were over 99 percent. PMA also referred to data indicating that 86 percent of the solvents that they were using were already under 0.2 percent benzene and virtually all were already under 0.5 percent.

OSHA does not view these data as inconsistent. The Harris data indicate that 0.5 percent may in some circumstances lead to exposures over 1 ppm. The data referred to by the Rubber industry indicated that they are generally using solvents with benzene contaminants well under 0.5 percent and that exposures are under 1 ppm.

OSHA has reviewed its proposal in the light of comments, and additional data. Based on that review OSHA believes a percentage exclusion of 0.1 percent is appropriate for the long term. A percentage exclusion is needed because benzene is present in tiny amounts in so many solvents and other petroleum based liquids used throughout industries. To require employers to monitor no matter how low the percentage of benzene present in solvents would require a large amount of industrial hygiene resources to be used in situations where one can be highly confident that exposures will be substantially below the action level. In addition, such an exclusion encourages manufacturers to lower benzene contamination below the percentage exclusion. There is a competitive advantage to do so since their buyers will not be covered by the standard. Consequently, benzene exposures will be lower overall.

Secondly, OSHA concludes that 0.1 percent is the appropriate level for the exclusion. That level is needed to give a high degree of confidence that resulting airborne exposure are below the action level. The Harris data and the theoretical analysis by the Paint and Coating Association demonstrate this.

In addition, the level is needed to prevent skin absorption of benzene to be above the level which would be absorbed by the body through inhalation at the action level. As the above calculations show, 0.1 percent is needed to prevent workers who cannot wear gloves and have calloused hands from getting above 6 or 7 milligrams absorbed utilizing the higher estimates of absorption ratios) in 8 hours which would be the same as inhaled for 8 hours at the 0.5 ppm action level. (It should be noted that if the lower estimates of absorption ratios are used, of course, the amount absorbed would be less at 0.1 percent. See the discussion above under skin absorption).

OSHA believes that there will be few workers who will receive the maximum airborne and skin absorption levels from 0.1 percent benzene contaminated solvents. But such workers would receive less than the equivalent of 8 hours of benzene inhaled at the 1 ppm the PEL.

OSHA, however, has concluded that the phase down to 0.1 percent benzene contamination should be in 2 years and not 5 years. The final standard provides that the percentages exclusion should be 0.5 percent for the first year, 0.3 percent for the second year, and 0.1 percent subsequently. As the above discussion indicates, 0.5 percent benzene contamination can lead to airborne exposures over the PEL and to skin absorption which would be equivalent to greater than the amount that would be inhaled at the PEL in certain circumstances. Consequently, OSHA believes it is appropriate it achieve 0.1 percent as soon as feasible.

The JRB report (Ex. No. 153) demonstrates that there are a number of processes technically available now to reduce benzene contamination to below 0.1 percent in solvents and other liquids. In addition, suppliers were selling such solvents prior to publication of the proposal. OSHA now believes that a 5-year estimate to achieve 0.1 percent was undully pessimistic. The data supplied to the record show that 86 percent of the solvents used by the rubber industry, for example, are now below 0.2 percent benzene contamination. Therefore, not as much change is needed to achieve 0.1 percent as OSHA had originally believed. Consequently, OSHA concluded that production processes can be changed to achieve 0.3 percent in one year and 0.1 percent in 2 years from the effective date of this standard. In addition, that would be 3½ years from the date of the proposal.

OSHA is not requiring use of solvent with less than 0.1 percent benzene. An employer can use solvents with higher amounts. That employer will not be automatically exempted from the benzene standard, but will have to initially monitor employees to determine their exposure. If exposures are below 0.5 ppm, the only requirements are training and monitoring if processes charge. If exposure changes are over 0.5 ppm or 1 ppm the other provisions of the standard apply.

Finally, as discussed in the section on medical surveillance, the final standard requires medical surveillance for tire builders who are exposed to solvents between 0.1 and 0.5 percent benzene in the interim period. Those workers have regular skin exposures to such solvents and it will not be feasible for them to wear gloves. The medical surveillance will serve as a backstop to check on OSHA's judgement to permit interim exclusion levels.

Paragraph (a)(2)(vi) Oil and Gas Drilling, Production and Servicing Production

OSHA proposed to exempt oil and gas drilling production and servicing operations from the benzene standard. The basis for the exclusion was that exposures were under the action level and intermittent. OSHA had reviewed proposal comments on this sector (Ex. Nos. 142–1, 142–6, 142–13, 142–31, 142–32, 142–33). Most commenters recommended an exclusion based on monitoring data indicating that exposures at the production sites are believed to be low. Conoco (Ex. No. 142–1) for example, states "that both the personnel exposures and the ambient atmosphere at (these production) facilities were primarily in the 0.0–0.30 ppm benzene range. . . (And that) no readings greater than 0.5 ppm could be reproduced.

Additional exposure data was submitted to the record after the proposal and the API extensively reviewed exposure data (Ex. No. 260, pp. 16d–24d). This indicated that exposures were generally well under the action level with few exposures over the PEL. This was because the percentage of benzene in crude oil was generally low. For example, API submitted survey data of the results of 145 samples taken during 1985. Only three of these samples (2.1 percent) were above 0.5 ppm, and only three more fell in the range of 0.25–5 ppm. Fully 85 percent of the samples (124) reflected exposures of less than 0.1 ppm. [Ex. No. 204–7, pp. 67–68].

Drilling and Servicing

API submitted additional data (Ex. No. 260A, Appendix C, Attachment (1) indicating average exposures of 0.07 percent for certain drilling and servicing activities. Shell submitted data on 164 samples from 55 field production units. One sample was at 3.2 ppm, a few were between 0.5 and 0.2 ppm and the rest were no greater than 0.1 ppm.

Although some of the studies indicated somewhat higher exposure (Ex. No. 204–7, ATT. 8 and Runion and Scott), none of the studies indicated more than 1.5 percent of samples over 1 ppm.

In addition, API stated that workers move from site to site frequently. Thus, it would be unlikely that any worker would work at a site with higher benzene levels in the crude oil for long periods (Ex. No. 260, p. 17d). Based on this evidence, OSHA concludes that average exposures are well below the action level and very few exceed it. Workers are unlikely to be exposed to any repeated exposures over the action level. On this basis the exemption is retained.

Paragraph (a)(2)(vii) Coke Oven Batteries

OSHA did not propose to exempt coke oven batteries and had not specifically considered the issue. The American Iron & Steel Institute (AISI) noted that the JRB report indicated that virtually all exposures were under the action level. In addition, AISI introduced additional data (Ex. No. 245D and E) indicating that no exposures were over the PEL, and in the more recent data, no exposures were over the action level. Based on this data, AISI argued that coke oven batteries should be exempted from the standard on the principle that there was a high degree of confidence that all exposures were under the action level. The request for exemption was not specifically opposed although the AFL–CIO and USW in their post hearing briefs had some disagreement with the principle.

OSHA agrees that the data indicates that there is a high degree of confidence that very few exposures to benzene will be over the action level in coke oven batteries and none will be over the PEL. A major reason for these low exposures is OSHA's coke oven emissions standard (29 CFR 1910.1029), which requires employers to ensure that employees in regulated areas are not exposed to coke oven emissions at concentrations greater than 150 micrograms per cubic meter of air. This standard limits the levels of benzene to which coke oven employees are exposed. This illustrates the fact that the installing engineering controls to reduce employee exposures to a specific chemical frequently has the side benefit of reducing exposures to other hazardous chemicals.

Based on this analysis and data, OSHA believes it appropriate to exempt coke oven batteries from the benzene standard. Paragraph (a)(2)(vii) does so. It should be noted that the exemption only apply to the batteries. Coke facilities have other non-battery operations (such as light oil by-product operations) where benzene exposures are well above 1 ppm. These areas are covered by the standard and are discussed elsewhere in the preamble.

Construction

OSHA proposed to cover construction under the benzene standard and pointed out that there would be little impact on the industry. The Agency noted that it was important to cover construction to insure that the industry utilize solvents with a low percentage of benzene contamination and to prevent a loophole from being created.

OSHA presented the standard to the Construction Advisory Committee, and they did not oppose the standard applying to construction. Some members believed it should be represented in 29 CFR 1926, the construction regulations.

There was little comment on the proposal. The AFL–CIO and USW strongly supported applying the standard to construction for the reasons stated. They also felt that painters should be covered because of the possibility of the use of paints with substantial benzene contamination which would lead to high benzene exposures (Ex. No. 260, p. 52, 53). They did not object to a percentage exclusion (which would cover paints) so long as OSHA instituted the 0.1 percent level quicker. The National Paints and Coatings Association did not object to the standard covering painting so long as there was a percentage exclusion. OSHA has followed these recommendations.

The AFL–CIO and NPCA presented somewhat different theoretical analyses of what worst case exposures would be from spray painting with paints less than 0.1 percent benzene contamination. But in view of the lack of substantive disagreement, it is not necessary to resolve that issue.

OSHA concludes that the final standard should cover construction. The standard has virtually no impact on construction. The only impact that OSHA is aware of on new construction from the standard is on the use of some solvents contaminated by benzene in construction. However by purchasing solvents with less than initially 0.5 percent benzene contamination, 0.3 percent after one year, and after 2 years 0.1 percent benzene contamination, which as discussed above is feasible and inexpensive, the construction industry will fit within the percentage exclusion and be exempt from the benzene standard.

As discussed above, a frequent source of significant benzene exposure is maintenance operations at refineries, petrochemical plants and other facilities. Engineering controls are often not feasible for these maintenance operations. Exposures during these operations may be relatively high and it is necessary, therefore, that employees wear respirators, receive medical examinations and be protected by other provisions of the proposed benzene standard. Sometimes such facilities hire outside contractors to perform maintenance operations. The contention is sometimes made that the maintenance operations should be considered to be construction activities and not subject to general industry standards.

Even though there will be little impact on construction. OSHA concludes that construction should not be exempted from the standard. If construction were exempted there would be no requirement that construction employees utilize solvents with a low content of benzene contamination. In addition, a loophole would be opened in the enforcement of the standard if construction were exempted. The distinction between maintenance and construction activities is often an ambiguous one. The independent contractors who perform maintenance oprations clearly need to be covered because of the possibility of higher exposures. If construction were excluded, these maintenance contractors might argue that their work is "construction" and that they are not covered by the standard. By covering

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construction, this ambiguity does not arise. However, OSHA reiterates that there will be little actual impact on true new construction activities except for the need to purchase solvents with low benzene contamination.

OSHA is sympathetic to the view that health standards applicable to the construction industry be reprinted in full in Part 1926, Construction Standards. However, doing so substantially increases taxpayer costs for printing since a substantial number of pages are involved. Very few construction employers and employees will be directly affected by the Benzene Standard. Accordingly, the Agency believes it would be a better use of tax dollars not to reprint the standard in Part 1926.

Laboratories

The final standard, as did the proposal, covers laboratories subject to OSHA jurisdiction, including quality control and research laboratories. There are case reports of leukemia associated with benzene exposure in laboratories (Ex. No. 159–35).

Quality control laboratories in coke, petrochemical, tire, and refinery facilities usually repeat experimental procedures involving liquids containing benzene to test for product uniformity. Pure benzene is a commonly used chemical in research laboratories for many kinds of experiments. Because of benzene's volatility, the potential exists for significant exposures unless it is utilized properly under a hood.

OSHA has considered the few comments received on this issue, both in favor and opposed. Because of the direct evidence of health risk, frequency of use in laboratories and potential for high exposure, OSHA concludes laboratories should be covered.

Both quality control and research laboratories all have hoods. This would be the appropriate feasible engineering control which would succeed in keeping exposures below the PEL and generally below the action level. (See the discussion of the JRB report in the proposal and OSHA's proposed standard for laboratories).

OSHA believes that the monitoring requirements of the benzene standard would not be burdensome for research laboratories. A worst case initial monitoring conducted during the experiment with the greatest use of benzene could determine whether exposures were under the action level. If so, no further action need be taken. If exposures were over the action level, it would be appropriate to check the efficiency of the hood and the laboratory (work) practices to lower exposures. OSHA concludes that handling benzene under a hood would generally keep exposures below the action level; but if not, the rest of the standard would be applicable including medical surveillance.

OSHA proposed generally not to cover laboratories with substance specific standards but to cover them with a single generic standard (See 51 FR 26660, July 24, 1986). However, in that proposal, the Agency specifically recognized that benzene might be an exception, principally because of the need for a specific medical surveillance protocol for workers routinely exposed to benzene in laboratories (51 FR 26675). OSHA concludes that the benzene commonly used in laboratories may result in significant exposures if hoods are not properly used. Moreover, medical surveillance has clear benefits for employees including those who work in laboratories. The final laboratory standard has not been issued. Therefore, benzene use in all laboratories is most appropriately covered by this substance specific standard for the present time. OSHA will give additional consideration to this issue in the context of its final laboratory standard and then determine whether changes are appropriate once a final standard becomes effective. (No capital investment is required by this standard.)

Maritime Industries

OSHA proposed to cover the maritime industries. There was little comment expect for barge cleaning and repair and by implication tanker cleaning and repair. The AFL-CIO supported coverage (Ex. No. 262, p. 52). OSHA is covering these sectors for the reasons discussed. However, special provisions apply to ship and barge repair and cleaning. These are discussed below. OSHA intends shortly to issue a proposal on these operations.

Port facilities handling petroleum products generally handle petroleum products only and these products frequently contain a percentage of benzene. Most facilities are operated by the major oil companies. Benzene exposures over 1 ppm may result during the handling of these products. Compliance with the 1 ppm level can be achieved through the use of engineering controls which are located on the ship or barge.

Installation of this equipment is under the jurisdiction of the Coast Guard and not required by the proposed benzene standard. If these controls are not available compliance can be achieved with respirators.

As exposures can be over 1 ppm, employees of these facilities need the protection of the benzene standard. Although exposures may not be continuous, they may be high and occur on a regular basis (Ex. No. 159–67, Runion and Scott). OSHA, therefore, is including this segment in its standard and has covered it in the feasibility analysis.

Some of these operations may be longshoring rather than general industry. Facilities are generally utilized only for petroleum products and employees work there on a full-time basis exposed to benzene. The unique features of longshoring—many different types of cargoes, temporary employment and only occasional exposures—do not exist). Consequently, the benzene standard covers Part 1918, Longshoring and Part 1917, Marine Terminals.

Traditional longshoring operations may involve handling sealed containers holding benzene or liquids containing benzene. Those operations are generally exempted by the sealed container exemption. However, training is required to explain to the worker the importance of not breaking the containers and emergency protection is needed if there is a major spill of benzene or liquids containing a high percentage of benzene. Such provisions are in the standard and retained by the sealed containers exemption.

The standard is incorporated into 29 CFR 1915, Shipyard Employment for new constuction only and repair of ships and barges other than barges and ships containing petroleum products. There is little impact as they will comply by using solvents or paints with less than 0.1 percent benzene. However, coverage is needed so the yards will not use solvents or paints with a higher percentage of benzene.

Paragraph (a)(3) Cleaning and Repair of Barges and Tankers

This paragraph provides various exemptions from the benzene standard for the cleaning and repair of barges and tankers which carry oil, gasoline, other petroleum products and petrochemicals. As discussed in Section VIII B, Summary of RIA, above, special factors affect this sector. The proposal intended to fully cover this sector and indicated possible controls, but no detailed study was performed. At the hearing, industry representatives brought to OSHA's attention possible compliance difficulties and suggested a further study. OSHA recently completed a further study, but this was well after the close of the record.

Consequently, OSHA is exempting this sector from provisions where there might be compliance difficulties. OSHA

is not exempting this sector from provisions which are clearly feasible because part of the industry is already complying with them. OSHA intends to issue a proposal based on its recently completed study to develop standard . provisions most appropriate for this sector.

Specifically, OSHA is exempting this sector from the requirements to achieve 1 ppm with engineering controls (paragraph f) based on industry testimony of possible difficulties to achieve this level with engineering controls. (The difficulties may not be as great as suggested because the relatively high measurements presented were of total hydrocarbons not just benzene). The requirement to achieve 10 ppm with engineering controls remains in effect. The industry testified they are currently meeting this requirement.

The permissible exposure limits of a 1 ppm TWA and 5 ppm STEL are to be achieved with any combination of respirators, work practices and engineering controls. Industry employees currently wear respirators, OSHA staff has observed this. Where oxygen efficiency is not a problem employees may wear air purifying mask respirators which do not substantially increase the difficulty of entering tight spaces. Welding hoods are available with respirator capabilities. Where welding goes on, provisions for airlines or power are needed, so it is feasible to have airlines for air supplied respirators as well. Where oxygen deficiency exists, provisions for air supplied respirators or self contained breathing apparatus (SCBA's) must be made to prevent asphyxiation. Consequently, it is feasible to achieve 1 ppm with respirators.

The industry is currently monitoring with indicator tubes which measure total hydrocarbons. These are not particularly accurate but will always error on the high or protective side for benzene. They have the advantage of giving an almost immediate reading. OSHA intends the industry to continue its current practice. Accordingly, it is exempting this sector from the provisions of paragraph (e) which would require greater accuracy, require full shift monitoring and would be inconsistent with the current practices. The industry is already monitoring much more frequently than the monitoring provisions of paragraph (e) require. OSHA recommends that current practice be retained.

OSHA is not exempting the industry from the other provisions of the standard. Exposures to benzene are frequent and often over 1 ppm. Respirator use is frequent. Consequently, there is a clear health need for medical surveillance and training. Some companies and sectors (such as the cleaners specifically) already receive medical exams and training, so it is clearly feasible.

The partial exemption applies to tankers as well as barges. No specific evidence was presented on tankers but OSHA infers that the same factors would apply. It will fully consider this in the future rulemaking.

OSHA wishes to thank the industry for its cooperation in the study performed after the close of the record. In the intended future proposal rulemaking, OSHA will address the factors specific to this industry.

B. Definitions: Paragraph (b).

"Action Level". The final standard retains the same definition of "action level" as was defined in the proposal. "Action level" is defined as an airborne concentration of benzene of 0.5 ppm calculated as an 8-hour time-weighted average. Where exposures are below the action level of 0.5 ppm, little further action is required of the employer. Above the action level, the monitoring, and medical provisions of the standard take effect. Of course, the employer is required to keep employees' exposures below the 1.0 ppm permissible exposure limit.

One purpose of the action level is to relieve the burden on employers by providing a cut-off point for required compliance activities under the standard. In addition, due to the variable nature of employee exposures to airborne concentrations of benzene, the concept of an action level provides a means by which the employer may have greater assurance that the employees will not be exposed to benzene over the permissible exposure limit.

The action level also increases the cost-effectiveness and performance orientation of the standard while improving employee protection. Employers who can, in a cost-effective manner, come up with innovative methodology to reduce exposures below the action level, will be encouraged to do so in order to save on the expenses for the monitoring and medical surveillance provisions of the standard. Their employees will be further protected because their exposures will be less than half of the permissible exposure limit. When employers do not lower exposures below the action level, employees above the action level will have protection of medical surveillance, monitoring and other provisions of the standard to give further protection from the effects of benzene.

There is a discussion in the proposal preamble on the statistical basis for determining the action level (see 50 FR 50552). OSHA's specific choice of setting an action level of one-half the PEL is based on its successful experience in utilizing one-half the PEL as the action level in many standards, such as arsenic, ethylene oxide and vinyl chloride.

There was little or no criticism of the action level concept and various comments supported it. See Uniroyal (Ex. No. 142–8, RMA (Ex. No. 142–9), CMA (Ex. No. 201–33, p. 181) and AFL–CIO (Ex. No. 262, p. 3). The AFL–CIO agreed that a 0.5 ppm action level was appropriate for 1 ppm standard although they recommended a 0.5 ppm PEL with a 0.3 ppm action level. (This later issue is discussed in the feasibility section).

It should be noted that the proposed standard required training consistent with the Hazard Communication Standard even when exposures are below the action level. (The preamble discussion was not clear on this aspect). Training is appropriate below the action level so that employees can recognize situations where benzene exposure might be increasing and avoid taking actions which might lead to higher exposures.

Based on the reasoning above, the generally supportive comments, and OSHA's successful experience with the concepts, the action level of 0.5 ppm as proposed is retained in the final standard.

"Assistant Secretary" and "Authorized person" are defined in the final as proposed. These are based on OSHA's experience and the definitions have generally not been commented on.

"Benzene" (C_6H_6) is defined in the final standard as liquid or gaseous benzene and liquid mixtures containing benzene and benzene vapors released by those liquids (subject to the percentage exclusion discussed above in the scope section). The definition excludes from coverage "unreacted benzene contained in solid materials." The latter is a change from the 1978 standard and intends to clarify some of the concerns raised by commenters. The American Petroleum Institute in its comments (Ex. No. 142–31) raised concerns that if the 1978 standard were interpreted literally, products such as polystyrene containing a few parts per million benzene in the solid form would have to be labeled as a cancer hazard. Other polymer manufacturers reported extremely low levels of benzene vapor emitted from solid products containing very low amounts of unreached benzene (Ex. No. 142–31, Attachment C, page 6).

For example, ARCO stated "Tests conducted by ARCO Polymers on these products . . . demonstrate that even at the point where the highest concentration of benzene would be anticipated, the amount of benzene vapor in the air did not exceed the [0.5 ppm] action level. * * * In all cases but * * * one, if any benzene vapor was emitted it was undetectable using test procedures designed to detect levels as low as five parts per billion."

OSHA's chemical consultants at JRB concur with ARCO's findings and have informed OSHA that in their opinion it would be extremely unlikely that significant quantities of benzene would be emitted from solid materials, except in cases where the solid materials were being burned. Burning these materials would probably release quantities of toxins (such as styrene) with much more acute effects than the quantity of benzene being released. Since it is unlikely that unreacted benzene contained in solids will impose a significant health hazard, OSHA has excluded it from the scope of the standard.

The exclusion is intended to omit from the standard's coverage products that contain a very small amount of benzene in bound forms, such that they are incapable of releasing into the workplace, benzene vapors at levels which are greater than a small fraction of the action level.

"Bulk wholesale storage facility" is defined as a "bulk terminal or bulk plant where fuel is stored prior to its delivery to customers." The explanation for this definition is addressed in the Scope and Application section above.

"Container" means any barrel, bottle, can, cylinder, drum, reaction vessel, storage tank, or the like, but does not include piping systems.

"Day" is defined as any part of a calendar day. Therefore, if a requirement is applicable for an employee who is exposed to benzene for 10 days in a calendar year, that requirement becomes applicable to an employee who is exposed to benzene for any part of each of 10 calendar days in a year.

"Director" means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services.

"Emergency" is defined to mean any occurrence such as, but not limited to, equipment which may result in an unexpected significant release of benzene. Sections of the proposed standard that include provisions that must be met in case of emergencies include Respiratory Protection, Medical Surveillance, and Employee Information and Training.

Every spill or leak does not automatically constitute an emergency situation. The exposure to employees must be high and unexpected. This is a performance oriented provision relying on judgement. It is not possible to specify detailed circumstances which constitute an emergency.

"Employee exposure" is defined as that exposure to airborne benzene which would occur if the employee were not using respiratory protective equipment. This definition is consistent with OSHA's previous use of the term "employee exposure" in other health standards.

"Regulated area" means areas where airborne concentrations of benzene are in excess of the permissible exposure limit. This is discussed in the Regulated Area discussion below.

"Vapor control system" means any equipment used for containing the total vapors displaced during the loading of gasoline tank trucks and the displacing of these through a vapor processing system or balancing the vapor with the storage tank. This equipment also includes systems containing the vapors displaced from the storage tank during the unloading of the tank trunk which balance the vapors back to the tank truck.

With the exception of "Vapor Control System" the rest of the defintions are consistent with the proposal and reflect OSHA's past experience. There generally were no comments on those definitions.

There was one comment by Conoco suggesting this definition be broadened to include systems which dispurse vapors. OSHA does not believe that is protective. See the discussion under Scope and Application, Storage Facilities, Paragraph (a)(2)(ii).

C. Permissible Exposure Limits (PELs): Paragraph (c)

(1) Time-weighted average limit (TWA)

OSHA has decided to revise the permissible exposure limits for benzene by amending the current standard contained in 29 CFR 1910.1000, Table Z–2, which contains a 10 ppm 8-hour TWA, an "acceptable ceiling concentration" of 25 ppm and an "acceptable maximum peak concentration" of 50 ppm. (The Table Z–2 limits will continue to apply only where the new standard is not applicable). OSHA has decided to replace the 10 ppm 8-hour TWA for most industry segments with an 8-hour time-weighted average to airborne concentrations of benzene of 1 ppm. This new TWA is based on evidence that occupational exposure to benzene under current permissible exposure levels presents a significant risk to employees and that the new standard will achieve a significant reduction in that risk. The basis for the permissible 8-hour exposure limit is discussed above in the sections on significance of risk, feasibility and choice of exposure limit. In summary, OSHA has concluded that lowering the current PEL from a 10 ppm TWA to a 1 ppm TWA substantially reduces a significant risk and is feasible.

(2) Short-term exposure limit (STEL)

OSHA had decided to reduce the current short term exposure limits of a 25 ppm ceiling and a 50 ppm peak to a 5 ppm limit averaged over a 15-minute period. This decision is based on human and animal data indication that intermittent or peak exposures appear to cause greater effects than continual exposures to the same or lower levels.

OSHA, in the proposal, sought comment on the scientific principles it should use to determine the necessity for incorporating a STEL in the permissible exposure limit. It further sought comment on whether a STEL should be incorporated into the benzene standard, and if so, at what level. (See 50 FR 50552) and whether intermittent peak exposures to benzene carry any greater risk of disease than continuous low level exposures.

OSHA has reviewed the scientific principles concerning whether a short term exposure limit (STEL) should be set for a chemical substance and has also reviewed specific studies with regard to benzene, that are summarized here.

Dr. Richard Irons of the Chemical Industry Institute of Toxicology (CIIT) presented study results on benzene and stated:

> * * * our experimental evidence would highlight a concern that has been focused recently on transient exposure in the occupational environment rather than continuous low level exposure * * * where transient exposure is more important with respect to the individual than constant exposure to some low level or a time weighted average (Ex. No. 159–41A).

In a previous study Irons et al. had determined that the polyphenolic metabolites of benzene, primarily hydroquinone and catechol, appear to be responsible for benzene immune suppression and bone marrow suppression. Thus, for this study, mice were administered hydroquinone or catechol, on an intermittent basis or continuously. Irons stated:

> We found if we took the same dose of hydroquinone that we were giving repeatedly for a continuous regimen and gave it for three

days and allowed the animals four days to recover, then gave it again, an intermittent exposure, so that over a 30 day period, for example, the animals are receiving approximately 45% of the dose they would have received with continuous exposure, and we have a very pronounced drop in bone marrow cellularity, we have a decrease, a progressive decrease in circulating white counts, primarily associated with the lymphocytes, we have progressive decrease in erythrocytes, circulating erythrocyte counts. We have followed these animals now out to approximately between 6 and 8 weeks. They're beginning to drop dead * * * with what would be considered a classic aplastic response or aplasia in bone marrow (Ex. No. 159–41A).

With repeated administration of the metabolites, only a transient effect which gradually returned to normal was observed. On the basis of these observations. Irons concluded:

* * * intermittent exposure appears to be much more potent at producing bone marrow effects than is continuous exposure, and it may be that protection of the worker in an occupational setting requires prevention of peak exposures rather than the progressive lowering of the TWA in the absence of regulating or limiting transient exposure situations (Ex. No. 159–41A).

In addition, short term exposures to benzene at relatively low concentrations have caused chromosomal damage in animals. Those include exposures at 28 ppm for 4 hours (Tice et al., 1982, Ex. No. 159–88), at 1 ppm for 6 hour (Erexson, 1986, Ex. No. 171), and at 6 ppm for two 8-hour periods (Gad-El-Karim et al., 1982, Ex. No. 159–32).

Dr. Raymond Tice, a cytogeneticist and staff scientist at Brookhaven National Laboratory, submitted data (Ex. No. 201–37) indicating that more bone marrow damage can result from less exposure to benzene under intermittent exposure conditions. DBA/2, C57B1/6 and B6C3F1 mice were exposed to benzene in air at 300 ppm for 6 hours/day for 13 weeks, either for 5 days/weeks or 3 days/week. The three days/week regimen was similar to that used by Dr. Irons in his experiments, except that Tice exposed mice to benzene and Irons exposed mice to metabolite of benzene. With the three day regimen. Tice observed a considerably longer depression of the bone marrow erythropoiesis than with the 5 day regimen, which adds support to Irons' findings that intermittent exposure may be worse than continuous exposure.

In a study of refinery workers (Devine et al., 1983, Ex. No. 142–32A), a significantly increased risk of death from leukemia was not observed among the entire cohort possibly due to limited statistical sensitivity. However, when a case control study was conducted of the leukemia deaths observed among this same cohort, the deaths were found to be significantly associated with a history of longest employment as general pipefitters (RR=2.7), maintenance and yard pipefitters (RR=2.8), or in utilities (RR=4.6) (Divine and Barron, 1983, Ex. No. 142–32B). The mode of benzene exposure in these latter jobs is considered to be through intermittent bursts, as pipefitters and utility personnel usually have major responsibilities for repairing broken pipes or leaking seals in streams that may contain from 5% to 100% benzene. Given the limited statistical sensitivity of the case-control study and yet the identification of a significant association between dying from leukemia and the mode of benzene exposure most likely to have been experienced by these workers. OSHA has concluded that exposure to short-term intermittent bursts of benzene was an important factor in the development of these leukemias.

In the study by Wong et al. (Ex. No. 151A) which demonstrated a dose-response relationship between cumulative benzene exposure and death from lymphatic and hematopoietic cancer, a relative risk of 3.4 was observed for those persons categorized as having experienced maximum peak benzene exposures below 25 ppm.

DOW Chemical Company submitted a report to EPA and to NIOSH shortly after the earlier OSHA administrative record on benzene closed in 1978 (Holder, 1978, Ex. No. 159–49). This study demonstrated significantly elevated chromosomal breakage in circulating lymphocytes among 52 workers employed in operations where 8-hour time-weighted average benzene concentrations ranged between 2-10 ppm. Peak levels of benzene associated with the TWA concentrations as determined by 2–3 minute sampling periods ranged from 50 to greater than 100 ppm. Ceiling concentrations as determined by 15-minute sampling periods were reported to have been 25 ppm (Holder, 1978, Ex. 159–49). Further analyses by level of exposure indicated elevated chromosomal damage at exposures averaging below 1.0 ppm, as well as a dose-response relationship between chromosomal damage and benzene exposure (Picciano, 1980, Docket #H–059. Ex. No. 230.X–6). Although the frequency of peaking is unknown, Holder implied that the chromosomal damage was due to the peak exposures (Holder, 1978, Ex. 159–49).

The American Industrial Hygiene Association (AIHA) (Ex. No. 201–19) commented in response to questions in the proposal. "For a STEL to be justifiable from a toxicologic perspective, there must be an additional toxic response beyond which the TWA is not adequately protective." It further stated that an example of such a toxic effect is "a disproportionate increase in responses for excursion doses above the TWA." AIHA also pointed out that there are physical criteria limiting combinations of excursion time and concentration profiles and suggested that professional industrial hygienists recommend such exposure limits, but made no specific recommendations regarding a STEL for benzene.

NIOSH (Tr. 3/20/86 pp. 7–8; Ex. No. 238) recommended a short term exposure limit. In support of its position, NIOSH described data on the pharmacokinetics, evidence of cytotoxicity, results from long and short term exposures and the contribution of skin absorption to the overall exposure to benzene.

Dr. Bernard Goldstein, who was requested to testify by API, stated:

* * * a short term exposure limit is reasonable for two reasons—one, there is evidence * * * that there may be a concentration effect. The second reason is * * *, a short term exposure limit is valuable in helping workplace managers focus on the potential within their workplace for sudden release of an adverse product (Tr. 3/26/86, p. 139).

In comments for the State of Wyoming (Ex. No. 201–2), Donald D. Owsley supported issuance of a STEL if the dose of benzene received is sufficient to promote an adverse effect. Based upon the findings discussed in the proposal of significant chromosomal damage after short duration exposure to benzene in peak concentrations of 50 to 100 ppm, he found it "imperative that a short term exposure level be included * * *."

Atlantic-Richfield Co. (Ex. No. 201–25) supported a STEL, from an industrial hygiene view-point, because a STEL for benzene "will help ensure that the PEL is not exceeded by establishing an operational bench mark for short duration tasks." Chevron Corporation and Phillips Petroleum Company supported retention of the existing 25 ppm STEL (Ex. Nos. 201–16, 201–18), but did not believe there was a health basis for lowering it.

Kenneth G. Gould, Medical Director, Exxon Co. (Ex. No. 201–15) commented that "petroleum industry hydrocarbon exposures typically result from a series of small to medium excursions over an 8-hour shift", but a STEL is not necessary for benzene, because there is no scientific basis for relating a STEL to

the PEL, and excursions about 5–10 ppm are likely to be sensed by the employee, particularly if in a mixture with other hydrocarbons. OSHA disagrees that excursions of 5–10 ppm are likely to be sensed by employees, since benzene has poor warning properties at those concentrations and is even more difficult to smell in the presence of other solvent mixtures. Furthermore, protective action taken after exposure achieves little in reduction of risks.

A few commenters suggested that a 1 ppm PEL automatically imposes a maximum 15 minute exposure limit of 32 ppm, assuming *no* benzene exposure for the rest of the 8-hour shift (Ex. Nos. 201–30, 258). OSHA is concerned that there is misunderstanding of the concept of a STEL. The STEL is not a maximum level, but is a 15 minute time weighted average, so that it is possible to exceed the STEL as averaged over the 15 minute sampling period.

Exposures could theoretically go up to 75 ppm for one minute and still be in compliance with a 5 ppm-15 minute STEL. (Exposures could theoretically go up to 480 ppm for 1 minute with no STEL and 1 ppm 8-hour TWA). Furthermore, in reality, while 15 minutes or longer periods may only be measured for compliance purposes, excursions can occur for any time period. The STEL is implemented to prevent excursions and/or keep them as low as is feasible in order to reduce the risks of exposure to benzene.

SOHIO commented (Ex. No. 201–13) regarding the STEL that there is no conclusive scientific evidence that a STEL affords additional protection from chronic effects of benzene, for the following reasons: "Exposure estimates in the various epidemiology studies are tenuous and approximate at best * * * no appropriate animal experiments are available to address the STEL question * * * because of the differences in toxic effects exhibited by man and laboratory animals in response to chronic benzene exposure, it may not even be possible to design appropriate animal studies to address the STEL question." OSHA believes that there is extensive scientific evidence indicating that a STEL would afford additional protection from the chronic effects of benzene exposure as discussed here.

CMA (Ex. No. 258) in its final brief, contended that there is no basis for a STEL in the benzene standard because "A STEL is not needed to prevent the occurrence of acute health effects. Similarly, since a dose-rate effect for benzene-related leukemia has not been demonstrated, a STEL cannot be justified in terms of preventing leukemogenic effects of benzene. In any event, the proposed standard would protect against high short-term exposures even without the adoption of a STEL" (Ex. No. 258, p. 5).

OSHA disagrees with all three points made by CMA with regard to the STEL. First, a STEL can prevent the occurrence of acute health effects that can result from high peak exposures still within the 8-hour TWA PEL of 1 ppm. Theoretically, a peak at 480 ppm for 1 minute with no exposure to benzene for the rest of the day, could occur and compliance with the PEL would be possible. This could occur in a situation where repairs were being made on pipes or pumps with benzene-containing streams. Acute effects of benzene exposure include any of the cytopenias, including pancytopenia and aplastic anemia. Repeated intermittent high peak exposures such as this, with inadequate recovery time between exposures could lead to serious adverse acute and chronic effects. These exposures could be limited by a STEL and prevent peaks that would not be controlled by the PEL from occurring.

Public Citizen Health Research Group (Ex. No. 201–41) commented that OSHA should issue a STEL. "Given the significant risk that persists even at the 1 ppm TWA, OSHA is duty-bound to enact the most protective provisions practicable to reduce that risk." Public Citizens reiterated the importance of the data and statements of Dr. Richard Irons of the Chemical Industry Institute of Toxicology, that mice exposed intermittently to hydroquinone (benzene metabolite) died of aplastic anemia at 45 percent of the cumulative dose received with continuous exposure, meaning that intermittent doses are more hazardous than continuous exposures. They also stated that epidemiologic and experimental evidence presented in the proposal supports the need for a STEL, and added two studies not discussed in the proposal (Erexson et al., 1986, Ex. No. 252A-17-25, and Styles & Richardson, 1984, Ex. No. 252A-17-77) indicating measurable DNA damage in mice and rats after exposure to 1 ppm benzene for one six hour period. Public Citizen also pointed out that several epidemiologic studies have shown cancer or chromosome damage from average exposures of about 1 ppm benzene. Public Citizen stated that the 1 ppm TWA alone does not protect workers from significant health risks and a STEL should be adopted to reduce significant risks at the 1 ppm PEL.

The United Steelworkers of America and the AFL–CIO (Ex. No. 262) believe that "the record evidence clearly justifies the establishment of a short term limit." They cited evidence in the record demonstrating that short-term intermittent exposures to benzene result in adverse effects, including cytogenetic effects in animals (Ex. No. 233), aplastic anemia in animals (Ex. No. 159–41A), the testimony of Dr. Marvin Legator (Ex. No. 233) on the meaning of the cytogenetic tests, epidemiological studies of refinery maintenance and repair workers (Ex. No. 142–32B), and the epidemiological study by Wong et al. suggesting that peak exposures contribute to benzene related leukemia (Ex. No. 151–A).

The United Steelworkers and AFL–CIO cited several industrial hygiene factors that should be considered in determining the need for a STEL. They cited testimony of witnesses who agreed that in circumstances where jobs and operations are characterized by short term high level exposures, a short term limit would be more appropriate for judging exposures than an 8-hour TWA; many benzene jobs are characterized by short term exposures, such as in coke by-product plants, petroleum refineries and chemical facilities (especially maintenance and laboratory workers). They further stated that Dow Chemical recognized the appropriateness of a STEL for chemical operations by establishing a 10 ppm ceiling as an internal Dow standard (Tr. 3/26/86, p. 68).

In addition, short term exposure limits reduce exposure excursions peaks, and limit exposure variability, and limit long term average exposures (Ex. No. 204; Tr. 3/18/86, p. 13; Tr. 3/19/86, p. 158). In their opinion, a STEL would prohibit excursions otherwise allowed by an 8-hour TWA PEL. The United Steelworkers and AFL–CIO believe there is more than adequate scientific justification for a STEL.

In summary, intermittent benzene exposure has been demonstrated to cause more chromosomal changes and aplastic anemia in experimental animals than continuous exposure to the same or lesser amounts of benzene. Average exposures of 1 ppm to experimental animals have caused chromosomal aberrations; slightly higher average exposures to humans have been associated with significantly elevated chromosomal breakage and leukemia. Jobs entailing intermittent peak exposures have also demonstrated significantly elevated risks of leukemia. Thus, modes of benzene exposure as well as average exposure levels currently found in the occupational setting have demonstrated the need for a STEL in addition to a TWA PEL in order to further reduce health risks associated with benzene exposure.

Many parties to the rulemaking and scientific experts supported the need for a STEL based on biological data and modes of exposure to which workers are subjected.

Based on all the evidence, OSHA concludes that a STEL is necessary to prevent adverse health effects indicated by the biologic data. As discussed in the variability section, controlling peaks is also a good method of reducing cumulative dose. The existence of the STEL, the action level and the industrial hygiene provisions is the basis for OSHA's belief that risk will be reduced to levels lower than predicted by the risk assessments. (See the discussion in the significant risk and risk assessment sections). The 5 ppm STEL is feasible as discussed in Section VIII, D.

D. Regulated Areas: Paragraph (d)

The final standard retains the proposed requirement to establish a regulated area wherever the airborne concentration of benzene is above the permissible exposure limits. Access to the regulated areas is limited to authorized persons and the areas themselves are to be demarcated in any manner that limits the number of persons exposed to benzene within these areas. As in the proposed rule, the areas are demarcated by the employer in any manner that limits worker entrance into the areas.

The final standard gives employers a choice of whether to use, for example, ropes, markings, temporary barricades, gates, or more permanent enclosures to demarcate and limit access to these areas. Factors that employers might consider in determining the type of identification system include the configuration of the area, whether the regulated area is permanent, the airborne benzene concentration, the number of employees in adjacent areas, and the period of time the area is expected to have exposure levels above the PEL. Permitting employers to choose how best to identify and limit access to regulated areas is consistent with OSHA's belief that employers are in the best position to make such a determination based on the specific conditions of their workplaces.

The language of the final standard has been changed to include language in the "Definition" section that states that a regulated area is to be established where airborne concentration of benzene "exceed, or can reasonably be expected to exceed, the permissible exposure limits, either the 8-hour time-weighted average exposure of 1 ppm or the short-term exposure limit of 5 ppm for 15 minutes." The language in the standard itself, at (d)(1) has also been changed to reflect this new clarification. This conforms to the comparable provision of the recently promulgated Asbestos Standard (29 CFR 1910.1001). OSHA believes that this new wording more clearly defines the intent of the provision, that, when an employer reasonably expects exposures to be above the permissible exposure limits at a work location or site, he should establish a regulated area in order to prevent employees from unknowingly entering a high exposure area without the proper respiratory protection.

The final standard specifies two distinct permissible exposure limits: (1) An 8-hour time-weighted average exposure (TWA) of 1 ppm of benzene in air, and, (2) a 15-minute Short Term Exposure Limit (STEL) of 5 ppm of benzene in air. The standard requires the establishment of regulated areas when exposures are above either PEL.

Amoco Corporation, in its submissions (Ex. No. 201–22) stated that it was "not clear * * * whether OSHA expects a regulated area to be designated at any time and place the airborne concentration of benzene exceeds 1 ppm for any duration, or if this is required only when the airborne concentration is high enough for a long enough period of time that an employee continually present in the area might be overexposed." The Agency's intent in this provision is to require the establishment of a regulated area wherever exposures exceed the 8-hour time-weighted average limit or exceed the 15 minute STEL. Excursions above the PEL (but not exceeding the STEL) are allowed during the course of the workday so long as the TWA PEL is not exceeded.

The Chemical Manufacturers Association (Ex. No. 201–33) felt that OSHA's "definition should focus on potential employee exposure to benzene as an 8-hour TWA, not on the airborne concentration of benzene in a particular 'area.' " The intent of OSHA's regulated area requirement is to protect employees from unknowingly entering areas where their exposures would be expected to be above the PEL. The final standard, therefore, requires establishment of regulated areas where a reasonable expectation exists that the TWA or STEL would be exceeded if an employee were to work at that location all day. This both warns employees of the possible need to wear respirators and to keep out if they have no need to be present. An employee may not know how long he or she will be present in an area and should take precautions if the possibility exists that the employee will exceed the limit.

Regulated areas are to be established at all work areas where the TWA or STEL is exceeded, including maintenance operations. Areas such as maintenance operations where exposures are temporarily over the TWA or STEL need to be demarcated just as other areas of overexposure so employees who are not needed in these areas will keep out or wear respirators before entering them. The regulated area provisions of this standard are similar to other OSHA health standards.

E. Exposure Monitoring: Paragraph (e)

The final standard retains the requirements for employers to conduct employee exposure monitoring as originally set forth in the proposed standard, with some minor changes. OSHA's authority to establish monitoring requirements is found in section 6(b)(7) of the Occupational Safety and Health Act [29 U.S.C. 655] which mandates that any standard promulgated under section 6(b) shall, where appropriate, "provide for monitoring or measuring of employee exposures at such locations and intervals, and in such a manner as may be necessary for the protection of employees." The main purpose of monitoring is to determine the extent of employee exposure to benzene to determine if precautions are needed.

Exposure monitoring also informs the employer whether he is meeting the obligation imposed by the standard to keep his employees under the permissible exposure limits. In addition, exposure monitoring permits the employer to determine the source and extent of exposure and, with this information, evaluate the effectiveness of engineering and work practice controls, thereby preventing the overexposure of employees. Exposure monitoring is also necessary in order to determine whether respiratory protection is required, and if so, which respirator is to be selected.

Section 8(c)(3) of the Act [29 U.S.C. (c)(3)] requires employers to promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents at levels that exceed those prescribed by an applicable occupational safety or health standard. Exposure monitoring therefore enables employers to meet this legal obligation of the Act. Exposure monitoring data also are part of the information that must be supplied to the examining physician.

The results of exposure monitoring trigger the various provisions of the standard's requirements and are utilized by the employer to determine which

sections of the standard are applicable to exposed employees. Major sections of the standard are triggered if an employee is exposed above the action level and are not required if the employee is not.

All employee exposure monitoring required under the provisions of this standard is to be "personal sampling," as opposed to environmental or area sampling. Determinations of employee exposure are to be made from breathing zone samples representative of each employee's average exposure to benzene without regard to the use of respirators. Representative 8-hour time-weighted-average exposures are to be determined on the basis of one sample taken from the employee's breathing zone or on a series of consecutive samples taken over the full shift of the employee's exposure. Full-shift sampling is to be conducted for each job classification in each work area.

The final standard also contains the requirement that employees are not to be exposed above the short term exposure limit (STEL) of 5 ppm. Measurements for determination of compliance with the STEL are to be made from breathing zone samples measured at operations where there is reason to believe exposures are high. Examples given in the regulation include operations involving the opening of tanks for filling, loading or guaging, and/or where containers or process equipment are opened, resulting in expected high employee exposures. Also, where benzene is used for cleaning or as a solvent in an uncontrolled situation. STEL determinations are to be conducted. The employer may use short period measuring devices such as real time instrumentation or detector tubes to determine where short term measurements are needed.

Except for initial monitoring requirements, where an employer can document which shift at a location has the highest exposures, the employer needs to monitor only representative employees on the shift with the highest exposures. The language has been slightly clarified from the proposal to reflect a CMA comment (Ex. No. 201–33).

Representative initial employee monitoring is required of all employers who have a workplace covered under the scope of this standard. In its comments to the record, the Penzoil Company (Ex. 201–29) recommended that previous monitoring results collected in response to OSHA's several rulemaking efforts since 1977 should be allowed to be "grandfathered" into satisfying the initial monitoring requirements of this final benzene standard. The final standard allows initial monitoring data collected up to one year prior to the effective date of the standard to be relied upon to satisfy the initial monitoring requirements. The Agency feels that allowing employers to utilize this data provides reasonable flexibility to employers in meeting this requirement. Monitoring data more than one year old would not reflect the current conditions of the workplace.

The results of the initial monitoring represent the data that will be used to determine when further periodic monitoring is necessary. Periodic monitoring is required every six months for employees exposed above the PEL, and every year for those exposed at or above the action level but at or below the PEL. When two consecutive measurements taken at least 7 days apart indicate that the employee's exposure has decreased to the PEL or below but is at or above the action level, the frequency of monitoring for this employee can change from semi-annually to annually. If exposures are found to be below the action level, then monitoring may cease, unless production or process changes occur which may lead to higher exposures.

Additional monitoring is required of an employer in the form of repeating either initial or periodic monitoring as appropriate (see paragraphs (e)(2) and (e)(3)) when a change has occurred in his workplace that would make the employer suspect that new or additional exposures are occuring to his employees. Examples of when such new or additional exposures could occur include changes in production, processes, control equipment being utilized and changes in personnel or work practices in use.

The Monsanto Company, in its comments on this issue (Ex. No. 201–30) felt that additional monitoring specified in this section should not be required when changes are implemented that would reduce employee exposure, such as local exhaust ventilation changes. OSHA disagrees with this position since remonitoring is the only way an employer can be sure that the control measures implemented actually are being effective and are functioning properly in reducing employee exposure.

Section (e)(5)(ii) has been reworded to clarify that additional monitoring is required whenever spills, leaks, ruptures or other breakdowns occur that may lead to employee exposure. The employer shall monitor after the cleanup or repair to ensure that exposures have returned to the levels that existed prior to the incident.

Several commenters stated that OSHA's requirement for this additional monitoring should be tied to employee exposure. Monsanto suggested that "a more performance oriented approach will allow the employer greater latitude in choosing the more appropriate monitoring technique, such as area samples or short term consecutive source samples."

OSHA concurs with Monsanto in that a "performance oriented approach" will allow the employer greater latitude in choosing the more appropriate monitoring technique. The employer will have flexibility of utilizing either area or personnel monitoring or a combination of these methods in order to characterize potential worker exposure after a spill or leak.

As set forth in the proposed standard, the final standard retains the requirement to utilize monitoring and analytical methods which have an accuracy (at a confidence level of 95%) of not less than plus or minus 25% for airborne concentrations of benzene. Information on sampling and analysis can be found in Appendix D. Sampling and analysis may be performed by portable direct reading instruments, real-time continuous monitoring systems, passive dosimeters or other suitable methods. The employer, however, has the legal obligation to select a monitoring method which meets the accuracy and precision requirements of the standard. Equipment companies have been working on developing detector tubes with improved accuracies which read over 15 minutes. When they meet the stated accuracy, they can be used to monitor for the STEL.

Employers are required to notify employees in writing within 15 working days after the receipt of the results of any monitoring performed on them. This may be done either individually or by posting the results in an appropriate location that is accessible to the affected employee. The employer is also required to notify employees of the correction action(s) that are to be taken whenever the PEL is exceeded, in order to reduce exposure below the permissible levels. These provisions are required by section 8(c)(3) of the OSH Act and are further explained in the proposal at 50 FR 50557.

The Impact of Exposure Variability

Exposures at most locations are not identical to the average concentrations each day, but fluctuate somewhat because of minor changes in operations or environment. This is known as variability. Some variability is controllable and some is not. Employers

must keep average exposures somewhat under the PEL so that overexposure will not likely occur.

In drafting the benzene proposal, OSHA followed the same approach that it has taken since 1974 when it developed the vinyl chloride standard. Thus, a permissible exposure limit (PEL) of 1 ppm in the case of benzene, was proposed as an 8-hour time-weighted average. Firms were required to conduct exposure monitoring to determine the benzene level to which employees are exposed. If the monitoring reveals that workers are being exposed to benzene levels averaged over 8-hours in excess of the PEL, then the firm must develop and implement a compliance program in order to reduce exposure, primarily by means of engineering controls and work practices.

The proposal included several provisions to give extra flexibility to this approach. First, because monitoring results may not reflect the "true" employee exposures because of sampling and analytical error (SAE), OSHA has explicitly stated that it will not issue a citation on the basis of a single OSHA sample result unless the result exceeds the PEL plus the SAE (determined to be 25% in the case of benzene). Thus, a citation for exceeding the 1 ppm benzene PEL will not be issued unless the result for a benzene sample is greater than 1.25 ppm.

Also, OSHA has long recognized that there will be some day-to-day variability in employees' exposure due to environment variables. Its feasibility analyses take into account variability in determining the lowest feasible level. The OSHA Industrial Hygiene Technical Manual (p. 10–7) directs compliance officers to consider long term historical exposure patterns in reaching compliance determinations. So if a compliance officer finds an exposure over the PEL for a location, and the employer has many measurements under the PEL, the compliance officer will investigate the problem. If that investigation reveals that the compliance officer's sample may not be a true representation of the employee's exposure, the compliance officer may decide to remonitor first before deciding whether to issue a citation. However, the compliance officer may issue a citation for a single 8-hour TWA over the PEL plus the sampling and analytic error and normally would do so if the circumstances indicated in the manual did not apply. Employers generally keep their exposure levels on average somewhat under the PEL so if the measurement is high on the day of inspection, the measured exposure will still be under the PEL.

OSHA has been following this approach to enforcement, essentially since its inception 16 years ago. All 1910.1000 Tables Z–1, Z–2 and Z–3 standards and all section 6(b) health standards promulgated since 1974 (i.e., those that do not require closed systems) have been enforced this way. In OSHA's experience it has been protective of workers, has given reasonable certainty to employers who, if they have installed appropriate controls, have achieved the levels set consistently, and makes reasonably efficient use of the compliance officer's time.

However, prior to the publication of the benzene proposal, OSHA received a comment from the API recommending that the Agency reconsider its policy in the case of benzene. Specifically, the API submitted a draft of a study by Dr. Spear (Ex. No. 179) which appeared to indicate that there was a greater than average degree of random variation in exposures associated with some operations in the petroleum industry. If this higher degree of variability was not controllable, then employees in the petroleum industry would have to keep average benzene exposures well below the PEL in order to ensure that there are few random exposures above the PEL. Thus, API suggested that OSHA consider adopting a new enforcement policy in the case of benzene because of the variability problem or raising the PEL to 2 ppm so that they could achieve the PEL with few excursions.

OSHA retained its long standing policy in the proposal but requested that the public submit comments on this issue (50 FR 50513. 50555). Possible alternatives mentioned were a 40-hour TWA, a higher exposure limit or averaging exposures.

OSHA received a number of comments in response to these questions which can be classified into several broad categories. The first group is concerned with the impact of exposure variability on the feasibility of meeting the 1 ppm PEL. The second group is concerned with the "fairness" of OSHA issuing a citation based on a single observation in excess of the 1 ppm PEL. A third group believes the traditional OSHA approach was best. OSHA has carefully reviewed all the comments and data. The technical feasibility discussion (Section VIII.D.) demonstrates that the 1 ppm level is feasible, taking into account the variability that exists. The following section discusses other issues.

Dr. Spear performed an in-depth statistical analysis of sampling data obtained from many different sources (e.g., companies, plants, process units, etc.) and using many different sampling methods over different sampling periods (Ex. No. 204–7). Dr. Spear and his colleagues consulted with industry experts, and organized the data into 123 "relatively homogeneous" job groups. According to Dr. Spear, data on 19 of the groups proved to be extensive enough for detailed statistical analysis. (Exhibit 204–7. pp. 7–8).

API supplied OSHA with both a tape which continued the raw data used by Dr. Spear and a key which could be used to organize the data into the job groups developed by Dr. Spear (Ex. No. 250). Table I presents a summary of the benzene exposures of the 19 groups.

A comparison of these statistics with those presented in the Spear report (Ex. No. 204–7, Table 2, p. 21) revealed that most of the statistics presented in Table I are within 98% of those presented by Spear, with two exceptions. (Spear did not report the arithmetic means, and, it appears that one observation below the level of detection was placed in job group 5 by Spear and in job group 6 by OSHA.) Since these minor differences can be explained by the fact that Spear made some slight modifications to his data sets in order to take advantage of hard copy information which was not available to OSHA, it appears that both analyses were essentially based on the same data.

Table I presents data which provides some information on the degree of variability which existed several years ago when the data was gathered and when the exposure limit was 10 ppm so there was no requirement to keep exposure below 1 ppm. In 10 out of the 19 jobs groups, more than 9 percent of the observations exceeded the proposed 1 ppm PEL even though the arithmetic means of the observations in these data sets were below 1 ppm. In 3 of these 10 cases, nearly 10 percent of the observations exceeded 1.0 ppm even though the arithmetic mean of the observations was less than one-half of the proposed PEL.

Since the exposures for the job groups exhibit the pattern of concern to some commenters (i.e., high probability of random observation above 1 ppm when average exposures are below 1 ppm), they represented an opportunity to examine the variability issue further. Much of the analysis which follows is based upon Table I and the assumption that there is equal chance of obtaining any observation in the data set associated with each group. The

parametric approach based upon the assumption that the underlying distribution of exposures was log normal could have alternatively been used (Ex. No. 204–7, p. 26, Table 7) and would have led to similar results.

Based upon comments made to the record and the analysis of the Spear study that follows, OSHA reached the following conclusions. First, the impact of exposure variability on the ability of firms to comply with the 1 ppm 8-hour TWA PEL is greatly overstated. Next, compliance with the 1 ppm 8-hour TWA PEL is feasible and will not result in unfair citations. And, finally, OSHA's current enforcement policy is more protective of workers than the other alternatives that have been suggested.

TABLE I.—SUMMARY OF BENZENE EXPOSURES FOR 19 JOB GROUPS

Job group	No. of observations	No. of employees sampled	Percent of samples below the level of detection	Percent of samples exceeding 1 ppm	Percent of samples exceeding 2 ppm	Arithmetic mean * (ppm)
1	205	40	27.3	0.5	0.0	0.10
2	171	44	8.2	1.2	1.2	0.29
3	83	21	15.7	13.3	6.0	0.82
4	58	24	0.0	13.8	3.4	0.62
5	54	15	1.9	9.3	5.6	0.33
6	67	22	9.0	16.4	13.4	0.66
7	80	20	2.5	20.0	10.0	1.30
8	161	37	3.1	24.2	16.8	1.69
9	124	23	10.5	10.5	3.2	0.51
10	97	25	18.6	9.3	7.2	0.49
11	113	33	15.9	1.8	0.0	0.25
12	98	25	14.3	6.1	1.0	0.36
13	79	19	25.3	5.1	1.3	0.29
14	89	17	14.6	9.0	3.4	0.44
15	177	25	24.3	11.9	7.9	0.58
16	90	18	2.2	1.1	0.0	0.26
17	59	20	0.0	16.9	5.1	0.71
18	48	24	6.3	25.0	18.8	2.47
19	55	18	9.1	14.5	1.8	0.50

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.
*When computing the arithmetic mean, values below the level of detection were assumed to equal 0.05 ppm.

Impact of Exposure Variability on the Feasibility of the 1 ppm PEL

While the technological feasibility of meeting the 1 ppm PEL was previously discussed in this preamble (See Section VIII. D., Summary of Regulatory Impact and Flexibility Analysis), several points are worth noting in this section. First, not all of the variation in exposure is the result of either random chance or environmental factors. Many high exposures result from clearly identifiable causes. Many companies, in fact, recognize that exposures are not truly random and record information such as the weather and the operating conditioning of the plant at the time samples are taken (Ex. No. 253). And, as the API noted, many companies tend to concentrate their hygiene efforts on the conditions associated with the highest exposures (Ex. No. 204–7, Confidential Survey).

Secondly, it is possible to devise strategies to control the peaks. For example, Dr. Mirer of the UAW stated:

> Every industrial hygienist knows that occupational exposures vary within the workplace. Interpreting this variability and understanding the reasons for it are the basic activity of the profession.
>
> Exposure varies from day to day, based on differences in production rate, material composition or character, process controls, work elements, process upsets or breakdowns, environmental emissions control changes, adjacent exposure sources, and sampling or analytical variation.
>
> The causes of variation in exposure are largely the elements which the employer is required by a standard to control by the implementation of feasible engineering and administrative controls and work practice controls.
>
> The control methods are supposed to be designed to protect, under a variety of conditions, overexposures or violations of the standard which should be abated by the installation of controls to prevent the overexposures.
>
> I should also add that most of this variation is not the result of any physical law or principle or inevitable characteristic of industrial operations. It's actually socially determined—such factors as production rate—and well under the control of employers (Tr., 3/25/86, pp. 40–41), Dr. Harris testifying at OSHA's request (Tr., 3/19/86, pp. 7–8).

Dr. Mirer's position that much variability is controllable was supported by several witnesses in the hearing including Dr. Spear testifying at the request of API (Tr., 3/21/86, pp. 40–41, Dr. Harris testifying at OSHA's request (Tr., 3/19/86, pp. 158–159), and Dr. Lynch, testifying at CMA's request (Tr., 3/26/86, p. 92). SOHIO, as discussed below in Methods of Compliance, pointed out that in their pure benzene facility, engineering controls consistently kept exposures below 1 ppm (Ex. No. 201–13, p. 13) indicating that they had controlled variability well in a difficult circumstance. Dr. Snyder testified on behalf of CMA as to how engineering controls reduce variability to low levels. He stated,

> . . . higher standard deviations [of variability] do occur when controls are not fully implemented. As controls are applied, the standard deviation does come down a little bit but in our own plants where the control is quite good we've gotten down in the vicinity of 2 [standard deviations] or maybe a little under 2 [a low level of variability] (Tr., 3/26/84, p. 91).

Various control strategies are described in both the JRB report (Ex. No. 153) and the Regulatory Impact and Flexibility Analysis, including the institution of a leak detection repair program, the installation of better seals and gaskets, and the use of dilution ventilation. API (Ex. No. 204–7, pp. 56–65) and CMA (Ex. No. 258, pp. 167–170), have noted that there are some circumstances, where respiratory protection is appropriate and is common industry practice. Identification when

exposures are likely to be over 1 ppm and respirators needed is important to make this strategy work. Thus, the percent of employee exposures currently exceeding the 1 ppm level need not remain constant after the promulgation of the 1 ppm PEL. Indeed, the primary purpose of revising the benzene standard is to reduce this percentage.

OSHA, therefore, concludes that exposure variability does not represent a feasibility problem. As was discussed at length in the feasibility sector, OSHA's conclusion is that it is feasible to achieve 1 ppm with a high degree of confidence day in and day out so that employers will not face a substantial amount of random variation over the PEL.

Exposure Variability and Various Monitoring Approaches

Some commenters suggested that the high exposure variability associated with outdoor work operations makes OSHA's current enforcement policy unfair to the conscientious employer who maintains typical employee exposures below the PEL but who has some employees exposed above the PEL due to random chance. For example, Mr. William F. O'Keefe, V.P. of API stated:

> [T]his phenomenon [day-to-day exposure variability] is commonly observed for workplace contaminants, and means that even employers whose workplaces typically are far below an OSHA standard face a measurable risk of a citation for violating OSHA's never-to-be-exceeded PELs. Such citations are inherently unfair, since the occasional "outlier" samples cannot be anticipated. . . . We think that the issuance of a citation where average exposures are plainly below the OSHA PEL is unfair and unnecessary, and that the standard OSHA issues for benzene should have a built-in mechanism for preventing such a result [Ex. No. 204–7, pg. 19–22].

OSHA concludes that the following discussion demonstrates that OSHA's monitoring approach is not unfair.

Dr. Spear suggested that OSHA should concentrate on the mean exposures rather than the peak exposures when chronic and not acute effects are at issue (TR., 3/21/86, pp. 30–31). For several reasons, however, OSHA does not agree with the premise that only the mean exposures are of concern. First, studies, such as those of Irons [Ex. No. 159–42A] and Tice [Ex. No. 201–37], discussed in the STEL section, suggest that intermittent exposures may have more harmful effects than continuous exposure to a relatively greater amount of benzene. Second, a careful consideration of the implications of a higher than average degree of variability indicates that OSHA's enforcement policy does not generally lead to unfair citations. Finally, as is discussed in the section on the PEL, in a attempting to reduce the possibility of a random exposure exceeding the 1 ppm PEL, employers will generally reduce average exposures to well below 1 ppm. This strengthens OSHA conclusion that the actual risk will be well below that predicted by the risk assessments at 1 ppm. If, OSHA concentrates on the mean exposure, however, the Agency anticipates that average exposures will not decline as much, and OSHA could not be as confident that risk will be below that predicted by the risk assessment at 1 ppm.

The following discussion reviews the various alternatives considered and the reasons for the above conclusions. These alternatives can be divided into the following four broad classifications: (1) Adopting the 1 ppm as a 40-hour TWA; (2) raising the 8-hour TWA PEL so that there is a lower probability of detecting the outlier; (3) in the event a compliance officer obtains an initial reading above the 8-hour PEL, requiring OSHA to resample before issuing a citation in order to determine whether the high exposure was representative or was due solely to chance; and, (4) allowing the use of employer data—which demonstate that average exposures are below the 8-hour PEL—to rebut the presumption, based on a single high reading obtained by OSHA, that exposures exceed the PEL. Each of these approaches is discussed in the following sectors.

Adopting the 1 ppm as a 40-hour TWA

Question 2 of the proposal requested the public to comment on the appropriateness of adopting a 40-hour TWA [50 FR 50512]. OSHA received several comments in response to this request. Some comments opposed the 40-hour TWA PEL because it would be both expensive and difficult to implement. For example, Phillips Petroleum stated that:

> Phillips is in favor of the eight-hour TWA limit. The longer forty-hour limit may be more representative of true exposures, but because of the logistics of getting an employee to carry a sampler for consecutive work periods totaling 40 hours and varying work schedules, it is impractical to set a forty-hour limit. The eight hour time weighted average is more efficient and practical at whatever PEL is set. [Ex. No. 201–18, p. 2).

The AFL–CIO and USWA were also against the 40-hour TWA. They stated.

> The 40 hour averaging scheme would not only allow great peaks in exposure (particularly if there is no STEL in the final standard), but would be very difficult to implement. Determining 40-hour time weighted averages would require greatly increased sampling time and resources for both employers and OSHA [Ex. No. 262, p. 40].

Other comments were in favor of the 40-hour PEL because it addressed the problem of unusual work days. For example, Standard Oil of Ohio stated that:

> We find general "adjustment factors" for novel work schedules such as those which are replete in the industrial hygiene literature, are unsatisfactory (e.g. Chapter XIII Modification of PEL's for Prolonged Exposure Periods, in OSHA's Industrial Field Operations Manual). Adjustment factors should be tailored to the specific toxicologic and pharmacokinetic properties of the chemical in question. * * * Given the lack of scientific evidence to support the application of any adjustment factors. Sohio supports a 1 ppm PEL with a 40-hour weighted average. (Ex. No. 201–13)

Sun Company also supported this position.

> The adoption of a formula for calculating the exposure representative for a 40-hour work week would resolve problems of technical and/or environmental variability without resorting to the arduous log-normal statistical calculations expounded by compliance theorists. [Ex. No. 201–9]

Based on these comments and its experience, OSHA has concluded that the adoption of a 40-hour TWA is inappropriate. First, OSHA's current enforcement policy for addressing non-standard work days has been tested over several years under actual field condition. Second, and more importantly, since the benzene standard covers a very wide scope of establishments it must be drafted to limit the compliance burden on typical firms while still protecting worker. While Sun Company and Standard Oil may have the resources to conduct monitoring over a 40-hour period, most firms and OSHA do not.

A 40-hour TWA would have two harmful impacts. It would place an unfair burden on the majority of firms covered by the standard (many of which are small businesses) by greatly increasing monitoring costs and it would reduce the protection afforded most employees because monitoring over 40 hours would greatly constrain the number of worksite that OSHA could inspect. Finally, a 40-hour TWA will be less protective of workers than an 8-hour TWA because a 40-hour TWA will permit more excursions above the PEL and will probably result in higher average exposures than an 8-hour TWA.

Companies which have unusual workshifts which they believe are not appropriately covered by OSHA's enforcement guidelines to cover such

situation, should write to OSHA's Field Compliance staff explain their situation. If the facts justify it, OSHA would consider adding to its guidelines covering non-standard shifts.

Raising the PEL

Another approach recommended in some comments to handle variability was to raise the PEL and keep the same enforcement approach. CMA, for example, stated that OSHA should:

> establish a higher PEL than OSHA has proposed *e.g.*, a PEL of 2 ppm * * * [In] order to comply with a 2 ppm standard, employers would have to maintain average exposures at less than 1 ppm [because of the high exposure variability, a point that was confirmed at the hearing. Thus, a 2 ppm standard, effectively requiring that long-term average exposures be maintained at or below 1 ppm, would provide all of the health benefits that OSHA has calculated for the proposed 1 ppm standard [Ex. No. 258, pp. 130–131].

Table I reveals that only one of 19 Groups (i.e., Group 6) had a greater than 9 percent probability of exceeding 2 ppm when the arithmetic mean was below 1 ppm.

This approach suffers from a major defect. It would permit much higher average exposures than can be feasibly achieved and is likely to lead to increased risk. As Ms. Seminario of the AFL–CIO stated.

> We turn to the * * * proposal to increase the standard to 2 parts per million. I think the only point that needs to be made there is indeed 2 parts per million is in fact, given OSHA's procedures to allow for variation in analytical and sampling techniques, is really a 2.5 part per million standard. When we deal with that, we have to look at it that way, and look at it as increasing the risk proposed to workers. It allows greater exposures no matter how you look at it (Tr., 3/27/86, p. 77).

Table 1 clearly illustrates the point that with a 2 ppm limit there could easily be average exposures over 1 ppm and few readings over 2 ppm so that OSHA would rarely issue citations. For the three groups that have arithmetic means greater than 1 ppm (i.e., 7, 8, and 18), only 10–19 percent of the observations exceeded 2 ppm. This means, that contrary to CMA's assertions, an employer could keep average exposures over 1 ppm and face only a 10–19% chance of being cited for violating 2 ppm. Consequently, some employers might choose not to keep average exposures below 1 ppm with a 2 ppm limit. Thus, this approach must be rejected on the basis that it is less protective of workers and clearly would permit higher average exposures than 1 ppm.

Two Consecutive Readings Above the PEL

The third approach is for OSHA to issue a citation only in cases where the compliance officer obtains two consecutive readings above the PEL. Dr. Spear stated:

> [C]onsider the likelihood of the inspector obtaining two consecutive samples above the PEL. If the sampling is independent then the probability that two consecutive measurements exceed 1 ppm is simply the square of the probability (of one sample exceeding 1 ppm) * * * Unless the two measurements are taken sufficiently close together in time to be highly autocorrelated, it would appear probable that the long-term average exposure is likely to exceed the PEL in environments where two consecutive samples are found to exceed the PEL. Therefore * * * [this] proposal appears to be a sensible check * * * [Ex. No. 204–7, p. 29]

If one makes the assumption that the exposures are truly random and independent, then it can be shown by using this approach (i.e., simply taking the squares of the percentage of observations exceeding 1 ppm in Table I), that the probability of two consecutive measurements exceeding 1 ppm is less than 3 percent for the 16 job groups that have average exposures below the proposed 1 ppm PEL. Even in the case of Job Group 6, which has the highest probability of the 16 Job Groups, the probability of two consecutive measurements exceeding 1 ppm is only 2.7 percent (i.e., 16.4% x 16.4%). Thus, this approach makes it highly unlikely that OSHA would issue a citation for violations of the 8-hour PEL in cases where the average exposures are below the PEL. These estimates were made without consideration of the SAE. If the SAE had been included then the probability of not catching an average exposure above the proposed 1 ppm PEL would be even higher.

This approach suffers from several major defects. As was discussed previously, not all high exposures are truly random. Some are due to specific causes under the employer's control. If a compliance officer is required to obtain two consecutive samples above the PEL before a citation can be issued, the employer can take steps to alter the conditions in the plant which will result in lower exposures when the compliance officer returns. While this may seem like a good approach to get the employer to take action, it must be remembered that some of the steps that can be taken (such as reducing the process rate or avoiding certain operations) are not permanent. Thus, this approach could make the standard unenforceable. The employer could, by slowing operations on the return day, register low exposures even though normal exposures are over the limit.

Second, this would mean that averages over the limit would often be missed even without action by the employer. For example, under the assumption of random and independent events, the probability of obtaining two consecutive observations above the 1 ppm from Job Group 18, where the arithmetic mean is over twice the proposed PEL, is less than 7 percent. (i.e., 25%×25%=6.25%). Finally, this approach greatly reduces the number of employers who can be inspected.

Thus, this alternative must be rejected on the grounds that it is not protective of workers since long-term average exposures well over the PEL will generally not be detected. Dr. Spear did recognize this when he stated, "I think the idea of requiring them [the compliance officers] to have two consecutive samples over the PEL [before issuing a citation] was not a very good way to go" (Tr., 3/27/86, pp. 82–83).

Averaging Exposures

The final approach, which received the most support by industry, is to allow the use of employer data to establish the average exposure, and this average would be used as part of the basis for the determination of compliance. The rationale behind this approach was summarized by the CMA, in its post-hearing brief:

> In short, there was widespread agreement at the hearing that average exposure over a long period of time is the relevant parameter for estimating cancer risks associated with low level occupational exposure to benzene and that, accordinly, a better relationship between the PEL and the health risk of concern would be achieved if the standard were implemented on a basis that takes account of average exposures in determining compliance [Ex. No. 258, p. 117].

According to Dr. Spear, the averaging approach appears to have the advantage of being more closely tied to the "health risk of concern" than the other approaches. In addition, it also encourages employers to collect more exposure data. More observations may lead to a greater probability of identifying a problem if one exists (Ex. No. 218B, p. 21).

As discussed in the STEL section, however, the long term average exposure may not be the only concern. Occasional "outliers" may also be important.

However, the averaging approach would be extremely difficult to implement. It does not take into account the need to ensure that the average

computed by the employer is representative of the same conditions sampled by the OSHA compliance officer. If the employer's and OSHA's samples were taken under different conditions, then the results are meaningless. According to Dr. Spear, "if you mix apples and oranges, you can sample until hell freezes over and you are not going to get an adequate characterization" of exposures (Tr., 3/27/87, p. 50).

This concern was stated by Margaret Seminario of the AFL–CIO.

> * * * the point I was trying to make earlier was that when you look at the data, and you take an arithmetic mean, * * * you are taking an awful lot on faith that indeed those samples do represent that worker's particular exposures, [and] that exposure measurements are representative * * * (Tr., 3/27/86, p. 122).

If the samples were taken under differing conditions, then a problem situation may go undetected, resulting in inadequate worker protection. According to Dr. Spear,

> it doesn't make any sense * * * to average across different people if you cannot assure yourself, and whoever might be scrutinizing your data, that these people do have similar exposures, because * * * you may * * * have one individual * * * who has higher average exposure than another individual, and clearly, by averaging the two, you are not protecting the person with the higher exposure (Tr., 3/21/86, p. 42).

The result of pooling samples, taken under very different conditions is to create a heterogeneous population. Dr. Lynch noted that the problem would result in "speading the data all over the place" (Tr., 3/26/86, p. 92). Ms. Seminario stated that,

> There may be overlapping distributions or several distinct distributions of exposures, which cannot be accurately represented by the simple log normal model. Grouping this data in one distribution may * * * increase estimates of the probability of higher exposures occurring [Ex. No. 204–9, p. 7].

For this reason, the AFL–CIO requested that if the averaging approach was permitted, then OSHA should require the employer's data to meet several criteria in order to ensure that the employer's data represented the true exposure of specific individuals. For example, the following criteria were suggested:

> (1) "Employer data will only be considered if it is data on the same worker doing the same job."
>
> (2) "There must be more than 5 employer exposure measurements for the individual worker taken over the past year, and those samples must represent the full range of possible exposures" [Ex. No. 262, p. 44].

This would be a substantial body of documentation for the employer to gather and for OSHA's compliance office to review.

In order to further study the problem of obtaining representative samples of worker exposure and avoiding overlapping distribution. OSHA conducted statistical tests on some of the jobs groups in the Spears study. OSHA attempted to determine if the mean exposures of the group would be substantially different when some quantifiable characteristic was taken into account. The purpose of this is to determine whether the degree of variation stated indicated true variation or that the groupings included different conditions and did not represent nearly homogeneous groups. In the latter case, the study would exaggerate the degree of variation because it included different conditions in each group. OSHA used Dr. Spear's report as a basis for this analysis because he and his colleagues spent considerable effort to attempt to obtain "nearly homogenous groups" [Ex. No. 207–7, p. 2–4].

The analysis was conducted in the three steps. First, each group of observations was transformed from a presumably log normal distribution to the normal distribution required for the tests (i.e., each observation was converted to its logarithmic value). Next, the data in each group was stratified according to two identifiable characteristic (i.e., operating, condition), so that the subgroups could be tested to determine if they came from the same parent population group. Finally, the following tests were conducted: The F-test, the t-test, and two "goodness-of-fit" tests for normality.

The two tests for normality—the Kolomogorov D for subgroups with more than 50 observations and the Shapiro Wilk for subgroups with less than 51 observations—were important, because normal distributions were required for the other tests. In addition, while these tests were not sufficient to ensure that there were no overlapping distributions, they did provide OSHA with some confidence that the observations did not come from the very different distributions (which might have, for example, resulted in multiple peaks in the frequency distribution). The F-test was used to test the hypothesis that two normal populations have the same variance, and, the t-test was used to test the hypothesis that two normal populations with same variance also has the same mean. Taken together these tests revealed whether or not it was safe to assume that the two subgroups came from the same population because the normal distribution is fully characterized by two parameters, the mean and variance.

While this analysis was not designed to be generally representative of all situations, it does reveal the difficulty in implementing the averaging approach. (This is especially true given the considerable effort spent by Dr. Spear and his colleague in obtaining "nearly homogeneous group" [Ex. No. 204–7, p. 2–4], an effort that is highly unlikely to be duplicated under most field conditions.)

Since codes for at least 3 different operating conditions (e.g., routine, turnaround , and other) were available for 12 of 19 job groups, it seemed reasonable to conclude that some plant peronnel may have been concerned about differences in exposures resulting from different operating conditions. Thus, this seemed to be an ideal starting point for the analysis of Dr. Spear's groups. Further examination of the data, however, revealed that six of the 12 groups only contained observations on one operating condition.

Two of the job groups (i.e., 7 and 8) contained at least two normally distributed subgroups of at least 10 observations each and were used for further testing. (The hypothesis of normality could not be rejected at the 95 percent confidence level).

Job Group 8 had two subgroups that could be tested, exposures taken during running conditions (OPC=1) and exposures taken during turnarounds (OPC=2). Based on the values presented in Table II, an F-statistic of 1.66 was calculated and the hypothesis that the two subgroup variances came from the same normal population was rejected at the 95 percent confidence level.

A similar procedure was followed for job group 7 using the values in Table III. Job group 7 had two subgroups of over 30 observations (i.e., running conditions and turnarounds) and one subgroup of exactly 10 observations (i.e., partial shutdown).

TABLE II.—TEST VALUES FOR GROUP 8

Descnption of parameter	Value of parameter	
	Running	Turn-around
Number of observations	69	71
Arithmetic mean of the logs	−1.64	−1.31
Arithmetic standard deviation of the logs	1.56	2.01

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

The first round of tests were conducted on the two larger subgroups. An F-statistic of 1.39 was calculated and

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at the 95 percent confidence level the hypothesis that two variances came from the same normal population was not rejected. A T statistic of 1.7 was calculated, which proved to be indeterminant at the 95 percent confidence level. The hypothesis that the two means came from the same normal population was rejected under a one-tail test but was accepted under the two-tail test. Not having plant-specific knowledge, it was not possible to determine which test should be used. (However, the mean for the turnaround operation should probably be higher than the mean for running conditions, thus justifying the use of a one-tail test).

Next, the arithmetic mean of the observations were examined. This examination revealed that although the arithmetic mean of all 80 observations for Job Group 7 was 1.3 ppm (See Table I), the arithmetic mean of the 67 observations in both of these subgroups were only half that value (i.e., 0.66 ppm). Clearly, some other condition was contributing to the high average exposures of Group 7. This other condition, which proved to be partial shutdown (an arithmetic mean of 10 observations of approximately 6 ppm), is subject of the next series of tests.

Based on the value presented in Table III, an F-statistic of 3.12 was calculated by using the variances for partial shutdown and running condition, and the hypothesis that these two variances came from the same normal population was rejected at the 95 percent confidence level. An F-statistic of 2.25 was calculated by using the variances for partial shutdown and turnaround, and the hypothesis that these two variances came from the same normal population was rejected at the 95 percent confidence level. Finally, an F-statistic of 2.51 was calculated by using the variance for partial shutdown and variance for the combined observations for turnaround and running condition (arithmetic standard deviation of the logs equal to 1.63), and the hypothesis that these two variances came from the normal population was rejected at the 95 percent confidence level.

Thus, it appears that operating conditions may exert a significant influence on exposures and that relatively rare events (such as partial shutdowns) may have a major impact on average exposures. This conclusion is of particular concern because of the lack of information on operating conditions in many of data sets used by Dr. Spear. It would be even less likely to have such data from less sophisticated employers. Thus, if OSHA adopted the averaging approach, the Agency would not be able to apply these tests in the many situations.

In lay terms, this analysis indicates several things. First, the Spear data probably does not demonstrate as much variability as has been suggested. Where the hypothesis could be tested, the data indicate that several different operating conditions were combined into a single data group. These different conditions had different average exposures. So the degree of variation was exaggerated because different conditions were pooled.

Table III.—Test Values for Group 7

Description of parameter	Value of parameter		
	Running	Turna-round	Part shut-down
Number of observations	31	36	10
Arithmetic mean of the logs	−2.00	1.33	−0.88
Arithmetic standard deviation of the logs	1.46	1.72	2.58
Arithmetic mean of observations	0.46	0.83	5.97

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

Second, an averaging approach is very difficult to implement. Before OSHA can adopt the averaging approach, there must be a procedure in place to ensure that the average is computed from a representative sample, because an average computed from observations taken under statistically different conditions may lead to the underestimation of the exposures of some workers. It would be difficult for the smaller employer to implement such system, it would take much greater resources from all employers, and it would be very difficult for OSHA to review the data to determine whether it was representative of a specific condition.

According to Dr. Spear, "* * * representative is the key word. I think that the burden * * * that it places on OSHA [is] to ensure that the employer's data is in fact representative. * * *" [Tr., 3/21/86, p. 128.] But, it is very difficult, if not impossible, for someone to determine whether or not the observations represent a particular situation without having an extensive knowledge of the process and unit in question.

Even such a sophisticated statistician as Dr. Spear did not achieve truly representative groups though he made a substantial effort. For example, the tests conducted above on the statistical significance of different operating conditions on exposures were all based on codes supplied by the companies. Without these codes (most groups either did not have the codes or had only one code), it would not have been possible to determine the homogeneity of the data nor would it have been possible to determine that the high average exposures for Job Group 7 were primarily due to exposures during partial shutdown.

Third, this approach gives employers an incentive to measure low days and not to measure and take actions to control high exposures, conditions like the partial shutdown for Group 7. Under current OSHA policy, firms have the motivation to stratify their data in order to determine if the high exposures are associated with some specific condition, because if a random OSHA inspection detects that condition a citation may be issued. Thus, it is common practice for firms to take a great percentage of their samples during problem situations (Ex. No. 204–7, p. 37), (Ex. No. 204–7, pp. 43–55). Under the averaging scheme, however, firms will have the motivation to avoid taking samples during the problem situations in order to keep their average exposures below the PEL.

The chances that a compliance officer, who does not have plant-specific knowledge, will detect the omission of data for specific situations are remote. A compliance officer will not know if, as in the case of Group 7, the partial shutdown data are combined with the running and/or shutdown data. A compliance officer is unlikely to know whether the sampling was representative of all factors (e.g., weather, product mix, production levels, maintenance in the unit, maintenance in adjacent units, etc.) or know whether a specific high exposure condition was under-represent in the data base, thereby making the arithmetic mean lower than the true average exposure.

Consequently, it would be extremely unlikely for OSHA to find a violation of the PEL on the initial visit, even where long-term worker exposures actually exceed the PEL. Thus, OSHA would have to remonitor. According to Dr. Mirer of the United Auto Workers, "a policy like that would probably grind OSHA enforcement of health standards to a total halt, and put OSHA out of the business of enforcing health standards [Tr., 3/25/86, p. 21]. This is because the chances of obtaining two consecutive readings above the PEL (i.e., the initial one and the follow up) are extremely small as was demonstrated earlier.

Finally, the averaging approach would permit employers to maintain higher

average exposures than OSHA's traditional approach and then it would be feasible to achieve. Consequently, OSHA would not be able to say as confidently that actual risks are substantially below the risks predicted by the risk assessments. It should be noted that OSHA would reach the conclusion not to adopt the averaging approach, even apart from its analysis of the Spear data, based on the other factors discussed.

Conclusion

The preceding analysis and that in the Technical Feasibility section has shown that compliance with the 1 ppm benzene PEL is feasible even taking into account exposure variability. Much exposure variability is not random and employers can take steps to protect workers from being exposed to high benzene exposures by controlling it. Some variability is outside of the employer's control, but OSHA's technical feasibility analysis shows that controls are available to keep exposures reasonably consistently under 1 ppm.

The preceding analysis also indicates that variability is not as great as some suggest. Alternative compliance strategies have many disadvantages. They are difficult and expensive for employers to carry out. They greatly increase OSHA compliance officer time per inspection, thereby greatly reducing the number OSHA can perform. These approaches can lead to higher average exposures than can be feasibly attained. An averaging approach discourages an employer from measuring high exposures in order to be in position to reduce them. They make it less likely that compliance officers will detect conditions of true overexposure.

OSHA's current enforcement approach has a number of advantages. It makes more efficient use of compliance officer's time permitting OSHA to make more inspections, detect more over exposures if they exist and hence protect more workers. It encourages employers to try and detect high exposure conditions and take actions to reduce them. This reduces variability, reduces average exposures and reduces peak exposures. OSHA has been successfully carrying out this enforcement approach for over 15 years. It avoids the substantial statistical complications that other approaches entail and which are very difficult to carry out in this field. As a matter of statistics in situations of high variability, one high reading indicates the likelihood of high cumulative dose because of the influence of the tail on the average exposure (Tr., 3/19/86, p. 158; Tr., 3/21/86, p. 48). Finally, OSHA's compliance manual directs the compliance officer to consider employer data and workplace conditions before deciding whether the compliance officer should cite or remonitor based on an exposure over the limit.

F. Methods of Compliance: Paragraph (f)

OSHA proposed that feasible engineering and work practice controls be the primary method of reducing exposures in production and distribution operations where exposures are more continuous in nature. Engineering controls are generally more effective in practice than respirators. However, the proposal indicated that in many "maintenance and repair activities" and operations where "exposure are intermittent in nature and limited in duration," engineering and work practice controls may not be feasible. Thus, respiratory protection could be the primary means of control. See paragraph (g)(1)(ii). In addition, OSHA proposed that employers could utilize their choice of control strategies, including respiratory protection, engineering controls, work practices or any combination of these methods when benzene is present in an area of the workplace fewer than 30 days in the year.

The comments and evidence received were generally supportive of the proposal. Accordingly, the final standard includes the proposed provisions.

In response to the Request for Information, many commenters discussed appropriate compliance strategies. As elaborated below, a number of commenters such as Du Pont and Shell stated that they generally rely on engineering and work practice controls to control benzene and that these controls and generally achieved 1 ppm at their workplaces. However, these and other companies noted that in certain maintenance and repair operations which result in intermittent employee exposures, engineering controls either would not be feasible or be extremely wasteful and that respiratory protection would be appropriate and afford adequate employee protection.

For example, SOHIO (Ex. No. 142–6) recognized the general effectiveness of engineering controls to reduce employee exposures to benzene, but pointed out that there were certain working situations and conditions "under which exposure could not be reduced" regardless of how extensive the use of engineering controls was and respirators were appropriate.

In its response to the request for information, Shell Oil Company (Ex. No. 142–13) outlined the engineering and work practice controls used by Shell and other companies operating as oil and chemical processing industries. Shell stated that when these types of controls are coupled with respiratory protection programs, proper personal protective equipment and an effective training and education program, "these engineering and work practice controls are normally adequate to ensure that actual employee exposure does not exceed 1 ppm TWA."

Du Pont (Ex. No. 142–35) stated that, along with various listed engineering control options, "a number of familiar work practice controls can (and should) be utilized, including extensive training, well-established procedures for particular operations, proper maintenance and good housekeeping. Given an adequate phase-in period, such controls could probably be implemented by Du Pont to operate at 1 ppm." Du Pont pointed out, in further comments, that there were circumstances where "respirators will always be required for some tasks even though engineering controls are in place, whenever the potential for unexpected employee exposure exists (for example, possible equipment failure)."

In the proposal, OSHA also discussed the reasons why the Agency and the general industrial hygiene community believes that engineering controls should be the primary means of compliance. An effective method of controlling employee exposure is to control the emission of toxic substances at their source through mechanical means combined with the use of work practices. Good engineering and work practice controls also help to minimize splashes and spills. An added benefit of these controls is reducing dermal exposure to employees.

In addition, it is very difficult to wear respirators full time in production operations. If active movement is required respirators create safety hazards since they limit vision and communication. They also tend to slip during heavy physical labor and sweat may create skin irritation at the seal.

Specifically in the case of benzene, as discussed in the respirator section, there is no MSHA/NIOSH approved negative pressure respirator for benzene at 1 ppm because benzene has poor odor warning properties below 12–15 ppm and the possibility of filter breakthrough without warning exists. Although OSHA believes the provisions in this proposed standard in regard to filter changing minimizes this problem, nonetheless the problem is sufficiently great so that it would not be protective for a large

number of employees to wear respirators when feasible engineering controls exist. However, OSHA also recognized that respirators may provide acceptable protection when an employer establishes stringent procedures and then carefully supervises their implementation on a continuous basis.

OSHA elaborated on its preliminary conclusions at greater length in the preamble to the proposal. (See 50 FR 50558–50562). OSHA requested comments on its proposal and these issues. It received a number of comments and some testimony. Many supported the proposal and the preference for engineering controls. Industry comments did not oppose the preference for engineering controls so long as the flexibility contained in the standard was retained. Very few comments specifically opposed a preference for engineering controls.

OSHA requested Dr. Robert Harris, Professor of Environmental Engineering at the University of North Carolina, an expert in this field, to testify on this issue. He stated,

> In Industrial hygiene practice, engineering controls are recognized as the preferred means of control whenever they can be applied. The fundamental reason for this is that the elimination or control of exposures by engineering means, which are independent of workplace occupancy, and of the integrity and proper use of personal protective equipment, results in the most effective and reliable protection of workers (Ex. No. 211, p. 13).

The National Institute for Occupational Safety and Health (NIOSH) presented the most extensive comments on this issue, an 18 page report with an extensive bibliography (Ex. No. 201–42, Attach 2). They strongly supported the preference for engineering controls and summarized their position as follows:

Should OSHA require the use of feasible engineering controls in preference to the use of respirators?

Yes, in most circumstances the use of engineering controls (and not administrative and work practice controls) are the clearly superior means of employee exposure prevention.

The hierarchy of control solutions should be followed in developing a worker protection strategy. Each element of the ordered hierarchy:

(1) Preventing or containing hazardous workplace emissions at their source,

(2) Removing the emission from the pathway between the source and the worker, and

(3) Controlling the exposure of the worker with barriers between the worker and the hazardous environment, should be sequentially applied in descending order to the extent feasible before the next lower element is considered.

The application of engineering controls is effective for all three elements, while respirators are only effective for the third element. Years of public health experience in controlling infectious disease as well as industrial hygiene experience have shown that the first two elements are the more practical and substantially more effective approach. Respirators are limited to the third element of the prevention hierarchy, which for decades have shown to be the least reliable and least consistent approach to exposure prevention.

What factors indicate that engineering controls in the workplace better protect employee health?

When discussing "better" employee health protection it is important to define what is meant by "better." Better protection will provide more reliable, more consistent, and higher levels of adequate protection to a larger number of workers. A control solution with better protection will have increased feasibility for demonstrating the protection afforded each individual worker throughout the lifespan of the system. Better protection will have less dependence on human intervention for its efficacy so as to increase its reliability. Finally, better protection will create fewer additional problems of its own. Properly designed, installed, operated, and maintained engineering control systems can have all of the preceding characteristics, thus they definitely can better protect employee health.

Engineering controls are designed to prevent a hazardous agent from being emitted into a workplace and reduce the airborne levels of substances already released. For a work environment with minimal contamination, there is assurance that inadvertant entries into the workplace by other employees do not expose those employees to the hazardous agent. Respirators, on the other hand, do not reduce the environmental levels of a contaminant, but can only provide a very localized barrier of questionable reliability. Respirators cannot reduce or eliminate hazardous material from the workplace that may be absorbed by workers through their skin or by ingestion.

The exposure control performance of engineering control systems can be frequently monitored by valid real-time techniques that are inexpensive and quick. Therefore, a gradual or sharp reduction in system control effectiveness for large numbers of workers can be detected. With respirators, however, there is no system to detect defects in their use in the workplace; this is one of their most severe deficiencies.

Engineering controls, by generally relying more on mechanical devices or design features, are less subject to human error. Engineering controls require less personal involvement and intervention, thus they can be substantially more reliable and consistent in the levels of protection provided to workers. The effective application of respirators as controls requires effective training of each and every worker that must depend on the respirators for health protection. Acceptance and effective cooperation by every worker, proper wearing each and every time by every worker, and verification that this is occuring are some of the necessary assumptions for effective respiratory protection dependent on respirators. These are fragile and questionable assumptions for many respirator programs.

Mr. Nelson, a certified industrial hygienist employed by DuPont testifying on behalf of the Chemical Manufacturer's Association stated.

> The determination of when engineering controls or respirators should be used to protect the health of employees has, for some time, been a controversial subject. Our belief is that each employee's work environment should be maintained at safe levels through the implementation of engineering controls, when the use of engineering controls would be cost-effective, augmented as appropriate by personal protective equipment, and/or work practice controls. (Tr. 3/26/86, pp. 5–6)

Dr. Snyder testifying on behalf of CMA pointed out another advantage of engineering controls, they reduce exposure variability (See the discussion on variability). He noted "higher standard deviations (of variability) do occur when controls are not fully implemented. As controls are applied, the standard deviation does come down a little bit but in our own plants where the control is quite good, we've gotten down in the vicinity of 2 (standard deviation) or maybe a little under 2" (Tr. 3/26/85, p. 91).

Mr. Michael Wright, Director of Safety and Health for the United Steel Workers, a qualified industrial hygienist, also strongly supported the preference for engineering controls. He stated as additional reasoning for the preference.

> In fact, respirators are an even worse choice for benzene than for other chemicals. Benzene has poor warning properties at 1 and 0.5 ppm, making it difficult to detect filter break-through. (Benzene getting through the filter of an air purifying respirator into the breathing zone.)
>
> Air supplied respirators are infeasible in many benzene jobs. A worker would either have to change air bottles many times during the workday, or drag an air hose hundreds of yards in a refinery or chemical plant, a practical impossibility (Tr. 3/25/86, pp. 50, 51).

He also strongly supported OSHA's requirement of a compliance plan stating,

> In order to ensure that feasible engineering controls are in fact installed, companies should be made to prepare detailed written compliance plans on the model of lead standard (Tr., 3/25/86, p. 51).

The comments of the major chemical companies, petroleum companies and their trade associations were virtually identical. They did not object to the general preference for engineering

controls. However, they strongly supported the need for the exceptions incorporated by OSHA in the proposal for that general preference. These exceptions were for maintenance and repair activities, occasional and intermittant activities, and when benzene is present in the area fewer than 30 days in the year. See the comments of SOHIO (Ex. No. 201–13), EXXON (Ex. No. 201–15, Monsanto (Ex. No. 201–30), CMA (Ex. No. 201–33, p. 158) and API (Ex. No. 206, p. 61d).

For example Monsanto stated,

> As standard practice, Monsanto Company makes every attempt to reduce workplace exposures through the use of sound engineering controls and has over the last several years instituted major control efforts at our benzene handling locations to lower potential worker exposures to the lowest level practical. Although our control efforts are ongoing, we still rely on respiratory protection during nonroutine tasks or where other controls are not feasible. (Ex. No. 201–30, p. 1).

Exxon stated,

> Exxon concurs with OSHA's proposal to '. . . specifically recognize that in maintenance and repair operations engineering controls may not be feasible or an efficient use of scarce resources.' The cross-reference between paragraphs (f) and (g) is an appropriate mechanism to tie these together (Ex. No. 201–15, p. 4).

Sohio pointed out it had recently constructed a facility to produce pure benzene to achieve 1 ppm with engineering control with occasional short term use of respirators. (Obviously a pure benzene facility will have greater difficulties than a facility with only 5 or 10% benzene in the process stream, other things being equal). They stated,

> Sohio's experience with our benzene manufacturing facility indicates that we can achieve a TWA of 1 ppm with engineering controls. However, TWA exposures of less than 1 ppm can be achieved only though the use of PPE.
>
> In 1984 Sohio constructed a benzene production facility at our petroleum refinery in Lima, Ohio. Best available control technology was used to minimize benzene emissions at all locations. This facility cannot consistently achieve 0.5 ppm 8-hour time weighted average exposures. Since the beginning of the start-up 15 months ago short-term exposure to benzene vapor above 1 ppm has been controlled by employee use of airline respirators and self-contained breathing apparatus during some non-routine and maintenance tasks. This respirator program is closely operated and supervised by the facility safety department.

This facility has these engineering controls in addition to many others:

> —Storage tanks each with an internal floating roof secondary seal and automatic guaging device.
>
> —Pumps, each with double mechanical seals flushing system and failure indicator.
>
> —Closed drain system.
>
> —Closed-loop sampling station and sample bombs.

Closed loading system with vent scrubber to control emissions during railcar loadings.

Covered API separator.

Local mechanical exhaust ventilation and makeup air systems in two quality control laboratories.

> In addition to these engineering controls the facility utilizes at least one administrative control: frequent manual leak detection surveys and prompt repair of leaking equipment. The Lima facility cannot achieve a benzene concentration of 0.5 ppm 8 hour time weighted average. Ex. No. 201–13. p. 2)

CMA stated as regards to the engineering control paragraph (f) and respirators the following:

> * * * respirators may be used to comply with the standard, * * * (1) where "benzene is present in a work area less than a total of 30 days per year" and (2) in "work operations for which the employer establishes that engineering and work practice controls are not feasible such as maintenance and repair activities, vessel cleaning, or operations where engineering and work practice controls are infeasible because exposures are intermittent in nature and limited in duration * * * These two respirator use provisions are both appropriate and extremely important. They respond to critical feasibility concerns and represent an attempt to make the standard as cost-effective as possible, consistent with the protection of worker health. As OSHA recognizes, "[e]ngineering controls may be impractical if used only a few days per year, and * * * respirators present fewer difficulties to the wearer if used intermittently." For these reasons, we strongly support these respirator use provisions (Ex. No. 201–33, pp. 158 159).

The only major comment which specifically objected to the preference for engineering controls was the Respiratory Protection Group of the Industrial Safety Equipment Association which represents manufacturers of respirators. They stated that the employer should be required to "maintain a written assessment of the feasibility and efficacy of the method used whether it be engineering control respiratory protection or a combination of both methods." The employer would then choose based on that analysis of cost and employee acceptance (Ex. No. 201–17A).

Finally the AFL–CIO and USWA summarized their position as follows in their post hearing brief:

> OSHA should continue to rely on engineering controls and work practices as the primary means of compliance. In fact, the poor warning properties of benzene make respirators even less effective. Feasible engineering controls and work practices should be required for all jobs, not just those which involve more than 30 days exposure per year (Ex. No. 262, pp. 3–6).

OSHA, after reviewing the record, concludes that the provisions on methods of compliance in the proposal are appropriate for benzene. Indeed there was no significant opposition to them in the comments. OSHA is currently considering its policies on methods of compliance generally. (See 48 FR 7473, February 22, 1983, and the 1987 Regulatory Program of the United States Government). Decisions made in rulemaking on that issue would, of course, be based on the evidence in that record.

OSHA has considered whether different principles should apply as to methods of compliance for the STEL, such as using respirators to meet the STEL but not the TWA. In the existing benzene record, commenters did not address this option. In the absence of comments on such alternative approaches, the provisions of (g)(1)(ii) give appropriate guidance and will lead to a protective and cost-effective approach. However, this matter will arise in the proceeding on methods of compliance. (See the 1987 Regulatory Program of the United States Government.) If evidence appropriate to benzene is submitted in the methods of compliance rulemaking, OSHA will consider making appropriate changes to the benzene standard.

Benzene and chemicals containing benzene or made from it are generally produced and processed in closed systems. There are effective controls for transfer points. Consequently engineering controls and leak detection are generally very effective and efficient, maintaining the closed nature of the system.

As NIOSH pointed out, engineering controls for benzene will provide the most effective worker protection. It is much easier to tell whether the engineering controls are working than whether a respirator program is working. They are the most reliable and hence the most protective controls in this circumstances since they are much less susceptible to human error. In addition they greatly reduce the possibility of skin absorption or ingestion.

Respiratory protection is not as effective, especially for production activities or other activities which require their use a substantial percentage of the time. A good respirator program requires careful supervision and extensive training and fit testing. Proper respirator use also

reduces productivity. Although a careful respiratory program increases the protection respirators afford, such a program is expensive. Enforcement of a good program by OSHA is relatively difficult.

Respirator use reduces vision and communication. Thus, their use may create safety hazards. In addition their use may lead to face irritation. Consequently, there is an incentive for unsupervised employees to not use them when required or not use them properly.

In the case of benzene, as Mr. Wright pointed out, there is a further disadvantage of extensive reliance on respirators. Since 1 ppm is below the odor threshold, the worker would receive no warning if there was filter breakthrough in an air filtering respirator. Self-contained breathing apparatus is heavy and supplied air respirators require an airhose which is difficult to use when a worker must move around. (There is no NIOSH/OSHA approved air filtering respirator for benzene at 1 ppm. However, OSHA does permit their use with requirements to alleviate the difficulties. See the discussion in the respirator section below.)

Every qualified professional industrial hygienist who testified on the issue, including Mr. Wright, Dr. Harris, and Dr. Nelson of the CMA panel, stated that engineering controls were the preferred control methodology.

Industry did not dispute this general principle (though they strongly supported the modifications to it in the OSHA proposal). In the several specific examples of benzene facilities discussed on the record, both Monsanto and SOHIO pointed out how they had successfully utilized engineering controls to reduce exposures to low levels, lower than required at the time. This indicates industry practice is to prefer engineering controls.

OSHA experience is that engineering controls have worked best. As this has been required in prior standards, OSHA now has experiential evidence demonstrating the advantage of this approach. For example, engineering controls for vinyl chloride have been very protective of workers, cost one-tenth the amount OSHA's contractor estimated and improved industry efficiency. The cotton dust standard with its preference for engineering controls has greatly reduced the level of byssinosis in the cotton industry, increased the industry's productivity and competitiveness, and cost one-half of OSHA's estimate (50 FR 51121). The evidence in this proceeding indicates that OSHA's coke oven emission standard with its preference for engineering controls as an additional benefit has already reduced benzene exposures at coke oven batteries below the action level. So substantial additional health benefits than originally considered have been achieved by that standard.

However, as OSHA pointed out in the proposal, the general preference for engineering controls applies with greatest force to production activities and other activities which require employees to wear respirators a greater percentage of the time. OSHA in all of its standards has pointed out that feasible engineering controls may not be available for maintenance and repair activities. By definition, these activities are intermittent, scattered and in the case of repairs result from the breakdown of machinery. In addition, these operations should only require workers to wear respirators part of the time. It is easier to wear respirators because of less irritation and easier to insist that they be worn when respirator use is intermittent.

OSHA also indicated in the proposal that engineering controls are often infeasible when exposures are intermittent in nature and limited in duration. For the same reason as maintenance and repair activities, extensive attempts at engineering controls are often not practical where exposures are both brief and occasional. It is both difficult to keep operable and a not very productive use of valuable industrial hygiene time, as well as often very costly, to try to provide engineering controls for very brief, intermittent exposures. (There are often effective engineering controls for regular intermittent exposures.) In addition, for such intermittent and irregular exposures, employees can wear respirators with less difficulty.

In addition, virtually all the industry comment supported OSHA's proposal for maintenance and repair activities. There was no significant opposition to these provisions. Consequently, OSHA retains both of these provisions for the reasons stated here and in the proposal.

OSHA also proposed that the employer may choose any combination of engineering, work practice and respirator controls when that employer can document that benzene is used in the work area 30 or fewer days in a year. OSHA stated in the proposal,

> Engineering controls may be impractical if used only a few days per year, and, as discussed, respirators present fewer difficulties to the wearer if used intermittently (50 FR 50559).

As citations above indicate, this provision was strongly supported by industry. CMA supported it for the reasons stated by OSHA and also argued "* * * [the provisions] respond to critical feasibility concerns and represent an attempt to make the standard as cost-effective as possible, consistent with protection of worker health" (Ex. No. 201–33, p. 159).

CMA also contends that the provision should be broadened to read, "Where the employer can document that employee exposure to benzene on a job assignment occurs for less than a total of 30 days per year * * *". They argued that this would place the focus on employee exposure and not on work areas. They also refer to a question their attorney asked of an OSHA employee.

> Q. Is the focus of the proposed standard on employee exposure to benzene as opposed to airborne levels of benzene that may be in an area where employees are not spending time?
>
> A. I think the purpose of the standard is, of course, to reduce employee exposures, and not theoretical exposures where there are no employees" (Tr. 2/18/86, pp. 76–77).

OSHA has concluded that the provision should be retained as originally proposed. When an operation occurs only briefly in a year, it may be impractical to install engineering controls since they will be used for such a brief period. Indeed it may be a waste of industrial hygiene resources to install major engineering controls which will be used only temporarily. For this temporary period, a carefully supervised respirator program may be effective. Consequently, the additional flexibility of the provision is appropriate.

However, this approach is not appropriate for exposures which continue for a substantial part of the year, even if a particular employee does not come into contact with benzene for more than 30 days. The reason is that this would permit employee rotation. For example, an operation could continue for one-half the year. But 6 employees could be rotated in for 30 days each.

Under CMA's approach there would be no preference for engineering controls, but in fact, this is not a temporary situation but a regular situation. Engineering control would keep 180 employee days of exposure per year under the PEL. It would be a worthwhile use of IH resources to keep exposure below the PEL with engineering controls. The better protection of engineering controls would extend over 180 exposure days. Avoidable respirator use under the CMA alternative would be substantial, just divided up over many employees.

In addition, the CMA approach would create a substantial paperwork burden to identify employees in an area each

day. It also would be difficult for OSHA to determine if individual employees were exposed more than 30 days in one area.

Finally, OSHA believes that the CMA recommendation encourages employee rotation. OSHA opposes rotating employees into areas of higher exposures to carcinogens to reduce individual exposure because this does not reduce cumulative exposure as reducing exposures with controls would. It is inappropriate to encourage employers to expose a greater than necessary number of employees to a carcinogen. (This argument applies to employees wearing a respirator, as well, because their respirators might not be worn properly and leak. Indeed by requiring more employees to wear respirators the possibility of less effective training, supervision and skill in use increases.)

Several commenters suggested that OSHA in the preamble list jobs for which the preference for engineering controls is not appropriate (Ex. No. 358, pp. 168–9; Ex. No. 201–18, p. 1). OSHA believes that the regulatory requirements it has incorporated in the standard based on sound industrial hygiene principles are the most specific regulatory language appropriate. It is impractical to list jobs since there is no consistency of names within companies as well as across companies. Further, a detailed job analysis is not generally appropriate at the rulemaking stage unless a specific job is clearly defined and widespread. For an illustration of the application of the principle see the proposal at 50 FR 50558, col. 3.

Finally, paragraph (f)(2) requires an employer who has exposures over the PEL to establish and implement a written compliance program which describes the methodology to be used to reduce employee exposure to or below the PEL within his workplace. (If the employer is already in compliance, no plan is required.) The plan should provide for this to be accomplished where feasible through engineering and work practice controls. These written plans must include a schedule for implementation and must be furnished upon request for examination and copying to OSHA, NIOSH, and affected employees or their representatives.

Once a workplace is in compliance with the standard, the compliance plan need not be updated. If exposures later increase over the PEL; however, an update must be prepared.

These written compliance plans are to be revised as appropriate. Appropriate circumstances may include a change in controls or substantially different exposure conditions. The plan need not be updated merely because some controls have been installed since the last update, or because not all have been installed pursuant to the schedule, or because of new monitoring results which are similar to prior results.

Their was little comment or criticism of this provision in the rulemaking and it is incorporated with little change in the final. Such provisions have been in other OSHA standards and in OSHA's experience lead to a systematic and efficient reduction in exposures to below the PEL. A plan is also standard industrial hygiene practice.

G. Respirator Protection: Paragraph (g).

The final standard requires or permits that respirators be used to limit employee exposure to benzene in the following circumstances:

(i) During the time period necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations for which the employer establishes that compliance with either the TWA or STEL through the use of engineering and work practice controls are not feasible such as some maintenance and repair activities, vessel cleaning, or other operations where engineering and work practice controls are infeasible because exposures are intermittent in nature and limited in duration;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient or are not required under paragraph (f)(1)(iii) of this section to reduce exposure to or below the PEL; and

(iv) In emergencies.

These limitations on the required use of respirators are consistent with the requirements of other OSHA health standards (e.g. asbestos, 1910.1001; ethylene oxide 1910.1047) and with good industrial hygiene practice. They reflect OSHA's determination, as detailed in the preceeding section on methods of compliance, that respirators are inherently less reliable than engineering and work practice controls. OSHA believes, therefore, that relying on respirators to control exposures to the PEL must be confined to the designated situations.

Many commenters gave their support for the use of respirators in work assignments, where benzene exposures are intermittent in nature and limited in duration. CMA (Ex. No. 258) strongly endorsed the proposed OSHA provisions permitting use of respirators in such cases and also where the use of engineering and work practice controls would be infeasible because of the nature of exposures and the impracticality of utilizing engineering controls. Other commenters who shared similar views were Exxon Company (Ex. No. 201–15), Phillips Petroleum Company (Ex. No. 201–18), and testimony of Margaret Seminario on behalf of the AFL–CIO (Ex. No. 204–9). See also discussion in the preceding section.

OSHA has concluded that if the permissible exposure levels for benzene are exceeded, and engineering and work practice controls are infeasible, employers must provide respirators as a secondary means of protection. However, the goal of the standard is the control of emissions at the source, which will minimize the need for routine use of respirators.

The final standard requires that whenever respirators are necessary to reduce employee exposure to or below the PEL, the employer must provide respirators at no cost to the employee. The standard requires the employer to select respirators in accordance with Table 1 (in the regulatory text) from those jointly approved by MSHA/NIOSH. The respirator selection table will enable the employer to provide the type of respirator which affords the proper degree of protection based on the airborne concentration of benzene. To comply with this requirement the employer must perform initial monitoring as described in paragraph (e)(2) to accurately determine the airborne concentration of benzene to which employees may be exposed. While the employer must select the appropriate respirator from the table on the basis of the airborne concentration of benzene, he may always select a respirator providing greater protection, that is, one prescribed for higher concentrations of benzene than present in his workplace.

For lower concentrations of benzene, OSHA proposes to permit the use of air purifying respirators provided that the filter element is replaced at the beginning of each work shift. Benzene has poor odor warning properties at low levels, and OSHA is aware that MSHA/NIOSH would not approve the use of air-purifying respirators in this situation because users would be unable to detect the benzene if breakthrough occurs. However, OSHA believes that filter elements of the type approved by MSHA/NIOSH for use with organic vapors would provide sufficient service life for the intended application as prescribed in Table 1 if replaced with the required frequency.

Adequate employee protection is achieved by the replacement of the filter element. To ensure that filter elements are changed in time, the employer is required to date the filter elements when

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they are installed in the respirators. Some contaminants absorbed on the sorbents of the cartridges or canisters tend to desorb upon storage. Consequently, immediate breakthrough can occur when the respirator is worn on the next day. Since the desorption characteristics of benzene on the sorbent are not known, multi-day use of filter elements is not permitted. If filter elements having end of-service life indicators are developed and approved, the standard permits their use.

The final standard permits the use of any full facepiece powered air-purifying respirator (PAPR) with MSHA/NIOSH approved organic vapor canisters for exposures up to 100 ppm. The device contains a blower and a sorbent to purify the contaminated air to breathable air. In order to assure adequate canister capacity, OSHA requires that each organic vapor canister provide a minimum service life of 4 hours when it is tested at 25 C, 85% relative humidity, 64 liters per minute air flow and at the challenge concentration of 150 ppm benzene. The air flow will be 115 and 170 liters per minute respectively for tight and loose fitting powered air-purifying respirators.

Where employees are exposed to levels of benzene greater than 100 ppm, positive pressure atmosphere supplying respirators must be used. These respirators use uncontaminated air rather than mechanically cleaning the benzene contaminated atmosphere. OSHA allows only supplied air or SCBA's which operate in the positive-pressure mode because their performance is much better as facepiece leakage is minimal with positive pressure.

The standard permits employees to leave the regulated area to readjust the respirator facepiece to their faces for proper fit. It also permits them to leave the regulated area to wash their faces to avoid potential skin-irritation associated with respirator use.

The employer is also required to assure that the respirator assigned will fit properly. Proper fit of the respirator is essential to the performance of negative pressure air purifying respirators. As a negative pressure is created within the facepiece when the wearer breathes, unfiltered benzene contaminated air may enter the facepiece if gaps exist in the facepiece seal.

Obtaining a proper respirator fit on each employee may require the employer to provide two or three different mask sizes from several manufacturers to select the facepiece with the best fit (least leakage around the faceseal). A properly fitted facepiece will reduce the inhalation leakage to a minimum. Fit testing is especially important for benzene because of benzene's poor odor warning qualities at the level set by the standard. An employer must not permit or direct an employee to enter an area where exposures are over the PFL, or if the fit tests indicate a respirator is not providing a proper fit.

OSHA is permitting the employer to choose either quantitative or qualitative fit testing to add to the performance orientation of the standard and permit the employer to tailor the testing to the circumstances of the employer's establishment. Protocols for the type of testing the employer chooses are set forth in Appendix E.

Quantitative fit testing is a procedure whereby the level of penetration of a test agent of a known concentration is measured inside the facepiece of the respirator. Quantitative respirator fit testing is generally recognized as the better method for determining how well a respirator fits any one individual. It allows the employer to continue testing until the optimum or best fitting respirator is identified and selected for the employee. Quantitative fit testing requires the use of moderately sophisticated testing equipment and is more expensive than qualitative fit testing to perform.

Qualitative fit testing is a technique whereby a person wearing a respirator is tested to see whether a test agent with a low odor threshold can be detected inside the respirator. Qualitative fit testing is a more subjective test than quantitative testing because it depends on the individuals ability to detect the test agent but if performed right can be reliable.

OSHA believes that while quantitative fit testing may have some advantages, qualitative testing which is conducted in accordance with the protocols described in Appendix E accomplishes the intent of the standard to assure that each employee receives and wears the respirator which provides an appropriate level of protection.

Several commenters such as CMA suggested that OSHA's qualitative fit test protocols were too complex and suggested alternatives. OSHA greatly appreciates the time and effort which went into the comments. However, OSHA will shortly be issuing a proposal to amend 1910.134 the respirator program section. OSHA believes that rulemaking is a better forum to concentrate on this relatively narrow and technical issue. OSHA will reconsider the issue in that rulemaking and if appropriate adopt their suggestions then for benzene. For now, OSHA has decided it is appropriate to adopt a more detailed protocol which it knows is protective enough. OSHA has made some changes in the protocol to clarify and simplify it however.

All employees who wear respirators more than 30 days per year must receive as part of the medical surveillance program a pulmonary function test and a cardiopulmonary examination. Respirator usage presents an additional burden to the pulmonary system of the employee. This burden may result in symptoms such as shortness of breath, chest pain, dizziness or fatigue. All of these symptoms may be exacerbated by pre-existing lung disease such as chronic bronchitis, emphysema, asthma or pneumoconiosis. It is, therefore, important that all employees who will be wearing respirators more than a minimal number of times be medically screened to determine fitness for respirator usage.

From past experience, OSHA is aware of the problems of respirator use as the primary means of exposure control. Proper facial fit is essential, but variations in individual facial dimensions, as well as facial hair, scars or growths, make it difficult to maintain this facial fit. Fatigue and reduced efficiency may occur because of increased breathing resistance when negative-pressure respirators are used. Additionally, heat stress, reduced vision, and other safety problems presented by respirators should be considered by the employer. Visual impairment could pose a significant problem where physical hazards exist and the ability to see is important. Speech is also limited by respirator use. Voice transmission through a respirator can be difficult, annoying, and fatiguing, and communication may make the difference between a safe and efficient operation and a hazardous operation, especially in dangerous jobs.

OSHA does not presently believe that respirators should be considered the primary means of employee health protection against exposure to benzene for activities where engineering controls are feasible. However, despite these problems OSHA has concluded that if the permissible exposure level for benzene is exceeded, employers must provide respiratory protection as a supplementary means of protection. However, the goal of the standard is the control of emissions using engineering and work practice controls which will minimize the need for routine use of respirators.

A good respirator program is needed so that respirators will provide sufficient protection. The employee must be properly trained to wear the respirator,

to know why the respirator is needed, and to understand the limitations of the respirators. An understanding of the hazards involved is necessary to enable the employee to take steps for his or her own protection. Accordingly, the employer must implement a respiratory protection program meeting the requirements of 29 CFR 1910.134(b), (d), (e) and (f) as well. That section contains basic requirements for proper selection, fit, use, cleaning and maintenance of respirators.

OSHA is currently developing a proposed rule to amend its generic respiratory protection standard at 1910.134. When this rule is finalized, OSHA intends to amend the respiratory protection requirements in its other standards in order to make them as consistent as possible with 1910.134. Commenters to this record may wish to also provide comments to the record for the respiratory protection standard.

H. *Protective Clothing and Equipment: Paragraph (h).* The requirement for the employer to provide protective clothing and equipment at no cost to the employee and to assure its use where appropriate to prevent eye contact and limit dermal exposure to liquid benzene has been retained in the final rule. Eye and face protection is to meet the requirements of OSHA's provision at 29 CFR 1910.133, "Eye and face protection." Protective clothing and equipment is to be used as necessary to protect employees during their particular work experiences from exposure to benzene, including, where appropriate, such items as face shields, gloves, aprons, coveralls, or footwear.

As discussed in the preamble to the proposed rule, the requirements for this section differ from the final standard for benzene (1978) in that personal protective equipment is now required "where appropriate to limit dermal exposure to liquid benzene." Previously, "impermeable protective clothing and equipment" had been specified. Dermal contact is to be "limited," and obviously, prevented where possible. The language of the final rule is performance-oriented to allow the employer sufficient flexibility to provide the protective equipment for dermal exposure which will be necessary to protect employees in their particular work situations. Eye contact, however, is to be prevented. Employers closely following the provisions of § 1910.133 and providing appropriate protective equipment when required can be reasonably assured of meeting this goal.

OSHA did not receive comments generally questioning the feasibility of the protective clothing and equipment requirements of the standard. However, as discussed in the proposed rule, representatives of the tire manufacturing industry stated that tire builders cannot use gloves in their assigned tasks since gloves interfere with tire production and can partially dissolve becoming sticky or tacky when exposed to benzene-containing solvent. The dissolution of gloves during these situations can create a safety hazard, since a worker's hand could become stuck to a rotating unfinished tire. Furthermore, the industry stated that manual contact with the rubber on each ply of the tire is necessary for positioning the rubber plies on the drum and for ensuring complete adhesion between plies or between plies and tire treads. Representatives of the United Rubber Workers Union agreed with this analysis. Tire manufacturers may comply with the dermal exposure limitations of this section without requiring gloves by complying with the standard's percentage exclusion using solvents with very low percentages of benzene contamination as specified by paragraph (a)(2)(v). This provision was agreed to by both industry and union representatives. As a general statement, however, direct skin contact with hydrocarbon solvents is in general not a good idea and should be avoided wherever possible. Since benzene is absorbed through the skin, gloves and other protective clothing are to be used to prevent or limit contact with liquids containing benzene over the percentage exclusion.

The requirement to provide and ensure the use of personal protective clothing and equipment when working with benzene generally met with approval by commentors on the proposed rule. This approach is performance-oriented. It requires the employer to consider each of the processes of his workplace where employees may have eye or dermal contact with liquid benzene and then implement the most efficient means to achieve the goal of the standard. The provision is not intended to allow the employee to come into regular contact with benzene or benzene contaminated substances.

The Public Citizen Health Research Group, in its comments on the proposed standard (Ex. 201–41) felt that the types of protective clothing required by the standard should be specified, and that the requirement as written was "unreasonably vague in light of the rapidly growing body of data on the disparate permeabilities of different protective clothing materials." OSHA believes that by retaining performance language for the use of protective clothing employers have more flexibility to utilize new and improved clothing and equipment as they are developed.

Public Citizen also suggested that OSHA "specify suitable protective clothing based on specific chemical/material permeation tests under actual condition of use, e.g. temperature, flexing, or bending." The protection provided by protective clothing does vary upon its conditions of use, and it is these very conditions that differ between workplace and worker and situation of use. OSHA does not have data available to specify suitable tests.

While OSHA's performance-oriented approach grants an employer flexibility to achieve the goal of minimizing benzene contact, it does not allow him to allow employee to come into regular contact with benzene, especially when it can be avoided. Contact is to be minimized to the extent possible and prohibited where possible. A conscientious approach to this requirement by the prudent employer would be the constant upgrading of the protective clothing and equipment in use at his establishment in order to meet the intent of the standard by the best available means, and, as always, to avoid contact with liquid benzene or solution containing it wherever possible.

I. *Medical Surveillance: Paragraph (i)*

Where appropriate, medical surveillance programs are required by section 6(b)(7) of the OSH Act, to be included in OSHA health standards to aid in determining whether the health of workers is adversely affected by exposure to toxic substances. The requirements contained in this final benzene standard are designed to detect changes in the hematopoietic system resulting from occupational exposure to benzene. Although most of the medical surveillance provisions remain the same as the proposal, several changes have been made. These changes include: enlarging the scope to include employees involved in tire building (tire building machine operations) who use solvents containing greater than 0.1 percent benzene; requiring the periodic physical examination to be administered annually instead of semi-annually; requiring all laboratory work be conducted in an *accredited* laboratory; deleting the requirements for chest X-rays in the initial examination and thereafter; removing the numerical definition of normal red cell blood parameters and substituting the more suitable *normal limits* as established by accredited laboratories and changing the emergency examination to require immediate blood counts after the exposure and then follow-up monthly blood counts for a duration of three

months. In addition, the Agency has expanded the medical removal paragraph to include a provision for wage rate retention. In other respects, the medical surveillance requirements parallel the proposed standard's provisions except where editorial changes have been added to clarify the Agency's intent.

The purpose of medical surveillance is the prevention or detection of abnormalities which may occur in some benzene exposed workers early enough to prevent further deleterious health effects. The risk assessment indicates that there is a quantified increased incidence of leukemia. The survey of the literature indicates that cytopenias and aplastic anemias also may occur. For these reasons, OSHA considers regular medical surveillance for benzene workers exposed at or above the action level to be necessary. In addition, there will be a number of workers who have an increased risk of developing leukemia as a result of past exposures to concentrations above 10 ppm, and these workers also need medical surveillance.

Yandl's submission to the 1977 benzene hearings reviews a number of papers which indicate that removal from exposure will in most cases result in reversal of cytopenias and a high percentage of aplasias. There is also evidence from Legge, Hunter, Hamilton and Vigliani that progressive reductions in benzene exposures have resulted in a reduction in the number of cases of benzene hemopathy, including leukemia. However, direct observation of the reduction in cases of leukemia following reduction in exposure is less easy to quantify than other effects on the blood, principally because most studies have not had a continuous follow-up for more than 10 years subsequent to reduction or elimination of benzene exposures (Hernberg; Vigliani; Ex. Nos. 159–36; 128–15).

With very few exceptions, interested parties who submitted written comments to the record and those who testified at the hearings generally supported the concept of medical surveillance even though they disagreed on specific provisions. Dr. Daniel T. Teitelbaum, testifying for OSHA, stated that "medical surveillance * * * is based on sound medical practice" (Ex. No. 221, p. 18). Dr. Bernard Goldstein, testifying for the American Petroleum Institute (API), recommended medical screening for workers exposed to 1 ppm (Tr. 3/26/86, pp. 162, 176). The American Iron and Steel Institute (AISI) commented that OSHA had identified the appropriate elements for examinations and laboratory tests for workers above the PEL (Ex. Nos. 201–44, p. 53; 259, p. 44). The Chemical Manufacturers Association (CMA) noted in their brief that they had previously determined the medical surveillance provisions to be well conceived over all (Ex. No. 258, p. 137). CITGO commented that an "annual examination coupled with emergency examinations as required by the standard are adequate to detect any significant impairment from benzene exposure" (Ex. No. 201–14, p. 4).

Some opposition to medical surveillance came from Dr. John M. Bennett testifying for API, who stated: "there are no current technologies available to take advantage of a possible benefit from early detection of adverse effects at present day exposure levels" (Ex. No. 260, p. 33d, Tr. 3/26/86, p. 176). Dr. Bennett recommended a prospective laboratory screening program be instituted to identify early indicators of marrow injury and generate data on the effectiveness of a medical screening program (Tr. 3/26/86, p. 129). OSHA agrees with Dr. Bennett that further research to define benzene effects is important, but the Agency is convinced the current evidence supports a need for medical surveillance at this time. OSHA concludes from the evidence reviewed that the medical surveillance in this final standard is both appropriate and essential.

The specific aims of medical surveillance were summarized in the proposal as follows:

1. Early detection and reversal of cytopenias and aplasias.

2. The prevention of some leukemias by reducing dose to the more susceptible workers.

3. Early recognition and treatment of those cases of leukemia which might occur and improvement in remission rate and duration.

4. Better evidence of the effectiveness of the proposed standard.

At the hearings, a number of physicians addressed these aims. As noted above, OSHA's expert witness, Dr. Teitelbaum stated in his submitted testimony that using "medical surveillance for these ends is based on sound medical practice" (Ex. No. 221, p. 18). NIOSH testified that "* * * medical surveillance may enhance worker protection." NIOSH further stated that "the program should be designed so that it accomplishes the goal of identifying exposed populations and giving early indications of potential disease thereby allowing intervention" (Tr. 3/20/86, p. 17). Dr. Bennett questioned the medical surveillance aims on the basis of his belief that is not possible to make a judgment on whether universal blood screening for benzene exposed workers will yield substantial benefits; nor did he believe early diagnosis substantially improved the prognosis for patients who develop leukemia. Additionally, Dr. Bennett did not think benzene-included cytopenias or aplasias would be found in workers exposed below 10 ppm (Ex. No. 260, p. 34d). Although Dr. Goldstein recommended medical screening for workers exposed at 1 ppm (Tr. 3/26/86, p. 162), he later qualified that statement, under questioning by API, to the effect that if he were certain the workers were only exposed to 1 ppm there would be no need for the program (Tr. 3/26/86, p. 167). Representatives of labor groups generally supported these aims. (e.g. Tr. 3/25/86, p. 72; p. 85).

The Agency believes the evidence in the record suggests these aims represent appropriate targets for the medical surveillance program. In addition to expert opinion that does support these aims, OSHA believes the gravity of the diseases caused by benzene is a further reason for the Agency to require affected industries to institute a medical surveillance program designed to meet multiple targets. Moreover, the Agency is persuaded that a comprehensive approach to these aims is further justified by the fact that current knowledge of these diseases is far from complete and methods of detection and treatment continue to evolve.

It is known that cytopenias and aplasias can be treated and reversed. Therefore, detecting cytopenias or aplasias due to exposure to benzene at a stage when these conditions are reversible and treatable and reducing or eliminating further benzene exposure will result in improved prognosis for workers who develop these conditions. This is sufficient evidence by itself to support a medical surveillance program.

It is recognized that as a result of medical surveillance some individuals may be removed for blood dyscrasis such as cytopenias and aplasias not due to benzene exposure, but since these individuals may have compromised bone marrow function, their removal from benzene exposure may prevent the progression of such disease.

The second aim, the prevention of some leukemias by reducing dose to the more susceptible workers, is still subject to scientific dispute, but it is certainly consistent with a reasonable interpretation of some of the expert opinion expressed to OSHA and embodied in the literature. The same can be said for the third aim of early detection resulting in possible remission

and/or increased survival time for those who have already developed leukemia. This, too, is one of those gray areas of medicine where it is not known for certain if early detection (and treatment) improves prognosis, but some types of leukemia have a better prognosis and all physicians recommend this for their patients.

Finally, medical surveillance for all workers exposed to benzene above the action level will provide more comprehensive information on the effectiveness of the proposed standard in reducing disease than has previously been possible.

The benzene proposal referenced salient papers in the medical literature and opinions of scientific and regulatory bodies which have a special bearing on medical surveillance (Ex. Nos. 2–3; 128–59; 126; 159–105) and presented additional opinions in standard medical and hematological textbooks to explain the reasons for the tests specified and their frequency. The information reflected a consensus of the vast majority of the medical community and forms a basis for the expected toxicity and illness which a medical surveillance program must target for prevention or detection.

The large volume of published medical literature on benzene toxicity unequivocally establishes that chronic exposure to this chemcial is causally associated most commonly with actute myelocytic leukemia (AML) and its variants, as well as aplastic anemia and varied combinations of suppression of the erythrocyte count (anemia) and/or the leukocyte cell count (leukopenia) and/or the thrombocyte count (thrombocytopenia). When all of these cell counts are below normal the condition is designated as pancytopenia. Benzene has also been associated to a lesser degree with other hematologic disorders, including chronic myelogenous leukemia, acute and chronic lymphatic leukemia, multiple myeloma, paroxysmal nocturnal hemoglobinuria (PNU) and various forms of lymphoma including Hodgkins disease.

Cecils's Textbook of Medicine (Ex. No. 159–105) states that:

> Workers exposed to benzene have an increased risk of acute myelogenous leukemia (AML). In these patients, bone marrow hypoplasia and/or pancytopenia often precede the diagnosis of leukemia.

Harrison's Principles of Medicine (Ex. No. 159–82) states:

> By far the most important manifestation of chronic exposure to benzene is bone marrow depression, which may progress to aplastic anemia and complete aplasia of the bone marrow. Individual susceptibility to this effect varies greatly and may not become apparent for months after the initial exposure of the poison.

In Cancer Medicine 1982 (Ex. No. 159–26), it is stated that:

> The drugs implicated in leukemogens are all known to cause bone marrow depression and/or aplasia. The only compound with an unequivocal relationship to AML is benzol [benzene]. Exposure to benzol sometimes seemingly trivial, has been followed by the development of AML with or without the clinically recognized intermediate steps of aplastic anemia, other cytopenias, myelofibrosis or myeloid metaplasia.

Wintrobe's textbook (Ex. No. 159–102) states:

> A variety of chemcials and drugs have been suggested as possible leukemogenic agents in human leukemia, but only benzene can be unequivocally implicated. Disturbances of the hematopoietic system, especially marrow aplasia with pancytopenia, in workers chronically exposed to benzene, have been recognized for many years. The overwhelming predominance of AML or closely related syndromes, often preceded by periods of aplasia with pancytopenia in such workers, provides compelling evidence for an etiologic relationship.

Wintrobe further states:

> Benzene has been known as a cause of fatal aplastic anemia since Santesson's description (1897) of 4 cases in workers in a bicycle tire factory * * * the classic picture of leukopenia, thrombocytopenia, and poisoning by benzene. Among exposed workers the most common abnormality reported was anemia (48 percent). Next in frequency was macrocytosis (47 percent), thrombocytopenia (33 percent) and leukopenia (15 percent).

Wintrobe adds:

> There are great variations in susceptibility to benzene poisoning. Evidence of poisoning may appear in a few weeks or only after many years of exposure, or it may not be discovered until the onset of infection long after exposure has ceased. Any degree of exposure is potentially dangerous.

The information cited establishes those medical conditions which a surveillance program for benzene exposed employees must be designed to prevent or detect. The screening test for that purpose is a complete blood count (CBC) including platelet count, white blood cell differential, white blood cell count, red blood cell count, hemoglobin, hematocrit and red cell indices. From the information cited above, it seems reasonable to conclude that early detection of a dose related marrow suppression and removal from benzene exposure may prevent the progression to a more serious disease such as aplastic anemia or leukemia.

Because case recognition by routine monitoring may not necessarily detect leukemia before the clinical manifestations appear, OSHA believes that any individual who develops early signs and symptoms of leukemia, such as fatigue, bruising, bleeding or any other symptoms which might be attributable to benzene exposure should consult the physician who normally carries out routine surveillance as soon as possible.

General Provisions

As in the proposed standard, this final rule requires medical surveillance be provided to employees who are or may be exposed to benzene at or above the action level 30 or more days per year, employees who are or may be exposed to benzene at or above the PEL 10 or more days per year, employees who have been exposed to more than 10 ppm of benzene for 30 or more days in a year prior to the effective date of the standard when employed by their current employer, and employees who have been exposed to an emergency situation 1910.128(i)(1)(i)). In addition, OSHA is including employees involved in tire building operations called tire building machine operators, who utilize solvents containing greater than 0.1 percent benzene to the medical surveillance coverage.

Several commenters raised questions about the scope of medical surveillance. Some, like the AFL–CIO and USW in their post-hearing brief, recommended coverage be expanded to require employers to make medical surveillance available to former employees after they leave employment (Ex. No. 260, p. 46). Dr. Goldstein commented that workers previously exposed to air levels higher than 10 ppm benzene should have their blood examined when the new standard is promulgated (Ex. No. 159–106).

Dr. Parkinson, testifying for USW, expressed concern that the OSHA standard did not provide for continuing medical surveillance for workers who leave their jobs (Tr. 3/25/86, p. 84). Mary-Win O'Brien, an attorney for USW, agreed with this concern, and cited OSHA's coke oven standard to show that the Agency has in the past required medical surviellance for employees whose exposure was not immediate, in the case of coke oven employees for as long as an employee remains employed with that employer. She also cited OSHA's Hazard Communication Standard to show that the Agency has regulated outside the employer/employee relationship, since that standard requires manufacturers to

provide information to downstream employers (Tr. 3/25/86, pp. 86–87).

Other commenters, primarily industry trade associations, favored a narrower scope. AISI argued that medical surveillance should be limited to those employees whose current occupational exposures exceed the PEL for 30 or more days per year or who are inadvertently exposed to high concentrations of benzene in the event of an emergency (Ex. No. 259, p. 44). CMA supported providing medical surveillance to all employees that OSHA proposed covering except "employees (much less former employees) who are not currently exposed to benzene simply because they were exposed to benzene in the past (e.g., exposed to more than 10 ppm * * * for more than 30 days in a prior year)" (Ex. No. 258, p. 137).

API questioned OSHA's proposed requirement to include previously exposed workers on what they suggested were: (1) the dubious value of medical surveillance generally, (2) the unlikelihood of finding any marrow suppression because the low 10 ppm standard had been in effect for 15 years, and (3) the difficulty and burdens (time and expense) of estimating past exposure (Ex. No. 260, pp. 36d–38d). API also objected to post-employment examinations on the bases of their belief that the (1) benefits of medical surveillance are doubtful, (2) OSHA does not possess the statutory authority to require employers provide post-employment examinations and (3) the impracticality or infeasibility of this requirement (Ex. No. 260, pp. 39d–46d). API stated that the most OSHA should consider * * * is * * * [to require] the . . . physician to *consider* whether to advise particular employees to continue receiving regular medical check-ups and hematologic tests after they have left the job. (Ex. No. 260, p. 46d)).

Nearly all commenters supported medical surveillance for employees who have been exposed during an emergency situation.

In addition to the workers OSHA proposed to include in medical surveillance, the Agency is adding employees involved in hand tire building operations who are called "tire building machine operators" who utilize solvents containing greater than 0.1 percent benzene, because they cannot decrease their dermal exposure to benzene by wearing gloves or using barrier creams. These workers are being included in medical surveillance in the final standard because the combined exposures they receive from dermal absorption and inhalation may equal the exposure of other workers who will be receiving medical surveillance.

A NIOSH study of benzene absorption in hairless mice indicated approximately 1 percent of applied benzene was absorbed through the skin whether undiluted benzene or 0.5 percent benzene in rubber solvent was applied to the skin (Ex. No. 252–17–78). On the basis of this study, NIOSH estimated that workers building 150 tires a day could absorb approximately 6 mg. of benzene a day through intact skin. The 6 mg. is similar to the 7 mg. of benzene that would be absorbed by a worker whose exposure was due to inhaling 0.5 ppm over an 8-hour day.

NIOSH also indicated that workers building tires frequently had cracked and fissured skin. To estimate the possible effects of cracked skin on the total benzene absorbed, Professor Maibach applied solvents containing benzene to patches of stripped skin of rhesus monkeys (Ex. No. 134–2b). The amount absorbed through the stripped skin was 5.3 times greater than the amount absorbed through intact skin. When the increased rate of exposure to benzene due to its absorption through cracked or fissured skin is applied to the previous study results by NIOSH, absorptions totaled 32 mg. (6 mg. x 5.3) per day for workers using solvents containing 0.5 percent benzene, and 16.2 mg. a day for workers using solvents containing 0.25 percent benzene. Both of these absorption figures exceed the comparable figure of 14 mg. of benzene that a worker inhaling 1 ppm over an 8-hour day could be expected to absorb. Indeed, the use of a solvent containing more than 0.1 percent benzene will result in a potential for benzene skin absorption equal to or above the amount taken into the body through the inhalation of 0.5 ppm benzene, the action level above which medical surveillance is required.

The Rubber Manufacturers Association (RMA), supported exemption of workers utilizing benzene solvents with less than 0.5 percent benzene concentration initially, later falling to 0.1%. They argued that employees using such liquids are not exposed to atmospheric levels posing demonstrated health risks. RMA estimated that since benzene content has been decreasing steadily since 1978, 99 percent of airborne samples would show levels below the proposed 1 ppm permissible exposure limit (Ex. No. 257, p. 4). They therefore argued that in most instances airborne exposure would be below permissible exposure levels and medical surveillance is not appropriate. However, this argument does not take into account the increased exposures from dermal absorption.

Because tire builders using solvents with more than 0.1% benzene are exposed to combined dermal and airborne exposures about equal to other workers who receive medical examination, OSHA is providing them with medical examinations. Since the percentage content of benzene in a solvent necessary to bring the user within the scope of this final standard is being reduced to 0.1 percent over two years following promulgation of the standards, OSHA anticipates that most tire building operations will switch to solvents containing less than 0.1 percent benzene as soon as possible, thereby making medical surveillance for these tire builders likely to be a short-term proposition.

OSHA has considered all the evidence in the record on the issue of the appropriate scope of medical surveillance. Some comments recommended expanding or restricting the groups of workers to be covered and others supported the coverage OSHA proposed. The Agency believes its coverage is both reasonably related to achieving medical benefits and administratively practical. For example, including employees exposed above the action level for 30 days and those exposed above the PEL for 10 days insures that employees, for whom medical surveillance will be of more benefit, receive it. At the same time, this duration of exposure trigger enables employees to avoid spending valuable medical surveillance resources on workers with very low exposures, thereby allowing these resources to be properly focused on the workers with higher exposures. Covering employees who have been exposed to more than 10 ppm for 30 or more days in a year prior to the effective date of standard when employed by their current employers strikes a balance between the need to extend medical surveillance to workers with high exposures in the past and the administrative difficulty of keeping in touch with former employees who may well have moved on to other jobs at far-away locations. The provision is a reasonable and administratively convenient way to provide benefits to these workers.

In order to effectuate the major purpose of the medical surveillance, the prevention or detection of hematological abnormalities which may occur in workers exposed to benzene, the Agency finds the coverage as stated in paragraph (i)(1)(i) adequately protects workers at risk from occupational exposure to benzene. The employees OSHA proposed to cover and the tire builders are the workers at greatest risk

of adverse health effects. Moreover, employees at greatest risk are most likely to benefit from the medical surveillance provisions.

For all the above cited reasons, OSHA believes its coverage will most adequately protect workers.

The final standard requires all medical examinations and procedures to be performed by or under the supervision of a licensed physician and to be provided without cost to the employee (paragraphs (i)(1) (ii) and (iv)). Clearly, a licensed physician is the appropriate person to supervise and evaluate a medical examination. However, certain parts of the required examination do not necessarily require the physician's expertise and these may be conducted by other suitably qualified health care personnel under the supervision of the physician.

OSHA has also added the requirement that examinations be provided without cost to the employee, and at a reasonable time and place," paragraph (i)(1)(iv). Dr. Parkinson testified that he had seen many situations where the worker was expected to drive 15 miles on his off-duty time in order to consult with the physician because the physician never visited the plant (Tr., 3/25/86, p. 82). In order for the health benefits to accrue to the employees, the examinations must be convenient to them and the above requirements insure that they will be. Moreover, OSHA has included this provision in other standards, e.g. EtO, 49 FR 25798 and Asbestos, 51 FR 22737.

OSHA is adding the requirement at paragraph (i)(1)(ii) that all laboratory work be performed by an accredited laboratory. Dr. Teitelbaum pointed out in his statement that accreditation by a national accrediting body or its state equivalent means that the laboratory has participated in a recognized quality assurance program. This, Dr. Teitelbaum wrote, tends to assure long-term stability, allowing assessment of population trends and trends in the individual benzene worker (Ex. No. 221, pp. 26, 27). Dr. Parkinson supported this position (Tr. 3/25/86, p. 79). Dr. Teitelbaum further stated that adding this requirement will not significantly increase the cost of any test since the laboratories currently performing most of these analyses are appropriately accredited (Ex. No. 221, p. 27). No commenters opposed this recommendation. OSHA agrees that it is important that laboratories performing the tests be accredited and accordingly has added the requirements in performance language.

Since there are several nationally recognized accreditation programs, such as those of the American College of Pathologists and the Joint Commission for Accreditation of Hospitals, OSHA is not requiring a laboratory to be accredited by a particular organization. Successful completion of the accreditation process will assure that the laboratory has demonstrated consistently acceptable results in a proficiency testing program.

Similarily, in order to assure the pulmonary function tests are correctly administered, the Agency has added a requirement at paragraph (i)(1)(iii) that " * * * persons other than licensed physicians, who administer the pulmonary function test * * * shall complete a training course in spirometry sponsored by an appropriate governmental, academic or professional institution." This provision is consistent with OSHA's recently promulgated standard for cotton dust (50 FR 51220).

The medical surveillance program can be divided into four distinct categories: the initial examination, the periodic examination, the additional examination when blood conditions are abnormal and the surveillance examination requirements following an emergency exposure to benzene. OSHA believes that adherence to the requirements of the medical surveillance program will enable the physician to detect adverse health effects of benzene exposure at an early and therefore sometimes correctable stage, and will aid in determining whether an individual can wear a respirator.

Initial examination. Consistent with OSHA's proposal, the initial examination is to include a detailed occupational and medical history, complete physical examination and pertinent laboratory evaluation. The following areas are to be covered:

Occupational history. Any past exposure to chemicals known to adversely affect the bone marrow or any past hematologic abnormalities which are potentially work-related should be recorded, as well as details of any exposure to radiation.

Medical history. Any past illness or abnormality of the hematopoietic system should be carefully evaluated. Any medications with adverse effects which impact on the hematologic system should be carefully noted. Smoking habits and hobbies should be recorded.

A complete physical examination of all systems. Laboratory evaluation. A complete blood count, including a thrombocyte count, erythrocyte count, a leukocyte count with differential, hematocrit, hemoglobin and erythrocyte indices must be performed. Any additional tests as necesary in the opinion of the examining physician shall also be administered.

For workers who may wear a respirator for more than 30 days in a year, the initial examination also includes:

A thorough history of the cardio-pulmonary system should be noted. Aspirometric test of pulmonary function shall be performed. The spirometry shall be consistent with the recommendation of the American Thoracic Society, and include at a minimum a forced vital capacity (FVC) and a forced expiratory volume at 1 second (FEV_1). The test shall be carried out by a physician or by a qualified technician. It should be kept in mind that normal values for spirometric tests in blacks can be lower than those for the general population (Ex. Nos. 159–49, 159–107).

The purposes of the initial medical examinations are: (1) establish the current health status of an employee and whether employment in areas with benzene exposure is appropriate, (2) to determine adverse health effects resulting from previous exposures to benzene or other chemicals, or radiation, (3) to provide a baseline against which future occupational health examination results may be measured, and (4) to determine whether the individual can safely wear a respirator. OSHA believes that the described examination will elicit the appropriate information to assess the worker's initial health condition and allow for effective medical monitoring.

The detailed medical history will aid the physician in interpreting the results of the tests. The baseline blood count is especially important. First, individual counts vary and knowing the individual baseline allows the physician to more precisely monitor changes which may result from benzene exposures. Secondly, most of the employees monitored will have had prior benzene exposures, many at levels higher than the new PEL. The intial count will provide information for the physician to base a recommendation on whether further benzene exposure is appropriate. Dr. Goldstein testified that he thought routine complete blood counts were of value for asymptomatic workers with benzene exposure and that platelet counts should be included (Tr. 3/26/86, p. 159)

OSHA specifically sought comment on whether a peripheral blood smear and reticulocyte count should be required. Dr. Goldstein testified that he would recommend a reticulocyte count on initial screening as a baseline, but would not include the test as part of routine screening. Regarding the

peripheral blood smear, Dr.Goldstein stated he would want to have a blood smear available or be able to obtain one rapidly (Tr. 3/26/86 p. 166–167). This would be for follow-up of any abnormalities detected on initial screening.

Dr. Bennett did not believe in the need for a reticulocyte count and a peripheral blood smear in routine surveillance since they are not included in routine laboratory blood screenings. Moreover, regarding the reticulocyte count, he testified that "the range of normal is between 0.4 and 1.5 percent and therefore it allows for a fair amount of error" (Tr. 3/26/86, pp. 131, 132).

Although Dr. Teitelbaum supported including a reticulocyte count and a peripheral smear in the laboratory evaluation, he acknowledged the difficulty in preparation and analyses of the specimen. It was his opinion that including these tests would require some retraining of the medical community and close supervision of testing by a qualified hematologist or pathologist (Ex. No. 221, pp. 24–26).

In view of the evidence, OSHA does not consider the peripheral blood smear and the reticulocyte count to be necessary components of medical surveillance for benzene exposure. Transportation and storage problems for these tests, coupled with the complexity of preparation and interpretaton of results, suggest the decision regarding whether to carry out a reticulocyte count and a blood smear is best left to the examining physician (See Appendix C for further discussion of these tests).

Many commenters addressed the requirement in the proposal that employees who wear respirators more than 30 days per year have a chest x-ray in the initial examination and then every 5 years thereafter. Most of the commenters stressed the independent health risks and questionable benefits presented by the ex-rays (e.g., Ex. No. 260, pp. 49d; Ex. No. 201–16, p. 3; Ex. No. 201–13; p. 6; Ex. No. 255D, p. 3). Dr. Parkinson testified at the hearing that he would leave the question of the frequency of chest x-rays up to the discretion of the individual physician (Tr. 3/25/86, p. 78). OSHA agrees with the commenters that the examining physician is in the best position to determine whether the benefits of this technique would outweigh any risks to an employee. Therefore, OSHA has deleted the requirement for a chest x-ray from both the initial and the periodic examinations.

During the physicial examination for employees who may be required to wear a respirator, special attention should be given to the eyes (contact lenses or spectacle wearing may interfere with the effectiveness of a full face mask respirator or half mask respirator); ears (perforated tympanic membranes), facial contour (respirator fit); skin (facial irritation from respirators) and cardio-pulmonary system.

The pulmonary function test (PFT), required as a baseline procedure, is to assure that those employees who are required to wear a negative pressure respirator are not compromised by a pulmonary deficit that has not been detected by regular clinical examinations. The pulmonary function test will detect obstructive and restictive pulmonary disease.

In addition, the physician should consider if, in his or her opinion, it is necessary to evaluate the worker's ability to wear a respirator during a simulation of the physicial stresses of the actual work environment, and consider whether additional laboratory tests such as an electrocardiogram, single breath diffusing capacity or other pulmonary function tests are necessary.

Periodic Examination. OSHA proposed periodic medical examinations to be administered twice yearly in order to detect, at an early stage, the pathological changes that could lead to the more serious diseases caused or aggravated by benzene exposure. By detecting abnormalities early, workers may be removed from further benzene exposure. These measures could prevent significant morbidity and may improve prognosis in individual cases.

OSHA's preliminary determination that examinations should be given twice each year was based upon the fact that the serious diseases associated with benzene exposure can develop rapidly and therefore relatively frequent examinations at appropriate intervals are necessary to institute removal and so avoid exposure to a greater total dose.

There were a number of comments on the frequency of periodic examinations. CMA suggested that since, in its view, medical surveillance had "limited usefulness" and that the counseling of employees could be done as effectively with less frequency, the appropriate frequency for periodic examinations is annually. (Ex. No. 258, pp. 147–149) API agreed (Ex. No. 260, pp. 33d, 35d). API further noted that where voluntary medical programs are in place, they generally provide for annual examinations (Ex. No. 260, pp. 35d).

On the other hand, Dr. Goldstein testified that he anticipated twice-yearly medical and/or laboratory examinations would have a higher yield of true hematologic problems when compared to yearly examinations (Tr. 3/26/86, p. 128). Lori Abrams of the Public Citizens Health Research Group recommended blood testing four times per year in order to catch blood disorders that develop rapidly (Tr. 3/20/86, pp. 119–120).

After considering all of the above recommendations, the Agency has decided to require the periodic medical examinations be given annually rather than semi-annually. The tests that make up the parts of the medical examination are useful, but they could never be administered often enough to discover all the blood abnormalities as they occur. Consequently, a reasonable period must be chosen. The practice of the medical profession of yearly exams in industry now provides a reasonable basis for judgment. OSHA is persuaded that examinations given on a yearly basis will provide the appropriate protection for workers. The Agency believes the yearly examinations will be almost as likely to pick up blood abnormalities as the semi-annual examinations. Finally, OSHA agrees with commenters that the Agency's second goal for periodic examinations, employee questioning and counseling, can be accomplished on a yearly basis as well as on a semi-annual basis.

OSHA's proposed periodic medical re-evaluation of workers required to wear respirators is being carried forth in this final standard. The evaluation is necessary because the development of an illness or the use of a new medication which may affect the cardiovascular system must be assessed for its possible bearing on respirator wearing. This will enable the physician to determine whether the individual can safely continue to wear the respirator or whether the employee should be fitted with another type or removed from any area for which a respirator may be necessary.

As proposed, pulmonary function tests need not be repeated on an annual basis since little additional information is likely to be derived from such practice. However, repetition following a three year period is required because retesting as that frequency will provide reasonable assurance that the worker who must wear a respirator has not developed some significant pulmonary disability over the preceeding three years.

Dr. Teitelbaum testified that PFTs should be performed initially to provide a baseline and annually thereafter in order to find out when a worker's pulmonary function deteriorates before the deterioration places a worker in a life-threatening situation (Tr. 3/24/86, pp. 5, 48). On the other hand, Dr.

Parkinson testified that the three year interval was appropriate (Tr. 3/25/86, p. 146). CMA, in their comments, also endorsed the three year interval (Ex. pp. 139–142). OSHA agrees with Dr. Parkinson and CMA and has therefore concluded that the proposed frequency provides adequate protection. However, as with all components of the medical examination, the required frequency of the PFT is a minimum standard and if the physician feels that testing should be done on a yearly basis, the physician is free to exceed the required frequency.

*Additional Examinations.*The purpose of the initial and periodic examinations is to screen for employees who have developed abnormalities. When abnormalities in the blood are detected, an additional blood examination shall be carried out to confirm the findings 1910.1028 (i)(5). If the second test shows abnormalities which cause concern to the physician, the employee shall be removed temporarily from exposure to benzene and the examining physician shall refer the employee to a hematologist/internist for further examination, unless the examining physician has good reason to believe such additional referral is not needed. The purpose of removal at this stage is to avoid the possibility of deterioration in the employee's blood picture due to continued exposure to benzene. The purpose of consultation with a hematologist/internist is to provide the necessary special tests and expertise to make a diagnosis, to advise on treatment and also to advise whether continued or future exposure would be an unacceptable risk to the health of the worker (Evidence indicates there are enough specialists in the country (Tr. 3/26/86, pp. 174–7; Ex. No. 159–1)).

Certain abnormalities found through routine screening are of greater significance in a benzene-exposed worker and warrant immediate consultation with a specialist. Macrocytosis may be an important early indicator of toxicological effects; anemia, leukopenia, thrombocytopenia, and an abnormal differential count are significant hematological signs. In the case of microcytic anemia, a thorough search for other causes of this type of anemia should be made prior to deciding that referral to a hematologist/internist is necessary.

In this final standard, paragraphs (i)(5)(A) through (C) contain the criteria that mandate further laboratory testing and referrals. OSHA proposed further testing and referrals be triggered by specific numerical findings (i.e. a hemoglobin level below 14 grams precent for males or below 12 grams percent for females). However, throughout the course of this rulemaking different definitions of normal blood parameters and trigger points have been presented to OSHA.

Data from the First National Health and Nutrition Examination Survey shows variations in the normal range for white cell counts related to age, sex, race, and smoking habits (Ex. No. 159–56). Similarly, variations occur in the normal ranges for other blood elements especially with regard to sex and geography. Thus, all these factors need to be considered when defining acceptable levels of formed blood elements for pre-employment assessment, as part of routine medical surveillance and for decisions to refer benzene workers to a hematologist/internist.

OSHA recognizes that there are no absolute "normal values" for the various blood parameters. Therefore, any choice of "normal ranges" of blood parameters and "trigger values" for referral will be arbitrary to some extent and have limitations. OSHA has selected the normal ranges and trigger points for referral that it believes are the most practical and have the fewest limitations.

Clearly, an important element in the medical evaluation is the preemployment white cell count. Any progressive change in the white cell count of any other blood parameter must be carefully monitored, taking into account not only the precision of the method but also the variation which occurs. A count of 4000 white blood cells per mm^3 is being carried forward from the proposal as the lower limit for normal, below which referral is necessary. Any value below this also needs to be assessed against the preemployment level taking into account the factors cited above. Comparison of blood cell counts against the individual's baseline count from a previous evaluation will be helpful in detecting whether any abnormality exists.

Raised white blood cell counts may be caused by various infections, allergies, physical activity, some drugs and smoking. However, a rapid increase in white blood cells particularly with abnormal differential count may indicate the onset of leukemia. Since such an onset may be sudden and progress rapidly, any benzene-exposed worker who feels unwell and manifests symptoms of fatigue, weakness, loss of appetite, bruising, hemorrhage, or unexplained fever should be encouraged to report at once to a physician. Medical and blood examinations should be carried out immediately. If the physician considers it necessary, the worker may be referred directly to a hematologist/internist.

Setting the upper limit of the white blood count (WBC) that requires consulation is more difficult. Wintrobe's *Clinical Hematology* recommended an upper limit of normal of 10,000 cells/mm^3. However, it has been pointed out in Wintrobe's current textbook (Ex. No. 159–102) that using this value in the working population, where external stresses such as exercise and infection can produce an elevated white cell count with a normal differential count, may be problematic.

The main screening goal at the upper limit of normal in this working population is the detection of leukemia. *Cancer Medicine* reports that the median white count of over 1500 patients with AML was between 15,000 and 20,000/ul. However, ten percent of the patients had white counts lower than 2000/ul and slightly over one-quarter of the patients had white counts of less than 5000/ul. *Cancer Medicine* also states that, "When the leukocyte level is elevated the circulating cells are usually predominately leukemic." (Ex. No. 15–26)

Therefore, recognizing elevated white cell counts can occur with numerous etiologies (i.e. infections) other than benzene exposure and that a large number of leukemia patients have WBCs below 10,000, OSHA has decided not to include an upper level of normal for WBC. Worker protection will be maintained by the requirement that the physician consult with a hematologist or internist when the WBC is below 4000 per mm^3 or when there are abnormalities in the leukocyte differential count.

There were various recommendations made in the testimony regarding the normal range for red blood indices. The limitations of absolute values for hemoglobin and hematocrit were also discussed. For example, Dr. Parkinson testified that workers in some areas have normal hemoglobin values as high as 16mg (Tr., 3/25, p. 79). Variations from "normal" blood parameters may be related to a number of factors. For example, hemoglobin values are known to vary according to altitude, thus ensuring that no specific fixed level is appropriate for all geographic areas. Higher levels are normal at higher altitudes since more hemoglobin is necessary in these settings to transport adequate oxygen to the tissues.

Because the hematocrit and hemoglobin levels vary by geographic area, OSHA has deleted the absolute

levels and substituted the normal limit, which is determined by all laboratories for their reference populations and consists of limit within a 95 percent confidence interval (C.I.).

In this final standard as in the proposal, a fall in the hemoglobin level from an individual's baseline, even if the level remains within the normal range for the reference group, will trigger a repeat test and consideration for referral, paragraph (i)(5)(i)(A). Several physicians emphasized the clinical significance of such a finding, stressing the need to compare an individual's test values to the baseline tests as well as to compare the individual's test results to the reference population (e.g., Ex. No. 221 pp. 22; Tr. 3/25/86, pp. 79–80).

A change has been made for the thrombocyte (platelet) count, which must now vary more than 20 percent from the employee's most recent values or fall outside the normal limit (95 percent CI) as determined by the laboratory in order to trigger a referral. Dr. Goldstein testified that the proposed trigger variation of 15 percent was too small and that 20 percent would be more appropriate (Tr. 3/26/86, p. 159). Dr. Bennett noted that the 15 percent figure was not in common usage and that further testing should be triggered only if the platelet falls below the lower limit as established by the reference laboratory (Tr. 3/26/86, p. 131) or two standard deviations below the normal. OSHA agrees that the 15 percent variance figure for platelets was too low and had therefore set the final variance at 20 percent.

OSHA emphasizes that the criteria listed in paragraphs (i)(5)(i)(A) through (C), while representative of the major hematological findings that warrant further investigation, are not the only conditions that may require further testing or referrals. For example, several of the medical experts emphasized the need to recognize trends, comparing results to baseline tests, to consider all blood parameters, and to identify patterns. (Tr. 3/26/86, pp. 160; Tr. 3/25/86, p. 77). Physicians should be aware of the fact that there may be other conditions requiring further investigation.

Physician discretion in ordering retests and making referrals to hematologists/internists has been retained in two ways. First, the hematocrit and hemoglobin findings and platlet and WBC will require retesting and/or referral only when the abnormal count or trend in counts cannot be explained by other medical reasons, (paragraph (i)(5)(i)(A)). Secondly, the exception in the provision for referral to a hematologist or an internist that was in the proposal has been retained in paragraph (i)(5)(ii) in this final standard. This provides for referral "unless the physician has good reason to believe such referral is unnecessary." OSHA believes all the changes reflect current expert opinion and knowledge, and will protect workers whose blood counts become abnormal while ensuring sufficient physician discretion to prevent unnecessary tests and referrals.

OSHA believes that the above requirement for interpreting the CBC, including consideration of referral to a specialist when counts reach the specified levels, are supported by current medical knowledge and are necessary to adequately protect workers. Some commenters, such as API (Ex. No. 142–31) have criticized similar CBC interpretation guidelines because of the number of evaluations that will be triggered by abnormal blood counts. However, OSHA believes the risks of serious adverse health effects such as leukemia, aplastic anemia, cytopenias or pancytopenia, coupled with the possibility of reversal, treatment and improved prognosis, warrant the above enumerated provisions. The lowering of exposures to 1 ppm will mean that the number of referrals will be small.

Emergency Exposures. Following an emergency situation in which a worker is exposed to an excess amount of benzene, documentation of enhanced absorption of benzene through a uninary phenol test is required so that increased medical surveillance can be initiated, if needed. The most extensively used and validated method of detection in this situation is the urinary phenol test (Ex. No. 159–82). Elevated urinary phenol levels can occur without benzene exposure (Ex. No. 159–29), but these instances do not detract from the overall effectiveness of the test when overexposure has occurred. Testimony at the hearings generally supported a urinary phenol test following emergency exposures.

OSHA proposed to require that the employer also provide an employee whose urinary phenol is above 75mg/L with a complete blood count at the end of 3 months following the emergency exposure in order to determine if blood abnormalities have developed from the exposure. OSHA noted that if abnormalities develop, a referral to a specialist for diagnosis and treatment may be needed. Dr. Parkinson testified that the one blood count is inadequate. He stated that an immediate blood count is necessary to ensure the worker's baseline blood indices are within normal limits at the time of the emergency. Moreover, he stated that monthly counts following the emergency exposure were necessary to detect possible marrow suppression than can occur over time with acute high dose exposure. (Tr., 3/25/86, pp. 77–78). OSHA agrees. Therefore, paragraph (i)(4)(iii) now requires employees be provided with "a complete blood count * * * immediately and at monthly intervals for a duration of (3) months following the emergency exposure.

Additional Provisions. The final standard retains the requirement in the proposal that the employer provide the examining physician with certain information (paragraph (i)(6)). This includes:

(1) A copy of the regulations and appendices.

(2) A description of the employee's duties as related to exposure.

(3) The employee's actual or representative's exposure level.

(4) Information regarding the use of personal protective equipment.

(5) Information from previous employment-related medical examinations not otherwise available to the physician.

The purpose of making this information available to the physician is to aid in the evaluation of the employee's health in relation to assigned duties and to help the physician determine fitness to wear personal protective equipment when required.

For each examination required under this section the employer shall obtain a written opinion from the examining physician which shall include:

1. The occupationally pertinent results of the medical examination and tests.

2. The physician's opinion as to whether the employee has any detected medical conditions or is taking any medication which would place the employee at increased risk of material impairment from exposure to benzene or from the use of personal protection equipment.

3. An opinion as to the employee's ability to wear a respirator when it is required.

4. A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions resulting from benzene exposure which require further explanation or treatment.

The purpose of requiring the examining physician to supply the employer with a written opinion is to provide the employer with a medical basis to aid in the initial placement of employees and to assess the employee's ability to use protective clothing and equipment. The requirement that an employee be provided with a copy of the

physician's written opinion within 15 days will ensure that the employee is informed of the receipt by the employer of the results of the medical examination in a timely manner. The purpose in requiring that specific findings or diagnoses unrelated to occupational exposure to benzene not be included in the written opinion, paragraph (i)(7)(ii), is to encourage employees to take the medical examinations by removing any concern that the employer will obtain information about their physical condition that is unrelated to occupational exposures.

Editorial changes have been made in paragraph (i)(7)(ii) which stipulates that the physician shall not reveal in the written opinion given to the employer, specific records, findings and diagnoses that have no bearing on an employee's ability to work in a benzene exposed workplace. The purpose of this provision remains protection of the privacy of the employee by not having the physician reveal non-occupational related conditions to the employer. This provision has been included in prior standards.

Union representatives raised the issue of the proper treatment of sensitive personal information that might be gleaned from the medical examinations (Ex. No. 262, p. 49). Both Dr. Parkinson and Dr. Mirer testified that extreme care had to be taken with the information so that the employees would not be arbitrarily fired or transferred (Tr. 3/25/86, pp. 72; 82; Tr. 3/27/86, pp. 159, 160).

OSHA is concerned about privacy. Mindful of these concerns, the Agency has drafted medical surveillance to: (1) limit the amount of information collected to that which a physician would need to determine whether an employee could safely work in an area where benzene exposure exceeds the action level, and (2) limit the information the physician reveals to the employer to only those findings germane to occupational exposure to benzene (paragraph (i)(7)(ii)). The Agency cannot restrict physicians from providing employers with information that bears upon an employee's ability to work in a benzene exposed area, because to do so could easily result in the employee's health or even the health and safety of other employees being compromised. Moreover, the employer may need this information in order to gauge the effectiveness of the company's health and safety program. However, OSHA can and has greatly limited the information from the medical examinations that the physician is allowed to report to the employer. OSHA believes this approach which is consistent with other standards (e.g., EtO), strikes the proper balance between the employer's need to know about conditions related to occupational exposure and employees' privacy rights.

Medical Removal. OSHA proposed that medical removal from further benzene exposure should occur in two circumstances. The first is a temporary removal when the plant physician considers that referral to a hematologist/internist is necessary while waiting for the hematologist/internist report (paragraph (i)(8)(i)). The justification for temporary medical removal by the plant physician while awaiting consultation by the hematologist/internist is based on the fact that, in some cases, blood abnormalities may rapidly progress to serious and possibly life-threatening disease and continued benzene exposure could influence such an event.

The second circumstance where medical removal occurs follows the findings of the hematologist/internist. With this information from the specialist in hand, the physician needs to decide whether the employee can return to work involving benzene exposure or whether the employee shall be kept away from further benzene exposure either permanently or until the blood has returned to normal. If this removal is temporary, an estimate is to be made of the probable removal period and the times of further follow-up examinations. OSHA considers that at a PEL of 1 ppm such removal procedures will be minimal in number.

In the proposal, OSHA posited several reasons for temporarily or permanently removing the employee following consultation with of the hematologist/internist. First, an employee who is removed from benzene exposure at the earliest possible time is given the best chance of enabling his or her blood to return to normal. Second, continued exposure could cause serious progressive and possibly fatal disease, sometimes with rapid onset. The Agency noted that blood conditions can deteriorate rapidly during conditions of continuing exposure. Removal and treatment may prevent death, cure illness or improve the employee's condition.

Most of the commenters supported some form of medical removal. For example, CMA commented that they believed the "provisions for medical removal are appropriate" (Ex. No. 201–33, p. 147). However, commenters, especially physicians, disagreed on the level of health benefits to be gained from medical removal. Dr. Parkinson testified:

> * * * It seems clear from medical evidence that in many cases, blood dyscrasias do precede aplastic anemia and leukemia, and removal from exposure does reduce the risk of progression to leukemia or aplastic anemia (Tr., 3/25/86, p. 83).

Dr. Teitelbaum, in enumerating the appropriate bases of medical surveillance emphasized the necessity of "removing from exposure to benzene those workers with diseases which might predispose them to adverse effects such as pre-existing chronic anemias, leukopenias and thrombocytopenias" (Ex. No. 221, p. 16).

On the other hand, Dr. Bennett testified that, for two diseases, AML and myelodysplasia, once the underlying bone marrow damage has been manifested in the form of abnormal blood counts, the prospects for a return to normal bone marrow are poor (Tr., 3/26/86, p. 124). However, in response to a question about whether a patient with some form of potentially reversible bone marrow damage should be removed from exposure to benzene until the "picture clarified," Dr. Bennett replied, "Yes" (Tr., 3/26/86, p. 138). Moreover, Dr. Bennett testified that removal from benzene exposure would be prudent if a patient has * * *" bone marrow damage that cannot be reversed, or a condition which stimulates the bone marrow on a chronic basis * * * [because] * * * the bone marrow precursor cells may be stimulated enough so that additional insult by an agent such as benzene may be adverse * * *" (Tr., 3/26/86, p. 137).

Dr. Teitelbaum enumerated several instances where removal might be appropriate. He noted that the work of Jandl and others suggested conditions which lead to malignant change might be prevented through early detection followed by removing the exposed worker (Ex. No. 221, pp. 14). Other instances where removal would be appropriate would be for workers who have aplastic anemias or underlying autoimmune diseases that might predispose to aplastic anemias. (Ex. No. 221, pp. 16, 19).

Although physicians may disagree on the criteria and circumstances for removal and the precise advantages to be gained from medical removal, nearly all physicians who evaluated the issue could envision some set of circumstances where removal is appropriate. Therefore, after considering all the evidence in the record on medical removal, OSHA has concluded that medical removal is an integral and

essential part of medical surveillance in this final standard.

Medical removal of provides an opportunity for blood abnormalities, particularly aplasias and cytopenias, to reverse themselves before they become irreversible. The second basis for removal is to prevent increased benzene exposure for those workers who already show signs of more serious diseases such as leukemia and aplastic anemia. In these cases, most physicians recommend removal from the possible causative agent. If the cause cannot be determined, it is still prudent to remove a worker to avoid a known leukemogen that could increase the adverse effects through a synergistic or additive mechanism with the primary leukemic agent.

After reviewing the evidence, OSHA concludes that the proposal's analysis of the mechanism for removal is correct. The decision is made based on objective evidence of the tests, the recommendations of the specialist and the examing physician's judgment.

Dr. Kenneth B. Miller from OCAW and Dr. Parkinson recommended medically-removed workers be provided extra examinations, preferably by a three doctor review panel (Tr. 3/27/86; 3/25/86). There was concern that the physician and hematologist hired by the company may be overly conservative, inclined to remove an employee who is still capable of working in an area where benzene exceeds the action level (e.g. Tr., 3/25/86, pp. 89–90). Moreover, in noting the gravity of the situation for workers, they pointd out some workers could still lose their livelihoods in that even if MRP is instituted, it is likely to be limited in time and scope. They believed a review panel of physicians would lessen fears of job loss, thus encouraging full participation.

OSHA believes the recommendation for a follow-up examination has merit but the Agency is not persuaded that a three physician review panel is necessary to ensure appropriate care for employees with abnormal hematological findings. The medical surveillance paragraph provides for an initial examination, periodic examinations, additional examinations and referrals, emergency examinations and a follow-up examination for employees who are removed for medical reasons. Referrals are to be made to board certified hematologists or internists, thereby insuring the input of the appropriate medical experts whenever an employee is removed for medical reasons. OSHA does not believe adding more physicians to the plan would improve the medical care provided to the employee.

Medical Removal Protection. In the preamble to the proposal, OSHA raised the issue of medical removal protection. There we said OSHA would expect that employers who were able, would provide employment in areas of no benzene exposure or areas below the action level to those employees temporarily removed from benzene exposure for medical reasons. OSHA suggested that the details of such transfers are best left to collective bargaining and employer personnel policies. However, the Agency specifically sought comment on whether there is a health justification for including such a provision.

Medical removal protection (MRP), has been used in other OSHA standards. OSHA's MRP program for the lead standard was upheld by the United States Court of Appeals for the District of Columbia Circuit in *United Steelworkers of America, AFL-CIO* v. *Marshall, 647 F. 2d 1189 (D.C. Cir. 1980), Cer. denied. Lead Industries Association Inc.* v. *Donovan*, 101 S. Ct. 3148 (1981). Part of the MRP program for lead involved a wage retention provision for workers who transferred to other jobs or were laid off in order to avoid continued exposure to unacceptable levels of lead.

In 1981, the Supreme Court, in *American Textile Manufacturers Institute (ATMI)* v. *Donovan*, 452 U.S. 490 (1981), struck down the MRP of the cotton dust regulation, but left the job transfer provision in effect. The Court held that OSHA did not explain how the provision was related to the achievement of a safe and healthful work environment (*Id.* at 537–538). The Court did not decide the issue of whether OSHA had the underlying authority to promulgate such a provision.

OSHA raised the issue of whether evidence showed health reasons for MRP when it reevaluated the cotton dust standard. OSHA concluded it did, both the industry and union recommended it and MRP was included in this final standard (50 FR 51120; Dec. 13, 1985).

Medical removal provisions are appropriate when they can be shown to provide employee health benefits. This preventative health mechanism is particularly appropriate when a worker's body may be biologically monitored for adverse health effects caused by exposures and when the health effects are reversible. Under these circumstances, temporary medical removal can assist in protecting the worker by limiting further occupational exposure, and by enabling a worker to recover from identified adverse health effects while remaining under the medical surveillance program of the employer. Evidence in the record shows that benzene meets both of these tests, as discussed previously.

In addition, OSHA has received many comments to the benzene record on the role of wage rate retention in encouraging workers to participate in medical surveillance programs.

Mr. Donald Broad, a steelworker, testified:

> Certainly, you must have an earnings provision. We've had a lot of people sign off OSHA physicals in the past. They've been borderline with high blood pressure or trace of sugar, and they're just scared to death of losing their job or their position or whatever, and that's probably the biggest reason people sign off OSHA, as they are scared of losing money. (Tr. 3/25/86, p. 183).

George Cafasso, another steelworker, agreed, stating that workers feared loss of money and also their jobs. (Tr. 3/25/86, p. 183).

Margaret Seminario, Associate Director of Occupational Safety and Health, AFL-CIO, testified that workers refuse medical tests because of fear of losing their jobs. She testified that it is inappropriate for OSHA to include medical removal without a wage maintenance provision similar to that in the lead standard (Tr. 3/25/86, p. 183).

Joseph L. Durst, Jr., Health and Safety Director for the United Brotherhood of Carpenters, testified that his members would not take the medical examination if they thought the consequences would be to lose their jobs (Tr. 3/27/86, p. 106).

Dr. Franklin Mirer, Director of U.A.W. Health and Safety Department, testified that while he did not know of any auto workers exposed to benzene who had refused to take medical examinations, he did know of other workers who had done so, particularly inplant lift truck drivers (Tr. 3/25/86, p. 40).

Several physicians also testified to the importance of a rate retention component of medical removal. Dr. David Parkinson testified that he believed it to be absolutely imperative that benzene workers be provided with a benefit plan like the one in the lead standard. Without this protection, Dr. Parkinson stated, workers would be reluctant to participate in medical removal. He testified that the medical evidence was clear that in many cases blood dyscrasias precede aplastic anemia and leukemia and that removal from exposure does reverse dyscrasias, thereby presumably reducing the risk of progression to aplastic anemia or leukemia (Tr. 3/25/86, p. 83).

Dr. Miller testified that an employee who is removed from a benzene-

exposed job for medical reasons should have a new job, retaining the employee's wage rate and seniority. If this is not possible, Dr. Miller stated, the employer must maintain wages for some period of time, perhaps 12–18 months (Tr. 3/27/86, p. 98).

Industry representatives were generally opposed to inclusion of a wage rate retention provision. (Ex. Nos. 258; 259; 260), For example, CMA, in their Post-Hearing Brief, supported OSHA's medical removal provisions, but argued that a wage retention provision was "neither legally supportable nor necessary in practice" (Ex. No. 258, p. 157). The trade association questioned OSHA's authority to require MRP, citing section 4(b)(4) of the Act. Additionally, CMA stated that the omission of a wage retention provision in the OSH Act reflected the intent of Congress, since the OSH Act was passed only a year after the Federal Coal Mine Health and Safety Act of 1969, which specifically included a wage retention provision (Ex. No. 258, p. 158).

CMA, having noted that any wage retention provision must have a health justification, argued that not only does no health justification exist, but also that such a provision is not necessary from a practical standpoint (Ex. No. 258, p. 159). In distinguishing the benzene medical removal provisions from the lead standard, which includes a wage retention provision, CMA stated that whereas a significant number of lead workers are removed, with a low 1 ppm standard for benzene, the number of benzene workers removed will be negligible, thereby not likely to lead workers to fear for their jobs or wage rates (Ex. No. 258, pp. 160, 161).

OSHA believes it does have the authority to include such provisions when they are necessary to protect the health of the workers. The Court of Appeals in the lead case found the wage rate retention provision did not violate section 4(b)(4) of the Act since the section 4(b)(4) restriction could only apply to the small group of workers who are removed under MRP pursuant to a final medical determination that they are already disabled, and for whom no low-exposure job of equal salary is available. They rejected the other arguments made by CMA. (*USWA, etc.* v. *Marshall*, 647 F. 2d 1189 at 1235.)

Removal from benzene exposure is clearly needed to protect health when certain conditions are detected by medical surveillance. Yet employees will be reluctant to agree to medical surveillance if they fear it will lead to loss of job. There was much testimony as to this fact in the benzene hearing and this has been the evidence in other OSHA rulemakings. When employees avoid the medical surveillance, there is no way to identify workers who are developing blood abnormalities due to benzene exposure. These same employees will continue to work in a benzene environment to their detriment.

Medical removal benefits are an appropriate area for collective bargaining agreements. But OSHA has become convinced by the evidence presented that there is a health need for these provisions and basic MRP benefits should be incorporated for all workers whether covered by collective bargaining agreements or not or whether another agreement covers it.

The Agency must always ascertain that MRP is needed for health reasons and then tailor the particular components of MRP to the chemical being regulated. OSHA is persuaded that the health of workers exposed to benzene can be improved by requiring employers to provide limited benefits.

There is a particular reason, in the case of benzene, why medical removal protection is especially appropriate. There will be some cases of abnormal blood counts for reasons other than benzene exposure. If some employees are removed without pay until the reason for the abnormal blood count is diagnosed, other employees are likely to start refusing examinations because of this loss of pay.

After a physician determination to remove an employee pursuant to paragraph (i)(8)(ii), the employee is to be transferred to a comparable job with benzene exposures under the action level or, if none is available, receive medical removal benefits for up to 6 months. During this period, the employee's condition may improve. A follow-up examination is required. At that time the physician, in consultation with the hematologist/internist will determine whether the employee may return to the employee's old job or whether the removal is to be made permanent.

OSHA's MRP provision for benzene has been structured to emphasize the desirability of transferring the worker who is medically removed to a job where benzene does not exceed the action level (paragraph (i)(8)(iv)). In effecting such a transfer, the employer is required to maintain the employee's wage rate, seniority and other benefits (paragraph (i)(8)(iv)). OSHA believes most employers will be in a position to do this as discussed in the economic feasibility section. The component of MRP benefits, paying the wage rate and maintaining seniority and other benefits, becomes available to the employee only when there is no comparable job available, paragraph (i)(8)(iv).

After the follow-up examination and a final physician determination that the employee may not return to work in an area where exposures exceed the action level, the employer is to transfer the employee to another job which is available or which becomes available for which the employee is qualified or can be trained in a short period. As relatively few employees will be removed (unlike lead) and such jobs are likely to be available, OSHA believes this provision should carry out the health need of encouraging employees to take medical examinations without substantially interferring with collective bargaining and employer-employee relations. A broader definition of alternative jobs is used to increase the possibility that alternative jobs are available as medical removal benefits are not provided at this stage. The benzene-related condition has been determined at this stage to be permanent.

In paragraph (i)(9)(i), the employer is required to provide up to 6 months of MRP benefits each time an employee is removed because of hematological findings, unless the employee has been transferred to a comparable job. A number of representatives of labor organizations recommended protection continue for up to 18 months as in the lead standard, or for a greater period of time depending on the particulars of each case. [Most industry groups opposed MRP and thus did not comment on specific provisions). OSHA believes that 6 months is the appropriate period of time because, first, it represents the approximate amount of time needed for the hematological examinations and other essential consultations leading to a determination as to whether the employee can return to work in an area where benzene exceeds the action level. Secondly, it is likely that if an abnormal hemoglobin count is due to one of the commoner non-benzene reversable causes such as iron deficiency anemia, menorrhagia or bleeding gastrointestional ulcers, the disorders can be diagnosed and possibly reversed within the six month period.

Paragraph (i)(9)(ii) defines MRP benefits as the maintenance of earnings, seniority and other employment rights as though the employee had not been removed. OSHA believes that inclusion of all of these components of an employee's rights and benefits is essential so that the employees are not prevented from participation in the medical examinations by fear of immediately losing their jobs upon the

finding of abnormal hematological conditions.

Finally, the employer's obligation to provide MRP is reduced to the extent the employee receives some form of compensation for earnings lost during the period of removal. This provision is necessary in order to ensure the MRP does not result in a "windfall" to the employee who collects other compensation, or earns a salary at another job, while the employee is on medical removal from benzene exposure.

OSHA believes MRP as structured provides appropriate protection to employees without undue intrusion into the area of collective bargaining arrangements.

J. Communication of Benzene Hazards to Employees: Paragraph (j)

In this final benzene standard, OSHA includes a paragraph entitled: "Communication of benzene hazards to employees." This paragraph addresses the issue of transmitting information to employees about the hazards of benzene through the use of: (1) signs and labels, (2) material safety data sheets, and (3) information and training. Previous OSHA health standards generally included separate paragraphs on employee information and training and signs and labels. This final standard incorporates both of those areas into this single paragraph, along with material safety data sheet provisions to be consistent with other recent OSHA rules (e.g., Ethylene Oxide, 49 FR 25734).

On November 25, 1983, the Occupational Safety and Health Administration published its final rule on Hazard Communication at 48 FR 53280 (29 CFR 12919.1200). The Hazard Communication Standard requires all chemical manufacturers and importers to assess the hazards of the chemical which they produce or import, and all manufacturing employers [in SIC codes 20 through 39 (Division D, Standard Industrial Classification Manual)] to provide information concerning the hazards of such chemicals to their employees. The standard provides that:

> This transmittal of information is to be accomplished by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets and employee training [29 CFR 1910.1200 (a)(1)].

Since the Hazard Communication Standard "is intended to address comprehensively the issue of evaluating and communicating chemical hazards to employees" OSHA proposed this paragraph, "Communication of benzene hazards to employees," in an effort to avoid repetition of those requirements now comprehensively laid out in § 1910.1200. In addition, this new paragraph has been developed with the intent of avoiding placement of a duplicate administrative burden on those employers attempting to comply with the requirements of several different applicable OSHA health standards, while at the same time providing the necessary protection afforded employees under the provisions for signs and labels, material safety data sheets, and employee information and training.

The communication of benzene hazards paragraph of the benzene standard has been designed to be substantively as consistent as possible with the Hazard Communication Standard. However, there are some differences. The benzene standard's paragraph on hazard communication covers all industry segments covered by the benzene standard where as the Hazard Communication Standard currently applies only to employers with workplaces in the manufacturing industry sectors (SIC codes 20–39). However, OSHA will be expanding the Hazard Communication Standard to cover a wider segment of industry.

The final rule for benzene requires that regulated areas to be posted with signs stating: "Danger, Benzene, Cancer Hazard, Flammable—No Smoking, Authorized Personnel Only, Respirator Required." The Agency intends the posting of these signs to demarcate regulated areas. Such warning signs are required to be posted whenever a regulated area exists, that is, whenever the permissible exposure limit is likely to be exceeded. For some work sites, regulated areas exist permanently where there is an area where exposures cannot be reduced below the PEL by the use of engineering controls. In those situations the signs are needed to warn employees not to enter the area unless they are wearing respirators and unless there is a need for entering the area.

Regulated areas may also exist on a temporary basis, for example, during maintenance. The use of warning signs in these types of situations is also important, since the temporary high exposures would represent a new or unexpected exposure to employees who are regularly scheduled to work at these sites. The posting of signs at the occurrence of a maintenance situation or during an emergency if there is time, will help to prevent unnecessary exposures to workers who may not otherwise know or expect excessive benzene exposure levels and serves to warn employees of the need to wear respirators.

The wording of the warning signs for regulated areas proposed by OSHA in being carried forth in the final standard in order to assure that the proper warning is given to employees. OSHA feels that the use of the word "Danger" is appropriate, based on the epidemiological evidence of the human carcinogenicity of benzene. "Danger" is used to attract the attention of workers, to alert them to the fact that they are in an area the permissible exposure limit is exceeded, and to emphasize the importance of the message that follows. The use of the word "Danger" is also consistent with other recent OSHA health standards dealing with carcinogens.

One commenter, Amoco, expressed concern about requiring "Flammable—No Smoking" in the signs (Ex. No. 221–22, p. 11). In their operations, Amoco officials stated, any areas that might be designated a regulated area for benzene would be part of a larger area which would already be a no smoking area and employees seeing "No-Smoking" on the sign for the regulated area might think that smoking was forbidden only in the regulated area (Ex. No. 201–22, p. 11). OSHA believes that the need to warn all employees of the fire hazard in a benzene regulated area outweighs possible confusion.

Amoco also commented that the phrase "respirator required" was not instructive since it did not specify what kind of respirator (Ex. No. 201–22). OSHA realizes that the term is not specific; but it does not warn that a respirator is needed, an important notice. It would not be possible to list the types of respirators required and that require further direction by the employer.

While OSHA recognizes that some employees entering the regulated areas for a short time may not be exposed above either the TWA or the STEL, it is still possible that many employees who are assigned to work in these areas may remain in these locations for long enough periods of time to be overexposed to benzene without the use of respirators. To ensure that these employees are adequately protected. It is necessary that the sign alert them to the need to wear respirators.

Paragraph (j)(1)(ii) requires that labels or other appropriate forms of warning be provided for containers (as defined in the "Definitions" paragraph of this section) of benzene within the workplace in accordance with the requirements of the Hazard Communication standard. OSHA is requiring containers be labeled: "Danger, Contains Benzene. Cancer

Hazard." Paragraph (j)(1)(iii) further requires that this same legend be affixed to containers of benzene leaving the workplace. Again, such labeling is to be in accordance with requirements of § 1910.1200(f). As stated in the Scope and Application section of this standard, and, consistent with OSHA's Hazard Communication standard, these labeling requirements do not apply to pipelines.

The requirements for signs and labels are consistent with section 6(b)(7) of the OSH Act, which prescribes the use of labels or other appropriate forms of warning to apprise employees of the hazards to which they are exposed. In addition, the OSHA Hazard Communication standard requires that, if a hazardous chemical is regulated by OSHA in a substance specific health standard, "* * * the chemical manufacturer, importer, distributor or employer shall ensure that the labels or other forms of warning used are in accordance with the requirements of that standard (see 29 CFR 1910.1200 (f)(3)). Therefore, this benzene standard, at paragraph (j)(1) states the specific labeling (and sign) requirements that must be used to warn employees of the hazards to which they are exposed.

OSHA also proposed to require the employer to obtain or develop and to distribute and provide access to a material safety data sheet for benzene in accordance with the requirements of 29 CFR 1910.1200(g). Amoco commented that since their employees are likely to encounter benzene only as a component of another product, any warning for benzene should only be included on the MSDS for the main substance (Ex. No. 201–22, p. 11).

OSHA has considered this recommendation, but has decided not to alter the requirement in the proposal that MSDSs be obtained and developed for benzene. The main reason for this decision is that the hazards of benzene as shown above in the section on health effects are sufficiently great that workers who may be exposed to the chemical need the detailed information that would be present on a MSDS for benzene so the employee would be in a better position to protect oneself.

The material safety data sheet also serves as the central source of information to employees and downstream employers who must be provided with an MSDS if benzene is produced and shipped out of the plant. In addition, the MSDS serves as the basic source of information on the hazards of benzene essential to the training provisions of this and other applicable health standards.

Chemical manufacturers and importers have the primary responsibility, under the Hazard Communication standard, to develop or prepare the material safety data sheet. The manufacturer or importer is most likely to have the best access to information about the product, and is therefore responsible for disseminating this information to downstream users of the material. Therefore, for employers whose employees' exposure to benzene is from products received form outside sources, the information necessary for a complete MSDS or the MSDS itself is to be obtained from the manufacturer and made available to affected employees. The requirements for the information that is to be contained on the material safety data sheet are explained in detail at 29 CFR 1910.1200(g).

Although few commenters addressed the issues in the communication of benzene hazard paragraph, there was one area that drew comment from both union and industry representatives. This was the issue of how much detail should be required on the label, container, or MSDS when benzene is present as a contaminent or as an intergral part of a solution.

As noted above, the Agency proposed to require employers whose employees use solvents containing benzene to label the containers with a specific cautionary phrase and obtain or develop an MSDS for the sovlent and make it available to employees. OSHA intended that these labels and MSDSs be consistent with the Hazard Communication Standard, 29 CFR 1910.1200, which requires carcinogens be identified on a label or MSDS if they make up 0.1% or more of the mixture [29 CFR 1910.1200(f) and (g)]. Identification of the carcinogen need only include the name of the chemical and does not need to specify what percent of the concentration the chemical constitutes.

Union representatives have requested OSHA to require the percentage concentration of benzene be added to the labels, containers and MSDS (Ex. No. 262, p. 55). They argue that merely listing benzene by name on the label is inadequate, since the concentration could be low, as for example 0.1 percent or much higher, perhaps in the range of 10 to 20 percent. These representatives contend that employers, by not knowing the precise percentage of benzene in the mixture, will be unable to determine what protective measures to take (Ex. No. 262, p. 55).

CMA strongly opposes this recommendation. CMA argues that communication issues were considered and resolved in the lengthy rulemaking proceeding for the Hazard Communication Standard (Ex. No. 258, p. 179). They contend the requirements of the Hazard Communication Standard provide employees with all the information they need to minimize risks associated with handling benzene mixtures (Ex. No. 258, pp. 179, 180).

After considering all the evidence, OSHA has decided to carry forth the proposed labeling and MSDS requirements. First, OSHA agrees with CMA that the issue of what is appropriate for labels and MSDSs was considered in the Hazard Communication rulemaking and that the Agency concludes that it is generally appropriate to making the information and labeling requirements of chemical standards consistent with the Hazard Communication standard.

Second, the final standard only exempts from coverage work operations where liquid mixtures, (solvents) containing 0.5 percent or less benzene in the first year following publication, 0.3 percent or less benzene in the second year, and 0.1 percent thereafter, are used. Since mixtures where the percentage of benzene is higher than these limits are subject to full coverage under the standard, employers using the solvents with higher concentration will have to keep employee exposure at or under the PEL regardless of the precise percentage benzene in the solvent. Finally, OSHA believes the provision that exempts mixtures with very low benzene contents will motivate solvent manufacturers to reduce the benzene content of their mixtures so that few, if any, mixtures above the exempt levels will even be available.

Paragraph (j)(3) of this final benzene standard requires employers to provide employees with information and training on benzene at the time of initial assignment and at least annually thereafter. The training program is to be in accordance with the requirements of the Hazard Communication Standard, 29 CFR 1910.1200(h)(1) and (2), including specific information required to be provided by that section. In addition, employees are to be provided with an explanation of the contents of Appendices A and B of this standard. Employees are to be informed where a copy of the final benzene standard is accessible to them, and receive a description of the medical surveillance program required under paragraph (i) of this final standard. Employees are also to receive an explanation of the information contained in Appendix C on the medical surveillance guidelines for benzene.

Training and information requirements are routine components of OSHA health standards and are required by section 6(b)(7) of the Act.

Their inclusion reflects the Agency's experience that informed employees are essential to the operation of any effective occupational health program. Training serves to explain and reinforce the information presented to employees on labels and material safety data sheets. Active employee participation in training sessions results in the more effective communication of hazard information to employees which can further result in workers taking conscientious protective actions at their job duties, thereby decreasing the possibility of occupationally-related illnesses and injuries.

As proposed, the training provisions of this final standard are performance-oriented, rather than specified and detailed language. The standard, in requiring training to be in accordance with the requirements of 29 CFR 1910.1200, lists the categories of information to be transmitted to employees and not the specific ways that this is to be accomplished.

OSHA believes that the employer is in the best position to determine how the training he or she is providing is being received and absorbed by the employees. OSHA has, therefore, described the objectives to be met and the intent of its training to ensure they can help to protect themselves. The specifics of how this is to be accomplished are left up to the employer.

Many comments were received that endorsed this approach. For example, Conoco, Inc. (Ex. No. 142–27) suggested "* * * that OSHA consider that any education and training requirements be in performance language, requiring employers to determine that employees have the necessary health and safety information rather than annual retraining on exactly the same points" Conoco further noted that their "* * * experience with the vinyl chloride standard, which details items to be included in annual training, has shown such specification language to be counter productive because of the required repetition."

One commenter, Amoco, recommended the benzene training provisions be limited to employees exposed "* * * 30 days or more per year above the action level [or assigned] to work in which respiratory protection is used to protect against exposures above the PEL (Ex. No. 201–22, p. 11). OSHA believes the seriousness of the potential health effects warrants the training provisions be applied to all workers covered by the benzene standard.

Other commenters stated that OSHA's Hazard Communication Standard provides important requirements for training provisions and that separate requirements for training would be redundant. Mindful of their comment, OSHA's training program for this final standard is in accordance with the requirements of 29 CFR 1910.1200. The Agency intends that the use of such performance-oriented requirements will encourage employers to tailor their training needs to their specific workplaces, thereby resulting in the most effective training program suitable for each specific workplace.

K. Recordkeeping: Paragraph (k)

The final benzene standard requires employers to maintain exposure measurement records and medical records. These requirements are in accordance with section 8(c) of the Act which requires employers to keep and make available such records as the Secretary may prescribe as necessary or appropriate for the enforcement of the Act, or for developing information regarding the causes and prevention of occupational accidents and illnesses.

The final rule provides that records he kept to identify the employee monitored and to reflect the employee's exposure accurately. Specifically, exposure records must include the following information: (a) the dates, number, duration and results of each of the samples taken, including, where appropriate, a description of the procedures used to determine representative employee exposures; (b) a description of the sampling and analytical methods used; (c) a description of the type of respiratory protective equipment worn, if applicable; and (d) the name, social security number, job classification and exposure levels of the employee monitored, and all other employees whose exposure the measurement is intended to represent.

In addition to records on employee exposure measurements, the employer is required to establish and maintain an accurate individual record for each employee subject to medical surveillance as required by paragraph (i) of the final standard. OSHA believes that medical records, like exposure monitoring records, are necessary and appropriate to the enforcement of the standard, to the successful treatment of benzene related disease and the development of information regarding the causes and prevention of illness.

The records shall include: (1) The name and social security number of the employee, (2) the employer's copy of all physicians reports on the employee, (3) any employee benzene related medical complaints, (4) a copy of the information provided to the physician as required by paragraph (i)(6) of this section and (5) a copy of the employee's medical and work history related to any hematologic toxins. Abnormal changes of blood elements may be affected by different factors and therefore a good medical history will include specification of known hematologic toxins to which the employee has been exposed. These items constitute information necessary and appropriate for later accurate diagnoses and determinations that the worker is adequately protected under the standard.

It is necessary to keep these records for extended periods because of the long latency period commonly associated with carcinogenesis. Cancer often cannot be detected until 20 or more years after onset of exposure. The extended record retention period is therefore needed for several purposes. First, diagnosis of disease in employees is assisted by having present and past exposure data and the results of prior medical examinations. In addition, retaining records for extended periods also makes it possible at some future date to review effectiveness and the adequacy of the standard.

Two commenters objected to the detailed language of the proposed standard [Ex. Nos. 201–15, 201–35]. Both commenters stated that the recordkeeping provisions were a duplication of the requirements found in § 1910.20, Access to Employee Exposure and Medical Records, and expressed the opinion that only a reference to § 1910.20 was necessary.

The recordkeeping requirements in the standard is not a duplication of § 1910.20 which only requires retention of records the employer chooses to make. The recordkeeping requirements of the benzene standard, mandates the creation of new records or reports, and imposes new obligations on employers to monitor or measure employee exposures, and to provide medical surveillance or examinations relative to occupational exposure to benzene.

The retention and access provisions of the benzene standard are consistent with § 1910.20. Employees and their designated representatives are, in general, allowed unrestricted access to exposure monitoring records. Access to medical records is also provided for employees and, if the employee has given specific written consent, for the employee's designated representative. OSHA retains unrestricted access to both kinds of records, but its access to personally identifiable medical records is made subject to rules of agency practice and procedure concerning

OSHA access to employee medical records, designed to protect privacy, which have been published at 29 CFR 1913.10 (see 45 FR 35384).

The time period required for retention of exposure of records is thirty years and for medical records duration of employment plus thirty years. These retention periods are consistent with those in the OSHA records access standard.

The transfer of employee exposure monitoring and medical records is to be in accordance with the provisions of paragraph (h) of 29 CFR 1910.20. If an employer ceases to do business and there is no successor employer, the employer is to notify NIOSH and transmit the records to the Director of NIOSH for retention, if requested. An employer may go out of business before notifying NIOSH. However, the records must be retained for at least 90 days after NIOSH is notified.

OSHA believes the collection and retention of these exposure monitoring and medical records is necessary to protect employee health by assisting in diagnosis of conditions and to allow for future assessement of the standard's effectiveness exposure limit and other provisions.

L. Observation of Monitoring: Paragraph (l)

The benzene standard contains provisions for the observation of exposure monitoring. This provision is in accordance with section 8(c) of the OSH Act which requires that employers provide employees and their representatives with the opportunity to observe monitoring of employee exposures to toxic substances or harmful physical agents. Observation procedures are set forth which require the observer, whether it be an employee or a designated representative, to be provided with the personal protective clothing and equipment that is required to be worn by the employees who are working in the area. The employer is required to assure the use of such clothing and equipment or respirators, and is responsible for requiring that the observer complies with all other applicable safety and health procedures.

M. Effective Dates: Paragraph (m)

The standard becomes effective 90 days after date of publication in the **Federal Register**. The requirements of paragraphs (a) through (m) of the standard are to be completed sixty (60) days after the effective date of the final rule except for paragraph (f)(1), which sets forth the requirements for engineering and work practice controls. Consequently, employers will have 5 months from publication to accomplish those requirements which OSHA believes is adequate time. Implementation dates for the completion of the engineering and work practice requirements are to be no later than 2 years after the effective date of the final rule. This is to allow affected employers sufficient time to design (where necessary), obtain, and install the necessary control equipment. Because of the financial difficulties of the steel industry, and with the agreement of both the United Steel Workers and the American Iron & Steel Institute, the compliance period for coke light oil recovery and byproduct operations is 5 years.

N. Appendices: Paragraph (n)

Five appendices have been included at the end of this standard. Appendices A, B, C, and D have been included primarily for purposes of information. None of the statements contained in Appendices A, B, C, and D should be construed as establishing a mandatory requirement not otherwise imposed by the standard, or as detracting from an obligation which the standard does impose. However, the protocols for respiratory fit testing in Appendix E are binding.

Appendix A contains information on the description and exposure levels of benzene. Also provided in Appendix A is information on the health hazards associated with exposure, descriptions of protective clothing and equipment, emergency and first aid procedures, medical requirements, provisions for the observation of monitoring, access to exposure and medical records, and precautions for the safe use, handling and storage of benzene.

Appendix B contains "substance technical guidelines" for benzene, including physical and chemical data, spill and leak procedures including waste disposal methods, and other miscellaneous precautions for the safe handling of benzene.

Appendix C contains the medical surveillance guidelines for benzene. Included in these guidelines are a description of the routes of entry, the toxicology and symptoms and signs associated with benzene exposure, information on the treatment of acute toxic effects, and surveillance and preventive considerations, including hematology guidelines which may be useful to physicians in conducting the medical surveillance program required by section (i) of this proposed standard.

Appendix D gives details of the OSHA sampling and analytical methods for use in monitoring employee exposures to benzene.

Appendix E gives detailed fit testing procedures that are to be followed for qualitative and quantitative fit testing of negative pressure respirators. Various protocols for qualitative and quantitative fit tests are outlined in detail. These protocols have been simplified from the proposal. Several commenters suggested further simplification. OSHA plans in the near future to propose revisions to section 1910.134, the respirator program standard. In that rulemaking it will consider whether further simplification is appropriate.

All the Appendices are designed to aid the employer in complying with the requirements of the standard. Paragraph (j) of this proposed standard on the "communication of benzene hazards to employees" specifically requires that the contents of the standard and Appendices A and B be made available to affect employees. Information contained in Appendix C on medical surveillance is to be explained to affected employees. The information in Appendix C also provides information needed by the physician to evaluate the results of the medical examination.

Recordkeeping Requirements

The recordkeeping requirements in this standard have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The approval number is 1218–0129 and the approval has been granted until August 31, 1990.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210.

Pursuant to sections 6(b) and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), 29 CFR Part 1911 and Secretary of Labor's Order No. 9–83 (48 FR 35736), Part 1910 of 29 CFR is hereby amended by adding a new permanent standard for occupational exposure to benzene as section 1910.1028 as set forth below and to make consequential amendments to Table Z–2 of § 1910.1000. In addition, pursuant to section 4(b)(2) of the Act, OSHA has determined that this new standard is more effective than the general standards now in Subpart B of Part 1910, and in Parts 1915, 1917, 1918, and 1926 of Title 29, Code of Federal Regulations. Therefore, these general standards are superseded with respect to benzene by this new § 1910.1028. A new paragraph

(i) is added to § 1910.19 to reflect this decision.

List of Subjects in 29 CFR Part 1910

Benzene, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

Signed at Washington, DC, on this 1st day of September 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

XII. The Standard

PART 1910—[AMENDED]

Part 1910 of Title 29 of the Code of Federal Regulations is hereby amended as follows:

1. The authority citation for Subpart B of Part 1910 continues to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35 et seq; Service Contract Act of 1965, 41 U.S.C. 351 et seq; Pub. L. 91–54, 40 U.S.C. 333; Pub. L. 85–742, 33 U.S.C. 941; National Foundation on Arts and Humanities Act, 20 U.S.C. 951 et seq; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 2505), or 9–83 (48 FR 35736); and 29 CFR Part 1911.

2. A new paragraph (i) is added to § 1910.19 to read as follows:

§ 1910.19 Special provisions for air contaminants.

* * * * *

(i) *Benzene.* Section 1910.1028 shall apply to the exposure of every employee to benzene in every employment and place of employment covered by §§ 1910.12, 1910.13, 1910.14, 1910.15 or 1910.16 in lieu of any different standard on exposures to benzene which would otherwise be applicable by virtue of those sections.

3. The authority citation for Subpart Z of Part 1910 is amended to add an entry for § 1910.1028 as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR Part 1911. Section 1910.1000 Tables Z–1, Z–2, Z–3 also issued under 5 U.S.C. 553. * * * Section 1910.1028 also issued under 29 U.S.C. 653.

* * * * *

4. A footnote "1" is added to the entry "Benzene" in Table Z–2 of Section 1910.1000 to read as follows. The entry for "Benzene" is republished.

§ 1910.1000 [Amended]

TABLE Z–2 [AMENDED]

Material	8-hour time weighted average	Acceptable ceiling concentration	Acceptable maximum average peak above the acceptance ceiling concentration for an 8-hour shift	
			Concentration	Maximum duration
Benzene [1] Z37.40–1969	10 p.p.m	25 p.p.m	50 p.p.m	10 minutes.
*	*	*	*	*

[1] This standard applies to the industry segments exempt from the 1 ppm 8 hour TWA and 5 ppm STEL of the benzene standard at § 1910.1028. This standard also applies to any industry for which § 1910.1928 is stayed or otherwise not in effect.

5. A new § 1910.1028 and Appendices A, B, C, D, and E are added to Subpart Z to read as follows:

§ 1910.1028 Benzene.

(a) *Scope and application.* (1) This section applies to all occupational exposures to benzene. Chemical Abstracts Service Registry No. 71–43–2, except as provided in paragraphs (a)(2) and (a)(3) of this section.

(2) This section does not apply to:

(i) The storage, transportation, distribution, dispensing, sale or use of gasoline, motor fuels, or other fuels containing benzene subsequent to its final discharge from bulk wholesale storage facilities, except that operations where gasoline or motor fuels are dispensed for more than 4 hours per day in an indoor location are covered by this section.

(ii) Loading and unloading operations at bulk wholesale storage facilities which use vapor control systems for all loading and unloading operations, except for the provisions of 29 CFR 1910.1200 as incorporated into this section and the emergency provisions of paragraphs (g) and (i)(4) of this section.

(iii) The storage, transportation, distribution or sale of benzene or liquid mixtures containing more than 0.1 percent benzene in intact containers or in transportation pipelines while sealed in such a manner as to contain benzene vapors or liquid, except for the provisions of 29 CFR 1910.1200 as incorporated into this section and the emergency provisions of paragraphs (g) and (i)(4) of this section.

(iv) Containers and pipelines carrying mixtures with less than 0.1 percent benzene and natural gas processing plants processing gas with less than 0.1 percent benzene.

(v) Work operations where the only exposure to benzene is from liquid mixtures containing 0.5 percent or less of benzene by volume, or the vapors released from such liquids until September 12, 1988; work operations where the only exposure to benzene is from liquid mixtures containing 0.3 percent or less of benzene by volume or the vapors released from such liquids from September 12, 1988, to September 12, 1989; and work operations where the only exposure to benzene is from liquid mixtures containing 0.1 percent or less of benzene by volume or the vapors released from such liquids after September 12, 1989; except that tire building machine operators using solvents with more than 0.1 percent benzene are covered by paragraph (i) of this section.

(vi) Oil and gas drilling, production and servicing operations.

(vii) Coke oven batteries.

(3) The cleaning and repair of barges and tankers which have contained benzene are excluded from paragraph (f) methods of compliance, paragraph (e)(1) exposure monitoring-general, and paragraph (e)(6) accuracy of monitoring. Engineering and work practice controls shall be used to keep exposures below 10 ppm unless it is proven to be not feasible.

(b) *Definitions.*

"Action level" means an airborne concentration of benzene of 0.5 ppm calculated as an 8-hour time-weighted average.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Authorized person" means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the right to

observe monitoring and measuring procedures under paragraph (l) of this section, or any other person authorized by the Act or regulations issued under the Act.

"Benzene" (C_6H_6) (CAS Registry No. 71–43–2) means liquefied or gaseous benzene. It includes benzene contained in liquid mixtures and the benzene vapors released by these liquids. It does not include trace amounts of unreacted benzene contained in solid materials.

"Bulk wholesale storage facility" means a bulk terminal or bulk plant where fuel is stored prior to its delivery to wholesale customers.

"Container" means any barrel, bottle, can, cylinder, drum, reaction vessel, storage tank, or the like, but does not include piping systems.

"Day" means any part of a calendar day.

"Director" means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

"Emergency" means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which may or does result in an unexpected significant release of benzene.

"Employee exposure" means exposure to airborne benzene which would occur if the employee were not using respiratory protective equipment.

"Regulated area" means any area where airborne concentrations of benzene exceed or can reasonably be expected to exceed, the permissible exposure limits, either the 8-hour time weighted average exposure of 1 ppm or the short-term exposure limit of 5 ppm for 15 minutes.

"Vapor control system" means any equipment used for containing the total vapors displaced during the loading of gasoline, motor fuel or other fuel tank trucks and the displacing of these vapors through a vapor processing system or balancing the vapor with the storage tank. This equipment also includes systems containing the vapors displaced from the storage tank during the unloading of the tank truck which balance the vapors back to the tank truck.

(c) *Permissible exposure limits (PELs)*—(1) *Time-weighted average limit (TWA).* The employer shall assure that no employee is exposed to an airborne concentration of benzene in excess of one part of benzene per million parts of air (1 ppm) as an 8-hour time-weighted average.

(2) *Short-term exposure limit (STEL).* The employer shall assure that no employee is exposed to an airborne concentration of benzene in excess of five (5) ppm as averaged over any 15 minute period.

(d) *Regulated areas.* (1) The employer shall establish a regulated area wherever the airborne concentration of benzene exceeds or can reasonably be expected to exceed the permissible exposure limits, either the 8-hour time weighted average exposure of 1 ppm or the short-term exposure limit of 5 ppm for 15 minutes.

(2) Access to regulated areas shall be limited to authorized persons.

(3) Regulated areas shall be determined from the rest of the workplace in any manner that minimizes the number of employees exposed to benzene within the regulated area.

(e) *Exposure monitoring*—(1) *General.* (i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of each employee's average exposure to airborne benzene.

(ii) Representative 8-hour TWA employee exposures shall be determined on the basis of one sample or samples representing the full shift exposure for each job classification in each work area.

(iii) Determinations of compliance with the STEL shall be made from 15 minute employee breathing zone samples measured at operations where there is reason to believe exposures are high, such as where tanks are opened, filled, unloaded or gauged; where containers or process equipment are opened and where benzene is used for cleaning or as a solvent in an uncontrolled situation. The employer may use objective data, such as measurements from brief period measuring devices, to determine where STEL monitoring is needed.

(iv) Except for initial monitoring as required under paragraph (e)(2) of this section, where the employer can document that one shift will consistently have higher employee exposures for an operation, the employer shall only be required to determine representative employee exposure for that operation during the shift on which the highest exposure is expected.

(2) *Initial monitoring.* (i) Each employer who has a place of employment covered under paragraph (a)(1) of this section shall monitor each of these workplaces and work operations to determine accurately the airborne concentrations of benzene to which employees may be exposed.

(ii) The initial monitoring required under paragraph (e)(2)(i) of this section shall be completed by 60 days after the effective date of this standard or within 30 days of the introduction of benzene into the workplace. Where the employer has monitored within one year prior to the effective date of this standard and the monitoring satisfies all other requirements of this section, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (e)(2)(i) of this section.

(3) *Periodic monitoring and monitoring frequency.* (i) If the monitoring required by paragraph (e)(2)(i) of this section reveals employee exposure at or above the action level but at or below the TWA, the employer shall repeat such monitoring for each such employee at least every year.

(ii) If the monitoring required by paragraph (e)(2)(i) of this section reveals employee exposure above the TWA, the employer shall repeat such monitoring for each such employee at least every six (6) months.

(iii) The employer may alter the monitoring schedule from every six months to annually for any employee for whom two consecutive measurements taken at least 7 days apart indicate that the employee exposure has decreased to the TWA or below, but is at or above the action level.

(iv) Monitoring for the STEL shall be repeated as necessary to evaluate exposures of employees subject to short term exposures.

(4) *Termination of monitoring.* (i) If the initial monitoring required by paragraph (e)(2)(i) of this section reveals employee exposure to be below the action level the employer may discontinue the monitoring for that employee, except as otherwise required by paragraph (e)(5) of this section.

(ii) If the periodic monitoring required by paragraph (e)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are below the action level the employer may discontinue the monitoring for that employee, except as otherwise required by paragraph (e)(5).

(5) *Additional monitoring.* (i) The employer shall institute the exposure monitoring required under paragraphs (e)(2) and (e)(3) of this section when there has been a change in the production, process, control equipment, personnel or work practices which may result in new or additional exposures to benzene, or when the employer has any reason to suspect a change which may result in new or additional exposures.

(ii) Whenever spills, leaks, ruptures or other breakdowns occur that may lead to employee exposure, the employer shall monitor (using area or personal sampling) after the cleanup of the spill

or repair of the leak, rupture or other breakdown to ensure that exposures have returned to the level that existed prior to the incident.

(6) *Accuracy of monitoring.* Monitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of benzene.

(7) *Employee notification of monitoring results.* (i) The employer shall, within 15 working days after the receipt of the results of any monitoring performed under this standard, notify each employee of these results in writing either individually or by posting of results in an appropriate location that is accessible to affected employees.

(ii) Whenever the PELs are exceeded, the written notification required by paragraph (e)(7)(i) of this section shall contain the corrective action being taken by the employer to reduce the employee exposure to or below the PEL, or shall refer to a document available to the employee which states the corrective actions to be taken.

(f) *Methods of compliance*—(1) *Engineering controls and work practices.* (i) The employer shall institute engineering controls and work practices to reduce and maintain employee exposure to benzene at or below the permissible exposure limits, except to the extent that the employer can establish that these controls are not feasible or where the provisions of paragraph (f)(1)(iii) or (g)(1) of this section apply.

(ii) Wherever the feasible engineering controls and work practices which can be instituted are not sufficient to reduce employee exposure to or below the PELs, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

(iii) Where the employer can document that benzene is used in a workplace less than a total of 30 days per year, the employer shall use engineering controls, work practice controls or respiratory protection or any combination of these controls to reduce employee exposure to benzene to or below the PELs, except that employers shall use engineering and work practice controls, if feasible, to reduce exposure to or below 10 ppm as an 8-hour TWA.

(2) *Compliance program.* (i) When any exposures are over the PEL, the employer shall establish and implement a written program to reduce employee exposure to or below the PEL primarily by means of engineering and work practice controls, as required by paragraph (f)(1) of this section.

(ii) The written program shall include a schedule for development and implementation of the engineering and work practice controls. These plans shall be reviewed and revised as appropriate based on the most recent exposure monitoring data, to reflect the current status of the program.

(iii) Written compliance programs shall be furnished upon request for examination and copying to the Assistant Secretary, the Director, affected employees and designated employee representatives.

(g) *Respiratory protection.* (1) *General.* The employer shall provide respirators, and assure that they are used, where required by this section. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations for which the employer establishes that compliance with either the TWA or STEL through the use of engineering and work practice controls is not feasible, such as some maintenance and repair activities, vessel cleaning, or other operations where engineering and work practice controls are infeasible because exposures are intermittent in nature and limited in duration;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient or are not required under paragraph (f)(1)(iii) of this section to reduce exposure to or below the PELs; and

(iv) In emergencies.

(2) *Respirator selection.* (1) Where respirators are required or allowed under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator as specified in Table 1, and shall assure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those jointly approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11. Negative pressure respirators shall have filter elements approved by MSHA/NIOSH for organic vapors or benzene.

(iii) Any employee who cannot wear a negative pressure respirator shall be given the option of wearing a respirator with less breathing resistance such as a powered air-purifying respirator or supplied air respirator.

(3) *Respirator program.* The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e) and (f).

(4) *Respirator use.* (i) Where air-purifying respirators are used, the employer shall replace the air purifying element at the expiration of service life or at the beginning of each shift in which they will be used, whichever comes first.

(ii) If an air purifying element becomes available with an end of useful life indicator for benzene approved by MSHA/NIOSH, the element may be used until such time as the indicator shows no further useful life.

(iii) The employer shall permit employees who wear respirators to leave the regulated area to wash their faces and respirator facepieces as necessary in order to prevent skin irritation associated with respirator use or to change the filter elements of air-purifying respirators whenever they detect a change in breathing resistance or chemical vapor breakthrough.

(5) *Respirator fit testing.* (i) The employer shall perform, and certify the results of, either quantitative or qualitative fit tests at the time of initial fitting and at least annually thereafter for each employee wearing a negative pressure respirator. The test shall be used to select a respirator facepiece which exhibits minimum leakage and provides the required protection as prescribed in Table 1. The employer shall provide and assure that the employee wears a respirator demonstrated by the fit test to provide the required protection.

(ii) The employer shall follow the test protocols outlined in Appendix E of this standard for whichever type of fit testing the employer chooses.

TABLE 1.—RESPIRATORY PROTECTION FOR BENZENE

Airborne concentration of benzene or condition of use	Respirator type
(a) Less than or equal to 10 ppm.	(1) Half-mask air-purifying respirator with organic vapor cartridge.
(b) Less than or equal to 50 ppm.	(1) Full facepiece respirator with organic vapor cartridges. (1) Full facepiece gas mask with chin style canister.[1]
(c) Less than or equal to 100 ppm.	(1) Full facepiece powered air-purifying respirator with organic vapor canister.[1]

TABLE 1.—RESPIRATORY PROTECTION FOR BENZENE—Continued

Airborne concentration of benzene or condition of use	Respirator type
(d) Less than or equal to 1,000 ppm.	(1) Supplied air respirator with full facepiece in positive-pressure mode.
(e) Greater than 1,000 ppm or unknown concentration.	(1) Self-contained breathing apparatus with full facepiece in positive pressure mode. (2) Full facepiece positive- pressure supplied-air respirator with auxiliary self-contained air supply.
(f) Escape	(1) Any organic vapor gas mask; or (2) Any self-contained breathing apparatus with full facepiece.
(g) Firefighting	(1) Full facepiece self-contained breathing apparatus in positive pressure mode.

[1] Canisters must have a minimum service life of four (4) hours when tested at 150 ppm benzene, at a flow rate of 64 LPM, 25 °C, and 85% relative humidity for non-powered air purifying respirators. The flow rate shall be 115 LPM and 170 LPM respectively for tight fitting and loose fitting powered air-purifying respirators.

(h) *Protective clothing and equipment.* Personal protective clothing and equipment shall be worn where appropriate to prevent eye contact and limit dermal exposure to liquid benzene. Protective clothing and equipment shall be provided by the employer at no cost to the employee and the employer shall assure its use where appropriate. Eye and face protection shall meet the requirements of 29 CFR 1910.133.

(i) *Medical surveillance*— (1) *General.* (i) The employer shall make available a medical surveillance program for employees who are or may be exposed to benzene at or above the action level 30 or more days per year; for employees who are or may be exposed to benzene at or above the PELs 10 or more days per year; for employees who have been exposed to more than 10 ppm of benzene for 30 or more days in a year prior to the effective date of the standard when employed by their current employer; and for employees involved in the tire building operations called tire building machine operators, who use solvents containing greater than 0.1 percent benzene.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician and that all laboratory tests are conducted by an accredited laboratory.

(iii) The employer shall assure that persons other than licensed physicians who administer the pulmonary function testing required by this section shall complete a training course in spirometry sponsored by an appropriate governmental, academic or professional institution.

(iv) The employer shall assure that all examinations and procedures are provided without cost to the employee and at a reasonable time and place.

(2) *Initial examination.* (i) Within 60 days of the effective date of this standard, or before the time of initial assignment, the employer shall provide each employee covered by paragraph (i)(1)(i) of this section with a medical examination including the following elements:

(A) A detailed occupational history which includes:

(*1*) Past work exposure to benzene or any other hematological toxins,

(*2*) A family history of blood dyscrasias including hematological neoplasms;

(*3*) A history of blood dyscrasias including genetic hemoglobin abnormalities, bleeding abnormalities, abnormal function of formed blood elements;

(*4*) A history of renal or liver dysfunction;

(*5*) A history of medicinal drugs routinely taken;

(*6*) A history of previous exposure to ionizing radiation and

(*7*) Exposure to marrow toxins outside of the current work situation.

(B) A complete physical examination.

(C) *Laboratory tests.* A complete blood count including a leukocyte count with differential, a quantitative thrombocyte count, hematocrit, hemoglobin, erythrocyte count and erythrocyte indices (MCV, MCH, MCHC). The results of these tests shall be reviewed by the examining physician.

(D) Additional tests as necessary in the opinion of the examining physician, based on alterations to the components of the blood or other signs which may be related to benzene exposure; and

(E) For all workers required to wear respirators for at least 30 days a year, the physical examination shall pay special attention to the cardiopulmonary system and shall include a pulmonary function test.

(ii) No initial medical examination is required to satisfy the requirements of paragraph (i)(2)(i) of this section if adequate records show that the employee has been examined in accordance with the procedures of paragraph (i)(2)(i) of this section within the twelve months prior to the effective date of this standard.

(3) *Periodic examinations.* (i) The employer shall provide each employee covered under paragraph (i)(1)(i) of this section with a medical examination annually following the previous examination. These periodic examinations shall incude at least the following elements:

(A) A brief history regarding any new exposure to potential marrow toxins, changes in medicinal drug use, and the appearance of physical signs relating to blood disorders:

(B) A complete blood count including a leukocyte count with differential, quantitative thrombocyte count, hemoglobin, hematocrit, erythrocyte count and erythrocyte indices (MCV, MCH, MCHC); and

(C) Appropriate additional tests as necessary, in the opinion of the examining physician, in consequence of alterations in the components of the blood or other signs which may be related to benzene exposure.

(ii) Where the employee develops signs and symptoms commonly associated with toxic exposure to benzene, the employer shall provide the employee with an additional medical examination which shall include those elements considered appropriate by the examining physician.

(iii) For persons required to use respirators for at least 30 days a year, a pulmonary function test shall be performed every three (3) years. A specific evaluation of the cardiopulmonary system shall be made at the time of the pulmonary function test.

(4) *Emergency examinations.* (i) In addition to the surveillance required by (i)(1)(i), if an employee is exposed to benzene in an emergency situation, the employer shall have the employee provide a urine sample at the end of the employee's shift and have a urinary phenol test performed on the sample within 72 hours. The urine specific gravity shall be corrected to 1.024.

(ii) If the result of the urinary phenol test is below 75 mg phenol/L of urine, no further testing is required.

(iii) If the result of the urinary phenol test is equal to or greater than 75 mg phenol/L of urine, the employer shall provide the employee with a complete blood count including an erythrocyte count, leukocyte count with differential and thrombocyte count at monthly intervals for a duration of three (3)

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months following the emergency exposure.

(iv) If any of the conditions specified in paragraph (i)(5)(i) of this section exists, then the further requirements of paragraph (i)(5) of this section shall be met and the employer shall, in addition, provide the employees with periodic examinations if directed by the physician.

(5) *Additional examinations and referrals.* (i) Where the results of the complete blood count required for the initial and periodic examinations indicate any of the following abnormal conditions exist, then the blood count shall be repeated within 2 weeks.

(A) The hemoglobin level or the hematocrit falls below the normal limit [outside the 95% confidence interval (C.I.)] as determined by the laboratory for the particular geographic area and/or these indices show a persistent downward trend from the individual's pre-exposure norms; provided these findings cannot be explained by other medical reasons.

(B) The thrombocyte (platelet) count varies more than 20 percent below the employee's most recent values or falls outside the normal limit (95% C.I.) as determined by the laboratory.

(C) The leukocyte count is below 4,000 per mm^3 or there is an abnormal differential count.

(ii) If the abnormality persists, the examining physician shall refer the employee to a hematologist or an internist for further evaluation unless the physician has good reason to believe such referral is unnecessary. (See Appendix C for examples of conditions where a referral may be unnecessary.)

(iii) The employer shall provide the hematologist or internist with the information required to be provided to the physician under paragraph (i)(6) of this section and the medical record required to be maintained by paragraph (k)(2)(ii) of this section.

(iv) The hematologist's or internist's evaluation shall include a determination as to the need for additional tests, and the employer shall assure that these tests are provided.

(6) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this regulation and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's actual or representative exposure level:

(iv) A description of any personal protective equipment used or to be used; and

(v) Information from previous employment-related medical examinations of the affected employee which is not otherwise available to the examining physician.

(7) *Physician's written opinions.* (i) For each examination under this section, the employer shall obtain and provide the employee with a copy of the examining physician's written opinion within 15 days of the examination. The written opinion shall be limited to the following information:

(A) The occupationally pertinent results of the medical examination and tests;

(B) The physician's opinion concerning whether the employee has any detected medical conditions which would place the employee's health at greater than normal risk of material impairment from exposure to benzene:

(C) The physician's recommended limitations upon the employee's exposure to benzene or upon the employee's use of protective clothing or equipment and respirators.

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions resulting from benzene exposure which require further explanation or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific records, findings and diagnoses that have no bearing on the employee's ability to work in a benzene-exposed workplace.

(8) *Medical removal plan.* (i) When a physician makes a referral to a hematologist/internist as required under paragraph (i)(5)(ii) of this section, the employee shall be removed from areas where exposures may exceed the action level until such time as the physician makes a determination under paragraph (i)(8)(ii) of this section.

(ii) Following the examination and evaluation by the hematologist/internist, a decision to remove an employee from areas where benzene exposure is above the action level or to allow the employee to return to areas where benzene exposure is above the action level shall be made by the physician in consultation with the hematologist/internist. This decision shall be communicated in writing to the employer and employee. In the case of removal, the physician shall state the required probable duration of removal from occupational exposure to benzene above the action level and the requirements for future medical examinations to review the decision.

(iii) For any employee who is removed pursuant to paragraph (i)(8)(ii) of this section, the employer shall provide a follow-up examination. The physician, in consultation with the hematologist/internist, shall make a decision within 6 months of the date the employee was removed as to whether the employee shall be returned to the usual job or whether the employee should be removed permanently.

(iv) Whenever an employee is temporarily removed from benzene exposure pursuant to paragraph (i)(8)(i) or (i)(8)(ii) of this section, the employer shall transfer the employee to a comparable job for which the employee is qualified (or can be trained for in a short period) and where benzene exposures are as low as possible, but in no event higher than the action level. The employer shall maintain the employee's current wage rate, seniority and other benefits. If there is no such job available, the employer shall provide medical removal protection benefits until such a job becomes available or for 6 months, whichever comes first.

(v) Whenever an employee is removed permanently from benzene exposure based on a physician's recommendation pursuant to paragraph (i)(8)(iii) of this section, the employee shall be given the opportunity to transfer to another position which is available or later becomes available for which the employee is qualified (or can be trained for in a short period) and where benzene exposures are as low as possible but in no event higher than the action level. The employer shall assure that such employee suffers no reduction in current wage rate, seniority or other benefits as a result of the transfer.

(9) *Medical removal protection benefits.* (i) The employer shall provide to an employee 6 months of medical removal protection benefits immediately following each occasion an employee is removed from exposure to benzene because of hematological findings pursuant to paragraphs (i)(8) (i) and (ii) of this section, unless the employee has been transferred to a comparable job where benzene exposures are below the action level.

(ii) For the purposes of this section, the requirement that an employer provide medical removal protection benefits means that the employer shall maintain the current wage rate, seniority and other benefits of an employee as though the employee had not been removed.

(iii) The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from

a publicly or employer-funded compensation program, or from employment with another employer made possible by virtue of the employee's removal.

(j) *Communication of benzene hazards to employees*—(1) *Signs and labels.* (i) The employer shall post signs at entrances to regulated areas. The signs shall bear the following legend:

DANGER
BENZENE
CANCER HAZARD
FLAMMABLE—NO SMOKING
AUTHORIZED PERSONNEL ONLY
RESPIRATOR REQUIRED

(ii) The employer shall ensure that lables or other appropriate forms of warning are provided for containers of benzene within the workplace. There is no requirement to label pipes. The labels shall comply with the requirements of 29 CFR 1910.1200(f) and in addition shall include the following legend:

DANGER
CONTAINS BENZENE
CANCER HAZARD

(2) *Material safety data sheets.* (i) Employers shall obtain or develop, and shall provide access to their employees, to a material safety data sheet (MSDS) which addresses benzene and complies with 29 CFR 1910.1200.

(ii) Employers who are manufacturers or importers shall:

(A) Comply with paragraph (a) of this section, and

(B) Comply with the requirement in OSHA's Hazard Communication Standard, 29 CFR 1910.1200, that they deliver to downstream employers an MSDS which addresses benzene.

(3) *Information and training.* (i) The employer shall provide employees with information and training at the time of their initial assignment to a work area where benzene is present. If exposures are above the action level, employees shall be provided with information and training at least annually thereafter.

(ii) The training program shall be in accordance with the requirements of 29 CFR 1910.1200(h) (1) and (2), and shall include specific information on benzene for each category of information included in that section.

(iii) In addition to the information required under 29 CFR 1910.1200, the employer shall:

(A) Provide employees with an explanation of the contents of this section, including Appendices A and B, and indicate to them where the standard is available; and

(B) Describe the medical surveillance program required under paragraph (i) of this section, and explain the information contained in Appendix C.

(k) *Recordkeeping*—(1) *Exposure measurements.* (i) The employer shall establish and maintain an accurate record of all measurements required by paragraph (e) of this section, in accordance with 29 CFR 1910.20.

(ii) This record shall include:

(A) The dates, number, duration, and results of each of the samples taken, including a description of the procedure used to determine representative employee exposures;

(B) A description of the sampling and analytical methods used;

(C) A description of the type of respiratory protective devices worn, if any; and

(D) The name, social security number, job classification and exposure levels of the employee monitored and all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least 30 years, in accordance with 29 CFR 1910.20.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance required by paragraph (i) of this section, in accordance with 29 CFR 1910.20.

(ii) This record shall include:

(A) The name and social security number of the employee;

(B) The employer's copy of the physician's written opinion on the initial, periodic and special examinations, including results of medical examinations and all tests, opinions and recommendations;

(C) Any employee medical complaints related to exposure to benzene;

(D) A copy of the information provided to the physician as required by paragraphs (i)(6) (ii) through (v) of this section; and

(E) A copy of the employee's medical and work history related to exposure to benzene or any other hematologic toxins.

(iii) The employer shall maintain this record for at least the duration of employment plus 30 years, in accordance with 29 CFR 1910.20.

(3) *Availability.* (i) The employer shall assure that all records required to be maintained by this section shall be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) Employee exposure monitoring records required by this paragraph shall be provided upon request for examination and copying to employees, employee representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a) through (e) and (g) through (i).

(iii) Employee medical records required by this paragraph shall be provided upon request for examination and copying, to the subject employee, to anyone having the specific written consent of the subject employee, and to the Assistant Secretary in accordance with 29 CFR 1910.20.

(4) *Transfer of records.* (i) The employer shall comply with the requirements involving transfer of records set forth in 29 CFR 1019.20(h).

(ii) If the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director, at least three (3) months prior to disposal, and transmit them to the Director if required by the Director within that period.

(l) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees, or their designated representatives, an opportunity to observe the measuring or monitoring of employee exposure to benzene conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* When observation of the measuring or monitoring of employee exposure to benzene requires entry into areas where the use of protective clothing and equipment or respirators is required, the employer shall provide the observer with personal protective clothing and equipment or respirators required to be worn by employees working in the area, assure the use of such clothing and equipment or respirators, and require the observer to comply with all other applicable safety and health procedures.

(m) *Dates*—(1) *Effective date.* The standard shall become effective December 10, 1987.

(2) *Start-up dates.* (i) The requirements of paragraph (a) through (m) of this section, except the engineering control requirements of paragraph (f)(1) of this section shall be completed within sixty (60) days after the effective date of the standard.

(ii) Engineering and work practice controls required by paragraph (f)(1) of this section shall be implemented no later than 2 years after the effective date of the standard.

(iii) Coke and coal chemical operations may comply with paragraph (m)(2)(ii) of this section or alternately include within the compliance program required by paragraph (f)(2) of this

section, a requirement to phase in engineering controls as equipment is repaired and replaced. For coke and coal chemical operations choosing the latter alternative, compliance with the engineering controls requirements of paragraph (f)(1) of this section shall be achieved no later than 5 years after the effective date of this standard and substantial compliance with the engineering control requirements shall be achieved within 3 years of the effective date of this standard.

(n) *Appendices.* The information contained in Appendices A, B, C, and D is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligations. The protocols on respiratory fit testing in Appendix E are mandatory.

Appendix A—Substance Safety Data Sheet, Benzene

I. Substance Identification

A. Substance: Benzene.

B. Permissible Exposure: Except as to the use of gasoline, motor fuels and other fuels subsequent to discharge from bulk terminals and other exemptions specified in § 1910.1028(a)(2):

1. Airborne: The maximum time-weighted average (TWA) exposure limit is 1 part of benzene vapor per million parts of air (1 ppm) for an 8-hour workday and the maximum short-term exposure limit (STEL) is 5 ppm for any 15-minute period.

2. Dermal: Eye contact shall be prevented and skin contact with liquid benzene shall be limited.

C. Appearance and odor: Benzene is a clear, colorless liquid with a pleasant, sweet odor. The odor of benzene does not provide adequate warning of its hazard.

II. Health Hazard Data

A. *Ways in which benzene affects your health.* Benzene can affect your health if you inhale it, or if it comes in contact with your skin or eyes. Benzene is also harmful if you happen to swallow it.

B. *Effects of overexposure.* 1. Short-term (acute) overexposure: If you are overexposed to high concentrations of benzene, well above the levels where its odor is first recognizable, you may feel breathless, irritable, euphoric, or giddy; you may experience irritation in eyes, nose, and respiratory tract. You may develop a headache, feel dizzy, nauseated, or intoxicated. Severe exposures may lead to convulsions and loss of consciousness.

2. Long-term (chronic) exposure. Repeated or prolonged exposure to benzene, even at relatively low concentrations, may result in various blood disorders, ranging from anemia to leukemia, an irreversible, fatal disease. Many blood disorders associated with benzene exposure may occur without symptoms.

III. Protective Clothing and Equipment

A. *Respirators.* Respirators are required for those operations in which engineering controls or work practice controls are not feasible to reduce exposure to the permissible level. However, where employers can document that benzene is present in the workplace less than 30 days a year, respirators may be used in lieu of engineering controls. If respirators are worn, they must have joint Mine Safety and Health Administration and the National Institute for Occupational Safety and Health (NIOSH) seal of approval, and cartridge or canisters must be replaced before the end of their service life, or the end of the shift, whichever occurs first. If you experience difficulty breathing while wearing a respirator, you may request a positive pressure respirator from your employer. You must be thoroughly trained to use the assigned respirator, and the training will be provided by your employer.

B. *Protective Clothing.* You must wear appropriate protective clothing (such as boots, gloves, sleeves, aprons, etc.) over any parts of your body that could be exposed to liquid benzene.

C. *Eye and Face Protection.* You must wear splash-proof safety goggles if it is possible that benzene may get into your eyes. In addition, you must wear a face shield if your face could be splashed with benzene liquid.

IV. Emergency and First Aid Procedures

A. *Eye and face exposure.* If benzene is splashed in your eyes, wash it out immediately with large amounts of water. If irritation persists or vision appears to be affected see a doctor as soon as possible.

B. *Skin exposure.* If benzene is spilled on your clothing or skin, remove the contaminated clothing and wash the exposed skin with large amounts of water and soap immediately. Wash contaminated clothing before you wear it again.

C. *Breathing.* If you or any other person breathes in large amounts of benzene, get the exposed person to fresh air at once. Apply artificial respiration if breathing has stopped. Call for medical assistance or a doctor as soon as possible. Never enter any vessel or confined space where the benzene concentration might be high without proper safety equipment and at least one other person present who will stay outside. A life line should be used.

D. *Swallowing.* If benzene has been swallowed and the patient is conscious, do not induce vomiting. Call for medical assistance or a doctor immediately.

V. Medical Requirements

If you are exposed to benzene at a concentration at or above 0.5 ppm as an 8-hour time-weighted average, or have been exposed at or above 10 ppm in the past while employed by your current employer, your employer is required to provide a medical examination and history and laboratory tests within 60 days of the effective date of this standard and annually thereafter. These tests shall be provided without cost to you. In addition, if you are accidentally exposed to benzene (either by ingestion, inhalation, or skin/eye contact) under emergency conditions known or suspected to constitute toxic exposure to benzene, your employer is required to make special laboratory tests available to you.

VI. Observation of Monitoring

Your employer is required to perform measurements that are representative of your exposure to benzene and you or your designated representative are entitled to observe the monitoring procedure. You are entitled to observe the steps taken in the measurement procedure, and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you or your representative must also be provided with, and must wear the protective clothing and equipment.

VII. Access to Records

You or your representative are entitled to see the records of measurements of your exposure to benzene upon written request to your employer. Your medical examination records can be furnished to yourself, your physician or designated representative upon request by you to your employer.

VIII. Precautions for Safe Use, Handling and Storage

Benzene liquid is highly flammable. It should be stored in tightly closed containers in a cool, well ventilated area. Benzene vapor may form explosive mixtures in air. All sources of ignition must be controlled. Use nonsparking tools when opening or closing benzene containers. Fire extinguishers, where provided, must be readily available.

Know where they are located and how to operate them. Smoking is prohibited in areas where benzene is used or stored. Ask your supervisor where benzene is used in your area and for additional plant safety rules.

Appendix B—Substance Technical Guidlines, Benzene

I. Physical and Chemical Data

A. Substance identification.

1. *Synonyms:* Benzol, benzole, coal naphtha, cyclohexatriene, phene, phenyl hydride, pyrobenzol. (Benzin, petroleum benzin and Benzine do not contain benzene).

2. *Formula:* C_6H_6 (CAS Registry Number: 71–43–2)

B. Physical data.

1. Boiling Point (760 mm Hg): 80.1 °C (176 °F)

2. Specific Gravity (water=1): 0.879

3. Vapor Density (air=1): 2.7

4. Melting Point: 5.5 °C (42 °F)

5. Vapor Pressure at 20 °C (68 °F): 75 mm Hg

6. Solubility in Water: .06%

7. Evaporation Rate (ether=1): 2.8

8. Appearance and Odor: Clear, colorless liquid with a distinctive sweet odor.

II. Fire, Explosion, and Reactivity Hazard Data

A. Fire.

1. Flash Point (closed cup): −11 °C (12 °F)

2. Autoignition Temperature: 580 °C (1076 °F)

3. Flammable limits in Air. % by Volume: Lower: 1.3%, Upper: 7.5%

4. Extinguishing Media: Carbon dioxide, dry chemical, or foam.

5. Special Fire-Fighting procedures: Do not use solid stream of water, since stream will scatter and spread fire. Fine water spray can be used to keep fire-exposed containers cool.

6. Unusual fire and explosion hazards: Benzene is a flammable liquid. Its vapors can form explosive mixtures. All ignition sources must be controlled when benzene is used, handled, or stored. Where liquid or vapor may be released, such areas shall be considered as hazardous locations. Benzene vapors are heavier than air; thus the vapors may travel along the ground and be ignited by open flames or sparks at locations remote from the site at which benzene is handled.

7. Benzene is classified as a 1 B flammable liquid for the purpose of conforming to the requirements of 29 CFR 1910.106. A concentration exceeding 3,250 ppm is considered a potential fire explosion hazard. Locations where benzene may be present in quantities sufficient to produce explosive or ignitable mixtures are considered Class I Group D for the purposes of conforming to the requirements of 29 CFR 1910.309.

B. Reactivity.

1. Conditions contributing to instability: Heat.

2. Incompatibility: Heat and oxidizing materials.

3. Hazardous decomposition products: Toxic gases and vapors (such as carbon monoxide).

III. Spill and Leak Procedures

A. Steps to be taken if the material is released or spilled. As much benzene as possible should be absorbed with suitable materials, such as dry sand or earth. That remaining must be flushed with large amounts of water. Do not flush benzene into a confined space, such as a sewer, because of explosion danger. Remove all ignition sources. Ventilate enclosed places.

B. Waste disposal method. Disposal methods must conform to other jurisdictional regulations. If allowed, benzene may be disposed of: (a) By absorbing it in dry sand or earth and disposing in a sanitary landfill; (b) if small quantities, by removing it to a safe location from buildings or other combustible sources, pouring it in dry sand or earth and cautiously igniting it; and (c) if large quantities, by atomizing it in a suitable combustion chamber.

IV. Miscellaneous Precautions

A. High exposure to benzene can occur when transferring the liquid from one container to another. Such operations should be well ventilated and good work practices must be established to avoid spills.

B. Use non-sparking tools to open benzene containers which are effectively grounded and bonded prior to opening and pouring.

C. Employers must advise employees of all plant areas and operations where exposure to benzene could occur. Common operations in which high exposures to benzene may be encountered are: the primary production and utilization of benzene, and transfer of benzene.

Appendix C—Medical Surveillance Guidelines for Benzene

I. Route of Entry

Inhalation; skin absorption.

II. Toxicology

Benzene is primarily an inhalation hazard. Systemic absorption may cause depression of the hematopoietic system, pancytopenia, aplastic anemia, and leukemia. Inhalation of high concentrations can affect central nervous system function. Aspiration of small amounts of liquid benzene immediately causes pulmonary edema and hemorrhage of pulmonary tissue. There is some absorption through the skin. Absorption may be more rapid in the case of abraded skin, and benzene may be more readily absorbed if it is present in a mixture or as a contaminant in solvents which are readily absorbed. The defatting action of benzene may produce primary irritation due to repeated or prolonged contact with the skin. High concentration are irritating to the eyes and the mucuous membranes of the nose, and respiratory tract.

III. Signs and Symptoms

Direct skin contact with benzene may cause erythema. Repeated or prolonged contact may result in drying, scaling dermatitis, or development of secondary skin infections. In addition, there is benzene absorption through the skin. Local effects of benzene vapor or liquid on the eye are slight. Only at very high concentrations is there any smarting sensation in the eye. Inhalation of high concentrations of benzene may have an initial stimulatory effect on the central nervous system characterized by exhilaration, nervous excitation, and/or giddiness, followed by a period of depression, drowsiness, or fatigue. A sensation of tightness in the chest accompanied by breathlessness may occur and ultimately the victim may lose consciousness. Tremors, convulsions and death may follow from respiratory paralysis or circulatory collapse in a few minutes to several hours following severe exposures.

The detrimental effect on the blood-forming system of prolonged exposure to small quantities of benzene vapor is of extreme importance. The hematopoietic system is the chief target for benzene's toxic effects which are manifested by alterations in the levels of formed elements in the peripheral blood. These effects have occurred at concentrations of benzene which may not cause irritation of mucous membranes, or any unpleasant sensory effects. Early signs and symptoms of benzene morbidity are varied, often not readily noticed and non-specific. Subjective complaints of headache, dizziness, and loss of appetite may precede or follow clinical signs. Rapid pulse and low blood pressure, in addition to a physical appearance of anemia, may accompany a subjective complaint of shortness of breath and excessive tiredness. Bleeding from the nose, gums, or mucous membranes, and the development of purpuric spots (small bruises) may occur as the condition

progresses. Clinical evidence of leukopenia, anemia, and thrombocytopenia, singly or in combination, has been frequently reported among the first signs.

Bone marrow may appear normal, aplastic, or hyperplastic, and may not, in all situations, correlate with peripheral blood forming tissues. Because of variations in the susceptibility to benzene morbidity, there is no "typical" blood picture. The onset of effects of prolonged benzene exposure may be delayed for many months or years after the actual exposure has ceased and identification or correlation with benzene exposure must be sought out in the occupational history.

IV. Treatment of Acute Toxic Effects

Remove from exposure immediately. Make sure you are adequately protected and do not risk being overcome by fumes. Give oxygen or artificial resuscitation if indicated. Flush eyes, wash skin if contaminated and remove all contaminated clothing. Symptoms of intoxication may persist following severe exposures. Recovery from mild exposures is usually rapid and complete.

V. Surveillance and Preventive Considerations

A. General

The principal effects of benzene exposure which form the basis for this regulation are pathological changes in the hematopoietic system, reflected by changes in the peripheral blood and manifesting clinically as pancytopenia, aplastic anemia, and leukemia. Consequently, the medical surveillance program is designed to observe, on a regular basis, blood indices for early signs of these effects, and although early signs of leukemia are not usually available, emerging diagnostic technology and innovative regimes make consistent surveillance for leukemia, as well as other hematopoietic effects, essential.

Initial examinations are to be provided within 60 days of the effective date of this standard, or at the time of initial assignment, and periodic examinations annually thereafter. There are special provisions for medical tests in the event of hematologic abnormalities or for emergency situations.

The blood values which require referral to a hematologist or internist are noted in the standard in paragraph (i)(5). The standard specifies that blood abnormalities that persist must be referred "unless the physician has good reason to believe such referral is unnecessary" (paragraph (i)(5)). Examples of conditions that could make a referral unnecessary despite abnormal blood limits are iron or folate deficiency, menorrhagia, or blood loss due to some unrelated medical abnormality.

Symptoms and signs of benzene toxicity can be non-specific. Only a detailed history and appropriate investigative procedures will enable a physician to rule out or confirm conditions that place the employee at increased risk. To assist the examining physician with regard to which laboratory tests are necessary and when to refer an employee to the specialist, OSHA has established the following guidelines.

B. Hematology Guidelines

A minimum battery of tests is to be performed by strictly standardized methods.

1. Red cell, white cell, platelet counts, white blood cell differential, hematacrit and red cell indices must be performed by an accredited laboratory. The normal ranges for the red cell and white cell counts are influenced by altitude, race, and sex, and therefore should be determined by the accredited laboratory in the specific area where the tests are performed.

Either a decline from an absolute normal or an individual's base line to a subnormal value or a rise to a supra-normal value, are indicative of potential toxicity, particularly if all blood parameters decline. The normal total white blood count is approximately 7,200/mm ^{3} plus or minus 3,000. For cigarette smokers the white count may be higher and the upper range may be 2,000 cells higher than normal for the laboratory. In addition, infection, allergies and some drugs may raise the white cell count. The normal platelet count is approximately 250,000 with a range of 140,000 to 400,000. Counts outside this range should be regarded as possible evidence of benzene toxicity.

Certain abnormalities found through routine screening are of greater significance in the benzene-exposed worker and require prompt consultation with a specialist, namely:

a. Thrombocytopenia.

b. A trend of decreasing white cell, red cell, or platelet indices in an individual over time is more worrisome than an isolated abnormal finding at one test time. The importance of trend highlights the need to compare an individual's test results to baseline and/or previous periodic tests.

c. A constellation or pattern of abnormalities in the different blood indices is of more significance than a single abnormality. A low white count not associated with any abnormalities in other cell indices may be a normal statistical variation, whereas if the low white count is accompanied by decreases in the platelet and/or red cell indices, such a pattern is more likely to be associated with benzene toxicity and merits thorough investigation.

Anemia, leukopenia, macrocytosis or an abnormal differential white blood cell count should alert the physician to further investigate and/or refer the patient if repeat tests confirm the abnormalities. If routine screening detects an abnormality, follow-up tests which may be helpful in establishing the etiology of the abnormality are the peripheral blood smear and the reticulocyte count.

The extreme range of normal for reticulocytes is 0.4 to 2.5 percent of the red cells, the usual range being 0.5 to 1.2 percent of the red cells, but the typical value is in the range of 0.8 to 1.0 percent. A decline in reticulocytes to levels of less than 0.4 percent is to be regarded as possible evidence (unless another specific cause is found) of benzene toxicity requiring accelerated surveillance. An increase in reticulocyte levels to about 2.5 percent may also be consistent with (but is not as characteristic of) benzene toxicity.

2. An important diagnostic test is a careful examination of the peripheral blood smear. As with reticulocyte count the smear should be with fresh uncoagulated blood obtained from a needle tip following venipuncture or from a drop of earlobe blood (capillary blood). If necessary, the smear may, under certain limited conditions, be made from a blood sample anticoagulated with EDTA (but never with oxalate or heparin). When the smear is to be prepared from a specimen of venous blood which has been collected by a commercial Vacutainer ® type tube containing neutral EDTA, the smear should be made as soon as possible after the venesection. A delay of up to 12 hours is permissible between the drawing of the blood specimen into EDTA and the preparation of the smear if the blood is stored at refrigerator (not freezing) temperature.

3. The minimum mandatory observations to be made from the smear are:

a. The differential white blood cell count.

b. Description of abnormalities in the appearance of red cells.

c. Description of any abnormalities in the platelets.

d. A careful search must be made throughout of every blood smear for immature white cells such as band forms (in more than normal proportion,

i.e., over 10 percent of the total differential count), any number of metamyelocytes, myelocytes or myeloblasts. Any nucleate or multinucleated red blood cells should be reported. Large "giant" platelets or fragments of megakaryocytes must be recognized.

An increase in the proportion of band forms among the neutrophilic granulocytes is an abnormality deserving special mention, for it may represent a change which should be considered as an early warning of benzene toxicity in the absence of other causative factors (most commonly infection). Likewise, the appearance of metamyelocytes, in the absence of another probable cause, is to be considered a possible indication of benzene-induced toxicity.

An upward trend in the number of basophils, which normally do not exceed about 2.0 percent of the total white cells, is to be regarded as possible evidence of benzene toxicity. A rise in the eosinophil count is less specific but also may be suspicious of toxicity if the rises above 6.0 percent of the total white count.

The normal range of monocytes is from 2.0 to 8.0 percent of the total white count with an average of about 5.0 percent. About 20 percent of individuals reported to have mild but persisting abnormalities caused by exposure to benzene show a persistent monocytosis. The findings of a monocyte count which persists at more than 10 to 12 percent of the normal white cell count (when the total count is normal) or persistence of an absolute monocyte count in excess of 800/mm ^{3} should be regarded as a possible sign of benzene-induced toxicity.

A less frequent but more serious indication of benzene toxicity is the finding in the peripheral blood of the so-called "pseudo" (or acquired) Pelger-Huet anomaly. In this anomaly many, or sometimes the majority, of the neutrophilic granulocytes possess two round nuclear segements—less often one or three round segments—rather than three normally elongated segments. When this anomaly is not hereditary, it is often but not invariably predictive of subsequent leukemia. However, only about two percent of patients who ultimately develop acute myelogenous leukemia show the acquired Pelger-Huet anomaly. Other tests that can be administered to investigate blood abnormalities are discussed below; however, such procedures should be undertaken by the hematologist.

An uncommon sign, which cannot be detected from the smear, but can be elicited by a "sucrose water test" of peripheral blood, is transient paroxysmal nocturnal hemoglobinuria (PNH), which may first occur insidiously during a period of established aplastic anemia, and may be followed within one to a few years by the appearance of rapidly fatal acute myelogenous leukemia. Clinical detection of PNH, which occurs in only one or two percent of those destined to have acute myelogenous leukemia, may be difficult; if the "sucrose water test" is positive, the somewhat more definitive Ham test, also known as the acid-serum hemolysis test, may provide confirmation.

e. Individuals documented to have developed acute myelogenous leukemia years after initial exposure to benzene may have progressed through a preliminary phase of hematologic abnormality. In some instances pancytopenia (i.e., a lowering in the counts of all circulating blood cells of bone marrow origin, but not to the extent implied by the term "aplastic anemia") preceded leukemia for many years. Depression of a single blood cell type or platelets may represent a harbinger of aplasia or leukemia. The finding of two or more cytopenias, or pancytopenia in a benzene-exposed individual, must be regarded as highly suspicious of more advanced although still reversible, toxicity. "Pancytopenia" coupled with the appearance of immature cells (myelocytes, myeloblasts, erythroblasts, etc.), with abnormal cells (pseudo Pelger-Huet anomaly, atypical nuclear heterochromatin, etc.), or unexplained elevations of white blood cells must be regarded as evidence of benzene overexposure unless proved otherwise. Many severely aplastic patients manifested the ominous finding of 5–10 percent myeloblasts in the marrow, occasional myeloblasts and myelocytes in the blood and 20–30% monocytes. It is evident that isolated cytopenias, pancytopenias, and even aplastic anemias induced by benzene may be reversible and complete recovery has been reported on cessation of exposure. However, since any of these abnormalities is serious, the employee must immediately be removed from any possible exposure to benzene vapor. Certain tests may substantiate the employee's prospects for progression or regression. One such test would be an examination of the bone marrow, but the decision to perform a bone marrow aspiration or needle biopsy is made by the hematologist.

The findings of basophilic stippling in circulating red blood cells (usually found in 1 to 5% of red cells following marrow injury), and detection in the bone marrow of what are termed "ringed sideroblasts" must be taken seriously, as they have been noted in recent years to be premonitory signs of subsequent leukemia.

Recently peroxidase-staining of circulating or marrow neutrophil granulocytes, employing benzidine dihydrochloride, have revealed the disappearance of, or diminution in, peroxidase in a sizable proportion of the granulocytes, and this has been reported as an early sign of leukemia. However, relatively few patients have been studied to date. Granulocyte granules are normally strongly peroxidase positive. A steady decline in leukocyte alkaline phosphatase has also been reported as suggestive of early acute leukemia. Exposure to benzene may cause an early rise in serum iron, often but not always associated with a fall in the reticulocyte count. Thus, serial measurements of serum iron levels may provide a means of determining whether or not there is a trend representing sustained suppression of erythropoiesis.

Measurement of serum iron, determination of peroxidase and of alkaline phosphatase activity in peripheral granulocytes can be performed in most pathology laboratories. Peroxidase and alkaline phosphatase staining are usually undertaken when the index of suspecion for leukemia is high.

Appendix D—Sampling and Analytical Methods for Benzene Monitoring and Measurement Procedures

Measurements taken for the purpose of determining employee exposure to benzene are best taken so that the representative average 8-hour exposure may be determined from a single 8-hour sample or two (2) 4-hour samples. Short-time interval samples (or grab samples) may also be used to determine average exposure level if a minimum of five measurements are taken in a random manner over the 8-hour work shift. Random sampling means that any portion of the work shift has the same change of being sampled as any other. The arithmetic average of all such random samples taken on one work shift is an estimate of an employee's average level of exposure for that work shift. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee). Sampling and analysis must be performed with procedures meeting the requirements of the standard.

There are a number of methods available for monitoring employee exposures to benzene. The sampling and analysis may be performed by collection

of the benzene vaptor or charcoal absorption tubes, with subsequent chemical analysis by gas chromatography. Sampling and analysis may also be performed by portable direct reading instruments, real-time continuous monitoring systems, passive dosimeters or other suitable methods. The employer has the obligation of selecting a monitoring method which meets the accuracy and precision requirements of the standard under his unique field conditions. The standard requires that the method of monitoring must have an accuracy, to a 95 percent confidence level, of not less than plus or minus 25 percent for concentrations of benzene greater than or equal to 0.5 ppm.

The OSHA Laboratory modified NIOSH Method S311 and evaluated it at a benzene air concentration of 1 ppm. A procedure for determining the benzene concentration in bulk material samples was also evalauted. This work, reported in OSHA Laboratory Method No. 12, includes the following two analytical procedures:

I. OSHA Method 12 for Air Samples

Analyte: Benzene
Matrix: Air
Procedure: Adsorption on charcoal, desorption with carbon disulfide, analysis by GC.
Detection limit: 0.04 ppm
Recommended air volume and sampling rate: 10L to 0.2 L/min.

1. Principle of the Method.

1.1 A known volume of air is drawn through a charcoal tube to trap the organic vapors present.

1.2. The charcoal in the tube is transferred to a small, stoppered vial, and the anlyte is desorbed with carbon disulfide.

1.3. An aliquot of the desorbed sample is injected into a gas chromatograph.

1.4 The area of the resulting peak is determined and compared with areas obtained from standards.

2. Advantages and disadvantages of the method.

2.1 The sampling device is small, portable, and involved no liquids. Interferences are minimal, and most of those which do occur can be eliminated by altering chromatographic conditions. The samples are analyzed by means of a quick, instrumental method.

2.2 The amount of sample which can be taken is limited by the number of milligrams that the tube will hold before overloading. When the sample value obtained for the backup section of the charcoal tube exceeds 25 percent of that found on the front section, the possibility of sample loss exists.

3. Apparatus.

3.1 A calibrated personal sampling pump whose flow can be determined within ±5 percent at the recommended flow rate.

3.2. Charcoal tubes: Glass with both ends flame sealed, 7 cm long with a 6-mm O.D. and a 4-mm I.D., containing 2 sections of 20/40 mesh activated charcoal separated by a 2-mm portion of urethane foam. The activated charcoal is prepared from coconut shells and is fired at 600 °C prior to packing. The adsorbing section contains 100 mg of charcoal, the back-up section 50 mg. A 3-mm portion of urethane foam is placed between the outlet end of the tube and the back-up section. A plug of silanized glass wool is placed in front of the adsorbing section. The pressure drop across the tube must be less than one inch of mercury at a flow rate of 1 liter per minute.

3.3. Gas chromatograph equipped with a flame ionization detector.

3.4. Column (10-ft × ⅛-in stainless steel) packed with 80/100 Supelcoport coated with 20 percent SP 2100, 0.1 percent CW 1500.

3.5. An electronic integrator or some other suitable method for measuring peak area.

3.6. Two-milliliter sample vials with Teflon-lined caps.

3.7. Microliter syringes: 10-microliter (10-μL syringe, and other convenient sizes for making standards, 1-μL syringe for sample injections.

3.8. Pipets: 1.0 mL delivery pipets

3.9. Volumetric flasks: convenient sizes for making standard solutions.

4. Reagents.

4.1. Chromatographic quality carbon disulfide (CS_2). Most commercially available carbon disulfide contains a trace of benzene which must be removed. It can be removed with the following procedure:

Heat under reflux for 2 to 3 hours, 500 mL of carbon disulfide, 10 mL concentrated sulfuric acid, and 5 drops of concentrated nitric acid. The benzene is converted to nitrobenzene. The carbon disulfide layer is removed, dried with anhydrous sodium sulfate, and distilled. The recovered carbon disulfide should be benzene free. (It has recently been determined that benzene can also be removed by passing the carbon disulfide through 13x molecular sieve).

4.2. Benzene, reagent grade.

4.3. p-Cymene, reagent grade, (internal standard).

4.4. Desorbing reagent. The desorbing reagent is prepared by adding 0.05 mL of p-cymene per milliliter of carbon disulfide. (The internal standard offers a convenient means correcting analytical response for slight inconsistencies in the size of sample injections. If the external standard technique is preferred, the internal standard can be eliminated).

4.5. Purified GC grade helium, hydrogen and air.

5. Procedure.

5.1. Cleaning of equipment. All glassware used for the laboratory analysis should be properly cleaned and free of organics which could interfere in the analysis.

5.2. Calibration of personal pumps. Each pump must be calibrated with a representative charcoal tube in the line.

5.3. Collection and shipping of samples.

5.3.1. Immediately before sampling, break the ends of the tube to provide an opening at least one-half the internal diameter of the tube (2 mm).

5.3.2. The smaller section of the charcoal is used as the backup and should be placed nearest the sampling pump.

5.3.3. The charcoal tube should be placed in a vertical position during sampling to minimize channeling through the charcoal.

5.3.4 Air being sampled should not be passed through any hose or tubing before entering the charcoal tube.

5.3.5. A sample size of 10 liters is recommended. Sample at a flow rate of approximately 0.2 liters per minute. The flow rate should be known with an accuracy of at least ±5 percent.

5.3.6. The charcoal tubes should be capped with the supplied plastic caps immediately after sampling.

5.3.7. Submit at least one blank tube (a charcoal tube subjected to the same handling procedures, without having any air drawn through it) with each set of samples.

5.3.8. Take necessary shipping and packing precautions to minimize breakage of samples.

5.4. Analysis of samples.

5.4.1. Preparation of samples. In preparation for analysis, each charcoal tube is scored with a file in front of the first section of charcoal and broken open. The glass wool is removed and discarded. The charcoal in the first (larger) section is transferred to a 2-ml vial. The separating section of foam is removed and discarded; the second section is transferred to another capped vial. These two sections are analyzed separately.

5.4.2. Desorption of samples. Prior to analysis, 1.0 mL of desorbing solution is pipetted into each sample container. The desorbing solution consists of 0.05 μL internal standard per mL of carbon disulfide. The sample vials are capped as soon as the solvent is added. Desorption should be done for 30 minutes with occasional shaking.

5.4.3. GC conditions. Typical operating conditions for the gas chromatograph are:

1.30 mL/min (60 psig) helium carrier gas flow.

2.30 mL/min (40 psig) hydrogen gas flow to detector.

3.240 mL/min (40 psig) air flow to detector.

4.150 °C injector temperature.

5.250 °C detector temperature.

6.100 °C column temperature.

5.4.4. Injection size. 1 μL.

5.4.5. Measurement of area. The peak areas are measured by an electronic integrator or some other suitable form of area measurement.

5.4.6. An internal standard procedure is used. The integrator is calibrated to report results in ppm for a 10 liter air sample after correction for desorption efficiency.

5.5. Determination of desorption efficiency.

5.5.1. Importance of determination. The desorption efficiency of a particular compound can vary from one laboratory to another and from one lot of chemical to another. Thus, it is necessary to determine, at least once, the percentage of the specific compound that is removed in the desorption process, provided the same batch of charcoal is used.

5.5.2. Procedure for determining desorption efficiency. The reference portion of the charcoal tube is removed. To the remaining portion, amounts representing 0.5X, 1X, and 2X and (X represents target concentration) based on a 10 L air sample are injected into several tubes at each level. Dilutions of benzene with carbon disulfide are made to allow injection of measurable quantities. These tubes are then allowed to equilibrate at least overnight. Following equilibration they are analyzed following the same procedure as the samples. Desorption efficiency is determined by dividing the amount of benzene found by amount spiked on the tube.

6. Calibration and standards. A series of standards varying in concentration over the range of interest is prepared and analyzed under the same GC conditions that will be used on the samples. A calibration curve is prepared by plotting concentration (μg/mL) versus peak area.

7. Calculations. Benzene air concentration can be calculated from the following equation:

$mg/m^3 = (A)(B)/(C)(D)$

Where: A = μg/mL benzene, obtained from the calibration curve

B = desorption volume (1 mL)

C = Liters of air sampled

D = desorption efficiency

The concentration in mg/m^3 can be converted to ppm (at 25° and 760 mm) with following equation:

$ppm = (mg/m^3)(24.46)/(78.11)$

Where: 24.46 = molar volume of an ideal gas
25 °C and 760 mm
78.11 = molecular weight of benzene

8. Backup Data.

8.1 Detection limit—Air Samples.

The detection limit for the analytical procedure is 1.28 ng with a coefficient of variation of 0.023 at this level. This would be equivalent to an air concentration of 0.04 ppm for a 10 L air sample. This amount provided a chromatographic peak that could be identifiable in the presence of possible interferences. The detection limit data were obtained by making 1 μL injections of a 1.283 μg/mL standard.

Injection	Area Count	
1	655.4	
2	617.5	
3	662.0	$\bar{X}$ = 640.2
4	641.1	SD = 14.9
5	636.4	CV = 0.023
6	629.2	

8.2. Pooled coefficient of variation—Air Samples. The pooled coefficient of variation for the analytical procedure was determined by 1 μL replicate injections of analytical standards. The standards were 16.04, 32.08, and 64.16 μg/mL, which are equivalent to 0.5, 1.0, and 2.0 ppm for a 10 L air sample respectively.

Injection	Area Counts		
	0.5 ppm	1.0 ppm	2.0 ppm
1	3996.5	8130.2	16481
2	4059.4	8235.6	16493
3	4052.0	8307.9	16535
4	4027.2	8263.2	16609
5	4046.8	8291.1	16552
6	4137.9	8288.8	16618
$\bar{X}$ =	4053.3	8254.0	16548.3
SD =	47.2	62.5	57.1
CV =	0.0116	0.0076	0.0034
$\bar{CV}$ = 0.008			

8.3. Storage data—Air Samples

Samples were generated at 1.03 ppm benzene at 80% relative humidity, 22 °C, and 643 mm. All samples were taken for 50 minutes at 0.2 L/min. Six samples were analyzed immediately and the rest of the samples were divided into two groups by fifteen samples each. One group was stored at refrigerated temperature of −25 °C, and the other group was stored at ambient temperature (approximately 23 °C). These samples were analyzed over a period of fifteen days. The results are tabulated below.

PERCENT RECOVERY

Day analyzed	Refrigerated			Ambient		
0	97.4	98.7	98.9	97.4	98.7	98.9
0	97.1	100.6	100.9	97.1	100.6	100.9
2	95.8	96.4	95.4	95.4	96.6	96.9
5	93.9	93.7	92.4	92.4	94.3	94.1
9	93.6	95.5	94.6	95.2	95.6	96.6
13	94.3	95.3	93.7	91.0	95.0	94.6

PERCENT RECOVERY—Continued

Day analyzed	Refrigerated			Ambient		
15	96.8	95.8	94.2	92.9	96.3	95.9

8.4. Desorption data.

Samples were prepared by injecting liquid benzene onto the A section of charcoal tubes. Samples were prepared that would be equivalent to 0.5, 1.0, and

2.0 ppm for a 10 L air sample

PERCENT RECOVERY

Sample	0.5 ppm	1.0 ppm	2.0 ppm
1	99.4	98.8	99.5
2	99.5	98.7	99.7
3	99.2	98.6	99.8
4	99.4	99.1	100.0
5	99.2	99.0	99.7
6	99.8	99.1	99.9
$\bar{X}$ =	99.4	98.9	99.8
SD =	0.22	0.21	0.18
CV =	0.0022	0.0021	0.0018
$\bar{X}$ = 99.4			

8.5. Carbon disulfide

Carbon disulfide from a number of sources was analyzed for benzene contamination. The results are given in the following table. The benzene contamiant can be removed with the procedures given in section 4.1.

Sample	µg Benzene/mL	ppm equivalent (for 10 L air sample)
Aldrich Lot 83017	4.20	0.13
Baker Lot 720364	1.01	0.03
Baker Lot 822351	1.01	0.03
Mallinkrodt Lot WEMP	1.74	0.05
Mallinkrodt Lot WDSJ	5.65	0.18
Mallinkrodt Lot WHGA	2.90	0.09
Treated CS_2		

II. OSHA Laboratory Method No. 12 for Bulk Samples

Analyte: Benzene.

Matrix: Bulk Samples.

Procedure: Bulk Samples are analyzed directly by high performance liquid chromatography (HPLC).

Detection limits: 0.01% by volume

1. Principle of the method.

1.1. An aliquot of the bulk sample to be analyzed is injected into a liquid chromatograph.

1.2. The peak area for benzene is determined and compared to areas obtained from standards.

2. Advantages and disadvantages of the method.

2.1. The analytical procedure is quick, sensitive, and reproducible.

2.2. Reanalysis of samples is possible.

2.3. Interferences can be circumvented by proper selection of HPLC parameters.

2.4. Samples must be free of any particulates that may clog the capillary tubing in the liquid chromatograph. This may require distilling the sample or clarifying with a clarification kit

3. Apparatus.

3.1. Liquid chromatograph equipped with a UV detector.

3.2. HPLC Column that will separate benzene from other components in the bulk sample being analyzed. The column used for validation studies was a Waters uBondapack C18, 30 cm x 3.9 mm.

3.3. A clarification kit to remove any particulates in the bulk if necessary.

3.4. A micro-distillation apparatus to distill any samples if necessary.

3.5. An electronic integrator or some other suitable method of measuring peak areas.

3.6. Microliter syringes—10 µL syringe and other convenient sizes for making standards. 10 µL syringe for sample injections.

3.7 Volumetric flasks, 5 mL and other convenient sizes for preparing standards and making dilutions.

4. Reagents.

4.1. Benzene, reagent grade.

4.2. HPLC grade water, methyl alcohol, and isopropyl alcohol.

5. Collection and shipment of samples.

5.1. Samples should be transported in glass containers with Teflon-lined caps.

5.2. Samples should not be put in the same container used for air samples.

6. Analysis of samples.

6.1. Sample preparation.

If necessary, the samples are distilled or clarified. Samples are analyzed undiluted. If the benzene concentration is out of the working range, suitable dilutions are made with isopropyl alcohol.

6.2. HPLC conditions.

The typical operating conditions for the high performance liquid chromatograph are:

1. Mobile phase—Methyl alcohol/water, 50/50

1. Analytical wavelength—254 nm

3 Injection size—10 µL

6.3. Measurement of peak area and calibration.

Peak areas are measured by an integrator or other suitable means. The integrator is calibrated to report results % in benzene by volume.

7. Calculations.

Since the integrator is programmed to report results in % benzene by volume in an undiluted sample, the following equation is used:

% Benzene by Volume = A x B

Where: A = % by volume on report
B = Dilution Factor
(B = 1 for undiluted sample)

8. Backup Data.

8.1. Detection limit—Bulk Samples.

The detection limit for the analytical procedure for bulk samples is 0.88 µg, with a coefficient of variation of 0.019 at this level. This amount provided a chromatographic peak that could be identifiable in the presence of possible interferences. The detection limit date were obtained by making 10 µL injections of a 0.10% by volume standard.

1	45386	
2	44214	
3	43822	$\bar{X}$ = 44040.1
4	44062	SD = 852.5
6	42724	CV = 0.019

8.2. Pooled coefficient of variation—Bulk Samples.

The pooled coefficient of variation for analytical procedure was determined by 50 µL replicate injections of analytical standards. The standards were 0.01, 0.02, 0.04, 0.10, 1.0, and 2.0% benzene by volume.

AREA COUNT (PERCENT)

Injection No.	0.01	0.02	0.04	0.10	1.0	2.0
1	45386	84737	166097	448497	4395380	9339150
2	44241	84300	170832	441299	4590800	9484900
3	43822	83835	164160	443719	4593200	9557580
4	44062	84381	164445	444842	4642350	9677060
5	44006	83012	168398	442564	4646430	9766240
6	42724	81957	173002	443975	4646260	.....
$\bar{X}$ =	44040.1	83703.6	167872	444149	4585767	9564986
SD =	852.5	1042.2	3589.8	2459.1	96839.3	166233
CV =	0.0194	0.0125	0.0213	0.0055	0.0211	0.0174
$\bar{CV}$ =	0.017					

Appendix E: Qualitative and Quantitative Fit Testing Procedures

I. Fit Test Protocols

A. The employer shall include the following provisions in the fit test procedures. These provisions apply to both qualitative fit testing (QLFT) and quantitative fit testing (QNFT).

1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least three sizes of elastomeric facepieces of the type of respirator that is to be tested, i.e., three sizes of half mask; or three sizes of full facepiece; and units from at least two manufacturers.

2. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a comfortable fit. A mirror shall be available to assist the subject in evaluating the fit and positioning the respirator. This instruction may not constitute the subject's formal training on respirator use, at it is only a review.

3. The test subject shall be informed that he/she is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape, and if fitted and used properly, will provide adequate protection.

4. The test subject shall be instructed to hold each facepiece up to the face and eliminate those which obviously do not give a comfortable fit.

5. The more comfortable facepieces are noted; the most comfortable mask is donned and worn at least five minutes to assess comfort. Assistance in assessing comfort can be given by discussing the points in item 6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to ajust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:

(a) Position of the mask on the nose.

(b) Room for eye protection.

(c) Room to talk.

(d) Position of mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

(a) Chin properly placed:

(b) Adequate strap tension, not overly tightened;

(c) Fit across nose bridge;

(d) Respirator of proper size to span distance from nose to chin;

(e) Tendency of respirator to slip;

(f) Self-observation in mirror to evaluate fit and respirator position.

8. The test subject shall conduct the negative and positive pressure fit checks as described below or ANSI Z88.2–1980. Before conducting the negative or positive pressure test, the subject shall be told to seat the mask on the face by moving the head from side-to-side and up and down slowly while taking in a few slow deep breaths. Another facepiece shall be selected and retested if the test subject fails the fit check tests.

(a) *Positive pressure test.* Close off the exhalation value and exhale gently onto the facepiece. The face fit is considered satisfactory if a slight positive pressure can be built up inside the facepiece without any evidence of outward leakage of air at the seal. For most respirators this method of leak testing requires the wearer to first remove the exhalation value cover before closing off the exhalation value and then carefully replacing it after the test.

(b) *Negative pressure test.* Close off the inlet opening of the canister or cartridge(s) by covering with the palm of the hand(s) or by replacing the filter seal(s), inhale gently so that the facepiece collapses slightly, and hold the breath for ten seconds. If the facepiece remains in its slightly collapsed condition and no inward leakage of air is detected, the tightness of the respirator is considered satisfactory.

9. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface, such as stubble beard growth, beard, or long sideburns which cross the respirator sealing surface. Any type of apparel which interferes with a satisfactory fit shall be altered or removed.

10. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory disease or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

11. The test subject shall be given the opportunity to wear the successfully fitted respirator for a period of two weeks. If at any time during this period the respirator becomes uncomfortable, the test subject shall be given the opportunity to select a different facepiece and to be retested.

12. The employer shall certify that a successful fit test has been administered to the employee. The certification shall include the following information:

(a) Name of employee;

(b) Type, brand and size of respirator; and

(c) Date of test.

Where QNFT is used, the fit factor, strip chart, or other recording of the results of the test, shall be retained with the certification. The certification shall be maintained until the next fit test is administered.

13. Exercise regimen. Prior to the commencement of the fit test, the test subject shall be given a description of the fit test and the test subject's responsibilities during the test procedure. The description of the process shall include a description of the test exercises that the subject will be performing. The respirator to be tested shall be worn for at least 5 minutes before the start of the fit test.

14. Test Exercises. The test subject shall perform exercises, in the test environment, in the manner described below:

(a) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(b) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution so as to not hyperventilate.

(c) Turning head side to side. Standing in place, the subject shall slowly turn his/her head from side to side between the extreme positions on each side. The head shall be held at each extreme momentarily so the subject can inhale at each side.

(d) Moving head up and down. Standing in place, the subject shall slowly move his/her head up and down. The subject shall be instructed to inhale in the up position (i.e., when looking toward the ceiling).

(e) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(f) Grimace. The test subject shall grimace by smiling or frowning.

(g) Bending over. The test subject shall bend at the waist as if he/she were to touch his/her toes. Jogging in place shall be substituted for this exercise in those test environments such as shroud type QNFT units which prohibit bending at the waist.

(h) Normal breathing. Same as exercise 1.

Each test exercise shall be performed for one minute except for the grimace

exercise which shall be performed for 15 seconds.

The test subject shall be questioned by the test conductor regarding the comfort of the respirator upon completion of the protocol. If it has become uncomfortable, another model of respirator shall be tried.

B. Qualitative Fit Test (QLFT) Protocols.

1. General.

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator qualitative fit test program.

(b) The employer shall ensure that persons administering QLFT are able to prepare test solutions, calibrate equipment and perform tests properly, recognize invalid tests, and assure that test equipment is in proper working order.

(c) The employer shall assure that QLFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. *Isoamyl Acetate Protocol.*

(a) Odor threshold screening.

The odor threshold screening test, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate.

(1) Three 1-liter glass jars with metal lids are required.

(2) Odor free water (e.g. distilled or spring water) at approximately 25 degrees C shall be used for the solutions.

(3) The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1 liter jar and shaking for 30 seconds. A new solution shall be prepared at least weekly.

(4) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

(5) The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. The solution shall be shaken for 30 seconds and allowed to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution shall be used for only one day.

(6) A test blank shall be prepared in a third jar by adding 500 cc of odor free water.

(7) The odor test and test blank jars shall be labeled 1 and 2 for jar identification. Labels shall be placed on the lids so they can be periodically peeled, dried off and switched to maintain the integrity of the test.

(8) The following instruction shall be typed on a card and placed on the table in front of the two test jars (i.e., 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

(9) The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

(10) If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test shall not be performed.

(11) If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

(b) Isoamyl acetate fit test.

(1) The fit test chamber shall be similar to a clear 55-gallon drum liner suspended inverted over a 2-foot diameter frame so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

(2) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

(3) After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

(4) A copy of the test exercises and any prepared text from which the subject is to read shall be taped to the inside of the test chamber.

(5) Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch piece of paper towel, or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 cc of pure IAA. The test subject shall hand the wet towel on the hook at the top of the chamber.

(6) Allow two minutes for the IAA test concentration to stabilize before starting the fit test exercises. This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of his/her cooperation, and the purpose for the head exercises; or to demonstrate some of the exercises.

(7) If at any time during the test, the subject detects the banana like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

(8) If the test has failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber and again begin the procedure described in (1) through (7) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

(9) When a respirator is found that passes the test, its efficiency shall be demonstrated for the subject by having the subject break the face seal and take a breath before existing the chamber.

(10) When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the test area from becoming contaminated, the used towels shall be kept in a self sealing bag so there is no significant IAA concentration build-up in the test chamber during subsequent tests.

3. *Saccharin Solution Aerosol Protocol.*

The saccharin solution aerosol QLFT protocol is the only currently available, validated test protocol for use with particulate disposable dust respirators not equipped with high-efficiency filters. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) Taste threshold screening.

The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin.

(1) Threshold screening as well as fit testing subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches in diameter by 14 inches tall with at least the front portion clear and that allows free movements of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts # FT 14 and # FT 15 combined, is adequate.

(2) The test enclosure shall have a ¾-inch hole in front of the test subject's

nose and mouth area to accommodate the nebulizer nozzle.

(3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe through his/her wide open mouth with tongue extended.

(4) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer the test conductor shall spray the *threshold check solution* into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

(5) The *threshold check solution* consists of 0.83 grams of sodium saccharin USP in 1 cc of warm water. It can be prepared by putting 1 cc of the fit test solution (see (b)(5) below) in 100 cc of distilled water.

(6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then released and allowed to fully expand.

(7) Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

(8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(10) The test conductor will take note of the number of squeezes required to solicit a taste response.

(11) If the saccharin is not tasted after 30 squeezes (step 10), the test subject may not perform the saccharin fit test.

(12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

(13) Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

(14) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours.

(b) Saccharin solution aerosol fit test procedure.

(1) The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

(2) The fit test uses the same enclosure described in (a) above.

(3) The test subject shall don the enclosure while wearing the respirator selected in section (a) above. The respirator shall be properly adjusted and equipped with a particulate filter(s).

(4) A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

(5) The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

(6) As before, the test subject shall breathe through the open mouth with tongue extended.

(7) The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same number of squeezes required to elicit a taste response in the screening test.

(8) After generating the aerosol the test subject shall be instructed to perform the exercises in section I. A. 14 above.

(9) Every 30 seconds the aerosol concentration shall be replenished using one half the number of squeezes as initially.

(10) The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

(11) If the taste of saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

4. *Irritant Fume Protocol.*

(a) The respirator to be tested shall be equipped with high-efficiency particulate air (HEPA) filters.

(b) The test subject shall be allowed to smell a weak concentration of the irritant smoke before the respirator is donned to become familiar with its characteristic odor.

(c) Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part No. 5645, or equivalent. Attach one end of the smoke tube to a low flow air pump set to deliver 200 milliliters per minute.

(d) Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep his/her eyes closed while the test is performed.

(e) The test conductor shall direct the stream of irritant smoke from the smoke tube towards the face seal area of the test subject. He/She shall begin at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

(f) The exercises identified in section I. A. 14 above shall be performed by the test subject while the respirator seal is being challenged by the smoke.

(g) Each test subject passing the smoke test without evidence of a response shall be given a sensitivity check of the smoke from the same tube once the respirator has been removed to determine whether he/she reacts to the smoke. Failure to evoke a response shall void the fit test.

(h) The fit test shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agent.

C. Quantiative Fit Test (QNFT) Protocol.

1. General.

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator quantitative fit test program.

(b) The employer shall ensure that persons administering QNFT are able to calibrate equipment and perform tests properly, recognize invalid tests, calculate fit factors properly and assure that test equipment is in proper working order.

(c) The employer shall assure that QNFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. Definitions.

(a) Quantitative fit test. The test is performed in a test chamber. The normal air-purifying element of the respirator is replaced by a high-efficiency particulate air (HEPA) filter in the case of particulate QNFT aerosols or a sorbent offering contaminant penetration protection equivalent to high-efficiency filters where the QNFT test agent is a gas or vapor.

(b) Challenge agent means the aerosol, gas or vapor introduced into a test chamber so that its concentration inside and outside the respirator may be measured.

(c) Test subject means the person wearing the respirator for quantitative fit testing.

(d) Normal standing position means standing erect and straight with arms down along the sides and looking straight ahead.

(e) Maximum peak penetration method means the method of determining test agent penetration in the respirator as determined by strip chart recordings of the test. The highest peak penetration for a given exercise is taken to be representative of average penetration into the respirator for that exercise.

(f) Average peak penetration method means the method of determining test agent penetration into the respirator utilizing a strip chart recorder, integrator, or computer. The agent penetration is determined by an average of the peak heights on the graph or by computer integration, for each exercise except the grimace exercise. Integrators or computers which calculate the actual test agent penetration into the respirator for each exercise will also be considered to meet the requirements of the average peak penetration method.

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(g) "Fit Factor" means the ration of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. Apparatus.

(a) Instrumentation. Aerosol generation, dilution, and measurement systems using corn oil or sodium chloride as test aerosols shall be used for quantitatives fit testing.

(b) Test chamber. The test chamber shall be large enough to permit all test subjects to perform freely all required exercises without distrubing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air, yet uniform in concentration throughout the chamber.

(c) When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

(d) The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of the challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000. Integrators or computers which integrate the amount of test agent penetration leakage into the respirator for each exercise may be used provided a record of the readings is made.

(e) The combination of substitute air-purifying elements, challenge agent and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of an established exposure limit for the challenge agent at any time during the testing process.

(f) The sampling port on the test specimen respirator shall be placed and constructed so that no leakage occurs around the port (e.g. where the respirator is probed), a free air flow is allowed into the sampling line at all times and so that there is no interference with the fit or performance of the respirator.

(g) The test chamber and test set up shall permit the person administering the test to observe the test subject inside the chamber during the test.

(h) The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent inside the test chamber constant to within a 10 percent variation for the duration of the test.

(i) The time lag (interval between an event and the recording of the event on the strip chart or computer or integrator) shall be kept to a minimum. There shall be a clear association between the occurrence of an event inside the test chamber and its being recorded.

(j) The sampling line tubing for the test chamber atmosphere and for the respirator sampling port shall be of equal diameter and of the same material. The length of the two lines shall be equal.

(k) The exhaust flow from the test chamber shall pass through a high-efficiency filter before release.

(l) When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

(m) The limitations of instrument detection shall be taken into account when determining the fit factor.

(n) Test respirators shall be maintained in proper working order and inspected for deficiencies such as cracks, missing valves and gaskets, etc.

4. Procedural Requirements.

(a) When performing the initial positive or negative pressure test the sampling line shall be crimped closed in order to avoid air pressure leakage during either of these tests.

(b) An abbreviated screening isoamyl acetate test or irritant fume test may be utilized in order to quickly identify poor fitting respirators which passed the positive and/or negative pressure test and thus reduce the amount of QNFT time. When performing a screening isoamyl acetate test, combination high-efficiency organic vapor cartridges/canisters shall be used.

(c) A reasonably stable challenge agent concentration shall be measured in the test chamber prior to testing. For canopy or shower curtain type of test units the determination of the challenge agent stability may be established after the test subject has entered the test environment.

(d) Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half mask or 1 percent for a full facepiece respirator.

(e) A stable challenge concentration shall be obtained prior to the actual start of testing.

(f) Respirator restraining straps shall not be overtightened for testing. The straps shall be adjusted by the wearer without assistance from other persons to give a reasonable comfortable fit typical of normal use.

(g) The test shall be terminated whenever any single peak penetration exceeds 5 percent for half masks and 1 percent for full facepiece respirators. The test subject shall be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate.

(h) In order to successfully complete a QNFT, three successful fit tests are required. The results of each of the three independent fit tests must exceed the minimum fit factor needed for the class of respirator (e.g. half mask respirator, full facepiece respirator).

(i) Calculation of fit factors.

(1) The fit factor shall be determined for the quantitative fit test by taking the ratio of the average chamber concentration to the concentration inside the respirator.

(2) The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and of the end of the test.

(3) The concentration of the challenge agent inside the respirator shall be determined by one of the following methods:

(i) Average peak concentration.

(ii) Maximum peak concentration.

(iii) Integration by calculation of the area under the individual peak for each exercise. This includes computerized integration.

(j) Interpretation of test results. The fit factor established by the quantitative fit testing shall be the lowest of the three fit factor values calculated from the three required fit tests.

(k) The test subject shall not be permitted to wear a half mask, or full facepiece respirator unless a minimum fit factor equivalent to at least 10 times the hazardous exposure level is obtained.

(l) Filters used for quantitative fit testing shall be replaced at least weekly, or whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily (when used) or sooner if there is any indication of breakthrough by a test agent.

[FR Doc. 87-20480 Filed 9-3-87; 12:00 pm]
BILLING CODE 4510-26-M

Friday
September 11, 1987

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Allocation and Apportionment of Expenses; Notice of Proposed Rulemaking and Notice of Public Hearing

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-935-86]

Allocation and Apportionment of Expenses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations and a notice of a public hearing relating to the allocation and apportionment of expenses, including interest expense, for purposes of the foreign tax credit rules and certain other international tax provisions. These regulations would provide the public with guidance necessary to comply with the Tax Reform Act of 1986 [Pub. L. 99-514]. Although certain of these rules require the allocation and apportionment of interest expense on a consolidated basis, these rules do not provide guidance regarding the allocation and apportionment of other expenses on a consolidated basis.

DATES: Written comments and/or requests to appear at a public hearing scheduled for November 13, 1987, must be delivered or mailed by October 26, 1987. These regulations are proposed generally to be applicable to the allocation of expenses for taxable years beginning after December 31, 1986.

ADDRESS: Send comments and requests to appear at the public hearing to: Commissioner of Internal Revenue, Attn: CC:LR:T (INTL-935-86), Washington, DC 20224. The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David M. Merrick, Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC 20224. Attention: CC:LR:T (202-566-6276, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Income Tax Regulations (26 CFR Part 1) under sections 861(b), 863(b), and 864(e) of the Internal Revenue Code of 1986 [Pub. L. 99-514]. The proposed regulations are issued under the authority contained in sections 861(b) (26 U.S.C. 861(b)), 863(b) (26 U.S.C. 863(b), 864(e) (26 U.S.C. 864(e)), and 7805 (26 U.S.C. 7805) of the Internal Revenue Code of 1986. Some of the interpretations set forth herein may require the enactment of legislation, including certain provisions of the Technical Corrections Act of 1987 (H.R. 2636), which would amend Pub. L. 99-514.

Discussion—Description of Statutory and Implementing Regulatory Provisions

Statutory Provisions

The Tax Reform Act of 1986 revised the rules for the allocation and apportionment of interest and other expenses for purposes of the international tax provisions. Section 864(e)(2) generally requires taxpayers to allocate and apportion interest expense on the basis of assets. Furthermore, section 864(e)(4) requires an adjustment for earnings and profits to the tax book value of the stock of certain corporations owned by the taxpayer for purposes of apportioning expenses, including interest, on the basis of assets.

Section 864(e) (1) and (5) provides special rules that apply in allocating and apportioning interest expense in the case of an affiliated group of corporations, as defined in the regulations. Interest expense of each member is allocated and apportioned on the basis of apportionment fractions that are computed as if all members of the group were a single corporation. The section 1504 definition of an affiliated group is modified for purposes of section 864(e) to include within the affiliated group section 936 corporations.

Section 864(e)(3) provides rules for the treatment of tax exempt income and assets in allocating and apportioning expenses generally.

Finally, section 1215(c) of the Tax Reform Act of 1986 provides transition rules in allocating and apportioning interest expense on the debt outstanding on November 16, 1985.

Asset Method Apportionment Generally

Section 1.861-8(c)(2) indicates that, although apportionment on the basis of assets is mandatory in connection with interest expenses, it may also be used in connection with the apportionment of other expenses. Taxpayers apportioning expenses on the basis of assets may do so either on the basis of the fair market value or the tax book value of those assets. However, once a taxpayer apportions expenses on the basis of the fair market value of assets, it may not change back to the tax book value method without securing the Commissioner's approval. For taxpayers who apportion expenses on the basis of the tax book value of assets, the basis in assets consisting of stock in designated subsidiary corporations must be adjusted to reflect retained earnings and profits, as provided in § 1.861-10(b) of the regulations described below.

Tax Exempt Income and Assets

Section 1.861-8(d)(2) provides that, in allocating deductions that are definitely related to separate classes of gross income, exempt income shall be taken into account. In apportioning deductions for expenses that are definitely related and allocable to a class of gross income consisting of multiple groupings of income (whether statutory or residual) or to all gross income, however, exempt income and exempt assets shall not be taken into account. For this purpose, tax exempt income and assets do not include income of a foreign person that is not effectively connected with the conduct of a trade or business in the United States and related assets, or income of a possessions corporation for which a credit is allowed under section 936 and related assets. The regulations reserve with respect to appropriate rules for insurance companies subject to tax under sections 801 or 831.

General Rules Regarding the Allocation of Interest Expense

Section 1.861-8(e)(2)(i) indicates that, since loans are normally advanced on the general credit of the taxpayer, the associated interest expense generally should be apportioned on the basis of all the taxpayer's assets. Except as otherwise provided, interest expense is considered related to all income producing activities and properties of the taxpayer and thus is allocable to all the gross income which the income producing activities and properties of the taxpayer generate, have generated, or could reasonably be expected to generate.

Section 1.861-8(e)(2)(ii) states that any loss on the sale of a receivable that is generated in the ordinary course of a taxpayer's business shall be treated, solely for purposes of allocation and apportionment under this section, as an item of interest expense and shall be subject to allocation and apportionment under this section.

Section 1.861-8(e)(2)(iii) enumerates various provisions of the Code which operate to disallow, capitalize, or suspend the deduction of interest expense, and provides that the regulations apply only to interest expense that is deductible after application of such provisions.

Section 864(e)(7)(D) of the Code, as it would be amended under the Technical Corrections Act of 1987 (H.R. 2636), indicates that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section for direct allocation of interest expense in the case of indebtedness resulting in a disallowance under section 246A of the Code. The Service is considering whether interest expense incurred on the funds borrowed to acquire certain debt-financed stock investments subject to section 246A should be allocated solely to the income derived from such stock investments. The Service invites taxpayer comments on this issue.

Section 1.861–8(e)(2)(iv) describes circumstances in which interest expense can be directly allocated to specific property. This exception to the fungibility rule of § 861–8(e)(2)(ii) is generally available only in cases in which specifically identified property is purchased or improved with nonrecourse financing. The regulations clarify the scope of paragraph (e)(2)(iv) in several respects to address, among other things, the treatment of related party transactions, refinancings, post-construction permanent financing, and cross-collateralization. For purposes of apportioning other interest expense on an asset method, the value (tax book or fair market) of any asset must be reduced (but not below zero) by the principal amount of indebtedness the interest on which is directly allocated under this section. The regulations reserve on the direct allocation of interest expense in the case of integrated financial transactions.

Section 1.861–8(e)(2)(v) provides apportionment rules for individuals. Individuals with foreign source income of less than $5,000 are not required to apportion interest to foreign source income. For individuals not meeting this exception, different apportionment rules apply to the certain kinds of interest expense enumerated under section 163(h)(2) of the Code. Interest expense incurred in the active conduct of a trade or business is apportioned on the basis of the assets used in such business. Investment interest expense is apportioned by reference to the individual's investment assets. Passive activity interest expense is apportioned by reference to the individual's passive activity assets. Qualified residence interest expense and personal interest expense (to the extent deductible under transition rules set forth in section 163(h)(6)) are apportioned on the basis of all the taxpayer's gross income. The Service is considering whether certain of the asset adjustments described in § 1.861–10 should also be required in the case of individual taxpayers.

Section 1.861–8(e)(2)(vi) provides apportionment rules for partnerships. Interest expense of a partnership that is directly allocable to specific property under § 1.861–8(e)(2)(iv) retains its character as directly allocable interest expense in the hands of the partner. In the case of interest expense that is not directly allocable to identified property and is subject to apportionment, different apportionment rules may apply depending upon whether the partner is an individual or a corporation. In general, however, the partner's distributive share of interest expense that is not directly allocable to identified property is subject to apportionment at the level of the partner, taking into account generally the partner's allocable share of partnership assets. In addition, a special rule requires the direct allocation of a partner's distributive share of partnership interest expense to that partner's distributive share of partnership income in the case of certain partners owning a less than 10 percent partnership interest.

Section 1.861–8(e)(2)(vii) provides apportionment rules for corporations. In the case of corporate taxpayers, the gross income method may not be used for the apportionment of interest expense, except to the extent permitted in transition rules. Under the asset method, which is described more fully in subsequent provisions of the regulations, interest expense is allocated and apportioned among the various statutory and residual groupings of income on the basis of the taxpayer's assets in each grouping.

The Service is considering the adoption of a rule that would permit foreign corporations to employ a gross income method for purposes of: (1) Computing taxable income under subpart F; (2) computing earnings and profits for all federal tax purposes; and (3) characterizing stock in a controlled foreign corporation for purposes of allocating and apportioning the United States shareholder's interest expense as a general limitation asset, passive asset, or other type of limitation category asset in the hands of a U.S. shareholder. If any foreign corporation controlled by a United States taxpayer were to elect the use of the gross income method, all other controlled foreign corporations controlled by that taxpayer or any related person (within the meaning of section 267(b)) would be required to use the gross income method. Consistency would not be required if the United States taxpayer is a minority shareholder (after taking into account interests owned by related persons). In such a case, the minority shareholder must employ the same method as the majority shareholder. If there is no majority shareholder in the corporation, the shareholders owning a majority of the voting stock of the corporation will determine on behalf of all shareholders which method to employ.

Under the gross income method, for purposes of allocating the interest expense of a United States shareholder of a controlled foreign corporation on an asset basis, the taxpayer would attribute the tax book value or fair market value of the stock of a controlled foreign corporation to the various separate limitation categories based on the gross income of the controlled foreign corporation within each relevant category for the taxable year of the controlled foreign corporation ending during the taxable year of the taxpayer. In the case of a controlled foreign corporation that owns stock in one or more lower-tier controlled foreign corporations, the gross income of the first-tier controlled foreign corporation would reflect a ratable portion of the gross income of all such lower-tier corporations derived during the taxable year ending during the taxable year of the taxpayer. Thus, the analysis of gross income within a chain of controlled foreign corporations would begin at the lowest-tier controlled foreign corporation and proceed up the chain to the first-tier controlled foreign corporation. The gross income of each lower-tier corporation would be attributed to the various separate limitation categories of each higher-tier corporation. In determining the gross income of a controlled foreign corporation attributable to its separate limitation categories, gross income would be reduced by any related party interest expense which is subject to the look-through rules of section 904(d)(3) of the Code.

The Service is also considering a weighted average variation on the gross income method described above which, instead of merely taking into account a pro rata share of the gross income of any lower-tier controlled foreign corporation, would weigh the amount of such income by reference to the amount of each upper-tier corporation's investment in the lower-tier corporation, relative to its other assets. The Service invites taxpayer comments on these proposals.

Section 1.861–8(e)(2)(viii) describes the asset method. There are two methods of apportionment based on

assets: Tax book value and fair market value. Assets are, in general, attributed to the various groupings of income by reference to the income that they generate, have generated, or may reasonably be expected to generate. For purposes of determining the value of assets, an average of values (book or market) shall be computed for the taxable year on the basis of values of assets at the beginning and end of the year, except where a substantial distortion of asset values would result. Special rules apply in the case of a qualified business unit (as defined in section 989(a) of the Code) of a domestic corporation with functional currency other than the U.S. dollar. This section also describes the process of attributing assets to statutory groupings. It sets forth the methodology by which taxpayers must attribute assets to statutory groupings. Special rules apply in the case of assets that are receivables.

Section 1.861–8(e)(2)(ix) provides the effective dates for the rules of paragraph (e)(2).

Affiliated Group Apportionment of Interest Expense

Section 1.861–9 describes the operation of section 864(e) (1) and (5), which requires the affiliated group apportionment of interest expense. Section 1.861–9(b) indicates that section 864(e) (1) and (5) applies to the computation of foreign source taxable income for purposes of section 904 (relating to various limitations on the foreign tax credit), the computation of the combined taxable income of the related supplier and a foreign sales corporation (FSC) (under sections 921 through 927) or a domestic international sales corporation (DISC) (under sections 991 through 997), and in the application of section 907 for purposes of determining reductions in the amount allowed as a foreign tax credit under section 901. Section 864(e) (1) and (5) does not apply to the computation of subpart F income of controlled foreign corporations (under sections 951 through 964), the computation of combined taxable income of a possessions corporation and its affiliates (under section 936), and the computation of effectively connected taxable income of foreign corporations. With regard to section 936 corporations, the apportionment of the affiliated group's interest expense for purposes of determining the amount of allowable credit under section 936 is governed by section 936. Any rules that are adopted under section 936(h) could result in adjustments to the allocation and apportionment of interest expense pursuant to these rules.

Section 1.861–9(c) indicates that, except as otherwise provided, the taxable income of each member of an affiliated group from sources outside the United States shall be determined by allocating and apportioning the interest expense of each member according to apportionment fractions which are computed as if all members of such group were a single corporation. Stock in affiliated corporations is not taken into account in determining apportionment fractions under the asset method described in § 1.861–8(e)(2)(viii). In the case of an affiliated group that files a consolidated return, consolidated foreign tax credit limitations are computed for the group in accordance with the rules of § 1.1502–4.

Section 1.861–9(d) defines the term "affiliated group" to have the same meaning as is given that term by section 1504, except that section 1504(b)(4) is inapplicable. Because section 1504(b)(4) is inapplicable, section 936 corporations are included within the affiliated group for purposes of computing the apportionment fractions applicable to interest expense of other members of the group. The regulations reserve on the treatment of insurance companies subject to section 801 under the affiliated group apportionment rule described in § 1.861–9(c). Any members of an affiliated group that constitute financial corporations (as defined in the regulations) shall be treated as a separate affiliated group. In addition, a bank holding company that is regulated under the Bank Holding Company Act of 1956 is subject to special rules for purposes of segregating and apportioning its interest expense and certain of its assets between the financial and nonfinancial groups.

Further regulations will be issued to provide rules on disaffiliation. These rules will preclude the avoidance of the group apportionment rules of section 864(e) (1) and (5) through the disaffiliation of one member or the creation of two affiliated groups. For example, the rules will address disaffiliation or the creation of dual affiliated groups resulting from the ownership of stock in domestic corporations by controlled foreign subsidiaries, the ownership by unrelated persons of stock with voting rights that are disproportionate to the value of such stock, and the ownership of United States trade or business operations by foreign subsidiaries.

Section 1.861–9(e) indicates that, in the case of loans between members of an affiliated group, the indebtedness of the member borrower is not considered as an asset of the member lender. Moreover, in the case of such a loan, a member borrower shall first allocate interest expense incurred on loans from a member lender to the class of gross income in which the member lender includes the interest income on the loan. In the case of a back-to-back loan (as defined), special rules apply.

Section 1.861–9(f) provides that the combined taxable income of a FSC or DISC and its related supplier shall be reduced by the portion of the total interest expense of the affiliated group that is apportioned to assets of the group used in connection with export sales involving the FSC or DISC. Under this rule, interest of other group members may be attributed to the combined taxable income of a FSC or DISC and its related supplier without affecting the amount of interest otherwise deductible by the FSC, DISC, related supplier, or other members of the affiliated group. The FSC or DISC is entitled to its statutory portion of the combined taxable income, net of any apportioned group interest expense, for purposes of determining the transfer price of export property sold by the related supplier to a buy-sell DISC or FSC or the commission paid by the related supplier to a commission DISC or FSC.

Section 1.861–9(g) addresses the problem of losses created through affiliated group apportionment in the case of an affiliated group that could, but does not, file a consolidated return. Generally, § 1.1502–4 of the regulations provides for consolidated determinations of foreign tax credit limitations in the case of an affiliated group filing a consolidated return. In the case of an affiliated group that does not file a consolidated return, the amount of foreign tax credits allowed in any separate limitation category cannot exceed the credits computed under paragraph (g). The adjustments that may be required under paragraph (g) eliminate losses in a limitation category created within a given group member through the apportionment of interest expense and reduce income of other group members that have income in the same limitation category.

Adjustments for Certain Assets

Section 1.861–10 describes the operation of the various provisions related to asset based apportionment of interest and other expenses. Section 1.861–10(b) provides that, with respect to the apportionment of expenses on the basis of the tax book value of assets, the adjusted basis of stock in a 10 percent

owned corporation shall be increased by the earnings and profits (or decreased by deficits) of such corporation and of any lower-tier 10 percent owned corporation that are attributable to such stock and accumulated during the period the taxpayer held 10 percent or more of such stock. This adjustment is not necessary with respect to taxpayers using the fair market value method because the fair market value of any asset which is stock will reflect retained earnings and profits. This adjustment is to be made annually and is noncumulative. Thus, the adjusted basis of the stock is to be annually adjusted by the attributable portion of total current and accumulated earnings and profits (or any deficit), taking any distributions into account.

Section 1.861–10(b)(4) provides that, in the event of disproportionate contributions to capital, any shareholder that does not make a proportionate contribution to corporate capital shall increase for apportionment purposes its basis in the stock of the corporation by its pro rata share of the disproportionate capital contribution.

Section 1.861–10(b)(5) defines the term "earnings and profits" for purposes of the earnings and profits adjustment to basis. The term has the same meaning as that applied in section 312 of the Code. There are, however, special rules applicable to foreign corporations permitting the use of retained earnings determined under generally accepted accounting principles in lieu of earnings and profits in pre-effective date taxable years. These rules must be applied on a consistent basis with respect to all 10 percent owned foreign corporation stock owned by an affiliated group. The Service is considering the adoption of a translation rule for financial earnings reported in any currency other than the U.S. dollar. Such earnings would be converted into U.S. dollars using the exchange rate between that currency and the U.S. dollar on the last day of the taxpayer's taxable year.

Section 1.861–10(b)(7) provides rules for the translation of earnings and profits from the taxpayer's functional currency into U.S. dollars. Section 1.861–10(b)(8) provides similar rules for the translation of the previously taxed income from the taxpayer's functional currency into U.S. dollars. In addition, the Service is considering the adoption of a rule that would apply to any 10 percent owned corporation whose functional currency is not the U.S. dollar. This rule would substitute for the fixed U.S. dollar basis in the stock of such a corporation a basis that is annually revalued to take into account the fluctuations in the value of the capital invested in the corporation that are attributable to movements in exchange rates. The Service solicits taxpayer comments on this proposal.

Section 1.861–10(c) provides special rules concerning the attribution of certain assets to statutory groupings. Under § 1.861–10(c)(1), the stock of a controlled foreign corporation shall be attributed to the various separate limitation categories or other statutory groupings based on the analysis of the assets of the controlled foreign corporation. In the case of tiered controlled foreign corporations, look-through rules apply.

Section 1.861–10(c)(2) indicates that, in the case of any domestic corporation in which the shareholder owns more than 50 percent but less than 80 percent of the stock, a taxpayer shall attribute the stock of such domestic corporation to the various separate limitation categories based either on the fair market or tax book value of the assets of such corporation.

Under § 1.861–10(c)(3), any debt held by the taxpayer in a controlled foreign corporation which is considered in apportionment generally shall be attributed to the various separate limitation categories based on the taxpayer's treatment of the interest income derived from that debt obligation after the application of look-through and netting rules of sections 904(d)(3)(C) and 954(b)(5) of the Code, respectively.

Section 1.861–10(c)(4) indicates, however, that, in the case of loans made by a United States affiliated group to a related controlled foreign corporation, only such loans in excess of the total third-party debt of the group are considered as group assets. Moreover, to the extent that loans made to related controlled foreign corporations are disregarded in apportioning the affiliated group's interest expense, an amount of total affiliated group interest expense on third-party debt equal to the interest income generated by the disregarded controlled foreign corporation debt shall be apportioned solely to the interest income generated by such debt. The Service will adopt rules in subsequent regulations to prevent, in appropriate cases, the direct allocation of interest expense to passive income derived by the affiliated group in the form of interest income received on affiliated group loans to related controlled foreign corporations where the affiliated group lends funds to related controlled foreign corporations for investment in passive assets.

Section 1.861–10(c)(5) indicates that, because a dividend from any noncontrolled section 902 corporation is subject to a separate limitation for purposes of section 904, the value of such stock is attributable to each such separate limitation category. In cases in which the noncontrolled section 902 corporation does not pay dividends sufficient to absorb interest expense allocated and apportioned to its separate limitation category, a loss in that limitation category will result, subject to recapture under section 904(f). The Service is considering the adoption of rules that would permit such taxpayers to elect to attribute stock in noncontrolled section 902 corporations to any separate limitation category in which there are excess foreign tax credits prior to the apportionment of interest expense. The purpose of this rule would be to allow electing taxpayers to avoid, to the extent possible, the maintenance of foreign loss accounts subject to recapture under section 904(f) resulting from the apportionment of expense to the separate limitation category for each noncontrolled section 902 corporation. The Service solicits comments on this proposal.

The Service is also considering a special rule for characterizing stock in a lower-tier controlled foreign corporation that has subpart F income held by an upper-tier controlled foreign corporation. This rule would apply for the purpose of apportioning the expenses of the upper-tier corporation but would not apply for the purpose of characterizing the stock of the upper-tier corporation in the hands of its United States shareholders. The subpart F income of the lower-tier controlled foreign corporation is includible directly in the gross income of its United States shareholders and does not pass through the upper-tier controlled foreign corporation. If, as the proposed regulations require, interest expense of the upper-tier controlled foreign corporation is apportioned under an asset method, then interest expense of the upper-tier controlled foreign corporation would be apportioned, for example, to the portion of the stock in the lower-tier controlled foreign corporation that is characterized as a passive asset as a consequence of assets held by the lower-tier controlled foreign corporation that generated foreign personal holding company income includible in the subpart F income of the lower-tier controlled foreign corporation. Because subpart F income of the lower-tier controlled foreign corporation is not included in the gross

income of the upper-tier controlled foreign corporation when distributed, the apportionment of interest expense of the upper-tier controlled foreign corporation in the manner described above will apportion interest expense to an asset that can generate no income to the upper-tier controlled foreign corporation. The Service is considering whether stock in a lower-tier controlled foreign corporation should be disregarded in apportioning interest expense of an upper-tier controlled foreign corporation to the extent of that portion of the stock attributable to assets of the lower-tier controlled foreign corporation that generates subpart F income. The Service invites taxpayers to comment on this proposal.

Section 1.861–10(c)(6) provides that for purposes of apportionment, the adjusted basis or fair market value of any asset that is subject to the interest capitalization rules of section 263A shall be reduced by that portion of the principal amount of the taxpayer's total indebtedness the interest on which is so capitalized.

Section 1.861–11 describes the operation of the transition rules under section 1215(c) of the Tax Reform Act of 1986 that provide for the gradual phase-in of the provisions of section 864(e) and the regulations thereunder. In addition, rules are provided concerning the impact of corporate transfers on transition relief.

The regulations also amend § 1.863–3(b), Example 2. That example formerly provided that, in cases in which a taxpayer appropriately uses it for the computation of income from certain sales of personal property derived partly from within and partly from without the United States, taxable income shall first be computed by deducting from the gross income derived from the sale of personal property the expenses, losses, or other deductions properly allocated and apportioned thereto in accordance with the rules set forth in § 1.861–8. The amount of taxable income is then split between domestic and foreign sources based on fractions described in paragraph (ii) of that example. Changes to this section indicate that, while the fractions are unchanged, the income derived from such sales is to be split prior to the allocation and apportionment of expenses to gross income. No other change to the provisions of this example is intended.

The regulations do not address the effect of the enactment of section 864(e) on the allocation of interest expense for purposes of computing the effectively connected income of a foreign corporation under § 1.882–5.

Special Analyses

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking that solicits public comment, it has been determined that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6) and a Regulatory Flexibility Analysis has not been prepared

Comments and Requests to Appear at the Public Hearing

Before adopting final regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held on November 13, 1987 in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave. NW., Washington, DC.

Drafting Information

The principal author of these regulations is David M. Merrick of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, both in matters of substance and style.

List of Subjects in 26 CFR 1.861–8 through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Source of income, United States investments abroad.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.861–8 through 1.861–11 also issued under 26 U.S.C. 864(e) * * *.

Par. 2. Section 1.861–8 is amended as follows, with provisions to read as set forth below:

(1) By revising paragraphs (c)(1), (d)(2), (e)(2), (f)(1)(iii), and example (24) in paragraph (g),

(2) By renumbering existing paragraph (c)(2) as paragraph (c)(3) and adding a new paragraph (c)(2),

(3) By removing examples (1) and (2) of paragraph (g) and reserving them.

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(c) *Apportionment of deductions.*—(1) *Deductions definitely related to a class of gross income.* Where a deduction has been allocated in accordance with paragraph (b) of this section to a class of gross income which is included in one statutory grouping and the residual grouping, the deduction must be apportioned between the statutory grouping and the residual grouping. Where a deduction has been allocated to a class of gross income which is included in more than one statutory grouping, such deduction must be apportioned among the statutory groupings and, where necessary, the residual grouping. Thus, in determining the separate limitations on the foreign tax credit imposed by section 904(d)(1) or by section 907, the income within a separate limitation category constitutes a statutory grouping of income and all other income not within that separate limitation category (whether domestic or within a different separate limitation category) constitutes the residual grouping. In this regard, the same method of apportionment must be used in apportioning a deduction to each separate limitation category. Also, see paragraph (f)(1)(iii) of this section with respect to the apportionment of deductions among the statutory groupings designated in section 904(d)(1). If the class of gross income to which a deduction has been allocated consists entirely of a single statutory grouping or the residual grouping, there is no need to apportion that deduction. If a deduction is not definitely related to any gross income, it must be apportioned ratably as provided in paragraph (c)(3) of this section. A deduction is apportioned by attributing the deduction to gross income (within the class to which the deduction has been allocated) which is in the statutory grouping or in each of the statutory groupings and to gross income (within the class) which is in the residual grouping. Such attribution must be accomplished in a manner which

reflects to a reasonably close extent the factual relationship between the deduction and the grouping of gross income. In apportioning deductions, it may be that for the taxable year there is no gross income in the statutory grouping or that deductions will exceed the amount of gross income in the statutory grouping.

See paragraph (d)(1) of this section with respect to cases in which there is an excess of deductions. In determining the method of apportionment for a specific deduction, examples of bases and factors which should be considered include, but are not limited to—

(i) Comparison of units sold;

(ii) Comparison of the amount of gross sales or receipts;

(iii) Comparison of costs of goods sold;

(iv) Comparison of profit contribution;

(v) Comparison of expenses incurred, assets used, salaries paid, space utilized, and time spent which are attributable to the activities or properties giving rise to the class of gross income; and

(vi) Comparison of the amount of gross income.

Paragraphs (e)(2) through (e)(8) of this section provide the applicable rules for allocation and apportionment of deductions for interest, research and development expenses, and certain other deductions. The effects on tax liability of the apportionment of deductions and the burden of maintaining records not otherwise maintained and making computations not otherwise made shall be taken into consideration in determining whether a method of apportionment and its application are sufficiently precise. A method of apportionment described in this paragraph (c)(1) may not be used when it does not reflect, to a reasonably close extent, the factual relationship between the deduction and the groupings of income. Furthermore, certain methods of apportionment described in this paragraph (c)(1) may not be used in connection with any deduction for which another method is prescribed. The principles set forth above are applicable in apportioning both deductions definitely related to a class which constitutes less than all of the taxpayer's gross income and to deductions related to all of the taxpayer's gross income. If a deduction is not related to any class of gross income, it must be apportioned ratably as provided in paragraph (c)(3) of this section.

(2) *Apportionment based on assets.* Certain taxpayers are required by paragraph (e)(2) of this section to apportion interest expense on the basis of assets. A taxpayer may apportion other deductions based on the comparative value of assets that generate income within each grouping, provided that such method reflects the factual relationship between the deduction and the groupings of income and is applied in accordance with the rules of § 1.861–8(e)(2). In general, such apportionments must be made either on the basis of the tax book value of those assets or on their fair market value. However, once the taxpayer uses fair market value, the taxpayer and all related parties as defined in section 267(b) must continue to use such method unless expressly authorized by the Commissioner to change its method. In the case of any corporate taxpayer that—

(i) Uses tax book value, and

(ii) Owns directly or indirectly (within the meaning of § 1.861–10(b)(2)(ii)) 10 percent or more of the total combined voting power of all classes of stock entitled to vote in any other corporation (domestic or foreign) that is not a member of the affiliated group (as defined in section 864(e)(5)),

such taxpayer shall adjust its basis in that stock in the manner described in § 1.861–10(b).

* * * * *

(d) *Excess of deductions and excluded and eliminated items of income.*

* * * * *

(2) *Allocation and apportionment to exempt, excluded or eliminated income*—(i) *In general.* In the case of taxable years beginning after December 31, 1986, except to the extent otherwise permitted by § 1.861–11, the following rules shall apply to take account of income that is exempt or excluded, or assets generating such income, with respect to allocation and apportionment of deductions.

(A) *Allocation of deductions.* In allocating deductions that are definitely related to one or more classes of gross income, exempt income (as defined in paragraph (d)(2)(ii) of this section) shall be taken into account.

(B) *Apportionment of deductions.* In apportioning deductions that are definitely related either to a class of gross income consisting of multiple groupings of income (whether statutory or residual) or to all gross income, exempt income and exempt assets (as defined in paragraph (d)(2)(ii) of this section) shall not be taken into account. For purposes of apportioning deductions which are not taken into account under § 1.1502–13(c)(2) in determining gain or loss from deferred intercompany transactions, as defined in § 1.1502–13(a)(2), income from such transactions shall be taken into account in the year such income is ultimately included in gross income. See example (24) of paragraph (g) of this section.

(ii) *Exempt income and exempt assets defined*—(A) *In general.* For purposes of this section, the term "exempt income" means any income that is, in whole or in part, exempt, excluded, or eliminated for federal income tax purposes. The term "exempt asset" means any asset the income from which is, in whole or in part, exempt, excluded, or eliminated for federal tax purposes.

(B) *Certain stock and dividends.* The term "exempt income" includes the portion of the dividends that are deductible under—

(*1*) Section 243(a) (1) or (2) (relating to the dividends received deduction), or

(*2*) Section 245(a) (relating to the dividends received deduction for dividends from certain foreign corporations).

Thus, for purposes of apportioning deductions using a gross income method, gross income would not include a dividend to the extent that it gives rise to a dividends received deduction under either section 243(a) (1) or (2) or section 245(a). In addition, for purposes of apportioning deductions using an asset method, assets would not include that portion of stock equal to the portion of dividends paid thereon that would be deductible under either section 243(a) (1) or (2) or section 245(a). In the case of stock which generates, has generated, or can reasonably be expected to generate qualifying dividends deductible under section 243(a)(3), such stock shall not constitute a tax exempt asset. Such stock and the dividends thereon will, however, be eliminated from consideration in the apportionment of interest expense under the consolidation rule set forth in § 1.861–9(c).

(iii) *Income that is not considered tax exempt.* In determining the effectively connected taxable income of a foreign taxpayer (including a foreign sales corporation (FSC)), gross income (whether domestic or foreign source) which is not effectively connected to the conduct of a United States trade or business is not considered to be exempt, eliminated, or excluded income and, thus, may have expenses, losses, or other deductions allocated and apportioned to it. In computing the combined taxable income of a DISC or FSC and its related supplier, the gross income of a DISC or a FSC is not considered to be exempt, eliminated, or excluded income and, thus, may have expenses, losses, or other deductions allocated and apportioned to it. Also, for

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all purposes under subchapter N of the Code, including the computation of combined taxable income of a possessions corporation and its affiliates under section 936(h), the gross income of a possessions corporation for which a credit is allowed under section 936(a) is not considered to be exempt, eliminated, or excluded income and, thus, may have expenses, losses, or other deductions allocated and apportioned to it.

(iv) *Special rule for insurance companies.* [Reserved.]

(v) *Prior years.* For expense allocation and apportionment rules applicable to taxable years beginning before January 1, 1987, and for later years to the extent permitted by § 1.861–11, see 26 CFR 1.861–8(d)(2) (Revised as of April 1, 1986).

(e) *Allocation and apportionment of certain deductions.*

* * * * *

(2) *Interest*—(i) *In general.* The method of allocation and apportionment for interest set forth in this paragraph (e)(2) is based on the approach that, in general, money is fungible and that interest expense is attributable to all activities and property regardless of any specific purpose for incurring an obligation on which interest is paid. This approach recognizes that all activities and property require funds and that management has a great deal of flexibility as to the source and use of funds. Normally, creditors of a taxpayer subject the money advanced to the taxpayer to the risk of the taxpayer's entire activities and look to the general credit of the taxpayer for payment of the debt. When money is borrowed for a specific purpose, such borrowing will generally free other funds for other purposes, and it is reasonable under this approach to attribute part of the cost of borrowing to such other purposes. Consistent with the principles of fungibility, except as provided in subdivisions (iii), (iv), and (vi)(D)(*1*) of this paragraph (e)(2) and paragraph (d)(2) (relating to tax exempt assets), the aggregate of deductions for interest shall be considered related to all income producing activities and assets of the taxpayer and, thus, allocable to all the gross income which the assets of the taxpayer generate, have generated, or could reasonably have been expected to generate. In the case of the interest expense of members of an affiliated group, such interest expense shall be considered to be allocable to all the gross income of the members of the group under § 1.861–9. That section requires the members of an affiliated group to allocate and apportion the interest expense of each member of the group as if all members of such group were a single corporation. For the method of determining the interest deduction allowed to foreign corporations under section 882(c), see § 1.882–5.

(ii) *Losses on sale of receivables.* Except in the case of DISC as provided in § 1.994–1(c)(6)(v), any loss on the sale of a receivable that is generated in the ordinary course of a taxpayer's business shall be treated, solely for purposes of allocation and apportionment under this section, as an item of interest expense and shall be subject to allocation and apportionment under this section.

(iii) *Allowable deductions.* In order for an interest expense to be allocated and apportioned, it must first be determined that the interest expense is currently deductible. A number of provisions in the Code disallow, capitalize, or suspend deductions of interest expense.

(A) *Disallowed deductions.* A taxpayer does not allocate and apportion interest expense under this section that is permanently disallowed by operation of section 163(h), section 265, or any other provision that permanently disallows the deduction of interest expense.

(B) *Section 263A.* Section 263A requires the capitalization of interest expense that is allocable to designated types of property. Any interest expense that is capitalized under section 263A does not constitute deductible interest expense for purposes of this section. Furthermore, interest expense capitalized in inventory or depreciable property is not separately allocated and apportioned when the inventory is sold or depreciation is allowed. Capitalized interest expense is effectively allocated and apportioned as part of, and in the same manner as, the cost of goods sold or depreciation deduction.

(C) *Section 163(d).* Section 163(d) suspends the deduction for interest expense to the extent that it exceeds net investment income. In the year that suspended investment interest expense becomes allowable under the rules of section 163(d), that interest expense is apportioned under rules set forth in paragraph (e)(2)(v)(B) of this section as though it were incurred in the taxable year in which the expense may be deducted.

(D) *Section 469—(1) General rule.* Section 469 suspends the deduction of passive activity losses to the extent that they exceed passive activity income for the year. Passive activity losses may consist in part of interest expense properly allocable to passive activity. In the year that suspended interest expense becomes allowable as a deduction under the rules of section 469, that interest expense is apportioned under rules set forth in paragraph (e)(2)(v)(C) of this section as though it were incurred in the taxable year in which the expense may be deducted.

(*2*) *Identification of the interest component of a suspended passive loss.* A suspended passive loss may consist of a variety of items of expense other than interest expense. Suspended interest expense for any taxable year is computed by multiplying the total suspended passive loss for the year by a fraction, the numerator of which is passive interest expense for the year (determined under regulations issued under section 163) and the denominator of which is total passive expenses for the year. The amount of the suspended interest expense that is considered to be deductible in a subsequent taxable year is computed by multiplying the amount of any cumulative suspended interest expense (reduced by suspended interest expense allowed as a deduction in prior taxable years) times a fraction, the numerator of which is the portion of cumulative suspended passive losses that become deductible in the taxable year and the denominator of which is the cumulative suspended passive losses for prior taxable years (reduced by suspended passive losses allowed as deductions in prior taxable years).

(*3*) *Example.* The rules of this subdivision (D) may be illustrated by the following example.

On January 1, 1987, A, an individual, invested in a passive activity. In 1987, the passive activity generated no passive income and $100 in passive losses, all of which were suspended by operation of section 469. The suspended loss included $10 of suspended interest expense. In 1988, the passive activity generated $50 in passive income and $150 in passive expenses which included $30 of interest expense. The entire $100 passive loss was suspended in 1988 and included $20 of interest expense ($100 suspended passive loss x $30 passive interest expense / $150 total passive expenses). Thus, at the end of 1988, A had total suspended passive losses of $200, including $30 of suspended interest expense. In 1989, the passive activity generated $100 in passive income and no passive expenses. Thus, $100 of A's cumulative suspended passive loss was therefore allowed in 1989. The $100 of deductible passive loss includes $15 of suspended interest expense ($30 cumulative suspended interest expense x $100 of cumulative suspended passive losses allowable in 1989 / $200 of total cumulative suspended passive losses). The $15 of interest expense is apportioned under the rules of paragraph (e)(2)(v) of this section as though it were incurred in 1989.

(iv) *Allocation of interest to specific property*—(A) *General rule.* If the

existence of all of the facts and circumstances described below is established, the deduction for interest shall be considered directly allocable solely to the class of gross income which a specific property generates, has generated, or could reasonably be expected to generate. Such facts and circumstances are as follows:

(*1*) The indebtedness on which the interest was paid was specifically incurred for the purpose of purchasing or improving identified property;

(*2*) The proceeds of the borrowing were actually applied to purchase or improve the identified property;

(*3*) The creditor can look only to the identified property (or any lease or other interest therein) as security for payment of the principal and interest on the loan and, thus, cannot look to any other property, the borrower, or any third party with respect to payment of the loan;

(*4*) It may be reasonably assumed that the return (cash flow) on or from the property will be sufficient to fulfill the terms and conditions of the loan agreement with respect to the amount and timing of payment of principal and interest; and

(*5*) There are restrictions in the loan agreement on the disposal or use of the property consistent with the assumptions described in (*3*) and (*4*) of this subdivision (iv)(A).

Indebtedness between related persons as well as indebtedness incurred from unrelated persons for the purpose of purchasing property from a related person does not qualify under paragraph (e)(2)(iv)(A)(*1*) of this section. In addition, interest expense which constitutes qualified residence interest as defined in section 163(h)(3) shall not qualify for direct allocation under the terms of this paragraph (e)(2)(iv)(A).

(B) *Economic significance.* Even though the requirements of paragraph (e)(2)(iv)(A) of this section are met, a deduction for interest will not be considered directly allocable to specific property if, taking into account all the facts and circumstances, the transaction (including the security arrangement) lacks economic significance.

(C) *Refinancings.* If a taxpayer refinances indebtedness that meets the requirements of paragraph (e)(2)(iv) (A) and (B) of this section with new indebtedness, such new indebtedness will qualify for allocation to identified property, provided that—

(*1*) The principal amount of the new indebtedness does not exceed the remaining principal amount of the old indebtedness.

(*2*) The term of the new indebtedness does not exceed the remaining term of the old indebtedness, and

(*3*) The requirements of subdivisions (*3*), (*4*), and (*5*) of paragraph (e)(2)(iv)(A) and of paragraph (e)(2)(iv)(B) of this section are satisfied at the time of the refinancing.

(D) *Post-construction permanent financing.* Financing that is obtained after the completion of constructed property will be deemed to satisfy the requirements of paragraph (e)(2)(iv)(A) (*1*) and (*2*) of this section if—

(*1*) The financing is obtained within one year after the constructed property is first placed in service for purposes of section 167,

(*2*) The financing does not exceed the cost of construction (including construction period interest),

(*3*) The proceeds of the financing are used to repay construction loans, to pay amounts owed to contractors for the construction of the property, or to refinance temporary post-construction financing, and

(*4*) The borrower owned the property when it was first placed in service.

(E) *Cross collateralization*—(1) *In general.* Because direct allocation is permitted only in cases in which identified property (or income from the property) constitutes the only security for the loan, any form of cross collateralization precludes direct allocation. Thus, any device, including a contract, letter of credit, or guaranty, that expands the creditor's rights, directly or indirectly, beyond the identified property purchased or improved with the funds advanced will preclude the direct allocation of interest expense. The borrower's right to substitute collateral under any loan contract shall not preclude the direct allocation of interest expense under this paragraph (e)(2)(iv) until such time as the collateral is so substituted. Thereafter, however, interest expense will not qualify for direct allocation under this paragraph (e)(2)(iv).

(2) Treatment of general obligation receivables. A loan of funds which are used to purchase the general obligation receivables of a third party which is secured only by the receivables shall be considered for the purposes of this section to be secured both by the receivable itself and by the general credit of the third-party obligor. Thus, the only receivable that can satisfy the requirements of paragraph (e)(2)(iv)(A)(*3*) is a receivable under which the creditor's rights are limited to identified property purchased by the obligor in exchange for the receivable.

Example. X makes a loans to Y in order for Y to purchase the general credit obligation of Z from M, a merchant. X is entitled upon Y's default to recover the Z note. In the event of Y's default, X's rights as a creditor would extend beyond the property held by Y (the Z note) to encompass all of Z's assets. Accordingly, the interest expense that Y incurs on the loan is not directly allocable under this section because the requirements of paragraph (e)(2)(iv)(A)(*3*) are not satisfied.

(F) *Consideration of assets or income to which interest is directly allocated in apportioning other interest expense.* In apportioning interest expense under the asset method described in paragraph (e)(2)(viii) of this section, the value (fair market or tax book) of any asset to which interest expense is directly allocated under this paragraph (e)(2)(iv) shall be reduced (but not below zero) by the principal amount of the indebtedness the interest on which is so allocated. In apportioning interest expense under a gross income method, gross income shall be reduced by income to which interest expense is directly allocated under this paragraph (e)(2)(iv).

(G) *Direct allocations in the case of certain integrated financial transactions.* [Reserved.]

(v) *Apportionment rules for individuals.* In the case of taxable years beginning after December 31, 1986, individuals generally shall apportion interest expense under different rules according to the type of interest expense incurred. The interest expense of individuals shall be characterized under the regulations issued under section 163. However, in the case of an individual whose foreign source income which does not exceed a gross amount of $5,000, the apportionment of interest expense under this section is not required. Such an individual's interest expense may be allocated entirely to domestic source income.

(A) *Interest incurred in the conduct of a trade or business.* Individuals who incur business interest described in section 163(h)(2)(A) shall apportion such interest expense using an asset method by reference to the individual's business assets.

(B) *Investment interest.* An individual who incurs investment interest described in section 163(h)(2)(B) shall apportion that interest expense on the basis of the individual's investment assets.

(C) *Interest incurred in a passive activity.* An individual who incurs passive activity interest described in section 163(h)(2)(C) shall apportion that interest expense on the basis of the individual's passive activity assets.

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Individuals who receive a distributive share of interest expense incurred in a partnership are subject to special rules set forth in paragraph (e)(2)(vi) of this section.

(D) *Qualified residence and deductible personal interest.* Individuals who incur qualified residence interest described in section 163(h)(2)(D) shall apportion that interest expense under a gross income method, taking into account all income (including business, passive activity, and investment income). To the extent that personal interest described in section 163(h)(2) remains deductible under transitional rules, individuals shall apportion such interest expense in the same manner as qualified residence interest.

(E) *Example.* The following example illustrates the principles of this section.

Example—(i) *Facts.* A is a resident individual taxpayer engaged in the active conduct of a trade or business, which A operates as a sole proprietor. A's business generates only domestic source income. A's investment portfolio consists of several less than 10 percent stock investments. Certain stocks in which A's adjusted basis is $40,000 generate domestic source income and other stocks in which A's adjusted basis is $60,000 generate foreign source passive income. In addition, A owns his personal residence, which is subject to a mortgage in the amount of $100,000. All interest expense incurred with respect to A's mortgage is qualified residence interest for purposes of section 163(h)(2)(D). A's other indebtedness consists of a bank loan in the amount of $40,000. Under the regulations issued under section 163(h), it is determined that the proceeds of the $40,000 loan were divided equally between A's business and his investment portfolio. In 1987, the net income of A's business, before the apportionment of interest expense, was $50,000. A's investment portfolio generated $4,000 in domestic source income and $6,000 in foreign source passive income. All of A's debt obligations bear interest at the annual rate of 10 percent.

(ii) *Analysis of business interest.* Under section 163(h) of the Code, $2,000 of A's interest expense is attributable to his business. Under the rules of paragraph (e)(2)(v)(A), such interest must be apportioned on the basis of the business assets. Applying the asset method described in paragraph (e)(2)(viii), it is determined that all of A's business assets generate domestic income and, therefore, constitute domestic assets. Thus, the $2,000 in interest expense on the business loan is allocable to domestic source income.

(iii) *Analysis of investment interest.* Under section 163(h) of the Code, $2,000 of A's interest expense is investment interest. Under the rules of paragraph (e)(2)(v)(B), such interest must be apportioned on the basis of investment assets. Applying the asset method, A's investment assets consist of stock generating domestic source income with an adjusted basis of $40,000 and stock generating foreign source passive income with an adjusted basis of $60,000. Thus, 40 percent ($800) of A's investment interest is apportioned to domestic source income and 60 percent ($1,200) of A's investment interest is apportioned to foreign source passive income for purposes of section 904.

(iv) *Analysis of qualified residence interest.* The $10,000 of qualified residence interest expense is apportioned under the rules of paragraph (e)(2)(v)(D) on the basis of all of A's gross income. A's gross income consists of $60,000, $54,000 of which is domestic source and $6,000 of which is foreign source passive income. Thus, $9,000 of A's qualified residence interest is apportioned to domestic source income and $1,000 of A's qualified residence interest is apportioned to foreign source passive income.

(vi) *Partnerships*—(A) *In general—aggregate rule.* Subject to the exception set forth in paragraph (e)(2)(vi)(D) of this section, a partner's distributive share of the interest expense of a partnership that is directly allocable to identified partnership property under paragraph (e)(2)(iv) of this section shall be treated as directly allocable to the class of income generated by such partnership property. A partner's distributive share of the interest expense of a partnership that is not directly allocable to identified partnership property under paragraph (e)(2)(iv) of this section generally is considered related to all income producing activities and assets of the partner and shall be subject to apportionment under the rules described in this paragraph (e)(2)(v) (B) through (E) of this section. Subject to the exception set forth in paragraph (e)(2)(vi)(D) of this section, each partner shall, in the application of the asset method, take into account its pro rata share of partnership assets, in lieu of its interest in the partnership. For purposes of this section, a partner's percentage interest in a partnership shall be determined in the same manner as a partner's percentage ownership interest is determined under § 1.897–1(e)(2)(ii). Similarly, a partner's pro rata share of partnership assets shall be determined based on liquidation values in the manner provided in § 1.897–1(e)(2)(ii).

(B) *Corporate partners whose interest in the partnership is 10 percent or more.* A corporate partner whose interest in the partnership is 10 percent or greater shall generally apportion its distributive share of partnership interest expense by reference to the partner's assets under the rules of paragraph (e)(2)(vii) of this section. A corporation using the tax book value method of apportionment shall use the partnership's inside basis in its assets, adjusted to the extent required under paragraph (e)(2)(iv)(F) of this section. A corporation using the fair market value method of apportionment shall use the fair market value of the partnership's assets, adjusted to the extent required under paragraph (e)(2)(iv)(F) of this section.

(C) *Individual partners who are general partners or who are limited partners with an interest in the partnership of at least 10 percent.* All individual general partners and individual limited partners with an interest in the partnership of at least 10 percent shall first classify their distributive share of partnership interest expense as interest incurred in the active conduct of a trade or business, as passive activity interest, or as investment interest under regulations issued under sections 163 and 469. The individual must then apportion his or her interest expense (including the partner's distributive share of partnership interest expense) under the rules of paragraph (e)(2)(v) of this section. Each such individual partner shall take into account his or her distributive share of partnership gross income or pro rata share of the partnership assets in applying such rules. An individual using the tax book value method of apportionment shall use the partnership's inside basis in its assets, adjusted to the extent required under paragraph (e)(2)(iv)(F) of this section. An individual using the fair market value method of apportionment shall use the fair market value of the partnership's assets, adjusted to the extent required under paragraph (e)(2)(iv)(F) of this section.

(D) *Less than 10 percent limited partners and less than 10 percent corporate general partners—entity rule.* (*1*) A limited partner (whether individual or corporate) or corporate general partner whose interest in the partnership is less than 10 percent shall directly allocate its distributive share of partnership interest expense to its distributive share of partnership gross income. Under § 1.904–7(i)(2) of the regulations, such a partner's distributive share of foreign source income of the partnership is treated as passive income, except in the case of high withholding tax interest or income from a partnership interest held in the ordinary course of the partner's active trade or business, as defined in § 1.904–7(i)(2). A partner's distributive share of partnership interest expense (other than partnership interest expense that is directly allocated to identified property under paragraph (e)(2)(iv) of this section) shall be apportioned in accordance with the partner's relative distributive share of gross foreign source income in each limitation category and its domestic source income. To the

extent that partnership interest expense is directly allocated under paragraph (e)(2)(iv) of this section, a comparable portion of the income to which such interest expense is allocated shall be disregarded in the analysis of the partnership's gross income. The partner's distributive share of the interest expense of the partnership that is directly allocable under paragraph (e)(2)(iv) of this section shall be allocated according to the treatment, after application of § 1.904–7(i)(2), of the partner's distributive share of the income to which the expense is allocated.

(*2*) For purposes of apportioning other interest expense of the partner on an asset basis, the partner's interest in the partnership, and not the partner's pro rata share of partnership assets, is considered to be the relevant asset. The value of this asset for apportionment purposes is either the tax book value or fair market value of the partner's partnership interest, depending on the method of apportionment used by the taxpayer. This amount of a partner's interest in the partnership is allocated among various limitation categories in the same manner as interest expense is apportioned in subdivision (*1*) of this paragraph (e)(2)(vi)(D). If the partner uses the tax book value method of apportionment, the partner's interest in the partnership must, for this purpose, be reduced to the extent that the partner's basis consists of liabilities that are taken into account under section 752 of the Code. Under either the tax book value or fair market value method of apportionment, for purposes of this section only, the value of the partner's interest in the partnership must be reduced by the principal amount of any indebtedness of the partner the interest on which is directly allocated to its partnership interest under paragraph (e)(2)(iv) of this section.

(*3*) To the extent that the partnership's foreign source income which would otherwise be considered passive under § 1.904–7(i)(2) constitutes high-taxed income for purposes of section 904(d)(2)(F), such income and associated expenses are treated as general limitation income. For purposes of apportioning other interest expense of the partner, the partner's interest is considered to be a foreign general limitation asset to the same extent that the foreign source passive income is treated as general limitation income.

(E) *Example*—(i) *Facts.* A, B, and C are partners in a limited partnership. A is a corporate general partner, owns a 5 percent interest in the partnership, and has an adjusted basis in its partnership interest, determined without regard to section 752 of the Code, of $5. A's investment in the partnership is not held in the ordinary course of the taxpayer's active trade or business, as defined in § 1.904–7(i)(2). B, a corporate limited partner, owns a 70 percent interest in the partnership, and has an adjusted basis in its partnership interest, determined without regard to section 752 of the Code, of $70. C is an individual limited partner, owns a 25 percent interest in the partnership, and has an adjusted basis in the partnership interest, determined without regard to section 752 of the Code, of $25. The partners' interests in the profits and losses of the partnership conform to their respective interests. None of the interest expense incurred directly by any of the partners is directly allocable to their partnership interest under § 1.861–8(e)(2)(iv). The ABC partnership's sole assets are two apartment buildings, one domestic and the other foreign. The domestic building has an adjusted inside basis of $600 and the foreign building has an adjusted inside basis of $500. Each of the buildings is subject to a nonrecourse liability in the amount of $500. The ABC partnership's total interest expense for the taxable year is $120, both nonrecourse liabilities bearing interest at the rate of 12 percent. The indebtedness on the domestic building qualifies for direct allocation under the rules of § 1.861–8(e)(2)(iv). The indebtedness on the foreign building does not so qualify. The partnership incurred no foreign taxes. The partnership's gross income for the taxable year is $360, consisting of $100 in foreign source income and $260 in domestic source income. Under § 1.752–1(e), the nonrecourse liabilities of the partnership are allocated among the partners according to their share of the partnership profits. Accordingly, the adjusted basis of A, B, and C in their respective partnership interests (for other than apportionment purposes) is, respectively, $55, $770, and $275.

(ii) *Determination of the amount of partnership interest expense that is subject to allocation and apportionment.* Interest on the nonrecourse loan on the domestic building is, under § 1.861–8(e)(2)(iv), directly allocable to income from that investment. The interest expense is therefore directly allocable to domestic income. Interest on the nonrecourse loan on the foreign building is not directly allocable. The interest expense is therefore subject to allocation and apportionment. Thus, $60 of interest expense is directly allocable to domestic income and $60 of interest expense is subject to allocation and apportionment.

(iii) *Analysis for Partner A.* A's distributive share of the partnership's gross income is $18, which consists of $5 in foreign source income and $13 in domestic source income. A's distributive share of the ABC interest expense is $6, $3 of which is directly allocable to domestic income and $3 of which is subject to apportionment. After direct allocation of qualifying interest expense, A's distributive share of the partnership's gross income consists of $5 in foreign source income and $10 in domestic source income. Because A is a less than 10 percent corporate partner, A's distributive share of any foreign source partnership income is considered to be passive income. Accordingly, in apportioning the $3 of partnership interest expense that is subject to apportionment on a gross income method, one-third ($1) is apportioned to foreign source passive income and two-thirds ($2) is apportioned to domestic source income. In apportioning its other interest expense, A uses the tax book value method. A's adjusted basis in A's partnership interest ($55) includes A's share of the partnership's liabilities ($50), which are included in basis under section 752. For purposes of apportioning other interest expense, A's adjusted basis in the partnership must be reduced to the extent of such liabilities. Thus, A's adjusted basis in the partnership, for purposes of apportionment, is $5. For the purpose of apportioning A's other interest expense, this $5 in basis is characterized one-third as a foreign passive asset and two-thirds as a domestic asset, which is the ratio determined in subdivision (*1*) of paragraph (e)(2)(vi)(D).

(iv) *Analysis for Partner B.* B's distributive share of the ABC interest expense is $84, $42 of which is directly allocable to domestic income and $42 of which is subject to apportionment. As a corporate limited partner whose interest in the partnership is at least 10 percent, B is subject to the rules of paragraph (e)(2)(vi)(B) of this section. These rules require that a corporate partner apportion its distributive share of partnership interest expense on the asset method described in paragraph (e)(2)(viii) of this section by reference to its corporate assets, which include, for this purpose, 70 percent of the partnership's assets, adjusted in the manner described in paragraph (e)(2)(iv)(F) to the extent of directly allocable interest expense.

(v) *Analysis for Partner C.* C's distributive share of the ABC interest expense is $30, $15 of which is directly allocable to domestic income and $15 of which is subject to apportionment. As an individual limited partner whose interest in the partnership exceeds 10 percent, C is subject to the rules of paragraph (e)(2)(vi)(C) of this section. These rules require that an individual's share of partnership interest expense be classified under regulations issued under section 163(h) and then apportioned under the rules applicable to individuals, which are set forth in paragraph (e)(2)(v) of this section.

(vii) *Corporations.* Corporate taxpayers shall apportion interest expense on the basis of corporate assets, as provided in paragraph (e)(2)(viii) of this section. Affiliated groups of corporations are subject to special rules set forth in § 1.861–9. Section 1.861–10 sets forth special rules applicable to all corporate taxpayers relating to basis adjustments, to the consideration and characterization of certain assets in the apportionment of interest expense, and to other special rules pertaining to the apportionment of interest expense. Section 1.861–11 contains transition rules for corporations limiting the application of the rules of §§ 1.861–8, 1.861–9, and 1.861–10, which are otherwise applicable to taxable years beginning after 1986. In

the case of an affiliated group of corporations as defined in § 1.861–9(d), any reference in §§ 1.861–8, 1.861–9, 1.861–10, or 1.861–11 to "taxpayer" with respect to the allocation and apportionment of interest expense generally denotes the entire affiliated group of corporations and not the separate members thereof, unless the context otherwise requires.

(viii) *Asset method*—(A) *Apportionment*—(*1*) *In general.* Normally, the deduction for interest expense relates more closely to the amount of capital utilized in an activity or property than to the gross income generated therefrom, and therefore the deduction for interest should normally be apportioned on the basis of asset values. Indebtedness permits the taxpayer to acquire or retain different kinds of assets which may produce substantially different yields of gross income in a given taxable period in relation to their value. Except to the extent otherwise provided, taxpayers must apportion interest expense only on the basis of asset values and will not be allowed to apportion any interest deduction on the basis of gross income.

(*2*) *Methods of asset apportionment.* If a taxpayer consistently apportions the deduction for interest on the basis of the tax book value (adjusted basis) of its assets, that method will ordinarily be accepted by the Commissioner. Alternatively, a taxpayer may apportion the deduction for interest on the basis of the fair market value of its assets if it can establish the fair market value to the satisfaction of the Commissioner. See paragraph (c)(2) of this section regarding rules requiring consistency in the use of the tax book value or fair market value method (including among related parties) and an earnings and profits adjustment by taxpayers using the tax book value method to the stock in certain nonaffiliated 10 percent owned corporations. (See also § 1.861–10(b).)

(*3*) The provisions of this paragraph (e)(2)(viii)(A) may be illustrated by the following examples:

Example (1).—(i) *Facts.* X, domestic corporations organized on January 1, 1987, has deductible interest expense in 1987 in the amount of $150,000. X apportions its expenses according to the tax book value method. The adjusted basis of X's assets is $3,600,000, $3,000,000 of which generate domestic source income and $600,000 of which generate foreign source general limitation income.

(ii) *Allocation.* No portion of the $150,000 deduction is directly allocable solely to identified property within the meaning of paragraph (e)(2)(iv) of this section. Thus, X's deduction for interest is related to all its activities and assets.

(iii) *Apportionment.* X would apportion its interest expense as follows:

To foreign source general limitation income:

$150,000 multiplied by $600,000 divided by $3,600,000 equals $25,000

To domestic source income:

$150,000 multiplied by $3,000,000 divided by $3,600,000 equals $125,000

Example (2).—(i) *Facts.* Assume the same facts as in the example in paragraph (e)(2)(viii)(A)(*3*) above, except that X apportions its interest expense on the basis of the fair market value of its assets. X's total assets have a fair market value of $4,000,000, $3,200,000 of which generate domestic source income and $800,000 of which generate foreign source general limitation income.

(ii) *Allocation.* No portion of the $150,000 deduction is directly allocable solely to identified property within the meaning of paragraph (e)(2)(iv) of this section. Thus, X's deduction for interest is related to all its activities and properties.

(iii) *Apportionment.* X may apportion its interest expense as follows if it establishes the fair market value of its assets to the satisfaction of the Commissioner:

To foreign source general limitation income:

$150,000 multiplied by $800,000 divided by $4,000,000 equals $30,000

To domestic source income:

$150,000 multiplied by $3,200,000 divided by $4,000,000 equals $120,000

(B) *Attribution of assets to statutory groupings.* Assets are attributed to statutory groupings according to the source and type of the income that they generate, have generated, or may reasonably be expected to generate. The physical location of assets is not relevant to this determination. In the case of inventory or a receivable generated in the ordinary course of the taxpayer's business from the sale of such inventory, such an asset must be characterized by reference to the source of sales income from that inventory during the taxable year. If a taxpayer maintains separate inventories for any federal tax purpose, including the rules for establishing pools of inventory items under sections 472 and 474 of the Code, each separate inventory shall be separately characterized in accordance with the previous sentence.

(C) *Determining asset values*—(1) *General rule.* For purposes of determining values of assets under this paragraph (e)(2)(viii), an average of values (book or market) within each statutory grouping and the residual grouping shall be computed for the year on the basis of values of assets at the beginning and end of the year. However, at the end of the first taxable year beginning after 1986, a taxpayer shall determine asset values solely by reference to the year-end value of its assets. Thus, no averaging is required for the first taxable year beginning after 1986. Where a substantial distortion of asset values would result from averaging beginning-of-year and year-end values, as might be the case in the event of a major corporate acquisition or disposition, the taxpayer must use a different method of asset valuation that more clearly reflects the average value of assets weighted to reflect the time such assets are held by the taxpayer during the taxable year.

(2) Special rule for qualified business units of domestic corporations with functional currency other than the U.S. dollar. In the case of a qualified business unit (as defined in section 989(a) of the Code) of a domestic corporation, the average values of assets determined under the principles of paragraph (e)(2)(viii)(C)(*1*) of this section shall be calculated in units of functional currency. For purposes of applying the asset method, such functional currency values shall then be translated into dollars at the exchange rate between the functional currency and the U.S. dollar on the last day of the taxpayer's taxable year.

(3) Example. X is a domestic corporation that uses the fair market value method of apportionment. X is a calendar year taxpayer. X owns 25 percent of the stock of A, a noncontrolled section 902 corporation. At the end of 1987, the fair market value of X's assets by income grouping are as follows:

Domestic	$1,000,000
Foreign general limitation	500,000
Foreign passive	500,000
Noncontrolled section 902 corporation	50,000

For its 1987 tax year, X shall apportion its interest expense by reference to the 1987 year-end values. In July of 1988, X sells a portion of its investment in A and in an asset acquisition purchases a shipping business, the assets of which generate exclusively foreign shipping income. At the end of 1988, the fair market values of X's assets by income grouping are as follows:

Domestic	$800,000
Foreign general limitation	900,000
Foreign passive	300,000
Noncontrolled section 902 corporation	40,000
Foreign shipping	100,000

For its 1988 tax year, X shall apportion its interest expense by reference to the average of the 1987 year-end values and the 1988 year-end values, assuming that the averaging of beginning-of-year and end-of-year values does not cause a substantial distortion of average asset values. These averages are as follows:

Domestic	$900,000
Foreign general limitation	700,000
Foreign passive	400,000
Foreign shipping	50,000

Noncontrolled section 902 corporation	45,000

(D) *Methodology of attribution.* For each taxable year, a taxpayer's assets shall be divided into three types—

(1) Single category assets. Assets that generate income that is exclusively within a single statutory grouping or the residual grouping.

(2) Multiple category assets. Assets that generate income within more than one grouping of income (statutory or residual).

(3) Assets without identifiable yield. Assets that produce no directly identifiable income yield or that contribute equally to the generation of all the income of the taxpayer (such as assets used in general and administrative functions).

Single category assets are directly attributable to the relevant statutory or residual grouping of income. In order to attribute multiple category assets to the relevant groupings of income, the income yield of each such asset for the taxable year must be analyzed to determine the proportions of gross income generated by it within each relevant grouping. The value of each asset is then prorated among the relevant groupings of income according to its respective proportions of gross income. The value of each asset without identifiable income yield must be identified. However, because prorating the value of such assets cannot alter the ratio of assets within the various groupings of income (as determined by reference to the single and multiple category assets), they are not taken into account in determining that ratio. An example demonstrating the application of the asset method is set forth in § 1.861–10(d). This example also demonstrates the application of certain of the special asset characterization rules that are set forth in § 1.861–10.

(ix) *Effective dates.* In general, the rules of this section, as well as the rules of §§ 1.861–9 and 1.861–10, shall apply for taxable years beginning after December 31, 1986. In the case of corporate taxpayers, however, transition rules set forth in § 1.861–11 provide for the gradual phase-in of the provisions of this and the foregoing sections. For rules for taxable years beginning before January 1, 1987, and for later years to the extent permitted by § 1.861–11, see 26 CFR 1–861–8(e)(2) (Revised as of April 1, 1986).

(f) *Miscellaneous matters*—(1) *Operative sections.*

* * * * *

(iii) *Separate limitations to the foreign tax credit.* Section 904(d)(1) requires that the foreign tax credit limitation be determined separately in the case of the types of income specified therein. Accordingly, the income within each separate limitation category constitutes a statutory grouping of income and all other income not within that separate limitation category (whether domestic or within a different separate limitation category) constitutes the residual grouping.

* * * * *

(g) *General examples.*

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Example (24)—Exempt, excluded, or eliminated income—(i) *Income method*—(A) *Facts.* X, a domestic corporation organized on January 1, 1987, is engaged in a number of businesses worldwide. X owns a 25-percent voting interest in each of five corporations engaged in the business A, two of which are domestic and three of which are foreign. X incurs stewardship expenses in connection with these five stock investments in the amount of $100. X apportions its stewardship expenses using a gross income method. Each of the five companies pays a dividend in the amount of $100. X is entitled to claim the 80-percent dividends received deduction on dividends paid by the two domestic companies. Because tax exempt income is considered in the allocation of deductions, X's $100 stewardship expense is allocated to the class of income consisting of dividends from business A companies. However, because tax exempt income is not considered in the apportionment of deductions within a class of gross income, the gross income of the two domestic companies must be reduced to reflect the availability of the dividends received deduction. Thus, for purposes of apportionment, the gross income paid by the three foreign companies is considered to be $100 each, while the gross income paid by the domestic companies is considered to be $20 each. Accordingly, X has total gross income from business A companies, for purposes of apportionment, of $340. As a result, $29.41 of X's stewardship expense is apportioned to each of the foreign companies and $5.80 of X's stewardship expense is apportioned to each of the domestic companies.

(ii) *Asset method*—(A) *Facts.* X, a domestic corporation organized on January 1, 1987, carries on a trade or business in the United States. X has deductible interest expense incurred in 1987 of $60,000. X owns all the stock of Y, a foreign corporation. X also owns 49 percent of the voting stock of Z, a domestic corporation. Neither Y nor Z have retained earnings and profits at the end of 1987. X apportions its interest expense on the basis of the fair market value of its assets. X has assets worth $1,500,000 that generate domestic source income, among which are tax exempt municipal bonds worth $100,000, and the stock of Z, having a value of $500,000. The Y stock owned by X has a fair market value of $2,000,000 and generates solely foreign source general limitation income.

(B) *Allocation.* No portion of X's interest expense is directly allocable solely to identified property within the meaning of paragraph (e)(2)(iv) of this section. Thus, X's deduction for interest is definitely related to all its gross income as a class.

(C) *Apportionment.* For purposes of apportioning expenses, assets that generate exempt, eliminated, or excluded income are not taken into account. Because X's municipal bonds are tax exempt, they are not taken into account in apportioning interest expense. Since X is entitled to claim under section 243 the 80-percent dividends received deduction with respect to the dividend it received from Z, 80 percent of the value of that stock is not taken into account as an asset for purposes of apportionment under the asset method. X apportions its interest deduction between the statutory grouping of foreign source general limitation income and the residual grouping of domestic source income as follows:

To foreign source general limitation income:

Interest expense multiplied by general limitation assets that are not tax exempt divided by worldwide assets that are not tax exempt

$60,000 multiplied by $2,000,000 divided by ($100,000 plus $900,000 plus $2,000,000) equals $40,000

Nonexempt foreign assets divided by 20 percent of Z stock value plus nonexempt domestic assets plus nonexempt foreign assets

To domestic source income:

Interest expense multiplied by domestic assets that are not tax exempt divided by worldwide assets that are not tax exempt

$60,000 multiplied by $100,000 plus $900,000 divided by ($100,000 plus $900,000 plus $2,000,000) equals $20,000

20 percent of Z stock value plus nonexempt domestic assets divided by 20 percent of Z stock value plus nonexempt domestic assets plus nonexempt foreign assets

Par. 3. Sections 1.861–9 and 1.861–9A are redesignated as §§ 1.861–12 and 1.861–12A, and new §§ 1.861–9 through 1.861–11 are added to read as follows:

§ 1.861–9 Special rules for allocating and apportioning interest expense of an affiliated group of corporations.

(a) *In general.* Sections 1.861–8, 1.861–10, and 1.861–11 provide rules that are generally applicable to all corporations. The rules of this section relate to affiliated groups of corporations and implement section 864(e) (1) and (5), which requires affiliated group allocation and apportionment of interest expense. The rules of this section apply to taxable years beginning after December 31, 1986, except as otherwise provided in § 1.861–11. Paragraph (b) of this section describes the scope of the application of the rule for the allocation and apportionment of interest expense of affiliated groups of corporations, which is contained in paragraph (c) of this section. Paragraph (d) of this section sets forth the definition of the term "affiliated group" for purposes of this

section. Paragraph (e) of this section describes the treatment of loans between members of an affiliated group. Paragraph (f) of this section provides rules concerning the affiliated group allocation and apportionment of interest expense in computing the combined taxable income of a FSC or DISC and its related supplier. Paragraph (g) of this section describes the treatment of losses caused by apportionment of interest expense in the case of an affiliated group that does not file a consolidated return.

(b) *Scope of application*—(1) *Application of section 864(e) (1) and (5) (concerning the definition and treatment of affiliated groups).* Section 864(e) (1) and (5) and the portions of this section implementing section 864(e) (1) and (5) apply to the computation of foreign source taxable income for purposes of section 904 (relating to various limitations on the foreign tax credit). Section 904 imposes separate foreign tax credit limitations on passive income, high withholding interest income, financial services income, shipping income, income consisting of dividends from each noncontrolled section 902 corporation, income consisting of dividends from a DISC or former DISC, taxable income attributable to foreign trade income within the meaning of section 923(b), distributions from a FSC or former FSC, and all other forms of income not enumerated above ("general limitation income"). Section 864(e) (1) and (5) and the portions of this section implementing section 864(e) (1) and (5) also apply in connection with section 907 to determine reductions in the amount allowed as a foreign tax credit under section 901. Section 864(e) (1) and (5) and the portions of this section implementing section 864(e) (1) and (5) also apply to the computation of the combined taxable income of the related supplier and a foreign sales corporation (FSC) (under sections 921 through 927) as well as the combined taxable income of the related supplier and a domestic international sales corporation (DISC) (under sections 991 through 997).

(2) *Nonapplication of section 864(e) (1) and (5) (concerning the definition and treatment of affiliated groups).* Section 864(e) (1) and (5) and the portions of this section implementing section 864(e) (1) and (5) do not apply to the computation of subpart F income of controlled foreign corporations (under sections 951 through 964), the computation of combined taxable income of a possessions corporation and its affiliates (under section 936), or the computation of effectively connected taxable income of foreign corporations. For the rules with respect to the allocation and apportionment of interest expenses of foreign corporations, see §§ 1.882–4 and 1.882–5.

(c) *General rule for affiliated corporations.* Except as otherwise provided in this section, the taxable income of each member of an affiliated group within each statutory grouping shall be determined by allocating and apportioning the interest expense of each member according to apportionment fractions which are computed as if all members of such group were a single corporation. For purposes of determining these apportionment fractions, stock in affiliated corporations shall not be taken into account. In the case of an affiliated group of corporations that files a consolidated return, consolidated foreign tax credit limitations are computed for the group in accordance with the rules of § 1.1502–4. Except as otherwise provided in § 1.861–8(e)(2)(iii), (iv), and (vi)(D), all the interest expense of all members of the group will be treated as definitely related and therefore allocable to all the gross income of the members of the group and account shall be taken of all the assets of all the members of the group in apportioning this interest expense. For purposes of this section, the term "taxpayer" refers to the affiliated group (regardless of whether the group files a consolidated return), rather than to the separate members thereof.

(d) *Definition of affiliated group*—(1) *General rule.* For purposes of the section, the term "affiliated group" has the same meaning as is given that term by section 1504, except that section 936 companies are also included within the affiliated group. Section 1504(a) defines an affiliated group as one or more chains of includible corporations connected through 80-percent stock ownership with a common parent corporation which is an includible corporation (as defined in section 1504(b)). In the case of a corporation that either becomes or ceases to be a member of the group during the course of the corporation's taxable year, only the interest expense incurred by the group member during the period of membership shall be allocated and apportioned as if all members of the group were a single corporation. In this regard, account shall be taken of assets held during the period of membership. Other interest expense incurred by the group member during its taxable year but not during the period of membership shall be allocated and apportioned without regard to other members of the group.

(2) *Inclusion of section 936 corporations*—(i) The exclusion from the affiliated group of section 936 corporations under section 1504(b)(4) is inoperative for purposes of this section. Thus, a possessions corporation meeting the ownership requirements of section 1504(a) with respect to which an election under section 936 is in effect for the taxable year is a member of the affiliated group.

(ii) *Example*—(A) *Facts.* X is the common parent of Y and Z. XY constitutes an affiliated group of corporations within the meaning of section 1504(a) and uses the tax book value method of apportionment. Y owns all the stock of Z, a possessions corporation with respect to which an election under section 936 is in effect for the taxable year. Z manufactures widgets in Puerto Rico. Y purchases these widgets and markets them exclusively in the United States. Of the three corporations, only Z has foreign source income, which includes both qualified possessions source investment income and general limitation income. For purposes of section 904, Z's qualified possessions source investment income constitutes foreign source passive income. In computing the section 936 benefit, Y and Z have elected the cost sharing method. Of the three corporations, only X has debt and, thus, only X incurs interest expense.

(B) *Analysis.* As provided in paragraph (b)(2) of this section, sections 864(e) (1) and (5) do not apply in the computation of benefits under section 936(h). The effect of including Z in the affiliated group relates to the fact that X, the only debtor corporation in the group, must, under the asset method described in § 1.861–8(e)(2)(viii), apportion a part of its interest expense to foreign source passive income and foreign source general limitation income. This is because the assets of Z that generate qualified possessions source investment income and general limitation income are included in computing the group apportionment fractions. The result is that, under section 904(f), X has an overall foreign loss in both the passive and general limitation categories, which currently offsets domestic income and must be recaptured against any subsequent years' foreign passive income and general limitation income, respectively, under the rules of that section.

(3) *Treatment of insurance companies subject to taxation under section 801.* [Reserved.]

(4) *Treatment of certain financial corporations*—(i) *In general.* In the case of an affiliated group (as defined in paragraph (d)(1) of this section), any members that constitute financial corporations as defined in paragraph (d)(4)(ii) of this section shall be treated as a separate affiliated group consisting of financial corporations (the "financial group"). The members of the group that do not constitute financial corporations shall be treated as members of a separate affiliated group consisting of

nonfinancial corporations ("the nonfinancial group").

(ii) *Financial corporation defined.* The term "financial corporation" means any corporation which meets all of the following conditions:

(A) It is described in section 581 (relating to the definition of a bank) or section 591 (relating to the deduction for dividends paid on deposits by mutual savings banks, cooperative banks, domestic building and loan associations, and other savings institutions chartered and supervised as savings and loan or similar associations);

(B) Its business is predominantly with persons other than related persons (within the meaning of section 864(d)(4) and the regulations thereunder) or their customers; and

(C) It is required by state or Federal law to be operated separately from any other entity which is not such an institution.

(iii) *Treatment of bank holding companies.* The total aggregate interest expense of any member of an affiliated group that constitutes a bank holding company subject to regulation under the Bank Holding Company Act of 1956 shall be prorated between the financial group and the nonfinancial group on the basis of the assets in the financial and nonfinancial groups. For purposes of making this proration, the assets of each subsidiary, and not the stock basis in each subsidiary, shall be taken into account. Any direct or indirect subsidiary of a bank holding company that is predominantly engaged in the active conduct of a banking, financing, or similar business shall be considered to be a financial corporation for purposes of this paragraph (d)(4). The interest expense of the bank holding company must be further apportioned in accordance with § 1.861–8(e)(2)(viii) to the various section 904(d) categories of income contained in both the financial group and the nonfinancial group on the basis of the assets owned by each group. For purposes of computing the apportionment fractions for each group, the assets owned directly by a bank holding company within each limitation category described in section 904(d)(1) (other than stock in affiliates or assets described in § 1.861–8(e)(2)(viii)(D)(*3*)) shall be treated as owned by the nonfinancial group and financial group.

(iv) *Consideration of stock of the members of one group held by members of the other group.* In apportioning interest expense, the nonfinancial group shall not take into account the stock of any lower-tier corporation that is treated as a member of the financial group under paragraph (d)(4)(i) of this section. Conversely, in apportioning interest expense, the financial group shall not take into account the stock of any lower-tier corporation that is treated as a member of the nonfinancial group under paragraph (d)(4)(i) of this section. For the treatment of loans between members of the financial group and members of the nonfinancial group, see § 1.861–9(e).

(5) *Example*—(i) *Facts.* X, a domestic corporation which is not a bank holding company, is the parent of domestic corporations Y and Z. Z owns 100 percent of the stock Z1, which is also a domestic corporation. X, Y, Z, and Z1 were organized after January 1, 1987, and constitute an affiliated group within the meaning of paragraph (d)(1) of this section. Y and Z are financial corporations described in paragraph (d)(4) of this section. X also owns 25 percent of the stock of A, a domestic corporation. Y owns 25 percent of the voting stock of B, a foreign corporation that is not a controlled foreign corporation. Z owns less than 10 percent of the voting stock of C, another foreign corporation. Any foreign source income generated by Y's or Z's direct assets is exclusively financial services income. Any foreign source income generated by X's or Z1's direct assets is exclusively general limitation income. X and Z1 are not financial corporations described in paragraph (d)(4)(ii) of this section. Y and Z, therefore, constitute a separate affiliated group apart from X and Z1 for purposes of section 864(e). The combined interest expense of Y and Z of $100,000 ($50,000 each) is apportioned separately on the basis of their assets. The combined interest expense of X and Z1 of $50,000 ($25,000 each) is allocated on the basis of the assets of the XZ1 group.

Analysis of the YZ Group Assets

Adjusted basis of assets of the YZ group that generate foreign source financial services income (excluding stock of foreign subsidiaries not included in the YZ affiliated group)	$200,000
Z's basis in the C stock (not adjusted by the allocable amount of C's earnings and profits because Z owns less than 10 percent of the stock) which would be considered to generate passive income in the hands of a nonfinancial services entity but is considered to generate financial services income when in the hands of Z, a financial services entity	$100,000
Y's basis in the B stock (adjusted by the allocable amount of B's earnings and profits) which generates dividends subject to a separate limitation for B dividends	$100,000
Adjusted basis of assets of the YZ group that generate U.S. source income	$600,000
Total assets	$1,000,000

Analysis of the XZ1 Group Assets

Adjusted basis of assets of the XZ1 group that generate foreign source general limitation income	$500,000
Adjusted basis of assets of the XZ1 group other than A stock that generate domestic source income	$1,900,000
X's basis in the A stock adjusted by the allocable amount of A's earnings and profits	$100,000
Total domestic assets	$2,000,000
Total assets	$2,500,000

(ii) *Allocation.* No portion of the $50,000 deduction of the YZ group is definitely related solely to specific property within the meaning of paragraph (e)(2)(iv) of § 1.861–8. Thus, the YZ group's deduction for interest is related to all its activities and properties. Similarly, no portion of the $50,000 deduction of the XZ1 group is definitely related solely to specific property within the meaning of paragraph (e)(2)(iv) of § 1.861–8. Thus, the XZ1 group's deduction for interest is related to all its activities and properties.

(iii) *Apportionment.* The YZ group would apportion its interest expense as follows:

To gross financial services income from sources outside the United States:

$50,000 multiplied by $300,000 divided by $1,000,000 equals $15,000

To gross income subject to a separate limitation for dividends from B:

$50,000 multiplied by $100,000 divided by $1,000,000 equals $5,000

To gross income from sources inside the United States:

$50,000 multiplied by $600,000 divided by $1,000,000 equals $30,000

The XZ1 group would apportion its interest expense as follows:

To gross general limitation income from sources outside the United States:

$50,000 multiplied by $500,000 divided by $2,500,000 equals $10,000

To gross income from sources inside the United States:

$50,000 multiplied by $2,000,000 divided by $2,500,000 equals $40,000

(e) *Loans between members of an affiliated group*— (1) *General rule.* In the case of loans between members of an affiliated group, as defined in paragraph (d) of this section, for purposes of apportioning interest expense, the indebtedness of the member borrower shall not be considered an asset of the member lender.

(2) *Treatment of related party interest expense.* Prior to the apportionment of other interest expense, a member borrower shall first allocate interest expense incurred on loans from a member lender to the class of gross

income in which the member lender includes the interest income on the loan.

(3) *Back-to-back loans.* If a member of the affiliated group makes a loan to a nonmember who makes a loan to a member borrower, the rule of paragraph (e) (1) and (2) of this section shall apply, in the Commissioner's discretion, as if the member lender made the loan directly to the member borrower, provided that the loans constitute a back-to-back loan transaction. Such loans will constitute a back-to-back loan for purposes of this paragraph (e) if the loan by the nonmember would not have been made or maintained on substantially the same terms irrespective of the loan of funds by the lending member to the nonmember or other intermediary party.

(4) *Financial and nonfinancial groups.* For purposes of this paragraph, bank holding companies and members of separate financial and nonfinancial groups under paragraph (d)(4) of this section that are otherwise affiliated shall be treated as a member of the same group.

(5) *Examples.* The rules of this paragraph (e) may be illustrated by the following examples.

Example (1). X, a domestic corporation, is the parent of Y, a domestic corporation, and Z, a corporation organized under the laws of a foreign country. X and Y were organized after January 1, 1987, and constitute an affiliated group within the meaning of paragraph (d)(1) of this section. Y is not a so-called 80/20 corporation described in section 861 (a)(1) and (c). Among X's assets are the notes of Y and Z. The Y note is for the amount of $100,000 and the Z note is for the amount of $200,000. Because X and Y are members of an affiliated group, Y's note does not constitute an asset for purposes of apportionment. Since the source of X's interest income received from the Y note is domestic, Y's deduction for interest paid on the note is allocated directly to Y's domestic source income. Only the balance of Y's interest expense is apportioned under the rules of this section. Because Z is not a member of the affiliated group, Z's note does constitute an asset for purposes of apportionment. However, if Z is a controlled foreign corporation, § 1.861–10(c)(4) limits the extent to which its debt may be considered as an asset in apportionment.

Example (2). X is a domestic corporation organized after January 1, 1987. X owns all the stock of Y, a domestic corporation. On June 1, 1987, X loans $100,000 to Z, an unrelated party. On June 2, 1987, Z makes a loan to Y with terms substantially similar to those of the loan from X to Z. Based on the facts and circumstances of the transaction, it is determined that Z would not have made the loan to Y on the same terms if X had not made the loan to Z. Because the transaction constitutes a back-to-back loan, as defined in paragraph (e)(3) of this section, the Commissioner may require, in his discretion, that neither the note of Y nor the note of Z may be considered an asset of X for purposes of this section.

(f) *Computations of combined taxable income.* In the computation of the combined taxable income of any FSC or DISC and its related supplier which is a member of an affiliated group under the pricing rules of sections 925 or 994, the combined taxable income of such FSC or DISC and its related supplier shall be reduced by the portion of the total interest expense of the affiliated group that is incurred in connection with those assets of the group used in connection with export sales involving that FSC or DISC. This amount shall be computed by multiplying the total interest expense of the affiliated group and interest expense of the FSC or DISC by a fraction the numerator of which is the assets of the affiliated group and of the FSC or DISC generating foreign trade income or gross income attributable to qualified export receipts, as the case may be, and the denominator of which is the total assets of the affiliated group and the FSC or DISC. Under this rule, interest of other group members may be attributed to the combined taxable income of a FSC or DISC and its related supplier without affecting the amount of interest otherwise deductible by the FSC or DISC, the related supplier or other member of the affiliated group. The FSC or DISC is entitled to only the statutory portion of the combined taxable income, net of any deemed interest expense, which determines the commission paid to the FSC or DISC or the transfer price of qualifying export property sold to the FSC or DISC.

(g) *Losses created through apportionment*—(1) *General rules.* In the case of an affiliated group that is eligible to but does not file a consolidated return, the foreign tax credits in any separate limitation category are limited to the credits computed under the rules of this paragraph (g). As a consequence of the affiliated group allocation and apportionment of interest expense required by section 864(e)(1) and this section, interest expense of a group member may be apportioned for section 904 purposes to a limitation category in which that member has no gross income, resulting in a loss in that limitation category. For purposes of this paragraph, the term "limitation category" includes domestic source income, as well as the types of income described in section 904(d)(1) (A) through (I). A loss of one affiliate in a limitation category will reduce the income of another member in the same limitation category if a consolidated return is filed. (See § 1.1502–4.) If a consolidated return is not filed, this netting does not occur. Accordingly, in such a case, the following adjustments among members may be required, as provided in paragraph (g)(1) of this section, in order to give effect to the group allocation of interest expense:

(i) Losses created through group apportionment of interest expense in one or more limitation categories within a given member must be eliminated; and

(ii) A corresponding amount of income of other members in the same limitation category must be recharacterized.

Such adjustments shall be accomplished, in accordance with paragraph (g)(3) of this section, without changing the total taxable income of any member and before the application of section 904(f). Section 904(f) (including section 904(f)(5)) does not apply to a loss created through the apportionment of interest expense to the extent that the loss is eliminated pursuant to paragraph (g)(3)(ii) of this section. For purposes of this section, the terms "limitation adjustment" and "recharacterization" mean the recharacterization of income in one limitation category as income in another limitation category.

(2) *Mechanics of computation*—(i) *Step 1: Computation of consolidated taxable income.* The members of an affiliated group must first allocate and apportion all other deductible expenses other than interest. The members must then deduct from their respective gross incomes within each limitation category interest expense apportioned under the rules of § 1.861–8(e)(2)(viii). The taxable income of the entire affiliated group within each limitation category is then totalled.

(ii) *Step 2: Loss offset adjustments.* If, after step 1, a member has losses in a given limitation category or limitation categories created through apportionment of interest expense, any such loss (*i.e.*, the portion of such loss equal to interest expense) shall be eliminated by offsetting that loss against taxable income in other limitation categories of that member to the extent of the taxable income of other members within the same limitation category as the loss. If the member has taxable income in more than one limitation category, then the loss shall offset taxable income in all such limitation categories on a pro rata basis. If there is insufficient domestic income of the member to offset the net losses in all foreign limitation categories caused by the apportionment of interest expense, the losses in each limitation category shall be recharacterized as domestic losses to the extent of the taxable income of other members in the same respective limitation categories. After

these adjustments are made, the income of the entire affiliated group within each limitation category is totalled again.

(iii) *Step 3: Determination of amount subject to recharacterization.* In order to determine the amount of income to be recharacterized in step 4, the income totals computed under step 1 shall be subtracted from the income totals computed under step 2.

(iv) *Step 4: Recharacterization.* Because any differences determined under step 3 represent deviations from the consolidated totals computed under step 1, such differences (in any limitation category) must be eliminated.

(A) *Limitation categories to be reduced.* In the case of any limitation category in which there is a positive change, the income of group members with income in that limitation category must be reduced on a pro rata basis (by reference to net income figures as determined under step 2) to the extent of such positive change ("limitation reductions"). Each member shall separately compute the sum of the limitation reductions.

(B) *Limitation categories to be increased.* In any case in which only one limitation category has a negative change in step 3, the sum of the limitation reductions within each member is added to that limitation category. In the case in which multiple limitation categories have negative changes in step 3, the sum of the limitation reductions within each member is prorated among the negative change limitation categories based on the ratio that the negative change for the entire group in each limitation category bears to the total of all negative changes for the entire group in all limitation categories.

(3) *Examples.* The following examples illustrate the principles of this paragraph.

Example (1)—(i) *Facts.* X, a domestic corporation, is the parent of domestic corporations Y and Z. X, Y, and Z were organized after January 1, 1987, constitute an affiliated group within the meaning of paragraph (d)(1) of this section, but do not file a consolidated return. The XYZ group apportions its interest expense on the basis of the fair market value of its assets. X, Y, and Z have the following assets, interest expense, and taxable income before apportioning interest expense:

	X	Y	Z	Total
Assets:				
Domestic	2,000.00	0	1,000.00	3,000.00
Foreign passive	0	50.00	50.00	100.00
Foreign general	[illegible]	700.00	200.00	900.00
Interest expense	48.00	12.00	80.00	140.00
Taxable income (pre-interest):				
Domestic	100.00	0	63.00	163.00
Foreign passive	0	5.00	5.00	10.00
Foreign general	[illegible]	60.00	35.00	95.00

(ii) *Step 1: Computation of consolidated taxable income.*

Each member of the XYZ group apportions its interest expense according to group apportionment ratios determined under the asset method described in § 1.861–8(e)(2)(viii), yielding the following results:

	X	Y	Z	Total
Apportioned interest expense:				
Domestic	36.00	9.00	60.00	105.00
Foreign passive	1.20	0.30	2.00	3.50
Foreign general	10.80	2.70	18.00	31.50
Total	48.00	12.00	80.00	140.00

The members of the group then compute taxable income within each category by deducting the apportioned interest expense from the amounts of pre-interest taxable income specified in the facts in paragraph (i), yielding the following results:

	X	Y	Z	Total
Taxable income:				
Domestic	64.00	−9.00	3.00	58.00
Foreign passive	−1.20	4.70	3.00	6.50
Foreign general	−10.80	57.30	17.00	63.50
Total	52.00	53.00	23.00	128.00

(iii) *Step 2: Loss offset adjustments.*

Because X and Y have losses created through apportionment, these losses must be eliminated by reducing taxable income of the member in other limitation categories. Because X has a total of $12 in apportionment losses and because it has only one limitation category with income (*i.e.*, domestic), domestic income must be reduced by $12, thus eliminating its apportionment losses. Because Y has a total of $9 in apportionment losses and because it has two limitation categories with income (*i.e.*, foreign passive and foreign general limitation), the income in these two limitation categories must be reduced on a pro rata basis in order to eliminate its apportionment losses. In summary, the following adjustments are required:

	X	Y	Z	Total
Loss Offset Adjustments				
Domestic	−12.00	+9.00	0	−3.00
Foreign passive	+1.20	−0.68	0	+0.52
Foreign general	+10.80	−8.32	0	+2.48

These adjustments yield the following adjusted taxable income figures:

	X	Y	Z	Total
Adjusted Taxable Income				
Domestic	52.00	[illegible]	3.00	55.00
Foreign passive	0	4.02	3.00	7.02
Foreign general	0	48.98	17.00	65.98
Total	52.00	53.00	23.00	128.00

(iv) *Step 3: Determination of amount subject to recharacterization.*

The adjustments performed under Step 2 led to a change in the group's taxable income within each limitation category. The total loss offset adjustments column shown in paragraph (iii) above shows the net deviations between Steps 1 and 2.

(v) *Step 4: Recharacterization.*

The loss offset adjustments yield a positive change in the foreign passive and the foreign general limitation categories. Y and Z both have income in these limitation categories. Accordingly, the income of Y and Z in each of these limitation categories must be reduced on a pro rata basis (by reference to the adjusted taxable income figures) to the extent of the positive change in each limitation category. The total positive change in the foreign passive limitation category is $0.52. The adjusted taxable income of Y in the foreign passive limitation category is $4.02 and the adjusted taxable income of Z in the foreign passive limitation category is $3. Therefore, $0.30 is drawn from Y and $0.22 is drawn from Z. The total positive change in the foreign general limitation category is $2.48. The adjusted taxable income of Y in the foreign general limitation category is $48.98, and the adjusted taxable income of Z in the foreign general limitation category is $17. Therefore, $1.84 is drawn from Y and $.64 is drawn from Z.

The members must then separately compute the sum of the limitation reductions. Y has limitation reductions of $0.30 in the foreign passive limitation category and $1.84 in the foreign general limitation category, yielding total limitation reduction of $2.14. Under these facts, domestic income is the only limitation category requiring a positive adjustment. Accordingly, Y's domestic income is increased by $2.14. Z has limitation reductions of $0.22 in the foreign passive limitation category and $0.64 in the foreign general limitation category, yielding total limitation reductions of $0.86. Under these facts, domestic income is the only limitation category of Z requiring a positive adjustment. Accordingly, Z's domestic income is increased by $0.86.

	X	Y	Z	Total
Recharacterization Adjustments				
Domestic	[illegible]	+2.14	+0.86	+3.00
Foreign passive	0	−0.30	−0.22	−0.52
Foreign general	0	−1.84	−0.64	−2.48

These recharacterization adjustments yield the following final taxable income figures:

	X	Y	Z	Total
Final Taxable Income				
Domestic	52.00	2.14	3.86	58.00
Foreign passive	0	3.72	2.78	6.50
Foreign general	0	47.14	16.36	63.50
Total	52.00	53.00	23.00	128.00

Example (2)—(i) *Facts.* X, a domestic corporation, is the parent of domestic corporations Y and Z. X, Y, and Z were organized after January 1, 1987, constitute an

affiliated group within the meaning of paragraph (d)(1) of this section, but do not file a consolidated return. Moreover, X has served as the sole borrower in the group and, as a result, has sustained an overall loss. The XYZ group apportions its interest expense on the basis of the fair market value of its assets. X, Y, and Z have the following assets, interest expense, and taxable income before interest expense:

	X	Y	Z	Total
Assets				
Domestic	2,000.00	[illegible]	1,000.00	3,000.00
Foreign passive	0	50.00	50.00	100.00
Foreign general	0	700.00	200.00	900.00
Interest expense	140.00	0	0	140.00
Taxable income (pre-interest)				
Domestic	100.00	0	100.00	200.00
Foreign passive	0	5.00	5.00	10.00
Foreign general	0	70.00	35.00	105.00

(ii) *Step 1: Computation of consolidated taxable income.*

Each member of the XYZ group apportions its interest expense according to group apportionment ratios determined under the asset method described in § 1.861–8(e)(2)(viii), yielding the following results:

	X	Y	Z	Total
Apportioned Interest Expense				
Domestic	105.00	[illegible]	0	105.00
Foreign passive	3.50	0	[illegible]	3.50
Foreign general	31.50	0	0	31.50
Total	140.00	0	0	140.00

The members of the group then compute taxable income within each category by deducting the apportioned interest expense from the amounts of pre-interest taxable income specified in the fact in paragraph (i), yielding the following results:

Taxable income	X	Y	Z	Total
Domestic	−5.00	0	100.00	95.00
Foreign passive	−3.50	5.00	5.00	6.50
Foreign general	−31.50	70.00	35.00	73.50
Total	−40.00	75.00	140.00	175.00

(iii) *Step 2: Loss offset adjustment.*

Because X has insufficient domestic income to offset the sum of the losses in the foreign limitation categories caused by apportionment, the amount of apportionment losses in each limitation category shall be recharacterized as domestic losses to the extent of taxable income of other members in the same limitation category. This is accomplished by adding to each foreign limitation categories an amount equal to the loss therein and by subtracting the sum of such foreign losses from domestic income, as follows:

Loss offset adjustments	X	Y	Z	Total
Domestic	−35.00	[illegible]	0	−35.00
Foreign passive	+3.50	0	0	+3.50
Foreign general	+31.50	[illegible]	0	+31.50

These adjustments yield the following adjusted taxable income figures:

Adjusted taxable income	X	Y	Z	Total
Domestic	−40.00	[illegible]	100.00	60.00
Foreign passive	[illegible]	5.00	5.00	10.00
Foreign general	0	70.00	35.00	105.00
Total	−40.00	75.00	140.00	175.00

(iv) *Step 3: Determination of amount subject to recharacterization.*

The adjustments performed under Step 2 led to a change in the group's taxable income within each limitation category. The total loss offset adjustments column shown in paragraph (iii) above shows the net deviations between Steps 1 and 2.

(v) *Step 4: Recharacterization.*

The loss offset adjustments yield a positive change in the foreign passive and the foreign general limitation categories. Y and Z both have income in these limitation categories. Accordingly, the income of Y and Z in each of these limitation categories must be reduced on a pro rata basis (by reference to the adjusted taxable income figures) to the extent of the positive change in each limitation category. The total positive change in the foreign passive limitation category is $3.50. The adjusted taxable income of Y in the foreign passive limitation category is $5, and the adjusted taxable income of Z in the foreign passive limitation category is $5. Therefore, $1.75 is drawn from Y and $1.75 is drawn from Z. The total positive change in the foreign general limitation category is $31.50. The adjusted taxable income of Y in the foreign general limitation category is $70, and the adjusted taxable income of Z in the foreign general limitation category is $35. Therefore, $21 is drawn from Y and $10.50 is drawn from Z.

The members must then separately compute the sum of the limitation reductions. Y has limitation reductions of $1.75 in the foreign passive limitation category and $21 in the foreign general limitation category, yielding total limitation reductions of $22.75. Under these facts, domestic income is the only limitation category requiring a positive adjustment. Accordingly, Y's domestic income is increased by $22.75. Z has limitation reductions of $1.75 in the foreign passive limitation category and $10.50 in the foreign general limitation category, yielding total limitation reductions of $12.25. Under these facts, domestic income is the only limitation category requiring a positive adjustment. Accordingly, Z's domestic income is increased by $12.25.

Recharacterization adjustments	X	Y	Z	Total
Domestic	0	+22.75	+12.25	+35.00
Foreign passive	[illegible]	−1.75	−1.75	−3.50
Foreign general	0	−21.00	−10.50	−31.50

These recharacterization adjustments yield the following final taxable income figures:

Final taxable income	X	Y	Z	Total
Domestic	−40.00	22.75	112.25	95.00
Foreign passive	0	3.25	3.25	6.50
Foreign general	0	49.00	24.50	73.50
Total	−40.00	75.00	140.00	175.00

§ 1.861–10 Adjustments for certain assets.

(a) *In general.* These rules are applicable to all corporate taxpayers in connection with apportionment of expenses in which an asset method is used, and supplement other rules provided in §§ 1.861–8, 1.861–9, and 1.861–11. The rules of this section apply to taxable years beginning after December 31, 1986, except as otherwise provided in § 1.861–11. Paragraph (b) of this section describes a basis adjustment for stock in nonaffiliated 10 percent owned corporations. Paragraph (c)(1) of this section sets forth rules for attributing the stock in controlled foreign corporations to the various limitation categories. Paragraph (c)(2) of this section provides rules for the treatment of certain stock in domestic corporations. Paragraph (c)(3) of this section provides rules concerning the attribution of debt owned by related controlled foreign corporations to the various limitation categories. Paragraph (c)(4) of this section describes the treatment of debt owned by related controlled foreign corporations. Paragraph (c)(5) of this section describes the treatment of stock of noncontrolled section 902 corporations. Paragraph (c)(6) of this section describes the treatment of assets that are subject to the capitalization rules of section 263A. Paragraph (d) of this section sets forth an example illustrating the rules of this section, as well as the rules of § 1.861–8(e)(2)(viii).

(b) *Basis adjustment for stock in nonaffiliated 10 percent owned corporations*—(1) *Taxpayers using the tax book value method.* For purposes of apportioning expenses on the basis of the tax book value of assets, the adjusted basis of any stock in a 10 percent owned corporation owned directly by the taxpayer shall be—

(i) Increased by the amount of the earnings and profits (as defined in paragraph (b)(5) of this section) of such corporation and of lower-tier 10 percent owned corporations) attributable to such stock and accumulated during the period the taxpayer or other members of its affiliated group held 10 percent or more of such stock, or

(ii) Reduced (but not below zero) by any deficit in earnings and profits (as defined in paragraph (b)(5) of this section) of such corporation and of lower-tier 10 percent owned

corporations) attributable to such stock for such period.

This adjustment is to be made annually and is noncumulative. Thus, the adjusted basis of the stock (determined without prior years' adjustments under this section) is to be adjusted annually by the amount of accumulated earnings and profits (or any deficit), taking any distributions into account, as provided in paragraph (b)(5)(i) of this section. In the case of stock acquired during the year, a taxpayer must approximate the portion of total earnings and profits for the year derived subsequent to the acquisition.

(2) *10 percent owned corporation defined*—(i) *In general.* The term "10 percent owned corporation" means any corporation (domestic or foreign)—

(A) Which is not included within an affiliated group as defined in § 1.861–9(d)(1), and

(B) In which the members of the affiliated group own directly or indirectly 10 percent or more of the total combined voting power of all classes of the stock entitled to vote.

(ii) *Rule of attribution.* Stock that is owned by a corporation, partnership, or trust shall be treated as being indirectly owned proportionately by its shareholders, partners, or beneficiaries.

(3) *Earnings and profits of lower-tier corporations taken into account.* For purposes of the adjustment to the basis of the stock of the 10 percent owned corporation owned by the taxpayer under paragraph (b)(1) of this section, the earnings and profits of that corporation shall include its pro rata share of the earnings and profits (or any deficit therein) of each succeeding lower-tier 10 percent owned corporation. Thus, a first-tier 10 percent owned corporation shall combine with its own earnings and profits its pro rata share of the earnings and profits of all such lower-tier corporations. The affiliated group shall then adjust its basis in the stock of the first-tier corporation by its pro rata share of the total combined earnings and profits of the first-tier and the lower-tier corporations. In the case of a 10 percent owned corporation whose tax year does not conform to that of the taxpayer, the taxpayer shall include the annual earnings and profits of such 10 percent owned corporation for the tax year ending within the tax year of the taxpayer, whether or not such 10 percent owned corporation is owned directly by the taxpayer.

(4) *Disproportionate contributions to capital.* In the event that a shareholder other than the taxpayer contributes to the capital of a corporation during the taxable year (whether or not in exchange for stock), any shareholder that does not make a proportionate contribution to corporate capital (based on contributions per share) shall increase its basis in the stock of the corporation for purposes of this section by its pro rata share of the disproportionate capital contribution.

(5) *Earnings and profits defined*—(i) *In general.* Subject to the special rules in paragraph (b)(5)(ii) of this section, the term "earnings and profits" has the meaning provided by section 312 of the Code and includes all earnings and profits accumulated since 1913 reduced by distributions made through the end of the current year.

(ii) *Special rules for foreign corporations in pre-effective date tax years.* Solely for purposes of determining the adjustment required under paragraph (b)(1) of this section, for tax years beginning after 1912 and before 1987, financial earnings (or losses) of a foreign corporation computed using United States generally accepted accounting principles may be substituted for earnings and profits in making the adjustment required by paragraph (b)(1) of this section. A taxpayer is not required to isolate the financial earnings of a foreign corporation derived or incurred during its period of 10 percent ownership or during the post-1912 taxable years, but may include all historic financial earnings for purposes of this adjustment. If the affiliated group elects to use financial earnings with respect to any foreign corporation, financial earnings must be used by that group with respect to all foreign corporations, except that earnings and profits may in any event be used for controlled foreign corporations for taxable years beginning after 1962 and before 1987. However, if the affiliated group elects to use earnings and profits with respect to any single controlled foreign corporation for the 1963 through 1986 period, such election shall apply with respect to all its controlled foreign corporations.

(6) *Translation of earnings and profits.* If the functional currency of any 10 percent owned corporation is not the U.S. dollar, the translation of post-1986 earnings and profits from such corporation's functional currency into U.S. dollars shall be performed using the exchange rate between the functional currency and the U.S. dollar on the last day of the taxpayer's taxable year. In the case of an affiliated group that files a consolidated return, the relevant exchange rate is that which is in effect at the end of the taxable year of the affiliated group that files the consolidated return.

(7) *Other basis adjustments.* In the case of a controlled foreign corporation whose functional currency is not the U.S. dollar, the adjustment for post-1986 earnings and profits requires an annual recomputation of the U.S. dollar value of accumulated earnings and profits, including those representing previously taxed income. Thus, a taxpayer shall add to its adjusted basis in the stock of the controlled foreign corporation (determined without regard to section 961) the end-of-year U.S. dollar value of its share of all earnings and profits, including the end-of-year U.S. dollar value of earnings and profits represented by income that is considered previously taxed income with respect to that taxpayer.

(8) *Taxpayers using the fair market value method.* Because the fair market value of any asset which is stock will reflect retained earnings and profits, taxpayers who use the fair market value method shall not adjust stock basis by the amount of retained earnings and profits, as otherwise required by paragraph (b)(1) of this section.

(9) *Examples.* Certain of the rules of this paragraph (b) may be illustrated by the following examples.

Example (1). X, an affiliated group that uses the tax book value method of apportionment, owns 20 percent of the stock of Y, which owns 50 percent of the stock of Z. X's basis in the Y stock is $1,000. X, Y, and Z have calendar taxable years. The undistributed earnings and profits of Y and Z at year-end attributable to X's period of ownership are $80 and $40, respectively. Because Y owns half of the Z stock, X's pro rata share of Z's earnings and profits attributable to X's Y stock is $4. X's pro rata share of Y's earnings attributable to X's Y stock is $16. For purposes of apportionment, the tax book value of the Y stock is, therefore, considered to be $1,020.

Example (2). X, an unaffiliated domestic corporation that was organized on January 1, 1987, has owned all the stock of Y, a foreign corporation with a functional currency other than the U.S. dollar, since January 1, 1987. Both X and Y have calendar taxable years. All of Y's assets generate general limitation income. X has a deductible interest expense incurred in 1987 of $160,000. X apportions its interest expense using the tax book value method. The adjusted basis of its assets that generate domestic income is $7,500,000. The adjusted basis of its assets that generate foreign source general limitation income (other than the stock of Y) is $400,000. X's adjusted basis in the Y stock is $2,000,000. Y has undistributed earnings and profits for 1987 of $100,000, translated into dollars from Y's functional currency at the exchange rate on the last day of X's taxable year. Because X is required under paragraph (b)(1) of this § 1.861–9 to increase its basis in the Y stock by the computed amount of earnings and profits, X's adjusted basis in the Y stock is

considered to be $2,100,000, and its adjusted basis of assets that generate foreign source general limitation income is, thus, considered to be $2,500,000. X would apportion its interest expense as follows:

To foreign source general limitation income:

Interest expense times adjusted basis of foreign general limitation assets divided by adjusted basis of foreign general limitation assets plus adjusted basis of domestic assets

$160,000 multiplied by $2,500,000 divided by $2,500,000 plus $7,500,000 equals $40,000

To domestic source income:

Interest expense times adjusted basis of domestic assets divided by adjusted basis of foreign general limitation assets plus adjusted basis of domestic assets

$160,000 multiplied by $7,500,000 divided by $2,500,000 plus $7,500,000 equals $120,000

(c) *Attribution of certain assets to statutory groupings*—(1) *Stock of controlled foreign corporations*—(i) *In general.* In the case of stock in a controlled foreign corporation (as defined in section 957), a taxpayer (or affiliated group) shall attribute the tax book value or fair market value (depending upon the asset apportionment method used) of such stock to the various separate limitation categories using the asset method described in paragraph (c)(1)(ii) of this section.

(ii) *Asset method.* Under the asset method, the taxpayer attributes the tax book value or fair market value of the stock of a controlled foreign corporation to the various separate limitation categories based on an analysis of the assets owned by the controlled foreign corporation during the foreign corporation's taxable year that ends during the taxpayer's taxable year. This process is based on the application of § 1.861–8(e)(2)(viii) at the level of the controlled foreign corporation. The tax book value or the fair market value of each of the assets of the controlled foreign corporation is attributed to the various separate limitation categories based on the source and type of the income that it generates, has generated, or may reasonably be expected to generate. In the case of a controlled foreign corporation that owns stock in one or more lower-tier controlled foreign corporations in which the United States taxpayer is a United States shareholder, the attribution of the tax book value or the fair market value of the stock of the first-tier controlled foreign corporation to the various separate limitation categories of the affiliated group must take into account the stock in lower-tier corporations. For this purpose, the stock of each such lower-tier corporation shall be characterized by reference to the assets owned during the lower-tier corporation's taxable year that ends during the taxpayer's taxable year. The analysis of assets within a chain of controlled foreign corporations must begin at the lowest-tier controlled foreign corporation and proceed up the chain to the first-tier controlled foreign corporation.

(2) *Certain stock in domestic corporations.* In the case of stock in any domestic corporation in which the taxpayer owns more than 50 percent but less than 80 percent of the voting stock, a taxpayer (or affiliated group) using the tax book value or fair market value method of asset apportionment shall attribute the tax book value or fair market value of such stock to the various separate limitation categories on the basis of the tax book value of the assets of that domestic corporation in each such category, as determined under § 1.861–8(e)(2)(viii)(C) (the "asset method"). In the case of tiered domestic corporations, the stock in each such lower-tier corporation in which the higher-tier corporation owns more than 50 percent but less than 80 percent of the voting stock shall be characterized by reference to the assets owned during the lower-tier corporation's taxable year that ends during the taxpayer's taxable year.

(3) *Attribution of related controlled foreign corporation debt assets to separate limitation categories.* Subject to the provisions of paragraph (c)(4) of this section, in the case of any debt held by the taxpayer in a related controlled foreign corporation, the taxpayer shall attribute that debt obligation to the various separate limitation categories according to the taxpayer's treatment of the interest income, derived from that debt obligation, after application of the look-through rule of section 904(d)(3)(C). The look-through rule of section 904(d)(3)(C) provides that any interest which is received or accrued from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as income in a separate limitation category to the extent it is properly allocable to income of the controlled foreign corporation in such category. In determining the gross income of a controlled foreign corporation attributable to its separate limitation categories, any interest expense which is paid to any United States shareholder in such corporation (or to any related controlled foreign corporation) (as defined in § 1.904–7(g)) is allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) to the extent thereof. See section 954(b)(5).

(4) *Related controlled foreign corporation debt assets*—(i) *General rule.* For purposes of apportionment, the debt of a related controlled foreign corporation (as defined in paragraph (c)(4)(v) of this section) owed to any member of the affiliated group constitutes an asset of the affiliated group only to the extent that the total debt of all related controlled foreign corporations owed to all members of the affiliated group exceeds the total debt from third-party lenders (as defined in paragraph (c)(4)(vi) of this section) of the affiliated group. Thus, if third-party debt exceeds related controlled foreign corporation debt, all related controlled foreign corporation debt shall be disregarded. Conversely, if related controlled foreign corporation debt exceeds third-party debt, only the excess of the total debt of related controlled foreign corporations over the total of third-party debt is considered as a group asset for purposes of the apportionment of interest expense.

(ii) *Mechanics of computation.* In the case of an affiliated group in which the total of related controlled foreign corporation debt assets exceeds the affiliated group's total third-party debt, each member of the affiliated group that owns such debt assets shall compute the extent to which such assets are considered for purposes of apportionment by multiplying either the tax book value or fair market value (depending on the choice of apportionment methods) of its total related controlled foreign corporation debt assets by a fraction, the numerator of which is the excess of the group total of related controlled foreign corporation debt assets over the group total indebtedness to third parties, and the denominator of which is the group total of related controlled foreign corporation debt assets.

(iii) *Example.* The rules of this paragraph (c)(4) and may be illustrated by the following example.

Example—(A) *Facts.* XYZ is an affiliated group of corporations which uses the tax book value method of apportionment. XYZ owns related controlled foreign corporations A, B, and C. A owes X a debt in the principal amount of $50. B owes Y a debt in the principal amount of $40. C owes Z a debt in the principal amount of $10. These debts constitute related controlled foreign corporation debts and have a tax book value equalling their principal amounts. The XYZ group owes a total of $50 to third parties.

(B) *Computation.* Because XYZ's related controlled foreign corporation debt assets exceed its indebtedness to third parties, a portion of those assets will constitute assets for purposes of apportionment. The tax book

value of each such debt asset must be multiplied by the following fraction:

$$\frac{100-50}{100}$$

Accordingly, for purposes of apportioning any interest expense remaining after the application of paragraph (c)(4)(iv) of this section, the tax basis of the related controlled foreign corporation debt assets is as follows:

A–X debt	$25 (½ of 50)
B–Y debt	20 (½ of 40)
C–Z debt	5 (½ of 10)

(iv) *Treatment of interest expense on third-party indebtedness.* In the case of any affiliated group in which related controlled foreign corporation debt assets are disregarded for purposes of apportionment under paragraph (c)(4) (i) and (ii) of this section, an annual amount of affiliated group third party interest expense equal to the amount of interest income paid or accrued with respect to the disregarded related party debt shall be allocated solely to such interest income.

(v) *Related controlled foreign corporation defined.* For purposes of this section, the term "related controlled foreign corporation" means any controlled foreign corporation which is a related party under section 267(b). Such a controlled foreign corporation is considered related to all the members of the affiliated group, notwithstanding the absence of direct stock ownership.

(vi) *Third-party lender defined.* For purposes of this section, the term "third-party lender" means any creditor of any member of the affiliated group which is itself neither a member of the affiliated group nor a related controlled foreign corporation (as defined in paragraph (c)(4)(v)).

(vii) *Examples.* The rules of this paragraph (c)(4) may be illustrated by the following examples.

Example (1). The facts are the same as in the example in paragraph (c)(4)(iii) of this section, except that XYZ has related controlled foreign corporation debt in the amount of $1,000 and third-party debt of $500. Assume that the interest rate on all related controlled foreign corporation loans is 10 percent per annum generating of $100 of related controlled foreign corporation interest income to the XYZ group. Also assume that the third-party debt owed by the XYZ group bears an interest rate of 11 percent per annum resulting in $55 of interest expense incurred by the XYZ group. One-half of the related controlled foreign corporation debt assets of the XYZ group ($500) is disregarded for purposes of asset apportionment. Therefore, an amount of the third-party interest expense of the XYZ group must be directly allocated to the related controlled foreign corporation interest income. The amount of the directly allocable interest expense is equal to a pro rata amount of the interest income derived from the disregarded controlled foreign corporation debt. In this example, one-half ($500) of the related controlled foreign corporation debt is disregarded for interest allocation purposes. Therefore, third-party interest expense of $50 must be directly allocated to the $50 of interest income earned from the disregarded portion of the controlled foreign corporation debt. See sections 904(d)(3)(C) and 954(b)(5) for pertinent sourcing and characterization rules. The remaining $5 of third-party interest expense is subject to apportionment.

Example (2). The facts are the same as in the example in paragraph (c)(4)(iii), except that XYZ's third-party indebtedness is $1,000 and its related controlled foreign corporation debt equals $500. Also assume that the interest rate on the third-party debt is 11 percent per annum and the interest rate on the related controlled foreign corporation loans is 10 percent per annum. Because all of XYZ's related controlled foreign corporation debt assets are disregarded under paragraph (c)(4) of this section, an amount of XYZ's third-party interest expense equal to all its income generated by the related controlled foreign corporation debt ($50) is allocated to the category of income generated by that debt. See sections 904(d)(3)(C) and 954(b)(5) for pertinent sourcing and characterization rules.

(5) *Stock of noncontrolled section 902 corporations.* Because each noncontrolled section 902 corporation constitutes a separate limitation category, the value of such stock, increased to the extent required under paragraph (b) of this section, is attributable solely to each such category.

(6) *Section 263A assets*—(i) *Rule.* In the case of any asset in connection with which interest expense is capitalized under section 263A, the adjusted basis or fair market value (depending on the taxpayer's choice of apportionment methods) of such an asset shall be reduced during the period of capitalization by that portion of the principal amount of the taxpayer's total indebtedness the interest on which is so capitalized. After the conclusion of the production period, no reduction is required or allowed.

(ii) *Example.* The rules of this paragraph (c)(6) may be illustrated by the following example.

Example. X is a domestic corporation which uses the tax book value method of apportionment. X has $1000 of indebtedness and $100 of interest expense. X builds an asset with an adjusted basis of $800 before interest capitalization and is required under the rules of section 263A to capitalize $40 in interest expense. Because interest on $800 of debt is capitalized, $800 of the principal amount of X's debt is allocable to the building, thereby reducing its adjusted basis for purposes of apportionment. The balance of X's interest expense ($60) is allocated and apportioned under the rules of this section.

(d) *Example.* Certain of the rules of this section and of § 1.861–8(e)(2)(viii) are illustrated by the following example.

(1) *Facts.* X, a domestic corporation organized on January 1, 1987, has a calendar year taxable year and apportions its interest expense on the basis of the fair market value of its assets. In 1987, X incurred a deductible third-party interest expense of $100,000 on a principal amount of indebtedness in the amount of $1 million. X manufactures widgets. One-half of the widgets are sold in the United States and one-half are exported and sold through a foreign branch with title passing outside the United States.

X owns all the stock of Y, a controlled foreign corporation that also has a calendar year taxable year and is also engaged in the manufacture and sale of widgets. For 1987, Y has taxable income of $50,000 before the deduction for related party interest expense. Half of the $50,000 is foreign source personal holding company income and the other half is derived from widget sales and constitutes foreign source general limitation income. Y's foreign personal holding company taxable income is included in X's gross income under section 951. Y paid no dividends in 1987. Y borrowed $100,000 from X and paid X $10,000 in interest on the loan.

In addition to its stock in Y, X owns 20 percent of the stock of Z, a noncontrolled section 902 corporation.

X's total assets and their fair market values are:

Asset	Fair market value
Plant and equipment	$1,000,000
Corporate headquarters	500,000
Inventory	200,000
Automobiles	20,000
Goodwill	10,000
Patents	50,000
Trademarks	10,000
Y stock	90,000
Y note	100,000
Z stock	30,000

Y's total assets and their fair market values are:

Asset category	Fair market value
Foreign general limitation	$250,000
Foreign passive	250,000

(2) *Categorization of Assets*

Single Category Assets

1. Automobiles: X's automobiles are used exclusively by its domestic sales force in the generation of United States source income. Thus, these assets are attributable solely to the grouping of domestic income.

2. Y Note: Under 1.861–10(c)(4), related controlled foreign corporation notes or

receivables are subject to special limitations in the application of the asset method. Related controlled foreign corporation debt is only considered in apportionment to the extent that the total of such assets held by a taxpayer exceed the taxpayer's indebtedness to third parties. To the extent that these assets are disregarded in apportionment, an amount of the taxpayer's interest expense on third-party indebtedness equal to the interest income on the notes that are disregarded is allocated to the income generated by those notes. X has third-party debt in the principal amount of $1 million. The Y note is an asset with the principal amount of $100,000. Accordingly, the Y note is not considered in apportionment. Moreover, since the Y note is disregarded, X must allocate $10,000 of its third-party interest expense to the $10,000 of interest income earned on the Y note. Thus, only $90,000 of X's third-party interest expense is subject to allocation and apportionment under the rules of this section.

In determining the source and character of the interest income on the Y note to which X must allocate a portion of its third-party interest expense, the rules of sections 904(d)(3) and 904(g) apply. See paragraph (c)(3) of this section. Under the look-through rule of section 904(d)(3)(C), Y's $10,000 interest payment to X is allocated directly to, and thus reduces, Y's foreign personal holding company income of $25,000, yielding foreign personal holding company taxable income of $15,000.

3. Z stock: Because Z is a noncontrolled section 902 corporation, the dividends paid by Z are subject to a separate limitation under section 904(d). Thus, this asset is attributable solely to the statutory grouping consisting of Z dividends.

Multiple Category Assets

1. Plant & equipment, inventory, patents, and trademarks: In 1987, X sold half its widgets in the United States and exported half outside the United States. A portion of the taxable income from export sales will be foreign source income, since the export sales were accomplished through a foreign branch and title passed outside the United States. Thus, these assets are attributable both to the statutory grouping of foreign general limitation and the grouping of domestic income.

2. Y Stock: The Y stock must be attributed to the statutory groupings based on the analysis of Y's assets under the rules of this section.

Assets Without Identifiable Yield

1. Corporate headquarters and goodwill: These assets generate no identifiable income yield. The value of each such asset is disregarded.

(3) *Analysis of Income Yield for Multiple Category Assets.*

1. Plant & equipment, inventory, patents, and trademarks: As noted above, X's 1987 widget sales were half domestic and half foreign. Assume that Example 2 of § 1.863–2(b)(2) applies in sourcing the export income from the export sales. Under Example 2, the income generated by the export sales is sourced half domestic and half foreign. The income generated by the domestic sales is entirely domestic source. Accordingly, three-quarters of the income generated on all sales is domestic source and one-quarter of the income is foreign source. Thus, three-quarters of the fair market value of these assets are attributed to the grouping of domestic source income and one-quarter of the fair market value of these assets is attributed to the statutory grouping of foreign source general limitation income.

2. Y Stock: During 1987, Y owned assets with a fair market value of $150,000 that generated foreign source passive income (determined after the application of the section 954(b)(5) netting rule, described in § 1.904–7(c)(2)(ii)) and assets with a fair market value of $250,000 that generated foreign source general limitation income. Thus, 62.5 percent of the fair market value of the Y stock is attributed to the statutory grouping of foreign source general limitation income, and 37.5 percent of the fair market value of the Y stock is attributed to the statutory grouping of foreign source passive income.

(4) *Totals.*

Having allocated $10,000 of its interest expense to foreign source passive income in connection with the Y note, X would apportion the $90,000 balance of its interest according to the following apportionment fractions:

Asset	Domestic source	Foreign general	Foreign passive	Noncontrolled section 902
Plant & equipment	$750,000	$250,000		
Inventory	150,000	50,000		
Automobiles	20,000			
Patents	37,500	12,500		
Trademarks	7,500	2,500		
Y stock		56,250	$33,750	
Y note				
Z stock				$30,000
Totals	965,000	371,250	33,750	30,000
Percentage	58.9%	26.5%	2.5%	2.1%

§ 1.861–11 Transition rules for interest expenses.

(a) *General rule.* This section contains transitional rules that limit the application of the rules for allocating and apportioning interest expense of corporate taxpayers contained in §§ 1.861–8, 1.861–9, and 1.861–10 of the regulations, which are applicable in allocating and apportioning the interest expense of corporate taxpayers generally for taxable years beginning after 1986. To the extent that the rules of §§ 1.861–8, 1.861–9, and 1.861–10 do not apply pursuant to these transitional rules, interest expense shall be allocated and apportioned under the rules of § 1.861–8 as in effect for taxable years beginning before 1987. See 26 CFR 1.861–8 (Revised as of April 1, 1986).

(b) *General phase-in*—(1) *In general.* In the case of each of the first three taxable years of the taxpayer beginning after December 31, 1986, the rules of §§ 1.861–8, 1.861–9, and 1.861–10 shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the general phase-in amount, as defined in paragraph (b)(2) of this section.

(2) *General phase-in amount defined.* Subject to the limitation imposed by paragraph (b)(3) of this section, the general phase-in amount means the amount which is the applicable percentage (determined under the following table) of the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985:

Taxable year beginning after Dec. 31, 1986	Percentage
First	75
Second	50
Third	25

(3) *Reductions in indebtedness.* The general phase-in amount shall in no event exceed the lowest amount of indebtedness of the taxpayer outstanding as of the close of any month beginning after November 16, 1985.

(c) *Nonapplication of the consolidation rule*—(1) *General rule.* In

the case of each of the first five taxable years of the taxpayer beginning after December 31, 1986, the consolidation rule (contained in § 1.861–9) shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the special phase-in amount, as defined in paragraph (c)(2) of this section.

(2) *Special phase-in amount.* The special phase-in amount is the sum of—

(i) The general phase-in amount,

(ii) The five-year phase-in amount, and

(iii) The four-year phase-in amount.

(3) *Five-year phase-in amount.* The five-year phase-in amount is the lesser of—

(i) The applicable percentage (the "unreduced percentage" in the following table) of the five-year debt amount, or

(ii) The applicable percentage (the "reduced percentage" in the following table) of the five-year debt amount reduced by paydowns:

Transition year	Unreduced percentage	Reduced percentage
Year 1	8⅓	10
Year 2	16⅔	25
Year 3	25	50
Year 4	33⅓	100
Year 5	16⅔	100

(4) *Four-year phase-in amount.* The four-year phase-in amount is the lesser of—

(i) The applicable percentage (the "unreduced percentage" in the following table) of the four-year debt amount, or

(ii) The applicable percentage (the "reduced percentage" in the following table) of the four-year debt amount reduced by paydowns (if any) to the extent that such paydowns exceed the five-year debt amount:

Transition year	Unreduced percentage	Reduced percentage
Year 1	5	6¼
Year 2	10	16⅔
Year 3	15	37½
Year 4	20	100

(5) *Five-year debt amount.* The "five-year debt amount" means the excess (if any) of—

(i) The amount of the outstanding indebtedness of the taxpayer on May 29, 1985, over

(ii) The amount of the outstanding indebtedness of the taxpayer on December 31, 1983.

The five-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985.

(6) *Four-year debt amount.* The "four-year debt amount" means the excess (if any) of—

(i) The amount of the outstanding indebtedness of the taxpayer on December 31, 1983, over

(ii) The amount of the outstanding indebtedness of the taxpayer on December 31, 1982.

The four-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, reduced by the five-year debt amount.

(7) *Paydowns.* The term "paydowns" means the excess (if any) of—

(i) The aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, over

(ii) The lowest amount of indebtedness of the taxpayer outstanding as of the end of the current taxable year or the close of any preceding month beginning after November 1985.

Paydowns are first applied to the five-year debt amount to the extent thereof and then to the four-year debt amount for purposes of computing the five-year and the four-year phase-in amounts.

(d) *Treatment of affiliated group.* For purposes of this section, all members of the same affiliated group of corporations (as defined in paragraph (d) of § 1.861–9) shall be treated as one taxpayer whether or not such members filed a consolidated return. Related party debt is not taken into account in computing transition relief. Moreover, the paydown of related party debt is not taken into account in determining the amount of paydowns.

(e) *Mechanics of computation*—(1) *Step 1: Determination of the amounts within the various categories of debt.* Each separate member must determine each of its following amounts:

(i) *November 16, 1985 amount.* The amount of its debt outstanding on November 16, 1985 (after the elimination of intercompany indebtedness),

(ii) *Unreduced five-year debt.* The amount of any increase or any decrease in the amount of its indebtedness on May 29, 1985 (after elimination of intercompany indebtedness) over the amount of its indebtedness on December 31, 1983 (after elimination of intercompany indebtedness),

(iii) *Unreduced four-year debt.* The amount of any increase or any decrease in the amount of its indebtedness on December 31, 1982 (after elimination of intercompany indebtedness), and

(iv) *Year-end debt.* The amount of its year-end debt for the relevant tax year (after elimination of intercompany indebtedness).

(2) *Step 2: Aggregation of the separate company amounts.* Each of the four amounts for the separate companies identified in Step 1 must be separately aggregated in order to compute consolidated transition relief.

(3) *Step 3: Calculation of lowest group debt level for any month beginning after November 1985.* In order to calculate the lowest debt level for any month beginning after November 1985—

(i) Determine the debt level for each company at the end of each month beginning after November 1985,

(ii) Aggregate the month-end debt levels of all companies to determine the group month-end debt level for each month beginning after November 1985, and

(iii) Determine which of the group month-end debt levels is the lowest.

(4) *Step 4: Computation of paydowns.* Paydowns equal the amount by which the aggregate November 16, 1985, amount exceeds the lowest group month-end debt.

(5) *Step 5: Computation of limitations on aggregate unreduced five-year debt and aggregate unreduced four-year debt.*

(i) The aggregate unreduced five-year debt cannot exceed the aggregate November 16, 1985 amount.

(ii) The aggregate unreduced four-year debt cannot exceed the aggregate November 16, 1985 amount less the aggregate unreduced five-year debt.

(6) *Step 6: Computation of reduced five-year and reduced four-year debt*—

(i) *Reduced five-year debt.* Compute the amount of reduced five-year debt by subtracting from the aggregate unreduced five-year debt (see Step 5) the amount of paydowns (see Step 4).

(ii) *Reduced four-year debt.* To the extent that the amount of paydowns (see Step 4) exceeds the amount of aggregate unreduced five-year debt (see Step 5), compute the amount of reduced four-year debt by subtracting such excess from the unreduced four-year debt (see Step 1).

(iii) To the extent that paydowns do not offset either the aggregate unreduced five-year amount or the aggregate unreduced four-year amount, the reduced and the unreduced amounts are the same.

(iv) All subsequent references to any amount refer to the aggregate amount for all members of the same affiliated group of corporations, unless otherwise specified.

(7) *Step 7: Computation of the general phase-in amount.* The general phase-in amount is the lesser of—

(i) The percentage of the November 16, 1985, amount designated for the relevant transition year in the table below, or

(ii) The lowest group month-end debt level (see Step 3).

GENERAL PHASE-IN TABLE

Transition year	Percentage
Year 1	75
Year 2	50
Year 3	25

(8) *Step 8: Computation of five-year phase-in amount.* The five-year phase-in amount is the lesser of—

(i) The percentage of the unreduced five-year debt designated for the relevant transition year in the table below, or

(ii) The percentage of the reduced five-year debt designated for the relevant transition year in the table below.

FIVE-YEAR PHASE-IN TABLE

Transition year	Unreduced percentage	Reduced percentage
Year 1	8⅓	10
Year 2	16⅔	25
Year 3	25	55
Year 4	33⅓	100
Year 5	16⅔	100

(9) *Step 9: Computation of Four-year Phase-in Amount.* The four-year phase-in amount is the lesser of—

(i) The percentage of the unreduced four-year debt designated for the relevant transition year in the table below, or

(ii) The percentage of the reduced four-year debt designated for the relevant transition year in the table below.

FOUR-YEAR PHASE-IN TABLE

Transition year	Unreduced percentage	Reduced percentage
Year 1	5	6¼
Year 2	10	16⅔
Year 3	15	37½
Year 4	20	100

(10) *Step 10: Determination of group debt ratio and application of transition relief to separate company interest expense.* (i) The general phase-in amount consists of the amount computed under Step 7. Interest expense on this amount is computed under pre-1987 rules of allocation and apportionment.

(ii) The post-1986 separate company amount consists of the sum of the amounts determined under Steps 8 and 9. Interest expense on this amount is computed under post-1986 rules of allocation and apportionment as applied on a separate company basis.

(iii) The post-1986 one-taxpayer amount consists of the aggregate year-end debt (see Step 1) less the sum of the amounts computed under Steps 7, 8, and 9. Interest expense on this amount is computed under post-1986 rules as applied on a consolidated basis.

(iv) To determine the extent to which the interest expense of each separate company is subject to any of these sets of apportionment rules, each company shall prorate its own interest expense by reference to the ratio which each of the foregoing categories bears to the total of all three categories.

(f) *Example.* XYZ form an affiliated group.

(1) *Step 1:* Determination of the amounts within the various debt categories.

	Historic 3rd party debt		Increase
Company X			
Nov. 16, 1985	$100,000		
May 29, 1985	90,000	5-year	$10,000
Dec. 31, 1983	80,000	4-year	10,000
Dec. 31, 1982	70,000		
Current debt level	100,000		
Current interest expense.	10,000		
Company Y			
Nov. 16, 1985	$200,000		
May 29, 1985	170,000	5-year	$120,000
Dec. 31, 1983	50,000	4-year	10,000
Dec. 31, 1982	40,000		
Current debt level	250,000		
Current interest expense.	30,000		
Company Z			
Nov. 16, 1985	$300,000		
May 29, 1985	300,000	5-year	$50,000
Dec. 31, 1983	250,000	4-year	100,000
Dec. 31, 1982	150,000		
Current debt level	350,000		
Current interest expense.	30,000		

(2) *Step 2:* Aggregation of the separate company amounts.

Aggregate November 16, 1985 ..... $600,000
Aggregate 5-year debt 180,000
Aggregate 4-year debt 120,000
Aggregate Current Debt Level 700,000

(3) *Step 3:* Calculation of lowest group debt level for any month beginning after November 1985.

An analysis of the group month-end debt levels since November 1985 indicates that in March 1986, XYZ's group month-end debt level fell to $500,000, which represents the lowest sum for all months under consideration.

(4) *Step 4:* Computation of paydowns.

The aggregate November 16, 1985 amount ($600,000), less the lowest group month-end debt level ($500,000), yields a total paydown in the amount of $100,000.

(5) *Step 5:* Computation of limitations on aggregate unreduced five-year debt and aggregate unreduced four-year debt.

Aggregate November 16, 1985 amount $600,000
Aggregate unreduced 5-year debt 180,000
Aggregate unreduced 4-year debt 120,000

Because the November 16, 1985 amount exceeds the unreduced 4- and 5-year debt, the full amount of the 4- and 5-year debt qualify for transition relief. In cases where the November 16, 1985 amount is less than the 4- or 5-year debt, the 4- and 5-year debt amounts are limited to the November 16, 1985 amount. See the limitations on the 4-year and 5-year debt amounts in paragraphs (c)(6) and (c)(5), respectively, of this section.

(6) *Step 6:* Computation of reduced five-year and four-year debt.

The paydowns computed under Step 4 are deemed to first offset the aggregate unreduced five-year debt. Accordingly, the reduced amount of five-year debt is $80,000. Since the paydowns are less than the aggregate unreduced five-year debt, there is no paydown in connection with aggregate unreduced four-year debt. Accordingly, the unreduced four-year debt and the reduced four-year debt are both considered to be $120,000.

(7) *Step 7:* Computation of the general phase-in amount.

In transition year 1, the general transition amount is the lesser of:

(i) 75 percent of the aggregate November 16, 1985 amount (75% of $600,000 = $450,000); or

(ii) The lowest monthly debt level since November 16, 1985 ($500,000).

Therefore, the general transition amount is $450,000.

(8) *Step 8:* Computation of the five-year phase-in amount.

In transition year 1, the five-year phase-in amount is the lesser of:

(i) 8⅓ percent of the unreduced five-year amount (8⅓% of $180,000 = $15,000); or

(ii) 10 percent of the reduced five-year amount (10% of $80,000 = $8,000).

Therefore, the five-year phase-in amount is $8,000.

(9) *Step 9:* Computation of the four-year phase-in amount.

In transition year 1, the four-year phase-in amount is the lesser of:

(i) 5 percent of the unreduced four-year amount (5% of $120,000 = $6,000); or

(ii) 6¼ percent of the reduced four-year amount (6¼% of $120,000 = $7,500).

Therefore, the four-year phase-in amount is $6,000.

(10) *Step 10:* Determination of group debt ratio and application of relief to separate company interest expense.

(i) As determined under Step 7, interest expense on a total of $450,000 of the XYZ debt in the first transition year is computed under pre-1987 rules of allocation and apportionment.

(ii) The sum of Steps 8 ($8,000) and 9 ($6,000) is $14,000. Interest expense on a total of $14,000 of XYZ debt is computed under post-1986 rules of allocation and apportionment as applied on a separate company basis.

(iii) The balance of XYZ's aggregate current debt level ($700,000) less the sum of Step 7, 8, and 9 ($464,000) is $236,000. Interest expense on a total of $236,000 of XYZ debt is computed under post-1986 rules of allocation and apportionment as applied on a consolidated basis. X, Y, and Z, respectively, have current interest expense of $10,000, $30,000, and $30,000. Thus, 64.3 percent (450,000/700,000) of the interest expense of each separate company is subject to pre-1987 rules. Two percent (14,000/700,000) of the interest expense of each separate company is subject to post-1986 rules applied on a separate company basis. Finally, 33.7 percent (236,000/700,000) of the interest expense of each separate company is subject to post-1986 rules applied on a consolidated basis.

(g) *Corporate transfers*—(1) *Effect on transferee.* If a domestic corporation or an affiliated group acquires a domestic corporation that is not a member of the transferee's affiliated group before the acquisition and that had indebtedness outstanding on November 16, 1985, the November 16, 1985 amount and the unreduced five-year and four-year amounts of the acquired member shall be taken into account for purposes of computing transition relief of the transferee group for the taxable year of the acquisition and subsequent taxable years. These amounts shall be aggregated with the respective amounts of the transferee group for such years. In addition, the lowest group debt level of the transferee group for such years shall equal the lower of

(i) The sum of the acquired member's debt level for the month-end taken into account in computing the transferor group's lowest debt level for the preceding taxable year and the transferee group's lowest debt level taken into account in the preceding taxable year; or

(ii) The lowest end-of-month debt level for the transferee group for the taxable year of the acquisition and subsequent taxable years determined on an aggregate basis under paragraph (e)(3) of this section.

In addition, any paydowns of members of the transferor group other than the acquired member during taxable years prior to the year of acquisition that were deemed to reduce debt of the acquired member under the rules of paragraph (g)(4) of this section must be added to paydowns of the transferee group that are otherwise computed. If an election under section 338 is effective for the acquired member, no indebtedness of the acquired member shall qualify for transitional relief for the year of acquisition and subsequent taxable years.

(2) *Effect on transferor.* In the case of an acquisition of a member of an affiliated group by a nonmember of the group, the transition attributes of the acquired member, other than paydowns of the acquired member during prior taxable years that are considered to reduce the debt of other members under the rules of paragraph (g)(4) of this section, will not be further considered in computing the transition relief of the transferor group for the taxable year during which the acquisition occurs and subsequent taxable years. Thus, the November 16, 1985 amount, the unreduced five-year and four-year debt amounts, and the end-of-month debt levels of the transferor group shall be computed without regard to the acquired member's respective amounts for purposes of computing transition relief of the transferor group for such years. In addition, the lowest group debt level of the transferor group for such years shall equal the lower of:

(i) The lowest debt level of the members of the transferor group (net of the debt of the acquired member at the end of the relevant month) that was taken into account in the preceding taxable year; or

(ii) The lowest end-of-month debt level for the transferor group for the taxable year of the acquisition and subsequent taxable years determined under paragraph (e)(3) of this section without regard to the acquired member.

(3) *Assumptions of indebtedness.* In the event that the indebtedness of the acquired member is assumed by any person, transition relief is available only if the person assuming the indebtedness is the successor in interest as determined for purposes of section 381.

(4) *Rules for attributing paydowns among separate companies*—(i) *General rule.* Under paragraph (c)(7) of this section, paydowns are deemed to reduce first the five-year phase-in amount, then the four-year phase-in amount, and then the general phase-in amount. Thus, a reduction in indebtedness of the group caused by a reduction in the debt of a group member that has no five-year debt will nevertheless be deemed under this ordering rule to reduce the indebtedness of those group members that do have five-year debt. In order to preserve the effect of paydowns caused by a reduction in the debt of a group member prior to a corporate transfer that is deemed to reduce debt of another member, each member must determine on a separate company basis at the time of any transfer the impact of paydowns on the various categories of indebtedness.

(ii) *Mechanics of computation.* Separate company accounts of paydowns are determined by prorating any paydown among all group members with five-year debt to the extent thereof on the basis of the relative amounts of five-year debt. Paydowns in excess of five-year debt are prorated on a similar basis among all group members with four-year debt to the extent thereof on the basis of the relative amounts of four-year debt. Paydowns in excess of four-year and five-year debt are prorated among all group members with general phase-in debt to the extent thereof on the basis of the relative amounts of general phase-in debt.

(5) *Example (1): Computing separate company accounts of reductions*—(i) *Facts.* XYZ constitutes an affiliated group of corporations that has a calendar taxable year and the following transition attributes:

	Historic third party debt		Increase
Company X			
Nov. 16, 1985	$100,000		
May 29, 1985	80,000	5-year	$0
Dec. 31, 1983	80,000	4-year	10,000
Dec. 31, 1982	70,000		
July 1986 debt level	100,000	xl	
Company Y			
Nov. 16, 1985	$200,000		
May 29, 1985	170,000	5-year	$120,000
Dec. 31, 1983	50,000	4-year	10,000
Dec. 31, 1982	40,000		
July 1986 debt level	250,000		
Company Z			
Nov. 16, 1985	$300,000		
May 29, 1985	290,000	5-year	$40,000
Dec. 31, 1983	250,000	4-year	100,000
Dec. 31, 1982	150,000		
July 1986 debt level	150,000		

In July 1986, Z repaid an outstanding loan in the principal amount of $150,000. The aggregate amount of indebtedness of the XYZ group at the end July 1986 is the lowest amount of end-of-month indebtedness for the period from November 16, 1985 to December 31, 1986. Because the November 16, 1985 amount is $600,000 and because the lowest monthly level of indebtedness of the XYZ group is $500,000, the XYZ group has a paydown in the amount of $100,000. This paydown partially offsets the $160,000 of five-year debt in the XYZ group.

(ii) *Analysis.* Applying the rule of paragraph (g)(4) of this section, separate company accounts of paydowns are computed by prorating the $100,000 paydown among those members of the group that have five-year debt. Accordingly, the paydown is prorated between Y and Z as follows:

To Y:

$$\$100,000 \times \frac{\$120,000}{\$160,000} = \$75,000$$

To Z:

$$\$100,000 \times \frac{\$40,000}{\$160,000} = \$25,000$$

Example (2): Corporate acquisitions—(i) *Facts.* The facts are the same as in example (1). On July 15, 1987, the XYZ group sells all the stock of Y to A. The lowest post-November 1985 end-of-month debt level of the XZ group for its 1987 taxable year is computed without regard to Y and remains the July 1986 amount as computed for X and Z. AY constitutes an affiliated group of corporations after the acquisition. There was no paydown of A's transitional debt as of the date of acquisition. During September 1987, however, A repaid $100,000 of November 16, 1985 debt. Y repaid no November 16, 1985 indebtedness during 1987.

(ii) *Transferee group.* The following analysis applies in determining transitional relief for purposes of apportioning the interest expense of the transferee group for 1987. The AY group has the following transition attributes for 1987:

	Historic third party debt		Increase
Company A			
Nov. 16, 1985	$100,000		
May 29, 1985	250,000	5-year	$5,000
Dec. 31, 1983	245,000	4-year	10,000
Dec. 31, 1982	235,000		
Sept. 1987 debt level	0		
Company Y			
Nov. 16, 1985	$200,000		
May 29, 1985	170,000	5-year	$120,000
Dec. 31, 1983	50,000	4-year	10,000
Dec. 31, 1982	40,000		
Sept. 1987 debt level	250,000		
Pre-acquisition year paydown by another member of the transferor group that reduced Y's debt.	75,000		

The lowest debt level of the AY group for 1987 equals the lower of:

(A) The sum of the lowest debt levels of Y ($250,000) and A ($100,000) that were taken into account in 1986; or

(B) The lowest end-of-month debt level of the AY group for 1987 determined on an aggregate basis under paragraph (e)(3) of this section (the September 1987 debt level of $250,000).

Because the November 16, 1985 amount is $300,000 and because the lowest monthly level of indebtedness of the AY group is $250,000, the AY group has a paydown in the amount of $50,000. In addition, the paydown by Z in 1986 that was deemed to reduce Y debt is added to the paydown computed above, yielding a total paydown of $125,000. This amount is prorated between members that have five-year debt, eliminating the five-year debt of the group.

(iii) *Transferor group.* The following analysis applies in determining transitional relief for purposes of apportioning the interest expense of the transferor group for 1987. The XZ group has the transition attributes stated below for 1987. The July 31, 1987 debt level is the lowest aggregate end-of-month level for the XZ group as computed under paragraph (g)(2).

	Historic 3rd party debt		Increase
Company X			
Nov. 16, 1985	$100,000		
May 29, 1985	80,000	5-year	$0
Dec. 31, 1983	80,000	4-year	10,000
Dec. 31, 1982	70,000		
July 1987 debt level	100,000		
Pre-acquisition paydown by Y that reduced X's debt.	0		
Company Z			
Nov. 16, 1985	$300,000		
May 29, 1985	290,000	5-year	$40,000
Dec. 31, 1983	250,000	4-year	100,000
Dec. 31, 1982	150,000		
July 1987 debt level	150,000		
Pre-acquisition paydown by Y that reduced Z's debt.	0		

Because the revised November 16, 1985 amount of the XZ group is $400,000 and because the lowest monthly level of indebtedness of the XZ group is $250,000, the XZ group has a paydown in the amount of $150,000. This paydown offsets the total five- and four-year debt of the XZ group.

Par. 4. Section 1.863–3(b)(2), Example (2), subdivisions (i) and (ii) are revised as to read as follows:

§ 1.863–3 Income from the sale of personal property derived partly from within and partly from without the United States.

* * * * * *

(b) *Income partly from sources within a foreign country.*

* * * * * *

(2) *Allocation or apportionment.*

* * * * * *

Example (2). (i) Where an independent factory or production price has not been established as provided under example (1), the gross income derived from the sale of personal property produced (in whole or in part) by the taxpayer within the United States and sold within a foreign country or produced (in whole or in part) by the taxpayer within a foreign country and sold within the United States shall be computed.

(ii) Of this gross amount, one-half shall be apportioned in accordance with the value of the taxpayer's property within the United States and within the foreign country, the portion attributable to sources within the United States being determined by multiplying such one-half by a fraction, the numerator of which consists of the value of the taxpayer's property within the United States and the denominator of which consists of the value of the taxpayer's property both within the United States and within the foreign country. The remaining one-half of such gross income shall be apportioned in accordance with the gross sales of the taxpayer within the United States and within the foreign country, the portion attributable to sources within the United States being determined by multiplying such one-half by a fraction the numerator of which consists of the taxpayer's gross sales for the taxable year or period within the United States, and the denominator of which consists of the taxpayer's gross sales for the taxable year or period both within the United States and within the foreign country.

* * * * *

James I. Owens,

Acting Commissioner of Internal Revenue.

[FR Doc. 87–20778 Filed 9–8–87; 12:13 pm]

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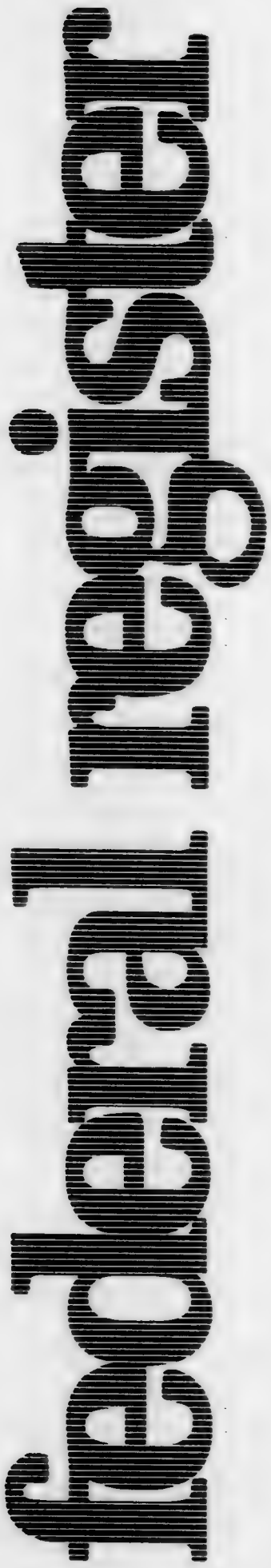

Friday
September 11, 1987

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of an Airport Radar Service Area at Sarasota, FL; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-25]

Proposed Establishment of an Airport Radar Service Area at Sarasota, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish an Airport Radar Service Area (ARSA) at Sarasota-Bradenton Airport, FL. This location is a public airport with an operating control tower served by a Level V Radar Approach Control. Establishment of this ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at this location would promote the efficient control of air traffic and reduce the risk of midair collision in the terminal area.

DATES: Comments must be received on or before December 11, 1987. An informal airspace meeting is scheduled for November 10, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 87-AWA-25, 800 Independence Avenue SW., Washington, DC 20591.

The informal airspace meeting place is as follows:

Sarasota-Bradenton Airport, FL, ARSA
Time: 7:30 p.m.
Location: Airport Administration Building, McElmurray Auditorium, General Spaatz Boulevard, Sarasota Airport.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert L. Laser, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No 87-AWA-25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold an informal airspace meeting for the proposed ARSA location in order to receive additional input with respect to the proposal. The date, time, and place for this meeting is listed above. Persons who plan to attend the meeting should be aware of the following procedures to be followed:

(a) The meeting will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) There will be no admission fee or other charge to attend and participate. The meeting will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of the meeting is more expeditious than planned.

(c) The meeting will not be recorded. A summary of the comments made at this meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meeting should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1-2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83-9 (July 20, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, Airports and also at the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which are included in the TRSA replacement program. The task group recommended that these criteria take into account, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. This criteria has been developed and is being published via the FAA directives system.

The FAA has established ARSA's at 89 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's or locations without TRSA's which warrant implementation of an ARSA.

Related Rulemaking

This notice proposes ARSA designation at a location not identified as a candidate for an ARSA in the preamble to Amendment No 71–10 (50 FR 9252). This candidate airport meets the criteria for ARSA candidacy as adopted in FAA directives. Other candidate locations, whether identified as a candidate location in the preamble to Amendment No 71–10 or proposed as a candidate by virtue of meeting the adopted criteria, will be proposed in future notices published in the **Federal Register**.

The Current Situation at the Proposed ARSA Location

Sarasota-Bradenton Airport is a public airport with an operating control tower served by a Level V Radar Approach Control. The airport operations at this airport are quite varied as to the mix of aircraft. Aircraft speeds range from the extremely slow to the maximum speed allowed under regulations with maneuverability varying from the extremely maneuverable to the slower maneuvering aircraft. Although many aircraft landing at Sarasota-Bradenton Airport are sequenced with the aid of radar, airspace and operating rules are not established by regulation. Participation by pilots operating under visual flight rules (VFR) is voluntary, although pilots are urged to participate. This level of service is known as Stage II and is provided at some locations not identified as TRSA's.

Although the Sarasota-Bradenton Airport is not a TRSA location, the NAR Task Group recommended and the FAA adopted the establishment of numerical criteria to allow airports such as Sarasota-Bradenton with safety, traffic and other needs to become candidates for ARSA's regardless of the presence of a TRSA. Sarasota-Bradenton Airport is rapidly becoming more heavily used by numerous air carriers and air taxis. The number of passengers boarded annually far surpasses that adopted as being necessary for ARSA candidacy.

The NAR Task Group stated that, because there are different levels of service offered in terminal areas such as Sarasota-Bradenton Airport, users are not always sure of what restrictions or privileges exist, or how to cope with them. Stage II services offered at Sarasota-Bradenton Airport include traffic advisories and sequencing to the runway but do not include conflict resolution in the terminal airspace. Participation in this program is strictly voluntary. The only service available outside the airport traffic area is separation for instrument flight rule (IFR) traffic and VFR traffic advisories as an additional service. Some believe that the voluntary nature of Stage II at airports with moderate activity levels does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service in the same way, to the extent feasible, within standard size airspace designations.

Aircraft operating under VFR to or from a satellite airport and within the airport traffic area (ATA) of the primary airport are excluded from the two-way radio communications requirement of § 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action. The volume and density of air traffic at the Sarasota-Bradenton Airport has reached that point when two-way communication between ATC and all aircraft is necessary.

The Proposal

The FAA is considering an amendment to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish an ARSA at Sarasota-Bradenton Airport, FL. The proposed ARSA is depicted on the chart in Appendix 1 to this notice.

FAA regulations, 14 CFR 91.88, define ARSA and prescribe operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The ARSA rule provides in part that, prior to entering the ARSA, any aircraft arriving at any airport in an ARSA or flying through an ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, § 71.14 and § 71.501, and Part 91, § 91.1 and § 91.88.

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation

The FAA has conducted a Regulatory Evaluation of the proposed establishment of an ARSA at Sarasota Bradenton Airport. The major findings of that evaluation are summarized below, and the evaluation is available in the regulatory docket.

a. Costs

Costs which potentially could result from the establishment of additional ARSA sites fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

FAA expects that the ARSA proposed in this notice can be implemented without requiring additional controller personnel above current authorized staffing levels, because participation in the Stage II service is already quite high, and the separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, because controller training will be conducted during normal working hours, and Sarasota-Bradenton Airport already operates the necessary radar equipment, FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA will modify its terminal radar procedures at the proposed ARSA site in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

This rulemaking proceeding and process will satisfy much of the need to notify the public and educate pilots about ARSA operations. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. The expenses associated with these public meetings are considered costs attributable to the rulemaking process; however, any public information costs following establishment of a new ARSA are strictly attributable to the ARSA. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA also has issued an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs have been estimated to be approximately $500 for each ARSA site. This cost is incurred only once upon the initial establishment of an ARSA.

Information on ARSA's following the establishment of additional sites will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues and, therefore, will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA which will allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit the terminal area without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment (which will be offset somewhat by the descent).

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result im minor delays to aircraft operations. FAA does not expect such delay to be appreciable. FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the separation standards allowed in an ARSA will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the efficiencies that an ARSA will permit. This has been the experience at most of the locations where ARAS's have been in effect for the longest period of time and is the recurring trend at the locations that have been more recently designated.

The FAA does not expect that any operators will find it necessary to install radio transceivers as a result of establishing the ARSA proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and, therefore, will not incur any additional costs as a result of the proposed ARSA. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the

affected airports have also been used to avoid radio installation costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impact will occur at the candidate ARSA sites proposed in this notice.

b. Benefits

Much of the benefit that will result from ARSA's is nonquantifiable and is attributable to simplification and standardization of ARSA configurations and procedures. Further, once experience is gained in ARSA operations, the flexibility allowed air traffic controllers in handling traffic within an ARSA will enable them to move traffic as efficiently as at present but with increased safety.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented, throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to $300 million or more, resulting from the prevention of a midair collision involving a large air carrier aircraft and numerous fatalities. Establishment of an ARSA at the site proposed in this notice will contribute to these improvements in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at the ARSA location proposed in this notice will only be temporary, and that once established, the ARSA will result in efficient terminal area operations. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition, establishment of the proposed ARSA site will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA proposed in this notice will produce long term, ongoing benefits that will far exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that potentially could be affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in Stage II and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude many satellite airports located within 5 nautical miles of the primary airport at candidate ARSA sites to avoid adversely impacting their operations and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potentially adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type that use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation, if adopted, will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g)

(Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Sarasota-Bradenton Airport, FL [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Sarasota-Bradenton Airport (lat. 27°23'42" N., long. 82°33'15" W.); and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the Sarasota-Bradenton Airport. This airport radar service area is effective during the specific days and hours of operation of the Sarasota Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Washington, DC, on September 4, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

SARASOTA, FLORIDA
SARASOTA-BRADENTON AIRPORT
FIELD ELEV. 28'

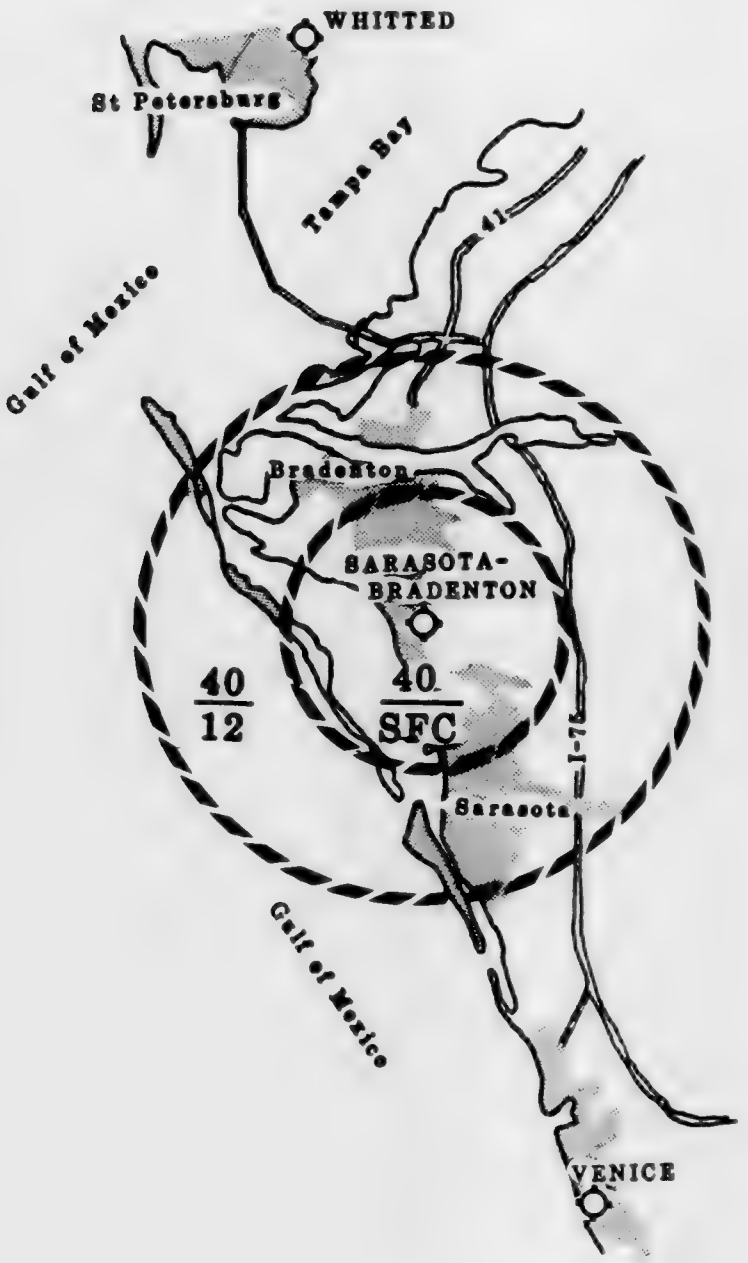

LEGEND

ARSA

ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

[FR Doc. 87-20934 Filed 9-10-87; 8:45 am]
BILLING CODE 4910-13-C

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Friday
September 11, 1987

Part V

United States Information Agency

Department of the Treasury

Customs Service

Import Restrictions on Archaeological Material From El Salvador; Notices

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UNITED STATES INFORMATION AGENCY

Convention on Cultural Property Implementation Act (Pub. L. 97-446); Import Restrictions on Archaeological Material From El Salvador

Pursuant to the authority vested in me under Executive Order 12555, and Delegation Order No. 86-3 of March 18, 1986 (51 FR 10137).

Findings

I hereby find:

(1) That the Republic of El Salvador made a request to the United States Government of the type and in the form required by sec. 303(a) of the Act, 19 U.S.C. 2602(a), on March 13, 1987, seeking emergency U.S. import restrictions and has supplied information which supports a determination that an emergency condition exists with respect to archaeological material from the Cara Sucia Archaeological Region, which material was identified as comprising a part of the Republic's cultural patrimony in danger of being pillaged in crisis proportions;

(2) That, pursuant to sec. 303(f)(1), 19 U.S.C. 2602(f)(1), notification of this request was published in the **Federal Register** of April 8, 1987 (52 FR 11413);

(3) That, pursuant to sec. 303(f)(2), 19 U.S.C. 2602(f)(2), this request was submitted to the Cultural Property Advisory Committee on April 21, 1987 for investigation, review and recommendation;

(4) That on July 16, 1987 the Committee transmitted to me its Report within the statutory ninety (90) day period prescribed in section 304(c)(2), 19 U.S.C. 2603(c)(2);

(5) That the Committee, in accordance with the requirements of sec. 306(f), 19 U.S.C. 2605(f), has thoroughly considered this request and has investigated the situation described in it;

(6) That the Committee recommends that emergency import restrictions be imposed on archaeological material from the Cara Sucia Archaeological Region;

(7) That the Cara Sucia Archaeological Region in the southwestern area of the Department of Ahuachapan of El Salvador is a naturally defined but environmentally diverse costal plain measuring approximately sixty-six (66) square miles, and more particularly defined as an area comprised by a line beginning at a point on the Pacific Ocean at El Salvador's common border with Guatemala and following the border north to the border crossing of the coastal highway (carretera del litoral), then following a line eastward and including the cities, villages and towns of La Ceiba, El Corozo, Aguachapio and Cuilapa to the crossing of the coastal highway at the El Rosario River thence south following the river to the Pacific Ocean, which area includes the archaeological locations of El Carmen, Cara Sucia, El Tacahol, Aguachapio, La Caseta, Nueva York, El Cajete, and El Guisany;

(8) That archaeological material is identifiable as coming from the Cara Sucia Archaeological Region, that this Region is recognized to be of high cultural significance, and that this site is in jeopardy from pillage and dispersal, which is, or threatens to be, of crisis proportions; and

(9) That the imposition of emergency import restrictions on a temporary basis would, in whole or in part, reduce the incentive for pillage and dispersal of the archaeological material from the Cara Sucia Archaeological Region.

Determinations

Now, therefore, in accordance with the aforementioned authority vested in me, I hereby determine:

(1) That, pursuant to section 304(b) of the Act, 19 U.S.C. 2603(b), an emergency condition exists in the Cara Sucia Archaeological Region;

(2) That the import restrictions set forth in section 307, 19 U.S.C. 2606, be applied to the archaeological material from the Cara Sucia Archaeological Region; and

(3) That, in accordance with the provisions of section 304(c)(3), 19 U.S.C. 2603(c)(3), the duration of such restrictions shall extend until March 13, 1992, five years from the date on which the Republic of El Salvador's request was made to the United States.

Dated: September 4, 1987.

Marvin Stone,

Deputy Director.

[FR Doc. 87-20904 Filed 9-10-87; 9:43 am]

BILLING CODE 8230-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 87-104]

Import Restrictions on Archaeological Material From El Salvador

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of import restrictions.

SUMMARY: This document advises the public that in accordance with a request from the Government of El Salvador, restrictions are being placed on the importation of certain endangered archaeological material from El Salvador. This action, which is being taken pursuant to the Convention on Cultural Property Implementation Act and in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and in cooperation with the U.S. Information Agency, will assist El Salvador in protecting its cultural patrimony.

EFFECTIVE DATE: September 11, 1987.

FOR FURTHER INFORMATION CONTACT:

Legal aspects: Samuel Orandle, Entry Procedures and Penalties Division (202-566-5765);

Operational aspects: Louis Alfano, Commercial Compliance Division (202-566-8651).

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and accompanying illegal exporting and importing.

There has been growing concern in the U.S. regarding the need for protecting endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been recent pillaging has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of the museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the

"Convention on Cultural Property Implementation Act" (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*). The spirit of the Convention was enacted into law to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations whence they originate, but also to greater international understanding of mankind's common heritage. In 1983, the U.S. became the first major art importing country to implement the 1970 Convention.

It was with these goals in mind that Customs issued interim regulations to carry out the policies of the Act. The interim regulations, which were set forth in § 12.104, Customs Regulations (19 CFR 12.104), were published in the **Federal Register** as T.D. 85–107 on June 25, 1985 (50 FR 26193), and took effect immediately. After consideration of comments received on the interim regulations, final regulations were issued as T.D. 86–52, published in the **Federal Register** on February 27, 1986 (51 FR 6905), and took effect on March 31, 1986.

El Salvador

Under section 303(a)(3) of the Cultural Property Implementation Act (19 U.S.C. 2602(a)(3)), the Government of El Salvador, a State Party to the 1970 UNESCO Convention, requested the U.S. Government to impose import restrictions on certain endangered archaeological material to assist El Salvador in protecting its cultural patrimony. Notice of receipt of the request was published by the U.S. Information Agency (USIA) in the **Federal Register** on April 8, 1987 (52 FR 11414).

On April 21, 1987, the request was referred to the Cultural Property Advisory Committee, which conducted a review and investigation, and submitted its report in accordance with the provisions of 19 U.S.C. 2605(f) to the Deputy Director, USIA, on July 16, 1987. The Committee found the situation in El Salvador to be an emergency and recommended that the U.S. Government impose emergency import restrictions. The Deputy Director, pursuant to the authority vested in him under Executive Order 12555 and USIA Delegation Order 86–3, considered the Committee's recommendations and made his determination that emergency import restrictions be applied. (See this issue of the **Federal Register**.)

The Commissioner of Customs, in consultation with the Deputy Director of the USIA, has drawn up a list of covered archaeological material from the Cara Sucia archaeological region in El Salvador. The materials on the list are subject to the 1970 UNESCO Convention and § 12.104, Customs Regulations. As provided in 19 U.S.C. 2601 *et seq.*, and § 12.104a, Customs Regulations, listed material from this region may not be imported into the U.S. unless accompanied by documentation certifying that the material left El Salvador legally and not in violation of the laws of El Salvador.

In the event an importer cannot produce the certificate, documentation, or evidence required in § 12.104c, Customs Regulations, at the time of making entry, § 12.104d provides that the district director of Customs shall take custody of the material until the certificate, documentation, or evidence is presented. Section 12.104e provides that if the importer states in writing that he will not attempt to secure the required certificate, documentation, or evidence, or the importer does not present the required certificate, documentation, or evidence to Customs within the time provided, the material shall be seized and summarily forfeited to the U.S. in accordance with the provisions of Part 162, Customs Regulations (19 CFR Part 162).

Illustrative List of Categories of Prehispanic Archaeological Objects From the Cara Sucia Archaeological Region

The following descriptions are illustrative and representative but are not intended to be exhaustive or restrictively typical.

Ceramic Vessels

1. *Miniature bottles, bowls, jars, flasks* of fine clay, cream to brown colored, sometimes with stamped or carved designs, measuring 2 to 3 inches in height.

2. *Bowls:* Low, open vessels in a variety of styles and colors usually 4 to 10 inches in diameter and 4 and 5 inches in height. Styles include:

—Arambala polychrome, reddish brown to brown color, with glyphic and/or animal motifs and bands;
—Salinitas polychrome, streaky cream to orange colored with black bands and designs such as spirals and animals;
—Usulutan style, a "negative" decorative technique with light color lines on a darker background; often colored cream and orange to light brown;
—Delirio bichrome, red design on a cream surface;
—Olocuilta monochrome, bright orange with traces of paint;
—Lolotique monochrome, dull red decorated with finely incised lines;
—Pinos monochrome, black-brown surface usually weathered to matte appearance, fine to coarsely incised design that may have a dull red pigment rubbed in;
—Santa Tecla monochrome, dull red sometimes with faceted shoulder.

3. *Jars:* Vessels with neck and narrow opening, sometimes with handles, usually measuring 7 to 9 inches in height. Styles include:

—Guarumal bichrome, white dots on orange-red background;
—Usulutan style, a "negative" decorative technique, with light color lines on a darker background; often colored cream and orange to light brown;
—Plumbate monochrome, lead grey to orange colored with metallic sheen, sometimes with effigy appliques; when tapped has a distinct ring.

4. *Effigy Vessels:* Vessels fashioned to resemble human, animal or natural forms; usually orange, red or brown colored and 7 and 8 inches in height.

5. *Vases:* Vessels with straight or shaped sides, sometimes stuccoed, usually 6 to 9 inches in height. Styles include:

—Incised or molded cylindrical vase, orange to brown in color, sometimes decorated with carved geometric or naturalistic designs depicting ceremonial scenes or monkeys on cream panels;
—Nicoya polychrome "lamp chimney" vase, white background with red, black and orange designs and black "step scrolls." Also frequently found as simple bowls with effigy supports;
—Pear-shaped with ring base with designs in blue, yellow and red; may be stuccoed;
—Tiquisate, round-bottomed vase, colored cream to orange with incised designs carved on panels on each side of vase.

6. *Plates:* Made with tripod feet or low vase, usually reddish brown or orange colored. May have painted symbolic designs in red, orange, black, blue or white of human or animal figures. Plates are usually no larger than 15 inches in diameter.

7. *Censers:* Ladle censers with oversized handle ("frying pan" shaped) with orange or brick-red surfaces. They measure usually a little over 14 inches in length.

Ceramic Figurines

1. *Figurines:* Made from clay, often hollow and shaped like a bell, depicting human forms (often women elaborately adorned with headdresses and earplugs, sometimes with child in arms) or animal

forms (dogs, monkeys, bats, toads, birds). Often beige to reddish brown color, sometimes with traces of colored paint. Small in size, usually under 12 inches in height. May be hand molded or made from a mold.

2. *Whistles and flutes:* Hollow clay figures, beige to brown color, shaped as animals such as birds, jaguars, dogs, or marsupials, and combining in some cases, human features.

3. *Molds:* Used to produce figurines, often show press marks and finger drags; usually brick-red in color and coarsely textured.

Other Ceramic Objects

1. *Drums:* Open at the top and bottom, black-brown to orange in color and sometimes incised with a medallion design; usually 8 inches in height.

2. *Effigies:* Objects fashioned to resemble natural, animal or human forms, including mushrooms, usually orange, red or brown colored and 7 to 8 inches in height.

3. *Stamp seals:* Seals designed to resemble animals (birds, reptiles, monkeys, insects) or geometric motifs; has a short spike handle on back; small in size measuring 2 x 2 inches.

Stone Sculpture

1. Basalmo "death" sculpture depicting a human figure with closed eyes crouching, carved from grey igneous stone; usually 12 inches in height.

2. "Hachas," or flat stones resembling a human or animal head in profile, usually 12 inches in height.

3. Relief panel resembling a jaguar head carved in relief from grey igneous stone, measuring 24 inches by 24 inches in size.

Dated: September 4, 1987.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 87-20905 Filed 9-10-87; 9:43 am]

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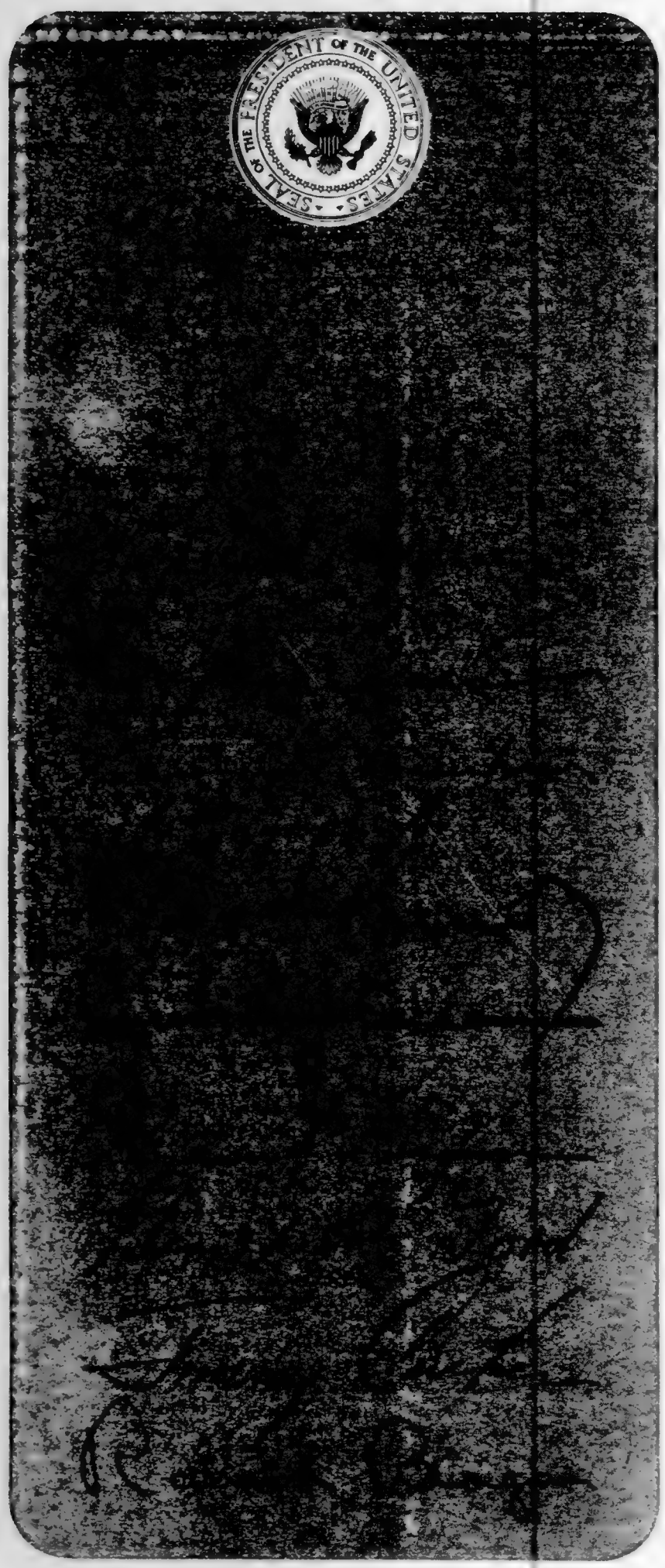

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Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 12608 of September 9, 1987

Elimination of Unnecessary Executive Orders and Technical Amendments to Others

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to eliminate certain Executive Orders that are no longer necessary, and to make technical amendments in others to correct outdated agency references or obsolete legal citations, it is hereby ordered as follows:

Section 1. The following Executive Orders are revoked:

8744	Authorizing certain employees of the Government to acquire a classified civil service status
10880	Permitting certain employees to be given career or career conditional appointments
11377	Providing for Tariff Commission reports regarding the estimated consumption of certain brooms
11911	Providing for preservation of endangered species
12034	Providing for the appointment of former ACTION cooperative volunteers to the civilian career service
12295	Extending nuclear cooperation with EURATOM
12426	Establishing the President's Advisory Committee on Women's Business Ownership

Notwithstanding the revocation of Executive Orders Nos. 8744, 10880, and 12034, benefits already conferred under these Executive Orders before revocation shall not be affected.

Sec. 2. Each of the Executive Orders, as amended, listed in this section, and any other order that relates to functions or areas of responsibility delegated to the Office of Management and Budget, are amended by deleting the words "Bureau of the Budget" wherever they occur and inserting in lieu thereof "Office of Management and Budget", and by deleting the word "Bureau" and inserting in lieu thereof "Office" wherever the word "Bureau" is used as a reference to the Office of Management and Budget:

8248	10903	11044
9830	11012	11047
10582	11030	11060
10624	11034	11140
		11480

Sec. 3. Executive Order No. 9979 is amended by revoking paragraph 1 and deleting the "2." introducing the remaining paragraph.

Sec. 4. Executive Order No. 10289, as amended, is further amended as follows:

(a) In Section 1(c), by deleting the words "section 2 of the Act of August 18, 1914, c. 256, 38 Stat. 699 (46 U.S.C. 82)," and inserting in lieu thereof "section 1 of the Act of August 26, 1985, Public Law 98–89, 97 Stat. 510 (46 U.S.C. 3101);"

and by deleting the words "survey, inspection, and measurement of" and inserting in lieu thereof "the inspection of."

(b) In Section 1(d), by deleting the words "(46 U.S.C. 104)," and inserting in lieu thereof "(46 U.S.C. Appendix 104),";

(c) In Section 1(e), by deleting the words "(46 U.S.C. 134)," and inserting in lieu thereof "(46 U.S.C. Appendix 134),";

(d) In Section 1(f), by deleting the words "(46 U.S.C. 141),", "(46 U.S.C. 121)," and "(46 U.S.C. 146)," and inserting in lieu thereof "(46 U.S.C. Appendix 141)," "(46 U.S.C. Appendix 121)," and "(46 U.S.C. Appendix 146),";

(e) By revoking Sections 1(g) and 1(j), and renumbering Sections 1(h) and 1(i) as Sections 1(g) and 1(h), respectively;

(f) Adding a new subsection (i) to Section 1:

"(i) The authority vested in the President by Section 5318 of the Revised Statutes, as amended (19 U.S.C. 540), to employ suitable vessels other than Coast Guard cutters in the execution of laws providing for the collection of duties on imports and tonnage;"

(g) In Section 2(e), by deleting the words ", exclusive of the territory and waters of the Canal Zone"; and

(h) By revoking Section 2(f).

Sec. 5. Part V of Executive Order No. 10530, as amended, is further amended as follows:

(a) By deleting the words "Administrator of General Services" wherever they appear and inserting in lieu thereof "Archivist of the United States";

(b) By deleting the words "(44 U.S.C. 305(a))" and inserting in lieu thereof "(44 U.S.C. 1505(a)),";

(c) By deleting the words "(44 U.S.C. 306; 311(a); and 311(f))," and inserting in lieu thereof "(44 U.S.C. 1506; 1510(a) and 1510(f)),";

(d) Adding the words "(44 U.S.C. 1505(b)),"' following the words "section 5(b) of the act,";

(e) Adding the words "(44 U.S.C. 1510(a)),"' following the words "in the said section 11(a),"; and

(f) Adding the words "(44 U.S.C. 1510)", following the words "provisions of section 11".

Sec. 6. Executive Order No. 10608 is amended by deleting the words "Foreign Service Act of 1946 (60 Stat. 999)" and inserting in lieu thereof "Foreign Service Act of 1980 (94 Stat. 2071)".

Sec. 7. Executive Order No. 10624, as amended, is further amended as follows:

(a) In the preamble, by deleting the words "sections 602(d), 603, and 605 of Title VI of the Act of August 28, 1954, 68 Stat. 908, 909" and inserting in lieu thereof "sections 605, 606B and 606D of Title VI of the Act of August 28, 1954, as amended, (7 U.S.C. 1765, 1766a, and 1766c)"; and

(b) In Section 1(a), by deleting the words "The provisions of Part II—Procedures for Coordination Abroad—of Executive Order No. 10575 of November 6, 1954," and inserting in lieu thereof "The provisions of section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927)".

Sec. 8. Executive Order No. 10840, as amended, is further amended by replacing the first paragraph and the provisions it presents with the following:

"Whereas the Assignment of Claims Act of 1940 (54 Stat. 1029), as amended by the Act of September 13, 1982, 96 Stat. 976 (31 U.S.C. 3727), contains the following provisions:

"During a war or national emergency proclaimed by the President or declared by law and ended by proclamation or law, a contract with the

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Department of Defense, the General Services Administration, the Department of Energy (when carrying out duties and powers formerly carried out by the Atomic Energy Commission), or other agency the President designates may provide, or may be changed without consideration to provide, that a future payment under the contract to an assignee is not subject to reduction or setoff. A payment subsequently due under the contract (even after the war or emergency is ended) shall be paid to the assignee without a reduction or setoff for liability of the assignor—

(1) to the Government independent of the contract; or

(2) because of renegotiation, fine, penalty (except an amount that may be collected or withheld under, or because the assignor does not comply with, the contract), taxes, social security contributions, or withholding or failing to withhold taxes or social security contributions, arising from, or independent of, the contract.

"An assignee under this section does not have to make restitution of, refund, or repay the amount received because of the liability of the assignor to the Government that arises from or is independent of, the contract.

"The Government may not collect or reclaim money paid to a person receiving an amount under an assignment or allotment of pay or allowances authorized by law when liability may exist because of the death of the person making the assignment or allotment."

Sec. 9. Sections 2(a) and 2(b) of Executive Order No. 10841, as amended, are further amended by deleting the words "Atomic Energy Commission" and inserting in lieu thereof "Secretary of Energy".

Sec. 10. Executive Order No. 11023 is amended by deleting the words "Coast and Geodetic Survey" except in citing the "Coast and Geodetic Survey Commissioned Officers Act of 1948", and inserting in lieu thereof "National Oceanic and Atmospheric Administration".

Sec. 11. Executive Order No. 11030, as amended, is further amended as follows:

(a) In Section 2(c), by deleting the words "National Archives and Records Service, General Services Administration" and inserting in lieu thereof "National Archives and Records Administration";

(b) In Section 5, by deleting the words "44 U.S.C. 312" and inserting in lieu thereof "44 U.S.C. 1511";

(c) In Section 6, by deleting the words "44 U.S.C. 305(a)" and inserting in lieu thereof "44 U.S.C. 1505(a)".

Sec. 12. Executive Orders No. 11034 and 12048 are amended by deleting the words "Health, Education, and Welfare" wherever they appear and inserting in lieu thereof "Education".

Sec. 13. Executive Order No. 11047 and any other Executive order that relates to functions or areas of responsibility delegated to the Federal Aviation Administration are amended by deleting the words "Federal Aviation Agency" and "Agency" wherever they appear and inserting in lieu thereof "Federal Aviation Administration" and "Administration".

Sec. 14. Executive Order No. 11077, as amended, is further amended as follows:

(a) By deleting the second sentence in Section 1(b);

(b) By deleting the words "the Department of Health, Education, and Welfare, and of" in Section 1(c);

(c) By revoking Section 2;

(d) By renumbering Sections 3, 4, 5, 6, and 7 as Sections 2, 3, 4, 5, and 6 respectively; and

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(e) By deleting in renumbered Sections 2(a) and 2(b), the words "and the Secretary of Health, Education, and Welfare may each" and inserting in lieu thereof "may".

Sec. 15. Each of the Executive Orders, as amended, listed in this Section and any other order that relates to functions or areas of responsibility delegated to the Department of Health and Human Services, is amended and revised by deleting the words "Department of Health, Education, and Welfare" wherever they occur and inserting in lieu thereof "Department of Health and Human Services", and by deleting the words "Secretary of Health, Education, and Welfare" wherever they appear and inserting in lieu thereof "Secretary of Health and Human Services":

11079	11609	12049
11140	11623	12086
11157	11687	12138
11480	11776	12146
11490	11800	12154
11583	11899	12196
		12208

Sec. 16. Executive Order No. 11390, as amended, is further amended as follows:

(a) By revoking Section 1(1);

(b) By revoking Section 1(7); and

(c) In Section 1(4), by deleting the words "by sections 565, 599, 3450, and 8450" and inserting in lieu thereof "by sections 565 and 599".

Sec. 17. Executive Order No. 11440, as amended, is further amended by deleting the words "Administrator of General Services" and the word "Administrator" wherever they appear, and inserting in lieu thereof "Archivist of the United States" and "Archivist".

Sec. 18. Section 2 of Executive Order No. 11467 is amended by deleting the words "Secretary of the Interior" and inserting the words "Secretary of Commerce".

Sec. 19. Executive Order No. 11561, as amended, is amended by deleting the words "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980".

Sec. 20. Executive Order No. 11580 is amended by deleting the words "Administrator of the National Credit Union Administration" and inserting in lieu thereof "National Credit Union Administration Board" in the first paragraph.

Sec. 21. Section 7 of Executive Order No. 11644, as amended, is further amended by deleting the words "Atomic Energy Commission" and inserting in lieu thereof "Secretary of Energy and the Nuclear Regulatory Commission".

Sec. 22. Executive Order No. 11747 is amended by revoking Section 1 and deleting the words "Sec. 2.".

Sec. 23. Section 1(a) of Executive Order No. 11755 is amended by adding the words "the Commonwealth of the Northern Mariana Islands," after the words "American Samoa," wherever they appear.

Sec. 24. Section 4 of Executive Order No. 11758, as amended, is further amended by deleting the words "Federal Procurement Regulations, the Armed Services Procurement Regulations," and inserting in lieu thereof "Federal Acquisition Regulations".

Sec. 25. Executive Order No. 11845 is amended as follows:

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(a) By inserting, after the words "88 Stat. 332,", the words "(2 U.S.C. 681 *et seq.*),";

(b) By inserting, after the words "section 1012 or 1013", the words "(2 U.S.C. 683 and 684)"; and

(c) By inserting, after the words "section 1014(e) of the Act", the words "(2 U.S.C. 685(e))".

Sec. 26. Executive Order No. 11880 is amended by deleting the words "Under Secretary of Commerce" and inserting in lieu thereof "Deputy Secretary of Commerce".

Sec. 27. Executive Order No. 11899, as amended, is further amended by deleting the words "(88 Stat. 2210, 25 U.S.C. 450(i))," and inserting in lieu thereof "(88 Stat. 2210, 25 U.S.C. 450 i),".

Sec. 28. Section 6 of Executive Order No. 11990 is amended by deleting the words "and the Water Resources Council".

Sec. 29. Executive Order No. 12101 is amended by deleting the words "Sections 4 and 6 of the Diplomatic Relations Act (92 Stat. 809; 22 U.S.C. 254c and 254e)" and inserting in lieu thereof "Section 4 of Diplomatic Relations Act (92 Stat. 809; 22 U.S.C. 254c)."

Sec. 30. Section 1-201(a) of Executive Order No. 12163, as amended, is further amended by revoking paragraphs (23) and (24), and by renumbering paragraphs (25), (26), (27), and (28) as paragraphs (23), (24), (25), and (26) respectively.

Sec. 31. Executive Order No. 12322 is amended by deleting the words "Principles and Standards for Water and Related Land Resources Planning (Part 711 of Title 18 of the Code of Federal Regulations (45 F.R. 64366))," and inserting in lieu thereof "Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies".

Sec. 32. Executive Order No. 12328 is amended by deleting the words "(25 CFR 251.5 and 252.31)" and inserting in lieu thereof (25 CFR 140.5 and 141.31)".

Ronald Reagan

THE WHITE HOUSE,
September 9, 1987.

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Rules and Regulations

Federal Register
Vol. 52, No. 177
Monday, September 14, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 752

Taking Adverse Actions Under the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on suspensions and removal actions in the Senior Executive Service (SES). The regulations exclude reemployed annuitants from coverage and extend coverage to certain limited appointees in addition to career employees currently covered. The regulations also incorporate statutory revisions since July 1979 as to the reasons for taking adverse actions. They apply to suspensions for more than 14 days or removals from the civil service for reasons of misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

EFFECTIVE DATE: October 14, 1987.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, (202) 632–4625.

SUPPLEMENTARY INFORMATION: On May 30, 1986, OPM published proposed regulations (51 FR 19554) on taking adverse actions in the Senior Executive Service (SES) to implement Subchapter V of Chapter 75 of Title 5, United States Code, as amended.

The comment period, which was 60 days from the date of publication, ended on July 29, 1986. Comments were received from six agencies and one executive organization.

I. Short Suspensions

One agency and the executive organization disagreed with the provision in § 752.601(b)(1) prohibiting suspensions of career appointees for 14 days or less. In the preamble of the proposed regulations, we had pointed out that Subchapter V of Chapter 75, 5 U.S. Code, on SES adverse actions does not cover suspensions of 14 days or less and that Subchapter I of Chapter 75, which does cover such suspensions, pertains only to employees in the competitive service. We also had noted that Congress may have viewed short suspensions (normally imposed for less serious offenses) as inappropriate disciplinary measures for SES members, who have a significant impact on agency programs and on the public image of the Government.

The agency commented that, "Given the management flexibility attendant with the SES, it is arguable that the absence of specific statutory procedures for a lesser suspension means only that there are none to be followed." The agency further argued that management needs the authority to suspend SES members for 14 days or less if it is to maintain effective discipline within the workforce because, in some instances, a longer suspension would not be appropriate.

The executive organization argued that agencies have an inherent authority to take actions against their employees in the absence of specific legislation limiting this authority. It also pointed out that executives may be subject to lesser forms of disciplinary actions, such as admonishments and official reprimands. It further stated that the prohibition on short suspensions "may unnecessarily and unfairly increase the punishment received by a senior executive, as well as the number of appeals taken to the MSPB [Merit Systems Protection Board] over minor matters."

Because Congress specifically addressed the issue of disciplinary actions for career SES members in 5 U.S.C. and did not cover suspensions for 14 days or less, OPM still believes that there is no statutory authority to take such actions. The General Accounting Office (GAO) in a March 16, 1987, decision (B–221970) agreed with this conclusion. GAO also ruled that any prior suspensions for 14 days or less were "unwarranted personnel actions which require the payment of back pay."

OPM agrees with the comments, however, that the inability to take short suspensions limits the flexibility agencies have in disciplinary cases. Therefore, although the prohibition on short suspensions remains in the regulations because of current statutory provisions, OPM will seek a change in the law to authorize such suspensions.

II. Other Issues

The executive organization recommended that § 752.604(c)(1), which permits an employee "a reasonable amount of official time" to respond to a 30-day notice of proposed adverse action, be amended to provide a specific minimum time period, such as 20 days. Under 5 U.S.C. 7543(b)(2), an employee has not less than 7 days to respond to the notice, but that section does not state how much official time the employee may use in preparing his or her response. The regulatory provision allowing a "reasonable amount of official time" for SES employees to respond is the same as for non-SES employees. We are not aware of any problems that have arisen because of the provision, and it is retained.

Two agencies recommended that § 752.604(d), which allows an agency to grant an executive a maximum of 10 days on paid nonduty status when the "crime provision" is used to shorten the normal 30-day notice period, be amended to allow the agency to use the paid nonduty status for all of the shortened notice period when necessary. One of the agencies commented that the section requires that an executive have not less than 7 days to respond, but that the agency may provide a longer period, including one longer than 10 days. Further, even if an executive responds within 7 days, there may not be sufficient time while the executive is still in the paid nonduty status for the agency to make a final determination if the deciding official is not immediately available or if the response identifies questionable areas to be resolved. We agree and have amended the provision accordingly.

One agency recommended that the provisions on medical considerations and disability retirement that were added (at 49 FR 1330 on January 11, 1984) to the regulations for non-SES employees in 5 CFR 752.404(c)(3) also be adopted for SES employees. We agree and have added § 752.604(c)(4) and have amended § 752.604(f) accordingly.

One agency objected to the proposal to delete Subpart E of 5 CFR Part 752,

which contains the statutory requirements for SES adverse actions, on the basis of the convenience in having the statutory and regulatory requirements together. We agree and have retained the subpart. The subpart has been revised to incorporate statutory changes since the Civil Service Reform Act.

The following provisions of the proposed regulations did not receive any comments and are adopted in the final regulations.

(1) Section 752.601(c)(2) includes in coverage of the regulations certain limited term and limited emergency appointees who were covered under 5 U.S.C. 7511 immediately before their SES appointment.

(2) Section 752.601(d) excludes reemployed annuitants from coverage of the regulations.

(3) Section 752.603 on the standard for adverse action states, in accordance with 5 U.S.C. 7543, that such action may be taken only "for reasons of misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function."

(4) Section 752.604(b) provides means other than suspension for keeping an employee away from the work site during the 30-day notice period under certain circumstances, such as when an employee's continued presence would pose a threat to the employee or others. The provision in the proposed regulations, however, which would have permitted placing an appointee on involuntary sick or other leave when the agency has medical documentation stating physical or mental incapacitation has been deleted in light of court decisions that involuntary leave may be tantamount to a suspension without procedures.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Government employees who are members of the Senior Executive Service.

List of Subjects in 5 CFR Part 752

Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 752 as follows:

PART 752—ADVERSE ACTIONS

1. The authority citation for Part 752 is revised as set forth below, and all other authority citations throughout Part 752 are removed:

Authority: 5 U.S.C. 7504, 7514; 5 U.S.C. 1302, Pub. L. 95–494; Section 752.401 also issued under 5 U.S.C. 3301 and 3302, and E.O. 10577; Subpart F also issued under 5 U.S.C. 7543.

2. Section 752.501 in Subpart E is amended by revising the paragraph under § 7542. and by revising paragraph (a) under § 7543. to read as follows:

Subpart E—Principal Statutory Requirements for Taking Adverse Actions Under the Senior Executive Service

Sec.
752.501 Principal statutory requirements.
* * * * *

"§ 7542. Actions covered

"This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1206 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 or 3595 of this title.

"§ 7543. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

* * * * *

3. Subpart F is revised to read as follows:

Subpart F—Regulatory Requirements for Taking Adverse Actions Under the Senior Executive Service

Sec.
752.601 Coverage.
752.602 Definitions.
752.603 Standard for action.
752.604 Procedures.
752.605 Appeal rights.
752.606 Agency records.

Subpart F—Regulatory Requirements for Taking Adverse Actions Under the Senior Executive Service

§ 752.601 Coverage.

(a) *Adverse actions covered.* This subpart applies to suspensions for more than 14 days and removals from the civil service as set forth in 5 U.S.C. 7542.

(b) *Actions excluded.* (1) An agency may not take a suspension action of 14 days or less.

(2) This subpart does not apply to actions taken under 5 U.S.C. 1206(g), 3592, 3595, or 7532.

(c) *Employees covered.* This subpart covers the following appointees:

(1) A career appointee—

(i) Who has completed the probationary period in the Senior Executive Service;

(ii) Who is not required to serve a probationary period in the Senior Executive Service; or

(iii) Who was covered under 5 U.S.C. 7511 immediately before appointment to the Senior Executive Service.

(2) A limited term or limited emergency appointee—

(i) Who received the limited appointment without a break in service in the same agency as the one in which the employee held a career or career-conditional appointment (or an appointment of equivalent tenure as determined by the Office of Personnel Management) in a permanent civil service position outside the Senior Executive Service; and

(ii) Who was covered under 5 U.S.C. 7511 immediately before appointment to the Senior Executive Service.

(d) *Employees excluded.* This subpart does not cover an appointee who is serving as a reemployed annuitant.

§ 752.602 Definitions.

In this subpart—

"Career appointee," "limited term appointee," and "limited emergency appointee" have the meaning given in 5 U.S.C. 3132(a).

"Day" means calendar day.

"Suspension" has the meaning given in 5 U.S.C. 7501(2).

§ 752.603 Standard for action.

(a) An agency may take an adverse action under this subpart only for reasons of misconduct, neglect of duty, malfeasance., or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(b) An agency may not take an adverse action under this subpart on the basis of any reason prohibited by 5 U.S.C. 2302.

§ 752.604 Procedures.

(a) *Applicability.* The procedures provided in 5 U.S.C. 7543(b) apply to any appointee covered by this subpart.

(b) *Notice of proposed action.* (1) The notice of proposed action shall inform the appointee of his or her right to review the material that is relied on to support the reasons for action given in the notice.

(2) The agency may not use material that cannot be disclosed to the appointee or to the appointee's representative or designated physician under § 297.204(c) of this chapter to support the reasons in the notice.

(3) Under ordinary circumstances, an appointee whose removal has been proposed shall remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances when the agency determines that the appointee's continued presence in the work place during the notice period may pose a threat to the appointee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency shall consider whether any of the following alternatives is feasible:

(i) Assigning the appointee to duties where he or she is no longer a threat to safety, the agency mission, or Government property;

(ii) Placing the appointee on leave with his or her consent;

(iii) Carrying the appointee on appropriate leave (annual or sick leave, leave without pay, or absence without leave) if he or she is voluntarily absent for reasons not originating with the agency; or

(iv) Curtailing the notice period when the agency can invoke the provisions of paragraph (d) of this section (the "crime provision").

(4) If none of the alternatives in paragraph (b)(3) of this section, is available, agencies may consider placing the appointee in a paid, nonduty status during all or part of the advance notice period.

(c) *Appointee's answer.* (1) The agency shall give the appointee a reasonable amount of official time to review the material relied on to support its proposed action, to prepare an answer orally and in writing, and to secure affidavits, if the appointee is in an active duty status.

(2) The agency shall designate an official to hear the appointee's oral answer who has authority either to make or to recommend a final decision on the proposed adverse action.

(3) The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides for a formal hearing in its regulations in accordance with paragraph (g) of this section.

(4) If the appointee wishes the agency to consider any medical condition that may have affected the basis for the adverse action, the appointee shall be given reasonable time to furnish medical documentation of the condition. The same procedures that are applicable in § 752.404(c)(3) of this chapter are also applicable for an appointee in the Senior Executive Service.

(d) *Exception.* Section 7543(b)(1) of Title 5 of the United States Code authorizes an exception to the 30 days' advance written notice when the crime provision is invoked. This provision may be invoked even in the absence of judicial action if the agency has reasonable cause to believe that the appointee has committed a crime for which a sentence of imprisonment may be imposed. The agency may require the appointee to furnish any answer to the proposed action, and affidavits and other documentary evidence to support the answer, within such time as under the circumstances would be reasonable, but not less than 7 days. When the circumstances require immediate action, the agency may place the appointee in a nonduty status with pay for such time as is necessary to effect the action.

(e) *Representation.* (1) Under 5 U.S.C. 7543(b)(3), an appointee covered by this subpart is entitled to be represented by an attorney or other representative.

(2) An agency may disallow as an appointee's representative—

(i) An individual whose activities as a representative would cause a conflict of interest or position;

(ii) An employee of the agency whose release from his or her official position would give rise to unreasonable costs; or

(iii) An employee of the agency whose priority work assignments preclude the employee's release.

(f) *Agency decision.* In arriving at its written decision, the agency may consider only the reasons specified in the notice of proposed action. The agency shall consider any reply of the appointee or the appointee's representative made to a designated official and any medical documentation furnished under paragraph (c) of this section. The agency shall deliver the notice of decision to the appointee at or before the time the action will be effective. The notice of decision shall inform the appointee of his or her appeal rights.

(g) *Hearing.* Under 5 U.S.C. 7543(c), the agency may, in its regulations, provide a hearing in place of or in addition to the opportunity for written and oral reply.

§ 752.605 Appeal rights.

(a) Under 5 U.S.C. 7543(d), a career appointee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) A limited term or limited emergency appointee who is covered under § 752.601(c)(2) also may appeal an action taken under this subpart to the Merit Systems Protection Board.

§ 752.606 Agency records.

The agency shall maintain copies of the adverse action record items specified in 5 U.S.C. 7543(e) and furnish them upon request as required by that subsection.

[FR Doc. 87-21024 Filed 9-11-87; 8:45 am]
BILLING CODE 6325-01-M

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5 CFR Part 890

An Additional Opportunity for Annuitants To Enroll for Federal Employees Health Benefits Coverage

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations to permit an annuitant who is covered by the Federal Employees Health Benefits (FEHB) enrollment of another person to enroll either for self only or for self and family coverage in the same plan and option when the covering enrollment is canceled. The previous FEHB regulations permitted only active employees to take such action following the cancellation of a covering enrollment. These revised regulations will correct this inequity by allowing eligible annuitants the same enrollment opportunities that employees receive after the cancellation of the covering enrollment.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: John Ray, (202) 632-4634.

SUPPLEMENTARY INFORMATION: On May 7, 1987, OPM published proposed regulations in the **Federal Register** (52 FR 17300) to allow an eligible annuitant who was covered by the enrollment of another person under the FEHB Program to enroll in the same plan and option within 31 days after the voluntary cancellation of the covering enrollment. Such an opportunity to enroll had previously been made available only to active employees. We also published a proposed clarification to another section of the regulations to specify that an annuitant who loses FEHB coverage because the covering enrollment is changed to self only must be otherwise eligible to enroll in his or her own right.

Two written comments were received during the 60-day comment period. One comment, which offered no suggestions for changes, was from a national association of Federal employees. The other comment was from a national association of retired Federal employees and was totally supportive of the

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proposed changes. Therefore, we are publishing our proposed revisions to the regulations as final regulations without any further changes.

Waiver of 30-Day Delay in Effective Date of Final Regulation

Pursuant to section 553(d)(1) of Title 5 of the United States Code, I find that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to enable as many annuitants as possible to take advantage of the new opportunity for FEHB enrollment which must be exercised within 31 days of an annuitant's loss of coverage as a family member.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will apply only to annuitants seeking to continue their FEHB coverage.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Claims, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Section 890.102 also issued under 5 U.S.C. 1104 and Section 3(5) of Pub. L. 95–454, 92 Stat. 1112; Section 890.301 also issued under 5 U.S.C. 8905(b); Section 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C. 8901(9); Section 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98–615, 98 Stat. 3195, and Title II of Pub. L. 99–251, 100 Stat. 20.

2. In § 890.301, a new paragraph (f)(3) is added and paragraph (g)(4) is revised to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(f) *Change to self alone.* * * *

(3) In order for an employee annuitant to be eligible to elect self only coverage under authority of this paragraph, he or she must meet the statutory requirements of having retired on an immediate annuity and having been covered by a plan under this part (including enrollment in his or her own right) since his or her first opportunity to enroll or for the 5 years immediately preceding his or her retirement, whichever is shorter.

(g) *Loss of coverage under Federal programs.* * * *

(4) An employee or annuitant who is not enrolled, but is covered by the enrollment of another enrollee under this part, may register to be enrolled in the same plan and option within 31 days after cancellation of the other's enrollment. If the employee is not eligible to enroll in the plan from which coverage is lost, he or she may enroll in the same option of any available plan. In order for an employee annuitant to be eligible to enroll under authority of this paragraph, he or she must meet the statutory requirements of having retired on an immediate annuity and having been covered by a plan under this part (including enrollment in his or her own right) since his or her first opportunity to enroll or for the 5 years immediately preceding his or her retirement, whichever is shorter.

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[FR Doc. 87–21015 Filed 9–11–87; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 418

[Amdt. No. 2; Docket No. 4701S]

Wheat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Wheat Crop Insurance Regulations (7 CFR Part 418), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Wheat Crop Insurance Regulations (7 CFR Part 418) only through the 1987 crop year. The provisions currently contained in this Part have been issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations (§ 401.101, Wheat Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 31, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC will publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a seperate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 418 will be effective only through the end of the 1987 crop year, FCIC amends the subpart heading of these regulations to specify that such will be the case.

The new Wheat Endorsement has been published as an endorsement to 7 CFR Part 401 (§ 401.101, Wheat Endorsement), and becomes effective for the 1988 and succeeding crop years. The provisions of the Wheat Crop Insurance Regulations, now contained in 7 CFR Part 418, are therefore superseded and will terminate, effective with the end of the 1987 crop year.

On July 7, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 25381, proposing to amend the subpart heading of 7 CFR Part 418 to make the regulations therein effective only through the end of the 1987 crop year. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received.

Therefore, the proposed rule published at 52 FR 25381 is adopted as final.

List of Subjects in 7 CFR Part 418

Crop insurance, Wheat.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Subpart heading to the Wheat Crop Insurance Regulations (7 CFR Part 418), as follows:

PART 418—[AMENDED]

1. The Authority citation for 7 CFR Part 418 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 418 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on August 21, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–21077 Filed 9–11–87; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 419

[Amdt. No. 3; Docket No. 4705S]

Barley Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation,USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Barley Crop Insurance Regulations (7 CFR Part 419), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Barley Crop Insurance Regulations (7 CFR Part 419) only through the 1987 crop year. The provisions currently contained in this Part have been issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations (§ 401.103, Barley Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 31, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC will publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master

policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 419 will be effective only through the end of the 1987 crop year, FCIC amends the subpart heading of these regulations to specify that such will be the case.

The new Barley Endorsement has been published as an endorsement to 7 CFR Part 401 (§ 401.103, Barley Endorsement), and becomes effective for the 1988 and succeeding crop years. The provisions of the Barley Crop Insurance Regulations, now contained in 7 CFR Part 419, are therefore superseded and will terminate, effective with the end of the 1987 crop year.

On July 7, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 25382, proposing to amend the subpart heading of 7 CFR Part 419 to make the regulations therein effective only through the end of the 1987 crop year. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received.

Therefore, the proposed rule published at 52 FR 25382 is adopted as final.

List of Subjects in 7 CFR Part 419

Crop insurance, Barley.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Subpart heading to the Barley Crop Insurance Regulations (7 CFR Part 419), as follows:

PART 419—[AMENDED]

1. The Authority citation for 7 CFR Part 419 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C 1506, 1516).

2. The Subpart heading in 7 CFR Part 419 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on August 20, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–21074 Filed 9–11–87; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 427

[Amdt. No. 2; Doc. No. 4708S]

Oat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Oat Crop Insurance Regulations (7 CFR Part 427), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Oat Crop Insurance Regulations (7 CFR Part 427) only through the 1987 crop year. The provisions currently contained in this Part have been issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations (§401.105, Oat Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 31, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC will publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 427 will be effective only through the end of the 1987 crop year, FCIC amends the subpart heading of these regulations to specify that such will be the case.

The new Oat Endorsement has been published as an endorsement to 7 CFR Part 401 (§401.105, Oat Endorsement), and becomes effective for the 1988 and succeeding crop years. The provisions of the Oat Crop Insurance Regulations, now contained in 7 CFR Part 427, are therefore superseded and will terminate, effective with the end of the 1987 crop year.

On July 7, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 25383, proposing to amend the subpart heading of 7 CFR Part 427 to make the regulations therein effective only through the end of the 1987 crop year. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none was received.

Therefore, the proposed rule published at 52 FR 25383 is adopted as final.

List of Subjects in 7 CFR Part 427

Crop insurance, Oat.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Subpart heading to the Oat Crop Insurance Regulations (7 CFR Part 427), as follows:

PART 427—[AMENDED]

1. The Authority citation for 7 CFR Part 427 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 427 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on August 21, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–21075 Filed 9–11–87; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 429

[Amdt. No. 2; Doc. No. 4709S]

Rye Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Rye Crop Insurance Regulations (7 CFR Part 429), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Rye Crop Insurance Regulations (7 CFR Part 429) only through the 1987 crop year. The provisions currently contained in this Part have been issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations (401.106, Rye Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 31, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC will publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 429 will be effective only through the end of the 1987 crop year, FCIC amends the subpart heading of these regulations to specify that such will be the case.

The new Rye Endorsement has been published as an endorsement to 7 CFR Part 401 (401.106, Rye Endorsement), and becomes effective for the 1988 and succeeding crop years. The provisions of the Rye Crop Insurance Regulations, now contained in 7 CFR Part 429, are therefore superseded and will terminate, effective with the end of the 1987 crop year.

On July 7, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 25384, proposing to amend the subpart heading of 7 CFR Part 429 to make the regulations therein effective only through the end of the 1987 crop year. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received.

Therefore, the proposed rule published at 52 FR 25384 is adopted as final.

List of Subjects in 7 CFR Part 429

Crop insurance, Rye.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*),

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the Federal Crop Insurance Corporation amends the Subpart heading to the Rye Crop Insurance Regulations (7 CFR Part 429), as follows:

PART 429—[AMENDED]

1. The Authority citation for 7 CFR Part 429 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 429 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on August 21, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–21076 Filed 9–11–87; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 439

[Amdt. No. 1; Doc. No. 4711S]

Almond Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Almond Crop Insurance Regulations (7 CFR Part 439), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Almond Crop Insurance Regulations (7 CFR Part 439) only through the 1987 crop year. The provisions currently contained in this part have been issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations (§ 401.110, Almond Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 31, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC will publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 439 will be effective only through the end of the 1987 crop year, FCIC amends the subpart heading of these regulations to specify that such will be the case.

The new Almond Endorsement has been published as an endorsement to 7 CFR Part 401 (401.110, Almond Endorsement), and becomes effective for the 1988 and succeeding crop years. The provisions of the Almond Crop Insurance Regulations, now contained in 7 CFR Part 439, are therefore superseded and will terminate, effective with the end of the 1987 crop year.

On July 2, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 25015, proposing to amend the subpart heading of 7 CFR Part 439 to make the regulations therein effective only through the end of the 1987 crop year. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received.

Therefore, the proposed rule published at 52 FR 25015 is adopted as final.

List of Subjects in 7 CFR Part 439

Crop insurance, Almond.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation amends the Subpart heading to the Almond Crop Insurance Regulations (7 CFR Part 439), as follows:

PART 439—[AMENDED]

1. The authority citation for 7 CFR Part 439 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The subpart heading in 7 CFR Part 439 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC, on August 21, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-21073 Filed 9-11-87; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 578]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 578 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 286,011 cartons during the period September 13 through September 19, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 578 (§ 910.878) is effective for the period September 13 through September 19, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456, telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on September 9, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 9 to 3 vote a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is fair.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been appraised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Sec. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.878 is added to read as follows:

§ 910.878 Lemon Regulation 578.

The quantity of lemons grown in California and Arizona which may be handled during the period September 13 through September 19, 1987, is established at 286,011 cartons.

Dated: September 10, 1987.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-21202 Filed 9-11-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-41-AD; Amdt. 39-5722]

Airworthiness Directives; Boeing Model 767 Airplanes Equipped With General Electric CF6 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes equipped with General Electric CF6 Engines, which requires replacement of aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line. This amendment is prompted by reports of cracks extending through the width of the bracket, allowing the bracket flange and clamp to contact and wear the adjacent fuel line. This condition, if not corrected, could lead to penetration of the fuel line wall, creating a fuel leak.

EFFECTIVE DATE: October 7, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Donald L. Kurle, Aerospace Engineer, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal

Aviation Regulations to include an airworthiness directive which requires the replacement of aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line on certain Boeing Model 767 airplanes equipped with General Electric CF6 engines, was published in the **Federal Register** on May 11, 1987 (52 FR 17598).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter, the Air Transport Association (ATA) of America, noted that its members affected by the proposed rule expressed agreement with the replacement of the aluminum brackets with inconel brackets. However, one ATA member proposed extending the 3,000 flight hour compliance period to 4,500 hours, provided repetitive inspections are conducted at 850 flight hour intervals. The member now inspects the subject brackets at 850 flight hour intervals and considers this inspection as equivalent in safety to mandatory bracket replacement within the 3,000 flight hour compliance period. The FAA does not agree totally with this comment. Since the method and adequacy of the inspection used by the ATA member is not known by the FAA, the FAA cannot at this time approve inspection in lieu of replacement. Therefore, the FAA is issuing the final rule as proposed. If the operator wishes to pursue periodic inspection and replacement at 4,500 flight hours as an alternate means of compliance, it is encouraged to submit a detailed proposal to the FAA in accordance with paragraph B. of the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 30 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 manhours per airplane to accomplish the required actions, that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,200.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, equipped with General Electric CF6 engines, listed in Boeing Service Bulletin 767-29-0032, dated January 15, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent cracking of the hydraulic pressure line aluminum support brackets in the engine strut, and possible fuel line penetration, accomplish the following:

A. Within the next 3,000 hours time-in-service after the effective date of this AD, replace aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line in accordance with Boeing Service Bulletin 767-29-0032 dated January 15, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 7, 1987.

Issued in Seattle, Washington, on August 26, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-21007 Filed 9-11-87; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-16-AD; Amdt. 39-5720]

Airworthiness Directives; British Aerospace Model BAC 1-11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model BAC 1-11 series airplanes, equipped with R.F.D. inflatable escape slides, which requires modification to the emergency escape slide deployment system. This amendment is prompted by reports of failure of the emergency escape slide to deploy. This condition, if not corrected, could result in preventing timely escape from an airplane in an emergency.

EFFECTIVE DATE: October 7, 1987.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airwortniness directive, which requires modification to the emergency escape slide deployment system in certain British Aerospace Model BAC 1-11 series airplanes equipped with R.F.D. inflatable escape slides, was published in the **Federal Register** on June 3, 1987 (52 FR 20722).

Interested parties have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the single comment received in response to the NPRM.

The commenter agreed with the intent of the NPRM, but, regarding paragraph B. of the proposal, could see no reason to allow an extension of the compliance times to repair the escape slide system. The FAA disagrees. Paragraph B. of the NPRM is a standard provision in most AD's to allow an alternate means to be used in complying with the AD. Each request for approval under this paragraph must provide an acceptable level of safety and is carefully reviewed and decided upon, based on the safety merit of each particular request.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Estimated cost for parts is $100/airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,280.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($380). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace (BAe): Applies to Model BAC 1–11 series airplanes equipped with R.F.D. inflatable escape slides, identified in BAe BAC 1–11 Service Bulletin 25–PM5906, Revision 2, dated November 9, 1984, and BAC 1–11 Service Bulletin 25–PM5943, dated November 24, 1986, certificated in any category. Compliance is required within 5 months after the effective date of this AD, unless previously accomplished.

To prevent failure of the emergency escape slide deployment system, accomplish the following:

A. Modify the R.F.D. emergency escape slide system in accordance with BAC 1–11 Service Bulletin 25–PM5906, Revision 2, dated November 9, 1984, and BAC 1–11 Service Bulletin 25–PM5943, dated November 24, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, P.O. Box 17414, Dulles International Airport, Washington DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 7, 1987.

Issued in Seattle, Washington, on August 24, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–21008 Filed 9–11–87; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Risk Management Exemptions From Speculative Position Limits Approved Under Commission Regulation 1.61

AGENCY: Commodity Futures Trading Commission.

ACTION: Statement of agency interpretation.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is publishing the following interpretation of Commission Regulation 1.61 in order to assist exchanges who may wish to amend, pursuant to section 5a(12) of the Commodity Exchange Act ("Act"), their speculative position limit rules required under Commission Regulation 1.61. The purpose of such an amendment would be to include risk-management exemptions in addition to the current exemptions for hedging and arbitrage or spreading. The interpretation pertains both to the types of positions which the Commission believes it may be appropriate to exempt and the procedures for granting such exemptions in view of an exchange's rule enforcement responsibilities. The Commission believes that such exemptions from exchange-enforced position limits are consistent with the objectives of the Commodity Exchange Act as discussed in this interpretation.

This interpretation delineates those positions which clearly would fall under such an exemption. The interpretation is not intended to be all-inclusive, and other positions, upon further analysis, might also be included appropriately within such an exemption. The Commission welcomes comment from all persons concerning this interpretation and other positions which might be included under such an exemption, consistent with the analysis of this interpretation.

EFFECTIVE DATE: September 14, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to Regulation 1.61 exemptions.

FOR FURTHER INFORMATION CONTACT: Ronald B. Hobson, Assistant to the Director, Division of Economic Analysis, 2033 K Street, NW., Washington, DC 20581 (202) 254–7303.

SUPPLEMENTARY INFORMATION:

I. Introduction

When the Agriculture Committees of the House of Representatives and the Senate reported out their respective versions of the Futures Trading Act of 1986, each Committee called upon the Commodity Futures Trading Commission to review its hedging definition to ensure that the definition continues to be consistent with the

current needs and practices of the industry.[1]

The report of the House of Representatives' version of the Futures Trading Act of 1986 noted that the principal problems identified by Committee witnesses with respect to the current definition pertain to the focus of the definition on agricultural and other physical commodity futures. In this regard, the House Committee Report noted:

> [T]hese witnesses stated that, depending on how the definition is interpreted, it may not recognize certain new uses of financial futures and options by investment advisers, banks, and insurance companies that manage pension funds, mutual funds, and other portfolios who must choose among different investments with varying levels of risk and anticipated returns.

Further, the House of Representatives' Committee Report noted:

> [A]s part of this review, the Committee wishes the Commission to consider giving certain concepts, uses, and strategies "non-speculative" treatment under the Act and relevant Commission regulations, whether under the hedging definition or, if appropriate, as a separate category similar to the treatment given certain spread, straddle, or arbitrage positions: one, the concept of "risk management" by portfolio managers as an alternative to the concept of "risk reduction"; two, futures positions taken as alternatives rather than temporary substitutes for cash market positions; three, other trading strategies involving the use of financial futures including, but not limited to, asset allocation (altering portfolio exposure in certain areas such as equity and debt), portfolio immunization (curing mismatches between the duration and sensitivity of a pension fund's assets and liabilities to ensure that portfolio assets will be sufficient to fund payment of its liabilities) and duration (altering the average maturity of a portfolio's assets); and four, options transactions, in particular the writing of covered puts and calls.

The reports of the Agriculture Committees of both the House of Representatives and the Senate further noted that a principal purpose of the Act, as set forth in section 4a(1), is the prevention of excessive speculation which causes unreasonable or unwarranted changes in commodity prices and that Commission actions on this matter should be consistent with this important purpose.

At about the same time as the enactment of the Futures Trading Act of 1986, the Commission's Financial Products Advisory Committee ("FPAC") adopted a resolution recommending that the Commission direct its staff to determine whether amendments to the Commission's hedging definition are necessary to accommodate current prudent portfolio management techniques that involve the use of futures markets. In order to facilitate the Commission's review of the hedging definition, the FPAC undertook a study which it issued in June 1987.[2] This study reviewed the Commission's hedging definition in light of modern finance theory and current investment practices. Based on this review, the FPAC made several recommendations including the recommendation that "the CFTC should define a new category of risk management positions that would be exempt from speculative position limits." In this regard, the FPAC observed that financial futures and options may be used as surrogates or complements to cash market positions to alter risk exposure or take advantage of "the transactional efficiencies of the futures and options markets." The FPAC noted that such positions would be unleveraged (*i.e.*, would be covered by cash or cash equivalents) or would result in leverage in the futures market only to the extent necessary to replicate an alternative, unleveraged exposure in the cash market for the relevant underlying securities. The FPAC also expressed the view that such positions would be no more conducive to market manipulation or disruption than are currently recognized hedging strategies.

The Commission believes that the exemption of certain risk-management positions from exchange speculative limits would be consistent with the objectives of Regulation 1.61 as discussed below.[3] Furthermore, the Commission believes that this interpretation regarding the appropriate nature of such exemptions and the situations under which they could be granted is responsive to the above noted Congressional suggestions proffered in the context of the 1986 reauthorization.

II. Background on Regulation 1.61

Paragraph (a)(1) of Commission Regulation 1.61 provides that each contract market shall adopt speculative limits on futures positions:

> [F]or the purpose of preventing excessive speculation in any commodity under contracts of sale of such commodity for future delivery, arising from those extraordinarily large positions which may cause sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity.[4]

In other words, the objective of speculative limits adopted under this regulation is to prevent large futures or option positions from disrupting the relevant derivative market. This requirement is based on the premise of section 4a of the Act that large speculative positions present potential for disruptions in terms of unreasonable fluctuations or unwarranted changes in commodity prices. In particular, the Commission has noted that "a trader's net position has a continued effect on price, and if sufficiently large can become a perceptible market factor." (45 FR 79833) Speculative limits serve to limit this potential influence of relatively large positions, including those situations where such positions must be liquidated abruptly during volatile market conditions which often involve erratic price movements. In view of this concern Commission approval of exchange rules permitting exemptions from speculative limits to date has been limited to bona fide hedging positions or positions which are otherwise economically balanced, *i.e.*, spreading or arbitrage positions.[5]

These rules require that traders apply to the exchange for speculative limit exemptions on a case-by-case basis. Moreover, the rules require that certain factors be considered by the exchange in determining the level of such exemptions. In the case of positions

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[1] See H.R. Rep. No. 624, 99th Cong., 2d Sess. 1, 45–46 (1986); and S. Rep. No. 291, 99th Cong., 2d Sess. 1, 21–22 (1986).

[2] *The Hedging Definition and the Use of Financial Futures and Options: Problems and Recommendations for Reform*, Report of the Financial Products Advisory Committee of the Commodity Futures Trading Commission, June 1987.

[3] In this regard, it should be noted that this interpretation relates solely to the application of Commission speculative position limits and does not address Commission Rule 4.5, 17 CFR 4.5. That rule delineates a safe harbor for identifying entities which meet the definition of a commodity pool, but which, because they are otherwise regulated and have adopted certain limitations on their commodity interest trading, should not be treated as pools.

[4] Paragraph (b) of Regulation 1.61 incorporates by reference this same objective with respect to position limits for option contracts.

[5] Regulation 1.61 (paragraphs (a)(2) for futures and (b)(2) for options) provides that limits established pursuant to the rule shall not apply to bona fide hedging positions as defined in accordance with CFTC Regulation 1.3(z)(1), provided that a contract market may limit such positions consistent with sound commercial practices and orderly markets. In addition, paragraph (a) provides that in establishing position limits for futures, a contract market may, among other things, set different limits or provide exemptions for positions which are normally known in the trade as "spreads, straddles or arbitrage."

Paragraph (e) of Rule 1.61 provides for certain additional explicit exemptions from newly established limits and for the cumulations of futures commissions merchants' or floor brokers' non-proprietary accounts. Further, this paragraph provides that

> [I]n addition to the express exemptions specified in this section, a contract market may provide and submit for Commission approval, such other exemptions from its position limits adopted pursuant to paragraph (a) or (b) of this section, consistent with the purposes of this section.

determined to be bona fide hedging, the exchange is to take into account the applicant's hedging needs and financial capability. Similarly, exchanges are required to consider an applicant's financial status and the liquidity of the markets involved in granting spread or arbitrage exemptions for futures or options. In view of these factors, exchanges are required to determine levels of exemptions which are consistent with an applicant's commercial needs and with orderly markets.

III. The Nature of "Risk Management" Positions

The FPAC's study of the hedging definition contains an extensive discussion of trading strategies involving financial futures and options that are currently employed by financial institutions. In a broad sense, each of these strategies could be characterized as a form of risk management since each serves to alter an institution's risk-return profile within the context of the institution's overall investment objectives and predetermined risk parameters. However, many of these strategies involve risk *reduction* and therefore fall within the Commission's current hedging definition.[6] As a consequence, any futures or option positions involved in such risk-reducing strategies currently would be eligible for exemption from exchange speculative limits pursuant to the exchange rules governing such limits and exemptions therefrom. The FPAC recommendation regarding speculative limit exemptions for "risk-management" positions concerns only those strategies which do not involve a reduction in an institution's risk exposure and therefore are not eligible for a hedging exemption.

In order to illustrate more precisely the types of positions that could be considered for exemptions from speculative limits by exchanges under a risk-management classification, consider a pension fund that has received new monies from fund contributors. The fund's manager must decide how to allocate such contributions among a myriad of investment alternatives. The manager may believe that the stock market as a whole offers favorable short-term return prospects but may be undecided with respect to the individual stocks to be purchased or, perhaps, whether over the longer run the stock investment should be made. In order to obtain immediate stock market exposure, the manager invests the majority of the new funds in short-term money market instruments (*e.g.*, Treasury bills) and the remainder in long stock index futures contracts. To the extent that the underlying value of the stock index futures position does not exceed the value of the money market investment and the funds used to margin the futures position, the fund manager has effectively created a synthetic stock position in the amount of the new funds.

If the fund manager intends to convert the new funds into actual stock purchases, the position currently would be eligible for exemption from speculative limits as a hedge—in effect an anticipatory hedge. However, if, for whatever reason, there exists a likely prospect that the fund manager may not replace his synthetic stock position with actual stocks, the hedge status of the stock index futures position may be uncertain, as would be the position's current eligibility for an exemption from speculative limits. In accord with the provisions of this interpretation, in the latter circumstance the stock index futures position could be classified as a risk-management position and therefore eligible for exemption from speculative limits.

A variation of this institutional asset allocation strategy would involve a pension fund that is fully invested in both debt and equity securities. The fund manager may believe that market timing considerations favor a temporary increase in the fund's equity exposure relative to its debt exposure. Such a reallocation could be accomplished in numerous ways, including the actual sale of bond holdings and the simultaneous purchase of stocks. However, in view of the intended temporary nature of the reallocation of assets and in consideration of the potential transactions costs of such a shift if effected through the cash markets, the fund manager may choose to accomplish the reallocation using futures only. Such a shift could involve buying stock index futures and selling Treasury bond or Treasury note futures. Although the short Treasury bond or note futures position currently would be eligible for exemption from speculative limits as a hedge, the long stock index futures position would not. However, under appropriate exchange rules issued pursuant to this interpretation, the long stock index futures position could be eligible for a risk-management exemption from speculative limits.

The risk-management exemptions contemplated herein also could apply to certain strategies which utilize futures to extend the duration of a financial institution's investment portfolio, as distinguished from duration matching or immunization strategies. Consider the manager of an insurance company's bond portfolio who wishes to use a new allocation of cash to lengthen the duration of the portfolio. This can be accomplished by using all of the cash to purchase long-term coupon bonds, zero-coupon bonds, or a combination of the two. Alternatively, a portion of the cash could be retained, and bond futures contracts can be purchased.

If the general strategy of lengthening the fund's duration is undertaken in order to maintain an immunized bond position, *i.e.*, one that is free of interest-rate risk when considered in the context of the insurance company's liabilities, the bond futures position could be eligible for exemption from speculative limits as a "balance-sheet" hedge.[7] Alternatively, if the fund manager intends to convert the cash into actual bond purchases, the bond futures position could be eligible for a speculative limit exemption as an anticipatory hedge. However, even if neither of these conditions holds, the long bond futures position could be eligible for a risk-management exemption under exchange rules consistent with the provisions outlined in this interpretation.

An additional strategy that could involve debt- or equity-based options on futures or currency options which may fall under an appropriately framed risk-management exemption from speculative limits is covered option writing by financial institutions. The short call option position involved in such a strategy could qualify as a hedge and therefore be eligible for an exemption from speculative limits to the extent that the size of the option position is dynamically adjusted to maintain a close correspondence between the fluctuations in the value of the option position and those of the underlying cash market position (*i.e.*, to achieve delta neutrality). Alternatively, if the size of the short call position is not adjusted but is matched by a long put position of the same value and with the same expiration date and strike price, the resulting synthetic short futures position could qualify as a hedge of an existing cash market position and the matching option components could be eligible for speculative limit exemptions. However, if, to enhance its income, a government securities dealer or the

[6] The Commission recently addressed questions raised in the FPAC study regarding the hedge status of certain risk-reducing uses of futures and options (*e.g.*, in the context of portfolio immunization strategies) in an interpretation clarifying certain aspects of the hedging definition. See 52 FR 27195 (July 20, 1987).

[7] See the Commission's August 3, 1987, **Federal Register** notice on the hedging definition, *ibid.*

manager of a government bond fund, for example, were to write an amount of call options on Treasury bond futures equivalent in value to the portion of its holdings of long-term government debt to be used as cover for such options, the option position would not be eligible for a hedge exemption but could be eligible for a risk-management exemption from speculative limits under exchange rules consistent with the provisions of this interpretation.

IV. Risk-Management Exemption Guidelines

The Commission believes that it would be consistent with the objectives of section 4a of the Act and § 1.61 of its rules to consider approval, pursuant to section 5a(12) of the Act and Commission Regulation 1.41(b), of exchange rules which exempt from speculative limits the following risk management positions in debt-based, equity-based and foreign currency futures and options:

A. Long positions in futures, long calls, or short puts whose underlying commodity value does not exceed the sum of:

(1) Cash set aside in an identifiable manner or unencumbered short-term U.S. Treasury obligations so set aside, plus any funds deposited as margin on such positions; and

(2) Accrued profits on such positions held at the futures commission merchant.

B. Short calls whose underlying commodity value does not exceed the sum of:

(1) The value of securities or currencies underlying the futures contract upon which the option is based or underlying the option itself and which securities or currencies are owned by the trader holding such option position; and

(2) The value of securities or currencies whose price fluctuations are substantially related to the price fluctuations of the securities or currencies underlying the futures contract upon which the option is based or underlying the option itself and which securities or currencies are owned by the trader holding such option position.

C. Long positions in futures or long calls whose underlying commodity value does not exceed the sum of

(1) The value of equity securities, debt securities, or currencies owned and being hedged by the trader holding such futures or option position, provided that the fluctuations in value of the position used to hedge such securities are substantially related to the fluctuations in value of the securities themselves; and

(2) Accrued profits on such positions held at the futures commission merchant.

Moreover, the Commission recommends that exchange rules submitted pursuant to section 5a(12) of the Act should specify how the granting of exemptions for risk management positions would be consistent with the intent of Commission Rule 1.61. Of particular interest to the Commission are whether:

1. The cash market underlying the futures or option market has a high degree of demonstrated liquidity relative to the size of positions, and whether there exist opportunities for arbitrage which provide a close linkage between the cash market and the derivative market in question.

2. The positions are on behalf of a commercial entity, including parents, subsidiaries or other related entities, which typically buys, sells or holds the underlying or a related cash market instrument.

3. The positions will be subject to explicit exchange procedures concerning the approval and amendment of each applicant's exemption. Each such exemption should be contingent upon the nature of the position, the liquidity of the markets involved (including current market conditions), and the financial status of the position holder.

The Commission believes that the above points address regulatory concerns which are integral to Rule 1.61, particularly with respect to derivative market positions lacking an offsetting cash or derivative market position, *viz.*, the limited liquidity in certain derivative markets and the prospect of the abrupt liquidation of large, one-sided positions in the face of adverse price movements.[8] In that regard, the Commission has noted that the characteristics of the underlying cash market and the ability to conduct substantial arbitrage positions mitigate the degree to which large positions may influence prices in the derivative market.[9] Further, the fact that exempted positions would be matched by cash or cash equivalent set-asides should limit the possibility that such positions would be subjected to a forced liquidation due to financial considerations.[10]

This is not to say, however, that these conditions would alleviate all possible regulatory concerns. The Commission is aware that the capacity of a contract market to absorb large positions is not unlimited, notwithstanding mitigating characteristics of the cash market. (46 FR 50940). Accordingly, the Commission believes that all positions exempted, even including those for bona fide hedging and intermarket spreading or arbitrage, should be carefully determined and monitored by the exchanges. In particular, exchange rules permitting such exemptions should provide for determination of such exemptions on a case-by-case basis. The applicant should describe in writing the specific nature and size of the position to be exempted and otherwise include information relevant to the conditions discussed above. Further, the exchange should approve or otherwise specify a maximum size for each exempted position in view of the liquidity of the affected markets and the financial status of the trader. In addition, as with existing exchange rules permitting hedge, arbitrage and spread exemptions, the Commission believes that rules regarding risk management positions should make clear that traders who have applied for or been granted risk management exemptions should supplement their application as conditions relevant to their exemptions change and may be required to supply the exchange with additional information as requested and that the exchange can amend, revoke or otherwise limit the exemption for any good reason.[11] Finally, the Commission believes that, consistent with existing exchange speculative limit exemptions, exchanges should maintain procedures

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[8] See, for instance, 45 FR 79832–79833 (December 2, 1980).

[9] See, for instance, 45 FR 79832.

[10] In this respect, as noted above, a common characteristic of positions currently exempted under provisions for hedging or arbitrage is an offsetting position in another similar or closely related market.

[11] Paragraph (d) of Rule 1.61 requires the submission of certain materials in connection with position limits for each contract market. These include

(2) Any bylaw, rule, regulation or resolution which provides for exemptions from limits proposed under paragraphs (a) and (b) of this section, including an exemption for bona fide hedging, and

(4) A description of the method of enforcement of option and/or future position limits, which shall include a description of the procedures by which contract markets will determine hedging exemptions and the method of monitoring compliance with rules concerning bona fide hedging positions or any other exemptions.

The procedures and information requirements outlined in the text above closely parallel those embodied in exchange speculative limit rules previously approved by the Commission. For a discussion of such rules, see, for example, an April 16, 1982, memorandum to the Commission from the Division of Economics and Education concerning the application of the Chicago Mercantile Exchange for designation as a contract market in the Standard & Poor's 500 Stock Price Index.

for periodically reviewing risk-management exemptions.

The Commission notes that providing risk management exemptions to commercial entities who are typically engaged in buying, selling or holding cash market instruments is similar to a provision in the Commission's hedging definition, *viz.*, the risks to be hedged arise in the management and conduct of a commercial enterprise. Further, a provision that the entities typically are engaged substantially in the underlying or related cash markets appears consistent with the statements of the Agriculture Committees of both the House of Representatives and the Senate. The Commission believes that firms likely to meet this condition would include, but not necessarily be limited to, commercial banks, investment banks, investment companies, insurance companies and other investment firms in terms of these entities' responsibilities with respect to pension funds, endowment funds, trusts, mutual funds and other securities and currency portfolios.

The Commission welcomes the written views of any interested persons concerning this interpretation. In particular, the Commission is interested in receiving the views of the public regarding any additional positions which could be included under this exemption, consistent with its underlying rationale and the requirements of Regulation 1.61.

Issued in Washington, DC, on September 8, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-21013 Filed 9-11-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Ivermectin Liquid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories providing for safe and effective use of Eqvalan® (ivermectin) oral liquid in horses for treating and controlling certain parasites.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065-0914, filed NADA 140-439 which provides for use of Eqvalan® (ivermectin) oral liquid in horses for treating and controlling large strongyles, small strongyles, pinworms, ascarids, hairworms, large-mouth stomach worms, neck threadworms, bots, lungworms, intestinal threadworms, and summer sores caused by specified organisms. The product is to be administered to horses by stomach tube or as an oral drench at a dose of 200 micrograms per kilogram of body weight.

The NADA is approved, and the animal drug regulations are amended to reflect this approval by adding new § 520.1195 *Ivermectin liquid* (21 CFR 520.1195). The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Part 520 is amended by adding new § 520.1195 to read as follows:

§ 520.1195 Ivermectin liquid.

(a) *Specifications.* Each milliliter contains 10 milligrams of ivermectin.

(b) *Sponsor.* See No. 000006 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 200 micrograms per kilogram of body weight as a single dose.

(2) *Indications for use.* It is used in horses for the treatment and control of large strongyles (adult) (*Strongylus equinus*), (adult and arterial larval stages) (*Strongylus vulgaris*), (adult and migrating tissue stages) (*Strongylus endentatus*), (adult) (*Triodontophorus* spp.); small strongyles, including those resistant to some benzimidazole class compounds (adult and fourth stage larvae) (*Cyathostomum* spp., *Cylicocyclus* spp., *Cylicodontophorus* spp., *Cylicostephanus* spp.); pinworms (adult and fourth stage larvae) (*Oxyuris equi*); ascarids (adult) (*Parascaris equorum*); hairworms (adult) (*Trichostongylus axei*); large mouth stomach worms (adult) (*Habronema muscae*); stomach bots (oral and gastric stages) (*Gastrophilus* spp.); lungworms (adults and fourth stage larvae) (*Dictyocaulus arnfieldi*); intestinal threadworms (adults) (*Strongyloides westeri*); summer sores caused by *Habronema* and *Draschia* spp. cutaneous third stage larvae; and dermatitis caused by neck threadworm microfilariae (*Onchocerca* spp.).

(3) *Limitations.* Administer by stomach tube or as an oral drench. Do not use in horses intended for food purposes. Safety has not been demonstrated in horses under 4 months old. Do not administer to foals of this age class. Federal law restricts this drug to us by or on the order of a licensed veterinarian.

Dated: September 3, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-21051 Filed 9-11-87; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 752

Landscape and Roadside Development

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on landscape development to implement a requirement for planting native wildflowers along Federal-aid highways. Section 130 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 amended 23 U.S.C. 319 by adding a requirement that at least one-quarter of one percent of funds expended for landscaping projects be used to plant native wildflowers. This provision requires every landscaping project to include the planting of native wildflower seeds and/or seedlings, unless a waiver has been granted.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Eugene Johnson, Environmental Analysis Division (202–366–9173) or Michael J. Laska, Office of Chief Counsel (202–366–1383), Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) (Pub. L. 100–17, 101 Stat. 132) was enacted on April 2, 1987. Section 130 of the STURAA amended 23 U.S.C. 319 by adding a requirement that native wildflower seeds or seedlings or both be planted as part of any landscaping project undertaken on the Federal-aid highway system. At least one-quarter of one percent of the funds expended for such landscaping projects must be used to plant native wildflowers. A waiver of this requirement can be granted by FHWA if a State certifies that native wildflowers or seedlings cannot be grown satisfactorily or that there is an overall scarcity of available planting areas or that the available planting areas will be used for agricultural purposes. Previously, the States planted wildflowers on a voluntary basis, generally, with State garden clubs donating the wildflower seeds. Section 130 does not prohibit the acceptance of native wildflower seeds or seedlings donated by civic organizations or other organizations and individuals to be used in landscaping projects. However, the value of donated plant materials may not be counted toward the required minimum expenditure.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or significant regulation under the regulatory policies and procedures of the Department of Transportation. Since the revisions in this document are being issued for the purpose of literally complying with statutory language mandated by section 130 of the STURAA of 1987, public comment is impracticable and unnecessary. Therefore, the FHWA finds good cause to make the revisions final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information, since the revisions incorporated in the regulation require no interpretation and provide for no discretion. It is anticipated that the economic impact of this rulemaking, although mandated by the statutory provisions themselves, will be minimal. Therefore, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, the FHWA is amending Part 752 of Title 23, Code of Federal Regulations, as set forth below. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372, regarding intergovernmental consultation on Federal programs and activities, apply to this program.)

List of Subjects in 23 CFR Part 752

Government contracts, Grant programs—Transportation, Highways and roads, Landscape development, Roadside development, Wildflowers.

Issued on: September 2, 1987.

R.A. Barnhart,

Federal Highway Administrator.

PART 752—LANDSCAPE AND ROADSIDE DEVELOPMENT

The Federal Highway Administration hereby amends Part 752 of Title 23, Code of Federal Regulations, as follows:

1. The authority citation for Part 752 continues to read as follows:

Authority: 23 U.S.C. 131, 315, 319; 42 U.S.C. 4321, *et seq.*; 49 CFR 1.48(b), unless otherwise noted.

2. Section 752.3 is amended by adding paragraph (e) to read as follows:

§ 752.3 Definitions.

* * * * *

(e) *Landscape project.* Any action taken as part of a highway construction project or as a separate action to enhance the esthetics of a highway through the placement of plant materials consistent with a landscape design plan. Seeding undertaken for erosion control and planting vegetation for screening purposes shall not constitute a landscaping project.

3. Section 752.4 is amended by revising paragraph (a) and (b) and by adding paragraph (e) to read as follows:

§ 752.4 Landscape development.

(a) Landscape development, *which includes landscaping projects and other highway planting programs* within the right-of-way of all federally funded highways or on adjoining scenic lands, shall be in general comformity with accepted concepts and principles of highway landscaping and environmental design.

(b) *Landscape development* should have provisions for plant establishment periods of a duration sufficient for expected survival in the highway environment. Normal 1-year plant establishment periods may be extended to 3-year periods where survival is considered essential to their function, such as junkyard screening or urban landscaping projects.

* * * * *

(e) Landscaping projects shall include the planting of native wildflower seeds or seedlings or both, unless a waiver is granted as provided in § 752.11(b).

4. Section 752.11 is revised to read as follows:

§ 752.11 Federal participation.

(a) Federal-aid highway funds, but generally excluding Interstate construction funds, are available for landscape development; for the

acquisition and development of safety rest areas, scenic overlooks, and scenic lands; for the development of information centers and systems; and for the removal of abandoned motor vehicles.

(b) Federal-aid highway funds may participate in any landscaping project undertaken pursuant to paragraph (a) of this section provided that at least one-quarter of one percent of funds expended for such landscaping project is used to plant native wildflower seeds or seedlings or both. The Administrator may, upon the request of a State highway agency, grant a waiver to this requirement provided the State certifies that:

(1) Native wildflowers or seedlings cannot be grown satisfactorily; or

(2) There is a scarcity of available planting areas; or

(3) The available planting areas will be used for agricultural purposes.

(c) Subject to the requirement of paragraph (b) of this section, Federal-aid highway funds may participate in plant establishment periods in or associated with landscape development.

(d) Notwithstanding the provisions of paragraph (b) of this section, Federal-aid highway funds may participate in the planting of flowering materials, including native wildflowers, donated by garden clubs and other organizations or individuals.

(e) The value of donated plant materials shall not count toward the one-quarter of one percent minimum expenditure required by paragraph (b) of this section.

(f) Federal-aid funds may not be used for assemblage, printing, or distribution of information materials; for temporary or portable information facilities; or for installation, operation, or maintenance of vending machines.

[FR Doc. 87-21071 Filed 9-11-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 165

[DoD Directive 4105.66]

Suspension and Debarment of Nonappropriated Fund Contractors

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule removes Part 165 in its entirety. The Part is no longer valid because it does not support current Department of Defense policy emphasizing central monitoring and coordination of contract fraud investigators and remedies.

EFFECTIVE DATE: January 8, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Bynum, Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington DC 20301-1155, telephone (202) 697-4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 165

Armed forces, Conflict of interests, Government employees, Government procurement, Reporting and recordkeeping requirements.

PART 165—[REMOVED]

Accordingly, Title 32, Chapter I is amended to remove Part 165.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 8, 1987.

[FR Doc. 87-21031 Filed 9-11-87; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3235-2]

Standards of Performance for New Stationary Sources; Test Methods in Appendix A and Performance Specifications in Appendix B; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is correcting errors in the test methods and performance specifications in Appendices A and B of 40 CFR Part 60 in the Code of Federal Regulations. Errors in the test methods and performance specifications that have been overlooked over the years are corrected by this action.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Roger T. Shigehara at (919) 541-2237.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 60

Air pollution control, Electric utility steam generating units, Incorporation by reference, Intergovernmental relations, Kraft pulp mills, Nitric acid plants, Portland cement plants, Primary copper smelters, Reporting and recordkeeping requirements, Sewage treatment plants, Sulfuric acid plants.

Dated: September 3, 1987.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

The following corrections are made in Appendices A and B of 40 CFR Part 60 as published in the Code of Federal Regulations, revised as of July 1, 1986.

PART 60—[AMENDED]

1. The authority for 40 CFR Part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

Appendix A—[Amended]

Method 1—[Amended]

2. Appendix A, Method 1 is amended as follows:

(a) By revising Figures 1-1, 1-2, and 1-3 as shown:

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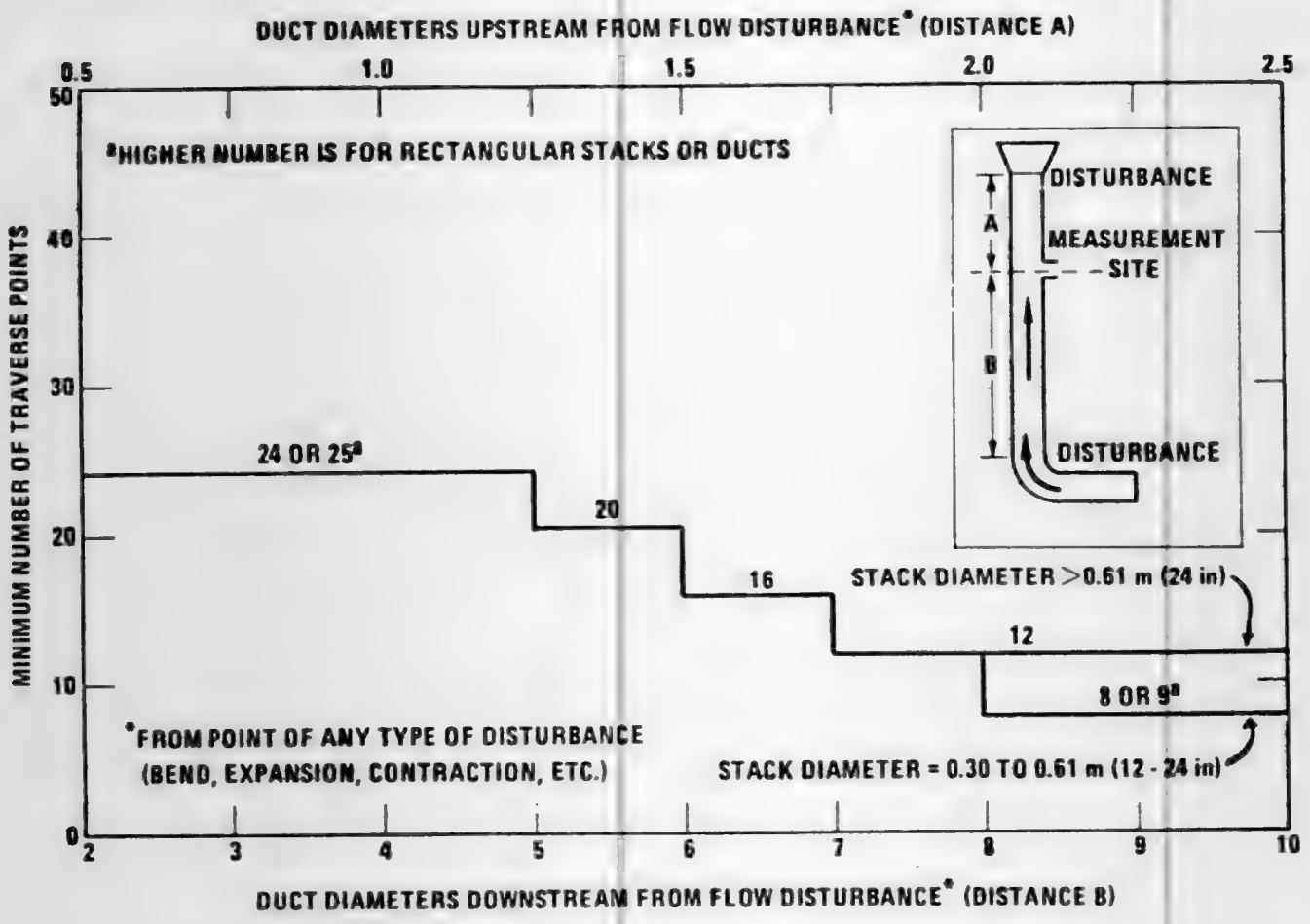

Figure 1-1. Minimum number of traverse points for particulate traverses.

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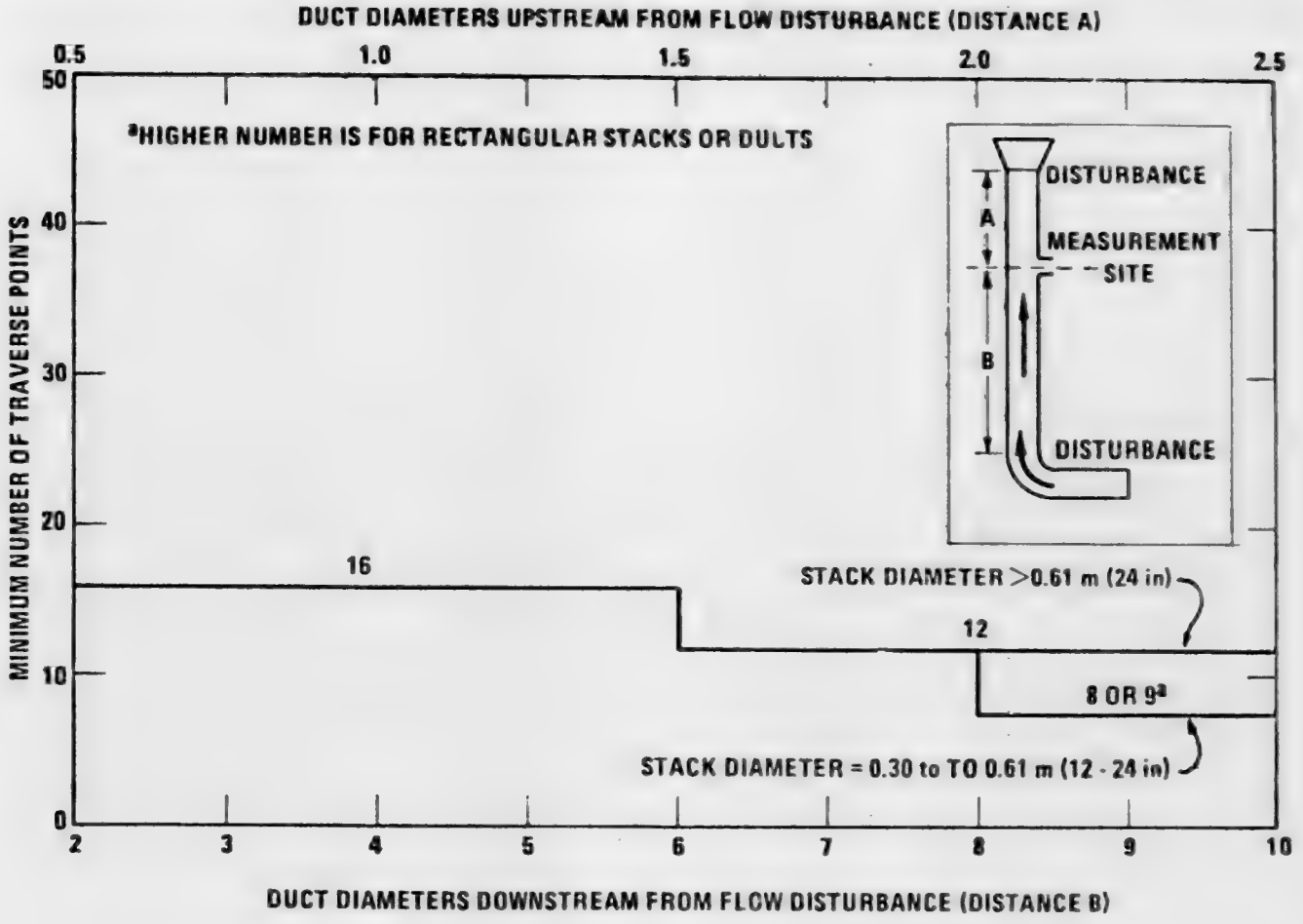

Figure 1-2. Minimum number of traverse points for velocity (nonparticulate) traverses.

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TRAVERSE POINT	DISTANCE, % of diameter
1	4.4
2	14.6
3	29.6
4	70.4
5	85.4
6	95.6

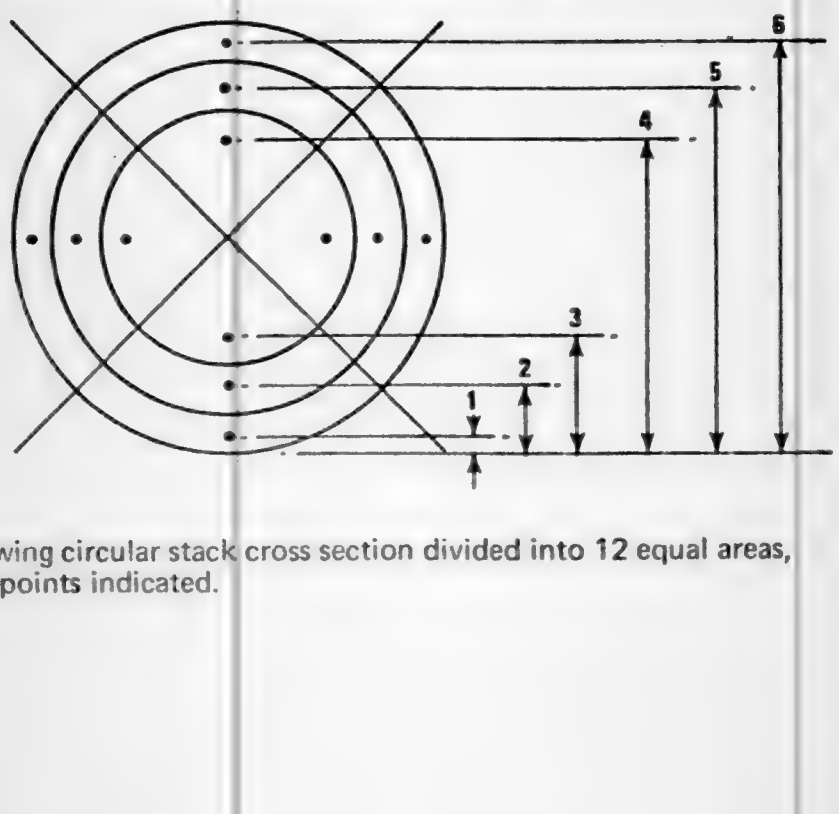

Figure 1-3. Example showing circular stack cross section divided into 12 equal areas, with location of traverse points indicated.

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(b) Section 2.4, third paragraph, by removing the last sentence:

"The limit of acceptability for the average value of α would remain 20°".

Method 2—[Amended]

3. Appendix A, Method 2 is amended as follows:

(a) By adding a title to the figure following Section 4.1.2 to read as follows:

Figure 2–6. Proper pitot tube-sampling nozzle configuration to prevent aerodynamic interference; buttonhook-type nozzle; centers of nozzle and pitot opening aligned; D_t between 0.48 and 0.95 cm (3/16 and 3/8 in.).

(b) By adding a bar over "C_p" in the terms "C_p (side A)", "C_p (side B)", "C_p (A)", or "C_p (B)" to read "$\bar{C}_p$ (side A)", "$\bar{C}_p$ (side B)", "$\bar{C}_p$ (A)", or "$\bar{C}_p$ (B)" in the following places:

(1) Section 4.1.4.2, lines 1 and 2.
(2) Section 4.1.4.3, lines 2 and 4.
(3) Section 4.1.4.5, lines 4 and 5.
(4) Section 4.1.5.1.1, line 6, (twice).

(c) By revising the symbol "δ" to read "σ" in the following places:

(1) Section 4.1.4.4, line 1.
(2) Section 4.1.4.5, line 2 (twice).
(3) Section 4.1.5.3, line 8.

(d) Section 5.3, by adding a new paragraph following Equation 2–10 to read as follows: "To convert Q_{sd} from dscm/hr (dscf/hr) to dscm/min (dscf/min), divide Q_{sd} by 60."

Method 2A—[Amended]

4. Appendix A, Method 2A is amended as follows:

(a) Section 2.1, line 6, by revising the specification "± percent" to read "±2 percent".

Method 2B—[Amended]

5. Appendix A, Method 2B is amended as follows:

(a) Section 4.4, by revising Equation 2B–2 to read as follows:

$$Q_{sd} = V_{sd}/\theta \qquad \text{Eq. 2B–2}$$

Method 3—[Amended]

6. Appendix A, Method 3 is amended as follows:

(a) Section 2.2.7, line 2, by revising the figure "28" to read "30".

(b) Figure 3–3, footnote, by revising the last term "<10%" to read "≤|10%|".

(c) Section 4.2.7, NOTE, line 4, by removing the words "Citation 5 in the Bibliography" and inserting in their place the words "Section 4.4.1".

(d) Section 6.2, by revising Equation 3–1 to read as follows:

$$\%EA = \frac{\%O_2 - 0.5\%\ CO}{0.264\ \%N_2 - (\%O_2 - 0.5\ \%CO)}$$

Eq. 3–1

Method 5—[Amended]

7. Appendix A, Method 5 is amended as follows:

(a) Section 2.1.1, line 3, by revising the figure "30°" to read "≤30°".

(b) Section 4.2, under *Container No. 2*, 5th paragraph, lines 1 and 2, by removing the words "be used to".

(c) Section 5.1, line 5, by revising the figure "01.025" to read "0.025".

(d) By revising Figure 5–6 as shown:

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Date _____ Metering System Identification: _____

Barometric pressure, P_b = _____ in. Hg

Orifice manometer setting ΔH in. H_2O	Spirometer (wet meter) gas volume V_w ft^3	Dry gas meter volume V_m ft^3	Temperatures: Spirometer (wet meter) t_w °F	Temperatures: Dry Gas Meter Inlet t_i °F	Temperatures: Dry Gas Meter Outlet t_o °F	Temperatures: Dry Gas Meter Average t_m °F	Time θ min

Calculations

ΔH in. H_2O	Y: $\frac{V_w P_b (t_m + 460)}{V_m \left[P_b + \frac{\Delta H}{13.6}\right] (t_w + 460)}$	$\Delta H@$: $\frac{0.0317\ \Delta H}{P_b (t_o + 460)} \left[\frac{(t_w + 460)\ \theta}{V_w}\right]^2$
Average		

Y = Ratio of reading of wet test meter to dry test meter; tolerance for individual values ±0.02 from average.

$\Delta H@$ = Orifice pressure differential that equates to 0.75 cfm of air @ 68°F and 29.92 inches of mercury, in. H_2O; tolerance for individual values ±0.20 from average.

Figure 5.6. Example data sheet for calibration of metering system (English units).

BILLING CODE 6560-50-C

(e) Section 6.1, third term (C_a), by revising the units "mg/g" to read "mg/mg".

(f) Section 6.10, by adding to the conversion factor table under the appropriate headings the following: From "g" To "mg" Multiply by "0.001".

(g) Section 6.11.1, Equation 5–7, by revising the term "P_m" in the numerator to read "V_m Y".

(h) By adding a new Section 6.13 after Section 6.12 to read as follows:

6.13 Stack Gas Velocity and Volumetric Flow Rate. Calculate the average stack gas velocity and volumetric flow rate, if needed, using data obtained in this method and the equations in Sections 5.2 and 5.3 of Method 2.

Method 5A—[Amended]

8. Appendix A, Method 5A is amended as follows:

(a) Section 6.1, first term, C_t, by revising the units "mg/g" to read "mg/mg".

(b) By adding a heading on a separate line after the nomenclature of Section 6.4 and before Eq. 5A–2 to read as follows:

6.5 Moisture Content.

(c) In the newly designated Section 6.5, NOTE after Equation 5A–2, fourth from last line, by revising "Figure 2" to read "Figure 5–2 of Method 5".

Method 5D—[Amended]

9. Appendix A, Method 5D is amended as follows:

(a) Section 4.3, by adding an equation number to the right of the equation to read "Eq. 5D–1".

(b) Section 6.2, by adding an equation number to the right of the equation to read "Eq. 5D–2".

(c) In Section 6.2, in the text following the equation, by revising the two occurrences of the unit "Nm^3" to read "sm^3".

Method 5E—[Amended]

10. Appendix A, Method 5E is amended as follows:

(a) Section 6.1, by revising Eq. 5E–2 to read as follows:

$$m_c = 0.001\ C_{toc}\ V_s$$

Eq. 5E–2

(b) Section 6.1, nomenclature list, third term, by revising the term "C_c" to read "C_{toc}".

Method 6B—[Amended]

11. Appendix A, Method 6B is amended as follows:

(a) Section 4.2, line 3, by removing the words "ascarite bubbler" and inserting in their place the words "CO_2 absorber".

Method 6C—[Amended]

12. Appendix A, Method 6C is amended as follows:

(a) Section 6.4.1, line 4, by revising "Figure 6C–6" to read "Figure 6C–5".

Method 7—[Amended]

13. Appendix A, Method 7 is amended as follows:

(a) Section 4.1.1, by revising the term "V_i" to read "P_i".

(b) Section 5.2.2, nomenclature, 1st term (K_c), by adding a comma after the word "factor" and adding the units "μg" to read "factor, μg.".

(c) By adding a heading on a separate line before Equation 7–3 ($m = 2K_cAF$) to read "6.3 Total μg NO_2 Per Sample.".

(d) Section 6.4, after Equation 7–4, by adding the nomenclature and a sentence to read as follows:

Where:

$K_2 = 10^3$ (mg/scm)/(μg/ml) for metric units.
$= 6.242 \times 10^{-5}$ (lb/scf)/(μg/ml) for English units.

To convert from mg/dscm to g/dscm, divide C by 1,000.

Method 7A—[Amended]

14. Appendix A, Method 7A is amended as follows:

(a) Section 4.5, by revising the heading to read "Audit Sample Analysis.".

(b) Section 6.2, by adding a new paragraph after the fourth term in the nomenclature of Equation 7A–1 and just before the paragraph that begins "If desired, the concentration . . ." to read, "To convert from mg/dscm to g/dscm, divide C by 1000.".

Method 7B—[Amended]

15. Appendix A, Method 7B is amended as follows:

(a) Section 5.1, NOTE, by inserting "K_c" between the words "factor" and "as" to read ". . . factor K_c as . . .".

Method 7C—[Amended]

16. Appendix A, Method 7C is amended as follows:

(a) Section 3.2.12, line 2, by revising the figure "100" to read "1000".

(b) Section 6.4, by adding to the list the conversion factor "1000 mg=1 g.".

Method 7D—[Amended]

17. Appendix A, Method 7D is amended as follows:

(a) Section 6.4, by adding to the list the conversion factor "1000 mg=1 g.".

Method 8—[Amended]

18. Appendix A, Method 8 is amended as follows:

(a) Section 6.1, sixth term, "*N*", by revising the units "g equivalents/liter" to read "meq/ml".

(b) Section 6.7.1, Eq. 8–4, by adding the term "*Y*" next to term "V_m" in the numerator to read "$V_m Y$".

(c) By adding a new Section 6.9 after Section 6.8 to read as follows:

6.9 Stack Gas Velocity and Volumetric Flow Rate. Calculate the average stack gas velocity and volumetric flow rate, if needed, using data obtained in this method and the equations in Sections 5.2 and 5.3 of Method 2.

Method 9—[Amended]

19. Appendix A, Method 9 is amended as follows:

(a) Section 2.2, by adding the words "a sketch of the observer's position relative to the source," between the words "affiliation," and "and" to read ". . . affiliation, a sketch of the observer's position relative to the source, and . . ."

(b) Section 3.3.2.3, line 5, by adding the symbol Φ before the equal sign and figure "=2" to read "Φ=2".

Method 11—[Amended]

20. Appendix A, Method 11 is amended as follows:

(a) Section 5.1.3, by adding the heading and period "Tubing." between "5.1.3" and "Glass" to read "5.1.3 Tubing. Glass . . ."

(b) Section 6.3.3, line 3, by revising the chemical symbol "C_6H_5AsD" to read "C_6H_5AsO".

(c) Section 8.1.1, second from last line, by revising the equation number "9.3" to read "11–3".

(d) Section 8.1.2, by revising "equation 9.1" to read "Equation 11–1".

(e) Section 8.1.3, third from last line, by revising the equation number "9.2" to read "11–2".

(f) Section 9.1, by adding an equation number to the right of the equation to read "Eq. 11–1".

(g) Section 9.2, by adding an equation number to the right of the equation to read "Eq. 11–2".

(h) Section 9.3, by adding an equation number to the right of the equation to read "Eq. 11–3".

(i) Section 9.3, NOTE, line 3, by revising the equation number "9.3" to read "11–3".

(j) Section 9.4, by revising the equation number "Eq. 11–5" to read "Eq. 11–4".

(k) Section 9.5, by adding an equation number to the right of the equation to read "Eq. 11–5".

(l) Section 9.5, NOTE, by revising the equation number "9.5" to read "11–5".

Method 13A and 13B—[Amended]

21. Appendix A, Methods 13A and 13B are amended as follows:

(a) Method 13A, Section 9.1, nomenclature, the third term, C_s, by adding the units after the units "mg/m³" to read "(mg/ft³)".

(b) Method 13A, Section 9.5.2, by removing the symbol "K" from Equation 13A–2 and by removing the nomenclature after the equation.

(c) Method 13B, Section 9.3, by revising the unit of the symbol "K" ("mg/ml") to read "mg/millimole".

Method 14—[Amended]

22. Appendix A, Method 14 is amended as follows:

(a) Section 6.4, by removing the words "(in mg F/dscm)".

(b) Section 6.4.2, nomenclature, first term, $\overline{C_s}$, by adding the units after the units "mg F/dscm" to read "(mg F/dscf)".

(c) Section 6.4.2, nomenclature, third term, $V_{m(std)}$, by adding the unit after the unit "dscm" to read "(dscf)".

(d.) Section 6.5, by revising Equation 14–3 to read as follows:

$$Q_{sd} = \frac{V_{mt} M_d P_m (293\ ^\circ K) A}{(t_m + 273^\circ)(760\ mm\ Hg)} \qquad \text{Eq. 14–3}$$

(e) Section 6.5, nomenclature, by revising the term "Q_m" to read "Q_{sd}" and the term "T_m" to read "t_m".

(f) By adding a new Section 6.6 after Section 6.5 to read as follows:

6.6 Conversion Factors.

1 ft³ = 0.02832 m³

1 hr = 60 min

Method 15—[Amended]

23. Appendix A, Method 15 is amended as follows:

(a) Section 3.2, third from last line, by revising the word "chromatographs" to read "chromatograms".

(b) Section 5, by adding the heading "5.1 Sampling." on the next line following the heading "5. *Apparatus*".

(c) Section 5.1.2, by adding the heading "Sample Line." between the section number "5.1.2" and the word "The" to read "5.1.2 Sample Line. The . . ."

(d) Section 5.4, second paragraph, line 3, by revising the word "chromatograph" to read "chromatogram".

(e) Section 5.5.3, last line, by revising the temperature "±1.1 °C" to read "±0.1 °C".

(f) Section 10.3, line 4, by revising the section number "paragraph 10.1" to read "Section 10.2", and in line 6, by revising the word "paragraph" to read "Section".

(9) Section 11.3, nomenclature, by revising the second term to read "SO_2 equivalent$_i$".

(h) By adding Figures 15–1, 15–2, and 15–3 to Method 15 after Section 12.1.4.

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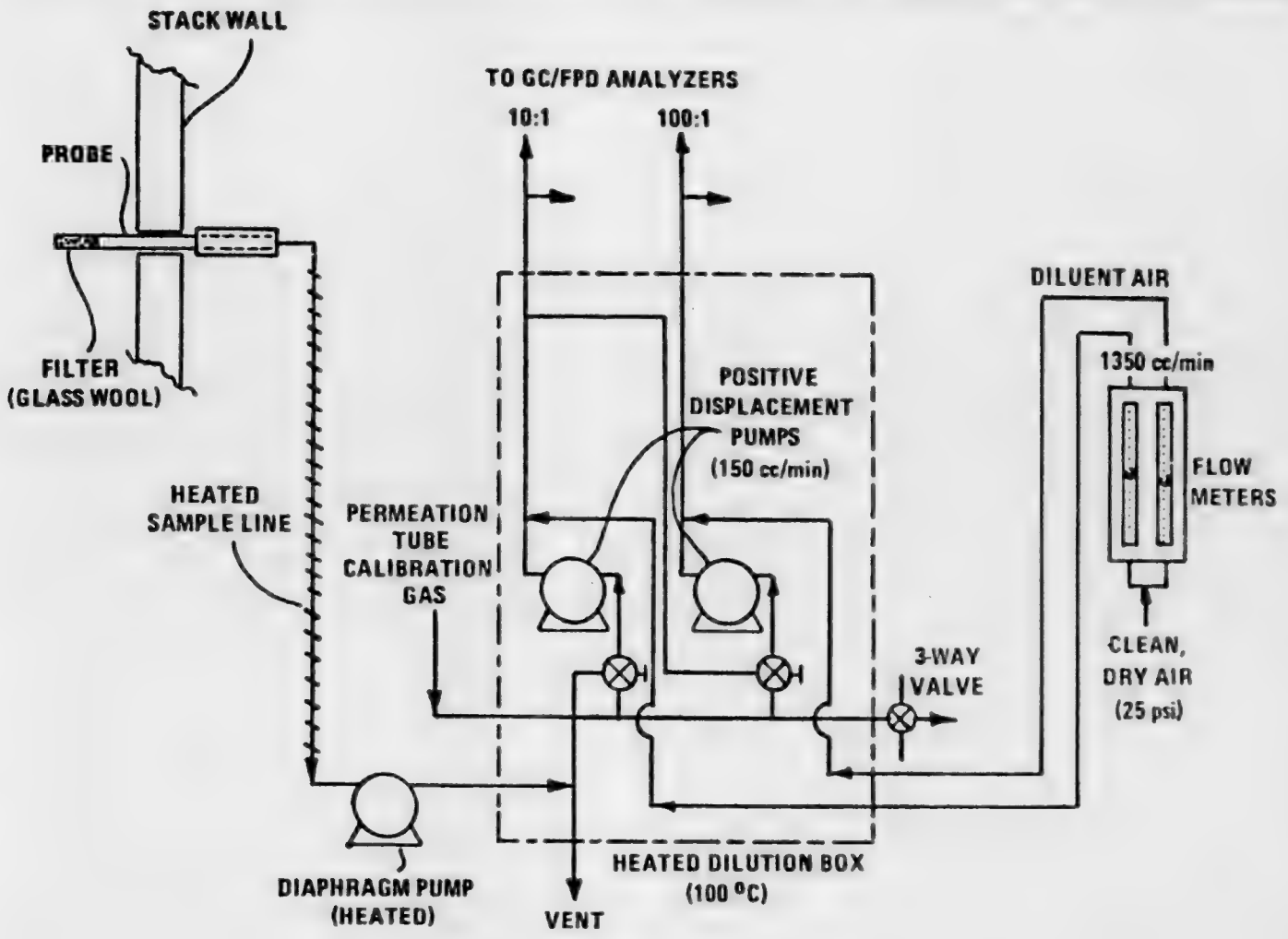

Figure 15-1. Sampling and dilution apparatus.

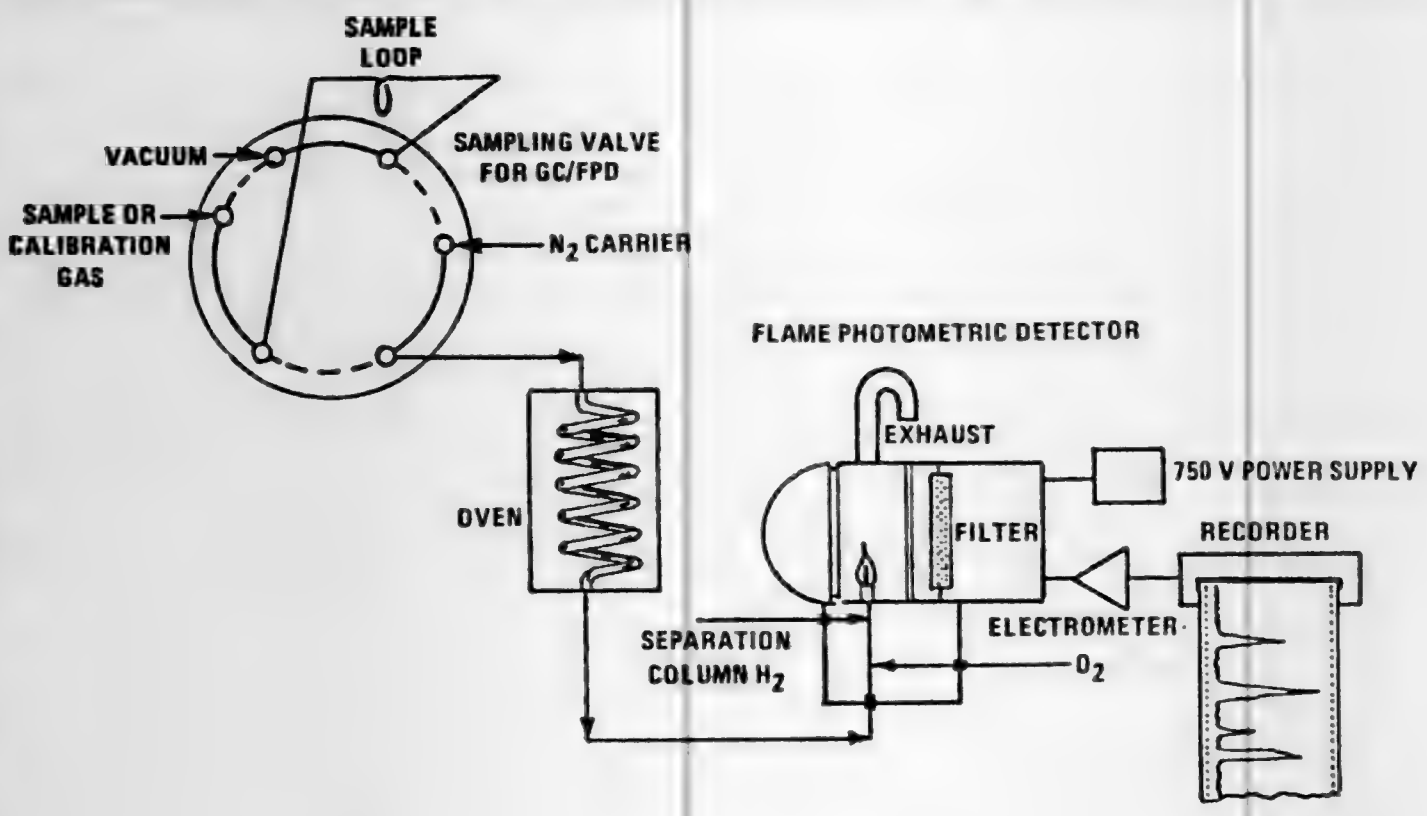

Figure 15-2. Gas chromatographic flame photometric analyzer.

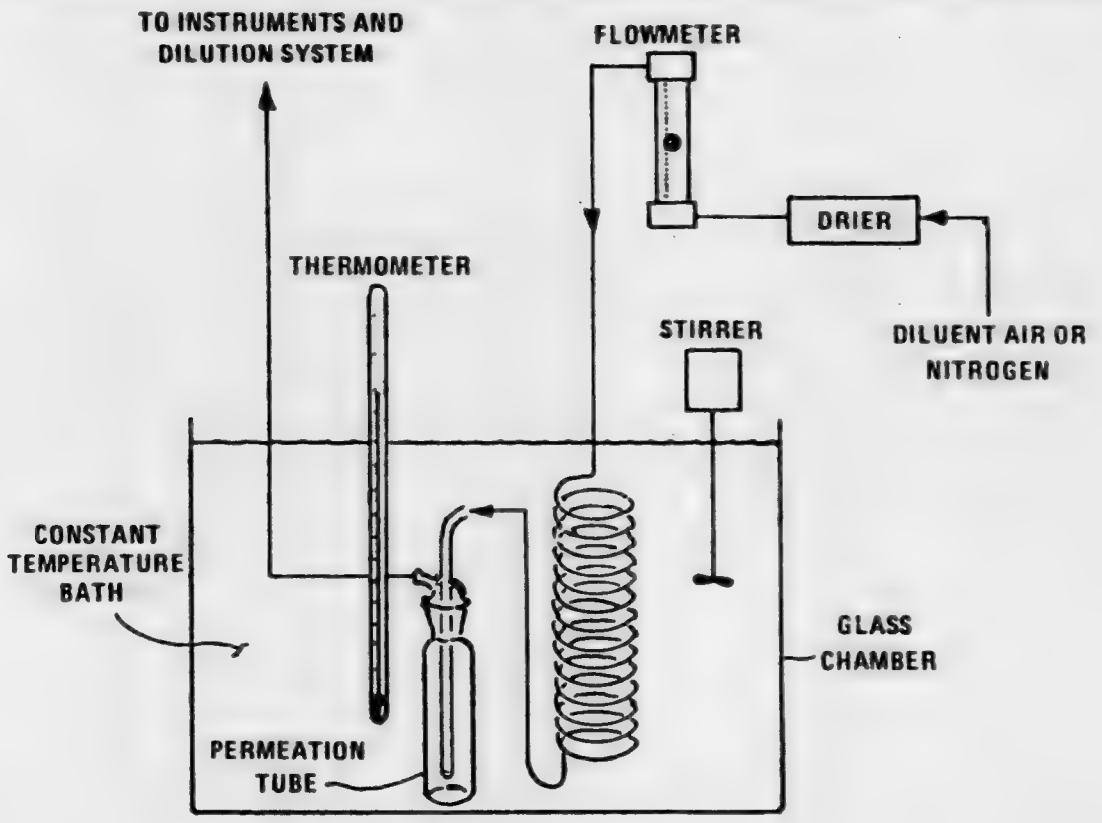

Figure 15-3. Apparatus for field calibration.

BILLING CODE 6560-50-C

Method 16—[Amended]

24. Appendix A, Method 16 is amended as follows:

(a) By revising Section 2.2 to read as follows:

2.2 Sensitivity. Using the 10-ml sample size, the minimum detectable concentration is approximately 50 ppb.

(b) Section 3.2, third from last line, by revising the word "chromatographs" to read "chromatograms".

(c) Section 3.4, by revising the word "chromatographs" to read "chromatograms".

(d) Section 3.4 and Section 4.2, by revising the specification "± percent" to read "±5 percent" and "±10 percent," respectively.

(e) Section 5, by removing the parentheses and words "(See Figure 16–1)".

(f) Section 5.1.1, by adding the sentence "See Figure 16–1." between the heading "Probe." and the word "The" to read "5.1.1 Probe. See Figure 16–1. The . . ."

(g) Section 5.1.2, line 3, by adding the unit "in." to the figure "(½)" to read "(½ in.)".

(j) Section 5.5, second paragraph, line 3, by revising the word "chromatograph" to read "chromatogram".

(i) Section 10.3, line 4, by revising "paragraph 10.1" to read "Section 10.2".

Method 16A—[Amended]

25. Appendix A, Method 16A is amended as follows:

(a) Section 6.3, second equation, by revising the figure "32.02" to read "32.03"; by removing the hyphens in the terms "1-g", "1000-ml", "1000-μl" to read "1 g", "1000 ml", and "1000 μl"; and by revising the term "64.06–9" to read "64.06 g".

Method 17—[Amended]

26. Appendix A, Method 17 is amended as follows:

(a) Section 6.1, third term, C_a, by revising the units "mg/g" to read "mg/mg".

(b) Section 6.1, the term "$\approx_w$" is revised to read "p_w".

Method 19—[Amended]

27. Appendix A, Method 19 is amended as follows:

(a) Section 3.2, by revising the word "outlet" in the definition of the third term, E_{SO2i}, to read "inlet".

(b) Section 5.1, line 1, by revising the first occurrence of the word "or" with the chemical symbols "SO_2 or O_2" to read "SO_2 and O_2".

(c) Section 5.2.2, second equation, "F_w", by revising the figure "25.5" in the numerator to read "28.5".

(d) Section 5.3.1.2, by revising the term under the second NOTE to read as follows:

$$\frac{20.9}{20.9\,(1-B_{ws})-\%O_{2w}}$$

(e) Section 5.3.1.3, second paragraph, line 3, by revising the term "$\%O_{2d}$" to read "$\%O_{2w}$".

(f) Section 5.3.2.1, by removing "Insert Illus. 0193C".

(9) Table 19–1, headings, by adding slash marks "/" to the units "dscm J", "dscf 10^6 Btu", "wscm J", "scm J", and "scf 10^6 Btu" to read "dscm/J", "dscf/10^6 Btu", wscm/J", "scm/J", and "scf/10^6 Btu"; and to change "wscf J 10^6 Btu" to read "wscf/10^6 Btu".

Method 20—[Amended]

28. Appendix A, Method 20 is amended as follows:

(a) Section 5.1, lines 11 and 12, by revising the name "Environmental Monitoring and Support Laboratory" to read "Environmental Monitoring Systems Laboratory".

Method 24A—[Amended]

29. Appendix A, Method 24A is amended as follows:

(a) Section 2, by revising the section number "2.1.1.5" to read "2.1.2".

(b) By revising Section 2.2 to read as follows:

2.2 Coating Density. Determine the density of the ink or related coating according to the procedure outlined in ASTM D 1475–60 (reapproved 1980), (incorporated by reference—see § 60.17).

(c) Section 3.2, by revising Equation 24A–2 to read as follows:

$$V_o=(\overline{W}_o\,\overline{D}_c)/\overline{D}_o \qquad \text{Eq. 24A–2}$$

Appendix B—[Amended]

30. Appendix B, Performance Specification 1 is amended as follows:

(a) Section 1.1 (b), line 1, by removing the paragraph number "5.1.5".

(b) Section 4.2.2, line 2, by revising the figure "1" to read "4".

(c) By revising Figures 1–3, 1–4, and 1–5 as shown:

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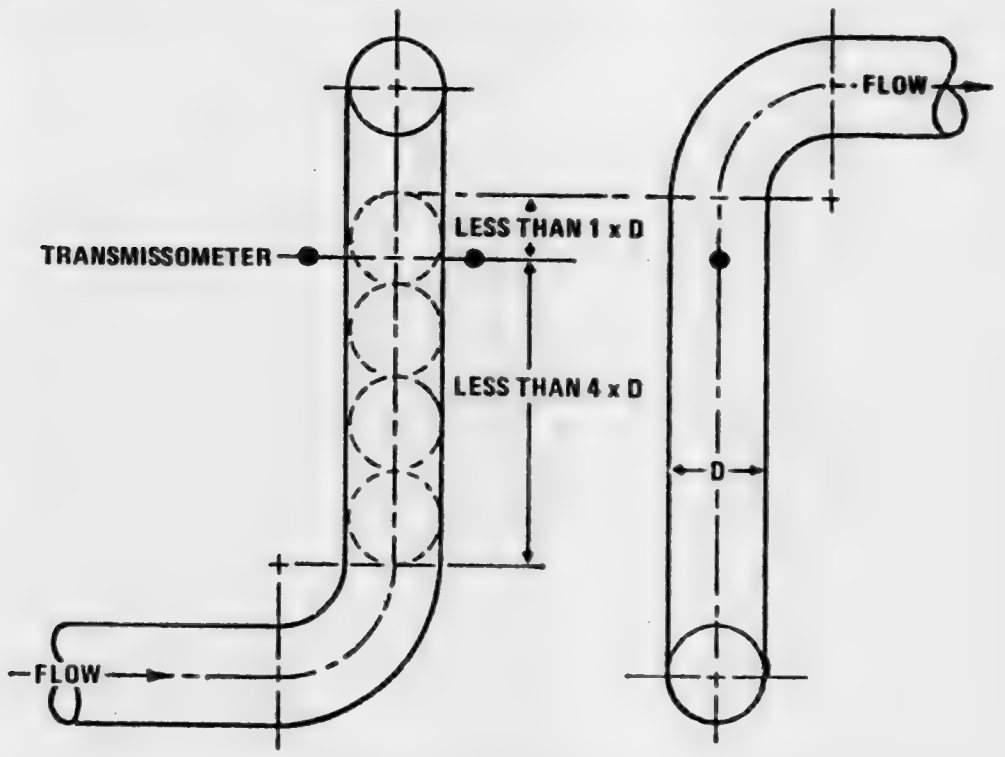

Figure 1-3. Transmissometer location between bends in a vertical stack.

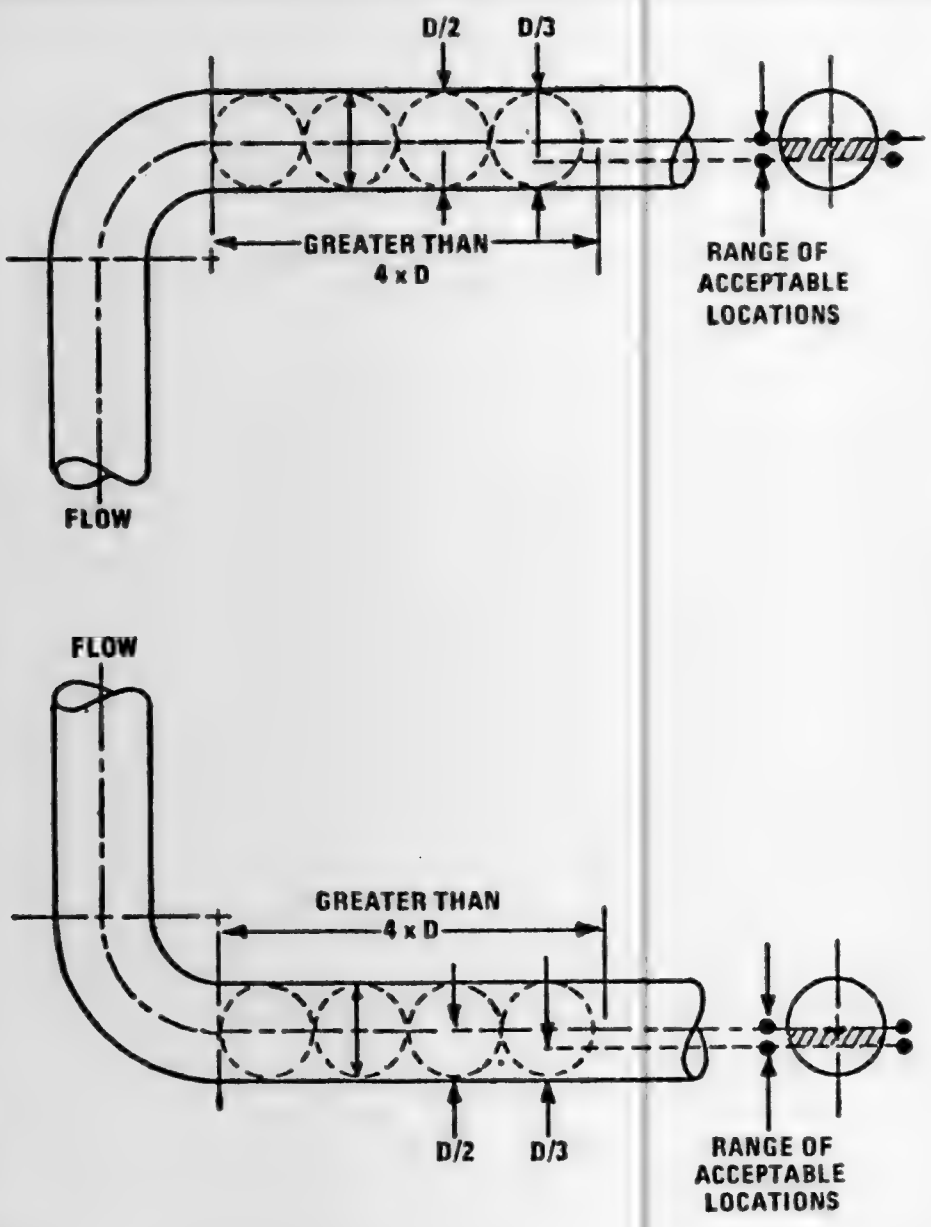

Figure 1-4. Transmissometer location greater than four diameters downstream of a vertical bend in a horizontal stack.

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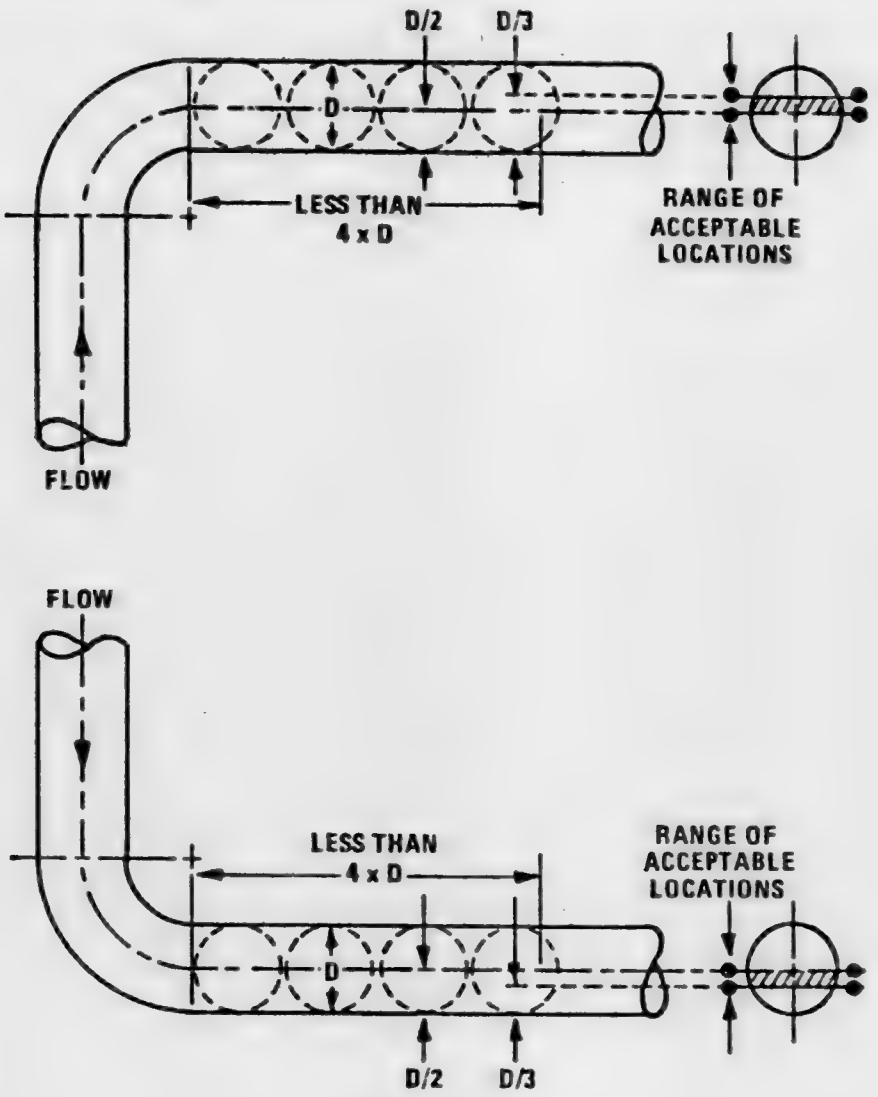

Figure 1-5. Transmissometer location less than four diameters downstream of a vertical bend in a horizontal stack.

BILLING CODE 6560-50-C

(d) Section 7.1.4, by revising the equation numbers "1–5 or 1–6" to read "1–6 or 1–7".

[FR Doc. 87–20760 Filed 9–11–87; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 798

[OPTS–42079A; FRL–3260–7]

Revision of Toxic Substances Control Act Test Guidelines; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting the final rule that amended the Toxic Substances Control Act (TSCA) test guidelines to provide more explicit guidance on the necessary minimum elements of each study, which appeared in the **Federal Register** of May 20, 1987 (52 FR 19056).

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–543, 401 M Street, SW., Washington, DC 20460, (202) 554–1404.

SUPPLEMENTARY INFORMATION: In FR Doc. 87–11124, in the issue for Wednesday, May 20, 1987, the following change is made on page 19081:

§ 798.5395 [Corrected]

Under § 798.5395 *In vivo mammalian bone marrow cytogenetics tests: Micronucleus assay,* in item 16.b.iii., paragraph (2), line 2, correct "At least 200" to "At least 1,000." The context of the paragraph makes clear that 1,000 was the intended number.

Dated: September 2, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87–21046 Filed 9–11–87; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81–11; Notice 23]

Federal Motor Vehicle Safety Standards; Lamps Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice adopts a technical amendment which, in effect, permits aiming pad configurations specified for sealed beam headlamps with circular lenses to be used on replaceable bulb headlamps. The notice implements the grant of a rulemaking petition filed by BMW of North America, Inc. A notice of proposed rulemaking on this subject was published in February 1987.

EFFECTIVE DATE: Effective date of the amendment is October 14, 1987.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA, Washington, DC 20590, (202–366–5276).

SUPPLEMENTARY INFORMATION: Late in 1986, BMW of North America, Inc., filed a petition for rulemaking to amend Motor Vehicle Safety Standard No. 108, to clarify that replaceable bulb headlamp systems may incorporate aiming pad configurations identical to those required on sealed-beam headlamps with circular lenses, saying that it wished to introduce a replaceable bulb headlamp with a circular lens whose diameter is equal to that of a 5¾ inch sealed beam headlamp. However, it is impossible for BMW's new headlamp to meet the aiming pad configurations specified by Figure 4 of Standard No. 108 for replaceable bulb headlamps, though it can meet those specified for sealed beam headlamps with a lens diameter of 5¾ inches. It therefore petitioned NHTSA for an alternative to Figure 4 which would allow replaceable bulb lamp lenses to "be designed so that the lamp may be inspected and aimed by mechanical aimers as specified in SAE J602 October 1980, without the removal of any ornamental trim rings or other parts."

In amending Standard No. 108 to allow use of replaceable bulb headlamps with the attendant styling freedom, NHTSA did not deem it likely that a manufacturer would wish to introduce such a lamp with a size identical to one of the four then permitted. Thus, the petitioner was correct in concluding that the apparent exclusion of replaceable bulb headlamp systems from sealed beam aiming pad location requirements was inadvertent. Therefore, NHTSA granted BMW's petition, and issued a Notice of Proposed Rulemaking, published in the **Federal Register** on February 25, 1987 (52 FR 5563). It proposed an amendment of paragraph S4.1.1.36(a)(2) that would allow replaceable bulb headlamps the option of incorporating aiming pads as specified for 7-inch, or 5¾-inch diameter sealed beam headlamps as specified in SAE Standard J571d, and that would require such headlamps to be designed so that they could be inspected and aimed by mechanical aimers as specified in SAE Standard J602. This is necessary because the universal adaptor used on other types of replaceable bulb headlamps is not designed for use on headlamps of the sizes covered by SAE J571d.

At that time the agency was considering the advisability of requiring headlamps on which the universal adapter cannot be used to bear permanent identification of the type adaptor for which it is designed, and whether such an adapter has been provided with the vehicle, as well as the advisability of placing this information in the operator's manual. NHTSA requested comments on the necessity for the provision of that information.

Seven brief comments were received on the proposal, none of which opposed it. In the proposal the last sentence of S4.1.1.36(a)(2) stated that a headlamp with aiming pads meeting the requirements of SAE J571d for circular headlamps shall be designed so that it may be inspected and aimed by a mechanical aimer as specified in SAE J602c. However, upon review, NHTSA has concluded that this language is unnecessary and has removed it from S4.1.1.36(a)(2) which is otherwise unchanged from the language proposed; the language, in essence, already appears in the first sentence of (a)(2).

The petitioner, BMW, asked an interpretative question. It requested confirmation that aiming dimensions do not have to be marked on the lenses because sealed bean headlamps aimed by a mechanical aimer as specified in SAE J602c do not have to be marked. The agency confirms BMW's understanding. Aiming dimensions do not have to be marked on the lens of a headlamp using existing adapters for headlamps with diameters of 5¾ inches and 7 inches because of the exception in (a)(3) provided for in (a)(2). This exception (Section 5 of SAE J580 AUG79) regulates the design of sealed beam headlamps with those diameters.

In response to NHTSA's request for comments on the advisability of marking adapter information on the lenses of headlamps unable to accommodate the universal adapter, and associated Operator's Manual information, manufacturers generally opposed these ideas. Chrysler Corporation expressed its belief that personnel involved in aiming headlamps are already knowledgeable about appropriate adapters. Because vehicle owners generally do not mechanically aim their headlamps, adapter information in the

Operator's Manual would serve no useful purpose. Perhaps most importantly, adapters are not standardized, and standardization would have to occur before any regulation relating to them could be promulgated. Volkswagen of America felt that the number of adapters is so small and the physical differences between them so obvious that no markings are required. Ford Motor Company also opposed any regulation. General Motors does not anticipate that a significant number of new types of adapters will be forthcoming in the future, as it believes there will be a trend away from the use of aiming pads on the face of the lens towards on-vehicle aiming systems. In view of these comments the agency does not intend to consider these topics as candidates for rulemaking.

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a regulatory evaluation is required. Since the amendment relieves a restriction, the rule will not impose additional requirements or costs but will permit manufacturers great flexibility in the design and use of headlighting systems. The price of new headlamps will not be affected. NHTSA has analyzed this rule for the purpose of the National Environmental Policy Act. The rule will have no effect upon the human environment since it will result in no change in the weight and quantity of materials used in the manufacture of headlamps.

The agency has also considered this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions will not be significantly affected as there will be no impact on the price of new vehicles or headlamps.

Because of the necessity of the petitioner to plan production, importation, and distribution on an orderly basis, it is found that an effective date earlier than 180 days after issuance of the final rule is in the public interest.

The engineer and lawyer primarily responsible for this rule are Jere Medlin and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Paragraph (a)(2) of paragraph S4.1.1.36 of §571.108 is revised to read:

§ 571.108 Standard No. 108; lamps, reflective devises, and associated equipment.

* * * * *

S4.1.1.36

* * * * *

(a) * * *

(2) The exterior face of the lens of each replaceable bulb headlamp shall have three pads which meet the requirements of either Figure 4, *Dimensional Specifications for Location of Aiming Pads on Replaceable Bulb Headlamp Units*, or SAE Standard J571d *Dimensional Specifications for Sealed Beam Headlamp Units*, June 1976, as specified for a headlamp with a diameter of 5¾ inches or 7 inches. Except as provided in subparagraph (a)(3), a whole number which represents the distance in tenths of an inch (i.e., 0.3 inch=3) from the aiming reference plane to the respective aiming pads which are not in contact with that plane, shall be inscribed adjacent to each respective aiming pad on the lens of a headlamp whose pads meet the requirements of Figure 4. The height of these numbers shall not be less than .157 inch (4mm). If there is interference between the plane and the area of the lens between the aiming pads, the whole number will represent the distance to a secondary plane. The secondary plane shall be located parallel to the aiming reference plane and as close as possible to the lens without causing interference.

* * * * *

Issued on September 8, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-21037 Filed 9-11-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 50239-5115]

Atlantic Tuna Fisheries; Catch Rate Change

AGENCY: National Marine Fisheries Service (NMFS) NOAA, Commerce.

ACTION: Notice of catch rate change in the General category.

SUMMARY: The catch rate for giant Atlantic bluefin tuna in the General category is changed from one to two fish per day per vessel. The regulations governing this fishery allow this change based on a review of specified criteria. The increase will provide handgear fishermen a better opportunity to harvest the quota.

EFFECTIVE DATE: September 11, 1987.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, National Marine Fisheries Service, Northeast Region, Management Division, 2 State Fish Pier, Gloucester, MA 01930-3097, 617-281-3600, ext. 324.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 through 971h) regulating the take of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction appear at 50 CFR Part 285.

Section 285.24(a) provides that the Assistant Administrator for Fisheries, NOAA, on or about September 1, may adjust the daily catch rate limit to a maximum of three giant Atlantic bluefin tuna per day per vessel, based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum use of the quota. The Assistant Administrator has determined, based on the reported catch of giant Atlantic bluefin tuna of only 170 short tons (st) through August 28, and the relatively low average daily catch rate of less than 3 st per day for the period August 14 through August 28, that the quota for the General category will not be harvested under the prevailing catch constraints. Therefore, the catch rate of one giant Atlantic bluefin tuna per day per vessel will be increased on September 11, 1987, to two fish per day per vessel to provide maximum opportunity to use the General category quota of 650 st set forth in § 285.22(a).

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This daily catch rate will remain in effect for the remainder of 1987 or until the quota for the General category is reached. Notice of this action has been mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery.

Other Matters

This action is taken under the authority of 50 CFR 285.24 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

(16 U.S.C. 971 *et seq.*)

Dated: September 8, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-21063 Filed 9-11-87; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 61225-7052]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reopening.

SUMMARY: NOAA announces the reopening of the Bering Sea joint venture processing (JVP) directed fishery on pollock under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. Only a small portion of the 20,000 mt that were estimated to be necessary for bycatch was actually harvested. Therefore, about 37,000 mt remains in the Bering Sea pollock JVP. This action is necessary to allow JVP operations to fully harvest the allocated amount. It is intended to assume optimum use of these groundfish by allowing the domestic fishery to resume operations.

DATES: Effective September 9, 1987. Comments will be accepted through September 24, 1987.

ADDRESS: Comments should be mailed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: On June 5, 1987, 75,000 mt of the Bering Sea/Aleutian Islands non-specific reserve was apportioned to Bering Sea pollock JVP, resulting in a JVP of 1,005,013 mt (52 FR 21958, June 10, 1987). The Secretary provided only 55,000 mt of the reserve apportionment for harvest in the directed pollock joint venture fishery. The Regional Director estimated that the 55,000 mt additional tonnage would be taken in the directed JVP pollock fishery by June 6. The Regional Director estimated that the remaining JVP tonnage of groundfish target species other than pollock would require a bycatch amount of 20,000 mt of pollock. That amount was apportioned to the Bering Sea pollock JVP in accordance with 50 CFR 675.20(b)(1)(i) on the condition that it be used only for bycatch in JVP fisheries that continued to conduct directed fisheries on species other than pollock in the Bering Sea subarea after June 6.

The yellowfin sole joint venture fishery reached its JVP quota and was closed on June 29 (52 FR 25232, July 6, 1987), as was the "other flatfish" joint venture fishery in most of the Bering Sea subarea. The actual bycatch of pollock in all joint venture fisheries conducted in the Bering Sea subarea since June 6 was much lower than anticipated, as was the catch in the directed JVP pollock fishery by June 6. The current remainder for the Bering Sea pollock JVP is 37,000 mt.

The remainder of Bering Sea pollock JVP is far greater than the necessary bycatch for joint venture operations in the Bering Sea subarea during the remainder of 1987. No plans have been submitted for any such operations, so that restricting the catch of pollock to bycatch only, is not necessary. Thus, U.S. joint venture vessels may resume directed fishing for pollock in the Bering Sea subarea until otherwise notified by the Regional Director.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that providing prior notice and comment is impractical and contrary to the public interest. Immediate effectiveness of this notice is necessary to prevent delaying the taking of available pollock until later in the season when weather patterns can decrease catch rates and endanger fishermen. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 et seq.

Dated: September 9, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87-21064 Filed 9-9-87; 4:24 pm]

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Proposed Rules

Federal Register
Vol. 52, No. 177
Monday, September 14, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

Pay Administration Under the Fair Labor Standards Act; Exemptions

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is proposing to modify the Fair Labor Standards Act (FLSA) regulations used to determine the exemption status of supervisory firefighters (and a limited number of other employees) at the GS–7 through GS–9 levels. An unintended side effect of the change from previous to current regulations was to significantly reduce the total pay of most supervisory firefighters, thus causing recruitment, retention, and pay structure problems. The proposed revision of current regulations prevents the pay reduction for most of these employees by making them nonexempt (covered by FLSA overtime provisions).

DATE: Written comments will be considered if received no later than October 14, 1987.

ADDRESS: Send or deliver written comments to Michael D. Clogston, Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, Room 5459, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jack Tapping, (202) 632–4530.

SUPPLEMENTARY INFORMATION: Changes to exemption regulations were last published on March 4, 1986, in the Federal Register, and transmitted to Federal agencies in FPM Bulletin 551–18. The current regulations changed the method for determining the exemption status of the vast majority of supervisory firefighters.

Previously, these firefighters were nonexempt (covered by the FLSA overtime provisions) even though properly classified as "supervisory" under the Supervisory Grade Evaluation Guide *if* they spent less than 80 percent of their worktime on supervisory and closely related work. Most supervisory firefighters qualified for FLSA overtime pay because they spent less than 80 percent of their time in supervisory work.

Under current regulations, the 80-percent criterion was deleted. This resulted in most firefighters properly classified as "supervisory" below the GS–10 level being exempt from FLSA overtime pay. Application of current regulations caused a significant pay reduction for most supervisory firefighters because of their unique work schedule and the unique overtime standard provided for them in the FLSA. Most Federal employees are eligible for overtime for hours worked in excess of 40 hours per week. Typically, a Federal firefighter will work three 24-hour shifts in a week, or 72 hours of work. For the vast majority of firefighters (those working for the Defense Department) the unusually long work schedule is an absolute condition of employment. Nonexempt firefighters are eligible for additional overtime compensation for all hours in excess of 53. Exempt supervisory firefighters are not eligible for additional overtime compensation. Thus the current FLSA exemption regulations have created a situation where there is a counterincentive for employees (e.g., at grade GS–5 or GS–6) to take more responsible, higher-graded positions. We have received numerous inquiries addressing this situation including many from Federal employees and congressional offices, and formal requests from the Department of Defense, representing all military services, that we correct this problem.

We agree that this problem should be corrected and are proposing a change to 5 CFR 551.204(b) to make supervisory Federal firefighters below the GS–10 level subject to the "80-percent" criterion, as well as the primary duty criterion. This change may also affect certain supervisory law enforcement officials, but we believe the impact will be negligible, as their overtime entitlement is determined differently from that of firefighters.

We are planning to have this change made prospectively at the beginning of the first pay period on or after the effective date of the final regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it merely changes the procedure for applying the executive exemption criteria of the Fair Labor Standards Act to certain Federal employees.

List of Subjects in 5 CFR Part 551

Administrative practice and procedure, Fair Labor Standards Act, Government employees, Manpower training programs, Travel, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend Part 551 as follows:

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

1. The authority citation for Part 551 continues to read as follows:

Authority: Sec. 4(f) of the Fair Labor Standards Act as amended by Pub. L. 93–259 enacted April 8, 1974, 88 Stat. 55; 29 U.S.C. 204f.

2. Paragraph (b) of § 551.204 is revised to read as follows:

§ 551.204 Executive exemption criteria.

* * * * *

(b) In addition to the primary duty criterion that applies to all employees, foreman level supervisors in the Federal Wage System (or the equivalent in other wage systems), employees at the GS–7 through GS–9 level subject to section 207(k) of Title 29, United States Code, and employees classified at the GS–5 or GS–6 level (or the equivalent in other white collar pay systems) must spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work.

[FR Doc. 87–21025 Filed 9–11–87; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 4; Docket No. 4638S]

General Crop Insurance Regulations; Canning and Processing Tomato Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new § 401.114 to be known as the Canning and Processing Tomato Endorsement. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on canning and processing tomatoes in an endorsement to a master crop insurance policy which contains the standard terms and conditions concerning most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 14, 1987, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as July 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as § 401.114, the Canning and Processing Tomato Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring tomatoes.

Upon final publication of § 401.114, the provisions for insuring tomatoes contained therein will supersede those provisions contained in 7 CFR Part 438, the Canning and Processing Tomato Crop Insurance Regulations, effective with the beginning of the 1988 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding this new Canning and Processing Tomato Endorsement to 7 CFR Part 401 as outlined below, FCIC is proposing other changes in the provisions for insuring tomatoes as follows:

1. *Section 1*—Modify the provision that requires insured tomatoes to be under contract with a canner to require that the contract be in writing and made available to us if the insured is going to claim an indemnity. This change is made because of difficulties involving claimed oral agreements.

2. *Section 3*—Include provisions for stage guarantees in the endorsement rather than in the actuarial documents. Stage guarantee levels have been standardized nationwide and the first stage production guarantee has been increased to 50% of the final stage guarantee.

Change the method used to determine crop stage. All stage intervals will now be determined by plant growth stage rather than specific calendar dates. This change is made so that growers planting at different times will have similar time periods and incurred costs before reaching the second stage.

4. *Section 5*—Add the date the canner or processor no longer accepts production as an event that ends the insurance period. This change is made due to previous loss adjustment problems in situations when the buyer was no longer accepting production.

5. *Section 6*—Add unit division guidelines and add a clause to specify that division of units may result in the insured paying required additional premium for guideline unit division by section, ASCS Farm Serial Number, or practice.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Canning and processing tomato endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the General Crop Insurance Regulations (7 CFR Part 401) by adding a new § 401.114 in Chapter IV of Title 7 of the Code of Federal Regulations to be known as the Canning and Processing Tomato Endorsement (§ 401.114), effective for the 1988 and succeeding crop years, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 401.114, Canning and Processing Tomato Endorsement, effective for the 1988 and

succeeding crop years, to read as follows:

§ 401.114 Canning and processing tomato endorsement.

The provisions of the Canning and Processing Tomato Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Canning and Processing Tomato Endorsement

1. Insured Crop

a. The crop insured will be tomatoes which are planted for harvest as canning or processing tomatoes.

b. In addition to the tomatoes not insurable in section 2 of the general crop insurance policy, we do not insure any tomatoes:

(1) Which are not grown under a written contract with a canner or processor or excluded from the canner or processor contract for, or during, the crop year. (The contract must be dated, executed and effective before you report your acreage. It must be made available to us if you are going to claim an indemnity on any unit, or upon our request.); or

(2) Except in California, that are grown on acreage where tomatoes have been grown in either of the two previous crop years.

c. A late planting option will be available on tomatoes.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure any loss of production due to failure to market the tomatoes unless such failure is due to actual physical damage from a cause specified in subsection 2.a.

3. Production Guarantees

a. The production guarantees per acre are progressive by stages and increase, at specified intervals, to the final stage production guarantee. The stages and production guarantees are:

(1) First stage is from planting until first fruit set, the first stage production guarantee is 50% of the final stage production guarantee.

(2) Second stage is from first fruit set until harvest, the second stage production guarantee is 80% of the final stage production guarantee.

(3) Third stage (final stage) is harvested acreage, the third stage production guarantee is the final stage guarantee.

b. Any acreage of tomatoes damaged to the extent that growers in the area would not further care for the tomatoes, will be deemed to have been destroyed even though the tomatoes continue to be cared for. The production for such acreage will be the guarantee for the stage in which such damage occurs

4. Annual Premium

a. The annual premium amount is computed by multiplying the final stage production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the canning and processing tomato policy for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

5. Insurance Period

The insurance period ends at the earlier of one of the events described in section 7 of the general crop insurance policy or the date the canner or processor no longer accepts production under the contract which covers the insured acreage planted for the contract year. The calendar date for the end of the insurance period is October 10 of the calendar year in which the tomatoes are normally harvested.

6. Unit Division

Tomato acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium if required by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year; and either

a. Acreage planted to insured tomatoes is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified and the insured acreage can be easily determined; and

(2) The tomatoes are planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured tomatoes is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Tomatoes planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

7. Notice of Damage or Loss

a. In addition to the notices required in section 8 of the general crop insurance policy, if you are going to claim an indemnity on any unit, you must give us notice within 72 hours:

(1) Of when harvest would normally start if any acreage on the unit is not to be harvested;

(2) Of discontinuance of harvest on the unit; or

(3) If you are unable to deliver production to the canner or processor.

b. The tomato vines on any hard-harvested acreage must not be destroyed until inspected by us if an indemnity is to be claimed on the unit.

c. For the purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

8. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tomatoes to be counted (see subsection 8.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (tons) to be counted for a unit will include:

(1) All harvested tomato production marketed and any tomato production which does not meet the quality requirements of the canner or processor contract due to not being timely marketed;

(2) All appraised production which will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good tomato farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, put to another use without our prior written consent, or damaged solely by an uninsured cause;

(c) For acreage which does not qualify for the final period guarantee, any amount of appraised and harvested production in excess of the difference between the final period guarantee and the guarantee applicable to such acreage;

(d) Production lost due to uninsured causes; and

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(e) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of tomatoes becomes general in the county and is reappraised by us;

(ii) Further damaged by an insured cause and is reappraised by us; or

(iii) Harvested.

9. Cancellation and Termination Dates

The cancellation and termination dates are February 15 in California and April 15 in all other states.

10. Contract Changes

The date by which contract changes will be available in your service is November 30 preceding the cancellation date for counties with a February 15 cancellation date and December 31 preceding the cancellation date for all other counties.

11. Meaning of Terms

a. "First fruit set" means the reproductive stage of the plant when 30% of the plants have produced a fruit that has reached a minimum of one inch in diameter.

b. "Harvest" means severance of tomatoes from the vines for the purpose of delivery to a canner or processor.

c. "Section" means a unit of measure under the rectangular survey system describing a tract of land generally one mile square, usually containing approximately 640 acres.

Done in Washington, DC, on August 20, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-21088 Filed 9-11-87; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. No. 9; No. 4693S]

General Crop Insurance Regulations; Cotton Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section 7 CFR 401.119, to be known as the Cotton Endorsement. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on cotton in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 14, 1987, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512.1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as August 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.119, the Cotton Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring cotton.

Upon publication of 7 CFR 401.119 as a final rule, the provisions for insuring cotton contained therein will supersede those provisions contained in 7 CFR Part 421, the Cotton Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 421 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 421 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy These changes do not affect meaning or intent of the provisions. In adding the new Cotton Endorsement to 7 CFR Part 401, FCIC is proposing changes in the provisions for insuring cotton as follows:

1. *Section 1*—Add a provision indicating that cotton destroyed to comply with other U.S. Department of Agriculture programs will not be insured. This provision was added to prevent insurance from attaching to a crop that is intended for destruction or destroyed to comply with other USDA programs.

2. *Section 8*—Add a provision that provides for harvested—unharvested guarantees replacing previous stage guarantees. This change was made due to the administrative problems encountered in determining which stage damage occurs in and whether farmers in the area generally would further care for the crop.

3. *Section 6*—Include unit division provisions to modify the unit definition in the general crop insurance policy to exclude unit division by share.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Cotton endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*),

the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75.430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.119 Cotton Endorsement, effective for the 1988 and succeeding crop years, to read as follows:

§ 401.119 Cotton endorsement.

The provisions of the Cotton Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Cotton Endorsement

1. Insured Crop and Acreage

a. The crop insured will be American Upland lint cotton.

b. The acreage insured of skip-row cotton will be the acreage occupied by the rows of cotton after eliminating the skipped-row portions, unless other methods of determining acreage are required by the actuarial table.

c. In addition to the cotton not insurable in section 2 of the general crop insurance policy, we do not insure any cotton:

(1) Which is not irrigated and is grown:

(a) Where a hay crop was harvested; or

(b) Where a small grain crop reached the heading stage in the same calendar year;

(2) Planted in excess of the acreage limitations applicable to the farm by any program administered by the United States Department of Agriculture; or

(3) Destroyed, designated to be destroyed, or put to another use in order to comply with other United States Department of Agriculture programs.

d. A late planting agreement will be available for cotton.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

4. Insurance Period

a. In lieu of subsection 7.b. of the general crop insurance policy (harvest of the unit), insurance will end upon removal of the cotton from the field.

b. The calendar dates for the end of the insurance period are as follows:

(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson counties, Texas, and all Texas counties lying South thereof—September 30;

(2) Arizona, California, New Mexico, Oklahoma, and all other Texas counties—January 31;

(3) All other states—December 31.

5. Unit Division

a. In lieu of subsections 17.q.(1) and 17.q.(2) of the general crop insurance policy, a unit will be all insurable acreage of cotton in the county in which you have an insured share and which is identified by a single ASCS Farm Serial Number at the time insurance first attaches for the crop year.

b. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy.

c. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between units will cause those units to be combined.

6. Notice of Damage or Loss

In addition to the provisions in section 8 of the general crop insurance policy;

a. You may not destroy any cotton on which an indemnity will be claimed until we give consent.

b. For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of cotton to be counted (see subsection 8.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share

b. The total production to be counted for a unit will include:

(1) All harvested production; and

(2) All appraised production which will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good cotton farming practices;

(b) Not less than the applicable guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Not less than 25 percent of the production guarantee per acre for all unharvested acreage

(d) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of cotton becomes general in the county and is reappraised by us;

(ii) Further damaged by an insured cause and is reappraised by us; or

(iii) Harvested.

(e) Appraised production of not less than the second stage guarantee on acreage where the cotton stalks have been destroyed without our written consent.

c. When mature cotton (harvested or unharvested) has been damaged solely by insured causes, the production to count will be reduced if, on the date the final notice of loss is given by the insured, the price quotation for cotton of like quality (price quotation "A") at the applicable spot market is less than 75 percent of price quotation "B". Price quotation "B" will be that day's spot market price quotation at the same market for cotton of the grade, staple length, and micronaire reading shown by the actuarial table for this purpose. The pounds of production to be counted will be determined by multiplying the number of pounds (harvested and appraised) of mature cotton by price quotation "A" and dividing the result by 75 percent of price quotation "B"

8. Cancellation and Termination Dates

The cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof	February 15.
Alabama; Arizona, Arkansas; California, Florida, Georgia; Louisiana, Mississippi, Nevada; North Carolina, South Carolina, and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	March 31
All other Texas counties and all other states.	April 15

9. Contract Changes

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and November 30 preceding the cancellation date for all other Counties.

10. Meaning of Terms

a. "Cotton" means only American Upland Cotton.

b. "County" means the land defined in the general crop insurance policy and any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

c. "Harvest" means the removal of the seed cotton on each acre from the open cotton boll or the severance of the open cotton boll from

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the stalk by either manual or mechanical means on acreage from which at least 25 percent of the per acre production guarantee is removed.

d. "Mature cotton" means cotton which can be harvested either manually or mechanically and will include both unharvested and harvested cotton.

e. "Skip-row" means planting patterns consisting of alternating rows of cotton and fallow rows (or rows of another crop) as defined by ASCS.

f. "Spot market" means a market so designated by the Secretary of Agriculture by Regulation (7 CFR Part 27) pursuant to 26 U.S.C. 4862.

Done in Washington, DC, on August 20, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-21080 Filed 9-11-87; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. No. 6, Doc. No. 4622S]

General Crop Insurance Regulations; Flaxseed Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.116 to be known as the Flaxseed Endorsement. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on flaxseed in an endorsement to the General Crop Insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 14, 1987, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.116, the Flaxseed Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring flaxseed.

Upon publication of 7 CFR 401.116 as a final rule, the provisions for insuring flaxseed contained therein will supersede those provisions contained in 7 CFR Part 423, the Flaxseed crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 423 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 423 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Flaxseed Endorsement to 7 CFR Part 401, FCIC is proposing other changes in the provisions for insuring flaxseed as follows:

1. *Section 5*—Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided. Add language to specify that nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your unit for the purpose of determining the guarantee for the unit.

2. *Section 10*—Add definitions for "Harvest" and "Section."

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**.

Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations; Flaxseed endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.116 Flaxseed Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.116 Flaxseed endorsement.

The provisions of the Flaxseed Crop Insurance Endorsement for the 1988 and subsequent crop year are as follows:

Federal Crop Insurance Corporation

Flaxseed Endorsement

1. Insured Crop

a. The crop insured will be flaxseed planted for harvest as seed.

b. In addition to the flaxseed not insurable in section 2 of the general crop insurance policy, we do not insure any flaxseed if the seed has not been mechanically incorporated into the soil in rows unless another method of planting is specifically allowed by the actuarial table.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table contained in the flax policy in effect for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction amount will not increase because of favorable experience;

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

The calendar date for the end of the insurance period is October 31 following planting.

5. Unit Division

Flaxseed acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year. Production reports by unit based on those records should be filed as early as possible but must be filed by no later than the date required by subsection 4.d. of the general crop insurance policy and either; and either:

a. Acreage planted to the insured flaxseed is located in separate, legally identifiable sections or, in the absence of section descriptions the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified, and the insured acreage can be easily determined; and

(2) The flaxseed is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured flaxseed is located in a single section or ASCS Farm Serial Number and consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

(1) Flaxseed planted on the irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system planted to insurable flaxseed are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your unit for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

For purposes of Section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. An indemnity will be determined for each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of flaxseed to be counted (see subsection 7.b.);

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include:

(1) All harvested production and may be adusted for moisture or quality as follows:

(a) Mature flaxseed production which, due to insurable causes, has a test weight or less than 47 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, contains more than 15 percent damaged flaxseed, will be adjusted by:

(i) Dividing the value per bushel of the insured flaxseed by the price per bushel of U.S. No. 2 flaxseed; and

(ii) Multiplying the result by the number of bushels of insured flaxseed.

(b) The applicable price for No. 2 flaxseed will be the local market price on the earlier of the day the loss is adjusted or the day the insured flaxseed is sold.

(2) All appraised production will include:

(a) Unharvested production on harvested acreage and potential production lost due to an uninsured causes and failure to follow recognized good flaxseed farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use (other than harvest) without our prior written consent or damaged solely by an uninsured cause;

(c) Appraised production on unharvested acreage; and

(d) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of flax becomes general in the county and reappraised by us;

(ii) Further damaged by an insured cause and reappraised by us; or

(iii) Harvested.

8. Cancellation and Termination Date

The cancellation and termination date for all states is April 15.

9. Contract Changes

Contract changes will be available at your service office by December 31 prior to the cancellation date.

10. Meaning of Terms

a. "Harvest" of flaxseed on the unit means combining, or removal from the field.

b. "Section" is a unit of measure under the rectangular survey system describing a tract of land generally one mile square, usually consisting of approximately 640 acres.

Done in Washington, DC on August 20, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-21082 Filed 9-11-87; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amt. No. 3; Doc. No. 4344S]

General Crop Insurance Regulations; Grain Sorghum Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.113 to be known

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as the Grain Sorghum Endorsement. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on grain sorghum in an endorsement of the General Crop Insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 14, 1987, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as July 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450

This program is not subject to the provisions of Executive Order 12372 requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environment Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.113, the Grain Sorghum Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring grain sorghum.

Upon publication of 7 CFR 401.113 as a final rule, the provisions for insuring grain sorghum contained therein will supersede those provisions for insuring grain sorghum contained in 7 CFR Part 420, the Grain Sorghum Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 420 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 420 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Grain Sorghum Endorsement to 7 CFR Part 401 as outlined below, FCIC is proposing changes in the provisions for insuring corn. FCIC itemizes such changes as follows:

1. *Section* 1—Add a provision indicating that grain sorghum destroyed to comply with other U.S. Department of Agriculture progrms will not be insured. This provision was added to prevent insurance from attaching to the crop intended for eventual destruction to comply with other U.S. Department of Agriculture programs.

2. The General Policy provides that insurance will begin on each unit or portion of a unit. This change avoids instances when delayed planting of part of a unit until after the final planting date prevents insurance from attaching on timely planted acreage.

3. *Section* 5—Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided. Add language to specify that nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your unit for the purpose of determining the guarantee for the unit.

4. *Section* 10—Add definitions for "Harvest", and "Section."

FCIC is soliciting public comments on this proposed rule for 30 days following publication in the Federal Register. Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Grain sorghum endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.113 Grain Sorghum Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.113 Grain sorghum endorsement.

The provisions of the Grain Sorghum Crop Insurance Endorsement for the 1988 and subsequent crop year are as follows:

Federal Crop Insurance Corporation

Grain Sorghum Endorsement

1. Insured Crop

a. The crop insured will be combine type hybrid grain sorghum planted for harvest as grain.

b. In addition to the grain sorghum not insurable in section 2 of the general crop insurance policy, we do not insure any grain sorghum, which was destroyed or put to another use for the purpose of conforming with any other program administered by the United States Department of Agriculture.

c. A late planting agreement will be available for all grain sorghum.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from

the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table contained in the grain sorghum policy in effect for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction amount will not increase because of favorable experience;

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

The calendar date for the end of the insurance period is:

(a) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties south thereof, September 30.

(b) All other Texas counties and all other States, December 10.

5. Unit Division

Grain sorghum acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year; and either

a. Acreage planted to the insured grain sorghum crop is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

(2) The grain sorghum is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured grain sorghum is located in a single section or ASCS Farm Serial Number and consists of acreage on which both irrigated and non-irrigated practices are carried out, provided:

(1) Grain sorghum planted on the irrigated acreage does not continue into non-irrigated acreage in the same rows or planting pattern (Non-irrigated corners of a center pivot irrigation system planted to insurable grain sorghum are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your unit for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and non-irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

a. In addition to the notices required in section 8 of the general crop insurance policy and in case of damage or probable loss, you must give us written notice if you want our consent to harvest the damaged crop. We will appraise the potential bushels of grain production. If we are unable to do so before harvest, you may harvest the crop if a representative sample is left unharvested.

b. For the purpose of section 8 of the general crop insurance policy and subsection 6.a. above, a representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field(s).

7. Claim for Idemnity

a. The indemnity will be determined on each unit by:

(1) multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of grain sorghum to be counted (see subsection 7.d.);

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include:

(1) All harvested and appraised production and may be adjusted for moisture and quality as follows:

(a) Mature grain sorghum production which is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent; or

(b) Mature grain sorghum production which, due to insurable causes has a test weight of less than 51 pounds per bushel or contains more than 15.0 percent kernel damage, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, will be adjusted by:

(i) Dividing the value per bushel of the insured grain sorghum by the price per bushel of U.S. No. 2 grain sorghum; and

(ii) Multiplying the result by the number of bushels of insured grain sorghum.

The applicable price for No. 2 grain sorghum will be the local market price on the earlier of the day the loss is adjusted or the day the insured grain sorghum is sold; and

(2) All appraised production which will include:

(a) Unharvested production on harvested acreage and potential production lost due to an uninsured causes and failure to follow recognized good grain sorghum farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Appraised production on unharvested acreage;

(d) Appraised production on insured acreage for which we have given written consent to be put another use unless such acreage is:

(i) Not put to another use before harvest of grain sorghum becomes general in the county and reappraised by us;

(ii) Further damaged by an insured cause and reappraised by us; or

(iii) Harvested.

c. A replanting payment is available under this endorsement if we determine it is practical to replant on a unit and our appraisal does not exceed 90 percent of the guarantee on the unit. The replanting payment per acre will be your actual cost per acre for replanting, except that the payment will not exceed 7 bushels multiplied by the price election, multiplied by your share. When the crop is replanted by a practice that was uninsurable as an original planting, the guarantee is reduced by the amount of the replant payment.

8. Cancellation and Termination Dates

State and County	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties south thereof.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Uptown, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	March 31
All other Texas counties and all other States.	April 15.

9. Contract Changes

Contract changes will be available at your service office by December 31 prior to the cancellation date for counties with an April 15 cancellation date and by November 30 prior to the cancellation date for all other counties.

10. Meaning of Terms

a. "Harvest" of grain sorghum on the unit means combining, or removal from the field.

b. "Section" is a unit of measure under the rectangular survey system describing a tract of land generally one mile square, usually consisting of approximately 640 acres.

Done in Washington, DC, on August 20, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-21084 Filed 9-11-87; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. No. 10; Doc. No. 4724S]

General Crop Insurance Regulations; Rice Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.120, to be known as the Rice Endorsement. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on rice in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 14, 1987, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as August 1, 1992.

E. Ray Rosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.120, the Rice Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring rice.

Upon publication of 7 CFR 401.120 as a final rule, the provisions for insuring rice contained therein will supersede those provisions contained in 7 CFR Part 424, the Rice Corp Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 424 will be terminated at the end of the 1987 crop year and will later be removed and reserved. FCIC will propose to amend the title of 7 CFR Part 424 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Rice Endorcement to 7 CFR Part 401, FCIC is proposing other changes in the provisions for insuring rice as follows:

1. *Section 1*—Add a provision indicating that rice destroyed to comply with other U.S. Department of Agriculture programs will not be insured. This provision was added to prevent insurance from attaching to a crop that is destroyed to comply with other programs.

2. *Section 5*—Add unit division provisions in the endorsement. The language used modifies the unit definition in the general crop insurance policy to exclude unit division by share.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Corp Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Rice endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

Part 401—[Amended]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.120 Rice Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.120 Rice endorsement.

The provisions of the Rice Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Rice Endorsement

1. Insured Crop

a. The crop insured will be rice which is planted for harvest as grain.

b. In addition to the rice not insurable in section 2 of the general crop insurance policy, we do not insure any rice:

(1) Destroyed or put to another use in order to comply with other United States Department of Agriculture programs; or;

(2) Which is not irrigated.

c. A late planting agreement will be available.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from

the following causes occurring within the insurance period:

(1) Adverse weather conditions (excluding drought);

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginnning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure against any loss of production due to application of saline water.

3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

4. Insurance Period

The calendar date for the end of the insurance period is October 31 of the calendar year on which the rice is normally harvested.

5. Unit Division

a. In lieu of subsections 17.q.(1) and 17.q.(2) of the general crop insurance policy, a unit will be all insurable acreage of rice in the county in which you have an insured share and which is identified by a single ASCS Farm Serial Number at the time insurance first attaches for the crop year.

b. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy.

c. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between units will cause those units to be combined.

6. Notice of Damage or Loss

For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

(a) The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of rice to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

b. The total production to be counted for a unit will include all harvested production including any production from a second rice crop harvested in the same crop year (Any mature production from volunteer rice growing in the rice will be counted as rice on a weight basis).

(1) Mature rough rice production which otherwise is not eligible for quality adjustment will be reduced in volume by .12 percent for each .1 percentage point of moisture in excess of 12.0 percent; or

(2) Mature rough rice production which, due to insurable causes;

(a) Has a total milling yield (heads, second heads, screening, and brewers) or less than 68 pounds per hundredweight;

(b) The whole kernel weight is less than 55 pounds per hundredweight for medium and short grain varieties;

(c) The whole kernel weight is less than 48 pounds per hundredweight for long grain varieties;

(d) Contains more than 4.0 percent chalky kernels in long grain varieties;

(e) Contains more than 6.0 percent chalky kernels in medium or short grain varieties;

(f) Contains more than 3.0 percent chalky kernels in other types; or

(g) Contains more than 2.5 percent red rice will have the production adjusted by:

(i) Dividing the value per pound of such rice, by the price per pound of U.S. No. 3 rough rice; and

(ii) Multiplying the result by the number of pounds of such rice.

(The applicable price for No. 3 rough rice will be the nearest mill center price on the earlier of the day the loss is adjusted or the day the rice was sold).

c. The production to be counted will include all appraised as follows:

(1) All unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good rice farming practices.

(2) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(3) Appraised production on unharvested acreage.

(4) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of rice becomes general in the county and is reappraised by us;

(ii) Further damaged by an insured cause and is reappraised by us; or

(iii) Harvested.

d. A replanting payment is available under this endorsement if we determine it is practical to replant on the acreage and our appraisal does not exceed 90 percent of the guarantee on the acreage to be replanted. The replanting payment per acre will be the actual cost of replanting, but will not exceed 400 pounds multiplied by the price election, multiplied by your share.

8. Cancellation And Termination Dates

The cancellation and termination dates are:

State and county	Cancellation and termination dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, Dimmit Counties, Texas, and all Texas counties south thereof	February 15
Missouri	April 15
Florida	March 15
All other Texas counties and all other states	March 31

9. Contract Changes

The date by which contact changes will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and November 30 preceding the cancellation date for all other counties.

10. Meaning of Terms

a. "County" means the land defined in the general crop insurance policy and any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

b. "Harvest" means the completion of combing or threshing of rice on the unit.

c. "Mill center" means any location in which two or more mills are engaged in milling rough rice.

d. "Replanting" means performing the cultural practices necessary to replant insured acreage to rice.

e. "Second crop rice" means regrowth of a stand of rice originating from the initially insured rice crop following harvest and which can be harvested in the same crop year.

Done in Washington, DC, on August 20, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-21085 Filed 9-11-87; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. No. 7; Docket No. 4623S]

General Crop Insurance Regulations; Soybean Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section 7 CFR 401.117, to be known as the Soybean Endorsement. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on soybeans in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the

promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 14, 1987 to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increase in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3051, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.117, the Soybean Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring soybeans.

Upon publication of 7 CFR 401.117 as a final rule, the provisions for insuring soybeans contained therein will supersede those provisions contained in 7 CFR Part 431, the Soybean Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 431 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 431 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Soybean Endorsement to 7 CFR Part 401, FCIC is proposing changes in the provisions for insuring soybeans as follows:

1. *Section 4*—Provide that insurance will begin on each unit or portion of a unit. This change is made to avoid instances when delayed planting of part of a unit until after the final planting date would prevent insurance from attaching on timely planted acreage. Change end of insurance period for several Southeastern states to December 31.

2. *Section 5*—Add division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided. States having unit division restrictions are added to this section. These states were previously shown on the acturial table. Add languag to specify that nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your unit for the purpose of determining the guarantee for the unit.

3. *Section 7*—Change the threshold for quality adjustment due to excess moisture from 14 percent to 13 percent.

4. *Section* 10—Add definitions for "Harvest," and "Section."

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register.** Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Soybean endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR § 401.117 Soybean Endorsement, effective for the 1988 and succeeding crop years, to read as follows:

§ 401.117 Soybean endorsement.

The provisions of the soybean Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Soybean Endorsement

1. Insured Crop

a. The crop insured will be soybeans planted for harvest as beans.

b. In addition to the crop not insurable to section 2 of the general crop insurance policy, we do not insure any soybeans if the seed has not been mechanically incorporated into the soil in rows during the planting process unless provided for the actuarial table.

c. A late planting agreement will be available for corn.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period.

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are expected, excluded, or

limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table contained in the soybean policy in effect for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following condition:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction amount will not increase because of favorable experience;

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

In lieu of the provisions in section 7 of the general crop insurance policy the following will apply:

a. Insurance attaches on each unit or part of a unit when the soybean crop is planted.

b. Insurance ends on each unit at the earliest of:

(1) Total destruction of the crop;

(2) Harvest;

(3) Final adjustment of a loss;

(4) The date immediately following planting as follows:

(a) December 20 in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia

(b) December 10 in all other states.

5. Unit Division

Except in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas, soybean acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least previous crop year. Production reports by unit based on those records should be filed as early as possible but must be filed by no later than the date required by subsection 4.d. of the general crop insurance policy and either;

b. acreage planted to the insured soybeans is located either in separate, legally identifiable sections or, in the absence of section descriptions the land is identified by separate ASCS Farm Serial Numbers provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified, and the insured acreage can be easily determined, and

(2) The soybeans are planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured soybeans is located in a single section or ASCS Farm Serial Number and consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

(1) Soybeans planted on the irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern (Non-irrigated corners of a center pivot irrigation system planted to insurable grain sorghum are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your unit for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

For purposes of Section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. An indemnity will be determined for each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of soybeans to be counted (see subsection 7.b.);

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include:

(1) All harvested production and may be adjusted for moisture or quality as follows:

(a) Mature soybean production which is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 13.0 percent.

(b) Soybean production which, due to insurable causes has a test weight of elss than 49 pounds per bushel or is of distinctly low quality as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act will be adjusted by:

(i) Dividing the value per bushel of such soybeans by the price per bushel of U.S. No. 2 soybeans; and

(ii) Multiplying the result by the number of bushels of insured soybeans.

(c) The applicable price for No. 2 soybeans will be the local market price on the earlier of the day the loss is adjusted or the day the insured soybeans are sold.

(2) All appraised production and will include:

(a) Unharvested production on harvested acreage and potential production lost due to an uninsured causes and failure to follow recognized good soybean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use (other than harvest) without our prior written consent or damaged solely by an uninsured cause;

(c) Appraised production on unharvested acreage;

(d) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of soybeans becomes general in the county and reappraised by us;

(ii) Further damaged by an insured cause and reappraised by us; or

(iii) Harvested.

c. A replanting payment is available under this endorsement if we determine it is practical to replant. The replanting payment will be your actual cost for replanting, not to exceed your price election multiplied by 3 bushels multiplied by your share.

When the crop is replanted by a practice that was uninsurable as an original planting, the guarantee will be reduced by the amount of the replant payment. In accordance with subsection 9.h.(1)(a) no replanting payment will be made on acreage on which our appraisal exceeds 90 percent of the guarantee.

8. Cancellation and Termination Dates

State and county	Cancellation and termination dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, and Dimmit Counties, Texas and all Texas counties lying south thereof.	February 15
Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	March 31
All other Texas counties and all other states	April 15

9. Contract Changes

Contract changes will be available at your service office by December 31 prior to the cancellation date for counties with an April 15 cancellation date and by November 30 prior to the cancellation date for all other counties.

10. Meaning of Terms

a. "Harvest" of soybeans on the unit means combining, or removal from the field.

b. "Section" is a unit of measure under the rectangular survey system describing a tract of land generally one mile square, usually consisting of approximately 640 acres.

c. "Distinctly Low Quality" means:

(1) Exceeding 8.0 percent kernel damage (excluding heat damage);

(2) Having a musty, sour, or commercially objectionable foreign odor which causes the soybeans to grade U.S. Sample grade; or

(3) Graded as "Garlicky" soybeans.

Done in Washington, DC, on August 20, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-21086 Filed 9-11-87; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 420

[Amdt. No. 1; Doc. No. 4642S]

Grain Sorghum Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Grain Sorghum Insurance Regulations (7 CFR Part 420), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Grain Sorghum Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations as § 401.113, Grain Sorghum Endorsement, effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Corporation Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 14, 1987, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulations 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environment Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 420 will be effective only through the end of the 1987 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Grain Sorghum Endorsement will be published as an endorsement to 7 CFR Part 401 (401.113, Grain Sorghum Endorsement), and become effective for the 1988 and succeeding crop years. Upon final publication, the provisions of the Grain Sorghum Crop Insurance Regulations, now contained in 7 CFR Part 420, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 420 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 420

Crop insurance, Grain sorghum.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Subpart heading to the Grain Sorghum Insurance Regulations (7 CFR Part 420), as follows:

PART 420—[AMENDED]

1. The Authority citation for 7 CFR Part 420 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 420 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 crop years

Done in Washington, DC on August 20, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-21083 Filed 9-11-87; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. No. 1; Doc. No. 4340S]

General Crop Insurance Regulations; Corn Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.111, to be known as the Corn Endorsement. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on corn in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 14, 1987, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.111, the Corn Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring corn.

Upon publication of 7 CFR 401.111 as a final rule, the provisions for insuring corn contained therein will supersede those provisions contained in 7 CFR Part 432, the Corn Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 432 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 432 by separate document so that the provisions therein are effective only through the 1987 crop year.

The provisions of 7 CFR 401.111 will not contain those provisions applicable to insuring corn as silage. Provisions for insuring corn on a purely silage basis will be proposed for reissue as 7 CFR 401.112 the Corn Silage Option as an amendment to this corn endorsement.

Minor editorial change have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Corn Endorsement to 7 CFR Part 401, FCIC is proposing other changes in the provisions for insuring corn as follows:

1. *Section 1.*—Add a provision to limit insurance only to acreage which is planted in rows far enough apart to permit mechanical cultivation. Add a provision indicating that corn destroyed to comply with other U.S. Department of Agriculture programs will not be insured. This provision was added to prevent insurance from attaching to the crop intended for eventual destruction to comply with other U.S. Department of Agriculture programs.

2. *Section 4.*—Provide that insurance will begin on each unit or portion of a unit. This change is made to avoid instances when delayed planting of part of a unit until after the final planting date would prevent insurance from attaching on timely planted acreage.

3. *Section 5*—Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided. Add language to specify that nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your unit for the purpose of determining the guarantee for the unit.

4. *Section 7*—Add a provision for adjustment of a loss on a grain basis unless the insured enters into the "silage amendment" by the sales closing date.

5. *Section 10*—Add definitions for "Harvest", and "Section."

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Corn endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.111 Corn Endorsement, effective for

the 1988 and Succeeding Crop Years, to read as follows:

§401.111 Corn endorsement.

The provisions of the Corn Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Corn Endorsement

1. Insured Crop

a. The crop insured will be field corn ("corn") planted for harvest as grain or silage.

b. In addition to the corn not insurable according to section 2 of the general crop insurance policy, we do not insure any corn:

(1) On which the corn was destroyed or put to another use for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(2) Unless the acreage is planted in rows far enough apart to permit mechanical cultivation; or

(3) Planted for silage unless a silage amendment has been completed.

c. If the actuarial table for the county provides a "silage only guarantee", coverage is only available with the completion of the silage amendment.

d. A late planting agreement will be available for corn.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table contained in the corn policy for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply;

(5) Participation must be continuous.

4. Insurance Period

The calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson counties, Texas, and all Texas counties lying south thereof, September 30;

(b) Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom counties, Washington, October 31;

(c) All other counties where our actuarial table shows:

(a) only a silage guarantee;

(b) both a grain and a silage guarantee on any acreage of corn harvested for silage, September 30;

(d) All other counties and states, December 10.

5. Unit Division

Corn acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit you maintain written verifiable records of planted acreage and harvested production for at least the previous crop year. Production reports by unit based on those records should be filed as early as possible but must be filed by no later than the date required by subsection 4.d. of the general crop insurance policy and either;

a. Acreage planted to the insured corn crop is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) the boundaries of the section or ASCS Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

(2) The corn is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

b. Acreage planted to the insured corn is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and non-irrigated practices are carried out, provided:

(1) Corn planted on the irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern (nonirrigated corners of a center pivot irrigation system planted to insured corn are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your unit for the purpsoe of determining the guarantee for the unit.); and

(2) Planting, fertilizing, and harvesting are carried out in accordance with recognized good irrigated and non-irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between units will cause the production from those units commingled to be combined for the purpose of calculating an indemnity.

6. Notice of Damage or Loss

In addition to the notices required in section 8 of the general crop insurance policy, you must give us written notice if you have been prevented from planting at least your ASCS permitted acreage on any Farm Number to corn or any other non-conserving corp through the prevented planting date. Such notice must be given no later than the acreage reporting date. For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section.

7. Claim for Indemnity

a. An indemnity will be determined for each grain unit by:

(1) Multiplying the insured grain acreage by the production guarantee;

(2) Subtracting therefrom the total production of grain to be counted (See subsection 7.d.)

(3) Multiplying this product by the grain price election; and

(4) Multiplying this result by your share.

b. When the actuarial table provides a bushel guarantee only or a bushel and tonnage guarantee (and you do not have a timely signed silage option) all appraisals will be made in bushels.

c. When the actuarial table provides a tonnage guarantee, and a corn silage amendment is in effect, the indemnity will be determined in accordance with the procedure shown on the corn silage amendment.

d. The total production (bushels) to be counted for a unit with a grain guarantee will include:

(1) All harvested production and may be adjusted for moisture or quality as follows:

(a) Mature grain which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 15.5 through 30.0 percent and .2 percent for each .1 percentage point of moisture from 30.1 through 40.0 percent; or

(b) Mature grain which, due to insurable causes, has moisture over 40 percent; test weight below 40 pounds per bushel; or kernel damage more than 15 percent as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, will be adjusted by:

(1) Dividing the value per bushel of such corn by the price per bushel of U.S. No. 2 corn; and

(2) Multiplying the result by the number of bushels of such corn.

The applicable price for No. 2 corn will be the local market price on the earlier of the day the loss is adjusted or the day such corn was sold. The quality adjustment will not reduce the harvested production more than 75 percent so that at least 25 percent of harvested production will count.

(2) All appraised production which will include:

(a) Unharvested production on harvested acreage and potential production lost due to

an uninsured causes and failure to follow recognized good corn farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Appraised production on unharvested acreage;

(d) For any acreage of corn reported as grain and harvested as silage, indemnity calculations will be converted to a bushel basis at the conversion rate shown in the form FCI–35 for silage harvested or appraised from a grain variety.

(e) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of corn becomes general in the country and reappraised by us;

(ii) Further damaged by an insured cause and reappraised by us; or

(iii) Harvested.

e. A replanting payment is available under this endorsement if we determine it is practical to replant on a unit and our appraisal does not exceed 90 percent of the guarantee. The replanting payment will not exceed 8 bushels multiplied by the price election, multiplied by your share. When the crop is replanted by a practice that was uninsurable as an original planting, the guarantee will be reduced by the amount of the replanting payment.

8. Cancellation and Termination Dates

State and County	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof	February 15
Alabama; Arizona; Arkansas, California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina, and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas Counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gozales De Witt Lavaca, Colorado, Wharton, and Matagorda Counties, Texas	March 31
All other Texas counties and other states	April 15

9. Contract Changes

Contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by November 30 preceding the cancellation date for all other counties.

10 Meaning of Terms

a. "Harvest" of corn for grain on the unit means completion of combining and/or picking the corn for grain.

b. "Section" means a unit of measure under the rectangular survey system describing a tract of land generally one mile square, usually containing approximately 640 acres.

Done in Washington, DC, on August 18, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–21079 Filed 9–11–87; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 401

[Amdt. No. 2; Doc. No. 4343S]

General Crop Insurance Regulations; Corn Silage Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.112 to be known as the Corn Silage Option. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on corn on an optional silage basis in an endorsement to the General Crop Insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 14, 1987, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility ACt; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.112, the Corn Silage Option, effective for the 1988 and succeeding crop years, to provide the provisions for insuring corn on an optional silage basis.

Upon publication of 7 CFR 401.112 as a final rule, the provisions for insuring

corn as silage contained therein will supersede those silage provisions contained in 7 CFR Part 432, the Corn Crop Insurance Regulations, effective with the beginning of the 1988 crop year.

The remaining non-silage provisions contained in 7 CFR Part 432 will be reissued as 7 CFR 401.111, the Corn Endorsement.

The present policy contained in 7 CFR Part 432 will be terminated at the end of the crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 432 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Corn Silage Option to 7 CFR Part 401 as outlined below, no changes were made to the provisions for insuring corn as silage.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.112, the Corn Silage Option, effective for the 1988 and succeeding crop years, to provide the provisions for insuring corn on an optional silage basis.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this notice will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Corn silage option.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.112 Corn Silage Option, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.112 Corn silage option.

The provisions of the Corn Silage Crop Insurance Option amendment to the Corn Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Corn Silage Option

Insured's Name

Address

Contract No.

Crop Year

Identification No.

SSN

Tax

Upon our approval, this amendment is applicable for the 1988 and succeeding crop years.

1. You must have a corn endorsement in force. The corn endorsement provides guaranteed protection on a bushel basis for corn harvested as grain only.

2. All provisions of the corn endorsement not in conflict with this amendment remain applicable. If a conflict exists between the terms of the endorsement and this silage option, the terms of the silage option apply.

3. A properly executed Corn Silage Option must be submitted to us on or before the sales closing date if you wish to insure your corn as silage under this amendment.

4. The silage option remains in force and need not be renewed annually. If you desire to cancel the option, you must do so in writing by the cancellation date shown in the actuarial table. The silage option is mandatory if required by the actuarial table.

5. Failure to submit a properly executed silage option amendment by the sales closing date will result in all your corn being insured under the terms and conditions of the corn endorsement.

6. All production and appraisals under this amendment will be in tons. When the corn is harvested as silage and a grain appraisal is made concurrently with a silage appraisal, and the grain/silage appraisal is less than 4.5 bushels per ton, the production will be reduced 1 percent for each 1 tenth of a bushel below 4.5 bushels. The representative sample required by subsection 8.a.(3) of the general policy must be at least 10 feet wide and the entire length of the field. If a representative sample is not left unharvested, no reduction for harvested silage will be allowed.

7. If the actuarial table shows both a grain and silage guarantee, and the normal silage harvesting period has ended, we may increase any tonnage appraisal or any harvested silage production to 65 percent moisture equivalent to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

8. A replanting payment will be available in accordance with subsection 9.h. of the general policy if it is practical to replant. The payment will not exceed 1 ton, multiplied by the price election, multiplied by your share.

Your premium rate under this amendment is that specified for silage corn on the actuarial table. If only one premium rate is shown by the actuarial table it will be applied to both grain and silage. Mixtures of corn and grain sorghum are insurable for silage only if the sorghum does not exceed 20 percent of the stand.

The end of the insurance period under the silage option amendment is September 30 for the crop year. The silage option amendment is not usable in corn counties which offer coverage only on a bushel basis.

Insured's Signature

(Date)

Agent's Signature

(Date)

Approved by Company

(Date)

Done in Washington, DC, on August 20, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–21078 Filed 9–11–87; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 421

[Amt. No. 2; Docket No. 4716S]

Cotton Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Cotton Crop Insurance Regulations (7 CFR Part 421), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Cotton Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly proposed 7 CFR Part 401, General Crop Insurance Regulations (401.119, Cotton Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 will be a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and will substantially reduce: (1) The time involved in amendment or

revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 14, 1987, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has proposed to publish in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 421 will be effective only through the end of the 1987 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Cotton Endorsement will be published as an endorsement to 7 CFR Part 401 § 401.119, Cotton Endorsement), and become effective for the 1988 and succeeding crop years. Upon final publication, the provisions of the Cotton Crop Insurance Regulations, now contained in 7 CFR Part 421, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 421 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 421

Crop insurance, Cotton.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Subpart heading to the Cotton Crop Insurance Regulations (7 CFR Part 421), as follows:

PART 421—[AMENDED]

1. The Authority Citation for 7 CFR Part 421 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 421 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on August 21, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-21081 Filed 9-11-87; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 438

[Amdt. No. 2, Doc. No. 4634S]

Canning and Processing Tomato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Canning and Processing Tomato Crop Insurance Regulations (7 CFR Part 438), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Canning and Processing Tomato Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations as § 401.114, Canning and Processing Tomato Endorsement, effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be

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submitted not later than October 14, 1987, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 438 will be effective only through the end of the 1987 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such wil be the case.

It is proposed that the new Canning and Processing Tomato Endorsement will be published as an endorsement to 7 CFR Part 401 (401.114, Canning and Processing Tomato Endorsement), and become effective for the 1988 and succeeding crop years. Upon final publication, the provisions of the Canning and Processing Tomato Crop Insurance Regulations, now contained in 7 CFR Part 438, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 438 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 438

Crop insurance, Canning and processing tomato.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Subpart heading to the Canning and Processing Tomato Crop Insurance Regulations (7 CFR Part 438), as follows:

PART 438—[AMENDED]

1. The Authority citation for 7 CFR Part 438 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 438 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on August 20, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–21087 Filed 9–11–87; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 981

Almonds Grown In California; Administrative Rules and Regulations Governing Quality Control

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the administrative rules and regulations established under the Federal marketing order for California almonds to change the tolerance for inedible almonds from 3 percent to 0 percent. The change would improve the quality of California almond shipments.

DATE: Comments must be received by September 29, 1987.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, USDA, AMS, Fruit and Vegetable Division, P.O. Box 96456, Room 2085, South Building, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act, (RFA), the Administrator of the Agricultural Marketing Service (AMS) has

considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601 through 674), as amended, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of almonds under the marketing order for California almonds who are subject to regulation during the course of the current season. There are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having average annual gross revenues for the last three years of less than $100,000, and agricultural service firms have been defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This proposed rule would lower from 3 percent to 0 percent the tolerance for inedible almonds in each variety of almonds processed by handlers. The change is proposed in view of a projected high quality 1987 almond crop. It is the general policy of the Almond Board of California (ABC) to recommend adjustments in the inedible tolerance based on crop quality.

When crop quality is poor, the precentage of inedibles in lots of almonds received by handlers from growers is high, and handlers have difficulty removing inedibles to meet low tolerances with the constraints of industry processing capabilities. Inedibles are removed by a combination of machine and manual labor. Thus, handlers need the flexibility provided by a higher tolerance precentage for inedibles when the quality is poor. On the other hand, when crop quality is good and there are few inedibles in lots of almonds received by handlers, handlers have the capability of removing a larger percentage of the inedibles. In this case, a lower tolerance is warranted. Therefore, it is the Agency's view that the proposed lower tolerance for inedible almonds can be implemented without handlers incurring significant additional costs.

Based on the above, the Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposal would amend §981.442(a)(4) of Subpart—Administrative Rules and Regulations issued under marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California. The order is effective under the Act. The proposal is based on a recommendation of the ABC, which is responsible for local administration of the order, and other information.

Section 981.442(a)(4) of the administrative rules and regulations currently requires the weight of inedible kernels in each variety in excess of 3 percent of the kernel weight received by handlers to be reported to the ABC. This weight must be accumulated during processing and delivered to the ABC or ABC accepted crushers, feed manufacturers, or feeders.

It is proposed to amend §981.442(a)(4) by changing the tolerance for calculating a handler's disposition obligation from 3 percent to 0 percent. This action would allow for stricter quality control while still maintaining ample supplies of almonds to meet trade demand. The change is intended to provide a higher quality product to almond users and consumers. The industry has the capability of implementing such stricter control due to a projected high quality 1987 almond crop.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered adequate because the current crop year began on July 1, 1987. Handlers are now receiving and processing 1987 crop almonds, and they need to know as soon as possible whether or not a change in the inedible tolerance will be adopted.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, California.

For the reasons set forth in the preamble, 7 CFR Part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Section § 981.442 is amended by revising the first sentence of paragraph (a)(4) to read as follows:

§ 981.442 Quality control.

(a) * * *

(4) *Disposition obligation.* The weight of inedible kernels in excess of 0 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligations. * * *

* * * * * *

Dated: September 4, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87–21090 Filed 9–11–87; 8:45 am]

BILLING CODE 3410–02–W

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 85–060]

Importation of Meat and Animal Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations in 9 CFR Part 94 by uniformly changing the language which prohibits *entry* into the United States of certain animal products, to language which would prohibit the *importation* of such products. This proposal would also change the present requirement that specified certificates accompany certain imported articles to a requirement that the specified certificates both accompany the articles and be presented to an authorized inspector of the United States Department of Agriculture at the time of importation. This proposal would also require that certificates accompany cured and cooked meats imported from countries where foot-and-mouth disease or rinderpest exists and be presented at the port of arrival in the United States. These changes would enhance the ability of the Department to enforce 9 CFR Part 94 and would, therefore, assist the effort to prevent the introduction of certain animal diseases into the United States.

DATE: Consideration will be given only to comments postmarked or received on or before November 13, 1987.

ADDRESSES: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number

85–080. Comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Bowen, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville. MD 20782. 301–436–8499.

SUPPLEMENTARY INFORMATION:

Background

Importation Prohibitions

The regulations in 9 CFR Part 94 (referred to below as the regulations) regulate, among other things, the importation into the United States of certain animals, meat, and animal products. These regulations are designed to prevent the introduction into the United States of foot-and-mouth disease, rinderpest, African swine fever, hog cholera, swine vesicular disease, and viscerotropic velogenic Newcastle disease. However, in certain instances in 9 CFR Part 94, terminology prohibiting "entry" is used where terminology prohibiting "importation" is intended.

The term "importation" under the animal quarantine laws means to bring within the territorial limits of the United States. The term "entry" means to introduce into the commerce of the United States after release fro government detention.

In order to exclude the diseases noted above, the regulations should provide for the least possible risk of animals, meat, or animal products that could transmit the diseases to domestic animals. This prevention is most effectively accomplished by restricting or prohibiting the importation of such animals, meat, or animal products, where control can be exercised over articles prior to their entry into the commerce of the United States.

As noted above, however, the regulations in some cases prohibit or restrict *entry* instead of *importation*. This distinction is important because prohibited animals, meat, and animal products are often confiscated during customs inspections at ports of entry after the articles have been *imported* but before they have been *entered* into the United States. In some cases, penalties cannot be successfully imposed on violators because the imported articles have been confiscated before their entry. Such cases reduce the effectiveness of the regulations in deterring attempts to bring prohibited articles into the United States.

This proposal would amend the language of the regulations to specify that a violation occurs upon the importation, not the entry, of a prohibited article. Language in the regulations prohibiting *entry* into the United States of certain animals, meat, and animal products would be uniformly changed to language prohibiting the *importation* of such articles.

Port of Arrival

The proposal would substitute the term "port of arrival" for the present term "port of entry," which is used in various sections in Part 94. Imported meats or animal products must satisfy various requirements at the port of entry, such as inspection or presentation of certificates before the meat or animal products are released from the port into the United States. However, in some cases, meat products may arrive at one port (the port of arrival) and be shipped to another location (the port of entry) at which formal clearance through Customs and other requirements are accomplished. Such shipment of uncleared meat or animal products within the United States presents a risk of disease transmission, as pilferage, loss, or container damage while in transit may allow transmission of disease organisms to domestic animals.

The Department believes that this risk can be minimized by ensuring that the provisions of Part 94, which control the importation of meat and animal products, are applied at the port of arrival, rather than the port of entry. Therefore, the term "port of entry" would be changed to "port of arrival" wherever it appears in Part 94.

Presentation of Certificates

In some cases, meat or meat products shipped from countries not recognized by the United States Department of Agriculture as free of the diseases addressed in the regulations are permitted importation into the United States if they are processed in such a way as to eliminate the risk of spreading the diseases from the country of shipment to the United States, and are accompanied by required documentation.

In certain cases, when these articles are shipped for importation into the United States, they must be accompanied by prescribed certificates and, if required, other documents that attest that the required conditions for the preparation and shipment of the products have been met. Currently, the regulations require only that these certificates accompany the articles to the United States. In order for the Department to confirm that the prescribed conditions for the articles' importation have been met, it is necessary to require not only that the certificates accompany the meat or meat products, but also that they be presented to the Department's authorized inspector at the time of importation. This proposal includes provisions that would require that the meat certificates be presented to the Department's authorized inspector at the port of arrival upon the arrival of the products in the United States.

Importation From Countries Not Recognized by the United States Department of Agriculture as Free of Rinderpest and Foot-and-Mouth Disease

Cured meats and cooked meats are permitted importation into the United States from countries where rinderpest or foot-and-mouth disease exists. if those meats are prepared and transported according to specified conditions which eliminate the risk of disease transmission. Currently, no certificate attesting to the fulfillment of these conditions is required to accompany the meats to the United States. The Department has found, however, that visual inspection of the meats at the port of arrival is not adequate to determine that the meats were prepared and transported according to the conditions necessary to eliminate the risk of disease transmission. In order to provide a mechanism whereby the Department can confirm that the required conditions have been met, it is proposed that importation of such meats be permitted only if the meats are accompanied by a certificate issued by an authorized official of the national government of the country of origin, stating that the meats have been prepared according to the conditions for cooking or curing specified in § 94.4. Upon arrival of the meats in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

Miscellaneous

This document would define certain terms and also make certain nonsubstantive changes in the regulations for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The majority of this proposal is concerned with clarifying where certain, presently required, certificates must be presented to U.S. officials upon arrival of certain animal products in the United States, specifying that such certificates must be presented at the port of arrival, rather than at the port of entry. With two exceptions, this proposal would not alter the present provisions governing which products require certification when shipped to the U.S.

The proposal that presentation of the certificates be made at the port of arrival would have no economic impact, other than that of facilitating imposition of penalties on violators of the regulations. The Department anticipates that total additional penalties collected annually because of the proposed changes would amount to less than $4,000.

The change that does affect certification would establish provisions to require certification for importation of cooked or cured meats from countries where rinderpest or foot-and-mouth disease exists. The economic impact of obtaining certification would be minimal, and the products affected would represent significantly less than 1 percent of all such animal products entering the U.S. economy.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this proposal contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

Accordingly, it is proposed to amend regulations in 9 CFR Part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for Part 94 would be revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1308; 21 U.S.C. 111, 114a: 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In Part 94, a new § 94.0 would be added to read as follows:

§ 94.0 Definitions.

For the purpose of this part, the following terms have the meanings set forth in this section.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other employee of the United States Department of Agriculture to whom authority is delegated to act in his or her stead.

Authorized inspector. Any employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other individual who is authorized by the Administrator to enforce this part.

Deputy Administrator. The Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other employee of the United States Department of Agriculture to whom authority is delegated to act in his or her stead.

Import (imported, importation) into the United States. To bring into the territorial limits of the United States.

Port of arrival. Any place in the United States at which a product or article arrives, unless the product or article remains on the means of conveyance on which it arrived within the territorial limits of the United States.

United States. The several States, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other territory or possession of the United States, except as provided in § 94.5 of this part.

Veterinary Services. Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture.

Veterinary Services representative. An individual employed by Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the function involved.

3. In § 94.1, the heading and paragraph (c) would be revised to read:

§ 94.1 Designation of countries where foot-and-mouth disease or rinderpest exists; importations prohibited.

* * * * * *

(c) Except as otherwise provided in this part, the importation of fresh, chilled, or frozen meat of ruminants or swine which originates in a country free of foot-and-mouth disease and rinderpest, as designated in paragraph (a) of this section, but which enters a port or otherwise transits a country where foot-and-mouth disease or rinderpest exists may be imported if:

(1) The meat is accompanied by the foreign meat inspection certificate required by § 327.4 of this title and, upon arrival of the meat in the United States, the foreign meat inspection certificate is presented to an authorized inspector at the port of arrival;

(2) The meat is placed in the transporting carrier in a hold or compartment which was sealed in the country of origin by an official of such country with serially numbered seals approved by Veterinary Services, so as to prevent contamination, and the loading of any cargo into and the removal of any cargo from such sealed hold or compartment, en route to the United States;

(3) The serial numbers of the seals used to seal the hold or compartment of the transporting carrier are recorded on the foreign meat inspection certificate which accompanies the meat;

(4) Upon arrival of the carrier in the United States port of arrival, the seals are found by a Veterinary Services representative to be intact, and the Veterinary Services representative finds that there is no evidence indicating that the seals were tampered with; and

(5) The meat is found by an authorized inspector to be as represented on the foreign meat inspection certificate.

§ 94.3 [Amended]

4. Section 94.3 would be amended by changing "Deputy Administrator, Veterinary Services" to read "Deputy Administrator".

§ 94.4 [Amended]

5. Section 94.4 would be amended by changing "Deputy Administrator,

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Veterinary Sevices" to "Deputy Administrator" each time it appears, by changing "port of entry" to "port of arrival" each time it appears, and by removing "said" each time it appears.

6. In § 94.4, present paragraph (b)(3) would be redesignated as (b)(4) and new paragraphs (a)(4) and (b)(3) would be added to read as follows:

§ 94.4 Cured or cooked meats[1] from countries where foot-and-mouth disease or rinderpest exists.

(a) * * *

(4) The meat shall be accompanied by a certificate issued by an official of the national government of the country of origin who is authorized to issue the foreign meat inspection certificate required by § 327.4 of this title, stating that such meat has been prepared in accordance with paragraphs (a)(1), (a)(2) and (a)(3)(i) of this section. Upon arrival of such cured meat in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

(b) * * *

(3) The meat shall be accompanied by a certificate issued by an official of the national government of the country of origin who is authorized to issue the foreign meat inspection certificate required by § 327.4 of this title, stating that such meat has been prepared in accordance with paragraphs (b)(1) and (b)(2) of this section. Upon arrival of such cooked meat in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

* * * * *

7. In § 94.6, paragraph (d)(2), the reference to "Deputy Administrator, Veterinary Services," would be changed to "Deputy Administrator".

8. In § 94.6, the first sentence in footnote 3 would be revised to read:

[3] The names and addresses of approved establishments may be obtained from, and requests for approval of an establishment may be made to, the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Washington, DC 20250. * * *

9. In § 94.6, paragraph (d)(4), the reference to "port of entry" would be changed to "port of arrival".

10. In § 94.6, paragraph (e), the reference to "Deputy Administrator, Veterinary Services" would be changed to "Deputy Administrator".

11. Section 94.6 would be amended by revising the introductory text in paragraph (g)(1) to read as follows:

§ 94.6 Carcasses of poultry, game birds, and other birds, parts or products thereof, and eggs other than hatching eggs; restrictions, exceptions.

* * * * *

(g) * * *

(1) The eggs are accompanied by a certificate signed by a salaried veterinary officer of the national government of the country of origin. Upon arrival of the eggs in the United States, the certificate must be presented to an authorized inspector at the port of arrival. The certificate must state:

* * * * *

12. In § 94.6, in the concluding paragraph of paragraph (g)(2)(ii), the reference to "Deputy Administrator, Veterinary Services" would be changed to read "Deputy Administrator".

13. In § 94.6, paragraphs (h) (2) and (3), the references to "Deputy Administrator, Veterinary Services," would be changed to read "Deputy Administrator" each time they appear.

§ 94.7 [Amended]

14. In § 94.7, the references to "Deputy Administrator, Veterinary Services," would be changed to read "Deputy Administrator" each time they appear.

§§ 94.8, 94.9, 94.12 and 94.16 [Amended]

15. In Part 94, the footnotes designated as 7a through 11 would be redesignated accordingly: Redesignate 11 as 13, 9 as 11, 7a as 9, 10 as 12, and 8 as 10. The references to the footnotes in §§ 94.8, 94.9, 94.12, and 94.16 would be changed accordingly: In § 94.8, change 7a as 9; in § 94.9, change 8 as 10 and change 9 as 11; in § 94.12, change 10 as 12 and change 9 as 11; and in § 94.16, change 11 as 13.

16. Section 94.8 would be amended by changing the references to "Deputy Administrator, Veterinary Services" to read "Deputy Administrator" each time they appear, by changing the references to "port of entry" to "port of arrival" each time they appear, and by revising the introductory text for this section, the introductory text in paragraph (a), and paragraphs (a)(3)(v) and (a)(3)(vi) to read as follows:

§ 94.8 Pork and pork products from countries where African swine fever exists or is reasonably believed to exist.

African swine fever exists or the Administrator has reason to believe that African swine fever exists [8] in: All the countries of Africa, Brazil, Cuba, Haiti, Italy, Malta, Netherlands, Portugal, and Spain.

(a) No pork or pork products may be imported into the United States from any country listed in this section unless:

* * * * *

(3) * * *

(v) It was processed at only one processing establishment in a country listed in this section; and

(vi) It is accompanied by a certificate issued by an official of the national government of the country in which the processing establishment is located who is authorized to issue the foreign meat inspection certificate required by § 327.4 of this title, stating that all of the requirements of this section have been met. Upon arrival of the pork or pork products in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

* * * * *

17. In § 94.9, paragraph (a) would be revised to read:

§ 94.9 Pork and pork products from countries where hog cholera exists.

(a) Hog cholera is known to exist in all countries of the world except Australia, Canada, Denmark, Dominican Republic, Fiji, Finland, Iceland, New Zealand, Northern Ireland, Norway, the Republic of Ireland, Sweden, and Trust Territory of the Pacific Islands.[10]

* * * * *

18. In § 94.9, paragraph (b)(2), the reference to "§ 94.9(b)(1) (ii) or (iii)" would be changed to read "paragraphs (b)(1) (ii) or (iii) of this section" and the reference to "§ 327.2 in Chapter III of this title" would be changed to read "§ 327.2 of this title".

---

[1] This does not include any meat that has been sterilized by heat in hermetically sealed containers.

[8] The Administrator bases the reason to believe African swine fever exists in a country on the following factors: (1) When a country allows the importation of host animals, pork or pork products, or vectors of African swine fever from a country in which African swine fever exists under conditions less stringent than those prescribed for importing host animals, pork or pork products, or vectors of African swine fever into the United States from a country in which African swine fever exists; or (2) When a country allows the importation or use of African swine fever virus or cultures under conditions less stringent than those prescribed for the importation or use of African swine fever virus or cultures into or within the United States; or (3) The proximity of a country to another country with known outbreaks of African swine fever; or (4) A country's lack of a disease detection, control or reporting system capable of detecting or controlling African swine fever and reporting it to the United States in time to allow this country to take appropriate action to prevent the introduction of African swine fever into the United States; or, (5) Any other fact or circumstance found to exist which constitutes a risk of introduction of African swine fever into the United States.

[10] See also other provisions of this part and Parts 92, 95, 96, and 327 of this chapter for other prohibitions and restrictions upon importation of swine and their products.

19. In § 94.9, paragraph (b), the introductory text and paragraph (b)(3) would be revised to read as follows:

* * * * *

(b) No pork or pork product may be imported into the United States from any country where hog cholera is known to exist unless it complies with the following requirements:

* * * * *

(3) In addition to the foreign meat inspection certificate required by § 327.4 of this title, pork and pork products prepared under paragraphs (b)(1) (ii) or (iii) of this section shall be accompanied by a certificate that states that the provisions of paragraphs (b)(1) (ii) or (iii) of this section have been met. This certificate shall be issued by an official of the national government of the country of origin who is authorized to issue the foreign meat inspection certificate required by § 327.4 of this title.[11] Upon arrival of the articles in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

* * * * *

20. In § 94.9, paragraph (b)(4), the reference to "Deputy Administrator, Veterinary Services" would be changed to read "Deputy Administrator".

21. In § 94.9, paragraph (c), the reference to "§ 94.9(b)(1)(iii)" would be changed to read "paragraph (b)(1)(iii) of this section", and the reference to "§ 94.12(b)(1)(iii)" would be changed to read "§ 94.12(b)(1)(iii) of this part".

22. Section 94.10 would be revised to read as follows:

§ 94.10 Swine from countries where hog cholera exists.

(a) Hog cholera is known to exist in all countries of the world except Australia, Canada, Denmark, Dominican Republic, Fiji, Finland, Iceland, New Zealand, Northern Ireland, Norway, the Republic of Ireland, Sweden, and Trust Territory of the Pacific Islands. No swine which originate in or are moved from or transit any country in which hog cholera is known to exist may be imported into the United States except wild swine imported in accordance with paragraph (b) of this section.

(b) Wild swine may be allowed importation by the Deputy Administrator upon request in specific cases under § 92.4(c) or § 92.2 of this chapter.

23. In § 94.11, the introductory text in paragraph (c) would be revised to read as follows:

[11] The certification required may be placed on the certificate prescribed by § 327.4 or may be contained in a separate document.

§ 94.11 Restrictions on importation of meat and other animal products from specified countries.

* * * * *

(c) *Additional certification.* Meat of ruminants or swine or other animal products from countries designated in paragraph (a) of this section must be accompanied by additional certification by a full-time salaried veterinary official of the agency in the national government that is responsible for the health of the animals within that country. Upon arrival of the meat of ruminants or swine or other animal product in the United States, the certification must be presented to an authorized inspector at the port of arrival. The certification must give the name and official establishment number of the establishment where the animals were slaughtered, and shall state that:

* * * * *

24. In § 94.12, the introductory text in paragraph (b), paragraph (b)(3), and newly redesignated footnote 11 would be revised to read as follows:

§ 94.12 Pork and pork products from countries where swine vesicular disease exists.

* * * * *

(b) No pork or pork product may be imported into the United States from any country where swine vesicular disease is considered to exist unless it complies with the following requirements and it is not otherwise prohibited importation under this part:

* * * * *

(3) In addition to the foreign meat inspection certificate required in § 327.4 of this title, pork or pork products prepared under paragraph (b)(1) (ii), (iii) or (iv) of this section shall be accompanied by certification that the provisions of paragraphs (b)(1)(ii), (b)(1)(iii)(A), or (b)(1)(iv)(B)(2) of this section have been met. The certification shall be issued by an official of the national government of the country of origin who is authorized to issue the foreign meat inspection certificate required by § 327.4 of this title.[11] Upon arrival of the pork or pork products in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

25. In § 94.12, the first sentence in newly designated footnote number 12 would be revised to read:

[12] The names and addresses of approved establishments may be obtained from, and request for approval of any establishment may be made to the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Washington, DC 20250. * * *

[11] See footnote 11 in § 94.9 of this part.

26. In § 94.12, paragraph (b)(4), the reference to "Deputy Administrator, Veterinary Services," would be changed to read "Deputy Administrator".

27. In § 94.13, in the introductory text, the reference to "or which vesicular disease is considered to exist;" would be removed and the reference to "Part 327, Subchapter A, Chapter III of this title" would be changed to read "Part 327 of this title".

28. In § 94.13, paragraph (a) and the introductory text of paragraph (b) would be revised to read:

§ 94.13 Restrictions on importation of pork or pork products from specified countries.

* * * * *

(a) All such pork or pork products, except those treated in accordance with § 94.12(b)(1)(i) of this part, shall have been prepared only in inspected establishments that are eligible to have their products imported into the United States under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and under § 327.2 of this title and shall be accompanied by the foreign meat inspection certificate required by § 327.4 of this title. Upon arrival of the pork or pork products in the United States, the foreign meat inspection certificate must be presented to an authorized inspector at the port of arrival.

(b) Unless such pork or pork products are treated according to one of the procedures described in § 94.12(b) of this part, the pork or pork products must be accompanied by an additional certificate issued by a full-time salaried veterinary official of the agency in the national government responsible for the health of the animals within that country. Upon arrival of the pork or pork products in the United States, the certificate must be presented to an authorized inspector at the port of arrival. The certificate shall state the name and official establishment number of the establishment where the swine involved were slaughtered and the pork was processed. The certificate shall also state that:

* * * * *

29. In § 94.13, paragraph (b)(3), the reference to "94.13" would be changed to read "section".

30. Section 94.14 would be revised to read:

§ 94.14 Swine from countries where swine vesicular disease exists; importations prohibited.

(a) Swine vesicular disease is known to exist in all countries of the world

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except those listed in § 94.12(a) of this part. No swine which originate in or are moved from or transit any country in which swine vesicular disease is known to exist may be imported into the United States except wild swine imported in accordance with paragraph (b) of this section.

(b) Wild swine may be allowed importation by the Deputy Administrator upon request in specific cases under § 92.4(c) or § 92.2 of this chapter.

§ 94.16 [Amended]

31. In § 94.16, paragraph (b), the references to "Deputy Administrator, Veterinary Services" would be changed to read "Deputy Administrator" each time they appear.

32. In § 94.16, the first sentence in newly designated footnote 13 would be revised to read:

[13] The names and addresses of approved establishments or warehouses or information as to approved manner of processing, and request for approval of any such establishment, warehouse, or manner of processing may be made to the Deputy Administrator, Veterinary Services, United States Department of Agriculture, Hyattsville, Maryland 20782. * * *

§ 94.17 [Amended]

33. In § 94.17, the references to "Deputy Administrator, Veterinary Services," would be changed to "Deputy Administrator" each time they appear, and the reference to "(9 CFR 94.17)" would be removed.

Done in Washington, DC, this 8th day of September 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-20974 Filed 9-11-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ANM-19]

Proposed Establishment of Transition Area, Burlington, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a 700 foot transition area at Burlington, Colorado. The area is necessary to provide controlled airspace for aircraft executing a new instrument approach procedure at Kit Carson Airport.

DATES: Comments must be received on or before November 11, 1987.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 87-ANM-19, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 87-ANM-19, 17900 Pacific Highway South, C-68966, Seattle, WA 98168, Telephone: (206) 431-2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ANM-19". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide controlled airspace around the Kit Carson Airport. The area will be shown on aeronautical charts enabling pilots to circumnavigate the area or otherwise comply with instrument flight rules during instrument flight conditions.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 151O; EO 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.161 [Amended]

2. Section 71.181 is amended as follows:

Burlington, CO, (New)

That airspace extending upward from 700 feet above the surface within a 12 mile radius of the Kit Carson County Airport (lat. 39°14'27" N., long. 102°17'08" W.).

Issued in Seattle, Washington, on August 19, 1987.

Temple H. Johnson, Jr.

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87-21009 Filed 9-11-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWP-30]

Revision to Window Rock, AZ, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the description of the Window Rock, AZ., transition area. The revision will increase the size of the 700 foot transition area southwest of the Window Rock Airport and will provide controlled airspace for a new instrument approach procedure to the airport. The procedure will be a random area navigation approach to Runway 02 (RNAV RWY 02).

DATES: Comments must be received on or before October 20, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 87-AWP-30, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (213) 297-1648.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWP-30." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the description of the Window Rock, AZ, transition area. This revision will increase the size of the 700 foot transition area southwest of the Window Rock Airport and provide controlled airspace for a new RNAV RWY 02 instrument approach to the Window Rock Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Window Rock, AZ. [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Window Rock Airport (lat. 35°39'08" N., long. 109°04'00" W.); within 3 miles each side of the Gallup VORTAC 318° radial, extending from the 5-mile radius area to the Gallup VORTAC; and within an area bounded by a ling beginning at lat. 35°38'27" N., long. 109°06'35" W., to lat. 35°31'07" N., long. 108°58'32" N., to lat. 35°27'13" N., long. 109°04'34" W., to lat. 35°25'26" N., long. 109°14'05" W., to lat. 35°31'35" N., long. 109°10'58" W., to the point of beginning.

Issued in Los Angeles, California, on August 24, 1987.

James Holweger,

Assistant Manager, Air Traffic Division.

BILLING CODE 4910-13-M

[FR Doc. 87-20753 Filed 9-11-87; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 70504-7104]

Annual Survey of U.S. Direct Investment Abroad (BE-11)

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth proposed rules for the BE-11, Annual Survey of U.S. Direct Investment Abroad, conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under authority of the International Investment and Trade in Services Survey Act. Specifically, the proposed rules change the reporting requirements on Form BE-11C of the survey to: (1) Require filing of a complete BE-11C report for nonbank foreign affiliates owned at least 20 percent, but less than 25 percent, by the U.S. Reporter and for which total assets, sales, or net income exceed $10 million, and (2) *for fiscal year 1987 only,* require filing of a partial BE-11C report for nonbank foreign affiliates owned at least 10 percent, but less than 20 percent, by the U.S. Reporter and for which total assets, sales, or net income exceed $100 million. For the former affiliates, a Form BE-11C with all seven data items completed would be required each year; for the latter affiliates, a Form BE-11C with only three items—that is, assets, sales, and net income—completed would be required but only for fiscal year 1987. Previously, all foreign affiliates owned less than 25 percent were exempt from being reported in the BE-11 survey. Some reporting by 10-to-25-percent-owned affiliates is needed because of the Bureau's inability to provide reliable estimates for the universe of all foreign affiliates without at least some information on affiliates owned between 10 and 25 percent.

DATE: Comments on the proposed rule will receive consideration if submitted in writing on or before October 14, 1987.

ADDRESS: Comments may be mailed to the Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Room 608, Tower Building, 1401 K Street, NW., Washington, DC 20005. Comments received will be available for public inspection in Room 608, Tower Building between 8:00 a.m. and 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty Barker, Acting Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

SUPPLEMENTARY INFORMATION:

Background

The BE-11, Annual Survey of U.S. Direct Investment Abroad, is a mandatory survey, conducted pursuant to the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by section 306 of Pub. L. 98-573). It provides annual time series on important aspects of the operations of U.S. multinational companies, including data on their services activities and international services transactions. The survey covers a sample of nonbank U.S. parent companies and their nonbank foreign affiliates; the sample data are used to generate universe estimates of data for parents and affiliates for years in which benchmark surveys, or censuses, of U.S. direct investment abroad are not conducted.

The BE-11 survey contains three forms—the BE-11A, which covers the U.S. Reporter; the BE-11B, which covers majority-owned foreign affiliates; and the BE-11C, which covers minority-owned foreign affiliates. This proposed rule would alter the reporting requirements for the BE-11C form.

When the first BE-11 survey, convering 1983, was approved by the Office of Management and Budget (OMB), one of the conditions for approval was that the BE-11C form be limited only to those minority-owned nonbank foreign affiliates that were owned 25 percent or more, directly or indirectly, by the U.S. Reporter, but not more than 50 percent by all U.S. Reporters of the affiliate combined, and whose assets, sales, or net income exceeded $10 million. Elimination of reporting on the BE-11C for affiliates owned less than 25 percent was ordered by OMB to reduce the reporting burden on U.S. businesses.

U.S. direct investment abroad, however, is defined to include all foreign business enterprises owned *10* (not *25*) percent or more, directly or indirectly, by a U.S. person. In preparing estimates for the universe of all nonbank foreign affiliates based on the annual survey data, the Bureau of Economic Analysis (BEA) has thus lacked the information needed to make reliable estimates for affiliates owned at least 10 percent, but less than 25 percent. Although the percentage of U.S. ownership is low, some of these affiliates are very large. In 1982, the last year for which information is available, these affiliates accounted for about 8 percent of the nonbank affiliate universe in terms of assets. Their shares of assets were much larger in some individual countries. For example, in 1982, they accounted for 28 percent and 17 percent, respectively, of the total assets of all affiliates in India and Japan, countries that restrict majority ownership by foreigners. Other countries where their shares exceeded 15 percent were Venezuela, Austria, France, Greece, Turkey, Israel, and New Zealand.

In an attempt to obtain the data needed to produce reliable universe estimates. BEA is proposing to alter the reporting requirements on the BE-11C form to (1) require filing of a complete BE-11C report for nonbank affiliates owned at least 20 percent, but less than 25 percent, directly or indirectly, by the U.S. Reporter and for which anyone of the exemption level items (i.e., total assets, sales or gross operating revenues, or net income) exceeds $10 million, positive or negative, and (2) *for fiscal year 1987 only,* require filing of a partial BE-11C report for nonbank affiliates owned at least 10 percent, but less than 20 percent, directly or indirectly, by the U.S. Reporter and for which any one of the three exemption level items exceeds $100 million, positive or negative. For the former affiliates, all seven data items on the form must be completed each year; for the latter, only three items—assets, sales, and net income—must be completed, and only for fiscal year 1987. The new rule, if approved, would be effective with the BE-11 survey covering 1987.

Based on data from BEA's 1982 benchmark survey of U.S. direct investment abroad, it is estimated that, under the proposed rules, about 65 nonbank U.S. Reporters would have to file complete BE-11C reports each year for about 140 nonbank foreign affiliates owned at least 20 percent, but less than 25 percent, with assets, sales, or net income exceeding $10 million. In addition, for fiscal year 1987 only, about 25 nonbank U.S. Reporters would have to file partial BE-11C reports for about 60 nonbank foreign affiliates owned at least 10 percent, but less than 20 percent, with assets, sales, or net income exceeding $100 million.

Executive Order 12291

BEA has determined that this proposed rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual.

Executive Order 12291

BEA has determined that this proposed rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act. Current OMB approval of the collection of information requirements for the BE–11 survey (OMB No. 0608–0053) expired July 31, 1987. A request to continue the collection of this information, with the change in reporting requirements for the BE–11C form, has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act.

Comments regarding these collection of information requirements may be directed to the office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Bureau of Economic Analysis, Washington, DC 20503.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to preparation of an initial regulatory flexibility analysis are not applicable to this proposed rulemaking because it will not have a significant economic impact on a substantial number of small entities. the $10 million exemption level below which reporting of 20-to-25 percent-owned affiliates is not required on the BE–11C form, and the $100 million level below which reporting of 10-to-20 percent-owned affiliates is not required for fiscal year 1987, exclude small businesses from being reported.

Accordingly, the General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 806

Economic statistics, U.S. investment abroad, Penalties, Reporting and recordkeeping requirements.

Dated: September 14, 1987.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 806 as follows:

PART 806—[AMENDED]

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

2. In § 806.14, paragraphs (f)(3)(iii) and (f)(3)(iv)(B) are revised; paragraphs (f)(3)(iv)(C) and (D) are redesignated (f)(3)(iv)(D) and (E), respectively; and new paragraphs (f)(3)(iv)(C) and (F)(3)(v) are added to read as follows:

§ 806.14 U.S. direct investment abroad.

* * * * *

(f) * * *

(3) * * *

(iii) A complete Form BE–11C (Report for Minority-owned Foreign Affiliate), including all seven data items on the form, must be filed for each minority-owned nonbank foreign affiliate that is owned at least 20 percent, directly or indirectly, by the U.S. Reporter but not more than 50 percent by all U.S. Reporters of the affiliate combined, and for which any *one* of the exemption level items exceeds $10 million. In addition, *for the report covering fiscal year 1987 only*, a partial BE–11C, including only three data items (that is, total assets, sales or gross operating revenues, and net income), must be filed for each minority-owned nonbank foreign affiliate that is owned at least 10 percent, but less than 20 percent, directly or indirectly, by the U.S. Reporter and for which any *one* of the exemption level items exceeds $100 million.

(iv) * * *

(B) *For fiscal year 1987 only*, it is less than 20 percent owned, directly or indirectly, by the U.S. person and none of its exemption level items exceeds $100 million.

(C) For fiscal years other than 1987, it is less than 20 percent owned, directly or indirectly, by the U.S. person.

(D) Its U.S. parent (U.S. Reporter) is a bank.

(E) It is itself a bank.

(v) Notwithstanding the above, an affiliate holding an equity interest in another affiliate that must be reported on Form BE–11B or C must also be reported on Form BE–11B (if majority owned) or C (if minority owned), regardless of the value of its assets, sales, or net income. That is, all affiliates upward in the chain of ownership must be reported.

[FR Doc. 87–21049 Filed 9–11–87; 8:45 am]

BILLING CODE 3510–06–M

Coast Guard

33 CFR Part 117

[CGD5–87–063]

Drawbridge Operation Regulations; Pocomoke River, MD

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the requests of the Maryland Department of Transportation and CONRAIL, the Coast Guard is considering amending the regulations governing the operation of the Route 675 highway drawbridge across the Pocomoke River, mile 15.6, and adding new regulations for the railroad swing bridge across the Pocomoke River, mile 15.2, at Pocomoke City, Maryland. The proposal would require five hours advance notice for bridge openings from October 1 to March 31. This eliminates the need to have a person constantly available to open the draws during a time of year when few vessels transit the river. It should provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 29, 1987.

ADDRESSES: Comments should be mailed to Commander (oan), 431 Crawford Street, Fifth Coast Guard District, Portsmouth, Virginia 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at 431 Crawforth Street, Room 609, Portsmouth, Virginia. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, (804) 398–6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Fifth Guard District, will evaluate all communications

received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer, and CDR Robert J. Reining, project attorney.

Discussion of Proposed Regulations

In July 1982, the State Highway Administration for Maryland asked the DELMARVA Water Transport Committee, Inc. to conduct an informal survey of drawbridge openings for the bridge on Route 675, mile 15.6, over the Pocomoke River. The survey showed few openings during the winter months. The Maryland Department of Transportation requested that vessels give five hours advance notice for openings between October 1 to March 31.

CONRAIL submitted a similar request for the railroad bridge at mile 15.2 over the Pocomoke River. The bridge is currently left open from October 1 to March 31. It is closed for the two daily train crossings (one train in each direction). Since there are fewer openings for vessels than closures for trains, it would be more cost effective to provide a drawtender for the infrequent openings rather than provide the bridgetender to close the bridge for the daily rail crossings during the winter months.

Commercial vessel operations, who have been contacted informally, have not objected to the proposal.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of the infrequent bridge openings during the winter months the economic impact should be very minimal. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499, 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.569 is revised to read as follows:

§ 117.569 Pocomoke River.

(a) The CONRAIL railroad bridge, mile 15.2, at Pocomoke City, shall open on signal, except between October 1 and March 31 the draw must open only if at least five hours advance notice is given.

(b) The draw of the Route 675 bridge, mile 15.6 at Pocomoke City, shall open on signal, except between October 1 and March 31 the draw must open only if at least five hours advance notice is given.

(c) The draw of the 512 bridge, mile 29.9 at Snow Hill, shall open on signal if at least five hours advance notice is given.

Dated: August 18, 1987.

R.M. Polant,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 87–21098 Filed 9–11–87; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD13 87–06]

Security Zone; Hood Canal, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a security zone in the waters of Hood Canal immediately adjacent to the Naval Submarine Base Bangor, Washington. This action is necessary to safeguard U.S. Naval vessels from sabotage or other subversive acts, accidents, or other incidents of a similar nature while they are moored at the Submarine Base. This security zone will provide protection to these vessels by prohibiting access to the waters around the Submarine Base except by certain authorized vessels, and by providing a sufficient area in which to detect unauthorized intrusions in time to allow appropriate security measures to be taken.

DATE: Comments must be received on or before October 29, 1987.

ADDRESSES: Comments should be mailed to Commander (mps), Thirteenth Coast Guard District, Federal Building, 915 Second Avenue, Seattle, WA, 98174. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Capt H. H. Dudley, (206) 442–5537.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD13 87–06) and specific section of the proposal to which their comments apply, and give reasons for each comment, receipt of comments will be acknowledged if a stamped self addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are CAPT H. H. Dudley, Project Officer, Port and Vessel Safety Branch Thirteenth Coast Guard District, and Lieutenant A. W. Bogle, Project Attorney, Legal Office, Thirteenth Coast Guard District.

Discussion of Proposed Regulations

After a review of Naval Submarine Base Bangor physical security, the Commanding Officer, Naval Submarine Base Bangor requested that the Coast Guard Captain of the Port, Puget Sound establish a security zone which would be essentially conterminous with an existing restricted zone established by the U.S. Army Corps of Engineers at 33 CFR 207.750(e). The boundaries of the proposed security zone are identical to those of the restricted area except at the southern end of the security zone. At this point the security zone extends for an additional 110 yards from latitude 47°43′24″ N., longitude 122°44′37″ W. to latitude 47°43′28″ N., longitude 122°44′40″ W. This change permits the shoreside boundary of the security zone to coincide with the Submarine Base property line at its southern boundary. The Coast Guard has concluded that a security zone is warranted and appropriate, because the security zone is

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intended for the protection of assets which are vital to the national interest. It is undeniable that vessels moored at the Submarine Base can easily be approached from the water and are vulnerable to acts of sabotage. Prohibiting access to the water areas around the Submarine Base provides a means of countering this without unnecessarily interfering with the public's use of this waterway.

The requested security zone keeps unauthorized persons sufficiently clear of the vessels at the Submarine Base, allows early detection of unauthorized entry, and does not interfere with navigation using the Hood Canal for through passage. This security zone will be limited to water areas only. Present laws and regulation give the Commanding Officer, Naval Submarine Base sufficient authority to restrict access onto the Base from land access routes and to deal with unauthorized persons within the Base.

This proposal would exempt certain clearly defined classes or categories of vessels from some or all of the restrictions imposed by the security zone. Such exemptions have been granted where the Captain of the Port and Commanding Officer, Naval Submarine Base Bangor have agreed that access to the Submarine Base does not pose a threat to the safety or security of the Submarine Base and is in the National interest. (Individuals aboard exempted vessels also may enter the security zone without the permission of the Captain of the Port.)

Other vessels and individuals who desire to enter the security zone will be required to request and receive authority to enter the security zone from the Captain of the Port Puget Sound via the Security Office of the Naval Submarine Base at Bangor, WA.

This proposal preserves the Coast Guard's existing authority to control the movement of vessels and individuals on the waters subject to the jurisdiction of the United States, including those vessels and individuals that are permitted to enter or remain within the security zone without the specific permission of the Captain of the Port. This authority is restricted by law to actions taken to prevent injury to vessels, waterfront facilities, or the waters of the United States, or to secure the observance of the rights and obligations of the United States. The reservation of this authority is necessary to ensure that the Coast Guard has the ability to take prompt and adequate enforcement action within the security zone if a threat to the national security or the safety of any vessel arises. The reservation of this authority is not intended to, and should not, obstruct or hinder the ability of Commanding Officer, Naval Submarine Base Bangor to conduct operations at the Base. The authority of the Coast Guard that has been reserved by this proposal is no greater than the authority the Coast Guard has over vessels and individuals at other waterfront facilities, including commercial shipyard and dock facilities.

The Coast Guard understands that there are commercial fishermen who have fished these waters under contract with the Navy. We anticipate that the Captain of the Port will grant permission for these individuals to enter the security zone during those periods when they hold valid licenses to take shellfish or other forms of marine life from the Hood Canal at that location, if upon review by the U.S. Navy it is determined that these individuals do not pose a security risk to the United States.

At the present time, there are no intentions to require the use of Port Security Cards or other special credentials for vessels authorized to operate in the security zone, other than the certificate of exemption required for vessels operating in the security zone on the basis of a temporary exemption issued pursuant to the regulation.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Except for the small additional area added to allow the land boundary of Submarine Base and the southern boundary of the security zone to coincide, the area affected by this security zone is already restricted to navigation by the existing restricted zone. Even in the absence of this restricted zone, those interests affected would be primarily recreational, and the loss of the use of this part of the canal should not affect their use of the canal for navigation or other purposes except in a very minor way.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5

2. Section 165.1302 is added to read as follows:

§ 165.1302 Bangor Naval Submarine Base, Bangor, WA

(a) *Location.* The following is a security zone: The waters of the Hood Canal encompassed by a line commencing on the east shore of Hood Canal at latitude 47°43′24″ N, longitude 122°44′37″ W, thence to latitude, 47°43′28″ N, longitude 122°44′40″ W; thence to latitude, 47°43′50″ N, longitude 122°44′40″ W; thence to latitude, 47°44′24″ N, longitude 122°44′22″ W; thence to latitude, 47°45′47″ N, longitude 122°43′22″ W; thence to latitude, 47°46′23″ N, longitude 122°42′42″ W; thence to latitude, 47°46′23″ N, longitude 122°42′20″ W; thence to 125° true to the high tide line; thence southerly along the shoreline to the point of beginning.

(b) *Security zone anchorage.* The following is a security zone anchorage: Area No. 2. Waters of Hood Canal within a circle of 1,000 yards diameter centered on a point located at latitude 47°46′26″ N, longitude 122°42′49″ W.

(c) *Special Regulations.* (1) Section 165.33 paragraphs (a), (e), and (f) do not apply to the following vessels or individuals on board those vessels:

(i) Public vessels of the United States, other than United States Naval vessels.

(ii) Vessels that are performing work at Naval Submarine Base Bangor pursuant to a contract with the United States Navy which requires their presence in the security zone.

(iii) Any other vessel or class of vessels mutually agreed upon in advance by the Captain of the Port and Commanding Officer, Naval Submarine Base Bangor. Vessels operating in the security zone under this exemption must have previously obtained a copy of a certificate of exemption permitting their operation in the security zone from the Security Office, Naval Submarine Base Bangor. This written exemption shall

state the date(s) on which it is effective and may contain any further restrictions on vessel operations within the security zone as have been previously agreed upon by the Captain of the Port and Commanding Officer, Naval Submarine Base Bangor. The certificate of exemption shall be maintained on board the exempted vessel so long as such vessel is operating in the security zone.

(2) Any vessel authorized to enter or remain in the security zone may anchor in the security zone anchorage.

(3) Other vessels desiring access to this zone shall secure permission from the Captain of the Port through the Security Office of the Naval Submarine Base Bangor. The request shall be forwarded in a timely manner to the Captain of the Port by the appropriate Navy official.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and monitoring of this security zone by the U.S. Navy.

Dated: September 2, 1987.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Commander Thirteenth Coast Guard District.

[FR Doc. 87-21099 Filed 9-11-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 302, 303, and 305

Child Support Enforcement Program; Prohibition of Retroactive Modification of Child Support Arrearages

AGENCY: Office of Child Support Enforcement, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule implements section 9103 of Pub. L. 99-509, the Omnibus Budget Reconciliation Act of 1986, which amends section 466(a) of the Social Security Act (the Act), effective.October 21, 1986. Section 9103 requires that, as a condition of State IV-D plan approval, States have in effect laws requiring the use of procedures to prohibit retroactive modification of child support arrearages. However, such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice has been given, either directly or through the appropriate agent, to the obligee (or where the petitioner is the obligee) to the obligor. Specifically, State IV-D agencies must have in effect and use procedures whereby any payment or installment of support under any child support order is, on and after the date it is due, a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State and is entitled, as such, to full faith and credit in such State and in any other State.

While the effective date of this statute is October 21, 1986, under section 9103(b)(2) of Pub. L. 99-509, if a State demonstrates to the Secretary, HHS, that State legislation is required to conform the State IV-D plan to the requirements of this statute, a delay based on the need for legislation may be granted. In such a case, the State's plan would not be regarded as failing to comply solely by reason of its failure to meet the requirements imposed by the new amendments until the beginning of the fourth month beginning after the end of the first session of the State's legislature which ends on or after October 21, 1986.

DATES: Consideration will be given to comments received by November 13, 1987.

ADDRESS: Address comments to: Director, Office of Child Support Enforcement, Family Support Administration, Department of Health and Human Services, Room 2090, Switzer Building, 330 C Street SW., Washington, DC 20201, Attention: Director, Policy and Planning Division. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., in Room 2090 of the Department's office at the above address.

FOR FURTHER INFORMATION CONTACT: Susan Corriveau, Policy Branch, OCSE (202) 245-1978.

SUPPLEMENTARY INFORMATION:

Background

Section 9103 of Pub. L. 99-509 is a result of Congress' recognition of the disparity among States regarding the modification of child support arrearages. Although most States permit child support orders to be modified only prospectively, thus affecting only future child support payments, some States allow child support awards to be modified retroactively. In such States, the court or administrative entity has the authority to reduce or nullify arrearages by reducing the amounts owed for past periods.

Prior to enactment of section 9103 of Pub. L. 99-509, 18 States permitted child support orders to be modified retroactively. The vast majority of such retroactive modifications had the effect of reducing the amount of child support ordered. Thus, for example, an order for $200 a month for child support, which was unpaid for 36 months should accumulate an arrearage of $7,200. Yet, if the obligor was brought to court, having made no prior attempt to modify the order, the order might be reduced to $100 a month retroactive to 36 months prior to the date of modification. This has the effect of reducing the arrearage from $7,200 to $3,600. The order is reduced without placing any diligence requirement on the absent parent to petition in a timely manner to reduce the order, if for some reason circumstances change.

It further permits arguments to be made about changed circumstances in prior periods at a time when evidence may not be abundant or clear.

In interstate cases involving registration of out of State orders, where the absent parent resides in a State different from the one where his or her children reside or where the child support order was entered, the problem may be exacerbated by the fact that the custodial parent usually is not present when the case is heard in the absent parent's State and is unable to testify about any claimed past change in circumstances.

In addition to the 18 States which prior to enactment of Pub. L. 99-509 permitted retroactive modification of orders, 17 other States did not meet the requirement of reducing to final judgment amounts of child support ordered as the payments become due. Because Pub. L. 99-509 requires that child support payments be judgments as they become due, they are entitled to full faith and credit and may be registered and enforced in any State.

In light of this situation, section 9103 added a new requirement to section 466(a) of the Act which States must meet in order to have an approved title IV-D State Plan. Specifically, under section 466(a)(9), States must have in effect laws requiring the use of procedures under which any payment or installment on a child support order is a judgment, on and after the date each payment is due, and retroactive modification of child support orders is prohibited with the following exception. Modification may be permitted with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

In the past, when a custodial parent or absent parent moves out of the State where a support obligation has been established, the IV-D agency often

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would enforce the order using the Uniform Reciprocal Enforcement of Support Act, (URESA). Using URESA is time consuming and frustrating for the custodial parent owed a support obligation. Under URESA, the absent parent has the opportunity to allege inability to pay the established support amount, which may result in a lower support order. Under the new requirement specified by section 9103, all child support orders in a State, including orders entered before October 21, 1986, can now be enforced by any other State without creating a new child support order. Such a provision will ensure that the processing of interstate cases will be less time consuming and less costly because new child support orders will not have to be created and collections will increase because accumulated arrearage debts will stay intact and not be reduced or forgiven. Specific remedies to enforce these judgments shall be determined by the State, pursuant to State law.

This new statute adds a ninth mandatory requirement to section 466(a) of the Act which requires States to have in effect laws requiring the use of certain procedures to increase the effectiveness of their child support enforcement programs in order to have an approved Title IV–D State plan. These mandatory requirements are:

(1) Procedures for carrying out a program of withholding under which new or existing support orders are subject to the State law governing withholding so that a portion of the absent parent's wages may be withheld.

(2) Expedited processes to establish and enforce child support obligations.

(3) Procedures for obtaining overdue support from State income tax refunds on behalf of recipients of aid under the State's title IV–A or IV–E plan.

(4) Procedures for the imposition of liens against the real and personal property of absent parents who owe overdue support.

(5) Procedures for the establishment of paternity at least until the child's 18th birthday

(6) Procedures which require that an absent parent give security or post a bond or some other guarantee to secure payment of support

(7) Procedures for making information regarding the amount of overdue support owed by an absent parent available to consumer reporting agencies.

(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from wages.

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due):

(A) A judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced;

(B) entitled as a judgment to full faith and credit in such State and in any other State; and

(C) not subject to retroactive modification by such State or by any other State.

However, such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice has been given, either directly or through the appropriate agent, to the obligee (or where the obligee is the petitioner) to the obligor.

While the effective date of this statute is October 21, 1986, under section 9103(b)(2) of Pub. L. 99–509, if a State demonstrates to the Secretary, HHS, that State legislation is required to conform the State IV–D plan to the requirements of the statute, a delay in implementation based on the need for legislation may be granted. In such a case, the State's IV–D plan would not be regarded as failing to comply with the requirements imposed by the new amendment until the beginning of the fourth month beginning after the end of the first session of the State's legislature which ends on or after October 21, 1986.

Statutory Authority

This proposed rule is published under the authority of section 1102 of the Social Security Act (the Act) which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Section 466 of the Act requires that States have in effect and use certain mandatory provisions. Section 9103 of Pub. L. 99–509 added a new paragraph (9) under section 466(a) which requires that States have in effect laws requiring the use of procedures which provide that any payment or installment of support under any child support order is a judgment, entitled to full faith and credit, and not subject to retroactive modification.

Regulatory Provisions

This proposed regulation revises § 302.70(a) to specify that the effective date for paragraphs (1) through (8) is October 1, 1985 and for paragraph (9) is October 21, 1986.

In addition, this regulation would add a new paragraph (9) under § 302.70(a) to require that any payment or installment of support under any child support order is, on and after the date it is due, a judgment, and may not be modified retroactively.

This regulation would also amend 45 CFR Part 303 to add a new § 303.106 entitled, Procedures to prohibit retroactive modification of child support arrearages. Paragraph (a) of this section would require States to have in effect and use procedures which provide that any payment of child support, on and after the date it is due, be a judgment, by operation of law. This requirement would provide that the child support installment must become a judgment without the need for any action by any entity; it becomes a judgment simply by a payment falling due.

Paragraph (a)(2) of § 303.106 would require that the judgment be entitled to full faith and credit in the originating State and in any other State. Full faith and credit is a Constitutional principle which provides that the various States must recognize the judgments of the other States within the United States.

Paragraph (a)(3) would state that the judgment is not subject to retroactive modification, except as provided under paragraph (b) of this section. The intent of this requirement is to prohibit courts or administrative entities from forgiving or reducing arrearages.

Paragraph (b) provides for the exception referred to in paragraph (a)(3) that will permit limited retroactive modification of child support orders. The first condition is that modification may be permitted for any period during which there is pending a petition for modification. The second condition requires that the modification may only be permitted from the date that notice of such petition has been given, either directly or through the appropriate agent to the obligee or (where the obligee is the petitioner) to the obligor.

This regulation would also amend the audit regulation by adding a new § 305.57 entitled Retroactive modification of child support arrearages. This audit criterion would provide that, in order to meet the requirements of title IV–D, the State must have laws in effect and be using procedures which require that any payment or installment of support under any child support order is, on and after the date it is due, a judgment, and may not be modified retroactively.

Paperwork Reduction Act

This proposed rule at 45 CFR 302.70(a)(9), 303.106, and 305.57 contains information collection requirements which are subject to OMB review under the Paperwork Reduction Act of 1980 (Pub. L. 96–511). As required by section 3504(h) of Pub. L. 96–511, we have submitted a copy of this proposed rule to OMB for its review of the information collection requirements listed above. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official. designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, attention: Desk Officer for HHS.

Regulatory Impact Analysis

The Secretary has determined, in accordance with executive Order 12291 that this rule does not constitute a "major" rule for the following reasons:

(1) The annual effect on the economy is less than $100 million;

(2) This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) This rule will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), we are required to prepare a regulatory flexibility analysis for those rules which will have a significant economic impact on a substantial number of small entities. Its principle impact is on State IV–D agencies who will be required to expend minimal effort, and on the judicial system. This provision could potentially save money for both the Federal Government and the States by increasing amounts available for collection. Further, the cost of interstate enforcement activities will be reduced by eliminating the need to obtain a child support order in more than one State. Therefore, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program)

Dated: July 17, 1987.

Wayne A. Stanton,

Director, Office of Child Support Enforcement.

Approved: July 31, 1987.

Otis R. Brown,

Secretary.

List of Subjects

45 CFR Part 302

Child support, Grant programs, Social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 303

Child support, Grant programs, Social programs, Reporting and recordkeeping requirements.

45 CFR Part 305

Accounting, Child support, Grant programs, Social programs, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 45, Chapter III of the Code of Federal Regulations is amended as follows:

PART 302—[AMENDED]

1. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Section 302.70 is amended by revising paragraph (a) introductory text; removing the word "and" at the end of paragraph (a)(7); removing the period at the end of paragraph (a)(8) and inserting "; and" in its place; and, adding paragraph (a)(9) to read as follows:

§ 302.70 Required State laws.

(a) *Required laws.* Effective October 1, 1985, with respect to paragraphs 1 through 8, and effective October 21, 1986, with respect to paragraph 9, the State plan shall provide that, in accordance with sections 454(20) and 466 of the Act, the State has in effect laws providing for and has implemented the following procedures to improve program effectiveness:

* * * * *

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (a)(2) of this section, is (on and after the date it is due):

(i) A judgment by operation of law with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced;

(ii) Entitled as a judgment to full faith and credit in such State and in any other State; and

(iii) Not subject to retroactive modification by such State or by any other State, except as provided in § 303.106 paragraph (b).

* * * * *

PART 303—[AMENDED]

3. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

4. Part 303 is amended by adding § 303.106 to read as follows:

§ 303.106 Procedures to prohibit retroactive modification of child support arrearages.

(a) The State shall have in effect and use procedures which require that any payment or installment of support under any child support order is, on and after the date it is due:

(1) A judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced;

(2) Entitled as a judgment to full faith and credit in such State or in any other State; and

(3) Not subject to retroactive modification by such State or by any other State except as provided in paragraph (b) of this section.

(b) The procedures referred to in paragraph (a)(3) may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

PART 305—[AMENDED]

5. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 603(h), 604(d), 652(a)(1) and (4), and 1302.

6. Part 305 is amended by adding § 305.57 to read as follows:

§ 305.57 Retroactive modification of child support arrearages.

For the purposes of this part, in order to be found in compliance with the State plan requirement to prohibit the retroactive modification of child support arrearages (45 CFR 302.70(a)(9)), a State must have in effect laws which provide

that any payment or installment under any child support order is, on and after the date it is due, a judgment and procedures which prohibit retroactive modification of child support arrearages as provided in 45 CFR 303.106 of this chapter.

[FR Doc. 87-20971 Filed 9-11-87; 8:45 am]
BILLING CODE 4150-04-M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Ch. 53

Air Force System Command Federal Acquisition Regulation Supplement; Contracting by Negotiation

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule.

SUMMARY: The Air Force proposes to amend Chapter 53 of Title 48 of the Code of Federal Regulations by adding the Air Force System Command (AFSC) Federal Acquisition Regulation as Appendix B, consisting of Parts AFSC 5315 and AFSC 5352. The AFSC implements and supplements the Department of the Air Force Federal Regulation Supplement, the Department of Defense Federal Acquisition Regulation Supplement and the Federal Acquisition Regulation.

DATE: Comments must be submitted in writing on or before October 14, 1987, to be considered in the formulation of the final rule. Please cite AFSC Case No. 87-01 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments ot HQ AFSC/PKCP, Andrews AFB MD 20334-5000.

FOR FURTHER INFORMATION CONTACT: Capt Brian Koechel, HQ AFSC/PKCP, telephone (301) 981-4022.

SUPPLEMENTARY INFORMATION:

A. Background

Numerous studies have shown that an aggressive work measurement system can increase direct manufacturing labor productivity in contractor facilities by 10 to 30 percent, resulting in an overall five percent reduction in major weapon system acquisition costs. MIL-STD 1567A is an essential tool in DOD's cost reduction efforts. When applied effectively, discipline in contractor work measurement systems is increased, resulting in improved productivity and efficiency. Application of MIL-STD-1567A also ensures government visibility into contractor performance. A major benefit of work measurement systems is that it provides a better foundation for pricing and negotiation. This proposed rule provides to Air Force System Command (AFSC) activities in implementation of MIL-STD-1567A on AFSC contracts supporting major weapon systems programs.

B. Regulatory Flexibility Act

The proposed addition of section AFSC 5315.892 is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) became work measurement is required for contractors: (1) Having a significant volume of government business; (2) who are under government inplant contract administration; and (3) who have a resident DCAA auditor.

C. Paperwork Reduction Act

This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Chapter 53

Government procurement.

Therefore, it is proposed to amend Title 48 of the Code of Federal Regulations Chapter 53 by adding Appendix B to include Part AFSC 5315 and Part 5352 to read as follows:

APPENDIX B—AIR FORCE SYSTEMS COMMAND FEDERAL ACQUISITION REGULATION SUPPLEMENT

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART AFSC 5315—CONTRACTING BY NEGOTIATION

SUBCHAPTER H—CLAUSES AND FORMS

PART AFSC 5352—Solicitation Provisions and Contract Clauses

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART AFSC 5315—CONTRACTING BY NEGOTIATION

Subpart AFSC 5315.4—Solicitation and Receipt of Proposals and Quotations

Sec.

AFSC 5315.406-5 Part IV—Representations and instructions.
Subpart AFSC 5315.8—Price Negotiation
AFSC 5315.892 Work measurement pricing and negotiation requirements.
AFSC 5315.892-1 Scope.
AFSC 5315.892-2 Policy.
AFSC 5315.892-3 Procedures.

Authority: 5 U.S.C. 301 and FAR 1.301.

Subpart AFSC 5315.4—Solicitation and Receipt of Proposals and Quotations

AFSC 5315.406-5 Part IV—Representations and instructions.

(b) Section L, Instructions, conditions and notices to offerors.

(vii) Where DOD MIL-STD-1567 is applicable to the instant contract, contractors and their subcontractors shall be advised in the Request for Proposal (RFP) that Type I and Type II labor standards, along with work measurement system data, when available, shall be used in the build-up of all coast estimates and as a basis for negotiations. The data shall also be consistent with recognized cost accounting methods and be verifiable through normal auditing procedures. The Statement of Work (SOW) will also contain provisions for the establishment and maintenance of a DOD MIL-STD-1567 compliant work measurement system.

(viii) If DOD MIL-STD-1567 is not applicable, contractors shall be advised that company-unique labor standards and work measurement system data, when available and consistent with recognized cost accounting methods and is audit verifiable, shall be used in the build-up of all cost estimates and as a basis for negotiation.

(ix) Offerors shall be advised in the solicitation instructions that work measurement system data used to develop cost estimates will be considered by the government as cost or pricing data as defined by FAR 15.804.

(x) Contracting officers shall insert in RFPs a clause substantially the same as Part AFSC 5352.215-9000, Preparation of offers-use of labor standards, on all acquisitions resulting in either full-scale development or production contracts and any modifications to those contracts.

Subpart AFSC 5315.8—Price Negotiation

AFSC 5315.892 Work measurement pricing and negotiation requirements.

AFSC 5315.892-1 Scope.

(a) This section provides guidance for the use of DOD MIL-STD-1567, work measurement data in the pricing, negotiation, and management of systems acquisition programs.

(b) This section applies to all contracts for the acquisition of weapon systems. DOD MIL-STD-1567 must be included in all contracts supporting programs which meet the following criteria:

(1) Full scale development (FSD) exceeding $100 million;

(2) Production exceeding or is expected to exceed $20 million annually or 100 million cumulatively.

(c) All solicitations and resulting contracts meeting the above criteria shall include a clause substantially the same as AFSC 5352.215–9001, Work measurement: Existing system, or AFSC 5352.215–9002, Work measurement: No existing system, as appropriate. If subcontractor flowdown is required, then a clause substantially the same as AFSC 5352.215–9003, Work measurement: subcontractor implementation, shall be inserted into the solicitation and resulting contract.

AFSC 5315.892–2 Policy.

When DOD MIL–STD–1567 is on contract, contractors must use Type I and Type II labor standards, when available, to develop budgets, plans, and schedules; to form a basis for pricing and negotiations; and to baseline performance. Actual costs from earlier acquisitions will not normally be accepted. If actual costs are used, the rational for their use will be documented in the contract file. If DOD MIL–STD–1567 is not a part of a contract, but the contractor has independently developed labor standards, government representatives shall determine if labor standard data was used in the proposal development as required by AFSC 5315.406–5(b). A further determination, coordinated with the Defense Contract Audit Agency (DCAA), will be made that the work measurement system information used to build up the proposal was collected through the contractor's accounting system according to his accepted Cost Accounting System Disclosure Statement. This information shall be considered as cost or pricing data in accordance with FAR 15.804. Work measurement unique terminology is defined in DOD MIL–STD–1567.

AFSC 5315.892–3 Procedures.

(a) DOD MIL–STD–1567 should be used throughout the acquisition process to include SOW development, RFP preparation, contract negotiation, contract award, and contract administration.

(b) DOD MIL–STD–1567 will be monitored as a normal delegated function to the cognizant CAO. This requirement is defined by AFSC 5342.302(a)(73). Continued compliance with all procedures, use of adequately supported labor standards (Type I and other) in the buildup of cost estimates and negotiation, detailed variance analysis and expeditious corrective action and timely notification to the government of system changes (90 days) are factors to be used in determining whether or not a periodic audit or reverification is necessary. Based on this analysis, the cognizant CAO will determine if the contractor is in compliance with DOD MIL–STD–1567. AFCMD is responsible for conducting periodic audit and compliance reviews of contractor work measurement systems.

(c) Specific instructions for preparing Requests for Proposal (RFP) can be found at AFSC 5315.406–5. The intent of these instructions is to ensure that work measurement system data is used in the preparation of the cost proposal(s) and subsequent contract negotiations.

SUBCHAPTER H—CLAUSES AND FORMS

PART AFSC 5352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart AFSC 5352.2—Texts of Provisions and Clauses

Sec.

AFSC 5352.215–9000 Preparation of offers—use of labor standards.
AFSC 5352.215–9001 Work measurement: existing system.
AFSC 5352.215–9002 Work measurement: no existing system.
AFSC 5352.215–9003 Work measurement: subcontractor implementation.

Authority: 5 U.S.C. 301 and FAR 1.301.

Subpart AFSC 5352.2—Texts of Provisions and Clauses

AFSC 5352.215–9000 Preparation of offers—use of labor standards.

According to AFSC 5315.406–5(b)(x), insert the following clause in the solicitation instructions, Section L:

Preparation of Offers—Use of Labor Standards (July 1987)

The contractor shall prepare the offer using available touch labor standards and other associated work measurement data meeting the criteria of DOD MIL–STD 1567. As a minimum, the contractor will break-out touch requirements by functional category (e.g., fabrication, assembly, functional test, and set-up) for each manufacturing cost element. The contractor's proposal must be supported by the following information: (a) A breakdown of the type and composition of touch labor standards used; (b) a breakdown of the major elements of realization applied; (c) isolation of any unmeasured, off-standard, or other touch labor effort not covered by touch labor standards; (d) any other factors, allowances, or charges to other direct, indirect or overhead cost accounts of personnel who normally perform touch labor functions. All work measurement system data included and used in support of the offer shall be audit verifiable and in accordance with the contractor's Cost Accounting System Disclosure Statement. The government shall be entitled to complete access of the contractor's work measurement system including any associated data, reports, or studies used by the contractor to support the cost estimate. The terminology used in this clause is defined in accordance with DOD MIL–STD 1567.

(End of clause)

AFSC 5352.215–9001 Work measurement: existing system.

According to AFSC 5315.892–1(c), insert the following clause in contracts where DOD MIL–STD–1567 is applicable and the contractor has an existing work measurement system:

Work Measurement: Existing System (July 1987)

(a) The contractor shall maintain a work measurement system that satisfies the requirements of DOD MIL–STD–1567, Work measurement. The contractor agrees to make maximum use of the information derived from this system, including the use of labor standard data, to price, negotiate, and manage. Supporting rationale for manufacturing touch labor cost estimates shall include a breakdown of the applicable labor standards and anticipated realization factors required to prepare and support each cost element. Allowances included in the labor standard and the major components of the realization factor shall be separately explained. In addition, manufacturing labor not categorized as touch labor shall also be separately explained in accordance with the Contractor's Accounting System Disclosure Statement. All data collected and used from the contractor's work measurement system shall be audit verifiable. The government is entitled to complete access to the system and any associated data, reports, or studies.

(b) If the contractor is operating a work measurement system compliant with DOD MIL–STD–1567, then documentation of government review shall be provided. If the government has previously determined system noncompliance, the contractor will submit a corrective action plan within 60 days of contract award. If the government has not previously determined system compliance/noncompliance, the contractor will submit, within 60 days of contract award, a time-phased implementation plan for achieving system compliance with DOD MIL–STD–1567.

(c) During and after system implementation, the contractor's system will be subject to a periodic government audit to reconfirm compliance with DOD MIL–STD–1567. The requirement for the contractor to maintain a work measurement system that meets the criteria of DOD MIL–STD–1567 constitutes a material requirement of this contract. The cognizant CAO shall, for the purposes of progress payment administration, determine the monetary impact to the government of the contractor's failure to meet this requirement.

(End of clause)

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AFSC 5352.215–9002 Work measurement: no existing system.

According to AFSC 5315.892–1(c), insert the following clause when DOD MIL–STD–1567 is applicable and the contractor does not have an existing work measurement system in operation:

Work Measurement: No Existing System (July 1987)

(a) The contractor shall document, implement, and maintain a work measurement system that satisfies the requirements of DOD MIL–STD–1567, Work measurement. The contractor agrees to make maximum use of the information derived by this system during and after development, including the use of labor standard data to price, negotiate and manage. Supporting rationale for manufacturing touch labor cost estimates shall include a breakdown of the applicable labor standards and anticipated realization factors required to prepare and support each cost element. Allowances included in the labor standard and the major components of the realization factor shall be separately explained. In addition, manufacturing labor not categorized as touch labor shall also be separately explained in accordance with the Contractor's Accounting System Disclosure Statement. All data collected and used from the contractor's work measurement system shall be audit verifiable. The Government is entitled to complete access to the work measurement system and any associated data, reports, or studies.

(b) The contractor shall provide, within 60 days after contract award, a plan implementing DOD MIL–STD–1567. The plan will include a schedule for the development of Type I labor standards resulting in at least 80% coverage of all categories of touch labor. The plan will also provide a time-phased schedule for implementation of the various tracking, reporting and database management systems. The plan will be updated monthly and be made available for government review upon request. The plan for developing and maintaining the system will include a time-phased set of milestones as agreed to by the government and will result in a system that is fully complaint with DOD MIL–STD–1567 __ months after contract award.

(c) As work measurement policies and procedures are implemented, the government will confirm compliance with DOD MIL–STD–1567. After an initial review of the entire system has been accomplished and corrections made as needed, the system will be subject to a periodic government audit to reconfirm contractor compliance.

(d) Implementation and maintenance of the work measurement system constitutes a material requirement of this contract.

(End of clause)

AFSC 5352.215–9003 Work measurement: subcontractor implementation.

According to AFSC 5315.892–1(c), insert the following clause whenever DOD MIL–STD–1567 will be placed in a contract:

Work Measurement: Subcontractor Implementation (July 1987)

(a) The contractor shall incorporate DOD MIL–STD–1567 in each subcontract which meets the criteria set forth in paragraph 1.2.1 of DOD MIL–STD–1567. The contractor will develop a plan for accomplishing subcontract implementation within 60 days of prime contract award. The plan will provide for the reconciliation of any subcontract implementation related issues. The plan must be executed within 180 days of contract award, resulting in incorporation of MIL–STD–1567A or a request for waiver accomplished.

(b) The contractor shall incorporate in applicable subcontracts adequate provisions for documentation, review and audit of subcontractor systems. The assessment of subcontractor compliance will be the responsibility of the contractor unless otherwise agreed to between the government and contractor. Documented evidence of subcontractor compliance will be made available to the government upon request.

(End of clause)

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–20996 Filed 9–11–87; 8:45 am]

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Notices

Federal Register
Vol. 52, No. 177
Monday, September 14, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Plant Genetic Resources Board Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: October 6–7, 1987.

Time: 8:30 a.m.–5 p.m., October 6; 8:30 a.m.–5 p.m., October 7.

Place: CIMMYT, Lisboa 27, Apdo. Postal 6–641; Col. Juarez, Deleg. Cuauhtemoc; 06600 Mexico, D.F., MEXICO (El Batan).

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact Person: C.F. Murphy, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, BARC-West, Room 239, Building 005, Beltsville, Maryland 20705. Telephone: (301) 344–1560.

Done at Beltsville, Maryland, this 25th day of August 1987.

Charles F. Murphy,

Executive Secretary, National Plant Genetic Resources Board.

[FR Doc. 87–21089 Filed 9–11–87; 8:45 am]

BILLING CODE 3410–13–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee (CAC) of The American Economic Association (AEA), The CAC of The American Marketing Association (AMA), The CAC of The American Statistical Association (ASA), and The CAC on Population Statistics; Amendment to Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of changes to the separate and jointly held meetings of the CAC of the AEA, CAC of the AMA, CAC of the ASA, and CAC on Population Statistics. The notice of this meeting was originally published in the **Federal Register** on August 21, 1987 (52 FR 31648 and 31649). The joint meeting will convene on October 8, 1987 at the Ramada Hotel, 6400 Oxon Hill Road, Oxon Hill, Maryland 20745.

The meetings will still begin at 11:15 a.m. and adjourn at 5:45 p.m. on October 8. The following three agendas replace those shown in the previously published notice.

The CAC of the AMA

(1) Census Bureau response to recommendations and activities of special interest to the CAC of the AMA, (2) quality of economic statistics (joint with CAC of the AEA), (3) five-year plan on service (joint with CAC of the AEA), (4) marketing the 1987 Economic Censuses, and (5) discussion of data user news.

The CAC of the ASA

(1) Census Bureau response to recommendations and activities of special interest to the CAC of the ASA, (2) new initiatives in population projections (joint with CAC on Population Statistics), (3) evaluation of demographic analysis (joint with CAC on Population Statistics), (4) confidentiality techniques for the 1990 census (joint with CAC on Population Statistics), and (5) 1990 Research, Evaluation, and Experimental (REX) Program (joint with CAC on Population Statistics).

The CAC on Population Statistics

(1) Census Bureau response to recommendations and activities of special interest to the CAC on Population Statistics, (2) new initiatives in population projections (joint with CAC of the ASA), (3) evaluation of demographic analysis (joint with CAC of the ASA), (4) confidentiality techniques of the 1990 census (joint with CAC of the ASA), and (5) 1990 Research, Evaluation, and Experimental (REX) Program (joint with CAC of the ASA).

Persons wishing additional information regarding these meetings may contact the Committee Liaison Officer, Mrs. Phyllis Van Tassel, Room 2428, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233). Telephone: (301) 763–5410.

Date: September 4, 1987.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 87–21030 Filed 9–11–87; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held October 13, 1987 at 2:30 p.m.–4:30 p.m. at the Princeton Club, 15 West 43rd Street, New York City. The Committee provides advice about ways to promote increased exports of U.S. textiles and apparel.

Agenda:

Review of export data; reports on conditions in the export market; recent foreign restrictions affecting textiles; export expansion activities; and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Theresa Stuart (202/377–5153).

Date: September 8, 1987.

James Babb,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 87–21050 Filed 9–11–87; 8:45 am]

BILLING CODE 3510–DR–M

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Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held October 8, 1987, 9 a.m. to 3 p.m., U.S. Department of Commerce, Herbert Hoover Building, Room 4830, 14th and Constitution Avenue, NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session: 9:00 a.m.–11:45 a.m. Status reports by Ad Hoc Working Group Chairmen, and update on Export Administration initiatives.

Executive Session: 1:30–3:00 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act of 1979, as amended. A Notice of Determination to close meetings, or portions of meetings, of the subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 17, 1985, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information, contact Connie White (202) 377–8760.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–21072 Filed 9–11–87; 8:45 am]

BILLING CODE 3510–DT–M

National Bureau of Standards

[Docket No. 61003–7137]

Approval of Federal Information Processing Standards Publication 29–2; Interpretation Procedures for Federal Information Processing Standards for Software

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce approval of Federal Information Processing Standards Publication (FIPS PUB) 29–2, entitled *Interpretation Procedures for Federal Information Processing Standards for Software*. FIPS PUB 29–2 supersedes FIPS PUB 29–1 in its entirety.

SUMMARY: A proposed revision of FIPS PUB 29–1 was announced in the **Federal Register** (51 FR 7604, dated March 5, 1986). While the comments received expressed support for the proposed procedures, NBS determined that it would be appropriate to broaden the scope of the procedures to include all Federal Information Processing Standards for software. As a result of this determination and after consideration of all comments received from the first **Federal Register** announcement, a second proposed revision of FIPS PUB 29–1 was announced in the **Federal Register** (51 FR 44505, dated December 10, 1986).

All responses received as a result of this second announcement supported the adoption of the proposed FIPS PUB 29–2.

The written comments submitted by interested parties and other material available to the Department were reviewed by NBS. On the basis of this review, the Director of NBS approved FIPS PUB 29–2.

The written comments received are part of the public record and are available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

EFFECTIVE DATE: September 14, 1987.

ADDRESS: Interested parties may purchase copies of this revised publication from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this publication is set out in the Where to Obtain Copies section of the FIPS PUB.

FOR FURTHER INFORMATION CONTACT: Ms. Mabel V. Vickers, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 975–3277.

Date: September 2, 1987.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 29–2

(date).

Interpretation Procedures for Federal Information Processing Standards for Software

Federal Information Processing Standards Publication (FIPS PUBS) are issued by the National Bureau of Standards pursuant to the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Purpose*

The purpose of this Federal Information Processing Standards Publication (FIPS PUB) is to establish the procedures for requesting a technical interpretation of any of the Federal Information Processing Standards (FIPS) for software and for providing a solution to the request. This FIPS PUB supersedes FIPS PUB 29–1 in its entirety.

2. Background

The FIPS for software include, but are not limited to, FIPS programming languages, FIPS database languages, FIPS graphics languages, and FIPS operating systems languages. As the standards are used as the basis for the implementation of software, validation of software, or writing of application programs, questions may arise as to the meaning of certain specifications. It is desirable to provide solutions to these questions that can be used uniformly throughout the Federal Government. In order to achieve this objective, the National Bureau of Standards will provide responses to questions of interpretation for the respective FIPS. To assist NBS in providing these responses, a variety of mechanisms may be used, including :

a. Obtaining a recommended interpretation from a committee of the recognized standards body responsible for the development of the standard that has been adopted as a FIPS.

b. Organization of a Federal Interpretation Committee (FIC) which will be responsible for providing a recommended interpretation for a particular FIPS.

c. Consultation with persons recognized as expert in the particular subject matter of the interpretation request.

3. Approving Authority of Interpretations

Director, National Bureau of Standards.

4. Maintenance Agency

U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

5. Cross Index [1]

The following is a current list of the FIPS for which the National Bureau of Standards will issue interpretations. As new software standards are approved, they may be added to this list. Consult the appropriate FIPS PUB for the standard to which the interpretation request applies for any special instructions regarding interpretations.

a. FIPS PUB 21, COBOL.
b. FIPS PUB 68, Minimal BASIC.
c. FIPS PUB 69, FORTRAN.
d. FIPS PUB 109, PASCAL.
e. FIPS PUB 120, Graphical Kernel System.
f. FIPS PUB 123, Data Descriptive File for Information Interchange.
g. FIPS PUB 125, MUMPS.
h. FIPS PUB 126, Database Language NDL.
i. FIPS PUB 127, Database Language SQL.
j. FIPS PUB 128, Computer Graphics Metafile.
k. FIPS PUB [2], UNIX [3] Operating System Derived Environments.
l. FIPS PUB [2], Information Resource Dictionary System (IRDS).

6. Implementing Schedule

These procedures become effective on (date).

7. Applicability

a. The provisions of this document apply to Federal departments and agencies and to vendors of software that wish to have questions concerning specifications of FIPS for software resolved by the National Bureau of Standards.

b. An interpretation that is developed and approved as a result of employing these procedures applies to software, as specified in each interpretation, that is brought into the Federal inventory after the effective date of the interpretation.

8. Procedures

(In the following procedure, each reference to "Federal interpretation Committee" (FIC) should be construed to mean the specific interpretation committee responsible for the software to which the request applies.)

a. *Requesting an Interpretation.* (1) Requests may be submitted by a vendor of software intended to conform to a FIPS for software or by any department or agency of the Federal Government.

(2) Requests for an interpretation should be submitted in writing to the National Bureau of Standards. See paragraph 9 for the address.

(3) A request for interpretation should contain the following information:

(a) Name of organization submitting the request.

(b) Name of individual within the submitting organization who may be contacted concerning the request.

(c) Date by which the interpretation is desired.

(d) Appropriate references to FIPS specifications that have a bearing on the problem cited in the request.

(e) A concise explanation of the problem requiring an interpretation.

(f) Any supporting documentation that will assist in understanding or describing the problem.

(g) Any recommendations the requesting organization would like to make concerning a possible interpretation, along with appropriate justification or comments.

b. *Processing a request for interpretation.* (1) Upon receipt, the National Bureau of Standards will determine which of the following mechanisms will be used in developing a response to the request for interpretation:

(a) Obtaining a recommended interpretation from a committee of the recognized standards body responsible for the development of the standard that has been adopted as a FIPS.

(b) Organization of a Federal interpretation Committee (FIC) which will be responsible for providing a recommended interpretation for a particular FIPS.

(c) Consultation with persons recognized as expert in the particular subject matter of the interpretation request.

(d) Any combination of the mechanisms in (a) through (c) above. At least the mechanism in paragraph (a) above will be used in the case of a request for interpretation of a FIPS that adopts a standard developed by a recognized standards body.

(2) If the FIC is utilized:

(a) The request is distributed to the FIC.

(b) Position papers on proposed solutions to a cited problem may be submitted by any FIC member for consideration by the FIC membership.

(c) The requester of an interpretation may be invited to attend the meeting at which the request will be considered and to participate in the discussion of the problem identified by the request.

(3) If either the appropriate standards body or recognized experts is utilized, the request is sent to that body indicating the date by which an interpretation is desired.

(4) Upon completion of the proposed interpretation, the National Bureau of Standards will:

(a) Arrange for publication of the proposed interpretation in the **Federal Register** and forward it to Federal agencies for the purpose of soliciting comments from Federal agencies, vendors, and private industry.

(b) Notify requester of the proposed interpretation.

(5) Comments received as a result of publication and review of the proposed interpretation will then be reviewed by the National Bureau of Standards and, if appropriate, the body specified in paragraph 8.b.(1), and a final interpretation developed.

c. *Dissemination of an approved interpretation.* (1) The National Bureau of Standards will be responsible for the dissemination of interpretation of FIPS for software.

(2) The approved interpretation will consist of the following information:

(a) Definition of the problem being resolved.

(b) Discussion of the issues relevant to the problem.

(c) Discussion of the solution to the problem (interpretation).

(d) Any necessary clarification to the particular FIPS to effect the resolution.

(e) Effective date of the interpretation.

(3) The approved interpretation will be disseminated and will include, at a minimum, the following: Publication in the **Federal Register**; letter to the Federal agencies; and letter to the requester.

(4) The National Bureau of Standards will maintain a central register of approved interpretations for reference.

9. *Point of Contact*

The following address will be used for correspondence pertaining to interpretations of FIPS for software: Institute for Computer Sciences and Technology, National Bureau of Standards, Attn: Software Interpretations, Gaithersburg, MD 20899.

10. *Where to Obtain Copies*

Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal information Processing Standards Publication 29–2 (FIPSPUB–2), and title. When a microfiche is desired, this should be specified. payment may be made by check, money order, or deposit account.

[FR Doc. 87–21095 Filed 9–11–87; 8:45 am]
BILLING CODE 3510–CN–W

[1] Refers to most recent revision of FIPS PUBS.
[2] To be published in the near future.
[3] UNIX is a registered trademark of AT&T.

National Oceanic and Atmospheric Administration

Public Hearings on the Draft Environmental Impact Statement/ Management Plan for the Proposed Cordell Bank National Marine Sanctuary

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is considering Cordell Bank, located off the coast of northern California, for designation as a national marine sanctuary. NOAA will hold public hearings on a draft environmental impact statement/management plan for the proposed sanctuary. The purpose of the hearings is to receive the views of interested parties on the proposed designation and the draft environmental impact statement/management plan. The views expressed at these hearings, as well as written comments received on the draft, will be considered in the preparation of the final environmental impact statement/management plan.

The hearings will be held on September 29, 1987, from 7:00 to 10:00 PM at the Grange Hall, Bodega Avenue and Highway 1, Bodega Bay, California, and on September 30, 1987, from 7:30 to 10:30 PM at the Golden Gate National Recreation Area Conference Room, Bldg. 201 (First Floor), Fort Mason, San Francisco, California. All interested persons are invited to attend.

FOR FURTHER INFORMATION CONTACT: William W. Windom, (202) 673–5122, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235. Copies of the draft environmental impact statement/management plan are available upon request to the Marine and Estuarine Management Division.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection Research, and Sanctuaries Act, as amended (16 U.S.C. 1431 *et seq.*) ("Act"), authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries if, as required by section 303 of the Act (16 U.S.C. 1433), the Secretary finds, in consultation with the Congress, a variety of specified officials, and other interested persons, that the designation will fulfill the purposes and policies of Title III (set forth in section 301(b) of the Act (16 U.S.C. 1431(b)) and: (1) The area proposed for designation is of special national significance due to its resource or human-use values; (2) existing state and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; (3) designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and (4) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

The authority of the Secretary to designate national marine sanctuaries and administer the other provisions of the Act has been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management in the National Oceanic and Atomospheric Administration (DOC/DOO 25–5A, section 301(z), August 25, 1985).

The waters surrounding Cordell Bank were nominated for status as a national marine sanctuary in July 1981. On June 30, 1983, NOAA declared the area an active candidate for further consideration as a national marine sanctuary. A public scoping meeting to gather information to determine the range and significance of issues related to sanctuary designation and management was held on April 25, 1984. The draft environmental impact statement/management plan was prepared, and a notice of its availability was published in the **Federal Register** on August 28, 1987. On the same date, a summary of the draft management plan and the proposed designation document and regulations for the sanctuary were also published in the **Federal Register.** Written comments on the draft environmental impact statement/management plan must be received by October 12, 1987.

Cordell Bank and its surrounding waters, because of a rare combination of Oceanic conditions and undersea topography, provide a highly productive marine environment in a discrete, well defined area. The prevailing California current flows southward along the coast bringing nutrients to the upper levels of the Bank, while the upwelling of nutrient-rich, bottom waters stimulates the growth of planktonic organisms. These nutrients support the entire food chain from small Crustaceans to the fish, marine mammals and seabirds that form the exceptionally vigorous, ecological community flourishing at Cordell Bank. Designation of the area as a national marine sanctuary is proposed for the purposes of protecting and conserving this special ecological community.

With regard to a proposal to designate an area as a national marine sanctuary, section 304(a)(4) of the Act requires that the proposed designation include the geographic area proposed to be included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational or esthetic value; and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. The draft environmental impact statement/management plan contains the terms of the proposed designation and the proposed regulations, discusses the environment and resources of the proposed sanctuary, and describes proposed sanctuary goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities, for the area.

(Federal Domestic Assistance Catalog Number 11.429 Marine and Estuarine Management Program)

Dated: September 8, 1987.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87–21027 Filed 9–11–87; 8:45 am]

BILLING CODE 3510–08–M

CONSUMER PRODUCT SAFETY COMMISSION

Labeling of Certain Household Products Containing Methylene Chloride; Statement of Interpretation and Enforcement Policy

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of interpretation and enforcement policy.

SUMMARY: The Commission [1] is issuing an interpretation and a statement of

[1] The Commission voted 2–1 to issue this statement of interpretation and enforcement policy. Commissioners Carol G. Dawson and Anne Graham voted in favor of the policy; Chairman Terrence Scanlon dissented, preferring instead to issue the Commission's determination in the form of a rule under section 3(a) of the Federal Hazardous Substances Act. Each Commissioner filed a separate opinion or statement concerning his or her vote; these opinions can be obtained from the Office of the Secretary Consumer Product Safety Commission, Washington, DC 20207, phone (301) 492–6800.

enforcement policy for household products that contain methylene chloride and that expose consumers to significant amounts of methylene chloride vapor. The Commission considers such products to be hazardous substances, under the provisions of the Federal Hazardous Substances Act, basing its determination on animal test results that indicate such products may pose a carcinogenic risk to humans. Accordingly, if such products are not labeled properly, they are misbranded hazardous substances. This action by the Commission results from concerns raised by tests showing that inhalation of methylene chloride vapor can cause an increased incidence of benign mammary tumors in male and female rats and can cause an increased incidence of carcinomas and adenomas in male and female mice. The evidence currently available to the Commission shows that products in a number of classes present sufficient exposure of consumers to methylene chloride vapor that they should be considered to be hazardous substances. These product classes are named in the following enforcement policy. Additional information may become available in the future showing that additional products are also hazardous substances. Once the enforcement policy becomes effective, the Commission intends to bring individual enforcement actions against products that are not properly labeled (or against the products' manufacturers, distributors, or importers). Such actions will provide full opportunities for the Commission's technical data and legal conclusions to be contested. In addition, such enforcement actions will be preceded by opportunities for industry members and Commission staff to discuss the applicability of the enforcement policy to particular products containing methylene chloride.

DATE: The interpretation and enforcement policy becomes effective on March 14, 1988, as to products whose labels are printed after that date and September 14, 1988 as to products that are packaged after that date.

FOR FURTHER INFORMATION CONTACT: Charles M. Jacobson, Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6400.

SUPPLEMENTARY INFORMATION:

A. Background

Previous Commission Action

On August 20, 1986, the Commission published a proposed rule that would declare household products containing other than contaminant levels of methylene chloride to be hazardous substances. 51 FR 29778. The proposal was prompted by a concern that methylene chloride might pose a carcinogenic risk to humans that was raised by tests showing that inhalation of methylene chloride vapor increased the incidence of various types of benign and malignant tumors in rats and mice.

In 1980, an industry inhalation bioassay in Sprague-Dawley rats and in hamsters was completed. This bioassay (the "Dow study"), published in 1984, showed salivary gland tumors in male rats and an increased number of mammary gland tumors per tumor-bearing rat. There was no carcinogenic effect noted in hamsters. Since then, a number of other bioassays have been published.

The National Toxicology Program ("NTP") of the Public Health Service, Department of Health and Human Services, undertook cancer bioassays of methylene chloride by the oral (gavage) and inhalation routes of exposure. The gavage bioassay was completed first, and the draft report was reviewed by the NTP Board of Scientific Counselors in September of 1982. The study results showed evidence of carcinogenicity in rats. However, an audit of the contractor that performed the bioassay, conducted by the Toxicology Audit Subcommittee of the Health and Science Committee of the Halogenated Solvents Industry Alliance, uncovered a number of discrepancies in the conduct of the bioassay. A subsequent audit, performed by NTP, confirmed these discrepancies. As a result, the NTP withdrew the draft report on the gavage bioassay. The inhalation bioassay report was released after a complete audit was performed.

On March 29, 1985, the NTP Board of Scientific Counselors reviewed the NTP inhalation bioassay and concluded that there was "clear evidence" of carcinogenicity of methylene chloride in female rats, as shown by an increased incidence of benign neoplasms of the mammary gland, and in male and female mice, as shown by increased incidences of alveolar/bronchiolar carcinomas and adenomas and of hepatocellular carcinomas and adenomas (lung and liver cancers). There was also "some evidence' of carcinogenicity in male rats as shown by an increased incidence of benign neoplasms of the mammary gland. Methylene chloride also has been found to be genotoxic in several test systems.

After receiving additional information from the staff and from other parties, the Commission preliminarily decided that scientific evidence indicated that exposure to products containing methylene chloride should be presumed to pose a carcinogenic risk to consumers, but that there was also some uncertainty concerning the potential cancer risk to humans which should be explored further. The Commission therefore decided to initiate formal rulemaking under seciton 3(a) of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1262(a), in order to resolve this uncertainty. A proposed rule to declare methylene chloride a hazardous substance, based on concerns raised by the test results in animals, was published in the **Federal Register** on August 20, 1986 (51 FR 29778).

The Commission received 17 comments on its proposed rule. Additional information concerning the background of the Commission's activities concerning methylene chloride is contained in the August 20, 1986, **Federal Register** notice.

B. Determination of Hazardous Substance

After considering the comments on the proposed rule described above, the Commission has concluded that the animal test data showing increases in the incidence of various types of benign and malignant tumors in rats and mice are sufficient to warrant a concern that methylene chloride may pose a carcinogenic risk to humans and that products containing it should be considered hazardous substances.

In the comments on the proposed rule, a number of arguments were raised by persons who opposed any determination by the Commission that methylene chloride poses a carcinogenic risk to humans. These arguments examined the available data and presented contentions that, if established, would cost doubt on the presumption that methylene chloride is a human carcinogen or would indicate that the possible risk to humans from various exposures would be much less than that predicted by the Commission's staff. The Commission's staff examined the comments in opposition to a determination that methylene chloride is carcinogenic to humans and presented arguments to either refute the commenters' contentions or to show why the data do not demonstrate the commenters' hypotheses. The Commission's staff also reviewed comments relating to the magnitude of the presumed risk, as well as newly available data, and revised its risk estimates to account for the new data. The Commission's staff's views are contained in various memoranda addressing the comments on the

proposal and in a draft **Federal Register** notice prepared for the Commission's consideration of whether to issue a final rule.

The comments of two industry associations, the Halogenated Solvents Industry Alliance and the National Paint and Coatings Association, also opposed an express finding by the Commission that methylene chloride is a likely human carcinogen. However, these industry associations also indicated that they did not oppose a determination that at least some household products containing methylene chloride are hazardous substances if that determination were based on a concern that the products are hazardous on the basis of the animal test results, in the absence of strong indications to the contrary. In other words, the industry did not feel that the scientific data demonstrates that methylene chloride is a human carcinogen and that, as additional information is obtained on the response of humans to methylene chloride, it is possible that methylene chloride will be shown to not be carcinogenic to humans. Nevertheless, the industry acknowledges that the animal test results are a sufficient cause for concern that methylene chloride should be considered a hazardous substance until conclusive evidence on the various points of contention is obtained.

After considering the comments on the proposed rule, and the other available evidence, the Commission has concluded that there is little or no uncertainty involved in a determination that household products containing methylene chloride, and presenting significant exposures to consumers, may pose a carcinogenic risk to humans unless and until persuasive evidence to the contrary is obtained. While the Commission supports the analysis of the scientific issues prepared by its staff, it is unnecessary to make a conclusive determination of all these issues at this time for the purpose of determining that there is sufficient uncontested evidence to warrant a finding that methylene chloride may pose a carcinogenic risk to humans and, therefore, is a hazardous substance. Therefore, the Commission concludes that, as to the core findings required to make a determination that household products containing methylene chloride are hazardous substances, there is no significant controversy, and it is unnecessary to continue with the rulemaking proceeding, which is intended to avoid or resolve uncertainty.

Rather than continue with the rulemaking, the Commission believes it is preferable to issue this statement of interpretation and enforcement policy. If the rulemaking proceeding were continued, there is a potential that there would be a subsequent adjudicatory hearing, as well as subsequent appeals to the Commission and to a court of appeals, which could delay the effective date of the rule for up to several years. Issuing this statement of the Commission's views, however, will advise affected manufacturers of the Commission's interpretation that certain household products containing methylene chloride are hazardous substances. The Commission believes that most manufacturers will begin steps immediately to incorporate appropriate labeling, discussed below, that is required by the FHSA. The major industry associations mentioned above have indicated their willingness to adopt appropriate labeling, and a broad cross-section of industry represented in the Steering Committee for Methylene Chloride came to consensus agreement on such labeling.

As discussed below, the Commission intends to allow a sufficient time for manufacturers to adopt revised labels without unnecessary costs involved in overlabeling products or discarding previously printed labels. After that time, the Commission intends to bring individual enforcement actions against improperly labeled products, or against the manufacturers, distributors, or retailers of such products. In such enforcement actions, the defendants will have full opportunity to contest the toxicity of methylene chloride, the exposure to consumers presented by the particular product, or any other technical or legal principle relied on by the Commission.

The publication of this notice expresses the Commission's view that the issues raised in the proposed rule can be best dealt with by issuing this statement of interpretation and enforcement policy; however, it is not intended to withdraw the proposed rule. Therefore, if it appears in the future that voluntary compliance with the Commission's interpretation, supported by enforcement actions against noncomplying firms, is inadequate to obtain uniform compliance with the FHSA, the Commission will have the option of resuming the rulemaking proceeding.

c. Products Believed To Be Hazardous

The data presently available to the Commission indicate that products in the following classes that contain methylene chloride can expose consumers to significant amounts of methylene chloride vapor and are thus hazardous substances.

(1) Paint strippers.
(2) Adhesive removers.
(3) Spray shoe polish.
(4) Adhesives and glues.
(5) Paint thinners.
(6) Glass frosting and artificial snow.
(7) Water repellants.
(8) Wood stains and varnishes.
(9) Spray paints.
(10) Cleaning fluids and degreasers.
(11) Aerosol spray paint for automobiles.
(12) Automobile spray primers.
(13) Products sold as methylene chloride.

In order to provide some definiteness to manufacturers, the Commission states that it does not presently have information showing that products in these categories that contain one percent or less of methylene chloride are hazardous substances.

However, the fact that a product is not specifically named above, or that it contains one percent or less of methylene chloride, does not mean that the product is *not* a hazardous substance. Since the available data on the unnamed categories are not definitive, the status of the unnamed products as hazardous substances could be reconsidered by the Commission if additional information showing significant exposures became available.

Since the FHSA applies to, among other things, all toxic household substances that may cause substantial personal injury or substantial illness as a proximate result of any customary or reasonably foreseeable handling or use, if additional information becomes available showing that products that are not now specifically identified present significant exposures, labeling for such products would be automatically required by section 2(p)(1) of the Act. 15 U.S.C. 1261(p)(1). In this event, the Commission could bring enforcement actions against manufacturers of such products that refused to provide appropriate labeling. In such actions, the Commission would have to establish that the product was a hazardous substance, and all issues relied on by the Commission could be contested by the defendant.

D. Required Labeling

General FHSA Labeling Requirements

One of the statutes administered by the Commission is the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1276, which establishes certain requirements and gives the Commission certain remedial powers

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with respect to hazardous household substances. Under section 2(g) of the FHSA, 15 U.S.C. 1261(g), a "toxic" substance is defined as "any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface." Section 2(f)(1) of the FHSA defines "hazardous substance" as including:

> (A) Any substance or mixture of substances which (i) is toxic, [or other enumerated hazards] . . ., if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

15 U.S.C. 1261(f)(1).

Under section 2(p)(1) of the FHSA, a hazardous substance that is intended, or packaged in a form suitable, for use in the household is misbranded if it fails to bear a label with certain specified labeling. Included in the required labeling is:

> (D) the signal word "WARNING" or "CAUTION" . . . (E) an affirmative statement of the principal hazard or hazards, such as "Flammable", "Combustible," "Vapor Harmful", "Causes Burns", "Absorbed Through Skin", or similar wording descriptive of the hazard; (F) precautionary measures describing the action to be followed or avoided. . . ."

15 U.S.C. 1261(p)(1).

Since the Commission has determined that household products which can expose consumers to methylene chloride vapor are hazardous substances because they may pose a carcinogenic risk to humans, such products will be required to bear labeling that meets the requirements of section 2(p)(1) of the FHSA.

Also, the labels for all products subject to the FHSA are expected to comply with the Commission's regulations, at 16 CFR 1500.121, for the prominence, placement, and conspicuousness of labeling required by the FHSA. These regulations provide that all items of labeling required by the FHSA may be placed on the "principal display panel" (hereinafter called the "front panel") on the immediate container and, if appropriate, on any other container or wrapper. The signal word (*i.e.*, "DANGER", "WARNING", or "CAUTION") and the statement of principal hazard(s) are required to be on the front panel. The other items of required labeling may be placed on some other display panel on the container (hereinafter called the "back panel"), provided that the front panel contains the statement "Read carefully other cautions on the [back] panel" or its practical equivalent.

Labeling for Potential Cancer Hazards

1. *General Principals*

The Commission believes that labeling for potential cancer hazards under the FHSA must adhere to three general principles. These principles may be applied somewhat differently to different products, depending on the degree of exposure presented by a product. These principles are discussed immediately below. Following that discussion, this notice discusses how the application of these principles can result in different labeling for different products, depending on whether the particular product involved presents a potentially high or low degree of exposure in reasonably foreseeable use or misuse.

a. *Indication of a potential cancer hazard.* The nature of the hazard of being exposed to a substance that may cause adverse chronic effects is that the hazard does not necessarily present itself to the senses of persons exposed to the substance. Where a product presents only acute hazards, preliminary symptoms of the acute exposure, such as dizziness, eye watering, or headaches, may serve to warn the user that he or she is being exposed to an excessive amount of the substance. With a presumed chronic hazard, however, the exposure level that may cause acute symptoms may exceed the exposure level that could present a significant chronic risk to persons using a product containing the substance. Since the product itself may not warn of the chronic hazard associated with exposure to the substance, it is especially important that the product's label communicate the hazard to the user in a way that will motivate the user to take adequate precautions against overexposure.

The Commission believes that in order for a label to motivate the user to take adequate precautions against overexposure to a potential cancer hazard, the label should indicate that exposure to the product may present a cancer hazard. This could be accomplished by having the front panel carry the statement of principal hazard, "vapor harmful" or the equivalent, while the back panel would contain a more specific indication of a possible cancer hazard, such as "cancer hazard" or "this product contains methylene chloride, which has been shown to cause cancer in certain laboratory animal tests," or the like. Alternatively, the statement of principal hazard on the front panel could state both "vapor harmful" or the equivalent and the more specific indication that one of the hazards presented is that of carcinogenicity.

b. *An explanation of factors that control the degree of risk.* The Commission believes that the labeling for a potential cancer hazard should indicate that the risk to the user is related to the level and duration of exposure. Products involving greater exposure need an explicit statement that both the concentration of the vapors to which one is exposed and the length of exposure are factors affecting risk to the user. This will also have the effect of reinforcing in the user the notion that there are actions that the user can take to reduce the risks associated with using the product. As discussed further below, products presenting lower exposures in reasonably foreseeable use scenarios can use labeling that is less explicit to satisfy this aspect of FHSA labeling.

c. *Precautions to be taken.* Products presenting the higher degrees of exposure should bear detailed descriptions of the particular precautions that are necessary. This element of required labeling includes an explanation of the specific actions that should be taken or avoided by users. An example of such instructions, developed for products such as paint strippers by the Steering Committee for Methylene Chloride, is given below. Statements such as "use with adequate ventilation," that have been used commonly in the past with respect to acute inhalation hazards, are insufficient for products that present a chronic hazard at levels where no acute symptoms are manifested. As explained in more detail below, however, for products presenting low exposures, a direction to use the product outdoors or with windows opened or to not use the product in a small room, or the like, could adequately satisfy this element of FHSA labeling.

2. How Labeling May Vary With Different Products

There are wide variations in the concentrations of methylene chloride in different product classes and in different products within a single class. Furthermore, there are differences in the reasonably foreseeable ways that the various products containing methylene chloride are used. Accordingly, the exposures associated with various products vary widely. This fact caused the Commission to consider the extent to which different labeling might be appropriate for those products that present the highest exposures than is appropriate for those products where exposure is lower.

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After considering this issue, the Commission has concluded that the three general principles of chronic hazard labeling under the FHSA, described above, should apply to all products that are considered to be hazardous substances because they contain methylene chloride. However, the particular information on the labels of products in the high and low exposure categories could be considerably different and still comply with these general principles.

The strongest labeling is required for the products involving the higher exposures. Of the product classes on which the Commission currently has data, the ones involving the greatest exposure to the individual user are paint strippers and adhesive removers. A description of suitable labeling for paint strippers containing relatively large amounts of methylene chloride is given below. Similar labeling, with appropriate modifications to reflect the different manners of use, would be required for those adhesive removers that present similar exposures. Any attempt to qualify or limit the apparent seriousness of the required warnings would be inappropriate for these high-concentration products.

On the other hand, the presently available information indicates that certain products in the remaining product classes subject to the rule may present lesser hazards, in varying degrees. As to these products, it may be appropriate to provide additional explanation on the label to inform the user or potential purchaser that, when properly used, the exposure can be considered slight. For example, products that are rarely used indoors or that have low concentrations of methylene chloride and otherwise result in low exposures in normal use may be able to appropriately use additional label language to help consumers put the hazard presented by the product in context. However, the Commission believes that such labeling qualifications should not be used unless methylene chloride is the only ingredient that requires cautionary labeling and the manufacturer has a sound basis for concluding that the product in fact presents a suitably low concentration of methylene chloride or that the exposure expected from the product is otherwise very low.

Another difference from the labeling practices used for the highest exposure products that might be appropriate for lower exposure products involves the need for the product's label to indicate that the potential risk depends on the length and severity of the exposure. Where a product's normal exposure is either short or low, the label may not need to specifically point out that aspect of the factors relating to risk.

As provided in 16 CFR 1500.128, the Commission's staff routinely provides labeling advice to manufacturers on labeling necessary to comply with the FHSA. The staff remains available for such informal advice, where desired, for products containing methylene chloride.

3. Detailed Example of Labeling for Paint Strippers

The Steering Committee for Methylene Chloride, a group of industry and consumer interest representatives working with the Commission's staff, previously considered the question of labeling language that will adequately convey to users the information needed to enable users to protect themselves and that will also comply with the requirements of the FHSA. The Steering Committee recommended the following labeling for products, such as some paint strippers, that contain high percentages of methylene chloride. The Commission believes that this labeling meets, and in certain respects exceeds, the minimum requirements of section 2(p)(1) of the FHSA.

[Front Panel]

CAUTION: Vapor Harmful, Read Other Cautions and HEALTH HAZARD INFORMATION on Back Panel

[or equivalent language]

[Back Panel]

Contains methylene chloride, which has been shown to cause cancer in certain laboratory animals. Risk to your health depends on level and duration of exposure.

[Or equivalent language]

[The back panel labeling given above would be placed separately from use precaution information such as the following.]

Use this product outdoors, if possible. If you must use it indoors, open all windows and doors or use other means to ensure fresh air movement during application and drying. If properly used, a respirator may offer additional protection.* Obtain professional advice before using.* A dust mask does not provide protection against vapors.* Do not use in basement or other unventilated area.

Open container carefully and close after each use. Clean up rags, papers, and waste promptly. Allow solvent to evaporate, then dispose of in metal containers.

[Or equivalent language suitable for the particular product involved.]

A label such as that stated above would be required by the potential carcinogenic inhalation hazard from paint strippers, although some of the precautions stated also may serve to protect against acute hazards that might be presented. Of course, the product's labeling would also have to meet the other requirements of the FHSA and to address other hazards that the product may present. For example, the label may have to address the acute toxicity of methylene chloride, flammability hazards associated with a product, toxic gases that can be produced by contact with flame or hot surfaces, or the need to avoid contact with skin or eyes because of irritant or corrosive qualities in a product. Also, the label would have to include, when necessary or appropriate, instructions for first aid treatment, including instructions on actions to take if overcome by vapors.

Also, the particular precautions about actions to be taken or avoided that are given in the above example are intended primarily for paint removers, and these precautions may not apply to other products containing methylene chloride. For example, some products may not involve rags or other items that need to be disposed of separately.

E. Effect on State and Local Laws

Section 18(b)(1)(A) of the FHSA, 15 U.S.C. 1261n, provides:

(b)(1)(A) Except as provided in paragraphs (2) and (3) [15 U.S.C. 1261n], if hazardous substance or its packaging is subject to a cautionary labeling requirement under section 2(p) or 3(b) [15 U.S.C. 1261(p), 1262(b)] designed to protect against a risk of illness or injury associated with the substance, no State or political subdivision of a State may establish or continue in effect a cautionary labeling requirement applicable to such substance or packaging and designed to protect against the same risk of illness or injury unless such cautionary labeling requirement is identical to the labeling requirement under section 2(p) or 3(b).

Under the Commission's interpretation, products that contain methylene chloride and that expose consumers to significant amounts of methylene chloride vapor are hazardous substances subject to the requirements of section 2(p)(1) of the FHSA. Therefore, under the terms of section 18(b)(1)(A) of the FHSA, the Commission concludes that any statutes or regulations of state or local governments establishing cautionary labeling requirements designed to protect against the risk are void and unenforceable to the extent that the state or local requirements are not

*The use of respirators may not be a practical way for most consumers to protect themselves from methylene chloride vapors. Accordingly, the Commission should point out that the statement concerning respirators in the above labeling example that was recommended by the Steering Committee on Methylene Chloride is not required by the FHSA.

identical to the requirements under section 2(p)(1) of the FHSA.

F. Administration of the Enforcement Policy

Under the FHSA, firms are responsible for deciding whether their products containing methylene chloride meet the definition of hazardous substance. This involves consideration of the concentration of methylene chloride in the product and of the ways the product is used to determine if the product presents a significant exposure to methylene chloride vapor. The Commission recognizes that this decision can be difficult, and the Commission has attempted to give as much guidance as possible in this notice. In addition, the Commission will assist firms to the fullest extent possible.

Before an enforcement action is brought against a firm that is thought to be improperly labeling a product containing methylene chloride, the firm will be given an opportunity to informally present evidence to the Commission staff that its product does not present a significant exposure to methylene chloride vapor in reasonably foreseeable handling or use of the product. The policy can be fairly administered only with such a case-by-case approach that recognizes differences in the levels of risk presented by different household products containing methylene chloride.

G. Effective date

In order to minimize any adverse economic effects to firms who must change labels in order to comply with the FHSA, this enforcement policy will be effective March 14, 1988 as to products whose labels are printed after that date and September 14, 1988 as to products that are packaged after that date.

H. Conclusion

For the reasons explained above, the Commission believes that household products that present a significant exposure to methylene chloride vapor are hazardous substances due to a potential hazard of human carcinogenicity. Labeling required by the FHSA will be enforced in accordance with the policy explained above. This policy is not a binding rule, but is merely a notice of the Commission's intention to bring appropriate enforcement actions under the FHSA. In any such actions, any parties who disagree about whether particular products containing methylene chloride are hazardous substances will have the opportunity to challenge the Commission's technical data and legal conclusions in federal district court.

Because this enforcement policy is not a proposed or final rule, the Regulatory Flexibility Act is inapplicable. Further, neither the publication of this notice nor the bringing of enforcement cases under the policy has any significant potential for affecting the environment, and no environmental assessment or environmental impact statement is required.

Dated: September 9, 1987.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 87-21094 Filed 9-11-87; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.004C]

Notice Inviting Applications for New Awards Under Desegregation of Public Education; State Educational Agency Desegregation Program for Fiscal Year 1988.

Purpose: Provides grants to State Educational Agencies (SEAs) to enable them to provide technical assistance (including training) at the request of school boards and other responsible governmental agencies, in the preparation, adoption, and implementation of plans for the desegregation of public schools and in the development of effective methods of coping with special educational problems occasioned by desegregation.

Deadline for Transmittal of Applications: November 9, 1987.

Deadline for Intergovernmental Review Comments: January 11, 1988.

Applications Available: September 25, 1987.

Available Funds Anticipated: The Administration's budget request for fiscal year 1988 does not include funds for this programs. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program.

Estimated Range of Awards: $100,000 to $750,000.

Estimated Average Size of Awards: $303,846.

Estimated Number of Awards: 52.

Project Period: 12 Months.

Applicable Regulations: (a) The Desegregation of Public Education Regulations, 34 CFR Parts 270 and 271, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79, except that 34 CFR 75.200 trhough 75.217 (relating to the evaluation and competitive review of grants) do not apply to grants awarded under 34 CFR Part 271.

For Applications or Information, Contact: Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue SW., Room 2059, Washington, DC 20202, Mail Stop 6264. Telephone: (202) 732-4342.

Program Authority: 42 U.S.C. 2000c-2000c-2; 2000c-5.

Dated: August 28, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87-21053 Filed 9-11-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP87-118-000]

Proposed Changes in FERC Gas Tariff; Williams Natural Gas Co.

September 8, 1987.

Take notice that Williams Natural Gas Company (WNG) on August 31, 1987, tendered for filing First Revised Sheet Nos. 59, 69, 76 and 94 to its FERC Gas Tariff, Original Volume No. 1 and First Revised Sheet Nos. 10, 21, 31, 56, 59, 78, 92 and 267 to its FERC Gas Tariff, Original Volume No. 2.

WNG states that the purpose of this filing is to enable WNG to change its accounting and billing procedures from a fiscal month basis to a calendar month basis.

The proposed effective date of the above tariff sheets is October 1, 1987.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21062 Filed 9-11-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $1,800,000 (plus accrued interest) obtained pursuant to a consent order between the DOE and Suburban Propane Gas Corporation (Suburban). The funds will be distributed to refund applicants who purchased propane, butane, and natural gasoline from Suburban entities, including Suburban's Eastern Division, Midwest Division, NGL Department, VanGas, and Exploration and Production Division, during the period November 1973 through October 1978 (the consent order period).

DATE AND ADDRESS: Applications for refund must be filed by December 14, 1987, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should be filed in duplicate and display a conspicuous reference to Case Number KEF-0038.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094.

SUPPLEMENTARY INFORMATION: In accordance with Section 205.282(c) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the final Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute monies obtained from Suburban Propane Gas Corporation to settle possible pricing violations with respect to the firm's sales of propane, butane, and natural gasoline during the consent order period. Under the terms of the consent order, Suburban remitted $1,800,000, which is being held in an interest-bearing escrow account.

We will distribute these funds in two stages. In the first stage, we will accept claims from identifiable purchasers of propane, butane, an natural gasoline who may have been injured by Suburban's pricing practices during the consent order period. The specific requirements which an applicant must meet in order to receive a refund are set out in Section II of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of propane, butane, and natural gasoline which they purchased from Suburban entities. If any funds remain after meritorious claims are paid in the first stage, they may be used for indirect restitution in accordance with the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99-509, 1 Fed. Energy Guidelines ¶11,702 *et seq.*

Applications for refunds may now be filed by customers who purchased propane, butane, and natural gasoline from Suburban during the consent order period. Applications must be filed within 90 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All applications received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Date: September 4, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Suburban Propane Gas Corporation

Date of Filing: May 21, 1986

Case Number: KEF-0038

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement procedures for the distribution of funds obtained by the DOE as a result of the agency's enforcement of the Mandatory Petroleum Price and Allocation Regulations. *See* 10 CFR Part 205, Subpart V. Pursuant to the provisions of Subpart V, on May 21, 1986, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order that it entered into with Suburban Propane Gas Corporation (Suburban). In its Petition, the ERA requests that the OHA establish special procedures to make refunds in order to remedy the effects of the alleged regulatory violations that were settled in the Suburban Consent Order. This Decision contains the procedures which the OHA has formulated to govern the distribution of the Suburban Consent Order funds.

I. Background

Suburban was engaged in the production, refining, and marketing of crude oil, refined petroleum products, and natural gas liquid products during the period of federal petroleum price controls, March 6, 1973 through January 27, 1981. It was therefore subject to the Mandatory Petroleum Price Regulations set forth at 6 CFR Part 150 and 10 CFR Part 212. The ERA conducted several extensive audits of Suburban's operations and, as a result of those audits, contended in the course of a number of administrative proceedings that Suburban and its subsidiaries had violated applicable DOE price regulations in the refining and marketing of petroleum products during the audit periods.

In order to settle all claims and disputes between Suburban and the DOE regarding the firm's sales of propane, butane, and natural gasoline, the parties entered into a Consent Order on March 21, 1986. Under the terms of the Consent Order, Suburban deposited $1,800,000 into an interest-bearing escrow account for ultimate distribution by the DOE. As of July 31, 1987, the total value of the Suburban escrow account was $1,944,115.

On June 26, 1987, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Suburban Consent Order funds. In order to give notice to all potentially affected parties, a copy of the PD&O was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. 52 FR 25298 (July 6, 1987). We received no comments concerning the proposed procedures for the distribution of the Suburban Consent Order funds. Consequently, they will be adopted as proposed.

II. Refund Procedures

Subpart V sets forth general guidelines to be used by the OHA in formulating plans for distributing funds received as a result of enforcement proceedings. The Subpart V process may be used in situations like the present case where the DOE is unable to readily identify those persons who may

have been injured by alleged overcharges or ascertain the amount of the refunds they should receive.

The distribution of refunds in this proceeding will take place in two stages. In the first stage, we will accept claims from identifiable purchasers of propane, butane, and natural gasoline (the covered products) who may have been injured by Suburban's pricing practices during the period November 1, 1973 through October 31, 1978 (the Consent Order period). Such purchasers likely obtained the covered products from the following Suburban entities: Eastern Division; Midwest Division; NGL Department; VanGas; and Exploration and Production Division. If any funds remain after all meritorious first-stage claims have been paid, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99-509, 1 Fed. Energy Guidelines ¶ 11,702 *et seq.*

A. Refunds to Identifiable Purchasers

In the first stage of the Suburban refund proceeding, we will distribute the funds currently in escrow to claimants who demonstrate that they were injured by Suburban's alleged overcharges. Although there is a variety of methods by which such a showing can be made, a refiner, reseller or retailer claimant is generally required to demonstrate (i) that it maintained "banks" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and (ii) that market conditions were the reason that it did not pass through those increased costs.

We will adopt presumptions of injury which have been used in many prior refund cases. These presumptions will enable applicants to participate in the refund process without incurring inordinate expense and will allow the OHA to consider the refund applications in the most efficient manner possible. See 10 CFR 205.282(e).

1. *Applicants Claiming a Refund of $5,000 or Less.* The first presumption we will use is that purchasers of Suburban propane, butane, and natural gasoline seeking small refunds were injured by the alleged regulatory violations settled in the Suburban Consent Order. Under the small claims presumption, a reseller or retailer seeking a refund of $5,000 or less will not be required to submit any additional evidence of injury beyond establishing the volume of covered products it purchased during the settlement period. *See, e.g., Marathon Petroleum Co.,* 14 DOE ¶ 85,269 (1986) (*Marathon*) and cases cited therein. This presumption is based on a number of considerations. In order to make a detailed claim of injury, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering evidence of injury to support a refund claim could exceed the expected refund. In addition, use of the small claims presumption is desirable from an administrative standpoint because it allows the OHA to process a large number of routine refund claims quickly.

2. *Refiners, Resellers, and Retailers Seeking Larger Refunds.* In lieu of making a detailed showing of injury, a refiner, reseller, or retailer claimant whose allocable share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 60 percent of its allocable share up to $50,000.[1] The use of this presumption reflects our conviction that these medium-range claimants were likely to have experienced some injury as a result of the alleged overcharges. *See Marathon,* 14 DOE at 88,515. In a prior refund proceeding, we determined that a 60 percent presumption for medium-range NGLP purchasers accurately reflected the amount of their injury as a result of those purchases. *See Getty Oil Company,* 15 DOE ¶ 85,064 (1986) at 88,123. We therefore will adopt the 60 percent presumptive level of injury for all medium-range claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Suburban covered products in order to be eligible to receive a refund of 60 percent of its total volumetric share.[2] Large claimants, those who purchased more than 78,764,965 gallons, may elect to limit their claim to $50,000 rather than submit a detailed showing of economic injury.

3. *Spot Purchasers.* We also will adopt a rebuttable presumption that refiners and resellers who made spot purchases from Suburban did not suffer economic injury as a result of those purchases. As we have previously noted, spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Suburban's products at increased prices unless they were able to pass through the full price of the purchases to their own customers. *Office of Enforcement,* 6 DOE ¶ 82,597 at 85,396-97 (1981). Therefore, a firm which made only spot purchases from Suburban will be ineligible to receive a refund, even one below the $5,000 threshold level, unless it presents evidence rebutting the spot purchaser presumption. Such evidence must establish that the spot purchaser was unable to recover the price it paid for Suburban's products and that it was forced by market conditions to make the purchases upon which its refund claim is based. *See, e.g., Marathon,* 14 DOE at 88,515; *Dorchester Gas Corporation,* 14 DOE ¶ 85,240 at 88,452 (1986).

4. *Agricultural Cooperatives and Regulated Utilities.* We will also adopt the presumption that regulated industries (such as public utilities) and agricultural cooperatives absorbed the alleged Suburban overcharges. These types of applicants will not have to submit any further evidence of injury in order to qualify for the full amount of volumetric refund based on purchase volumes that were used by themselves or sold to members. Any overcharges suffered by such firms would have been passed through to their customers by the regulatory bodies or agreements that control the prices they may charge. Similarly, any refunds they receive would automatically be passed through to their customers. Consequently, we will permit an entity of this type to receive a full volumetric refund, provided that it includes in its refund application a full explanation of the manner in which refunds will be passed through to its customers. *See Office of Special Counsel,* 9 DOE ¶ 82,538 at 85,203 (1982).

5. *End-Users.* Finally, we will presume that end-users or ultimate consumers whose businesses were unrelated to the petroleum industry were injured by Suburban's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the Consent Order period. As a result, they were not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. For this reason, an analysis of the impact of the alleged overcharges on the final prices of non-

[1] That is, claimants who purchased between 4,725,898 gallons and 78,764,965 gallons of Suburban propane, butane, and natural gasoline during the Consent Order period may elect to use this presumption.

[2] A medium-range claimant may elect not to receive a refund based upon this presumption and may instead attempt to show that it is eligible for a refund equal to its full allocable share by making a detailed showing of injury using the general criteria set forth above. However, the 60 percent presumption will not be available to medium-range claimants who submit a detailed injury showing which leads us to conclude that they are eligible for a refund of less than 60 percent of their volumetric share.

petroleum goods and services would be beyond the scope of a special refund proceeding. *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Therefore, end-users of Suburban covered products need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased Suburban covered products for consumption as fuel or raw materials will not be considered end-users for the purpose of the showing of injury. *Seminole Refining Inc.*, 12 DOE ¶ 85,188 at 88,576 (1985).

B. Calculation of Refund Amounts

We will use a volumetric method to divide the Suburban escrow account among applicants who demonstrate that they are eligible to receive refunds. This method generally presumes that the alleged overcharges were spread equally over all the gallons of propane, butane, and natural gasoline sold by Suburban during the Consent Order period. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser might have been greater, and any purchaser may file a refund application based on a claim that it incurred a disproportionate share of the injury from Suburban's alleged overcharges.

Under the volumetric method we will adopt, a claimant will be eligible to receive a refund equal to the number of gallons of Suburban covered products that it purchased during the consent order period multiplied by the volumetric refund amount. The volumetric refund amount in this case will be $0.001058 per gallon.[3] In addition, successful claimants will receive a proportionate share of the accrued interest.

As in previous cases, we will establish a minimum refund amount of $15 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

C. General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased propane, butane, and natural gasoline sold by Suburban between November 1, 1973 and October 31, 1978. There is no specific application form that must be used. However, a suggested format for Applications for Suburban Refunds is set forth in the Appendix to this Decision. All Applications for Refund should include the following information:

(1) A conspicuous reference to Case Number KEF-0038 and the applicant's business name and address.

(2) The name, title, and telephone number of a person who may be contacted by OHA for additional information concerning the Application.

(3) The manner in which the applicant used the Suburban propane, butane, or natural gasoline, i.e., whether it was a refiner, reseller, retailer or end-user.

(4) The volume of Suburban propane, butane, and natural gasoline it purchased during each month of the Consent Order period and the Division or Suburban subsidiary from which it obtained the product(s). If the applicant was an indirect purchaser it must also submit the name of its immediate supplier and indicate why it believes the covered product was originally sold by Suburban.

(5) If the applicant is a reseller, retailer or refiner which wishes to claim a refund in excess of $5,000 and does not elect the 60 percent injury presumption for calculating its refund, or which wishes to claim a refund in excess of $50,000, it should also:

(a) State whether it maintained banks of unrecouped product cost increases and furnish the OHA with quarterly bank calculations through January 27, 1981;

(b) State whether it or any of its affiliates have filed any other Applications for Refund in which it referred to its level of banks as a basis for refund; and

(c) Submit evidence that it did not pass through the alleged overcharges to its customers. For example, a firm may submit market surveys to show that price increases were infeasible.

(6) If the applicant is in any way affiliated with Suburban, it must indicate the nature of the affiliation.

(7) If there has been a change in ownership of the entity that purchased the Suburban propane, butane, or natural gasoline, the applicant must provide the names and addresses of the other owners, and should either state the reasons why a refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they waive their claim to a refund.

(8) If the applicant is involved in DOE enforcement or private actions filed under Section 210 of the Economic Stabilization Act, it should describe the action and its current status. If the applicant was a party to such an action which is no longer pending, it should indicate how the proceeding was resolved. The applicant must keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 CFR 205.9(d).

(9) All applicants must submit the following signed statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant that believes that its application contains confidential information must indicate this and submit two additional copies of its application from which confidential information has been deleted. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for refund from the funds remitted to the Department of Energy by Suburban Propane Gas Corporation pursuant to the Consent Order executed in March 21, 1986 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision in the **Federal Register**.

George B. Breznay,

Director, Office of Hearings and Appeals.

Dated: September 4, 1987.

RF299–

DOE Use Only

Appendix—Suggested Format for Application for Suburban Propane Refund—KEF–0038

1. Name of Applicant during refund period:

Address during refund period: (November 1, 1973—October 31, 1978)

[3] This figure is computed by dividing the $1,800,000 received from Suburban by the estimated 1,700,569,000 gallons of propane, butane, and natural gasoline sold by the firm during the consent order period.

2. To whom should refund check be made out?

Address to which check should be sent:

Contact Person:

Daytime Telephone: (_____)

3. (a) Type of Applicant:
Reseller/Retailer _____ End-user_____ Other_____

(b) If you are a reseller/retailer and the total Suburban refund requested by your firm and all affiliated entities exceeds $5,000, do you elect the $5,000 or 60 percent injury presumption for calculating your refund?

Yes

No

If you do not elect the $5,000 or 60 percent presumption of injury method, or if you are requesting a refund greater than $50,000, attach information on banks of unrecovered product costs as well as the required injury showing. (See Decision for details on the injury showing required.)

4. (a) Total gallonage for which refund is requested (from page 3):

(b) Product(s) (propane, butane, natural gasoline):

5. Was the product you bought Suburban-branded?

Yes

No

6. Were you supplied by Suburban directly?

Yes

No

If yes, provide Suburban customer number here:

If no to Items 5 and 6, attach an explanation of why you believe the product was sold by Suburban

7. Immediate supplier(s) during refund period name(s):

Address(es):

8. Have you ever been a party or are you currently a party in a DOE enforcement action or a private section 210 action? If yes, please attach an explanation.

Yes

No

9. Have you or a related firm filed any other application for refund or authorized any individual(s) other than those identified on this form to file an application on your behalf involving any Suburban product? If yes, attach an explanation.

Yes

No

10. Have you or a related firm ever filed any refund application(s) in any other refund proceeding(s) administered by this office? If yes, provide the name(s) of the proceeding(s) and your refund case number(s).

Yes

No

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application form which will be placed in the OHA public reference room.

Date

Signature of Applicant

Title

Name of Applicant: _____ KEF-0038.

Monthly Purchase Volumes of (propane, butane, natural gasoline)	1973	1974	1975	1976	1977	1978
January	*********					
February	*********					
March	*********					
April	*********					
May	*********					
June	*********					
July	*********					
August	*********					
September	*********					
October	*********					
November						
December						********
Yearly total						********

Grand Total for This Product:
Gallons.

Note.—If your total for *all products* is less than 14,000 gallons, you will not be eligible to receive a refund.

[FR Doc. 87-21023 Filed 9-11-87; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of August 7 Through August 14, 1987

During the Week of August 7 through August 14, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 4, 1987.

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 7 through August 14, 1987]

Date	Name and location of applicant	Case No.	Type of submission
July 30, 1987	Jim Woods Marketing, Treece, KS	KEE-0148	Exception to the reporting requirements. If granted: Jim Woods Marketing would not be required to file form EIA-782B, "Resellers/Retailer Monthly Petroleum Product Sales Report."
Aug. 10, 1987	Cities Service Oil & Gas Corp., Washington, DC	KEG-0017	Petition for special redress. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, concerning cooperation agreements entered into with Economic Regulatory Administration.
Aug. 10, 1987	Citizen/Labor Energy Coalition, Washington, DC	KFA-0114	Appeal of an information request denial. If granted: The August 6, 1987 Freedom of Information Request Denial issued by the Office of Oil and Gas would be rescinded, and Citizen/Labor Energy Coalition would receive data based on information obtained from the form EIA-857.
Aug. 11, 1987	Boise Cascade Corp., Washington, DC	RR270-11	Request for modification/rescission in the stripper well petition proceeding. If granted: The July 14, 1987 Decision and Order (Case No. RR270-1291) issued to Boise Cascade Corporation would be modified regarding the firm's application for refund submitted as a Surface Transporter in the Stripper Well Litigation Proceeding.
Aug. 14, 1987	U.S.A. Petroleum Corp., Cincinnati, Ohio	KFA-0115	Appeal of an information request denial. If granted: The June 13, 1987 Freedom of Information Request Denial issued by the Economic Regulatory Administration would be rescinded, and U.S.A. Petroleum Corporation would receive access to all records responsive to their May 26, 1987 Freedom of Information Request.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceedings/ name of refund applicant	Case No.
8/7/87	Amoco II/National Helium, Charter, Perry and Colne/ Tennessee.	RQ251-391, RQ3-392, RQ24-393, RQ183-394, RQ2-395
8/7/87-8/14/87	Crude Oil Applications Received.	RF272-3555-RF272-3921
8/12/87	Sussex Petroleum Co., Inc.	RF265-2520
4/30/86	Draper Energy Co., Inc.	RF225-10887
4/30/86	Draper Energy Co., Inc.	RF225-10888
7/21/86	Leighton Gas & Oil	RF225-10889
7/21/86	Kossuth Oil Co.	RF225-10890
6/24/87	Medford Petroleum, Inc.	RF265-2521
2/17/87	L.F. Phillips & Sons, Inc.	RF225-10894
2/17/87	L.F. Phillips & Sons, Inc.	RF225-10895
2/17/87	L.F. Phillips & Sons, Inc.	RF225-10896
1/15/87	Massoudi's Mobil Service	RF225-10893
8/13/87	Powl's Feed Service	RF265-2522
8/13/87	Powl's Feed Service	RF265-2523
8/13/87	Marvin C. Beck	RF298-1
8/13/87	Ted Reece	RF298-2
8/13/87	Glen D. Brown	RF298-3
8/13/87	Paul A. Heinzelmann	RF298-4
8/13/87	Darrel Rush	RF298-5
8/13/87	Max L. Watts	RF298-6
8/13/87	Thomas Marlatt	RF298-7
8/13/87	John Golitko	RF298-8
8/13/87	Larry E. Kunn	RF298-9
8/13/87	Mark Edward Dust	RF298-10
8/13/87	Bill Schumacher	RF298-11
8/13/87	Samuel N. Bales	RF298-12
8/13/87	Wayne Cowger	RF298-13
8/13/87	Ken Milleville	RF298-14
8/13/87	Ronald Weaber	RF298-15
8/13/87	Hartford Wood River Terminal	RF298-16
8/14/87	Ramona Oil Company, Inc.	RF157-4
4/28/87	Peoples Gas System	RF225-10897
8/14/87	J. Richard Myer	RF265-2524
8/10/87	Gene's Skelly Service	RF265-2525
8/14/87	Myer's Propane Gas Service	RF277-84
7/21/87	Ike's Oil Co.	RF225-10891
7/21/87	Danielson Oil Co.	RF225-10892
8/11/87	John P. Carroll	RF265-2519
8/11/87	Walter J. Mornes	RF139-172
8/10/87	Wallace Oil Co. of Texas	RF265-2516
8/10/87	Robert J. Lueken	RF265-2517
8/10/87	Robert J. Lueken	RF265-2518
8/10/87	Rising Sun Truck Stop	RF250-2731

[FR Doc. 87-21019 Filed 9-11-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of July 6 Through July 10, 1987

During the week of July 6 through July 10, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Arent, Fox, Kintner, Plotkin & Kahn, 7/7/87, KFA-0102

The law firm of Arent, Fox, Kintner, Plotkin & Kahn, on behalf of Centel Business Systems, filed an Appeal from a denial by the Manager of the Idaho Operations Office of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). The firm sought access to a report which was created by a DOE contractor concerning a bid protest filed by Centel. In considering the Appeal, the DOE found that the report was properly withheld under Exemption 5 of the FOIA. Specifically, the DOE found that the report was a predecisional, deliberative document prepared for the use of the Idaho Operations Office in writing its own report on the Centel protest. The DOE further found that releasing the report would not be in the public interest because disclosure would discourage the contractor's ability and willingness to make honest and candid recommendations to the DOE. Accordingly, the Appeal was denied.

Gary Chaffins, 7/10/87, KFA-0100

Gary Chaffins filed an Appeal from a partial denial by the Manager for Administration of the San Francisco Operations Office, of a request submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that under Exemption 6 a former DOE employee and other individuals had a privacy interest in documents discussing his potential conflict of interest in working for the Lawrence Livermore National Laboratories. The DOE also found that there was a public interest in ensuring that the conflict of interest regulations were properly applied. In weighing these interests, the DOE found that no unwarranted invasion of privacy would occur in releasing redacted versions of these documents after deletion of information which would otherwise allow the identification of the individuals involved.

Motion for Discovery

Morrison Petroleum Company, Inc., 7/9/87, KRD-0350

Morrison Petroleum Company, Inc. (Morrison) filed a Motion for Discovery in connection with its Statement of Objections to the Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firm on October 27, 1986. The DOE denied Morrison's request for contemporaneous construction discovery of § 211.67(e) and of 10 CFR 205.202 as it pertained to prohibiting the receipt of Small Refiner Bias Entitlements for crude oil refined pursuant to certain types of processing agreements. The DOE found that Morrison had not demonstrated that these regulations were so ambiguous that this discovery was relevant and necessary. The DOE also denied Morrison's request for documents regarding alleged representations made by Federal Energy Administration officials to a company doing business with Morrison, finding that Morrison had no right to rely on such representations. Finally, the DOE rejected Morrison's request for information concerning the ERA's alleged delay in issuing the PRO and the financial deterioration of Morrison's partner in the transactions at issue. The DOE found that such discovery would not provide information relevant to Morrison's laches defense. Accordingly, Morrison's Motion for Discovery was denied.

Interlocutory Order

Macmillan Oil Company, Inc., 7/10/87, KRZ-0062

On February 17, 1987, the Macmillan Oil Company, Inc. filed a Motion to Supplement the Record in a Proposed Remedial Order

proceeding (Case No. HRO–0122) with documentary material that the firm had presented in related settlement negotiations. The material which Macmillan seeks to provide relates to one of the central issues in dispute in the remedial proceeding, i.e., the calculation of the firm's product in inventory during the audit period covered by the Proposed Remedial Order. In granting the Motion, the DOE determined that admission of the material into the record could help resolve the disputed issue. The DOE also noted that the ERA had had an extended opportunity to review this material and had not objected to its inclusion into the record. The DOE concluded therefore that the enforcement proceeding would not be unduly delayed and no prejudice would result by granting the Motion.

Supplemental Order

Stripper Well Exemption Litigation, 7/7/87, KCX–0038

To implement a June 26, 1987 order of the U.S. District Court for the District of Kansas, the OHA ordered that the State Governments be deemed to have reimbursed the Federal Government for one-half of the Advance Fund made available to the States under the Stripper Well Settlement Agreement. The OHA also ordered that an additional $904,031.86 be paid to the States, since the court required a credit that was more than the amount necessary to fully repay one-half of the Advance Fund.

Refund Applications

American Steamship Company, 7/10/87, RF271–106

The Department of Energy (DOE) issued a Decision and Order approving an application submitted by the American Steamship Company (ASC) for a refund from the Rail and Water Transporters Escrow established as a result of the Stripper Well Settlement Agreement. ASC calculated its gallonage claims from purchase records for the years 1974–1981, and estimated its 1973 gallonage based on statistical data which indicated the amount of fuel consumed by each vessel on each voyage. The DOE will determine a per gallon refund amount and establish the amount of ASC's refund after it completes its analysis of all Rail and Water Transporter claims.

ANR Freight System, Inc., et al., 7/10/87, RF279–920 et al.

ANR Freight System, Inc. and nine other for-hire and private motor carriers filed Applications for Refunds from the Surface Transporters Escrow established pursuant to the Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378. The DOE examined each claim and ascertained that each of the applicants is an eligible surface transporter and no claim exceeded the gallons of petroleum products that the applicant consumed in vehicle operations. The total volume approved for refunds in this Decision and Order is 1,179,616,448 gallons.

Associated Food Stores, Inc., 7/9/87, RF270–1088

The DOE issued a Decision dismissing a company's claim for a Surface Transporter refund for failure to submit additional information to verify the firm's gallonage claim. The DOE had previously explained to the firm that an analysis of the claim could not be completed without the information and that as a result the claim would have to be dismissed if the information was not provided. Despite having received an extension of time to submit the data, Associated Food Stores did not provide the information to document its claim.

Clarke A. Phillips, Jr., 7/9/87, RF270–1113

The DOE issued a Decision approving a refund for Mr. Phillips, a bus operator, from the Surface Transporters Escrow. The refund will be based on purchases of 769,122 gallons of gasoline and motor oil during the Settlement Period.

GCO Minerals Co./Conoco, Inc., 7/6/87, RF254–3

The DOE issued a Decision and Order concerning an Application for Refund filed by Conoco, Inc., seeking a portion of the funds remitted by GCO Minerals Company pursuant to a consent order entered into between GCO and the DOE. Conoco purchased 32,466,000 gallons of propane, iso-butane, normal butane and natural gasoline from GCO during the consent order period. The DOE found that Conoco experienced a competitive disadvantage as a result of these purchases of iso-butane and normal butane from GCO. Accordingly, the DOE granted refunds equal to the volumetric refund amount for these two products. In the case of Conoco's purchases of propane and natural gasoline, the DOE found that Conoco had purchased a portion of these products at below market prices. Consequently, the refund amount for these two products was limited to an amount equal to the gallons of propane and natural gasoline that Conoco purchased at above market prices multiplied by the per gallon volumetric rate. The refund granted totals $89,624, representing $75,237 in principal plus $14,387 in interest.

Good Hope Refineries/Conoco, Inc., 7/9/87, RF189–6

The DOE issued a Decision and Order concerning an Application for Refund filed by Conoco, Inc., in the Good Hope Refineries special refund proceeding. *Good Hope Refineries*, 13 DOE ¶ 85,105 (1985). The DOE determined that Conoco was a spot purchaser of products from Good Hope and as such should be presumed not to have been injured by any alleged overcharges. Although the firm was informed of this preliminary determination, Conoco did not attempt to rebut the spot purchaser presumption. Accordingly, the refund application was denied.

Grace Distribution Service, Inc., W.R. Grace & Co., W.R. Grace & Co., 7/10/87, RF270–1099, RF270–2441, RF271–226

The DOE issued a Decision approving the Grace Distribution Service's Surface Transporter refund claim. The two claims for refunds submitted by its parent, W.R. Grace & Co., including a Rail & Water Transporter claim, were filed after the proceeding's December 15, 1986 deadline and were therefore dismissed as untimely. The Decision noted that had the two W.R. Grace claims been timely the Surface Transporter claim would have been considered together with the Grace Distribution claim and the Rail & Water claim would not have been considered because a firm and its affiliates may not receive refunds in both transportation proceedings.

Grand Trunk Western Railroad Co., Sabine Towing & Transportation Co., Prudential Lines, Inc., 7/10/87, RF271–71, RF271–75, RF271–77

The DOE issued a Decision and Order approving applications submitted by three companies for refunds from the Rail and Water Transporters (RWT) Escrow established as a result of the Stripper Well Settlement Agreement. OHA found that all three applicants had established that they were members of the RWT class, and had substantiated their purchases of the volumes of domestic petroleum products claimed in their respective applications. Accordingly, OHA approved all three applications. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Rail and Water claims.

Greyhound Lines, Inc., 7/10/87, RF270–1236

The Department of Energy issued a Decision approving the application submitted by Greyhound Lines, Inc. (Greyhound) for a refund from the Surface Transporter Escrow, established as a result of the Stripper Well Agreement. Greyhound applied for a refund based on its purchases of motor gasoline and diesel fuel between August 19, 1973 and January 27, 1981. Greyhound demonstrated that it was a Surface Transporter and documented purchases of volumes of fuel in excess of the 250,000 gallon minimum established in the *Order Establishing Surface Transporter Escrow and Prescribing Provision for Administration of the Fund*, ¶ 16. Accordingly, the application was approved, and the documented volumes will be used to calculate the applicant's final refund. The DOE stated that because the size of a Surface Transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amount of the applicant's refund will be determined at a later date. The total gallonage approved in this Decision is 536,272,476.

Lawrence Neppl Trucking, Inc., et al., 7/6/87, RF270–2357, et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for Surface Transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by six Surface Transporters and will use those gallonages as a basis for the refunds that will ultimately be issued to the six firms. The total number of gallons approved in this decision is 15,844,714.

Lockheed Air Terminal, Inc./Aspen Airways, Inc., et al., 7/8/87, RF269–1, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by 23 end-users of aviation fuel purchased from

Lockheed Air Terminal, Inc. Each applicant provided documentation of its purchase volumes of Lockheed aviation fuel. In accordance with the procedures established in the Lockheed Special Refund Proceeding, the DOE determined that the applicants should receive refunds totaling $399,663, representing $239,507 in principal and $160,156 in interest.

Marathon Petroleum Company/Ride, Inc., 7/9/87, RF250–2460, RF250–2461

The DOE issued a Decision and Order concerning Applications for Refund filed by Ride, Inc. (Ride). Ride purchased products covered by a consent order that the agency entered into with Marathon Petroleum Company. It came to the attention of the DOE that Ride was related by common ownership to Morgan Oil Company, a firm which had previously received a refund in this proceeding. Therefore, Ride's claim was considered together with the previously granted claim, and Ride was granted a refund of $10,968, representing $9,928 in principal and $1,040 in interest.

Marathon Petroleum Company/Taylor Oil Company, 7/10/87, RF250–2195

The DOE issued a Decision and Order concerning an Application for Refund filed by Taylor Oil Company (Taylor) in the Marathon Petroleum Company special refund proceeding. Taylor requested a refund based on purchases which the firm and two subsidiaries made from Marathon. The DOE determined that since the three firms were under common control during the consent order period, Taylor should receive a refund based upon the total purchases of all three entities. Although the documented purchase volumes could have supported a greater refund, the DOE found that Taylor could not receive a total refund greater than $50,000 in principal, absent a demonstration of injury. Since Taylor declined to demonstrate injury, under the 35 percent presumption of injury the firm was granted a refund of $55,238, representing $50,000 in principal and 5,238 in interest.

Mobil Oil Corporation/T.A. Wisemaan, 7/10/87, F225–6493, RF225–10736, RF225–10848

The DOE issued a Decision and Order concerning Applications for Refund filed by T.A. Wiseman, President of T.A. Wiseman, Distributor, and by Stoel, Rives, Boley, Jones & Grey (Stoel, Rives) on Mr. Wiseman's behalf. A refund had been granted in response to the application filed by Stoel, Rives, but no Decision had been issued regarding the application filed by Mr. Wiseman. After considering the record, as expanded by the application filed by Mr. Wiseman, the DOE concluded that the application filed by Stoel, Rives contained a number of inaccuracies and that the decision granting a refund in response to that application should be rescinded. The DOE also concluded that the application filed by Mr. Wiseman contained accurate information. Accordingly, the DOE ordered Stoel, Rives to remit $267 for deposit into the Mobil escrow account and granted a refund of $206 ($169 in principal plus $37 interest) to Mr. Wiseman.

Oglebay Norton Co., et al., 7/9/87, RF271–6, et al.

The DOE issued a Decision and Order approving applications submitted by 12 companies for refunds from the Rail and Water Transporters (RWT) Escrow established as a result of the Stripper Well Settlement Agreement. OHA found that all 12 applicants had established that they were members of the RWT class, and had substantiated their purchases of the volumes of U.S. petroleum products claimed in their respective applications. Accordingly, OHA approved all 12 applications. The DOE will calculate a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Rail and Water claims.

Parker Towing Company, Inc., et al., 7/10/87, RF271–85, et al.

The Department of Energy (DOE) issued a Decision and Order approving applications submitted by six water transporters for refunds from the Rail and Water Transporters Escrow established as a result of the Stripper Well Settlement Agreement. Each applicant based its gallonage claim either on purchase records or estimates derived from those records. In the case of Turecamo Coastal and Harbor Towing Corporation (Turecamo) (RF271–104) the DOE found that the firm overstated its gallonage by claiming fuel purchases for all of 1973 and 1981, rather than for only those months covered by the Settlement Agreement. Turecamo's gallonage claim was accordingly adjusted and reduced by 149,158 gallons. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Rail and Water claims.

Pinkett's Shore Lines, Inc., Canning Truck Service, Inc., Triboro Coach Corporation, 7/10/87, RF270–1181, RF270–1185, RF270–1204

The Department of Energy issued a Decision approving applications submitted by two bus companies and a trucking firm for refunds from the Surface Transporter Escrow, established as a result of the Stripper Well Agreement. Each applicant applied for a refund based on its purchases of motor gasoline and diesel fuel between August 19, 1973 and January 27, 1981. Each applicant demonstrated that it was a Surface Transporter and had purchased specified volumes of fuel in excess of the 250,000 gallon minimum established in the *Order Establishing Surface Transporter Escrow and Prescribing Provision for Administration of the Fund*, ¶ 16. The Finkett's Shore Lines, Inc. and Triboro Coach Corp.'s claims were approved in full while Canning Truck Service, Inc.'s application was denied in part to eliminate the portion of the claim that was based upon heating oil purchases. The approved volumes will be used to calculate each applicant's final refund. The DOE stated that because the size of a Surface Transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amount of the applicant's refund will be determined at a later date. The total number of gallons approved in this Decision is 11,181,787.

Rocky Mountain Moving & Storage, Inc., 7/6/87, RF270–1545

The Department of Energy (DOE) issued a Decision and Order approving 14 Applications for refund from the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. Each claimant demonstrated that it was a Surface Transporter and documented its purchases of motor gasoline and diesel fuel. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Standard Oil Company (Indiana)/Kentucky, 7/7/87, RQ21–369

The DOE issued a Supplemental Order regarding a second-stage refund application filed by Kentucky and approved in 1985. *Standard Oil Co. (Indiana)/Kentucky*, 12 DOE ¶ 85,207 (1985). The 1985 Decision required Kentucky to submit a post-plan report within two years of the date of the Decision, specifying the manner in which the funds approved by OHA had been spent. On May 19, 1987, Kentucky submitted the post-plan report showing that the residual funds approved by OHA had been transferred to the Cabinet for Human Resources to be spent on low-income weatherization. Under the circumstances and in view of the fact that the program designated is an appropriate use of second-stage monies, the OHA approved the post-plan report.

Standard Oil Company (Indiana)/Montana, 7/6/87, RM21–68

The State of Montana filed a Motion for Modification concerning the use of a portion of the second-stage refund previously allotted to it from funds made available through a consent order with Standard Oil Company (Indiana). *Standard Oil Co. (Indiana)/Montana*, 13 DOE ¶ 85,150 (19____). Specifically, Montana requested permission to use the $11,792 of principal and interest previously remitted to it for the creation of a blueprint loan library in order to fund an Energy Efficient Housing Publication. The DOE found the proposed modification to be consistent with the guidelines established in *Standard Oil Co. (Indiana)*, 11 DOE ¶ 85,185 (1983) and that it will provide consumers of heating oil and future home-owners with useful energy conservation information. Accordingly, the Motion for Modification was approved.

Valleydale Packers, et al., 7/6/87, RF270–1340, et al.

The Department of Energy (DOE) issued a Decision and Order approving the volumes of 13 Applications for Refund from the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Dismissals

The following submissions were dismissed:

Company Name and Case No.
Ambassador Cab, Inc.—RF270–410

Checker-American Cab Association—RF270–1711
Clean Machine, Inc.- HRO–0048, HRO–0049, KRD–0024, KRH–0024
Consolidated Cab Company—RF270–1710
McKesson Chemical Company—RF270–2268
Premium-ABC Company—RF270–1702
Radio Oil Company—RF250–2221
Thurman Distributors—RF238–44
Washington Cab Company—RF270–1709

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room IE–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 4, 1987.

[FR Doc. 87–21020 Filed 9–11–87; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of July 13 Through July 17, 1987

During the week of July 13 through July 17, 1987, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Tampimex Oil International, Ltd., 7/17/87; KRO–0430

The DOE issued a final Remedial Order to Tampimex Oil International, Ltd. (Tampimex). Although notified of the pendancy of this proceeding, Tampimex never filed a Notice of Objection or other response to the Proposed Remedial Order (PRO) that the Economic Regulatory Administration had issued to the firm on December 19, 1986. As a result, the DOE found that Tampimex was deemed to consent to the issuance of the PRO in final form. The DOE further found that the PRO established a prima facie case of violations of 10 CFR 212.186, 210.62(c) and 205.202 and liability therefor. However, the DOE modified the remedial provisions of the PRO to require Tampimex to remit the amount of overcharges, $689,997, plus appropriate interest to the DOE with instructions that the DOE will deposit the sum into a suitable DOE escrow account for ultimate disbursement pursuant to procedures set forth in 10 CFR Part 205, Subpart V.

Petition for Special Redress

Commonwealth of Kentucky, 7/14/87; KEG–0012

The DOE issued a Decision and Order concerning a Petition for Special Redress filed by the Commonwealth of Kentucky. Kentucky sought approval to utilize Stripper Well settlement monies to fund its Low Income Energy Assistance Trust Fund, which had been previously determined to fall outside the terms of the Stripper Well Settlement Agreement. After discussing the need for Stripper Well state plans to meet the objectives of energy conservation, energy efficiency, or renewable energy alternatives as well as the goals of timely restitution and overall balance, the DOE determined that Kentucky's program was unacceptable. The DOE found that a perpetual trust fund does not meet the standard of timeliness in restitution. Moreover the plan will not be balanced among the various sectors of injured consumers because the Commonwealth proposes to allocate all of its crude oil overcharge monies to the low-income sector. Accordingly, Kentucky's Petition for Special Redress was denied.

Request for Exception

Southeastern Oil, 7/16/87; KEE–0136

Southeastern Oil (Southeastern) filed an Application for Exception from the requirement that it file Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that Southeastern's reporting burden was not significantly different from that of other similarly-situated firms participating in the EIA–782B survey. Accordingly, exception relief was denied.

Motion for Discovery

Economic Regulatory Administration, 7/13/87; KRD–0023

The Economic Regulatory Administration (ERA) filed a Motion for Discovery relating to an Amended Proposed Remedial Order (APRO) which the ERA issued to Texaco Inc. (Texaco) on October 31, 1986. In the APRO, the ERA seeks to have Texaco perform a self-audit of its compliance with the crude oil producer price regulations, 10 CFR Part 212, Subpart D, in sales of crude oil produced from specified properties and refund any overcharges found to exist. In the Motion for Discovery, the ERA sought Texaco's responses to nineteen interrogatories and production of documents relating to objections raised by Texaco in the proceeding that: (i) There is no factual basis for assuming the existence of overcharges on the properties subject to the APRO self-audit, and (ii) the self-audit would be unduly burdensome. In considering the ERA's motion, the DOE determined that the discovery sought by the ERA relating to the first issue would not render evidence which is relevant or necessary, but that the ERA should be granted limited discovery relating to the self-audit burden which may be incurred by Texaco. Accordingly, the ERA's Motion for Discovery was granted in part.

Refund Applications

Aero Trucking, Inc., 7/17/87; RF270–1513

The Department of Energy (DOE) issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. Aero's entire claim was based on fuel purchased by the owner-operators of trucks leased by Aero. The DOE held that carriers may not receive a refund for fuel used by leased trucks where the owner-operators of those trucks were contractually responsible for fuel purchases. Consequently, Aero's claim was denied.

Beacon Oil Company/ Golden Gate Petroleum Company, 7/17/87; RF238–63

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of the Golden Gate Petroleum Company (Golden Gate), a reseller of Beacon Oil Company petroleum products. Based upon its purchases of diesel fuel and gasoline, Golden Gate applied for a refund under the procedures outlined in *Beacon Oil Co.*, 14 DOE ¶ 85,011 (1986), as modified by *Beacon Oil Co.*, 14 DOE ¶ 85,509 (1986), governing the disbursement of settlement funds received from Beacon pursuant to a December 17, 1979 Consent Order. According to those procedures, an applicant whose total refund, *including* previous credits received but not passed through to its customers in the form of reduced prices, exceeds $5,000 must demonstrate that it was injured as a result of its purchases from Beacon. In the case of Golden Gate, the DOE found that during 1980, Golden Gate had received a full refund for its Beacon gasoline purchases in the form of credit refunds totaling $244,080. Thus the request for a refund based upon the gasoline purchase was denied. On the basis of its purchases of Beacon diesel fuel during the consent order period, Golden Gate could have received a refund of $45,655. However, having received refunds in excess of the $5,000 small claims threshold in order to receive a further refund Golden Gate would have had to demonstrate injury with respect to its diesel fuel purchases or qualify for a small claims refund of $5,000 by showing that it passed through to its customers the previous motor gasoline credit refunds. Golden Gate did neither and the Application for Refund was denied.

C.C. Jones, Inc., et al., 7/17/87; RF270–299, et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow account established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption Litigation. The DOE approved the purchase volumes of refined petroleum products claimed by five trucking companies which operated as common carriers and one bus company. The DOE will use those volumes as the basis for the refunds that will ultimately be issued to the seven firms. Because the amount of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the seven firms' refunds will be determined at a later date.

Chemical Leaman Tank Lines, Inc., et al., 7/13/87; RF270–885, et al.

Chemical Leaman Tank Lines, Inc. and six other for-hire and private motor carriers filed Applications for Refund, seeking funds from the Surface Transporters Escrow established pursuant to the Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378. The DOE examined each claim and ascertained that each of the applicants is an eligible surface transporter, and that no claim exceeded the gallons of petroleum products that the applicant consumed in vehicle operations. The total volume approved in this Decision and Order is 332,967,900 gallons.

City Market, Inc., et al., 7/15/87; RF270–1339, et al.

The Department of Energy (DOE) issued a Decision and Order approving the volumes of 17 Applications for Refund from the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Dorchester Gas Corporation/Air Speed Oil Company, 7/13/87, RF253–5

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Air Speed Oil Co. in the Dorchester Gas Corporation special refund proceeding. Air Speed demonstrated that it purchased 17,321,287 gallons of motor gasoline directly from Dorchester during the consent order period. Because the applicant limited its claim to $5,000, it was not required to demonstrate injury. Accordingly, a small-claims refund of $5,000 in principal and $1,429 in interest was approved for Air Speed.

Fleet Carrier Corporation, M&G Convoy, Inc., Commercial Carriers, Inc., Janesville Auto Transport Co., Complete Auto Transit, Inc., 7/16/87, RF270–1525, RF270–1526, RF270–1527, RF270–1528, RF270–1529

The Department of Energy (DOE) issued a Decision and Order to five subsidiaries of Ryder System in connection with the administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. After adjusting the claims to eliminate gallons claimed but not actually purchased by Ryder, the DOE approved the claims and will use the adjusted gallonages as a basis for the refund that will ultimately be issued to the eight firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the firms' refund will be determined at a later date. The total number of gallons approved in this Decision is 223,794,832.

Freightway Corporation, et al., 7/16/87, RF270–1454, et al.

The Department of Energy (DOE) issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. The DOE approved, with minor adjustments, the gallonages of refined petroleum products claimed by eight transportation companies and will use those gallonages as a basis for the refund that will ultimately be issued to the eight firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the firms' refund will be determined at a later date. The total number of gallons approved in this Decision is 78,071,876.

Gary Energy Corporation/Westport Energy Corporation, Northwest Pipeline Corporation/Westport Energy Corporation, 7/14/87, RF47–22, RF116–10

The DOE issued a Supplemental Decision and Order concerning the disbursement of an escrow account established from refunds previously approved for Westport Energy Corporation in two special refund proceedings. Westport's refunds in the Gary Energy Corporation and Northwest Pipeline Corporation proceedings had been placed into an escrow account pending resolution of a DOE enforcement proceeding involving Westport. Pursuant to a bankruptcy reorganization plan approved by the firm's creditors, including the DOE, the Decision directed the transferal of 35% of the principal and interest in the account to another account designated for the receipt of the DOE's portion of the bankruptcy settlement funds. The Decision also directed the disbursement of the remaining 65% of the principal and interest in the account to the Counsel for Westport, for distribution among the firm's creditors.

Getty Oil Company/A&M Service, Inc., et al., 7/15/87, RF265–1169, et al.

The DOE issued a Decision and Order concerning 57 Applications for Refund filed by purchasers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. None of them requested or was entitled to a refund greater than the $5,000 small claims refund amount. The amount of the refunds approved in this Decision is $220,036, representing $111,150 in principal and $108,886 in accrued interest.

Getty Oil Company/Amelon's Getty Service, et al., 7/17/87, RF265–1393, et al.

The DOE issued a Decision and Order concerning 52 Applications for Refund filed by purchasers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. None of them requested or was entitled to a refund greater than the $5,000 small claims refund amount. The amount of the refunds approved in this Decision is $172,667, representing $86,845 in principal and $85,822 in accrued interest.

Green Bay and Western, et al., 7/17/87, RF271–3, et al.

The DOE issued a Decision and Order approving applications submitted by 11 companies for the refunds from the Rail and Water Transporters (RWT) Escrow established as a result of the Stripper Well Settlement Agreement. OHA found that all 11 claimants had established that they were members of the RWT class, and had substantiated their purchases of the volumes of U.S. petroleum products claimed in their respective applications. Accordingly, OHA approved all 11 applications. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all RWT claims.

Gulf Oil Corporation/Fulton Industrial Gulf Service, et al., 7/15/87, RF225–3632, et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed by retailers and resellers of Gulf refined petroleum products. The claimants applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). After examining the evidence and supporting documentation submitted by the applicants, the DOE concluded that the claimants should receive refunds totalling $21,725, representing $17,323 in principal plus $4,402 in interest.

Hare Cartage Inc., 7/17/87, RF270–2482

The DOE modified a Decision and Order it had issued in connection with its administration of the $10.75 million escrow account established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. The Decision and Order reduced the number of gallons approved for Hare Cartage, Inc. to eliminate volumes of petroleum products not used in surface transportation. The adjusted volumes will form the basis for the refund that will ultimately be issued to the firm. Because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amount of the firm's refund will be determined at a later date.

Herman Bros. Inc., et al., 7/16/87, RF270–291 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow account established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. The Decision approved the purchase volumes of refined petroleum products claimed by six trucking companies which operated common carriers and one company which operated a private fleet of trucks for over-the-road transportation. The DOE will use those volumes as the bases for the refunds that will ultimately be issued to the seven firms. The Decision states that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the seven firms' refunds will be determined at a later date.

La Porte Transit Co., Inc., 7/14/87, RF270–1141

The DOE issued a Decision approving a trucking company for a Surface Transporter refund based on purchases of 2,772,336 gallons of gasoline and diesel fuel during the Settlement Period.

Marathon Petroleum Company/Risser Oil Corporation Pace Petroleum Corporation, 7/16/87, RF250–1294, RF250–1295

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Marathon Oil Company special refund proceeding on behalf of the Risser Oil and Pace Petroleum Corporations. Each firm documented separately its purchases of motor gasoline from Marathon during the period covered by the refund proceeding. However, because the firms enjoy common ownership, their two claims were consolidated for purposes of analysis. Because the total, combined refund did not exceed the $5,000 small claims threshold, a detailed showing of injury was not necessary. The decision approved a refund of $1,182, representing $1,068 in principal and $114 in interest.

Marathon Petroleum Company/Storey Oil Company, Inc., 7/13/87, RF250–2019, RF250–2020

The DOE issued a Decision and Order granting an Application for Refund filed by Storey Oil Company, Inc. (Storey) in connection with the Marathon Petroleum Company special refund proceeding. Storey did not request a refund of more than $5,000, and was therefore not required to submit a detailed showing of injury. However, Storey is a respondent in an enforcement proceeding currently before the Office of Hearings and Appeals. As a result, pending the outcome of the enforcement proceeding, the DOE determined that the refund should be deposited in a separate interest-bearing account on behalf of Storey. The refund totals $566, representing $511 in principal and $55 in interest.

Mobil Oil Corporation/Bissell Distributing Company, et al., 7/14/87, RF225–6511, et al.

The DOE issued a Decision granting 16 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $16,728, representing $13,640 in principal plus $3,088 in interest.

Mobil Oil Corporation/Dawson Oil & Transport et al., 7/14/87, RF225–10665 et al.

The DOE issued a Decision granting 7 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The Doe granted refunds totalling $21,056, representing $17,169 in principal and $3,887 in interest.

N & B Express, Inc., Southwestern Film Service, Lewis & Michael, Inc., Country Home Bakeries, 7/14/87, RF270–2267, RF270–2276, RF270–2306, RF270–2322

The DOE issued a Decision and Order concerning four Applications for Refund from the $10.75 million Surface Transporters Escrow fund established pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. Each applicant demonstrated that it operated motor vehicles during the Settlement Period and that it was either a "for hire" carrier or a private fleet operator for purposes of this proceeding. In addition, each applicant documented purchase volumes in excess of the 250,000 gallon minimum prescribed in the Order establishing the Surface Transporters Escrow. One claim was adjusted to exclude heating oil purchases and another to exclude non-Settlement Period purchases. Accordingly, all four Applications were approved, and the respective volumes will be used to calculate each company's final refund. The total number of gallons approved in this Decision is 6,973,136.

Oats, Incorporated, et al., 7/13/87, RF270–1544, et al.

The Department of Energy (DOE) issued a Decision and Order approving the volumes of 26 Applications for Refund from the Surface Transporters Escrow, established as the result of the Settlement Agreement in the Stripper Well Exemption Litigation. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Oceana Terminal Corporation, Pacer Oil Company of Florida, Inc., Pasco Petroleum Company, Inc., Parman Oil Corporation/Kimberly-Clark, et al., 7/16/87, RF243–3, et al.

The DOE issued a Decision and Order granting Applications for Refund filed by Kimberly-Clark, Wasserman Realty Service, Carse Oil Company/Ideal Gas, Brennan Petroleum Company, Kaibab Industries/Whiting Stations, Quick Petroleum Company and Birmingham-Nashville Express. Each applicant sought a refund from one of the escrow accounts involving the Cibro, Pacer, Pasco and Parman consent order funds. Three applicants were end-users and the remaining four either retailers or resellers. All claims were less than the small claims threshold of $5,000. Accordingly, the applicants were granted refunds totalling $20,341, representing $10,612 in principal and $9,729 in accrued interest.

Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Ace Gas, Inc., 7/16/87, RF26–46

The DOE issued a Decision and Order to Ace Gas, Inc., in response to its Application for Refund filed in the Sid Richardson Carbon and Gasoline Company and Richardson Products Company (Richardson) special refund proceeding. In the application the firm submitted detailed proof of injury in connection with its purchases from Richardson, using a three-step competitive disadvantage methodology. After fully considering the claim, the DOE determined that the firm should receive a refund of 100 percent of its allocable share based upon all of its purchases during the consent order period and granted a refund of $91,703, representing $47,175 in principal plus $4,528 in interest.

Standard Oil Co. (Indiana)/Washington, et al., 7/16/87, RQ251–368, et al.

The DOE issued a Decision approving second-stage refund plans filed by the States of Washington and Iowa. In its application, Washington proposed to spend its entire share of Standard Oil Co. (Indiana) funds, excluding 4% reserved for federally-recognized Indian Tribes in the State, for traffic light signal synchronization. Iowa proposed to use its share, together with second stage monies from Coline Gasoline Corp., Vickers Energy Corp., and OKC Corp., to fund weatherization of low-income housing as well as various, unspecified projects associated with the State's Institutional Conservation Program (ICP), State Energy Conservation Program (SECP), and Energy Extension Service (EES). The DOE found that Washington's proposed traffic light synchronization project would reduce motorists' consumption of motor gasoline, thereby providing indirect restitution to injured consumers of refined petroleum products. Accordingly, Washington was granted a refund of $96,006, representing $89,101 principal and $6,905 interest for the program. In considering the Iowa submission, the DOE approved the proposal to weatherize low-income residences in the State since that would reduce energy consumption. However, the DOE found that allocating second-stage refund monies to unidentified ICP, SECP, and EES projects conferred too much discretion regarding the manner in which the funds would be spent. Accordingly, Iowa was granted $730,745 ($666,409 principal plus $64,336 interest) in Amoco II, Coline Gasoline Corp., and OKC Corp. funds for the State's weatherization program and was encouraged to submit a more specific plan for use of the remaining Amoco II and Vickers Energy Corp. funds.

Sun Transport Inc., 7/13/87, RF271–142

The Department of Energy (DOE) issued a Decision and Order dismissing an application submitted by Sun Transport, Inc. for a refund from the Rail and Water Transporters Escrow (RWT) established as a result of the Stripper Well Settlement Agreement. The DOE found that Sun was an affiliate of Sun Refining Company, a refiner which had previously received a refund from the Refiners Escrow. One of the prerequisites for an RWT refund is the waiver of payment from any of the seven other escrow accounts created in the Settlement Agreement. Such a waiver is also binding on the affiliates of a company which had previously received a payment from one of the escrows. Since the parent firm had waived any right to a RWT refund the DOE found that Sun Transport was ineligible for a RWT refund.

Westside Baber Cab Co., et al., 7/17/87, RF270–445, et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption Litigation. The DOE approved the gallonages of refined petroleum products claimed by four companies and will use those gallonages as bases for the refunds

that will ultimately be issued to the four firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the four firms' refunds will be determined at a later date.

Dismissals

The following submissions were dismissed:

Company Name and Case No.

Beacon Oil Co./Redwood Oil Co.—RF238–43
Elston Kimbell Mobil—RF225–6485
Hicks Mobil Service—RF225–6583, RF225–6599
Hughes Service Center—RF225–514
Jim's Mobil—RF225–8717
Kimbell-Elston—RF225–6579
Olson Flying Service, Inc.—RF225–6529

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room IE–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 4, 1987.

[FR Doc. 87–21021 Filed 9–11–87; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of July 27 Through July 31, 1987

During the week of July 27 through July 31, 1987, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Petition for Special Redress

California, 7/28/87, KEG–0013

The DOE issued a Decision and Order concerning a Petition for Special Redress submitted by the State of California. The State sought approval to use Stripper Well funds for two projects which the DOE's Assistant Secretary for Conservation and Renewable Energy held to be inconsistent with the terms of the Stripper Well Settlement Agreement. The DOE approved the State's proposal to use $29.555 million to fund a group of 22 public transportation projects but disapproved the State's proposal to use $5.445 million to supplement the State Transit Assistance (STA) program. The DOE determined that the 22 public transportation projects would result in increased energy conservation within the State, would have a restitutionary impact on the driving populace of the State, and are part of a large, well-balanced restitutionary program. Furthermore, the DOE found that the programs were permissible under both the 1981 Chevron consent order and OHA precedent. The DOE found, however, that the STA program, as described in the Petition, is inconsistent with the Settlement Agreement.

Motion for Evidentiary Hearing

Apache Oil Company, Inc., 7/29/87, KRH–0001

Apache Oil Co., Inc. (Apache) filed a Motion for Evidentiary Hearing in connection with a Proposed Remedial Order (PRO) issued to it by the Economic Regulatory Administration (ERA) on April 30, 1985. In the PRO, the ERA alleges that Apache charged prices for regular, premium and unleaded motor gasoline that were in excess of the maximum lawful selling prices (MLSPs) set forth in 10 CFR 212.93, as amended. The ERA imputed MLSPs for Apache since the firm claimed its records for May 15, 1973 were destroyed by flood and since Apache failed to reconstruct its May 15 selling prices. The ERA reconstructed MLSPs for Apache based on two classes of purchaser, retail and wholesale, for each of the three grades of motor gasoline, using data from Ada Oil Co. (Ada), a firm which ERA designated as Apache's nearest comparable outlet. In response to a Special Report Order (SRO) on May 29, 1980, Apache had maintained that it sold products both at the retail and wholesale levels on May 15, 1973. However, Apache now maintains that it sold products only at the retail level in May 1973, and to new markets after that date.

In its Motion for Evidentiary Hearing, Apache sought to present testimony concerning: (i) its classes of purchaser on May 15, 1973 and the allegedly new markets to which it sold products after that date; and (ii) the comparability of Apache and Ada. The OHA determined that the classes of purchaser the firm maintained on May 15, 1973 and after that date were material and relevant issues which were disputed by the parties. With respect to the second issue, the DOE determined that Apache could present witnesses and documents to demonstrate that Apache and Ada were not comparable firms. In addition, to prevail in the case, Apache was directed to present an alternative firm which was more comparable to it than Ada, since the firm failed to calculate its MLSPs or to produce records showing its MLSPs. The DOE also determined that Apache may present evidence to show that the methods used by the ERA to calculate its MLSPs were unreasonable or injurious to the firm. Finally, Apache was directed to identify the backgrounds of the witnesses it proposed to introduce at the hearing and to summarize the facts about which they would testify.

Refund Applications

Arrowhead Drinking Water Co. et al., 7/28/87, RF270–1262 et al.

The Department of Energy (DOE) issued a Decision and Order approving the volumes of eight Applications for Refund from the Surface Transporters Escrow established as the result of the Stripper Well Settlement Agreement. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Association of Independent Taxi Operators, Inc., 7/27/87, RF270–1134

The DOE issued a Decision denying a taxicab association's claim for a Surface Transporter refund. The Association provided support services to its members and operated a filling pump for its members' convenience. However, the members themselves paid for the fuel. Since the Association acted as a reseller it was not a member of the class for which the escrow was established.

The DOE rejected the Association's proposal that it receive the refund and pass it through to its members. Members of the Association had not signed claim forms agreeing to be bound by the terms of the Settlement. In addition, granting a refund claim submitted on behalf of a class or trade association would not accomplish direct restitution. The DOE distinguished the role that the Association sought to assume (as claimant) from that which other associations have assumed (as representative).

Bisom Truck Line, Inc. et al., 7/27/87, RF270–434 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by 26 companies and will use those gallonages as bases for the refunds that will ultimately be issued to the 26 firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the 26 firms' refunds will be determined at a later date.

Getty Oil Company/Aaron's Auto Service et al., 7/27/87, RF270–2063 et al.

The DOE issued a Decision and Order concerning 54 Applications for Refund filed by resellers or retailers of products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. None of them was entitled to a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $192,902, representing $97,022 in principal and $95,880 in accrued interest.

Getty Oil Company/Battan's Getty et al., 7/29/87, RF265–2274 et al.

The DOE issued a Decision and Order concerning 49 Applications for Refund filed by resellers or retailers of products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. None of them was entitled to a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $194,446,

representing $97,798 in principal and $96,648 in accrued interest.

Holmes Transportation, Inc., 7/30/87, RR270–3

Holmes Transportation, Inc. filed a Motion for Reconsideration of the dismissal of its Application for Refund from the Surface Transporters Escrow Fund. The firm's application was dismissed because it was filed after the December 8, 1986 filing deadline. In considering the Holmes Motion, the DOE pointed out that it was expected to exercise its best efforts to complete disbursement of the Surface Transporters Escrow Fund by February 7, 1988. The DOE found that since granting extensions from the deadline might result in the receipt of more applications than it could expect to analyze in the available time period, extensions should only be granted in compelling circumstances. In its application, Holmes stated that the additional time was necessary because it had difficulty in obtaining the records needed to file an application and because it did not have the personnel necessary to gather necessary information. The DOE found that these did not constitute compelling circumstances warranting the approval of an extension of time. Accordingly, the Holmes motion was denied.

Instant Air Freight Company, et al., 7/28/87, RF270–1011, et al.

The DOE issued a Decision and Order to eight firms that applied for refunds from the $10.75 million Surface Transporters Escrow fund established pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. Each applicant demonstrated that it operated motor vehicles during the Settlement Period and that it was either a "for hire" carrier or a private fleet operator for the purposes of this proceeding. In addition, each applicant demonstrated that it purchased a certain volume of eligible petroleum products above the 250,000 gallon minimum prescribed in the Order establishing the Surface Transporters Escrow. Heating oil volumes were subtracted from one claim, and volumes used in garbage trucks' power take-off units were added to another claim. Once these adjustments were made, all eight Applications were approved. The respective volumes will be used to calculate each company's final refund. The total number of gallons approved in this Decision is 8,959,568.

John R. Trucking Co., Inc. et al., 7/30/87, RF270–588 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by five trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the five firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the five firms' refunds will be determined at a later date.

Langer Transport Corp., 7/29/87, RF270–1084

The DOE issued a Decision evaluating a trucking company's claim for a Surface Transporter refund. The company's claim included volumes which the company purchased and volumes which the company's independent contractors (owner operators) purchased. The company submitted a plan outlining its intention to pass refunds through to its owner operators.

The DOE approved the company only for its own purchases. The owner operators had not signed claim forms agreeing to be bound by the terms of the Settlement. Since each owner operator's purchase volumes were lower than the minimum threshold, they were not members of the class for which the Surface Transporters Escrow was established. In addition, granting a refund to the carrier would needlessly complicate the simple alternative refund proceeding available to owner operators.

Marathon Petroleum Company/Allied Oil Co., et al., 7/31/87, RF250–2672 et al.

Allied Oil Company, Tresler Oil Company, Ashland Petroleum Company, and General Oils Co., Inc., resellers of petroleum products, each filed an Application for Refund, seeking a portion of the funds remitted by Marathon Petroleum Company, pursuant to a consent order that Marathon entered into with the Department of Energy. Because all of the applicants are affiliated companies of Ashland Oil, Inc., the DOE combined their claims for refund evaluation purposes. Since none of the applicants attempted to demonstrate injury, the DOE granted 35% of the volumetric share of the applicants in accordance with the presumption of injury established in the *Marathon* special refund proceeding. The principal refund amount granted in this Decision was $6,453.83, plus $707.51 in accrued interest.

Mobil Oil Corp./Adirondack Central School et al., 7/27/87, RF225–8520 et al.

The DOE issued a Decision and Order granting 48 applications of end-users and retailers requesting refunds from the Mobil Oil Corporation consent order fund. Each applicant presented evidence that it purchased refined petroleum products from Mobil during the consent order period. The end-user applicants purchased product both directly and indirectly supplied by Mobil. According to the methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985) (*Mobil*), each applicant was found to be eligible for a refund from the Mobil consent order fund based on the volume of its purchases imes 100 percent of the volumetric refund amount if it purchased product directly from Mobil, and times 60 percent of the volumetric refund amount if it purchased motor gasoline indirectly from Mobil. End-users who purchased Mobil products other than motor gasoline indirectly received the full volumetric refund amount. Six of the applications were filed by retailers supplied directly by Mobil. According to the presumptions set forth in *Mobil*, these applicants were eligible for a refund from the Mobil consent order fund based on the volume of their motor gasoline purchases times 30 percent of the volumetric refund amount. Retailers of products other than motor gasoline received the full volumetric refund amount. The refunds approved in the Decision totaled $49,921.

Mobil Oil Corporation/Bob Anderson et al., 7/28/87, RF225–3785 et al.

The DOE issued a Decision granting 31 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers, resellers, and end-users of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $54,830 ($44,708 principal plus $10,122 interest).

Moore Business Forms & Systems, Reeves Transportation Company, Joseph Cory Delivery Services, Inc., 7/28/76, RF270–1188, RF270–1190, RF270–1195

The Department of Energy issued a Decision approving applications for refunds from the Surface Transporter Escrow, established as a result of the Stripper Well Agreement, which were submitted by two companies that operated a private fleet and a trucking company. Each applicant applied for a refund based on its purchases of motor gasoline and diesel fuel between August 19, 1973 and January 27, 1981. Each applicant demonstrated that it was a Surface Transporter and purchased a certain volume above the 250,000 gallon minimum established in the *Order Establishing Surface Transporter Escrow and Prescribing Provision for Administration of the Fund*, ¶ 16. Accordingly, all three applications were approved, and the respective volumes will be used to calculate each applicant's final refund. The DOE stated that because the size of a Surface Transporter applicant's refund will depend upon the number of gallons that are ultimately approved, the actual amount of the applicant's refund will be determined at a later date. The total number of gallons approved in this Decision is 11,799,398.

Pulley Freight Lines, Inc., Floyd & Beasley Transfer Co., Inc., Churchill Truck Lines, Inc., 7/28/87, RF270–1032, RF270–1039, RF270.1071

The DOE issued a Decision and Order concerning three Applications for Refunds from the $10.75 million Surface Transporters Escrow fund established pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. Each applicant demonstrated that it operated motor vehicles during the Settlement Period and that it was a "for hire" carrier for the purposes of this proceeding. In addition, each applicant demonstrated that it purchased a certain volume of eligible petroleum products above the 250,000 gallon minimum prescribed in the Order establishing the Surface Transporters Escrow. Accordingly, all three Applications were approved, and the respective volumes will be used to calculate each company's final refund. The total number of gallons approved in this Decision is 68,045,827.

R.A.C. Holding, Inc, 7/27/87, RF270–1182

The Department of Energy issued a Decision denying the application submitted by R.A.C. Holding, Inc. (R.A.C.) for a refund from the Surface Transporter Escrow established as a result of the Stripper Well

Agreement. R.A.C. applied for a refund based on its purchases of motor gasoline between August 19, 1973 and January 27, 1981. R.A.C. is a vehicle rental company and the definition of "Surface Transporter" specifically excludes car rental companies. *See Order Establishing Surface Transporters Escrow*, ¶ 16.

Rocky Ford Moving Vans et al., 7/30/87, RF270–3 et al.

The Department of Energy (DOE) issued a Decision and Order approving 30 Applications for Refund from the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. The applicants, all "for hire" trucking companies or private fleets of trucks, applied for refunds based on purchases of diesel fuel, motor gasoline, motor oil, and lubricating oils between August 19, 1973 and January 27, 1981. The DOE's Decision approved 29 of the companies purchase volumes as set forth in their applications and one company's adjusted volumes. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Stang Enterprises, Inc. et al, 7/31/87, RF270–391 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by 20 companies and will use those gallonages as bases for the refunds that will ultimately be issued to the 20 firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the 20 firms' refunds will be determined at a later date.

Dismissals

The following submissions were dismissed:

Name and Case No.

General Electric Co.—RF225–8123, RF225–8124, RF225–8125.
Holland Industries, Inc.—RF270–1149.
Irving Eugene King—RF270–2321.
Salt River Project, Agricultural Improvement and Power District—RF272–368.
Trigon Exploration, Inc.—KRO–0110.
Yellow Cab Company—RF270–2351.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

September 4, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 87–21022 Filed 9–11–87; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 4, 1987.

Background

Notice is hereby given of final approval of proposed information collection by the Board of Governors of the Federal Reserve System under OMB delegated authority as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Board is not publishing notice of the proposed collection for public comment because to do so would substantially interfere with the Board's duty under section 4(f)(6) of the Bank Holding Company Act, as amended, 12 U.S.C. 1843(f)(6). That section provides that nonbanking companies that controlled a nonbank on March 5, 1987, must file a report with the board by October 9, 1987, in order to qualify for certain grandfather privileges. As the report must be filed within 60 days of the amended statute taking effect, the Board could not go through the normal notice and comment procedures and at the same time provide meaningful guidance on the report to the prospective respondents.

FOR FURTHER INFORMATION CONTACT:

J. Virgil Mattingly, Jr., Deputy General Counsel, Legal Division (202–452–3430), Board of Governors of the Federal Reserve System, Washington, 20551;

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington 20551 (202–452–3822).

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340)

Report Title: Report by Certain Companies Controlling Nonbank Banks.

Agency form number: FR 3040.

OMB docket number: 7100–0225.

Frequency: One-time.

Reporters: Nonbanking companies that owned a nonbank bank as of March 5, 1987.

Annual reporting hours: 240.

A significant number of small entities will not be substantially affected.

General description of report:

A nonbanking company that controlled a nonbank on March 5, 1987, that wishes to establish its qualifications for certain grandfather privileges must file by October 9, 1987, the name and address of the company, the name and address of each bank the company controls, and a description of each bank's activities.

There is no report form, as such, but the Board has published guidelines for those who file the report. A copy of the guidelines is available from the Board or from each Federal Reserve Bank.

Board of Governors of the Federal Reserve System, September 4, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–21002 Filed 9–11–87; 8:45 am]

BILLING CODE 6210–01–M

Applications To Engage de novo in Permissible Nonbanking Activities; Bank of Boston Corp. et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing,

identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 1, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation,* Boston, Massachusetts; to engage *de novo* through its subsidiary, BancBoston Financial Company, Boston, Massachusetts, in factoring activities pursuant to § 225.25(b)(1)(v) of the Board's Regulation Y. Applicant proposes to continue to engage in factoring activities in Taiwan and Hong Kong and to expand the service area to worldwide.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Marine Midland Banks, Inc.,* Buffalo, New York; The Hong Kong and Shanghai Banking Corporation, Hong Kong; HSBC Holdings B.V., Amsterdam, The Netherlands; and Kellett N.V., Curacao, Netherlands/Antilles; to engage *de novo* through their subsidiary, Subaru Credit Corporation, Buffalo, New York, in making and servicing loans, as are made by consumer finance and commercial finance companies, and in leasing personal property pursuant to § 225.25 (b)(1) and (b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–20999 Filed 9–11–87; 8:45 am]

BILLING CODE 6210–01–M

Acquisitions of Shares of Banks or Bank Holding Companies; First Minnetonka City Bank Employees Profit Sharing Plan

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 29, 1987.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Minnetonka City Bank Employees Profit Sharing Plan and Trust,* Minnetonka, Minnesota; to acquire an additional 10.09 percent of the voting shares of First Minnetonka Bancorporation, Inc., Minnetonka, Minnesota.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Robert V. Kelley,* Burbank, California, to acquire 31.5 percent of the voting shares of BNB Bancorp, Burbank, California, and thereby indirectly acquire Burbank National Bank, Burbank, California.

Board of Governors of the Federal Reserve System, September 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–21000 Filed 9–11–87; 8:45 am]

BILLING CODE 6210–01–M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; The Summit Bancorporation et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 1, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Summit Bancorporation,* Summit, New Jersey; to merge with Yardville National Bancorp, Yardville, New Jersey, and thereby indirectly acquire the Yardville National Bank, Yardville, New Jersey.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.,* Atlanta, Georgia; to acquire 100 percent of the voting shares of SunTrust BankCard, N.A., Atlanta, Georgia, a *de novo* bank.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Chester County Bancshares, Inc. II,* Henderson, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Chester County Bank, Henderson, Tennessee.

2. *Independent Community Bancorp, Inc.,* Frankfort, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Kentucky Independent Bank, Inc., Frankfort, Kentucky, a *de novo* bank.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Allen Bancshares, Inc.,* Olathe, Kansas; to become a bank holding company by acquiring 88.13 percent of the voting shares of Olathe State Bank, Olathe, Kansas.

Board of Governors of the Federal Reserve System, September 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–21001 Filed 9–11–87; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Institute of Mental Health, Neurosciences Research Review Committee; Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's

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initial review committees in the month of October 1987. These committees will be open for discussion of administrative announcements and program developments. The committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92–463.

Committee Name: Neurosciences Research Review Committee, NIMH.

Date and Time: October 7–9: 8:30 a.m.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue NW., Washington, DC 20007.

Status of Meeting:

Open—October 7: 8:30–9:30 a.m.
Closed—Otherwise

Contact: Gerry Perlman, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3944.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: October 8–9: 9:00 a.m.

Place: Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting:

Open—October 8: 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Pamela I. Mitchell, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: October 8–9: 9:00 a.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Status of Meeting:

Open—October 8: 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Frances Smith, Room 9C02, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4868.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities in the fields of treatment development and assessment, and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.

Date and Time: October 8–10: 9:00 a.m.

Place: Canterbury Hotel, 1733 N Street NW., Washington, DC 20036.

Status of Meeting:

Open—October 8: 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Dorothy Tengood, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cognition, Emotion, and Personality Research Review Committee, NIMH.

Date and Time: October 9–10: 9:00 a.m.

Place: The Henley Park Hotel, 926 Massachusetts Avenue NW., Washington, DC 20001.

Status of Meeting:

Open—October 8: 9:00–10:00 a.m.
Closed—Otherwise

Contact: Shirley Maltz, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3944.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the fields of personality, cognition, emotion, and higher mental processes, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Clinical Program Projects and Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: October 15–16: 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting:

Open—October 15: 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Pamela J. Mitchell, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of Mental Health Clinical Research Centers, clinical program projects, and other large-scale multi-disciplinary research projects, and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Clincial and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.

Date and Time: October 19–21: 9:00 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Status of Meeting:

Open—October 19: 9:00–9:30 a.m.
Closed—Otherwise

Contact: Thomas D. Sevy, Room 16C26, Parklawn Bulding, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities, and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Drug Abuse Epidemiology and Prevention Research Review Committee, NIDA (foremerly Drug Abuse Epidemiology, Prevention, and Services Research Review Committee).

Date and Time: October 19–22: 8:30 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting:

Open—October 19: 8:30–9:30 a.m.

Closed—Otherwise

Contact: Ron Gold, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.

Date and Time: October 20–23: 8:30 a.m..

Place; Halpine Room, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting:

Open—October 20: 8:30–8:45 a.m.
Closed—Otherwise

Contact: Yuth Nimit, 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for fiscal review.

Committee Name: Drug Abuse Clinical and Behavioral Research Review Committee, NIDA.

Date and Time: October 20–23: 9:00 a.m.

Place: Parklawn Room, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting:

Open—October 20: 9:00–9:30 a.m.
Closed—Otherwise

Contact: Daniel Mintz, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rocville, MD 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Pharmacology Research Subcommittee of the Drug Abuse Biomedical Research Committee, NIDA.

Date and Time: October 20–23: 8:30 a.m.

Place: Woodmont Room, Holiday Inn Crowne Plaza, 1750 Rockville Pike. Rockville, MD 20852.

Status of Meeting:

Open—October 20: 8:30–8:45 a.m.
Closed—Otherwise

Contact: Heinz Sorer, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Prevention and Epidemiology Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.

Date and Time: October 21–23: 9:00 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Status of Meeting:

Open—October 21: 9:00–10:30 a.m.
Closed—Otherwise

Contact: Thomas D. Sevy, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6160.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommenations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Aging Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.

Date and Time: October 22–23: 9:00 a.m.

Place: Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

Status of Meeting:

Open—October 22: 9:00—9:30 a.m.
Closed—Otherwise

Contact: Jean Byrne, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health, in the fields of child, family, and aging, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Mental Health Behavioral Sciences Research Review Committee, NIMH.

Date and Time: October 22–24: 9:00 a.m.

Place: Canterbury Hotel, 1733 N Street NW., Washington, DC 20036.

Status of Meeting:

Open—October 22: 9:00–10:00 a.m.
Closed—Otherwise

Contact: Cathy Oliver, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to behavorial sciences areas relevant to mental health, and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

Date and Time: October 28–30: 9:00 a.m.

Place: Embassy Suites, 1250 22nd Street NW., Washington, DC 20037.

Status of Meeting:

Open–October 28: 9:00:–11:00 a.m.
Closed–Otherwise

Contact: Samir Zakhari, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities, and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Criminal and Violent Behavior Research Review Committee, NIMH.

Date and Time: October 28–30: 9:15 a.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

Status of Meeting:

Open–October 28: 9:15–10:30 a.m.
Closed–Otherwise

Contact: Peg Lyons, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications

for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to the mental health aspects of criminal, delinquent, and antisocial behavior; individual violent behavior; sexual assault; and law-mental health interactions related to these areas, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Research Scientist Development Review Committee, NIMH.

Date and Time: October 28–30: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Status of Meeting:

Open–October 28: 9:00–10:00 a.m.

Closed–Otherwise

Contact: Linda Rainey, Room 9C05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for the support of individuals who are engaged full time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Substantive information may be obtained from the contact persons listed above. Summeries of the meetings and rosters of committee members may be obtained as follows: NIAAA: Ms. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375; NIDA: Ms. Camilla Holland, Committee Management Officer, Room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1644; NIMH: Ms. Joanna Kieffer, Committee Management Officer, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Date: September 8, 1987.

Peggy W. Cockrill

Committee Managment Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87–21016 Filed 9–11–87; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 87N–0306]

Drug Export; Duralith™ (Lithium Carbonate) C.R. Tablets, 300 mg.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Forest Laboratories, Inc., has filed an application requesting approval for the export of the human drug Duralith™ (Lithium Carbonate) C.R. Tablets, 300 mg. to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Forest Laboratories, Inc., 150 East 58th Street, New York, New York 10155–0015, has filed an application requesting approval for the export of the drug Duralith™ (Lithium Carbonate) C.R. Tablets, 300 mg. to Canada. The drug is indicated for use in the treatment of manic episodes of manic-depressive illness. The application was received and filed in the Center for Drugs and Biologics on September 2, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 24, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: September 4, 1987.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87–21052 Filed 9–11–87; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute (NCAB Subcommittee on AIDS); Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board Subcommittee on AIDS, National Cancer Institute. This meeting, originally scheduled for September 29, 1987, 7:30 p.m., Building 31C, Conference Room 7, Bethesda, Maryland 20892, was published in the **Federal Register** (52 FR 33474) on September 3.

This Subcommittee meeting is being rescheduled to convene on September 29 immediately following the Subcommittee on Special Actions for Grants meeting. The Subcommittee on Special Actions for Grants is to meet at 8:30 a.m. until the completion of the review of grant applications. It will be held in Building 31C, Conference Room 8, Bethesda, Maryland 20892.

The meeting will be open to the public for the discussion of the National Cancer Institute's involvement in AIDS research.

Dated: September 4, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-21067 Filed 9-11-87; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Biology and Diagnosis; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Biology and Diagnosis, National Cancer Institute, November 3, 1987, Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be devoted to program review and to concept review of proposed NCI research initiatives and will be open to the public on November 3 from 9 a.m. to adjournment. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summary minutes of the meeting and roster of committee members.

Dr. Ihor J. Masnyk, Deputy Director, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31, Room 3A03, National Institutes of Health, Bethesda, Maryland 20892 (301/496-3251) will provide substantive program information.

Dated: September 4, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-21068 Filed 9-11-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Issuance of Research Plan for the NIEHS Superfund Hazardous Substances Basic Research Program

Notice is hereby given of the issuance and availability of the plan for the implementation of a program of university-based research and training grants authorized by section 322(a) of the Comprehensive Environmental Response, Compensation of Liability Act (42 U.S.C. 9601) as amended by section 203 of the Superfund Amendments and Reauthorization Act (42 U.S.C. 9660a).

The plans and priorities for the NIEHS Hazardous Substances Basic Research Grants program were previously described in meeting announcements published in the **Federal Register** of November 28, 1986 (51 FR 43089-43092) and March 9, 1987 (52 FR 7218-7223). Public comment was solicited regarding the plans and priorities. Following the public meeting, the two program descriptions were consolidated into the draft "NIEHS Superfund Hazardous Substances Basic Research Plan" and submitted to the NIEHS Advisory Council on Hazardous Substances Research and Training for review and comment at the July 20, 1987, meeting published in the **Federal Register** June 30, 1987 (52 FR 24346).

The final version of the plan for implementation, entitled "The NIEHS Hazardous Substances Basic Research and Training Plan" is now available from Mr. Daniel VanderMeer, Office of Program Planning and Evaluation, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709. (Phone: 919 541-3484 or FTS 629-3484.)

Dated: September 8, 1987.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 87-21069 Filed 9-11-87; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Delegation of Authority; Health Care for the Homeless, Section 340 of the Public Health Service Act

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on January 14, 1981, (46 FR 10016) by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration, with authority to redelegate, the authority under section 340 of the Public Health Service Act (42 U.S.C. 256), as amended, pertaining to Health Care for the Homeless. Previous delegations and redelegations made to officials within the Public Health Service of authorities under section 340 of the Public Health Service Act may continue in effect provided they are consistent with this delegation.

The above delegation was effective on September 2, 1987.

Date: September 2, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87-21017 Filed 9-11-87; 8:45 am]

BILLING CODE 4160-15-M

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 36163-7, August 19, 1975, as amended by 52 FR 15383, April 28, 1987) is amended to reflect a revision in the function of the National Institute of Mental Health. This revision of function is necessary in preparation for the transfer of Saint Elizabeths Hospital to the District of Columbia in October 1987, in accordance with Pub. L. 98-621. The transfer requires a revision of the functional statements of the Office of the Director, National Institute of Mental Health.

Section HMM, Organization and Functions, is amended as follows:

In the functional statement for the *National Institute of Mental Health,* insert an "and" before item (6) change the semicolon after item (6) to a period, and delete item (7).

Section HM-B, Organization and Functions, is amended as follows:

In the functional statement for the *Division of Intramural Research Programs HMMB,* delete item (3), and insert the following as item (3): "(3) provides a focus for national attention in the area of mental health research."

These organizational changes will be effective October 1, 1987.

Date: August 31, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87-21039 Filed 9-11-87; 8:45 am]

BILLING CODE 4160-20-M

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records 09-15-0054, "Health Care Practitioner Adverse Credentialing Data Bank, HHS/HRSA/BHPr." Routine uses for this new system also are proposed.

DATE: PHS invites interested parties to submit comments on the proposed routine use on or before October 14, 1987. PHS has sent a Report of a New System of Records to Congress and the

BEST COPY AVAILABLE

Office of Management and Budget (OMB) on September 8, 1987. The new system of records will be effective 60 days from the date submitted to OMB, unless PHS receives comments which would result in a contrary determination.

ADDRESS: Please address comments to the HRSA Privacy Act Coordinator, Department of Health and Human Services, Parklawn Building, Room 14A–20, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–3780. This is not a toll-free number. Comments received will be available for public inspection at the above address during normal business hours, 8:30 a.m.–5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth P. Moritsugu, Acting Deputy Director, Bureau of Health Professions, Parklawn Building, Room 8–05, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301 443–5796. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), proposes to establish a new system of records for the purpose of: (1) Collecting from insurance companies, health care entities, and State licensing boards information affecting the professional qualifications of health care practitioners; and (2) disseminating data on adverse actions taken against health care practitioners to health care entities, which may employ them and to State licensure boards, as mandated by law.

A. The Department of Health and Human Services (DHHS) through a contractor will establish a data bank to collect and disseminate information concerning: (1) Medical malpractice actions or claims for which payment is made; (2) licensure disciplinary actions by Boards of Medical Examiners, and (3) adverse actions on clinical privileges taken by health care entities.

The data bank will be maintained by a private contractor, whose name, address, and telephone number will be announced in the final publication of the system notice. The contractor will be required to maintain Privacy Act safeguards with respect to this records system.

Definitions in this system notice:

The term "health care practitioner" includes physicians, dentists, nurses, optometrists, pharmacists, podiatrists, and other health care practitioners licensed or otherwise authorized by a State.

The term "Board of Medical Examiners" includes any such Board, a body comparable to such a Board (as determined by a State) with the responsibility for the licensing of physicians, and any subdivision of such a Board or body.

The term "Health Care Entity" includes a hospital, health maintenance organization, or group medical practitioner.

B. The Privacy Act permits disclosure of information without the consent of the subject individual for "routine uses," that is, disclosure which is compatible with the purpose for which the data are collected. Accordingly, six routine uses for information in this system of records have been established.

The first routine use permits disclosure to each hospital concerning a health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital and for the purpose of screening such individuals who apply for a staff position or clinical privilege at the hospital. Records may also be disclosed to a hospital at such other times as it requests them. This enables the hosptial to meet the requirement of the Health Care Quality Improvement Act of 1986 which provides that each hospital every two years shall request information from the system on each practitioner on its medical staff or holding clinical privileges.

The second routine use will permit HRSA to disclose records to other health care entities, such as health maintenance organizations and group medical practices which provide health care service and follow a formal professional review process, as they enter an employment or affiliation relationship with a health care practitioner, or to which the health care practitioner has applied for clinical privileges or appointment to the medical staff. The purpose of the disclosures is to further the quality of the health care provided by these entities.

The third routine use will permit HRSA to disclose to a State licensing board conducting a review of the individual to aid the Board in meeting its responsibility to protect the health of the population in its jurisdiction.

The fourth routine use will permit HRSA to disclose records to an attorney who has filed a malpractice action or claim on behalf of a client with State or Federal court or other adjudicatory body regarding a specific health care practitioner, for use solely with respect to litigation resulting from the action or claim.

The fifth routine use will permit disclosure to any Federal entity, employing a health care practitioner or having the authority to sanction such practitioners covered by a Federal program, which (a) enters into a memorandum of agreement with HHS, (2) conducts a formal professional review process in determining an adverse action against a practitioner, and (3) maintains a Privacy Act system of records regarding information collected on the health care practitioners it employs. The purpose of the disclosure is to further the quality of the health care provided by these entities.

These Federal entities include the Department of Defense and the Veterans Administration, which will contribute data to and withdraw data from the system. They will request data on their staff every two years and also will check with the system on a practitioner prior to reaching a medical staff or clinical privileging affiliation agreement with the individual.

The sixth routine use provides for disclosure to the Department of Justice should the Department become a defendant in litigation to enable the Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

C. Safeguards have been established to insure that no unauthorized personnel has access to this information. The safeguards in this notice have been prepared to reflect the minimum safeguards which HRSA and the contractor will maintain. Safeguards will be periodically reviewed by the Project Officer, ADP Systems Security Officer, and the Contractor to assure the confidentiality and security of the data is strictly enforced.

Dated: September 9, 1987.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management, PHS.

09–15–0054

SYSTEM NAME:

Health Care Practitioner Adverse Credentialing Data Bank, HHS-/HRSA/BHPr.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records in this system will be located at a facility under contract to the Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA). The contractor and facility location(s) will be announced in the final publication of this system notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Health care practitioners, including physicians, dentists, nurses, optometrists, pharmacists, podiatrists, and all other health care practitioners licensed or otherwise authorized by a State, against whom specified adverse credentialing actions have been taken or for whom malpractice compensation has been paid.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *For malpractice compensation.* The health care practitioner's name(s); work and home addresses; professional school attended with date of graduation; license number(s); board certification; Drug Enforcement Administration (DEA) registration number; Social Security number if known; known hospital affiliations; the name and address of the entity, such as insurance companies, paying as well as the name, title, and phone number of the individual reporting on behalf of the paying entity; the file number on the claim; date of incident; date of judgment or settlement; and amount of payment with the terms.

2. *For State Medical Board action.* Health Care Practitioner's name(s); work and home addresses; professional school attended with date of graduation; license number(s); board certification; DEA number; Social Security number if known; the Board action, such as revocation or suspension of the physician's license, censures, reprimands, or placing individual on probation; classification of the action by code, and date of action with the effective date.

3. *For adverse clinical privilege action.* Health Care Practitioner's name(s), work and home addresses, professional school attended with date of graduation, license number(s), board certification, DEA number, Social Security number if known; action taken, and date of action with the effective date.

For categories 1, 2, and 3, a brief description of the acts or omissions and injuries or illnesses upon which the action or claim was based also is included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Health Care Quality Improvement Act of 1986, section 424(b) (42 U.S.C. 11134(b)) authorizes the maintenance of records of medical malpractice payments, disciplinary actions taken by Boards of Medical Examiners, and professional review actions taken by health care entities.

PURPOSE(S):

The purpose of the system is to: (1) Collect from insurance companies, health care entities, and State licensing boards information affecting the professional qualifications of health care practitioners; and (2) disseminate data on adverse actions taken against health care practitioners to health care entities, which may employ them, and to State licensure boards, as mandated by law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

HRSA may disclose data to:

1. Each hospital requesting data concerning a health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital, and for the purpose of screening the professional qualification of such individuals who seek staff positions or clinical privileges at the hospital. Records also may be disclosed to a requesting hospital at such other times as it needs them. This enables the hospital to meet the requirement of the Health Care Quality Improvement Act of 1986 which also requires each hospital every two years to request data from the system regarding each practitioner on its medical staff or who holds clinical privileges.

2. Other health care entitites, such as health maintenance organizations and group medical practices which provide health care services and follow a formal professional review process, as they enter an employment or affiliation relationship with a health care practitioner, or to which the health care practitioner has applied for clinical privileges or appointment to the medical staff. The purpose of the disclosures is to identify health care practitioners whose qualification may be unsatisfactory.

3. A State licensing board conducting a review of the individual to aid the Board in meeting its responsibility to protect the health of the population in its jurisdiction.

4. An attorney who has filed a malpractice action or claim on behalf of a client with a State or Federal court or other adjudicatory body regarding a specific health care practitioner for use solely with respect to litigation resulting from the action or claim.

5. Any Federal entity, employing a health care practitioner or having the authority to sanction such practitioners covered by a Federal program, which (1) Enters into a memorandum of agreement with HHS; (2) conducts a formal professional review process in determining an adverse action against a practitioner; and (3) maintains a Privacy Act system of records regarding the health care practitioners it employs.

This includes the Department of Defense and the Veterans Administration which will contribute data to and withdraw data from the system. They will request data on their staff every two years and also will request information on a practitioner who seeks a medical staff position or clinical privileges.

6. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to effect directly the operation of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an indvidual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclousure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, magnetic tape, and disc packs.

RETRIEVABILITY:

At least two identifier levels will be used, such as: (1) Name, individual practitioner's identifying number assigned in the system; and (2) professional school attended and date of graduation. Other identifiers may be State license number(s), Federal and State Drug Enforcement Administration registration numbers, and Social Security number if known.

SAFEGUARDS:

1. Authorized Users: Access is limited to authorized BHPr and contract personnel responsible for administering the program. Authorized personnel include the System Manager and Project Officer, and HRSA ADP Systems Security Officer; and the contractor's employees and officials, computer personnel, and program managers who have responsibilities of implementing

the program. Both HRSA and the contractor shall maintain current lists of authorized users.

2. Physical Safeguards: Magnetic tapes, disc packs, computer equipment, and hard copy files are stored in areas where fire and life safety codes are strictly enforced. All automated and nonautomated documents are protected on a 24 hour basis in locked storage areas. Security guards perform random checks on the physical security of the records storage areas.

3. Procedural Safeguards: A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. All authorizing users will sign a nondisclosure statement.

Access to records is limited to those staff members trained in accordance with the Privacy Act and ADP security procedures. The contractor is required to assure the confidentiality safeguards of these records and to comply with all provisions of the Privacy Act. All individuals who have access to these records must have the appropriate ADP security clearances. Privacy Act and ADP system security requirements are included in the contract. The BHPr Project Officer and the System Manager oversee compliance with these requirements. HRSA authorized users will make site visits to the contractor's facilities to assure security and Privacy Act compliance.

The safeguards described above were established in accordance with DHHS Chapter 45–13 and supplementary Chapter PHS hf: 45–13 of the General Administration Manual; and the DHHS Information Resources Management Manual, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Each record shall be disposed of 15 years beyond the known death date of the practitioner or 15 years beyond the date of an individual's estimated age of 70. This retention span is established because imposters frequently claim the credentials of deceased practitioners in order to attempt to "provide care."

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Bureau of Health Professions, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURES:

Requests by mail: To determine if a record exists about you, write to the contractor operating the bank (see SYSTEM LOCATION). The request must contain the name and address of the individual, the identifier number assigned to that practitioner by the system with the first admission of data about him/her into the bank, the name of the professional school attended and the date of graduation, license number(s), State and Federal Drug Enforcement Administration registration number, Social Security number if the individual wishes to provide it; a written statement that the requester is the person he/she claims to be and that he/she understands that the request or acquisition of records pertaining to another individual under false pretenses is a criminal offense subject to a $5,000 fine.

Requests in person: The individual must meet all the requirements stated above for a request by mail, providing the information in written form. The individual should recognize that in order to maintain confidentiality, and thus the accuracy of data released through repeated internal verification, securing the information by request in person will be time consuming.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also provide a reasonable description of the record being sought. Requesters also may request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Any physician or health care practitioner may dispute the accuracy of information in the data system concerning himself/herself.

1. *Procedures for filing a dispute.* The practitioner:

a. informs the System Manager and the reporting entity, in writing, of the disagreement, and the basis for it;

b. requests simultaneously that the disputed information be entered into a "disputed" status and be reported to inquirers as being in a "disputed" status; and

c. enters into discussion with the reporting entity to resolve the dispute.

2. *Procedures for revising disputed information.*

a. If the reporting entity revises the information originally submitted to the data system, the System Manager will notify all entities to whom reports have been sent that the original information has been revised.

b. If the reporting entity fails to revise the reported information, the System Manager will, upon request, review the written information submitted by both parties (the physician or health care practitioner and the reporting entity), and related information which is available, including, but not limited to, that available from malpractice insurers. test examination results, State administrative procedures and judicial decisions, and the Health Care Financing Administration. After review, the System Manager will either:

(1) Continue to note the information as "disputed," and include a brief statement by the physician or health care practitioner describing the disagreement concerning the information; or

(2) Send corrected information to previous inquirers if the System Manager concludes that the information was incorrect.

RECORD SOURCE CATEGORIES:

Individuals whose records are contained in the system; insurance companies which have paid or are paying malpractice settlements or judgments; State Medical Boards; State Dental Boards; State Licensing Boards, health care entities; the Drug Enforcement Agency; and Federal organizations who employ health care practitioners.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 87–21174 Filed 9–11–87; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–07–4111–15; W–76517]

Proposed Reinstatement of Terminated Oil and Gas Lease; Fremont County, WY

September 4, 1987.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–76517 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–76517 effective May 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Fred O'Ferrall,

Acting Chief, Leasing Section.

[FR Doc. 87–21005 Filed 9–11–87; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–07–4111–15; W–75062]

Proposed Reinstatement of Terminated Oil and Gas Lease; Natrona County, WY

September 4, 1987.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–75062 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of the **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–75062 effective July 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Fred O'Ferrall,

Acting Chief, Leasing Section.

[FR Doc. 87–21006 Filed 9–11–87; 8:45 am]

BILLING CODE 4310–22–M

Minerals Management Service

Outer Continental Shelf Operations; Southern California OCS, Lease Sale

AGENCY: Minerals Management Service, Pacific OCS Region, Interior.

ACTION: Announcement of public scoping meetings for Proposed Offshore Oil and Gas Lease Sale 95, southern California.

SUMMARY: This notice announces four public scoping meetings to be held regarding the proposed Offshore Oil and Gas Lease Sale 95, southern California. The purpose of these scoping meetings is to indicate the area to be studied, gather public information, identify sale related issues and concerns, and review the offshore leasing process. The meetings will be held in Santa Maria, Ventura, Long Beach, and Oceanside, California.

DATES AND ADDRESSES: The public meeting dates and locations are as follows: October 14, 1987, Santa Maria Inn, 801 S. Broadway, in Santa Maria, CA.; October 16, 1987, McBride Building, Ventura County Fairgrounds, 10 W. Harbor Blvd., in Ventura, CA; October 20, 1987, Long Beach Convention and Entertainment Center, 300 E. Ocean Blvd., in Long Beach, CA.; and October 22, 1987, El Camino Country Club, 3202 Vista Way in Oceanside, CA. An opportunity to make public statements will be provided at each meeting. All four meetings will begin at 9 a.m. and continue until 8 p.m. or until all information is received. The written scoping comment period closes October 9, 1987. Written scoping comments should be sent to the address below, however written statements submitted at the scoping meetings will be considered and evaluated.

FOR FURTHER INFORMATION CONTACT: George W. Hampton, Sale 95 EIS Coordinator, Environmental Assessment Section, Office of Leasing and Environment, Minerals Management Service, 1340 West Sixth Street, Los Angeles, CA 90017. (213) 894–6744, or FTS 798–6744.

SUPPLEMENTARY INFORMATION: On July 9, 1987 (52 FR 25956), MMS published notices in the **Federal Register** (Volume 52, Number 131) announcing the Call for Information and Nominations and the Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the proposed Offshore Oil and Gas Lease Sale 95, southern California. This began the pre-lease process leading to the lease sale tentatively scheduled for September, 1989, and opened the public scoping period. To ensure that public concerns and issues are identified, and to assist the technical staff preparing the EIS in incorporating these concerns into the pre-lease process, four public scoping meetings are scheduled. At these meetings concerned citizens, interest groups, representatives of governmental agencies and the oil industry, will have the opportunity to meet individually with MMS technical staff to discuss issues of concern, make public statements, and hear a brief overview of the offshore leasing program. The written scoping comment period formally ends on October 9, 1987. All comments received at the scoping meetings will be evaluated and considered during the EIS preparation process. There will be several other periods prior to the lease sale where the public will have opportunities to comment on both the EIS and the proposal, including the period following the release of the draft EIS.

Dated: September 4, 1987.

William E. Grant,

Regional Director, Pacific OCS Region, Minerals Management Service.

[FR Doc. 87–21044 Filed 9–11–87; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31107]

Duluth, Winnipeg and Pacific Railway Co., Tracking Rights, Duluth, Missabe & Iron Range Railway Co.; Exemption

Duluth, Missabe and Iron Range Railway Company (DM&IR) has agreed to grant overhead trackage rights to Duluth, Winnipeg and Pacific Railway Company (DWP) between mileposts 21.66 and 23.0 on DM&IR's interstate division at Pokegama yard, Superior, WI, a distance of approximately 1.34 miles. The trackage rights are effective September 1, 1987.

This notice is filed under 49 CFR 1180.3(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).[1]

Dated: September 4, 1987.

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[1] The Railway Labor Executives' Association has filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 11343, whereby the imposition of labor protective conditions is mandatory, those conditions have been routinely imposed.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 87-21180 Filed 9-11-87; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87-73]

NASA Advisory Council; Establishment of Space Station Advisory Committee and Renewal of Council

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Establishment of Space Station Advisory Committee and Renewal of Council.

SUMMARY: Pursuant to section 14(b)(1) of the Federal Advisory Committee Act, Pub. L. 92-463, and after consultation with the Committee Management Secretariat, General Services Administration, the National Aeronautics and Space Administration has determined that establishment of the Space Station Advisory Committee of the NASA Advisory Council is in the public interest in connection with the performance of duties imposed upon NASA by law. NASA has also determined that renewal of the following NASA advisory committees is in each case in the public interest in connection with the performance of duties imposed upon NASA by law:
NASA Advisory Council (NAC);
Aeronautics Advisory Committee;
Aeronautics Advisory Committee; Subcommittee on Aviation Safety Reporting System;
History Advisory Committee;
Life Sciences Advisory Committee;
Space Applications Advisory Committee;
Space and Earth Science Advisory Committee;
Space Systems and Technology Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, National Aeronautics and Space Administration, Code F, Washington, DC 20546 (202/453-8335).

SUPPLEMENTARY INFORMATION: The function of the Council is to consult with and advise the NASA Administrator or designee with respect to plans for, work in progress on, and accomplishments of NASA's aeronautics and space programs. The Space Station Advisory Committee will be concerned with all facets of the Space Station Program, but specifically including: (1) Technical matters of design development, and construction of the initial station complex; (2) adequacy of and plans for verification of designs; (3) agency preparations to use the station in all relevant disciplines; (4) agency preparations to operate and support the station, including transportation support; (5) safety of crew and equipment; (6) participation in the program by interests other than NASA (government and private, domestic and foreign); and (7) station evolution, and the role of the station in the long-term, strategic plans of the agency.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 3, 1987.

[FR Doc. 87-21036 Filed 9-11-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before October 29, 1987. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force, N1-AFU-86-3. Records concerning standard reporting designators used to identify selected equipment in the Air Force inventory.

2. Department of the Air Force, Directorate of Administration (N1-AFU-87-14). Records relating to non-technical graphics produced at the base level.

3. Department of the Air Force, (N1-AFU-87-35). Short-term promotion records.

4. Department of Agriculture, Forest Service (N1-95-87-3). Records created during the rulemaking process (case files for specific rules and policies have been

designated for eventual transfer to the National Archives).

5. Department of Agriculture, Forest Service, Fire and Aviation Staff (N1–95–87–18). Cooperative Fire Protection Program poster artwork.

6. Department of Commerce, National Production Authority (N1–151–87–15). Records of the National Production Authority relating to scrap and salvage.

7. Commodity Futures Trading Commission, Office of Administrative Services, (N1–180–87–1). Trading registration and surveillance records.

8. Farm Credit Administration, Records and Projects Division (N1–103–87–1). Stockholder agreements of the Baltimore Bank for Cooperatives.

9. Department of Justice, Civil Division, Foreign Litigation Section (N1–131–87–3). Looted securities claim case files, 1943–59, of the Office of Alien Property.

10. Department of State, Brussels Universal and International Exhibition of 1958 (N1–43–87–2). Aerial film depicting an unidentified rural area. Records of historical value are permanent.

11. Department of State, Bureau of Economic and Business Affairs, Executive Office (N1–59–87–10). Data Bank of Economic Officers.

12. Veterans Administration, Department of Medicine and Surgery (N1–15–87–4). Medical records. (This comprehensive schedule provides for the long term retention of the patient medical files).

Dated: September 3, 1987.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 87–21018 Filed 9–1–87; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before October 14, 1987.

ADDRESS: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Service Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20596 (202) 786–0233 and Ms. Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503 (202) 395–6880.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid of Foreman, National Endoment for the Humanities, Administrative Service Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20596 (202) 786–0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) the title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out of the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category Extension

Title: NEH-Division of Fellowships and Seminars-Guidelines and Application Instruction for Directors, Summer Seminars for School Teachers Program

Form Number: 3136–0095

Frequency of Collection: Collection occurs once yearly, according to individual program application deadline

Respondents: University and college faculty

Use: The guidelines and application instructions provide direction for preparing narrative and budgetary parts of applicants for grant funds and request additional information regarding grants recently received by applicants

Estimated Number of Respondents: 805

Estimated Hours for Respondents to Provide Information: 3,220

Title: NEH-Division of Fellowships and Seminars-Guidelines and Application Instruction for Participants, Summer Seminars for School Teachers Program

Form Number: 3136–0097

Frequency of Collection: Collection occurs once yearly, according to individual program application deadline

Respondents: School Teachers and other school personnel

Use: The guidelines and application instructions provide direction for preparing applicants for grant funds and request additional information regarding grants recently received by applicants

Estimated Number of Respondents: 8,430

Estimated Hours for Respondents to Provide Information: 25,290

Susan Metts,

Assistant Chairman of Administration.

[FR Doc. 87–21041 Filed 9–11–87; 8:45 am]

BILLING CODE 7536–01–M

National Endowment for the Arts; Tilted Arc Site Review Advisory Committee; Notice of Renewal

In accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92–463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office Management and Budget Circular A–63) notice is hereby given that renewal of the Tilted Arc Site Review Advisory Committee has been approved by the Chairman of the National Endowment for the Arts for a period of one year from the date this Charter is filed. In response to a request by the General Services Administration (GSA), the committee will review and make recommendations on the appropriateness or inappropriateness of proposed sites for the relocation of a sculpture entitled *Tilted Arc* by Richard Serra. This Committee will report its recommendations to the Administrator of the GSA or the Administrator's designee, through the Chairman of the Arts Endowment.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel, National Endowment for the Arts.

September 9, 1987.

[FR Doc. 87–21104 Filed 9–11–87; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

American Nuclear Society Executive Workshops on the Utility/NRC Interface.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of conferences.

SUMMARY: NRC staff will participate in Executive Workshops sponsored by the American Nuclear Society on the subject of the Utility/NRC Interface.

DATE: October 13–15, 1987 (Central Workshop).

LOCATION: Bethesda, MD (Central Workshop).

CONTACT FOR FURTHER INFORMATION: Information on meeting locations, conference fees and registration procedures may be obtained by writing or calling the American Nuclear Society, Meetings, Department, 555 North Kensington, Avenue, LaGrange Park, IL 60525; (312) 352–6611. Inquiries regarding the Central Workshop should be made prior to October 2, 1987.

SUPPLEMENTARY INFORMATION: The Central Workshop, to be held in Bethesda, MD, October 13–15, 1987, will provide information to improve communications and the overall effectiveness of the operations-related interface between utilities and the NRC. Subsequent regional workshops will be held to apply the results of the central meeting to situations in the specific regions. Tentative regional workshop dates are as follows:

- Regions IV and V, November 19–21, 1987, Los Angeles, CA.
- Region II, January 10–12, 1988, Atlanta, GA.
- Region I, February 28–March 2, 1988, Philadelphia, PA.
- Region III, March 20–22, 1988, Chicago, IL.

Dated at Bethesda, MD this 8th day of September 1987.

For Nuclear Regulatory Commission.

James G. Partlow,

Director, Division of Reactor Inspection and Safeguards, Office of Nuclear Reactor Regulation.

[FR Doc. 87–21057 Filed 9–11–87; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on TVA Organizational Issues; Meeting

The ACRS Subcommittee on TVA Organizational Issues will hold a meeting on October 2, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, October 2, 1987—8:30 A.M. Until the Conclusion of Business

The Subcommittee will review the safety issues associated with TVA management reorganization and the Sequoyah restart.

Oral statements may be presented by member of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Person desiring to make oral statements should notify the ACRS staff members named below as far in advance as in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ARCS staff member, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: September 9, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–21054 Filed 9–11–87; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Meeting of the Auxiliary Systems Subcommittee; Change of Date

The ACRS Subcommittee meeting on Auxiliary Systems scheduled to be held on September 30, 1987, notice of which was published in the **Federal Register** on August 14, 1987 (52 FR 30473), has been *postponed to October 1, 1987, 8:30 A.M., Room 1046, 1717 H Street NW., Washington, DC.* All other items pertaining to this meeting remain the same as previously published.

Date: September 9, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–21055 Filed 9–11–87; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Extreme External Phenomena; Change of Date

The ACRS Extreme External Phenomena Subcommittee meeting scheduled for September 17, 1987 has been *rescheduled for 9:00 A.M., Tuesday, September 29, 1987.* All other items pertaining to this meeting remain the same as previously published in the **Federal Register** dated Friday, August 21, 1987 (52 FR 31685).

Date: September 9, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–21056 Filed 9–11–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–20294 License No. 35–23134–01 EA 87–172]

Order Suspending License (Effective Immediately) and Order to Show Cause; Log-Tec

I

Log-Tec, (Licensee) P.O. Box 61, Cleveland, Oklahoma 74020 is the holder of a Byproduct Material License issued by the Nuclear Regulatory Commission (NRC/Commission) on June 14, 1984 pursuant to 10 CFR Part 30. The license is due to expire on June 30, 1989. The license authorizes the Licensee to possess and use licensed materials (americium-241 and cesium-137 sources of up to 4.6 and 10 curies per source, respectively) in oil and gas well logging. The license specifies that sources shall be used by, or under the supervision and in the physical presence of, Hector Apodaca or Roger Couffer. Mr. Apodaca is no longer employed by Log-Tec and is no longer a part owner of Log-Tec. Presently, Mr. Couffer is the sole proprietor of Log-Tec. Mr. Couffer is an experienced well logger who has been employed at four other well logging companies and who has been involved in licensed activities since April 1974 as a user, supervisor, or owner.

On August 19, 1987, a routine NRC inspection was conducted at Log-Tec facilities in Cleveland, Oklahoma. During the course of the inspection, the NRC inspector determined that the Licensee was in apparent violation of seven regulatory requirements. These apparent violations included the failure to (a) store radioactive material at an authorized location, (b) survey storage facilities, (c) provide for personnel monitoring, (d) maintain utilization records, (e) properly label radioactive shipping packages, (f) perform leak tests on sealed sources, and (g) calibrate survey instruments. When these apparent violations were discussed with Mr. Couffer, the company's sole proprietor, the NRC inspector was told that the Licensee's sources had not been used since about june 1986.

Contrary to the above, on August 21, 1987, the President of Inland Oil Corporation provided a sworn statement that the Licensee had conducted well logging operations for Inland Oil Corporation on July 9, 1987. According to the President, he and another person witnessed Mr. Couffer conducting the logging process. Inland Oil Corporation also provided NRC with written documentation (i.e., neutron log) received from the Licensee that verified the results of the logging process.

On August 21, 1987, an NRC investigator and an NRC inspector interviewed Mr. Couffer about the use of radioactive sources. Again, Mr. Couffer reiterated that he had done no logging using radioactive sources since June 1986. However, when confronted with the copy of the neutron log received from Inland Oil Corporation, Mr. Couffer admitted that he had performed this work and had used a radioactive source to do so. Also, Mr. Couffer stated that he had no records of his work at Inland Oil. Mr. Couffer said that he told the NRC inspector that he had not used radioactive sources because he knew his records were not up-to-date and he was afraid to admit this. Mr. Couffer stated that he had none of the records required by NRC and never thought about keeping such records. He stated that his survey equipment was out of calibration because he did not have the money for such maintenance. Mr. Couffer also admitted that he had not used film badges in a long time because he could not afford such associated expenses. Also, Mr. Couffer admitted that he, doing business as (dba) Log-Tec, had conducted licensed well logging activities for other companies (i.e., Continental Oil, JGW, and Covenant Oil) since June 1986 besides that done for Inland Oil Corporation. NRC contacted and subsequently obtained Inland Oil Corporation company neutron ray logs that document Mr. Couffer's use of radioactive sources for logging operations on September 9, 1986, December 10, 1986, and June 30, 1987.

III

Mr. Couffer's action in deceiving the NRC inspector demonstrates that he is untrustworthy and uncommitted in his compliance with Commission requirements. Therefore, I lack the requisite reasonable assurance that Mr. Couffer, dba Log-Tec, will comply with Commission requirements in the future. Accordingly, I have determined that the public health, safety, and interest require that License No. 35–23134–01 be suspended, effective immediately, as described below.

I have further determined that pursuant to 10 CFR 2.201(c) and 2.202(f) no prior notice is required and that the suspension should be immediately effective pending further Order.

IV

Accordingly, in view of the foregoing and pursuant to sections 81, 161b., 161c., 161i., 161o., 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Section 2.202 and 10 CFR Parts 30 and 39, It is hereby ordered, immediately effective, that:

A. Activities authorized under License No. 35–23134–01 are suspended.

B. Mr. Couffer, dba Log-Tec, shall place all byproduct material in his possession in locked storage and within 30 days shall transfer such material to a person authorized to receive the material and shall notify the NRC Region IV office upon compliance.

C. Mr. Couffer, dba Log-Tec, shall show cause, in accordance with Section V of this Order, why License No. 35–23134–01 should not be revoked.

The Regional Administrator, Region IV, may relax or rescind any of the above provisions upon demonstration of good cause by Mr. Couffer, dbt Log-Tec.

V

Pursuant to 10 CFR 2.202(b), Mr. Couffer, dba Log-Tec, may show cause why License No. 35–23134–01 should not be revoked by filing a written answer under oath or affirmation within twenty days of the date of this Order, setting forth the matters of fact and law on which the Licensee relies. Mr. Couffer, dba Log-Tec, may answer this Order, as provided in 10 CFR 2.202(d), by consenting to the provisions specified in Section IV above. Upon consent of Mr. Couffer, dba Log-Tec, to the provisions set forth in Section IV of this Order, or upon his failure to file an answer within the specified time, the provisions specified in Section IV above shall be final without further Order.

VI

Pursuant to 10 CFR 2.202(b), Mr. Couffer, dba Log-Tec, or any other person adversely affected by this order may request a hearing within twenty days of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than Mr. Couffer, dba Log-Tec, requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). An answer to this Order or a request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is requested by Mr. Couffer, dba Log-Tec, or a person whose interest is adversely affected, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Bethesda, Maryland, this 8th day of September 1987.

[FR Doc. 87–21058 Filed 9–11–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–22063 License No. 29–20777–01 EA 87–156]

Order Modifying License (Effective Immediately); Precision Materials Corp.

I

Precision Materials Corporation (the "licensee") Replogle Avenue, Mine Hill, New Jersey 07801, is the holder of Byproduct Material License No. 29–20777–01, which authorizes the licensee to possess a maximum of 2,000,000 curies of cobalt-60 as sealed sources for use in a custom designed OMEGA irradiator for irradiation of certain materials. The license was issued by the Nuclear Regulatory Commission (the

"Commission" or "NRC") on March 29, 1985, was most recently amended on January 28, 1986, and is due to expire on March 31, 1990. The licensee currently possesses approximately 320,000 curies of cobalt-60 installed as sealed sources in the irradiator, as well as approximately 30 cubic feet of contaminated resins from the irradiator's pool water demineralizer cleanup system. The resins, which are stored in containers above the irradiator cell, apparently were contaminated when the sources were originally obtained at the facility since the casks used to transport the sources were contaminated.

II

On July 22–23, 1987, an NRC inspection was conducted at the licensee's facility in Mine Hill, New Jersey. Although no violations of NRC regulatory requirements were identified during the inspection, the NRC did learn that water from the irradiator pool was leaking from an unidentified location in the pool. The NRC inspectors obtained samples of the pool water directly from the pool and also from the demineralizer cleanup system. Analysis of those samples found no radioactivity above background, indicating that the encapsulated cobalt-60 sources stored in the pool were not leaking.

During the exit interview at the conclusion of the inspection, the inspectors were informed by the licensee's President that the corporation (1) had insufficient financial resources to continue normal operation of the facility, (2) was anticipating that it would default on its debts, and (3) was considering bankruptcy proceedings.

In view of these inspection findings with respect to the leaking irradiator pool, and the licensee's apparent financial difficulties, the NRC Region I, sent a Confirmatory Action Letter to the licensee on August 6, 1987, to confirm commitments made by the licensee's Comptroller, who was also one of the licensee's three Radiation Safety Officers, in a telephone conversation with Region I on August 5, 1987. Specifically, the licensee committed to:

1. Initiate daily monitoring of the irradiator pool water to assure maintenance of appropriate water level and detection of any radioactive contaminants, record the results of the monitoring, and promptly submit all data collected through September 1, 1987 to the NRC Region I office, with an assessment of the cause of the water leakage as well as planned corrective actions; and,

2. Promptly notify the NRC Region I office of any decision to terminate licensed activities, and conform with the requirements of 10 CFR 30.36(b) regarding such termination.

III

Subsequently, on August 26, 1987, NRC Region I received a telephone call from the licensee's President indicating that the three designated Radiation Safety Officers for the facility (i.e., the President, Vice-President and Comptroller), who are the three individuals with primary technical knowledge concerning operation of the facility, would be resigning as employees of Precision Materials Corporation by September 4, 1987, and that none of the remaining employees had sufficient technical knowledge concerning the facility and its associated safety controls to permit continued operation. As a result, NRC Region I contacted the licensee's Chairman of the Board on August 27, 1987, and he indicated that he was unaware of these planned resignations.

In light of the uncertainty among the licensee's corporate officers toward operation of the facility, the NRC initiated a conference call on August 28, 1987, with the licensee's President (who is also one of the four members of the Board of Directors), the Chairman of the Board, the Chairman's attorney, and a third Board member, to address the licensee's intentions concerning continuation of licensed activities. During this conference call, licensee representatives did not agree on any particular course of action, and the Chairman of the Board and the other Board member both indicated that they (1) had very little knowledge of the technical operation of the facility or the technical aspects of licensed activities; (2) were unaware that the President and other individuals at the facility with knowledge of facility operation were planning to resign; and (3) could not, on such short notice, provide any decision or plan concerning the future of licensed activities at their facility.

Subsequently, on August 31, 1987, NRC Region I personnel met at the licensee's facility with the licensee's President, Vice President, the fourth member of the Board of Directors (who did not participate in the August 28, 1987 conference call) and representatives of, and attorneys for, Midlantic National Bank, the primary creditor of the facility. The Chairman of the Board and remaining Board member were aware of this meeting, but had stated during the August 28, 1987 conference call that they could not attend. The meeting was conducted to discuss the licensee's plans for the facility, including control and disposition of the radioactive material. At the meeting, the NRC was informed that (1) water was leaking from the irradiator pool at a rate of approximately 20 gallons/hour, (2) one of the Radiation Safety Officers (Comptroller) had resigned, effective August 28, 1987, and (3) the other two Radiation Safety Officers (President and Vice President) intended to resign effective September 4, 1987 after placing the irradiator in a shutdown status at that time. No other licensee representative was present to indicate what arrangements, if any, had been made for maintaining the facility in a shutdown status beyond September 4; obtaining qualified replacement personnel; amending the license in light of the departure of key technical personnel required by the license; or developing plans for control and removal of the radioactive material.

During the August 31, 1987 meeting, the Midlantic Bank representatives orally agreed to support the salaries of certain of the current technical and administrative staff at the facility until September 11, 1987 in order to provide more time to resolve issues affecting the disposition of the radioactive material, and in order to permit the licensee to initiate negotiations with other parties for prompt removal and transfer of the radioactive sources from the facility to an authorized recipient.

IV

In light of the current financial status of this licensee, the planned resignations of the President and Vice President (the two remaining Radiation Safety Officers), the apparent lack of sufficient technical knowledge of facility operation by any remaining employee, officer or director of the corporation, and the continuing problem of water leakage from the irradiator pool, the NRC no longer has reasonable assurance that use or storage of licensed material at this facility will be performed safely and in accordance with the terms of the license. Therefore, I have determined that operation of the irradiator should be suspended, and the license should be modified to require that arrangements be made to either provide a basis for resumption of operations, as set forth in Section V below, or to promptly transfer all licensed material to an authorized recipient. Further, pursuant to 10 CFR 2.204, I have determined that public health and safety requires that these actions be made immediately effective.

V

Accordingly, pursuant to Sections 81, 161b., 161c., 161i., and 161o., 182, and 186

of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 30, it is hereby ordered, effective immediately, that license No. 29–20777–01 is modified as follows:

A. Operation of the irradiator is suspended as of close of business September 4, 1987. All radioactive sources shall be placed and maintained in their storage position in the irradiator pool until such time as the sources are placed in NRC-approved storage casks or shipping casks;

B. Within 7 days of the date of this Order, the licensee shall place all radioactive sources in NRC-approved storage casks or shipping casks;

C. Until such time as the sources are placed in NRC-approved storage or shipping casks, the licensee shall perform daily monitoring of the irradiator pool to determine and maintain the water level and detect any radioactive contaminants, and shall notify by phone at 215–337–5280 the Director, or his designee, Division of Radiation Safety and Safeguards, NRC Region I, of the results of the monitoring by close of business of the next business day.

D. Within 30 days of the date of this Order, the licensee shall either:

1. Provide the Regional Administrator, NRC Region I, with a basis for resumption of licensed activities in the form of an application to amend License No. 29–20777–01, and include, as part of that basis:

a. Qualifications of personnel who will be responsible for operation of the facility, and for assuring that the facility is operated safely and in accordance with NRC regulations and the conditions of the license;

b. Plans for performing necessary repairs to the irradiator pool prior to any resumption of operations; and

c. A description of financial resources available to the corporation to allow it to hire qualified personnel, effect necessary repairs, and to resume and conduct licensed activities in a safe manner; or

2. Transfer the radioactive sources to another NRC or Agreement State licensee authorized to receive these sources, and provide the Regional Administrator, NRC Region I, in writing, a plan for assuring that all radioactive waste is transferred to an authorized recipient, the facility is decontaminated in accordance with the requirements set forth in 10 CFR 30.36, and approval for release of the facility for unrestricted use is obtained from the Regional Administrator, NRC Region I.

E. Notify the Director, Division of Radiation Safety and Safeguards, NRC Region I, by telephone, at least 24 hours prior to any movement of the sources from the pool and/or the facility.

The Regional Administrator, NRC Region I, may relax or terminate any of these conditions for good cause.

VI

The licensee or any other person adversely affected by this Order may request a hearing within 30 days after issuance of this Order. Any answer to this Order or any request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee to answer or request a hearing within the specified time, this Order shall be final without further proceedings. An answer to this order or request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 4th day of September 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 87–21059 Filed 9–11–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–272, 50–311]

Exemption; Public Service Electric and Gas Company, (Salem Nuclear Generating Station, Units 1 and 2)

I

Public Service Electric and Gas Company (the licensee) holds Facility Operating License Nos. DPR–70 and DPR–75, which authorizes operation of the Salem Nuclear Generating Station, Units No. 1 and No. 2 (the facilities of Salem 1 and 2) at power levels not in excess of 3411 megawatts thermal. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are pressurized water reactors located on the licensee's site in Salem County, New Jersey.

II

Paragraph III.D.2(b)(ii) of Appendix J of 10 CFR Part 50 requires, in part, that a full pressure airlock leakage test be performed whenever airlocks are opened and when containment integrity is not required by the plant's Technical Specifications.

III

By letter dated April 11, 1986, the licensee requested a partial Exemption from the requirement of 10 CFR Part 50, Appendix J, III.D.2(b)(ii) identified in II above, and substitution of an airlock door seal leakage test (Paragraph III.D.2(b)(iii) of Appendix J, 10 CFR Part 50) for the full pressure airlock test otherwise required by Paragraph III.D.2(b)(ii) when the airlock is opened while the reactor is in cold shutdown (Mode 5) or refueling (Mode 6), if no maintenance has been performed on the airlock that could affect its sealing capability.

By letters dated August 29, 1986, and March 13, 1987, the licensee requested a slightly revised exemption that would additionally allow the door seal leakage rate test of III.D.2(b)(iii) to be used when the maintenance affecting the airlocks sealing capability was performed only on the door gaskets. That is, door seal testing will be done after each opening, after maintenance which could affect the airlock door gaskets, and prior to establishing containment integrity. If maintenance that could affect sealing capability has been performed on an airlock, other than the door gaskets, a full pressure airlock test must still be performed.

If an airlock is opened during Modes 5 and 6, Paragraph III.D.2(b)(ii) of Appendix J requires that an overall airlock leakage test at not less than the calculated peak containment pressure from a design-basis LOCA (Pa) be conducted before plant heatup and startup (i.e., entering Mode 4). The existing airlock doors are so designed that a full-pressure (i.e., Pa = 47.0 psig) test of an entire airlock can only be performed after strongbacks (structural bracing) have been installed on the inner door. Strongbacks are needed because the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. Installing strongbacks, performing the test, and

removing strongbacks requires at least 8 hours per airlock (there are two airlocks) during which access through the airlock is prohibited.

If the periodic 6-month test of paragraph III.D.2(b)(i) of Appendix J and the test required by paragraph III.D.2(b)(iii) of Apendix J are current, no maintenance (other than to door gaskets) has been performed on the airlock that could affect its sealing capability, the airlock is properly sealed, there is no reason to expect the airlock to leak excessively just because it has been opened in Mode 5 or Mode 6.

Accordingly, the Commission concludes that the licensee's proposed aproach of substituting the seal leakage test of paragraph III.D.2(b)(iii) for the full pressure test of paragraph III.D.2(b)(ii) of Appendix J is acceptable following door gasket maintenance and/or prior to entering Mode 4. Furthermore, the licensee has committed to meet the requirements of paragraph III.D.2(b)(ii) of Appendix J whenever other maintenance that could affect sealing capability has been performed on the airlock.

The special circumstances for granting this exemption pursuant to 10 CFR 50.12 have also been identified. The purpose of paragraph III.D2(b)(ii) is to ensure that airlocks are properly sealed when containment integrity is required. The proposed alternative test method is sufficient to achieve this underlying purpose in that it provides adequate assurance of continued leaktight integrity of the airlock. Consequently, the special circumstances described by 10 CFR 50.12(a)(2)(ii) and (iii) exist in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule in that the licensee has proposed an acceptable alternative test method that accomplishes the intent of the regulation. Compliance would result in undue hardship that would be significantly in excess of that contemplated when the regulation was adopted in that plant startup would be delayed while an overall airlock leakage test was performed at full pressure. The effort and delay required is not warranted by the resulting safety benefit.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, these exemptions are authorized by law will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances described by 10 CFR 50.12(a)(2)(ii) and (iii) exist in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule in that Public Service has proposed an acceptable alternative test method that accomplishes the intent of the regulation.

Accordingly, the Commission hereby grants the exemption as described in Section III above from 10 CFR Part 50, Appendix J, III.D.2(b)(ii).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (52 FR 29101, August 5, 1987).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 4th day of September 1987.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 87-21060 Filed 9-11-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-87]

Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License; Westinghouse Electric Corporation Nuclear Training Reactor

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of Orders authorizing Westinghouse Electric Corporation (Westinghouse or the licensee) to dismantle the reactor facility and dispose of the component parts, and termination of Facility Operating License No. R-119, in accordance with the licensee's application dated July 8, 1987.

The first of these Orders would be issued following the Commission's review and approval of the licensee's detailed plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license and any further NRC jurisdiction over the facility. Prior to issuance of each Order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By October 14, 1987, the licensee may file a request for a hearing with respect to issuance of the subject Orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A

petitioner who fails to file such a supplement which satisifies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lester S. Rubenstein: petitioner's name and telephone number; date petition was mailed; Westinghouse; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ms. Carol Dalcanton, Westinghouse Electric Corporation, P.O. Box 355, Pittsburgh, Pennsylvania 15230, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitioner, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated July 8, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Dated at Bethesda, Maryland, this 8th day of September 1987.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Regulation.

[FR Doc. 87–21061 Filed 9–11–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the name of a new member of the OPM Performance Review Board.

DATE: August 31, 1987.

FOR FURTHER INFORMATION CONTACT: Anne A. Andrews, Policy Development Branch, Office of Personnel and EEO, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415 (202) 632–9402.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

James E. Colvard,

Deputy Director.

The following Senior Executive Service member has been selected to fill a vacancy on the Performance Review Board of the Office of Personnel Management:

Leonard R. Klein, Deputy Associate Director for Career Entry.

[FR Doc. 87–21026 Filed 9–11–87; 8:45 am]

BILLING CODE 6325–01–M

President's Commission on Compensation of Career Federal Executives; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of closed portion of a meeting.

SUMMARY: As set out in a notice published in the **Federal Register** on August 27, 1987 (52 FR 32368), the President's Commission on Compensation of Career Federal Executives is holding its first meeting on September 17, 1987, beginning at 12:00 noon, in room 4830 of the Department of Commerce, located at 14th and Constitution Avenue, NW., Washington, DC. According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the first hour of that meeting will be closed so that the Commission can discuss internal personnel rules and practices.

In accordance with section 10(d) of the Federal Advisory Committee Act and 41 CFR 101.6.1023, I have determined that the request of the Commission to close the first hour of this meeting is consistent with both that Act and the Government in the Sunshine Act (Pub. L. 94–409) at 5 U.S.C. 552b. Under those statutes, portions of the meetings of Commissions such as this one can be closed in certain limited circumstances. One of those circumstances is when a portion of the meeting is likely to relate solely to internal personnel rules and practices. The Government in the Sunshine Act, as made applicable to this Commission by the Federal Advisory Committee Act, provides, at 5 U.S.C. 552b(c)(2), such an exemption to the requirement that meetings be open to the public.

The Commission has requested that the first hour of its first meeting be closed so that the Commission members can discuss internal personnel rules and practices that must be reviewed before the Commission can begin its work. I have determined that the Commission has demonstrated the need to close that portion of its first meeting in accordance with the aforementioned exemption to the Government in the Sunshine Act.

FOR FURTHER INFORMATION CONTACT: Steven Gleason, Executive Director, President's Commission on Compensation of Career Federal Executives, Office of Personnel Management, 1900 E Street, NW., Room 5554, Washington, DC 20415, 632–8703.

OFFICE OF PERSONNEL MANAGEMENT

Constance Horner,

Director.

[FR Doc. 87–21216 Filed 9–11–87; 10:29 am]

BILLING CODE 6325–01–M

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SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83s), supporting statements, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340

Title: Reporting and Recordkeeping Requirements on Lenders
Frequency: On occasion
Description of Respondents: Information is necessary for SBA to communicate with lender in the processing and servicing of loans.
Annual Responses: 2,410
Annual Burden Hours: 4,820
Type of Request: Extension

Title: Application for Business Loans
Frequency: On occasion
Description of Respondents: The application contains information needed to make sound credit decision in accordance with SBA lending authority. It includes the identity and address of applicant, the loan amount and its use, previous government financing, financial and management data, agreements and certifications which would be in effect if the loan is made.
Annual Responses: 28,000
Annual Burden Hours: 560,000
Type of Request: Extension

Title: Debt Collection Activities and Financial Statement of Debtor
Form No. SBA 770
Frequency: On occasion
Description of Respondents: The financial information on the SBA Form 770 is necessary in making a determination regarding the compromise of claims and other liquidation proceedings including litigation by the Agency and the Department of Justice. The Debt Collection Activities involve communications with existing borrowers of SBA who have defaulted in scheduled loan repayment.
Annual Responses: 182,000
Annual Burden Hours: 182,000
Type of Request: Extension

Title: Other Borrower Reports, Records, and Request
Frequency: On occasion
Description of Respondents: A variety of the requests for change in the loan agreement are requested by the borrowers. These requests and the submission of financial statements by borrowers are received and examined by SBA loan officers. If such requirements were not made of the borrower, the Government would be denied the opportunity to react to early signs of financial difficulty and adverse situations.
Annual Responses: 250,000
Annual Burden Hours: 187,500
Type of Request: Extension

William Cline,
Chief, Administrative Information Branch, Small Business Administration.
September 9, 1987.

[FR Doc. 87–21093 Filed 9–1–87; 8:45 am]
BILLING CODE 8025–01–M

[Application No. 03/03–0184]

Application for a Small Business Investment Company License; Fidelcor Capital Corp.

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended, (15 U.S.C. 661, et seq.) (the Act) has been filed by Fidelcor Capital Corp. (the Applicant), 123 S. Broad Street, Philadelphia, Pennsylvania 19109, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1987).

The officers, directors and sole shareholder or the Applicant are as follows:

Bruce H. Luehrs, President/Director, 428 Owen Road, Wynnewood, Pennsylvania 19096
Elizabeth T. Crawford, Vice President/Treasurer, 75 Militia Hill Dr., Wayne, Pennsylvania 19087
Robert E. Keith, Jr., Director, 749 Campwoods Road, Villanova, Pennsylvania 19085
Mark J. DeNino, Director, 138 Montrose Ave., #49, Rosemont, Pennsylvania 19401
Gerald Blum, Director, 360 East 72nd Street, New York, New York 10021
Fidelcor Capital Management Corp., Investment Advisor, 123 S. Broad Street, Philadelphia, Pennsylvania 19109
Fidelcor Inc., Sole Stockholder, 123 S. Broad Street, Philadelphia, Pennsylvania 19109

The Applicant will be a wholly owned subsidiary of Fidelcor, Inc., a bank holding company within the meaning of the Bank Holding Company Act of 1956. The Officers and Directors of the Investment Advisor are identical to those of the applicant. There is no person known to hold beneficially 10 percent or more of the voting securities Fidelcor, Inc.

The Applicant, a Commonwealth of Pennsylvania Corporation, will begin operations with $15,000,000 of paid-in capital and paid-in surplus. The Applicant will conduct its activities primarily in the Delaware Valley area but will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this Notice shall be published in a newspaper of general circulation in the Philadelphia, Pennsylvania area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 4, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-21092 Filed 9-11-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending September 4, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45121

Date Filed: September 1, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 29, 1987.

Description: Application of Compagnie Aeromaritime D'Affretement, pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to conduct U.S.–France passenger and cargo charter flights.

Docket No. 45122

Date Filed: September 2, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 30, 1987.

Description: Application of Taquan Air Service, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to engage in interstate air transportation (Points in Alaska).

Docket No. 45123

Date Filed: September 2, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 30, 1987.

Description: Application of American Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for renewal of its certificate of public convenience and necessity for Route 370 (Dallas/Ft. Worth-London).

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-21070 Filed 9-11-87; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 87-066]

Meeting of the Subcommittee on Vapor Control, Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Subcommittee on Vapor Control of the Chemical Transportation Advisory Committee (CTAC). The Subcommittee is considering requirements for tank vessels and waterfront facilities which use vapor control systems. The meeting will be held on Thursday, October 8, 1987 and Friday, October 9, 1987, in Rooms 8A, B, and C, Federal Building 10A, 800 Independence Avenue, SW., Washington, DC. The meeting is scheduled to begin at 9:00 a.m. and end at 5:00 p.m. on Thursday, and begin at 8:00 a.m. and end at 3:00 p.m. on Friday. The agenda for the meeting follows:

1. Call to order.
2. Opening remarks.
3. Review and approval of the minutes of the last meeting.
4. Presentation of technical papers relating to vapor control systems and their components.
5. Discussion on design principles, necessary technology development, and the necessary safety features for vapor control systems.
6. Assignment of Subcommittee work.
7. Adjournment.

Attendance is open to the public. Members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than five days before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander R.H. Fitch, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1217.

Dated: September 9, 1987.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87-21102 Filed 9-11-87; 8:45 am]

BILLING CODE 4910-14-M

[CGD 87-067]

Houston/Galveston Navigation Safety Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of the Fifteenth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, September 24, 1987 in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9:30 a.m. and end at approximately 1:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the Committee.
3. Presentation of any additional new items for consideration of the Committee.
4. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety maters affecting the Houston/Galveston area.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander V. O. Eschenberg, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (m), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396, telephone number (504) 589–6901.

Dated: August 10, 1987.

J.D. Sipes,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 87-21103 Filed 9-11-87; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Functions; Flight Service Station Closure; Dodge City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight Service Station Closure; Dodge City, Kansas.

SUMMARY: Notice is hereby given that on August 1, 1987, the Flight Service Station at Dodge City, Kansas, was closed. Hereafter, services to the general public at Dodge City, Kansas, will be provided by the Flight Service Station at Wichita, Kansas. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on August 6, 1987.

Clarence E. Newbern,

Acting Manager, Air Traffic Division.

[FR Doc. 87-21010 Filed 9-11-87; 8:45 am]

BILLING CODE 4910-13-M

Functions; Flight Service Station Closure, Emporia, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight Service Station Closure; Emporia, Kansas.

SUMMARY: Notice is hereby given that on August 2, 1987, the Flight Service Station at Emporia, Kansas, was closed. Hereafter, services to the general public at Emporia, Kansas, will be provided by the Flight Service Station at Wichita, Kansas. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on August 6, 1987.

Clarence E. Newbern,

Acting Manager, Air Traffic Division.

[FR Doc. 87-21011 Filed 9-11-87; 8:45 am]

BILLING CODE 4910-13-M

Functions; Flight Service Station Closure, Hill City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight Service Station Closure; Hill City, Kansas.

SUMMARY: Notice is hereby given that on August 1, 1987, the Flight Service Station at Hill City, Kansas, was closed. Hereafter, services to the general public at Hill City, Kansas, will be provided by the Flight Service Station at Wichita, Kansas. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on August 6, 1987.

Clarence E. Newbern,

Acting Manager, Air Traffic Division.

[FR Doc. 87-21012 Filed 9-11-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 87-9]

National Bank Capital Forbearance Policies

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of Revised Policy Statement on Capital Forbearance.

SUMMARY: The Office of the Comptroller of the Currency (Office or OCC) has revised its policy statement on national bank capital forbearance through issuance of Office Banking Circular (BC-212 Supplement #2). This notice is intended to provide persons in related industries, who would not normally receive copies of banking circulars, with the text revising the capital forbearance policy.

DATE: BC-212 Supplement #2 was dated July 7, 1987.

FOR FURTHER INFORMATION CONTACT: Jon Nagy, National Bank Examiner, Commercial Activities Division, (202) 447-1164), Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: On March 28, 1986, the Office promulgated BC-212 containing its national bank capital forbearance policies. On April 23, 1986, the Office published in the **Federal Register** those same forbearance policies (51 FR 15305). Under BC-212, and similar actions by the Federal Deposit Insurance Corporation (FDIC) and the Board of governors of the Federal Reserve System, capital forbearance was available to well-managed banks with loan concentrations in the agricultural or oil and gas sectors of the economy. Banks could apply for capital forbearance only until the end of 1987.

Since banks are continuing to experience problems as a result of a protracted recovery in some economic sectors, the Office, on July 7, 1987, issued Banking Circular BC-212 Supplement #2. That Supplement amends the capital forbearance policy guidelines and make them more flexible. The FDIC guidelines (51 FR 26182) were issued on July 13, 1987.

In announcing the Office's changes, the Comptroller stressed that the bank regulators would not use the capital forbearance guidelines to permit insolvent banks to remain open and cautioned that low capital ratios may threaten a bank's survival. More than two-thirds of the national banks with less than four percent total capital at year-end 1985 failed within 18 months.

The major changes in the capital forbearance guidelines are:

- The deadline for applying for capital forbearance is extended two years to December 31, 1989; the period during which capital must be restored to normal levels is also extended two years to January 1, 1995.
- Capital forbearance will no longer be limited to banks that meet the definition of agricultural or oil and gas banks. Instead, capital forbearance may be approved for banks that can demonstrate that their difficulties are primarily the result of economic problems beyond bank management's control. Capital forbearance will not be approved for banks whose problems are the result of insider abuse, mismanagement, etc.
- A bank will no longer have to have a minimum primary capital ratio of four percent to qualify for capital forbearance.
- The Office will not take enforcement actions concerning capital against banks that have been granted forbearance; however, the Office will not take enforcement actions concerning capital against banks that have been granted forbearance; however, the Office may take enforcement actions dealing with other safety and soundness concerns during the capital forbearance period.

The full text of (A) the Office's transmittal letter and (B) BC-212, the revised guidelines, follow:

A. OCC Transmittal Letter Dated July 7, 1987

To: Chief Executive Officers of the Bank Addressed

Subject: Revised Capital Forbearance Policy

The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) are amending their capital forbearance guidelines.

From early 1986, the OCC, the FDIC and the Board of Governors of the Federal Reserve System adopted a joint statement of policy with respect to capital problems being experienced by certain banks heavily impacted by depressed economic conditions in agricultural sectors of the economy. That policy, which was subsequently extended to include banks with concentrations of loans relating to the oil and gas industry, was intended to provide temporary relief to

qualifying banks from normal capital requirements, where such capital levels have been depleted largely as a result of loan losses attributable to economic conditions in the markets served by such banks. OCC guidelines for implementation of the capital forbearance portion of the policy were published in Banking Circular 212 dated March 28, 1986. Under the policy, banks were given until December 31, 1987 to seek approval for capital forbearance.

While some improvements in the economies of the agricultural and oil and gas regions of the country have occurred, there are still a number of banks in those areas which continue to suffer from slow economic recovery. Consequently, the OCC believes that an extension of the expiration date for obtaining capital forbearance is warranted. Numerous affected banks have utilized the policy, but it could be further strengthened by broadening its applicability.

Therefore, the OCC and the FDIC have decided to amend their capital forberance guidelines effective immediately.

All eligible banks are encouraged to apply for the capital forbearance program. Some bankers have expressed concern that an application for capital forbearance would trigger an examination or administrative action against the bank. Applying will not normally trigger immediate examinations or administrative actions. Banks should expect, as a normal rule, to remain under the same examination schedule. However, an administrative action, if appropriate, could be taken if unsafe or unsound practices are discovered.

The major changes to the existing guidelines are:

(a) The deadline for obtaining approval for capital forbearance is extended two years to December 31, 1989 and correspondingly, the period during which capital must be returned to normal levels is also extended two years to January 1, 1995.

(b) The program will no longer be limited to banks that meet the definition of an agricultural/oil and gas bank. Any bank is a candidate for capital forbearance if it can be demonstrated that its difficulties are primarily attributed to economic problems beyond the control of management.

(c) The minimum capital to asset ratio set forth in the orginal guidelines has been eliminated.

While the revised guidelines have eliminated the requirement that banks must have capital to asset ratios equal to or greater than 4 percent, banks seeking capital forbearance should be aware that: (a) Capital forbearance will not be approved for insolvent institutions and (b) capital plans must offer reasonable assurance of restoration of capital. Prospects for approval of capital forbearance for banks with low capital ratios would be enhanced if the capital plan contemplates an external infusion of capital over the course of the forbearance period.

The full text of the revised guidelines is attached.

(signed)

Robert L. Clarke,

Comptroller of the Currency.

B. Banking Issuance: Banking Circular BC–212 Supplement #2 Dated July 7, 1987

To: Chief Executive Officers of All National Banks, Deputy Comptrollers, Department and Division Heads, and Examining Personnel

I. Introduction

The OCC recongize that banks serving an undiversified economic sector of the economy may be unusually adversely affected if that sector experiences a severe, unexpected and protracted downturn. Such banks may not be able to raise needed capital because of the temporary unattractiveness of the institutions and/or their market area. These conditions may exist even though bank management followed prudent banking practices and had a successful performance record prior to the economic downturn. In light of these circumstances, the OCC has modified its guidelines for capital forbearance to provide greater operational flexibility to banks, with concentrations in weak economic sectors, that are well managed, solvent and viable.

This Banking Issuance revises and replaces Section III and eliminates Attachment A of Banking Circular 212, dated March 28, 1986.

II. Revised Capital Forbearance Guidelines

The revised capital forbearance guidelines are effective immediately. Banks may request capital forbearance at any time through December 31, 1989 and must have restored their capital to normal levels on or before January 1, 1995. Forbearance means the OCC will not issue a capital directive (12 CFR Part 3) to enforce normal capital standards, nor will the OCC take formal administrative action under 12 USC 1818(b) to enforce these capital standards or to obtain other corrective actions relating to capital adequacy, provided bank management does not engage in abusive, unsafe or unsound practices and the bank meets, initially and on a continuing basis, the following qualifications and conditions:

1. The bank's weakened capital must be largely the result of problems in the economy beyond bank management's control and not due to self-dealing, excessive operating expenses, excessive dividends, actions taken solely for the purpose of qualifying for capital forbearance, or other instances of significant mismanagmeent or ownership abuse.

2. The bank must provide a plan acceptable to the OCC for restoring capital, by not later than January 1, 1995, to the normal capital standards (12 CFR Part 3). This plan should specifically address dividend levels; compensation to directors, executive officers or individuals who have a controlling interest; and payments for services or products furnished by affiliated companies. The plan should provide for realistic improvement in the bank's primary capital ratio, over the course of the forbearance period, from earnings, capital injections, asset shrinkage, or a combination thereof.

3. The OCC must be satisfied that bank management is competent and willing to address the bank's problems and can successfully implement the plan to restore adequate capital.

4. The bank must agree to file an annual progress report with the OCC regarding its capital plan. Depending on an individual bank's progress, more frequent reports and/or a modified capital plan may be required.

Banks seeking capital forbearance should make a written request to the District Office of the OCC in the district in which the bank is located. The request should reflect a need for forbearance, contain an explanation of its eligibility to participate and include a capital improvement plan. Capital forbearance will be granted unless, within 60 days of receipt of the request, the OCC notifies the bank that its request has been denied or informs that bank that additional information is needed.

Existing administrative actions against banks for which capital forbearance has been approved will remain in effect. However, capital provisions contained within these administrative actions shall be deemed to have been modified by the approval of capital forbearance.

The OCC reserves the right to terminate capital forbearance for banks engaged in unsafe and unsound or other objectionable practices, or if it becomes apparent that the bank is unable to comply with its capital plan, or any modification of such plan.

We anticipate that Part VI, Lending Limits of Banking Circular 212 will be modified to extend the date lending limits will be relaxed to December 31, 1989.

Other provisons of Banking Circular 212 dated March 28, 1986 remain in effect.

III. Originating Office

Questions regarding this Banking Circular may be directed to the Chief National Bank Examiner's Office, Commercial Activities Division, Washington, DC 20219 (202) 447–1164.

(signed) Robert L. Clarke,

Comptroller of the Currency.

Dated: September 2, 1987.

[FR Doc. 87–21065 Filed 9–11–87; 8:45 am]

BILLING CODE 4810–33–M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Scholarships; Closing Date for Nominations from Eligible Institutions of Higher Education

Notice is hereby given that, pursuant to the authority contained in the Harry S. Truman Memorial Scholarship Act, Pub. L. 93–642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for Truman Scholarships. Procedures are prescribed at 45 CFR Part 1801, and were published in the **Federal Register** on June 19, 1976 (43 FR 26366).

In order to be assured of consideration, all documentation in support of nominations must be received by the Truman Scholarship Review Committee, CN 6302, Princeton, NJ 08541–6302 postmarked no later than Tuesday, December 1, 1987.

Malcolm C. McCormack,

Executive Secretary.

[FR Doc. 87–21042 Filed 9–11–87; 8:45 am]

BILLING CODE 9500–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Art of Rosso Fiorentino

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1987 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby detemine that the objects to be included in the exhibit, "The Art of Rosso Fiorentino" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about October 25, 1987, to on or about January 3, 1988, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

John A. Lindburg,

Acting General Counsel

[FR Doc. 87–21156 Filed 9–11–87; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Agency Form Letter Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form letter, (2) the title of the form letter, (3) the agency form letter number, if applicable, (4) a description of the need and its use, (5) how often the form letter must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form letter, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the form letter and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 13, 1987.

Dated: September 8, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. Equal Opportunity Compliance Review Report
3. VA Form 27–8734
4. This information is used to gather information from proprietary post-secondary schools at less than college level to help determine compliance with equal opportunity laws and Agency regulations.
5. Annually
6. State or local governments; and Busineses or other for-profit
7. 136 responses
8. 136 hours
9. Not applicalbe

Extension

1. Department of Veterans Benefits
2. Application for Amounts on Deposit for Deceased Veteran
3. VA Form 21–6898
4. This information is necessary to determine the proper payee of gratuitous benefits deposited by VA into the Personal Funds of Patients for a veteran during hospitalization and due the veteran at the time of death.
5. On occasion
6. Individuals or households
7. 700 responses
8. 175 hours
9. Not applicable

Extension

1. Department of Veterans Benefits
2. Consumer Sampling Letter
3. VA Form Letter 27–652
4. This information is needed to determine the quality of assistance provided by Veterans Assistance Services in VA Regional Offices to veterans and their dependents.
5. On occasion
6. Individuals or households
7. 15,294 responses
8. 1,275 hours
9. Not applicable.

[FR Doc. 87–21032 Filed 9–11–87; 8:45 am]

BILLING CODE 8320–01–M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department of staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Pattie Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 13, 1987.

Dated: September 9, 1987.

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. the telephone number is 202–485–7976, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

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By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits

2. Statement of Marital Relationship.
3. VA Form 21–4170.
4. This information is needed to determine eligibility for gratuitous death benefits as the widow(er) of a veteran.
5. On occasion.
6. Individuals or households.
7. 6,000 responses.
8. 3,000 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits

2. Fuel and Heating Systems Inspection Report (Manufactured Home).
3. VA Form 26–8731c.
4. This information is used to determine acceptability of used manufactured homes for VA guaranteed home loans.
5. On occasion.
6. Individuals or households; Businesses or other for-profit; and Small businesses or organizations.
7. 1,000 responses.
8. 2,000 hours.
9. Not applicable.

Extension

1. Department of Medicine and Surgery

2. Chiropractic Services Pilot Program.
3. VA Form 10–20838A through F (NR).
4. This information is needed to respond to the Congressional mandate to conduct a pilot program to evaluate the benefits and cost-effectiveness of providing chiropractic services to eligible veterans.
5. On occasion.
6. Individuals or households; Federal agencies or employees; and Small businesses or organizations.
7. 4,785 responses.
8. 3,075 hours.
9. Not applicable.

[FR Doc. 87–21105 Filed 9–11–87; 8:45 am]

BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 177
Monday, September 14, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:45 a.m. on Wednesday, September 9, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a plan for financial assistance, pursuant to section 13(c) of the Federal Deposit Insurance Act, for First City Bancorporation of Texas, Inc., Houston, Texas.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a close meeting pursuant to subsection (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17the Street NW., Washington, DC.

Dated: September 9, 1987.
Federal Deposit Insurance Corporation.
Margaret M. Olsen,
Deputy Executive Secretary.
[FR Doc. 87-21164 Filed 9-10-87; 12:40 pm]
BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 52, No. 177
Monday, September 14, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-006]

Final Results of Antidumping Duty Administrative Review; Steel Jacks From Canada

Correction

In notice document 87-20057 beginning on page 32957 in the issue of Tuesday, September 1, 1987, make the following correction:

On page 32958, in the third column, in the table, in the right hand column, in the first line, "23.35" should read "28.35".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0240]

Filing of Food Additive Petition; Foodways National, Inc., and NutraSweet Co.

Correction

In notice document 87-19133 beginning on page 31667 in the issue of Friday, August 21, 1987, make the following correction:

On page 31667, in the third column, in the **SUMMARY**, in the eighth line, insert "toppings" after "frostings,".

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Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, 23, 36, 91, and 135
Airworthiness Standards and Operating Rules; Commuter Category Airplanes; Correction of Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 23, 36, 91, and 135

[Docket No. 23516; Amdt. Nos. 21-59, 23-24, 36-13, 91-197, and 135-21]

Airworthiness Standards and Operating Rules; Commuter Category Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Correction of final rule.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on January 15, 1987 (52 FR 1806) as Airworthiness Standards and Operating Rules; Commuter Category Airplane. These rules relate to the adoption of certification procedures, airworthiness and noise standards, and operating rules for an additional category of propeller-driven, multiengine airplane, designated as the Commuter Category.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Medley, Standards Office, ACE-110, Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION: When Amendment Nos. 21-59, 23-34, 36-13, 91-197, and 135-21 were published in the **Federal Register**, several errors and text omissions occurred. For completeness of text and accuracy of information, it is necessary to correct these errors.

Need for Immediate Adoption

Since these amendments only correct errors and impose no additional burden on any person, I find that notice and public procedure are unnecessary and contrary to the public interest and that good cause exists for making it effective in less than 30 days.

Correction of Publication

Accordingly, in addition to the corrections published in the **Federal Register** on March 9, 1987 (52 FR 7262), the publication of Amendment Nos. 21-59, 23-34, 36-13, 91-197, and 135-21 in the **Federal Register** issue of January 15, 1987 (52 FR 1806), is corrected as follows:

§ 23.3 [Corrected]

1. On page 1825, third column, § 23.3(a), in line four, the word "certificate" is corrected to read "certificated"; and in third column § 23.3(e), line two, the word "part" is corrected to read "Part".

§ 23.53 [Corrected]

2. On page 1826, second column, § 23.53(b)(2)(ii), in the second line, the word "safer" is corrected to read "safe"; third column, § 23.53(c)(2), in the sixth line, the reference to "$1.2VV_{s1}$" is corrected to read "$1.2V_{s1}$"; and on page 1826, third column, § 23.53(c)(6), in the tenth line, the reference to "V_V" is corrected to read "V_R".

§ 23.65 [Corrected]

3. On page 1827, third column, § 23.65(d), in the fourth line, the word "temperatures" is corrected to read "temperature".

§ 23.67 [Corrected]

4. On page 1827, third column, § 23.67(e)(1), in the fourth line, the words "paragraphs (i) and (ii)" is corrected to read "(i) and (ii) of this paragraph".

5. On page 1828, first column, § 23.67(e)(3), in the fourth line, the reference to "V_{s4}" is corrected to read "V_{s1}".

6. On page 1828, second column, paragraph no. 16, in the fourth line, remove the phrase "and by adding an "s" to the word "airplane" in paragraph (a)"; and in line seven, same paragraph, remove the phrase "by adding an "s" to the word "airplane" in the first part of the sentence in paragraph (b)".

§ 23.335 [Corrected]

7. On page 1829, second column, § 23.335(d)(1), in the sixth line, "$\sqrt{(n_e)}$ V_{s1} is corrected to read "$\sqrt{(n_e)}V_{s1}$".

§ 23.443 [Corrected]

8. On page 1830, first column, § 23.443(b), the fifth line, insert a comma between "V_C" and "V_D"; and in line nine, insert a period after the word "investigated".

9. On page 1830, first column, insert before amendatory statement number 26 an amendatory statement that reads:

§ 23.561 [Corrected]

25-1. Section 23.561(b)(2) is amended by changing the title of the first column of the table, that now reads "Normal and utility categories" to read "Normal, utility, and commuter categories".

§ 23.787 [Corrected]

10. On page 1831, first column, § 23.787(g)(2), in the fourth line, "(b)" is corrected to read "(b), (d), (e),".

§ 23.901 [Corrected]

11. On page 1832, second column, § 23.901(b)(3), in the first line, "In addition, for" is corrected to read "For" and in the third line, "the engine installation must not" is corrected to read "not".

§ 23.1199 [Corrected]

12. On page 1833, second column, § 23.1199(c), in the first line, "A means" is corrected to read "A means must be provided".

§ 23.1305 [Corrected]

13. On page 1833, third column, § 23.1305(k)(2), in the first line, insert "turbine engine of" after "Each" and before "turbine-powered".

§ 23.1323 [Corrected]

14. On page 1834, first column, § 23.1323(c), in the first line, "commuter" is corrected to read "commuter category".

§ 23.1351 [Corrected]

15. On page 1834, first column, § 23.1351, in the first line, remove the five asterisks; and in § 23.1351(a)(2), in the first line, the word "subparagraph" is corrected to read "paragraph".

16. On page 1834, second column, § 23.1351(b)(5)(v), in the second line, "this paragraph" is corrected to read "paragraph (b)(5) of this section".

Appendix F—[Corrected]

17. On page 1835, second column, Appendix F to Part 23, paragraph (d), in the 13th line, "1550 degrees F" is corrected to read "1550°F" to be consistent with paragraph (e), line twelve.

Appendix G—[Corrected]

18. On page 1835, third column, in Appendix G to Part 23, after the title and before "G23.3 Content" insert five asterisks to indicate retention of existing regulatory material.

§ 135.169 [Corrected]

19. On page 1836, column three, § 135.169(b), in the fifth line, "or" is corrected to read "of".

Issued in Washington, DC on September 4, 1987.

T. Allan McArtor,

Administrator.

[FR Doc. 87-20886 Filed 9-11-87; 8:45 am]

BILLING CODE 4910-13-M

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 971

Deep Seabed Mining; Regulations for Commercial Recovery and Revision of Regulations for Exploration; Supplemental Proposed Rule

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 971

[Docket No. 50712-7186]

Deep Seabed Mining; Regulations for Commercial Recovery and Revision of Regulations for Exploration

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Supplemental proposed rule.

SUMMARY: Pub. L. 96-283, the Deep Seabed Hard Mineral Resources Act (the Act) authorizes the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to issue to eligible United States citizen applicants, licenses for exploration for and permits for the commercial recovery of deep seabed hard mineral resources. The Act also requires that NOAA issue regulations with respect to deep seabed mining licenses and permits. Through the Act and these rules the United States governs the exercise, by its citizens, of the high seas freedom to engage in exploration for and commercial recovery of deep seabed hard mineral resources.

On July 25, 1986, NOAA proposed regulations to govern commercial recovery activities of U.S. citizens, and to consolidate parts of the exploration regulations with the proposed commercial recovery regulations.

After review of the public comments received on the regulations, NOAA is considering modification of portions of these proposed regulations. NOAA has determined that several proposed modifications are sufficiently different from the relevant July 1986 proposals, or of sufficient public interest, to warrant an additional opportunity for public comment prior to promulgation of final regulations.

This notice therefore seeks public comments on a limited set of proposed regulations which modify the July proposals. After completion of public procedures, NOAA plans to issue a single set of final regulations based upon both the July and this notice of proposed rulemaking.

DATE: Comments must be received on or before October 29, 1987.

ADDRESSES: Inquiries and submissions should be mailed to: Ocean Minerals and Energy Division, Office of Ocean and Coastal, Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Suite 710, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: James P. Lawless, Chief, Ocean Minerals and Energy Division (202) 673-5121, or John W. Padan, Program Manager, Deep Seabed Mining, (202) 673-5117, at the above address.

SUPPLEMENTARY INFORMATION: During 1980 and 1981, NOAA engaged in its first rulemaking to implement the Act and issued regulations on September 15, 1981, pertaining to exploration by U.S. citizens for deep seabed hard mineral resources (15 CFR Part 970).

Because commercial recovery under the Act is authorized to begin on or after January 1, 1988, NOAA has decided to proceed with regulations governing commercial recovery of deep seabed hard mineral resources in order to allow U.S. consortia to conduct necessary planning and related activities including data collection and securing financing for commercial recovery activities. The commercial recovery regulations will affect licensees' decisions whether to commit significant new levels of resources to further technology development. In addition, other United States citizens may be considering the possibility of entering the field of deep seabed mining. In order to make these major financial decisions, these persons will need to understand the legal regime for commercial recovery under which U.S. citizens would operate.

NOAA also recognizes that deep seabed hard minerals may be important in meeting the long-range national interests of the United States. Thus it is appropriate to assure that U.S. citizens can continue with their orderly planning for the development of these resources. Further, early promulgation of these regulations provides potential permit applicants with timely notice of the information required for permit evaluation and issuance, but which must be developed during the exploration phase.

NOAA recognizes that developments such as changes in technology, the availability of new environmental data and results of monitoring, and the potential future national need for manganese, may necessitate future changes in the regulations adopted pursuant to this rulemaking. Consequently, the regulations are designed to encourage the development of technology necessary to recover deep seabed manganese nodules by providing a clear regime now, for corporate planning purposes, while allowing for changes in regulations, if needed, and deferring detailed decisions on permit-specific terms, conditions and restrictions (TCRs) until the time of permit issuance. This two stage process will facilitate planning, by enabling planners to know now the general levels of efforts that will be required, and their approximate costs, without precluding the opportunity for future research results and improvements in state of the art to be reflected in the TCRs. The regulations also recognize the need for flexibility in order to promote the development of deep seabed mining techniques and systems in a manner compatible with the requirements of the Act and regulations.

Original Notice of Proposed Rulemaking

On July 25, 1986, NOAA published in the **Federal Register** and distributed for public comment a Notice of Proposed Rulemaking (51 FR 26794). Copies of the proposed rules were mailed to a wide variety of interested groups and individuals on the NOAA deep seabed mining mailing list. Notices of public hearings held in conjunction with this rulemaking were also published in local newspapers serving the public in the regions where the hearings were located. Five public hearings were held pursuant to this rulemaking: one each on August 26 in Washington, DC and September 9 in San Francisco, two in Honolulu and one in Hilo, Hawaii, on September 11. The original 90 day public comment period was extended an additional 30 days through November 24, 1986, in response to a request from several concerned parties. Comments on the proposed regulations were received from twenty-six sources, including industry, state representatives, environmental groups, other Federal agencies and interested citizens. Copies of the comments and transcripts of the public hearings are available for review at the above address.

Summary of Comments and Responses on Issues in this Proposed Rulemaking

The comments submitted in response to the Notice of Proposed Rulemaking were useful in assisting NOAA in its consideration of the issues raised in implementing its responsibilities under the Act. Comments on several issues led NOAA to recognize that the best approach to these issues might be to propose regulations different than originally proposed. Accordingly, rather than proceeding now with final rules, NOAA is proposing new approaches, on four issues, for public comment. The following summarizes comments on these issues and outlines NOAA's proposals. After this notice and comment process, NOAA anticipates proceeding to issue final regulations for the entire set.

Subpart F—Environmental Effects

General. Several comments were received on the adequacy of the environmental parts of the proposed permit regulations. For instance a department of one coastal state noted that the broad general guidelines and principles regarding environmental protection, ". . . seems reasonable to us and we believe that NOAA's research program concerning the deep seabed environment can yield information important to identifying and mitigating any adverse effects which may be important to this state." Another coastal state noted: "We feel the two stage process of general regulations then permit specific terms, conditions and restrictions, (is) a safe route to take given the uncertainty of technologies and environmental concerns to be applied."

In contrast to the above reactions, there were a number of comments which amounted to a general concern over what was perceived to be a dearth of environmental guidelines, particularly given the infancy of the industry and technology and a relative lack of environmental knowledge of the deep sea environment. Highlights of these comments are: (1) Considering the lack of information of the deep sea environment, NOAA should undertake an expanded program of environmental assessment that focusses on information needed to develop responsible regulatory requirements; (2) the regulatory process relies on after-the-fact monitoring to develop the information needed to assess adverse impacts, and then fails to provide assurance that this information will be used to modify permits so that harmful practices are stopped or mitigated; (3) there is a presumption that there will be no significant adverse environmental effects; (4) the environmental information available from monitoring will be available only after adverse effects have already occurred; and (5) the 20-year duration of a permit is too long, given the relative lack of information on the deep sea environment.

NOAA full well realizes the relative lack of information on the deep sea environment and has continued to pursue a research program to fill the major gaps. Presently, this research is focussed on the benthic impacts due to the sedimentation of particulate material suspended by a mining collector device or discharged as a benthic plume. NOAA is also investigating the possibility of cooperation with other nations in conducting some environmental studies related to the test of mining equipment in the next several years. Given the present state of the metals market and the negative influence this has had on commercial deep seabed mining plans, some of the results of these research efforts should be available before NOAA receives a permit application.

One commenter did note that, with respect to the proposed rule, they support NOAA's monitoring requirements. However, they further note that such monitoring is intended to assist NOAA in determining the existence of or potential for "significant adverse impacts" on the environment and that without a definition of such, the value of monitoring would be diminished.

The changes being proposed clarify the environmental requirements in response to the specific concern above. NOAA believes these changes will also ease the general concerns of the other commenters regarding the need for more specific environmental guidelines.

Criteria for determination of significant adverse environmental effects. The proposed regulations have a new § 971.601—Environmental requirements, that explicitly notes the environmental requirements which the Administrator must address in issuing a permit. These proposed requirements are based on there being sufficient environmental information to make a determination that either: (1) The issuance of a permit cannot reasonably be expected to result in a "significant adverse environmental effect"; or (2) if there is insufficient information to make a determination on this question, no "irreparable harm" will come to the environment during a period when monitoring of commercial recovery is undertaken to further examine the significant adverse environmental effects issue (§ 971.601(a)).

Section 971.601(a) is patterned after the Ocean Discharge Criteria of the Clean Water Act regulations (40 CFR Part 125, Subpart M) because they have been tried and tested for ocean discharges, and upon reflection NOAA has concluded these are also relevant for deep seabed mining generally. The discussion as well as all generic data for a hydraulic mining system generating surface and seafloor discharges is found on pages 116–124 in the PEIS. If the proposed mining operation would create one or more discharges, thereby triggering the need for a National Pollutant Discharge Elimination System (NPDES) permit from EPA, NOAA would cooperate with EPA in the analysis of the environmental aspects of the site-specific proposed activities. This cooperative effort will be used to avoid duplicative processing of applications.

NOAA requests comment on the applicability of these criteria, to the extent they may apply, in examining any perturbation to the marine environment caused by the issuance of a permit regardless of whether or not a particular mining system creates a "discharge" under the Clean Water Act. The proposed rules require consideration of the following factors in determining "significant adverse environmental effect":

(1) The quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged;

(2) The potential transport of such pollutants by biological, physical or chemical processes;

(3) The composition and vulnerability of the biological communities which may be exposed to such pollutants including the presence of unique species or communities of species, the presence of species identified as endangered or threatened pursuant to the Endangered Species Act or the presence of those species critical to the structure or function of the ecosystem such as those important for the food chain;

(4) The importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of an organism;

(5) The existence of special aquatic sites including but not limited to marine sanctuaries and refuges, parks, national and historic monuments, national seashores, wilderness areas and coral reefs;

(6) The potential impacts on human health through direct and indirect pathways;

(7) Existing or potential recreational and commercial fishing, including finfishing and shellfishing;

(8) Any applicable requirements of an approved Coastal Zone Management plan;

(9) Such other factors relating to the effects of the discharge as may be appropriate; and

(10) Marine water quality criteria developed pursuant to section 304(a)(1) of the Clean Water Act.

Subsection 971.601(b) would require the applicant to have an approved monitoring plan (§ 971.603) and § 971.202(b)(1) would require the applicant to have the capabilities to implement it.

As part of this structure in the regulations, § 971.101—Definitions, new

terms "significant adverse environmental effect" and "irreparable harm" have been defined, again using the pattern of the Ocean Discharge Criteria.

The above changes respond to the concerns of commenters by assuring that "irreparable harm" to the environment will not occur even if there is insufficient information to decide whether permitted activities will result in "significant adverse environmental effects". Monitoring is used to further examine this issue. Furthermore, § 971.406 has been modified to note that if a permit is granted under this scenario, it would be subject to modification or suspension if significant adverse environmental effects are revealed by such monitoring. Thus, although a permit under such a scenario would still be issued for 20 years, the effective period could be less in the event of the appearance of significant adverse environmental effects.

NOAA believes that adequate protection would be provided to the environment with the above noted changes and with the definitions of "significant adverse environmental effect" and "irreparable harm" (§ 971.101).

Best available technologies (BAT) and mitigation. Although, as stated in the July 1986 proposed rule § 971.603(b) [now § 971.604(a)], NOAA is unable to define a specific technology(ies) as being the best available technologies (BAT), several commenters urged NOAA to reconsider its position. For those mining systems requiring an NPDES permit, it was pointed out that EPA will have to require the use of Best Conventional Pollutant Control Technology, assuming the mining discharge(s) are considered conventional rather than toxic pollutants. Therefore, the applicant must address the matter in terms of the Clean Water Act. One commenter suggested that applicants might explain their use of BAT in the context of how other alternatives were considered and rejected. Although NOAA continues to believe it is inappropriate to specify particular technologies as BAT, NOAA acknowledges the concerns of some of the commenters, and that section 109(b) of the Act contains certain requirements relating to BAT. Therefore, NOAA is clarifying this provision in the regulations by adopting the approach utilized in implementation of the OCS Lands Act. Until NOAA is in a position to define performance standards or specify particular equipment or procedures comprising BAT, an interim process would be adopted. An applicant would have to submit the information necessary to demonstrate that the requirements of section 109(b) of the Act would be met. The information would have to include the alternatives considered, their costs, and the rationale supporting the selection process.

Closely related to the use of BAT is the concept of mitigation, a particular approach to the avoidance of a potential problem. Three commenters recommended that mitigation measures be required. Another suggested the need for a plan that would describe how activities would be modified in the face of a perceived adverse impact. NOAA believes it is premature to require mitigation. However, public discussion, as briefly referenced in the preamble to the July 1986 proposed rules, revealed an awareness that sub-surface discharge of mining wastes could be a mitigation measure to consider in the future. Thus, NOAA agrees with the desirability of an applicant having to think about a potential need to deal with a problem triggered by surface discharge. Accordingly, a requirement for a mitigation plan has been proposed in § 971.604(b).

Stable reference areas. Comments received on the stable reference area (SRA) concept were mainly concerned with urging NOAA to designate some Impact Reference Areas (IRAs) and Preservational Reference Areas (PRAs) no later than the issuance of permits. One comment suggested that this be accomplished by NOAA stating in the regulations that the issuance of a permit is contingent upon the simultaneous designation of IRAs and PRAs. Another comment urged NOAA to make a mandatory designation of interim PRAs and to designate areas within the mine sites for impact reference. A requirement has been proposed in new § 971.603—At-sea monitoring, which would require the monitoring of benthic impact through the study of two types of areas, each selected by the permittee in consultation with NOAA: (1) An IRA which will be located in a portion of a permit area scheduled to be mined early; and (2) an interim PRA located in a portion of a permit area determined by the permittee to be non-mineable. Under appropriate circumstances, NOAA would be willing to consider designating a joint IRA and/or interim PRA for more than one operation. Although the SRA provisions in the Act propose areas outside those licensed or permitted, NOAA believes that the above approach, which falls within NOAA's authority, is compatible with the purpose of the SRA concept.

It was also recommended by one of the above commenters that instead of just reserving a subsection of the commercial regulations for SRAs, NOAA should establish the framework for defining criteria for identifying both IRAs and PRAs. Setting the framework in the final rules, it was thought, would encourage the international consultations with other nations which are required by the Act. NOAA, however, feels that it is more appropriate to continue to reserve the subsection and delay establishing criteria until the completion of the NOAA-sponsored research which was recommended in the 1984 National Research Council's report on deep seabed SRAs.

Subpart B—Applications

Antitrust information. The preamble to the proposed rules repeated the provisions in section 103(d) of the Act on antitrust review by the Attorney General of the United States and the Federal Trade Commission (FTC), and requested comments on whether such information should be specified in NOAA regulations as part of a commercial recovery permit application, or whether NOAA should play a role of advising a potential applicant informally as to what information the applicant should be prepared to provide to the Department of Justice (DOJ) and FTC for their review, should these agencies request information under their own authorities. NOAA also set forth the antitrust information needs which generally had been identified by the DOJ and FTC. The DOJ has commented that, upon consideration, they think it would be inappropriate to require every applicant to furnish all the information suggested in the proposed rule preamble. Instead, they now propose that NOAA require every applicant to submit certain basic information to enable an initial antitrust review, and that the regulations provide that the DOJ and FTC could request additional information where necessary. DOJ also proposed references to the potential need for new antitrust information in §§ 971.412 and 971.413, relating to changes or revisions in permits.

NOAA once again seeks comments on the appropriate mechanism for handling antitrust information, viewing the above two alternative approaches as the primary options. NOAA also requests comments on the new information description, set forth below, which DOJ has proposed. Proposed language for § 971.207:

(a) *General.* Section 103(d) of the Act specifically provides for antitrust review

of applications by the Attorney General of the United States and the Federal Trade Commission.

(b) *Contents.* In order to provide information for this antitrust review, the application must contain the following:

(1) For each entity that is an owner or member of the applicant, the identity of each of its owners or members, and for each such owner or member, the identity of each of its parents, subsidiaries, or affiliates.

(2) For each entity that is an owner or member of the applicant and each person identified in (1) above, and for each mineral deposit or mine containing or producing cobalt, copper, manganese, or nickel in which such person has a direct or indirect ownership interest of 20 percent or more, identify the mineral deposit or mine and each mineral contained therein or produced therefrom, and state the person's percentage ownership interest therein.

(3) For each person for which a response to (2) above is requested, and separately for each of the preceding two years and for each of the minerals, cobalt, copper, manganese, and nickel, state the aggregate annual tonnage of that ore produced or mined at the mineral deposits and mines identified in response to (2) above, and an estimate of the average concentration of the mineral in that ore.

(c) *Requests for additional information.* Within thirty days after the Administrator has transmitted to the Attorney General of the United States and the Federal Trade Commission a complete copy of an application for issuance or transfer of a permit for commercial recovery, the Attorney General or the Federal Trade Commission may, if they deem it appropriate, seek additional information from the applicant. The applicant shall have thirty days from the date it received the request to supply the additional information requested. If any of the requested information is unavailable to the applicant or if the applicant otherwise cannot provide all the requested information within the thirty-day time period, the applicant shall provide that information that is available, and shall notify the requesting agency promptly as to what information is unavailable, what information is available but cannot be supplied within thirty days, the reason that such information cannot be provided within thirty days and the time within which it can and will be supplied.

Proposed new language to add to § 971.412(c): (4) The ownership or membership of a permittee by the addition of a new owner or member, or an increase in ownership or membership of a permittee by an existing owner or member, that results in the new or existing member owning an additional 10 percent share of the permittee since the issuance of the original permit or the last reported revision to the permit; or

(5) Any ownership change other than one reported pursuant to clause (4) above which change is sufficiently broad in scope to raise a question as to:

(i) The permittee's ability to meet the requirements of the sections cited in the above clauses (1) and (2), or

(ii) The sufficiency of the TCRs to accomplish their intended purposes.

Proposed new language to add to § 971.413(c): This application should: (A) Identify and describe all changes in the ownership or membership of the permittee since the initial application (or since the last revision reported pursuant to this subsection); (B) provide the information requested in § 971.207(b) (2) and (3) for all persons who have become owners or members of the permittee since the initial application (or since the last revision reported pursuant to this subsection), and (C) update the last reported information requested in § 971.207(b) (2) and (3) for all other current owners or members if that information last was reported more than 5 years earlier.

Classification Under Executive Order 12291

NOAA has made a determination that this particular proposed notice does not constitute a "major" rule as defined by the criteria contained in E.O. 12291, however the proposed rules of July 1986, of which this is a follow-up, are determined to be major. Notice of this proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

Regulatory Impact Analysis

NOAA has prepared a supplement to the regulatory impact analysis prepared for the July 1986 proposed rules which deals solely with this proposed rule. The analysis, which is available to all interested parties, examines the various alternatives NOAA considered as it addressed the new issues, including alternatives advocated by interest groups; considers benefit and cost implications of the alternatives; and explains NOAA's reasons for making the choices reflected in these proposed regulations.

Regulatory Flexibility Act

On July 25, 1986, NOAA issued proposed Regulations for the Commercial Recovery of Deep Seabed Hard Minerals. In response to public comment, NOAA has determined that further consideration is required on the particular issues contained in this rule. The results of this solicitation will be incorporated into the final major regulation.

This notice of proposed rulemaking clarifies the preamble to the July 1986 proposed regulations regarding the Regulatory Flexibility Act (5 U.S.C. 50 et seq.). NOAA has prepared a draft regulatory impact analysis which contains an evaluation of regulatory flexibility. Based upon that evaluation, the General Counsel of the Department of Commerce certified that the July proposal would not have a significant economic impact on a substantial number of small entities. The regulations do not impose any reporting, recordkeeping, or other compliance requirements on small governmental jurisdictions or small organizations.

These proposed regulations fall within the scope of the earlier evaluation and certification.

Paperwork Reduction Act

The information collection requirements of the major regulation on commercial recovery, which will contain the results of these proposed provisions, has been approved by the Office of Management and Budget, OMB No. 0648–0170. Any changes to the approved information collection that result after the public comment period will be minor and will be submitted to OMB as an amendment to the major regulation information collection requirements.

Environmental Assessment

Pursuant to section 109(c) of the Act and the National Environmental Policy Act of 1969, NOAA has prepared a final programmatic environmental impact statement (PEIS) assessing the environmental impacts of commercial recovery in the area of the oceans in which such activities by any United States citizen will likely first occur under the authority of the Act. The PEIS was filed with the Environmental Protection Agency in September 1981. Copies may be obtained by writing NOAA, Chief, Ocean Minerals and Energy Division, at the address specified in the **ADDRESSES** section of this rulemaking. NOAA has also prepared an environmental assessment (EA) which updates the PEIS and which confirms a finding of no significant impact on the quality of the human environment from the promulgation of the July 1986 proposed regulations. NOAA has determined that, because this proposed rulemaking deals mainly with improvements in environmental

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protection measures, this finding is still valid. The EA is available at the above location for review upon request.

List of Subjects in 15 CFR Part 971

Administrative practice and procedures, Environmental protection, Marine resources, Marine safety, Reporting requirements, Seabed mining.

Accordingly, new Part 971 which was proposed to be added July 25, 1986 (51 FR 26794), would be amended as follows.

Dated: September 3, 1987.

Anthony J. Calio,

Administrator.

PART 971—[AMENDED]

1. The authority citation for Part 971 would continue to read as follows:

Authority: 30 U.S.C. 1401 et seq.

2. Section 971.101 would be amended by removing the paragraph designations and adding the following definitions in alphabetical order:

§ 971.101 Definitions.

* * * * *

"Environment" or "environmental" as used in the definitions of "irreparable harm" and "significant adverse environmental effect" means or pertains to the deep seabed and ocean waters lying at and within the permit area, and in surrounding areas including transportation corridors to the extent that they might be affected, and the living and non-living resources of those areas.

* * * * *

"Irreparable harm" means significant undesirable effects to the environment occurring after the date of the permit issuance which will not be reversed after cessation or modification of the discharge.

* * * * *

"Significant adverse environmental effect" means: (1) Significant adverse changes in ecosystem diversity, productivity, and stability of the biological communities within the environment; (2) threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms; or (3) loss of aesthetic, recreational, scientific or economic values which is unreasonable in relation to the benefit derived from the discharge.

* * * * *

3. Section 971.406 would be revised to read as follows:

§ 971.406 Environmental effects.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery proposed in the application cannot reasonably be expected to result in a significant adverse environmental effect taking into account the analyses and information in any applicable EIS and any TCRs associated with the permit. This finding also will be based upon the requirements in Subpart F. However, as also noted in Subpart F, if a determination on this question cannot be made on the basis of available information, and it is found that irreparable harm will not occur during a period when an approved monitoring program is undertaken to further examine the significant adverse environmental effect issue, a permit may be granted, subject to modification or suspension (see § 971.417) if a significant adverse environmental effect is revealed by such monitoring.

§§ 971.601-971.605 [Redesignated as §§ 971.602-971.606].

4. Sections 971.601 through 971.605 would be redesignated as §§ 971.602 through 971.606; newly redesignated §§ 971.602 through 971.604 would be revised; and a new § 971.601 would be added to read as follows:

§ 971.601 Environmental requirements.

In issuing a permit for the commercial recovery of deep seabed hard mineral resources, the Administrator must find that:

(a) The issuance of a permit cannot reasonably be expected to result in a significant adverse environmental effect, or, if there is insufficient information to make that determination, that no irreparable harm will result during a period when monitoring of commercial recovery is undertaken to gather sufficient information. In examining this issue, NOAA will give consideration to the following Ocean Discharge Criteria of the Clean Water Act (40 CFR Part 125, Subpart M), as they may pertain to discharges and other environmental perturbations related to the commercial recovery operations:

(1) The quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged;

(2) The potential transport of such pollutants by biological, physical or chemical processes;

(3) The composition and vulnerability of the biological communities which may be exposed to such pollutants including the presence of unique species or communities of species, the presence of species identified as endangered or threatened pursuant to the Endangered Species Act or the presence of those species critical to the structure or function of the ecosystem such as those important for the food chain;

(4) The importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of an organism;

(5) The existence of special aquatic sites including but not limited to marine sanctuaries and refuges, parks, national and historic monuments, national seashores, wilderness areas and coral reefs;

(6) The potential impacts on human health through direct and indirect pathways;

(7) Existing or potential recreational and commercial fishing, including finfishing and shellfishing;

(8) Any applicable requirements of an approved Coastal Zone Management plan;

(9) Such other factors relating to the effects of the discharge as may be appropriate;

(10) Marine water quality criteria developed pursuant to section 304(a)(1) of the Clean Water Act; and

(b) The applicant has an approved monitoring plan (§ 971.603) and the resources and other capabilities to implement it.

§ 971.602 Significant adverse environmental effects.

(a) *Determination of significant adverse environmental effects.* The Administrator will determine the potential for or the occurrence of any significant adverse environmental effect (for the purposes of sections 103(a)(2)(D), 105(a)(4), 106(c) and 109(b) (second sentence) of the Act), on a case by case basis.

(b) *Basis for determination.* Determinations will be based upon the best information available, including relevant environmental impact statements, NOAA-collected data and monitoring, and other data provided by the applicant or permittee.

(c) *Related considerations.* In making a determination, the Administrator may take into account any TCRs or other mitigation measures.

(d) *Activities with no significant adverse environmental effect.* NOAA believes that exploration-type activities as listed in the license regulations (15 CFR 970.701), require no further environmental assessment.

(e) *Activities with potential for significant adverse environmental effects.* NOAA research has identified at-sea testing of recovery equipment, the

recovery of manganese nodules in commercial quantities from the deep seabed and the construction and operation of commercial-scale processing facilities as activities which may have some potential for significant adverse environmental effects.

(f) *Related terms, conditions and restrictions.* Permits will be issued with TCRs containing environmental requirements with respect to protection (pursuant to § 971.419), mitigation (pursuant to § 971.419), or best available technology requirements (pursuant to § 971.423), as appropriate, and monitoring requirements (pursuant to § 971.424) to acquire more information on the environmental effects of deep seabed mining.

§ 971.603 At-sea monitoring.

(a) An applicant must submit with its application a monitoring plan designed to enable the Administrator to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects, to validate assessments made in the EIS, and to ensure compliance with TCRs.

(b) The monitoring plan shall include determination of (1) the spatial and temporal characteristics of the mining ship discharges; (2) the spatial extent and severity of the benthic impact, including recovery rate and pattern of benthic recolonization; and (3) any secondary effects that result from the impact of the mining collector and benthic plume.

(c) The monitoring of benthic impact shall involve the study of two types of areas, each selected by the permittee in consultation with NOAA:

(1) An impact reference area, located in a portion of a permit area scheduled to be mined early in a permit term; and

(2) An interim preservational reference area, located in a portion of a permit area expected to be non-mineable.

(d) The following specific environmental parameters must be proposed for examination in the applicant's monitoring plan:

(1) Discharges—

Salinity, temperature, density
Suspended particulates concentration and density
Particulate and dissolved nutrients and metals
Size, configuration, and velocities of discharge

(2) Upper water column—

Nutrients
Endangered species (observations)
Salinity, temperature, density
Currents and direct current shear
Vertical distribution of light
Suspended particulate material advection and diffusion
In-situ settling velocities of suspended particulates
Zooplankton and trace metals uptake
Fish larvae
Behavior of biota, including commercially valuable fish.

(3) Lower water column and seafloor—

Currents
Suspended particulate material advection and diffusion
In-situ settling velocities of suspended particulates
Benthic scraping and blanketing, and their impacts and recovery.

(e) The monitoring plan shall include provision for monitoring those areas impacted by the permittee's mining activities, even if such areas fall outside its minesite.

(f) After the Administrator's approval of the monitoring plan, this plan will become a permit TCR. The monitoring plan TCR will authorize refinement of the monitoring plan prior to testing and commercial-scale recovery, and at other appropriate times, if refinement is necessary to reflect accurately proposed operations or to incorporate recent research or monitoring results.

(g) If test mining is proposed, the applicant shall include in the monitoring plan a provision for monitoring the test(s) as well as a strategy for using the result to monitor more effectively commercial-scale recovery. This monitoring shall address concerns expressed in the PEIS and in the permit EIS.

(h) The monitoring plan shall include a sampling strategy that is based on sound statistical methods, provide that equipment and methods be scientifically accepted, provide that the personnel who are planning, collecting and analyzing the data be scientifically well qualified, and provide that the resultant data be submitted to the Administrator in accordance with formats of the National Oceanographic Data Center and other formats as may be specified by the Administrator.

(i) Pursuant to section 114(1) of the Act the Administrator intends to place observers onboard mining vessels not only to ensure that permit TCRs are followed but also to evaluate the effectiveness of monitoring strategies, both in terms of protecting the environment and in being cost-effective (see § 971.1005) and, if necessary, to develop potential mitigation measures. If modification of permit TCRs or regulations is required to protect the quality of the environment, the Administrator may modify TCRs pursuant to § 971.414, or the regulations pursuant to § 971.804.

§ 971.604 Best available technologies (BAT) and mitigation.

(a) The Administrator shall require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant adverse effect on safety, health, or the environment, except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies. Because of the embryonic nature of the industry, NOAA is unable either to specify particular equipment or procedures comprising BAT or to define performance standards. Until such experience exists, the applicant shall submit such information as is necessary to indicate, as required, the use of BAT, the alternatives considered to the specific equipment or procedures, and the rationale as to why one alternative technology was considered in place of another. This analysis shall include a discussion of the costs involved with use of such technology and the incremental benefits gained.

(b) NOAA is not specifying particular mitigation methodologies or techniques at this time (such as requiring the sub-surface release of mining vessel discharges), but expects applicants and permittees to develop and carry out their operations to the extent possible to minimize adverse environmental effects and to be able to demonstrate efforts to that end. The applicant must submit a plan describing how he would mitigate a significant adverse environmental effect, if it were caused by the surface release of mining vessel discharges, including a plan for the monitoring of any discharges. Based upon monitoring results, NOAA may find it necessary in the future to specify particular

procedures for minimizing adverse environmental effects. These procedures would be incorporated into permit TCRs.

(c) In permit TCRs NOAA will require the permittee to report, prior to implementation, any proposed technological or operational changes that will increase or have unknown environmental effects. Changes in composition, concentration or size distribution of suspended particulates discharged from the mining vessel, water depth of vessel discharge, depth of cut in the seafloor of the mining collector, and direction or amount of sediment discharged at the seafloor are factors of concern to NOAA. If proposed changes have a high potential for increasing adverse environmental effects the Administrator may disapprove or require modification of the changes.

[FR Doc. 87-20754 Filed 9-11-87; 8:45 am]
BILLING CODE 3510-12-M

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federal register

Monday
September 14, 1987

Part IV

Department of Health and Human Services

Office of Human Development Services

Alaskan Native Social and Economic Development Projects; Availability of Financial Assistance; Notice

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ISS
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13612-882]

Alaskan Native Social and Economic Development Projects; Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Office of Human Development Services (OHDS), Department of Health and Human Services.

ACTION: Announcement of availability of competitive financial assistance for Alaskan Native social and economic development projects.

DATES: The closing dates for receipt of applications are December 11, 1987 and May 6, 1988.

FOR FURTHER INFORMATION CONTACT: Ted George (206) 442–0992 or Robert Kreidler (206) 442–8113, Administration for Native Americans, Office of Human Development Services, Department of Health and Human Services, 2901 3rd Avenue, Mail Stop 411, Seattle, WA 98121.

A. Introduction and Program Purpose

The purpose of this program announcement is to announce the availability of financial assistance to promote self-sufficiency for Alaskan Natives through support of local governance, as well as social and economic development projects. Funds will be awarded under section 803 of the Native American Programs Act of 1974, Pub. L. 93–644, 88 Stat. 2324, 42 U.S.C. 2991b.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement.

The purpose of the financial assistance provided by the Administration for Native Americans (ANA) under the Native American Programs Act (the Act) is to promote social and economic self-sufficiency for American Indians, Alaskan Natives, and Native Hawaiians.

ANA believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and Alaskan Native villages and in the leadership of Native American groups. The development of self-sufficiency requires strengthening governmental responsibilities, economic progress, and improvement of social systems which protect and enhance the health and well-being of individuals, families and communities.

Achievement of self-sufficiency is based on the community's ability to plan, organize, and direct resources in a comprehensive manner to achieve long-range community goals. ANA bases its program and policy initiatives on the following three program goals:

(1) Governance: To assist tribal and village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

(2) Economic Development: To foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services.

(3) Social Development: To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

To accomplish these goals, ANA supports tribal and village governments and other Native American organizations in the development and implementation of community-based, long-term governance and social and economic development strategies (SEDS) aimed at promoting the self-sufficiency of their own communities. This approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining their own goals, setting priorities, and planning and implementing programs aimed at achieving those goals; the unique mix of socio-economic, political, and cultural factors involved in each community makes such self-determination necessary; the local community is in the best position to apply its own cultural, political, and socio-economic values in deciding on long-term strategies and programs.

(2) Economic and social development are interrelated, and development in one area should be balanced with development in the other in order to enhance self-sufficiency. Without a careful balance of the two, the community's development efforts may be jeopardized. Expansion of social services, without providing opportunities for employment and economic development, may lead to greater dependency. Conversely, inadequate social services can seriously impede productivity and economic development.

B. Proposed Projects To Be Funded

The fundamental task which Native American communities face is developing enduring social and economic strategies in keeping with local goals, resources, and cultural values. ANA is interested in assisting local communities in the implementation of projects that are a part of long-range strategies to achieve social and economic self-sufficiency. ANA expects its applicants to have undertaken a long-range planning process that addresses the community's development and encourages social and economic growth for the community. Such long-range planning must consider the maximum use of available resources, directing those resources at opportunities and addressing issues that hinder progress.

ANA encourages applicants to consider innovative approaches to achieve the specific governance and social and economic goals of the community, and to use non-ANA resources including human, natural, and financial ones to strengthen and broaden the proposed project's impact in the community.

All projects funded by ANA must be complete, self-sustaining or supported with other than ANA funds at the end of the project period. ANA's funding of specific projects is not for those programs which operate indefinitely or have need for ANA funding on a recurring basis.

Goal 1: Governance. Effective governance is a necessary foundation and condition for social and economic development of Indian tribes, Alaskan Native villages and Native American groups. Efforts to achieve effective governance include: (1) Strengthening the effectiveness of tribal and village governments; (2) increasing the ability of tribes, villages and Native American groups and organizations to plan, develop, and administer a comprehensive program supportive of community social and economic self-sufficiency; and (3) increasing awareness of the legal rights and benefits to which Native Americans are entitled, either by virtue of the Federal trust relationship, legislative authority, or as citizens of the United States.

Under the governance goal, ANA strongly encourages tribal and village councils and other governing bodies to strengthen and streamline their institutional management in order to develop and implement social and economic development strategies and to improve the day-to-day management of programs. By improving such capabilities, Indian Tribes, Alaskan

Native villages and Native American groups can better define and achieve the goals of their people and promote greater efficiency and effectiveness in the use of available resources.

Goal 2: Economic Development. Effective economic development is the long-term mobilization and management of economic resources to achieve a diversified economy characterized by widespread distribution of economic resources, services, and benefits; participation of community members in the productive activities and economic investments of the community; and pursuit of economic interests in ways that balance economic gain with social development.

Goal 3: Social Development. Effective social development is the mobilization and management of resources for the social benefit of community members, and involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over the institutions that protect the health and welfare of individuals and families, and preserve the values, language, and culture of the community.

Building on the foundation of strong local governance, ANA expects tribal and village governments and other Native American organizations to move toward coordinated and balanced development and implementation of social and economic development strategies. These interrelated strategies should coordinate and direct all resources (Federal and non-Federal) toward locally determined priorities, and affect the community and its members in ways that promote greater economic and social self-sufficiency. In addition, these strategies should provide an independent source of revenue to the community which will assist the applicant in decreasing dependency on public funds.

Alaska Initiative

Based on the three ANA goals, in Fiscal Year 1984, ANA implemented a special Alaska social and economic development initiative. The purpose of this special effort was to provide financial assistance at the village level or for village-specific projects aimed at improving a village's social and economic development. This program announcement continues to implement this initiative. ANA sees both the non-profit and for-profit corporations in Alaska as being able to play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which take advantage of the opportunities afforded to Alaskan Natives under the Alaska Native Claims Settlement Act (ANCSA), Pub. L. 92-202.

Examples of the types of projects that ANA is seeking to fund include, but are not limited to, projects that will:

Governance

- Initiate a demonstration program at a regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base.
- Assist in developing land use capabilities and develop skills in the areas of land and natural resource management including resource assessment and development, as well as potential impacts upon the environment and the subsistence ecology.
- Assist village consortia in the development of tribal constitutions, codes, and court systems.
- Develop agreements between the State and villages that transfer programs, jurisdictions, and/or control to Native entities.
- Strengthen village government control of land management, including land protection.
- Develop tribal courts, adoption codes, and/or related comprehensive children's codes.
- Assist in status clarification for traditional councils.
- Initiate village level mergers between village council and village corporations.
- Develop Regional IRAs (Indian Reorganization Act of 1934) and village consortia, in order to maximize tribal government resources, i.e., to develop model codes, or tribal court systems.

Economic Development

- Assist villages to develop businesses and industries which (1) use local materials, (2) create jobs for Alaskan Natives, (3) are capable of high productivity at a small scale of operation, and (4) complement traditional and necessary seasonal activities.
- Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system.
- Assist villages or consortia of villages in developing subsistence compatible industries that will retain local dollars in villages, reducing dependency on State and Federal subsidies.
- Assist in new or expanded Native businesses.
- Assist villages in labor export, i.e., people leaving the local communities for seasonal work and returning to their communities.

Social Development

- Assist villages in developing the service sector.
- Assist in developing training and education programs for those jobs in education, government, and health usually found in local communities and also to work with the various agencies to encourage job replacement of non-Natives by Natives.
- Coordinate land use planning with village corporations and city government.
- Develop local control of planning and delivery of social services.
- Develop new service programs established with ANA funds and funded for continued operation by local communities or the private sector.
- Develop or coordinate activities with State-funded projects, in decreasing the incidences of child abuse and neglect, or fetal alcohol syndrome, or Native suicides.
- Assist in obtaining licenses to provide housing or related services for State or local governments.
- Assist in increasing the number of Native adoptions, or Native children returning home from foster care.
- Assist in respite care for family caretakers.

C. Eligible Applicants

The following are eligible to apply for a grant award under this program announcement:

- Alaskan Native villages as defined in the Alaska Native Claims Settlement Act.
- Nonprofit Alaskan Native Regional Corporations in Alaska with village specific projects.
- Nonprofit Native organizations in Alaska with village specific projects.
- Current ANA grantees in Alaska funded under section 803 of the Native American Programs Act with a project period ending in Fiscal Year 1988.
- Alaskan Native Indian communities as recognized by the Bureau of Indian Affairs.

Although for-profit Regional Corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use the for-profit corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing

applications and to participate as subcontractors in the project.

D. Available Funds

Approximately $1.5 million of financial assistance is available under this program announcement.

Funding Guidance: ANA plans to award approximately 15–18 grants. For individual village projects, the funding level will be up to $100,000; for regional nonprofit and village consortia, the funding level is up to $150,000, commensurate with approved multi-village objectives. For multi-year projects, the funding range for Fiscal Years 1989 and 1990 will be the same.

Each applicant is eligible to receive no more than one grant award under this announcement.

E. Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project, one extending more than 12 months, affords grantees the opportunity to undertake more complex and in-depth projects than can be completed in one year. Applicants are encouraged to develop multi-year projects. However, applicants should note that a multi-year project is a project on a single theme that requires more than 12 months to complete. It is not a series of unrelated projects presented in chronological order over a three year period. It should also be noted that funding after the first budget period of a multi-year project will be non-competitive.

The budget period for each multi-year project grant will be 12 months. The non-competitive funding for the second and third year will depend upon the grantee's progress in achieving the objectives of the project according to the approved work plan, the availability of Federal funds, ANA's continued belief that the project is in the public interest, and compliance with applicable statutory, regulatory and grant requirements.

F. Grantee Share of Project

Grantees must provide at least 20 percent of the total approved cost of the project, which may be cash or in-kind contributions. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The method to compute the non-Federal share is shown in the Application Kit. An itemized budget detailing the applicant's non-Federal share and its source must be included in the application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with section 1336.50(b)(3) of the Native American Program Regulations.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application requirements are approved under OMB Control No. 0980–0016. The application kits containing the necessary forms may be obtained from: Administration for Native Americans, Office of Human Development Services, DHHS, 2901 3rd Avenue, Mail Stop 411, Seattle, WA 98121, Attention: No. 13612–882, (206) 442–0992, Attention: 13612–882.

Application Submission

One signed original and two copies of the grant application, including all attachments, must be hand delivered or mailed to: Department of Health and Human Services, Office of Human Development Services, Discretionary Grants Management Branch, 2901 3rd Avenue, Mail Stop 414, Seattle, WA 98121, Attention: ANA 13612–882.

DO NOT SUBMIT THE APPLICATION TO WASHINGTON, DC.

The application shall be signed by an individual authorized to act for the applicant tribe or organization and to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel evaluates each application against the published criteria. The results of this review assist the Commissioner in making final funding decisions.
- The Commissioner's decision also takes into account the comments of the ANA staff, State and Federal agencies having performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this Program Announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within approximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA).

The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

I. Review Process and Criteria

Applications submitted in a timely manner under this program announcement will undergo a pre-review to determine:

- That the applicant is eligible in accordance with the Eligible Applicant Section of this announcement;
- That the application proposes project objectives which are responsive to the Program Announcement; and
- That the application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. All required materials and forms are listed in the Grant Application Checklist in the Application Kit.

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the following criteria:

(1) *Long-Range Goals.* The application presents long-range goals, within the context of the community's comprehensive social and economic development goals, which the proposed project addresses. (Inclusion of the community's entire development plan is not necessary.) (15 points)

(2) *Resources Availability to the Proposed Project.* Other resources which will assist or be coordinated with the project are described. Resources may be human, natural or financial in nature, including Federal and non-Federal resources. (15 points)

(3) *Capabilities and Qualifications.* The resumes or position descriptions of key personnel indicate that the staff is qualified to carry out the project. (15 points)

(4) *Project Objectives and Activities.* The application proposes project objectives and project activities which:

- Are realistic and feasible;
- Are measurable and quantifiable;
- Are based on a fully described and locally determined balanced social and economic development strategy;
- Clearly address a major problem within the community;
- Indicate when the objective will be accomplished; and
- Indicate who will accomplish the objective; (20 points)

(5) *Results or Benefits Expected.* The proposed project will result in specific, measurable outcomes which will clearly contribute to the overall development of the community and its members. The specific information provided is the basis upon which the outcomes can be evaluated at year end. (20 points)

(6) *Budget.* The budget fully explains and justifies the line items in the budget categories in Part III, Section B of the Budget Information. Sufficient detail is included to facilitate determination of allowability, relevance to the project, and cost benefits. (15 points)

J. Guidance to Applicants

The following policies, pointers, and instructions are provided to assist applicants in developing a competitive application.

(1) Program Guidance

- Community Coordination: ANA supports the concept that the key to balanced socio-economic development is the local village. ANA encourages Native village governments to coordinate their local plans with other village entities, if any, and especially the city government and the village corporation. In addition, villages are encouraged to make maximum use of regional nonprofit resources, including village-to-regional corporation subcontracts.
- ANA reviewers of applications have indicated they are better able to judge the feasibility and practicality of a proposed economic development project when the applicant has utilized a business plan to discuss the project. ANA has included sample business plans in the application kit. It is strongly suggested that an applicant use these as a guide in the development of an application. The more information given a review panel on a proposed business, the better able it is to evaluate the potential for success.
- ANA does not fund on the basis of need. ANA funds projects presenting the strongest prospects for fulfilling a community's governance, social or economic development.
- In discussing the problems or needs of the community being addressed in the application, sufficient background and/or history of the community should be included to ensure that the feasibility of the proposed project will be understood by reviewers.
- The project proposal must clearly identify in measurable terms the expected results of the project and its positive and continuing impact on the community.
- In the Part IV, Section A of the application package, *Resources Available to the Proposed Project,* the applicant should address any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant and any restrictions to those settlements and explain the specific reasons it is seeking ANA funds, particularly if the applicant apparently has other resources to support the proposed project and chooses not to use them.
- Supporting documentation or other testimonies from concerned interests other than the applicant may be used to provide support for the feasibility of the project.

(2) Technical Guidance

- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- ANA suggests that the pages of the application be numbered sequentially from the first page. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.
- Two copies of the application plus the original are required.
- Applicants are encouraged to have someone other than the author apply the evaluation criteria and score the application prior to its submission in order to gain a better sense of their application's quality and potential competitiveness.
- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.
- ANA will not fund essentially identical projects serving the same constituency.
- ANA will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.
- An application from a Federally recognized tribe must be from the governing body.
- The Cover Page (included in the Kit) should be the first page of an application.
- The Approach page (Section B, Part IV) for each objective proposed should be of sufficient detail to become a daily or weekly staff guide of responsibilities should the applicant be funded.
- If a profit making venture is being proposed, revenue must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income and used in accordance with the deduction alternative. (See 45 CFR Part 74.42(c).)
- Applicants proposing multi-year projects must fully describe annual project objectives and activities. Separate Objective Work Plans (OWP) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.
- Applicants for multi-year projects must justify the entire time-frame of the project (i.e. why the project needs multiple years to complete) and describe the results to be achieved by the end of each budget period of the project period.
- The applicant should specify the entire project period length on the cover page of the Form 424, Block 16, not the length of the first budget period. In cases where the application's contents propose one length of project period and the Form 424 cover page specifies a conflicting length of project period, ANA will consider the project period specified on the Form 424 as the governing one.
- Village governments without established accounting systems must arrange for qualified, acceptable accounting services prior to release of grant funds.

Note: Subpart H, 45 CFR Part 74 describes those elements of a generally acceptable accounting system for Federal grantees. The financial management standards in Subpart H require:

(1) Accurate, current and complete disclosure;

(2) Records which show source and application of funds;

(3) Effective control and accountability of funds and property;

(4) Comparison of actual and budgeted amounts;

(5) Procedures to minimize time lapsing between transfer and disbursement of funds;

(6) Procedures to determine allowability and allocating of funds;

(7) Accounting records with source documentation;

(8) Periodic audits; and

(9) A follow-up system.

(3) Projects or activities that generally will not meet the purposes of this announcement

The following activities are inconsistent with the policies of ANA:

- Projects which support a grantee in providing training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA") are inconsistent with the policies of ANA. However, the purchase of T/TA by a grantee for its own use or use for its members (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.
- Proposed feasibility studies, business plans, marketing plans, or written materials such as manuals that are not an integral part of the applicant's long-range development plan would generally not be considered. ANA is not interested in funding 'wish lists' of business possibilities. ANA expects evidence of solid investment of time and thought on the part of the applicant to any development of business or other plans.
- On-going social service delivery, expansion or continuation of existing social service delivery programs;
- Core administrative functions or other activities that essentially support the applicant's administrative functions;
- Project goals which are not responsive to one or more of the three ANA goals (Governance, Economic Development, Social Development);
- Projects plans or strategies clearly not determined or developed at the local level;
- Proposals from consortia of tribes that are not specific in regard to support from and roles of member tribes;
- Projects which should be supported by other Federal funding sources appropriate and available for the proposed activity;
- Activities that will not be completed, not be self-sustaining or not be supported by other than ANA funds at the end of the project period;
- Lack of demonstrated coordination with non-ANA resources;
- Lack of a justification or explanation for requesting ANA funds, or a lack of discussion of other resources and revenues for use in the project;
- The purchase of real estate (see 45 CFR 1336.50 (e)) or construction (see HDS Grants Administration Manual 3–e);
- Use of ANA grant funds for a monetary share of capital investment for a business.

ANA will critically evaluate applications within which the acquisition of major capital equipment (whether oil rigs or computers/word processing equipment), franchises or management fees are major components of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application.

ANA will also critically evaluate projects reflecting heavy reliance on use of outside consultants, especially where consultants have prepared the application and have provided themselves a major role in the proposed project.

K. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are December 11, 1987 and May 6, 1988.

L. Receipt of Applications

Applications must either be hand delivered or mailed.

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting the deadline if they are:

(1) Received on or before the deadline date at the address specified in the Application Submission Section, or

(2) Sent on or before the deadline date. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications. Applications which do not meet the criteria in the above paragraph of this section are considered late applications. ANA shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. ANA may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: July 22, 1987.

William Lynn Engles,

Commissioner, Administration for Native Americans.

Approved: August 31, 1987.

Phillip N. Hawkes,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 87–21038 Filed 9–11–87; 8:45 am]

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[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[6] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

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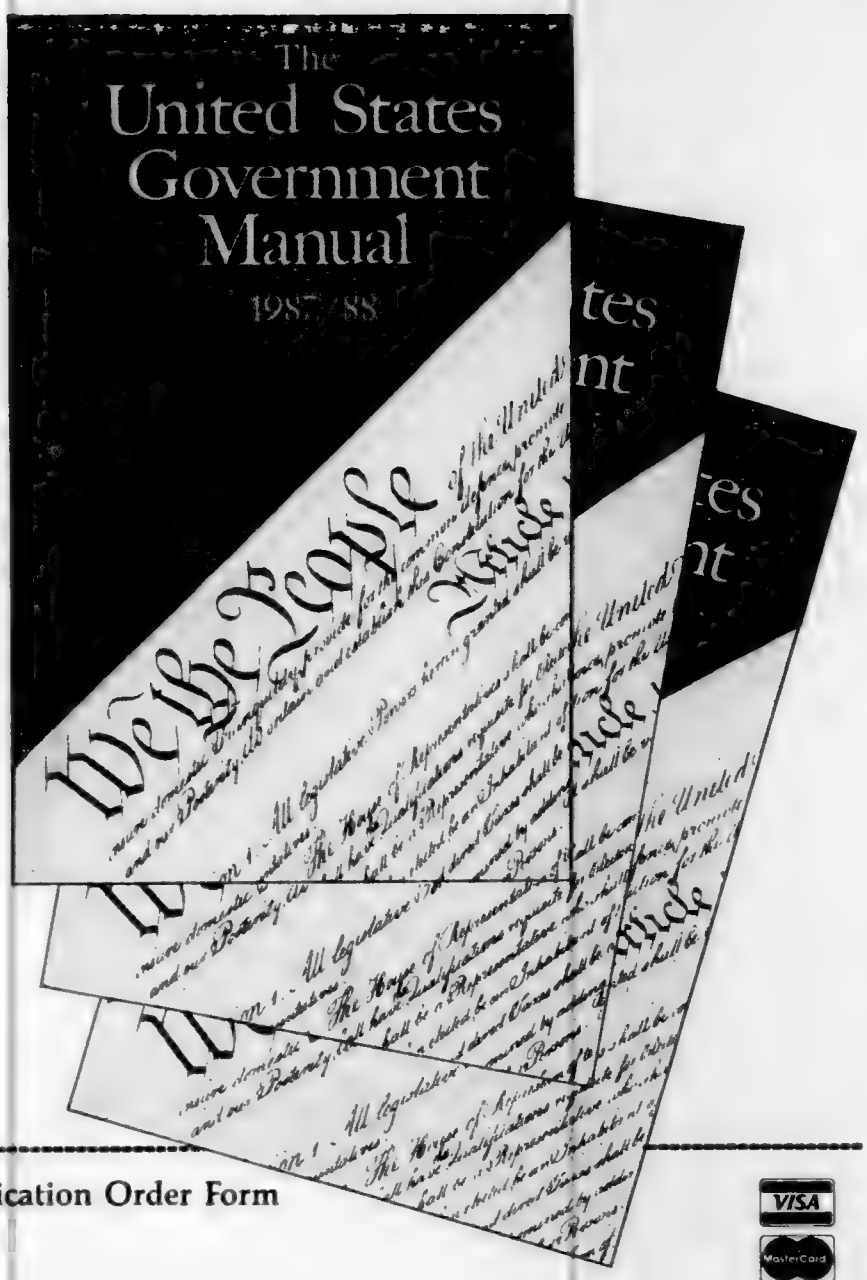

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

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Presidential Documents

Title 3—

The President

Proclamation 5701 of September 11, 1987

National Hispanic Heritage Week, 1987

By the President of the United States of America

A Proclamation

During National Hispanic Heritage Week, all Americans can recognize, honor, and celebrate the rich and diverse contributions Hispanic Americans have made to our land ever since the exploration and settlement of the Western Hemisphere.

People of Hispanic culture have been present in the Americas from early times and have exerted much influence on the development of the United States. Hispanic explorers helped open the New World, discover its resources, and found its new nations, including parts of our own. Explorers such as Coronado in the 16th century traveled throughout the present-day United States, and Spaniards settled in St. Augustine, Florida, long before Jamestown was founded. The founding of missions and presidios in California was simultaneous with the American Revolution; and when the new United States had won, thanks in part to Spanish help, Te Deum masses of thanksgiving were celebrated in those missions, just as throughout all Spanish colonies. In the 19th century, the vision of liberty inspired countless brave Latin Americans to fight for independence for their countries. Today, Hispanics carry on the dream of freedom throughout the hemisphere, and democracy is enjoying a broad resurgence.

The Spanish names bestowed on so many of our cities, towns, States, rivers, mountains, and lakes—Los Angeles, Sacramento, Guadalupe, Colorado, Sierra Nevada, for instance—remind us daily that the values of Hispanic Americans, such as devotion to church, family, work, and community, helped settle our frontiers and build our future. Hispanic Americans have served and sacrificed time and again in the Armed Forces to keep our Nation free. Hispanic cultural heritage is a constant source of enrichment for our country, and Hispanic Americans are a source of close ties to the nations of Central and South America.

America's Hispanic heritage is an indelible and invaluable part of our history and a vital part of the creative forces that are shaping our future.

In recognition of the outstanding achievements of Hispanic Americans, the Congress, by Joint Resolution approved September 17, 1968 (Public Law 90–498), has authorized and requested the President to issue annually a proclamation designating the week including September 15 and 16 as National Hispanic Heritage Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning September 13, 1987, as National Hispanic Heritage Week, in recognition of the Hispanic individuals, families, and communities who enrich our national life. I call upon the people of the United States, especially educators, to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of Sept., in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-21390
Filed 9-11-87; 4:34 pm]
Billing code 3195-01-M

Editor's note: For the President's remarks on signing Proclamation 5701, see the *Weekly Compilation of Presidential Documents* (vol. 23, no. 36).

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Rules and Regulations

Federal Register
Vol. 52, No. 178
Tuesday, September 15, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1004

Milk in the Middle Atlantic Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the months of September 1987 through February 1988 certain provisions relating to how much milk not needed for fluid (bottling) use may be moved directly from farms to manufacturing plants and still be priced under the Middle Atlantic milk order. The action was requested by a cooperative association to insure the efficient disposition of milk not needed for fluid use and still maintain producer status under the order for dairy farmers regularly associated with the market. A substantial change in the method of disposing much of the market's reserve milk supplies prompted the request by the cooperative association.

EFFECTIVE DATE: September 15, 1987.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7311.

SUPPLEMENTARY INFORMATION:

Prior Document in This Proceeding

Notice of Proposed Suspension

Issued August 17, 1987, published August 20, 1987 (52 FR 31408).

The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers regularly associated with the market will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), and of the order regulating the handling of milk in the Middle Atlantic marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 20, 1987 (52 FR 31408) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the proposed action were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September 1987 through February 1988 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1004.12, all of paragraph (d) except the introductory text.

Statement of Consideration

This action makes inoperative for September 1987 through February 1988 the provisions of the Middle Atlantic Federal milk order that limit the amount of milk that may be diverted from farms to nonpool plants and still retain producer milk status. The order now provides that during any month of September through February a handler may divert not more than 18 days' production of each producer or in the alternative all diversions of a proprietary handler and a cooperative association handler may not exceed 40 and 50 percent, respectively, of the volume of such handler's total producer receipts.

The suspension was requested by Atlantic Dairy Cooperative (ADC), which handles a substantial part of the market's reserve milk supplies. The basis for the request is that current production and marketing conditions have caused the cooperative to change the manner in which much of its reserve milk supplies are handled. Normally, a substantial portion of ADC's reserve milk supplies are delivered to reserve pool plants, including the proponent cooperative's reserve pool processing plant at Mt. Holly Springs. However, because of tighter supply-demand conditions this year over last year, ADC expects that the proportion of deliveries to nonpool plants will significantly increase while deliveries to reserve pool processing plants will markedly decline. Consequently, beginning in September 1987, ADC projects that deliveries to nonpool plants, which are received on a diverted basis, are expected to exceed the quantity of milk that could be diverted to nonpool plants under the present diversion limits and still maintain producer status for all such milk. Proponent cooperative stated that without the suspension it would be forced to make uneconomic shipments of a substantial part of such deliveries of its member milk to nonpool plants that has been regularly associated with the market to qualify it for pooling beginning in September.

The changed marketing situation cited by ADC coupled with an analysis of market data indicates that the order's limitation on diversions to nonpool plants during the period in question will not enable the cooperative to efficiently handle milk that is not needed for fluid uses where nonpool plants are the principal outlets for reserve milk. Without suspension of the requested provisions, and to insure that some producers of ADC who have been regularly supplying the Middle Atlantic market continue to share in the higher-valued fluid sales, the proponent cooperative would be forced to receive part of such producer member milk first at its pool manufacturing plant and then in turn, transfer it to a nonpool plant. Such extra handling tends to affect milk quality and is an uneconomic means of pooling the proponent cooperative's reserve milk supplies. Suspending the diversion limits will tend to promote

handling efficiencies and accommodate the changed method in the disposition of much of ADC's reserve milk supplies. Thus, the suspension action is necessary to promote orderly marketing conditions.

Maryland and Virginia Milk Producers Association, Inc., and Eastern Milk Producers indicate support for the suspension. No opposition to the action was received.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that uneconomic movements of milk would be made solely for the purpose of pooling the milk of producers who have regularly been associated with the Middle Atlantic market;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1004

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions in § 1004.12 of the Middle Atlantic order are hereby suspended for September 1987 through February 1988.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. The authority citation for 7 CFR Part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1004.12 [Amended]

2. In § 1004.12, all of paragraph (d) except the introductory text is suspended during the months of September 1987 through February 1988.

Signed at Washington, DC, on September 9, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 87–21159 Filed 9–14–87; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[INS No.: 1002–87]

Adjustment of Status to That of Persons Admitted for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This regulation change will require all future applicants for permanent residence under the Cuban Adjustment Act to submit, with their application, local police clearances from every jurisdiction in the United States where they have lived for six months or more. This action is necessary because it is not feasible to conduct these police clearances in an automated fashion in six states as is currently done, due to the significant decrease in the number of applications submitted to the Service. This rule will streamline the Service's procedures in future adjustment of status applications under the Cuban Adjustment Act.

EFFECTIVE DATE: September 15, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph D. Cuddihy, Senior Immigration Examiner, Immigration & Naturalization Service, 425 Eye Street NW., Washington, DC 20536; Telephone: (202) 633–3320.

SUPPLEMENTARY INFORMATION: On April 10, 1987, the Service published a proposed rule at 52 **Federal Register** 11659, requesting that comments be received by May 10, 1987. There were no comments submitted to the Service. This final rule is therefore being implemented as proposed.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant impact on a substantial number of small entities.

This order is not a major rule within the definition of section 1(b) of E.O. 12291.

The information collection requirement contained in this regulation will be submitted to OMB under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 245

Aliens, Immigration and Nationality Act, Passports, Visas.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for Part 245 is revised read:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1255, 1257.

2. In § 245.2, paragraph (a)(3)(iv) is revised to read as follows:

§ 245.2 Application.

(a) * * *

(3) * * *

(iv) *Under the Act of November 2, 1966.* An application for adjustment of status is made on Form I–485A. There is no fee required in the application for the benefits of this Act. The application must be accompanied by Form I–643, Health and Human Services Statistical Data Sheet. The application must include a clearance from the local police jurisdiction for any area in the United States when the applicant has lived for six months or more since his or her 14th birthday.

* * * * *

Dated: May 20, 1987.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87–21120 Filed 9–14–87; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL TRADE COMMISSION

16 CFR Part 5

Standards of Conduct; Miscellaneous Revisions and Corrections

AGENCY: Federal Trade Commission.

ACTION: Final rules.

SUMMARY: The Federal Trade Commission (FTC) has revised its Rules of Practice to update and clarify the Standards of Conduct for agency employees and to make technical corrections.

EFFECTIVE DATE: These amendments are effective September 15, 1987.

FOR FURTHER INFORMATION CONTACT: Christian S. White, Assistant General Counsel, Federal Trade Commission, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2476.

SUPPLEMENTARY INFORMATION: Following an internal review of its Standards of Conduct for agency employees, the Commission has adopted several clarifying amendments. These amendments are technical in nature and clarify existing standards so that the FTC staff and the public will understand

more clearly what the applicable ethical standards require of Commission members and employees. These amendments have been submitted to and approved by the Office of Government Ethics.

The provisions of Part 5 of the FTC Rules of Practice containing Standards of Conduct for agency employees are amended as follows:

(1) Section 5.1 is amended to refer to both the public and confidential systems under which certain agency employees are required to make financial disclosures.

(2) Section 5.9 is amended to permit the distribution of a comprehensive summary of the Standards of Conduct to agency employees as an alternative to providing a copy of the regulation. Most professional FTC employees receive and regularly use the Commission's Rules of Practice, which include the Standards of Conduct.

(3) Section 5.11(b)(1) is amended to permit agency employees to accept gifts from individuals where circumstances make it clear that personal or family relationships rather than the business of the persons concerned are the motivating factor for the gift. *See*, 5 CFR 735.202(b)(1).

(4) Section 5.11 is amended to permit participants in educational programs to accept gifts that are of nominal intrinsic value, are given to all participants in such programs, and are in the nature of a remembrance traditional to the offering institution.

(5) Section 5.11(d) is amended to provide a brief explanation of the Foreign Gifts and Decorations Act, 5 U.S.C. 7342.

(6) Section 5.11(e) is amended to state the circumstances under which FTC employees are permitted by the Government Employees Training Act, 5 U.S.C. 4111, to accept reimbursements for travel and related expenses.

(7) Section 5.12(c) is amended to delegate to the General Counsel responsibility for authorizing the disclosure of non-public information in teaching, lecturing, or writing undertaken by Commission officials.

(8) Section 5.12(f) is amended to require that FTC employees requesting permission to engage in outside employment certify that no government property, resources, or facilities not available to the general public will be used in such employment.

(9) Section 5.17 is revised to clarify the Commission's position on employee indebtedness.

(10) Section 5.42 is amended to correct a technical error in the reference to another section of the Standards of Conduct.

Regulatory Flexibility Act

No regulatory flexibility analysis (or certification that one is not required) is necessary because these rules are procedural, and thus not within the definition of "rule" for purposes of Chapter 6, Title 5, U.S.C.

List of Subjects in 16 CFR Part 5

Administrative practice and procedure, Standards of conduct, Conflict of interest.

Text of Amendment

Accordingly, the Federal Trade Commission amends Title 16, Part 5, of the Code of Regulations as follows:

PART 5—STANDARDS OF CONDUCT

1. The authority for Part 5 continues to read as follows:

Authority: E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR, 1965 Supp., 5 CFR 735.104, unless otherwise noted.

2. Section 5.1 is revised to read as follows:

§ 5.1 Purpose.

This part establishes standards of ethical conduct for employees and special Government employees in the Federal Trade Commission. It sets forth regulations pertaining to financial interests; acceptance of gifts, entertainment, and favors; outside employment; use of Government information; and teaching, lecturing, and writing. This part also contains instructions for the filing of public financial disclosure reports under the Ethics in Government Act by members and certain employees and the filing of confidential statements of employment and financial interests by certain employees and special Government employees.

3. Section 5.9 is revised to read as follows:

§ 5.9 Publication of regulations.

Each employee and special Government employee shall be furnished a copy of the regulations in this part (or a comprehensive summary thereof) within 90 days after their approval by the Office of Personnel Management. Each new employee and special Government employee shall be furnished a copy of summary at the time of his entrance on duty. At least once each year, an appropriate notice shall be issued by the General Counsel to bring the provisions of the regulations in this part to the attention of each employee and special Government employee.

4. Section 5.11 is amended by revising paragraphs (b) introductory text and (b)(1), (d) and (e) and adding paragraph (b)(5) to read as follows:

§ 5.11 Gifts, entertainment, and favors.

* * * * *

(b) As exceptions to paragraph (a) of this section, an employee shall be permitted to:

(1) Accept gifts, gratuities, favors, entertainment, loans, or other things of monetary value from members of his intermediate family (*i.e.*, parents, children, or spouse) or from a friend when the circumstances make it clear that it is the personal or family relationship rather than the business of the persons concerned which is the motivating factor;

* * * * *

(5) Accept gifts given for participation in an education program when they are of nominal intrinsic value, are provided to all participants in the program, and are in the nature of a remembrance traditional to the particular offering institution.

* * * * *

(d) An employee shall not accept gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342. Congress has authorized federal employees to receive certain gifts from a foreign government where those gifts are of "minimal value" as defined by regulations issued by the General Service Administration.

(e) Employees may not accept reimbursement for travel or expenses incident to travel on official business from any source other than the Federal Government, except that employees may obtain agency approval to accept such reimbursement from organizations that are exempt from taxation under the Internal Revenue Code, 26 U.S.C. 501(c)(3), for expenses incident to training or the attendance at meetings in accordance with 5 U.S.C. 4111 and 5 CFR 410.702.

5. Section 5.12 is amended by revising paragraphs (c) and adding paragraph (f)(5) to read as follows:

§ 5.12 Outside employment and other activity.

* * * * *

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, or this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an

examination of the Office of Personnel Management or Board of Examiners for the Foreign Service, that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the General Counsel gives written authorization for the use of nonpublic information on the basis that the use is in the public interest. In addition, an officer or employee who is a Presidential appointee covered by section 401(a) of the Executive order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission, or which draws substantially on official data or ideas which have not become part of the body of public information.

* * * * *

(f) * * *

(5) Employee's certification that no Government property, resources, or facilities not available to the general public will be used in connection with the outside employment.

6. Section 5.17 is revised to read as follows:

§ 5.17 Employee indebtedness.

The Federal Trade Commission considers the indebtedness of its employees to be essentially a matter of their own concern. The Commission will not be placed in the position of acting as a collection agency or of determining the validity or amount of contested debts. Nevertheless, failure on the part of an employee without good reason and in a proper and timely manner to honor debts acknowledged by the employee to be valid or reduced to judgment by a court or to make or to adhere to satisfactory arrangements for the settlement thereof, may be cause for disciplinary action. Each employee is expected to meet his responsibilities for payment of Federal, State, and local taxes.

7. Section 5.42(a) is revised to read as follows:

§ 5.42 Reviewing statements of special Government employees.

(a) All statements submitted in accordance with § 5.41 shall be reviewed initially by the bureau director or office head who has supervisory authority over the special Government employee. Following this review, all statements shall be returned to the General Counsel for safekeeping.

* * * * *

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87-21168 Filed 9-14-87; 8:45 am]

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16 CFR Part 13

[Docket No. C-2427]

Foremost-McKesson, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified a 1973 consent order (38 FR 22468) by setting aside the second paragraph, of the consent order, prohibiting material inducements to customers to attend respondent's trade shows.

DATES: Consent Order issued July 26, 1973. Modified Order issued April 16, 1987.

FOR FURTHER INFORMATION CONTACT: FTC/S-2115, P. Abbott McCartney, Washington, DC 20580. (202) 326-2687.

SUPPLEMENTARY INFORMATION: In the Matter of Foremost-McKesson, Inc. The prohibited trade practices and/or corrective actions, as set forth at 38 FR 22468, remain unchanged.

List of Subjects in 16 CFR Part 13

Druggists' sundries, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Order Reopening the Proceeding and Modifying Cease And Desist Order

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

Respondent McKesson Corporation ("McKesson") [1] filed a Petition to Reopen Proceeding and Set Aside Order ("Petition") on November 26, 1986, pursuant to Subsection 5(b) of the FTC Act, 15 U.S.C. 45(b). The Commission's order to cease and desist relates to McKesson's practices surrounding trade shows that it conducts for its retail drug store customers. McKesson is the largest wholesale distributor of drugs and druggists' sundries in the country.

McKesson requests the Commission to reopen the proceeding to set aside the two principal parts of the order on the basis of changed conditions of law and fact and the public interest. The Commission issued its order in this matter on July 26, 1973, with the consent of McKesson. 83 F.T.C. 228. The complaint and order were based upon alleged violations of section 5 of the FTC Act. 15 U.S.C. 45. The first ordering paragraph prohibits McKesson from inducing promotional allowances and services from its suppliers in connection with trade shows when McKesson knows or has reason to know that such allowances and services are not available to its competititors on proportionally equal terms. The second part prohibits McKesson from providing material inducements to customers to attend McKesson's trade shows when the receipt is dependent on the volume of the customer's purchases.

The Commission filed on January 10, 1979, a civil penalty action against respondent for violations or the order in this matter in *FTC* v. *Foremost-McKesson, Inc.*, No. 79 Civ. 0162 (PNL) (S.D.N.Y.). The civil penalty action focused upon national trade shows held by McKesson in 1976, 1977, and 1978 and attended by McKesson's retail customers. A Final Judgment and Permanent Injunction was entered on November 23, 1983, with the consent of the parties. Under the judgment, McKesson paid civil penalties and was prohibited for ten years from inducing any promotional allowances that were not available to its competitors on proportionally equal terms. This paragraph in the court's injunction parallels the prohibition in the Commission's order against inducing disproportionate promotional allowances.

A. Standard for Reopening a Final Order of the Commission

Subsection 5(b) of the Federal Trade Commission Act provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. The burden is on the petitioner to make the satisfactory showing of changed conditions required by the statute. This burden is not a light one in view of the public interest in repose and the finality of the Commission's orders. *See Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest

[1] Respondent was formerly Foremost-McKesson, Inc. It changed its name to McKesson Corporation in 1983.

considerations support repose and finality). If the Commission determines that the petitioner has satisfied this requirement, the Commission must reopen the order to determine whether modification is required and, if so, the nature and extent of the modification. Subsection 5(b) does not require that the Commission modify any order. S. Rep. No. 96–500, 96th Cong., 2d Sess. 10 (1979). *See* Order Modifying Consent Order Issued September 28, 1977, in *Union Carbide Corp.*, Docket No. C–2902 on November 14, 1986.

Subsection 5(b) also provides that the Commission may reopen and modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. To obtain review on this ground, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. If respondent satisfies this threshold requirement, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. *See* Order Modifying Consent Order Issued September 28, 1977, in *Union Carbide Corp.*, Docket No. C–2902 on November 14, 1986.

B. The Prohibition Against the Knowing Inducement of Discriminatory Promotional Allowances and Services

Respondent first seeks to have the prohibition against the knowing inducement of discriminatory promotional allowances and services set aside because the Commission's recent decision in *General Motors Corp.*, 103 F.T.C. 641 (1984) ("*G.M.*"), is a changed condition of law. In *G.M.*, the Commission restricted use of Section 5 of the FTC Act to expand the "spirit" of *per se* liability of subsection 2(d) of the Robinson-Patman Act, 15 U.S.C. 13(d), to conduct not otherwise covered by the "letter" of the Robinson-Patman Act. The Commission chose to limit the "spirit" theory to conduct that was actually anticompetitive. According to McKesson, the first paragraph in its order does not prohibit conduct that is either anticompetitive or unlawful under the Robinson-Patman Act.

The Commission has long prohibited, pursuant to section 5 of the FTC Act, a buyer from inducing promotional allowances and services that it knows or has reason to know are not available to its competitors on proportionally equal terms. *See e.g., Grand Union Co. v. FTC*, 300 F.2d 92, 99 (2d Cir. 1962). This prohibition is also embodied in the Commission's Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR 240.14. The prohibition arises from subsections 2(d) and 2(e) of the Robinson-Patman Act, 15 U.S.C. 13(d) and 13(e), which prohibit sellers from providing promotional allowances and services to any firm in connection with the resale of that supplier's products unless such allowances or services are available to the firm's competitors on proportionally equal terms. Discriminatory promotional allowances and services are *per se* unlawful, that is, unlawful without a demonstration of an injury to competition. *See FTC v. Simplicity Pattern Co.*, 360 U.S. 55 (1959).

Although the Robinson-Patman Act does not itself prohibit the inducement of such allowances and services, the Commission has employed section 5 of the FTC Act to prohibit such buyer inducements. The omission of buyer liability under the Robinson-Patman Act was deemed by the court of appeals in *Grand Union* to be "more 'inadvertent' than 'studious.'" 300 F.2d at 96 (footnote omitted). The court observed that "[s]ince * * * there can be no unlawful preference made by a seller unless it was received by a buyer, it is clear that Congress did not intend to sanction buyers to continue to engage in the unlawful activity." *Id.* at 97 (footnote omitted).

The Commission's decision in *G.M.* did not change this precedent surrounding buyer liability for knowingly inducing discriminatory promotional allowances nor the Commission's underlying enforcement policy. In *G.M.*, the Commission declined to extend the *per se* liability of subsections 2(d) and 2(e) of the Robinson-Patman Act to a transaction not otherwise prohibited by those subsections. The concept of buyer liability under section 5 of the FTC Act, however, as explained in *Grand Union*, only imposes liability upon a party to a transaction that is already unlawful under those subsections of the Robinson-Patman Act. That is, *Grand Union* stands for the proposition that both parties to an unlawful transaction may be held liable. In *G.M.*, the Commission merely declined to broaden the class of unlawful transactions.

The Commission also acknowledged the continued applicability of the *Grand Union* line of cases in *G.M.* 103 F.T.C. at 700–01. In the accompanying footnote, the Commission noted that proof of injury is not required in a section 5 buyer inducement case. *Id.* at 701 n.3.

In view of the Commission's position respecting buyer inducements in *G.M.*, McKesson has not established a changed condition of law that requires reopening the order.

Apparently as a changed condition of fact, McKesson also asserts that this first prohibition of the order is no longer needed because the prohibition is now embodied in a court decree as a result of the civil penalty action. McKesson contends that the Commission is, thus, well-equipped to proceed against future conduct. However, the fact that a Federal court has entered a decree to enforce a portion of the Commission's own order is not the type of changed condition of fact that requires reopening the order. Rather, the previous alleged violations leading to the entry of the decree suggest that continuation of the order is appropriate to ensure that McKesson continues to conform its conduct to the law.

McKesson also urges the Commission in the public interest to set aside the prohibition against inducing discriminatory promotional allowances and services because the prohibition places it at a competitive disadvantage. According to McKesson, none of its competitors are subject to such prohibitions, save one. *See Bergen Brunswig Corp.*, Docket No. C–2463, 83 F.T.C. 687 (1973). However, this order provision only prohibits McKesson from violating the law. The order provision does not prohibit any conduct that is currently lawful and McKesson has not demonstrated any other injury flowing from the prohibition. McKesson has not established that it is placed at a competitive disadvantage by an order that requires it to obey the law. *See* Order Modifying Cease and Desist Order Issued July 19, 1951, in *Atlas Supply Co.*, Docket No. 5794, 106 F.T.C. 334, 335 (1985).

In view of this, and because of the continued viability of the *Grand Union* line of cases, the Commission does not believe that setting aside this part of the order would be in the public interest.

C. The Prohibition Against Providing Customers Material Inducements To Attend Trade Shows

McKesson also requests the Commission to set aside the prohibition against providing material inducements to customers to attend its trade shows when the amount is dependent upon the customers' volume of purchases. McKesson claims that the paragraph prohibits competitive conduct and, therefore, is contrary to the public interest.

This provision no longer appears to be necessary. Setting aside this paragraph may be warranted because the prohibited conduct has never been *per se* unlawful under Section 5 and is a competitively reasonable method for a

wholesale distributor to employ in attracting retailers to attend a trade show. Additionally, there is evidence that the prohibition against material inducements may place McKesson at a competitive disadvantage because its competitors are not bound by a similar prohibition. Of course, subsection 2(a) of the Robinson-Patman Act, 15 U.S.C. 13(a), prohibits any price discrimination that injures competition among wholesale distributors.

The Commission has denied that part of McKesson's petition that seeks to reopen on the basis of changed conditions. McKesson has failed to make any showing of changed conditions of law or fact of the type to require such reopening. Likewise, the public interest does not warrant any modification to the prohibition of the knowing inducement of promotional allowances because the paragraph only requires compliance with established case law. However, in the public interest, the Commission has determined to reopen the order and set aside the second paragraph prohibiting material inducements to customers to attend respondent's trade shows.

Accordingly, it is hereby ordered that the proceeding be, and it hereby is, reopened and the following paragraph be set aside as of the date of this order:

It is further ordered that respondent shall cease and desist from offering or providing to its customers, directly or indirectly, any material inducement, monetary or otherwise, to attend its trade shows whenever such customers' receipt of the inducement depends upon their purchases or volume of purchases of merchandise from respondent.

By direction of the Commission. Chairman Oliver concurred in part and dissented in part. Commissioner Azcuenaga was recused.

Emily H. Rock,

Secretary.

Separate Statement of Chairman Oliver in Foremost-McKesson, Inc.; C. 2427

Foremost-McKesson (McKesson), a drug and sundries wholesaler, has petitioned the Commission to vacate a 1973 order that regulates McKesson's conduct in administering druggists' sundries trade shows. The order regulates both McKesson's acceptance of promotional fees, services, and facilities from suppliers who set up booths at the shows, and McKesson's reimbursement of travel and other expenses to retailers who attend the shows.

The Commission concludes, and I agree, that the order should be vacated to the extent it regulates McKesson's reimbursement of retailer travel and other expenses, because continued regulation is not in the public interest. However, the Commission has chosen not to vacate the order's provisions regulating McKesson's acceptance of promotional fees, services, and facilities from suppliers of druggists' sundries. I strongly dissent from this portion of the Commission's decision.

The order's provisions that the Commission refuses to vacate prohibit McKesson from receiving promotional services or facilities from suppliers, or from receiving compensation from suppliers for providing promotional services or facilities, if McKesson knows or has reason to know that similar allowances and services are not available to its competitors on proportionally equal terms. These restrictions are the "buyer side" analogs of Robinson-Patman Act subsections 2(d) and 2(e), which prohibit sellers from offering nonproportional promotional allowances and services to buyers.

As is well know, there is little economic justification for regulating either the offers of services and allowances by sellers (as in subsections 2(d) and 2(e)), or the inducements for services and allowances by buyers (as in the present matter), when neither sellers nor buyers possess substantial market power. Under competitive conditions, sellers face incentives sufficient to ensure that no buyer will face systematic discrimination, or "proportionally unequal" treatment, in any meaningful sense.

Subsections 2(d) and 2(e) of the Robinson-Patman Act would not be quite as troublesome if they incorporated a competitive injury standard requirement.[1] Unfortunately, they do not. As a result, the subsections often increase the costs of doing business, and ultimately force consumers to pay higher prices for goods and services, by making illegal *per se* practices that, in most instances, pose no threat to competition. Even more unfortunately, the Commission has in the past (in the *Grand Union* line of cases) compounded that anti-consumer effects of subsections 2(d) and 2(e) (which regulate conduct of sellers) by using section 5 to reach an even broader class of cases (conduct of buyers), making it *per se* unlawful for a buyer to induce, or receive allowances and services with knowledge that competing buyers were treated nonproportionally.[2]

The Commission recently provided a persuasive basis for overturning the use of section 5 to extend the scope of subsections 2(d) and 2(e). In its decision in *General Motors Corp.* ("GM"), the Commission determined that activities not prohibited by the Sherman and Clayton acts should be prohibited under section 5 only if (1) they have anticompetitive effects very similar to the effects of conduct barred by the pro-competitive portions of those Acts; and (2) if their prohibition is not inconsistent with any other legislative goal reflected in the pro-competitive portions of those Acts.[3]

Thus, the Commission should no longer use section 5 to extend the Robinson-Patman Act, if the Commission does not consider the Act itself to be pro-competitive. And the Commission clearly does not view the Robinson-Patman Act as pro-competitive; it has characterized the Act as a "protectionist non-efficiency oriented" statute whose objectives conflict rather than coincide with the protection of competition.[4] This condemnation applies most strongly to subsections 2(d) and 2(e) because they do not require any demonstration of competitive injury.

Moreover, in the present matter, there is no evidence or analysis to indicate an exercise of market power, and hence no evidence of an ability to discriminate. Therefore the prohibitions imposed by the order on McKession as likely only to inhibit McKession's ability to compete. Clearly, this is inconsistent with the pro-competitive purposes of the Sherman and Clayton Acts.

The Commission was created as an expert body capable of determining when a practice injures competition and when it does not. The Commission did not exercise that expertise in the *Grand Union* line of cases. Instead, it simply extended an inappropriate standard of illegality to an additional class of businesses. The Commission has clear authority to overturn the *Grand Union* line of reasoning. I am unaware of any court decision ordering the Commission to hold as illegal *per se* an inducement

[1] Notably, the American Bar Association has recently suggested that subsections 2(d) and 2(e) be subjected to the competitive injury standard embodied in subsection 2(a). *ABA Favors Competitive Injury Test for Advertising and Promotional Allowances*, 52 Antitrust and Trade Reg. Rep. 357 (Feb. 26, 1987).

[2] *See, e.g. Grand Union Co. v. FTC*, 300 F.2d 92, 99 (2d Cir. 1962); *Giant Food Inc. v. FTC*, 307 F.2d 184, 186 (D.C. Cir. 1962), *cert. denied*, 372 U.S. 910 (1963).

[3] *General Motors Corp.*, 103 F.T.C. 641, 700–701 (1984); *accord. Ethyl Corp.*, 101 F.T.C. 425, 597 (1983), *rev'd on other grounds sub nom. DuPont v. FTC*, 729 F.2d 1288 (2d Cir. 1984).

[4] *General Motors Corp.*, 103 F.T.C. 641, 695–696 (1984), *citing Jefferson County Pharmaceutical Association v. Abbott Laboratories*, 460 U.S. 150, 171 n. 39 (1983).

by a buyer of what we cast as nonproportional services and allowances. The courts merely have indicated that the Commission may, in its discretion, take that step. But, as a general matter, the Commission has both the primary responsibility and wide discretion to interpret section 5. Moreover, the Supreme Court has concluded that "as a general rule the Robinson-Patman Act should be construed so as to insure its coherence with 'the broader antitrust policies that have been laid down by Congress.', " [5]

The Commission has elected not to modify the order's buyer inducement provisions. The Commission has thus, to the detriment of American consumers, foregone an opportunity to alter a precedent in an instance where it has the authority to do so. How can the Commission take this action and at the same time claim to serve the interest of American consumers? [6]

Accordingly, although I concur with so much of the Commission's decision as vacates the "seller side" provision, I dissent from the Commission's decision not to vacate the order in its entirety.

[FR Doc. 87-21170 Filed 9-14-87; 8:45 am]
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16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles

AGENCY: Federal Trade Commission.

ACTION: Final rule; denial of petitions for exemption.

SUMMARY: The Commission has decided to deny petitions for exemption that were filed by sixty-five automobile leasing companies and an auto rental company. The petitions had requested exemptions for the petitioners from the Commission's Used Car Rule.

FOR FURTHER INFORMATION CONTACT: Joyce E. Plyler (202/326-3021), Attorney, or Matthew D. Gold (202/326-3019), Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. This Proceeding

Sixty-five automobile leasing companies petitioned the Commission, pursuant to section 18(g) of the FTC Act, 15 U.S.C. 57a(g), for exemptions from the Commission's Trade Regulation Rule Concerning the Sale of Used Motor Vehicles (the "Used Car Rule" or the "Rule"), 16 CFR Part 455.[1] The petitioners seek exemptions from the Rule for sales to consumers that result from: (a) The consignment of used vehicles to auctions; (b) the use of repossession lots; (c) the solicitation of bids from dealers; and (d) sales made by third-party sales agents (consignees). The petitions do not seek exemptions from the Rule for retail sales of used vehicles at used car lots. A separate petition for exemption from the Used Car Rule was filed by Alamo Rent-A-Car, Inc., of Fort Lauderdale, Florida ("Alamo").[2] Because the Alamo petition raises issues that are common to the petitions by NVLA members, all the petitions are addressed in this one proceeding.

On March 31, 1986, the Commission published a notice in the **Federal Register** (the "Notice"), requesting public comments on the issues raised by the petitions. 51 FR 10884 (1986). In the Notice, the Commission elicited public comment on the petitions generally and on specific questions that were set out in the text. *Id.* at 10885. A copy of the Notice was sent to each petitioner, as well as other parties that are on a special mailing list for the Used Car Rule. Twenty-nine parties submitted comments in response to the Notice, including several trade associations and two state government agencies. None of the petitioners, however, responded to the Notice. The comments are discussed in Sections III–IV, *infra*.

B. The Used Car Rule

The Used Car Rule is primarily intended to prevent and discourage oral misrepresentations and unfair omissions of material facts by used car dealers concerning warranty coverage. The Rule requires dealers to disclose warranty information by means of a window sticker, called the "Buyers Guide." The Rule also requires that certain disclosures be printed on the standard-format Buyers Guide, including: (a) A suggestion that consumers ask about having a pre-purchase inspection of the vehicle by their own mechanic; (b) a warning against relying on spoken promises; and (c) a list of fourteen major systems in an automobile and some of the problems that may occur in these systems.

Section 455.2(a) of the Rule requires dealers to prepare and display a Buyers Guide before offering to sell a used vehicle to a consumer. In § 455.1(d)(3), the term "dealer" is defined to include, with some exceptions, any person or business which sells or offers to sell to consumers six or more used vehicles in a twelve month period. The term "consumer" is defined in § 455.1(d)(4) of the Rule as "any person who is not a used vehicle dealer." Therefore, any dealer, including a leasing company, that offers a used vehicle for sale only to another dealer is not required to prepare and display a Buyers Guide for that vehicle.

Sales of used vehicles by auto leasing companies are often not covered by the Rule. First, many leasing companies sell used vehicles directly to dealers. As discussed above, these sales are not covered by the Rule. In addition, the Rule does not cover sales to the lessee,

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[5] *United States v. United States Gypsum Co.* 438 U.S. 458–459 (1978), *quoting Automatic Canteen Co. v. FTC*, 346 U.S. 61, 74 (1953).

[6] Hint: How can you square a circle?

[1] The petitions have been placed on the public record and are identified as Documents 102–2 through 102–62 in FTC File 215–54.

Counsel for the National Vehicle Leasing Association ("NVLA") informed the FTC's staff that NVLA drafted and distributed blank petitions to its members. Members of NVLA were invited to use this form as the basis for their own petitions. Each petition submitted recites identical facts and arguments to support the petition. A memorandum summarizing staff's conversion with NVLA's counsel has been placed on the public record and is identified as Document 103–2 in FTC File 215–54.

A typical petition consisting of the form circulated by NVLA, with the blanks filled in, was filed by Martin Cadillac Co. (d/b/a "DLC Leasing") of Los Angeles (the "Petition"). In this notice, the Commission will refer to specific sections of the NVLA form petition by citing to the Martin Cadillac Petition.

A letter was sent to each petitioner confirming receipt of its petition and informing petitioners that the pendency of a petition for exemption does not stay the application of the Used Car Rule as it pertains to the petitioner, pursuant to section 18(g)(3) of the FTC Act, 15 U.S.C. 57a(g)(3). Copies of these letters have been placed on the public record and are identified as Documents 103–3 through 103–6 in FTC File 215–54.

[2] The Alamo petiton has been placed on the public record and is identified as Document 102–1 in FTC File 215–54. A letter was sent by the FTC's staff to counsel for Alamo, confirming receipt of the petition and informing counsel that the pendency of a petition for exemption does not stay the application of the Used Car Rule as it pertains to Alamo, pursuant to section 18(g) (3) of the FTC Act, 15 U.S.C. 57a(g)(3). A copy of this letter has been placed on the public records and is identified as Document 103–1 in FTC File 215–54.

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to an employee of the lessee, or to a buyer procured by the lessee.[3] These exclusions were intended "to remove from the scope of the Rule used car sales where the absence of a retail sales environment substantially diminishes the risk of deceptive practices * * * found to be characteristic of used car sales presentations.[4]

II. The Petitions

The petitioners assert that the exclusions set forth in § 455.1(d)(3) of the Rule fail to remove from the Rule's coverage their vehicles that, although ultimately sold to consumers, were not intended to be sold to consumers. The petitioners state that these sales are not made in a retail environment and should not come under the Rule. Such sales include those made through auctions and repossession lots, as well as those resulting from the solicitation of bids from dealers.[5] In addition, the Petition states that other vehicles are sold to consumers in a retail environment, through third-party sales agents. The petitioners, however, contend that these vehicles are disposed of in a manner which gives the petitioners "no means to ensure compliance" with the Rule.

Specifically, the petitioners seek exemption for four classes of transactions. Petitioners contend that when they consign vehicles to auctions to use repossession lots, they often do so with the intent or expectation that sales will be made to wholesale purchasers. Nevertheless, the petitioners note that some of these sales may fall within the scope of the Used Car Rule because a person who is not a dealer, and hence a consumer, may purchase a vehicle at some auctions or repossession lots. The petitioners also state that they seek to dispose of vehicles by soliciting bids from dealers, and that dealers sometimes inform personal friends about the availability of a particular vehicle.[6] The petitioners claim that these individuals, who are not dealers, may request the opportunity to submit a bid. The petitioners state that the Rule covers such transactions because the vehicle was offered to a consumer.

Finally, the petitioners seek exemptions for sales made through third party sales agents (consignees). The petitioners contend that they should not be held responsible for their agents' failure to comply with the Rule. According to the Petition, lessors will sometimes "seek the assistance of a third party sales agent in a different part of the country because a vehicle is located there at the time it comes off lease." The petitioners assert that in these circumstances, they have "no means to assure compliance" with the Rule. They argue that because third party sales agents are generally "dealers" under the Rule, and therefore are responsible for complying with the Rule's requirements, "there is no logical reason" to impose liability on the petitioners as well.

III. The Comments

As noted earlier, the Commission received comments from twenty-nine parties.[7] The comments generally opposed granting the petitions.

Of the fifteen comments which responded to the specific questions raised in the Notice, twelve were opposed to the petitions, and three favored granting the petitions. These fifteen comments will be discussed in detail in the following section of this notice, which will analyze the Petition.

As noted previously, none of the petitioners submitted comments in response to the Notice. Each petitioner was mailed a copy of the Notice, which included specific questions relating to the methods that the petitioners employ to dispose of previously leased vehicles.[8] However, the three trade associations that commented provide some information about the specific methods used to dispose of vehicles.[9]

Fourteen of the 29 comments made general statements about the issues raised by the Notice. These comments were virtually unanimous in their opposition to the petitions. One typical comment from a dealer noted that "leasing companies are in direct competition with franchised dealers who must conform with the law * * *. [They] already enjoy very favorable price concessions from our manufacturers * * *. There is no reason that they should be allowed to bypass another regulation."[10] Another dealer commented that "if you [grant the exemptions] you may as well drop the complete Trade Regulation Rule. Please do not be led astray by [the petitioners'] plea, the John Q. Public will pay the price if you do."[11] Another dealer contended that the Rule has helped the industry: "Let us not destroy what has been achieved by taking a step in the wrong direction. The public is beginning to recognize honesty in what has been considered a nefarious business, help keep it that way by rejecting this request."[12] Although these comments do not directly address the issues presented by the petitions, the thrust of these comments indicates that dealers generally oppose any exemptions to the Rule, particularly exemptions that would treat dealers and leasing companies in a different fashion.

IV. Analysis of the Petitions

In this section, each of the four types of transactions for which petitioners seek exemption is discussed separately. At the outset, however, the Commission considered an issue that was raised by the National Automobile Dealers Association ("NADA") and several other commenters: whether any exemptions granted to the petitioners should also apply to other dealers. NADA commented that:

> [a]ny exemptions limited solely to the petitioner leasing companies would be fundamentally unfair to other 'dealers' * * * and to the incidental 'consumer' purchaser who would face a confusing regulatory double standard for identical sales.[13]

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[3] The Statement of Basis and Purpose for the Used Car Rule explains that the definition of the term dealer "specifically excludes" not only "a lessor selling a used vehicle to the vehicle's lessee," but also a lessor selling a leased vehicle to "a buyer procured by the vehicle's lessee." 49 FR 45692, 45708 (1984).

[4] *Id.*

[5] Petition at 2.

[6] The Alamo petition claims that an exemption for all Alamo sales is warranted. Alamo's petition states that most of its previously leased vehicles are disposed of through private sales in which no consumer bids are solicited, although such bids are apparently accepted upon receipt.

[7] The comments have been placed on the public record and are identified as Documents 103–9 through 103–37 in FTC File 215–54.

The comments from the American Bankers Association, Doc. 103–36, and the New York Commissioner of Motor Vehicles, Doc. 103–37, were received after May 30, 1986, the deadline for submitting public comments to the Commission. While the Commission may refer to these comments in this notice, such references are for purposes of illustration only. The Commission's conclusions therefore are not based upon consideration of these two comments.

[8] Each petitioner was sent a copy of the Notice that was published in the **Federal Register**. However, the Commission did not specifically request comments from the individual petitioners.

[9] *See* National Vehicle Leasing Association ("NVLA") Comment, Document 103–32, at 2–5; National Automobile Dealers Association ("NADA") Comment, Document 103–33, at 3–5; and National Independent Auto Dealers Association ("NIADA") Comment, Document 103–35, at 2–3.

[10] Sandpoint Comment, Document 103–14. *See also* New York DMV Comment, Document 103–37, at 1; Better Buick GMC Comment, Document 103–22: Leasing companies "are not required by the manufacturer to provide showroom space, shop facilities, parts, customer parking and the many other requirements before a dealership may be obtained."

[11] Curt & Hal Comment, Document 103–12.

[12] Better Buick GMC Comment, Document 103–22. *See also* Greenway Motors Comment, Document 103–25: "It is a good rule, it works, and is helping to restore much needed credibility to the used vehicle business."

[13] NADA Comment, Document 103–33, at 5. NADA's comment requests that the Commission

Continued

The Commission recognizes that granting an exemption *only* to petitioners could be unfair, and that consumers might become confused by the result. Therefore, this analysis discusses how the requested exemptions would affect the used vehicle sales industry as a whole.

A. Auctions

The petitioners seek exemptions for auctions to which they consign vehicles:

> Petitioner[s] very often may consign automobiles to auctions with the clear intent that sales to wholesale purchasers will occur. There is a chance, however, that a non-"dealer" purchaser (*i.e.*, a "consumer" as defined in the Rule) may purchase an automobile at an auction, thus triggering, read literally, application of the Rule.[14]

Each of the petitions provided data concerning the average number of yearly lease terminations during the previous three years and the number of sales made during that period in "non-retail" settings to persons other than a lessee or lessee-procured buyer. According to the petitions, the petitioners averaged over 15,000 sales per year in "non-retail" settings. Presumably, the "non-retail" settings referred to include auctions, repossession lots and requests for bids, the subject of the petitions. However, none of the petitions, nor any of the comments, provided any information on the number of the petitioners' vehicles that are sold at auction or the percentage of auctions that are open to consumers.[15] According to a recent survey of U.S. commercial fleet owners, approximately, 32% of the vehicles sold in 1985 were consigned to auctions.[16]

The California Attorney General's office commented that the Rule need not apply to auctions in which a consumer would only rarely be present. However, the comment also noted that "many auctions * * * have wide appeal for [consumers] and hence * * * we believe it would be most important not to exempt auctions * * * totally but only sales through auctions * * * in which the dealer reasonably anticipates that the purchasers will not, except in rare cases, be [consumers].[17] The National Independent Automobile Dealers Association ("NIADA") commented that auctions "are, in reality, nothing more than other names for 'used car lots,' as the public is invited, encouraged, or at least allowed to purchase vehicles being disposed of by the petitioners."[18] The New York Commissioner of Motor Vehicles commented that leasing companies can "assure that their vehicles are not inadvertently sold directly to consumers [by allowing] their cars to be sold at auctions which permit only registered dealers and vehicle dismantlers to enter the auction locale."[19]

Petitioners imply that sales to consumers at auctions are inadvertent because petitioners consign vehicles to auctions with the intent that other dealers will purchase them. However, petitioners have provided no evidence to support the contention that sales to consumers at auctions are either rare or inadvertent. On the contrary, the comments received suggest that auctions may have wide appeal to consumers and may be analogous to traditional used car lots. The comments also indicate that certain auctions may even invite consumer attendance. Petitioners make no distinction between auctions attended only by dealers and auctions at which consumers are allowed or invited to attend. Clearly, an auction that is restricted to dealers only is not covered by the Rule.[20]

At auctions attended by consumers, as in "traditional" used car lots, the Buyers Guide provides consumers with an understanding of the term "as is."[21] In addition, the Buyers Guide reminds consumers to ask about having a pre-purchase inspection.[22] The list of vehicle systems and the possible problems that may arise provides an invaluable "roadmap" to those consumers who choose to conduct their own inspection of a vehicle.

Petitioners have provided no factual basis for their conclusory statement that auctions are non-retail environments. Without evidence that auctions do not have characteristics of "retail" environments and without evidence that sales to consumers through auctions are, in fact, rare, the Commission must deny the petitions for exemption.

B. Repossession Lots

The petitioners seek exemptions for sales made at "repossession lots":

> Petitioner uses repossession lots maintained by others, again with the expectation that wholesale buyers only will make purchases. While the public is not invited to purchase such automobiles and the setting is not a retail sales environment, as members of the financial services industry have clearly proven, a non-wholesale purchaser may, once again, seek to purchase an automobile, thus once again raising the question of compliance with the Rule.[23]

The exact definition of the term "repossession lot" is unclear. In its comment, NADA described a repossession lot as:

> * * * a permanent or regular sales point where a third party offers vehicles up for sale to "dealers." NADA dealers do not, of course, use "repossession lots" strictly for repossessions nor do most dealer repossessions go to "repossession lots."[24]

In its comment, NIADA categorized repossession lots as nothing more than "used car lots."[25] The Oregon IADA commented that "[r]epossession lots are certainly open to the public * * *."[26]

The Commission has analyzed the issue of repossession lots in the same manner as it has analyzed auctions. That is, if a repossession lot is open only to dealers, the Rule does not apply.[27] However, the record indicates that at least some repossession lots are open to consumers as well as dealers. The petitioners have not made a sufficient showing that in such circumstances there is no need for the Rule because of an absence of a retail sales environment where deceptive sales practices, which

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consider its remarks as a formal petition for exemption under section 18(g) of the FTC Act. *Id.* at 2. However, NADA's comment is generally addressed to the questions posed in the Notice, and presents no new issues, apart from the request that any exemptions granted be extended to all dealers.

[14] Petition at 2.

[15] The Commission specifically requested such information. *See* Notice at 10885 (Questions 2, 3(a), 3(b)).

[16] "Used Car Marketing Results," *NAFA Bulletin* (May 1986), at 12, 22–23 (the "NAFA Study"). The *NAFA Bulletin* is published by the National Association of Fleet Administrators, Inc., which is headquartered in Iselin, New Jersey. The NAFA Study has been placed on the public record and is identified as Document 103–38 in FTC File 215–54.

[17] California Attorney General's Comment, Document 103–29.

[18] NIADA Comment, Document 103–35, at 2.

[19] New York DMV Comment, Document 103–37, at 1.

[20] *See* §§ 455.1(d)(4) and 455.2(a) of the Used Car Rule.

[21] The Buyers Guide may also foster warranty competition among the several dealers that offer to sell used vehicles at the same auction.

[22] The Buyers Guide may point out to the consumer the desirability of a pre-purchase independent inspection, which the Commission believes to be the best method for determining a vehicle's mechanical condition. *See also* SBP at 45724. To the extent that a pre-purchase independent inspection of vehicles at an auction may be impossible, some consumers might find the Buyer Guide's disclosure useful in considering how much, if anything, to bid at an auction.

[23] Petition at 2.

[24] NADA Comment, Document 103–33, at 3.

[25] NIADA Comment, Document 103–35, at 2.

[26] Oregon IADA Comment, Document 103–27. *See also* California Attorney General's Comment, Document 103–29 (the Rule should cover repossession lots in which the dealer reasonably anticipates that vehicles will be purchased by consumers); and NIADA Comment, Document 103–35, at 2 (repossession lots are the same as conventional used car lots).

[27] *See supra* note 20.

the rule is designed to prevent or remedy, might occur. Consequently, the Commission is denying the petitioners request to exempt all repossession lot sales from the Rule.

C. Request for Bids

The petitioners seek an exemption for sales made through the solicitation of bids:

> Petitioner may solicit bids for a unit from dealers. Occasionally, a dealer will advise a friend of the availability of a given unit and that person will also ask for an opportunity to submit a bid. Clearly that "consumer" is not acting in an environment which bespeaks a retail setting.[28]

The NAFA Study does not directly address the issue of how many vehicles are sold though this process. The NAFA Study does, however, note that in 1.1% of all U.S. commercial fleet sales, the selling price is determined by the highest bid received.[29]

The Commission has applied the same analysis to requests for bids as for auctions and repossession lots. A request for bids that is open only to other dealers would not be covered by the Rule, because dealer-to-dealer transactions are specifically excluded by the Rule.[30] Where bids are solicited or accepted from consumers, however, the risk remains that a dealer might make the same misrepresentations as in the "traditional" retail setting. Petitioners have submitted no evidence to show that the protections of the Rule are any less necessary in a consumer sales transaction that was prompted by a solicitation for bids than are necessary in other used car sales. Without such evidence, the petitions are unsubstantiated and are thus denied.

D. Consignment Sales

The petitioners also seek exemption for consumer sales made by third party sales agents (consignment sales). The petitioners state:

> Petitioner may, from time to time, seek the assistance of a third party sales agent in a different part of the country because a vehicle is located there at the time that it comes off lease. In this instance * * * the actual vehicle disposal may be in a retail setting. * * * Petitioner, however, has no means to assure compliance, and the terms of the Rule, by defining dealer as one who "offers" a unit for sale, clearly provides a duty of compliance on the sales agent * * *. Under these circumstances, there is no logical reason to continue to impose potential liability on the Petitioner for the acts of another over whom Petitioner has no effective control, and the Commission should focus solely on the conduct of the sales agent.[31]

Several automobile dealer trade associations commented that the Commission should not exempt consignment sales. NADA's comment concluded that third party sales should not be exempt from the Rule.[32] NIADA commented that "[t]o suggest to the FTC that the petitioners cannot control their own third-party agents would lead one to believe that perhaps the petitioners should re-examine their hiring practices, rather than attempt to escape from the existing Rule * * *. If the petitioners are concerned about whether their agents are complying, then [they should] remove the vehicles to their own premises to ensure compliance * * *"[33] The Nebraska IADA stated that "[v]ehicles sold through third parties opens a large field of possible abuses."[34]

The Commission is denying the request to exempt consignors of used vehicles from their obligation to comply with the Rule. Petitioners have not supported their claim that dealers do not have any means of ensuring compliance with the Rule when used vehicles are consigned to third party agents. On the contrary, as the comments suggest, dealers can make Rule compliance a condition of the consignment contract. Moreover, it is in the dealers' economic self-interest to carefully choose consignees to ensure that the consignee will comply with the consignment contract and will comply with any applicable State or Federal laws. Dealers should be equally able to ensure compliance with the Used Car Rule. In addition, dealers could choose to use private indemnification agreements to lessen the chance that a consignor-dealer would be financially responsible for its consignee's malfeasance.

Although the Commission recognizes that third party sales agents are obligated themselves to comply with the Rule, in certain circumstances it nevertheless may be appropriate to direct enforcement action against the consignor. For example, if all the vehicles at ten dealerships have Buyers Guides, *except* the vehicles that are on consignment from one leasing company, Commission action against the consignor-leasing company may be warranted.

V. Conclusion

The Commission has concluded that exemptions for sales at auctions, repossession lots or through requests for bids, which are open or promoted to consumers, are not warranted. However, the Rule does not apply where a dealer offers a used vehicle for sale through an auction, repossession lot or request for bids that is open only to dealers. The Commission also has concluded that an exemption for consignment sales is unwarranted.

For the reasons discussed in this notice, the Commission has determined that the petitions for exemption should be denied.

List of Subjects in 16 CFR Part 455

Used cars, Trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87-21169 Filed 9-14-87; 8:45 am]

BILLING CODE 6750-01-M

[28] Petition at 2.

[29] NAFA Study at 12.

[30] *See supra* note 20.

[31] Petition at 2.

[32] NADA Comment, Document 103-33, at 6. However, NADA's comment also implies that these transactions should be exempt. *Id.* at 4.

[33] NIADA Comment, Document 103-35, at 3.

[34] Nebraska IADA Comment, Document 103-18. *See also* New York DMV Comment, Document 103-37, at 1: "[L]easing companies may assure themselves they are selling their vehicles located * * * at wholesale by selling to registered dealers only."

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Residence and Citizenship; Correction

AGENCY: Social Security Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects § 416.1618, a final rule to be codified in 20 CFR Part 416, which was published in the **Federal Register** on June 10, 1987 (52 FR 21939). The second sentence of that section inadvertently omitted a reference to paragraph (b)(16) of that same section. This document also makes conforming corrections in the preamble.

FOR FURTHER INFORMATION CONTACT: Dave Smith, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7460.

SUPPLEMENTARY INFORMATION: A revision of § 416.1618(b) of Regulations No. 16 was published as a final rule on June 10, 1987 (52 FR 21939). This section, which lists the categories of aliens who are permanently residing in the United States under color of law (PRUCOL), states that none of the categories

includes applicants for an Immigration and Naturalization status unless specified in the category. The only category that specifies applicants is § 416.1618(b)(6). However, applicants can also be found to be PRUCOL under § 416.1618(b)(16) if they meet the requirements of that paragraph. We are correcting § 416.1618(b) and the preamble to make this clear.

PART 416—[AMENDED]

The following corrections are made in FR Doc. 87–12987 published in the **Federal Register** June 10, 1987 (52 FR 21939).

1. On page 21940, the middle column, the third sentence of the first full paragraph is corrected to read:

"The regulations do not apply to applicants for an Immigration and Naturalization status other than applicants covered under *Berger* v. *Heckler*, 771 F.2d 1556 (1985) (paragraphs (b)(6) and (b)(16) of § 416.1618 of these regulations.)"

2. On page 2942, the third column, the response to the first comment is corrected to read:

"Response: We generally agree and have clarified § 416.1618(b) accordingly. Nonimmigrants are not PRUCOL; applicants for INS status may be found to be PRUCOL only under § 416.1618(b)(6) or (16)".

§ 416.1618 [Corrected]

3. On page 21944, the first column, paragraph (b) is corrected to read:

(b) *Categories of aliens who are permanently residing in the United States under color of law.* Aliens who are permanently residing in the United States under color of law are listed below. None of the categories includes applicants for an Immigration and Naturalization status other than those applicants listed in paragraph (b)(6) of this section or those covered under paragraph (b)(16) of this section. None of the categories allow SSI eligibility for nonimmigrants; for example, students or visitors. Also listed are the most common documents that the Immigration and Naturalization Service provide to aliens in these categories:

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

Dated: September 4, 1987.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 87–21167 Filed 9–14–87; 8:45 am]

BILLING CODE 4190–11–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning October 1, 1987. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The PBGC adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after October 1, 1987, and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Corporate Policy and Regulations Department, Code 35400, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The PBGC's regulation on the valuation of plan benefits in single-employer plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Although the amendments to Title IV effected by the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") change significantly the rules for terminating single-employer plans, the valuation rules are much the same. (SEPPAA applies to all plan terminations initiated on or after January 1, 1986.) Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination (like all insufficient plans under prior law) must value guaranteed benefits and (new under SEPPAA) benefit commitments under the plan using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit commitments, although this is not required. (Such plans may value benefit commitments that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since July 1, 1987 (52 FR 22635 (June 15, 1987)). Changes in the financial and annuity markets now require an increase in those rates. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after October 1, 1987, which set reflects an increase of ¼ percent in the immediate interest rate to 8 percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after October 1, 1987, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

BEST COPY AVAILABLE

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for Part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 11004(a), 11007–11009, 11016 (c)(12)–(c)(13) and 11011(a), Pub. L. 99–272, 100 Stat. 239–240, 244–252, 274 and 253–257.

2. Rate Set 69 of Appendix B is revised and Rate Set 70 of Appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B–Interest Rates and Quantities Used To Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_y" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate percent	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
•	•	•	•	•	•	•	•	
69	7–1–87	10–1–87	7.75	1.0700	1.0575	1.0400	7	8
70	10–1–87		8.00	1.0725	1.0600	1.0400	7	8

Kathleen P. Utgoff,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87–21122 Filed 9–14–87; 8:45 am]
BILLING CODE 7708–01–M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of October 1987.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35400), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment affective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 553 (b) and (d).). Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_t are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
•		•			•			•		•		•			•	
October 1987	.09875	.095	.09	.085	.08	.07375	.07375	.07375	.07375	.07375	.0675	.0675	.0675	.0675	.0675	.06

Issued at Washington, DC, on this 8th day of September 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-21121 Filed 9-14-87; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Implementation of a CHAMPUS DRG-Based Payment System

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule amendment.

SUMMARY: On September 1, 1987, the Department of Defense published Table 2 (52 FR 33031), "National Urban and Rural Adjusted Standardized Amounts, Labor/Nonlabor, Cost-Share Per Diem, and Area Wage Indexes" which gave estimated amounts. This amendment is to display the actual amounts for the table.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen E. Issacson, Policy Branch, OCHAMPUS, telephone (303) 361-4005.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Table 2 is revised to read as follows:

TABLE 2.—NATIONAL URBAN AND RURAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR, COST-SHARE PER DIEM, AND AREA WAGE INDEXES

[**Editorial Note:** This table will not appear in the Code of Federal Regulations.]

National urban adjusted standardized amount	$2,835.21
Labor portion	2,060.63
Nonlabor portion	774.58
National rural adjusted standardized amount	$2,531.44
Labor portion	1,952.50
Nonlabor portion	578.94
Cost-share per diem for beneficiaries other than dependents of active duty members	$175.00

Area Wage Indexes

The area wage indexes used under the CHAMPUS DRG-based payment system are those used under the Medicare PPS as published in the **Federal Register** on June 10, 1987 (52 FR 22135).

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 10, 1987.

[FR Doc. 87-21199 Filed 9-14-87; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

33 CFR Part 207

Ouachita and Black Rivers, Arkansas and Louisiana, Mile 0.0 to Mile 338.0 (Camden, AR) Above the Mouth of the Black River; Use, Administration, and Navigation

AGENCY: U.S. Army Corps of Engineers DOD.

ACTION: Final rule.

SUMMARY: The U. S. Army Corps of Engineers is amending the regulations in 33 CFR 207.249, which govern the use, administration, and navigation of Ouachita and Black Rivers, Arkansas, and Louisiana by adding the Red River, Louisiana, from Mile 6.7 to Mile 276.0. These revisions are necessary to advise the waterway users that the Corps of Engineers is constructing a 9 feet by 200 feet project on the Red River with five locks and dams.

EFFECTIVE DATE: September 15, 1987.

ADDRESS: HQUSACE (CECW-OM), Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Rixie J. Hardy, phone number (202) 272-1773.

SUPPLEMENTARY INFORMATION: The Red River Waterway, with project dimensions of 9 feet by 200 feet, was authorized for construction by the River and Harbors Act of 1968 (90th Congress). Five locks and dams will provide the necessary lift from the Old River Lock at the Mississippi River to Shreveport, Louisiana. Locks with usable dimensions of 84 feet wide by 685 feet long are being constructed. Lock and Dam No. 1 has been completed and is being operated and maintained by Government personnel. Lock and Dam No. 2 (John H. Overton Lock and Dam) is scheduled to be open for navigation on or about 15 October 1987 with operation and maintenance to be performed by contract personnel. Lock and Dam No. 3 is in the initial phase of construction. Construction schedules for Locks and Dams 4 and 5 have not yet been established. The Vicksburg District has issued written navigation notices advising waterway users of the operation of locks and dams on the Red River Waterway.

Note.—The Secretary of the Army (SA) has determined that this document does not contain a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in costs or prices. The SA certifies that this rule will not have a significant economic impact on a substantial number of entities and thus does not require the preparation of a regulatory flexibility analysis.

List of Subjects in 33 CFR Part 207

Navigation, Navigable waters, Waterways.

Date: September 10, 1987.

John O. Roach II,

Department of the Army Liaison Officer.

33 CFR Part 207 is amended as follows:

PART 207—[AMENDED]

1. The authority citation for Part 207 continues to read as follows:

Authority: 40 Stat. 266; 3 U.S.C. 1.

2. In Part 207, § 207.249 is amended as follows:

a. The heading is to read as set out below:

§ 207.249 Ouachita and Black Rivers, Arkansas and Louisiana, Mile 0.0 to Mile 338.0 (Camden, Arkansas) above the mouth of the Black River; the Red River, Louisiana, Mile 6.7 (Junction of Red, Atchafalaya and Old Rivers) to Mile 276.0 (Shreveport, Louisiana); use, administration, and navigation.

b. Amending (b)(1) by adding before "The Lockmaster shall . . ."

"(i) *Locks staffed with Government personnel.*" and by adding at the end of (b)(1):

"(ii) *Locks staffed with contract personnel.* Contract lock operators shall give all necessary orders and direction for operation of the locks. No one shall cause any movement of any vessel or other floating object in the locks or approaches except by or under the direction of the contract lock operator. All duties and responsibilities of the lockmasters set forth in this section shall be performed by the contract lock operator except that the responsibility for enforcing all laws, rules and regulations shall be vested in an offsite government employee designated by the Vicksburg District Engineer."

c. Amending (b)(3)(iii) by adding at the end after "dam": "on the Ouachita

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and Black Rivers" and by adding "(iv) *A navigation pass is not provided as part of the Red River Locks and Dams.* When water levels rise to within 2 feet of the top of the lock walls, operation of the locks will cease until the water level falls below this level. These stages can reasonably be expected to occur once in 10 years. No vessel, tow, or raft shall attempt to navigate over the lock or other structures at high river stages. United States Coast Guard radiotelephone broadcasts and U.S. Army Corps of Engineers navigation bulletins should be monitored for information on lock operations."

d. Amending (b)(5)(iii) by adding after "vessels, tows, or rafts" "navigating on the Ouachita and Black Rivers" and by adding:

(iv) The maximum dimensions on the Red River Waterway of a vessel, tow or raft attempting to pass through the lock in a single passage are 80 feet wide, 685 feet long, and 9 feet draft. Tows or rafts requiring breaking into two or more sections to pass through the lock may transit the lock at such time as the lockmaster determines that they will neither unduly delay the transit of craft of lesser dimensions nor endanger the lock structure and appurtenances because of wind, current, or other adverse conditions. These craft are also subject to such special handling requirements as the lockmaster finds necessary at the time of transit.

e. Amending paragraph (d) by revising the last sentence as follows:

"Copies may be obtained free of charge at any of the locks or from the Vicksburg District Engineer, Vicksburg, Mississippi, upon request."

[FR Doc. 87-21123 Filed 9-14-87; 8:45 am]
BILLING CODE 3710-92-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Fishing Regulations; Delaware Water Gap National Recreation Area, Pennsylvania and New Jersey

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: On February 11, 1987, the National Park Service, Department of the Interior, published in the **Federal Register** (52 FR 4511) a proposed rule to permit fishing methods at Delaware Water Gap National Recreation Area which are authorized under applicable State laws. This proposal was made available for public review and comment for a period of thirty-three (33) days following publication in the **Federal Register**, and ending on March 16, 1987. No comments, however, were received. As a result, a final regulation, unchanged from the proposed rule, is published to permit a level of public use and enjoyment of park resources consistent with the establishment of Delaware Water Gap National Recreation Area.

EFFECTIVE DATE: October 15, 1987.

FOR FURTHER INFORMATION CONTACT: Karl Theune, River District Ranger, Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania 18324, Telephone: (717) 588-6637.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1984, National Park Service General Regulations [36 CFR 2.3(d)(1)], became effective prohibiting "Fishing in fresh water in any manner other than by hook and line, with the rod or line being closely attended." This regulation is in conflict with Pennsylvania and New Jersey fishing regulations which have been in effect since Delaware Water Gap National Recreation Area was authorized in 1965 and for many years prior to its authorization. Examples of conflicts include:

1. Pennsylvania permits the use of spears or gigs to take carp, gar, suckers and eels. New Jersey regulations allow for the use of spears and long bows for the taking of shad, eels, carp, suckers, herring, and bullheads; suckers may be gigged.

2. Both states permit the use of seines for getting bait, digging of lampreys, and five (5) tip-ups for ice fishing.

The National Park Service has determined that allowing recreational fishing at Delaware Water Gap National Recreation Area in accordance with methods permitted by the States of Pennsylvania and New Jersey would be advantageous both to visitors use, as well as to the management of the park resources. The species of fish to be taken under example 1 above consists of both exotics as well as native species that cannot be taken effectively by traditional rod and reel methods.

The use of seines for bait collection, digging of lamprey eels, and the use of tip-ups for ice fishing, in example 2 above, are all traditional uses by the Delaware River fishermen. In addition, the regulations of both the New Jersey Division of Fish, Game and Wildlife, and the Pennsylvania Fish Commission allow these methods of capture. Many years of using these traditional fishing methods have not been detrimental to the area, and the National Park Service anticipates no deterimental effects from continuing these methods. If these methods should cause harm to the fishery or other resources in the future, they can be prohibited by designating areas closed to certain fishing methods. Commercial fishing methods allowed under State laws will *not* be allowed.

There have been no changes in the final rule from the proposed rule published February 12, 1987. During the comment period that expired March 16, 1987, no comments from organizations, agencies or private citizens were received. Consequently, the rule promulgated here is the same as the one proposed.

Drafting Information

The principal author of this rulemaking is Karl Theune, River District Ranger, Delaware Water Gap National Recreation Area.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a "major rule" within the meaning of E.O. 12291, and certifies that this document will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rule will contribute in some part to the local tourism of communities in the vicinity of the park by assuring the continued availability of the range of recreational activities that have been available to Park users in the past.

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332), the Service has prepared an environmental assessment on this special regulation with a finding of No Significant Impact which is available at the address noted above.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Section 7.96 also issued under DC Code 8–137 (1981) and DC Code 40–721 (1981).

2. By adding a new paragraph (g) to § 7.71 to read as follows:

§ 7.71 Delaware Water Gap National Recreation Area.

* * * * *

(g) *Fishing.* Unless otherwise designated, fishing in any manner authorized under applicable State law is allowed.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Date: August 25, 1987.

[FR Doc. 87–21209 Filed 9–14–87; 8:45 am]

BILLING CODE 4310–70–M

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36 CFR Part 7

Fishing Regulations; Bighorn Canyon National Recreation Area, Montana and Wyoming

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: On October 10, 1986, the National Park Service, Department of the Interior, published in the **Federal Register** (51 FR 197) a proposed rule to allow fishing methods at Bighorn Canyon National Recreation Area which are authorized under the applicable state laws of the states of Montana and Wyoming. This proposal was made available for public review and comment for a period of thirty (30) days following publication in the **Federal Register**, and ending on November 9, 1986. No comments, however, were received. As a result, a final regulation, unchanged from the proposed rule, is published to permit a level of public use and enjoyment of park resources consistent with the establishment of Bighorn Canyon National Recreation Area for both preservation and recreational use.

EFFECTIVE DATE: October 15, 1987.

FOR FURTHER INFORMATION CONTACT: Richard L. Lake, Chief Park Ranger, Bighorn Canyon National Recreation Area, P.O. Box 458, Fort Smith, Montana 59035, Telephone: 406–666–2412.

SUPPLEMENTARY INFORMATION:

Background

National Park Service General Regulations [36 CFR 2.3(d)(l)], which became effective on April 30, 1984, prohibit "Fishing in fresh water in any manner other than by hook and line, with the rod or line being closely attended".

This regulation is in conflict with Montana and Wyoming fishing regulations which have been in effect since before Bighorn Canyon National Recreation Area was authorized in 1966, and for many years prior to its authorization.

Examples of conflicts include:

1. Montana law states, "All waters open to bow and arrow hunting and snagging of non-game fish. Non-game fish and burbot may be taken with rubber or spring propelled spears by persons swimming or submerged in all waters open to fishing".

2. Wyoming law states, "It is legal to take non-game fish by bow and arrow and by crossbow without a license or permit". "No person shall use a spear gun to take fish underwater without obtaining the proper fishing license and an underwater fishing license."

Congress' stated interest in the enabling legislation for Bighorn Canyon National Recreation Area was for the National Park Service to permit hunting and fishing on lands and waters within the recreation area in accordance with the appropriate laws of the United States and the states of Montana and Wyoming.

The National Park Service has determined that allowing fishing at Bighorn Canyon National Recreation Area in accordance with methods permitted by the states of Montana and Wyoming would benefit the visitor and simplify fishing regulations and enforcement. This regulation is necessary to allow recreational taking of rough or non-game fish by traditional methods other than hook and line, i.e. underwater spear fishing and bow and arrow fishing. The National Park Service anticipates that this change will have a positive effect on the fishery by exerting some control on increasing numbers of non-game fish.

Drafting Information

The principal author of the rulemaking is Richard W. Hougham, Bighorn Canyon National Recreation Area, Lovell, Wyoming 82431.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of E.O. 12291, and certifies that this document will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will contribute in some part to the tourism of communities in the vicinity of the recreation area by assuring the continued availability of the range of recreational activities that have been available to area users in the past.

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental Regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 36 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Section 7.96 also issued under DC Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. In § 7.92, by adding a new paragraph (c) to read as follows:

§ 7.92 Bighorn Canyon National Recreation Area.

* * * * *

(c) *Fishing.* Unless otherwise designated, fishing in any manner authorized under applicable State law is allowed.

Susan Reece,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Date: August 25, 1987.

[FR Doc. 87–21208 Filed 9–14–87; 8:45 am]

BILLING CODE 4310–70–M

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POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 24 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as the revised regulations on mail dispute cases, publishers qualifying for second-class in-county rates, and restrictions on the purchase of postal money orders, have previously been published in the **Federal Register**.

EFFECTIVE DATE: September 20, 1987.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268–2960.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 24, dated September 20, 1987. The text of all published changes is filed with the Director of the **Federal Register**. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following except from the Summary of Changes section of the transmittal letter for issue 24 covers the minor changes not previously described in interim or final rules published in the **Federal Register**.

Note.—This is a complete issue of the DMM, containing changes published in the Postal Bulletin through August 6, 1987 (Postal Bulletin 21631). All future issues of the DMM will also be complete issues.

Summary of Changes

1. Exhibits 122.63c–d showing labeling lists for sectional center facilities serving single three-digit ZIP Code areas and SCFs serving more than one three-digit ZIP Code prefix area are updated. The change in Exhibit 122.63d also incorporates the three-digit SCF code required for the SCF label. The mandatory compliance date for these changes is October 5, 1987 (PB 21626, 7–2–87; 21627, 7–9–87; 21628, 7–16–87; 21629, 7–23–87). Labeling lists in Exhibits 122.63e–l and Exhibit 722.1 also are updated (PB 21627; 7–9–87; 21628, 7–16–87). Mixed States labeling lists (Exhibits 122.63p–r) instructions are revised (PB 21629, 7–23–87).

2. Section 125.2, *Conditions Applied to Mail Addressed to Military Post Offices Overseas* (PB 21625, 6–25–87; 21628, 7–16–87; 21630, 7–30–87) is updated.

3. Section 125.3, *Military Ordinary Mail* (MOM), is added at the request of the Department of Defense (PB 21625, 6–25–87).

4. Section 126, *Mail Sent Via Department of State to U.S. Government Personnel Abroad*, is revised to show changes in 126.1, 126.221–223 and 126.31 as provided by the Department of State (PB 21624, 6–18–87).

5. Section 145.3 is revised to allow the use of colors to highlight the background of permit imprints and (2) to provide that the imprints may be embossed or unembossed (PB 21610, 3–12–87; 21628, 7–16–87).

6. Sections 146 and 911 pertaining to the payment of postage on unpaid or insufficiently prepared registered mail are modified to clarify the proper handling of this type of mail (PB 21631, 8–6–87).

7. * * *

8. Section 158.4 is revised to show that postal employees who place orders for overprinting the name and address of the delivery unit on PS Form 3849–A, *Delivery Notice or Receipt*, must submit them for processing to the Divisional Manager, Support Services Office (PB 21623, 6–11–87).

9. Sections 221, 321, 421, 621, and 721, which describe the types of materials mailable as Express Mail, First-, second-, third-, or fourth-class mail, are revised to emphasize the applicability of 123, 124, and 127 to all material presented for mailing (PB 21630, 7–30–87).

10. Sections 367.232, 464.32b, 667.121e, 667.132d, and 767.224 have been revised to show Exhibit 122.673d as a reference for labeling SCFs serving more than one three-digit ZIP Code prefix area (PB 21629, 7–23–87).

11. Section 373 is revised to indicate that a Priority Mail piece in a weight category for which the rates do not vary by zones may be deposited in street collection boxes (PB 21631, 8–6–87).

12. * * *

13. Sections 622.11c and 651.211b are revised to change the maximum-size limits of mail that may qualify for the third-class carrier route presort level rate. Effective May 31, 1987, the maximum-size limits for third-class carrier route presort level rate pieces increased to 11¾ inches in width and 14 inches in length. The maximum thickness remains ¾ of an inch (PB 21619, 5–14–87).

14. Section 642.2, is revised to clarify how Form 3624, *Application to Mail at Special Bulk Third-Class Rates* (April 1987 edition), must be processed at associate post offices, field divisions and MSCs and rates and classification centers.

15. Exhibit 722.1 is revised to show new ZIP Code and BMC changes (PB 21624, 6–18–87; PB 21627, 7–9–87).

16. Section 753 is revised to clarify that the 90-cent nonmachinable surcharge is not applicable to library rate materials or to special fourth-class postage rates (PB 21625, 6–25–87).

17. Section 911 is revised to correspond with 146 with regard to the handling of registered mail for which no postage or insufficient postage has been prepaid (PB 21631, 8–6–87).

18. A new section 914.175 is added to allow postal customers to use Collect-On-Delivery (COD) service in conjunction with Express Mail. As a result of this option, the following DMM sections are also revised: 149.221–222; 149.513–514; 149.515 is added; 262.2; 263.2; 291.2; 293.1–2; 295.1; 296.2; 914.171; 914.2; 914.41; 914.412; 914.434; 914.51b; 933.1 (PB 21629, 7–23–87).

19. Sections 914.54 and 914.622 are revised by the deletion of references to *personal* checks because it was never intended to differentiate between personal and business checks. The words *customer* and *addressee* are changed to *recipient* in nearly every reference. Section 914.531j is revised to specify that individuals who normally receive an addressee's mail may also accept and pay for COD articles. Section 914.54 is amended to state the forms of identification required when accepting recipient's check. When recipient is known to the delivery employee, one form of identification, preferably driver's license, must be recorded on the check (PB 21621, 5–28–87).

20. Section 914.715 d and e are amended to require that the postal employee completing Form 3821, *Bulk Receipt for COD Mail and Funds*, write in the total amount collected, clearly separating the total by the amount to be remitted by check and money order and the money order fees (PB 21625, 6–25–87).

21. * * *

22. Section 953 is revised to clarify requirements and to standardize format and terminology (PB 21625, 6–25–87).

23. Minor editorial and typographical changes have been made to 115.96; 144.741b; 154.623; 157.33; 241a; Exhibit 324.72; 914.531a–b; 917; 951.155.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of §111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	FEDERAL REGISTER publication
24	Sept. 20, 1987	52 FR

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87–21178 Filed 9–14–87; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 270

[FRL 3253–5]

Extension of Date for Submission of Part A Permit Applications for Certain Cement Kilns Burning Hazardous Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of compliance date.

SUMMARY: Section 3004(q)(2)(C) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, subjects cement kilns in metropolitan areas with a population of greater than 500,000 to incinerator requirements as RCRA facilities. Because of substantial confusion under EPA regulations concerning whether and when the owners and operators of such cement kilns were required to file Part A permit applications, EPA is extending the date of Part A submission for such facilities to March 15, 1988. Cement kilns subject to RCRA under section 3004(q)(2)(C) that otherwise satisfy the criteria of RCRA section 3005(e) may qualify for interim status by filing a Part A permit application by the above date.

FOR FURTHER INFORMATION CONTACT: RCRA hotline at (800) 424–9346 (in Washington, DC, call 382–3000) or Barbara Foster, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 382–7729.

SUPPLEMENTARY INFORMATION: Section 3004(q)(2)(C) of HSWA requires that any cement kiln located within the boundaries of an incorporated municipality with a population greater than 500,000 must comply with RCRA incinerator regulations to burn fuel that contains hazardous waste. Such kilns were not subject to RCRA permit requirements prior to November 8, 1984, the date of enactment of section 3004(q)(2)(C). Section 3004(q)(2)(C) was codified at 40 CFR 266.31(c) on July 15, 1985 (50 FR 28702) and recodified on November 29, 1985 (50 FR 49164). The section 3004(q)(2)(C) requirement to comply with RCRA incineration regulations remains in effect until the Agency develops substantive standards for cement kilns burning hazardous wastes. The Agency proposed such standards on May 6, 1987 in its proposed rule regarding burning of hazardous waste in boilers and industrial furnaces (*see* 52 FR 16982).

The Agency is aware of a number of kilns that may have become subject to RCRA permitting requirements as a result of section 3004(q)(2)(C). According to the most recent statistics available from the Bureau of the Census, 24 cities in the U.S. have a population greater than 500,000 (*see Government Finances*, GF–85, number 4, 1984–85). Those cities are listed in the table below. Any cement kiln that burns hazardous waste and that is located in one of these cities is thereby required to comply with the incinerator regulations of RCRA.

U.S Cities with a Population Greater than 500,000

Baltimore	Los Angeles
Boston	Memphis
Chicago	Milwaukee
Cleveland	New Orleans
Columbus	New York
Dallas	Philadelphia
Denver	Phoenix
Detroit	San Antonio
Honolulu	San Diego
Houston	San Francisco
Indianapolis	San Jose
Jacksonville	Washington DC

Facilities subject to RCRA regulations for incinerators are required to obtain permits that prescribe the appropriate operating and performance standards for burning fuel containing hazardous waste. "Existing" kilns may qualify for interim status to operate until they obtain a RCRA permit.

To qualify for interim status, a facility must meet the criteria set forth in RCRA section 3005(e), i.e., it must: (1) Be an existing hazardous waste management facility on November 19, 1980 or on the effective date of statutory or regulatory changes that render the facility subject to permitting requirements (in this case the applicable date is November 8, 1984—the date HSWA was enacted); (2) comply with notification requirements of section 3010; and (3) file a permit application.

Under 40 CFR 260.10, EPA defines "existing hazardous waste management facility" to mean either a facility that is "in operation," that is, actually treating, storing, or disposing of hazardous waste, or a facility "for which construction has commenced" on the relevant date. It should be noted that this definition, promulgated prior to enactment of HSWA, applies only to facilities eligible for interim status at that time, that is, those in existence on November 19, 1980. However, when HSWA was enacted, it amended section 3005(e) to allow facilities to obtain interim status if they were in existence on the date of statutory or regulatory changes that subject them to RCRA permitting. Although the Agency has not made the conforming change in its regulations defining "existing facility" to reflect the HSWA expansion of section 3005(e), the Agency interprets the definition to apply to all facilities "in existence" under section 3005(e)(1)(A)(ii).

Under § 260.10, a hazardous waste facility is "under construction" if it has received all hazardous waste management approvals necessary for physical construction and either a continuous, on-site construction program has begun or the facility has accepted substantial contractual obligations for such construction, to be completed within a reasonable time. Although not directly addressed by the regulations, EPA has interpreted "under construction" also to include facilities that have completed construction on the relevant date. In this case, however, to qualify as an "existing" hazardous waste management facility, the facility owner must be able to demonstrate an intent to handle hazardous waste within a reasonable time after the relevant date (46 FR 2344, January 9, 1981).

Section 270.10(e) of the RCRA regulations further defines permit application and interim status qualifications for facilities that meet the "in existence" requirement of section 3005(e). Under § 270.10(e)(1), they must submit a Part A permit application either (1) 6 months after the date of publication of regulations that first require the facility to comply with Parts 265 and 266, or (2) 30 days after the date the facility first becomes subject to the

standards of those parts, whichever comes first. When existing facilities must begin complying with the Part 265 interim status standards because of revisions to Parts 260, 261, 265, or 266, the Agency routinely publishes, in the **Federal Register**, a date for submission of the permit application (*see* § 270.10(e), note).

Section 270.10(e)(2) provides that the Agency can extend the date for Part A submission, by **Federal Register** notice, if it finds that there has been substantial confusion as to whether the owner or operator was required to file a permit application and that the confusion was due to ambiguities in EPA's regulations. Through today's notice, EPA is exercising its discretion to extend the date of Part A submission for cement kilns subject to section 3004(q)(2)(C) because of substantial confusion.

There are a number of factors that have led to substantial confusion for owners or operators of cement kilns who became subject to RCRA requirements under section 3004(q)(2)(C). First, these facilities became subject to RCRA requirements as a result of a statutory amendment, rather than as a result of the issuance of regulations. As noted in § 270.10(e)(1) of the RCRA regulations, when EPA issues or revises its regulations to apply RCRA requirements to a new category of facilities, the preamble to those rules will generally specify when permit applications for those facilities are due. In the case of these cement kilns, the application of RCRA requirements was a result of statutory rather than regulatory revision, providing no immediate opportunity to clarify permit application requirements. In addition, although the "big city cement kiln" provision was codified by the Agency on two separate occasions in Part 266, there was no information provided in these rulemakings concerning the permit application requirements for cement kilns already "in existence" as hazardous waste management facilities.

Finally, the permit application regulations for existing facilities under § 270.10(e) do not clearly address the requirements for facilities that become subject to RCRA due to statutory changes. Instead, the regulations address only regulatory changes (§ 270.10(e)(1)(i)) or changes at a facility that bring it into the RCRA system (§ 270.10(e)(1)(ii)). In fact, a possible reading of the regulations suggests that the Part A application would not be due until 30 days after a cement kiln actually begins to burn hazardous waste fuel. The Agency disagrees with this reading and believes that Part A permit applications for these cement kilns were due 30 days after enactment of HSWA; however, the Agency also believes that there is substantial confusion as to when or whether the Part A applications were due.

As a result of the confusion concerning when or whether Part A permit applications are to be submitted for cement kilns subject to RCRA under section 3004(q)(2)(C), which is in large part due to ambiguity in EPA's hazardous waste fuel regulations and permitting requirements, EPA is extending the date for Part A submission for such facilities until March 15, 1988. In setting that date, the Agency has allowed the 6-month period it typically allows after rulemaking actions requiring Part A submission. Furthermore, as discussed above, any such cement kiln seeking interim status must also demonstrate that it was in existence as a hazardous waste management facility on November 8, 1984.

On July 16, 1987, Petro Chem Processing, Inc. (Petro Chem) submitted to the Agency a petition for rulemaking. Petro Chem requested that, if the Agency were to exercise its discretion under § 270.10(e) to extend the date for Part A submission for these cement kilns, it do so by a notice and comment rulemaking under the Administrative Procedure Act (APA). Petro Chem claimed that the notice and comment procedures of the APA are necessary for the Agency to make the finding of substantial confusion required by § 270.10(e).

As authority for its petition, Petro Chem cited § 260.20 of the RCRA regulations as well as section 553 of the Administrative Procedure Act (APA). Thus, the petitioner requested that the Agency comply with the procedural requirements of § 260.20 if the Agency were to decide to deny its petition.

Section 260.20 provides that any person may petition the Agency to modify or revoke any provision of Parts 260 through 265. It requires the Administrator, upon receipt of a petition under that section, to publish in the **Federal Register** a tentative decision to grant or deny and, thereby, offer opportunity for public comment. The Administrator must then make a final decision after evaluating public comments.

However, Petro Chem's petition to the Agency is not properly based on § 260.20 because, in making a finding of substantial confusion under § 270.10(e), the Agency does not modify or revoke any provision in its RCRA regulations. Rather, EPA construes the petition as one founded solely on section 553(e) of the APA which provides that each Agency shall give interested persons the right to petition for the issuance, amendment, or repeal of a rule. Petitions submitted under the authority of section 553(e) alone are not subject to the procedural requirements of § 260.20.

The Agency has reviewed the petition submitted by Petro Chem and has decided to deny it for the following reasons. First, § 270.10(e)(2) does not contemplate notice and comment rulemaking in its application. Rather, § 270.10(e)(2) clearly provides that the Administrator will announce, in the **Federal Register**, any extension of the submission date for Part A permit applications made in accordance with that section. This notice satisfies the requirements of § 270.10(e)(2).

In addition, to the extent that this notice is a rulemaking for purposes of section 553 of the APA, the Agency believes that public comment on the extension provided by this notice is unnecessary given the absence of issues under § 270.10(e) for which comment would be useful. The Agency thus believes that it has "good cause" under section 553(b)(3)(B) of the APA to extend the date of these part A permit application submissions under § 270.10(e)(2) without prior notice and comment.

To the extent that this action is a "rule," the Agency believes that it has "good cause" under section 553(d) of the APA and section 3010(b) of RCRA to make it immediately effective. EPA is providing 6 months for owners and operators of affected cement kilns to submit Part A permit applications. This is ample time for compliance—hence, postponement of the effective date is unnecessary.

For the above stated reasons, the Agency hereby extends the date of Part A submissions for facilities subject to section 3004(q)(2)(C). Any cement kiln that is eligible for interim status and subject to section 3004(q)(2)(C), whether or not it is currently burning hazardous waste fuel, that fails to submit a Part A application by March 15, 1988, will be unable to qualify for interim status under section 3005(e), and thus will be required to obtain a RCRA permit prior to burning hazardous waste fuel. It should be noted that this extension of the date for Part A submission does not apply to any other treatment, storage, or disposal activity associated with the cement kiln burning of hazardous waste fuels.

Date: September 2, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87-20762 Filed 9-14-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-480; RM-5431]

Radio Broadcasting Services; Starkville, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 291C2 to Starkville, Mississippi and modifies the license of Station WSMU(FM) to specify operation on Channel 291C2 instead of Channel 292A. This action is taken in response to a petition filed by Starkville Broadcasting Co., Inc., licensee of Station WSMU(FM). With this action, this proceeding is terminated.

EFFECTIVE DATE: October 19, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-480, adopted August 18, 1987, and released September 3, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Mississippi, by deleting Channel 292A at Starkville and adding 291C2.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-21109 Filed 9-14-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-448; RM-5410, RM-5758]

Radio Broadcasting Services; Centerville, Park City and Manti, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 289C2 for Channel 288A at Centerville, Utah, and modifies the license of Station KCGL(FM) to specify operation on the new frequency, at the request of Radio Property Ventures. This action further dismisses the counterproposal of Park City Radio Associates to allot Channel 286A to Park City, Utah, which also would require the substitution of Channel 284 for 286 at Manti, Utah, and the imposition of a 17 kilometer site restriction on Channel 289C2 at Centerville (RM-5758). With this action, this proceeding is terminated.

EFFECTIVE DATE: October 19, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-448, adopted August 17, 1987, and released September 3, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Centerville, Utah, by deleting Channel 288A and adding Channel 289C2.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-21110 Filed 9-14-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 203, 204, 205, 206, 207, 208, 210, 213, 214, 215, 217, 222, 225, 233, 244, 245, and 252

Department of Defense Federal Acquisition Regulation Supplement; Defense Acquisition Circular (DAC) 86-2

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: Defense Acquisition Circular (DAC) 86-2 amends the DoD FAR Supplement (DFARS) with respect to change of contracting activity designation; special prohibition on employment; Competition in Contracting Act of 1984; instructions for completion of DD Form 350; bidding procedures for overseas sources; acquisition planning; contracting out; excess personal property; Federal Supply Schedules; field pricing reports; use of DD Form 1155; follow-up on contract audit reports; component breakout; identification of sources of supply; restrictions on the employment of personnel for work on construction/service contracts (Alaska and Hawaii); subcontracting policies and procedures; procedures for Industrial Plant Equipment (IPE); editorial corrections; provides changes to DAR Supplement Number 6 (not a part of the 1986 edition of the DFARS); provides an agreement between representatives of the Department of Defense and General Electric Company on procedures with respect to state and local income and franchise taxes; and provides information regarding a determination by the U.S. Trade Representative.

EFFECTIVE DATE: March 15, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o Room 3D139, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

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The December 31, 1986 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1986 edition of the DoD FAR Supplement made by Defense Acquisition Circular 86–1.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

B. Public Comments

Notices of proposed rules were published in the **Federal Register** requesting Government agencies, private firms, associations, and the general public to submit comments to be considered in the formulation of the final rules.

DAC 86–2, Items III, V, VI, VII, VIII, IX, X, XI, XIII, XIV, XV, XVI, XVII, XIX, XX, XXI, and XXII

Public comments have not been solicited with respect to these revisions since such revisions (a) do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or (b) do not have a significant effect beyond agency internal operating procedures; or compelling reasons required issuance of an interim rule without prior publication for public comment.

DAC 86–2, Item IV

On April 7, 1986, the DAR Council published a proposed rule in the **Federal Register** (51 FR 11760). Comments were received and considered by the DAR Council.

DAC 86–2, Item XII

A proposed rule was published in the **Federal Register** on October 20, 1986 (51 FR 37207), and public comments were solicited. After review of the public comments, the DAR Council approved the proposed rule as a final rule without change.

DAC 86–2, Item XVIII

An interim rule was published in the **Federal Register** on February 5, 1986 (51 FR 4501). As a result of the review of the public comments, no changes were deemed appropriate. Section 9069 of the FY 1987 Defense Appropriations Act enacts a similar requirement to those provisions covered by Section 8078 of the FY 1986 Defense Appropriations Act. The rule was extended to include: (a) Reference to section 9069 of the FY 1987 DoD Appropriations Act; (b) identification of FY 1987 contracts, and (c) reference to the FY 1987 unemployment rates in Alaska and Hawaii. It is not expected that these changes will result in different public comments from those originally submitted.

C. Regulatory Flexibility Act

DAC 86–2, Items III, V, VI, VII, VIII, IX, X, XI, XIII, XIV, XV, XVII, XIX, XX, XXI, and XXII

These revisions are not "significant revisions" as defined in FAR 1.501–1; i.e., they do not alter the substantive meaning of any coverage in the DFARS having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98–525 and section 302 of Pub. L. 98–577 pertaining to publication of proposed regulations, solicitation of agency and public views on these revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply.

DAC 86–2, Item IV

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule requires as a contractual undertaking, that small business prime and subcontractors adhere to 10 U.S.C. 2408 and place the prescribed clause in subcontracts exceeding $25,000. The monetary impact of these requirements is not deemed significant within the meaning of the Act. Further, the underlying statute is intended for uniform application and does not exclude, nor allow DoD discretion to exclude, small businesses from its prohibitions. However, by not requiring that the prescribed clause be included in small purchases under FAR Part 13 and subcontracts not exceeding $25,000, the rule reduces contract complexity for small firms, consistent with the intent of the Act.

DAC 86–2, Item XII

The revision to DFARS 208.404–2(a)(S–70) does appear to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy for the Small Business Administration.

DAC 86–2, Item XVI

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule excludes commercial items sold in substantial quantities to the general public and priced at established catalog or market prices or awards made through full and open competition. Therefore, contracts will not have to identify the actual manufacturer, the national stock number, or the source of technical data for such items. In FY 1985, 59% of all contract actions were awarded to small businesses. DoD estimates that the total impact of this reduced workload on all businesses is a reduction of 700,250 hours annually. DoD estimates that the reduced workload applicable to all small businesses is a reduction of approximately 413,148 hours annually (−700,250×59%). Since DoD conducts business with approximately 40,000 small businesses per year, this reduction is considered insignificant.

DAC 86–2, Item XVIII

This rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the change does nothing more than implement section 8078 of the FY 1986 Appropriations Act and section 9069 of the FY 1987 Appropriations Act. If this change impacts on small entities, it will impact only those small entities that have been awarded in FY 1986 and FY 1987 construction and services contracts calling for performance in whole or in part within the States of Alaska or Hawaii and then only if the unemployment rate for those states exceeds the national average. The number of small entities that meet this condition is considered to be insignificant in relation to the total number of small entities that do business with the Department of Defense.

D. Paperwork Reduction Act Information

DAC 86–2, Items III, IV, V, VI, VII, VIII, IX, X, XI, XIII, XIV, XV, XVII, XVIII, XIX, XX, XXI, and XXII

The Paperwork Reduction Act does not apply because these final rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

DAC 86–2, Item XII

For this rule, it was estimated that there would be a reduction of 2,030,000 burden hours. A request for OMB clearance was submitted, and on December 19, 1986, OMB approved the estimated reduction of 2,030,000 burden

hours under OMB approval number 0704–0187.

DAC 86–2, Item XVI

It is estimated that the implementation of this coverage will result in a paperwork burden reduction of 700,250 hours. OMB approved the burden estimate on March 10, 1987, clearance number 0704–0214.

List of Subjects in 48 CFR Parts 202, 203, 204, 205, 206, 207, 208, 210, 213, 214, 215, 217, 222, 225, 233, 235, 244, 245, and 252.

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Defense Acquisition Circular

(No. 86–2)

March 15, 1987.

Unless otherwise specified, all DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective March 15, 1987.

Defense Acquisition Circular (DAC) 86–2 amends the DoD Federal Acquisition Supplement (DFARS) and prescribes procedures to be followed. The following is a summary of the amendments and procedures:

Item I—State and Local Income and Franchise Taxes, General Electric Company

The Corporate Administrative Contracting Officer, Defense Contract Administration Services Management Area, Hartford, and the General Electric Company have agreed on procedures to be used when requesting instructions with respect to or accounting for state and local income and franchise taxes. The agreement is attached to this DAC as an information item.

(Editorial note.—The agreement is not included in this document.)

Item II—Trade Agreements Acts Threshold

The United States Trade Representative has determined that the dollar threshold for determining whether purchases made during calendar year 1987 are subject to the Trade Agreements Act is $171,000. This threshold is effective on 1 January 1987.

Item III—Contracting Activities

Section 202.101 is revised to reflect the correct designation of the Senior Procurement Executive for the Air Force and changes to the listing of contracting activities for the Army.

Item IV—Special Prohibition on Employment

A new section 203.571 is added to implement section 941 of the Defense Acquisition Improvement Act of 1988 (Title IX, Pub. L. 99–500). A related clause is added to afford defense contractors notice of statutory prohibitions, give effect to statutory provisions requiring certain determinations by the Secretary of Defense, and provide an administrative remedy when a knowing violation of the statute occurs.

Item V—Competition in Contracting Act of 1984

FAC 84–5 and DAC 84–10 issued changes to the FAR and the DFARS to implement the Competition in Contracting Act of 1984 (CICA). FAC 84–13 issued further changes to the FAR. The following changes have been made to the DFARS to implement the FAC 84–13 changes:

Coverage is added to 204.601 to implement FAR 4.601 (a) and (d) which require, respectively, that agencies retain records of procurements and that they transmit procurement information to the Federal Procurement Data System. DFARS 205.201 (S–70) is revised to conform to the statutory threshold. DFARS 205.205(c) (1) and (2), and 215.1001 (b)(1) and (c) are deleted because they duplicate FAR coverage. The title to 206.302–1 is revised. DFARS 208.7006–3 is revised to require that the requiring department which submits a Military Interdepartmental Purchase Request to a contracting department shall provide supporting justification for use of other-than-full and open competition, when appropriate, rather than the justification required by FAR 6.303–2(a).

Item VI—Instructions for Completion of DD Form 350

Item XII of this DAC changes the procedures for issuing orders against optional Federal Supply Schedules (FSS); hence DFARS 204.671–5(d) is revised to recognize all FSS orders as competitive. The paragraph is further changed to reflect new FAR citations for exceptions to synopsis. Other changes are made to clarify or improve the sense of the instructions.

DFARS 204.671–5(c)(5)(ii)(F)(5), which was inadvertently omitted from the 1986 edition of the DFARS, is included in this DAC.

Item VII—Bidding Procedures for Overseas Sources

Section 205.203(b)(S–70) and 214.202–1(b) are added to provide bidders from overseas a 45-day bid period, consistent with user needs.

Item VIII—Acquisition Planning

Section 207.103 is revised to include a milestone chart, referenced in 207.103(i), which was not included with the initial publication of the DFARS.

Item IX—Nondevelopmental Items

The Defense Acquisition Improvement Act of 1987 (Pub. L. 99–500) amends Title 10 of the United States Code by adding Section 2325, Preference for Nondevelopmental Items, which contains provisions designed to increase the use of nondevelopmental items to fulfill requirements for items of supply. Section 207.105 and Part 210 are revised to provide guidance in conformance with the above-referenced legislation.

Item X—Contracting Out

Section 207.302(d)(2) is revised to provide that a full cost comparison study is required when activities performed involve 45 or less DoD civilian employees. This change is made to comply with section 1221, Pub. L. 99–661. The coverage is further changed to reflect the correct legislative reference.

Item XI—Excess Personal Property

Section 208.102 is added to indicate that DoD Inventory Control Point personnel are required to review excess personal property records before proceeding with a procurement action.

Item XII—Federal Supply Schedules

Section 208.404–2(a)(S–70) is revised to permit contracting officers to consider whether further competition obtained under an open market purchase would provide sufficient benefits to offset lower administrative costs and reduced contract placement leadtime associated with making a purchase against an optional Federal Supply Schedule when such schedules are available.

Item XIII—Use of DD Form 1155 (Anti-Kickback Procedures)

Section 213.505–2(S–73)(1) is revised by adding paragraph (1iii) to prescribe use of FAR clause 52.203–7, Anti-Kickback Procedures.

Item XIV—Field Pricing Reports

Section 215.805(c)(1)(S–70) is revised to provide procedures for expediting the field pricing review process.

Item XV—Follow-Up on Contract Audit Reports

Section 215.874 is added to reference DoD Directive 7640.2 for policy on contract audit follow-up reports.

Item XVI—Component Breakout

Sections 217.7202–1(c) and 217.7202–4(b) are revised to clarify guidelines regarding component breakout.

Item XVII—Identification of Sources of Supply

Section 1231 of Pub. L. 98–525, as amended by section 928 of Pub. L. 99–591, requires delivery of source information under DoD supply contracts. Section 217.7204 is revised to stipulate that the coverage applies to all contracts requiring delivery of supplies, other than commercial items sold in substantial quantities to the general public and priced at established catalog or market prices or awarded through full and open competition. A related change is made to the clause at 252.217–7270. These changes are effective on all contracts entered into on or after April 15, 1987.

Item XVIII—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts (Alaska and Hawaii)

DAC 86–1, dated August 18, 1986, issued a new Subpart at 222.72 and a clause at 252.222–7002 to implement section 8078 of the FY 1986 Defense Appropriations Act, with respect to employment of personnel in Alaska and Hawaii for work on construction contracts awarded in FY 1986. Subpart 222.72 is revised to add section 9069 of the 1987 Defense Appropriations Act for contracts awarded in FY 1987. The clause at 252.222–7002 remains unchanged.

Item XIX—Subcontracting Policies and Procedures

DFARS 244.304(b)(1) is revised to clarify contracting officer responsibilities in reviewing prime contractor administration of sucontractor progress payments.

Item XX—Procedures for Industrial Plant Equipment (IPE)

DFARS 245.608–71(g) is revised by deleting the requirement for the Plant Clearance Officer to assure that a completed DD Form 1342 is submitted to DIPEC reporting final disposition of surplus IPE. Final disposition of IPE that is determined to be excess to agency ownership, but not to its requirements, may be sold by GSA to the incumbent contractor. IPE sold in this manner shall be reported to DIPEC in accordance with individual agency instructions. Since DIPEC is no longer collecting data on final disposal of IPE, except for that sold by GSA, section 245.7102–6(b)(9) is deleted.

Item XXI—DAR Supplement No. 6

DAR Supplement No. 6 is revised to state that the definitions are applicable only to Supplement 6, and to clarify the definition of "actual manufacturer".

Note.—DAR Supplement No. 6 is not a part of the 1986 edition of the DFARS. It may be purchased separately from the Government Printing Office.)

Item XXII—Editorial Changes

Table of Contents: Subpart 203.7 is added; the title to Subpart 219.1 is corrected; the designation of the Armed Services Pricing Manual is corrected.

Section 208.7003–1 is revised to reflect the correct date of the referenced DoD Instruction, and to delete reference to the NAVSUPINST which has been canceled.

Section 208.7003–6 is revised to change the word "Procuring" to "Contracting".

Section 213.505–2(S–73) is revised to reflect in paragraph (1)(1i) the correct titles for the referenced clauses FAR 52.209–1 and 52.209–2.

Section 215.170(c) is revised to change the referenced paragraph 215.173 to read 215.170.

Section 225.302(S–72)(2)(i) is revised to reflect the correct designation of OASN(S&L), International Programs, listed as an authority to make determinations for the Department of the Navy.

Sections 225.7301(b) and 225.7305(f) are revised to reflect the correct title for the Security Assistance Management Manual.

Section 225.7304(c)(1)(i)(C) is revised to reflect the correct paragraph number for the International Traffic in Arms Regulations (ITAR).

Section 233.214 is revised to reflect the correct number for the referenced paragraph.

Section 245.600 is revised to add the title "Scope of Subpart."

Table of Contents, Part 252, is revised to reflect the correct title for 252.217–7213, and to mark 252.217–7220 as "Reserved."

Adoption of Amendments

Therefore the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR Parts 202, 203, 204, 205, 206, 207, 208, 210, 213, 214, 215, 217, 222, 225, 233, 244, 245, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

Table of Contents

2. The Table of Contents is amended by substituting in the listing entitled "MANUALS" the words "Armed Services Pricing Manual (1986)" for the words "Manual for Contract Pricing (ASPM No. 1) (15 SEP 75)".

PART 202—DEFINITIONS OF WORDS AND TERMS

202.10 [Amended]

3. Section 202.101 is amended by substituting in the undesignated paragraph entitled "Senior Procurement Executive" at the designation for the Air Force the word "(Acquisition)" for the words "(Research Development and Logistics)"; paragraph (a) is amended by removing from the undesignated paragraph reading "For the Army" the entries reading "Office of the Assistant Chief of Staff for Information Management," "Office of the Director, Contracting and Production, ODCSLOG," and "U.S. Army Electronics Research and Development Command," by revising the entry reading "Office of the Deputy Chief of Staff for Procurement and Production Headquarters, U.S. Army Materiel Command" to read "Office of the Deputy Chief of Staff for Procurement, Headquarters, U.S. Army Materiel Command" and adding the entry for "U.S. Army Laboratory Command"; the undesignated paragraph reading "National Guard Bureau" is amended by revising the entry reading "Office of the Chief of Engineers" to read "U.S. Army Corps of Engineers."

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

4. Sections 203.571 through 203.571–5 are added to read as follows:

203.571 Employment prohibitions on persons convicted of fraud or other Defense contract-related felonies.

203.571–1 Scope.

This subpart prescribes policies and procedures to implement 10 U.S.C. 2408 which prohibits defense contractors from employing in a managerial or supervisory capacity on any defense contract, persons convicted of fraud or any other felony arising out of a contract with the Department of Defense, or allowing those persons to serve on the contractor's board of directors. The statutory prohibitions extend for a period, as determined by the Secretary of Defense, of not less than one year from the date of conviction.

203.571–2 Definitions.

"Arising out of a contract with the Department of Defense", as used in this subpart, means any act in connection

with (a) attempting to obtain, or (b) obtaining, (c) performing, a contract or subcontract of any agency, department, or component of the Department of Defense.

"Conviction of fraud or any other felony", as used in this subpart, means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

203.571-3 Policy.

A contractor shall not allow a person, convicted of fraud or any other felony arising out of a contract with the Department of Defense, to serve in a management or supervisory capacity on any defense contract or subcontract or upon its board of directors, for a period of one year from the date of conviction or for the period of any resultant debarment of the convicted person, whichever is longer.

203.571-4 Reporting.

When a defense contractor is found to have violated the prohibition in 203.571-3 above, a report shall be prepared and forwarded in accordance with agency procedures (see DoD Directive 7050.5).

203.571-5 Contract clause.

The contracting officer shall insert the clause at 252.203-7001, Special Prohibition on Employment, in all solicitation and contracts other than those entered into using the small purchase procedures of FAR Part 13.

PART 204—ADMINISTRATIVE MATTERS

5. Section 204.601 is added to read as follows:

204.601 Record requirements.

(a) The Defense Acquisition Management Data System (DAMDS), meets the record retention requirements of FAR 4.601.

(d) The information required to be transmitted to the Federal Procurement Data System shall be transmitted by Washington Headquarters Service via the DAMDS based on feeder reports (DD Forms 350 and 1057) submitted to it by the Departments.

204.671-4 [Amended]

6. Section 204.671-4 is amended by inserting in paragraph (a) between the number "350" and the word "shall" the words ", or electronic equivalent,".

7. Section 204.671-5 is amended by removing the last sentence of paragraph (b)(13)(xl); by removing in the third sentence of paragraph (d) the number "8"; by inserting in the last sentence of paragraph (d) before the listing of codes between the number "6" and the comma the words "or 8"; by revising the list of codes in the introductory text of paragraph (d); by revising paragraph (d)(2); by inserting in the second sentence of paragraphs (d)(7) and (d)(8) between the number "6" and the comma the words "or 8"; by substituting in the seventh sentence of paragraph (d)(9) the letter "e" in lieu of the letter "f"; by adding in paragraph (d)(10) under Code 1A between the word "when" and the word "action" the word "the"; by substituting in paragraph (d)(10) under Code 1B "FAR 6.302-1(a)(2)(ii)" in lieu of "FAR 6.302-1(b)(2)"; by substituting in paragraph (d)(10) under Code 1C "FAR 6.302-1(a)(2)(i)" in lieu of "FAR 6.302-1(b)(3)"; by substituting in paragraph (d)(10) under Code 1D "FAR 6.302-1(b)(2)" in lieu of FAR 6.302-1(b)(4)"; by substituting in paragraph (d)(10) under Code 1E "FAR 6.302-1(b)(3)" in lieu of "FAR 6.302-1(b)(5)"; by substituting in paragraph (d)(10) under Code 1F "FAR 6.302-1(b)(4)" in lieu of "FAR 6.302-1(b)(6)"; by substituting in paragraph (e)(1)(ii) the FAR citation "19.001" in lieu of "19.101"; and by inserting in paragraph (e)(9)(iv) between the word "the" and the word "action" the word "contract"" to read as follows:

204.671-5 Instructions for completion of DD Form 350.

* * * * *

(d) * * *

C1, the code indicates the synopsis action taken by the contracting office:

C2, if C1 is coded 1, leave C2 blank; if C1 is coded 2, enter the code that accurately reflects the pertinent exception reason:

* * * * *

(2) *Item C2, Reason Not Synopsized.* Enter the applicable code as follows (see FAR 5.202):

DD 350 Code	FAR 5.202 Exception Reason
A	1. Classified/National security.
B	2. Urgency.
C	3. Foreign Government/International Organization.
D	4. Source set by statute.
E	5. Utility Services one source.
F	6. Order against requirements contract.
G	7. Proposal under the Small Business Innovation Development Act of 1982.
G	8. Unsolicited research proposal.
H	9. Perishable subsistence.
I	— Reserved.
J	10. Brand name resale.
K	11. Action under existing contract previously synopsized.
L	— Head of Agency determination.
Z	12. Made and performed outside U.S., possessions and Puerto Rico.
Z	— Original estimate less than $25,000, or original exemption no longer coded.

* * * * *

PART 205—PUBLICIZING CONTRACT ACTIONS

205.201 [Amended]

8. Section 205.201 is amended by substituting in the title of paragraph (S-70) the words "$10,000 or Less" for the words "Less Than $10,000"; and by substituting in the text the phrase "$10,000 or less" for the phrase "less than $10,000".

9. Section 205.203 is added to read as follows:

205.203 Publicizing and response time.

(b) (S-70) When requested by a source located in a participating country or a designated country as defined in Part 225, the contracting officer shall allow at least 45 days response time for receipt of bids or proposals from the date of issuance of the solicitation if this is consistent with Government requirements.

205.205 [Removed]

10. Section 205.205 is removed.

PART 206—COMPETITION REQUIREMENTS

206.302-1 [Amended]

11. Section 206.302-1 is amended by adding to the title the words "and No Other Supplies or Services Will Satisfy Agency Requirements."; and by revising in paragraph (c)(S-70) the FAR reference reading "6.302-1(b)(6)" to read "6.302-1(b)(4)".

PART 207—ACQUISITION PLANNING

207.103 [Amended]

12. Section 207.103(i) is amended by adding at the end of the section an Illustrative Milestone Chart Format.

BILLING CODE 3810-01-M

BILLING CODE 3810-01-C

ILLUSTRATIVE MILESTONE CHART FORMAT

ACQUISITION PLAN NO. _____

ACQUISITION ITEM _____ ACQUISITION PLANNING CHART

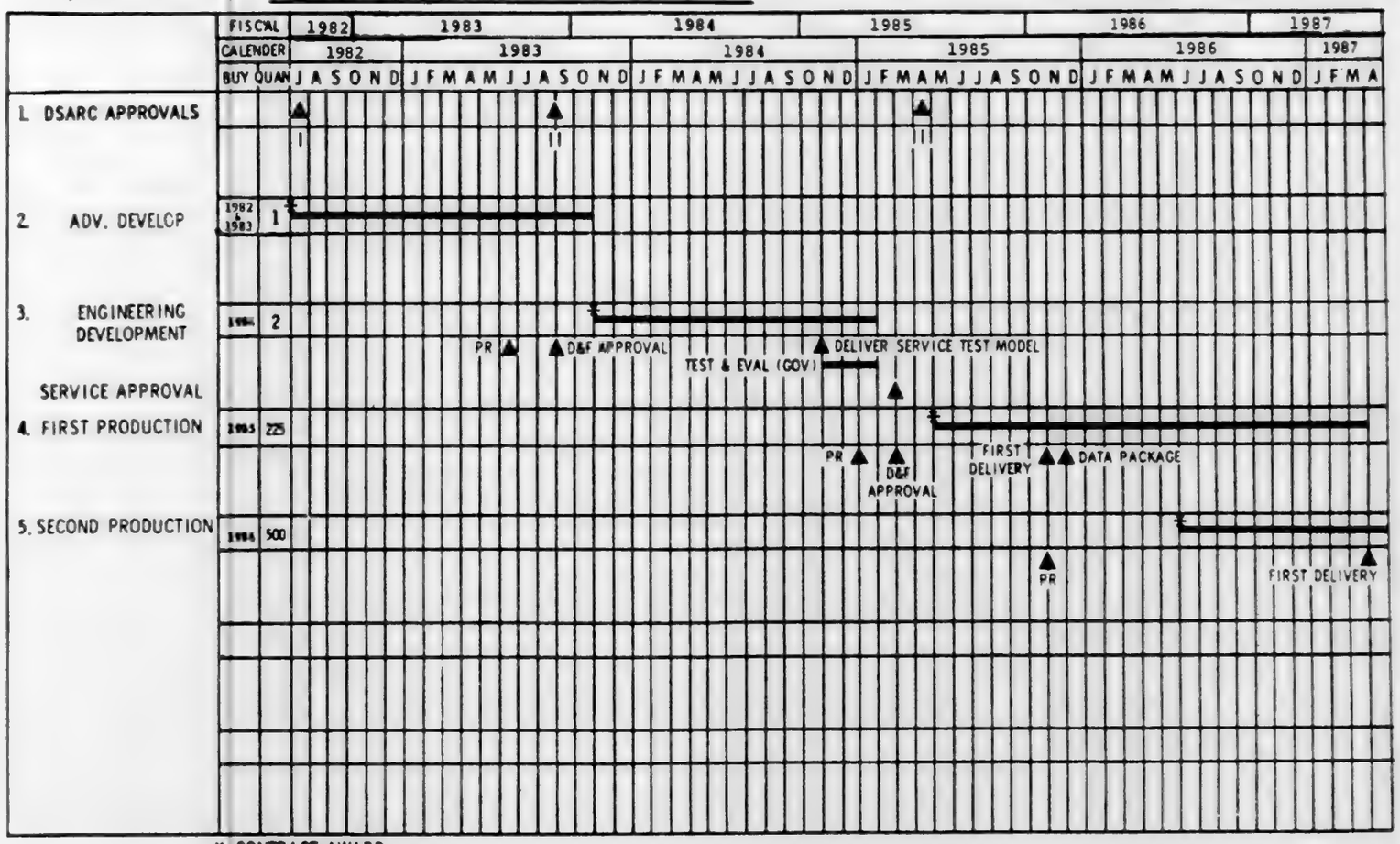

* CONTRACT AWARD

13. Section 207.105 is amended by redesignating paragraph (b)(5) as paragraph (b)(2); by redesignating paragraph (b)(6) as paragraph (b)(5); by adding new paragraph (b)(6); and by redesignating paragraph (b)(13) as paragraph (b)(12), to read as follows:

207.105 Contents of written acquisition plans.

* * * * *

(b)(6) *Product descriptions.* For development acquisition, describe the market research efforts planned or undertaken to identify nondevelopmental items (see 210.001) that could satisfy the acquisition objectives.

14. Section 207.302 is amended by substituting in the first sentence of paragraph (d)(2) the number 45 for the number 40; and by revising the parenthetical sentence in paragraph (d)(2) to read as follows:

207.302 General.

(d) * * *

(2) * * * (See section 1221, Pub. L. 99-661.)

* * * * *

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

15. A new Subpart 208.1, consisting of Section 208.102, is added to read as follows:

Subpart 208.1—Excess Personal Property

208.102 Policy.

In accordance with Department of Defense Directive (DoD) 4140.39, Dod inventory control points are required to check applicable disposal system management information records to determine if suitable excess or surplus assets are available and can meet customer requirements in a timely and economical manner before proceeding with purchase actions. The contracting officer may assume that a check of the disposal system records has been made by requirements personnel prior to their issuing of the purchase request.

16. Section 208.404-2 is revised to read as follows:

208.404-2 Optional use.

(a)(S-70) As specified in FAR 8.001(a), optional schedules are preferred sources of supplies and services. Accordingly, contracting officers should make maximum use of optional schedules in meeting requirements for supplies and services. Further competition with respect to optional schedules is not required. However, if, in the contracting officer's judgment, the introduction of competition from nonschedule sources would be in the best interest of the Government in terms of quality, responsiveness, or costs, other procedures may be used.

208.7003-1 [Amended]

17. Section 208.7003-1 is amended by revising the date of Department of Defense Instruction 4115.1 to read "September 1, 1972"; and by removing the parenthetical reference at the end of the sentence.

208.7003-6 [Amended]

18. Section 208.7003-6 is amended by substituting in the second sentence the word "Contracting" for the word "Procuring".

19. Section 208.7006-3 is amended by revising paragraph (a); by adding paragraphs (b) and (c); and by redesignating the existing paragraph (b) as paragraph (d), to read as follows:

208.7006-3 Justification and approvals and determinations and findings.

(a) Coordinated procurement shall not be used by Departments to avoid FAR Part 6 requirements concerning full and open competition (see FAR 6.002).

(b) When a Requiring Department requests that a Contracting Department obtain supplies or services by contracting using other than full and open competition (see FAR Subpart 6.3):

(1) The Requiring Department shall provide:

(i) The complete certified documentation required by FAR 6.303-2(b) (which documentation shall be approved at a level within the Requiring Department equivalent to the appropriate level in FAR 6.304 prior to submitting the MIPR to the Contracting Department);

(ii) When requested by the Contracting Department Contracting Officer, any additional supporting data (e.g., the results of any market survey conducted or the reason why none was conducted, actions that will be taken by the Requiring Department to overcome barriers to competition in the future);

(iii) The executed Determination and Findings (D&F) specified in FAR 6.302-7(c)(1), when applicable; and

(iv) Two copies of all documentation and D&F's with the MIPR or other purchase request.

(2) The Contracting Department Contracting Officer shall prepare the justification and obtain the approval required by FAR 6.303 and 6.304.

(c) When a Requiring Department recommends that a Contracting Department obtains supplies or services by contract using full and open competition after excluding a particular source (see FAR 6.202):

(1) The Requiring Department shall provide all data required by FAR 6.202(b)(2); and

(2) The Contracting Department shall prepare the Determination and Findings required by FAR 6.202(b)(1).

* * * * *

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

20. Section 210.001 is amended by adding the following definition in alphabetical sequence to read as follows:

210.001 Definitions.

* * * * *

"Nondevelopmental item" means;

(a) Any item of supply that is available in the commercial marketplace;

(b) Any previously-developed item of supply that is in use by a department or agency of the United States, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(c) Any item of supply decribed in (a) or (b) above that requires only minor modification in order to meet the requirements of the contracting agency;or

(d) Any item of supply that is currently being produced that does not meet the requirements of (a), (b), or (c) above solely because the item is not yet in use or is not yet available in the commercial marketplace.

21. Section 210.002 is added to read as follows:

210.002 Policy.

(S-70) Pursuant to 10 U.S.C. 2325, it is the policy of the Department of Defense to fulfill requirements for items of supply through the acquisition of nondevelopmental items to the maximum practicable extent.

PART 213—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

22. Section 213.505-2(S-73)(1) is amended by substituting in paragraph (1i) after the words "FAR 52.209-1" the words "Qualified Requirements" for the words "Qualified Products—End Items"; by substituting in paragraph (1i) after the words "FAR 52.209-2" the words "Qualified Requirements" for the words "Qualified Products"; by inserting in paragraph (1ii) the acronym "FAR" before the referenced clauses 52.209-3

and 52.209–4; and by adding paragraph (1iii) to read as follows:

213.505–2 Agency order forms in lieu of optional Forms 347 and 348.

* * * * *

(S–73) * * *

(1) * * *

(1iii) In accordance with FAR 3.502–3, insert the clause at FAR 52.203–7, Anti-Kickback Procedures.

PART 214—SEALED BIDDING

23. Section 214.202–1 is amended by adding paragraph (b) to read as follows:

214.202–1 Bidding time.

* * * * *

(b) When requested by a source located in a participating country or a designated country as defined in Part 25, the contracting officer shall provide for a 45-day bidding period if this is consistent with the Government's requirements.

PART 215—CONTRACTING BY NEGOTIATION

215.170 [Amended]

24. Section 215.170 is amended by substituting in the second sentence of paragraph (c) "paragraph 215.170" in lieu of "paragraph 215.173."

25. Section 215.805–5 is amended by revising paragraphs (c)(1)(S–70) (A) and (B) to read as follows:

215.805–5 Field pricing support.

* * * * *

(c)(1)(S–70) * * *

(A) The Plant Representative/Administrative Contracting Officer (Plant Rep/ACO) is the team manager for all contracting officer requests for field pricing support. The contracting officer shall send all requests for field pricing support to the cognizant field contract administration activity; generally, the Plant Rep for the Services and the ACO for DCAS(DLA). To expedite the pricing review process, these requests shall be marked in bold letters on the mailing envelope "FIELD PRICING REQUEST". On urgent requests, provide facismile numbers in the requests to facilitate sending the complete report. A copy of the request will also be sent to the cognizant audit activity.

(B) When the contracting officer knows in advance that field pricing support will be required, the contracting officer shall provide the cognizant Plant Rep/ACO and auditor a copy of the solicitation. If the contracting officer requires the contractor to provide copies of the proposal directly to the Plant Rep/ACO and auditor, a field pricing request shall be issued along with the solicitation. In this event, the contracting officer shall include in the field pricing request, the approximate date the proposal will be provided by the contractor, and identify those specific areas for which field pricing support is required.

215.873 [Reserved]

26. Section 215.873 is added and marked "Reserved."

27. Section 215.874 is added to read as follows:

215.874 Follow-up on contract audit reports.

It is policy of the Department of Defense for contracting officers to make the best possible use of contract audit advice. The DoD policy on contract audit follow-up is contained in Department of Defense Directive 7640.2, "Policy for Follow-Up on Contract Audit Reports."

215.1001 [Amended]

28. Section 215.1001 is amended by removing paragraphs (b)(1) and (c).

PART 217—SPECIAL CONTRACTING METHODS

217.7202–1 [Amended]

29. Section 217.7202–1 is amended by removing the second sentence of paragraph (c).

30. Section 217.7202–4 is amended by substituting in the third sentence of paragraph (b) the word "net" for the word "overall"; by substituting in the fourth sentence of paragraph (b) the word "net" for the word "overall"; and by adding a sentence at the end of paragraph (b) to read as follows:

217.7202–4 Breakout guidelines.

* * * * *

(b) * * * Breakout will normally not be justified for a component whose cost is not expected to exceed $1 million for the current year's requirement.

31. Section 217.7204 is amended by inserting in the first sentence of paragraph (a) between the word "supplies" and the word "shall" a comma and the words "other than commercial items sold in substantial quantities to the general public and priced at established catalog or market prices or awarded through full and open competition,"; by removing in paragraph (a)(1) between the word "or" and the word "all" the word "of"; by adding paragraph (b); and by redesignating the existing paragraphs (b) and (c) as paragraphs (c) and (d), to read as follows:

217.7204 Identification of sources of supply.

* * * * *

(b) This section does not apply to a contract that requires delivery of supplies that are commercial items sold in substantial quantities to the general public if the contract—

(1) Provides for the acquisition of such supplies at established catalog or market prices; or

(2) Is awarded through the use of full and open competition.

* * * * *

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

32. The title to Subpart 222.72 is amended by removing the words "Section 8078, 1986 Defense Appropriations Act—".

222.7200 [Amended]

33. Section 222.7200 is amended by inserting in paragraph (a) between the word "Act" and the word "requires" a comma and the words "Pub. L. 98–190, and Section 9069 of the 1987 Defense Appropriations Act, Pub. L. 99–591,"; by substituting in paragraph (a) the word "require" for the word "requires"; by inserting in paragraph (a) after the words "FY 1986" the words "and FY 1987"; and by inserting in paragraphs (b) and (c) after the words "FY 1986" the words "and FY 1987".

222.7201 [Amended]

34. Section 222.7201 is amended by substituting "the Under Secretary of Defense for Acquisition" in lieu of the Assistant Secretary of Defense for Acquisition and Logistics".

PART 225—FOREIGN ACQUISITION

225.302 [Amended]

35. Section 225.302 is amended by substituting in paragraph (S–72)(2)(i) in the listing for the Department of the Navy the designation "OASN (S&L), Director, International Programs" in lieu of the designation "OASN (S&L), CBM".

36. Section 225.7301 is amended by revising paragraph (b) to read as follows:

225.7301 Applicable statutory provisions.

* * * * *

(b) *Contractor preference for direct commercial sales.* Dod policies and procedures with respect to contractor preference for direct commercial sales are contained in the Security Assistance

Management Manual (DoD 5105.38–M), Chapter 6, Section II, entitled Contractor Preference for Direct Commercial Sales, published by the Defense Security Assistance Agency.

225.7304 [Amended]

37. Section 225.7304 is amended by substituting in paragraph (c)(1)(i)(C) the number "126.8" in lieu of the number "123.16".

225.7305 [Amended]

38. Section 225.7305 is amended by substituting in the first sentence of paragraph (f) the parenthetical title "(Security Assistance Management Manual)" in lieu of "(Military Assistance and Sales Manual)".

PART 233—PROTEST, DISPUTES, AND APPEALS

233.214 [Amended]

39. Section 233.214 is amended by substituting the reference "233.213(a)" in lieu of "233.013(a)".

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

40. Section 244.304 is amended by removing the words "advance payments, progress payments," from paragraph (b)(1)(xvi), by removing the word "and" from paragraph (b)(1)(xx); by removing the period at the end of paragraph (b)(1)(xxi) and inserting a semi-colon and the word "and"; and by adding a new paragraph (b)(1)(xxii) to read as follows:

244.304 Surveillance.

* * * * *

(b) * * *

(1) * * *

(xxii) Management control systems, including internal audit procedures, to administer progress payments to subcontractors.

* * * * *

PART 245—GOVERNMENT PROPERTY

41. Section 245.608–71 is amended by revising paragraph (g) to read as follows:

245.608–71 Procedures for industrial plant equipment.

* * * * *

(g) The plant clearance officer shall, when IPE is transferred use-to-use or use-to-storage within DoD, assure that a copy of the completed shipping document is submitted to DIPEC. Sales of IPE that is excess to ownership but not to DoD requirements that is sold by GSA shall be reported to DIPEC in accordance with agency instructions.

245.7102–6 [Amended]

42. Section 245.7102–6 is amended by removing paragraph (b)(9).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

43. Section 252.203–7001 is added to read as follows:

252.203–7001 Special prohibition on employment.

As prescribed in 203.571–5, insert the following clause:

Special Prohibition on Employment (Apr 1987)

(a) *Definitions.* "Arising out a contract with the Department of Defense", as used in this clause, means any act in connection with (1) attempting to obtain, (2) obtaining, or (3) performing a contract or subcontract of any agency, department, or component of the Department of Defense.

"Conviction of fraud or any other felony", as used in this clause, means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or pleas, including a plea of *nolo contendere*, for which sentence has been imposed.

(b) Section 941, Title IX, Pub. L. 99–500 (10 U.S.C. 2408) prohibits a person who is convicted of fraud or any other felony arising out of a contract with the Department of Defense from working in a management or supervisory capacity or any defense contract, or serving on the board of directors of any defense contractor, for a period, as determined by the Secretary of Defense, of not less than one (1) year from the date of conviction. Defense contractors are subject to a criminal penalty of not more than $500,000 if they are convicted of knowingly employing a person under a prohibition or allowing such person to serve on their board of directors.

(c) The Contractor agrees not to knowingly employ any person, convicted of fraud or any other felony arising out of a contract with the Department of Defense, in a management or supervisory capacity on any Department of Defense contract or subcontract or allow such person to serve on its board of directors from the date the Contractor learns of the conviction until one (1) year has expired from the date of conviction. However, if the person has also been debarred pursuant to FAR Subpart 9.4, the above prohibition shall extend for the period of debarment, but in no event shall the prohibition be less than one (1) year from the date of the conviction.

(d) If the Contractor knowingly employs such a convicted person in a management or supervisory capacity on any defense contract or subcontract or knowingly allows such person to serve on its board of directors within the prohibited period, the Government may consider, in addition to the criminal penalties contained in Section 941 of Pub. L. 99–500, other available remedies, such as suspension or debarment, and may direct the cancellation of this contract at no cost to the Government, or terminate this contract for default.

(e) The Contractor agrees to include the substance of this clause, including this paragraph (e), appropriately modified to reflect the identity and relationship of the parties, in all subcontracts exceeding $25,000.

[End of clause]

252.217–7220 [Removed and Reserved]

44. Section 252.217–7220 is amended by removing the text and marking the section "Reserved."

45. Section 252.217–7270 is amended by changing the reference in the introductory paragraph to read "217.7204(c)"; by changing the date of the clause to read "(FEB 1987)"; by designating the existing paragraph of the clause as paragraph (a); and by adding paragraph (b) to the clause to read as follows:

252.217–7270 Identification of sources of supply.

* * * * *

(b) The requirements of paragraph (a) do not apply to any items that are commercial items sold in substantial quantities to the general public if—

(1) The items are priced using established catalog or market prices; or

(2) The items are acquired through the use of full and open competition.

[End of clause]

46. DAR Supplement No. 6 is amended as follows:

(a) Section S6–103 is revised to read as follows:

S6–103 Definitions.

The following definitions are applicable to this supplement only.

(b) Section S6–103.3 is revised to read as follows:

S6–103.3 Actual Manufacturer. An individual, activity, or organization that performs the physical fabrication processes that produce the actual part or other items of supply. The actual manufacturer *must* produce the replenishment part in-house. The actual manufacturer may or may not be the Design Control Activity.

(c) Section S6–103.9 is revised; Section S6–103.10 is added; and the existing Sections S6–103.10, S6–103.11, and S6–103.12 are redesignated S6–103.11, S6–103.12, and S6–103.13, to read as follows:

S6–103.9 Design Control Activity. A contractor or government activity having responsibility for the design of a given part, and for the preparation and currency of engineering drawings and other technical data for that part. The design control activity may or may not be the actual manufacturer.

S6–103.10 Manufacture. The physical fabrication process that produces a part, or other item of supply. The physical fabrication processes include, but are

not limited to machining, welding, soldering, brazing, heat treating, braking, riveting, pressing, chemical treatment, etc.

* * * * *

[Editorial note: DAR Supplement No. 6 is not a part of the 1986 edition of the DoD FAR Supplement.]

[FR Doc. 87-20913 Filed 9-14-87; 8:45 am]

BILLING CODE 3810-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1802, 1803, 1804, 1805, 1810, 1812, 1813, 1815, 1816, 1822, 1823, 1832, 1842, 1845, 1847, 1852, and 1870

[NASA FAR Supplement Directive 85-8]

Miscellaneous Changes to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes implementing higher level issuances dealing with NASA internal or administrative matters, and includes two items previously publicized as proposed rules.

EFFECTIVE DATE: September 15, 1987.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-2119.

SUPPLEMENTARY INFORMATION:

Background

The major changes involve: (1) Transferring contracts, (2) field pricing reports, (3) subcontract price redetermination, (4) letter contract approval, (5) Standard Form 99 reporting, (6) withholding under construction contracts, (7) plant clearance costs, (8) financial reporting of government property, and (9) consolidation of five provisions and clauses developed by NASA field installations.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations noted above as background Items 1-7 fall in the exempted category.

Item 8 was published (52 FR 26541) on July 15, 1987 as a proposed rule. No public comment was received. Item 9 was published (52 FR 25417) on July 7, 1987. Two comments were received, both of which were accepted. Specifically, institutions of higher education have been exempted from the requirements of a new "Technical Direction" contract clause, and the clause itself has been modified to avoid the potential for conflict with the Federal Acquisition Regulation "Notification of Changes" clause.

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulation imposes no burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR Part 1320, except for background Item 8 to which approval number 2700-0017 applies.

List of Subjects in 48 CFR Parts 1801, 1802, 1803, 1804, 1805, 1810, 1812, 1813, 1815, 1816, 1822, 1823, 1832, 1842, 1845, 1847, 1852, and 1870

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1801, 1802, 1803, 1804, 1805, 1810, 1812, 1813, 1815, 1816, 1822, 1823, 1832, 1842, 1845, 1847, 1852, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Part 1801 is amended by revising Subparts 1801.1, 1801.2, 1801.3, 1801.4, 1801.6, and 1801.7 to read as follows:

* * * * *

Subpart 1801.1—Purpose, Authority, Issuance

Sec.

1801.101 Purpose.
1801.102 Authority.
1801.103 Applicability.
1801.104 Issuance.
1801.104-1 Publication and code arrangement.
1801.104-2 Arrangement of regulations.
1801.104-3 Copies.
1801.104-370 Dissemination of this regulation, revisions, and procurement notices.
1801.105 OMB approval under the PaperworkReduction Act.
1801.105-1 NASA FAR Supplement requirements.
1801.105-2 Solicitations and contracts.

Subpart 1801.2—Administration

1801.270 Amendment of regulation.
1801.270-1 Revisions.
1801.270-2 Procurement notices.
1801.270-3 Effective date.
1801.270-4 Numbering.
1801.271 NASA procedures for FAR changes.

Subpart 1801.3—Agency Acquisition Regulations

1801.301 Policy.
1801.302-70 Field installation instructions and implementation of the NASA FAR Supplement.
1801.303 Codification and public participation.
1801.303-70 Assignment of numbers.

Subpart 1801.4—Deviations From the FAR and NASA FAR Supplement

1801.400 Scope of subpart.
1801.401 Definition.
1801.402 Policy.
1801.403 Individual deviations.
1801.404 Class deviations.
1801.405 Deviations pertaining to treaties and executive agreements.
1801.470 Modification to existing contracts for new procurement.
1801.471 Procedure for requesting deviations.

Subpart 1801.6—Contracting Authority and Responsibilities

1801.601 General.
1801.603 Selection, appointment, and termination of appointment.
1801.603-1 [Reserved]
1801.603-2 Selection.
1801.603-3 Appointment.
1801.603-4 Termination.
1801.670 Delegation of procurement responsibilities.

Subpart 1801.7—Determinations and Findings

1801.703 Class determinations and findings.
1801.704 Content.
1801.707 Signatory authority.

Subpart 1801.1—Purpose, Authority, Issuance

1801.101 Purpose.

The NASA FAR Supplement establishes agency-wide uniform policies and procedures that implement and supplement the FAR.

1801.102 Authority.

Under the following authorities, the Administrator has delegated to the Assistant Administrator for Procurement authority to prepare, issue, and maintain the NASA FAR Supplement:

(a) The National Aeronautics and Space Act of 1958, as amended (Pub. L. 85-568; 42 U.S.C. 2451 *et seq.*);

(b) 10 U.S.C. Chapter 137;

(c) Other statutory authority; and

(d) FAR Subpart 1.3.

1801.103 Applicability.

The NASA FAR Supplement applies to all acquisitions as defined in FAR Part 2 except where expressly excluded in the FAR or this supplement.

1801.104 Issuance.

1801.104–1 Publication and code arrangement.

(a) The NASA FAR Supplement is published in—

(1) The daily issue of the **Federal Register;**

(2) Cumulated form in the Code of Federal Regulations (CFR); and

(3) A separate loose-leaf edition adaptable for either interleaving with the FAR or filing separately.

(b) The NASA FAR Supplement is issued as Chapter 18 of Title 48 CFR, and it parallels the FAR in format, arrangement, and numbering system. Thus, a formal citation to this paragraph would appear as 48 CFR 1801.104–1(b).

1801.104–2 Arrangement of regulations.

(a) *General.* The NASA FAR Supplement conforms with the arrangement and numbering system prescribed by FAR 1.104. The numbering illustrations at FAR 1.104–2(b) are equally applicable to the NASA FAR Supplement; users are reminded that in the loose-leaf edition of the supplement, NASA's assigned CFR chapter number 18 will appear to the left of the applicable part number separated by a dash, e.g., 1815.402–1. However, in 48 CFR Chapter 18 the dash has been removed; therefore, the first four digits preceding the point refer to the CFR part number.

(b) *Numbering.* (1) All coverage in the NASA FAR Supplement that is unique to NASA will use part, subpart, section, and subsection numbers 70 through 89 (see 1801.303–70):

(i) Part 1870 is the first part number NASA can use for adding coverage that neither implements nor supplements the FAR; i.e., there is no appropriate subject heading within the 53 parts of the FAR under which the coverage could be located.

(ii) Subpart 1815.70 is the first subpart number NASA can use to supplement FAR Part 15.

(iii) Section 1815.470 is the first number NASA can use to supplement FAR Subpart 15.4.

(iv) Subsection 1815.402–70 is the first number NASA can use to supplement FAR 15.402.

(v) Subsection 1815.402–170 is the first number NASA can use to supplement FAR 15.402.1.

(2) All coverage in the NASA FAR Supplement other than that identified with a 70 or higher number, as described in subparagraph (b)(1) above, implements the FAR and will bear the identical number and title of the FAR segment being implemented down to the subsection level; e.g., 1815.402–1 implements FAR 15.402–1. Below this level (paragraph, subparagraph (see FAR 1.104–2(b)(2)), NASA FAR Supplement alphanumerics will not correlate with FAR alphanumerics.

(c) *References and citations.* (1) Unless otherwise stated, cross references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this regulation.

(2) This Regulation may be referred to as the National Aeronautics and Space Administration Federal Acquisition Regulation Supplement, the NASA FAR Supplement, or, for the purpose of brevity, the NFS.

(d) *Provisions and clauses.* See FAR Subpart 52.1 and Subpart 1852.1 for information regarding the numbering and dating of provisions and clauses.

1801.104–3 Copies.

Copies of the NASA FAR Supplement in **Federal Register,** loose-leaf, and CFR form may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402.

1801.104–370 Dissemination of this regulation, revisions and procurement notices.

(a) The NASA FAR Supplement, NASA FAR Supplement Directives (NFSDs) and Procurement Notices (PNs) (see 1801.270–2) will be distributed directly to NASA Headquarters and to installation distribution points. The number of copies of the regulation and revisions thereto will be distributed on the basis of the requirements furnished by each Headquarters office and NASA field installation to the Office of Procurement, NASA Headquarters (Code HP). Material that revises this regulation will be published in the **Federal Register** as required by statute.

(b) Heads of field installations shall ensure that copies of the NASA FAR Supplement, NFSDs, and PNs are promptly distributed to all interested activities and individuals within their installation. Code HP is responsible for distribution within Headquarters and for monitoring bulk distribution to installations.

(c) Subscriptions to the NASA FAR Supplement, including applicable NFSDs, may be purchased by private concerns and individuals from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

1801.105 OMB approval under the Paperwork Reduction Act.

1801.105–1 NASA FAR Supplement requirements.

The following OMB control numbers apply:

NASA FAR Supplement Segment and OMB Control Number	
18–12	2700–0056
18–23	2700–0051
18–27	2700–0052
18–32	2700–0055
18–43	2700–0054
NF 533	2700–0003
NF 667	2700–0004
NF 1018	2700–0017
All Requirements	*2700–0043*

1801.105–2 Solicitations and contracts.

Various requirements in an RFP/IFB or contract, generally in the statement of work, are not tied to specific paragraphs cleared in 1801.105–1, but yet require information collection or recordkeeping. OMB control number 2700–0042 applies to these requirements. The OMB control number shall be displayed in the upper right hand corner of each solicitation/contract. Over-printing is authorized by 1853.104.

Subpart 1801.2—Administration

1801.270 Amendment of regulation.

This regulation will be amended as needed to set forth improved procedures that reduce contract preparation time, simplify and standardize contract forms, and improve the contracting process. Acquisition personnel are encouraged to submit suggestions, based on operating experience, for improving and simplifying the procedures in this Regulation. Such suggestions should be submitted through the Procurement Officer to the Office of Procurement, NASA Headquarters (Code HP).

1801.270–1 Revisions.

This regulation will be amended by issuance of NFSDs containing loose-leaf replacement pages which revise parts, subparts, or paragraphs. Also see 1801.270–2 below. Each replacement page will bear the NFSD number and page number at the top. A vertical bar at the side of a line indicates that a change has been made within that line.

1801.270–2 Procurement notices.

(a) This regulation will also be amended by issuance of Procurement Notices (PNs) when—

(1) It is necessary or advisable to promulgate as rapidly as possible selected material revising this regulation, in a general or narrative manner, in advance of a specific page

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replacement type revision to this regulation, or

(2) The policy and/or procedure is expected to be effective for a period of one year or less.

(b) Unless otherwise indicated, each item in a PN will remain in effect until the effective date of the subsequent NASA FAR Supplement revision that incorporates the item or until specifically cancelled.

(c) Material that is unsuitable for insertion in this regulation will be promulgated by means other than PNs.

1801.270–3 Effective date.

(a) Statements in NFSDs and PNs to the effect that the material published therein is "effective upon receipt" or upon a specified date or that changes in the Directive or Notice are "to be used upon receipt" mean that any new or revised clauses or forms included in the Directive or Notice shall be included in invitations for bids and requests for proposals issued thereafter, unless a different meaning is expressed in the Directive or Notice.

(b) Compliance with a revision to this regulation shall be in accordance with the NFSD or PN which contains the revision. Procurements initiated after receipt of new or revised clauses should, to the maximum practicable extent, include such clauses.

(c) Unless otherwise stated, invitations for bids that have been issued and bilateral agreements for which negotiations have been completed prior to the receipt of new or revised contract clauses need not be amended to include the new or revised clauses if such amendment would unduly delay the procurement action.

1801.270–4 Numbering.

(a) Effective January 1, 1986, NFSDs and PNs are numbered in the same manner as the FAR; i.e., consecutively beginning with number 1 prefixed by the last two digits of the calendar year of issuance of the current edition of the NASA FAR Supplement.

(b) Prior to January 1, 1986, the following NFSD's and PN's were issued:

1984
NFSDs 84–1 through 84–3
PNs 84–1 through 84–15
1985
NFSDs 85–1 through 85–4
PNs 85–1 through 85–9

Although in calendar year 1986 the NFS is a 1984 edition, the first NFSD is 85–5 and the first PN is 85–10. The current consecutive numbering and the "85" prefix will be maintained until the next NFS edition is published. Full compliance with paragraph (a) above will be achieved at that time.

1801.271 NASA procedures for FAR changes.

(a) NASA is represented on the Defense Acquisition Regulatory Council (DARC) by a policy member from the Procurement Policy Division (Code HP) and a legal member from the Office of General Counsel (Code GK). NASA staff members are also assigned to standing and *ad hoc* DARC committees in their areas of expertise. The DARC policies and procedures for initiating and reviewing FAR changes shall be followed by the assigned individuals.

(b) Any NASA element or individual may suggest a revision to the FAR. Such suggestions should be in writing and contain, at a minimum: A concise description of the problem the suggested revision is designed to cure or ameliorate; the revision in the form of a marked-up copy of the current FAR language or the text of any additional FAR language; the consequences of making no change and the benefits to be expected from a change; and any other information necessary for understanding the actual situation. All suggested FAR revisions shall be sent to the Director, Procurement Policy Division (Code HP).

Subpart 1801.3—Agency Acquisition Regulations

1801.301 Policy.

All agency-wide policies and procedures that govern the contracting (see FAR Subpart 2.1) process or otherwise control contracting relationships shall be incorporated in the NASA FAR Supplement.

1801.302–70 Field installation instructions and implementation of the NASA FAR supplement.

Heads of NASA field installations may implement the FAR and NASA FAR Supplement by prescribing for their installation detailed procurement operating instructions, delegations of authority, and assignment of responsibilities which they deem essential for the efficient performance of their procurement function. Such instructions shall comply with FAR § 1.302 and Subpart 1.4 and Subpart 1801.4 of this regulation.

1801.303 Codification and public participation.

1801.303–70 Assignment of numbers.

(a) Part, subpart, section, and subsection numbers 1 through 69 are reserved for FAR use.

(b) Part, subpart, section, and subsection numbers 70 through 89 are reserved for NASA FAR Supplement use.

(c) Part, subpart, section, and subsection numbers 90 and up are reserved for use by NASA contracting offices.

Subpart 1801.4—Deviations From the FAR and NASA FAR Supplement

1801.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the NASA FAR Supplement and for the internal processing of FAR deviation requests under FAR Subpart 1.4.

1801.401 Definition.

"Deviation" means—

(a) "Deviation" as defined at FAR 1.401; and/or

(b) Any one or combination of the following:

(1) The issuance or use of a policy, procedure, solicitation provision (see FAR 52.101(a)), contract clause (see FAR 52.101(a)), method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the NASA FAR Supplement.

(2) The omission of any solicitation provision or contract clause when its prescription requires its use.

(3) The use of any solicitation provision or contract clause with modified or alternate language that is not authorized by the NASA FAR Supplement (see definitions of "modification" and "alternate" in FAR 52.101(a)).

(4) The use of a solicitation provision or contract clause prescribed by the NASA FAR Supplement on a "substantially as follows" or "substantially the same as" basis (see FAR 52.101(a)) if such use is inconsistent with the intent, principle, or substance of the prescription or related coverage on the subject matter in the supplement.

(5) The authorization of lesser or greater limitations on the use of any solicitation provision, contract clause, policy, or procedure prescribed by the NASA FAR Supplement.

(6) The issuance of agency-wide policies or procedures that govern the contracting process or otherwise control contracting relationships that are not incorporated into the NASA FAR Supplement in accordance with FAR 1.301(a) and 1801.301 of this regulation.

1801.402 Policy.

Unless precluded by law, executive order, or regulation, deviations from the NASA FAR Supplement may be granted only as specified in this subpart. See FAR Part 53 and Part 1853 of this

regulation regarding exceptions to forms prescribed therein.

1801.403 Individual deviations.

Individual deviations affect only one contracting action and, unless FAR 1.405(e) is applicable, may be authorized only by the Assistant Administrator for Procurement or a designee. (See 1801.471 regarding requests for deviations.)

1801.404 Class deviations.

Class deviations affect more than one contracting action. When it is known that a class deviation will be required on a permanent basis, the contracting office should propose an appropriate NASA FAR Supplement revision to cover the matter. Only the Assistant Administrator for Procurement or a designee may approve class deviations. (See 1801.471 regarding request for deviations.) 1801.405 Deviations pertaining to treaties and executive agreements.

1801.405 Deviations pertaining to treaties and executive agreements.

Deviations to the NASA FAR Supplement pertaining to treaties or executive agreements will be processed under the procedures in FAR 1.404 except that deviations not authorized by FAR 1.405 (b) or (c) will be requested under 1801.471.

1801.470 Modification to existing contracts new procurement.

When an existing contract is modified to add new procurement, approval of the deviations previously granted for the existing contract must be obtained for the modification as though the modification were a new contract. New procurement for the purpose of this section shall be considered any action that is competed or that must be authorized under FAR 6.302. An information copy of each request for deviation shall be furnished to the cognizant Associate Administrator.

1801.471 Procedure for requesting deviations.

(a) Requests for authority to deviate from the provisions of this Regulation and other procurement publications shall be submitted to the Office of Procurement, NASA Headquarters (Code HP). Such requests shall be signed by the procurement officer, or in that person's absence, by the duly appointed acting procurement officer. Such requests shall be submitted as far in advance as the exigencies of the situation will permit.

(b) Each request for a deviation shall contain, as a minimum—

(1) Identification of the NASA FAR Supplement requirement from which a deviation is sought;

(2) A full description of the deviation and the circumstances in which it will be used;

(3) A description of the intended effect of the deviation;

(4) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request;

(5) The name of the contractor and identification of the contract affected, including the dollar value;

(6) Detailed reasons supporting the request, including any pertinent background information which will contribute to a fuller understanding of the deviation sought; and

(7) A copy of the counsel's concurrence or comments thereon.

Subpart 1801.6—Contracting Authority and Responsibilities

1801.601 General.

At NASA, the authority and responsibility to contract for authorized supplies and services are delegated to the Assistant Administrator for Procurement by NMI 5101.8, Delegation of Authority—To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement), and the authority and responsibility to act in certain circumstances is redelegated to various NASA officials by NMI 5101.24, Delegation of Authority—To Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters (Various Officials).

1801.603 Selection, appointment, and termination of appointment.

1801.603-1 [Reserved]

1801.603-2 Selection.

(a) *Policy.* The objective of issuing contracting officer Certificates of Appointment, SF Form 1402, is to ensure that only those officials who are fully qualified to obligate the Government for the expenditure of public funds for the procurement of supplies and/or services are appointed as contracting officers when an organizational need occurs. Only GS–1105 and GS/GM–1102 personnel shall be appointed as contracting officers.

(b) *Appointment levels.* There are three levels of appointment authority, as follows; the appropriate appointment level shall be specified on the SF 1402 upon issuance:

(1) *Basic level:* Applies to personnel in the GS–1102 or GS–1105 series only who have signature authority for small purchases, orders placed under Federal Supply Schedule contracts, other mandatory sources, or blanket purchase agreements.

(2) *Intermediate level:* Applies to those in the GS–1102 series only who have been delegated the authority to execute contracts and contract modifications for up to a maximum of $500,000.

(3) *Senior level:* Applies to all personnel in the GS–1102 series only who have been delegated contracting authority to execute contracts and contract modifications which exceed $500,000.

(c) *Organizational need determination.* NASA contracting officers shall be appointed only in those instances in which a valid organizational need can be demonstrated. Organizational factors to be considered in assessing the need for a contracting officer appointment include volume of actions, complexity of work, and organizational structure.

(d) *Selection procedure.* (1) Once the organizational need is determined, the supervisor will nominate a contracting officer candidate. At the request of the supervisor, the candidate shall prepare a qualification statement (or SF 171) containing the following information:

(i) Name.

(ii) Title, series, and grade.

(iii) Office.

(iv) Relevant experience, beginning with current position to a total of four relevant positions, including for each position—

(A) Employer;

(B) Dates employed;

(C) Title of position;

(D) Kind of business/organization; and

(E) Description of work.

(v) Other relevant special qualifications, certifications, or skills.

(vi) Relevant honors, awards, or fellowships received.

(vii) Education, including—

(A) Highest level completed;

(B) High school name, dates attended, and diploma received; and

(C) College or university name, dates attended, degree(s) received; chief undergraduate college subjects; number of credits (show whether semester or quarter hours) completed; major field of study at highest level of college work.

(viii) Procurement-related training, including—

(A) Name of course;

(B) Name of school; and

(C) Dates attended.

(2) The supervisor will review the qualification statement to determine the candidate's ability to perform the

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functions required to meet the organizational need. The supervisor will then complete a Request for Appointment of a Contracting Officer, using the format shown below, justifying the validity of the organizational need and verifying the contracting officer candidate's qualifications. This document will be signed by the candidate's supervisor and submitted through appropriate organizational channels to the appointing authority (see NMI 5101.24). If additional information is required by the appointing authority, the application will be returned with a request for further explanation or supporting data.

Format

Request for Appointment of a Contracting Officer

The following findings and determinations are made pursuant to applicable laws and regulations:

(Insert appropriate information)

1. There is a clear and convincing need to appoint a contracting officer with the ability to perform at the ——— (basic, intermediate, or senior) contracting officer warrant level for the following reasons:

(Insert appropriate reasons)

2. The contracting officer candidate is—

(Name, Title, Series, and Grade)

3. The contracting officer candidate will occupy the organizational level described below:

(Office/Branch/Division and Location)

4. The candidate's qualifications statement is enclosed. It was found that (insert the appropriate statement)

—The candidate's experience and training meet the established qualification standards.

—This candidate does not meet the minimum qualifications in _____ experience and/or training as indicated in the justification); *therefore*, an interim appointment for the period of _____ is requested. These experience and/or training needs will be identified in the candidate's individual development plan and must be completed by _____.

5. The candidate's current conflict-of-interest disclosure statement is on file in the appropriate personnel office or is attached.

6. In addition to the NASA FAR Supplement, laws, Executive Orders, NASA Management Instructions, and other applicable regulations, the following additional warrant limitations are imposed:

a. Dollar Threshold:_____ _____
b. Other Limitations:_____ _____
Supervisor: _____
(Signature of Supervisor of the Candidate)

(Date) (Typed Name)

(Procurement Office) (Title)
Approved:

(Appointing Authority) Date

(3) If the appointing authority approves the Request for Appointment of a Contracting Officer, the appointing authority shall issue a Standard Form (SF) 1402, Certificate of Appointment, in accordance with 1801.603–3. A copy of the SF 1402, the Request for Appointment of a Contracting Officer, and the qualification statement shall be maintained for each contracting officer in a central location in the center procurement office during the period of time the SF 1402 is effective and for three years after its termination or after the individual has left the procurement office's employ. A copy of each SF 1402 issued shall be provided to NASA Headquarters, Office of Procurement (Code HM). Each center shall prepare and maintain an up-to-date listing, by name and position, of all the installation's contracting officers and the limitations imposed on them in their warrants. A copy of this listing shall be provided annually to NASA Headquarters, Office of Procurement (Code HM).

(e) *Required qualifications.* (1) The following are the experience, education, and training requirements needed to qualify for each of the three contracting officer appointment authority levels. Appointing authorities can establish additional qualifications, as appropriate. For example, additional qualifications may be established for those authorized to sign incentive and award-fee actions.

(i) *Experience*—(A) *Basic level:* One year of current experience in Government or commercial procurement, including six months experience in small purchasing.

(B) *Intermediate level:* Two years of current, progressively complex and responsible procurement and/or staff experience in Government or commercial procurement.

(C) *Senior level:* Four years of current, progressively complex and responsible procurement and/or staff experience in Government or commercial procurement.

(ii) *Education (preferred, not mandatory).*

(A) *Basic level:* A high school diploma or equivalent.

(B) *Intermediate and Senior levels:* A bachelor's degree from an accredited college or university which included or was supplemented by at least 24 semester hours in a field of study directly related to procurement, such as business administration, contract law, accounting, Government management, industrial purchasing, or material management.

(iii) *Training.* Acceptable formal training courses covering the subject matter listed below must be satisfactorily completed before a candidate may be nominated for a contracting officer appointment. Approved equivalency tests may be used as substitutes for these formal training requirements.

(A) *Basic level:* 40 hours of formal training covering the application of fundamental principles, policies, procedures, and practices in procurement.

(B) *Intermediate level:* 80 hours of formal training covering the functional knowledge of procurement law, policies, procedures, and methods, including, as a minimum, Government contract law, procurement by negotiation, procurement by sealed bidding, contract administration, and cost and price analysis.

(C) *Senior level:* 120 hours of formal training, including analysis of procurement methods and techniques to enable an individual to effectively manage contractual relationships. The general topics described above also apply to the senior level.

(2) A two-year associate's degree in a procurement-related field, such as business administration or accounting, may be substituted for six months of procurement experience. A four-year undergraduate program degree in a procurement-related field from an accredited college or university may be substituted for procurement experience at the rate of 12 semester credit hours for three months of procurement experience. One year of concentrated experience in an advanced procurement subject area beyond the two-year minimum for the intermediate-level qualifications and the four-year minimum for senior-level qualifications may be substituted for 24 classroom hours of formal training in procurement. The maximum credit for the total additional years of experience in separate concentrated procurement subject areas is 96 classroom hours.

(f) *Interim appointments.* Personnel shall not ordinarily be appointed as contracting officers if they do not meet the applicable qualifications prescribed in this subsection. If it is necessary to appoint a contracting officer who does not fully meet the qualifications, an interim appointment may be granted. The appointing authority shall require as a condition of the interim appointment that all training or experience requirements will be met within a specified reasonable period of time. Failure to successfully complete the training requirements within this time

frame will result in termination of the appointment or issuance of another interim warrant, whichever is considered necessary by the appointing authority. The appointing authority must fully document these actions.

(g) *Condition of appointment.* As a condition of continuing appointment, all contracting officers shall be required to satisfactorily complete a procurement-related Government, commercial, or academic course/seminar at least once every five years. This training will preferably be in an area closely related to that in which the contracting officer is assigned.

(h) *Changes to contract Officer appointments.* Changes, either increasing or decreasing the warrant limitations of a contracting officer, shall be made solely at the discretion of the appointing authority. When an appointing authority determines to make such changes, a new SF 1402 shall be issued, and the existing warrant shall be officially terminated.

1801.603-3 Appointment.

(a) The SF 1402 shall be construed as authorization of designated personnel to exercise contracting officer authority in accordance with the FAR. In addition, the SF 1402 shall be construed as authorization of designated personnel to exercise contracting officer authority in accordance with the NASA FAR Supplement and the NASA Procurement Regulation. The limitations section of the SF 1402 shall, immediately after the word "following," state:

"• • • the limitations contained in the NASA FAR Supplement and the limitations contained in the NASA Procurement Regulation."

(b) If the appointing official chooses to restrict a contracting officer from exercising authority under the NASA Procurement Regulation, the limitations section of the SF 1402 shall, immediately after the word "following," state:

• • • the limitations contained in the NASA FAR Supplement. This Certificate of Appointment does not authorize the appointee to exercise contracting officer authority under the NASA Procurement Regulation.

1801.603-4 Termination.

The appointing authority may revoke the appointment of a contracting officer at any time. Contracting officers whose appointments are terminated shall be given by the appointing authority a written notice stating the reasons for and the effective date of the termination.

1801.670 Delegation of procurement responsibilities.

(a) Non-GS/GM-1102 or -1105 personnel shall only be delegated procurement responsibilities by a warranted contracting officer (see 1801.603 above) and only in accordance with the guidelines in this section. Personnel who are not in the GS/GM-1102 or -1105 job series shall not be issued formal contracting officer warrants (SF 1402). Procurement responsibilities, as ordering officers or as contracting officer representatives, shall be delegated to such personnel by a warranted contracting officer in a written letter of delegation. Limitations shall be clearly set forth in the delegation letter. Authority to sign contracts, modifications, or orders in excess of the small purchase limitation shall not be delegated.

(b) Non-procurement personnel who are delegated procurement responsibilities shall be required to have the training, experience, and education requirements necessary for the responsibilities assigned. If responsibility is to be delegated for making small purchases, the training, education, and experience for the basic-level contracting officer warrant shall be required. Variations from these procedures require a deviation in accordance with Subpart 1801.4.

Subpart 1801.7—Determinations and Findings

1801.703 Class determinations and findings.

The effective period specified in each class determination and findings (D&F) shall not ordinarily exceed one year. When periods longer than one year are considered appropriate and necessary, they should be stated, along with the reasons for the longer periods.

1801.704 Content.

(a) Content and format requirements in addition to those at FAR 1.704 are specified in the associated subject text.

(b) While the contracting officer is responsible for preparing the D&Fs, requirements and technical personnel are responsible for the accuracy and adequacy of the factual information supporting the findings. Supporting information within the functional areas of requirements and technical personnel shall be furnished to the contracting officer in writing.

1801.707 Signatory authority.

(a) Signatory authority for D&Fs is specified in the FAR or NASA FAR Supplement text for the associated subject matter.

(b) The Administrator or Deputy Administrator may also make any of the D&Fs that may be made by the Assistant Administrator for Procurement or by a contracting officer.

PART 1802—DEFINITIONS OF WORDS AND TERMS

3. Subpart 1802.1 is amended by revising 1802.101 to read as follows:

1802.101 Definitions.

The following words and terms are used throughout this regulation as defined in this subpart unless—

(a) The context in which they are used clearly requires a different meaning, or

(b) A different definition is prescribed for a particular part or portion of a part.

"Administrator" means the Administrator or Deputy Administrator of NASA.

"Assistant Administrator for Procurement" means the Assistant Administrator for Procurement, Office of Procurement, NASA Headquarters (Code H).

"Contracting activity" in NASA includes each "installation" as defined herein.

"Contracting office" means the same thing as the previously used term "procurement office."

"Field installation" means Ames Research Center, Goddard Space Flight Center, John F. Kennedy Space Center, Langley Research Center, Lewis Research Center, Johnson Space Center, George C. Marshall Space Flight Center, National Space Technology Laboratories, and any other field installation hereafter established by NASA.

"Head of the agency" means, in NASA, the Administrator or Deputy Administrator of NASA.

"Head of the contracting activity" means, in NASA, the Director (or other Head) of a NASA field installation and the Assistant Administrator for Procurement for NASA Headquarters.

"Installation" means NASA Headquarters and field installations and is synonymous with the term "contracting activity."

"Procurement" means the same thing as the term acquisition, as defined in FAR Subpart 2.101.

"Procurement Officer" means the chief of the contracting office, as defined in FAR Subpart 2.101.

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

4. Part 1803 is amended as set forth below:

a. In Subpart 1803.3, paragraphs (a)(5) and (c) of 1803.303 are revised to read as follows:

1803.303 Reporting suspected antitrust violations.

(a) * * *

(5) Information that may be available with respect to the pricing system employed in bids or proposals believed to reflect noncompetitive practices; and

* * * * *

(c) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to NASA Headquarters, Office of Procurement (Code HP). The report shall include the reasons for suspecting collusion. Code HP will forward a copy of the report to the NASA Office of the Inspector General.

b. In Subpart 1803.70, 1803.7001 is revised to read as follows:

1803.7001 Policy.

(a) It is NASA policy that contracts will not normally be placed on a noncompetitive basis with any individual who was employed by NASA during the past two years or with any firm in which such a former employee is a partner, principal officer, or majority shareholder or which is otherwise controlled or predominantly staffed by such former employees, unless it is determined to be in the best interest of the Government to do so (see 1806.303–270).

(b) Where it has been determined that it is appropriate to contract with an individual or a firm described in paragraph (a) above, the approval authority for the justification for less than full and open competition shall be as specified in 1806.304–70.

(c) If an individual or firm described in paragraph (a) above is involved in a competitive procurement, precautions must be taken to ensure that such individual or firm, *per se*, is not accorded preferential treatment. In the event such individual or firm is the successful offeror, the contract file shall include a separate document fully explaining the safeguards used to ensure fair treatment of all offerors under the procurement. Such documentation is not required if sealed bidding is used.

(d) Nothing in this subpart shall be construed as relieving former employees from obligations prescribed by law, such as 18 U.S.C. 207, Disqualification of Former Officers and Employees.

(e) The policy in paragraph (a) above shall also be considered when reviewing subcontracts for the purpose of granting consent under NASA prime contracts (see FAR 44.202–2(a)(7)).

PART 1804—ADMINISTRATIVE MATTERS

5. In Part 1804, in Subpart 1804.70, 1804.7002 is revised and Subpart 1804.74 is added to read as set forth below:

1804.7002 Restrictions.

Requests for permission to transfer a contract to another NASA installation, when considered advisable by the Director of the installation, shall be addressed to the appropriate official-in-charge of a Headquarters program office or the designated program director, after concurrence from the recipient installation director. Contracts shall not be transferred by an installation until permission to transfer has been obtained. The concurrence of the Associate Deputy Administrator—Institution (Code ADA–I) is also required for a transfer where an installation's roles and missions may be affected.

Subpart 1804.74—Observance of Legal Holidays

1804.7401 Contract clause.

The contracting officer shall insert the clause at 1852.204–73, Observance of Legal Holidays, in cost reimbursement contracts when work will be performed at a NASA installation and it is desired that contractor employees observe the same holidays as government employees. This clause may be appropriately modified for fixed price contracts. If notification to a contractor of government holidays would be useful in administering any contract, the contracting officer shall use Alternate I.

PART 1805—PUBLICIZING CONTRACT ACTIONS

6. Subpart 1805.2 is amended by revising 1805.205 and 1805.207 to read as follows:

1805.205 Special situations.

Potential sources which respond to R&D advance notices shall be added to the appropriate solicitation mailing list for the subsequent solicitation. Those sources that do not appear on the solicitation mailing lists established in accordance with FAR 14.205–1 shall be requested to submit Standard Form 129, Solicitation Mailing List Application. Responding sources that are on established lists may be requested to submit amended applications in order to reflect their current capabilities.

1805.207 Preparation and transmittal of synopses.

(a) Within NASA, each notice publicizing the procurement of architect-engineer services shall be headed "R. Architect-Engineer Services." In addition to other requirements of FAR 5.207(c), the description of the project shall include a brief statement on the relative order of importance the Government attaches to the significant evaluation criteria and the date by which responses to the notice must be received, including submission of Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, if required. Appropriate statements shall be made concerning any specialized qualifications, security classifications, and limitations on eligibility for consideration. Qualifications or performance data required from architect-engineer firms shall be described. If the procurement is to be set aside for small business, the notice shall so state, indicating the specific size standard to be used and requiring that eligible responding firms submit a small business certification statement. In addition, contracting officers shall also add at the end of the synopsis—

See Note 62. Provisions of Note 62 shall apply to this notice except that in the second paragraph of the note: (a) The "National Aeronautics and Space Administration" is substituted for the "Department of Defense" wherever the reference appears, and (b) the fourth additional consideration listed is changed to read: "(4) Past experience, if any, of the firm with respect to performance on contracts with NASA, other Government agencies, and private industry."

(b) In synopses of contracting actions involving options, the contracting officer shall either—

(1) Include the options in the description required by FAR 5.207(c)(2)(viii) or

(2) Publish a separate synopsis of the option as a new procurement prior to its exercise. (See FAR 17.207(c)(4).)

(c) FAR 5.207(b)(4) requires that each synopsis be identified by a Federal Information Processing Standards (FIPS) number. The numbers assigned to NASA installations by FIPS–95 are—

Ames Research Center	8020
Goddard Space Flight Center	8026
Headquarters	8001
Johnson Space Center	8032
Kennedy Space Center	8035
Langley Research Center	8038
Lewis Research Center	8041
Marshall Space Flight Center	8044
NASA Residence Office—JPL	8029
National Space Tech. Lab	8047

7. Subpart 1805.3 is revised to read as follows:

* * * * *

Subpart 1805.3—Synopses of Contract Awards

Sec.
1805.302 Preparation and transmittal of synopses of awards.
1805.302–70 Headquarters notification.
1805.303 Announcement of contract awards.
1805.303–70 Furnishing additional procurement information to the public.
1805.303–71 Notification of the Public Affairs Office.

Subpart 1805.3—Synopses of Contract Awards

1805.302 Preparation and transmittal of synopses of awards.

1805.302–70 Headquarters notification.

The contracting officer shall mail one copy of the synopsis of contract award as prepared under FAR 5.302 to the Office of Small and Disadvantaged Business Utilization, NASA Headquarters (Code K) and send one copy to the Public Affairs Office of the installation.

1805.303 Announcement of contract awards.

Congressional notification shall be in accordance with 1805.403–70.

1805.303–70 Furnishing additional procurement information to the public.

(a) *Policy.* (1) In addition to publicizing procurements and contract awards in the Commerce Business Daily, it is NASA policy to furnish the public, upon request, through the public affairs office of the NASA installation receiving the request, information on specific current NASA procurements, including—

(i) The names of firms invited to submit bids or proposals;

(ii) The names of firms that attended any preproposal briefing conferences when held;

(iii) After the date established for receipt of bids or proposals, the names of firms that submitted bids or proposals (but see 1815.413); and

(iv) Contract award information as required to be publicized in the Commerce Business Daily under the provisions of FAR 5.303 and this 1805.303–70.

(2) Exceptions to this policy will be permitted only when the Assistant Administrator for Procurement or the Director of the field installation concerned determines that the disclosure of such information would be prejudicial to the interests of NASA.

(b) *Procedures.* Contracts requiring approval by the Assistant Administrator for Procurement, in accordance with Subpart 1804.72 will not be distributed, nor will any information be given to any source outside of NASA that the contract has been approved, until 24 hours after the Director of Public Affairs and the Assistant Administrator for Legislative Affairs, NASA Headquarters, have been advised that the contract has been consummated.

(c) *Unsuccessful offerors.* For releasing information to unsuccessful offerors, see FAR 14.408 and FAR Subpart 15.10.

1805.303–71 Notification of the Public Affairs Office.

(a) *Letter contracts.* (1) The procedures for issuing and approving letter contracts are contained in FAR 16.603 and 1816.603. Prior to transmittal of a letter contract to a contractor for signature, the Procurement Officer shall furnish to the Installation Public Affairs Office the following information:

(i) Whether the letter contract initiates a new contract or additional work or services under an existing contract.

(ii) The dollar amount authorized for the letter contract and the estimated total cost of the contract or supplemental agreement.

(iii) Name and address of the contractor.

(iv) Location where the work is to be performed.

(v) A brief description of the work, including identification of the program and project.

(vi) For the purpose of responding to queries only, a list of the unsuccessful offerors and their addresses.

(2) Upon receipt of the information described in subparagraph (a)(1) above, the Installation Public Affairs Office will transmit the information immediately, in the form of a news release, by priority TWX or more expeditious means (if appropriate) to the Chief, News and Information Branch (Code LM), and the Assistant Administrator, Congressional Relations Office (Code XC), NASA Headquarters. The information will not be otherwise released by the Installation Public Affairs Office, nor shall the letter contract be released before 2:30 p.m. Washington, DC, time of the next working day, unless clearance has been received earlier from the Office of the Chief, News and Information Branch (Code LM). If individual circumstances clearly indicate a need for earlier action, exception must be obtained from the Assistant Administrator for Procurement.

(b) *Definitive contracts and supplemental agreements.* (1) This subparagraph pertains to contracts and supplemental agreements that do not require the approval of the Assistant Administrator for Procurement pursuant to 1804.7205 and are in an amount of $5,000,000 or over for the National Space Technology Laboratory, Headquarters Contracts and Grants Division, and the NASA Resident Office—JPL and $10,000,000 or over for Ames Research Center, Goddard Space Flight Center, Johnson Space Center, Kennedy Space Center, Langley Research Center, Lewis Research Center, and Marshall Space Flight Center. This subparagraph does not pertain to supplemental agreements covering overruns or incremental funding actions. Such contracts and supplemental agreements shall not be distributed nor shall any source outside NASA be informed that the contractual instrument has been signed by both parties until the following procedures are carried out:

(i) The Procurement Officer shall furnish to the Installation Public Affairs Office the following information—

(A) Whether the contract initiates a new contract or additional work or services under an existing contract.

(B) Type of contract.

(C) Dollar amount authorized for the instant action and the estimated total cost of the contract if this is different.

(D) Name and address of the contractor.

(E) Location where the work is to be performed.

(F) A brief description of the work, including identification of the program and project.

(G) For the purpose only of responding to queries, a list of the unsuccessful offerors and addresses.

(ii) Upon receipt of the above information, the Installation Public Affairs Office will immediately prepare a news release in the form of a priority TWX which will contain as a minimum the information in subparagraph (b)(1)(i) above, and transmit it to the Chief, News and Information Branch (Code LM), and to the Assistant Administrator, Congressional Relations Office (Code XC), NASA Headquarters. The information will not be otherwise released by the Installation Public Affairs Office, nor shall the contract instrument be released before 2:30 p.m. Washington, DC time of the next working day unless clearance has been received earlier from the Chief, News and Information Branch (Code LM). If individual circumstances clearly indicate a need for earlier action, exception must be obtained from the Assistant Administrator for Procurement.

(2) When forwarded for the approval of the Assistant Administrator for Procurement, if required by 1804.7205, contracts and supplemental agreements shall be accompanied by a draft news release prepared by the Installation Public Affairs Office and furnished to

the contracting office for inclusion in the submission file. The news release will contain as a minimum the information required by subpagraph (b)(1)(i) above. At the time the contract or supplemental agreement is approved by the Assistant Administrator for Procurement, the news release will be forwarded immediately to the Chief, News and Information Branch (Code LM), and to the Assistant Administrator, Congressional Relations Office (Code XC).

8. In Subpart 1805.4, 1805.403–70 is revised to read as follows:

1805.403–70 Headquarters approval and release.

The proposed reply, with full documentation, will be promptly prepared and forwarded by the most expeditious means to the Assistant Administrator, Congressional Relations Office (Code XC), NASA Headquarters, for approval and release. (See 1805.303–70.)

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

9. Part 1810 is amended as set forth below:

a. Section 1810.002–70 is revised to read as follows:

1810.002–70 NASA policy.

Whenever a specification is deemed inadequate, immediate action shall be taken under established procedures to amend or revise the specification in order to obviate the necessity for repeated departures from the specification.

b. In 1810.004, paragraph (a) is revised to read as follows:

1810.004 Selecting specifications or descriptions for use.

(a) As required by FAR 10.004(e), appropriate preservation, packaging, packing, and marking requirements will be included in contracts. The services of packaging technicians shall be used to:

(1) Develop preservation, packaging, packing, and marking requirements for individual procurements, and

(2) Assist in evaluating the reasonableness of contractors' packaging, packing, and marking cost estimates or charges.

* * * * *

c. In 1810.004–71, paragraphs (a) through (g) are revised to read as follows:

1810.004–71 Brand name or equal purchase description.

(a) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only when authorized by FAR 10.004(b)(3) and in accordance with this subpart (see 1810.008–70, 1810.011 and 1852.210–70).

(b) The words "or equal" should not be added when it has been determined under paragraph (a) above that only a particular product meets the essential requirements of the Government, as, for example, where the required supplies can be obtained only from one source (see FAR 6.302–1).

(c) Where feasible, all known acceptable brand name products should be referenced. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced.

(d) "Brand name or equal" purchase descriptions should set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the needs of the Government. For example, where interchangeability of parts is required, such requirement should be specified. Purchase descriptions should contain the following characteristics, in addition to those at FAR 10.004(b)(1), to the extent available, and include such other information as is necessary to describe the item required:

(1) Complete common generic identification of the item required;

(2) Applicable model, make, or catalog number for each brand name product referenced, and identity of the commercial catalog in which it appears; and

(3) Name of manufacturer, producer, or distributor of each brand name product reference (and address if company is not well known).

(e) When necessary to describe adequately the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the solicitation as being that of the particular-named manufacturer, producer, or distributor. The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by offerors at the contracting office.

(f) When a solicitation contains a "brand name or equal" purchase description, bidders who offer brand name products referenced in such description shall not be required to furnish bid samples of the referenced brand name products; however, solicitations may require the submission of bid samples in the case of offerors proposing "or equal" products.

(g) Proposals offering products which differ from brand name products referenced in a "brand name or equal" purchase description shall be considered for award where the contracting officer determines under the clause in 1852.210–70 that the offered products meet the salient characteristics required by the solicitation. Offers shall not be rejected because of minor differences in design, construction, or features which do not affect the suitability of the products for their intended use.

* * * * *

d. Sections 1810.008 and 1810.008–70 are revised to read as follows:

1810.008 Identification and availability of specifications.

Each solicitation shall be accompanied by the applicable specifications, standards, plans, drawings, and other pertinent documents, or shall state where such documents may be obtained or examined.

1810.008–70 Brand name or equal awards.

Award documents shall identify or incorporate by reference an identification of the specific products which the contractor is to furnish. Such identification shall include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the solicitation. Included in this requirement are those instances where:

(a) The description of the end item contains "brand name or equal" purchase descriptions of component parts or of accessories related to the end item; and

(b) The clause at 1852.210–70 as applicable to such component parts or accessories (see 1810.004–70(i)).

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

10. Subpart 1812.1 is amended by adding to 1812.104–70 paragraph (c) to read as follows:

1812.104–70 Additional clauses.

* * * * *

(c) The contracting officer shall insert the clause at 1852.212–72, Partial Shipments, in solicitations and contracts when a quantity specified for a line item to be delivered is more than one unit and/or when the schedule contains more than one line item to be delivered,

and partial shipments by the contractor will not adequately meet the Government's overall needs.

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

11. In Subpart 1813.3, 1813.303 is revised to read as follows:

1813.303 Preparation and execution of orders.

Orders incorporating the fast payment procedure may be issued on Optional Form 347, Order for Supplies or Services, or on any other Center-prescribed purchase order form.

1813.403-70 [Amended]

12. In 1813.403-70, paragraph (c)(2) is revised by removing the word "paragraph" in the last sentence.

PART 1815—CONTRACTING BY NEGOTIATION

13. Subpart 1815.8 is amended as set forth below:

a. Section 1815.805-5(a) is revised to read as follows:

1815.805-5 Field pricing support.

(a) A field pricing report shall be obtained in accordance with FAR 15.805-5(a)(1) except that for cost reimbursement, cost sharing, cost-plus-award-fee, or cost-plus-fixed-fee types of contracts the requirement for obtaining a field pricing report is $1,000,000.

* * * * *

b. Sections 1815.870-1 and 1815.870-2 are revised to read as follows:

1815.870-1 General.

When subcontracts have been placed on a price redetermination or fixed-price incentive basis and the prime contract is to be repriced, it may be appropriate to negotiate a firm prime contract price, even though the contractor has not yet established final subcontract prices. The contracting officer may do this when convinced the amount included for subcontracting is reasonable, e.g., where realistic cost or pricing data on subcontract efforts is available. However, even though the available cost data is highly indefinite and there is a distinct chance that one or more of the subcontracts eventually may be redetermined at prices that are lower than those predicted in redetermining the prime contract price, other circumstances may require the prompt negotiation of the final contract price. In such a case, the contract modification which evidences the revised contract price should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of the specified subcontracts. This may be done by including in the contract modification the clause prescribed at 1815.870-2.

1815.870-2 NASA contract clause.

Insert the clause at 1852.215-71, Adjustment for Subcontract Price Redetermination, in contract modifications that reflect a repricing of the prime contract when one or more subcontracts thereunder is on a price redetermination or fixed-price incentive basis and the prime contractor has not established final prices for any such subcontracts.

PART 1816—TYPES OF CONTRACTS

14. Part 1816 is amended as set forth below:

a. In Subpart 1816.2, 1816.203-4 is revised to read as follows:

1816.203-4 Contract clauses.

(a) When neither of the clauses prescribed in FAR 16.203-4(a) or (b) is appropriate, the contracting officer may use one of the clauses at 1852.216-7001 or 1852.216-7002 in accordance with following instructions:

(1) *Economic price-adjustment for basic steel, aluminum, brass, bronze, or copper mill products.* The price-adjustment clause at 1852.216-7001 is authorized for use in supply contracts for basic steel, aluminum, brass, bronze, or copper mill products such as sheets, plates, and bars, when all of the conditions in FAR 16.203-4(a) (i) through (iii) have been met. The ten percent figure in subparagraph (c)(1) of the clause shall not be exceeded unless approved by the Procurement Officer. No adjustment under this clause shall be made in the contract price until the requested adjustment has been verified by the contracting officer in accordance with the criteria in FAR 15.804-3(c) and as required by subparagraph (c)(4) of the clause.

(2) *Economic price adjustment for nonstandard steel items.*

The price adjustment clause at 1852.216-7002 is authorized for use in fixed-price supply contracts when (i) the contractor is a steel producer and actually manufactures the standard steel mill item referred to in paragraph (d) of the clause and (ii) the items being procured are nonstandard steel items made wholly or in part of standard steel mill items. The 110% figure in paragraph (e) of the clause shall not be exceeded unless approved by the Procurement Officer after coordination with the installation Financial Management Officer.

(b) The contracting officer shall also coordinate with the installation Financial Management Officer before exceeding the ten percent limit in subparagraph (c)(1) of the clauses at FAR 52.216-2, 52.216-3, and 52.216-4.

(c) The contracting officer may modify the clause at FAR 52.216-4 for use in sealed bid procurements.

(d) This paragraph applies to adjustments based on cost indexes of labor or material.

(1) All economic price adjustment clauses using cost indexes require advance approval by the Assistant Administrator for Procurement. Requests for such approval shall be submitted to the Office of Procurement, NASA Headquarters, Code HC.

(2) The following factors may be considered in preparing a price adjustment clause in situations meeting the criteria of FAR 16.203-4(d):

(i) The clause should not be overly complex.

(ii) The clause normally should not provide either a ceiling or a floor for adjustment unless adjustment is based on an index below the four-digit level of the Bureau of Labor Statistics Producer Price Index or the Wage and Income Series by Standard Industrial Classification (Labor).

(iii) The clause normally should cover all potential economic fluctuations within the original contract period of performance.

(iv) The clause must have a positive and accurate identification of the applicable index(es) upon which adjustments will be based and must provide an alternative in the event publication of the designated index is discontinued. The alternative might include the substitution of another index, if the time remaining would justify it and an appropriate index is reasonably available, or some other method for repricing of the remaining portion of the work to be performed. There normally should not be any need to make an adjustment if computation of the identified index is altered; *however,* provision may be made to adjust the economic fluctuation computations if there is such a substantial alteration to the method of computing the index as to negate the original intent of the parties. When an index to be used is subject to revision (*e.g.,* the Bureau of Labor Statistics Producer Price Indexes), the economic price adjustment clause shall further specify that any economic price adjustment shall be based upon the applicable revised index.

(v) An index should be structured to encompass a large sample of relevant items, yet bear a logical relationship to

the type of contract costs measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to contract performance, yet must be broad enough so as to assure the minimal effect of any single company, including the anticipated contractors.

(vi) Not more than two indexes normally should be used; i.e., one for labor (direct and indirect) and one for material (direct and indirect).

(vii) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

(viii) The clause should provide for adjustment from the beginning of the contract or from such period of time that the rate of expenditure is commensurate with the administrative cost and effort to adjust, but it should not provide for adjustment beyond the original contract performance period.

(ix) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to total contract price) in lieu of actual cost incurred. If the clause is to be used in a competitive procurement, the labor and material allocations, with regard to both mix and percentage rate of expenditure, shall be determined by the contracting officer in a manner which approximates, as nearly as possible, the average-expenditure profile of all companies to be solicited. If the clause is to be used in an other-than-competitive procurement, the labor and material allocations determined by the contracting officer may be subject to negotiation and agreement.

(x) The clause should state the percentage of the contract price subject to price adjustment. Normally, adjustments would not be applied to the profit portion of the contract. Additionally, the labor and material portions of the contract must be examined to exclude any areas that do not require adjustment. It may not be necessary, for example, to include all subcontracting because some of the subcontracting could be for short periods of time during the early life of the contract. It may be possible to exclude certain areas of overhead from escalation protection; e.g., depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges. Consideration also should be given to including economic-fluctuation protection covering that portion of labor for the period of time for which a definitive union agreement exists without additional factoring for such things as cost of living increases. Care should be taken to allocate to labor and material only those costs likely to be affected by fluctuations in the economy. That portion of the contract determined to be proper for economic-fluctuation protection shall then be allocated to specific periods of time (e.g., quarterly, semiannually) based on the most-probable expenditure or commitment basis (expenditure profile).

(xi) The clause should provide for definite times or positive events for price adjustments. Adjustments should be of a frequency that will afford the contractor appropriate economic relief without at the same time creating a burdensome administrative effort. The adjustment period should normally range from a minimum of quarterly to a maximum of annually.

(xii) When the contract contains cost incentives, any sums paid to the contractor because of economic price adjustment provisions shall be subtracted from the total of the contractor's allowable cost for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges rather than dollar ranges above and below target costs, the economic price adjustment clause should be structured to maintain the original contract incentive range in dollars.

(xiii) The economic price adjustment clause should provide that once the labor and material allocations have been established, they remain fixed through the life of the contract and are not modified except in the event of partial termination of the contract. The clause should state that pricing actions pursuant to the changes clause or other provisions of the contract will be priced as though there were no provision for economic price adjustment.

(e) Consistent with the factors in subparagraph (d)(2) above, and to properly allocate risk, the contracting officer may determine it appropriate to provide for certain economic price adjustment arrangements between the prime contractor and subcontractors. In such circumstances, a provision for incorporation of price adjustment clauses in specified subcontracts should be included in the price adjustment provision of the prime contract.

(f) When economic price adjustment provisions are included in contracts that do not require submission of cost or pricing data (see FAR 15.804–2), it is the responsibility of the contracting officer to obtain adequate information to establish the base line from which adjustments will be made. In addition, the contracting officer may require verification of the data submitted to the extent considered necessary to permit reliance upon it as a reasonable base line.

(g) The contracting officer shall insert the provision at 1852.216–7003, Evaluation of Offers Subject to Economic Price Adjustment, in all solicitations and contracts that contain an economic price adjustment clause.

b. In Subpart 1816.3, 1816.303 is revised to read as follows:

1816.303 Cost-sharing contracts.

The following basic guidelines apply to research contracts resulting from unsolicited proposals, and to supplements to such contracts which require additional funding.

(a) *When cost-sharing is applicable.* (1) Except as provided in subparagraphs (b) (1) and (2) below, cost sharing by non-Federal organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal.

(2) Cost sharing by non-Federal organizations in contracts other than those described in subparagraph (a)(1) above may be accepted when voluntarily offered by a performing organization.

(b) *When cost sharing is not applicable.* (1) Cost sharing is not applicable to contracts for basic or applied research resulting from an unsolicited proposal when the offeror certifies in writing to the contracting officer that it has no commercial, production, educational, or service activities on which to use the results of the research, and no means of recovering any cost sharing on such projects. In these situations, where there is no measurable gain to the performing organization, there is no mutuality of interest, and it would not be equitable for the Government to require cost sharing.

(2)(i) The activities of educational institutions under NASA research grants, cooperative agreements, and contracts are of benefit only to NASA and normally would not justify cost sharing; i.e., NASA's normal policy of reimbursing universities fully for research performed on its behalf would apply. However, to establish on a case-by-case basis that there is no clear indication of significant future benefit or measurable gain, and that cost sharing does not apply, the contracting officer shall document the file with a determination that is substantively the same as that required in subparagraph (b)(1) above. The determination shall identify the information on which it is

based. If the determination cannot reasonably be made from the available material, the contracting officer shall request the offeror to certify as in subparagraph (b)(1) above. Blanket procedures shall not be established for obtaining certifications from offerors for all cases on a routine basis.

(ii) Cost sharing by educational institutions may nevertheless be accepted when voluntarily offered; provided, the institution is aware of NASA's policy that the amount of cost sharing is not a factor in the determination to support a given proposal.

(c) *Amount of cost sharing.* (1) Educational institutions and affiliated not-for-profit institutions.

(i) Cost sharing for such institutions normally varies from one percent to as much as five percent of the cost of the project. Cost sharing normally is appropriate if it falls within the one to five-percent range.

(ii) NASA does not request inclusion of cost-sharing information in proposals from educational institutions. If cost sharing is determined applicable, a cost-sharing offer will be requested during negotiations.

(2) *Other performing organizations.* (i) Cost sharing for organizations other than those in subparagraph (c)(1) above may be any percentage of the research cost. Mutuality of interest in the results of the work being performed is of primary significance in assessing the appropriateness of any particular level of cost sharing.

(ii) Factors which may be considered in determining mutuality of interest include—

(A) The potential of the contractor to recover its contribution from non-Federal sources;

(B) The extent to which the particular area of research requires special stimulus in the national interest; and

(C) The extent to which a research effort or result is likely to enhance the contractor's capability, expertise, or competitive position.

(d) *Implementation*—(1) *Payment of fee or profit.* No fee or profit will be paid to a cost-sharing contractor, and only an agreed portion of allowable costs will be reimbursed.

(2) *Method of cost sharing.* Cost sharing shall be accomplished by a contribution of part or all of one or more elements of the allowable cost of the work being performed and normally shall be expressed as a stated minimum percentage of the total allowable costs of the project. Costs so contributed may not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(3) *Documentation.* Grant, cooperative agreement, and contract files shall contain appropriate documentation of the reasons for cost sharing and support for the amount of cost sharing agreed upon. For educational institutions, the reasons for cost sharing exceeding five percent or the amount originally offered shall be documented.

c. In Subpart 1816.6, 1816.603–71 is revised to read as follows:

1816.603–71 Authority to approve the issuance of a letter contract.

(a) *Letter contracts having an estimated definitive contract amount below the dollar thresholds specified in 1807.7102.*

(1) Authority to approve the issuance of such letter contract is delegated to the procurement officers. The request for approval shall include the following:

(i) Name and address of proposed contractor.

(ii) Location where contract is to be performed.

(iii) Contract number, including modification number, if applicable.

(iv) Brief description of the work or services to be performed.

(v) Performance period or delivery schedule.

(vi) Amount of letter contract.

(vii) Performance period of letter contract.

(viii) Estimated total amount of definitive contract.

(ix) Type of definitive contract to be executed; e.g., fixed-price, cost-plus-award-fee.

(x) Statement that the definitive contract will contain all required clauses or that deviations therefrom have been approved.

(xi) Statement as to the necessity and advantage to the Government of the proposed letter contract.

(2) The Procurement Officer shall provide a copy of the approval to issue a letter contract, along with the documentation required in paragraph (a)(1) above, to the Assistant Administrator for Procurement (Code HS) within 10 days of approval.

(3) The Procurement officer shall notify the Assistant Administrator for Procurement (Code HS) of the date of definition and contract amount.

(b) *Letter contracts having an estimated definitive contract amount equal to or exceeding the dollar thresholds specified in 1807.7102.* (1) Requests for authority to issue such letter contracts shall be signed by the Procurement Officer and submitted to the Assistant Administrator for Procurement (Code HS). They shall include the information cited in paragraph (a)(1) above.

(2) Any modification made, prior to definitization, to a letter contract that was approved by the Assistant Administrator for Procurement must be approved by the Assistant Administrator for Procurement. When a letter contract was approved by the Procurement Officer, any modification made to it, prior to definitization, that increases the estimated definitized contract amount to or above the dollar thresholds specified in 1807.7102 must have the prior approval of the Assistant Administrator for Procurement.

(3) Promptly upon receipt of a request to issue a letter contract, the Assistant Administrator for Procurement will obtain the concurrence or comments of cognizant Officials-in-Charge of Headquarters Offices and then advise the Procurement Officer of the disposition of the request.

1816.702 [Removed]

d. In Subpart 1816.7, 1816.702 is removed.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

15. Subpart 1822.6 is amended by revising 1822.608–5 to read as follows:

1822.608–5 Award.

FAR 22.608–5(b) shall not apply to NASA.

PART 1823—ENVIRONMENT, CONSERVATIONS, AND OCCUPATIONAL SAFETY

16. Subpart 1823.70 is amended as set forth below:

a. In 1823.7002, paragraph (d)(1)(vii) is revised to read as follows:

1823.7002 Responsibility.

* * * * *

(d) * * *

(1) * * *

(vii) Activities which may (by either direct or secondary effect) adversely affect the work environment due to the use of ionizing radiation, microwaves, noise, lasers, ultraviolet, and infrared sources.

* * * * *

PART 1832—CONTRACT FINANCING

17. Subpart 1832.1 is amended as set forth below:

a. In 1832.111–70, paragraph (e) is added to read as follows:

1832.111–70 NASA contract clauses.

* * * * *

(e) The contracting office shall insert the clause at 1852.232–79, Payment for On-site Preparatory Costs, in solicitations and contracts for construction on a fixed-price basis where progress payments are contemplated and pro rata payment of these costs to the contractor is appropriate.

1832.171 [Removed]

b. Section 1832.171 is removed.

PART 1842—CONTRACT ADMINISTRATION

18. Part 1842 is amended as set forth below:

a. In Subpart 1842.1, 1842.101 and 1842.173 are revised to read as follows:

1842.101 Policy.

It is NASA policy to make optimum use of the contract administration audit and related support functions available from the Department of Defense (DOD) and other Government agencies. NASA agreements with Government agencies regarding the delegation and performance of contract administration and related field support functions are the responsibility of the Governmental Affairs Division (Code LD). However, questions may be directed to the Procurement Policy Division (Code HP). NASA shall retain technical direction of all contracts awarded regardless of the agency responsible for contract administration.

1842.173 Reimbursement for contract administration services.

The basis for reimbursement to DOD for contract administration and related support services is the NASA–DOD agreement. Budgeting, funding, and payment for these services will be accomplished in accordance with NMI 7410.1, Budgeting, Funding and Payment for Contract Administration and Related Field Services Performed by Others. Budgeting, funding, and payment of carrier bills of lading for transportation performed as a result of a traffic management delegation are the responsibility of the NASA installation issuing the delegation.

b. Subpart 1842.2 is amended by revising paragraph (d) of 1842.202–70 to read as follows:

1842.202–70 Delegations to contract administration offices.

* * * * *

(d) *Industrial security.* NASA industrial security policies and procedures are set forth in NMI 1650.1, Industrial Security Policies and Procedures, which stipulates that the industrial security function on NASA contracts will be performed automatically by DOD. The basis for DOD performance of this function is the NASA/DOD Agreement. Nonindustrial security functions, which are the responsibility of the NASA contracting officer, may be delegated to DOD at the option of the NASA contracting officer and shall be delegated when contract performance is to be accomplished at another NASA installation (see section 1842.171). These contracting officer security functions, when delegated to DOD or to another NASA installation, shall be specifically identified on NASA Form 1430A.

* * * * *

c. Subpart 1842.70 is added to read as follows:

Subpart 1842.70—Technical Direction

1842.7001 Contract clause.

(a) The contracting officer shall insert the clause at 1852.242–70, Technical Direction, in cost reimbursement solicitations and contracts where the contracting officer determines that it is necessary to issue direction to the contractor within the scope of the contract in order to accomplish the contract requirements effectively. This clause is not authorized for use with institutions of higher education and other non-profit organizations.

(b) If the contract includes FAR 52.243–7, Notification of Changes (see FAR 43.106), the contracting officer shall use Alternate I to the clause. This alternate substitutes paragraph (d) of the clause in order to use the procedures in the Notification of Changes clause when the contractor believes nontechnical direction changes have been issued.

PART 1845—GOVERNMENT PROPERTY

19. Subpart 1845.1 is amended as set forth below:

a. In 1845.102–70, paragraph (a)(3) is revised to read as follows:

1845.102–70 Procedures.

(a) * * *

(3) Requirement that additional facilities to be provided by the Government be described and identified by category, such as "Land," "Buildings," and "Equipment" (see Subpart 1845.71).

* * * * * *

b. In 1845.106–70, paragraph (d) is revised to read as follows:

1845.106–70 NASA contract clauses.

* * * * * *

(d) The clause at 1852.245–73, Financial Reporting of Government-Owned/Contractor-Held Property, shall be inserted in all contracts except where it is virtually certain that Government property will not be furnished to or acquired by the contractor (i.e., as in most study contracts and certain contracts for services), or where the only property to be provided is provided for the purpose of repair or servicing (see 1852.245–72), or where all property to be provided is subject to the clause at 1852.245–71, Installation Provided Government Property (see paragraph (b) above). Reporting shall be on an annual basis except in those instances in which an on-site contractor is performing property acquisition and management for the Government. In such cases more frequent reporting may be required and the contracting officer shall use the clause with its Alternate I (monthly reporting) or Alternate II (quarterly reporting) as appropriate. The address and office code of a single organization within the cognizant NASA installation which has been designated as the focal point for control and distribution of the NF 1018 shall be inserted in the clause.

c. Section 1845.106–71 is added to read as follows:

1845.106–71 Plant reconversion and plant clearance.

Any solicitation provision or contract clause which would reserve until after award of a contract the negotiation of costs for plant reconversion or plant clearance must be approved by the Assistant Administrator for Procurement.

20. Subpart 1845.5 is amended by revising 1845.505–14 to read as follows:

1845.505–14 Reports of Government property.

(a) *Property accounts.* The contractor's property control system shall be such as to provide the dollar amount of Government property for which the contractor is accountable in the following classifications in accordance with the instructions in 1845.71:

(1) Land and rights therein.
(2) Buildings.
(3) Other structures and facilities.
(4) Leasehold improvements.
(5) Plant equipment.
(6) Special tooling.
(7) Special test equipment.
(8) Material.
(9) Space hardware.

(b) *Facilities, special tooling and special test equipment.* The contractor's property control system shall identify the items in subparagraphs (a) (1) through (7) above as contractor-acquired or Government-furnished.

(c) *The material and space hardware.* The contractor's property control system shall provide the dollar value of items in subparagraphs (a) (8) and (9) above for which the contractor is accountable. Reporting of material, however, is required only when the balance on hand at the end of the reporting period amounts to $75,000 or more . Reporting of space hardware is required only by direction of the contracting officer.

(d) *Submission of reports.* When required by the contract (see 1845.106–70(d)), the contractor shall submit a Report of Government-Owned/ Contractor-Held Property, NASA Form 1018, in accordance with the instructions in 1845.71 and the contract clause.

21. Subpart 1845.71 is amended by revising the introductory text and instructions 1 through 6 in 1845.7101 to read as follows:

1845.7101 Instructions for the preparation of NASA Form 1018.

This instruction provides guidance in the preparation of NASA Form 1018 (see 1853.3) which is required of all contractors that have been furnished, or have acquired, Government-owned property under the terms of their contract. The classification of property, the related costs to be reported, and the reporting requirements are set forth below:

1. Property Classification Accounts

The following property classifications and related costs apply only to financial reporting under this Form:

(a) *Land.* The classification "land" includes costs of land, capital improvements thereto (except buildings and other structures and facilities), and costs incidental to the acquisition and preparation of land for use such as appraisal fees, clearing costs, drainage, grading, landscaping, plats and surveys, removal and relocation of the property of others as part of purchase contract, removal or destruction of structures or facilities purchased but not used, and legal fees and expenses.

(b) *Buildings.* The classification "buildings" includes costs of buildings, improvements to buildings, and fixed equipment which is normally required for the functional use of the building and becomes permanently attached to and made a part of the building which cannot be removed without cutting into the walls, ceilings, or floors, such as plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults. It also includes the cost of all equipment of any type built-in, affixed to, or installed in real property where the installation cost, including special foundations or unique utilities or services, or the facility restoration cost after removal, is substantial.

(c) *Other Structures and Facilities.* The classification "other structures and facilities" includes costs of acquisitions and improvements of other structures and facilities such as airfield pavements; harbor and port facilities; power production facilities and distribution systems; reclamation and irrigation facilities; flood control and navigation aids; storage, industrial, service, and research and development facilities other than buildings; utility systems (heating, sewage, water, and electrical) when they serve several buildings and/or structures; communication systems; traffic aids; roads and bridges; railroads; monuments and memorials; and other nonstructural improvements such as sidewalks, parking areas, and fences. It also includes the cost of all equipment of any type built-in, affixed to, or installed where the installation cost including special foundations or unique utilities or services, or the facility restoration cost after removal is substantial.

(d) *Leasehold Improvements.* The classification "leasehold improvements" includes NASA-funded costs of long-term capital improvements (more than 3 years) to leases, rights, interests, and privileges relating to land such as easements, rights-of-way, permits, use agreements, water rights, air rights, and mineral rights. It also includes the NASA-funded costs of improvements (costing $5,000 or more and determined to be a capital asset) made to land, buildings, and other structures and facilities occupied by a NASA contractor but leased either indirectly through contract or directly by NASA rather than owned by NASA. However, the cost of NASA-owned buildings and other structures and facilities (and improvements thereto that meet the criteria for capitalization) occupied by a NASA contractor and located on land not owned by NASA shall be included in the appropriate account(s) described in paragraphs (a), (b), and (c). A single improvement shall not be accomplished in increments of less than $5,000 in order to avoid adjustment to the fixed asset accounts.

(e) *Plant Equipment.* The classification "plant equipment" includes costs of personal property of a capital nature (including equipment, machine tools, test equipment (but excluding special tooling, special test equipment and space hardware—see paragraphs (f), (g), and (i), furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose, which—

(1) Has a unit cost of $5,000 or more;

(2) Has a useful life of two years or more; or

(3) Will not be consumed during an experiment.

(f) *Special Tooling.* The classification "special tooling" includes the cost of jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a specialized nature that without substantial modification or alteration their use limited to the development or production of particular supplies or parts thereof or to the performance of particular services. It does not include the cost of material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.

(g) *Special Test Equipment.* The classification "special test equipment" includes costs of either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract; items or assemblies of equipment that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include costs of material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

(h) *Material.* The classification "material" includes costs of property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of a contract. It is not intended that this category include material which is part of space hardware work in process reported on NASA Form 1018, Schedule II, when required by the terms of the agreement, or material which has been issued from inventory and charged to a contract item. It is intended to include all Government-owned material which normally would be considered as materials inventory for balance sheet purposes.

(i) *Space Hardware.* The classification "space hardware" applies only to those items of space property, and components thereof, specifically identified in the Annual List of Selected Items of Space Hardware (see paragraph 6). It includes the cost of personal property which is unique to aeronautical and space programs of NASA and is not otherwise included in the classification of property set forth in paragraphs (a) through (h) above. Space hardware is subdivided as follows for financial reporting purposes:

(1) Completed space hardware, systems, and subsystems (includes the cost, actual or estimated, of such items as aircraft, engines, space vehicles, satellites, spacecraft, and rockets including components provided for prototypes, mock-ups, fit checks, or for such other reasons as may be specified in the contract).

(2) Spare parts and components (includes the cost, actual or estimated, of deliverable spare parts and components employed as spare parts to be used for the purpose of emergency, replacement, repair, or modification subsequent to the fabrication of space hardware). These types of property are commonly referred to as "logistics spares" or "test support spares" and do not include components utilized by the contractor which are not deliverable as spares and which are included as work in process.

(3) Space hardware work in process (includes the actual or estimated fabrication costs as of the date of the report of undelivered space hardware and such associated systems, subsystems, spare parts, and components which are provided or acquired and charged to work in process pending incorporation into and end item).

These types of items are included in what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are progress payments to firm fixed-price subcontractors for undelivered items.

2. Transfers of Property

In order for NASA to properly control and account for contractor-held Government property (both Government-furnished and contractor-acquired), all transfers to another contract, contractor, NASA installation, or other Government agency shall be adequately documented. Such transfers shall only be accomplished through the NASA installation responsible for the contract from which the property is being transferred.

(a) *Transfers By Contractors*— (1) *Approval and notification.* Property transfers by contractors shall be made only upon the approval of the NASA contracting officer (or designee), of the contractor making shipment. The shipping document shall specify the appropriate property classification such as plant equipment, special test equipment, special tooling, or space hardware. The cognizant property administrator of the shipping contractor shall be informed of property transfers by a copy of the shipping document. Shipping and receiving contractors shall promptly notify their respective NASA financial management office when accountability of Government property reportable on NASA Form 1018 is transferred to, or received from, other contracts, contractors, NASA installations, or other Government agencies. Copies of shipping/receiving documents will suffice in most instances.

(2) *Documentation.* The shipping contractor shall prepare an acceptable form of documentation such as DD Form 250, Material Inspection and Receiving Report, DD Form 1149, Requisition and Invoice/Shipping Document, or similar forms to cover movement of Government property to other Government agencies. Established procedures for the use of such forms shall be strictly followed. As a minimum, each shipping document must contain contract number(s), shipping reference(s), property classification(s) in which the item(s) is (are) recorded, unit price(s), and any other appropriate identifying or descriptive data. Unit prices on the shipping document shall be obtained from records maintained pursuant to the provisions of FAR Part 45 and NFS 1845.

(3) *Reporting.* In addition to the required shipping documentation, all transfers of reportable property which occur during the reporting period shall be reflected in column (b), Government-Furnished Additions, of NASA Form 1018 by the receiving contractor and in column (e), Disposals, of NASA Form 1018 by the shipping contractor.

(4) *Reclassification.* Reclassifications between property accounts shall be accomplished by the contractor in possession of the property at the time reclassification takes place. Where property is transferred to another contract or contractor, it shall first be recorded by the receiving contractor in the same property classification and amount as reflected on the shipping document. (For example, in the event a contractor received an item by transfer from another contractor or NASA installation which is identified on the shipping document as plant equipment but which the recipient intends to incorporate into special test equipment, the recipient shall first enter the transferred item in the plant equipment account and subsequently reclassify it as special test equipment.) The reclassification of Plant Equipment, Special Tooling, Special Test Equipment, and/or Space Hardware shall not be made without prior notification to the property administrator and approval of the contracting officer.

(5) *Incomplete Documentation.* Where transfer documents are received by contractors without sufficient detail to properly record the transfer (e.g., omission of property classification, unit prices, etc.), the missing data shall be requested directly from the shipper or through the property administrator as provided in FAR 45.505–2. Contractors may append a Government-furnished property list to the NASA Form 1018 report when they are unable to obtain the required data, provided that the list includes the following information:

(i) Description of the property.
(ii) Quantity.
(iii) Shipping document reference.
(iv) Identity of shipper.
(v) Dates shipped and/or received.
(vi) Date(s) price data were requested and from whom requested (shipper or property administrator).
(vii) NASA Form 1018 line item (type/account) to be adjusted.

(b) *Other Transfers*— (1) *Intra-Contractor Transfers.* Any transfer of Government property between contracts of a single contractor, whether administered by the same NASA installation or by a different NASA installation, requires the same approval, notification, and documentation as set forth in paragraph (a) above.

(2) *Transfer to Government agencies other than NASA.* Transfers of Government property to such other Government agencies can only be accomplished through the NASA contracting officer and requires the same approval, notification, and documentation as set forth in paragraph (a) above.

(3) *Recovered space hardware.* Space hardware recovered after flight and transferred to a contractor for analysis, repair, refurbishment, or for other purposes shall not be reported on subsequent NASA Forms 1018 as Space Hardware unless accountability has been transferred and the contractor is specifically directed to report the item.

3. Submission or Reports

(a) When the clause entitled "Financial Reporting of Government-Owned/Contractor-Held Property" is included in the contract, the contractor shall prepare a Report of Government-Owned/Contractor-Held Property, NASA Form 1018, in accordance with the instructions set forth herein and on the NASA Form 1018.

(b) Four copies of NASA Form 1018 for the period ending June 30 shall be submitted by the contractor in accordance with the clause entitled "Financial Reporting of Government-Owned/Contractor-Held Property" not later than July 31 of each year, when reporting is required annually. When more frequent reporting is required, the due date shall be not later than the last day of the month following the period being reported. The reporting requirement shall not be less frequent than annually; in all cases a report shall be required as of June 30.

(c) Negative reports shall be submitted when appropriate.

(d) A final report shall be submitted within 30 days after disposition of all property subject to reporting under the contract and shall not be withheld until the next regular report due date.

4. Report Coverage

(a) The NASA Form 1018 shall include the cost of all Government-owned property, except as noted in Section 5 below, in the possession of the contractor and first-tier subcontractors under each prime contract using the prime contractor's records to the extent practicable where the subcontractor reporting is delayed.

(b) Government-owned material held in storage for issue by the contractor and subcontractor shall be reported only when the balance on hand at the end of the reporting period amounts to $75,000 or more for each prime contract, including subcontracts.

(c) Space hardware shall be reported only if specifically requested in writing by the contracting officer, and reporting shall be limited to those items identified on the Annual List of Selected Items of Space Hardware (see Section 6).

5. Exclusions

The following items shall not be reported on NASA Form 1018:

(a) Plant equipment having a unit cost of less than $5,000.

(b) Industrial facilities in process of construction or material held for use in construction of industrial facilities.

(c) Scrap or salvage.

(d) Items ordinarily reportable but furnished to the contractor for repair and return to NASA (except as required in subparagraph 2(b)(3)).

(e) Work in process except as required in Schedule II, Space Hardware Reportable Items, of NASA Form 1018.

(f) Materials issued for consumption.

(g) Materials held in storage for issue where the cost at the close of the reporting period is less than $75,000.

(h) NASA shipping containers.

(i) Space hardware on firm fixed-price contracts and subcontracts, except where progress payments are specified (see subparagraph 1(i)(3)).

(j) Space property, except those items specifically identified as space hardware and required to be reported in accordance with Section 6.

(k) Installation property made available pursuant to the clause at 1852.245–71.

6. Space Hardware Reporting Requirements

(a) Space hardware reporting shall be required on cost and incentive type contracts

and first-tier subcontracts on a selective basis where the estimated cost and fee of the total contract exceeds $500,000 and any one or combination of the individual reporting categories (i.e., completed space hardware, components and spare parts, and work in process) exceeds $75,000.

(b) Space hardware items to be reported or deleted shall be specified by the contracting officer prior to June 1 of each year based on the Annual List of Selected Items of Space Hardware issued by the Director of Financial Management, NASA Headquarters.

(c) Reporting shall become effective with the next report period beginning July 1, or as otherwise stipulated in the contract and will continue thereafter until all specified items of space hardware are delivered under the terms of the contract, the contract is terminated, or the item is removed from the Annual List of Selected Items of Space Hardware.

(d) The reports shall contain—

(1) The reportable items on hand, consisting of the cost and quantity of completed space hardware and the cost of related independent completed systems and subsystems;

(2) The total amount for completed spare parts and components relating to item (1), above; and

(3) The total amount for work in process of fabrication relating to one or both of the preceding items.

(e) Costs reported on Schedule II will not be a consideration in reimbursement to the contractor for work performed or for termination proceedings. Costs will be computed in accordance with accepted accounting principle, will be reasonably accurate, and will be the product of any one, or a combination of, the following:

(1) Abstract of cost data from the contractor's property or financial records.

(2) Computations based on engineering and financial data.

(3) Estimates based on NASA Form 533 reports.

(4) Formula procedures, (e.g., using a 50 percent factor for work in process items based on updated SF 1411 estimates or the contractor's approved estimating and pricing system).

(5) Other approved methods.

(f) When the same item is being fabricated for more than one project, the completed space hardware, related independent systems and subsystems, spare parts, and work in process shall be reported by contract item.

(g) When a contract provides for two or more different completed space hardware items, some of which are not included in the Annual List of Selected Items of Space Hardware, cost of those items to be reported shall be determined on an actual basis where possible or on a basis considered reasonable within the contractor's records or as provided in paragraph (e) above.

(h) The cost of items of space hardware, systems, and subsystems shall be reported using the contractor's records which are a part of the prescribed property or financial control system as provided in Section 3; however, fee, tooling, and other nonrecurring costs shall be excluded. Fabrication costs shall be based on the contractor's approved estimating and pricing system or property control system and should include—

(1) Direct labor;

(2) Direct materials and purchased parts (costs of purchased items shall be consistent with the contractor's approved pricing methods);

(3) Other direct costs (e.g., computer costs, travel, and transportation);

(4) Overhead—a percentage factor or rate applied to the direct costs or other applicable base; and

(5) Costs of Government-furnished property applied (data available from the shipping document—e.g., DD Form 250, 1149, or similar form—or estimated where necessary).

* * * * *

PART 1847—TRANSPORTATION

22. Part 1847 is amended by adding Subpart 1847.70 to read as follows:

Subpart 1847.70—Protection of the Florida Manatee

1847.7001 Contract clause.

The contracting officer shall insert the clause at 1852.247-71, Protection of the Florida Manatee, in solicitations and contracts when deliveries or vessel operations, dockside work, or disassembly functions under the contract will involve use of the waterways inhabited by manatees (endangered marine mammals). The clause shall also be included in applicable subcontracts (including vendor deliveries).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

23. Subpart 1852.2 is amended as set forth below:

a. Sections 1852.204-73, 1852.212-72, 1852.232-79, 1852.242-70 are added to read as follows:

1852.204-73 Observance of Legal Holidays.

Insert the following clauses as prescribed in 1804.7401.

Observance of Legal Holidays (September 1987)

(a) The on-site government personnel observe the listed days as holidays:

New Year's Day
Labor Day
Martin Luther King's Birthday
Columbus Day
Washington's Birthday
Veteran's Day
Memorial Day
Thanksgiving Day
Independence Day
Christmas Day

Any other day designated by Federal statute, Executive Order, or the President's proclamation.

(b) When any day falls on a Saturday, the preceding Friday is observed. When any such day falls on a Sunday, the following Monday is observed. Observance of such days by government personnel shall not by itself be cause for an additional period of performance, or entitlement of compensation except as set forth within the contract.

(c) All personnel assigned to this contract shall limit their observance of holidays set forth above. In the event the contractor's personnel work during a holiday other than those above, no form of holiday or other premium compensation will be reimbursed as either a direct or indirect cost. However, this does not preclude reimbursement for authorized overtime work where such work would have been overtime regardless of the status of the day as a holiday.

(d) When the center grants administrative leave to its government employees, contractor personnel working on-site should also be dismissed. However, the contractor agrees to continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled and shall be guided by the instructions issued by the contracting officer or his/her duly authorized representative.

(e) In each instance when administrative leave is granted to contractor personnel pursuant to paragraph (d) above as a result of inclement weather, potentially hazardous conditions, or other special circumstance, it will be without loss to the contractor. The cost of salaries and wages to the contractor for the period of any such excused absence shall be a reimbursable item of cost hereunder for employees in accordance with the contractor's established accounting policy.

(End of clause)

(Alternate I)

(September 1987)

(a) The on-site government personnel observe the listed days as holidays:

New Year's Day
Labor Day
Martin Luther King's Birthday
Columbus Day
Washington's Birthday
Veteran's Day
Memorial Day
Thanksgiving Day
Independence Day
Christmas Day

Any other day designated by Federal statute, Executive Order, or the President's proclamation.

(b) When any day falls on a Saturday the preceding Friday is observed. When any such day falls on a Sunday, the following Monday is observed. Observance of such days by government personnel shall not by itself be cause for an additional period of performance, or entitlement of compensation except as set forth within the contract.

(End of clause)

1852.212-72 Partial shipments.

Insert the following clause as prescribed in 1812.104-70(c).

Partial Shipments

(September 1987)

Partial shipments will not be accepted unless authorized elsewhere in this contract or authorized by the contracting officer's representative at the time of delivery. The Government reserves the right to return partial shipments to the contractor, transportation charges collect.

(End of clause)

1852.232-79 Payment for On-Site preparatory costs.

Insert the following clause as prescribed in 1832.111-70(e):

Payment for On-Site Preparatory Costs

(September 1987)

Costs associated with on-site preparatory work (start-up or set-up costs) will be prorated over all work activities of a Critical Path Method (CPM) network or Progress Chart against which progress payments will be sought. Separate payment for on-site preparatory costs will not be made by the Government.

(End of clause)

1852.242-70 Technical direction.

Insert the following clause as prescribed in 1842.7001.

Technical Direction

(September 1987)

(a) Performance of the work under this contract shall be subject to the written technical direction of the Contracting Officer's Technical Representative (COTR), who shall be specifically appointed by the contracting officer in writing. Technical direction is defined as a directive to the contractor which approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or otherwise furnishes guidance to the contractor. Technical direction includes the process of conducting inquiries, requesting studies, or transmitting information or advice by the COTR, regarding matters within the general tasks and requirements in Section C of this contract.

(b) The COTR does not have the authority to, and shall not, issue any instructions purporting to be technical direction which:

(1) Constitutes an assignment of additional work outside the Statement of Work;

(2) Constitutes a change as defined in the contract clause entitled "Changes";

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions, or specifications of the contract; or

(5) Interferes with the contractor's rights to perform the terms and conditions of the contract.

(c) All technical directions shall be issued in writing by the COTR.

(d) The contractor shall proceed promptly with the performance of technical directions duly issued by the COTR in the manner prescribed by this clause and within his/her authority under the provisions of this clause. If, in the opinion of the contractor, any instructions or direction by the COTR falls within one, or more, of the categories defined in (b) (1) through (5) above, the contractor shall not proceed but shall notify the contracting officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the contracting officer to take action as described herein. Upon receiving the notification from the contractor, the contracting officer shall either issue an appropriate contract modification within a reasonable time or advise the contractor in writing within thirty (30) days after receipt of the contractor's letter that:

(1) The technical direction is rescinded in its entirety; or

(2) The technical direction is within the scope of the contract, does not constitute a change under the "Changes" clause of the contract and that the contractor should proceed promptly with the performance of the technical direction.

(e) A failure of the contractor and contracting officer to agree that the technical direction is both within the scope of the contract and does not constitute a change under the "Changes" clause of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the "Disputes" clause of this contract.

(f) Any action(s) taken by the contractor in response to any direction given by any person other than the contracting officer or the COTR shall be at the contractor's risk.

(End of clause)

Alternate I

(September 1987)

As prescribed in 1842.7001(b), substitute Alternate I as paragraph (d) of the basic clause.

(d) The contractor shall proceed promptly with the performance of technical directions duly issued by the COTR in the manner prescribed by this clause and within his/her authority under the provisions of this clause. If, in the opinion of the contractor, any instruction or direction by the COTR falls within one, or more, of the categories defined in (b) (1) through (5) above, the contractor shall not implement the direction but shall notify the Contracting Officer in accordance with the Notification of Changes clause (FAR 52.243-7) of this contract.

(End of clause)

b. Section 1852.245-73 is revised to read as follows:

1852.245-73 Financial Reporting of Government-Owned/Contractor-Held Property.

As prescribed in 1845.106-70(d), insert the following clause:

Financial Reporting of Government-Owned/Contractor-Held Property

(September 1987)

(a) The Contractor shall prepare and submit annually a NASA Form 1018, Report of Government-Owned/Contractor-Held Property, in accordance with the instructions on the form and subsection 1845.505-14 of the NASA FAR Supplement, except the reporting of space hardware shall be required only upon the written direction of the Contracting Officer identifying the specific project items to be reported.

(b) If administration of this contract has been delegated to the Department of Defense, the original and three copies of NASA Form 1018 shall be submitted through the DOD Property Administrator to the NASA office identified below. If administered by NASA, the forms shall be submitted directly to the following NASA office:

[Insert the address and office code of the organization within the cognizant NASA installation responsible for control and distribution of the NF 1018.]

(c) The annual reporting period shall be from July 1 of each year to June 30 of the following year. The report shall be submitted by July 31.

(d) The Contractor agrees to insert the reporting requirement in all first-tier subcontracts, except that such requirement shall provide for the submission of the subcontractor reports directly to the Contractor. The Contractor shall require the subcontractor reports to be submitted in sufficient time to meet the reporting date in paragraph (c) above.

(e) The Contractor's report(s) shall consist of a consolidation of subcontractors' reports and the Contractor's report.

(End of clause)

Alternate I

(September 1987)

When "monthly" is used in lieu of "annually" in paragraph (a) of the basic clause, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The monthly report is due no later than the last day of the month following the month being reported.

Alternate II

(September 1987)

When "quarterly" is used in lieu of "annually" in paragraph (a) of the basic clause, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The quarterly report is due no later than the last day of the month following the quarter being reported.

c. Section 1852.247-71 is added to read as follows:

1852.247-71 Protection of the Florida Manatee.

Insert the following clauses as prescribed in 1847.7001.

Protection of the Florida Manatee

(September 1987)

(a) Pursuant to the Endangered Species Act of 1973 (Pub. L. 93-205), as amended, and the Marine Mammals Protection Act of 1972 (Pub. L. 92-522), the Florida Manatee (Trichechus Manatus) has been designated as an endangered species, and the Banana and

Indian Rivers within and adjacent to NASA's Kennedy Space Center (KSC) have been designated as a critical habitat of the Florida Manatee.

(b) Contractor personnel involved in vessel operations, dockside work and selected disassembly functions, shall be provided training relative to:

(1) Habits and characteristics of the Florida Manatee,

(2) Provisions of the applicable laws,

(3) Personal liability of workers under the laws, and

(4) Operational restrictions imposed by KSC.

(c) All vessel operations shall be conducted within the posted speed restrictions, and vessels shall be operated at minimum controllable speeds in all KSC waters. Shallow water operations are prohibited.

(d) Training will be conducted by personnel of the U.S. Fish and Wildlife Service (USFWS). The contractor agrees to cooperate with the USFWS by allowing access at reasonable times and places (including shipboard) to USFW personnel, and by making available such contractor personnel as are required to have the training. Arrangements for training will be made as follows:

(1) For personnel involved in tug, barge, or marine operations, through the Lockheed Space Operations Contractor, Transportation Coordination Center, Kennedy Space Center, Florida, telephone (305) 867-2737.

(2) For all other personnel, through the Systems Training and Employee Development Branch, Code PM-TNG, telephone (305) 867-2737.

(e) The contractor shall incorporate the provisions of this clause in applicable subcontracts (including vendor deliveries).

(End of clause)

PART 1870—NASA SUPPLEMENTARY REGULATIONS

24. Section 1870.103 is amended as set forth below:

1870.103 [Amended]

a. In Chapter 6 of Appendix I to 1870.103, paragraph 2 is revised to read as follows:

600 Payload Formulation

* * * * *

2. Payload elements for STS flights fall into two major categories. "NASA or NASA-related" payload elements are those which are developed by a NASA Program Office or by another party with which NASA has a shared interest. "Non-NASA" payload elements are those which require only STS operation services from NASA and hence interface with NASA through the Office of Space Flight.

* * * * *

b. In paragraph XI of Appendix B to Appendix I of 1870.103, paragraph 1 is revised to read as follows:

Appendix B—General Instructions and Provisions

* * * * *

XI. Patent Rights

1. For any contract resulting from this solicitation awarded to other than a small business firm or nonprofit organization, the clause at NFS 1852.227-70, "New Technology," shall apply. Such contractors may, in advance of contract, request waiver of rights as set forth in the provision at NFS 1852.227-71, "Requests for Waiver of Rights to Inventions."

* * * * *

[FR Doc. 87-21142 Filed 9-14-87; 8:45 am]
BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70362-7164]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: This document modifies the regulations implementing the Fishery Management Plan for Ocean Salmon Fisheries off Washington, Oregon, and California (FMP). The rulemaking is necessary to facilitate enforcement and to reconcile certain inconsistencies between Federal and State ocean salmon regulations, and Federal and international salmon and halibut regulations. It is intended to improve coordination among international, Federal, and State management jurisdictions and to strengthen enforcement of ocean salmon regulations.

EFFECTIVE DATE: October 14, 1987.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Director, Northwest Region, NMFS), 206-526-6150; or E. Charles Fullerton (Director, Southwest Region, NMFS), 213-514-6196.

SUPPLEMENTARY INFORMATION: Under the Magnuson Fishery Conservation and Management Act (Magnuson Act), the FMP was prepared by the Pacific Fishery Management Council (Council), and was approved by the Secretary of Commerce (Secretary) on March 2, 1978. The FMP has been amended seven times. Implementing regulations are codified at 50 CFR Part 661.

This rulemaking changes the Federal ocean salmon regulations to facilitate enforcement and resolve inconsistencies among Federal, State, and international regulations. The Council discussed this rule and recommended it to the Secretary at its September 1986 meeting.

The rule contains five changes to the ocean salmon fishing regulations which are described below:

Issue 1—Processing Inspection

The rule clarifies the authority of authorized officers to enter buildings, vehicles, piers, or dock facilities where salmon may be found by making it unlawful for a person in control to refuse such entry.

Issue 2—False Statements

The rule prohibits making any false statement, oral or written, to an authorized officer about the taking, catching, harvesting, landing, purchase, sale, or transfer of salmon.

Issue 3—Gear and Catch Inspection

The rule makes it unlawful to refuse to submit fishing gear or catch under a person's control to inspection by an authorized officer or to interfere with or prevent, by any means, such an inspection.

Issue 4—Pacific Halibut

The rule clarifies that it is unlawful to take and retain Pacific halibut except in accordance with regulations of the International Pacific Halibut Commission. Fishermen are required to return to the water with the least possible injury any Pacific halibut which cannot be retained lawfully.

Issue 5—Undersized Salmon

The rule prohibits fishing for salmon in an area when salmon of less than the legal minimum size limit for that area are aboard a vessel.

The rule was proposed in the **Federal Register** on May 27, 1987 (52 FR 19744), and public comments were requested until June 25, 1987. One comment was received on Issue 3. The commentor recommended that "catch" as well as "fishing gear" should be subject to the prohibition, and stated that there have been numerous instances when fishermen have been able to frustrate investigations by throwing illegal catch overboard. NOAA agrees with the need to add "catch" to this prohibition.

Classification

NOAA issues this rule, under authority of section 305(g) of the Magnuson Act, to clarify the meaning of specified sections of the FMP, to facilitate enforcement, and to reconcile inconsistencies among Federal, State, and international fisheries regulations.

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This action is not expected to alter the nature or intensity of environmental impacts which were addressed in the supplemental environmental impact statement (SEIS) prepared for the 1984 framework amendment to the FMP. A notice of availability of the SEIS was published on September 23, 1984 (49 FR 38355).

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Administrator determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 10, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 661 is amended as follows:

PART 661—[AMENDED]

1. The authority citation for Part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 661.2, a new paragraph (e) is added to read as follows:

§ 661.2 Relation to other laws.

* * * * *

(e) Any person fishing subject to this part who also engages in fishing for Pacific halibut should consult regulations of the International Pacific Halibut Commission at 50 CFR Part 301 for applicable requirements of that part.

3. In § 661.3, a definition of "areas of custody" is added in alphabetical order to read as follows:

§ 661.3 Definitions.

Areas of custody means any vessels, buildings, vehicles, piers, or dock facilities where salmon may be found.

* * * * *

4. Section 661.5 is amended by revising paragraph (b)(10) and adding new paragraphs (b) (17) through (20) to read as follows:

§ 661.5 General restrictions.

* * * * *

(b) * * *

(10) Refuse to permit an authorized officer to board a fishing vessel, or to enter areas of custody, subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation issued under the Magnuson Act.

* * * * *

(17) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any salmon.

(18) Refuse to submit fishing gear or catch subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(19) Take and retain Pacific halibut (*Hippoglossus stenolepis*) except in accordance with regulations of the International Pacific Halibut Commission at 50 CFR Part 301. Pacific halibut which cannot be retained lawfully must be returned to the water immediately and with the least possible injury.

(20) Fish for salmon in an area when salmon of less than the legal minimum length for that area are on board the fishing vessel, except that this provision does not prohibit transit of an area when salmon of less than the legal minimum length for that area are on board so long as no fishing is being conducted.

[FR Doc. 87-21171 Filed 9-14-87; 8:45 am]

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DEPARTM

Federal Cr

7 CFR Part

[Amdt. No.

General Cr ELS Cotto

AGENCY: Fe Corporatio

ACTION: Pr

SUMMARY: Corporatio the Genera (7 CFR Part and succee new sectio the Extra L Endorseme rule is to p endorseme of crop ins cotton in a crop insura the standa common to the promul contained i Act, as am

DATE: Writ opinions o submitted 1987, to be

ADDRESS: proposed r Cole, Offic Crop Insur South Build Agriculture

FOR FURTH Peter F. Co Insurance of Agricult telephone

SUPPLEMEN action has procedures Regulation constitutes currency, c

Proposed Rules

Federal Register
Vol. 52, No. 178
Tuesday, September 15, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 11, Doc. No. 4728S]

General Crop Insurance Regulations; ELS Cotton Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.121, be known as the Extra Long Staple (ELS) Cotton Endorsement. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on ELS cotton in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 15, 1987, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these reglations under those procedures. The sunset review date established for these regulations is established as August 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases, in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.121, the ELS Cotton Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring extra long staple cotton.

Upon publication of 7 CFR 401.121 as a final rule, the provisions for insuring ELS cotton contained therein will supercede those provisions contained in 7 CFR Part 448, the ELS Cotton Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 448 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 448 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new ELS Cotton Endorsement to 7 CFR Part 401, FCIC is proposing other changes in the provisions for insuring ELS cotton as follows:

1. Section 1

Add a provision indicating that cotton destroyed to comply with other U.S. Department of Agriculture programs will not be insured. This provision was added to prevent insurance from attaching to a crop that is destroyed or intended for destruction to comply with other U.S.D.A. programs.

2. Section 7

Add provisions providing for harvested—unharvested guarantees replacing stage guarantees. This change was made due to the administrative problems encountered in determining in which stage damage occurs and whether farmers in the area generally would further care for the crop.

3. Section 5

Include unit division provisions in the endorsement. The language used modifies the unit definition in the general crop insurance policy to exclude unit division by share.

4. Section 10

Change the definition of harvest to require that at least 25 percent of the production guarantee be picked before the acreage qualifies as harvested.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, ELS cotton endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.121 ELS Cotton Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.121 ELS Cotton Endorsement

The provisions of the ELS Cotton Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation Extra Long Staple Cotton Endorsement

1. Insured Crop and Acreage

a. The crop insured will be Extra Long Staple cotton ("ELS") and American Upland lint cotton ("AUP") if the acreage was originally planted to ELS cotton.

b. The acreage insured of skip-row cotton will be the acreage occupied by the rows of cottom after eliminating the skipped-row portions, unless other methods of determining acreage are required by the actuarial table.

c. In addition to the cotton not insurable in section 2 of the general crop insurance policy, we do not insure any cotton:

(1) Which is not irrigated and is grown:

(a) Where a hay crop was harvested; or

(b) Where a small grain crop reached the heading stage in the same calendar year;

(2) Planted in excess of the acreage limitations applicable to the farm by any program administered by the United States Department of Agriculture; or

(3) Destroyed, designated to be destroyed, or put to another use in order to comply with other United States Department of Agriculture programs.

d. A late planting agreement will be available.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

4. Insurance Period

a. In lieu of subsection 7.(b) of the general crop insurance policy, (harvest of the unit) insurance will end upon removal of the cotton from the field.

b. The calendar date for the end of the insurance period is January 31.

5. Unit Division

a. In lieu of subsections 17.q.(1) and 17.q.(2) of the general crop insurance policy, a unit will be all insurable acreage of cotton in the county in which you have an insured share and which is identified by a single ASCS Farm Serial Number at the time insurance first attaches for the crop year.

b. We may reject or modify an ASCS reconstitution for the purpose of FCIC unit definition if the reconstitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy.

c. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between units will cause those units to be combined.

6. Notice of Damage or Loss

In addition to the provisions in section 8 of the general crop insurance policy;

a. You may not destroy any cotton on which an indemnity will be claimed until we give consent.

b. You must give us notice if you are going to replant any acreage originally planted to ELS cotton to AUP cotton.

c. For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of cotton to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

b. The total production to be counted for a unit will include all harvested and appraised production.

(1) Any mature ELS cotton production will be reduced when, due solely to insured causes, the quality of the ELS cotton produced is such that the price quotation for ELS cotton of like grade, staple length, and micronaire reading (price A) is less than 75 percent of price B. Price B is defined as the market price quotation for ELS cotton of the grade, staple length, and micronaire reading designated in our actuarial table for this purpose. The price quotations for prices A and B will be the market price quotations at the recognized market closes to the unit on the earlier of the day the loss is adjusted or the day the damaged ELS cotton was sold. In the absence of a price quotation on such date, the price quotations for the nearest prior date for which an ELS cotton price quotation was listed for both prices A and B will be used. The pounds of production to be counted will be determined by multiplying the number of pounds of mature production by price A and dividing the result by 75 percent of price B.

(2) Any AUP cotton harvested from acreage originally planted to ELS cotton in the same growing season will be reduced by the factor obtained by dividing the price of the AUP cotton by the price of ELS cotton of the grade, staple length, and micronaire reading shown in our actuarial table. The prices will be determined at the closest recognized market to the insured unit on the earlier of the date the loss is adjusted or the date the AUP cotton was sold.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes; and

(b) Failure to follow recognized good cotton farming practices;

(c) Not less than the applicable guarantee for any acreage which is abandoned or put to another use without our written consent or damaged solely by an uninsured cause; and

(d) Not less than 25 percent of the production guarantee per acre for all unharvested acreage.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of cotton becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

(5) Any appraisal of the AUP cotton on acreage originally planted to ELS cotton will be reduced by the factor determined in section 7.b.(2) above. If prices are not yet available, the previous year's season average price will be used.

(6) The cotton stalks must not be destroyed on any acreage for which an indemnity is claimed, until we give consent. An appraisal of not less than the guarantee may be made on acreage where the stalks have been destroyed without our consent.

8. Cancellation and Termination Dates

The cancellation and termination dates are:

States	Cancellation and termination dates
New Mexico	April 15.
All other states	March 31.

9. Contract Changes

The date by which contract changes will be available in our service office is November 30 preceding the cancellation date.

10. Meaning of Terms

a. "Cotton" means Extra Long Staple cotton and acreage replanted to American Upland Cotton after ELS was destroyed by an insured cause.

b. "County" means the land defined in the general crop insurance policy and any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

c. "ELS Cotton" means Extra Long Staple cotton (also called Pima Cotton and American-Egyptian Cotton).

d. "Harvest" means the removal of the seed cotton on each acre from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means on acreage from which at least 25 percent of the per acre production guarantee is removed.

e. "Mature cotton" means ELS cotton which can be harvested either manually or mechanically and will include both unharvested and harvested cotton.

f. "Replanted" means performing the cultural practices necessary to replant acreage to AUP cotton after ELS cotton was destroyed by an insured cause in the same growing season.

g. "Skip-row" means planting patterns consisting of alternating rows of cotton and fallow rows (or rows of another crop) as defined by ASCS.

Done in Washington, DC, on August 27, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-21182 Filed 9-14-87; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. 4-0613]

Truth in lending; Maximum Interest Rate Limitations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to revise regulation Z (Truth in Lending) to implement Title XII, section 1204 of the Competitive Equality Banking Act of 1987. Section 1204 provides that, effective December 8, 1987, any adjustable rate mortgage loan originated by a creditor must include a limitation on the maximum interest rate that may apply during the term of the mortgage loan. The proposed amendment to Regulation Z incorporates the substance of the new law into the regulation. The proposed amendment would apply to both open-end and closed-end consumer credit transactions covered by the Truth in Lending Act and Regulation Z. The amendment would apply to all dwelling-secured extensions of credit that require variable rate disclosures under Regulation Z, as well as open-end dwelling-secured lines of credit in which the creditor reserves the contractual right to make changes in the terms and conditions of the account from time to time—including rate changes. The amendment would apply only to closed-end credit transactions and open-end credit programs entered into on or after December 8, 1987. The rule would not apply retroactively to existing transactions or programs. Under the proposed amendment, creditors would be required to specify in their credit contracts the maximum interest rate (a lifetime cap) that may be imposed.

DATE: Comments must be received on or before October 14, 1987.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington DC 20551, or delivered to the Mail Services courtyard entrance on 20th Street, between C Street and Constitution Avenue NW., Washington D.C., between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R-0613. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Adrienne D. Hurt, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-2412 or 452-3867; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

On August 10, 1987, the Competitive Equality Banking Act of 1987, Pub. L 100-86, 101 Stat. 552, was enacted into law. Title XII, section 1204 of the act provides that "[a]ny adjustable rate mortgage loan originated by a creditor shall include a limitation on the maximum interest rate that may apply during the term of the mortgage loan." (Section 1204 does not set the maximum interest rate.) An adjustable rate mortgage loan is defined in section 1204 as any loan secured by a lien on a one-to-four family dwelling unit, where the loan is made pursuant to an agreement under which the creditor may, from time to time, adjust the rate of interest. Creditors who regularly extend credit for personal, family or household purposes are subject to the statutory requirement. Section 1204 further provides that failure to comply with the requirement is to be treated as a violation of the Truth in Lending Act. The section makes specific reference to civil liability and administrative enforcement under sections 130 and 108 of Truth in Lending, respectively. The law becomes effective on December 8, 1987.

Section 1204 was a floor amendment to the Senate's omnibus financial institutions bill, and was agreed to by House conferees working on the final bill. There is very little legislative history on section 1204 indicating the intent of Congress in enacting this provision, other than comments offered on the Senate floor. (*See* 133 Cong. Rec. S3945 (daily ed. March 20, 1987))

Given the broad language of section 1204, most of the questions asked about the new law concern the scope of its coverage. There have also been questions about the manner of compliance. Creditors have asked the following questions.

—Does the statute apply to business credit as well as consumer credit?

—Does the statute apply to both open-end and closed-end credit?

—Will the statute be applied retroactively to existing credit agreements, more specifically, assuming that open-end credit is covered by section 1204, will the statute apply to new advances under an open-end credit plan that had been entered into prior to the effective date of the law?

—Again assuming coverage, can a creditor raise the maximum interest rate on an open-end plan by use of a change in terms notice? (*See* § 226.9(c) of Regulation Z) Alternatively, can a creditor terminate an account when the maximum rate is reached?

—With regard to closed-end credit, if a consumer refinances or assumes an extension of credit, can the creditor increase the maximum rate?

—Does the statute require a creditor to include a limitation on incremental or periodic caps in a credit contract or only a limitation on a lifetime cap?

—Does the maximum interest rate have to be stated as a sum certain?

(2) The Proposed Amendment to Regulation Z

The proposed amendment to Regulation Z would incorporate the substance of section 1204 into a new § 226.30 to Subpart D of the regulation. In addition, technical amendments would be made to § 226.1 of Regulation Z, in the paragraphs on Board authority, organization of the regulation, and

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enforcement and liability (to incorporate by reference administrative enforcement and civil liability provisions of the Truth in Lending Act into section 1204(c)). The amendment would apply to dwelling-secured extensions of credit covered by the Truth in Lending Act in which the creditor may make interest rate adjustments. Thus, it will apply only to consumer credit and not to business credit. The amendment covers both open-end and closed-end credit transactions. Thus, all dwelling-secured transactions that currently require variable rate disclosures under Truth in Lending will have a lifetime cap on the rate of interest that can be imposed. (*See* § 226.6(a)(2) footnote 12, and § 226.18(f) to Regulation Z; *see also* comment 226.6(a)(2)–2 and comments 18(f)–1 and 18(f)–6 in the Official Staff Commentary to Regulation Z regarding coverage of the variable rate disclosure requirements.)

In addition, there is one category of transactions that does not require variable rate disclosures under the Truth in Lending Act, but that falls squarely within the definition of transactions covered by section 1204: open-end home equity lines of credit in which the creditor reserves the contractual right to make rate adjusments on the account. (*See* comment 6(a)(2)–2 of the commentary) These transactions are not considered variable rate plans for purposes of Truth in Lending disclosure because the rate changes are discretionary and are not tied to an index or formula. (Although variable rate disclosures are not given, creditors are required under the Truth in Lending Act to provide written notice to a consumer of each rate increase in advance of the increase.) Under the proposal, creditors offering such programs will be required to set a lifetime cap on the interest rate.

The proposed amendment will cover applicable transactions entered into on or after December 8, 1987, the effective date of the law. The amendment would not apply retroactively to existing credit contracts. Consequently, new advances under preexisting open-end credit plans are not subject to section 1204.

Creditors would be required to specify in their credit contracts a maximum interest rate (a lifetime cap) that could be imposed. It is the creditor's determination as to what that rate will be. The rate must be stated as a sum certain or in a manner in which the consumer may easily ascertain the maximum rate. For example, the following statements would be sufficiently specific:

—The maximum interest rate will not exceed X%.

—The interest rate will never be higher than X percentage points above the initial rate of Y%.

Statements like the following, however, do not indicate a sum certain and would not comply with the regulation.

—The interest rate will never be higher than X percentage points over the going market rate.

—The interest rate will not exceed the state usury ceiling which is currently X%.

The latter example does not mean that a creditor may not establish a state usury ceiling as the maximum rate to be imposed on a credit transaction, since choice of a maximum rate is within the creditor's discretion. The problem with the letter statement is that it suggests that if the state usury ceiling later increases, then the maximum rate imposed on the credit transaction will increase. That would not be consistent with the law since section 1204 requires that a maximum lifetime cap be set for the full term of the obligation. Similarly, if a creditor were to use a change in terms notice to increase a maximum interest rate that has been imposed on an open-end adjustable rate plan, the creditor would not, in fact, have set a maximum rate on the credit plan in accordance with section 1204. Therefore, creditors may not change the terms of existing plans to increase the maximum rate.

A creditor is not prohibited from terminating an open-end plan when the maximum interest rate set under the plan is reached. Nevertheless, the Board is concerned that such a practice could have an adverse effect on consumers. Of particular concern is the possibility that a creditor, in addition to suspending the consumer's ability to obtain additional funds under the line of credit, might reserve the right to require the consumer to pay the entire balance outstanding at the time the account is terminated because the maximum interest rate has been reached. Regulation Z does not currently call for disclosure of this right to terminate. The Board would like comment on whether an open-end creditor that has the right to terminate a plan, and requires payment of the outstanding balance in full when the maximum interest rate set under the plan is reached, should be required to specifically dislose this fact in the credit contract and/or the initial Truth in Lending disclosures.

The Board would also like to note here that it is currently studying the broader issue of whether the Truth in Lending disclosures for open-end equity plans should be revised to take account of the special characteristics of these programs, which differ in many ways from the more traditional open-end credit programs. The terms and conditions of these programs are generally more complex and the consequences for consumers greater if they fail to understand the program. The Board will probably be considering this fall whether additional or different disclosure requirements should be applicable to open-end equity lines of credit.

With respect to closed-end credit transactions subject to section 1204, the maximum interest set may not be increased during the term of the transaction. If there is a refinancing as defined in § 226.20(a), an assumption as defined in § 226.20(b), or any other situation constituting a new credit transaction subject to Regulation Z, however, a new interest rate cap may be set.

If any further guidance for compliance with section 1204 is necessary, the Board expects to incorporate it into the seventh proposed update to the Official Staff Commentary to Regulation Z that will be published for comment in November 1987.

(3) Interim Compliance Rule for Certain Closed-End Creditors

Section 105(d) of Regulation Z requires the Board, except in limited circumstances, to delay the effective date of any change to Truth in Lending disclosure requirements to the October 1 following by six months the date a rule is promulgated. The implementation of section 1204 will *not* change previous Truth in Lending disclosure *requirements*. Nevertheless, some creditors that currently offer uncapped closed-end adjustable rate loans may have to change their Truth in Lending disclosure *forms* to add a disclosure of the lifetime cap. (See § 226.18(f)(2) of Regulation Z.) Section 226.17(a) provides that all required Truth in Lending closed-end disclosures must be grouped together and presented separately from the contract. (Open-end credit disclosures are not subject to such requirement.) When the Board takes final action on the proposed Truth in Lending disclosure rules for adjustable rate mortgage transactions (the ARMs proposal) now pending, (51 FR 42241, November 24, 1986) these creditors might again have to alter their closed-end disclosure forms.

To avoid the burden of changing Truth in Lending disclosure forms twice in a short period of time, the proposal would allow closed-end creditors to have until

October 1, 1988 to make the necessary revisions to their disclosure forms. For the interim period between December 8, 1987 and October 1, 1988, compliance with section 1204—that is, placing the maximum rate limitation in the credit contract—would constitute compliance with the Regulation Z requirement to disclose interest rate caps in a closed-end variable rate credit transaction.

(4) Comments Requested

Interested persons are invited to submit written comments on the proposed amendment and other matters addressed in this notice. After the close of the comment period, based upon it analysis of the comments received, the Board will publish in the **Federal Register** notice of final action.

The comment period ends on October 14, 1987. Section 1204 becomes effective December 8, 1987. It is therefore imperative that comment be made in a timely manner. Because prompt resolution of these matters is essential and in the public interest, the expanded rulemaking procedure set forth in the Board's policy statement of January 15, 1979 (44 FR 3957) has not been followed.

(5) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed revisions to Regulation Z. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC, 20551, at (202) 452–3245.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in Lending.

(6) Text of Proposed Revision

Certain conventions have been used to highlight the proposed revisions. New language is shown inside arrows, while language that would be removed is set off with brackets. Pursuant to authority granted in Title XII, section 1204(b) of the Competitive Equality Banking Act of 1987, Pub. L. 100–86, 101 Stat. 552, the Board proposes to amend Regulation Z (12 CFR Part 226) as follows:

PART 226—TRUTH IN LENDING

1. The authority citation for Part 226 is revised to read as follows:

Authority: Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. 96–221, 94 Stat. 170 (15 U.S.C. 1604 *et seq.*); sec. 1204(c), Competitive Banking Equality Act, Pub. L. 100–86, 101 Stat. 552.

2. Section 226.1 is amended by revising paragraph (a), (d) introductory text, (d) (4), and (e) to read as follows:

Subpart A—General

§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.

(a) *Authority.* This regulation, known as Regulation Z, is issued by the Board of Governors of the Federal Reserve System to implement the federal Truth in Lending and Fair Credit Billing Acts, which are contained in Title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*) This regulation also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 (Pub. L. 100–86, 101 Stat. 552).

* * * * *

(d) *Organization.* The regulation is divided into subparts and appendices as follows:

* * * * *

(4) Subpart D contains rules on oral disclosures, Spanish language disclosure in Puerto Rico, record retention, effect on state laws, [and] state exemptions [,], and rate limitations.

(e) *Enforcement and liability.* Section 108 of the act contains the administrative enforcement provisions. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the act and the regulation. Section 1204(c) of title XII of the Competitive Equality Banking Act of 1987, Pub. L. 100–86, 101 Stat. 552, incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the act.

* * * * *

3. A new § 226.30 is added to Subpart D to read as follows:

Subpart D—Miscellaneous

§ 226.30 Limitation on rates.

In a consumer credit transaction subject to the act and this regulation, a creditor shall include in the credit contract a limitation on the maximum interest rate that may be imposed during the term of the obligation [1] when—

(a) The annual percentage rate may increase after consummation or, in the case of open-end credit, when the annual percentage rate may change during the plan; and

(b) The transaction is secured by a dwelling.

[1] When a creditor changes its credit contract(s) to comply with this section, that will constitute compliance with the disclosure requirements of § 226.18(f)(2) until October 1, 1988.

By order of the Board of Governors of the Federal Reserve System, September 11, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–21294 Filed 9–14–87; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; How We Count Earned and Unearned Income; Funds Used To Pay Indebtedness

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The proposed rule would clarify the regulations to reflect a longstanding Social Security Administration (SSA) policy that amounts withheld from earned and unearned income for payment of a debt or other legal obligation are included in income for the purpose of determining eligibility and payment amount under the Supplemental Security Income (SSI) program.

DATE: To be sure that your comments are considered we must receive them no later than November 16, 1987.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, 3–B–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 597–3409.

SUPPLEMENTARY INFORMATION: To be eligible for SSI, an individual's income must not exceed certain limits set by law. In addition, the amount of an eligible individual's SSI benefit is determined by the amount of his or her income.

BEST COPY AVAILABLE

Section 1612(a)(1) of the Social Security Act (the Act) provides that earned income, for SSI purposes, includes wages as determined under section 203(f)(5)(C) of the Act. Since section 203(f)(5)(C) does not specifically exclude wages which are withheld to satisfy an indebtedness, such amounts are charged as wages for Title II purposes. Thus, such amounts also are considered as wages, and therefore as earned income, for Title XVI purposes.

Section 1612(a)(2) of the Act states that unearned income includes "all other income" which does not meet the statutory definition of earned income.

Section 1612(b) of the Act lists items which are specifically excluded from income. Since amounts which are withheld from income, either earned or unearned, to pay an indebtedness or other legal obligation are not specifically excluded, it is the policy of SSA to treat such amounts as income. Examples of such includable amounts are monies withheld from an individual's income by garnishment, child support payments (both court ordered and voluntary), and payment of other debts. Although our longstanding policy has been to consider such income, our regulations have explicitly provided only for considering garnished income and payments such as Medicare premiums. The proposed rule would make explicit that any income withheld to pay a debt would be considered income.

The effect of not considering such funds as income is to have the SSI program subsidize child support obligations or other debts, which is not its purpose as a program designed to meet the subsistence needs of its claimants only. While we do have authority under the deeming provisions in section 1614(f) of the Act to disregard portions of a deemor's income to satisfy the needs of the deemor's ineligible dependent children, we do not have authority under the Act to allocate a portion of an SSI claimant's income for use of the claimant's dependents. When court-ordered obligations reduce income to the extent that there are insufficient funds to meet food, clothing, and shelter needs, an individual may petition the court to have the payments reduced. In addition, when an individual voluntarily incurs a debt that is to be repaid from future income, the terms and amount of the payment installment are, at least initially, within the individual's control.

To lend further support to our policy of counting amounts which are withheld from income to pay a debt or other legal obligation, we propose to revise 20 CFR 416.1102 to state that sometimes income also includes more or less than actually received. We may include more *or* less unearned income than actually received, but we do not include less earned income than actually received since gross wages are considered earned income. We also propose to cross refer to the specific regulations on earned income (20 CFR 416.1110) and unearned income (20 CFR 416.1123(b)(2)) which explain this concept in more detail.

We also propose to expand 20 CFR 416.1110 and 416.1123(b)(2) to state specifically our policy with respect to funds which are pledged or which are withheld from earned and unearned income, voluntarily or by court order, for payment of a debt or other legal obligation or to make any other payments such as Medicare premiums. That is, funds which are withheld to pay an indebtedness or other legal obligation or to make any other payment will be listed as situations where we include in earned and unearned income more than actually received.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these proposed regulations will not result in costs or savings, or otherwise meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they will affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, is not required.

Paperwork Reduction Act of 1980

These proposed regulations would impose no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Programs No. 13.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental security income.

Dated: June 25, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: July 31, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart K of Part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631, of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154; sec. 2639 of Pub. L. 98–269, 98 Stat. 1144.

2. Section 416.1102 is revised to read as follows:

§ 416.1102 What is income.

Income is anything you receive in cash or in kind that you can use to meet your needs for food, clothing and shelter. Sometimes income also includes more or less than you receive (see, §§ 416.1110 and 416.1123(b)). In-kind income is not cash, but is actually food, clothing, or shelter, or something you can use to get one of these.

3. In § 416.1110, the introductory material preceding paragraph (a) is revised to read as follows:

§ 416.1110 What is earned income.

Earned income may be in cash or in kind. We may include more of your earned income than you actually receive. We include more than you actually receive if amounts are withheld from earned income because of a garnishment or to pay a debt or other legal obligation, or to make any other payments. Earned income consists of the following types of payments:

* * * * *

4. In § 416.1123, paragraph (b)(2) is revised to read as follows:

§ 416.1123 How we count unearned income.

* * * * *

(b) *Amount considered as income.* * * *

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligation, or to make any other payment such as payment of your Medicare premiums.

* * * * *

[FR Doc. 87–21040 Filed 9–14–87; 8:45 am]
BILLING CODE 9190–11–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11-11-87-07]

Anchorage Ground Regulations; Anaheim Bay Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Naval Weapons Station, Seal Beach, California, has requested the Coast Guard amend 33 CFR 110.215. This change will revise the Explosive Anchorage Regulations for the waters of Anaheim Bay Harbor, California, by adding the area between the Entrance Channel and the West Jetty to the existing anchorage. This action is necessary to conform the regulation to the present usage of the anchorage. Reference to Commandant, Eleventh Naval District, a position which no longer exists, will be deleted.

DATE: Comments must be received on or before October 30, 1987.

ADDRESS: Comments should be mailed to Commander (oan), Eleventh Coast Guard District, Room 702, Union Bank Building, 400 Oceangate, Long Beach, CA 90822-5399. The comments and other materials referenced in this notice will be available for inspection and copying at the Union Bank Building, Room 702, 400 Oceangate, Long Beach, CA. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade M.J. Lodge, Aids to Navigation Branch, Eleventh Coast Guard District, Suite 702, 400 Oceangate, Long Beach, CA. (213) 499-5410.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD11-11-87-07) and the specific section of the proposal to which their comments apply and give the reasons for their comments. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests are received and the Coast Guard determines that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant Commander F.L. McClain, project officer, Marine Safety Division, Eleventh Coast Guard District; Lieutenant Junior Grade M.J. Lodge, project officer, Aids to Navigation Branch, Eleventh Coast Guard District, and Lieutenant Commander Arthur E. Brooks, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

The United States Navy has requested amendment of the Explosive Anchorage Regulations for the waters of Anaheim Bay Harbor, California. The area presently designated as an explosive anchorage has proven inadequate for the number of barges needed to move explosives at U.S. Naval Weapons Station, Seal Beach. To accommodate the increase in barge traffic, three more buoys were placed on the west side of the harbor in 1983. The proposed rules will facilitate naval operations and enhance public safety by amending the regulations designating the explosive anchorage to conform to present usage. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110.

Economic Assessment and Certificate

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Only a small number of vessels will be involved and the U.S. Navy will cooperate with public use of the area to the extent allowed by explosive loading requirements. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46(e) and 33 CFR 1.05-1(g). Section 110.1a and each section listed in § 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.215 is revised to read as follows:

§ 110.215 Anaheim Bay Harbor, California; U.S. Naval Weapons Station, Seal Beach, California; Naval Explosives Anchorage.

(a) *The anchorage ground.* The waters of Anaheim Bay Harbor between the east side of the Entrance Channel and the East Jetty, and the west side of the Entrance Channel and the West Jetty as outlined in the following two sections:

(1) East Side:

Latitude	*Longitude*
33°44'03.0" N.	118°05'35.0" W.
33°43'53.0" N.	118°05'15.0" W.
33°43'49.0" N.	118°05'18.0" W.
33°43'36.5" N.	118°05'56.0" W.
33°43'37.0" N.	118°05'57.0" W.
33°44'03.0" N.	118°05'35.0" W.

(2) West Side:

Latitude	*Longitude*
33°44'05.0" N.	118°05'40.0" W.
33°44'06.0" N.	118°05'56.5" W.
33°44'01.0" N.	118°06'01.0" W.
33°43'40.5" N.	118°06'03.0" W.
33°43'39.5" N.	118°06'02.0" W.
33°44'05.0" N.	118°05'40.0" W.

(b) *The regulations.* (1) This area is reserved for use of naval vessels carrying or transferring ammunition or explosives under standard military restrictions as established by the Safety Manual, Armed Service Explosives Board.

(2) No pleasure or commercial craft shall navigate or anchor within this area at any time without first obtaining permission from the Commanding Officer, Naval Weapons Station, Seal Beach, California. This officer will extend full cooperation relating to public use of the area and will fully consider every reasonable request for the passage of small craft in light of requirements for national security and safety of persons and property.

(3) Nothing in this section shall be construed as relieving the owner or operator of any vessel from the regulations contained in § 204.195 of Title 33, covering navigation in Anaheim Bay Harbor.

(4) The regulations in this section shall be administered by the Commanding Officer, U.S. Naval Weapons Station, Seal Beach, California, and by such agencies as he may designate, and enforced by the Captain of the Port, Los Angeles-Long Beach, California.

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Dated: September 9, 1987.

A.B. Beran,

Rear Admiral (lower half), U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 87-21097 Filed 9-14-87; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD8-87-10]

Safety Zone; Vicinity of the Old River Control Structure, Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed rule making.

SUMMARY: The Coast Guard is considering amending its regulations, Title 33 CFR 165.802, by extending the safety zone in the vicinity of the Old River Control Structure to include the area around the New Old River Auxiliary Control Structure located at 311.2, RDB, AHP. These structures control the distribution of water between the Mississippi River, Red River, and the Atchafalaya River. Recent completion of the New Auxiliary Control Structure necessitates extending the area of the safety zone. The extension of the safety zone will assist in protecting the structures, thus preventing interruption of flow control with serious downstream ramifications for flood control, navigation and municipal/industrial water supplies.

DATE: Comments must be received on or before October 30, 1987.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Captain of the Port, 4640 Urquhart Street, New Orleans, LA 70117-4698. The comments and other materials referenced in this notice will be available for inspection and copying at Captain of the Port Office, Room A-305. Normal office hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG Patrick J. Galvin, Waterway Safety Officer, C/O U.S. Coast Guard Captain of the Port, 4640 Urquhart Street, New Orleans, LA 70117-4698, Telephone: (504) 589-7127.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice CGD8-87-, the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before the final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Patrick J. Galvin, Project Officer for the Captain of the Port, and LCDR James J. Vallone, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The Old River Control Structure located at Mile 314.5 RDB, AHP, completed in October 1983, was built to control the distribution of water between the Mississippi River and the Atchafalaya River. The New Auxiliary Old River Control Structure located at Mile 311.2 RDB, AHP, completed March 1987, was built to reduce the flow through the Old River Structure thereby reducing the undermining of the Old River Control Structure. Completion of the New Auxiliary Control Structure necessitates extending the area of the safety zone. The regulation will assist in protecting the structures, thus preventing interruption of flow control with serious downstream ramifications for flood control, navigation and municipal/industrial water supplies.

The regulation will also assist in preventing the entry of vessels into an area of an extreme navigational safety hazard.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority for all of part 165

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The only affect of the proposed regulation is to establish an area of controlled access in the vicinity of The Old River Control Structure and the New Old River Auxiliary Control Structure. Limited access in this area will not impede normal navigation.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Inland waterway navigation regulations.

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6-04-6, and 160.5.

2. Section 165.802 is revised to read as follows:

§ 165.802 Lower Mississippi River Vicinity of Old River Control Structure Safety Zone.

(a) The area enclosed by the following boundary is a safety zone—from the Black Hawk Point Light, mile 316.1 AHP LMR to a point opposite the Wilkinson Light, mile 310.0 AHP along the levee above the right descending bank; thence to the opposite levee a line perpendicular to the channel centerline; thence along the levee to the upstream end of the Old River Overbank structure mile 315.5 AHP LMR; thence along a line to the Black Hawk Point Light.

(b) Any vessel desiring to enter this safety zone must first obtain permission from the Captain of the Port, New Orleans. The operator of the Corp of Engineers' picket boat on scene is delegated the authority to permit entry into this safety zone.

Dated: July 25, 1987.

J.E. Lindak,

Captain, U.S. Coast Guard, Captain of the Port, New Orleans, LA.

[FR Doc. 87-21101 Filed 9-14-87; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 20

Proposed Changes In Express Mail International Service (EMS) Rates

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: In an effort to be more responsive to the needs of the marketplace, the Postal Service proposes new On Demand and Custom Designed Service half-pound and pound rates for Express Mail International Service (EMS). These new rates will be compensatory and will establish reasonable lower prices for lighter weight parcels and letters.

Lists of the new EMS rates, by rate group, together with a listing of the countries in each rate group are provided in the tables below.

DATE: Comments must be received on or before October 15, 1987.

ADDRESS: Written comments should be directed to the General Manager, Rate Development Division, Office of Rates, Rates and Classification Department, U.S. Postal Service, Washington, DC 20260–5352. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 8620, 475 L'Enfant Plaza West SW., Washington, DC 20260–5352.

FOR FURTHER INFORMATION CONTACT: Tom Philson, (202) 268–2674 or Duane Redic (202) 268–2677.

SUPPLEMENTARY INFORMATION: The lowest weight category for Express Mail International Service is currently one pound, yet customers often require expedited delivery of items that weigh less than this amount. In response to the needs of the marketplace, the Postal Service proposes a new half-pound rate category and an adjustment in the pound rate for EMS pieces. The rates for Express Mail International Service items over one pound and all other applicable charges remain as published at 49 FR 50326 (December 27, 1984).

The *International Mail Manual* is incorporated by reference in the Code of Federal Regulations, 39 CFR 20.1. Rate changes in the manual, as well as changes to Publication 273, *Express Mail International Service Guide*, will be made in due course. Accordingly, although 39 U.S.C. 407 does not require advance notice and the opportunity for submission of comments on international service, and the provisions of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553) do not apply (39 U.S.C. 410(a)), the Postal Service invites interested persons to submit written data and views concerning the proposed new rates for Express Mail International Service which are presented in the tables below.

List of Subjects in 39 CFR Part 20

Postal Service, Foreign relations.

PART 20—[AMENDED]

The authority citation for Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

Express Mail International Service (EMS) Proposed On Demand Service Rate Changes

Pounds (up to and including)	Group 1	Group 2	Group 3	Group 4
1/2	[1] $18.00	[2] $18.00	$18.00	$18.00
1	[1] 21.00	[2] 21.00	21.00	21.00

[1] *Exception:* The proposed half-pound rate for On Demand Service to Canada is $13.00. The proposed pound rate for On Demand Service to Canada is $16.00.

[2] *Exception:* The proposed half-pound rate for On Demand Service to Great Britain and Northern Ireland is $15.00. The proposed pound rate for On Demand Service to Great Britain and Northern Ireland is $18.00.

Express Mail International Service (EMS) Proposed Custom Designed Service Rate Changes [3]

Pounds (up to and including)	Group 1	Group 2	Group 3	Group 4
1/2	[1] $26.00	[2] $26.00	$26.00	$26.00
1	[1] 29.00	[2] 29.00	29.00	29.00

[1] Exception: The proposed half-pound rate for Custom Designed Service to Canada is $21.00. The proposed pound rate for Custom Designed Service to Canada is $24.00.

[2] Exception: The proposed half-pound rate for Custom Designed Service to Great Britain and Northern Ireland is $23.00. The proposed pound rate for Custom Designed Service to Great Britain and Northern Ireland is $26.00.

[3] Rates in this table are applicable to each piece of international Custom Designed Express Mail shiped under a Service Agreement providing for tender by the customer at a designated Post Office.

Express Mail International Service Countries in Each Rate Group

Country	Rate group	Maximum weight (pounds)
Argentina	3	44
Australia	4	44
Austria	2	44
Bahamas	2	44
Bahrain	3	44
Bangladesh	4	44
Barbados	2	44
Belgium	3	44

Express Mail International Service Countries in Each Rate Group—Continued

Country	Rate group	Maximum weight (pounds)
Bermuda	1	44
Brazil	4	50
Canada	1	66
Cayman Islands	2	44
Chad	3	44
Chile	3	33
China, People's Republic of	4	33
Colombia	2	44
Cote d'Ivoire (Ivory Coast)	3	44
Cyprus	3	44
Denmark	3	44
Djibouti	4	44
Egypt	3	44
Finland	3	44
France	3	44
Germany, Federal Republic of	2	44
Great Britain and Northern Ireland	2	44
Greece	3	44
Guyana	2	44
Hong Kong	3	44
Hungary	2	44
Iceland	3	44
India	4	44
Indonesia	4	22
Ireland	2	44
Israel	3	33
Italy	3	44
Japan	4	44
Jordan	3	44
Korea, Republic of	3	44
Kuwait	3	44
Luxembourg	2	44
Macao	3	44
Malaysia	4	33
Mali	3	44
Mexico	1	44
Netherlands	3	44
Netherlands Antilles	2	44
New Zealand	4	44
Niger	3	44
Nigeria	3	44
Norway	3	44
Oman	3	44
Pakistan	3	22
Panama	2	44
Portugal	2	44
Qatar	3	44
Saudi Arabia	3	22
Senegal	3	44
Singapore	4	44
South Africa	4	44
Spain	2	44
Sweden	3	44
Switzerland	3	33
Taiwan	3	33
Thailand	4	44
Tunisia	3	44
Turkey	3	44
United Arab Emirates	3	44
Uruguay	3	44
Venezuela	2	44

An appropriate amendment to 39 CFR 20.3 to reflect these changes will be published when the final rule is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-21179 Filed 9-14-87; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87-266; FCC 87-243]

Telephone Company; Cable Television Cross-Ownership

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission adopted a Notice of Inquiry on the possibility of presenting to the Congress proposals for modification of the Communications Act and Commission's Rules governing the provision of video programming by telephone common carriers within their operating areas. This action is taken to determine if such modifications are needed in view of the growth of cable television and changes in the telephone industry.

DATES: Comments must be received on or before October 2, 1987 and reply comments on or before November 2, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James F. Ferris, (202) 634-1830.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry in CC Docket No. 87-266, adopted on July 16, 1987 and released on August 18, 1987. The full text of this action may be inspected in the Commission's Dockets Branch, Room 230, 1919 M St. NW., Washington, DC, during regular business hours or purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857-3800.

Summary of Notice of Inquiry

Growth of cable television and changes in the telephone industry may warrant reassessment of the Commission's restrictions on the rights of telephone common carriers to provide cable television services within their telephone operating areas (commonly called "Telephone Company—Cable Television Cross-ownership"). Those restrictions embodied in the Commission's rules and regulations were generally codified by Congress in its Cable Communications Policy Act of 1984, and were added as Title VI to the Communications Act of 1934, as amended. If the Commission determines through this Inquiry that modification of those restrictions would better serve the public interest, such findings may become the basis for legislative proposals to the Congress.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 87-21112 Filed 9-14-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-350 , RM-5812]

Radio Broadcasting Services; Millinocket, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KATAHDIN Communications, Inc., proposing the substitution of FM Channel 235C2 for Channel 249A at Millinocket, Maine, and modification of its license for Station WSYY-FM, to reflect the new channel. Concurrence of the Canadian government is required for this allocation.

DATES: Comments must be filed on or before October 26, 1987, and reply comments on or before November 10, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David M. Hunsaker, Putbrese & Hunsaker, 6800 Fleetwood Road, P.O. Box 539, McLean, Virginia 22101 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.87-350, adopted August 18, 1987, and released September 3, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-21111 Filed 9-14-87; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub-No. 5)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1987 Update; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is correcting errors in the listing of proposed fees for services performed in connection with licensing and related services performed by the Commission, which appeared in the **Federal Register** on August 28, 1987 (52 FR 32573).

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 275-7428.

SUPPLEMENTARY INFORMATION: The ICC has proposed changes in its user fees to reflect the Commission's current cost for performing services. The proposed rules contained errors which are being corrected here.

Dated: September 9, 1987.

Kathleen M. King,

Acting Secretary.

PART 1002—[AMENDED]

§ 1002.2 [Amended]

The following corrections are made in the proposed fee chart in 49 CFR 1002.2 (f) Schedule of filing fees:

1. Item (9) of the chart on page 32574 is corrected to read:

(9) An application for motor carrier emergency temporary authority 49 U.S.C. 10928(c)(1).....$70

2. Item (33)(b) of the chart on page 32575 is corrected to read:

33(b) Exempt transaction under 49 CFR 1050.31.....$550

3. Item (48)(iv) of the chart on page 32575 is corrected to read:

(48)(iv) Exempt transaction [49 CFR 1080.2(d)].....$550

4. Item (51) of the chart on page 32575 is corrected to read:

(51) An application for approval of a rail rate association agreement 49 U.S.C. 10706.....$25,100

[FR Doc. 87-21158 Filed 9-14-87; 8:45 am]

BILLING CODE 7035-01-M

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Notices

Federal Register
Vol. 52, No. 178
Tuesday, September 15, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Proposed Student Community Service Project Guidelines

AGENCY: ACTION.

ACTION: Notice of proposed Student Community Service Project Guidelines.

SUMMARY: The following Notice sets out the guidelines under which Student Community Service Projects will operate. The Guidelines are divided into seven parts which deal with the overall program philosophy, responsibilities of the sponsor, staff, volunteers and volunteer placement sites. It also includes basic data on the administration of a Student Community Service Project.

DATE: Written comments should be submitted no later than October 15, 1987 to Valerie Wheeler, ACTION, 806 Connecticut Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Valerie Wheeler, ACTION, 806 Connecticut Avenue, NW., Washington, DC, 800–424–8867 or 202–634–9424.

SUPPLEMENTARY INFORMATION: Section 420 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5060) was amended in 1979 to define the term regulation and to detail the procedures to be followed in prescribing regulations. Through its broad definition of a regulation, the section requires that "any rule, regulation, guidelines, interpretation, order, or requirement of general applicability" issued by the Director of ACTION must be published with a 30-day comment period except in certain limited circumstances. These Guidelines, although not regulations under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), may, in whole or in part, be required by our Act to be published in proposed form for comments.

ACTION has determined that these guidelines are not major rules as defined in E.O. 12291. This determination is based on the proposed grants' size and purpose, neither of which will result in the economic impact of a major rule. These guidelines are noted in the Catalog of Federal Domestic Assistance, Number 72.005.

I. Introduction

This Notice sets forth the guidelines under which Student Community Service Projects will operate. Student Community Service Project guidelines are contained in seven parts:

Part I—Introduction
Part II—Purpose
Part III—Grantee Eligibility and Selection Criteria
Part IV—Grant Application Procedures
Part V—Project Management
Part VI—Student Volunteer Assignments
Part VII—Restrictions

These guidelines supersede Student Service-Learning Program Guidelines published in the **Federal Register**, dated May 22, 1986, and instructions and technical assistance provided to grants previously awarded under Title I, Part B of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113).

II. Purpose

Student Community Service Projects are authorized under Title I, Part B, section 111 and section 114 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory purpose of these projects is to encourage students to undertake volunteer service in their communities in such a way as to enhance the educational value of the service experience, through participation in activities which address poverty-related problems. Student volunteers must be enrolled in secondary, secondary vocational or post-secondary schools on an in-school or out-of-school basis. They serve on a part-time, non-stipended basis.

Service opportunities must result in student volunteers gaining learning experiences through service in low-income communities, whether or not they receive academic credit.

The intent of Student Community Service Projects is to join community, school and youth in developing the scope and nature of volunteer experiences which serve the needs of poverty communities while securing resources by which the effort can be continued and expanded after federal support ends, if needed.

Local communities should determine what their problems are and how best to solve them. ACTION resources can be made available to assist in helping communities solve some of their problems through fostering student volunteer service. The community must generate increasing resources to enable the project to continue once ACTION grant funds are no longer provided. Technical assistance and training in project management, fundraising and recruiting will be provided by ACTION as required.

III. Grantee Eligibility and Selection Criteria

The following criteria will be employed by ACTION staff in the selection and approval of Student Community Service Projects:

A. The applicant must be a Federal, State, or local agency, or private non-profit organization or foundation in the United States, the District of Columbia, Virgin Islands, Puerto Rico, American Samoa, or Guam, which has the authority to accept and the capability to administer a student community service project grant.

B. Student volunteer activities must be poverty-related in scope and otherwise comply with the provisions of the legislative authority outlined in Part II.

C. Grant funds must be used to initiate or expand a student volunteer community service project which addresses the needs of the low-income community.

D. The grantee must develop and maintain community support for the Student Community Service Project through a planned program including public awareness and communications.

E. Community representation in the project's operation, including representatives of youth groups, school systems, educational institutions, etc., must be identified in the grant application.

F. The grant application must demonstrate that project goals and objectives are quantifiable, measurable, and show benefits to the student volunteers and to the low-income community. It must describe the expected learning outcomes which will result from the service experience. The projected number of student volunteers who will serve in the project and hours

of service are to be included in project goals and objectives.

G. The grant application must demonstrate how student volunteers will be recruited and how they will receive orientation appropriate to their assignments.

H. The grantee must identify resources which will permit continuation of the student oommunity service project upon the conclusion of Federal funding as outlined in Part II.

I. The grantee must comply with all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. This does not refer to agreements made with volunteer placement sites as discussed in Part V. This includes compliance with applicable financial and fiscal requirements established by ACTION or other elements of the Federal government.

J. The grantee must ensure compliance with the restrictions outlined in Part VI.

V. Grant Application Procedures

A. Scope of Grant

Student Community Service Project grants are awarded for up to a twelve-month period. Requests for second- or third-year reduced funding can be sought by grantees. Maximum federal awards over a period of three years are up to $15,000 for the first year, up to $10,000 for the second, and up to $5,000 for the third. The grantee is required to contribute a local share of at least $3,000 each year. Final determination of the actual amount of grant awards rests with the ACTION Regional Director.

ACTION seeks sponsoring organizations which can demonstrate the ability to raise sufficient local support in order to achieve 100% non-ACTION funding of their Student Community Service Projects after Federal funding ends.

Applicants for new or renewal grants must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs and Activities" as set forth in 45 CFR Part 1233. Contact the ACTION State Office for specific instructions on how to fulfill this requirement.

B. Procedures for New Grantees

Project application forms are available from ACTION State of Regional Offices which will also establish schedules for application submission. Grant allowable costs are contained in ACTION Handbook 2650.2, *Grants Management Handbook for Grantees*, which is available from ACTION State or Regional offices.

Applications will be submitted to the appropriate ACTION State Office for programmatic and technical review. ACTION Regional Offices will review all new applications and send them to the Director of VISTA/Student Community Service Programs. The Director of VISTA/Student Community Service will render final decisions on new Student Community Service Project grant applications.

Regional Grants and Contracts Officers will issue Notices of Grant Awards upon notification from the Director of VISTA/Community Service Programs.

C. Procedures for Renewal Grantees

Applications for renewal will be evaluated using the factors identified in selecting initial grantees, as well as the grantees compliance with these guidelines and the grantee's performance during the previous year(s), particularly in the achievement of measurable goals and objectives. All project renewals are subject to the availability of funds.

Renewal applications from first- and second-year grantees are reviewed at the ACTION State Office level and submitted to the ACTION Regional Director for final approval.

If the renewal application is denied, the sponsor will be notified that ACTION intends to deny the application for renewal and the sponsor will be given an opportunity to show cause why the application should not be denied in accordance with 45 CFR Part 1206. This regulation is available from ACTION State or Regional Offices.

V. Project Management

Sponsors shall manage grants awarded to them in accordance with the provisions of these guidelines and ACTION Handbook 2650.2, *Grants Management Handbook for Grantees*, which will be furnished the sponsor at the time the initial grant is awarded.

Project support provided under an ACTION grant will be furnished at the lowest possible cost consistent with the effective operation of the project. Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

A. Local Support Contributions

The Student Community Service Project sponsor shall be responsible for providing at least $3,000 in non-federal share contribution for each year of the grant's operation. This amount can be obtained through cash and/or allowable in-kind contributions.

Local share can include, but is not limited to, cash or in-kind contributions such as office space, office equipment, supplies, accounting services, insurance, vehicles, telephones, printing, postage, recognition, travel and personnel which directly benefit the project.

B. Reporting Requirements

Sponsors must comply with fiscal reporting requirements as outlined in ACTION Handbook 2650.2 and must maintain records in accordance with generally accepted accounting principles. Records shall be kept available for inspection at the request of ACTION and shall be preserved for at least three years following the date of submission of the final Financial Status Report for each budget period.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

A quarterly project progress report shall also be submitted to the ACTION State Office no later than 30 days after the end of each project quarter. The report shall include, but not be limited to, the following items:

1. A comparison of actual accomplishments with the goals and objectives established for the period.

2. The number of volunteers participating in the project during the quarter.

3. The number of volunteer hours generated during the quarter.

4. Problems, delays, or adverse conditions that have affected or will affect the attainment of project objectives.

C. Insurance

Grantees are responsible and must show evidence that student volunteers, while performing their assignments, have adequate accident, personal liability, and automobile liability insurance coverage consistent with other insurance maintained by the organization, and with sound institutional and business practices.

D. Transportation

The sponsor should structure student volunteer assignments to minimize transportation expenses and requirements.

When transportation is not provided, volunteers may be reimbursed for actual costs within the limitations prescribed by the local project and the availability of funds.

E. Project Staff

Each grantee will designate a person to serve as the project director. A full-

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time director is desirable. A rationale for less than a full-time project director must be included with the project application. The project director should be hired within 30 days of project start date. Supervision of the project director is the responsibility of the sponsor.

Student Community Service Project staff are employees of the grantee organization and are subject to its personnel policies and practices.

F. Community Relations

1. Community Support

A viable community support system needs to be initiated to ensure project success and project continuation without Federal funds. Project support may be sought from school districts, governmental entities, religious and service groups, United Way, foundations, the business community, youth organizations, etc. One method of enlisting and maintaining community support for the project's operation is through the establishment of a project advisory council and/or working committee of the sponsor's board. Initial outreach to representatives of these groups, as evidenced by accompanying letters of support, is seen as an effective step to the development of the application.

2. Volunteer Recognition

With the participation of the sponsor, the staff, and volunteer placement sites, recognition should be given to student volunteers for service to the community. Projects can also provide recognition to local individuals and agencies or organizations for significant activities in support of project goals. Specific recognition activities should be reflected in the application narrative and budget.

3. Public Awareness

A strong community relations program ensures public awareness of start-up and continuing project activities. It is essential for the successful recruiting of volunteers and for the recognition of volunteer service. The project sponsor and project director should inform community, city and county officials, and the media about development, growth and success of the student community service project.

VI. Student Volunteer Assignments

Student volunteers are assigned to serve low-income communities in a variety of ways. Local sponsors are expected to develop volunteer service opportunities taking into consideration the focus of the project, the age, skills, and interests of student volunteers, as well as the value of the learning experience itself.

Clear understanding concerning the responsibilities of volunteer placement sites must be reached between representatives of the grantee's project staff and the volunteer site supervisor. Agreements may be formally arranged through the utilization of a Memorandum of Understanding, a Letter of Agreement or other means.

A formal agreement between the project staff and volunteer site will greatly assist the staff and volunteers in the management of volunteers. Issues and responsibilities concerning volunteer orientation/training, volunteer transportation, recognition and reporting of service hours, are functions outlined in this agreement.

VII. Restrictions

A. Special restrictions on Student Community Service Project grantees:

1. Political Activities

a. Grant funds shall not be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office or any voter registration activity.

b. No project shall use grant funds to provide services, employ or assign personnel or volunteers for, or take any action which would result in the identification or apparent identification of the project with:

(1) Any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office;

(2) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any election; or

(3) Any voter registration activity.

2. Lobbying

a. No grant funds or volunteers may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except as follows:

(1) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a student volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(2) In connection with an authorization or appropriation measure directly affecting operation of the program.

Regulations found in 45 CFR Part 1226, "Prohibitions On Electoral and Lobbying Activities," apply fully hereto, and provide further details on the limitations of political and lobbying activities that apply to volunteers and sponsors. Each grantee is obliged to know, and communicate to staff and volunteers, the prohibitions included therein.

3. Special Restriction on State or Local Government Employees

If the sponsor receiving a grant from ACTION is a state or local government agency, certain restrictions contained in Chapter 15 of Title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

a. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.

b. Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

c. Be a candidate for elective office, except in a non-partisan election. "Non-partisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential election received votes in the last preceding election at which Presidential electors were selected.

If a project staff member, whose salary is traceable in whole or in part to an ACTION grant, is also a State or local government employee, the staff member is covered by provisions of the Hatch Act, restricting in many instances public participation in partisan political activities. Questions about the coverage of the Hatch Act may be addressed to the Office of General Counsel, ACTION, Washington, DC 20525.

4. Non-discrimination

No person with responsibility for the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

5. Religious Activities

Volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of their duties.

6. Labor and Anti-Labor Activity

No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

7. Non-displacement of Employed Workers

A student volunteer may not perform any service or duty which would supplant the hiring of workers who would otherwise be employed to perform similar services or duties; or result in the displacement of employed workers or impair existing contracts for service.

8. Non-compensation for Services

No volunteer or other person, organization, or agency shall request or receive any compensation for services of student volunteers. No volunteer site or any member or cooperating organization shall be requested or required to contribute or to solicit contribution to establish any part of a local share. This does not prevent the acceptance of cash contributions made voluntarily and without condition to the grantee for legitimate charitable purposes.

9. Volunteer Status

Student volunteers are not employees of the sponsoring organization or the U.S. Government while volunteers.

10. Nepotism

Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors unless there is concurrence by ACTION.

(42 U.S.C. 4974)

Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction:

Region I

ACTION Region Office, 10 Causeway Street, Room 473, Boston, MA 02222–1039
ACTION State Office, Abraham Ribicoff Fed. Bldg., 450 Main Street, Room 524, Hartford, CT 06103–3002
ACTION State Office, Federal Building, Room 305, 76 Pearl Street, Portland, ME 04101–4188
ACTION State Office, 10 Causeway Street, Room 467, Boston, MA 02222–1038

(New Hampshire/Vermont)

ACTION State Office, Federal Post Office & Courthouse, 55 Pleasant Street, Room 316, Concord, NH 03301–3939
ACTION State Office, John E. Fogarty Building, Room 200, 24 Weybosset Street, Providence, RI 02903–2882

Region II

ACTION Region Office, 6 World Trade Center, Room 758, New York, NY 10048–0206
ACTION State Office, 402 East State Street, Room 246, Trenton, NJ 08608–1507

(Metropolitan New York)

ACTION State Office, 6 World Trade Center, Room 758, New York, NY 10048–0206

(Upstate New York)

ACTION State Office, U.S. Courthouse & Federal Building, 445 Broadway, Room 103, Albany, NY 12207–2923

(Puerto Rico/Virgin Islands)

ACTION State Office, Frederico DeGetau Federal Office Building, Carlos Chardon Avenue, Hato Rey, PR 00918–2241

Region III

ACTION Region Office, U.S. Customs House, 2nd & Chestnut Street, Room 108, Philadelphia, PA 19106–2912
ACTION State Office, Federal Building, Room 372–D, 600 Federal Place, Louisville, KY 40202–2230

(Delaware/Maryland)

ACTION State Office, Federal Building, 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201–2814
ACTION State Office, Federal Building, Room 500, 85 Marconi Boulevard, Columbus, OH 43215–2888
ACTION State Office, US Customs House, Room 108, 2nd & Chestnut Streets, Philadelphia, PA 19106–2998

(Virginia/Dist. of Columbia)

ACTION State Office, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240–1832
ACTION State Office, 603 Morris Street, 2nd Floor, Charleston, WV 25301–1409

Region IV

ACTION Region Office, 101 Marietta Street, NW., Suite 1003, Atlanta, GA 30323–2301
ACTION State Office, 2121 8th Avenue North, Room 722, Birmingham, AL 35203–2307
ACTION State Office, 930 Woodcock Road, Suite 221, Orlando, FL 32803–3750
ACTION State Office, 75 Piedmont Avenue, NE, Suite 412, Atlanta, GA 30303–2587
ACTION State Office, Federal Building, Room 1005–A, 100 West Capital Street, Jackson, MS 39269–1092
ACTION State Office, Federal Building, P.O. Century Station, 300 Fayetteville Street Mall, Room 131, Raleigh, NC 27601–1739
ACTION State Office, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201–2430
ACTION State Office, Federal Building/US Courthouse, 801 Broadway, Room 248, Nashville, TN 37203–3889

Region V

ACTION Region Office, 10 West Jackson Boulevard, 6th Floor, Chicago, IL 60604–3964
ACTION State Office, 10 West Jackson Boulevard, 6th Floor, Chicago, IL 60604–3964
ACTION State Office, 46 East Ohio Street, Room 457, Indianapolis, IN 46204–1922
ACTION State Office, Federal Building, Room 339, 210 Walnut, Des Moines, IA 50309–2195
ACTION State Office, Federal Building, Room 658, 231 West Lafayette Boulevard, Detroit, MI 48226–2799
ACTION State Office, Old Federal Building, Room 126, 212 Third Avenue South, Minneapolis, MN 55401–2596
ACTION State Office, 517 East Wisconsin Avenue, Room 601, Milwaukee, WI 53202–4507

Region VI

ACTION Region Office, 1100 Commerce, Room 6B11, Dallas, TX 75242–0696
ACTION State Office, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201–3291
ACTION State Office, Federal Building, Room 248, 444 SE. Quincy, Topeka, KS 66603–3501
ACTION State Office, 626 Main Street, Suite 102, Baton Rouge, LA 70801–1910
ACTION State Office, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64106–2009
ACTION State Office, Federal Building, Cathedral Place, Room 129, Santa Fe, NM 87501–2026
ACTION State Office, 200 NW 5th, Suite 912, Oklahoma City, OK 73102–6093
ACTION State Office, 611 East Sixth Street, Suite 107, Austin, TX 78701–3747

Region VIII (No Region VII)

ACTION Region Office, Executive Tower Building, 1405 Curtis Street, Denver, CO 80202–2349
ACTION State Office, Columbine Building, Room 301, 1845 Sherman Street, Denver, CO 80203–1167
ACTION State Office, Federal Building, Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001–3649
ACTION State Office, Federal Office Building, Drawer 10051, 301 South Park, Rm 192, Helena, MT 59626–0101
ACTION State Office, Federal Building, Room 293, 100 Centennial Mall North, Lincoln, NE 68508–3898

(North & South Dakota)

ACTION State Office, Federal Building, Room 213, 225 S. Pierre Street, Pierre, SD 57501–2452
ACTION State Office, U.S. Post Office & Courthouse, 350 South Main Street, Room 484, Salt Lake City, UT 84101–2198

Region IX

ACTION Region Office, 211 Main Street, Room 530, San Francisco, CA 94105–1914
ACTION State Office, 522 North Central, Room 205–A, Phoenix, AZ 85004–2190
ACTION State Office, 211 Main Street, Room 534, San Francisco, CA 94105–1974
ACTION State Office, Federal Building, Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024–3671

(Hawaii/Guam/American Samoa)

ACTION State Office, Federal Building, P.O. Box 50024, Honolulu, HI 96850
ACTION State Office, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502–1208

Region X

ACTION Region Office Federal Office Building, 909 First Avenue, Ste. 3039, Seattle, WA 98174–1103

ACTION State Office, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702–5745

(Alaska)

ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174–1103

ACTION State Office, Federal Building, Room 647, 511 NW. Broadway, Portland, OR 97209–3416

ACTION State Office, Suite 3039, Federal Office Building, 909 First Avenue, Seattle, WA 98174–1103.

(42 U.S.C. 4974)

Dated in Washington, DC on September 9, 1987.

Donna M. Alvarado,

Director, ACTION.

[FR Doc. 87–21143 Filed 9–14–87; 9:45 am]

BILLING CODE 6050–28–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting; Missouri Advisory Committee

Notice is hereby given, pursuant to the provision of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 3:00 p.m., on September 22, 1987, at the Sheraton Inn, 3333 S. Glenstone, Springfield, Missouri. The purpose of the meeting is to hear presentations on the status of civil rights in the State of Missouri. In addition, program ideas and activities for fiscal year 1988 will be discussed.

Persons desiring additional information, or planning a presentation to the Committee, should contact Acting Committee Chairperson, Cora D. Thompson or Melvin L. Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 3, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–21279 Filed 9–14–87; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

List of New Members of the Departmental Performance Review Board

This notice announces the new members of the Departmental Performance Review Board (PRB) in the Department of Commerce. The purpose of the Departmental PRB is to review the performance of appointing authorities and their immediate deputies who are in the SES and SES members whose ratings are initially prepared by their respective appointing authorities.

These Departmental PRB members are appointed for a two year term ending November 30, 1989. The list of new members eligible to serve on the Departmental PRB is as follows:

Office of the Deputy Secretary

Shirley Hays, Special Assistant to the Deputy Secretary

Office of General Counsel

Robert Brumley, Deputy General Counsel
Robert Ellert, Chief Counsel for Economic Affairs

Office of the Assistant Secretary for Administration

Otto Wolff, Deputy Assistant Secretary
Joseph Brown, Deputy Director, Office of Personnel and Civil Rights

Minority Business Development Agency

Chester Smith, Assistant Director for Program Development
Thomas Francis, Assistant Director for Program Support

Economic Affairs

C. Louis Kincannon, Deputy Director, Bureau of the Census
Allan Young, Director, Bureau of Economic Analysis
Lucy Falcone, Senior Advisor to the Chief Economist

National Telecommunications and Information Administration

Dennis Connors, Director, Office of Policy Coordination and Management
Charles Schott, Deputy Assistant Secretary

Economic Development Administration

Craig Smith, Deputy Assistant Secretary for Management Support

International Trade Administration

Saul Padwo, Director, Office of Trade Information Services
Peter Hale, Director, Office of Western Europe
Vincent DeCain, Deputy Assistant Secretary for Export Administration
John Richards, Director, Office of Industrial Resource Administration
Roger Severance, Director, Office of the Pacific Basin

National Oceanic and Atmospheric Administration

William Evans, Assistant Administrator for Fisheries
Thomas Pyke, Assistant Administrator for Environmental Satellite and Information Services.

Patent and Trademark Office

William Lawson, Patent Documentation Administrator
Stephen Kunin, Group Leader

National Bureau of Standards

Lyle Schwartz, Director, Institute for Materials Science and Engineering
Guy Chamberlin, Director of Administration

Persons desiring any further information about the Departmental PRB or its membership may contact Mr. David E. Mathis, Executive Secretary to the Departmental PRB, Office for Personnel and Civil Rights, Herbert C. Hoover Building, Room 5102, Washington, DC 20230 (202) 377–3453.

Dated August 15, 1987.

David E. Mathis,

Executive Secretary, Departmental Performance Review Board, Department of Commerce.

[FR Doc. 87–21154 Filed 9–14–87; 8:45 am]

BILLING CODE 3510–BS–M

International Trade Administration

Short-Supply Review on Certain Slabs; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products, with respect to certain carbon steel slabs used in the production of steel plate and sheet.

DATE: Comments must be submitted on or before September 22, 1987.

ADDRESS: Send all comments to

Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement, the U.S.-Brazil Arrangement, and the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products provides that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain carbon steel slabs used in the manufacture of hot-and cold-rolled sheet, and hot-rolled plate. The slabs for production of sheet are of low carbon steel, six to eight inches in thickness, 30 to 49 1/2 inches in width, and 200 to 218 inches in length. The slabs requested for production of plate are 3-1/2 to 8-1/2 inches in thickness, 32 to 52 inches in width, and 80 to 120 inches in length.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than September 25, 1987. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce at the above address.

Dated: September 9, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–21207 Filed 9–14–87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Atlantic Billfish Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The South Atlantic Fishery Management Council will hold a series of public hearings and provide a comment period to solicit public input into the proposed Billfish Fishery Management Plan. Various measures to conserve and manage the resource will be discussed.

DATES: See **"SUPPLEMENTARY INFORMATION"** for dates and locations of the hearings. All hearings will begin at 7:00 p.m. The public comment period on the proposed plan will close November 2, 1987.

ADDRESS: All written comments should be sent to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, 803–571–4366.

SUPPLEMENTARY INFORMATION: The Billfish Fishery Management Plan was prepared jointly by the South Atlantic, New England, Mid-Atlantic, Gulf and Caribbean Fishery Management Councils. It establishes a management regime for Atlantic billfishes throughout the Atlantic, Gulf and Caribbean exclusive economic zones (EEZs) of the United States. The species addressed by this plan are the sailfish, *Istiophorus platypterus;* the white marlin, *Tetrapturus albidus;* the blue marlin, *Makaria nigricans;* and the longbill spearfish, *Tetrapturus pfluegeri.*

The dates and locations of the public hearings are scheduled as follows:

September 28, 1987 (Joint hearing with the Gulf of Mexico FMC)—American Legion Hall, Junior College Road, Stock Island, FL

September 28, 1987—North Carolina Aquarium at Pine Knoll Shores, Highway 58, Pine Knoll Shores, NC

September 29, 1987—Broward County Governmental Center, 115 South Andrews Avenue, Room 422 (Commission Chambers), Ft. Lauderdale, FL

September 29, 1987—North Carolina Aquarium on Roanoke Island, Airport Road, Manteo, NC

September 30, 1987—Sandlewood High School, 2750 John Prom Boulevard, Jacksonville, FL

September 30, 1987—South Carolina Wildlife & Marine Resources Center, Ft. Johnson Road, Charleston, SC

October 1, 1987—Thunderbolt Town Hall, 2702 Mechanics Avenue (Highway 80), Thunderbolt, GA

Dated: September 10, 1987.

Richard H. Schaefer,

Acting Director, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–21172 Filed 9–4–87; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Atlantic Salmon Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a public hearing and request for comments.

SUMMARY: The New England Fishery Management Council will hold a public hearing and provide a comment period to solicit public input into the development of a Fishery Management Plan for Atlantic Salmon.

DATES: The hearing will begin at 10:00 a.m. on September 24, 1987. Written comments will be received until September 30, 1987.

ADDRESSES: The hearing will be held at the Ramada Hotel, 225 McClellan Highway, East Boston, Massachusetts.

Written comments may be sent to the Chairman, New England, Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 617–231–0422.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) and the Assistant Administrator for Fisheries (NOAA) propose to adopt and implement a Fishery Management Plan (FMP) for Atlantic Salmon *(Salmo salar).* The FMP is needed to address a deficiency in the U.S. management program for its Atlantic salmon resource to facilitate accomplishment of the long-term goals of salmon management as embodied within the States' stock restoration programs in the Northeast. The Council proposes to establish a management program for Atlantic salmon in the EEZ to complement existing State management programs in inland and coastal waters and to complement

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Federal management authority over salmon of domestic origin on the high seas (beyond 12 miles) conferred to the United States as a signatory nation to the North Atlantic Salmon Conservation Organization (NASCO).

Dated: September 10, 1987.

Richard H. Schaefer,

Acting Director, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-21173 Filed 9-14-87; 8:45 am]

BILLING CODE 3510-22-W

Public Meeting; Mid-Atlantic Fishery Management Councils

AGENCY: National Marine Fisheries Services, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting, September 22, 1987, at 10 a.m., at the Ramada Inn, 76 Industrial Highway, Essington, PA (telephone: 215-421-9600), to set quotas for squid, mackerel, butterfish, surf clams and ocean quahogs, as well as to discuss other fishery management and administrative matters. The public meeting may be lengthened or shortened depending upon progress of the agenda, and the Council may go into closed session (not open to the public) to discuss personnel and/or national security matters.

For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, 300 South New Street, Room 2115, Dover, DE 19901; telephone (302) 674-2331.

Date: September 10, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-21217 Filed 9-14-87; 8:45 am]

BILLING CODE 3510-22-M

Amended Meeting Notice; North Pacific Fishery Management Council

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The agenda as published in the **Federal Register** (52 FR 32959, September 1, 1987) for the North Pacific Fishery Management Council's September 23-25, 1987, public meeting in Anchorage, AK, has been amended. In addition, the Council will review a draft statement of commitment to examine alternatives to traditional fisheries management techniques forwarded by the Council's Policy and Planning Committee. The draft statement includes a plan of action for developing effort controls in the sablefish longline fishery by 1989, and for groundfish in general by 1990, including in the interim a possible moratorium on new entry to the fisheries. Any final decision on such a moratorium would be scheduled for the Council's December 1987 or January 1988 public meeting.

All other information as published originally remains unchanged. For further information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

Date: September 10, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-21218 Filed 9-14-87; 8:45 am]

BILLING CODE 3510-22-M

Public Meetings; North Pacific Fishery Management Council

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Halibut Management Team and its Halibut Regulatory Amendment Advisory Group will convene separate public meetings to review public proposals for allocative regulations in the halibut fisheries off Alaska. The Team will convene September 16, 1987, at 9 a.m. at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way, NE., Room 2143, Building 4, Seattle, WA. The Advisory Group will convene September 17 at the same time and location as mentioned above for the Management Team.

For further information contact Mr. Denby Lloyd, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

Date: September 10, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-21219 Filed 9-14-87; 8:45 am]

BILLING CODE 3510-22-M

Public Meeting; South Atlantic Fishery Management Council

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a joint public meeting, September 21-22, 1987, of its Habitat and Environmental Protection and Ad Hoc Plan Development Committees, at the Council's Headquarters (address below), to discuss the Council's responsibilities under new habitat and vessel safety guidelines resulting from Magnuson Fishery Conservation and Management Act amendments. A detailed agenda will be available to the public on or about September 15, 1987.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: September 10, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-21220 Filed 9-14-87; 8:45 am]

BILLING CODE 3510-22-M

Public Meeting; Western Pacific Fishery Management Council.

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Precious Corals Planning Team will convene a public meeting, September 14, 1987, at 2 p.m., at 1164 Bishop Street, Room 602, Honolulu, HI. The public meeting will focus on amending the fishery management plan for the precious corals fishery of the Western Pacific Region. The amendment will include the establishment of new quotas for selective and non-selective harvesting methods in exploratory areas; establishing a size limit for selective harvesting of precious coral in exploratory areas; discussing whether or not to include dead coral in the harvest quotas, and the means of enforcing the size limit.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Date: September 10, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-21221 Filed 9-4-87; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Closed Meetings; Department of Defense Wage Committee

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, October 6, 1987; Tuesday, October 13, 1987; Tuesday, October 20, 1987; and Tusday, October 27, 1987 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 10, 1987.

[FR Doc. 87–21192 Filed 9–14–87; 8:45 am]

BILLING CODE 3810–01–M

Ada Board; Meeting

SUMMARY: A meeting of the Task Force on Process for Ada 9X will be held Thursday, October 1, 1987 from 9:00 a.m.–5:00 p.m. at IDA, 5111 Leesburg Pike, Suite 300, Falls Church, Virginia 22041, to discuss the process for developing Ada 9X and to develop recommendations to be forwarded to the Ada Board.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, IIT Research Institute, Ada Information Clearinghouse, 4550 Forbes Boulevard, Suite, Lanham, Maryland 20706, (703) 685–1477.

Linda M. Bynum,

Office of the Secretary of Defense, Alternate Federal Register Liaison Office, Department of Defense.

September 9, 1987.

[FR Doc. 87–21197 Filed 9–14–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Revision

AFROTC Scholarship Nomination
(AFROTC form 36)
(OMB No. 0701–0103)

The information provided on the form by the applicant is used by the Air Force Reserve Officer Training Corps (AFROTC) Scholarship Central Selection Board in evaluating the applicant's qualifications for a scholarship award. The form reflects information on academic aptitude and performance and includes an evaluation by the applicant's Professor of Aerospace Studies.

Individuals
Responses 2,000
Burden hours 1,200.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Charles T. Rowland, HQ AFROTC/RRUC, College Scholarship Branch, Maxwell AFB, AL 36112–6663, telephone number (205) 293–6588.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 10, 1987.

[FR Doc. 87–21196 Filed 9–14–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information; Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact for whom a copy of the information proposal may be obtained.

Extension

USMA Applicant's Personal Background; USMA Forms 21–25, 21–26,

21–27, 5–520 and USMA FL 480 (OMB No. 0702–0060)

West Point candidates provide personal background information which allows the USMA Admissions Committee to make subjective judgements on non-academic experiences. Data is also used by USMA's Office of Institutional Research for Correlation with success in graduation and military careers.

Individuals or households.
Responses: 26,000
Burden Hours: 7,750.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, SAIS–ADR, Room 1C638, The Pentagon, Washington, DC 20310–0107, telephone (202) 694–0754.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 10, 1987.

[FR Doc. 87–21193 Filed 9–14–87; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information; Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) an estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact for whom a copy of the information proposal may be obtained.

Extension

USMA Applicant's Education; USMA Forms 21–16, 21–23, and USMA FL 480–1 (OMB No. 0702–0062)

The U.S. Military Academy Admissions Committee strives to objectively and fairly evaluate the applicant's past and future academic performance. The candidates provide school officials with forms that (a) request and supplement academic transcripts, (b) evaluate the candidate, and (c) provide final semester grades.

Individuals or households, State or local government schools:

Responses: 31,000
Burden Hours: 4,334.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, SAIS–ADR, Room 1C638, The Pentagon, Washington, DC 20310–0107, telephone (202) 694–0754.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 10, 1987.

[FR Doc. 87–21194 Filed 9–14–87; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information; Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact for whom a copy of the information proposal may be obtained

Extension

Employer's Evaluation of Candidate; USMA Form 5–518 (OMB No. 0702–0061)

The USMA Form 5–518 is the form given to an employer by the candidate in order to receive credit for the work done outside the school/vocational environment. Without this form candidates would not receive recognition for this responsible activity as a component demonstrating leadership potential and maturity.

State or local governments, farms businesses or other for profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Responses: 3,500
Burden Hours: 584.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, SAIS–ADR, Room 1C638, The Pentagon, Washington, DC 20310–0107, telephone (202) 694–0754.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 10, 1987.

[FR Doc. 87–21195 Filed 9–14–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Innovative Control Technology Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Innovative Control Technology Advisory Panel.

Date and Time: September 30, 1987—9:00 a.m.–5:00 p.m.

Place: Washington Marriott Hotel, 1221 22d Street NW., Washington, DC 20037.

Contact: Sandy Guill, Department of Energy, Environment, Safety and Health (EH–22), 1000 Independence Avenue SW., Washington, DC 20585, Telephone: 202/586–4628.

Purpose of the Panel: To advise the Secretary of Energy on how to best achieve DOE's expanded innovative clean coal technologies program's objectives of reducing costs and improving efficiency by expanding emissions control options beyond those now available.

Tentative Agenda: Briefings and discussions of:

- DOE Clean Coal Program (CCTP–1).
- Selection Criteria Used in CCTP–1.
- Factors to be considered in selection criteria for Innovative Controls Program.
- Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sandy Guill at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 9, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87–21162 Filed 9–14–87; 8:45 am]

BILLING CODE 6450–01–M

Conduct of Employees; Notice of Waiver

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a position, insurance, or other similarly vested interest.

Mr. Carl P. Gertz is under consideration for the position of Project Manager, Commercial Nuclear Waste Management Project Office, in the Nevada Operations Office of the Department of Energy. Mr. Gertz has an interest in the Boeing Employee Retirement Plan, as a result of his past employment by the Boeing Company.

It has been established to my satisfaction that requiring Mr. Gertz to divest his interest in The Boeing Company Employee Retirement Plan would impose an exceptional hardship on him, and that such interest is a vested pension interest within the meaning of section 602(c) of the Act. Accordingly, I have granted Mr. Gertz a waiver of the divestiture requirements of section 602(a) of the Act, for the duration of his employment with the Department, with respect to his interest in the Boeing Company Employee Retirement Plan.

In accordance with section 208, Title 18, United States Code, Mr. Gertz will be directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon The Boeing Company unless his supervisor and the Counselor agree that the financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the service which the Government may expect of him.

Dated: September 3, 1987.

John S. Herrington,

Secretary of Energy.

[FR Doc. 87–21214 Filed 9–14–87; 8:45 am]

BILLING CODE 6450–01–M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Australia and European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Austria concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/EU(AT)–19, for the retransfer of irradiated fuel spheres and compacts containing 12.49 grams of uranium enriched to 9.6 percent in the isotope uranium–235, 0.0595 grams of uranium–233, 13.88 grams of thorium, and 0.12 grams of plutonium, from Austria to the Federal Republic of Germany for post-irradiation examination and subsequent disposal.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days the date of publication of this notice.

For the Department of Energy.

Date: September 8, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–21161 Filed 9–14–87; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangements; Sweden and Australia

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following sales:

Contract Number S–SW–65, for the sale of 296.8 grams of natural uranium and 21.297 grams of uranium enriched to 2.28 percent in the isotope uranium-235 for use as standard reference materials by ASEA–ATOM, Sweden. Contract Number S–AU–131, for the sale of 25.994 grams of natural uranium and 1.001 grams of uranium enriched to 49.38 percent in the isotope uranium-235 for use as standard reference materials by Amdel, Ltd., Adelaide, Australia.

In accordance with Section 131 of the Atomic Energy Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner that fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: September 8, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-21160 Filed 9-14-87; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for clearance to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (144 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses annually; (11) annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) a brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before October 15, 1987. Last notice published Monday, August 3, 1987.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible.

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC-585.
3. 1902-0138.
4. Reporting of Electric Energy Shortages and Contingency Plans Under PURPA 206.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for profit.
9. 30 respondents.
10. 30 responses.
11. 8,250 hours.
12. The reported information will be used to formulate options and recommendations for Commission consideration and action should shortages affecting reporting public utilities occur and to determine if statute provisions (FPA-202(g)) for equitable customer treatment are satisfied.

Statutory authority: Secs. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC, August 13, 1987.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 87-21215 Filed 9-14-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP87-109-000]

Proposed Change in FERC Gas Tariff; Algonquin Gas Transmission Co.

September 9, 1987.

Take notice that Algonquin Gas Transmission Company (Algonquin) on August 31, 1987, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A and B.

Algonquin states that it is making this filing pursuant to § 154.38(d)(6) of the Commission's Regulations in order to: (1) Include in its FERC Gas Tariff the procedure for collecting from its customers the annual charges assessed by the Commission under the Annual Charge Adjustment ("ACA") Clause (18 CFR 382); (2) to include in its rates the authorized ACA Unit Surcharge; and (3) to include in its FERC Gas Tariff the procedure to pass through to its customers any ACA surcharge it is charged by its suppliers.

The proposed effective date of the tariff sheets listed on Appendix A and B is October 1, 1987.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before September 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21131 Filed 9-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1953]

Existing Licensee's Intent To File an Application for New License; Consolidated Water Power Co.

September 9, 1987.

Take notice that on June 4, 1987, Consolidated Water Power Company, licensee for the Du Bay Project No. 1953 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Du Bay Project No. 1953 will expire on June 30, 1991. The project is located on the Wisconsin River in Marathon, Portage and Wood Counties, Wisconsin, and occupies federal lands under the jurisdiction of the Bureau of Land Management.

The principal project works currently licensed for Project No. 1953 are: (1) A concrete gravity dam and adjacent earth dikes; (2) a reservoir with a surface area of approximately 6,830 acres; (3) a powerhouse containing four generating

units with a total installed capacity of 7,200 kW; (4) a substation; and (5) a 44-kV transmission line, approximately 21 miles in length.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 1989.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87–7–000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87–7–000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–21133 Filed 9–14–87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2392]

Existing Licensee's Intent To File an Application for New License; Georgia-Pacific Corp.

September 9, 1987.

Take notice that on August 6, 1987, Georgia-Pacific Corporation, licensee for the Gilman Project No. 2392, has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Gilman Project No. 2392 will expire on December 31, 1990. The project is located on the Connecticut River in Essex County, Vermont and Coos County, New Hampshire, and has a total capacity of 4,850 kW.

The principal project works currently licensed for Project No. 2392 are: (1) The Gilman Dam, (a) a concrete gravity structure approximately 170 feet long and 29 feet high, and (b) a rock-filled timber crib dam approximately 108 feet long and 40 feet high, each with a crest elevation of 828.3 feet USGS; (2) 5-foot-high flashboards bringing the normal water surface elevation to 833.3 feet USGS; (3) a hydraulically operated crest gate 18 feet high and 27 feet wide; (4) a reservoir having an area of 130 acres, a storage capacity of 705 acre-feet, and a normal water surface elevation of 833.3 feet USGS; (5) a powerhouse containing four turbine-generator units, one rated at 2,250 kW, one rated at 1,000 kW, and two rated at 800 kW each for a total rated capacity of 4,850 kW; (6) a 200-foot-long transmission line; and (7) appurtenant facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1988.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87–7–000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87–7–000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–21134 Filed 9–14–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87–101–000]

Tariff Filing Overthrust Pipeline Co.

September 9, 1987.

Take notice that on August 31, 1987, Overthrust Pipeline Company (Overthrust), pursuant to 18 CFR 154.38(d)(6) and Part 382 of the Commission's regulations, tendered for filing and acceptance revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, as follows:

Third Revised Sheet No. 2
Fifth Revised Sheet No. 6
First Revised Sheet No. 9
Original Sheet No. 54–A

Additionally, pursuant to authority granted by order issued June 27, 1986, in Docket No. RP86–88–000 and by order issued December 19, 1986, in Docket Nos. RP86–88–002 and RP86–88–003, Overthrust tendered for filing and acceptance First Revised Sheet No. 12–A to its FERC Gas Tariff, Original Volume No. 1.

Overthrust states that the purpose of this filing is to (1) terminate Rate Schedule T–1, (2) add language to its FERC Gas Tariff to provide for an Annual Charge Adjustment (ACA) clause, and (3) implement the annual charge unit rate of $0.0021/Mcf in each of its rate schedules applicable to transportation. Overthrust requests an effective date of October 1, 1987, for all tendered tariff sheets.

Copies of the filing were served upon Overthrust's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–21127 Filed 9–14–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87–95–000]

Change in Tariff; Panhandle Eastern Pipe Line Co.

September 9, 1987.

Take notice that on August 28, 1987, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing revised sheets to its FERC Gas Tariff, Original Volume No. 1, as reflected in Appendix No. 1, and to its FERC Gas Tariff, Original Volume No. 2, as reflected in Appendix No. 2, to become effective October 1, 1987.

On May 29, 1987 the Commission issued Order No. 472 in Docket No. RM87–3–000. Order No. 472 provides that a natural gas company, such as Panhandle, may file an Annual Charge Adjustment (ACA) clause to its FERC Gas Tariff. Panhandle states that pursuant to Order 472 in Docket No. RM87–3–000 and § 154.38(d)(6)(i) of the Commission's Regulations, Panhandle proposes an Annual Charge Adjustment Provision (Section 20) to the General

Terms and Conditions of Panhandle's FERC Gas Tariff, Original Volume No. 1.

Panhandle has also included as Appendix No. 3 proposed alternate tariff sheets which reflect Rate Schedule PT settlement rates which are pending before the Commission in Docket No. RP86–116, *et al.* In the event Commission approval of the RP86–116, *et al.*, settlement rates is granted prior to October 1, 1987, Panhandle respectfully requests the Commission accept the proposed alternate tariff sheets included in Appendix No. 3. Panhandle requests that the Commission grant such waivers as may be necessary for acceptance of the tariff sheets submitted herewith, to become effective October 1, 1987, as previously described.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All motions or protests should be filed on or before September 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–21128 Filed 9–14–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST85–1730–001 and ST85–1874–001]

Extension Reports; Panhandle Gas Co.

September 9, 1987.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue sales of natural gas for an additional term of up to 2 years.[1]

The table below lists the name and addresses of each company selling pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

Any person desiring to be heard or to make any protest with reference to said extension reports should on or before September 23, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

EXTENSION LIST

[August 15–31, 1987]

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date	Expiration date [2]
ST85–1730–001 [1]	Panhandle Gas Co., P.O. Box 1188, Houston, TX 77001.	Pacific Gas and Electric Co.	08–17–87	D	08–15–87	11–15–87
ST85–1874–001 [1]	Panhandle Gas Co., P.O. Box 1188, Houston, TX 77001.	Piedmont Natural Gas Co.	08–17–87	D	08–31–87	11–15–87

[1] This extension report was filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

[2] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.

[FR Doc. 87–21136 Filed 9–14–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–873–000]

Application; Sunshine Energy Co.

September 9, 1987.

Take notice that on September 1, 1987, Sunshine Energy Company ("Sunshine"), filed in this proceeding an application pursuant to section 7 of the Natural Gas Act ("NGA") and Part 157 of the Commission's regulations, requesting blanket certificate authorization for (1) self-implementing sales for resale of certain natural gas in interstate commerce, without market restrictions, (2) pregranted abandonment of all sales for resale in interstate commerce, and (3) waiver of Part 154 of the Commission's Regulations concerning maintenance of rate schedules.

Sunshine states that the purpose of its application is to permit Sunshine to make sales for resale in interstate commerce of gas which is subject to all NGPA pricing categories. Sunshine also seeks parallel authority on behalf of producers who may sell gas to Sunshine or on whose behalf Sunshine may act as agent. Sunshine also seeks pre-granted abandonment authority to discontinue all sales made pursuant to the authority requested upon the earlier of the contract expiration date or the expiration of Sunshine's blanket authority.

Any person desiring to be heard or to make any protest with reference to Sunshine's application should on or before September 23, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

[1] Notice of these extension reports does not constitute a determination that a continuation of service will be approved.

Procedure. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any conference or hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21125 Filed 9-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-847-000]

Application; Texas Eastern Gas Services Co.

September 9, 1987.

Take notice that on August 24, 1987, Texas Eastern Gas Services Company ("TEGAS"), One Houston Center, 1221 McKinney, Houston, Texas 77010, filed in this proceeding an application pursuant to section 7 of the Natural Gas Act ("NGA") and Part 157 of the Commission's regulations, requesting blanket certificate authorization for (1) self-implementing sales for resale of certain natural gas in interstate commerce, without market restrictions, (2) pre-granted abandonment of all sales for resale in interstate commerce, and (3) waiver of Part 154 of the Commission's Regulations concerning maintenance of rate schedules.

TEGAS states that the purpose of its application is to permit TEGAS to make sales for resale in interstate commerce of gas which is available for sale, but is still subject to the certificate and abandonment provisions of the NGA. TEGAS further requests that the Commission declare in its order issuing the authorizations that the Commission's NGA jurisdiction over the activities and operations gf TEGAS is limited to the transactions for which authorization is sought in the Application.

Any person desiring to be heard or to make any protest with reference to said filing should on or before September 23, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any conference or hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21126 Filed 9-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-106-000]

Change in Tariff; Trunkline Gas Co.

September 9, 1987.

Take notice that on August 31, 1987; Trunkline Gas Company (Trunkline) tendered for filing revised sheets to its FERC Gas Tariff, Original Volume No. 1, as reflected in Appendix No. 1, and to its FERC Gas Tariff, Original Volume No. 2, as reflected in Appendix No. 2, to become effective October 1, 1987.

On May 29, 1987 the Commission issued Order No. 472 in Docket No. RM87-3-000. Order No. 472 provides that a natural gas company, such as Trunkline Gas Company (Trunkline), may file an Annual Charge Adjustment (ACA) clause to its FERC Gas Tariff. Trunkline states that pursuant to Order No. 472 in Docket No. RM87-3-000 and § 154.38(d)(6)(i) of the Commission's Regulations, Trunkline proposes an Annual Charge Adjustment Provision (Section 20) to the General Terms and Conditions of Trunkline's FERC Gas Tariff, Original Volume No. 1. This adjustment will permit the collection of 2.1 mills to recover from its customers annual charges assessed it by the Commission under Part 382 of the Commission's Regulations. Trunkline requests that the Commission grant such waivers as may be necessary for acceptance of the tariff sheets submitted herewith, to become effective October 1, 1987, as previously described.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 365.211, 385.214). All motions or protests should be filed on or before September 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21135 Filed 9-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP-115-000]

Proposed Changes in FERC Gas Tariffs Williston Basin Interstate Pipeline Co.

September 9, 1987.

Take notice that on August 31, 1987, Williston Basic Interstate Pipeline Company (Williston Basin), tendered for filing proposed changes to its FERC Gas Tariffs, First Revised Volume No. 1, Original Volume No. 1-A and Original Volume No. 2 applicable to its jurisdictional gas sales and transportation customers. Williston Basin states that the proposed changes would increase revenues from jurisdictional sales and services by $10,838,603 based on the 12-month period ending April 30, 1987, as adjusted. The proposed effective date is October 1, 1987.

The filing includes a proposal to eliminate Williston Basin's interruptible sales Rate Schedule I-1 and to allow such sales to be made within the revised contract quantities nominated by its sales customers and included in the filing. Williston Basin states that it will be submitting an application for abandonment of Rate Schedule I-1 pursuant to section 7(b) of the Natural Gas Act Shortly. The filing also incorporates a newly revised version of Rate Schedule E-1 in First Revised Volume No. 1 of Williston Basin's FERC Gas Tariff as compared to that submitted and rejected in Docket No. RP86-10-000 to allow the provision of emergency sales service pursuant to existing certified authority under the Commission's Regulations at 18. CFR 284.261 *et seq*. Additionally, the filing incorporates revisions of the authorized and unauthorized overrun provisions in the Company's Rate Schedule G-1 and SGS-1 in its FERC Gas Tariff, First Revised Volume No. 1 and recognizes the change to "best efforts" service of Rate Schedules X-5 and X-6 contained in its FERC Gas Tariff, Original Volume No. 2, by deleting the billing demand quantities shown for these latter two services. The Company notes that abandonment of the sales provided under Rate Schedules X-5 and X-6 is pending in Docket No. RP86-10-000, CP86-430-000 and CP86-431-000.

BEST COPY AVAILABLE

Conforming tariffs changes are proposed throughout to effectuate these revisions.

Copies of this filing were served on the Company's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with Rule 211 or 114 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21132 Filed 9-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10063-002]

Surrender of Preliminary Permit; Cumberland Mills Hydroelectric Limited Partnership

September 9, 1987.

Take notice that the Cumberland Mills Hydroelectric Limited Partnership, permittee for the Cumberland Mills Project No. 10063 located on the Presumpscot River in Cumberland County, Maine has requested that its preliminary permit be terminated. The preliminary permit was issued on December 10, 1986, and would have expired on November 30, 1989. The permittee states that analysis of the Cumberland Mills Project did not indicate feasibility for development.

The permittee filed the request on August 26, 1987, and the preliminary permit for Project No. 10063 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21129 Filed 9-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9924-001]

Surrender of Preliminary Permit; Trenton Falls Hydroelectric Co.

September 9, 1987.

Take notice that the Trenton Falls Hydroelectric Company, permittee for the Nine Mile Feeder Canal Project No. 9924, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9924 was issued on August 7, 1986, and would have expired on July 31, 1989. The project would have been located on the Nine Mile Feeder Canal, in Oneida County, New York.

The permittee filed the request on August 21, 1987, and the preliminary permit for Project No. 9924 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21130 Filed 9-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-4579-048 et al.]

Natural Gas Companies; Applications for Certificates, Abandonments of Service and Petitions to Amend Certifications; [1] Cities Service Oil & Gas Corp. et al.

September 9, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 23, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR § 385.211,385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-4579-048, D, Aug. 31, 1987.	Cities Service Oil & Gas Corp., P.O. Box 300, Tulsa, OK 74102.	Colorado Interstate Gas Co., Lease No. 6-1539132 (NE SW Section 35-33S-42W), Morton County, KS.	([1])	
CI60-169-000, D, Aug. 31, 1987.	....do	Colorado Interstate Gas Co., Lease No. 6-1548616 (S/2 NE, SE Less approximately 2 acres Section 19-34S-42W), Morton County, KS.	([2])	
CI61-1123-000, D, Aug. 31, 1987.	....do	Colorado Interstate Gas Co., Lease No. 6-1539015 (NE Section 25-33S-42W), Morton County, KS.	([3])	

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Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-3056-001, F, Aug. 26, 1987.	Cities Service Oil & Gas Corp, (Succ. to ARCO Oil & Gas Company, Division of Atlantic Richfield Co., (Opr.), *et al.*).	Trunkline Gas Co., Columbus Field Unit, Colorado County, TX.	[22]	
G-4319-001, F, Aug. 26, 1987.	.....do	.....do	[4]	
CI87-852-000, (CI67-824), B, Aug. 24, 1987.	.....do	Consolidated Gas Transmission Corp., Perry Township, Jefferson County, PA.	[6]	
CI87-845-000, (CI86-350-000), B, Aug. 21, 1987.	.....do	Transco Gas Supply Co., High Island Block A-273, OCS-G-2398, Offshore Texas.	[7]	
CI87-864-000, (CI67-865), B, Aug. 31, 1987.	.....do	El Paso Natural Gas Co., Reeves TXL Unit, Reeves County, TX.	[8]	
CI87-863-000, (CI62-1240), B, Aug. 31, 1987.	.....do	Northern Natural Gas Co., Division of Enron Corp., N/2 NE/4 Section 17-33S-21W, Clark County, KS.	[9]	
CI87-856-000, B, Aug. 28, 1987.	William P. Carr	El Paso Natural Gas Co., San Juan Basin, San Juan County, NM.	[15]	
CI87-857-000, B, Aug. 28, 1987.	.....do	.....do	[15]	
CI87-858-000, B, Aug. 28, 1987.	.....do	.....do	[15]	
CI87-859-000, B, Aug 28, 1987.	.....do	.....do	[15]	
CI87-853-000, (CI75-128), B, Aug. 25, 1987.	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	Trunkline Gas Co., South Marsh Island Block 261, Offshore Louisiana.	[16]	
G-11479-000, D, Aug. 26, 1987.	Amoco Production Co., P.O. Box 3092, Houston, TX 77253.	El Paso Natural Gas Co., Langlie Mattix, *et al.*, Lea County, NM.	[17]	
CI87-862-000, (CI84-147), B, Aug. 13, 1987.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA 94120-7309.	Natural Gas Pipeline Company of America, West Cameron 81 Field, Offshore Louisiana.	[19]	
CI87-860-000, (CI67-658), B, Aug. 28, 1987.	Bob Hurt, P.O. Box 2748, Pikeville, KY 41501.	Columbia Gas Transmission Corp., Pike County, KY.	[20]	
CI87-832-000, (G-10411), B, Aug. 17, 1987.	Brookover Enterprises, P.O. Box 1034, Garden City, KS 67846.	Panhandle Eastern Pipeline Co., Novinger Marmaton Field, Chester Reservoir, Section 22-33S-30W, Mease County, KS.	[23]	
CI87-849-000, A, Aug. 26, 1987.	Phillips Petroleum Co., 990-G Plaza Office Bldg., Bartlesville, OK 74004.	Transwestern Pipeline Co., Feldman Field, Hemphill County, TX.	[25]	
CI87-850-000, B, Aug. 21, 1987.	Silver Creek Management Corp., 1900 Amidon—Suite 221, Wichita, KS 67202.	Panhandle Eastern Pipeline Co., Hardtner Field, Barber County, KS.	[26]	
CI87-851-000, B, Aug. 21, 1987.	.....do	.....do	[26]	
CI87-842-000, (CI79-471), B, Aug. 20, 1987.	Mesa Operating Ltd. Partnership, P.O. Box 2009, Amarillo, TX 79189-2009.	ANR Pipeline Co., Block 273, High Island, Offshore Texas.	[27]	
CI87-865-000, (CI64-1198), B, Aug. 31, 1987.	Cibola Oil & Gas Corp.	Natural Gas Pipeline Company of America, Penn Griffith Field, Rusk County, TX.	[28]	
CI87-866-000, B, Aug. 31, 1987.	Canadian Occidental of California, P.O. Box 300, Tulsa, OK 74102.	Transco Gas Supply Co., High Island, Block A-273, OCS-G-2398, Offshore Texas.	[29]	
CI87-861-000, (G-6613), B, Aug. 31, 1987.	Union Pacific Resources Co., 1400 Smith Street—Suite 1500, Houston, TX 77002.	Williams Natural Gas Co., West Edmond Field, Logan County, OK.	[30]	
CI68-90-000, D, Aug. 31, 1987.	Santo Resources, Inc., P.O. Box 301, Waynoka, OK 73860.	Panhandle Eastern Pipeline Co., Fair #1 Unit, Northeast Waynoka Field, Woods County, OK.	[31]	
G-3244-000 & CI72-686-001, F, Aug. 25, 1987.	Cabot Corp., 550 Westlake Blvd., Houston, TX 77079.	El Paso Natural Gas Co., Winkler Field, Winkler County, TX.	[32]	

[1] Lease No. 6-1539132 reverted to the U.S. Government on 7-5-85, after which Cities Service no longer had a working interest in such lease.

[2] Lease No. 6-1548616 reverted to the U.S. Government on 1-12-87, after which Cities Service no longer had a working interest in such lease.

[3] Lease No. 6-1539015 reverted to the U.S. Government on 3-27-87, after which Cities Service no longer had a working interest in such lease.

[4] Cities Service acquired effective 6-1-86, .0641823% working interest in Tracts 1, 5 and 19 of Atlantic Richfield Company; effective 7-1-74, .0000177% working interest in Tract 19 of John E. and Polly R. Daniel; effective 6-1-86, .0001002% working interest in Tract 19 of Homestead Farms Co., Ltd., L.P.; and effective 1-1-85, .0000177% working interest in Tract 19 of Carl G. Marquardt Estate, all in Columbus Field Unit, Colorado County, Texas.

[5] Not used.

[6] By Assignment of Oil and Gas Leases and Bill of Sale executed 5-4-87, effective 1-1-87, Cities Service sold all of its wells and assigned its interest in the oil and gas leases ⅓ to J & J Enterprises, Inc., and ⅔ to Consolidated Gas Transmission Corporation.

[7] Production from High Island Block A-273 OCS-G-2398 has ceased and all wells approved for P&A and lease terminated 12-16-86.

[8] By Agreement of Sale and Purchase effective 1-1-87, Cities sold all of its interest in the Reeves TXL Units #1-9 leases located in Sections 44 and 46, Block 50, Township 7, T&P Railroad Survey, Reeves County, Texas, from depths below 5,400 feet, proportionally 80% to Helmerich & Payne, Inc., and 20% to CNG Producing Company.

[9] By Assignment of Oil and Gas Leases and Bill of Sale effective 4-1-87, Cities assigned its interest in the McMinimy Unit to G.L. Stafford, Jr.

[10] Not used.
[11] Not used.
[12] Not used.
[13] Not used.
[14] Not used.
[15] Termination of contract. In addition Applicant requests pregranted abandonment for three years for spot market sales made under Applicant's small producer certificate.
[16] The contract passed its primary term and Conoco has no remaining production subject to Rate Schedule No. 412.
[17] Effective 2-1-87, Amoco sold all of its interest in the Gregory Federal "A" Lease to Union Texas Petroluem Corporation.
[18] Not used.
[19] Chevron no longer owns an interest in the acreage originally covered by Rate Schedule No. 194 and gas reserves depleted and sales contract terminated.
[20] The rate paid for the purchase of gas under the term of the contract is $.35/Mcf. The gas cannot be produced at this price. It is requested that contact number 1169 be terminated and that Columbia Gas Transmission Corporation be ordered to transport any remaining volumes from the dedicated lease to Columbia Gas of Kentucky.
[21] Not used.
[22] Cities Service acquired effective 6-1-86, .0458635% working interest in Tract 6 of Atlantic Richfield Company in Columbus Field Unit, Colorado County, Texas.
[23] Uneconomical to operate.
[24] Not used.
[25] Applicant is filing under Gas Purchase Contract dated 6-1-80 as amended by 1-1-87 purchase agreement.
[26] Uneconomical and well is plugged and lease abandoned.
[27] Production ceased and leases expired.
[28] Depleted reserves.
[29] Production from High Island Block A-273, OCS-G-2398 has ceased and all wells approved for P&A and lease terminated 12-16-86.
[30] Assignment of contract to Midstates Pipeline Company.
[31] Unprofitable, well was plugged and abandoned. Panhandle Eastern Pipeline Company requested authority to remove wellhead measurement facilities.
[32] By an Assignment Agreement dated and effective 5-1-87, Phillips 66 Natural Gas Company assigned to Cabot its interests in certain gas sales agreements with El Paso Natural Gas Company.
Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 87-21138 Filed 9-14-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. C187-854-000]

Application for Certificate of Public Convenience and Necessity and for Pre-Granted Abandonment; ARCO Oil and Gas Co., Division of Atlantic Richfield Co. ("ARCO")

September 9, 1987.

Take notice that on August 27, 1987, ARCO Oiland Gas Company, a Division of Atlantic Richfield Company (ARCO) filed an application requesting the Federal Energy Regulatory Commission (Commission) to issue an Order permitting and approving a Blanket Certificate of Public Convenience and Necessity for Sales for Resale in Interstate Commerce with Pre-granted Abandonment Authority upon the termination or expiration of the term of such sales. The requested authorizations would allow ARCO to purchase and resell, with pre-granted abandonment, natural gas subject to the jurisdiction of the Commission under the Natural Gas Act. ARCO wishes to sell NGA gas produced by other producers which has been released by the original purchaser or never didicated to a contract. The gas sold pursuant to the requested authorizations would be gas for which the entity selling to ARCO has received appropriate authority from the Commission.

ARCO also requested that the Commission, (1) grant the request for a term of three years; (2) waive requirements under sections 154 and 271 of the Commission's Regulations concerning the establishment and maintenance of rate schedules and blanket affidavits, and waiver of other regulations which may impede the granting of the requested authorizations; and (3) pregranted abandonment of the sales initiated pursuant to the authority requested therein upon contract expiration or termination of the contracts governing such sales.

ARCO states that it is not affiliated with any interstate pipeline, and does not anticipate setting up a separate marketing entity separate from its oil and gas producing operations.

ARCO states that the requested authority will give ARCO maximum flexibility in moving supplies of gas that might otherwise be shut in, or enhance its ability to serve a wider range of markets, thus promoting competition in the nationwide gas market.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 23, 1987, file with the Federal Energy Regulatory Commission, Washington DC 20436, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it but will not serve to make the protestants paries to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-21137 Filed 9-14-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA88-40-000, RP87-102-000]

Change in Rates; Raton Gas Transmission Co.

September 9, 1987.

Take notice that Raton Gas Transmission Company (Raton) on August 28, 1987, tendered for filing, proposed changes in its FERC Gas Tariff, Volume No. 1, consisting of Eighth Revised Sheet No. 4. The change in rate is for jurisdictional sales and service.

Raton states that the instant filing is a minor rate change as required by 18 CFR 154.38 (d)(4) of the Regulations and reallocates cost-of-service between Demand and Commodity. In addition it provides for adjusted rates from supplier filed on August 14, 1987, and proposed to become effective October 1, 1987. Minor reduction in demand quantities are included therein.

Copies of Raton's filing are on file with the Commission and are available for public inspection. In addition, copies have been served on Raton's

Jurisdictional Customer and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21140 Filed 9-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-104-000]

Proposed Change in Tariff; South Georgia Natural Gas Co.

September 9, 1987.

Take notice that on August 31, 1987, South Georgia Natural Gas Company (South Georgia) tendered for filing certain revised sheets to its FERC Gas Tariff with proposed effective dates of May 1, 1987, July 1, 1987, and October 1, 1987. South Georgia states that the tariff sheets which are proposed to become effective on May 1, 1987, and July 1, 1987, extend the reduced settlement rates established pursuant to the Stipulation and Agreement in Docket Nos. RP87-13-000 and RP87-69-000 to its Rate Schedule X-6 through X-13. The October 1, 1987, tariff sheets reflect the establishment of an Annual Charge Adjustment Clause in accordance with the terms of the Commission's Order No. 472 to be applicable to all of South Georgia's sales and transportation rate schedules.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such motions or protests should be filed on or before September 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21139 Filed 9-14-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures; Gulf Oil Corp.

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy has adopted the final procedures to be followed in refunding approximately $31 million in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings brought by the Economic Regulatory Administration of the Department of Energy involving Gulf Oil Corporation.

DATE AND ADDRESS: Applictions for Refund must be filed in duplicate, postmarked no later than June 30, 1988, and addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Applications should conspicuously display a reference to the Case Number HEF-0590.

FOR FURTHER INFORMATION CONTACT: Virginia Lipton, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2400.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a June 14, 1985 consent order between the DOE and Gulf Oil Corporation. That consent order settled certain disputes between the firm and the DOE concerning Gulf's possible violations of DOE regulations in its sales of crude oil and refined petroleum products. The consent order covers the period January 1, 1973 through January 27, 1981.

The Decision sets forth the procedures and standards that the DOE has formulated to distribute approximately $31 million, the available portion of the Gulf consent order fund allocated to Gulf refined petroleum products. Under the procedures adopted, purchasers of Gulf refined products may file claims for refunds from the consent order fund. The amount of the refund available to an applicant will generally be a pro rata or volumetric share of the Gulf consent order fund allocated to refined products. In order to receive a refund, a claimant must furnish the DOE with evidence that it was injured by the allegedly unlawful prices for covered products charged by Gulf. However, the Decision indicates that no separate, detailed showing of injury will be required of end-users of the relevant product, or of firms which file refund claims in amounts of $5,000 or less. The Decision further indicates that an applicant whose claim, if granted, would result in a refund greater than $5,000, but not greater than $50,000 may elect to receive a refund based on 40 percent of its allocable share. According to the Decision, such an applicant will not be required to provide a separate demonstration of injury. The Decision also determines that applicants whose claims, if granted, would result in a refund of more than $50,000 will be required to demonstrate that they were injured as a result of their purchases of Gulf product. The DOE further adopted a rebuttable presumption that Gulf consignees experienced an injury of 10 percent as a result of their sales of Gulf product. The DOE has prepared a suggested application format for claimants. A copy of the format may by otained by contacting the Office of Hearings and Appeals.

Applications for Refund must be postmarked no later than June 30, 1988, and should be sent to the address set forth at the beginning of this notice. Refund applicants must file two copies of their submission. All applications will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1-234, 1000 Independence Avenue SW., Washington, DC 20585.

Date: September 8, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals

Decision and Order

September 8, 1987.

Name of Firm: Gulf Oil Corp.

Date of Filing: July 25, 1985.

Case Number: HEF-0590

On July 25, 1985, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the

OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving Gulf Oil Corporation (Gulf). *See* 10 CFR Part 205, Subpart V. The settlement agreement resolved DOE allegations that Gulf violated the mandatory petroleum regulations in its sales of crude oil and refined petroleum products. On October 15, 1986, the OHA issued a Proposed Decision and Order tentatively setting forth procedures for distributing the Gulf settlement fund. 51 FR 37479 (October 22, 1986). We further provided a 30-day period for submission of comments regarding our proposal. That period elapsed on November 21, 1986. The present Decision will address the comments received in connection with the procedures proposed for disbursement of the portion of the Gulf fund allocated to refined products and will set forth the final procedures for distribution of the Gulf refined product refund pool.[1]

Section I below summarizes the procedures tentatively adopted in the Proposed Order for distributing the Gulf refined product refund pool. Section II reviews and considers the comments we received regarding those procedures. Section III sets forth the final Gulf refund procedures applicable to parties claiming refunds based on alleged overcharges by Gulf in sales of refined products. A claimant should take special note of those requirements applicable to its particular circumstances. The specific application requirements are followed by a discussion of general requirements which apply to all refund applications involving refined petroleum products. We have also prepared a suggested form that refund applicants may use. This optional printed application form is available from OHA. Applications for refund from the Gulf refined product pool must be postmarked by June 30, 1988.

I. Summary of Proposed Gulf Refund Procedures

As we stated in the Proposed Decision, during the period covered by the settlement agreement, Gulf was engaged in the production, sale and refining of crude oil, as well as in the sale of refined petroleum products. DOE audits of Gulf's operations revealed possible regulatory violations in the firm's application of the federal petroleum price and allocation regulations. In order to settle claims and disputes between Gulf and the DOE, the two parties entered into a consent order which became final on June 14, 1985. Under the terms of the consent order, Gulf remitted $146,550,226.79 to the DOE in settlement of alleged violations occurring between January 1, 1973 and January 27, 1981 (the consent order period). These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution.

Because the consent order resolves alleged violations involving both sales of crude oil and refined products, we proposed to divide the fund into two pools. *See Office of Special Council*, 10 DOE ¶ 85,048 (1982) (*Amoco*). As we stated in the Proposed Order, according to information set forth in the **Federal Register** Notice announcing the proposed Gulf consent order, approximately 71 percent of the aggregate amount of the alleged violations settled by the consent order concern Gulf's production and sales of crude oil. 50 FR 9493, 9496 (March 6, 1985). We therefore proposed that this same percentage of the principal contained in the Gulf escrow account, or $104,050,661, be set aside as a pool of crude oil funds. We further proposed that the remaining 29 percent of the Gulf funds, or $42,499,566 be made available for distribution to claimants who demonstrate that they were injured by Gulf's alleged violations in sales of refined petroleum products. It is this latter sum that is the subject of the present Order.

The Proposed Order set forth the procedures under which purchasers of Gulf refined petroleum products could apply for refunds from the $42 million pool apportioned to refined products. In this regard, we proposed several presumptions. First, we presumed that the alleged overcharges were dispersed equally in all sales of refined product made by Gulf during the consent order period and that refunds should therefore be made on a pro rata or volumetric basis. Under the volumetric refund approach, a claimant is eligible to receive a refund equal to the number of gallons purchased times the per gallon refund amount. We also refer to this volumetric refund amount as the claimant's "allocable share."[2] In the Proposed Order, we set the per gallon refund amount at $.00084 per gallon. We derived this figure by dividing the consent order funds allocated to the Gulf refined products refund pool ($42,499,566) by the number of gallons of covered products other than crude oil which we believe that Gulf sold from August 1973 through the date of decontrol of the relevant product (66,387,563,569). However, we also recognize that some claimants may have been disproportionately overcharged, and indicated that any purchaser of Gulf refined product may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon and Gasoline Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

We proposed to adopt a number of presumptions concerning injury. These presumptions excuse certain categories of refund applicants that purchased Gulf products from submitting proof that they were injured by Gulf's alleged overcharges, thus simplifying the refund process for these applicants.

We tentatively found that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry would not be required to provide a separate demonstration that they were injured by Gulf's alleged refined product overcharges. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, we found an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We proposed, therefore, that end-users of Gulf products need only document that they were ultimate consumers of a specific amount of Gulf products to make a sufficient showing that they were injured by the alleged overcharges.

We also tentatively decided not to require firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement to demonstrate injury as a result of alleged overcharges on refined products. Although such firms, e.g., public utilities and agricultural cooperatives, generally would have passed overcharges through to their customers, they generally would pass through any refunds as well. Therefore, we suggested that we would require such applicants to certify that they will pass any refund received through to their customers, to provide us with a full explanation of how they plan to accomplish this restitution, and to explain how they will notify the

[1] The final procedures for disbursing the Gulf crude oil refund pool will be considered under Case No. KFX-0037

[2] Claimants are also eligible to receive a pro rata share of interest accrued on the escrowed funds.

appropriate regulatory body or membership group of their receipt of the refund money. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We noted, however, that a cooperative's sales of Gulf products to non-members would be treated in the same manner as sales by other resellers.

We also proposed specific procedures regarding refund applications filed by resellers, retailers and refiners. We proposed, first, to adopt a small-claims presumption, as we have in many previous cases. Under the small-claims presumption, a claimant seeking total refunds of $5,000 or less (excluding interest) is not required to submit any evidence of injury, beyond establishing the volume of Gulf products it purchased during the settlement period. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984). We believe that the cost to the applicant of gathering evidence of injury to support a small refund claim and the cost to the OHA of analyzing the additional evidence might be outweighed by the benefits that could be achieved by receiving the additional information.

In the Proposed Order we also stated that refiners, resellers and retailers seeking refunds greater than $5,000 would be expected to provide a more detailed injury showing. We tentatively adopted a further presumption for refiner, reseller or retailer applicants whose claims, if granted, would result in a total refund greater than $5,000, but no greater than $50,000, excluding interest (mid-range claimants). Based on our review of prior cases, we believed it a reasonable presumption that firms that sold Gulf refined products were likely to have experienced some injury as a result of the alleged overcharges. *E.g., Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986); *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985) (*Mobil*); *Amoco*, 10 DOE at 88,222–23. Based on national average data and the conclusions regarding absorption of injury reached in those cases, we tentatively decided to adopt an injury presumption level of 40 percent in the Gulf refund proceeding. Accordingly, we proposed that any mid-range claimant be permitted to elect to receive a refund based on 40 percent of its total allocable or volumetric share. We tentatively determined that in order to receive a refund based on this 40 percent presumption, an applicant would be required to substantiate the volume of product it purchased from Gulf. We also stated that any mid-range claimant may elect not to receive a refund based on this presumption and may, instead, prove the extent of its injury using the criteria set forth for large refund claimants.

Finally, we proposed that a large refund applicant in this general category, one whose total claims, if granted, would result in a refund of more than $50,000 excluding interest, be required to provide a detailed showing of injury. We stated in the Proposed Order that such an applicant would be expected to show that it did not pass along the alleged overcharges to its own customers, by demonstrating that it maintained a bank of unrecovered product costs beginning with the first month of the period for which a refund was claimed through the date on which that product was decontrolled. In addition, we provided that a claimant specifically establish injury by showing that it did not pass through those increased costs. We suggested that such a showing might be made through a demonstration of lowered profit margins, decreased market share, or depressed sales volumes during the period of purchases from Gulf. *American Pacific Int'l.*, 14 DOE ¶ 85,158 (1986).

II. Comments Regarding Distribution of the Gulf Refined Product Pool

We received comments concerning our proposed procedures for disbursement of the Gulf refined products refund pool from the Gulf Jobbers Group and the Gulf Oil Wholesale Marketers Association (hereinafter referred to collectively as The Jobbers). The Jobbers assert that the small-claims limit of $5,000 should be increased with respect to claims made by resellers of Gulf refined products. The Jobbers allege that the $5,000 small claims threshold unfairly discriminates against them. They state that the volumetric refund share of a Gulf retailer of average size (one that purchased approximately 5.7 million gallons of product over the consent order period) would be $3,654. The Jobbers state that the average retailer would therefore be eligible to receive its full allocable share of the Gulf consent order fund without the necessity of proving injury. The Jobbers assert that a median-volume jobber (i.e., non-retail reseller) sold approximately 4.4 million gallons of product annually. The "full volumetric refund" of the median jobber applicant would therefore be approximately $22,000. The Jobbers state that jobber applicants receive unfavorable treatment when compared to retailer applicants, since jobbers, unlike retailers, cannot receive a "full volumetric refund" without a showing of injury. The Jobbers assert that the small-claims limit should be increased to allow jobber claimants that purchased "average" or "median" volumes of Gulf product to be subject to a full injury presumption, enabling them to receive a refund of approximately $22,000 with no injury showing.

The Jobbers have misperceived the function of the small claims threshold. The principal purpose of the $5,000 presumption is not to provide a "full volumetric refund" to an average size applicant. This is obvious because the volumetric amount, a function of the funds made available and the volume of products sold by the consent order firm, will vary considerably in each proceeding. Thus, the $5,000 threshold in one proceeding may permit a "full volumetric refund" to an average size firm, and in others may allow a "full volumetric refund" to a smaller than average firm or larger than average firm. The focus of the small claims injury presumption is on the size of the refund to be granted, and on whether the benefits to be obtained by the increased accuracy that is possible through analyzing injury data outweigh the burdens of supplying and reviewing the data. We believe that if a claimant requests a "full volumetric refund" that amounts to a sum greater than $5,000, the additional effort necessary for a detailed injury analysis is warranted. The $22,000 refund figure recommended by The Jobbers represents a significant sum that should not be disbursed without consideration of absorption of overcharges.

Moreover, as we pointed out above, a refund greater than $5,000 without an actual injury showing is possible through the 40 percent presumption method. This method does not provide a "full volumetric refund" because it presumes an injury level of 40 percent, and reduces the volumetric refund level accordingly. We emphasize, however, that the "average" jobber referred to above, would, under our 40 percent presumption methodology, be able to receive a refund of $8,800 (40 percent of $22,000) with no actual showing of absorption of overcharges. Thus, even without an injury showing, the average jobber could receive a refund considerably greater than that of the "average retailer" ($3,600) and greater than the $5,000 small claims threshold. In view of these considerations, we will not adopt this aspect of The Jobbers' suggestions.

The Jobbers also have raised the issue of the appropriate standards to be applied in considering Applications for Refund filed by consignees of Gulf product. A consignee agent distributes covered products to purchasers pursuant

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to a contractual arrangement with a refiner, under which the refiner retains title to the covered products and specifies the prices to be paid by the purcahser. The refiner pays the consignee agent a commission on a per-gallon basis. 10 CFR 212.31.

The Jobbers point out that Gulf distributed 50 percent of its motor gasoline and middle distillates through more than 700 consignees. The Jobbers state that Gulf consignees were injured by Gulf in two ways. First, The Jobbers allege that due to Gulf's desire to maintain illegally high prices, consignees were forced to accept reduced commissions in order that the Gulf product it sold could remain competitively priced. Secondly, The Jobbers contend that consignees were forced to refuse new business because Gulf's prices at times were so uncompetitive that consignees would have been forced to accept a per gallon loss. The Jobbers therefore request that we adopt a presumption granting consignees a full volumetric refund on every gallon that a consignee did resell for Gulf.

In view of the large number of Gulf consignees who comprise the potential applicant pool in this proceeding, we agree with The Jobbers that it will be useful to set forth principles for considering the claims of this group of applicants. For the reasons set out below we will adopt a presumption of injury, as suggested by The Jobbers, although we will not use the precise presumption they recommend.

In previous decisions, we have adopted the rebuttable presumption that consignees were not economically injured as a result of their sales of a consent order firm's product, since they received a set per gallon commission fee that was added to the consent order firm's wholesale price. *See Amoco*, 10 DOE ¶ 85,048; *Gulf Oil Corp./C. F. Canter Oil Co.*, 13 DOE ¶ 85,388 (1986) (*Canter*).

In *Canter*, a Tennessee Gulf consignee overcame this presumption, adopted in a prior Gulf refund proceeding, by demonstrating that its State's overall gasoline consumption increased during the consent order period, while its own total gasoline sales volume decreased. *See Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984) (*Gulf I*). The refund in *Canter* was calculated by multiplying the following three factors: (i) The number of gallons of motor gasoline Gulf consigned to the claimant during the consent order period, (ii) the claimant's loss of potential sales (equal to the decrease in its gasoline sales volume plus the percentage increase in its State's gasoline consumption during the relevant period), and (iii) the Gulf volumetric refund amount. This approach has been adopted in several subsequent Gulf consignee cases. *E.g., Gulf Oil Corp./G.W. Mothershed Oil Co.*, 14 DOE ¶ 85,204 F(1986); *Gulf Oil Corp./Gilbert Enterprises, Inc.*, 14 DOE ¶ 85,356 (1986); *Gulf Oil Corp./Knight Oil Co.*, 15 DOE ¶ 85,017 (1986); *Gulf Oil Corp./Kenneth R. Greive Dist.*, 15 DOE ¶ 85,077 (1986); *Gulf Oil Corp./John D. Glover & Sons*, 15 DOE ¶ 85,181 (1986). The lost sales percentages in these cases generally ranged from .24 percent to 36 percent, with many successful claimants experiencing a combined drop in their own sales and statewide consumption increases of approximately 6 to 15 percent.

Based on these cases and on the experience we have gained regarding consignee applicants in *Gulf I*, we now believe that it is appropriate to adopt the following consignee presumption in the present proceeding. *See* 10 CFR 205.282(e). Specifically, we will adopt a rebuttable level of injury presumption of 10 percent for all consignees of any Gulf product during the consent order period. We believe that this percentage figure is reasonable in view of the combined percentage sales losses of consignees and statewide consumption increases demonstrated in our *Gulf I* consignee refund cases. Accordingly, a consignee may elect to receive a refund based on 10 percent of its total allocable or volumetric share. As with other presumptions adopted in our refund proceedings, any consignees applicant will be free to rebut this presumption and prove a greater injury in order to receive a larger refund.

After considering all comments received, we are now prepared to issue final procedures applicable to refund claims from the Gulf refined product pool. We have summarized these procedures below.

III Refund Procedures for the Gulf Refined Product Pool

This section sets forth the considerations applicable to refund claims from the pool apportioned to Gulf refined products.[3] The Gulf settlement fund available for refined products will be distributed to purchasers of Gulf refined product who satisfactorily demonstrate that they were injured by Gulf's alleged pricing violations. From our experience with Subpart V proceedings, we believe that potential claimants will fall into the following categories: (1) End-users, i.e., consumers who used the Gulf refined products; (2) regulated entities not subject to the former federal oil price controls that used Gulf products in their businesses, or cooperatives that sold Gulf products in their businesses; and (3) refiners, resellers or retailers who resold the Gulf products.

As we discussed in our Proposed Order, refunds will generally be made on a pro rata or volumetric basis. The volumetric refund amount in this special refund proceeding is $.00064 per gallon. However, we recognize that the impact on an individual purchaser might have been greater. Therefore, any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co.*, 12 DOE ¶ 85,054 (1984).

(A) Specific Application Requirements for Each Category of Refined Product Refund Applicants

(1) Refund Applications by End-Users

As discussed above, we are adopting a finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged refined product overcharges settled by the Gulf consent order. End-user claimants need only document their purchase volumes of Gulf products to make a sufficient showing that they were injured by the alleged overcharges.

(2) Refund Applications by Regulated Firms or Cooperatives

As we further stated above, agricultural cooperatives and regulated firms, such as public utilities, that are required to pass on to their customers the benefit of any refund received will be exempted from the requirement that they make a detailed showing of injury. *See Tenneco Oil Co./Farmland Industries, Inc.*, 9 DOE ¶ 82,597 (1982); *Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). Instead, those firms and cooperative groups will be required to certify that they will pass any refund received through to their customers, to provide us with a full explanation of the manner in which they plan to accomplish this restitution to their customers and to notify the appropriate

[3] Pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, (PODRA), the DOE must determine the amount of oil overcharge funds held in escrow that is not needed to make restitution to injured parties or to meet other commitments. These excess funds are made available to State governments for use in energy conservation programs. PODRA, section 3003(c). Pursuant to PODRA, $11,531,425.83 of the $42,499,566 refined product pool plus interest was disbursed to the States in 1986. 51 FR 43964 (December 5, 1986). We continue to believe that the remaining $30,968,140.17 will be sufficient to pay all claims seeking refunds from the Gulf refined product pool.

regulatory body of the receipt of refund money. A cooperative's sales of Gulf products to nonmembers will be treated in the same manner as sales by other resellers.

(3) Refund Applications by Resellers, Retailers and Refiners

(a) *Refiners, Resellers and Retailers Seeking Refunds of $5,000 or Less.* We are adopting the small-claims presumption set forth in the Proposed Order. Therefore, a claimant seeking a refund of $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of Gulf refined product it purchased during the consent order period.[4] *See Texas Oil & Gas Corp.*, 12 DOE at 88,210; *Marion Corp.*, 12 DOE ¶ 85,014 (1984). In addition to the general information required from all applicants, this type of claimant need only establish, through substantiating the volumes of purchases, that it is a small-claims applicant.

(b) *Refiners, Resellers and Retailers Seeking Refunds Greater Than $5,000.* We will also adopt a mid-range injury presumption of 40 percent. This presumption may be elected by a reseller/refiner/retailer applicant whose claim would result in a refund greater than $5,000 but not greater than $50,000 (excluding interest). These applicants will be required only to establish the volumes of refined product purchased from Gulf. Thus, they may elect to receive a refund based on 40 percent of their allocable share. Of course, a mid-range applicant may elect not to receive a refund based on this presumption and may, instead prove the extent of its injury using the criteria applicable to large claimants. Conversely, any applicant in this category may limit the amount of the refund it is requesting to no more than $50,000 and elect the 40 percent presumption method.

A claimant seeking a refund of more than $50,000 will be required to provide a detailed demonstration of its injury, as well as detailed purchase volume information. Such a claimant will be required to demonstrate that it maintained a bank of unrecovered product costs. In addition, the claimant must show, through market conditions or otherwise, that it not pass through those increased costs to its customers. Such a showing might be made though a demonstration of a competitive disadvantage, lowered profit margin, decreased market share, or depressed sales volume during the period of purchases from the consent order firm.

(4) Refund Applications by Spot Purchasers

If a claimant made only sporadic purchases of significant volumes of Gulf product, we consider that claimant to be a spot purchaser. We believe that in most circumstances such a claimant should not receive a refund, since it is unlikely to have experienced injury. Purchasers on the spot market tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Gulf product at increased prices unless they were able to pass through the full amount of the quoted selling price at the time of purchase to their own customers. *See Vickers*, 8 DOE at 85,396–97. Therefore, an applicant which made only spot purchases from Gulf will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishes the extent to which it was injured as a result of its purchases of Gulf refined product during the consent order period. *See Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986). Spot purchasers will *not* be able to use the injury presumption described above.

(5) Applicants Seeking Refunds Based on Allocation Claims

We also recognize that we may receive claims alleging Gulf allocation violations. Such claims are based on the consent order firm's alleged failure to furnish petroleum products that it was obliged to supply to the claimant under the DOE allocation regulations. *See* 10 CFR Part 211. We will evaluate refund applications based on allocation claims by referring to standards such as those set forth in *OKC Corp./Town & Country Markets, Inc.*, 12 DOE ¶ 85,094 (1984), and *Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984).

(6) Refund Applications by Consignees

As we explained above, we have decided to adopt a presumption that Gulf consignees generally experienced an injury of 10 percent as a result of their sales of Gulf product. However, consignees may rebut this presumption and establish a greater level of injury.

(7) Minimum Refunds

As in previous cases, we will establish a minimum refund amount. We have found through our prior experience in refund cases that the cost of processing claims outweighs the benefits of restitution when refunds of less than $15 are sought. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982).

(B) General Refund Application Requirements for Claims From the Gulf Refined Product Pool

There is a suggested application form available from OHA. Gasoline retailers applicants using the suggested form must file a separate form for *each gasoline station* for which a refund is requested. All other applicants using the suggested form should file one application showing total gallonage of all Gulf refined products purchased during the covered period. Such applicants should attach a supporting schedule with a separate volume calculation for *each product*. We will accept all applications that contain the information necessary to process a claim, whether or not the suggested form is used. For those claimants not using the suggested form, the information that must be included in an application is set forth below.

1. An application for refund must be in writing, signed by the applicant, and specify that it pertains to the Gulf Oil Corporation Special Refund Proceeding, Case No. HEF–0590.

2. Each applicant should furnish its name, street or post office address, and its telephone number. If the applicant is a business firm, it should furnish all other names under which it operated during the period for which the claim is being filed.

3. Each applicant should specify how it used the product—i.e., whether it was a refiner, reseller, retailer, consignee or end-user.

4. Each applicant must submit a monthly, quarterly or yearly purchase schedule for Gulf purchases during the period August 1973 through January 27, 1981.

5. If an applicant purchased Gulf refined products from a reseller, it must establish its basis for belief that the product originated with Gulf and identify the reseller from whom the product was purchased. Indirect purchasers who either fall within a class of applicants whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of Gulf products passed through the alleged Gulf overcharges to its own customers.

6. The application for refund should contain the name, address, and telephone number of the person who prepared the application. If the preparer was someone other than the applicant,

[4] Claimants whose monthly purchases during the period for which a refund is claimed result in a volumetric refund of greater than $5,000, but who cannot establish that they did not pass through the alleged price increases to their customers, or who limit their claims to the threshold amount will be eligible for a refund of the $5,000 threshold amount without being required to submit additional evidence of injury. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,122 (1982) (*Ada*); *Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396 (1981) (*Vickers*).

the applicant should furnish us with the name and telephone number of a contact person familiar with the facts set forth in the application whom we may contact for additional information concerning the application. Unless otherwise specified, the refund check will be issued to the preparer.

7. Each applicant must indicate whether it or a related firm has authorized any individual to file any other refund application in this Gulf refund proceeding on its behalf, and if so attach an explanation.

8. Each applicant must indicate whether it is a Gulf consignee.

9. Each applicant must indicate whether it received a refund in any other Gulf refund proceeding.

10. If the applicant is affiliated or associated with Gulf in any manner, it must so indicate and provide information explaining the nature of its relationship with the consent order firm.

11. If the applicant has been involved in an enforcement proceeding brought by the DOE, it must provide a summary of the present status of the proceeding, or if the matter is no longer pending, it must indicate how the proceeding was resolved.

12. If the applicant is a firm which did not actually purchase gasoline from Gulf but is a successor to a Gulf customer, the applicant must provide evidence establishing that it, rather than Gulf's former customer, if entitled to a refund.

13. Each application must include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

14. All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

15. Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

16. Applications must be postmarked no later than June 30, 1988. All timely applications for refund will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

(C) Distribution of the Remainder of the Consent Order Pool Attributable to Gulf's Refined Product Sales.

In the event that money remains after all refund claims from the Gulf refined product refund pool have been disposed of, undistributed funds in that refund pool will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, H.R. 5300, Title III, 99th Cong. 2d Session., Cong. Rec. H11319–21, (Daily E. October 17, 1986).

It is Therefore Ordered That:

(1) Applications for refined product refunds from the fund remitted to the Department of Energy by Gulf Oil Corporation pursuant to the consent order that became effective on June 14, 1985, may now be filed.

(2) Applications for Refund from the Gulf Oil Corporation refined product refund pool must be postmarked no later than June 30, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: September 8, 1987.

[FR Doc. 87–21163 Filed 9–14–87; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

September 9, 1987.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0110

Title: Application for Renewal of License for Commercial and Noncommercial AM, FM or TV Broadcast Station

Form No.: FCC 303–S

The approval on application form FCC 303–S has been extended through 8/31/90. The November 1986 edition with a previous expiration of 8/31/87 will remain in use until updated forms are available.

OMB No.: 3060–0075

Title: Application for Transfer of Control of Corporate Licensee or Permittee, or Assignment of License or Permit, for an AM or TV Translator Station, or a Low Power Television Station

Form No.: FCC 345

The approval on application form FCC 345 has been extended through 8/31/90. The June 1985 edition with a previous expiration of 8/31/87 will remain in use until updated forms are available.

OMB No.: 3060–0018

Title: Application for Renewal of License for Translator or Low Power Television Broadcast Station

Form No.: FCC 348

The approval on application form FCC 348 has been extended through 8/31/90. The February 1985 edition with a previous expiration of 8/31/87 will remain in use until updated forms are available.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–21119 Filed 9–14–87; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

September 1, 1987.

On July 21, 1987, the Federal Communications Commission submitted a proposed Broadcast Equal Employment Opportunity Program Report to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507. The notice was published on July 29, 1987 (52 FR 28344). The Commission has determined that an amendment is necessary to clarify the time periods to be reported for job hires and promotions requested in Sections IV and V of the form (FFC 396) which is presently under review. The second paragraph in each section is revised to read as follows:

During the twelve-month period *prior to filing this report* beginning (Month-Day-Year) and ending (Month-Day-Year), we hired/promoted:

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–21115 Filed 9–14–87; 8:45 am]

BILLING CODE 6712–01–M

[PRB–3]

Privatization of Special Call Sign System for Amateur Stations; Extension of Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Notice extension of time for filing reply comments.

SUMMARY: Forest Industries Telecommunications (FIT) has requested that the time for filing reply comments in this proceeding concerning Privation of Special Call Sign System for Amateur Stations be extended. FIT has shown good cause why such extension of time would be in the public interest.

DATE: Reply comments must be filed on or before September 8, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont; Private Radio Bureau.

SUPPLEMENTARY INFORMATION: The original Notice was published on April 13, 1987, 52 FR 11884.

Order

In the matter of privatization of special call sign system for amateur stations.

Adopted: August 26, 1987.

Released: August 28, 1987.

By the Acting Chief, Private Radio Bureau.

On February 3, 1987, the FCC Issued a Public Notice in this proceeding concerning a special call sign system for amateur stations. The extended reply comment period expires August 31, 1987. Forest industries Telecommunications (FIT) has requested that the time for filing reply comments be extended to and including September 8, 1987.

2. In support of its request, FIT states that because of the relatively large volume of comments filed and the inherent delays in obtaining copies from the public reference facility at Gettysburg, Pennsylvania, it would not be possible to review the comments and to prepare and file meaningful replies by the due date. FIT believes that the extension of time requested will be helpful in developing a more complete record. We believe that the input of FIT will be useful and will further that goal.

3. In view of the foregoing, and pursuant to the authority contained in § 0.331 of the FCC Rules, the request of FIT for an extension of time in which to file reply comments IS GRANTED. Reply comments concerning PRB–3 are due on or before September 8, 1987.

Federal Communications Commission.

Richard J. Shiben,

Acting Chief, Private Radio Bureau.

[FR Doc. 87–21112 Filed 9–14–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

[No. 87–950]

FSLIC Insurance Premium

Date: September 9, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the Corporation ordered the assessment against each insured institution of an additional premium for FSLIC insurance in an amount equal to one thirty-second of one percent of the total amount of the accounts of the insured members of each insured institution determined as of June 30, 1987.

EFFECTIVE DATE: September 15, 1987.

FOR FURTHER INFORMATION CONTACT: Mary A. Creedon, Director, Insurance Division, Office of the FSLIC, (202) 377–6620; or JoAnne Morris, Attorney, Office of General Counsel (202) 377–7396, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Whereas, The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), may authorize the Corporation, pursuant to section 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c) (1982), to assess against each institution the accounts of which are insured by the Corporation pursuant to section 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution"), additional premiums for such insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation, *provided* that the total amount so assessed in any one year against any insured institution shall not exceed one eighth of one per centum of the total amount of the accounts of the insured members of such institution and *provided further* that the amount of the additional premium for the year 1987 may not exceed ⅝s of one percentum of the total amount of the accounts of the insured members of such institution unless the Bank Board determines that severe pressures on the Corportion exist which necessitate an infusion of additional funds; and

Whereas, The Bank Board, as operating head of the Corporation, by Resolution No. 85–142, dated February 22, 1985, by Resolution No. 85–437, dated June 5, 1985, by Resolution No. 85–770, dated August 28, 1985, by Resolution No. 85–1142, dated December 9, 1985, by Resolution No. 86–213, dated March 6, 1986, by Resolution No. 86–582, dated June 10, 1986, by Resolution No. 86–941, dated September 2, 1986, by Resolution No. 86–1253, dated December 15, 1986, by Resolution No. 87–281 dated March 16, 1987, and by Resolution No. 87–610 dated May 27, 1987, ordered assessments against each insured institution of an additional premium for insurance in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984, for the first assessment, as of March 31, 1985, for the second, as of June 30, 1985, for the third, as of September 30, 1985, for the fourth, as of December 31, 1985, for the fifth, as of March 31, 1986, for the sixth, as of June 30, 1986, for the seventh, as of September 30, 1986, for the eighth, as of December 31, 1986, for the ninth, and as of March 31, 1987, for the tenth; and

Whereas, The total insurance premiums assessed for the first and second quarter of 1987 equal three forty-eighths of one percentum of the total amount of the accounts of the insured members of the insured institutions; and

Whereas, The Bank Board has considered memoranda of the Corporate Accounting Branch and the Chief Financial and Administrative Officer, Office of the FSLIC, (a copy of which memoranda are in the Minute Exhibit file), describing the impact of the collection of the additional premiums for insurance assessed pursuant to Resolution No. 85–142, dated February 22, 1985, Resolution No. 85–437, dated June 5, 1985, Resolution No. 85–770, dated August 28, 1985, Resolution No. 85–1142, dated December 9, 1985, Resolution No. 86–213, dated March 6, 1986, Resolution No. 86–582, dated June 10, 1986, Resolution No. 86–941, dated September 2, 1986, Resolution No. 86–1253, dated December 15, 1986, Resolution No. 87–281, dated March 16, 1987, and Resolution No. 87–610 dated May 27, 1987, upon the Corporation's insurance reserves:

Now, therefore, it is resolved, That on the basis of the administrative record, the Bank Board finds and determines that the Corporation has incurred substantial losses during calendar years 1981 through 1986 and the first two quarters of 1987; and

Resolved further, That the Bank Board finds and determines that:

1. Losses and expenses incurred by the Corporation, as defined in Resolution No. 85–142, require the assessment of additional insurance premiums pursuant to section 404(c) of the NHA in addition to the additional insurance premiums assessed pursuant to Resolutions No. 85–142, No. 85–437, No. 85–770, No. 85–1142, No. 86–213, No. 86–582, No. 86–941, No. 86–1253, No. 87–281, and No. 87–610 in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. It is appropriate, therefore, to provide for the assessment of an additional insurance premium at this time, pursuant to section 404(a)(2) and 404(c)(1) of the NHA, by order of the Corporation; and

Resolved further, That the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance for the third quarter of 1987, in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of such insured institution determined as of June 30, 1987; and

Resolved further, That the additional insurance premium assessed pursuant to this Resolution shall be payable on or about September 30, 1987; and

Resolved further, That the Director or Deputy Director, Office of the FSLIC ("Director"), shall determine the amount of the additional premium due to be paid on September 30, 1987, by each insured institution and shall notify each insured institution of such amount at least fifteen (15) days prior to the date such amount is due; and

Resolved further, That the Director, on behalf of the Corporation, is hereby authorized to take all other actions necessary or appropriate to determine and collect the additional insurance premium authorized and ordered by this Resolution; and

Resolved further, That the Secretary shall forward this Resolution for publication in the **Federal Register.**

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–21145 Filed 9–14–87; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; American Transport Lines, Inc. et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–009648A–042.

Title: Inter-American Freight Conference.

Parties:

A. Bottacchi S.A. De Navegacion C.F.I.e I.
American Transport Lines, Inc.
A/S Ivarans Rederi
Brazil-America Container Line
Companhia Maritima Nacional
Companhia De Navegacao Lloyd Brasileiro
Companhia De Navegacao Maritima Netumar
Empresa Lineas Maritimas Argentinas Sociedad Anonima (Elma S/A)
Empresa De Navegacao Allianca S.A.
Frota Amazonica
Georgia-Aztec Line
Van Nievelt Goudriaan & Co. B.V.
Sea-Land Service, Inc.
Transportacion Maritima Mexicana, S.A.
Columbus Line

Synopsis: The proposed amendment would provide that open-rated items may not be established without the unanimous approval of the member lines present and entitled to vote in the conference section involved.

Agreement No.: 202–010689–027.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.
Orient Overseas Container Line, Inc.

Synopsis: The proposed amendment would preclude members from entering into loyalty contracts either with conference approval or by independent action.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: September 9, 1987.

[FR Doc. 87–21106 Filed 9–14–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Acquisition of Company Engaged in Nonbanking Activities; Centerre Bancorporation

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 30, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Centerre Bancorporation,* St. Louis, Missouri; to acquire Reed Employee Benefit Systems, Inc., Maryland Heights, Missouri, through its wholly-owned subsidiary, Benefit Plan Services, Inc., Maryland Heights, Missouri, and thereby engage in providing certain administrative services, with respect to employee benefit plans established by employers pursuant to defined benefit plans, defined contribution plans, 401-K plans and profit sharing plans.

Board of Governors of the Federal Reserve System, September 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-21116 Filed 9-14-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; First Security Affiliates, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 2, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Security Affiliates, Inc.,* Lexington, Kentucky; to merge with State Financial Bancshares, Inc., Richmond, Kentucky, and thereby indirectly acquire State Bank and Trust Company of Richmond, Richmond, Kentucky.

2. *First Security Corporation of Kentucky,* Lexington, Kentucky; to acquire 100 percent of the voting shares of State Bank & Trust Co. of Richmond, Richmond, Kentucky.

3. *First Southern Bancorp, Inc.,* Stanford, Kentucky; to become a bank holding company by acquiring 99 percent of the voting shares of National Bank of Lancaster, Lancaster, Kentucky; First State Bank of Wayne County, Monticello, Kentucky; and Lincoln County National Bank, Stanford, Kentucky.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Magna Group, Inc.,* Belleville, Illinois; to acquire 100 percent of the voting shares of The First National Bank of Wood River, Wood River, Illinois.

2. *Magna Group, Inc.,* Belleville, Illinois, and MCB Acquisition Company, Belleville, Illinois; to acquire 100 percent of the voting shares of McLean County Bancshares, Inc., Bloomington, Illinois, and thereby indirectly acquire McLean County Bank, Bloomington, Illinois, and Stanford State Bank, Stanford, Illinois. In connection with this application, MCB Acquisition Company has also applied to become a bank holding company.

Board of Governors of the Federal Reserve System, September 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-21117 Filed 9-14-87; 8:45 am]

BILLING CODE 6210-01-M

Application To Engage de Novo in Permissible Nonbanking Activities; Investark Bankshares, Inc.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Investark Bankshares, Inc.,* Stuttgart, Arkansas; to engage *de novo* in performing real estate appraisals pursuant to § 225.25(b)(13) of the Board's Regulation Y. This activity will be conducted in the State of Arkansas.

Board of Governors of the Federal Reserve System, September 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-21118 Filed 9-14-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Advisory Committees; Meetings; Office of the Assistant Secretary for Health

In accordance with section 19(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of October 1987:

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: October 6-7, 1987, 8:30 a.m.

Place: Linden Hill Hotel, Forest Hill Room, 5400 Pooks Hill Road, Bethesda, Maryland.

Open October 6, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing to do analysis of data derived from experiments and

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demonstrations designed to test the cost-effectiveness or efficiency of particular methods of health services delivery and financing, for the research grants program administered by the National Center for Health Services Research and Health Care Technology Assessment.

Agenda: The open session of the meeting of October 6 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. Hoke S. Glover, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Name: Health Services Research Review Subcommittee.

Date and Time: October 8–9, 1987, 8:00 a.m.

Place: Holiday Inn—Crowne Plaza, Woodmont Room, 1750 Rockville Pike, Rockville, Maryland.

Open October 8, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grants program administered by the National Center for Health Services Research and Health Care Technology Assessment.

Agenda: The open session of the meeting on October 8 from 8:00 a.m. to 9:00 a.m. will be devoted to a business meeting covering administration and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. The information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Anthony Pollitt, National Center for Health Services Research and Health Care Technology Assessment, Rc 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Name: Health Care Technology Study Section.

Date and Time: October 21–23, 1987, 1:30 p.m.

Place: Charity Hospital, The Auditorium, 1532 Tulane Avenue, New Orleans, Louisiana.

Open October 21, 1:30 p.m. to 5:00 p.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications addressing the effects of health care technologies and procedures, including those in the area of information sciences, as well as those addressing the process of diffusion and adoption of new technologies and procedures.

Agenda: The open session from 1:30 p.m. to 5:00 p.m. on Octobr 21 will be devoted to a business meeting covering administrative matters and reports as well as a seminar on the grants review process. There will also be a presentation by the Director, NCHSR. The closed sessions of the meeting will be devoted to review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Agenda items are subject to change as priorities dictate.

Date: September 3, 1987.

J. Michael Fitzmaurice,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 87–21201 Filed 9–14–87; 8:45 am]

BILLING CODE 4160–17–M

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Medicare Hearings and Appeals System (MHAS)," HHS/HCFA/AAO No. 09–70–5001. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice. Please note, however, that comments with respect to "routine uses" must be received by October 15, 1987.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on September 10, 1987. In addition, HCFA has requested a waiver of the OMB requirement for this notice to remain in the **Federal Register** for a total of 60 days. (Sections 1869(b)(1) (C) and (D) of the Social Security Act, as amended by section 9341 of the Omnibus Budget Reconciliation Act of 1986, mandates that the Department of Health and Human Services establish a hearings and appeals process for claims under Medicare Part B for services rendered after January 1, 1987. In April 1987, the Department decided that HCFA would establish the Bureau of Medicare Hearings and Appeals to handle all Medicare beneficiary appeals including those types of cases currently processed by the Social Security Administration's

Office of Hearings and Appeals (except for Part A and Part B beneficiary entitlement appeals, which would remain in SSA). The waiver is requested in order to afford individuals timely decisions on their requests for hearings and appeals). If granted, the new system of records, including routine uses, will become effective October 13, 1987, unless HCFA receives comments which would convince us to make a contrary determination. The new Bureau will also be responsible for, and the new system of records will be applicable to, provider certification and termination appeals and appeals from determinations made by Peer Review Organizations in accordance with sections 1155 and 1156 of the Social Security Act.

ADDRESS: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G–A–1, East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Richard Kisseberth, Office of Program Review and Evaluation, Bureau of Quality Control, Health Care Financing Administration, Room 239, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone 301–594–8090.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records and to collect data under the authority of sections 1869(b)(1) (C) and (D) of the Social Security Act which changes Medicare Part B appeal rights and is in accordance with Congressional expectation that HCFA establish a separate office of hearings and appeals for all Medicare beneficiary appeals. The system will also be applicable to provider certification and termination appeals and appeals from determinations made by Peer Review Organizations, in accordance with sections 1155 and 1156 of the Social Security Act.

The Privacy Act permits us to disclose information without consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information. Information may also be disclosed if required by the Freedom of Information Act. The proposed routine uses in the new system meet the compatibility criteria, since the information is collected for administering a hearings and appeals process in accordance with Title XVIII and Part B of Title XI of the Social Security Act. We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: September 9, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

09–70–5001

SYSTEM NAME:

Medicare Hearings and Appeals System (MHAS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration, 6325 Security Boulevard (Paper Media), Baltimore, Maryland 21207. (Contact system manager for location of Magnetic Media computerized records.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who request a hearing by an administrative law judge (ALJ) or appeal an ALJ decision on cases administered by HCFA pursuant to Titles XI, XVIII, and XIX of the Social Security Act, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information concerning Medicare beneficiaries and physicians and other persons involved in furnishing services to Health Insurance beneficiaries. Information on beneficiaries may include: name, address, SSN, medical services, equipment, and supplies for which Medicare reimbursement is requested, and material used to determine amount of benefits allowable under Medicare. Information on physicians and other persons may include: name, address, specialty, identification number, medical services for which Medicare reimbursement is requested, material used to determine amount of benefits allowable under Medicare, and material used to determine whether a sanction or suspension is warranted.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205, 1155, 1156, 1869, and 1872 of the Social Security Act, as amended.

PURPOSE OF THE SYSTEM:

The Hearing and Appeals File contains information used in processing the claimant's Request for Hearing or Appeal; information for the conduct of the hearing or appeal; information the Administrative Law Judge uses to reach a decision; and information to reply to future correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made to: (1) A contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

(2) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

(3) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(4) The Department of Justice for investigation and prosecuting violations of the Social Security Act to which criminal penalities attach, or other criminal statues as they pertain to the Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Paper and magnetic media.

RETRIEVABILITY:

Records are normally retrieved numerically by the docket control number. However, records will be cross-referenced by the beneficiary's social security number, physician's or other individual's identification number, and alphabetically by name, in order to associate correspondence.

SAFEGUARDS:

a. Authorized Users: Only agency employees and contractor personnel whose duties require the use of information in the system. In addition, such agency employees and contractor personnel are advised that the information is confidential and of criminal sanctions for unauthorized disclosure of information.

b. Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is included in contracts related to this system.

d. Implementation Guidelines: Safeguards are implemented in accordance with all guidelines required by the Department of Health and Human Services. Safeguards for automated records have been established in accordance with the Department of HHS' Automated Data Processing Manual, "Part 6, ADP System Security."

RETENTION AND DISPOSAL:

Records are retained for 10 years after the last action on the record.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Administrator/Office of Associate Administrator of Operations, Health Care Financing Administration, Room 742, East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

Inquiries and requests for system records should be addressed to the system manager at the address above. The requestor must specify the case control number or the claimant's name and health insurance claim number or provider number.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Departmental Regulations, 45 CFR 5b.7.)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete or not current). (These procedures are in accordance with Departmental Regulations, 45 CFR 5b.7.)

RECORDS SOURCE CATEGORIES:

HCFA obtains the identifying information in this system from the request for a Medicare hearing or appeal. Information in these records are obtained from Medicare carrier or intermediary, or Peer Review Organization records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ARTS:

None.

[FR Doc. 87-21124 Filed 9-14-87; 8:45 am]
BILLING CODE 4120-03-M

[BERC-394-CN]

Medicare Program; Proposed Additions To and Deletions From the Current List of Covered Surgical Procedures for Ambulatory Surgical Centers; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of proposed notice.

SUMMARY: This document corrects technical errors that appeared in the proposed notice that was published in the **Federal Register** on August 11, 1987 (52 FR 29729) on proposed additions to and deletions from the current list of covered surgical procedures for ambulatory surgical centers (ASCs).

FOR FURTHER INFORMATION CONTACT: Jackie Greene, (301) 597-2989.

SUPPLEMENTARY INFORMATION: In **Federal Register** document 87-18220 beginning on page 29729, in the issue of August 11, 1987, make the following corrections:

1. On page 29730, in the first column, the second sentence of the last paragraph should read "An expanded list of covered procedures was published as a final notice in the **Federal Register** on April 21, 1987 (52 FR 13176)." The third sentence should begin "That list also deleted * * *".

2. On page 29730, in the third column, the heading for section III should read "III. Proposed Deletions".

3. On page 29731, in the first column, the procedure codes and descriptions that appear before "Musculoskeletal" should read as follows:

11401 Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 0.6 to 1.0 cm
11402 lesion diameter 1.1to 2.0 cm
11403 lesion diameter 2.1 to 3.0 cm
11404 lesion diameter 3.1 to 4.0 cm
11421 Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitaliz, lesion diameter 0.6 to 1.0 cm
11422 lesion diameter 1.1 to 2.0 cm
11423 lesion diameter 2.1 to 3.0 cm
11441 Excision, other benign lesion (unless listed elsewhere), face ears, eyelids, nose, lips, mucous membrane; lesion diameter 0.6 to 1.0 cm
11442 lesion diameter 1.1 to 2.0 cm
11443 lesion diameter 2.1 to 3.0 cm
11444 lesion diameter 3.1 to 4.0 cm
11600 Excision, malignant lesion, trunk, arms, or legs; lesion diameter up to 0.5 cm
11601 lesion diameter 0.6 to 1.0 cm
11602 lesion diameter 1.1 to 2.0 cm
11603 lesion diameter 2.1 to 3.0 cm
11604 lesion diameter 3.1 to 4.0 cm
11620 Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter up to 0.5 cm
11621 lesion diameter 0.6 to 1.0 cm
11622 lesion diameter 1.1 to 2.0 cm
11623 lesion diameter 2.1 to 3.0 cm
11624 lesion diameter 3.1 to 4.0 cm
11640 Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter up to 0.5 cm
11641 lesion diameter 0.6 to 1.0 cm
11642 lesion diameter 1.1 to 2.0 cm
11643 lesion diameter 2.1 to 3.0 cm
11644 lesion diameter 3.1 to 4.0 cm
11750 Excision of nail and nail matrix, partial or complete, (eg, ingrown or deformed nail) for permanent removal

A correction has been made to the initial dimension of the diameters for each of these procedures.

4. On page 29731, in the second column, the procedure description for code 45910 should read "Dilation of rectal stricture (separate procedure) under anesthesia other than local".

5. On page 29731, in the second column, a procedure description for code 53621 is added to read "subsequent".

6. On page 29731, in the second column, after "57400 Dilation of vagina under anesthesia" and before "Culdoscopy, diagnostic", code "57450" is added.

7. On page 29731, in the third column, the material that appeared as the last paragraph should have appeared as

several paragraphs that should have read as follows:

"The great majority of the services billed under these codes in our available claims data were furnished in doctors' offices. We do not expect this notice to result in a significant shift of site of service, or to result in significant savings. Therefore, we have determined that this proposed notice is not a major rule, and that a regulatory impact analysis is not required.

"B. Regulatory Flexibility Act

"We prepare and publish an initial regulatory flexibility analysis consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) for proposed notices unless the Secretary certifies that the notice would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider all ASCs to be small entities.

"As of January 1987, there were 682 ASCs participating in Medicare. Some of these centers specialize, and would be affected only to the extent that they offer procedures proposed for deletions. Nonetheless, we expect most ASCs to be affected to some extent.

"Our site-of-service data are for calendar year 1984, since there are lags due to billing, reporting, and accumulating data to create usable files. Our data show only a small proportion of all procedures being performed in ASCs. More than 75 percent of the approved claims that were submitted under the codes we propose to delete were for services furnished in physicians' offices, and less than one percent were for services furnished in ASCs. Although there were fewer ASCs in 1984 than at present, we do not believe that these services are being frequently furnished in them, and do not expect these deletions would affect their revenues significantly."

8. On page 29732, in the first column, the first sentence of the first full paragraph should read "In view of the large number of procedures being added to the list of covered ASC procedures through a notice published in the **Federal Register** on April 21, 1987 (52 FR 13176), we believe that affected ASCs would not experience a significant adverse impact from the proposed deletions."

9. On page 29732, in the first column, the last paragraph should read "Because of the large number of pieces of correspondence we normally receive on proposed notices, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the end of the comment period. After review of those comments, we may decide to proceed with either a final notice or an additional proposed notice, as appropriate."

10. On page 29732, in the second column, the authority citation should read "(Sec. 1833(i)(1) of the Social Security Act (42 U.S.C. 1395l(i)(1); 42 CFR 416.65))".

(Sec. 1833(i)(1) of the Social Security Act (42 U.S.C. 1395l(i)(1); 42 CFR 416.65))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 4, 1987.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 87-21165 Filed 9-14-87; 8:45 am]

BILLING CODE 4120-01-M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 46, No. 223, page 56928 and page 56929, dated Thursday, November 19, 1981; and **Federal Register**, Vol. 48, No. 198, page 46446 and page 46447, dated Wednesday, October 12, 1983) is amended to reflect a reorganization within Region III and Region VIII, Office of the Associate Administrator for Operations (AAO). Both Regional Offices are in the process of reorganizing from a functional structure to a program structure with respect to the administration of Medicare and Medicaid. The reorganizations are pilot tersts which are targeted to be up to 2 years in duration. This reorganization eliminates the current Divisions of Program Operations and Financial Operations in Regions III and VIII and replaces them with the Division of Medicaid and the Division of Medicare.

The specific amendments to Part F. are described below:

- Section FP.20.D., Office of the Regional Administrator (FPD(I-X)), is amended by changing the administrative code from (FPD(I-X)) to (FPD(I, II, IV-VII, IX, X)).
- Section FP.20.D.3., Division of Financial Operations (FPD(I-X)C), is amended by changing the administrative code from (FPD(I-X)C) to (FPD(I, II, VII, IV–IX, X)C)).
- Section FP.20.D.4., Division of Program Operations (FPD(I-X)D), is amended by changing the administrative code from (FPD(I-X)D) to (FPD(I, II, IV–VII, IX, X)D).
- Section FP.20.D., the Office of the Regional Administrator (FPD(I, II, IV–VII, IX, X)), is further amended by adding the following two new organizational components. The new components should be placed directly after Section FP.20.D.4., Division of Program Operations (FPD(I, II, IV-VII, IX, X). The new components will become FP.20D.5., Division of Medicaid, and FP.20.D.6., Division of Mediare. The new functional statements read as follows:

5. Division of Medicaid (FPD(III, VIII)E)

Under the direction of the HCFA Regional Administrator, plans, manages, and provides Federal leadership to State agencies in program implementation, maintenance, and the regulatory review of State Medicaid program management activites under Title XIX of the Social Security Act and assures the propriety of Federal expenditures. Provides consultation and guidance to States on appropriate matters including interpretation of Federal requirements, options available to States under these requirements, and information on practices in other States. Maintains day-to-day liaison with State agencies and monitors their Medicaid program activities and practices by conducting periodic program managment and financial reviews to assure State adherence to Federal law and regulations. Reviews, approves, and maintains official State plans and plan amendments for medical assistance. Provides consultation to States in the administration of the amount, duration, scope, and reimbursement of health services available under the State program. Reviews, approves, and monitors State reimbursement systems and determines the allowability or non-allowability of claims for Federal financial participation; and where State expenditures have not been in accordance with Federal requirements, takes action to disallow such claims. Stimulates State action toward achievement of selected program objectives and monitors their progress. Reviews States' quarterly estimates of expenditures under the Medicaid program and recommends the amount to be estimated in the quartely grants. Reviews States' quarterly statements of expenditures and recommends appropriate action on amounts claimed. Defers reimbursement action on questionable State claims, reviews the cliams for allowability, and recommends appropriate action. Issues orders suspending Federal Financial

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Participation on behalf of State payments to Title XIX provider institutions and the revocation of such suspension orders. Supports, evaluates, and provides advice on State managment information and claims payment systems. Implements Title XIX special initiatives, such as Prepaid Health Plans, Health Maintenance Organizations, and other special or experimental programs, and operation of major management initiatives such as quality control. Where appropriate, provides an opportunity for State input to operational plans, policy, regulations, legislation, and budget formulation. Responds to beneficiary, Congressional, provider, and public inquiries concerning Medicaid issues and takes appropriate action on individual case situations. Accepts and responds to Freedom of Information Act requests and on matters concerning the Privacy Act. Supports HCFA headquarters in activities concerning research and demonstration projects.

6. Division of Medicare (FPD(III, VIII)F)

Under the direction of the HCFA Regional Administrator, assures the effective administration of the Medicare program through the day-to-day working relationship with Medicare contractors, providers, physicians, the Social Security Administration (SSA) regional office and district office personnel, elements of the Office of the Inspector General and other organizations and individuals concerned with program operations. Assures continuing surveillance and appraisal of Medicare contractors in the administration of health insurance provisions. Identifies problems and initiates action to ensure contractor adherence to national Medicare policy and procedures. Directs Medicare regional financial management activities. Directs a program of in-depth reviews to evaluate the effectiveness of the Medicare program. Conducts quality assurance programs and onsite performance appraisals and analyzes statistical performance reports. Negotiates and approves contractor budget modifications to budget allotments and final cost settlements. Coordinates day-to-day contractor financial management activities. Reviews and approves certain subcontracts and leases, and monitors banking activities and evaluates the cost allocation procedures of contractors. Conducts contractor appraisals. Interprets HCFA's institutional reimbursement policies. Relates appropriately to elements of SSA, providing consultation on Medicare program matters and any other activity necessary to achieve program objectives. Provides direction to Medicare contractors in carrying out their responsibilities for interfacing with Peer Review Organizations. Establishes and maintains liaison with organizations representing health care professionals, providers of health care services, and program beneficiaries. Takes necessary action on matters relating to the Freedom of Information Act and the Privacy Act. Performs regional responsibilities relating to experimental and demonstration projects. Assumes responsibility for program training and assures timely responses to Congressional and public inquiries. Relates appropriately to central office components such as providing feedback on operations, activities, and problems, and by providing regional perspectives in the development of Agency policies, objectives, and work plans. In coordination with the Division of Medicaid, handles inter-program activities such as the Medicare buy-in for Medicaid beneficiaries.

Bartlett S. Fleming,

Associate Administrator for Management and Support Services.

Date: August 24, 1987.

[FR Doc. 87-21198 Filed 9-14-87; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

National Toxicology Program; Board of Scientific Counselors Meetings

As part of an effort to earlier inform the public and allow interested parties to comment or obtain information on toxicology and carcinogenesis studies prior to public peer review, the National Toxicology Program (NTP) will announce in the **Federal Register** six to eight weeks in advance a list of the draft Technical Reports to be reviewed at the upcoming meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee and associated *ad hoc* Panel of Experts (*Peer Review Panel*). In the same announcement a tentative listing of Technical Reports will be given for the subsequent meeting of the Peer Review Panel; in this case, February or March 1988 (an exact date has not been established.

Additionally, in a separate issue of the **Federal Register**, the NTP will furnish a listing of draft Technical Reports projected for evaluation by the Peer Review Panel during the period November 1987 through February/March, 1989.

Those interested in having detailed information about any of the studies listed herein or wanting to provide input should contact the responsible NTP staff scientist as early as possible by telephone or by mail to: NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

Meeting of November 6, 1987

Pursuant to Pub. L. 92-463, notice is given of the next meeting of the NTP Peer Review Panel on November 6, 1987, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 9:00 a.m. and is open to the public. The primary agenda topic is to peer review draft Technical Reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program.

Draft technical reports of studies on the following chemicals (listed in alphabetical order with Chemical Abstracts Service registry numbers, routes of administration and NTP staff scientists) are *tentatively* scheduled to be peer reviewed on November 6. All studies were done using Fischer 344 rats and/or B6C3F$_1$ mice. The order of presentation will be made available at a later date.

Chemical (CAS registry No.)	Route of administration	Staff scientist (telephone No.)
Benzyl Alcohol (100-51-6)	Gavage	Dr. M. P. Dieter (919-541-3369)
Iodinated Glycerol (5634-39-9)	Gavage	Dr. J. E. French (919-541-7790)
D-Limonene (5989-27-5)	Gavage	Dr. C. W. Jameson (919-541-4096)
Methyl Dopa Sesquihydrate (41372-08-1)	Feed	Dr. J. K. Dunnick (919-541-4811).
Roxarsone (121-19-7)	Feed	Dr. K. M. Abdo (919-541-7819)
Tetracycline Hydrochloride (64-75-5)	Feed	Dr. D. D. Dietz (919-541-2272)
Tribromomethane (Bromoform) (75-25-2)	Gavage	Dr. R. L. Melnick (919-541-4142)

Persons wanting to make a short presentation regarding a particular Technical Report or concept during the public comment periods should notify the Executive Secretary and provide a written copy in advance of the meeting so copies can be made and distributed to all Panel members, staff and attendees.

Meeting of February/March 1988

Draft technical reports of studies on the following chemicals are tentatively

expected to be peer reviewed in February or March of 1988. All studies were done using Fischer 344 rats and/or B6C3F$_1$ mice.

Chemical (CAS registry No.)	Route of administration	Staff scientist (telephone No.)
p-Chloroaniline (106-47-8)	Gavage	Dr. R. S. Chhabra (919-541-3386).
2,4-Dichlorophenol (120-83-2)	Feed	Dr. R. L. Melnick (919-541-4142).
Dimethoxane (829-00-2)	Gavage	Dr. K. M. Abdo (919-541-7819)
N,N-Dimethylaniline (121-69-7)	Gavage	Dr. K. M. Abdo (919-541-7819)
Diphenhydramine Hydrochloride (147-24-0)	Feed	Dr. R. L. Melnick (919-541-4142)
Ethyl Bromide (74-96-4).	Inhalation	Dr. J. H. Roycroft (919-541-2788).
Ethyl Chloride (75-00-3).	Inhalation	Dr. J. H. Roycroft (919-541-2788).
Furosemide (54-31-9).	Feed	Dr. J. R. Bucher (919-541-4532).
Hexachloroethane (67-72-1)	Gavage	Dr. W. C. Eastin (919-541-7941).
Hydrochlorothiazide (58-93-5).	Feed	Dr. J. R. Bucher (919-541-4532).
8-Methoxypsoralen (298-81-7).	Gavage	Dr. J. K. Dunnick (919-541-4811).
N-Methylolacrylamide (924-42-5).	Gavage	Dr. J. R. Bucher (919-541-4532).
Pentachlorophenol, Dowicide EC-7 and Technical (87-86-5)	Feed	Dr. E. E. McConnell (919-541-3267).

An updated announcement for these scheduled technical reports will appear in the **Federal Register** six to eight weeks prior to the meeting.

The Executive Secretary, Dr. Larry G. Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919-541-3971), FTS (629-3971), will furnish final agenda, a roster of subcommittee and panel members, and other program information prior to a meeting, and summary minutes subsequent to a meeting.

Date: September 4, 1987.

David P. Rall, M.D.,

Director, National Toxicology Program.

[FR Doc. 87-21176 Filed 9-14-87; 8:45 am]

BILLING CODE 4140-01-M

Statement of Organization, Functions, and Delegations of Authority; Food and Drug Administration

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 50 FR 51606, December 18, 1985) is amended to reflect organizational changes in the Food and Drug Administration (FDA).

FDA is transferring the physical security function from the Division of Ethics and Program Integrity (DEPI) to the Division of Management Services, Office of Management and Operations, Office of the Commissioner. FDA is also establishing a liaison function in DEPI to clarify their existing relationship with the Office of the Inspector General.

Section HF-B, Organization and Functions is amended as follows:

1. Delete subparagraph (h-2), *Division of Management Services (HFA75)* and insert a new subparagraph (h-2), *Division of Management Services (HFA75)* reading as follows:

(h-2) *Division of Management Services (HFA75).* Provides leadership and guidance to Headquarters staff offices, Headquarters operating activities, and field activities for all management services programs including, but not limited to, personal property management and accountability, physical security, real property management, space management and utilization, occupational safety and health management, environmental health, construction, leasing, and engineering services, graphic arts, printing and reproduction, microform management, mail and files.

Develops and conducts management programs in directives management, reports and forms management, records and correspondence management, and other management areas as assigned.

Responsible for maintaining effective liaison with the Government Printing Office and for the centralized clearance and coordination of all printing and publication services.

Coordinates the development of Agencywide policies and procedures for such services; plans, executes, evaluates, and adjusts efforts in these activities.

2. Delete subparagraph (h-7), *Division of Ethics and Program Integrity (HFA72)* and insert a new subparagraph (h-7), *Division of Ethics and Program Integrity (HFA72)* reading as follows:

(h-7) *Division of Ethics and Program Interity (HFA72).* Directs and coordinates a multidiscipline team of administrative and/or program specialists who conduct scheduled reviews of FDA Headquarters and field components to determine adherence to existing managerial policy and practices; assures that recommendations resulting from the review findings are implemented.

Directs FDA's personnel security program and provides professional leadership and authoritative guidance in these areas. Formulates policy and procedures necessary to maintain the integrity of privileged information submitted by industry.

Provides a centralized Agencywide investigative capability for top management.

Implements internal control reviews in accordance with OMB guidelines.

Directs the formulation of FDA policies and procedures concerning conflicts of interest and employee associations with regulated industries, review financial interest including outside activities of FDA employees, decides conflict of interest issues and counsels and train employees on the avoidance of conflicts of interests.

Acts as FDA liaison with the Office of the Inspector General (OIG) regarding audits. Coordinates preparations of FDA responses to OIG audit findings, and monitors implementation of FDA responses.

Date: September 2, 1987.

Wilford J. Forbush,

Director, Office of Management, PHS.

FR Doc. 87-21200 Filed 9-14-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-030-87-5101-09-XKAB]

Assist in Preparation of Environmental Statements; Pacific Power & Light Co.; Scoping Meetings

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of public scoping meetings to assist in preparing an environmental assessment (EA) for a 230-KV transmission line in central and southwestern Wyoming by Pacific Power and Light Company.

SUMMARY: Three public scoping meetings are scheduled to assist in identifying issues or concerns to be addressed during the preparation of an EA analyzing the impacts of building approximately 116 miles of 230-KV transmission line in two separate phases. The first phase is from Spence to Bairoil, Wyoming and is 43 miles long. The second phase is from Bairoil, Wyoming to the Jim Bridger power plant east of Rock Springs, Wyoming, and which is approximately 73 miles long.

DATES: The meetings are as follows:

October 19, 1987—7:00 p.m.
Natrona County Public Library, Crawford Room, 307 East 2nd, Casper, Wyoming

October 20, 1987—7:00 p.m.
White Mountain Library, 2935 Sweetwater Drive, Rock Springs, Wyoming

October 21, 1987—7:00 p.m.
Fremont County Public Library, Carnegie Room, 451 N. 2nd Street, Lander, Wyoming.

FOR FURTHER INFORMATION: For further information contact one of the following BLM Offices:

Rawlins District, 1300 Third Street, P.O. Box 670, Rawlins, WY 82301, (307) 324–7171, Attn: Mary Hanson
Casper District, 1701 East E Street, Casper, WY 82601, (307) 261–5101, Attn: Glen Nebeker
Rock Springs District, P.O. Box 1170, Rock Springs, WY 82902, (307) 362–6422

Written comments should be addressed to the Rawlins District Office. In order for them to be considered in the scope of the EA, they should be received no later than October 30, 1987.

SUPPLEMENTARY INFORMATION: Pacific Power and Light is proposing to build a 230–KV transmission line in two separate phases in south central Wyoming. Counties which could be affected include: Carbon, Natrona, and Sweetwater.

Both sections of transmission line will consist of 2-pole, H-frame wood structures approximately 80 feet in height, 80 feet ruling span, and right-of-way width 100 feet for a 30-year period. Once completed, Phase I will provide a second feed from the Dave Johnson Power Plant to AMOCO's Bairoil Plant. It will also provide various switching and transfer capabilities. Phase II will provide three possible feeds to AMOCO, and reinforce the 230–KV system.

PP&L will prepare the EA for BLM. The EA will analyze the impacts of building the transmission line and operating its switching and transfer capabilities.

When the EA is completed, notice of its availability for review will be published. The public review period will be 30 days. Any comments received during that time will be taken into consideration before a decision is made and a FONSI is prepared.

If during the scoping or preparation of the EA, either significant impacts are identified or significant controversy develops, the document will be converted to and issued as a draft environmental impact statement (EIS) and the process would proceed following normal EIS procedures. This would include a 45 day comment period and the preparation of a final EIS.

Richard Bastin,
District Manager.

[FR Doc. 87–21204 Filed 9–14–87; 8:45 am]
BILLING CODE 4310–22–M

[AZ–040–07–4212–12; A 22977]

Realty Action; Segregation of Federal Mineral Estate, Graham County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Segregation of Federal mineral estate, Graham County, Arizona.

SUMMARY: The following lands have been examined and identified as potentially suitable for a mineral exchange with the State of Arizona:

Gila and Salt River Meridian, Arizona
T. 7 S., R. 25 E.,
Sec. 24, NW¼NE¼.
Containing 40 acres, more or less.

The surface estate belongs to the State of Arizona and the subsurface belongs to the United States. The land is being considered for a mineral exchange with the Arizona State Land Department.

Publication of this notice in the **Federal Register** segregates the subsurface estate from the operation of the mining laws. The segregative effect will end upon issuance of a patent or two years from the date of the publication, whichever occurs first.

DATE: For a period of up to and including October 30, 1987, interested parties may submit comments to the District Manager at 425 E. 4th Street, Safford, Arizona 85546. Any adverse comments will be evaluated by the State Director, who may sustain, vacate of modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Detailed information concerning this action may be obtained from the Safford District Office or by calling (602) 428–4040 during the office hours 7:45 a.m. to 4:15 p.m. MST.

Vernon L. Saline,
Acting District Manager.

Date: September 4, 1987.

[FR Doc. 87–21184 Filed 9–14–87; 8:45 am]
BILLING CODE 4310–37–M

National Park Service

National Register of Historic Places; Pending Nominations; Alabama et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 5, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 30, 1987.

Carol D. Shull,
Chief of Registration, National Register.

Alabama

Hale County

Gallion, *Hatch, Alfred, Place at Arcola,* Rt. 1, Hale Co. Rd. #2

Jefferson County

Birmingham, *Reed, William, House,* 888 Twin Lake Dr.

Connecticut

Hartford County

Newington, *Kellogg, General Martin, House,* 679 Willard Ave.

New London County

Ledyard, *Applewood Farm,* 528 Colonel Ledyard Hwy.

District of Columbia

Washington, Brodhead-Bell-Morton Mansion, 1500 Rhode Island Ave., NW.

Indiana

Posey County

Poseyville, *Bozeman-Waters National Bank,* 19 W. Main St.

Randolph County

Union, *Kerry, William, House,* 501 N. Columbia St.

Louisiana

St. Charles County

Kenner and Kugler Cemeteries Archeological District

Massachusetts

Barnstable County

Provincetown, *US Post Office-Provincetown Main,* 217 Commercial St.
Yarmouth, *Northside Historic District,* US 6A between Barnstable-Yarmouth town line & White Brock

Berkshire County

Mt. Washington, *Osborn, Benjamin, House,* West St., E on private Rd.
Tyringham, *Tyringham Shaker Settlement Historic District,* Jerusalem Rd.

Bristol County

Attleboro, *US Post Office-Attleboro Main,* 75 Park St.

Hampden County

Chicopee, *Page, Thomas D., House,* 105 East St.

Middlesex County

Winchester, *US Post Office-Winchester Main*, 48 Waterfield Rd.

Plymouth County

Middleborough, *US Post Office-Middleborough Main*, 90 Center St.

Suffolk County

Boston, *Bunker Hill School*, 65 Baldwin St.

Worcester County

Millbury, *US Post Office-Millbury Main*, 119 Elm St.

New Jersey

Gloucester County

Williamstown, *Free Library and Reading Room-Williamstown Memorial Library*, 405 S. Main St.

Middlesex County

Middlesex, *White, Joseph and Minnie, House*, 243 Hazelwood Ave.

North Carolina

Bladen County

White Oak vicinity, *Desserette*, SW side of SR 1320 near jct. with SR 1318

Wake County

Raleigh, *Oakwood Historic District (Boundary Increase)*, E side of Linden Ave. & N. side of 700 blk. E. Lane St.

North Dakota

Bottineau County

Bottineau & Carbury vicinity, *Crogen, Ole, Farm District*, 4 mi. NW of Bottineau

Dickey County

Oakes, *Klein and Sutmar Block (Oakes MPS)*, 419 Main Ave.
Oakes, *Noonan, Walter T., House (Oakes MPS)* 215 S. Seventh St.
Oakes, *Oakes National Bank Block (Oakes MPS)*, 501 Main Ave.

Foster County

Carrington vicinity, *Hall, Ralph, Farm District*, N of Carrington on W Side of Burlington Northern RR tracks

Griggs County

Cooperstown, *Northern Lights Masonic Lodge*, Ninth St.

McHenry County

Kief, Liberty Baptist Church (Ukrainian Immigration Dwellings and Churches in North Dakota from Early Settlement Until the Depression MPS), Fifth & Christina Sts.

McLean County

Butte vicinity, *Semevolos Farm (Ukrainian Immigrant Dwellings and Churches in North Dakota from Early Settlement Until the Depression MPS)*, SE of Butte

Ransom County

Lisbon, *Bradford Hotel*, 18 Fourth Ave., W.

Tennessee

Maury County

Columbia vicinity, *Kennedy, James, House*, Rogers Ford Rd.

Wisconsin

Milwaukee County

Milwaukee, *Salem Evangelical Church*, 1025 & 1037 S. Eleventh St.

Waukesha County

Mukwonago, *United Unitarian and Universalist Church*, 216 Main St.

[FR Doc. 87-21210 Filed 9-14-87; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Meeting; Advisory Committee on Voluntary Foreign Aid

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on the theme: "PVO Effectiveness at Creating and Maintaining Sustainable Development." This is one of a series of meetings exploring various aspects of "PVO Effectiveness" delineating cases and strategies for enhancing PVOs' work as agents of development. The meeting will be one day: Tuesday, September 22nd from 9:00 a.m. to 5:00 p.m. in Room 1107NS. To enter the building use C Street (Diplomatic Entrance) between 21st and 23rd Streets, NW., Washington, DC.

Tuesday September 22, 1987

The meeting is free and open to the public. However, *Notification by September 18, 1987 Through Advisory Committee Headquarters is required by the Department of State for security reasons.*

9:00 a.m.—Welcoming Remarks: Morgan Williams, ACVFA Chairman
9:30 a.m.—Overview of PVO Sustainability
10:30 a.m.—Panel Discussion on Sustainability, A.I.D. Representative, PVO Representative, LDC Representative
12:00 p.m.—Lunch
2:00 p.m. Panel Discussion based on PVO project evaluations by the International Science and Technology Institute
3:30 p.m.—Committee Discussion of Issues
5:00 p.m.—Adjourn.

There will be A.I.D. representatives at the meeting. Any interested person may attend, request to appear before, or file statements with the Advisory Committee. Written statements should be filed prior to the meeting and should be available in twenty five (25) copies.

Persons wishing to attend the meeting must call (703) 235-1684, or write, no later than September 18, to arrange entrance to the Department of State Building. The address is: The Advisory Committee on Voluntary Foreign Aid, Room 250, SA-8, Agency for International Development, Washington, DC 20523.

Date: September 3, 1987.

Karen Poe,

Acting Director, Office of Private and Voluntary Cooperation, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 87-21147 Filed 9-14-87; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 328]

Investigation of Tank Car Allowance System

AGENCY: Interstate Commerce Commission.

ACTION: Notice of postponement of the meeting of the Joint Negotiating Committee (JNC) scheduled for September 14, 1987.

SUMMARY: As published in 52 FR 29449 (August 7, 1987), the JNC was scheduled to reconvene to negotiate changes to the mileage allowance formula, equalization rule, and other related matters in light of the Commission's decision in No. 35404, *General American Transp. Corp.* v. *Indiana Harbor Belt Railroad Co., et al.* (not printed), served March 12, 1987. This notice is to inform all interested parties that the scheduled September 14, 1987 meeting has been postponed indefinitely.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: September 8, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 87-21157 Filed 9-14-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Pollution Control; Lodging of Consent Decree; B.F. Goodrich Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby

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given that on August 26, 1987, a proposed consent decree in *United States* v. *B.F. Goodrich Co.*, Civil Action No. C83–0456L(A), was lodged with the United States District Court for the Western District of Kentucky. The complaint filed by the United States alleged violations of the Clean Air Act by defendant due to emissions of vinyl chloride from defendant's polyvinyl chloride plant in Louisville, Kentucky. The consent decree provides for payment of a civil penalty and for injunctive relief to restrain further violations of the Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *B.F. Goodrich Co.*, D.J. Ref. No. 90–5–2–1–453. The proposed consent decree may be examined at the office of the United States Attorney, Room 211, U.S. Post Office Building and Courthouse, 601 West Broadway, Louisville, Kentucky, and at the Region IV Office of the Environmental Protection Agency, 345 Courtland St., NE., Atlanta, Georgia. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.20 payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–21148 Filed 9–14–87; 8:45 am]

BILLING CODE 4410–01–M

Pollution Control; Lodging of Consent Decree; Georgia Pacific Corp.

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on August 7, 1987 a proposed consent decree in *United States* v. *Georgia-Pacific Corporation*, Civil Action No. PB–C–87–443 was lodged with the United States District Court for the Eastern District of Arkansas. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 301 of the Clean Water Act, 33 U.S.C. 1311 at Georgia-Pacific Corporation's plywood manufacturing facility in Fordyce, Dallas County, Arkansas. The complaint alleged that Georgia-Pacific discharged pollutants into navigable waters in violation of the limitations in the National Pollutant Discharge Elimination System ("NPDES") permit for the Fordyce facility. The complaint sought injunctive relief to require Georgia-Pacific Corporation to comply with its NPDES permit and civil penalties for past violations. The consent decree requires Georgia-Pacific Corporation to develop and implement an operation and maintenance program to bring the Fordyce facility into compliance with its permit. Georgia-Pacific Corporation is also required to pay a civil penalty of $43,000 in settlement of the government's civil penalty claims.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Georgia-Pacific Corporation*, D.J. Ref. 90–5–1–1–2663.

The proposed consent decree may be examined at the office of the United States Attorney for the Eastern District of Arkansas, 327 Post Office and Courthouse Building, 600 West Capitol, Little Rock, Arkansas 72203 and at the Region VI office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–21149 Filed 9–14–87; 8:45 am]

BILLING CODE 4410–01–M

Pollution Control; Lodging of Consent Decree; Polychrome Corp.

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on August 31, 1987, a proposed consent decree in *United States of America* v. *Polychrome Corporation*, 84 Civ. 4862 (JMC) was lodged with the United States District Court for the Southern District of New York. The complaint filed by the United States sought civil penalties and injunctive relief under the Clean Air Act with respect to emissions of volatile organic compounds ("VOCs") from the lithographic printing plate manufacturing plant operated by Polychrome Corporation in Yonkers, New York.

Under the consent decree, Polychrome has agreed to install equipment to control VOC emissions from coating operations at its plant, to complete a list of specific improvements designed to increase the efficiency of the emission controls, and to pay a civil penalty of $149,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Polychrome Corporaton*, D.J. Ref. 90–5–2–1–707.

The proposed consent decree may be examined at the office of the United States Attorney, One St. Andrews Plaza, New York, NY 10278, and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 87–21150 Filed 9–14–87; 8:45 am]

BILLING CODE 4410–01–M

[Civil No. A-87-420]

Pollution Control; Lodging of Consent Decree Pursuant to the Clean Water Act; Alaska Gold Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 27, 1987, a proposed Consent Decree in *United States* v. *Alaska Gold Company*, Civil No. A–87–420 was lodged with the United States District Court for the District of Alaska. The proposed Consent Decree concerns the prevention of the discharge of pollutants in violation of the Clean Water Act and the limits set forth in Alaska Gold's National Pollutant Discharge Elimination System permit. The proposed Consent Decree requires Alaska Gold to achieve compliance with the Act and its permit and to pay a civil penalty of $100,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Alaska Gold, D.J. Ref. 90–5–1–1–2925.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Alaska, 701 C Street, Anchorage, Alaska 99513, and at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $1.90 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–21185 Filed 9–14–87; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Meeting; The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: October 13, 1987, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210.

Purpose

To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION CONTACT: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565.

Signed at Washington, DC, this 8th day of September 1987.

Christopher Hankin,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 87–21190 Filed 9–14–87; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

[TA-W-19,615]

Adjustment Assistance; Negative Determination Regarding Application for Reconsideration; Bailey Controls Co., Wickliffe, OH

By an application dated July 22, 1987, the United Auto Workers requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Bailey Controls Company, Wickliffe, Ohio. The denial notice was signed on July 1, 1987 and published in the **Federal Register** on July 14, 1987 (52 FR 26376).

Pursuant to 29 CFR 98.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous:

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that (1) the Department relied on company-wide sales data instead of plant sales data and that (2) foreign competition in electronic control devices impacted their production of mechanical pneumatic devices. Also, the union states that the Department erred in its negative determination by indicating that the foreign transfer of production from Wickliffe was not significant. The union also claims that since 1973 Bailey Controls has suffered from foreign competition and that all machining operations will be phased out during fiscal 1988.

Bailey Controls Company is a custom engineering shop producing both electronic and mechanical-pneumatic controls.

Investigation findings show that the Department used plant sales and production data of electronic control and mechanical control devices. Sales and production of all control devices increasded in 1986 compared to 1985 and did not decrease in the first quarter of 1987 compared to the same quarter of 1986. Disaggregated data for sales and production of control devices show that plant sales and production of electronic control devices increased while sales and production of mechanical control devices decreased in 1986 compared to 1985. Production and sales data for both types of controls show that they did not decrease in the first quarter of 1987 compared to the same quarter in 1986.

Findings in the investigations do not substantiate that the decline in sales of mechanical controls were the result of foreign competition but were rather the result of a product being replaced by a superior product. Industry sources and company officials both indicate that mechanical pneumatic control devices are being replaced by electronic control devices. The electronic control product is a state-of-the-art electronic microprocessor based control which is substantially more efficient and requires less man-hours to produce. Company officials indicated that orders for electronic control devices are replacing orders for the mechanical control

devices especially in the domestic market and that company domestic sales, in value, of electronic control devices have increased every year. Technological unemployment would not form a basis for certification.

Concerining the transfer of certain production operations from Wickliffe to plants overseas, company officials indicated that such production was insignificant. According to company officials production on only one product was shipped overseas within the past five years and that was on a product discontinued in the U.S. market. The transferred production was marketed overseas. Further, this transfer of production occurred in 1984–1985, beyond the period applicable to the petition. Company officials affirmed that no layoffs occurred as the result of the overseas transfer of production.

With respect to the union's claim about worker separations beginning in 1973 and continuing, section 223(b)(1) of the Trade Act of 1974 does not permit the certification of workers prior to one year of the petition date which in this case is April 27, 1987. Worker separations during the period applicable to the petition are the result of (1) company mandated cost control efforts and (2) the reorganization of the production process brought about by the shift to electronic controls which require less machining and man hours to produce.

The subcontracting of production operations to local shops and to other domestic plants also played a major role in reducing the workforce at Wickliffe. A domestic transfer of production would not form a basis of certification. There were no layoffs from the machine shop at Wickliffe during the period applicable to the subject petition that could be associated with a domestic or overseas transfer of production.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 3rd day of September 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87–21188 Filed 9–14–87; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–19,688]

Adjustment Assistance; Negative Determination Regarding Application for Reconsideration; Whirlpool Corp., St. Joseph Division, St. Joseph, MI

By an application dated August 18, 1987, counsel for local 1918 of the International Association of Machinists (IAM) requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Whirlpool Corporation's St. Joseph Division, St. Joseph, Michigan. The denial notice was signed on July 7, 1987 and published in the **Federal Register** on July 21, 1987 (52 FR 27479).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opionion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Counsel claims that a significant portion of the production previously performed at Whirlpool Corporation was transferred to Canada. It is also claimed that machinery used in the production of washing machine component parts formerly produced at St. Joseph was also transferred to Canada.

Investigation findings show that Whirlpool Corporation's plant in St. Joseph was essentially a component parts plant for washing machines and dryers. The St. Joseph plant supplied component parts to other corporate plants in Ohio and South Carolina. As a result of an important product design change, Whirlpool has completely shifted its production to direct drive washing machines and dryers from the previously produced belt driven models. This technological change makes the new models not only more efficient but they require substantially less parts. Consequently, many of the parts formerly produced at St. Joseph are no longer required. Technological unemployment would not form a basis for certification.

Production on most other parts, e.g. washing machine lids, plastic parts, etc. was transferred to other corporate domestic plants. A domestic transfer of production also would not form a basis for certification.

Whirlpool's affiliate in Canada continues to produce the older belt driven washing machines for the Canadian market. Investigation findings show that less than seven percent of component parts production from St. Joseph was transferred to Canada. Most of this transferred production is integrated into the production of washing machines for the Canadian market. Lost export sales would not form a basis for certification.

Concerning the transfer of machinery to Canada, only increased imports of articles like or directly competitive with the articles produced by the workers' firm or appropriate subdivision can be considered under the Trade Act of 1974. Machinery used in the production of washing machine parts is not like or directly competitive with washing machine parts. This issue was addressed in *United Shoe Workers of America, AFL–CIO* v. *Bedell*, 506, F 2d 174, (D.C. Circ. 1974). The court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, machinery for belt driven parts which is further removed from the finished article cannot be considered like or directly competitive with washing machine parts.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 8th day of September 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87–21189 Filed 9–14–87; 8:45 am]

BILLING CODE 4510–30–M

Federal-State Unemployment Compensation Program; Ending of Extended Benefit Period in the State of Alaska

This notice announces the ending of the Extended Benefit Period in the State of Alaska, effective on August 29, 1987.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 *note*) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the

Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Alaska on December 29, 1985, and has now triggered off.

Determination of an "off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on August 8, 1987, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending August 29, 1987.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office in their locality.

Signed at Washington, DC, on September 4, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 87-21191 Filed 9-14-87; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act of 1974; Records Transfer

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of transfer of records subject to the Privacy Act to the National Archives.

SUMMARY: Records retrievable by personal identifiers which are transferred to the National Archives of the United States are exempt from most provisions of the Privacy Act of 1974 (5 U.S.C. 552a) except for publication of a notice in the **Federal Register.** NARA publishes a quarterly notice of the records newly transferred to the National Archives of the United States which were maintained by the originating agency as a system of records subject to the Privacy Act.

DATE: Written comments must be received by October 15, 1987.

ADDRESS: Comments should be sent to Adrienne C. Thomas, Director, Program Policy and Evaluation Division (NAA), National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Dr. Trudy Peterson, Assistant Archivist for the National Archives, on (202) 523-3130 or (FTS) 523-3130.

SUPPLEMENTARY INFORMATION: In accordance with section (1)(3) of the Privacy Act, archival records transferred from Executive Branch agencies to the National Archives of the United States are not subject to the provisions of the Act relating to access, disclosure, and amendment. The Privacy Act does require that a notice appear in the **Federal Register** when records are transferred to the National Archives of the United States. The records of the United States Congress and all United States Courts are exempt from all provisions of the Privacy Act. Consequently, when records retrievable by personal identifiers are transferred from the Congress or the Courts to the National Archives of the United States, the notice in the **Federal Register** does not include these records.

After transfer of records retrievable by personal identifiers from executive branch agencies to the National Archives of the United States, NARA does not maintain these records as a separate systems of records. NARA will attempt to locate specific records about the individual. Records in the National Archives of the United States may not be amended, and NARA will not consider any requests for amendment.

Archival records maintained by NARA are arranged by Record Group depending on the agency of origin. Within each Record Group, the records are arranged by series, thereunder generally by filing unit, and thereunder by document or groups of documents. The arrangement at the series level or below is generally the one used by the originating agency. Usually, a system of records corresponds to a series, and this notice uses the series title as the title of the system of records.

The following systems of records retrievable by personal identifiers have been transferred to the National Archives:

1. System name:

National Archives Record Group 75, Records of the Bureau of Indian Affairs (Department of the Interior), Fort Totten Indian Agency Records, 1910-1935.

System location:

National Archives-Kansas City Branch, 2312 East Bannister Road, Kansas City, Missouri 64131.

Categories of individuals covered by the system:

Student or potential students at Bureau of Indian Affairs schools (including contract schools), 1910-1935.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l)(3). Further information about uses and restrictions may be found in 41 FR 105-61.53 and in the General Notice published by the National Archives and Records Administration in 40 CFR 45786 (October 2, 1975).

Categories of records in the system:

Student case files, attendance and performance records, banking records and expenditures of tribal benefit funds and applications for grants and grant agreements.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in boxes.

b. Retrievability: Arranged alphabetically by name of student.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address:

The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8th and Pennsylvania Avenue NW., Washington, DC 20408.

Notification Procedures:

Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 41 CFR 105–61.53. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 41 CFR 105–61.5101.

2. System name:

National Archives Record Group 75, Records of the Bureau of Indian Affairs (Department of Interior), Pierre Agency Records, 1949–1962.

System location:

National Archives-Kansas City Branch, 2312 East Bannister Road, Kansas City, Missouri 64131.

Categories of individuals covered by the system:

Individual Indians enrolled in Bureau of Indian Affairs (BIA) agencies, students or potential students at BIA schools (including contract schools), 1949–1962.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(3). Further information about uses and restrictions may be found in 41 CFR 105–61.53 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

Categories of records in the system:

Student case files, attendance and performance records, banking records and expenditures of tribal benefit funds and applications for grants and grant agreements.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage. Paper records stored in boxes.

b. Retrievability. Arranged alphabetically by name of student.

c. Safeguards. Records are kept in a locked stack area accessible only to authorized personnel of the National Archives.

d. Retention and disposal. Records are retained permanently.

System manager and address:

The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8th and Pennsylvania Avenue, NW., Washington, DC 20408.

Notification procedure:

Persons desiring information from or about these records should direct inquiries to the system manager.

Records access procedures:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 41 CFR 105–61.53. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 41 CFR 105.61.5101.

3. System name:

National Archives Record Group 75, Records of the Bureau of Indian Affairs (Department of Interior), Pierre Agency, Indian student records, 1928–1964.

System location:

National Archives-Kansas City Branch, 2312 East Bannister Road, Kansas City, Missouri 64131.

Categories of individuals covered by the system:

Student case files, attendance and performance records, banking records and expenditures of tribal benefit funds and applications for grants and grant agreements, 1928–1964.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(3). Further information about uses and restrictions may be found in 41 CFR 105–61.53 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

Categories of records in the system:

Student case files, attendance and performance records, banking records and expenditures of tribal benefit funds and applications for grants and grant agreements.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage. Paper records stored in boxes.

b. Retrievability. Arranged alphabetically by name of student.

c. Safeguards. Records are kept in a locked stack area accessible only to authorized personnel of the National Archives.

d. Retention and disposal. Records are retained permanently.

System manager and address:

The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8th and Pennsylvania Avenue NW., Washington, DC 20408.

Notification procedure:

Persons desiring information from or about these records should direct inquiries to the system manager.

Records access procedures:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 41 CFR 105–61.53. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 41 CFR 105–61.53.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 87–21186 Filed 9–14–87; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts, Literature Advisory Panel (Poetry Fellowships Section) to the National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Poetry Fellowships Section) to the National Council on the Arts will be held on October 1–2, 1987 from 9:00 a.m.–5:30 p.m. and on October 3, 1987, from 9:00–2:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 3, 1987 from 12:00 p.m.–2:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on October 1–2, 1987 from 9:00 a.m.– 5:30 p.m. and on October 3, 1987 from 9:00 a.m.–12:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

September 8, 1987.

[FR Doc. 87–21151 Filed 9–14–87; 8:45 am]

BILLING CODE 7537–01–M

Meetings: Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506 telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidential to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* September 30, 1987
Time: 8:30 a.m. to 5:30 p.m.
Room 315
Program: This meeting will review applications in the fields of the humanities submitted to the Editions Category of the Texts Program, Division of Research, for projects beginning after April 1, 1988.

2. *Date:* October 5, 1987
Time: 8:30 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review applications in the fields of the humanities submitted to the Editions Category of the Texts Program, Division of Research, for projects beginning after April 1, 1988.

3. *Date:* October 6, 1987
Time: 8:30 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review applications in the fields of the humanities submitted to the Editions and Translations Category of the Texts Program, Division of Research, for projects beginning after April 1, 1988.

4. *Date:* October 16, 1987
Time: 8:30 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review applications in the fields of the humanities submitted to the Translations Category for Texts Program, Division of Research, for projects beginning after April 1, 1988.

5. *Date:* October 19, 1987
Time: 8:30 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review applications in the fields of the humanities submitted to the Translations Category for Texts Program, Division of Research, for projects beginning after April 1, 1988.

6. *Date:* October 23, 1987
Time: 8:30 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review applications in the fields of the humanities submitted to the Translations Category, Division of Research Programs, for projects beginning after April 1, 1988.

7. *Date:* October 26, 1987
Time: 8:30 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review applications in the fields of the

humanities submitted to the Translations Category, of Texts Program, Divsion of Research Programs, for projects beginning after April 1, 1988.

8. *Date:* October 30, 1987
Time: 8:30 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review applications in the fields of the humanities submitted to the Translations Category of Texts Program, Divsion of Research Programs, for projects beginning after April 1, 1988.

9. *Date:* October 29–30, 1987
Time: 9:00 a.m. to 5:30 p.m.
Room: 430
Program: This meeting will review applications for Humanities Projects in Libraries, submitted to the Division of General Programs, for projects beginning after September 1987.

Susan H. Metts,
Assistant Chairman for Administration.
[FR Doc. 87-21181 Filed 9-14-87; 8:45 am]
BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement and regulatory analysis. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, EE 006-5 (which should be mentioned in all correspondence concerning this draft guide) is entitled "Qualification of Safety-Related Lead Storage Batteries for Nuclear Power Plants" and is intended for Division 1. The guide is being developed to describe a method acceptable to the NRC staff for complying with Commission regulations on the qualification of safety-related lead storage batteries for nuclear power plants. This guide endorses IEEE Std 535-1986, "IEEE Standard for Qualification of Class 1E Lead Storage Batteries for Nuclear Power Generating Stations."

This draft guide and the associated value/impact statement and regulatory analysis are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on the guide (including any implementation schedule), the draft value/impact statement, and the regulatory analysis. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Comments will be most helpful if received by November 20, 1987.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 4th day of September 1987.

For the Nuclear Regulatory Commission.

Robert J. Bosnak,
Deputy Director, Division of Engineering, Office of Nuclear Regulatory Research.
[FR Doc. 87-21206 Filed 9-14-87; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24891; File No. SR-OCC-87-15]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corp.

The Options Clearing Corporation ("OCC") on July 22, 1987, filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The Commission is publishing the notice to solicit comment on the proposed rule change. The proposal would authorize a new clearing system, the International Clearing System ("ICS"), designed to accommodate trading of OCC-cleared products worldwide on a 24 hour basis.[1]

I. Description of the Proposal

The proposal would modify Article VI (Clearance of Exchange Transactions) of OCC's By-Laws by adding a new Section 22 that would govern the classes of options to be cleared through ICS. This new provision would authorize separate reporting for classes of options cleared through ICS.

OCC states that under ICS, as it will be implemented initially: (1) Position, exercise, and assignment information will be processed beginning at 3:30 p.m. EST; (2) the deadline for notices will be changed from 8:00 p.m. to 3:30 p.m. EST; (3) daily position reports and exercise and assignment activity reports will be distributed by 6:30 p.m. EST; and (4) notification of assignments will be distributed between 6:00 p.m. and 6:30 p.m. EST. OCC states that generally, transactions that occur in trading sessions conducted after 4:00 p.m. EST will be deemed to have been effected on the following day.

OCC specifies that under ICS: (1) The acceptance of late filings of option exercise notices would be a matter of OCC's discretion; and (2) due to the reduced processing time available in ICS, OCC would not apply the fee

[1] This ICS proposal relates to the rule change recently submitted by the Philadelphia Stock Exchange, Inc. ("PHLX") to extend trading hours for foreign currency options. *See* File No. SR-PHLX-87-17, approved as Securities Exchange Act Rel. No. 24652 (June 29, 1987), 52 FR 25680. As of Thursday, September 17, 1987, PHLX plans to add an evening trading session that will begin at 7:00 p.m. and end at 11:00 p.m. Eastern Standard Time ("EST"), Sundays through Thursdays.

OCC has submitted this filing to accommodate the new PHLX evening session. Moreover, OCC states that the PHLX evening session is the start of what will become a 24 hour trading day.

schedule for late filing of option exercise notices, as set forth in OCC Rule 801(e), to option contracts cleared through ICS.[2]

OCC states that, as a related change, the proposal would modify Policy and Interpretation ("Interpretation") .01 of OCC By-Laws Article VI, Section 1. This change would recognize the fact that if an account contains positions in foreign currency options cleared through ICS, correspondent clearing corporations may not be able to effect automatic account transfers/through the Automated Customer Accounts Transfer System ("ACATS") prior to 3:30 p.m. EST.[3] Accordingly, the new Interpretation would provide that an account transfer could be handled "manually," as it would have been before the introduction of ACATS. Additionally, the proposal contains certain conforming changes, including a definition of "ICS" and a modified definition of "trade date" that would be added to Article I of OCC's By-Laws.

OCC emphasizes that many of its basic operations, including daily premium and margin settlement and the exercise settlement process, would be unaffected by the change to ICS. These activities would continue to be conducted at the same time and in the same manner as conducted currently. OCC further states that ICS will be essentially the same as OCC's existing system for clearing non-equity options except that the trade processing and clearing functions will be compressed into the period between 4:00 p.m. and 7:00 p.m. EST.

II. OCC's Rationale for the Proposal

OCC states that the increasing internationalization of the securities markets has caused extended trading hours due to: (1) The trading of the same security in two or more markets located in different time zones, and (2) extended trading hours in domestic markets that are intended to coincide with business hours in foreign markets. OCC believes that eventually some OCC-cleared products will be traded somewhere in the world twenty-four hours a day. To accommodate these expected trading hours, OCC has designed ICS, a new clearing system for a trading day that begins at about 7:00 p.m. Eastern Time, and which would continue until as late as 4:00 p.m. on the following business day.

OCC states that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act because it will further the prompt and accurate clearance and settlement of options transactions, including transactions that are effected in United States and foreign markets and at times that are outside the usual business hours of the United States.

III. Request for Comments

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protecton of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comment within 21 days after this notice is published in the **Federal Register**. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–87–15 and should be submitted by October 6, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 9, 1987.

[FR Doc. 87–21177 Filed 9–14–87; 8:45 am]

BILLING CODE 8010–01–M

[2] For background on OCC's filing deadline for option exercise notices and its schedule of late fees, *see* File No. SR–OCC–86–19, approved in Securities Exchange Act Rel. No. 24431 (May 16, 1987), 52 FR 17874.

[3] For background in ACATS, *see* File No. SR–OCC–86–26, which was noticed as immediately effective in Securities Exchange Act Rel. No. 24133 (February 24, 1987), 52 FR 6147.

DEPARTMENT OF STATE

Director General of the Foreign Service and Director of Personnel

[Public Notice 1026]

State Department Performance Review Board Members

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Executive Resources Board of the Department of State has appointed the following members to the State Department Performance Review Board Register and in so doing amends accordingly Department of State Public Notice No. 924 (December 7, 1984) effective December 3, 1984.

Jack Jenkins, Executive Director, Bureau of Administration

Richard A. Clarke, Deputy Assistant Secretary for Regional Analysis, Bureau of Intelligence and Research

Elizabeth G. Verville, Deputy Legal Advisor, Office of the Legal Advisor

Frederick A. McGoldrick, Director, Office of Nuclear Non-Proliferation and Export Policy, Bureau of Oceans and International Environmental and Scientific Affairs

Elaine B. Jenkins, One America, Inc., 1109 Spring Street, Silver Spring, MD 20910.

Date: September 4, 1987.

George S. Vest,

Director General of the Foreign Service and Director of Personnel.

[FR Doc. 87–21152 Filed 9–14–87; 8:45 am]

BILLING CODE 4710–15–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 87–9–21]

Aviation Proceedings; Fitness Determination; Chester County Aviation, Inc. d/b/a Chester County Air

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 87–9–21, order to show cause.

SUMMARY: The Department of Transportation is proposing to find Chester County Aviation, Inc. d/b/a Chester County Air fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than September 25, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (P–56, Room 6420), U.S. Department of Transportation, 400

Seventh Street SW., Washington, DC 20590, (202) 366–2341.

Dated: September 10, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–21213 Filed 9–14–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Tulsa County, OK

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Tulsa County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Frank N. Cunningham, Assistant Division Administrator, Federal Highway Administration, 200 NW. Fifth Street, Room 454, Oklahoma City, Oklahoma 73102, Telephone: (405) 231–4725.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oklahoma Department of Transportation (ODOT), will prepare an environmental impact statement (EIS) on a proposal to improve Interstate Route 44 in Tulsa. The proposed improvement would involve the addition of two lanes to the existing four-lane divided facility from the Arkansas River bridge/Riverside Drive interchange eastward approximately four miles to the west edge of the Broken Arrow Expressway interchange. Improvements to this segment of Interstate 44 are considered necessary to provide for the existing and projected traffic demand as well as to enhance safety.

Two alternatives are under consideration: Taking no action and adding two lanes to the existing facility to create a six-lane divided freeway.

Letters describing the proposed action and soliciting comments have previously been sent to appropriate Federal, State and local agencies during the Environmental Assessment stage of environmental processing.

A public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: September 8, 1987.

Frank N. Cunningham,

Assistant Division Administrator, Oklahoma City, OK.

[FR Doc. 87–21153 Filed 9–14–87; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Dane County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway improvement in Dane County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jaclyn Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905. Telephone (608) 264–5967.

SUPPLEMENTARY INFORMATION: An EIS will be prepared in cooperation with the Wisconsin Department of Transportation for transportation improvements to State Highway US 18/51 in Dane County, Wisconsin. The U.S. Army Corp of Engineers has been requested to serve as a cooperating agency for the EIS.

The proposed project consists of a 4-lane improvement around or through the City of Verona. The project begins at approximately County Trunk Highway (CTH) G and US 18/151 intersection and proceeds easterly to the CTH PD and US 18/151 intersection.

Planning, environmental, and location engineering studies are underway to develop transportation improvement alternatives including: (1) The no-build alternative, (2) reconstruction of the existing roadway through the City of Verona, and (3) a bypass to the north or south of the City of Verona.

Existing US 18/151 is a 2-lane facility as it passes through the City of Verona. The highway is functionally classified as a principal arterial and is on the Federal designated truck network. Environmental activities are in progress for a proposed 4-lane roadway improvement west of the City of Verona. Four lanes already exist east of the City. Continuation of a 4-lane section will be important to maintaining highway safety, accommodating traffic, and assisting local governments in their land-use planning. Agency coordination and scoping activities will involve agencies that are identified as having an interest in or jurisdiction by law regarding the proposed action. Agencies will be notified by mail of the date of the formal scoping meeting.

In addition, coordination will continue with local units of government, private interest groups, and local citizens, including public meetings and a formal public hearing.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: September 3, 1987.

Frank M. Mayer,

Division Administrator, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. 87–21187 Filed 9–14–87; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 8, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0068
Form Number: IRS Form 2441
Type of Review: Resubmission
Title: Credit for Child and Dependent Care Expenses

Description: Internal Revenue Code (IRC) section 21 allows credit for certain

child and dependent care expenses to be claimed on Form 1040. The information on Form 2441 is used to help verify that the credit is properly figured.

Respondents: Individuals or households
Estimated Burden: 1,115,956

Clearance Officer: Garrick Shear, (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 87–21119 Filed 9–14–87; 8:45 am]
BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 178
Tuesday, September 15, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, September 16, 1987, see times below.
LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.
STATUS:
MATTERS TO BE CONSIDERED:

9:30 a.m.

Closed to the Public

1. Compliance Update

The staff will brief the Commission on the status of certain compliance matters.

10:30 a.m.

Open to the Public

2. Lawn Darts: Options

The staff will brief the Commission on options relating to the hazards of lawn darts.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.
September 11, 1987.
[FR Doc. 87–21359 Filed 9–11–87; 4:01 pm]
BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, September 17, 1987.
LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.
STATUS: Closed to the Public.
MATTERS TO BE CONSIDERED:

1. Enforcement Matter OS #5497

The staff will brief the Commission on Enforcement Matter OS #5497.

2. Enforcement Matter OS #5364

The staff will brief the Commission on Enforcement Matter OS #5364.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.
September 11, 1987.
[FR Doc. 87–21360 Filed 9–11–87; 4:01 pm]
BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:33 p.m. on Wednesday, September 9, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) Matters relating to the possible failure of certain insured banks; and (2) a request for financial assistance, pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 10, 1987.
Federal Deposit Insurance Corporation.
Margaret M. Olsen,
Deputy Executive Secretary.
[FR Doc. 87–21325 Filed 9–11–87; 2:07 pm]
BILLING CODE 6714–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 10, 1987.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Sent to Federal Register on September 2, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., September 10, 1987.

CHANGES IN THE MEETING: The meeting previously announced for this time and date has been cancelled. No earlier announcement of this cancellation was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 87–21315 Filed 9–11–87; 2:06 pm]
BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, September 18, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: September 10, 1987.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 87–21203 Filed 9–10–87; 4:42 pm]
BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 Noon, Monday, September 21, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Preliminary consideration of testimony on banking issues.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: September 11, 1987.

James McAffee,

Associate Secretary of the Board.

[FR Doc. 87–21349 Filed 9–11–87; 3:50 pm]

BILLING CODE 6210–01–M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Wednesday, September 23, 1987.

PLACE: Eighth Floor, 1120 Vermont Avenue NW., Washington, DC.

STATUS: Open.

MATTER TO BE CONSIDERED: *Marren v. Department of Justice*, DA075285C9010; to hear the agency's response to the Board's order dated August 24, 1987, directing certain officials of the agency to "show cause why their salaries should not be withheld in accordance with the authority described at 5 U.S.C. 1205(d)(2) for the period of noncompliance" with the Board's back pay order in this case.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Date: September 11, 1987.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 87–21343 Filed 9–11–87; 3:34 pm]

BILLING CODE 7400–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 14, 21, 28, and October 5, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 14

Monday, September 14

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)
10:30 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Briefing on the Status of Peach Bottom (Public Meeting)

Thursday, September 17

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 21—Tentative

Wednesday, September 23

2:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 28—Tentative

Thursday, October 1

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)
2:00 p.m.
Briefing on Technical Specifications Improvement Project (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 5—Tentative

Tuesday, October 6

2:00 p.m.
Briefing on Transportation and the Modal Study (Public Meeting)

Thursday, October 8

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Licensing Board Decision in *Radiology Ultrasound Nuclear Consultants, P.A.*" (Public Meeting) was held on September 10.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker, (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

September 10, 1987.

[FR Doc. 87–21348 Filed 9–11–87; 3:38 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [52 FR 33901 September 8, 1987].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Monday, August 31, 1987.

CHANGE IN THE MEETING: Additional meeting.

The following items were considered at a closed meeting on Thursday, September 10, 1987, following the 10:00 a.m. open meeting.

Regulatory matter regarding financial institution.
Settlement of litigation matter.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jacqueline Higgs at (202) 272–2149.

Jonathan G. Katz,

Secretary.

September 11, 1987.

[FR Doc. 87–21356 Filed 9–11–87; 3:55 pm]

BILLING CODE 8010–01–M

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Corrections

Federal Register
Vol. 52, No. 176
Tuesday, September 15, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

48 CFR Part 208

Federal Acquisition Regulation Supplement; Federal Supply Schedules

Correction

In rule document 87-20309 beginning on page 33411 in the issue of Thursday, September 3, 1987, make the following correction:

On page 33412, in the table, in the ninth entry, in the first column, "02/01/88" should read "02/01/89".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87C-0253]

Filing of Color Additive Petition; CooperVision, Inc.

Correction

In notice document 87-20013 beginning on page 32965 in the issue of Tuesday, September 1, 1987, make the following correction:

On page 32965, under **FOR FURTHER INFORMATION CONTACT**, in the fourth and fifth lines, the telephone number should read "202-472-5690".

BILLING CODE 1505-01-D

federal register

Tuesday
September 15, 1987

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Rubber Tire Manufacturing Industry; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3211-3]

Standards of Performance for New Stationary Sources; Rubber Tire Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for the rubber tire manufacturing industry were proposed in the **Federal Register** on January 20, 1983 (48 FR 2676). This action promulgates standards of performance for the rubber tire manufacturing industry. These standards implement section 111 of the Clean Air Act and are based on the Administrator's determination that the synthetic rubber industry causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require new, modified, and reconstructed facilities at rubber tire manufacturing plants to reduce emissions to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

EFFECTIVE DATE: September 15, 1987.

Under section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Rubber Tire Manufacturing Industry—Background for Promulgated Standards," EPA–450/3–81–008b. The promulgation BID contains: (1) A summary of all public comments made on the proposed standards and the Administrator's response to the comments, (2) summary of the changes made to the standards since proposal, and (3) the final environmental impact statement which summarizes the impacts of the standards.

Docket. A docket, number A–80–9, containing information considered by the EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information and official interpretations of applicability, compliance requirements, and reporting aspects of the promulgated standard, contact the appropriate Regional, State, or local office contact as listed in 40 CFR 60.4. For further information on the background of the regulatory decisions in the promulgated standard, contact Ms. Dianne Byrne, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 2711, telephone (919) 541–5266. For further information on the technical aspects of the promulgated standards, contact Mr. Dave Salman, Chemicals and Petroleum Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5417.

SUPPLEMENTARY INFORMATION:

Summary of Standards

Standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> • • • application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [section 111(a)(1)].

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

The standards limit volatile organic compounds (VOC) emissions from new, modified, and reconstructed facilities. VOC emissions from the rubber tire industry are caused by solvent application to different components of a tire during the manufacturing process. The affected facilities are each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C-automatic operation.

Facilities affected by these standards are those where components for agricultural, airplane, industrial, mobile home, light-duty truck or passenger vehicle tires which have a bead diameter up to and including 0.5 meter (m) [19.7 inches (in)] and cross section dimension up to and including 0.325 m (12.8 in) are mass produced in assembly-line fashion.

The standards for each undertread cementing operation, each sidewall cementing operation, each green tire spraying operation where organic solvent-based sprays are used, and each Michelin-B operation require at least 75 percent emission reduction. The standards require 65 percent emission reduction for each Michelin-A operation and each Michelin-C-automatic operation. The standards require that emissions be limited to 10 grams of VOC per tire (g/tire) for each tread end cementing operation, 5 grams of VOC per bead (g/bead) for each bead cementing operation, 1.2 g/tire for a water-based inside green tire spray application, and 9.3 g/tire for a water-based outside green tire spray application.

Total (uncontrolled) monthly VOC use cutoffs (kg/mo limits) have been provided for undertread cementing operations, sidewall cementing operations, green tire spraying operations where organic solvent-based sprays are used, Michelin-A operations, Michelin-B operations, and Michelin-C-automatic operations. Where monthly VOC use at one of these affected facilities is less than or equal to the applicable cutoff, that affected facility is exempt from the prescribed percent emission reduction requirements. The monthly VOC use cutoffs vary according to the number of days in a monthly compliance period. For each undertread cementing operation, the VOC use cutoffs at or below which 75 percent emission reduction is not required are as follows:

Number of days	VOC use limit
28	3,870 kilograms (kg)
29	4,010 kg
30	4,150 kg
31	4,280 kg
35	4,840 kg (for 5-week production months only)

The monthly VOC use cutoffs for each sidewall cementing operation and each green tire spraying operation where organic solvent-based sprays are used,

at or below which 75 percent emission reduction is not required, are as follows:

Number of days	VOC use limit
28	3,220 kg
29	3,340 kg
30	3,450 kg
31	3,570 kg
35	4,030 kg (for 5-week production months only).

The monthly VOC use cutoffs for each Michelin-B operation, at or below which 75 percent emission reduction is not required, are as follows:

Number of days	VOC use limit
28	1,310 kg
29	1,360 kg
30	1,400 kg
31	1,450 kg
35	1,640 kg (for 5-week production months only).

The monthly VOC use cutoffs for each Michelin-A operation and each Michelin-C-automatic operation, at or below which 65 percent emission reduction is not required, are as follows:

Number of days	VOC use limit
28	1,570 kg
29	1,630 kg
30	1,690 kg
31	1,740 kg
35	1,970 kg (for 5-week production months only).

The standards also provide an alternative means of compliance with the 75 percent emission reduction requirements. This option, available for undertread cementing operations, sidewall cementing operations, green tire spraying operations where organic solvent-based sprays are used, and Michelin-B operations, requires the owner or operator to demonstrate that the affected facility meets the following equipment and operating parameters:

(1) Captured emissions vented to a 95 percent efficient control device;

(2) An enclosure around the cement or spray application and drying areas;

(3) For undertread cementing operations, sidewall cementing operations, and Michelin-B operations, enclosure of the drying area to contain components for a minimum of 30 seconds after cement application;

(4) For green tire spraying operations where organic solvent-based sprays are used, enclosure of tires for a minimum of 30 seconds after spraying;

(5) A minimum 100 feet per minute (fpm) face velocity through each permanent opening to the enclosure; and

(6) The total area of all permanent openings into the enclosure shall not exceed the area necessary to maintain the VOC concentration in the exhaust gas at 25 percent of the lower explosive limit (LEL) while the facility is operating at maximum solvent use rate, a 100 fpm face velocity is maintained through all permanent openings, and all temporary openings are closed.

Separate testing, monitoring, recordkeeping, and reporting requirements are included for each combination of standard format (g/tire, g/bead, kg/mo, or percent emission reduction), control technique (low solvent use or emission reduction system), and compliance method (performance tests or equipment specifications). Initial performance tests are required for each affected facility.

Monthly performance tests are required to determine compliance with each of the g/tire limits (tread end cementing and water-based green tire spraying); the g/bead limit; and each of the kg/mo VOC use limits (undertread cementing, sidewall cementing, organic solvent-based green tire spraying, Michelin-A, Michelin-B, and Michelin-C-automatic). Whether or not monthly performance tests are required to determine compliance with the percent emission reduction standards depends primarily on the type of control device used, and then on the method of demonstrating compliance.

The standards require continuous monitoring and recording of thermal incinerator combustion temperature and of the temperature before and after the catalyst bed for catalytic incinerators. If a carbon adsorber is used as a VOC recovery system, then the standards require the continuous monitoring and recording of the organics concentration level of the carbon bed exhaust. The standards require that the owner or operator maintain at the source for a period of at least 2 years records of all data and calculations used to determine VOC emissions for each affected facility.

The standards require the owner or operator to meet all notification and reporting requirements specified in Subpart A of 40 CFR Part 60. Each owner or operator of an affected facility must declare the monthly schedule (each calendar month or a 4–4–5–week schedule) to be used in making compliance determinations. In addition, each owner or operator of an affected undertread cementing, sidewall cementing, green tire spraying (using organic solvent-based sprays), Michelin-A, Michelin-B, or Michelin-C-automatic facility must declare which standard will be met (percent emission reduction or kg/mo VOC use) or whether compliance will be demonstrated by meeting the optional equipment specifications (not applicable for Michelin-A or Michelin-C-automatic facilities). These declarations must be made in writing to the Administrator at the time of notification of anticipated startup as required in 40 CFR 60.7(b). Where monitoring of operating parameters is required, the owner or operator must report semiannually when monitored parameters are not within acceptable limits.

Method 24 of Appendix A to Part 60 or formulation data will be used to determine the VOC content of cements and green tire spray materials, and Method 25 will be used to determine the concentration of VOC in exhaust gas streams.

Summary of Environmental, Energy, and Economic Impacts

The incremental impacts in the background information document (BID) for the proposed standards, "Rubber Tire Manufacturing Industry—Background Information for Proposed Standards, "EPA–450/3–81–006a, were determined using the levels of emission reduction recommended in the control technique guidelines (CTG) document, "Control of Volatile Organic Compound Emissions from Manufacture of Pneumatic Rubber Tires," EPA–450/2–78–030, as the regulatory baseline. The CTG recommends an average overall emission reduction of about 70 percent from undertread cementing, tread end cementing, bead cementing, and green tire spraying operations. Sidewall cementing was not addressed in the CTG.

In establishing the baseline for the proposed standards, capture and control technology was assumed to be used for undertread cementing operations, tread end cementing operations, bead cementing operations, and green tire spraying operations where organic solvent-based sprays are used. However, many States where rubber tire manufacturing plants are located have adopted regulations in their State implementation plans (SIP's) that can be met without installing capture and control equipment at tread end cementing and bead cementing operations. The EPA believes that this emission reduction scenario is a more representative regulatory baseline for calculating the impacts of the new source performance standards (NSPS) and, therefore, has revised the emission reduction and cost calculations for the baseline.

Compared to the revised baseline, the standards will reduce nationwide emissions from newly constructed, modified, and reconstructed facilities by

1,710 megagrams (1,885 tons) in the fifth year after proposal. This represents a 46 percent reduction in emissions beyond the baseline. For a single medium-sized plant, the emission reduction compared to the baseline is about 367 megagrams (405 tons) per year. The standards will not result in an increase of water pollution, solid waste, or energy consumption.

Control costs calculated for the regulatory baseline assume that: (1) A separate capture and control system will be employed at each undertread cementing operation to reduce emissions; (2) 54 percent of the green tire spraying operations will use only water-based sprays and therefore incur no control system costs; and (3) 46 percent of the green tire spraying operations will use some organic solvent-based sprays and will utilize capture and control technology to reduce emissions. Control costs calculated for the NSPS assume that: (1) A separate capture and control system will be employed at each undertread cementing operation and each sidewall cementing operation; (2) good work practices will be used to minimize emissions at each tread end cementing operation and each bead cementing operation; (3) 54 percent of the green tire spraying operations will use only water-based sprays and therefore incur no control system costs; and (4) 46 percent of the green tire spraying operations will use some organic solvent-based sprays and will utilize capture and control technology to reduce emissions.

Compared to the regulatory baseline, total nationwide capital costs will increase by about $6.1 million during the first 5 years after proposal. The total nationwide annualized cost in the fifth year will increase by about $1.1 million. For a single medium-size plant, the fifth year annualized cost attributable to NSPS, including solvent recovery credits, will be about $114,000. The average incremental cost effectiveness for the industry compared to the baseline is $615 per megagram. For a medium-sized plant, the cost effectiveness compared to the baseline is $315 per megagram. The nationwide costs represent single-line retrofits, and the medium-sized plant costs represent a new plant using one capture/control system for all like operations. No changes in price or reductions in return on investment (ROI) are projected compared to the baseline control level. Implementation of the standards is not expected to inhibit industry growth.

The environmental, energy, and economic impacts are discussed in greater detail in the promulgation BID, "Rubber Tire Manufacturing Industry—Background for Promulgated Standards," EPA–450/3–81–008b.

Public Participation

Before proposal of the standards, interested parties were advised by public notice in the **Federal Register** (45 FR 73133, November 4, 1980) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the standards recommended for proposal. The meeting was held December 2–3, 1980. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The standards were proposed in the **Federal Register** on January 20, 1983 (48 FR 2676). The preamble to the proposed standards discussed the availability of the proposal BID, "Rubber Tire Manufacturing Industry—Background Information for Proposed Standards," EPA–450/3–81–008a, which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the proposal BID were distributed to interested parties. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on March 3, 1983, at Research Triangle Park, North Carolina. The hearing was open to the public and each attendee was given an opportunity to comment on the proposed standards. The public comment period was from January 20, 1983, to April 1, 1983.

Nine comment letters were received and two interested parties testified at the public hearing concerning issues relative to the proposed standards. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards. In addition, the EPA met with representatives of the Rubber Manufacturers' Association (RMA) on December 12, 1983, to discuss the feasibility of a compliance bubble for the rubber tire industry.

Major Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from rubber tire manufacturers, a trade association, and from one State agency. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the promulgation BID service as the basis for the revisions which have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble.

Significant changes in the standards since proposal include a change in the definition of an affected green tire spraying facility; the addition of emission limits for green tire spraying operations where organic solvent-based green tire sprays are used; a change in the format of the VOC use rate cutoffs for undertread cementing and sidewall cementing; the addition of a VOC use rate cutoff for green tire spraying operations, Michelin-A operations, Michelin-B operations, and Michelin-C-automatic operations; and the addition of an alternative compliance method for geen tire spraying operations that use organic solvent-based sprays. Emission limits, a VOC use cutoff, and an alternative compliance method for green tire spraying facilities were added in response to industry claims that organic solvent-based sprays must be used in some circumstances. VOC use cutoffs for Michelin-A, -B, and -C-automatic facilities were added in response to receipt of more detailed information on the design and costs of the emission reduction systems that would be applied to these facilities.

The emission limit for bead cementing has been revised from a grams of VOC per tire limit to a grams of VOC per bead limit. The definition of "month" also has been changed. These changes are explained in the promulgation BID.

Several comments in favor of a compliance bubble for tire manufacturing plants were received. While a generic bubble is not being provided in the standards, as discussed under a later section in this preamble, "Bubble Considerations," the Administrator will consider requests for specific compliance bubbles on a case-by-case basis. Factors that the Agency would consider in approving specific bubble applications are discussed in a recently approved NSPS bubble application (52 FR 28946, August 4, 1987).

A statement has been added to the regulation [§ 60.543(1)] to clarify that the precent emission reduction requirements and monthly VOC use cutoffs for undertread cementing, sidewall cementing, green tire spraying, Michelin-A, Michelin-B, and Michelin-C-automatic operations apply to all VOC used in cements and organic solvent-based green tire sprays, including that VOC used for tire types other than those defined in the regulation

[§ 60.541(a)(16)]. At proposal, the EPA believed that only those tires defined in the regulation would be processed at these operations and that other tire types would be processed only at different specialized operations. Since proposal, the EPA has learned that other tire types may be processed on the same equipment and in the same manner as those tires defined in the regulation. VOC emissions from cementing/spraying other tire types at these operations can be captured and controlled in the same manner as VOC emissions from cementing/spraying those tires defined in the regulation. Furthermore, total VOC use data, which are independent of tire size and use, were used to develop the percent emission reduction requirements and monthly VOC use cutoffs.

A second statement has been added to the regulation [§ 60.543(m)] to clarify that only those tires defined in the regulation should be counted in determining the total number of tread ends cemented, beads cemented, green tires sprayed with inside water-based spray, and green tires sprayed with outside water-based sprays each month. The g/tire and g/bead emissions limits for these operations are based on production and VOC use data only for the types of tires defined in the regulation. Therefore, other tire types should not be counted when determining compliance with the g/tire or g/bead limits.

Neither of these clarifications alters the applicability of the standards as proposed. For an operation to be considered an affected facility, it must, at some time, process a type of tire as defined in the regulation. If no tires, as defined in the regulation, are ever processed at a particular operation, then it is not an affected facility. In any subsequent revision of these standards (e.g., the 4-year review), the EPA will consider expanding the scope of the definition of the affected facilities for those operations which have percent emission reduction requirements and monthly VOC use cutoffs to include operations where only tire types other than those now defined in the regulation are processed.

At proposal, owners and operators who use a carbon adsorber to achieve compliance with a precent reduction requirement by meeting equipment specifications would have been required, upon EPA promulgation of the necessary continuous monitor performance specifications, to install an emissions monitor to measure the VOC concentration of the exhaust gases. The Agency has not developed such continuous monitor performance specifications for VOC. However, organics monitoring devices are available that can serve as concentration level indicators for determining proper operation and maintenance without the necessity for performance specifications. In addition, these monitoring devices are substantially less costly to operate than emissions monitors and can be operated more easily. Thus, the final standards have been revised to require the installation of organics concentration monitoring devices (where carbon adsorbers are used to achieve compliance with a percent reduction requirement by meeting equipment specifications) for the purpose of determining proper operation and maintenance of the carbon adsorbers.

VOC Use Cutoffs and Definition of the Total Number of Tires Processed (T_o)

Several commenters contended that the proposed method of counting tires at an affected facility to determine the gram per tire VOC usage rate [T_o in § 60.542(c)(2)] would penalize tire manufacturers who eliminate organic solvent application for part of their production at a particular affected facility. Several commenters subsequently requested that the EPA delete the phrase "* * * which receive an application of cement (green tire spray)" from the proposed definition of T_o. These commenters suggested that, for the purpose of performance test calculations in § 60.543(c)(2), T_o should equal the total number of tires or tire components processed at an affected facility. One commenter contended that under the proposed definition of T_o, an affected facility theoretically could be required to install VOC control technology when less than 10 percent of the tires or tire components passing through the affected facility actually are cemented. Another commenter showed that under the proposed definition of T_o, add-on emission controls would be required for one of his plants' undertread cementing operations even though 60 percent of the production is not cemented. This commenter explained that if 0.1 gram of VOC were applied to each tire presently not cemented at the facility, no add-on controls would be required because the proposed definition of T_o would count all tires cemented. The commenter remarked that, based on the example presented above, the proposed definition of T_o would have a result which is contrary to the EPA's intent to have tire manufacturers reduce or eliminate organic solvent use. This commenter stated that if the definition of T_o were revised as requested, credit would be given to his company for eliminating the application of undertread cement to a portion of its production and, consequently, no VOC controls would be required.

The proposed standards would require that VOC emissions be reduced by 75 percent at affected undertread cementing and sidewall cementing facilities where in each calendar month VOC use exceeds an average of 25 g/tire [§ 60.542(a)(1) and (2)]. The percent emission reduction requirement reflects the applicaton of BDT as required by the Clean Air Act.

The gram per tire VOC use cutoffs were provided to exempt from the emission reduction requirements facilities that would incur control costs which the Administrator judge to be too high for the emission reduction achieved. In selecting the 25 g/tire number, the EPA recognized that some tires receiving undertread or sidewall cement would receive less than 25 grams of VOC and others would receive greater than 25 grams of VOC, but, on the average, VOC use would be 25 g/tire, assuming that all tires received an application of cement.

The commenter presented a situation where a large portion of the tire production does not receive undertread cement. However, VOC use is greater than 25 g/tire for the portion of production receiving cement, the only tires that would be counted under the proposed definition of T_o. In this situation, the EPA agrees that the proposed definition of T_o could result in requiring a manufacturer to reduce VOC emissions where the control costs were judged unreasonable for the emission reduction achieved.

With this concern in mind, the EPA has revised the cutoffs. The revised cutoffs are based on total (uncontrolled) monthly VOC usage at the facility. The total (uncontrolled) monthly VOC use cutoffs are equivalent to the proposed 25 g/tire cutoffs, as they were developed using the same bases (production rates, etc.) that were used to determine the proposed 25 g/tire cutoffs. In addition, the VOC use cutoff number reflect the same cost-effectiveness value as the 25 g/tire cutoff numbers. Furthermore, the VOC use format better reflects the EPA's basis (total solvent use, regardless of the number of tires processed) for exemption facilities that would incur control costs judged too high for the amount of emission reduction that would be achieved. This format also eliminates the commenter's problem of having to reduce emissions by 75 percent where total VOC use

could be relatively "small", but the amount of VOC applied per tire could exceed the proposed 25 g/tire cutoff.

The monthly VOC use cutoff figure would depend on whether a calendar month schedule or a "4–4–5" week production schedule is used for compliance and the number of days in a calendar month. Where VOC use at each undertread cementing facility is equal to or less than the following monthly cutoffs, 75 percent emission reduction is not required at that facility:

Number of days per month	VOC use limit
28	3,870 kg
29	4,010 kg
30	4,150 kg
31	4,280 kg
35	4 340 kg (for 5-week production months only)

Where VOC use at each sidewall cementing facility is equal to or less than the following monthly cutoffs, 75 percent emission reduction is not required at that facility:

Number of days per month	VOC use limit
28	3,220 kg
29	3,340 kg
30	3,450 kg
31	3,570 kg
35	4,030 kg (for 5-week production months only)

The standards for bead cementing operations, tread end cementing operations, and green tire spraying operations that use water-based sprays require tire manufacturers to maintain VOC emissions from these operations at or below the levels selected as representative of BDT. VOC consumption and tire production data supplied by the industry indicated that, on the average, VOC emissions of 10 g/tire or less for tires receiving tread end cement and emissions of 5 g/bead or less for beads receiving cement are achievable. The data also show that VOC emissions of 1.2 g/tire or less for tires receiving water-based inside green tire sprays and emissions of 9.3 g/tire or less for tires receiving water-based outside green tire sprays are achievable. Commenters have not provided information indicating that these levels are not achievable. Consequently, T_o for bead cementing, tread end cementing, and water-based green tire spraying will remain as the number of tires or components receiving an application of cement or spray.

Organic Green Tire Spraying Emission Limits

Several commenters requested that the proposed standards for inside and outside green tire spraying be revised to include provisions for use of organic solvent-based green tire sprays. One commenter was concerned that the proposed standards assume that all affected green tire spraying operations can use water-based sprays and that the proposed emission limits (1.2 g/tire for inside sprays, 9.3 g/tire for outside sprays) are significantly more stringent than could be achieved by using organic solvent-based sprays in conjunction with the best capture and control devices.

The proposed standards for inside and outside green tire spraying were based on industry-supplied information indicating that water-based sprays were replacing organic solvent-based sprays at most operations. While the EPA still believes that use of water-based sprays will predominate, it recognizes that organic solvent-based green tire sprays must be used in some cases. Consequently, a standard of performance has been developed for green tire spraying operations where organic solvent-based sprays are used. The EPA has determined that 75 percent emission reduction, based on 80 percent capture and 95 percent control, represent the best system of continuous emission reduction for organic solvent-based green tire sprays. Accordingly, the standard requires a 75 percent emission reduction at a facility where VOC use from organic solvent-based sprays exceeds the monthly cutoffs. In addition, an alternative compliance method is provided.

The following monthly total (uncontrolled) VOC use cutoffs represent the combined VOC use rate for organic solvent-based inside and outside spray applications below which the cost to reduce VOC emissions by 75 percent from a single green tire spraying facility has been judged unreasonable for the emission reduction achieved:

Number of days per month	VOC use limit
28	3,220 kg
29	3,340 kg
30	3,450 kg
31	3,570 kg
35	4,030 kg (for 5-week production months only)

Costs used to develop the cutoffs were based upon a retrofit situation, where VOC emissions captured in an enclosed booth are vented to a baghouse for particulate removal and then to a carbon adsorber for recovery.

The EPA is including equipment requirements as an alternate method of demonstrating compliance with the standards for green tire spraying operations. This alternative compliance method is similar to that included in the alternative compliance method for undertread cementing and sidewall cementing [§ 60.543(j)].

Under the alternative compliance method, the owner or operator of an affected green tire spraying facility can seek to demonstrate compliance with the standards for green tire spraying facilities where organic solvent-based sprays are used by meeting the following design and equipment requirements:

1. Enclosure (i.e., the capture system) of the spray application and drying areas;

2. 100 feet per minute (fpm) face velocity through all permanent openings in the capture system;

3. Coated green tires retained in capture system for at least 30 seconds;

4. The total area of all permanent openings into the enclosure does not exceed the area necessary to maintain the VOC concentration of the exhaust stream at 25 percent of the lower explosive limit (LEL) when the facility is operating at its maximum solvent use rate, the face velocity through all permanent openings is 100 fpm, and all temporary openings are closed; and

5. Captured VOC vented to a 95 percent efficient control device. The 100 foot per minute face velocity requirement for all permanent openings and the 30-second retention time requirement for coated green tires are to assure optimal capture of VOC. The purpose of the maximum permanent opening area requirement is to minimize the escape of fugitive emissions from the enclosure. Twenty-five percent of the LEL was selected as the reference point for sizing permanent openings because it represents the level of dilution most commonly used to avoid fire and explosion hazards. Ninety-five percent control of captured VOC is required as this is considered best demonstrated technology. A particulate removal device, such as a scrubber, a filter, cyclone, or baghouse, may be needed in some cases to pretreat the green tire spray exhaust stream prior to its entering the VOC control device in order to avoid fouling of the VOC control device by particulates in the green tire overspray. However, exhaust stream pretreatment for particlate removal is not required by these standards.

Bubble Considerations

Most of the commenters requested that a general bubble provision be added to the standards before promulgation. Such a provision would set a special emission limit or limits solely for use in bubbles. The commenters believe that a bubble is

appropriate for this industry because there is a large number of small affected facilities, and they claim that the cost of capture and control technology may vary widely from facility to facility. A bubble provision could encourage firms subject to this NSPS to remove additional emmissions at those new facilities where reduction is least costly, in exchange for not controlling facilities where control is more costly. The commenters state that the control flexibility provided by a bubble would provide the potential for large cost savings to the industry.

The Agency has recently approved an NSPS bubble application (52 FR 28946, August 4, 1987). In doing this, the Agency made clear that we will receive case-by-case applications for NSPS compliance bubbles. The major factors that will influence decisions on whether to approve them were also described. The Agency will consider bubbles for rubber tire manufacturing facilities on a case-by-case basis in accordance with such factors.

One factor relevant to the bubbles suggested by the commenters is that EPA will approve only NSPS bubbles that result in an emission reduction at least as great as would have resulted from facility-by-facility application of the NSPS. The two specific examples of potential rubber tire bubbles suggested during the public comment period however would have resulted in more emissions than would have occurred under the facility-by-facility application of the NSPS. Therefore, these bubbles were not approvable. Our reasons for this conclusion and responses are described below for the information of future applicants.

The first suggestion proposed a trade of emissions between an undertread cementing facility and a tread end cementing facility. The uncontrolled VOC emissions from the facilities would be 63 g/tire and 15.1 g/tire, respectively. The commenter used the proposed 25 g/tire VOC use cutoff level as the emission limit for the undertread cementing facility and combined that level with the 10 g/tire limit for tread end cementing for a bubble limit of 35 g/tire. The commenter would install a 75 percent efficient capture and control system at the undertread cementing facility to reduce emissions to 15.7 g/tire. The 15.7 g/tire emission rate combined with the uncontrolled emission rate of 15.1 g/tire at the tread end cementing facility (15.7+15.1=30.8) would be less than the commenter's claimed 35 g/tire bubble limit, thereby allowing the commenter to avoid reducing emisisons from the tread end cementing facility. This example used the proposed 25 g/tire VOC use cutoff (now revised to a monthly VOC use level) as an allowable emission level for an undertread cementing facility that uses a capture/control system, instead of the 15.7 g/tire level that would be required by the standards (75 percent reduction from the uncontrolled level of 63 g/tire). Under the facility-by-facility standards, the combined emissions from undertread cementing and tread end cementing would be, at most, 25.7 g/tire (15.7+10=25.7); under the commenter's proposed bubble, the emissions would be 30.8 g/tire, or at least 5 g/tire greater than the emissions under the facility-by-facility application of the standards.

Furthermore, the commenter's use of the VOC use cutoff numbers as emission limits for facilities for the capture/control systems is a misapplication of the cutoffs. The cutoff numbers represent a VOC use rate at which the cost of operating a capture/control system was judged to be too high for the emission reduction achieved; that is, if a facility uses only 25 g/tire or less, no further emision reduction would be required. However, facilities using more than 25 g/tire are required to reduce emissions by 75 percent because capture and control costs are reasonable for these facilities. Thus, the commenter is applying the wrong emission limit to undertread cementing, since his uncontrolled level is 63 g/tire.

The second example proposed to allow a plant owner/operator to obtain emission credits for operations that are not performed at a particular tire plant. This commenter no longer cements beads as part of the manufacturing process and wanted to obtain credit equal to the 10 g/tire bead cementing limit for use at another new facility (presumably to avoid installing BDT controls at an undertread cementing or sidewall cementing facility).

The approach of generating NSPS emission reduction credit from avoiding construction of certain emitting facilities would not be permitted where the credits would clearly result in increased emissions. If credit were given for production facilities which have not been built, other facilities which have been built might not need to install BDT. For example, if the 5 g/bead limit for bead cementing (again, this figure is equivalent, in most cases, to 10 g/tire) in the above proposal were given as a credit to be applied elsewhere, emissions from the plant could be 10 g/tire higher under a bubble than they would be under the facility-by-facility standards.

Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and the EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review [section 307(d)(7)A)].

Miscellaneous

The effective date of this regulation is September 15, 1987. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, construction or modification of which was commenced after the date of proposal, January 20, 1983.

As prescribed by section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that the rubber tire manufacturing segment of the synthetic rubber source category contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Information collection requirements associated with this regulation (those included in 40 CFR 60.7, 60.545, and 60.546) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0156.

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Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in determining BDT. The economic impact assessment is included in the background information document for the proposed standards.

In addition to economics, the cost-effectiveness numbers of alternative standards were also evaluated to assure that the controls required by this rule are reasonable relative to other VOC regulations. In this case, the standards would increase the rubber tire manufacturers' operating costs, producing an average cost effectiveness in the fifth year of about $615 per megagram of VOC emission reduction if recovery credits are assumed. Additional detail on costs can be found in the background information document.

Percent Emission Reduction Standards.

As discussed in the preamble to the proposed standards, the percent emission reduction format was selected as the format of the standards for undertread cementing operations, sidewall cementing operations, organic-based green tire spraying operations, Michelin-A operations, Michelin-B operations, and Michelin-C-automatic operations. For each of these affected facilities, there exists a wide variability of VOC use among manufacturers and, in some cases, among individual plants. Because of the difficulty in identifying the reasons for this variability and because of concerns regarding potential tire safety implications, the EPA sought to establish standards that would not require affected facilities to restrict VOC use. Given these conditions, the percent emission reduction format conforms better than other formats with the Clean Air Act requirement in section 111(a) that "a standard of performance shall reflect the degree of emission limitation and the percentage reduction achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction . . .) the Administrator determines has been adequately demonstrated."

However, there may be two disadvantages associated with percent emission reduction standards. First, percent emission reduction requirements may not provide a strong incentive to reduce VOC use. However, reducing VOC use at any of these facilities would offer the potential for lower costs due to the reduction in the amount of solvent required. It would also allow the owner or operator to achieve the required percent emission reduction with a smaller capture system and control device. While the resulting cost savings could be substantial, they may not offer sufficient incentive to use less VOC or to employ tackifying processes that do not require the use of VOC. For example, those tire manufacturers using the largest amounts of VOC at their cementing operations may not attempt to use less VOC since they would still be required to operate a 75 percent efficient capture/control system. However, the inclusion of low VOC use cutoffs provides an economic incentive for many sources to reduce VOC usage. A second potential disadvantage with percent emission reduction standards is that they may not contribute to cost-efficiency goals which aim to equate the marginal costs per unit of emission reduction among polluters. The percent emission reduction format, while equalizing costs, tends to increase, rather than minimize, differences in marginal cost-effectiveness values, i.e., the costs of making equal percent reductions are unequal. For rubber tire manufacturers, the costs per ton of VOC removed are greater for medium VOC users than for high VOC users (although the total costs are lower for medium users.

On balance, due to the wide variability in VOC use and the EPA's efforts to take into consideration the industry's tire safety concerns, the advantages of percent emission reduction standards for the rubber tire manufacturing industry are judged to outweigh the disadvantages.

"Major Rule" Determination

Under Executive Order 12291, the EPA is required to judge whether a regulation is a "major rule" and therefore subject to certain requirements of the Order. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be "major rule." Fifth-year annualized costs of the standard, compared to an uncontrolled situation, would be about $1.4 million. The product wholesale price is not expected to increase. The Agency has therefore concluded that the proposed regulation is not a "major rule" under Executive Order 12291.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from the OMB to the EPA and any EPA response to those comments are available for public inspection in Docket No. A–80–9, EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Regulatory Flexibility Analysis Certification

The Regulatory Flexibility Act of 1980 requires that adverse effects of all Federal regulations upon small businesses be identified. According to current Small Business Administration guidelines, a small business in the SIC category 3011, "Tires and innertubes," is one that has 1,000 employees or less. This is the criterion to qualify for SBA loans or for the purpose of government procurement. Of the 16 tire manufacturing companies, 3 existing companies have less than 1,000 employees. An industry representative has stated that employment in a typical new plant is expected to average 1,400, with a range of 1,000 to 2,000. Thus, it is unlikely that any new plant would be considered a small entity. Existing small entities are not expected to become subject to the NSPS through new construction, modification, or reconstruction. However, if a small business did become subject to the NSPS, the cost of compliance would have minimal impacts.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping, Rubber tire manufacturing (SIC 3011).

Date: September 1, 1987.

Lee M. Thomas,

Administrator.

For reasons set out in the preamble, 40 CFR Part 60 is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for Part 60 continues to read as follows:

Authority: 41 U.S.C. 7411, 7414, and 7601(a).

2. 40 CFR Part 60 is amended by adding a new Subpart BBB to read as follows:

Subpart BBB—Standards of Performance for the Rubber Tire Manufacturing Industry

Sec.

60.540 Applicability and designation of affected facilities.

Sec.
60.541 Definitions.
60.542 Standards for volatile organic compounds.
60.543 Performance test and compliance provisions.
60.544 Monitoring of operations.
60.545 Recordkeeping requirements.
60.546 Reporting requirements.
60.547 Test methods and procedures.
60.548 Delegation of authority.

Subpart BBB—Standards of Performance for the Rubber Tire Manufacturing Industry

§ 60.540 Applicability and designation of affected facilities.

(a) The provisions of this subpart apply to the following affected facilities in rubber tire manufacturing plants: each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C-automatic operation.

(b) The provisions of this subpart apply to each facility identified in paragrpah (a) of this section that commences construction or modification after January 20, 1983.

(c) Although the affected facilities listed under § 60.540(a) are defined in reference to the production of components of a "tire," as defined under § 60.541(a), the percent emission reduction requirements and VOC use cutoffs specified under § 60.542(a)(1), (2), (6), (7)(iii), (7)(iv), (8), (9), and (10) refer to the total amount of VOC used (the amount allocated to the affected facility), including the VOC used in cements and organic solvent-based green tire spray materials for tire types not listed in the § 60.541(a) definition of "tire."

§ 60.541 Definitions.

(a) All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in Subpart A of this part.

"Bead" means rubber-covered strands of wire, wound into a circular form, which ensure a seal between a tire and the rim of the wheel onto which the tire is mounted.

"Bead cementing operation" means the system that is used to apply cement to the bead rubber before or after it is wound into its final circular form. A bead cementing operation consists of a cement application station, such as a dip tank, spray booth and nozzles, cement trough and roller or swab applicator, and all other equipment necessary to apply cement to wound beads or bead rubber and to allow evaporation of solvent from cemented beads.

"Component" means a piece of tread, combined tread/sidewall, or separate sidewall rubber, or other rubber strip that is combined into the sidewall of a finished tire.

"Drying area" means the area where VOC from applied cement or green tire sprays is allowed to evaporate.

"Enclosure" means a structure that surrounds a VOC (cement, solvent, or spray) application area and drying area, and that captures and contains evaporated VOC and vents it to a control device. Enclosures may have permanent and temporary openings.

"Green tire" means an assembled, uncured tire.

"Green tire spraying operation" means the system used to apply a mold release agent and lubricant to the inside and/or outside of green tires to facilitate the curing process and to prevent rubber from sticking to the curing press. A green tire spraying operation consists of a booth where spraying is performed, the spray application station, and related equipment, such as the lubricant supply system.

"Michelin-A operation" means the operation identified as Michelin-A in the Emission Standards and Engineering Division confidential file as referenced in Docket A–80–9, Entry II–B–12.

"Michelin-B operation" means the operation identified as Michelin-B in the Emission Standards and Engineering Division confidential file as referenced in Docket A–80–9, Entry II–B–12.

"Michelin-C-automatic operation" means the operation identifed as Michelin-C-automatic in the Emission Standards and Engineering Division confidential file as referenced in Docket A–80–9, Entry II–B–12.

"Month" means a calendar month or a prespecified period of 28 days or 35 days (utilizing a 4–4–5-week recordkeeping and reporting schedule).

"Organic solvent-based green tire spray" means any mold release agent and lubricant applied to the inside or outside of green tires that contains more than 12 percent, by weight, of VOC as sprayed.

"Permanent opening" means an opening designed into an enclosure to allow tire components to pass through the enclosure by conveyor or other mechanical means, to provide access for permanent mechanical or electrical equipment, or to direct air flow into the enclosure. A permanent opening is not equipped with a door or other means of obstruction of air flow.

"Sidewall cementing operation" means the system used to apply cement to a continuous strip of sidewall component or any other continuous strip component (except combined tread/sidewall component) that is incorporated into the sidewall of a finished tire. A sidewall cementing operation consists of a cement application station and all other equipment, such as the cement supply system and feed and takeaway conveyors, necessary to apply cement to sidewall strips or other continuous strip component (except combined tread/sidewall component) and to allow evaporation of solvent from the cemented rubber.

"Temporary opening" means an opening into an enclosure that is equipped with a means of obstruction, such as a door, window, or port, that is normally closed.

"Tire" means any agricultural, airplane, industrial, mobile home, light-duty truck and/or passenger vehicle tire that has a bead diameter less than or equal to 0.5 meter (m) (19.7 inches) and a cross section dimension less than or equal to 0.325 m (12.8 in.), and that is mass produced in an assembly-line fashion.

"Tread end cementing operation" means the system used to apply cement to one or both ends of the tread or combined tread/sidewall component. A tread end cementing operation consists of a cement application station and all other equipment, such as the cement supply system and feed and takeaway conveyors, necessary to apply cement to tread ends and to allow evaporation of solvent from the cemented tread ends.

"Undertread cementing operation" means the system used to apply cement to a continuous strip of tread or combined tread/sidewall component. An undertread cementing operation consists of a cement application station and all other equipment, such as the cement supply system and feed and takeaway conveyors, necessary to apply cement to tread or combined tread/sidewall strips and to allow evaporation of solvent from the cemented tread or combined tread/sidewall.

"VOC emission control device" means equipment that destroys or recovers VOC.

"VOC emission reduction system" means a system composed of an enclosure, hood, or other device for containment and capture of VOC emissions and a VOC emission control device.

"Water-based green tire spray" means any mold release agent and lubricant applied to the inside or outside of green tires that contains 12 percent or less, by weight, of VOC as sprayed.

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(b) Notations used under this subpart are defined below:

B_o = total number of beads cemented at a particular bead cementing affected facility for a month

C_a = concentration of VOC in gas stream in vents after a control device (parts per million by volume)

C_b = concentration of VOC in gas stream in vents before a control device (parts per million by volume)

C_f = concentration of VOC in each gas stream vented directly to the atmosphere from an affected facility or from a temporary enclosure around an affected facility (parts per million by volume)

D_c = density of cement or spray material (grams per litre)

D_r = density of VOC recovered by an emission control device (grams per litre)

E = emission control device efficiency, inlet versus outlet (fraction)

F_c = capture efficiency, VOC captured and routed to one control device versus total VOC used for an affected facility (fraction)

F_o = fraction of total mass of VOC used in a month by all facilities served by a common cement or spray material distribution system that is used by a particular affected facility served by the common distribution system

G = monthly average mass of VOC used per tire cemented or sprayed with a water-based green tire spray for a particular affected facility (grams per tire)

G_b = monthly average mass of VOC used per bead cemented for a particular bead cementing affected facility (grams per bead)

L_c = volume of cement or spray material used for a month (liters)

L_r = volume of VOC recovered by an emission control device for a month (liters)

M = total mass of VOC used for a month by all facilities served by a common cement or spray material distribution system (grams)

M_o = total mass of VOC used at an affected facility for a month (grams)

M_r = mass of VOC recovered by an emission control device for a month (grams)

N = mass of VOC emitted to the atmosphere per tire cemented or sprayed with a water-based green tire spray for an affected facility for a month (grams per tire)

N_b = mass of VOC emitted per bead cemented for an affected facility for a month (grams per bead)

Q_a = volumetric flow rate in vents after a control device (dry standard cubic meters per hour)

Q_b = volumetric flow rate in vents before a control device (dry standard cubic meters per hour)

Q_f = volumetric flow rate of each stream vented directly to the atmosphere from an affected facility or from a temporary enclosure around an affected facility (dry standard cubic meters per hour)

R = overall efficiency of an emission reduction system (fraction)

T_d = total number of days in monthly compliance period (days)

T_o = total number of tires cemented or sprayed with water-based green tire sprays at a particular affected facility for a month

W_o = weight fraction of VOC in a cement or spray material.

§ 60.542 Standards for volatile organic compounds.

(a) On and after the date on which the initial performance test, required by § 60.8, is completed, but no later than 180 days after initial startup, each owner or operator subject to the provisions of this subpart shall comply with the following conditions:

(1) For each undertread cementing operation:

(i) Discharge into the atmosphere no more than 25 percent of the VOC used (75 percent emission reduction) for each month; or

(ii) Maintain total (uncontrolled) VOC use less than or equal to the levels specified below, depending upon the duration of the compliance period:

(A) 3,870 kilograms of VOC per 28 days,

(B) 4,010 kilograms of VOC per 29 days,

(C) 4,150 kilograms of VOC per 30 days,

(D) 4,280 kilograms of VOC per 31 days, or

(E) 4,840 kilograms of VOC per 35 days.

(2) For each sidewall cementing operation:

(i) Discharge into the atmosphere no more than 25 percent of the VOC used (75 percent emission reduction) for each month; or

(ii) Maintain total (uncontrolled) VOC use less than or equal to the levels specified below, depending upon the duration of the compliance period:

(A) 3,220 kilograms of VOC per 28 days,

(B) 3,340 kilograms of VOC per 29 days,

(C) 3,450 kilograms of VOC per 30 days,

(D) 3,570 kilograms of VOC per 31 days, or

(E) 4,030 kilograms of VOC per 35 days.

(3) For each tread end cementing operation: Discharge into the atmosphere no more than 10 grams of VOC per tire (g/tire) cemented for each month.

(4) For each bead cementing operation: Discharge into the atmosphere no more than 5 grams of VOC per bead (g/bead) cemented for each month.

(5) For each green tire spraying operation where only water-based sprays are used:

(i) Discharge into the atmosphere no more than 1.2 grams of VOC per tire sprayed with an inside green tire spray for each month; and

(ii) Discharge into the atmosphere no more than 9.3 grams of VOC per tire sprayed with an outside green tire spray for each month.

(6) For each green tire spraying operation where only ogranic solvent-based sprays are used:

(i) Discharge into the atmosphere no more than 25 percent of the VOC used (75 percent emission reduction) for each month; or

(ii) Maintain total (uncontrolled) VOC use less than or equal to the levels specified below, depending upon the duration of the compliance period:

(A) 3,220 kilograms of VOC per 28 days,

(B) 3,340 kilograms of VOC per 29 days,

(C) 3,450 kilograms of VOC per 30 days,

(D) 3,570 kilograms of VOC per 31 days, or

(E) 4,030 kilograms of VOC per 35 days.

(7) For each green tire spraying operation where both water-based and organic solvent-based sprays are used:

(i) Discharge into the atmosphere no more than 1.2 grams of VOC per tire sprayed with a water-based inside green tire spray for each month; and

(ii) Discharge into the atmosphere no more than 9.3 grams of VOC per tire sprayed with a water-based outside green tire spray for each month; and either

(iii) Discharge into the atmosphere no more than 25 percent of the VOC used in the organic solvent-based green tire sprays (75 percent emission reduction) for each month; or

(iv) Maintain total (uncontrolled) VOC use for all organic solvent-based green tire sprays less than or equal to the levels specified under paragraph (a)(6)(ii) of this section.

(8) For each Michelin-A operation:

(i) Discharge into the atmosphere no more than 35 percent of the VOC used

(65 percent emission reduction) for each month; or

(ii) Maintain total (uncontrolled) VOC use less than or equal to the levels specified below, depending upon the duration of the compliance period:

(A) 1570 Kilograms of VOC per 28 days,

(B) 1630 Kilograms of VOC per 29 days,

(C) 1690 Kilograms of VOC per 30 days,

(D) 1740 Kilograms of VOC per 31 days, or

(E) 1970 Kilograms of VOC per 35 days.

(9) For each Michelin-B operation:

(i) Discharge into the atmosphere no more than 25 percent of the VOC used (75 percent emission reduction) for each month; or

(ii) Maintain total (uncontrolled) VOC use less than or equal to the levels specified below, depending upon the duration of the compliance period:

(A) 1310 Kilograms of VOC per 28 days,

(B) 1360 Kilograms of VOC per 29 days,

(C) 1400 Kilograms of VOC per 30 days,

(D) 1450 Kilograms of VOC per 31 days, or

(E) 1640 Kilograms of VOC per 35 days.

(10) For each Michelin-C-automatic operation:

(i) Discharge into the atmosphere no more than 35 percent of the VOC used (65 percent emission reduction) for each month; or

(ii) Maintain total (uncontrolled) VOC use less than or equal to the levels specified under paragraph (a)(8)(ii) of this section.

§ 60.543 Performance test and compliance provisions.

(a) Section 60.8(d) does apply to the monthly performance test procedures required by this subpart. Section 60.8(d) does not apply to initial performance tests and to the performance tests specified under paragraphs (b)(2) and (b)(3) of this section. Section 60.8(f) does not apply when Method 24 is used.

(b) Performance tests shall be conducted as follows:

(1) The owner or operator of an affected facility shall conduct an initial performance test, as required under § 60.8(a), except as described under paragraph (j) of this section. The owner or operator of an affected facility shall thereafter conduct a performance test each month except as described under paragraphs (g)(1) and (j) of this section. Initial and monthly performance tests shall be conducted according to the procedures in this section.

(2) The owner or operator of an affected facility who elects to use a VOC emission reduction system with a control device that destroys VOC (e.g., incinerator), as described under paragraphs (f) and (g) of this section, shall repeat the performance test when directed by the Administrator or when the owner or operator elects to operate the capture system or control device at conditions different from the most recent determination of overall reduction efficiency. The performance test shall be conducted in accordance with the procedures described under paragraphs (f)(2) (i) through (iii) of this section.

(3) The owner or operator of an affected facility who seeks to comply with the equipment design and performance specifications, as described under paragraph (j) of this section, shall repeat the performance test when directed by the Administrator or when the owner or operator elects to operate the capture system or control device at conditions different from the most recent determination of control device efficiency or measurement of capture system retention time or face velocity. The performance test shall be conducted in accordance with the procedures described under paragraph (f)(2)(ii) of this section.

(c) For each undertread cementing operation, each sidewall cementing operation, each green tire spraying operation where organic solvent-based sprays are used, each Michelin-A operation, each Michelin-B operation, and each Michelin-C-automatic operation where the owner or operator seeks to comply with the uncontrolled monthly VOC use (kg/mo) limits, the owner or operator shall use the following procedure to determine compliance with the applicable (depending upon duration of compliance period) uncontrolled monthly VOC use limit specified under § 60.542(a) (1)(ii), (2)(ii), (6)(ii), (7)(iv), (8)(ii), (9)(ii), and (10)(ii). If both undertread cementing and sidewall cementing are performed at the same affected facility during a month, then the kg/mo limit specified under § 60.542(a)(1)(ii) shall apply for that month.

(1) Determine the density and weight fraction VOC (including dilution VOC) of each cement or green tire spray from its formulation or by analysis of the cement or green tire spray using Method 24. If a dispute arises, the Administrator may require an owner or operator who used formulation data to analyze the cement or green tire spray using Method 24.

(2) Calculate the total mass of VOC used at the affected facility for the month (M_o) by the following procedure:

(i) For each affected facility for which cement or green tire spray is delivered in batch or via a distribution system that serves only the affected facility:

$$M_o = \sum_{i=1}^{a} L_{c_i} D_{c_i} W_{o_i}$$

where: "a" equals the number of different cements or green tire sprays used during the month that are delivered in batch or via a distribution system that serves only a single affected facility.

(ii) For each affected facility for which cement or green tire spray is delivered via a common distribution system that also serves other affected or existing facilities:

(A) Calculate the total mass of VOC used for all of the facilities served by the common distribution system for the month (M):

$$M = \sum_{i=1}^{b} L_{c_i} D_{c_i} W_{o_i}$$

where: "b" equals the number of different cements or green tire sprays used during the month that are delivered via a common distribution system that also serves other affected or existing facilities.

(B) Determine the fraction (F_o) of M used at the affected facility by comparing the production records and process specifications for the material cemented or sprayed at the affected facility for the month to the production records and process specifications for the material cemented or sprayed at all other facilities served by the common distribution system for the month or by another procedure acceptable to the Administrator.

(C) Calculate the total monthly mass of VOC used at the affected facility for the month (M_o):

$$M_o = MF_o$$

(3) Determine the time duration of the monthly compliance period (T_d).

(d) For each tread end cementing operation and each green tire spraying operation where water-based sprays are used (inside and/or outside) that do not use a VOC emission reduction system, the owner or operator shall use the following procedure to determine compliance with the g/tire limit

specified under § 60.542(a) (3), (5)(i), (5)(ii), (7)(i), and (7)(ii).

(1) Determine the density and weight fraction VOC as specified under paragraph (c)(1) of this section.

(2) Calculate the total mass of VOC used at the affected facility for the month (M_o) as specified under paragraph (c)(2) of this section.

(3) Determine the total number of tire cemented or sprayed at the affected facility for the month (T_o) by the following procedure:

(i) For a trend end cementing operation, T_o equals the number of tread or combined tread/sidewall components that receive an application of tread end cement for the month.

(ii) For a green tire spraying operation that uses water-based inside green tire sprays, T_o equals the number of green tires that receive an application of water-based inside green tire spray for the month.

(iii) For a green tire spraying operation that uses water-based outside green tire sprays, T_o equals the number of green tires that receive an application of water-based outside green tire spray for the month.

(4) Calculate the mass of VOC used per tire cemented or sprayed at the affected facility for the month (G):

$$G = \frac{M_O}{T_O}$$

(5) Calculate the mass of VOC emitted per tire cemented or sprayed at the affected facility for the month (N):

$$N = G$$

(e) For each bead cementing operation that does not use a VOC emission reduction system, the owner or operator shall use the following procedure to determine compliance with the g/bead limit specified under § 60.542(a)(4).

(1) Determine the density and weight fraction VOC as specified under paragraph (c)(1) of this section.

(2) Calculate the total mass of VOC used at the affected facility for the month (M_o) as specified under paragraph (c)(2) of this section.

(3) Determine the number of beads cemented at the affected facility during the month (B_o) using production records; B_o equals the number of beads that receive an application of cement for the month.

(4) Calculate the mass of VOC used per bead cemented at the affected facility for the month (G_b):

$$G_b = \frac{M_O}{B_O}$$

(5) Calculate the mass of VOC emitted per bead cemented at the affected facility for the month (N_b):

$$N_b = G_b$$

(f) For each tread end cementing operation and each bead cementing operation that use a VOC emission reduction system with a control device that destroys VOC (e.g., incinerator), the owner or operator shall use the following procedure to determine compliance with the emission limit specified under § 60.542(a) (3) and (4).

(1) Calculate the mass of VOC used per tire cemented at the affected facility for the month (G), as specified under paragraphs (d) (1) through (4) of this section, or mass of VOC used per bead cemented at the affected facility for the month (G_b), as specified under paragraphs (e) (1) through (4) of this section.

(2) Calculate the mass of VOC emitted per tire cemented at the affected facility for the month (N) or mass of VOC emitted per bead cemented for the affected facility for the month (N_b):

$$N = G\,(1-R)$$

$$N_b = G_b\,(1-R)$$

For the initial performance test, the overall reduction efficiency (R) shall be determined as prescribed under paragraphs (f)(2) (i) through (iii) of this section. In subsequent months, the owner or operator may use the most recently determined overall reduction efficiency (R) for the performance test except during conditions described under paragraph (b)(2) of this section.

(i) The owner or operator of an affected facility shall construct a temporary enclosure around the application and drying areas during the performance test for the purpose of capturing fugitive VOC emissions. The enclosure must be maintained at a negative pressure to ensure that all evaporated VOC are measurable. Determine the fraction (F_c) of total VOC used at the affected facility that enters the control device:

$$F_c = \frac{\sum_{i=1}^{m} C_{b_i} Q_{b_i}}{\sum_{i=1}^{m} C_{b_i} Q_{b_i} + \sum_{i=1}^{n} C_{f_i} Q_{f_i}}$$

where: "m" is the number of vents from the affected facility to the control device, and "n" is the number of vents from the affected facility to the atmosphere and from the temporary enclosure.

(ii) Determine the destruction efficiency of the control device (E) by using values of the volumetric flow rate of each of the gas streams and the VOC content (as carbon) of each of the gas streams in and out of the control device:

$$E = \frac{\sum_{i=1}^{m} C_{b_i} Q_{b_i} - \sum_{i=1}^{p} C_{a_i} Q_{a_i}}{\sum_{i=1}^{m} C_{b_i} Q_{b_i}}$$

where: "m" is the number of vents from the affected facility to the control device, and "p" is the number of vents after the control device.

(iii) Determine the overall reduction efficiency (R):

$$R = EF_c$$

(g) For each undertread cementing operation, each sidewall cementing operation, each green tire spraying operation where organic solvent-based sprays are used, each Michelin-A operation, each Michelin-B operation, and each Michelin-C-automatic operation that use a VOC emission reduction system with a control device that destroys VOC (e.g., incinerator), the owner or operator shall use the following procedure to determine compliance with the percent emission reduction requirement specified under § 60.542 (a) (1)(i), (2)(i), (6)(i), (7)(iii), (8)(i), (9)(i), and (10)(i).

(1) For the initial performance test, the overall reduction efficiency (R) shall be

determined as prescribed under paragraphs (f)(2) (i) through (iii) of this section. The performance test shall be repeated during conditions described under paragraph (b)(2) of this section. No monthly performance tests are required.

(h) For each tread and cementing operation and each bead cementing operation that uses a VOC emission reduction system with a control device that recovers VOC (e.g., carbon adsorber), the owner or operator shall use the following procedure to determine compliance with the emission limit specified under § 60.542(a) (3) and (4).

(1) Calculate the mass of VOC used per tire cemented at the affected facility for the month (G), as specified under paragraphs (d) (1) through (4) of this section, or mass of VOC used per bead cemented at the affected facility for the month (G_b), as specified under paragraphs (e) (1) through (4) of this section.

(2) Calculate the total mass of VOC recovered from the affected facility for the month (M_r):

$$M_r = L_r D_r$$

(3) Calculate the overall reduction efficiency for the VOC emission reduction system (R) for the month:

$$R = \frac{M_r}{M_o}$$

(4) Calculate the mass of VOC emitted per tire cemented at the affected facility for the month (N) or mass of VOC emitted per bead cemeted at the affected facility for the month (N_b):

$$N = G\ (1-R)$$

$$N_b = G_b\ (1-R)$$

(i) For each undertread cementing operation, each sidewall cemeting operation, each green tire spraying operation where organic solvent-based sprays are used, each Michelin-A operation, each Michelin-B operation, and each Michelin-C-automatic operation that use a VOC emission reduction system with a control device that recovers (VOC) (e.g., carbon adsorber), the owner or operator shall use the following procedure to determine compliance with the percent reduction requirement specified under § 60.542(a) (1)(i), (2)(i), (6)(i), (7)(iii), (8)(i), (9)(i), and (10)(i).

(1) Determine the density and weight fraction VOC as specified under paragraph (c)(1) of this section.

(2) Calculate the total mass of VOC used at the affected facility for the month (M_o) as described under paragraph (c)(2) of this section.

(3) Calculate the total mass of VOC recovered from the affected facility for the month (M_r) as described under paragraph (h)(2) of this section.

(4) Calculate the overall reduction efficiency for the VOC emission reduction system (R) for the month as described under paragraph (h)(3) of this section.

(j) Rather than seeking to demonstrate compliance with the provisions of § 60.542(a) (1)(i), (2)(i), (6)(i), (7)(iii), or (9)(i) using the performance test procedures described under paragraphs (g) and (i) of this section, and owner or operator of an undertread cementing operation, sidewall cementing operation, green tire spraying operation where organic solvent-based sprays are used, or Michelin-B operation that use a VOC emission reduction system may seek to demonstrate compliance by meeting the equipment design and performance specifications listed under paragraphs (j)(1), (2), and (4) through (6) or under paragraphs (j)(1) and (3) through (6) of this section, and by conducting a control device efficiency performance test to determine compliance as described under paragraph (j)(7) of this section. The owner or operator shall conduct this performance test of the control device efficiency no later than 180 days after initial startup of the affected facility, as specified under § 60.8(a). Meeting the capture system design and performance specifications, in conjunction with operating a 95 percent efficient control device, is an acceptable means of demonstrating compliance with the standard. Therefore, the requirement for the initial performance test on the enclosure, as specified under § 60.8(a), is waived. No monthly performance test are required.

(1) For each undertread cementing operation, each sidewall cementing operation, and each Michelin-B operation, the cement application and drying area shall be contained in an enclosure that meets the criteria specified under paragraphs (j) (2), (4), and (5) of this section; for each green tire spraying operation where organic solvent-based sprays are used, the spray application and drying area shall be contained in an enclosure that meets the criteria specified under paragraphs (j) (3), (4), and (5) of this section.

(2) The drying area shall be enclosed between the application area and the water bath or to the extent necessary to contain all tire components for at least 30 seconds after cement application, whichever distance is less.

(3) Sprayed green tires shall remain in the enclosure for a minimum of 30 seconds after spray application.

(4) A minimum face velocity of 100 feet per minute shall be maintained continuously through each permanent opening into the enclosure when all temporary enclosure openings are closed. The cross-sectional area of each permanent opening shall be divided into at least 12 equal areas, and a velocity measurement shall be performed at the centroid of each equal area with an anemometer or similar velocity monitoring device; the face velocity of each permanent opening is the average value of the velocity measurements taken. The monitoring device shall be calibrated and operated according to the manufacturer's instructions.

Temporary enclosure openings shall remain closed at all times except when worker access is necessary.

(5) The total area of all permanent openings into the enclosure shall not exceed the area that would be necessary to maintain the VOC concentration of the exhaust gas stream at 25 percent of the lower explosive limit (LEL) under the following conditions:

(i) The facility is operating at the maximum solvent use rate;

(ii) The face velocity through each permanent opening is 100 feet per minute; and

(iii) All temporary openings are closed.

(6) All captured VOC are ducted to a VOC emission control device that is operated on a continuous basis and that achieves at least a 95 percent destruction or recovery efficiency.

(7) The efficiency of the control device (E) for the initial performance test is determined by using values of the volumetric flow rate of each of the gas streams and the VOC content (as carbon) of each of the gas streams in and out of the control device as described under paragraph (f)(2)(ii) of this section. The control device efficiency shall be redetermined during conditions specified under paragraph (b)(3) of this section.

(k) Each owner or operator of an affected facility who initially elected to be subject to the applicable percent

emission reduction requirement specified under § 60.542(a)(1)(i), (2)(i), (6)(i), (7)(iii), (8)(i), (9)(i), or (10)(i) and who later seeks to comply with the applicable total (uncontrolled) monthly VOC use limit specified under § 60.542(a)(1)(ii), (2)(ii), (6)(ii), (7)(iv), (8)(ii), (9)(ii), or (10)(ii) shall demonstrate, using the procedures described under paragraph (c) of this section, that the total VOC use at the affected facility has not exceeded the applicable total (uncontrolled) monthly VOC use limit during each of the last 6 months of operation. The owner or operator shall be subject to the applicable percent emission reduction requirement until the conditions of this paragraph and § 60.546(h) are satisfied.

(l) In determining compliance for each undertread cementing operation, each sidewall cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C-automatic operation, the owner or operator shall include all the VOC used, recovered, or destroyed from cements and organic solvent-based green tire sprays including those cements or sprays used for tires other than those defined under § 60.541(a).

(m) In determining compliance for each tread end cementing operation, each bead cementing operation, and each green tire spraying operation, the owner or operator shall include only those tires defined under § 60.541(a) when determining T_o and B_o.

§ 60.544 Monitoring of operations.

(a) Each owner or operator subject to the provisions of this subpart shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment, unless alternative monitoring procedures or requirements are approved for that facility by the Administrator:

(1) Where a thermal incinerator is used for VOC emission reduction, a temperature monitoring device equipped with a continuous recorder for the temperature of the gas stream in the combustion zone of the incinerator. The temperature monitoring device shall have an accuracy of 1 percent of the temperature being measured in °C or ±0.5 °C, whichever is greater.

(2) Where a catalytic incinerator is used for VOC emission reduction, temperatrue monitoring devices, each equipped with a continuous recorder, for the temperature in the gas stream immediately before and after the catalyst bed of the incinerator. The temperature monitoring devices shall have an accuracy of 1 percent of the temperature being measured in °C or ±0.5 °C, whichever is greater.

(3) For an undertread cementing operation, sidewall cementing operation, green tire spraying operation where organic solvent-based sprays are used, or Michelin-B operation where a carbon adsorber is used to meet the performance requirements specified under § 60.543(j)(6), an organics monitoring device used to indicate the concentration level of organic compounds based on a detection principle such as infrared, photoionization, or thermal conductivity, equipped with a continous recorder, for the outlet of the carbon bed.

(b) An owner or operator of an undertread cementing operation, sidewall cementing operation, green tire spraying operation where organic solvent-based sprays are used, or Michelin-B operation where a VOC recovery device other than a carbon adsorber is used to meet the performance requirements specified under § 60.543(j)(6), shall provide to the Administrator information describing the operation of the control device and the process parameter(s) which would indicate proper operation and maintenance of the device. The Administrator may request further information and will specify appropriate monitoring procedures or requirements.

(Approved by the Office of Management and Budget under control number 2060–0156.)

§ 60.545 Recordkeeping requirements.

(a) Each owner or operator of an affected facility that uses a thermal incinerator shall maintain continuous records of the temperature of the gas stream in the combustion zone of the incinerator and records of all 3–hour periods of operation for which the average temperature of the gas stream in the combustion zone was more than 28 °C (50 °F) below the combustion zone temperature measured during the most recent determination of the destruction efficiency of the thermal incinerator that demonstrated that the affected facility was in compliance.

(b) Each owner or operator of an affected facility that uses a catalytic incinerator shall maintain continuous records of the temperature of the gas stream both upstream and downstream of the catalyst bed of the incinerator, records of all 3-hour periods of operation for which the average temperature measured before the catalyst bed is more than 28 °C below the gas stream temperature measured before the catalyst bed during the most recent determination of destruction efficiency of the catalytic incinerator that demonstrated that the affected facility was in compliance, and records of all 3-hour periods for which the average temperature difference across the catalyst bed is less than 80 percent of the temperature difference measured during the most recent determination of the destruction efficiency of the catalytic incinerator that demonstrated that the affected facility was in compliance.

(c) Each owner or operator of an undertread cementing operation, sidewall cementing operation, green tire spraying operation where organic solvent-based sprays are used, or Michelin-B operation that uses a carbon adsorber to meet the requirements specified under § 60.543(j)(6) shall maintain continuous records of all 3-hour periods of operation during which the average VOC concentration level or reading of organics in the exhaust gases is more than 20 percent greater than the exhaust gas concentration level or reading measured by the organics monitoring device during the most recent determination of the recovery efficiency of the carbon adsorber that demonstrated that the affected facility was in compliance.

(d) Each owner or operator of an undertread cementing operation, sidewall cementing operation, green tires spraying operation where organic solvent-based sprays are used, Michelin-A operation, Michelin-B operation, or Michelin-C-automatic operation who seeks to comply with a specified kg/mo uncontrolled VOC use limit shall maintain records of monthly VOC use and the number of days in each compliance period.

(e) Each owner or operator that is required to conduct monthly performance tests, as specified under § 60.543(b)(1), shall maintain records of the results of all monthly tests.

(Approved by the Office of Management and Budget under control number 2060–0156.)

§ 60.546 Reporting requirements.

(a) Each owner or operator subject to the provisions of this subpart, at the time of notification of the anticipated initial startup of an affected facility pursuant to § 60.7(a)(2), shall provide a written report to the Administrator declaring for each undertread cementing operation, each sidewall cementing operation, each green tires spraying operation where organic solvent-based spray are used, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation the emission limit he intends to comply with and the compliance method (where § 60.543(j) is applicable) to be employed.

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(b) Each owner or operator subject to the provisions of this subpart, at the time of notification of the anticipated initial startup of an affected facility pursuant to § 60.7(a)(2), shall specify the monthly schedule (each calendar month or a 4-4-5-week schedule) to be used in making compliance determinations.

(c) Each owner or operator subject to the provisions of this subpart shall report the results of all initial performance tests, as required under § 60.8(a), and the results of the performance test required under § 60.543 (b)(2) and (b)(3). The following data shall be included in the report for each of the above performance tests:

(1) For each affected facility for which the owner or operator seeks to comply with a kg/mo uncontrolled VOC use limit specified under § 60.542(a): The monthly mass of VOC used (M_o) and the number days in the compliance period (T_d).

(2) For each affected facility that seeks to comply with a g/tire or g/bead limit specified under § 60.542(a) without the use of a VOC emission reduction system: the mass of VOC used (M_o), the number of tires cementd or sprayed (T_d), the mass of VOC emitted per tire cemented or sprayed (N), the number of beads cemeted (B_o), and the mass of VOC emitted per bead cemented (N_b).

(3) For each affected facility that uses a VOC emission reduction system with a control device that destroys VOC (e.g., incinerator) to comply with a g/tire or g/bead limit specified under § 60.542(a): The mass of VOC used (M_o), the number of tires cemented or sprayed (T_o), the mass of VOC emitted per tire cemented or sprayed (N), the number of beads cemented (B_o), the mass of VOC emitted per bead cemented (N_b), the mass of VOC used per tire cemented or sprayed (G), the mass of VOC per bead cemented (G_b), the emission control device efficiency (E), the capture system efficiency (F_c), the face velocity through each permanent opening for the capture system with the temporary openings closed, and the overall system emission reduction (R).

(4) For each affected facility that uses a VOC emission reduction system with a control device that destroys VOC (e.g., incinerator) to comply with a percent emission reduction requirement specified under § 60.542(a): The emission control device efficiency (E), the capture system efficiency (F_c), the face velocity through each permanent opening in the capture system with the temporary openings closed, and the overall system emission reduction (R).

(5) For each affected facility that uses a carbon adsorber to comply with a g/tire or g/bead limit specified under § 60.542(a): The mass of VOC used (M_o), the number of tires cemented or sprayed (T_o), the mass of VOC used per tire cemented or sprayed (G), the number of beads cemented (B_o), the mass of VOC used per bead (G_b), the mass of VOC recovered (M_r), the overall system emission reduction (R), the mass of VOC emitted per tire cemented or sprayed (N), and the mass of VOC emitted per bead cemented (N_b).

(6) For each affected facility that uses a VOC emission reduction system with a control device that recovers VOC (e.g., carbon adsorber) to comply with a percent emission reduction requirement specified under § 60.542(a): The mass of VOC used (M_o), the mass of VOC recovered (M_r), and the overall system emission reduction (R).

(d) Each owner or operator of an undertread cementing operation, sidewall cementing operation, green tire spraying operation where organic solvent-based sprays are used, or Michelin-B operation who seeks to comply with the requirements described under § 60.543(j) shall include in the initial compliance report a statement specifying, in detail, how each of the equipment design and performance specifications has been met. The initial compliance report also shall include the following data: The emission control device efficiency (E), the face velocity through each permanent enclosure opening with all temporary enclosure openings closed, the total area of all permanent enclosure openings, the total area of all temporary enclosure openings, the maximum solvent use rate (kg/hr), the type(s) of VOC used, the lower explosive limit (LEL) for each VOC used, and the length of time each component is enclosed after application of cement or spray material.

(e) Each owner or operator of an affected facility shall include the following data measured by the required monitoring device(s), as applicable, in the report for each performance test specified under paragraph (c) of this section.

(1) The average combustion temperature measured at least every 15 minutes and averaged over the performance test period of incinerator destruction efficiency for each thermal incinerator.

(2) The average temperature before and after the catalyst bed measured at least every 15 minutes and averaged over the performance test period of incinerator destruction efficiency for each catalytic incinerator.

(3) The concentration level or reading indicated by the organics monitoring device at the outlet of the adsorber, measured at least every 15 minutes and averaged over the performance test period of carbon adsorber recovery efficiency while the vent stream is normally routed and constituted.

(4) The appropriate data to be specified by the Administrator where a VOC recovery device other than a carbon adsorber is used.

(f) Once every 6 months each owner or operator subject to the provisions of §60.545 shall report, as applicable:

(1) Each monthly average VOC emission rate that exceeds the g/tire or g/bead limit specified under §60.542(a), as applicable for the affected facility.

(2) Each monthly average VOC use rate that exceeds the kg/mo VOC use limit specified under §60.542(a), as applicable for the affected facility.

(3) Each monthly average VOC emission reduction efficiency for a VOC recovery device (e.g., carbon adsorber) less than the percent efficiency limit specified under §60.542(a), as applicable for the affected facility.

(4) Each 3-hour period of operation for which the average temperature of the gas stream in the combustion zone of a thermal incinerator, as measured by the temperature monitoring device, is more than 28°C (50°F) below the combustion zone temperature measured during the most recent determination of the destruction efficiency of the thermal incinerator that demonstrated that the affected facility was in compliance.

(5) Each 3-hour period of operation for which the average temperature of the gas stream immediately before the catalyst bed of a catalytic incinerator, as measured by the temperature monitoring device, is more than 28°C (50°F) below the gas stream temperature measured before the catalyst bed during the most recent determination of the destruction efficiency of the catalyst incinerator that demonstrated that the affected facility was in compliance, and any 3-hour period for which the average temperature difference across the catalyst bed (i.e., the difference between the temperatures of the gas stream immediately before and after the catalyst bed), as measured by the temperature monitoring device, is less than 80 percent of the temperature difference measured during the most recent determination of the destruction efficiency of the catalytic incinerator that demonstrated that the affected facility was in compliance.

(6) Each 3-hour period of operation during which the average concentration level or reading of VOC's in the exhaust gases from a carbon adsorber is more than 20 percent greater than the exhaust gas concentration level or reading measured by the organics monitoring

device during the most recent determination of the recovery efficiency of the carbon adsorber that demonstrated that the affected facility was in compliance.

(g) The requirements for semiannual reports remain in force until and unless EPA, in delegating enforcement authority to a State under Section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such State. In that event, affected facilities within the State will be relieved of the obligation to comply with these requirements, provided that they comply with the requirements established by the State.

(h) Each owner or operator of an affected facility who initially elected to be subject to the applicable percent emission reduction requirement specified under § 60.542(a) and who later seeks to comply with the applicable total (uncontrolled) monthly VOC use limit specified under § 60.542(a) and who has satisfied the provisions specified under § 60.543(k) shall furnish the Administrator written notification no less than 30 days in advance of the date when he intends to be subject to the applicable VOC use limit instead of the applicable percent emission reduction requirement.

[Approved by the Office of Management and Budget under control number 2060–0156.]

§ 60.547 Test methods and procedures.

(a) The test methods in Appendix A to this part, except as provided under § 60.8(b), shall be used to determine compliance with § 60.542(a) as follows:

(1) Method 24 or formulation data for the determination of the VOC content of cements or green tire spray materials. In the event of dispute, Method 24 shall be the reference method. For Method 24, the cement or green tire spray sample shall be a 1-liter sample collected in a 1-liter container at a point where the sample will be representative of the material as applied in the affected facility.

(2) Method 25 as the reference method for the determination of the VOC concentrations in each stack, both entering and leaving an emission control device. The owner or operator shall notify the Administrator 30 days in advance of any test by Method 25. For Method 25, the sampling time for each of three runs shall be at least 1 hour. Method 1 shall be used to select the sampling site, and the sampling point shall be the centroid of the duct or at a point no closer to the walls than 1 meter. The minimum sample volume shall be 0.003 dry standard cubic meter (dscm) except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Administrator.

(3) Method 2, 2A, 2C, or 2D, as appropriate, as the reference method for determination of the flow rate of the stack gas. The measurement site shall be the same as for the Method 25 sampling. A velocity traverse shall be made once per run within the hour that the Method 25 sample is taken.

(4) Method 4 for determination of stack gas moisture.

§ 60.548 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authority which will not be delegated to States: Section 60.543(c)(2)(ii)(B).

[FR Doc. 87–21045 Filed 9–14–87; 8:45 am]
BILLING CODE 6560–50–M

VOL 52 ISS 178 SE 15 1987 UMI

Tuesday
September 15, 1987

Part III

Nuclear Regulatory Commission

10 CFR Part 50

Nuclear Power Plant Standardization; Policy Statement

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Nuclear Power Plant Standardization

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission is issuing a revised policy statement on the standardization of nuclear power plant designs. The policy statement encourages the use of standard plant designs and provides information concerning the certification of plant designs that are essentially complete in scope and level of detail. The intent of these actions are to improve the licensing process and to reduce the complexity and uncertainty in the regulatory process for standardized plants.

DATE: Effective on September 15, 1987. Workshop to be held October 20, 1987.

ADDRESSES: Submit comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. A public workshop will be held on October 20, 1987, in the Cabinet Room of the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Jerry N. Wilson, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4727.

SUPPLEMENTARY INFORMATION:

Workshop

The NRC staff will conduct a workshop to inform the public of staff efforts to develop an implementing rulemaking on standardization and to provide a forum for public discussion of the revised policy statement and relevant issues that need to be addressed in the rulemaking package. The workshop will be held on October 20, 1987 at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814 in the Cabinet Room. The workshop will start at 9:00 a.m. The NRC staff will present an overview of the revised policy statement and the proposed rulemaking package at the workshop. Those members of the public who wish to make a presentation at the workshop should notify the contact listed above so that they can be added to the agenda. Anyone who wishes to and further comments to the record or who cannot attend the workshop should send written comments to the Secretary of the Commission no later than October 30, 1987.

Background

The Nuclear Regulatory Commission believes that standardization of nuclear power plant designs is an important initiative that can significantly enhance the safety, reliability and availability of nuclear plants. The Commission intends to improve the licensing process for standardized nuclear power plants and to reduce complexity and uncertainty in the regulatory process. Appendices M, N and O to Title 10, Part 50 of the Code of Federal Regulations (10 CFR Part 50) establish various options and procedures for the approval of standardized plant designs. A provision for Commission approval of a reference design in a rulemaking proceeding is included in Appendix O. This has been termed Reference System Design Certification and is the focus of the Commission's standardization policy. This policy statement revises the Standardization Policy Statement of 1978 (August 31, 1978; 43 FR 38954).

The purpose of this policy statement is to encourage standardization and to provide information concerning the Commission's efforts to develop a regulatory framework for the certification of plant designs which:

- Are essentially complete in both scope and level of detail;
- Cover plant design, construction, and quality assurance programs;
- Satisfy regulatory requirements before construction begins; and
- Can be referenced for individual plant applications.

Use of certified reference designs in future license applications should enhance plant safety, increase the efficiency of the NRC review process, and reduce complexity and uncertainty in the regulatory process. A regulatory framework which provides for certification of reference designs by means of rulemaking will alleviate the need to reconsider design issues in individual licensing proceedings on future license applications which reference the certified designs. Areas included within the scope of the reference system design certification rulemaking would require no further review by the staff, the Advisory Committee on Reactor Safeguards (ACRS), or the hearing boards.

The Commission's primary objectives in issuing a policy statement on nuclear power plant standardization are threefold:

- To encourage the use of standard plant designs in future license applications in order to enhance plant safety, improve the efficiency and reduce the complexity and uncertainty of the regulatory process;
- To identify the issues that are important to the implementation of standardization and to state the Commission's intent to develop proposed rules to address these issues more fully; and
- To express the Commission's intent to make resources available on a priority basis to facilitate the reference system design certification process for essentially complete nuclear power plant designs and for the licensing reviews of applications referencing these certified designs.

Experience has shown that the "one-of-a-kind" approach to reactor design, construction, and operation has led to an operating reactor population of great variability and diversity, even among reactors from the same vendor. This variability is introduced when utilities and designers incorporate customs features into their designs; when varying construction practices are used; and when plants are operated and maintained by different organizations. This variability has introduced significant differences in the licensing and operation of these plants, in the transfer of experience from one reactor to another, in technical specifications, in operating procedures, and in backfitting considerations.

The Commission believes that the use of certified standardized designs can benefit the public health and safety by concentrating resources on specific design approaches without stifling ingenuity; by stimulating standardized programs of construction practice, quality assurance, and personnel training; and by fostering more effective maintenance and improved operation. Standardization should result in significant economies of scale in learning and sharing operating experience, in maintaining qualified vendor support, and in maintaining an adequate inventory of long lead-time, high cost spare parts that can be shared by a number of units. These concepts are embodied in foreign experience with the standardization of nuclear power plant design, contruction, and operation. Standardization is expected to further improve the safety performance of future plants. Standardization will allow for a more expeditious and efficient review process and a more thorough understanding of the designs by the industry and the NRC staff. In strongly endorsing the concept of standardization, the Commission acknowledges that there can be drawbacks. The most significant is that specific problems may potentially affect

a large number of reactors. However, on balance, the Commission believes that the enhanced safety of reactor operation should far outweigh any disadvantages.

Commission policy for plant safety is articulated in its Policy Statement on Safety Goals (August 4, 1986; 51 FR 28044, August 21, 1986; 51 FR 30028). The Standardization Policy also is consistent with the standardized plant provisions of the Commission's complementary Severe Accident Policy Statement (August 8, 1985; 50 FR 32138). Many of the desirable safety characteristics listed in the Advanced Reactor Policy Statement (July 8, 1986; 51 FR 24643) are equally desirable for evolutionary light water reactor standardized designs.

The Commission believes that Congress should promote nuclear safety by pursuing legislative initiatives to further encourage the standardization concept. The proposed Nuclear Power Plant Standardization and Licensing Act of 1987, which the Commission forwarded to Congress in January of this year, includes the following three legislative proposals:

- Issuance of a combined construction permit and operating license;
- Issuance of a site permit prior to submission of an application for a construction permit or combined construction permit and operating license;
- Issuance of a facility design approval (Reference System Design Certification) prior to submission of an application for a construction permit or combined construction permit and operating license.

The Commission believes that these legislative changes are important to achieving the full benefits of standardization. The one-step licensing process would give licensees greater assurance that if the facility is constructed in accordance with the terms of the application/permit, it will be permitted to operate once construction is complete. The issuance of site permits and facility design approvals, in advance of specific applications for their use, would allow subsequent facility applications to reference the permits and/or approvals without further regulatory action unless there is a substantial reason not to do so. This process would also facilitate early identification and resolution of site and design issues after affording an opportunity for public participation.

The Commission continues to believe that nuclear standardization and licensing legislation should be enacted. The Commission recognizes, however, that much of its legislative proposal with respect to standardization could be accomplished under its existing statutory authority. In addition, there is a need for regulations to implement the Commission's standardization policy more effectively. For these reasons, the Commission is developing proposed regulations that will address licensing reform and standardization. With regard to standardization, the proposed rules will provide a regulatory framework for Commission certification of standard designs by rulemaking, as set forth in paragraph 7 of Appendix O to 10 CFR Part 50. The proposed rules will address the following subjects: Relationship of the new regulatory framework to the existing provisions of Appendices M, N, and O to Part 50; filing requirements; contents of applications; design certification and renewal fees; design certification rulemaking procedures; referral of applications to the Advisory Committee on Reactor Safeguards (ACRS); duration and renewal of design certifications; changes to certified standard designs; and provisions for plant specific variances. The Commission's general approach to standard design certification under its existing rules is outlined in this policy statement. The issues important to execution of the Commission's standardization policy will be addressed more fully in the proposed rules.

Statement of Policy on Nuclear Power Plant Standardization

The purpose of this standardization policy is to provide the regulatory framework for reference system design certification of nuclear power plant designs which are essentially complete in both scope and level of detail; cover plant design, construction, and quality assurance programs; satisfy regulatory requirements before construction begins; and can be referenced in individual plant applications.

The reference system designs, at least initially, are expected to be evolutions of existing proven LWR designs. Detailed information consisting of design and procurement specifications, performance requirements, and acceptance and inspection requirements will be substituted for name plate data. For those systems, structures and component designs which represent significant deviations from previously-approved LWR designs, prototype testing and/or empirical information may also be required. Advanced design concepts should be developed according to the guidelines of the Advanced Reactor Policy Statement. When an advanced design concept is sufficiently mature, e.g., through comprehensive, prototypical testing, an application for design certification could be made.

In the reference system design certification process, the final decision will be made by the Commission itself following review by the ACRS, the issuance of a final design approval by the staff, and the completion of a rulemaking proceeding. The reference system concept means that an entire nuclear power plant design or a major portion of the design is acceptable for incorporation by reference in individual license applications. The design certification concept focuses on the certification of a reference system design through rulemaking, as provided for by Appendix 0 to 10 CFR Part 50. The rules being developed to implement this policy will address the criteria and procedures for issuance and renewal of design certifications, as well as the duration of the certification and renewals. The certified design must be used and relied upon by the staff, the ACRS, the hearing boards and the Commission in their consideration of applications that reference the certified design. The issue of relitigation of issues considered and decided in the design certification rulemaking will be addressed in the proposed rules.

The Commission believes that several benefits will be realized in this process which will not only enhance safety, but should also contribute added stability and predictability to the regulatory process. The rulemaking will certify the acceptability of the design. The certified design will be referenced in the application for a Construction Permit or Operating License. The rulemaking to obtain the design certification will cover the criteria necessary for design and construction of a plant; the quality assurance program; and whatever tests, analyses, and inspection criteria are necessary to assure that the plant is built within the certified design specifications.

The Commission expects to implement the following policies with regard to design certification review. An applicant for a design certification must first obtain a Final Design Approval (FDA) pursuant to Appendix 0 to Part 50. If the applicant intends to seek a design certification, the FDA application must indicate that intent. As set forth in Appendix 0, the FDA application must include information on scope and design detail which is essentially equivalent to that required by 10 CFR 50.34(b), as well as any other information customarily required by the staff to perform a Final Safety Analysis Report review. In addition, it must address the following four licensing criteria for new plant designs set forth in the Commission's Severe Accident Policy Statement:

(1) Demonstration of compliance with the requirements of the current Commission regulations, including the Three Mile Island requirements for new plants as reflected in the construction permit rule, 10 CFR 50.34(f);

(2) Demonstration of technical resolution of all applicable Unresolved Safety Issues and the medium- and high-priority Generic Safety Issues, including a special focus on ensuring the reliability of decay heat removal systems and the reliability of both AC and DC electrical supply systems;

(3) Completion of a probabilistic risk assessment (PRA) and consideration of the severe accident vulnerabilities that the PRA exposes, along with the insights that it may add to the assurance that there is no undue risk to public health and safety; and

(4) Completion of staff review of the design with a conclusion of safety acceptability using an approach that stresses deterministic engineering analysis and judgment complemented by PRA.

The design certification application should also propose, for staff review and approval, the tests, analyses, inspections and acceptance criteria that are considered necessary to provide reasonable assurance that a plant which references the certified design is built and operated within the specifications of the final design. Additional information beyond that required for an FDA may be necessary to support the design certification rulemaking. Further detailed guidance in this area will be developed by the staff, if necessary, as a result of experience with the first few FDA/design certification reviews.

Features of the design which can only be determined when a specific site is chosen generally are not included in the design approval or certification. Rather, the designer defines a set of site enveloping parameters (seismic events, rainfall, flood, etc.) which are used in the design of the plant. These parameters usually are selected to envelop a large portion of the potential sites in the U.S. Once the design is certified by the Commission, conformance of actual sites with the established site envelope must be demonstrated by the applicant and verified by the staff at the time an actual plant application is reviewed. Other features of the design which are dependent on the site (*i.e.*, cooling water supply, emergency preparedness plans, etc.) are also reviewed for acceptability and compatibility with the pre-approved/certified design at the time of an actual application.

Currently, NRC-initiated changes to the design certification rule will not be required unless the Commission determines that these modifications are in accord with the backfit rule specified in 10 CFR 50.109. The subject of modifications to be required after the design certification is granted, as well as amendments at the request of the design certification holder and variances at the request of a utility, will be addressed in the proposed rules. In developing those rules, the Commission will consider the appropriateness of employing the backfitting standard set forth in the proposed standardization and licensing reform legislation. The Commission expects that backfits to the design certification rule would be applied uniformly to all plants referencing the certified design. Similarly, amendments to the design certification rule initiated by the holder of the design certification would also be applied uniformly to all plants referencing the standard design. In addition, procedures will be developed to allow for plant-specific variances in limited circumstances at the request of the facility licensee.

All applications for licenses and approvals for standard designs are at present subject to the fees and the fee recovery rates identified in 10 CFR Part 170. The Commission has authorized a revision of 10 CFR Part 170 to include a new provision for the reference system design certification process. This revision would permit the phased recovery of design certification costs through collection of fees from the holder of the design certification, as the design is referenced. If the design is not referenced or if all the costs are not recovered within ten years, the holder of the design certification will be responsible for any amounts still due at the end of the ten year period.

Although the Commission strongly encourages the use of certified designs for the entire plant in all future license applications, the regulations also allow for other standardization options including the duplicate plant, the replicate plant, and the manufacturing license concepts. While these options may be used in the interim, they are discouraged for the longer term. The Commission also recognizes that review, approval and certification of major portions of complete plants may be useful in the interim. However, applications for essentially complete designs are preferred and will be given priority in allocation of resources to support review and approval.

Dated at Washington, DC, this 9th day of September, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-21205 Filed 9-14-87; 8:45 am]

BILLING CODE 7590-01-M

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federal register

Tuesday
September 15, 1987

Part IV

Department of Transportation

Office of the Secretary
Research and Special Programs Administration

14 CFR Parts 217 and 241
Aviation Economic Regulations; Report of Traffic and Capacity Statistics; Extension of Comment Period

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Research and Special Programs Administration

14 CFR Parts 217 and 241

[Docket 44999; Notice No. 87-13a]

Aviation Economic Regulations; Report of Traffic and Capacity Statistics; Part 217—Reporting Traffic and Capacity; Statistics B Foreign Air Carriers in Civilian Scheduled, Charter, and Nonscheduled Services; Part 241—Uniform System of Accounts and Reports For Large Certificated Air Carriers

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Extension of comment period.

SUMMARY: The Department grants a request to extend the comment period on regulations it has proposed concerning the collection of traffic and capacity data on a market and segment basis from large U.S. and foreign air carriers. This Notice extends the comment period on the proposed rule, originally set as September 14, 1987, until October 14, 1987.

DATE: Comments on the proposed rule must be received on or before October 14, 1987.

ADDRESS: Comments should be directed to the Docket Clerk, Room 4107, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Donald W. Bright or Richard J. King, Office of Aviation Information Management, DAI-1, 400 Seventh Street, SW., Washington, DC, 20590, (202) 366-4384 or (202) 366-4375, respectively.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (52 FR 26498, July 15, 1987) the Department proposed amendments to its regulations for collecting traffic and capacity data from U.S. and foreign air carriers. The proposed regulations would replace the collection of U.S. and foreign air carrier charter data, collected on Form 217, with the Form 41 Schedule T-100 for U.S. air carriers and Form 41 Schedule T-100(f) for foreign air carriers. The proposal would eliminate the collection of ER-586 Service Segment Data (SSD) from U.S. air carriers. Foreign air carriers would also file scheduled service data for the first time. The Department originally set September 14, 1987 as the date for filing comments on the proposed regulations.

In a joint motion dated September 8, 1987, Japan Air Lines Co., Ltd. and Singapore Airlines, Ltd. (the Parties) requested a thirty-day extension of time in which comments in response to the Department's Notice No. 87-13 may be filed. Nippon Cargo Airlines Co., Ltd. also filed in support of the motion.

The Parties considered the proposed regulations to be extremely complex, so complex that the Department held a public briefing on August 5, 1987 to explain its proposal, and issued supplementary explanatory data to further illustrate the reporting proposal. The Parties also pointed to the need for detailed consultations, during traditional vacation periods, between senior management officials and data processing personnel. A thirty-day delay in submitting comments would permit a more thorough and meaningful response.

The request for extension of time is granted. This rulemaking proposes to revise the data collection procedures affecting the air transport industry. As a result, it is important to provide the industry with adequate time to respond to the complexities of the proposed rulemaking. Therefore, the comment period is extended until October 14, 1987 to allow all parties additional time to offer substantive comments.

Accordingly, pursuant to 49 CFR 5.25 and under authority delegated to the Assistant General Counsel for Regulations and Enforcement in 14 CFR 385.20, I find that Parties have a substantive interest in the proposed rule and have shown good cause for the extension and that the extension is in the public interest. Therefore, the request of the Parties for an extension of time to file comments in Docket 44999 is granted. Comments are now due October 14, 1987.

Issued in Washington, DC, on September 11, 1987.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration, DOT.

[FR Doc. 87-21449 Filed 9-14-87; 11:21 am]

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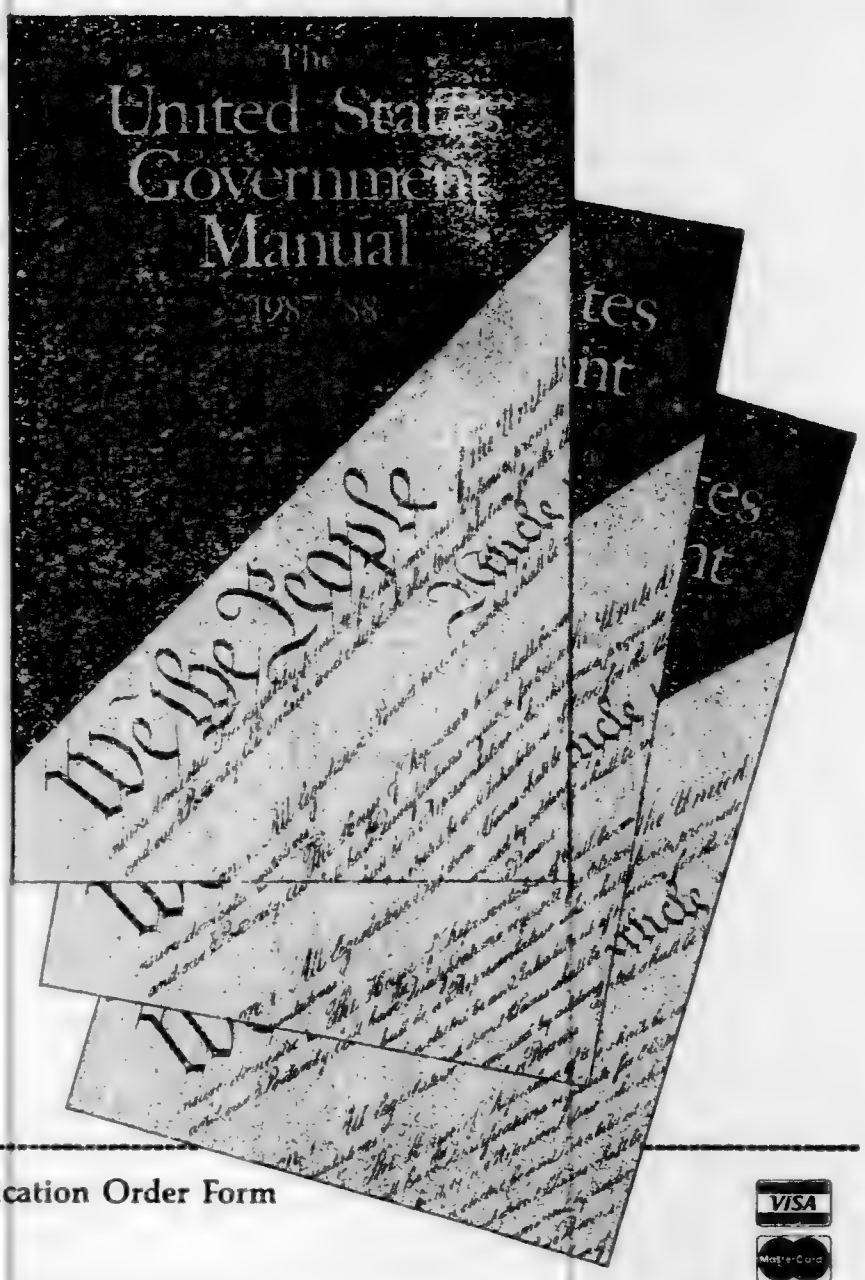

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700 and 705

Community Development Revolving Loan Program for Credit Unions; Definitions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This regulation establishes a revised program under which loans from the Community Development Credit Union Revolving Loan Fund will be made to participating credit uinons. A proposed regulation was issued by the NCUA Board on April 9, 1987 (52 FR 12427, April 16, 1987). The final regulation sets forth, among other things, the scope and purpose of the program application procedures, types of activities participating credit unions will perform, and how loans will be made and collected under the program. Section 700.1(h)(l) updates the definition of "low income members."

EFFECTIVE DATE: September 16, 1987.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie Ulan, Staff Attorney, NCUA, Office of General Counsel, at above address, or telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION:

Background and General Comments

The NCUA Board issued a proposed regulation on April 9, 1987, entitled Community Development Revolving Loan Program for Credit Unions (Program) to implement the authority Congress granted to it to administer the Community Development Credit Union Revolving Loan Fund (Fund). (*See* 52 FR 12427, April 16, 1987.) The Board received 25 comment letters on the proposed regulation. Nineteen of the comment letters were from credit unions; all of these credit unions are either former recipients of loans from the Fund and/or interested in receiving loans from the Fund under this new regulation. Eighteen of the nineteen credit unions are federally chartered. Three of the commenters were individuals, two were credit union trade associations and one was a state credit union league. Most of the comments received supported the proposed regulation, with some modification. The final regulation contains the same structure as the proposed regulation. The substantive changes made to the regulation are discussed below.

Technical Assistance

The issue that drew the most comment was the need for technical assistance. Comment was requested as to what types of technical assistance credit unions receiving loans from the Fund (participating credit unions) might desire and whether interest payments that the NCUA receives on loans made from the Fund should be used to provide technical assistance. Twenty of the commenters expressed a need for technical assistance. Several noted that money for such assistance should come from the interest received on loans to participating credit unions. A few commenters believed that technical assistance should be paid for from the corpus of the Fund. The commenters suggested that technical assistance was needed in the following areas: staff and board training; business planning; marketing to increase membership; community needs assessment; feasibility and implementation of new services and products; management by objective, liaison with government agencies; linkage with public assistance agencies, obtaining capital from the private sector; computerization; and business lending. Five commenters stated that technical assistance should not be provided by NCUA because NCUA examiners were already overburdened and that they lacked expertise in issues concerning participating credit unions. Many of the commenters believed that technical assistance should be provided by a sole provider that has expertise in the types of credit unions receiving loans from the Fund. One commenter noted that technical assistance should be provided before loan funds are distributed to participating credit unions.

It is the opinion of the NCUA Board that technical assistance is a necessary part of the Program and that Congress intended for some technical assistance to be provided to participating credit unions from the Fund. NCUA plans to contract with a provider that can render necessary technical assistance to credit unions selected for participation in the Program. Technical assistance is to be in the areas set forth above, but is not limited to those areas. In general, the technical assistance to be provided should aid participating credit unions in providing services to their members and in the efficient operation of such credit unions. The NCUA will spend up to one half of the interest monies received on loans that have been paid back into the Fund, but not to exceed $120,000 per year. The resdiual interest payments will be kept as a reserve agasinst losses from loans made to participating credit unions from the Fund. Section 705.10 has been added to the final regulation and addresses technical assistance.

Interest Rate

The issue receiving the most comment, after technical assistance, was the interest rate to be charged to participating credit unions. Fifteen commenters addressed this issue. Almost all of these commenters were in favor of a fixed interest rate, rather than the adjustable rate set forth in the proposed regulation (proposed § 705.7(d)). Commenters stated that participating credit unions do not have the sophistication to charge adjustable rates on loans they will make from the loan proceeds from the Fund. As a result, participating credit unions would be subject to an interest rate squeeze if the rate on the money they owe to the Fund rises while the loans they make from these proceeds are at a lower fixed rate. Commenters suggested that if a fixed rate of interest was not a possibility, then caps should be placed on both the amount of adjustments per year and the maximum interest rate over the life of the loan. Upon evaluation of the comments, the NCUA Board has determined that a fixed rate of interest would better suit the purposes of the Program and the participating credit unions than an adjustable rate. Loans from the Fund will be made to participating credit unions at a fixed

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interest rate of 3 percent. An appropriate change has been made to § 705.7(d) of the final regulation.

Participating Credit Unions: Associational and Start-up Credit Unions

Five commenters noted that credit unions participating in the Program should not be limited to community-based credit unions that are already in existence as required by the proposed rule. They reasoned that certain associational-based credit unions should be able to qualify for loans from the Fund when their fields of membership are comprised of civic, housing or anti-poverty organizations. Such credit unions were able to participate in the Program under the two prior regulations. The NCUA Board agrees that such associational-based credit unions should be able to participate in the Program and has deleted the word "community" from the definition of participating credit union found in § 705.3 of the final regulation. Although participating credit unions need not be chartered as community credit unions, in most cases they will be serving the residents and businesses of a clearly defined community or geographic area.

In addition, eight commenters noted that "start-up" credit unions (credit unions that have not yet been chartered) should not be prevented from participation in the Program. Groups sponsoring start-up credit unions could apply for and obtain loans from the Fund under the two prior regulations. The proposed rule limited participants to credit unions already in existence. Commenters suggested that a limited percentage of Fund monies be used to make loans to start-up credit unions. One commenter suggested that provision of technical assistance should alleviate risks associated with start-ups. The Board notes that start-up credit unions have caused most of the losses to the Fund under the prior regulations. Based upon such experience and consistent with the overall purposes of the Fund, it is the NCUA's present position that Program funds be limited to established credit unions. As stated in the preamble to the proposed rule, the program is neither a start-up nor a remedial program. The final regulation reflects this position.

Note Payable v. Nonmember Deposit

Comment was specifically requested on whether Program loans from the Fund to participating credit unions should be recorded on the credit unions books as a note payable, nonmember deposit, or either of the two at NCUA's option. Nine commenters addressed this issue. All but three preferred that the loans be recorded as a nonmember deposit rather than as a note payable. The reason commenters gave for recording the loan as a nonmember deposit rather than a loan was that Federal credit unions are subject to a borrowing limitation of 50% of paid-in and unimparied capital and surplus. The commenters do not believe that Program loans should be subject to the 50% limitation. The NCUA Board wishes to maintain control over how such loans are recorded in that some state-chartered participating credit unions may not be permitted to record the loans as nonmember deposits. In most instances, the Board anticipates that loans will be recorded as nonmember deposits on the credit union's books. Therefore, no change has been made regarding NCUA's discretion to determine how loans are to be recorded. However, the provision has been added to § 705.7(a), and because this latter section already addressed the amount of loans, § 705.3(b) has been deleted as unnecessary. Reference to how loans are recorded has also been added to § 705.7(c)(1).

Matching Requirement

Several commenters reflected on the dollar-for-dollar matching requirement of the proposed regulation (§ 705.7(b)). Participating credit unions must match the loan amount received from the Program with increased shares, dollar for dollar, within one year of approval of their loan application. Commenters suggested a two-to-one match as was required under the prior two regulations (e.g., if a credit union receives a $100,000 loan, it would only have to increase shares by $50,000, rather than $100,000 as the Board has proposed). It is the opinion of the NCUA Board that a dollar-for-dollar matching requirement is appropriate. Federally-chartered participating credit unions will have "low income" status that enables them to accept shares from members as well as nonmembers. It is reasonable to require participating credit unions to build up their share base in the same amount as the amount of funds that they receive from the Program. Section 705.7(b) remains unchanged in the final rule.

State-Chartered Participants

As noted in the final regulation, participation in the Program is open to both state- and federally-chartered credit unions. State credit unions need not be federally insured. In order for NCUA to ascertain that the state-chartered participants are complying with the Program requirements, such participants shall make their examination reports available to NCUA. State-chartered participants shall agree to permit limited examination by NCUA to assure compliance with this Part. NCUA does not anticipate doing routine examinations of these participants. Examination will take place if necessary to protect the assets of the Fund. An appropriate addition has been made to § 705.8 of the final rule.

Additional Comments

Two commenters mentioned the community needs plan (§ 705.6(a)(2)) required by the regulation. They stated that more than the 60 days set forth in the proposed regulation are necessary in order to submit a community needs plan. The NCUA Board believes that 60 days are sufficient to prepare a community needs plan comprised of coordination contacts and a list of community needs that the credit union may provide.

Two commenters asked how long the application period for loans from the Fund will remain open. The Board has determined that a 60-day application period is appropriate. The initial application period will open upon publication of this final rule in the **Federal Register** and will close on November 30, 1987. The November 30 closing date has been added to § 705.9 of the final regulation.

One commenter suggested that NCUA establish an interagency coordinating committee in order to carry out the purposes of the Program. The NCUA Board will make an effort to consult, from time to time, with other agencies to help coordinate efforts of various low income assistance programs.

Lastly, one of the commenters submitted a plan for a central community development credit union without commenting on the proposed regulation. NCUA does not have the authority to establish and charter the central credit union as it was structured by the commenter.

Previous Regulations

Loans made under the Program when it was administered by the CSA were subject to Part 705 of NCUA's Regulations (*See* 45 FR 15171, March 10, 1980). These loans have all been repaid or otherwise accounted for. The prior Part 705 will be deleted and replaced by this new Part 705. Several loans made pursuant to the second regulation promulgated by HHS (45 CFR 1076.60, *see* 48 FR 53560, Nov. 11, 1983) are still outstanding. Those outstanding loans are subject to the HHS regulation. All

loans made henceforth will be subject to this new final rule.

Section 700.1(h)—Definition of Low Income Members

As provided in § 705.3(a), a participating credit union must meet one of three definitions of "low income members" as set forth in § 700.1(h)(1)–(3) of NCUA's Rules and Regulations (12 CFR 700.1(h)(1)–(3)) in order to qualify for the Program. Two commenters suggested that the NCUA Board redefine "low income members" as found in § 700.1(h)(1) of the NCUA Rules and Regulations (12 CFR 700.1(h)(1)). This subsection defines "low income members" as "those members whose annual income falls at or below the lower level standard of living classification as established by the Bureau of Labor Statistics, U.S. Department of Labor." The Bureau of Labor Statistics no longer updates the classification. The classification is now annually updated by the Employment and Training Administration of the U.S. Department of Labor. The NCUA Board has issued a replacement definition of "low income members" for § 700.1(h)(1), concurrent with the issuance of this final rule. The new definition refers to the original lower level standard of living classification set forth by the Bureau of Labor Statistics and annually updated by the Employment and Training Administration of the Department of Labor. The most recent update of the lower level standard of living classification was published in the **Federal Register** by the Employment and Training Administration on July 14, 1987 (*see* 52 FR 26378). NCUA is updating this definition as a final rather than a proposed rule since there is no substantive change to the definition. NCUA is merely specifying the office of the Department of Labor that now annually updates the lower level standard of living classification. The standard set forth in the definition is unchanged.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions. The proposed rule will affect only a small number of credit unions and will not impose an additional burden on them. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The final regulation contains the two collection of information requirements as noted in the proposed regulation. Section 705.5 contains the application procedures for a credit union wishing to participate in the Program and § 705.6(a)(2) contains the requirement that participating credit unions develop a community needs plan. These collection requirements were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. The collection requirements were approved by OMB and have been assigned collection number 3133–0109 for use through 6/30/88. OMB noted one additional collection. Section 705.8 requires that state-chartered participants obtain written concurrence from their respective state regulatory authority. OMB requested that the entire collection (three requirements) be resubmitted to them with this final regulation. NCUA will resubmit the collection request to OMB and publish a notification in the **Federal Register** upon their final approval. Any further comments on the collection of information requirements should be submitted to: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: Robert Fishman.

List of Subjects in 12 CFR Parts 705 and 700

Credit unions, Community development revolving loan program, Low income.

By the National Credit Union Administration Board this 9th Day of September, 1987.

Becky Baker,

Secretary of the Board.

PART 705—[AMENDED]

Accordingly, NCUA amends its regulations as follows:

1. Part 705 is revised to read as follows:

PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN PROGRAM FOR CREDIT UNIONS

Sec.

705.0 Applicability.
705.1 Scope.
705.2 Purpose of the program.
705.3 Definition.
705.4 Program activities.
705.5 Application for participation.
705.6 Community Development Committee.
705.7 Loans to participating credit unions.
705.8 State-chartered credit unions.
705.9 Application period.
705.10 Technical assistance.

Authority: Pub. L. 97–35, 95 Stat. 498; Pub. L. 99–609, note to 42 U.S.C. 9822.

§ 705.0 Applicability.

Monies from the Community Development Revolving Loan Fund for Credit Unions obligated after October 1, 1987, are governed by this regulation.

§ 705.1 Scope.

(a) This part implements the Community Development Revolving Loan Program for Credit Unions (Program) under the sole administration of the National Credit Union Administration.

(b) This Part establishes the following:

(1) Definitions;

(2) The application process for participation in the program;

(3) Requirements for program participation;

(4) How loan funds are to be made available and their repayment; and

(5) Technical assistance to be provided to participating credit unions.

§ 705.2 Purpose of the program.

The Community Development Revolving Loan Program for Credit Unions is intended to support the efforts of participating credit unions through loans to those credit unions in:

(a) Providing basic financial and related services to residents in their communities; and

(b) Stimulating economic activities in the communities they service which will result in increased income, ownership and employment opportunities for low income residents, and other community growth efforts.

§ 705.3 Definition.

For purposes of this Part, a "participating credit union" means a state- or federally-chartered credit union that is specifically involved in stimulation of economic development activities and community revitalization efforts aimed at benefiting the community it serves; whose membership meets the definitions of "predominantly" and "low income members" as found § 700.1 (h) and (i) of the NCUA Regulations (§ 700.1(h)(4)), or applicable state standards; and has submitted an application and has been selected for participation in the Program in accordance with this Part.

§ 705.4 Program activities.

In order to meet the objectives of the Program, a credit union applicant must provide a variety of financial and related services designed to meet the particular needs of the low income community served. These activities shall include basic member share account and member loan services. In addition,

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these activities may include, but are not limited to, the following:

(a) Member services, including:

(1) Financial counseling;

(2) Consumer education programs;

(3) Home owner counseling;

(4) Check cashing;

(5) Money orders;

(6) Bill paying services; and

(7) Direct deposit of recurring payments.

(b) Increased membership and capitalization activities, including:

(1) Membership drives;

(2) Systematic savings plans;

(3) Encouraging community organizations to open and increase share accounts.

§ 705.5 Application for participation.

(a) Application to participate in the Program shall be submitted to:

National Credit Union Administration, Community Development Revolving Loan Program for Credit Unions, 1776 G Street, NW., Washington, DC 20456.

(b) The application shall contain the following information:

(1) Information demonstrating a sound financial position and the credit union's ability to manage its day-to-day business affairs. Credit unions shall submit the following for the most recent month-end and each of the twelve months preceding that month-end:

(i) Balance sheet;

(ii) Income and expense statement;

(iii) Delinquent loan list.

(2) Evidence that the credit union has a need for increased funds in order to improve financial services to its members.

(3) The following information concerning the credit union's field of membership:

(i) Current field of membership as set forth in the credit union's charter;

(ii) Changes, if any, to be made to the field of membership for participation in the Program, including:

(A) Evidence of approval of change by credit union board of directors;

(B) Evidence of submission and approval of change by either NCUA Regional Director or State Supervisor;

(iii) Current designation as a low-income credit union.

(4) Specifics of how the credit union proposes to serve the needs of its members and the community with Program funds. The applicant credit union will also construct and submit a plan for its growth and development. The plan will set forth objectives for financial growth, credit union development and capitalization, and the means for achieving these objectives.

(5) How the credit union proposes to cooperate with existing community development programs of state and Federal agencies, including the Department of Housing and Urban Development and the Department of Health and Human Services as well as others.

(c) NCUA will notify applicant credit unions as to whether or not they have qualified for a loan under this Part. Reasons for nonqualification will be stated.

§ 705.6 Community development committee.

(a) Each participating credit union, in addition to its other committees, shall have a Community Development Committee. The responsibilities of the Community Development Committee fall into two interrelated categories: coordination (liaison) and identification of community needs.

(1) *Coordination.* The Community Development Committee must establish and maintain liaison with government agencies and others having developmental projects in the community. This liaison will help ensure a united effort at redeveloping the community with a minimum of duplication. The Community Development Committee shall see to it that the community is kept informed of the participating credit union's activities.

(2) *Community Needs Plan.* Within 60 days after a credit union has been selected for participation in the Program, the Community Development Committee will prepare and present to the participating credit union's board of directors, a Community Needs Plan. This Plan will set forth the coordination contacts established. The Plan will also contain, in priority sequence, a list of community needs that the credit union may be able to provide. The participating credit union's board of directors will make the decision as to what services the credit union can provide. The Committee's responsibility is to advise the board on needs and to provide sufficient cost estimates and "how to" recommendations to enable the board to reach the best decisions.

(b) The Community Development Committee shall be appointed by the board from among the members of the credit union, one of whom must be a board member of the participating credit union. The board shall determine the number of members on the committee which shall not be fewer than three nor more than five. Regular terms of the committee shall be for one or two years as the board shall determine; *Provided*, however, that all terms shall be for the same number of years and until the appointment and qualification of successors. No members of the Community Development Committee shall be compensated as such.

(c) In addition to the Community Development Committee working with the credit union board of directors, they will report to the credit union members once a year either at the annual meeting or in a written report sent to all members.

§ 705.7 Loans to participating credit unions.

(a) Amount and Recording of Loans. A credit union selected for particpation in the Program will be eligible to receive up to $200,000 in the form of a loan from the Community Development Revolving Loan Fund for Credit Unions. The amount of the loan will be based on the creditworthiness of the participating credit union, financial need, and demonstrated capability of a participating credit union to provide financial and related services to its members. At the discretion of NCUA, a loan will be recorded by a participating credit union as either a note payable or a nonmember deposit.

(b) *Matching requirements.* Participating credit unions will be encouraged to develop, as rapidly as possible, a permanent source of member shares.

(1) Loan monies made available must be matched by the participating credit union by increasing its member and non-member share deposits in an amount at least equal to the loan amount. Participating credit unions must meet this matching requirement within one year of the approval of the loan application and must maintain the increase in the total amount of member share deposits for the duration of the loan.

(2) Drawdown of the loan to a participating credit union may be made in a maximum of two payments only. Upon approval of its loan application, and before it meets its matching requirement, a participating credit union may receive 50% of the loan committed. The remainder of the funds committed will be available to the participating credit union only after it has documented that it has met the match requirement for the total amount of the loan committed.

(3) Failure of a participating credit union to generate the required match within one year of the approval of the loan will result in the reduction of the loan proportionate to the amount of match actually generated. Payment of any additional funds initially approved will be limited as appropriate to reflect the revised amount of loan approved,

and any funds already advanced to the participating credit union in excess of the revised amount of loan approved must be repaid immediately to NCUA. Failure to repay such funds to NCUA upon demand shall result in the default of the entire loan.

(4) Failure by a participating credit union to achieve at least 25% of its proposed match may result in the requirement by NCUA that immediate and full repayment of the loan be made.

(c) *Terms and repayment.* (1) Assistance made available in this Program, whether recorded by the credit union as a note payable or nonmember deposit at NCUA's direction, is in the form of a loan and must be repaid to NCUA. All loans will be scheduled for repayment within the shortest time compatiable with sound business practices and with the objectives of the Program, but in no case will the term exceed five years. The policy of NCUA is to revolve these funds to qualifying credit unions as often as practical, in order to gain maximum economic impact on as many credit unions that are qualified to participate in the Program as possible.

(2) Semiannual interest payments (beginning six months after the initial distribution of a loan) and semiannual principal payments (beginning one year after the initial distribution of a loan) will be required.

(d) *Interest rates.* Loans made under this rule shall bear interest at a fixed annual percentage rate of 3 percent.

(e) *Default, Collections and Adjustments.* The terms of each loan agreement shall provide for the immediate acceleration of the unpaid balance for breach or default in the performance by the participating credit union of the terms or conditions of the loan. This will include misrepresentations, default in making interest/principal payments, failure to report, insolvency, failure to maintain adequate match for the duration of the loan period, etc. The unpaid balance will also be accelerated and immediately due if any part of the loan funds are improperly used, or if uninvested loan proceeds remain unused for an unreasonable or unjustified period of time.

§ 705.8 State-chartered credit unions.

State-chartered credit union applicants approved for participation by NCUA must obtain written concurrence from their respective state regulatory authority. Such participants shall make copies of their state examination reports available to NCUA and shall agree to examination by NCUA for the limited purpose of compliance with this Part.

§ 705.9 Application period.

Applications for participation in the program will be accepted through November 30, 1987. As additional funds become available, new applications will be accepted. Notices of future availability of funds will be published in the **Federal Register**.

§ 705.10 Technical assistance.

NCUA will contract with an outside provider to render technical assistance to participating credit unions. Technical assistance provided will aid participating credit unions in providing services to their members and in the efficient operation of such credit unions. Up to one-half of the interest monies received on loans repaid into the Fund will be spent on technical assistance, but such amount will not exceed $120,000 per year.

PART 700—[AMENDED]

2. The authority citation for Part 700 is revised to read as follows:

Authority: 12 U.S.C. 1752(5), 1757(6), 1766.

3. Section 700.1(h)(1) is revised to read as follows:

§ 700.1 Definitions.

* * * * *

(h) * * *

(1) Those members whose annual income falls at or below the lower level standard of living classification as established by the Bureau of Labor Statistics and as updated by the Employment and Training Administration of the U.S. Department of Labor;

* * * * *

[FR Doc. 87-21324 Filed 9-15-87; 8:45 am]
BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 105

Standards of Conduct

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final regulation amends existent 13 CFR § 105.511(g) to provide that Financial Disclosure Statements required to be filed by Executive Order 11222 (May 8, 1965) may be disclosed to individuals who must have access to them in order to carry out responsibilities established by law.

DATES: Effective September 16, 1987.

ADDRESS: Written comments should be addressed to Martin D. Teckler, Deputy General Counsel, Room 700, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Martin D. Teckler, Telephone (202) 653-6642.

SUPPLEMENTARY INFORMATION: Heretofore SBA's regulation implementing Executive Order 11222 has not specifically provided for access to Financial Disclosure Statements (SBA Form 703) other than upon request and by demonstration of good cause to SBA's Administrator, and the approval of the request. This regulation amendment is intended to provide for administrative ease in handling requirements for inspection of the Statements where ligitimately authorized inquiries are concerned. Thus, for example, when the SBA's Office of Inspector General is carrying out a function authorized by the Inspector General Act, Pub. L. 95-452 (October 12, 1978), 5 U.S.C. App., a Statement will be made available upon written request to the Standards of Conduct Counselor in whose custody the Statement resides. The request must reference that it is being made in order to carry out a function authorized by law, and the requester must establish his or her identity as a person operating under authority of law to the satisfaction of the Standards of Conduct Counselor (SBA Inspector General credentials will satisfy this requirement). The Standards of Conduct Counselor will in turn respond in writing to the request, referencing this regulation and the establishment of the identity of the requester and immediately provide the Statement.

With respect to requests from other sources, the Standards of Conduct Counselor will follow the same procedure; determining the identity of the requester, the legal authorization, and determining that he or she finds that the request is or is not granted, and the reasons therefore before providing or not providing the Statement. SBA's Central Office Standards of Conduct Counselor will stand by the advise Regional Standards of Conduct Counselors on the implementation of this amendment, both substantively and procedurally.

This regulation is one which is a matter relating to Agency management or personnel. Therefore, the provisions of 5 U.S.C. 553 do not apply to its promulgation. In addition, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, it will not have a significant impact on a substantial number of small entities, and will have no Paperwork Reduction Act (44 U.S.C. ch. 35) implications.

List of Subjects in 13 CFR Part 105

Conflict of interests.

PART 105—[AMENDED]

1. The authority citation for Part 105 continues to read as follows:

Authority: Sec. 5, 72 Stat. 385 (15 U.S.C. 634); E.O. 11222, 3 CFR 1964–65 Comp.; 5 CFR 735.104.

2. In § 105.511, paragraph (g) is revised to read as follows:

§ 105.511 Financial disclosure statements under Executive Order 11222.

* * * * *

(g) Each Statement of Employment and Financial Interests shall be held in confidence by the recipient and no information contained therein shall be disclosed except as the Administrator may determine for good cause shown, or to those individuals who must have access in order to carry out responsibilities under law upon request to the appropriate Standards of Conduct Counselor.

* * * * *

Date: August 27, 1987.

James Abdnor,

Administrator.

[FR Doc. 87–21091 Filed 9–15–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–CE–52–AD; Amdt. 39–5725]

Airworthiness Directive; Bellanca (Champion) Model 8GCBC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Bellanca (Champion) Model 8GCBC airplanes, which requires an inspection of the front and rear spars for compression failures. Such failures have contributed to two accidents. This action is necessary to detect and correct said condition in the spars and thereby preclude in-flight structural failure of the wing.

EFFECTIVE DATE: October 15, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Information pertaining to this action may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Efrain Esparza, Airplane Certification Branch, ASW–150, Aircraft Certification Division, Southwest Region, FAA, Fort Worth, Texas 76193–0150; Telephone (817) 624–5156.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring an inspection of the front and rear wing spars on all Champion Model 7 and 8 series airplanes was published in the **Federal Register** on November 13, 1986 (51 FR 41113). The original comment period, ending December 10, 1986, was extended to April 5, 1987, by the **Federal Register** publication of December 31, 1986 (51 FR 47249) to allow interested persons additional time for response to the NPRM.

The proposal resulted from two accidents that were caused by in-flight airplanes structural failure of the wing on Bellanca (Champion) Model 8GCBC wherein compression failures in the wing's main spar were contributing factors. Compression failures are failures of wood fibers on a plane perpendicular to the wood fiber longitudinal axis. If undetected, such compression failure can result in in-flight structural failure of the wing with loss of the airplane.

The National Transportation Safety Board (NTSB) recommended to the FAA that an Advisory Notice be mailed to all Bellanca (Champion) Model 8GCBC owners regarding in-flight airframe failure accidents involving this airplane. In addition, the NTSB recommended to the FAA that an AD be issued to require compliance with: (1) Bellanca Service Letter No. C–139A, "Inspection Wing Rib/Spar Attachment and Leading Edge Support Block Nails," applicable to Models 7GC, 7GCA, 7GCB, 7GCBA, 7HC, 7KC, 7KCAB, 7ECA, 7GCAA, 7GCBC, 8KCAB, and 8GCBC, (2) Bellanca Service Letter No. 116, "Wing Leading Edge Inspection," applicable to the Model 8KCAB, and (3) Bellanca Service Letter No. 95, "Inspection, Repair, and Modification of Aileron Bay Ribs," applicable to Models 7ECA, 7GCAA, and 7GCBC.

The FAA, after reviewing information from the accident reports, determined that in the two accidents a compression crack in the wing spars contributed to the spar and wing failures. In addition, the FAA could not find evidence that any of the problems associated with Bellanca Service Letters No. C–139A, 116, and 95 contributed to any of the accidents. Therefore, on October 17, 1985, the FAA issued a General Aviation Airworthiness Alert, AC 43–16, "Bellanca Aircraft Possible Wing Failure, Model 7 and 8 Series, to recommend an inspection of the wing spars for compression failures for the Model 7 and 8 series airplanes. The General Aviation Airworthiness Alert was sent to all the Model 7 and 8 series airplane owners in response to the NTSB's first recommendation. However, the level of response from the owners to this AC was very low considering the nature of the problem and the number of airplanes involved.

Since this condition was considered likely to exist or develop on other airplanes of the same/similar type design, the FAA determined that mandatory inspection of the wing spars of Champion (Bellanca) Model 7 and 8 series airplane was necessary to detect and correct compression failures to preclude in-flight structural failure of the wing. Therefore, the proposed AD would have made compliance with specific parts of the instructions in AC 43–16 dated October 17, 1985, mandatory for all Bellanca (Champion) 7 and 8 series airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to all matters presented. Substantive changes and changes of an editorial and clarifying nature have been made to the proposed rule upon relevant comments received and further review within the FAA. In general, the comments received address 35 major issues. Ten commenters agreed with the proposal.

Four hundred thirty-one commenters disagreed with the economic impact not being significant. These commenters expressed concern that the required inspection would make it prohibitive to continue flying the airplanes; in addition, they stated that the inspection could amount to as much as 25 percent of the total value of the airplane. They contended that for those airplanes in the aerobatic category, the consequences would be even worse since the inspection would have to be performed at every 100 flight hours. Cutting and patching fabric every 100 flight hours would result in covering of the wings more often and required an additional cost not identified in the economic impact analysis. Therefore, they believed that this would be a significant economic impact contrary to what the NPRM stated. The FAA has revised the AD in light of this comment and as a result of some of the other comments discussed herein. The changes to the AD have resulted in a less severe economic impact than the one given in the original proposal.

One hundred seventy-seven commenters objected to the proposal because they believed that only those airplanes that had wing damage should be inspected. They stated that all in-flight wing failures occurred on airplanes that had previously been overturned, flipped on their back, or had some other kind of damage to their wings. They believed that there was not enough justification to make those airplanes with no damage history comply with the proposed AD. The FAA disagrees and believes that airplane records in some instances are not reliable sources of information especially regarding accident history and latent or undetected damage. The FAA believes that at least a one-time inspection should be performed on those model airplanes regardless of service history.

One hundred fifty-one commenters disagreed with the proposal on including all 7 and 8 series airplanes. The commenters' objections were based on the good service history of these airplanes. They stated that in their association with these airplanes they never had a problem with compression cracks of the type mentioned in the proposal, and thus they felt the proposal should not apply to all Model 7 and 8 airplanes. The FAA agrees. Therefore, only those airplanes which service history justifies AD action will be covered in the AD.

One hundred forty commenters objected to the proposal on the basis that it implied that all Model 7 and 8 series airplanes, especially the aerobatic and normal category airplanes, were the same. The FAA agrees with the comments and the AD will be clarified. Originally, all Model 7 and 8 series airplanes were included in the proposal; however, only Model 8GCBC airplanes will be covered in the AD.

Ninety-nine commenters disagreed with the proposal because of the lack of sufficient accident and incident information to support it. They stated that two airplane accidents out of a fleet of 8,200 airplanes could not justify the drastic and expensive inspection proposed. The FAA agrees that two airplanes out of 8,200 is a very small figure; however, these two airplanes had in-flight structural failure of the wing which resulted in loss of the airplanes. The FAA agrees that there is not sufficient justification to support an AD applicable to all 8,200 airplanes but believes the AD should be applicable to those models that have service history of damaged spars or wing structural failures.

Thirty-seven commenters responded against the proposal because they believe that the Airworthiness Alert issued on October 17, 1985, was sufficient action. They stated that the Alert was given sufficient publicity and distributed to all affected parties. The FAA does not agree that the 1985 Alert has been sufficient to resolve and correct the unsafe conditions that currently exists in the Model 8GCBC airplanes. The FAA does agree that the Alert is an informative tool and, as stated in the Alert, the FAA does encourage all Model 7 and 8 series owners to accomplish the inspections specified in the Alert. However, the FAA believes the aforementioned service history on Model 8GCBC airplanes justifies an AD to insure compliance on those airplanes. Further, the FAA is currently revising the original 1985 Airworthiness Alert to include a discussion of the latest information and findings relative to this AD and plans to reissue the Alert to all owners of Model 7 and 8 series airplanes. The revised Alert will continue to recommend inspections of the wooden spars on both series airplanes, especially if subjected to any accident or other occurrence which may have resulted in structural damage to the wings.

Nineteen commenters disagreed with the inspection procedures outlined in the proposal. They stated that the fabric cutouts jeopardized the structural integrity of the wing and the airplane, especially if performed every 100 flight hours as required for airplanes in the aerobatic category. They believe that the cutting and patching of the fabric would weaken the wing making flying unsafe. The FAA disagrees. If FAA approved methods for cutting and repairing fabric are used, the structural integrity of the fabric and wing should not deteriorate.

Seventeen commenters recommended that inspection rings with plates be used in lieu of fabric cutouts. They argued that this would be more economical especially for repetitive inspections. The FAA agrees, and the AD will allow the use of inspection rings.

Nineteen commenters opposed the proposal because they believe it was drafted as a result of four separate in-flight wing structural failures involving airplanes performing aerobatic maneuvers. They stated that the airplanes, Model 8GCBC Scouts, were not certificated in the aerobatic category and yet their wings failed while performing aerobatic maneuvers. The FAA does agree that unauthorized aerobatic maneuvers may have contributed to some accidents and the AD has been revised to contain instructions to install an "AEROBATICS PROHIBITED" placard on the instrument panel that will supplement the existing operational placard and impose no additional limitation on the operation of Model 8GCBC airplanes.

Fourteen commenters objected to the proposal by stating that annual inspections provided enough inspections to determine the airworthiness of the airplanes. The FAA disagrees. There are no inspections performed on these airplanes to detect compression failures in the spars. The FAA believes that by making the inspection mandatory, the level of safety will be enhanced to assure a minimum acceptable level of safety.

Fourteen commenters disagreed with the proposal by stating that it had originated as a result of improper inspections performed by inspectors and by improper repairs. The FAA agrees that some of the airplanes may not have been properly inspected for compression failures. Therefore, the FAA will require an inspection for compression failures through this AD action.

Eleven commenters recommended that airplanes in the aerobatic category which will be required to have an inspection every 100 hours flight be placarded for nonaerobatics until the wings have to be re-covered. They stated that they could fly their airplane like a normal category airplane, and thus only the initial inspection would have to be performed. The FAA believes that based on the other comments received and the revisions made in the AD, the above recommendation is not appropriate.

Eight commenters recommended that the proposal should only apply to Champion Model 8GCBC airplanes. They stated that since this is the only Model with a service history of wing failures there was not justification to apply it to the other models. The FAA agrees and the AD will be revised to include only the Model 8GCBC airplanes.

Eight commenters recommended that the proposed AD require an inspection of the wing strut-spar attach area rather than the entire spar. They contended that the highest stress concentration during an incident/accident where the wings suffer damage will be this area. They further stated this area will show cracks before any other area does. The FAA agrees, and the AD will cover an inspection of the wing strut attach area in lieu of the entire spar.

Four commenters stated the proposal was not clearly written to specify to which airplanes it applied. They stated that the proposal talks about wing fuel tanks and calls for an inspection of the

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spar just outboard of the wing fuel tanks. The commenters stated that some airplanes, specifically the Champion Model 7AC, do not have wing fuel tanks, and thus it is not clear how the proposal applies to them. The FAA agrees that airplanes without wing fuel tanks were overlooked. The AD will reflect this change.

Four commenters stated that existing inspection holes are adequate to determine the condition of the spars and therefore objected to the fabric cutouts as required in the proposal. The FAA disagrees. The existing inspection holes may not provide sufficient access to the wing-spar attach area especially when a magnifying lens and flashlight are to be used. The inspection outlined in the proposal requires that the lens and flashlight be as close to the side surface of the spar as possible, and the existing inspection holes may not provide such access.

One commenter requested that the proposal be clarified and that it be revised to address the fact that some airplanes might have metal spars, and thus the proposal would not apply to them. The FAA agrees. The AD will require the inspection only on airplanes with wooden spars. Two commenters stated that the proposal did not give consideration to those airplanes which have been recently re-covered or had their wing spars replaced. They recommended that the FAA revise the proposal to provide some relief to these airplanes. The FAA agrees, and the AD reflects this comment.

One commenter questioned the effectiveness of the inspection procedures to detect compression failures. The commenter did not believe that compression cracks could be detected if only one side of the spar is inspected.

The FAA disagrees. Compression cracks, especially those in the wing strut attach area, are visible from either side. They extend across the thickness of the spar and run across the grain from top to bottom of the spar or vice versa.

Several commenters objected to the proposal being more stringent on aerobatic category airplanes than normal category airplanes. They stated that aerobatic category airplanes are designed to higher load factors than normal category airplanes. The FAA agrees, and the AD reflects this comment.

One commenter recommended that the proposal specify on which surface the fabric cutouts are to be made on top or bottom of the wing. The FAA agrees and the AD incorporates this comment.

One commenter disagreed with the proposal because he believes Bellanca Service Letter No. C–139A is already doing what the proposal requires. The FAA disagrees. Bellanca Service Letter No. C–139A requires an inspection of the wing rib/spar attachment and leading edge support nails but does not require an inspection for compression failures of the wing strut attach area.

Accordingly, the proposal is being adopted with the changes heretofore noted.

Some comments received involved the cost determination. The AD will require 12 inspection cutouts or holes, three at each spar. The FAA has determined that only 233 Model 8GCBC airplanes will be affected by this rule instead of the original 8,200 airplanes as stated in the NPRM.

Therefore, the FAA has determined that this regulation involves 233 airplanes at an approximate one-time cost of $420 for each airplane or a total one-time fleet cost of $97,860. No small entities impacted by this AD own sufficient airplanes to cause their cost of compliance to equal or exceed a significant cost level. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Bellanca (Champion): Applies to Model 8GCBC series (all serial numbers) airplanes, certificated in any category when equipped with wooden wing spars. Compliance: Required as indicated in the body of the AD unless already accomplished.

To preclude in-flight structural failure of the wing, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after the effective date of this AD, install the following placard on the instrument panel in full view of the pilot:

"AEROBATICS PROHIBITED"

The placard shall be fabricated of durable material with face size at least .38 inches high and 1.88 inches long and may be locally manufactured. The letters on the placard must be at least .10 inches in height and the letter color must contrast with the background color. The placard must be permanently affixed.

(b) The requirements of paragraph (a) of this AD may be accomplished by the owner/operator on any airplanes which are not used under Part 121 or 135. The person accomplishing these actions must make the appropriate airplane maintenance record entry per FAR 43.9 and 91.173.

(c) Within the next 75 hours' time-in-service (TIS) after the effective date of this AD, unless already accomplished, inspect the wing spars for compression failures as follows:

(1) For the front spar, make rectangular C-shaped cutouts just aft of the front spar with the long side parallel to the spar so that the fabric peels away from the spar. Do this for the rib bay areas adjacent to and including the wing spar-lift strut attach fitting rib bay areas. Make the cutout large enough to allow visual inspection of the exposed section of the spar. The cutouts are to be made on the wing's lower surface. For the rear spar, make the rectangular cutout just forward of the rear spar so that it peels away from the spar. Do this for the rib bay areas adjacent to and including the wing spar-lift strut attach fitting rib bay areas. Accomplish the inspection by using existing or new inspection holes in lieu of fabric cutouts providing they allow an adequate visual inspection. Do not remove the wood pads at the spar-lift strut attach point to accomplish the inspection.

(2) With the use of a 10X hand lens or microscope inspect the side surface of the spar (rear side of front spar/front side of rear spar) with a light striking along the grain at an angle of about 20° with the surface. The point of view should be varied between 45° and the vertical (with respect to the spar side surface) on the same side as the light source. Try other angles of light and vision. With the use of a light and mirror, inspect the bottom edge of the wooden spar at this location.

Note 1.—When viewed in the manner described in this paragraph, a failure appears as an irregular line extending across the grain. When using a 10X hand lens or microscope, the same arrangement with respect to the light source is recommended except that it is best to keep the point of view at a vertical angle due to distortion of the field when any other position is used.

During the examination of the spar with a hand lens and light, care must be taken not to mistake minute breaks in the surface fibers that are sometimes caused by chafing, for compression failures. These surface breaks can be removed with a sharp knife, whereas a compression failure is usually still visible after a thin shaving has been taken off. The knife must be sharp so that a very thin shaving can be removed without crushing the remaining fibers and thereby obscuring a compression failure if present.

(3) If any compression failures are found, prior to further flight, repair or replace the spar.

Note 2.—Other conditions such as loose/missing rib nails should be looked for, and unsatisfactory conditions should be repaired.

(d) After the inspection specified in paragraph (c) of this AD has been accomplished, prior to further flight repair the wing fabric cutout using appropriate maintenance instructions and/or reinstall inspection hole covers, as applicable.

(e) The inspection specified in paragraph (c) of this AD is not applicable to the following airplanes:

(1) Airplanes modified with a metal spar per STC No. SA3829NM, and

(2) Airplanes equipped with wood wing spars providing that:

(a) Within 500 hours TIS prior to the effective date of this AD either the spars were replaced and the wings recovered, or the spars have been inspected for compression failures as described in this AD, and,

(b) Subsequent to the above replacement or inspection, the airplane has not been involved in any accident which may have resulted in structural damage to the wings.

(f) If, at any time, subsequent to the effective date of this AD, the airplane is involved in an accident that may have resulted in structural damage to the wings, prior to further flight reinspect the wing spars in accordance with paragraph (c) of this AD.

(g) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(h) An equivalent method of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, ASW-150, FAA, Southwest Regional Office, Fort Worth, Texas 76193-0150.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective October 15, 1987.

Issued in Kansas City, Missouri, on August 31, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-21229 Filed 9-15-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-117-AD; Amdt. 39-5723]

Airworthiness Directives; Lockheed-Georgia Model 382, 382B, 382E, 382F, and 382G Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Lockheed Model 382 and 382B/E/F/G series airplanes, which requires inspection of the pilot's and copilot's circuit breaker panel wiring for chafing or short circuiting; inspection for proper clearance between wire bundles, wire bundle clamps, and circuit breaker terminals; repair or replacement of any damaged wire; and relocation of wire bundle clamps, if necessary, to maintain minimum clearance. This amendment is prompted by a report of an in-flight fire caused by an electrical short in one of the six circuit breaker panels in the flight deck. This condition, if not corrected, could result in a fire on board the airplane.

EFFECTIVE DATE: September 17, 1987.

ADDRESSES: The applicable service information may be obtained from Lockheed-Georgia Company, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Trammell, Systems Branch, ACE-130A, FAA, Central Region, Atlanta Aircraft Certification Office, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991-3020.

SUPPLEMENTARY INFORMATION: The FAA has recently received a report of an in-flight fire which occurred on a Lockheed-Georgia Model 382 series airplane (military Model C-130 series airplane), operated by the United States Air Force. During an overwater operation, at Flight Level 210, smoke and fumes were observed in the flight deck. Flames were emitting from the circuit breaker panel, and were extinguished by the flight crew with a halon fire extinguisher. The airplane landed without further incident; there were no injuries. Investigation revealed that the fire originated in the area of the essential DC bus, where the clamp was short circuiting wires coming from the bus. An initial inspection conducted by the Air Force of the Model C-130 series airplanes located at the base nearest where the incident occurred identified more than 20 airplanes having circuit breaker panel wiring bundles which did not meet the required minimum clearance between the affected wire bundles, wire bundle clamps, and circuit breaker terminals. Chafed and abraded wiring was also detected. This condition, if not corrected, can lead to fire on board the airplane.

The FAA has reviewed and approved Lockheed Alert Service Bulletin A382-24-19, dated August 7, 1987, which describes an inspection of the pilot's and copilot's circuit breaker panel areas for chafing or short circuiting, and for proper clearance between wire bundles, wire bundle clamps, and circuit breaker terminals; repair or replacement or any damaged wire; and relocation of wire bundle clamps, if necessary, to maintain minimum clearance.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires inspection of the circuit breaker panels, wire bundles, wire bundle clamps, and circuit breaker terminals, repair of damaged wire, and relocation of wire bundle clamps, if necessary, in accordance with the Lockheed alert service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

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Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Lockheed-Georgia: Applies to Model 382, 382B, 382E, 382F, and 382G series airplanes; Serial Numbers 3946 through 5024, except 4412, 5022, 5025, 5027, 5029, and 5032; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the potential for smoke or fire occurring in the flight deck, accomplish the following:

A. Within the next 25 hours time-in-service, inspect the 6 pilot's and copilot's circuit breaker panel areas, as follows:

1. Gain access to the following 6 circuit breaker panels in the flight station: pilot's side panel, upper and lower pilot's distribution panel, copilot's side panel, upper and lower copliot's distribution panel.

2. Open each circuit breaker panel and visually inspect for scorching, chafing, or short circuiting between circuit breaker wire terminals, wire bundles, and wire bundle clamps.

3. Inspect for minimum clearance of 0.250 inch between circuit breaker wire terminals, wire bundles, and wire bundle clamps.

4. With circuit breaker door closed, visually inspecting from adjacent door opening, inspect circuit breaker and attached wiring for chafing and minimum clearance. Direct particular attention to wire bundles routed at bottom of panels.

5. If 0.250 inch minimum clearance is present and no wire chafing or damage exists, return airplane to service.

6. If damaged wire is found, prior to further flight repair or replace wire in accordance with the applicable technical manual, SMP 582, Hercules Wiring Diagram Manual.

7. If 0.250 inch clearance does not exist, prior to further flight relocate wire bundle clamps and/or spaces, if necessary, to maintain minimum clearance. Reroute wiring in accordance with the applicable technical manual, SMP 582, Hercules Wiring Diagram Manual.

B. Accomplishment of the inspection, repair, and relocation procedures described in Lockheed Alert Service Bulletin A382–24–19, dated August 7, 1987, constitutes compliance with the requirements of paragraph A., above.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Altanta Aircraft Certification Office, FAA, Central Region.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Lockheed-Georgia Company, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia.

This amendment becomes effective September 17, 1987.

Issued in Seattle, Washington, on August 26, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–21231 Filed 9–15–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ANM–8]

Revision to Hailey, ID, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects **Federal Register** Document 87–19107 which revised the Hailey, Idaho, transition area. An inadvertent error was made in the effective date of this action.

EFFECTIVE DATE: 0901 UTC, September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 87–ANM–8, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2535.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 87–19107 was published on August 21, 1987 (52 FR 31614) revising the Hailey, Idaho, transition area. This action was necessary to provide 700-foot controlled airspace to accommodate a Microwave Landing System (MLS) special instrument approach procedure for Horizon Airlines at Hailey, Idaho.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore — (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 87–19107, as published in the **Federal Register** on August 21, 1987 (52 FR 31614) is corrected as follows:

Change the effective date from 0901 UTC, September 30, 1987, to 0901 UTC, September 24, 1987 (Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.69).

Issued in Seattle, Washington, on September 3, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87–21227 Filed 9–15–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR PART 71

[Airspace Docket No. 87–AGL–13]

Alteration of Transition Area; Huntington, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Huntington, IN, transition area to accommodate a new NDB Runway 9 Standard Instrument Approach Procedure (SIAP) to Huntington Municipal Airport. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, July 21, 1987, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Huntington, IN, transition area (52 FR 27415).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Huntington, IN, transition area to accommodate a new NDB Runway 9 SIAP. This modification consists of decreasing the radius from 7 miles to 5 miles and adds an extension from the 5-mile radius to 8.5 miles west of the airport.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 15010; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Huntington, IN [Revised]:

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Huntington Municipal Airport (lat. 40°51'12"N, long. 85°27'37"W); and within 3.5 miles each side of the 260° bearing from the Huntington NDB, extending from the 5-mile radius to 8.5 miles west of the airport, excluding those portions that overlie the Fort Wayne, IN and Wabash, IN transition areas.

Issued in Des Plaines, Illinois, on August 31, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87–21228 Filed 9–15–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ASW–7]

Designation of Transition Area; Brady, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will designate a transition area at Brady, TX. This action is necessary due to the proposed nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) to the Curtis Field Airport using the Brady NDB (BBD). The intended effect of this action is to provide adequate controlled airspace for aircraft operating under instrument flight rules (IFR) executing the new SIAP to the Curtis Field Airport, and other aircraft operating under visual flight rules (VFR). Coincident with this action, the airport status will be changed from VFR to IFR.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On March 11, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a transition area at Brady, TX (52 FR 9182).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The only comments received objecting to this proposal came from the United States Air Force. Their objections centered on the following issues:

- The establishment of the transition area would create complications for military aircraft flying Military Training Routes (MTR) in the Brady, TX area.
- When the transition area is in effect, the western third of the Brady Low Military Operating Area (MOA) would be unusable for Low Altitude Training (LOWAT).

The FAA does not agree with these objections. The anticipated number of IFR arrivals to or departures from Curtis Field Airport is not expected to have an adverse effect on aircraft flying MTR's in the area. Standard IFR separation will be provided between aircraft on an IFR clearance to/from Curtis Field Airport and aircraft operating along IFR MTR's in the area.

The FAA is committed to providing protected access to airports having an SIAP. At the same time, the agency is committed to the use of airspace on a real-time basis. Based on the current level of IFR traffic at Curtis Field Airport, the FAA believes that there should be little impact on missions being flown by aircraft using the Brady Low MOA.

Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a 700-foot transition area at Brady, TX. To enhance airport usage, a new instrument approach procedure has been developed for the Curtis Field Airport, TX, utilizing the Brady NDB as a navigational aid. The Brady NDB will provide new navigational guidance for aircraft using the Curtis Field Airport. The development of a new SIAP, based on this navigational aid, entails designation of a transition area at Brady, TX, at and above 700 feet above the ground level within which aircraft are provided air traffic control services.

BEST COPY AVAILABLE

Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedures under IFR and other aircraft operating under VFR. Coincident with the amendment, the airport status will change from VER to IFR.

The FAA had determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Brady, TX [New]

The airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Curtis Field Airport, (Latitude 31°11'00" N., Longitude 99°19'27" W.) and within 3 miles each side of the 355 bearing from the Brady nondirectional radio beacon (NDB) (Latitude 31°10'42.6" N., Longitude 99°19'22.4" W.), extending from the 6.5-mile radius area to 8 miles north of the Curtis Field Airport.

Issued in Fort Worth, TX, on September 2, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87–21225 Filed 9–15–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 25369; Amdt. No. 1356]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES:

Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase— Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The Complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an

effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the afffected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC, on September 4, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS-DME, MLS-RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPS; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective January 14, 1988

Valdez, AK—Valdez Nr 2, MLS/STOL–1 RWY 6, Amdt. 2, CANCELLED

. . . Effective October 22, 1987

Fullerton, CA—Fullerton Muni, VOR–A Amdt. 5
Sacramento, CA—Sacramento Metropolitan, NDB RWY 16L, Orig.
Sacramento, CA—Sacramento Metropolitan, NDB RWY 16R, Amdt. 9
Sacramento, CA—Sacramento Metropolitan, NDB RWY 34L, Amdt. 4
Sacramento, CA—Sacramento Metropolitan, NDB RWY 34R, Orig.
Sacramento, CA—Sacramento Metropolitan, ILS RWY 16R, Amdt. 12
Sacramento, CA—Sacramento Metropolitan, ILS RWY 34L, Amdt. 4
Cordele, GA—Crisp County-Cordele, VOR/DME RWY 22, Amdt. 8
Cordele, GA—Crisp County-Cordele, NDB RWY 9, Amdt. 2
Springfield, IL—Capital, ILS RWY 22, Amdt. 4
Springfield, IL—Capital, RADAR–1, Amdt. 6
Kosrae Island Federated States of Micronesia, Kosrea, NDB/DME–A, Original
Baltimore, MD—Baltimore-Washington Intl, VOR/DME RWY 4, Orig.
Mansfield, MA—Mansfield, Muni, NDB RWY 32, Amdt. 2
Marshall, MI—Brooks Field, VOR RWY 28, Amdt. 11
Mora, MN—Mora Muni, NDB RWY 35, Orig.
Laurel/Hattiesburg, MS—Pine Belt Regional, LOC BC RWY 36, Orig.
Morristown, NJ—Morristown Muni, ILS RWY 23, Amdt. 5
Teterboro, NJ—Teterboro, ILS RWY 6, Amdt. 25
Akron, OH—Akron-Canton Regional, VOR RWY 5, Orig.
Charleston, WV—Yeager, ILS RWY 5, Amdt. 3
Charleston, WV—Yeager, ILS RWY 23, Amdt. 27

. . . Effective August 31, 1987

Crossville, TN—Crossville Memorial, ILS RWY 26, Amdt. 8

[FR Doc. 87–21226 Filed 9–15–87; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 7H5518/R889/FRL–3281–1]

Pesticide Tolerances in Foods; Avermectin B_1; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error in the preamble of the final rule that established a food additive and a feed additive regulation for residues of the miticide/insecticide avermectin B_1, which appeared in the **Federal Register** of May 13, 1987 (52 FR 17941).

FOR FURTHER INFORMATION CONTACT: George LaRocca, Product Manager (PM) 15, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2400.

SUPPLEMENTARY INFORMATION: In FR Doc. 87–11032 in the issue for Wednesday, May 13, 1987, the following correction is made on page 17941, third column, thirty-second line: Change "NOEL of 0.02 mg/kg/day" to "NOEL of 0.2 mg/kg/day."

Dated: September 2, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87–21341 Filed 9–15–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N–87–1728; FR–2398]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by increasing the limits for Rutland County, Vermont, Johnston County, North Carolina and Horry County, South Carolina. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter,

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Director, Single Family Development Division, Room 9270; telephone (202) 755–6720. For manufactured homes: Christopher Peterson, Director, Office of Manufactured Housing and Regulatory Functions, Room 9158; telephone (202) 755–5210; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), 12 U.S.C. 1710–1749, authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured home lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features (see 49 FR 21520). First, there was no separate listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and lots and individual lots, and specified the special high-cost amounts for manufactured homes, combination manufactured homes and lots and individual lots insured in Alaska, Guam and Hawaii. Third, it made changes to the list based on a new definition of "metropolitan area".

On October 1, 1986 (51 FR 34961), the Department published its annual complete listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act and the applicable limits for each area.

This Document

Today's document revises the high-cost mortgage amounts for Rutland County, Vermont, Johnston County, North Carolina and Horry County, South Carolina.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists changes for single family residences insured under section 203(b) or 234(c) of the National Housing Act.

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a combination manufactured home and lot loan, × the dollar amount in the "one family" column of Part II of this list by .80. For example, Horry County, South Carolina has a one-family limit of $73,600. The combination home and lot loan limit for Horry County is $73,600 ×.80, or $58,880.00.

B. *Section 2(b)(1)(E): Lot only (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Horry County, South Carolina has a one-family limit of $73,000. The lot loan limit for Horry County is $73,600 ×.20, or $14,720.

C. *Section 2(b)(2). Alaska, Guam and Hawaii limits:* The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. (40,500 × 140%).

2. For combination manufactured homes and lots: $75,600. ($54,000 × 140%).

3. For lots only: $18,900. (13,500 × 140%).

II. Title II: Updating of FHA Sections 203(b), 234(c) and 214 Area Wide Mortgage Limits

REGION II.—HUD FIELD OFFICE—ALBANY OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Rutland County..	$85,000	$95,750	$116,350	$134,250

REGION IV.—HUD FIELD OFFICE—GREENSBORO OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Johnston County	$71,250	$80,250	$97,500	$112,500

REGION IV.—HUD FIELD OFFICE—COLUMBIA OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Horry County.....	$73,600	$82,900	$100,750	$116,250

Dated: September 8, 1987.

James E. Schoenberger,

Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87–21387 Filed 9–15–87; 8:45 am]

BILLING CODE 4210–27–M

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24 CFR Part 888

[Docket No. N–87–1694; FR–2318]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation; Orange County, NY

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This final Notice announces new Fair Market Rents for the Orange County market area of New York State. These rents are necessary to provide fair market rents comparable to market rents for new construction in this market area.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street SW., Washington, DC 20410–0500. Telephone (202) 426–7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The predecessor to this final notice (see the proposed notice of June 29, 1987, 52 FR 24172) offered some background information on the Housing Assistance Payments (HAP) Program. That notice explained that under the programs authorized by Section 8 of the United States Housing Act of 1937,

> HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. . . . FMRs [are established by HUD and] are based primarily

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on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area, as determined by HUD Field Office staff. In addition, for the Fair Market Rents most recently promulgated by the Department [see 51 FR 28486, August 7, 1986], these rents reflected the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs.

As further explained in the proposed notice, this action revises the entire Fair Market Rent schedule for the Orange County, New York market area. According to the June 29, 1987 notice,

The 1986 FMRs reflected data submitted by the New York Regional Office (NYRO), as well as the cost containment efforts implemented for all 1986 New Construction and Substantial Rehabilitation rents. While the data submitted by the field office was proper, it reflected comparables all built during the 1970s, because there has been no construction of modestly designed rental housing in Orange County for the past several years. HUD's procedures, which are consistent with sound appraisal practices, permit the use of such comparables, which are then adjusted for all variables, including age. Further, where comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for "market rents" would be that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacancy rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal.

[A]nalysis of the 1986 FMRs for the [Orange County] market area indicate[s] that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even where it is clear that there has been compliance with the Department's cost containment guidelines with respect to project design. Therefore, an upward adjustment of FMRs for this market area is needed. . . .

Public Comments

The proposed notice of June 29, 1987 (52 FR 24172) invited comments from the public on the proposal to adjust the FMRs in Orange County. One comment was received. The commenter claimed that the "proposed rents would not support [its] project." The commenter, however, offered no data to support its assertion. In light of this comment, the Department wishes to point out that since the FMRs principally reflect building costs and rentals as a whole in a given market or jurisdiction, not the costs associated with building a particular project or the rentals necessary to service the debt on that project, the Department could not properly change the FMRs to accommodate the higher rentals that the commenter's project may demand.

Accordingly, the Department is adopting the same FMR schedule published in the notice of June 29, 1987.

Other Information

HUD regulations in 24 CFR Part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the FMRs adopted in this Notice are within the exclusion set forth in § 50.20(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (Section 8).

Accordingly, the following new Fair Market Rent schedule is adopted for the Orange County, New York market area:

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation (Including Housing Finance and Development Agencies' Programs)

REGION 2—NEW YORK REGIONAL OFFICE
MARKET: ORANGE

Structure Type	Number of bedrooms				
	0	1	2	3	4
Detached			757	859	931
Semi-Detached Row	529	572	664	815	892
Walkup	456	534	649	762	843
Elevator 2-4 STY	623	674	852		
Elevator 5+ STY	569	766	935		

Date: September 8, 1987.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-21386 Filed 9-15-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Cleveland Regulation 87-01]

Safety Zone Regulations; Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing seven safety zones in the Cuyahoga River and the adjoining shore area. The zones are needed to protect life and property associated with moored, standing or anchored vessels from a safety hazard arising from the transit of vessels over 1600 gross tons. Entry into these zones is generally prohibited unless authorized by the Coast Guard Captain of the Port, Cleveland, OH. However, vessels may transit, but not moor, stand or anchor in, these zones as necessary to comply with the Inland Navigation Rules or otherwise facilitate safe navigation.

EFFECTIVE DATES: This regulation becomes effective on September 3, 1987. It terminates on December 31, 1987 unless sooner terminated by the Captain of the Port, Cleveland.

ADDRESS: Comments should be mailed to Commanding Officer, Marine Safety Office, 1055 East Ninth Street, Cleveland, OH 44114. The comments will be available for inspection and copying at the same location. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Cdr. John H. Distin, Captain of the Port, (216) 522-4406.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent further damage to the vessels involved or further injury to the people involved.

Although this regulation is published as an emergency final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESS**" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Cdr. John H. Distin, the Captain of the Port, Cleveland, and Lcdr. Carl V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

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Discussion of Regulation

The circumstance requiring this regulation results from large vessels (lakers) transiting the Cuyahoga River an average of twice a day through areas used increasingly by a large number of small, mainly recreational vessels. A pattern of collisions between large, underway vessels and small vessels located on the insides of bends in the river has been identified. On August 31, 1987, one such collision resulted in severe damage to two recreational boats, one of which had persons on board.

Seven areas are considered to present the greatest danger to life and property based on collisions that have occurred or are likely to occur. Those areas are in the vicinity of the river bends by Shooters, Nautica Stage, Columbus Road bridge, Upriver Marina and Riverfront Yacht Services. Preventing mooring, standing or anchoring of vessels in these areas will decrease danger to lives and property.

This regulation is issued pursuant of 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T0901 is added to read as follows:

§ 165.T0901 Cuyahoga River, Cleveland, Ohio—Safety zones.

(a) *Location.* The waters of the Cuyahoga River extending ten (10) feet into the river at the following seven (7) locations, including the adjacent shorelines, are safety zones:

(1) From the western end of Shooter's dock to fifty (50) feet east of 41 degrees 29'55.1" N., 81 degrees 42'27.6" W. which is the north point of the pier at Shooter's Restaurant.

(2) Twenty-five (25) feet downriver to twenty-five (25) feet upriver of 41 degrees 29'48.9" N., 81 degrees 42'10.7" W. which is the knuckle toward the downriver corner of the Nautica stage.

(3) Ten (10) feet downriver to ten (10) feet upriver of 41 degrees 29'45.5" N., 81 degrees 42'9.7" W. which is the knuckle toward the upriver corner of the Nautica stage.

(4) The fender on the west bank of the river at 41 degrees 29'45.2" N., 81 degrees 42'10" W. which is the knuckle at Bascule Bridge (railroad).

(5) The two hundred seventy (270) foot area on the east bank of the river between the Columbus Road bridge (41 degrees 29'18.8" N., 81 degrees 42'02.3" W.) to the chain link fence at the upriver end of Commodore's Club Marina.

(6) Fifty (50) feet downriver to twenty-five (25) feet upriver from 41 degrees 29'24.5" N., 81 degrees 41'57.2" W. which is the knuckle at the Upriver Marina fuel pump.

(7) Twenty-five (25) feet downriver to twenty-five (25) feet upriver from 41 degrees 29'41" N., 81 degrees 41'38.6" W. which is the end of the chain link fence between Jim's Steak House and Riverfront Yacht Services.

(b) *Effective Date:* This regulation becomes effective on September 3, 1987. It terminates on December 31, 1987 unless sooner terminated by the Captain of the Port.

(c) *Regulations*—(1) *General rule.* Except as provided below, entry of any kind or for any purpose into the foregoing zones is strictly prohibited in accordance with the general regulations in § 165.23 of this part.

(2) *Exception.* Vessels may transit, but not moor, stand or anchor in, the foregoing zones as necessary to comply with the Inland Navigation Rules or to otherwise facilitate safe navigation.

(3) *Waivers.* Owners or operators of docks wishing a partial waiver of these regulations may apply to the Captain of the Port, Cleveland. Partial waivers will only be considered to allow for the mooring of vessels in a safety zone when vessels of 1600 gross tons (GT) or greater are not navigating in the proximate area. Any requests for a waiver must include a plan to ensure immediate removal of any vessels moored in a safety zone upon the approach of a vessel(s) 1600 GT or greater.

Dated: September 3, 1987.

John H. Distin,

Commander, U.S. Coast Guard, Captain of the Port, Cleveland, OH.

[FR Doc. 87–21096 Filed 9–15–87; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 3

Removal of Monetary Rates

AGENCY: Veterans Administration.

ACTION: Final regulatory amendments.

SUMMARY: The Veterans Administration (VA) has amended its adjudication regulations to remove references to monetary benefits rates and income limitations and to replace them with the statutory citations or methods of computation that are the basis for those monetary rates and income limitations. The amendments are necessary to eliminate the cost of annual regulatory amendments based solely on legislative rate changes or changes made by standardized computation methods. The effect of these amendments will be to reduce unnecessary regulatory burdens and publication costs while maintaining an adequate method of advising the public of periodic changes in benefit rates and income limitations through publication in the "Notices" section of the **Federal Register**.

DATES: These amendments are effective October 16, 1987.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: On pages 17773–77 of the **Federal Register** of May 12, 1987, the VA published proposed amendments removing monetary rates from 38 CFR Part 3. Interested persons were given until June 9, 1987, to submit comments on the proposed amendments. Two comments were received.

Both commenters expressed the view that some method should be retained whereby the public would have access to current monetary rate schedules. One commenter suggested that an appendix to 38 CFR Part 3 be created so that monetary rates would be available to the public from a single source. The other commenter suggested leaving the monetary rates in the regulations or abolishing the regulations altogether as unnecessary.

Title 38 of the Code of Federal Regulations is revised each year as of July 1 and is printed and distributed for public use late in the year. Most of the monetary rates in 38 CFR Part 3 are adjusted each year effective December 1. Therefore, the monetary rates in each revision of title 38 are almost always out of date.

Creation of an appendix to 38 CFR Part 3 would not improve the situation because an appendix would have to be updated by publishing a regulatory amendment in the **Federal Register**.

Since this is the same method currently used for updating the regulations, nothing would be gained by taking the monetary rates out of the regulations and putting them in an appendix.

Public notice of changes in monetary rates will not be affected by these amendments. Rate changes were previously published in the "Rules and Regulations" section of the **Federal Register** but now will be published in the "Notices" section. In addition, current information on monetary rates will continue to be available at all VA regional offices and may be obtained by calling the toll-free number listed for each regional office in the white pages of the telephone directory.

Since we have determined that no changes are warranted based on the comments received, the amendments are adopted as proposed.

The Administrator hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that these regulations impose on regulatory burdens on small entities, and there will be no direct effect on claimants for VA benefits.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that these regulations are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program numbers are 64.101, 64.104, 64.105, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practices and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

Approved: August 28, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 3, Adjudication, is amended as follows:

PART 3—[AMENDED]

1. In § 3.23, the heading and paragraphs (a) and (c) and revised to read as follows:

§ 3.23 Improved pension rates—Veterans and surviving spouses.

(a) *Maximum annual rates of improved pension.* The maximum annual rates of improved pension for the following categories of beneficiaries shall be the amounts specified in 38 U.S.C. 521 and 541, as increased from time to time under 38 U.S.C. 3112. Each time there is an increase under 38 U.S.C. 3112, the actual rates will be published in the "Notices" section of the **Federal Register**.

(1) Veterans who are permanently and totally disabled.

(Authority: 38 U.S.C. 521(b) or (c))

(2) Veterans in need of aid and attendance.

(Authority: 38 U.S.C. 521(d))

(3) Veterans who are housebound.

(Authority: 38 U.S.C. 521(e))

(4) Two veterans married to one another—combined rates.

(Authority: 38 U.S.C. 521(f))

(5) Surviving spouse alone or with a child or children of the deceased veteran in the custody of the surviving spouse.

(Authority: 38 U.S.C. 541 (b) or (c))

(6) Surviving spouses in need of aid and attendance.

(Authority: 38 U.S.C. 541(d))

(7) Surviving spouses who are housebound.

(Authority: 38 U.S.C. 541(e))

* * * * *

(c) *Mexican border period and World War I veterans.* The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this section shall be increased by the amount specified in 38 U.S.C. 521(g), as increased from time to time under 38 U.S.C. 3112. Each time there is an increase under 38 U.S.C. 3112, the actual rate will be published in the "Notices" section of the **Federal Register**.

(Authority: 38 U.S.C. 521(g))

2. In § 3.24, the heading and paragraphas (b) and (c) are revised to read as follows:

§ 3.24 Improved pension rates—Surviving children.

* * * * *

(b) *Child with no personal custodian or in the custody of an institution.* In cases in which there is no personal custodian, i.e., there is no person who has the legal right to exercise parental control and responsibility for the child's welfare (see § 3.57(d)), or the child is in the custody of an institution, pension shall be paid to the child at the annual rate specified in 38 U.S.C. 542, as increased from time to time under 38 U.S.C. 3112, reduced by the amount of the child's countable annual income. Each time there is an increase under 38 U.S.C. 3112, the actual rate will be published in the "Notices" section of the **Federal Register**.

(c) *Child in the custody of person legally responsible for support*—(1) *Single child.* Pension shall be paid to a child in the custody of a person legally responsible for the child's support at an annual rate equal to the difference between the rate for a surviving spouse and one child under § 3.23(a)(5), and the sum of the annual income of such child and the annual income of such person or, the maximum annual pension rate under paragraph (b) of this section, whichever is less.

(2) *More than one child.* Pension shall be paid to children in custody of a person legally responsible for the children's support at an annual rate equal to the difference between the rate for a surviving spouse and an equivalent number of children (but not including any child who has countable annual income equal to or greater than the maximum annual pension rate under paragraph (b) of this section) and the sum of the countable annual income of the person legally responsible for support and the combined countable annual income of the children (but not including the income of any child whose countable annual income is equal to or greater than the maximum annual pension rate under paragraph (b) of this section, or the maximum annual pension rate under paragraph (b) of this section times the number of eligible children, whichever is less).

(Authority: 38 U.S.C. 542)

3. Section 3.25 is revised to read as follows:

§ 3.25 Parents' dependency and indemnity compensation (DIC)—method of payment computation.

Monthly payments of parents' DIC shall be computed in accordance with the following formulas:

(a) *One parent.* Except as provided in paragraph (b) of this section, if there is only one parent, the monthly rate specified in 38 U.S.C. 415 (b)(1), as increased from time to time under 38 U.S.C. 3112, reduced by $.08 for each

dollar of such parent's countable annual income in excess of $800. No payments of DIC may be made under this paragraph, however, if such parent's countable annual income exceeds the amount specified in 38 U.S.C. 415(b)(3), as increased from time to time under 38 U.S.C. 3112, and no payment of DIC to a parent under this paragraph may be less than $5 a month.

(b) *One parent who has remarried.* If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under paragraph (a) or paragraph (d) of this section, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined countable annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

(c) *Two parents not living together.* The rate computation method in this paragraph applies to

(1) Two parents who are not living together, or

(2) An unremarried parent when both parents are living and the other parent has remarried.

The monthly rate of DIC paid to such parents shall be the rate specified in 38 U.S.C. 415(c)(1), as increased from time to time under 38 U.S.C. 3112, reduced by an amount no greater than $.08 for each dollar of such parent's countable annual income in excess of $800, except that no payments of DIC may be made under this paragraph if such parent's countable annual income exceeds the amount specified in 38 U.S.C. 415(c)(3), as increased from time to time under 38 U.S.C. 3112, and no payment of DIC to a parent under this paragraph may be less than $5 monthly. Each time there is a rate increase under 38 U.S.C. 3112, the amount of the reduction under this paragraph shall be recomputed to provide, as nearly as possible, for an equitable distribution of the rate increase. The results of this computation method shall be published in schedular format in the "Notices" section of the **Federal Register** as provided in paragraph (f) of this section.

(d) *Two parents living together or remarried parents living with spouse.* The rate computation method in this paragraph applies to each parent living with another parent and to each remarried parent when both parents are alive. The monthly rate of DIC paid to such parents shall be the rate specified in 38 U.S.C. 415(d)(1), as increased from time to time under 38 U.S.C. 3112, reduced to an amount no greater than $.08 for each dollar of such parent's and spouse's combined countable annual income in excess of $1,000 except that no payments of DIC may be made under this paragraph if such parent's and spouse's combined countable annual income exceeds the amount specified in 38 U.S.C. 415(d)(3), as increased from time to time under 38 U.S.C. 3112, and no payment of DIC to a parent under this paragraph may be less than $5 monthly. Each time there is a rate increase under 38 U.S.C. 3112, the amount of the reduction under this paragraph shall be recomputed to provide, as nearly as possible, for an equitable distribution of the rate increase. The results of this computation method shall be published in schedular format in the "Notices" section of the **Federal Register** as provided in paragraph (f) of this section.

(e) *Aid and attendance.* The monthly rate of DIC payable to a parent under this section shall be increased by the amount specified in 38 U.S.C. 415(g), as increased from time to time under 38 U.S.C. 3112, if such parent is

(1) A patient in a nursing home, or

(2) Helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

(f) *Rate publication.* Each time there is an increase under 38 U.S.C. 3112, the actual rates will be published in the "Notices" section of the **Federal Register**.

(Authority: 38 U.S.C. 210(c))

4. Section 3.26 is revised to read as follows:

§ 3.26 Section 306 and old law pension annual income limitations.

(a) The annual income limitations for section 306 pension shall be the amounts specified in section 306(a)(2)(A) of Pub. L. 95–588, as increased from time to time under section 306(a)(3) of Pub. L. 95–588.

(b) If a beneficiary under section 306 pension is in need of aid and attendance, the annual income limitation under paragraph (a) of this section shall be increased in accordance with 38 U.S.C. 521(d), as in effect on December 31, 1978.

(c) The annual income limitations for old-law pension shall be the amounts specified in section 306(b)(3) of Pub. L. 95–588, as increased from time to time under section 306(b)(4) of Pub. L. 95–588, as increased from time to time under section 306(b)(4) of Pub. L. 95–588.

(d) Each time there is an increase under section 306 (a)(3) or (b)(4) of Pub. L. 95–588, the actual income limitations will be published in the "Notices" section of the **Federal Register**.

(Authority: 38 U.S.C. 210(c))

5. In § 3.27 paragraphs (a) and (b) are revised to read as follows:

§ 3.27 Automatic adjustment of benefit rates.

(a) *Improved pension.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of title II of the Social Security Act, the VA shall, effective on the dates such increases become effective, increase by the same percentage each maximum annual rate of improved pension.

(Authority: 38 U.S.C. 3112(a))

(b) *Parent's dependency and indemnity compensation—maximum annual income limitation and maximum monthly rates.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of title II of the Social Security Act, the VA shall, effective on the dates such increases become effective, increase by the same percentage the annual income limitations and the maximum monthly rates of dependency and indemnity compensation for parents.

(Authority: 38 U.S.C. 3112(b)(1))

* * * * *

6. Section 3.28 is revised to read as follows:

§ 3.28 Automatic adjustment of section 306 and old-law pension income limitations.

Whenever the maximum annual rates of improved pension are increased by reason of the provisions of 38 U.S.C. 3112, the following will be increased by the same percentage effective the same date:

(a) The maximum annual income limitations applicable to continued receipt of section 306 and old-law pension; and

(b) The dollar amount of a veteran's spouse's income that is excludable in determining the income of a veteran for section 306 pension purposes. (See § 3.262(b)(2))

These increases shall be published in the **Federal Register** at the same time that increases under § 3.27 are published.

(Authority: Sec. 306, Pub. L. 95–588)

Cross References: Section 306 and old-law pension annual income limitations. See § 3.26.

7. In § 3.262 paragraph (b)(2) is revised to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(b) * * *

(1) * * *

(2) *Veterans.* The separate income of the spouse of a disabled veteran who is entitled to pension under laws in effect on June 30, 1960, will not be considered. Where pension is payable under section 306(a) of Pub. L. 95–588, to a veteran

who is living with a spouse there will be included as income of the veteran all income of the spouse in excess of whichever is the greater, the amount of the spouse income exclusion specified in section 306(a)(2)(B) of Pub. L. 95–588 as increased from time to time under section 306(a)(3) of Pub. L. 95–588 or the total earned income of the spouse, which is reasonably available to or for the veteran, unless hardship to the veteran would result. Each time there is an increase in the spouse income exclusion pursuant to section 306(a)(3) of Pub. L. 95–588, the actual amount of the exclusion will be published in the "Notices" section of the **Federal Register.** The presumption that inclusion of such income is available to the veteran and would not work a hardship on him or her may be rebutted by evidence of unavailability or of expenses beyond the usual family requirements.

(Authority: 38 U.S.C. 521(f); sec. 306(a)(2)(B) of Pub. L. 95–588)

* * * * *

8. In § 3.802 the first sentence of paragraph (b) is revised to read as follows:

§ 3.802 Medal of Honor.

* * * * *

(b) An award of special pension at the monthly rate specified in 38 U.S.C. 562 will be made as of the date of filing of the application with the Secretary concerned. * * *

9. In § 3.1600 the first sentence of paragraphs (a) and (g); the first sentence of the introductory text of paragraphs (b) and (f); and paragraph (c) are revised to read as follows:

§ 3.1600 Payment of burial expenses of deceased veterans.

* * * * *

(a) *Service-connected death and burial allowance.* If a veteran dies as a result of a service-connected disability or disabilities, an amount not to exceed the amount specified in 38 U.S.C. 907 (or if entitlement is under § 3.8 (c) or (d), an amount in Philippine pesos computed in accordance with the provisions of § 3.8(c)) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. * * *

(b) *Nonservice-connected death and burial allowance.* If a veteran's death is not service-connected, an amount not to exceed the amount specified in 38 U.S.C. 902 (or if entitlement is under § 3.8 (c) or (d), an amount in Philippine pesos computed in accordance with the provisions of § 3.8(c)) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. * * *

* * * * *

(c) *Death while properly hospitalized.* If a person dies from nonservice-connected causes while properly hospitalized by the VA, there is payable an allowance not to exceed the amount specified in 38 U.S.C. 903(a) for the actual cost of the person's funeral and burial, and an additional amount for transportation of the body to the place of burial. For burial allowance purposes, the term "hospitalized by the VA" means admission to a VA facility (as defined in 38 U.S.C. 601(4)) for hospital, nursing home, or domiciliary care under the authority of 38 U.S.C. 610 or 611(a), or admission (transfer) to a nursing home under the authority of 38 U.S.C. 620 for nursing home care at the expense of the United States. (If the hospitalized person's death is service-connected, entitlement to the burial allowance and transportation expenses fall under paragraphs (a) and (g) of this section instead of this paragraph.)

(Authority: 38 U.S.C. 903 (a))

* * * * *

(f) *Plot or interment allowance.* When a veteran dies from nonservice-connected causes, an amount not to exceed the amount specified in 38 U.S.C. 903(b) (or if the entitlement is under § 3.8 (c) or (d), an amount in Philippine pesos computed in accordance with the provisions of § 3.8(c)) may be paid as a plot or interment allowance. * * *

* * * * *

(g) *Transportation expenses for burial in national cemetery.* Where a veteran dies as the result of a service-connected disability, or at the time of death was in receipt of disability compensation (or but for the receipt of military retired pay or nonservice-connected disability pension would have been entitled to disability compensation at time of death), there is payable, in addition to the burial allowance (either the amount specified in 38 U.S.C. 902 or the amount specified in 38 U.S.C. 907 if the cause of death was service-connected), an additional amount for payment of the cost of transporting the body to the national cemetery for burial. * * *

10. In § 3.1601 paragraphs (a)(1)(i) and (a)(2)(i) and the last sentence of paragraph (a)(2)(iii) are revised to read as follows:

§ 3.1601 Claims and evidence.

(a) * * *

(1) * * *

(i) The funeral director, if the entire bill or any balance is unpaid (if the unpaid bill or the unpaid balance is less than the applicable statutory burial allowance, only the unpaid amount may be claimed by the funeral director); or

* * * * *

(2) * * *

(i) The funeral director, if he or she provided the plot or interment services, or advanced funds to pay for them, and if the entire bill for such or any balance thereof is unpaid (if the unpaid bill or the unpaid balance is less than the statutory plot or interment allowance, only the unpaid amount may be claimed by the funeral director); or

* * * * *

(iii) * * * Any remaining balance of the plot or interment allowance may then be applied to interment expenses; or

* * * * *

11. In § 3.1604 the introductory text of paragraph (a), the last sentence of paragraph (b)(2), and paragraphs (c) and (d)(3) are revised to read as follows:

§ 3.1604 Payments from non-VA sources.

(a) *Contributions or payments by public or private organizations.* When contributions or payments on the burial expenses have been made by a State, any agency or political subdivision of the United States or of a State, or the employer of the deceased veteran only the difference between the entire burial expenses and the amount paid thereon by any of these agencies or organizations, not to exceed the applicable statutory burial allowance, will be authorized. Contributions or payments by any other public or private organization such as a lodge, union, fraternal or beneficial organization, society, burial association or insurance company, will bar payment of the burial allowance if such allowance would revert to the funds of such organization or would discharge such organization's obligation without payment.

Authority: (38 U.S.C. 902; 907)

* * * * *

(b) * * *

(1) * * *

(2) * * * In such cases only the difference between the total burial expense and the amount paid thereon under such provision, not to exceed the amount specified in 38 U.S.C. 902, will be authorized.

(Authority: 38 U.S.C. 902(b))

* * * * *

(c) *Payment of plot or interment allowance by public or private organization except as provided for by*

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§ 3.1604(d). Where any part of the plot or interment expenses has been paid or assumed by a State, any agency or political subdivision of a State, or the employer of the deceased veteran, only the difference between the total amount of such expenses and the amount paid or assumed by any of these agencies or organizations, not to exceed the statutory plot or interment allowance, will be authorized.

(Authority: (38 U.S.C. 903(b))

(d) * * *

* * * * *

(3) *Amount of the allowance.* A State or an agency or political subdivision of a State entitled to payment under this paragraph shall be paid the maximum statutory amount as a plot or interment allowance without regard to the actual cost of the plot or interment.

(Authority: 38 U.S.C. 903(b))

* * * * *

12. In § 3.1612 paragraph (e)(2)(ii) is revised and paragraph (e)(2)(iii) is added to read as follows:

§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

* * * * *

(e) * * *

(2) * * *

(ii) The average actual cost, as determined by the VA, or headstones and markers furnished at Government expense for the fiscal year preceding the fiscal year in which the non-Government marker was purchased or the services for adding the veteran's identifying information on an existing headstone or marker were purchased.

(iii) The average actual cost of Government-furnished headstones and markers during any fiscal year is determined by dividing the sum of the VA's costs during that fiscal year for procurement, transportation, Monument Service and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by the VA during that fiscal year and rounding to the nearest whole dollar amount. The resulting average actual cost is published at the end of each fiscal year in the "Notices" section of the **Federal Register.**

(Authority: 38 U.S.C. 906 (d))

* * * * *

[FR Doc. 87-21354 Filed 9-15-87; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 36

Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans; Correction

AGENCY: Veterans Administration.

ACTION: Final regulation; correction.

SUMMARY: In the **Federal Register** of Thursday, September 10, 1987 (52 FR 34218) the Veterans Administration (VA) published increases in maximum interest rates on guaranteed manufactured home units loans, lot loans, and combination manufactured home unit and lot loans. An increase appearing in 38 CFR 36.4311(a) was inadvertently omitted. This document is to correct the text of § 36.4311(a).

EFFECTIVE DATE: September 8, 1987.

FOR FURTHER INFORMATION CONTACT: George Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-3042.

Dated: September 11, 1987.

Priscilla B. Carey,

Chief, Directives Management Division.

On page 34218 of the **Federal Register** of September 10, 1987, Volume 52, § 36.4311(a) is correctly revised to read as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10½ per centum per annum, effective September 8, 1987, the interest rate on any home manufactured home/lot loan guaranteed under 38 U.S.C. 1810, or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such a date may not exceed 10½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

[FR Doc. 87-21837 Filed 9-15-87; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 2F2680/R911; FRL-3260-4]

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide glyphosate [*N*-(phosphonomethyl]glycine] and its metabolite aminomethylphosphonic acid (AMPA) in or on coconut at 0.1 part per million (ppm). The regulation was requested by Monsanto Co. and establishes the maximum permissible level for residues of the herbicide in or on coconut.

EFFECTIVE DATE: September 16, 1987.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 412, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 23, 1982 (47 FR 27126), which announced that Monsanto Co., 1101 17th Street, NW., Washington, DC 20036, had submitted a pesticide petition, PP 2F2680, to EPA proposing the establishment of a tolerance for combined residues of the herbicide glyphosate [*N*-(phosphonomethyl)glycine] and its metabolite aminomethylphosphonic acid (AMPA) in or on the raw agricultural commodity copra at 1.0 ppm. Food additive tolerances were proposed under food additive petition (FAP) 2H5339 for the combined residues of the herbicide and its metabolite on coconut oil, desiccated coconut, and copra meal at 0.1 ppm.

There were no comments received in response to the notice of filing.

The petitioner subsequently amended the petition to propose the establishment of a tolerance for the combined residues of the herbicide glyphosate and its metabolite aminomethylphosphonic acid in or on the raw agricultural commodity (RAC) coconut at 0.1 ppm. The food additive tolerances on coconut oil, desiccated coconut, and copra meal were withdrawn.

The data submitted in the petition and other relevant material have been evaluated. The data evaluated include a 2-year oncogenicity study in mice fed

dosages of 0, 150, 750, and 4,500 milligrams/kilogram/day (mg/kg/day); a chronic feeding/ oncogenicity study in rats fed dosages of 0, 3, 10, and 31 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day (highest dose tested [HDT]) and a systemic NOEL greater than 31 mg/kg/day; a 1-year chronic feeding study in dogs fed dosage levels of 0, 20, 100, and 500 mg/kg/day with a NOEL of 500 mg/kg/day; a teratology study in rats fed dosage levels of 0, 300, 1,000, and 3,500 mg/kg/day with no teratogenic effects occurring up to and including 3,500 mg/kg/day (HDT), maternal and fetotoxic NOELs of 1,000 mg/kg/day; a teratology study in rabbits fed dosage levels of 0, 75, 175, and 350 mg/kg/day with no teratogenic effects occurring up to and including 350 mg/kg/day (HDT), a maternal NOEL of 175 mg/kg/day, and a fetotoxic NOEL of 350 mg/kg/day (HDT); a three-generation reproduction study in rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with a NOEL of 10 mg/kg/day; a mutagenicity test—chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S–9 activation); a mutagenicity test—DNA repair in rat hepatocytes (negative); a mutagenic test—*in vivo* bone marrow cytogenic in rats (negative); a mutagenicity test—rec-assay with *B. subtilis* (negative); a mutagenicity test—reverse mutation with *S. typhimurium* (negative); a mutagenicity (Ames) test with *S. typhimurium* (negative); and a dominant lethal mutagenicity test in mice (negative).

The acceptable daily intake (ADI) based on the three-generation rat reproduction study (NOEL of 10 mg/kg/day) and using a hundredfold safety factor is calculated to be 0.1 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances and unpublished but approved tolerances is 0.0047 mg/kg/day. The current action will contribute 0.000001 mg/kg/day to the TMRC and will not increase the percentage of the ADI utilized. Published tolerances utilize 4.65 percent of the ADI.

Desirable data lacking are a repeat of the mouse and rat oncogenicity studies. There are currently no actions pending against the continued registration of this pesticide. No detectable residues of *N*-nitrosoglyphosate, a contaminant of glyphosate, are expected to be present in the commodities for which the tolerance is sought. The oncogenic potential of glyphosate is not fully understood. Because of the equivocal (uncertain) nature of the oncogenic response in mice, the Agency referred the issue to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Science Advisory Panel (SAP) for a "Weight-of-Evidence" classification. After reviewing all available evidence, the SAP proposed that glyphosate be classified as a "Class D Oncogen" or having "inadequate animal evidence of oncogenicity," and that there be a Data Call-In for further studies in rats and/or mice to clarify unresolved questions. After rereview of all available information, the Agency decided to classify glyphosate as a "Class D Oncogen" and also to request a repeat of the mouse oncogenicity study. Also, because of the large difference between the high dose tested in the rat and mouse oncogenicity studies, the rat oncogenicity study was rereviewed. The rereview indicated that a maximum tolerated dose (MTD) may not have been reached in that study. Therefore, the Agency decided to also request a repeat of the rat oncogenicity study at doses high enough to read an MTD. The Agency's policy has been to issue new use registrations in which the resulting change in TMRC is less than 1 percent; however, any significant new use registrations will be handled on a case-by-case basis and will not be issued until issues in the Glyphosate Registration Standard have been resolved. Monsanto Co. has been notified of these conclusions and deficiencies by the Glyphosate Registration Standard dated June 30, 1986.

The nature of the residue is adequately understood, and an adequate analytical method (gas chromatography with a phosphorous-specific flame photometric detector) is available for enforcement purposes. Existing tolerances will accommodate residues occurring in meat, fat, and meat byproducts of cattle, horses, hogs, sheep, and goats and milk, poultry, or eggs resulting from this use.

Based on the information considered by the Agency, it is concluded that the tolerance established by amending 40 CFR Part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk, Environmental Protection Agency, Room M–3708 (A–110), 401 M Street, SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulations deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 610 through 612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 1, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. In § 180.364, paragraph (a) is amended by adding and alphabetically inserting the listing for coconut, to read as follows:

§ 180.364 Glyphosate; tolerance for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Coconut	0.1
* * * * *	

[FR Doc. 87–20909 Filed 9–15–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 5F3170/R910; FRL-3260-6]

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revises the tolerance expression for combined residues of glyphosate [*N*-(phosphonomethyl)glycine] and its metabolite aminomethylphosphonic acid (AMPA) to include plant growth regulator uses as well as herbicidal uses for the raw agricultural commodity sugarcane at 2.0 parts per million (ppm) and liver and kidney of cattle, goats, hogs, horses, poultry, and sheep at 0.5 ppm. This rule to revise the tolerance expression was requested by Monsanto Co.

EFFECTIVE DATE: September 16, 1987.

ADDRESS: Written objections may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Robert J. Taylor Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 412, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 17, 1985 (50 FR 15219), which announced that Monsanto Co., 1101 17th Street, NW., Washington, DC 20036, had submitted a pesticide petition, PP 5F3170, to EPA proposing to amend 40 CFR 180.364(b) by revising the tolerance expression to read as follows: "Tolerances are established for the combined residues of glyphosate [*N*-(phosphonomethyl)glycine] and its metabolite aminomethylphosphonic acid resulting from application of glyphosate isopropylamine salt for herbicidal and plant growth regulator purposes and/or the sodium sesqui salt for growth regulator purposes in or on the following raw agricultural commodities." The tolerance levels for the commodities listed in the table therein remain the same.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data evaluated include a 2-year oncogenicity study in mice fed dosages of 0, 150, 750, and 4,500 milligrams/kilogram/day (mg/kg/day) with an equivocal (uncertain) oncogenic effect at 4,500 mg/kg/day; a chronic feeding/ oncogenicity study in rats fed dosages of 0, 3, 10, and 31 mg/kg/ day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day (highest dose tested [HDT]) and a systemic no-observed-effect level (NOEL) greater than 31 mg/kg/day; a 1-year chronic feeding study in dogs fed dosage levels of 0, 20, 100, and 500 mg/kg/day with a NOEL of 500 mg/kg/day; a teratology study in rats fed dosages levels of 0, 300, 1,000, and 3,500 mg/kg/day with no teratogenic effects occurring up to and including 3,500 mg/kg/day (HDT), maternal and fetotoxic NOELs of 1,000 mg/kg/day; a teratology study in rabbits fed dosage levels of 0, 75, 175, or 350 mg/kg/day with no teratogenic effects occurring up to and including 350 mg/kg day with no teratogenic effects occurring up to and including 350 mg/kg/day (HDT), a maternal NOEL of 175 mg/kg/day, and a fetotoxic NOEL of 350 mg/kg/day (HDT); a three generation reproduction study in rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with a NOEL of 10 mg/kg/day; a mutagenic test—chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S-9 activation); a mutagenic test—DNA repair in rat hepatocytes (negative); a mutagenicity test—*in vivo* bone marrow cytogenic in rats (negative); a mutagenicity test—rec-assay with *B. subtilis* (negative); a mutagenicity test—reverse mutation with *S. typhimurium* (negative); a mutagenicity (Ames) test with *S. typhimurium* (negative); and a dominant lethal mutagenicity test in mice (negative).

The acceptable daily intake (ADI) based on the three-generation rat reproduction study (NOEL of 10 mg/kg/day) and using a hundred-fold safety factor is calculated to be 0.1 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published and unpublished but approved tolerances is 0.0047 mg/kg/day, which utilizes 4.65 percent of the ADI. This revision does not increase the TMRC and will not increase the percentage of the ADI utilized.

Desirable data lacking are a repeat of the mouse and rat oncogenicity studies. There are currently no actions pending against the continued registration of this pesticide. No detectable residues of *N*-nitrosoglyphosate, a contaminant of glyphosate, are expected to be present in the commodities for which tolerances are established. The oncogenic potential of glyphosate is not fully understood. Because of the equivocal (uncertain) nature of the oncogenic response in mice, the Agency referred the issue to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Science Advisory Panel (SAP) for a "Weight-of-Evidence" classification. After reviewing all available evidence, the SAP proposed that glyphosate be classified as a "Class D Oncogen" or having "inadequate animal evidence of oncogenicity," and that there be a Data Call-In for further studies in rats and/or mice to clarify unresolved questions. After reveiew of all available information, the Agency decided to classify glyphosate as a "Class D Oncogen" and also to request a repeat of the mouse oncogenicity study. Because of the large difference between the high dose tested in the rat and mouse oncogenicity studies, the rat oncogenicity study was rereviewed. The rereview indicated that a maximum tolerated dose (MTD) may not have been reached in that study. Therefore, the Agency decided also request a repeat of the rat oncogenicity study at doses high enough to read an MTD. The Agency's policy has been to issue new use registrations in which the resulting change in TMRC is less than 1 percent; however, any significant new use registrations will be handled on a case-by-case basis and will not be issued until issues in the Glyphosate Registration Standard have been resolved. Monsanto Co. has been notified of these conclusions and deficiencies by the Glyphosate Registration Standard dated June 30, 1986.

The nature of the residue is adequately understood, and an adequate analytical method (gas liquid chromatography with a flame photometric detector) is available for enforcement purposes in Volume 2 of the Food and Drug Administration Pesticide Analytical Manual. No additional residues of glyphosate and AMPA are expected to occur in the liver and kidney of cattle, goats, hogs, horses, poultry, or sheep from the proposed use; therefore, the established tolerances on these commodities are considered adequate to cover residues of glyphosate and AMPA resulting from the proposed use of glyphosate isopropylamine salt on sugarcane.

Based on the information considered by the Agency, it is concluded that the tolerance established by amending 40 CFR Part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the

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date of publication in the **Federal Register**, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M–3708 (A–110), 401 M Street, SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulations deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 610 through 612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 1, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a.

2. In § 180.364, the introductory text of paragraph (b) is revised to read as follows:

§ 180.364 Glyphosate; tolerance for residues.

* * * * *

(b) Tolerances are established for the combined residues of glyphosate [*N*-(phosphonomethyl)glycine] and its metabolite aminomethylphosphonic acid resulting from application of glyphosate isopropylamine salt for herbicidal and plant growth regulator purposes and/or the sodium sesqui salt for growth regulator purposes in or on the following raw agricultural commodities:

* * * * *

[FR Doc. 87–20908 Filed 9–15–87; 8:45 am]

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40 CFR Part 180

[PP 7E3474/R908 (FRL–3260–5)]

Pesticide Tolerance for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide iprodione, its isomer, and its metabolite in or on the raw agricultural commodity carrots. The Interregional Research Project No. 4 (IR–4) petitioned for this tolerance.

EFFECTIVE DATE: September 16, 1987.

ADDRESS: Written objections, identified by the document control number, [PP 7E3474/R908], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–1806.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of July 15, 1987 (52 FR 26536), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 7E3474 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of Florida.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-N-(1-methyl-ethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methyl-ethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide in or on the raw agricultural commodity carrots at 5 parts per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 through 612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 1, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.399(a) is amended by adding and alphabetically inserting the listing for the raw agricultural commodity carrots, to read as follows:

§ 180.399 Iprodione; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Carrots	5.0
* * * * *	

[FR Doc. 87-20910 Filed 9-15-87; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-267; RM-5306, RM-5407]

Radio Broadcasting Services; Beverly Hills and Odessa, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 246A to Beverly Hills, Florida, as a first FM service, at the request of Raymond P. Starke. Additionally, a conflicting petition to add Channel 246A to Odessa, Florida, as a first FM service at the request of Bridget Vinson, has been denied. Under our priorities for evaluating conflicting proposals, Beverly Hills is favored as the more populous community. A late counterproposal submitted by T and B Broadcasting for Channel 246A at Spring Hill, Florida, is dismissed. With this action, this proceeding is terminated.

DATES: Effective October 19, 1987; The window period for filing applications will open on October 20, 1987, and close on November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-267, adopted August 18, 1987, and released September 3, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), of the Rules the Table of FM Allotments, the entry for Beverely Hills, Florida, Channel 246A is added.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-21108 Filed 9-15-87; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Pediocactus despainii (San Rafael Cactus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for *Pediocactus despainii* (San Rafael cactus). The two known populations of this plant consist of 2,000–3,000 individuals each. Both occur in Emery County in central Utah, mainly in areas administered by the Bureau of Land Management. This rare species is sought by cactus collectors, one population is heavily impacted by recreational use of off-road vehicles, and approximately half of each population is in areas covered by oil and gas leases and mining claims for gypsum or other minerals. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for *P. despainii*.

DATE: The effective date of this rule is October 16, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Regional Fish and Wildlife Enhancement Office, U.S. Fish and Wildlife Service, 134 Union Boulevard, fourth floor, Lakewood, Colorado, and the Fish and Wildlife Enhancement Field Office, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John Anderson, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement Office, 529 25½ Road, Suite B113, Grand Junction, Colorado 81505 (303/241/0563 or FTS 322-0348), or John Larry England at the Salt Lake City address above (801/524-4430 or FTS 588-4430).

SUPPLEMENTARY INFORMATION:

Background

Pediocactus despainii (San Rafael cactus) was discovered in 1978 by Kim Despain on the San Rafael Swell, a large anticline (geologic upwarp) in Emery County, Utah. Additional material was collected in 1979 by Despain, E. Neese, and K. Thorne of Brigham Young University, and also by K. Heil of San Juan College, Farmington, New Mexico (Heil 1984). The description of *Pediocactus despainii* was published by Welsh and Goodrich (1980). A second population on the San Rafael Swell, approximately 25 miles from the first, was located in 1982 by S. Brack, a cactus nurseryman from Belen, New Mexico. In 1984, Heil conducted a status survey and did not locate any new populations. The San Rafael cactus is thus known from just two populations, one in an area 3 miles (5 kilometers) across, and the other in an area 1 mile (1.6 kilometers) across. Each population contains 2,000 to 3,000 individual plants (Heil 1984).

Pediocactus despainii is a small barrel-type cactus, 1.5 to 2.3 inches (3.8 to 6.0 centimeters) tall and 1.2 to 3.8 inches (3.0 to 9.5 centimeters) wide. Each areole or spine cluster contains 9 to 13 white, flattened, pectinate (comblike) radial spines that partially obscure the stem, but no central spines are present. The small flowers are about 1 inch (2.5 centimeters) across and are peach to yellow in color with a bronze tint. This cactus is distinguished from other closely related members of its genus by its larger stem size, and naked (hairless) areoles, and by the bronze tint to its flowers. With its diminutive size and peculiar habit of shrinking underground for several months a year during dry or cold seasons, it is not surprising that *P. despainii* was only recently discovered. It is only noticeable for a short time in the spring when in bloom. Otherwise, even if the exact location of its populations are known, it cannot be seen and is easily overlooked. It grows on hills, benches, and flats of the Colorado plateau's semiarid grasslands. This habitat is savannahlike and contains scattered junipers, pinyon pines, low shrubs, and annual and perennial herbs. The occupied area is mostly administered by the Bureau of

Land Management (BLM), but the State of Utah owns one section.

The genus *Pediocactus* contains eight species, one with two varieties and another with three (Heil *et al.* 1981). Except for one wide-ranging species, all are rare endemics of the Four Corners region (Utah, Colorado, Arizona, and New Mexico). *Pediocactus bradyi, P. knowltonii, P. peeblesianus* var. *peeblesianus,* and *P. sileri* are currently listed as endangered. *Pediocactus paradinei, P. peeblesianus* var. *fickeiseniae,* and *P. winkleri* are candidates for addition to the List of Endangered and Threatened Plants. These disjunct species are probably relicts of a once-more-widespread genus with a distribution that was fractured by the current climatic regime (Benson 1982).

Since *P. despainii* is a newly described rare cactus and a member of a group of cacti eagerly sought by collectors both in this country and abroad, it is endangered by collection pressures. The type locality is near a popular, though undeveloped, camping area and receives heavy use from off-road and all-terrain vehicles. Approximately half of the range of the species is covered by oil and gas leases and mining claims for gypsum or other minerals. Surface disturbance associated with exploration for gypsum has occurred near the type locality. The effect of livestock grazing on the species is unknown.

In the **Federal Register** of December 15, 1980 (45 FR 82480), the Service published a notice of review for plants, which included *P. despainii* in Category 1. Category 1 comprises taxa for which substantial biological data are available to support listing. No comments on this taxon were received in response to the 1980 notice. In the **Federal Register** of November 28, 1983 (48 FR 53640), the Service published a supplement to the 1980 notice of review, in which *P. despainii* was changed to Category 2. Category 2 comprises taxa for which the Service has information indicating the possible appropriateness of a proposal to list the taxa, but for which more substantial data are needed. The status survey of Heil (1984), compiled through contract to the Service, provided the needed data. In the **Federal Register** of September 27, 1985 (50 FR 39526), the Service published a revised notice of review, in which *Pediocactus despainii* was redesignated as Category 1.

Taxa included in the 1980 and 1985 plant notices of review, and the 1983 supplement, are treated as if under petition pursuant to the Act. The 1982 Amendments to the Act required that petitions that were pending as of October 12, 1982, be treated as having been received on that date. Section 4(b)(3) of the Act requires that within 12 months of the receipt of such a petition a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other activity involving additions to or removals from the Federal Lists of Endangered and Threatened Wildlife and Plants. Therefore, on October 13, 1983, the Service made the finding that determination of endangered status for *P. despainii* was warranted but precluded by other listing activity. With such a finding, the petition is recycled, and another finding becomes due within 12 months. On October 12, 1984, and again on October 11, 1985, additional findings of warranted but precluded were made with respect to the listing of *P. despainii.* In the **Federal Register** of March 27, 1986 (51 FR 10560–10563), the Service proposed to determine endangered status for *P. despainii,* and that proposal incorporated a finding that the petitioned action was warranted.

Summary of Comments and Recommendations

In the March 27, 1986, proposed rule (51 FR 10560) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, inviting public comment, were published in the *Emery County Progress* on April 16, 23, and 30, 1986, and in the *Deseret News* and *Salt Lake Tribune* on April 15, 16, and 17, 1986. Four comments were received and are discussed below. No public hearing was requested.

The State of Utah supported the listing. The International Union for Conservation of Nature and Natural Resources made an informational comment.

The Emery County Commission requested an informal meeting to discuss concerns arising from information included in a newspaper article. A meeting, including a field trip to one of the cactus population sites, was held on June 6, 1986. The Service's oral and written response to the Commission is summarized here. The Commission questioned whether there were sufficient threats to the species to warrant a designation of endangered, and if such threats could be removed by other means. The Service maintains that significant threats, such as collecting and off-road vehicle damage, exist to the San Rafael cactus and will be difficult to remove. Therefore, the endangered determination is accurate. The Commission questioned whether the effects of grazing on the San Rafael cactus were actually known, since present grazing levels are lower than historic levels. The Service is interested in the effects of grazing on the fragile semidesert grassland habitat with which the San Rafael cactus is associated, but at present has no data documenting the impact of grazing on the species. The Commission was concerned that the designation of the San Rafael cactus as an endangered species would affect land use in the San Rafael Swell outside of its occupied habitat. Management of the entire San Rafael Swell is beyond the control of the Service in protecting the cactus and its habitat. Land-use decisions made by Federal agencies that could affect this species will be handled through the section 7 consultation process (see "Available Conservation Measures," below). Appropriate conservation measures would be directly related to the species' occupied habitat, which is only a small part of the San Rafael Swell.

The Bureau of Reclamation (1) commented on the taxonomy of *P. despainii;* (2) questioned whether listing would popularize the species and increase collecting while not reducing other threats such as off-road vehicle impacts, mineral exploration, and mining activities; and (3) questioned the change in candidate status among the three notices of review. The Service's response to the Bureau of Reclamation's comment is summarized here. *The Cacti of the United States and Canada* (Benson 1982) does not contain a discussion of *P. despainii* (beyond a reference in the appendix) because the book was in press for several years and does not contain references later than 1979. It was for this reason that no discussion was made of *P. despainii,* and not because the taxonomy of the species was in question. The threat of collecting will be addressed through the Service's Law Enforcement Division and through the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Regarding other threats, Federal agencies are legally required to insure that their actions in managing Federal land, such as authorizing off-road vehicle use and administering mineral leasing programs, are not likely to jeopardize listed species. Inasmuch as a significant portion of the habitat of this species is located on land administered by the Bureau of Land Management, listing could provide important protection from

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such activities. A change in candidate category indicates not necessarily a change in the degree of urgency of listing, but a recognition of the need for more information to document the need for listing. After *P. despainii* was changed from Category 1 to 2, the Service contracted for a status survey to obtain additional information (Heil 1984).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *P. despainii* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Pediocactus despainii* Welsh and Goodrich (San Rafael cactus) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The type locality of *P. despainii* is being heavily impacted by off-road vehicles, as it is near a popular recreation area. The level of impact is such that, in one area, individual plants were literally growing among the crisscrossed off-road vehicle tracks. About half of the area occupied by both populations contains oil and gas leases and mining claims for gypsum or other minerals. While no commercial development has taken place, surface disturbances from associated exploration and annual assessment work will continue to be a threat. The San Rafael cactus has some natural protection afforded by its habit of shrinking into the ground for part of the year. However, it forms buds in the fall that overwinter to become the next spring's flowers (Heil *et al.* 1981). These flowering buds at ground level may be vulnerable to surface disturbance, increasing the portion of the year that the species' reproductive capacity is vulnerable. Semiarid grassland parks and understory vegetation of pinyon-juniper woodlands are fragile habitats. They are easily invaded by aggressive native shrub and tree species or exotic weedy species when they are mechanically disrupted or when native grass species are removed. Another grassland cactus, *Opuntia imbricata* (tree cholla), was found to be significantly positively associated with some of the same native perennial grass species as is *P. despainii*, and negatively associated with weedy species indicative of range deterioration, in the short grass prairie in El Paso County, Colorado (Kinraide 1978). Maintenance of the desert grassland parks and understory vegetation of pinyon-juniper woodland may be an essential habitat requirement for *P. despainii*.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* As indicated earlier, this rare plant is highly desired by cactus collectors. It is known that collectors "make the rounds" through the Four Corners area, from the habitat of one species of *Pediocactus* to the next, to collect a complete set (Heil, pers. comm.). The small size of these species makes them easy to hide and therefore hard to detect in interstate or international commerce.

C. *Disease or predation.* The effect of livestock grazing on *P. despainii* is unknown. Because of the small size of this cactus and its habit of shrinking underground for part of the year, grazing is not thought to be directly significant to its survival. However, there are cattle-watering reservoirs within the range of the first discovered population, which may cause localized concentrations of livestock and the possibility of trampling of a portion of that population. The effect of livestock grazing on the trend and condition of surrounding desert grassland and pinyon-juniper understory vegetation needs to be evaluated to determine its impact on *P. despainii*. Service botanists have observed that the species is susceptible to infestations of insect larvae.

D. *The inadequacy of existing regulatory mechanisms.* No treaties, except the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and no Federal or State laws, directly protect *P. despainii*. CITES regulates international import and export but not interstate commerce, collecting for possession, or impacts to habitat.

E. *Other natural or manmade factors affecting its continued existence.* The fragile nature and vulnerability of the desert grassland and pinyon-juniper ecosystem in which *P. despainii* occurs have been mentioned previously. Also, because there are only two populations and a low number of plants, the possibility exists that a catastrophic disturbance, either natural or manmade, could destroy a significant portion of the species.

The Service has carefully assessed the best scientific and commercial information available regarding past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *P. despainii* as endangered. With only 4,000 to 6,000 individuals, and just two populations, collecting could lower its numbers significantly, and surface disturbances are impacting the ecosystem in which it occurs. For the reasons given below, it would not be prudent to designate critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor "B" in the "Summary of Factors Affecting the Species," *P. despainii* is threatened by taking, an activity difficult to prevent and not regulated by the Act with respect to plants, except for a prohibition against removal of endangered plants from areas under Federal jurisdiction and reduction to possession. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. All involved parties and landowners have been notified of the location of populations and importance of protecting this species' habitat. Such protection will be addressed through the recovery and section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered

or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Known Federal activities that may affect *P. despainii* are sanctioned use of off-road vehicles within its habitat, permitting actions in response to oil and gas development, and approval of mining plans. BLM is already consulting with the Service regarding such matters, and effects on that agency's activities due to this listing are expected to be minimal.

Section 9 of the Act and implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Because of horticultural interest in *P. despainii*, trade permits may be sought, but few permits for plants of wild origin would ever be issued since the species is not common in the wild. Plants of cultivated origin are available and permits may, under certain circumstances, be issued for trade in those. Requests for copies of regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

On July 29, 1983, *P. despainii* was included on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect of this listing is that both export and import permits are required before international shipment may occur. Such shipment is strictly regulated by CITES member nations to prevent it from being detrimental to the survival of the species, and cannot be allowed if it is for primarily commercial purposes. If plants are certified as artificially propagated, however, international shipment requires only export documents under CITES, and commercial shipments may be allowed.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. As notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Benson, L. 1982. *The Cacti of the United States and Canada*. Stanford University Press, 1044 pp.

Heil, K. 1984. Status report on *Pediocactus despainii*, U.S. Fish and Wildlife Service, Denver, Colorado, 14 pp.

Heil, K., B. Armstrong, and D. Schleser, 1981. A review of the genus *Pediocactus*. *Cactus & Succulent Journal* 53:17–39.

Kinraide, T.B. 1978. The ecological distribution of cholla cactus (*Opuntia imbricata* (Haw.) DC.) in El Paso County, Colorado. *Southwestern Naturalist* 23:117–134.

Welsh, S.L., and S. Goodrich. 1980. Miscellaneous plant novelties from Alaska, Nevada, and Utah. *Great Basin Naturalist* 40:78–88.

Author

The primary author of this final rule is John L. Anderson; John L. England acted as editor (see ADDRESSES section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Cactaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cactaceae—Cactus family:						
Pediocactus despainii	San Rafael cactus	U.S.A. (UT)	E	286	NA	NA

Dated: August 26, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–21286 Filed 9–15–87; 8:45 am]

BILLING CODE 4310–55–M

VOL 52 ISS 179 SE 16 1987 UMI

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

[Docket No. 70616-7183]

Red Drum Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement Amendment 1 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP). This final rule (1) establishes primary and secondary fishing areas and prohibits harvest of red drum from secondary areas, (2) revises quota provisions to include allocations for shrimp vessels and recreational fishing vessels, (3) revises the closure requirement to apply to shrimp and recreational vessels, (4) prohibits the sale of fish taken under the bag limit, (5) establishes that fish harvested in the exclusive economic zone (EEZ) will be landed in conformance with State laws, and (6) revises the procedure for specifying total allowable catch (TAC) and modifying quotas for the primary area. The intended effect is to protect and rebuild the red drum resource throughout its range through cooperative State/Federal management and to prevent overfishing while achieving optimum yield (OY) from the red drum fishery on a continuing basis.

EFFECTIVE DATE: October 16, 1987.

ADDRESS: Copies of the environmental assessment and the supplemental regulatory impact review/initial regulatory flexibility analysis may be obtained from William R. Turner, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Willian R. Turner, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce (Secretary) prepared the FMP under the authority of section 304(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Implementing regulations for the FMP were effective December 19, 1986 (51 FR 46678, December 24, 1986). Earlier, the Secretary promulgated an emergency rule (51 FR 23553, June 30, 1986) that limited directed net harvest of red drum from the EEZ to one million pounds during its 90-day effective period (June 25 to September 23, 1986); it also limited incidental catch in other commercial fisheries to five percent of red drum by weight of the total catch aboard a vessel. The directed fishery was closed on July 20, 1986 (51 FR 26554, July 24, 1986; corrected at 51 FR 27413, July 31, 1986). The Secretary extended the emergency rule (51 FR 34220, September 26, 1986) for a second 90-day period, until December 22, 1986.

In Amendment 1 to the FMP, the Gulf of Mexico Fishery Management Council (Council) revised and restated the management unit, problems in the fishery, management objectives, OY, the procedure for specifying harvest levels from the EEZ, allowable harvest levels, and other provisions. The preamble to the proposed rule to implement Amendment 1 (52 FR 22822, June 16, 1987) described these changes and their rationale and is not repeated here.

Comments and Responses

Comments criticizing the proposed rule and amendment were received from Organized Fishermen of Florida, Alaska Factory Trawler Association, Southeastern Fisheries Association, National Fisheries Institute, Pacific Seafood Processors Association, Fish Consumers Association, one commercial purse seine captain, and a minority report signed by two members of the Council. Mixed comments indicating support for some measures and problems or potential problems with others were received from the Florida Department of Natural Resources, Florida Marine Fisheries Commission, U.S. Coast Guard, and U.S. Fish and Wildlife Service. Letters in support of Amendment 1 and the proposed rule where received from approximately 3,000 members of the Coastal Conservation Association and from several recreational fishing organizations. In general, critical comments challenged the composition and structure of the management unit, procedures for specifying harvest levels, and the deletion of provisions describing supersession of State law when landing red drum taken from the EEZ during a directed commercial fishery. Other miscellaneous comments were received, but most were related to these topics and all are addressed below.

Management Unit

One organization indicated that blue runner, black drum, ladyfish, and crevalle jack should be included in the management unit because they occur in close association with red drum. Although not genetically related, these species were originally proposed for inclusion in the FMP. It was generally believed that the market could expand for one or more of these species in search of a substitute for red drum, and that their inclusion in the FMP would provide a basis for accumulating data in the event the management became warranted. Based on comments received on the proposed rule to implement the FMP, these species were eliminated from the management unit. The reason was discussed in the preamble to the final rule for the FMP.

Other comments indicated that there is no justification for dividing the Gulf of Mexico EEZ into primary and secondary management areas. Although there is no direct genetic evidence on red drum to support stock differences in these areas, indirect evidence from mark-recapture studies, harvest data, and socio-economic considerations support the division. Historically, more than 98 percent of the total recreational and commercial catch of red drum from the EEZ has been harvested from the primary area. Data from Florida and Texas, the States bordering the secondary areas, indicate high fishing mortality rates in those areas. Further, owing to the nine-mile jurisdictional authority of these two States in the Gulf of Mexico, red drum in these secondary areas appear concentrated in waters under State control. Available data on red drum migration indicate little intermixing between areas. Although limited, considered together this information suggests that escapement from State waters bordering the secondary areas has been insufficient to maintain the offshore brood stock of red drum. Total closure of the secondary areas coupled with intensified conservation efforts evident on the part of the States is expected to protect and enhance rebuilding of the offshore red drum population in those areas. Such constraints should result in relatively slight socioeconomic impacts, as less than two percent of the total of the red drum harvest has been from the secondary areas.

Specification of Harvest Levels

Comments in this category generally were concerned with who specifies the allowable catch levels and by what process. Additionally, there was concern with the 20-percent level of juvenile escapement targeted for inshore waters and its relationship to allowable catch, its measurement, and its scientific basis.

The achievement of a 20-percent level of juvenile escapement to offshore waters does not trigger the opening of a directed commercial fishery. It is simply a prerequisite which will foster rebuilding of the offshore spawning stock biomass to levels that could support renewed fishing effort. A

general rule of thumb used by fishery biologists is that spawning stock biomass should not be reduced below 20 to 40 percent of the level existing before exploitation. Certain fisheries exploited beyond this level have collapsed. Therefore, the Council has recommended that the States take measures to allow the escapement of 20 to 40 percent of the juveniles that would have escaped from nearshore waters in the absence of an inshore fishery. An initial goal of 20 percent escapement is recommended. NMFS, through its Southeast Fisheries Center, will annually review the stock assessment data to determine if the 20-percent (or any future) escapement level is appropriate to achieve the objectives of the amendment. NMFS will also monitor the States' efforts to increase juvenile escapement to the determined levels and to provide estimates of escapement. On the basis of the best scientific information currently available, escapement is the determining factor in increasing the offshore spawning stock biomass. Based on annual stock assessments, NMFS will determine current levels of escapement and what levels are required over time to reach a spawning stock biomass that ensures optimum recruitment and enhancement of inshore and offshore populations. NMFS is presently funding and will evaluate the success of State projects conducted under the Marine Fisheries Initiative (MARFIN) program to measure levels of escapement.

The opening of a directed commercial fishery in the primary area will not occur until stock assessment data identifies a level of surplus spawning stock that can be safely removed while incurring little risk of overfishing. Accordingly, NMFS will provide an annual assessment of the red drum stock that will be used to specify a range of acceptable biological catch (ABC) for the primary area. The Council in turn will use that information to make necessary adjustments to the amount of allowable catch from within or below the range of ABC and to establish appropriate quotas for forthcoming fishing seasons. These decisions are within the authority of the Council, subject to conformance with the national standards of 50 CFR Part 602. Under the FMP prepared by the Secretary, the Regional Director was responsible for these decisions. The use of FMP amendment procedures to specify allowable catch and quotas ensures a greater cross-section of review, promotes conservation, minimizes risk to the resource, and takes advantage of statutory deadlines in making timely adjustments to TAC and quotas.

State/Federal Cooperative Management

Several respondents commented that deletion of supersession provisions in Amendment 1 is in direct conflict with responsibilities recognized in the Secretarial FMP, and sets an improper precedent for managing other fisheries under the Magnuson Act. According to the comments, use of State landing laws to control harvest in the EEZ appears contrary to the intent of the Magnuson Act and an abdication of management authority by the Secretary.

NOAA does not agree that the Secretary has relinquished management responsibility to the States or that the actions embodied in Amendent 1 are contrary to the Magnuson Act. Rather, the changes represent a shift to a more pragmatic approach, where the States and the Federal government share more equitably the burdens and responsibilities of red drum management. It recognizes that the States play an integral role in preserving and rebuilding offshore stocks. State inshore fisheries, where the majority of the harvest has historically taken place, are totally dependent on offshore spawners. State implementation of conservation fishing regulations not only protects inshore red drum fisheries, but should also ensure adequate escapement to restore offshore stocks and subsequent resumption of the offshore fishery. The 20 percent escapement provision emphasizes the necessity for a shared research and development program. Amendment 1 focuses on both inshore and offshore stock problems as equally important to restoration of this resource. It provides that State landing and possession laws apply to all presently allowable EEZ bag limits and commercial incidental catch. Further, Amendment 1 continues to provide for the landing and sale of lawfully captured red drum from the EEZ whenever a directed fishery is resumed. Such fish will be properly documented and landed as "imports." This will allow marketing of these fish in a way that is compatible with State laws where sale of domestically landed red drum is prohibited, but where certified imports are exempt and can be legally marketed. This approach supports and strengthens State conservation programs without diluting or disrupting enforcement capabilities.

Other Comments

One agency supported the short-term goal of protecting offshore spawners while encouraging and supporting the States' efforts to protect juveniles in estuarine waters, but expressed concern with the long-term management strategy because it could result in the resumption of offshore harvest. The direction of future management of red drum resources depends upon how the stocks respond to current management practices as reflected by the annual stock assessments. Permanent closure of the EEZ to a directed commercial harvest of red drum would constitute an inflexible management approach oblivious to factual biological information emerging from ongoing studies, be insensitive to user-group concerns and allocation responsibilities under the Magnuson Act, and obstruct the Council's deliberative processes.

Another agency indicated that the identification of problems in Amendment 1 should be expanded to include, "competition between recreational and commercial uses," and that the document should contain greater elaboration of this issue. User-group competition is included in problem (4) as identified in the proposed rule and Amendment 1. NOAA believes that the management approach described in Amendment 1 reasonably addresses problems associated with the competition for access to this resource in an atmosphere of State-Federal cooperation and is consistent with conservation decisions.

One agency commented that defining allowable incidental catch in terms of landed catch precludes enforcement at sea of incidental catch limitations. Where possible, the final rule prohibits possession of red drum in or from the EEZ or a primary or secondary area. Compliance with restrictions which apply on a trip basis, however, must be determined on landed catch. A vessel which catches red drum in excess of five percent by weight early in a fishing trip should not be considered to be in violation when it could end the trip within the legal limit. NOAA expects that relevant observations at sea will be communicated to and coordinated with authorized officers ashore to maximize enforcement efforts. Enforcement at sea is required to detect illegal transfers of red drum and to document any fishing operations that do not minimize wastage.

One agency recommended that the final rule define the eastern boundary of the secondary area off Florida to clarify its limits off the southern tip of Florida. A clear definition of that boundary, based on the delineation between the Gulf of Mexico and the Atlantic Ocean as contained in 50 CFR 601.12(c), is included in the definition of secondary areas.

One agency expressed concern that the language of the existing § 653.3(c), making the regulations applicable within the boundaries of any national park, monument, or marine sanctuary in the Gulf of Mexico, is inconsistent with an avowed purpose of Amendment 1, i.e., deletion of the exemption from State landing laws. NOAA does not view § 653.3(c) as operating to displace laws which are otherwise made applicable to these types of areas. This general language ensures protection of the resource throughout its range in the EEZ compatible with other applicable restrictions.

One agency recommended a minimum size of 18 inches for all red drum taken from the EEZ to aid State enforcement when a directed net harvest is resumed. Consideration of such a recommendation would be appropriate when resumption of a directed commercial fishery is contemplated.

A commenter, concerned about the "dumping" of excess red drum because nets were set around too many fish, proposed a prohibition on and a severe penalty for dumping. The final rule contains prohibitions on fishing operations which cause wastage of red drum.

Changes From the Proposed Rule

Section 653.1 is reorganized for simplicity and clarity, language is added to clarify that the regulations apply only to fishing vessels of the United States, and reference to § 653.22(g) as an exception to applicability of the regulations only in the EEZ of the Gulf of Mexico is removed. The provision allowing continued application of State landing and possession laws to certain red drum harvested in the EEZ is contained in § 653.2(d) of this rule and does not constitute an exception to the applicability of the rules of this part.

In § 653.2, the terms and definitions for *Commercial quota* and *Non-directed commercial red drum fishing (fishery)* are no longer used and are removed. The latter term implied that there could be a commercial fishery in which catch of red drum is a secondary or tertiary target species. Such is not the case. Red drum taken in any commercial fishery other than the directed commercial red drum fishery is incidental catch in other commercial fisheries. Removal of the term *Non-directed commercial red drum fishing (fishery)* is reflected in rewording throughout the final rule. In the definition of *Directed commercial red drum fishing (fishery)*, the exemption for shrimp trawling is removed. All commercial fishing activity in which the weight of red drum landed exceeds five percent of the total weight of all other fish on board is a directed red drum fishery. The terms *Commercial fishing* and *Recreational fishing* are replaced by *Commercial fishing (fishery)* and *Recreational fishing (fishery)* and their definitions are revised for clarity and consistency. The definition of *Authorized officer* is revised to be more specific as to the participants in any agreement whereby a Federal or State officer becomes an authorized officer. In the definition of *Center Director*, the telephone number is corrected. Reference to Figure 2 is removed from the definitions *of Primary area* and *Secondary areas* and the figure is removed as it is not necessary for a clear understanding of the areas. In the definition of *Primary area*, the western boundary is clarified. Specification of the eastern boundary of the EEZ seaward of the fishery jurisdiction of Florida is added to the definition of *Secondary areas*.

In § 653.3, paragraph (b) is revised to clarify that the U.S. Coast Guard is not a party to the State/Federal agreement for data collection.

In § 653.3(d), the requirement that certain persons landing red drum must comply with "other fishery" laws of the State where landed is removed. Specifying compliance with only the "landing and possession" laws of the State where landed is in accord with Amendment 1 and avoids the ambiguity of the phrase "other fishery" laws.

In § 653.5, a change to paragraph (b) is added because of the removal of the term "non-directed red drum fishery".

In § 653.7, excess verbiage in paragraph (a)(1) is removed, paragraphs (a)(7) and (8) are revised consistent with the creation of primary and secondary areas, and paragraphs (a) (17) through (22) are added to provide specific prohibitions for failure to meet the requirements of § 653.22.

In § 653.21, paragraph (a) is revised to substitute "primary area" for "EEZ" and to clarify that the quota is for each fishing season.

Section 653.22 is reorganized for clarity and to apply the prohibition on wastage of red drum to all fisheries. Paragraph (c) of the proposed rule (paragraph (b)(2) in this final rule) is revised to clarify that a commercial vessel with an allowable bycatch of red drum must have a permit and that a commercial vessel over the allowable limit is considered as conducting a directed commercial red drum fishery. Paragraph (g) is removed as the applicability of State landing and possession laws is covered in § 653.3(d). Paragraph (h) [Reserved] is removed. Landing restrictions will be included in paragraph (b)(1) when directed commercial red drum fishery is authorized.

In § 653.23 paragraph (a) is no longer applicable and is removed and paragraphs (b) and (c) of the proposed rule are designated as (a) and (b) and revised for clarity.

In § 653.24, paragraph (d) is revised to clarify that a change in TAC will be by amendment to the FMP and paragraph (e) is revised to clarify that the percentage of any excess red drum which may be included in the TAC will be set by the Council no more frequently than annually.

Classification

The Regional Director determined that Amendment 1 is necessary for the conservation and management of the red drum fishery of the Gulf of Mexico and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for Amendment 1. The Assistant Administrator for Fisheries concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA may be obtained from the Southeast Region of NMFS (see ADDRESS).

The Administrator of NOAA determined that this is not a "major rule" requiring the preparation of a regulatory impact analysis under Executive Order 12291. The amendment's management measures are designed to maintain the productivity of each user group to the maximum extent possible while preventing overfishing of red drum and restoring the red drum stock. The major benefit of this rule is restoration and maintenance of the red drum stock.

The Council prepared a supplemental regulatory impact review (SRIR) which concluded that this rule will have the following economic effects. Greater long-term benefits, in terms of overall poundage produced, will result than from the other alternatives. The impact of the prohibition of red drum harvest from the secondary areas is expected to be negligible since, historically, 98 percent of recreational and commercial catch from the EEZ has been from the primary area. The impact of a bag limit of one fish and the impact of prohibiting directed commercial fishing for red drum, continued in Amendment 1, were described in the RIR and initial regulatory flexibility analysis (IRFA). No additional costs to participants for permits are anticipated as a result of the amendment.

Federal enforcement costs of the regulatory action are not changed by the

proposed rule. Annual State enforcement costs, estimated to be as high as $1 million, are anticipated to be significantly reduced by the provisions which operate to preserve applicable State landing and possession laws.

A copy of the RIR/IRFA for the FMP and SRIR for Amendment 1 may be obtained from the Southeast Region of NMFS (see ADDRESS).

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule will not have a significant economic impact on a substantial number of small entities. This is because it will not signficantly alter current fishing practices. Although all present participants in the fishery will now be required to land red drum in conformance with State law, landings will not be affected since harvesting will be permitted in those States (Alabama, Mississippi, Louisiasna) where 98 percent of the historical catch has occurred, and fish can continue to be landed in accordance with State law. The Council prepared an IRFA as part of the SRIR which concluded that this proposed rule will have an insignificant effect on fishing entities. These effects are included in the SRIR, which is summarized above. The action will enhance enforcement activities and will provide benefits in the form of an improved resource and higher landings in the long term.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act. The collection of information requirements of the FMP were approved under OMB Control Number 0648–0117.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, Alabama, Mississippi, and Lousiana. Texas does not have an approved coastal zone management program. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies of Florida and Louisiana agreed with this determination. The State agencies of Alabama and Mississippi failed to comment during the statutory time period and, accordingly, concurrence is implied.

List of Subjects in 50 CFR Part 653

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 11, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 653 is amended as follows:

PART 653—RED DRUM FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 653 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. Section 653.1 is revised to read as follows:

§ 653.1 Purpose and scope.

The purpose of this part is to implement the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP) prepared by the Secretary of Commerce and amended by the Gulf of Mexico Fishery Management Council. The regulations in this part, except for § 653.5, apply to fishing for red drum by fishing vessels of the United States in the EEZ in the Gulf of Mexico. The reporting requirements in § 653.5 apply to vessels of the United States and persons participating in the fishery in both the EEZ and State jurisdictions.

3. In § 653.2, the definitions for *Commercial quota* and *Non-directed commercial red drum fishing (fishery)* are removed; definitions for *Commercial fishing, Recreational fishing,* paragraph (c) under the definition for *Authorized officer, Directed Commercial red drum fishing (fishery),* and the telephone number under *Center Director* are revised; a phrase is added to the definition for *Exclusive economic zone (EEZ)* between the words "means the" and the word "area"; and new definitions for *Primary area, Secondary area,* and *Total allowable catch (TAC)* are added in alphabetical order to read as follows:

§ 653.2 Definitions.

* * * * *

Authorized officer means

* * * * *

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

* * * * *

Center Director * * * telephone 305–361–4200 * * *

Commercial fishing (fishery) means fishing or fishing activities which result in the harvest of fish one or more of which (or part thereof) is sold, traded or bartered.

* * * * *

Directed commercial red drum fishing (fishery) means any commercial fishing activity in which the weight of red drum landed exceeds five percent of the total weight of all other fish on board.

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is the area * * *

* * * * *

Primary area means the EEZ seaward of the fishery jurisdictions of Alabama, Mississippi, and Louisiana, bounded on the east by a line directly south from the boundary between Alabama and Florida (87°31.1′ W. longitude) to its intersection with the outer limit of the EEZ, and bounded on the west by a line beginning at the boundary between Texas and Louisiana (midpoint between the gulfward extension of the Sabine Pass jetties) to 29°32.1′ N. latitude, 93°47.7′ W. longitude, thence directly south to its intersection with the outer limit of the EEZ.

* * * * *

Recreational fishing (fishery) means fishing or fishing activities which result in the harvest of fish none of which (or part thereof) is sold, traded, or bartered.

* * * * *

Secondary areas means (a) the EEZ seaward of the fishery jurisdiction of Florida in the Gulf of Mexico and (b) the EEZ seaward of the fishery jurisdiction of Texas, with boundaries consistent with the immediately adjacent boundaries described for the primary area. For the purposes of this definition, the eastern boundary of the EEZ in the Gulf of Mexico is a line from the outer limit of the EEZ north along 83°00′ W. longitude to the outer limit of the waters of Florida off the Dry Tortugas Islands, thence in a clockwise direction around that outer limit to 24°35′ N. latitude, thence east along 24°35′ N. latitude to the outer limit of the waters of Florida off the Marquesas Keys.

* * * * *

Total allowable catch (TAC) means the maximum permissible annual harvest from the primary area set from within or below the ABC range after consideration of biological, economic, and social factors and the risk of inducing recruitment overfishing associated with that harvest level.

* * * * *

4. In § 653.3, paragraph (b) is revised and a new paragraph (d) is added to read as follows:

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§ 653.3 Relation to other laws.

* * * * *

(b) Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a State/Federal agreement for data collection and a tripartite agreement among the State, the U.S. Coast Guard, and the Secretary for enforcement.

* * * * *

(d) A person landing red drum from the recreational fishery or from a commercial fishery, other than a directed red drum fishery, must comply with the landing and possession laws of the State where landed.

5. In § 653.4, paragraph (a) is revised to read as follows:

§ 653.4 Permits and fees.

(a) *Applicability.* A permit is required for a commercial vessel fishing in the EEZ, other than a shrimp fishing vessel, to possess or land red drum.

* * * * *

6. In § 653.5, paragraph (b), introductory text, is revised to read as follows:

§ 653.5 Reporting requirements.

* * * * *

(b) *Other commercial fisheries.* An owner or operator of a commercial fishing vessel, other than a shrimp fishing vessel, which possesses or lands red drum as incidental catch, if selected by the Center Director, must

* * * * *

7. In § 653.7, the word "or" at the end of paragraph (a)(15) is removed; the period at the end of paragraph (a)(16) is removed and a semi-colon is added in its place; paragraphs (a)(1), (7), and (8) are revised; and new paragraphs (a)(17) through (22) are added to read as follows:

§ 653.7 Prohibitions.

(a) * * *

(1) Retain or land red drum in a commercial fishery, other than the shrimp fishery, without a permit as required by § 653.4(a).

* * * * *

(7) Retain on board a vessel or possess red drum in or from the secondary areas as specified in § 653.22(a);

(8) Retain on board a vessel or possess red drum in or from the primary area under a quota specified in § 653.21(b) or (c) after such quota is reached and notice is published in accordance with § 653.23(a);

* * * * *

(17) Conduct a directed commercial red drum fishery in the primary area as specified in § 653.22(b)(1) and (2);

(18) Retain on board a vessel or possess red drum in or from the primary area in a recreational fishery in excess of the bag limit specified in § 653.22(b)(3) or as modified in accordance with § 653.23(b);

(19) Sell, barter, or trade red drum taken under the bag limit specified in § 653.22(b)(3)

(20) Conduct fishing operations in a way that causes wastage of red drum as specified in § 653.22(c);

(21) Transfer at sea red drum harvested from or possessed in the EEZ from fishing vessel to any other vessel as specified in § 653.22(d); or

(22) Possess in the EEZ or land red drum from the primary area without the head and fins intact as required by § 653.22(e).

8. Section § 653.21 is revised to read as follows:

§ 653.21 Quotas.

(a) The total allowable harvest of red drum for the directed commercial red drum fishery in the primary area is zero for each fishing season.

(b) The total allowable harvest of red drum taken as incidental catch in other commercial fisheries, excluding the shrimp fishery, in the primary area is 100,000 pounds for each fishing season.

(c) The total allowable harvest of red drum taken as incidental catch in the commercial shrimp fishery in the primary area is 200,000 pounds for each fishing season.

(d) The total allowable harvest of red drum for recreational fishing in the primary area is 325,000 pounds for each fishing season.

(e) The TAC in the primary area is 625,000 pounds for each fishing season.

9. Section § 653.22 is revised to read as follows:

§ 653.22 Harvest and landing limitations.

(a) *Harvest from secondary areas.* No red drum may be harvested or possessed in or from the secondary areas. Red drum caught in the secondary areas must be released immediately with a minimum of harm.

(b) *Harvest from the primary area—*

(1) *Directed commercial red drum fishery.* No red drum may be harvested from the primary area in the directed commercial red drum fishery.

(2) *Incidental catch in other commercial fisheries.* A commercial vessel which fishes in the primary area and which takes red drum as incidental catch may not land red drum in excess of five percent of the total weight of all other fish and/or shrimp on board. A commercial fishing vessel which lands red drum in excess of this limitation will be considered as conducting a directed commercial red drum fishery. Any commercial vessel which takes red drum, other than a shrimp fishing vessel, must have a permit as required by § 653.4(a).

(3) *Recreational bag limit.* A person in a recreational fishery may not possess red drum in or from the primary area in excess of one red drum per person per trip. Red drum in excess of this bag limit must be released immediately with a minimum of harm. Red drum harvested under the bag limit may not be sold.

(c) *Wastage prohibited.* A person or vessel must conduct fishing operations in a way that minimizes wastage of red drum.

(d) *Transfer at sea.* Red drum harvested from or possessed in the EEZ may not be transferred from a fishing vessel to any other vessel.

(e) *Head and fins intact.* Red drum possessed in the EEZ, or harvested from the primary area and landed, must have head and fins intact.

10. Section § 653.23 is revised to read as follows:

§ 653.23 Closures.

(a) The Secretary, by publication of a notice in the **Federal Register**, will prohibit the retention on board or landing of red drum taken as incidental catch in a commercial fishery in or from the primary area under a quota specified in § 653.2 (b) or (c) for the remainder of a fishing season when the respective quota for that fishery is reached or is projected to be reached.

(b) The Secretary, by publication of a notice in the **Federal Register**, will set the recreational bag limit specified in § 653.22(b)(3) at zero and prohibit further retention on board or landing of red drum in the recreational fishery in or from the primary area for the remainder of a fishing season when the quota specified in § 653.21(d) is reached or is projected to be reached.

11. Section 653.24 is revised to read as follows:

§ 653.24 Allowable catch and allocation procedures.

(a) Prior to October 1, each year, the Center Director will

(1) Update the stock assessment for red drum;

(2) Reassess the MSY level;

(3) Specify the best estimate of the standing stock and its age composition;

(4) Reexamine and specify the level of offshore standing stock necessary to

optimize larval recruitment to the inshore fishery;

(5) Specify the geographical variations in stock abundance, mortality, juvenile escapement, and recruitment;

(6) Summarize current and historical information on migratory movements of the stock; and

(7) Analyze social and economic data available in the fishery.

(b) The Council will appoint a scientific assessment group that will review the Center Director's reports, current harvest statistics, and economic, social, and other relevant data and will prepare a written assessment report to the Council specifying a range of ABC for the primary area. The report will

(1) Set forth a risk analysis showing the probabilities of adversely impacting the spawning stock biomass (SSB) through fishing at each level of ABC and the economic and social impacts of those levels;

(2) Include consideration of the fishing mortality rates relative to F_{MSY} and $F_{0.1}$, abundance relative to optimum SSB, trends in recruitment, and whether overfishing is occurring for the stock as a whole or upon a portion of the stock in any geographical area;

(3) In specifying ABC, separately identify the quantity of the offshore population, in excess of the SSB necessary to optimize recruitment, that may be harvested; and

(4) When requested by the Council, include information on bag limits, size limits, specific gear harvest limits, and other restrictions required to prevent a user group from exceeding its allocation or quota under a TAC specified by the Council, along with the economic and social consequences of such restrictions.

(c) The Council will consider the report and recommendations of the scientific assessment group and relevant public comments. A public hearing will be held at the time and place the Council takes action on the report. Other public hearings may be held. The Council may convene its Red Drum Advisory Panel and Scientific and Statistical Committee to provide advice before taking action.

(d) In specifying TAC, the Council will consider the recommendations, comments, and advice provided for in paragraphs (b) and (c) of this section and will set TAC from within or below the ABC range by FMP amendment.

(e) If an offshore population (above annual surplus production) exceeds a SSB necessary to optimize recruitment, the percentage of the excess which may be included in the TAC will be set by the Council periodically but no more frequently than annually.

(f) The Council will make changes in use group allocations for the primary area, if any, by FMP amendment.

[FR Doc. 87-21388 Filed 9-14-87; 8:45 am]
BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 52, No. 179
Wednesday, September 16, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 639]

Wild Horse Valley Viticultural Area; California

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), is considering the establishment of a viticultural area in the mountains between Napa and Solano Counties, California, to be known as Wild Horse Valley. The proposed viticultural area is located just five miles east of the City of Napa. It contains vineyards in both Napa and Solano Counties. The petition was submitted by John Newmeyer of Napa and four other interested persons. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. The establishment of viticultural areas also allows wineries to further specify the origin of wines they offer for sale to the public.

DATE: Written comments must be received by November 2, 1987.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC, 20044–0385 (Notice No. 639) Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR, Part 4. These regulations allow the establishment of definite viticultural areas.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguised by geographical features, the boundaries of which have been delineated in Subpart C of Part 9. Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area; based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF has received a petition proposing a viticultural area encompassing a valley near Napa, California, approximately five and one-third miles long and one and two-thirds miles across at its widest point. The total area of the proposed viticultural area is 3,300 acres or 5.16 square miles. Currently there are seventy-three acres of winegrapes in the proposed Wild Horse Valley viticultural area. According to the petitioner, recent studies of other sites in the area indicate the feasibility of more than tripling the number of acres planted to winegrapes, and additional plantings are being considered. There are currently no bonded wineries in the proposed viticultural area, but two small wineries are planned. According to the petitioner, the first winery will begin operation for the crush of 1987 or 1988.

The petitioner claims that because of its proximity to San Francisco Bay and its elevation, the viticultural conditions in Wild Horse Valley are different from grape-growing conditions in other valleys in the eastern coast ranges of Napa County, such as Wooden, Gordon, Pope, Foss and Chiles Valleys, which tend to be more continental in climate, as well as more fertile. The petitioner claims that Wild Horse Valley's soils, climate, and elevations are also different from the nearby Green Valley in Solano County (known as Solano County Green Valley) and the adjacent Coombsville area of Napa Valley. According to the petitioner, the long growing season of the proposed Wild Horse Valley, its rocky soil, and windy conditions produce grapes that are well-suited to winemaking.

Location Compared To American Viticultural Areas

The proposed viticultural area is within the North Coast viticultural area. The proposed area partially overlaps the Napa Valley and Solano County Green Valley viticultural areas. The Suisin Valley viticultural area is approximately 2.5 miles east of the proposed Wild Horse Valley. It is separated from the proposed viticultural area only by the Solano County Green Valley viticultural area.

Evidence of Name

According to the petitioner, the name Wild Horse Valley is well documented. The petitioner provided references to books identifying the area as Wild Horse Valley as early as 1866. According to early accounts, wild horses

roamed the area during that period, thus the intriguing name Wild Horse Valley was coined.

Today, the name Wild Horse Valley is found on U.S.G.S. maps and on Napa County road maps. One of the two roads leading to the valley is named "Wild Horse Valley Road," and a creek flowing from the southeast portion of the valley into Solano County Green Valley, is named "Wild Horse Creek." According to the petitioner, the large, locally known horse ranch and equestrian center, Wild Horse Valley Ranch, located at the north end of the valley, has given the name ample publicity in recent years.

The petitioner claims that the first vineyard used for wine production in Wild Horse Valley was that of Joseph Vorbe who in 1881 had 50 acres. The wine historian, William F. Heintz, published a report entitled, "Wild Horse Valley's Viticultural History." Part of the report includes a transcript of an interview with a long time Napa resident conducted by Mr. Heintz on July 28, 1986. The transcript of the interview was included with the petition. The interview describes the historical use of the name Wild Horse Valley, as well as its viticultural significance.

Evidence of Boundaries

According to the petitioner, the boundaries of the Wild Horse Valley are defined by the natural terrain of the area. This hilly upland valley is rimmed by higher peaks on all sides. In its center are two large man-made lakes which supply water to the City of Vallejo. To the west, south, and southeast, mountainous terrain soon gives way to alluvial plains. To the north and northeast the terrain is ruggedly mountainous.

For ease of definition, the petitioner drew the boundary of the proposed viticultural area with straight lines for the most part, connecting prominent peaks surrounding the valley. According to the petitioner, this approximation is quite accurate, enclosing the area which has been historically known as Wild Horse Valley.

Geographical Evidence

Climate and Elevation

The petitioner claims that the valleys in the coast ranges east of Napa Valley generally tend to have a drier, more continental climate than the Napa Valley floor and vineyard sites in the mountains to the west. Many factors, including distance from sources of marine air, sunny exposure, and heat-absorbing rocky outcroppings, contribute to warmer summertime temperatures. The petitioner believes that because of its location, Wild Horse Valley is an exception to this generalization.

The petitioner states that the area of southern Napa Valley and Wild Horse Valley have lower annual temperatures and smaller annual temperature ranges as compared with the northern Napa Valley and most of the eastern Coast Ranges of Napa County, which have higher annual temperatures and larger annual temperature ranges.

According to the petitioner, Wild Horse Valley's southerly location near San Pablo and Suisun Bays expose it to cool westerly winds blowing in from the ocean and the bay, especially in spring and summer. The petitioner claims that its proximity to the Carquinez Straits and its unprotected position rising out of bayshore flatlands on two sides make Wild Horse Valley an unusually windy location. The California Energy Commission Wind Resource Map (submitted by the petitioner) depicts Wild Horse Valley to be on the edge of a zone where wind speeds average eleven to fourteen miles per hour. According to the petitioner, the effect of its windy location is enhanced by its elevation. Diurnal local winds created by the sun's warming of the ground tend to flow upslope or upcanyon during the day. This air movement combines with the marine breezes blowing in the same direction to make Wild Horse Valley windier than the lower elevation of the Coombsville district of Napa Valley to the west, and the more inland coast range mountains and valleys to the north, and the more sheltered Solano County Green Valley viticultural area. Generally speaking, those surrounding areas have wind speeds averaging less than eleven miles per hour.

The petitioner contends that the proposed viticultural area also enjoys longer hours of sunlight than Coombsville and Green Valley. The petitioner says that summer fogs that blanket the lower elevations in the evening and early morning often stop below the altitude of Wild Horse Valley. Early mornings in the Wild Horse Valley are clear and bright. Around nine in the morning the fog will sometimes rise briefly into the valley as it warms and dissipates. In spite of the longer period of daylight, Wild Horse Valley's customary cool winds keep afternoon temperatures low. A thermograph study done in 1965 at the ranch of James Birkmyer in the north end of the valley indicated that this site has a Region I climate (less than 2,500 degree days) as classified by the University of California at Davis system of heat summation.

According to the petitioner, the experience of growers in Wild Horse Valley confirms that the growing season climate is cool. James Birkmyer's twenty-two year old plot of Johannisberg Riesling on his ranch in the proposed viticultural area consistently ripens late with high acid levels at the end of September or beginning of October. The petitioner claims the climate of the proposed Wild Horse Valley viticultural area and the overlapping Solano County Green Valley are different. Available thermograph studies (1973–74) of Solano County Green Valley, places the climate in mid-Region III. In contrast, available thermograph data (1965), places Wild Horse Valley's climate in Region I. Solano County Green Valley is more sheltered and on the average, warmer than Wild Horse Valley. This is in part due to the simple difference in elevation. When air rises, in general it expands and cools at the rate of about five and one-half degrees Fahrenheit per thousand feet.

The elevation of the proposed viticultural area is generally higher than the surrounding valleys. Wild Horse Valley's elevation ranges from 1,000 to 2,000 feet above sea level.

Many areas of Solano County Green Valley have much lower elevations than the proposed area ranging from 400 to 800 feet above sea level. Because of the difference in elevation, fog is more prevalent in Solano County Green Valley than in Wild Horse Valley. The average annual rainfall in Solano County Green Valley is twenty to twenty-five inches per year. Over the last twenty years the rainfall in Wild Horse Valley has averaged thirty-two inches per year.

Soils

The soils in Wild Horse Valley also set it apart from neighboring vineyard districts. The soils in Wild Horse Valley are primarily shallow, well-drained, sloping stony loams of the Hambright-Toomes association found only in mountainous uplands. Specific soil types include Hambright, Toomes, Gilroy, Coombs, Sobrante and Trimmer loams. Vineyards in Wild Horse Valley have been established on Hambright and Trimmer soils. The petitioner's reseach has established that Wild Horse Valley has the only vineyard planted on Trimmer soil in either Napa or Solano Counties. The soil in the overlapping Solano County Green Valley is primarily Conejo clay loam, a nearly level, deep, fine-textured alluvial soil found only at low elevations. Soil in the nearby Coombsville district of Napa Valley

immediately west of Wild Horse Valley consists of Coombs loam with areas of Kidd, Haire, Forward, and Sobrante soils. The soils found in other Napa County grape-growing areas to the north and east are primarily Yolo loam, Pleasanton loam, Diablo clay and Millsholm loam in the Cappel Valley. In Foss Valley they consist of Maxwell clay, Bale clay loam and Aiken loam. In Gordon Valley they are mostly Bale clay loam, Cole silt loam, Yolo loam and Bressa-Dibble complex. In the Wooden Valley they mostly are Bale clay loam, Sobrante loam, Cole silt loam, Hair clay loam, Diablo clay, Clear Lake clay, Bressa-Dibble complex. In Chiles Valley they are primarily Pleasanton loam, Perkins gravelly loam, Henneke gravelly loam, Tehema silt loam, Maxwell clay, and Bressa-Dibble complex. In Pope Valley the soils consist primarily of Pleasanton loam, Perkins gravelly loam, Henneke gravelly loam, Tehema silt loam, Maxwell clay and Bressa-Dibble complex.

Conclusion

The petitioner believes that the Wild Horse Valley is a unique and distinctive grape-growing area. Historically considered a "tributary" of the Napa Valley, it has again earned a reputation in modern times for producing quality winegrapes. However, this single geographical area has lost its historic identity, because it is split by the political boundary between two counties (Napa and Solano) into two separate viticultural areas. The petitioner believes Wild Horse Valley's establishment as an American viticultural area and subsequent use as an appellation on wine labels will enable this small area to preserve its heritage as an established grape-growing and wine producing region. Based on the petitioner's evidence provided in this notice, it is the petitioner's opinion that the proposed Wild Horse Valley viticultural area defines a region with unique climate and growing conditions different from the surrounding areas.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking because the proposal is not expected: (1) To have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact nor compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse affects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 34, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirements to collect information are proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. The document proposes possible boundaries for the viticultural area named "Wild Horse Valley." However, comments concerning other possible boundaries or names for this viticultural area will be given full consideration.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Viticultural areas, Consumer protection, Wine.

Authority and Issuance

27 CFR Part 9—*American viticultural areas*, is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.124 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.124 Wild Horse Valley.

Par. 3. Subpart C is amended by adding § 9.124 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.124 Wild Horse Valley.

(a) *Name.* The name of the viticultural area described in this section is "Wild Horse Valley."

(b) *Approved map.* The appropriate map for determining the boundaries of the "Wild Horse Valley" viticultural area is one U.S.G.S. Quadrangle (7.5 Minute Series) map. It is titled Mt. George, California (1951), photorevised 1968.

(c) *Boundaries.* The boundaries of the proposed Wild Horse Valley viticultural area (in Napa and Solano Counties) are as follows:

(1) The beginning point is on the section line boundary between section 33, Range 3 West, Township 6 North and section 4, Range 3 West, Township 5 North, Mount Diablo Range and Meridian, marked with an elevation of 1,731 feet, which is a northwest corner in the boundary between Napa and Solano Counties.

(2) From the beginning point, the boundary runs in a north-northeasterly direction approximately .9 mile to the

summit of an unnamed hill having a marked elevation of 1,804 feet.

(3) Then northeasterly approximately .7 mile to the summit of an unnamed hill having a marked elevation of 1,824 feet;

(4) Then south-southeasterly approximately .6 mile to the summit of an unnamed hill having a marked elevation of 1,866 feet;

(5) Then south-southeasterly approximately .5 mile to the summit of an unnamed hill having a marked elevation of 2,062 feet;

(6) Then southerly approximately .7 mile to the summit of an unnamed hill having a marked elevation of 2,137 feet;

(7) Then south-southeasterly approximately .4 mile to the summit of an unnamed hill having a marked elevation of 1,894 feet;

(8) Then southerly approximately 2.3 miles to the midpoint of the section line boundary between sections 15 and 22, Township 5 North, Range 3 West, Mount Diablo Range and Meridian;

(9) Then southwesterly approximately 1.3 miles to the summit of an unnamed hill having a marked elevation of 1,593 feet;

(10) Then west-northwesterly approximately 1.2 miles to the summit of an unnamed hill, on the Napa/Solano County boundary, having a marked elevation of 1,686 feet;

(11) Then north-northeasterly approximately 1.5 miles to the summit of an unnamed hill having a marked elevation of 1,351 feet;

(12) Then north-northeasterly approximately 1.2 miles to the summit of an unnamed hill having a marked elevation of 1,480 feet; and

(13) Then north-northwesterly approximately 1.0 mile to the point of beginning.

Approved: August 31, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87-21141 Filed 9-15-87; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[Notice No. 641]

Cayuga Lake Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in New York State, within the counties of Seneca, Tompkins, and Cayuga, to be known as "Cayuga Lake." This proposal is the result of a petition submitted by Douglas and Susanna Knapp (Knapp Farms, Inc.) and Robert Plane (Plane's Cayuga Vineyard, Inc.), whose wineries are located within the proposed area. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they purchase.

DATE: Written comments must be received on or before October 16, 1987.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, Attn: Notice No. 641.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as an appellation of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition proposing a viticultural area in New York State, surrounding and adjacent to Cayuga Lake, within the counties of Seneca, Tompkins, and Cayuga, to be known as "Cayuga Lake." The proposed area, located north of the city of Ithaca, between Seneca Lake and Owasco Lake, includes eight bonded wineries and 16 vineyards, with approximately 460 acres of grapes. Further, the proposed area is situated within the approved Finger Lakes viticultural area.

According to the petitioners, historical and current evidence regarding the name as well as the boundaries of the proposed area include the following:

(a) The body of water called Cayuga Lake received its name from the Cayuga Indians, who originally inhabited the region bordering the lake.

(b) The name figures prominently in identifying the area in the diaries of General Sullivan during his campaign to open land in upstate New York to settlers in the 1700's.

(c) Cayuga Lake is the name used by the first permanent settlers in Seneca County in 1789, and has remained the same to the present time.

(d) The large state park located in the northern section of the proposed viticultural area is named Cayuga Lake State Park.

(e) State Route 89, which runs the length of the proposed viticultural area, is also known as Cayuga Lake Boulevard.

Geographical features of the proposed Cayuga Lake viticultural area include the following:

(a) Bedrock of different kinds is the main source of soil material in New York State. Within the proposed Cayuga Lake viticultural area, the bedrock is predominantly shale. To the north of the proposed area, it is alternating limestone and slate formations, and to the south, it is interbedded sandstone and shale.

(b) The maximum elevation within the proposed area is no more than 800 feet above the surface of Cayuga Lake. The elevation of the areas to the east, west,

and south of the proposed area, however, is 1,000–2,000 feet.

(c) The Cayuga Lake basin is one of two major land formations in the Finger Lakes that resulted from glacial activity in the Pleistocene epoch. As consistently stated in O.D. von Engeln's *The Finger Lakes Region: Its Origin and Nature,* The Cayuga Lake basin is separated from the second major basin, Seneca Lake (west of Cayuga Lake), by both topography and soil type.

(d) The micro-climate of the proposed viticultural area is created by both Cayuga Lake and its adjacent hills. This is discussed in an article that appeared in the July 1986 issue of *Geographical Review,* entitled "Vines, Wines, and Regional Identity in the Finger Lakes Region." As mentioned in the article, due to the cold air drainage down the valley slopes in summer, and the release of heat stored in Cayuga Lake, the risk of an early frost is reduced. This results in an extended growing season on the slopes, from an average of 145 days for much of the Finger Lakes region, to between 165 and 170 days for the proposed viticultural area.

(e) The moderating effects of Cayuga Lake and its adjacent hills have resulted in the proposed viticultural area having an extended heat summation period, from 2,200–2,300 degree days for much of the Finger Lakes area, to 2,400–2,500 degree days for the proposed viticultrual area.

Boundaries of the Area

The boundaries of the proposed Cayuga Lake viticultural area may be found on one United States Geological Survey (U.S.G.S.) map (Elmira, New York; Pennsylvania). The boundaries, as referred to in the petition, are described in § 9.123.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking because the proposal is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities; nor (2) to impose, nor otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact nor compliance burden on a substantial number of small entities.

Executive Order 12291

It has been determined that this proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provision of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested persons concerning this proposed viticultural area. This document proposes possible boundaries for the Cayuga Lake viticultural area. However, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 30-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Viticultural areas, Consumer protection, and Wine.

Authority and Issuance

Accordingly, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.123 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.123 Cayuga Lake.

Par. 3. Subpart C of 27 CFR Part 9 is amended by adding § 9.123 to read as follows:

§ 9.123 Cayuga Lake.

(a) *Name.* The name of the viticultural area described in this section is "Cayuga Lake."

(b) *Approved map.* The appropriate map for determining the boundaries of the Cayuga Lake viticultural area is one U.S.G.S. map scaled 1:250,000, titled "Elmira, New York; Pennsylvania," 1962 (revised 1978).

(c) *Boundaries.* The proposed Cayuga Lake viticultural area is located within the counties of Seneca, Tompkins, and Cayuga, in the State of New York, within the Finger Lakes viticultural area. The exact boundaries of the proposed area, based on landmarks and points of reference on the approved map, are as follows:

(1) Commencing at the intersection of State Route 90 with State Route 5 in Cayuga County, north of Cayuga Lake.

(2) Then south along State Route 90 to a point approximately one mile past the intersection of State Route 90 with State Route 326.

(3) Then south along the primary, all-weather, hard surface road, approximately ¾ mile, until it becomes State Route 90 again at Union Springs.

(4) Then south/southeast along State Route 90 until it intersects the light-duty, all-weather, hard or improved surface

road, approximately 1.5 miles west of King Ferry.

(5) Then south along another light-duty, all-weather, hard or improved surface road, approximately 4 miles, until it intersects State Route 34B, just south of Lake Ridge.

(6) Then follow State Route 34B in a generally southeast direction until it intersects State Route 34, at South Lansing.

(7) Then south along State Route 34, until it meets State Route 13 in Ithaca.

(8) Then southwest along State Routes 34/13, approximately 1.5 miles, until it intersects with State Route 79, in Ithaca.

(9) Then west along State Route 79, approximately ½ mile, until it intersects State Route 96.

(10) Then along State Route 96, in a generally northwest direction, until it intersects State Routes 414 and 96A in Ovid.

(11) Then north along State Routes 96/414, until they divide, approximately 2.5 miles north of Ovid.

(12) Then along State Route 414, in a generally northeast direction, until it meets U.S. Route 20 in the town of Seneca Falls.

(13) Then along U.S. Route 20, in a northeast direction, until it intersects State Routes 318, 89, and 5.

(14) Then along U.S. Route 20/State Route 5, in a northeast direction, to the beginning point, at the intersection with State Route 90.

Approved: September 8, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87-21277 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Abandoned Mine Land Reclamation Program Amendment; Alabama

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: On June 15, 1987, the State of Alabama to OSMRE a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Alabama Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment pertains to minor adjustments in the Alabama policies and procedures regarding land acquisition, management, and disposal; reclamation on private land (liens and appraisals); and right-of-entry.

This notice sets forth the times and locations that the Alabama Plan and proposed changes will be available for public inspection, the comment period during which interested persons may submit written comments, and the procedure that will be followed regarding a public hearing.

DATES: OSMRE will accept written comments on the proposed rule until 4:00 p.m. on October 16, 1987. If requested, a public hearing on the proposed amendment is scheduled for 7:00 p.m. on October 13, 1987. Requests to present oral or written testimony at the hearing must be received before the close of business on October 1, 1987.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed to: Robert A. Penn, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, Birmingham, Alabama 35209.

Copies of the Alabama Plan, the proposed changes to the plan, and the administrative record of the Alabama Plan are available for public review and copying at the OSMRE Offices and the State Abandoned Mine Lands Office listed below, during normal business hours Monday through Friday excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Birmingham Field Office.

Alabama Department of Industrial Relations, Abandoned Mine Lands Program, 649 Monroe Street, Montgomery, Alabama 36130; Telephone: (205) 731-0953

OSMRE's field office processing the amendment: Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 228 West Valley Avenue, Room 302, Birmingham, Alabama 35209; Telephone (205) 731-0953 Office of Surface Mining Reclamation and Enforcement, Administrative Records Office, 1100 L Street NW., Room 5131, Washington, DC 20240.

If a public hearing is held, its location will be at the Birmingham Field Office listed above, on the date listed under "**DATES.**"

FOR FURTHER INFORMATION CONTACT: Jean W. O'Dell, Acting AML Supervisor, Birmingham Field Office, (205) 731-0953.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

Title IV of the SMCRA of 1977, Pub. L. 95-87, 30 U.S.C. 1202 *et seq.*, establishes an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and waters eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1987, and for which there is no continuing reclamation responsibility under State or Federal law. Title IV provides that a State with an approved AMLR program has the responsibility and primary authority to implement the program.

The Secretary of the Interior approved the Alabama Plan on May 20, 1982. Information pertinent to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings and the disposition of comments can be found in the May 20, 1982 **Federal Register** (47 FR 22062).

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.13 in approving or disapproving an amendment or revision.

II. Discussion of the Proposed Amendment

By letter dated June 15, 1987, Alabama submitted a reclamation plan amendment to OSMRE (Administrative Record No. AL-423). The proposed amendment consists of revised narratives to replace three sections of the approved Alabama Plan as provided for by 30 CFR 884.13. Minor editorial changes were made in the three sections to bring the Alabama Plan into line with OSMRE organizational changes. Specifically, the following areas of the plan are being revised.

1. *Land Acquisition, Management, and Disposal (30 CFR Part 879):* Alabama has submitted revised procedures and forms for conducting appraisals on lands to be acquired by the State under the AMLR Program. Other revised areas include tax encumbrances and final processing during release of mortgages, deeds, and judgments.

2. *Reclamation on private lands (30 CFR Part 882):* Alabama has submitted revised procedures and forms for

conducting appraisals on eligible abandoned mine lands (AML) and for considering lien potential, satisfaction, and release for properties being reclaimed under the AMLR program.

3. *Rights of entry (30 CFR Part 877).* Alabama is is proposing to make minor changes to the procedures and forms utilized to obtain voluntary and nonconsensual rights of entry on AML lands.

OSMRE is seeking comments on the adquacy of the proposed Alabama amendment as set forth in 30 CFR 884.15. If approved, the amendment would become part of the Alabama Plan.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by the State of Alabama satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Alabama Plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact Robert A. Penn at the Birmingham Field Office listed under **"ADDRESSES"** by the close of business on October 1, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representative to discuss the proposed amendment may request a meeting at the Brimingham Field Office by contacting Robert A. Penn at the address listed under **"ADDRESSES."** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* Approval of State AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 2, p. B–1.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On October 4, 1985, the Office of Management and Budget (OMB) granted OSMRE an exemption from section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State reclamation plans or amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior had determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No burden would be imposed upon entities operating in compliance with the Act.

3. *Federal Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 901

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Ronald C. Recker,

Acting Assistant Director Eastern Field Operations.

Date: September 1, 1987.

[FR Doc. 87–21293 Filed 9–15–87; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 916

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on the substantive adequacy of amendments submitted by the State of Kansas to amend its permanent regulatory program (hereinafter referred to as the Kansas Program) under the Surface Mining Control and Relamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Kansas regulatory program concerning the applicability of SMCRA to the extraction of coal incidental to the extraction of other minerals and the establishment of a schedule for contemporaneous reclamation.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment, and information pertinent to the public hearing.

DATES: Comments not received on or before 4:00 p.m. October 16, 1987, will not necessarily be considered. If requested, a public hearing on the proposed modifications will be held on October 13, 1987, beginning at 10:00 a.m. at the location shown below under **"ADDRESSES"**

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106.

If a public hearing is held, its location will be at: The Holiday Inn, 422 Monroe, Pittsburg, Kansas 65701.

See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the Kansas program amendment and administrative record on the Kansas program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSMRE Kansas City Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas

City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the Kansas program amendment, the Kansas program, and the administrative record on the Kansas program are available for public review and copying at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5131, Washington, DC 20240; Telephone (202) 343–5447.

Kansas Mined Land Conservation and Reclamation Board, 107 W. 11th Street, P.O. Box 1418, Pittsburgh, Kansas 66762; Telephone: (316) 231–8540.

Written Comments

Written comments should be specific, pertain only to those issues proposed in this rulemaking, and include explanations in support of the comment recommedations. Comments received after the time indicated under "DATES" or at locations other than Kansas City, Missouri, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business October 1, 1987. If no one requests to comment at at public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of a hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will also allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in "**ADDRESSES**" by contracting the person listed under "**FOR FURTHER INFORMATION CONTACT**".

All such meetings are open to the public, and if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

Background

On February 26, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Kansas. On January 21, 1981, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary conditionally approved the Kansas program (46 FR 5892).

Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, and the disposition of comments, and explanations of the condition of approval of the Kansas program can be found in the January 21, 1981, **Federal Register**. Subsequent actions concerning the Kansas program are identified in 30 CFR 916.15 and 916.16.

Proposed Amendment

On August 5, 1987, the State of Kansas submitted to OSMRE an amendment to its approved permanent regulatory program. The amendment consists of proposed modifications to Kansas' regulations concerning the applicability of SMCRA to the extraction of coal incidental to the extraction of other minerals and the establishment of a schedule for contemporaneous reclamation.

The proposed changes are summarized briefly below.

Incidental Extraction of Coal

1. Kansas proposes to revise its statute at Kansas Statutes Annotated (K.S.A.) 49–431 to include the activity of incidential extraction of coal as not being applicable to the Kansas Mined-Land Conservation and Reclamation Act. Specifically it defines this activity as "the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purpose of commercial use or sale".

Schedule of Contemporaneous Reclamation

2. Kansas proposes to amend its regulations at Kansas Administrative Regulations (K.A.R.) 47–9–1, incorporating by reference 30 CFR 816.100 to include the language "The regulatory authority may establish schedules that define contemporaneous reclamation". This language parallels the Federal regulations and had been inadvertently omitted from a previous regulatory revision.

3. Kansas proposes to amend its regulations at K.A.R. 47–9–1, incorporating by reference 30 CFR 816.102 to include a definition of backfilling and grading. This action places into the regulations the definitions that had been the formal policy of the Kansas Mined-Land Conservation and Reclamation Board (MLCRB). The definition reads "Absent a regulatory authority approved schedule, backfilling and grading will be completed within 180 days following coal removal and shall not be more than four (4) spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge".

4. Kansas proposes to amend its regulations at K.A.R. 47–9–1, incorporating by reference, 30 CFR 816.22 to include a definition of topsoil redistribution. This action places into the regulations the definition that had been the formal policy of the MLCRB. The definition reads "Absent a regulatory authority approved schedule for soil material distribution, topsoil materials removed under paragraph (1) of this section shall be redistributed within 120 days following rough backfilling and grading in a manner that—".

Additional Determinations

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 28, 1987.

Raymond L. Lowrie,

Assistant Director, Western Field Operations, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87-21291 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 917

Public Comment Period and Opportunity for Public Hearing on Proposed Amendment to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE has received a proposed amendment and is announcing procedures for a public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by the Commonwealth of Kentucky as a modification to the Kentucky permanent program [hereinafter referred to as the Kentucky program] under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment submitted consists of new and revised regulations designed to implement Kentucky Revised Statute (KRS) 350.075, the remining statutes enacted by the 1986 Kentucky General Assembly as Senate Bill No. 374.

This notice sets forth the times and location that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment, and the procedures that will be followed regarding the public hearing.

DATES: Written comments relating to Kentucky's proposed amendment not received on or before 4:00 p.m. on October 16, 1987, will not necessarily be considered in the decision process. A public hearing on the adequacy of the amendment will be held upon request at 10:00 a.m. on October 13, 1987, at the location shown below under "**ADDRESSES.**" Any person interested in making an oral or written presentation at the public hearing should contact Mr. W. Hord Tipton at the Lexington Field Office by the close of business October 1, 1987.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand-delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Copies of the proposed amendment, the Kentucky program, the Administrative Record of the Kentucky program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for review at the OSMRE Lexington Field Office and the office of the Department for Surface Mining Reclamation and Enforcement listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street, NW., Washington, DC 20240, Telephone: (202) 343-5492

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2828

Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSMRE. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982, **Federal Register** (47 FR 21404-21435).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed program submission, as well as he Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982, **Federal Register** notice. Subsequent action concerning the conditions of approval and program amendments are identified in 30 CFR 917.11, 917.15, 917.16 and 917.17.

II. Submission of Amendment

On August 4, 1987, (Administrative Record No. KY-751), Kentucky resubmitted to OSMRE, pursuant to 30 CFR 732.17, certain revisions to the Kentucky regulatory program. The revisions are intended to implement Kentucky Senate Bill No. 374 that was approved by the Director, OSMRE, on July 13, 1986 (51 FR 26002). The proposed rules are intended to address the requirement at 30 CFR 917.16 (c)(2) which states tht Kentucky is required, prior to implementation of Senate Bill No. 374, to submit to the Director proposed regulations to implement the bill and to receive the Director's approval of the regulations. On July 29, 1986, Kentucky submitted regulations to implement Senate Bill No. 374 (Administrative Record No. 717) and on November 26, 1986, OSMRE announced that the regulations to implement Senate Bill No. 374 were withdrawn by Kentucky (51 FR 42267).

The revisions modify sections of the Kentucky Administrative Regulations (KAR) at 405 KAR 8:060, 405 Kar 20:090, 405 KAR 8:010, 405 KAR 12:020, and 405 KAR 16:020, and are summarized briefly below.

1. Kentucky proposes to add a new regulation 405 KAR 8:060, to set forth permit application requirements for special reclamation of abandoned mine lands. The rule would include sections for applicability (all applications for permits to conduct special reclamation of abandoned mine lands); definitions;

general provisions; legal financial and compliance information; environmental resources information; maps, drawings and cross-sections; mining and reclamation plan; and performance bond. A special reclamation of abandoned mine lands permit is for remining of previously mined lands and secondary coal recovery operations.

2. Kentucky proposes to add a new regulation, 405 KAR 20:090, to establish performance standards to apply to a special reclamation of abandoned mine lands permit. The applicability section of the rule proposes that requirements of 405 KAR Chapters 16, 18 and 20 (the approved program performance standards for surface mines, underground mines and special categories) would not apply to such lands except as specifically stated in the rule. The rule would establish separate hydrologic protection requirements, requirements for backfilling and grading, and revegetation standards for a special reclamation of abandoned mine lands permit.

3. Kentucky proposes to modify 405 KAR 8:010, section 4, to: (1) require an inspector from the Division of Abandoned Lands and an inspector from the Division of Field Services to make a written determination that the proposed site meets special remining permit conditions, and, (2) assure that preliminary applications will contain sufficient information to qualify the lands. Kentucky modified 405 KAR 8:010, section 5(1)(c) to include reference to 405 KAR 8:060 special reclamation of abandoned mine lands permit.

4. Kentucky proposes to add 405 KAR 12:020, section 3(4)(d), to require enforcement of order for cessation and immediate compliance on a special reclamation of abandoned mine lands permit to effect only that permit.

5. Kentucky proposes to modify 405 KAR 16:020, section 2(7) to permit the Cabinet to waive the time criteria for backfilling and grading of secondary coal recovery operations.

The Director is seeking public comment on the adequacy of the proposed program amendment. Comments should specifically address the issues of whether the proposed amendment is in accordance with SMCRA and no less effective than its implementing regulations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by Kentucky satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the admendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Lexington Field Office, Lexington, Kentucky, will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business on October 1, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE, Lexington Field Office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public, and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary had determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE in exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* The rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Carl C. Close,

Assistant Director, Eastern Field Operations.

Date: August 28, 1987.

[FR Doc. 87-21292 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD8-87-09]

Inland Waterways Navigation Regulations—Lower Mississippi River Between Miles 310.0 AHP and Mile 340.0 AHP

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The Coast Guard is considering amending its regulations, Title 33 Part 162.80(a) by extending the lower limit of the regulated area from mile 314.5, AHP to mile 310.0, AHP. The Old River Control Structure and the New Auxiliary Old River Control Structure control the distribution of water between the Mississippi River, Red River, and the Atchafalaya River.

Recent completion of the New Auxiliary Control Structure necessitates extending the area where vessel mooring is prohibited. The extension of the lower limit will assist in protecting the structures, thus preventing interruption of flow control with serious downstream ramifications for flood control, navigation and municipal/industrial water supplies.

DATE: Comments must be received on or before November 2, 1987.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Captain of the Port, 4640 Urquhart Street, New Orleans, LA 70117–4698. The comments and other materials referenced in this notice will be available for inspection and copying at Captain of the Port Office, Room A–305. Normal office hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG Patrick J. Galvin, Waterway Safety Officer, C/O U.S. Coast Guard Captain of the Port, 4640 Urquhart Street, New Orleans, LA 70117–4698, Telephone: (504) 589–7127.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice CGD8–87–09, the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before the final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Patrick J. Galvin, Project Officer for the Captain of the Port, and LCDR James J. Vallone, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The Old River Control Structure located at Mile 314.5 RDB, AHP, LMR, completed in October 1983 was built to control the distribution of water between the Mississippi River and the Atchafalaya River. The New Auxiliary Old River Control Structure located at Mile 311.2 RDB, AHP, LMR, completed March 1987, was built to reduce the flow through the Old River Structure thereby reducing the undermining of the Old River Control Structure. Completion of the New Auxiliary Control Structure necessitates extending the area where vessel mooring is prohibited. The regulation will assist in protecting the structures, thus preventing interruption of flow control with serious downstream ramifications for flood control, navigation and municipal/industrial water supplies.

Economic Assessment and Certification:

These proposed regulations are considered to be non major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The only affect of the proposed regulation is to restrict vessels from mooring in an area upriver from The Old River Control Structure and the New Old River Auxiliary Control Structure. This will not impede normal navigation.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 162

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 162 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 162 continues to read as follows:

Authority: 33 USC 1225 and 1231; 50 USC 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 162.80(a) is revised to read as follows:

§ 162.80 Mississippi River below mouth of Ohio River, including South and Southwest Passes.

(a) *Mooring on Mississippi River between miles 310.0 AHP and 340.0 AHP.* (1) No vessel or craft shall moor along either bank of the Mississippi River between mile 310.0 AHP and Mile 340.0 AHP except in case of an emergency, pursuant to an approved navigation permit, or as authorized by the District Commander. Vessels may be moored any place outside the navigation channel in this reach in case of an emergency and then for only the minimum time required to terminate the emergency. When so moored, all vessels shall be securely tied with bow and stern lines of sufficient strength and fastenings to withstand currents, winds, wave action, suction from passing vessels or any other forces which might cause the vessels to break their moorings. When vessels are so moored, a guard shall be on board at all times to insure that proper signals are displayed and that the vessels are securely and adequately moored.

(2) Vessels may be moored any time at facilities constructed in accordance with an approved navigation permit or as authorized by the District Commander. When so moored, each vessel shall have sufficient fastenings to prevent the vessels from breaking loose by wind, current, wave action, suction from passing vessels or any other forces which might cause the vessels to break their mooring. Number of vessels in one fleet and the width of the fleet of vessels tied abreast shall not extend into the fairway or be greater than allowed under the permit.

(3) Mariners should report immediately by radio or fastest available means to the lockmaster at Old River Lock or to any Government patrol or survey boat in the vicinity any emergency mooring or vessels drifting uncontrolled within the area described in paragraph (a)(1) of this section. It is the responsibility and duty of the master of a towing vessel releasing or mooring a vessel in this reach of the Mississippi River to report such action immediately.

* * * * * *

Dated: July 28, 1987.

J.P. Wysocki,

Commander, U.S. Coast Guard, Alternate Captain of the Port, New Orleans, LA.

[FR Doc. 87–21100 Filed 9–15–87; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 241

Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: This document presents a proposed rule partially implementing section 103(m) of Pub. L. 99–662, which directs the Secretary of the Army to reduce the non-Federal cost-share of flood control and agricultural water supply projects under an "ability to pay" determination. This proposed rule applies only to flood control projects. Agricultural water supply projects will be covered by other guidelines which will be published in the future.

The ability to pay calculation is a two step procedure. In step one, an alternative level of cost-sharing is determined by comparing project flood control benefits to project flood control costs. It is assumed that even the poorest communities and states should have the ability to afford a cost-share equal to one fourth of the benefit/cost ratio, when expressed as a percentage. If this calculation yields an alternative non-Federal cost-share that exceeds the normal share (as defined in section 103), the Non-Federal interest will be required to provide the normal share.

If the benefits-based share alternative is less than the normal share, the project sponsor may be eligible to contribute the amount required by the lower share, or to provide a share that is between the two values. Eligibility will be determined by a formula that uses per capita personal income of the state(s) and county(ies) in which the project is located. If the state and county per capita income values are low enough, the project will be eligible for the full reduction. Intermediate values of state and county per capita income yield a partial reduction from the normal cost-share to the benefits-based alternative. High values of state and county income result in no reduction from the normal share.

The proposed rule also covers other subjects which are relevant to the ability to pay test. These details are discussed in the supplementary information that follows.

DATE: Before adopting the proposed rule as a final rule, the Corps of Engineers will give consideration to any written comments timely submitted. Written comments must be received by December 15, 1987.

ADDRESS: Send comments to HQUSACE, Director of Civil Works, ATTN: CECW–RP, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Dr. Robert N. Stearns, (202) 272–0120.

SUPPLEMENTARY INFORMATION:

Background

The language of section 103(m) is broad: "Any cost-sharing agreement under this section for flood control or agricultural water supply shall be subject to the ability of a non-Federal interest to pay. The ability of any non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary." There is no definite Congressional direction on how the Secretary is to proceed.

The Report of the Senate Committee on Environment and Public Works (Senate Report 99–126, Aug. 1, 1985) briefly discusses section 103(m). The first reference (p. 6) gives examples of the kinds of factors which should be included in the ability to pay criteria; income in relation to need, unemployment, and the sponsor's ability to borrow funds. The second reference (p. 69) stresses that beneficial projects should not be rejected simply because non-Federal interests lack the necessary resources, but points out that since the normal cost-sharing provisions under section 103 should not prove burdensome, ability to pay determinations reducing the non-Federal share are quite unlikely.

The debate over section 103(m) provides some insight as to Congressional intent. Senator Moynihan, on March 4, 1986 stated that floods could hit and devastate communities "which are small and could not possibly themselves take care of the cost sharing that is provided under the basic schedule." (pp. S2838–S2839) Senator Pryor on March 26, 1986, expressed his concern that "in the rural areas, there are fewer benefited parties to make up the local sponsor group, and the amount they would have to tax themselves to pay 25 to 35 percent of construction costs are onerous." (p. S3401) The debate also shows that there is no clear consensus on precisley how the section is to operate. Congressman Roe, in describing the conference agreement on Oct. 17, 1986, expressed his view that the Secretary should be encouraged "to use this descretionary authority to continue to provide new flood control protection at reduced or no non-Federal cost-sharing in areas where need exists but ability to pay does not." (p. H11546) On the other hand Senator Stafford, Chairman of the Senate Committee on Environment and Public Works argued that, "It is anticipated that the Secretary will only rarely invoke this authority. And this provision can never be used to eliminate the non-Federal share." (p. S16983) Senator Stafford also argued, "This bill now says local communities, must, in general pay 25 cents to get at least $1 in benefits, sometimes much more than $1 in benefits. Even the poorest communities should be able to find a quarter to invest in order to get $1 or more in return." (p. S16983)

The Role of the Local Sponsor

In developing the ability to pay guidelines, we have had to address the issue that different states have different policies with respect to the degree of state involvement in sponsoring flood control projects and providing financial support. We believe that the guidelines should be "policy neutral" in relation to the selection of the local sponsor. Thus, states where sponsors are agencies of state governments will not be treated differently than states where sponsors may be much smaller governmental units such as cities or towns.

While our goal is to be policy neutral with respect to the selection of the local sponsor, we will not be neutral with respect to the possibility of state assistance when local sponsors have limited financial capability. We believe that states have a responsibility in cases where a local sponsor seems incapable of providing the non-Federal share. This has led to two conclusions which have been incorporated into our proposed guidelines.

Our first conclusion is that state resources as well as project area resources should be a factor in determining any adjustments to the normal cost-share. This will be evident in the formulas described below.

Our second conclusion is that project size should not be a separate consideration. Larger projects must generate larger benefits, and therefore, affect a larger segment of the population, if they have met the economic feasibility test for Federal funding. More importantly, when compared to state budgets, every project becomes a small percentage of total capital expenditures.

The Use of Project Benefits in Developing a Cost-Share Alternative

Local sponsors and their states have two sources of economic resources that can be used to pay for the non-Federal share of the project. First, existing resources as reflected in traditional measures of income and/or wealth, may be sufficient. Second, the project itself will generate benefits. Many of the benefits to flood control projects are either due to flood damage reduction or to income enchancement to households and businesses located in the project area. These benefits represent an important source of income and wealth that will be available for project funding no matter how poor the project area is before implementation.

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We believe that project benefits should determine the alternative level of cost-sharing under the ability to pay test. This alternative level establishes a benefits based floor (BBF) below which the non-Federal cost-share will not be reduced. Therefore, when projects are fully eligible, the reduction in the non-Federal share would be such as to set the share equal to one fourth of the project's benefit/cost ratio, when this ratio is expressed as a percentage. For example, if a project has a benefit/cost ratio of 1.2, share reductions cannot bring the share below one fourth of this, or 30 percent of project first costs. In this example, if the "normal" level of cost-sharing, i.e. the amount required by section 103(a) or 103(b), is less than 30 percent, there will be no reduction under the ability to pay provision.

The selection of the factor of one fourth, or 25 percent, is based on the minimum level of non-Federal cost-sharing for flood control projects specified in sections 103(a) and 103(b). The position is equivalent to that expressed by Senator Stafford "[e]ven the poorest communities should be able to find a quarter to invest in order to get $1 or more in return." (see Background section above). It is expected that the reductions in cost-sharing will occur most often when normal non-Federal costs are closer to the 50 percent maximum than to the 25 percent minimum. Congress may occasionally authorize projects which have a benefit cost ratio below one. The determination of alternative levels of cost-sharing under the ability to pay test should apply in these cases, despite the low ratio. These projects will not generate the same level of economic resources (compared to project costs) as economically justified projects, and project beneficiaries will not have the same ability to pay from this source. Under no circumstances, however, do we believe that the non-Federal share should be less than the five percent minimum payment of section 103(a)(1)(A), Pub. L. 99–662.

Operations and maintenance (O&M) expenses of flood control projects have traditionally been the responsibility of a non-Federal interest. We do not propose to change this; any reductions in non-Federal shares under the ability to pay provision will apply to first costs only. For administrative simplicity, we have proposed to use one fourth of the benefit cost ratio as an alternative share, even though the costs in this calculation include O&M costs. This ratio will be calculated based on the discount rate which the Corps is using to evaluate projects at the time the local cooperation agreement (LCA) is signed. For LCA's signed in 1987 for example, an 8.875 percent discount rate would be used.

The Use of Per Capita Personal Income To Determine Project Eligibility

Project eligibility for reductions in the non-Federal share will be determined by the per capita personal income of the project area (using county income as the surrogate for project area income) and the state in which the project is located. Although alternative concepts of a "fiscal capacity" or "ability to pay" index have been developed and promoted, many government programs continue to use per capita income (including Medicaid and Aid to Families with Dependent Children). The data are readily available from the Bureau of Economic Analysis on a yearly basis.

Per capita income reflects two of the three factors set out in the aforementioned report of the Senate Committee on Environment and Public Works: (1) Income in relation to need; and (2) unemployment. "Income in relation to need" is a phrase which suggests consideration not only of income, but of the relative cost of living in a particular geographic area. Unfortunately, information on regional cost of living differentials is not available from the Federal government. Data from private sources, including the *Rand McNally Places Rated Guide, 1985* are useful indicators of price differentials among urban areas, but fail to document the cost of living for rural areas within the United States, making it impossible to calculate state and county price indices accurately from these sources. Moreover, the cost of living measures reported by these sources place a heavy emphasis on the current market value of housing, a factor that may not be relevant for people who have lived in an area for a long time. This leaves us with no comprehensive information to use as a basis for precisely adjusting income figures to account for differences in the cost of living. On the other hand such a precise calculation may not be necessary. When current housing value is given a smaller weight and urban price indices are combined for all regions in a single state, the cost of living differentials set out in the private sources decrease dramatically. Per capita income thus already takes into account, to a great degree, "income in relation to need". This fact, in addition to the unavailability of comprehensive cost of living data reaffirms the choice of per capita income as our basic statistical measure.

We should note two exceptions: Alaska and Hawaii. Even when current housing value is given less weight in calculations for these two states, their relative costs of living are far higher than the rest of the country. This finding is consistent with that of the Office of Personal Management, which conducts surveys to determine the salary levels of Federal employees in Alaska and Hawaii which would compensate the employees for the higher prices they must pay. Cost of living adjustments will therefore be made for Alaska and Hawaii, based on the Federal Government's salary differentials in those two states for Federal employees living in non-Federal housing without Federal Commissary provisions. Pay differentials may be different for various regions in Alaska and Hawaii. For administrative simplicity, the differentials for the two most populated regions will be used: Anchorage AK (a 25 percent pay differential in 1986), and Oahu HI (a 22.5 percent differential in 1986). Information on the salary differentials for the period 1982–86 is available in FPM Bulletins 591–30, 591–32, and 591–33.

Unemployment, the second factor mentioned in the Committee report, tends to be lower in areas where per capita personal income is higher. For example, using state information for 1985, the correlation coefficient between these variables was .47, a value which is significantly different from zero statistically. Moreover, since ability to pay is more a function of the *level* of income than the *distribution* of income, PCI is preferred over a measure of unemployment.

The third factor set out in the Committee Report is the sponsor's borrowing capability. We have carefully considered how best to incorporate this factor in our calculations. We conclude that such an incorporation is inappropriate. Borrowing capability as measured for example by an entity's credit rating, will reflect a number of factors including but not limited to the underlying economic resource base. Local governments may have committed themselves to providing public services which are either discretionary or are provided by the private sector in other locations. In some cases, a community may be unable to raise additional capital because its citizens are simply unwilling to vote for the tax increases that might be required. We conclude therefore, that the borrowing capability of the local sponsor should not be a factor in the ability to pay determination.

The interim final rule will use a three year average of PCI. Although this will create lags in recognizing when an area has had a deterioration or improvement in its economic circumstances, it also reduces the likelihood that findings will be based on temporary circumstances. Other Federal programs are based on a three year average.

All U.S. Territories will be eligible for the full amount of cost-share reduction. Unpublished data from the Bureau of Economic Analysis indicates that in 1985, per capital personal income in the territories ranged from 66 percent of the U.S. average (GUAM) to 25 percent of the U.S. average (American Samoa).

The Eligibility Formula

The eligibility factor (EF) will be determined by:

$$EF = a - b_1 \times (\text{State PCI Index}) - b_2 \times (\text{County PCI Index})$$

where a, b_1, and b_2 are positive constants. The county and state PCI indices are a measure of the local PCI relative to the national average. If per capita income in a state equals the national average, the state's index number would be 100. If a project includes beneficiaries in more than one county, the county PCI index will be a combined PCI index, where each county PCI index is weighted by the share of project benefits which can be located geographically. If EF is less than zero, the project is not eligible for cost-share reductions under the ability to pay test. If EF is greater than or equal to one, the project is eligible for full application of the benefits based cost-share alternative described above. For EF less than one but greater than zero, the value represents the degree of application for which the project is eligible. For example if the normal cost-share is 50 percent and the minimum cost-share under the ability to pay formula is 30 percent and EF = .6, the project will receive 60 percent of the difference between 50 percent and 30 percent. The cost-share in this example would be 38 percent (50 − .60(50–30) = 38).

The formula reflects our view that state participation in the cost-sharing of flood control projects should be encouraged. The choice of county data to represent a project area's per capita income is based on considerations of practicality and policy. County data is available from the Bureau of Economic Analysis, Department of Commerce, on a year basis. If smaller governmental units were used, there would be an increased likelihood of inaccurate statistics. Equally important, by defining in advance the governmental region to represent the project area, the non-Federal interests are free to identify the local sponsor without regard to the effect this might have on the ability to pay determination.

In selecting the parameters a, b_1, and b_2 we have had two objectives. First, in order to encourage state participation where necessary, we have given equal weights to state and county PCI, that is b_1 and b_2 have been set equal to each other (they are kept separate in the formula, so that the weights may be changed, if appropriate, after comments are considered). Second, we have been guided by our sense of the intent of Congress that the ability to pay provision should only apply in exceptional circumstances. The formula has therefore been constructed so that two-thirds of the counties would not be eligible; 20 percent of the counties would be eligible for the full application; and the remaining 13⅓ percent would be eligible for a partial application.

Available county PCI data lag behind available state PCI data. Currently, county information is available through 1984, state information through 1986. The interim guidelines require the use of the three latest years even if these years are different for counties and states. We believe that this represents the most up to date economic profile of a project area which can be applied uniformly to all projects.

Other Factors

We have retained the five percent minimum cash requirement of section 103(a)(1)(A) even for projects where the ability to pay test leads to a reduction in the non-Federal cost-share. This requirement is intended to demonstrate that the non-Federal interest has a serious commitment to the project. Congress did not want to cash requirement changed when the normal cost-share level was at the maximum of 50 percent (see section 103(a)(3)) nor did it want the requirement waived when the non-Federal interest chooses to make a deferred payment (see section 103(a)(4)). By keeping the 5 percent cash requirement under the ability to pay provision, it may be necessary to negotiate cash repayments to the local sponsor at the end of the project, or to make Federal payments for Lands, Easements, Rights of Way, Relocations, and Dredge Material Disposal Areas (LERRD) that are normally the responsibility of the non-Federal interest.

The interim final rule also contains a provision allowing the non-Federal interest to waive application of the ability to pay test. This might be most advantageous when project benefits have not been fully enumerated before authorization or when additional research is necessary to separate flood control benefits and costs from total costs of a multi-purpose project. In these cases, local sponsors may want to accept the normal cost-share so that implementation of the project will not be delayed.

E.O. 12291 and Regulatory Flexibility Act

This rule is not a major rule within the meaning of Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Pursuant to 5 U.S.C. 605(b) I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities because it imposes few, if any, administrative burdens of any sort on small entities.

Furthermore, the number of entities affected by this rule is small and the relief granted in individual cases, though significant to the parties involved, is not significant within the meaning of the Regulatory Flexibility Act.

List of Subjects in 33 CFR Part 241

Community facilities, Flood control, Intergovernmental relations, Water resources.

Dated: September 1, 1987.

Peter J. Cahill,

Colonel, GS, Executive, OASA (CW).

The Corps of Engineers proposes to establish a new Part 241 in Title 33, Chapter II as follows:

PART 241—FLOOD CONTROL COST-SHARING REQUIREMENTS UNDER THE ABILITY TO PAY PROVISION—SECTION 103(m) OF PUB. L. 99-662 [ER 1165-2-121)

Sec.

241.1 Purpose
241.2 Applicability
241.3 References
241.4 General Policy
241.5 Procedures for Estimating the Alternative Cost-share
241.6 Application of Test

Appendix A–State Per Capita Personal Income Index Numbers

Appendix B–County Per Capita Personal Income Index Numbers

Authority: Sec. 103(m), Water Resources Development Act of 1986 Pub. L. 99–662, 100 Stat. 4082, 33 U.S.C. 2201 et seq.

§ 241.1 Purpose.

This regulation gives general instructions on the implementation of section 103(m) of Pub. L. 99–662 as it applies to flood control projects.

§ 241.2 Applicability.

This regulation applies to all HQUSACE elements and field operating agencies of the Corps of Engineers having Civil Works responsibilties.

§ 241.3 References.

(a) Section 103, Water Resources Development Act, 1986, Pub. L. 99–662, 100 Stat. 4082, 33 U.S.C. 2201 et seq.

(b) U.S. Water Resources Council, *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies*, March 10, 1983.

(c) Office of Personnel Management, *FPM Bulletin* 591–30.

(d) Office of Personnel Management, *FPM Bulletin* 591–32.

(e) Office of Personnel Management, *FPM Bulletin* 591–33.

(f) U.S. Dept. of Commerce, Bureau of Economic Analysis, *Local Area Personal Income, 1979–84*, Volumes 1–9.

§ 241.4 General policy.

(a) Procedures described herein will be used to establish an "ability to pay" test which will be applied to all flood control projects. As a result of the application of the test, some projects will be cost-shared by the Non-Federal interest at a lower level than the non-Federal share would be normally under the provisions of section 103 of Pub. L. 99–662.

(b) The ability to pay test shall be conducted independently of any analysis of a project sponsor's ability to finance its ultimate share of proposed project costs. The test shall not be used to affect project scope, or to change budgetary priorities among projects competing for scarce Federal funds.

(c) Since the normal non-Federal cost-share is substantially less than full costs in every case, the ability to pay test should be structured so that reductions in the level of cost-sharing will be granted in only a limited number of cases of severe economic hardship.

(d) Any reductions in the level of non-Federal cost-sharing as a result of the application of this test will be applied to construction costs only. The non-Federal interests will continue to be responsible for the cost of operations, maintenance and rehabilitation.

(e) Section 103(m) requires that all cost-sharing agreements for flood control be subject to the ability to pay test. This includes any projects specifically authorized by Congress as well as the "continuing authority" projects constructed under section 14 of the 1946 Flood Control Act (33 U.S.C. 701r) and section 205 of the 1948 Flood Control Act (33 U.S.C. 701s).

(f) The test should be based not only on the economic circumstances within a project area, but also on the conditions of the state(s) in which the project is located. Although states' policies with respect to supporting local interests on flood control projects are not uniform, the state represents a potential source of financial assistance which should be considered in the analysis.

(g) The alternative level of cost-sharing determined under the ability to pay principle should be govered in part by project benefits. If, as a result of the project, local beneficiaries receive more income, or are required to use fewer resources on flood damage repair or replacement, or on flood insurance, a portion of these resources should be available to pay for the non-Federal share, even in those cases where an analysis of current economic conditions indicates that there are relatively limited resources in the project area and its state.

(h) The Non-Federal interest may, at its discretion, waive the application of the ability to pay test. In this case, the Non-Federal interest shall be considered to have the ability to pay the normal cost-share and no further research will be required.

§ 241.5 Procedures for estimating the alternative cost-share.

(a) *Step one.* Determine the maximum reduction in the level of non-Federal cost-sharing for qualifying projects.

(1) Calculate the ratio of flood control benefits (developed using the Water Resources Council's *Principles and Guidelines*-ref. b) to flood control costs for the authorized project based on the discount rate which the Corps is currently using to evaluate projects. Costs include operations and maintenance as well as first costs. Divide the result by four.

(2) If the ratio determined in § 241.5(a)(1), when expressed as a percentage, is less than the level of cost-sharing that would normally be required by section 103(a) or 103(b), Pub. L. 99–662, projects may be eligible for a reduction in the non-Federal share to this "benefits based floor" (BBF), or for a partial reduction to a share between the normal level and the BBF. In no case however, will the non-Federal cost-share be less than five percent.

(3) If the ratio detemined in § 241.5(a)(1), when expressed as a percentage, is greater than the level of cost-sharing that would normally be required by section 103(a) or 103(b), Pub. L. 99–662, the normal level of cost-sharing will apply.

(b) *Step two.* Determine project eligibility. Projects may qualify for the full amount of the reduction in cost-sharing calculated in Step one, or for some fraction of the reduction in cost-sharing, depending on a measure of the economic resources of the project area and of the state or states in which the project is located.

(1) For each of the three latest calendar years for which information is available, detemine the level of per capita personal income in the state or states in which the project sponsors are located, and compare this to the national average of per capita personal income. Source: Dept of Commerce, Bureau of Economic Analysis as presented in the *Survey of Current Business*. For Alaska and Hawaii only, divide the per capita personal income figure by one plus the percentage used in the Federal Government's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage AK and Oahu, HI (see References §§ 241.3(c) and 241.3(d). Index each state's per capita personal income to the national average (U.S.=100), and calculate the three year average of the state's index number.

(2) For each of the three latest calendar years for whch information is available, determine the level of per capita personal icome in the county or counties where project benefits accure (the "project area"), and compare this to the national average of per capita personal income. Source: Reference § 241.3(c). For Alaska and Hawaii only, divide the per capita personal income figure by one plus the percentage used in the Federal Government's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage AK and Oahu HI. Index each county's per capita personal income to the national average (U.S.=100), and calculate the three year average of the county's index number.

(3) To assure consistency, the calculations in (1) and (2) will be performed by HQUSACE and distributed to all field elements. This information is included in Appendices A

and B to this document. In subsequent years the information will be included in the Corps' Reference Handbook, Ref. § 241.3(g) which is updated annually.

(4) When the project area includes more than one county, calculate a composite project area index by talking a weighted average of the county index numbers, the weights being equal to the relative levels of benefits received in each county.

(5) Calculate an "eligibility factor" for the project according to the following formula:

$EF = a - b_1 \times (\text{state factor}) - b_2 \times (\text{area factor})$.

If EF is one or more, the project is eligible for the full reduction in cost-share to the benefits based floor. If EF is zero or less, the project is not eligible for a reduction. If EF is between zero and one, the non-Federal cost-share will be reduced proportionately to an amount which is greater than the BBF but less than the normal non-Federal cost-share. See § 241.5(c) below. The values of a, b_1, and b_2 will be determined by HQUSACE. The parameter values will be based on the latest available data and set so that 20 percent of counties have an EF of 1.0 or more, while 66.7 percent have an EF of O or less. These values will be adjusted periodically as new information becomes available. Changes will be published in the Corps' Reference Handbook, the values as of July 1, 1987 are:

$a = 14.45646$
$b_1 = 0.08858$
$b_2 = 0.08858$

Note that currently, b_1 and b_2 are equal, giving the same weight to state and local income levels.

(6) For Puerto Rico, Guam and other U.S. territories the eligibility factor is administratively established to be equal to 1.

(c) *Application of the Ability to Pay Formula to the Basic Cost-sharing Provisions of Section 103.* If a flood control project has a BBF which is less than the normal cost-share and an EF which is greater than zero, the non-Federal cost-share will be reduced. The actual reduction is determined by applying the ability to pay formula to the basic flood control cost-sharing provisions of section 103 Pub. L. 99-662 as follows:

(1) when EF = 1:

cost-share = BBF

(2) when EF < 1, for structural projects covered by section 103(a):

(a) if LERRD equals or exceeds 45 percent:

cost-share = 50 − EF × (50–BBF)

(b) if LERRD exceeds 20 percent but is less than 45 percent:

cost-shared = (LERRD + 5) − EF × [LERRD + 5)–BBF]

(c) if LERRD is less than 20 percent: cost-share = 25-EF (25-BBF)

(3) When EF < 1, for non-structural projects covered by Section 103(b):

Cost-share = 25-EF (25-BBF)

(4) In no case can the non-Federal share be less than five percent.

Note. LERRD equals the costs of lands, easements, rights-of-way, relocations, and dredged material disposal areas.

§ 241.6 Application of test.

(a) A preliminary ability to pay test will be applied during the study phase of any proposed project. If the ability to pay cost-share is lower than the share that would normally apply, the revised estimated cost-share will be used for budgetary and other planning purposes.

(b) The official application of the ability to pay test will be made at the time the Local Cooperation Agreement (LCA) between the Corps of Engineers and the Non-Federal interest is signed. For structural flood control projects, the normal level of cost-sharing will not be known until the end of the project (since the normal level as specified in section 103(a) includes LERRD). In this case, if the Eligibility Factor is greater than zero but less than one, the ability to pay non-Federal share will be determined using estimated costs. For all projects, the LCA will include a clause indicating the results of the ability to pay test. If a project is eligible for a lower non-Federal share, the revised share will be specified (there will be no recalculation of this share once the LCA is signed). If at the time of project completion, the normal non-Federal share based on actual costs, is less than the ability to pay share specified in the LCA, the normal share will apply. For all projects, an exhibit attached to the LCA will include: The benefits based floor (BBF) determined in Step one above; the eligibility factor (EF) determined in Step two above; if the Eligibility Factor is greater than zero and less than one, the estimated normal non-Federal share; and the formula used in determining the ability to pay share as described in §§ 241.5(c)(1) and 241.5(c)(4).

(c) For structural projects, the project sponsor will be required to provide a cash payment equal to a minimum of five per cent of estimated total project costs during the period of construction, regardless of the outcome of the ability to pay test. If formula § 241.5(c)(2) is used to estimate the non-Federal share, the resultant non-Federal cash requirement could continue to exceed five per cent. For example, if LERRD is 10 percent of costs, the normal costshare requirement is 25 percent, including a 15 percent cash payment; if the revised Non-Federal share under ability to pay is 20 percent, there remains a 10 percent cash requirement. In these cases, the Non-Federal interest shall pay its share of cash during construction at a rate proportionate to its projected final cash share. If the non-Federal share, adjusted for ability to pay considerations, exceeds 30 percent, section 103(a)(4), permitting deferred payment of the amount exceeding 30 percent, will still apply.

(d) If the normal LERRD plus five percent cash requirement exceeds the ability to pay cost share requirement, the Federal Government will make any necessary adjustments to the Non-Federal interest through Federal payments for LERRD or reimbursement. The adjustment mechanism will be negotiated and the Local Cooperation Agreement will include a description of the mechanism.

Appendix A.—State Per Capita Personal Income Index Numbers State Income as a Percent of U.S. Average, 1984–86

State	State Index No.
Alabama	76.90
Alaska	104.14
Arizona	91.71
Arkansas	75.33
California	115.84
Colorado	106.36
Connecticut	130.59
Delaware	103.32
District of Columbia	130.75
Florida	99.09
Georgia	90.61
Hawaii	85.79
Idaho	79.85
Illinois	106.50
Indiana	89.93
Iowa	91.48
Kansas	99.44
Kentucky	78.00
Louisiana	80.96
Maine	86.33
Maryland	114.04
Massachusetts	118.43
Michigan	98.13
Minnesota	101.86
Mississippi	66.59
Missouri	94.94
Montana	81.38
Nebraska	95.23
Nevada	104.48
New Hampshire	107.90
New Jersey	124.38
New Mexico	78.10
New York	116.32
North Carolina	84.05
North Dakota	86.83
Ohio	95.27
Oklahoma	87.91
Oregon	91.35

State	State Index No.
Pennsylvania	96.70
Rhode Island	100.76
South Carolina	76.88
South Dakota	81.55
Tennessee	81.21
Texas	96.07
Utah	75.45
Vermont	87.41
Virginia	104.95
Washington	100.59
West Virginia	73.67
Wisconsin	95.42
Wyoming	94.02

Source: Survey of Current Business, April, 1987.

Note.—Alaska income figures divided by 1.25 Hawaii income figures divided by 1.15, 1984, 85; By 1.225, 1986.

Appendix B.—County Per Capita Personal Index Numbers County Income as a Percent of U.S. Average 1982–84

County	County PCI Index
Alabama	
Autauga	77.01
Baldwin	81.85
Barbour	66.37
Bibb	61.76
Blount	64.26
Bullock	60.46
Butler	64.14
Calhoun	71.88
Chambers	67.49
Cherokee	60.04
Chilton	69.44
Choctaw	67.32
Clarke	64.10
Clay	66.14
Cleburne	63.34
Coffee	76.72
Colbert	79.24
Conecuh	61.17
Coosa	55.87
Covington	72.99
Crenshaw	72.75
Cullman	70.04
Dale	71.11
Dallas	65.71
De Kalb	65.43
Elmore	77.71
Escambia	72.56
Etowah	76.04
Fayette	71.32
Franklin	74.10
Geneva	74.29
Greene	49.02
Hale	53.04
Henry	63.45
Houston	77.47
Jackson	67.38
Jefferson	93.78
Lamar	73.87
Lauderdale	82.78
Lawrence	61.35
Lee	70.49
Limestone	73.71
Lowndes	58.54
Macon	55.37
Madison	96.41
Marengo	61.83
Marion	64.37
Marshall	73.89
Mobile	77.58
Monroe	69.84
Montgomery	92.44
Morgan	84.75
Perry	45.55
Pickens	62.25
Pike	67.41
Randolph	62.70
Russell	68.14
St. Clair	70.38
Shelby	90.04
Sumter	53.39
Talladega	66.03
Tallapoosa	69.52
Tuscalossa	76.39
Walker	79.51
Washington	62.61
Wilcox	58.75
Winston	70.550
Alaska	
Aleutian Islands	104.84
Anchorage Borough	128.00
Bethel	63.82
Bristol Bay Bor.	130.67
Dillingham	70.55
Fairbanks N. Star	135.39
Haines Borough	104.57
Juneau Borough	139.70
Kenai Peninsula	92.26
Ketchikan Gateway	122.19
Kobuk	76.29
Kodiak Island	91.27
Matanuska-Susitna	100.47
Nome	88.00
North Slope Bor.	161.41
Pr. of Wales-Outer Ketchikan	93.64
Sitka Borough	106.76
Skagway-Yakutat-Angoon	98.48
Se Fairbanks	81.78
Valdez-Cordova	114.35
Wade Hampton	46.63
Wrangell-Petersburg	113.45
Yukon-Koyukuk	61.52
Arizona	
Apache	47.93
Cochise	71.38
Coconino	71.73
Gila	75.15
Graham	57.80
Greenlee	72.27
La Paz (2 Years)	65.79
Maricopa	101.85
Mohave	74.32
Navajo	60.95
Pima	90.66
Pinal	65.20
Santa Cruz	70.75
Yavapai	85.82
Yuma (2 Years)	69.78
Arkansas	
Arkansas	81.85
Ashley	68.71
Baxter	84.26
Benton	86.92
Boone	75.12
Bradley	66.43
Calhoun	58.13
Carroll	73.90
Chicot	52.26
Clark	68.69
Clay	64.72
Cleburne	69.87
Cleveland	62.93
Columbia	77.91
Conway	70.88
Craighead	75.89
Crawford	63.72
Crittenden	65.65
Cross	60.60
Dallas	65.81
Desha	61.74
Drew	59.15
Faulkner	78.63
Franklin	66.70
Fulton	48.18
Garland	85.70
Grant	73.20
Greene	67.23
Hempstead	68.13
Hot Spring	72.67
Howard	86.73
Independence	72.78
Izard	67.54
Jackson	64.02
Jefferson	75.39
Johnson	66.94
Lafayette	63.87
Lawrence	68.28
Lee	47.92
Lincoln	52.68
Little River	67.42
Logan	63.60
Lonoke	72.87
Madison	61.61
Marion	62.92
Miller	72.77
Mississippi	69.78
Monroe	56.80
Montgomery	62.71
Nevada	64.22
Newton	48.18
Ouachita	72.99
Perry	58.63
Phillips	54.96
Pike	65.56
Poinsett	62.85
Polk	59.95
Pope	70.75
Prairie	65.67
Pulaski	99.01
Randolph	57.61
St. Francis	61.57
Saline	78.57
Scott	64.02
Searcy	47.87
Sebastian	87.77
Sevier	70.14
Sharp	63.52
Stone	50.11

County	County PCI Index
Union	94.15
Van Buren	57.50
Washington	76.58
White	67.20
Woodruff	66.25
Yell	66.05
California	
Alameda	119.92
Alpine	80.21
Amador	91.68
Butte	81.65
Calaveras	70.62
Colusa	102.24
Contra Costa	138.51
Del Norte	75.08
El Dorado	95.10
Fresno	91.84
Glenn	94.57
Humboldt	85.73
Imperial	80.69
Inyo	92.72
Kern	92.07
Kings	80.10
Lake	87.00
Lassen	76.95
Los Angeles	114.07
Madera	81.74
Marin	174.75
Mariposa	86.64
Mendocino	86.31
Merced	81.79
Modoc	82.27
Mono	88.41
Monterey	111.39
Napa	120.87
Nevada	83.23
Orange	131.86
Placer	105.09
Plumas	81.08
Riverside	103.37
Sacramento	101.66
San Benito	82.85
San Bernardino	92.71
San Diego	105.74
San Francisco	141.22
San Joaquin	92.22
San Luis Obispo	98.23
San Mateo	156.13
Santa Barbara	120.16
Santa Clara	136.29
Santa Cruz	105.45
Shasta	84.74
Sierra	82.98
Siskiyou	80.64
Solano	100.81
Sonoma	115.58
Stanislaus	91.09
Sutter	89.28
Tehama	77.77
Trinity	73.08
Tulare	80.40
Tuolumne	80.96
Ventura	112.17
Yolo	94.42
Yuba	73.80
Colorado	
Adams	101.60
Alamosa	80.37
Arapahoe	137.74
Archuleta	68.19
Baca	92.30
Bent	77.46
Boulder	120.55
Chaffee	91.18
Cheyenne	87.80
Clear Creek	90.10
Conejos	45.02
Costilla	62.38
Crowley	94.53
Custer	71.09
Delta	75.73
Denver	122.45
Dolores	82.13
Douglas	138.70
Eagle	112.86
Elbert	104.78
El Paso	95.94
Fremont	80.76
Garfield	109.31
Gilpin	87.62
Grand	97.15
Gunnison	68.08
Hinsdale	66.37
Huerfano	71.43
Jackson	91.55
Jefferson	129.31
Kiowa	118.18
Kit Carson	93.63
Lake	70.46
La Plata	80.49
Larimer	91.20
Las Animas	69.57
Lincoln	105.46
Logan	92.08
Mesa	87.03
Mineral	97.81
Moffat	82.82
Montezuma	86.98
Montrose	74.67
Morgan	95.48
Otero	81.03
Ouray	88.40
Park	90.38
Phillips	97.34
Pitkin	155.60
Prowers	85.54
Pueblo	81.95
Rio Blanco	105.34
Rio Grande	79.26
Routt	114.30
Saguache	65.12
San Juan	74.79
San Miguel	63.10
Sedgwick	101.54
Summit	113.37
Teller	90.15
Washington	103.42
Weld	90.58
Yuma	100.37
Connecticut	
Fairfield	158.08
Hartford	125.36
Litchfield	117.96
Middlesex	121.03
New Haven	113.15
New London	112.35
Tolland	110.22
Windham	96.00
Delaware	
Kent	83.64
New Castle	115.60
Sussex	96.45
Florida	
Alachua	76.49
Baker	64.08
Bay	81.39
Bradford	57.07
Brevard	96.27
Broward	123.96
Calhoun	55.59
Charlotte	92.91
Citrus	71.41
Clay	94.72
Collier	116.31
Columbia	68.17
Dade	102.87
De Soto	68.74
Dixie	52.46
Duval	95.65
Escambia	80.42
Flagler	75.91
Franklin	52.79
Gadsden	53.78
Gilchrist	69.85
Glades	48.91
Gulf	67.35
Hamilton	63.45
Hardee	65.47
Hendry	79.35
Hernando	75.38
Highlands	80.66
Hillsborough	89.57
Holmes	52.70
Indian River	106.55
Jackson	64.30
Jefferson	60.26
Lafayette	71.63
Lake	92.48
Lee	101.53
Leon	84.80
Levy	60.37
Liberty	58.01
Madison	66.52
Manatee	103.56
Marion	76.85
Martin	113.73
Monroe	88.58
Nassau	84.72
Okaloosa	82.23
Okeechobee	60.04
Orange	99.90
Osceola	85.03
Palm Beach	130.73
Pasco	80.71
Pinellas	113.11
Polk	82.71
Putnam	71.99
St. Johns	94.78
St. Lucie	79.41
Santa Rosa	82.18
Sarasota	126.95
Seminole	96.82
Sumter	66.95

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County	County PCI Index
Suwannee	65.44
Taylor	71.64
Union	47.77
Volusia	90.66
Wakulla	63.72
Walton	56.01
Washington	61.79
Georgia	
Appling	73.56
Atkinson	67.93
Bacon	61.69
Baker	64.30
Baldwin	72.23
Banks	71.18
Barrow	78.67
Bartow	77.19
Ben Hill	67.59
Berrien	70.14
Bibb	86.46
Bleckley	73.29
Brantley	59.62
Brooks	56.32
Bryan	66.70
Bulloch	67.11
Burke	64.88
Butts	69.10
Calhoun	72.25
Camden	82.40
Candler	60.20
Carroll	78.62
Catoosa	71.16
Charlton	60.77
Chatham	90.41
Chattahoochee	60.74
Chattooga	63.19
Cherokee	85.30
Clarke	84.83
Clay	50.31
Clayton	92.14
Clinch	64.28
Cobb	118.73
Coffee	64.36
Colquitt	70.15
Columbia	92.70
Cook	56.92
Coweta	86.71
Crawford	73.16
Crisp	66.38
Dade	61.17
Dawson	84.67
Decatur	70.39
De Kalb	116.85
Dodge	64.81
Dooly	77.98
Dougherty	78.52
Douglas	84.84
Early	65.79
Echols	55.93
Effingham	76.56
Elbert	76.57
Emanuel	60.20
Evans	66.09
Fannin	64.99
Fayette	120.55
Floyd	87.61
Forsyth	93.78
Franklin	79.88
Fulton	109.42
Gilmer	74.02
Glascock	79.59
Glynn	89.67
Gordon	80.06
Grady	68.92
Greene	64.77
Gwinnett	112.83
Habersham	69.40
Hall	91.75
Hancock	56.15
Haralson	81.22
Harris	69.97
Hart	74.43
Heard	76.05
Henry	91.29
Houston	88.92
Irwin	71.08
Jackson	76.89
Jasper	79.66
Jeff Davis	74.13
Jefferson	65.21
Jenkins	57.48
Johnson	63.11
Jones	77.28
Lamar	71.55
Lanier	60.57
Laurens	74.26
Lee	74.64
Liberty	66.60
Lincoln	66.71
Long	57.35
Lowndes	73.25
Lumpkin	68.55
McDuffie	70.75
McIntosh	55.11
Macon	58.15
Madison	73.51
Marion	63.49
Meriwether	62.46
Miller	64.52
Mitchell	62.26
Monroe	74.40
Montgomery	63.99
Morgan	78.78
Murray	70.33
Muscogee	83.48
Newton	80.34
Oconee	86.71
Oglethorpe	72.62
Paulding	73.51
Peach	79.25
Pickens	79.21
Pierce	62.29
Pike	75.37
Polk	74.36
Pulaski	76.25
Putnam	71.13
Quitman	55.00
Rabun	61.81
Randolph	54.86
Richmond	84.44
Rockdale	93.75
Schley	69.39
Screven	65.01
Seminole	69.13
Spalding	78.93
Stephens	72.72
Stewart	57.37
Sumter	74.31
Talbot	56.49
Taliaferro	72.13
Tattnall	62.31
Taylor	65.97
Telfair	71.66
Terrell	59.42
Thomas	78.21
Tift	77.95
Toombs	64.38
Towns	58.51
Treutlen	58.02
Troup	83.08
Turner	71.07
Twiggs	57.76
Union	50.44
Upson	71.35
Walker	74.99
Walton	75.65
Ware	78.71
Warren	63.68
Washington	70.39
Wayne	70.84
Webster	69.91
Wheeler	58.15
White	64.15
Whitfield	88.26
Wilcox	62.60
Wilkes	75.09
Wilkinson	72.56
Worth	67.44
Hawaii	
Hawaii	69.79
Honolulu	95.11
Kauai	73.07
Maui and Kalawao	81.12
Idaho	
Ada	98.15
Adams	83.49
Bannock	81.50
Bear Lake	71.06
Benewah	81.09
Bingham	67.53
Blaine	95.00
Boise	77.47
Bonner	69.44
Bonneville	86.16
Boundary	73.94
Butte	66.28
Camas	113.80
Canyon	74.98
Caribou	75.36
Cassia	78.17
Clark	124.46
Clearwater	67.41
Custer	76.38
Elmore	70.53
Franklin	65.40
Fremont Co & Yellowstone Park	70.02
Gem	76.53
Gooding	72.03
Idaho	69.58
Jefferson	59.90
Jerome	66.26
Kootenai	80.81
Latah	75.72
Lemhi	64.84
Lewis	101.42
Lincoln	77.79
Madison	51.70
Minidoka	62.79
Nez Perce	95.24

County	County PCI Index
Oneida	66.74
Owyhee	53.91
Payette	73.85
Power	85.92
Shoshone	77.87
Teton	65.13
Twin Falls	84.35
Valley	81.51
Washington	79.29
Illinois	
Adams	91.73
Alexander	59.38
Bond	83.06
Boone	96.78
Brown	78.83
Bureau	100.23
Calhoun	79.64
Carroll	84.38
Cass	93.14
Champaign	87.06
Christian	96.45
Clark	84.52
Clay	80.87
Clinton	86.80
Coles	80.08
Cook	111.75
Crawford	94.70
Cumberland	65.43
De Kalb	86.46
De Witt	102.43
Douglas	91.04
Du Page	140.84
Edgar	88.61
Edwards	96.18
Effingham	83.91
Fayette	67.61
Ford	103.98
Franklin	88.47
Fulton	84.60
Gallatin	73.89
Greene	77.19
Grundy	111.95
Hamilton	73.86
Hancock	83.21
Hardin	58.39
Henderson	78.25
Henry	97.42
Iroquois	97.33
Jackson	76.90
Jasper	76.11
Jefferson	87.23
Jersey	84.63
Jo Daviess	88.44
Johnson	53.12
Kane	111.92
Kankakee	91.81
Kendall	101.88
Knox	91.17
Lake	134.13
La Salle	98.49
Lawrence	97.72
Lee	98.45
Livingston	100.48
Logan	100.05
McDonough	72.79
McHenry	115.82
McLean	99.70
Macon	97.87
Macoupin	89.41
Madison	98.92
Marion	86.62
Marshall	92.73
Mason	88.08
Massac	74.03
Menard	95.53
Mercer	84.32
Monroe	104.39
Montgomery	89.81
Morgan	97.30
Moultrie	86.80
Ogle	87.22
Peoria	103.19
Perry	91.99
Piatt	100.93
Pike	75.19
Pope	45.92
Pulaski	57.81
Putnam	95.29
Randolph	85.81
Richland	97.25
Rock Island	100.58
St. Clair	86.18
Saline	86.06
Sangamon	104.49
Schuyler	70.38
Scott	91.21
Shelby	79.73
Stark	106.00
Stephenson	101.51
Tazewell	99.10
Union	75.88
Vermilion	90.62
Wabash	98.27
Warren	88.11
Washington	92.51
Wayne	86.26
White	91.78
Whiteside	89.34
Will	100.92
Williamson	81.52
Winnebago	100.87
Woodford	98.94
Indiana	
Adams	79.72
Allen	95.90
Bartholomew	96.36
Benton	102.69
Blackford	77.71
Boone	104.64
Brown	70.68
Carroll	84.35
Cass	89.24
Clark	85.79
Clay	83.90
Clinton	89.67
Crawford	60.73
Daviess	74.16
Dearborn	84.83
Decatur	84.42
De Kalb	85.53
Delaware	81.97
Dubois	93.54
Elkhart	98.58
Fayette	82.72
Floyd	91.60
Fountain	79.86
Franklin	68.06
Fulton	78.86
Gibson	93.11
Grant	86.70
Greene	73.72
Hamilton	118.55
Hancock	97.95
Harrison	75.89
Hendricks	97.05
Henry	83.10
Howard	98.40
Huntington	89.38
Jackson	84.98
Jasper	84.48
Jay	80.70
Jefferson	81.96
Jennings	66.91
Johnson	98.48
Knox	84.11
Kosciusko	87.00
LaGrange	65.45
Lake	92.23
La Porte	90.06
Lawrence	80.97
Madison	86.50
Marion	101.46
Marshall	85.79
Martin	74.33
Miami	83.66
Monroe	72.23
Montgomery	87.17
Morgan	86.69
Newton	77.39
Noble	79.41
Ohio	75.55
Orange	67.10
Owen	72.61
Parke	75.96
Perry	68.18
Pike	87.68
Porter	100.41
Posey	92.16
Pulaski	85.94
Putnam	77.26
Randolph	82.42
Ripley	79.53
Rush	83.30
St. Joseph	95.45
Scott	70.84
Shelby	88.25
Spencer	80.30
Starke	69.59
Steuben	82.84
Sullivan	79.14
Switzerland	62.34
Tippecanoe	84.30
Tipton	102.55
Union	84.31
Vanderburgh	100.04
Vermillion	77.52
Vigo	82.77
Wabash	85.08
Warren	83.98
Warrick	93.36
Washington	70.53
Wayne	83.19
Wells	89.24
White	90.59
Whitley	83.97
Iowa	
Adair	74.76

County	County PCI Index
Adams	82.74
Allamakee	72.58
Appanoose	73.88
Audubon	82.54
Benton	90.27
Black Hawk	94.72
Boone	90.98
Bremer	91.13
Buchanan	79.27
Buena Vista	93.66
Butler	84.45
Calhoun	96.75
Carroll	94.93
Cass	91.42
Cedar	92.16
Cerro Gordo	98.69
Cherokee	87.61
Chickasaw	83.89
Clarke	75.70
Clay	91.08
Clayton	78.92
Clinton	92.27
Crawford	85.63
Dallas	98.57
Davis	66.31
Decatur	66.16
Delaware	74.16
Des Moines	92.50
Dickinson	93.64
Dubuque	88.27
Emmet	89.84
Fayette	79.03
Floyd	84.75
Franklin	88.37
Fremont	95.84
Greene	97.65
Grundy	93.82
Guthrie	84.97
Hamilton	99.44
Hancock	91.29
Hardin	95.63
Harrison	81.38
Henry	87.11
Howard	77.35
Humboldt	101.20
Ida	87.84
Iowa	95.11
Jackson	77.69
Jasper	92.81
Jefferson	77.82
Johnson	93.88
Jones	77.95
Keokuk	89.14
Kossuth	89.47
Lee	88.20
Linn	103.59
Louisa	80.63
Lucas	88.51
Lyon	78.77
Madison	85.55
Mahaska	81.83
Marion	94.13
Marshall	100.03
Mills	87.86
Mitchell	85.09
Monona	85.71
Monroe	80.63
Montgomery	93.38
Muscatine	103.65
O'Brien	94.14
Osceola	91.47
Page	85.49
Palo Alto	92.96
Plymouth	82.96
Pocahontas	97.75
Polk	112.56
Pottawattamie	91.85
Poweshiek	95.65
Ringgold	73.38
Sac	91.28
Scott	100.92
Shelby	87.16
Sioux	77.79
Story	87.39
Tama	89.19
Taylor	71.74
Union	89.76
Van Buren	73.62
Wapello	86.69
Warren	94.60
Washington	98.44
Wayne	80.86
Webster	94.26
Winnebago	97.97
Winneshiek	73.30
Woodbury	94.08
Worth	84.53
Wright	107.96

Kansas

Allen	87.22
Anderson	93.31
Atchison	77.41
Barber	111.76
Barton	115.09
Bourbon	93.58
Brown	89.16
Butler	105.91
Chase	93.22
Chautauqua	75.52
Cherokee	76.71
Cheyenne	96.48
Clark	116.91
Clay	86.29
Cloud	95.78
Coffey	96.03
Comanche	115.30
Cowley	90.51
Crawford	85.44
Decatur	115.37
Dickinson	88.04
Doniphan	76.93
Douglas	79.12
Edwards	114.09
Elk	81.90
Ellis	93.74
Ellsworth	101.22
Finney	108.44
Ford	109.79
Franklin	92.32
Geary	83.61
Gove	102.25
Graham	99.78
Grant	131.01
Gray	120.18
Greeley	151.42
Greenwood	95.58
Hamilton	116.79
Harper	110.44
Harvey	93.19
Haskell	117.44
Hodgeman	136.21
Jackson	86.88
Jefferson	87.44
Jewell	99.30
Johnson	148.81
Kearny	102.55
Kingman	91.64
Kiowa	104.68
Labette	79.38
Lane	147.43
Leavenworth	85.17
Lincoln	105.25
Linn	87.85
Logan	98.29
Lyon	88.83
McPherson	100.96
Marion	93.06
Marshall	82.76
Meade	129.96
Miami	87.36
Mitchell	107.54
Montgomery	87.36
Morris	80.36
Morton	114.38
Nemaha	90.13
Neosho	93.46
Ness	115.05
Norton	101.33
Osage	83.27
Osborne	104.36
Ottawa	98.38
Pawnee	101.26
Phillips	112.80
Pottawatomie	76.77
Pratt	122.05
Rawlins	98.34
Reno	97.15
Republic	94.60
Rice	103.62
Riley	83.97
Rooks	99.35
Rush	118.08
Russell	128.85
Saline	101.61
Scott	122.65
Sedgwick	112.75
Seward	119.19
Shawnee	107.55
Sheridan	109.38
Sherman	96.33
Smith	98.60
Stafford	136.11
Stanton	105.80
Stevens	133.41
Sumner	104.94
Thomas	94.95
Trego	107.25
Wabaunsee	89.73
Wallace	96.23
Washington	95.75
Wichita	167.33
Wilson	85.25
Woodson	86.69
Wyandotte	82.99

Kentucky

Adair	56.41
Allen	67.79
Anderson	83.96
Ballard	80.87

County	County PCI Index
Barren	71.03
Bath	59.27
Bell	64.74
Boone	90.64
Bourbon	116.35
Boyd	90.50
Boyle	80.47
Bracken	73.12
Breathitt	58.41
Breckinridge	58.27
Bullitt	72.12
Butler	52.53
Caldwell	74.28
Calloway	70.58
Campbell	87.73
Carlisle	70.28
Carroll	78.15
Carter	55.45
Casey	46.50
Christian	71.29
Clark	85.34
Clay	57.38
Clinton	42.87
Crittenden	72.93
Cumberland	57.87
Daviess	91.76
Edmonson	47.17
Elliott	43.99
Estill	59.40
Fayette	112.70
Fleming	55.28
Floyd	58.63
Franklin	100.72
Fulton	78.82
Gallatin	66.19
Garrard	69.23
Grant	71.40
Graves	78.96
Grayson	59.02
Green	64.73
Greenup	77.12
Hancock	82.96
Hardin	69.51
Harlan	63.42
Harrison	77.88
Hart	58.42
Henderson	90.68
Henry	74.91
Hickman	64.72
Hopkins	95.49
Jackson	43.32
Jefferson	101.44
Jessamine	77.66
Johnson	65.17
Kenton	91.92
Knott	55.35
Knox	51.93
Larue	67.84
Laurel	61.98
Lawrence	59.31
Lee	49.26
Leslie	48.51
Letcher	58.19
Lewis	48.96
Lincoln	55.08
Livingston	72.45
Logan	70.49
Lyon	65.45
McCracken	95.00
McCreary	40.56
McLean	76.83
Madison	67.58
Magoffin	51.79
Marion	54.65
Marshall	75.37
Martin	67.28
Mason	78.52
Meade	60.87
Menifee	41.61
Mercer	74.83
Metcalfe	51.30
Monroe	54.32
Montgomery	69.10
Morgan	48.35
Muhlenberg	84.32
Nelson	73.31
Nicholas	65.12
Ohio	70.00
Oldham	97.09
Owen	61.10
Owsley	39.65
Pendleton	69.12
Perry	61.97
Pike	68.84
Powell	53.88
Pulaski	64.21
Robertson	61.16
Rockcastle	46.72
Rowan	57.68
Russell	53.11
Scott	85.75
Shelby	84.30
Simpson	78.83
Spencer	68.72
Taylor	68.18
Todd	60.16
Trigg	76.12
Trimble	69.68
Union	83.34
Warren	72.76
Washington	61.34
Wayne	46.58
Webster	86.48
Whitley	66.26
Wolfe	46.05
Woodford	121.04

Louisiana

County	County PCI Index
Acadia	73.76
Allen	58.25
Ascension	86.69
Assumption	69.49
Avoyelles	54.06
Beauregard	67.56
Bienville	72.42
Bossier	82.95
Caddo	96.64
Calcasieu	89.54
Caldwell	58.20
Cameron	85.69
Catahoula	61.14
Claiborne	74.55
Concordia	73.68
De Soto	72.47
East Baton Rouge	101.08
East Carroll	57.32
East Feliciana	65.32
Evangeline	61.78
Franklin	53.27
Grant	57.45
Iberia	94.40
Iberville	75.95
Jackson	72.81
jefferson	106.52
Jefferson Davis	68.49
Lafayette	116.28
Lafourche	86.04
La Salle	58.53
Lincoln	72.89
Livingston	74.19
Madison	46.38
Morehouse	65.01
Natchitoches	62.20
Orleans	94.84
Ouachita	77.81
Plaquemines	85.62
Pointe Coupee	75.53
Rapides	71.78
Red River	58.81
Richland	64.34
Sabine	48.88
St. Bernard	92.41
St. Charles	100.14
St. Helena	55.83
St. James	89.46
St. John/Baptist	90.04
St. Landry	66.63
St. Martin	70.12
St. Mary	91.85
St. Tammany	103.75
Tangipahoa	63.39
Tensas	64.96
Terrebonne	88.26
Union	68.61
Vermilion	82.94
Vernon	59.91
Washington	66.89
Webster	77.85
West Baton Rouge	83.05
West Carroll	51.55
West Feliciana	54.58
Winn	58.02

Maine

County	County PCI Index
Androscoggin	83.69
Aroostook	70.01
Cumberland	102.27
Franklin	72.06
Hancock	84.15
Kennebec	87.38
Knox	84.00
Lincoln	88.90
Oxford	76.81
Penobscot	81.41
Piscataquis	72.68
Sagadahoc	91.62
Somerset	74.15
Waldo	64.77
Washington	67.96
York	84.40

Maryland

County	County PCI Index
Allegany	78.82
Anne Arundel	111.83
Baltimore	119.14
Calvert	102.94
Caroline	79.86
Carroll	106.40
Cecil	89.80
Charles	97.67

County	County PCI Index
Dorchester	83.72
Frederick	100.82
Garrett	64.26
Harford	105.07
Howard	137.13
Kent	88.78
Montgomery	166.64
E. George's	109.92
Queen Anne's	95.68
St. Mary's	85.92
Somerset	72.26
Talbot	119.65
Washington	90.22
Wicomico	86.54
Worcester	94.68
Baltimore Ind City	86.26
Massachusetts	
Barnstable	119.12
Berkshire	100.91
Bristol	93.31
Dukes	101.04
Essex	118.66
Franklin	92.92
Hampden	98.67
Hampshire	91.16
Middlesex	132.22
Nantucket	126.11
Norfolk	138.57
Plymouth	103.19
Suffolk	99.90
Worcester	97.70
Michigan	
Alcona	67.60
Alger	67.91
Allegan	80.89
Alpena	76.14
Antrim	73.41
Arenac	68.38
Baraga	65.99
Barry	80.32
Bay	88.87
Benzie	73.88
Berrien	87.42
Branch	82.43
Calhoun	93.69
Cass	86.54
Charlevoix	77.74
Cheboygan	68.28
Chippewa	65.08
Clare	64.81
Clinton	93.15
Crawford	64.65
Delta	75.19
Dickinson	90.48
Eaton	100.19
Emmet	84.61
Genesee	100.72
Gladwin	65.15
Gogebic	71.61
Grand Traverse	93.20
Gratiot	82.18
Hillsdale	79.20
Houghton	65.52
Huron	84.28
Ingham	96.49
Ionia	77.44
Iosco	71.27
Iron	79.34
Isabella	69.99
Jackson	88.32
Kalamazoo	100.49
Kalkaska	70.45
Kent	96.59
Keweenaw	65.25
Lake	55.95
Lapeer	88.94
Leelanau	89.07
Lenawee	88.82
Livingston	102.16
Luce	81.07
Mackinac	76.01
Macomb	111.03
Manistee	76.60
Marquette	76.25
Mason	70.77
Mecosta	56.36
Menominee	76.64
Midland	103.76
Missaukee	60.10
Monroe	94.61
Montcalm	75.71
Montmorency	68.06
Muskegon	82.25
Newaygo	70.15
Oakland	137.12
Oceana	68.42
Ogemaw	60.93
Ontonagon	60.89
Osceola	62.87
Oscoda	56.71
Otsego	78.06
Ottawa	94.32
Presque Isle	67.87
Roscommon	71.86
Saginaw	89.85
St. Clair	93.76
St. Joseph	83.80
Sanilac	77.81
Schoolcraft	71.58
Shiawassee	89.55
Tuscola	80.13
Van Buren	76.51
Washtenaw	112.88
Wayne	95.72
Wexford	70.11
Minnesota	
Atkin	65.62
Anoka	99.67
Becker	65.08
Beltrami	60.86
Benton	75.32
Big Stone	73.69
Blue Earth	91.74
Brown	90.76
Carlton	75.99
Carver	102.07
Cass	68.30
Chippewa	81.41
Chisago	86.89
Clay	80.40
Clearwater	55.50
Cook	81.02
Cottonwood	92.06
Crow Wing	78.05
Dakota	116.69
Dodge	85.18
Douglas	74.21
Faribault	91.54
Fillmore	83.44
Freeborn	95.70
Goodhue	94.62
Grant	82.48
Hennepin	130.28
Houston	81.08
Hubbard	61.27
Isanti	77.39
Itasca	72.35
Jackson	88.24
Kanabec	71.63
Kandiyohi	81.27
Kittson	92.15
Koochiching	76.92
Lac Qui Parle	79.48
Lake	59.99
Lake of the Woods	74.39
Le Sueur	87.36
Lincoln	68.19
Lyon	86.26
McLeod	98.42
Mahnomen	69.83
Marshall	84.77
Martin	103.81
Meeker	77.51
Mille Lacs	79.31
Morrison	63.45
Mower	97.09
Murray	87.00
Nicollett	85.38
Nobles	91.79
Norman	97.03
Olmsted	117.28
Otter Tail	81.62
Pennington	81.56
Pine	67.61
Pipestone	77.79
Polk	87.02
Pope	71.36
Ramsey	115.10
Red Lake	78.74
Redwood	88.35
Renville	89.13
Rice	82.84
Rock	84.14
Roseau	83.34
St. Louis	86.84
Scott	102.99
Sherburne	78.70
Sibley	79.21
Stearns	78.50
Steele	102.77
Stevens	81.05
Swift	71.33
Todd	60.13
Traverse	80.60
Wabasha	89.33
Wadena	67.85
Waseca	92.97
Washington	109.99
Watonwan	96.44
Wilkin	84.88
Winona	81.82
Wright	83.63
Yellow Medicine	85.23
Mississippi	
Adams	79.17

County	County PCI Index
Alcorn	70.96
Amite	59.74
Attala	55.23
Benton	53.90
Bolivar	54.76
Calhoun	55.37
Carroll	53.10
Chickasaw	62.38
Choctaw	57.20
Claiborne	52.83
Clarke	64.02
Clay	62.74
Coahoma	60.96
Copiah	60.81
Covington	60.85
De Soto	79.04
Forrest	73.90
Franklin	58.73
George	63.26
Greene	48.54
Grenada	69.47
Hancock	68.56
Harrison	73.58
Hinds	92.73
Holmes	45.72
Humphreys	51.58
Issaquena	48.89
Itawamba	63.49
Jackson	75.29
Jasper	61.12
Jefferson	63.15
Jefferson Davis	53.17
Jones	74.89
Kemper	47.71
Lafayette	56.87
Lamar	63.89
Lauderdale	79.96
Lawrence	53.39
Leake	62.69
Lee	80.57
Leflore	62.55
Lincoln	63.78
Lowndes	71.72
Madison	67.88
Marion	58.93
Marshall	51.09
Monroe	67.34
Montgomery	53.71
Neshoba	61.82
Newton	68.61
Noxubee	48.60
Oktibbeha	60.10
Panola	56.06
Pearl River	62.46
Perry	70.07
Pike	61.97
Pontotoc	62.06
Prentiss	53.34
Quitman	53.01
Rankin	78.81
Scott	59.58
Sharkey	56.30
Simpson	61.70
Smith	62.30
Stone	68.07
Sunflower	53.49
Tallahatchie	49.08
Tate	68.25
Tippah	64.99
Tishomingo	61.32
Tunica	51.19
Union	69.31
Walthall	57.32
Warren	84.38
Washington	66.00
Wayne	52.92
Webster	64.58
Wilkinson	53.44
Winston	61.33
Yalobusha	58.83
Yazoo	63.12

Missouri

County	County PCI Index
Adair	72.34
Andrew	78.11
Atchison	81.87
Audrain	85.23
Barry	73.51
Barton	74.46
Bates	79.23
Benton	65.24
Bollinger	46.76
Boone	85.93
Buchanan	89.99
Butler	66.46
Caldwell	78.06
Callaway	87.80
Camden	74.34
Cape Girardeau	86.36
Carroll	85.13
Carter	45.43
Cass	91.78
Cedar	58.48
Chariton	79.50
Christian	73.80
Clark	64.60
Clay	107.47
Clinton	86.23
Cole	96.83
Cooper	83.78
Crawford	71.15
Dade	69.94
Dallas	60.28
Daviess	63.10
De Kalb	68.22
Dent	60.97
Douglas	49.20
Dunklin	59.87
Franklin	87.43
Gasconade	76.49
Gentry	70.46
Greene	89.37
Grundy	77.59
Harrison	67.38
Henry	87.37
Hickory	56.59
Holt	73.90
Howard	74.91
Howell	61.70
Iron	68.53
Jackson	102.73
Jasper	81.65
Jefferson	82.93
Johnson	72.36
Knox	66.56
Laclede	70.86
Lafayette	88.06
Lawrence	68.41
Lewis	65.81
Lincoln	84.81
Linn	75.49
Livingston	81.53
McDonald	58.11
Macon	71.31
Madison	57.09
Maries	57.13
Marion	78.50
Mercer	62.98
Miller	73.80
Mississippi	63.16
Moniteau	72.61
Monroe	76.76
Montgomery	78.85
Morgan	62.68
New Madrid	60.57
Newton	68.22
Nodaway	69.41
Oregon	52.92
Osage	68.10
Ozark	52.04
Pemiscot	56.92
Perry	73.27
Pettis	83.93
Phelps	72.24
Pike	74.19
Platte	107.39
Polk	65.78
Pulaski	57.97
Putnam	62.57
Ralls	69.46
Randolph	81.99
Ray	85.12
Reynolds	55.47
Ripley	47.13
St. Charles	105.55
St. Clair	69.39
Ste. Genevieve	77.06
St. Francois	75.27
St. Louis	131.70
Saline	87.35
Schuyler	68.69
Scotland	69.66
Scott	68.39
Shannon	49.43
Shelby	74.00
Stoddard	65.78
Stone	71.82
Sullivan	70.08
Taney	79.64
Texas	59.18
Vernon	73.91
Warren	86.42
Washington	55.13
Wayne	44.64
Webster	65.30
Worth	59.89
Wright	60.67
St. Louis Ind City	93.19

Montana

County	County PCI Index
Beaverhead	79.75
Big Horn	63.71
Blaine	68.46
Broadwater	70.01
Carbon	78.97
Carter	68.49
Cascade	90.24
Chouteau	86.19
Custer	87.96
Daniels	87.04
Dawson	86.59

County	County PCI Index
Deer Lodge	68.81
Fallon	80.33
Fergus	83.16
Flathead	84.28
Gallatin	78.74
Garfield	84.83
Glacier	81.87
Golden Valley	69.10
Granite	76.25
Hill	84.77
Jefferson	74.91
Judith Basin	65.40
Lake	67.19
Lewis and Clark	98.22
Liberty	95.30
Lincoln	70.30
McCone	90.22
Madison	71.61
Meagher	70.13
Mineral	75.29
Missoula	82.84
Musselshell	81.76
Petroleum	54.83
Phillips	77.80
Pondera	91.26
Powder River	83.72
Powell	89.72
Prairie	68.30
Ravalli	69.91
Richland	79.74
Roosevelt	73.78
Rosebud	87.70
Sanders	68.86
Sheridan	93.30
Silver Bow	92.97
Stillwater	81.04
Sweet Grass	86.24
Teton	80.12
Toole	108.12
Treasure	81.56
Valley	82.58
Wheatland	88.05
Wibaux	63.08
Yellowstone	101.19
Park (Incl. Ylwst. Ntl. Pk.)	81.40
Nebraska	
Adams	99.83
Antelope	90.34
Arthur	83.86
Banner	89.94
Blaine	75.47
Boone	81.54
Box Butte	75.88
Boyd	72.52
Brown	91.17
Buffalo	85.49
Burt	94.08
Butler	96.73
Cass	87.42
Cedar	69.34
Chase	95.08
Cherry	83.54
Cheyenne	98.19
Clay	100.11
Colfax	89.75
Cuming	90.55
Custer	85.24
Dakota	81.40
Dawes	79.06
Dawson	92.85
Deuel	110.42
Dixon	73.55
Dodge	100.08
Douglas	109.56
Dundy	100.96
Fillmore	101.71
Franklin	101.84
Frontier	82.46
Furnas	84.42
Gage	91.26
Garden	110.70
Garfield	80.74
Gosper	97.74
Grant	102.39
Greeley	79.21
Hall	94.91
Hamilton	100.13
Harlan	91.07
Hayes	63.88
Hitchcock	90.73
Holt	70.21
Hooker	85.21
Howard	82.62
Jefferson	92.78
Johnson	79.01
Kearney	115.53
Keith	101.62
Keya Paha	60.59
Kimball	112.25
Knox	63.53
Lancaster	99.42
Lincoln	95.18
Logan	85.42
Loup	55.94
McPherson	77.17
Madison	93.56
Merrick	85.25
Morrill	76.98
Nance	86.63
Nemaha	86.12
Nuckolls	81.69
Otoe	89.91
Pawnee	87.90
Perkins	119.43
Phelps	117.60
Pierce	72.22
Platte	100.18
Polk	109.56
Red Willow	97.39
Richardson	85.50
Rock	92.82
Saline	102.05
Sarpy	89.69
Saunders	87.71
Scotts Bluff	88.03
Seward	87.54
Sheridan	77.41
Sherman	73.75
Sioux	73.26
Stanton	75.43
Thayer	88.39
Thomas	78.92
Thurston	65.01
Valley	81.73
Washington	96.19
Wayne	69.11
Webster	84.26
Wheeler	55.61
York	105.78
Nevada	
Churchill	85.08
Clark	101.91
Douglas	128.89
Eklo	101.87
Esmeralda	93.92
Eureka	92.43
Humboldt	77.76
Lander	88.05
Lincoln	88.07
Lyon	87.88
Mineral	95.06
Nye	93.09
Pershing	87.80
Storey	94.80
Washoe	120.85
White Pine	87.68
Carson City	105.71
New Hampshire	
Belknap	95.07
Carroll	94.76
Cheshire	95.39
Coos	85.65
Grafton	93.55
Hillsborough	109.71
Merrimack	101.58
Rockingham	111.40
Strafford	91.30
Sullivan	88.74
New Jersey	
Atlantic	112.12
Bergen	153.40
Burlington	106.13
Camden	103.15
Cape May	107.09
Cumberland	87.77
Essex	111.03
Gloucester	97.44
Hudson	94.70
Hunterdon	140.49
Mercer	117.85
Middlesex	123.85
Monmouth	121.39
Morris	150.24
Ocean	105.62
Passaic	106.65
Salem	92.90
Somerset	153.20
Sussex	107.42
Union	135.50
Warren	108.27
New Mexico	
Bernalillo	96.42
Catron	53.89
Chaves	81.79
Cibola	48.00
Colfax	81.22
Curry	81.63
De Baca	75.00
Dona Ana	67.57
Eddy	85.80
Grant	71.31
Guadalupe	52.98
Harding	77.04
Hidalgo	71.65

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County	County PCI Index
Lea	96.89
Lincoln	84.04
Los Alamos	159.36
Luna	69.11
McKinley	50.67
Mora	39.33
Otero	75.82
Quay	77.93
Rio Arriba	54.89
Roosevelt	66.30
Sandoval	78.09
San Juan	76.79
San Miguel	51.46
Santa Fe	91.73
Sierra	76.56
Socorro	54.72
Taos	66.89
Torrance	56.94
Union	72.41
Valencia	73.91
New York	
Albany	111.50
Allegany	65.85
Bronx	82.57
Broome	98.77
Cattaraugus	73.34
Cayuga	81.06
Chautauqua	85.66
Chemung	88.76
Chenango	75.46
Clinton	72.25
Columbia	84.72
Cortland	77.26
Delaware	74.12
Dutchess	109.35
Erie	99.06
Essex	78.84
Franklin	68.08
Fulton	82.15
Genesee	91.24
Greene	83.20
Hamilton	80.25
Herkimer	80.43
Jefferson	80.85
Kings	90.21
Lewis	67.17
Levingston	86.58
Madison	82.82
Monroe	116.59
Montgomery	87.44
Nassau	155.17
New York	157.77
Niagara	95.06
Oneida	89.55
Onandaga	102.56
Ontario	95.17
Orange	95.09
Orleans	88.44
Oswego	82.91
Otsego	77.69
Putnam	121.79
Queens	115.10
Rensselaer	90.61
Richmond	115.26
Rockland	134.28
St. Lawrence	70.67
Saratoga	95.10
Schenectady	110.60
Schoharie	70.53
Schuyler	75.51
Seneca	88.99
Steuben	85.02
Suffolk	115.44
Sullivan	87.15
Tioga	87.58
Tompkins	80.98
Ulster	95.82
Warren	89.95
Washington	76.24
Wayne	93.05
Westchester	163.00
Wyoming	76.24
Yates	82.07
North Carolina	
Alamance	87.54
Alexander	78.85
Alleghany	68.18
Anson	66.06
Ashe	62.63
Avery	61.05
Beaufort	72.03
Bertie	65.95
Bladen	59.17
Brunswick	64.75
Buncombe	86.03
Burke	78.16
Cabarrus	89.11
Caldwell	74.25
Camden	66.79
Carteret	70.84
Caswell	58.59
Catawba	91.01
Chatham	86.29
Cherokee	55.71
Chowan	69.71
Clay	55.67
Cleveland	76.92
Columbus	61.63
Craven	78.75
Cumberland	73.85
Currituck	67.76
Dare	67.43
Davidson	83.20
Davie	84.36
Duplin	67.69
Durham	95.92
Edgecombe	76.32
Forsyth	106.85
Franklin	66.62
Gaston	83.91
Gates	72.80
Graham	60.11
Granville	66.78
Greene	73.38
Guilford	101.91
Halifax	62.20
Harnett	62.96
Haywood	78.90
Henderson	93.09
Hertford	66.89
Hoke	49.69
Hyde	53.46
Iredell	80.85
Jackson	66.00
Johnston	72.08
Jones	62.76
Lee	87.26
Lenoir	75.75
Lincoln	81.57
McDowell	71.59
Macon	70.80
Madison	60.09
Martin	72.14
Mecklenburg	108.90
Mitchell	70.82
Montgomery	68.45
Moore	88.80
Nash	89.86
New Hanover	84.78
Northampton	54.35
Onslow	73.77
Orange	93.68
Pamlico	71.89
Pasquotank	78.42
Pender	63.55
Perquimans	66.56
Person	69.82
Pitt	75.87
Polk	93.00
Randolph	84.89
Richmond	66.64
Robeson	56.94
Rockingham	79.71
Rowan	84.13
Rutherford	73.99
Sampson	68.82
Scotland	68.37
Stanly	81.52
Stokes	76.17
Surry	79.09
Swain	58.37
Transylvania	82.11
Tyrrell	79.38
Union	88.88
Vance	72.00
Wake	109.29
Warren	64.34
Washington	77.41
Watauga	65.14
Wayne	72.25
Wilkes	76.03
Wilson	86.00
Yadkin	80.92
Yancey	57.00
North Dakota	
Adams	92.23
Barnes	86.77
Benson	81.31
Billings	89.97
Bottineau	104.84
Bowman	103.15
Burke	110.95
Burleigh	110.16
Cass	110.78
Cavalier	109.61
Dickey	85.33
Divide	122.41
Dunn	92.91
Eddy	101.01
Emmons	72.60
Foster	93.93
Golden Valley	102.17
Grand Forks	88.02
Grant	69.60
Griggs	95.89
Hettinger	95.41
Kidder	77.84

County	County PCI Index
La Moure	82.01
Logan	83.84
McHenry	93.41
McIntosh	84.16
McKenzie	88.97
McLean	100.47
Mercer	107.64
Morton	86.38
Mountrail	84.68
Nelson	103.18
Oliver	91.21
Pembina	108.00
Pierce	87.22
Ramsey	103.15
Ransom	91.39
Renville	109.95
Richland	87.86
Rolette	62.92
Sargent	96.71
Sheridan	87.72
Sioux	55.34
Slope	84.19
Stark	92.42
Steele	117.67
Stutsman	97.61
Towner	101.26
Traill	110.45
Walsh	92.18
Ward	96.35
Wells	105.92
Williams	115.29
Ohio	
Adams	53.17
Allen	91.94
Ashland	85.76
Ashtabula	81.81
Athens	59.18
Auglaize	89.33
Belmont	83.76
Brown	76.62
Butler	95.20
Carroll	73.33
Champaign	79.33
Clark	87.41
Clermont	83.94
Clinton	84.30
Columbiana	75.15
Coshocton	85.88
Crawford	84.75
Cuyahoga	113.32
Darke	83.19
Defiance	91.84
Delaware	96.39
Erie	95.18
Fairfield	92.51
Fayette	74.94
Franklin	101.27
Fulton	91.03
Gallia	77.04
Geauga	111.74
Greene	96.15
Guernsey	72.87
Hamilton	108.70
Hancock	106.15
Hardin	75.54
Harrison	76.03
Henry	91.95
Highland	71.13
Hocking	73.35
Holmes	57.91
Huron	84.77
Jackson	68.41
Jefferson	86.13
Knox	79.22
Lake	106.96
Lawrence	69.01
Licking	90.28
Logan	88.07
Lorain	91.78
Lucas	99.84
Madison	75.60
Mahoning	89.14
Marion	87.96
Medina	101.27
Meigs	70.13
Mercer	86.26
Miami	93.72
Monroe	73.73
Montgomery	101.66
Morgan	80.92
Morrow	71.83
Muskingum	82.61
Noble	67.84
Ottawa	96.59
Paulding	81.16
Perry	67.80
Pickaway	83.08
Pike	63.53
Portage	87.96
Preble	83.27
Putnam	87.29
Richland	91.08
Ross	76.95
Sandusky	90.98
Scioto	66.04
Seneca	87.32
Shelby	83.89
Stark	93.50
Summit	103.42
Trumbull	95.52
Tuscarawas	82.98
Union	88.76
Van Wert	96.43
Vinton	58.83
Warren	88.43
Washington	84.88
Wayne	88.19
Williams	91.78
Wood	93.53
Wyandot	92.45
Oklahoma	
Adair	55.46
Alfalfa	107.78
Atoka	52.77
Beaver	97.21
Beckham	75.87
Blaine	82.14
Bryan	74.44
Caddo	78.54
Canadian	104.31
Carter	95.02
Cherokee	61.20
Choctaw	59.39
Cimarron	117.84
Cleveland	99.94
Coal	61.58
Comanche	75.55
Cotton	78.21
Craig	89.21
Creek	84.88
Custer	87.15
Delaware	59.70
Dewey	94.79
Ellis	101.54
Garfield	106.44
Garvin	85.09
Grady	82.09
Grant	125.95
Greer	76.96
Harmon	72.10
Harper	111.40
Haskell	64.79
Hughes	66.31
Jackson	77.97
Jefferson	79.69
Johnston	54.13
Kay	118.63
Kingfisher	96.17
Kiowa	79.37
Latimer	59.72
Le Flore	64.27
Lincoln	81.94
Logan	85.30
Love	71.90
McClain	84.25
McCurtain	60.24
McIntosh	66.92
Major	91.96
Marshall	71.17
Mayes	76.28
Murray	74.01
Muskogee	83.18
Noble	87.70
Nowata	79.15
Okfuskee	62.51
Oklahoma	113.60
Okmulgee	76.43
Osage	80.34
Ottawa	81.85
Pawnee	85.24
Payne	74.26
Pittsburg	68.59
Pontotoc	85.00
Pottawatomie	87.93
Pushmataha	49.76
Roger Mills	69.67
Rogers	90.86
Seminole	80.80
Sequoyah	61.51
Stephens	94.86
Texas	126.24
Tillman	71.33
Tulsa	115.69
Wagoner	79.61
Washington	131.11
Washita	65.19
Woods	101.63
Woodward	87.72
Oregon	
Baker	74.93
Benton	84.21
Clackamas	101.85
Clatsop	84.61
Columbia	84.28
Coos	79.38
Crook	80.59
Curry	85.58

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Deschutes	80.45
Douglas	80.27
Gilliam	101.04
Grant	75.82
Harney	78.47
Hood River	91.13
Jackson	80.99
Jefferson	79.62
Josephine	69.64
Klamath	78.11
Lake	83.07
Lane	82.40
Lincoln	84.78
Linn	79.11
Malheur	72.14
Marion	87.03
Morrow	108.42
Multnomah	105.13
Polk	78.12
Sherman	109.31
Tillamook	81.30
Umatilla	80.03
Union	79.35
Wallowa	81.79
Wasco	94.78
Washington	110.27
Wheeler	90.95
Yamhill	83.86
Pennsylvania	
Adams	82.11
Allegheny	108.86
Armstrong	84.32
Beaver	88.62
Bedford	64.74
Berks	104.26
Blair	75.83
Bradford	73.82
Bucks	111.77
Butler	88.72
Cambria	80.71
Cameron	79.90
Carbon	86.59
Centre	76.13
Chester	122.08
Clarion	77.11
Clearfield	80.69
Clinton	72.61
Columbia	77.84
Crawford	73.85
Cumberland	107.62
Dauphin	101.27
Delaware	119.71
Elk	89.95
Erie	88.35
Fayette	76.14
Forest	70.87
Franklin	88.95
Fulton	63.44
Greene	71.41
Huntingdon	67.41
Indiana	79.15
Jefferson	80.88
Juniata	79.59
Lackawanna	87.15
Lancaster	96.65
Lawrence	78.39
Lebanon	91.95
Lehigh	107.78
Luzerne	86.42
Lycoming	83.55
McKean	86.45
Mercer	82.43
Mifflin	70.98
Monroe	88.83
Montgomery	142.43
Montour	88.34
Northampton	100.39
Northumberland	79.46
Perry	82.16
Philadelphia	89.22
Pike	86.39
Potter	67.89
Schuylkill	83.86
Synder	74.18
Somerset	76.99
Sullivan	69.40
Susquehanna	74.94
Tioga	67.68
Union	79.30
Venango	86.50
Warren	85.86
Washington	91.44
Wayne	81.49
Westmoreland	93.23
Wyoming	75.12
York	95.10
Rhode Island	
Bristol	112.76
Kent	106.62
Newport	102.46
Providence	96.17
South Carolina	
Abbeville	65.37
Aiken	88.48
Allendale	53.36
Anderson	76.51
Bamberg	56.49
Barnwell	72.83
Beaufort	92.05
Berkeley	68.86
Calhoun	70.49
Charleston	83.92
Cherokee	76.39
Chester	76.67
Chesterfield	68.95
Clarendon	53.95
Colleton	59.76
Darlington	65.97
Dillon	54.41
Dorchester	76.65
Edgefield	60.73
Fairfield	62.00
Florence	74.57
Georgetown	69.23
Greenville	91.73
Greenwood	80.35
Hampton	65.14
Horry	78.37
Jasper	63.09
Kershaw	81.75
Lancaster	70.73
Laurens	75.49
Lee	57.90
Lexington	91.39
McCormick	60.57
Marion	61.76
Marlboro	52.49
Newberry	84.15
Oconee	78.66
Orangeburg	64.00
Pickens	78.60
Richland	88.76
Saluda	64.54
Spartanburg	83.11
Sumter	65.34
Union	66.42
Williamsburg	53.72
York	87.96
South Dakota	
Aurora	64.49
Beadle	90.47
Bennett	63.43
Bon Homme	77.63
Brookings	75.55
Brown	91.49
Brule	81.65
Buffalo	56.23
Butte	77.78
Campbell	76.37
Charles Mix	66.01
Clark	80.22
Clay	73.34
Codington	82.05
Corson	52.37
Custer	76.09
Davison	84.97
Day	78.10
Deuel	75.03
Dewey	64.31
Douglas	65.32
Edmunds	76.31
Fall River	91.23
Faulk	80.54
Grant	80.63
Gregory	74.80
Haakon	88.63
Hamlin	73.95
Hand	87.83
Hanson	64.15
Harding	85.05
Hughes	94.36
Hutchinson	77.76
Hyde	92.75
Jackson	63.01
Jerauld	68.04
Jones	105.23
Kingsbury	86.10
Lake	80.63
Lawrence	82.03
Lincoln	87.47
Lyman	82.93
McCook	74.81
McPherson	81.60
Marshall	74.97
Meade	77.86
Mellette	61.51
Miner	78.10
Minnehaha	98.78
Moody	74.36
Pennington	89.85
Perkins	89.29
Potter	92.54
Roberts	70.25
Sanborn	71.79
Shannon	29.08

County	County PCI Index
Spink	85.72
Stanley	92.23
Sully	127.78
Todd	44.13
Tripp	82.68
Turner	84.70
Union	87.20
Walworth	88.08
Yankton	81.48
Ziebach	66.70
Tennessee	
Anderson	94.18
Bedford	74.97
Benton	71.71
Bledsoe	55.39
Blount	82.82
Bradley	77.73
Campbell	55.53
Cannon	67.82
Carroll	75.67
Carter	60.69
Cheatham	75.51
Chester	59.50
Claiborne	54.65
Clay	53.34
Cocke	55.19
Coffee	81.98
Crockett	64.78
Cumberland	61.24
Davidson	100.55
Decatur	60.25
De Kalb	71.66
Dickson	76.96
Dyer	74.15
Fayette	55.40
Fentress	43.89
Franklin	64.54
Gibson	69.93
Giles	77.76
Grainger	54.82
Greene	70.61
Grundy	50.96
Hamblen	64.03
Hamilton	92.01
Hancock	42.42
Hardeman	58.21
Hardin	61.26
Hawkins	63.22
Haywood	55.53
Henderson	59.96
Henry	77.03
Hickman	64.17
Houston	65.79
Humphreys	71.81
Jackson	49.19
Jefferson	65.47
Johnson	57.08
Knox	87.96
Lake	53.18
Lauderdale	60.37
Lawrence	72.45
Lewis	47.22
Lincoln	66.23
Loudon	82.06
McMinn	71.68
McNairy	61.57
Macon	67.96
Madison	79.52
Marion	64.35
Marshall	79.41
Maury	78.17
Meigs	65.72
Monroe	52.76
Montgomery	74.12
Moore	73.07
Morgan	50.55
Obion	82.99
Overton	52.86
Perry	65.15
Pickett	48.19
Polk	64.47
Putnam	69.46
Rhea	73.65
Roane	73.12
Robertson	75.12
Rutherford	83.64
Scott	50.64
Sequatchie	56.44
Sevier	72.55
Shelby	93.43
Smith	65.53
Stewart	68.19
Sullivan	86.08
Sumner	86.01
Tipton	68.51
Trousdale	77.22
Unicoi	69.67
Union	53.29
Van Buren	53.28
Warren	76.74
Washington	81.49
Wayne	57.25
Weakley	61.89
White	63.16
Williamson	108.33
Wilson	86.52
Texas	
Anderson	77.83
Andrews	106.48
Angelina	84.44
Arkansas	88.86
Archer	104.71
Armstrong	100.85
Atascosa	73.91
Austin	105.69
Bailey	68.52
Bandera	99.71
Bastrop	81.70
Baylor	100.70
Bee	68.84
Bell	83.80
Bexar	89.49
Blanco	96.12
Borden	102.43
Bosque	94.69
Bowie	86.00
Brazoria	106.40
Brazos	74.38
Brewster	91.70
Briscoe	103.53
Brooks	55.28
Brown	82.73
Burleson	72.11
Burnet	100.94
Caldwell	70.37
Calhoun	83.64
Callahan	86.73
Cameron	54.59
Camp	93.57
Carson	110.26
Cass	72.59
Castro	65.21
Chambers	87.49
Cherokee	86.69
Childress	81.86
Clay	98.14
Cochran	86.73
Coke	85.51
Coleman	82.23
Collin	128.05
Collingsworth	80.18
Colorado	89.05
Comal	107.01
Comanche	87.47
Concho	71.66
Cooke	99.24
Coryell	71.22
Cottle	94.81
Crane	108.39
Crockett	106.29
Crosby	72.69
Culberson	63.45
Dallam	97.17
Dallas	123.89
Dawson	84.31
Deaf Smith	85.00
Delta	87.99
Denton	123.72
DeWitt	80.32
Dickens	68.69
Dimmit	50.01
Donley	91.67
Duval	67.16
Eastland	78.25
Ector	99.70
Edwards	90.96
Ellis	97.75
El Paso	68.74
Erath	98.37
Falls	74.14
Fannin	83.76
Fayette	99.09
Fisher	89.46
Floyd	84.93
Foard	93 64
Fort Bend	124 29
Franklin	97 37
Freestone	86.27
Frio	59 24
Gaines	77 40
Galveston	108 65
Garza	88.11
Gillespie	109.56
Glasscock	145.85
Goliad	89 05
Gonzales	90 35
Gray	114.08
Grayson	94.71
Gregg	101.29
Grimes	84.04
Guadalupe	87.23
Hale	78.90
Hall	82.61
Hamilton	74.25
Hansford	102.84
Hardeman	93.57
Hardin	88.73
Harris	118.69
Harrison	80 20

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Haskell	86.97
Hays	80.50
Hemphill	92.96
Henderson	73.63
Hidalgo	51.31
Hill	81.59
Hockley	87.79
Hood	109.61
Hopkins	98.21
Houston	92.78
Howard	92.21
Hudspeth	79.80
Hunt	87.34
Hutchinson	116.04
Irion	115.66
Jack	100.88
Jackson	97.42
Jasper	78.31
Jeff Davis	97.76
Jefferson	107.40
Jim Hogg	86.57
Jim Wells	75.56
Johnson	99.54
Jones	87.50
Karnes	82.62
Kaufman	92.99
Kendall	116.60
Kennedy	129.30
Kent	73.68
Kerr	112.39
Kimble	87.89
King	78.81
Kinney	80.08
Kleberg	75.19
Knox	79.47
Lamar	82.22
Lamb	92.83
Lampasas	84.87
La Salle	47.76
Lavaca	92.80
Lee	81.73
Leon	94.54
Liberty	92.02
Limestone	79.51
Lipscomb	100.66
Live Oak	80.11
Llano	103.20
Loving	193.55
Lubbock	92.08
Lynn	73.31
McCulloch	84.95
McLennan	92.07
McMullen	115.55
Madison	77.41
Marion	61.08
Martin	96.99
Mason	74.74
Matagorda	85.17
Maverick	33.97
Medina	77.68
Menard	90.91
Midland	134.04
Milam	88.75
Mills	97.67
Mitchell	86.85
Montague	85.25
Montgomery	121.30
Moore	97.07
Morris	86.13
Motley	57.99
Nacogdoches	79.75
Navarro	88.68
Newton	68.07
Nolan	93.07
Nueces	91.52
Ochiltree	109.60
Oldham	89.16
Orange	84.33
Palo Pinto	90.50
Panola	77.91
Parker	98.89
Parmer	74.43
Pecos	81.34
Polk	74.36
Potter	92.87
Presidio	72.43
Rains	81.48
Randall	111.14
Reagan	98.30
Real	57.39
Red River	67.76
Reeves	71.99
Refugio	97.13
Roberts	107.91
Robertson	69.70
Rockwall	134.04
Runnels	92.36
Rusk	94.39
Sabine	68.27
San Augustine	62.75
San Jacinto	71.68
San Patricio	79.54
San Saba	75.67
Schleicher	96.66
Scurry	96.44
Shackleford	100.28
Shelby	72.82
Sherman	144.04
Smith	105.03
Somervell	104.78
Starr	33.13
Stephens	88.23
Sterling	87.91
Stonewall	92.92
Sutton	88.33
Swisher	74.94
Tarrant	111.95
Taylor	98.84
Terrell	103.69
Terry	82.83
Throckmorton	96.39
Titus	94.96
Tom Green	97.70
Travis	106.95
Trinity	67.85
Tyler	85.75
Upshur	71.93
Upton	90.86
Uvalde	69.30
Val Verde	59.31
Van Zandt	87.42
Victoria	107.04
Walker	69.98
Waller	85.93
Ward	92.78
Washington	106.01
Webb	50.42
Wharton	85.14
Wheeler	88.36
Wichita	103.62
Wilbarger	97.35
Willacy	48.70
Williamson	99.84
Wilson	68.67
Winkler	92.20
Wise	95.58
Wood	92.68
Yoakum	103.92
Young	112.10
Zapata	55.13
Zavala	48.01
Utah	
Beaver	57.74
Box Elder	77.53
Cache	82.84
Carbon	86.20
Daggett	58.97
Davis	76.71
Duchesne	71.94
Emery	68.54
Garfield	63.40
Grand	77.49
Iron	61.76
Juab	58.52
Kane	74.85
Millard	62.48
Morgan	83.95
Piute	55.24
Rich	50.84
Salt Lake	86.87
San Juan	47.40
Sanpete	53.83
Sevier	75.04
Summit	94.96
Tooele	78.22
Uintah	76.15
Utah	57.40
Wasatch	67.14
Washington	63.11
Wayne	54.14
Weber	84.38
Vermont	
Addison	73.10
Bennington	88.49
Caledonia	73.72
Chittenden	95.39
Essex	67.30
Franklin	78.37
Grand Isle	78.07
Lamoille	80.58
Orange	72.19
Orleans	65.79
Rutland	87.41
Washington	90.29
Windham	87.28
Windsor	88.51
Virginia	
Accomack	79.40
Albemarle	97.23
Alleghany	71.18
Amelia	70.78
Amherst	74.24
Appomattox	73.05
Arlington	176.03
Augusta	80.15
Bath	88.85
Bedford	83.92

County	County PCI Index
Bland	56.40
Botetourt	85.31
Brunswick	61.32
Buchanan	70.64
Buckingham	62.47
Campbell	85.91
Caroline	76.73
Carroll	59.91
Charles City	79.25
Charlotte	67.26
Chesterfield	113.55
Clarke	96.47
Craig	80.69
Culpeper	85.91
Cumberland	57.79
Dickenson	66.76
Dinwiddie	72.10
Essex	72.72
Fairfax	153.68
Fauquier	102.74
Floyd	62.30
Fluvanna	72.86
Franklin	65.33
Frederick	87.18
Giles	74.78
Gloucester	90.01
Goochland	100.75
Grayson	62.18
Greene	74.71
Greensville	60.64
Halifax	65.02
Hanover	108.71
Henrico	122.56
Henry	82.31
Highland	84.16
Isle of Wight	92.03
James City	94.17
King and Queen	77.11
King George	93.50
King William	91.24
Lancaster	99.09
Lee	60.77
Loudoun	125.65
Louisa	77.22
Lunenburg	66.43
Madison	67.74
Mathews	82.39
Mecklenburg	71.63
Middlesex	75.10
Montgomery	68.28
Nelson	68.01
New Kent	98.29
Northampton	72.54
Northumberland	87.54
Nottoway	74.06
Orange	85.75
Page	74.39
Patrick	65.28
Pittsylvania	64.38
Powhatan	81.18
Prince Edward	68.47
Prince George	68.58
Prince William	108.14
Pulaski	73.20
Rappahannock	88.26
Richmond	80.53
Roanoke	103.39
Rockbridge	75.59
Rockingham	86.09
Russell	63.80
Scott	64.70
Shenandoah	82.43
Smyth	64.85
Southampton	82.82
Spotsylvania	85.81
Stafford	99.40
Surry	81.58
Sussex	80.34
Tazewell	78.18
Warren	84.98
Washington	70.15
Westmoreland	78.67
Wise	81.42
Wythe	71.24
York	98.17
Alexandria	174.95
Bedford City	95.12
Bristol	84.80
Buena Vista	76.33
Charlottesville	97.75
Chesapeake	92.22
Clifton Forge	101.19
Colonial Heights	122.19
Covington	94.85
Danville	91.77
Emporia	99.55
Fairfax City	165.15
Falls Church	194.25
Franklin	115.59
Fredericksburg	97.62
Galax	90.04
Hampton	94.63
Harrisonburg	79.05
Hopewell	93.54
Lexington	85.03
Lynchburg	97.61
Manassas	122.68
Manassas Park	94.64
Martinsville	94.71
Newport News	97.03
Norfolk	87.84
Norton	99.26
Petersburg	96.65
Poquoson	107.68
Portsmouth	88.95
Radford	78.94
Richmond	115.39
Roanoke	96.68
Salem	100.26
South Boston	88.53
Staunton	96.17
Suffolk	84.29
Virginia Beach	109.42
Waynesboro	98.79
Williamsburg	123.69
Winchester	105.39

Washington

Adams	107.25
Asotin	90.78
Benton	106.12
Chelan	96.59
Clallam	93.60
Clark	91.10
Columbia	125.60
Cowlitz	95.79
Douglas	90.23
Ferry	61.28
Franklin	90.56
Garfield	139.19
Grant	79.97
Grays Harbor	97.30
Island	91.80
Jefferson	95.82
King	123.99
Kitsap	101.70
Kittitas	81.20
Klickitat	85.19
Lewis	92.48
Lincoln	141.17
Mason	81.32
Okanogan	87.85
Pacific	95.04
Pend Oreille	66.15
Pierce	93.48
San Juan	110.23
Skagit	99.55
Skamania	80.33
Snohomish	99.54
Spokane	89.55
Stevens	69.10
Thurston	98.03
Wahkiakum	90.11
Walla Walla	96.93
Whatcom	85.55
Whitman	93.13
Yakima	82.58

West Virginia

Barbour	68.76
Berkeley	79.52
Boone	71.79
Braxton	60.39
Brooke	79.27
Cabell	86.48
Calhoun	54.36
Clay	51.85
Doddridge	56.49
Fayette	68.39
Gilmer	61.04
Grant	66.15
Greenbrier	70.18
Hampshire	59.34
Hancock	91.11
Hardy	56.31
Harrison	82.59
Jackson	75.23
Jefferson	77.06
Kanawha	100.68
Lewis	71.83
Lincoln	53.44
Logan	71.57
McDowell	66.37
Marion	86.22
Marshall	78.31
Mason	69.01
Mercer	78.12
Mineral	67.95
Mingo	66.06
Monongalia	80.40
Monroe	58.40
Morgan	74.87
Nicholas	69.95
Ohio	93.65
Pendleton	48.76
Pleasants	78.19
Pocahontas	66.49
Preston	66.92
Putnam	83.61
Raleigh	79.17
Randolph	69.70

County	County PCI Index
Ritchie	62.37
Roane	63.82
Summers	59.57
Taylor	67.88
Tucker	57.90
Tyler	68.97
Upshur	70.20
Wayne	64.18
Webster	49.35
Wetzel	80.82
Wirt	61.50
Wood	88.69
Wyoming	62.19
Wisconsin	
Adams	60.52
Ashland	73.73
Barron	78.83
Bayfield	62.64
Brown	99.55
Buffalo	80.39
Burnett	64.46
Calumet	91.84
Chippewa	77.23
Clark	73.58
Columbia	91.10
Crawford	69.90
Dane	110.04
Dodge	85.47
Door	91.57
Douglas	76.26
Dunn	69.71
Eau Claire	84.93
Florence	63.14
Fond Du Lac	90.93
Forest	56.81
Grant	80.80
Green	102.20
Green Lake	88.02
Iowa	76.25
Iron	67.20
Jackson	74.96
Jefferson	91.60
Juneau	79.67
Kenosha	102.61
Kewaunee	83.82
La Crosse	93.95
Lafayette	85.51
Langlade	71.26
Lincoln	74.38
Manitowoc	89.01
Marathon	84.63
Marinette	79.17
Marquette	70.27
Milwaukee	107.61
Monroe	81.54
Oconto	72.18
Oneida	82.75
Outagamie	96.49
Ozaukee	130.61
Pepin	76.39
Pierce	87.81
Polk	78.50
Portage	85.16
Price	74.38
Racine	104.48
Richland	74.43
Rock	93.22
Rusk	63.81
St. Croix	95.31
Sauk	87.12
Sawyer	64.42
Sheboygan	99.14
Taylor	73.35
Trempealeau	72.32
Vernon	75.92
Vilas	69.78
Walworth	90.83
Washburn	73.55
Washington	101.35
Waukesha	123.42
Waupaca	89.35
Waushara	68.42
Winnebago	100.13
Wood	93.71
Shawano	72.63
Wyoming	
Albany	88.34
Big Horn	74.60
Campbell	105.04
Carbon	95.44
Converse	87.62
Crook	92.42
Fremont	84.42
Goshen	78.90
Hot Springs	97.93
Johnson	97.01
Laramie	109.70
Lincoln	85.46
Natrona	123.69
Niobrara	89.28
Park	100.96
Platte	75.30
Sheridan	107.65
Sublette	98.28
Sweetwater	104.37
Teton	118.02
Uinta	87.12
Washakie	93.80
Weston	106.67

Note.—Alaska Income Figures Divided by 1.25. Hawaii Income Figures Divided by 1.15.

Source: Bureau of Economic Analysis, Local Area Personal Income 1978–84.

[FR Doc. 87-21288 Filed 9-15-87; 8:45 am]

BILLING CODE 3710-08-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1190

Minimum Guidelines and Requirements for Accessible Design

AGENCY: United States Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Public comment is invited on a proposal that would amend the *Minimum Guidelines and Requirements for Accessible Design* (MGRAD) by deleting § 1190.40 through 1190.230 of Subpart D—Technical Provisions and in their stead incorporating by reference (with some exceptions) sections 4.2 through 4.32 and the Appendix of the 1986 edition of the American National Standards Institute Standard ANSI A117.1, "American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People." In 1981, MGRAD was issued by the ATBCB pursuant to section 502(b)(7) of the Rehabilitation Act of 1973, to establish minimum guidelines and requirements for standards issued by the four standard-setting agencies under the Architectural Barriers Act of 1968. A revised final rule was issued in 1982. In 1984, the four standard-setting agencies issued the *Uniform Federal Accessibility Standards* (UFAS), which was based on the ANSI format. MGRAD establishes the minimum requirements with which UFAS must comply. The proposal would minimize the differences between MGRAD and UFAS. Further, by replacing the MGRAD technical provisions with the ANSI A117.1 (1986), both MGRAD and UFAS would follow the same format that is most widely used in non-federally funded and constructed facilities. This proposal also would make conforming technical amendments and would add provisions to Subpart E, which was reserved when MGRAD was published.

DATES: Written comments must be submitted on or before November 16, 1987.

ADDRESS: Written comments should be addressed to the General Counsel, Docket 87-04, Architectural and Transportation Barriers Compliance Board, 330 C Street, SW., Room 1010, Washington, DC 20202. Comments received will be available for public inspection at the above address from 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mark Smith, ATBCB, 330 C Street SW., Room 1010, Washington, DC 20202, (202) 245-1801 (v/TDD). This is not a toll-free number. This proposed rule is available on cassette at the above address for persons with visual impairments.

SUPPLEMENTARY INFORMATION:

Background of Proposed Rule

The Architectural and Transportation Barriers Compliance Board (ATBCB) was established by Section 502 of the Rehabilitation Act of 1973, as amended (Pub. L. 93-112, 29 U.S. 792), to insure compliance with standards prescribed pursuant to the Architectural Barriers Act of 1968, as amended (Pub. L. 90-480,

42 U.S.C. 4151–4157) (the Act). The Act is intended to insure that certain buildings financed with Federal funds are designed, constructed, altered, and leased in accordance with standards issued by four Federal agencies to provide ready access and use of such buildings to physically handicapped people. The four agencies authorized to issue standards for all design, construction, alteration, and leasing subject to the Act are the Department of Defense (DOD) for its buildings and facilities; the Department of Housing and Urban Development (HUD) for residential structures; the U.S. Postal Service (USPS) for its buildings and facilities; and the General Services Administration (GSA) for all other buildings and facilities.

A 1978 amendment to section 502 of the Rehabilitation Act, Pub. L. 95–602, authorized the Board to issue minimum guidelines and requirements (MGRAD) for these standards. The MGRAD now in effect was published on August 20, 1982 (47 FR 33862), and is codified at 36 CFR Part 1190.

Throughout the development of and rulemaking proceeding for MGRAD, the ATBCB considered the specifications contained in the American National Standards Institute's "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped Persons" (ANSI A117.1–1980 or ANSI). The American National Standards Institute (ANSI) is a private, national organization that publishes recommended standards on a wide variety of subjects. ANSI's standards for barrier-free design are developed by a committee made up of 52 organizations representing associations of handicapped people, rehabilitation professionals, design professionals, builders, and manufacturers. ANSI's standards are developed using the consensus process. The original ANSI A117.1, adopted in 1961, formed the technical basis for the first accessibility standards adopted by the Federal Government and most State governments. The 1980 edition of that standard was based on research funded by the U.S. Department of Housing and Urban Development. It was generally accepted by the private sector and was recommended for use in State and local building codes by the Council of American Building Officials.

Recognizing the widespread application of the ANSI standard and the desirability of uniformity, the ATBCB in MGRAD included provisions that were consistent with the technical specifications of ANSI A117.1–1980 wherever it was deemed appropriate.

In reviewing the ANSI technical requirements during MGRAD development, however, the ATBCB found that in some cases, with regard to some subjects, there was no sufficient research and/or field experience to support a Federal requirement at the time. Those provisions were reserved in MGRAD. The reserved provisions include external door opening force limits; requirements for accessible windows; the use of detectable warnings at locations other than doors leading to hazardous areas; all provisions dealing with signage; and opening time requirements for elevator doors.

Certain provisions in MGRAD differed from the 1980 ANSI, and some provisions of MGRAD provided clarification or additional information.

Following the publication of MGRAD as a final rule, the four standard-setting agencies under the Act initiated the development of uniform accessibility standards to be used by all Federal agencies. The objective of the effort was to publish uniform standards which would, wherever possible, be consistent with the ANSI A117.1–1980 standard while complying with MGRAD.

In keeping with the agencies' objective to secure uniformity between Federal requirements and those commonly used in the private sector or by state and local governments, the UFAS followed ANSI A117.1–1980 in format. Departures from the ANSI technical provisions were made only where necessary in order to comply with MGRAD, or where the agencies found differing or additional requirements to be appropriate due to the nature of certain buildings and facilities subject to the Act or which were in the interests of improved safety or access for handicapped people. The resulting document, the *Uniform Federal Accessibility Standards* (UFAS), was published in final form in the **Federal Register** on August 4, 1984 (47 FR 33862), and was implemented individually by the standard-setting agencies. GSA adopted the UFAS in 41 CFR 101.19.6, effective August 7, 1984. HUD adopted the UFAS in 24 CFR Part 40, effective October 4, 1984. USPS adopted the UFAS in Handbook RE–4, "Standards for Facility Accessibility by the Physically Handicapped," effective November 15, 1984. DOD adopted the UFAS by revising Chapter 18 of DOD 4270.1–M, "Construction Criteria," by memorandum dated May 8, 1985.

The 1980 ANSI standard recommended that scoping provisions, *i.e.*, specifications as to the number of accessible features and elements, be developed by administering agencies, but included in the technical specifications a requirement for a "reasonable number" of accessible features or elements. In accordance with this recommendation, the ATBCB developed for MGRAD definite numeric values in order to provide explicit guidance to the Federal standard-setting agencies. When the agencies developed UFAS, these MGRAD scoping guidelines were followed in section 4.1, Minimum Requirements, and, in addition, the "reasonable number" references in the ANSI technical provisions were deleted.

An integral part of the ANSI process is the requirement for each ANSI standard to be reviewed at five-year intervals and then either reaffirmed or revised. When the ANSI A117.1 review began in 1984, differences between UFAS and the 1980 ANSI standard were among the principal recommendations made for changes to be made in the new edition. The provisions that has been reserved in MGRAD were also reviewed to determine whether they should be retained, revised, or deleted in the new ANSI standard. The ANSI Committee found no justification for deleting these requirements, and thus retained all of the provisions that were reserved in MGRAD. However, revisions were made in some of the sections that reflected findings of ATBCB research on MGRAD reserved areas.

Many of the features of UFAS not previously in the ANSI standard were adopted in the 1986 ANSI, which was approved by ANSI on February 5, 1986. In particular, the 1986 ANSI eliminates all references to "minimum number" requirements in its technical provisions; includes some revisions to signage requirements that reflect results of ATBCB-sponsored research; and incorporates other requirements such as certain reach range dimensions, vertical clearances, and provisions relating to alarms.

Proposed Action on Reserved Sections

In the period since completion of MGRAD, the ATBCB has sponsored research in the areas of detectable warnings, signage and other environmental information systems, alarms, and hand anthropometrics, among other topics, and has participated with the standard-setting agencies in their development of UFAS. ATBCB has also assisted the ANSI A117.1 Committee in the development of the 1986 edition of that standard. The ATBCB had the opportunity to review, with those primarily responsible for the UFAS and ANSI standards, comments on the 1980 standard that reflected

practical experience in applying that earlier standard as well as information about new practices and technology.

Neither the review of these comments nor the research sponsored by the ATBCB to date warrants broad or significant changes in the MGRAD technical requirements, or modifications to the provisions of the 1986 standard at this time. In the case of detectable surface treatments, the ATBCB research recommended against federally-mandated requirements for detectable warnings at this time, which is reflected in an exception to the ANSI provisions incorporated in this rulemaking. Research in the area of signage developed recommendations for some changes—primarily the requirements for raised rather than incised tactile signage; for a standard measurement of stroke-to-width ratios, and for upper-case sans serif tactile signage—which have been incorporated in the ANSI standard. Some other recommendations from signage and information systems research would amplify or add to current requirements, and would make slight changes in permissible character proportions, but the ATBCB does not at this time consider that there is sufficient justification to recommend changes to existing requirements that are in wide use. This information, like similar findings from other research projects, will be used as appropriate in providing technical assistance to designers requiring more detailed information and may be reconsidered in future revisions of MGRAD.

Similarly, most findings from Alarms and Hand Anthropometrics studies did not conflict with current requirements but rather suggested additional consideration and refinements. These findings are discussed in further detail in sections which follow.

Finally, MGRAD reserved Subpart E—Special Building or Facility Types or Elements, for future rulemaking. The ANSI technical provisions include specifications for accessible dwelling units, one of the principal categories identified for Subpart E. UFAS incorporates the ANSI dwelling unit specifications and also provides requirements for a number of other special buildings types. These requirements were developed by a UFAS working group led by the standard-setting agencies with participation by the ATBCB and other Federal agencies with responsibility for different building and facility types.

Taking all of these developments into consideration, the ATBCB has determined that it is now possible to complete the reserved sections of MGRAD. The technical requirements proposed to be added to MGRAD are based primarily on the standards now promulgated by ANSI and the four standard-setting agencies, with findings from ATBCB research providing additional information and support.

There are two basic factors supporting this decision. The first consideration is the fact that the UFAS was developed subsequent to the publication of MGRAD and was subject to public comment following its publication in proposed form in the **Federal Register**. Thus, these public comments constitute a more current record in support of the UFAS provisions than existed on these issues when MGRAD was issued. The comments that will be received in response to this Notice of Proposed Rulemaking (NPRM) will provide an even more current record with regard to the proposed action. Since the UFAS has now been applied successfully for more than two and one-half years, and since the ATBCB participated in its development, it is appropriate to propose that requirements found in the UFAS but reserved in MGRAD be accepted now as the ATBCB minimum requirements.

Second, the ANSI A117.1 committee carefully reviewed all of the changes made when the 1980 standard was adapted for UFAS and the ATBCB rationale for reserving the MGRAD sections. Comments, opinions, and recommendations on these and other issues were solicited from the committee's membership of 52 organizations and carefully considered. The 1986 ANSI standard is the result of these extensive deliberations. Many of the UFAS changes have been adopted; in other cases, alternative approaches were developed that the ATBCB considers acceptable.

Another question considered by the ATBCB was the format of the MGRAD technical provisions. At the time MGRAD was developed, the Board drafted the standard in the **Federal Register** format used for regulations issued by the executive agencies. When the standard-setting agencies began development of the UFAS, they chose to use the format of the ANSI standard, thus retaining intact the numbering system and the figures. This decision was made in the interest of promoting uniformity in the accessibility standards used in Federal and non-Federal design and construction. The ATBCB believes that this is a worthwhile goal and therefore proposes that the ANSI technical provisions be adopted as the MGRAD technical provisions. It has chosen to use ANSI rather than UFAS because the 1986 ANSI has made a number of editorial improvements which are not currently in the UFAS. It is anticipated that future revisions of UFAS will incorporate updated versions of ANSI.

This proposed rulemaking would achieve several goals. It would complete MGRAD after five years of study and lessons learned in the development of other standards. It would make comparisons and future revisions of UFAS and MGRAD simpler. Finally, it would move significantly closer to the long-standing goal of uniformity in accessibility requirements for both the public and private sectors. This would have the benefit of simplifying accessibility compliance by removing duplicative layers of technical specifications that are a confusing and complicating factor for designers and builders as well as lay persons concerned with promoting accessibility. The result should be improved efficiency for all concerned parties.

In proposing this action, the ATBCB stresses its commitment to continuing review and revision of MGRAD as knowldge, experience, and new technology develop. While proposing to adopt the ANSI technical provisions as the technical specifications core of MGRAD, the ATBCB intends to maintain MGRAD as an independent document and is not restricting future action on technical issues. As proposed here, wherever the ATBCB finds a different or more stringent requirement appropriate, such a requirement will be adopted. As future ANSI editions are developed, each would be reviewed, as this one was, before making a decision on adopting the new version. Morever, any determination to modify MGRAD will be subject to a public rulemaking proceeding. While maintaining the independence of MGRAD, however, the ATBCB remains committed to continued close cooperation with the ANSI A117.1 committee, and will continue to work to bring potential improvements in that standard that are identified by the ATBCB to the attention of the committee members.

Further, incorporating the technical provisions of the nationally-accepted voluntary standard developed by ANSI is clearly in keeping with the Federal policy articulated in Executive Order 11093 promoting the use of private-developed standards wherever possible in Federal activities.

Provisions of the Proposed Rule

The proposed rule includes a number of amendments to complete reserved sections of MGRAD, to conform MGRAD language and terms to those used in ANSI A117.1, and to substitute

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references to ANSI section numbers for the corresponding section numbers in the current MGRAD. A section-by-section description of the proposed amendments follows:

Section 1190.2, Applicability.

This section would be amended by deleting paragraph (e), which describes the reserved status of Subpart E, Special Building and Facility Types, and places certain requirements on the Department of Housing and Urban Development until such time as the subpart is completed. Because this proposed rulemaking would complete the housing requirements and remove the "reserved" status of the subpart, paragraph (e) no longer is necessary or appropriate.

Section 1190.3, Definitions.

This rulemaking would substitute the ANSI definitions of "adaptability," "common use," and "physically handicapped person" for those now appearing in MGRAD. In the case of the first two terms, the ANSI definitions are more clear and are consistent with the intent of MGRAD definitions. The ANSI definition of "physically handicapped person" is the same definition used in UFAS. It was accepted by the ATBCB when UFAS was developed as being appropriate for purposes of standards issued under the Architectural Barriers Act, which relate strictly to accessibility and usability of buildings and facilities. By incorporating this definition, uniformity in defining the term among all three documents will be achieved.

In addition, definitions would be added for several terms that are used in the ANSI A117.1 standard but were not used in MGRAD. These terms are "detectable," "detectable warning," "dwelling unit," "housing," "marked crossing," "multifamily dwelling," "service entrance," and "sleeping accommodations." The definition for "tactile warning," a term that would no longer be used, would be deleted.

Sections 1190.7, 1190.8, and 1190.9 and Subpart B.

A technical correction is proposed to delete section numbers unused in the current MGRAD and redesignate the remaining sections accordingly. Thus § 1190.9, Severability, would be redesignated as § 1190.7, and Subpart C, Scope, would be redesignated as Subpart B. The original sections 1190.7 and 1190.8 covered subject matter later deemed inappropriate for inclusion in MGRAD. Subpart B was originally intended to cover Waivers and Modifications, but proposed provisions were deleted after a 1980 opinion by the Office of Legal Counsel, Department of Justice, found that the ATBCB was not authorized to issue regulations governing waivers and modifications.

Subpart C—Scope.

This subpart would be redesignated as Subpart B and would be amended wherever reference is made to sections of the current Subpart D—Technical Provisions. Those references would be replaced by incorporating the appropriate references to corresponding provisions of the ANSI A117.1–1986 standard.

In addition, some new provisions would be added to incorporate requirements currently found in Subpart D—Technical Provisions that are not included in the ANSI standard. These provisions have been added to this section when the requirements were considered to be a scoping rather than a technical provision. (The ANSI standard contains no scoping provisions, but rather relies on the adopting authority to establish those requirements.)

Amendments to Subpart C would be made in each of its three sections, *§ 1190.31, Accessible buildings and facilities: New construction; § 1190.32, Accessible buildings and facilities: Additions,* and *§ 1190.33, Accessible buildings and facilities: Alterations.* Amendments to § 1190.31 include:

(1) Section 1190.31(a)(2), which would incorporate a provision now found in § 1190.50(h), Egress (and in UFAS 4.3.10) which requires more than one accessible means of egress wherever fire code provisions require more than one means of egress from any space or room.

(2) An addition to § 1190.31(g) which would note that platform lifts should facilitate unassisted entry and exit from the lift. This provision is under § 1190.110 in the current MGRAD.

Further, new provisions would be added to cover areas now reserved in MGRAD. Where UFAS contains scoping requirements in the reserved areas, these amendments would adopt consistent requirements. These additions to § 1190.31 would include:

(1) Paragraph (j), *Windows,* which was reserved in MGRAD pending further study or experience with application of the 1980 ANSI standard. When the ANSI A117.1 committee reviewed the issue for the 1986 revision of the standard, the fact that MGRAD had reserved the provision was considered. The reviewers decided that practical experience with the 1980 requirements on windows had not identified any problems with the specifications and that it was desirable to retain the provisions (found at section 4.12 in the ANSI standard) in order to assure that the need for accessible windows not be overlooked. The ATBCB funded a research project on Hand Anthropometrics which studied capabilities of selected disabled subjects to operate mechanisms and building components. Copies of the report of this project and other ATBCB research described in this proposal are available for inspection at the office referenced above. The findings from this study suggested detailed design criteria for window-opening hardware and indicated appropriate operable forces based on the specific type of hardware (*e.g.*, small bar or plate) that would be usable by 90 percent of the 104 disabled subjects in laboratory studies. The recommended forces ranged from 2 pound feet (lbf) to rotate a crank) to 11 pound feet (lbf) when a hook grip could be used.

The ANSI requirement permits hardware "operable by one hand" and which "does not require tight grasping, pinching or twisting of the wrist." The maximum operable force permitted is 5 lbf.

Although the detailed recommendations from the Hand Anthropometrics studies provide valuable information, for designers of building products in particular, and will be offered by the ATBCB as technical assistance information, the ATBCB does not believe that a mandatory Federal requirement more detailed and stringent than anything now in effect is warranted on the basis of current information.

The research report points out that "the research undertaken in this project was the first comprehensive examination of human performance of hand/arm disabled people. As such, the results can not be considered complete or definitive. . . . Moreover, there are some findings that suggest the need to develop different research methods or, at least, modify those described" in the report. It was noted, for example, that performance on actual devices can exceed performance on abstracted tasks. Bearing such considerations in mind, the ATBCB does not believe there is justification for establishing new and detailed requirements at this time. On the other hand, the research, together with experience with the 1980 ANSI standard, has confirmed the ATBCB's opinion that specifications for windows should be included in MGRAD requirements.

The current ANSI provisions are within the acceptable range of grip types (and forces for certain types) identified by the research project. To incorporate these ANSI requirements by reference would ensure greater accessibility than is now the case with no requirements in force. Since the research team did find standard window-opening devices on the market that met the requirements, there should be no practical impediment

to implementing the provision. The detailed recommendations offered by the research findings could, along with additional information that may become available, serve as the basis for future revisions to MGRAD at a later date.

Therefore, this reserved section would be completed by requiring that operable windows, where provided, comply with 4.12.

(2) Paragraph (o) *Tactile warnings*, was also reserved when MGRAD was published. Subsequently, the ATBCB funded research on detectable tactile surface treatments. As noted in an earlier proposed rulemaking (52 FR 4352, February 11, 1987), the findings from this study did not support mandatory Federal requirements in this area. Therefore the ATBCB proposed not to require detectable warnings, other than knurled surfaces on hardware of doors leading to hazardous areas. However, the ATBCB recognizes that designers and builders may choose to provide detectable warnings and has proposed amendments to MGRAD that would refer users to ANSI 4.27.

While ANSI 4.27 provides useful guidance on the issue of detectable warnings, the ATBCB also wished to provide the following guidance. First, the ANSI standard requires detectable warning surfaces on curb ramps. Concerns have been raised about the difficulties which people with certain mobility impairments (particularly amputees or persons using braces) have in walking on the surface treatments typically used for detectable warnings. These problems are particularly acute when the treatments are applied to sloping surfaces such as curb cuts. An additional point is that the ANSI standard requires only a textural contrast for detectable warnings, while the ATBCB research indicated that other cues such as sound and resiliency are equally or more useful. This issue is discussed in a summary of the ATBCB research report that is available from the office identified in this proposed rule.

In addition, under the proposal, the ATBCB will provide other information on detectable surfaces upon request. This proposed amendment incorporates the language proposed in the earlier NPRM cited above. The comments on detectable surfaces received in response to the earlier proposal will be incorporated into this rulemaking docket and considered along with any additional comments received on detectable warnings as a result of the present NPRM.

(3) Paragraph (p), *Signage*, was reserved in response to comments on early MGRAD rulemaking that included provisions on signage. The ATBCB has funded two research projects in this area since that time, one specifically on signage and the second on signage and other information systems for low-vision persons. UFAS included the signage requirements of the 1980 ANSI standard because it was considered essential to provide standards for signage in Federal buildings while the ATBCB continued its consideration of the issue. The 1986 ANSI standard incorporated the principal undisputed findings from the ATBCB signage research. Specifically, these provisions are (1) establishing the upper-case letter "x" as the standard of measurement for determining character proportions; and (2) prohibiting incised letters. This proposed rulemaking adopts the technical provisions of the 1986 ANSI and provides scoping requirements consistent with the intent of UFAS requirements.

Some additional recommendations from the research reports were not adopted by ANSI and would not be incorporated into MGRAD by this proposal. It was judged that there was not sufficient justification for those recommendations to merit making an MGRAD change that would be inconsistent with both ANSI and UFAS. This is the case with research recommendations for certain ratios governing character proportion on signs. Similarly, research findings suggested detailed requirements for lighting, gloss factors, and color contrast quantification that would represent significant new requirements. Appropriate information from the research will be made available when technical assistance is requested. These findings and practical experience will be evaluated for consideration in future rulemakings.

(4) A new paragraph (u) would be added to provide scoping requirements for housing. No housing provisions were included in MGRAD when it was published in 1982; the rulemaking noted that housing was among the special building and facility types that would be the subject of later rulemakings to complete the reserved Subpart E. UFAS adopted the ANSI requirements for dwelling units, with some amendments, along with scoping provisions for housing. This rulemaking would add, in subsection (u), scoping provisions for housing consistent with those in UFAS and would reference the technical specifications in the 1986 ANSI, which incorporate the UFAS amendments to the 1980 standard.

(5) A new paragraph (v) would be added to provide scoping requirements for health care facilities. This is one of the special building and facility types for which Subpart E was reserved. Consistent with the UFAS requirements, which were approved by the ATBCB at the time of their development, this rulemaking would adopt both scoping and technical provisions for health care facilities. The ATBCB notes that these requirements may be subject to review during future amendments of MGRAD.

As noted above, amendments would also be made to *Section 1190.32, Accessible buildings and facilities: Additions*, and *Section 1190.33, Accessible buildings and facilities: Alterations*. Conforming amendments would be made to § 1190.32 to reference corresponding ANSI provisions where MGRAD section numbers are now cited. Also, the reserved "Signage" paragraph would be deleted. Signage in additions to existing buildings would comply with the same requirements as in new construction. Similar amendments also would be made in § 1190.33, *Accessible buildings and facilities: Alterations*.

Additional amendments would be made to § 1190.33 to provide special technical provisions for certain situations in alteration projects. These amendments are consistent with provisions now in effect in UFAS. Specifically, the rule would permit:

(a) Omitting the requirement for an automatic elevator door reopening device where an existing elevator has a safety door edge. This exception is found at § 1190.100(c)(3)(i) in the current MGRAD.

(b) Reducing the minimum car dimensions to 4' x 4' where it is structurally impracticable to comply with the elevator car size required for new construction projects. This exception currently is found at § 1190.100(d)(1)(i) in MGRAD.

(c) Adding one accessible "unisex" toilet per floor, adjacent to existing toilet facilities, where it is structurally impracticable to make existing toilet facilities for each sex accessible. This exception is found at § 1190.150(a)(1) in MGRAD in effect.

(d) Providing special technical Provisions for stair handrails and door features in alterations projects.

(e) Providing certain exceptions for assembly areas.

Subpart D—Technical Provisons. This subpart would be redesignated as Subpart C and would be amended to incorporate §§ 4.2 through 4.32 and the Appendix of ANSI A117.1–1986 in lieu of the corresponding technical provisions now found in MGRAD §§ 1190.40 through 1190.240.

Incorporation of the ANSI provisions would complete the reserved MGRAD sections. These are: (1) all provisions

related to signage requirements, now found at MGRAD §§ 1190.60(f), 1190.100(e)(2), 1190.100(h)(2)(iii), 1190.100(j)(2), 1190.150(d), and 1190.200; (2) all provisions related to tactile warnings, now found at MGRAD §§ 1190.70(e)(9), 1190.80(f), and 1190.190; (3) MGRAD § 1190.140, Windows; (4) MGRAD § 1190.100(e)(2), elevator door open-time requirement, and (5) MGRAD § 1190.130(h)(2)(i), exterior door opening force requirement.

Most ANSI provisions are identical in effect and intent with the corresponding MGRAD provisions. Some provisions that MGRAD (and UFAS) included in the technical sections were not incorporated in the 1986 ANSI because they were deemed to be more appropriately treated as scoping requirements. Those requirements are proposed to be included in the amended § 1190.31, as noted above. Some were not incorporated in the 1986 ANSI standard because the ANSI committee did not consider those particular requirements to be substantiated by research findings or experience indicating superior benefits in accessibility or usability over the then current ANSI requirements, or because the committee felt that the requirements were not appropriate for a voluntary standard used for private sector construction. Where the ATBCB believes that the more stringent requirement is of sufficient importance that it should be mandated for facilities subject to the Architectural Barriers Act—all of which involve Federal funding for design, construction, alteration or leasing—it is proposing exceptions to the ANSI provisions. These exceptions, which are consistent with UFAS, are:

(1) MGRAD § 1190.100(d)(3)(iv) and (f)(1)(iv) and UFAS 4.10.3 and 4.10.12, require elevator car control and hall call buttons to be either raised or flush. ANSI permits recessed, raised, or flush buttons. The 1986 ANSI Committee considered revising this provision to prohibit recessed buttons but did not do so because, whether recessed, raised or flush, mechanically activated buttons must be depressed in order to be activated. Therefore such a prohibition would not necessarily be helpful. It was also noted that recessed buttons are easier to use for persons with certain disabilities and prevents problems of accidental activation by persons with visual disabilities who are "reading" the panel by touch.

However, further study has led the ATBCB to conclude that problems with recessed buttons are sufficient to outweigh these possible benefits. Persons with upper limb amputations or any disability that would require use of a fist or elbow to activate the button cannot use a recessed button. Further, the Hand Anthropometrics project found that persons with reaching limitations frequently use a slapping motion to operate higher buttons, a motion that would not activate a recessed button. Since raised or flush buttons are readily available, as are new control panels with inclined buttons that would obviate the problem of depressing flush buttons, the ATBCB believes it is appropriate to maintain MGRAD requirement as currently in effect.

(2) Paragraphs 4.7.7 Warning Textures and 4.7.12 Uncurbed Intersections of ANSI 4.7 Curb Ramps require detectable warning surfaces at curb ramps and uncurbed intersections. As discussed earlier, the ATBCB does not propose to require detectable warnings at any location and therefore is making an exception to these provisions.

(3) MGRAD § 1190.150(f)(5)(i) and UFAS 4.21.6 permit the installation of a fixed shower head in lieu of a hand held shower head in unmonitored facilities where vandalism is a consideration. ANSI provides advisory language to this effect in its Appendix. Although the ATBCB proposed to adopt the ANSI Appendix as well as the technical provisions, in order to avoid any potential questions about the validity of the fixed-shower-head exception in UFAS, this provision is specifically listed in this rulemaking as a proposed exception to the ANSI technical provisions.

(4) MGRAD § 1190.150(f)(7) and UFAS 4.21.7 permit a maximum height of ½ inch (13 mm) for curbs in shower stalls that are 36 inches by 36 inches (915 mm by 915 mm). ANSI permits a 4-inch curb height, the standard height for curbs in prefabricated shower stalls. Although the ATBCB recognizes the advantages of permitting use of standard building products, and although it is believed that a large proportion of disabled individuals who independently transfer to shower seats are able to maneuver over the 4-inch curb, the requirement for the lower curb would be continued because it increases accessibility for people with paralysis of the legs who cannot lift their legs over a 4–inch curb when transferring.

(5) UFAS 4.30.6 specifies mounting heights and locations for interior signage. (There is no corresponding provision in MGRAD because all signage requirements are reserved.) This requirement is not included in ANSI provisions on signage that are being incorporated by this rulemaking. The ATBCB believes the UFAS requirement to be appropriate and useful in assuring that tactile signage can be located by people with impaired vision. In addition to the ANSI technical provisions, this proposal would specify that such signage be mounted between 54 inches and 66 inches above the floor on the latch side of the door.

(6) UFAS 4.33.3 contains an exception to the ANSI requirements on placement of wheelchair locations in assembly areas. This proposal would provide an exception to the ANSI provisions to incorporate the UFAS provision. MGRAD, UFAS, and ANSI all require dispersal of wheelchair locations throughout the seating area. The exception permits clustered wheelchair seating in bleachers and other areas with sight lines requiring slopes greater than 5 percent, or to permit equivalent positions on levels with accessible egress.

The remaining differences between the ANSI and MGRAD specifications, and the ATBCB determination on each, are as follows:

(1) MGRAD § 1190.50(i)(3)(iv) permits carpet tile to have a maximum combined thickness of pile, cushion and backing of ½ inch. The section recommends that carpet meet this requirement but permits carpet to have a pile height up to ½ inch, exclusive of the thickness of pad or backing. The restriction on carpet tile thickness was incorporated in UFAS due to the MGRAD requirement. The 1980 ANSI, in paragraph 4.5.3, permits a maximum pile height of ½ inch and does not distinguish between carpet and carpet tile. In developing the 1986 standard, the ANSI committee considered the disparity between the standards but did not revise the existing ANSI provision because committee members did not consider it appropriate to place a different requirement on carpet tile than on carpet. The ATBCB has reviewed this issue and concluded that the difference in the MGRAD requirement and the ANSI requirement is not significant, and further agrees that there is no evidence to support continuing the different requirement for carpet tile than for carpet. Therefore the ATBCB proposes to incorporate 4.5.3 as it appears in ANSI.

(2) MGRAD § 1190.60, *Parking and passenger loading zones,* differs from the corresponding ANSI provisions, 4.6 Parking Spaces and Passenger Loading Zones, in the areas noted below. This proposal would incorporate all of the ANSI provisions without change. (a) MGRAD 1190.60(c)(2)(i) provides advisory specifications for accessible van parking spaces, although such

spaces are not required. UFAS 4.6.3 incorporates the same specifications as advisory standards. ANSI refers the user of the A117.1 standard to the appendix for dimensions for accessible van spaces. Since this proposal incorporates the ANSI appendix by reference, the ATBCB does not consider it necessary to restate the advisory specifications elsewhere in MGRAD.

(b) MGRAD § 1190.60(c)(5) requires that accessible parking spaces and access aisles have surface slopes not exceeding 1:48 in all directions. The same requirement is applied to passenger loading zones under § 1190.60(d)(3). UFAS 4.6.3 and 4.6.5 incorporate a similar requirement. The 1986 ANSI standard reviewers considered this specification, but did not incorporate it in section 4.6. ANSI 4.3.7 Slope (under 4.3 Accessible Route) requires that the cross slope of an accessible route can never exceed 1:50, which is essentially the same as the 1:48 MGRAD requirement. Since ANSI 4.6.3 states that the access aisle of a parking space or passenger loading zone is part of the accessible route from the space or zone, the cross slope requirement clearly applies. It is therefore not necessary to repeat the requirement in this section.

(c) MGRAD § 1190.60(d)(1) and UFAS 4.6.5 require that the access aisle at accessible passenger loading zones be 5 feet wide, the same width as the access aisle at accessible parking spaces. ANSI 4.6.3 requires a 4-foot-wide access aisle. Like other MGRAD and UFAS differnces with the 1980 ANSI standard, this was considered by the ANSI committee.

Discussions with the research contractor who developed the original ANSI requirement indicate that the difference in access aisle width was based on analysis of the use of the space. The access aisle at a parking space is likely to be adjacent to another parking space in which a car could be parked close to the boundary. At a passenger loading zone, on the other hand, a car can be positioned to assure full use of the access aisle and there will be no adjacent vehicle to maneuver around. Another consideration arguing for the wider access aisle for parking spaces is the possibility of a door from the adjacent parked car swinging into the access aisle. After weighing these considerations, the ATBCB has determined that a five foot wide access aisle is adequate for loading zones and there is no overriding reason for maintaining a Federal requirement that is different from the ANSI provision.

(d) MGRAD § 1190.60(e) and UFAS 4.6.6 require vertical clearances of 114 inches at accessible passenger loading zones and along vehicle access routes to such areas from site entrances. ANSI 4.6.3 requires a vertical clearnace of 108 inches. In considering this requirement, the ANSI Committee concurred that a vertical clearance specification was appropriate but ascertained that 108 inches (9 feet) was sufficient to provide clearance for standard accessible vans and would be consistent with standard building practices on height of entrance canopies. The ATBCB does not find the 6-inch difference between UFAS and MGRAD, on the one hand, and ANSI on the other hand, to be significant in view of the finding that standard personal vans can be accommodated with such a specification and therefore does not propose to include an exception on this provision. However, the Board notes that in order for facilities to be accessible to certain paratransit vehicles currently available from major manufacturers, vertical clearances must allow for vehicles as high as 125 inches (10 ft. 5 inches) in height. Facilities where access by paratransit "minibus" vehicles is a concern should consider the need to provide the higher clearance.

(3) MGRAD § 1190.70, *Ramps and curbs*, provides at paragraph (e), Curb ramps, that flared sides are required if any part of a path crosses any part of a curb ramp not protected by guardrails. UFAS includes this requirement at 4.7.5. ANSI 4.7.5 requires that curb ramps located where pedestrians must walk across them shall have flared sides. Since handrails or guardrails are not, in fact, generally used nor desirable for curb ramps (where they could impede pedestrian movement), the ANSI approach of requiring flared sides is believed to be a more satisfactory solution and is therefore proposed to be incorporated into MGRAD through this amendment.

(4) MGRAD § 1190.90, *Handrails*, differs from the corresponding ANSI provisions 4.8.5, 4.9.4 and 4.26 in the areas noted below. This proposal would incorporate all of the ANSI provisions without change.

(a) MGRAD § 1190.90, *Handrails*, requires, as did the 1980 ANSI standard, that handrails be no more than 1½ inch in outside diameter. Subsequently, ANSI received comments from industry spokesmen noting that pipes used for handrails are generally designated by inside diameter sizes, and that the typical pipe size specified is the 1½ inch pipe which has an outside diameter of 1.9 inches. Based upon laboratory research conducted with 104 disabled subjects, the ATBCB's Hand Anthropometrics project has indicated that an outside diameter of 1.7 inches is optimum for handrails and recommends for handrails a range from 1.3 to 1.7 inches in outside diameter. After consideration of these comments and preliminary information on the ATBCB research findings which indicated 1½" was too restrictive, the ANSI committee approved a revision to ANSI 4.8.5 and ANSI 4.9.4 specifying that standard pipe sizes designated by the industry as 1¼ inch to 1½ inch are acceptable as handrails.

The ATBCB research report has suggested 1.7 inches as the optimum diameter for permitting a power grip. In a power grip, the hand closes completely around an object, with thumb and fingers touching. However, the study was not conducted using handrails and, therefore, could not report on whether the power grip is actually used. Field testing performed with other devices found that subjects sometimes performed quite differently than they did in abstract laboratory tests. Therefore, this proposal would incorporate the ANSI provision into MGRAD. A larger diameter is clearly called for and the research underlying the 1.7 inch recommendation is not sufficiently definitive to form the basis for a new requirement which would differ from any now in effect. The Board intends to review new information on this issue as it becomes available for consideration in future revisions of MGRAD.

(b) MGRAD § 1190.90, *Handrails*, includes in paragraph (e) requirements on load-bearing capacity of handrails and specifies that handrails shall not rotate within their fittings. UFAS incorporated in 4.8.5 (for ramps) and 4.9.4 (for stairs), the requirement that the fixture not rotate within its fittings; it did not include load-bearing capacity. The 1986 ANSI did not incorporate these requirements because these were deemed to be safety issues that are covered appropriately by sections of building codes dealing with handrail safety requirements, rather than in the context of accessibility. The ATBCB concurs in this determination.

(c) MGRAD § 1190.90, *Handrails*, also requires in paragraph (f) that ends of handrails be returned smoothly to wall, floor or post. UFAS incorporated this requirement at 4.8.5 (for rails at ramps) and 4.9.4 (for rails at stairs). ANSI 4.9.4 includes a requirement that stairway handrail extensions must comply with 4.4, Protruding Objects, which would provide the same protection afforded by the MGRAD requirement. In view of this, and since UFAS includes the requirement in both sections, the ATBCB proposes to incorporate ANSI 4.8.5 unchanged. It is anticipated that UFAS will continue to provide the more

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explicit requirement in both sections and that ANSI will consider adopting consistent language at its next revision.

(5) MGRAD § 1190.100, Elevators, contains five specifications that differ somewhat from the ANSI provisions in 4.10, Elevators. MGRAD also reserves the provision on elevator door timing for which ANSI provides a requirement at 4.10.8. The ATBCB proposal regarding one of these provisions for elevator car controls and hall call buttons, was noted above. In addition, this proposed rulemaking would adopt the ANSI 4.10.8 requirement for a three-second open time for elevator doors. Although the ATBCB had originally adopted a five-second open time requirement, it was withdrawn because of serious concerns about its effect on elevator operations in high-rise buildings (46 FR 39764). UFAS later adopted, with ATBCB concurrence, the three-second time frame. The ATBCB proposes to incorporate into MGRAD the three-second time as proven by experience to be sufficient, given the requirements for door and signal timing that are part of the comprehensive elevator specifications. The other differences are as follows:

(a) MGRAD provisions explicitly require that objects mounted beneath lobby call buttons shall not project into the elevator lobby more than 4 inches. The ANSI Committee considered adding this requirement to 4.10 but determined that the provisions of 4.25, Operating Controls and Mechanisms, and 4.4, Protruding Objects, precluded such placement and therefore an explicit statement in 4.10 was redundant. The ATBCB accepts this reasoning, and proposes to adopt the ANSI provision.

(b) MGRAD § 1190.100(d)(3)(ii) requires that car control buttons be mounted no higher than 48 inches above the floor, unless that height causes a substantial increase in cost, in which case the highest button may be 54 inches above the floor. The ANSI committee considered this approach but found the cost consideration inappropriate for a technical specification and further determined that where the number of floors or other factors mandated higher buttons (up to the 54–inch maximum), then the elevator car should be required to permit side approach. The ATBCB agrees that this is an appropriate way to assure accessibility of elevator controls and therefore proposes to incorporate this provision into MGRAD. The same consideration applies to mounting height of emergency communication equipment [ANSI 4.10.14, MGRAD 1190.100(j)(1)].

(c) MGRAD 1190.100(f)(1)(i) requires that hall call buttons be mounted with centerlines 48 inches above the floor. ANSI 4.10.3 specifies a mounting height of 42 inches. This difference is not considered significant. In addition, the lower height specified by ANSI should increase ease of access. Therefore, the ATBCB proposes to accept the ANSI specifications.

(6) MGRAD § 1190.130(a)(3) states that revolving doors and turnstiles are not accessible and therefore shall not be the only means of access at any accessible entrance or on any accessible route, and further requires that an accessible door be provided adjacent to the revolving door or turnstile and be designed to facilitate the same use pattern. The ANSI Committee reviewed the turnstile/revolving door issue and found that accessible turnstiles and revolving doors are now available on the market. For that reason, ANSI 4.13.2 was revised in 1986 to permit revolving doors or turnstiles that meet all the requirements for accessible doors, but to prohibit inaccessible turnstiles or revolving doors as the only means of passage at an accessible entrance or along an accessible route. The ATBCB believes this to be appropriate and proposes to incorporate this approach into MGRAD. Further, the additional language in MGRAD 1190.130(a)(3) regarding adjacent location and equivalent use patterns is not considered necessary to be included here since the ANSI provision clearly requires an accessible door at any accessible entrance. The further requirement that the adjacent door be subject to the same use patterns as the inaccessible revolving door or turnstile is required by MGRAD in the definition of "accessible" at 1190.3, which states that, "accessible elements and spaces of a building or facility including doors provided adjacent to a turnstile or a revolving door, shall be subject to the same use patterns as other elements and spaces of the building or facility."

(7) MGRAD § 1190.130(f) requires that no door hardware be mounted higher than 48 inches above the floor. ANSI 4.13.9 provides that all door operating hardware be mounted within the reach ranges specified in 4.2. The ANSI provision recognizes that there may be door operating hardware other than door opening devices (*e.g.*, special safety locks) that may be mounted at other than standard doorknob heights, and would assure that no such devices are mounted outside acceptable ranges for lower as well as higher reaches. The ATBCB concurs that these are valid consideration and that the ANSI requirement is consistent with the intent of the MGRAD provision. MGRAD is proposed to be amended accordingly.

(8) MGRAD § 1190.150(e)(2)(ii) and UFAS 4.17 require that toilet stalls in new construction be 60" wide. Both provisions include an exception which permits alternate stall sizes with widths of 48" or 36" in alteration projects if it is structurally impracticable to provide the 60" stall. ANSI 4.17 permits stalls of all three sizes in new construction, although the 60" stall is specified as the "standard" stall and the more narrow stalls are designated "alternate stalls." After careful review of the issue, the ATBCB is proposing to adopt ANSI and permit the use of the more narrow stalls. In the public comment on earlier MGRAD rulemakaings proposing the requirement for a 60" stall, comments were received from Federal and state agencies arguing against requiring the 60" stall. In addition a School of Medicine recommended that optional sizes be allowed. The 36" wide stall is the most usable for people with some disabilities (for example, for crutch or cane users) who need support on both sides when moving to or rising from a seated position. It is also the only stall design that offers support on either side for persons with the use of only one arm. The 36" wide stall requires a frontal transfer by wheelchair users. It provides sufficient depth to permit the stall door to close behind the wheelchair, although it will not accommodate some powered wheelchairs and three-wheeled powered mobility aids.

The 48" stall allows diagonal transfer from a wheelchair. In the research for the 1980 ANSI standard, it was found to be usable by all subjects who could transfer.

The 60" stall is the only stall which permits side transfer from a wheelchair. While the ATBCB continues to believe the 60" wide stall is preferable, it also recognizes that there are other factors that may make more narrow stalls preferable in some situations, and therefore believes that it is appropriate to permit alternate stall widths. The ATBCB also notes that stall sizes between 36" and 48" may adequately meet accessibility needs, and believes that alternate widths (such as the 42" width permitted by the Michigan State Code) would be permissible under this provision. The standard stall is preferred where it is feasible to provide the additional space. Because of the significance of this issue, and because there appear to be possible conflicting needs of people with different disabilities, the ATBCB particularly invites comment on this point. For example, does the 42" stall provide a workable compromise for wheelchair users and people with other disabilities? Does the movable grab bar, such as those frequently used in Europe, provide

a better solution? The ATBCB will review these and other approaches suggested by comments in making the final determination on this issue.

(9) MGRAD § 1190.180(c) permits visual alarms with a flash frequency "less than 5 [Hertz] Hz." The ANSI standard, at 4.26.3, requires a flashing frequency of approximately 1 Hertz. This revision was recommended to and adopted by ANSI in order to avoid the possibility of triggering seizures for individuals sensitive to rapidly flashing lights. The recommendation was based on experience with visual alarms in facilities serving hearing-impaired persons, which found that flashing frequencies of approximately 1 Hertz were adequate to awaken or alert those persons. The ATBCB's Alarms Documentation study also found evidence confirming this conclusion. The ATBCB believes that this is an appropriate requirement, and proposes to incorporate the ANSI requirement into MGRAD.

(10) MGRAD § 1190.210 specifies requirements for telephones. Equivalent requirements are provided in ANSI section 4.29. The ANSI provisions include a requirement not found in MGRAD for signage indicating the location of telecommunications devices for deaf persons where such equipment is provided. The ATBCB considers this to be an appropriate requirement that will benefit hearing-impaired people without imposing a significant burden on the provider, and therefore proposes to incorporate it into MGRAD.

Subpart E—Special Building or Facility Types or Elements.

The final provision of this proposed rulemaking would complete the reserved MGRAD subpart on special building or facility types—Subpart E in the current MGRAD, proposed to be redesignated Subpart D. In MGRAD as currently in effect, § 1190.2(e) explains that Subpart E is reserved for future development of minimum guidelines and requirements for special building and facility types, specifically including housing. However, in proposing to incorporate ANSI by reference, MGRAD like UFAS will be incorporating dwelling unit specifically in the basic technical provisions. Therefore the ATBCB proposes to complete the reserved subpart by incorporating sections 5 through 9 of the UFAS. These sections provide specifications for restaurants, cafeterias, health care facilities, mercantile facilities, libraries and postal facilities. The ATBCB participated with the standard-setting agencies in developing these specifications and approved them before their publication as final standards.

As need arises for specifications on other special building or facility types, the ATBCB may issue additional guidelines under this subpart. For example, the ATBCB organized a working group in access to recreational facilities and funed the development of a paper, recently completed, which proposes recommended MGRAD provisions for scoping and technical specifications for a variety of recreational facility types. These recommendations will be considered for future rulemaking.

Other Information

This proposed rule has been submitted to the Office of Management and Budget and reviewed under procedures established in Executive Order 12291. This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order 12291 on Federal Regulations. This rulemaking would not establish significant new Federal requirements, but rather is adopting language used in existing standards which has the same effect and intent as the provisions being replaced. Where new provisions are adopted to complete reserved sections, Federal requirements in those areas already exist in the *Uniform Federal Accessibility Standards*, with only minor exeptions which would have minimal cost impact.

The ATBCB has determined, as required by the National Environmental Policy Act of 1969, 42 U.S.C. 4332, that the proposal will not have any significant impact on the environment.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the ATBCB certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 36 CFR Part 1190

Buildings, Handicapped, Leasing, Transportation.

Accordingly, 36 CFR Part 1190 is proposed to be amended as set forth below.

By vote of the Board on May 13, 1987.

Thomas E. Harvey,

Chairperson, Architectural and Transportation Barriers Compliance Board.

It is proposed that 36 CFR Part 1190 be amended as follows:

PART 1190—MINIMUM GUIDELINES AND REQUIREMENTS FOR ACCESSIBLE DESIGN

1. The authority citation for 36 CFR Part 1190 is revised to read as follows:

Authority: Section 502(b) of the Rehabilitation Act of 1973 [29 U.S.C. 792(b)(7)], as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 602, 92 Stat. 2982, and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1801).

§ 1190.2 [Amended]

2. Section 1190.2 is amended by removing paragraph (e).

§ 1190.3 [Amended]

3. Section 1190.3 is amended by:

(a) Revising the definition of "Adaptability" to read:

* * * * *

"Adaptability" means the capability of certain building spaces and elements, such as kitchen counters, sinks and grab bars, to be altered to added so as to accommodate the needs of persons with and without disabilities, or to accommodate the needs of persons with different types of degrees of disability.

* * * * *

(b) revising the definition of "Common use areas" to read:

* * * * *

"Common use" means those interior and exterior rooms, spaces or elements that are made available for the use of a restricted group of people (for example, residents of an apartment building, the occupants of an office building, or the guests of such residents or occupants).

* * * * *

(c) Revising the definition of "Physically handicapped person" to read:

* * * * *

"Physically handicapped person" means an individual who has a physical impairment, including impaired sensory, manual, or speaking abilities, which results in a functional limitation in access to and use of a building or facility.

* * * * *

(d) Adding the following definitions:

(1) After the definition of "Curb ramp" and before the definition of "Egress," insert—

* * * * *

"Detectable" means perceptible by one or more of the senses.

"Detectable warning" means a standardized surface texture applied to or built into walking surfaces or other

elements to warn visually impaired people of hazards in the path of travel.

"Dwelling unit" means a single unit of residence that provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like. A single-family home is a dwelling unit, and dwelling units are to be found in such housing types as townhouses and apartment buildings.

* * * * *

(2) After the definition of "Guidelines and requirements" and before the definition of "Operable part", insert—

* * * * *

"Housing" means a building, facility, or portion thereof, excluding inpatient health care facilities, that contains one or more dwelling units or sleeping accommodations. Housing may include, but is not limited to, one-family and two-family dwellings, multifamily dwellings, group homes, hotels, motels, dormitories, and mobile homes.

"Marked crossing" means a crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

"Multifamily dwelling" means any building containing more than two dwelling units.

* * * * *

(3) After the definition of "Section 502 of the Rehabilitation Act" and before the definition of "Shall," insert,

* * * * *

"Service entrance" means an entrance intended primarily for delivery or service.

* * * * *

(4) After the definition of "Site improvements" and before the definition of "Space," insert,

* * * * *

"Sleeping accommodations" means rooms in which people sleep (for example, dormitory and hotel or motel guest rooms).

* * * * *

(e) removing the definition "Tactile warning."

§§ 1190.7 and 1190.8 [Removed];

§ 1190.9 [Redesignated as § 1190.7]

4. Remove §§ 1190.7 and 1190.8 and redesignate § 1190.9 as § 1190.7.

Subpart C [Redesignated as Subpart B]

5. Redesignate Subpart C as Subpart B.

§ 1190.31 [Amended]

6. Amend § 1190.31 Accessible buildings and facilities: New contruction, as follows:

(a) The introductory text is revised to read:

Except as otherwise provided in this part, all new construction of buildings and facilities shall comply with the minimum requirements set forth below, and the technical provisions (designated as Sections 4.2 through 4.32) of the American National Standards Institute (ANSI) A117.1 (1986) standard incorporated by reference in Subpart C, Technical Provisions. The citations in the provisions which follow refer to the sections of the referenced standard.

* * * * *

(b) Section 1190.31(a) is revised to read:

* * * * *

(a) *Accessible route.* At least one accessible route shall comply with ANSI 4.3, Accessible Routes.

(1) Required accessible route(s) shall connect an accessible building entrance with:

(i) Transportation facilities located within the property line of a given site, including passenger loading zones, public transportation facilities, taxi stands, and parking;

(ii) Pub'ic streets and sidewalks;

(iii) Other accessible buildings, facilities, elements, and spaces that are on the same site; and

(iv) All accessible spaces, rooms, and elements within the building or facility.

(2) Where fire code provisions require more than one means of egress from any space or room, then more than one accessible means of egress complying with ANSI 4.3.10 shall be provided for handicapped people and shall be arranged so as to be readily accessible from all accessible rooms and spaces.

* * * * *

(c) Section 1190.31(b) is amended by: (1) removing "§ 1190.60, Parking and passenger loading zones," wherever it appears and inserting in lieu thereof, "ANSI 4.6 Parking Spaces and Passenger Loading Zones"; and (2) removing the reference to § 1190.60(c)(2)(a) in the last sentence of § 1190.31(b)(1)(ii).

(d) Section 1190.31(c) is amended by: (1) removing "§ 1190.70, Ramps and curb ramps"; and (2) inserting in lieu thereof "ANSI 4.7 Curb Ramps or ANSI 4.8 Ramps, as appropriate."

(e) Section 1190.31(d) is amended by removing "§ 1190.80" and inserting in lieu thereof "ANSI 4.9."

(f) Section 1190.31(e) is amended by removing the text which follows "as required in" and inserting in lieu thereof, "ANSI 4.8 Ramps and ANSI 4.9 Stairs, respectively."

(g) Section 1190.31(f) is amended by: (1) removing "§ 1190.100" wherever it appears and inserting in lieu thereof "ANSI 4.10"; and (2) removing "§ 1190.70 Ramps and curb ramps, and § 1190.110, Platform lifts" in paragraph (f)(2) and inserting in lieu thereof, "ANSI 4.8 Ramps and ANSI 4.11 Platform Lifts."

(h) Section 1190.31(g) is amended by removing "§ 1190.100, Platform lifts" and inserting in lieu thereof "ANSI 4.11 Platform Lifts, and should facilitate unassisted entry and exit from the lift."

(i) Section 1190.31(h) is amended by removing "§ 1190.120" whereever it appears and inserting in lieu thereof "ANSI 4.14."

(j) Section 1190.31(i) is amended by: (1) removing "§ 1190.130" wherever it appears and inserting in lieu thereof "ANSI 4.13"; and (2) removing "§ 1190.50(h)" in paragraph (i)(3) and inserting in lieu there of "ANSI 4.3.10."

(k) Section 1190.31(j) is amended by removing "[Reserved]" and adding, "If operable windows are provided, they shall comply with ANSI 4.12 Windows."

(l) Section 1190.31(k) is revised to read as follows:

* * * * *

(k) *Toilet and bathing facilities.* If toilet and bathing facilities are provided, then each public and and common use toilet room shall comply with ANSI 4.22, Toilet Rooms, Bathrooms, Bathing Facilities and Shower Rooms. Other toilet rooms shall be adaptable. If bathing facilities are provided, then each public and common use bathing facility shall comply with ANSI 4.22. In each such facility where any of the fixtures and accessories specified in ANSI 4.16, Water Closets; 4.17, Toilet Stalls; 4.18, Urinals; 4.19, Lavatories, Sinks and Mirrors; 4.20, Bathtubs; and 4.21, Shower Stalls, are provided, at least one accessible fixture and accessory of each type provided shall comply with the provisions in the subsection applicable to that fixture or accessory. Bathrooms in dwelling units shall comply with ANSI 4.32.4, Bathrooms. For special use situations, refer to Subpart E of this Part 1190, Special Building or Facility Types or Elements.

(m) Section 1190.31(l) is amended by removing "§ 1190.160, Drinking fountains and water coolers," and "§ 1190.160" the other two times it appears, and inserting in lieu thereof "ANSI 4.15, Drinking Fountains and Water Coolers," and "ANSI 4.15," respectively.

(n) Section 1190.31(m) is amended by removing "§ 1190.170, Controls and operating mechanisms," and inserting in lieu thereof, "ANSI 4.25, Controls and Operating Mechanisms."

(o) Section 1190.31(n) is amended by: (1) removing "§ 1190.180" and inserting in lieu thereof, "ANSI 4.26", and (2)

adding at the end of the paragraph the following:

* * * * *

* * * In facilities with sleeping accommodations, the sleeping accommodations shall have an alarm system complying with ANSI 4.26.4, Auxiliary Alarms. Emergency warning systems in health care facilities may be modified to suit standard health care alarm design practice.

(p) Section 1190.31(o) is revised to read:

* * * * *

(o) *Detectable warnings.* Detectable warnings complying with ANSI 4.27.3, Tactile Warnings on Doors to Hazardous Areas, shall be provided on the hardware of all doors leading to hazardous areas. Such warnings shall not be used at emergency exit doors. Detectable warnings are not required at locations other than doors to hazardous areas by this part. If detectable warnings are provided, the specifications at ANSI 4.27 may be used as guidance.

Note.—The ATBCB has funded research in the area of detectable tactile surface treatments. The research findings were inconclusive and, therefore, recommended no mandatory requirements at this time. Technical assistance materials are available from ATBCB, 330 C Street, SW, Room 1010–2101, Washington, DC 20202 (202) 472–2700 (voice or TDD).

* * * * *

(q) Section 1190.31(p) is revised to read as follows:

* * * * *

(p) *Signage.* Signage shall comply with ANSI 4.28, Signage. Permanent signage that identifies rooms and spaces shall also comply with ANSI 4.28.4.

Exception: The provisions of ANSI 4.28.4 are not mandatory for temporary information on room and space signage, such as current occupant's name, provided the permanent room or space identification complies with ANSI 4.30.4.

* * * * *

(r) Section 1190.31(q) is amended by removing "§ 1190.210" wherever it appears and inserting in lieu thereof "ANSI 4.29."*

(s) Section 1190.31(r) is amended by removing "§ 1190.220, Seating, tables and work surfaces," and inserting in lieu thereof "ANSI 4.30, Seating, Tables and Work Surfaces."

(t) Section 1190.31(s) is amended by: (1) removing "§ 1190.230, Assembly areas" and "§ 1190.230" and inserting in lieu thereof "ANSI 4.31, Auditorium and Assembly Areas" and "ANSI 4.31," respectively; and (2) removing "§ 1190.50, Walks, floors and accessible routes" and inserting in lieu thereof "ANSI 4.3, Accessible Routes."

(u) Section 1190.31(t) is amended by removing "§ 1190.240" wherever it appears and inserting in lieu thereof "ANSI 4.23."

(v) new § 1190.31(u) is added to read as follows:

* * * * *

(u) *Housing.* Accessible housing shall: (1) Comply with the requirements of this § 1190.31 as it applies to public use and common use areas and areas where handicapped persons may be employed, except as follows:

(i) *Elevators:* Where provided, elevators shall comply with ANSI 4.10. Elevators or other accessible means of vertical movement are not required in residential facilities when:

(A) No accessible dwelling units are located above or below the accessible grade level; and

(B) At least one of each type of common area and amenity provided for use of residents and visitors is available at the accesible grade level.

(ii) *Entrances:* Entrances complying with ANSI 4.14 shall be provided as necessary to achieve access to and egress from buildings and facilities.

Exception: In projects consisting of one-to-four family dwellings where accessible entrances would be extraordinarily costly due to site conditions or local code restrictions, accessible entrances are required only to those buildings containing accessible dwelling units.

(iii) *Common Areas:* At least one of each type of common area and amenity in each project shall be accessible and shall be lcoated on an accessible route to any accessible dwelling unit.

(2) Provide dwelling units complying with ANSI 4.32, Dwelling Units, in accordance with the following table:

Facilities	Application
Hotels, Motels, Boarding houses.	5 percent of the total units, or at least one, whichever is greater.
Multifamily housing (Apartment houses).	
Federally assisted.	5 percent of the total, or at least one unit, whichever is greater, in projects of 15 or more dwelling units, or as determined by the appropriate Federal agency following a local needs assessment conducted by local government bodies or states under applicable regulations.
Federally owned	5 percent of the total, or at least one unit, whichever is greater.
Dormitories	5 percent of the total, or at least one unit, whichever is greater.
One and two family dwelling.	
Federally assisted, rental.	5 percent of the total, or at least one unit, whichever is greater, in projects of 15 or more dwelling units, or as determined by the appropriate Federal agency following a local needs assessment conducted by local government bodies or states under applicable regulations
Federally assisted, homeownership	To be determined by home buyer.
Federally owned	5 percent of the total, or at least one unit, whichever is greater.

(w) A new § 1190.31(v) is added to read as follows:

* * * * *

(v) *Health care facilities.* Accessible health care facilities shall:

(1) Comply with the requirements of this § 1190.31 as it applies to public use and common use areas and areas where handicapped persons may be employed; and

(2) Provide patient rooms and patient toilet rooms complying with Part 6 of the Uniform Federal Accessibility Standards (UFAS) in accordance with the following table:

Facilities	Application
Long Term Care Facilities. (including Skilled Nursing Facilities, Intermediate Care FAcilities, Bed & Care, and Nursing Homes).	At least 50 percent of patient toilets and bedrooms.
Outpatient Facilities.	All patient toilets and bedrooms.
Hospital	
General Purpose Hospital	At least 10 percent of patient toilets and bedrooms.
Special Purpose Hospital (Hospitals that treat conditions that affect mobility)	All patient toilets and bedrooms.

§ 1190.32 [Amended]

7. Section 1190.32, *Accessible buildings and facilities: Additions,* is amended as follows:

(a) In paragraph (a), by removing "§ 1190.120" and inserting in lieu thereof "ANSI 4.14."

(b) In paragraph (b), by removing "§ 1190.50, Walks, floors and accessible routes," and inserting in lieu thereof, "ANSI 4.3, Accessible Route."

(c) In paragraph (c), by removing "§ 1190.150, Toilet and bathing facilities" and inserting in lieu thereof "ANSI 4.22, Toilet Rooms, Bathrooms, Bathing Facilities and Shower Rooms."

(d) By removing paragraph (f).

§ 1190.33 [Amended]

8. Section 1190.33, *Accessible buildings and facilities: Alterations,* is amended as follows:

(a) In paragraph (a)(1), by changing the period at the end thereof to a comma, and adding, "except as noted in paragraph (a)(2) of this section."

(b) By removing paragraph (a)(4) and redesignating (a) (2) and (3) as (a) (3) and (4) and adding a new paragraph (a)(2) as follows: (2) Exceptions to the

requirements of paragraph (a)(1) of this section for existing buildings or facilities are:

(i) Stairs. Full extension of stair handrails shall not be required in alterations where such extensions would be hazardous or impossible due to plan configuration.

(ii) Elevators.

(A) If a safety door edge is provided in existing automatic elevators, then the automatic door reopening devices may be omitted (see ANSI 4.10.6).

(B) Where existing shaft or structural elements prohibit strict compliance with ANSI 4.10.9, then the minimum floor area dimensions may be reduced by the minimum amount necessary, but in no case shall they be less than 48 in. by 48 in. (1220 mm by 1220 mm).

(iii) Doors.

(A) Where existing elements prohibit strict compliance with the clearance requirements of ANSI 4.13.5, a projection of 5/8 in. (16 mm) maximum will be permitted for the latch side door stop.

(B) if existing thresholds measure 3/4 in. (19 mm) high or less, and are beveled or modified to provide a beveled edge on each side, then they may be retained.

(iv) Toilet rooms. Where alterations to existing facilities make strict compliance with ANSI 4.22 and 4.23 structurally impracticable, the addition of one "unisex" toilet per floor containing one water closet complying with ANSI 4.16 and one lavatory complying with ANSI 4.19, located adjacent to existing toilet facilities, will be acceptable in lieu of making existing toilet facilities for each sex accessible.

(v) Assembly areas.

(A) In alterations where it is structurally impracticable to disperse seating throughout the assembly area, seating may be located in collected areas as structurally feasible. Seating shall adjoin an accessible route that also serves as a means of emergency egress.

(B) In alterations where it is structurally impracticable to alter all performing areas to be on an accessible route, then at least one of each type shall be made accessible.

(c) In newly redesignated paragraph (a)(3), by removing "§ 1190.70, Ramps and curb ramps; § 1190.100, Elevators; or § 1190.110, Platform lifts," and inserting in lieu thereof, "ANSI 4.8, Ramps; 4.10, Elevators; or 4.11, Platform Lifts."

(d) In paragraph (c)(1), by removing "§ 1190.50, Walks, floors and accessible routes" and inserting in lieu thereof, "ANSI 4.3, Accessible Routes."

(e) In paragraph (c)(2), by removing "§ 1190.120" and inserting in lieu thereof, "ANSI 4.14."

(f) In paragraph (c)(3), by removing "§ 1190.150, Toilet and bathing facilities" wherever it appears and inserting in lieu thereof, "ANSI 4.22, Toilet Rooms, Bathrooms, Bathing Facilities, and Shower Rooms."

(g) By revising paragraphs (c)(6) (i) and (vii) as follows:

(i) ANSI 4.6, Parking Spaces and Passenger Loading Zones;

(ii) ANSI 4.15, Drinking Fountains and Water Coolers;

(iii) ANSI 4.23, Storage;

(iv) ANSI 4.26, Alarms;

(v) ANSI 4.29, Telephones;

(vi) ANSI 4.30, Seating, Tables and Work Surfaces;

(vii) ANSI 4.31, Auditorium and Assembly Areas.

Subpart D [Redesignated as Subpart C]

9. Subpart D—*Technical Provisions* is amended by redesignating it as Subpart C and by revising it to read:

Subpart C—Technical Provisions

Sec.
1190.40 Technical specifications.
1190.50 Exceptions.

Subpart C—Technical Provisions

§ 1190.40 Technical specifications.

Features, elements and spaces required to be accessible by §§ 1190.31, 1190.32, or 1190.33 shall meet the technical requirements specified in the provisions of sections 4.2 through 4.32 of ANSI A117.1-1986, "American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People," which is incorporated herein by reference, except as amended in the section which follows. This standard is published by the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018. Copies may be ordered from the Institute at that address.

§ 1190.50 Exceptions.

(a) Under ANSI 4.10, Elevators, the following:

(1) Hall call buttons provided under ANSI 4.10.3 shall be raised or flush.

(2) Buttons on elevator control panels provided under ANSI 4.10.12(1) Buttons, shall be raised or flush.

(b) Under ANSI 4.7, Curb Ramps, paragraph 4.7.7, Warning Textures, and 4.7.12, Uncurbed Intersections, shall not apply.

(c) Under ANSI 4.21, Shower Stalls, the following:

(1) Under ANSI 4.1.6, Shower Unit, installation of a fixed shower head may be permitted in lieu of an adjustable-height or hand-held shower head in unmonitored facilities where vandalism is a concern; and

(2) Curbs provided under ANSI 4.21.7, Curbs, in shower stalls that are 36 in by 36 in (915 mm by 915 mm) shall have a maximum height of ½ in (13 mm).

(d) ANSI 4.28, Signage, is amended to require that interior tactile signage identifying rooms and spaces be located alongside the door on the latch side and be mounted at a height between 54 in and 66 in (1370 mm and 1675 mm) above the finished floor.

(e) Under ANSI 4.31, Auditorium and Assembly Areas, paragraph 4.31.3, Placement of Wheelchair Locations, is amended to allow accessible viewing positions to be clustered in bleachers, balconies and other areas that have sight lines requiring slopes greater than 5 percent, or to permit equivalent accessible viewing positions to be located on levels having accessible egress.

Subpart E [Redesignated as Subpart D]

10. Subpart E—*Special Building or Facility Types or Elements* is redesignated as Subpart D and § 1190.60 is added to read as follows:

§ 1190.60 Special building or facility types.

The requirements specified in the *Uniform Federal Accessibility Standards* (UFAS) in Section 5, Restaurants and Cafeterias; 6, Health Care; 7, Mercantile; 8, Libraries; and 9, Postal Facilities, are deemed to satisfy minimum guidelines and requirements of the ATBCB for accessibility standards for those building and facility types.

[FR Doc. 87-21222 Filed 9-15-87; 8:45 am]
BILLING CODE 6820-BP-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Quercus hinckleyi (Hinckley Oak)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine that a plant, *Quercus hinckleyi* (Hinckley oak), is a threatened species. Hinckley oak is known from three documented localities in Presidio County, western Texas. Each population contains fewer than 60 individuals. These small populations are threatened

by road improvements, taking, and introduction of exotic game into the habitat. A final determination that *Quercus hinckleyi* is threatened will implement the full protection provided by the Endangered Species Act of 1973 (Act), as amended. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by November 16, 1987. Public hearing requests must be received by November 2, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's Regional Endangered Species Office, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Sue Rutman, Endangered Species Botanist, Albuquerque, New Mexico (see **ADDRESSES** above) (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

Quercus hinckleyi, a very localized member of the oak family (Fagaceae), is a unique component of the middle elevation Chihuahuan Desert vegetation. This small oak occurs at three localities in Presidio County, western Texas. Hinckley oak is readily identified at a distance because the grey-green leaves lend a smokey appearance to the intricately branched plants. Hinckley oaks reach a maximum height of 4 feet (1.2 meters). Plants can occur as single stems or as clonal groups that form dense thickets. The small, glabrous, holly-like (spinescent) leaves persist for more than one season. Acorns are produced annually, occur singly or paired on the branches, and mature in the fall.

Hinckley oak is restricted to dry limestone slopes between 3,500 and 4,500 feet (1100–1400 meters) in elevation. The surrounding desertscrub community is dominated by *Agave lecheguilla* (lecheguilla), *Acacia constricta* (whitethorn acacia), and *Parthenium incanum* (mariola). The area received about 8–12 inches (20–30 cm) of rain per year, and has a frost-free season of 260 days.

The type specimen of Hinckley oak was collected by Dr. C.H. Muller and Dr. L.C. Hinckley near Solitario Peak in 1950. Dr. Muller (1951) subsequently named the species in honor of his colleague, Dr. Hinckley. In 1956, Dr. M.C. Johnson collected a specimen at the type locality (number 3460, deposited at University of Texas at Austin) and noted that 150 plants occurred there. The same site presently contains about 60 plants (Miller and Powell 1982). The second population was discovered in 1984 by Mr. Jeff Clark, a former graduate student at Sul Ross University. This population is located directly west of Solitario Peak on the last ridge above Fresno Creek. The third locality, discovered on the west side of Shafter by Dr. M. Powell in 1975, contains 30–40 plants (Miller and Powell 1982). Two other sites in the Shafter area, one 0.5 mile (0.8 km) east and the other 3 miles (4.8 km) south of Shafter, have not been relocated, although the area has been searched intensively by Dr. A.M. Powell of Sul Ross University. The three known populations occur on privately owned land. Searches have been conducted but no populations of *Quercus hinckleyi* have been found in the neighboring Mexican State of Coahuila (Muller 1951).

Mr. Mike Fleming of Big Bend National Park has speculated that Hinckley oak may occur within the Park in the Dead Horse Mountains (pers. comm., 1986). Although no occurrences of Hinckley oak in the Dead Horse Mountains have been documented, Fleming's belief is supported by the presence of suitable habitat and evidence that Hinckley oak was more widely distributed in southwestern Texas prior to the area's desertification about 8,000 years ago (Van Devender *et. al.* 1978). The warming and drying trend probably precipitated the decline of Hinckley oak, and may explain the species' present limited distribution. However, the natural decline of Hinckley oak is being artifically accelerated by man-caused threats.

Federal action involving this species began with section 12 of the Endangered Species Act (Act) of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list of 1,700 plant species was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document 94–51 and the July 1, 1975, **Federal Register** (40 FR 27823). *Quercus hinckleyi* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A one-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with 4 other proposals that had expired. On December 15, 1980 (45 FR 82480), and September 27, 1985 (50 FR 39526), the Service published updated notices reviewing the native plants being considered for classification as threatened or endangered. *Quercus hinckleyi* was included in these notices as a category 1 species. Category 1 comprises taxa for which the Service has sufficient biological information to support proposing them as endangered or threatened.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within one year of their receipt. Section 2(b)(1) of the Act's Amendments of 1982 further requires that all petitions pending on October 12, 1982, be treated as having been newly submitted on that date. Because the 1980 notice of review was accepted as a petition, all of the taxa contained in the notice, including *Quercus hinckleyi*, were treated as being newly petitioned on October 12, 1982. On October 13, 1983, and on or about that date every year thereafter (the latest was October 10, 1986), the Service made one-year findings that the petition to list *Quercus hinckleyi* was warranted but precluded by other listing actions of higher priority. Biological data, supplied by Miller and Powell (1982), fully support a listing of *Quercus hinckleyi* as threatened. The present proposal is based primarily on Miller and Powell's biological data, and constitutes the final finding requirement of section 4(b)(3)(B) of the Act for the petition on this species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR Part 424)

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promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Quercus hinckleyi* Muller (Hinckley oak) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In 1986, Texas highway 67 was expanded and the road is now close to the Hinckley oak population at Shafter (Poole, Texas Natural Heritage Program Biologist, pers. comm., 1986). Further expansion or a realignment of the highway may eliminate all or part of the population.

A potential threat to the two populations near Solitario Peak is the planned development of the area as an exotic game ranch. Introduced mammals may degrade the habitat by trampling soil and plants, and both introduced birds and mammals may eat the acorns, stems, or leaves of Hinckley oaks.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The attractive Hinckley oak is currently being propagated and developed as a cultivar by the Texas A&M University Agricultural Extension Service (Miller and Powell 1982). Hinckley oak is easily propagated from acorns or from young shoots. The demand for acorns by people wishing to cultivate the plant may reduce the potential number of recruits to the native populations. However, the actual impact of acorn collecting is unknown.

C. *Disease or predation.* Native deer, small mammals, and birds eat the acrons of Hinckley oak. This form of predation has an unknown impact on Hinckley oak populations. As mentioned in Factor A, the introduction of non-native mammal and bird predators remains a potential threat. Hinckley oaks have no apparent disease problems.

D. *The inadequacy of existing regulatory mechanisms.* Hinckley oak is not currently protected by any Federal or State law.

E. *Other natural or manmade factors affecting its continued existence.* The scarcity (fewer than 200 plants) of Hinckley oak, its limited distribution, and its widely separated populations make this species vulnerable to both natural and man-caused threats. Any further reduction in plant numbers could reduct the reproductive capabilities and genetic potential of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Quercus hinckleyi* as threatened. This action seems appropriate because, although this species has a small population size and limited distribution, it has good recovery potential and, at the present rate of decline, the danger of extinction does not appear to be in the forseeable future. For the reasons given below, no critical habitat has been proposed for this species.

Critical Habitat

Section 4(a)(3) of the Act, as aamended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endagered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species, "*Quercus hinckleyi* is threatened by taking, an activity difficult to control and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. All involved parties and landowners will be notified of the location and importance of protecting Hinckley oak habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. No net benefit for the conservation of this species would accrue from designating critical habitat. Therefore, it would not be prudent to determine critical habitat for *Quercus hinckleyi* at this time.

Potential Recovery Actions

Potential recovery actions include collection of acorns to produce plants for reintroduction into suitable habitat, property protection, coordination with the Texas Highway Department and coordination with private organizations and both private landowners to develop appropriate conservation and management measures.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Some actions may be undertaken prior to listing. See Potential Recovery Actions above. The protection required for Federal agencies and the prohibitions against taking are discussed, in part below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The only anticipated Federal project involving *Quercus hinckleyi* is the possible funding by the Federal Highway Administration of any maintenance and widening activities for Texas highway 67 in this part of Presidio County.

The Act and its implementing regulations found at 50 CFR 17.17 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. these prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commerical activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession.

Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conseration agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because *Q. hinckelyi* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to Hinckley oak;

(2) The location of any additional populations of Hinckley oak and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of Hinckley oak; and

(4) Current or planned activities in the subject area and their possible impacts on Hinckley oak.

Final promulgation of the regulation an Hinckley oak will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Miller, D.J., and A.M. Powell. 1982. Status Report on *Quercus hinckleyi*. U.S. Fish and Wildlife Service, Endangered Species Office, Albuquerque, NM. 6 pp

Muller, C.H. 1951. The oaks of Texas. Contributions from the Texas Research Foundation 1:40–41.

Van Devender, T.R., C.E. Freeman, and R.D. Worthington. 1978. Full-glacial and recent vegetation of Livingston, Hills, Presidio County, Texas. Southwestern Naturalist 23:289–302.

Author

The primary author of this proposed rule is Sue Rutman, Endangered Species Botanist, U.S Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884, Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Fagaceae, to the List of Endangered and Threatened Plants:

§ 71.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*		
Fagaceae—Oak family:						
Quercus hinckleyi	Hinckley oak	U.S.A. (TX)	T		NA	NA
*	*	*	*	*		

Dated: August 26, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–21287 Filed 9–15–87; 8:45 am]

BILLING CODE 4310–55–M

VOL 52 ISS 179 SEP 16 1987 UMI

Notices

Federal Register
Vol. 52, No. 179
Wednesday, September 16, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 11, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20593, Attn: Desk Office for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Office of your intent as early as possible.

Revision

- National Agricultural Statistics Service

Farm Costs and Returns Survey
Annually
Farms; 44,550 responses; 21,200 hours; not applicable under 3504(h)
Larry Gambell (202) 447–7737

Larry K. Roberson,
Acting Departmental Clearance Officer.

[FR Doc. 87–21376 Filed 9–15–87; 8:45 am]
BILLING CODE 3410–01–M

Office of the Secretary

Illinois Forestry Development Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954, as Amended

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that payments made to landowners under the Illinois Forestry Development Program are made primarily for the purpose of improving forests. This determination, which is made in accordance with section 126 of the Internal Revenue Code of 1954, as amended, and the provisions of 7 CFR Part 14, permits recipients of these payments to exclude some or all of them from gross income for Federal income tax purposes if certain other conditions are met.

FOR FURTHER INFORMATION CONTACT: Frederick A. Dorrell, Director, Cooperative Forestry, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, (703) 235–2212.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as added by the Revenue Act of 1978 and amended by the Technical Corrections Act of 1979, provides that certain payments made under State programs may be eligible for exclusion from gross income if certain determinations are made. The Secretary of Agriculture must determine whether payments made under a State program, as described in section 126(a)(10), are "made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife." In making this determination, the Secretary of Agriculture must evaluate each program according to criteria set forth in 7 CFR Part 14.

One such program carried out by the state of Illinois (i.e., the Illinois Forestry Development Program) is authorized by the Illinois Forestry Development Act (Ill. Ann. Stat. ch. 96 1/2, pars. 9101 through 9107) (Smith-Hurd 1983). This program is designed to provide technical and financial assistance to private landowners to increase the supply of timber from private forest lands. The program is administered by the state of Illinois Department of Conservation through its Division of Forest Resources and Natural Heritage. An eligible entity is any private timber grower who owns or operates at least five contiguous acres of land in the State on which timber is produced.

Cost-share payments are made under the program for the satisfactory installation of forestry practices developed to accomplish one or more of the following:

(a) Reforestation of land suitable for growing timber, including protection from fire and domestic livestock.

(b) Timber stand improvement.

Eligible practices for which cost-share assistance is made available under the program are: site preparation for planting or natural regeneration, tree planting, vegetation control, timber stand improvement (including pruning), fire breaks, and protection from domestic livestock which includes fencing.

Cost share payments under the program can be made in an amount that does not exceed: (1) 40 percent of the total cost of the forestry management practices for such practices approved to be funded from monies appropriated for this purpose for fiscal year 1986; (2) 60 percent of the total cost of the forestry management practices for such practices approved to be funded from monies appropriated for this purpose for fiscal year 1987; and (3) 80 percent of the total cost of the forestry management practices for such practices approved to be funded from monies appropriated for this purpose for subsequent fiscal years. Cost share funds shall be paid from monies appropriated to the Department by the General Assembly for that purpose from the Illinois Forestry Development Fund or any other fund in

the State Treasury. The maximum payment per participant per year is $1,000. A practice cannot be repeated on the same land within a 10 year period and a practice must be effective for a minimum of 10 years. Property upon which cost-share practices are installed must be protected from destructive fires and animal grazing.

The authorizing legislation, regulations, and operating procedures for the Forestry Development Program of the state of Illinois have been carefully examined using the criteria set forth in 7 CFR Part 14. The Department has concluded that payments made under this forestry cost-sharing program are made to provide financial assistance to agricultural landowners in carrying out forest improvement practices. A "Record of Decision, Illinois Forestry Development Program: Primary Purpose Determination for Federal Tax Purposes" has been prepared and is available upon request from Cooperative Forestry, Forest Service, USDA. Requests may be sent to the address listed above.

Determination

It is hereby determined in accordance with section 126(b)(1) of the Internal Revenue Code of 1954, as amended, and 7 CFR Part 14, that all cost-share payments made for forest improvement practices under the Illinois Forestry Development Act of the state of Illinois (Ill. Ann. Stat. ch. 96 1/2, pars. 9101 through 9107) (Smith-Hurd 1983) are made primarily for the purpose of improving forests.

Signed at Washington, DC, on August 24, 1987.

Richard E. Lyng,

Secretary of Agriculture.

Record of Decision—Illinois Forestry Development Program Primary Purpose Determination for Federal Tax Purposes

Introduction: The Secretary of Agriculture is authorized by section 126 of the Internal Revenue Code of 1954, as amended, to determine the primary purpose for which payments are made under certain Federal and State programs. The determination will identify payments that recipients may exclude from their gross income for Federal tax purposes to the extent allowed by the Secretary of the Treasury.

Basis for Determination: U.S. Department of Agriculture (USDA) determinations are made in accordance with 7 CFR Part 14 by reviewing authorizing legislation, regulations, and operating policy to identify the purposes for which cost-share payments are made. Final determinations are made on the basis of program, category of practices, or practice, and are published in the **Federal Register.**

Statement of Findings: The Forestry Development Program of the State of Illinois is authorized by the Illinois Forestry Development Act (Ill. Ann. Stat., ch. 96 1/2, pars. 9101 through 9107) (Smith-Hurd 1983). The purpose of this program is to promote the development of an active forestry industry in the State of Illinois.

A Forestry Development Fund was established by the Illinois Forestry Development Act (the "Act") to fund the program from amounts derived from an assessment of a four percent harvest fee on timber severed in Illinois.

The Director of the Department of Conservation administers the program through the Division of Forest Resources and Natural Heritage. Program guidelines are in Title 17, Chapter I, Subchapter d, Part 1536 of the Illinois Administrative Code. The program provides technical and cost-share assistance to eligible landowners and timber growers to increase the productivity of their privately owned forests through the application of approved forest management practices.

The Illinois Forestry Development Program encourages private landowners to apply silvicultural practices for the purpose of commercially growing timber through the establishment of forest stands, or by encouraging the proper regeneration of forest stands to commercial production levels. The Illinois Division of Forest Resources and Natural Heritage provides the required technical assistance to install the approved practices in the field.

The approved practices are: (1) Site preparation—the preparation of a site for planting seedlings or for natural regeneration of a commercial forest tree species; (2) tree planting—the planting of a sufficient number of seedlings to establish a forest stand; (3) vegetation control—treatment of competing vegetation to allow seedlings to become established; (4) timber stand improvement—releasing established reproduction of desired tree species for the purpose of ensuring adequate regeneration of a commercial stand, or pruning selected trees to improve quality; (5) protection from fire—construction of fire lanes; and (6) protection from domestic livestock—fencing to protect the woodland area approved for forest management practices from overgrazing. A forest management plan is developed or approved by the forester representing the Division of Forestry Resources and Natural Heritage. These plans are evaluated annually for reapproval.

The maximum cost-share assistance for each practice or separate component is a percentage of the actual cost of performing the treatment(s) considered necessary to obtain the needed practice. Provisions are made so that the participant will make a significant contribution to the cost of performing the practice. Cost share payments under the program can be made in an amount that doest not exceed: (1) 40 percent of the total cost of the forestry management practices for such practices approved to be funded from monies appropriated for this purpose for fiscal year 1986; (2) 60 percent of the total cost of the forestry management practices for such practices approved to be funded from monies appropriated for this purpose for fiscal year 1987; and (3) 80 percent of the total cost of the forestry management practices for such practices approved to be funded from monies appropriated for this purpose for subsequent fiscal years. Cost share funds shall be paid from monies appropriated to the Department by the General Assembly for that purpose from the Illinois Forestry Development Fund or any other fund in the State Treasury. The maximum payment per participant per year is $1,000. A practice cannot be repeated on the same land within a 10 year period and a practice must be effective for a minimum of 10 years. Property upon which cost-share practices are installed must be protected from destructive fires and animal grazing.

An eligible entity is a private timber grower who owns or operates at least five continguous acres of land in the State on which timber is produced, and has an Illinois Department of Conservation approved forest management plan as described in 17 Illinois Administrative Code 1537. A timber grower is defined in section 2(i) of the Act as:

> The owner, tenant or operator of land in this State who has an interest in, or is entitled to receive any part of the proceeds from, the sale of timber grown in this State and includes persons exercising authority to sell timber.

Summary: The purpose of the Illinois Forestry Development Act is to increase the productivity of the privately owned forests in Illinois, and to ensure that forest operations performed under the Forestry Development Act are conducted in a manner designed to protect the soil, air, and water resources. Participation is voluntary. The approved practices are site preparation, tree planting, vegetation

control, timber stand improvement, and protection from fire and domestic livestock.

Determination: It is determined that all cost-share payments made for approved practices under the Illinois Forestry Development Act are for the purpose of improving forests.

[FR Doc. 87-21377 Filed 9-15-87; 8:45 am]
BILLING CODE 3410-01-M

ARCTIC RESEARCH COMMISSION

Meeting

Notice is hereby given that the Arctic Research Commission will meet in Executive Session on 24 September 1987, in Anchorage, Alaska. The meeting will start at 5:00 p.m. at the Commission Offices located at 707 A Street, Anchorage, Alaska.

Matters to be discussed in Executive Session include: (1) Future Plans of the Commission (2) Discussion of Possible New Candidates for Membership and (3) Commission Financial Affairs.

Contact Person for More Information: W. Timothy Hushen, Executive Director, Arctic Research Commission (213) 743-0970.

W. Timothy Hushen,
Executive Director, Arctic Research Commission.
[FR Doc. 87-21352 Filed 9-15-87; 8:45 am]
BILLING CODE 7555-01-M

COMMISSION ON CIVIL RIGHTS

Iowa Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn of 4:00 p.m., on September 28, 1987, at Ramada Inn, 214 Washington Street, Waterloo, Iowa. The purpose of the meeting is to hear presentations on the status of civil rights in the State of Iowa.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Ralph S. Scott, Jr., or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 3, 1987.

Susan J. Prado,
Acting Staff Director.
[FR Doc. 87-21278 Filed 9-15-87; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF COMMERCE

Bureau of Census

Intercity, Rural, and Charter Bus Transportation Survey; Notice of Consideration; Correction

This document corrects the agency contact telephone number contained in the notice published on September 8, 1987 (52 FR 33855).

The telephone number for additional information about this proposed survey is (301) 763-7452.

Dated: September 10, 1987.

Edward J. McGuire,
Federal Register Liaison Officer, Bureau of the Census.
[FR Doc. 87-21299 Filed 9-15-87; 8:45 am]
BILLING CODE 3510-07-M

International Trade Administration

[A-428-061]

Preliminary Results of Antidumping Duty Administrative Review; Precipitated Barium Carbonate From the Federal Republic of Germany

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany. The review covers one manufacturer/exporter of this merchandise to the United States and the period July 1, 1985 through June 30, 1986. The review indicates the existence of no dumping margins for the firm during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Richard P. Bruno or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 20438) the final results of its last administrative review of the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany (46 FR 32884, June 25, 1981). After the promulgation of our new regulations, the petitioner requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation on July 17, 1986 (51 FR 25923). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultations in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of precipitated barium carbonate, a chemical compound ($BaCO_3$), currently classifiable under TSUSA item 472.0600 and under HS item 2836.60.00.

The review covers one manufacturer/exporter of West German precipitated barium carbonate to the United States,

Kali-Chemie AG, and the period from July 1, 1985 through June 30, 1986.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the delivered, packed price to unrelated purchasers in the United States.

All sales to the United States were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation. The Department determined that purchase price was the appropriate indicator of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

We made adjustments, where applicable, for foreign inland freight, ocean freight, marine insurance, U.S. duty, forwarding fees, U.S. clearance and brokerage charges, U.S. inland freight, and transloading. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on either the delivered or ex-factory, packed price with adjustments, where applicable, for inland freight, rebates, prompt payment discounts, technical services, and differences in packing costs. We denied a claimed adjustment for "other expenses" because it was not properly quantified. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that no dumping margins exist for Kali-Chemie AG for the period July 1, 1985 through June 30, 1986.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication and may request a hearing within 8 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for by section 751(a)(1) of the Commerce Regulations, since there was no margin the Department shall not require a cash deposit of estimated antidumping duties for Kali-Chemie AG. For any shipments from the one remaining known manufacturer/exporter not covered by this review, the cash deposit will continue to be the rate published in the final results of the last administrative review for that firm (50 FR 16330, April 25, 1985). For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after June 30, 1986 and who is unrelated to the reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of West German precipitated barium carbonate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

Date: September 8, 1987.

[FR Doc. 87-21346 Filed 9-15-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-702]

Preliminary Determination of Sales at Less Than Fair Value; Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that stainless steel butt-weld pipe and tube fittings (SSBW pipe fittings) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by November 24, 1987.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Judith Nehring (202/377-0160) or Mary S. Clapp (202/377-1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that SSBW pipe fittings from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). Fuji Acetylene Industries Co., Ltd., is excluded from this determination because the margin found is *de minimis*. We made fair value comparisons on sales of the class or kind of merchandise to the United States during the period of investigation, November 1, 1986, through April 30, 1987. The margins of sales at less than fair value are shown in the "suspension of Liquidation" section of this notice.

Case History

On April 2, 1987, we received a petition in proper form filed by Flowline Corporation on behalf of the U.S. industry producing SSBW pipe fittings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are

being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated such an investigation on April 21, 1987 (52 FR 13734, April 24, 1987) and notified the ITC of our action.

On May 27, 1987, questionnaires were presented to Nippon Benkan Kogyo, K.K. (Benkan), and Mie Horo. It was determined that these companies accounted for more than 85% of all exports to the United States of SSBW pipe fittings from Japan. We received a response from Benkan on July 27, 1987, and supplemental responses on August 10 and August 25, 1987. Mie Horo has indicated that it would not respond to our questionnaire. We also received voluntary responses from Fuji Acetylene Industries Co., Ltd. (Fuji), and Nippon Bulge Industries, Ltd. (NBI). Since the Department determined that the response submitted by NBI contained major deficiencies, we have not analyzed that response for purposes of this investigation. We have, however, determined that Fuji's response was substantially complete and have analyzed it for purposes of this determination.

Scope of Investigation

The products covered by this investigation are SSBW pipe and tube fittings whether finished or unfinished, including as-formed tubular blanks, under 14 inches in inside diameter, currently classified under the *Tariff Schedules of the United States Annotated* (TSUSA) under item number 610.8948 and currently classifiable under HS item number 7307.23.00.

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System by January 1, 1988. In view of this, we will be providing both the appropriate TSUSA item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUAS item numbers in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC, 20230.

Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Fair Value Comparisons

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value. We investigated all sales of SSBW pipe fittings for the period November 1, 1986, through April 30, 1987. Mie Horo did not respond to our questionnaire; therefore, we based our fair value comparisons for it on the best information available in accordance with section 776(b) of the Act.

United States Price

We based United States price for all U.S. sales on purchase price in accordance with section 772(b) of the Act. Some of these sales were made directly to unrelated customers in the United States prior to importation. Under these circumstances, section 772(b) clearly requires that purchase price be used for determining the U.S. sales price. All of the other sales to the United States were through a related U.S. selling agent; however, the U.S. customer took shipment directly from the manufacturer. We used purchase price, as opposed to exporter's sales price, for these sales for the following reasons:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related U.S. selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

We regard the diversion of merchandise into the related U.S. selling agent's inventory as an important factor in distinguishing between ESP and purchase price because it is associated with a materially different type of selling activity than that which occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, it commonly incurs substantial storage and financial carrying costs and has added flexibility in its marketing. With direct shipments, the activity which takes place in the U.S. is the mere facilitation of a transaction.

We also use the inventory test because it can be readily understood and applied by respondents who must reply to Department questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

We calculated purchase price based on the f.o.b. c.i.f., duty unpaid or c.i.f. duty paid, packed prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, ocean freight, Japan brokerage, U.S. brokerage, U.S. duty, marine insurance, and U.S. inland freight, as appropriate. For Mie Horo, we calculated the purchase price of SSBW pipe fittings on the basis of the best information available as contained in the petition, which is the prices that two U.S. distributors paid for imports of the subject merchandise. Petitioner deducted from those prices the 7% duty on SSBW pipe fittings and an additional 10% to account for Japanese inland freight, ocean freight, marine insurance and brokerage.

Foreign Market Value

In accordance with section 773 (a) of the Act, we calculated foreign market value based on f.o.b. packed home market prices to related and unrelated purchasers. We reviewed Benkan's pricing practices and preliminarily determined that its prices to related purchasers represent arms-length transactions. We made deductions, where appropriate, for inland freight, rebates and discounts. We made adjustments for differences in circumstances of sale for credit expenses pursuant to 19 CFR 353.15. We denied claims for technical services and advertising because the basis of calculating these expenses was not fully described. We deducted home market packing and added U.S. packing.

We established separate categories of "such or similar" merchandise, pursuant to section 771(16) of the Act, on the basis of type of fitting (elbows, tees, reducers, stub-ends, caps), nominal size (dimensions of the pipe fittings), degree of processing (finished or unfinished), wall thickness, material grade and raw material (seamless or welded). Where we found identical products sold in the home market we used those sales for comparison to U.S. sales. Where there were no identical products sold in the home market for comparison to products sold to the United States, we made adjustments to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act. These adjustments were based on differences in the costs of material, direct labor and directly related factory overhead.

For Mie Horo, we calculated the foreign market value on the basis of best information available, which is the constructed value data contained in the petition, applying the statutory minimum of 10% for general expenses and the 8% minimum for profit.

Currency Conversion

In accordance with § 353.56(a)(1) of our regulations, all currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On April 2, 1987, the petitioners alleged that critical circumstances exist within the meaning of section 733(e) of the Act with respect to SSBW pipe fittings from Japan. In determining whether critical circumstances exist, we must examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and (B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following data in order to determine whether massive imports have taken place over a short period of time: (1) The volume and value of imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Apparent domestic consumption statistics, which would enable the Department to measure import penetration, are not available for the subject merchandise.

To determine whether imports have been massive over a relatively short period, we analyzed recent Department of Commerce IM–146 trade statistics on imports of SSBW pipe fitting for equal periods immediately preceding and following the filing of the petition, comparing imports of March–April to May–June. To account for the lag time of the reported statistics, we included April in the pre-filing period.

The statistics reveal that there was a 100.76 percent increase in the post-filing period, May–June 1987, over the pre-filing period, March–April, 1987. This substantial increase, by itself, would indicate that imports have surged dramatically since the petition was filed. However, we also compared the import activity during the months in question with activity during the same months for several previous years to determine whether this surge results from a seasonal trend. For the same March–April and May–June periods in 1984, 1985, and 1986, statistics indicate that there was a 168.79 percent increase in 1984, a 26.87 percent decrease in 1985, and a 51.70 percent decrease in 1986. Since these figures do not indicate that the post-filing surge here is part of an established pattern or a seasonal trend, we determine that a massive surge in imports of SSBW pipe fittings exists since the time the petition was filed.

Having concluded that there have been massive imports of the subject merchandise, the Department must determine whether there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation or whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value. The Department found that an affirmative antidumping duty order in Canada on the subject merchandise against Japan was issued on July 21, 1982. This constitutes a history of dumping.

Based on the above information, that there is a history of dumping of the subject merchandise and that there have been massive imports, we preliminarily conclude that critical circumstances do exist with respect to imports from Japan.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(e) of the Act, we are directing the U.S. Customs Service to retroactively suspend liquidation of all entries of SSBW pipe fittings from Japan (except those produced and sold by Fuji) that are entered, or withdrawn from warehouse, for consumption, 90 days before the date of publication of this notice in the **Federal Register**. This retroactive suspension of liquidation is ordered because of the preliminary affirmative critical circumstances determination.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. This retroactive suspension of liquidation will remain in effect until further notice.

Manufacturer/Exporter	Weighted-average margin (percent)
Nippon Benkan Kogyo, K.K.	28.86
Fuji Acetylene Industries Co., Ltd.	0.18 (*de minimis*)
Mie Horo	64.85
All others	28.86

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under and administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on October 23, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to

participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 17, 1987. Oral presentations will be limited to issues raised in the briefs. All written views, along with 10 copies, should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-21347 Filed 9-15-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 70881-7181]

Foreign Availability Assessment; Controllable Pitch Propellers

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Notice of finding of foreign availability assessment.

SUMMARY: The Office of Foreign Availability (OFA) of Export Administration is required by sections 5 (f) and (h) of the Export Administration Act of 1979, as amended, to initiate and review claims of foreign availability on items controlled for national security purposes.

OFA has completed an assessment on controllable pitch propellers controlled under paragraph (e)(2) of the "List of Equipment Controlled by ECCN 1416A" in ECCN 1416A on the Commodity Control List (Supplement No. 1 to § 399.1). The equipment that is controlled by ECCN 1416A is defined as "controllable pitch propellers and hub assemblies rated at greater than 20,000 hp." Based on this assessment and following consultation with the Department of Defense, the Department of Commerce has found foreign availability for this commodity at 40,000 hp and below.

FOR FURTHER INFORMATION CONTACT: Donald Brychczynski, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-3564.

SUPPLEMENTARY INFORMATION:

Background

The Office of Foreign Availability (OFA) has completed an assessment, pursuant to Part 391 of the Export Administration Regulations (15 CFR Part 391), on the foreign availability of *controllable pitch propellers* and has recommended a finding of foreign availability as defined by law. The purpose of the assessment was to determine whether national security export controls should be continued. Based on such assessment, the Director of OFA has determined that foreign availability exists for such equipment within the meaning of section 5(f) of the Export Administration Act of 1979, as amended.

Based on this determination, Export Administration will publish regulations amending the national security export controls on these controllable pitch propellers. Specifically, individual validated licenses to destinations other than controlled countries will no longer be required for controllable pitch propellers with horsepower ratings of 40,000 and below. Export Administration also has begun the process whereby the United States Government will work with COCOM member governments to reach agreement on an orderly reduction in the multilateral controls placed on such controllable pitch propellers when exported to controlled countries.

If OFA receives substantive new evidence affecting this foreign availability determination, the assessment will be reevaluated. Inquiries concerning the scope of this assessment may be directed to Office of Foreign Availability at the above address.

Dated: September 11, 1987.

Irwin M. Pikus,

Director, Office of Foreign Availability.

[FR Doc. 87-21335 Filed 9-15-87; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 70880-7180]

Foreign Availability Assessment: Wire Bonders

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Notice of finding of foreign availability assessment.

SUMMARY: The Office of Foreign Availability (OFA) of Export Administration is required by sections 5(f) and (h) of the Export Administration Act of 1979, as amended, to initiate and review claims of foreign availability on items controlled for national security purposes.

OFA has completed an assessment on stored program controlled wire bonders controlled under paragraph (b)(5)(ii) of the "List of Equipment Controlled by ECCN 1355A" in ECCN 1355A on the Commodity Control List (Supplement No. 1 to 15 CFR 399.1). The equipment that is controlled by ECCN 1355A is defined as "stored program controlled" wire bonders. (The term "stored program controlled" is defined in Technical Note 4 in ECCN 1355A.) Based on this assessment, the Department of Commerce has found foreign availability for this commodity.

FOR FURTHER INFORMATION CONTACT: John Pastore, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-5953.

SUPPLEMENTARY INFORMATION:

Background

The President has decided not to override the finding of foreign availability for this commodity.

Therefore, Export Administration will publish regulations amending the national security export controls on "stored program controlled" wire bonders. Specifically, individual validated licenses to destinations other than controlled countries will no longer be required for "stored program controlled" wire bonders with parameters below certain levels specified in the amended regulations. Export Administration also will begin the process whereby the United States Government will work with COCOM member governments to reach agreement on an orderly change in the multilateral controls placed on "stored program controlled" wire bonders when exported to controlled countries.

If OFA receives substantive new evidence affecting this foreign availability determination, the assessment will be reevaluated. Inquiries concerning the scope of this assessment may be directed to the OFA at the above address.

Dated: September 11, 1987.

Irwin M. Pikus,

Director, Office of Foreign Availability.

[FR Doc. 87-21332 Filed 9-15-87; 8:45 am]

BILLING CODE 3510-DT-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee

will be held on Wednesday, October 7, 1987, at 10:30 a.m., Herbert C. Hoover Building, Room H3407, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets and retailing of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes contact Alfreda Burton (202) 377–5761.

Dated: September 11, 1987.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–2134 Filed 9–15–87; 8:45 am]

BILLING CODE 3510–DR–M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-labor Textile Advisory Committee will be held on Tuesday, October 6, 1987, at 1:30 p.m., Herbert C. Hoover Building, Room H4830, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise officials of the Department of problems and conditions in the textile and apparel industry.)

General Session: 1:30 p.m. Review of import trends, report on conditions in the domestic market, and other business.

Executive Session: 2:00 p.m. Discusison of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspeciton and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies the minutes contact Alfreda Burton (202) 377–5761.

Dated: September 11, 1987.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–21333 Filed 9–15–87; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Reserves

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Hawaii Coastal Management Program. Section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. The state evaluated was found to be adhering both to the programmatic terms of its financial assistance award and/or to the approved coastal management program; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in section 303(2)(A)–(I) of the Coastal Zone Management Act. A copy of the assessment and detailed findings for this program may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone: 202/673–5104).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Date: September 9, 1987.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87–21319 Filed 9–15–87; 8:45 am]

BILLING CODE 3510–08–M

Intent to Evaluate Performance of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Programs

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Alaska Coastal Management Program (CMP): Mississippi CMP; Wisconsin CMP; Alabama CMP; Virginia CMP; and Hawaii's Waimanu National Estuarine Research Reserve through December 31, 1987. The reviews of coastal management programs will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2)(A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under CZMA. The reviews of National Estuarine Research Reserves are conducted pursuant to section 315(f) of the CZMA, as amended by Pub. L. 99–272, which requires the Secretary of Commerce to evaluate periodically the operation and management of each Reserve, including education and interpretive activities, and the research being conducted within the reserve. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held

as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance reports, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. Written comments from all interested parties on each of those programs to the contact listed below are encouraged at this time. OCRM will place subsequent notice in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone: 202–673–5104).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: September 9, 1987.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87–21318 Filed 9–15–87; 8:45 am]

BILLING CODE 3510–08–M

COMMISSION ON EDUCATION OF THE DEAF

Meeting of the Commission and its Committees

AGENCY: Commission on Education of the Deaf.

ACTION: Notice of meetings.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of forthcoming meetings of the Commission on Education of the Deaf and its Committees. The purpose of the Commission and Committee meetings is to approve publication of the second of two sets of notices of draft recommendations in the **Federal Register**. These meetings will be open to the public.

DATES: September 28, 1987, 8:00 a.m. to 5:00 p.m.; September 29, 1987, 8:00 a.m. to 5:00 p.m.; September 30, 1987, 8:00 a.m. to 5:00 p.m.

ADDRESS: All meetings will be held in the Holiday Inn-Capitol, 550 C Street SW., Washington, DC 20024. Monday, the Joint Committee will meet in the Lewis Room. The remainder of the day, the Precollege Committee will meet in the Gemini Room; the Postsecondary Committee in the Lewis Room. Tuesday and Wednesday, all meetings will be in the Lewis Room.

FOR FURTHER INFORMATION CONTACT: Monica Hawkins, Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets SW., Washington, DC 20407. [202] 453–4353 (TDD) or [202] 453–4684 (Voice). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Joint Committee will meet Monday, September 28, from 8:00 a.m. to 10:00 a.m. to receive input from the engage in discussion with a panel of representatives from the model Secondary School for the deal (MSSD), and the Kendall Demonstration Elementary School (KDES) on research and dissemination activities. The precollege Committee will meet from 10:30 a.m. to 12:00 noon to receive input from and engage in discussion with a panel of representatives from the MSSD and the KDES on precollege activities. The Postsecondary Committee will meet at the same time to discuss employment of deaf persons at Gallaudet University and NTID. That afternoon, form 1:00 p.m. to 5:00 p.m., the Precollege Committee will meet to discuss the proposed findings on demographics, language acquisition, reading, and early intervention. The Postsecondary Committee will also meet from 1:00 p.m. to 5:00 p.m. to discuss vocational rehabilitation services, vocational education, and transition programs for low-achieving persons and adult education.

On September 29, the Joint Committee will meet from 8:00 a.m. to 12:00 noon to discuss minority education, the Department of Education's liaison officer to Gallaudet University and the NTID, the Captioned Films program, technology, and educational interpreting. In the afternoon, the Joint Committee will meet from 1:00 p.m. to 5:00 p.m. to discuss culture in the classroom, education of deaf/blind persons, teacher training/certification, the feasibility of establishing a clearinghouse, and rural education.

On September 30, the Executive Committee will meet from 8:00 a.m. to 10:00 a.m. for reports. The full Commission will meet from 1:00 p.m. to 5:00 p.m. to approve the publication of its second set of draft recommendations and to suggest items to put on the agenda from the October 28–29 meeting.

The proposed agenda for the Commission meeting on September 30, includes the following:

I. Approval of minutes

II. Reports.

- Chairperson's Report.
- Vice Chairperson's Report.
- Executive Committee Chairperson's Report.
- Staff Director's Report.

III. New business.

Second set of draft recommendations for publication in the **Federal Register**.

IV. October agenda

V. Adjournment

These meetings will be open to the public. Interpreters will be provided. If you need audio-loop systems or other special accommodations, please contact Monica Hawkins at [202] 453–4353 (TDD) or [202] 453–4684 (Voice) no later than September 23, 1987, 5:00 p.m. E.S.T. These are not toll free numbers.

Records will be kept of the proceedings and will be available for public inspection at the office of the Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets SW., Washington, DC.

Pat Johanson,

Staff Director.

[FR Doc. 87–21323 Filed 9–15–87; 8:45 am]

BILLING CODE 5820–SD–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures Trading Commission ("Commission") previously published in the **Federal Register** a proposal of the Chicago Mercantile Exchange ("CME") for designation as a futures contract market in the Nikkei Stock Average. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before October 1, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME Nikkei Stock Average futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading

Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–7227.

SUPPLEMENTARY INFORMATION: On May 19, 1987, the Commission published in the Federal Register, for a 60-day comment period, a notice of availability of the CME's proposed terms and conditions for the Nikkei Stock Average futures contract (52 FR 20136). In a September 4, 1987, letter to the Commission, the CME requested that the Commission republish the terms and conditions of the proposed contract "to afford commentators an additional opportunity to comment on these terms." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by October 1, 1987.

Issued in Washington, DC, on September 11, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87–21336 Filed 9–15–87; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting; Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the DACOWITS is to assist and advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semi-annually.

DATE: October 25–29, 1987 (Detailed agenda follows.

ADDRESS: Sheraton Plaza Hotel, 1721 Central Texas Expressway, Killeen, Texas, unless otherwise noted in detailed agenda.

Agenda: Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following meetings and discussions.

Sunday, October 25, 1987

11:00 a.m.–4:00 p.m., Registration
11:00 a.m.–12:00 noon, Executive Committee Meeting
12:00 noon–1:00 p.m., Get Acquainted Luncheon (Current DACOWITS Members Only)
12:00 a.m.–1:00 p.m., Get Acquainted Luncheon (MilRep and Liaison Officers Only)
1:15 p.m.–2:00 p.m., Chairman's Procedural Session
2:00 p.m.–3:00 p.m., Briefing: Title IV: Joint Officer Personnel Policy DoD Reorganization Act of 1986
3:00 p.m.–6:00 p.m., Subcommittee Sessions (Evaluation and Disposition of Service Responses); Briefing: Army Medical Study (Subcommittee #2)
7:00 p.m.–8:30 p.m., No-Host Social Buffet

Monday, October 26, 1987

8:00 a.m.–8:30 a.m., OSD Official Coffee
8:30 a.m.–9:00 a.m., Official Opening Ceremony. Presiding: Dr. Jacquelyn Davis, DACOWITS Chairman
9:30 a.m.–10:30 a.m., Briefing: Study of Women at the Naval Academy
10:45 a.m.–11:45 a.m., Briefing: General Unrestricted Line; Training and Administration of Reserves; Command of Naval Reserve Centers
12:00 noon–1:30 p.m., OSD Luncheon (*by invitation only*)
1:30 p.m.–2:30 p.m., Briefing: Command and Executive Officer Billets Available for Personnel in the General Unrestricted Line
2:30 p.m.–5:30 p.m., Subcommittee Sessions (Evaluation of Briefings and Sunday Resolutions)
7:00 p.m.–8:00 p.m., OSD Reception (*By Invitation Only*)
8:00 p.m.–10:30 p.m., OSD Dinner (*By Invitation Only*)

Tuesday, October 27, 1987

Field trip hosted by the U.S. Army to Fort Hood, Texas. (Limited to DACOWITS Members, Former Members, Official Military Representatives, DACOWITS Liaison Officers, and special guests.)

Wednesday, October 28, 1987

9:00 a.m.–9:30 a.m., Presentations by Members of the Public
9:30 a.m.–11:45 a.m., Subcommittee Sessions
12:00 noon–2:00 p.m., Installation Visit Luncheon
2:00 p.m.–5:00 p.m., Executive Committee Mark-up

Thursday, October 29, 1987

7:30 a.m.–8:00 a.m., Individual Review of Resolutions
8:00 a.m.–11:00 a.m., General Business Session
11:00 a.m.–12:00 noon, Adjourn; Executive Committee Meeting

FOR FURTHER INFORMATION CONTACT: Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the meeting:

(1) Members of the public will not be permitted to attend the official Department of Defense luncheon or dinner.

(2) All business sessions, to include the Executive Committee Meetings, will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the meeting.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than October 5, 1987.

(5) Length and number of oral presentations to be made will depend on

the number of requests received from the members of the public.

(6) Oral presentations by members of the public will be permitted only from 9:00 a.m. to 9:30 a.m. on Wednesday, October 28, 1987, before the Full Committee.

(7) Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS office with a copy of the presentation or 60 copies of the statement by October 9, 1987.

(8) Persons submitting a written statement only for inclusion in the minutes of the meeting must submit one (1) copy either before or during the meeting or within five (5) days after the close of the meeting.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chairman or Director, DACOWITS and Military Women Matters, to consider.

(1) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chairman and if time allows after the official participants have asked questions and/or made comments.

(12) Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee Meetings, or the Business Session on Thursday, October 29, 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 11, 1987.

[FR Doc. 87-21297 Filed 9-15-87; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Advisory Committee; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Subcommittee (Ground Based Free Electron Laser Technology Integration Experiment Technical Advisory Group) will meet in closed session in Washington, DC, on September 21-22, 1987.

The mission of the Subcommittee is to provide the SDI Advisory Committee an independent analysis and assessment of the plans and approaches for the ground based free electron laser technology integration experiment. At the meeting on September 21-22, 1987 the subcommittee will discusss status of laser research and management issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C., App II, (1982)), it has been determined that this SDI Advisory Subcommittee meeting, concerns matters listed in 5 U.S.C., 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 11, 1987.

[FR Doc. 87-21298 Filed 9-15-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory and Coordinating Council on Bilingual Education; Meeting

AGENCY: Department of Education, National Advisory and Coordinating Council on Bilingual Education.

ACTION: Notice of meeting.

The public is being given less than 15 days notice of this meeting inasmuch as the Designated Federal Official was unable to obtain a quorum.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 21 and 22, 1987, 9:15 a.m. until 5:00 p.m. The meeting will be conducted at the Dupont Plaza Hotel, 1500 New Hampshire Avenue, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Anna Maria Farias, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202 (202) 732-5063.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. The meeting of the Council is open to the public.

The proposed agenda includes the following:

I. Roll Call
II. Adoption of Minutes of Previous Meeting
III. Introduction of Visitors
IV. Presentation of Information by OBEMLA Director or Designee
V. Presentation of information by Members of general Public or Organizations on Agenda Items (Limited to 5 minutes per person from any one group)
VI. Committee Reports
VII. Old Business
VIII. New Business
IX. Presentation of Information by Members of general Public or Organizations on Items for Possible Future Action by Council (Limited to 5 minutes per person from any one group)
X. Meetings of Individual Committees
XI. Reconvening of Council
XII. Adjournment

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, Monday through Friday from 9:00 a.m.-5:30 p.m.

Dated: September 11, 1987.

Alicia Coro,

Director, Office of Bilingual Education and Minority Affairs.

[FR Doc. 87-21321 Filed 9-15-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

Action: Amendment to the SES Performance Review Board Appointments.

Summary: This notice lists the additional members to serve on the Performance Review Board standing register for the Department of Energy. This amends the listing forwarded for publication on August 13, 1987.

The additional names for the SES Performance Review Board are as follows:

Lawrence Pettis
Samuel Rousso
Joel Snow
Robert Tiller

Issued in Washington, DC, on August 27, 1987.

Harry L. Peebles,

Executive Secretary, Executive Personnel Board.

[FR Doc. 87-21385 Filed 9-15-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-610-000 et al.]

Electric Rate and Corporate Regulation Filings; Wisconsin Electric Power Co. et al.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Company

[Docket No. ER87-610-000]

September 4, 1987.

Take notice that on August 31, 1987, Wisconsin Electric Power Company tendered for filing transmission service agreements between Wisconsin Electric Power Company and Commonwealth Edison Company and between Wisconsin Electric Power Company and Wisconsin Public Service Corporation. The transmission service agreements provide for the transmission of economy energy between Commonwealth Edison Company and Wisconsin Public Service Corporation as contemplated in a Letter Agreement filed June 8, 1987, in Docket No. ER87-475-000.

Copies of the filing were served upon Wisconsin Public Service Corporation, Green Bay, Wisconsin, Commonwealth Edison Company, Chicago, Illinois, and the Public Service Commission of Wisconsin, Madison, Wisconsin.

Comment date: September 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Montaup Electric Company

[Docket Nos. ER81-749-000, ER82-325-000, ER83-110-000, ER84-55-000, ER87-471-000]

September 4, 1987.

Take notice that on August 28, 1987, Montaup Electric Company (Montaup) tendered for filing a compliance report showing the refunds that were credited to the Customer's bills dated August 14, 1987 for electric service rendered during the month of July 1987.

Montaup states that the refund include credits to the affiliates in Docket Nos. ER83-110-000 and ER84-55-000 due to stipulations contained in their settlement. Montaup also states that credit was applied to the non-affiliates' bills from settlement in Docket No. ER84-55-000; but no credit was owed to them from Docket Nos. ER81-749-000, ER82-325-000 or ER83-110-000 due to prior settlement with them.

Comment date: September 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk

[Docket No. EL86-22-000]

September 4, 1987.

Take notice that on August 31, 1987, Niagara Mohawk tendered for filing pursuant to the Commission's letter order dated June 18, 1987, its Compliance Refund Report. The refund of $45,000, without interest, was tendered to the Power Authority of the State of New York pursuant to Article II.A. of the Settlement Agreement in this docket is for ultimate distribution to Airco, Inc., SKW Alloy, In., Occidental Chemical Corporation and Olin Corporation and represents a full and complete settlement of this proceeding.

Comment date: September 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Company

[Docket No. ES87-38-000]

September 8, 1987.

Take notice that on August 25, 1987, Interstate Power Company (Applicant) filed an application with the Commission seeking an order pursuant to section 204 of the Federal Power Act for $50 million short-term promissory notes commercial paper to be issued on or before December 31, 1988, and to mature no later than December 31, 1989.

Comment date: September 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Company

[Docket No. ER87-503-000]

September 9, 1987.

Take notice that on September 3, 1987, Carolina Power & Light Company (CP&L) tendered for filing changes to CP&L's Backstand Power and Transmission rates which are a part of the Service Agreement dated October 27, 1972. The Service Agreement, as amended, is on file with the Commission as Carolina Power & Light Company Rate Schedule FPC No. 102.

This filing amends the original filing dated June 18, 1987, to reflect the 34% statutory federal income tax rate which became effective on July 1, 1987. CP&L's Backstand Power and Transmission rates filed herewith decreased from the 1985 rates and are for the time period July 1, 1987, through June 30, 1988. It is respectfully requested that the Commission waive its 60-day notice requirement and allow the supplements filed herewith to become effective on July 1, 1987.

Comment date: September 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Electric Company

[Docket No. ER87-616-000]

September 9, 1987.

Take notice that on September 3, 1987, Commonwealth Electric Company (Commonwealth) tendered for filing, pursuant to § 35.12 of the Commission's regulations, a proposed tariff for the provision of non-firm transmission services at wholesale. Commonwealth states that its proposed tariff is intended to be generally-available to investor-owned utilities, municipalities operating an electric distribution system and "Qualifying Facilities". The tariff proposes a cost of service formula rate to be implemented on an annual basis. If implemented based upon date applicable to calendar 1986, such rate would be $1.31 per kilowatt per month. Commonwealth proposes that its tariff become effective upon November 8, 1987, an even date slightly in excess of sixty days following the instant filing.

Commonwealth states that copies of the tendered filing have been served upon the Massachusetts Department of Public Utilities.

Comment date: September 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER86-272-002]

September 9, 1987.

Take notice that on September 4, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing a compliance report containing the calculation of revenue at the proposed and present rates for the Western Area Power Administration (WAPA).

Comment date: September 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER87-617-000]

September 9, 1987.

Take notice that on September 3, 1987, Southern Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (Southern Companies), tendered for filing a change in rates for Service Schedule B and Service Schedule E of the Interchange Contract dated December 15, 1980 between City of Tallahassee, Florida and Southern Companies. The proposed change would reduce the return on common equity component of the formula rate described in the Allocation Methodology and Periodic Rate Computation Procedure Manual and the Addendum to Service Schedule E, Allocation Methodology and

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Periodic Rate Computation Procedure Manual of Southern Companies from 15.0% to 14.0%.

Comment date: September 23, 1987, in accordance with Standard Paragraph E at the end of this document.

9. Southern Company Services, Inc.

[Docket No. ER87-618-000]

September 9, 1987.

Take notice that on September 3, 1987, Southern Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (Southern Companies), tendered for filing a change in rates for Service Schedule B of the Interchange Contract dated August 7, 1981 between South Carolina Public Service Authority and Southern Companies. The proposed change would reduce the return on common equity component of the formula rate described in the Allocation Methodology and Periodic Rate Computation Procedure Manual from 16.0% to 14.0%.

Comment date: September 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb.

Secretary.

[FR Doc. 87-21344 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8893-002 et al.]

Applications Filed With the Commission; Hydroelectric Applications (Hydro Power Development et al.)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Minor License.

b. Project No.: 8893-002.

c. Date Filed: December 12, 1986.

d. Applicant: Hydro Power Development.

e. Name of Project: Snake River.

f. Location: On the Snake River and Peru Creek in Summit County, Colorado (Section 6, Township 5S, Range 76W, New Mexico Principal Meridian).

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Herbert C. Young, 123 S. Paradise Road, Golden, CO 80401, (303) 526-9296.

i. FERC Contact: Hector M. Perez, (202) 376-1669.

j. Comment Date: October 13, 1987.

k. Description of Project: The proposed run-of-river project would consist of: (1) A new intake structure in the north bank of the Snake River at elevation 9,980 feet msl; (2) a new 48-inch-diameter, 4,000-foot-long buried penstock; (3) a new intake structure in the south bank of the Peru Creek at elevation 9,980 feet msl; (4) a new 48-inch-diameter, 4,000-foot-long buried penstock; (5) a new powerhouse with 2 turbine-generator units with an installed capacity of 150 and 600 kW, each; (6) a new 600-foot-long, 11-kV underground cable; and (7) other appurtanances. The project would be located within the Arapahoe National Forest. The applicant estimates an average annual generation of 2,250,000 kWh for the project.

l. Purpose of Project: Project energy would be sold to the Public Service Company of Colorado.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

2 a. Type of Application: Preliminary Permit.

b. Project No.: 9298-000.

c. Date Filed: June 27, 1985.

d. Applicant: Henniker Hydroenergy Corp.

e. Name of Project: Henniker Dam.

f. Location: On Contoocook River, near town of Henniker, in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r)

h. Applicant Contact: Mr. Victor A. Engel, 145 Abbott Road, Concord, NH 03301, (603) 225-3068.

i. FERC Contact: Sat Goel (202) 376-9816

j. Comment Date: October 9, 1987.

k. Description of Project: The proposed project would consist of: (1) An existing 8-foot-high, 315-foot-long dam to be reconstructed, owned by the Army Corps of Engineers; (2) an existing reservoir with 90-acre feet storage capacity and a surface area of 15 acres at an elevation of 410.85 feet m.s.l; (3) a new 11-foot-diameter, 200-foot-long penstock; (4) a new powerhouse containing two generating units with a total installed capacity of 1,500 kW; and (5) a proposed 200-foot-long transmission line connecting to an existing Public Service Company of New Hampshire.

l. Purpose of Project: The project power would be sold to Public Service Company of New Hampshire. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $40,000.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3 a. Type of Application: Minor License.

b. Project No.: 9685-001.

c. Date Filed: November 12, 1986.

d. Applicant: Clarance A. and Lottie E. Hawkins and Hawkins Hydro Co.

e. Name of Project: Hawkins.

f. Location: On the Dirty George Creek and Camp Creek in Delta County, Colorado (Sections 9, 15, and 16, Township 13S, Range 95W New Mexico Principal Meridian).

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Clarance A. Hawkins, Rural Route 1, P.O. Box 373, Eckert, CO 81418, (303) 856-3845.

i. FERC Contact: Hector M. Perez, (202) 376-1669.

j. Comment Date: October 9, 1987.

k. Description of Project: The proposed run-of-river project would consist of: (1) An existing 3-foot-high, 15-foot-long concrete diversion dam across Dirty Creek at elevation 7,180 feet msl; (2) an existing 125-foot-long rectangular irrigation ditch, (3) a new sump-type intake structure at the irrigation ditch; (4) a new 16-inch-diameter, 9,200-foot-long steel penstock; (5) a new powerhouse with a 650-kW turbine-generator unit; (6) a new 50-foot-long tailrace channel returning water into Camp Creek at elevation 6,200 msl; (7) a new 2,000-foot-long underground transmission line; and other appurtances. The upper part of the project is partially on lands administered by the Bureau of Land Management. The applicant estimates an average annual generation of 3,677,631 kWh. Project energy would be sold to the Colorado-Ute Electric Association. This application was filed within the applicant's preliminary permit term for this project.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

4 a. Type of Application: Constructed Minor License.

b. Project No.: 10102–000.

c. Date Filed: September 29, 1986.

d. Applicant: Franklin Springer.

e. Name of Project: Springer No. 1.

f. Location: On the McFadden, Morrison, and Pine Creeks in Chaffee County, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Karl F. Kumli III, 1911 Eleventh Street, Suite 201, P.O. Box 2279, Boulder, CO 80306, (303) 440–0075.

i. FERC Contact: Hector Perez, (202) 376–1669.

j. Comment Date: October 13, 1987.

k. Description of Project: The existing project consists of: (1) A concrete diversion weir at Morrison Creek; (2) an 866-foot-long, 10-inch-diameter penstock; (3) Waupaca Reservoir No. 2 with a surface area of 2.4 acres at elevation 8,672 feet msl formed by the Waupaca Dam No. 2 (a 28-foot-high and 408-foot-long earthfill structure), the North Saddle Dam (a 10-foot-high and 90-foot-long earthfill structure), and the South Saddle Dam (a 12-foot-high and 148-foot-long earthfill structure); (4) a 10-inch-diameter and 387-foot-long penstock from the Waupaca Dam No. 2 to join the downstream end of the penstock in item 2 above: (5) a 10-inch-diameter, 1,553-foot-long penstock; (6) a powerhouse with a 45-kW turbine-generator unit; (7) a 450-foot-long, 7.2-kV transmission line; and (8) other appurtenances. The Waupaca Reservoir No. 2 is an off channel reservoir fed by the Morrison Creek, McFadden Creek, and the Pine Creek. All project features and lands are owned by the applicant. The project generates an average of 103,680 kWh per year. The power is being sold to the Colorado Ute Electric Association.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

5 a. Type of Application: Major License.

b. Project No.: 10199–000.

c. Date Filed: November 28, 1986.

d. Applicant: City of Klamath Falls, OR.

e. Name of Project: Salt Caves.

f. Location: On the Klamath River in Klamath County, Oregon, on Bureau of Land Management lands: T40S, R6E; T41S, R6E, and T41S, R5E, Williamette Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Mr. William G. Miller, Resource Management International, Inc., 1010 Hurley Way, Suite 500, Sacramento, CA 95825, (916) 924–1534.

i. FERC Contact: James Hunter (202) 376–9814.

j. Comment Date: October 9, 1987.

k. Description of Project: The project would consist of: (1) A 75-foot-high, 580-foot-long earthen dam with a crest elevation of 3,265.0 feet, diverting flow to a 500-foot-long power canal and spillway approach channel; (2) a 250-foot-long ungated concrete ogee-crest spillway located adjacent to the power canal intake with a crest elevation of 3,250.0 feet, and appurtenant hydraulic jump stilling basin; (3) a 25-foot-high by 20-foot-wide concrete low level outlet conduit with slide gate control facilities, and discharging to the spillway stilling basin; (4) an impoundment with a surface area of 70 acres and a gross storage capacity of 1,500 acre-feet at a normal maximum pool elevation of 3,250.0 feet; (5) power canal intake facilities consisting of a 115-foot-long by 65-foot-wide fish screenhouse, a 65-foot-long concrete-lined transition, and a 27-foot-wide radial gate; (6) a 7.3-mile-long power diversion conduit consisting of a 27-foot-wide concrete flume and a 7,900-foot-long concrete-lined channel; (7) a 2,000-foot-long forebay with a normal pool elevation of 3,224.5 feet; (8) a wasteway to the river consisting of an overflow crest discharging into a side channel chute and stilling basin for a total length of 1,850 feet; (9) a concrete penstock intake structure with two 17-foot-high by 12-foot-wide chambers; (10) two 1,320-foot-long, 10-foot-diameter steel penstocks; (11) a 70-foot-long, 65-foot-wide, 55-foot-high buried reinforced concrete powerhouse containing two turbine-generating units each rated at 40 MW at an average net head of 440 feet and a hydraulic capacity of 1,220 cfs; (12) a concrete-lined tailrace with a bottom width of 50 feet discharging into the Klamath River at a normal tailwater elevation of 2,781.0 feet; (13) two parallel, 1.5-mile-long, 230-kV transmission lines from the substation adjacent to the powerhouse to an existing PP&L 230-kV line; and (14) appurtenant facilities. Recreation improvements include parking areas, fishing and hiking access, campgrounds, and a fish spawning channel and fish ladder at the dam. The applicant estimates the average annual generation for the project to be 364.3 GWh. The cost of the project is estimated to be $163,863,000.

l. Purpose of Project: Power output would be sold to one or more utilities in the region.

m. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

6 a. Type of Application: Preliminary Permit.

b. Project No: 10365–000.

c. Date Filed: March 26, 1987.

d. Applicant: J. Thomas Gibbons and Roberty M. Harding.

e. Name of Project: Oriskany Falls Generating Station.

f. Location: On Oriskany Creek, near town of Augusta, in Oneida County, NY.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Person: Mr. J. Thomas Gibbons, R.D. 1, Box 173, Gridley Page Road, Deansboro, NY 3328, (315) 841–8191.

i. FERC Contact: Sat Goel, (202) 376–9816.

j. Comment Date: October 13, 1987.

k. Description of Project: The preposed project would consist of: (1) The existing 8-foot-high, 60-foot-long, Oriskany Falls Dam at crest elevation 976 feet m.s.l., owned by Robert M. Harding; (2) an existing 30-inch-diameter, 25-foot-long steel penstock; (3) an existing powerhouse containing a new single generating unit with a rated capacity of 60 kW at a head of 19 feet, and (4) a 60-foot-long, 4.8-kV transmission line connecting to the existing New York State Electric & Gas Corporation line.

The estimated average annual energy production is 350,000 kWh. The project power would be sold to New York State Electric and Gas Corporation. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7 a. Type of Application: Preliminary Permit.

b. Project No: 10421–000.

c. Date Filed: May 28, 1987.

d. Applicant: Skagit River Hydro.

e. Name of Project: Howard Creek.

f. Location: On Howard Creek in T36N, R6E, near Burlington in Skagit County, WA.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Mr. Lawrence J. McMurtrey, 12122–196th Avenue NE., Redmond, WA 98052, (206) 885–3986.

i. FERC Contact: Julie Bernt, (202) 376–9812.

j. Comment Date: October 17, 1987.

k. Description of Project: The proposed run-of-the-river project would consist of: (1) A 36-inch-wide concrete intake structure buried in the streambed at elevation 2,000 feet; (2) a 9,000-foot-

long, 60-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 4,230 kW; and (4) an 11-mile-long transmission line. Applicant estimates the average annual energy production to be 18.53 GWh and the cost of the work performed under the preliminary permit to be $40,000.

l. Purpose of Project: The power produced is to be sold to a local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

8 a. Type of Application; Preliminary Permit.

b. Project No.: 10432–000.

c. Date Filed: June 15, 1987.

d. Applicant: Energy Alternatives.

e. Name of Project: Lookout — Fossil Creek.

f. Location: In Snoqualmie — Mt. Baker National Forest, on Lookout and Fossil Creeks, in Whatcom County, Washington. Township 40N and Range 7E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Alan K. VanHook, 6286 North Fork Road, Deming, WA 98244, (206) 592–5148.

i. FERC Contact: Thomas Dean, (202) 376–9275.

j. Comment Date: October 13, 1987.

k. Description of Project: The proposed project would consist of: (1) Two diversion weirs each approximately 8 feet high and 30 feet wide with inlet elevations of 3,000 feet msl; (2) an 18-inch-diameter bifurcated penstock totalling 8,800 feet in length leading to; (3) a powerhouse at elevation 1,300 feet msl containing two generating units with a total capacity of 1,500 kW operating at 1,700 feet of hydraulic head; (4) a tailrace; and (5) a 0.25-mile-long, 110 kV transmission line. The applicant estimates the average annual energy production to be 5.1 GWh. The approximate cost of the studies under the permit would be $50,000.

l. Purpose of Project: Applicant intends to sell the power generated from the proposed facility to Puget Sound Power and Light of Washington.

m. This Notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 10431–000.

c. Date Filed: June 16, 1987.

d. Applicant: Town of Telluride.

e. Name of Project: San Miguel.

f. Location: On the San Miguel River in San Miguel County, Colorado (Section 32, Township 43 N, Range 9W, and Section 31, Township 43 N, Range 9W, New Mexico Principal Meridian).

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Michael P. Demos, HDI, Suite 108, 10394 West Chatfield Avenue, Littleton, CO 80127, (303) 973–0951.

i. FERC Contact: Hector M. Perez, (202) 376–1669.

j. Comment Date: October 13, 1987.

k. Description of Project: The proposed run-of-river project would consist of: (1) A 9-foot-high weir; (2) a small reservoir with a surface area of 2 acres at elevation 8,617 feet msl; (3) an intake structure at the left abutement of the weir; (4) a 54-inch-diameter, 6,500-foot-long penstock; (5) a powerhouse with a 4.6-MW generating unit; (6) a 60-foot-long, 12.5-kV underground cable; and (7) other appurtenances. The applicant estimates an average annual generation or 16,700,000 kWh. The project would be located on private lands except for about 2,000 feet of the penstock that would be located within the Uncompahgre National Forest.

l. Purpose of Project: Project energy would be sold to the Colorado Ute Electric Association.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 10437–000.

c. Date Filed: June 29, 1987.

d. Applicant: Franklin Hydro, Inc.

e. Name of Project: LaSell Dam Hydroelectric Project.

f. Location: On the Great Chazy River, in Clinton County, NY.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Mr. Frank O. Christie, Ballard Mill, S. William Street, Malone, NY 12953, (518) 483–1945.

i. FERC Contact: Thomas O. Murphy (202) 376–9829.

j. Comment Date: October 13, 1987.

k. Description of Project: The proposed project would consist of: (1) An existing 40-foot-high, 310-foot-long, reinforced concrete dam; (2) a proposed 7-acre reservoir after three-foot-high flashboards raise the normal maximum surface elevation to 685 feet USGS; (3) a proposed 100-foot-long, 5-foot-diameter, steel penstock; (4) a proposed powerhouse containing an estimated installed generating capacity of 540-kW; (5) a proposed 2,600-foot-long, 4.8-kV transmission line; (6) a proposed 175-foot-long, gravel access road; and (7) appurtenant facilities. The average annual energy generation is estimated to be 1.65 GWh. The applicant estimated that the cost of the studies under permit would be $20,000.

l. Purpose of Project: All project power generated would be sold to New York State Electric and Gas Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 10438–000.

c. Date Filed: June 29, 1987.

d. Applicant: Mohawk Hydro Associates.

e. Name of Project: Lock 16.

f. Location: New York State Barge Canal, Montgomery and Herkimer Counties, NY.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Ms. Christine T. Gordon, Synergics, Inc., 410 Severn Avenue, Suite 313, Annapolis, MD 21403, (301) 268–8820.

i. FERC Contract: Steven H. Rossi (202) 376–9819.

j. Comment Data: October 13, 1987.

k. Description of Project: The proposed project would consist of: (1) An existing 4.0-foot-high, 361-foot-long concrete masonry dam; (2) a reservoir with a surface area of 490 acres, a storage capacity of 2,500 acre-feet, and a normal water surface elevation of 322.5 feet m.s.l.; (3) a new 100-foot-wide, 500-foot-long excavated earth powr canal; (4) a new 16-foot by 16-foot steel intake structure; (5) a new 14-foot-diameter, 20-foot-long steel penstock; (6) a new powerhouse containing one generating unit with a capacity of 3,000 kW; (7) a new 40-foot-wide, 400-foot-long excavated earth tailrace; (8) a new transmission line, 2,000 feet long; and (9) appurtenant facilities. The applicant estimates the average annual generation would be 16,000,000 kWh. The existing dam is owned by the New York State Department of Transportation. The applicant estimates that the cost of the studies under permit would be $50,000.

l. Purpose of Project: Project power would be sold to Niagara Nohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No: 10444–000.

c. Dated Filed: July 15, 1987.

d. Applicant: Chappel Hyrdo Co.

e. Name of Project: Chappel Dam.

f. Location: Cedar River, Gladwin County, MI.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Mr. Gary F. Croskey, Chappel Hydro Company, 336 University Dr., East Lansing, MI 48823, (517) 332–7019.

i. FERC Contact: Dean Wight, (202) 376–9820.

j. Comment Date: October 16, 1987.

k. Description of Project: The proposed project would consist of: (1) An existing earth embankment and concrete spillway dam 1,050 feet long and 33 feet high; (2) an existing impoundment 453 acres in surface area and of 4,300 acre-feet volume at a normal maximum surface elevation of 815 feet mean sea level; (3) an existing powerhouse 26 feet wide and 31 feet long; (4) two existing turbines, one of which would be refurbished to drive a proposed 250 kW generator; and (5) appurtenant facilities.

The hydraulic head is 28 feet. The estimated annual energy production is 0.9 GWh. The existing facilities are owned by the County of Gladwin, MI. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $32,000.

l. The notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13 a. Type of Application: Amendment of License.

b. Project No.: 4285–008.

c. Dated Filed: July 7, 1987.

d. Applicant: City of Logan, UT.

e. Name of Project: Logan No. 2 Hydro Project.

f. Location: On Logan River in Cache County, Utah: Sections 27, 28, 29, 31, 32, T12N, R2E; SLB&M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Honorable Newel G. Daines, Jr., Mayor, City of Logan, P.O. Box 527, 61 West First North, Logan, UT 84321.

i. FERC Contact: Jesse W. Short, (202) 376–9818.

j. Comment Date: October 16, 1987.

k. Description of Project: The proposed amendment of license involves lands in the Cache National Forest and would incorporate two developments: An old existing one, including the dam, and a new small one for required bypass flows from the same dam; the old development consists of: (1) Logan Third Dam, 31.5 feet high and 108 feet long; (2) a reservoir of about 40 acre-feet; (3) a radial-gated intake structure; (4) a precast concrete pipeline: 78 inches in diameter and 6,800 feet long, connecting to a surge tank and a steel penstock, 72 inches in diameter and 375 feet long; (5) a powerhouse with an installed capacity of 1,300 kW under a 95-foot head; (6) a tailrace and bypass facility returning flow to the Logan River; (7) a tramission line and substation; and (8) appurtenant facilities; the new development consists of: (9) a slide-gated intake structure; (10) a steel penstock 24 inches in diameter and 100 feet long; (11) a propeller turbine-generator unit rated at 50 kW under a 24-foot head; (12) an outlet to the river; (13) a transmission line connection and (14) appurtenant facilities. The applicant estimates that the average annual energy output would be 6,300,000 kWh and 386,000 kWh, respectively.

l. Purpose of Project: Project energy would be utilized by the Applicant.

m. This notice also consists of the following standard paragraphs: B and C.

14 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 5466–004.

c. Dated Filed: October 15, 1986.

d. Applicant: The City of New York.

e. Name of Project: Croton Reservoir System.

f. Location: On the East Branch Croton River, Middle Branch Croton River, Cross River, Croton River, Muscoot River, and Titicus River in Cortland, North Salem, Somers and Bedford Townships, Westchester County, and Southeast and Carmel Townships, Putnam County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2709.

h. Applicant Contact: Mr. Harvey W. Schultz, Commissioner, Dept. of Environmental Protection, Municipal Building, Room 2358, New York, NY 10007, (212) 669–8264.

i. FERC Contact: Thomas O. Murphy, (202) 376–9829.

j. Comment Date: October 16, 1987.

k. Description of Project: The proposed project will consist of five developments.

The new Croton Development will consist of: (1) The 2,168-foot-long, 297-foot-high New Croton Dam; (2) the new Croton Reservoir having a surface area of 2,200 acres at the spillway crest elevation of 195.5 feet m.s.l.; (3) the intake structure, gatehouse ¿2, and related conduits through the dam; (4) a new powerhouse containing three generating units having a total rated generating capacity of 3 MW; (5) a release conduit to the Croton River; (6) a proposed 2.8-mile long, 13.2-kV transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual energy generation will be 11.1 GWh.

The Titicus Dam Development will consist of: (1) The 1,583-foot-long, 124-foot-high Titicus Dam; (2) the existing reservoir having a surface area of 670 acres at the spillway crest elevation of 324.5 feet m.s.l.; (3) the intake structure, a 36-inch-diameter buried penstock, and the gatehouse; (4) a new powerhouse containing three generating units having a total rated generating capacity of 200 kW; (5) a release channel to the Titicus River; (6) a 2,400-foot-long, 13.2-kV transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual energy generation will be 1,276 MWh.

The Croton Falls Development will consist of: (1) The 1,070-foot-long, 175-foot-high Croton Falls dam, and a 700-foot-long spillway; (2) the existing Croton Falls Reservoir having a surface area of 1,166 acres at the spillway crest elevation of 309.5 feet m.s.l.; (3) the intake chamber, related conduits through the dam, and a 36-inch-diameter penstock; (4) a new powerhouse containing one 400 kW generating unit; (5) a proposed 1,300-foot-long, 4.8-kV transmission line; and (6) appurtenant facilities. The applicant estimates that the average annual energy generation will be 2,156 MWh.

The Croton Falls Diverting Development will consist of: (1) The 2,200-foot-long, 54-foot-high Croton Falls Diverting Dam; (2) the existing Croton Falls Diverting Reservoir having a surface area of 147 acres at the spillway crest elevation of 309.5 feet m.s.l.; (3) a rehabilitated vault to serve as a powerhouse containing one 112 kW generating unit; (4) a proposed 60-foot-long, 42-inch-diameter penstock; (5) a proposed 700-foot-long, 4.8-kV transmission line; and (6) appurtenant facilities. The applicant estimates that the average annual energy generation will be 783 MWh.

The Sodom Dam Development will consist of: (1) The 1,100 foot-long, 98-foot-high Sodom dam and a separate 500-foot-long spillway; (2) the existing, 537-acre reservoir at the spillway crest elevation of 416.5 feet m.s.l.; (3) the gatehouse and release conduit through the Sodom dam; (4) a proposed powerhouse which will contain one 300-kW generating unit; (5) a 400-foot-long tailrace; (6) a 1,000-foot-long, 4.8-kV transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual energy generation will be 2,077 MWh.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

15 a. Type of Application: Minor License.

b. Project No.: 8445–002.

c. Date Filed: November 17, 1986.

d. Applicant: Jerry B. Buckley.

e. Name of Project: Blue Hill.

f. Location: On the West Fork Clear Creek and Blue Creek in Clear Creek

County, Colorado. Sections 25, 26, and 23, Township 3S, Range 75W, New Mexico Principal Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Jerry B. Buckley, Box 609, Georgetown, CO 80444, (303) 569–2582.

i. FERC Contact: Hector M. Perez, (202) 376–1669.

j. Comment Date: November 6, 1987.

k. Description of Project: The proposed run-of-river project would consist of: (1) 2 sump-type intake structures, one on the West Fork of Clear Creek and the other on Blue Creek, both at elevation 9,390 feet msl; (2) a main 36-inch-diameter, 5,400-foot-long steel penstock from the West Fork of Clear Creek; (3) a 10-inch-diameter, 400-foot-long steel penstock from the Blue Creek joining the main penstock; (4) a powerhouse with a 1,400-kW turbine-generator unit; (5) a 50-foot-long open channel tailrace returning the water to the West Fork of the Clear Creek; (6) a 25-kV, 300-foot-long transmission line; and other appurtenances.

The applicant estimates an average annual generation of 3,573,378 kWh to be sold to the Public Service Company of Colorado. The project would affect lands of the Arapaho National Forest. This application was filed within the applicant's preliminary permit term for this project.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

16 a. Type of Application: Preliminary Permit.

b. Project No: 10436–000.

c. Date Filed: June 26, 1987.

d. Applicant: Oglethorpe Power Corp.

e. Name of Project: Pickens County Pumped Storage Hydro Project.

f. Location: On the Scarecorn Creek near Jasper, Pickens County, GA.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Mr. Donald Martin, Oglethorpe Power Corporation, 2100 East Exchange Place, P.O. Box 1349, Tucker, GA 30085, (404) 496–7600.

i. FERC Contact: Ed Lee, (202) 376–9828.

j. Comment Date: November 6, 1987.

k. Description of Project: The proposed pumped storage hydro project would consist of: (1) A 185-acre upper reservoir and 11,000-foot-long and 235-foot-high dam; (2) a 475-acre lower reservoir and 2,900-foot-long and 146-foot-high dam; (3) an upper reservoir intake/outlet; (4) a high-head tunnel and shaft and a low-head tunnel totaling 8,400 feet in length; (5) a lower reservoir intake/outlet; (6) an underground powerstation located between the upper and lower reservoirs with a total installed capacity of 900 MW; (7) a switchyard and transmission line, approximately 19 miles in length; (8) access roads and tunnels; and (9) appurtenant facilities. Applicant estimates that the average annual generation would be 10,800 MWh, and the cost of the work to be performed under the preliminary permit would be $10 to $15 million.

l. Purpose of Project: The power of produced is to be utilized by the applicant within its own distribution system.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 10446–000.

c. Date Filed: July 27, 1987.

d. Applicant: The Passamaquoddy Tribal Council at the Pleasant Point Reservation.

e. Name of Project: Half-Moon Cove Project.

f. Location: On Half Moon Cove in Washington County, ME.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contracts:

Mr. Melvin Francis, Passamaquoddy Tribal Council, Pleasant Point Reservation, Perry, ME 04667, (207) 853–2551

Mr. Normand Laberge, 9922 Dickens Avenue, Bethesda, MD 20814, (202) 635–5327.

i. FERC Contact: Steven H. Rossi (202) 376–9819.

j. Comment Date: October 22, 1987.

k. Competing Application: Project No. 10380–000, Date Filed: April 14, 1987.

l. Description of Project: The proposed project would consist of: (1) A new 75-foot-high, 1,050-foot-long earth and rock gravity dam; (2) a reservoir with a surface area of 795 acres, a storage capacity of 10,700 acre-feet, and normal water surface elevation of 13.2 feet m.s.l.; (3) a new intake gate; (4) a new concrete powerhouse containing two generating units with a capacity of 6,000 kW each for a total installed capacity of 12,000 kW; (5) a new transmission line, 700 feet long; and (6) appurtenant facilities. The applicant estimates the average annual generation would be 37,300,000 kWh. The applicant estimates that the cost of the studies under permit would be $235,000.

m. Purpose of Project: Project power would be sold to the Bangor Hydroelectric Company and Eastern Maine Electric Cooperative.

n. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

18 a. Type of Application: Preliminary Permit.

b. Project No.: 10447–000.

c. Date Filed: July 29, 1987.

d. Applicant: JDJ Energy Co.

e. Name of Project: Spring Mountain Pumped Storage.

f. Location: Arkansas River (Lake Dardanelle) in Logan and Yell Counties, AR.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Doyle W. Jones, P.E., 902 Highway 270 North, Suite 102, Malvern, AR 72104 (501) 337–4904.

i. FERC Contact: Dean Wight, (202) 376–9820.

j. Comment Date: November 13, 1987.

k. Description of Project: The proposed project would use the existing Lake Dardanelle, a part of the McClellan-Kerr Arkansas River Navigation System owned and operated by the U.S. Army Corps of Engineers, Little Rock District, P.O. Box 867, Little Rock, AR 72203, as a lower reservoir, and would consist of (1) a proposed rockfill embankment 50 feet high and 20 feet wide forming a circular impoundment approximately 3000 feet in diameter; (2) a proposed reservoir of 210 acres surface area and 8940 acre-feet volume at a normal maximum surface elevation of 1870 feet NGVD; (3) a proposed reinforced concrete intake structure 95 feet high, 75 feet wide, and 130 feet long; (4) four proposed 12-foot-diameter steel penstocks about 4.5 miles long; (5) a proposed reinforced concrete powerhouse 150 feet high, 325 feet long, and 100 feet wide housing four proposed reversible turbine-pump-generators of 250 MW each; (6) a proposed 500 kV transmission line 9000 feet long; (7) appurtenant facilities. The estimated annual energy production (based on an annual energy input of 4745 GWh) is 3650 GWh. Project power would be sold. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $e0,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

19 a. Type of Application: Preliminary Permit.

b. Project No.: 10448–000.

c. Date Filed: August 3, 1987.

d. Applicant: Natural Energy Resources Co.

e. Name of Project: Union Park.

f. Location: On Taylor River and Lottis Creek, Gunnison and Chaffee Counties, CO.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Allan D. Miller, President, Natural Energy Resources Co., 3855 Highway 105 West, P.O. Box 561, Palmer Lake, CO 80133, (303) 481–2003.

i. FERC Contact: Hector M. Perex, (202) 376–1669.

j. Comment Date: October 22, 1987.

k. Competing Application: Project No. 10449–000, Date Filed: August 3, 1987. Both notices of application expire the same day.

l. Description of Project: The proposed pumped-storage project would utilize the existing U.S. Bureau of Reclamation's Taylor Park Reservoir, on the Taylor River, as the lower reservoir, which has a normal water surface elevation of 9,330 feet msl, and would consist of: (1) A new 440-foot-high, 1,800-foot-long zoned-earth or rock-fill dam with a crest elevation of 10,066 feet msl at the entrance of Union Canyon in Union Park; (2) a reservoir with a surface area of 4,200 acres at normal maximum surface elevation of 10,052 feet msl; (3) an 11-foot-diameter, 8,000-foot-long concrete-lined pressure conduit; (4) an underground powerhouse with a total installed generating capacity of 70 MW; (5) an 11-foot-diameter 2,000-foot-long tailrace conduit to the south shore of Taylor Park Reservoir; and (6) other appurtenances. Applicant estimates an average annual generation of 123,000 MWh to be marketed for distribution in Colorado, Utah, New Mexico, Texas, Nevada, Arizona, or California.

m. This notice also consists of the following standard paragraph: A5, A7, A9, A10, B, C, and D2.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 10449–000.

c. Date Filed: August 3, 1987.

d. Applicant: City of Gunnison, Town of Parker, and the County of Arapahoe.

e. Name of Project: Union Park.

f. Location: On Taylor River and Lottis Creek, in Gunnison and Chafee Counties, CO.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Karl F. Kumli III, 1911 11th Street, Sutie 201, P.O. Box 2279, Boulder, CO 80306, (303) 440–0075.

i. FERC Contact: Hector M. Perez, (202) 376–1669.

j. Comment Date: October 22, 1987.

k. Competing Application: Project No. 10448–000, Date Filed: Aug. 3, 1987. Both notices of application expire the same day.

l. Description of Project: The proposed pumped-storage project would utilze the existing U.S. Bureau of Reclamation's Taylor Park Reservoir, on the Taylor River, which has a normal maximum water surface elevation of 9,330 feet msl, and would consist of: (1) A new 370-foot-high zoned-earth or rock-fill dam with a crest elevation of 9,995 feet msl at the entrance of Union Canyon in Union Park; (2) a reservoir with a surface area of 3,550 acres at normal maximum surface elevation of 9,975 feet msl; (3) an 11-foot-diameter, 8,000-foot-long concrete-lined pressure conduit; (4) a powerhouse with a total installed generating capacity of 60 MW; (5) an 11-foot-diameter, 2,000-foot-long tailrace conduit to the south shore of Taylor Park Reservoir; (6) a 25-mile-long transmission line; and (7) other appurtenances. Applicant estimates an average generation of 83,000 MWh to be used partly by the City of Gunnison and sold to utilities in the southwestern part of the United States.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application

Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Application for preliminary permit will not be accepted in response to this notice.

A4. Development Application

Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the intial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself; or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit

Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the intial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit

A preliminary permit, if issued, does not authorize construction. The term of

the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construction and operate the project.

B. Comments, Protests, or Motions To Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "*Comments*", "*Notice of Intent To File Competing Application*", "*Competing Application*", "*Protest*" or "*Motion To Intervene*", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. William C. Wakefield II, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments

States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825*l* (b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statues listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments

Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specified terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 10, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–21300 Filed 9–15–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP87–503–000 et al.]

Natural Gas Certificate Filings; Pacific Gas Transmission Co. et al.

Take notice that the following filings have been made with the Commission

1. Pacific Gas Transmission Co.

September 4, 1987.

[Docket No. CP87–503–000]

Take notice that on August 19, 1987,[1] Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105–1570, filed in Docket No. CP87–503–000, a petition for waiver of the termination date specified in § 284.105 of the Regulations under the Natural Gas Act (18 CFR 284.105), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

PGT states that on August 18, 1981, PGT Pacific Interstate Transmission Company (PITCO) entered into a contract (Contract) for the transportation of up to 300,000 Mcf of natural gas per day, on a best efforts basis, from south of Stanfield, Oregon and delivered for PITCO's account at a point of interconnection with the facilities of Pacific Gas and Electric Company near Malin, Oregon. PGT further states that the transportation of natural gas commenced April 13, 1982, and originated as a self-implementing transaction pursuant to Part 284, Subpart G of the Regulations and was continued as a "grandfathered" transportation service under the transitional provisions of Order No. 436 (18 CFR 284.105).

PGT states that the Contract originally remained in full force and effect for an initial two-year period, until September 30, 1983. PGT further states the Contract was subsequently amended to extend the term for additional two-year periods, through September 30, 1985 and September 30, 1987.

PGT states that under Order No. 436, existing Section 311 transportation was automatically allowed to continue on a "grandfathered" basis for a certain period to allow a suitable transition period for transportation arrangements under previous section 311 programs. Pursuant to § 284.105 of the Commission's Regulations (18 CFR 284.105), such transportation service was allowed to continue as "grandfathered" transportation until the earlier of the expiration of the then existing contract or October 9, 1987. Thus, PGT states that the section 311 transportation on behalf of PITCO was and is automatically allowed to continue as "grandfathered" transportation only until September 30, 1987.

In order to avoid termination of the transportation service for PITCO on September 30, 1987, PGT requests that such termination date be waived until 30 days after PGT accepts a blanket certificate in Docket No. CP87–159–000. PGT further requests that the Commission treat the petition as a request for any other waivers which may be necessary to enable PGT to continue the transportation on a "grandfathered" basis beyond September 30, 1987, and until 30 days after PGT accepts a blanket certificate in Docket No. CP87–159–000.

Comment date: September 18, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Columbia Gulf Transmission Corp.

September 8, 1987.

[Docket No. CP87–505–000]

Take notice that on August 20, 1985, Columbia Gulf Transmission Corporation (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP87–505–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon certain of its natural gas pipeline facilities and appurtenances constructed to take gas from Huffco Petroleum Corporation (Huffco) from offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf states that certain natural gas pipeline facilities, approximately 0.72 miles of 10-inch pipeline from the "A" platform in West Cameron Block 531, offshore Louisiana, to a subsea tie-in in West Cameron Block 510, offshore Louisiana, a dual 8-inch measurement station and associated piping on the "A" platform, will be transferred to Huffco Petroleum Corporation at a price to be determined by the date of transfer in an effort to resolve certain disputes with respect to Columbia Gulf's transportation rates involving the facilities to be transferred. Therefore, Columbia Gulf seeks permission and approval to abandon.

Comment date: October 23, 1987, in accordance with Standard Paragraph G at the end of this notice.

3. North Penn Gas Co.

September 8, 1987.

[Docket No. CP87–507–000]

Take notice that on August 21, 1987, North Penn Gas Company (North Penn), 76–80 Mill Street, Port Allegany, Pennsylvania 16743, filed in Docket No. CP87–507–000 a petition for a declaratory order, pursuant to § 385.207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207), requesting an order declaring that the construction of certain facilities by Consolidated Gas Transmission Corporation (Consolidated) requires certification by the Federal Energy Regulatory Commission, as set forth in the petition on file with the Commission and open to public inspection.

North Penn indicates that Consolidated has stated its intention to construct, own, and operate interconnection facilities and transport gas to Corning Natural Gas Corporation (Corning) and/or New York State Electric & Gas Company pursuant to section 311 of the Natural Gas Policy Act (NGPA). It is further stated that in Docket No. CP87–195–000 Consolidated seeks certification under section 7(c) of the Natural Gas Act (NGA) for the construction of such facilities and sales service to Corning.

North Penn States that the question at issue in its petition is whether Consolidated is authorized pursuant to NGPA section 311 to construct facilities for which Consolidated already has applied for certification in Docket No. CP87–195–000, and which Consolidated anticipates using for NGPA section 311 transportation service only until the Commission certificates their use in Docket No. CP87–195–000 for jurisdictional sales service.

Comment date: September 22, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. El Paso Natural Gas Co.

September 8, 1987.

[Docket No. CP87–499–000]

Take notice that on August 18, 1987, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP87–499–000 pursuant to Rules 209 and 212 of the Commission's Rules of Practice and Procedure and sections 4, 7, and 16 of the Natural Gas Act a petition for declaratory relief and request for issuance of a show cause order.

El Paso's petition concerns the parties' rights and obligation with respect to certain sales of natural gas made by Valero Interstate Transmission Company (VITCO) to El Paso pursuant to a tariff and rate schedule on file with the Commission. El Paso states that it is presently subject to an "Order on Temporary Injunction" issued by the state District Court, Hidalgo County, Texas. El Paso contends that this state

[1] The application was tendered for filing on August 17, 1987; however, the fee required by § 381.207 of the Commission's Rules was not paid until August 19, 1987. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

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court order compels El Paso to (i) take and pay for specific volumes of gas in direct contravention of Commission Order Nos. 380 and 380–C; (ii) accept from VITCO of gas sold and transported in interstate commerce which sale and transportation have not been authorized under section 7 of the Natural Gas Act or Section 311 of the Natural Gas Policy Act of 1978 and (iii) accept, contrary to its will, deliveries of gas at levels and rates dictated by a state court having no authority to order such sales.

In support of its motion, El Paso notes that both VITCO and El Paso are natural gas companies subject to the Commission's Natural Gas Act jurisdiction. El Paso states that pursuant to a contract dated January 28, 1981, as amended, VITCO agreed to sell up to 31,250 Mcf of gas per day to El Paso for resale. The sales contract became part of VITCO's FERC Gas Tariff, Rate Scehdule No. S–3.

According to El Paso, Article V, Section 1 of Rate Schedule S–3 contains a minimum commodity bill such that El Paso pays for a stipulated daily contract quantity multiplied by the applicable contract price, whether or not such quantity was actually taken by El Paso.

El Paso claims that Commission Order No. 380, issued on June 1, 1984, and the regulations thereunder (18 CFR 157 *et seq.*) required the elimination from all natural gas pipeline tariffs of provisions that operated to permit recovery of variable gas cost for gas not taken by the buyer. Commission Order No. 380–C ordered inoperative all minimum take provision effective November 1, 1984. Order No. 380 *et al.* was affirmed in all significant respects by the United States Court of Appeals for the District of Columbia Circuit. *Wisconsin Gas Co. v. FERC*, 770 F.2d (D.C. Cir. 1985), *cert. denied*, 106 S.Ct. 1968 (1986).[1]

El Paso states that on December 18, 1985, El Paso notified VITCO that in accordance with Order No. 380, *et al.*, it would not pay VITCO for any gas not actually taken by El Paso, but would continue to pay all other charges, including demand charges and other fixed costs, as permitted under Order No. 380.

El Paso claims that certain producer/suppliers of VITCO (clanton, *et al.*) have brought suit in the state District Court, Hildalgo County, Texas charging VITCO with breach of the gas supply contract,[2] and that VITCO filed a petition naming El Paso as a third party defendant in the action. El Paso asserts that VITCO named El Paso as a third party defendant based on VITCO's assertion that any failure by VITCO to comply with the Clanton, *et al.* contracts was due to El Paso's refusal, as sanctified by Order No. 380, to honor the minimum bill provision of VITCO's Rate Schedule S–3. On August 12, 1987, the state court granted a temporary injunction against El Paso, which held that the obligations of VITCO *vis-a-vis* Clanton, *et al.*, had, as a matter of law, been assumed by El Paso and that Order No. 380, *et seq.* was not a bar to issuance of a court order enjoining El Paso from failing to take and pay for minimum quantities of gas, under the Clanton, *et al.* /VITCO contracts, even though said contracts do not themselves require the purchaser to take and pay for any minimum volume of gas. El Paso states that the state court order provides that El Paso "* * * is ordered and directed to receive and take from the wells of Clanton *et al.* * * * and Clanton *et al.* * * * are directed to produce and deliver to VITCO for the account of El Paso * * *." specified daily takes of gas.

As a result of the court's order, El Paso claims, it will be forced to pay Clanton, *el al.* approximately $33,000 per day more than the present market value of the subject gas. El Paso alleges that the net effect of the court's mandatory minimum take requirement will be to force El Paso to cut back purchases of less costly production, including oil related production and hardship wells.

El Paso claims that VITCO has attempted to enjoin El Paso in a manner proscribed by Commission regulations; and that VITCO's suit seeks to amend the filed tariffs and rate schedules of VITCO by inserting certain new terms and conditions, such as the minimum take requirement, in direct contravention of valid and effective Commission orders. El Paso claims that VITCO has impermissibly evaded the Commission's exclusive jurisdiction to regulate, under sections 4, 5 and 7 of the Natural Gas Act, the terms contained in El Paso's FERC gas tariff, and the transportation and sale for resale of natural gas in interstate commerce. Therefore, El Paso claims that it cannot be forced to honor minimum commodity bill or minimum take obligations which have been outlawed by Order No. 380.

El Paso requests that the Commission declare that any payments made by El Paso under compulsion of the state court order are contrary to the requirements of Rate Schedule S–3, are unjust, unreasonable, unduly discriminatory and in violation of the Natural Gas Act and the regulations thereunder. El Paso also requests permission to collect from VITCO payments sufficient to offset payments which El Paso makes under compulsion of the court order. El Paso requests that the Commission find such action not to be in violation of section 4 of the Natural Gas Act or section 601 of the Natural Gas Policy Act of 1978. Furhter, El Paso requests that the Commission find and declare that VITCO is in violation of section 7(b) and 7(c) of the Natural Gas Act for failing to obtain authorization to abondon certificated sales and for engaging in jurisdictional activities without prior Commission certification. Finally, El Paso requests that the Commission confirm that in the event any gas is purchased by El Paso under compulsion of the state court's injunction order, no new service obligation will attach to El Paso or its facilities requiring abandonment authorization under section 7(b) of the Natural Gas Act.

In addition to the relief set forth above, El Paso requests that the Commission direct Vitco to demonstrate why any transportation of gas purchased by El Paso under compulsion of court orders does not thereby render Vitco in violation of sections 4 and 7 of the Natural Gas Act

El Paso also requests that the Commission bring an action in Federal District Court under section 20 of the Natural Gas Act and request that the Court tmporarily restrain Clanton, *et. al.*, the state court of Texas, Hildago County, and Vitco from violations of Order Nos. 380, *et al.*, the regulations thereunder, sections 4,5, and 7 of the Natural Gas Act and section 311 of the Natural Gas Policy Act of 1978.

Comment date: September 29, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP87–506–000]

September 9, 1987.

Take notice that on August 21, 1987, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP87–506–000 an application pursuant to section 7 of the Natural Gas

[1] By its express terms, Order No. 380 applied to sales tariffs of interstate pipelines (and the terms and conditions of service rendered by such interstate pipelines with respect to jurisdictional sales for resale) and rendered inoperative any tariff provision which provided for the recovery of purchased gas costs for gas not taken by the buyers.

[2] The complaining producers are John L. Clanton, Mission Oil & Gas Program 1980–2, Omni Drilling Partnership 1980–1, Miramar Petroleum, Inc., Petrotech Energy '80–2, Petrotech Energy '81–4, Sterling Petroleum—1980–B, Petro Pet, Ltd., Resources Investment Corporation, Clarion Oil & Gas, Inc., Bright & Company Kidco, Ltd., hereinafter referred to as "Clanton, *et al.*

Act for permission and approval to abandon the transportation of natural gas by AER for direct sale to 26 industrial customers and a certificate of public convenience and necessity authorizing the transporation of natural gas for the 26 industrial customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER states that its application is filed in accordance with a Stipulation and Agreement dated December 11, 1986, and approved by the Arkansas Public Service Commission on February 13, 1987, regarding the nature and scope of the retail sales services to be offered to those customers by AER. AER asserts that the Stipulation and Agreement provides for a range of retail service options, including 100 percent sales service, combination sales and transportation service, and 100 percent transportation service. AER asserts that for those customers electing the 100 percent transportation service option, the Stipulation and Agreement sets out certain circumstances under which they again could become sales customers of AER and provides for the limited term abandonment of any sales transportation obligations AER would otherwise have for the period such customers elect 100 percent transportation service as provided in the Stipulation and Agreement. Twenty-six (See Appendix) of AER's industrial customers have exercised the option to become 100 percent transportation customers, it is stated. AER requests permission and approval for limited term abandonment of its sales transportation obligations to such customers, contingent on the Commission's issuance of complementary authorizations for the transportation of third-party gas to the former sales customers under a certificate of public convenience and necessity which would be in effect until the customer resumes purchasing gas from AER. If the customer does not resume purchases of gas from AER by January 1, 1994, ther authorization for such transportation service would expire, it is indicated. Further, it is indicated that in the event a customer electing the 100 percent transportation option does not return to AER's sales serving by January 1, 1994, AER has the right to seek authorization for permanent abandonment of any direct sales transportation by AER to that customer.

Comment date: September 30, 1987, in accordance with Standard Paragraph F at the end of this notice.

LIST OF CUSTOMERS AND DOCKETS AFFECTED

Customers	Docket numbers	Proposed transportation services	
		Firm CD-MMBtu	Interruptible MCQ-MMBtu [2]
A. P. Green Fire Brick Co	G-10887		1,200
Acme Brick Co	G-745	1,300	1,400
Aluminum Co. of America	G-10887	13,500	4,500
American Cyanamid Corp	G-10887		1,000
Arkansas Chemicals, Inc	CP61-193	1,200	500
Arkansas Glass Container Corp	G-10887	2,000	1,000
Arkansas Kraft Corp	CP68-334	2,335	8,500
Berry Petroleum Corp	G-10887		2,000
Cooper Tire & Rubber Co	[1]	2,563	500
Cross Oil & Refining Co	G-10887	1,700	800
Dow Chemical, USA	CP67-89	1,870	500
El Dorado Chemical Co	G-10887	625	1,875
Ethyl Corp	CP69-209	1,850	650
Great Lakes Chemical Corp	CP65-256 and CP83-20	9,700	4,190
International Paper Co.—Pine Bluff, AR	G-10887	12,000	36,000
International Paper Co.—Camden, AR	G-10887	4,000	12,000
Lion Oil Co	G-10887	13,000	9,000
Macmillian Petroleum, Inc	G-10887	2,000	1,000
Manville Forest Products	CP70-3	1,000	500
Mid-America Packaging, Inc	G-10887	2,000	2,000
Nekoosa Papers, Inc	CP67-347	8,000	17,000
Quincy Soybean Co	CP62-219	500	3,000
Riceland Foods, Inc	CP62-219	6,200	1,400
Standard Rendering Co	G-10887	500	1,000
Weyerhaeuser Co	CP70-26	4,000	1,500
Wabash Alloys, a division of Connell Limited Partnership (formerly Vulcan Materials Co.)	G-10887	700	1,200

[1] Unable to locate specific docket authorization at this time.
[2] Each of the agreements shown also has an overrun provision providing for additional overrun services on an interruptible basis with the exception of A. P. Green Fire Brick Co., American Cyanamid Corp. and Berry Petroleum, who elected interruptible transportation service only.

6. Colorado Interstate Gas Co.

[Docket No. CP87-510-000]

September 9, 1987.

Take notice that on August 25, 1987, Colorado Interstate Gas Company (CIG) P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP87-510-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act for authorization to add an additional point of delivery of natural gas to Greeley Gas Company (Greeley) and to revise the maximum daily volume obligation (MDVO) at an existing delivery point to Northern Gas Division of KN Energy, Inc. (Northern) under the certificate issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the

Commission and open to public inspection.

CIG proposes to construct and operate a new tap on its Canon City Line in Fremont County, Colorado in order to provide a new point of delivery to Greeley. CIG asserts that the new delivery point would be utilized by Greeley to serve several farmers in the immediate vicinity. The MDVO for the new delivery point, to be designated the Penrose South sales delivery point, would be 75 Mcf of natural gas per day, it is alleged.

CIG also proposes in Docket No. CP87–510–000 to increase the MDVO at Northern Gas' existing Husky Travel Shoppe delivery point in Albany County, Wyoming from 20 Mcf to 70 Mcf of natural gas per day. CIG alleges that the increased volumes to be delivered at this location would be utilized by Northern Gas to serve certain field operations of Chevron U.S.A., Inc. CIG asserts that no additional facilities would be required at the Husky Travel Shoppe delivery point to serve the additional volumes.

CIG does not propose any change to either Greeley's or Northern Gas' total daily entitlement or annual entitlement. CIG further asserts that the proposed delivery point and the MDVO proposed revisions would not adversely impact on its ability to deliver the peak-day or annual entitlements of its other existing customers.

Comment date: October 26, 1987, in accordance with Standard Paragraph G at the end of this notice.

7. Sunshine Natural Gas System

[Docket No. CP87–513–000]

September 9, 1987.

Take notice that on August 27, 1987, Sunshine Natural Gas System (Sunshine), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP87–513–000 an application pursuant to section 7(c) of the Natural Gas Act requesting authorization to construct and operate a natural gas pipeline and related facilities necessary to transport natural gas for others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sunshine requests authorization to construct and operate a total of 608 miles of pipeline, 37,500 horsepower of compression and related facilities. It is stated that these facilities have an estimated cost of $470 million and have been designed to transport up to 450 MMcf of natural gas per day (MMcfd) on a firm basis from Mobile County, Alabama, to central Florida, of which 250 MMcfd could be delivered to Martin County, Florida. Sunshine states that upon placing these facilities in service November 1, 1991, it would be able to connect, directly and indirectly, with the facilities of other interstate natural gas pipeline facilities in order to provide Florida customers access not only to the substantial reserves in the Mobile Bay Area, but would also provide access to every supply area in the United States and Canada.

Sunshine states that at the present time it has not entered into transportation agreements with any potential shippers. Sunshine further states that should it enter into contracts prior to Commission certification, it would file executed copies of such agreements with the Commission.

It is explained that this application is filed on the basis that Sunshine is and would be owned solely by a partnership between ANR Southern Pipeline Company, a subsidiary of ANR Pipeline Company (ANR), and ANR Gulf Pipeline Company, a subsidiary of American Natural Resources Company (American Natural) and would on that basis, construct and operate the proposed facilities. However, it is stated, ANR and American Natural are willing to open the ownership of Sunshine to others pursuant to acceptable contractual arrangements.

Comment date: September 30, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. United Gas Pipe Line Co.

[Docket No. CP87–514–000]

September 9, 1987.

Take notice that on August 28, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP87–514–000 an application pursuant to section 7(b) of the Natural Gas Act for Permission and approval to abandon a direct industrial sale service to Chevron U.S.A. Inc. (Chevron) of up to 4,000 Mcf of natural gas per day, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that Chevron has notified United by letter dated March 13, 1987, that its present firm sales contract has terminated. United further states that continuation of the present service is not in the public interest and it requests that the Commission permit the termination of direct sale service to the extent required.

United is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that, if such new arrangements are not made, it will file to abandon such facilities.

Comment date: September 30, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but wil not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to

be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21296 Filed 9-15-87; 8:45am]

BILLING CODE 6717-01-M

[Docket No. CS87-93-000 et al.]

Applications for Small Producer Certificates; [1] Southwest Royalties, Inc.

September 10, 1987.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make a protest with reference to said applications should on or before September 24, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No	Date filed	Applicant
CS87-93-000	8-17-87	Southwest Royalties, Inc., P.O. Drawer 10885, Midland, TX 79702
CS87-94-000	8-17-87	Pardee Production Co., 7706 East 85th Street, Tulsa, OK 74133
CS87-95-000	8-31-87	Cordova Resources, Inc., 1607 Tulane Drive, Richardson, TX 75081
CS87-97-000	8-24-87	Eakin Brothers, a partnership, P.O. Box 189, Amarillo, TX 79105
CS87-98-000	8-31-87	Ken Perkins Oil and Gas, Inc., P.O. Drawer 1237, Kingsville, TX 78363
CS87-100-000	8-31-87	Dalton Kincheloe & Gladys J. Kincheloe, 859 Petroleum Building, Roswell, NM 88201
CS87-101-000	8-31-87	Ned West, 10623 Sagebluff, Houston, TX 77089.

[FR Doc. 87-21303 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-735-001 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; BAF Energy a California Limited Partnership, et al.

Comment date: October 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

September 9, 1987.

Take notice that the following filings have been made with the Commission.

1. BAF Energy a California Limited Partnership

[Docket No. QF85-735-001]

On August 25, 1987, BAF Energy a California Limited Partnership (Applicant), c/o BAF Energy, Inc., General Partner, of 550 Kearny Street, Suite 1000, San Francisco, California 94108 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in King City, California. The facility will consist of a combustion turbine generating unit, a heat recovery steam generator, and an extraction steam turbine generating unit. Thermal energy recovered from the facility will be used in the food processing plant. The primary energy source will be natural gas. The net electrical power production capacity of the facility will be 121 MW.

By order issued February 28, 1986, the Director of Office of Electric Power Regulation granted certification of the facility as a cogeneration facility (34 FERC ¶ 62,411).

The recertification is requested due to change of ownership of the facility from Basic American Foods, Inc. to its affiliate BAF Energy. BAF Energy is a California Limited Partnership whose sole general partner is BAF Energy, Inc., a California corporation which is a wholly-owned subsidiary of Basic American Foods, Inc. All other facility's characteristics remain unchanged.

2. Encogen One Partners Ltd.

[Docket No. QF87-615-000]

On August 21, 1987, Encogen One Partners Ltd. (Applicant), of 10375 Richmond Avenue, Houston, Texas 77042 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near Sweetwater, Texas. The facility will consist of three combustion turbine generating units, three heat recovery steam generators and an extraction/condensing steam turbine generating unit. Heat recovered from the facility will be sold to the United States Gypsum Company for use in an industrial process for drying gypsum slurry in gypsum board drying kilns and for space heating. The net electric power production capacity of the facility will be 257 MW. The primary energy source will be natural gas.

3. Inter-Power of Pennsylvania, Inc.

[Docket No. QF87-632-000]

On August 27, 1987, Inter-Power of Pennsylvania, Inc. (Applicant), of 3 West Penn Center, Pittsburgh, Pennsylvania 15230 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near the Village of Colver in Cambria County, Pennsylvania. The facility will consist of a fluidized bed combustion boiler and a condensing steam turbine generator. Applicant states that the primary energy

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source of the facility will be "waste" in the form of bituminous coal refuse. The maximum net electric power production capacity of the facility will be 79.5 megawatts.

4. Keystone Shipping Co.

[Docket No. QF87-617-000]

On August 24, 1987, Keystone Shipping Company (Applicant), of 313 Chestnut Street, Philadelphia, Pennsylvania 19106 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at the Monsanto Plant in Logan Township, Bridgeport, New Jersey. The facility will consist of four fluid bed combustors and two extraction/condensing steam turbine generators. The steam recovered from the facility will be used for process heating in the Monsanto Plant. The net electrical power production capacity of the facility will be 200 MW. The primary source of energy will be coal. Installation of the facility is expected to commence in late 1988.

5. Oxford Energy of New York, Inc.

[Docket No. QF87-622-000]

On August 25, 1987, Oxford Energy of New York, Inc. (Applicant), of c/o Oxford Energy, Inc., 675 Third Avenue, New York, New York 10017 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Ulster County, New York. The facility will consist of a water wall steam generator and a steam turbine generator. The net electric power production capacity will be approximately 24 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Approximately less than one percent (1%) of the total energy input will be natural gas or oil which will be used for start-up and auxiliary burners.

6. Oxford Energy of New York, Inc.

[Docket No. QF87-623-000]

On August 25, 1987, Oxford Energy of New York, Inc. (Applicant), c/o Oxford Energy, Inc., 675 Third Avenue, New York, New York 10017 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the Town of Ulster, Ulster County, New York. The facility will consist of two refractory lined waterwall steam generators, and a steam turbine-generator. The primary energy source will be non-recappable scrap rubber tires. The maximum net electric power production capacity will be approximately 29,000 KW. Oil or natural gas will be used for start-up only, however such fossil fuel use will not exceed 1% of the total energy input to the facility during any calendar year period.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21345 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP72-110-044 et al.]

Filing of Pipeline Refund Reports; Algonquin Gas Transmission Co. et al.

September 10, 1987.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, on or before September 24, 1987. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.
5/15/87	Algonquin Gas Transmission Company.	RP72-110-044
5/22/87	Natural Gas Pipeline Company of America.	RP78-78-018
5/22/87	Arkla Resources Inc.	TA87-2-31-002
7/6/87	Transcontinental Gas Pipe Line Corporation.	TA85-1-29-014
7/16/87	Transcontinental Gas Pipe Line Corporation.	TA85-1-29-015
8/7/87	ANR Pipeline Company	RP85-86-004
8/24/87	Columbia Gas Transmission Corporation.	TA81-1-21-027
8/28/87	Northern Natural Gas Company.	RP82-71-020

[FR Doc. 87-21308 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-119-000 & TA88-1-34-000]

Proposed Changes in FERC Gas Tariff; Florida Gas Transmission Co.

September 10, 1987.

Take notice that on August 31, 1987, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, TX 77251-1188 tendered for filing the following tariff sheets to its FERC and Gas Tariff.

FERC Gas Tariff, First Revised Volume No. 1

19th Revised Sheet No. 8
7th Revised Sheet No. 9
Original Sheet No. 57B

FERC Gas Tariff, Original Volume No. 2

42nd Revised Sheet No. 128

FERC Gas Tariff, Original Volume No. 3

9th Revised Sheet No. 126
8th Revised Sheet No. 181
8th Revised Sheet No. 265
8th Revised Sheet No. 283
8th Revised Sheet No. 305
8th Revised Sheet No. 365
8th Revised Sheet No. 395
8th Revised Sheet No. 423
7th Revised Sheet No. 453
5th Revised Sheet No. 486
5th Revised Sheet No. 518
5th Revised Sheet No. 549
5th Revised Sheet No. 584
4th Revised Sheet No. 640
5th Revised Sheet No. 658
1st Revised Sheet No. 675
1st Revised Sheet No. 709
1st Revised Sheet No. 744

Reason for Filing

19th Revised Sheet No. 8 and 42nd Revised Sheet No. 128 contain revisions to FGT's Rate Schedules G and I and Rate Schedule T–3, respectively, to: (1) Adjust the Primary Adjustment to reflect an increase in FGT's average cost of gas purchased for sale and company use, net of amounts to be recovered through Incremental Pricing Surcharges; (2) adjust the Balancing Adjustment to amortize over the six-month adjustment period (October 1, 1987 through March 31, 1988), the balance in the current period Unrecovered Purchased Gas Cost Account as of June 30, 1987; (3) eliminate the Order 94 Surcharge established to amortize retroactive Order 94 production-related costs over the twelve-month period ending September 30, 1987; and (4) establish an Annual Charge Adjustment (ACA) charge.

7th Revised Sheet No. 9 contains the estimated Incremental Pricing Surcharges for the period October 1, 1987 through December 31, 1987.

Original Sheet No. 57B establishes a new Section 22 of the General Terms and Conditions of its FERC Gas Tariff which implements an ACA clause which provides for an ACA unit charge to be applicable to each of FGT's sales and transportation rate schedules. The Original Volume No. 3 tariff sheets incorporates reference to and applicability of the ACA unit charge to the transportation rate schedules.

The proposed effective date of the above referenced tariff sheets is October 1, 1987.

The above mentioned changes to the Primary and Balancing Adjustments are being made pursuant to section 15 (Purchased Gas Adjustment and Incremental Pricing Provision) of the General Terms and Conditions of FGT's FERC Gas Tariff, First Revised Volume No. 1 and § 154.38 *et seq.*, of the Commission's Regulations (18 CFR 154.38, *et seq.*).

The net effort of the adjustments being filed for Rate Schedules G and I and for Rate Schedule T–3 are summarized below:

	Rate Schedules		
	Sch. G ($/therm)	Sch. I ($/therm)	T–3 ($/Mcf)
Currently Effective Rates[1]	28.191	25.433	39.40
Primary Adjustment	.667	.667	.21
Balancing Adjustment	.536	.536	(.05)
Order 94 Surcharge	(.570)	(.570)	(.32)
ACA Unit Charge	.021	.021	.21
October 1, 1987 Rates	28.845$	26.087$	39.45$

[1]Reflects rates effective July 1, 1987 pursuant to Docket No. RP86–137–006.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2, Original Volume No. 3, and interested states commissions and is being posted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 17, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–21301 Filed 9–15–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–110–000]

Change in Sales Rates and Adoption of ACA Clause; Northwest Pipeline Corp.

September 8, 1987.

Take notice that on August 31, 1987, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1–A, and Original Volume No. 2, the following tariff sheets:

First Revised Volume No. 1

Thirty-Seventh Revised Sheet No. 10
Twentieth Revised Sheet No. 10–A
First Revised Sheet No. 100
Original Sheet No. 133–A

Original Volume No. 1–A

Eleventh Revised Sheet No. 201
First Revised Sheet No. 302
First Revised Sheet No. 312
First Revised Sheet No. 323
First Revised Sheet No. 333
Third Revised Sheet No. 339
Second Revised Sheet No. 344
Second Revised Sheet No. 345
First Revised Sheet No. 400
First Revised Sheet No. 419

Original Volume No. 2

Second Revised Sheet No. 2.4
Thirteenth Revised Sheet No. 2–B
First Revised Sheet No. 2–B.1

Northwest states the purpose of this filing is to establish an Annual Charge Adjustment Clause ("ACA" Clause) in Northwest's tariff as appropriate and to set forth the applicable surcharge in its sales, transportation, and gathering rate schedules as required by Order No. 472.

Northwest requests an effective date of October 1 1987.

Northwest states that a copy of this filing has been served on Northwest's jurisdictional customers and affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–21307 Filed 9–15–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–103–000]

Proposed Changes; Panhandle Eastern Pipe Line Co.

September 9, 1987.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 31, 1987, tendered for filing certain revised tariff sheets, to its FERC Gas Tariff, Original Volume Nos. 1 and 2 to be effective as proposed. These revised sheets reflect an increase in

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rates and are being filed in compliance with the Commission's Opinion Nos. 265 and 265–A, issued February 20, 1987 and August 19, 1987, respectively, in Docket Nos. RP82–58 and RP82–105.

Opinion Nos. 265 and 265–A required Panhandle to file a revised cost of service and revised tariff sheets, and to adjust its billing determinants, particularly D_2. Panhandle noted that although it had not planned to effect a general rate adjustment at this time, the far-reaching changes mandated by the Commission in Opinion Nos. 265 and 265–A, including those that affect cost allocations, as well as currently projected reductions in sales, as well as projected throughputs, result in rate increases thus making it necessary to invoke a general rate change. Thus, this filing is also made pursuant to Section 4 of the Natural Gas Act and the Federal Energy Regulatory Commission's Regulations. In this connection, Panhandle also called attention to the provisions of Paragraph 3 of Article II of the July 1, 1987 Stipulation and Agreement, as supplemented, filed in Docket No. RP86–116, *et al.* and certified by the Administrative Law Judge to the Commission on July 22, 1987, which requires the filing of a general Section 4 rate case for both sales and transportation rates, and contemplates that such filing would be made by September 1, 1987. Panhandle stated that this filing also complies with that commitment.

Panhandle noted that these revised rates reflect a substantial shift in cost reponsibilities among Panhandle's customers, as contrasted to the cost responsibilities underlying Panhandle's currently effective rate.

Panhandle noted that it is cognizant of the need to restructure its rate schedules to reflect changed current competitive environment in the industry and the Commission's recent orders and decisions responding to that changed environment, including the Commission's orders in Opinion Nos. 265 and 265–A. Panhandle stated it has been negotiating with its customers to achieve exactly that goal. Panhandle noted, however, that additional time is required to complete these very difficult, complex negotiations.

Panhandle stated that it expects the Commission to suspend these revised tariff sheets beyond the proposed October 1, 1987 effective date, and requested that these sheets, as they may be revised pursuant to discussion with parties hereto, become effective after motion by Panhandle within the statutory suspension period upon a showing of good cause.

Panhandle stated that in compliance with Opinion No. 265–A it included the revisions to its LS, SS and CS Rate Schedules reflecting the required treatment of the minimum commodity bill to be effective August 19, 1987.

Panhandle stated that this filing is being made without prejudice to its rights to obtain judicial review or seek a stay of Opinion Nos. 265 and 265–A.

Panhandle noted that it has reduced its non-gas cost of service by $64 million since the filing in Docket No. RP85–194, and that those reductions, including the reduction in the applicable federal corporate income tax rate, are included herein. Panhandle stated that the need for a rate increase arises as a direct and immediate consequence of reductions in projected throughput on its system attributable to Commission orders which seek to change the entire structure of Panhandle's tariff, the consequential reductions in gas purchases by customers, some of whom have summarily ceased purchases from the Company entirely, and the anticipated nomination of D_2 volumes mandated by Opinion No. 265–A.

Panhandle also stated that these revised tariff sheets reflect volumes predicated on the assumption that Panhandle will be permitted to continue as an interim open access transporter until more permanent arrangements can be made, and that the rates for both sales and transportation services that are based on fully allocated costs and projected units of throughput.

In addition, Panhandle is proposing changes to the terms and conditions of its transportation Rate Schedules in view of recent Commission pronouncements regarding the terms and conditions of transportation provided under Part 284 of the Commission's Regulations.

Panhandle has reclassified to the transmission function certain certificated items of plant which, in fact, perform transmission functions but which were previously classified to the gathering function. Panhandle requests that it be granted such waivers of the Regulations or such authority as may be necessary to make conforming accounting entries to reflect such changes.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–21306 Filed 9–15–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–105–000]

Change in Tariff; Stingray Pipeline Co.

September 10, 1987.

Take notice that on August 31, 1987, Stingray Pipeline Company (Stingray) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fourteenth Revised Sheet No. 4

Original Sheet No. 70–C

The proposed effective date of these revised sheets is October 1, 1987.

On May 29, 1987 the Commission issued Order No. 472 in Docket No. RM87–3–000. Order No. 472 provides that a natural gas company, such as Stingray Pipeline Company (Stingray), may file an Annual Charge Adjustment (ACA) clauses to its FERC Gas Tariff. This adjustment will permit the collection of 2.1 mills per Mcf to recover from its customers annual charges assessed it by the Commission under Part 382 of the Commission's Regulations.

Stingray states that pursuant to Order No. 472 in Docket No. PM87–3–000 and § 154.38(d)(6)(i) of the Commission's Regulations, Stingray proposes a new Annual Charge Adjustment Provisioin to Stingray's FERC Gas Tariff, Original Volume No. 1.

To the extent required, if any, Stingray requests that the Commission grant such waivers as may be necessary for acceptance of the tariff sheets submitted herewith, to become effective October 1, 1987, as previously described.

Copies of this letter and enclosures are being served on all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 17, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a m otion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21304 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-107-000]

Proposed Changes in FERC Gas Tariff; Texas Gas Transmission Corp.

September 10, 1987.

Take notice that on August 31, 1987 Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, FPC Gas Tariff, Original Volume No. 2, and FERC Gas Tariff, Original Volume No. 3:

FERC Gas Tariff, Original Volume No. 1

Third Revised Sheet No. 1
Ninth Revised Sheet No. 10
Ninth Revised Sheet No. 10A
Fifth Revised Sheet No. 11
Fifth Revised Sheet No. 12
Third Revised Sheet No. 12A
Second Revised Sheet No. 76
First Revised Sheet No. 117
First Revised Sheet No. 118
First Revised Sheet No. 119
First Revised Sheet No. 144
First Revised Sheet No. 159
First Revised Sheet No. 175D

FPC Gas Tariff, Original Volume No. 2

Seventh Revised Sheet No. 82
Twenty-third Revised Sheet No. 333
Eighteenth Revised Sheet No. 362
Nineteenth Revised Sheet No. 363
First Revised Sheet No. 440
First Revised Sheet No. 484
Eighth Revised Sheet No. 547
Eighth Revised Sheet No. 919
Tenth Revised Sheet No. 982
Eighth Revised Sheet No. 1005
Second Revised Sheet No. 1085
First Revised Sheet No. 1105

FERC Gas Tariff, Original Volume No. 3

First Revised Sheet No. 21
First Revised Sheet No. 22

The revised tariff sheets are being filed to incorporate into Texas Gas's Tariffs a FERC Annual Charge Adjustment (ACA) Unit Charge, as authorized by § 154.38(d) of the Commission's Regulations, which was added pursuant to Order No. 472 issued May 29, 1987, (39 FERC, Para. 61,206), and Order No. 472-A issued June 17, 1987, (39 FERC Para. 61,316). Order No. 472 arose out of section 3401(a)(1) of the Omnibus Budget Reconciliation Act of 1986, which requires the Federal Energy Regulatory Commission (Commission) to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year." On or about July 16, 1987, Texas Gas received an Annual Charges Billing from the Commission for fiscal year 1987. Texas Gas was required to remit, by August 31, 1987, to the Commission, Texas Gas's portion of the Commission deficit. For the purpose of recovering this payment, Texas Gas has elected, pursuant to the authority outlined in Order No. 472, to institute the ACA unit charge of $.0020 per MMBtu, as set by the Commission on Texas Gas's Annual Charges Billing.

Copies of this filing were served on Texas Gas's jurisdictional customers and interested State commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE, Washington, DC 20426, in accordance with Rules 2.11 and 2.14 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21302 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-40-003, 005, and 006]

Compliance Filing; Western Transmission Co.

September 9, 1987.

Take notice that on August 17, 1987 Western Gas Transmission Company (Western) tendered for filing substitute Original Sheet No. 17A.1 to its Federal Energy Regulatory Commission Gas Tariff, Original Volume No. 1.

The instant tariff sheet is tendered pursuant to the Commission's order at July 17, 1987, in the above-referenced docket. Western amended this filing on August 27, 1987 in Docket No. RP87-40-005 and on August 30, 1987 in Docket No. RP87-40-006.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21305 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS—51596A; FRL 3261-2]

Certain Chemical Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90-days for premanufacture notice (PMN) P-86-92, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on November 29, 1987.

FOR FURTHER INFORMATION CONTACT: Jim Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Room E-611E, 401 M Street, SW., Washington, DC 20460, (202-382-3374).

SUPPLEMENTARY INFORMATION: On October 25, 1985, EPA received PMN 86-92 for a modified acrylate polymer. The submitter claimed its identity, specific chemical identity, production volume, and process information to be confidential business information. Notice of receipt was published in the

Federal Register of November 8, 1985 (50 FR 46508). The original 90-day review period for PMN P–86–92, including voluntary suspensions, was scheduled to expire on August 31, 1987.

Based on its analysis, EPA finds that there is a possibility that the substance submitted for review in this PMN may be regulated under TSCA. The Agency requires an extension of the review period, as authorized by section 5(c) of TSCA, to investigate further potential risk, to examine its regulatory options, and to prepare the necessary documents should regulatory action be required. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to November 29, 1987.

PMNs are available for public inspection in Room NE–G004, at the EPA headquarters, address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: August 31, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87–21340 Filed 9–15–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

[No. 87–952]

Application for Consideration Under Capital Forbearance

Date: September 10, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a new information collection request, "Application for Consideration under Capital Forbearance" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This information is necessary to review the application and determine whether the applicant meets eligibility requirements. Each institution requesting inclusion under the Capital Forbearance Policy must submit an application. The Board estimates that each application will require forty hours to complete.

DATE: Comments on the information collection request are welcome and should be received on or before October 1, 1987.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Michael D. Solomon, Office of General Counsel, 377–6432, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–21329 Filed 9–15–87; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

[Agreement No. 212–010746–001]

Columbus/PACE/SCNZ/BSL/PAD; Space Charter and Sailing Agreement; Erratum

The **Federal Register** Notice of August 20, 1987 (Vol. 52, No. 161, page 31446) in summarizing the above agreement should have also stated that the agreement's geographic scope is being enlarged to include the Pacific Coasts of North America and Hawaii.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: September 11, 1987.

[FR Doc. 87–21311 Filed 9–15–87; 8:45 am]

BILLING CODE 6730–01–M

[Fact Finding Investigation No. 15]

Practices of Various Entities Operating as Intermediaries for the Transportation of Goods in the United States Waterborne Foreign Commerce; Order

The Commission initiated this investigation on September 17, 1986, to examine the practices of various entities that act as intermediaries for the transportation of goods in our waterborne foreign commerce. The Commission directed the Investigative Officer to provide a final report of findings and recommendations no later than one year after publication of the Order in the **Federal Register** (51 FR 33662, September 22, 1986). The Investigative Officer has now advised that additional time will be needed to fully and adequately complete the investigation and issue a comprehensive report.

Therefore, it is ordered, That the Investigative Officer shall issue to the Commission a final report of findings and recommendations on or before March 31, 1988. By the Commission September 8, 1987.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 87–21310 Filed 9–15–87; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224–200032.

Title: Virgin Islands Port Authority Crane Lease Agreement.

Parties:

Virgin Islands Port Authority (Port Authority)

Tropical Shipping and Construction Co., Ltd. (Tropical)

Synopsis: Under the terms of the proposed agreement the Port Authority exclusively leases to Tropical one 30 foot long run capacity Paceco gantry Crane and related parts, inventory and equipment, located at the Third Port on St. Croix, Virgin Island. The term of this lease is for three years commencing July 1, 1985, with two options to renew for two additional five-year period.

Agreement No: 224–200034.

Title: Port of San Diego Terminal Agreement.

Parties:

San Diego Unified Port District (Port

District)
10th Avenue Cold Storage Company (Lessee)

Synopsis: The proposed agreement provides for the use of 51,111 square feet of Transit Shed No. 1 at the 10th Avenue Marine Terminal, San Diego, California. The term of the agreement shall be for a period of seven years, with one option to extend for one additional five-year period.

Agreement No: 224–011088–001.
Title: City of Los Angeles Terminal Agreement.
Parties:

City of Los Angeles
Matson Terminals

Synopsis: The proposed agreement amendment clarifies the responsibilities of the parties with respect to the collection of tariff charges, revenue sharing and payment procedures.

Agreement No: 224–200030.
Title: Virgin Island Terminal Agreement.
Parties:

Virgin Islands Port Authority
Tropical Shipping and Construction, Ltd., (Tropical)

Synopsis: The proposed agreement contains the terms and conditions under which Tropical will occupy certain parcels of land and section's of a warehouse in Crown Bay, St. Thomas, Virgin Islands for use in containerized cargo operations.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: September 11, 1987.

[FR Doc. 87–21355 Filed 9–15–87; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Board Meeting

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the agency's Alcohol, Drug Abuse, and Mental Health Advisory Board in the month of October 1987. Board members will discuss issues in the areas of treatment, research, prevention, and education viz-a-viz the legislative mandate. Attendance by the public at these sessions will be limited to space available.

Committee Name: Alcohol, Drug Abuse, and Mental Health Advisory Board, ADAMHA.

Date and Time: October 13–14: 9:00 a.m.

Place: National Institute of Health, Building 1, Wilson Hall, 3rd Floor, 9000 Rockville Pike, Bethesda, Maryland 20892.

Status of Meeting: Open.

Contact: Barbara Wagner, Room 12C05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1910.

Purpose: The Alcohol, Drug Abuse, and Mental Health Advisory Board assesses the national needs for alcoholism, alcohol abuse, drug abuse, and mental health treatment and prevention services and the extent to which those needs are being met by State, local, and private programs, and programs receiving funds under Title V and Parts B and C of Title XIX of the Public Health Service Act. The Board provides advice and recommendations to the Secretary and to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration respecting these activities to assist in guiding national strategies aimed at the amelioration of alcohol, drug abuse, and mental health problems.

Substantive information, summaries of the meetings, and roster of committee members may be obtained from the contact person listed above.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

Date: September 10, 1987.

[FR Doc. 87–21283 Filed 9–15–87; 8:45 am]

BILLING CODE 4160–20–M

National Institutes of Health

Notice of Reestablishment of Committees

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92–463, 86 St. 770–776], and the Health Research Extension Act of 1985, November 20, 1985 [Pub. L. 99–158, section 402(b)(6)], the Director, NIH, announces the reestablishment, effective October 1, 1987, of the following committees:

Cardiovascular and Renal Study Section
Experimental Virology Study Section
Immunological Sciences Study Section
Molecular Cytology Study Section
Pharmacology Study Section
Reproductive Endocrinology Study Section
Virology Study Section
Visual Sciences A Study Section
Visual Sciences B Study Section

Duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: September 11, 1987.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 87–21526 Filed 9–15–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–920–07–4113–12]

Proposed Additions to the Rye Patch Known Geothermal Resources Area, Nevada

September 1, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Departmental Manual 1.1k, Bureau of Land Management, the following lands are hereby added to the Rye Patch Known Geothermal Resources Area, effective February 1, 1987.

Rye Patch Known Geothermal Resources Area, Mt. Diablo Meridian, Nevada

T. 31 N., R. 33 E.,
Sec. 1, lots 1–4, S½N½, N½SE¼;
Sec. 2, lots 17 thru 33;
Sec. 4, lots 1 and 2 of the NW¼, lot 1 of the NE¼, W½ of lot 2 of NE¼, S½;
Sec. 8, E½, E½NW¼;
Sec. 10, all;
Sec. 12, lots 9 thru 26;
Sec. 14, all;
Sec. 16, all;
Sec. 20, all;
Sec. 22, all;
Sec. 28, all;
Sec. 32, all;
Sec. 34, W½, NE¼;
Sec. 37, lots 1, 2, 3, 4;
Sec. 38, lots 1, 2, 3, 4;
Sec. 39, lots 1, 2, 3, 4.
T. 32 N., R. 33 E.,
Sec. 28, N½NE¼, S½NW¼, N½SW¼, SE¼SW¼;
Sec. 32, all;
Sec. 34, E½E½SW¼, NE¼NW¼.

The above area aggregates 8,649.58 acres, more or less.

FOR FURTHER INFORMATION CONTACT: Richard Hoops, BLM Nevada State

Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702–784–5134.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87–21316 Filed 9–15–87; 8:45 am]

BILLING CODE 4310–HC–M

[WO–150–07–4830–11]

National Public Lands Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet October 15, and 17, 1987, at the Hyatt Regency Hotel, 1750 Welton Street, Denver, Colorado. The meeting hours will be 8:00 a.m. to 11:30 a.m., on Thursday, the 15th, and 8:00 a.m. to 12:00 p.m. on Saturday, the 17th. On Friday, October 16, Council members will visit the Bureau of Land Management's Denver Service Center for an orientation session highlighting land information system technology. The proposed agenda for the meeting is:

Thursday, October 15: The State view of public land management in Colorado; Council old and new business, to include Department responses to previous Council resolutions; Public statement period.

Saturday, October 17: Discussion of agendas for future Council sessions; Meetings of Council subcommittees (Energy and Minerals, Lands, and Renewable Resources); Reports from subcommittees to full Council and consideration of Council resolutions.

All meetings of the Council will be open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 10:00 a.m. on Thursday, October 15. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written comments by October 8 to the Bureau of Land Management's Denver Service Center at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

DATES: October 15 and 17—Council Meeting. October 15—Public Statements.

ADDRESS: Copies of public statements should be mailed by October 8 to: Director, Denver Service Center (D–100), Bureau of Land Management, P.O. Box 25047, Denver, Colorado 80225–0047.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Washington, DC Office, BLM, telephone (202) 343–2054; or Cathryn Davis, Denver Service Center, BLM, telephone (303) 236–6552.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of BLM.

David C. O'Neal,

Deputy Director.

September 11, 1987.

[FR Doc. 87–21391 Filed 9–15–87; 8:45 am]

BILLING CODE 4310–84–M

[NM–920–07–4121–10]

New Mexico; San Juan River Regional Coal Team Meeting and Request for Public Comments on the Long-Range Market Analysis for the Region

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of regional coal team meeting.

SUMMARY: The San Juan River Regional Coal Team (RCT) will meet to consider future development plans for Federal coal in the Region. The public is invited to attend.

The primary purposes of the meeting are to (1) recommend approval of the RCT Charter, (2) review the long-range market analysis, and (3) develop a recommendation on whether to resume or defer coal activity planning in the Region.

DATE: The RCT will meet at 9:00 a.m. on Tuesday, November 3, 1987.

ADDRESS: The meeting will be held at the Continental Inn, 4048 Cerrillos Road, Santa Fe, New Mexico 87501. Telephone (505) 473–4646.

FOR FURTHER INFORMATION CONTACT: Russell Jentgen or John Kenny, Bureau of Land Management, Division of Mineral Resources, P.O. Box 1449, Santa Fe, New Mexico 87501. Mr. Jentgen may be reached by telephone at (505) 988–6109 or FTS 476–6109 and Mr. Kenny at (505) 988–6024 or FTS 476–6024.

SUPPLEMENTARY INFORMATION: At this meeting, the RCT will review the long-range market analysis for the San Juan River Region and public comments thereon. Copies of the long-range market analysis may be obtained from the Public Room of the Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Joseph M. Montoya Federal Building and U.S. Post Office, South Federal Place, Santa Fe, New Mexico 87501. Telephone (505) 988–6100 or FTS 476–6100.

The public is requested to submit comments on this long-range market analysis to Russell Jentgen or Keith Bennett at the above address by October 27, 1987. Comments received after the October 27, 1987, deadline, but before the RCT meeting, would be made available to the members of the RCT for consideration as time permits.

The RCT will consider information obtained from the public at this meeting to develop recommendations to guide future coal leasing decisions for the region.

Anyone who wishes to speak at the meeting is requested to provide written copies of their remarks. Written material will also be accepted in lieu of or in addition to any oral presentation.

Following is a preliminary agenda for this meeting:

1. Introductions
2. Approval of Minutes
3. Regional Coal Activity Status
   a. Preference Right Lease Applications (PRLA's)
   b. Summarization of Coal Decisions in the following Resource Management Plans (RMP's)
      (1) Farmington RMP
      (2) Rio Puerco RMP
      (3) Socorro RMP
      (4) Durango/San Miguel RMP
   c. Record of Decision on the San Juan Regional Coal Environmental Impact Statement (EIS)
4. Impacts from the Navajo/Hopi Resettlement Act Selections
5. Scheduled Company Presentations
6. Long-Range Market Analysis and Summary of Public Comments
7. RCT Activity Planning Discussions
   a. Resume Activity Planning
   b. Defer Activity Planning Decision until after Tier I PRLA's are fully adjudicated
   c. Deactivate the Region (in whole or in part) and Lease by Application
8. RCT Charter Decision
9. Public Comment
10. Scheduling of Next Meeting
11. Adjourn

Monte G. Jordan,

Alternate Chairperson, San Juan River Regional Coal Team.

Dated: September 10, 1987.

[FR Doc. 87–21284 Filed 9–15–87; 8:45 am]

BILLING CODE 4310–FB–M

[AZ-050-06-4830-02]

Arizona; Yuma District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Yuma (Arizona) District Advisory Council meeting.

SUMMARY: A meeting of the Yuma District Advisory Council will be held on Friday, October 16, beginning at 10 a.m. in the Lake Havasu City Council Chambers located at 1795 Civic Center Boulevard.

DATE: Friday, October 16, 1987.

FOR FURTHER INFORMATION CONTACT: Douglas B. Stockdale, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, 602–726–3600.

SUPPLEMENTARY INFORMATION: Discussions will center on District program updates, Wild Horses and Burros, cooperative efforts to clean up dumps on public land, Bill Williams River cooperative management agreement, Havasu City Airport application, Long-Term Visitor Area use program, Highway 95 reconstruction on Parker Strip, and other Council-initiated topics. The public is invited to attend the meeting.

Written statements from the public may be filed for the Council's consideration. Statements must arrive at the District Office by October 13. Oral statements will also be accepted but, depending on the number of persons wishing to address the Council, a per-person time limit may be imposed.

Summary minutes of the District Advisory Council meeting will be maintained in the Yuma District Office and will be available for inspection and reproduction during regular business hours (7:45 a.m. through 4:30 p.m.) within 30 days of the meeting.

J. Darwin Snell,

District Manager.

September 9, 1987.

[FR Doc. 87–21434 Filed 9–15–87; 8:45 am]

BILLING CODE 4310–32–M

[AZ-050-07-4212-11, A-22501]

Realty Action; Lease/Conveyance of Public Lands in La Paz County, Yuma District, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Lease/Conveyance of Public Lands for Recreation and Public Purposes (R&PP).

SUMMARY: The following described public lands located in the community of Quartzsite, Arizona, in La Paz County, have been examined and found suitable for lease/conveyance to the Quartzsite School District for public school purposes and are so classified under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.):

Gila and Salt River Meridian, Arizona

T. 4 N., R. 19 W.,
Sec. 21, M&B within S½S½NW¼.

The area described contains 24.5 acres, more or less.

Lease or conveyance is consistent with BLM land use planning, would not affect any BLM programs, and would be in the public interest.

The lease/conveyance would be subject to the following conditions:

1. Provisions of the Recreation and Public Purposes Act and all regulations of the Secretary of the Interior.
2. A right-of-way thereon for ditches or canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Upon publication of this Notice in the **Federal Register**, these lands will be segregated from all forms of appropriation under any other public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Bureau of Land Management, District Manager, Yuma District Office, P.O. Box 5680, Yuma, Arizona 85364. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Yuma Resource Area, Yuma District at (602) 726–6300.

J. Darwin Snell,

District Manager.

Date: September 8, 1987.

[FR Doc. 87–21272 Filed 9–15–87; 8:45 am]

BILLING CODE 4310–32–M

[CA-940-07-5410-10; CA 20670]

Realty Action; Conveyance of Mineral Interest in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—conveyance of the reserved mineral interests.

SUMMARY: The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interests pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: Joan Mangold, BLM California State Office, 2800 Cottage Way, Room E–2841, Federal Office Building, Sacramento, California 95825, (916) 978–4815.

The purpose is to allow consolidation of surface and subsurface ownership, for the lands described below, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interests in the United States interferes with or precludes appropriate nonmineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

Mount Diablo Meridian

T. 4 N., R. 14 E.,
Sec. 27, E½ lot 28, lot 30.

The area described contains 7.32 acres in Calaveras County. Currently 100 percent of the mineral interest in these lands is owned by the United States.

The application was filed on August 13, 1987. Upon publication of this Notice of Realty Action in the **Federal Register** as provided in 43 CFR 2091.3–1(c) and 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; or upon issuance of a patent or other document of conveyance to such mineral interests, or two years from the date of filing of the application, whichever occurs first (43 CFR 2091.3–2(a)).

Dated: September 8, 1987.

Nancy J. Alex,

Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 87–21273 Filed 9–15–87; 8:45 am]

BILLING CODE 4310–40–M

BEST COPY AVAILABLE

[NM-010-4121-12; NM 57802]

Issuance of Mineral Exchange Conveyance Document; Order Providing for Opening of Reconveyed Minerals; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued an exchange conveyance document to Cerrillos Land Company, on March 6, 1987, for the coal estate only in the following described land in McKinley County, New Mexico pursuant to section 206 of the Act of October 21, 1967 (43 U.S.C. 1716) and section 504(a) of the Act of December 19, 1980 (16 U.S.C. 410 ii-3):

New Mexico Principal Meridian, New Mexico

T. 15 N., R 7 W.,
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20;
Sec. 22, lots 1, 5, NE¼, and E½NW¼;
Sec. 28, NE¼NE¼, W½NE¼, NW¼, and N½SW¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½.
T. 15 N., R 8 W.,
Sec. 22, SE¼NE¼ and S½;
Sec. 24;
Sec. 26;
Sec. 28, E½NE¼, SE¼SW¼, and SE¼;
Sec. 34, N½ and NE¼SE¼.

Aggregating 4,890.26 acres, more or less.

In exchange for the coal estate in the above described land, the coal estate in 6,263.45 acres, more or less, in McKinley County, New Mexico and all Cerrillos Land Company's mineral estate interest in the Chaco Culture National Historic Park lands and Archeological Protection Site lands in San Juan and McKinley Counties, New Mexico aggregating 4,889.69 acres, more or less, were reconveyed to the United States. The reconveyed lands were described in the Notice of Realty Action published in 51 FR 41025 on November 12, 1986.

At 9 a.m. on October 19, 1987, the coal estate reconveyed to the United States will be open to the coal leasing laws. The mineral estate reconveyed under the Historic Park and Protection Sites will be managed with the limitations identified in section 506 of the Act of December 19, 1980 (16 U.S.C. 410 ii-3). All activity will be subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law.

Larry L. Woodard,
State Director.

Dated: September 2, 1987.

[FR Doc. 87-21320 Filed 9-15-87; 8:45 am]
BILLING CODE 4310-5B-M

[OR 37982 (WA); OR-130-07-4212-13:GP7-252]

Extension of Notice of Realty Action; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of Public Lands in Benton, Douglas, Franklin and Grant Counties, Washington.

SUMMARY: This notice extends the Notice of Realty Action published in Vol. 49, page 49385 of the **Federal Register** on December 19, 1984, for a period of two additional years. Extension of the notice is necessary to complete the processing of this land exchange.

Date of Issue: September 8, 1987.

Joseph K. Buesing,
District Manager.

[FR Doc. 87-21280 Filed 9-15-87; 8:45 am]
BILLING CODE 4310-33-M

[WY-940-07-4520-12]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of Plats of Survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 A.M., September 4, 1987.

Sixth Principal Meridian

T. 40 N., R. 116 W.

The plat representing the survey of riparian lands by photogrammetric methods, T. 40 N., R. 116 W., Sixth Principal Meridian, Wyoming, was accepted August 21, 1987.

T. 41 N., R. 116 W.

The plat representing the survey of riparian lands by photogrammetric methods, T. 41 N., R. 116 W., Sixth Principal Meridian, Wyoming, was accepted August 21, 1987.

T. 42 N., R. 116 W.

The plat, in two sheets, representing the survey of riparian lands by photogrammetric methods, T. 42 N., R. 116 W., Sixth Principal Meridian, Wyoming, was accepted August 21, 1987.

T. 40 N., R. 117 W.

The plat representing the survey of riparian lands by photogrammetric methods, T. 40 N., R. 117 W., Sixth Principal Meridian, Wyoming, was accepted August 21, 1987.

T. 41 N., R. 117 W.

The plat representing the survey of riparian lands by photogrammetric methods, T. 41 N., R. 117 W., Sixth Principal Meridian, Wyoming, was accepted August 21, 1987.

T. 40 N., R. 117 W.

The plat representing the corrective dependent resurvey of the section line between sections 11 and 12, T. 40 N., R. 117 W., Sixth Principal Meridian, Wyoming, Group No. 275, was accepted August 21, 1987.

These surveys were executed to meet certain administrative needs of this Bureau.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: September 4, 1987.

Dennis D. Bland,
Acting Chief, Branch of Cadastral Survey.

[FR Doc. 87-21274 Filed 9-15-87; 8:45 am]
BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0442, Block 128A, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 8, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section,

Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: September 9, 1987.

J. Roger Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–21317 Filed 9–15–87; 8:45 am]

BILLING CODE 4310–MK–M

National Park Service

Acadia National Park Advisory Commission, Bar Harbor, ME; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, section 10), that a meeting of the Acadia National Park Advisory Commission will be held on Tuesday, October 13, 1987.

The Commission was established pursuant to Pub. L. 99–420, section 103. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the Park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at the Kebo Valley Golf Club House, Eagle Lake Road, Bar Harbor, Maine, at 1:30 p.m. for the following reasons:

1. Swearing-in of the sixteen members.
2. Review of responsibilities of the Commission as outlined in the Charter.
3. Review Pub. L. 99–420, including status of proposed acquisitions, and exchanges, as well as guidelines for developing private property within the Park and for accepting scenic easements outside the Park boundary.
4. Establish the following committees:

A. Nominatings
B. Bylaws
C. Guidelines

The meeting is open to the public. It is expected that fifty persons will be able to attend the session in addition to the Commissions members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting. Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, Bar Harbor, Maine 04609.

Herbert S. Cables, Jr.,

Regional Director.

Date: September 9, 1987.

[FR Doc. 87–21374 Filed 9–15–87; 8:45 am]

BILLING CODE 4310–70–M

Upper Delaware Scenic and Recreational River; Citizens Advisory Council Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: September 25, 1987, 7:00 PM.[1]

INCLEMENT WEATHER RESCHEDULE DATE: October 11, 1987.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764–0159; 717–729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704 (f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 USC § 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will surround discussion of the background and implementation of definition of flood plains, and applicability of the flood insurance programs concerning the Upper Delaware valley.

The meeting will be open to the public.

Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 87–21375 Filed 9–15–87; 8:45 am]

BILLING CODE 4310–70–M

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–276]

Investigation; Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Same and Processes for Making Such Memories

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 5, 1987, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Intel Corporation, 3065 Bowers Avenue, Santa Clara, California 95051. The complaint was amended on August 31, 1987. The complaint, as amended, alleges unfair methods of competition and unfair acts in the importation of certain erasable programmable read only memories, components thereof, and products containing same into the United States, or in their sale, actual or threatened, by reason of alleged direct and induced infringement of (1) claims 14–17 of U.S. Letters Patent 3,938,108; (2) claims 1–3 of U.S. Letters Patent 4,048,518; (3) claims 1–3 of U.S. Letters Patent 4,103,189; (4) claims 1 and 2 of U.S. Letters Patent 4,223,394; (5) claims 1–4 of U.S. Letters Patent 4,519,050; or (6) claims 1–10 of U.S. Letters Patent 4,685,084, or in their manufacture abroad by a process which, if practiced in the United States, would

infringe (1) claims 1–5, 7 and 8 of U.S. Letters Patent 4,114,255 or (2) claims 1–3 of U.S. Letters Patent 4,519,849. The complaint further alleges that the tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a general exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Gary Rinkerman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–1273.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of investigation: Having considered the complaint, the U.S. International Trade Commission, on September 3, 1987, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain erasable programmable read only memories, components thereof, and products containing same into the United States, or in their sale, actual or threatened, by reason of alleged direct and induced infringement of (1) claims 14–17 of U.S. Letters Patent 3,938,108; (2) claims 1–3 of U.S. Letters Patent 4,048,518; (3) claims 1–3 of U.S. Letters Patent 4,103,189; (4) claims 1 and 2 of U.S. Letters Patent 4,223,394; (5) claims 1–4 of U.S. Letters Patent 4,519,050; or (6) claims 1–10 of U.S. Letters Patent 4,685,084, or in their manufacture abroad by a process which, if practiced in the United States, would infringe (1) claims 1–5, 7 and 8 of U.S. Letters Patent 4,114,255 or (2) claims 1–3 of U.S. Letters Patent 4,519,849, the tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Intel Corporation, 3065 Bowers Avenue, Santa Clara, California 95051

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hyundai Electronics Industries Co., Ltd., San 136–1, Ami–Ri, Bubal–Myun, Ichon–Ku, Kyungki–Do, Republic of Korea

Hyundai Electronics America, Inc., 4401 Great America Parkway, 3rd Floor, Santa Clara, California 95054

Atmel Corporation, 2095 Ringwood Avenue, San Jose, California 95131

International CMOS Technology, Inc., 2031 Concourse Drive, San Jose, California 95131

Cypress Electronics, Inc., 2175 Martin Avenue, Santa Clara, California 95050

All-American Semiconductor, Inc., 16251 NW. 54th Avenue, Hialeah, Florida 33014

Pacesetter Electronics, Inc., 5417 E. La Palma Avenue, Anaheim, California 92817

(c) Gary Rinkerman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to § 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential business information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing–impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 8, 1987.

[FR Doc. 87–21380 Filed 9–15–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigations No. 731–TA–351 and 353 (Final)]

Certain Forged Steel Crankshafts From the Federal Republic of Germany and the United Kingdom

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from the Federal Republic of Germany and the United Kingdom of certain forged steel crankshafts,[3] provided for in items 660.67 and 660.71 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective May 13, 1987, following preliminary determinations by the Department of Commerce that imports of certain forged steel crankshafts from the Federal Republic of Germany and the United Kingdom were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 3, 1987, (52 FR 20790). The hearing was held in Washington, DC, on August 4, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler dissenting.

[3] The crankshafts subject to these investigations are forged carbon or alloy steel crankshafts with a shipping weight of between 40 and 750 pounds, whether machined or unmachined.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 9, 1987. The views of the Commission are contained in USITC Publication 2014 (September, 1987), entitled "Certain forged steel crankshafts from the Federal Republic of Germany and the United Kingdom: Determinations of the Commission in Investigations No. 731-TA-351 and 353 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 9, 1987.

[FR Doc. 87-21383 Filed 9-15-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-267]

Commission Decision To Review an Initial Determination Terminating the Investigation as to One Respondent; Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment

AGENCY: U.S. International Trade Commission.

ACTION: Review of an initial determination.

SUMMARY: Notice is hereby given that the Commission has determined to review the initial determination (ID) (Order No. 8) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-3395.

SUPPLEMENTARY INFORMATION: On August 6, 1987, the ALJ issued an ID (Order No. 8) which terminated the investigation with respect to respondent "Hair-Gro." Complainant, The Upjohn Co., filed a petition for review of the ID. No comments were received from government agencies.

This action is taken under authority of section 337 of the Tariff Act of 1930 and §§ 210.53-210.56 of the Commission's Rules of Practice and Procedure (19 U.S.C. 1337; 19 CFR 210.53-210.56).

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 9, 1987.

[FR Doc. 87-21382 Filed 9-15-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-270]

Import Investigations; Certain Noncontact Tonometers

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on September 28, 1987, in Hearing Room 6311 at the Interstate Commerce Commission Building at 12th Street and Constitution Avenue NW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the Federal Register.

Janet D. Saxon,

Administrative Law Judge.

Issued: September 8, 1987.

[FR Doc. 87-21381 Filed 9-15-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-355 (Final)]

Certain Silica Filament Fabric From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Japan of woven fabrics, of glass (silica filaments), whether or not colored, containing not over 17 percent of wool by weight, provided for in items 338.25 and 338.27 of the Tariff Schedules of the United States, that have found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

The Commission also unanimously determines, pursuant to section 735(b)(4)(A) of the Act (19 U.S.C. 1673(b)(4)(A)), that the material injury is not by reason of massive imports of silica filament fabric from Japan over a relatively short period to an extent that it is necessary that the duty provided for in section 731 of the act be imposed retroactively on those imports in order to prevent such injury from recurring.

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

Background

The Commission instituted this investigation effective May 13, 1987, following a preliminary determination by the Department of Commerce that imports of amorphous silica filament fabric from Japan were being sold at LTVF within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of June 11, 1987 (52 FR 22398). The hearing was held in Washington, DC, on August 5, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 9, 1987. The views of the Commission are contained in USITC Publication 2015 (September 1987), entitled "Certain Silica Filament Fabric from Japan: Determination of the Commission in Investigation No. 731-TA-355 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 9, 1987.

[FR Doc. 87-21384 Filed 9-15-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31102]

Wisconsin Central Ltd.; Exemption Acquisition and Operation; Certain Lines of Soo Line Railroad Co.

Wisconsin Central Ltd. (WCL) has filed a notice of exemption to acquire and operate certain properties of the Soo Line Railroad Company (Soo). The properties include the following lines and trackage rights:

Withrow, MN, milepost 432.02 to Forest Park, IL, milepost 10.9 (including Duplainville, WI connecting track between the Soo's Withrow, MN to Forest Park, IL and the Soo's Milwaukee

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to Lacrosse, WI line; Waukesha branch line from milepost 100.63 of Soo's Withrow to Forest Park line to milepost 18.23 in or near Waukesha, but excluding any portion of the line lying north of milepost 16.56 on Soo's Brookfield line; Burlington to Sturtevant, WI branch line from milepost 25.928 westerly to the end of Soo ownership, but excluding the line east of milepost 25.98; IHB connecting track, Franklin Park, IL between Soo's Withrow to Forest Park line and Indiana Harbor Belt Railroad mainline track); Withrow, MN, milepost 23.75 to Sault St. Marie, MI, milepost 494.1; Ladysmith, milepost 355.487 to Owen, WI, milepost 308.66; New Lisbon, milepost 0.32 to Tomahawk, WI, milepost 133.38; Argonne, milepost 242.7 to Neenah, WI, milepost 361.1; Ashland, milepost 435.495 to Spencer, WI, milepost 289.8; Green Bay, milepost 200.008 to North Milwaukee, WI, milepost 95.18; Cameron, milepost 96.1 to Rice Lake, WI, milepost 102.8; Chippewa Falls, milepost 350.92 to Eau Claire, WI, milepost 360.09; Marengo, WI, milepost 333.2 to White Pine, MI, milepost 14.41; Baraga, milepost 23.0 to Trout Lake, MI, milepost 27.12; Neenah, milepost 186.4 to Manitowoc, WI, milepost 230.6; Negaunee, milepost 163.6 to Palmer, MI terminus; Vesper, milepost 16.2 to Nekoosa, WI, milepost 32.7; and trackage rights between Withrow, milepost 23.75 and points in the terminal of St. Paul/Mineapolis, MN; Duplainville, and points within the Milwaukee, WI terminal; Ladysmith, milepost 355.48 and Superior, WI, milepost 460.6; and assignment of incidental Soo trackage rights over other carriers including rights over Green Bay & Western between Black Creek, milepost 23.73 to Green Bay, WI, milepost 1.39 and over the Marinette, Tomahawk and Western between Bradley, milepost 5.4 and Tomahawk, WI, milepost 0.0. The aforesaid includes approximately 1,800 route miles and 173 route miles of trackage rights over the Soo.[1]

In connection with the transaction covered by this notice of exemption, WCL, which will be a Class II carrier, will issue securities. The issuance of these securities is exempt under 49 CFR 1175.1.

[1] Locations include: between Withrow, MN and Shoreham, MN; between Central Ave., MN and Crystal, MN; between Cardigan Jct., MN and Soo Line Jct., MN; between St. Paul, MN and Merriam Park, MN; between Duplainville, WI and Milwaukee, WI; between North Milwaukee, WI and Grand Ave., WI; between Cutoff, WI and Muskego Yard, WI; and between Ladysmith, WI and Superior, WI.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption will be void *ab initio*.

The effective date of this notice has been stayed until October 26, 1987. Comments have been invited and must be filed with the Commission by September 25, 1987, and served on Robert H. Wheeler, Isham, Lincoln & Beale, Suite 5200, Chicago, IL 60602, (312) 558–7553. Replies by applicant are due by October 2, 1987. A petition to vacate the commission's stay decision has been filed by WCL.

Decided: September 11, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 87–21450 Filed 9–11–87; 11:22 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Withdrawal

On August 7, 1987, the Drug Enforcement Administration (DEA) published a Notice of Application in the **Federal Register** (Vol. 52, No. 152, pg. 29450) stating that Ayerst-Wyeth Pharmaceutical Inc., State Road 3 Kilometer 142.1, P.O. Box 2880, Guayama, Puerto Rico 00654, had submitted an application for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydrocodeine (9120)	II
Bulk dextropropoxyphene (non-dosage forms) (9273)	II

On August 20, 1987, the DEA was advised that Ayerst-Wyeth Pharmaceutical Inc., State Road, 3 Kilometer 142.1, P.O. Box 2880, Guayama, Puerto Rico 00654, wishes to withdraw its application for registration as a bulk manufacturer of dihydrocodeine (9120) and bulk dextropropoxyphene (non-dosage forms) (9273).

The application having been withdrawn, any proceedings relating to the application have been terminated and the publication withdrawn.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: September 10, 1987.

[FR Doc. 87–21223 Filed 9–15–87; 8:45 am]

BILLING CODE 4410-09-M

Quotas for Controlled Substances in Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Established 1987 Aggregate Production Quota for Ibogaine.

SUMMARY: This notice establishes the 1987 aggregate production quota for ibogaine, a Schedule I controlled substance.

DATE: This order is effective September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C. 20537. Telephone (202) 633–1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code, section 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On June 30, 1987, a notice proposing to revise the 1987 aggregate production quota for ibogaine was published in the **Federal Register** (52 FR 24350). All interested persons were invited to comment on or object to the proposal on or before July 30, 1987. No comment or objections were received.

Pursuant to section 3(c)(3) and 3(E)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act (5 U.S. Code section 601, et seq.). The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quota impact

predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code, section 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1987 revised aggregate production quota for ibogaine, expressed in grams of anhydrous base, be established as follows:

Basic class	1987 aggregate production quota
Ibogaine	545

John C. Lawn,

Administrator, Drug Enforcement Administration.

Date: September 3, 1987.

[FR Doc. 87-21224 Filed 9-15-87; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services; General Operating Support Program

AGENCY: Institute of Museum Services, National Foundation on the Arts and the Humanities.

ACTION: Grant Application Availability Notice for Fiscal Year 1988.

This grant application announcement applies only to the General Operating Support Program awards under 45 CFR Part 1180 for Fiscal Year 1988.

Nature of program: IMS makes awards under the GOS program to museums to maintain, increase, or improve museum services. The purpose of these awards is to ease the financial burden borne by museums as a result of their increased use by the public and to help them carry out their educational role, as well as other functions. Section 206 of the Museum Services Act, Title II of Pub. L. 94-462, as amended, contains authority for this program. (20 U.S.C. 965)

Deadline date for transmittal of applications: An application for a new grant must be mailed or hand-delivered by Friday, November 13, 1987.

Applications delivered by mail: An application sent by mail must be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue NW., Room 609, Washington, DC 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMS.

If any application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-cancelled by the U.S. Postal Service.

Applications delivered by hand: An application that is hand-delivered must be taken to the Institute of Museum Services, Old Post Office Building, 1100 Pennsylvania Avenue NW., Room 609, Washington, DC 20506.

IMS will accept a hand-delivered application between 9:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

Program information: Program information is contained in the following: final regulations published June 17, 1983 in **Federal Register** Vol. 48, No. 118, pages 27727-27734; amendments published on April 10, 1984 **Federal Register** Vol. 49, No. 70, pages 14108-14111 and on June 15, 1984 **Federal Register** Vol. 49, No. 117, pages 24731-24733; notice of proposed rulemaking published on October 5, 1984 **Federal Register** Vol. 49, No. 195, pages 39346-39349; final guidelines and standards published July 5, 1985 in **Federal Register** Vol. 50, No. 129, pages 27584-27589; the Application forms and accompanying instructions in the Application Packet. See paragraph on Application form.

Available funds: Approximately $17,000,000 pending Congressional appropriation. The maximum grant was $75,000 in FY 87. Upon appropriation of funds for the program, a maximum grant level will be determined by the National Museum Services Board. Most museums which are funded will receive a smaller amount (45 CFR 1180.9). In addition, IMS normally does not make grants for more than 10 percent of a museum's most recently completed fiscal year's actual non-federal operating income. (See 45 CFR 1180.16(b)).

Application forms: IMS is mailing application forms and program information in a GOS Application Packet to museums and other institutions on its mailing list. Applicants may obtain Application Packets by writing or telephoning the Institute of Museum Services, 1100 Pennsylvania Avenue NW., Room 609, Washington, DC 20506, (202/786-0539).

Applicable regulations: Final regulations for the General Operating Support grant program were published in the **Federal Register** on June 17, 1983 FR Vol. 48, No. 118, pages 27727-27734. Amendments to these regulations were published in the **Federal Register** on April 10, 1984 FR Vol. 49, No. 70, pages 14108-14111 and on October 5, 1984, FR Vol. 49, No. 195 pages 39346-39349, on June 15, 1985 FR Vol. 49, No. 117 pages 24731-24733; and for a document relating to Final Regulations published on this program, see rule published elsewhere in this issue.

The regulations as amended implement the Museum Services Act. The amendments make technical and other changes in the eligibility conditions and other terms for the administration of the General Operating Support Program and remove unneeded provisions. As revised the regulations published on June 17, 1983 will apply to the award of grants for Fiscal Year 1987.

Further information: For further information contact Theresa Michel, Public Affairs Officer, Institute of Museum Services, 1100 Pennsylvania Avenue NW., Washington, DC 20506. Telephone: (202) 786-0536.

(Catalogue of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

Dated: September 10, 1987.

Lois Burke Shepard,

Director, Institute of Museum Services.

[FR Doc. 87-21322 Filed 9-15-87; 8:45 am]

BILLING CODE 7036-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-285; License No. DPR-40 EA 86-176]

Order Imposing Civil Monetary Penalty; Omaha Public Power District (Fort Calhoun Station)

I

Omaha Public District (licensee) is the holder of operating License No. DPR-40 issued by the Nuclear Regulatory Commission (NRC/Commission) on August 19, 1973. The license authorizes the licensee to operate the Fort Calhoun Station in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities was conducted during September 16–20, 30, October 1–8, November 6–8, 18–22, and December 9–17, 1985. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated January 26, 1987. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for Violation I. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated April 10, 1987.

III

After consideration of the licensee's response and the statements of fact, explanation, and request for reduction of severity level and remission of the civil penalty contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that Violation I occurred as stated and that the penalty proposed for Violation I designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It Is Hereby Ordered That:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, and a copy to the NRC Resident Inspector, Fort Calhoun Station.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in Violation I of the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland, this 10th day of September 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director For Regional Operations

Appendix—Evaluations and Conclusions

On January 26, 1987 a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Omaha Public Power District responded to the Notice on April 10, 1987. The licensee admitted that Violation I occurred as stated in the Notice; however, the licensee requested reduction of the severity level and remission of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

Restatement of Violation I

10 CFR 50.59(a) allows the holder of a license to make changes in the facility as described in the safety analysis report (SAR) without prior Commission approval unless it involves a change in the technical specifications or involves an unreviewed safety question. An unreviewed safety question is created if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the SAR may be increased, if a possibility for an accident or malfunction of a different type than any evaluated previously in the SAR may be created, or if the margin of safety as defined in the basis for any technical specification is reduced.

10 CFR 50.59(b) requires, in part, that the licensee maintain records of changes in the facility to the extent that such changes constitute changes in the facility as described in the SAR. These records shall include a written safety evaluation which provides the basis for the determination that the change does not involve an unreviewed safety question.

Section 14.14 of Fort Calhoun Updated Safety Analysis Report (USAR) states that during a steam generator tube rupture incident, gaseous fission products would be released to atmosphere from the secondary system at the condenser vacuum pump discharge. Those fission products not discharged in this way would be retained by the main steam, feedwater and condensate systems.

Contrary to the above:

1. From March 1980 to January 1985, the licensee failed to meet the requirements of 10 CFR 50.59 in that a change was made to the facility as described in the USAR without conducting and documenting a review to determine that the change did not involve an unreviewed safety question. The change to the facility involved the modification of the auxiliary feedwater pump turbine common steam admit valve (YCV–1045) from the "fail close" to the "fail open" design mode, completed in March 1980, without the addition of a safety-related air accumulator system for the individual "fail open" steam supply valves (YCV–1045 A and B). The inability to close the "fail open" steam supply valves upon the loss of non-safety-related instrument air would result in an additional fission product release path, not analyzed in the USAR, for a steam generator tube rupture incident. Consequently, the change involved an unreviewed safety question because the consequences of an accident previously evaluated in the USAR may have been increased.

2. On January 15, 1985, the licensee improperly analyzed the change to its facility as described above and concluded that an unreviewed safety question did not exist when, in fact, an unreviewed safety question did exist.

This is a Severity Level III violation (Supplement I).

Civil Penalty—$50,000.

Summary of Licensee's Response

The licensee admits that Violation I occurred but requests remission of the civil penalty based on reevaluation of the violation's severity level. The licensee reviewed the modification to YCV–1045 and admits that previous evaluations of the modification were not sufficiently comprehensive. However, it was concluded that the modification constituted a system enhancement and that an unreviewed safety question did not exist.

In evaluating whether the consequences of an accident, previously evaluated in the USAR may have been increased, the licensee identified three specific events as potentially impacted by the new "fail open" mode of YCV–1045. Of the analyses of the three events, only the analysis for the steam generator tube rupture (SGTR) event demonstrated an increased impact, revealing a small increase in the radiological consequences. Because the SGTR analysis of Section 14.14.5 of the USAR remained the bounding analysis, the licensee argues that neither the probability of occurrence or consequences of an equipment malfunction or accident previously identified were increased. To further support this conclusion the licensee discusses the probable existence of the release path directly to the atmosphere upon loss of instrument air when YCV–1045 was a "fail close" valve. The licensee argues that even as a "fail close" valve, YCV–1045 would have opened on residual system air pressure, so that the release path would have previously existed and was not created by the modification.

The licensee's response also addresses the other criteria for an unreviewed safety question delineated in 10 CFR 50.59 and concludes neither was applicable. In the licensee's review of whether the margin of safety as defined in the basis for any Technical Specification is reduced, the discussion focuses on containment integrity. The licensee concludes that, because YCV–1045 is required to be open during certain accident conditions, containment integrity is unaffected by the valve's "fail open" design.

NRC Evaluation of Licensee's Response

The NRC staff has carefully reviewed the licensee's response and has concluded that an unreviewed safety question did exist. The staff agrees with the licensee that with the modification of YCV–1045 to a "fail open" valve, system reliability was improved. However, the improvement of reliability without the addition of safety-related accumulators for valves YCV–1045 A/B introduced an unanalyzed release path through YCV–1045. A sufficiently comprehensive safety analysis/safety evaluation performed in 1979, 1983, or 1985 should have identified that the modification resulted in the introduction of a steam release path to the environment which was not previously considered in USAR Section 14.14.2 and which, as demonstrated by the licensee, increased the radiological consequences of the SGTR event. Contrary to the licensee's argument, the consequences of a configuration change to a system described in the safety analysis report do not have to exceed those of the bounding analysis to constitute an unreviewed safety question. The consequences of a change in a system configuration need only result in an increase in the consequences of an accident when compared to those for that accident as previously anlayzed. If the specific accident conditions were not previously analyzed then an unreviewed safety question exists until the analysis is performed.

With regard to the licensee's argument that the release path existed prior to the modification because sufficient instrument air pressure would have remained in the system to open YCV–1045, the NRC staff concludes that this is only a supposition. The licensee has not provided any factual basis in the form of an analysis to support this hypothesis.

Since Violation I only addressed the existence of an unreviewed safety question because the consequences of an accident previously evaluated in the USAR May have been increased (10 CFR 50.59(2)(i)), the staff did not review in detail the licensee's response addressing the other criteria for an unreviewed safety question. However, the staff does not agree with the licensee's contention regarding containment isolation in that, the licensee did not adequately address the containment isolation function of valve YCV–1045, since the valve, along with valves HC–1041 and 1042, provides isolation capability for a system closed to the containment atmosphere. The modified "fail open" mode of valve YCV–1045 no longer provided the isolation function as designed. As such, during a loss-of-collant accident, concurrent with steam generator leakage, a continuing release of radioactive steam to the environment via YCV–1045 would occur until the valve was isolated manually-locally.

Consequently, because between March 1980 and January 1985 an unreviewed safety question did exist when valve YCV–1045 was modified, the violation is appropriately categorized as a Severity Level III violation and therefore, the licensee's request for remission of the civil penalty based on the reduction in severity level of the violation is not deemed to be appropriate.

NRC Conclusion

After careful consideration of the licensee's response, the NRC staff concludes that the violation is significant in that an unreviewed safety question as defined in 10 CFR 50.59 existed and the violation is appropriately classified as a Severity Level III violation. Further, the licensee has not provided a sufficient basis for remission of the civil penalty. Consequently, the proposed civil penalty in the amount of Fifty Thousand Dollars ($50,000) should be imposed.

[FR Doc. 87–21351 Filed 9–15–87; 8:45 am]
BILLING CODE 7590–01

Meeting; Advisory Committee on Reactor Safeguards; Subcommittee on Generic Items

The ACRS Subcommittee on Generic Items will hold a meeting on September 30, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 30, 1987—8:30 A.M. until the conclusion of business

The Subcommittee will continue the discussion on the effectiveness of the programs that address generic issues and USIs. Also, it will discuss with selected licensees the contribution to plant safety resulting from the implementation of the resolved generic issues and USIs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time alloted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr.

Sam Duraiswamy (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: September 10, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–21350 Filed 9–15–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of SF 172 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44 U.S. Code, Chapter 35), this notice announces a proposed extension to an unchanged form which collects information from the public. Standard Form 172, Amendment to Application for Federal Employment SF 171, is completed by individuals applying for Federal jobs who wish to update their applications without preparing a complete new SF 171. OPM and agency examining offices as well as agency appointing officials use the information provided to determine the individual's qualifications for Federal employment. Approximately 175,909 respondents annually expend 87,955 burden hours to complete the SF 172. For copies of this proposal, call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received on or before September 28, 1987.

ADDRESSES: Send or deliver comments to:

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, NW., Washington DC 20503

FOR FURTHER INFORMATION CONTACT: Laurence T. Lorenz, (202) 653–8076.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–21281 Filed 9–15–87; 8:45 am]

BILLING CODE 6325–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

Status: Open

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Hydro Assessment Study report
- Other
- Public comment

DATE: September 21, 1987. 10:00 a.m.

ADDRESS: The meeting will be held in the Council's central office, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 87–21290 Filed 9–15–87; 8:45 am]

BILLING CODE 0000–00–M

POSTAL SERVICE

Privacy Act of 1974; Matching Program—Postal Service/California State Employment Development Department

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Program—U.S. Postal Service/California State Employment Development Department.

SUMMARY: The purpose of this document is to publish notice of the Postal Service's plan to participate as a source agency in a match by computer of certain records in its Payroll System File (050.020, Finance Records–Payroll System) with the California State Employment Development Department wage and unemployment insurance claims files. The purpose of the match is to identify current or former employees of the Oakland Division postal facility who are receiving unemployment compensation and/or workers' compensation benefits to which they are not entitled.

DATE: The match is expected to begin in September 1987.

ADDRESS: Send any comments to Records Officer, Room 8121, U.S. Postal Service, 475 L'Enfant Plaza, SW, Washington, D.C. 20260–5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268–5158.

SUPPLEMENTARY INFORMATION: The Postal Inspection Service is initiating a matching project to identify postal employees of the Oakland, California Division who are receiving unreported wages from non-postal sources while receiving workers' compensation and/or partial unemployment compensation benefits. The match will further identify current and former postal employees who may be receiving unemployment compensation benefits and/or benefits under the Federal Employees' Compensation Act (FECA) to which they are not entitled. Set forth below is the information required by paragraph 5.f. (1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Report of a Matching Program: U.S. POSTAL SERVICE (USPS) AND CALIFORNIA STATE EMPLOYMENT DEVELOPMENT DEPARTMENT (CSEDD)

a. *Authority*: 39 U.S.C. 401, 404.

b. *Program Description*: Under the planned program, the USPS Inspection Service (IS) will submit to the CSEDD a computer tape containing approximately 4000 social security account numbers (SSANs) of employees of the Oakland Division postal facility. The CSEDD will match that tape of SSANs against its base wage file containing records of the wages reported by employers in the State and against its file of unemployment insurance claimants. For matched SSANs (i.e., "hits"), the CSEDD will provide the IS with the following information from its files: Individual name, SSAN, employer name and address, the most current five-quarter

wage information, and the most current unemployment benefit information. The IS will follow up on hits through review of USPS payroll and Office of Workers' Compensation Program records, and checks with employers reporting payment of wages to those individuals identified as hits. A reduction, suspension, or termination of benefit payments, collection of monies overpaid, and/or disciplinary measures against the employee may ensue when the circumstances warrant but only after due process has been afforded to the individual. When there are reasonable grounds to believe there has been a violation of criminal law, the matter may be referred for Federal or State prosecution. A joint investigation will be conducted by the Inspection Service and the Department of Labor, Office of the Inspector General, on those hits verified as suspect cases and case files may be established by the IS within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use Nos. 26 and 28 in USPS 050.020, Payroll System, most recently published in 52 FR 6251 of March 2, 1987.

c. *Period of the Match*: The matching program will be on a one-time basis and is expected to begin in September 1987 and end no later than March 1989.

d. *Security*: The CSEDD personnel who perform the match will: (a) Have the only access to the USPS computer tape; (b) use it only to accomplish the official stated purpose of the match and for no other purpose; and (c) safeguard it from unauthorized access. Likewise, information disclosed to the IS by CSEDD on hits will be used by authorized personnel only for the purpose of the match and for no other purpose and will be safeguarded from unauthorized access. All information exchanged as a result of this matching project will be maintained in locked file areas when not in use.

e. *Disposition of Records*: The CSEDD will not retain or copy the tape provided by the IS and will return it to the IS within six months from the date of its receipt or upon completion of the actual computer run (comparison), whichever is sooner. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that no fraud or irregularity has occurred.

f. *Further Comments*: No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records provided by the CSEDD in connection with this program.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 87-21331 Filed 9-15-87; 8:45 am]

BILLING CODE 7710-12-M

Privacy Act of 1974; Matching Program—Postal Service/State of Washington Department of Social and Health Services

AGENCY: Postal Service.

ACTION: Notice of Matching Program—U.S. Postal Service/State of Washington Department of Social and Health Services.

SUMMARY: The purpose of this document is to publish notice of the Postal Service's plan to participate in a computer matching program with the State of Washington Department of Social and Health Services to identify postal employees who are delinquent in repayment of public assistance related debts owed to that State.

DATE: The match is expected to begin in September 1987.

ADDRESS: Send any comments to Records Officer, Room 8121, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC. 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268-5158.

SUPPLEMENTARY INFORMATION: The Office of Financial Recovery of the State of Washington Department of Social and Health Services is responsible for the collection of public assistance related liabilities owed to the State of Washington. That office has asked the Postal Service to participate in a computer matching program to identify postal employees who are in arrears in payments to the State of Washington for debts owed as a result of public assistance overpayments and/or unpaid assessed mental health care. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computer Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provided to both Houses of Congress and to the Office of Management and Budget.

Report of a Matching Program: U.S. POSTAL SERVICE (USPS) AND STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES (W-DSHS)

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the W-DSHS will submit to the USPS a computer tape of the names and social security account numbers (SSANs) of persons delinquently owing monies to the State of Washington as a result of overpaid welfare and food stamp benefits, unpaid mental health hospital care, and other public assistance related debts. The USPS will match that tape against its payroll system files (USPS 050.020, Finance Records—Payroll System) and will disclose to W-DSHS the following information about individuals common to both files (i.e., "hits"): Name, SSAN, date of birth, home address, facility where employed, last date of postal employment (as available), and wage information.

The information will be disclosed to the Office of Financial Recovery of the W-DSHS for comparison with its client files and a thorough review to verify the identify of matched individuals and their status as debtors consistent with the objectives of the matching program. Subsequent actions may include issuance of collection letters, liens against real propery, and/or garnishment of wages. These or other collection actions taken by the W-DSHS will comport with all applicable due process standards. Further, the USPS Inspection Service may participate in the investigation of "hits" as a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use No. 28 in USPS 050.020, Payroll System, most recently published in 52 FR 6251 of March 2, 1987.

c. *Period of the Match:* The matching program will be on a one-time basis and is expected to begin in September 1987 and end no later than March 1989.

d. *Security:* The USPS personnel who perform the match will: (a) Have the only USPS access to the W-DSHS computer tape; (b) use it for the purpose of the match and for no other purpose; and (c) safeguard it from unauthorized access. Likewise, the postal employee information disclosed to the W-DSHS will be used by authorized W-DSHS personnel only for the purpose of the

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match and for no other purpose and will be safeguarded from unauthorized access.

e. *Disposition of Records:* The USPS will not retain or copy the tape provided by W–DSHS and will return it upon completion of the match. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that no irregularity has occurred.

f. *Other Comments:* No bestowed rights, privileges or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87–21330 Filed 9–15–87; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24898; File No. SR–Amex–87–12]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change

On June 1, 1987, the American Stock Exchange, Inc. ("Amex"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase position and exercise limits for Treasury note options.

In 1982, when the Amex introduced 10-year Treasury note options, the average amount of each Treasury note series auctioned was less than half the amount offered at recent auctions. Position and exercise limits were established at a fixed 2,000 contracts (each Treasury note option contract represents $100,000 in underlying Treasury notes), which represented approximately 5 to 10% of the then publicly offered principal amount.

In recent years, however, the size of Treasury financings has increased substantially (*e.g.*, the two currently trading Treasury notes each has public offerings of $9 billion and one issue subsequently reoffered an additional $9 billion). In response to the increased size of these public financings, the proposed rule change provides for position and exercise limits based on 10% of the amount of the specific publicly auctioned Treasury note, with a maximum limit of 12,000 contracts. In addition, if any of the underlying Treasury notes are subsequently reported as STRIPS (separate trading of registered interest and principal of securities as reported in the Monthly Statement of the Public Debt of the U.S. Government), the initial position limits must be reduced if those limits represent more than 12% of the non-stripped Treasury note. The Chicago Board Options Exchange, Inc. ("CBOE") sought the same change for its treasury note options and its 30-year Treasury bond options and, in June 1986, enacted position limits based on the public offering size of the 30-year Treasury bonds.[3]

The Commission previously has identified the principal purposes of position and exercise limits as: (1) To minimize the potential for mini-manipulations and corners or squeezes of the underlying market; (2) to impose a ceiling on the position an investor with inside corporate or market information can establish through the use of options; and (3) to reduce the possibility for disruption of the options market itself, especially in illiquid options classes. The Amex position and exercise limit of 10% of a Treasury note series does not pose a risk of manipulation of the market in the underlying Treasury notes because of the large and liquid supply of the notes deliverable against such option contracts. The Amex extension of existing position exercise and limits in Treasury note options reflects the increased dollar value of recently auctioned Treasury notes. Growth in institutional investor demand for Treasury notes creates a corresponding need for institutions to establish offsetting positions in derivative products (*i.e.*, options or futures) to lessen their risk. In this regard, the Commission believes the Amex proposal to increase position and exercise limits to 10% of the value of the Treasury notes being offered publicly will enhance the utility of Treasury note options for large insitutional investors and thereby increase the depth and liquidity of the market in the Treasury note options.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requiements of section 6, [4] and the rules and regulations thereunder. There have been no discernible regulatory problems associated with current Treasury note option limits and the Amex proposal fundamentally represents a continuation of the current approach to such limits, with the increase proposed being essentially gradual ones relative to the size of recent issues of the underlying securities. Indeed, the Amex proposal enhances upon its current rule by accounting for stripping. The Amex proposal also appears to respond to market participants needs for greater limits in this area, and strikes an appropriate overall balance between the needs of market participants and the regulatory purposes position and exercise limits are designed to serve.[5]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the rule change is substantively identical to a proposed rule change previously filed by the CBOE and approved by the Commission.[6]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

Dated: September 10, 1987.

[FR Doc. 87–21362 Filed 9–15–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24899; File No. SR–AMEX–87–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to Expansion of AUTO-EX System Order Size

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2]

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 C.F.R. 240.19b–4 (1985).

[3] *See* Securities Exchange Act Release No. 23298 (June 4, 1986), 51 FR 21284 (June 11, 1986).

[4] 15 U.S.C. 78f. (1982).

[5] The Commission continues to believe that proposals to increase position and exercise limits must be justified and evaluated separately. The Commission thus, has reviewed the proposed exercise limits separately and, as indicated, has concluded that these limits should not raise manipulation problems or increased concern over market disruption in the underlying securities.

[6] *See*, Securities Exchange Act Release No. 23298, (June 4, 1986).

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1985).

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b–4 (1986).

the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted, on July 16, 1987, copies of a proposed rule change that would expand the Amex automated execution system for options ("AUTO-EX") by increasing the size of eligible market [3] and marketable limit orders [4] from 10 to 20 contracts.

Notice of the proposed rule change, together with its terms of substance, was published in Securities Exchange Act Release No. 24752, July 28, 1987, 52 FR 28883, August 4, 1987. No comments were received regarding the proposal.

AUTO-EX is an automated execution system that enables member firms to route public customer market and marketable limit orders up to 10 contracts through the system for automatic execution at the best prevailing price at the time the order is entered. AUTO-EX reports such executions back to the entering firm as well as to the last sale tape. The AUTO-EX system maintains the priority of public limit orders on the specialist's book. The system differentiates between the bids and offers of limit orders on the book and all other bids and offers, and diverts an incoming AUTO-EX order to the specialist's post for manual execution against the limit order book if the best bid or offer in the marketplace is represented by a book order.

AUTO-EX is presently used in selected series of Major Market Index options,[5] in emergency situations involving high volume in particular equity options,[6] and for certain orders in competitively traded options.[7] The Amex states that the AUTO-EX system has received the strong support of Exchange member firms. The system results in "locked in" trades since the Exchange submits both sides to comparison, thereby eliminating operational burdens for users.

The Commission recently approved a proposed rule change to expand the Exchange's Amex Options Switching System ("AMOS") by increasing the size of contracts to be entered through AMOS from 10 to 20.[8] The AMOS system provides Amex member firms with the means to route electronically options orders, up to the specified volume limits, to the post where the option is traded. Following the execution of an electronically routed order, the member receives an execution report back through the system. In approving the proposal, the Commission concluded that the increased order routing parameters requested by the Amex were justified due to a substantial increase in order flow.

AUTO-EX is an automatic order execution system that interlocks with the AMOS order routing system. In order for these interlocking systems to operate efficiently, the Exchange contends that it must have the authority to set the same 20-contract limit for both systems.

The Commission believes that increasing the size of eligible orders in the Amex's AUTO-EX system from 10 to 20 contracts can benefit the investing public by facilitating the execution of orders that have been routed through the Amex's AMOS system. The Commission also believes that increasing the number of contracts that can be executed through AUTO-EX from 10 to 20 will enhance further the Exchange's ability to process transactions expeditiously and effectively. The Commission also believes that the Amex's incorporation of the specialists' book into the routing and execution of orders will ensure that limit orders on the book will be protected. Moreover, as order routing and execution systems are integrally related, the Commission believes it logical to provide for automatic execution of the same number of contracts that are routed automatically to the appropriate post. Finally, the increase in size from 10 to 20 contracts does not alter significantly the nature of the orders eligible for AUTO-EX. The Commission therefore finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) [9] and section 11A(a)(1)(B) [10] and the rules and regulations thereunder, in that it will foster cooperation and coordination with persons engaged in facilitating transactions in securities, and will result in more efficient and effective market operations.

It is therefore ordered, pursuant to Section 19(b) of the Act,[11] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

Dated: September 10, 1987.

[FR Doc. 87-21303 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

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[3] A market order is an order to buy or sell a stated number of option contracts at the most advantageous price obtainable after the order is represented in the Trading Crowd. Amex Rule 131.

[4] Marketable limit orders are limit orders (*i.e.*, orders to buy or sell at a specified price or better) that are immediately executable because the market is at or better than the limit price.

[5] *See* Securities Exchange Act Release No. 23544 (August 20, 1986), 51 FR 30601.

[6] *See* Securities Exchange Act Release No. 24228 (March 18, 1987), 52 FR 9601.

[7] *See* Securities Exchange Act Release No. 24714 (July 17, 1987), 52 FR 28396.

[8] *See* Securities Exchange Act Release No. 24668 (July 1, 1987), 52 FR 25677.

[9] 15 U.S.C. 78f(b)(5) (1982).

[10] 15 U.S.C. 78k-1(a)(B) (1982).

[11] 15 U.S.C. 78s(b) (1982).

[12] 17 CFR 200.303(a)(12) (1986).

[Release No. 34-24894; File No. SR-CBOE-87-15]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on April 27, 1987, submitted to the Securities and Exchange Commission a proposed rule change relating to government security options permits ("GSOPs" or "permits"). The proposal was published for comment in Securities Exchange Act Release No. 24440 (May 11, 1987), 52 FR 18632. As discussed below, several comment letters were received.

The proposed rule change would enable the CBOE to issue up to 20 three-year permits to trade government security options settled by physical delivery. These permits would be the successors to non-equity options permits issued in 1981,[3] of which two remain in effect. Proposed Rule 3.22A would create 20 new permits with the same terms as the permits issued in 1981,[4] except that the new permits would not carry a right to purchase a regular membership, no Exchange member would be allowed to hold more than two permits, and a sole proprietor member would be able to employ a nominee to use a permit.

In addition, the proposal would replace the term "non-equity options" with the term "government security options settled by physical delivery" in the Exchange rules relating to both the old and new permits. Finally, the definition of the phrase "non-equity options permit holder" contained in CBOE Rule 1.1(h) (h) would be omitted

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] *See* Securities Exchange Act Release No. 18077 (September 3, 1981), 46 FR 45232.

[4] *See* CBOE Rule 3.20.

as duplicative, because a definition is provided in Chapter Three of the CBOE rules.

I. Comments

In a comment letter, J.S. Fossett & Co., Inc. ("Fossett"), a CBOE member, objected to the manner in which the issuance of GSOPs was authorized.[5] In a March 30, 1987 notice of a special meeting and in an April 1, 1987 letter to CBOE members from Gary P. Lahey, Vice Chairman of the Exchange, the CBOE staff informed the membership that at an April 14, 1987 special meeting the issuance of GSOPs would be considered. The notice and letter informed the membership that issuance of the permits would be deemed authorized if a majority of the members voted affirmatively or if a quorum was not obtained at the end of a maximum of three days' balloting. By the end of the third day, April 16, 1987, a quorum had not been reached, so the GSOPs were deemed approved.

Fossett argues that an affirmative vote of a majority of the Exchange membership was required to authorize the issuance of GSOPs. Specifically, Fossett contends that because Section 2.1(a) of the CBOE Consititution requires that the issuance of Exchange memberships be approved by a majority vote of the CBOE members, the permits, which in Fossett's view "are nothing more than limited memberships" because they "give their holders the most important privilege of membership—the right to go on the Exchange floor and enter into transactions as a market maker,"[6] must be approved by an affirmative membership vote. In addition, Fossett noted that the special memberships approved by the CBOE in 1979,[7] the non-equity options permits issued by the CBOE in 1981, and the foreign currency options permits issued by the CBOE in 1985 [8] as well as limited trading permits issued by the American Stock Exchange, all were authorized by a majority voted for the relevant exchange's membership.[9]

The CBOE responded in a letter, dated June 23, 1987, in which it argues that GSOPs are not memberships.[10] In particular, the CBOE pointed out that the permits would exist for only three years and that permit holders would be entitled to trade only government security options, would have no right to petition or vote at Exchange meetings, would not pay Exchange dues, and would have no interest in Exchange assets. Finally, the CBOE asserted that it was not required to hold a vote on permit issuance and did so only "to give the membership an opportunity to indicate whether there was strong disagreement with the permit proposal."[11]

In a letter, dated July 28, 1987, the CBOE reiterated its belief that GSOPs do not constitute memberships.[12] The CBOE acknowledged that the definition of the term "member" in section 3(a)(3)(A) of the Act would include a GSOP holder,[13] but argued that the CBOE Constitution's definition of "member" would *not* include a permit holder and that the two definitions have different purposes and are not required to be in agreement.[14] In addition, the Exchange drew a distinction between permits and memberships by arguing that a permit would rise to the level of a membership if, for example, it were of unlimited duration, allowed trading in several established products, and included an interest in Exchange assets and the right to petition for and vote at CBOE meetings.[15]

Fossett responded to the CBOE's contentions in an August 6, 1987 letter, in which it cited the Act's definition of the term "member" and reiterated its point that GSOPs provide the essence of an exchange membership—the right to transact business on the exchange floor. Fossett also cited section 6(b)(3) of the Act, which requires an exchange's rules to "assure a fair representation of its members in the administration of its affairs." [16] As Fossett pointed out, the CBOE relied on section 6 (b)(3) of the Act in a previous rule filing seeking Commission approval of an amendment to section 2.1 of the CBOE Constitution to require membership approval of the issuance of additional memberships.[17]

The CBOE then submitted a third letter, dated August 7, 1987.[18] The CBOE stated that it does not believe it is possible to draw a hypothetical line between "permits" and "memberships," but that the significant limitations on GSOPs dictate a finding that GSOPs are not memberships for purposes of the CBOE Constitution. The Exchange also argued that there are different purposes behing the definitions of the term "member" in the Act and in the CBOE Constitution. In particular, the Act's definition is designed to bring within the purview of the Act all those who effect transactions on an exchange floor, while the CBOE Constitution's definition is meant to "preclude dilution of member rights, particularly access to the Exchange's trading floor in relation to established products." [19] The CBOE, while acknowledging that it would have been preferable to have included in section 2.1 of the CBOE Constitution an explicit provision allowing the Exchange to issue trading permits that provide inexpensive access to new products, argued that there is no administrative history suggeting that section 2.1 "was designed to limit the Exchange's ability to provide access to its floor in relation to the establishment of new products." [20]

Finally, the CBOE submitted an August 26, 1987 letter discussing in detail the legislative history of the amendment of Article II, section 2.1(a)

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[5] *See* letter from H. Stephen Fossett, President, J.S. Fossett & Co., Inc., to Secretary, SEC, dated June 5, 1987 ("Fossett Letter I").

[6] *Id.* at 2.

[7] CBOE special memberships, which will expire after 10 years, were issued in 1980 to former options members of the Midwest Stock Exchange. Special members are entitled to a 1/8 vote at Exchange meetings and have no interest in Exchange assets. *See* CBOE Constitution, sections 2.1(d) and 2.6(b)-(d).

[8] Foreign currency options permits entitled holders to effect transactions only in currency options and are subject to many of the same limitations applicable to government security options permits. *See* CBOE Rule 22.13.

[9] Fossett Letter I, *supra* note 5, at 2. Fossett also noted that a Philadelphia Stock Exchange proposal to create so-called equity specialist participations was defeated due to a lack of a quorum at a membership meeting. *Id.* at 3.

[10] *See* letter from Anne Taylor, Associate General Counsel, CBOE, to Joseph M. Furey, Branch Chief, Branch of Options Regulation, Division of Market Regulation.

[11] *Id.*

[12] *See* letter from Anne Taylor, Associate General Counsel CBOE, to David Underhill, Attorney, Division of Market Regulation ("Taylor Letter II").

[13] 15 U.S.C. 78c(a)(3)(A) (1982).

[14] Taylor Letter II, *supra* note 12, at 1. Section 3(a)(3)(A) of the Act defines the term "member of a national securities exchange" as a "person permitted to effect transactions on the floor of the exchange." 15 U.S.C. 78c(a)(3)(A) (1982).

[15] *Id.* at 2. The CBOE also agreed to include in Exchange Rule 1.1(h)(h) a definition of the term GSOP holder. This rule, which previously defined "non-equity options permit holder," would spell out the fact that permit holders are subject to all the provisions of the CBOE Constitution and rules other than those from which GSOPs expressly are exempted (*e.g.*, those relating to voting rights and rights to Exchange assets). In this regard, the Commission agrees that, irrespective of whether the permit holders are "members" for purposes of the voting requirements regarding their issuances under the CBOE Constitution, the permit holders are "members" of the Exchange under the Act and subject to the rules of the Exchange that apply to members.

[16] 15 U.S.C. 78f(b)(3) (1982).

[17] *See* Securities Exchange Act Release No. 14235 (December 8, 1977), 42 FR 63496.

[18] *See* letter from Anne Taylor, Associate General Counsel, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation.

[19] *Id.* at 1.

[20] *Id.* at 2.

and (c) of the CBOE Constitution.[21] The CBOE noted that the specific proposal requiring that future membership offerings be approved by a majority of CBOE members resulted from dissatisfaction among certain members reacting to an April 1977 CBOE Board of Directors decision to offer 50 original, unsold full Exchange memberships.[22] These dissatisfied members circulated a petition requesting an amendment to section 2.1 of the Constitution to require membership votes for future offerings of memberships and to terminate the membership offering then extant. A special meeting of the membership was scheduled for August 29, 1977 and, with a quorum present,[23] a vote was taken. The proposition was approved by a vote of 705 in favor, 148 against. The CBOE then submitted a proposed rule change to the Commission amending its Constitution in accordance with the membership petition. The Commission approved the proposed rule change in Securities Exchange Act Release No. 14235.

II. Discussion

After careful review, the Commission has determined that, although it is a close question, the CBOE was not required to obtain membership approval prior to issuing the GSOPs. In reaching this conclusion, the Commission has evaluated the special considerations raised when a Board of Directors interprets its own authority pursuant ot its own charger and within the context of a membership organization.[24] Here, for example, the Board of Directors not only concluded that the GSOPs issuance was consistent with the spirit of section 2.1(a) of the CBOE Constitution, but provided the membership with an opportunity to voice its objections at a special meeting. Thus, although an explicit provision in the CBOE Constitution allowing the Exchange to issue limited trading permits without membership approval would be preferable, for the reasons described below, we believe the GSOPs issuance was within the authority of the CBOE Board of Directors.

The first step in this analysis is an examination of the actual language of the CBOE rules. In this regard, the language of the relevant CBOE provisions is somewhat circular, and thus is of limited utility. Section 2.1 of the CBOE Constitution requires approval of membership offerings and Section 1.1(b) of the CBOE Constitution defines regular members as persons who acquire memberships made available by the Exchange in accordance with its rules.[25] These sections, however, are not dispositive of whether something less than a full membership is a "membership made available by the Exchange."

The Commission finds persuasive, however, the CBOE's position that section 2.1 is intended to prevent the issuance of additional memberships, which could dilute the value of existing memberships, without certain procedural steps being followed. Authorizing additional memberships, or granting additional memberships cheaply, could lessen the value of existing memberships. Section 2.1 ensures that such actions will not be taken unless certain procedures are followed (*i.e.*, membership approval). These procedures would not be necessary, however, if the access to the trading floor that was granted was so limited in nature as not to affect the value of a full membership. Indeed, the amendment to the CBOE Constitution requiring member approval of additional Exchange memberships arose in the context of an attempt to issue 50 original, unsold full Exchange memberships, not limited trading permits. Accordingly, the CBOE should be able to issue permits granting access to its floor without membership approval if those permits are not significantly dilutive of the value of existing memberships.

While the GSOPs provide their holders with many of the same rights and obligations as do regular memberships, the CBOE Board of Directors reasonably has decided that the dilutive concerns underlying section 2.1 do not arise in connection with their issuance. The GSOPs are extremely limited in nature. They grant their holders only the right to trade a specific, low-volume or new product for a period of three years, they carry no voting rights, and they were created for the purpose of promoting trading in new options products.

The Commission believes that the offering of GSOPs does not raise the same dilutive concerns as an offering of full memberships. The Commission, therefore, finds that the GSOPs need not be authorized by membership approval. This finding, however, is limited to GSOPs in particular, and does not necessarily extend to any type of trading permits the CBOE might create in the future. A permit that has more extensive rights and obligations than GSOPs may have such value as to be dilutive of existing memberships, and therefore constitute a "membership" for purposes of section 2.1 of the CBOE Constitution.[26]

The GSOPs should afford market makers and floor brokers inexpensive access to government security options trading. This should facilitate transactions in such options, thereby enhancing market liquidity and providing a direct benefit to investors. At the same time, the permits do not contain incentives that could induce inappropriate trading by the permit holders. The Commission therefore finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6[27] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Acr,[28] that the proposed rule change, as amended,[29] is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 9, 1987.

[FR Doc. 87-21364 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24900; File No. SR-CBOE-87-33]

Self-Regulatory Organization; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder, [2]

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[21] *See* Letter from Nancy R. Crossman, Associate General Counsel, CBOE, to Brandon Becker, Associate Director, Division of Market Regulation.

[22] *Id.* at 1. The CBOE also noted that the offering price for these full memberships was not "out of line with subsequent independent sales." *Id.* at note 3.

[23] Of a possible 1,294 votes, 853 ballots were cast. *Id.* at 2. As more than 50% of those eligible to vote cast ballots, CBOE's quorum requirements were satisfied. *See* CBOE Constitution, Article I, section 3.6.

[24] *But see* Securities Exchange Act Release No. 24429 (May 6, 1987), 35 SEC DOCKET 432.

[25] GSOPs would not be special memberships. *See* note 7, *supra*.

[26] The Commission notes that GSOP holders will be subject to the same trading rules and disciplinary procedures as regular members. This should ensure that a permit holder's activities are consistent with the obligations of a member of a national securities exchange as defined in the Act. *See* note 15, *supra*.

[27] 15 U.S.C. 78f (1982).

[28] 15 U.S.C. 78s(b)(2) (1982).

[29] As discussed above at note 15, the CBOE has agreed to include a definition of GSOP holder in CBOE Rule 1.1(h)(h).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1982).

the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on July 14, 1987, filed with the Securities and Exchange Commission ("Commission") a proposed rule amendment relating to its Retail Automatic Execution System ("RAES"). The proposal was published for comment in Securities Exchange Act Release No. 24751 (July 28, 1987), 52 FR 28884. No comments were received.

The proposed rule change would allow the CBOE to increase the number of options on the Standard & Poor's 100 Index ("OEX") eligible for execution through RAES from 10 to 20 per order. RAES currently permits the automatic execution of certain public customer orders for up to 10 contracts in a limited number of OEX series.[3] In support of its proposal, the CBOE noted in its rule filing that RAES in OEX allows customers to enjoy firm quotes to 10 contracts in eligible series; increases the efficiency of order entry and handling, trade matching and reporting; enhances the Exchange's audit trail; and adds to the confidence of public customers. As an illustration of the effectiveness of RAES, the CBOE cited the fact that on an average trading day in June 1987, RAES handled 26.1% of the OEX customer orders routed over the Exchange's Order Routing System ("ORS") and 8.2% of OEX ORS customer contracts.[4]

The Exchange believes that increasing the size of OEX orders eligible for execution through RAES to 20 contracts will increase the average percentage of OEX customer orders executed through RAES by approximately 2.5%, while increasing the average percentage of OEX customer contracts executed through RAES by about 2.4%. Thus, the Exchange has stated that expansion to 20 contracts will provide timely execution and enhance audit trails, fill reporting, price reporting and trade matching for a greater number of OEX orders. This should increase customer confidence and reduce the number of transactions required to be executed manually on the trading floor.[5]

The Commission agrees that expansion of the number of OEX orders eligible for execution through RAES should enhance the efficient functioning of OEX trading on the Exchange. This enhanced efficiency will provide a direct benefit to public customers and remove impediments to and help to perfect the mechanism of a free and open market. Moreover, the increase in size from 10 to 20 contracts does not alter significantly the nature of the orders eligible for RAES. The Commission accordingly finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [6] and the rules and regulations thereunder.[7]

It is therefore ordered, pursuant to section 19 (b)(2) of the Act,[8] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21365 Filed 9-15-87; 8:45 am]

[BILLING CODE 8010-01]

[Release No. 34-24893; File No. SR-DTC-87-12]

Self-Regulatory Organizations; Depository Trust Co.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on August 10, 1987, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission a proposed rule change as described below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would codify as part of DTC's Participant Operating Procedures DTC's existing procedures relating to: (1) Credit of dividend, principal, and interest proceeds to participants' cash accounts; (2) reversal of those credits in certain circumstances (*e.g.*, issuer default); and (3) refund of DTC's overnight investment income to participants who also act as paying agents on DTC-eligible issues. The proposal also would codify DTC's current practice of passing through to participants charges by DTC's interest collection agent for interest costs incurred from late bearer municipal bond interest payments. These procedures previously were approved in Securities Exchange Act Release No. 23686.[1] The proposed rule change would clarify DTC's procedures for credits, charge-backs and rebates as they relate to redemption proceeds. These procedures, as they relate to redemption proceeds, have not been approved prior to this filing and are being published for comment for the first time.

Currently, DTC credits certain payments to participant cash accounts on payable date, prior to having received such payments from paying agents. These payments include cash dividends on equity securities, principal on debt securities, and interest on debt securities. Although these payments are typically credited on payable date, DTC's rules authorize DTC to withhold such credits in appropriate circumstances.[2]

In certain cases, DTC also credits participants for payments of principal on redemptions of municipal securities in advance of DTC receiving those payments.[3] If DTC has not received the proceeds of a municipal security redemption by the eighth calendar day after the redemption date, DTC will credit the principal proceeds to the participants to whom they are due. However, DTC may elect not to credit participants with such proceeds if: (1) DTC management determines that there are not funds available to DTC sufficient to offset such credits, or (2) DTC management believes that the securities position in connection with which such credit would be given is an erroneous position, or that provision of such credit would be in error for some other, similar reason.

Under the proposed rule change, DTC is authorized to charge back previously credited payments upon written request

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[3] RAES also handles public customers orders in options on the Standard & Poor's 500 Index and on equity securities of six corporations. A more comprehensive description of RAES is contained in the Commission's initial order approving the CBOE's implementation of RAES on a pilot basis. See Securities Exchange Act Release No. 21695 (January 28, 1985), 50 FR 4823.

[4] 52 FR at 28884.

[5] *Id.*

[6] 15 U.S.C. 78f (1982).

[7] Any further expansion of the number of OEX contracts eligible for execution through RAES would, of course, be subject to Commission approval.

[8] 15 U.S.C. 78s(b)(2) (1982).

[1] 51 FR 37102 (October 17, 1986).

[2] For payments of $1,000,000 or more, DTC can withhold crediting if: (a) DTC has not received by 12:00 noon Eastern time on the payable date advice that it has received such payment, and (b) DTC's prior experience with the payor indicates that such payment will not be received after 12:00 noon Eastern time on payable date. For payments of $1,000,000 or less, DTC can withhold crediting if: (1) DTC has not received payment by 12:00 noon Eastern time on payable date, and (2) DTC management determines that insufficient funds are available from alternative sources to cover any excess of such credits over payments received or reasonably expected to be received.

In addition to these two cases, DTC can withhold from crediting any payment if DTC management knows that such payment will not be received on the payable date.

[3] DTC credits participants for payments of principal and interest on redemptions of non-municipal securities on the date such payments are received by DTC. DTC credits participants for payments of interest on redemptions of municipal securities also on the date such payments are received by DTC.

from a paying agent within ten (10) business days of the payable date for: (1) An error by the paying agent; (2) a failure by the issuer to provide the paying agent with sufficient funds to cover the payments, or (3) the bankruptcy of the issuer on or prior to the payable date. DTC also charges back for any errors made by DTC as a result of erroneous announcements or calculations of payments credited to participants in anticipation of payments which have not been received by DTC 10 business days after payable date.[4] For charge-backs resulting from a paying agent's written request, DTC notifies the participant one business day prior to the date DTC enters the charge-back in the participant's daily money settlement account.[5] Although DTC usually verifies the facts stated in the notice from the paying agent, DTC does not have any obligation to do so. If the paying agent notifies DTC more than 10 business days after payment date, DTC is not required to charge back a participant's account but will cooperate with the paying agent and the participant to resolve the matter. For DTC initiated charge-backs, DTC gives participants a one business day notice if the charge-back occurs within 10 business days after payable date. Otherwise, DTC notifies participants five (5) business days prior to entry to the charge-back.

Under its current procedures, DTC also invests, overnight, funds received from paying agents and remits to participants income derived from those investments. DTC encourages paying agents to make dividend, principal, interest and redemption payments in same-day funds. DTC's settlement system, however, credits these payments to participants in next-day funds. As a means to come as close as practicable to passing these payments on to participants in same-day funds, DTC invests the funds overnight and refunds the investment income to participants on a monthly basis. The following is a description of DTC's investment procedures.

Generally, income from the investment of dividend, principal, interest, and redemption payments is refunded to participants on a monthly basis. The amount of the refund, however, may be reduced in the following four instances. First, a refund will be decreased if all or part of that refund must be used to fund credits to participants for payments due to be received (but not received) on the preceding business day. Second, the amount of a refund to a participant who is (or is affiliated with) a payor may be reduced as follows: (a) No refund will be paid if less than 90% of payments due over the three preceding months from the participant (or the participant's affiliate) are received by DTC in same-day funds on payable date; (b) any refund paid to participant who pays (or whose affiliate pays) 90% or more of its payments on payable date in same-day funds will be reduced by (i) the percentage of the prior month's payments not received on payable date, plus (ii) the percentage of the prior month's payments not received in same-day funds.[6] Third, the amount of a refund to payor of municipal securities payments who remits the payments in same-day funds may be reduced by an amount equal to any interest expense incurred by DTC to fund credits to participants for payments due from this payor which were not received on payable date. Finally, no refund shall be paid to a payor of municipal securities payments who does not provide CUSIP number identification on payments of redemption proceeds.

DTC also passes through to participants the interest collection agent's costs from late bearer municipal bond interest payments (called a "funds usage charge"). DTC channels all coupons for bearer municipal bonds to a central interest collection agent ("Agent"). On payable date, the Agent pays DTC the total interest payments from those bonds regardless of whether the Agent has collected such interest from the various paying agents. For interest payments received late by the Agent from paying agents, the Agent charges DTC a funds usage charge. DTC passes this charge on a *pro rata* basis to participants that received those particular payments.

DTC's proposed rule change would codify as part of DTC's Participant Operating Procedures the procedures described herein. In a previous order,[7] the Commission approved DTC's crediting, chargeback, and investment procedures as they apply to dividend payments on equity securities and interest and principal payments on debt securities. The Commission stated that these procedures are designed to improve the timeliness of payments to DTC participants and enhance the safeguarding of funds in DTC's custody or control. In that Order, the Commission also approved DTC's procedure with regard to funds usage charges.

DTC believes that the proposed rule change is consistent with section 17A of the Act because it is designed to enhance the timeliness of dividend, principal, interest, and redemption payments to DTC participants and improve processing and recordkeeping by DTC and its participants. DTC also believes that the procedures to be codified are designed to enhance the safeguarding of funds in DTC's custody or control.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comment within 21 days after notice is published in the **Federal Register**. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. § 552, are available at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–87–12.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 9, 1987.

[FR Doc. 87–21366 Filed 9–15–87;8:45 am]

BILLING CODE 8010–01–M

[4] If DTC credits participants on payable date for payments to be received on payable date, such payments are not received by DTC on payable date, and DTC does not have funds sufficient to cover credits made on that day, DTC may enter into the daily settlement accounts of participants receiving such credits charges equal in total to the amount of such excess. Each participant will be charged an amount equal to its *pro rata* share of the total to be charged. DTC may require each such participant to remit to it on the business day following the payable date a payment in same-day funds equal to the amount of such charge.

[5] DTC notifies the participants through the Participant Terminal System ("PTS") and by placing the notice in the participant's box at DTC.

[6] For example, if a paying agent makes 95% of its payments on payable date (a 5% shortfall) and 96% of its payments in same-day funds (a 4% shortfall), its refund for that month will be reduced by 9%.

[7] *See* note 1, *supra.*

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[Release No. 34-24892; File No. SR-MSE-87-9]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to a Proposed Rule Change by Midwest Stock Exchange, Inc.; Extension of the Suspension of Application of the Mandatory Posting Rule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 23, 1987 the Midwest Stock Exchange, Incorporated ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing SR-MSE-87-1,[1] the MSE suspended the application of Article XXX, Rule 1.01 (I)(6)(c) (Mandatory Posting Rule) for the two six-month periods ending June 30, 1986 and December 31, 1986. The Exchange has determined to extend the suspension of the application of the Mandatory Posting Rule for an additional six month period ending June 30, 1987.

Although the progress of revising the evaluation criteria for mandatory posting has been significant, it has been slower than initially anticipated.[2] In the event that revised evaluation criteria are not approved and implemented prior to the end of the year, postings pursuant to the current Mandatory Posting Rule will resume for the six month period ending December 31, 1987.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Mandatory Posting Rule requires the Exchange to semiannually post for applications any security for which the Exchange's market share (determined as a percentage of number of trades reported to the tape) is less than the third largest among all exchanges and is also less than the Exchange's average market share for all specialist-assigned issues for the previous six month period. If a co-specialist's stock is posted pursuant to this Rule and he chooses to reapply for it, he is entitled to a hearing before the Committee on Specialist Assignment and Evaluation ("CSAE") pursuant to Article XVII, Rule 3 on the evaluation of his performance in the posted issue.

The first posting pursuant to the Rule was made in January 1986 for the six month period ending December 31, 1985. Since that time, CSAE representatives have met with Floor member representatives to review current evaluation criteria and consider revisions to such criteria. Because substantial progress had been made by this group to revise the evaluation criteria, the CSAE decided to suspend the application of the Mandatory Posting Rule for the two six-month periods ending June 30, 1986 and December 31, 1986. The CSAE and the Exchange's Board of Governors ("Board"), have determined to extend the suspension of the Mandatory Posting Rule for an additional six month period ending June 30, 1987 while it continues its review of the current evaluation criteria.

The CSAE anticipates that revised criteria, subject to Commission approval, will be available to review specialist performance by December 31, 1987. In the event revised criteria have not been implemented by this date, however, it is anticipated that the postings will resume under the current Mandatory Posting Rule.

The proposed rule change is consistent with section 6 of the Act in that it will encourage the dissemination of more competitive markets by the MSE, thereby promoting just and equitable principles of trade, and, in general, protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The MSE does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

CSAE representatives and Exchange staff have been meeting on an ongoing basis with Floor member representatives to receive input on revising specialist evaluation criteria.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. The Exchange anticipates that revised specialist evaluation criteria will be developed by December 31, 1987. The Board determined to suspend the application of the Mandatory Posting Rule for an additional six month period ending June 30, 1987 with the expectation that the CSAE representatives, Exchange staff members, and Floor members will submit to the Board revised specialist evaluation criteria in the near future.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to the file number in the caption above and should be submitted by October 7, 1987.

V. Conclusion

The Commission finds that the proposed rule change is consistent with

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[1] *See*, Securities Exchange Act Rel. No. 24444 (May 12, 1987) 52 FR 19002.

[2] In this regard, we note that the Exchange indicated in SR-MSE-87-1 that it intended to submit revised specialist performance evaluation criteria to the Commission by June 30, 1987. The Exchange noted, however, that if it had not submitted revised evaluation criteria to the Commission by that date, it would resume posting securities for applications under the Mandatory Posting Rule for the six month period ending June 30, 1987. This rule filing suspends the posting again for the first half of 1987.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

As noted in the previous Commission order approving suspension of the Mandatory Posting Rule for the two six month periods ending June 30 and December 31, 1986, [3] the Commission believes that it is important for the Exchange to monitor the performance of MSE specialists and co-specialists to ensure that they provide the best possible markets for the securities they trade. In this regard, the Commission believes the Exchange's plan to revise its mandatory posting evaluation criteria is part of continuing effort to develop comprehensive, balanced, and fair specialist performance standards.

Based on the above, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that approval of the proposed rule change would suspend the application of the Rule for an additional six months while simultaneously providing the Exchange with additional time to complete its review and submit to the Commission revised specialist evaluation performance criteria. The Commission, therefore, believes that accelerated approval of the proposed rule change is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

Dated: September 9, 1987.

[FR Doc. 87-21367 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for United Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 10, 1987

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Del-Val Financial Corporation, Common Stock, $1.00 Par Value (File No. 7-0437)

Furr's/Bishop's Cafeterias, L.P., Depositary, Preference, Units (File No. 7-0438)

John Fluke MFG., Co., Common Stock, $.50 Par Value (File No. 7-0439)

Americus Trust for American Express Shares, Scores (File No. 7-0440)

Americus Trust for Ford Shares, Scores (File No. 7-0441)

Americus Trust for Mobil Oil Shares, Scores (File No. 7-0442)

Americus Trust for Bristol-Myers Shares, Scores (File No. 7-0443)

Americus Trust for Coca-Cola Shares, Scores (File No. 7-0444)

Americus Trust for Dow Chemical Shares, Scores (File No. 7-0445)

Americus Trust for General Electric Shares, Scores (File No. 7-0446)

Lewis Galoob Toys, Inc., Common Stock, $.01 Par Value (File No. 7-0447)

Turner Broadcasting System, Inc., Class A Common Stock, 6¼ Par Value (File No. 7-0448)

Turner Broadcasting System, Inc., Class B Common Stock, 6¼ Par Value (File No. 7-0449)

Solitron Devices, Inc. (Del.) Common Stock, $1.00 Par Value (File No. 7-0450)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 1, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21370 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange; Application for Unlisted Trading Privileges in an Over-the-Counter Security

September 9, 1987.

The Midwest Stock Exchange, Inc. ("MSE") on September 4, 1987, submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under section 12(b) of the Act:

File No	Symbol	Issuer
7-0485	MSFT	Microsoft Corp., Common Stock, $.001 Par Value.

Comments

Interested persons are invited to submit on or before September 30, 1987, written comments, data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are requested to address whether they believe the grant of UTP is consistent with section 12(f)(1)(C). In considering an application for extension of UTP to OTC securities under section 12(f)(1)(C), the Commission is required to take account of, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant such application if any rule of the national securities exchange making an application under 12(f)(1)(C) would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the activity of market makers who are specialists and such dealers who are not specialists.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21371 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

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[3] See, Securities Exchange Act Rel. No. 24444 (May 12, 1987), 52 FR 19002.

[4] 17 CFR 200.30-3.

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[Release No. 34-24880; File No. SR-NYSE-87-14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc.; Indications of Interest Upon Openings and Reopenings

On April 30, 1987, the New York Stock Exchange, Inc. ("NYSE") submitted to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, a proposed rule change that would revise the NYSE's policy on opening and reopening of trading after indications of interest have been disseminated by the specialist. The proposal also sets forth the NYSE's policy on when a specialist may commence dissemination of indications of interest in a security that has been subject to a trading halt. The proposed rule change was noticed in Securities Exchange Act Relases No. 24510 (May 26, 1987), 52 FR 20657. No comments were received.

The proposal retains the current requirement of waiting at least fifteen minutes from the first indication of interest before reopening a stock, but reduces the additional delay required for reopening when more than one indication is necessary. Under the proposal, the additional fifteen minute waiting period currently required after each subsequent indication would be reduced to either five or ten minutes depending upon the circumstances.[1]

The proposal also sets forth situations where opening indications will be permitted, subject in most cases to the waiting periods described above. It permits the dissemination of an initial indication with the approval of a Floor Official before 9:30 for a security which is a spinoff or for which a trading halt had existed at the close of the prior trading session; permits indications before opening the security in the case of an initial public offering with the approval of a Floor Director or Floor Governor; and in any other situation, permits pre-opening indications with the approval of a Floor Director or Floor Governor and authorizes them to tailor the waiting periods to the situation.[2]

In its filing, the NYSE states that the purpose of the proposed rule change is to eliminate its competitive disadvantage arising out of inconsistencies between the CTA Plan, of which the NYSE is a participant, and the NYSE's policy on reopenings. The CTA Plan permits markets to resume trading after fifteen minutes as measured by "T time" (*i.e.*, the time at which news has been fully disclosed), so long as the market has disseminated indications of interest during that fifteen minute period, [3] whereas the NYSE cannot resume trading until fifteen minutes after the last indication prints. The proposed rule change reflects the NYSE's determination that, when one or more indications follows an initial indication, investors and other off-floor participants will have an adequate time to react to indications. As noted above, there still would be the fifteen minute minimum requirement, thereby continuing a longer waiting period than required under the current CTA Plan.

The Commission has carefully reviewed the proposal and believes the proposal adequately balances the need to provide the public sufficient time to react to indications of interest with the NYSE's desire to be competitive with other marketplaces. Although the proposal does reduce the overall waiting period where successive indications occur, it does not premit the reopening of the market any earlier than fifteen minutes from the first indication. The NYSE will monitor the implementation of these procedures and report its findings to the Commission at the conclusion of the first year of the policy's operation.

The Commission also believes that the granting to Floor Officials, Governors, and Directors of discretion to approve disseminations for pre-opering indications in instances such as contemplated in the proposal is appropriate. Floor officials are appointed by the Exchange for the purpose of ensuring that required procedures are followed by members. These officials are trained to make appropriate decisions concerning procedures on the floor and should be very familiar with floor operations and trading situations. Accordingly, the NYSE should be able to rely on their expertise in authorizing pre-opening indications. Based on the above, the Commission finds that the proposed rule change is consistent with the requirements for the Act and the rules and regulations thereunder applicable to a national securities exhange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefor ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NYSE–87–14) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 4, 1987.

[FR Doc. 87–21368 Filed 9–15–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 24895; File No. ODD–87–3]

Self-Regulatory Organizations; The Options Clearing Corp.; Order Granting Approval to Proposed Amendments to Options Disclosure Document

On August 29, 1987, the Options Clearing Corporation ("OCC"), in conjunction with the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. [collectively, the self-regulatory organizations ("SROs")] submitted to the Commission amended copies of an options disclosure document ("ODD") pursuant to Rule 9b-1 of the Securities Exchange Act of 1934 ("Act").[1] Rule 9b-1 requires that the ODD contain information concerning, among other matters, the mechanics of buying, writing and exercising standardized options, and the risks of trading the options, and prohibits a broker or dealer from accepting a customer's options order, or approving a customer's account for trading, unless the broker furnishes the customer with an ODD.

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[1] The fifteen minute waiting period may be reduced to ten minutes if one of more indications perceded it and the last indication and the immediately preceding indication do not overlap. The waiting period may be reduced to five minutes if one or more indications preceded it and the last indication and the Imme liately preceeding indication do overlap.

[2] For example, under the revised policy the NYSE has indicated that a Floor Director of Floor Governor may approve pre-9:30 indications where significant news concerning and NYSE-listed company was released after the market closed the day before and in situations such as "Triple Witching" days, to provide for more orderly trading. *See* sections (1)(d) and (2)((b), File No. SR-NYSE–87–14, at 1–2. In Securities Exchange Act Release No. 24596 (June 16, 1987), 52 FR 23618, the Commission granted accelerated approval of a proposal by the NYSE (File No. SR-NYSE–87–17) to permit, among other things, pre-opening indications of interest and the reduction of waiting periods on the June 19 "Expiration Friday" in order to assist in handling order flow associated with the concurrent expiration of stock index futures, stock index options and options on stock index futures. These procedures were not utilized, however, since the volume and volatility on June 19 was less than on previous Expiration Fridays.

[3] *See* Securities Exchange Act Release No. 22981 (March 13, 1986), 51 FR 8731.

[1] 17 CFR 240.9b-1 (1986).

The disclosure document filed with the Commission reflects recent changes in the options markets. For example, the revised document discusses some of the special characteristics and risks of internationally-traded options; [2] the commencement of evening trading in foreign currency options; [3] the possibility that the settlement value of certain index options may be determined by reference to the prices of the constituent stocks at times other than the close of trading; [4] proposals to trade options on Treasury yield measures that would be settled in cash rather than by the delivery of underlying securities; [5] and new settlement procedures for foreign currency options.[6] The ODD also states that in the future the time period during which European-style options may be exercised may be extended beyond the current one-day period.[7]

Rule 9b-1 provides that an options market must file five copies of amendments to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers unless the Commission determines otherwise having due regard to the adequacy of the information fisclosed and the protection of investors. This provision is intended to permit the Commission either to accelerate or extend the time period definitive copies of a disclosure document may be distributed to the public.

The Commission has reviewed the amended disclosure document and finds that it is consistent with the protection of investors and in the public interest to allow its distribution as of September 17, 1987.[8]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 9, 1987.

[FR Doc. 87-21369 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

[2] *E.g.*, the document discusses the possibility that option premiums in foreign countries for internationally-traded options may not reflect current prices of the underlying interests in the United States, because foreign options markets may be open for trading during hours or on days when U.S. markets are closed.

[3] As of the date of this release, one U.S. options market, the Philadelphia Stock Exchange ("Phlx"), plans to initiate trading in foreign currency options during evening trading sessions. *See* Securities Exchange Act Release No. 24652, June 29, 1987, 52 FR 25680.

[4] Disclosure regarding this issue previously was approved by the Commission, and was made by the OCC and SROs, by means of a supplement to the ODD. *See* Securities Exchange Act Release No. 24259, March 25, 1987, 52 FR 10651. The present amendments provide further disclosure of the ramifications of settlement procedures based on other than the closing prices of the underlying stocks.

[5] As of the date of this release, the Commission has not approved any new debt option contracts as described in the amended ODD's new section on Treasury yield options. Assuming that such Treasury yield options ultimately are approved for options trading, the Commission separately will consider, at that time, whether the ODD, as approved in this Order, adequately describes the characteristics and risks of such options. Accordingly, the Commission's determination to approve the revised ODD does not necessarily entail a conclusion that the ODD disclosure regarding proposed Treasury yield options complies with Rule 9b-1.

[6] The revised ODD states that the Intermarket Clearing Corporation ("ICC"), a wholly owned subsidiary of OCC, may act as OCC's agent in making foreign currency settlements with OCC Clearing Members. ICC's settlement procedures are same as those of OCC. In addition, OCC has established procedures whereby Clearing Members may permit customers to make settlement directly with an OCC correspondent bank.

[7] At the current time all of the European-style options traded on U.S. markets are exercisable only on the day before expiration. The Commission reserves judgment regarding the adequacy of the revised ODD's disclosure concerning this matter pending the filing of SRO proposals to effectuate such a change, and Commission approval thereof.

[Release No. 34-24889; File No. SR-Phlx-87-20]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder, [2] the Philadelphia Stock Exchange, Inc. (Phlx" or "Exchange"), on June 10, 1987, filed with the Securities and Exchange Commission ("Commission") a proposed rule change that would allow the Phlx to list options on a 20-stock Utility Index. The proposed rule change was published for comment in Securities Exchange Act Release No. 24722 (July 20, 1987), 52 FR 28403. No comments were received on the proposed rule change.

The Phlx proposes to list options on a Utility Index which it has developed. This narrow-based index [3] would be comprised of 20 common stocks of domestic companies that are involved primarily in electric power generation. These companies include many of the most highly capitalized American electric utility companies. The Utility Index would be capitalization-weighted and its value would be updated at least every minute during the trading day.[4]

Options on the Utility Index would be traded pursuant to current Exchange rules governing the trading of index options.[5] These rules govern matters such as units of trading, exercise prices, expiration cycles, premium quotations, position and exercise limits, and replacement of stocks in an index. The only rule amendment proposed by the Phlx in connection with listing Utility Index options is an amendment to Rule 1006A ("Other Restrictions on Options Transactions and Exercise") that would specify that the Exchange would offer only European-style options on the Utility Index and that, accordingly, restrictions on exercise would be in effect until the last trading day prior to expiration.[6]

The Commission previously has indicated that minimum standards should be designed to ensure that narrow-based index options are not used as a subterfuge to trade options on individual stocks that do not meet the options eligibility standards [7] or as a

[8] Rule 9b-1 provides that the use of an options disclosure document shall not be permitted unless the options classes to which the document relates are the subject of an effective registration statement on Form S-20 under the Securities Act of 1933. Post-Effective Amendment No. 1 to OCC's Form S-20 registration statement covering the options classes discussed in the ODD became effective on April 30, 1987. *See* Registration No. 33-4165.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] A narrow-based index generally is considered an industry index designed to be representative of price movements in particular categories of stocks. *See* Phlx Rule 1000A(11). The Utility Index will be subject to the Phlx's rules relating to narrow-based indexes, which often differ from the requirements relating to broad-based indexes. For example, Phlx Rule 722 requires margin for short call and put positions in narrow-based indexes to be deposited and maintained in an amount equal to the premium, or market value of the contract, plus 15% of the index's dollar value, less any amount the option is out-of-the-money, with a minimum required margin of premium plus 5% of the contract's dollar value. By contrast, the margin requirement for a broad-based index generally is the premium, or market value of the contract, plus 5% of the index's dollar value, less any amount the option is out-of-the-money, with a minimum required margin of premium plus 2% of the index's dollar value. Under Phlx Rule 1001A(b)(1), position and exercise limits for narrow-based indexes are 8,000 contracts, while Phlx Rule 1001A(a) sets position and exercise limits for broad-based indexes at an aggregate contract value of $300 million.

[4] Details relating the calculation of the Index value and the composition of the Index, including a list of the specific stocks and their prices, market values and relative weights in the Utility Index, were included in the original rule filing. *See* 52 FR at 28404-05.

[5] *See* Phlx Rules 1000A-1103A.

[6] Although a European-style option is designed so that exercise cannot occur prior to the option's expiration date, investors are free to trade out of their positions at any time throughout the life of the option.

[7] The options exchanges have adopted uniform options eligibility standards. To be eligible for options trading, a company's common stock must, for example, have a market price per share of at

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way to trade options on one stock that makes up a very large proportion of the index.[8] The Commission decided, however, that, rather than setting an absolute minimum number of securities that could be included in a narrow-based index, the exchanges should establish appropriate standards and submit proposed index options to the Commission for review.

In view of the Commission's concerns regarding potential abuses in connection with narrow-based indexes, the exchanges generally have set forth criteria that must be met for industry or narrow-based indexes. For example, the Pacific Stock Exchange's ("PSE") rules require that no stock comprise greater than 50% of the index and that any stock constituting greater than 10% of the index be eligible for options trading.[9] In addition, if the index consists of fewer than 20 stocks, at least 50% of its value must be comprised of options-eligible stocks; if it consists of 20 or more stocks, at least 35% of its value must be options-eligible stocks. Other exchanges, however, such as the Phlx, have chosen to provide less specific guidance in their Rules as to what minimum criteria must be satisfied for designation as a narrow-based index.[10]

Regardless of the specificity provided by an exchange in its rules, however, the Commission must determine that the proposed index option satisfies the relevant statutory criteria. In particular, the Commission must find that the proposed index contains a sufficient number of active and liquid stocks so that the index is not susceptible to manipulation, and that the index is not used as a surrogate for trading options on securities that themselves are not options-eligible.

The Phlx's proposed Utility Index satisfies all of the guidelines described above, even the very detailed criteria set forth in PSE Rule XXI. No stock in the Utility Index comprises more than 10% of the value of the index.[11] The stocks in the Index are, for the most part, activity traded.[12] In addition, 80% of the stocks in the 20-stock Utility Index are options-eligible.[13] Finally, no one individual or group of the 20 stocks has a capitalization that is so large in comparison to the other stocks in the Index that its price movements will impact disproportionately the Index's value. Consequently, the Commission does not believe that purchases or sales of several of the utility stocks comprising the Index would make the Index readily susceptible to manipulation.

The trading of listed options on an index of domestic utility stocks will provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of utility stocks. In this regard, the Commission notes that the Phlx Utility Index are currently comprised correlates very closely to movements of leading utility averages.[14] Institutional and individual investors, among others, with substantial investments in utility stocks will be able to use the Phlx Utility Index to hedge their exposure or to supplement their dividend income by writing Utility Index call options.[15]

Application of the Phlx's existing rules governing trading of index options should ensure that Utility Index options trading is conducted in a fair and orderly manner. In addition, the Phlx has in place surveillance procedures for other narrow-based indexes currently trading on the Phlx. These procedures will be used by Phlx staff to ensure that unusual trading in the Utility Index will be identified and investigated quickly.

The availability of options on the Utility Index should help to remove impediments to a free and open market and should facilitate transactions in securities. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6[16] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 9, 1987.

[FR Doc. 87-21313 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

least $10 and be held by a minimum of 6,000 shareholders. In addition, the company must have at least seven million publicly-traded shares outstanding, the trading volume of which must have been at least 2.4 million shares in the preceding 12 months. *See, e.g.*, American Stock Exchange Rule 915; Chicago Board Options Exchange Rule 5.3.

[8] *See* Securities Exchange Act Release No. 20396 (November 18, 1983), 48 FR 53691.

[9] *See* PSE Rule XXI, Section 3(b)-(e).

[10] For example, Phlx Rule 1009A provides that the securities underlying the index do not have to meet the requirements of Phlx Rule 1009, which provides the minimum criteria necessary for a security to qualify for options trading. *See* note 7, *supra*.

[11] According to the figures attached as *Exhibit* A to the original rule filing, 52 FR at 28405, Pacific Gas and Electric Co., at 8.92% of the Index's total capitalization, comprised the greatest percentage of the Utility Index value as of June 4, 1987.

[12] All of the Utility Index's 20 component stocks are listed and traded on the New York Stock Exchange. For the six-month period March 1, 1987 through August 31, 1987, average daily trading volume for these stocks has ranged from a low of approximately 164,178 shares for Centerior Energy to a high of 775,232 shares for Pacific Gas and Electric.

[13] According to the Phlx, 16 of the 20 Utility Index stocks are options-eligible. These include: American Electric Power Co.; Centerior Energy Co.; Commonwealth Edison Co.; Consolidated Edison of N.Y., Detroit Edison Co., Dominion Resources, Inc.; Duke Power Co.; FPL Group Inc.; Houston Industries, Inc.; Niagara Mohawk Power Corp.; Pacific Gas and Electric Co.; Philadelphia Electric; Public Service Enterprise Group; Southern California Edison Co.; Southern Company; and Texas Utilities Co. The four utility stocks that are not options-eligible are: Union Electric Co.; Pacificorp; Ohio Edison Co.; and Northeast Utilities.

[14] According to figures supplied by the Phlx, the correlation coefficients for the Utility Index as compared with the Dow Jones Utility Average (15 stocks) and the Standard & Poor's Electric Average (21 stocks) are greater than 95% over terms ranging from 150 days to 10 years. *See* letter from William W. Uchimoto, Acting General Council, Phlx, to David Underhill, Attorney, Divison of Market Regulation, SEC, dated August 6, 1987.

[15] Unlike the regulations under the Commodity Exchange Act, the federal securitities laws do not contain an explicit "economic purpose" test for new options products. Nevertheless, to approve a new options proposal the Commission must be satisfied that its introduction is in the public interest. *See* section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5) (1982). Such a finding would be difficult with respect to an options product that served no hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. While it is unclear whether an index product based on 20 utility stocks will attract widespread investor participation, the Commission accepts the Phlx's representation in a September 8, 1987 telephone conversation that a utility industry index would serve an economic function by allowing investors to hedge portfolios of utility stocks and take positions with respect to price movements in the utility segment of the market. Telephone conversation between Michele Berkowitz, Staff Counsel, Phlx, and David Underhill, Attorney, Division of Market Regulation, SEC. Accordingly, because the Commission is satisfied that the Index will not raise regulatory problems and can serve an economic function, the Commission believes it is up to the business judgement of the exchange to determine whether to introduce the product.

[16] 15 U.S.C. 78f (1982).

[17] 15 U.S.C. 78s(b)(2) (1982).

[Release No. 34-24897; File No. SR-SCCP-87-02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Approving Proposed Rule Change

The Stock Clearing Corporation of Philadelphia ("SCCP") on June 6, 1987, filed a proposed rule change with the Commission under section 19(b) of the Securities Exchange Act ("Act"). As explained in greater detail below, the proposal would authorize SCCP to establish procedures for the automated

transfer and processing of customers' security accounts. The Commission published notice of the proposal in the **Federal Register** on July 17, 1987, to solicit public comment.[1] No public comment was received. This order approves the proposal.

I. Description

The proposal would authorize SCCP to establish procedures for the automated transfer and processing of customer securities accounts on behalf of SCCP participants.[2] The procedures would include the establishment of time periods and regulations for the automated transfer of a participant's customers' securities accounts, including transfer initiation forms, instructions, reports to participants, and any information required by SCCP to transfer a securities account from one clearing agency participant to another participant. Further, SCCP would be authorized to adopt procedures concerning acceptances or rejections of customers' account transfer and the transfer of items in customer accounts through its Continuous Net Settlement ("CNS") System or Trade-by-Trade System.[3] SCCP further states that it currently is drafting rules of implementation for this enabling proposal.[4]

The proposal provides that SCCP would not be liable for the completeness or accuracy of the information contained in a participant's request to transfer a customer's securities account through the facilities of SCCP or otherwise; for the completeness or accuracy of any documentation necessary for a participant to transfer a customer's securities account; or for the vailidity of information regarding any particular asset contained in a customer securities accounts. SCCP states that its sole responsibility would be to make any transfer initiation documentation or information forms available to the delivering participant who is to transfer the account or to return such forms to the receiving participant to whom the account is to be transferred.[5]

II. SCCP's Rationale

The purpose of the proposal is to allow transfers of customer securities accounts among SCCP participants, and between a SCCP participant and a participant of another registered clearing agency that has established an automated account transfer service. SCCP states that the proposal would provide the necessary enabling authority for SCCP to establish procedures for an automated account transfer service, including applicable forms, reports, instructions, or other necessary information and data. SCCP also states that the proposal is consistent with the Act, particularly section 17A of the Act, because it would facilitate the prompt and accurate clearance and settlement of securities transactions, including customer account transfers.

III. Discussion

The Commission believes that SCCP's proposal is consistent with the Act. The Commission believes that the proposal would promote the timely and accurate transfer of customer's securities accounts in accordance with section 17A of the Act and, more particularly, that the use of automated procedures for transferring accounts would enhance efficiency and reduce expenses in account transfer processing. The proposal also should help to reduce, for depository-eligible securities, the manually intensive handling of security certificates and related paperwork between broker-dealers.

The Commission notes that ACATS is already in effect at NSCC [6] and at Midwest Clearing Corporation.[7] Additionally some securities exchanges, including the New York Stock Exchange [8] and the Midwest Stock Exchange,[9] require their member organizations dealing with the public to use ACATS for customer account transfers.

The Commission also notes that SCCP's proposal includes disclaimers of SCCP responsibility for, among other things, the accuracy or completeness of instructions of reports for customer account transfers. The Commission believes those disclaimers are appropriate because SCCP generally would not be in position to monitor those documents for completeness or accuracy. Under the proposal, SCCP would act simply as intermediary in relaying account transfer information to NSCC (as its facilities manager for ACATS) and among participants. The proposal does not alter SCCP's higher standard of care applicable to the safeguarding of securities and funds. Accordingly, the Commission believes that SCCP's standard of care under the proposal is consistent with the Act.[10]

The Commission recognizes that the proposal authorizes SCCP to establish procedures for the ACATS services and that it provides a framework for that service in SCCP's rules. Accordingly, SCCP must file its procedures for review under the Act before initiating any customer's account transfer on behalf of SCCP participants.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act and, in particular, with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–SCCP–87–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 10, 1987.

[FR Doc. 87–21314 Filed 9–15–87; 8:45 am]

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[1] *See* Securities Exchange Act Rel. No. 24696 (July 10, 1987), 52 FR 27093.

[2] SCCP would provide services primarily to Philadelphia Stock Exchange ("PHLX") members and SCCP participants that are not members of the National Securities Clearing Corporation ("NSCC").

[3] SCCP states in its filing the NSCC has agreed to serve as the facilities manager for the proposal. SCCP would accept the transfer information requests from its clearing firms, transmit the information on tape to NSCC for processing, accept the processed data from NSCC and furnish the reports to its clearing firms. Telephone conversation between William W. Uchimoto, Acting General Counsel, SCCP, and Thomas C. Etter, Attorney, Securities and Exchange Commission, August 24, 1987.

[4] SCCP plans to adopt rules of implementation in the form of a procedural manual pursuant to section 19(b)(3)(A) of the Act. Telephone conversation between William W. Uchimoto, Acting General Counsel, SCCP, and Thomas C. Etter, Attorney, Securities and Exchange Commission, August 24, 1987. Additionally, PHLX plans to adopt a rule requiring its member organizations dealing with the public to use ACATS. Telephone conversations between William W. Uchimoto, Acting General Counsel, PHLX, and Thomas C. Etter, Attorney, Securities and Exchange Commission, September 9, 1987.

[5] The proposal would not affect SCCP's liability for establishing CNS positions which are governed by SCCP's existing rules. Telephone conversation between William W. Uchimoto, Acting General Counsel, SCCP, and Thomas C. Etter, Attorney, Securities and Exchange Commission, August 24, 1987.

[6] *See* Securities Exchange Act Rel. No. 22481 (September 30, 1985), 50 FR 41274.

[7] *See* Securities Exchange Act Rel. No. 24218 (March 16, 1987), 52 FR 9230.

[8] *See* Securities Exchange Act Rel. Nos. 22913 (February 14, 1986), 51 FR 6845; and 22662 (November 26, 1985), 50 FR 49643.

[9] *See* Securities Exchange Act Rel. No. 24819 (August 19, 1987), 52 FR 32229.

[10] *See, e.g.*, Securities Exchange Act Rel. Nos. 16900 (June 17, 1980), 45 FR 41920; 22940 (February 24, 1986), 51 FR 7169.

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[Rel. No. IC-15971; 812-6818]

Application; Compagnie Financiere de Suez

September 10, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Campagnie Financiere de Suez.

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from the provisions of the 1940 Act.

Summary of Application: Applicant seeks an order permitting it to issue and sell in the United States its debt or equity securities, either directly or in the form of American Depository Shares, evidenced by American Depository Receipts.

Filing Date: The application was filed on August 7, 1987 and amended on September 10, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 30, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Michael Gruson, Esq. or Jonathan Weld, Esq., Shearman and Sterling, 153 East 53rd Street, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney (202) 272–3026, or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is the holding company of the Suez group (the "Suez Group"), a leading French banking organization which ranks by total assets among the largest banking and financial organizations in the world. Through its principal operating subsidiary, Banque Idosuez (the "Subsidiary"), and other banking subsidiaries, the Suez Group offers a full range of general commercial banking services to large corporate clients and individual customers. In addition to its commercial banking activities, the Suez Group provides a wide range of banking services throughout France and internationally, including corporate finance advice and advice on mergers and acquisitions, portfolio administration and custodial services and, outside the United States, underwriting of securities issues. The Subsidiary is currently operating under an SEC exemptive order permitting it to issue commercial paper notes and other debt securities in the United States (Investment Company Act Rel. No. 13517, Sept. 20, 1983).

2. At December 31, 1986, Applicant had consolidated total assets of $51.6 billion. Consolidated customer deposits and loans each amounted to $14.9 billion. Estimated consolidated net worth (excluding good will) at December 31, 1986 was $2.6 billion and consolidated net income for 1986 was $372 million.[1]

In addition to the Subsidiary, the Suez Group includes a number of financial and other companies, within and outside of France.

3. The French government, which presently owns all the shares of the Applicant, is planning to sell the shares pursuant to its privatization program. The privatization of the Applicant is tentatively scheduled for the beginning of October.

4. Applicant and its banking subsidiaries are subject to extensive government regulations in France under a structure that is generally comparable to regulation applicable to banks and bank holding companies in the United States. Rules and regulations governing the operation of french banks and other credit institutions range from licensing requirements and restrictions on the scope of non-banking activities to detail balance sheet ratios and regular reporting and reserve requirements.

5. Applicant has a substantial banking presence in the United States through the New York and Chicago branches of the Subsidiary and the offices and agencies of the Subsidiary in other states. The New York and Chicago branches of the Subsidiary are principally engaged in wholesale commercial lending. The United States branches operate under licenses from the Superintendent of Banks of the State of New York and Illinois and are subject to State supervision and regulation substantially equivalent to those applicable to banks organized under the banking laws of New York and Illinois. The other United States offices and agencies of the Subsidiary are subject to extensive regulation under state laws comparable to the regularoty requirements of the States of New York and Illinois.

6. In addition, Applicant is subject to federal reporting requirements under the Bank Holding Company Act of 1956, and the United States branches, offices and agencies of the Subsidiary are subject to reporting and examination requirements under the International Banking Act of 1978, which are similar to those imposed on domestic banks that are members of the Federal Reserve System.

7. Applicant wishes to be able to have access to the United States capital markets through private placements or public offerings of its debt, and its equity securities, either directly or in the form of American Depositary Shares represented by American Depositary Receipts. With respect to public offerings of its debt and equity securities, and Applicant would register such securities under the Securities Act of 1933 (the "1933 Act") and would become subject to and would comply with the reporting requirements applicable to foreign issuers under the Securities Exchange Act of 1934. Although the Applicant would offer its debt or equity securities to the general public, it has been advised by its investment banks that the market for such securities would be largely institutional investors.

8. Applicant would ensure that any future placement, including the private placement to be made in connection with the privatization described above, of its debt or equity securities in the United States under circumstances not requiring registration under the 1933 Act would meet the prevailing standards for exemption from registration. Applicant would not effect any such private placement without obtaining an opinion of Under States counsel that the placement would be exempt from the registration requirements of the 1933 Act.

Applicant's Legal Analysis

1. The requested order is necessary or appropriate in the public interest. By

[1] Amounts stated in United States dollars ($) have been converted form French Francs (FF) at the rate of exchange of $1 = 6.4555 FF, the medium of the buy and sell rates for the United States dollar on the Paris Stock Exchange on December 31, 1986. On August 4, 1987 the rate of exchange was $1 = 6.2445 FF.

providing the Applicant with the opportunity to have greater access to the United States capital markets, approval of the application would advance the policies underlying the International Banking Act of 1978, which include placing United States banks and foreign banks on a basis of competitive equality in their United States transactions. Approval would also make a foreign issuer's debt or equity securities available to the general investing public, as well as to institutional and sophisticated investors, subject to the protections of the United States securities laws.

2. The requested order is consistent with the protection of investors. Applicant is subject to a comprehensive scheme of regulation both in France and the United States. Imposition of a second scheme of regulation would impose superfluous inhibitions and expense without contributing to the protection of investors. The requested order is consistent with the purposes of the 1040 Act because regulation of institutions similar to the Applicant was not within the intent of the 1040 Act.

Applicant's Conditions

Applicant agrees to the following undertakings:

1. In connection with the private placements and registered offerings of Applicant's debt and equity securities, the disclosure contained in the prespectus or private placement memorandum would be at least as comprehensive as that customarily provided with respect to foreign issuers making those type of offerings in the United States. Any prospectus or memorandum relating to an offering would contain a description of Applicant. It would also contain the Applicant's most recently published financial statements audited by a firm of independent public accountants of recognized international standing and would disclose any material differences between the accounting principles applied in the preparation of such financial statements and United States generally accepted accounting principles applicable to United States banks. Such financial statements would be updated to reflect material changes in the financial condition of Applicant

2. Applicant agrees that all issues of its debt securities in the United States shall have received prior to issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization and that Applicant's United States counsel shall have certified that such rating has been received, provided, however, that no such rating need to obtained with respect to any such issue if, in the opinion of Applicant's United States counsel, an exemption from registration is available under Section 4 of the 1933 Act.

3. Applicant undertakes that in the event of an offering in the United States of debt securities denominated in a currency other than United States dollars, Applicant will set forth in the prospectus or memorandum relating to such offering (i) the rate of exchange between the currency in which the securities are denominated and United States dollars as of a recent date and (ii) appropriate disclosure of the risks to investors regarding the potential for exchange rate fluctuations.

4. Applicant undertakes to submit expressly to the jurisdiction of the federal and New York courts in the City of New York for the purpose of any suit, action or proceeding arising out of any offering conducted in reliance upon the order of the SEC requested hereby or in connection with the debt or equity securities distributed thereby. Applicant further undertakes that in connection with any such offering of debt or equity securities it would appoint an agency in the City of New York to accept service of process. Such submission to jurisdiction and appointment of an agent for service of process would be irrevocable for as long as any of the Applicant's debt or equity securities issued in reliance upon the order of the SEC requested hereby remained outstanding in the United States. Such submission of jurisdiction and appointment of agency for service of process would not affect the right of any holder of such debt or equity securities to bring suit in any court having jurisdiction over the Applicant by virtue of the offer and sale of the securities or otherwise. The agent for service of process would not be a trustee for the holders of securities or have any responsibilities or duties to act for such holders.

5. Applicant has a substantial banking presence in the United States through the New York and Chicago branches of the Subsidiary, and the Subsidiary's offices and agencies in other states. Applicant represents that it has no present intention to curtail its banking operations in the United States so as to cease to be regulated as a bank in the United States. If, however, such operations are curtailed in the future with the result that the Applicant is no longer regulated as a bank in the United States, the Applicant agrees that it will continue to comply with the undertakings concerning the Applicant's submission to jurisdiction and appointment of an agent for service of process, as set forth above, until such time as there shall be no holder in the United States of the Applicant's debt or equity securities issued in reliance upon any order made pursuant to the application.

6. Applicant would issue debt or equity securities in the United States only so long as the Applicant is supervised and examined by French governmental authorities having the power of supervision over financial institutions in France and, in respect of its United States banking operations, by state or federal authorities in the United States having the power of supervision over banks and bank holding companies in the United States. Applicant represents that it has no present intention to curtail its banking operations in France so as to cease to be subject to banking regulation in France.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21372 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15969; File No. 812-6758]

Application; Valley Opportunities Incorporated

September 9, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Valley Opportunities Incorporated ("Applicant").

Relevant 1940 Act Sections: Order requested under section 3(b)(2), or, alternatively, under section 6(c) exempting the Applicant from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities investment company or, alternatively, granting it an exemption from all provisions of the 1940 Act and the rules and regulations thereunder.

Filing Date: The Application was filed on June 12, 1986, and amended on September 3, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any request must be

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received by the SEC by 5:30 p.m., on October 2, 1987. Request a hearing in writing, giving the nature of your request, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send the request to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

ADDRESS: Secetary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Valley Opportunities Incorporated, 120 South Front Street, Mankato, Minnesota 55601.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel (202) 272–3030, of the Division of Investment Management (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The complete Application is available for a fee from either the SEC's public reference branch in person, or the SEC's commercial copier (800)–231–3282 (in Maryland, (301)–258–4300).

Applicant's Representations

1. Applicant is a newly organized development stage company formed to encourage commercial and industrial development in the Mankato-North Mankato area of southern Minnesota. Applicant's common stock has initially been distributed in an offering made pursuant to Rule 506 of Regulation D under section 4(2) of the Securities Act of 1933 (the "1933 Act"). Approximately $626,000 was raised from 26 investors in this offering, all of which are businesses located in the Mankato-North Mankato area. All of the investors represented in their subscription documents that they acquired the shares for purposes of investment and not for resale. The common shares of the Company are also subject to substantial restrictions on transfer, and bear a restrictive legend to that effect. No public active trading market is expected ever to develop for such common shares.

2. Applicant has been advised by counsel, and in turn has advised its investors, that it is not an "investment company" for purposes of the 1940 Act by virtue of the provisions of section 3(c)(1) of the 1940 Act, since Applicant is not making and does not currently propose to make a public offering of its securities and since its outstanding securities are held by less than 100 persons. Applicant now contemplates raising up to an additional $400,000-$600,000 from a large group of investors, however, which is likely to raise the total number of Applicant's security holders to over 100, pursuant to Regulation A or section 3(a)(11) under the Securities Act of 1933, as amended. Because of this, Applicant hereby requests an order pursuant to section 3(b)(2) of the 1940 Act, declaring that Applicant is directly and "primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading securities", or pursuant to section 6(c) of the 1940 Act, exempting Applicant from all provisions of the 1940 Act.

3. Applicant's Articles of Incorporation require the investment of 75% of its stockholders' equity, up to $750,000, in securities issued or guaranteed by, or backed with the full faith and credit of, the United States government or any state or local government unit, or in certificates of deposit of, or accounts in any bank or savings and loan institution, provided that the full amounts of such investments are insured by the FDIC or the FSLIC (hereinafter the "permitted investments"). Applicant may use the remaining 25% of the stockholders' equity and the income from such permitted investments in furtherance of the primary purpose of Applicant, which is to foster commercial and economic development in the Mankato-North Mankato area. Applicant's activities are focused on attracting new businesses to the area through, for example, advertisements in trade journals, direct mailings, surveys of local businesses, referrals from local chambers of commerce and various state agencies and other suitable activities. Applicant also provides a wide range of services as an accommodation to new businesses in its locale.

Applicant's Legal Conclusions

1. Applicant concedes that it may fall within the definition of an investment company under section 3(a)(3) of the 1940 Act because the value of its permitted investments most likely will exceed 40% of the value of Applicant's total assets. Moreover, although Applicant is primarily engaged in the business of promoting commercial and industrial development in a narrowly defined geographic area, it is possible that, due to the requirement that 75% of its stockholders' equity be invested in the permitted investments, Applicant could be deemed to be primarily engaged in the business of investing in securities, and therefore could fall within the definition of an "investment company" under section 3(a)(1) of the 1940 Act. Applicant contends, however, that the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes and the policies of the 1940 Act.

2. In support of its assertion, Applicant states that its board of directors has adopted a resolution requiring that no more than 40% of its investments may be made in securities which do not meet the definition of "government securities" as set forth in section 2(a)(16) of the 1940 Act. Moreover, Applicant asserts that although it is intended that applicant will be self-sustaining and eventually profitable, all investors have been advised that the primary purpose of applicant is the promotion of commercial and industrial development, and not the maximization of return on its shareholders' equity investments. Applicants Articles of Incorporation require a vote of two-thirds of the shareholders in order to change the requirement that 75% of its funds be invested in "permitted investments". This arrangement leaves the day-to-day operations of Applicant to its staff and to the volunteers serving the Applicant's board of directors, and reserves the decisions with respect to large investments or changes in its capital fund to its shareholders.

3. Applicant asserts that its primary business and the business of its predecessor (Valley Industrial Development Company ("VIDC"), a not-for-profit corporation which carried out development activities in the Mankato-North Mankato prior to Applicant's formation) has always been and will continue to be the promotion of economic and commercial development, rather than investment in securities. Applicant's and VIDC's recent activities are examples of such primary purpose. Second, although Applicant's offering materials warned of the applicability of the 1940 Act, its promoters, in their business plan, and Applicant's offering materials clearly identified its primary business as that of promoting commercial and economic development. Moreover, the marketing efforts of Applicant's many volunteers have focused almost exclusively on the economic and commercial development aspects of Applicant.

4. Applicant's present behavior is consistent with its primary purpose of promoting development, as evidenced by its activities to date, and management's almost single-minded attention to development activities, as opposed to investment activities. Management of Applicant and VIDC spend no more than 1% of their time in managing the capital fund. An investment committee consisting of four

bankers from the community makes the decisions with respect to Applicant's capital fund, but only one brief meeting of the committee has been held, to date. Another meeting of the committee is scheduled in the next few weeks but in view of the selfimposed limits on the use of Applicant's capital fund, the meeting is anticipated to last only about half an hour. Applicant currently has approximately 75% of its capital fund (approximately 470,000 of the total of $600,000 approximately) invested in United States Treasury obligations. The decision to restrict the capital fund to such conservative investments was intended to ensure a high degree of safety in preserving Applicant's capital with a minimum of investment management, as opposed to increasing the capital fund through aggressive investment management. Accordingly, Applicant's investment committee spends very little time in managing the capital fund, which distinguishes it from virtually all investment companies.

5. Although Applicant's sole source of "income" is the income from its capital fund, the real source of its income is the proceeds raised from local businesses who are investing in the economic and commercial development of their community and not in the hope that they would get a favorable return on their money. The proceeds from Valley's capital fund are not likely to cover expenses, but in the event that they do, that will be the only true income from the operations. And although Applicant's offering materials clearly identify the goal of making Applicant a profitable operation, were it not for the thousands of hours of free time devoted by its promoters, a large portion of the offering proceeds would have been consumed by now.

Applicant's Conditions

If the requested order is granted, the Applicant agrees to the following conditions:

1. Applicant will not engage in the trading of securities for short-term speculative purposes.

2. Applicant will be subject to all administrative, procedural and jurisdictional provisions of the 1940 Act and sections 9, 17(a)-(e), 31, 36(a) and 37 of the rules promulgated thereunder, as well as all sections of the 1940 Act and the rules promulgated thereunder necessary to implement and enforce the above sections of the 1940 Act, as if it were a registered investment company.

3. Regarding any future offerings of its securities, Applicant will (a) not make such offerings unless they are only to promote the industrial and commercial development in the area consistent with its Articles of Incorporation; (b) make such offerings only to residents of or businesses having a substantial presence in the Area; (c) require purchasers to represent that (i) they are purchasing for investment and not with a view to resale, (ii) with respect to any person purchasing in excess of $10,000 of the securities being offered, the amount purchased does not exceed 20% of such purchaser's net worth and (iii) they have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment; (d) require purchasers to enter into a shareholders' agreement whereby the Issuer and the Shareholders will have the right to purchase a selling Shareholder's securities for the same price initially paid by such selling shareholder to Issuer for the Shares to be sold; and (e) provide disclosure to investors prior to purchase of the conditions imposed by this Condition (3) and the restriction on the payment of dividends imposed by Condition (4);

4. Dividends will not be paid to Applicant's shareholders without Applicant either registering under the 1940 Act or obtaining the prior approval of the SEC;

5. Applicant will hold regular meetings of its shareholders for the purpose of electing directors and transacting whatever other business may come before the meeting;

6. Applicant will submit for shareholder ratification or approval at each annual shareholders' meeting the appointment of an independent certified public accountant engaged by Applicant;

7. Applicant will make available to shareholders its annual audited financial statements; and

8. Applicant will not repurchase any of its shares for a purchase price greater than it received upon the original issuance of such shares.

9. Applicant will continue to invest its funds with a view toward promoting industrial and commercial development in the Mankato-North Mankato area, and thus the development of a productive economic climate in the area, and not to making profits through investments in securities.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21313 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Service Station at Daggett, California; Closing

Notice is hereby given that on or about September 11, 1987, the Flight Service Station at Daggett, California, will be closed. Services to the general aviation public of Daggett, formerly provided by this office, will be provided by the Flight Service Station in Riverside, California. This information will be reflected in the reissuance of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Arlene B. Feldman,

Acting Director, Western-Pacific Region.

Issued in Lawndale, California, on September 2, 1987.

[FR Doc. 87-21230 Filed 9-15-87; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[BS-Ap-Nos. 2684 and 2699]

Metro North Commuter Railroad

The Metro North Commuter Railroad has petitioned the Federal Railroad Administration (FRA) seeking approval to remove all automatic wayside signals and install a traffic control system with the cap signals between milepost 0.7 and milepost 6.1 on the Harlem Line, all within the City of New York, New York. These proceedings are identified as FRA Block Signal Application Nos. 2684 and 2699.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on these proposals.

Accordingly, a public hearing is hereby set for 10:00 a.m. on December 10, 1987, in Room 305A of the Jacob K. Javits Federal Building at 26 Federal Plaza in New York, New York.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all intial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their

initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on September 10, 1987.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87-21327 Filed 9-15-87; 8:45 am]

BILLING CODE 4910-06-M

[BS-Ap-No. 2705]

Southern Pacific Transportation Co.

The Southern Pacific Transportation Company has petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue the automatic block signal system between Lyoth, California, and Fresno, California, a distance of approximately 122 miles. This proceeding is identified as FRA Block Signal Application No. 2705.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on these proposals.

Accordingly, a public hearing is hereby set for 10:00 a.m. on November 10, 1987, in Room 210 of the U.S. Post Office Builidng at 801 I Street in Sacramento, California.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on September 10, 1987.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87-21328 Filed 9-15-87; 8:45 am]

BILLING CODE 4910-06-M

UNITED STATES INFORMATION AGENCY

A Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

The American Judiciary Branch: A Study Tour for Turkish Justice Officials: The Office of Private Sector Programs will assist in supporting a two-week study tour to expose Turkish justice officials to the Judiciary Branch of the U.S. Government. This program will focus on the constitutional origin of the judicial systems in both societies as well as American legal processes and the administration of justice in our democracy. The program will include travel to Washington, DC, and at least one state capital. Participants will include representatives of Turkey's judicial/legal system.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have a lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials which contains proposal guidelines. Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (ATTN: Initiative Programs), United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

Dated: August 25, 1987.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 87-21275 Filed 9-15-87; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Medical Research Service Merit Review Boards; Meetings

The Veterans Administration gives notice under the Federal Advisory Committee Act of the meetings of the following Federal Advisory Committees.

Merit review board for	Date	Time	Location
Nephrology	Sept. 28, 1987	8 a.m. to 5 p.m.	Washington Plaza.[1]
Do	Sept. 29, 1987	do	
Alcoholism and Drug Dependence	Oct. 1, 1987	8 a.m. to 5 p.m.	Room 119, VA Central Office.[2]
Respiration	Oct. 4, 1987	7 p.m. to 10 p.m.	Vista Hotel.[3]
Do	Oct. 5, 1987	8 a.m. to 5 p.m.	
Infectious Disease	Oct. 9, 1987	7 p.m. to 10 p.m.	New York Hilton.[4]
Do	Oct. 10, 1987	8 a.m. to 5 p.m.	
Do	Oct. 11, 1987	8 a.m. to 12 p.m.	
Surgery	Oct. 11, 1987	8 a.m. to 6 p.m.	Pacific A [5] Hyatt Regency.
Hematology	Oct. 19, 1987	8 a.m. to 5 p.m.	Room 119, VA Central Office.
Mental Health and	Oct. 21, 1987	do	Vista Hotel.
Behavioral Science	Oct. 22, 1987	do	
Do	Oct. 23, 1987	do	
Gastroenterology	Oct. 26, 1987	do	Vista Hotel.
Do	Oct. 27, 1987	do	
Neurobiology	Oct. 26, 1987	do	Vista Hotel.

Merit review board for	Date	Time	Location
Do	Oct. 27, 1987	do	
Do	Oct. 28, 1987	do	
Cardiovascular Studies	Oct. 29, 1987	do	Room 119, VA Central Office.
Do	Oct. 30, 1987	do	
Oncology	Nov. 2, 1987	do	Room 119, VA Central Office.
Do	Nov. 3, 1987	do	
Endocrinology	Nov. 5, 1987	do	Vista Hotel.
Do	Nov. 6, 1987	do	
Basic Sciences	Nov. 9, 1987	do	Room 119, VA Central Office.
Do	Nov. 10, 1987	do	
Immunology	Nov. 12, 1987	8 a.m. to 5 p.m.	Room 119, VA Central Office.
Do	Nov. 13, 1987	do	

[1] Washington Plaza, 10 Thomas Circle, Washington, DC 20005.
[2] Veterans Administration Central Office, 810 Vermont Avenue, NW Washington, DC 20420.
[3] Vista International Hotel, 1400 M Street, NW, Washington, DC 20005.
[4] New York Hilton Hotel, 1335 Avenue of the Americas, New York, NY 10019.
[5] Hyatt Regency San Francisco, Embarcadero, San Francisco, CA 94111.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Veterans' Administration investigators working in Veterans Administration Medical Centers and clinics.

The meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552(c) (6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. Arlene E. Mitchell, Chief, Program Review Division, Medical Research Service, Veterans Administration, Washington, DC (202) 233–5065 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: September 10, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87–21312 Filed 9–15–87; 8:45 am]

BILLING CODE 8320–01–M

VOL
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Sunshine Act Meetings

Federal Register
Vol. 52, No. 179
Wednesday, September 16, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

September 10, 1987.

FCC To Hold Open Commission Meeting, Thursday, September 17, 1987

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 17, 1987, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Revision on Part 15 of the rules regarding the operation of radio frequency devices without an individual license. Summary: The FCC will consider the adoption of a Notice of Proposed Rule Making which addresses a number of changes in the technical and administrative provisions for operation of a non-licensed radio frequency device.

General—2—Title: Amendment of Parts 2 and 22 of the Commission's Rules to permit liberalization of technology and auxiliary service offerings in the Domestic Public Cellular Radio Telecommunications Service. Summary: The Commission will consider whether to adopt a Notice of Proposed Rule Making proposing technical and operational changes in the cellular service.

General—3—Title: Amendment of Parts 2 and 22 of the Commission's Rules relative to Cellular Communications Systems (Gen. Docket No. 84–1231); Amendment of Parts 2, 15 and 90 of the Commission's Rules and Regulations to Allocate Frequencies in the 900 MHz Reserve Band for private Land Mobile Use (Gen. Docket 84–1233); Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish other rules and policies pertaining to the use of radio frequencies in a Land Mobile Satellite Service for the provision of Various Common Carrier Services (Gen. Docket No. 84–1234). Summary: The Commission will consider a second Memorandum Opinion and Order addressing eight petitions for reconsideration of frequency allocations made in the *Report and Order* in the above proceedings.

General—4—Title: Amendment of Subpart H, Part 1 of the Commission's Rules and Regulations concerning *Ex Parte* Communications and Presentations in Commission Proceedings. Summary: The Commission will consider whether any aspects of its new *ex parte* rules should be reconsidered.

Common Carrier—1—Title: Report and Order in CC Docket No. 86–309, *Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service off of the Island of Puerto Rico.* Summary: The Commission will consider adoption of Policies concerning the authorization of common carrier facilities to provide service off of Puerto Rico.

Common Carrier—2—Title: Order on Reconsideration, CC Docket 86–111, Separation of Costs of regulated telephone service from costs of nonregulated activities. Summary: The Commission will consider petitions for reconsideration of various aspects of its Joint Cost Order.

Mass Media—1—Title: Amendment of Parts 1, 63, and 76 of the Commission's Rules to Implement the provisions of the Cable Communications Policy Act of 1984 (MM Docket No. 84–1296). Summary: The Commission will consider a Memorandum Opinion and Order addressing certain amendments to its rules implementing provisions of the Cable Communications Policy Act of 1984.

Mass Media—2—Title: Amendment of Parts 63, and 76 of the Commission's Rules to Implement the provisions of the Cable Communications Policy Act of 1984 (MM Docket 84–1296). Summary: The Commission will consider a Further Notice of Proposed Rule Making concerning its rules implementing provisions of the Cable Communications Policy Act of 1984.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Congressional and Public Affairs, telephone number (202) 632–5050.

Issued: September 10, 1987.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–21407 Filed 9–14–87; 11:10 am]

BILLING CODE 6712–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 14, 1987:

A closed meeting will be held on Tuesday, September 15, 1987, at 2:30 p.m. An open meeting will be held on Wednesday, September 16, 1987, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 15, 1987, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Institution of injunctive actions.
Formal order of investigation.

The subject matter of the open meeting scheduled for Wednesday, September 16, 1987, at 10:00 a.m., will be:

1. Consideration of whether to issue a release publishing for public comment proposed Rules 13e–2 and 14d–11 which would prohibit, subject to certain exceptions, purchases, offers to purchase, arrangements or understandings to purchase or solicitation of offers to sell which would result in any person increasing his ownership by ten percent or more of a class of securities once a tender offer has formally commenced for such class of securities and until 10 business days after the scheduled expiration date of the tender offer, unless such actions are conducted pursuant to the tender offer rules. The restriction would apply to the target company, bidders and third parties. The proposed Rules would subject bidders to similar requirements, and exceptions thereto, from the time a bidder commences a tender offer by means of public announcement until either it formally commences by other means or 30 business days have expired since the bidder has withdrawn such public announcement. For further information, please contact David A. Sirignano at (202) 272–3097 or Jonathan E. Gottlieb at (202) 272–2607.

2. Consideration of whether to propose changes in Forms 10–K and 10–Q that would require registrants, after reasonable inquiry, to provide information not filed in Form 3 and 4 reports required during the reporting period and identify any of their directors, officers, or ten percent security holders that have failed to file all of their Form 3 and 4 reports required during the reporting period in a timely manner. Copies of the Form 3 and 4 would be required to be sent to the registrant to aid its monitoring of such filings.

In addition, the Commission will consider proposing to condition the safe harbor of Rule 144 upon the seller having filed all required Forms 3 and 4 in a timely manner during the 12 months preceding filing of Form 144 and any sales pursuant to the Rule. Form 144 would be amended to include a positive representation concerning the seller's compliance with Section 16(a) of the Securities Exchange Act of 1934. For further information, please contact Brian Lane at (202) 272.2589.

3. Consideration of whether to adopt Rule 206(4)–4 under the Investment Adviser's Act of 1940 which would codify an investment adviser's fiduciary obligation to disclose material financial and disciplinary information to clients. For further information, please contact Debra J. Kertzman at (202) 272–2107.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Morris at (202) 272–3085.

Jonathan G. Katz,

Secretary.

September 11, 1987.

[FR Doc. 87–21361 Filed 9–11–87; 4:36 pm]

BILLING CODE 8010–01–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, September 15, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street NW., Washington, DC 20436.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731–TA–343 (Final) (Tapered Roller Bearings and Parts Thereof from Japan)—briefing and vote.
6. Inv. 731–TA–383 (Preliminary) (Certain Bimetallic Cylinders from Japan)—briefing and vote.
7. Inv. 701–TA–224 (Final) (Remand) (Live Swine and Pork from Canada)—briefing and vote.
8. Any items left over from previous agenda.

CONTRACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary,

September 3, 1987.

[FR Doc. 87–21378 Filed 9–11–87; 4:37 pm]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 33315—dated September 2, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, September 9, 1987.

Change in time for the meeting: 9:30 a.m., Wednesday, September 9, 1987.

In conformity with 19 CFR 201.37(b), Commissioners Leibeler, Burnsdale, Eckes, and Rohr determined that Commission business required the change in time of the meetingg on September 9, 1987, and affirmed that no earlier announcement of the change in time was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Lodwick disapproved.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary.

September 4, 1987.

[FR Doc. 87–21379 Filed 9–11–87; 4:37 pm]

BILLING CODE 7020–02–M

VOL
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federal register

Wednesday
September 16, 1987

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Lepidomeda vittata (Little Colorado Spinedace) To Be a Threatened Species With Critical Habitat; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Lepidomeda vittata (Little Colorado Spinedace) To Be a Threatened Species With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Lepidomeda vittata* (Little Colorado spinedace), a native fish of Arizona, to be a threatened species and determines its critical habitat under the authority contained in the Endangered Species Act (Act) of 1973, as amended. A special rule is proposed that would allow take for certain purposes in accordance with Arizona State laws and regulations. The Little Colorado spinedace historically occurred throughout the upper portions of the Little Colorado River drainage, but is now found only in portions of East Clear, Chevelon, Silver, and Nutrioso Creeks and the Little Colorado River in Coconino, Navajo, and Apache Counties, Arizona. The decline of this species results from habitat alteration and loss due to impoundment, removal of water from the streams, channelization, grazing, road building, urban growth, and other human activities. The decline is also related to the introduction and spread of exotic predatory and competitive fish species, and the use of ichthyotoxins in many of its native streams. In addition, several water development projects have been or are being proposed for the remaining habitat of the species. Remaining Little Colorado spinedace habitat is found on U.S. Forest Service, Bureau of Land Management, State of Arizona, and privately-owned lands. This rule will implement Federal protection provided by the Act for *Lepidomeda vittata*.

DATE: The effective date of this rule is October 16, 1987.

ADDRESSES: The complete file for this rule is available for public inspection during normal business hours, by appointment, at the U.S. Fish and Wildlife Service Regional Office, 500 Gold Avenue SW., Room 4000 (P.O. Box 1306) Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Burton, Endangered Species Biologist, Endangered Species Office, U.S. Fish and Wildlife Service, Region 2 (see **ADDRESSES** above) 505/766–3972 or FTS 474–3972.

SUPPLEMENTARY INFORMATION:

Background

The Little Colorado spinedace, *Lepidomeda vittata*, was first collected west of the 100th meridian by members of the U.S. Topographical and Geographical Survey (Wheeler 1889). The species was described by E.D. Cope in 1874 from that collection. Cope listed the type locality as the "Chiquito Colorado," which was later defined as "the Little Colorado River somewhere between the mouth of the Zuni River and Sierra Blanca (White Mountain)" (Miller and Hubbs 1960). This fish is a member of the family Cyprinidae and is generally less than 10 centimeters (4 inches) in total length. The species is endemic to the upper portions of the Little Colorado River and to its north flowing, permanent tributaries on the Mogollon Rim and the northern slopes of the White Mountains in eastern Arizona. This naturally restricted historic range has been significantly reduced in the past 50 years by habitat destruction, use of fish toxicants, and the introduction of exotic predatory and competitive fish species.

Populations of the Little Colorado spinedace, like those of many other desert fishes, fluctuate dramatically from year to year. There are many reasons for these fluctuations, and historically they have probably reflected cyclic periods of drought and/or increasd rainfall. However, in more recent history the impact of human populations and their increasing demand for water has adversely affected the normal fluctuations of the spinedace populations. Various uses of water by man have adversely altered spinedace habitat, resulting in accentuated population lows and reduced population highs. Such activities could lead to the extirpation of the Little Colorado spinedace in areas that normally would have sustained populations of the fish through drought periods. Such population fluctuations make it difficult to delineate precisely the current range of the Little Colorado spinedace. Spinedace populations have fallen to extremely low levels several times within the past 25 years. During these population lows, extensive collection efforts may fail to take spinedace at locations that formerly supported healthy populations. These same locations may once again support spinedace populations during good water years. Little Colorado spinedace are presently known from the following locations (Miller 1961, Miller and Hubbs 1960, Minckley 1973, Minckley and Carufel 1967, Miller 1963, Minckley and McCall 1977):

(1) *East Clear Creek and its Tributaries.* Coconino County, Arizona. The spinedace occupies approximately 35 stream miles extendingf upstream from the confluence with Clear Creek to the headwaters near Potato Lake. The stream flows through the Apache-Sitgreaves and Coconino National Forests, with some interspersed privately-owned lands. At present the only tributary known to harbor Little Colorado spinedace is Leonard Canyon at Dines Tank (T.13N., R.12E., Sec.28); however, during periods of higher population levels it is likely that spinedace occupy the other tributaries, particularly near their confluence with East Clear Creek.

(2) *Chevelon Creek.* Navajo County, Arizona. The spinedace occupies approximately 8 miles of stream from the confluence with the Little Colorado River, near Winslow, upstream to Bell Cow Canyon. Lands in this area are privately-owned, with the exception of a small portion, which is the Arizona Game and Fish Department's Chevelon Creek Wildlife Area.

(3) *Silver Creek.* Navajo County, Arizona. The spinedace occupies approximately 20 stream miles of Silver Creek extending from its confluence with the Little Colorado River upstream to its headwaters near the town of Silver Creek. The stream flows primarily on privately-owned lands with only small sections of stream flowing through State and Bureau of Land Management lands.

(4) *Little Colorado River.* Apache County, Arizona. The Little Colorado spinedace is found sporadically throughout approximately 40 miles of permanent stream in this area, from the town of St. Johns upstream to the permanent headwaters in the White Mountains near the town of Greer. Upstream from St. Johns, the river flows through privately-owned lands, then through contiguous State lands, and the through additional privately-owned lands around the town of Springerville. The upper end of the river flows through the Apache-Sitgreaves National Forest with only a few privately-owned inholdings.

(5) *Nutrioso Creek.* Apache County, Arizona. The spinedace occupies approximately 12 stream miles from the confluence with the Little Colorado River upstream to near the town of Nutrioso. The stream flows through privately-owned lands around the towns of Springerville and Nutrioso; however, approximately 5 miles of the stream flows through the Apache-Sitgreaves National Forest, and a small portion flows through State-owned lands.

The Little Colorado spinedace inhabits very small to moderate sized streams and is characteristically found in pools with water flowing over fine gravel and silt-mud substrates. During periods of drought spinedace are believed to persist in springs and intermittent streambed pools; and during flooding they tend to distribute themselves throughout the stream. The spinedace spawns primarily in early summer, but continues at a reduced level until early fall (Minckley 1973).

The Colorado spinedace was included in the Service's "Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species" published in the **Federal Register** on December 30, 1982 (47 FR 58454–60). It was considered a category 1 species, indicating that the Service had substantial biological information to support a proposal to list as endangered or threatened. On April 12, 1983, the Service received a petition from the Desert Fishes Council to list the Little Colorado spinedace. This petition was found to contain substantial scientific or commercial information, and a notice of finding was published on June 14, 1983 (48 FR 27273). After a review and evaluation of the petition's merits, the Service found that the petitioned action is warranted, and a notice of the finding that the species warranted listing was published in the **Federal Register** on July 13, 1984 (49 FR 28583). A proposed rule to list *Lepidomeda vittata* was published on May 22, 1985 (50 FR 21095).

Lepidomeda vittata is listed by the State of Arizona as a threatened species, Group 3 (Arizona Game and Fish Commission 1982), which are those species ". . . whose continued presence in Arizona could be in jeopardy in the foreseeable future."

Summary of Comments and Recommendations

In the May 22, 1985, proposed rule (50 FR 21095) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *White Mountain Independent*, Show Low, Arizona, on June 18, 1985, that invited general public comment. Fifteen letters of comment were received. No public hearing was requested or held.

Comments in opposition to the listing were received from Phelps Dodge Corporation. Both the U.S. Forest Service and the Arizona Department of Transportation support the listing but oppose the critical habitat designation.

The Arizona State Clearinghouse had no comments on the proposal. Letters in support of the listing and designation of critical habitat were received from The Nature Conservancy, Arizona Game and Fish Department, the Desert Fishes Council, Dr. R.R. Miller, and Mr. C.O. Minckley. Economic Data were provided by the U.S. Bureau of Reclamation, Federal Highways Administration, Environmental Protection Agency, Arizona Game and Fish Department, U.S. Forest Service, and Arizona Department of Transportation.

The Nature Conservancy supported both the listing and designation of critical habitat and recommended that the watersheds for the stream segments indentified as critical habitat be included in that designation. The Service feels that the inclusion of the entire watershed in a critical habitat designation for this fish is not justified biologically. The designation of critical habitat is used for those areas that are crucial to the continued survival of a species and normally includes areas occupied either permanently or temporarily by the species. Although the Service has authority, under section 3(5)(A)(ii) of the Act, to designate as critical habitat areas that are not occupied by the species, the best available scientific data do not substantiate the entire watershed, as critical to the survival of the spinedace. However, the Service recognizes the importance of the watersheds in maintaining quality habitat for the spinedace, and the Service believes that any Federal activities in the watersheds that would adversely affect the critical habitat, as designated in the rivers, would be subject to section 7 of the Endangered Species Act. If it should later appear that buffer zones in the watershed are essential to the conservation of the species and, therefore, should be designated as critical habitat, then the Service will propose appropriate revisions to the critical habitat.

Phelps Dodge Corporation expressed opposition to the proposed rule for the following reasons: (1) It would jeopardize the water supply to its Morenci operations; (2) it may prevent any significant future developments or modifications of the few streams that exist in Arizona and on some in New Mexico; and (3) it should have been preceded by an Environmental Impact Statement and a Regulatory Impact Analysis. The Service response is as follows: (1) Existing operations are subject to the requirements of section 7(a)(2) of the Act if Federal agency involvement continues with respect to the project. Ongoing projects subject to the continuing exercise of Federal discretion must comply with section 7(a)(2) at all stages of project planning and implementation. As noted in *TVA* v. *Hill*, 437 U.S. 153 (1978), "it is clear Congress foresaw that section 7 would, on occasion, require agencies to alter ongoing projects in order to fulfull the goals of the Act" 437 U.S. at 186 (footnote omitted). Critical habitat designation is not expected to affect existing operations; however, if Federal involvement is required for these operations to continue they would be subject to the requirements of section 7(a)(2) of the Act. (2) Presently, approximately 44 miles of stream in Arizona, which represent a very small percentage of the States' entire surface drainage, are being proposed for critical habitat designation. Critical habitat designation does not prevent all development or modification, but prohibits Federal actions that are likely to result in the destruction or adverse modification of critical habitat. Thus, any activity funded, authorized or conducted by the Federal government must be planned to avoid the destruction or adverse modification of critical habitat. (3) On October 25, 1983, on the basis of recommendations from the Council on Environmental Quality and on a decision by the Sixth Circuit Court of Appeals, the Service published a notice in the **Federal Register** (48 FR 49244; October 25, 1983) stating that Environmental Assessments would no longer be prepared for regulations adopted pursuant to section 4(a) of the Endangered Species Act. It has been the Service's past experience that when National Environmental Policy Act (NEPA) environmental assessments were prepared for section 4(a) actions, all resulted in a finding of no significant impact. Statutory deadlines for listing a species and declaring its critical habitat, as well as the statutory limits on the Service's discretion, make preparation of an Environmental Impact Statement (EIS) both impractical and unnecessary. Preparation of an EIS would not be consistent with the purposes and policies of either the Act or NEPA, which basically center on environmental protection. The Service prepares both a determination of effects and an economic analysis document on each critical habitat rule in compliance with Executive Order 12291 and section 4(b)(2) of the Act, respectively. These documents include an analysis of the best information available on economic or other impacts posed by the designation of critical habitat and an

analysis of any alternative critical habitat boundaries. When added to the administrative record generated through the public comment period of a proposed rule, this economic analysis should provide, at the very least, the functional equivalent of NEPA documentation, which would satisfy the information-gathering, analytical, and environmental protection goals of the Act. In further response to this comment, the Service notes that Regulatory Impact Analyses (RIA) are only required for "major rules" as defined by Executive Order 12291. Because the Department's Determination of Effects for this rule indicates that, after an analysis of impacts, the critical habitat rule is not major, no RIA is required.

The Arizona Game and Fish Department supported both the listing and the designation of critical habitat. The Department did, however, question the impact that stocking of rainbow trout into portions of the Little Colorado River, including extant spinedace habitat, could have upon the species. The Department further pointed out that it has not been demonstrated that rainbow trout prey extensively on spinedace. Arizona also requested that future use of piscicides not be ruled out in these waters. The Service responds that stocking of "put and take" size rainbow trout into habitats occupied by spinedace does not have a direct impact on the species since rainbow trout of that size are primarily insectivorous and most are caught by anglers soon after being stocked. Competition for food and space may occur briefly, but principally during the times that spinedace metabolism is low. A far greater threat to the spinedace comes from the brown trout, which is not only piscivorous, but is also capable of successfully reproducing and establishing itself in these streams. Future use of piscicides in streams supporting Little Colorado spinedace would be evaluated and if long-term benefits accrued to the spinedace which outweighed short-term impacts, use of piscicides would be considered. If an action of this type were to be conducted on Federal lands, or was to be done by the State using Federal funds, section 7 consultation would be required.

The U.S. Forest Service supported the listing of the spinedace, but questioned the need for designating critical habitat for the species. The Fish and Wildlife Service responds that the designation of critical habitat for a listed species places a special emphasis upon those areas and notifies Federal agencies of their obligation to ensure that no action they authorize, fund, or carry out is likely to result in the destruction or adverse modification of critical habitat. The U.S. Forest Service also questioned the designation of intermittent reaches of stream as critical habitat. The Service responds that critical habitat does not have to be continually occupied by the species but may be used by the species during certain times of the year. Thus, a gravel bar that is dry during fall and winter may be used by spawning fish during spring and summer. In determining what areas are critical habitat, consideration is given to those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection. Such requirements include sites for breeding, reproduction and rearing of offspring. Another question raised by the U.S. Forest Service involved the width of critical habitat outward from the stream and why only the stream was proposed as critical habitat. The Service responds that a riparian buffer zone is sometimes included in the critical habitat to indicate the importance of the stream bank ecosystem to the survival of the species and that actions along the stream banks can affect the continued existence of the fish. Because of the steep, canyon-like banks of much of the spicedace habitat, inclusion of riparian zones in the critical habitat was not included. (Also see the Service answer to the Nature Conservancy.) The U.S. Forest Service also questioned why the portion of Nutrioso Creek that flows through its land was singled out as critical habitat when the spinedace is found over a much broader range in the creek. The Service responds that only a small population of spinedace is found outside of the portion of Nutrioso Creek not fronted by U.S. Forest Service land, and that maximum protection for the species can be achieved by designating the U.S. Forest Service portion of the stream as critical habitat. The U.S. Forest Service also felt that time and effort spent gathering economic information for provision to the Service could be better used on other endeavors. The Service responds that the Act and other laws require the Service to prepare various economic and other impact analyses of critical habitat designations. The Service attempts to acquire the best available data when conducting these analyses. The Service recognizes and appreciates the time and effort spent by the U.S. Forest Service and other agencies in collecting and preparing this information.

The Arizona Department of Transportation requested that all bridge crossings be excluded from designation of critical habitat. The Service responds that the Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. The Economic Analysis prepared by the Service did not show the economic benefits of exclusion of the bridge crossings, or any other area being considered, to outweigh the benefits of designating the area as critical habitat. Furthermore, use of private, State, or local funds for activities which do not require a Federal permit is not restricted by the critical habitat designation. The Service will assist the Arizona Department of Transportation in developing a workable program which involves both protection of the spinedace and adequate and safe highway facilities for the public.

Mr. C. O. Minckley suggested that golden shiners were only a problem in the upper portion of Chevelon Creek and are far removed from the lower portion which is being designated as critical habitat. The Service has changed the rule to reflect this recommendation. He also suggested that the upper end of the Chevelon Creek critical habitat stop at Bell Cow Canyon. This recommendation was also incorporated into the final rule. Lastly, he suggested the Nutrioso Creek critical habitat be extended upstream to the town of Nutrioso and the reach of the Little Colorado River from Saint Johns to Lyman Reservoir be included in the critical habitat designation. The Service responds that suggested stream reaches were not included in the original proposal and have not been thoroughly sampled. Future efforts will include sampling the suggested reaches to determine if they contain those constituent elements essential to the conservation of the spinedace and which may require special management considerations or protection. If the suggested reaches fit the criteria of critical habitat, a proposal to revise the critical habitat designation can be published at a later date.

The Federal Highway Administration (FHA) noted that the map for the Nutrioso Creek portion of cirtical habitat was in error. Work completed on U.S. 666 in 1982 eliminated two of the three creek crossings below Nelson Reservoir. The Service responds that the map for critical habitat in this final rule had

been changed accordingly. The FHA also noted that a future upgrading project near the town of Nutrioso is planned; this is upstream from the critical habitat and no problems are expected.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Little Colorado spinedace should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 FR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Little Colorado spinedace (*Lepidomeda vittata*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Much of the historic habitat of the Little Colorado spinedace has been adversely modified or destoryed by human activities. One of the most detrimental of these has been the impoundment of the rivers and streams. The spinedace is a stream dwelling fish and is unable to exist in reservoirs. There are now approximately 150 impoundments in the Little Colorado basin, ranging in size from small stock tanks to reservoirs of up to 1,400 surface acres. Except for a few of the small stock tanks located on streams, these reservoirs are uninhabitable by the spinedace. In many areas, these reservoirs have inundated and thus destroyed previously occupied spinedace stream habitat. In addition, these impoundments have often resulted in the total or partial dewatering of long downstream reaches of stream, resulting in the destruction of spinedace habitat. The presence of these reservoirs also adversely affects the continued existence of the spinedace upstream and downstream from the reservoir through predation by, and competition with, exotic fish species.

Human uses including riparian destruction, urban growth, mining, timber and pulpwood harvest, road construction, livestock grazing, and other watershed disturbances have also been detrimental to spinedace habitat. The precise effects of many of these uses on fish populations, particularly spinedace, are difficult to define. However, these uses have resulted in many changes to the streams used by the Little Colorado spinedace such as dewatering, erosion and channel downcutting, chemical and organic pollution, alteration of flow regimes, alteration of stream temperature, and excessive siltation. In the 1880's, the Little Colorado River above Grand Falls was a perennial stream with extensive riparian areas of grasses, cottonwoods, and willows. Extensive swamps and marshy areas existed above the town of Winslow (Miller 1961). The river now has perennial flow only in the uppermost of 10 to 15 percent of its length.

Future threats to the remaining habitat of the Little Colorado spinedace come from the same human uses that have resulted in past habitat alteration and destruction. There are several proposed new water projects for the area, and additional new projects continue to be proposed as water demand increases. Wilkin's Dam, at the confluence of Clear and East Clear Creeks, is a proposed Bureau of Reclamation project, a part of the larger Mogollon Mesa project which would also include a new dam on upper Chevelon Creek. Wilkin's Dam would inundate approximately 8 miles of stream and significantly decrease downstream flows, while contributing significantly to the problem of exotic predatory and competitive fishes in East Clear Creek (see Factors C and E). This project is presently inactive and is not expected to be reactivated in the near future. In 1977, the Arizona Public Service Corporation did test drilling to tap groundwater in the Chevelon Creek drainage. This water was to be used for their Cholla Lake generating facility near Holbrook, Arizona; however, the quality of the water found in the test drilling was too poor for their needs. Additionally, the Arizona Game and Fish Department has identified nine potential sites within existing spinedace range that they are considering for future recreational impoundments.

Much of the remaining Little Colorado spinedace habitat is afforded some protection by inaccessibility or by public ownership of the lands. The East Clear Creek population is located on the Coconino and Apache-Sitgreaves National Forests; portions of the Little Colorado River, Silver and Nutrioso Creeks populations are also located on the Apache-Sitgreaves National Forest, and the lower portion of Chevelon Creek flows through a rugged canyon in relatively roadless country. As the human population of the adjacent areas increases, and the demand for water and recreational access increases, those spinedace populations on public or presently inaccessible lands will be subjected to mounting pressures for water projects, road construction, and other development.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no evidence that the Little Colorado spinedace is overused for any of these purposes.

C. *Disease or predation.* Predation by exotic piscivorous fish has been shown to be a contributing factor in the decline of many native southwestern fishes, and has undoubtedly been a major factor in the decline of the Little Colorado spinedace. The spinedace was historically associated with few, if any, fish predators. Of the native fish species of the Little Colorado River, only the roundtail chub (*Gila robusta*) was a potential predator on spinedace. However, in the past 100 years, several exotic predatory fish species have been introduced into Little Colorado spinedace habitats. These species include black bullhead (*Ictalurus melas*), channel catfish (*Ictalurus punctatus*), yellow bullhead (*Ictalurus natalis*), green sunfish (*Lepomis cyanellus*), largemouth bass (*Micropterus salmoides*), and brown trout (*Salmo trutta*). The continuing adverse impact of these predators on the Little Colorda spinedace, and the possibility of further introduction and spread of predatory fish is a significant threat to the existence of the spinedace. The construction of reservoirs in or near spinedace habitat exacerbates the threat of exotic fish introductions and the spread of predatory fishes. This occurs because reservoirs are desirable habitat for many predatory game fishes, many of which are purposely introduced for recreational purposes. The introduction of such fish into these reservoirs allows and encourages their spread throughout the range of the Little Colorado spinedace. Additionally, parasites introduced with such exotic fish may also adversely affect the spinedace.

D. *The inadequacy of existing regulatory mechanisms.* The State of Arizona lists this species under Group 3 of the Threatened Wildlife of Arizona. Group 3 includes, "Species or subspecies whose continued presence in Arizona could be in jeopardy in the foreseeable future" (Arizona Game and Fish Commission 1982). Under this designation, taking of the Little Colorado spinedace is regulated and is allowed only under a collecting permit or by licensed angling. However, no protection of the habitat is included in such a designation and no management plan exists for this species.

E. *Other natural or manmade factors affecting its continued existence.* The

introduction of exotic fishes into the habitat of the Little Colorado spinedace poses a major threat to the spinedace from competitive interactions as well as from predation. In upper Chevelon Creek, golden shiners were present in such large numbers in 1965 that the Arizona Game and Fish Department treated the stream with a piscicide (fish toxicant) in an unsuccessful attempt to eradicate them. This treatment was considered necessary because the golden shiner competes with young game fish, particularly trout (Minckley 1973). Since the Little Colorado spinedace is "troutlike in its behavior and habitat requirements" (Miller 1963), it is quite likely that the golden shiner is also a significant competitor with the Little Colorado spinedace (Minckley and Carufel 1967). The possibility of the further introduction of other competitive species, particularly the red shiner (*Notropis lutrensis*) into spinedace habitats is an additional threat to the Little Colorado spinedace. The red shiner has been shown to displace the spikedace (*Meda fulgida*) in portions of the Gila River system (Minckley 1973). These shiners are widespread in Arizona. The red shiner is commonly used for bait, thus increasing the probability of its eventual introduction into Little Colorado spinedace habitat also increases that probability because of the increased use of bait in the fishery which develops in such reservoirs. Other exotic fishes, particularly cyprinids such as fathead minnow and Rio Grande killifish, may also be a competitive threat to the Little Colorado spinedace, and it has been found that the spinedace is generally rare or absent where exotic fish other than trout are present.

Another important factor in the decline of the Little Colorado spinedace has been the use of piscicides (fish toxicants) in the streams of the Little Colorado River drainage. Most of the major game fish streams of the drainage have been subjected to poisoning, with such chemicals as rotenone and toxaphene, in generally unsuccessful attempts to rid these streams of "trash" fish such as carp, suckers, chubs, and shiners and thereby improve the streams for game fish (Miller 1963). The Little Colorado River was treated from Lyman Reservoir downstream for approximately 10 miles in 1951, and Chevelon Creek was treated twice in 1965 (Mickley and Carufel 1967), and again several years later. These treatments undoubtedly significantly reduced both the populations and range of the Little Colorado spinedace.

No estimate has been made of Little Colorado spinedace population sizes; however, it is well known that their numbers fluctuate markedly. Because of this, threats to the spinedace must be analyzed as to their impact at the lowest population levels. Habitat alterations which may not significantly affect populations at moderate or high levels may be disastrous at low population levels, and could lead to extirpation of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Little Colorado spinedace as threatened. Threatened status seems appropriate because of the severely reduced range of the species, and because of the many threats to the fish and its remaining habitat. If this species is not listed, it could reasonably be expected to become endangered within the foreseeable future and thus not listing would be a violation of the Act's intent. Since the species is still extant in several locations and the threats to the species are generally localized, the species is not in danger of extinction at this time and thus endangered status is not appropriate.

Critical Habitat

Critical habitat, as defined by section 3 of the Act means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the Little Colorado spinedace to include the following:

(1) *East Clear Creek, Coconino County, Arizona;* approximately 18 miles of stream extending from the confluence with Leonard Canyon upstream to the Blue Ridge reservoir dam, and approximately 13 miles of stream extending from the upper end of Blue Ridge Reservoir upstream to Potato Lake.

(2) *Chevelon Creek, Navajo County, Arizona;* approximately 8 miles of stream extending upstream from the confluence with the Little Colorado River to the confluence of Bell Cow Canyon.

(3) *Nutrioso Creek, Apache County, Arizona;* approximately 5 miles of stream from the Apache-Sitgreaves National Forest boundary upstream to the Nelson Reservoir dam.

These stream portions were chosen for critical habitat designation because they presently support healthy self-perpetuating populations of the Little Colorado spinedace. They provide all of the ecological, behavioral, and physiological requirements necessary for the survival of the spinedace. However, due to the extreme fluctuations which Little Colorado spinedace populations exhibit, these areas may not necessarily support the most stable and healthy populations of spinedace at any given time in the future. At present, the Silver Creek and Little Colorado River populations are spotty and/or difficult to locate, but this situation may change with periodic population fluctuations. This designation of critical habitat is based on the best available information. If new information demonstrates additional critical habitat areas are necessary for this species, they must be subject to a new **Federal Register** proposal.

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Any activity that would deplete the flow, lessen the amount of minimum flow, or significantly alter the natural flow regime of East Clear, Chevelon, or Nutrioso Creeks could adversely impact the critical habitat. Such activities include, but are not limited to, excessive groundwater pumping, impoundment, and water diversion. Any activity that would extensively alter the channel morphology of East Clear, Chevelon, or Nutrioso Creeks could adversely affect the critical habitat. Such activities include, but are not limited to, channelization, impoundment, excessive sedimentation from logging, grazing and other watershed disturbances, and riparian vegetation destruction. Also, any activity that would extensively alter the water chemistry of East Clear, Chevelon, or Nutrioso Creeks could adversely affect the critical habitat. Such activities include, but are not

limited to, release of chemical or biological pollutants at a point source or by dispersed release.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has evaluated the proposed critical habitat designation for *Lepidomeda vittata*, taking into consideration all additional comments received. Biological information was provided that warranted adjusting the boundaries of the critical habitat designation for Chevelon Creek.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required by Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7 (a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

At present, no known Federal activities would be affected by this proposal. On East Clear Creek, the Little Colorado spinedace habitat is primarily on the Coconino and Apache-Sitgreaves National Forests. The Forest Service does not expect any significant impact on management of this area as a result of this proposal since the Little Colorado spinedace is already one of their emphasized species. Wilkin's Dam on Clear Creek is a Bureau of Reclamation project and section 7 consultation will be required if that project is ever reactivated (it is currently in inactive status). On Chevelon Creek, the majority of the land is privately-owned, and is used for livestock grazing. Other activities that might be affected by this proposal could include future water development projects if they are federally funded or authorized. At the lower end of Chevelon Creek, there is a small portion of land owned by the Arizona Game and Fish Department, which is the Chevelon Creek Wildlife Area. No effects from this proposal are expected on its management since it is already being managed for wildlife values and upon listing would include the spinedace. On the privately-owned lands on Silver and Nutrioso Creeks, and the Little Colorado River, no effect is expected from this proposal. It is possible that future water development projects on these lands might be affected if such projects have any Federal involvement. On portions of those streams on the Apache-Sitgreaves National Forest no effect is expected.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The above discussion generally applies to threatened species of fish or wildlife. However, the Secretary has the discretion, under section 4(d) of the Act, to issue such special regulations as are necessary and advisable for the conservation of a threatened species. The State of Arizona presently regulates direct taking of the Little Colorado spinedace through the requirement of State collecting permits. Since the primary threat to this species stems from habitat disturbance and modification, and not from direct taking of the species or from commercialization, the Service concludes that the State's collecting permit system is more than adequate to protect the species from excessive taking, so long as such takes are limited to: educational purposes, scientific purposes, the enhancement of the propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. A separate Federal permit system is not required to address the current threats to the species. Therefore, a special rule for the Little Colorado spinedace is proposed that will allow taking to occur for the above stated purposes without the need for a Federal permit, if a State collecting permit is obtained and all other State wildlife conservation laws and regulations are satisfied. In relying upon the State's permitting system, however, and not establishing separate Federal permitting procedures, the Service is issuing a final rule that in effect, precludes any further application of piscicides that would result in the taking of the Little Colorado spinedace, unless it is in accordance with an approved conservation plan for the species. The special rule also acknowledges the fact that incidental take of the species by State-licensed recreational fishermen is not a significant threat to this species. Therefore, such incidental take will not be a violation of the Act if the fisherman immediately returned the taken fish to its habitat. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited. Without this special rule, all of the prohibitions under 50 CFR 17.31 would apply. The Service believes that this special rule will allow for more efficient management of the species, thereby facilitating its conservation. For these reasons, the Service has concluded that this regulatory measure is necessary and advisable for the conservation of the Little Colorado spinedace.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species is not a major rule under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These determinations are based on a Determination of Effects

that is discussed below and available at the Region 2 Office of Endangered Species, U.S. Fish and Wildlife Service (see ADDRESSES).

The Service has prepared an economic analysis and believes that economic and other impacts of this critical habitat designation on the Forest Service are not significant in the foreseeable future. The economic impact analysis concluded that Federal program costs would be minimal and would be incurred as the cost of planning to prevent introduction of exotic species and adverse effects from logging activities. No economic impacts on individuals or State and local governments were identified, and no impact on the national or regional economy, commerce, or employment were discerned.

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Author

The author of this final rule is Gerald L. Burton, Endangered Species Biologist, U.S. Fish and Wildlife Service, Albuquerque, New Mexico (505/766–3972 or FTS 474–3972). Status information was provided by C.O. Minckley, Flagstaff, Arizona.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

Part 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population were endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Spinedace, Little Colorado	*Lepidomeda vittata*	U.S.A. (AZ)	Entire	T	287	17.95(e)	17.44(t)

3. Add the following paragraph (t) as a special rule to § 17.44

§ 17.44 Special rules—Fishes.

* * * * *

(t) Little Colorado spinedace (*Lepidomeda vittata*).

(1) No person shall take this species, except in accordance with applicable State Fish and Wildlife conservation laws and regulations in the following instances: for educational purposes, scientific purposes, the enhancement of propagation or survivial of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (t) (1) through (3) of this section.

* * * * *

4. Amend § 17.95(e) by adding critical habitat of the Little Colorado spinedace in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—Fish and wildlife.

(e) * * *

LITTLE COLORADO SPINEDACE (*Lepidomeda vittata*)

Arizona:

1. *Coconino County.* East Clear Creek: approximately 18 miles of stream extending from the confluence with Leonard Canyon (NE ¼ Sec. 11 T14N R12E) upstream to the Blue Ridge Reservoir dam (SE ¼ Sec. 33 T14N R11E), and approximately 13 miles of stream extending from the upper end of Blue Ridge Reservoir (east boundary SE ¼ Sec. 36 T14N R10E) upstream to Potato Lake (NE ¼ Sec. 1 T12N R9E).

2. *Navajo County.* Chevelon Creek; approximately 8 miles of stream extending from the confluence with the Little Colorado River (NW¼ Sec. 23 T18N R17E) upstream to Bell Cow Canyon (SE¼ of the SW¼ Sec. 11 T17N R17E).

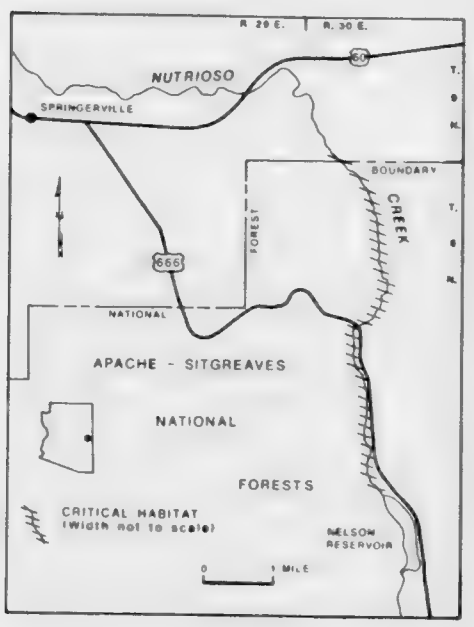

3. *Apache County.* Nutrioso Creek; approximately 5 miles of stream extending from the Apache-Sitgreaves National Forest boundary (north boundary Sec. 5 T8N R30E) upstream to the Nelson Reservoir dam (NE¼ Sec. 29 T8N R30E).

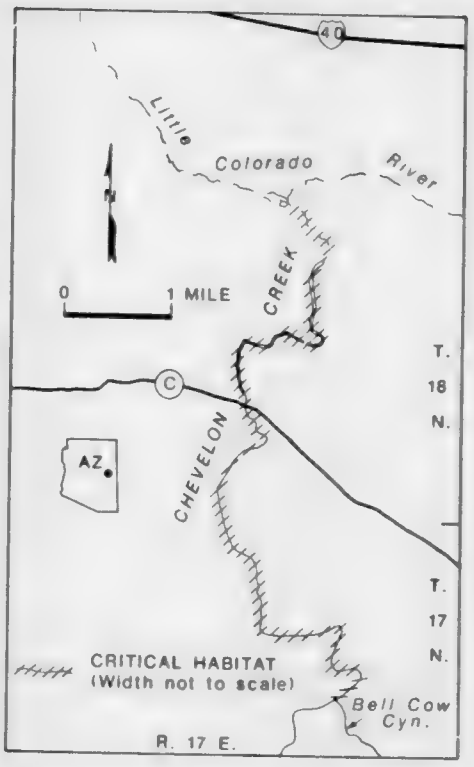

Constituent elements, for all areas of critical habitat, include clean, permanent flowing water, with pools and a fine gravel or silt-mud substrate.

* * * * *

Dated: July 21, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-21285 Filed 9-15-87; 8:45 am]

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September 16, 1987

Part III

Department of Health and Human Services

Public Health Service

42 CFR Part 36
Indian Health Service; Final Rule

VOL 52 ISS 179 SE 16 1987 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 36

Indian Health Service

AGENCY: Health Resources and Services Administration, Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: These are final rules governing who may receive health services from the Indian Health Service (IHS). Under these rules, and eligible person must be: (1) A member of a federally recognized Indian tribe, and (2) reside within a designated Health Service Delivery Area (HSDA). The regulation provides for a one-year transition period prior to implementation and a waiver for Indian children (18 and under) who are ineligible under the new rule and who have at least one natural parent who is eligible. These eligibility requirements are applicable to both direct and contract health services.

Under section 103(a) of the Indian Self-Determination Act, Pub. L. 93–638, 25 U.S.C. 450g(a), IHS funds may be expended only for carrying out the "functions, authorities, and responsibilities" which the Secretary would otherwise have carried out with those funds. Therefore, tribes and tribal organizations operating facilities under Pub. L. 93–638 must also adhere to the eligiblility provisions and procedures in these rules and are not authorized to serve persons with IHS funds who do not meet these criteria.

DATES: Effective March 16, 1988, except for the *Transition Provisions*, Subpart D, §§ 36.31 through 36.34, which are effective September 16, 1987 through September 16, 1989.

FOR FURTHER INFORMATION CONTACT: Richard J. McCloskey, Indian Health Service, Room 6A–20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: 301–443–1116. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: On June 10, 1986, a notice of proposed rulemaking (NPRM) was published in the **Federal Register** (51 FR 21118 et seq.) proposing changes to the regulations governing who may receive health services from the IHS. Interested persons were given until October 8, 1986, to submit written comments, suggestions, or objections. Because of the interest expressed in this proposal, on October 10, 1986 a notice was published in the **Federal Register** (51 FR 36412) extending the comment period to November 7, 1986.

A. Changes Made From the Proposed Rules

These rules are the product of a careful analysis of over 11,000 submissions by individuals; groups; Indian and non-Indian organizations; state, local, and tribal governments; and the Congress submitted to the Department during the comment period. In addition, we received approximately 10,000 pages of transcripts taken at more than 120 public meetings held at selected locations throughout the country. On the basis of this analysis the Department has modified the proposed rules as noted below:

1. The proposed eligibility requirement that persons must be one quarter (¼) or more Indian or Alaska Native ancestry has been deleted.

Many commentors expressed concern that inclusion of a specific blood quantum requirement would interfere with a tribe's sovereignty by eliminating some tribal members from eligibility based upon racial identity rather than on the political relationship which exists between tribes and the Federal Government. Other commentors opposed the blood quantum criteria for a variety of other reasons; e.g., establishment of a blood quantum requirement would: violate Indian treaty or statutory rights; shift the Federal government's financial burden and responsibility to others; be "termination"; be racial discrimination between Indians; divide Indian families; and present tremendous difficulties involved in proving degree of Indian descent.

The Department does not believe that any of these arguments necessarily preclude use of a specific blood quantum as a criteria for receipt of Federal health benefits. As we indicated in the preamble to the NPRM, blood quantum requirements, as well as tribal membership, have historically been used by Congress, Federal agencies, and the courts to determine who is an "Indian" for purposes of Federal benefits, claims, awards, and Federal jurisdiction. Nevertheless, there is substantial merit in many of the comments submitted and the overwhelming response by Indian people, tribal governments, and the Congress, was in opposition to the blood quantum criteria. There was strong feeling in the Indian community that criteria governing eligibility for IHS services should, to the extent possible, conform with tribal membership requirements and the use of blood quantum would eliminate some tribal members from eligibility for IHS services. We agree and, therefore, have deleted blood quantum as a criteria for eligibility in the final rule.

In addition, we have deleted the definition of Indian ancestry which specified descent from a member of a Federally recognized tribe. This was proposed as a means of calculating Indian blood quantum. Since the blood quantum criteria has been dropped and the tribal membership requirement remains, the definition is no longer needed.

2. Section 36.12 has been revised to delete the language in (a)(1) "* * *, or eligible for membership in, * * *" This language was originally included to permit those people of Indian descent who are eligible for, but not currently enrolled in, a federally recognized tribe to be eligible for IHS services. Although some commentors were against limiting eligibility to members of tribes, a majority of commentors, in opposing the blood quantum criteria, did so partially on the basis that tribal membership should be sufficient criteria. We have decided that any person eligible for tribal membership but not enrolled will have more than enough time to become a member during the one year transition period provided for in this regulation. This decision is consistent with our decision that only members of Federally recognized tribes will be eligible for IHS services.

Those Indian people who are eligible for tribal membership but who do not wish to exercise their membership eligibility for whatever personal reasons they may have, are free to make this choice. We recognize that they will also be choosing to be ineligible for IHS services. This same result follows when a tribal member chooses to move beyond the geographical range of the IHS program. In both cases, however, the individual has it within their power to change their selection.

3. The NPRM proposed to make non-Tribal Indians eligible if they were at least one-half (½) or more Indian descent. We have deleted this criteria because of our decision that eligibility should be based on tribal membership rather than blood quantum and because of the overwhelming opposition expressed to any blood quantum requirements. In opposing blood quantum, a majority of commentors did so at least partially on the basis that tribal membership should be a sufficient criteria. We agree. Services are provided to Indian people because of the political relationship which exists between tribes and the Federal Government rather than on a racial basis.

4. We have included an exception to the tribal membership requirement for minor children (18 and under) of tribal members. The child must have one natural parent who is a tribal member and the child must meet all other requirements. This exception does not apply to non-Indian adopted, foster or step-children of eligible Indians.

This exception is in response to commentor concern that minor Indian children of tribal members also be eligible for IHS services even if the children are not themselves tribal members. To some extent, family divisions have already occurred with the statutory curtailment of services to non-Indians enacted in 1983, (Pub. L. 97–394). Non-Indian foster, adopted, and step-children would continue to be excluded under this rule. Nevertheless, we believe it to be good public health policy to limit such family divisions as much as possible. In our view, an exception to the tribal membership requirement for Indian children not eligible for tribal membership is a reasonable accommodation which will help mitigate any harsh impact of this rule.

5. Section 36.12 as proposed would have allowed former residents of HSDA's and their minor children to return only to their home communities to obtain services without reestablishing residency. The final rule will permit former residents of HSDA's and their minor children to return to *any* HSDA (not necessarily their former community of residence) to obtain services available in IHS and IHS funded facilities. They will not, however, be eligible for contract health services. To preclude Indians from obtaining IHS services could restrict their mobility and discourage them from seeking employment in off reservation areas.

6. Section 36.15(d), governing changes in HSDA boundaries, has been revised to make it clear that while any tribe may request a change in HSDA boundaries, consultation with *all* the affected tribes is required. This is to assure that no tribe is unknowingly impacted by expansion or contraction of the HSDA resulting from the request of another tribe.

7. Section 36.12(b)(4) has been revised to delete language that would have required the prior written approval of the Service Unit Director, for good cause shown, to permit continued eligibility for a 90-day grace period after an eligible person ceased to reside in a HSDA. Language similar to that contained in the present regulations has been substituted, permitting persons who cease to reside in a HSDA and who are neither students nor transients to be eligible for services for a period of 90 days from such departure. This 90 day grace period is included in order to provide a reasonable period for the making of alternative arrangements for health services. We do not wish to impose an additional administrative burden by requiring either prior written approval of the Service Unit Director or the need to establish good cause.

8. Language has been added to provide for a transition period prior to implementation of the new rules. Many commentors expressed concern that those excluded by any new rules should be allowed adequate time to arrange alternate coverage for their health care needs. In order to provide time to obtain alternate services and to complete treatment underway we have provided for a transition period of one year as follows:

The rule will not take effect until six months after publication to permit time for administrative steps necessary for implementation and education. After implementation there will be a second six month grace period during which those who would lose their eligibility under the new regulation and who had made use of an IHS or IHS funded facility within 3 years prior to the implementation date, shall retain eligibility if they reside in a HSDA.

Provisions have been included to assure that persons no longer eligible under these rules but who on the last day of the one year transition period are under treatment for any active condition or under treatment for a chronic degenerative disease or condition will continue to be considered as IHS beneficiaries until such time as their condition may be stabilized and other health care providers and medical assistance programs can be located. These provisions provide that:

(1) Inpatients in IHS and IHS funded facilities and those receiving inpatient care under contract, including contract health services, may continue to receive services at IHS expense until the need for hospitalization and follow-up services has ended as determined by the responsible IHS or tribal physician, all other conditions being met including medical priorities;

(2) Those actively undergoing a course of outpatient treatment either in IHS and IHS funded facilities or through contract health services, termination of which would impair the health of the individual patient, may continue to receive the treatment at IHS expense for a reasonable length of time, until the course of treatment reaches a point where it may safely be terminated or the patient transferred to other providers as determined by the responsible IHS or tribal physician. In addition, treatment for chronic degenerative conditions may be provided for no longer than 1 year beyond the point where it was otherwise safe to transfer treatment to other providers; and

(3) All patients receiving care under (1) and (2) above shall be notified that, after discharge from care provided under any of the above circumstances, they will no longer be eligible for service as IHS beneficiaries. These patients shall be offered assistance in locating other health care providers and medical assistance programs.

9. For purposes of clarification, language has been added to the definitions of "appropriate ordering officials" and "Service unit Director" to include the equivalent contract official administering IHS programs under such authority as the Indian Self-Determination Act, Pub. L. 93–638.

10. The definition of "Program Director" has been deleted as this term is no longer used by the IHS.

11. The first sentence in § 36.12(c), has been revised to clarify that the provision applies both to IHS facilities and programs and to facilities and programs operated and/or owned by tribes and funded by the IHS.

12. Language has been added to § 36.15 (a) and (b) to clarify that HSDA's may only include geographic areas within the United States. Under the Snyder Act, appropriations are authorized for "Indians throughout the United States". This will remove from eligibility Indians residing outside the United States who in the past may have received direct services from IHS facilities.

13. Language has been added to § 36.16 to clarify that IHS will only maintain currently eligible people in its registration system and further that persons requesting Beneficiary Identification Cards (discussed later) need not submit new evidence of tribal membership and residence if such evidence is a already on file. The IHS will make the determination as to whether or not the materials on file are sufficent.

B. Discussion of comments

1. A number of commentors (approximately one-third) suggested that we retain the current eligibility rules rather than adopt the proposed changes. There was widespread confusion, however, as to what the current requirements were with a significant number under the mistaken opinion that the tribes currently determine eligibility for IHS services.

We believe that tightening eligibility requirements based upon tribal membership and residency and combining the requirements applicable to both direct and contract services will enable us to allocate resources better and will enhance coordination of patient care in IHS and non-IHS facilities. Moreover, Congress has directed that "* * * IHS must address the issue of an expanding service population, * * * in terms of defining who is or should be generally eligible for IHS services, * * *" (H.R. Rep. No. 97–942, 97th Cong., 2nd Sess. at p. 108 (1982).

2. Over 2400 commentors were against limiting eligibility to members of federally recognized tribes. On the other hand, of the more than 16,000 commentors opposing blood quantum, a majority did so at least partially on the basis that tribal membership should be a sufficient criteria. Some argued that the Snyder Act, as IHS's authorizing Legislation, does not specifically limit eligibility to members of Federally recognized tribes. Nevertheless, in appropriating funds, Congress has generally provided funds for services to federally recognized Indians.

The Federal governments' underlying policy is to serve Indians, not as individuals, but as members of Federally-recognized governmental entities. Consequently, the Bureau of Indian Affairs (BIA) has a formal procedure for identifying such entities, and in other cases Congress has recognized some tribes by statute. Moreover, the approach taken in this rule is consistent with the fact that Congress has recently defined the term "Indian" in three related statutes essentially to mean a person who is a member of Federally recognized tribe, i.e. section 4 (a) and (b) of the Indian Self-Determination Act, Pub. L. 93–638 (25 U.S.C. 450b (a) and (b)); section 4 (c) and (d) of the Indian Health Care Improvement Act, Pub. L. 94–437 (25 U.S.C. 1603 (c) and (d)); and section 4204(3) and 4226(4) of Subtitle C—"Indians and Alaska Natives" of the Omnibus Drug Act, Pub. L. 99–570.

The definition of "Indian" in the Indian Self-Determination Act reflects the special relationship between tribes and the Federal Government. Basing eligibility on tribal membership will strengthen the role and position of tribes as well as provide IHS with a consistent definition of "Indian". In our view, reliance on tribal membership will have positive implications for Indian self-determination, the role and authority of tribal government, inter-tribal relationships, and the existing Federal-Indian relationship.

This approach will also be relatively simple to administer as it will basically be left to the tribes to verify who their members are. Indian persons or groups not currently federally recognized have a formal process through which they may petition for such recognition through the BIA's Federal acknowledgement program.

3. Many commentors expressed the view that the tribes should determine who is eligible for services for the IHS. We believe that deletion of the (¼) blood quantum criteria as an additional requirement to tribal membership will accommodate these concerns.

The tribal membership criteria without the (¼) blood quantum requirement clarifies that IHS services are not provided to Indian people because of their racial identity but rather primarily on the political relationship which exists between tribes and the Federal government. The tribal governments, by establishing their membership requirements, also establish eligibility for IHS services for their members who choose to reside in an IHS Health Service Delivery Area (HSDA).

4. Some commentors were concerned about the effect on those who would no longer be eligible for care and were in favor of permanently "grandfathering" in current eligibles who would not meet the new requirements. We believe these concerns are adequately addressed by a number of provisions in this rule directed at mitigating its impact on persons no longer eligible as IHS beneficiaries. These provisions include the one-year transition period, provision for minor Indian children, and provisions to assure continuity of care for persons in active treatment or with chronic degenerative conditions. In light of these provisions we have rejected the idea of permanently grandfathering all former eligibles.

5. Some commentors suggested that this was a "major rule" under Executive Order 12291, and a regulatory impact analysis was required. As was explained in the preamble in the NPRM, the proposed rule does not have cost implications for the economy of $100 million or more independent of the IHS appropriation, nor will it result in a major increase in cost for consumers, industries, or Government agencies, nor will it adversely affect competition. Accordingly, it has been determined that the rule is not a major rule under Executive Order 12291, and a regulatory impact analysis is not required.

6. Some commentors suggested that non-Indian spouses and other non-Indian family members of an eligible Indian should be eligible for services as IHS beneficiaries. This is not possible under current law. The fiscal year 1983 Appropriation Act for the Department of the Interior and Related Agencies, Pub. L. 97–394, which includes the appropriation for the Indian Health Service, restricted eligibility for non-Indians for no-charge services to situations involving a pregnancy, acute infectious diseases or public health hazards. IHS regulations have been amended to conform to Pub. L. 97–394 (48 FR 11220 et seq.), and this rule retains those restrictions.

7. A number of Commentors stated that they were opposed to the geographic residency requirement. The reasons were varied but included the arguments that all tribal members should be eligible regardless of residency and that residency violates the Snyder Act which provides for services for Indians throughout the United States. This is an issue we previously addressed in 1978 in connection with promulgation of the contract health services regulations (42 FR 34650 et seq., August 4, 1978). While IHS does have authorizing legislation (Snyder Act, etc.) to provide services to "Indians throughout the United States"; in appropriating funds Congress has generally provided funds for services to federally recognized Indians who live on or near Federal Indian reservations with certain exceptions, e.g. Urban projects.

This rule initially includes as HSDAs all current Contract Health Service Delivery Areas (CHSDA) and non-CHSDA service areas. In addition, the final rule adopts the proposed administrative method permitting the Director, IHS to revise HSDA boundaries after consultation with the Indian tribes affected and consideration of the criteria spelled out in the rule. Tribes are also allowed to request boundary changes. Revisions made by the Director will be published in the **Federal Register.**

8. Some commentors were concerned that combining eligibility rules for direct and contract health services and limiting eligibility to residents of the HSDA's will, for the first time, deny direct services to many Indians in areas beyond the HSDA's. Residency within a defined geographic service area is currently a requirement under the contract health service regulations and under this rule a residency requirement would apply to both direct and contract health services. We believe that requiring residency on or near reservations for both direct and contract care is not only a key element of this

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rule but is also prudent policy and consistent with Congressional intent.

9. This rule does away with the "close economic and social ties" test. If an Indian person resides in a HSDA and is a member of a Federally recognized tribe, he or she is eligible for IHS services both direct and contract. There were 37 tribal comments and 317 individual comments in favor of a residency requirement. Those in favor of residency did not address the close ties test. Nevertheless, we believe that deleting the close ties test is consistent with the overall approach and will simplify administration of the program and provide the individual with a clearer eligibility requirement.

10. Several commentors requested that implementation of the proposed regulations be postponed for various periods because there had not been enough consultation with the tribes. The issues involved in the NPRM were first presented in June 6, 1983, when a **Federal Register** notice (48 FR 25273) was published which outlined a number of options for eligibility criteria for Indians served by the IHS and solicited comments on these options. The proposed regulations have received extensive public exposure with a 150 day comment period resulting in over 11,000 submissions by individuals; groups; Indian and non-Indian organizations; state, local and tribal governments; and the Congress. In addition, over 120 public meetings were held to take public comments which resulted in over 10,000 pages of transcripts.

11. Some commentors were in favor of giving the tribes power to clear, veto, or even solely define the geographic composition of the HSDA's. This could defeat the concept of residency on or near reservations. As we indicated in the proposal, it is our intention to leave current service delivery areas in place at the outset to avoid any disruptions in service delivery patterns. The rule permits any Indian tribe located within a HSDA to submit to the appropriate Area Director(s) requests for changes in HSDA boundaries based on criteria contained in the regulation. The rule includes consultation with any other tribes affected by the proposal. The tribal request, all tribal comments, and the Area Director's recommendation and findings will be submitted to the IHS Director or the Director's designee, who makes the final determination.

12. A number of commentors were concerned that the rule might have a disproportionate impact on Indians in California and, therefore, special rules should be included for California Indians to take into account special historical factors in that State, such as failure to ratify treaties and past termination policies. Other commentors expressed opposite concerns claiming a special definition of California Indians would expand the current Indian service population in California and in effect "protect" the current California service population from the effects of any new eligibility rules, thus being unfair to Indians in other parts of the country who would be subject to and would have to bear the impact of any new rules.

Establishing separate eligibility requirements for California could set a precedent both for local diverse eligibility criteria and for inclusion of non-tribal Indian groups in other states. We have concluded that, absent specific Congressional direction to do so, it would be inappropriate for the Department to treat California Indians differently under this rule. The relationship between the Federal government and Indian Tribes is well established. Mechanisms are in place to correct historical anomalies through the BIA Federal acknowledgement program. We believe the most reasonable and prudent poilcy with respect to eligibility for services from the IHS is to make it clear that such services are available to members of Federally recognized tribes. It is within the jurisdiction of the BIA Federal acknowledgment program and the Congress to correct any historical anomalies with respect to Indian groups not now recognized.

C. Fee for Service Care

As was explained in the proposed rule we are also updating the regulation to specify those circumstances in which the IHS may provide direct services at its facilities on a fee-for-service basis. These include:

(a) In emergencies under section 322(b) of the Public Health Service Act, 42 U.S.C. 249(b), and 42 CFR 32.111 of the regulations;

(b) To Public Health Service and other federal beneficiaries under Economy Act (31 U.S.C. 1535) arrangements to the extent that providing services does not interfere with or restrict the provision of services to Indian and Alaska Native beneficiaries; and

(c) To non-beneficiaries residing within the HSDA under policies approved by the tribe or tribes located on the reservation but only to the extent that providing services does not, as determined by the IHS interfere with or restrict the provision of services to Indian and Alaska Native beneficiaries.

This rule will not necessarily eliminate the actual provision of services to those individuals who will no longer retain eligibility. They may still receive services from IHS facilities on a fee-for-service basis under one of the above conditions.

D. Beneficiary Identification Cards (BIC)

Only 92 comments were received on this subject and of these 84 were opposed to the use of BICs. Nevertheless, a registration process and issuance of BICs will enable the IHS to have more accurate knowledge of beneficiary populations and make it easier to identify beneficiaries and to expedite the provision of services in the various clinical settings. The absence of a card will not preclude an otherwise eligible Indian from obtaining services, though it may delay the administrative determination that an individual is eligible for services on a no charge basis.

E. Evidence of Tribal Membership

We have added a provision to clarify responsibilities for determining or demonstrating that a person is a member of a federally recognized tribe. Identification of federally recognized tribes is a BIA responsibility and the IHS relies on the BIA both for identification of federally recognized tribes and for resolution of controversies as to whom or what body officially speaks for or represents a tribe. Obtaining acknowledgment as a Federally recognized tribe is governed by regulations at 25 CFR Part 83. The IHS will work with both the BIA and the tribes to determine membership but it is the responsibility of the individuals to demonstrate that they are member of a federally recognized tribe.

Under this rule, the IHS will recognize two methods of demonstrating tribal membership:

(1) Documentation that the applicant meets the requirements of tribal membership as prescribed by the charter, articles of incorporation, other legal instrument or traditional process of the tribe and has been officially designated a tribal member by an authorized tribal official or body; or

(2) Certification of tribal enrollment or membership by the Secretary of the Interior acting through the (BIA).

This will help local IHS officials identify beneficiaries as well as provide necessary guidance to resolve any disputes regarding tribal membership.

F. Comments Beyond Scope

Several comments were received that went beyond the scope of the notice. They include suggestions: (1) That IHS charge Indians for services provided, or require a means test; and (2) that IHS

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use contract health service funds to buy group health insurance policies.

Determination Concerning Impact of the Rule

This rule does not have cost implications for the economy of $100 million or more independent of the IHS appropriation, nor will it result in a major increase in cost for consumers, industries, or Government agencies, nor will it adversely affect competition. Therefore, the Secretary has determined that the rule is not a "major rule under Executive Order 12291, and a regulatory impact analysis is not required. Further, these regulations will not have a significant economic impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Paperwork Reduction Act

Sections 36.12(b)(2), 36.14(a), 36.15(d), and 36.16 contain information collections that are subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980, which have been approved under control number 0915–0107.

List of Subjects in 42 CFR Part 36

Alaska natives, Indians, Health, Health facilities, Health service delivery areas, Contract health services.

Dated: May 28, 1987.

Robert E. Windom

Assistant Secretary for Health.

Approved: July 8, 1987.

Otis R. Bowen,

Secretary.

For the reasons set out in the preamble, we are amending 42 CFR Part 36 as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: Sec. 3, 68 Stat. 674; 42 U.S.C. 2003, 42 Stat. 208, sec. 1, 68 Stat. 674; 25 U.S.C. 13, 42 U.S.C. 2001 unless otherwise noted.

2. Subpart A is amended by revising the title, removing § 36.1, and redesignating §§ 36.2 and 36.3 as §§ 36.1 and 36.2 respectively, to read as follows:

Subpart A—Purpose

Sec.
§ 36.1 Purpose of the regulations.
* * * * *
§ 36.2 Administrative instructions.
* * * * *

3. Subparts B and C are amended by:

A. Redesignating § 36.12(c) as § 36.11(d);

B. Revising § 36.12;

C. Revising and redesignating § 36.21 as § 36.10;

D. Redesignating § 36.24 as § 36.13;

E. Removing § 36.14 and by revising paragraph (a) introductory text of § 36.25 and then by redesignating § 36.25 as § 36.14. The revised paragraph (a) introductory text would read as set forth below;

F. Adding new § 36.15 and § 36.16 to read as set forth below; and

G. Adding OMB control number 0915–0107 at the end of §§ 36.12, 36.14, 36.15, and 36.16.

The revised and added portions of Subpart B read as follows:

§ 36.10 Definitions.

As used in this subpart: "Alternate resources" means resources other than those of the Indian Health Service available and accessible to the individual, such as health care providers and institutions, health care payment sources, or other health care programs for the provision of health services (e.g., Medicare, Medicaid, State or local health care programs or private insurance), for which the individual may be eligible or would be eligible except for the individual's eligibility for any IHS program.

"Appropriate ordering official" means, unless otherwise specified by contract with the health care facility or provider or by a contract with a tribe or tribal organization, the ordering official for the Service Unit in which the individual requesting contract health services or on whose behalf the services are requested, resides.

"Area Director" means the Director of an Indian Health Service Area Office designated for purposes for administration of Indian Health Service Programs.

"Contract health services" means health services provided at the expense of the Indian Health Service from public or private medical or hospital facilities other than those of the Service or those funded by the Service.

"Emergency" means any medical condition for which immediate medical attention is necessary to prevent the death or serious impairment of the health of an individual.

"Health Service Delivery Area" means a geographic area designated pursuant to § 36.15 of this Subpart.

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et. seq.*, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Reservation" means any Federally recognized Indian tribe's reservation, Pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), and Indian allotments if considered reservation land by the Bureau of Indian Affairs.

"Reside" means living in a locality with the intent to make it a fixed and a permanent home. The following persons will be deemed residents of the Health Service Delivery Area:

(1) Students who are temporarily absent from the Health Service Delivery Area during full time attendance at programs of vocational, technical, or academic education including normal school breaks;

(2) Persons who are temporarily absent from the Health Service Delivery Area for purposes of travel or employment (such as seasonal or migratory workers);

(3) Indian children placed in foster care outside the Health Service Delivery Area by order of a court of competent jurisdiction and who were residents within the Health Service Delivery Area at the time of the court order.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"Service" means the Indian Health Service.

"Service Unit Director" means the Director of Indian Health Service programs for a designated geographical or tribal area of responsibility or the equivalent official of a contractor administering an IHS program.

§ 36.12 Persons to whom health services will be provided.

(a) Subject to the requirements of this subpart, the Indian Health Service will provide direct services at its facilities, and contract health services, as medically indicated, and to the extent that funds and resources allocated to the particular Health Service Delivery Area permit, to persons of Indian or Alaska Native descent who:

(1) Are members of a federally recognized Indian tribe; and

(2) reside within a Health Service Delivery Area designated under § 36.15; or

(3) Are not members of a Federally recognized Indian tribe but are the natural minor children (18 years old or under) of a member of a Federally

recognized tribe and reside within a Health Service Delivery Area designated under § 36.15.

(b) Subject to the requirements of this subpart, the Indian Health Service will also provide direct services at its facilities and, except where otherwise provided, contract health services, as medically indicated and to the extent that funds and resources allocated to the particular Health Service Delivery Area permit, to people in the circumstances listed below:

(1) To persons who meet the eligibility criteria in paragraph (a) of this section except for the residency requirement, who formerly resided within a Health Service Delivery area designated under § 36.15, and who present themselves to any Indian Health Service or Indian Health Service funded facility (and to minor children of such persons if the children meet the eligibility criteria in paragraph (a) of this section except for the residency requirement). Contract health services may not be authorized for these individuals;

(2) To a non-Indian woman pregnant with an eligible Indian's child but only during the period of her pregnancy through post-partum (generally about 6 weeks after delivery). In cases where the woman is not married to the eligible Indian under applicable state or tribal law, paternity must be acknowledged in writing by the Indian or determined by order of a court of competent jurisdiction;

(3) To non-Indian members of an eligible Indian's household if the medical officer in charge determines that the health services are necessary to control acute infectious disease or a public health hazard; and

(4) To an otherwise eligible person for up to 90 days after the person ceases to reside in a Health Service Delivery Area when the Service Unit Director has been notified of the move.

(c) Contract health services will not be authorized when and to the extent that Indian Health Service or Indian Health Service funded facilities are available and accessible to provide the needed care. When funds are insufficient to provide the volume of contract health services needed by the service population, the Indian Health Service shall determine service priorities on the basis of medical need. Contract health services will not be authorized when, and to the extent that, alternate resources for payment:

(1) Are available and accessible to the beneficiary, or

(2) Would be available and accessible if the beneficiary were to apply for them, or

(3) Would be available and accessible under state or local law or regulation in the absence of the individual's eligibility for contract health services from the Indian Health Service or Indian Health Service funded programs.

(d) The Indian Health Service may provide direct services at its facilities on a fee-for-service basis to persons who are not beneficiaries under paragraphs (a) and (b) of this section under a number of authorities including the following:

(1) In emergencies under section 322(b) of the Public Health Service Act, 42 U.S.C. 249(b), and 42 CFR 32.111 of the regulations;

(2) To Public Health Service and other Federal beneficiaries under Economy Act (31 U.S.C. 1535) arrangements to the extent that providing services does not interfere with or restrict the provision of services to Indian and Alaska Native beneficiaries; and

(3) To non-beneficiaries residing within the Health Service Delivery Area when approved by the tribe or tribes located on the reservation but only to the extent that providing services does not interfere with or restrict the provision of services to Indian and Alaska Native beneficiaries.

(Approved by the Office of Management and Budget under control number 0915–0107)

§ 36.14 Reconsideration and appeals.

(a) Any person who has applied for and been denied health services or eligibility by the Indian Health Service or by any contractor contracting to administer an Indian Health Service program or portion of a program, including tribes and tribal organizations contracting under the Indian Self-Determination Act, shall be notified of the denial in writing together with a statement of all the reasons for the denial. The notice shall advise the applicant that within 30 days from the receipt of the notice the applicant * * * * * * * * * *

(Approved by the Office of Management and Budget under control number 0915–0107)

§ 36.15 Health Service Delivery Areas.

(a) The Indian Health Service will designate and publish as a notice in the **Federal Register** specific geographic areas within the United States including Federal Indian reservations and areas surrounding those reservations as Health Service Delivery Areas.

(b) The Indian Health Service may, after consultation with all the Indian tribes affected, redesignate the boundaries of any Health Service Delivery Area followed by publication of a notice in the **Federal Register**. Any redesignation of a Health Service Delivery area will include the reservation, and those areas close to the reservation boundaries which can reasonably be considered part of the reservation service area based on consideration of the following factors:

(1) The number of persons residing in the off-reservation area who would be eligible under § 36.12(a) (1) and (3).

(2) The number of persons residing in the off-reservation area who have traditionally received health services from the Indian Health Service and whose eligibility for services would be affected;

(3) The geographic proximity of the off-reservation area to the reservation; and

(4) Whether the Indians residing in the off-reservation area can be expected to need and to use health services provided by the Indian Health Service given the alternate resources (health facilities and payment sources) available and accessible to them.

(c) Notwithstanding paragraphs (a) and (b) of this section, the Indian Health Service may designate States, subdivisions of States such as counties or towns, or other identifiable geographic areas such as census divisions or zip code areas, as Health Service Delivery Areas where reservations are nonexistent, or so small and scattered and the eligible Indian population so widely dispersed that it is inappropriate to use reservations as the basis for defining the Health Service Delivery Area.

(d) Any Indian tribal government may request a change in the boundaries of the Health Service Delivery Area. Such a request should be supported by documentation related to the factors for consideration set out in paragraph (b) of this section and shall include documentation of any consultation with or notification of other affected or nearby tribes. The request shall be submitted to the appropriate Area Director(s) who shall afford all Indian tribes affected the opportunity to express their views orally and in writing. The Area Director(s) shall then submit the request, including all comments, together with the Area's recommendation and independent findings or verification of the factors set out in paragraph (b) of this section, to the Indian Health Service Director or to the Director's designee for the Indian Health Service decision. The decision of the Indian Health Service Director or the Director's designee shall constitute final agency action on the tribe's request. Changes in the boundaries of Health Service Delivery Areas will be published in the **Federal Register**.

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(Approved by the Office of Management Budget under control number 0915–0107)

§ 36.16 Beneficiary identification Cards and verification of tribal membership.

(a) The Indian Health Service will issue Beneficiary Identification Cards as evidence of beneficiary status to persons who are currently eligible for services under § 36.12(a). Persons requesting Beneficiary Identification Cards must submit or have on file evidence satisfactory to the Indian Health Service of tribal membership and residence within a Health Service Delivery Area. The absence of a Beneficiary Identification Card will not preclude an otherwise eligible Indian from obtaining services through it may delay the administrative determination that an individual is eligible for services on a no charge basis.

(b) For establishing eligiblity or obtaining a Beneficiary Identification Card, applicants must demonstrate that they are members of a Federally recognized tribe. Membership in a Federally recognized tribe is to be determined by the individual tribe or the Bureau of Indian Affairs. Therefore, the Indian Health Service will recognize two methods of demonstrating tribal membership:

(1) Documentation that the applicant meets the requirements of tribal membership as prescribed by the charter, articles of incorporation, or other legal instruments or traditional processes of the tribe and has been officially designated a tribal member by an authorized tribal official or body; or

(2) Certification of tribal enrollment or membership by the Secretary of the Interior acting through the Bureau of Indian Affairs.

(c) Demonstrating membership in a Federally recognized tribe is the responsibility of the applicant. However, the Indian Health Service may consult with the appropriate tribe or the Bureau of Indian Affairs on outstanding questions regarding an applicant's tribal membership if the Indian Health Service has some documentation that it believes may be helpful to the tribe or the Bureau of Indian Affairs in making their determination.

(Approved by the Office of Management and Budget under control number 0915–0107)

Subpart C [Removed and Reserved]

G. The remaining portions of Subpart C, §§ 36.22 and 36.23 are removed, and Subpart C is removed and reserved.

H. A temporary Subpart D, consisting of §§ 36.31 through 36.34 is added, effective September 16, 1987 through September 18, 1989, subsequent to which Subpart D shall be removed and reserved.

Subpart D—Transition Provisions

§ 36.31 Transition period.

(a) The transition period for full implementation of the new eligibility regulations consists of three parts;

(1) A six month delayed implementation;

(2) A six month grace period; and

(3) A health care continuity period determined by medical factors.

§ 36.32 Delayed implementation.

(a) The eligibility requirements in Subparts A and B of this part become effective March 16, 1988.

(b) During the six month delayed implementation period the former eligibility regulations will apply.

§ 36.33 Grace period.

(a) Upon the effective date referred to in § 36.32(a), individuals who would lose their eligibility under the new eligilibity regulations published on September 16, 1987, and who have made use of an Indian Health Service of Indian Health Service funded service within three years prior to September 16, 1987 (date of publication of the new eligibility regulations) shall retain their eligibility for a six month grace period ending September 16, 1988. During this grace period such individual's eligibility will continue to be determined under the former regulations except that the new residency requirements established by Subparts A and B must be met for the individual to be eligible.

(b) All individuals who receive services during the grace period based on paragraph (a) of this section and whose eligibility will terminate on September 16, 1988, shall be notified in writing that after September 16, 1988 they will no longer the eligible for services as Indian Health Service beneficiaries. Such written notice should include an explanation of their appeal rights as provided in § 36.14 of the part. These patients shall be offered assistance in locating other health care providers and medical assistance programs.

§ 36.34 Care and treatment of people losing eligibility.

(a) Individuals who lose their eligibility on September 16, 1988, (end of the grace period) and on that date are actively undergoing treatment may still be provided services for a limited period in the following circumstances;

(1) Inpatients in IHS and IHS funded facilities and those receiving inpatient care under contract, including contract health services, may continue to receive such care and necessary follow-up services at Indian Health Service expense until the need for hospitalization and follow-up services has ended as determined by the responsible Indian Health Service or tribal physician, all other conditions being met including medical priorities;

(2) Those actively undergoing a course of outpatient treatment either in Indian Health Service and Indian Health Service funded facilities or through contract health services, termination of which would impair the health of the individual patient, may continue to receive the treatment at Indian Health Service expense for a reasonable length of time, until the course of treatment reaches a point where it may safely be terminated or the patient transferred to other providers as determined by the responsible Indian Health Service or tribal physician, all other conditions being met including medical priorities.

(3) Those under treatment for chronic degenerative conditions may be provided additional treatment at Indian Health Service expense for no longer than 1 year beyond the end of the grace period notwithstanding any determination that it was otherwise safe to transfer treatment to other providers, all other conditions being met including medical priorities.

(b) All patients receiving care under paragraph (a) of this section shall be notified in writing that, after discharge from care provided under any of the above circumstances, they will no longer be eligible for services as Indian Health Service beneficiaries. Such notice shall include an explanation of their appeal rights as provided in § 36.14 of this part. These patients shall be offered assistance in locating other health care providers and medical assistance programs.

[FR Doc. 87–21166 Filed 9–15–87; 8:45 am]

BILLING CODE 4160–16–M

federal register

Wednesday
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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Special Federal Aviation Regulation No. 47; Special Flight Authorization for Noise Restricted Aircraft; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 24394; NPRM 87-9]

Special Federal Aviation Regulation No. 47; Special Flight Authorization for Noise Restricted Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: Special Federal Aviation Regulation (SFAR) 47 provides for limited issuance of special flight authorizations to conduct certain nonrevenue operations that are otherwise prohibited by the Part 91, Subpart E, noise restrictions. The current rule terminates on December 31, 1987. This proposal would extend SFAR 47 through December 31, 1989, and require all requests for special flight authorizations to be submitted in writing five days prior to effective date. The FAA does not plan to extend the SFAR beyond January 1, 1990.

DATE: Comments must be received on or before October 16, 1987.

ADDRESSES: Comments on the proposal are to be marked "Docket No. 24394" and mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24394, 800 Independence Ave., SW., Washington, DC 20591; or delivered in duplicate to Room 916, 800 Independence Ave., SE., Washington, DC. Comments may be inspected in Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mrs. Laurette Fisher, Noise Policy and Regulatory Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, telephone: (202) 267-3561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impact of this proposal. The comments should contain the regulatory docket or notice number and be submitted in duplicate to the address above. All comments received as well as a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for comments.

Before taking any final action on the proposal, the Administrator will consider the comments made on or before the closing date, and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter submits a self-addressed, stamped postcard with the comment and on the postcard the following statement is made: "Comments to Docket No. 24394." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should be identified by the docket number of this proposed rule. Persons interested in being placed on a mailing list for future notices of proposed rulemaking should also request a copy of Advisory Circular No. 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Synopsis of the Proposal

Under Part 91 of the Federal Aviation Regulations, on or after January 1, 1985, no person may operate a civil subsonic turbojet airplane with maximum weight of more than 75,000 pounds to or from an airport in the United States unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels under Part 36. This restriction applies to U.S. registered aircraft that have standard airworthiness certificates and foreign registered aircraft that would be required to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States. SFAR 47 was adopted February 26, 1985, (50 FR 7751, February 26, 1985) to permit certain operations of noise restricted aircraft without a formal grant of exemption under FAR Part 11. The FAA has determined this process to be very cost beneficial and time efficient to both the government and the private sector. On December 31, 1986, FAA extended SFAR 47 for a one-year period until December 31, 1987, in order to facilitate the removal of remaining non-noise compliant airplanes from the United States. The FAA believes that by January 1, 1990, nearly all non-compliant Stage 1 aircraft will have been modified to meet Stage 2 noise standards or be out of service. Moreover, if a situation arises that an aircraft needs to be hushkitted after January 1, 1990, the FAR Part 11 exemption process is available. The FAA plans no further action to extend the SFAR beyond this date.

In addition, from experience gained in the issuance of special flight authorizations, the FAA believes a change establishing a time frame for submitting SFAR 47 requests is required due to the number of last-minute requests submitted.

The FAA proposes to amend section 3 of SFAR 47 to require the applicant for a special flight authorization to submit its request in writing five days before the applicant's requested flight date. This time frame will prevent any delays in issuing the requested authorizations, and assist the applicant in insuring the flight can be commenced as planned.

Paperwork Reduction Act Approval

The reporting requirements contained in this proposal have been submitted to OMB for review. Comments on the requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, Room 3001, Washington, DC 20503; Attention: FAA Desk Officer (Telephone 202-395-7340). A copy should be submitted to the FAA docket.

Economic Impact

This proposal has minimal economic impact. Adoption of the proposal would allow an alternative from the exemption process for certain operations, reducing administrative costs upon operators and the FAA. While the operations are not without some noise costs, these costs can be characterized as trivial, since the number of operations at any one local airport will be extremely low in number.

Even though benefits will exceed costs for this proposal, the FAA finds that the SFAR if adopted, is not likely to have significant economic impact upon a substantial number of small entities. The basis for this is the very low number of requests which FAA foresees as a result of the adoption of this proposal. This number should not exceed twenty over the life of the regulation. Accordingly, preparation of a full regulatory evaluation is not required.

List of Subjects in 14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Pilots, Airspace, Air

transportation, Airworthiness directives and standards.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact has been prepared. The changes proposed in this rule do not significantly affect the quality of the human environment.

The Proposed Amendment

Accordingly, the FAA proposes to amend Part 91 of the Federal Aviation Regulations (14 CFR Part 91) by amending Special Federal Aviation Regulation 47 to read as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 State 1180); 42 U.S.C 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983].

Special Federal Aviation Regulation 47—[Amended]

2. By amending paragraph 3 to add one paragraph as follows:

(j) Written requests should be received five days prior to requested flight date.

3. By removing from paragraph 5 the word "1987" and substituting the word "1989."

The proposal has minimal economic consequences. Accordingly, for reasons stated earlier the FAA has determined that: (1) The amendment does not involve a major rule under Executive Order 12291; (2) the amendment is not significant nor does it require a Regulatory Evaluation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) it is certified that under the criteria of the Regulatory Flexibility Act that the amendment will not have significant economic impact on a substantial number of small entities. In addition, this proposal, if adopted would have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the United States.

Issued at Washington, DC on September 11, 1987.

Norman H. Plummer,

Director of Environment and Energy.

[FR Doc. 87-21357 Filed 9-15-87; 8:45 am]

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Part V

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Inpatient Hospital Deductible and Coinsurance Amounts and Part A Premium for the Uninsured Aged for 1988; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OACT-11-N]

Medicare Program; Inpatient Hospital Deductible and Coinsurance Amounts and Part A Premium for the Uninsured Aged for 1988

AGENCY: Health Care Financing Administration (HCFA), HHS.
ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and coinsurance amounts and the monthly hospital insurance premium for the uninsured aged for calendar year 1988 under Medicare's hospital insurance program. The Medicare statute specifies the formulae to be used to determine these amounts.

The inpatient hospital deductible will be $540. The daily coinsurance amounts will be: (a) $135 for the 61st through 90th days of hospitalization; (b) $270 for lifetime reserve days; and (c) $67.50 for the 21st through 100th days of extended care services in a skilled nursing facility.

The monthly Medicare hospital insurance premium for the 12 months beginning January 1, 1988 (for individuals who are not insured under the Social Security or Railroad Retirement Acts and do not otherwise meet the requirements for entitlement to Part A) is $234.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Barb Klees, (301) 594–2780.

SUPPLEMENTARY INFORMATION:

I. Inpatient Hospital Deductible and Coinsurance Amounts

Section 1813 of the Social Security Act (the Act) (42 U.S.C. 1395(e)) provides for an inpatient hospital deductible and certain coinsurance amounts to be deducted from the amount payable by Medicare for inpatient hospital services and extended care services furnished an individual. Section 1813(b)(2) of the Act, as amended by section 9301 of the Omnibus Budget Reconciliation Act (OBRA) of 1986, Pub. L. 99–509, requires the Secretary to determine and publish by September 15 of each year the amount of the inpatient hospital deductible applicable for the following calendar year.

The 1988 inpatient hospital deductible and coinsurance amounts discussed below have been computed as required by section 1813 of the Act. The costs associated with this notice are the result of legislative requirements implemented by this notice. The amount of the deductible for 1988 under the formula has been determined to be $540. This represents a 4 percent increase over the deductible for 1987, which was $520. The 1987 deductible had increased 6 precent over that for 1986. The $520 amount for 1987 was prescribed by Congress in section 1813(b)(1) of the Social Security Act, as amended by section 9301 of OBRA.

Section 9301 of Pub. L. 99–509 amended section 1813 of the Act to establish a new method for computing the amount of the inpatient hospital deductible. Under the formula specified in the law, the deductible for calendar year 1988 must be equal to $520 (the deductible for the preceding year) multiplied by the percentage increase (that is, the update factor) for the prospective payment rates for inpatient hospital services effective October 1, 1987, and adjusted to reflect real case mix. The amount so determined is rounded to the nearest multiple of $4.

The applicable percentage increase for Medicare prospective payment rates is 2.7 percent, as announced in the **Federal Register** on September 1, 1987 (52 FR 33034). The case-mix adjustment factor is 1.46 percent.

A case-mix index is calculated for each hospital reflecting the relative costliness of that hospital's mix of cases compared to a national average mix of cases. We computed the increase in average case mix for hospitals paid under the Medicare prospective payment system (PPS) in fiscal year 1987. We used PPS bills available to us as of the end of July 1987. This is a total of about 6 million discharges for FY 1987. The increase in average case mix in FY 1987 is computed to be 1.46 percent.

In the June 11, 1987 notice of the Secretary's recommended update for PPS hospitals (52 FR 22386), we made no adjustment to the update factor for case mix, since at that time the date indicated an increase in case mix of 0.6 percent in FY 1987, which was small compared to increases in prior years. We considered all of this increase as due to changes in real case mix. Even though the measure of case-mix increase for FY 1987 has increased to 1.46 percent, we did not recommend any adjustment to the PPS update for FY 1988. Hence, we considered all of the 1.46 percent increase as changes in real case mix. By law, we must increase the deductible by the real case-mix increase of 1.46 percent.

Thus, the inpatient hospital deductible for calendar year 1988 is $520 times 1.027 times 1.0146, which equals $541.84 and is rounded to $540.

Because the coinsurance amounts in section 1813 of the Act are fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year, the increase in the deductible has the effect of also increasing the amount of coinsurance the Medicare beneficiary must pay. Thus, for inpatient hospital services or extended care services furnished in 1988, the daily coinsurance for the 61st through 90th days of hospitalization (¼ of the inpatient hospital deductible) will be $135; the daily coinsurance for lifetime reserve days (½ of the inpatient hospital deductible) will be $270; and the daily coinsurance for the 21st through 100th days of extended care services in a skilled nursing facility (⅛ of the inpatient hospital deductible) will be $67.50.

The estimated cost to beneficiaries due to these increases is $200 million. This amount is based on an estimated 7.3 million beneficiaries who will have 7.9 million benefit periods and use 2.9 million hospital coinsurance days, 1.1 million lifetime reserve days, and 4.2 million skilled nursing facility coinsurance days in 1988.

II. Part A Premium for the Uninsured Aged

Under the authority in section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2)), I have determined that the monthly Medicare hospital insurance premium for the uninsured aged for the 12 months beginning January 1, 1988 is $234.

Section 1818 of the Social Security Act (Act) provides for voluntary enrollment in the hospital insurance program (Part A of Medicare), subject to payment of a monthly premium, of certain persons age 65 and older who are uninsured for social security or railroad retirement benefits and do not otherwise meet the requirements for entitlement to hospital insurance. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.)

The formula specified in this section requires that, for the period beginning January 1, 1988, the 1973 base year premium ($33) be multiplied by the ration of (1) the 1988 inpatient hospital deductible to (2) the 1973 inpatient hospital deductible, rounded to the nearest multiple of $1, or, if midway between multiples of $1, to the next higher multiple of $1.

Under section 1813(b)(2) of the Act, the 1988 inpatient hospital deductible was determined to be $540. The 1973 deductible was actuarially determined to be $76, although the 1973 deductible

was actually promulgated to be only $72, to comply with a ruling of the Cost of Living Council. (See 37 FR 21452, October 11, 1972.) The monthly premium for the 12-month period beginning January 1, 1988 has been calculated using the $76 deductible for 1973, since this more closely satisfies the intent of the law. Thus, the monthly hospital insurance premium is $33 × (540/76) = $234.47, which is rounded to $234.

The monthly hospital insurance premium for the uninsured aged for the 12-month period beginning January 1, 1988, will increase to $234. That amount is 4 percent higher than the $226 monthly premium amount for the 12-month period beginning January 1, 1987.

The estimated cost of this increase to the approximately 18 thousand enrollees who do not otherwise meet the requirements for entitlement to hospital insurance will be about $2 million.

III. Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

(Sec. 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e(b)(2) and sec. 1818(d)(2) of the Social Security Act. (42 U.S.C. 1395i–2(d)(2))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 10, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 11, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87–21553 Filed 9–16–87; 10:03 am]

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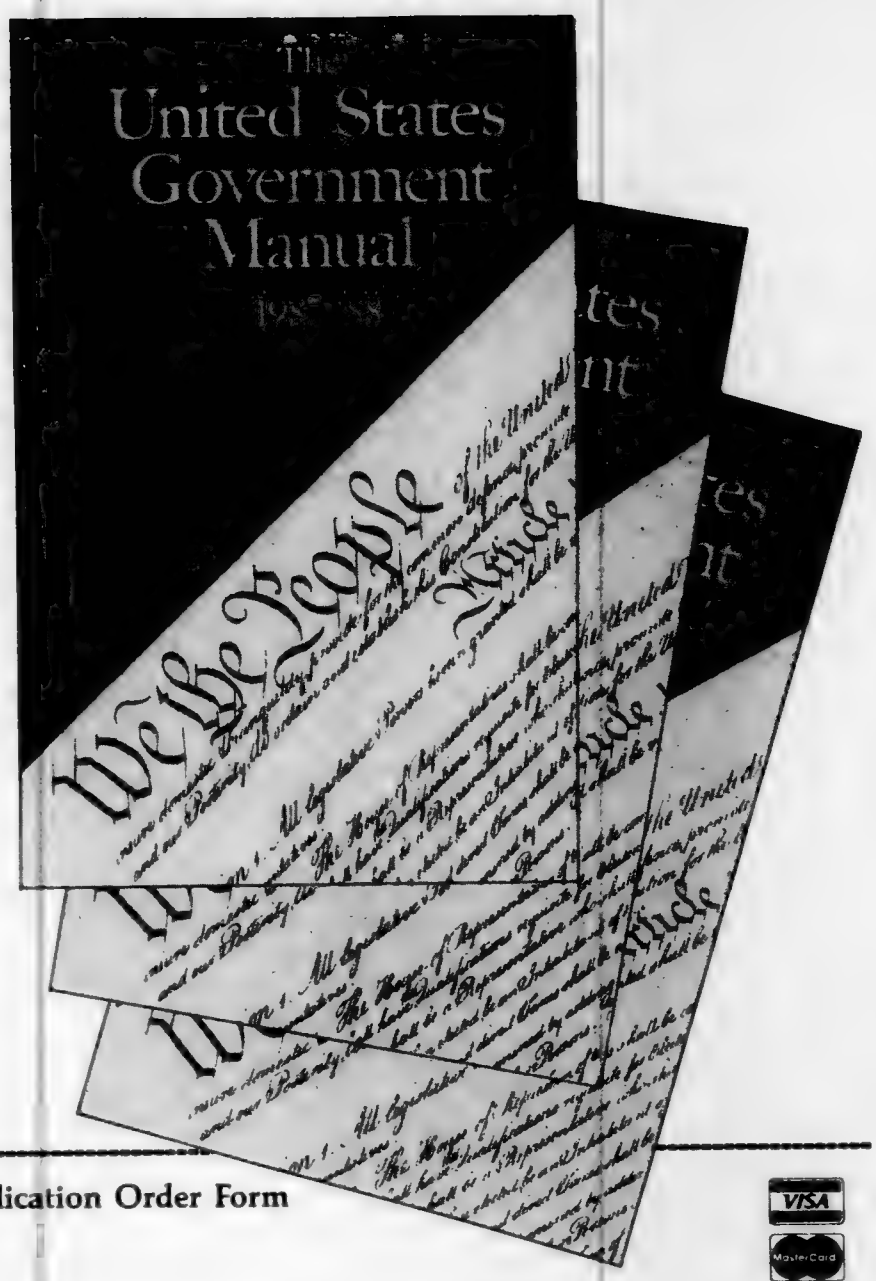

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 87-124]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding an additional portion of Los Angeles County in California to the list of areas in Los Angeles County designated as quarantined areas. This action is necessary as an emergency measure in order to prevent the artificial spread of the Mediterranean fruit fly into noninfested areas of the United States. The effect of this action is to impose certain restrictions on the interstate movement of regulated articles from the quarantined area.

DATES: Interim rule effective September 14, 1987. Consideration will be given only to comments postmarked or received on or before November 16, 1987.

ADDRESSES: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-124. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 661 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is an extremely destructive pest of numerous fruits (especially citrus fruits), nuts, vegetables, and berries. Heavy infestations of this pest can result in complete loss of these crops. The short life cycle of the Mediterranean fruit fly permits the rapid development of serious outbreaks.

A document published in the **Federal Register** on September 2, 1987, (52 FR 33218-33224, Docket Number 87-120) established the Mediterranean fruit fly regulations (7 CFR 301.78 *et seq.*; referred to below as the regulations). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the artificial spread of the Mediterranean fruit fly to noninfested areas of the United States.

The regulations, among other things, designated portions of Los Angeles County as a quarantined area. This area remains infested with Mediterranean fruit fly.

However, the Mediterranean fruit fly has now been found in other areas of Los Angeles County, as a result of trapping surveys conducted by inspectors of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture and state agencies of California. The regulations in § 301.78-3 provide that the Deputy Administrator for Plant Protection and Quarantine shall list as a quarantined area each state, or each portion of a state, in which the Mediterranean fruit fly has been found by an inspector. We are amending the regulations by revising the quarantined area to include all the areas in Los Angeles County in which the Mediterranean fruit fly has been found. The revised quarantined area is as follows:

Los Angeles County

That portion of the county bounded by a line beginning at the intersection of Interstate Highway 10 and Central Avenue; then southerly along Central Avenue to its intersection with Martin Luther King, Jr. Boulevard; then westerly along Martin Luther King, Jr. Boulevard to its intersection with Broadway; then southerly on Broadway to its intersection with Imperial Highway; then easterly along Imperial Highway to its intersection with State Highway 19; then northeasterly along State Highway 19 to its intersection with Washington Boulevard; than northwesterly along Washington Boulevard to its intersection with Paramount Boulevard; then northeasterly along Paramount Boulevard to its intersection with State Highway 72; then westerly along State Highway 72 to its intersection with Montebello Boulevard; then northerly along Montebello Boulevard to its intersection with Paramount Boulevard; then northerly along Paramount Boulevard to its intersection with State Highway 60; then westerly along State Highway 60 to its intersection with Mednik Avenue; then northerly along Mednik Avenue to its intersection with Floral Drive; then northeasterly along an imaginary line to the intersection of Brightwood Street and Stonewell Street; then northerly along an imaginary line to the intersection of Casuda Canyon Drive and Ladera Street; then northerly along Ladera Street to its intersection with Verde Vista Drive; then westerly along an imaginary line to the intersection of State University Drive and Eastern Avenue; then westerly along Eastern Avenue to its intersection with Marianna Avenue; then westerly along an imaginary line to the intersection of Boca Avenue and Valley Boulevard; then northwesterly along Valley Boulevard to its intersection with Mission Road; then southwesterly along Mission Road to its intersection with U.S. Highway 101; then westerly along U.S. Highway 101 to its intersection with Vignes Street; then southerly along Vignes Street to its intersection with 1st Street; then easterly along 1st Street to its intersection with Santa Fe Avenue; then southerly along Santa Fe Avenue to its intersection with Interstate Highway 10; then westerly along Interstate Highway 10 to the point of beginning.

Emergency Action

William F. Helms, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Due to the possibility that the Mediterranean fruit fly could be spread artifically to noninfested areas of the United States, a situation exists requiring immediate action to help control the spread of this pest. Since prior notice and other public procedures with respect to this interim

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rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 to make this interim rule effective upon signature. We will consider comments on this interim rule that are postmarked or received within 60 days of publication. As soon as possible after the comment period closes, we will publish another document in the **Federal Register** discussing the comments we received and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Within the part of Los Angeles County that is being added to the quarantined area, there are fewer than 20 small entities that may be affected, 12 mobile and three stationary fruit stands. Most of the sales by these entities are local intrastate sales and will not be affected by this rule. Also, the conditions in the Mediterranean fruit fly regulations and the treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow interstate movement of most articles without significant added costs.

Based on these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3(c), the designation of the quarantined areas is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles County

That portion of the county bounded by a line beginning at the intersection of Interstate Highway 10 and Central Avenue; then southerly along Central Avenue to its intersection with Martin Luther King, Jr. Boulevard; then westerly along Martin Luther King, Jr. Boulevard to its intersection with Broadway; then southerly on Broadway to its intersection with Imperial Highway; then easterly along Imperial Highway to its intersection with State Highway 19; then northeasterly along State Highway 19 to its intersection with Washington Boulevard; then northwesterly along Washington Boulevard to its intersection with Paramount Boulevard; then northeasterly along Paramount Boulevard to its intersection with State Highway 72; then westerly along State Highway 72 to its intersection with Montebello Boulevard; then northerly along Montebello Boulevard to its intersection with Paramount Boulevard; then northerly along Paramount Boulevard to its intersection with State Highway 60; then westerly along State Highway 60 to its intersection with Mednik Avenue; then northerly along Mednik Avenue to its intersection with Floral Drive; then northeasterly along an imaginary line to the intersection of Brightwood Street and Stonewell Street; then northerly along an imaginary line to the intersection of Casuda Canyon Drive and Ladera Street; then northerly along Ladera Street to its intersection with Verde Vista Drive; then westerly along an imaginary line to the intersection of State University Drive and Eastern Avenue; then westerly along Eastern Avenue to its intersection with Marianna Avenue; then westerly along an imaginary line to the intersection of Boca Avenue and Valley Boulevard; then northwesterly along Valley Boulevard to its intersection with Mission Road; then southwesterly along Mission Road to its intersection with U.S. Highway 101; then westerly along U.S. Highway 101 to its intersection with Vignes Street; then southerly along Vignes Street to its intersection with 1st Street; then easterly along 1st Street to its intersection with Santa Fe Avenue; then southerly along Santa Fe Avenue to its intersection with Interstate Highway 10; then westerly along Interstate Highway 10 to the point of beginning.

Done at Washington, DC, this 14th day of September, 1987.

D. Husnik,

Acting Deputy Administrator, Plant Protection and Quarantine Animal and Plant Health Inspection Service.

[FR Doc. 87–21468 Filed 9–16–87; 8:45 am]

BILLING CODE 3410–34–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 706

Federal Credit Union; Prohibited Lending Practices

AGENCY: National Credit Union Administration.

ACTION: Interim final rule.

SUMMARY: The Competitive Equality Banking Act of 1987 (CEBA) amended the Federal Trade Commission Act to provide that the authority to declare practices of Federal credit unions (FCU's) unfair or deceptive trade practices was transferred from the Federal Trade Commission (FTC) to the NCUA. The CEBA further amended the FTC Act to require the NCUA to promulgate rules that are substantially similar to rules issued by the FTC defining unfair or deceptive trade practices. The FTC adopted such a rule entitled the Credit Practices Rule which FCU's were subject to until the enactment of the CEBA. The Credit Practices Rule prohibits the use by creditors of four contract provisions and the pyramiding of late charges, and requires a notice to be given to potential cosigners of credit obligations. This interim final rule was adopted by the NUCA Board to meet NCUA's statutory mandate to adopt substantially similar rules as those issued by the FTC defining unfair or deceptive trade practices.

EFFECTIVE DATE: September 17, 1987. Comments must be received on or before November 17, 1987.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: James J. Engel, Deputy General Counsel, or Julie Tamuleviz, Staff Attorney, NCUA, Office of General Counsel, at the above address, or telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION:

Background

Prior to the enactment of the Competitive Equality Banking Act of 1987 (CEBA), Pub. L. 100–86, on August 10, 1987, the Federal Trade Commission (FTC) had the authority to prevent FCU's from engaging in unfair or deceptive trade practices. (15 U.S.C. 45 (a)(2).) The FTC also had the authority to prescribe rules defining unfair or deceptive trade practices. (15 U.S.C. 57a(a)(1)(B).) The CEBA amended the FTC Act by transferring to the NCUA the authority to declare practices of FCU's unfair or deceptive trade practices, to investigate such practices, and to issue rules regulating such practices by FCU's. This amendment provided FCU's with the same exemptions from the FTC's trade practices authority with respect to unfair or deceptive trade practices as those currently allowed banks and savings and loans regulated by the Federal Reserve Board and the Federal Home Loan Bank Board.

As amended by CEBA, the FTC Act provides that, within 60 days after the effective date of an FTC Rule defining unfair or deceptive trade practices, NCUA must promulgate rules applicable to FCU's prohibiting acts or practices of FCU's which are substantially similar to those prohibited by the FTC unless the Board finds that such acts and practices of FCU's are not unfair or deceptive. The FTC issued such a Rule, the Credit Practices Rule, which became effective on March 1, 1985. 16 CFR Part 444. FCU's were subject to this rule until the enactment of CEBA.

The Credit Practices Rule prohibits the following types of loan contract clauses:

1. *Confessions of Judgment of Cognovits*—a waiver of a debtor's right to notice and the opportunity to be heard in the event of a suit or other process on the credit obligation, and for the entry of a judgment against the debtor resulting therefrom.

2. *Waivers of Exemption*—a waiver or limitation of exemption from attachment, execution, or other process of the debtor's real or personal property, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

3. *Wage assignments*—at the creditor's option, a transfer of a debtor's wages to the creditor upon default without notice or hearing.

4. *Security Interest in Household Goods*—gives a creditor a nonpossessory lien on personal property. The rule prohibits the taking of a security interest, other than a purchase money security interest, in a debtor's household goods.

The rule also prohibits a lender from engaging in any practice which would result in the pyramiding of late charges, that is, charging multiple late charges for one late payment. The rule also requires lenders to disclose in writing to potential cosigners that they will have to repay the loan if the debtor does not.

As discussed above, the NCUA is now statutorily required to issue a rule that is substantially similar to the FTC's Credit Practices Rule. The Prohibited Lending Practices Rule is being issued by the NCUA Board to meet this requirement. The NCUA Board determined that it was necessary to adopt the Prohibited Lending Practices Rule as an interim final rule, rather than as a proposed rule, to ensure that FCU's are currently subject to a rule substantially similar to the FTC's Credit Practices Rule. As the Prohibited Lending Practices Rule does not impose any new requirements on FCU's, this will not impose any hardship on FCU's. The Board will review the interim final rule to determine if any amendments should be made, and requests comments on the rule in this regard. Following this additional review of the rule, the Board will adopt a final rule.

NCUA's Prohibited Lending Practices Rule is virtually identical in substance to the FTC's Credit Practices Rule and the corresponding rules issued by the Federal Reserve for banks (12 CFR Part 227) and the Federal Home Loan Bank Board for savings and loan associations (12 CFR Part 535). However, NCUA's rule has been modified so that it applies only to FCU's. Readers desiring further information should refer to the preamble of the FTC's rule. (49 FR 7740, March 1, 1984.)

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that this rule will not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets) as the rule does not impose any additional requirements on any FCU, but merely maintains rules that FCU's have been subject to since March 1, 1985. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The rule contains one information collection request. Section 706.3(b) of the rule requires that FCU's provide cosigners with a specified disclosure prior to the time the cosigner assumes liability on an obligation. This information collection request will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act prior to the time the rule is published in the **Federal Register**. The requirement has been in effect for FCU's under the FTC rule. Written comments and recommendations regarding the information collection request should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, a New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: Robert Fishman.

List of Subjects in 12 CFR Part 706

Credit unions, Prohibited lending practices, Unfair or deceptive acts.

By the National Credit Union Administration Board, this 9th day of September, 1987.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA adds a new Part 706 to its regulations as follows:

PART 706—PROHIBITED LENDING PRACTICES

Sec.

706.1 Definitions.
706.2 Unfair credit practices.
706.3 Unfair or deceptive cosigner practices.
706.4 Late charges.
706.5 State exemptions.

Authority: 15 U.S.C. 57a(f).

§ 706.1 Definitions.

(a) *Person.* An individual, corporation, or other business organization.

(b) *Consumer.* A natural person member who seeks or acquires goods, services, or money for personal, family, or household use.

(c) *Obligation.* An agreement between a consumer and a Federal credit union.

(d) *Debt.* Money that is due or alleged to be due from one to another.

(e) *Earnings.* Compensation paid or payable to an individual or for his or her account for personal services rendered

or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(f) *Household goods.* Clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents, provided that the following are not included within the scope of the term "household goods":

(1) Works of art;

(2) Electronic entertainment equipment (except one television and one radio;

(3) Items acquired as antiques; and

(4) Jewelry (except wedding rings).

(g) *Antique.* Any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character.

(h) *Cosigner.* A natural person who renders himself or herself liable for the obligation of another person without receiving goods, services or money in return for the credit obligation, or in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the obligation. The term includes any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.

§ 706.2 Unfair credit practices.

(a) In connection with the extension of credit to consumers, it is an unfair act or practice for a Federal credit union, directly or indirectly to take or receive from a consumer an obligation that:

(1) Constitutes or contains a cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(2) Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(3) Constitutes or contains an assignment of wages or other earnings unless:

(i) The assignment by its terms is revocable at the will of the debtor, or

(ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or

(iii) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(4) Constitutes or contains a nonpossessory security interest in household goods other than a purchase money security interest.

§ 706.3 Unfair or deceptive cosigner practices.

(a) *Prohibited practices.* In connection with the extension of credit to consumers, it is:

(1) A deceptive act or practice for a Federal credit union, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any person.

(2) An unfair act or practice for a Federal credit union, directly or indirectly, to obligate a cosigner unless the cosinger is informed prior to becoming obligated, which in the case of open end credit means prior to the time that the agreement creating the cosigner's liability for future charges is executed, of the nature of his or her liability as cosigner.

(b) *Disclosure requirement.* To comply with the cosigner information requirement of paragraph (a)(2) of this section, a clear and conspicuous document that contains only the following statement, or one which is substantially equivalent, must be given to the cosigner prior to becoming obligated:

Notice of Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

§ 706.4 Late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for a Federal credit union, directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For purposes of this section, "collecting a debt" means any activity other than the use of judicial process that is intended to bring about or does bring about repayment of all or part of a consumer debt.

§ 706.5 State exemptions.

(a) If, upon application to the NCUA by an appropriate state agency, the NCUA determines that:

(1) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of this rule applies; and

(2) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this rule; then that provision of this rule will not be in effect in the state to the extent specified by the NCUA in its determination, for as long as the state administers and enforces the state requirement or prohibition effectively.

[FR Doc. 87-21523 Filed 9-16-87; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 87-117]

Change in the Customs Service Field Organization; Port Huron, MI

AGENCY: U.S Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to change the Customs field organization by extending the geographic limits of the port of entry of Port Huron, Michigan. Currently, Customs officers assigned to the port provide service at many locations which are outside the existing port limits. This expansion will better serve the public by

including several locations routinely requiring Customs service within the official port limits.

EFFECTIVE DATE: October 19, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control, (202–566–9425).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, by notice published in the **Federal Register** on April 23, 1987 (52 FR 13473), Customs proposed to amend § 101.3, Customs Regulations (19 CFR 101.3), by extending the geographic limits of the port of entry of Port Huron, Michigan, located in the Detroit, Michigan, Customs District in the North Central Region.

The proposed expanded port limits set forth in that document, and as more accurately described in a subsequent notice published on May 12, 1987 (52 FR 17770), are as follows:

All of the territory encompassing the cities of Port Huron, Marysville, St. Clair, Marine City and Algonac and the Townships of Port Huron, Fort Gratiot, Kimball, St. Clair, East China and the portion of Cottrellville and Clay Townships east of and including Highway M-29, all in the State of Michigan.

No comments were received in response to the notice proposing the expansion. After further review of the matter, Customs has determined that it is in the public interest to adopt the expansion as proposed. The expansion of the geographic limits of Port Huron will permit normal rotation of inspectors to St. Clair, Marine City, and Algonac as they are now assigned to other areas within the existing port limits. Importers within the expanded port limits will no longer be billed mileage charges, which have been minimal. The expansion will result in no additional workload and will require no additional personnel.

Algonac and Marine City are currently listed in § 101.4(c), Customs Regulations (19 CFR 101.4(c)), as Customs stations. As those two locations are now encompassed by the expanded limits of Port Huron, they are being removed from the list in § 101.4(c).

Authority

This change is made under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR Parts 1949 through 1953 Comp. Ch. II) and pursuant to authority provided by Treasury Department Order No. 101–5, dated February 17, 1987 (52 FR 6282).

Executive Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. Similarly, this document is not subject to the regulatory analysis and other requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Customs routinely establishes and expands Customs ports of entry and Customs stations throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this amendment may have a limited effect upon some small entities in the area affected, it is not expected to be significant because establishing and expanding port limits or stations in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Drafting Information

The principal author of this document was John Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization and functions (Government agencies).

Amendments to the Regulations

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101, Customs Regulations (19 CFR Part 101), continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1, 66, 1202 (Gen. Hdnote. 11), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

§ 101.3 [Amended]

2. To reflect this change, the list of Customs regions, districts, and ports of entry in § 101.3(b) is amended by removing "53576" from the listing for Port Huron in the column headed "Ports of entry", in the Detroit, Michigan, Customs District of the North Central Region, and inserting in its place, "87–117".

§ 101.4 [Amended]

3. The list of Customs districts, stations, and ports of entry having supervision, in § 101.4(c) is amended as follows:

By removing "Algonac, Mich." and "Marine City, Mich." from the column headed "Customs stations" and by removing from the same two lines, "Port Huron," from the column headed "Port of entry having supervision" in the Detroit, Michigan, Customs district.

William von Raab,

Commissioner of Customs.

Approved: August 31, 1987.

Francis A. Keating II,

Assistant Secretary of the Treasury.

[FR Doc. 87–21496 Filed 9–16–87; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 87N–0094]

Administrative Practices and Procedures; Update

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulation concerning participation in outside standard-setting activities by updating the list of names of the associations of State and local governments with whom FDA maintains close daily cooperation.

DATES: Effective September 17, 1987; written comments by October 19, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Heinz G. Wilms, Division of Federal-State Relations (HFC–150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3360.

SUPPLEMENTARY INFORMATION: FDA is amending its regulation (21 CFR 10.95) governing participation in outside standard-setting activities by updating the names of the listed associations of State and local governments.

In this update, the Association of State and Territorial Health Officials

replaces its listed affiliate—Conference of State Sanitary Engineers. The Interstate Shellfish Sanitation Conference replaces the listed Interstate Seafood Seminar and the National Shellfish Sanitation Program. The following organizations also are being added to the list: American Association of Food Hygiene Veterinarians, Conference of Food Protection, Conference of State Health and Environmental Managers, National Association of Boards of Pharmacy, National Association of Departments of Agriculture, National Conference of Local Environmental Health Administrators, and the National Society of Professional Sanitarians.

Because this final rule is essentially editorial in nature and noncontroversial, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest (5 U.S.C. 553 (b)(B) and (d)). This final rule, therefore, is effective September 17, 1987. However, interested persons may, on or before October 19, 1987, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FDA has analyzed the economic impact of this rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The agency has determined that the rule is not a major rule as defined in Executive Order 12291 and certifies that the rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

The agency has determined under 21 CFR 24.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 10

Administrative practice and procedure.

Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 10 is amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR Part 10 continues to read as follows:

Authority: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91–513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91–513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85–172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91–597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149); secs. 1 through 10, Chapter 358, 29 Stat. 604–607 as amended (21 U.S.C. 41–50); sec. 2 et seq., Pub. L. 788, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89–755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.).

2. In § 10.95 by revising paragraph (d)(8) to read as follows:

§ 10.95 Participation in outside standard-setting activities.

* * * * * *

(d) * * *

(8) Because of the close daily cooperation between FDA and the associations of State and local government officials listed below in this paragraph, and the large number of agency employees who are members of or work with these associations, participation in the activities of these associations is exempt from paragraph (d) (1) through (7) of this section, except that a list of the committees and other groups of these associations will be included in the public file on standard-setting activities established by the Freedom of Information Staff (HFI–35):

(i) American Association of Food Hygiene Veterinarians (AAFHV).

(ii) American Public Health Association (APHA).

(iii) Association of American Feed Control Officials, Inc. (AAFCO).

(iv) Association of Food and Drug Officials (AFDO).

(v) Association of Official Analytical Chemists (AOAC).

(vi) Association of State and Territorial Health Officials (ASTHO).

(vii) Conference for Food Protection (CFP).

(viii) Conference of State Health and Environmental Managers (COSHEM).

(ix) Conference of Radiation Control Program Directors (CRCPD).

(x) International Association of Milk, Food, and Environmental Sanitation, Inc. (IAMFES).

(xi) Interstate Shellfish Sanitation Conference (ISSC).

(xii) National Association of Boards of Pharmacy (NABP).

(xiii) National Association of Departments of Agriculture (NADA).

(xiv) National Conference on Interstate Milk Shipments (NCIMS).

(xv) National Conference of Local Environmental Health Administrators (NCLEHA).

(xvi) National Conference on Weights and Measures (NCWW).

(xvii) National Environmental Health Association (NEHA).

(xviii) National Society of Professional Sanitarians (NSPS).

Dated: September 10, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–21424 Filed 9–16–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 83–14]

Truck Size and Weight; Lane Widths

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This notice sets forth the deletion or modification of certain routes of the National Network for commercial motor vehicles. The intended effect is to increase the safety of the National Network that was established by the final rule on truck size and weight published at 49 FR 23302 on June 5, 1984, and codified under 23 CFR Part 658, Appendix A.

EFFECTIVE DATE: September 17, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Blow, Office of Motor Carrier Information Management and Analysis, (202) 366–4023, Mr. Richard A. Torbik, Office of Planning, (202) 366–0233, Mr. David C. Oliver, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The National Network of highways in 50 States, the District of Columbia, and Puerto Rico on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act (STAA) of 1982, Pub. L. 97–424, 96 Stat. 2097 may operate was

established by the final rule published in the **Federal Register** at 49 FR 23302, June 5, 1984 (23 CFR Part 658, App. A).

Some of the published routes have lane widths less than 12 feet, the designation of which has been challenged as exceeding the authority of the STAA.

The Tandem Truck Safety Act of 1984 (TTSA) (Pub.L. 98–554, 98 Stat. 2829) clarified the FHWA's authority to designate Federal-aid Primary System highways with less than 12-foot wide lanes, if FHWA determines that such designation is consistent with highway safety. The FHWA published at 50 FR 12825 on April 1, 1985, an advance notice of proposed rulemaking (ANPRM) requesting comments on sections of routes with such lane widths which had been designated under the Secretary's authority. A summary of the responses to the ANPRM docket (FHWA Docket No. 83–14) and a State-by-State review of the comments received was published in the notice of proposed rulemaking (NPRM) at 51 FR 8511 on March 12, 1986. In the NPRM, the FHWA proposed to amend the June 5, 1984, final rule for the States of Kentucky, New Jersey, North Carolina, South Carolina, and Virginia by deleting or modifying certain routes in these States. The docket responses to the NPRM are reported below.

Docket Response to NPRM (Published at 51 FR 8511 on March 12, 1986)

The FHWA received ten responses to FHWA Docket No. 83–14: four from the trucking industry, two from State transportation agencies, one from a port authority, one from a State Senator, one from a State Representative, and one from the Center for Auto Safety. Of this group, the trucking industry recommended that the proposed deletions not be made on sections of the following routes: US 74 in North Carolina and US 52 in South Carolina. The North Carolina Department of Transportation recommended that the proposed deletions not be made on sections of US 19 and US 74. The State did not object to the proposed deletion on a section of US 421. The South Carolina Department of Highways and Public Transportation and a State Senator and a State Representative both from South Carolina recommended that the proposed deletions on a section of US 52 not be made. The Port Authority of New York and New Jersey recommended that the proposed deletion on a section of NJ 440 not be made. The Center for Auto Safety (CAS) recommended the deletion of four additional sections on four routes in South Carolina. Three of the four route sections were identified in the ANPRM but were not proposed for modification in the NPRM. The three route sections identified in the ANPRM were on US 52 in Florence, US 123 near Westminister, and US 321 south of Columbia. These three route sections were further reviewed by the FHWA and the results are included under South Carolina in the following State-by-State review of comments to the NPRM docket. The fourth route section, on US 76 in Columbia, South Carolina, was not identified in either the ANPRM or the NPRM and will be included in a future NPRM.

Results of State–by–State Review of NPRM Docket Comments

Kentucky

For Kentucky, the NPRM proposed deleting a section of US 79 between the Tennessee State Line and US 68, Russellville, because of restricted clearances at a railroad underpass. Also, a modification to KY 61 was proposed in the NPRM by deleting a section between the Tennessee State Line and Peytonburg because this section of two-lane highway has 8-foot lanes and severe curvature. Finally, a modification to US 127 was proposed in the NPRM by deleting the section between the Tennessee State Line and the US 127 Bypass south of Danville because the section has 10-foot lanes and severe grades. No comments on the above three proposals were received, therefore, these route sections are being deleted.

New Jersey

For New Jersey, the NPRM proposed deletion of a short section of NJ 440 between I–95 in Edison and the New York State Line at the Outerbridge Crossing because the New York section of the Outerbridge Crossing did not connect to highways in New York on the National Network. One comment was received from the Port Authority of New York and New Jersey that owns and has jurisdiction over the Outerbridge Crossing in both States. The Port Authority recommended that the section be retained because the Holland and Lincoln Tunnels cannot accommodate STAA vehicles due to lateral clearance restrictions and the New York metropolitan area requires access from a southern route through Perth Amboy, New Jersey, in addition to the other routes via the George Washington Bridge and the Goethals Bridge. The Port Authority has been working with New York City officials to provide access for STAA vehicles on NY 440. In order not to preclude the additional access, this section is being retained.

North Carolina

For North Carolina, the NPRM proposed deleting a 21.86-mile section of US 19 in Cherokee, Macon, and Swain Counties. The North Carolina Department of Transportation recommended that this section be retained because the overall truck accident experience is not significantly greater than that experienced statewide and no tandem trailer truck accidents have occurred in this section. Also, there are no other alternate routes of reasonable length between Ashville, North Carolina, and Chattanooga, Tennessee. For these reasons, this section is being retained.

Also for North Carolina, the NPRM proposed deleting a short section of US 74, 1.9 miles in length, in Charlotte, because the addition of turning lanes at intersections has narrowed the existing three through lanes in each direction to an average of 9 feet each. The State's comment recommended that this section be retained because no tandem trailer truck accidents have occurred in this section and there are no reasonable alternate routes. Two additional comments were received from the trucking industry and both recommended retention of this route section because there are no reasonable alternate routes and longer routing would increase the exposure of traffic to accidents. The overall truck accident experience is greater than that experienced statewide; however, the State and the city of Charlotte have agreed to restrict STAA vehicles to the center lane in each direction and the necessary signing has already been installed. Therefore, this section is being retained subject to restrictions by the State on STAA vehicles passing through the section.

Finally, for North Carolina, the NPRM proposed deleting a short section of US 421 in New Hanover County between Kure Beach and Carolina Beach, because this section traverses a heavily built up beach resort area. One comment was received from the State which indicated that it did not object to the proposed deletion. Therefore, this section is being deleted.

South Carolina

For South Carolina, the NPRM proposed deleting a 57.17-mile section of US 52 between Lake City and Moncks Corner (via Kingstree) primarily because the lane widths for turning at the intersection of US 52 and SC 261/527 in Kingstree are less than 12 feet wide. Comments received from the State Department of Highways and Public

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Transportation, the trucking industry, a State Senator, and a State Representative, recommended that the section be retained because the proposed deletion would cause negative impacts on the community of Kingstree and the industry. Further field review indicated that the 13-mile section from Lake City south to near the Kingstree north urban limit is 4-lane divided with 12-foot lanes and serves several plants and factories. Therefore, this section is being retained as a spur. However, the four 10-foot lanes in Kingstree are not adequate to accommodate STAA vehicles through the intersection of US 52 and SC 261/527 in Kingstree. Also, the section from Kingstree south to Moncks Corner includes curves and limited sight distance and shoulder widths. Therefore, the 45-mile section of US 52 from the end of the 4-lane section north of the city limits of Kingstree, passing south through Kingstree, to Moncks Corner is being deleted. The deleted section is not critical to network continuity as trucks traveling from Charleston can use I–26/I–95 to reach points northwest and US 17 to reach points northeast. The 19-mile section of US 52 from Moncks Corner to US 52/I–26 Connector at Goose Creek is 4-lane divided with 12-foot lanes and serves industry along its length. Therefore, this section is being retained as a spur.

As discussed earlier, the Center for Auto Safety (CAS) recommended in its comments to the NPRM docket the deletion of various sections on three routes (US 52, US 123 and US 321) that were not included in the NPRM. The three routes had been listed in the preceding ANPRM for review and had been retained on the National Network. The CAS recommendations were based primarily on substandard lane widths and geometrics. In view of the comments by the CAS to the NPRM docket the sections recommended for deletion on the three routes were further reviewed with the following results.

The CAS recommended deleting a 2.48-mile section of US 52 in Florence, South Carolina. The review indicates the section has 12-foot wide lanes throughout except for a two-block segment that has four 10-foot wide lanes with two 8-foot parking lanes. The speed limit is 25 m.p.h. and the route passes in front of the City Hall which precludes removal of parking. Trucks operate on this straight, level urban section at or below the speed limit. The overall accident experience in this section is greater than that experienced statewide; however, there are no suitable alternate routes and deletion of this section would eliminate network continuity to Lake City on the south and Myrtle Beach on the southeast. Retention of this short section is necessary to commerce and network continuity. Therefore, the section is being retained.

The CAS recommended deleting an 8.16-mile section of US 123 between US 76, west of Westminster, South Carolina, to the urban limit of Seneca, South Carolina. The review indicates all of the lanes in the section are at least 12 feet wide except for a 1.0-mile section in Westminster that has four 10-foot lanes curb-to-curb. The accident rate in the 1.0-mile section is higher than the statewide average. Therefore, the 1.0-mile section in Westminster is being deleted. The remaining 7.16 miles is being retained as a spur route to serve adjacent industrial areas. In addition, a 10.98-mile rural section from the west end of the 1.0-mile section in Westminster to the Georgia State line is being deleted because US 123 is not on the National Network in Georgia and the 10.98-mile section would be isolated from the system.

Finally, the CAS recommended deleting a 43.87-mile section of US 321 between Columbia, South Carolina, and US 78, Denmark, South Carolina. The review indicates all of the land widths throughout the section are at least 12 feet wide except for three short sections that vary in length from 0.4-mile to 0.9-mile. Two of the short sections are in the rural communities of Gaston and Neeses and both sections involve low traffic volumes and have four 11-foot wide lanes. The overall accident experience in Gaston is less than that experienced statewide and in Neeses it is greater than that experienced statewide. The third short section is in the rural community of Swansea and has four 10-foot wide lanes. This section is essentially straight and level with one gradual curve near the southern end. Trucks were observed operating safely through this low-volume section, at or below the 35 m.p.h. speed limit, with no encroachments on adjacent lanes. The overall accident experience in Swansea is greater than that experienced statewide. In view of the operational characteristics of the three short, low-volume sections and their importance to network continuity and service, the overall 43.87-mile section is being retained.

Virginia

For Virginia, the NPRM proposed deleting the section of VA 57 between VA 753 and VA 666. No comments were received on the proposed deletion; therefore, this section is being deleted.

Regulatory Impact

The FHWA has considered the impacts of this action and has determined that it is not a major rulemaking action within the meaning of E.O. 12291. Pursuant to E.O. 12498, this rulemaking action has been included in the Regulatory Program for significant rulemaking actions. These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking proposes to technically amend the June 5, 1984, final rule by deleting certain highway segments in accordance with statutory provisions. The impacts of the deletions addressed in this rulemaking do not significantly alter the impacts fully considered in the original impact statement accompanying the June 5 rule. These segment deletions represent a very small portion of the National Network with a negligible impact on the prior system. Thus, no revised regulatory evaluation is needed. For the same reasons, the FHWA finds good cause to make the amendments to 23 CFR Part 658 final without a 30-day delay in effective date under the Administrative Procedure Act and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 658

Grants programs—transportation, Highways and roads, Motor carrier—size and weight.

Issued on: September 11, 1987.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA hereby amends Chapter I of Title 23, Code of Federal Regulations, by correcting Appendix A to Part 658 for the States of Kentucky, North Carolina, South Carolina, and Virginia, to read as set forth below.

PART 658—[AMENDED]

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Sections 133, 411, 412, 413, and 416 of Pub. L. 97–424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2313, and app. 2316), as amended by Pub. L. 98–17, 97 Stat. 59, and

Pub. L. 98–554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

Appendix A—[Amended]

2. Appendix A to Part 658 is amended for the State of Kentucky by removing the Posted Route Number entries:

Route	From	To
US 79	Tennessee State Line.	US 68 Russellville.
•	•	•
KY 61	Tennessee State Line.	KY 90 at Burkesville.
•	•	•
US 127	Tennessee State Line.	US 60 in Frankfort (via Danville and Lawrenceburg Bypasses).

and inserting in place of KY–61 and US–127 the following:

Route	From	To
KY 61	Peytonsburg	KY 90 at Burkesville.
•	•	•
US 127	US 127 Bypass North of Danville.	US 60 in Frankfort (via Lawrenceburg Bypass).

3. Appendix A to Part 658 is amended for the State of North Carolina by removing Posted Route Number entry:

Route	From	To
US 421	Kure Beach	I–95 Dunn

and inserting in its place the following:

US 421	Carolina Beach	I–95 Dunn.
•	•	•	•

and adding the following note at the end of the route listing:

Note 1.—Commercial Vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1982 (STAA) and subsequent Acts are subject to State restrictions on US 74 in Charlotte. For specific information, contact the North Carolina Department of Transportation, One South Wilmington Street, Raleigh, North Carolina 27611, Telephone: (919)733–2520.

4. Appendix A to Part 658 is amended for the State of South Carolina by removing Posted Route Number entries:

Route	From	To
US 123	Georgia State Line	US 25 Greenville.
•	•	•
US 52	US 15, Society Hill	US 52/I–26 Connector at Goose Creek.

and inserting in their respective places the following:

US 123	Bibb Street, Westminster.	US 25 Greenville.
•	•	•
US 52	US 15, Society Hill	End of 4 lane section North of urban limits of Kingstree.
US 52	Moncks Corner	US 52/I–26 Connector at Goose Creek.

5. Appendix A to Part 658 is amended for the State of Virginia by removing Posted Route Number entry:

Route	From	To
VA 57	Route 220 (Bassett Forks	Route 666 (Bassett)

and inserting in its place the following:

VA 57	Route 220 (Bassett Forks).	Route 753 (Eastern edge of Bassett in Henry Co.).

[FR Doc. 87–21499 Filed 9–16–87; 8:45 am]
BILLING CODE 4910–2e–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232 and 235

[Docket No. R–87–1354; FR–2414]

Mortgage Insurance; Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations increases the maximum allowable interest rate on certain section 232 (Mortgage Insurance for Nursing Homes) loans and on all section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates.

EFFECTIVE DATE: September 8, 1987.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755–7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Ch. II have been made to increase the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been raised from 10.00 percent to 10.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 27, 1986 (52 FR 14362) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: Housing and community development.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

1. The authority citation for 24 CFR Part 232 continues to read as follows:

Authority: Sections 211, 232, National Housing Act, (12 U.S.C. 1715b, 1715w); Section 7(d), Department of Housing and Urban Development, (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 10.50 percent per annum with respect to mortgages insured on or after September 8, 1987.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); Section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 10.50 percent per annum with respect to mortgages insured on or after September 8, 1987.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed on by the mortgagee and the mortgagor, which rate shall not exceed 10.50 percent per annum with respect to mortgages insured after September 8, 1987.

* * * * *

Date: September 4, 1987.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87-21528 Filed 9-16-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Virginia State Plan; Approval of Plan Supplement; Termination of Limited Concurrent Federal Enforcement

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Final rule; Approval of supplement to the Virginia State Plan; notice of termination of concurrent Federal enforcement.

SUMMARY: on December 12, 1986, the Occupational Safety and Health Administration gave notice that concurrent Federal enforcement authority would be exercised in Virginia, pending enactment by the Virginia legislature of certain amendments to the State occupational safety and health law. These amendments, which relate to the issuance and judicial review of administrative search warrants, became effective on July 1, 1987. The present **Federal Register** document provides notice that the new legislation has been reviewed and approved by OSHA as part of the State plan, and that the limited exercise of concurrent Federal enforcement authority announced on December 12, 1986 has been terminated.

EFFECTIVE DATE: September 17, 1987.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION: Section 18 of the Occupational Safety and Health Act (the "Act" 29 U.S.C. 667) provides that States which wish to assume responsibility for enforcing occupational Safety and health standards under State law may do so by submitting, and obtaining Federal approval of, a State plan for such enforcement. The Act requires, as a condition of plan approval, that a State provide "adequate legal authority" for enforcement of safety and health standards. Among other things, adequate legal authority must include "a right to entry and inspection of all workplaces . . .which is at least as effective as that provided in section 8 (of the Federal Act), and includes a prohibition of advance notice of inspections." 29 U.S.C. 667(c)(3)(4).

On September 28, 1976, notice of initial Federal approval of the Virginia State plan was published in the **Federal Register** (41 FR 42655). In States which have received initial plan approval the Act provides that OSHA "may, but shall not be required to" exercise Federal enforcement authority concurrently with the State. 29 U.S.C. 667(e). OSHA regulations at 29 CFR 1954.3 provide guidelines and procedures for the exercise of this discretionary concurrent enforcement authority. Under these regulations, Federal enforcement authority will not be exercised as to safety and health issues covered by a State plan and approved enabling legislation, providing the basis for effective enforcement of standards, sufficient enforcement staff, adopted standards, and functioning review authority, and has entered into an "operational status agreement" with the State. On June 11, 1982, notice was published of OSHA's determination that the Virginia State plan met the conditions for operational status. That notice set forth a description of a State and Federal responsibilities as described in an operational status agreement between OSHA and the Virginia Department of Labor and Industry (47 FR 25325).

Right of Entry Under the Virginia State Plan

OSHA's December 12, 1986 notice of its intent to resume limited concurrent enforcement, and recent efforts by Virginia to amend its occupational safety and health law, resulted from Virginia court decisions which affected the State's ability to enforce general schedule inspection warrants. The specific issue presented by these decisions was whether, after the issuance by a judge or magistrate of a warrant authorizing a general schedule safety or health inspection of a particular workplace, the employer may, in a suit to invalidate the warrant, obtain court-ordered discovery of agency information, documents, and testimony which were not part of the application submitted to the magistrate

who issued the warrant. In cases involving challenges to Federal OSHA inspection warrants the Federal courts have held such discovery improper under the "four corners" rule established by the U.S. Supreme Court in *Franks* v. *Delaware*, 438 U.S. 154 (1978).

U.S. Courts of Appeals for four Federal circuits have recognized the applicability of the four corners rule to cases involving OSHA general schedule inspection warrants. *Brock* v. *Trinity Industries, Inc.*, 824 F.2d 634 (8th Cir. 1987); *Donovan* v. *Mosher Steel Co.*, 791 F.2d 1535 (11th Cir. 1986); *Donovan* v. *Hackney, Inc.*, 769 F.2d 650 (10th Cir. 1985); *Brock* v. *Gretna Machine and Ironworks, Inc.*, 769 F.2d 1110 (5th Cir. 1895).

The four corners rule provides that when the issuance of a search warrant by a lower court or magistrate is challenged, the reviewing court is restricted to considering the information actually presented to the issuing judge. Except in the rate instance where the challenging party can show material, deliberate falsehood or reckless disregard for the truth by the warrant applicant, the reviewing court may consider only the matter contained within the "four corners" of the warrant application. Proper application of the four corners doctrine is especially important in cases involving inspections under the Federal OSH Act or equivalent State laws. As various Federal courts have noted, there is "no reason to impose cumbersome discovery procedures on the enforcement of an OSHA inspection warrant" which by law must be "executed without delay and without prior notice." *Donovan* v. *Mosher Steel, Inc., supra*, 791 F.2d at 1535. Moreover, the release to employers of etablishment lists or other employer-identifying data would in most instances violate the Act's prohibition of advance notice of OSHA inspections. 29 U.S.C. 666(f). Title 40.1 of the Labor Laws of Virginia contains a similar prohibition.

In *Mosher Steel-Virginia* v. *Teig*, 327 S.E. 2d 87 (Va., 1985) the Virginia Supreme Court, in a declaratory judgment suit by an employer seeking to invalidate a general schedule inspection warrant issued by a Virginia magistrate, held that the four corners rule would not be applied in cases involving *Barlow's* type OSHA inspection warrants. The court held *Franks* v. *Delaware* inapplicable to challenges to Virginia warrants obtained under the "reasonable legislative or administrative standards" test for probable cause derived from *Barlow's* (327 S.E. 2d at 92–3). Although the court permitted review of information outside that actually presented to the magistrate, the court expressly declined to resolve whether discovery would be permitted to allow the employer to obtain new information. Thus, it is unclear from the Virginia Supreme Court's opinion whether Virginia employers challenging general schedule warrants would be entitled to discovery, including the release of confidential scheduling information and "establishment lists" of workplaces likely to be inspected in the future. However, in a more recent declaratory judgment suit filed by the same employer in connection with a subsequent general schedule inspection warrant, the Circuit Court for the City of Roanoke relied upon the 1985 *Teig* decision in ordering State officials responsible for enforcing the plan to submit to discovery requested by the employer, which included the submission of data underlying the Virginia inspection plan, deposition of officials responsible for developing and implementing the inspection scheduling plan, and the release to the employer of various confidential scheduling materials including establishments lists. *Mosher Steel-Virginia* v. *Amato*, Chancery No. 86–04354 (filed June 20, 1986).

As previously discussed, in order to retain full operational status as well as continued Federal plan approval, a State must provide effective enforcement of safety and health standards, including a right of entry at least as effective as that exercised by OSHA under section 8 of the Act. States must have legal authority to obtain and execute inspection warrants on terms and conditions comparable to those afforded OSHA under Fedeal law. OSHA's State plan criteria require States to seek "administrative and judicial review of adverse adjudications," and to take "administrative, legislative or judicial action to correct any deficiencies" in enforcement which are caused by adverse adjudications. 29 CFR 1902.37(b)(14).

In response to the adverse State court rulings in *Mosher Steel*, at the request of the Virginia Department of Labor and Industry, Governor Gerald Baliles submitted to the Virginia legislature during its 1987 term a bill proposing amendments to the Virginia Occupational Safety and Health Act. These amendments, consisting of procedures for the issuance, review and execution of warrants to conduct occupational safety and health inspections, were enacted with some modification by the legislature and signed by Governor Baliles, becoming effective July 1, 1987. Virginia's Commissioner of Labor and Industry, Carol Amato, on July 10 transmitted the new legislation to Linda R. Anku, OSHA Reginal Administrator, for review and approval as part of Virginia's Federally-approved State plan.

Summary and Evaluation of the Amendments

The new legislation, codified as new sections 40.1–49.9 through 40.1–49.12 of the Code of Virginia, generally provides for the issuance of administrative search warrants, based upon a petition demonstrating probable cause and supported by an affidavit, by any judge having authority to issue criminal warrants whose territorial jurisdiction includes the workplace to be inspected. The amendments permit issuance of a warrant to conduct a general schedule inspection when "reasonable legislative or administrative standards are satisfied", a probable cause requirement derived from *Marshall* v. *Barlow's Inc.*, 436 U.S. 307 (1978). The amendments further specify that affidavits in support of general schedule inspection warrants contain "factual allegations sufficient to justify an independent determination by the judge that the inspection program is based on reasonable standards and that the standards are being applied to a particular workplace in a neutral and fair manner." For example, if a selection is based upon an industry's high hazard ranking, the amendments specify that the affidavit shall disclose the method and numerical basis for the ranking, the inspection history of the worksite in question and the status of other worksites in the area. Federal OSHA presently includes comparable information in its application for Federally-issued warrants. The new Virginia legislation addresses potential problems of advance notice and confidentiality by specifying that the affidavit shall not be required to disclose the actual schedule for inspections or the underlying data on which the statistics are based, provided that such statistics are derived from reliable, neutral third parties.

In addition to providing for the issuance of *Barlow's* type general schedule warrants, §40.1–49.9 authorizes the courts to issue warrants where there is "cause to believe that there is a condition, object, activity or circumstance which legally justifies such an inspection." Among other things, this language would authorize the issuance of warrants to conduct employee complaint inspections or other investigations for which specific probable cause exists.

Sections 40.1–49.10 and 40.1–49.11 contain procedures for the proper execution of inspection warrants, including provisions for forcible entry in appropriate cases.

Section 40.1–49.12 contains provisions which directly address the terms and conditions under which judicial review of warrants may be obtained. Subsection 40.1–49.12A precludes review by any court of an administrative warrant prior to its execution, except as a defense in a contempt proceeding. The owner of the workplace to be searched may obtain judicial review if he "makes by affidavit a substantial preliminary showing accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in his affidavit for the administrative search warrant and (ii) the false statement was necessary to the finding of probable cause." After execution of an administrative warrant, §40.1–49.12.B of the new legislation provides for judicial review "as a defense to any citation", or by means of a declaratory judgment action in the Circuit Court if no citation is issued as a result of the inspection. The legislation specifically provides that "in any such action the review shall be confined to the face of the warrant and affidavits and supporting materials presented to the issuing judge," unless the employer can show that "a false statement, knowingly and intentionally or with reckless disregard of the truth was made in support of the warrant and . . . the false statement was necessary to the finding of probable cause." The legislation specifically precludes *de novo* determination of probable cause, and directs the reviewing court to determine whether there is substantial evidence in the record supporting the decision to issue the warrant.

As stated by sponsors of the recent Virginia legislation, the intent of these amendments is to make Virginia law and procedure consistent with Federal court decisions in the area of administrative warrant law and procedure, to secure the Virginia occupational safety and health program a right of entry on the same terms and conditions available to Federal OSHA, and thus to assure the continued Federal approval of the Virginia State plan. The State has expressed confidence that the new legislation will achieve these results. OSHA has reviewed the legislation and also believes that it provides a basis for VOSH to obtain search warrants on terms and conditions equivalent to those which are available Federally. The legislation is applicable to all VOSH warrant cases and, in summary, provides that judicial review shall be limited to the face of the warrant, the application and other material actually presented to the issuing judge. The single exception permitted by the legislation is no broader than that recognized by the U.S. Supreme Court in *Franks* v. *Delaware*, i.e., review only in unusual cases in which material fraud or reckless disregard for the truth can be shown. Furthermore, the allegedly false or fraudulent matter must be shown to have been essential to the magistrate's probable cause determination. OSHA believes that this legislation satisfactorily addresses the legal problems incurred by VOSH as a result of recent state court action. Accordingly, the above-described amendments to the Virginia Occupational Safety and Health Act are today approved by OSHA in accordance with regulations at 29 CFR Part 1953, which sets forth procedures for Federal review of changes to approved State plans. Additionally, the exercise of concurrent Federal jurisdiction with regard to employer denials of entry for general schedule inspections, as announced in the December 12, 1986 **Federal Register**, was terminated when the amendments became effective on July 1, 1987.

Location of Plan Supplement for Inspection and Copying

A copy of the plan and its supplements may be inspected during normal business hours at the following locations: Office of Regional Administrator, Occupational Safety and Health Administration, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner, Virginia Department of Labor and Industry, 205 North Fourth Street, P.O. Box 12064, Richmond, Virginia 23241; and OSHA Office of State Programs, Room N–3700, 200 Constitution Avenue NW., Washington, DC 20210.

Public Participation

Under §1953.2(c) of this chapter the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the State amendments were enacted by the Virginia General Assembly in accordance with the requirements of State law. Good cause therefore is found for approval of these amendments without further public participation.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Decision

After careful consideration and review by the OSHA Regional and National Offices, the Virginia Plan supplement described above is found to be as effective as comparable Federal procedures and is hereby approved under Part 1953 of this chapter. In addition, notice is hereby given that the exercise of limited concurrent Federal enforcement authority which began on October 1, 1986, and was announced in the December 12, 1986, **Federal Register**, was terminated coincident to the Virginia legislative amendments becoming effective on July 1, 1987.

(Secs. 8, 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable)

Signed at Washington, DC, this 14 day of September 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

Accordingly, Subpart EE of 29 CFR Part 1952 is hereby amended as follows:

PART 1952—[AMENDED]

1. The authority citation for Part 1952 continues to read:

Authority: Secs. 8, 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

2. A new § 1952.377 is added to reflect the approval of significant program changes to read as follows:

§ 1952.377 Changes to approved plans.

In accordance with Part 1953 of this chapter, the following Virginia plan changes were approved by the Assistant Secretary:

(a) The State submitted legislative amendments related to the issuance and judicial review of administrative search warrants which became effective on July 1, 1987. The Assistant Secretary approved these amendments on 14 September, 1987.

[FR Doc. 87–21508 Filed 9–16–87; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 16

Program Fraud Civil Remedies

AGENCY: Departmental Offices, Office of Inspector General (OIG), Treasury.

ACTION: Final rule.

SUMMARY: This rule implements the Program Fraud Civil Remedies Act of 1986, which authorizes the Department of the Treasury (and certain other federal agencies) to impose through administrative adjudication civil penalties and assessments against persons making false claims and statements to it.

EFFECTIVE DATE: These regulations become effective September 17, 1987.

FOR FURTHER INFORMATION CONTACT: Alexandra Keith, Counsel to the Inspector General, Room 2218, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 566–5668.

SUPPLEMENTARY INFORMATION: The Program Fraud Civil Remedies Act ("Act"), Pub. L. 99–509, enacted on October 21, 1986, and codified at 31 U.S.C. 3801 through 3812, generally provides that any person who knowingly submits a false claim or statement to the Federal Government in an amount less than $150,000 may be liable for an administrative civil penalty of not more than $5,000 for each false claim or statement, and, in certain cases, to an assessment equal to double the amount falsely claimed.

The Act vests authority to investigate allegations of liability under its provisions in an agency's investigating official. Based upon the results of an investigation, the agency reviewing official determines, with the concurrence of the Attorney General, whether to refer the matter to a presiding officer for an administrative hearing. Any penalty or assessment imposed under the Act may be collected by the Attorney General, through the filing of a civil action, or by offsetting amounts other than tax refunds, owed the particular party by the Federal government.

The Act grants agency investigating officials authority to require by subpoena the production of documentary evidence which is "not otherwise reasonably available." If the case proceeds to hearing, the presiding officer may require the attendance and testimony of witnesses as well as the production of documentary evidence.

The Department of the Treasury is proposing to adopt implementing regulations as new 31 CFR Part 16, which would designate the Assistant Secretary of the Treasury for Management as the authority head, the Department's administrative Inspector General as the investigating official, and would assign the role of reviewing official to the General Counsel or his designee.

Any hearing under the Act would be presided over by an Administrative Law Judge. Administrative appeals of a presiding officer's decision would be determined by the authority head.

Congress, in other legislation, has provided the United States Customs Service with a comprehensive statutory scheme for penalizing civil violations of the tariff and trade laws, including the prosecution of matters within the jurisdiction of the jurisdiction of the Court of International Trade (28 U.S.C. 1581). Accordingly, it is not anticipated that the investigating official will, pursuant to his authority under these regulations, investigate allegations of violations of tariff and trade laws, for which an administrative remedy exists under those laws.

Special Analyses

Because these regulations relate to agency organization and management they are not subject to Executive order 12291. In general, the rule establishes procedures governing the scope and conduct of administrative adjudications to impose civil penalties and assessments upon persons who submit false claims or statements to the Department. Accordingly, a regulatory impact analysis is not required.

Similarly, it is hereby certified that this regulation would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 604(a).

List of Subjects in 31 CFR Part 16

Administrative practice and procedure, Fraud, Investigations, Organizations and functions (Government agencies), Penalties.

Title 31 of the Code of Federal Regulations is amended as follows:

I. In Title 31 of the Code of Federal Regulations, a new Part 16, Program Fraud Civil Remedies, is added to read as follows:

PART 16—REGULATIONS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

Sec

16.1 Basis and purpose.
16.2 Definitions.
16.3 Basis for civil penalties and assessments.
16.4 Investigation.
16.5 Review by the reviewing official.
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16.7 Complaint.
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16.12 Notice of hearing.
16.13 Parties to the hearing.
16.14 Separation of functions.
16.15 Ex parte contacts.
16.16 Disqualification of reviewing official or ALJ.
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16.18 Authority of the ALJ.
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16.20 Disclosure of documents.
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16.24 Protective order.
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16.26 Form, filing and service of papers.
16.27 Computation of time.
16.28 Motions.
16.29 Sanctions.
16.30 The hearing and burden of proof.
16.31 Determining the amount of penalties and assessments.
16.32 Location of hearing.
16.33 Witnesses.
16.34 Evidence.
16.35 The record.
16.36 Post-hearing briefs.
16.37 Initial decision.
16.38 Reconsideration of initial decision.
16.39 Appeal to authority head.
16.40 Stays ordered by the Department of Justice.
16.41 Stay pending appeal.
16.42 Judicial review.
16.43 Collection of civil penalties and assessments.
16.44 Right to administrative offset.
16.45 Deposit in Treasury of United States.
16.46 Compromise or settlement.
16.47 Limitations.

Authority: 31 U.S.C. 3801–3812.

§ 16.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99–509, sections 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who

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make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 16.2 Definitions.

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Department of the Treasury.

Authority head means the Assistant Secretary of the Treasury for Management.

Benefit, when used in the context of false statements made with respect to a benefit, means anything of value including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee. This definition should be distinguished from the limitations on coverage of these regulations with respect to beneficiaries of specific benefit programs which are found in § 16.3(c) of this part.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money, except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1954.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 16.7 of this part.

Defendant means any person alleged in a complaint under § 16.7 to be liable for a civil penalty or assessment under § 16.3.

Department means the Department of the Treasury.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 16.10 or § 16.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of the Treasury.

Knows or has reason to know, means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms "presents," "submits," and "causes to be made, presented," or "submitted." As the context requires, *making* or *made,* shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, private organization, State, political subdivision of a State, municipality, county, district, and Indian tribe, and includes the plural of that term.

Presiding officer means an administrative law judge appointed in the authority pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to section 3344 of such title.

Representative means an attorney designated in writing by a defendant to appear on his or her behalf in administrative hearings before the Department and to represent a defendant in all other legal matters regarding a complaint made pursuant to these regulations.

Reviewing official means the General Counsel, or another individual in the Legal Division of the Department designated by the General Counsel, who is—

(a) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16; and

(b) Is not subject to supervision by, or required to report to, the investigating official; and

(c) Is not employed in the organization unit of the authority in which the investigating official is employed.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the government will reimburse such State, political subdivision, or party of any portion of the money or property under such contract or for such grant, loan, or benefit, except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1954.

§ 16.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to an authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on

behalf of such authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty under these regulations regardless of whether such property, services, or money is actually delivered or paid.

(5) If the government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Includes or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the content of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

(c)(1) In the case of any claim or statement made by any individual relating to any of the benefits listed in paragraph (c)(2) of this section, received by such individual, such individual may be held liable for penalties and assessments under this section only if such claim or statement is made by such individual in making application for such benefits with respect to such individual's eligibility to receive such benefits.

(2) For purposes of this paragraph, the term "benefits" means—

(i) Benefits under the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977);

(ii) Benefits under chapters 11, 13, 15, 17, and 21 of title 38;

(iii) Benefits under the Black Lung Benefits Act;

(iv) Any authority or other benefit under the Railroad Retirement Act of 1974;

(v) Benefits under the National School Lunch Act;

(vi) Benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture;

(vii) Benefits under the special supplemental food program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966;

(viii) Benefits under part A of the Energy Conservation in Existing Buildings Act of 1976;

(ix) Benefits under the supplemental security income program under title XVI of the Social Security Act;

(x) Old age, survivors, and disability insurance benefits under title II of the Social Security Act;

(xi) Benefits under title XVIII of the Social Security Act;

(xii) Aid to families with dependent children under a State plan approved under section 402(a) of the Social Security Act;

(xiii) Medical assistance under a State plan approved under section 1902(a) of the Social Security Act;

(xiv) Benefits under title XX of the Social Security Act;

(xv) Benefits under section 336 of the Older Americans Act; or

(xvi) Benefits under the Low-Income Home Energy Assistance Act of 1981,

which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

(d) No proof of specific intent to defraud is required to establish liability under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(f) In any case in which it is determined that more than one person is liable for making a claim under this section, and on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 16.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the information, records, or documents sought;

(2) The investigating official may designate a person to act on his behalf to receive the information, records, or documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or to the person designated to receive the information, records, or documents, a certification that the information, records, or documents sought have been produced, or that such information, records, or documents are not available and the reasons therefor, or that such information, records, or documents, suitably identified, have been withheld based upon the assertion of an identified legal privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall report the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit the investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act, 31 U.S.C. 3729–3731, or for other civil relief, or to preclude or limit such official's discretion to defer or postpone a report or referral to avoid interference with an investigation into criminal misconduct or a criminal prosecution.

(d) Nothing in this section modifies any responsibility of the investigating official to report violations of criminal law to the Attorney General.

§ 16.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 16.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 16.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 16.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value, if any, of property, services, or other benefits requested or demanded in violation of § 16.3 of this part; or, if no monetary value can be put on the property, service or benefit, a statement regarding the non-monetary consequences to the agency of a false statement.

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

§ 16.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 16.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(l), and

(2) In the case of allegations of liability under § 16.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 16.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person, claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested, as long as the total amount for each claim does not exceed $150,000.

§ 16.7 Complaint.

(a) On or after the date the Attorney General or his designee approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 16.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by an attorney;

(4) That the defendant has a right to review and obtain certain information pursuant to Section 16.20 herein; and

(5) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the reviewing official serves the complaint on the defendant(s), he or she shall serve the defendant with a copy of these regulations.

§ 16.8 Service of complaint.

(a) Service of a complaint must be made by a certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgement of the defendant or his representative.

§ 16.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state whether the defendant has authorized an attorney to act as defendant's representative, and shall state the name, address, and telephone number of the representative.

§ 16.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 16.9(a), the reviewing official may refer the complaint to the ALJ for initial decision.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 16.8, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to file a timely answer, the ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 16.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ, and serves a copy on the agency, seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing a timely answer, the initial decision shall be stayed pending the ALJ's decision on the motion. The ALJ shall permit the agency a reasonable amount of time, not less than 15 calendar days, to respond to the defendant's motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision, if such a decision has been issued pursuant to paragraph (c) of this section, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 16.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head,

the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously, and based solely on the record before the ALJ, whether extraordinary circumstances excuse the defendant's failure to file a timely answer.

(k) If the authority head decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to file an answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 16.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 16.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant and the agency representative in the manner prescribed by § 16.8.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The names, addresses, and telephone numbers of the representatives of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 16.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 16.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be an attorney employed anywhere in the Legal Division of the Department, or an attorney employed in the offices of either the investigating official or the reviewing official; however the representative of the Government may not participate or advise in the review of the initial decision by the authority head.

§ 16.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 16.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's assertion that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragrpah (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the agency shall seek to have the case promptly reassigned to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 16.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by an attorney;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written beliefs and proposed findings of fact and conclusions of law after the hearing.

§ 16.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary

judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to make any determinations regarding the validity of Federal statutes or regulations, or Departmental Orders, Directives, or other published rules.

§ 16.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations, admissions of fact or the content and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 16.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other material that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 16.4(b) are based unless such documents are subject to a privilege under Federal law. The Department shall schedule such review at a time and place convenient to it. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtian a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 16.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 16.9.

§ 16.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purposes of this section and §§ 16.22 and 16.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data, either paper or electronic, and other documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ if it is not made available by another party on an informal basis. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition, and a description of the efforts which have been made by the party to obtain discovery.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 16.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 16.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 16.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 16.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 16.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause and that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section, shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 16.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to bring with him or her.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 16.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 16.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 16.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 16.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include a original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by an attorney, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 16.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation. When the period of time allowed is more than seven days, all intervening calendar days are included in the computation.

(c) Where a document has been served or issued by mail, an additional five days will be added to the time permitted for any response.

§ 16.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 16.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall

reasonably relate to the nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 16.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 16.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall have the burden of proving defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall have the burden of proving any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 16.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessements, the ALJ and upon appeal, the authority head, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, double damages and a significant civil penalty ordinarily should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 16.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 16.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 16.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permited by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 16.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided herein, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant, immaterial, or incompetent evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 16.24.

§ 16.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 16.24.

§ 16.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 16.37 Initial decision.

(a) The ALJ shall issue an initial decision, based solely on the record, which shall contain findings of fact, conclusion of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 16.3;

(2) If the person is liable for penalties of assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 16.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all defendants with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 16.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) When a motion for reconsideration is made, the time periods for appeal to the authority head contained in § 16.38, and for finality of the initial decision in § 16.36(d), shall begin on the date the ALJ issues the denial of the motion for reconsideration or a revised initial decision, as appropriate.

§ 16.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 16.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30 days period for an additional 30 days if the defendant files with the authority head a request for extension within the initial 30 days period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the notice of appeal and record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the agency may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made

of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head, prior to the issuance of the authority head's decision that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal to the ALJ with a copy of the decision of the authority head. At the same time the authority head shall serve the defendant with a statement describing the defendant's right to seek judicial review.

(l) Unless a petition for judicial review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 16.3 is final and is not subject to judicial review.

§ 16.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. In such a case, the authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 16.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 16.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 16.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 16.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 16.42 or § 16.43, or any amount agreed upon in a compromise or settlement under § 16.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 16.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 16.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 16.42 or during the pendency of any action to collect penalties and assessments under § 16.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 16.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing and signed by all parties and their representatives.

§ 16.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 16.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 16.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The time limits of this statute of limitations may be extended by agreement of the parties.

M. Peter McPherson,

Acting Secretary of the Treasury, United States Department of the Treasury.

[FR Doc. 87-21451 Filed 9-16-87; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Boston, MA Regulation 87-39]

Security Zone Regulation; Boston Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone in Boston Harbor around the passenger vessels QUEEN ELIZABETH 2 and STARSHIP OCEANIC while they are moored at Pier 5 (Commonwealth Pier) in South Boston, MA. The vessels will be taking part in "DEC World", an industry exposition sponsored by Digital Equipment Corporation at the World Trade Center on Pier 5. The vessels are to be used throughout the exposition as hotel and conference space for guests and employees of Digital. The security zone extends from the end of Pier 5 for one-hundred (100) yards in all directions over the water and includes the areas between Pier 4 and Pier 6 in South Boston, MA. This zone is needed to safeguard the passenger vessels QUEEN ELIZABETH 2 and STARSHIP OCEANIC against destruction from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on September 6, 1987 at 2:00 PM local time. It terminates on September 18, 1987 at 6:00 PM local time unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lt K. E. Dale, (617) 565–9000.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent damage to or destruction of the vessels and injury to parties involved in the "DEC World" exposition.

Drafting Information

The drafters of this regulation are Lt K.E. Dale, project officer for the Captain of the Port, and Commander R.A. Brunell, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The incident requiring this regulation will begin on September 6, 1987 with the arrival of the passenger vessel STARSHIP OCEANIC at Pier 5 in South Boston, will continue throughout the duration of the "DEC World" exposition, and will terminate on September 18, 1987 with the departure of the pasenger vessels STARSHIP OCEANIC and QUEEN ELIZABETH 2. The basis of this action is to prevent damage to or destruction of these vessels or injury to persons taking part in "DEC World". This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.TO139 is added to read as follows:

§ 165.TO139 Security Zone: Boston Harbor, Boston, MA.

(a) *Location.* The following area is a security zone around the passenger vessels STARSHIP OCEANIC and QUEEN ELIZABETH 2 while they are moored at Pier 5 (Commonwealth Pier) in South Boston, MA. The zone extends one-hundred (100) yards in all directions over the water from the end of Pier 5 and includes the areas between Piers 4 and 6.

(b) *Effective date.* This regulation becomes effective on September 6, 1987 at 2:00 PM local time. It terminates on September 18, 1987 at 6:00 PM local time unless sooner terminated by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other general requirements.

Dated: September 3, 1987.

R. L. Anderson,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 87–21527 Filed 9–16–87; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–3263–1]

Approval and Promulgation of Implementation Plans; New Hampshire; Particulate Emission Standards and Permit Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to two regulations of the New Hampshire State Implementation Plan (SIP). Revisions to one regulation require more stringent particulate emission standards for fuel burning devices installed on or after January 1, 1985 and the use of continuous emission monitoring (CEM) for fossil fuel-fired steam generators. Revisions to the other regulation increase permit fees for the review of new or modified devices and the renewal fees for permits to operate. The intended effect of this action is to approve these amendments as revisions to the New Hampshire SIP under section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on October 19, 1987.

ADDRESSES: Copies of the submittal are available for public inspection at Room 2313, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street SW., Washington, DC 20460; and the New Hampshire Department of Environmental Services, Division of Environmental Services, Air Resources Division, 64 North Main Street, Caller Box 2033, Concord, New Hampshire 03302–2033.

FOR FURTHER INFORMATION CONTACT: Lynne A. Hamjian, (617) 565–3246; FTS 835–3246.

SUPPLEMENTARY INFORMATION: On August 14, 1986 (51 FR 29116), EPA published a Notice of Proposed Rulemaking (NPR) for the State of New Hampshire. The NPR proposed to approve revisions to Chapter Air 700, "Permit Fee System," and Chapter Air 1200, "Prevention, Abatement, and Control of Stationary Source Air Pollution," submitted on April 26, 1985 by the New Hampshire Air Resources Division (NHARD). The NPR also stated that the NHARD submitted a letter to EPA on January 20, 1986 stating that Part Air 1202.10 of Chapter Air 1200 entitled, "Continuous Emission Monitoring (CEM) Systems," applies to all fossil-fuel fired steam generators as specified in 40 CFR Part 51, Appendix P. The letter is being incorporated by reference into the New Hampshire SIP.

A description of the revision and EPA's rationale for approving it were provided in the NPR and will not be restated here. No public comments were received on the NPR.

Between publication of the NPR and today's final rulemaking notice (FRN), EPA promulgated a New Source Performance Standard (NSPS) to control particulate matter (PM) and nitrogen oxides (NO_x) from Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60 Subpart Db). Some of the PM emission limits in Part Air 1202 of New Hampshire's revised regulations are less stringent than this newly promulgated NSPS. On May 12, 1987, the NHARD submitted a letter to EPA stating that it fully intends to implement the applicable emission limits required by Subpart Db. The NHARD has accepted delegation of this NSPS on January 29, 1987. Additionally, Part Air 608, "Minimum Requirements for Permits" of New Hampshire's SIP requires that where NSPS limits apply they supersede less stringent emission limitations in other regulations. EPA is incorporating the May 12, 1987 letter by reference into New Hampshire's SIP.

This action also makes a correction to a Table entitled, "New Hampshire TSP," codified at 40 CFR 81.330. The Table summarizes the New Hampshire attainment status for TSP. Metropolitan Manchester should be listed as "Does not meet secondary standards" and should *not* be listed as "Better than national standards." The current version

of the Table contains a typographical error as it indicates that Metropolitan Manchester is classified as both attainment and nonattainment. This action only corrects this Table and is not a redesignation action.

Final Action

EPA is approving SIP revisions to Chapter Air 700 and Chapter Air 1200 submitted April 26, 1985, January 20, 1986, and May 12, 1987 from the New Hampshire Air Resources Commission. The revisions increase permit fees, make the particulate matter emission standards for fuel burning devices more stringent, state the applicability of requirements for continuous emission monitoring systems and confirm that applicable NSPS limits supersede less stringent emission limits in Chapter Air 1200. EPA is also correcting a typographical error in a Table codified at 40 CFR 81.330.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 16, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Particulate matter and Reporting and Recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the **Federal Register** on July 1, 1982.

Date: September 11, 1987.

Lee M. Thomas,

Administrator.

Subpart EE, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart EE—New Hampshire

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1520, is amended by adding paragraph (c)(37) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(37) Revisions to the State Implementation Plan submitted on April 26, 1985, January 20, 1986 and May 12, 1987 by the Air Resources Commission.

(i) Incorporation by Reference:

(A) Letter dated April 26, 1985 from the New Hampshire Air Resources Commission submitting revisions to the State Implementation Plan for EPA approval.

(B) Revisions to New Hampshire Code of Administrative Rules, Part Air 704.01, "Permit Review Fee for Large Fuel Burning Devices," Part Air 704.02, "Permit Review Fee for All Other Devices," Part Air 706.01, "Renewal Review Fee For Large Fuel Burning Devices," Part Air 706.02, "Renewal Review Fee For All Other Devices," Part Air 1202, "Fuel Burning Devices," effective on December 27, 1984.

(C) Certification from the State of New Hampshire dated April 26, 1985.

(D) Letter from the State of New Hampshire dated January 20, 1986.

(E) Letter from the State of New Hampshire dated May 12, 1987.

3. Section 81.330 is amended by revising the TSP table to read as follows:

§ 81.330 New Hampshire.

NEW HAMPSHIRE—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Metropolitan Keene				X
Metropolitan Manchester		X		X
Remainder of New Hampshire portion of So. N.H.M.V. AQCR 121				X
Central NH Intrastate AQCR 149				X
Metropolitan Berlin	[1]X			X
Remainder of NH. portion of Androscoggin Valley interstate AQCR 107.				X

[1] EPA designation replaces State designation

* * * * *

4. In Section 52.1525 Table 51.1525 is amended by adding in numerical order the entries below. In the chart below the date approved by EPA and the **Federal Register** citation will be the publication date and citation of this document.

§ 52.1525 EPA-approved New Hampshire State regulations.

TABLE 52.1525 EPA APPROVED RULES AND REGULATIONS [1]—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Comments
Permit fee system	CH air 700	12-20-84	9-17-87	52 FR 35082	(c)37	Part Air, 704.01, 704.02 706.01, and 706.02
Prevention, abatement and control of stationary source air pollution.	CH air 1200	12-20-84	9-17-87	52 FR 35082	(c)37	Part Air 1202.

[1] These regulations are applicable statewide unless otherwise noted in the COMMENTS section.

[FR Doc. 87-21479 Filed 9-16-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 60

[A-9-FRL-3262-3]

Delegation of New Source Performance Standards (NSPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS authority to the California Air Resources Board (CARB) on behalf of the Sacramento County Air Pollution Control District (SCAPCD). This action is necessary to bring the NSPS program delegation up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: August 12, 1987.

ADDRESS: Sacramento County Air Pollution Control District, 9323 Tech Center Drive, Suite 800, Sacramento, CA 95827.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, State Implementation Plan Section (A-2-3), Air Programs Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8066, FTS 454-8066.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS categories on behalf of the SCAPCD. Delegation of authority was granted by a letter dated August 12, 1987 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of July 24, 1987, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) on behalf of the Sacramento County Air Pollution Control District (SCAPCD). We have reviewed your request for delegation and have found the SCAPCD's programs and procedures to be acceptable. The delegation includes authority for the following source categories:

NSPS	40 CFR Part 60 Subpart
Petroleum Dry Cleaners	JJJ
Nonmetallic Mineral Processing Plants.	OOO

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

cc: Sacramento County Air Pollution Control District

Terry McGuire,
Technical Support Division, CARB.

With respect to the areas under the jurisdiction of the SCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the SCAPCD at the address shown in the **ADDRESS** section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 8, 1987.

Charles W. Murray, Jr.,
Acting Regional Administrator.

[FR Doc. 87-21485 Filed 9-16-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 60

[A-9-FRL-3262-8]

Delegation of New Source Performance Standards (NSPS); State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS authority to the Nevada Department of Conservation and Natural Resources (NDCNR). This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, State Implementation Plan Section (A-2-3), Air Programs Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8066, FTS 454-8066.

SUPPLEMENTARY INFORMATION: The NDCNR has requested authority for delegation of certain NSPS categories. Delegation of authority was granted by a letter dated May 21, 1987 and is reproduced in its entirety as follows.

Mr. Lowell H. Shifley, Jr., P.E.,
Air Quality Officer, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources, 201 South Fall Street, Carson City, NV 89710.

Dear Mr. Shifley: In response to your request of May 8, 1987, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures.

The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

With respect to the areas under the jurisdiction of the NDCNR, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the NDCNR at the address shown in the letter of delegation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 8, 1987

Charles W. Murray, Jr.

Acting Regional Administrator.

[FR Doc. 87-21490 Filed 9-16-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-3261-7]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the Maricopa County Department of Health Services (MCDHS). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, State Implementation Plan Section (A-2-3), Air Programs Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8066, FTS 454-8066.

SUPPLEMENTARY INFORMATION: The MCDHS has requested authority for delegation of certain NSPS and NESHAPS categories. Delegation of authority was granted by a letter dated April 6, 1987 and is reproduced in its entirety as follows:

Mr. Robert W. Evans,
Chief, Bureau of Air Pollution Control,
Maricopa County Department of Health Services, 1845 East Roosevelt Street, Phoenix, AZ 85006

Dear Mr. Evans: In response to your request of March 25, 1987, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). We have reviewed your request for delegation and have found your programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR Part 60 Subpart
Industrial, Commercial, Institutional Steam Generating Units.	Db
Secondary Emissions from Basic Oxygen Process Steelmaking Facilities (C. after 1/20/83).	Na
Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.	KKK
Onshore Natural Gas Processing: SO_2 Emissions.	LLL
Nonmetallic Mineral Processing Plants.	OOO
NESHAPS	**40 CFR Part 61 Subpart**
Inorganic Arsenic Emissions from Glass Manufacturing Plants.	N
Inorganic Arsenic Emissions from Primary Copper Smelters.	O
Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.	P

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

With respect to the areas under the jurisdiction of the MCDHS, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the MCDHS at the address shown in the letter of delegation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 8, 1987.

Charles W. Murray Jr.,

Acting Regional Administrator.

[FR Doc. 87-21480 Filed 9-16-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-3261-8]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the Pima County Health Department (PCHD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: August 31, 1987.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, State Implementation Plan Section (A-2-3), Air Programs Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8066, FTS 454-8066.

SUPPLEMENTARY INFORMATION: The PCHD has requested authority for delegation of certain NSPS and NESHAPS categories. Delegation of authority was granted by a letter dated August 31, 1987 and is reproduced in its entirety as follows:

Patricia A. Nolan, M.D.,
Director, Pima County Health Department,
150 West Congress Street, Tucson, AZ 85701-1317

Dear Dr. Nolan: In response to your request of August 13, 1987, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). We have reviewed your request

for delegation and have found your present programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR Part 60 Subpart
Industrial Commercial Institutional Steam Generating Units.	Db
Secondary Emissions from Basic Oxygen Process Steelmaking Facilities (C. after 1/20/83).	Na
Onshore Natural Gas Processing: SO_2 Emissions.	LLL
Nonmetallic Mineral Processing Plants.	OOO

NESHAPS	40 CFR Part 61 Subpart
Inorganic Arsenic Emissions from Glass Manufacturing Plants.	N
Inorganic Arsenic Emissions from Primary Copper Smelters.	O
Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.	P

In addition, we are redelegating the following NSPS and NESHAPS categories since your revised programs and procedures are acceptable:

NSPS	40 CFR Part 60 Subpart
General Provisions	A
Fossil-Fuel Fired Steam Generators	D
Electric Utility Steam Generators	Da
Incinerators	E
Portland Cement Plants	F
Nitric Acid Plants	G
Sulfuric Acid Plants	H
Asphalt Concrete Plants	I
Petroleum Refineries	J
Storage Vessels for Petroleum Liquids.	K
Petroleum Storage Vessels	Ka
Secondary Lead Smelters	L
Secondary Brass & Bronze Ingot Production Plants.	M
Iron and Steel Plants (BOPF)	N
Sewage Treatment Plants	O
Primary Copper Smelters	P
Primary Zinc Smelters	Q
Primary Lead Smelters	R
Primary Aluminum Reduction plants	S
Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	T
Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	U
Phosphate Fertilizer Industry: Diammonium phosphate Plants.	V
Phosphate Fertilizer Industry: Triple Superphosphate Plants.	W
Phosphate Fertilizer Industry: Granular Triple Superphosphate.	X
Coal Preparation Plants	Y
Ferroalloy Production Facilities	Z
Iron and Steel Plants (Electric Arc Furnaces).	AA
Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels C. after 8/17/83.	AAa
Kraft Pulp Mills	BB
Glass Manufacturing Plants	CC
Grain Elevators	DD
Surface Coating of Metal Furniture	EE
Stationary Gas Turbines	GG
Lime Manufacturing Plants	HH
Lead-Acid Battery Manufacturing Plants.	KK
Automobile & Light-Duty Truck Surface Coating Operations.	MM
Phosphate Rock Plants	NN
Ammonium Sulfate	PP
Graphic Arts Industry: Publication Rotogravure Printing.	QQ
Pressure Sensitive Tape & Label Surface Coating Operations.	RR
Industrial Surface Coating: Large Appliances.	SS
Metal Coil Surface Coating	TT
Asphalt Processing and Asphalt Roofing Manufacture.	UU
Synthetic Organic Chemical Manufacturing Industry: Equipment Leaks of VOC.	VV
Beverage Can Surface Coating Industry.	WW
Bulk Gasoline Terminals	XX
Flexible Vinyl and Urethane Coating and Printing.	FFF
Equipment Leaks of VOC, Petroleum Refineries and Synthetic Organic Chemical Manufacturing Industry.	GGG
Synthetic Fiber Production Facilities	HHH
Petroleum Dry Cleaners	JJJ
Equipment Leaks of VOC, Petroleum Refineries and Synthetic Organic Chemical Manufacturing Industry.	KKK
Wool Fiberglass Insulation Manufacturing Plants.	PPP

NESHAPS	40 CFR Part 61 Subpart
General Provisions	A
Beryllium	C
Beryllium Rocket Motor Firing	D
Mercury	E
Vinyl Chloride	F
Equipment Leaks (Fugitive Emission Sources) of Benzene.	J
Asbestos	M
Equipment Leaks (Fugitive Emission Sources).	V

EPA is not delegating Radionuclides under the Clean Air Act (NESHAPS, Subpart B, H, I, and K) until delegation procedures and requirements are developed.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Acting Regional Administrator.

With respect to the areas under the jurisdiction of the PCHD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the PCHD at the address shown in the letter of delegation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 8, 1987.

Charles W. Murray, Jr.,

Acting Regional Administrator.

[FR Doc. 87-21481 Filed 9-16-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-3262-1]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the Mendocino County Air Pollution Control District (MCAPCD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary

program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: April 6, 1987.

ADDRESS: Mendocino County Air Pollution Control District, Courthouse Square, Ukiah, CA 95482.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, State Implementation Plan Section (A-2-3), Air Programs Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8066, FTS 454-8066.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the MCAPCD. Delegation of authority was granted by a letter dated April 6, 1987 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, California 95812

Dear Mr. Boyd: In response to your request of March 25, 1987, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) on behalf of the Mendocino County Air Pollution Control District (MCAPCD). We have reviewed your request for delegation and have found the MCAPCD's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR Part 60 Subpart
Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After 8-17-83.	AAa
Petroleum Dry Cleaners	JJJ
Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.	KKK
Onshore Natural Gas Processing: SO_2 Emissions.	LLL
Nonmetallic Mineral Processing Plants.	OOO
Wool Fiberglass Insulation Manufacturing.	PPP

In addition, we are redelegating the following NSPS and National Emission Standards for Hazardous Air Pollutants (NESHAPS) categories since the MCAPCD's revised programs and procedures are acceptable:

NSPS	40 CFR Part 60 Subpart
General Provisions	A
Fossil-Fuel Fired Steam Generators	D
Electric Utility Steam Generators	Da
Incinerators	E
Portland Cement Plants	F
Nitric Acid Plants	G
Sulfuric Acid Plants	H
Asphalt Concrete Plants	I
Petroleum Refineries	J
Storage Vessels for Petroleum Liquids.	K
Petroleum Storage Vessels	Ka
Secondary Lead Smelters	L
Secondary Brass & Bronze Ingot Production Plants.	M
Primary Emissions from Basic Oxygen Process Furnaces (C. after 6/11/73).	N
Sewage Treatment Plants	O
Primary Copper Smelters	P
Primary Zinc Smelters	Q
Primary Lead Smelters	R
Primary Aluminum Reduction Plants	S
Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	T
Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	U
Phosphate Fertilizer Industry: Diammonium Phosphate Plants.	V
Phosphate Fertilizer Industry: Triple Superphosphate Plants.	W
Phosphate Fertilizer Industry: Granular Triple Superphosphate.	X
Coal Preparation Plants	Y
Ferroalloy Production Facilities	Z
Iron and Steel Plants (Electric Arc Furnaces).	AA
Kraft Pulp Mills	BB
Glass Manufacturing Plants	CC
Grain Elevators	DD
Surface Coating of Metal Furniture	EE
Stationary Gas Turbines	GG
Lime Manufacturing Plants	HH
Lead-Acid Battery Manufacturing Plants.	KK
Automobile & Light-Duty Truck Surface Coating Operations.	MM
Phosphate Rock Plants	NN
Ammonium Sulfate	PP
Graphic Arts Industry: Publication Rotogravure Printing.	QQ
Pressure Sensitive Tape and Label Surface Coating Operations.	RR
Industrial Surface Coating: Large Appliances.	SS
Metal Coil Surface Coating	TT
Asphalt Processing and Asphalt Roofing Manufacture.	UU
Synthetic Organic Chemical Manufacturing Industry: Equipment Leaks of VOC.	VV
Beverage Can Surface Coating	WW
Flexible Vinyl and Urethane Coating and Printing.	FFF
Equipment Leaks of VOC, Petroleum Refineries and Synthetic Organic Chemical Manufacturing Industry.	GGG
Synthetic Fiber Production Facilities	HHH

NESHAPS	40 CFR Part 61 Subpart
General Provisions	A
Beryllium	C
Beryllium Rocket Motor Fixing	D
Mercury	E
Vinyl Chloride	F
Equipment Leaks (Fugitive Emission Sources) of Benzene.	J
Asbestos	M
Equipment Leaks (Fugitive Emission Sources).	V

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

With respect to the areas under the jurisdiction of the MCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the MCAPCD at the address shown in the **ADDRESS** section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 8, 1987.

Charles W. Murray, Jr.,
Acting Regional Administrator.

[FR Doc. 87-21483 Filed 9-16-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-3262.2]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the Monterey Bay Unified Air Pollution Control District (MBUAPCD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: May 8, 1987.

ADDRESS: Monterey Bay Unified Air Pollution Control District, 1164 Monroe Street, Suite 10, Salinas, CA 93906.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, State Implementation Plan Section (A-2-3), Air Programs Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8066, FTS 454-8066.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the MBUAPCD. Delegation of authority was granted by a letter dated May 8, 1987 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of April 17, 1987, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the Monterey Bay Unified Air Pollution Control District (MBUAPCD). We have reviewed your request for delegation and have found the MBUAPCD's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR Part 60 Subpart
Emission Guidelines and Compliance Times.	C
Electric Utility Steam Generators	Da
Nitric Acid Plants	G
Sulfuric Acid Plants	H
Petroleum Refineries	J
Petroleum Storage Vessels	Ka
Secondary Lead Smelters	L
Secondary Brass & Bronze Ingot Production Plants.	M
Primary Emissions from Basic Oxygen Process Furnaces (C. after 6/11/73).	N
Secondary Emissions from Basic Oxygen Process Steelmaking Facilities (C. after 1/20/83).	Na
Sewage Treatment Plants	O
Primary Copper Smelters	P
Primary Zinc Smelters	Q
Primary Lead Smelters	R
Primary Aluminum Reduction Plants	S
Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	T
Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	U
Phosphate Fertilizer Industry: Diammonium Phosphate Plants.	V
Phosphate Fertilizer Industry: Triple Superphosphate Plants.	W
Phosphate Fertilizer Industry: Granular Triple Superphosphate.	X
Coal Preparation Plants	Y
Ferroalloy Production Facilities	Z
Iron and Steel Plants (Electric Arc Furnaces).	AA
Steel Plants: Electric Arc Furnances and Argon-Oxygen Decarburization Vessels Constructed After 8-17-83.	AAa
Kraft Pulp Mills	BB
Glass Manufacturing Plants	CC
Grain Elevators	DD
Surface Coating of Metal Furniture	EE
Stationary Gas Turbines	GG
Lime Manufacturing Plants	HH
Lead-Acid Battery Manufacturing Plants.	KK
Metallic Mineral Processing Plants	LL
Automobile & Light-Duty Truck Surface Coating Operations.	MM
Phosphate Rock Plants	NN
Ammonium Sulfate	PP
Pressure Sensitive Tape and Label Surface Coating Operations.	RR
Industrial Surface Coating: Large Appliances.	SS
Metal Coil Surface Coating	TT
Asphalt Processing and Asphalt Roofing Manufacture.	UU
Synthetic Organic Chemical Manufacturing Industry: Equipment Leaks of VOC.	VV
Beverage Can Surface Coating Industry.	WW
Flexible Vinyl and Urethane Coating and Printing.	FFF
Equipment Leaks of VOC, Petroleum Refineries and Synthetic Organic Chemical Manufacturing Industry.	GGG
Synthetic Fiber Production Facilities	HHH
Petroleum Dry Cleaners	JJJ
Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.	KKK
Onshore Natural Gas Processing: SO_2 Emissions.	LLL
Nonmetallic Mineral Processiang Plants.	OOO
Wool Fiberglass Insulation Manufacturing.	PPP
Appendix A	
Appendix B	

NESHAPS	40 CFR Part 61 Subpart
Vinyl Chloride	F
Equipment Leaks (Fugitive Emission Sources) of Benzene.	J
Asbestos	M
Inorganic Arsenic Emissions from Glass Manufacturing Plants.	N
Inorganic Arsenic Emissions from Primary Copper Smelters.	0
Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.	P
Equipment Leaks (Fugitive Emission Sources).	V
Appendix A	
Appendix B	
Appendix C	

In addition, we are redelegating the following NSPS and NESHAPS categories since the MBUAPCD's revised programs and procedures are acceptable:

NSPS	40 CFR Part 60 Subpart
General Provisions	A
Fossil-Fuel Fired Steam Generators	D
Incinerators	E
Portland Cement Plants	F
Asphalt Concrete Plants	I
Storage Vessels for Petroleum Liquids.	K
Graphic Arts Industry: Publication Rotogravure Printing.	QQ

NESHAPS	40 CFR Part 61 Subpart
General Provisions	A
Beryllium	C
Beryllium Rocket Motor Firing	D
Mercury	E

Acceptance of this delegation constitutes your agreement to follow all applicable

provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

With respect to the areas under the jurisdiction of the MBUAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the MBUAPCD at the address shown in the **ADDRESS** section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 8, 1987.

Charles W. Murray, Jr.,

Acting Regional Administrator.

[FR Doc. 87-21484 Filed 9-16-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 60 and 61

[A-9-FRL-3262-4]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the San Diego County Air Pollution Control District (SDCAPCD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: May 21, 1987.

ADDRESS: San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, State Implementation Plan Section (A-2-3), Air Programs Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8066, FTS 454-8066.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the SDCAPCD. Delegation of authority was granted by a letter dated May 21, 1987 and is reproduced in its entirety as follows:

Mr. James D. Boyd,

Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of May 12, 1987, I am pleased to inform you that we are redelegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the San Diego County Air Pollution Control District (SDCAPCD). We have reviewed your request for redelegation and have found the SDCAPCD's programs and procedures to be acceptable. This redelegation includes authority for the following source categories:

NSPS	40 CFR Part 60 Subpart
General Provisions	A
Asphalt Concrete Plants	I
Sewage Treatment Plants	O

NESHAPS	40 CFR Part 61 Subpart
General Provisions	A

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61 including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

With respect to the areas under the jurisdiction of the SDCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the SDCAPCD at the address shown in the **ADDRESS** section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 8, 1987.

Charles W. Murray, Jr.,

Acting Regional Administrator.

[FR Doc. 87-21486 Filed 9-16-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 60 and 61

[A-9-FRL-3262-5]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the San Joaquin County Air Pollution Control District (SJCAPCD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: March 30, 1987.

ADDRESS: San Joaquin County Air Pollution Control District, 1601 East Hazelton Avenue, Stockton, CA 95201.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, State Implementation Section, Air Programs Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8066, FTS 454-8066.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and

NESHAPS categories on behalf of the SJCAPCD. Delegation of authority was granted by a letter dated March 30, 1987 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of March 17, 1987, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the San Joaquin County Air Pollution Control District (SJCAPCD). We have reviewed your request for delegation and have found the SJCAPCD's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR Part 60 Subpart
Secondary Emissions from Basic Oxygen Process Steelmaking Facilities (C. after 1/20/83).	Na
Steel Plants: Electric Arc Furnances and Argon-Oxygen Decarburization Vessels Constructed After 8–17–83.	AAa
Metallic Mineral Processing Plants	LL
Synthetic Organic Chemical Manufacturing Industry: Equipment Leaks of VOC.	VV
Beverage Can Surface Coating Industry.	WW
Flexible Vinyl and Urethane Coating and Printing.	FFF
Equipment Leaks of VOC, Petroleum Refineries and Synthetic Organic Chemical Manufacturing Industry.	GGG
Synthetic Fiber Production Facilities	HHH
Petroleum Dry Cleaners	JJJ
Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.	KKK
Onshore Natural Gas Processing: SO_2 Emissions.	LLL
Nonmetallic Mineral Processing Plants.	OOO
Wool Fiberglass Insulation Manufacturing.	PPP

NESHAPS	40 CFR Part 61 Subpart
Equipment Leaks (Fugitive Emission Sources) of Benzene.	J
Asbestos	M
Inorganic Arsenic Emissions from Glass Manufacturing Plants.	N
Inorganic Arsenic Emissions from Primary Copper Smelters.	O
Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.	P
Equipment Leaks (Fugitive Emission Sources).	V

In addition, we are redelegating the following NSPS and NESHAPS categories since the SJCAPCD's revised programs and procedures are acceptable:

NSPS	40 CFR Part 60 Subpart
General Provisions	A
Fossil-Fuel Fired Steam Generators	D
Electric Utility Steam Generators	Da
Incinerators	E
Portland Cement Plants	F
Nitric Acid Plants	G
Sulfuric Acid Plants	H
Asphalt Concrete Plants	I
Petroleum Refineries	J
Storage Vessels for Petroleum Liquids.	K
Petroleum Storage Vessels	Ka
Secondary Lead Smelters	L
Secondary Brass & Bronze Ingot Production Plants.	M
Primary Emissions from Basic Oxygen Process Furnaces (C. after 6/11/73).	N
Sewage Treatment Plants	O
Primary Copper Smelters	P
Primary Zinc Smelters	Q
Primary Lead Smelters	R
Primary Aluminum Reduction Plants	S
Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	T
Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	U
Phosphate Fertilizer Industry: Diammonium Phosphate Plants.	V
Phosphate Fertilizer Industry: Triple Superphosphate Plants.	W
Phosphate Fertilizer Industry: Granular Triple Superphosphate.	X
Coal Preparation Plants	Y
Ferroalloy Production Facilities	Z
Iron and Steel Plants (Electric Arc Furnaces).	AA
Kraft Pulp Mills	BB
Glass Manufacturing Plants	CC
Grain Elevators	DD
Surface Coating of Metal Furniture	EE
Stationary Gas Turbines	GG
Lime Manufacturing Plants	HH
Lead-Acid Battery Manufacturing Plants.	KK
Automobile & Light-Duty Truck Surface Coating Operations.	MM
Phosphate Rock Plants	NN
Ammonium Sulfate	PP
Graphic Arts Industry: Publication Rotogravure Printing.	QQ
Pressure Sensitive Tape and Label Surface Coating Operations.	RR
Industrial Surface Coating: Large Appliances.	SS
Metal Coil Surface Coating	TT
Asphalt Processing and Asphalt Roofing Manufacture.	UU

NESHAPS	40 CFR Part 61 Subpart
General Provisions	A
Beryllium	C
Beryllium Rocket Motor Firing	D
Mercury	E
Vinyl Chloride	F

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

CC: San Joaquin County Air Pollution Control District

With respect to the areas under the jurisdiction of the SJCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the SJCAPCD at the address shown in the **ADDRESS** section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 8, 1987.

Charles W. Murray, Jr.,
Acting Regional Administrator.

[FR Doc. 87–21487 Filed 9–16–87; 8:45 am]
BILLING CODE 6560–50–M

VOL 52 ISS 180 SEP 17 1987 UMI

40 CFR Parts 60 and 61

[A-9-FRL-3262-6]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the Santa Barbara County Air Pollution Control District (SBCAPCD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: August 6, 1987.

ADDRESS: Santa Barbara County Air Pollution Control District, 315 Camino del Remedio, Santa Barbara, CA 93110.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, State Implementation Plan Section (A-2-3), Air Programs Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8066, FTS 454-8066.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the SBCAPCD. Delegation of authority was granted by a letter dated August 6, 1987 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of July 24, 1987, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the Santa Barbara County Air Pollution Control District (SBCAPCD). We have reviewed your request for delegation and have found the SBCAPCD's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR Part 60 Subpart
Emission Guidelines and Compliance Times.	C
Electric Utility Steam Generators	Da
Industrial, Commercial, Institutional Steam Generating Units.	Db
Petroleum Storage Vessels	Ka
Secondary Emissions from Basic Oxygen Process Steelmaking Facilities (C. after 1/20/83).	Na
Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After 8-17-83.	AAa
Kraft Pulp Mills	BB
Glass Manufacturing Plants	CC
Grain Elevators	DD
Surface Coating of Metal Furniture	EE
Stationary Gas Turbines	GG
Lead-Acid Battery Manufacturing Plants.	KK
Metallic Mineral Processing Plants	LL
Automobile & Light-Duty Truck Surface Coating Operations.	MM
Phosphate Rock Plants	NN
Ammonium Sulfate Graphic Arts Industry:.	PP
Publication Rotogravure Printing	QQ
Pressure Sensitive Tape and Label Surface Coating Operations.	RR
Industrial Surface Coating: Large Appliances.	SS
Metal Coil Surface Coating	TT
Asphalt Processing and Asphalt Roofing Manufacture.	UU
Synthetic Organic Chemical Manufacturing Industry: Equipment Leaks of VOC.	VV
Beverage Can Surface Coating Industry.	WW
Flexible Vinyl and Urethane Coating and Printing.	FFF
Equipment Leaks of VOC, Petroleum Refineries and Synthetic Organic Chemical Manufacturing Industry.	GGG
Synthetic Fiber Production Facilities	HHH
Petroleum Dry Cleaners	JJJ
Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.	KKK
Onshore Natural Gas Processing: SO_2 Emissions.	LLL
Nonmetallic Mineral Processing Plants.	000
Wool Fiberglass Insulation Manufacturing.	PPP

NESHAPS	40 CFR Part 61 Subpart
General Provisions	A
Vinyl Chloride	F
Equipment Leaks (Fugitive Emission Sources) of Benzene.	J
Asbestos	M
Inorganic Arsenic Emissions from Glass Manufacturing Plants.	N
Inorganic Arsenic Emissions from Primary Copper Smelters.	O
Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic production Facilities.	P
Equipment Leaks (Fugitive Emission Sources).	V

In addition, we are redelegating the following NSPS and NESHAPS categories since the SBAPCD's revised programs and procedures are acceptable:

NSPS	40 CFR Part 60 Subpart
General Provisions	A
Fossil-Fuel Fired Steam Generators	D
Incinerators	E
Portland Cement Plants	F
Nitric Acid Plants	G
Sulfuric Acid Plants	H
Asphalt Concrete Plants	I
Petroleum Refineries	J
Storage Vessels for Petroleum Liquids.	K
Secondary Lead Smelters	L
Secondary Brass & Bronze Ingot Production Plants.	M
Primary Emissions from Basic Oxygen Process Furnaces (C. after 6/11/73).	N
Sewage Treatment Plants	O
Primary Copper Smelters	P
Primary Zinc Smelters	Q
Primary Lead Smelters	R
Primary Aluminum Reduction Plants	S
Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	T
Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	U
Phosphate Fertilizer Industry: Diammonium Phosphate Plants.	V
Phosphate Fertilizer Industry: Triple Superphosphate Plants.	W
Phosphate Fertilizer Industry: Granular Triple Superphosphate.	X
Coal Preparation Plants	Y
Ferroalloy Productzon Facilities	Z
Iron and Steel Plants (Electric Arc Furnaces).	AA
Lime Manufacturing Plants	HH

NESHAPS	40 CFR Part 61 Subpart
Beryllium	C
Beryllium Rocket Motor Firing	D
Mercury	E

EPA is not delegating Radionuclides under the Clean Air Act (NESHAPS, Subparts B, H, I, and K) until delegation procedures and requirements are developed.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

cc: Santa Barbara County Air Pollution Control District

Terry McGuire,

Technical Support Division, CARB.

With respect to the areas under the jurisdiction of the SBCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the SBCAPCD at the address shown in the **ADDRESS** section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.).*

Dated: September 8, 1987.

Charles W. Murray, Jr.,

Acting Regional Administrator.

[FR Doc. 87-21488 Filed 9-16-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-3262-7]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the Hawaii Department of Health (HDOH). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: August 31, 1987.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, State Implementation Plan Section (A-2-3), Air Programs Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8066, FTS 454-8066.

SUPPLEMENTARY INFORMATION: The HDOH has requested authority for delegation of certain NSPS and NESHAPS categories. Delegation of authority was granted by a letter dated August 31, 1987 and is reproduced in its entirety as follows:

John C. Lewin, M.D.,

Director of Health, Hawaii State Department of Health, P.O. Box 3378, Honolulu, Hawaii 96801

Dear Dr. Lewin: In response to your request of August 7, 1987, I am pleased to inform you that we are delegating to your agency authority to implement and enforce two additional categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). We have reviewed your request for delegation and have found your present programs and procedures to be acceptable. This delegation includes authority for the following categories:

NSPS	40 CFR Part 60 Subpart
General Provisions	A
NESHAPS	**40 CFR Part 61 Subpart**
General Provisions	A

This delegation amends the NSPS/NESHAPS agreement between the U.S. EPA and the Hawaii Department of Health dated August 15, 1983 and the amendments dated October 25, 1984, December 18, 1984, March 18, 1985, September 30, 1986, and January 27, 1987. The agreement is amended by adding authority for NSPS Subpart A, General Provisions and NESHAPS Subpart A, General Provisions. A copy of the amended agreement is enclosed.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

Enclosure

NSPS/NESHAPS Delegation Agreement

U.S. EPA and Hawaii Department of Health Services

Permits

1. After the effective date of this Agreement, Authority to Construct permits issued by HDOH shall include appropriate provisions to ensure compliance with applicable NSPS. The categories of new or modified sources covered by this agreement are:

a. General Provisions, Subpart A.

b. Fossil Fuel Steam Generators, Subpart D.

c. Electric Utility Steam Generator, Subpart Da.

d. Industrial-Commercial-Industrial Steam Generating Units, Subpart Db.

e. Incinerators, Subpart E.

f. Portland Cement Plants, Subpart F.

g. Asphalt Concrete Plants, Subpart I.

h. Petroleum Refineries Subpart J.

i. Storage Vessels for Petroleum Liquids Constructed after May 18, 1978, Subpart Ka.

j. Sewage Treatment Plants, Subpart O.

k. Stationary Gas Turbines, Subpart GG.

l. Bulk Gasoline Terminals, Subpart XX.

m. Beverage Can Surface Coating Industry, Subpart WW.

n. Equipment Leaks of VOC in Petroleum Refineries, Subpart GGG.

o. Petroleum Dry Cleaners, Subpart JJJ.

p. Steel Plants: Electric Arc Furnace and Argon Oxygen Decarburization Vessels constructed after October 21, 1974 and on or before August. 17, 1983, Subpart AA.

q. Steel Plants: Furnaces and Vessels constructed after August 17, 1983, Subpart AAa.

r. Nonmetallic Mineral Processing Plants, Subpart OOO.

2. After the effective date of this Agreement, Authority to Construct permits issued by HDOH shall include appropriate provisions to ensure compliance with applicable NESHAPS.

A. The categories of sources covered by this Agreement are:

a. General Provisions, Subpart A.

b. Mercury, Subpart E.

c. Equipment Leaks (Fugitive Emission Sources) of Benzene, Subpart J.

d. Equipment Leaks (Fugitive Emissions Sources), Subpart V.

BEST COPY AVAILABLE

With respect to the areas under the jurisdiction of the HDOH, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the HDOD at the address shown in the letter of delegation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 8, 1987.

Charles W. Murray, Jr.,

Acting Regional Administrator.

[FR Doc. 87-21489 Filed 9-16-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 61

[A-9-FRL-3261-9]

Delegation of National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NESHAPS authority to the California Air Resources Board (CARB) on behalf of the Great Basin Unified Air Pollution Control District (GBUAPCD). This action is necessary to bring the NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NESHAPS categories from EPA to State and local government.

EFFECTIVE DATE: August 6, 1987.

ADDRESS: Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, State Implementation Plan Section (A-2-3), Air Programs Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8066, FTS 454-8066.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NESHAPS categories on behalf of the GBUAPCD. Delegation of authority was granted by a letter dated August 6, 1987 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of July 28, 1987, I am pleased to inform you that we are delegating to your agency authority to implement and enforce one category of National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the Great Basin Unified Air Pollution Control District (GBUAPCD). We have reviewed your request for delegation and have found the GBUAPCD's programs and procedures to be acceptable. This delegation includes authority for the following source category:

NESHAPS	40 CFR Part 61 Subpart
Asbestos	M

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

cc: Great Basin Unified Air Pollution Control District

Terry McGuire,

Technical Support Division, CARB.

With respect to the areas under the jurisdiction of the GBUAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NESHAPS source categories should be directed to the GBUAPCD at the address shown in the **ADDRESS** section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 8, 1987.

Charles W. Murray,

Acting Regional Administrator.

[FR Doc. 87-21482 Filed 9-16-87; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 507 and 552

[Acquisition Circular AC-87-1; Supplement No. 1]

General Services Administration Acquisition Regulation; Comparison of Retirement Costs Under OMB Circular A-76

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement to the General Services Administration Acquisition Regulation, Acquisition Circular AC-87-1 extends the expiration date to March 7, 1988. The intended effect is to extend the policies and procedures as established in AC-87-1, which temporarily implemented the Office of Management and Budget (OMB) Transmittal Memorandum No. 4 which revised OMB Circular A-76 procedures for calculation and comparison of retirement costs in GSA pending a revision to the Federal Acquisition Regulation.

EFFECTIVE DATE: September 9, 1987. *Expiration Date:* March 8, 1988, unless canceled earlier or extended.

FOR FURTHER INFORMATION CONTACT: Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-3822.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. When AC-87-1 was originally issued, the GSA certified that under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that the document would not have a significant economic effect on a substantial number of small entities. This rule will not have a significant impact because of the limited number of solicitations subject to the requirement (approximately 21 in the next year).

The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act and assigned OMB Control No. 0348-0036.

List of Subjects in 48 CFR Parts 507 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 507 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Parts 507 and 552 are amended by the following supplement to Acquisition Circular AC–87–1:

General Services Administration Acquisition Regulation Acquisition Circular AC–87–1, Supplement No. 1

September 9, 1987.

To: All GSA contracting activities
Subject: Comparison of retirement costs under OMB Circular A–76

1. *Purpose.* This supplement extends the expiration date of General Services Administration Acquisition Regulation Acquisition Circular AC–87–1.

2. *Effective:* September 9, 1987.

3. *Expiration date:* The General Services Administration Acquisition Regulation Acquisition Circular AC–87–1 and this supplement will expire on March 8, 1988, unless cancelled earlier.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 87–21433 Filed 9–16–87; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 70620–7184]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to amend and extend the interim rule implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). Amendment 1 to the FMP, which this rule implements, addresses deficiencies in the interim rule. The intended effect of the rule is to maintain the abundance and viability of the groundfish stocks to support both commercial and recreational fisheries.

EFFECTIVE DATE: October 1, 1987, except for the recordkeeping requirement in § 651.22(f), which has been submitted to the Office of Management and Budget for approval. When approval is received, a notice will be published in the **Federal Register** making this section effective.

ADDRESS: Copies of the environmental assessment, supplementary regulatory impact review and regulatory flexibility analysis prepared for Amendment 1 are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01908.

FOR FURTHER INFORMATION CONTACT: Peter D. Colosi, Jr. (Multispecies Plan Coordinator), 617–281–3600, ext. 252.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) prepared Amendment 1 to amend and extend the FMP, which was approved by the Secretary of Commerce only until September 30, 1987. Amendment 1 addresses deficiencies in the FMP that were identified by the Secretary in his decision to approve the FMP conditionally for one year (51 FR 29642, August 20, 1986). The proposed rule for Amendment 1 was published June 23, 1987, at 52 FR 23570 and invited public comment.

Amendment 1 contains ten specific changes and additions to the management system. These are as follows:

1. The December–January exempted fishery for whiting is limited to the exempted fishery area west of 69°00′ W. longitude.

2. For the June–November exempted fishery, the species against which the ten percent bycatch of regulated species may be calculated are limited to dogfish, herring, mackerel, ocean pout, red hake, silver hake, and squid.

3. The southern boundary of the regulated mesh area on Georges Bank east of 69°40′ W. longitude is extended slightly southward.

4. Dredge gear designed to take scallops may not be used in the Southern New England Closed Area during closure periods.

5. The minimum mesh size for mobile gear nets must extend for at least 75 meshes forward of the terminus of the net.

6. No vessel fishing in or transiting the regulated mesh area may have a net available for immediate use with a mesh smaller than the minimum size specified in the regulations.

7. The dimensions of Closed Area I are changed, and the area will be moved to the south and east by regulatory amendment at a later date.

8. Hook-and-line gear is permitted for use in the Southern New England Closed Area, but yellowtail flounder may not be possessed.

9. The December–May exempted fishery program (EFP) for herring and mackerel is eliminated, but mid-water trawling is permitted subject to a permit issued by the Regional Director.

10. Upon recommendation of the Council, and in consultation with the Atlantic States Marine Fisheries Commission, the Regional Director may permit the use of certain selective gear in the northern shrimp fishery in the exclusive economic zone (EEZ) as an alternative to participation in the EFP, or require, by regulatory amendment to the FMP, the use of certain selective gear in the EEZ shrimp fishery.

Comments and Responses

Comments received strongly supported approval of the Amendment.

Written comments were submitted by the Point Judith Fishermen's Cooperative Association, Massachusetts Inshore Draggermen's Association, Maine Fishermen's Cooperative, U.S. Environmental Protection Agency, New England Fishery Management Council, Department of the Interior, Conservation Law Foundation, Arnold Fisheries Co., Levin Marine Supply, Inc., F/V Elizabeth, F/V Kathleen A. Mirarchi, Otonka, Inc., Roger F. Woodman, Jr., & Co., F/V Deb & Tres III, Congressman Gerry Studds, Congressman Don Young, Congresswoman Claudine Schneider, Senator William S. Cohen, Senator George J. Mitchell, Senator Edward M. Kennedy, Senator John F. Kerry, Senator John Chafee, Senator Claiborne Pell, and two individuals.

Comment: Twenty commenters stated that they supported unconditional approval of Amendment 1 as prepared by the Council, because it addressed the problems of conservation and would be supported by the industry.

Response: Amendment 1 is approved as requested.

Comment: Three commenters stated that the measures contained in Amendment 1 were insufficient to meet the objectives of the FMP or to prevent overfishing.

Response: The measures in Amendment 1 are designed to work towards the attainment of FMP objectives. If implementation of the measures in Amendment 1 demonstrates them to be inadequate, the Technical Monitoring Group is designed to recognize this early and recommend action to the Council that will address the problem.

Comment: Three commenters stated that implementing a Secretarial Amendment instead of the Council's Amendment would erode industry confidence and support of management.

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Response: A Secretarial Amendment will not be implemented at this time, because Amendment 1 has been approved.

Comment: Three commenters stated that the questions contained in the preamble to the proposed rule were inappropriate, prejudicial and out of context.

Response: Many commenters responded to the questions contained in the preamble and most responses indicated strong support for the measures contained in Amendment 1. This support had a substantial bearing on the decision to approve the Amendment.

Comment: Five commenters stated that the 5.5-inch minimum mesh size for 75 meshes was preferable to the entire net for the near term. It would give dealers and fishermen time to use up current twine.

Response: This measure is part of the approved amendment.

Comment: The Council made several comments of a minor technical or editorial nature.

Response: These comments are addressed in the body of the regulations.

Changes From the Proposed Rule

Sections 651.3(c) and 651.4(a)(2) are changed to omit the inappropriate reference to local law. The Council intended only the stricter of State or Federal regulations to prevail. Also, in § 651.4(a)(2), the reference to conservation measures is changed to management measures to avoid confusion.

A few changes of a technical or editorial nature have been made in this rule as follows:

In § 651.20(a)(1)(ii), degree signs are added to points of latitude and longitude.

In § 651.20(f)(4), the phrase "small mesh" is deleted from the sentence.

References to "FCZ" are changed to "EEZ" throughout the regulations.

Classification

The Regional Director has determined that Amendment 1 as approved is necessary for the conservation and management of northeast multispecies finfish and that it is consistent with the Magnuson Act and other applicable law.

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities.

The Council prepared an environmental assessment and the Assistant Administrator for Fisheries found there will be no significant impact on the environment as a result of this rule. Thus, it does not alter the final environmental impact statement of the FMP.

The Assistant Administrator for Fisheries finds for good cause—avoidance of a regulatory hiatus which would be damaging to the fishery resource—that it would be impracticable and contrary to the public interest to delay for 30 days the effective date of the final rule under section 553(d) of the Administrative Procedure Act.

This rule contains information collection requirements subject to the Paperwork Reduction Act. The permit requirements under § 651.4 have been approved by the Office of Management and Budget under OMB Control Number 0648–0097. The exempted fisheries program information requirement in § 651.4(n), and the reporting requirements in § 651.22(f), have been approved under OMB Control Number 0648–0016. The recordkeeping requirement in § 651.22(f) has been submitted to OMB for approval. When approval is received, it will be implemented by notice in the **Federal Register.**

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, Delaware, and North Carolina.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 11, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 651 is revised to read as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

Subpart A—General Provisions

Sec.

651.1 Purpose and scope.
651.2 Definitions.
651.3 Relationship to other laws.
651.4 Vessel permits.
651.5 Recordkeeping and reporting requirements. [Reserved]
651.6 Vessel identification.
651.7 Prohibitions.
651.8 Facilitation of enforcement.
651.9 Penalties.

Subpart B—Management Measures

651.20 Regulated mesh area and gear limitations.
651.21 Closed areas.
651.22 Exempted fishery program.
651.23 Minimum fish size.
651.24 Experimental fishing.
651.25 Gear marking requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 651.1 Purpose and scope.

This part implements the Fishery Management Plan for the Northeast Multispecies Fishery, as amended by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council. These regulations govern the conservation and management of multispecies finfish.

§ 651.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Areas of custody means any vessels, buildings, vehicles, piers or dock facilities where finfish may be found.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, Washington, DC 20235, or a designee.

Authorized officer means

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Bottom-tending gill net means any gill net, anchored or otherwise, that is fished on or near the bottom in the lower third of the water column.

Butterfish means *Peprilus triacanthus.*

Catch, take, or harvest includes, but is not limited to, any activity which results in killing any fish or bringing any live fish aboard a vessel.

Charter and party boats means vessels carrying recreational fishing parties for a per capita fee or for a charter fee.

Exempted fisheries means those species found in the exempted fisheries program (§ 651.23).

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking or harvesting of fish;

(b) The attempted catching, taking or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing; including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Herring means Atlantic herring, *Clupea harengus harengus*, or blueback herring, *Alosa aestivalis*.

Land means to begin offloading fish, to offload fish, or to transfer fish to another vessel.

Longline gear means fishing gear which is set horizontally, either anchored, floating, or attached to a vessel, which consists of a main or ground line with three or more gangions and hooks.

Mackerel means Atlantic mackerel, *Scomber scombrus*.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

Mid-Atlantic area means that area west and south of a line commencing at 41°18'16.2" N. latitude, 71°54'28.5" W. longitude and proceeding 142°37'27.25" True to the point of intersection with the outer boundary of the EEZ.

Midwater trawl gear means pelagic trawl gear, no portion of which is operated in contact with the bottom at any time.

Multispecies finfish includes, but is not limited to, the following finfish in the Northeast portion of the Atlantic Ocean EEZ.

Gadus morhua.....Atlantic cod.
Glyptocephalus cynoglossus....witch flounder.
Hippoglossoides platessoides...American plaice.
Limanda ferruginea..... yellowtail flounder.
Melanogrammus aeglefinus.....haddock.
Pollachius virens..... pollock.
Pseudopleuronectes americanus...winter flounder.
Scophthalmus aquosus...windowpane flounder.
Sebastes marinus..... redfish.
Urophycis tenuis..... white hake.

New England area means that area east and north of a line commencing at 41°18'16.2" N. latitude, 71°54'28.5" W. longitude and proceeding 142°37'27.25" True to the point of intersection with the outer boundary of the EEZ.

Official number means the documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means the master or other individual aboard and in charge of that vessel.

Owner, with respect to any vessel, means

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Recreational fishing means fishing for finfish which does not result in their barter, trade, or sale.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Party and charter boats are not considered recreational fishing vessels.

Regional Director means the Regional Director, Northeast Region, NMFS, 14 Elm Street, Federal Building, Gloucester, MA 01930, 617-281-3600, or a designee.

Regulated species means a subset of multispecies finfish which includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, and redfish.

Retain aboard means to fail to return fish to the sea after a reasonable opportunity to sort the catch.

Secretary means the Secretary of Commerce, or a designee.

Squids means *Loligo pealei* or *Illex illecebrosus*.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated by a fishery management plan or preliminary fishery management plan implemented under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented under chapter 121 of title 46, United States Code;

(b) Any vessel numbered under chapter 123 of title 46, United States Code, and measuring less than 5 net tons;

(c) Any vessel numbered under chapter 123 of title 46, United States Code, and used exclusively for pleasure; and

(d) Any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

Whiting means *Merluccius bilinearis*.

§ 651.3 Relationship to other laws.

(a) Fishing for squids, mackerel, and butterfish, which is affected by these rules, also is governed by other domestic rules under 50 CFR Part 655.

(b) Fishing vessel operators will exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protection of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

(c) Nothing in these regulations will supercede more restrictive State or local management measures for multispecies finfish.

§ 651.4 Vessel permits.

(a) *General.* (1) Any vessel of the United States fishing for multi-species

finfish, except commercial vessels fishing exclusively within State waters and recreational fishing vessels, must have a permit required by this part aboard the vessel.

(2) Vessel owners or operators who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ and without regard to where such fish or gear are possessed, taken, or landed) will be subject to all the requirements of this part. All such fishing, catch, and gear will remain subject to any applicable State requirements. If a requirement of this part and a management measure required by State law differ, any vessel owner or operator permitted to fish in the EEZ must comply with the more restrictive requirement.

(b) *Application.* (1) An application for a fishing vessel to participate in the multispecies finfish fishery must be submitted and signed by the vessel owner on an appropriate form which may be obtained from the Regional Director. The application should be submitted to the Regional Director at least 2 months prior to the date on which the applicant desires to have the permit made effective to ensure that he will receive the permit on time.

(2) Applicants must provide all of the following information:

(i) The name, mailing address, and telephone number of the applicant and the vessel's master;

(ii) If the vessel owner is a corporation, the officers' and shareholders' names and mailing addresses;

(iii) The name of the vessel;

(iv) The vessel's official number;

(v) The home port and gross tonnage of the vessel;

(vi) The engine horsepower of the vessel;

(vii) The approximate fish-hold capacity of the vessel in pounds;

(viii) The type of fishing gear used by the vessel; and

(ix) The size of the crew, which may be stated in terms of a range.

(c) *Issuance.* (1) Upon receipt of a completed application, the Regional Director will issue a permit within 45 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 21 days following the date of notification, the application will be discarded.

(d) *Surrender.* (1) A permit issued for a vessel may be surrendered by the owner thereof by certified mail addressed to the Regional Director.

(2) The Regional Director will reissue a permit which has been surrendered within 45 days from the date the reissuance was requested.

(e) *Expiration.* A permit expires on December 31 of each year.

(f) *Duration.* A permit is valid until it is voluntarily returned or expires or is revoked, suspended, or modified under 15 CFR Part 904.

(g) *Alteration.* Any permit which has been altered, erased, or multilated is invalid.

(h) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(j) *Display.* Any permit issued under this part must be carried aboard the fishing vessel at all times. The permit must be displayed for inspection at the request of an authorized officer.

(k) *Suspension and revocation.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this part.

(l) *Fees.* No fee is required for any permit under this part.

(m) *Change in application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Regional Director within 15 days of the change. Failure to report a change in information within 15 days of the change invalidates the permit.

(n) *Exempted fisheries program.* Any permit holder may initially request entry into the exempted fisheries program under § 651.22 by telephoning 617–281–4454. The permit holder must give his/her name, vessel name, vessel permit number, the specific exemption requested, the starting date and estimated duration of participation in the program, and the area of operation. The permit holder must have the letter of certification, which will be issued within one week, aboard at all times while engaged in an exempted fishery.

§ 651.5 Recordkeeping and reporting requirements. [Reserved]

§ 651.6 Vessel identification.

(a) *Vessel name.* Each fishing vessel subject to this part over 25 feet in length must display its name on the port and starboard sides of its bow and, as possible, on its stern.

(b) *Official number.* Each fishing vessel subject to this part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be visible from above.

(c) *Numerals.* Except as provided in paragraph (e) of this section, the official number must be permanently affixed to each vessel subject to this part in contrasting block Arabic numerals at least 18 inches in height for vessels over 65 feet in length, and at least 10 inches in height for vessels over 25 feet in length. The length of a vessel, for purposes of this section, will be that length set forth in U.S. Coast Guard or State records.

(d) *Duties of owner and operator.* The owner and operator of each vessel subject to this part will

(1) Keep the vessel's name and official number clearly legible and in good repair, and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

(e) *Nonpermanent markings.* Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The nonpermanent markings must be displayed in conformity with the above requirements when the vessel is fishing for multispecies finfish.

§ 651.7 Prohibitions.

(a) It is unlawful for any person owning or operating a vessel issued a permit under § 651.4 to do any of the following:

(1) Land or possess any regulated species which fails to meet the minimum fish sizes specified in § 651.23; and

(2) Fail to affix and maintain permanent markings as required by § 651.6.

(b) It is unlawful for any person to do any of the following:

(1) Use any vessel of the United States (except recreational fishing vessels) for taking, catching, harvesting or landing any regulated species taken from the EEZ unless the vessel has a valid permit issued under this part and the permit is aboard the vessel;

(2) Fish within the areas described in § 651.20(a) with nets smaller than the minimum size specified in § 651.20(b) unless the vessel is certified in an exempted fisheries program established under § 651.22;

(3) Fish within the areas described in § 651.20(a) outside of the exempted fisheries area specified in § 651.22(a) while the vessel is certified to participate in the exempted fisheries program under § 651.22;

(4) Fish in either area specified in § 651.21 during a period in which that area is closed, unless allowed by that section;

(5) Fail to comply with the gear-marking requirements of § 651.25;

(6) Having been signaled by an authorized officer, dump on board or into the water the contents of the net before the authorized officer has permitted the net to be emptied;

(7) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, or export any regulated species taken, retained, or imported in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(8) Import regulated species which are smaller than the minimum sizes specified in § 651.23;

(9) Make any false statement in connection with an application under § 651.4.

(10) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvest, landing, purchase, sale, possession, or transfer of any regulated species;

(11) Refuse to permit an authorized officer to board a fishing vessel or to enter an area of custody, subject to such person's control, for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit under the Magnuson Act;

(12) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (b)(11) of this section;

(13) Resist a lawful arrest for any act prohibited by this part;

(14) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(15) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcement this part;

(16) Fail to comply immediately with enforcement and boarding procedures specified in § 651.8;

(17) Transfer directly or indirectly, or attempt to transfer, to any vessel not having a permit under this part any U.S.-harvested, regulated species; or

(18) Violate any provisions of the exempted fisheries program specified in § 651.22.

(c) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulations or permit issued under the Manguson Act.

(d) *Presumption.* The possession for sale of regulated species which do not meet the minimum sizes specified in § 651.23 for sale will be *prima facie* evidence that such regulated species were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel not holding a permit under this part and fishing exclusively within State waters will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

§ 651.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is a preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to allow an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and,

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following additional signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.– .–)[1] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.–. –.— –.–. –.—) means "You should proceed at slow speed, a boat is coming to you." The signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... —.– ...—) means "you should stop or heave to; I am going to board you."

(4) "L" (.–..) means "You should stop your vessel instantly."

§ 651.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act, 15 CFR

[1] Period (.) means a short flash of light; dash (–) means a long flash of light.

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Part 904 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 651.20 Regulated mesh area and gear limitations.

(a) The mesh sizes stated in paragraphs (b) and (c) of this section will apply to all vessels fishing within the area defined by accepted boundary limits and by straight lines (rhumb lines) connecting the following points in the order stated:

(1) *Gulf of Maine regulated mesh area* (Figure 1):

(i) Bounded on the east by the U.S.-Canada maritime boundary (point L to point M to point F);

(ii) Bounded on the south by a line from 42°20′ N. latitude, 67°18.4′ W. longitude (point F) to 42°20′ N. latitude, 70°00′ W. longitude (point E) then southward to the intersection of 70°00′ W. longitude with the territorial sea (point D) then following the seaward limit of the territorial sea northward along the coasts of Massachusetts, New Hampshire, and Maine to the U.S.-Canada maritime boundary (point L).

(2) *Georges Bank regulated mesh area* (Figure 1):

Bounded by straight lines connecting the following points:

Point	Latitude, longitude	Loran C bearings
Z	40°18.7′ N., 69°40.0′ W.	9960-Y-43400 and 69°40′ W
A	40°53.5′ N., 69°40.0′ W	
B	41°35.0′ N., 69°40.0 W.	
C	41°35.0′ N and the territorial sea	
D	Northward along the territorial sea to its intersection with 70°00.0 W	
E	42°20.0 N., 70°00.0′ W.	
F	42°20.0 N., 67°18.4′ W (on the U.S.-Canada maritime boundary)	
G	41°18.6 N., 66°24.8 W	5930-Y-30750 and the U.S.-Canada maritime boundary
N1	40°55.5′ N., 66°38.0′ W.	5930-Y-30750 and 9960-Y-43500
N2	40°45.5 N., 68°00.0′ W.	9960-Y-43500 and 68°00 W
N3	40°37.0′ N., 68°00.0′ W	9960-Y-43450 and 68°00 W
N4	40°30.5 N., 69°00.0′ W.	9960-Y-43450 and 69°00 W
N5	40°22.7′ N., 69°00.0′ W.	9960-Y-43400 and 69°00 W
Z	40°18.7′ N., 69°40.0′ W.	9960-Y-43400 and 69°40 W

Note: Loran lines are included for the convenience of fishermen. They are not to be relied upon for determining position for enforcement purposes.

(b) *Trawl nets*—(1) *Diamond mesh.* Except as provided for in §§ 651.20(b)(3), 651.20(d), and 651.22, the minimum mesh size for any trawl net, including midwater trawls, or Scottish seine used by a vessel fishing in the mesh areas described in paragraphs (a)(1) and (a) (2) of this section is 5½ inches for at least 75 continuous meshes forward of the terminus of the net (Figure 4).

(2) *Square mesh.* Vessels may use square mesh which the Regional Director has certified to be equivalent in terms of haddock escapement to the mesh sizes specified in paragraph (b)(1) of this section.

(3) *Selective shrimp gear.* Upon the recommendation of the Council, the Regional Director, after consultation with the Atlantic States Marine Fisheries Commission, may permit the use of gear with smaller mesh than that required in § 651.20(b)(1) for vessels in the shrimp fishery which use gear that has been demonstrated to allow adequate escapement of juvenile regulated species.

(c) *Gill nets.* (1) The minimum mesh size for any bottom-tending gill net used by a vessel fishing in the mesh areas described in paragraph (a) of this section will be the same as that specified under paragraph (b) of this section.

(2) In other portions of the New England area not subject to minimum mesh size restrictions under paragraph (b) of this section, the mesh in bottom-tending gill nets must be the same during the months of November through February as that in effect under paragraph (b) of this section for the Georges Bank regulated mesh area, as defined in paragraph (a)(2) of this section.

(d) *Midwater gear exception.* (1) For the Georges Bank regulated mesh area, fishing for Atlantic herring or blueback herring, mackerel, and squids may take place throughout the fishing year with mesh sizes less than the regulated size, provided that:

(i) Midwater trawl gear is used exclusively;

(ii) The vessel deploying midwater gear is permitted by the Regional Director; and

(iii) The bycatch of regulated species does not exceed one percent by weight of herrings, mackerel, and squids on board the vessel.

(2) For the Gulf of Maine regulated mesh area, fishing for herring and mackerel may take place from December through May with mesh sizes less than the regulated size, provided that the requirements of paragraphs (d)(1) (i) and (ii) of this section are met and that the bycatch of regulated species does not exceed one percent by weight of herrings and mackerel on board the vessel.

(e) *Mesh measurements.* (1) Mesh sizes are measured by a wedge-shaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters, inserted into the meshes under a pressure or pull of five kilograms. The mesh size will be the average of the measurements of any series of 20 consecutive meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(2) A fishing vessel may not use any means or device which would obstruct the meshes on the top of the regulated portion of a trawl net, except that one net strengthener may be attached (only at its outside edges) to the top of the regulated portion of a trawl net, if such net strengthener consists of mesh material similar to the material of the regulated portion of the net and has a mesh size of the least twice the authorized minimum mesh size. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net which (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor.

(f) Except as provided in paragraph (d) of this section, no vessel issued a permit under § 651.4 may have available for immediate use any net not meeting the requirements specified in paragraphs (b) and (c) of this section, or mesh that is rigged in a manner which is inconsistent with § 651.20(e)(2), while in the areas described in paragraph (a) of this section. A net that conforms to one of the four following specifications and which cannot be shown to have been in recent use is considered to be "not available for immediate use":

(1) Nets stored below deck; or

(2) Nets stowed and lashed down on deck; or

(3) Nets which are on reels and are covered and secured; or

(4) Nets on vessels which have the towing wires detached from the gear.

§ 651.21 Closed areas.

(a) *Georgia Bank.* No person may fish within the following areas during the months of February through May.

(1) An area known as Closed Area I (Figure 2) bounded by six straight lines (rhumb lines) connecting the following points in the order stated:

Point	Latitude	Longitude
a	40°53′ N.,	68°53′ W.;
b	41°35′ N.,	68°30′ W.,
c	41°50′ N.,	68°45′ W.;
d	41°50′ N.,	69°00′ W.;
e	41°30′ N.,	69°00′ W.,
f	41°30′ N.,	69°23′ W.; and
a	41°53′ N.,	68°53′ W.

(2) An area known as Closed Area II (Figure 2) bounded by three straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
g	41°15' N.	67°00' W.;
h	41°15' N.	66°22.4' W. (the U.S.-Canada Maritime Boundary);
i	41°59.1' N.	67°00' W. (the U.S.-Canada Maritime Boundary);
g	41°15' N.	67°00' W.

(3) Exceptions. Paragraphs (a) (1) and (2) of this section do not apply.

(i) To longline vessels that fish with hooks having a gape of not less than 1.18 inches (30 mm), Closed Area I, only;

(ii) To pot gear designed and used to take lobsters; or

(iii) To dredges designed and used to take scallops.

(4) The Regional Director may open either of both Closed Areas I and II prior to the scheduled opening in May by notice in the **Federal Register**, if he determines that concentrations of spawning fish are no longer in the area(s).

(b) *Southern New England/Mid-Atlantic Region.* (1) Except as provided in paragraph (b)(3) of this section, during a closure, no person may fish within the area bounded by straight lines (rhumb lines) connecting the following points in the order stated (Figure 3):

Point	Latitude	Longitude
A	40°33.5' N.	69°40' W.;
N	40°26.5' N.	70°40' W.;
O	40°40.5' N.	70°40' W.;
P	40°30' N.	72°00' W.;
Q	40°17.8' N.	72°00' W.;
R	40°15.5' N.	72°20' W.;
S	40°39.0' N.	72°20' W.;
T	40°42.0' N.	72°00' W.;
U	40°48.2' N.	72°00' W.;
V	41°00' N.	70°49.5' W.;
W	41°00' N.	70°30' W.;
X	40°50' N.	70°30' W.;
Y	40°50' N.	69°40' W.; and
A	40°33.5' N.	69°40' W.

(2) The area defined in paragraph (b)(1) of this section will be regulated as follows:

(i) The portion of the area east of 71°30' W. longitude will close on March 1 each year and the portion west of 71°30' W. longitude will close on April 1 each year.

(iii) The entire area will be reopened at 2400 hours on May 31 of each year, or at an earlier date after May 1 by notice in the **Federal Register**, when the Regional Director, after consultation with Council, determines that the closure has achieved the appropriate spawning level for yellowtail and winter flounder.

(3) Exceptions.

(i) Paragraph (b)(1) of this section does not apply

(A) To pot gear designed and used to take lobsters;

(B) To dredge gear designed and used to take ocean quahogs or surf clams; and

(C) Hook-and-line gear; however, the possession of yellowtail flounder by persons or vessels fishing with hook and line gear within this area is prohibited.

(ii) In the Southern New England Closed Area described in § 651.21(b), fishing with midwater trawl gear may be permitted by the Regional Director. Any person intending to use midwater trawl nets in the area described in paragraph (b) of this section must notify the Regional Director in writing 30 days prior to the date on which the nets will be used. The Regional Director will issue a letter certifying the use of such nets. Fishing in these areas with midwater trawl nets may not commence without a letter of certification carried aboard the vessel. A vessel conducting such fishing may not retain aboard or land any regulated species.

§ 651.22 Exempted fishery program.

(a) *General.* The Regional Director will establish and implement an exempted fishery program to allow fishing vessels to engage in small mesh fisheries for species which require the use of mesh smaller than the size specified in § 651.20(b).

(1) Exempted fishing may be conducted shoreward of the area bounded by the straight lines (rhumb lines) connecting the following points in the order stated (Figure 1):

Point	Latitude	Longitude
C	41°35' N. and the territorial sea;	
B	41°35.5' N.	69°40' W.;
H	42°49.5' N.	69°40' W.;
I	43°12' N.	69°00' W.;
J	43°41' N.	68°00' W.;
K	43°58' N.	67°22' W. (the U.S.-Canada maritime Boundary); and
L	Northward along the irregular U.S.-Canada maritime boundary to the territorial sea.	

(2) The eastern boundary of the December–January combined whiting and shrimp exempted fishery is 69°00' W. longitude (Figure 1).

(b) *Entry.* (1) Any person owning or operating a vessel issued a valid Federal multispecies finfish permit may apply to fish under the exempted fisheries program by following the procedures set forth in § 651.4(n).

(2) The period of participation must be for at least 7 days, but not longer than 30 days. There is no limit on the number of times a vessel can apply to participate in the exempted fisheries program.

(c) *Certification.* (1) The Regional Director will certify in writing the entry of the applicant into the exempted fisheries program. Entry may be denied to an applicant based on the applicant's violation of the Magnuson Act, if the applicant has received a notice of violation and assessment concerning the violation.

(2) Entry of the applicant into the exempted fisheries program cannot occur until the applicant receives written certification from the Regional Director.

(d) *Commencement of fishing.* Fishing under the exempted fisheries program may begin after the applicant has received the certification from the Regional Director provided that this letter is retained aboard the vessel.

(e) *Limitations.* (1) During the period of participation in the exempted fisheries program, the vessel may not be employed to fish in the regulated mesh areas outside the area specified in paragraph (a) of this section. A vessel may not land regulated species in excess of the percentages specified in paragraph (e)(2) of this section over the period of participation in the program.

(2) Participation in the exempted fisheries program is subject to seasonal limitations, exempted species, and maximum regulated species percentage restrictions as follows:

Period	Target species	Comment
June through November	Dogfish, herring, mackerel, red hake, silver hake, squid, and ocean pout.	Regulated species may not exceed 10% of the total landings of dogfish, herring, mackerel, red hake, silver hake, squid, and ocean pout during the reporting period.

Period	Target species	Comment
December through January	Whiting	Regulated species may not exceed 10% of the total landings of whiting and shrimp during the reporting period; the fishery will be monitored by at-sea sampling.
December through May or as specified by ASFMC [1].	Shrimp	Regulated species may not exceed 10% of the total landings of shrimp during the reporting period.

[1] The Northern Shrimp Section of the Atlantic States Marine Fisheries Commission is responsible for the management of northern shrimp. The Section has designated a regulatory period from December through May within which it sets the annual fishing season for northern shrimp. The Section has the authority to adjust the regulatory period or add additional measures appropriate for the conservation of northern shrimp. The Section will consult with the New England Fishery Management Council regarding recommendations to adjust the regulatory period, with respect to the management of multispecies.

(3) Adjustments in the seasons, species or percentages of the exempted fisheries will be accomplished by regulatory amendment.

(f) *Recordkeeping and reporting.* The reporting period for the exempted fisheries will be 30 calendar days. Within one week from the expiration of the reporting period or withdrawal from the program under paragraph (g) of this section, or receipt of a notice of revocation under paragraph (h) of this section, the participant must mail or deliver to the Regional Director a NOAA Form 88–153 "Fishing Vessel Record", or business records that provide equivalent information, listing in pounds all fish landed during participation in the exempted fishery program on a trip-by-trip basis, or documentation that no fishing occurred. If no fish were landed, the participant must submit a document indicating no landings. The participant must provide, upon request of the Regional Director or his designee, trip landing records, kept in the normal course of business, that are certified as accurate by both the buyer and the seller for one year after his participation in the exempted fishery program to confirm the information required in NOAA Form 88–153. Buyer certification may be satisfied by the buyer's signature on the trip record that is retained by the seller (vessel operator). The responsible fishing vessel owner or opertor may alternatively maintain accurate trip-by-trip landings data on a NOAA Form 88–153 provided on request from the Regional Director.

(g) *Expiration or withdrawal.* Participation in the program expires at the end of the participation period under § 651.4(n), or when the owner's or vessel's name changes, or when a participant who has been duly operating in the program for at least 7 days notifies the Regional Director of his/her intent to withdraw from the program. Such withdrawal will be effective when the participant receives notice of the withdrawal from the Regional Director.

(h) *Revocation.* The Regional Director may end the participation of any applicant in the exempted fisheries program upon issuance of a notice of violation and assessment for violating any provisions of the program or the Magnuson Act. Notification will be in writing and will take effect upon receipt by the participant.

§ 651.23 Minimum fish size.

(a) The minimum sizes (total length) for certain regulated species follow:

(1) Commercial fishing vessels.

	Year 1 (inches)	Year 2 and beyond (inches)
Beyond Cod, haddock and pollock	17	19
Witch flounder (gray sole)	14	14
Yellowtail flounder	12	12
American plaice (dab)	12	12
Winter flounder (blackback)	11	11

(2) Recreational fishing vessels, charter and party boats, and individuals.

(i) Effective Year 1—Cod and haddock: 15 inches;

(ii) Effective Years 2 and 3—Cod and haddock: 17 inches;

(iii) Effective Year 4 and later—Cod and haddock: 19 inches.

(3) For purposes of paragraphs (a)(1) and (2) of this section, Year 1 is September 15, 1986, through September 30, 1987; Year 2 is October 1, 1987, through September 30, 1988; and Years 3 and later begin on October 1, 1988, and each year thereafter.

(b) The minimum lengths allowed by paragraph (a) of this section are measured on a straight line from the tip of the snout to the end of the tail.

§ 651.24 Experimental fishing.

The Secretary may authorize experimental fishing, which is not otherwise authorized by these regulations, for the acquisition of information.

§ 651.25 Gear marking requirements.

(a) Bottom-tending fixed gear (gill nets and longlines) fishing for multispecies finfish must have the name of the owner or vessel, or the official number of that vessel, permanently affixed to any bouys, gill nets, or longlines.

(b) Bottom-tending gill net or longline gear must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to and including north) of the gear displays a standard 12-inch tetrahedral corner radar reflector and a pennant positioned on a staff of least 6 feet above the buoy. The eastern most end (meaning the half compass circle from magnetic north through east to and including south) of the gear must display only the standard 12-inch tetrahedral radar reflector positioned in the same way.

(c) The maximum length of continuous gill nets must not exceed 6,600 feet between the end buoys.

(d) In the Gulf of Maine regulated mesh area specified in § 651.20, sets of gill net gear which are of an irregular pattern or which deviate more than 30 degrees from the original course of the set will be marked at the extremity of the deviation with an additional marker which must display two or more visible streamers and may either be attached to or independent of the gear.

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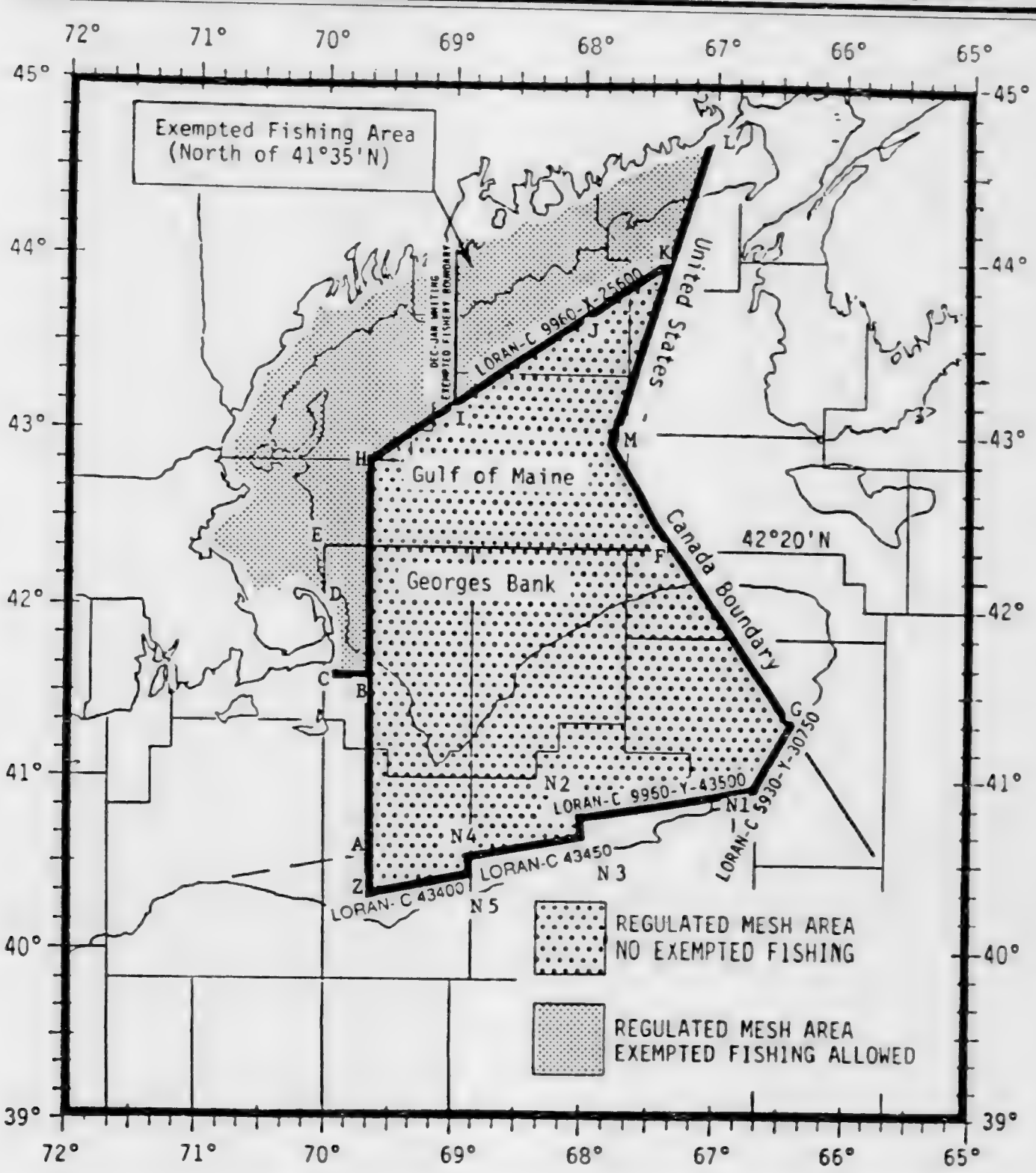

Figure 1. New England regulated mesh areas and areas of exempted and non-exempted fishing. See text for details. These areas are defined in §651.20(a). Loran lines are included for the convenience of fishermen. They are not to be relied upon for determining position for enforcement purposes.

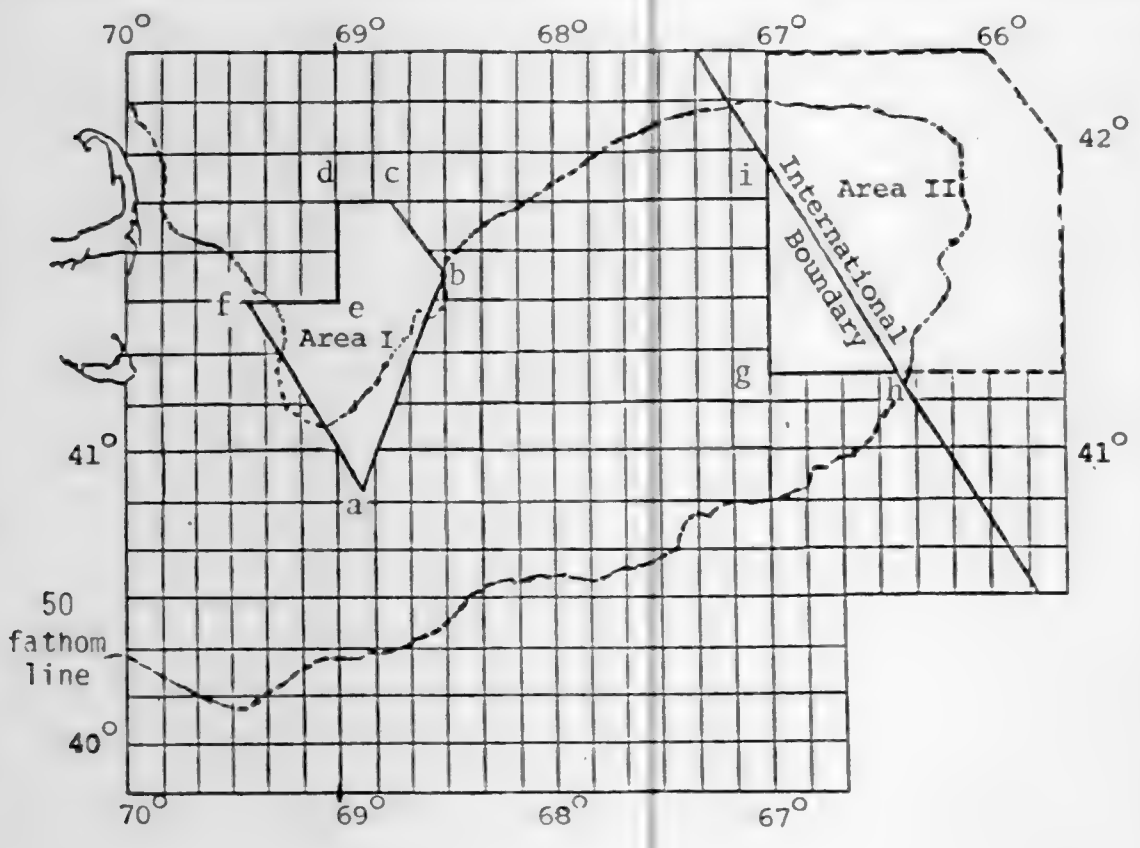

Figure 2. Georges Bank haddock spawning Closed Areas I and II.

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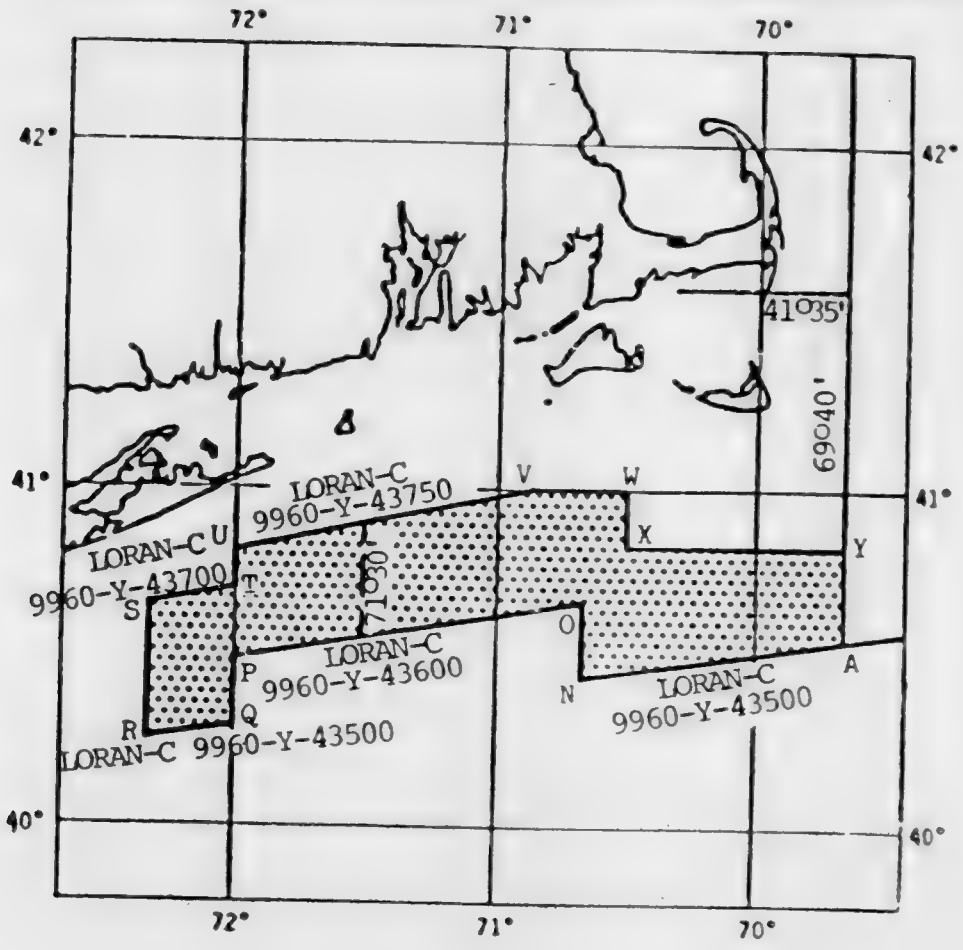

Figure 3. Southern New England/Middle Atlantic region closure. Coordinates listed in §651.21(b).

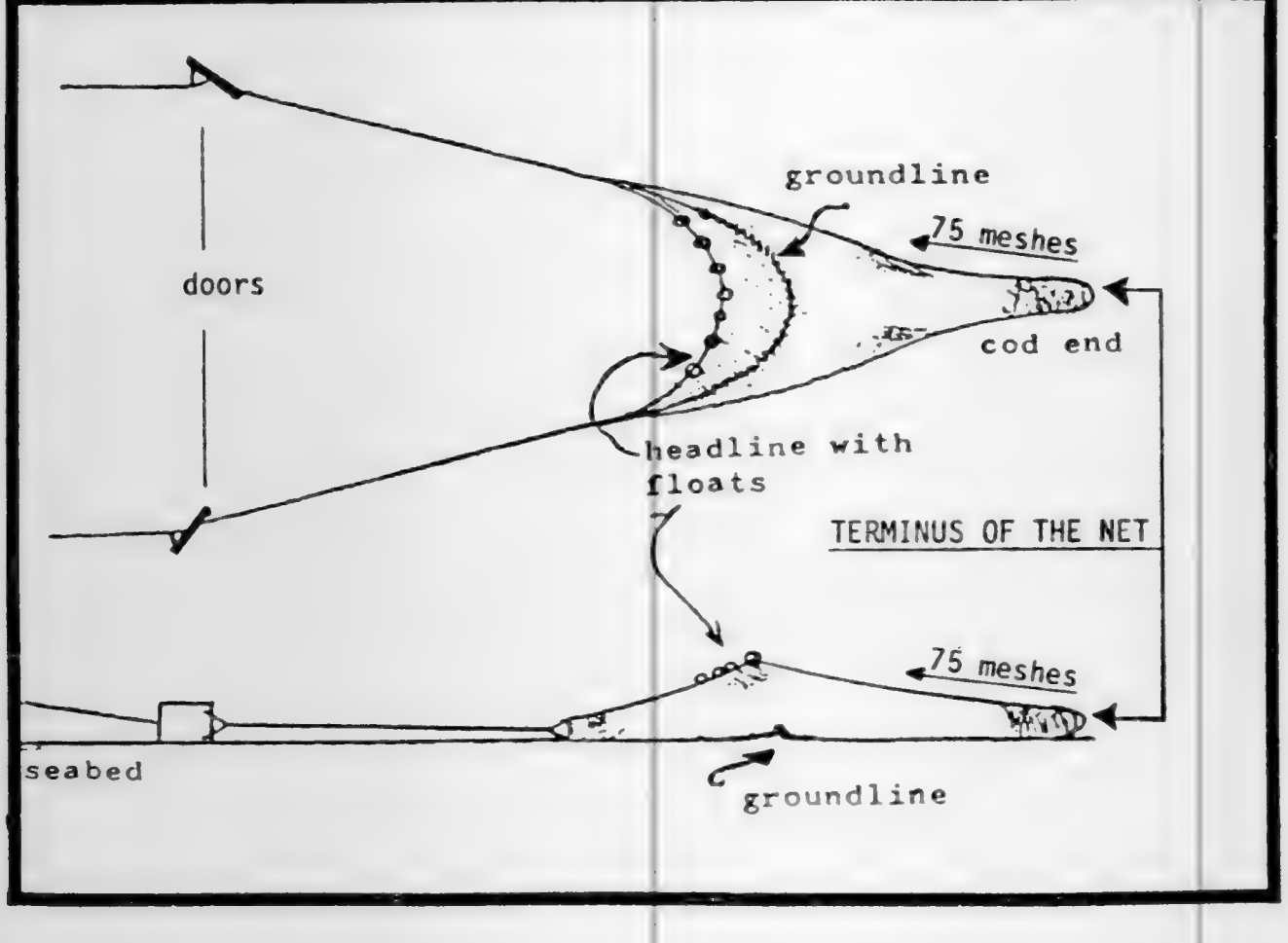

FIGURE 4 Diagram of a bottom trawl net showing the terminus of the net

[FR Doc. 87-21389 Filed 9-14-87; 4:49 pm]
BILLING CODE 3510-22-C

VOL 52 ISS 180 SE 17 1987 UMI

Proposed Rules

Federal Register
Vol. 52, No. 180
Thursday, September 17, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Key Element Reporting System

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to extend the data collection period for the Key Element Reporting System (KERS) in the Child Care Food Program (CCFP) until June 30, 1988. Extension of the data collection is necessary because of delays in the clearance and distribution of the KERS forms which reduced the originally established data collection period by 6 months. The proposed extension period will provide the Department with the 13-month data collection period which was originally envisioned as necessary to provide a comprehensive assessment of KERS in its current form.

DATE: To be assured of consideration, comments must be postmarked on or before November 16, 1987.

ADDRESSES: Send comments to Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302. Copies of all written comments on the proposed rule are available for review during normal business hours (8:30 a.m. to 5:00 p.m.) at the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

The action has been reviewed under Executive Order 12291 and has been classified as not major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for Program participants, consumers, individual industries, Federal, State or local government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5. U.S.C. 601 through 612). Pursuant to the review, the Administrator of the Food and Nutrition Service has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this proposed rule have been approved by the Office of Management and Budget (OMB) under clearance 0584–0055.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Background

On September 3, 1986, the Department published a final rule at 51 FR 31313 to incorporate a Key Element Reporting System (KERS) into the Child Care Food Program (CCFP) regulations. That final regulation requires State agencies to provide detailed information on institutional compliance with certain "key elements" of program operations. This system is intended to enhance the Department's ability to analyze the delivery of benefits at the local and State levels and to assess the need for program guidance or regulatory or legislative changes. The Department also believes that data obtained through this system will be helpful in developing comprehensive performance standards for the CCFP.

As the September 3 rule stipulates, KERS data collection was to have begun on December 1, 1986 and continue through December 31, 1987. The 13-month data collection period was established in the rule to give the Department a reasonable amount of time to assess the effectiveness of the system and to refine the use of data before implementing KERS permanently. Because of delays in the clearance and distribution of the KERS forms, data collection did not begin until approximately June 1, 1987. The Department continues to believe that a full 13-month data collection period is necessary to provide an accurate assessment of KERS. Accordingly, this proposal would extend the period for KERS data collection until June 30, 1988.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—Health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, the Department is proposing to amend 7 CFR Part 226 as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 326 and 361, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1760 and 1766); secs. 803, 810, and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); sec. 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

§ 226.6 [Amended]

2. In § 226.6, paragraph (o) is amended by removing the date "January 1, 1988" and adding in its place "June 30, 1988."

Date: September 11, 1987.

Anna Kondratas,

Administrator.

[FR Doc. 87–21520 Filed 9–16–87; 8:45 am]

BILLING CODE 3410–30–M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 86–347]

Movement of Citrus Fruit From Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearings.

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SUMMARY: Certain fruit (primarily citrus) may now be moved interstate from areas quarantined because of citrus canker, but only to areas of the United States that are not commercial citrus-producing areas. We propose to allow this fruit to be moved interstate to any destination in the United States, including commercial citrus-producing areas, if certain conditions are met. This action would relieve restrictions on the interstate movement of certain fruit from quarantined areas without increasing the risk of spreading citrus canker. We also propose to revise the conditions under which the fruit may be moved interstate from quarantined areas to areas that are not commercial citrus-producing areas. This action would help ensure that fruit moved interstate does not present a risk of spreading citrus canker.

DATES: Consideration will be given only to comments postmarked or received on or before November 2, 1987. We also will consider comments made at public hearings to be held on October 5, 1987, in Los Angeles, California; on October 7, 1987, in McAllen, Texas; and on October 9, 1987, in Lake Alfred, Florida.

ADDRESSES: Send an original and two copies of your comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 86–347. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

The public hearings will be held at the following locations: (1) On October 5, 1987, at the Los Angeles Airport Marriott Hotel, 5855 West Century Boulevard, Los Angeles, California; (2) on October 7, 1987, at the Holiday Inn Civic Center, Jacaranda Room, Expressway 83 and 2nd St., McAllen Texas; and (3) on October 9, 1987, at Ben Hill Griffin Auditorium, Agricultural Research and Education Center, 700 Experiment Station Road, Lake Alfred, Florida.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations Staff, Plant Protection and Quarantine, APHIS, USDA, Room 610, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–6365.

SUPPLEMENTARY INFORMATION:

Public Hearings

A representative of the Animal and Plant Health Inspection Service will preside at the hearings. Any interested person may appear and be heard in person, by attorney, or by other representative.

The hearings will begin at 10 a.m. and are scheduled to end at 5 p.m. However, the hearings may be ended at any time after they begin if all persons desiring to speak have been heard. Anyone wishing to speak at a hearing should register with the presiding officer on the morning of the hearing, between 9 a.m. and 10 a.m., at the hearing room. Those registered will be heard in the order of their registration. Anyone else who wishes to speak at the hearing will be heard after the registered speakers. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing.

If the number of registered speakers and other participants at a hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

Background

Citrus canker is a plant disease caused by the bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The disease is known to affect plants and plant parts, including fruit, of citrus and citrus relatives (Family Rutaceae). The disease can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. The disease also may make the fruit of diseased plants unmarketable by causing lesions in the fruit or by causing the fruit to drop from a tree before reaching maturity. Citrus canker is an aggressive disease that can infect susceptible plants rapidly and lead to extensive economic losses in citrus growing areas.

The Citrus Canker subpart, contained in 7 CFR 301.75 and referred to below as the regulations, was established after citrus canker was discovered in Florida in August of 1964. To help prevent the spread of this disease, the regulations restrict the interstate movement of regulated articles from areas quarantined because of citrus canker. Regulated articles are defined in § 301.75–2 of the regulations as: Plants or plant parts, including fruit and seeds, of all species, clones, cultivars, strains, varieties, and hybrids of the genera *Citrus* and *Fortunella*, and all clones, cultivars, strains, varieties, and hybrids of the species *Poncirus trifoliata* (which includes lemon, pummelo, grapefruit, key lime, persian lime, tangerine, satsuma, tangor, citron, sweet orange, sour orange, mandarin, tangelo, ethrog, kumquat, limequat, calamondin, and trifoliate orange, among others), and any other product, article, or means of conveyance when an inspector determines that the product, article, or means of conveyance presents a risk of spreading citrus canker and the inspector has notified the person in possession of the product, article, or means of conveyance that it is subject to the provisions of these regulations.

In 1985, we proposed to amend the regulations by adding provisions to allow fruit and seed designated as regulated articles to be moved interstate with a certificate from a quarantined area to any area of the United States; by revising the provisions that allow fruit designated as a regulated article to be moved interstate with a limited permit from a quarantined area to areas of the United States that are not commercial citrus-producing areas; by adding provisions to allow fruit designated as a regulated article and originating outside a quarantined area to be moved interstate through a quarantined area; and by making related miscellaneous changes. The proposal was published in the **Federal Register** of June 25, 1985 (50 FR 26326–26334, Docket No. 85–339). We received 18 written comments on the proposal; 42 persons commented on the proposal during three public hearings. Most of the comments concerning the proposed provisions related to fruit moved interstate with a certificate or limited permit. After considering the comments, we adopted the proposed provisions, except those related to moving fruit interstate with a certificate and certain provisions related to moving fruit interstate with a limited permit. The final rule was published in the **Federal Register** of December 13, 1985 (50 FR 51228–51234, Docket No. 85–381). We stated in that final rule that the provisions we did not adopt were still under consideration and would be the subject of a future rulemaking document.

We are again proposing to add provisions to allow fruit designated as a regulated article to be moved interstate with a certificate to any area of the United States and to revise the provisions that allow fruit designated as a regulated article to be moved interstate with a limited permit. Our new proposal, which differs from the 1985 one, reflects our additional experience in dealing with citrus canker and incorporates suggestions made by commenters on the 1985 proposal.

Fruit Moved Interstate With a Limited Permit

Under the current regulations, fruit designated as a regulated article may be moved interstate from a quarantined area in two ways: With a permit for scientific or experimental purposes; or with a limited permit to areas of the

United States that are not commercial citrus-producing areas. Commercial citrus-producing areas are identified in § 301.75–4 of the regulations as American Samoa, Arizona, California, Florida, Guam, Hawaii, Northern Mariana Islands, Puerto Rico, Texas, Virgin Islands of the United States, and that portion of Louisiana south of a line formed by the following interstate highways: Beginning on Interstate 10 at the western boundary of the state, extending to the junction of Interstate 10 and Interstate 12 in East Baton Rouge Parish, extending on Interstate 12 to the junction of Interstate 10 and Interstate 12 in St. Tammany Parish, and extending on Interstate 10 to the Mississippi state line.

Under the current regulations, an inspector will issue a limited permit for the interstate movement of fruit designated as a regulated article only if the inspector:

(1) Determines that the fruit originated in an area found free of citrus canker based on surveys conducted by inspectors appointed by the Deputy Administrator;

(2) Determines that the fruit is free of leaves, litter, and stems other than stems less than one-inch long that are attached to the fruit;

(3) Determines that the fruit has been treated in accordance with current § 301.75–12(a) of the regulations;

(4) Determines that the fruit is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of citrus canker; and

(5) Determines that the fruit is eligible for movement under all other federal domestic plant quarantines and regulations.

We propose to retain requirements (2) through (4) above, and to replace requirement (1) above with the following requirements:

First, we propose to allow fruit designated as a regulated article to be moved interstate with a limited permit only if an inspector determines there is no evidence that the grove from which the fruit is harvested has contained any citrus canker-infested or -exposed plants or plant parts within the past year. This requirement would help ensure that fruit moved interstate with a limited permit is free of citrus canker.

Second, we propose to require that groves be surveyed at specific times and in a specific manner. Survey requirements would be different for groves of 10 or more trees designated as a regulated article and for groves of fewer than 10 trees designated as a regulated article. (For the proposed grove surveys, we are interested only in trees that can bear fruit designated as a regulated article. We refer to these trees as "trees designated as a regulated article.")

For groves of 10 or more trees designated as a regulated article, an inspector would have to determine that the grove has been found free of citrus canker based on two surveys conducted as follows:

—Between one year and 90 days before harvest begins, an inspector must: examine all trees on the perimeter of the grove while driving by the trees at a speed of not more than 3 m.p.h.; examine, while on foot, at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and examine, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location in every 10 acres of the grove, or, if the grove is less than 10 acres, examine, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location.

—No more than 90 days before harvest begins, an inspector must: Examine all trees in the outer two rows of the grove while driving by the trees at a speed of not more than 3 m.p.h.; examine, while on foot, at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and examine, while on foot, a minimum of four mature trees or eight young trees in each of two randomly selected locations in every 10 acres of the grove, or, if the grove is less than 10 acres, examine, whi1e on foot, a minimum of four mature trees or eight young trees in each of two randomly selected locations.

At least one of the two surveys must be conducted during weather conditions (high temperatures and frequent rainfall) that an inspector determines are conducive to the development of citrus canker.

These requirements are necessary to ensure that groves are surveyed in a manner that will enable inspectors to detect citrus canker, if it exists in a grove, in the earliest possible stages of the disease.

For groves of fewer than 10 trees designated as a regulated article, an inspector would have to determine that the grove has been found free of citrus canker based on one survey conducted as follows:

No more than 30 days before the beginning of harvest, an inspector must walk through the grove and examine every tree.

We also propose to allow fruit harvested from a grove of fewer than 10 trees designated as a regulated article to be moved interstate to non-citrus-producing states with a limited permit only if the fruit is moved interstate directly to a household, with the intent that the fruit be consumed at, or by members of, that household.

We propose to require only one survey of groves of fewer than 10 trees, but two surveys of groves of 10 or more trees, for the following reason: Although ideally we would like all groves to be surveyed two times, regardless of the size of the grove, we do not have enough inspectors to conduct two surveys a year of every grove from which fruit designated as a regulated article could be shipped. In the State of Florida, the only area now quarantined because of citrus canker, thousands of individuals grow fruit designated as a regulated article in groves of fewer than 10 trees. Trees in these groves are often referred to as "dooryard" trees. Based on our experience with surveys for citrus canker in Florida, we have determined that we could not complete the required surveys if we subjected dooryard trees to the same two-survey requirement as groves of 10 or more trees.

We propose to require that the survey of groves of fewer than 10 trees be conducted no more than 30 days before harvest begins to minimize the time between survey and harvest that the trees could become exposed to or infested with citrus canker. Most groves of fewer than 10 trees are, literally, dooryard, or "backyard" trees whose owners may or may not take special precautions to prevent the trees from contracting diseases, including citrus canker. There is less risk of trees in larger groves becoming exposed to or infested with citrus canker between the second survey and the harvest because most of these larger groves are for profit and are, therefore, routinely managed for disease prevention. Also, we need to allow 90 days between the second survey and harvest in groves of 10 or more trees to allow time to schedule surveys. We would not be able to complete surveys of all the larger groves within 30 days of harvest. Surveys of groves of fewer than 10 trees do not take as long or require as many inspectors. Not only do the groves contain fewer trees, but many of these small groves are close together in residential areas and one inspector can survey many in a day.

However, because dooryard trees would be subject to only one survey, and because dooryard trees may or may not be managed for disease prevention in the same manner as larger, for-profit groves, we consider fruit from these trees to be at somewhat higher risk than fruit from larger groves for becoming exposed to or infested with citrus canker. Requiring that this fruit be moved directly to a household for consumption at, or by members of, that household would help ensure that the fruit does not present a risk of spreading citrus canker.

Fruit Moved Interstate With a Certificate

We propose to allow fruit designated as a regulated article to be moved interstate with a certificate to any area of the United States if an inspector:

(1) Determines that the fruit is harvested from a grove of 10 or more trees designated as a regulated article;

(2) Determines that the fruit is harvested from a grove that has not contained any infested or exposed plants or plant parts within the past two years;

(3) Determines that the fruit is harvested from a grove that an inspector has found free of citrus canker based on two surveys conducted as follows:

(i) Between one year and 90 days before harvest begins, an inspector must: examine all trees on the perimeter of the grove while driving by the trees at a speed of not more than 3 m.p.h.; examine, while on foot, at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and examine, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location in every 10 acres of the grove, or, if the grove is less than 10 acres, examine, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location; and

(ii) No more than 90 days before harvest begins, an inspector must walk through the grove and examine: all trees on either side of the first middle (between the first two rows) and every fourth middle thereafter throughout the grove; and at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and

(iii) At least one of the two surveys must be conducted during weather conditions (high temperatures and frequent rainfall) that an inspector determines are conducive to the development of citrus canker;

(4) Determines that the fruit is harvested from a grove that is at least one-half mile from any property that has contained infested or exposed plants or plant parts during the past two years;

(5) Determines that, within five miles of the grove from which the fruit is harvested, the following plants have been destroyed: (i) All infested plants; and (ii) Any exposed plants identified by an inspector as being at high risk for developing citrus canker. An inspector will determine whether exposed plants are at high risk for developing citrus canker by evaluating all of the circumstances related to the exposure, including, but not limited to, the following: The stage of maturity of the exposed plants at the time of exposure; the size and degree of infestation to which the plants were exposed; the proximity of the exposed plants to infested plants; the length of time the plants were exposed to infestation; and the strain of bacterium to which the plants were exposed;

(6) Determines that, during the past two years, the grove from which the fruit is harvested has received shipments of plants designated as regulated articles only from nurseries found free of citrus canker on three surveys conducted by an inspector not more than 90 days before each shipment (every plant designated as a regulated article in the nursery must be inspected on each survey);

(7) Determines that properties within five miles of the grove from which the fruit is harvested were surveyed and found free of infestation by an inspector at least one time during the past year as follows: (i) All properties that contain 10 or more plants designated as regulated articles and that are within five miles of the grove; (ii) All properties that contain one to nine plants designated as regulated articles and that are within one-half mile of the grove; and (iii) Twenty percent of the properties that contain one to nine plants designated as regulated articles and that are within one-half to five miles of the grove. The 20-percent sample must be distributed as evenly as possible over the area, with different samples inspected each year for five years;

(8) Determines that all personnel, vehicles, and equipment are treated in accordance with proposed § 301.75–12 (c) and (d) of the regulations upon entering the grove from which the fruit is harvested;

(9) Determines that the fruit and its containers are not mixed during picking, hauling before packing, or packing, with fruit that is designated as a regulated article but does not qualify for a certificate;

(10) Determines that the fruit is treated in accordance with § 301.75–12(a) of the regulations and then waxed;

(11) Determines that the fruit is packed in containers marked with a United States Department of Agriculture stamp that says "Certified under all applicable Federal or State cooperative domestic plant quarantines";

(12) Determines that the packed fruit is free of leaves, twigs, and other plant litter, except stems less than one-inch long that are attached to the fruit;

(13) Determines that the fruit is to be moved under any additional emergency conditions that may be imposed by the Deputy Administrator under the Federal Plant Pest Act to prevent the spread of citrus canker; and

(14) Determines that the fruit is eligible for movement under all other federal domestic plant quarantines and regulations applicable to the fruit.

The proposed requirements for treating personnel, vehicles, and equipment (requirement (8), above) are as follows:

All personnel must clean their hands with one of the following disinfectants upon entering the grove: Gallex 1027 Antimicrobial Soap; Hibiclens; Hibistat; Sani Clean Hand Soap; or Seventy Percent Isopropyl Alcohol. All vehicles and equipment must be disinfected upon entering the grove by removing all leaves, twigs, fruit, and other plant debris from all areas of the equipment or vehicles, including in cracks, under chrome strips, and on the undercarriage of vehicles, and by wetting all surfaces (including the inside of boxes and trailers), to the point of runoff, with one of the following disinfectants: A 200-ppm chlorine solution with a pH of 6.0 to 7.5; a 0.2-percent solution of a quaternary ammonium chloride (QAC) compound; a solution of hot water and detergent, under high pressure (at least 30 pounds per square inch), at a minimum temperature of 160 °F.; or steam, at a minimum temperature of 160 °F. at the point of contact. These disinfectants have been demonstrated to be effective in destroying bacteria that cause citrus canker.

The proposed criteria for obtaining a certificate to move fruit interstate include all of the requirements for qualifying for a limited permit plus other, more stringent, requirements. These criteria would ensure that fruit moved under certificate would present minimal risk of having even low, undetectable levels of citrus canker.

We propose to issue certificates only for fruit harvested from groves containing 10 or more trees designated as a regulated article because we must

limit the number of groves that we will inspect for fruit certification. The proposed process of determining that fruit meets the requirements for moving interstate with a certificate would involve many hours of work by inspectors for each certificate issued. We have enough inspectors to perform this work if we stipulate that fruit will be eligible to move interstate with a certificate only if it is harvested from a grove containing 10 or more trees designated as a regulated article. However, we do not have enough inspectors, or the funds to hire and train enough inspectors, to issue certificates for fruit from the thousands of groves in Florida that contain fewer than 10 trees designated as a regulated article. Placing the cut-off at 10 trees would allow us, given our available personnel and funds, to issue the maximum number of certificates in accordance with the proposed requirements.

In addition, we propose to deny certificates for the interstate movement of fruit designated as a regulated article if the fruit is from the area composed of Manatee, Pinellas, or Sarasota counties, or from Hillsborough County south of State Road 60 until two years after the last infested plant in this area has been destroyed. These counties comprise the only area in Florida where the "A" strain of citrus canker has been found. The "A" strain of citrus canker is a very aggressive strain of the disease. This prohibition would provide additional assurance that fruit designated as a regulated article and moved interstate with a certificate is free of citrus canker. Confirmation of additional infestations of citrus canker in Florida might be cause for suspending the issuance of certificates in other areas of the state.

Definitions

We propose to revise the current definition for "Grove" to clarify the meaning of this term. We also propose to revise the definition of "Citrus canker" so that it accurately reflects current taxonomic nomenclature. We propose to add definitions for the following terms used in our proposal: "Exposed" and "Infested." In addition, we propose to revise the term "Infestation or infested" to read "Infestation"; however, the definition would remain the same.

Miscellaneous

We propose to remove footnotes 2 and 5 and all references to them because they are not necessary. Footnote 2 contains text from Section 105dd of the Federal Plant Pest Act, which gives the Secretary of Agriculture the authority to take emergency measures to prevent the dissemination of plant pests that are not prevalent in the United States. The footnote does not contain any information necessary to carry out the requirements of the regulations. Also, our authority to impose the regulations is contained in the authority citation for Subpart-Citrus Canker, and this authority citation includes 7 U.S.C. 150dd. Footnote 5 applies to the treatments listed in § 301.75–12. It states: "These treatments shall be monitored by inspectors in order to assure compliance with the treatment provisions." Inspectors monitor many activities governed by the regulations, not just the application of required treatments, to ensure compliance with the regulations. Since footnote 5 does not contain any special requirements related to monitoring of treatments, there appears to be no reason for this footnote.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Our proposal to issue certificates for fruit designated as regulated articles relieves restrictions on owners of groves that contain 10 or more trees designated as a regulated article. However, this proposal would affect only fruit (primarily citrus) that is moved interstate as fresh fruit. Most Florida fruit designated as a regulated article is processed within the State and is, therefore, not affected by this proposal. Less than 20 percent of Florida fruit designated as a regulated article is consumed as fresh fruit, and much of this is consumed within the State or exported out of the United States. Fruit consumed within the State of Florida or exported out of the state directly to another country also would not be affected by this proposal. Before 1984, only about one percent of Florida fruit designated as a regulated article has been moved interstate as fresh fruit to commercial citrus-producing areas of the United States. We do not expect that adoption of our proposal would cause any change in this percentage.

As explained earlier in this supplementary information, we do not have enough inspectors, or the funds to hire and train enough inspectors, to issue certificates for fruit from the thousands of groves in Florida that contain fewer than 10 trees designated as a regulated article. Stipulating that fruit will be eligible for a certificate only if it comes from a grove of 10 or more trees designated as a regulated article would allow us to issue the maximum number of certificates given our available personnel and funds. However, we do not expect this limitation to have any significant economic effect on groves of fewer than 10 trees designated as a regulated article because, historically, almost all of the fresh fruit moved interstate from Florida has been destined for areas of the United States that are not commercial citrus-producing areas. Fruit may be moved interstate with a limited permit to areas of the United States that are not commercial citrus-producing areas. We expect that most grove owners who can now move fruit interstate with a limited permit could continue to do so if our proposal is adopted.

Our proposed amendments to the requirements concerning limited permits would allow fruit from groves of fewer than 10 trees designated as a regulated article to be moved interstate with a limited permit only if the fruit is moved interstate directly to a household, with the intent that the fruit be consumed at, or by members of, that household. Most groves of fewer than 10 trees designated as a regulated article are on residential properties and are not maintained for profit. Generally, fruit from these trees is consumed locally or is delivered as gifts to relatives and friends. Therefore: we do not expect that adoption of our proposal would have any significant economic effect on owners of groves with 10 or fewer trees designated as a regulated article.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that adoption of the proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), we have submitted the information collection provisions in this proposed rule to the Office of Management and Budget (OMB) for approval. You may

send written comments on these provisions to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS: Washington, DC 20503. Please send a copy of your comments to Steven B. Farbman, Assistant Director: Regulatory Coordination, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plant disease, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we propose to amend Part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§§ 301.75–7, 301.75–8, 301.75–9, 301.75–12 [Amended]

2. Footnotes 2 in § 301.75–7 and 5 in § 301.75–12 and all references to them would be removed, and footnotes 3 in § 301.75–8 and 4 in § 301.75–9 and all references to them would be renumbered 2 and 3, respectively.

3. In § 301.75–1, the term "Infestation or infested" would be revised to read "Infestation" and the definition would be revised; the definitions for "Citrus canker" and "Grove" would be revised; and definitions for "Exposed" and "Infested" would be added in alphabetical order to read as follows:

§ 301.75–1 Definitions.

* * * * *

Citrus canker. The plant disease caused by the bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye.

Exposed. Suspected by an inspector of containing the bacterium that causes citrus canker because of proximity to an infestation.

Grove. Any stand of trees maintained for the purpose of producing fruit and separated from other trees by a boundary, such as a fence, stream, road, canal, irrigation ditch, hedgerow, or open space, that is identifiable to an inspector as the boundary of the grove.

Infestation. The presence of citrus canker or the existence of circumstances that make it reasonable for an inspector to believe that citrus canker is present.

Infested. Containing the bacterium that causes citrus canker.

* * * * *

4. In § 301.75–7, paragraphs (b), (c), (d), (e), and (f) would be redesignated as paragraphs (c), (d), (e), (f), and (g); new paragraphs (b) and (h) would be added; redesignated paragraph (c) would be revised and headings would be added before the introductory text in paragraph (a) and in redesignated paragraphs (d), (e), (f), and (g) to read as follows:

§ 301.75–7 Issuance and cancellation of certificates and limited permits.

(a) *Certificates for interstate movement of seed.* * * *

(b) *Certificates for interstate movement of fruit.* Except as specified in paragraph (h) of this section, an inspector will issue a certificate for the interstate movement of fruit designated as a regulated article if an inspector:

(1) Determines that the fruit is harvested from a grove of 10 or more trees designated as a regulated article;

(2) Determines that the fruit is harvested from a grove that has not contained any infested or exposed plants or plant parts within the past two years;

(3) Determines that the fruit is harvested from a grove that an inspector has found free of citrus canker based on two surveys conducted as follows:

(i) Between one year and 90 days before harvest begins, an inspector must: Examine all trees on the perimeter of the grove while driving by the trees at a speed of not more than 3 m.p.h.; examine, while on foot, at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and examine, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location in every 10 acres of the grove, or, if the grove is less than 10 acres, examine, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location; and

(ii) No more than 90 days before harvest begins, an inspector must walk through the grove and examine: All trees on either side of the first middle (between the first two rows) and every fourth middle thereafter throughout the grove; and at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and

(iii) At least one of the two surveys must be conducted during weather conditions (high temperatures and frequent rainfall) that an inspector determines are conducive to the development of citrus canker;

(4) Determines that the fruit is harvested from a grove that is at least one-half mile from any property that has contained infested or exposed plants or plant parts during the past two years;

(5) Determines that, within five miles of the grove from which the fruit is harvested, the following plants have been destroyed:

(i) All infested plants; and

(ii) Any exposed plants identified by an inspector as being at high risk for developing citrus canker.

An inspector will determine whether exposed plants are at high risk for developing citrus canker by evaluating all of the circumstances related to the exposure, including, but not limited to, the following: The stage of maturity of the exposed plants at the time of exposure; the size and degree of infestation to which the plants were exposed; the proximity of the exposed plants to infested plants; the length of time the plants were exposed to infestation; and the strain of bacterium to which the plants were exposed;

(6) Determines that, during the past two years, the grove from which the fruit is harvested has received shipments of plants designated as regulated articles only from nurseries found free of citrus canker on three surveys conducted by an inspector not more than 90 days before each shipment (every plant designated as a regulated article in the nursery must be inspected on each survey);

(7) Determines that properties within five miles of the grove from which the fruit is harvested were surveyed and found free of infestation by an inspector at least one time during the past year as follows: (i) All properties that contain 10 or more plants designated as regulated articles and that are within five miles of the grove; (ii) All properties that contain one to nine plants designated as regulated articles and that are within one-half mile of the grove; and (iii) Twenty percent of the properties that contain' one to nine plants designated as regulated articles and that are within one-half to five miles of the grove. The 20-percent sample must be distributed as evenly as possible over the area, with different samples inspected each year for five years;

(8) Determines that all personnel, vehicles, and equipment are treated in

accordance with § 301.75–12 (c) and (d) of this subpart upon entering the grove from which the fruit is harvested;

(9) Determines that the fruit and its containers are not mixed during picking, hauling before packing, or packing, with fruit that is designated as a regulated article but does not qualify for a certificate;

(10) Determines that the fruit is treated in accordance with § 301.75–12(a) of this subpart and then waxed;

(11) Determines that the fruit is packed in containers marked with a United States Department of Agriculture stamp that says "Certified under all applicable Federal or State cooperative domestic plant quarantines";

(12) Determines that the packed fruit is free of leaves, twigs, and other plant litter, except stems less than one-inch long that are attached to the fruit;

(13) Determines that the fruit is to be moved under any additional emergency conditions that may be imposed by the Deputy Administrator under the Federal Plant Pest Act to prevent the spread of citrus canker; and

(14) Determines that the fruit is eligible for movement under all other federal domestic plant quarantines and regulations applicable to the fruit.

(c) *Limited permits for interstate movement of fruit.* An inspector will issue a limited permit for the interstate movement of fruit designated as a regulated article if an inspector:

(1) Determines that the fruit is harvested from a grove that has not contained any infested or exposed plants or plant parts within the past year;

(2) Determines that the fruit is harvested from a grove that an inspector has found free of citrus canker based on surveys conducted as follows:

(i) For a grove of 10 or more trees designated as a regulated article:

(A) Between one year and 90 days before harvest begins, an inspector must: Examine all trees on the perimeter of the grove while driving by the trees at a speed of not more than 3 m.p.h.; examine, while on foot, at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and examine, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location in every 10 acres of the grove, or, if the grove is less than 10 acres, examine, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location; and

(B) No more than 90 days before harvest begins, an inspector must: Examine all trees in the outer two rows of the grove while driving by the trees at a speed of not more than 3 m.p.h.; examine, while on foot, at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and examine, while on foot, a minimum of four mature trees or eight young trees in each of two randomly selected locations in every 10 acres of the grove, or, if the grove is less than 10 acres, examine, while on foot, a minimum of four mature trees or eight young trees in each of two randomly selected locations; and

(C) At least one of the two surveys must be conducted during weather conditions (high temperatures and frequent rainfall) that an inspector determines are conducive to the development of citrus canker.

(ii) For a grove of fewer than 10 trees designated as a regulated article, an inspector must walk through the grove and examine each tree within 30 days before harvest begins.

(3) Determines that the fruit is treated in accordance with § 301.75–12(a) of this subpart;

(4) Determines that the fruit is free of leaves, twigs, and other plant litter, except stems less than one-inch long that are attached to the fruit;

(5) Determines that the fruit is to be moved interstate under any additional emergency conditions that may be imposed by the Deputy Administrator under the Federal Plant Pest Act to prevent the spread of citrus canker;

(6) Determines that the fruit is eligible for interstate movement under all other federal domestic plant quarantines and regulations applicable to the fruit; and

(7) Determines that fruit harvested from a grove of fewer than 10 trees designated as a regulated article is to be moved interstate directly to a household, with the intent that the fruit will be consumed at, or by members of, that household.

(d) *Issuance of certificates and limited permits.* * * *

(e) *Withdrawal of certificates and limited permits.* * * *

(f) *Calamondin plants.* * * *

(g) *Container-grown calamondin and kumquat nursery plants.* * * *

(h) *Fruit ineligible for interstate movement with a certificate.* Fruit designated as a regulated article from the area composed of Manatee, Pinellas, and Sarasota counties, and Hillsborough County south of State Road 60 will not be eligible for interstate movement with a certificate until two years after the last infested plant in the area has been destroyed.

5. In § 301.75–12, new paragraphs (c) and (d) would be added to read as follows:

§ 301.75–12 Treatments.

* * * * *

(c) *Personnel.* All personnel must clean their hands using one of the following disinfectants:

(1) Gallex 1027 Antimicrobial Soap;

(2) Hibiclens;

(3) Hibistat;

(4) Sani Clean Hand Soap; or

(5) Seventy Percent Isopropyl Alcohol.

(d) *Vehicles and equipment.* Vehicles and equipment must be disinfected by removing all leaves, twigs, fruit, and other plant debris from all areas of the equipment or vehicles, including in cracks, under chrome strips, and on the undercarriage of vehicles, and by wetting all surfaces (including the inside of boxes and trailers), to the point of runoff, with one of the following disinfectants:

(1) A 200-ppm chlorine solution with a pH of 6.0 to 7.5;

(2) A 0.2-percent solution of a quaternary ammonium chloride (QAC) compound;

(3) A solution of hot water and detergent, under high pressure (at least 30 pounds per square inch), at a minimum temperature of 160 °F; or

(4) Steam, at a minimum temperature of 160 °F. at the point of contact.

Done at Washington, DC, this 11th day of September, 1987.

W.F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87–21295 Filed 9–16–87; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

Financial Assistance; Revised Policy on Restricting Eligibility for Financial Assistance Awards

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today proposes a limited revision of Subparts A and B of the Financial Assistance Rules, 10 CFR Part 600, to establish an additional method by which eligibility to receive a DOE financial assistance award may, under appropriate circumstances, be restricted to a single applicant and to provide

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additional guidance concerning the documentation required for noncompetitive awards. To address the issue of noncompetitive financial assistance in a more comprehensive way, the Department of Energy is issuing this proposed rule.

DATE: Written comments on the proposed rule must be received by October 19, 1987.

ADDRESS: Comments should be addressed to: James J. Cavanagh, Director, Business and Financial Policy Division (MA-422), Procurement and Assistance Management Directorate, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Edward F. Sharp, Business and Financial Policy Division (MA-422), U.S. Department of Energy, Washington, DC 20585, (202) 586–8192.

Christopher Smith, Office of the Assistant General Counsel for Procurement and Finance (GC-34), U.S. Department of Energy, Washington, DC 20585, (202) 586–1526.

SUPPLEMENTARY INFORMATION:

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VII. Public Comments

I. Introduction

The Department of Energy (DOE) is today proposing to amend its Financial Assistance Rules to provide an additional circumstance under which noncompetitive financial assistance awards; i.e., grants and cooperative agreements, may be made and to include guidance related to those awards.

DOE prefers to award discretionary financial assistance on the basis of solicitations which provide for the maximum amount of competition feasible (see § 600.6(b)). Today's proposal does not change that preference. Nevertheless, it is DOE's experience that the maximum amount of competition is not always appropriate or feasible and that administratively controlled methods of funding noncompetitively must be available to the Department.

At present, the Financial Assistance Rules explicitly provide two methods by which the Department may make a financial assistance award under circumstances of restricted eligibility: Acceptance of an unsolicited application on the basis of selection criteria oriented to a research project (§ 600.14(e)), or in response to applications received under a solicitation which restricts eligibility to a class(es) of eligible applicants (§ 600.7(b)) (limited competition); e.g., a solicitation to which only universities having nuclear reactors could respond. These two categories of restricted eligibility do not, however, provide a clear basis for restricting eligibility and making an award to only one applicant (noncompetitive). Over the years, DOE has found it necessary to occasionally restrict eligibility to one applicant.

Therefore, DOE is proposing to establish administrative review criteria which are to be used in situations where it is necessary or appropriate to restrict eligibility noncompetitively to only one applicant. The criteria which shall apply to circumstances in which eligibility is restricted to a single applicant will be contained in a determination of noncompetitive financial assistance (DNCFA).

II. Proposed Changes to 10 CFR Part 600

Section 600.6 is proposed to be amended by revising paragraph (a) and adding a new paragraph (b) to distinguish the bases for making new and renewal discretionary financial assistance awards. Paragraph (a)(2) would be revised to clarify that the selection criteria found at § 600.14(e)(1) must be satisfied in order for a new award to be made under that authority. In addition § 600.6 would be revised by adding new paragraphs (a)(4) and (a)(5) which identify the applications which use a DNCFA as a basis for making a discretionary financial assistance award.

Section 600.7(b) would be revised by redesignating existing paragraph (b) as paragraph (b)(1) and be creating a new paragraph (b)(2) which would set forth the management controls over the added category of authorized noncompetitive assistance awards. Those controls include justification criteria and documentation, signature, and publication requirements (including the addition of a 14-day public comment period).

Section 600.14 would be amended by the redesignation of existing paragraph (f) as paragraph (g), and existing paragraph (g) as paragraph (h) and by inserting a new paragraph (f) to specify the documentation, signature, and publication requirements (including a 14-day public comment period) for the justification for acceptance of an unsolicited application. DOE believes that it is desirable that the public be aware of these requirements.

Section 600.106 would be amended by revising paragraph (c) to reflect the policies of § 600.7(b)(2) for determinations of noncompetitive financial assistance.

III. Review Under Executive Order 12291

Today's proposal was reviewed under Executive Order 12291 (February 17, 1981). DOE has concluded that the rule is not a "major rule" because its promulgation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets.

In accordance with requirements of the Executive Order, this rulemaking has been reviewed by the Office of Management and Budget (OMB).

IV. Review Under the Regulatory Flexibility Act

These proposed regulations were reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has concluded that the proposed rule would only affect small entities as they apply for and receive grants and does not create additional economic impacts on small entities. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

V. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulations at 5 CFR Part 1320.

VI. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these wholly procedural rules clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *eq seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the DOE guidelines (10 CFR Part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

VII. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed changes set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "**ADDRESS**" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by October 19, 1987, will be fully considered prior to publication of a final rule resulting from this proposal. Any information you consider to be confidential must be so identified and submitted in writting, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Cooperative agreements/energy, Copyright, Debarment and Suspension, Educational institutions, Energy, Grants/energy, Hospitals, Indian tribal governments, Individuals, Inventions and patents, Nonprofit organizations, Reporting requirements, Small businesses.

In consideration of the foregoing, the Department of Energy hereby proposes to amend Chapter II of Title 10 of the Code of Federal Regulations by amending Part 600 as set forth below.

Issued in Washington, DC, September 8, 1987.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

For the reasons set out in the preamble, Part 600 of Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended as follows:

PART 600—[AMENDED]

1. The authority citation for Part 600 continues to read as follows:

Authority: Sec. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308).

2. Section 600.6 is revised to read as follows:

§ 600.6 Discretionary awards.

(a) DOE may make new discretionary financial assistance awards on the basis of:

(1) Applications submitted in response to a financial assistance solicitation (See § 600.9);

(2) Unsolicited applications satisfying the selection criteria of § 600.14(e)(1);

(3) Applications submitted in response to a Program Opportunity Notice or Program Research and Development Announcement (see 48 CFR 917.72 and 917.73) if, after an application is selected for award, DOE determines that a grant or cooperative agreement is the appropriate award instrument;

(4) An application for an award to be made on a noncompetitive basis under § 600.7(b)(2); or

(5) Unsolicited applications which do not satisfy the selection criteria of § 600.14(e)(1)(ii) if such applications satisfy the selection criteria of § 600.7(b)(2)(i).

(b) DOE may make renewal discretionary financial assistance awards on the basis of:

(1) Applications submitted in response to a financial assistance solicitation; or

(2) An application from an incumbent recipient if the award has been justified in accordance with § 600.7(b)(2).

(c) DOE shall solicit applications for discretionary financial assistance in a manner which provides for the maximum amount of competition feasible.

3. Section 600.7 is amended by revising paragraph (b) to read as follows:

§ 600.7 Eligibility.

* * * * *

(b)(1) *Restricted eligibility.* If DOE restricts eligibility in a solicitation or program rule to less than all otherwise eligible applicants under paragraph (a) of this section, an explanation of why the restriction of eligibility is considered necessary shall be included in the solicitation or program rule. If the aggregate amount of DOE funds available for award under a solicitation other than a program rule exceeds $250,000, such restriction of eligibility shall be supported by a written determination initiated by the responsible program office, approved by the responsible program Assistant Secretary or his or her designee, who shall be at an organizational level not less than two levels above that of the project officer, and the Contracting Officer and concurred in by legal counsel. If the aggregate amount of DOE funds available for award is $250,000 or less, the Head of Contracting Activity (HCA) for the awarding office that will be issuing the solicitation shall be the approving official for the written determination which is required by this paragraph, and which shall be concurred in by legal counsel. Legal counsel may waive the concurrence requirement.

(2) *Noncompetitive financial assistance.* DOE may award a grant or cooperative agreement on a noncompetitive basis (other than as a result of the acceptance of an unsolicited application meeting the selection criteria of § 600.14(e)(1)(ii) or an application for a continuation award in accordance with § 600.106(b)) only if the application satisfies one or more of the selection criteria in paragraph (b)(2)(i) of this section and is supported by a determination of noncompetitive financial assistance prepared in accordance with the provisions of paragraphs (b)(2) (ii) and (iii) of this section. In addition, an announcement of the intent to make a noncompetitive financial assistance award and an explanation of why a nomcompetitive financial assistance award is necessary shall be published in the **Federal Register** at least 14 calendar days prior to making an award. Public comments (or inquiries) to this announcement must be resolved by the DOE office issuing such announcement. Any such noncompetitive financial assistance is not subject to the solicitation requirements of § 600.9.

(i) *Criteria for justifying noncompetitive financial assistance.* In order for a noncompetitive award to be made under the authority of paragraph

(b)(2) of this section, it must satisfy one or more of the following selection criteria in addition to the types of factors listed in § 600.14(d):

(A) The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

(B) The activity(ies) is (are) being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity(ies).

(C) The applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

(D) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

(E) The applicant implements an agreement between the United States Government and a foreign government to fund a foreign applicant.

(F) Time constraints associated with a public health, safety, or welfare or national security requirement preclude competition.

(G) The responsible Assistant Secretary, with the concurrence of the Director, determines that a noncompetitive award is in the public interest. This authority may not be delegated.

(ii) *Documentation requirements.* A determination of noncompetitive financial assistance (normally prepared by the responsible program official (project officer)) is required to explain the basis for the proposed noncompetitive award. The determination, the purpose of which is to justify funding on a noncompetitive basis, shall be placed in the award file and must, as a minimum, include the following information:

(A) Name of the sponsoring program office and the awarding office, the type of award proposed (grant or cooperative agreement), and the proposed recipient.

(B) A description of the nature of the financial assistance to be provided (e.g. research grant, conference grant, etc.), the amount and availability of DOE funds required, any cost sharing proposed or required, and the statutory authority for the proposed award.

(C) A statement of whether the application was solicited or unsolicited and the nature of any significant preapplication contact between the applicant and the Department. If received on an unsolicited basis, a statement of why the application does not meet the selection criteria of § 600.14(e)(1).

(D) To the extent relevant, a discussion of the programmatic evaluation conducted and the results of that evaluation, including the overall merit and relevance to the DOE mission, the anticipated objectives and probability of success in meeting them, and the quality of the applicant's personnel and facilities.

(E) A brief description of the public purpose of support or stimulation to be served by the proposed award and, in nontechnical terms, identify any particular significance or specialized character of the activity proposed to be funded.

(F) A statement of which one(s) of the criteria in paragraph (b)(2)(i) of this section is (are) being relied upon to justify the action and an explanation in general, nontechnical detail why each such criterion applies.

(iii) *Approval requirements.* Except as provided below, all determinations of noncompetitive financial assistance under this paragraph (b)(2) must be approved, prior to award, by the initiating program official (project officer), the responsible program Assistant Secretary or his or her designee, who shall be not less than two organizational levels above that of the project officer, and the Contracting Officer, and must be concurred in by legal counsel. The HCA will be the approving official for a proposed noncompetitive financial assistance award under any program which has been formally assigned to an office under his or her cognizance or, for any other such award, if the amount of the proposed award (DOE funds) is $100,000 or less. The requirement for legal counsel concurrence also applies to any determination under this paragraph (b)(2) signed by an HCA. Legal counsel may waive the concurrence requirement for a particular award or class of awards. The signatures required by this paragraph must be affixed to the determination document.

* * * * *

4. Section 600.14 is amended by redesignating paragraphs (f) and (g) as (g) and (h) and revising them, and by inserting a new paragraph (f) to read as follows:

§ 600.14 Unsolicited applications.

* * * * *

(f) *Justification for acceptance of an unsolicited application.* Prior to making an award on the basis of acceptance of an unsolicited application, a justification document, which describes the results of the general evaluation conducted in accordance with paragraph (d) of this section and which addresses the selection criteria in paragraph (e)(1) of this section, must be prepared and completed for the award file. The justification must be prepared and signed by the initiating program official (project officer), and approved by the responsible program Assistant Secretary or his or her designee, and the contracting officer. The HCA will serve as the approving official if the proposed award is under a program which has been formally assigned to an office under his or her cognizance or, for any other such proposed award, if the amount of the proposed award is $100,000 or less. In addition, the concurrence of legal counsel in the justification is required for all awards for which the DOE share is expected to be more than $250,000 or such lower amount as legal counsel may determine. Further, an announcement of the intent to award based on an unsolicited application and an explanation of why such an award is being made shall be published for public comment in the **Federal Register** at least 14 calendar days prior to making an award.

(g) *Funding.* An award based on an unsolicited application may be made only if sufficient appropriated funds are available.

(h) *Unsuccessful applications.* DOE shall promptly notify in writing each applicant whose application does not satisfy the requirements of this section. DOE will return unsuccessful unsolicited applications only if requested by the applicant. This request may be made at the time of application or up to 30 days after the date of the written notification required by this paragraph.

5. Section 600.106 is amended by revising paragraph (c) to read as follows:

§ 600.106 Funding.

* * * * *

(c) *Renewal awards.* Discretionary renewal awards may be made either on the basis of a solicitation or on a noncompetitive basis. If DOE proposes to restrict eligibility for a discretionary renewal award to the incumbent grantee, the noncompetitive award must be justified in accordance with § 600.7(b)(2). Renewal applications must be submitted no later than 5 months

prior to the scheduled expiration of the project period unless a program rule or other published instruction establishes a different application deadline. Before DOE may make a renewal award for a formula grant, the grantee must submit a revised or amended state plan in accordance with program rules or other instructions from DOE.

[FR Doc. 87-21463 Filed 9-16-87; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No 33-6740; 34-24886; 35-24457; 39-2114; IC-15967; IA-1081; File No. S7-32-87]

Proposal for Expedited Publication of Interpretative, No-Action, and Certain Exemption Letters

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing for comment amendments to Rule 81 (17 CFR 200.81) under its regulations on Information and Reqeusts. The proposed amendments would, with certain exceptions, provide for the expedited publication of interpretative and no-action correspondence at the time the response is sent or given to the requesting party, unless temporary confidential treatment is granted. In addition, the Commission is proposing to codify the application of the rule to certain exemption letters. The Commission believes that more timely release of the staff's views will assist the public in its understanding of significant questions arising under the federal securities laws.

DATE: Comments should be received on or before October 19, 1987.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-32-87. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael Hyatte or Kenneth L. Wagner, (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance; Nancy J. Burke, (202) 272-2880, Office of Legal Policy and Trading Practices, Division of Market Regulation; Gerald T. Lins, (202) 272-2030, Office of Chief Counsel, Division of Investment Management; Securities and Exchange Commission, 450 Fifth St. NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Under Rule 81 as adopted on October 29, 1970,[1] interpretative and no-action letters and the related correspondence requesting the staff's views normally are made available for public inspection and copying 30 days after the staff's response has been sent or given to the requesting party. In appropriate circumstances, Rule 81(b) permits confidential treatment of the letter and request for up to 90 days beyond the 30 day period.

In light of its experience, the Commission believes that amendments to the rule should be considered to permit the more timely publication of these letters. Under the proposals announced today, the Commission's procedure for the release of interpretative and no-action requests and the staff's responses thereto would be changed to allow routinely for public availability of such correspondence as soon as practicable after the release of the response to the requesting party. These procedures would apply to all interpretative, no-action and exemptive letters relating to any statute administered by the Commission or any rule or regulation thereunder, with the exception of letters relating to the trading practices rules [2] under the Securities Exchange Act of 1934 ("Exchange Act").[3] The amended rule would not change the maxiumu duration (120 days) for confidential treatment available under Rule 81 or the standards for granting such treatment. Additionally, the rule is proposed to be amended to codify the staff's practice of applying Rule 81 procedures to certain Exchange Act exemption letters.

I. Discussion

The Commission is proposing amendments to § 200.81 of the Code of Federal Regulations (17 CFR 200.81) to allow more timely public inspection of requests for interpretative and no-action advice and the staff's responses to the requests. Since 1970, Rule 81 has provided for publication of interpretative and no-action correspondence 30 days after the staff has sent or given its response to the requesting party. Upon the request of the person seeking the staff's views, Rule 81(b) permits temporary confidential treatment of the correspondence for an additional 90 days in appropriate circumstances.

In the Commission's experience, there is substantial public interest in the staff's interpretative and no-action letters. While these informal letters are not expressions of the Commission's substantive views, they are relied on to provide guidance on various applications of the federal securities laws and rules thereunder,[4] particularly with respect to new transactions and securities. In the recent past, the Commission's staff, recognizing widely held public interest in the staff's views on particular issues, has made certain interpretation and no-action positions immediately available to the public after the permission of the requesting party had been obtained.[5] In addition to

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[1] Release No. 33-5098 (36 FR 2600). Before the adoption of Rule 81, no-action and interpretative letters usually were not made available to the public. The rule became effective for all such letters responding to requests made on or after December 1, 1970.

[2] *See* note 8, *infra*.

[3] 15 U.S.C. 78a *et seq.* The proposed amendments to rule 81 would continue to provide for 30-day confidential treatment for such letters.

[4] "[M]uch of what is known about the practical uses and permissible application of the 1933 Act exemptions has come from correspondence between attorneys and SEC staff personnel culminating in so-called 'no-action' letters." Hicks, *Exempted Transactions Under the Securities Act of 1933*, § 1.01[5] (1985 Rev.).

[5] The range of subjects where the staff has undertaken this practice has been broad, covering matters including improved methods of disclosure, issues raised by novel securities and distribution techniques, unsettled interpretative questions of long standing, and questions of compliance raised by changes in law other than federal securities regulation. Letters issued by the Division of Corporation Finance under this procedure include *General Motors* (January 16, 1987) and *McKesson Corp.* (April 15, 1987) (new techniques in annual reports to security holders); *Skadden, Arps, Slate, Meagher & Flom* (January 7, 1987) (registration of shareholder rights plans); *College Retirement Equities Fund* (February 18, 1987 and June 4, 1987) (no integration of institutional placements in United States with simultaneous overseas public financing); *E.F. Hutton* (December 3, 1985) and *Bateman, Eichler, Hill, Richards, Inc.* (December 3, 1985) (definition of "general solicitation" under Regulation D); *Verticom* (February 2, 1986) (interpretation of Rule 152 (17 CFR 230.152)); and *Baron Data Systems and Spectra-Physics* (December 2, 1986) and *American Bar Association* (Rule 16b-3 (17 CFR 240.16b-3) issues raised by the Tax Reform Act of 1986). Letters issued by the Division of Market Regulation under this procedure include *Trident Securities, Inc.* April 13, 1987) (account debit arrangement in contingency offering); *C.H. Beazer (Holdings) PLC* (May 27, 1987) (Rule 10b-6 (17 CFR 240.10b-6) exemption for British issuer with significant market capitalization, share turnover and number of market makers); *Tektronix, Inc.* (June 19, 1987) (tender offer must specify exact number of securities sought); and *Banco Central, S.A.* (June 30, 1987) (Rule 10b-6 exemption for Spanish issuer that makes market in its own securities). Letters issued by the Division of Investment Management under this procedure include *John Nuveen & Co. Incorporated* (November 18, 1986) (no federal requirement that funds hold

Continued

providing more timely guidance, earlier publication could reduce the number of duplicative requests for staff advice in the interpretative area and in cases where the staff has refused to provide a no-action position. Earlier publication would also help to alleviate possible confusion regarding the public availability dates of interpretative and no-action letters,[6] as well as eliminate the administrative burden associated with present procedures for providing expedited availability of such letters.[7]

Under the proposed amendment, correspondence requesting interpretative, no-action or exemptive advice and the staff's response thereto would be available, with limited exceptions, for public inspection and copying as soon as practicable after the response is first sent or given to the requesting party. This would be accomplished by providing such correspondence to the Commission's Public Reference Room after the response is mailed or given to the requesting party.

The rule would continue to provide for a 30-day confidentiality period for requests relating to Rules 10b–6, 10b–7, 10b–8, 10b–13 and 13e–4 under the Exchange Act.[8] Requests for interpretative, no-action or exemption positions under those rules frequently involve sensitive issues that might not be publicly disclosed as of the date of the response letter. Accordingly, the Commission is of the view that Rule 81 should continue to provide an automatic 30-day period of confidentiality for responses to requests concerning such rules.[9] In situations where a no-action or interpretative request relates to both the trading practices rules and other statutes or rules administered by the Commission, the 30-day confidentiality period would apply to the entire request and the staff's response thereto.[10]

Requesting parties and their counsel would continue to be able to prevent premature public disclosure of sensitive business information by seeking confidential treatment under the mechanisms of Rule 81(b). Rule 81(b) would be amended to provide temporary confidential treatment of the correspondence for a period of time not exceeding 120 days after the date the response is first sent or given to the requesting party,[11] thus preserving 120 days as the maximum duration of confidential treatment under the rule.[12]

Where a party requests confidential treatment for any period the material will continue to be held confidential for 30 days following notification of a rejection of such request in order to give the requester an opportunity to withdraw the letter as specified in Rule 81(b). The staff may, in fact, notify requesters of such a denial even before the letter is substantively processed. This would result in the 30 days running concurrently with the staff's consideration of the substance of the letter.

Currently, Rule 81 expressly covers no-action and interpretative letters. However, the staff, acting pursuant to delegated authority, also issues letters relating to exemptions under the Exchange Act [13] and the staff routinely follows Rule 81 with respect to public availability of such letters. The proposed amendments would codify this practice by making Rule 81 applicable to exemption letters under the Exchange Act where the issuance of an order granting such exemption does not require public notice and an opportunity for hearing.[14] The proposed amendments would also provide that Rule 81 would not apply to letters relating to requests for confidential treatment pursuant to Rule 24b–2 under the Exchange Act.[15]

II. Solicitation of Comments

Any interested persons wishing to submit written comments on the proposed amendments, as well as on other matters that may have an impact on the proposals, are requested to do so.

III. Cost/Benefit Analysis

The proposed amendments will neither impose additional reporting or record-keeping requirements on nor significantly increase regulatory compliance costs. The principal benefit associated with the amendments is that they would allow more timely public inspection of requests for interpretative, no-action and certain exemptive advice and the staff's responses thereto, thereby assisting the public in its understanding of significant questions arising under the federal securities laws.

IV. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendments proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

V. Statutory Basis

The amended rule is being proposed under section 19 of the Securities Act of 1933; section 23 of the Securities Exchange Act of 1934; section 20 of the Public Utility Holding Company Act of 1935; section 319 of the Trust Indenture Act of 1939; section 38 of the Investment Company Act of 1940; section 211 of the Investment Advisers Act of 1940; and section 1 of the Freedom of Information Act.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

VI. Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal

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annual shareholders' meetings): *Investment Company Institute* (October 29, 1986) (Investment Company Act Rule 19b–1 (17 CFR 270.19b–1)).

[6] Under the present Rule 81, a no-action or interpretative letter has a public availability date different from the actual date on which it was sent to the requesting party. As a result, there can be confusion on the part of outside persons as to the date of a particular letter. By making the response date and public availability date the same in the majority of cases, the proposed amendments would lessen this potential for confusion.

[7] Under the current practice for providing expedited availability of certain interpretative and no-action letters, the staff is required to seek a waiver of the 30-day confidentiality period from the requesting party. In addition, the staff must maintain records reflecting which letters have been released on an expedited basis. The proposed amendments to Rule 81 would, for the most part, eliminate this administrative burden by permitting expedited publication of all interpretative and no-action letters.

[8] 17 CFR 240 10b–6, 240.10b–7, 240.10b–8, 240–10b–13 and 240.13e–4.

[9] In appropriate cases, the staff would continue to seek the permission of the requester to make the response public on an expedited basis.

[10] This would be the case even where, for example, the Divisions of Corporation Finance and Market Regulation issue separate responses to a single no-action or interpretative request.

[11] Rule 81(b) provides that a request for confidential treatment will be granted where "the staff determines that the request is reasonable and appropriate." Such requests usually involve situations where the interpretative or no-action letter includes the terms of a proposed merger or acquisition which has not been publicly announced, or the description of a new investment product that is in the development stage.

[12] Rule 81(a) currently provides that all communications relating to a request be given confidential treatment for 30 days after a response is sent or given. A requesting party may also be granted confidential treatment for an additional 90 days pursuant to Rule 81(b).

[13] *E.g.*, under Rules 10b–6(h) 13e–4(g)(7) and 14d–10(e) under the Exchange Act (17 CFR 240.10b–6(h), 17 CFR 240.13e–4(g)(7) and 17 CFR 240.14d–10(e), respectively).

[14] Situations in which the Commission issues an exemptive order only after public notice and an opportunity for hearing include applications for exemptions pursuant to section 12(h) of the Exchange Act (15 U.S.C. 781(h)).

[15] 17 CFR 240.24b–2.

Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart D—Information and Requests

1. The authority citation for Part 200, Subpart D, continues to read as follows:

Authority: 80 Stat. 383, as amended, 31 Stat. 54, secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 5 U.S.C. 552, 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

2. 17 CFR 200.81 is amended by revising the section heading and paragraph (a), by removing the words "90 days after the expiration of such 30 days" and replacing them with the words "120 days from the date the response has been sent or given to such person" in the first sentence of paragraph (b), by revising the first sentence of the Note to paragraph (b), and adding a sentence at the end of paragraph (c) as follows:

§ 200.81 Publication of interpretative, no-action and certain exemption letters and other written communications.

(a) Except as provided in paragraphs (b) and (c) of this section, every letter or other written communication requesting the staff of the Commission to provide interpretative legal advice with respect to any statute administered by the Commission or any rule or regulation adopted thereunder, or requesting a statement that, on the basis of the facts stated in such letter or other communication, the staff would not recommend that the Commission take any enforcement action, or requesting an exemption, on the basis of the facts stated in such letter, from the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or any rule or regulation thereunder, where the issuance of an order granting such exemption does not require public notice and an opportunity for hearing, together with any written response thereto, shall be made available for inspection and copying by any person. Letters or other written communications with respect to Rules 10b–6, 10b–7, 10b–8, 10b–13 and 13e–4 (§§ 240.10b–6, 240.10b–7, 240.10b–8, 240.10b–13 and 240.13e–4 of this chapter) under the Exchange Act, together with any response thereto, shall be made available for inspection and copying by any person 30 days after the response has been sent or given to the person requesting it. All other letters or other written communications, together with any response thereto, shall be made available for inspection and copying by any person as soon as practicable after the response has been sent or given to the person requesting it.

(b) * * *

Note.—All letters or other written communications requesting interpretative advice, a no-action position, or an exemption shall indicate prominently, in a separate caption at the beginning of the request, each section of the Act and each rule to which the request relates. * * *

(c) * * * Further, this section shall not apply to applications or other written communications filed pursuant to § 240.24b–2 that relate to objections to public disclosure of information filed with the Commission or any exchange.

By the Commission.

Jonathan G. Katz,

Secretary.

September 8, 1987.

Securities and Exchange Commission Regulatory Flexibility Act Certification

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the amendments to Rule 81 pertaining to publication of interpretative and no-action letters and other written communications and to codification of the staff's practice of applying the rule to certain exemption letters will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the proposed amendments will neither impose additional reporting or recordkeeping requirements on nor significantly increase the costs for small entities to request interpretative, no-action and certain exemption letters.

Dated: September 8, 1987.

David S. Ruder.

[FR Doc. 87–21456 Filed 9–16–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260 and 284

[Docket No. RM87–17–000]

Technical Conferences; Natural Gas Data Collection System

September 11, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of technical conferences.

SUMMARY: On June 25, 1987, the Federal Energy Regulatory Commission (Commission) issued a notice of proposed rulemaking (NOPR) to establish a Natural Gas Data Collection System through the adoption of FERC Form No. 591. Comments were originally to be submitted 60 days after publication in the **Federal Register**, on September 8, 1987. On August 27, 1987, in response to requests from the Interstate Natural Gas Association of America (INGAA), Southern Natural Gas Company and ANR Pipeline Company and Colorado Interstate Gas Company, the Commission extended the comment period on this notice of proposed rulemaking 60 days to November 9, 1987.

In both the requests for extension of time and at a technical conference on this rulemaking held August 7, 1987, parties advised staff that the development of their comments would be facilitated if the Commission provided the industry and public further opportunity to query and discuss with staff certain aspects of FERC Form No. 591.

For this reason, the Commission is scheduling a series of technical conferences to be held prior to the end of the extended comment period. Specifically, the Commission is scheduling these conferences to allow participants to request clarifications, suggest revisions, and otherwise discuss the FERC Form No. 591 data processing format and instructions, definitions of data items, standardization of terms, and to identify specific data elements not available to the proposed respondents.

DATE: The technical conferences will be held on Thursday and Friday October 1 and 2, 1987, and Wednesday, Thursday and Friday October 7, 8 and 9, 1987, beginning at 9:30 a.m. on each day. Any revisions required to the time and place of these conferences will be announced at each conference and be available from the Commission's Office of Pipeline and Producer Regulation, (202) 357–9066.

ADDRESSES: The technical conferences will be held at: Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

The room number will be posted on each day of the technical conferences. Requests to participate in these conferences, including, if possible, a list of specific questions and suggestions, should be directed, in writing, by Monday, September 28, 1987, to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

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FOR FURTHER INFORMATION CONTACT: Randolph E. Mathura, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–9066.

SUPPLEMENTARY INFORMATION: On June 25, 1987, the Commission issued a Notice of Proposed Rulemaking (NOPR) in Docket No. RM87–17–000.[1] The NOPR proposes to establish the Natural Gas Data Collection System through the adoption of FERC Form No. 591. FERC Form No. 591 will require natural gas pipelines to submit various data, rate filings and certificate applications on 9-track magnetic tape. In addition, FERC Form No. 591 will revise the data presently submitted by natural gas pipelines to reflect the Commission's current regulatory responsibilities. This revision will result in the filing of much of the same data at the same time as at presently, will eliminate some data presently filed, and will require the submission of some data in more detail or more frequently than presently filed. In the NOPR, the Commission stated that it may propose a series of technical conferences to discuss FERC Form No. 591.

The Commission held the first technical conference on Friday, August 7, 1987. The purposes of this conference were to gather information on (1) the computer capability presently existing within the natural gas pipeline industry, (2) the technical considerations of submission of data on 9-track magnetic tape, and (3) to allow the Commission staff an opportunity to discuss and respond to questions on the computer aspects of FERC Form No. 591, including the computer hardware, computer software, and other data processing needs of both the Commission and the industry, and the processing, storage and retrieval of information submitted on magnetic tape.

At the conference held August 7, 1987, many commenters suggested further technical conferences to discuss such areas as the computer format of FERC Form No. 591 and related data processing issues, the standardization of definitions and instructions used in the form and the availability of the individual data elements requested in FERC Form No. 591.[2]

On August 27, 1987, the Commission extended the comment period an additional 60 days to November 9, 1987. The Commission is also scheduling five additional technical conferences to allow interested persons the opportunity to discuss the format and instructions, the definition of terms, and the data items requested in the FERC Form No. 591 that are unavailable for submission. The Commission is not proposing to discuss at these conferences the Commission's need for the individual data elements requested or the overall burden to the industry of suppling requested data items.

The first technical conference is scheduled for Thursday, October 1, 1987 beginning at 9:30 a.m. The Conference will begin with discussions on (1) the tape layout, instructions, specifications, (2) the use of the G and N1 Schedules, (3) the use of FIPS Pub. 79 and the ANSI x3.27–1978, (4) alternate computer submission formats, and (5) other data processing issues of interest to the public and industry. Discussions will then be held on Schedule E1: Physical Engineering, Schedule E2: Systems Operations and the certificate application aspects of Schedule N1: Periodic Filings. To the extent necessary, these topics will be carried over to the second conference scheduled for Friday, October 2, 1987, beginning at 9:30 a.m.

Following the Friday October 2, 1987 meeting, the Commission is scheduling three additional conferences, Wednesday October 7, 1987, Thursday October 8, 1987 and Friday October 9, 1987. The purpose of these additional conferences, is to discuss the remaining schedules included within FERC Form No. 591. The agenda on Wednesday October 7, 1987, will begin with Schedule F1: Tariff and continue as follows throughout the remaining conferences:

Schedule F2: Contract
Schedule F3: Receipt and Delivery Point
Schedule F4: Coincidental 3–Day Peak
Schedule C1: Pipeline Cost
Schedule C2: Pipeline Cost Totals
Schedule R1: Pipeline Revenue
Schedule P1: PGA Gas Purchases
Schedule T1: Totals
Schedule S1: Gas Supply

Schedule N1 discussions will be included as appropriate with each of these schedules.

The agenda for the conferences on Thursday October 8, 1987 and Friday October 9, 1987, will be announced at the conclusion of the meeting on October 7, 1987, and also be available by phone from the Commission's Office of Pipeline and Producer Regulation, (202) 357–9066. The agenda for these two meetings will be based on the progress made in dicussing the various schedules at the Wednesday October 7, 1987, conference. The Commission believes that a dicussion of each of the issues for each schedule of FERC Form No. 591 cna be completed by the conclusion of the Friday October 9, 1987, conference. Any additional conferences needed after this date will be scheduled at a later time and published in the **Federal Register.**

The technical conferences will not be of a judicial or evidentiary type. The Commission believes that the exchange of information can be accomplished most productively in a group discussion format, rather than participants making individual presentations. Thus, there will be no formal presentations nor cross-examinations. For each schedule or issue discussed, participants will be asked by a presiding Commission staff officer for their specific comments and questions. The Commission staff will be available to respond to questions concerning the NOPR, to receive and comment on suggestions and to participate in discussions on FERC Form No. 591. The Commission reminds participants, however, that in accordance with the provisions of § 3.8(h) of the Commission's regulations,[3] the opinions and comments expressed by staff are not binding on the Commission in the preparation of the final rule or any other action taken in this docket. The conference will be recorded. Any further procedural rules will be announced on the day of each technical conference. The record of the technical conference will be available in the public file for this proceeding, Docket No. RM7–17–000, in the Commission's Division of Public Information, and may be ordered from that office.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–21530 Filed 9–16–87; 8:45 am]

BILLING CODE 6717–01–M

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[1] 52 FR 25530 (July 7, 1987), IV FERC Stats. & Regs. ¶ 32.449 (June 25, 1987).

[2] *See*, particularly, the comments of Marvin W. Ehlers, Vice-President of MIS for MidCon Corporation, contained in the transcript of the technical conference held August 7, 1987, at page 60, the comments of Earl Beam, representing ENRON Interstate Pipelines, at page 26 and page 27 of the same transcript, the comments of Joseph E. Flaherty, Manager of Governmental Regulatory Affairs of Northeast Utilities, at page 70 of the transcript, and the comments of Walter W. Anderson, Manager of Rate and Regulatory Services, El Paso Natural Gas Company at pages 33 through 40 of the transcript.

[3] 18 CFR 3.8(h) (1987).

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2620

[AA-310-07-4211-02]

Withdrawal of Proposed Rulemaking Making Amendments to Regulations on Alaska State Grants

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: A proposed rulemaking making amendments to the existing regulations concerning the selection and conveyance of land under entitlements to the State of Alaska was published in the **Federal Register** on October 18, 1983 (48 FR 48400). The amendments were designed to reflect changes made by the Alaska National Interest Lands Conservation Act in the Alaska selection and conveyance process. In the period since the proposed rulemaking was published, the Bureau and the State have been able to resolve outstanding issues concerning the selection and conveyance of lands to the State of Alaska using the existing regulations. As a result of the Bureau's experience during the period since publication of the proposed rulemaking, it has been determined that the amendments put forward in the proposed rulemaking are not needed and the proposed rulemaking is hereby withdrawn.

EFFECTIVE DATE: September 17, 1987.

ADDRESS: Any inquiries or suggestions should be sent to: Director (310), Bureau of Land Management, Room 3653, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ted Stepheson, (202) 343-6511.

J. Steven Griles,

Assistant Secretary of the Interior.

August 28, 1987.

[FR Doc. 87-21393 Filed 9-16-87; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

New England Fishery Management Council; Atlantic Billfish Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The New England Fishery Management Council will hold a series of public hearings and provide a comment period to solicit public input into the proposed Billfish Fishery Management Plan. Individuals and organizations may comment in writing to the Council if they are unable to attend the hearings.

DATES: All hearings will begin at 7:00 p.m. The hearings are scheduled as follows:

1. September 28, 1987, Hyannis, MA
2. September 30, 1987, Portsmouth, NH
3. October 1, 1987, Galilee, RI

The public comment period will close November 2, 1987.

ADDRESSES: The hearings will be held at the following locations:

1. Hyannis—Sheraton Hyannis, Route 132 and Bearse's Way, Hyannis, MA
2. Portsmouth—Holiday Inn, Portsmouth Circle, Portsmouth, NH
3. Galilee—Dutch Inn, Great Island Road, Galilee, RI

All written comments should be sent to the Chairman, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1) Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 617-231-0422.

SUPPLEMENTARY INFORMATION: The Billfish Fishery Management Plan (FMP) was prepared jointly by the South Atlantic, New England, Mid-Atlantic, Gulf, and Caribbean Fishery Management Councils. It proposes to establish a management regime for Atlantic billfishes throughout the Atlantic, Gulf, and Caribbean portions of the exclusive economic zone (EEZ) of the United States. The species addressed by this plan are sailfish, white marlin, blue marlin, and longbill spearfish. The principal objective of the FMP is to maintain the highest availability of billfishes to the U.S. recreational fishery. A summary document will be distributed at the hearings presenting the preferred alternative which contains a ban on the sale of all billfishes, minimum sizes, a ban on imports, mandatory reporting for billfish tournaments and a ban on the use of drift entanglement nets. The Council seeks comment on a range of additional management options including a ban on the possession of billfish, a bag limit and gamefish designation.

Dated: September 11, 1987.

Richard H. Schaefer,

Acting Director, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-21500 Filed 9-16-87; 8:45 am]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 52, No. 180
Thursday, September 17, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Intent To Conduct an A-76 Comparison Study; Motor Vehicle Operation, Maintenance, Leasing, Acquisition, and Disposal Requirements

AGENCY: U.S. Department of Agriculture, Office of Operations.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture will conduct an A-76 cost comparison study of its motor vehicle operation, maintenance, leasing, acquisition, and disposal requirements.

DATES: A solicitation is expected to be released by December 1, 1987, to obtain costs for contracting for an organization outside of the Department to take over total responsibility for the operation, maintenance, acquisition, and disposal requirements of motor vehicles and equipment for the USDA. This solicitation will be synopsized in the *Commerce Business Daily* with instructions for potential contractors prior to bid opening.

FOR FURTHER INFORMATION CONTACT: Rex Hartgraves, FS, Chairman, Vehicle Services Task Force; telephone (202) 447-6709, (FTS) 447-6709; or Denise Patterson, Office of Operations, Personal Property Management Division; telephone (202) 447-3141, (FTS) 447-3141.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture, Office of Operations intends to conduct a nationwide cost comparison study of the operation, maintenance, leasing, acquisition, and disposal requirements of approximately 40,000 motor vehicles and equipment, valued at $1,000 or more, under the guidelines of OMB Circular A-76. This cost study is being conducted in compliance with Title XV, Subtitle C—*Federal Motor Vehicle Expenditure Control*, Pub. L. 99-272, Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985. Section 15305 of this legislation requires agencies to conduct a comprehensive and detailed study and compare the alternatives of the costs, benefits, and feasibility of (A) relying on the General Services Administration Interagency Fleet Management System; (B) entering into a contract with a qualified fleet management firm or another private contractor; or (C) using any other means less costly to the Government to meet its motor vehicle operation, maintenance, leasing, acquisition, and disposal requirements

This notice is published in compliance with OMB Circular A-76 which requires agencies to publish their schedules for conducting cost comparison studies and is for informational purposes only. Solicitation documents are not currently available.

Frank Gearde, Jr.,

Director, Office of Operations.

[FR Doc. 87-21514 Filed 9-16-87; 8:45 am]

BILLING CODE 3410-96-M

Office of the Secretary

State of Colorado Inactive Mine Reclamation Program; Determination of Primary Purpose of Amounts That May Be Excluded From Income Under Section 126 of the Internal Revenue Code of 1954, as Amended

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that payments and benefits that result under the Colorado Inactive Mine Reclamation Program, as authorized by Colorado Revised Statutes 34-33-133, are made primarily for the purposes of conserving soil and water resources, protecting or restoring the environment, improving forest, and providing a habitat for wildlife. This determination is in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The determination permits recipients of these payments and benefits to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Director, Colorado Mined Land Reclamation Division, 1313 Sherman Street, Room 423, Denver, Colorado 80203, Phone: (303) 866-3567; or Director, Land Treatment Program Division, Soil Conservation Service, USDA, Post Office Box 2890, Washington, DC 20013, (202) 382-1870..

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, 26 U.S.C. 126, provides that certain payments made to individuals under State conservation programs may be excluded from the recipient's gross income for Federal income tax purposes if the Secretary of Agriculture determines that the payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife . . ." The Secretary of Agriculture evaluates the State conservation program on the basis of criteria set forth in 7 CFR Part 14, and makes a "primary purpose" determination for the payments made under the program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made under the program do not substantially increase the annual income derived from the property benefited by the payments.

The Colorado Inactive Mine Reclamation Program is authorized by Colorado Revised Statutes 34-33-133. It is funded through grants from the Office of Surface Mining, U.S. Department of the Interior under Title IV of the Surface Mine Control and Reclamation Act (SMCRA). Funding of the program is from a special fee collection on coal production. The purposes of the Colorado Inactive Mine Reclamation Program are:

1. The protection of the public health, safety, general welfare, and property from extreme danger of adverse effects of past coal mining practices.

2. The protection of public health, safety, and general welfare from adverse effects of past coal mining practices.

3. The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including

measures for the conservation and development of soil, water, woodland, fish and wildlife, recreation resources, and agricultural productivity.

4. Research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques.

5. The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices.

6. The development of publicly owned land adversely affected by coal mining practices including land acquired as provided under SMCRA for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

The Mined Land Reclamation Division of the Colorado Department of Natural Resources administers the Colorado Inactive Mine Reclamation Program. Eligible projects are identified and selected by the State in accordance with the objectives described above.

In most cases, the consent to access must be obtained from private property owners for the State to conduct the reclamation work. Only where emergency situations exist can the State utilize its police powers for nonconsented entry. The State prepares the reclamation plans to eliminate threats to public health and safety, and repair degradation to lands and waters, which result from abandoned mines. All construction work is competitively bid. No cash payments are made to the landowner unless the landowner is successful in competitively procuring the construction contract. Benefits that inure to urban and rural property owners from the reclamation work include reduced threats to life and property, and for rural properties, increased land use capabilities for grazing and wildlife. However, all work conducted is for public health, safety and general welfare reasons.

Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and the Secretary's Memorandum No. 1512–1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Colorado Inactive Mine Reclamation Program "Primary Purpose Determination for Federal Tax Purposes," Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013; or the Director, Colorado Mined Land Reclamation Division, 1313 Sherman Street, Room 423, Denver, Colorado 80203.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authority legislation, regulations, and operating procedures of the Colorado Inactive Mine Reclamation Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all payments made under this program are for soil and water conservation, protecting or restoring the environment, improving forests, or providing wildlife habitat. Excluded from this determination are payments made for the recovery of coal or any mineral which occurs incidental to or in connection with the funded activity; payments made as compensation for services performed; and income from the sale of soil, minerals or any other materials. Subject to further determination by the Secretary of the Treasury, this determination permits property owners to exclude from gross income, for Federal income tax purposes, all payments made and benefits resulting from the Colorado Inactive Mine Reclamation Program except as excluded above.

Signed at Washington, DC, on September 10, 1987.

Peter C. Myers,

Acting Secretary.

[FR Doc. 87–21492 Filed 9–16–87; 8:45 am]

BILLING CODE 3410–01–M

Soil Conservation Service

Environmental Impact Statement; Smyrna-Clayton Critical Area Treatment RC&D Measure, Delaware

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Smyrna-Clayton Critical Area Treatment RC&D Measure, Kent County, Delaware.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas E. Hawkins, State Conservationist, Soil Conservation Service, 9 E. Loockerman Street, Suite 207, Dover, Delaware 19901–7377, telephone (302–678–0750).

Smyrna-Clayton Critical Area Treatment RC&D Measure, Delaware, Finding of No Significant Impact.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Douglas E. Hawkins, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan to reshape a steep eroding bank and to bring in fill material and cover the floor on an old abandoned sand and gravel pit approximately six (6) inches deep. All bare areas are to be treated with sufficient amounts of lime, fertilizer, grass seed, and mulch to establish an acceptable vegetable cover. Currently, the two areas are actively eroding and contributing sediment to Duck Creek, which runs along the northern property boundary of the project site. The site is located on State Route 134 in the Town of Smyrna, Delaware, directly across from the Smyrna High School.

Installation of the project measure will allow the local Little League to develop two baseball fields on the site and to reduce the amount of sediment entering Duck Creek.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Mr. Douglas E. Hawkins.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance Under No.

10.901–Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials.)

Douglas E. Hawkins,

State Conservationist.

September 9, 1987.

[FR Doc. 87–21429 Filed 9–16–87; 8:45 am]

BILLING CODE 3410–16–M

Soil, Water and Related Resources

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: The current 60 day comment period on the "Second RCA Appraisal: Soil, Water and Related Resources on Nonfederal Land in the United States, Analysis of Condition and Trends" appeared on page 26168 in Volume 52, the **Federal Register** of Monday, July 13, 1987 (FR Doc. 87–15773) expires September 14, 1987. This document extends the comment period an additional 30 days to allow citizens, as well as federal, state and local officials ample time to comment on the interim rule.

DATE: The comment period on the appraisal has been extended for thirty (30) days from the date of this notice. Comments should be submitted by October 19, 1987.

FOR FURTHER INFORMATION CONTACT: Peter M. Tidd, Director, Appraisal and Program Development Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, telephone: (202) 447–6388.

Wilson Scaling,

Chief.

[FR Doc. 87–21469 Filed 9–16–87; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35).

Agency: National Oceanic and Atmospheric Administration

Title: Logbook Family of Forms Amendment (Swordfish)

Form number: Agency—N/A; OMB—0648–0016

Type of request: Revision of a currently approved collection

Burden: 500 respondents; 1,999 new burden hours

Needs and uses: Atlantic swordfish fishermen will be required to submit logbooks on their catch. The information will be used by scientists to determine the status of swordfish stocks, and for providing other data to develop management measures to prevent overfishing.

Affected public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: Monthly

Respondent's obligation: Mandatory

OMB desk officer: John Griffen, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: September 8, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–21494 Filed 9–16–87; 8:45 am]

BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Docket No. 16–87]

Application for Expansion; Foreign-Trade Zone 9, Honolulu, HI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the State of Hawaii's Department of Planning and Economic Development, grantee of Foreign-Trade Zone 9, requesting authority to expand the zone to include a technology industrial park site in the Mililani area, Oahu, Hawaii, within the Honolulu Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 4, 1987.

On February 15, 1965, the Board authorized the State of Hawaii to establish a foreign-trade zone in the Honolulu area (Board Order 65, 30 FR 2377, 2/20/65). The general-purpose zone currently consists of warehousing facilities on 17 acres at Pier 2 in Honolulu Harbor. The Board recently approved an application to expand the zone to include a 1,050-acre site at the James Campbell Industrial Park in Ewa, Oahu.

The pending application calls for an additional 109-acre industrial site at the Mililani Technology Park, located east of the H–2 Freeway at Golf Course Road in the Mililani area of central Oahu, about 20 miles from downtown Honolulu. The site is being developed for technology-related operations, including light manufacturing, assembly, research and development, and world-wide distribution by Oceanic Properties, Inc., a subsidiary of Castle and Cooke, Inc., owner of the property. Because the zone already includes an industrial park site, the Board will evaluate the need for still another such site.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph E. Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; George Roberts, District Director, U.S. Customs Service, Pacific Region, P.O. Box 1641, Honolulu, Hawaii 96806; and Colonel F.W. Wanner, District Engineer, U.S. Army Engineer District Honolulu, Building 230, Fort Shafter, Hawaii 96858–5440.

Comments concerning the proposed expansion are invited in writing from interested parties, including whether there is a need for another non-contiguous industrial park site in Oahu as part of the Hawaii zone. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 23, 1987.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, P.O. Box 50026, 4106 Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii 96813

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue NW., Washington, DC 20230

Dated: September 11, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87–21513 Filed 9–16–87; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and State antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87–00012." A summary of the application follows.

Applicant: U.S. Hide, Skin & Leather Association (HS & L), 1707 N Street, NW., Third Floor, Washington, DC 20036. Contact: Jerome Breiter at (202) 833–2405. Application #: 87–00012. Date Deemed Submitted: September 4, 1987.

Members: the following companies that are members of HS & L: Anamax Corporation, Green Bay, WI; Chilewich Corporation, New York, NY; CHS Intercontinental Company, Houston, TX; Dietrich Hide Corporation, Boston, MA; Eastern Trading Company, Inc., Los Angeles, CA; A.J. Hollander & Company, Inc., New York, NY; Intermet, Ltd., Bloomfield Hills, MI; Kaufmann Trading Corporation, New York, NY; M. Lyon & Company, Kansas City, MO; A. Mindel & Son, Inc., Toledo, OH; Moyer Packing Company, Sounderton, PA; NAHE Texas, Inc., Pasadena, TX; National By-Products, Inc., Des Moines, IA; Newon Industries Corporation, Rutherford, NJ; Southwest Hide Company, Boise, ID; Trans Coast International, Inc., Los Angeles, CA; Trans World Hide Corporation, Cedar Rapids, IA; Union Hide Company, Inc., Oakland, CA; United Industries, Inc., Portland, OR; and WE Company, Detroit, MI.

Summary of the Application:

Export Trade:

Products:

Preserved hides and skins, and leather in various stages of finishing.

Export Trade Facilitation Services (as they relate to the export of Products)

Procurement of transportation services for Products exported or in the course of being exported. Transportation services include overseas freight transportation, inland freight transportation to a U.S. export terminal, port, or gateway; packing and crating; leasing of transportation equipment and facilities; terminal or port storage; wharfage and handling; insurance; forwarder services; export sales documentation and services; and customs clearance.

Export Markets:

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation: HS & L seeks certification to:

1. Negotiate with steamship conferences, steamship lines, railroads, trucking companies, container leasing companies, insurance companies, terminals, and freight consolidators and forwarders to obtain rates and other terms for transportation services for its members.

2. Meet and exchange information on transportation services, including:

a. potential suppliers;

b. rates and terms;

c. other information as may be necessary to analyze, negotiate for, and procure transportation services.

3. Meet and discuss supply and demand for hides, skins, and leather in the export markets, including volumes desired by export customers and anticipated prices.

4. Discuss and/or agree on terms of export sales, including prices to be charged by members to foreign buyers for hides, skins, and leather.

5. Prescribe the following conditions for membership in the association:

a. Any member in good standing of the HS & L is eligible for membership.

b. Any member may resign from the association by giving sixty days prior written notice to the HS & L.

c. New members may be added to the association upon proper request, and the Departments of Commerce and Justice shall be promptly notified of such request.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

Date: September 14, 1987.

[FR Doc. 87–21495 Filed 9–16–87; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and its Administrative Subcommittee will convene separate public meetings at the St. Croix by the Sea Hotel, Conference Room, Christiansted, St. Croix, U.S. Virgin Islands. At its 60th meeting the Council will elect its officials, consider management plans under development, habitat conservation issues, and discuss administrative issues related to the Council's regular operations. The Council's Administrative Committee will discuss issues related to the Committee's regular operations.

The Council will convene its public meeting on October 6, 1987, at 9 a.m. and adjourn at 5 p.m.; reconvene October 7 at 9 a.m. and adjourn at noon. The Administrative Subcommittee will convene October 5 at 2 p.m. and adjourn at 6 p.m.

For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918 (809) 753–4926.

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Dated: September 11, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-21525 Filed 9-16-87; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON CIVIL RIGHTS

Florida Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on October 1, 1987, at the Radisson Mart Plaza Hotel, Palm Room, 711 N.W. 72nd Ave., Miami, Florida. The purpose of the meeting is to conduct a public forum on police relations with the metropolitan Miami-Dade County area community.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael J. Moorhead (904/392-2211) or John I. Binkley, Director of the Eastern Regional Division, at (202/523-5264; TDD (202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 3, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-21430 Filed 9-16-87; 8:45 am]

BILLING CODE 6335-01-M

Michigan Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m., on September 30, 1987, at the Westin Hotel, Renaissance Center, Detroit, Michigan. The purpose of the meeting is to conduct program planning and to hold a community forum on the status of civil rights in Detroit.

Persons desiring additional information, or planning a presentation to the Committee, should contact Acting Committee Chairperson, Keith Butler or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 10, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-21431 Filed 9-16-87; 8:45 am]

BILLING CODE 6335-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing a Unilateral Import Restraint Limit for Certain Cotton Textile Products in Category 347/348 Produced or Manufactured in Costa Rica

September 14, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 18, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

On June 18, 1987, a notice was published in the **Federal Register** (52 FR 23198) which established an import restraint limit for cotton textile products in Category 347/348, produced or manufactured in Costa Rica and exported during the ninety-day period which began on May 29, 1987 and extended through August 26, 1987.

The United States Government has decided, inasmuch as consultations held with the Government of Costa Rica, August 27 and 28, 1987 did not reach a mutually satisfactory solution concerning this category, to control imports of cotton textile products in Category 347/348, produced or manufactured in Costa Rica and exported during the twelve-month period which began on August 27, 1987 and extends through August 26, 1988.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 347/348, during the twelve-month period which began on August 27, 1987 and extends through August 26, 1988, in excess of the designated level of restraint.

Textile products in Category 347/348 shipped in excess of the ninety-day limit previously established will be subject to the limit established in the directive published below. Charges will be made as the data become available.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in further consultations with the Government of Costa Rica, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 14, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 02229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 7 and 8, 1984, as amended, between the Governments of the

United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on Sept. 18, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 347/348, produced or manufactured in Costa Rica and exported during the twelve-month period which began on August 27, 1987 and extends through August 26, 1988, in excess of 825,725 dozen.

Textile products in Category 347/348 which have been released from the custody of the U.S. Customs Service under the provision of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out this directive, entries of textile products in Category 347/348, produced or manufactured in Costa Rica, which have been exported to the United States during the ninety-day period which began on May 29, 1987 and extended through August 26, 1987, shall to the extent of any unfilled balance, be charged to the level established for that period. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-21406 Filed 9-16-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 6-8 October 1987.

Times of Meeting: 0800-1600 hours daily.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Committee on Implementing Competitive Strategies will meet. Objectives of this meeting will be twofold. First, the panel will receive additional technology briefings of low observables, communications and ammunition/fuses. Second, based upon the technology briefings presented during this meeting and the August meeting, the panel will conduct work sessions, formulating their thoughts and refining them towards a finished product. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextreicably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-21432 Filed 9-16-87; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Capabilities Task Force will meet September 28-29, 1987 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's future needs and balance of strategic offensive/defensive forces, potential initiatives to enhance strategic capabilities, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: September 14, 1987.

W.R. Babington, Jr.,

Commander, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 87-21540 Filed 9-16-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.022]

Invitation of Applications for New Awards Under the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program for Fiscal Year 1988

Purpose: Awards fellowships through institutions of higher education to graduate students for full-time dissertation research abroad in modern foreign languages and area studies.

Priorities: The regulations governing the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program, provide for the establishment of funding priorities by the Secretary (34 CFR 662.32(c)). For Fiscal Year 1988, the Secretary has established funding priorities for new awards for doctoral dissertation research abroad. These priorities will be applied in accordance with the provisions of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3). All available funds for this program will be reserved solely for applications which propose research focusing upon one or more of the following world areas: (1) Africa; (2) the Western Hemisphere; (3) East Asia; (4) Southeast Asia and the Pacific; (5) Eastern Europe and the U.S.S.R.; (6) the Near East; or (7) South Asia. Applications which purpose research focusing on Western Europe will not be funded.

Deadline for transmittal of applications: November 16, 1987.

Applications available: September 30, 1987.

Available funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However, applications are invited to allow for sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program. The following estimates are based upon the FY 1987 appropriation.

Estimated range of awards: $4,000 to $40,000.

Estimated average amount of awards: $15,770.

Project period: 6 to 12 months.

Applicable regulations: (a) The Higher Education Programs in Modern Foreign Language Training and Area Studies—Doctoral Dissertation Research Abroad Fellowship Program Regulations, 34 CFR Part 662, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

For applications or information contact: Mr. John Paul, U.S. Department of Education, Mail Stop 3308, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 732–3298.

Program authority: 22 U.S.C. 2452(b)(6).

Dated: September 10, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–21476 Filed 9–16–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.019]

Invitation of Applications for New Awards Under the Fulbright-Hays Faculty Research Abroad Fellowship Program for Fiscal Year 1988

Purpose: Awards fellowships through institutions of higher education to faculty members for research abroad in modern foreign languages and area studies.

Priorities: The regulations governing the Fulbright-Hays Faculty Research Abroad Fellowship Program provide for the establishment of funding priorities by the Secretary (34 CFR 633.32(c)). For Fiscal Year 1988, the Secretary has established funding priorities for new awards for faculty research abroad. These priorities will be applied in accordance with the provisions of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3). All available funds for this program will be reserved solely for applications which propose research focusing upon one or more of the following world areas: (1) Africa; (2) the Western Hemisphere; (3) East Asia; (4) Southeast Asia and the Pacific; (5) Eastern Europe and the U.S.S.R.; (6) the Near East; or (7) South Asia. Applications which propose research focusing on Western Europe will not be funded.

Deadline for transmittal of applications: November 16, 1987.

Applications available: September 30, 1987.

Available funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However, applications are invited to allow for sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program. The following estimates are based upon the FY 1987 appropriation.

Estimated range of awards: $8,000 to $58,000

Estimated average amount of awards: $32,694.

Project period: 3 to 12 months.

Applicable regulations: (a) The Higher Education Programs in Modern Foreign Language Training and Area Studies—Faculty Research Abroad Fellowship Program Regulations, 34 CFR Part 663, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

For applications or information contact: Ms. Merion Kane, U.S. Department of Education, Mail Stop 3308, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 732–3301.

Program authority: 22 U.S.C. 2452 (b)(6).

Dated: September 10, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–21477 Filed 9–16–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.120–A&B]

Invitation of Applications for New Awards Under the Minority Science Improvement Program (MSIP) for Fiscal Year 1988

Purpose: Provides grants to support projects that propose to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the participation of underrepresented ethnic minorities in scientific and technological careers.

Deadline for transmittal of applications: November 20, 1987 for Special Projects, and January 29, 1988 for Institutional, Design, and Cooperative Projects.

Applications available: October 5, 1987.

Available funds: The Administration's budget for fiscal year 1988 requested an appropriation of $5,000,000. Should this amount be appropriated, approximately $3,750,000 will be available for Institutional, Design, and Cooperative Projects. The remaining $1,250,000 will be available for Special Projects.

Maximum size of awards: $300,000 for Institutional, $20,000 for Design, $500,000 for Cooperative Projects, and $150,000 for Special Projects.

Estimated average size of awards: $210,000 for Institutional and Cooperative Projects, $19,000 for Design Projects, and $44,000 for Special Projects.

Estimated number of awards: Institutional, Design and Cooperative Projects—18. Special Projects—20.

Project period: 12 to 36 months.

Applicable regulations: (a) The regulations governing the Minority Science Improvement Program, 34 CFR Part 637, and (b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

For applications or information contact: Dr. Argelia Velez-Rodriguez, U.S. Department of Education, Mail Stop 3327, 400 Maryland Avenue, SW. Room 3022, ROB–3, Washington, DC 20202. Telephone (202) 732–4396.

Program authority: 20 U.S.C. 1135b–1135b–3 and 1135d–1135d–6.

Dated: September 10, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–21478 Filed 9–16–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. PP–84]

Issuance of an Order Granting Time Extension; Central Maine Power Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Issuance of an order granting time extension.

SUMMARY: On September 10, 1987, the Economic Regulatory Administration (ERA) issued an order to Central Maine Power Company (CMP) granting an extension of the time within which CMP may file answers to all petitions for intervention in the Presidential permit proceeding Docket No. PP–84.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, U.S. Department of Energy, Office of Fuels Programs (RG–22), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5935.

Lise Courtney M. Howe, U.S. Department of Energy, Office of General Counsel (GC–41), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2900.

SUPPLEMENTARY INFORMATION: On August 14, 1987, Central Maine Power Company (CMP) filed a request with the Economic Regulatory Administration (ERA) for an extension of time within which to file CMP's answer to all petitions for intervention in the Presidential permit proceeding Docket No. PP–84. Pursuant to Rule 2008, 18 CFR 385.2008, CMP requested that the time to answer, provided in 18 CFR 385.214, be extended from fifteen days after each

petition is filed to fifteen days after the last day of the public comment period, i.e., Tuesday, September 15, 1987. 18 CFR 385.2008(a) authorizes decisional authorities to extend procedural time periods for good cause where the request is made before the expiration of the period "prescribed or previously extended." CMP requested this extension to allow for a more orderly and efficient proceeding without prejudicing any other person. This petition by CMP followed ERA's decision on July 31, 1987, to extend the time within which public comments, protests and interventions could be filed from August 5, 1987, to August 31, 1987 (52 FR 28481). ERA granted CMP's request on August 17, 1987 (52 FR 32165), thereby extending to Septmeber 15, 1987, CMP's time to answer all petitions for intervention filed in this proceeding.

On September 4, 1987, pursuant to 18 CFR 385.2008, Central Maine Power Company (CMP) filed a request with the ERA for a second extension of time from September 15, 1987, to September 22, 1987, within which to file responses to the 15 petitions to intervene which ERA has received in this proceeding. According to CMP, such an extension would facilitate a fuller evaluation by CMP of these numerous pleadings, and will enable a more complete response.

ERA agrees with CMP that the additional extension of time is warranted considering the numerous pleadings filed. Furthermore, ERA feels that the granting of this additional extension would not prejudice any person, nor would the completion of the permit proceeding be delayed.

It Is Ordered That:

(A) The request filed by Central Maine Power Company for an extension of time within which to file answers to petitions to intervene in the Presidential permit proceeding Docket No. PP–84 to Tuesday, September 22, 1987, is granted.

(B) Until the ERA determines the status of all parties which have filed petitions to intervene in the PP-84 proceeding, Central Maine Power Company is required to serve any filings or other submissions which it makes with ERA on the following individuals who represent parties that have filed petitions to intervene in this proceeding:

Ms. Pamela Prodan, Star Route, Dryden, Maine 05225

Douglas S. Horan, Esq., Associate General Counsel, Boston Edison Company, 800 Boylston Street, Boston, Massachusetts 02199

Ms. Jerrilynne Purdy, NEPOOL Relations & Inter-Utility Contracts Manager, Boston Edison Company, 800 Boylston Street, Boston, Massachusetts 02199

Allen C. Barringer, Esq., Potomac Electric Power Company, 1900 Pennsylvania Avenue, NW., Washington, DC 20068

Mr. T. Robert Woodward, Manager, PJM Interconnection Office, 955 Jefferson Avenue, Valley Forge Corporate Center, Norristown, Pennsylvania 19403

James R. McIntosh, Esq., Mr. C. Duane Blinn, Esq., Day, Berry & Howard, CityPlace, Hartford, Ct 06103–3499

Phillip C. Otness, Executive Director, New England Power Pool, 174 Brush Hill Avenue, West Springfield, Ma. 01090

Mr. Vern R. Walker, Swidler & Berlin, Chartered, 3000 K Street, NW., Suite 300, Washington, DC 20007

Mr. Robert O. Bigelow, Vice President and Director, Planning and Power Supply, New England Power Service Co., 25 Research Drive, Westborough, Mass. 01581

Mr. James A. Bennett, Town Manager, Torrey Memorial Building, Office of the Municipal Officers, Main Street, Dixfield, Maine 04224

Ms. Sonja L. Hodgkins, Star Route Box 30, Frye, Maine 04235

Mr. John K. Poirier, Nova Scotia Power Corporation, Secretary & General Counsel Division, P.O. Box 910, Halifax, Nova Scotia, B3J 2W5

Linda L. Randell, Esq., Wiggin & Dana, 195 Church Street, P.O. Box 1832, New Haven, Ct. 06508

Mr. Ellis O. Disher, The United Illuminating Company, 80 Temple Street, P.O. Box 1564, New Haven, Ct. 06505–0201

Mr. Walter T. Schultheis, Vice President, Power Supply Planning and Research, Northeast Utilities, P.O. Box 270, Hartford, Ct. 06141–0270

Mr. Robert P. Wax, Associate General Counsel, Northeast Utilities, P.O. Box 270, Hartford, Ct. 06141–0270

Mr. Kevin H. Young, Benesch, Friedlander, Coplan & Aronoff, 1100 Citizens Building, 850 Euclid Avenue, Cleveland, Ohio 44114

Mr. David C. Branand, National Coal Association, 1130 17th Street, NW., Washington, DC 20036

Mr. Ronald A. Kreisman, Natural Resources Council of Maine, 271 State Street, Augusta, Maine 04330

Ms. Sonia Hodgkins, Town of Roxbury, Box 24, Roxbury, Me. 04275

John & Kathleen Sunon, P.O. Box 193, Rumford, Me. 04276

Issued in Washington, DC on September 10, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–21464 Filed 9–16–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–45–NG]

Application To Export Natural Gas to Canada; Continental Natural Gas, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 25, 1987, of an application from Continental Natural Gas, Inc. (CNG), for blanket authorization to export natural gas to Canada for short-term or spot market sales to customers not yet identified but which are expected to include, among others, industrial and commercial end-users, agricultural users, utilities, pipelines and distribution companies. Authorization is requested to export up to 47.5 Bcf over a term of two years beginning on the date of first delivery. The maximum daily quantity of natural gas proposed to be exported by CNG will not exceed 65,000 Mcf. ERA is presently considering CNG's blanket application to import up to 47.5 Bcf of natural gas from Canada in ERA Docket No. 87–25–NG.

CNG proposes to act either as a broker or agent with respect to the sale of exported gas or may purchase gas on its own behalf for resale in Canada. The gas to be exported will be produced from fields in Oklahoma, Kansas, Colorado, Wyoming, Texas and Louisiana. No new facilities will be constructed for the proposed exportation of the gas by CNG. The applicant proposes to advise the ERA of the date of the first delivery of the export and submit quarterly reports giving details of individual transactions.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than October 19, 1987.

FOR FURTHER INFORMATION CONTACT:

John S. Boyd, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4523

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: This export application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204–111. All

parties should be aware that if the ERA approves this requested blanket export, it may designate a total amount of authorized volumes for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation. The decision on whether the export of natural gas is in the public interest will be based upon the domestic need for the gas and on whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade arrangements. The applicant asserts that the requested authorization would promote competition and, in light of the continuing "gas bubble", would benefit the public interest. Parties, especially those that may oppose this application, should comment in their responses on these matters.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., October 19, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CNG's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 10, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–21465 Filed 9–16–87; 8:45 am]

BILLING CODE 6450–01–M

Proposed Remedial Orders Issued to Texaco Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of issuance of proposed remedial orders to Texaco Incorporated.

I. Introduction

Pursuant to 10 CFR 205.192 the Economic Regulatory Administration (ERA), Department of Energy (DOE) hereby gives notice that two Proposed Remedial Orders (PROs) were issued on May 12, 1987 to Texaco Incorporated, 2000 Westchester Avenue, White Plains, New York 10650. The impact of the alleged violations is nationwide. In accordance with 10 CFR 205.192, a copy of the Proposed Remedial Orders with confidential information, if any, deleted, may be obtained from the DOE Freedom of Information Room, U.S. Department of Energy, 1000 Independence Avenue, SW, Room 1E–190, Washington, DC 20585.

Texaco Incorporated (Texaco) is a refiner engaged in the production of crude oil, the refining and marketing of petroleum products, and the production of natural gas liquids and natural gas liquid products. Texaco was therefore subject to the Mandatory Petroleum Price and Allocation Regulations (Regulations) which were in effect until January 28, 1981. The ERA conducted an audit of Texaco and determined that the firm violated the Regulations. ERA discusses below the proposed orders for which notice of issuance is hereby given.

II. Issuance of Proposed Remedial Orders

1. Proposed Remedial Order No. NTXR000A1

This PRO alleges that Texaco failed to compute correctly its increased shrinkage and gas plant product cost calculations in accordance with the Regulations.

Pursuant to authority provided in the Emergency Petroleum Allocation Act (EPAA), 15 U.S.C. 751 *et seq.*, the Department of Energy performed an audit of Texaco's books and records for the period September 1973 through December 1976 (audit period), in order to determine Texaco's compliance with the Regulations. The Regulations apply to the calculation and reporting by a firm of increased costs of shrinkage for natural gas liquids and natural gas liquid products produced in gas plants. As a consequence of errors in its calculations of its increased shrinkage cost per gallon, Texaco overstated its increased shrinkage cost due to use of incremental pricing, the improper inclusion of cycling plants in the shrinkage calculations, and shrinkage cost overreporting by amounts totalling $119,590,308 for the period September 1973 through December 1976.

The violations alleged in the PRO also concern costs claimed by Texaco in revised Refiners' Monthly Cost Allocation Reports (RMCARs) for May 1977 through July 1978 and potential continuing violations from January 1977 through December 1980. During this post-audit period, Texaco violated the Regulations by using an incremental pricing methodology for calculating shrinkage, improperly claiming shrinkage costs for Texaco's cycling plants, and improperly calculating extraction losses. ERA has estimated that as a result of those continuing violations from January 1977 through

December 1980, Texaco has overstated its costs by approximately $188 million.

As a remedy for these violations, the PRO directs Texaco to determine the correct amount of increased shrinkage costs that Texaco could have claimed, to recalculate its costs available for recovery, to submit new reporting schedules using the recomputed costs, and to refund any overcharges plus interest generated as a result of the recalculations.

2. Proposed Remedial Order No. RCKH016A1

This PRO alleges that Texaco overcharged in the amount of $32,452,636.27 in certain sales of its crude oil during the period June 1980 through January 1981.

ERA's audit focused on certain crude oil transactions in which Texaco sold price controlled crude oil to four crude oil resellers and conditioned those sales on Texaco's purchase of equal volumes of entitlements-exempt crude oil at prices substantially below market prices. The PRO alleges violations of the pricing regulations resulting from Texaco's receipt of consideration above its maximum lawful selling price in Texaco's sales of price controlled crude oil, in the form of discounts on its purchases of the entitlements-exempt crude oil.

As a remedy for these violations, the PRO proposes that Texaco be ordered to make restitution by refunding the violation amount, plus interest accrued since June 1980.

III. Notice of Objection

In accordance with 10 CFR 205.193, any aggrieved person may file a Notice of Objection to either or both of the proposed orders described in section II above with DOE's Office of Hearings and Appeals, within 15 days after the date of this publication. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed orders. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order.

All Notices of Objection, Statements of Objections, Responses, Replies, Motions, and other documents required to be filed with the Office of Hearings and Appeals shall be sent to: Office of Hearings and Appeals, U.S. Department of Energy, Room 1E–234, 1000 Independence Avenue, SW, Washington, DC 20585.

Copies of all Notices of Objection, Statements of Objections and all other documents filed by an aggrieved person or other participant shall be served on the same day as filed, on the following person in each of the identified PRO proceedings pursuant to 10 CFR 205.193(c): Jeffrey R. Whieldon, Associate Solicitor, Economic Regulatory Administration, United States Department of Energy, 1000 Independence Avenue, SW, Room 3H–017, Washington, DC 20585.

Issued in Washington, DC this 9th day of September 1987.

Chandler L. van Orman,

Deputy Administrator, Economic Regulatory Administration.

[FR Doc. 87–21466 Filed 9–16–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER87–535–000 et al.]

Electric Rate and Corporate Regulation Filings; Gulf Power Co. et al.

Take notice that the following filings have been made with the Commission:

1. Gulf Power Company

[Docket No. ER87–535–000]

September 10, 1987.

Take notice that on August 14, 1987, Gulf Power Company (Gulf) tendered for filing certain information requested by the Commission Staff pertaining to the calculation of the rate reduction proposed herein on July 13, 1987, which proposal would allow the Company to adjust rate bills to reflect the change in the Federal Income tax rates from 46% to 34% effective July 1, 1987.

Each of the affected wholesale customers has consented to the proposed tariff change as evidence by the executed letters of consent submitted with the filing, and Gulf states that the supplemental calculation information was submitted to each customer before consent.

Comment date: September 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Alabama Power Company

[Docket No. ER87–629–000]

September 14, 1987.

Take notice that on September 8, 1987, Alabama Power Company tendered for filing a change in rates for certain transmission services provided to the Alabama Municipal Electric Authority under the provisions of a Partial Requirements Agreement dated February 24, 1986, as amended. The proposed change will reduce the return on common equity component of the formula rate for certain transmission services from 15.0% to 14.0%.

Comment date: September 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Alabama Power Company

[Docket No. ER87–625–000]

September 14, 1987.

Take notice that on September 4, 1987, Alabama Power Company filed a rate decrease applicable to certain service provided to Alabama Electric Cooperative, Inc. under the provisions of an Interconnection Agreement dated May 5, 1980, as amended and a Transmission Service Agreement dated August 28, 1980, as amended. The proposed changes reduce the return on common equity components of formula rates adopted in such Interconnection Agreement and Transmission Service Agreement from 15.0% to 14.0%.

Comment date: September 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Appalachian Power Company

[Docket No. ER87–619–000]

September 14, 1987.

Take notice that on September 4, 1987, Appalachian Poweer Company (APCO) tendered for filing APCO's contract with the Southeastern Power Administration (SEPA) governing the delivery of SEPA preference power and energy from the Philpott Project to the Cities, of Bedford, Danville, Martinsville, Richlands, Radford and Salem, Virginia (the Virginia Cities). In accordance with the Commission's August 14, 1987 Order in Docket Nos. ER87–105–001 and ER87–106–001, the proposed effective date of APCO's filing is July 1, 1987.

The monthly integration fee of $5,416.67 ($65,000 annually) contained in APCO's filing is designed to compensate APCO for transmitting a portion of the Philpott Project's energy to Virginia Electric and Power Company (Virginia Power), for providing the services necessary to permit the Philpott Project to be operated on an intergrated basis with the John H. Kerr Project, and for administrative expenses that are difficult to quantify. The monthly demand charge of $2.07 per kilowatt-month is designed to compensate APCO for transmitting SEPA preference power to the Virginia Cities. APCO states that it will deliver 12,400 KW to the Virginia Cities on a monthly basis and that it will collect $308,016 in annual revenues under the proposed rate schedule. In addition, APCO will collect $65,000 in

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annual revenues for the other services being provided to SEPA.

APCO states that a copy of the filing has been provided to the Southeastern Power Administration, all parties of record in Docket Nos. ER87–105–001 and ER87–106–001, the Virginia State Corporation Commission, the Public Service Commission of West Virginia and the Commission Staff.

Comment date: September 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Connecticut Light & Power Company

[Docket No. ER87–604–000]

September 14, 1987.

Take notice that on September 4, 1987, Connecticut Light & Power Company (CL&P) tendered for filing an amended rate schedule. CL&P states that one of the rate schedules, FERC Rate Schedule No. CL&P 367, should not have been on the list that was filed August 25, 1987.

Comment date: September 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Green Mountain Power Corporation

[Docket No. ER87–613–000]

September 14, 1987.

Take notice that on September 1, 1987, Green Mountain Power Corporation tendered for filing the following revisions to rate schedules on file with the Federal Energy Regulatory Commission:

1. Revised Exhibit A—Procedure for Determination of Fixed Costs to an Agreement Between Green Mountain Power Corporation and UNITIL Power Corp. Regarding the Stony Brook Intermediate Combined Cycle Unit, dated as of March 28, 1986 (Green Mountain Rate Schedule FERC No. 90).

2. Revised Exhibit B—Procedure for Determination of Highgate Converter Station Fixed Costs to Agreement Between Green Mountain Power Corporation and Fitchburg Gas and Electric Company Regarding the Sale of Power from November 1, 1986 Through October 31, 1996 (Green Mountain Rate Schedule FERC No. 91).

3. Revised Exhibit C—Procedure for Determination of Highgate Converter Station Fixed Costs to Agreement Between Green Mountain Power Corporation and UNITIL Power Corp. Regarding the Sale of Power from October 1, 1986 Through October 31, 1990, dated as of June 20, 1986 (Green Mountain Rate Schedule FERC No. 92).

Green Mountain states that each of the subject agreements contains a cost of service formula rate in which the cost of common equity is determined on the basis of the rate of return set by the Vermont Public Service Board for the purpose of establishing Green Mountain's retail electric service rates. Green Mountain has proposed to reduce the rate of return on common equity in these agreements to 14%, effective as of March 1, 1987, concurrently with the date on which that rate of return became effective in Green Mountain's retail rates.

Green Mountain also tendered for filing an Agreement dated August 31, 1987 which amended Green Mountain Rate Schedule FERC No. 92 by increasing the amount of power being sold effective November 1, 1987 from 20 MW to 25 MW, and extending the term of that rate schedule to October 31, 1991.

Comment date: September 28, 1987, in accordance with Standard Paragraph E at the end of this document.

7. Holyoke Water Power Company and Holyoke Power and Electric Company

[Docket No. ER85–689–006]

September 14, 1987.

Take notice that on September 4, 1987, Holyoke Water Power Company (HWP) tendered for filing pursuant to Commission Order issued March 13, 1987 a refund report of refunds made on April 13, 1987 to its customers with interest accrued through that date for the difference between the Company's originally filed rates and the compliance rates.

This report includes the following:

Attachment A: Monthly billing determinants and revenues at proposed and compliance rates for the period April 1, 1986 through April 14, 1987.

Attachment B: Computation of the monthly refunds, including interest, for the monthly billings for the period April 1, 1986 through April 14, 1987.

Copies of this filing have been sent to each of HWP's wholesale customers and to all parties on the Commission's service list.

Comment date: September 28, 1987, in accordance with Standard Paragaph E at the end of this notice.

8. Montaup Electric Company

[Docket No. ER87–615–000]

September 14, 1987.

Take notice that on September 1, 1987, Montaup Electric Company (Montaup) tendered for filing an agreement between itself and the Pascoag, Rhode Island, Fire District (Pascoag) for transmission of Pascoag's entitlement to power from the New York Power Authority (NYPA) pursuant to Montaup's FERC Electric Tariff, Original Volume No. 2. Also tendered for filing is an Exhibit A containing a description of the transmission service.

Montaup requests that the filing be permitted to become effective as of July 1, 1985 when Pascoag's NYPA entitlement commenced. The filing has not occurred until now because Pascoag requested that Montaup wait until filing any transmission rate for delivery of NYPA Power to Pascoag until an agreement had been negotiated with the Massachusetts Municipal Wholesale Electric Company (MMWEC) for transmission of NYPA Power to the towns of Middleborough and Taunton, Massachusetts. That agreement was filed on July 8, 1987 in Docket No. ER87–531–000. The agreement with Pascoag has been prepared, executed, and is being filed, promptly thereafter.

Montaup believes that good cause exists to grant waiver of the 60-day notice requirement in order to insure that Pascoag receives the benefit of NYPA Power from July 1, 1985 for the past period since Pascoag's NYPA entitlement commenced. The waiver will have no adverse effect on Montaup's other customers.

Comment date: September 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Montana Power Company

[Docket No. ER87–624–000]

September 14, 1987.

Take notice that on September 4, 1987, Montana Power Company (Montana) tendered for filing a revised Index of Purchasers, identified as Eleventh Revised Sheet No. 10 under FERC Electric Tariff, 2nd Revised volume No. 1, which has been revised to show the addition of Montana-Dakota Utilities. Also tendered for filing were summaries of sales made under the Company's FERC Electric Tariff, 2nd Revised Volume No. 1, during July 1986 through December 1986 with cost justifications for the rates charged.

Montana requests an effective date of November 1, 1986 for the service agreement between Montana and Montana-Dakota Utilities, and therefore requests waiver of the Commission's notice requirements to allow that agreement to be effective on that date.

Comment date: September 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

10. Montana Power Company

[Docket No. ER87–624–000]

September 14, 1987.

Take notice that on September 4, 1987, Montana Power Company (MPC) tendered for filing pursuant to section 205 of the Federal Power Act (1) an agreement executed on July 23, 1987 (as

amended) for the sale of firm energy to the Sacramento Municipal Utility District during the period from June 15, 1987 through October 1, 1987, and (2) an agreement executed on August 18, 1987, for the sale of firm energy to the Black Hills Power & Light Company during the period of September 11, 1987 through September 27, 1987.

MPC has requested waiver of the notice provisions of § 35.3 of the Commission's regulations in order to permit the agreement to become effective on the dates indicated above in accordance with their terms.

Comment date: September 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

11. Oklahoma Gas and Electric Company

[Docket No. ER87-627-000]

September 14, 1987.

Take notice that on September 4, 1987, Oklahoma Gas and Electric Company (OG&E), P.O. Box 321, Oklahoma City, Oklahoma, 73101, tendered for filing Revised Sheet Nos. 4, 7 and 11 to its FERC ELECTRIC TARIFF, 1st Revised Volume No. 1. The revised rates are contained in proposed Rate Schedules WM-1, WM-2, and WC-1 applicable to municipalities and cooperatives, respectively. Also proposed is a change in the rates charged for wheeling and transmission service agreements with Southwestern Power Administration (SWPA) and Western Farmers Electric Cooperative, Inc., (WFEC) and services provided by the Company to the Oklahoma Municipal Power Authority (OMPA).

The decreased rates that have been proposed by the company are being made to reflect the decrease in the corporate income tax rate pursuant to the Tax Reform Act of 1986 and are proposed to be effective with usage on and after July 1, 1987.

OG&E states that copies of the tariff, rate schedules and the entire filing have been sent to its municipal and cooperative customers, to SWPA, to WFEC, and to OMPA. A complete set of the filing has also been sent to the Corporation Commission of the State of Oklahoma and the Arkansas Public Service Commission.

Comment date: September 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Company

[Docket No. ER87-628-000]

September 14, 1987.

Take notice that on September 8, 1987, Portland General Electric Company (PGE) tendered for filing a Sales Agreement with Southern California Edison Company, which provides for the sale and purchase during a five-week period from August 24, 1987 through September 25, 1987, a firm energy deliverable at rates not in excess of 200 MW per hour.

The contract rate for energy to be sold is based upon its incremental cost production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmission.

PGE states the reason for the proposed Sales Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a short period of time when such thermal resources are not required for its system loads.

PGE requests an effective date of August 24, 1987 and therefore requests a waiver of the Commission's notice requirements.

Copies of the filing have been served upon Southern California Edison Company and the Oregon Public Utility Commission.

Comment date: September 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

13. Southern Company Services, Inc.

[Docket No. ER87-620-000]

September 14, 1987.

Take notice that on September 4, 1987, Southern Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (Southern Companies), tendered for filing a change in rates for service schedule B of the Interchange Contract dated February 25, 1982 between Gulf States Utilities Company and Southern Companies. The proposed change would reduce the return on common equity component of the formula rate described in the Allocation Methodology and Periodic Rate Computation Procedure Manual from 15.0% to 14.0% for sales transactions under schedule B.

Comment date: September 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

14. Southern Company Services, Inc.

[Docket No. ER87-621-000]

September 14, 1987.

Take notice that on September 4, 1987, Southern Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (Southern Companies), tendered for filing a change in rates for Service Schedule B of the Interchange Contract dated February 27, 1981 between Jacksonville Electric Authority and Southern Companies. The proposed change would reduce the return on common equity component of the formula rate described in the Allocation Methodology and Periodic Rate Computation Procedure Manual from 15.0% to 14.0%

Comment date: September 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

15. Southern Company Services, Inc.

[Docket No. ER87-622-000]

September 14, 1987.

Take notice that on September 4, 1987, Southern Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (Southern Companies), tendered for filing a change in rates for Service Schedule A and Service B of the Interchange Contract dated October 18, 1979 between Florida Power & Light Company and Southern Companies. The proposed change would reduce the return on common equity component of the formula rate described in the Allocation Methodology and Periodic Rate Computation Procedure Manual from 15.0% to 14.9%.

Comment date: September 28, 1987, in accordance with Standard Paragraph E at end of this notice.

16. Southern Electric Generating Company

[Docket No. ER87-626-000]

September 14, 1987.

Take notice that on September 4, 1987, Southern Electric Generating Company tendered for filing a change in rates for the Power Contract dated January 27, 1959, as amended October 27, 1982. Under the Power Contract, Southern Electric Generating Company sells the entire output of its generating units to Alabama Power Company and Georgia Power Company. The proposed change in rates would reduce the return on common equity component of the formula rate included in the Power Contract from 16.9% to 14.9%.

Comment date: September 28, 1987, in accordance with Standard Paragraph E at end of this notice.

17. Washington Water Power Company

[Docket No. ER87-614-000]

September 14, 1987.

Take notice that on September 1, 1987, Washington Water Power Company (Company) of Spokane, Washington, tendered for filing proposed changes in

BEST COPY AVAILABLE

its FERC Electric Service Tariff, Schedule 61. The proposed changes would increase revenues from jurisdictional sales and service by approximately $999,758 based on the 12-month period ending December 31, 1986. The rate change is proposed to go into effect November 1, 1987.

The proposed rate changes are submitted for the purpose of compensating Washington Water Power Company for increases in power supply cost including the recovery of Colstrip Unit 4 and related costs. The Company is also requesting recovery of its investment related to the Washington Water Power Supply System Nuclear Project No. 3 (WNP-3). Construction has been delayed on the WNP-3 project, however, the company transferred its investment in the WNP-3 plant into an investment in Exchange Power through the negotiation and execution of the Settlement Agreement with the Bonneville Power Administration dated September 17, 1985. The Company began receiving power, under the terms of the Agreement, on January 1, 1987. The Company is requesting a 32.5-year amortization of its investment in Exchange Power with a rate of return allowed on the unamortized balance.

Copies of the filing have been served upon Washington Water Power Company's five wholesale customers affected by this filing.

Comment date: September 28, 1987, in accordance with Standard Paragraph E at end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21531 Filed 9-16-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-881-000 et al.]

Natural Gas Company; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]; Amoco Production Co et al.

September 14, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abondon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to the public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 25, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-881-000 (CI64-705), B, Sept. 4, 1987.	Amoco Production Company, P.O. Box 800, Room 1754, Denver, Colorado 80201.	Panhandle Eastern Pipeline Company, Miles Unit A No. 1 Sec. 7-T4N-R24E, Pioneer Memorial Park Units 1 and 2, Sec. 6-T4N-R24E, Moacne-Laverne Field, Beaver County, Oklahoma.	(1)	
G-4899-000, D, Sept. 4, 1987	Amoco Production Company, P.O. Box 3092, Houston, Texas 77253.	United Gas Pipe Line Company, West Mustang Island Field, Nueces County, Texas.	(2)	
G-4065-001, D, Sept. 4, 1987	....do	Texas Eastern Transmission Corporation, Chocolate Bayou Field, Brazoria County, Texas	(3)	
CI87-884-000, B, Sept. 8, 1987	Perkins Energy Co., et al., P.O. Drawer 878, Duncan, Okla. 73534	Arkla Energy Resources, a division of Arkla, Inc., Northwest Okeene Field, Blaine County, Oklahoma.	(4)	
CI68-993-000, D, Sept. 3, 1987	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001	ANR Pipeline Company, Selman, Field, Harper County, Oklahoma.	(5)	
CI87-882-000, B, Sept. 4, 1987	Samedan Oil Corporation, P.O. Box 909, Ardmore, Okla. 73402.	El Paso Natural Gas Company, Mocane-Laverne Field, Beaver County, Oklahoma.	(6)	
CI87-874-000, B, Sept. 2, 1987.	Fortune Production Company, P.O. Box 5109, San Angelo, Texas 76902	Northern Natural Gas Company, Division of Enron Corp., Cheaney (Strawn) & Cheaney (Strawn 4,500 Sand), Schleicher County, Texas.	(7)	
CI87-876-000, B, Aug. 31, 1987	Clarence W. Mutschelknaus, P.O. Box 351, Salem, W. Va 26426.	Consolidated Gas Transmission Corporation, Central District, Doddridge County, West Virginia	(8)	
CI87-875-000, B, Aug. 31, 1987.	....do	....do	(9)	
CI87-878-000 (CI80-375), B, Sept. 3, 1987.	Phillips Petroleum Company, 990-G Plaza Office Bldg., Bartlesville, Okla. 74004.	Locust Ridge Gas Company, MSU Anderson E No. 1 Buckhorn Field, Tensas Parish, Louisiana.	(10)	
CI87-879-000, B, Sept. 3, 1987	Southland Royalty Company, c/o Meridan Oil Inc., P.O. Box 4239, Houston, Texas 77210.	Northern Natural Gas Company, Division of Enron Corp., Puckett Field, Pecos County, Texas.	(11) (12)	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-833-000, B, Aug. 17, 1987.	Citation Oil & Gas Corp., 16800 Greenspoint Park Dr., Houston, Texas 77060.	El Paso Natural Gas Company, Langlie-Mattix Field, Lea County, New Mexico.	[13]	
CI87-874-000, B, Aug. 17, 1987.	.....do	El Paso Natural Gas Company, Justis, Jalmat & Langlie-Mattix Fields, Lea County, New Mexico.	[14]	
G-3841-000, D, Sept. 8, 1987....	Union Exploration Partners, Ltd., P.O. Box 7600, Los Angeles, Calif. 90051.	United Gas Pipe Line Company, Sligo Field, Bossier Parish, Louisiana.	[15]	
C175-354-001, D, Sept. 8, 1987.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	United Gas Pipe Line Company, Abbeville Field, Vermilion County, Louisiana.	[16]	
G-6613-001, B, Aug. 31, 1987...	Union Pacific Resources Company, 1400 Smith Street—Suite 1500, Houston, Texas 77002.	Williams Natural Gas Company, West Edmond Field, Logan County, Oklahoma.	[17]	

[1] The only three wells under this contract have been plugged and abandoned in 1985 due to lack of production.
[2] State Tract 45-47, Unit Tract 470 sold effective 6-1-87, to Atlantic Richfield Company.
[3] The Houston Farms Unit has been abandoned for several years. All acreage has expired and Amoco no longer has an interest in the Chocolate Bayou Field.
[4] Basic contract expires by its own term 9-15-87. Purchaser has terminated the contract by not purchasing the quantity of gas required by the contract. Good faith negotiations under FERC Order 451 were unsuccessful; purchaser did not respond.
[5] Assignment of dedicated acreage effective 11-1-86 to Essex Exploration Co.
[6] Depletion of reserves.
[7] Gathering Company, Corpening Enterprises, ceased to operate the pipeline.
[8] Applicant is requesting abandonment of service under its contract No. 4604 for the Piggott Wells only. Applicant states that it needs a compressor on the Piggott Wells and that Applicant was denied permission by Consolidated Gas to install a compressor. When this gas is released from Consolidated Gas, said gas will be sold to Equitable Gas.
[9] Applicant is requesting abandonment of service under its contract No. 3069 for its Well No. (47-017-01247) only. Applicant states that it needs a compressor on this well, and that Applicant was denied permission by Consolidated Gas to install a compressor. When this gas is released from Consolidated Gas, said gas will be sold to Equitable Gas.
[10] Phillips Petroleum Company and Locust Ridge Gas Company have entered into a new Gas Purchase Contract. This contract replaces that agreement dated 4-21-81, which was a flat rate type contract. The new agreement is a percentage-of-proceeds type contract which provides that the buyer shall pay the seller a percentage of the resale price per MMBtu received by the buyer from the buyer's customer to whom the seller's gas is resold.
[11] Contract expired by it's own term on 6-8-86, and limited sales continued absent a contract until Purchaser requested termination.
[12] Additional information received August 31, 1987.
[13] Applicant requests authorization for permanent abandonment of a sale of gas to El Paso. Applicant also requests a three-year pregranted abandonment for sales of the released gas for resale in interstate commerce under its small producer certificate issued in Docket No. CS86-92-000.
In support of its application Applicant states that the primary term of the contract has expired and that El Paso is no longer willing to purchase the gas under the terms of such agreement. Applicant states that deliverability is 3-4 Mcf/day and that the June 1987, price for the gas was $1.40/Mcf.
[14] Applicant requests authorization for permanent abandonment of a sale of gas to El Paso. Applicant also requests a three-year pregranted abandoment for sales of the released gas for resale in interstate commerce under its small producer certificate issued in Docket No. CS86-92-000.
In support of its application Applicant states that the primary term of the contract has expired and that El Paso is no longer willing to purchase the gas under the terms of such agreement. Applicant states that deliverability is 1,168 Mcf/day and that the June 1987, price for the gas was 96.3 cents/Mcf.
[15] Union Exploration Partners, Ltd. assigned certain leases under Docket No. G-3841 to KFL Operating, Inc.
[16] Expiration of leases.
[17] By assignment dated July 1, 1987, Applicant conveyed all of its interest in the contract dated March 21, 1949 to Midstates Pipeline Company.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-21523 Filed 9-16-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP87-134-000]

Application; ANR Pipeline Co.

September 11, 1987.

Take notice that on September 1, 1987 ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 (Applicant), filed in docket No. RP87-134-000, the following tariff sheets which will put into effect, on October 1, 1987, an "Annual Charge Adjustment Clause" pursuant to Order No. 472 of the Federal Energy Regulatory Commission (FERC):

Original Volume No. 1

Twelfth Revised Sheet No. 18
Alternate Twelfth Revised Sheet No. 18
Second Revised Sheet No. 85
Original Sheet No. 86

Original Volume No. 1-A

Second Revised Sheet No. 16
First Revised Sheet No. 17
Second Revised Sheet No. 26
Second Revised Sheet No. 38
Second Revised Sheet No. 48
First Revised Sheet No. 58
Second Revised Sheet No. 66

Original Volume No. 2

Second Revised Sheet No. 16
Second Revised Sheet No. 17
Second Revised Sheet No. 18
Second Revised Sheet No. 19
Third Revised Sheet No. 20
Third Revised Sheet No. 21

ANR also states that inclusion in its rates of the annual charge to ANR by the FERC pursuant to Order No. 472 is an issue in ANR's presently ongoing Docket No. RP86-169 proceeding, and that if an allowance for such amount of charge is specifically approved therein as a component of the rates approved therein, ANR plans to file to eliminate the subject tariff sheets provisions and ACA charge, effective on the effective date of such rates approved in Docket No. RP86-169.

Any person desiring to be heard or to make any protest with reference to the above referenced filing should on or before September 18, 1987, file with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-21533 Filed 9-16-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. FA87-71-000]

Filing; Cambridge Electric Light Co.

September 14, 1987.

Take notice that on August 14, 1987, Cambridge Electric Light Company (Company) tendered for filing an Offer of Settlement in response to the Commission's order in *Iowa-Illinois Gas and Electric Company* Docket No. FA84-46-001 39 FERC par. 61.055 (1987), wherein the Commission invited utilities that have included Spent Nuclear Fuel Disposal Costs (SNFDC) in their

wholesale fuel adjustment clauses (FAC), without explicit prior Commission approval, to propose a settlement to resolve cases of noncompliance with the Commission's fuel clause regulation, 18 CFR Part 35.14.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 28, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21534 Filed 9-16-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-139-000]

Tariff Filing; El Paso Natural Gas Co.

September 11, 1987.

Take notice that on September 8, 1987, El Paso Natural Gas Company ("El Paso") filed, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, the following tariff sheets to its FERC Gas Tariff:

Tariff Volume and Tariff Sheet

First Revised Volume No. 1
- Fifteenth Revised Sheet No. 100
- Third Revised Sheet No. 100-A
- Substitute Original Sheet No. 300
- Original Sheet No. 375
- Original Sheet Nos. 376 through 399

Original Volume No. 1-A
- Fourth Revised Sheet No. 20
- Second Revised Sheet No. 200
- Original Sheet No. 238
- Original Sheet Nos. 239 through 299

Third Revised Volume No. 2
- Thirty-ninth Revised Sheet No. 1-D
- Nineteenth Revised Sheet No. 1-D.2

Original Volume No. 2A
- Forty-first Revised Sheet No. 1-C

El Paso states that the tendered tariff sheets, when accepted and permitted to become effective, will add an annual charge adjustment provision to El Paso's FERC Gas Tariff and increase certain of El Paso's sales and transportation rates by $.0020 per dth ($.0021 per Mcf) as authorized by the Commission's Final Rule (Order No. 272) issued May 29, 1987 at Docket No. RM87-3-000.

El Paso Requested, pursuant to § 154.51 of the Commission's Regulations, waiver of the notice requirements of § 154.22 of the Commission's Regulations and any other of the Commission's applicable rules, regulations and orders as may be necessary to permit the tendered tariff sheets to become effective on October 1, 1987.

El Paso states that copies of the filing have been served upon all of its interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before September 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21535 Filed 9-16-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-883-000]

Application of Meridian Oil Trading Inc. for Blanket Sales Certificate With Pre-Granted Abandonment

September 14, 1987.

Take Notice that on September 4, 1987, Meridian Oil Trading Inc. ("MOTI"), pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c and 717f, and the provisions of 18 CFR Part 157, applied for a blanket certificate of public convenience and necessity and for pre-granted abandonment to permit the interstate sale for resale, and pre-granted abandonment of such sale, of natural gas which remains subject to the Commission's jurisdiction under the Natural Gas Act ("NGA"). MOTI states that it is seeking authority to resell natural gas abandoned pursuant to Commission orders authorizing producer abandonment and gas not previously sold in interstate commerce but which, if sold by MOTI in interstate commerce for resale, would require a certificate of public convenience and necessity. MOTI states that it is not seeking such authority with regard to any dedicated interstate gas for which abandonment has not been authorized by Commission order, nor is it seeking any transportation authority.

MOTI requests blanket authorization for a period of one year. MOTI requests waiver of certain filing requirements in order to permit it to respond to rapidly changing spot market conditions.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 25, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at any hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21536 Filed 9-16-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA87-3-26-002 and TA85-1-26-014]

Changes in Rates; Natural Gas Pipeline Company of America

September 11, 1987.

Take notice that on September 8, 1987, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective as indicated below:

	Effective date
Second Substitute Sixty-sixth Revised Sheet No. 5	9/1/87
Second Substitute Thirty-third Revised Sheet No. 5A	9/1/87
Substitute Sixty-seventh Revised Sheet No. 5	10/1/87
Substitute Thirty-fourth Revised Sheet No. 5A	10/1/87

Natural states that the tariff sheets to be effective September 1, 1987 are being revised to comply with Ordering Paragraph (B) of the Commission's August 27, 1987 order in Docket Nos. TA87–3–26–000 (PGA87–3) (IPR87–2) and TA85–1–26–001. Paragraph (B) required Natural to file within thirty days of the order revised tariff sheets in compliance with the Commission's Opinion Nos. 256 and 256A. The tariff sheets to be effective October 1, 1987 are substitutes for corresponding sheets originally filed August 31, 1987 to initiate an Annual Charges Adjustment (ACA). These sheets were revised to reflect the rate adjustments effective September 1.

Natural states that the overall effect of the instant filing reduces Natural's DMQ–1 demand and entitlement rates by $.11 and .52¢, respectively, while increasing Natural's DMQ–1 commodity rate by 4.70¢. Corresponding adjustments were made to Natural's other rates and charges to maintain the same rate design relationship. There is no net revenue change on an annual basis as the instant filing results in a transfer of $9.4 million from the demand components of Natural's rates to the commodity component.

A copy of this filing is being mailed to Natural's jurisdictional customers and interested State regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214. All such motions or protests must be filed on or before September 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–21537 Filed 9–16–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–38–000]

Change in Rate Schedule S–1 Tariff Provision; Natural Gas Pipeline Company of America

September 11, 1987.

Take notice that on September 4, 1987, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheet to be effective November 1, 1987:

Eighth Revised Sheet No. 27

Natural states the purpose, as more fully explained in the filing, is to amend Natural's Rate Schedule S–1 to allow the customers, subject to Natural's authorization, the opportunity to elect to withdraw gas during the winter period on days they are not taking their full Daily Entitlement under Rate Schedule DMQ–1 as currently provided.

A copy of this filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214. All such motions or protests must be filed on or before September 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishin to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–21538 Filed 9–16–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. G–2999–001 et al.]

Change in Name; Union Pacific Resources Co.

September 14, 1987.

Take notice that on August 25, 1987, Union Pacific Resources Company (UPRC) of 800 Cherry Street, Fort Worth, Texas 76102, filed a notice of change in name requesting that the Commission take notice of a change in name for certificates of public convenience and necessity and the redesignation of rate schedules heretofore issued to Champlin Petroleum Company or designated in the name Champlin Petroleum Company, all as more fully shown on the attached Exhibit II. In addition, UPRC requested that the Commission proceedings in which Champlin Petroleum Company was heretofore a party-applicant or party-respondent reflect the name change. This application is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 25, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for UPRC to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Exhibit II

LIST OF CERTIFICATE PROCEEDINGS, RATE SCHEDULES AND COMMISSION PROCEEDINGS OF UNION PACIFIC RESOURCES COMPANY

FERC GRS No.	Purchaser	Docket No.
1	Columbia Gas Transmission	G–2999
2	Texas Eastern Transmission Corp.	G–2999
3	Tennessee Gas Pipeline Company	G–2999
4	Tennessee Gas Pipeline Company	G–2999
5	Tennessee Gas Pipeline Company	G–2999
6	Tennessee Gas Pipeline Company	G–2999
7	Tennessee Gas Pipeline Company	G–19848
8	Tennessee Gas Pipeline Company	G–2999

LIST OF CERTIFICATE PROCEEDINGS, RATE SCHEDULES AND COMMISSION PROCEEDINGS OF UNION PACIFIC RESOURCES COMPANY—Continued

FERC GRS No.	Purchaser	Docket No.
9	Tennessee Gas Pipeline Company	G-2999
11	United Gas Pipeline	G-2999
16	Tennessee Gas Pipeline Company	G-2999
17	Tennessee Gas Pipeline Company	G-2999
18	Tennessee Gas Pipeline Company	G-2999
21	Tennessee Gas Pipeline Company	G-2999
22	Tennessee Gas Pipeline Company	G-2999
27	Texas Eastern Transmission Corp	G-11481
28	Williams Natural Gas Company	G-19584
41	Northern Natural Gas Company	G-6613
42	Northern Natural Gas Company	G-6613
43	Northern Natural Gas Company	G-6613
44	Northern Natural Gas Company	G-6613
53	Williams Natural Gas Company	G-6613
59	Colorado Interstate Gas Company	G-9490
64	Williams Natural Gas Company	G-10665
65	Colorado Interstate Gas Company	G-10723
66	Colorado Interstate Gas Company	G-11150
67	Colorado Interstate Gas Company	G-18171
68	Northern Natural Gas Company	G-12173
69	Panhandle Eastern Pipeline	G-12356
70	Northern Natural Gas Company	G-14380
71	Natural Gas Pipeline Company of America	G-14830
72	Panhandle Eastern Pipeline	G-16822
74	K N Energy, Inc	G-6613
75	Williams Natural Gas Company	G-69249
76	Williams Natural Gas Company	G-16993
83	Mountain Fuel Resources, Inc	CI-61-215
85	Natural Gas Pipeline Company of America	CI61-746
86	ANR Pipeline Company	CI61-1002
88	Williams Natural Gas Company	CI61-920
89	Williams Natural Gas Company	CI61-215
90	Panhandle Eastern Pipeline	CI61-1426
91	Zenith Natural Gas Company	CI61-108
92	Mesa Operating Limited Partnership	CI62-1389
93	Williams Natural Gas Company	CI64-221
94	K N Energy, Inc	CI64-378
97	Tennessee Gas Pipeline Company	CI66-1029
98	Northern Natural Gas Company	CI67-584
99	Northern Natural Gas Company	CI67-1855
101	El Paso Natural Gas	CI68-651
102	Northern Natural Gas Company	CI68-729
104	Panhandle Eastern Pipeline	CI69-1053
105	Panhandle Eastern Pipeline	CI70-672
106	Marathon Oil Company	CI70-1096
107	Marathon Oil Company	CI70-1116
108	Arkansas Louisiana Gas Company	CI71-384
109	Mountain Fuel Resources, Inc	G-6213
110	Mountain Fuel Resources, Inc	G-6213
111	Colorado Interstate Gas Company	G-10476
112	Colorado Interstate Gas Company	C161-1442
113	Colorado Interstate Gas Company	CI-418
114	Colorado Interstate Gas Company	CI64-921
115	Colorado Interstate Gas Company	CI67-1053
116	Colorado Interstate Gas Company	CI67-1238
117	Colorado Interstate Gas Company	CI167-1426
118	Colorado Interstate Gas Company	G-19226
119	Mountain Fuel Resources, Inc	CI68-1178
120	Colorado Interstate Gas Company	CI70-1
121	Colorado Interstate Gas Company	CI72-34
122	Northern Natural Gas Company	CI72-340
124	Mountain Fuel Resources, Inc	CI72-566
125	Mountain Fuel Resources, Inc	CI72-567
126	Panhandle Eastern Pipeline	CI72-487
127	Colorado Interstate Gas Company	CI72-768
128	Colorado Interstate Gas Company	CI73-69
129	Tennessee Gas Pipeline Company	CI73-182
130	El Paso Natural Gas	CI73-211
133	Northern Natural Gas Company	CI73-479

LIST OF CERTIFICATE PROCEEDINGS, RATE SCHEDULES AND COMMISSION PROCEEDINGS OF UNION PACIFIC RESOURCES COMPANY—Continued

FERC GRS No.	Purchaser	Docket No.
134	Southern Natural Gas Company	CI74-352
135	Williams Natural Gas Company	CI74-755
136	El Paso Natural Gas	CI75-70
137	Mountain Fuel Resources, Inc	CI75-84
138	Williams Natural Gas Company	CI75-599
139	Colorado Interstate Gas Company	CI75-716
140	Colorado Interstate Gas Company	CI76-100
143	Colorado Interstate Gas Company	CI76-135
144	Colorado Interstate Gas Company	CI76-138
145	El Paso Natural Gas	CI76-576
146	Colorado Interstate Gas Company	CI76-742
147	Western Gas Processors, Ltd	CI76-779
148	Panhandle Eastern Pipeline Company	CI77-24
149	El Paso Natural Gas	CI76-713
150	El Paso Natural Gas	CI77-452
151	Colorado Interstate Gas Company	CI77-763
153	Mountain Fuel Resources, Inc	CI78-908
156	Sea Robin Pipeline Company	CI79-648
157	Natural Gas Pipeline Company of America	CI80-308
158	Panhandle Eastern Pipeline	CI81-447
159	Arkansas Louisiana Gas Company	CI82-232
160	Mississippi River Transmission Corp	CI75-633
161	Mississippi River Transmission Corp	CI76-166
162	Mississippi River Transmission Corp	CI76-654
163	Mississippi River Transmission Corp	CI76-705
164	Mississippi River Transmission Corp	CI77-20
165	Mississippi River Transmission Corp	CI77-286
166	Mississippi River Transmission Corp	CI77-709
167	Mississippi River Transmission Corp	CI78-902
168	Amoco Gas Company	CI84-117

Other Proceedings: GP80-41, GP80-43, GP85-47, GP85-47-000, GP86-14-000, CI86-136-000, CI86-418-000, CI87-127-000, CI87-314-000, CI87-500-000, TA81-1-32, TA83-1-32-002, TA84-1-32, TA84-2-55-000,TA85-1-18-000, TA85-1-18-003, TA85-1-32, TA85-1-32-000, TA86-1-26-000, TA86-1-32, TA86-1-32-000, TA86-1-32-001, TA86-2-55-000-001, TA86-2-55-003, TA86-3-59-006, TA87-1-32-003, TA87-1-55, TA87-2-55-000,001, IN83-1, IN83-2, PL87-3-000, RA83-9-000, RM80-8, RM82-32, RM83-53, RM84-6, RM85-1, RM86-3, RM87-16-000, SA85-18-000, CP81-328-003, CP82-54-001, CP82-547-003, CP83-131-000, CP83-131-004, CP83-179-000, CP84-29-000, CP84-716-000, CP85-123-000, CP85-398-000, CP85-552-000, CP86-163-000, CP86-232-000, CP86-275-000, CP86-286, CP86-286-000, CP86-299, CP86-377-000, CP86-507-000, CP86-508-000, CP86-518-000, CP86-534-000, CP86-578, CP86-578-000 CP86-585, CP86-585-000, CP86-589, CP86-589-000, CP86-648-000, CP86-717-000, CP86-720-000, CP87-115-000, CP87-165-000, RP82-10-012, RP82-54-000, RP82-56, RP82-71-000, RP83-74-000, RP83-109, RP83-109-000, RP84-7-000, RP84-15-000, RP84-111-000, RP85-13-000, RP85-65, RP85-122-000, RP85-178-000, RP85-187-000, RP85-206-000, RP85-206-002, RP85-206-006, RP86-7-001, RP86-87-000,001, RP86-92-000, RP86-104, RP86-104-000, RP86-119-000, RP86-144-000, RP86-162-000, RP87-2-000, RP87-26-000, RP87-30-000.

[FR Doc. 87-21539 Filed 9-16-87; 8:45am]
BILLING CODE 6717-01-M

FARM CREDIT ADMINISTRATION

[Farm Credit Administration Order No. 878]

Authority Delegations; Authorization To Authenticate Documents, Certify Official Records, and Affix Seal

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: The Chairman of the Farm Credit Administration issued Order No. 878 authorizing certain employees to authenticate documents, certify official records, and affix seal. The text of the Order is as follows:

1. Isla B. Marsden, Assistant to the Chairman, Debra Buccolo, Assistant to the General Counsel, and Cindy R. Nicholson, Paralegal Specialists for the Office of General Counsel, individually, are authorized and empowered:

a. To execute and issue under the seal of the Farm Credit Administration, statements (1) authenticating copies of, or excerpts from official records and files of the Farm Credit Administration; (2) certifying, on the basis of the records of the Farm Credit Administration, the effective periods of regulations, orders, instructions, and regulatory announcements; and (3) certifying, on the basis of the records of the Farm Credit Administration, the appointment, qualification, and continuance in office of any officer or employee of the Farm Credit Administration, or any conservator or receiver acting under the supervision or direction of the Farm Credit Administration.

b. To sign official documents and to affix the seal of the Farm Credit Administration thereon for the purpose of attesting the signature of officials of the Farm Credit Administration.

2. The provisions of this Order shall be effective immediately and shall supersede Farm Credit Administration Order No. 865 dated August 4, 1986 (51 FR 27912, August 4, 1986) which is revoked.

Dated: September 14, 1987.

Frank W. Naylor, Jr.,

Chairman, Farm Credit Administration Board.

[FR Doc. 87-21556 Filed 9-16-87; 8:45 am]
BILLING CODE 6705-01-M

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FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 9, 1987.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transciption Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0053
Title: Application for Consent to Transfer Control of Corporation Holding Station License
Form Number: FCC 703
Action: Extension
Respondents: Business (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 907 Responses: 453 Hours
Needs and Uses: FCC Rules require that applicants in the Private Land Mobile, GMRS, Microwave, Coast and Ground Services submit FCC Form 703 whenever it is proposed to change, as by transfer of stock ownership, the control of a station. The data is used to determine continued eligibility for licensees. Without this information, violations of ownership regulations could occur.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 87–21410 Filed 9–16–87; 8:45 am]
BILLING CODE 6712-01-M

Specialized Mobile Radio Service Frequencies To Be Available for Reassignment

August 31, 1987.

The following channels were recently recovered from licensees who failed to meet the Commission's loading or construction requirements and will be available for reassignment to trunked Specialized Mobile Radio (SMR) applicants. They were previously licensed at the coordinates indicated and are available at any location within the geographic area which will protect existing SMR systems pursuant to Rules 90.362 and 90.621.

856/860.0375 MHz, Baldi, WA, 47–13–10 North, 121–50–31 West
856/860.5875 MHz, Liberty, TX, 30–05–39 North, 94–45–50 West
856/860.5875 MHz, Pflugerville, TX, 30–26–58 North, 97–39–44 West
856/860.5375 MHz, Boston, MA, 42–20–48 North, 71–27–00 West
856.6875, 857.6875, 858.6875, 860.6875 MHz, Boulder, CO, 39–54–48 North, 105–17–32 West
856/860.5625 MHz, Sarasota, FL, 27–20–05 North, 82–28–21 West
859/860.5125 MHz, Waltham, MA, 42–23–17 North, 71–15–09 West
856/860.5625 MHz, Washington, DC, 38–57–01 North, 77–04–47 West

Pursuant to the Public Notice of January 6, 1986, Mimeo No. 1805, these channels will be available for reassignment on September 30, 1987. All applications received before September 30, 1987 will be dismissed. The first application received after the channels become available for reassignment opens the filing window. The window stay open only for the day on which the first application is received. *All applications MUST reference the date and DA number of this Public Notice in order to be considered for these frequencies.*

There is a $30.00 fee required for each application filed. All checks should be made payable to the FCC. Applications should be mailed to: Federal Communications Commission, 800 Megahertz Service, P.O. Box 360416M, Pittsburgh, PA 15251–6416. Applications may also be filed in person between 9:00 AM and 3:00 PM at the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259, Attention: (Wholesale Lockbox Shift Supervisor).

For further information, refer to Public Notice of January 6, 1986 or contact Riley Hollingsworth or Betty Woolford (202) 632–7125 of the Private Radio Bureau's Land Mobile and Microwave Division.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 87–21411 Filed 9–16–87; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Garcia Communications et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant	City/State	File No.	MM Docket No.
A. Garcia Communications	El Centro, CA.	BPCT-870331QJ	76–354
B. SICC Holding Corp.	El Centro, CA.	BPCT-870602KH	
C. La Paz Wireless Corp	El Centro, CA.	BPCT-870602KI	
D. Imperial Valley Broadcasting.	El Centro, CA.	BPCT-870602KJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Air Hazard	A,B,C,D
2. Rule 73.685	B,D
3. Comparative	A,B,C,D
4. Ultimate	A,B,C,D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,
Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87–21412 Filed 9–16–87; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing; GNOL Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant	City/State	File No	MM Docket No.
A. GNOL Broadcasting, Inc	Morganton, NC.	BPCT-861030KG	87-82
B. Dr. James Wingate	Morganton, NC.	BPCT-861114KJ	
C. Cynthia Blair d/b/a Tar Hill Television.	Morganton, NC.	BPCT-861216IG	
D. R. L. Bush	Morganton, NC	BPCT-861216II	
E. John J. Garofalo d/b/a Skyway Television.	Morganton, NC.	BPCT-861216IJ	
F. Joel J. Know, Jr.	Morganton, NC.	BPCT-861216IK	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
Air hazard	A, B, C, D, E, F
Minimum separations	D
Comparative	A, B, C, D, E, F
Ultimate	A, B, C, D, E, F

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87-21413 Filed 9-16-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Great Plains Educational Trust and Minnesota Public Radio, Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Great Plains Educational Trust	Brookings, South Dakota	BPED-840416II	87-368
B. Minnesota Public Radio, Inc	Appleton, Minnesota	BPED-840604IA	

Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. 307(b)—Noncommercial Educational	A and B
2. Contingent Comparative—Noncommercial Educational FM.	A and B
3. Ultimate	A and B

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-21414 Filed 9-16-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Tamara Klindworth et al.

1. The Commission has before it the following mutually exclusive appplications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Tamara Klindworth	Worthington, MN	BPH-850710MG	87-369
B. Gudenan Broadcasting, Inc	Worthington, MN	BPH-850712NM	
C. KOVA Communications, A Limited Partnership	Worthington, MN	BPH-850712NR	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986.

The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. City Coverage	B
2. Air Hazard	A, B
3. Comparative	A, B, C
4. Ultimate	A, B, C

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-21415 Filed 9-16-87; 8:45 am]

BILLING CODE 6712-01-M

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Applications for Consolidated Hearing; RSO Broadcasting et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant	City/State	File No.	MM Docket No
A. Richard S. Ohendalski d/b/a RSO Broadcasting	Perry, Georgia	BPCT-861216IT	87-353
B. Perry Television, Inc	Perry, Georgia	BPCT-870317KH	
C. Radio Perry, Inc	Perry, Georgia	BPCT-870317KI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
Multiple Ownership	C
Air Hazard	B, C
Comparative	A, B, C
Ultimate	A, B, C

See Appendix.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87-21416 Filed 9-16-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Seaboard Broadcasting Co. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Seaboard Broadcasting Company, Richmond, VA	BPH-851115NG	87 352
B. Eunice Wilder and Shendan Broadcasting Corp. d/b/a Weyburn Broadcasting Limited Partnership, Richmond, VA.	BPH-851213MN	
C. HV Partners, Richmond, VA.	BPH-851213MO	
D. WKIE-FM, Inc., Richmond, VA	BPH-851216OA	
E. Richmond FM Group Limited Partnership, Richmond, VA.	BPH-851216OB	
F. Richmond Radio Limited Partnership, Richmond, VA.	BPH-851216OC	
G. Sally R. Eldred, Richmond, VA.	BPH-851216OD	
H. Richmond Radio Group, Ltd., Richmond, VA.	BPH-851216OE	
I. Thomas Christopher Gullett tr/as Radio Richmond, Richmond, VA.	BPH-851216OF	
J. Kasbah Communications Corporation, Richmond, VA.	BPH-851216OG	
K. Greater Richmond Radio, Ltd., Richmond, VA	BPH-851216OH	
L. FM Richmond Limited Partnership, Richmond, VA.	BPH-851216OI	
Richmond Educational Foundation, Inc., Richmond, VA.	BPH-851216OK	
N. Guernica Radio, Inc., Richmond, VA	BPH-851216OL	
O. Bertram Broadcasting Group, Richmond, VA.	BPH-851216OM	
P. Barbara B. Benns, Richmond, VA.	BPH-851216ON	
Q. James River Communications Corporation, Richmond, VA.	BPH-851216OO	
R. Nicholas Broadcasting, Richmond, VA.	BPH-851216OP	
S. Innovative Broadcasting, Inc., Richmond, VA	BPH-851216OQ	
T. Robert Fish, Richmond, VA	BPH-851216OR	
U. Commonwealth Communications, A Limited Partnership, Richmond, VA.	BPH-851216OS	
V. Minority Broadcasting Corporation, Richmond, VA.	BPH-851216OT	
W. Eighty-Ninety Broadcast, Inc. Richmond, VA.	BPH-851216OU	
X. Future Broadcast Limited Partnership, Richmond, VA.	BPH-851216OV	
Y. Honeycomb Broadcasting, Inc., Richmond, VA.	BPH-851216OW	
Z. Witjo Broadcasting, Inc., Richmond, VA.	BPH-851216OX	
AA. Richmond Hispanic Radio, Inc., Richmond, VA.	BPH-851216OY	
BB. Richmond Christian Radio, Inc., Richmond, VA.	BPH-851216OZ	
CC. One Hundred One Broadcasting, Inc., Richmond, VA.	BPH-851216QA	
DD. Penny Drucker, Richmond, VA.	BPH-851216QB	
EE. Richmond Broadcasting Associates, Richmond, VA.	BPH-851216QC	
FF. Capitol Cities Broadcasting Company, Richmond, VA.	BPH-851216QD	
GG. Virginia Communications Limited Partnership, Richmond, VA.	BPH-851216QE	
HH. Helen S. and Eugene D. Pearson d/b/a Mt Zion Broadcasting, Richmond, VA.	BPH-851216QF	
II. Recardo A. Foy, Richmond, VA.	BPH-860210ML	Dismissed

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose heading are set forth below. The text of each of these issues has been standardized and is set forth in its entirely under the corresponding heading at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. (See Appendix), U
2. Main Studio C,H,O,EE
3. Environmental, B,C,H,I,K,N,O,Q,T,AA,BB,CC,GG,HH
4. Air Hazard, B,I,K,M,Q,T,Y,AA,CC,GG,HH
5.Comparative, A—HH
6. Ultimate, A—HH

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transporation Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

1 (a). To determine, in light of the facts and circumstances surrounding the issue designated in the Morehead, North Carolina, proceeding, (MM Docket 86–300), whether Webber sought to engage in the "trafficking" of the constructon permit for Station WHMU–TV, Belmont, North Carolina.

1 (b). To determine, in light of the facts adduced pursuant to issue (a), above, whether Webber and hence U(Commonwealth) possess the basic qualifications to be a licensee of the facilities sought here.

[FR Doc. 87–21417 Filed 9–16–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Harold S. Schwartz et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/State	File No	MM Docket No.
A. Harold S. Schwartz, Brigham City, UT.	BPH–850712ZM	87–367
B. Susan Lundborg, Brigham City, UT.	BPH–850712ZO	
C. Golden Bear Communicatons, Brigham City, UT.	BPH–850712Z2 (DISMISSED)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800)

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–21418 Filed 9–16–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Western Telecasting Co.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, city/State	File No.	MM Docket No.
A. Western Telecasting Company, Jackson, WY.	BPCT–860926KN	87–57
B. William L. Cook, II, Jackson, WY.	BPCT–861117KR	
C. Bear Broadcasting, Ltd., Jackson, WY	BPCT–861117KW	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard, A
Comparative, A, B, C
Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87–21419 Filed 9–16–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

President's Advisory Committee on Mediation and Conciliation; Meeting

Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the President's Advisory Committee on Mediation and Conciliation will be held on Monday, October 5, 1987 from 9:00 a.m. to 5:00 p.m., Tuesday, October 6, 1987 from 9:00 a.m. to 5:00 p.m., and Wednesday, October 7, 1987 from 9:00 on to 5:00 p.m., in the second floor Davidson Room of the Hyatt Regency Hotel, 7th and Union Streets, Nashville, Tennessee 37219. The purpose of the meeting is to obtain the views of representatives of labor and management, and other qualified individuals, with regard to labor-management goals and objectives expected to be achieved within a period of five years. A hearing procedure will be followed in which the views of witnesses will be transcribed for the record.

The meeting will be open to the public. Interested persons may file written statements with the Committee, and subject to reasonable Committee procedures may also make oral statements on matters germane to subjects under consideration at the meeting.

Further information regarding this meeting may be obtained from Mr. Dennis R. Minshall, Executive Director, President's Advisory Committee on Mediation and Conciliation, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427, or call (202) 653–5290.

Dated: September 11, 1987.

Kay McMurray,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 87-21457 Filed 9-16-87; 8:45]

BILLING CODE 6372-01-M

FEDERAL RESERVE SYSTEM

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Dublin Bancshares, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless othersise noted, comments regarding each of these applications must be received not later than October 6, 1987.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Arkard Street, Dallas, Texas 75222:

1. *Dublin Bancshares, Inc.*, Dublin, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Dublin, Dublin, Texas.

2. *First Canyon Bancorporation, Inc.*, Canyon, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Canyon Bancshares, Inc., Canyon, Texas, and thereby indirectly acquire The First National Bank in Canyon, Canyon, Texas.

Board of Governors of the Federal Reserve System, September 11, 1987.

James McAfee,

Association Secretary of the Board.

[FR Doc. 87-21401 Filed 9-16-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Marion Bancshares Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserver Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing. Unless otherwise noted, comments regarding each of these applications must be received not later than October 6, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Marion Banchares Incorporated*, Marion, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Marion Bank and Trust Company, Marion, Alabama.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 320 South LaSalle Street, Chicago, Illinois 60690:

1. *Oxford Financial Corporation*, Elmhurst, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Addison State Bank, Addison, Illinois. Comments on this application must be received by September 30, 1987.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Elkcorp, Inc.*, Clyde, Kansas; to become a bank holding company by acquiring 80 percent of the voting shares of The Elk State Bank, Clyde, Kansas.

Board of Governors of the Federal Reserve System, September 11, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-21402 Filed 9-16-87; 8:45]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Nationwide Bankshares, Inc.

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 6, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President)

925 Grand Avenue, Kansas City, Missouri 64198:

1. *NationWide BankShares, Inc.*, West Point, Nebraska; to acquire Charter West Agency, Inc., West Point, Nebraska, and thereby engage in general insurance agency activities in a town with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. This activity will be conducted in the town of West Point, Nebraska, and the immediate vicinity.

Board of Governors of the Federal Reserve System, September 11, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-21403 Filed 9-16-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0269]

Filing of Food Additive Petition; Ciba-Geigy Corp.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 5-[(2,3-dihydro-6-methyl-2-oxo-1*H*-benzimidazol-5-yl)azo]-2,4,6(1*H*, 3*H*, 5*H*)-pyrimidinetrione as a colorant in all polymers.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4016) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of 5-[(2,3-dihydro-6-methyl-2-oxo-1*H*-benzimidazol-5-yl)azo]-2,4,6(1*H*, 3*H*, 5*H*)-pyrimidinetrione as a colorant in all polymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 3, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-21426 Filed 9-16-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86P-0369]

Canned Pacific Salmon Deviating From Identity Standard; Amendment of Temporary Marketing Permit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit, issued to Bumble Bee Seafoods, Inc., to market test canned skinless and boneless chunk salmon is being amended to add another test product manufacturer.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0110.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to Bumble Bee Seafoods, Inc., San Diego, CA 92123, to market test canned skinless and boneless chunk salmon to test consumer acceptance of the new style pack. The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standard of identity for canned Pacific salmon (21 CFR 161.170), which was promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Bumble Bee Seafoods, Inc., was published in the **Federal Register** of September 16, 1986 (51 FR 32844), and amended in the **Federal Register** of May 29, 1987 (52 FR 20147). The expiration date of the permit is December 29, 1987.

In accordance with § 130.17(f) Bumble Bee Seafoods, Inc., has requested that British Columbia Packers, Ltd., 4300 Moncton St., Richmond, British Columbia, Canada be added to the permit as a test product manufacturer. Accordingly, FDA is amending the temporary permit to reflect this change.

Therefore, FDA is amending the permit to add British Columbia Packers, Ltd., Richmond, British Columbia, Canada as a test product manufacturer. All other conditions and terms of this permit remain the same.

Dated: September 8, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-21422 Filed 9-16-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87D-0279]

Revised Forms for Investigational New Drug Applications; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised forms for investigational new drug applications. Two new forms are being made available: (1) A revised investigational new drug application (IND) (Form FDA-1571); and (2) a revised statement of investigator (Form FDA-1572). The revised statement of investigator form replaces previously used forms FDA-1572 and FDA-1573. The forms have been prepared by FDA's Center for Drugs and Biologics.

ADDRESS: Requests for forms may be made in writing to the Forms and Publications Distribution Center (HFA-268), 12100 Parklawn Dr., Rockville, MD 20852. Requests for forms should include the FDA form number, the form title, the quantity required, the name of the firm, and the address to which the shipment is to be sent.

FOR FURTHER INFORMATION CONTACT: Darlene Burgess, Center for Drugs and Biologics (HFN-46), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

SUPPLEMENTARY INFORMATION: The two revised forms are designed to be used with the newly revised investigational new drug regulations (the "IND Rewrite") published in the **Federal Register** of March 19, 1987 (52 FR 8798). These forms have been approved by the Office of Management and Budget (OMB) under The Paperwork Reduction Act of 1980 and assigned OMB control number 0910-0014. Because a limited number of the forms are available, sponsors are requested to limit their requests to 200 copies of each form.

Dated: September 10, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-21423 Filed 9-16-87; 8:45 am]

BILLING CODE 4160-01-M

VOL 52 ISS 180 SE 17 1987 UMI

[Docket No. 87M-0271]

Premarket Approval of Aerosol Services, Inc., Sterile Unpreserved Aerosol Pressurized Spray

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Aersosol Services, Inc., City of Industry, CA, for premarket approval, under the Medical Device Amendments of 1976, of AEROSOL SERVICES, INC., STERILE UNPRESERVED AEROSOL PRESSURIZED SPRAY. After reviewing the recommendaton of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant on July 31, 1987, by letter of the approval of the application.

DATE: Petitions for administrative review by October 19, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On July 6, 1987, Aerosol Services, Inc. (Aerosol), City of Industry, CA 91746, submitted to CDRH an application for premarket approval of AEROSOL SERVICES, INC., STERILE UNPRESERVED AEROSOL PRESSURIZED SPRAY. The device is indicated for use in the rinsing, heat disinfection and storage of soft (hydrophilic) contact lenses. The application includes authorization from Steridyne Laboratories, Inc. (Steridyne), Hollywood, CA, to incorporate the information contained in its approved premarket approval applicaton for the STERIDYNE DYNASPRAY STERILE SALINE SOLUTION (Docket No. 87M-0159), a product that is identical to the Aerosol device.

On February 27, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the Steridyne application. On July 31, 1987 CDRH approved Aerosol's application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of AEROSOL SERVICES, INC., STERILE UNPRESERVED AEROSOL PRESSURIZED SPRAY states that the solution is indicated for use in the rinsing, heat disinfection and storage of soft (Hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CFRH prescribes by letter to the applicant.

Opportunity for Administative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the person who may particiapte in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 19, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 3, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87-21421 Filed 9-16-87; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. October 13, 1987, 8:30 a.m., Auditorium, Lister Hill Center, Bldg. 38A, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contract person. Open public hearing, 8:30 a.m. to 9:30 a.m, unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5:30 p.m.; Joan C. Standaert, Center for Drugs and Biologics (HFN-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730 or 419-259-6211.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of cardiovascular disorders and diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in

writing, on issues pending before the committee should communicate with the committee contract person.

Open committee discussion. The committee will discuss (NDA 18–998) Merck and Co., Vasotech (enalapril) for treatment of congestive heart failure; (NDA 19–558) Merck and Co., Prinivil (lisinopril) for treatment of congestive heart failure; and (NDA 18–343) Squibb and Co., Capoten (captopril) for congestive heart failure.

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. October 22, and 23, 1987, 8:30 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.

Type of meeting and contact person. Open public hearing, October 22, 8:30 a.m. to 9:30 a.m, unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5:00 p.m.; open committee discussion, October 23, 8:30 a.m. to 2:30 p.m.; Isaac F. Roubein, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of pulmonary disease and diseases with allergenic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contract person.

Open committee discussion. On October 22, the committee will discuss the following: (1) Surfactant replacement therapy, (2) effect of theophylline on school performance, (3) rationality of antitussive-expectorant combinations, and (4) adverse rections of beta-agonists. On October 23, the committee will discuss NDA 19–658 (loratidine, Schering-Plough Corp.).

Anti-Infective Drugs Advisory Committee

Date, time, and place. October 26 and 27, 1987, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contract person. Open public hearing, October 26, 8:30 a.m. to 9:30 a.m, unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; October 27, 8:30 a.m. to 12:30 p.m.; Thomas E. Nightingale, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in infectious disease.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss the safety and efficacy of ganciclovir, also as DHPG, and the drug ramantadine.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meeting announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcrips of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: September 9, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–21425 Filed 9–16–87; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BERC–406–CN]

Medicare Program; Payments Under Medicare and Awards Under the Federal Tort Claims Act; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of HCFAR Ruling; Correction.

SUMMARY: In the July 10, 1987 issue of the **Federal Register** (FR Doc. 87–15581), beginning on page 26088, we set forth a

new HCFA Ruling concerning payment under Medicare when there is an award under the Federal Tort Claims Act. This notice corrects the Ruling number and several typographical errors, including a phrase omitted from the holding under the Ruling.

FOR FURTHER INFORMATION CONTACT: Julie Brown, (301) 594–9638.

SUPPLEMENTARY INFORMATION: We are making the following corrections to the July 10, 1987 document:

On page 26088, column 3, paragraph 1, line 14, and on page 26090, column 1, title to the Appendix, "HCFAR 87–5" should be "HCFAR 87–4".

On page 26089, column 1, paragraph 3, line 1: "HCFAR's" should be "HCFA's."

On page 26089, column 2, paragraph 1, line 12 of the quote "or" should be "on"; in lines 29 and 30 of the same quote, "to any right of an individual or any other entity to payment * * *" should be deleted, as it repeats what comes just before it.

On page 26089, column 3, incomplete paragraph at top, line 5: the word "the" should be "that."

On page 26089, column 3, paragraph 1: the word "situation" in line 9 should be "situations", and the word "as" in line 17 should be "a."

On page 26089, column 3, last paragraph, the sentence beginning on line 14 should read as follows: "It is further held that if Medicare has already made a payment for services for which liability exists under the FTCA, Medicare may recover its payments directly from the Federal entity responsible for such payments or from anyone who has been paid by the responsible entity with respect to such services."

On page 26090, column 2, paragraph 2, line 2: the word "third-part" should be "third-party."

On page 26090, column 2, line 3 of the quote: the word "paytment" should be "payment."

(Sections 1862(a)(3) and 1862(b)(1) of the Social Security Act (42 U.S.C. 1395y(a)(3) and 1395y(b)(1)); 42 CFR Parts 401 and 405)

(Catalog of Federal Domestic Assistance Program No. 13773, Medicare—Hospital Insurance Program)

Dated: September 11, 1987.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 87–21458 Filed 9–16–87; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; National Arthritis Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Arthritis Advisory Board on October 19, 1987. The Board will meet from 8:30 a.m. to approximately 3:00 p.m. at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat arthritis. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. John R. Abbott, Executive Secretary, National Arthritis Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–8274, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: September 11, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87–21405 Filed 9–16–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–87–1734]

Submission of Proposed Information Collections to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Proposal: Recertification of Family Income and Composition
Office: Housing
Description of the need for the information and its proposed use: Section 235 of the National Housing Act authorizes lenders to send these forms to homeowners to determine and adjust the amount of subsidy a mortgagor is eligible to receive. The forms are submitted to HUD for statistical analysis of increase and decrease in subsidy and general program information
Form number: HUD–93101, 93101A, and 93101B
Respondents: Individuals or households and businesses or other for-profit
Frequency of response: On occasion, monthly, and annually
Estimated burden hours: 429,924
Status: Reinstatement

Contact: Ann Marie Sudduth, HUD, (202) 755–6672, John Allison, OMB (202) 395–6880
Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Requests for Exceptions to Income Limits for the Section 8 Housing Assistance Program, 24 CFR 813.105 (b) and (c)
Office: Housing
Description of the need for the information and its proposed use: Project owners, Public Housing Authorities and Indian Housing Authorities may submit requests for exceptions in order to admit lower income families who are not very low income to units covered by the income limits in Section 323 of the Omnibus Budget Reconciliation Act of 1981. HUD will authorize exceptions on the basis of these requests
Form number: None
Respondents: State or local governments, non-profit institutions, and businesses or other for-profit
Frequency of response: On occasion
Estimated burden hours: 606
Status: Reinstatement
Contact: Myra E. Newbill, HUD, (202) 755–6887; John Allison, OMB, (202) 395–6880
Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Lease Requirements, 24 CFR 966.4
Office: Public and Indian Housing
Description of the need for the information and its proposed use: Under Section 203(B) of Article II of Part Two of the Annual Contributions Contract, each public housing agency should have a lease agreement with each tenant. This lease should have provisions to carry out statutory requirements such as rent redeterminations and terminations of tenancy. The lease will be reviewed by HUD during the regular occupancy audit
Form number: None
Respondents: Individuals or households
Frequency of response: On occasion
Estimated burden hours: 201,454
Status: Reinstatement
Contact: Edward C. Whipple, HUD, (202) 426–0744; John Allison, OMB, (202) 395–6880
Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Proposal: Contract and Subcontract Activity Reporting
Office: Community Planning and Development
Description of the need for the information and its proposed use: Executive Orders 11625 and 12432 state that this report will be prepared by the grantees for the purpose of providing data on expended dollars and to provide verifiable minority business enterprise (MBE) data. The information will enable HUD to monitor and evaluate MBE activities against the total program activity and the designated MBE goals
Form number: HUD–2516
Respondents: State or local governments
Frequency of response: Semi-annually
Estimated burden hours: 2,800
Status: Reinstatement
Contact: Leroy P. Gonnella, (202) 755–6092; John Allison, OMB, (202 395–6880
Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Urban Development Action Grant Program
Office: Community Planning and Development
Description of the need for the information and its proposed use: The information is used to evaluate applicants' requests for funding under the Urban Development Action Grant Program. Once funding decisions are made, the information serves as the basis for writing a grant agreement between HUD and approved cities and for monitoring progress in completing projects
Form number: SF–424, HUD–3440–3446
Respondents: State or local governments
Frequency of response: On occasion and semi-annually
Estimated burden hours: 71,155
Status: Reinstatement
Contact: Michael J. McMahon, HUD, (202) 755–8227; John Allison, OMB, (202) 395–6880
Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Mortgagee Questionnaire
Office: Housing
Description of the need for the information and its proposed use: The information collected by this form provides an overview of the mortgagee's operations for servicing HUD-insured single family mortgages. HUD uses this information to forecast possible weaknesses in a servicing operation prior to an on-site review of the mortgagee's office procedures
Form number: HUD–9800
Respondents: Businesses or other for-profit
Frequency of response: Biennially
Estimated burden hours: 3,250
Status: Extension
Contact: Leslie Bromer, HUD (202 755–7330; John Allison, OMB (202) 395–6880
Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Transmittal for Payment of One-Time Mortgage Insurance Premiums (OTMIP)
Office: Administration
Description of the need for the information and its proposed use: The form is prepared by HUD-approved mortgagees to provide remitter and mortgage data to HUD with payments of one-time mortgage insurance premiums. The data are used to record the collections, acknowledge receipts, and confirm sufficiency and/or accuracy of the funds and data received
Form number: HUD–27001
Respondents: Businesses or other for-profit
Frequency of response: On occasion
Estimated burden hours: 55,000
Status: Revision
Contact: Robert E. Wiggins, HUD (202 755–8238; John Allison, OMB (202) 395–6880
Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 8, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87–21529 Filed 9–16–87; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[A–850–07–4830–17–2411]

Oil Shale Leasing Prototype Program; Recision of Department Directive

In accordance with 5 U.S.C. 552(a)(1)(E), notice is hereby given that on August 3, 1987, a Department of the Interior directive relating to the prototype oil shale leasing program (Chapter 3, Part 615 of the Manual of the

Department of the Interior) that was published in the **Federal Register** of March 6, 1974 (45 FR 8642), was rescinded by Manual Release Number 2755.

Additional information concerning this action can be obtained from Michael J. Hengel, Bureau of Land Management on (202) 343–6152.

James E. Cason,

Acting Assistant Secretary of the Interior.

September 9, 1987.

[FR Doc. 87–21392 Filed 9–16–87; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Land Management

[WY–040–07–4322–02]

Draft Environmental Impact Statement; Public Hearing and Extension of Comment Period; Teton County; WY

AGENCY: Bureau of Land Management (BLM) and U.S. Forest Service (FS), Interior.

ACTION: Notice of a second Public Hearing and extension of comment period for the Sohare Creek Unit Exploratory Oil Well Draft Environmental Impact Statement (DEIS), Teton County, Wyoming.

SUMMARY: Notice is hereby given that a second public hearing on the Sohare Creek Unit Exploratory Oil Well (DEIS), in Teton County, Wyoming has been scheduled. In addition, the comment period on the DEIS is extended 15 days.

DATES: The second public hearing on the DEIS will be held at 7 p.m. on October 1, 1987. The comment period on the DEIS will end October 27, 1987.

ADDRESSES: The second public hearing will be held at the Hitching Post Inn in Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Questions or comments on the DEIS should be directed to Mr. Alfred Reuter, Project Leader, Bridger-Teton National Forest, P.O. Box 1888, Jackson, Wyoming 83001–1888, (307) 733–4755.

SUPPLEMENTARY INFORMATION: Initial public notice of the availability of the DEIS was published in the **Federal Register**, Vol. 52, No. 155, Wednesday, August 12, 1987 (52 FR 29894). A public hearing was held September 2, 1987, in Jackson, Wyoming. Because of several public requests, the comment period has been extended and the second public hearing scheduled. The BLM and FS intend to make full use of the public review process, so that all pertinent concerns can be taken into account in the preparation of the final EIS.

Donald H. Sweep,

District Manager.

September 10, 1987.

[FR Doc. 87–21470 Filed 9–16–87; 8:45 am]

BILLING CODE 4310–22–M

[ID–020–07–4212–13]

Management Framework Plan; Malad, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Amend the Malad Management Framework Plan to allow the exchange of public and private lands.

SUMMARY: Notice is hereby given in accordance with 43 U.S.C. 1711–1712 and 43 CFR 1610.2 (c) that the Burley District is proposing to amend the Malad Management Framework Plan to allow the exchange of the following described public and private lands:

Offered Lands (Private Land) 360 acres

T. 15S., R. 29E., Boise Meridian,
Section 24: SW¼, W½SE¼, SE¼SE¼;
Section 25: NE¼NE¼, NW¼NW¼.

Selected Lands (Public Land) 360 acres

T. 14S., R. 30E., Boise Meridian,
Section 28: E½, SE¼NW¼.

The general location of the selected land is two miles northeast of the Juniper Exit on I–84. The location of the offered land is four miles southwest of the Juniper Exit on I–84.

A land use plan amendment document and a land report will be prepared for the subject lands. The land report and the amendment will be reviewed by BLM interdisciplinary resource specialists. Public participation will involve the publication of this notice in the Federal Register and local newspapers. The adjoining landowners, grazing permittees, county commissioners, the Burley District Grazing Advisory Board and Advisory Council, and the Idaho Fish and Game Department will be asked for comments. As public controversy is expected to be low for the proposed exchange, no public meetings, hearings, or conferences are planned.

The main issue that is anticipated for the exchange proposal is whether it is in the public interest to exchange 360 acres of public land having potential for dry farming for 360 acres of private land having value for livestock grazing and wildlife habitat.

The existing Malad Management Framework Plan and maps are available for review at the Deep Creek Resource Area Office, 138 South Main Street, Malad, Idaho 83252.

The public may obtain additional information about this exchange proposal by contacting the Bureau of Land Management, ATTN: John R. Christensen, 138 South Main Street, Malad, Idaho 83252, telephone (208) 766–4766.

Dated: September 10, 1987.

W.A. Bright,

Acting District Manager.

[FR Doc. 87–21471 Filed 9–16–87; 8:45 am]

BILLING CODE 4310–GG–M

[NM–060–08–4410–12]

Management Framework Plan; Fort Stanton, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Prepare and amendment to the Fort Stanton Management Framework Plan.

SUMMARY: The U.S. Department of Interior, Bureau of Land Management, Roswell District, New Mexcio, will prepare a Management Framework Plan Amendment (MFPA), Including and Environmental Assessment (EA), to the Fort Stanton Management Framework Plan (MFP). This amendment will cover the recreation program on Fort Stanton and will allow for the development of a recreation sits approximately 40 acres in size. The proposed site will be located adjacent to New Mexico State Highways 214 and 380. When fully developed, this site will provide visitors with the opportunity of picnicking, overnight camping, and hiking along interpretative trails.

Location: The Fort Stanton Reservation covers 24,715 acres of Federal lands which are administered by the Roswell District Office of the Bureau of Land Management. Since 1963, the area has been used by the Agricultural Research Station of New Mexico State University (NMSU) for long-term range and wildlife research. The reservation is located in the foothills between Sierra Blanca and the Capitan Mountains in southern Lincoln County, New Mexico.

Issues: Recreation site development in the Salado Creek Drainage will be the only issue addressed.

Criteria: This amendment will be developed using the criteria set forth in the planning regulations 43 CFR Part 1600.

Public participation: The public, along with potentially affected communities

and governmental agencies will be contacted by letter to solicit comments.

Dates and locations of public meetings: Depending on the degree and nature of interest generated by this notice and the letter sent to the affected public and governmental entities, meetings may be scheduled. The time and location of any scheduled meetings will be announced through the local media, a minimum of 15 calendar days is advance.

For further information contact: Phil Kirk, Area Manager, Roswell Resource Area, P.O. Drawer 1857, Roswell, New Mexico, 88201, (505) 624–1790. Information and documents pertinent to this process will be available for public review weekdays from 7:45 a.m. to 4:30 p.m. at the BLM Office, Federal Building, 5th and Richardson, Roswell, New Mexico, 88201.

Dated: September 10, 1987.

Monte G. Jordan,

Associate State Director.

[FR Doc. 87–21472 Filed 9–16–87; 8:45 am]

BILLING CODE 4310–FB–M

[Ut–080–07–4333–13]

Motor Vehicles; Off-Road Vehicles Designations

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of off-road vehicle designation decisions.

Decision: Notice is hereby given relating to the use of off-road vehicles (ORV) on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and the regulations in 43 CFR Part 8340. The following described lands under administration of the Bureau of Land Management are designated as open, limited, or closed to off-road motorized vehicle use.

The 1,735,419 acres affected by the designations are known as the Diamond Mountain and Book Cliff Resource Areas in the Vernal District. These designations are a result of land use planning recommendations made in district land use plans.

The designations with associated travel restrictions are discussed in a recently completed Environmental Assessment that is available upon request at the Vernal District Office. These designations are published as final today.

Open Designation: Designated areas on public lands where off-road vehicles may be operated, subject to the operating regulations and vehicle standards set forth in 43 CFR Part 8340, subpart 8341 and 8343. All public lands not otherwise identified as limited or closed will be designated as open in the Vernal District.

Limited Designations: Designated areas where the use of off-road vehicles is subject to restrictions deemed appropriate by the authorized officer. The following restrictions apply to public lands in the Vernal District.

1. *Limited to existing roads and trails.* Designated lands in this category prohibits cross-country vehicle travel. All vehicle use is restricted to existing roads and trails. The following public lands in the Vernal District fall in this catagory.

a. *Fantasy Canyon.* This area contains unique erosional figures and has future interpretive potential. The area is very fragile and could be easily damaged by uncontrolled use. This area is described as:

T. 9 S., R. 22 E.,
Portion of Section 12.
Total: 160 acres.

b. *Upper Hill Creek.* These three areas border on the Hill Creek Extension of the Uintah and Ouray Indian Reservation. This area of the reservation has been identified as an important cultural, religious, and wildlife area by the Ute Tribe.

This area is described as:

T. 11 S., R. 19 E., SLBM
Portions of Sections 28, 29, and 33.
T 13 S., R. 20 E., SLBM.
All of Section 17.
Portions of Sections 18, 19, 20, 21, 22, 27, 28, 29, and 34.
T. 14 S., R. 21 E., SLBM.
All of Section 10, 15, and 22.
Portions of Sections 3, 11, 14, 23, 26, 27, 34, and 35.
T. 15 S., R. 21 E., SLBM.
Portions of Sections 6, 7, 18, and 19.
Total: 9,240 Acres.

c. *Threatened Plant Areas.* It is proposed to limit ORV use on two separate areas where the federally listed threatened plant *Sclerocactus Glaucus* grows.

1. *Wrinkles Area.* This area is located on a bench on the north side of Nine Mile Canyon 25 miles south of Myton.

This area is described as: T. 11 S., R. 14 E., SLBM.
Portions of Sections 13, 14, 15, 22, 23, 24, and 25.
T. 11 S., R. 15 E., SLBM.
Portions of Sections 17, 18, 19, 20, 23, 24, 25, 26, 29, and 30.
T. 11 S., R. 16 E., SLBM.
Portions of Sections 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 33, and 34.
T. 11 S., R. 17 E., SLBM.
Portions of Sections 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30.
Total: 11,700 Acres.

2. *Wild Horse Bench.* This area is located next to the Green River in Hill Creek.

This area is described as:

T. 9 S., R. 19 E., SLBM.
Portions of Sections 13, 23, 26, 27, 28, and 33.
T. 10 S., R. 18 E., SLBM.
Portions of Sections 25, 26, and 35.
T. 10 S., R. 19 E., SLBM.
All of Sections 20, 29, and 31.
Portions of Sections 4, 5, 7, 8, 9, 18, 19, and 30.
T. 11 S., R. 18 E., SLBM.
All of Sections 24 and 25.
Portions of Sections 1, 2, 12, 13, 14, 15, 20, 21, 22, 23, 26, and 35.
T. 11 S., R. 19 E., SLBM.
All of Sections 30 and 31.
Portions of Sections 6 and 17.
Total 15,790 Acres.

Closed Designations: Designated areas and trails on public lands where use of off road vehicles is prohibited.

1. *White River Canyon.* This area forms a corridor along the White River between a proposed dam site and the boundary of the Uintah and Ouray Indian Reservation. Each year a greater number of people float this segment of the White River. It is felt that closing the River Corridor to ORV use would help maintain the solitude that is an important part of a float trip down this river.

This area is described as:

T. 9 S., R. 22 E., SLBM.
All of Section 28.
Portions of Sections 26, 27, 34, and 35.
T. 10 S., R. 22 E., SLBM.
Portions of Sections 14 and 23.
T. 10 S., R. 23 E., SLBM.
Portions of Sections 13, 14, 18, 19, 20, 21, 22, 23, 26, 27, and 28.
Total: 5,120 Acres.

2. *Boulevard Ridge Watershed Study.* This area is being studied to determine effects of land treatment on runoff and sediment production. The area would be closed to ORV use.

The area is described as:

T. 13 S., R. 25 E., SLBM.
Portions of Section 17.
Total: 400 Acres.

Book Cliff Natural Area. This area is a mountain browse site that is considered to be in a natural condition. It is important that this area be maintained in a natural condition.

The area is described as:

T. 15 S., R. 25 E., SLBM.
Portions of Sections 17 and 20.
Total: 320 Acres.

These designations become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the authorized officer.

Existing designations limiting ORV use to existing roads and trails in the Pariette Wetlands, Red Creek Watershed, and Green River Corridor in Brown's Park remain in effect as published in the **Federal Register** January 27, 1983.

ADDRESS: For further information and map about these designations, contact the following Bureau of Land Management Office: District Manager, Vernal District Office, 170 South 500 East, Vernal, Utah 84078.

Dated: September 11, 1987.

David E. Little,

Vernal District Manager.

[FR Doc. 87-21517 Filed 9-16-87; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-020-07-4212-13; A-22982]

Realty Action; Exchange of Federal Minerals, Pima County, AZ

SUMMARY: The following described Federal mineral estate may be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 10 S., R. 14 E.,
Section 12, SW¼;
Section 13, NE¼NW¼, E½E½NW¼ NW¼.
T. 10 S., R. 15 E.,
Section 8, lot 3, S½NE¼, NW¼, S½;
Section 17, N½N½.

Comprising 966 acres, more or less.

In exchange for this federal mineral estate, the United States will select an equal number of acres of State-owned minerals located under federal surface.

The purpose of the exchange is to unite State and Federal split estates, thereby eliminating surface management difficulties and providing for the consolidation of surface/mineral ownership.

The purpose of this Notice of Realty Action is two-fold. First, this action will provide a response period of forty-five (45) days during which public comments will be accepted. Secondly, this action, as provided in 43 CFR 2201.1(b), shall segregate the federal minerals, as described in this Notice, to the extent that they will not be subject to appropriation under the mining laws, subject to any prior valid rights. The segregative effect shall terminate either upon publication in the **Federal Register** of a termination of the segregation or two years from the date of this publication, whichever comes first. This action is necessary to avoid the occurrence of nuisance mining claims that could encumber the federal minerals while the preparation of an environmental assessment and mineral report are ongoing.

Upon completion of the environmental assessment, a final Notice of Realty Action will be published. The Notice will provide a final description of the Federal and State minerals to be transferred, including reservations.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, may be obtained from the Area Manager, Phoenix Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: September 9, 1987.

Henri R. Bisson,

District Manager.

[FR Doc. 87-21437 Filed 9-16-87; 8:45 am]

BILLING CODE 4310-32-M

[AZ-040-07-4212-12; A 22435, A 22436]

Realty Action; Exchange of Public Land in Graham, Greenlee, Cochise and Pinal Counties, AZ and Cancellation of Segregation; Amended

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of Public Land in Graham, Greenlee, Cochise and Pinal Counties, AZ, and Cancellation of Segregation; Amended.

SUMMARY: **Federal Register,** Volume 52, No. 137, apearing on pages 27063 through 27065 in the issue of Friday, July 17, 1987, is amended by changing the last paragraph of column 3, page 27064 to read as follows:

This will serve as notice that the segregative effect placed upon the following described public lands in the Notice found at 52 FR 1670, January 15, 1987, will be terminated. The following described lands will be segregated from entry under the mining laws, except the mineral leasing laws under case number A 22436. The segregative effect will terminate upon issuance of patent to the State of Arizona or upon expiration of 90 days from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

Also, the listing of lands which followed should have included the following:

T. 7 S., R. 24 E.,
Sec. 13, SE¼SE¼;
Sec. 14, SW¼NE¼;
Sec. 24, lots 1, 2, 3, NE¼NE¼, S½NE¼, NE¼SW¼, N½SE¼.

The acreage to be segregated totals 15,487.39 acres.

Dated: September 10, 1987.

Ray A. Brady,

District Manager.

[FR Doc. 87-21438 Filed 9-16-87; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-07-4212-12; A 20346-S]

Realty Action; Exchange of Public Lands in Pima and Pinal Counties, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following described public lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 9 S., R. 6 E.,
Sec. 5, lots 1-5, S½
T. 10 S., R. 6 E.,
Sec. 30, lots 1-4, E½, E½W½;
Sec. 31, lots 1, 2, E½, NW¼, NE¼.
T. 11 S., R 6 E.,
Sec. 3, lots 1, 2, S½NE¼, S½;
Sec. 5, lots 1-4, S½N½, S½;
Sec. 6, lots 6, 7, E½SW¼, SE¼;
Sec. 7, NE¼;
Sec. 10 all.
T. 11 S., R. 8 E.,
Sec. 1, lots 1-8;
Sec. 3, lots 1-8.
T. 11 S., R. 9 E.,
Sec. 6, lots 2-5, SE¼SW¼, SW¼SE¼;
Secs. 10 through 26, all,
Sec. 35, 36, unleased portions.
T. 12 S., R. 9 E.,
Sec. 1, lot 4.
T. 14 S., R. 9 E.,
Sec. 33, N½N½, N½S½, SE¼SW¼, SE¼;
Sec. 34, 35, all.
T. 15 S., R. 9 E.,
Sec. 1, lots 1-3, W½NE¼, NW¼, N½SW¼, NW¼SE¼;
Sec. 3, NE¼NE¼, S½;
Sec. 4, S½;
Secs. 9 through 11, all;
Sec. 30, lots 1-4, E½E½W½.
T. 11 S., R. 10 E.,
Sec. 19, lots 1-4, E½, E½W½;
Sec. 20 W½;
Sec. 29, W½;
Sec. 30, lots 1-4, E½, E½W½.
T. 12 S., R. 10 E.,
Sec. 6, lots 1-7, S½NE¼, SE¼NW½, E½SW¼, SE¼;
Sec. 7, lots 1-4, E½, E½W½;
Sec. 18, lots 1-4, E½, E½W½;
Sec. 23, NW¼NW¼/.
T. 13 S., R. 10 E.,
Sec. 6, lot. 4.
T. 14 S., R. 10 E.,
Sec. 31, lots 1-11, NE¼, E½NW¼, NE¼SW¼, N½SE¼;

Sec. 33, lots 1–8, N½, N½S½.
T. 15 S., R 10 E.,
Sec. 3, lots 3, 4, S½NW¼;
Sec. 4, lots 1–4, S½N½;
Sec. 5, lots 1–4, S½N½, N½S½;
Sec. 6, lots 1–5, S½NE¼, SE¼NW¼.
T. 14 S., R. 11 E.,
Sec. 4, SE¼SE¼.

Containing approximately 25,196.12 acres.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1 (b), publication of this Notice will segregate the public lands as described in this Notice, from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: September 11, 1987.

Henri R. Bisson,

District Manager.

[FR Doc. 87–21473 Filed 9–16–87; 8:45 am]

BILLING CODE 4310-32-M

[CA–010–07–4212–13; CA 20645]

Realty Action; Exchange of Public and Private Lands in Placer, Stanislaus, Santa Clara and Tehama Counties, CA

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: The following described public land has been determined to be suitable for disposal by exchange under the authority of section 206 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1716).

Selected Public Land

Mount Diablo Meridian, California, Stanislaus and Santa Clara

T. 6 S., R. 5 E., Stanislaus and Santa Clara Counties
Sec. 7: E½SE¼, lots 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 18
Sec. 9: SW¼NE¼, SE¼NW¼, NE¼SW¼, lots 1, 2, 3, 4, 5, 6, 7, 8 and 9

In addition to the authority cited above, the following described public lands (Inks Creek Ranch inholdings) are being exchanged under the authority of sec. 3 of the Act of October 27, 1986, (Pub. L. 99–542).

Mount Diablo Meridian, California

T. 29 N., R. 2 W., Tehama County,
Sec. 20: N½NW¼, SE¼NE¼, SE¼SW¼, SE¼;
Sec. 30: SE¼NE¼, E½SW¼, SE¼, lots 3 and 4;
Sec. 32: All.

Aggregating 2306.28 acres, more or less.

In exchange for the above parcels, the United States will acquire the following described private land from the Trust for Public Land, 116 New Montgomery Street, San Francisco, California 94105–3607.

Offered Private Land

Mount Diablo Meridian, California

T. 15 N., R. 10 E., Placer County,
Sec. 11: All;
Sec. 15: E½NE¼, N½SE¼, lots 2, 3, 6, 7, 8, 9, 10, 11, 12 and 13;
Secs. 15 and 16: Lot 88 (M.S. 1215).

Aggregating 1127.94 acres, more or less.

The purpose of this exchange is to acquire non-federal lands located within the North Fork of the American River Canyon. Because of its unspoiled nature and the spectacular scenery within the canyon, the river was designated a Wild and Scenic River by Congress in 1978. The acquisition, which includes over a mile of river, will afford added protection for this valuable resource. In contrast, the Federal land to be exchanged has little value to the public; the majority is land-locked and completely inaccessible to the public. The action has been discussed with local officials and is consistent with the Bureau's land use plans and regulations. In view of the above, this exchange is considered to be in the public interest.

The values of the properties to be exchanged (which include both the surface and mineral estates) are approximately equal; full equalization of values will be achieved by payment to the United States by the Trust for Public Land in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

The Federal lands to be transferred will be subject to the following reservations, terms and conditions:

1. A reservation to the United States for a right-of way for ditches and canals constructed under the authority of the Act of August 30, 1890 (43 U.S.C. 954).

2. Subject to an existing electric transmission pipeline right-of way granted by the United States to Pacific Gas and Electric Co., its successors and assigns, by R/W grant S068456 under the authority of the Act of March 4, 1911.

3. Subject to an existing electric transmission line right-of way granted by the United States to Pacific Gas and Electric Co., its successors and assigns, by R/W grant S068100 under the authority of the Act of Feb. 25, 1920.

4. A reservation for a road authority under the authority of the Act of October 21, 1976, to the United States by R/W grant CA 16972. This reservation is appurtenant to nonexclusive road easement RE–RED–278 crossing adjacent private lands.

5. Reserving to the United States, its permittees or licensees the right to enter upon, occupy and use, any part or all of the NW¼ NW¼ of Sec. 20 and the NW¼ NW¼ of Sec. 32, T. 29 N., R. 2 W., MDM, lying within 50 feet of the center line of the transmission line right-of-way of the Pacific Gas and Electric Co., Project No. 1121, for the purposes set forth in and subject to the conditions and limitations of section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 818).

6. A reservation for oil and gas to the United States for the public lands located within T. 29 N., R. 2 W., MDM, Tehama County.

7. Pursuant to authority contained in sec. 4 of Executive Order 11990 of May 24, 1977, of sec. 206 of said Act of October 21, 1976 (FLPMA), of sec. 3 of said Act of October 27, 1986, the patent when issued will be subject to a restriction which constitutes a covenant running with the land for the E½ SE¼ SW¼ SE¼ SE¼, SW¼ SE¼ SE¼ SE¼ of Sec. 32, T. 29 N., R. 2 W., MDM (3.75 acres, more or less), requiring protection and maintenance on a continuing basis of wetland habitat (vernal pool) and the associated plant, *Orcuttia tenuis* (slender orcutt grass). The described wetland area supporting *Orcuttia tenuis*, a State endangered plant species, shall be subject to the conditions of the California Native Plant Protection Act of 1977 (Sec. 1904 of the California Fish and Game Code (CFGC)), the California Endangered Species Act (Sec. 2072.7 of the CFGC), the California Environmental Quality Act (Division 13 of the California Public Resources Code) and to local ordinances pertaining to wetlands.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public lands from settlement, location and entry under the public land laws and the mining laws for a period of two years from the date of first publication.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley, Folsom Resource Area Office, (916) 985–4474, at the address listed below. Also available for

BEST COPY AVAILABLE

review is the environmental assessment/land report.

DATE: For a period of 45 days from the first date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Folsom Resource Area.

ADDRESS: Comments should be sent to the Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630; (916) 985–4474. Any adverse comments will be forwarded to and evaluated by the District Manager, Bakersfield District and/or the District Manager, Ukiah District who may vacate or modify this realty action and issue a final determination. In the absence of any action by District Managers, this realty action will become a final determination of the Department of Interior.

Dated: September 11, 1987.

D.K. Swickard,

Area Manager.

[FR Doc. 87–21474 Filed 9–16–87; 8:45 am]

BILLING CODE 4310–40–M

[NM–030–07–4212–14]

Realty Action; Sale of Public Lands in Socorro County, NM.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described parcels of land have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) (FLPMA) at no less than the appraised fair market value shown. The parcels are isolated, difficult and uneconomical to manage as part of the public lands, and are not suitable for management by another Federal department or agency. The sale is consistent with the Bureau's planning efforts, and the public interest will be served by offering this land for sale.

Sale Method

Parcels 86–1 through 86–9 will be offered for sale using competitive bidding procedures (43 CFR 2711.3–1). On parcels 86–10 and 86–11, the bidding will be modified to allow bids from designated bidders only (43 CFR 2711.3–2). Parcels 86–12 through 86–47 will be offered as direct sales to the current occupants of the lands (43 CFR 2711.3–3).

Parcel No	Serial No.	Legal description NMPM	Acreage	Appraised value	Method of sale
86–1	NM 57056	T. 1 S., R. 1 W.; Sec. 26, Lot 14	0.510	$510	Competitive.
86–2	NM 59333	T. 4 S., R. 1 E.; Sec. 32, Lot 31	1.54	$3,080	Competitive.
86–3	NM 59336	T. 4 S., R. 1 E.; Sec. 32, Lot 37	2.16	$3,240	Competitive.
86–4	NM 59334	T. 4 S., R. 1 E., Sec. 32, Lot 29	10.49	$13,150	Competitive.
86–5	NM 59347	T. 4 S., R. 1 E., Sec. 32, Lot 32	5.70	$8,550	Competitive.
86–6	NM 64763	T. 4 S., R. 1 E.; Sec. 6, Lot 80	1.19	$1,785	Competitive.
86–7	NM 63921	T. 4 S., R. 1 E.; Sec. 6, Lot 63	1.41	$1,410	Competitive.
86–8	NM 63922	T. 4 S., R. 1 E.; Sec. 6, Lot 61	1.37	$1,370	Competitive.
86–9	NM 64758	T. 4 S., R. 1 E.; Sec. 6, Lot 83	7.12	$10,680	Competitive.
86–10	NM 64765	T. 2 S., R. 1 E.; Sec. 31, Lot 7. AKA portion of Tr. 2, MRGCD Map 159	8.81	$4,400	Modified, competitive.
86–11	NM 64789	T. 4 S., R. 1 E.; Sec. 6, Lot 64. AKA portion of old road, MRGCD Map 158	0.23	$2.50	Modified, competitive.
86–12	NM 63910	T. 2 S., R. 1 E.; Sec. 18, portion of Lot 30. AKA portion of public road, MRGCD Map 156.	Approx. 1.25	$2.50/ac	Direct.
86–13	NM 66321	T. 2 S., R. 1 E.; Sec. 30, portion of Lot 24. AKA portion of public road, MRGCD Map 158.	Approx. 1.0	$2.50/ac	Direct.
86–14	NM 64782	T. 2 S., R. 1 E.; Sec. 30, portion of Lot 33. AKA portion of public road, MRGCD Map 158.	Approx. 0.50	$2.50/ac	Direct.
86–15	NM 64768	T. 2 S., R. 1 E.; Sec. 30, portion of Lots 29 and 33. AKA portion of public road, MRGCD Map 158.	Approx. 0.40	$2.50/ac	Direct.
86–16	NM 66320	T. 2 S., R. 1 E., Sec. 30, portion of Lots 24 and 29. AKA portion of public road, MRGCD Map 158.	Approx. 3.5	$2.50/ac	Direct.
86–17	NM 66348	T. 2 S., R. 1 E.; Sec. 30, portion of Lot 33. AKA portion of public road, MRGCD Map 158.	Approx. 0.50	$2.50/ac	Direct.
86–18	NM 64769	T. 2 S., R. 1 E.; Sec. 30, portion of Lot 33. AKA portion of public road, MRGCD Map 158.	Approx. 1.0	$2.50/ac	Direct.
86–19	NM 64754	T. 3 S., R. 1 E.; Sec. 31, portion of Lot 41. AKA MRGCD Project Land, MRGCD Map 166.	Approx. 2.0	$2.50/ac	Direct.
86–20	NM 64753	T. 3 S., R. 1 E.; Sec. 31, Lots 44, 45, and 47 and portion of Lots 41 and 48. AKA portion of Tr. 98, Tr. 15, portions of old road, Luis Lopez Ditch and linear parcel, MRGCD Map 166.	Approx. 17.0	$750/ac	Direct.
86–21	NM 63919	T. 2 S., R. 1 E.; Sec. 30, portion of Lots 33, 34, and 35. AKA N1/2 Tr. 20 and portion of public road, MRGCD Map 158.	Approx. 25.0	$100/ac. to $500/ac	Direct.
86–22	NM 66325	T. 4 S., R. 1 E.; Sec. 5, Lot 38. AKA portion of road, MRGCD Map 167	1.55	$5.00	Direct.
86–23	NM 64784	T. 4 S., R. 1 E.; Sec. 5, Lot 39. AKA portion of Tr. 86, and unlotted portion of San Antonio Riverside Drain and canal and conveyance channel, MRGCD Map 167.	2.68	$7.50	Direct.
86–24	NM 64787	T. 4 S., R. 1 E.; Sec. 8, Lot 62. AKA portion of old road, MRGCD Map 168	0.20	$2.50	Direct.
86–25	NM 66323	T. 4 S., R. 1 E.; Sec. 8, Lot 59. AKA portion of old road, MRGCD Map 168	0.09	$2.50	Direct.
86–26	NM 58343	T. 4 S., R. 1 E.; Sec. 9, Lot 12. AKA Tr. 81, MRGCD Map 168	0.50	$1,000	Direct.
86–27	NM 66344	T. 4 S., R. 1 E.; Sec. 9, Lot 17. AKA portion of Tr. 113, MRGCD Map 168	0.04	$2.50	Direct.
86–28	NM 64788	T. 4 S., R. 1 E.; Sec. 8, Lot 63. AKA portion of old road, MRGCD Map 168	0.10	$2.50	Direct.
86–29	NM 66322	T. 4 S., R. 1 E.; Sec. 8, Lot 61. AKA portion of road, MRGCD Map 168	0.36	$2.50	Direct.
86–30	NM 64760	T. 4 S., R. 1 E.; Sec. 6, Lot 55	0.02	$2.50	Direct.
86–31	NM 63905	T. 4 S., R. 1 E.; Sec. 6, Lots 58, 60, and 71	1.41	$5.00	Direct.
86–32	NM 63917	T. 4 S., R. 1 E., Sec. 6, Lots 25, 47, and 57	0.82	$2.50	Direct.
86–33	NM 64756	T. 4 S., R. 1 E., Sec. 6, Lot 78	0.95	$2.50	Direct.
86–34	NM 64752	T. 4 S., R. 1 E., Sec. 6, Lot 66	3.05	$10.00	Direct.
86–35	NM 64755	T. 4 S., R. 1 E.; Sec. 6, Lot 77	0.07	$2.50	Direct.
86–36	NM 63924	T. 4 S., R. 1 E., Sec. 6, Lots 31 and 46; Sec. 7, Lot 22	17.58	$43.95	Direct.
86–37	NM 64762	T. 4 S., R. 1 E., Sec. 6, Lots 82 and 86	0.59	$2.50	Direct.
86–38	NM 63904	T. 4 S., R. 1 E., Sec. 6, Lots 73, 75, and 76	Approx. 2.0	$2.50/ac	Direct.
86–39	NM 63918	T. 4 S., R. 1 E., Sec. 6, Lots 26 and 86	0.16	$2.50	Direct.
86–40	NM 63916	T. 4 S., R. 1 E., Sec. 6, Lot 49	Approx. 0.25	$2.50/ac	Direct.
86–41	NM 63903	T. 4 S., R. 1 E., Sec. 6, Lots 56 and 84	0.83	$2.50	Direct.
86–42	NM 63914	T. 4 S., R. 1 E.; Sec. 6, Lots 54, 62, and 72	1.83	$5.00	Direct.
86–43	NM 64757	T. 4 S., R. 1 E., Sec. 6, Lot 67	0.10	$2.50	Direct.
86–44	NM 64761	T. 4 S., R. 1 E., Sec. 6, Lot 79	0.19	$2.50	Direct.
86–45	NM 64759	T. 4 S., R. 1 E.; Sec. 6, Lot 85	0.03	$2.50	Direct.
86–46	NM 66330	T. 2 S., R. 1 E.; Sec. 31, portion of Lot 9. AKA portion of Trs. 7A and 7B, MRGCD Map 159.	Approx. 2.0	$3,000/ac	Direct.

Parcel No.	Serial No.	Legal description NMPM	Acreage	Appraised value	Method of sale
86–47	NM 63915	T. 4 S., R. 1 E.; Sec. 6, Lot 48	Approx. 0.25	$2.50/ac	Direct.

Sales Procedures

All bidders must be 18 years of age or over and U.S. Citizens, and corporations be subject to the laws of any state or of the United States. Bids must be made by the principal or his duly qualified agent.

Sealed bids for parcels 86–1 through 86–11 will be considered only if received in the Socorro Resource Area Office, 198 Neel Avenue, Socorro, New Mexico 87801, before 10:00 a.m., on November 30, 1987, the date of the opening. Bids of less than fair market value will be rejected as required by FLPMA.

Each sealed bid must be accompanied by postal money order, bank draft or cashier's check made payable to the Bureau of Land Management, for not less than 10 percent or more than 30 percent of the amount of the bid. The sealed bid envelope must be marked in the lower left-hand corner as follows:

"Public Sale Bid Parcel ———,
Serial No. ————,
Sale Held ———, 1987.
(date)

The highest qualifying bid for each parcel will establish the sale price for that parcel. If two or more envelopes are received containing valid bids of the same amount for the same parcel, the determination of which is to be considered the highest designated bid will be by supplemental biddings. In such a case, the high bidders will be allowed to submit oral or sealed bids as designated by the Authorized Officer.

The successful bidder will be required to pay the remainder of the sale price prior to expiration of 180 days from the date of the sale. Failure to submit the full sale price within the above specified time limit will result in cancellation of the sale of the specific parcel and the deposit will be forfeited and disposed of as other receipts of sale.

All bids will be either returned, accepted, or rejected within 30 days of the sale date. Parcels not sold on the day of the sale will be offered for sale every first Tuesday of each month, same time and place, on a competitive sealed bid basis until sold, or until May 30, 1988, at close of business.

Parcels 86–10 and 86–11 will be offered as modified competitive sales to the designated bidders who are the known accessible landowners. Only bids from the following designated bidders will be accepted on parcel 86–10:

1. J. M. Ortega, Box 342, Socorro, New Mexico 87801
2. Rudy Olguin, Rt. 1, Box 303, Stanfield, Arizona 85272
3. Pedro Pino, Box 735, Socorro, New Mexico 87801
4. New Mexico Department of Game and Fish, State Capitol, Santa Fe, New Mexico 87503

Only bids from the following designated bidders will be accepted for parcel No. 11:

1. Ambrocio Armijo, Box 1878, Socorro, New Mexico 87801
2. Estate of Dulcinea G. Lopez, whose last known address was 107 Neel, Socorro, New Mexico 87801
3. Ludvig Nielson, P. O. Box 2461, Las Cruces, New Mexico 88004
4. Ralph and Sophie Pina, 3581 Mocassin Avenue, San Diego, California 92117
5. Estate of Jose Saavedra, whose last known address was c/o Onesimo Saavedra, Socorro, NM 87801

Parcel 86–12

County of Socorro, Box I, Socorro, New Mexico 87801

Parcel 86–13

Albert Zimmerly, Box 1484, Socorro, New Mexico 87801

Parcel 86–14

Joe C. Olguin Box 1601, Socorro, New Mexico 87801

Parcel 86–15

Lawrence Jaksha, P. O. Box 922, Socorro, New Mexico 87801

Parcel 86–16

William M. Emillio, P. O. Box 5, Socorro, New Mexico 87801

Parcel 86–17

Juan Maria Pino, et al, c/o Pete Pino, Box 735, Socorro, New Mexico 87801

Parcel 86–18

Robert V. Sanchez, 212 Mt. Carmel, Socorro, New Mexico 87801

Parcel 86–19

Middle River Grande Conservancy District (MRGCD), P.O. Box 581, Albuquerque, New Mexico 87103

Parcel 86–20

Paul Marshall, P.O. Drawer CC, Socorro, New Mexico 87801

Parcel 86–21

Karen A. Abraham, Larry P. Abraham, and Sandra K. Dhier; 8513 Chambers Place, N.E., Albuquerque, New Mexico 87109

Parcel 86–22

Felix Lopez, Rt. 2, Box 138, Socorro, New Mexico 87801

Parcel 86–23

MRGCD, Box 581, Albuquerque, New Mexico 87103

Parcel 86–24

Emmet Brieger, Bonito Route, Nogal, New Mexico 88341

Parcel 86–25

Orlando Armijo, Route 2, Box 706E, Alamogordo, New Mexico 88310

Parcel 86–26

Ludvig D. and Elicia E. Nielson, P.O. Box 2461, Las Cruces, New Mexico 88003

Parcel 86–27

Ambrocio Armijo, Box 1878, Socorro, New Mexico 87801

Parcel 86–28

Ralph G. and Sophie Pina, 3581 Mocassin Avenue, San Diego, California 92117

Parcel 86–29

County of Socorro, Box I, Socorro, New Mexico 87801

Parcel 86–30

MRGCD, Box 581, Albuquerque, New Mexico 87103

Parcel 86–31

Ernest Zamora, Route 2, Box 82, Socorro, New Mexico 87801

Parcel 86–32

Paul Marshall, P.O. Box CC, Socorro, New Mexixo 87801

Parcel 86–33

John Gerbracht, 855 Ft. Sheldon Road, Las Cruces, New Mexico 88001

Parcel 86–34

State of New Mexico Highway Department, Box 1149, Santa Fe, New Mexico 87501

Parcel 86–35

Pete Saavedra, Lost Canyon, Elephant Butte, New Mexico

Parcel 86–36

AT&SF Railway, 900 Polk Street, Amarillo, Texas 71971

Parcel 86–37

Charles Headen and Herbert Cushing, Box 858, Socorro, New Mexico 87801

Parcel 86–38

Amado Gallegos, Box 104, San Antonio, New Mexico 87832

Parcel 86–39

David Gonazalez, Route 2, Box 129, Socorro, New Mexico 87801

Parcel 86–40

Candido Miranda, 814 Padilla Place, Socorro, New Mexico 87801

Parcel 86–41

Billy Bachman, Box 1551, Socorro, New Mexico 87801

Parcel 86–42

County of Socorro, Box I, Socorro, New Mexico 87801

Parcel 86–43

Jimmy Zamora, Star Route, Box 82, Socorro, New Mexico 87801

Parcel 86–44

Fred DuBois, Star Route 2, Box 153, Socorro, New Mexico 87801

Parcel 86–45

Alex P. Lopez, 208 Highway 60, Socorro, New Mexico 87801

Parcel 86–46

Cornelio, Nattie, Tomas, and Frances Gonzales, P.O. Box 654, Socorro, New Mexico 87801

Parcel 86–47

Henry Padilla, 802 Padilla Place, Socorro, New Mexico 87801

Terms and Conditions

Terms and conditions applicable to the sale are:

1. The patents, when and if issued, will contain a reservation to the United States for ditches and canals.

2. All minerals will be reserved to the United States together with the right to prospect for, mine, and remove the minerals.

3. All patents will be issued subject to valid existing rights.

4. Parcels 1 and 6, 10–25, 27–28, 30–32, 36–42 and 46–47 lie within a floodplain, and the patents will contain land use restrictions as required by Executive Order 11988.

5. On parcels 10, 19, 20, 21, and 27, the patents will contain wetland restrictions.

6. On parcels 6–9, 34, 36, 38, and 41–43, the patents will be issued subject to right-of-way NM 66329 for a Socorro Electric Cooperative power line.

7. On parcels 6, 9, 33, 38, 43, and 44, the patents will be issued subject to right-of-way NM 09223 to the New Mexico State Highway Department.

8. On parcels 10, 20, and 21, the patent will contain a reservation to the U.S. Government for Bureau of Reclamation's (BOR's) Escondida Drain.

9. On parcels 6, 9, 31, 32, 40, and 47, the patent will be issued subject to an existing access road.

10. Parcels 2–5 are encumberd by the Socorro Electric Cooperative's power lines.

11. On parcel 2, the patent will be issued subject to right-of-way NM 20855 for water facilities.

DATES: Interested parties may submit comments regarding the proposed action to the Socorro Resource Area Manager on or before November 2, 1987.

ADDRESSES: Comments should be sent to Bureau of Land Management, Socorro Resource Area, 198 Neel Avenue NW., Socorro, NM 87801.

FOR FURTHER INFORMATION CONTACT: Jon Hertz, Chella Herrera, or Lois Bell at (505) 835–0412.

SUPPLEMENTARY INFORMATION: Additional information concerning the land, terms and conditions of sale, and bidding instruction may be obtained from the Socorro Resource Area Office at the above address.

Comments must reference specific parcel numbers. Adverse comments received on specific parcels will not affect the sale of any other parcel. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Upon publication in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The BLM may accept or reject any or all offers, or withdraw any land or interest in land for sale, if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with FLPMA or another applicable law.

Robert R. Calkins,

Acting District Manager.

[FR Doc. 87–21475 Filed 9–16–87; 8:45 am]

BILLING CODE 4310–FB–M

[WY-060-07-4212-14-W-88722]

Postponement of Realty Action for Public Lands in Goshen County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Postponement of sale data for realty action in Goshen County, Wyoming.

SUMMARY: The sale date of September 23, 1987 for a realty action (a modified competitive sale) for land parcel W–88722, T. 23 N., R. 62 W., Section 29, W½SW¼, Sectioin 32, NW¼, Sixth Principal Meridian, published in the **Federal Register** on Thursday July 30, 1987 (52 *FR* 28488–28489) is hereby postponed until further notice, pending further analysis.

Any sale bids will be returned immediately to the party of issuance.

When further analysis is completed, a decision will be made as to whether to reoffer the parcel for sale. If the parcel should be made available for sale, the sale date will be rescheduled and all affected parties contacted.

SUPPLEMENTARY INFORMATION: For any further information, contact the Platte River Resource Area Office, P.O. Box 2420, 815 Connie, Mills, WY 82644. phone (307) 261–5008.

Dated: September 10, 1987.

Donald D. Whyde,

Acting District Manager.

[FR Doc. 87–21518 Filed 9–16–87; 8:45 am]

BILLING CODE 4310–22–M

[CA–940–07–4520–12; Group 960]

Plat of Survey; California

September 9, 1987.

1. This plat of the following described land will be immediately placed in the open files in the California State Office, Sacramento, California, and will be available to the public as a matter of information. Copies of this plat and related field notes may be furnished to the public upon payment of the appropriate fee. Public notice, as provided in 43 CFR 1813.1–2 (BLM Manual, section 2097—Opening Orders) is required. The date selected for the filing shall be at least 45 days after the date the **Federal Register** Notice is signed:

Mount Diablo Meridian, Tulare County

T. 17 S., R. 29 E.

2. This plat (two sheets) representing the dependent resurvey of a portion of the subdivisional lines, the survey of the

subdivision of Section 9, and the survey of Lots 1, 2, 3, 4, 5, and 6 in Section 9, Township 17 South, Range 29 East, Mount Diablo Meridian, California, under Group No. 960, California, was accepted August 14, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau.

5. All inquiries relating to the land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87-21439 Filed 9-16-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4520-12; C-9-87]

Filing of Plat of Survey; California

September 9, 1987.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Plumas County

T. 26 N., R. 9 E.

2. This supplemental plat of the N ½ of Section 16, Township 26 North, Range 9 East, Mount Diablo Meridian, California, was accepted September 1, 1987.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Plumas National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87-21440 Filed 9-16-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4520-12; C-2-87]

Filing of Plat of Survey; California

September 9, 1987.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Shasta County

T. 38 N., R. 4 W.

2. This supplemental plat of Section 22, Township 38 North, Range 4 West, Mount Diablo Meridian, California, was accepted July 28, 1987.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Shasta National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief Public Information Section.

[FR Doc. 87-21441 Filed 9-16-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4520-12; C-7-87]

Filing of Plat of Survey; California

September 9, 1987.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Shasta County

T. 37 N., R. 5 W.

2. This supplemental plat of Section 2, Township 37 North, Range 5 West, Mount Diablo Meridian, California, was accepted August 7, 1987.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Shasta-Trinity National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87-21442 Filed 9-16-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4520-12; C-5-87]

Filing of Plat of Survey; California

September 9, 1987.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Plumas County

T. 26 N., R. 9 E.

2. This supplemental plat of the S½ Section 9, Township 26 North, Range 9 East, Mount Diablo Meridian, California, was accepted August 7, 1987.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Plumas National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87-21443 Filed 9-16-87; 8:45 am]

BILLING CODE 4310-40-M

[ID-010-07-4322-02-ADBD]

Boise District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Boise District Office.

ACTION: Notice of meeting.

SUMMARY: The Boise BLM District will conduct a meeting of the District Grazing Advisory Board on October 14 and 15, 1987. The meeting agenda for October 14 will include a summary of proposed Fiscal Year 1988 range improvement projects, a summary of Fiscal Year 1987 range improvement accomplishments, a review of riparian management projects, and a discussion of the planned greenstripping program. A tour of range improvement projects will be conducted October 15.

DATES: Wednesday, October 14 and Thursday, October 15, 1987.

ADDRESS: Boise District, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Public Affairs Specialist, Boise BLM District, (208) 334–9661.

J. David Brunner,

District Manager.

September 9, 1987.

[FR Doc. 87–21516 Filed 9–16–87; 8:45 am]

BILLING CODE 4310–GG–M

[MT–921–07–4121–10]

Public Meeting Announcement and Request for Public Comments on Long-Range Market Analysis; Fort Union Regional Coal Team Activities

ACTION: Notice of public meeting.

SUMMARY: The Fort Union Regional Coal Team (RCT) requests public comments on a Fort Union regional long-range market analysis by October 19, 1987. The RCT will review the long-range analysis and public comments during a public meeting on November 5, 1987. The primary purpose of this RCT meeting will be to assess the need to resume federal coal leasing in the Fort Union Coal Region. The full agenda for the RCT meeting is listed below.

DATE: The RCT will meet at 8:30 a.m. on November 5, 1987. Long-range market analysis comments must be submitted by October 19, 1987, in order to assure full consideration.

ADDRESS: The RCT meeting will be held in the Sky Top Room, on the 24th floor of the Billings Sheraton Hotel located at 27 North 27th Street, Billings, Montana 59101. The telephone number there is Area Code 406, 252–7400. Comments regarding the Fort Union long-range market analysis should be sent to Bill Frey, Bureau of Land Management, P.O. Box 36800, Billings, MT 59107.

FOR FURTHER INFORMATION CONTACT: Bill Frey, Telephone (406) 657–6841 or FTS 585–6841.

SUPPLEMENTARY INFORMATION: Copies of the Fort Union regional long-range market analysis may be obtained from Bill Frey at the above specified address or telephone numbers. Public comments received by October 19, 1987, will be reviewed by the RCT during the meeting on November 5, 1987. The market analysis and public comments will be major factors used by the RCT in recommending whether or not to resume coal leasing activity planning.

Public input opportunities will be provided on all agenda items. The agenda for this meeting is as follows:

I. Introduction
II. Approval of Minutes of Last RCT Meeting
III. Regional Activity Status
  A. Production
  B. PRLAs
  C. Exchange
  D. Emergency Leasing
  E. Planning (North Dakota Resource Management Plan)
IV. Long-Range Market Analysis
  A. Summarize Document
  B. Review Comments
V. RCT Activity Planning Recommendations
  A. Resumption or Deferral of Activity Planning
  B. Select RCT Operating Mode
VI. Data Adequacy Standards

Marvin LeNoue,

Acting State Director.

[FR Doc. 87–21435 Filed 9–16–87; 8:45 am]

BILLING CODE 4310–DN–M

[CO–030–4410–08–1784]

Montrose District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR Subpart 1784, that a meeting of the Montrose District Advisory Council will be held October 29, 1987 in Montrose, Colorado.

DATES: Requests to present oral comments must be received by October 26, 1987. The meeting is scheduled October 29, 1987.

ADDRESS: Submit requests to comment or requests for further information to: District Manager, Bureau of Land Management, Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401.

SUPPLEMENTARY INFORMATION: The meeting will convene at 9:30 a.m. in the Montrose District conference room. The meeting is open to the public; anyone wishing to make an oral statement must notify the District Manager by October 26, 1987.

The agenda will include:

1. Election of officers.

2. Discussion of District Manager's priorities.

3. Update on Resource Area programs and issues.

4. Discussion of the Gunnison Gorge Recreation Area Management Plan amendment.

5. Discussion of the Draft Uncompahgre Basin Resource Management Plan.

Dated: September 9, 1987.

Ken Herman,

Acting District Manager.

[FR Doc. 87–21436 Filed 9–16–87; 8:45 am]

BILLING CODE 4310–JB–M

Bureau of Reclamation

Draft Environmental Impact Statement; Change of Water Use in Willard Reservoir, Weber Basin Project, Utah

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Department of the Interior has prepared a Draft Environmental Impact Statement (DES) on the change of water use in the Willard (A. V. Watkins) Reservoir, a feature of the Weber Basin Project, Utah.

Public hearings will be held in the project area. Oral statements at the hearings will be limited to 10 minutes each. Speakers will be scheduled according to their time preference, if any, as requested by letter or telephone. Requests for scheduled presentations will be accepted until 4 p.m. on October 19, 1987. Written comments should be submitted to the Regional Director's office address, Attention: UC–400, in Salt Lake City, Utah, by November 10, 1987. Written comments received by this date will be printed in full in the final environmental statement.

DATES:

Weber County Health Department Auditorium, 2570 Grant Avenue, Ogden, Utah—October 20, 1987

City County Building, City Council Chamber, 325 South State Street, Suite 3, Salt Lake City, Utah—October 21, 1987

ADDRESSES: Copies of the DES can be obtained by contacting one of the following offices:

1. Director, Office of Environmental Affairs, Room 7425, Bureau of Reclamation Washington, DC 20240, telephone (202) 343–4991.

2. Regional Director, Bureau of Reclamation, P.O. Box 11568, Salt Lake City, Utah 84147, telephone (801) 524–5580.

3. Utah Projects Office, Bureau of Reclamation, P.O. Box 1338, Provo, Utah 84603, telephone (801) 379–1000.

FOR FURTHER INFORMATION CONTACT: Anyone interested in presenting statements at the hearings should

contact Kate O'Hare, Bureau of Reclamation, Utah Projects Office, P.O. Box 1338, Provo, Utah 84601, or telephone (801) 379–1000.

SUPPLEMENTARY INFORMATION: The DES describes environmental impacts of five alternatives for using 33,000 acre-feet of currently unsold water in Willard Reservoir. The 215,000 acre-foot capacity reservoir was originally intended to provide irrigation service to agricultural lands along an area on the eastern shore of the Great Salt Lake. However, since the reservoir completion 23 years ago, the demand for irrigation water did not develop as anticipated, leaving about 33,000 acre-feet of available water unsold. This, in combination with a series of unusually wet years, contributed to an unplanned stable water surface which could sustain a reservoir fishery and encourage a much higher amount of recreation use than expected. The administering agency, the Weber Basin Water Conservancy District, has proposed selling the water for municipal and industrial (M&I) use. The State Division of Wildlife Resources, Division of Parks and Recreation, and the U.S. Fish and Wildlife Service recognize that they made no early recommendations for fish and recreation use of the reservoir. However, developments now indicate a strong demand for such use, and these agencies now recommend that consideration be given to holding the water in the reservoir for fish and recreation purposes.

Five alternatives are being evaluated in the NEPA document. The first alternative would have the project proceed as originally designed and authorized. The 33,000 acre-feet of water would remain available for irrigation use. This plan constitutes the "No Federal Action" alternative required by NEPA.

The second alternative would limit project water sales to the present level. The 33,000 acre-feet of unsold water would have to be purchased by a public entity which would facilitate holding the water in the reservoir for fish, wildlife, and recreation purposes. Because of the large amounts of precipitation and high streamflow that have occurred in recent years, some of the water sold has not been used. This has resulted in a fairly stable water level in the reservoir. Under average or dry conditions, all of the sold water would be used and cause the reservoir to drop. The impact of using all sold water with the 33,000 acre-feet held for fish and recreation is described in the document.

The third alternative is proposed by the Weber Basin Water Conservancy District. The 33,000 acre-feet of unsold irrigation water would be converted and sold for M&I purposes.

The fourth alternative would limit the sale of water to the present level and in addition, provide recommended seasonal water elevations for fisheries and recreation. A public entity would have to not only purchase the 33,000 acre-feet of unsold water, but would also have to acquire some water already sold to irrigators in order to hold reservoir levels to those necessary for fish and recreation.

The fifth alternative is a combination of the third and fourth alternatives. The 33,000 acre-feet of unsold irrigation water would be converted for M&I use and also provide the seasonal water elevations recommended for fisheries and recreation. This alternative would also require the buy back of some additional water already sold.

Dated: September 14, 1987.

J. Austin Burke,

Acting Commissioner.

[FR Doc. 87–21557 Filed 9–16–87; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Draft Policy for Cabin Management on National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service *draft* policy concerning cabin management on national wildlife refuges in Alaska is now available for review. Comments and suggestions are solicited.

DATES: Comments must be received on or before November 16, 1987, to be considered in the development of the final policy.

ADDRESS: Comments should be directed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503–6199, Attention: Bill Kauer.

FOR FURTHER INFORMATION CONTACT: Bill Knauer at the above address or telephone (907) 786–3399.

SUPPLEMENTARY INFORMATION: The original cabin policy for the Fish and Wildlife Service was developed in 1981 and revised in 1984 and was used as the basis for regulations printed in the Code of Federal Regulations Title 50. We believe revisions are needed in the existing cabin policy and regulations in order to:

(1) Clarify some of the language in the original policy and correct some of the interpretation;

(2) Develop a more complete set of regulations that accurately reflect the intentions of the Alaska National Interest Lands Conservation Act;

(3) Resolve some of the problems refuge managers have had in implementing the policy;

(4) Resolve some of the concerns expressed by the public users; and

The intent of this draft policy is to allow for the continued customary and traditional uses of existing cabins (constructed prior to December 2, 1980), provided that the uses are consistent with existing laws and regulations and compatible with the purposes for which the refuge was established. In addition, the intent of the draft policy is to limit new cabins to those essential for the continuation of an ongoing activity or use allowed within a refuge.

Copies of the draft policy are available from any national wildlife refuge in Alaska, from the Regional Office (address above) or by calling Ms Gina Mullen in the Alaska Regional Office at (907) 786–3390.

Once the policy is finalized we will develop draft regulations for the public's consideration and subsequent incorporation into the Code of Federal Regulations.

Dated: September 4, 1987.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 87–21493 Filed 9–16–87; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Development Operations Coordination Document; Brooklyn Union Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Brooklyn Union Exploration Company, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2598, Block 252, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provided for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freshwater City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 9, 1987.

ADDRESS: A copy of the subject DOCD is availale for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 10, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–21444 Filed 9–16–87; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–291; Sub-No. 1X]

Andalusia & Conecuh Railroad Company; Abandonment Between Andalusia and Gantt, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts the Andalusia and Conecuh Railroad Company from the requirements of 49 U.S.C. 10903, *et seq.*, for the abandonment of its entire 8-mile line between milepost S–429 plus 700 feet at Andalusia, and milepost S–421 minus 1784.2 feet at Gantt, AL, subject to a condition that, while operations over a 2-mile segment at Andalusia may be discontinued, abandonment of that segment may not be effected until the Alabama and Florida Railroad Company, which has trackage rights over that segment, obtains authority or an exemption to discontinue the trackage rights.

DATES: This exemption will be effective on October 17, 1987. Petitions for stay must be filed by September 28, 1987, and petitions to reopen must be filed by October 7, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–291 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Deborah A. Phillips, Esq., Suite 800, 1350 New York Ave. NW., Washington, DC 20005–4797

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7246. (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission, Washington, DC 20423, or call (202) 289–4357 (assistance for the hearing impaired is available through TDD services (202) 275–1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: August 28, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87–21578 Filed 9–16–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Pollution Control; Logdging of a Stipulation of Dismissal; Hawthorne, Inc.

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on *September 9, 1987* a proposed Consent Decree in *United States* v. *Hawthorne, Inc.*, Civil Action No. 86–0265, was lodged with the United States District Court for the Eastern District of Pennsylvania.

The Complaint filed by the United States alleged that the defendants had violated the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos, 40 CFR Part 61, and the Clean Air Act, 42 U.S.C. 7401, and requested permanent injunctive relief and imposition of civil penalties. The proposed Consent Decree requires the defendant to comply with all notification provisions of the Asbestos NESHAP and to pay a total civil penalty of $57,500. The defendant will notify EPA of all future demolition activity involving asbestos by the company. In addition, Hawthorne shall develop as Asbestos Control Program (ACP) to detail procedures for complying with the Asbestos NESHAP and Consent Decree requirements.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Robert Hawthorne, Inc.*, DOJ # Ref. 90–5–2–1–872. The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Pennsylvania, 601 Market Street, Philadelphia, Pennsylvania 19107. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–21445 Filed 9–16–87; 8:45 am]

BILLING CODE 4410–01–M

Pollution Control; Lodging of Consent Decree; Heitland, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 11, 1987, a proposed consent decree in *United States* v. *Heitland, et al.*, Civil Action No. C86–3041 (N.D. Iowa) was lodged with the United States District Court, Northern District of Iowa, Central Division. The complaint filed by the United States alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos by defendants. The complaint sought injunctive relief to require the defendants to comply with the Clean Air Act and the NESHAP for asbestos and civil penalties for past violations.

The consent decree provides for the payment of $10 thousand ($10,000) in

civil penalties and enjoins the defendants from any future actions in violation of the asbestos NESHAP.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *George Heitland, et al.*, Department of Justice reference 90–5–2–1–938.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of Iowa Cedar Rapids, Iowa 52407 and at the Region VII office of the United States Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1535, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. When requesting a copy, please refer to *United States* v. *George Heitland et al.*, Department of Justice Reference 90–5–2–1–755.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–21446 Filed 9–16–87; 8:45 am]

BILLING CODE 4410–01–M

Pollution Control; Lodging of Consent Decree; Valmac Industries, Inc.

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on August 31, 1987 a proposed consent decree in *United States* v. *Valmac Industries, Inc.*, Civil Action No. 86–2005 was lodged with the United States District Court for the Western District of Arkansas. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 301 of the Clean Water Act, 33 U.S.C. 1311 at Valmac Industries, Inc.'s facility in Bloomer, Sebastian County, Arkansas. The complaint alleged that Valmac discharged pollutants into navigable waters in violation of the limitations in the National Pollutant Discharge Elimination System ("NPDES") permit for the Bloomer facility. The complaint sought injunctive relief to require Valmac Industries to comply with its NPDES permit and civil penalties for past violations. The consent decree requires Valmac to pay a civil penalty of $85,000 in settlement of the government's civil penalty claims.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Valmac Industries, Inc.*, D.J. Ref. 90–5–1–1–2551.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Arkansas, United States Post Office and Courthouse Building, 6th and Rogers, Fort Smith, Arkansas 72901 and at the Region VI office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–21447 Filed 9–16–87; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87–74]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Informal Executive Subcommittee.

Date and Time: October 5, 1987, 12:30 p.m. to 5:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 7002, Federal Building 6, 400 Maryland Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code F, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–8335).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council Informal Executive Subcommittee was established under the NASA Advisory Council to assist the Chair in planning the activities, establishing meeting agendas, and otherwise guiding the activities of the Council. The subcommittee is chaired by Mr. Daniel J. Fink, and includes eight other members, seven of whom chair standing committees of the Council.

The meeting will be closed to the public. The sole agenda item will be planning for the coming year of the activities of the Council, the committees, and their task forces, with emphasis throughout on prospective future membership of each of these groups and their interactions with NASA and outside parties. Throughout the sessions, the qualifications of these individuals will be candidly discussed and appraised with respect to the tasks to be accomplished. Because the meeting will be concerned throughout with matters listed in 5 U.S.C. 552(c)(6), it has been determined that this meeting should be closed to the public.

Type of meeting: Closed.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 11, 1987.

[FR Doc. 87–21542 Filed 9–16–87; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Chemistry; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Chemistry.

Date and Time: October 8–9, 1987; 9:00 AM to 5:00 PM each day.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Kenneth G. Hancock, Acting Director, Division of Chemistry, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7947.

Summary Minutes: May be obtained from Dr. Kenneth G. Hancock.

Purpose of Committee: To provide advice and recommendations concerning NSF support for research in chemistry.

Agenda: Open-Discussion of the current status and future plans of the Chemistry Division's activities.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-21507 Filed 9-16-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ecology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecology.

Date and Time: October 8 and 9, 1987—8:30 a.m. to 5:00 p.m. each day.

Place: Room 643, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Patrick J. Webber, Program Director, Ecology, (202) 357-9734, Room 215, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c). Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-21508 Filed 9-16-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ecosystem Studies; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecosystem Studies.

Date and Time: October 8 and 9, 1987—8:30 a.m. to 5:00 p.m. each day.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Jerry M. Melillo, Program Director, Ecosystem Studies, (202) 357-9596, Room 215, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in ecosystem studies.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-21509 Filed 9-16-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Population Biology and Physiological Ecology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Population Biology and Physiological Ecology.

Date and Time: October 8 and 9, 1987—8:30 a.m. to 5:00 p.m.

Place: Room 1242, National Science foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: closed.

Contact Person: Dr. Martyn M. Caldwell, Program Director, Population Biology and Physiological Ecology, (202) 357-9728, Room 215, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in population biology and physiological ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-21510 Filed 9-16-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Regulatory Biology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Regulatory Biology.

Date and Time: October 7, 8, and 9, 1987—8:30 a.m. to 5:00 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Stephen Bishop, Program Director, Regulatory Biology Program, Room 321, National Science Foundation, Washington, DC 20550, Telephone 202/357-7975.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in regulatory biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-21511 Filed 9-16-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Systematic Biology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Biology.

Date and Time: October 5 and 6, 1987—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. James E. Rodman, Acting Program Director, Systematic Biology, (202) 357-9588, Room 215, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in systematic biology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-21512 Filed 9-16-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-389]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination; Florida Power and Light Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-16, issued to Florida Power and Light Company, et al., (the licensee) for operation of the St. Lucie Plant, Unit No. 2, located in St. Lucie County, Florida.

The proposed amendment would add a special inspection region associated with the batwings of the steam generators. Research conducted by the licensee and Combustion Engineering (CE) has concluded that augmented inspection of the batwing area of the CE-designed model 3410 steam generators is necessary in order to monitor tube wear and to take remedial action, as necessary. The wear is the result of out-of-plane vibration of the batwing supports. The inspection of the remaining tubes will continue to be governed by the current technical specification requirements. The proposed change to the technical specifications would be made in response to the licensee's application for amendment dated September 4, 1987, as supplemented by letter dated September 11, 1987.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application, as restated below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment increases the surveillance requirements, for a defined area of tubes in the steam generators. This inspection pattern ensures that the area within the steam generator tube bundle representing the highest likelihood of damage will always be examined. The inspection of the remainder of the tube bundle will continue to be governed by the current technical specification requirements. The probability of not detecting a steam generator tube problem becomes very low.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

This modified specification applies to the inspection of a specific region of tubes in the steam generator while maintaining the intent of the specification. Since no change to the design or operation of the systems or components of the plant are involved, this change will not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The margin of safety involved in steam generator tube inspection depends on the accuracy and completeness of the examination. The wear mechanism seen at St. Lucie Unit 2 is well[-]defined and well within the capability of the inspection techniques. Using the predictive models based upon experiments and analysis, the area of concern is identified and will continuously be inspected. The current Technical Specifications will be applied elsewhere in the steam generator to ensure [that] future problems (if any) are identified. Therefore, this change will not involve a significant reduction in a margin of safety.

The St. Lucie Plant, Unit No. 2 is scheduled for refueling in early October. One of the requirements during refueling is to inspect steam generator tubes. The existing technical specifications do not address the recently identified need to inspect steam generator tubes in the batwing region of the steam generators where wear is occurring. The proposed change would add a special inspection region associated with the batwings, for the upcoming and all future steam generator tube inspections, in order to fully characterize the region, monitor tube wear and take remedial action as necessary. The inspection of the remaining tubes in the steam generators will be conducted per the existing technical specifications. Although the wear is a long-term phenomenon which is expected to occur over the life of the steam generators, it is prudent to take action now, during the early stages of the wear. The staff has determined that failure to act in a timely manner would result in requiring the licensee to follow the existing technical specifications regarding steam generator tube sample selection and inspection. The staff has further determined that the overall safety of the plant would be enhanced if the special inspection area was added to the technical specifications prior to the scheduled inspection. The inspection of the steam generator tubes is one of the first major outage-related efforts undertaken because of the length of time that is required to inspect tubes during the outage. Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If the proposed determination becomes final, an opportunity for a hearing will be published in the **Federal Register** at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the **Federal Register** and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to Herbert Berkow, Project Director, Project Directorate II-2, by collect call to (301) 492-7872, or submitted in writing to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclar Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. All comments received by October 2, 1987, will be considered in reaching a final determination. A copy of the application and any comments received may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Dated at Bethesda, Maryland, this 11th day of September, 1987.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Project Director,

PWR Project Directorate #2,

Division of Reactor Projects-I/II.

[FR Doc. 87-21501 Filed 9-16-87; 8:45 am]

BILLING CODE 7590-01-M

VOL 52 ISS 180 SEP 17 1987 UMI

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1987.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of August 1, 1987, of 57 deferrals contained in the six special messages of FY 1987. These messages were transmitted to the Congress on September 26, and December 15, 1986, and January 5 and 28, March 4, and August 27, 1987.

Rescissions (Table A and Attachment A)

As of September 1, 1987, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of September 1, 1987, $2,875.6 million in 1987 budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1987.

Information From Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** listed below:

Vol. 51, FR p. 35976, Tuesday, October 7, 1986

Vol. 51, FR p. 47356, Wednesday, December 31, 1986

Vol. 52, FR p. 964, Friday, January 9, 1987

Vol. 52, FR p. 3552, Wednesday, February 4, 1987

Vol. 52, FR p. 8046, Friday, March 13, 1987

Vol. 52, FR p. 33374, Wednesday, September 2, 1987

James C. Miller III,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1987 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President.....	$5,835.8
Accepted by the Congress.....	36.0
Rejected by the Congress.....	5,799.8
Pending before the Congress.....	0

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TABLE B

STATUS OF 1987 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	11,494.6
Routine Executive releases through Sept. 1, 1987 (OMB/Agency releases of $8,446.5 million and cumulative adjustments of $1.7 million)	-8,444.7
Overturned by the Congress.....	-174.3
Currently before the Congress.....	2,875.6

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1987

As of September 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Buildings and facilities	R87-1 R87-1A	28,000		1-5-87 1-28-87		28,000	3-16-87	
Agricultural Stabilization and Conservation Service								
Rural clean water program	R87-2	6,000		1-5-87	6,000	6,000	3-16-87	P.L. 100-71
Agricultural conservation program	R87-3	164,356		1-5-87		164,356	3-16-87	
Water bank program	R87-4	8,166		1-5-87		8,166	3-16-87	
Emergency conservation program	R87-5	10,000		1-5-87		10,000	3-16-87	
Farmers Home Administration								
Rural water and waste disposal grants	R87-6	79,500		1-5-87		79,500	3-16-87	
Rural community fire protection grants	R87-7	2,300		1-5-87		2,300	3-16-87	
Rural housing for domestic farm labor	R87-8	7,400		1-5-87		7,400	3-16-87	
Mutual and self-help housing	R87-9	8,000		1-5-87		8,000	3-16-87	
Very low income housing repair grants	R87-10	9,400		1-5-87		9,400	3-16-87	
Compensation for construction defects	R87-11	500		1-5-87		500	3-16-87	
Rural housing preservation grants	R87-12	14,400		1-5-87		14,400	3-16-87	
Soil Conservation Service								
Watershed and flood prevention operations	R87-13	96,000		1-5-87		96,000	3-16-87	
Great Plains conservation program	R87-14	8,000		1-5-87		8,000	3-16-87	
Resource conservation and development	R87-15	5,000		1-5-87		5,000	3-16-87	
Forest Service								
Land acquisition	R87-16	49,030		1-5-87		49,030	3-16-87	
DEPARTMENT OF COMMERCE								
Economic Development Administration								
Economic development assistance programs	R87-17 R87-17A	169,718 -50		1-5-87 1-28-87		169,668	3-16-87	
International Trade Administration								
Operations and administration	R87-18	11,400		1-5-87		11,400	3-16-87	
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R87-19	58,857		1-5-87		58,857	3-16-87	
National Telecommunications and Information Administration								
Public telecommunications facilities, planning and construction	R87-20	19,300		1-5-87		19,300	3-16-87	

Attachment A - Status of Rescissions - Fiscal Year 1987

As of September 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF DEFENSE - MILITARY								
Procurement								
Procurement of weapons and tracked combat vehicles, Army	R87-21	15,000		1-5-87		15,000	3-16-87	
Other procurement, Navy	R87-22	116,000		1-5-87		116,000	3-16-87	
Military Construction								
Military construction, Air Force	R87-23	2,750		1-5-87		2,750	3-16-87	
DEPARTMENT OF DEFENSE - CIVIL								
Corps of Engineers - Civil								
Construction, general	R87-24	7,715		1-5-87		7,715	3-16-87	
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Compensatory education for the disadvantaged	R87-25	7,500		1-5-87		7,500	3-16-87	
Impact aid	R87-26	17,500		1-5-87		17,500	3-16-87	
Special programs	R87-27	54,980		1-5-87		54,980	3-16-87	
Office of Bilingual Education and Minority Languages Affairs								
Bilingual education	R87-28	45,886		1-5-87		45,886	3-16-87	
Office of Special Education and Rehabilitative Services								
Education for the handicapped	R87-29	288,659		1-5-87		288,659	3-16-87	
Rehabilitation services and handicapped research	R87-30	127,455		1-5-87		127,455	3-16-87	
Office of Vocational and Adult Education								
Vocational and adult education	R87-31	432,319		1-5-87		432,319	3-16-87	
Office of Postsecondary Education								
Student financial assistance	R87-32	1,269,000		1-5-87		1,269,000	3-16-87	
Higher education	R87-33	203,050		1-5-87		203,050	3-16-87	
	R87-33A			1-28-87				
Office of Educational Research and Improvement								
Libraries	R87-34	34,500		1-5-87		34,500	3-16-87	

Attachment A - Status of Rescissions - Fiscal Year 1987

As of September 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities	R87-35	81,800		1-5-87		81,800	3-16-87	
Fossil energy research and development	R87-36	44,464		1-5-87		44,464	3-16-87	
Energy conservation	R87-37	87,433		1-5-87				
	R87-37A	-3500		1-28-87		83,933	3-16-87	
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Food and Drug Administration								
Buildings and facilities	R87-38	500		1-5-87		500	3-16-87	
Health Resources and Services Administration								
Health resources and services	R87-39	161,210		1-5-87		161,210	3-16-87	
	R87-39A			1-28-87				
Indian health facilities	R87-40	57,100		1-5-87		57,100	3-16-87	
	R87-40A			1-28-87				
National Institutes of Health								
National Library of Medicine	R87-41	5,405		1-5-87		5,405	3-16-87	
Office of the Assistant Secretary of Health								
Public health service management	R87-42	5,000		1-5-87		5,000	3-16-87	
Departmental Management								
Policy research	R87-43	2,200		1-5-87		2,200	3-16-87	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R87-44	473,313		1-5-87		473,313	3-16-87	
Housing counseling assistance	R87-45	3,500		1-5-87		3,500	3-16-87	
Community Planning and Development								
Community development grants	R87-46	375,200		1-5-87		375,200	3-16-87	
Urban development action grants	R87-47	237,500		1-5-87		237,500	3-16-87	
Management and Administration								
Salaries and expenses	R87-48	19,042		1-5-87		19,042	3-16-87	

Attachment A - Status of Rescissions - Fiscal Year 1987

As of September 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Management of lands and resources	R87-49	6,500		1-5-87		6,500	3-16-87	
Construction and access	R87-50	1,600		1-5-87		1,600	3-16-87	
Land acquisition	R87-51	2,700		1-5-87		2,700	3-16-87	
Bureau of Mines								
Mines and minerals	R87-52	16,594		1-5-87		16,594	3-16-87	
United States Fish and Wildlife Service								
Resource management	R87-53	20,500		1-5-87		20,500	3-16-87	
	R87-53A			1-28-87				
Construction	R87-54	23,200		1-5-87		23,200	3-16-87	
Land acquisition	R87-55	26,762		1-5-87		26,762	3-16-87	
National Park Service								
Operation of the national park system	R87-56	7,950		1-5-87		7,950	3-16-87	
Construction	R87-57	58,981		1-5-87		58,981	3-16-87	
Land acquisition	R87-58	97,638		1-5-87	30,000	97,638	3-16-87	P.L. 100-71
Historic preservation fund	R87-59	15,000		1-5-87		15,000	3-16-87	
Bureau of Indian Affairs								
Construction	R87-60	22,811		1-5-87		22,811	3-16-87	
Territorial and International Affairs								
Administration of territories	R87-61	2,500		1-5-87		2,500	3-16-87	
DEPARTMENT OF JUSTICE								
Immigration and Naturalization Service								
Salaries and expenses	R87-62	24,598		1-5-87		24,598	3-16-87	
DEPARTMENT OF LABOR								
Employment and Training Administration								
Training and employment services	R87-63	332,000		1-5-87		332,000	3-16-87	

Attachment A - Status of Rescissions - Fiscal Year 1987

As of September 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF THE TREASURY								
Federal Law Enforcement Training Center								
Salaries and expenses	R87-64	8,450		1-5-87		8,450	3-16-87	
Bureau of Alcohol, Tobacco, and Firearms								
Salaries and expenses	R87-65	15,000		1-5-87		15,000	3-16-87	
United States Customs Service								
Salaries and expenses	R87-66	38,945		1-5-87		38,945	3-16-87	
ENVIRONMENTAL PROTECTION AGENCY								
Abatement, control, and compliance	R87-67	47,500		1-5-87		47,500	3-16-87	
Buildings and facilities	R87-68	2,500		1-5-87		2,500	3-16-87	
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and development	R87-69	25,796		1-5-87		25,796	3-16-87	
VETERANS ADMINISTRATION								
Medical care	R87-70	75,000		1-5-87		(See Note Below)		
OTHER INDEPENDENT AGENCIES								
Appalachian Regional Commission								
Appalachian regional development programs	R87-71	31,059		1-5-87		31,059	3-16-87	
National Endowment for the Humanities								
National capital arts and cultural affairs	R87-72	4,000		1-5-87		4,000	3-16-87	
Selective Service System								
Salaries and expenses	R87-73	409		1-5-87		409	3-17-87	
Total, rescissions		5,835,751	0		36,000	5,760,751		

NOTE. - The $75 million proposed for rescission in Rescission Proposal No. R87-70 was never withheld from obligation. Therefore, there was no need to release the funds on March 16.

Attachment B - Status of Deferrals - Fiscal Year 1987

As of September 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-87
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit	D87-22	4,040,441		12-15-86	3,849,500				
Economic support fund	D87-1	95,000		9-26-86					190,941
	D87-1A		2,351,470	12-15-86	2,057,665			1,000	389,805
Military assistance	D87-23	847,000		12-15-86	720,797				126,203
International military education and training	D87-24	2,000		12-15-86	2,000				0
Agency for International Development									
Functional development assistance	D87-32	2,278		1-28-87	2,278				0
International disaster assistance	D87-25	57,000		12-15-86	55,180				1,820
Special Assistance for Central America									
Assistance for the Nicaraguan Democratic Resistance	D87-26	60,000		12-15-86	60,000				0
Promotion of stability and security in Central America	D87-27	1,000		12-15-86					1,000
DEPARTMENT OF AGRICULTURE									
Commodity Credit Corporation									
Temporary emergency food assistance	D87-33	28,559		1-28-87		28,559 P.L. 100-6			0
Rural Electrification Administration									
Reimbursement to the Rural electrification and telephone and revolving fund for interest subsidies and losses	D87-34	20,000		1-28-87	20,000				0
Forest Service									
State and private forestry	D87-35	797		1-28-87		797 P.L. 100-71			0
Land acquisition	D87-36	27,070		1-28-87		27,070 P.L. 100-71			0
Expenses, brush disposal	D87-2	111,202		9-26-86					
	D87-2A		1,534	3-4-87					112,736
Timber roads, purchaser election	D87-37	11,900		1-28-87		11,900 P.L. 100-71			0
Timber salvage sales	D87-3	29,731		9-26-86	6,113			3	23,621
Cooperative work	D87-4	526,938		9-26-86					
	D87-4A		8,336	3-4-87					
	D87-4B		516	8-27-87					535,791

Attachment B - Status of Deferrals - Fiscal Year 1987

As of September 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-87
Forest Service (continued)									
Gifts, donations, and bequests for forest and rangeland research	D87-5	200		9-26-86	96				104
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense	D87-6	2,350		9-26-86					
	D87-6A		1,316,152	12-15-86	1,281,553				36,949
Family Housing									
Family housing, Defense	D87-7	76,943		9-26-86					
	D87-7A		190,022	12-15-86	210,650				56,315
DEPARTMENT OF DEFENSE - CIVIL									
Soldiers' and Airmen's Home									
Capital outlays	D87-38	1,132		1-28-87	1,132				0
Wildlife Conservation, Military Reservations									
Wildlife conservation	D87-8	1,065		9-26-86					
	D87-8A		25	1-5-87					
	D87-8B		46	3-4-87	316				820
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance	D87-9	165		9-26-86					165
Southwestern Power Administration,									
Operation and maintenance	D87-10	7,554		9-26-86					
	D87-10A		6,106	1-5-87					13,660
Western Area Power Administration,									
Construction, rehabilitation, operation and maintenance	D87-29	4,485		1-5-87					4,485
Departmental Administration									
Departmental administration	D87-30	24,182		1-5-87					24,182

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Attachment B - Status of Deferrals - Fiscal Year 1987

As of September 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-87
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Health Resources and Services Administration									
Indian catastrophic health emergency fund..	D87-28	10,000		12-15-86	10,000				0
Centers for Disease Control									
Disease control, research, and training....	D87-39	2,428		1-28-87	2,428				0
Alcohol, Drug Abuse, and Mental Health Administration									
Alcohol, drug abuse, and mental health...	D87-40	10,000		1-28-87	10,000				0
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program).....	D87-11	2,900		9-26-86					2,900
Social Security Administration									
Limitation on administrative expenses (construction).....	D87-12	7,073		9-26-86					
	D87-12A		89	1-28-87		12			7,151
Limitation on administrative expenses (information technology systems).....	D87-57	134,437		3-4-87					
	D87-57A		36,482	8-27-87					170,919
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management									
Payments for proceeds, sale of Mineral Leasing Act of 1920, Section 40(d).....	D87-31	49		1-5-87					49
DEPARTMENT OF JUSTICE									
Office of Justice Programs									
Crime victims fund.....	D87-13	70,000		9-26-86					70,000
DEPARTMENT OF LABOR									
Employment Standards Administration									
Salaries and expenses.....	D87-41	9,659		1-28-87	9,659				0

Attachment B - Status of Deferrals - Fiscal Year 1987

As of September 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-87
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive.....	D87-14	6,100		9-26-86					
	D87-14A		14,000	1-5-87	8,462				11,638
Other									
Assistance for implementation of a Contadora agreement.....	D87-15	2,000		9-26-86	2,000				0
DEPARTMENT OF TRANSPORTATION									
Federal Railroad Administration									
Rail service assistance.....	D87-42	462		1-28-87		462	P.L. 100-71		0
Railroad safety.....	D87-43	1,101		1-28-87	1,101				0
Conrail labor protection.....	D87-44	646		1-28-87	646				0
Northeast corridor improvement program.....	D87-45	16,962		1-28-87		16,962	P.L. 100-71		0
Conrail commuter transition assistance.....	D87-46	10,000		1-28-87		10,000	P.L. 100-71		0
Urban Mass Transportation Administration									
Research, training and human resources.....	D87-47	4,336		1-28-87		4,336	P.L. 100-71		0
Interstate transfer grants - transit.....	D87-48	51,800		1-28-87		51,800	P.L. 100-71		0
Federal Aviation Administration									
Operation and maintenance, Metropolitan Washington Airports.....	D87-49	12,214		1-28-87	12,214				0
Facilities and equipment (Airport and airway trust fund).....	D87-16	803,877		9-26-86					
	D87-16A		295,611	12-15-86	19,996				1,079,492
Coast Guard									
Research, development, test, and evaluation.....	D87-50	5,000		1-28-87	5,000				0
Offshore oil pollution compensation fund...	D87-51	2,154		1-28-87	2,154				0
Deepwater port liability fund.....	D87-52	5,176		1-28-87	5,176				0
Office of the Secretary									
Payments to air carriers.....	D87-53	10,748		1-28-87	10,748				0

Attachment B - Status of Deferrals - Fiscal Year 1987

As of September 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-87
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D87-17	74,149		9-26-86	71,221			5	2,933
Local government fiscal assistance trust fund	D87-21	5,981		9-26-86	6,704			723	0
ENVIRONMENTAL PROTECTION AGENCY									
Research and development	D87-54	11,000		1-28-87		11,000	P.L. 100-71		0
Abatement, control, and compliance	D87-55	11,400		1-28-87		11,400	P.L. 100-71		0
OTHER INDEPENDENT AGENCIES									
Commission on the Ukraine Famine Salaries and expenses	D87-18	100		9-26-86	100				0
Office of the Federal Inspector for the Alaska Natural Gas Transportation System, Salaries and expenses	D87-19	411		9-26-86	411				0
Pennsylvania Avenue Development Corporation Land acquisition and development fund	D87-20	11,873		9-26-86					11,873
United States Railway Association Administrative expenses	D87-56	1,155		1-28-87	1,155				0
TOTAL, DEFERRALS		7,274,185	4,220,390		8,446,467	174,286		1,731	2,875,553

Note: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D87-21) of outlays only.

[FR Doc. 87-21521 Filed 9-16-87; 8:45 am]
BILLING CODE 3110-01-C

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OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, October 7, 1987
Wednesday, October 14, 1987
Wednesday, October 21, 1987
Wednesday, October 28, 1987

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnal Management.

These scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnal Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contracting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, DC 20415 (202) 632–9710.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

September 11, 1987.

[FR Doc. 87–21404 Filed 9–16–87; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD ACCOUNTING PRINCIPLES BOARD

Establishment of Cost Accounting Principles for Rail Carriers

AGENCY: Railroad Accounting Principles Board.

ACTION: Notice of issuance of final report.

SUMMARY: The Railroad Accounting Principles Board issued on September 1, 1987, its final report. The 2-volume report contains eight principles addressing railroad accounting and cost information issues relevant to regulatory proceedings in which cost determinations are used in Interstate Commerce Commission (ICC) decisions. The principles are to govern the determination of economically accurate railroad costs directly and indirectly associated with particular movements of goods. The report also contains recommendations to the ICC for implementing the principles and addressing related matters.

TO RECEIVE THIS REPORT CONTACT: Superintendent of Documents, U.S. General Accounting Office, P.O. Box 6015, Gaithersburg, Maryland 20877, Telephone (202) 275–6241.

SUPPLEMENTARY INFORMATION: The Railroad Accounting Principles Board (RAPB) has established principles governing the determination of economically accurate railroad costs directly and indirectly associated with particular movement of goods as required by 49 U.S.C. 11162, and issued its report as provided by 49 U.S.C. 11167. The report, dated September 1, 1987, is comprised of two volumes.

Volume 1 contains in its first chapter eight principles on (1) causality, (2) homogeneity, (3) practicality, (4) data integrity, (5) entity, (6) cost of capital, (7) asset valuation and related expense, and (8) productivity. The second chapter discusses the effect of the eight principles on specific regulatory proceedings and general-purpose costing systems. The third chapter discusses the effect of implementing the principles on existing practices of the Interstate Commerce Commission (ICC) and contains recommendations to the ICC for implementing the principles and addressing related matters.

Volume 2 is a detailed report with a separate chapter on each of the eight principles and the six specific regulatory applications most effected by the principles, and four chapters on matters related to general-purpose costing systems. These chapters contain detailed discussions of the principles, their use in specific regulatory applications, the rationale for the principles and recommendations, and alternative proposals considered by the RAPB.

The report is the culmination of a two and one-half year process during which substantial public input was obtained from railroads, shippers, and other parties. The RAPB invited and received comments on the issues the RAPB should address (50 FR 7153, February 20, 1985), a discussion memorandum presenting issues and questions relevant to regulatory measurement and costing principles, among other things (51 FR 4051, January 31, 1986), and an exposure draft containing proposed principles and recommendations (52 FR 5361, February 20, 1987). The RAPB also conducted a public hearing on April 30, 1987 at which representatives of railroads, shippers, and others testified.

With the establishment of cost accounting principles by the RAPB under 49 U.S.C. 11162, the ICC is required by 49 U.S.C. 11163 to promptly implement the principles through the rulemaking process, which will afford interested parties further opportunity to participate. Because the ICC is ultimately responsible for cost principles to be used in regulatory proceedings, it must review the RAPB's principles in light of rulemaking comments from interested parties and reasonably explain the rules it adopts. However, as part of the rulemaking process, the ICC must accord substantial deference to the RAPB's principles and to the rationale underlying those principles.

The RAPB's report is being mailed directly to parties who are known to the RAPB to be interested in its contents. Other parties will receive the report upon request.

Dated: September 1, 1987.

Charles A. Bowsher,

Chairman, Railroad Accounting Pirnciples Board.

[FR Doc. 87-21524 Filed 9-16-87; 8:45 am]

BILLING CODE 1610-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 17e-1, File No. 270.224

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17e-1 under the Investment Company Act of 1940. Rule 17e-1 is designed to ensure that brokers affiliated with investment companies receive no greater compensation than would be received from the investment companies in arm's length transactions. The rule requires approximately 10 hours of recordkeeping per investment company annually.

Comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

September 10, 1987.

[FR Doc. 87-21503 Filed 9-16-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

September 11, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Amax Gold, Inc.
Common Stock, $.01 Par Value (File No. 7-0474)

ABM Gold Corp.
Common Stock, No Par Value (File No. 7-0475)

Carnival Cruise Lines
Common Stock, $.01 Par Value (File No. 7-0476)

Goldome
Common Stock, $1.00 Par Value (File No. 7-0477)

Heritage Entertainment Inc.
Common Stock, $.01 Par Value (File No. 7-0478)

Lazy Boy Chair Co.
Common Stock, $1.00 Par Value (File No. 7-0479)

Malaysia Fund
Common Stock, $.01 Par Value (File No. 7-0480)

Neiman Marcus Group, Inc. (The)
Common Stock, $.01 Par Value (File No. 7-0481)

Sprague Technologies
Common Stock, $1.00 Par Value (File No. 7-0482)

Liberty All Star Equity Fund
Shares of Beneficial Interest (File No. 7-0483)

Vons Companies
Common Stock, $.10 Par Value (File No. 7-0484)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 2, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21452 Filed 9-16-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

September 11, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

American Fructose
Class A, Common Stock, $.10 Par Value (File No. 7-0456)

Calmat Co.
Common Stock, $1.00 Par Value (File No. 7-0457)

Cincinnati Bell, Inc.
Common Stock, $12.50 Par Value (File No. 7-0458)

Fay's Drug Co., Inc.
Common Stock, $.10 Par Value (File No. 7-0459)

Fairfield Communities, Inc.
Common Stock, $.10 Par Value (File No. 7-0460)

General Development Corp.
Common Stock, $1.00 Par Value (File No. 7-0461)

Hovnanian Enterprises, Inc.
Common Stock, $.01 Par Value (File No. 7-0462)

Hormel (Geo. A.) & Co.
Common Stock, $0.4688 Par Value (File No. 7-0463)

I.C.H. Corp.
Common Stock, $1.00 Par Value (File No. 7-0464)

Kay Jewlers, Inc.
Common Stock, $1.00 Par Value (File No. 7-0465)

Kellwood Co.
Common Stock, No Par Value (File No. 7-0466)

Lawter International, Inc.
Common Stock, $1.00 Par Value (File No. 7-0467)

Musingwear, Inc.
Common Stock, $1.00 Par Value (File No. 7-0468)

Pico Products, Inc.
Common Stock, $.01 Par Value (File No. 7-0469)

Price Communications Corp.
Common Stock, $.01 Par Value (File No. 7-0470)

Telephone Data Systems, Inc.
Common Stock, $1.00 Par Value (File No. 7-0471)

Varco International, Inc.
Capital Stock, No Par Value (File No. 7-0472)

Weiss Markets, Inc.
Common Stock, No Par Value (File No. 7-0473)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 2, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21453 Filed 9-16-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 11, 1987.

The above named additional securities has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Environmental Treatment & Technologies Corp.
Common Stock, $.10 Par Value (File No. 7-0451)
Flexi Van Corporation
Common Stock, $.01 Par Value (File No. 7-0452)
Hormel (Geo. A.), & Co.
Common Stock, $.2344 Par Value (File No. 7-0453)
Ford Motor Credit Company
Currency Exchange Warrants, Expiring June 15, 1992 (File No. 7-0454)
General Electric Credit Corp.
Currency Exchange Warrants, Expiring June 15, 1992 (File No. 7-0455)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 2, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21454 Filed 9-16-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24917; File No. SR-NYSE-87-30]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc.; Auxiliary Opening Procedures for Orders Relating to Expiring Stock Index Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 10, 1987, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds auxiliary opening procedures for assisting in handling the order flow associated with the concurrent expiration of stock index futures, stock index options and options on stock index futures (collectively, "index contracts") on September 18, 1987. It specifies procedures identical to those used on June 19, 1987 (SR-NYSE-87-17; Release No. 34-24596 (June 16, 1987)). Only the dates and the list of pilot stocks (due to one name change and the substitution of one stock as a consequence of changes in trading activity) have changed.

Specifically, the auxiliary procedures provide that stock orders relating to opening-price settling contracts must be received by 9:00 a.m. on September 18. The Exchange will promptly disseminate the size of substantial market order imbalances (50,000 shares or more) as at 9:00 in 50 pilot stocks.

The Exchange will make SuperDot available to accept orders at 7:30. The Exchange will also raise the order size eligibility for the Opening Automation Reporting Service ("OARS") to 30,099 shares—in effect, raising SuperDot's pre-opening order size parameters. The procedures confine orders relating to opening-price settling contracts to market orders and require them to be appropriately identified. The procedures also ban "limit-at-the-opening" orders and apply on September 18 the reduced waiting periods for second and subsequent price indications.[1]

The Exchange characterizes the proposed rule change as a Rule of the Board of Directors of the Exchange. The proposed rule change supersedes all Exchange rules and policies inconsistent with it.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose.* The purpose of the proposed rule change is to establish procedures to augment the NYSE's regular opening procedures on September 18, 1987. The auxiliary procedures will assist in integrating stock orders relating to expiring contracts into the Exchange's opening procedures in a manner that will assure an efficient market opening in each stock as close to 9:30 a.m. as possible.

The Exchange believes that settling index contracts based upon the opening prices of the constituent stocks, and

[1] The reduced waiting periods recently were approved on a permanent basis. Securities Exchange Act Release No. 24880 (September 4, 1987), 52 FR ——— (approving File No. SR-NYSE-87-14).

thereby permitting use of the Exchange's time-tested opening procedures, provides the best mechanism for handling the accompanying stock volume. The Exchange, the Chicago Mercantile Exchange, Inc. (the "CME") and the New York Futures Exchange, Inc. (the "NYFE") recently altered or added index contracts specifying that settlement pricing will occur based upon the opening prices on expiration Friday (September 18). They also have provided that trading in opening-price settling contracts will cease at the close on the preceding day (Thursday, September 17). The Exchange anticipates that these changes will divert to the opening approximately 75 percent of the stock order flow related to expiring index contracts. The proposed rule change establishes auxiliary procedures to help accommodate the diverted order flow.

The special dissemination of a picture of substantial market order imbalances in the 50 pilot stocks as at 9:00 will provide off-Floor participants with a picture of the unique impact of the index-related orders, and will allow ample opportunity for them to react to it. Because the regular opening procedures will otherwise operate, an off-Floor participant will, as always, be able to obtain a minute-to-minute Floor picture through his Floor broker. Similarly, the pre-opening application of the ITS Plan will be in effect. Moreover, if it becomes evident that a significant change from the September 17 closing price is in the offing, the specialist can, with the approval of a Floor Official, disseminate regular price indications over the tape as needed.

The particular purposes of several of the procedures deserve elaboration.

9:00 Cut-Off. The 9:00 cut-off for entry of stock orders relating to opening-price settling contracts assures that the upper limit of the order flow created by unwinding index-related positions is known at 9:00. The specialists can retrieve the orders in OARS at 9:00 and combine them with the manual orders, creating a complete picture of all the orders. If the picture shows an imbalance of 50,000 shares or more, he will notify off-Floor participants of the imbalance within the first several minutes after 9:00. This allows a half hour or more to react.

Preclusion of Limit-at-the-Opening Orders. Preclusion of limit-at-the-opening orders simplifies the specialist's task in opening his market. These orders cannot be entered into the electronic display book. Consequently, their acceptance would complicate the specialist's task by requiring him to keep a separate, manual tally. Customers are free to enter regular limit orders.

Applicability of Revised Price Indications Waiting Period. SR–NYSE–87–14, noted above, describes the purpose of reducing the waiting period following second and subsequent price indications.

2. *Statutory Basis.* The basis under the 1934 Act for the proposed rule change is section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange created an ad hoc Expiration Procedures Committee consisting of its Floor Directors, other representatives from the Floor, upstairs traders and institutional brokers. The proposed rule change reflects the consensus reached by the committee.

The Exchange received no written comments following the June expiration concerning the procedures.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the 1934 Act. Confirmation to the industry of the Exchange's intention to repeat the June 19 procedures should occur as soon as possible to permit investors and firms to plan accordingly. Moreover, the procedures contain no substantive changes from the June 19 procedures, on which there has been ample opportunity for comment. Accordingly, the Exchange seeks action by the Commission in time to permit notification of interested parties well in advance of the September 18 expiration.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder. The Commission believes that basing the settlement of index products on opening, as opposed to closing prices on September 18 may help to accomodate index-related share volume. The proposed auxiliary procedures are intended to ensure that the exchange may efficiently process sizeable order flow at the open. The Commission believes that these procedures should work to reduce order imbalances at the open, and thus dampen potential volatility. In this regard, the procedures worked well during the June expiration and the September expiration should provide the Commission with another opportunity to assess whether these procedures are sufficient in dampening expiration volatility at the opening, or whether additional measures are necessary.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposed rule change will enable the Exchange to quickly implement and notify market participants about procedures that it believes will appropriately address any index-related heightened share volume at the open on September 18.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 8, 1987.

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For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 11, 1987.

[FR Doc. 87-21504 Filed 9-16-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8356]

Issuer Delisting; Application To Withdraw From Listing and Registration; Del-Val Financial Corp. (Common Stock, Par Value $1.00)

September 11, 1987.

Del-Val Financial Corporation ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex"). The Company's common stock was recently listed and registered on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before October 2, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21455 Filed 9-16-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-17391]

Application and Opportunity for Hearing; Southern Natural Gas Co.

September 14, 1987.

Notice Is Hereby Given That Southern Natural Gas Company (a Delaware Corporation) ("Southern") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of Manufacturers Hanover Trust Company ("Manufacturers") under the indenture referred to in paragraph 1 below, which is qualified under the Act, and under the trust indenture referred to in paragraph 2 below, which has not been qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers from acting as Trustee under either of such indentures.

Section 310(b) of the Act provides, *inter alia*, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such Section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture of the same obligor. However, pursuant to clause (ii) of such subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing thereon, that trusteeships under the indentures are not so likely to involve a material conflict of interest as to make it necessary to disqualify such trustee from acting as trustee under any such indentures.

Southern alleges that:

1. On March 20, 1987, Southern filed with the Commission a Registration Statement (File No. 33-12784) covering $100,000,000 aggregate principal amount of debentures and an indenture, dated as of June 1, 1987, between Southern and Manufacturers, as Trustee (the "Southern Indenture"), pursuant to which Southern may issue from time to time in one or more series its unsecured debentures, notes or other evidence of indebtedness. The Registration Statement was declared effective on June 8, 1987. On July 31, 1987, Southern filed with the Commission a Registration Statement (File No. 33-16190) covering up to $200,000,000 aggregate principal amount of debt securities which it may issue from time to time, in one or more series, pursuant to the Southern Indenture.

2. Bear Creek Capital Corporation ("Bear Creek Capital"), a Delaware corporation formed and wholly-owned by Bear Creek Storage Company ("Bear Creek Storage"), a Louisiana partnership composed of Southern Gas Storage Company, a Delaware corporation and a wholly-owned subsidiary of Southern, and Tennessee Storage Company, a Delaware Corporation, has entered into a Trust Indenture, dated as of September 15, 1981 (the "Bear Creek Capital Indenture"), with Manufacturers, as Trustee, and T. C. Crane, as Co-Trustee, pursuant to which Bear Creek Capital issued an aggregate principal amount of $135,000,000 of its 9⅞% Secured Notes, Series A due November 1, 2000 and $30,000,000 of its 14⅞% Secured Notes, Series B due November 1, 2000 (collectively, the "Notes"). Inasmuch as the Notes were offered and sold in a private placement to a single institutional investor in reliance upon the representations of the purchaser that it was purchasing the Notes for investment and not with a view for resale, the Notes were not registered under the Securities Act of 1933, as amended, and the Bear Creek Capital Indenture was not qualified under the Trust Indenture Act of 1939. The notes are secured, *inter alia*, by an assignment to the Trustee by Bear Creek Capital of its rights under a Service Agreement, dated June 1, 1981, between Bear Creek Storage and Southern (the "Service Agreement"), assigned by Bear Creek Storage to Bear Creek Capital pursuant to a Pledge and Assignment of Rights Under Service Agreement, dated as of September 15, 1981, between Bear Creek Capital and Bear Creek Storage, consented to by Southern in a Consent and Agreement to Pledge and Assignment, dated as of September 15, 1981, executed by Southern and Tennessee Gas Pipeline Company (the "Consent"). The Consent provides that the obligation of Southern to pay the charges due under the Service Agreement is absolute and unconditional. The obligations of Southern under the Service Agreement and under the Consent are unsecured. Such obligations rank equally and on a par with the obligations of Southern in respect of its Securities under the Southern Indenture.

3. The Southern Indenture contains the provisions required by section 310(b) of the Act.

Southern has waived notice of hearing, and waives hearing, in connection with the matter referred to herein.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, File No. 22–17391 which is a public document on file in the offices of the Commission at the Public Reference Room, Judiciary Plaza, 450 Fifth Street, NW., Washington, DC.

Notice is Further Given that any interested persons may, not later than October 5, 1987, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–21505 Filed 9–16–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council; Public Meeting; California

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 9:00 a.m., Thursday October 29, 1987, at the Bank of America Executive Board Room, 555 South Flower Street, Los Angeles, California 90071, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information write or call M. Hawley Smith, District Director, U.S. Small Business Administration, 350 South Figueroa Street, Suite #600, Los Angeles, California 90071, (213) 894–2977.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 10, 1987.

[FR Doc. 87–21396 Filed 9–16–87; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council; Public Meeting; North Dakota

The Small Business Administration Revion VIII Advisory Council, located in the geographical area of Fargo, North Dakota, will hold a public meeting at 9:30 a.m., Wednesday, October 14, 1987, at the Town House Motor Inn, Bismarck, North Dakota, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration and others attending.

For further information write or call James L. Stai, District Director, U.S. Small Business Administration, 657–2nd Avenue North, Room 218, Fargo, North Dakota 58102, (701) 237–5771, extension 5131.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 10, 1987.

[FR Doc. 87–21397 Filed 9–16–87; 8:45 am]

BILLING CODE 8025–01–M

Region X Advisory Council; Public Meeting; Oregon

The Small Business Administration Region X Advisory Council, located in the geographical area of Portland, Oregon, will hold a public meeting at 10:00 a.m. on Tuesday, September 29, 1987, in the Oak Room, Linfield Commons, Linfield College, Linfield Avenue, McMinnville, Oregon to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Mr. John L. Gilman, District Director, U.S. Small Business Administration, 1220 SW Third Avenue, Room 676, Portland, Oregon 97204–2882, (503) 294–5221.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 10, 1987.

[FR Doc. 87–21398 Filed 9–16–87; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council; Public Meeting; South Dakota

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Sioux Falls, South Dakota, will hold a public meeting on Thursday, October 15, 1987, from 9:00 a.m. to 4:30 p.m., at the Howard Johnson Motel, North Dakota Room, 3300 West Russell, Sioux Falls, South Dakota 57107, to discuss such business as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Chester B. Leedom, District Director, U.S. Small Business Administration, Suite 101, Security Building, 101 South Main Avenue, Sioux Falls, South Dakota 57102, (605) 336–2980, Ext. 231.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 10, 1987.

[FR Doc. 87–21399 Filed 9–16–87; 8:45 am]

BILLING CODE 8025–01–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as Amended by Pub. L. 99–591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2523

Type of Request: Regular submission

Title of Information Collection: Employment Applications

Frequency of Use: On occasion

Type of Affected Public: Individuals

Small Businesses or Organizations Affected: No

Federal Budget Functional Category Code: 999

Estimated Number of Annual Responses: 105,000

Estimated Total Annual Burden Hours: 105,000.

Need For and Use of Information: Applications for employment are needed to collect information on qualifications, suitability for employment and eligibility for veterans preference. The information is used to make comparative appraisals and to assist in selections. The affected public consists of individuals who apply for TVA employment.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 87-21515 Filed 9-16-87; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 87-9-26]

Fitness Determination of Richmor Aviation, Inc., d/b/a Liberty Air

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 87-9-26, Order on Reconsideration.

SUMMARY: The Department of Transportation is proposing to find that Richmor Aviation, Inc., d/b/a Liberty Air is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses.

All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, U.S. Department of Transportation, 400 7th Street SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Terry, Air Carrier Fitness Division, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-2343.

Dated: September 14, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-21519 Filed 9-16-87; 8:45 am]

BILLING CODE 4910-62-M

Office of Commercial Space Transportation

[Docket No. 45133; Notice No. 87-18]

Commercial Space Transportation; Expendable Launch Vehicle Program; Environmental Assessment

AGENCY: Office of Commercial Space Transportation, DOT.

ACTION: DOT notice of availability of environmental assessment for commercial space licensing of activities at Vandenberg Air Force Base.

SUMMARY: DOT is issuing this notice to advise the public of availability of a Programmatic Environmental Assessment for Commercial Expendable Launch Vehicle Programs at Vandenberg Air Force Base, California.

SUPPLEMENTARY INFORMATION: In February 1986, the Office published the Programmatic Environmental Assessment for Commercial Expendable Launch Vehicle Programs (51 FR (6780) February 26, 1986). The Office has completed an environmental assessment of the commercial space transportation program at Vandenberg Air Force Base as supplemental information to the February 1986 assessment. DOT licenses commercial space launches from the National Ranges, one of which is Vandenberg Air Force Base. This programmatic assessment addresses the impact of commercial launches from Vandenberg Air Force Base, California. The assessment is available for public inspection and the public is invited to comment on it. The assessment and any comments received may be inspected as follows: (1) Documentary Service Division, Attention: Docket Section/C-55, Room 4107, Docket Number 45133, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and (2) Air Force Civil Engineer, Western Region/ROV, Room 1316, 630 Sansome Street, San Francisco, CA 94111, from 9:00 a.m. to 3:00 p.m. local time, Monday through Friday except Federal holidays. Copies of the assessment may be requested from (1) Office of Commercial Transportation, S-50, 400 Seventh Street, SW., Washington, DC 20590 and (2) Air Force Civil Engineer, Western Region/ROV, Room 1316, 630 Sansome Street, San Francisco, CA 94111. Comments should be sent in triplicate and will be accepted until October 16, 1987. Comments should be sent to Documentary Services Division, Attention Docket Section/C-55, Department of Transportation, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Norman Bowles, Associate Director for Licensing Programs, Office of Commercial Space Transportation, (202) 366-2929 or Gerald Musarra, Office of the General Counsel (202) 366-9305, Department of Transportation, Washington, DC 20590.

Dated at Washington, DC, September 10, 1987.

Courtney A. Stadd,

Director, Commercial Space Transportation.

[FR Doc. 87-21326 Filed 9-16-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Maricopa County, AZ

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Maricopa County, Arizona.

FOR FURTHER INFORMATION CONTACT: David Bender, District Engineer, Federal Highway Administration, 234 North Central Ave., Suite 330, Phoenix, AZ 85004, Telephone: (602) 261-3646.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arizona Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve Grand Avenue in Maricopa County, Arizona. The proposed improvement would involve the reconstruction of the existing route along a corridor from its present crossing of the Beardsley Canal northwest of Sun City West to Van Buren Street and Seventh Avenue near downtown Phoenix, a distance of about 26 miles. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration include: (1) Taking no action; (2) a partially controlled access expressway; (3) a fully controlled access expressway; and (4) an improved arterial concept. The various build alternatives include design variations of grade, alignment and interchange layouts.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. A series of public meetings will be held in Phoenix, Glendale, Peoria, Sun City and Sun City West between September 1987

and December 1988. In addition, one or more public hearings will be held. Public notice will be given of the time and place of the meetings and hearings. The draft EIS will be available for public and agency review and comment. No formal scoping meeting is planned at this time because extensive interagency coordination has already been initiated.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.

Issued on: September 9, 1987.

David E. Bender,

District Engineer, Phoenix, Arizona.

[FR Doc. 87-21448 Filed 9-16-87; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" donote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

Application number	Applicant	Renewal of exemption
2913-X	U.S. Department of Energy, Washington, DC.	2913
4354-X	Pennwalt Corporation, Buffalo, NY.	4354
4453-X	Woodard Explosives, Inc., Albuquerque, NM.	4453
4453-X	Thermex Energy Corporation, Dallas, TX.	4453
4661-X	Foote Mineral Company, Exton, PA.	4661
4932-X	Federal Laboratories, Inc., Saltsburg, PA.	4932
5206-X	Thermex Energy Corporation, Dallas, TX.	5206
6122-X	Pennwalt Corporation, Buffalo, NY.	6122
6452-X	Pennwalt Corporation, Buffalo, NY.	6452
6657-X	Liquid Air Corporation, Walnut Creek, CA.	6657
6702-X	Seradyn, Inc., Indianapolis, IN.	6702
6816-X	McDonnell Douglas Astronautics Company, Saint Louis, MO.	6816
7011-X	Russell-Stanley Corporation, Red Bank, NJ (see footnote 1).	7011
7052-X	Halliburton Services, Duncan, OK.	7052
7052-X	Duracell, Inc., Bethel, CT.	7052
7052-X	EG&G Environmental Equipment, Cataumet, MA.	7052
7072-X	Container Corporation of Amenca, Wilmington, DE.	7072
7205-X	U.S. Department of Defense, Falls Church, VA.	7205
7235-X	Luxfer USA Limited, Riverside, CA (see footnote 2).	7235
7280-X	U.S. Department of Defense, Falls Church, VA.	7280
7440-X	Revlon Professional Products, Inc., Jacksonville, FL.	7440
7536-X	U.S. Department of Defense, Falls Church, VA.	7536
7594-X	Bromine Compounds, Limited, Beer Sheva, Israel (see footnote 3).	7594
7595-X	American Cyanamid Company, Wayne, NJ.	7595
7607-X	Baker/TSA, Inc., Coraopolis, PA.	7607
7616-X	Union Pacific Railroad Company, Omaha, NE (see footnote 4).	7616
7887-X	Estes Industries, Inc., Penrose, CO.	7887
7887-X	Centuri Engineering Company, Inc., Penrose, CO.	7887
7887-X	Flight Systems, Inc., Raytown, MO.	7887
7887-X	Flight Systems, Inc., Burns Flat, OK.	7887
7887-X	Crown Rocket Technology, Mountlake Terrace, WA.	7887
7887-X	Aero Technology Company, Las Vegas, NV.	7887
7887-X	Model Rectifier Corporation, Edison, NJ.	7887
7943-X	Grow Group, Inc., Montebello, CA.	7943
8180-X	Dow Corning Corporation, Midland, MI.	8180
8194-X	Pennwalt Corporation, Buffalo, NY.	8194
8207-X	Rexnord, Inc., Commerce City, CO.	8207

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Application number	Applicant	Renewal of exemption
8230-X	J.T. Baker Chemical Company, Phillipsburg, NJ.	8230
8287-X	Rohm & Haas Company, Philadelphia, PA.	8287
8301-X	Container Corporation of America, Wilmington, DE.	8301
8516-X	Atlas Powder International, Limited, Pearlinston, MS.	8516
8579-X	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	8579
8650-X	Ethyl Corporation, Baton Rouge, LA.	8650
8673-X	MarkAir, Inc., Anchorage, AK (see footnote 5).	8673
8706-X	Petro-Steel, Division of Prairie State Equipment, Sioux Falls, SD (see footnote 6).	8706
8716-X	Foote Mineral Company, Exton, PA.	8716
8732-X	Dow Chemical U.S.A., Midland, MI.	8732
8732-X	Delta Distributors, Inc., Longview, TX.	8732
9015-X	Monsanto Company, Saint Louis, MO.	9015
9016-X	Van Leer Verpackunsen GmbH, Hamburg, West Germany.	9016
9066-X	Volvo Cars of North America, Rockleigh, NJ.	9066
9066-X	Porsche Cars North America, Inc., Reno NV.	9066
9066-X	Bayern-Chemie GmbH, Aschau, West Germany.	9066
9070-X	Warner Brothers, Inc., Sunderland, MA.	9070
9082-X	Rhone-Poulenc Ag Company, Research Triangle Park, NC.	9082
9144-X	Cajun Bag & Supply Co., Crowley, LA (see footnote 7).	9144
9169-X	Pacific Smelting Company, Torrance, CA.	9169
9305-X	ARCO Pipe Line Company, Independence, KS (see footnote 8).	9305
9379-X	Kaichem International Corporation, Savannah, GA.	9379
9485-X	Chem-Tech, Limited, Des Moines, IA.	9485
9485-X	Kaw Valley, Inc., Leavenworth, KS.	9485
9490-X	National Refrigerants, Inc., Radnor, PA.	9490
9512-X	Bryson Industrial Services, Inc., Lexington, SC.	9512
9530-X	National Refrigerants, Inc., Radnor, PA.	9530
9536-X	Transway Systems, Inc., Stoney Creek, Ont., Canada.	9536
9552-X	IRECO Incorporated, Salt Lake City, UT.	9552

[1] To authorize additional materials that are approved for shipment in DOT Specification 21C fiber drums.

[2] To authorize 6061-T6 aluminum alloy liners for DOT Specification FRP2 cylinders with service pressure not exceeding 4500 psi.

[3] To authorize railroad as an additional mode of transportation.

[4] To renew and to authorize use of electronic shipping papers in lieu of hard copy shipping papers, hard copy will be sent at a future date, both shipping papers include necessary certifications.

[5] To authorize reinstatement and renewal of exemption.

[6] To amend paragraph 7c to authorize a 10-inch maximum diameter bottom outlet

[7] To renew and to authorize cargo vessel as additional mode of transportation.

[8] To renew and to authorize a flammable and combustible liquid as additional commodities.

Application number	Applicant	Parties to exemption
4453-P	Mining Services International, Salt Lake City, UT.	4453
5600-P	Athens Corp., Oceanside, CA.	5600
7607-P	NUS Corporation, Tucker, GA.	7607
7887-P	Enertek, Inc., Phoenix, AZ.	7887
8390-P	Olin Hunt Specialty Products, Inc., West Paterson, NJ.	8390
8390-P	Hi Pure Chemicals, Inc., Nazareth, PA.	8390
8390-P	Image Technology, Tempe, AZ.	8390
8451-P	Boeing Military Airplane Company, Wichita, KS.	8451
8451-P	Ford Aerospace & Communications Corporation, Newport Beach, CA.	8451
8451-P	New England Ordnance, Inc., Guild, NH.	8451
8518-P	Pacific Construction & Maintenance, Inc., Ventura, CA.	8518
8554-P	Luckey Trucking, Inc., Streator, IL.	8554
8698-P	Taylor-Wharton, Harsco Corporation, Theodore, AL.	8698
8723-P	ECONEX Incorporated, Wheaton, IL.	8723
8958-P	De La Mare Engineering, Inc., San Fernando, CA.	8958
9066-P	Mercedes-Benz of North America, Inc., Montvale, NJ.	9066
9130-P	Applied Biochemists, Inc., Mequon, WI.	9130
9130-P	Great Lakes Chemical Corporation, El Dorado, AR.	9130
9275-P	Shaklee Corporation, San Francisco, CA.	9275
9302-P	Airplanes, Inc. d.b.a. Cal-West Aviation, Conord, CA.	9302
9549-P	Owen Oil Tools, Inc., Fort Worth, TX.	9549
9681-P	ICI Americas Inc., Bryon, GA.	9681
9742-P	Bromine Compounds Ltd., Beer-Sheva, Israel.	9742
9785-P	Ethyl Corporation, Baton Rouge, LA.	9785

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on September 11, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87-21427 Filed 9-16-87; 8:45 am]

BILLING CODE 4910-60-M

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Carso vessel, 4—Carso-only aircraft, 5—Passenger-carrying aircraft.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the application are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9836–N	Marko Foam Products, Inc., Hayward, CA	49 CFR Part 173, Subpart F, 177.839(a), (b), 178.150.	To manufacture, mark and sell a non-DOT specification non-reusable molded expanded polystyrene case similar to the DOT–33A except it incorporates six cavities to contain not more than six 5-pint bottles for shipment of corrosive materials authorized in the DOT Specification 33A. (Mode 1.)
9837–N	Interstate Industries of N.J., Clark, NJ	49 CFR 178.50–19(2), 175.3	To authorize the marking of lot numbers, instead of serial numbers, on DOT Specification 4B cylinders not exceeding 170 cubic inch capacity. (Modes 1, 2, 5.)
9838–N	S. & W. Waste, Inc., South Kearny, NJ	49 CFR 173.154	To authorize shipment of a flammable waste material, classed as a flammable solid, in non-DOT specification steel containers of approximately 20 cubic yard capacity, of the roll-on, roll-off type. (Mode 1.)
9839–N	Vulcan Packaging Ing., Toronto, Ontario, Canda.	49 CFR 178.116–6, 175.3	To manufacture, mark and sell a non-DOT specification, 6-gallon steel drum of 24 gauge steel, which otherwise complies with the DOT Specification 17E drum, for shipment of materials authorized in a DOT Specification 17E drum. (Modes 1, 2, 3, 4.)
9840–N	Kenai Air Alaska, Inc., Kenai, AK	49 CFR 172.101, 175.30, 175.3	To authorize shipment of hydrogen peroxide solution, 35 percent, classed as an oxidizer, in a 55 gallon DOT Specification 34 drum carried in a cargo net suspended from the cargo hook. (Mode 4.)
9841–N	Consani Engineering (Pty) Limited, Elsies River 7480, South Africa.	49 CFR 178.245–1(b), 175.3	To authorize manufacture, mark and sale of non-DOT specification steel portable tanks, similar to DOT Specification 51 steel portable tanks, for shipment of nonrefrigerated liquefied gases. (Modes 1, 2, 3, 4.)
9842–N	Sunbird Airlines, Inc., Murray, KY	49 CFR 172/101, 172.204(c)(3), 173.27, 175.3, 175.30(a)(1), 175.320(b), Part 107, Subpart B Appendix B.	To authorize carriage by cargo-only aircraft those Class A, B and C explosives that are not permitted or that are in quantities greater than prescribed for air shipment. (Mode 4.)
9843–N	Brum Engineered Parts Inc., Midland, Ontarion, Canada.	49 CFR 178.33a, 175.3	To authorize manufacture, mark and sale of non-DOT specification cylinders, similar to DOT Specification 2Q, for shipment of materials authorized in DOT Specification 2Q cylinders. (Modes 1, 2, 3, 4.)
9844–N	Theodor Fries, Gesellschaft MBH & Co., Sulz, Austria.	49 CFR 173.266(a), 175.3	To authorize shipment of hydrogen peroxide solution, 60% hydrogen peroxide by weight, classed as oxidizer and corrosive material, in a non-DOT specification polyethylene portable tank. (Modes 1, 2, 3, 4.)
9845–N	C-I-L, Inc., North York, Ontario, Canada	49 CFR 173.31	To authorize retesting of tank cars with a 5–5–3–3–3–3–3 year test cycle in lieu of the required 5–5–3–3–3–3–1 year test cycle. (Mode 2.)
9846–N	Flexcon and Systems, Inc., Lafayette, LA	49 CFR 175.154, 173.182, 173.245b	To authorize manufacture, mark and sale of polyethylene-lined woven polypropylene bag for shipment of materials classed as flammable or corrosive solid, or oxidizer. (Modes 1, 2.)
9847–N	FIBA/Mass Oxygen, Westboro, MA	49 CFR 173.34(e), 173.302(c), 175.3	To authorize testing of DOT Specification 3A and 3AA cylinders by means of acoustic emission testing in lieu of hydrostatic testing. (Modes 1, 2, 3, 4.)
9848–N	Hamilton Standard Div., United Technologies Corp., Windsor Locks, CT.	49 CFR 173.302	To authorize shipment of nitrogen, compressed, classed as nonflammable gas, in a non-DOT specification packaging. (Modes 1, 2.)
9849–N	Southern Air Transport, Inc., Miami, FL	49 CFR 172.101, 172.204(d)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B, 175.3.	To authorize carriage by cargo-only aircraft those Class A, B, and C explosives that are not permitted or that are in quantities greater than prescribed for air shipment. (Mode 4.)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on September 11, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87–21428 Filed 9–16–87; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 10, 1987.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0172
Form Number: 4562
Type of Review: Resubmission
Title: Depreciation and Amortization
Description: Form 4562 is used by taxpayers to claim a deduction for depreciation and/or amortization on their income tax return. The form also contains questions taxpayers are required to answer pertaining to automobiles and other "listed property" (Internal Revenue Code section 280F)

Respondents: Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Burden: 11,452,715 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 87–21459 Filed 9–16–87; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 10, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0216
Form Number: ATF F 54120.17 (702)
Type of Review: Extension
Title: Monthly Report of Wine Cellar Operations
Description: This report is used to monitor winery operations to insure collection of wine tax revenues. It further insures that wine is produced in accordance with the rules established in law and regulations. ATF F 5120.17 provides the raw data for ATF's Monthly Statistical Release on Wine, which is used by both ATF and other federal agencies as well as regulated industry for trend analysis and planning
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 18,044 hours

OMB Number: 1512–0457
Form Number: 5000/5
Type of Review: Revision
Title: ATF Reporting Requirement Letterhead Notice 5000/5—Implementation of Electronic Fund Transfer (Section 27(c)) of the Deficit Reduction Act of 1984, Pub. L. 98–369
Description: Section 27(c) of Pub. L. 98–369 requires large alcohol and tobacco taxpayers (over $5,000,000 annually) to remit taxes by electronic fund transfer. This report is required to identify these taxpayers, since this information is only available from the taxpayer, and not from any other source
Respondents: Businesses or other for-profit
Estimated Burden: 10 hours
Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 87–21460 Filed 9–16–87; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 10, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0906
Form Number: 8362
Type of Review: Extension
Title: Currency Transaction Report by Casinos
Description: Casinos have to report currency transactions of more than $10,000 within 15 days of the transaction. A casino is defined as one licensed by a State or local government having gross annual gaming revenue in excess of $1,000,000
Respondents: Businesses of other for-profit
Estimated Burden: 19,063 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management officer.
[FR Doc. 87–21461 Filed 9–16–87; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 11, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Departmental Offices

OMB Number: New
Form Number: None
Type of Review: New Collection
Title: Amendment to the Bank Secrecy Act Regarding Disclosure of Bank Secrecy Act Data
Description: Treasury needs reports of currency transactions exceeding $10,000 at financial institutions to identify persons who may be involved in drug trafficking, tax evasion, or other illegal activity. The information will be made available to Treasury law enforcement agencies, other Federal, state, and local enforcement agencies, and Congressional committees.
Respondents: State or local governments, Federal agencies or employees
Estimated Burden: 90 hours

OMB Number: New
Form Number: None
Type of Review: New Collection
Title: Amendment to the Bank Secrecy Act Instituting an Administrative Ruling System
Description: All financial institutions subject to the reporting and recordkeeping requirements of the Bank Secrecy Act and its regulations may require interpretations of the Act and the regulations. The proposed ruling system will provide a method by which those interpretations will be

available to all financial institutions subject to the Act and regulations

Respondents: Businesses or other for-profit

Estimated Burden: 450 hours

Clearance Officer: Dale A. Morgan, (202) 343–0263, Department of the Treasury, Room 2224, 15th & Pennsylvania Avenue NW., Washington, DC 20220

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–21462 Filed 9–16–87; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 180
Thursday, September 17, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 22, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, September 24, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Proposed Final Determination of Federal Election Commission Regarding Application of Gary Hart for Determination of Eligibility to Receive Presidential Primary Matching Funds.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 87-21590 Filed 9-15-87; 2:56 pm]
BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., September 23, 1987.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Docket No. 87-12—In the matter of Maximum Potential Liability in Independent Ocean Freight Forwarder Bonds—Consideration of Replies to Petition For Declaratory Order.

CONTACT PERSON FOR MORE INFORMATION: Tony P. Kominoth, Assistant Secretary, (202) 523-5725.

[FR Doc. 87-21612 Filed 9-15-87; 3:53 pm]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM, COMMITTEE ON EMPLOYEE BENEFITS

TIME AND DATE: 10:30 a.m., Wednesday, September 23, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to: (a) The general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations for each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific items include: Proposed early retirement program for employees of two Federal Reserve Banks.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: September 15, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87-21565 Filed 9-15-87; 12:24 pm]
BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, September 9, 1987.

PLACE: Room 532, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Consideration of issue raised by Commission's proposed budget submission to OMB.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326-2179, Recorded Message: (202) 326-2711.

Emily H. Rock,
Secretary.
[FR Doc. 87-21597 Filed 9-15-87; 2:56 pm]
BILLING CODE 6750-01-M

Corrections

Federal Register
Vol. 52, No. 180
Thursday, September 17, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Notice Inviting Public Comment on the Condition of American Education

Correction

In notice document 87-20594 appearing on page 33617 in the issue of Friday, September 4, 1987, make the following correction:

In the third column, under **FOR FURTHER INFORMATION CONTACT**, in the fourth line, "537-6651" should read "357-6651".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 75N-0184; DESI 10837]

T.C.M.-200 and -400 Tablets; Trihexamate; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval

Correction

In notice document 87-19749 beginning on page 32608 in the issue of Friday, August 28, 1987, make the following correction:

On page 32609, in the first column, under **SUPPLEMENTARY INFORMATION**, in the fifth paragraph, in the fourth line, "Stat. 1051 through 1053" should read "Stat. 1052-1053".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0257]

Filing of Food Additive Petition; Ferro Corp.

Correction

In notice document 87-20267 appearing on page 33472 in the issue of Thursday, September 3, 1987, make the following correction:

In the first column, in **SUPPLEMENTARY INFORMATION**, in the seventh line, "§ 728.2010" should read "§ 128.2010".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Resource Limits for Conditional SSI Payments

Correction

In rule document 87-19253 beginning on page 31757 in the issue of Monday, August 24, 1987, make the following correction:

On page 31758, in the third column, under *SSI Resources Policy and Conditional Payments*, in the first paragraph, in the eighth line, "include the" should read "include in the".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; Motor Club of America Insurance Co.

Correction

In notice document 87-20113 beginning on page 33312 in the issue of Wednesday, September 2, 1987, make the following correction:

On page 33312, in the third column, in the second paragraph, in the first line, "American" should read "America".

BILLING CODE 1505-01-D

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Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation (FAR); Compensation for Personal Services (Severance Pay); Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Compensation for Personal Services (Severance Pay)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to Federal Acquisition Regulation (FAR) 31.205–6, Compensation for personal services, that would delete certain language affecting severance pay.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before November 16, 1987, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87–33 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

A perceived inequity in the language contained in FAR 31.205–6(g)(2)(i) prompted the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council to reexamine the language related to severance pay within FAR 31.205–6, Compensation for personal services. As a result of this review, the Councils believe that it is not appropriate to disallow the cost of severance payments which are made in addition to early or normal retirement payments, and therefore are proposing to delete the last sentence of FAR 31.205–6(g)(2)(i). However, severance payments will still be required to meet the remaining tests for severance pay as well as the test of overall reasonableness of compensation.

B. Regulatory Flexibility Act

The proposed change to FAR 31.205–6 is not expected to have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because removal of the language results in no additional burden to any business and, in fact, eliminates a limitation on cost allowability. Furthermore, situations involving dual retirement and severance payments have not been frequently encountered.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any additional recordkeeping on information collection requirements. Therefore, OMB approval under 44 U.S.C. 3501, et seq. is not required.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: September 14, 1987.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

31.205–6 [Amended]

2. Section 31.205–6 is amended by removing the third sentence in paragraph (g)(2)(i).

[FR Doc. 87–21400 Filed 9–16–87; 8:45 am]

BILLING CODE 6820–61–M

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Part III

Department of Agriculture

Office of the Secretary

7 CFR Part 12

Highly Erodible Land and Wetland Conservation; Final Rule and Notice of Finding of No Significant Impact

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 12

Highly Erodible Land and Wetland Conservation

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule and notice of finding of no significant impact.

SUMMARY: The purpose of this final rule is to amend an interim rule which sets forth the terms and conditions under which a person who has produced an agricultural commodity on highly erodible land or newly converted wetland shall be declared ineligible for certain benefits provided by the United States Department of Agriculture, i.e., commodity price support or production adjustment payments, farm storage facility loans, disaster payments, payments for storage of CCC grain, Federal crop insurance, and farm loans administered by the Farmers Home Administration, as required by Subtitles B and C of Title XII of the Food Security Act of 1985 (Pub. L. 99–198).

DATES: Effective September 17, 1987. The incorporation by reference of certain publications listed in the regulations has been approved by the Director of the Federal Register as of June 24, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Alex King, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013, telephone: (202) 447-4542. Copies of the combined environmental assessment and finding of no significant impact, regulatory impact analysis, and regulatory flexibility analysis are available through this office.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under United States Department of Agriculture (the "Department" or "USDA") procedures established in accordance with provisions of Departmental Regulation 1512–1 and Executive Order 12291 and has been classified as "major." It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this rule. Copies of the regulatory impact analysis are available upon request from the previously mentioned contact.

The paperwork requirements imposed by this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. The Office of Management and Budget assigned number for those requirements is OMB No. 0550–0004.

It has been determined that this action may have a significant economic impact on a substantial number of small entities. The analysis prepared for this action includes a regulatory flexibility analysis.

The titles and numbers of the Federal assistance programs to which this rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052; Emergency Conservation Program—10.054; Emergency Loans—10.404; Farm Operating Loans—10.406; Farm Ownership Loans—10.407; Feed Grain Production Stabilization—10.055; Storage Facilities Equipment Loans—10.056; Wheat Production Stabilization—10.058; National Wool Act Payment—10.059; Beekeeper Indemnity Payments—10.060; Rice Production Stabilization—10.065; Federal Crop Insurance—10.450; Soil and Water Loans—10.416; Loans to Indian Tribes and Tribal Corporations—10.421; as found in the Catalog of Federal Domestic Assistance.

This rule is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment. An environmental assessment, dated June 1986, was prepared with regard to development of the interim rule. Notice of the availability of the environmental assessment was provided in the publication of the interim rule.

With regard to the highly erodible land conservation provisions of this rule, the invironmental assessment contains a consideration of the range of environmental effects that may result from implementation of the rule. The range of environmental effects considered recognizes the uncertainty which exists regarding the extent of compliance with the requirements of the rule, the actual erosion control measures that persons will adopt to maintain eligibility for USDA program benefits, and the actual erosion reduction that may result from those control measures. As to wetland conservation, the final rule merely clarifies the extent of the regulations' coverage.

Accordingly, based on review of the environmental assessment prepared for the interim rule, it has been determined that implementation of this final rule will not significantly affect the quality of the human environment. A copy of the finding of no significant impact and environmental assessment is available from the information contact office previously mentioned.

Statutory Authority

This rule is required pursuant to Subtitles B and C of Title XII of the Food Security Act of 1985 (the Act), 16 U.S.C. 3801 *et seq*. Those provisions of the Act remove the incentive that certain benefits provided by the Department could give persons to cultivate highly erodible land or to convert wetlands for the purpose of producing an agricultural commodity. Sections 1211 and 1221 of the Act provide, generally, that any person who, in any crop year, produces an agricultural commodity, without an approved conservation system, on a field in which highly erodible land is predominant or produces an agricultural commodity on any wetland converted after December 23, 1985, will be ineligible for commodity price support or production adjustment payments, farm storage facility loans, disaster payments, payments for storage of Commodity Credit Corporation grain, or Federal crop insurance. Also, any such person will be ineligible for loans made, insured, or guaranteed under any provision of law administered by the Farmers Home Administration if it is determined that the proceeds of such loan will be used for a purpose that will contribute to excessive erosion of highly erodible lands or to the conversion of wetland for agricultural commodity production.

This final rule amends the interim rule published at 51 FR 23496 (June 27, 1986) and applies to crops planted after the effective date of this rule and to all determinations made after or pending on the effective date of this rule. Generally, this rule sets forth (1) the definitions of highly erodible land, wetland, and converted wetland; (2) the activities which would cause a producer to be ineligible for benefits; (3) the exemptions from ineligibility; (4) the responsibilities of each administering agency; and (5) the administrative appeal rights of any person denied eligibility for benefits. This final rule will be implemented by the Agricultural Stabilization and Conservation Service (ASCS), the Commodity Credit Corporation (CCC), the Farmers Home Administration (FmHA), the Federal Crop Insurance Corporation (FCIC), the Soil Conservation Service (SCS) and the Extension Service (ES).

Discussion of Comments and Changes

USDA received 2696 letters containing 8400 comments concerning the interim rule issued on June 27, 1986. Entities responding included individuals, corporations, environmental groups, state and local governments, federal agencies, farm commodity groups, water districts, financial institutions, members of Congress, and others. Comments came from all states, except Alaska and Hawaii.

Changes in this final rule that modify the interim rule of June 27, 1986 are based upon USDA's experience in administering the interim rule, a USDA pilot test of the wetland conservation provision of the interim rule conducted from July 7 to July 25, 1986 in six states, public comments to the interim rule and consultation with the Fish and Wildlife Service of the United States Department of the Interior. Numerous minor editorial changes have been made in the text and order of the regulations for clarity and to facilitate the application of the regulations.

The discussion that follows is organized in the same sequence as the final rule.

Section 12.1 General.

One hundred and three comments were received concerning the general provisions of the interim rule. Many respondents suggested that the regulations be relaxed or rescinded. They cited a wide variety of reasons such as economic difficulties, undue government interference, overly severe penalties for noncompliance, lack of information activities, and difficulty of implementation.

Some respondents suggested that compliance should be based on the availability of cost-share assistance, and that persons should receive payment for complying with the regulations. Several suggested administrative flexibility to allow the shifting of commodity bases on farms to allow and encourage conservation oriented crop rotations. Others suggested that permanent conservation practices that are established in a permanent cover of grasses or legumes should be eligible for consideration as set aside acreage. These comments pertain to specific compliance requirements and are addressed in the final rule under § 12.23, Conservation Plans and Conservation Systems.

These regulations and the conditions they impose are required by the Food Security Act of 1985. USDA does not have the legislative authority to rescind or relax these conservation provisions or to make compliance contingent on the availability of cost share funds. However, the Department has sought to implement and administer the Act's requirements in a reasonable manner.

Furthermore, to the extent ongoing program cost share funds are available, cost share programs such as Agricultural Conservation Program (ACP), and Great Plains Conservation Program (GPCP) may be utilized to apply required conservation treatment on highly erodible cropland. Persons may also have the option to use the Conservation Reserve Program (CRP) to convert highly erodible cropland to grass, trees or wildlife cover for 10 years in return for annual "rental" payments and cost share payments to establish permanent covers. Under the legislation, the incentive for complying with the provisions of these regulations is the retention of eligibility to participate in and receive benefits from certain USDA programs.

The Secretary of Agriculture (the "Secretary") has established USDA information and education task forces at the national and state levels to increase the availability of information relating to the Act and these regulations. These task forces have developed fact sheets, brochures, displays, radio and television spots, news releases and other media material which are being used to better inform landowners and operators of the conservation provisions of the Act.

Also, this rule amends the regulations to provide that the regulations apply to all lands within States, *i.e.*, private lands, Federal, State or local government lands, and Indian tribal lands.

Section 12.2 Definitions

Many comments proposed modifications or additions to the existing definitions. Several comments requested a clarification of the term "normal circumstances" and numerous comments suggested that the definition of "person" should be revised to include agents of landowners or agencies. Other comments proposed broadening the definitions of a "conservation plan" and "conservation system" to include water quality, wetland preservation and other conservation purposes. Comments were also received which proposed changing the definition of "highly erodible land" to include land with streambank erosion.

In response to these comments and for purposes of clarity, several of the definitions have been revised in the final rule. Also, in conformance with section 3 of Pub. L. 100–28 (April 24, 1987), the definition of "conservation plan" was revised to reflect the wording of an amendment to section 1212(a)(2) of the Act, which provides more specific information on the content of a conservation plan. Furthermore, the definition of "highly erodible land" has been revised to indicate that highly erodible land is land that has an "erodibility index" of 8 or more, and a definition of erodibility index was added to more clearly describe the basis for determining the erodibility of land.

Also, it was determined that, for purpose of clarity, the term "normal circumstances" should be defined in context with its customary usage in determining whether land is wetland or not. This definition now appears in § 12.31(b)(2)(i).

The definitions of "conservation plan," "conservation system," or "highly erodible land" were not expanded to include water quality, wetland preservation and other conservation purposes, because considerations of water quality, wetland preservation, or other conservation purposes are not necessary to implement the highly erodible land conservation provisions of the Act to which those definitions relate. Likewise, streambank erosion, which is not the result of sheet, rill or wind erosion as required by the Act, cannot be used in defining or determining "highly erodible land."

The definition of "person" was not changed as suggested because the change is not needed. The person requesting USDA program benefits is the person who must comply with the Act and these regulations. To the extent that the program under which the person requests benefits recognizes agents for the person, agents may, in fact, represent the person for the purposes of these regulations. USDA did delete the term "producer" from the regulation after determining that the term was not essential to the rule.

The definition of "wetland" has been changed to exclude from the definition lands in Alaska identified as having high potential for agricultural development which have a predominance of permafrost soils. This change is required by the amendment to the Act's definition of "wetland" made by the Urgent Supplemental Appropriations Act of 1986, Pub. L. 99–349, 100 Stat. 710,714.

Section 12.4 Determination of Ineligibility

Seven hundred identical comments were received concerning determinations of ineligibility with regard to converted wetlands. All the respondents suggested the "rules should provide that in event the landowners crop or otherwise farm land classified as

wetlands, the action should only affect that particular farm unit and not other farm units the landowner and/or tenant has an interest in or is farming or operating."

Under the Act, however, ineligibility applies as to any commodity produced by a person, who has violated program provisions, during the crop year. Accordingly, the scope of § 12.4 is unchanged.

Section 12.5 Exemptions

Five comments were received concerning the extension of time for compliance with the highly erodible land conservation provisions in situations where soil survey maps are not available.

All five respondents expressed the concern that the references to an available soil survey in § 12.5(a) and (b)(1) were not clear as to whether the soil survey must be completed as to an entire farm or just for the existing cropland portion of a farm.

Sections 12.5(a) and (b)(1) have been changed to make clear that the referenced soil survey applies only to the cropland portion of the tract or farm. In order to carry out the highly erodible land and wetland conservation provisions of this rule, SCS must complete, as a minimum, a soil survey of all existing cropland on the tract or farm. However, it is SCS policy to complete a soil survey of the entire farm whenever resources permit, since a soil survey of the entire farm will allow SCS to identify those noncropland fields that contain highly erodible or hydric soil map units in order to inform landowners and operators of potential problems with eligibility if these areas are converted to cropland in the future.

One hundred and forty-nine comments were received suggesting that alfalfa, when used in a crop rotation, be considered an agricultural commodity so as to qualify for exemption under § 12.5(a) and (b)(1). The Act, however, specifically defines an agricultural commodity as any agricultural commodity that is planted and produced by the annual tilling of the soil.

Alfalfa, other legumes or grasses are not tilled annually and thus do not meet the definition of an agricultural commodity. Therefor, if a crop field was in alfalfa, other legume or grasses during the period 1981 to 1985, and was broken up to plant an annually tilled crop in 1986 or later years, the person may lose eligibility for program benefits. However, where alfalfa, other legumes or grass are used as a high residue crop in a crop rotation, as distinguished from permanent hayland or grassland, the existing crop rotation and management techniques may be considered to constitute an acceptable conservation system for the field. In such cases, a person may only need to have SCS determine that the existing conservation system meets the requirements of the local SCS field office technical guide, and obtain the approval for the conservation system from the local conservation district or SCS to maintain eligibility.

On April 24, 1987, section 1212(b) of the Act (16 U.S.C. 3812(b)) was amended by Pub. L. 100–28. The amendment authorized a one year extension of time for full implementation of conservation plans where alfalfa has been used in crop rotations (but not where alfalfa has been used for permanent hayland or pasture). Accordingly, a new § 12.5(b)(2) has been added to implement the time extension granted by the amendment. Essentially, persons who had alfalfa in a crop rotation on highly erodible land during each of the 1981 through 1985 crop years based on a conservation plan have until June 1, 1988 to fully apply the conservation system. The provisions contained in § 12.5(b)(2) of the interim rule have been moved to a new section (§ 12.32) of the final rule and are discussed later.

Four comments were received concerning the renovation of existing pastures. These comments noted that it is common, in many areas, to use a rotation of conventional crops for periods of two to three years before returning the land to permanent pasture. This cropping period is necessary to eliminate undesirable plant species that may have invaded the pasture and to prevent the recurrence of pasture plant diseases. The respondents requested that an exemption for renovation of pasture be added to the highly erodible land provisions to specifically allow rotation crops to be planted and harvested, and to allow soil loss to exceed tolerance levels during the period when rotation crops are grown.

It has been determined that no changes will be made in the final rule to categorically allow exceptions for breaking out highly erodible land for the production of annual crops in these situations. The production of annual crops on highly erodible land, even though done for purposes of permanent pasture renovation, falls within the scope of the highly erodible land conservation provisions of the Act and would require an approved conservation system. However, it should be noted that since erosion rates are computed over the full rotation period, additional erosion control practices may not be required if the average annual rate of erosion is acceptable, even though excessive erosion occurs in some individual years until permanent pasture is reestablished. Conversely, if the average annual erosion rate is excessive, a conservation system would specify the necessary erosion control practices and any allowable rotation crops, on a case by case basis, that could be produced for pasture renovation.

Another comment sought an exemption for situations where brushland is converted to grassland. Conversions from brush to grass are not subject to the highly erodible land provisions because grass is not an agricultural commodity for purposes of the Act. Therefore, the rule does not require modification in this regard.

Exemption Based on Economic Impact and Feasibility

Eight hundred and ninety comments were received concerning the economic impacts of § 12.5(b)(2) and (3) of the interim rule, which required that conservation systems and plans be developed to reduce soil erosion to an established soil loss tolerance level (T), with twice that level (2T) being allowed in specific circumstances. Seven hundred and thirty-four comments stated that these requirements would unduly affect the economy by forcing farmers out of business and causing adverse impacts on local agribusiness. Thirty-four comments were received concerning the economic hardship exemption of allowable soil loss tolerance (2T). Twelve respondents supported the exemption; twenty-two respondents opposed the provision of the interim rule allowing up to 2T soil loss upon a determination by SCS that further reduction is impractical. Three respondents suggested that exemption should be more than 2T. Ninety-two comments were concerned that farmers would be forced to apply expensive conservation measures that they could not afford.

Based upon the public comments and the Act's legislative history, USDA has determined that the "T" and "2T" limitations for conservation plans and conservation systems are too restrictive. For that reason § 12.5(b) (2) and (3) of the interim rule were amended on June 29, 1987, 52 FR 24132. The purpose, scope and effect of this change is more fully discussed in that rule. These provisions of the amended rule are currently in effect, are the subject of public comment, and are not made final by this rule. Although it has been incorporated in this final rule, relevant comments are encouraged and may be submitted in response to the June 29

amended interim rule and a final rule with respect to these provisions will be issued at a later date.

In this final rule this part of the interim rule has been moved to § 12.23, Conservation Plans and Systems, and expanded for a more comprehensive discussion of the requirements for conservation plans and systems.

Section 12.5(d) Exemptions for wetland.

Section 12.5(d)(1)(i) has been revised to clarify that the production of agricultural commodities on converted wetlands is exempt if the conversion was commenced or completed prior to December 23, 1985. This change implements the intent of Congress to exempt the production of agricultural commodities on converted wetlands if conversion was completed prior to December 23, 1985, as well as on converted wetlands where the conversion was commenced prior to December 23, 1985.

Four hundred and sixty comments were received on the "third party exemption" in § 12.32 of the interim rule. This exemption protected persons who produce agricultural commodities on wetlands converted by the actions of persons unassociated with the person requesting benefits. All of these respondents suggested that any person who produces an agricultural commodity on wetlands converted after December 23, 1985 should be determined to be ineligible for program benefits regardless of who caused the conversion.

The provisions regarding "third party exemptions" have been moved from § 12.32 to § 12.5(d)(1)(vi) in the final rule because this subject relates to exemptions more so than to the criteria for identifying converted wetlands, which continues to be the subject of § 12.32. The third party conversion provisions were amended after considering the public comments and consulting with the Fish and Wildlife Service. Under this final rule, converted wetlands are presumed to have been converted by the person applying for USDA program benefits unless the person can show that the conversion was by an independent third party and the person can show that there has been no involvement in a scheme or device to avoid compliance with this rule. Furthermore, such person may continue to produce agricultural commodities on such converted wetland and retain eligibility only as long as there is no further improvements to the drainage of such converted wetland or if a minimal effect determination is made by SCS with regard to any further drainage improvement. Conversely, if there was acquiescence in, approval of, or assistance to acts of a third party in regard to the conversion of the wetland, the person is subject to the scheme or device provisions of § 12.10 and may lose eligibility for program benefits. This approach allows persons who had no control whatsoever over the incidental conversion of wetland to use such lands for the production of agricultural commodities but at the same time prevents schemes or devices from being used to circumvent the rule and avoids undue windfall benefits to landowners or operators at the expense of wetland conversion.

With regard to wetlands converted prior to the effective date of the Act, § 12.5(d)(2) was added to the final rule to make clear that determinations regarding whether the conversion of wetland was completed prior to December 23, 1985 will be based upon consideration of the types of activities set forth in the definition of what constitutes a "converted wetland."

Fifty-one comments on the interim rule were concerned that the definition of converted wetland would allow additional drainage to occur to these lands after December 23, 1985. Section 12.5(d)(1)(i) of the final rule makes it clear that wetlands converted prior to December 23, 1985 are exempted from the rule by the law. Therefore, those converted wetlands may be improved by additional drainage, provided that no additional wetland or abandoned converted wetland is brought into production of an agricultural commodity. Also see § 12.33(b) of the final rule. However, under § 12.32(a)(3) of the final rule, potholes and playas and other wetlands that are flooded or ponded for extended periods, especially during the early growing season, will not be considered converted based upon activities that occurred prior to December 23, 1985, and further conversions will result in the loss of program benefits unless the conversion is determined to have a minimal effect, as determined pursuant to § 12.5(d)(1)(v).

Eight hundred and eighty-three comments were received concerning the exemption in § 12.5(d) (1) and (2) of the interim rule regarding converted wetlands for which conversion was commenced before December 23, 1985. Seven hundred respondents suggested that the exemption should include projects and drainage which have been planned but not installed as of December 23, 1985. These respondents further suggested that ongoing projects should not be unduly restricted. One hundred eighty-three respondents supported the commenced exemption as set forth in the interim rule.

After consideration of the comments and consultation with the Fish and Wildlife Service, USDA has revised the definition of "commenced" in § 12.5(d)(3) and (4) of the final rule to clarify what constitutes commencement of conversion prior to December 23, 1985 and to assure that commencement of conversion determinations are based on one or more of the following criteria: (1) the conversion activity was actually started before December 23, 1985; or (2) the person expended or committed substantial funds by entering into a contract for the installation of a drainage activity or for construction supplies and materials for the conversion prior to December 23, 1985.

The final rule also provides that a person seeking a determination of conversion commendement under this exemption must request the determination within one year following publication of this rule, must demonstrate that the conversion of the wetland has been actively pursued and must complete the conversion by January 1, 1995.

A new § 12.5(d)(4) has been added to specifically address the activities of drainage districts or entities that relate to the conversion of wetland. It imposes all of the criteria discussed above and, in addition, requires the drainage districts or similar entities to have had on file prior to December 23, 1985, an approved plan for installation of the district drainage project. Further, only those portions of the drainage project for which a substantial commitment of funds has been made or legally obligated prior to December 23, 1985 will be considered for exemption under § 12.5(d)(4). Finally, a person who wants to use the conversion commencement exemption in this situation must show that the drainage of the person's wetland was part of the project drainage plan.

Section 12.12 Appeals.

Seven comments were received concerning administrative appeals.

Four comments supported the administration appeal procedures as referenced in § 12.10 of the interim rule. Three comments recommended a change that would allow interested third parties to appeal any determination made under these regulations.

Under the Act, only the person or persons who face the loss of eligibility for USDA program benefits are adversely affected and have the right to an administrative appeal. The appeal procedures generally allow agencies to

request other interested persons to present information that directly relates to the determination under appeal. However, the interested party is not a party to the appeal.

Additionally, three hundred and ninety-six comments were received concerning the reporting of violations of the Act and these regulations. All of the respondents suggested that private citizens be allowed to report violations. Several respondents suggested that a toll free number be set up for this purpose.

The Department responds to reports of program violations when received from private citizens. There is presently a USDA toll-free number for use in reporting violations of USDA programs: 1–800–424–9121. Additionally, persons may report suspected violations by calling or writing the county office of ASCS, FmHA, or FCIC, as applicable.

For reference, the Code of Federal Regulation citations for the appeal procedures of all the USDA agencies involved in implementing the rule have been added to § 12.12.

Section 12.21 Criteria for Identifying Highly Erodible Lands.

One hundred and eighty-two comments were received concerning the criteria for identifying highly erodible lands. One hundred and thrity-seven comments made suggestions concerning the use of the erodibility index value for identifying highly erodible lands.

Twenty-four comments were concerned about the use of assigned "I" values for determining the Wind Erosion Erodibility Index (CI/T) rather than "I" values which have been adjusted to reflect tillage practices. The "I" value is the degree to which soil resists wind erosion. Twenty one comments were concerned about the consistency of the criteria and the breakpoint level used for identifying highly erodible lands, as set forth in the interim rule, with similar criteria existing for the Conservation Reserve Program (7 CFR Part 704).

It has been determined that the Erodibility Index (EI) criteria will be retained in the final rule, including the present break point value of "8 or more." At this value level, a majority of the lands that have a serious erosion problem if cropped without adequate erosion protection will be covered. Thus, the criteria set forth in this rule and the criteria that are applicable to the Conservation Reserve Program will be consistent. The Department recognizes that having a breakpoint discriminates between lands that fall on opposite sides of the breakpoint, but any criteria used (*e.g.*, land capability classes, erodibility index or actual erosion rates) would encounter the same problem. In order to implement that Act in a reasonable and practical manner, some cut-off point which is consistent with the Act's purposes must be used. The breakpoint value of "8 or more" has been determined to be the level which is most consistent with these purposes.

Furthermore, it has been determined that the EI values for wind erosion and water erosion should not be combined. While both wind and water erosion may occur on the same field, both erosion types do not necessarily occur on the same acre nor do both types of erosion occur at the same time of year. Thus, whichever is the most prevalent type of erosion, either wind or water, will be used to establish the EI value. If that value exceeds 8 or more, the soil unit is classified as a "highly erodible unit." About 1.4 million acres of the Nation's croplands have EI values between 5 and 8 for both wind and water erosion combined, which is less than 1.3 percent of all of the highly erodible cropland in the United States.

Also, it has been determined that only assigned "I" values, without adjustments to reflect tillage and other management practices, will be used to calculate the EI value in determining whether land is highly erodible due to the wind erosion hazard, since the EI represents the potential erodibility of the soil and not the actual rate of erosion. Adjusted "I" values may be used, where applicable, in determining whether an adequate conservation system is being followed, since the land management factors considered in the adjustment are relevant to that type of determination.

Section 12.23 Conservation plans and conservation systems.

A new section has been added in the final rule concerning conservation plans and conservation system requirements. Section 12.23(a) contains the wording set forth in the amendment to the interim rule which was published in the **Federal Register** on June 29, 1987, as previously mentioned.

Additionally, this section in the final rule contains four new provisions, § 12.23 (b), (c), (d), and (e), to clarify some minor misunderstandings regarding the interim rule that became apparent from the comments and during implementation of the interim rule. These revisions provide that:

1. Persons are encouraged to request SCS assistance for the development of a conservation plan or implementation of a conservation system well in advance of deadline dates to avoid delays and difficulties in maintaining eligibility for program benefits.

2. SCS will handle the approval or disapproval of conservation plans and systems in those situations where a conservation district does not provide such a determination within 45 days, unless there is good cause for delay.

3. Section 12.23(d) describes what constitutes "actively applying a conservation plan" so that a person may determine whether a plan is being actively applied by the person so as to meet the requirements of the Act.

4. Persons who believe the requirements for conservation plans and systems were misapplied with regard to them may appeal to SCS.

Fifty-nine comments were received concerning the requirements for conservation plans and the role of conservation districts in plan approval. Forty-eight comments favored the conservation district role provided in the interim rule and the requirements for conservation plan development but suggested some modification of these requirements. These suggestions included (1) providing more flexibility in the planning process, (2) allowing farmers to prepare their own plans, (3) placing a 5-year life span on conservation plans, and (4) requiring that conservation plans address all resource concerns. It has been determined that the rule adequately reflects the legislative intent concerning the development of the required conservation plan. Land owners and operators are responsible for making land use and conservation treatment decisions concerning their land and for compliance with the Act. The function of the soil conservationist is to identify acceptable conservation (treatment) system alternatives and to provide this and other relevant information of the landowner or operator. This process provides maximum flexibility in terms of format and content of the plan, the conditions under which a plan is to be revised, the types of resource concerns that can be addressed in the plan, and how the plan is prepared. A plan may be prepared solely by the person, or with assistance of SCS, or with assistance of a private consultant. When a conservation plan is prepared by parties other than SCS, the person must obtain SCS certification that the plan meets SCS standards and obtain the approval of the conservation district.

It has been determined that persons will be allowed to exchange, subject to restrictions, certain crop acreage bases for crops that have a high residue base if the high residue crop is recommended by SCS as being essential for the conservation plan and the recommendation is approved by ASCS.

See § 12.6(b)(3)(iv). The ability to exchange certain crop acreage bases for high residue crops will give persons more flexibility in the selection of acceptable conservation systems for highly erodible cropland. Determinations governing such exchanges will be administered pursuant to other relevant parts of Title 7 of the Code of Federal Regulations.

Section 12.31 Hydric soil criteria.

Eighty-six comments were received concerning the hydric soil criteria used to identify wetland. Most of these comments were concerned about the method used to identify hydric soils in the interim rule. Some respondents supported the method, while others believed the method would include too much land as wetland, and still others believed the method would not include enough land. A few comments suggested that the on-site procedures be used in all situations. Some comments recommended that soil map units which were not hydric but which contained hydric soil inclusions be deleted from hydric soil lists. A couple of comments recommended that only organic soils should be included in the lists of hydric soils and others recommended that SCS publish hydric soil criteria in the **Federal Register**.

Changes have not been made to the technical criteria for determining hydric soils as a result of these comments; however, changes were made in § 12.32 regarding converted wetland identification criteria. The method used for wetland identification was developed to provide the resource data necessary to determine predominance of hydric soils and prevalence of hydrophytic vegetation in order to make wetland determinations in accord with the Act's wetland definition. With regard to on-site determinations, USDA does not believe that it is necessary to make an on-site determination in all cases. The rule does provide for on-site determinations in those cases where an office determination cannot be made on the information available. Additionally, a person may request reconsideration of a wetland determination, which would then require an on-site determination. This procedure will allow SCS to allocate resources in an effective and efficient manner, while assuring that determinations are based on accurate information.

The rule does not exclude soil map units that have inclusions because many inclusions in a map unit consist of potholes or other wet areas that are clearly wetlands and have significant wetland values. To eliminate those soil map units that contain these inclusions from the list of hydric soils would not be consistent with the Act's objective of encouraging the conservation of wetland values.

The hydric soils criteria have been developed by an interagency committee of professionals in soils and wetlands independently of the Food Security Act of 1985. The legislative history of the Act recognizes this independent list and indicates that these criteria are to be used to identify wetlands. Comments concerning a proposed change in the criteria along with supporting data may be sent to: Chairman, National Technical Committee for Hydric Soils, USDA, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013. If a change in the list or the criteria is made, a notice will be published in the **Federal Register.**

Section 12.31(b) Prevalence of hydrophytic vegetation.

Thirty-four comments were received concerning the determination of a prevalence of hydrophytic vegetation. Twelve respondents felt too much land would be included as wetland by using the method described in the interim rule, and six felt too little land would be included. Sixteen comments suggested that the list of hydrophytic plants, and any changes in it, be circulated for review prior to adoption.

No change has been made in the method for determining prevalence of hydrophytic vegetation. However, changes have been made in § 12.32, regarding converted wetland identification criteria. The method used to determine prevalence of hydrophytic vegetation employs the National List of Plant Species That Occur in Wetlands (NLPSOW) and a weighted average technique, which uses plant indicator designations for the prevalence determination. The use of the NLPSOW is based on the Act's legislative history and interagency acceptance of the national list. The weighted average technique is an effective way to quantify prevalence based on data from previously sampled plant communities. The method was chosen because it is accurate, relatively simple to perform, yields a numerical value which can be used to quantify determinations, and lends itself to analysis of plant data using different plant data collection techniques. Related studies suggest that the NLPSOW value of 3.0 is the logical separation point between wetland and nonwetland. Under the final rule, the test for the prevalence of hydrophytic vegetation is applied after a determination has been made that an area is composed of hydric soils that are inundated or saturated.

The NPSLOW represents the best available technical knowledge in this field. The plant list is an interagency effort which is assembled by the Fish and Wildlife Service, Soil Conservation Service, the Army Corps of Engineers, and the Environmental Protection Agency. The NLPSOW contains a procedure for listing, delisting, or changing the indicator status of plant species. Copies of the NLPSOW may be obtained from the U.S. Fish and Wildlife Service, National Wetland Inventory, Monroe Building Suite 101, 9720 Executive Center Drive, Saint Petersburg, Florida 33702. Persons having data that supports a change of a listed plant species may submit their change request and data according to the procedures outlined in the NPSLOW.

Section 12.31(c)(1) Artificial wetland.

Section 12.31(c)(1) has been clarified by specifying that artificial wetland is identified as land that was formerly nonwetland or converted wetland but now is wetland due to manipulation.

Section 12.32(b) Farming under natural conditions.

Comments were received concerning the exemption for the production of agricultural commodities on wetland during a period of drought. The comments suggested that wetland that can be cultivated for a lengthy period of time should not come within this exemption and that restrictions be placed on the use of herbicides with regard to agricultural commodity production under this provision.

No changes have been made as a result of these comments. The Act expressly allows farming of wetland during dry years and the number of years that the natural conditions are dry enough to permit farming is not an appropriate consideration in determining whether a wetland has been converted. As to the suggested restrictions on herbicides, the use of approved herbicides is a part of normal, environmentally acceptable farming practices and so, the final rule does not categorically impose any specific restrictions.

Section 12.31(d) Minimal effect.

Seven hundred and seventy-four comments were received concerning the determination of the effect of converting wetland, as set forth in the interim rule. All of the comments suggested that the rule specifically allow the mitigation of fish and wildlife values to provide the basis for exemption. Most of the comments suggested that the final rule permit water resource districts to work

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with the Fish and Wildlife Service to develop drainage projects that provide replacement benefits to wildlife. The concern expressed was that the interim rule did not permit water resource districts to improve conditions for wildlife and thus replace wetland losses in order to allow their individual constituents to remain eligible for program benefits.

After consideration of these comments, the rule has not been changed to allow the production of agricultural commodities on converted wetland to be exempted categorically through the mitigation of the loss of fish and wildlife values. The wetland conservation provisions of the Act encourage the preservation and protection of natural wetlands, rather than the replacement of natural wetlands with artificial wetlands that may have similar fish and wildlife values. Further, if mitigation were allowed on a broad scale, extensive monitoring efforts would be required to ensure that mitigation is carried out and maintained.

Also, the increased use of converted wetland for agricultural commodity production would not be discouraged if mitigation were used for a categorical exemption. The final rule does not preclude the possibility of considering the merits of mitigation on a case by case basis in the course of making a "minimal effects" determination. In these specific situations, mitigation would be considered as a limited exception, rather than the rule, as the legislative intent for the minimal effect determination is that it should rarely be used.

Of course, this does not preclude mitigation from being used in conjunction with project-type activities that have objectives other than the conversion of wetland for the production of agricultural commodities.

In response to comments and after consultation with the Fish and Wildlife Service, new wording has been added to § 12.31(d) that precludes the further alteration of converted wetlands which were the subject of a minimal effects determinations. In this situation, a person is required to advise SCS of any proposed action that may change the hydrological or biological aspects of a converted wetland after the original minimal effect determination has been made so that the effects of the subsequent alterations may be considered to determine if those effects are so different as to no longer be minimal.

Section 12.32 Converted wetland identification criteria.

This section has been revised to provide that the land and water alteration activities described in the definition of "converted wetland" (see § 12.2(a)(6)) are criteria used to determine if a wetland has been converted. If evidence of these activities is not clearly discernable at the time of the determination, SCS will compare the hydric soils on the subject site with the same hydric soils on another nearby natural (undrained) site to determine if a crop can be produced without manipulating the water regime. If a crop could not be produced on the comparison wetland site without manipulation of the water regime, the subject area will be considered to be converted wetland. If a crop could be produced on the comparison site without manipulating of the water regime, the subject area will be determined to be a wetland that has not been converted. The production of an agricultural commodity may continue on the subject wetland as long as no conversion activity is carried out.

Seven hundred comments were received concerning the maintenance of existing drains on converted wetlands that are exempt from the Act's coverage. All of the respondents suggested that the rule should be clear as to whether maintenance of such drains is permissible. The final rule makes clear that for most converted wetlands, maintenance and improvement of drainage systems is appropriate, as long as additional wetlands are not converted and brought into commodity production. However, it has been determined that certain wetlands, *i.e.*, topographical depressions, such as potholes and playas and other seasonally flooded or ponded wetlands, retain significant wetland functions even if the water regime was modified before December 23, 1985. If these areas continue to meet the wetland criteria they will be identified as wetlands rather than converted wetlands, despite the prior manipulations, to protect the remaining wetland values. Persons may continue to farm these areas as they did prior to December 23, 1985 and remain eligible for program benefits; however, no further actions can be taken to increase effects on the water regime of these areas unless SCS makes a minimal effects determination.

A new paragraph (g) has been added in § 12.5 which places the burden of proof on the person seeking exemption on the basis of conversion prior to December 23, 1985, to show when a wetland was converted or when conversion was commenced.

Seven hundred comments were received concerning land that has been farmed three out of five years prior to passage of the Act. All of the respondents suggested that land in this category should be exempt from program restrictions.

It has been determined that crop history alone will not be used in the final rule as an indicator of wetland conversion. Wetlands that are farmed 3 out of 5 years prior to December 23, 1985 will not be considered to have been converted on that basis alone. This does not preclude such wetlands from being farmed in the same manner as they have been in the past. This does restrict what can be done in terms of drainage improvement on these wetlands, unless they are determined, on the basis of other factors, to have been converted before December 23, 1985. Crop history may be used in converted wetland determinations to analyze the extent of conversion and the purposes for which conversion was undertaken.

List of Subjects in 7 CFR Part 12

Highly erodible land, Wetland, Conservation, Price support programs, Federal crop insurance, Farmers Home Administration loans, Incorporation by reference, Loan programs—Agriculture, Environmental protection.

Accordingly, Title 7 of the Code of Federal Regulations is amended by revising Part 12 as follows:

PART 12—HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

Subpart A—General Provisions

Sec.

12.1 General.
12.2 Definitions.
12.3 Applicability.
12.4 Determination of ineligibility.
12.5 Exemptions.
12.6 Administration.
12.7 Certification.
12.8 Affiliated persons.
12.9 Landlords and tenants.
12.10 Scheme or Device.
12.11 Action based upon advice or action of Department.
12.12 Appeals.

Subpart B—Highly Erodible Land Conservation

12.20 SCS responsibilities regarding highly erodible land.
12.21 Identification of highly erodible lands criteria.
12.22 Highly erodible field determination criteria.
12.23 Conservation plans and conservation systems.

Subpart C —Wetland Conservation

12.30 SCS responsibilities regarding wetlands.
12.31 Wetland identification criteria.
12.32 Converted wetland identification criteria.
12.33 Use of wetland and converted wetland.

Authority: 16 U.S.C. 3801–3823, 3841–3844.

Subpart A—General Provisions

§ 12.1 General.

(a) This part sets forth the terms and conditions under which a person, who, after December 23, 1985, produces an agricultural commodity on highly erodible land or converted wetland, shall be determined to be ineligible for certain benefits provided by the United States Department of Agriculture and agencies and instrumentalities of the Department.

(b) The purpose of the provisions of this part are to remove certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland and to thereby—

(1) Reduce soil loss due to wind and water erosion,

(2) Protect the Nation's long term capability to produce food and fiber,

(3) Produce sedimentation and improve water quality,

(4) Assist in preserving the Nation's wetlands, and

(5) Curb production of surplus commodities.

§ 12.2 Definitions.

(a) The following definitions shall be applicable for the purposes of this part:

(1) "Agricultural commodity" means any crop planted and produced by annual tilling of the soil, including tilling by one-trip planters or sugarcane.

(2) "ASCS" means the Agricultural Stabilization and Conservation Service, an agency of the United States Department of Agriculture which is generally responsible for administering commodity production adjustment and certain conservation programs of the Department.

(3) "Conservation District" (CD) means a subdivision of a State or local government organized pursuant to the applicable law to develop and implement soil and water conservation activities or programs.

(4) "Conservation plan" means the document containing the decisions of a person with respect to the location, land use, tillage systems and conservation treatment measures and schedule which, if approved, must be or have been established on highly erodible cropland in order to control erosion on such land.

(5) "Conservation system" means the part of a cropland resource management system applied to a field or group of fields that provides for cost effective and practical erosion reduction based upon the standards contained in the SCS field office technical guide. A conservation system may include a single practice or a combination of practices.

(6) "Converted wetland" means wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) that makes possible the production of an agricultural commodity without further application of the manipulations described herein if (i) such production would not have been possible but for such action; and (ii), before such action such land was wetland and was neither highly erodible land nor highly erodible cropland.

(7) "CCC" means the Commodity Credit Corporation, a wholly-owned government corporation within the United States Department of Agriculture organized under the provisions of 15 U.S.C. 714 *et seq.*

(8) "Department" means the United States Department of Agriculture.

(9) "Erodibility index" means a numerical value that expresses the potential erodibility of a soil in relation to its soil loss tolerance value without consideration of applied conservation practices or management.

(10) "ES" means the Extension Service, an agency of the United States Department of Agriculture which is generally responsible for coordinating the information and educational programs of the Department.

(11) "FmHA" means the Farmers Home Administration, an agency of the United States Department of Agriculture which is generally responsible for providing farm loans and loan guarantees under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) and other laws.

(12) "FCIC" means the Federal Crop Insurance Corporation, a wholly-owned government corporation within the United States Department of Agriculture organized under the provision of 7 U.S.C. 1501 *et seq.*

(13) "Field" means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, croplines (in cases where farming practices make it probable that such cropline is not subject to change) or other similar features.

(14) "Highly erodible land" means land that has an erodibility index of 8 or more.

(15) "Hydric soils" means soils that, in an undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(16) "Hydrophytic vegetation" means plants growing in water or in a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(17) "Landlord" means a person who rents or leases farmland to another person.

(18) "Local ASCS office" means the county office of the Agriculture Stabilization and Conservation Service serving the county or a combination of counties in the area in which a person's land is located for administrative purposes.

(19) "Operator" means the person who is in general control of the farming operations on the farm during the crop year.

(20) "Owner" means a person who is determined to have legal ownership of farmland and shall include a person who is purchasing farmland under contract.

(21) "Person" means an individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof and such person's affiliates as provided in § 12.8 of this part.

(22) "Secretary" means the Secretary of the United States Department of Agriculture.

(23) "Sharecropper" means a person who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for such labor.

(24) "SCS" means the Soil Conservation Service, and agency within the United States Department of Agriculture which is generally responsible for providing technical assistance in matters of soil and water conservation and for administering certain conservation programs of the Department.

(25) "Soil map unit" means an area of the landscape shown on a soil map which consists of one or more soils.

(26) "State" means each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of

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the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(27) "Tenant" means a person usually called a "cash tenant", "fixed-rent tenant", or "standing rent tenant" who rents land from another for a fixed amount of cash or a fixed amount of a commodity to be paid as rent; or a person (other than a sharecropper) usually called a "share tenant" who rents land from another person and pays are rent a share of the crops or proceeds therefrom. A tenant shall not be considered the farm operator unless the tenant is determined to be the operator pursuant to this part and 7 CFR Part 719.

(28) "Wetland", except when such term is part of the term "converted wetland", means land that has a predominance of hydric soild and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

(b) In the regulations in this part and in all instructions, forms, and documents in connection therewith, all other words and phrases specifically relating to ASCS operations shall, unless the context of subject matter or the specific provisions of this part otherwise requires, have the meanings assigned to them in the regulations governing reconstitutions of farms, allotments and bases (7 CFR Part 719).

§ 12.3 Applicability.

(a) The provisions of this part shall apply to all land, including Indian tribal land, in the fifty States, the District of Columbia, the Commonweath of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(b) The provisions of this part apply to all agricultural commodities planted after, and to determinations made after or pending or September 17, 1987. For those agricultural commodities planted prior to such date and for all determinations made prior to such date, the regulations published at 51 FR 23496, June 27, 1986, as amended on June 29, 1987 (52 FR 24132) shall apply.

§ 12.4 Determination of ineligibility.

(a) Except as provided in § 12.5, any person who, after December 23, 1985, produces an agricultural commodity on a field in which highly erodible land is predominant or on converted wetland shall be ineligible:

(1) As to any commodity produced during that crop year by such person:

(i) For any type of price support or payment made available under the Agricultural Act of 1949, the CCC Charter Act, or any other Act;

(ii) For a farm storage facility loan made under Section 4(h) of the CCC Charter Act;

(iii) For any disaster payments made under the Agricultural Act of 1949;

(iv) For crop insurance under the Federal Crop Insurance Act;

(v) For a farm loan made, insured, or guaranteed by the FmHA, if FmHA determines that the proceeds of such loan will be used for a purpose that will contribute to excessive erosion of highly erodible land (i.e., production of an agricultural commodity on highly erodible land without a conservation plan or conservation system as required by this part) or to conversion of wetland for agricultural commodity production; or

(2) For a payment made under section 4 or 5 of the CCC Charter Act during such crop year for the storage of an agricultural commodity owned by CCC.

(b) A person shall be determined to have produced an agricultural commodity on a field in which highly erodible land is predominant or on converted wetland if:

(1) SCS has determined that—

(i) Highly erodible land is predominant in such field or

(ii) All or a portion of the field is converted wetland;

(2) ASCS has determined that the person is or was entitled to share in the crops available from the land, or in the proceeds thereof; and

(3) ASCS has determined that the land is or was planted to an agricultural commodity or was planted to an agricultural commodity during the year for which the person is requesting benefits.

(c) Persons who produce agricultural commodities and wish to participate in any of the USDA programs described in paragraph (a) of this section are responsible for contacting the appropriate agency of the Department well in advance of intended participation date so that Form AD 1026 can be completed. This contact will help assure that the appropriate determinations regarding highly erodible land or wetland, and conservation plans or conservation systems are scheduled in a timely manner. A late contact may not allow sufficient time for USDA to service the request and could result in a substantial delay in receiving a USDA determination of eligibility or ineligibility.

§ 12.5 Exemptions.

(a) *Highly erodible cropland in production or in Department programs during 1981 through 1985 crop years.* During the period beginning on December 23, 1985, and ending on the later of January 1, 1990, or the date that is two years after the date the cropland on which an agricultural commodity is produced was surveyed by the SCS to determine if such land is highly erodible, no person shall be determined to be ineligible for benefits as provided in § 12.4(a) as the result of the production of a crop of an agricultural commodity on any highly erodible land:

(1) That was planted to an agricultural commodity in any year 1981 through 1985; or

(2) That was set aside, diverted or otherwise not cultivated in any such crop years under a program administered by the Secretary for any such crops to reduce production of an agricultural commodity.

(b) *Compliance with a conservation plan or conservation system.* As further specified in this part, no person shall be ineligible for the program benefits described in § 12.4(a) as the result of production of an agricultural commodity on highly erodible land if such production is in compliance with an approved conservation plan or conservation system.

(1) With respect to the production of an agricultural commodity on any land identified under paragraph (a) of this section, if, as of January 1, 1990, or the date that is 2 years after the date SCS has completed a soil survey of the cropland on the tract or farm, whichever is later, a person is actively applying a conservation plan based on the local SCS field office technical guide and approved by the CD, in consultation with the local ASC committees and SCS, such person shall have until January 1, 1995, to fully comply with the plan without being determined to be ineligible for benefits under § 12.4.

(2) Persons who had, during each of the 1981 to 1985 crop years, alfalfa on highly erodible land in a crop rotation determined by SCS to be adequate for the protection of highly erodible land shall have until June 1, 1988 to fully implement an approved conservation system without being subject to program ineligibility under § 12.4. Failure to fully implement an approved conservation system by June 1, 1988 shall cause a person to be determined to have been ineligible for program benefits for the 1988 crop year, and to be ineligible for

each following crop year that an agricultural commodity is produced on such land without an approved conservation system.

(3) A person shall not be ineligible for program benefits under § 12.4(a) as the result of the production of an agricultural commodity which was produced on highly erodible land in an area:

(i) Under a conservation system that has been approved by the CD after the CD determined that the conservation system is in conformity with technical standards set forth in the SCS field office technical guide for such district; or

(ii) Not within a CD, under a conservation system that has been approved by SCS, to be adequate for the production of such agricultural commodity on highly erodible land.

(c) *Reliance upon SCS determination for highly erodible land.* A person shall not be ineligible for program benefits as the result of the production of an agricultural commodity which was produced on highly erodible land in reliance on a determination by SCS that such land was not highly erodible land, except that this paragraph (b)(3) of this section shall not apply to any agricultural commodity that was planted on any land after SCS determines that such land is highly erodible land, and the person is notified of such determinations.

(d) *Exemptions for wetland.* (1) A person shall not be determined to be ineligible for program benefits under § 12.4 as the result of the production of an agricultural commodity on:

(i) Converted wetland if the conversion of such wetland was commenced or completed before December 23, 1985; or

(ii) An artificial lake, pond or wetland created by excavating or diking non-wetland to collect and retain water for purposes such as water for livestock, fish production, irrigation (including subsurface irrigation), a settling basin, cooling, rice production, or flood control; or

(iii) A wet area created by a water delivery system, irrigation, irrigation system, or application of water for irrigation; or

(iv) Wetland on which production of an agricultural commodity is possible as a result of a natural condition, such as drought, and is possible without action by the person that destroys a natural wetland characteristic; or

(v) Converted wetland if SCS has determined that the actions of the person with respect to the production of an agricultural commodity on the converted wetland, individually and in connection with all other similar actions authorized by SCS in the area, would have only a minimal impact on the hydrological and biological aspect of wetlands.

(vi) Wetlands converted by actions of persons other than the person applying for USDA program benefits or any of the person's predecessors in interest after December 23, 1985, if such conversion was not the result of a scheme or device to avoid compliance with this part. Further drainage improvement on such lands is not permitted without loss of eligibility for USDA program benefits, unless the SCS determines under paragraph (d)(1)(v) of this section that further drainage activities applied to such lands would have minimal effect on any remaining wetland values. In applying this paragraph, converted wetlands shall be presumed to have been converted by the person applying for USDA program benefits unless the person can show that the conversion was caused by a third party with whom the person was not associated through a scheme or device as described under § 12.10. In this regard, activities of a water resource district, drainage district or similar entity will be attributed to all persons within the jurisdiction of the district or other entity who are assessed for the activities of the district or entity. Accordingly, where a person's wetlands are converted due to the actions of the district or entity, the person shall be considered to have caused or permitted the drainage.

(2) The conversion of a wetland, for purposes of this section, is considered to have been completed before December 23, 1985 if before that date, the draining, dredging, leveling, filling or other manipulation, (including any activity that resulted in the impairing or reducing the flow, circulation, or reach of water) was applied to the wetland and made the production of an agricultural commodity possible without further manipulation described herein where such production on the wetland would not otherwise have been possible.

(3) Except as provided under paragraph (d)(4) of this section, the conversion of a wetland is considered to have been commenced before December 23, 1985 if before such date:

(i) Any of the activities described in § 12.2(a)(6) were actually started on the wetland; or

(ii) The person applying for benefits has expended or legally committed substantial funds either by entering into a contract for the installation of any of the activities described in § 12.2(a)(6) or by purchasing construction supplies or materials for the primary and direct purpose of converting the wetland; and

(4) Notwithstanding paragraph (d)(3) of this section, for lands which are within the boundaries of a drainage district or similar entity which has the authority to levy an assessment for any of the activities described in § 12.2(a)(6) on wetlands, the conversion of a wetland in conjunction with the activities of such district or other entity is considered to have been commenced before December 23, 1985, if before such date:

(i) A project drainage plan setting forth in detail the planned drainage measures or other works of improvement had been officially adopted by the district or other entity; and

(ii) The district or other entity started installation of the drainage measures, or legally committed substantial funds toward the conversion of wetlands by entering into a contract for the installation of any of the activities described in § 12.2(a)(6) or by purchasing construction supplies and materials for the primary and direct purpose of converting wetland; and

(iii) The person applying for benefits can show that the wetland conversion with which the person is associated was the basis of a financial obligation to the district or other entity prior to December 23, 1985, and that a specific assessment for the project construction or a legal obligation to pay a specific assessment was made as to the person's wetlands prior to December 23, 1985.

(5) The purpose of the determination of conversion commencement made under paragraphs (d)(3) and (d)(4) of this section is to implement the legislative intent that those persons who had actually started conversion of wetland or obligated funds for conversion prior to the effective date of the Act (December 23, 1985) would be allowed to complete the conversion so as to avoid unnecessary economic hardship. Accordingly, the following requirements shall apply to all determinations of commencement made under paragraphs (d)(3) or (d)(4).

(i) All persons who believe they have a wetland or converted wetland for which conversion began but was not completed prior to December 23, 1985, must, before September 19, 1988, request ASCS to make a determination of commencement in order to be considered for exemption under § 12.4(d)(1)(i).

(ii) A person must show that the commenced activity has been actively pursued or the conversion will not be exempt under this section. In this context, "actively pursued" means that efforts toward the completion of the

conversion activity have continued on a regular basis since initiation of the conversion, except for delays due to circumstances beyond the person's control. With regard to wetland conversion by a person that is related to the project activities of a drainage district or other similar entity, the application of "actively pursued" begins when the project works are functional for connection and use by the person.

(iii) Any conversion activity considered to be commenced under this section shall lose its exempt status if not completed on or before January 1, 1995.

(iv) Only those wetlands for which the construction has begun or to which the contract or purchased supplies and materials relate may qualify for a determination of commencement. However, in those circumstances where the conversion of wetland does not meet the specific requirements of this paragraph, the person may request a commencement of conversion determination from the Deputy Administrator, State and County Operations, ASCS (the "Deputy Administrator"), upon a showing that undue economic hardship will result because of substantial financial obligations incurred prior to December 23, 1985, for the primary and direct purpose of converting the wetland.

(e) The provisions of § 12.4 shall not apply to any loan as described in § 12.4(a) that was made before December 23, 1985.

(f) A person shall not be determined to be ineligible in accordance with the provisions of this part for any benefits listed in § 12.4(a) with respect to the production of an agricultural commodity on highly erodible land which was planted before or in any crop year that began before December 23, 1985.

(g) It is the responsibility of the person seeking an exemption under paragraph (d)(1)(i) of this section to provide evidence, such as receipts, crop history data, drawings, plans or similar information, that the conversion was started or completed before December 23, 1985, for purposes of determining whether the conversion is exempt in accordance with this section.

§ 12.6 Administration.

(a) *General.* A determination of ineligibility for benefits in accordance with the provisions of this part shall be made by the agency of the Department to which the person has applied for benefits. All determinations required to be made under the provisions of this part shall be made by the agency responsible for making such determinations, as provided in this section.

(b) *Administration by ASCS.* (1) The provisions of this part which are applicable to ASCS will be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field in part by State ASC committees (STC) and county ASC committees (COC).

(2) The Deputy Administrator may determine any question arising under the provisions of this part which are applicable to ASCS and may reverse or modify any determination of eligibility with respect to programs administered by ASCS made by an STC or COC or any other ASCS office or ASCS official (except the Administrator) in connection with the provisions of this part.

(3) ASCS shall make the following determination which are required to be made in accordance with this part:

(i) Whether a person produced an agricultural commodity on a particular field as determined under § 12.4(b);

(ii) The establishment of field boundaries as described in § 12.2(a)(13);

(iii) Whether land was planted to an agricultural commodity in any of the years, 1981 through 1985, for the purposes of § 12.5(a)(1);

(iv) Whether to allow a person to exchange certain crop acreage bases (CAB) between CAB's with crops that leave a high residue, if recommended by SCS for inclusion in the conservation plan.

(v) Whether land was set aside, diverted or otherwise not cultivated under a program administered by the Secretary for any crop to reduce production of an agricultural commodity under § 12.5(a)(2);

(vi) Whether the agricultural commodity planted on a particular field was planted before December 23, 1985, or during any crop year which began before December 23, 1985, in accordance with § 12.5(f);

(vii) Whether for the purposes of § 12.9, the production of an agricultural commodity on highly erodible land or converted wetland by a landlord's tenant or sharecropper is required under the terms and conditions of the agreement between the landlord and such tenant or sharecropper and

(viii) Whether the conversion of a particular wetland was commenced before December 23, 1985, for the purposes of § 12.5(d) (3) or (4).

(ix) Whether the conversion of a wetland was caused by a third party under § 12.5(d)(1)(vi).

(4) A representative number of farms selected in accordance with instructions issued by the Deputy Administrator shall be inspected by an authorized representative of ASCS to determine compliance with any requirement specified in this part as a prerequisite for obtaining program benefits.

(5) ASCS will consult with U.S. Fish and Wildlife Service on pending commenced or third party determinations.

(c) *Administration by SCS.* (1) The provisions of this part that are applicable to SCS shall be administered under the general supervision of the Chief of the SCS and carried out in the field by the state conservationist, area conservationist, and district conservationist.

(2) SCS shall make the following determinations which are required to be made in accordance with this part:

(i) Whether land is highly erodible or is a wetland or a converted wetland in accordance with the provisions of this part;

(ii) Whether highly erodible land is predominant on a particular field under § 12.4(b);

(iii) Whether the conservation plan that a person is actively applying is based on the local SCS field office technical guide and is approved by—

(A) The CD, in consultation with local ASC committees and SCS, or

(B) By SCS;

(iv) Whether the conservation system that a person is using has been approved by the CD under § 12.5(b)(3) or, in an area not within a CD, a conservation system approved by the SCS to be adequate for the production of an agricultural commodity on highly erodible land;

(v) Whether production of an agricultural commodity on a wetland is possible as a result of natural conditions and is possible without action by the producer that destroys a natural wetland characteristic; and

(vi) Whether the actions of a person with respect to the production of an agricultural commodity on converted wetland would have only a minimal impact on the hydrological and biological aspects of wetland.

(3) SCS will provide such other technical assistance for implementation of the provisions of this part as is determined to be necessary.

(4) A person may obtain a highly erodible land or wetland determination by making a written request on Form AD 1026. The determination will be made in writing, and a copy will be provided to the person.

(i) A determination of whether or not an area meets the highly erodible land or wetland criteria may be made by the district conservationist based upon existing records or other information and without the need for an on-site determination. This determination will

be made, if practicable, within 15 calendar days after receipt of the written request.

(ii) An on-site determination as to whether an area meets the applicable criteria shall be made by the district conservationist if the person has disagreed with the determination made under paragraph (c)(4)(i) of this section, or if adequate information is not otherwise available to the district conservationist on which to make a determination.

(iii) An on-site determination, where applicable, will be made as soon as possible, but no later than 60 calendar days following a request for such a determination unless site conditions are unfavorable for the evaluation of soils or vegetation in which case the time period may be extended by the district conservationist until site conditions permit an adequate evaluation.

(iv) With regard to wetland determinations, if an area is continuously inundated or saturated for long periods of time during the growing season to such an extent that access by foot to make a determination of predominance of hydric soils or prevalence of hydrophytic vegetation is not feasible, the area will be determined to be a wetland.

(5) Persons who are adversely affected by a determination made under this section and believe that the requirements of this part were improperly applied may appeal, under § 12.12 of this part, any determination by SCS.

(d) *Administration by FmHA.* (1) The provisions of this part which are applicable to FmHA will be administered under the general supervision of the FmHA Administrator through FmHA's State, district, and county offices.

(2) FmHA shall determine whether the proceeds of a farm loan made, insured or guaranteed by FmHA will be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland.

(e) *Administration by FCIC.* The provisions of this part which are applicable to FCIC will be administered under the general supervision of the Manager, FCIC.

(f) *Administration by ES.* The Extension Service shall coordinate the related information and eduction program for the Department concerning implementation of this rule.

§ 12.7 Certification.

(a) In order for a person to be determined to be eligible for any of the benefits specified in § 12.4:

(1) It must be determined by SCS whether any farm in which the person applying for the benefits has an interest contains highly erodible land, wetland or converted wetland;

(2) The person applying for the benefits must certify in writing on Form AD–1026 that such person will not produce an agricultural commodity on highly erodible land or converted wetland during the crop year in which the person is seeking such benefits, unless such production is exempt, under § 12.5, from the provisions of § 12.4 of this part;

(3) The person applying for a FmHA insured or guranteed farm loan must certify that such person shall not use the proceeds of the loan for a purpose that will contribute to excessive erosion on highly erodible land or to conversion of wetlands to produce an agricultural commodity; and

(4) The person applying for the benefits must authorize and provide representatives of the Department access to all land in which such person has an interest for the purpose of verifying any such certification.

(b) Each agency of the Department shall make all certifications received by such agency and the results of investigations concerning such certifications available to other agencies.

(c) A certification made in accordance with this section does not relieve any person from compliance with the provisions of this part.

§ 12.8 Affiliated persons.

(a) For purposes of this part, the following persons are considered to be "affiliated" and, in addition, the actions of such persons will be considered for the purposes specified in this part to be the actions of the person who has requested benefits from the Department:

(1) The spouse and minor child of such person and/or guardian of such child;

(2) Any corporation in which the person is a stockholder, shareholder, or owner of more than 20 percent interest in such corporation;

(3) Any partnership, joint venture, or other enterprise in which the person has an ownership interest or financial interest; and

(4) Any trust in which the person or any person listed in paragraphs (a)(1) through (a)(3) of this section is a beneficiary or has a financial interest.

(b) If the person who has requested benefits from the Department is a corporation, partnership, or other joint venture, then, for purposes of applying paragraph (a) of this section, any participant or stockholder therein, except for persons with a 20 percent or less share in a corporation, shall also be considered to be the person applying for benefits from the Department.

§ 12.9 Landlords and tenants.

(a) Except as provided in paragraph (b) of this section, the ineligibility of a tenant or sharecropper, for benefits (as determined under § 12.4) shall not cause a landlord to be ineligible for benefits for which the landlord would otherwise be eligible with respect to commodities produced on lands other than those in which the tenant or sharecropper has an interest.

(b) Paragraph (a) of this section shall not be applicable to a landlord if the production of an agricultural commodity on highly erodible land or converted wetland by the landlord's tenant or sharecropper is required under the terms and conditions of the agreement between the landlord and such tenant or sharecropper and such agreement was entered into after December 23, 1985 or if the landlord has acquiesced in such activities by the tenant or sharecropper.

§ 12.10 Scheme or device.

All or any part of the benefits listed in § 12.4 otherwise due a person from the Department may be withheld or required to be refunded if the person adopts or participates in adopting any scheme or device designed to evade, or which has the effect of evading, the provisions of this part. Such acts shall include, but are not limited to, concealing from the Department any information having a bearing on the application of the provisions of this part or submitting false information to the Department or creating entities for the purpose of concealing the interest of a person in a farming operation or to otherwise avoid compliance with the provisions of this part. Such acts shall also include acquiescence in, approval of or assistance to acts which have the effect of, or the purpose of, circumventing these regulations for the production of an agricultural commodity.

§ 12.11 Action based upon advice or action of Department.

The provisions of Part 790 of this Title, as amended, relating to performance based upon the action or advice of a County Comittee (COC) or State Committee (STC) shall be applicable to the provisions of this part.

§ 12.12 Appeals.

Any person who has been or would be denied program benefits in accordance with § 12.4 as the result of any determination made in accordance with the provisions of this part may obtain a review of such determination in

accordance with the administrative appeal procedures of the agency which rendered such determination. Agency appeal procedures are contained in the Code of Federal Regulations as follows: ASCS, 7 CFR Part 780; SCS, 7 CFR Part 614; FmHA, 7 CFR Part 1900, Subpart B; and FCIC, 7 CFR 400.90.

Subpart B—Highly Erodible Land Conservation

§ 12.20 SCS responsibilities regarding highly erodible land.

In implementing the provisions of this part, SCS shall, to the extent practicable:

(a) Develop and maintain criteria for identifying highly erodible lands;

(b) Prepare and make available to the public lists of highly erodible soil map units;

(c) Make soil surveys for purposes of identifying highly erodible land; and

(d) Provide technical guidance to conservation districts which approve conservation plans and systems, in consultation with local county ASC committees and SCS, for the purposes of this part.

§ 12.21 Identification of highly erodible lands criteria.

(a) Soil map units and an erodibility index will be used as the basis for identifying highly erodible land. The erodibility index for a soil is determined by dividing the potential average annual rate of erosion for each soil by its predetermined soil loss tolerance (T) value. The T value represents the maximum annual rate of soil erosion that could occur without causing a decline in long-term productivity.

(1) The potential average annual rate of sheet and rill erosion is estimated by multiplying the following factors of the Universal Soil Loss Equation (USLE):

(i) Rainfall and runoff (R),

(ii) The degree to which the soil resists water erosion (K), and

(iii) The function (LS), which includes the effects of slope length (L) and steepness (S).

(2) The potential average annual rate of wind erosion is estimated by multiplying the following factors of the Wind Erosion Equation (WEQ): Climatic characterization of windspeed and surface soil moisture (C) and the degree to which soil resists wind erosion (I).

(3) The USLE is explained in the U.S. Department of Agriculture Handbook 537, "Predicting Rainfall Erosion Losses." The WEQ is explained in the paper by "Woodruff, N.P. and F.H. Siddaway, 1965. "A Wind Erosion Equation," Soil Science Society of America Proceedings, Vol. 29, No. 5, Pages 602–608. Values for all the factors used in these equations are contained in the SCS field office technical guide and the references which are a part of the guide.

(b) A soil map unit subject to significant erosion by either water or by wind shall be determined to be highly erodible if either the RKLS/T *or* the CI/T value for the map unit equals or exceeds 8.

(c) Whenever a soil map unit description contains a range of a slope length and steepness characteristics that produce a range of LS values which result in RKLS/T quotients both above and below 8, the soil map unit will be entered on the list of highly erodible soil map units as "potentially highly erodible." The final determination of erodibility for an individual field containing these soil map unit delineations will be made by an on-site investigation.

§ 12.22 Highly erodible field determination criteria.

(a) Highly erodible land shall be considered to be predominant on a field if either:

(1) 33.33 percent or more of the total field acreage is identified as soil map units which are highly erodible; or

(2) 50 or more acres in such field are identified as soil map units which are highly erodible.

(b) A person may request the modification of field boundaries for the purpose of excluding highly erodible land from a field. Such a request must be submitted to, and is subject to the approval of, ASCS.

(c) Small areas of noncropland within or adjacent to the boundaries of existing highly erodible crop fields such as abandoned farmsteads, areas around filled or capped wells, rock piles, trees or brush which are converted to cropland are considered to meet the requirement of § 12.5(c) if they are included in an approved conservation plan for the entire highly erodible field.

§ 12.23 Conservation plans and conservation systems.

(a) A conservation plan or a conservation system developed for the purposes of § 12.5(b) will be based upon the SCS field office technical guide, addressing considerations of economic and technical feasibility and other related factors.

(b) Persons who require SCS assistance for the development of a conservation plan or the installation of a conservation system are encouraged to request this assistance well in advance of deadline dates for compliance; otherwise the person may not be able to comply with these provisions and maintain eligibility for USDA program benefits.

(c) Conservation districts approve or disapprove conservation plans or conservation systems after SCS determines that the plans or systems conform to the SCS field office technical guide. If a conservation district fails, without due cause, to act on a request for conservation plan or conservation system approval within 45 days, or if no conservation district exists, SCS will approve or disapprove, as appropriate, the conservation plan or system in question.

(d) A person is considered to be actively applying a conservation plan for purposes of § 12.5(b) if the plan is being applied according to the schedule specified in the plan and the applied practices are properly operated and maintained. It is the responsibility of the person to:

(1) Annually certify that the conservation plan is being actively applied after January 1, 1990 and

(2) Arrange for a revision of the conservation plan with SCS, if changes are made in land use, crop rotation or management, conservation practices, or in the original schedule of practice installation.

(e) Persons who are adversely affected by the determinations made under this subpart and believe that the requirements of this subpart were improperly applied may appeal the decision to SCS under § 12.12.

Subpart C—Wetland Conservation

§ 12.30 SCS responsibilities regarding wetlands.

In carrying out the provisions of this part, SCS shall:

(a) Make available to the public an approved county list of hydric soil map units, which is based upon the National List of Hydric Soils;

(b) Maintain a list of hydrophytic vegetation derived from the National List of Plant Species That Occur in Wetlands;

(c) Consult with the Fish and Wildlife Service on determinations of exemptions made under § 12.5(d)(1) and (d)(2) and on matters relating to the identification of wetland,

(d) Oversee the development and application of criteria to identify hydric soils in consultation with the National Technical Committee for Hydric Soils, and

(e) Consult with the Fish and Wildlife Service and others in developing the National List of Plant Species that Occur in Wetlands and in providing guidance

in applying the lists of hydric soils and plant species to matters concerning wetland and converted wetland.

§ 12.31 Wetland identification criteria.

(a) *Hydric soils.* (1) SCS shall identify hydric soils through the use of published soil maps which reflect soil surveys completed by SCS. If a published soil map is unavailable for a given area, SCS may use unpublished soil maps which were made according to the specifications of the National Cooperative Soil Survey or may conduct an on-site evaluation of the land.

(2) SCS shall determine whether an area of a field or other parcel of land has a predominance of hydric soils that are inundated or saturated as follows:

(i) If a soil map unit has hydric soil as all or part of its name, that soil map unit or portion of the map unit related to the hydric soil shall be determined to have a predominance of hydric soils;

(ii) If a soil map unit is named for a miscellaneous area that meets the criteria for hydric soils (i.e., riverwash, playas, beaches, or water) the soil map unit shall be determined to have a predominance of hydric soils; or

(iii) If a soil map unit contains inclusions of hydric soils, that portion of the soil map unit identified as hydric soil shall be determined to have a predominance of hydric soils.

(3) *List of hydric soils.* (i) Hydric soils are those soils which meet criteria set forth in the publication "Hydric Soils of the United States 1985" which was developed by the National Technical Committee for Hydric Soils and which is incorporated by reference. This publication may be obtained upon request by writing the Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013, and is available for inspection at the Office of the Federal Register Information Center, Room 3801, 1100 L Street NW., Washington, DC 20408. Incorporation of this publication by reference was approved by the Director of the Federal Register on June 24, 1986. The materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

(ii) An official list of hydric soil map units shall be maintained at the local SCS office and shall include—

(A) All soils from the National List of Hydric Soils that can be found in that field office area, and

(B) Any soil map units or areas which the State conservationist determines to meet such hydric soil criteria.

(iii) Any deletions of a hydric soil unit from the hydric soil map unit list must be made according to the established procedure contained in the publication "Hydric Soils of the United States, 1985" for adding or deleting soils from the National List of Hydric Soils.

(b) *Hydrophytic vegetation.* Hydrophytic vegetation consists of plants growing in water or in a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(1) A plant shall be considered to be a plant species that occurs in wetland if such plant is listed in the National List of Plant Species that Occur in Wetlands. The publication may be obtained upon request from the U.S. Fish & Wildlife Service, National Wetland Inventory, Monroe Bldg. Suite 101, 9720 Executive Center Drive, Saint Petersburg, Florida 33702.

(2) For the purposes of the definition of "wetland" in § 12.2(a)(28) of this part, land shall be determined to have a prevalence of hydrophytic vegetation if:

(i) SCS determines through the use of the formula specified in paragraph (b)(3) of this section that under normal circumstances such land supports a prevalence of hydrophytic vegetation. The term "normal circumstances" refers to the soil and hydrologic conditions that are normally present, without regard to whether the vegetation has been removed; or

(ii) In the event the vegetation on such land has been altered or removed, SCS will determine if a prevalence of hydrophytic vegetation typically exists in the local area on the same hydric soil under the same hydrological conditions.

(3) The determination of prevalence of hydrophytic vegetation will be made in accordance with the following provisions:

(i) *Plant classification.* The National List of Plant Species that Occur in Wetlands classifies vascular plant species found in the United States and Puerto Rico into five indicator groups based upon their expected occurrence in wetlands. Obligate species are expected to occur in wetlands more than 99 percent of the time; facultative wet species, 66–69 percent of the time; facultative species, 33–65 percent of the time; facultative upland species, 1–33 percent of the time; and upland species, less than 1 percent of the time.

(ii) *Ecological indices.* The following ecological index values have been assigned the plant indicator groups for use in the formula to determine prevalence:

Indicator group	Ecological index
Obligate	1.
Facultative wet	2
Facultative	3.
Facultative Upland	4
Upland	5 (all plants not on the National List of Plant Species That Occur in Wetlands)

(iii) *Specific criteria.* If the area in question has met the criteria for hydric soils that are inundated or saturated, SCS will either visually or through the use of line transects, estimate the frequency of occurrence of plants within the community identified by indicator group to arrive at a prevalence index to indicate whether or not a prevalence of hydrophytic vegetation exists.

(iv) (A) The following formula shall be used to calculate the prevalence index, where:

PI = Prevalence Index.
F = Frequency of Occurrence of Plant Species.
n(1–5)= Ecological Index Values for Indicator Groups.

$$PI = \frac{(1 \times F1) + (2 \times F2) + (3 \times F3) + (4 \times F4) + (5 \times F5)}{(F1 + F2 + F3 + F4 + F5)}$$

(B) A mean prevalence index (PI) value of less than 3.0 shall indicate that the area exhibits a prevalence of hydrophytic vegetation.

(c) *Artificial wetland.* (1) An area shall be considered to be an artificial wetland for the purposes of § 12.5(d)(1)(ii) and (iii) of this part if such area was formerly nonwetland or wetland on which conversion was started or completed before December 23, 1985, but now meets wetland criteria due to the action of man.

(2) Notwithstanding the provisions of paragraph (c)(1) of this section, wetlands which are created in order to mitigate the loss of other wetlands as a result of irrigation, recreation, municipal water, flood control or other similar projects shall not be considered to be artificial wetland for the purposes of § 12.5(d)(1)(ii) and (iii) of this part.

(d) For the purposes of § 12.5(d)(1)(v) of this part, SCS, in consultation with the Fish and Wildlife Service, U.S. Department of the Interior, shall determine whether the effect of any action of a person associated with the production of an agricultural commodity on converted wetland has a minimal effect on the hydrological and biological aspect of wetlands. Such determination shall be based upon an environmental evaluation analyzing the effect of the action on the maintenance of wetland values of the particular wetland under consideration and other related wetlands, and will be made through an on-site evaluation. A request for such determination will be made prior to the beginning of activities that would convert the wetland. If a person has converted a wetland and then seeks a determination that the effect of such conversion on wetland was minimal, the burden will be upon the person to demonstrate to the satisfaction of SCS that the effect was minimal. The production of an agricultural commodity on any portion of a converted wetland in conformance with a minimal effect determination by SCS is exempt under § 12.5(d) of this part. However, any additional action of a person that will change the hydrological or biological characteristics of a wetland for which a minimal effect determination has been made shall be reported to SCS for a determination of whether the effect continues to be minimal. The loss of a minimal effect determination will cause a person who produces an agricultural commodity on the converted wetland after such change in status to be ineligible, under § 12.4, for program benefits.

§ 12.32 Converted wetland identification criteria.

(a) Converted wetland shall be identified by determining whether the wetland was altered so as to meet the definition of converted wetland set forth in § 12.2(a)(6). In making this determination, the following factors are to be considered:

(1) Where hydric soils have been used for production of an agricultural commodity and the drainage or other altering activity is not clearly discernable, SCS will compare the site with other sites containing the same hydric soils in a natural condition to determine if the hydric soils can or cannot be used to produce an agricultural commodity under natural conditions. If the soil on the comparison site could not produce an agricultural commodity under natural conditions, the subject wetland will be considered to be converted wetland.

(2) Where woody hydrophytic vegetation has been removed from hydric soils which permits the production of an agricultural commodity, and wetland conditions have not returned as the result of abandonment under § 12.33(b), the area will be considered to be converted wetland.

(3) A pothole or a playa shall not be determined to be converted wetland despite manipulations that occurred prior to December 23, 1985, if that area continues to meet wetland criteria. Any other wetland area that is seasonally flooded or ponded (surface water is present for extended periods especially early in the growing season even though it may be absent by the end of the season in most years) which has been manipulated prior to December 23, 1985 but otherwise continues to meet wetland criteria, shall not be determined to be converted wetland.

(b) A wetland shall not be considered to be converted if:

(1) Production of an agricultural commodity on such land is possible as a result of a natural condition, such as drought, and

(2) It is determined that the actions of the person producing such agricultural commodity does not permanently alter or destroy natural wetland characteristics. Destruction of herbacaeous hydrophytic vegetation, (*i.e.*, plants other than woody shrubs or trees) as a result of the production of an agricultural commodity shall not be considered as altering or destroying natural wetland characteristic if such vegetation could and has been allowed to return following cessation of the natural condition which made production of the agricultural commodity possible.

§ 12.33 Use of wetland and converted wetland.

(a) The provisions of § 12.32(a)(3) are intended to protect remaining functional values of the wetlands described therein. Persons may continue to farm such wetlands under natural conditions or as they did prior to December 23, 1985. However, no action can be taken to increase effects on the water regime beyond that which existed on such lands on or before December 23, 1985 unless SCS determines the effect on remaining wetland values would be minimal under § 12.5(d)(1)(v).

(b) Unless otherwise provided in this part, the production of an agricultural commodity on wetlands that were converted before, or for which the conversion was commenced before, December 23, 1985 is exempted by law from these regulations for the area which was converted or the minimum area the commenced activity could convert. Maintenance or improvement of these converted wetlands for the production of agricultural commodities are not subject to this rule so long as such actions do not bring additional wetland into the production of an agricultural commodity. Additional wetland means any natural wetland or any converted wetland that has reverted to wetland as the result of abandonment of crop production. Abandonment is the cessation of cropping, management or maintenance operations related to the production of agricultural commodities on converted wetland. Where the cessation of such cropping, management or maintenance operations has occurred, converted wetland is considered to be abandoned unless it is shown that there was no intent to abandon; provided, however, that at the end of five successive years during which there was no crop production, such land shall be determined to be abandoned if the land meets the wetland criteria of § 12.31. Participation in a USDA set-aside, diverted acres, or similar programs shall not be deemed to constitute abandonment.

Signed at Washington, DC, on September 10, 1987.

Peter C. Myers,

Acting Secretary.

[FR Doc. 87-21276 Filed 9-16-87; 8:45 am]

BILLING CODE 3410-01-M

Federal Register

Thursday
September 17, 1987

Part IV

Environmental Protection Agency

40 CFR Part 133

Amendment to the Secondary Treatment Regulation; Percent Removal Requirements During Dry Weather Periods for Treatment Works Served by Combined Sewers; Proposed Rule

VOL 52 ISS 180 SE 17 1987 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 133

[FRL-3232-4]

Amendment to the Secondary Treatment Regulation; Percent Removal Requirements During Dry Weather Periods for Treatment Works Served by Combined Sewers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule amends that portion of the EPA's secondary treatment regulation concerning the percent removal requirements during dry weather periods for treatment works served by combined sewers.

The secondary treatment regulation, originally promulgated in 1973, requires treatment works to meet both concentration-based effluent limitations for five-day biochemical oxygen demand (BOD_5) and total suspended solids (TSS) as well as an 85 percent removal requirement for these pollutants. The percent removal requirement was established to encourage municipalities to correct excessive infiltration and inflow (I/I) in their sewer systems and to prevent intentional dilution of the wastewater. When the regulation was amended in June 1985 to set separate limits for equivalent treatment (i.e., trickling filters and waste stabilization ponds), a 65 percent removal requirement was included for equivalent treatment facilities. Subsequently, in September 1985, the Agency amended the regulation to allow additional flexibility in applying the percent removal requirements. The current regulation allows adjustment of the percent removal requirements during wet and dry weather periods for treatment works served by separate sewers provided that the treatment works meet certain criteria defined in § 133.103(d) "Less Concentrated Influent Wastewater For Separate Sewers." The current regulation also includes a provision authorizing adjustments to the percent removal requirements for treatment works served by combined sewers, but only during wet weather periods (§ 133.103(a)). It does not apply to treatment works served by combined sewers during dry weather periods.

This proposal amends the percent removal requirements to allow adjustments during dry weather periods for treatment works served by combined sewers.

DATES: Written comments on this proposed rule must be submitted by November 16, 1987.

ADDRESSES: Comments on this proposed rule should be addressed to: Lam Lim, Office of Municipal Pollution Control (WH-595), Environmental Protection Agency, Washington, DC 20460, Telephone (202) 382-7371.

The public may inspect the administrative record for this proposed rulemaking and all comments received on it, on business days between 8:00 AM and 4:00 PM at: Public Information Reference Unit (located in the EPA Library), Room 2904, Environmental Protection Agency, 401 M Street, SW., Washington, DC. A reasonable fee will be charged for copying.

FOR FURTHER INFORMATION CONTACT: Lam Lim, Office of Municipal Pollution Control (WH-595), Environmental Protection Agency, Washington, DC 20460, (202) 382-7371.

SUPPLEMENTARY INFORMATION:

A. The EPA's Previous Actions on the Percent Removal Requirements

The Agency included an 85 percent removal requirement in the original secondary treatment regulations promulgated August 17, 1973, for both BOD_5 and TSS. Sections 133.102(a)(3) and 133.102(b)(3) require that the arithmetic mean of the values for effluent samples collected in a period of 30 consecutive days not exceed 15 percent of the arithmetic mean of the values for influent samples collected at approximately the same time during the same period (85 percent removal). In addition, the Agency included a provision in § 133.103(a) of the original secondary treatment regulation allowing adjustment of the 85 percent removal requirement during wet weather periods for treatment works served by combined sewers.

In response to information that in some cases the 85 percent removal requirement resulted in forcing advanced treatment levels on some treatment works with dilute influent wastewater, the Agency, on November 16, 1983, issued a **Federal Register** notice soliciting public comment on a number of options for amending the percent removal requirement (48 FR 52258). Based on the public comments received in response to the notice, the Agency proposed an amendment to the percent removal requirement on September 20, 1984, that would authorize a modification of the percent removal requirement for treatment works served by separate sewers if they demonstrated: (1) That they consistently met their concentration-based limitations; (2) that, to meet the percent removal requirement, the treatment works would have to meet significantly more stringent concentration-based limitations; and (3) that the less concentrated influent wastewater to the treatment works was not a result of excessve infiltration and inflow (49 FR 37010).

During the public comment period, a commenter suggested that the title of the new paragraph established by the amendment (40 CFR 133.103(d)) should clarify that the amendment applies only to treatment works served by separate sewer systems because treatment works served by combined sewers were already covered by an adjustment provision under § 133.103(a). In response to public comments, the Agency modified the title to read "Less Concentrated Influent Wastewaters for Separate Sewers." In addition, the EPA determined that the final amendment should apply to both the 85 and the new 65 percent removal requirements for equivalent treatment. The final amendment was published in the **Federal Register** on June 3, 1985 (50 FR 23282).

B. Challenge to the Final Amendment

On September 16, 1985, the City of New York filed a petition to review the percent removal amendment for separate sewers. *City of New York* v. *Environmental Protection Agency*, No. 85-4142 (2d Cir.). The City of New York, which has combined sewers, pointed out that treatment works served by combined sewers should also be eligible for adjustment of the percent removal requirements during dry weather periods because nonexcessive infiltration can dilute the influent wastewater of treatment works served by combined sewers just as it does for treatment works served by separate sewers.

C. Settlement Agreement

On January 7, 1986, the Agency and the City of New York filed a settlement agreement with the court. In the settlement agreement, the Agency agreed to initiate and take final action on a rulemaking proceeding concerning whether and, if so, how the secondary treatment regulation should be amended to allow the permit issuing authority to establish alternative percentage removal requirements for treatment works served by combined sewer systems during dry weather periods.

The agreement provided that such final Agency action may either be (1) The promulgation of an amendment to the secondary treatment regulation

addressing the percentage removal requirements (during dry weather periods) for treatment works served by combined sewers or (2) a decision, with a written explanation, not to amend the secondary treatment regulation.

D. Background on Adjustment of the Percent Removal Requirement

1. The Percent Removal Requirement

On August 17, 1973, the Administrator of the EPA defined the secondary treatment requirements for treatment works as the achievement of 30 mg/l BOD_5 and 30 mg/l TSS and 85 percent removal of those pollutants on a 30 day average, (40 CFR 133.102 (a) and (b)). The Agency based these limits on what were previously believed to be typical treatment works influent concentrations of 200 mg/l for BOD_5 and TSS. The percent removal requirement was originally established to achieve two basic objectives:

(a) To encourage municipalities to remove excessive infiltration and inflow (I/I) in the sewer systems, and

(b) To prevent intentional dilution of the influent wastewater to meet a concentration limit.

In 1985 the Agency established a 65 percent removal requirement for equivalent treatment which includes trickling filters and waste stabilization ponds.

The percent removal requirements have caused a number of problems for treatment works that receive less concentrated influent wastewater (less than 200 mg/l for BOD_5 and TSS). Those requirements forced many treatment works with less concentrated influent to meet more stringent effluent concentration levels than 30 mg/l BOD_5 and 30 mg/l TSS, even where these values were adequate to protect water quality.

2. Correction of Infiltration and Inflow

Infiltration is presently defined as water other than wastewater that enters a sewer system from the ground through defective pipes, pipe joints, connections, or manholes. Inflow is presently defined as water other than wastewater that enters a sewer system from roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, or street washing. In practice, however, the measurement of "infiltration" encompasses clear water originating from sources such as commercial cooling drainage and area drains (car wash, street and parking lot drains), because it would be difficult and costly to measure flows from those sources separately. The upcoming amendments to the construction grant regulations (40 CFR Part 35, Subpart I) will clarify the definitions of the terms "infiltration" and "inflow", so that they are consistent with actual flow measurement practices.

Under section 201(g)(3) of the Clean Water Act (33 U.S.C. 1281(g)(3)) and EPA's construction grant regulations (40 CFR 35.2005(b)(16) and 35.2120), grants for the construction of treatment works cannot be made unless an applicant has demonstrated that the sewer system is not or will not be subject to "excessive" I/I. For the purposes of EPA's construction grants program, the Agency has defined excessive I/I as quantities of I/I that can be economically eliminated from a sewer system. The determination of excessive I/I stems from the results of a cost-effectiveness analysis that compares the costs of correcting the I/I conditions (plus the costs of transporting and treating the remaining I/I) to the total costs of the alternative-transporting and treating all of the I/I.

Theoretically, the percent removal requirements impose more stringent levels of treatment than the concentration-based limits for BOD_5 and TSS until the municipality corrects the causes of the less concentrated wastewater in the sewer system. This regulatory approach is based on the assumption that a municipality can take corrective measures to reduce I/I that are less costly than providing additional hydraulic capacity in the sewer system and at the treatment plant.

In 1973, the Agency believed that from 70 to 100 percent of the I/I problem could be corrected through cost-effective sewer system rehabilitation. However, subsequent information ("Evaluation of Infiltration/Inflow Program," unpublished draft technical reports, 1979 and 1980) indicated that sewer rehabilitation is far less effective than formerly expected. In fact, cost-effective sewer rehabilitation was found to remove only up to 40 percent of the estimated infiltration. Accordingly, even large expenditures for the correction of sewer leakage could produce only a small ultimate reduction of infiltration. As a result, influent BOD_5 and TSS concentrations have often remained below 200 mg/l even after cost-effective correction of excessive infiltration sources.

3. Expected Influent Concentration Under Allowable I/I Conditions

The Agency has determined that the correction of excessive infiltration is likely to be unsuccessful for sewer systems with a dry weather base flow of up to 120 gallons per capita per day (gpcd). This figure is based on the following typical values: 70 gpcd domestic wastewater flow, 10 gpcd commercial and small industrial wastewater flow, and 40 gpcd nonexcessive infiltration flow. If the domestic and commercial wastewater flows plus infiltration within the sewer system are less than 120 gpcd, the construction grant regulations require no further infiltration correction work. For wet weather periods, no further corrective work is required if the total flow to the treatment plant (i.e., inflow plus wastewater plus infiltration) is less than 275 gpcd, and there are no chronic operational problems related to hydraulic overloading of the treatment works during storm events (e.g., the inflow is not excessive). The 275 gpcd allowance has been incorporated into the construction grant regulations (40 CFR 35.2120) and is based on a May 1984 study entitled "Determination of Excessive/nonexcessive Inflow Rates." It should be noted that the 120 and 275 gpcd figures are only threshold values for determining nonexcessive I/I. Construction grant applicants may determine that even higher values if I/I are nonexcessive through case-by-case sewer system evaluation studies (SSES).

E. Treatment Works Served by Combined Sewers

Combined sewers are sewer systems designed to convey stormwater (mostly from street curb inlets and area drains) in addition to domestic sanitary sewage and commercial and small industrial wastewater. During storm events, combined sewer systems are subject to large increases in flow due to either rainwater or snowmelt that enters the system. Combined sewer systems are generally operated to convey the maximum feasible amount of combined wastewater and stormwater to the treatment works. The excess, which is often the larger portion of the flow during storms, is discharged from the system at several overflow points before reaching the treatment plant. The dramatic, storm-related increase in flow which can occur at treatment plants served by combined sewer systems led to the inclusion of § 133.103(a) in the original secondary treatment regulation to allow either adjustment or suspension of the percent removal requirements during wet weather periods.

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F. Determination of Nonexcessive Flow in Combined Sewers During Dry Weather Conditions

1. Excessive-Nonexcessive Flow Study

In 1974 the Agency used historical records from water utilities to determine that the average non-consumptive water usage (i.e., water returned to the sewer system) in the United States is approximately 70 gpcd for domestic flows and 10 gpcd for commercial and small industrial flows. These estimates were used for the cost-effectiveness guidelines promulgated by EPA as part of the construction grant regulations (40 CFR Part 35).

The difference between the total baseline treatment works flow used for construction grant funding purposes (120 gpcd) and 80 gpcd (i.e. 70 + 10) is the portion attributable to nonexcessive infiltration (e.g., 40 gpcd). The Agency reviewed data from numerous I/I analyses and sewer system evaluation studies and determined that the typical value for nonexcessive infiltration nationwide is 1500 gallons per day per inch diameter per mile of sewer (gpdim). The 1500 gpdim value was used in the construction grant program (Program Requirements Memorandum 78–10, March 17, 1978) as the threshold value to determine where more extensive sewer system evaluation would be required (i.e., infiltration less than 1500 gpdim was considered nonexcessive and did not require any further sewer system analysis). Using the estimated national averages for pipe diameters and length of pipe per capita, 1500 gpdim converts to 40 gpcd for nonexcessive infiltration.

Using 40 gpcd for nonexcessive infiltration, 10 gpcd for commercial and small industrial flow, and 70 gpcd for domestic flow, the total baseline dry weather flow calculated by the Agency for municipal wastewater treatment plants (i.e., wastewater plus nonexcessive infiltration) equals 120 gpcd (70 + 10 + 40). Data used for this calculation did not distinguish between separate and combined sewer systems and in fact were for both types of systems.

2. Nonexcessive Flow in Separate Sewers

The Agency analyzed § 133.103(d) of the Secondary Treatment Regulation to determine if the language in that section should apply to systems with combined sewers. Section 133.103(d) presently authorizes the permitting authority to substitute either lower percent removal requirements or a mass loading limit for the percent removal requirements for treatment works served by separate sewer systems. The adjustment in the percent removal requirements is allowed if the permittee satisfactorily demonstrates that: (1) The treatment works does or will consistently meet its concentration limitations but can not meet the percent removal requirements due to less concentrated influent wastewater; (2) significantly more stringent concentration limitations than required by the concentration based standards must be met to comply with the percent removal requirements; and (3) the less concentrated influent wastewater does not result from excessive I/I.

The Agency's analysis of § 133.103(d) centered on the provision requiring that the less concentrated influent wastewater not result from excessive I/I. Section 133.103(d) relies on the definition of excessive infiltration in the construction grants regulations (40 CFR 35.2005(b)(16)). According to that definition and the related definitions for nonexcessive I/I, infiltration is nonexcessive if the average dry weather flow to the treatment works (i.e., wastewater plus infiltration) is less than 120 gallon per capita per day (gpcd).

3. Threshold Value for Combined Sewers During Dry Weather Conditions

The Agency believes that the threshold value of 120 gpcd for nonexcessive dry weather base flow should be applied to treatment works served by combined sewers during dry weather conditions for the following reasons. First, as discussed above in Section F.1 ("Excessive-Nonexcessive Flow Study"), the 120 gpcd value was derived in a study that examined both combined and separate sewers. Secondly, the Agency compared the 120 gpcd figure with data from: (1) A 1980 Agency study, "Evaluation of the Infiltration/Inflow Program" (Final Draft Report (EPA–68–01–4913)); and (2) field measurements of wastewater flows developed from sewer system studies conducted by private contractors and submitted to the Agency. These data support the 120 gpcd figure as a valid threshold for either combined or separate sewer systems. The Agency believes, therefore, that the 120 gpcd limit should apply equally to treatment works served by either separate or combined sewers during dry weather. Finally, simply as a practical matter, flow sources and flows in combined sewer systems are similiar to those in separate sewer systems during dry weather conditions.

4. Exclusion From the 120 gpcd Threshold of Industrial Discharges That Cause Interference

Today's proposed amendment provides that a permittee may not obtain a modification of its percent removal requirements if its less concentrated influent is due either to excessive infiltration or clear water industrial discharges or a combination of both. The Agency recently recognized that industrial discharges to municipal sewer systems can hydraulically overload a treatment works and thereby interfere with its ability to effectively treat influent wastewater. (52 FR 1599). If less concentrated influent to a treatment works is caused in whole or in part by clear water industrial discharges, then the Agency expects the treatment works to control such discharges rather than seek a modification of its percent removal requirements. Local sewer ordinances, as directed by the pretreatment regulations (40 CFR part 403; 52 FR 1586), should be enforced to prevent such hydraulic overloading.

The Agency is primarily concerned with clear water industrial discharges. The Agency considers clear water industrial discharges to include, but not be limited to, cooling tower discharges. The exclusion of clear water discharges recognizes that some industrial discharges may not cause wastewater going to a treatment works to be less concentrated. The Agency acknowledges that the limitation on industrial discharges was not included in its 1985 amendment for separate sewer systems. However, the Agency now recognizes these flows as potentially significant contributors to less concentrated wastewaters and, therefore, is proposing to make a special provision for such wastewater in this amendment.

G. Applying the Proposed Amendment

The proposed rule change applies only during dry weather periods for treatment works served by combined sewers. (The provision for separate sewer systems (§ 133.103(d)) remains unchanged. However at the conclusion of this rulemaking on proposed § 133.103(e), EPA expects to make two technical changes in § 133.103(d): (1) To correct the reference to section "102.105(a)(3)", which should read "133.105(a)(3); and (2) to change the phrase "significantly more stringent limitations" in § 133.103(d)(2) to read "significantly more stringent effluent concentrations", which is a clarification of the regulation's original intended

meaning. EPA invites comment on these two anticipated technical amendments.

To obtain an adjustment in the percent removal requirements during dry weather under the proposed rule, treatment works served by combined sewers must satisfy three conditions: (1) The treatment works does, or will, consistently meet its permit effluent concentration limitations, but the percent removal requirements cannot be met due to less concentrated influent wastewater; (2) significantly more stringent effluent concentrations than required by the concentration-based standards must be met to comply with the percent removal requirements; and (3) the less concentrated influent wastewater does not result from either excessive infiltration or industrial discharges to the system.

If the average dry weather base flow (i.e., the total of the wastewater flow plus infiltration) in a combined sewer system is less than the 120 gpcd threshold value, infiltration is assumed to be nonexcessive. However, sewer systems with average dry weather flows greater than 120 gpcd may also have nonexcessive infiltration if this is demonstrated on a case-by-case basis (i.e., the infiltration can not be cost-effectively reduced). A permittee would have the opportunity to demonstrate, on a case-by-case basis, that its combined sewer system is not subject to excessive infiltration even if the average total dry weather flow exceeds the 120 gpcd threshold value.

H. Summary of Proposal

Today's proposed amendment to the secondary treatment regulation adds a new § 133.103(e) entitled "Less Concentrated Influent Wastewater For Combined Sewers During Dry Weather." This change recognizes that treatment works served by combined sewers may receive less concentrated influent wastewater during dry weather periods that is not the result of excessive infiltration or industrial discharges and therefore the percent removal requirements may warrant adjustment. This amendment allows adjustment of the percent removal requirements for those treatment works under certain conditions. The conditions are specified in the amendment.

The new paragraph (e) allows treatment works served by combined sewers an opportunity to request adjustments in the percent removal requirements for dry weather periods. Under the proposed paragraph (e), the Regional Administrator or, if appropriate, the State Director is authorized to substitute for the percent removal requirements either a lower percent figure or a specific mass loading limit (lbs/day) on a case-by-case basis for the values in §§ 133.102(a)(3), 133.102(a)(4)(iii), 133.102(b)(3), 133.105(a)(3), 133.105(e)(4)(iii) provided that the permittee meets the requirements specified in § 133.103(e). Permit adjustments under wet weather conditions for combined sewers are covered under § 133.103(a).

I. Regulatory Reviews

1. Under Executive Order (E.O. 12291), EPA is required to judge whether a regulation is "major" and therefore subject to the regulatory impact analysis requirements of the Order or whether it may follow other development procedures. The Agency has determined that this proposed regulation is not a major rule within the scope of E.O. 12291. This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required under E.O. 12291. Any comments from OMB and any EPA responses are available for public inspection at the location noted in the **ADDRESSES** section.

2. Paperwork Reduction Act. In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., EPA must submit a copy of any proposed rule that contains a collection of information requirements to the Director of OMB for review and approval. The Agency determined that this proposed regulation does not contain information collection requirements.

3. Regulatory Flexibility Act. The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires EPA to assess the impact of its regulatory proposals on "small entities." No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The secondary treatment regulation amendment proposed today allows permitting authorities to adjust the percent removal requirements for small communities served by combined sewers. Where requirements are adjusted, the operation and maintenance costs of existing facilities may be reduced. The estimates of the ultimate benefits (i.e., cost reductions) that will accrue to small communities as a result of this amendment are uncertain.

This uncertainty stems largely from insufficient flow data for communities with combined sewer systems. Although quantification of costs and benefits is not possible, the Agency believes that this rulemaking will result in cost savings.

The Agency believes that today's proposed regulation will not result in any significant economic impact on small communities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that this proposed amendment will not have a significant impact on a substantial number of small entities.

J. Comments Invited

The Agency invites and encourages comments on any aspect of the proposal set forth in this notice. All comments received within 60 days will be considered in the promulgation of a final rule. For the Agency to evaluate the views expressed, the comments should contain specific data and information to support those views. The Agency is particularly interested in receiving additional data for combined sewer systems that represent typical dry weather flow conditions.

List of Subjects in 40 CFR Part 133

Treatment works, Waste treatment and disposal, Water pollution control.

Dated: September 8, 1987.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, EPA is proposing to amend 40 CFR Part 133 as follows:

PART 133—SECONDARY TREATMENT REGULATION

1. The Authority citation for Part 133 continues to read as follows:

Authority: Secs. 301(b)(1)(B), 304(d)(1), 304(d)(4), 308, and 501 of the Federal Water Pollution Control Act as amended by the Federal Water Pollution Control Act Amendments of 1972, the Clean Water Act of 1977, and the Municipal Wastewater Treatment Construction Grant Amendments of 1981; 33 U.S.C. 1311(b)(1)(B), 1314(d)(1) and (4), 1318, and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217; 95 Stat. 1623, Pub. L. 97–117.

2. Section 133.103 is amended by adding a new paragraph (e) to read as follows:

§ 133.103 Special considerations.

* * * * *

(e) Less concentrated influent wastewater for combined sewers during dry weather. The Regional Administrator or, if appropriate, the State Director is authorized to substitute either a lower percent removal requirement or a mass loading limit for the percent removal requirements set forth in §§ 133.102(a)(3), 133.102(a)(4)(iii), 133.102(b)(3), [133].105(a)(3), 133.105(b)(3) and 133.105(e)(4)(iii) provided that the

permittee satisfactorily demonstrates that: (1) The treatment works is consistently meeting, or will consistently meet, its permit effluent concentration limits, but the percent removal requirements cannot be met due to less concentrated influent wastewater; (2) to meet the percent removal requirements, the treatment works would have to achieve significantly more stringent effluent concentrations than would otherwise be required by the concentration-based standards; and (3) the less concentrated influent wastewater does not result from either excessive infiltration or industrial discharges during dry weather periods. The determination of whether the less concentrated wastewater results from excessive infiltration is discussed in 40 CFR 35.2005(b)(16). If the less concentrated influent wastewater is the result of clear water industrial discharges then the treatment works must control such discharges pursuant to 40 CFR Part 403.

[FR Doc. 87-21491 Filed 9-16-87; 8:45 am]

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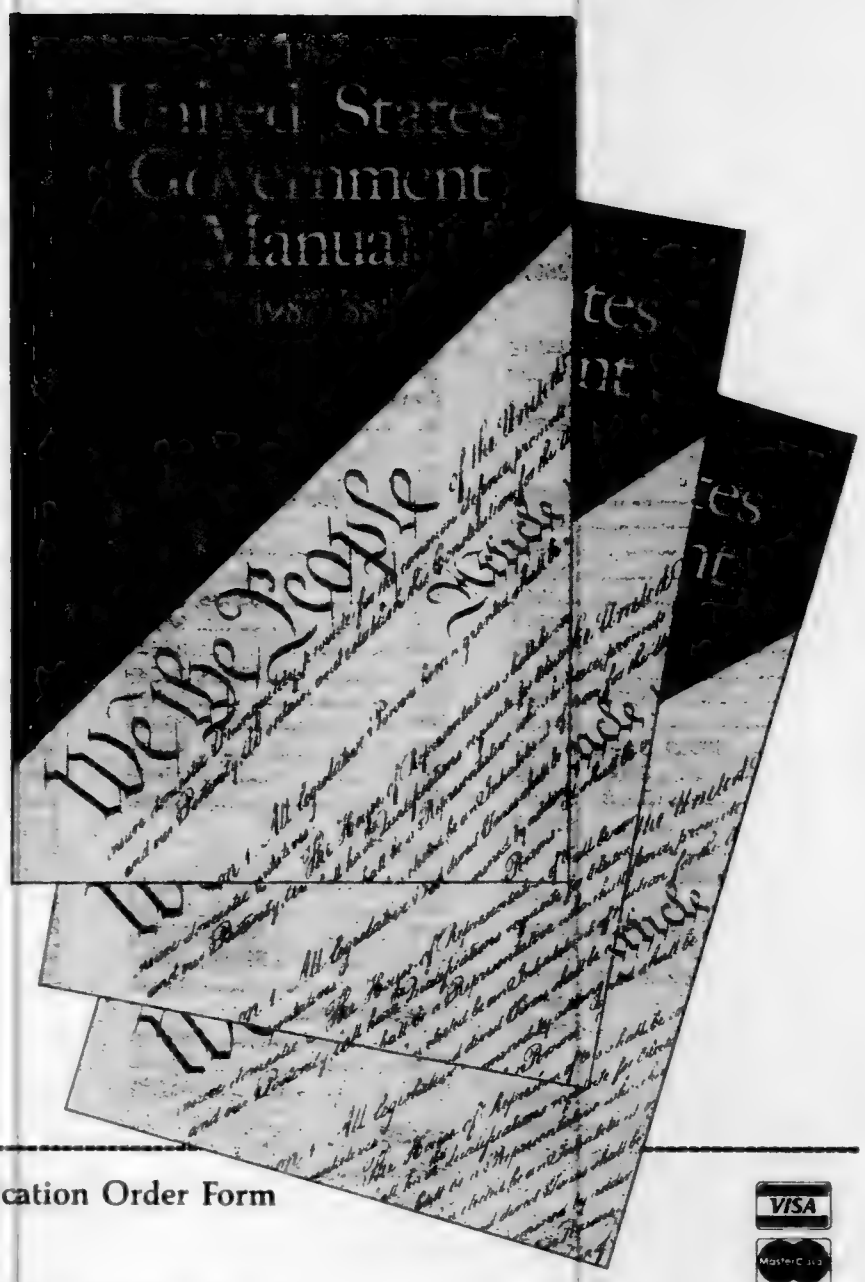

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Rules and Regulations

Federal Register
Vol. 52, No. 181
Friday, September 18, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27, 28, and 61

Revision of User Fees for Cotton Classification, Testing, and Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule revises the fees for cotton classification services to producers. The revision, which will result in a fee increase, is in accordance with the recent amendment to section 3a of the Cotton Statistics and Estimates Act which provides continuing authority to the Secretary of Agriculture to recover costs associated with cotton classing services through the fiscal year ending September 30, 1992.

This rule also increases fees for certain other cotton classification and testing services and cottonseed grading services. Fees charged for the purchase of American Upland and American Pima cotton and linters grade and staple standards, and for calibration cotton standards are also increased. The higher fees are necessary to recover, as nearly as practicable, the costs of providing such services including administrative and supervisory costs.

DATES: Effective September 21, 1987; comments must be received on or before 45 days after publication in the **Federal Register.**

ADDRESS: Fred S. Mullins, Cotton Division, AMS, USDA, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Fred S. Mullins, (202) 447–2145.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the Order.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The fee increases merely reflect only a modest increase in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost increases will not affect competition in the marketplace; (3) the amounts of the increases in fees are needed to continue to provide services at the levels desired by the industry; and (4) the use of the services is voluntary. The Secretary is authorized to recover the costs of cotton classification, standards and the testing services from users of such services and standards. The fee revisions contained herein reflect the recent amendment of the Cotton Statistics and Estimates Act, as well as the added costs incurred for providing the various services.

The information collection requirements contained in this interim rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Classification Fee for Producers

Section 3a of the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 473a), as amended on August 20, 1987, extends the Secretary's authority to recover costs associated with cotton classification services through fiscal year 1992. Absent the amendment, authority to collect fees would have expired at the end of fiscal year 1988. The statute directs the Secretary, within certain limitations, to set the user fee at a level that when combined with the proceeds from the sale of samples submitted for classification would recover, as nearly as practicable, the cost of the service provided, including administrative and supervisory costs. Prior to the recent amendment, the law (1) prohibited the amount of the uniform per bale classification fee in any year from exceeding the uniform fee collected in the previous year by more than the percentage increase in the Implicit Price Deflator for Gross National Product as indexed during the most recent twelve-month period for which statistics were available, and (2) prohibited an increase in the fee for any year if the accumulated reserve exceeded 20 percent of the cost of the classification program in the previous year. Under the amendment, the uniform classing fee will be established each year by adjusting the base fee for the previous year for inflation (Implicit Price Deflator for Gross National Product). After adjusting for inflation, the Secretary may increase or decrease the inflation adjusted fee by a percentage factor based on the size of the crop. Adjustments cannot exceed 15 percent, except when fees and other income will not provide a 10 percent operating reserve for the current fiscal year. The Secretary is authorized to make adjustments whenever the income generated from fees and other sources is insufficient to maintain an operating reserve of at least 10 percent. The amendment also authorizes an increase in the operating reserve from 20 to 25 percent and if income from fees and other sources is insufficient to maintain a 25 percent reserve, the Secretary is authorized to add a special surcharge of up to 5 cents per bale. However, the Secretary to the extent practicable shall not establish a fee when combined with all other sources of revenue and adjusted for expenses that would result in a projected operating reserve greater than 25 percent.

The fee for manual classification of producers' cotton was set at $1.08 per sample during the 1986 harvest season (7 CFR 28.909(b); 51 FR 22059 at 22063). This rule increases the classification fee for manual classification services to producers in § 28.909 from $1.08 to $1.20 per sample. This new fee is calculated using the 1986 classing fee ($1.08) and adding a three percent increase over the 1986 fee due to the Implicit Price Deflator amounting to an increase of three cents and a five cents per bale surcharge to re-establish the operating reserve. However, the resulting eight cents per bale increase, in addition to all other sources of revenue, has been determined to be inadequate to produce the ten percent operating reserve. Therefore, a supplemental fee adjustment of four cents per bale is added resulting in a twelve cents per bale increase and a manual classing fee of $1.20 per sample. The current 1987–1988 cotton crop is estimated to be 12.5

million running bales. Therefore, no adjustment in the fees is based upon the size of the projected crop. The additional fee for High Volume Instrument (HVI) classification is established presently at 50 cents per sample, resulting in an HVI classing fee of $1.70 per sample. The discount to voluntary centralized billing and collecting agents will remain five cents per bale.

The fee in paragraph (b) of § 28.910 for issuance of a new memorandum of classification at the request of the owner of the cotton for the business convenience of the owner without the reclassification of such cotton is increased from $3.00 to $4.00 per sheet due to the increased costs of providing this service, including clerical costs.

The fee for a manual review classification in § 28.911 is also increased from $1.15 to $1.20 per sample. The fee for HVI review classification is increased from $1.65 to $1.70 per sample. These fees reflect the increased costs of performing these services, including overhead and equipment costs.

Costs of Cotton Standards

Practical forms of the cotton standards are prepared and sold by the Cotton Division offices in Memphis, Tennessee, under the authority of the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*). The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) directs that the price for standards will cover, as nearly as practicable, the costs of providing the standards.

This rule increases the fees listed in §§ 28.123 and 28.151 for practical forms of the cotton standards, including both grade aud staple standards for American Upland cotton, American Pima cotton and for cotton linters. The fees need to be adjusted due to increased costs for salaries, packaging, handling, delivery, and postage. Current and estimated demand for the standards has also been factored into the fee revision since per unit costs are directly related to volume.

Costs have increased due to the new Federal Employees Retirement System (FERS) which became effective in January 1987. Under this system the Agency is required to pay the full contribution for retirement benefits for employees hired before January 1, 1984, who convert to FERS and all employees hired on or after January 1, 1984, who are automatically entered in FERS. Previously, a portion of these costs were subsidized by an appropriation from another federal agency. AMS' contribution for retirement benefits can increase by as much as 15.5 percent. Finally, the charges must be adjusted upward to cover losses incurred between January of this year and the effective date of the fee increase.

The fees for American Upland cotton grade standards are increased from $94.00 to $100.00 f.o.b. Memphis, Tennessee, or overseas air freight collect. The price is increased from $98.00 to $104.00 for domestic surface delivery and from $134.00 to $140.00 for overseas air parcel post delivered. The fees for American Upland staple standards f.o.b. Memphis and overseas air freight collect are increased from $13.00 to $14.00. The domestic surface delivered fee is increased from $15.00 to $16.00 and the overseas air parcel post delivered fee is increased from $27.00 to $28.00. The fees for American Pima grade standards are raised from $120.00 to $126.00 f.o.b. Memphis or overseas air freight collect. The fee increases from $124.00 to $130.00 for domestic surface delivered and from $160.00 to $166.00 for overseas air parcel post delivered. Fees for American Pima staple standards increase from $14.00 to $15.00 for f.o.b. Memphis and overseas air freight collect. The domestic surface delivered fee increases from $16.00 to $17.00 and the overseas air parcel post delivered fee is increased from $28.00 to $29.00. The fees for linters grade standards is increased from $94.00 to $100.00 f.o.b. Memphis or overseas air freight collect. The price for domestic surface delivery increases from $98.00 to $104.00 and the price for overseas air parcel post delivery is increased from $134.00 to $140.00. The f.o.b. Memphis or overseas air freight collect fees for linters staple standards are raised from $15.00 to $16.00. The delivered price increases from $17.00 to $18.00 for domestic and from $29.00 to $30.00 for overseas air parcel post.

Other Classification Services

Certain other cotton classification services are conducted under the United States Cotton Standards Act. Fees for these services have been reviewed. In order to recover increased costs, including supervision and overhead, fees for classification of cotton or samples in § 28.116 are increased by 15 cents: for grade, staple and micronaire readings from $1.15 per sample to $1.30; for grade and staple only from $1.00 per sample to $1.15; and for grade only or staple only from 75 cents to 90 cents.

The fee in § 28.117 for each new memorandum or certificate issued in substitution for a prior one is increased from $3.00 per sheet to $4.00. The additional hourly fee charged for Form C determinations in §§ 28.120 and 28.149 increases from $17.00 per hour or each portion thereof to $18.00 per hour, or each portion thereof, plus traveling expenses and subsistence or per diem. The fee in § 28.122 for a complete practical classing examination for cotton or cotton linters is increased from $120.00 to $125.00 and the fee for reexamination for a failed part, either grade or staple, increases from $70.00 to $75.00. Fees for the classification, comparison, or review of linters in § 28.148 are increased from $1.05 to $1.20 per bale or sample involved. In § 28.184, the fee for classification or comparison of cotton linters and the issuance of a memorandum is raised from $1.05 to $1.20 per sample.

The United States Cotton Futures Act (7 U.S.C. 15b) authorizes the Secretary to make such regulations as are necessary to carry out the provisions of that Act. Pursuant to that authority, Part 27 of the regulations (7 CFR Part 27) provides for cotton classification under the Cotton Futures Act including fees to recover the costs of classification and micronaire. Under this rule, the fees charged for the services are increased to cover the costs of providing such services, including overhead costs.

These fees have been reviewed and the fees in § 27.80 for initial classification are increased from $1.05 per bale to $1.20 per bale; for review classification is increased from $1.25 per bale to $1.40 per bale; and for combination service from $2.30 per bale to $2.60 per bale. All supervision fees are increased by five cents. Pursuant to § 27.85, fees for withdrawal of requests or applications for review, after such services have been started, are the same as the fees in § 27.80 for services completed, so such charges are affected by this rule. Fees for certificates which appear in § 27.81 increase from 55 cents to 60 cents.

Cottonseed Grading Fees

Pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) the Secretary is authorized to assess and collect such fees as will be reasonable and cover as nearly as practicable the cost of services rendered under the Act. The regulations promulgated pursuant to that Act for the inspection, sampling, and certification of cottonseed sold or offered for sale for crushing purposes (7 CFR Part 61) includes such fees. Under this rule, the fees charged for cottonseed grading purposes are increased to cover the costs of providing these services, including increased overhead costs.

The fee in § 61.43 for a sampler's license is increased from $19.00 to $20.00 for the examination while the fee for renewal of such a license is increased from $17.00 to $18.00. In § 61.44, the fee

for a chemist's license is increased from $350.00 to $360.00 for the examination while the fee for renewal of such a license increases from $120.00 to $125.00. In § 61.45, those fees charged to each licensed cottonseed chemist to cover the cost of administering the regulations in Part 61 are increased from $1.30 per certificate issued by the chemist to $1.35. The fee in § 61.46 for the review of the grading of any lot of cottonseed is increased from $51.00 to $54.00 with the disbursement to each of the two licensed chemists who performed the reanalysis increasing from $17.00 to $18.00. All of these increases reflect increases in program costs including clerical and administrative costs and rent, utilities, and communications.

Testing Services

Cotton testing services are provided by a USDA Laboratory in Clemson, South Carolina under the authority of the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–478). The tests are available, upon request, to private sources on a fee basis. The Cotton Service Testing Amendment (7 U.S.C. 473d) specifies that the fees for the services be reasonable and cover as nearly as practicable the costs of rendering the services.

Operating costs for providing testing services have increased due to higher costs for salaries, rent, utilities, communications, supplies and materials. Costs have also increased due to the new Federal Employees Retirement System (FERS) which became effective in January 1987. Under this system the Agency is required to pay the full contribution for retirement benefits for employees hired before January 1, 1984, who convert to FERS and all employees hired on or after January 1, 1984, who are automatically entered in FERS. Previously, a portion of these costs were subsidized by an appropriation from another federal agency. AMS' contribution for retirement benefits can increase by as much as 15.5 percent. Finally, the charges must be adjusted upward to cover losses incurred between January of this year and the effective date of the fee increase.

The fees for fiber and processing tests in § 28.956, except item 14.1, are increased.

AMS is removing item 1.0, the USDA calibration cotton series, from the list of fiber and processing tests of § 28.956. These cottons have been used primarily for the calibration of the length by Fibrograph and ⅛-inch gage fiber strength tests. Standard values for these tests have been added to the International Calibration Cotton Series, item 2.0. The USDA calibration cotton series also has standard values for the length by array and causticaire tests. The array and causticaire tests are performed in very few laboratories and demand for the USDA calibration cottons for use with these tests is nonexistent. AMS has determined that it is no longer cost effective to maintain the USDA calibration cottons. Therefore, item 1.0 is removed and the items following 1.0 are renumbered as set forth below.

The current item numbers and new item numbers are as follows:

Previous item No.	New item No.	Fee	
		Previous	New
1.0a		$22.00	Remove
1.0b		24.00	Remove
1.0c		22.00	Remove
1.0d		36.00	Remove
2.0a	2.0a	14.00	$15.00
2.0b	2.0b	16.00	16.00
2.0c	2.0c	14.00	15.00
2.0d	2.0d	24.00	25.00
2.1a	2.1a	22.00	23.00
2.1b	2.1b	24.00	25.00
2.1c	2.1c	22.00	23.00
2.1d	2.1d	36.00	37.00
3.0a	13.0a	80.00	85.00
3.0b	13.0b	95.00	105.00
3.0c	13.0c	115.00	125.00
3.1a	13.1a	45.00	48.00
3.1b	13.1b	65.00	70.00
3.1c	13.1c	90.00	97.00
3.2	13.2	110.00	117.00
3.5a	14.0a	20.00	22.00
3.5b	14.0b	25.00	27.00
3.5c	14.0c,5c	30.00	32.00
4.0	7.0	8.00	8.50
4.1	7.1	5.00	5.50
5.0	8.0	8.00	8.75
5.1	8.1	5.00	5.50
5.2a	9.0a	8.00	8.75
5.2b	9.0b	6.00	6.50
5.2c	9.0c	5.00	5.50
6.0	11.0	9.00	10.00
Minimum		45.00	50.00
6.1	12.0	5.00	6.00
7.0	10.0	.50	.55
7.1	10.1	.25	.30
8.0	16.0	13.00	14.00
9.0	20.0	100.00	105.00
9.1	20.1	75.00	80.00
10.0	21.0	90.00	95.00
11.0	22.0	130.00	140.00
12.0	23.0	185.00	200.00
13.0	24.0	205.00	220.00
14.0	19.0	75.00	80.00
14.1	18.0	25.00	25.00
15.0	25.0	27.00	29.00
15.1	25.1	37.00	40.00
16.0a	26.0a	70.00	75.00
16.0b	26.0b	20.00	22.00
17.0	27.0	10.00	11.00
17.1	28.0	4.00	4.50
17.2	28.1	6.00	6.50
18.0	29.0	16.00	17.00
18.1	29.1	27.00	29.00
19.0	6.0	1.00	1.08
20.0	3.0	90.00	95.00
20.1	3.1	10.00	15.00
20.2	4.0	20.00	25.00
20.3	4.1	10.00	12.00
21.0	31.0	2.00	2.50
22.0a	15.0a	7.00	7.50
22.0b	15.0b	12.00	13.00
23.0	32.0	2.50	3.00
24.0	33.0	1.00	1.10
24.1	33.1	10.00	12.00
25.0	5.0	1.60	1.60
26.0a	1.0a	80.00	84.00
26.0b	1.0b	84.00	88.00
26.0c	1.0c	80.00	84.00
26.0d	1.0d	120.00	124.00
27.0	27.0	4.00	4.50
Minimum		20.00	22.50
28.0	34.0		
29.0	30.0	10.00	12.00
Minimum		30.00	36.00

Pursuant to 5 U.S.C. 553, it is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with regard to this action and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the fee increases contained herein need to be put into effect as soon as possible to adequately fund the various services provided and to comply with the recent amendment to the Cotton Statistics and Estimates Act. The current crop season is already under way and the AMS should start billing under the new fee schedules as soon as possible.

List of Subjects

7 CFR Part 27

Cotton, Classification, Samples, Micronaire, Spot markets.

7 CFR Part 28

Cotton, Samples, Standards, Cotton Linters, Grades, Staples, Market news, Testing.

7 CFR Part 61

Cottonseed, Chemists, Samplers, Grades.

Accordingly, for reasons set forth in the preamble, 7 CFR Parts 27, 28, and 61 are amended as follows:

PART 27—[AMENDED]

1. The authority citation for Part 27 continues to read as follows:

Authority: 90 Stat. 1841–1846; 7 U.S.C. 15b.

2. Sections 27.80 (a), (b) and (d) through (h), and 27.81 are revised to read as follows:

§ 27.80 Fees; classification, micronaire, and supervision.

For services rendered by the Cotton Division pursuant to this subpart, whether the cotton involved is tenderable or not, person requesting the services shall pay fees as follows:

(a) Initial classification and certification—$1.20 per bale.

(b) Review classification and certification—$1.40 per bale.

* * * * *

(d) Combination service—$2.60 per bale. (Initial classification, review classification, and Micronaire determination covered by the same request and only the review

classification and Micronaire determination results certified on cotton class certificates.)

(e) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any two or more of these operations are performed together—$1.35 per bale.

(f) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any one of these operations is performed individually—$1.35 per bale.

(g) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$2.45 per bale.

(h) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different warehouse at the same delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$1.70 per bale.

§ 27.81 Fees; certificates.

For each new certificate issued in substitution for a prior certificate at the request of the holder thereof, for the purpose of business convenience, or when made necessary by the transfer of cotton under the supervision of any exchange inspection agency as provided in § 27.73, the person making the request shall pay a fee of 60 cents for each certificate issued.

PART 28—[AMENDED]

3. The authority citation for Subpart A of Part 28 continues to read as follows:

Authority: Sec. 5, 50 Stat. 62, as amended (7 U.S.C. 55); Sec. 10, 42 Stat. 1519 (7 U.S.C. 61).

Subpart A—[Amended]

4. Section 28.116 is amended by revising paragraph (a) to read as follows:

§ 28.116 Amounts of fees for classification; exemption.

(a) For the classification of any cotton or samples, the person requesting the services shall pay a fee, as follows, subject to the additional fee provided by paragraph (c) of this section.

(1) Grade, staple, and micronaire reading—$1.30 per sample.

(2) Grade, staple only—$1.15 per sample.

(3) Grade only or staple only—90 cents per sample.

* * * * *

5. Sections 28.117, 28.120, and 28.122 are revised to read as follows:

§ 28.117 Fee for new memorandum or certificate.

For each new memorandum or certificate issued in substitution for a prior memorandum or certificate at the request of the holder, thereof, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for his business convenience, the person requesting such substitution shall pay a fee of $4.00 per sheet.

§ 28.120 Expenses to be borne by party requesting classification.

For any samples submitted for Form A or Form D determinations, the expenses of inspection and sampling, the preparation of the samples and delivery of such samples to the classification room or other place specifically designated for the purpose by the Director shall be borne by the party requesting the classification. For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $18.00 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of such request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

§ 28.122 Fee for practical classing examination.

The fee for the complete practical classing examination for cotton or cotton linters shall be $125.00. Any applicant who passes both parts of the examination may be issued a certificate indicating this accomplishment. Any person who passes one part of the examination, either grade or staple, and fails to pass the other part, may be reexamined for that part that was failed. The fee for this practical reexamination is $75.00.

6. Section 28.123 is revised to read as follows:

§ 28.123 Costs of practical forms of cotton standards.

The costs of practical forms of the cotton standards of the United States shall be as follows:

Effective date: September 21, 1987	Dollars each box or roll			
	Domestic shipments		Shipments delivered outside the continental United States	
	F.o.b. Memphis Tenn.	Surface delivery	Air freight collect	Air parcel post delivered
Grade Standards:				
American Upland	$100.00	$104.00	$100.00	$140.00
American Pima	126.00	130.00	126.00	166.00
Standards for Length of Staple:				
American Upland (prepared in one-pound rolls for each length)	14.00	16.00	14.00	28.00
American Pima (prepared in one-pound rolls for each length)	15.00	17.00	15.00	29.00

7. Sections 28.148 and 28.149 are revised to read as follows:

§ 28.148 Fees and costs; classification; reviews; other.

The fee for the classification, comparison, or review of linters with respect to grade, staple, and character or any of these qualities shall be at the rate of $1.20 for each bale or sample involved. The provisions of §§ 28.115 through 28.126 relating to other fees and costs shall, so far as applicable apply to services performed with respect to linters.

§ 28.149 Fees and costs; Form C determination.

For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $18.00 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred or account of each request, in accordance with the fiscal regulations of the Department applicable to the

Division employee supervising the sampling.

8. Section 28.151 is revised to read as follows:

§ 28.151 Cost of practical forms for linters, period effective.

Practical forms of the official cotton linters standards of the United States will be furnished to any person subject to the applicable terms and conditions specified in § 28.105; *Provided*, that no practical form of any of the official cotton linters standards of the United States for grade shall be considered as representing any such standards after the date of its cancellation in accordance with this subpart, or, in any event, after the expiration of 12 months following the date of its certification. The cost of the practical forms of cotton linters standards of the United States shall be as follows:

Effective date: Sept. 21, 1987	Dollars each box or roll			
	Domestic shipments	Shipments delivered outside the continental United States		
	F.o.b. Memphis Tenn.	Surface delivery	Air freight collect	Air parcel post delivered
Linters grade standards (6 sample box for each grade)	$100.00	$104.00	100.00	$140.00
Linters staple standards (prepared in one pound rolls for each length)	16.00	18.00	16.00	30.00

Subpart B—[Amended]

9. The authority citation for Subpart B of Part 28 continues to read as follows:

Authority: Sec. 205, 60 Stat. 1090, as amended; 7 U.S.C. 1624.

10. Section 28.184 is revised to read as follows:

§ 28.184 Cotton linters; general.

Requests for the classification or comparison of cotton linters pursuant to this subpart and the samples involved shall be submitted to the Cotton Division. All samples classed shall be on the basis of the official cotton linters standards of the United States. The fee for classification or comparison and the issuance of a memorandum showing the results of such classification or comparison shall be $1.20 per sample.

Subpart D—[Amended]

11. The authority citation for Subpart D of Part 28 continues to read as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c); unless otherwise noted.

12. Paragraph (b) of § 28.909 is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of manual cotton classification service to producers is $1.20 per sample.

* * * * *

13. Paragraph (b) of § 28.910 is amended by revising it to read as follows:

§ 28.910 Classification of samples and issuance of classification data.

* * * * *

(b) Upon request of an owner of cotton for which classification memoranda have been issued under this subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be $4.00 per sheet.

14. Section 28.911 is amended by revising it to read as follows:

§ 28.911 Review classification.

A producer may request one manual or one High Volume Instrument (HVI) review classification for each bale of eligible cotton. The fee for manual review classification is $1.20 per sample. The fee for HVI review classification is $1.70 per sample. Samples for review classification must be drawn by gins or warehouses licensed pursuant to § 28.20–28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds from the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 25 cents per sample in addition to the fee established above in this section.

Subpart E—[Amended]

15. The authority citation for Subpart E of Part 28 continues to read as follows:

Authority: Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c); Sec. 3d, 55 Stat. 131 (7 U.S.C. 473d).

16. Section 28.956 is amended by revising entry numbers and fees to read as follows:

§ 28.956 Prescribed fees.

Fees for the fiber and processing tests shall be assessed as listed below:

Item No.	Kind of test	Fee per test
10	Calibration cotton for use with High Volume Instruments, per 5 pound package:	
	a. f.o.b. Memphis, Tennessee	$84.00
	b. By surface delivery within continental United States	88.00
	c. By air freight collect outside continental United States	84.00
	d. By air parcel post delivery outside continental United States	124.00
20	Furnishing international calibration cotton standards with standard values for micronaire reading and fiber strength at zero and ⅛-inch gage and Fibrograph length:	
	a. f.o.b. Memphis, Tennessee, ½-lb. sample	15.00
	b. By surface delivery within continental United States, ½-lb sample	16.00
	c. By air freight collect outside continental United States, ½-lb sample	15.00
	d. By air parcel post delivery outside continental United States, ½-lb sample	25.00
21	Furnishing international calibration cotton standards with standard values for micronaire reading only:	
	a. f.o.b. Memphis, Tennessee, 1-lb sample	23.00
	b. Surface delivery within continental United States, 1-lb sample	25.00
	c. By air freight collect outside continental United States, 1-lb sample	23.00
	d. By air parcel post delivery outside continental United States, 1-lb sample	37.00
30	Furnishing color standards, including a set of standard tiles and a master diagram for use in calibrating Nickerson-Hunter Cotton Colorimeters, per set	95.00
31	Furnishing replacement calibration tiles for above sets, each tile	15.00

Item No.	Kind of test	Fee per test
4.0	Furnishing a Colorimeter calibration sample box containing 6 cotton samples with color values Rd and +b plotted on a color diagram based on the Nickerson-Hunter Cotton Colorimeter, per box	25.00
4.1	Furnishing new Colorimeter readings on samples in calibration boxes returned for check readings, per 6-sample box	12.00
5.0	High Volume Instrument (HVI) measurement. Reporting micronaire, length, length uniformity, ⅛-inch gage strength, color and trash content. Based on a 6 oz. (170 g) sample, per sample	1.80
6.0	Color of ginned cotton lint. Reporting data on the reflectance and yellowness in terms of Rd and b values as based on the Nickerson-Hunter Cotton Colorimeter on samples which measure 5×8-½ inches and weigh approximately 50 grams, per sample	1.08
7.0	Fiber length of ginned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 4 specimens from a blended sample, per sample	8.50
7.1	Fiber length of ginned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 2 specimens from each unblended sample	5.50
8.0	Pressley strength of ginned cotton lint by flat bundle method for either zero of ⅛-inch gage as specified by applicant. Reporting the average strength as based on 6 specimens from a blended sample, per sample	8.75
8.1	Pressley strength of ginned cotton lint by flat bundle method for either zero or ⅛-inch gage as specified by applicant. Reporting the strength as based on 2 specimens for each unblended sample, per sample	5.50
9.0	Stelometer strength and elongation of ginned cotton lint by the flat bundle method for ⅛-inch gage. Reporting the average strength and elongation:	
	a. Based on 6 specimens from each blended sample, per sample	8.75
	b. Based on 4 specimens from each blended sample, per sample	6.50
	c. Based on 2 specimens from each blended sample, per sample	5.50
10.0	Micronaire readings on ginned lint. Reporting the micronaire based on 2 specimens per sample	.55
10.1	Micronaire reading based on 1 specimen per sample	.30
11.0	Fiber maturity and fineness of ginned cotton lint by the Causticare method. Reporting the average maturity, fineness, and micronaire reading as based on 2 specimens from a blended sample, per sample	10.00
	Minimum fee	50.00
12.0	Fiber fineness and maturity of ginned cotton lint by the IIC-Shirley Fineness/Maturity Tester method, reporting the average micronaire, maturity ratio, percent mature fibers and fineness (linear density) based on 2 specimens from a blended sample, per sample	6.00
13.0	Fiber length array of cotton samples. Reporting the average percentage of fibers by weight in each ⅛-inch group, average length and average length variability as based on 3 specimens from a blended sample:	
	a. Ginned cotton lint, per sample	65.00
	b. Cotton comber noils, per sample	103.00
	c. Other cotton wastes, per sample	125.00
13.1	Fiber length array of cotton samples. Reporting the average percentage of fibers by weight in each ⅛-inch group, average length, and average length variability as based on 2 specimens from a blended sample:	
	a. Ginned cotton lint, per sample	48.00
	b. Cotton comber noils, per sample	70.00
	c. Other cotton wastes, per sample	97.00
13.2	Fiber length array of cotton samples, including purified or absorbent cotton. Reporting the average percentage of fibers by weight in each ⅛-inch group, average length and average length variability as based on 3 specimens from a blended sample, per sample	117.00
14.0	Fiber Length and Length Distribution of cotton samples by the Almeter method. Reporting the upper 25 percent length, mean length, coefficient of variation, and short fiber, percentages by weight, number of tuft in each ⅛-inch group, as based on 2 specimens from a blended sample:	
	a. Report percentages of fiber by weight only	22.00
	b. Report percentages of fiber by weight and number of tuft	27.00
	c. Report percentages of fiber by weight, number and tuft	32.00
15.0	Foreign matter content of cotton samples. Reporting data on the non-lint content as based on the Shirley Analyzer separation of lint and foreign matter.	
	a. For samples of ginned lint or comber noils, per 100-gram specimen	7.50
	b. For samples of ginning and processing wastes other than comber noils, per 100-gram specimen	13.00
16.0	Neps content of ginned cotton lint. Reporting the neps per 100 square inches as based on the web prepared from a 3-gram specimen by using accessory equipment with the mechanical fiber blender, per sample	14.00
17.0	Sugar content of cotton. Reporting the percent sugar content as based on a quantitative analysis of reducing substances (sugars) on cotton fibers, per sample	4.50
	Minimum fee	22.50
18.0	Miniature carded cotton spinning test. Reporting data on tenacity (centinewtons per tex) of 22's yarn and HVI data (see item 5.0). Based on the processing of 50 grams of cotton in accordance with special procedures per sample	25.00
19.0	Two-pound cotton carded yarn spinning test available to cotton breeders only. Reporting data on yarn skein strength, yarn appearance, yarn neps and the classification and the fiber length of the cotton as well as comments on any unusual processing performance as based on the processing of 2 pounds of cotton in accordance with standard procedures into two standard carded yarn numbers employing a standard twist multiplier, per sample	80.00
20.0	Cotton carded yarn spinning test. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps and classification, and fiber length as well as comments summarizing any unusual observations as based on the processing of 6 pounds of cotton in accordance with standard laboratory procedures at one of the standard rates of carding of 6½, 9½, or 12½ pounds-per-hour into two of the standard carded yarn number of 8s, 14s, 22s, 36s, 44s, or 50s, employing a standard twist multiplier unless otherwise specified, per sample	105.00
20.1	Cotton carded yarn spinning test (open-end) for short staple (1 3/32nd inches and shorter) cottons. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps, and classification and fiber length as well as comments summarizing any unusual observations as based on the processing of 6 pounds of cotton in accordance with standard laboratory procedures at a carding rate of 12½ pounds-per-hour into 8s using a sliver weight of 60 grains per yard; a rotor speed of 45,000 RPM; and opening roll speed of 7,200 RPM; a twist multiple of 4.5; and a rotor diameter of 46 millimeters	80.00
21.0	Spinning potentials test. Determining the finest yarn which can be spun with no ends down and reporting spinning potential yarn number. This test requires an additional 4 pounds of cotton, per sample	95.00
22.0	Cotton combed yarn spinning test. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps, and classification and fiber length as well as comments summarizing any unusual observations as based on the processing of 8 pounds of cotton in accordance with standard procedures at one of the standard rates of carding of 4½, 6½, or 9½ pounds per hour into two of the standard combed yarn numbers of 22s, 36s, 44s, 50s, 60s, 80s, or 100s employing a standard twist multiplier unless otherwise specified, per sample	140.00
23.0	Cotton carded and combed yarn spinning test. Reporting the results as based on the processing of 10 pounds of cotton into two of the standard carded and two of the standard combed yarn numbers employing the same carding rate and the same yarn numbers for both the carded and the combed yarns, per sample	200.00
24.0	Cotton carded and combed yarn spinning test. Reporting the results as based on the processing of 9 pounds of cotton into two of the standard combed yarn numbers employing different carding rates and/or yarn numbers for the carded and combed yarns, per sample	220.00
25.0	Processing and testing of additional yarn. Any carded or combed yarn number processed in connection with spinning tests including either additional yarn numbers or additional twist multipliers employed on the same yarn numbers, per additional lot of yarn	29.00
25.1	Processing and furnishing of additional yarn: Any yarn number processed in connection with spinning tests. Approximately 300 yards on each of 16 paper tubes for testing by the applicant, per additional lot of yarn	40.00
26.0	Twist in yarns by direct-counting method. Reporting direction of twist and average turns per inch of yarn:	
	(a) Single yarns based on 40 specimens per lot of yarn	75.00
	(b) Plied or cabled yarns based on 10 specimens, per lot of yarn	22.00
27.0	Skein strength of yarn. Reporting data on the strength and the yarn numbers based on 25 skeins from yarn furnished by the applicant per sample	11.00
28.0	Appearance grade of yarn furnished on bobbins by applicant. Reporting the appearance grade in accordance with ASTM standards as based on yarn wound from one bobbin, per bobbin	4.50
28.1	Furnishing yarn wound on boards in connection with yarn appearance tests	6.50
29.0	Strength of cotton fabric. Reporting the average warp and filling strength by the garb method as based on 5 breaks for both warp and filling of fabric furnished by the applicant, per sample	17.00
29.1	Cotton fabric analysis. Reporting data on the number of warp and filling threads per inch and weight per yard of fabric as based on at least three (3) 6×6-inch specimens of fabric which were processed or furnished by the applicant, per sample	29.00
30.0	Chemical finishing tests on finisher drawing sliver. The Ahiba Texomat Dyer is used for scouring, bleaching and dyeing of a 3-gram sample. Color measurements are made on the unfinished, bleached and dyed cotton samples, using a Hunterlab Colorimeter, Model 25 M-3. The color values are reported in terms of reflectance (Rd), yellowness (+b) and blueness (−b)	12.00
	Minimum fee	36.00
31.0	Furnishing copies of test data worksheets. Includes individual obeservations and calculations which are not routinely furnished to the applicant, per sheet	2.50

Item No.	Kind of test	Fee per test
32.0	Furnishing identified cotton samples. Includes samples of ginned lint stock at any stage or processing or testing, waste of any type, yarn or fabric selected and identified in connection with fiber and/or spinning tests, per identified sample	3.00
33.0	Furnishing additional copies of test reports. Include extra copies in addition to the 2 copies routinely furnished in connection with each test item, per additional sheet	1.10
33.1	Furnishing a certified relisting of test results. Includes samples or sub-samples selected from any previous tests, per sheet	12.00
34.0	Classification of ginned cotton lint is available in connection with other fiber tests, under the provisions of 7 CFR § 28.56, at the fees prescribed by 7 CFR § 28.116. Classification includes grade, staple, and micronaire reading based on a 6 oz (170 g) sample.	

PART 61—[AMENDED]

16. The authority citation for Subpart A of Part 61 continues to read as follows:

Authority: Sec. 205, 60 Stat. 1090, as amended, (7 U.S.C. 1624, unless) otherwise noted.

Subpart A—[Amended]

17. Sections 61.43, 61.44, 61.45 and 61.46 are revised to read as follows:

§ 61.43 Fee for sampler's license.

In the examination of an applicant for a license to sample and certificate official samples of cottonseed the fee shall be $20.00, but no additional charges shall be made for the issuance of a license. For each renewal of a sampler's license, the fee shall be $18.00.

§ 61.44 Fee for chemist's license.

For the examination of an applicant for a license as a chemist to analyze and certificate the grade of cottonseed the fee shall be $360.00, but no additional charge shall be made for the issuance of a license. For each renewal of a chemist's license the fee shall be $125.00.

§ 61.45 Fee for certificates to be paid by licensee to Service.

To cover the cost of administering the regulations in this part each licensed cottonseed chemist shall pay to the Service $1.35 for each certificate of the grade of cottonseed issued by the licensee. Upon receipt of a statement from the Service each month showing the number of certificates issued by the licensee, such licensee will forward the appropriate remittance in the form of a check, draft, or money order payable to the "Agricultural Marketing Service, USDA."

§ 61.46 Fees for the review of grading of cottonseed.

For the review of the grading of any lot of cottonseed, the fee shall be $54.00. Remittance to cover such fee, in the form of a check, draft, or money order payable to the "Agricultural Marketing Service, USDA" shall accompany each application for review. Of each such fee collected, $18.00 shall be disbursed to each of the two licensed chemists designated to make reanalysis of such seed.

Dated: September 14, 1987.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 87-21467 Filed 9-17-87; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Parts 272 and 277

[Amd. No. 284]

Food Stamp Program; Automation of Data Processing (ADP) Model Plan

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule/analysis of comments.

SUMMARY: This action contains final regulations setting forth a model plan and requirements for State agency plans for the comprehensive automation of data processing (ADP) and computerization of information systems (CIS) under the Food Stamp Program (FSP), as required by the Food Security Act of 1985. This action will improve automation in the Food Stamp Program. State agencies must submit ADP plans by October 1, 1987. Proposed regulations were published in the **Federal Register** of February 6, 1987. Comments on the proposal were solicited through March 23, 1987. This final rulemaking takes the comments received into account.

DATES: Effective September 18, 1987, except for § 272.1(g)(92) which is not effective until OMB clearance is obtained. State agencies must submit ADP/CIS plans by October 1, 1987. They must begin to implement these plans October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be directed to Patricia Warner, Chief, Administration and Design Branch, Program Development Division, Food and Nutrition Service, USDA, 22302, (703) 756-3383.

SUPPLEMENTARY INFORMATION:

Effective Date

Since the law requires submission of the ADP model plan by October 1, 1987, good cause exists pursuant to 5 U.S.C. 553(d) for publication of this rule less than 30 days from its effective date.

Classification

Executive Order 12291

The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512-1. It has been determined that this action would not result in an annual effect on the economy of $100 million or more; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified this action as "not major".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 stat. 1164, September 19, 1980). S. Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities. This action simply results in development of a model plan and State agency plans which will improve the efficiency and cost effectiveness of the FSP through the effective use of ADP and information retrieval systems.

Paperwork Reduction Act

Information collection requirements contained in this regulation have been submitted to the Office of Management and Budget under the provisions of the Paperwork Act of 1980 (Pub. L. 96-511) and will not be effective until OMB has approved them.

Background

On February 6, 1987, the Department published in the **Federal Register** (52 FR 3817) a Notice of Proposed Rulemaking (NPRM) which proposed a model plan

and requirements for State agency plans for the Comprehensive automation of data processing (ADP) and computerization of information systems (CIS) under the Food Stamp Program, as required by the Food Security Act of 1985. Although the comment period on the NPRM closed March 23, 1987, the Department accepted comments until April 14, 1987. This action contains an analysis of the *significant* comments received, addresses the changes made and not made, and sets forth the final rulemaking. Readers may need to refer to the NPRM for a more complete understanding of the Department's actions or public comments on those actions.

The Department received 94 comments from a total of 16 commenters. The Department received comments from 13 individual State agencies, one private industry organization, the Department Office of the Inspector General, and the State agency Advisory Committee which had assisted in the development of the NPRM. (This group represented seven State agencies and met with FNS March 19 and 20, 1987.) FNS has carefully considered all of the comments received. As a result, clarifications have been made to the preamble and the rule. These changes, along with significant comments which were not adopted, are explained below.

Preamble

Several commenters had questions and concerns about the Functionally Automated Client Transaction System (FACTS) document (a detailed model for States to use in developing Statewide automated program systems) which FNS had offered to provide as technical assistance for State agencies. More than a dozen individuals and organizations requested copies of FACTS and copies were provided to the seven members of the State Advisory Committee. One commenter suggested that FACTS be mandated because of its controls designed to reduce fraud and inefficiency and its compliance with OMB Circular A–90. The same commenter wanted FACTS to be updated at least annually. Other commenters wanted FACTS and the Family Assistance Management Information System (FAMIS) to be consistent whenever possible and one commenter wondered whether FNS would rely heavily on FACTS to approve ADP/CIS plans or Advance Planning Documents (APDs).

In response to these comments, FNS wants to clarify that FACTS was offered in the NPRM as a technical assistance document. It was not intended that State agencies attempt to be certified under the FACTS system, as they may be under the FAMIS system, or that FNS Regional Offices would use FACTS to approve State ADP/CIS plans. Although FACTS *is* similar to the FAMIS system and is compatible with that system, to the extent possible, its basic purpose is somewhat different from FAMIS. FACTS was intended as a possible tool for State agencies which have not yet proceeded far in automation and are interested in knowing detailed functional requirements for the Food Stamp Program. It can be a useful starting point for discussions between State agencies as they consult with one another in developing and implementing their State plans, and it can be used as a checklist or tool for State agencies in evaluating their discussions. FACTS is not intended to be a substitute for State agency consultations, which FNS is strongly encouraging from the earliest stages of ADP/CIS plan development. Furthermore, the emphasis which will be placed on transfers of existing systems will make such consultations more important, and reliance on FACTS less important as the FACTS system has not actually been implemented in any State and so could not be transferred. Thus, we repeat that FACTS is technical assistance only and not a mandated document.

Section 272.2(e)(8)—Submittal Requirements.

Some commenters objected to the October 1, 1987 date for submission of their State plans and the October 1, 1988 date to begin implementing their plans. Some commenters objected to the 30-day turnaround State agencies are required to meet in making changes to their timely-submitted State plans in order to bring them into conformance with FNS standards. The Department is changing the time period for most State agencies to make revisions in their ADP/CIS plans. Based on comments from a number of commenters, the time period is being extended to 60 days because the previous 30-day period did not afford enough time in States where coordination among many different parts of the organization would have to take place. Some commenters suggested that FNS also have a deadline for reviewing State ADP plans. Section 272.2(e) already requires that State plan documents be approved or denied or additional information be requested within 30 days. Thus, ADP/CIS plans will automatically be approved within 30 days as a part of the State plan, unless a State agency hears otherwise. This does not mean that the State agency's APD would be approved, however.

There is no change in the dates State agencies must submit their ADP plans (October 1, 1987) or begin to implement them (October 1, 1988). These dates were specified by Pub. L. 99–198, section 1537. However, FNS believes that some commenters objected to these dates primarily because they believed that the amount of work involved on their parts was greater than that which is really expected by FNS. Thus, FNS is clarifying that a State ADP/CIS plan does not need to be as detailed as an APD. This is discussed further in the section of the preamble entitled § 272.10(a)—"Requirement to Automate". In addition, because of the limited time period between now and October 1, 1987, when State ADP/CIS plans are due, some State agencies may find it difficult to accomplish all of the planning necessary to develop their plans. Those State agencies may submit their ADP/CIS plans in two parts. The first part, which is required to be submitted October 1, 1987, would consist of an assessment of ADP status and needs. In this initial submission State agencies would indicate which functions in § 272.10 are automated and which are not. By January 1, 1988, the State agency would submit either a justification for not automating the functions which are not automated or a timetable and overall plan for the automation process. This two-step process should ease the burden in State ADP/CIS plan development. However, because of the need for the Department to send a report to the Congress on State agencies' automation status by April 1, 1988, the January 1, 1988 date cannot be extended and all State agencies must have approved ADP/CIS plans by March 1, 1988. Finally, FNS has clarified that when it is considering whether or not a State agency has "begun" to implement their ADP/CIS plan FNS will consider reasonable and substantial efforts on the part of the State agency to be a "beginning".

Section 272.10(a)—Requirement to Automate.

A number of commenters noted that FNS had a strong bias toward automation in the NPRM. One commenter supported this bias, noting that automation would increase productivity in the Food Stamp Program. However, four commenters objected, stating that the bias toward automation was inconsistent with the statutory language, was not what Congress intended, and did not give State agencies flexibility.

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In response to comments, FNS reviewed the statute and the legislative history. When a similar provision was first introduced by Senator Boschwitz of Minnesota (*Congressional Record*, S 16270, November 22, 1985), he noted that, under it, States would be encouraged to automate the Food Stamp Program (FSP) and that the provision would increase the level of automation in the FSP.

H. Rpt. 99–271 on H.R. 2100, dated September 13, 1985, also addresses a provision similar to the enacted statute stating that the Secretary would not mandate a *particular* approach and that the Secretary's ability to mandate the use of computers would be intended to be limited to specific severe problems in a State.

FNS agrees with the commenters that the Congress intended to provide State agencies with some flexibility, consistent with sound program administration. However, the Department interprets the Congressional purpose behind the enacted statute to be to motivate State agencies to consider some additional automation as a result of this provision. Furthermore, the language of the statute specifically states that the Secretary's approval is required for a State's plan to reflect the State agency's existing system, thus emphasizing that maintenance of the status quo is not automatically intended. Thus, some bias toward automation would seem to be appropriate and consistent with the reason for passage of this legislation.

The *degree* of automation intended is at issue, however. Under the proposed rule, "State agencies are required to appropriately and efficiently automate their FSP operations." The proposal notes that some State agencies may have less automation than others depending on the efficiency and effectiveness of their programs. The preamble in the NPRM states that State agencies may, with FNS approval, elect to continue use of a manual system where that would be dictated by the individual circumstances of the State. Thus, a manual system is not precluded by the NPRM. What State agencies seem to be objecting to is the requirement in § 272.10(a)(2) that State agencies which do not plan to automate some of the activities specified in § 272.10(b) must include as part of their plans their reasons for not automating, and these reasons must include cost-effectiveness.

FNS believes that this is a reasonable requirement. However, State agencies may have differing expectations concerning what is an appropriate justification in the ADP/CIS plan for not automating a particular program area. Therefore, FNS' expectations need to be clarified. FNS is not requiring State agencies to undergo extensive studies or extensive cost/benefit analyses. Nor is it requiring State agencies to automate when automation would not be appropriate. Its primary interest is for State agencies to review the possibilities for automation in their States. If the State agency is automated in a particular area, it does not need to provide further information other than to state that it *is* automated in that area. If a State agency is not automated in an area, then a brief discussion of whether additional automation is needed is required. FNS does *not* intend to mandate automation in a particular State unless there is a significant problem that automation can solve. On the other hand, FNS is not willing to pay for unnecessary automation efforts, so State agencies should keep in mind that they should plan for *appropriate* levels of automation.

One commenter suggested that FNS provide a model format to help guide State agencies on what information should be in their plans and how FNS would like to see it presented. A checklist to guide State agencies in comparing their systems to the model plan is available from FNS Regional offices. Also, State agencies may wish simply to take the provisions in the model plan or in FACTS, section by section, and develop their own checklist or format.

Several comments were received on the relationship between the APD process and the ADP/CIS plans. One commenter suggested that FNS accept approved APDs in place of the ADP/CIS plan and that FNS identify any areas of incompleteness in the APD. Another commenter thought that State APDs needed to be updated to include the model plan requirements. One commenter wondered if the ADP/CIS plan and the APD need to be submitted simultaneously. In an effort to avoid duplication and to minimize the burden on State agencies, we are making some changes. All State agencies are now required to submit some type of ADP/CIS plan. However, the format and length of that plan will differ depending on the degree of automation within each State. The ADP/CIS plan will consist of one of the following:

1. For State agencies which are sufficiently automated in each area specified in § 272.10(b), a certification that they are automated in each area will be sufficient.

2. For State agencies which are sufficiently automated in some, but not all, areas specified in § 272.10(b), the State ADP/CIS plan would consist of two parts. The first part would be the State agency's certification as to the areas in which they *are* automated. The second part would concern the areas which are not automated or which, in the State agency's opinion, are not automated sufficiently. For each of these areas State agencies would include their plans for automating these areas, including their timeframes for any planned activities. State agencies which are not planning to automate each of the areas specified in § 272.10(b) or which are not already automated in these areas would have to provide justification.

3. For State agencies which are not sufficiently automated in any of the areas specified in § 272.10(b), the longest and most detailed ADP/CIS plan would have to be submitted. This would have to include timeframes for each activity planned or a justification of why they would not automate.

Regardless of the type of plan submitted, any justification for not automating must take cost/effectiveness into consideration.

Under §§ 276.4 and 277.16, State agencies which do not comply with food stamp regulations or the provisions of the FNS-approved plan of operation may have their administration of the FSP determined to be inefficient and/or ineffective and funds that would otherwise be paid may be disallowed. According to section 1537(c) of Pub. L. 99–198, funds may also be disallowed for failure to comply with provisions relating to the ADP/CIS plan. This is clarified in § 272.10(a), which had proposed that State agencies must automate appropriately and effectively. In response to comments, FNS is clarifying precisely which requirements must be met so as to avoid funds being disallowed. State agencies may have funds withheld for failure to submit, revise, or timely implement their ADP plans. Section 272.10(a) states:

> Appropriate and efficient automation levels are those which result in effective programs or in cost effective reductions in errors and improvements in management efficiency, such as decreases in administrative costs.

This should be the goal of any automation effort under the Food Stamp Program. Automation for automation's sake is not the objective of this rule. Although FNS considered the possibility of actually quantifying measures of "appropriate and effective" by suggesting that administrative costs or errors must decrease by a particular amount in a specified time period, FNS felt that it would be too narrow to focus on automation alone to reduce

administrative costs and errors. However, FNS is replacing the words "appropriate and efficient" with a synonym, "sufficient," in order to more closely tie in the regulation with the statute, which specifies that State agencies with sufficient ADP/CIS systems may have their State plans reflect their existing systems. We believe that this will provide State agencies with more flexibility because State agencies will not necessarily have to automate in order to retain funding. State agencies must consider automation, however; and they would have to either plan to automate or receive FNS approval of their plans justifying why they are not automating. If the planned automation is extensive enough or enhanced funding is desired, State agencies will have to submit or revise an APD. This would not be different from current rules when a rethinking of State agency needs results in a change in the APD. Thus, the goal of the ADP/CIS plan is not to displace existing State initiatives but to supplement them as appropriate.

One commenter wanted State agencies to have the right to appeal an FNS decision on whether they should automate a particular area. FNS will not, in general, be making the initial decision whether or not a State will automate an area. State agencies will be making these decisions and these will be approved by FNS. If FNS decides to withhold funds from a State agency as a result of its failure to develop or implement an approved ADP/CIS plan, State agencies retain the right to appeal this decision under § 276.1(b).

Section 272.10(a)(2) of the proposed rule also addressed the transfer of ADP systems from one State to another. What it proposed was that State agencies consider transferring a system from another State agency as part of the process of determining how the State agency would fulfill an identified automation need. Further, the proposal specified several reasons why a State agency might reject a possible transfer and said that these reasons would not be deemed adequate bases for such a rejection. The Department was strongly indicating its belief that the most cost effective means of fulfilling an identified automation need was through transfer.

Many comments were received on this proposed provision. Two commenters supported the strong emphasis on transfers, but many commenters opposed it. Those opposing it did not seem to be opposed to transfer *per se*. Rather, they were opposed to the restriction of State agency flexibility in planning ADP systems that was embodied in the rule. Many of these commenters pointed out that the reasons set forth in the preamble as unacceptable justifications for rejecting transfers were actually the best reasons for not doing transfers. Other commenters were confused as to how the assessment of transfers fit into this ADP planning process. In their view, the actual assessment of whether a particular transfer would be appropriate was more properly a part of the Advance Planning Document process rather than this process.

The Department carefully considered these comments and has made changes in the rule. One change made by the Department in this provision was to clarify how the consideration of transfers is to fit into the ADP planning process. After reviewing the proposal, the Department determined that much of the specific activity with regard to assessing the appropriateness of transfers needs to be done as part of the Advance Planning Document process. It is during that process that State agencies must develop specifications for systems and make choices as to how an operation is best automated. The ADP planning process which this rule establishes is much more general in nature. The Department is not expecting State agencies to be making choices of systems and commitments to particular methods of automation as part of the ADP planning process. Consequently, the Department decided to amend the Advance Planning Document process rules to ensure that transfers are given proper attention then. A proposed rule changing those procedures will be issued shortly and will reflect this change.

While the Department is adding language regarding transfers to the Advance Planning Document rules, it is not removing the language from the ADP plan rules. Even though the Department believes that the vast amount of work needed to be done in asssessing transfers will be done during the Advance Planning Document process, it also believes that the general ADP plans required by these rules must show that such work is scheduled. Therefore, these rules require that State agencies show in the plans they develop that they will consider transfers.

Another change has been in the way the reasons for rejecting transfers will be considered. In the proposal, the Department listed five reasons commonly cited for rejecting transfers and said that these would be unacceptable. In the final rule, we say that State agencies which cite any of these reasons should not expect *automatic* approval. Any State agency that cites one of these reasons for rejecting transfer will need to show why the barriers cannot be overcome. As noted above, this presentation by State agencies would be done as part of their development of an Advance Planning Document.

The final area of concern raised by commenters was how State agencies would find out about possible systems that could be transferred. Suggestions centered on having FNS act as a clearinghouse of information or a facilitator, matching State agencies with others that have potentially transferable systems. The Department recognizes that FNS has an important role to play in this regard and has changed this rule to indicate that State agencies that want assistance can turn to FNS to get it. The Agency will provide assistance as needed to any State agency needing help in identifying systems operated elsewhere that could fulfill their needs.

Section 272.10(b).

Several comments were made suggesting additional elements be added to the model plan and several commenter objected to items which were included. Some elements are being added to the provisions of the model plan, not to impose new requirements but to clarify proposed requirements. In response to comments, the listing of "other" elements that affect household eligibility in § 272.10(b)(1)(ii) will be expanded. No more elements will be required; more elements will be mentioned. Additional items mentioned will included disqualification actions, categorical eligibility, and employment and training status.

One commenter opposed the requirement in § 272.10(b)(1)(vi) that an approvable system must be able to "generate notices to other appropriate programs or recipient eligibility, changes, and referrals." We are, accordingly, clarifying this provision to read, "generate information, as appropriate, to other programs."

Two commenters had comments concerning the eventual direct transmisison of required data from State agencies to FNS. One commenter wanted FNS to allow for the manual adjustment of data in some cases, rather than it being entirely automated. Another commenter thought that the cost of a State agency's achieving compability with FNS' system should be borne by FNS. We agree that data should be manually adjusted at times, and we do not see human intervention as incompatible with a fully automated system. We are not adopting the second

comment. FNS funding authority is not increased by Public Law 99–198 so FNS could provide up to 75 percent funding for certain approved systems. However, State agencies are reminded that the NPRM only required them to provide for the *eventual* direct transmission of data to FNS.

A number of comments were received on the provision in the NPRM to withhold administrative funds from State agencies for noncompliance with this rule. One commenter supported this provision and proposed that the requirements in the FACTS document be used as the basis for determining what is an appropriate level of automation. FNS did not adopt this suggestion. As already discussed, FNS is not mandating use of the FACTS document in order for a State to receive its regular levels of funding.

The preamble of the proposed rule had noted that funds could be withheld if State agencies did not automate sufficiently and effectively. Two commenters wanted FNS to define "sufficiently and effectively".

We have given some consideration whether or how to define "sufficiently and effectively" in determining whether to withhold State Administrative funds. FNS wants to emphasize that we were not intending to establish "sufficient and effectively" as the sole criteria for withholding funds but was using this phrase as a shorthand for the provisions contained in the enacted statute and in § 276.4 of the regulations. Section 1537 of Pub. L. 99–198 states that State agencies which already have "sufficient" ADP and CIS systems may submit State plans which reflect their existing systems. We assume that the commenters required guidance on what is a sufficient system.

Therefore, FNS has revised § 272.10 to state that "sufficient automation levels are those which result in effective programs or in cost effective reductions in errors and improvements in management efficiency, such as decreases in program administrative costs." As noted earlier, FNS may withhold funds if a State agency does not submit an approvable plan in accordance with the deadlines or if the State agency does not comply with their approved plan.

A number of commenters also wanted FNS to provide for enhanced funding for the development and operation of automated systems, with one commenter wanting 90 percent enhanced funding, as HHS provides. One commenter stated that the model plan is almost identical to the basic requirements for enhanced funding while it, in itself, does not provide enhanced funding. State agencies are aware of the statutory and regulatory language describing the requirements which must be met in order to qualify for enhanced funding. FNS wants to acknowledge that State agencies which automate every area specified in § 272.10(b) would probably be eligible for 75 percent enhanced funding for the development of their systems if they were to apply for it. However, FNS does not have the legal authority to provide funding over 75 percent for the development of systems or funding over 50 percent for the operation of systems. FNS does not want to automatically provide enhanced funding for developing the State ADP/CIS plan because the State ADP/CIS plan could consist of a certification of an existing system or a type of exception report on an existing system, which would not necessarily involve procedures that would qualify for enhanced funding.

In the review process it was noted that the revision to § 277.18(a)(2) could mistakenly be interpreted to require implementation of the model plan as a requirement for receipt of 75 percent funding of State agency ADP efforts. As stated in the NPRM, this was not intended and the language of the final regulation has been modified to reflect the actual intent of FNS. In addition, the language of the regulation reflects that State agencies do not have to provide for the capability of directly transmitting data to FNS in order to receive 75 percent funding. The requirement to eventually directly transmit data to FNS was added to the program functional standards that had been in § 277.18(c) when they were proposed to be moved to § 272.10. It was intended that this requirement be taken into consideration when the State agencies developed their ADP/CIS plans and was meant to affect the ADP/CIS plans only. Accordingly, the language of the regulation is being amended to reflect the original intent that the eventual capability to directly transmit data to FNS is not a requirement to receive 75 percent funding.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 277

Food stamps, Government procurement, Grant programs—social programs, Investigations, Reporting and recordkeeping requirements.

Accordingly, Parts 272 and 277 are amended as follows:

1. The authority citation for Parts 272 and 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(92) is added.

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(92) Amendment No. 284. State agencies shall submit their ADP/CIS plans to FNS for approval no later than October 1, 1987. Portions of ADP/CIS plans may be submitted no later than January 1, 1988. Plans must be approvable within 60 days of State agency receipt of FNS comments but no later than March 1, 1988. State agencies must begin to implement provisions contained in their approved plans by October 1, 1988.

3. Section 272.2 is amended by:

a. Adding a new sentence at the end of paragraph (a)(2);

b. Adding a new paragraph (d)(1)(vi); and

c. Adding a new paragraph (e)(8).

The additions read as follows:

§ 272.2 Plan of operation.

(a) *General Purpose and Content*— * * *

(2) *Content.* * * * The ADP/CIS Plan is considered part of the State Plan of Operation but is submitted separately as prescribed under section 272.2(e)(8).

* * * * *

(d) *Planning Documents.*

(1) * * *

(vi) ADP/CIS Plan as required by section 272.10

* * * * *

(e) *Submittal Requirements* * * *

(8) *ADP/CIS Plan.* The ADP/CIS Plan shall be signed by the head of the State agency and submitted to FNS by October 1, 1987. State agencies which require additional time to complete their ADP/CIS plan may submit their plan in two phases as described in § 272.10(a)(2), with the first part of the plan being submitted October 1, 1987. State agencies requiring additional time shall submit the second part of their plans by January 1, 1988. If FNS requests additional information to be provided in the State agency ADP/CIS Plan or if FNS requests that changes be made in the State agency ADP/CIS Plan, State agencies must comply with FNS comments and submit an approvable ADP/CIS Plan within 60 days of their

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receipt of the FNS comments but in no event later than March 1, 1988. Requirements for the ADP/CIS plan are specified in § 272.10.

* * * * *

3. A new § 272.10 is added to read as follows:

§ 272.10 ADP/CIS Model Plan.

(a) *General Purpose and Content*—(1) *Purpose.* All State agencies are required to sufficiently automate their food stamp program operations and computerize their systems for obtaining, maintaining, utilizing and transmitting information concerning the food stamp program. Sufficient automation levels are those which result in effective programs or in cost effective reductions in errors and improvements in management efficiency, such as decreases in program administrative costs. Thus, for those State agencies which operate exceptionally efficient and effective programs, a lesser degree of automation may be considered sufficient than in other State agencies. In order to determine a sufficient level of automation in each State, each State agency shall develop an ADP/CIS plan. FNS may withhold State agency funds under § 276.4(a) for failure to submit an ADP/CIS plan in accordance with the deadlines for submission, for failure to make appropriate changes in their ADP/CIS plan within 60 days of their receipt of FNS comments, or for failure to implement the approved ADP/CIS plan in accordance with the dates specified therein, unless extensions of time or deviations from the plan or schedules have been approved by FNS.

(2) *Content.* In developing their ADP/CIS plans, State agencies shall use one of the following three formats:

(i) State agencies which are sufficiently automated in each area specified in § 272.10(b) may provide a single certification statement that they are sufficiently automated in each area.

(ii) State agencies which are sufficiently automated in some, but not all, areas specified in § 272.10(b) shall submit an ADP/CIS plan which consists of two parts. The first part would be the State agency's certification as to the areas in which they are sufficiently automated. The second part would describe the areas of § 272.10(b) which the State agency has not automated or, in its opinion, has not automated sufficiently and include the State agency's plans for sufficiently automating these areas. State agencies shall include a description of how they intend to automate each area and a timetable for each planned activity, including a consideration of transfers as discussed in paragraph (a)(3) of this section. State agencies which are not planning to automate each of the areas specified § 272.10(b) or which are not already automated in these areas shall provide justification. Any such justification shall include a cost-effectiveness analysis.

(iii) State agencies which are not sufficiently automated in any of the areas specified in § 272.10(b) shall submit an ADP/CIS plan which describes their plans for sufficiently automating each area, including a timetable for each planned activity, including a consideration of transfers as discussed in paragraph (a)(3) of this section. State agencies which are not planning to automate each of the areas specified in § 272.10(b) or which are not, in their opinion, sufficiently automated in these areas shall provide justification. Any such justification shall include a cost-effectiveness analysis.

(3) *Transfers.* (i) State agencies planning additional automation shall consult with other State agencies and with the appropriate Regional Office to determine whether a transfer or modification of an existing system from another jurisdiction would be more efficient and cost effective than the development of a new system. In assessing the practicability of a transfer, State agencies should consult with other State agencies that have similar characteristics such as whether they are urban or rural, whether they are county or State administered, the geographic size of the States and the size of the caseload.

(ii) State agencies that plan to automate operations using any method other than transfers will need to be able to justify why they are not using transfers. The justification will need to include the results of the consultations with other State agencies, the relative costs of transfer and the system the State agency plans to develop, and the reasons for not using a transfer. Common reasons for not using transfers include: The State agency is required to use a central data processing facility and the (otherwise) transferable system is incompatible with it; the State agency's data base management software is incompatible with the transferable system; the State agency's ADP experts are not familiar with the software/hardware used by the transferable system and acquiring new expertise would be expensive; the transferable system is interactive or uses "generic" caseworkers, the receiving State agency does not and it would be expensive to modify the existing system and/or procedures; and transfer would provoke disputes with the State agency's personnel union. State agencies that cite any of these reasons shall not automatically receive approval to develop non-transferred systems. State agencies shall show what efforts were considered to overcome the problems and that those efforts are cost ineffective. This justification will need to be included as part of the Advance Planning Document that the State agency must submit for approval of its proposed system.

(iii) FNS will assist State agencies that request assistance in determining what other States have systems that should be considered as possible transfers.

(b) *Model Plan.* In order to meet the requirements of the Act and ensure the efficient and effective administration of the program, a food stamp system, at a minimum, shall be automated in each of the following program areas in paragraphs (b)(1), Certification, and (b)(2), Issuance Reconciliation and Reporting of this section. The food stamp system must further meet all the requirements in paragraph (b)(3), General, of this section.

(1) *Certification.* (i) Determine eligibility and calculate benefits or validate the eligibility worker's calculations by processing and storing all casefile information necessary for the eligibility determination and benefit computation (including but not limited to all household members' names, addresses, dates of birth, social security numbers, individual household members' earned and unearned income by source, deductions, resources and household size). Redetermine or revalidate eligibility and benefits based on notices of change in households' circumstances;

(ii) Identify other elements that affect the eligibility of household members such as alien status, presence of an elderly person in the household, status of periodic work registration, disqualification actions, categorical eligibility, and employment and training status;

(iii) Provide for an automatic cutoff of participation for households which have not been recertified at the end of their certification period;

(iv) Notify the certification unit (or generate notices to households) of cases requiring Notices of:

(A) Case Disposition,

(B) Adverse Action and Mass Change, and

(C) Expiration;

(v) Prior to certification, crosscheck for duplicate cases for all household members by means of a comparison with food stamp records within the relevant jurisdiction;

(vi) Meet the requirements of the IEVS system of § 272.8. Generate information, as appropriate, to other programs.

(vii) Provide the capability to effect mass changes: those initiated at the State level, as well as those resulting from changes at the Federal level (eligibility standards, allotments, deductions, utility standards, SSI, AFDC, SAA benefits);

(viii) Identify cases where action is pending or follow-up must be pursued, for example, households and verification pending or households containing disqualified individuals or a striker;

(ix) Calculate or validate benefits based on restored benefits or claims collection, and maintain a record of the changes made;

(x) Store information concerning characteristics of all household members;

(xi) Provide for appropriate Social Security enumeration for all required household members; and

(xii) Provide for monthly reporting and retrospective budgeting as required.

(2) *Issuance, reconciliation and reporting.* (i) Generate authorizations for benefits in issuance systems employing ATP's, direct mail, or online issuance and store all Household Issuance Record (HIR) information including: name and address of household, household size, period of certification, amount of allotment, case type (PA or NA), name and address of authorized representative, and racial/ethnic data;

(ii) Prevent a duplicate HIR from being established for presently participating or disqualified households;

(iii) Allow for authorized under- or over-issuance due to claims collection or restored benefits;

(iv) Provide for reconciliation of all transacted authorization documents to the HIR masterfile. This process must incorporate any manually-issued authorization documents, account for any replacement or supplemental authorization documents issued to a household, and identify cases of unauthorized and duplicate participation;

(v) Provide a mechanism allowing for a household's redemption of more than one valid authorization document in a given month;

(vi) Generate data necessary to meet Federal issuance and reconciliation reporting requirements, and provide for the eventual capability of directly transmitting data to FNS including:

(A) Issuance:

(*1*) FNS–259—Summary of mail issuance and replacement;

(*2*) FNS–250—Reconciliation of redeemed ATPs with reported authorized coupon issuance.

(B) Reconciliation: FNS–46—ATP Reconciliation Report.

(vii) Generate data necessary to meet other reporting requirements and provide for the eventual capability of directly transmitting data to FNS, including:

(A) FNS–101—Program participation by race;

(B) FNS–209—Status of claims against households; and

(C) FNS–388—Coupon issuance and participation estimates.

(viii) Allow for sample selection for quality control reviews of casefiles, and for management evaluation reviews;

(ix) Provide for program-wide reduction or suspension of benefits and restoration of benefits if funds later become available and store information concerning the benefit amounts actually issued;

(x) Provide for expedited issuance of benefits within prescribed timeframes;

(xi) Produce and store a participation history covering three (3) year(s) for each household receiving benefits.

(xii) Provide for cutoff of benefits for households which have not been recertified timely; and

(xiii) Provide for the tracking, aging, and collection of recipient claims and preparation of the FNS–209, Status of Claims Against Households report.

(3) *General.* The following functions shall be part of an overall State agency system but need not necessarily be automated:

(i) All activities necessary to meet the various timeliness and data quality requirements established by FNS;

(ii) All activities necessary to coordinate with other appropriate Federal and State programs, such as AFDC or SSI;

(iii) All activities necessary to maintain the appropriate level of confidentiality of information obtained from applicant and recipient households;

(iv) All activities necessary to maintain the security of automated systems to operate the Food Stamp Program;

(v) Implement regulatory and other changes including a testing phase to meet implementation deadlines, generally within 90 days;

(vi) Generate whatever data is necessary to provide management information for the State agency's own use, such as caseload, participation and actions data;

(vii) Provide support as necessary for the State agency's management of Federal funds relative to Food Stamp Program administration, generate information necessary to meet Federal financial reporting requirements;

(viii) Routine purging of case files and file maintenance, and

(ix) Provide for the eventual direct transmission of data necessary to meet Federal financial reporting requirements.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

5. In § 277.18:

(a) paragraph (a)(2) is revised;

(b) paragraph (c) is removed; and

(c) paragraphs (d), (e), (f), (g), and (h) are redesignated as paragraphs (c), (d), (e), (f) and (g).

The revision reads as follows:

§ 277.18 Establishment of an Automatic Data Processing (ADP) and Information Retrieval System.

(a) *General.* * * *

(2) Meet the program standards specified in § 272.10 (b)(1), (b)(2), and (b)(3), except for the requirements in § 272.10 (b)(2)(vi), (b)(2)(vii), and (b)(3)(ix) to eventually transmit data directly to FNS.

* * * * *

Date: September 10, 1987.

Anna Kondratas,

Administrator.

[FR Doc. 87–21614 Filed 9–17–87; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Stabilization and Conservation Service

7 CFR Parts 725 and 726

Tobacco Acreage Allotment and Marketing Quota Regulations

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: This rule adopts as a final rule, with minor corrections, the proposed rule published in the **Federal Register** on May 20, 1987 (52 FR 18918). This rule redefines the term "leaf account" and provides that a tobacco dealer, warehouseman, or other person who acquires tobacco from a processor or manufacturer and wishes purchase credit for such tobacco for a leaf account must obtain from the processor or manufacturer a certification stating that the tobacco is in the form normally marketed by producers. This rule provides that no purchase credit will be allowed for tobacco acquired by any person from a processor or manufacturer

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which is (1) in the form not normally marketed by producers or (2) blended with tobacco in the form normally marketed by producers and such action causes the warehousemen or dealers resales to exceed purchases. A marketing penalty will be due on the excess resales resulting from this action. This rule also provides that processors and manufacturers shall report to the Director of Tobacco and Peanuts Division, ASCS, all of their sales of tobacco to dealers and warehousemen that is in the form not normally marketed by producers.

EFFECTIVE DATE: September 18, 1987.

FOR FURTHER INFORMATION CONTACT: Donald M. Blythe, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013 (202) 447–4318.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 29, 1983).

A proposed rule was published in the **Federal Register** on May 20, 1987 (52 FR 18918), which defines "pickings" as the residue of tobacco which accumulates in the course of processing tobacco prior to being redried, consisting of scrap, stem, portions of leaves and leaves of poor quality. The proposed rule provided that such tobacco would be considered to be tobacco in the form not normally marketed by producers and no purchase credit will be allowed for such tobacco when acquired by any person from a processor or manufacturer. Furthermore, no dealer, warehouseman, or other person would be allowed to receive a purchase credit for any purchase from a processor or manufacturer unless the processor or manufacturer certifies that the tobacco involved in the purchase is tobacco in the form normally marketed by producers. The proposed rule also provided that the certification by the processor or manufacturer would be a certification to ASCS that the acquired tobacco is in the form normally marketed by producers.

The public was given 30 days to submit written comments on the proposed rule published. The Department received three comments from the public in response to the proposed rule.

Comments were received from one tobacco loan association, one State ASC committee and a law firm on behalf of a tobacco dealer. The tobacco loan association and the State ASC committee recommended implementation of the proposed rule because it would result in a substantial benefit to the integrity of the tobacco program.

The comment received on behalf of the tobacco dealer stated that the dealer owns a substantially quantity of tobacco not in the form normally marketed by producers which was purchased with the intention of blending the tobacco with tobacco in the form normally marketed by producers. The comment stated that to not allow the dealer a purchase credit for the blending of such tobacco would result in an excessive economic hardship to the dealer.

After considering the comments received, and in order to prevent the illegal marketing of unidentified tobacco, it has been determined that the provisions of the proposed rule should be adopted as a final rule. However, to avoid causing an economic hardship on warehouseman and dealers, the final rule will permit a warehousemen or dealer to receive a purchase credit for tobacco classified as "not in the form normally marketed by producers" when it is blended with tobacco in the form normally marketed by producers, provided that such tobacco was purchased from a processor or manufacturer prior to date of publication of this final rule in the **Federal Register**.

Accordingly, the proposed rule which was published in the **Federal Register** on May 20, 1987 (52 FR 18918) is adopted, with the above modification and minor corrections, as a final rule.

List of Subjects in 7 CFR Parts 725 and 726

Acreage allotment, Marketing quota, Reporting and recordkeeping requirements.

Final Rule

For the reasons set forth in the preamble, Chapter VII, Title 7 of the CFR is amended as follows:

PART 725—[AMENDED]

1. In Part 725:

a. The authority citation continues to read as follows:

Authority: Sec. 301, 313, 314, 314A, 316, 316A, 317, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48 as amended, 96 Stat. 215, 75 Stat. 469, as amended, 96 Stat. 205, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 65–66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended, 7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b, 1314b–1, 1314c, 1363, 1372–75, 1377, 1378; sec. 401, 63 Stat. 1054, as amended, 7 U.S.C. 1421, unless otherwise noted.

b. Section 725.51 is amended by revising paragraph (s) and adding paragraph (oo–1) to read:

§ 725.51 Definitions.

* * * * *

(s) *Leaf account tobacco.* The quantity of tobacco purchased or otherwise acquired by or for the account of a warehouseman, including floor sweepings purchased from another warehouseman or dealer, as adjusted by the debits and credits to the buyer's correction account. Such quantity shall not include tobacco in the form not normally marketed by producers, including tobacco pickings, purchased after September 18, 1987, and floor sweepings which accumulate on the warehouse floor.

* * * * *

(oo–1) *Tobacco pickings.* The residue which accumulates in the course of processing tobacco prior to the redrying of such tobacco, consisting of scrap, stems, portions of leaves, and leaves of poor quality shall be considered to be tobacco in the form not normally marketed by producers.

* * * * *

c. Section 725.94 is amended by revising paragraph (c) and adding paragraph (i) to read as follows:

§ 725.94 Penalties considered to be due from warehousemen, dealers, buyers and others excluding producer

* * * * *

(c) *Leaf account tobacco.* If warehouse resales exceed prior leaf account purchases, such marketing's shall be considered to be a marketing of excess tobacco unless such warehouseman furnishes evidence acceptable to the State committee showing that such marketing is not a marketing of excess tobacco. However, evidence acceptable to the State committee shall not be based on the warehouseman's proof of purchase of tobacco that is not in the form normally marketed by producers, unless such tobacco was purchased prior to September 18, 1987, even though such evidence indicates that resales exceed prior leaf account purchases as a result of the blending of tobacco, which was not in the form normally marketed by producers, with the warehouseman's prior purchases of leaf account tobacco.

* * * * *

(i) *Blending tobacco not in the form normally marketed by producers.* Tobacco purchased from processors or manufacturers after September 18, 1987, that is considered not in the form normally marketed by producers that is blended with tobacco in the form normally marketed by producers shall not be credited as a purchase to the dealer's or warehouseman's account by the State committee when reconciling the warehouseman's leaf account or the dealer's purchases and resales. Tobacco not in the form normally marketed by producers that is blended with other tobacco shall be deemed to be excess tobacco and a penalty shall be due on the pounds of tobacco by which a warehouseman's or dealer's resales exceed prior purchases.

§ 725.100 [Amended]

d. Section 725.100 is amended by removing paragraph (g).

e. Section 725.101 is amended by revising paragraphs (b) and (c) to read:

§ 725.101 Dealer purchases of damaged tobacco or tobacco from processors or manufacturers.

* * * * *

(b) *Purchase from processor or manufacturer.* (1) Any tobacco purchased by a dealer, warehouseman, or other person from a processor or manufacturer shall be considered to be tobacco in the form not normally marketed by producers unless the purchaser obtains from the processor or manufacturer a certification stating that such purchased tobacco is in the form normally marketed by producers. The certification by the processor or manufacturer shall be on a form prescribed by the Deputy Administrator certifying to ASCS that the tobacco involved in the transfer of ownership is in the form normally marketed by producers. No purchase credit shall be given to a dealer, warehouseman, or other person on MQ–79, Dealer's Record, for any purchase after September 18, 1987, of tobacco which is in the form not normally marketed by producers. Tobacco which meets the definition of pickings as defined in this part shall be considered tobacco in the form not normally marketed by producers.

(2) Any dealer, warehouseman or other person who plans to purchase tobacco in the form normally marketed by producers from a processor or manufacturer shall, prior to purchase, report such plans to the State ASCS office issuing form MQ–79, Dealer Record Book, to such person. Such report shall be made timely so that a representative of ASCS may inspect the tobacco to determine its marketable value and whether the tobacco is in the form normally marketed by producers. Any tobacco purchased from processors or manufacturers before—

(i) Such plans are reported to the State ASCS office, and

(ii) The tobacco is inspected by an ASCS representative or an inspection is declined by an ASCS representative shall be deemed to be excess tobacco and a penalty at the rate provided in § 725.92 shall be due.

(c) *Report by processor and manufacturer.* For the 1987–88 and subsequent marketing years, each processor or manufacturer shall make a report to the Director that shows the quantity of tobacco sold in the form not normally marketed by producers to dealers and buyers other than processors or manufacturers. The report shall be filed no later than the end of the calendar week following the week in which such tobacco was sold and shall show the name of the purchaser, the date of the sale and the pounds sold.

* * * * *

PART 726—[AMENDED]

2. In Part 726:

a. The authority citation continues to read as follows:

Authority: Secs. 301, 313, 314, 314A, 316B, 317, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 96 Stat. 215, 210, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 65–66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended, 7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b–2, 1314c, 1363, 1372–75, 1377, 1378; sec. 401, 63 Stat. 1054, as amended, 7 U.S.C. 1421, unless otherwise noted.

b. Section 726.51 is amended by revising paragraph (r) and adding paragraph (nn–1) to read:

§ 726.51 Definitions.

* * * * *

(r) *Leaf account tobacco.* The quantity of tobacco purchased or otherwise acquired by or for the account of a warehouseman, including floor sweepings purchased from another warehouseman or dealer, as adjusted by the debits and credits to the buyer's correction account. Such quantity shall not include tobacco in the form not normally marketed by producers, including tobacco pickings, purchased after September 18, 1987, and floor sweepings which accumulate on the warehouse floor.

* * * * *

(nn–1) *Tobacco pickings.* The residue which accumulates in the course of processing tobacco prior to the redrying of such tobacco, consisting of scrap, stems, portions of leaves, and leaves of poor quality. Such tobacco shall be considered to be tobacco in the form not normally marketed by producers.

c. Section 726.88 is amended by revising paragraph (c) and adding paragraph (i) to read as follows:

§ 726.88 Penalties considered to be due from warehousemen, dealers, buyers and others excluding producer.

* * * * *

(c) *Leaf account tobacco.* If warehouse resales exceed prior leaf account purchases, such marketing's shall be considered to be a marketing of excess tobacco unless such warehouseman furnishes evidence acceptable to the State committee showing that such marketing is not a marketing of excess tobacco. However, evidence acceptable to the State committee shall not be based on the warehouseman's proof of purchase of tobacco that is not in the form normally marketed by producers, unless, such tobacco was purchased prior to September 18, 1987, even though such evidence indicates that resales exceed prior leaf account purchases as a result of the blending of tobacco, which was not in the form normally marketed by producers, with the warehouseman's prior purchases of leaf account tobacco.

* * * * *

(i) *Blending tobacco not in the form normally marketed by producers.* Tobacco purchased from processors or manufacturers after September 18, 1987, that is considered not in the form normally marketed by producers, which is blended with tobacco in the form normally marketed by producers, shall

not be credited as a purchase to the dealer's or warehouseman's account by the State committee when reconciling the warehouseman's leaf account or the dealer's purchases and resales. Tobacco not in the form normally marketed by producers that is blended with other tobacco shall be deemed to be excess tobacco and a penalty shall be due on the pounds of tobacco that a warehouseman's or dealer's resales exceeds prior purchases.

d. Section 726.94 is amended by revising paragraph (e) (2), (3), and (4) and removing paragraph (h), to read:

§ 726.94 Dealer's records and reports.

* * * * *

(e) * * *

(2) *Purchase from processor or manufacturer.* Any tobacco purchased by a dealer, warehouseman, or other person from a processor or manufacturer shall be considered to be tobacco in the form not normally marketed by producers unless the purchaser obtains from the processor or manufacturer a certification stating that such purchased tobacco is in the form normally marketed by producers. The certification by the processor or manufacturer shall be on a form prescribed by the Deputy Administrator certifying to ASCS that the tobacco involved in the transfer of ownership is in the form normally marketed by producers. No purchase credit shall be given to a dealer, warehouseman, or other person on MQ–79, Dealer's Record, for any purchase after September 18, 1987, of tobacco which is in the form not normally marketed by producers. Tobacco which meets the definition of pickings as defined in this part shall be considered tobacco in the form not normally marketed by producers.

(3) *Certification.* Any dealer, warehouseman or other person who plans to purchase tobacco in the form normally marketed by producers from a processor or manufacturer shall, prior to purchase, report such plans to the State ASCS office issuing form MQ–79, Dealer Record Book, to such person. Such report shall be made timely so that a representative of ASCS may inspect the tobacco to determine its marketable value and whether the tobacco is in the form normally marketed by producers. Any tobacco purchased from processors or manufacturers before such plans are reported to the State ASCS office and before the tobacco is inspected by an ASCS representative or an inspection is declined by an ASCS representative shall be deemed to be excess tobacco and the penalty at the full rate shall be due.

(4) *Report by processor or manufacturer.* For the 1987–88 and subsequent marketing years, each processor or manufacturer shall make a report to the Director, showing the quantity of tobacco sold in the form not normally marketed by producers to dealers and buyers other than processors or manufacturers. The report shall be filed no later than the end of the calendar week following the week in which such tobacco was sold and shall show the name of the purchaser, the date of the sale and the pounds sold.

* * * * *

(h) [Remove]

Signed in Washington, DC, on September 10, 1987.

Vern Neppl,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 87–21636 Filed 9–17–87; 8:45 am]

BILLING CODE 3410–05–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 87–122]

Suspension of Regulations on Exclusive Use of the Harry S Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are suspending the current regulations on applying for special authorization for the exclusive use of the Harry S Truman Animal Import Center (HSTAIC) pending the completion of further rulemaking proceedings. These regulations provide for the acceptance of applications for the exclusive use of HSTAIC beginning October 1 of each year. We had hoped to complete rulemaking proceedings changing the requirements for the use of HSTAIC before October 1st of this year. Because we are in the process of proposing a revision of the regulations on importing animals through HSTAIC, because of the problems encountered under the current regulations in 1986 regarding its exclusive use, and because of the needless expense prospective importers would have to incur under the present regulations if the regulations are changed, we believe this action is warranted. We will publish our proposal in a forthcoming issue of the **Federal Register**.

DATES: Interim rule effective September 15, 1987. Consideration will be given only to comments postmarked or received on or before November 17, 1987.

ADDRESSES: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Specifically refer to Docket No. 87–122. You may review these comments at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Harvey A. Kryder, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, Veterinary Services, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8695.

SUPPLEMENTARY INFORMATION:

Background

Pending completion of rulemaking that will propose to revise completely the regulations on importing animals through the Harry S Truman Animal Import Center (HSTAIC) in 9 CFR Part 92, we are suspending § 92.41(b), "Procedures for special authorization for exclusive use of the HSTAIC." Because we will not have completed the rulemaking proceeding concerning the proposed changes in the regulations before October 1 of this year, we will accept no applications for exclusive use of HSTAIC until the rulemaking proceeding is completed.

The system in the current regulations for exclusive use of HSTAIC has created substantial controversy and practical problems in its administration; and we believe the current system should be changed to be effective and avoid charges of inequitable treatment. However, the procedures in the current regulations would automatically take effect on October 1, 1987—the beginning of fiscal year 1988—if we failed to take this emergency action. Our forthcoming proposals for change in the regulations will include, among other things, procedures for administering the annual lottery, deposit requirements, and clarification of the HSTAIC-importer's responsibilities. In proposing a new system for granting importers use of HSTAIC, we intend to ensure that all prospective applicants for space compete equally.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "Major rule." Based on information compiled by the Department, we have determined that this rule will have an

effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary if we are to advise importers that, having suspended the regulations in § 92.41(b), we will accept no applications for exclusive use of HSTAIC until further notice; contrary to past practice, therefore, we will accept no applications filed on October 1, 1987, the first date of the new fiscal year.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553(d)(3) for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

List of Subjects in 9 CFR Part 92

Animal diseases Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL; AND POULTRY PRODUCTS: INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d)

§ 92.41 [Removed and Reserved]

2. Section 92.41(b) is removed and reserved.

Done in Washington, DC, this 15th day of September, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-21634 Filed 9-17-87; 8:45 am]

BILLING CODE 3410-34-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 790

Interpretive Ruling and Policy Statement No. 87-2; Developing and Reviewing Government Regulations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interpretive Ruling and Policy Statement Number 87-2.

SUMMARY: This policy statement sets forth NCUA's procedures for developing and reviewing regulations. These procedures are intended to ensure compliance with the Regulatory Flexibility Act of 1980 and the Paperwork Reduction Act of 1980. This policy statement supersedes Interpretive Ruling and Policy Statement (IRPS) Number 81-4.

EFFECTIVE DATE: September 18, 1987.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Julie Tamuleviz, Staff Attorney, Office of General Counsel, NCUA, at the above address, or telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: This policy statement sets forth NCUA's procedures for developing and reviewing regulations. NCUA previously published its procedures for developing and reviewing regulations in Appendix A to Part 790 of the NCUA Rules and Regulations. Appendix A was written in response to Executive Order 12044, which directed each executive agency to adopt procedures to improve existing and future regulations. Executive Order 12044 was revoked in 1981 by Executive Order 12291. In response to this revocation, as well as the passage of the Financial Simplification Act of 1980, the Regulatory Flexibililty Act of 1980, 5 U.S.C. 601 *et seq.*, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, NCUA set forth an amended explanation of its procedures for developing regulations in IRPS 81-4. Due to changes in the law following the publication of IRPS 81-4, including the repeal of the Financial Simplification Act of 1980, it is necessary at this time to revoke IRPS 81-4 and to set forth current procedures for developing and reviewing regulations in a new policy statement. Appendix A to Part 790 will be removed from the Code of Federal Regulations.

Interpretive Ruling and Policy Statement Number 87-2; Developing and Reviewing Government Regulations

I. Statement of Policy and Coverage

It is the policy of NCUA to ensure that its regulations:

—Impose only minimum required burdens on credit unions, consumers, and the public;
—Are appropriate for the size of the financial institutions regulated by NCUA;
—Are issued only after full public participation in the rulemaking process; and
—Are clear and understandable.

II. Procedures for the Development of Regulations

1. Proposed Regulations

The Office of General Counsel (OGC) will oversee the development of regulations. Input on regulations will be obtained from other NCUA offices when appropriate. OGC will prepare a draft of the proposed regulation for submission to the NCUA Board for approval. The proposed regulation will then be published in the **Federal Register** and other appropriate publications.

2. Initial Regulatory Flexibility Analysis

When NCUA is required by 5 U.S.C. 553, or any other law, to publish a general notice of proposed rulemaking for any proposed regulation, NCUA will prepare and make available for public comment an initial regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities. Credit unions having less than $1 million in assets will be considered to be small entities. Such analysis will describe the impact of the regulation upon small entities, and will be published in the **Federal Register** at the time of general notice of proposed rulemaking for the regulation. A copy of the analysis will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration (SBA). The content of the initial regulatory flexibility analysis will be in accordance with the provisions of 5 U.S.C. 603.

3. Compliance With the Paperwork Reduction Act

If a proposed regulation contains an information collection request such as a recordkeeping or reporting requirement that, if adopted, will be imposed upon ten or more persons (including credit unions), the proposed regulation will be sent to the Office of Management and Budget (OMB) prior to publication in the **Federal Register**. OMB will then have 60 days after publication to comment on the information collection request. If OMB thereafter disapproves of the information collection request, the NCUA can override this by a majority vote and certify such override to OMB in the manner described in 44 U.S.C. 3507(c).

4. Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis will be prepared for all regulations that required the publication of a general notice of proposed rulemaking and that will have a significant economic impact on a substantial number of small entities. The content of the final regulatory flexibility analysis will be in conformance with 5 U.S.C. 604.

Initial and final regulatory flexibility analysis need not be prepared if the Board certifies that a regulation will not have a significant economic effect on a substantial number of small entities. The certification will be published in the **Federal Register** with a statement explaining the certification. A copy of the certification and statement will be provided to the Chief Counsel for Advocacy of the SBA.

5. Final Rule

OGC will prepare a draft final regulation to be presented to the NCUA Board for approval. Following Board approval, the final regulation will be published in the **Federal Register** and other appropriate publications.

III. Opportunity for Public Participation

A member of the public may recommend that NCUA develop a regulation or revise an existing regulation. A number of methods will be used by NCUA to encourage public participation in the development and review of regulations, including: notifying the public of the status of regulations being reviewed and developed through publication of the semiannual agenda; publication of advance notices of proposed rulemaking with requests for public comment; the use of questionnaires to solicit information; publication of articles; and by making copies of proposed regulations available to the public.

When any regulation is promulgated which will have a significant economic impact on a substantial number of small entities, the NCUA will assure that small entities have been given an opportunity to participate in the rulemaking process through the types of methods listed in 5 U.S.C. 609.

NCUA will continue to solicit public comment on proposed regulations as required by 5 U.S.C. 553. As a matter of policy, NCUA believes that the public should be given at least 60 days to comment on a proposed regulation. If the comment period is less than 60 days, or is extended beyond 60 days, NCUA will publish a statement in the **Federal Register** explaining the change.

IV. Review of Existing Regulations

NCUA shall periodically update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions. 5 U.S.C. 610 requires that regulations having a significant economic impact on a substantial number of small entities will be reviewed every ten years. As a matter of policy, NCUA will continue with its efforts to review *all* its existing regulations every three years.

V. Semiannual Agenda

Twice each year, NCUA will adopt an agenda of proposed regulations that the Agency has issued or expects to issue and currently effective regulations that are under NCUA review. Incorporated into the agenda, when necessary, will be the regulatory flexibility agenda required by 5 U.S.C. 602. Each semiannual agenda will be voluntarily submitted to the Office of Management and Budget for inclusion in the "Unified Agenda of Federal Regulations" published in the **Federal Register** in April and October of each year.

The semiannual agenda will contain the following: a brief description of the subject area being considered and a summary of the nature of any regulation which NCUA expects to propose or promulgate; the objectives and legal basis for the issuance of the regulation; an approximate schedule for completing action on any regulation for which NCUA has issued a general notice of proposed rulemaking; and the name and number of an NCUA official knowledgeable with respect to each agenda item. The agenda will identify any regulation that the NCUA expects to have a significant economic impact on a substantial number of small entities. When there are proposed regulations listed in the agenda that will have such an impact on small entities, NCUA will endeavor to provide notice of the agenda to small entities in the manner set forth in 5 U.S.C. 602(c). Where the regulatory flexibility agenda is incorporated into the semiannual agenda, the latter will be transmitted to the Chief Counsel for Advocacy of the SBA for comment.

By the National Credit Union Administration Board on this 9th day of September, 1987.

Becky Baker,

Secretary of the Board.

[FR Doc. 87-21522 Filed 9-17-87; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-54-AD; Amdt. 39-5727]

Airworthiness Directives; Aerospatiale SN601 (Corvette) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale SN601 (Corvette) series airplanes, which requires installation of modified low-pressure fuel filters. This amendment is prompted by a report of in-flight fuel filter icing. This condition, if not corrected, could result in fuel starvation

to the engines and subsequent loss of power.

EFFECTIVE DATE: October 19, 1987.

ADDRESSES: This applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires replacement of the low pressure fuel filters with modified filters on Aerospatiale SN601 (Corvette) series airplanes, was published in the **Federal Register** on June 3, 1987 (52 FR 20721).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the NPRM.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Basd on these figures, the total cost impact of this AD to U.S. operators is estimated to be $240.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979 and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($120). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model SN601 Corvette airplanes, certificated in any category, except those airplanes on which Modification No. 1390 (Service Bulletin 73-1, replacement of fuel anti-ice additive system by a fuel heating system), has been accomplished. Compliance is required as indicated, unless previously accomplished.

To prevent loss of power due to ice clogging of low pressure fuel filters, accomplish the following:

A. Within six months after the effective date of this AD, replace the low pressure fuel filters (P/N 433-E25-2) with modified filters (P/N 433-E25-21), in accordance with Aerospatiale Service Bulletin No. 28-10, dated April 25, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 19, 1987.

Issued in Seattle, Washington, on September 4, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-21640 Filed 9-17-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-171-AD; Amdt. 39-5724]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to CASA Model C-212 series airplanes, which requires replacement of certain elevator, rudder, and aileron trim control system rods, levers, links, and tabs. The FAA has determined that, in the event of certain single failures in these trim control systems, the potential exists for damage to the airframe due to flutter. The replacement components will add fail-safe features to the trim control systems.

EFFECTIVE DATE: October 19, 1987.

ADDRESSES: The applicable service information may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy M. Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires installation of the replacement elevator, rudder, and aileron trim control system components on CASA Model C-212 series airplanes, was published in the **Federal Register** on May 13, 1987 (52 FR 17958).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter suggested that there was no need for the installation of the trim control system components because there has been neither a failure of a control surface tab or related mechanism, nor any defects reported during inspections. The FAA does not concur that the installation is not needed. Service history in general has shown that a tab control system single

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failure is one of the most frequent causes of airframe damage due to flutter, and it was this experience that led to the requirement to account for single failures. Although there have been no reported failures or defects, this, in itself, is not considered a sufficient basis for concluding that an AD should not be issued, since service history only covers the experience to date, and a good portion of the airplane's service life remains.

The commenter also stated that the modification appeared still to be a single load path, and to spend a large amount of money installing the parts required by this AD, only to encounter some future AD requiring a change to the system, was not justified. The FAA does not agree. The design, which was developed by the manufacturer, utilizes such concepts as bolt/bushing combinations, back-to-back fittings, tubes within tubes, etc. Any single failure would, therefore, not result in a flutter condition.

The commenter proposed an inspection program in lieu of the installation of components. The FAA does not concur in total with this comment. The FAA has identified an unsafe feature in the design of the Model C-212, and has determined that installation of the modification required by this AD is necessary to address the unsafe design feature. We are not aware that an inspection program alone could provide an adequate level of safety. However, paragraph B. of the final rule provides to operators the option of applying for an alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 41 airplanes of U.S. registry will be affected by this AD, that it will take approximately 180 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Modification parts are estimated at $28,254 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,453,614.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because a substantial number of small entities are not affected. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 2, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

CASA: Applies to CASA Model C-212 series airplanes as listed in CASA Service Bulletin 212-27-25, Revision 2, dated October 23, 1985, certificated in any category. Compliance is required within 18 months after the effective date of this AD, unless previously accomplished.

To prevent airframe damage due to flutter caused by certain single failure conditions of the trim control system, accomplish the following:

A. Replace elevator, rudder, and aileron trim control system components in accordance with CASA Service Bulletin 212-27-25, Revision 2, dated October 23, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 19, 1987.

Issued in Seattle, Washington, on August 31, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-21641 Filed 9-17-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 43, 45, and 91

[Docket No. 25033; Amendment Nos. 43-29, 45-17, and 91-206]

Aircraft Identification and Retention of Fuel System Modification Records; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: FAA is correcting errors in Amendment Number 91-206, Aircraft Identification and Retention of Fuel System Modification Records. In FR Doc. 87-20606, published Wednesday September 9, 1987, on page 34096, please correct the amendment number "91-206" to read "91-202."

FOR FURTHER INFORMATION CONTACT: Joseph J. Gwiazdowski, (202) 267-9541.

Denise Hall,

Manager, Program Management Staff.

[FR Doc. 87-21543 Filed 9-17-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 87-AWP-28]

Alteration of Restricted Area R-2512 Holtsville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the times of use for Restricted Area R-2512 located near Holtsville, CA, indicating more accurately when the area is being utilized. This action will reduce the time the restricted area is in effect.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591: Telephone: (202) 267-9254.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations changes the times of use for Restricted Area R-2512 located near Holtville, CA. Because this would amend the time of designation to reflect actual times of use and would reduce the time the restricted area is in effect, I find that notice and

public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.25 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.25 [Amended]

2. Section 73.25 is amended as follows:

R–2512 Holtsville, CA [Amended]

By removing the present Time of designation and substituing the following:

Time of designation. 0600–2300 local time daily; other times by NOTAM 24 hours in advance.

Issued in Washington, DC, on September 3, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–21642 Filed 9–17–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 87–AWP–22]

Revocation of Restricted Area R–2529 Fort Ord West, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Restricted Area R–2529 located near Fort Ord West, CA. This action is necessary since the United States Army (USA) no longer uses the airspace for hazardous type activities. This action restores for public use previously restricted airspace.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9254.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations revokes Restricted Area R–2529 located near Fort Ord West, CA. This action is necessary since the USA is no longer using the airspace for hazardous activities. Because the purpose of the area no longer exists and because the action would simply restore the airspace to public use, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.25 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.25 [Amended]

2. Section 73.25 is amended as follows:

R–2529 Fort Ord West, CA [Removed]

Issued in Washington, DC on September 3, 1987.

Shelamo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–21643 Filed 9–17–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 75

[Airspace Docket No. 86–AWP–34]

Alteration of Jet Route J–6 California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Jet Route J–6 located in the vicinity of Palmdale, CA. The current alignment of J–6 is between Big Sur, CA, via a south dogleg to Palmdale, CA. This action realigns J–6 between Salinas, CA, via Avenal, CA, to Palmdale. Aircraft operating along that portion of J–6 are normally vectored north before proceeding over Palmdale. This action realigns J–6 to an area where aircraft are usually vectored, thereby reducing controller workload.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On March 20, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of Jet Route J–6 located in the vicinity of Palmdale, CA (52 FR 5923). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the description of Jet Route J–6 located in the vicinity of Palmdale, CA. The current alignment of J–6 is between Big Sur, CA, via a south dogleg to Palmdale, CA. This action realigns J–6 between Salinas, CA, via Avenal, CA, to Palmdale. Aircraft operating along that portion of J–6 are normally vectored before proceeding over Palmdale. This action realigns J–6 to an area where aircraft are usually vectored, thereby reducing controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation Safety, Jet Routes.

Adoption of the Amendment

Accordingly, purusant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–6 [Amended]

By removing the words "From Big Sur, CA, via INT Big Sur 137° and Palmdale, CA, 291° radials; Palmdale;" and by substituting the words "From Salinas, CA, via INT Salinas 145° and Avenal, CA, 292° radials; Avenal; INT Avenal 119° and Palmdale, CA, 310° radials; Palmdale;"

Issued in Washington, DC on September 3, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–21644 Filed 9–17–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 87–ACE–3]

Alteration of Jet Routes—Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns Jet Routes J–10 and J–192 located in the vicinity of Iowa City, IA. These alterations establish routes in areas where aircraft are normally vectored. This action improves traffic flow in that area and reduces controller workload.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On April 14, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of J–10 and J–192 by extending these routes to Iowa City, IA, VORTAC (52 FR 12000). These extensions will accommodate a heavy flow of traffic that is now using direct routes. This action reduces controller workload by establishing routes in areas where aircraft are usually vectored. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations realigns Jet Routes J–10 and J–192 located in the vicinity of Iowa City, IA. These alterations establish routes in areas where aircraft are normally vectored. This action improvess traffic flow in that area and reduces controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–10 [Amended]

By removing the words "to Des Moines, IA." and by substituting the words "Des Moines, IA; to Iowa City, IA."

J-192 [Revised]

From Goodland, KS, Pawnee City, NE; to Iowa City, IA.

Issued in Washington, DC, on September 9, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-21645 Filed 9-17-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy: (1) Has determined that USS FORT FISHER (LSD-40) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as naval dock landing ship, and (2) has directed that certain naval ships and classes of ships be deleted from one of the tables in the existing Part 706. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 27, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS FORT FISHER (LSD-40) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a naval dock landing ship. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided that the Under Secretary of the Navy has also determined that certain naval vessels and classes of vessels listed in the existing tables of 32 CFR 706.3 may be deleted from those tables since the exemptions from the 72 COLREGS listed in those tables for those vessels or classes of vessels have expired, and, where required, the current effective exemptions from the 72 COLREGS for those vessels or classes of vessels are now contained in the existing tables of 32 CFR 706.2. In addition, some of the vessels or classes of vessels being deleted are now in full compliance with the requirements of the 72 COLREGS, and others have been stricken from the Naval Vessel Register.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on USS FORT FISHER (LSD-40) in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of section 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS FORT FISHER	LSD-40							X	46

§ 706.3 [Amended]

3. Table One of § 706.3 is amended by deleting the following Navy vessels or classes of vessels:

LCC-19 Class
LHA-1 Class
USS TULARE (LKA-112)
USS CHARLESTON (LKA-113)
USS PAUL REVERE (LPA-248)
USS FRANCIS MARION (LPA-249)
LPD-1 Class
LPH-2 Class
LSD-28 Class
LSD-36 Class
LST-1179 Class
AE-21 Class
AE-23 Class
AE-26 Class
AFS-1 Class
AO-51 Class
AOE-1 Class
AOR-1 Class
AD-14 Class
AD-26 Class
AD-37 Class
AD-41 Class
USS COMPASS ISLAND (AG-153)
USS POINT LOMA (AGDS-2)
USS LASALLE (AGF-3)
AR-5 Class
AR-28 Class
AS-11 Class
USS PROTEUS (AS-19)
AS-31 Class
AS-33 Class
AS-36 Class
USS NORTON SOUND (AVM-1)
AS-39 Class

Date: August 27, 1987.

Approved.

H. Lawrence Garrett III,

Under Secretary of the Navy.

[FR Doc. 87-21541 Filed 9-17-87; 8:45 am]

BILLING CODE 3810-AE-M

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1, 2 and 5

Applicability of Regulations to Non-Federal Lands and Waters Under U.S. Legislative Jurisdiction

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is making an administrative change clarifying provisions in its general regulations that pertain to the applicability of certain regulations to non-federal lands and waters under the legislative jurisdiction of the United States. The existing wording has resulted in confusion and has generated questions concerning the original intent of the NPS in promulgating these particular regulations in 1983. The revised text clarifies the applicability of these regulations, without substantive change, and reflects the original intent of the NPS as expressed in the preamble of the earlier rulemaking.

EFFECTIVE DATE: October 19, 1987.

FOR FURTHER INFORMATION CONTACT: Andy Ringgold, National Park Service, Branch of Ranger Activities, P.O. Box 37127, Washington, DC 20013–7127, Telephone: 202–343–1360.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1983 the NPS published a major revision of its general regulations (see 48 FR 30252) that eventually went into effect on April 30, 1984, codified in Title 36 of the Code of Federal Regulations (36 CFR). Section 1.2 of that rulemaking addresses the applicability and scope of NPS regulations, providing generally that NPS regulations apply to all persons entering, using, visiting or otherwise within the boundaries of lands or waters administered by the NPS. Furthermore, paragraph (b) of this section reads as follows:

> (b) The regulations contained in Parts 1 through 7 of this chapter are not applicable on privately owned lands and waters (including Indian lands and waters owned individually or tribally) within the boundaries of a park area, except as may be provided by regulations related specifically to privately owned lands under the legislative jurisdiction of the United States.

The term "legislative jurisdiction" is defined in 36 CFR 1.4 to mean "lands and waters under the exclusive or concurrent jurisdiction of the United States", which, when applied to non-federal lands, means lands and waters over which the State has ceded some or all of its legislative authority to the United States. However, the meaning of the phrase "privately owned lands", although addressed in the preamble of the 1983 rulemaking, is not defined. The same phrase is used in ten general regulations codified in 36 CFR Part 2 and has been the subject of periodic questions since those regulations were promulgated. The ten regulations that apply on "privately owned lands and waters" within the exterior boundary of a park area that are under the legislative jurisdiction of the United States are:

1. Section 2.2 Wildlife protection.
2. Section 2.3 Fishing.
3. Section 2.4 Weapons, traps and nets.
4. Section 2.18 Fires.
5. Section 2.22 (a)(2), (b) and (c) Property.
6. Section 2.30 Misappropriation of property and services.
7. Section 2.31 Trespassing, tampering and vandalism.
8. Section 2.32 Interfering with agency functions.
9. Section 2.34 Disorderly conduct.
10. Section 2.36 Gambling.

The NPS emphasizes that these regulations apply only to those lands and waters under the legislative jurisdiction of the United States that are located *within* the exterior boundaries of a park area, not to lands or waters that might lie adjacent to such boundaries.

As indicated in the 1983 rulemaking, the NPS applied these regulations to "privately owned lands and waters" that are located within park boundaries and that are under the legislative jurisdiction of the United States in order to allow the NPS to respond to complaints from landowners concerning incidents such as disorderly conduct, fighting, hunting or discharging weapons, playing loud music or other disturbances, abandoned property, trespassing, tampering with private property, and gambling. The NPS determined that those provisions were the minimum necessary to protect non-federal property rights and ensure public safety for non-federal property owners, and it continues to hold that position. In the preamble discussion of that rulemaking (48 FR 30253, 30260 and 30261) the NPS indicated that the regulations that were made applicable on privately owned lands and waters under the legislative jurisdiction of the United States would apply on all lands and waters within a park area that were owned by private individuals, commercial entities or State agencies *and* over which the State had ceded either exclusive or concurrent jurisdiction to the United States.

The purpose of this rulemaking is to revise the text of the eleven regulations in 36 CFR Parts 1 and 2 that contain the phrase "privately owned lands and waters" or "privately owned lands" in order to clarify the NPS intent as clearly expressed in the preamble of the 1983 rulemaking. The NPS has determined that the phrase "privately owned lands" does not clearly encompass the full range of non-federal landowners originally intended. Accordingly, that phrase is being deleted from the regulations in question in favor of text that clarifies the fact that those regulations apply, regardless of land ownership, on lands and waters within a park area that are under the legislative jurisdiction of the United States.

The final rule also revises two nondiscrimination regulations in 36 CFR Part 5 that date from a 1966 rulemaking and that apply to commercial and private operations conducted within park areas. These regulations are:

1. Section 5.8 Discrimination in employment practices.
2. Section 5.9 Discrimination in furnishing public accommodations and transportation services.

These sections, which were inadvertently omitted from the proposed rule, both contain provisions that are applicable on "privately-owned lands" under the legislative jurisdiction of the United States. Their applicability provisions are being revised in the interest of consistency.

Summary and Analysis of Public Comments

A proposed rule was published in the **Federal Register** on April 14, 1987 (52 FR 12037) and a 30-day period provided for public review and comment. The NPS received four comments during this period, two each from State agency representatives and Federal agency representatives.

One State official urged that the language in the proposed rule not be adopted because it would result in the extension of NPS regulations to lands owned and administered by that agency within one unit of the National Park System. As discussed in the proposed rule and reemphasized in this rulemaking, the change in regulatory text is intended to be an editorial change, not a substantive change expanding the applicability of NPS

regulations. The NPS has carefully reviewed the proposal in its entirety and has determined that no expansion of authority, applicability or scope has taken place. If the State-owned lands in question were under the legislative jurisdiction of the United States at the time, the June 30, 1983 NPS rulemaking that went into effect on April 30, 1984 made the ten regulations in 36 CFR Part 2 applicable to those lands on that date. The proposed rule of April 14, 1987 and this final rule have not affected that situation other than to clarify the fact that those regulations do apply on those State-owned lands. The fact that the State official raised this point lends additional weight to the NPS position that clarification of this regulation was necessary.

The second State official suggested that the definition of the term "legislative jurisdiction" codified in 36 CFR 1.4 be revised to clarify the fact that the jurisdiction of the United States is based upon that which has been clearly and expressly ceded to it by the State. Cession by a State is a common method by which the NPS acquires legislative jurisdiction within a park area and the only method by which jurisdiction over non-federal lands and waters may be acquired. However, acquisition of legislative jurisdiction by the United States may also take place by State consent pursuant to article I, section 8, clause 17 of the U.S. Constitution or by reservation at the time a State was admitted to the Union. Therefore, the extent of jurisdiction exercised by the United States does not in all cases depend on that which was ceded by the State. To define the term "legislative jurisdiction" in a way that would alter its common meaning and that would not apply in all cases in which the term might be used would create unnecessary confusion. For this reason, the NPS has not adopted the suggested revision in regulatory text but has explained the issue in greater detail.

Both Federal agency officials expressed concern that this rulemaking might extend NPS jurisdiction over certain Indian Trust Lands administered by that agency. However, the examples used to illustrate this concern all consisted of reservation lands located *adjacent* to boundaries of certain park areas, not *within* their boundaries. NPS general regulations apply only as specified in the Code of Federal Regulations; there are no provisions that make NPS regulations applicable on lands or waters outside the boundaries of a park area unless those lands or waters are owned by, administered by or subject to the jurisdiction of the NPS. The NPS neither owns, nor administers nor has jurisdiction over Indian Trust Lands located adjacent to the boundaries of any park area, although several park areas and Indian reservations do share common boundaries. The regulations that are the subject of this rulemaking do not apply on such lands, nor do they extend the applicability of other NPS regulations to those lands.

One Federal agency official also suggested that the proposed rule had raised more questions than it had resolved concerning the status of Indian Trust Lands. The NPS has attempted to remove any remaining confusion by revising slightly the text of 36 CFR 1.2(b) in the final rule to clarify the applicability of NPS regulations on individually-owned or tribally-owned Indian lands.

Certain specified NPS regulations apply on non-federally owned lands *and* on the specified Indian lands, but only if they are located *within* the boundaries of a park area and only if those lands are under the legislative jurisdiction of the United States.

The regulatory text of the proposed rule has not been revised otherwise as a result of the public comments received. The only other differences in the final rule result from the inclusion of the two regulations in 36 CFR Part 5 that were inadvertently omitted from the proposed rule.

Drafting Information

The primary author of this rulemaking is Andy Ringgold of the NPS Division of Ranger Activities.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document constitutes an administrative change, not subject to the provisions of Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rulemaking has no economic effect since it is a clarification only and neither removes substantive restrictions nor imposes new ones.

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based in this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects

36 CFR Part 1

National parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

36 CFR Part 2

Environmental protection, National parks, Reporting and recordkeeping requirements.

36 CFR Part 5

Alcohol and alcoholic beverages, Business and industry, Civil rights, equal employment opportunity, National parks, Transportation.

In consideration of the foregoing, 36 CFR Chapter I is amended to read as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for Part 1 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462//–6a(e), 462(k); D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. In § 1.2, by revising paragraph (b) to read as follows:

§ 1.2 Applicability and scope.

* * * * *

(b) Except for regulations containing provisions that are specifically applicable, regardless of land ownership, on lands and waters within a park area that are under the legislative jurisdiction of the United States, the regulations contained in Parts 1 through 5 and Part 7 of this chapter do not apply on non-federally owned lands and waters or on Indian lands and waters owned individually or tribally within the boundaries of a park area.

* * * * *

PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

3. The authority citation for Part 2 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

4. In § 2.2, by revising paragraph (g) to read as follows:

§ 2.2 Wildlife protection.

* * * * *

(g) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

* * * * *

5. In § 2.3, by revising paragraph (g) to read as follows:

§ 2.3 Fishing.

* * * * *

(g) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

* * * * *

6. In § 2.4, by revising paragraph (g) to read as follows:

§ 2.4 Weapons, traps and nets.

* * * * *

(g) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

* * * * *

7. In § 2.13, by revising paragraph (d) to read as follows:

§ 2.13 Fires.

* * * * *

(d) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

* * * * *

8. In § 2.22 by revising paragraph (d) to read as follows:

§ 2.22 Property.

* * * * *

(d) The regulations contained in paragraphs (a)(2), (b) and (c) of this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

* * * * *

9. In § 2.30, by revising paragraph (b) to read as follows:

§ 2.30 Misappropriation of property and services.

* * * * *

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

* * * * *

10. In § 2.31, by revising paragraph (b) to read as follows:

§ 2.31 Trespassing, tampering and vandalism.

* * * * *

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

* * * * *

11. In § 2.32, by revising paragraph (b) to read as follows:

§ 2.32 Interfering with agency functions.

* * * * *

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

* * * * *

12. In § 2.34, by revising paragraph (b) to read as follows:

§ 2.34 Disorderly conduct.

* * * * *

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

* * * * *

13. In § 2.36, by revising paragraph (b) to read as follows:

§ 2.36 Gambling.

* * * * *

(b) This regulation applies, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

* * * * *

PART 5—COMMERCIAL AND PRIVATE OPERATIONS

14. The authority citation for Part 5 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

15. In § 5.8, by revising paragraph (c) to read as follows:

§ 5.8 Discrimination in employment practices.

* * * * *

(c) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

* * * * *

16. In § 5.9, by revising paragraph (c) to read as follows:

§ 5.9 Discrimination in furnishing public accommodations and transportation services.

* * * * *

(c) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

* * * * *

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Date: August 25, 1987.

[FR Doc. 87-21570 Filed 9-17-87; 8:45 am]

BILLING CODE 4310-70-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Increase in Rates Payable in the Educational Assistance Test Program

AGENCY: Veterans Administration and Department of Defense.

ACTION: Final regulations.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually based upon the average actual cost of attendance at public institutions of higher education in the 12-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that these rates should be increased by 6.1 percent. The regulations dealing with these rates are adjusted accordingly.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program

Administration, Vocational Rehabilitation and Education Service (225), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 3288 and 3289 of the **Federal Register** of February 3, 1987, there was published a proposal to amend 38 CFR Part 21 to increase the rates of educational assistance and subsistence allowance payable under the Educational Assistance Test Program. Interested people were given 30 days to submit comments, suggestions and objections.

The Veterans Administration (VA) and Department of Defense (DOD) received no comments, suggestions or objections. Accordingly, the agencies are making the proposal final without change.

These increases are effective October 1, 1986. Retroactive effect is warranted because these changes are liberalizing, and because they are interpretative rules which implement and construe the meaning of a law. Moreover, there is good cause for a retroactive effective date of October 1, 1986. Such a date facilitates implementation of 10 U.S.C. 2145 which requires annual adjustments in educational assistance.

The VA and DOD have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs and the Secretary of Defense have certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations make adjustments required by law, and because they affect only rates payable to individuals. No regulatory, administrative, or paperwork burdens are imposed on any type of small entities.

There is no Catalog of Federal Domestic Assistance number for the program affected by these regulations.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 24, 1987.

Thomas K. Turnage,

Administrator.

Approved: July 27, 1987.

A. Lukeman,

Lieutenant General, USMC, Deputy Assistant Secretary (Military Manpower and Personnel Policy).

38 CFR Part 21, *Vocational Rehabilitation and Education*, is amended as follows:

PART 21—[AMENDED]

1. In § 21.5820 the introductory text of paragraph (b), paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B), and paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B) are revised to read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) *Amount of educational assistance.* The amount of educational assistance may not exceed $1,560 per standard academic year, adjusted annually by regulation.

(Authority: 10 U.S.C. 2143)

(1) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $173.33 for a full-time student or by $86.67 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $5.77 for a full-time student or by $2.88 for a part-time student; and (10 U.S.C. 2143).

* * * * *

(2) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $173.33 for a full-time student or by $86.67 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $5.77 for a full-time student or by $2.88 for a part-time student; and (10 U.S.C. 2143).

* * * * *

2. In § 21.5822 paragraphs (b)(1)(i) and (b)(1)(ii) and paragraphs (b)(2)(i) and (b)(2)(ii) are revised to read as follows:

§ 21.5822 Subsistence allowance.

* * * * *

(b) * * *

(1) * * *

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is $389 per month, adjusted annually by regulation.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is $194.50 per month.

(Authority: 10 U.S.C. 2144)

* * * * *

(2) * * *

(i) The VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time by dividing $389 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(ii) The VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than a full-time basis by dividing $194.50 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(Authority: 10 U.S.C 2144)

* * * * *

[FR Doc. 87–21567 Filed 9–17–87; 8:45 am]

BILLING CODE 8320–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6762]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities

listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 44—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I—Regular Conversions					
Maine	Lincoln, town of, Penobscot County	230109	June 11, 1975, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Sept. 18, 1987.
Region III					
Delaware	Elsmere, town of, New Castle County.	100023	Oct. 2, 1974, Emerg., Dec. 31, 1976, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Pennsylvania	Applewold, borough of, Armstrong County.	620093	Mar. 11, 1975 , Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Do	Ceres, township of, McKean County.	421853	Aug. 6, 1974, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Do	Conneautville, borough of, Crawford County.	420349	May 28, 1975, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Do	Standing Stone, township of, Bradford County	621406	Mar. 9, 1977, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Do	St. Clair, township of, Westmoreland County.	422191	Aug. 22, 1977, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Do	Ulster, township of, Bradford County.	421218	July 29, 1975, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
West Virginia	Lincoln County, unincorporated areas	540088	May 24, 1976, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Do	Westmoreland County, unincorporated areas.	510250	Sept. 23, 1974, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Region IV					
Mississippi	Hancock County, unincorporated areas.	285254	June 30, 1970, Emerg., Sept. 9, 1970, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Region V					
Illinois	Wood Dale, city of	170224	Feb. 2, 1973, Emerg., Sept. 30, 1977, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Ohio	Brecksville, city of, Cuyahoga County.	390098	July 11, 1975, Emerg., Jan. 16, 1981, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Region VI					
Louisiana	Clarence, village of, Natchitoches Parish.	220130	Mar. 8, 1976, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Do	Natchitoches parish, unincorporated areas.	220129	May 10, 1973, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Region VII					
Iowa	Des Moines, city of, Polk County	190227	Sept. 6, 1974, Emerg., Feb. 4, 1981, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VIII					
Colorado	Longmont, city of, Boulder County	080027	Nov. 26, 1971, Emerg., July 5, 1977, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do
North Dakota	Alexander, city of McKenzie County.	380055	March 10, 1976, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Region IX					
California	Clearlake, city of, Lake County	060714	Feb. 19, 1971, Emerg., Oct. 17 1978, Reg., Sept. 18, 1987, Susp	Sept. 18, 1987	Do
Region X					
Alaska	Anchorage, municipality of Anchorage division.	020005	June 12, 1970, Emerg., Sept. 5, 1979, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Oregon	Canyon City, city of, Grant County	410075	Oct. 18, 1974, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp	Sept. 18, 1987	Do.
Do	Mt. Vernon, city of, Grant County	410080	Aug. 1, 1975, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp	Sept. 18, 1987	Do.
Region III—Minimals Conversions					
Pennsylvania	Rutland, township of, Tioga County.	422099	Mar. 14, 1975, Emerg., Aug. 1, 1987, Reg., Sept. 18, 1987, Susp.	Aug. 1, 1987	Aug. 1, 1987
Region IV					
Mississippi	Baldwyn, city of, Prentiss and Lee Counties.	280134	Dec. 2, 1974, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Sept. 18, 1987.
Do	Saltillo, town of, Lee County	280261	July 24, 1975, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Region V					
Minnesota	Fillmore County, unincorporated areas.	270124	Apr. 16, 1974, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Do	Raymond, city of, Kandiyohi County.	270222	Mar. 5, 1975, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Ohio	Portage County, unincorporated areas.	390453	Feb. 11, 1977, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Do	Wyandot County, unincorporated areas.	390787	Dec. 21, 1978, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.
Do	Hemlock, village of, Tioga County	390708	Feb. 27, 1976, Emerg., Aug. 19, 1987, Reg., Sept. 18, 1987, Susp.	Aug. 19, 1987	Aug. 19, 1987
Region VII					
Nebraska	Stanton, city of, Stanton County	310217	May 12, 1975, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Sept. 18, 1987.
Region VIII					
North Dakota	Velva, township of, McHenry County.	380310	Mar. 31, 1976, Emerg., Sept. 18, 1987, Reg., Sept. 18, 1987, Susp.	Sept. 18, 1987	Do.

Code for reading fourth column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension, Rein.—Reinstatement.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: September 10, 1987.

[FR Doc. 87-21571 Filed 9-17-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

Maritime Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends, clarifies and corrects Part 80 governing the Maritime Radio Services. Part 80 became effective on October 2, 1986, and has been governing the maritime community for approximately ten months. During this period, a number of cases requiring minor clarifications or corrections have been brought to the attention of the Commission staff. The purpose of this action is to incorporate those changes into Part 80.

EFFECTIVE DATE: September 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert E. Mickley, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 80

Maritime, Radio, Vessel.

Order

In the matter of editorial amendments to Part 80 of the rules concerning the maritime radio services.

Adopted: August 6, 1987.
Released: August 28, 1987.

1. This Order amends and corrects Part 80 of the Commission's Rules which govern the maritime radio services. Part 80 became effective on October 2, 1986.[1] This action was part of the Commission's ongoing effort to review, simplify and clarify its regulations. Part 80 reorganized and revised the maritime rules contained in Parts 81 and 83 and combined them into a single part. The *Report and Order* in PR Docket No. 85-145 stated that the changes incorporated in Part 80 were primarily editorial in nature and were not intended to alter substantive requirements except where specifically described.

2. Part 80 now has been effective for approximately ten months. During this period, a number of rules requiring clarification or correction have been brought to our attention by the maritime community and through staff review. This Order updates the maritime rules by clarifying and correcting Part 80 accordingly.

[1] See *Report and Order*, PR Docket No. 85-145, FCC 86-141, 51 FR 31206 (1986).

3. Because these amendments are editorial or interpretive in nature, intended to clarify and correct Part 80, the notice and comment procedure and the 30 day effective date provision of the Administrative Procedure Act is unnecessary. See 5 U.S.C. 553(b) and (d), 47 CFR 1.412(b) and 47 CFR 1.427(b).

4. Accordingly, it is ordered, that pursuant to the authority delegated to the Managing Director by § 0.231(d) of the Rules, Part 80 of the Commission's Rules is amended as set forth in the attached Appendix, effective upon publication in the **Federal Register**.

5. Regarding questions on matters covered in this document, contact Robert Mickley (202) 632–7175.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In the table of contents at the beginning of Part 80, correct the section title opposite section designator 80.471 to read, "Discontinuance or impairment of service."

§ 80.5 [Amended]

3. In § 80.5, under the term "Urgency signal", the third paragraph is revised to read, "(3) in radiotelephony, the international urgency signal consists of three oral repetitions of the group of words "PAN PAN", each word of the group pronounced as the French word "PANNE" and sent before the call."

§ 80.19 [Corrected]

4. The table in § 80.19 is corrected by adding a solid horizontal line in all three columns immediately above the "Public Coast" entry appearing in the first column.

§ 80.80 [Amended]

5. Footnote 1 applicable to § 80.80 is revised to read, "[1] Ship station transmitters, except hand-held portable transmitters, manufactured after January 21, 1987 must automatically reduce the carrier power to one watt or less when turned to the frequency 156.375 MHz or 156.650 MHz. All ship station tramsmitters, except hand-held portable transmitters, used after January 21, 1997, must automatically reduce power as described above. A manual override device must be provided which when held by the operator will permit full carrier power operation on channels 13 and 67. Hand-held portable transmitters must be capable of reducing power to one watt, but need not do so automatically."

§ 80.89 [Amended]

6. Section 80.89 is amened by adding a new paragraph (g) to read, "(g) Transmit on frequencies or frequency bands not authorized on the current station license."

§ 80.95 [Amended]

7. In §80.95, paragraph (a)(3) is revised to read "(3) Distress calls and related traffic; and"

§ 80.102 [Amended]

8. In § 80.102, the first sentence in paragraph (a) is revised to read, "Except as provided in paragraphs (d) and (e) of this section, stations must give the call sign in English,"; and a new paragraph (e) is added to read, "(e) VHF public coast station may identify by means of the approximate geographic location of the station or the area it serves when it is the only VHF public coast station serving the location or there will be no conflict with the identification of any other station."

§ 80.111 [Amended]

9. Section 80.111 is amended by adding a new paragraph (a)(6) to read, "(6) Calls to establish communication must be initiated on an available common working frequency when such a frequency exists and it is known that the called ship maintains a simultaneous watch on the common working frequency and the appropriate calling frequency(ies)."

§ 80.143 [Corrected]

10. In §80.143, paragraph (b) is corrected by adding paragraph (b)(4) to read, "(4) All other frequencies necessary for its service."

§ 80.207 [Amended]

11. In § 80.207, the introductory portion of paragraph (a) is revised to read, "(a) Authorization to use radiotelephone and radiotelegraph emissions by ship and coast stations includes the brief use of radiotelegraphy, including keying only the modulating audio frequency, tone signals, digital selective calling and other signalling devices to establish or maintain communications, provided,"; and paragraph (a)(4) is added to read, "(4) Use of selective calling equipment based upon this section, other than DSC equipment, may be continued for at least three years subsequent to an FCC Order that will authorize DSC as the only selective calling technique permitted for use in the maritime services. To quality for the continuation, the equipment must be used at the same station location where it was installed and operating on the date of the indicated FCC Order. This paragraph is not applicable to AMTS in the 216–220 MHz band or to NB–DP equipment that complies with CCIR Recommendation 476.

§ 80.215 [Corrected and Amended]

12. In § 80.215, correct the frequency band in paragraph (b)(1)(i) to read, "4000–8000 kHz" vice "4000–7000 kHz"; paragraph (c)(1) is amended by adding the footnote designator, "[12]" after footnote designator "[1]" appearing opposite the 156–162 MHz band; the second category entry in paragraph (e)(1) is revised to read, "Marine utility stations and hand-held portable transmitters 156–162 MHz; add footnote "[12]" in numerical order to read, "[12] The frequencies 156.375 MHz and 156.650 MHz are primarily intership frequencies. When authorized for coast stations on a secondary basis, the normal output power must not exceed 1 watt and the maximum output power must not exceed 10 watts."; paragraph (g)(3) is revised to read, "(3) Except as indicated in (4) of this paragraph, all transmitters manufactured after January 21, 1987, or in use after January 21, 1997, must automatically reduce the carrier power to one watt or less when the transmitter is tuned to 156.375 MHz or 156.650 MHz, and must be provided with a manual override switch which when held by an operator will permit full carrier power operation on 156.375 MHz and 156.650 MHz; "; and paragraph (g)(4) is revised to read, "(4) Hand-held portable transmitters are not required to comply with the automatic reduction of carrier power in (g)(3) of this section; and".

§ 80.215 [Corrected]

13. In §80.215, correct the paragraph designators of paragraphs (l) and (m), as published in the **Federal Register** on March 11, 1987, (52 FR 7417) to read (m) and (n). The first paragraph (l), which begins with the words "For operational fixed stations" remains unchanged.

§ 80.219 Corrected]

14. In § 80.219, paragraph (a)(3) is corrected to read, "(3) Use class F1B or

J2B emission with a total frequency shift of 170 Hertz."

§ 80.225 [Amended]

15. In § 80.225, the introductory paragraph is amended by removing the third sentence.

§ 80.303 [Amended]

16. In § 80.303, paragraph (a) is revised to read, "(a) During its hours of operation, each coast station operating in the 156–162 MHz band and serving rivers, bays and inland lakes except the Great Lakes, must maintain a safety watch on the frequency 156.800 MHz except when transmitting on 156.800 MHz.

§ 80.327 [Amended]

17. In §80.327, paragraph (c) is revised to read, "(c) In radiotelephony, the urgency signal consists of three oral repetitions of the group of words PAN PAN transmitted before the call."

§ 80.355 [Amended]

18. In § 80.355, the section title is revised to read, "Distress, urgency, safety, call and reply Morse code frequencies."

§ 80.369 [Amended]

19. In § 80.369, paragraph (c) is revised to read, "(c) The frequency 5167.5 kHz is available to any station for emergency communications in the State of Alaska. Peak envelope power of stations operating on this frequency must not exceed 150 watts. This frequency may also be used by Alaska private fixed stations for calling and listening, but only for establishing communication."

§ 80.371 [Amended]

20. In § 80.371 the frequency table in paragraph (a) is revised by adding new frequency pair "2406.0" to the ship transmit column and "2506.0" to the coast transmit column at the bottom of the "East Coast" frequency block.

21. In § 80.371, the second sentence in paragraph (d) is revised to read, "The following table describes the working carrier frequencies below 2750.0 kHz for simplex radiotelephony communications for use between public coast stations serving the Mississippi River System and ship stations within communication service range, whether or not the ship is operating within the confines of the Mississippi River System."

§ 80.373 [Amended]

22. In § 80.373(c), the frequency table in paragraph (c)(1) is amended by adding footnote symbol "[3]" to the right of frequencies 2065.0 and 2079.0, and by adding footnote symbol "[4]" to the right of frequencies 3023.0 and 5680.0; by adding footnote [3] in numerical order below the frequency table in paragraph (c)(1) to read, "[3] The frequencies 2065.0 kHz and 2079.0 kHz must be coordinated with Canada."; by adding footnote [4] in numerical order below the frequency table in paragraph (c)(1) to read, "[4] The frequencies 3023.0 kHz and 5680.0 kHz are available to private coast stations licensed to state and local governments and any scene-of-action ships for the purpose of search and rescue scene-of-action coordination including communications with any scene-of-action aircraft."; the introductory portion of paragraph (c)(2) is revised to read, "(2) Assignment of these frequencies is subject to the following general limitations:"; paragraph (c)(2)(iii) is amended to be punctuated at the end with a period; and paragraphs (c)(2)(iv) and (c)(2)(v) are removed.

23. In § 80.373(f), amend the frequency table after the listing of frequencies in the "Noncommercial" frequency category by adding a new frequency category "Distress, Safety and Calling" and adding one frequency under the new frequency category with four columnar entries to read, "16", "156.800", "156.800" and "EPRIB"; amend the frequency table opposite channel designator "17" under the Maritime Control frequency category by removing the entire fourth column entry; amend footnote [2] by inserting the word "only" after the word "use"; revise the second sentence in footnote [4] to read, "Normal output power must not exceed 1 watt."; revise footnote [5] to read "[5] 156.375 MHz and 156.650 MHz are available primarily for intership navigational communications. These frequencies are available between coast and ship on a secondary basis when used on or in the vicinity of locks or drawbridges. Normal output power must not exceed 1 watt. Maximum output power must not exceed 10 watts for coast stations or 25 watts for ship stations."; revise footnote [9] to read, "[9] when the frequency 156.850 MHz is authorized, it may be used additionally for search and rescue training exercises conducted by state or local governments."; revise the first sentence of footnote [10] to read, "The frequency 156.850 MHz is additionally available to coast stations on the Great Lakes for transmission of scheduled Coded Marine Weather Forecasts (MAFOR), Great Lakes Weather Broadcast (LAWEB) and unscheduled Notices to Mariners or Bulletins."

24. In § 80.373(i), the paragraph title is revised to read, "*Frequencies in the 1600–5450 kHz band for private communications in Alaska.*"

§ 80.383 [Corrected]

25. In § 80.383(b), correct paragraph (b)(2) to read, "(2) New Orleans: The rectangle between North latitudes 27 degrees 30 minutes and 31 degrees 30 minutes and West longitudes 87 degrees 30 minutes and 93 degrees;".

§ 80.387 [Amended]

26. In § 80.387(b), the frequency table is amended by adding the entry "5167.5 [3]" in numerical order to the third column; and by adding a new footnote [3] in numerical order below the frequency table to read, "[3] The frequency 5167.5 kHz is available for emergency communications in Alaska. Peak envelop power of stations operating on this frequency must not exceed 150 watts. When a station in Alaska is authorized to use 5167.5 kHz, such station may also use this frequency for calling and listening for the purpose of establishing communications."

§ 80.409 [Amended]

27. In § 80.409, paragraph (a)(3) is revised to read, "(3) Ship station logs must identify the vessel name, country of registry, and official number of the vessel.

28. In § 80.409, paragraph (f)(1) is revised to read, "(1) Radiotelephony stations subject to Parts II and III of Title III of the Communications Act and/or the Safety Convention must record entries indicated by paragraphs (e)(2) through (e)(11) of this section."

§ 80.471 [Corrected]

29. In § 80.471, the section title is corrected to read, "Discontinuance or impairment of service."

§ 80.475 [Amended and Corrected]

30. In § 80.475, paragraph (a) is revised to read, "(a) An AMTS may serve the upper and/or lower sectors of the Mississippi River, its connecting waterways, the Gulf Intracoastal Waterway, and the offshore waters of the Gulf of Mexico. An AMTS serving the eastern or western sector of the offshore waters of the Gulf of Mexico, that is, East or West of longitude 87°45′ W, must provide service to the 100 fathom line or 40 nautical miles offshore, whichever is greater."; the last sentence in paragraph (b)(1) is corrected to read, "See § 80.215(h)."; and the last sentence in paragraph (b)(2) is corrected to read, "A list of the notified television stations must be submitted with the subject applications."

§ 80.477 [Amended]

31. Section 80.477 is amended by adding a new paragraph (c) to read, "(c) AMTS service may be provided to any

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vessel within communication service range of an AMTS station even though the vessel may not be operating within the confines of a served waterway."

32. A new § 80.514 is added to read as follows:

§ 80.514 Marine VHF frequency coordinating committee(s).

This section contains the names of organizations that have been recognized by the Commission to serve as marine VHF frequency coordinating committees for their respective areas. Write or call FCC; Private Radio Bureau Licensing Division; Consumer Assistance Branch; Gettysburg, PA, 17326; Phone: (717) 337–1212; for frequency advisory committee mailing address information.

(a) The Southern California Marine Radio Council serves the California counties of Santa Barbara, Kern, San Bernardino, Ventura, Los Angeles, Orange, Riverside, San Diego, Imperial and the Channel Islands.

Subpart M—[Amended]

33. Immediately preceding § 80.601, the title of Subpart M is revised to read, "Stations in the Radiodetermination Service".

§ 80.655 [Amended]

34. In § 80.655, paragraph (a)(1) is revised to read, "(1) § 80.373 for scope of communications described in § 80.653(b)(1);"; paragraph (a)(2) is redesignated as paragraph (a)(3) and a new paragraph (a)(2) is added to read, "(2) §§ 80.373 and 80.385 for scope of communications described in § 80.653(b)(2);".

§ 80.859 [Corrected]

35. Two sections have been erroneously assigned the section designator "§ 80.859." The section designator applicable to the section entitled "Reserve power supply" is corrected to read, "§ 80.860."

§ 80.871 [Corrected]

36. In § 80.871, the frequency table in paragraph (d) is corrected by removing line 21 concerning channel 70 in its entirety.

37. A new § 80.879 is added to read as follows:

§ 80.879 Radar installation requirements and specifications.

Ships of 500 gross tons and upwards that are constructed on or after September 1, 1984, must comply with the radar installation requirements and specifications contained in § 80.825 of this part.

38. Section 80.1019 is revised to read as follows:

§ 80.1019 Antenna radio frequency indicator.

Each nonportable bridge-to-bridge transmitter must be equipped, at each point of control, with a carrier operated device which will provide continuous visual indication when the transmitter is supplying power to the antenna transmission line or, in lieu thereof, a pilot lamp or meter which will provide continuous visual indication when the transmitter control circuits have been placed in a condition to activate the transmitter.

§ 80.1053 [Corrected]

39. In § 80.1053, correct the 3 character emission designator symbol in paragraph (a)(4) to read, "A3X".

§ 80.1055 [Corrected]

40. Section 80.1055(a)(3) is corrected to read, "(3) Meet the requirements in § 80.1053 (a)(4) through (a)(7), (a)(12) and (c) through (i)."

[FR Doc. 87–21600 Filed 9–17–87; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 80

[PR Docket No. 86–340, RM–5227; FCC 87–277]

Maritime Services Rules Concerning Compulsory Ship Radar Equipment Specifications for New Installations

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: The FCC has amended its maritime rules concerning equipment specifications for new compulsory navigational radar installations on oceangoing ships of 500 gross tons and upwards. This action is taken to reconcile the minor differences contained in the separate radar documents and have a single document apply to new radar installations on compulsory equipped ships.

DATES: Effective date: October 13, 1987.

Incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 13, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert E. Mickley, Private Radio Bureau, Aviation and Marine Branch, Washington, DC 20554, (202) 632–7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in PR Docket No. 86–340, RM–5227, adopted August 18, 1987, and released August 31, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On August 19, 1986, the Commission released a Notice of Proposed Rule Making (NPRM) in PR Docket No. 86–340, RM–5227, 51 FR 31306, that proposed to update ship radar standards and specifications. The standards and specifications were proposed to be contained in a single document, incorporated by reference in the rules, and would apply to compulsory equipped ships with radar installed on or after July 1, 1988. The NPRM responded to a petition for rulemaking (RM–5227) and proposed radar performance specifications and standards submitted by the Radio Technical Commission For Maritime Services (RTCM) on behalf of the maritime industry.

2. The current radar specifications are contained in three separate documents referenced in § 80.825 of the Commission's rules. The documents are: International Convention for the Safety of Life at Sea, 1974; IMO Resolution A.477 (XII); and RTCM SC–65 Final Report, Volume II, as amended by Change 1. One or more of these documents are applicable to various ship categories determined by ship size, date of ship construction and date of radar installation. The purpose of the requested rule change was to reconcile the minor differences contained in the separate radar documents and have a single document apply to new radar installations on compulsory equipped ships. This should reduce confusion resulting from multiple documents containing specifications applicable to multiple categories of ships.

3. Comments in this proceeding were filed by the American Institute of Merchant Shipping (AIMS), the Comite International Radio Maritime (CIRM) and the RTCM. RTCM also filed reply comments.

4. AIMS supported the proposed amendments. In addition, AIMS requested that its list of minimum resources for on-board repair, contained in Volume III of the RTCM SC–65 Final Report, be referenced in § 80.825(c) of the rules. Because the rules recommend

minimum repair resources rather than a specific requirement, we are amending the rules as requested by AIMS to provide additional guidance to the maritime industry.

5. CIRM, a non-profit international association of companies concerned with the manufacture and supply of radio and radionavigation equipment for merchant ships, commented with respect to the vibration testing standards contained in RTCM Paper 153–85/SC 103–30 included as a part of the petition for rulemaking. Specifically, CIRM recommended that the frequency range at which the table is vibrated with an excursion of ±1.60 millimeters be between 5 and 12.5 Hz rather than between 0 and 12.5 Hz as contained in the RTCM paper. CIRM made its recommendation based upon action taken by Technical Committee 80 of the International Electro-Technical Commission which relaxed the vibration testing standards for marine navigational equipment.

6. RTCM's comments revised the wording of the proposed specifications to conform with IMO Resolution A.574(14) that replaced IMO Resolution A.281(VIII) concerning general requirements for marine navigational equipment. RTCM pointed out that the revision does not substantially change the meaning of the specification and has no significant effect upon the cost of the specified equipment. RTCM filed reply comments, which further revised its marine radar specification document to conform to the comments of CIRM. RTCM submitted this revision of its marine radar specification to accommodate the incorporation by reference of this single document into the rules.

7. We are amending the rules to incorporate by reference the revised marine radar specifications contained in RTCM Paper 133–87/SC 103–33 applicable to oceangoing ships of 500 gross tons and upward on or after July 1, 1988. We concur that the vibration testing standard can be relaxed as suggested by CIRM. Therefore, we are incorporating the CIRM recommendation into the rules. These specifications and standards will be contained in a single document for ease of use by radar equipment manufacturers. While radar equipment manufactured to these specifications and standards will meet or surpass the requirements for all ship categories, ship radar equipment installed prior to July 1, 1988, which meets the appropriate ship category requirements, as indicated in the rules, will continue to be authorized.

8. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labelling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

9. We have determined that section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) does not apply to this rule making proceeding because if promulgated, it will not have a significant economic impact on a substantial number of small entities. These new rules only affect large oceangoing ships that are required to carry radar installations. No additional equipment will be required, nor will currently carried equipment be obsoleted by this action.

Ordering Clauses

10. For the reasons stated above, it is ordered, that under the authority contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r) of the Commission's rules are amended effective October 13, 1987, as shown below.

11. It is further ordered, that this proceeding is terminated.

List of Subjects in 47 CFR Part 80

Vessels, Ship stations, Marine safety, Telecommunications equipment, Incorporation by reference.

New Rules

Part 80 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48, Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.825 is revised to read as follows:

§ 80.825 Radar installation requirements and specifications.

(a) Radar installations on board ships that are required by the Safety Convention or the U.S. Coast Guard to be equipped with radar must comply with either the document referenced in paragraph (a)(1) of this section or the applicable document referenced in paragraphs (a)(2) through (a)(4) of this section. These documents are incorporated by reference in accordance with 5 U.S.C. 552(a). The documents contain specifications, standards and general requirements applicable to shipboard radar equipment and shipboard radar installations. For purposes of this part, the specifications, standards and general requirements stated in these documents are mandatory irrespective of discretionary language. Radar documents are available for inspection at the Commission Headquarters in Washington, DC, or may be obtained from the Radio Technical Commission for Maritime Services (RTCM), P.O. Box 19087, Washington, DC 20036.

(1) Radar installed on ships of 500 gross tons and upwards on or after July 1, 1988, must comply with the provisions of RTCM Paper 133–87/SC 103–33 including Appendix A. Title: "RTCM Recommended Performance Specification for a General Purpose Navigational Radar Set for Oceangoing Ships of 500 Gross Tons and Upwards for New Radar Installations." Title of Appendix A: "General Purpose Shipborne Navigational Radar Set for Oceangoing Ships *Design and Testing Specifications.*" Document originally approved by RTCM August 15, 1985 and revised May 15, 1987.

(2) Radar installed on ships of 1,600 gross tons and upwards on or before April 27, 1981, must comply with the provisions of Volume II of RTCM Special Committee No. 65 Final Report; Part II. Title: "Performance Specification for a General Purpose Navigational Radar Set for Oceangoing Ships of 1,600 Tons Gross Tonnage and Upwards for Ships Already Fitted." Document approved by RTCM July 18, 1978; effective as FCC requirement on April 27, 1981.

(3) Radar installed on ships of 1,600 gross tons and upwards after April 27, 1981 and before July 1, 1988, must comply with the provisions of Volume II of RTCM Special Committee No. 65 Final Report with Change 1 entered; Part I including Appendix A. Title: "Performance Specification for a General Purpose Navigational Radar Set for Oceangoing Vessels of 1,600 Tons Gross Tonnage and Upwards for New Radar Installations." Title of Appendix A: "General Purpose Shipborne Navigational Radar Set for Oceangoing Ships *Design and Testing Specifications.*" Document approved by RTCM July 18, 1978; effective as FCC requirement on April 27, 1981.

(4) Ships between 500 and 1,600 gross tons constructed on or after September 1, 1984, with radar installed before July 1, 1988, must comply with Regulation 12, Chapter V of the Safety Convention and with the provisions of Inter-

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Governmental Maritime Consultative Organization (IMCO) [Now International Maritime Organization (IMO)] Resolution A.477(XII). Title: "Performance Standards for Radar Equipment." Adopted by IMCO November 19, 1981.

(b) For ships of 10,000 gross tons or more and any other ship that is required to be equipped with two radar systems, each of these systems must be capable of operating independently and must comply with the specifications, standards and general requirements established by paragraph (a) of this section. One of the systems must provide a display with an effective diameter of not less than 340 millimeters (13.4 inches) (16-inch cathode ray tube). The other system must provide a display with an effective diameter of not less than 250 millimeters (9.8 inches) (12-inch cathode ray tube).

(c) Recommendations for tools, test equipment, spares and technical manuals are contained in Part IV of Volume III of the RTCM SC–65 Final Report approved by RTCM July 18, 1978.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–21420 Filed 9–17–87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Final Frameworks for Late Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final late-season frameworks from which States may select season dates, limits and other options for the 1987–88 migratory bird hunting season. The earliest of these seasons generally commences on or about October 1, 1987, and include most of those for waterfowl.

The Service annually prescribes hunting regulations frameworks to the States. The effects of this final rule are to facilitate the selection of hunting seasons by the States and to further the establishment of the late-season migratory bird hunting regulations for 1987–88. State selections will be published in the **Federal Register** as amendments to §§ 20.104 through 20.107 and § 20.109 of Title 50 CFR Part 20.

EFFECTIVE DATE: This rule takes effect on September 18, 1987.

ADDRESSES: Send State season selections to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. Comments received on the proposed late-season frameworks are available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. Telephone (202) 254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 13, 1987, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (52 FR 7900) proposals to amend 50 CFR Part 20, with comment periods ending June 18, July 14 and August 25, 1987, respectively, for the 1987–88 Alaska, Hawaii, Puerto Rico and Virgin Islands hunting seasons; other early hunting seasons; and the late hunting seasons frameworks. That document dealt with the establishment of hunting seasons, shooting hours, areas and limits for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. A supplemental proposed rulemaking for both the early- and late-season frameworks appeared in the **Federal Register** dated June 3, 1987 (52 FR 20757).

On July 2, 1987, the Service published for public comment in the **Federal Register** (52 FR 25170) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On August 3, 1987, the Service published in the **Federal Register** (52 FR 28717) a fourth document containing final frameworks for Alaska, Puerto Rico and the Virgin Islands. On August 6, 1987, the Service published in the **Federal Register** (52 FR 29187), a fifth document containing final frameworks for other early seasons for migratory bird hunting from which State wildlife conservation agency officials selected early-season hunting dates, hours, areas and limits for the 1987–88 season. On August 14, 1987 (52 FR 30395) a sixth document containing proposed frameworks for late season migratory bird hunting regulations was published. On August 24, 1987, the Service published in the **Federal Register** (52 FR 31773) a seventh document consisting of a final rule amending Subpart K of Title 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, and common moorhen and purple gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; Canada geese in September in portions of Illinois, Michigan and Minnesota; sandhill cranes in the Central and Pacific Flyways; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and extended falconry seasons. This document is the eighth in the series and establishes final frameworks for late-season migratory bird hunting regulations for the 1987–88 season.

Review of Public Comments and the Service's Response

Written Comments Received

In the **Federal Register** dated June 3, 1987, (52 FR 20757), the Service responded to comments received up to that time on proposed late season frameworks. Statements made at the public hearing on proposed late hunting season frameworks and written comments were summarized and responded to in the **Federal Register** dated August 14, 1987 (52 FR 30395). Since then additional written comments have been received. In several cases, more than one comment was received from the same respondent, and in some others views were offered on more than one regulatory subject. The new comments are summarized and responded to according to the numbered regulatory topics identified in the **Federal Register** dated March 13, 1987 (52 FR 7900).

2. Frameworks for ducks in the conterminous United States—outside dates, season length and bag limits.

a. The Director of the Oklahoma Department of Wildlife Conservation, by letter dated August 25, 1987, noted the

State's support for the cooperative establishment of waterfowl regulations; recalled the Central Flyway Council's disagreement with the Service regulatory response to reduced duck numbers in 1985, especially as related to the equitability of the regulatory changes between Flyways; reiterated concerns that the 1986 regulations continued disproportionally greater restrictions in the Central Flyway compared to other Flyways; restated the Central Flyway Council's recommendation that the 1987 regulations provide for increased harvest opportunity for drake mallards in the Flyway; and noted the initial support of this management strategy by Service representatives and the subsequent denial of said strategy by the Service in response to opposition to the strategy expressed by others, rather than an explained biological reason. The State noted concern with such an approach to regulations, asked how the Central Flyway drake mallard proposal would violate the Service's harvest strategy for mallards, and closed by identifying the restoration of biologically justified and equitable harvest opportunity and the maintenance of a strong supportive user base through a balanced cooperative regulatory process as essential to the recovery of healthy waterfowl populations.

Response: The Service appreciates Oklahoma's continued support of the cooperative regulations development process despite disagreement concerning the suitability and equitability of Central Flyway duck harvest opportunities during the last three regulations cycles. In the August 14, 1987, **Federal Register** (at 52 FR 30397) the Service acknowledged some differences in effects of restrictive regulations on harvest reduction in 1985 and 1986, but noted the continuing disagreement between the Central Flyway Council and Service concerning the effect of some regulations, including the applicability of sex-specific regulations under recent waterfowl population conditions. The Service believes the Central Flyway duck populations are derived from some of the more stressed duck breeding habitats in the central prairie-parklands, and therefore, supports a continued conservative approach to duck harvest opportunity. The Service feels that many questions concerning the role of regulations which target drake mallards are as yet unanswered, and that the answers may be less clear than some biologists believe. The Service has indicated an intent to participate in discussions of selected regulatory strategies at forthcoming flyway technical section meetings, and believes that highly technical issues should be reviewed in those forums, rather than in regulations meetings. The Service agrees with Oklahoma that regulations should be biologically justified, that harvest opportunities be tailored, to the extent possible, to unique Flyway conditions and that in the long run widespread user understanding and support is essential to the maintenance of healthy waterfowl populations and habitats.

b. In a letter dated August 20, 1987, the Florida Game and Fresh Water Fish Commission, endorsed the continuation of restrictive harvest regulations this year and urged that pintail harvest restrictions be increased in other flyways. In addition, the Commission expressed disappointment that the Service did not reduce point values on ring-necked ducks from 35 to 25. The State indicated it has the impression the Service believes the proposed point-value change is for the Atlantic and Mississippi Flyways. The State noted its proposal relates only to the Atlantic Flyway and cited point value differences for pintails between the Atlantic and Mississippi Flyways as cause to similarly set different point values for the ring-necked duck between flyways. Florida maintains that a proposed 25 point value is not a liberalization and has noted that the State could now elect conventional regulations which permit 4 ringnecks in the daily bag. The State believes a body of objective scientific data supports its position on the status of ringneck populations and reduced point values but that the Service continues to deny this change based on positions that are not supported by existing data.

Response: The Service appreciates Florida's support of conservative harvest regulations for the 1987–88 hunting season. Also, the Service supports the Atlantic Flyway's action to reduce pintail harvest, but, notes that breeding populations in 1987 were not dissimilar from 1986 and therefore additional restrictions were not imposed elsewhere. The Service will continue to monitor spring breeding populations of pintails and will consider additional restrictions in 1988 if needed.

Differences in point values by species occur between flyways where data are available to differentiate their population status. However, since limited population and land-recovery information are available for ringneck populations in eastern Canada and the northeast U.S., existing data seem insufficient to justify different point values in the Mississippi and Atlantic Flyways. Further, it is unlikely the Service could grant a lower point value for ringnecks in Florida without considering a similar request from Mississippi Flyway States. The end result could well be a substantial increase in harvest opportunity for ring-necked ducks. It should also be realized that the effects of converting to a 4-bird conventional bag (which permits 4 ringnecks) is not the same as granting a 25 point category for a species. The first may be viewed as a more restrictive change while the second is viewed as a liberalization. Breeding population information derived from surveyed areas is available only for the northcentral region. The population information referenced by Florida was estimated from age ratios and band recovery data from the 1970s and may not accurately characterize recent population status. Thus, there is limited data for those populations of ring-necked ducks important to the harvest in the Atlantic Flyway which can be used to support changes in point values. It is noted that the Mississippi Flyway Council and Ontario have not supported the Atlantic Flyway Council's request for a reduced point value for ringnecks in Florida. In summary, the Service continues to believe a conservative approach to management of harvest opportunities for ring-necked ducks is warranted and, therefore, the point value for ringnecks should remain at 35 points.

c. A Florida resident expressed concern that the proposed point value for pintails in the Atlantic Flyway (i.e., 100 points) is too restrictive, and suggested a point value for pintails be established that allows 2 birds in the daily bag.

Response: The Service appreciates the Florida individual's concern, but notes that the 100-point value for pintails was proposed by the Service in support of action recommended by the Atlantic Flyway Council.

d. In a letter, the Finger Lakes and Western New York Waterfowl Association (Association) questioned the appropriateness of mallard harvest restrictions imposed in the Atlantic Flyway since 1985 and asked that either the hen mallard restriction be dropped or that the mallard bag be increased to four. They expressed dissatisfaction with similar regulatory frameworks in the Mississippi and Atlantic Flyways when the Atlantic Flyway derives little of its mallard harvest from the surveyed areas. They estimated that these restrictions saved only 13,000 prairie mallards yearly which migrate into the

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Atlantic Flyway, but more than 290,000 prairie mallards in the Mississippi Flyway. In addition, they asserted that winter inventory information is unreliable and cannot be used to justify restrictions but suggested that increased mallard availabilities and high productivity in Ontario have offset high recovery rates and justify more liberal regulations. Also, they questioned the effectiveness of hen mallard restrictions when data from the Stabilized Regulations Report suggest hunting mortality is compensatory with heavy predation on hens during nesting.

Response: The Service responded in detail to similar comments raised by the Association concerning mallard restrictions in the Atlantic Flyway and relationship to the Mississippi Flyway in the **Federal Register** published September 12, 1986 (see 51 FR 32463). In each flyway, harvest restrictions were designed to reduce harvest by a similar percentage. Total reductions by flyway will vary based on population size. While winter inventories cannot be used to estimate population size or measure year to year changes, results from this survey are valid to evaluate long-term trends. Presently, information to document breeding populations and annual productivity from outside the surveyed area (eastern Canada and N.E. United States) is not sufficiently well developed to be used to formulate harvest management strategies. The Service, in cooperation with the Atlantic Flyway Council, has expressed the need to improve the waterfowl data base for areas currently outside the surveyed areas.

Information published in the Stabilized Regulations Report, which failed to show an inverse relationship between survival and recovery rate, does not confirm that hunting mortality is compensatory with other mortality. While our knowledge of the effects of hunting mortality on various components of the mallard population has been greatly improved by examination of seasonal mortality, the relationship between harvest of females during the hunting season and subsequent losses during the breeding season is far from clear. However, since female survival is a critical factor to maintain or rebuild mallard populations, the Service believes that a conservative harvest strategy designed to protect females is prudent.

e. An individual from Massachusetts suggested that mallard bag-limit frameworks be at least 3-daily and there be no additional restrictions on mallard hens, because he felt that mallards harvested in Massachusetts are primarily birds derived from New England States. In addition, the individual believes hunters will react more favorably to restrictions on black duck harvest if liberal mallard limits are available.

Response: The Service recognizes the fact that many mallards using the Atlantic Flyway may be distinct from those annually inventoried in the survey areas. However, until population information can be gathered to document their status, the Service believes harvest management strategies for mallards should be conservative and that hen restrictions are justified. The impact of mallard restrictions, including only one hen in the daily bag, on black ducks cannot be fully assessed. Since the harvest on mallards in New England is small and few complete daily bag limits of mallards are reported, impacts to black ducks should be small.

3. American black ducks

The Humane Society of the United States, in a letter dated August 24, 1987, commented that the current black duck harvest reduction program has not been effective in restoring the black duck population and urged the season be closed in 1987. They suggested that reductions in total kill of black ducks likely reflects the continuing decline in the population. Further, they believe that apparent reductions in the kill rate for U.S. banded black ducks, even if real, would cause only insignificant changes in black duck populations as a whole.

Response: Preliminary information obtained from a review of the harvest restrictions imposed in the Atlantic and Mississippi Flyways since 1983 has shown a reduction in harvest of black ducks and a lowering of the kill rate. Presently, no trend is evident from the population information. However, many factors other than harvest may be operating to limit population recovery. The Service will continue current harvest strategies during the 1987–88 hunting season but plans to review existing data and to consider alternative harvest strategies for the 1988–89 season.

4. Wood ducks

a. An Oregon resident questioned the rationale used to increase the bag limit of wood ducks to that for ducks in general, and requested that wood ducks not be hunted in the Pacific Flyway until certain data and information were made available to prove that the population was not in jeopardy. He noted an absence of adequate census and banding data, the limited and much reduced habitat of the species, the fact that other species have been forced into favored wood duck habitats increasing competition, that hunting near roost sites has potential for stressing ducks, that hunting wooded habitats has potential for increased crippling rates, and that dump nests were erroneously interpreted as overpopulation and used to justify the increased limits.

Response: The increase in the bag limit on wood ducks in the Pacific Flyway referred to by the commentor occurred 20 years ago. During 1962–66, the bag limit was 2 wood ducks; but since 1967 the bag limit has been same as the basic limit on ducks which has ranged from 5 to 7. Idaho, in five northern counties, further limits wood ducks to 2 per day. The limit has been 5 in the flyway since 1985. The average harvest has been similar since the increase in the bag limit in the early 1960s. The Service has neither direct nor indirect evidence to suggest that the Pacific Flyway population of wood ducks is in jeopardy or that losses of their breeding habitats is any greater than for other kinds of waterfowl. The Service is considering a joint study with the California Department of Fish and Game to better protect important waterfowl habitats along the Sacramento River, an area of considerable importance to wintering wood ducks.

12. Canvasbacks and redhead ducks

a. The National Wildlife Federation (Federation) expressed support of the Service's proposal to continue the canvasback (Eastern Population) hunting closure in the three eastern flyways. With respect to the Western Population of canvasbacks, the Federation expressed support for the proposed canvasback season frameworks for the Pacific Flyway, but cautioned that in light of the current status of that population, the Service must be prepared to stop the harvest of Western Population canvasbacks if its 1988 breeding population index falls below the minimum threshold.

Response: The Service notes the Federation's support of the regulations frameworks for hunting canvasbacks. When the 1988 canvasback breeding population survey data and the harvest data from the 1987–88 hunting season become available, the Service, in coordination with the flyway councils, will review whether changes are needed in the 1988–89 regulations frameworks for the Western and Eastern Population of canvasbacks.

14. Frameworks for geese and brant in the conterminous U.S.—outside dates, season length and bag limits

Atlantic Flyway

a. In a letter from the Massachusetts Division of Fisheries and Wildlife, the State expressed opposition to limiting the experimental special resident Canada goose season to its Costal Zone. The State believes that this special should be held statewide since criteria based on neck-collar observations were collected in all areas of the State and were below the 20% level allowed. Further, Massachusetts indicated that concern for migratory populations is misplaced because banding data exist that show some geese breeding in the Canadian Maritimes may winter along coastal Massachusetts, particularly the outer Cape Cod area. Although some information suggests that a majority of the resident geese move to the coast in late winter, other geese simply shift to major rivers during severe weather. Thus, a statewide resident Canada goose season would be more effective to control resident numbers without increasing risk to migrant populations.

Response: The Service has reviewed the information presented in Massachusetts' proposal for a resident Canada goose season, but, with less than two years of neck-collar observations, the Service intends to initiate a special season on a limited basis. Since few wintering Canada geese have been banded or neck-collared in Massachusetts in past years, little information exists to identify breeding origins of these birds. Observations of neck-collared Canada geese from neighboring Connecticut have shown migrants to be present during late-January and early-February. Thus, the Service believes a conservative approach that allows the gathering of additional information before expanding this season statewise is warranted.

b. An individual from Massachusetts urged that the proposed special resident Canada goose season in Massachusetts be permitted statewide rather than limited to the State's Coastal Zone in order to provide sufficient reduction of the resident Canada goose population.

Response: See the Service's response to 14a above.

c. Two Massachusetts residents submitted objections to the proposed special resident Canada goose season in the State. One resident specifically referred to the lack of two years information during consideration of the special season.

Response: The Service acknowledges the individuals' objections, but believes the special season is warranted and notes that a conservative approach is being taken in that the season is restricted to the State's Coastal Zone. In regard to the question of data see the Service's response to 14a above.

Mississippi Flyway

a. Illinois has requested that the bag limit framework for Canada geese in the State's Rend Lake Quota Zone be increased to 2 geese daily because the harvest of Canada geese in the zone is closely monitored and a 1-goose daily bag limit is overly restrictive.

Response: In recent years Illinois demonstrated that its quota zone monitoring system provides effective control of the Canada goose harvest within its quota zones; therefore, the Service concurs with the request.

b. In the August 14, 1987, **Federal Register** (52 FR 30400) the Service noted that because of recently expressed concern about the status of the Tennessee Valley Population (TVP) of Canada geese with migrates through portions of the Mississippi Flyway to wintering areas in North and South Carolina, Ohio's request to relax Canada goose harvest restrictions (which had been imposed at State request in all or parts of 4 counties to protect small flocks of giant Canada geese) should be deferred until the potential impact of the requested change on TVP Canada geese can be assessed. In a letter dated August 15, 1987, Ohio reiterated its request and indicated that the requested change might produce, at most, a harvest increase of 20 percent in the eastern part of the requested change area and would not increase the harvest in the western part of the area.

Response: Based on the Service's harvest survey, the estimated harvest of Canada geese in the 4-county area averaged approximately 4,300 birds annually during 1977–86, about one-third of the statewide Canada goose harvest. Data submitted by the State in its comment suggest that perhaps about half of these birds were migrant geese from the Tennessee Valley Population (TVP).

Although Ohio included in its comment information suggesting that the impact on TVP geese of increasing the bag limit in the above areas may not be significant, the Service feels that the restriction should be retained in 1987, and requests that the State collect additional data during the 1987 hunting season, such as neck-collar observations, measurements of harvested geese, etc., for consideration during the establishment of regulations for the 1988 hunting season.

c. Michigan has requested the following regulations frameworks for hunting Canada geese in the State:

i. In the State's North Zone (i.e., Upper Peninsula) a September 26 opening date; establishment of a 4-county quota zone (Ontonagon, Baraga, Houghton and Marquette Counties) with a quota of 6,500 Canada geese, a 20-day season and daily bag limit of 2 geese; throughout the remainder of the Upper Peninsula a 40-day Canada goose season with a daily bag limit of 2 geese.

Response: The establishment of a quota zone and 20-day season in the major goose harvest counties should provide acceptable control of the Canada goose harvest in the Upper Peninsula despite the liberalized season and bag in the nonquota area. The Service believes the 10% increase in the harvest objective for Mississippi Valley Population Canada geese will allow Michigan to remain within State harvest objectives despite increased season length and bag limits in several goose zones.

ii. In the State's Middle Zone, a 40-day Canada goose season with a daily bag limit of 2 geese.

Response: The Service accepts the State's position that harvest will increase only slightly in the Middle Zone despite the 10-day increase in season length and one additional goose per day in the bag.

iii. In the State's South Zone west of Highways 27 and 127, a 40-day Canada goose season with a daily bag limit of 1 goose, and no change in the Allegan County Quota Zone.

Response: The South Zone (west) contains the Allegan County and Muskegon Wastewater Goose Management Area quota zones. The combination of quota areas, increasing numbers of giant Canada geese and an increased State harvest objective for Canada geese should combine to limit the harvest of migrant geese to acceptable levels in the South Zone (west) despite the increase in season length.

iv. In the State's South Zone east of Highways 27 and 127, a 40-day Canada goose season with a daily bag limit of 2 geese, and a reduction in the Saginaw County Goose Management Area quota from 5,000 Canada geese to 4,500.

Response: The Service notes that the season length and bag limit frameworks requested by the State reflect those proposed by the Service in the August 14, 1987, **Federal Register** (52 FR 30406). The final frameworks established herein include the reduction in the Canada goose harvest quota for the Saginaw County Goose Management Area. The

State proposed the reduction in recognition of concerns by the Service and the Atlantic Flyway Council over the status of Tennessee Valley Population Canada geese.

v. In the State's Southern Michigan Goose Management Area, a special late-season for Canada geese of only 30 days (between January 9 and February 7) with a daily bag limit of 2 geese, and a simplification of the area boundary by expanding it to follow Highways M–45, M–21 and Interstate 69.

Response: The Service concurs with the requested changes. The later, shorter special season should reduce the proportion of migrant geese in the special-season harvest, which has been unacceptably high in some past years.

Pacific Flyway

a. The National Wildlife Federation reiterated its support for restrictive seasons and hunting closures to assist the recovery of cackling Canada geese, Pacific white-fronted geese, black brant and emperor geese.

Response: As noted in the August 14, 1987, **Federal Register** (52 FR 30399), the Service believes the proposed season frameworks on geese and brant are in keeping with management guidelines and are appropriate to rebuilding those populations that have declined.

15. Tundra swans

a. The National Wildlife Federation urged that the experimental tundra swan hunting season in North Carolina become an operational part of the annual regulations development process.

Response: The Service proposes to continue North Carolina's tundra swan hunting season on an experimental basis while the "hunt plan" to coordinate the sport harvest of Eastern Population tundra swans among the four waterfowl flyways is being completed. In addition, the Service notes that only 2 years of North Carolina's 3-year experimental season were conducted at the 6,000-permits level, therefore, continuing the season experimental in 1987–88 will allow for the collection of a third year of hunting season data at that permit level.

b. Twenty additional comments have been received from individuals expressing their support of and 1 individual expressed opposition to a tundra swan hunting season in New Jersey.

Response: The "hunt plan" to coordinate the sport harvest of Eastern Population tundra swans among the four waterfowl flyways has not been completed; therefore, the Service is not proposing the experimental season in New Jersey.

Nontoxic Shot Regulations

In the July 21, 1987, **Federal Register** (52 FR 27352), the Service published a final rule describing areas in which lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1987–88 hunting seasons.

Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting. Attention is also directed to the January 15 and July 21, 1987 **Federal Register** (52 FR 1638 and 27363, respectively), which gave notice if States do not approve nontoxic shot zones when current Service guidelines and criteria indicate such zones are necessary to protect migratory birds, the Secretary of the Interior, acting through the Service, will not open those areas to waterfowl and coot hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council of Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service at the address indicated under the caption **ADDRESS.** As noted in the March 13, 1987, **Federal Register** (52 FR 7905), the Service is preparing a Supplemental Environmental Impact Statement (SEIS) on the FES. The Service indicated a mid-July 1987 publication date for a draft SEIS to be followed by public meetings prior to preparation of the final SEIS was anticipated; however, it is now unlikely that the draft SEIS will be available before early September.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and shall] "insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or adverse modification of [critical] habitat . . ." The Service therefore initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 15, 1987, the Office of Endangered Species gave a biological opinion that the proposed action was not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, Department of the Interior, Washington, DC.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the **Federal Register** dated March 13, 1987, (52 FR 7900), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. These final regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated August 3, 1987 (52 FR 28717).

Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed late hunting season rulemakings were published on March 13, June 3, and August 14, 1987, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that at the close of each period time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the States would have insufficient time to select season dates, shooting hours and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures that implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended, (40 Stat. 755; 16 U.S.C. 703 et seq.), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from State officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR Part 20 (§§ 20.104 through 20.107 and § 10.109) to reflect seasons, limits and shooting hours for the conterminous United States for the 1987–88 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1987–88 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918, (40 Stat. 755; 16 U.S.C. 701–708h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739; as amended, 54 Stat. 1103–04).

Final Regulations Frameworks for 1987–88 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved final frameworks for season lengths, shooting hours, bag and possession limits and outside dates within which States may select seasons for hunting waterfowl and coots. Frameworks are summarized below.

General

Split Season: States in all Flyways may split their season for ducks, geese or brant into two segments. States in the Atlantic and Central Flyways may, in lieu of zoning, split their season for ducks or geese into three segments. Exceptions are noted in appropriate sections.

Shooting Hours: From one-half hour before sunrise to sunset daily, for all species and seasons, including falconry seasons.

Extra Teal: States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck season. States in the Atlantic Flyway (except Florida) not selecting the point system may select an extra teal limit of no more than 2 blue-winged teal or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season. These extra limits are in addition to the regular duck bag and possession limits.

Special Scaup-only Season: States in the Atlantic, Mississippi and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

1. The season must fall between October 1, 1987, and January 31, 1988, in the Atlantic Flyway and October 3, 1987, and January 31, 1988, in the Mississippi and Central Flyways, all dates are inclusive.

2. The season must fall outside the open season for any other ducks except sea ducks.

3. The season must be limited to areas mutually agreed upon by the State and the Service prior to August 31, 1987.

4. These areas must be described and delineated in State hunting regulations.

Or

Extra Scaup: As an alternative, States in the Atlantic, Mississippi and Central Flyways, except those selecting the point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions 3 and 4 listed above. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

Point System: Selection of the point system for any State entirely within a flyway must be on a statewide basis, *except* if New York selects the point system, conventional regulations may be retained for the Long Island Area. New York may not select the point system within the Upstate zoning option, and Massachusetts, Pennsylvania and Vermont may not select the point system pending completion of zoning studies.

Deferred Season Selections: States that did not select rail, woodcock, snipe, sandhill cranes, common moorhens and purple gallinules and sea duck seasons in July should do so at the time they make their waterfowl selections.

Frameworks for open seasons and season lengths, bag and possession limit options, and other special provisions are listed below by Flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

Ducks, Coots and Mergansers

Hunting Seasons and Duck Limits

Outside Dates: Between October 1, 1987, and January 18, 1988.

Hunting Season: Not more than 40 days.

Duck Limits: The daily bag limit of ducks is 4 and may include no more than 3 mallards (only 1 may be a hen), 1 pintail, 2 wood ducks, 1 black duck and 1 fulvous tree duck. The possession limit is 8, including no more than 6 mallards, (no more than 2 of which may be a female), 2 black ducks, 2 pintails, 4 wood ducks, and 2 fulvous tree ducks (except as noted below). The limit of redheads is 2 daily and 4 in possession. The season is closed to the taking of canvasbacks.

Point System Options: As an alternative to conventional bag limits for ducks, a 40-day season with a point-system bag limit may be selected by

Atlantic Flyway States during the framework dates prescribed. Point values for species and sexes taken are as follow: in Florida only, the fulvous tree duck counts 100 points each; the female mallard, black duck, mottled duck (except South Carolina) and pintail count 100 points each. Wood duck (except in Virginia, North Carolina, South Carolina and Georgia during the early wood duck season option), redhead and hooded merganser count 70 points each; scaup, blue-winged teal, green-winged teal, sea ducks, wigeon, shoveler, gadwall, and merganser (except hooded) count 20 points each; the wood duck during the early wood duck season option in Virginia, North Carolina, South Carolina and Georgia counts 25 points each; the male mallard, ring-necked duck, goldeneye, bufflehead and all other ducks count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in two days.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Merganser Limits: Throughout the Flyway the daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: Throughout the Flyway daily bag and possession limits of coots are 15 and 30, respectively.

Early Wood Duck Season Option: Virginia, North Carolina, South Carolina and Georgia may split their regular hunting season so that a hunting season not to exceed 9 consecutive days occurs between October 1 and October 15. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks. Under the point system, wood ducks shall be 25 points. For other ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations. For those States using conventional regulations, the extra teal option may be selected concurrent with the early wood duck season option. This exception to the daily bag and possession limits of wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

Restrictions on Wood Ducks: Under conventional and point system options, the daily bag and possession limits may not include more than 2 and 4 wood ducks, respectively.

Restriction on Mottled Ducks: The season is closed to the taking of mottled ducks in South Carolina.

Special Scaup and Goldeneye Season: In lieu of a special scaup season, Vermont may, for the Lake Champlain Zone, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneye or 3 in the aggregate, and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to the special scaup season elsewhere.

Zoning

New York: New York may, for Long Island Zone, select season dates and daily bag and possession limits which differ from those in the remainder of the State.

Upstate New York (excluding the Lake Champlain zone) may be divided into three zones (West, North, South) for the purpose of setting separate duck, coot and merganser seasons. Only conventional regulations may be selected. A 2-segment split season may be selected in each zone. Teal and scaup bonus options shall be applicable, but the 16-day special scaup season will not be allowed.

The West Zone is that portion of Upstate New York lying west of a line commencing at the north shore of the Salmon River and its junction with Lake Ontario and extending easterly along the north shore of the Salmon River to its intersection with Interstate Highway 81, then southerly along Interstate Highway 81 to the Pennsylvania border.

The North and South Zones are bordered on the west by the boundary described above and are separated from each other as follows: Starting at the intersection of Interstate Highway 81 and State Route 49 and extending easterly along State Route 49 to its junction with State Route 365 at Rome, then easterly along State Route 365 to its junction with State Route 28 at Trenton, then easterly along State Route 28 to its junction with State Route 29 at Middleville, then easterly along State Route 29 to its intersection with Interstate Highway 87 at Saratoga Springs, then northerly along Interstate Highway 87 to its junction with State Route 9, then northerly along State Route 9 to its junction with State Route 149, then easterly along State Route 149 to its junction with State Route 4 at Fort Ann, then northerly along State Route 4 to its intersection with the New York/Vermont boundary.

Connecticut: Connecticut may be divided into two zones as follows:

a. North Zone—That portion of the State north of Interstate 95.

b. South Zone—That portion of the State south of Interstate 95.

Maine: Maine may be divided into two zones as follows:

a. North Zone—Game Management Zones 1 through 5.

b. South Zone—Game Management Zones 6 through 8.

New Hampshire: Coastal Zone—That portion of the State east of a boundary formed by State Highway 4 beginning at the Maine-New Hampshire line in Rollinsford west to the city of Dover, south to the intersection of State Highway 108, south along State Highway 108 through Madbury, Durham and Newmarket to the junction of State Highway 85 in Newfields, south to State Highway 101 in Exeter, east to State Highway 51 (Exeter-Hampton Expressway), east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south along Interstate 95 to the Massachusetts line.

Inland Zone—That portion of the State north and west of the above boundary.

West Virginia: West Virginia may be divided into two zones as follows:

a. Allegheny Mountain Upland Zone—The eastern boundary extends south along U.S. Route 220 through Keyser, West Virginia, to the intersection of U.S. Route 50; follows U.S. Route 50 to the intersection with State Route 93; follows State Route 93 south to the intersection with State Route 42 and continues south on State Route 42 to Petersburg; follows State Route 28 south to Minnehaha Springs; then follows State Route 39 west to U.S. Route 219; and follows U.S. Route 219 south to the intersection of Interstate 64. The southern boundary follows I–64 west to the intersection with U.S. Route 60, and follows Route 60 west to the intersection of U.S. Route 19. The western boundary follows: Route 19 north to the intersection of I–79, and follows I–79 north to the intersection of U.S. Route 48. The northern boundary follows U.S. Route 48 east to the Maryland State line and the State line to the point of beginning.

b. Remainder of the State—That portion outside the above boundaries.

Zoning Experiments

Vermont will continue a Lake Champlain Zone in 1987. The Lake Champlain Zone of New York must follow the waterfowl season, daily bag and possession limits, and shooting hours selected by Vermont. Massachusetts, New Jersey, and

Pennsylvania, may continue zoning experiments now in progress as shown in the sections that follow. Massachusetts and New Jersey may be divided into three zones, Pennsylvania into four zones and Vermont into two zones all on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. Only conventional regulations may be selected in Massachusetts, Pennsylvania and Vermont. A two-segment split season without penalty may be selected. The basic daily bag limit of ducks in each zone and the restrictions applicable to the regular season for the Flyway also apply. Teal and scaup bonus bird options, and the 16-day special scaup season shall be allowed.

Zone Definitions

Massachusetts: Western Zone—That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

Central Zone—That portion of the State east of the Western Zone and west of a line extending from the New Hampshire line at Interstate 95 south to Route 1, south on Route 1 to I–93, south on I–93 to Route 3, south on Route 3 to Route 6, west on Route 6 to Route 28, west on Route 28 to I–195, west to the Rhode Island line, EXCEPT the waters, and the lands 150 yards along the high-water mark, of the Assonit River to the Route 24 bridge, and the Taunton River to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of the State east and south of the Central Zone.

New Jersey: Coastal Zone—That portion of New Jersey seaward of a continuous line beginning at the New York State boundary line in Raritan Bay; then west along the New York boundary line to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware boundary in Delaware Bay.

North Zone—That portion of New Jersey west of the Coastal Zone and north of a boundary formed by Route 70 beginning at the Garden State Parkway west to the New Jersey Turnpike, north on the turnpike to Route 206, north on Route 206 to Route 1, Trenton, west on Route 1 to the Pennsylvania State boundary in the Delaware River.

South Zone—That portion of New Jersey not within the North Zone or the Coastal Zone.

Pennsylvania: Lake Erie Zone—The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

North Zone—That portion of the State north of I–80 from the New Jersey State line west to the junction of State Route 147; then north on State Route 147 to the junction of Route 220, then west and/or south on Route 220 to the junction of I–80, then west on I–80 to its junctions with the Allegheny River, and then north along but not including the Allegheny River to the New York border.

Northwest Zone—That portion of the State bounded on the north by the Lake Erie Zone and the New York line, on the east by and including the Allegheny River, on the South by Interstate Highway I–80, and on the west by the Ohio line.

South Zone—The remaining portion of the State.

Vermont: Lake Champlain Zone—Includes the United States portion of Lake Champlain and those portions of New York and Vermont which includes that part of New York lying east and north of boundary running south from the Canadian border along New York Route 9B to New York Route 9 south of Champlain, New York; New York Route 9 to New York Route 22 south of Keeseville; along New York Route 22 to South Bay, along and around the shoreline of South Bay to New York Route 22; along New York Route 22 to U.S. Highway 4 at Whitehall; and along U.S. Highway 4 to the Vermont border. From the New York border at U.S. Highway 4, along U.S. Highway 4 to Vermont Route 22A at Fair Haven; Route 22A to U.S. Highway 7 at Vergennes; U.S. Highway 7 to the Canadian border.

Interior Vermont Zone—The remaining portion of the State.

Sea Ducks

The daily bag and possession limit for sea ducks in special sea duck areas is in addition to the limits applying to other ducks during the regular duck season. In all areas outside of special sea duck areas, sea ducks are included in the regular duck season conventional or point sytem daily bag and possession limits.

Canada Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1987, and January 20, 1988 Maine, New Hampshire, Vermont, Massachusetts, Pennsylvania, West Virginia, Maryland and Virginia (excluding those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17) may select 70-day seasons for Canada geese. The daily bag and possession limits are 3 and 6 geese, respectively, except in Pennsylvania Counties of Erie, Mercer, Butler, and Crawford where the daily bag and possession limits are 1 and 2, respectively. In New York (including Long Island), Rhode Island, Connecticut, (North Zone only) New Jersey, Delaware, the Delmarva Peninsula portions of Maryland and Virginia, and that potion of Pennsylvania lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on I–81 to Route 443, east on 443 to Leighton, then east via 208 to Stroudsburg, then east on I–80 to the New Jersey line, the Canada goose season length may be 90 days with the closing framework date extended to January 31, 1988. In addition, that portion of the Susquehanna River from Harrisburg north to the confluence of the west and north branches at Northumberland, including a 25-yard zone of land adjacent to the waters of the river, is included in the 90-day zone. the daily bag limit within this area (except New York, Rhode Island, and Connecticut) will be 4 birds with the possession limit of 8 birds. The daily bag and possession limits in New York, Rhode Island, and Connecticut (North Zone) will be 3 and 6, respectively. In the South Zone of Connecticut (that portion south of Interstate 95) the Canada goose season length may be 90 days with the closing framework date extended to February 5, 1988. The daily bag limit and possession limit will be 3 and 6, respectively, through January 14 and 5 and 10, respectively from January 15 to February 5, 1988. This season in the South Zone of Connecticut is experimental. Those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17 in Virginia may select a 50-day season for Canada geese within the October 1, 1987, to January 20, 1988, framework; the daily bag and possession limits are 2 and 4 Canada geese, respectively. North Carolina and South Carolina may select a 43-day season for Canada geese within a December 20, 1987, to January 31, 1988, framework; the daily bag and possession limits are 1 and 2 Canada geese, respectively. In the Coatal Zone of Massachusetts, a special resident Canada goose season may be held within January 21, 1987, to February 5, 1988; the daily bag and possession limits are 5 and 10, respectively.

Closures on Canada geese: The season for Canada geese is closed in Flordia and Georgia.

Snow Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1987, and January 31, 1988, States in the Atlantic Flyway may select a 90/day season for snow geese (including blue geese); the daily bag and possession limis are 4 and 8, respectively.

Atlantic Brant

Outside Dates, Seasn Lengths, and Limits; Between October 1, 1987, and January 20, 1988, States in the Atlantic Flyway may select a 30-day season for Atlantic brant; the daily bag and possession limits are 2 and 4 brant, respectively.

Tundra Swans

In North Carolina an experimental season for tundra swans may be selected subject to the following conditions: (a) The season may be 90 days and must run concurrently with the snow goose season; (b) the State agency must issue and obtain harvest and hunting participation data; and (c) no more than 6,000 permits may be issued, auhorizing each permitee to take 1 tundra swan.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michian, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

Ducks, Coots, and Mergansers

Outside Dates: Between October 3, 1987 (October 1 in Wisconsin), and January 17, 1988, in all States.

Hunting Season: Not more than 40 days.

Canvasbacks: The season on canvasbacks is closed.

Limits: The daily bag limit of ducks is 4, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 2 wood ducks (except as noted below), 2 pintails, and 1 redhead. The possession limit is 8, including no more than 4 mallards (no more than 2 of which may be female), 2 black ducks, 4 wood ducks (except as noted below), 4 pintails, and 2 redheads.

Merganser Limits: The dail bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag and possession limits of coots are 15 and 30, respectively.

Point-System Option: As an alternative to conventional bag limits for ducks, a 40-day season with point-system bag and possession limis may be selected within the framework dates prescribed. Point values for species and sexes taken are as follows: The female mallard and black duck count 100 points each; the redhead, wood duck (except as noted below) and hooded merganser count 70 points each; the blue-winged teal, cinnamon teal, wigeon, gadwall, shoveler, scaup, green-winged teal and mergansers (except hooded merganser) count 20 points each; the male mallard, pintail, and all other species of ducks count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Coot Limits—Point System: Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

Early Wood Duck Season Option: Arkansas, Louisiana, Mississippi and Alabama may split their regular duck hunting seasons in such a way that a hunting season not to exceed 9 consecutive days may occur between October 3 and October 15. During this period, under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks, and under the point system the point value of wood ducks shall be 25 points. For other species of ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point-system regulations. In addition, the extra blue-winged teal option available to States in this Flyway that select conventional regulations and do not have a September teal season may be selected during this period. This exception to the daily bag and possesion limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after Octobr 15.

Western Louisiana: In that portion of Louisiana west of a boundary beginning at the Arkansas-Louisiana border on Louisiana Highway 3; then south along Louisiana Highway 3 to Bossier City; then east along Interstate 20 to Minden; then south along Louisiana Highway 7 to Ringgold; then east along Louisana Highway 4 to Jonesboro; then south along U.S. Highway 167 to Lafayette; then southeast along U.S. Highway 90 to Houma; then south along the Houman Navigation Channel to the Gulf of Mexico through Cat Island Pass—the seaon for ducks coots and mergansers may extend 5 additional days. If the 5-day extension is selected, and if point-system regulatons ae selected for the State, point values will be the same as for the rest of the State.

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits and shooting hours in the Pymatuning Reservoir area of Ohio will be the same as those selected by Pennsylvania. The area includes Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 knows as Woodward Road, on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Zoning

Alabama, Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons for ducks, coots and mergansers by zones described as follows:

Alabama: South Zone—Mobile and Baldwin Counties. North zone—The remainder of Alabama. The season in the South Zone may be split.

Illinois: North Zone—That portion of the State north of a line running east from the Iowa border along Illinois Highway 92 to I–280, east along I–280 to I–80, then east along I–80 to the Indiana border. Central Zone—That portion of the State between the North and South Zone boundaries. South Zone—That portion of the State south of a line running east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along Highway 12 to Illinois Highway 3, north along Illinois Highway 3 to Illinois Highway 159, north along Illinois Highway 159 to Illinois Highway 161, east along Illinois Highway 161 to Illinois Highway 4, north along Illinois Highway 4 to I–70, then east along I–70 to the Indiana border.

Indiana: North Zone—That portion of the State north of a line extending east from the Illinois border along State highway 18 to U.S. Highway 31, then north along U.S. 31 to U.S. Highway 24, then east along U.S. 24 to Huntington, then southeast along U.S. Highway 224 to the Ohio border. Ohio River Zone: That portion of Indiana south of a line extending east from the Illinois border along interstate Highway 64 to New Albany, then east along State Highway 62 to State Highway 56, then east along State Highway 56 to Vevay, then on State Highway 156 along the Ohio River to North Landing, then north along State Highway 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border. South Zone: That portion of the

State between the North and Ohio River Zone boundaries. The season in each zone may be split into two segments.

Iowa: North Zone—That portion of Iowa north of a line running west from the Illinois border along I–80 to U.S. 59, north along U.S. 59 to State Highway 37, northwest along State Highway 37 to State highway 175, then west along State highway 175 to the Nebraska border. South Zone—the remainder of the State.

Michigan: North Zone—The Upper Peninsula. South Zone—That portion of the State south of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and east and south along the south shore of, Stony Creek to Webster Road, east and south on Webster Road to Stony Lake Road, east on Stony Lake and Garfield Roads to M–20, east on M–20 to U.S.-10B.R. in the city of Midland, east on U.S.–10B.R. to U.S.–10, east on U.S.–10 and M–25 to the Saginaw River, downstream along the thread of the Saginaw River to Saginaw Bay, then on a northeasterly line, passing one-half mile north of the Corps of Engineers confined disposal island offshore of the Carn powerplant, to a point one mile north of the Charity islands, then continuing northeasterly to the Ontario border in Lake Huron. Middle Zone—The remainder of the State. Michigan may split its season in each zone into two segments.

Missouri: North Zone—That portion of Missouri north of a line running east from the Kansas border along U.S. Highway 54 to U.S. Highway 65, south along U.S. 65 to State Highway 32, east along State Highway 32 to State Highway 72, east along State Highway 72 to State Highway 21, south along State Highway 21 to U.S. Highway 60, east along U.S. 60 to State Highway 51, south along State highway 51 to State Highway 53, south along State Highway 53 to U.S. Highway 62, east along U.S. 62 to I–55, north along I–55 to State Highway 34, then east along State Highway 34 to the Illinois border. South Zone—The remainder of Missouri. Missouri may split its season in each zone into two segments.

Ohio: The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Muskingam, Guernsey, Harrison and Jefferson and all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Fairfield and Perry Counties bounded on the west by State Highway 37, on the south by State Highway 204, and on the east by State Highway 13. Ohio River Zone—The counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs. South Zone—That portion of the State between the North and Ohio River Zone boundaries. Ohio may split its season in each zone into two segments.

Tennessee: Reelfoot Zone—Lake and Obion Counties, or a designated portion of that area. State Zone—The remainder of Tennessee. Seasons may be split into two segments in each zone.

Wisconsin: North Zone—That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State Highway 35 to State Highway 25, north along State Highway 25 to U.S. Highway 10, east along U.S. Highway 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then easterly to the eastern State boundary in Lake Michigan. South Zone—The remainder of Wisconsin. The season in the South Zone may be split into two segments.

Within each State: (1) The same bag limit option must be selected for all zones; and (2) if a special scaup season is selected for a zone, it shall be held outside the regular season in that zone.

Geese

Definition: For the purpose of hunting regulations listed below, the term "geese" also includes brant.

Outside Dates, Season Lengths and Limits: Between October 3, 1987 (October 1 in Wisconsin) and January 17, 1988, States may select 70-day seasons for geese, with a daily bag limit of 5 geese, to include no more than 2 white-fronted geese. The possession limit is 10 geese, to include no more than 4 white-fronted geese. Regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Outside Dates and Limits on Snow and White-fronted Geese in Arkansas and Louisiana: Between October 3, 1987, and January 31, 1988, Arkansas may hold a 70-day season on snow (including blue) geese. Between October 3, 1987, and February 14, 1988, Louisiana may hold 70-day seasons on snow (including blue) and white-fronted geese by zones established for duck hunting seasons. Daily bag and possession limits are as described above.

Minnesota. In the:

(a) Lac Qui Parle Goose Management Block (Big Stone, Swift, Chippewa, Lac Qui Parle, and Yellow Medicine Counties) the season for Canada geese may extend for 30 days. In the Lac Qui Parle Quota Zone (described in State Regulations) the season will close after 30 days or when 4,000 birds have been harvested, which ever occurs first. Throughout the 5-county area the daily bag limit is 1 Canada goose and the possession limit is 2.

(b) Southeastern Zone (the Counties of Washington, Anoka, Hennepin, Carver, Scott, Rice, Steele, and Freeborn, and all Counties south and east thereof) the season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4. In selected areas of the Metro Goose Management Block (described in State regulations) and in Olmsted County, experimental late seasons may be held during December 18–27 to harvest Giant Canada geese. During these seasons, the daily bag limit is 2 Canada geese and the possession limit is 4.

(c) Remainder of the State the season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

Iowa: The season may extend for 45 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season for geese in the Southwest Goose Zone (that portion of the State bounded by U.S. Highway 92 and 71) may be held at a different time than the season in the remainder of the State.

Missouri In the:

(a) Swan Lake Zone (described in State regulations) the season for Canada geese closes after 40 days or when 10,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Southeast Zone (east of U.S. Highway 67 and south of Crystal City)—A 40-day season on Canada geese may be selected December 1, 1987, and January 17, 1988, with a daily bag limit of 1 Canada goose and a possession limit of 2.

(c) Remainder of the State the season for Canada geese may extend for 40 days in the respective duck hunting zones. The daily bag limit is 1 Canada goose, and the possession limit is 2.

Wisconsin: The total harvest of Canada geese in the State will be limited to 49,500 birds. In the:

(a) Horicon—Central Zone (Columbia, Dodge, Fond Fond Du Lac, Green Lake, Marquette and Winnebago Counties, and the northwest portion of Washington County north of State Highway 33 and west of U.S. Highway 45)—the harvest of Canada geese is limited to 32,500 birds, with 2,000 birds allocated to the Theresa Subzone. The season may not exceed 50 days. In the Theresa Subzone (described in State regulations), the daily bag limit is 1 Canada goose per permittee per 5-day

period, up to a season limit of 4. In the remainder of the Horicon-Central Zone, the season limit may not exceed 2 Canada geese per permittee, and the issuance of permits and tags may not exceed 40,300 permits with 1 tag each and 3,000 permits with 2 tags each.

(b) Mississippi River Zone (that portion of the State west of the Burlington-Northern Railroad in Grant, Crawford, Vernon, LaCrosse, Trempealeau, Buffalo, Pepin and Pierce Counties)—the season for Canada geese may extend for 70 days. Limits are 1 Canada goose daily and 2 in possession through November 24, and 2 daily and 4 in possession thereafter.

(c) Northeast Goose Zone (that portion of the North Duck Zone which includes the Counties of Vilas, Oneida, Lincoln, Marathon, a portion of Wood County, and all counties or portions of counties eastward). The season for Canada geese may not exceed 12 days. The daily bag limit is 1 Canada goose and the possession limit is 2. In Brown County, a special late season to control local populations of giant Canada geese may be held during December 1–31. The daily bag and possession limits during this special season are 2 and 4 birds, respectively.

(d) Southeast Goose Zone (that portion of the South Duck Zone which includes part of Wood County, Juneau, Sauk, Dane and Green Counties and all counties or portions of counties eastward)—in that portion of Southeast Zone outside the Horicon-Central tag zone, the season may not exceed 12 days. The daily bag limit is 1 Canada goose and the possession limit is 2. In the Rock Prairie Zone (described in State regulations), a special late season to harvest giant Canada geese may be held between November 7 and December 6. During the late season, the daily bag limit is 1 Canada goose and the possession limit is 2.

(e) Northwest Goose Zone (that portion of the North Duck Zone west of the Northeast Goose Zone)—the season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(f) Southwest Goose Zone (that portion of the South Duck Zone west of the Southeast Goose Zone)—the season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

In that portion of Wisconsin outside the Horicon-Central Zone, the progress of the Canada goose harvest must be monitored and the season closed if necessary, to insure that the harvest does not exceed 17,000 birds.

Illinois: The total harvest of Canada geese in the State will be limited to 52,500 birds. In the:

(a) Southern Illinois Quota Zone (described in State regulations)—The season for Canada geese will close after 50 days or when 26,300 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Rend Lake Quota Zone (Franklin and Jefferson Counties)—The season for Canada geese will close after 50 days or when 7,900 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(c) Tri-County Area (all of Knox County; the townships of Buckhart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, Putnam and that portion of Banner Township bounded on the north by Illinois Route 9 and on the east by the U.S. 24 in Fulton County; the township of Alba, Annawan, Atkinson and Cornwall in Henry County)—The season for Canada geese may not exceed 30 days. The daily bag limit is 1 Canada goose and the possession limit is 4.

(d) Remainder of State—Seasons for Canada geese up to 40 days may be selected by zones established for duck hunting seasons. The daily bag limit is 2 Canada geese and the possession limit is 4.

Michigan: The total harvest of Canada geese in the State will be limited to 58,000 birds. In the:

(a) North Zone—The framework opening date for geese is September 26 and the season for Canada geese may extend for 40 days, except in Ontonagon, Baraga, Houghton and Marquette Counties, where the season will close after 20 days or when 6,500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Middle Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(c) South Zone—(1) Allegan County Zone (that portion of Allegan County west of U.S. Highway 131)—the season for Canada geese will close after 50 days or when 3,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(2) Muskegon Wastewater Zone (described in State regulations)—the season for Canada geese will close after 50 days or when 500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(3) Saginaw County Goose Management Area—the season for Canada geese will close after 50 days or when 4,500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(4) Remainder of South Zone: (i) East of U.S. Highways 27 and 127—the season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(ii) West of U.S. Highways 27 and 127—the season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(d) Southern Michigan Goose Management Area (that portion of Michigan south of a boundary described as follows: From the beginning of the Michigan-Ontario border at the Bluewater Bridge south and west along highways I–94, I–69, M–21, I–96, I–196, and Lake Michigan Drive (M–45), then due west to the Wisconsin border)—A late Canada goose season of up to 30 days may be held between January 9 and February 7, 1988. The daily bag limit is 2 Canada geese and the possession limit is 4.

Ohio: The daily bag limit is 2 Canada geese and the possession limit is 4, except that in the counties of Ashtabula, Trumbull, Marion, Wyandot, Lucas, Ottawa, Erie, Sandusky, Mercer and Auglaize, the daily bag limit is 1 Canada goose and the possession limit is 2.

Indiana: The total harvest of Canada geese in the State will be limited to 16,000 birds. In:

(a) Posey County—The season for Canada geese will close after 50 days or when 4,700 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1988.

(b) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

Kentucky: In the:

(a) West Kentucky Zone (that portion of the State west of a line beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending northerly along the Purchase Parkway to I–24, east on I–24 to U.S. 641; northerly on U.S. 641 to U.S. 60; northeasterly on U.S. 60 to U.S. 41; and then northerly on U.S. 41 to the Kentucky-Indiana border)—The season for Canada geese may extend for 50 days, and the harvest will be limited to 16,500 birds. Of the 16,500-bird quota, 10,400 birds will be allocated to the Ballard Subzone and 3,300 birds will be allocated to the Henderson-Union

Subzone (both subzones described in State regulations). If the quota in either subzone is reached prior to completion of the 50-day season, the season in that subzone will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 50 days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1988.

(b) Remainder of the State—The season may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

Tennessee: In the:

(a) Northwest Zone (Lake, Obion, and Weakley Counties, and those portions of Gibson and Dyer Counties not included in the Southwest Zone)—The season may extend for 50 days, and the harvest of Canada geese will be limited to 7,200 birds. Of the 7,200–bird quota, 5,000 birds will be allocated to the Reelfoot Subzone (described in State regulations). If the quota in the Reelfoot Subzone is reached prior to completion of the 50-day season, the season in the subzone will be closed. If this occurs, the season in the remainder of the Northwest Zone may continue for an additional 7 days, not to exceed a total of 50 days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1988.

(b) Southwest Zone (that portion of the State bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45)—The season for Canada geese may extend for 15 days, with a framework closing date of January 31, 1988. The daily bag limit is 1 Canada goose and the possession limit is 2.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 1 Canada goose and the possession limit is 2, except in that portion west of State Highway 13, where the daily bag and possession limits are 2 and 4, respectively.

Arkansas: The total harvest of Canada geese in the State will be limited to 2,400 birds. The season for Canada geese may extend for 15 days, with a framework closing date of January 31, 1988. The daily bag limit is 1 Canada goose and the possession limit is 2.

Louisiana: The season for Canada geese is closed.

Mississippi: In the:

(a) Sardis Zone (described in State regulations)—The season for Canada geese may extend for 30 days, 10 days of which must occur before December 15, 1987. The daily bag limit is 1 Canada goose and possession limit is 2.

(b) Remainder of the State—The season for Canada geese may not exceed 15 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

In both areas, the framework closing date is January 31, 1988.

Alabama: In Alabama, the daily bag limit is 2 Canada geese and the possession limit is 4.

Missouri, Illinois, Indiana, Kentucky and Tennessee Quota Zone Closures

When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, the Swan Lake Zone in Missouri, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not in excess of 48 hours) as they deem necessary.

Shipping Restriction

In Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton and Carlisle, geese may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the entire Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

Ducks (including mergansers) and Coots

Outside Dates: October 3, 1987, through January 17, 1988.

Canvasbacks: There will be no open season on canvasbacks in the Central Flyway.

Hunting Season: Seasons in the Low Plains Unit may include no more than 51 days. Seasons in the High Plains Mallard Management Unit may include no more than 67 days, provided that the last 16 days may start no earlier than December 12, 1987. The High Plains Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, shall be described in State regulations.

States may split their seasons into 2 or, in lieu of zoning, 3 segments.

Daily Bag and Possession Limits

Conventional limits are 4 ducks daily which may include no more than 3 mallards no more than 1 of which may be a female, 3 pintails, 1 redhead, 1 hooded merganser, and 2 wood ducks; and 8 in possession which may include no more than 6 mallards no more than 1 of which may be a female, 6 pintails, 2 redheads, 2 hooded mergansers, and 4 wood ducks.

As an alternative, States may select point system bag and possession limits. Under this system, the daily limit is reached when the point values of the last duck taken and other ducks already taken during that day total 100 or more points. The value of each female mallard, black duck, and mottled duck is 100 points; each wood duck, redhead and hooded merganser, and in Texas only, each black bellied whistling duck and fulvous whistling duck is 70 points; each blue-winged teal, green-winged teal, cinnamon teal, scaup, gadwall, wigeon, shoveler, and merganser (except the hooded merganser) is 20 points; and each pintail, drake mallard, and each duck of other species and sexes is 35 points. The possession limit is the equivalent of two daily limits.

Daily bag and possession limits for coots are 15 and 30, respectively.

Zoning

Duck and coot hunting seasons may be selected independently in existing zones as described in the following States:

Montana (Central Flyway portion):

Experimental Zone 1. The counties of Bighorn, Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland and Yellowstone.

Experimental Zone 2. The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure and Wibaux.

Nebraska (Low Plains portion):

Zone 1—Keya Paha County east of U.S. Highway 183 and all of Boyd

County including the adjacent waters of the Niobrara River.

Zone 2—The area bounded by designated highways and political boundaries starting on U.S. 73 at the State Line near Falls City; north to N–67; north through Nemaha to U.S. 73–75; north to U.S. 34; west to the Alvo Road; north to U.S. 6; northeast to N–63; north and west to U.S. 77; north to N–92; west to U.S. 81; south to N–66; west to N–14; south to I–80; west to U.S. 34; west to N–10; south to the State Line; west to U.S. 283; north to N–23; west to N–47; north to U.S. 30; east to N–14; north to N–52; northwesterly to N–91; west to U.S. 281; north to Wheeler County and including all of Wheeler and Garfield Counties and Loup County east of U.S. 183; east on N–70 from Wheeler County to N–14; south to N–39; southeast to N–22; east to U.S. 81; southeast to U.S. 30; east to U.S. 73; north to N–51; east to the State Line; and south and west along the State Line to the point of beginning.

Zone 3—The area, excluding Zone 1, north of Zone 2.

Zone 4—The area south of Zone 2.

New Mexico:

Experimental Zone 1. The Central Flyway portion of New Mexico north of Interstate Highway 40 and U.S. Highway 54.

Experimental Zone 2. The remainder of the Central Flyway portion of New Mexico.

Oklahoma:

Zone 1—That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas-Oklahoma border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I–40, I–40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I–35, I–35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Oklahoma-Kansas state line.

Zone 2—The remainder of the Low Plains.

South Dakota (Low Plains portion):

South Zone—Bon Homme, Yankton and Clay Counties south of S.D. Highway 50; Charles Mix County south and west of a line formed by S.D. Highway 50 from Douglas County to Geddes, Highways CFAS 6198 and CFAS 6516 to Lake Andes, and S.D. Highway 50 to Bon Homme County; Gregory County; and Union County south and west of S.D. Highway 50 and Interstate Highway 29.

North Zone—The remainder of the Low Plains.

Wyoming (Central Flyway portion):

Zone 1—Sheridan, Johnson, Natrona, Campbell, Crook, Weston, Converse and Niobrara Counties.

Zone 2—Platte, Goshen and Laramie Counties.

Zone 3—Carbon and Albany Counties.

Zone 4—Park, Big Horn, Hot Springs, Washakie and Fremont Counties.

Geese

Definitions: In the Central Flyway, "geese" includes all species of geese and brant, "dark geese" includes Canada and white-fronted geese and black brant, and "light geese" includes all others.

Outside Dates: October 3, 1987, through January 17, 1988, for dark geese and October 3, 1987, through February 14, 1988 (February 28, 1988, in New Mexico), for light geese.

Possession Limits: Goose possession limits are twice the daily bag limits (see exception for light geese in the Rio Grande Valley Unit of New Mexico).

Hunting Seasons: Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 93 days with a daily limit of 5 geese that may include no more than 2 dark geese.

Kansas: For dark geese, no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 29 and no more than 1 Canada goose and 1 white-fronted goose during the remainder of the season.

For Light Goose Unit 1 (that area east of U.S. 75 and north of I–70), no more than 86 days with a daily limit of 5.

For Light Goose Unit 2 (the remainder of Kansas), no more than 86 days with a daily limit of 5.

Montana: No more than 93 days with daily limits of 2 dark geese and 3 light geese in Sheridan County and 3 dark geese and 3 light geese in the remainder of the Central Flyway.

Nebraska: For Dark Goose Unit 1 (Boyd, Cedar west of U.S. 81, Keya Paha east of U.S. 183, and Knox Counties), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 13 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder the season.

For Dark Goose Unit 2 (the remainder of the State east of the following highway starting at the South Dakota line; U.S. 183 to NE 2, NE 2 to U.S. 281, and U.S. 281 to Kansas), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 22 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 3 (that part of the State west of Units 1 and 2), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 22 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For light geese, no more than 86 days with a daily limit of 5.

New Mexico: For dark geese, no more than 93 days with a daily limit of 2.

For light geese in the Rio Grande Valley Unit (the Central Flyway portion of New Mexico west of highways starting at the Texas line north of El Paso: U.S. 54 to U.S. 60, U.S. 60 to U.S. 285, and U.S. 285 to the Colorado line), no more than 107 days with a daily limit of 5 and a possession limit of 20.

For light geese in the remainder of the Central Flyway portion of New Mexico, no more than 93 days with a daily limit of 5.

North Dakota: For dark geese, no more than 72 days with daily limits of 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese through November 1 and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 86 days with a daily limit of 5.

Oklahoma: For dark geese, no more than 72 days with a daily limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 86 days with a daily limit of 5.

South Dakota: For dark geese in the Missouri River Unit (the Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson east of SD Highway 65, Dewey, Gregory, Haakon north of Kirley Road and east of Plum Creek, Hughes, Hyde, Lyman north of Interstate 90 and east of U.S. Highway 83, Potter, Stanley, Sully, Tripp east of U.S. Highway 183, Walworth, and Yankton west of U.S. Highway 81), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 13 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the remainder of the State, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 86 days with a daily limit of 5.

Texas: West of U.S. 81, no more than 93 days with a daily limit of 5 geese which may include no more than 2 dark geese.

For dark geese east of U.S. 81, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese east of U.S. 81, no more than 86 days with a daily limit of 5.

Wyoming: For geese in each of 4 Units that coincide with management zones for ducks, no more than 93 days with daily limits of 2.

Tundra Swans

The following States may issue permits authorizing each permittee to take no more than one tundra swan, subject to guidelines in a current, approved management plan and general conditions that each State determine hunter participation and harvest, and specified conditions as follows:

Montana (Central Flyway portion): no more than 500 permits with the season dates concurrent with the season for taking geese.

North Dakota: no more than 1,000 permits with the season dates concurrent with the season for taking ducks.

South Dakota: no more than 500 permits with the season dates concurrent with the season for taking ducks.

Pacific Flyway

The Pacific Flyway includes Arizona, California*, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington and Wyoming (west of the Continental Divide including the Great Divide Basin).

Ducks, Coots, Common Moorhens, and Common Snipe

Outside Dates: Between October 3, 1987, and January 10, 1988.

Hunting Seasons: Seasons may be split into two segments. Concurrent 79-day seasons on ducks (including mergansers), coots, common moorhens (gallinules) and common snipe may be selected except as subsequently noted. In the Oregon counties of Morrow and Umatilla and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County, the seasons may be an additional 7 days.

Duck Limits: The basic daily bag limit is 5 ducks, including no more than 4 mallards but only 1 female mallard, 4 pintails but only 1 female pintail, and either 2 canvasbacks or 2 redheads or 1 of each. The possession limit is twice the daily bag limit.

Coot and Common Moorhen (Gallinule) Limits: The daily bag and possession limit of coots and common moorhens is 25 singly or in the aggregate.

Common Snipe Limits: The daily bag and possession limit of common snipe is 8 and 16, respectively.

California—Waterfowl Zones:* Season dates for the Colorado River Zone of California must coincide with season dates selected by Arizona. Season dates for the Northeastern and Southern Zones of California may differ from those in the remainder of the State.

Idaho—Duck Zones: Duck season dates for Zone 1 and Zone 2 may differ. Zone 1 includes all lands and waters within the Fort Hall Indian Reservation and Bannock County; Bingham County except that portion within the Blackfoot Reservoir drainage; and Power County east of State Highway 37 and State Highway 39. Zone 2 includes the remainder of the State.

Nevada—Clark County Waterfowl Zone: Season dates for Clark County may differ from those in the remainder of Nevada.

Colorado, Montana, New Mexico and Wyoming—Common Snipe: For States partially within the Flyway a 93-day season for common snipe may be selected to occur between September 1, 1987, and February 28, 1988, and need not be concurrent with the duck season.

Geese (Including brant)

Outside dates, season lengths and limits on geese (including brant): Seasons may be split into two segments. Between October 3, 1987, and January 17, 1988, a 93-day season on geese (except brant in Washington, Oregon and California*) may be selected, except as subsequently noted. The basic daily bag and possession limit is 6, provided that the daily bag limit includes no more than 3 white geese (snow, including blue, and Ross' geese) and 3 dark geese (all other species of geese). In Washington and Idaho, the daily bag and possession limits are 3 and 6 geese, respectively. Between October 3, 1987, and January 10, 1988, Washington, Oregon and California* may select an open season for brant with daily bag and possession limits of 2 and 4 brant, respectively. Brant seasons may not exceed 16-consecutive days in Washington and Oregon and 30-consecutive days in California* and must run concurrent with the duck season.

Aleutian Canada goose closure: There will be no open season on Aleutian Canada geese. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

California, Oregon, Washington—Cackling Canada goose closure:* There will be no open season on the cackling Canada geese in California*, Oregon and Washington.

California—Canada goose and dark goose closures:* Three areas in California*, described as follows, are restricted in the hunting of certain geese:

(1) In the counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley in that area bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River; then southerly on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45–162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows; there will be no open season for Canada geese. In this area, the season on dark geese must end on or before November 30, 1987.

(3) In the San Joaquin Valley in that area bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate Highway 5; then southerly on Interstate Highway 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly on State Highway 99 to the point of beginning; the hunting season for Canada geese will close no later than November 23, 1987.

California (Northeastern Zone)—Geese:* In the Northeastern Zone of California the season may be from October 10, 1987, to January 10, 1988, except that white-fronted geese may be taken only during October 10 to November 1, 1987. Limits will be 3 geese per day and 6 in possession, of which not more than 1 white-fronted goose or 2

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Canada geese shall be in the daily limit and not more than 2 white-fronted geese and 4 Canada geese shall be in possession.

California (Balance of the State Zone)—Geese:* In the Balance of the State Zone the season may be from October 31, 1987, through January 17, 1988, except that white-fronted geese may be taken only during October 31, 1987, to January 3, 1988. Limits shall be 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canda geese (except Aleutian and cackling Canada geese for which the season is closed).

Western Oregon: In those portions of Coos and Curry Counties lying west of U.S. Highway 101 and that portion of Western Oregon north and west of a line formed by State Highway 126 and Interstate Highway 5, except for designated areas, there shall be no open season on Canada geese. In the remainder of Western Oregon, the season and limits shall be the same as those for the Pacific Flyway, except the seasons in the designated area must end upon attainment of their individual quotas which collectively equal 210 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a state-issued permit authorizing them to do so.

Oregon (Lake and Klamath Counties)—Geese: In the Oregon counties of Lake and Klamath the season on white-fronted geese will not open until two weeks after the opening date of the general goose season.

Washington and Oregon (Columbia Basin Portions)—Geese: In the Washington counties of Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla and Yakima, and in the Oregon counties of Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa and Wasco, the goose season may be an additional 7 days.

Western Washington: In the Washington counties of Island, Skagit, Snohomish, and Whatcom, the season for snow geese may not extend beyond January 1, 1988. In Clark, Cowlitz, Wahkiakum, and Pacific Counties, except for areas to be designated by the State, there shall be no open season on Canada geese. For designated areas the seasons must end upon attainment of individual quotas which collectively will equal 90 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a state-issued permit authorizing them to do so.

Idaho, Oregon and Montana—Pacific Population of Canada geese: In that portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater and Idaho Counties); in the Oregon counties of Baker and Malheur; and in Montana (Pacific Flyway portion west of the Continental Divide), the daily bag and possession limits are 2 and 4 Canada geese, respectively; and the season for Canada geese may not extend beyond January 3, 1988.

Montana and Wyoming—Rocky Mountain Population of Canada Geese: In Montana (Pacific Flyway portion east of the Continental Divide) and Wyoming the season may not extend beyond January 3, 1988. In Lincoln, Sweetwater and Sublette Counties, Wyoming, the combined special sandhill crane-Canada goose seasons and the regular goose season shall not exceed 93 days.

Idaho, Colorado and Utah: In that portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border; in Colorado; and in Utah, except Washington County, the daily bag and possession limits are 2 and 4 Canada geese, respectively, and the season for Canada geese may be no more than 86 days and may not extend beyond Janauary 3, 1988.

Nevada: Nevada may designate season dates on geese in Clark County and in Elko County and that portion of White Pine County within Ruby Lake National Wildlife Refuge differing from those in the remainder of the State. In Clark County the season on Canada geese may be no more than 86 days. Except for Clark County the daily bag and possession limits are 2 and 4 Canada geese, respectively. In Clark County the daily bag and possession limits are 2 Canada geese.

Arizona, California, Utah and New Mexico:* In California, the Colorado River Zone where the season must be the same as that selected by Arizona and the Southern Zone; in Arizona; in New Mexico; and in Washington County, Utah; the season for Canada geese may be no more than 86 days. The daily bag and possession limit is 2 Canada geese except in that portion of California Department of Fish and Game District 22 within the Southern Zone (i.e. Imperial Valley) where the daily bag and possession limits for Canada geese are 1 and 2, respectively.

Tundra Swans

In Utah, Nevada and Montana, an open season for tundra swans may be selected to the following conditions: (a) The season must run concurrently with the duck season; (b) appropriate State agency must issue permits and obtain harvest and hunter participation data; (c) in Utah, no more than 2,500 permits may be issued, authorizing each permittee to take 1 tundra swan: (d) in Nevada, no more than 650 permits may be issued, authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties; (e) in Montana, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton or Cascade Counties.

Special Falconry Frameworks

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular and any special season framework dates.

Daily Bag and Possession Limits: Daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting season and extended falconry seasons.

Regulations Publication: Each State selecting the special must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

NOTE: In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup and goldeneye season or falconry season)

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* In *California:* Except that there will be no hunting of waterfowl and coots authorized in those areas designated for nontoxic shot use as described in the July 21, 1987 **Federal Register** (52 FR 27368). The California Game and Fish Commission is presently reconsidering its approval for the implementation and enforcement of nontoxic shot requirements in those areas. The Service will publish the final framework for those areas upon notification of California's approval.

exceed 107 days for a species in one geographical area.

Date: September 11, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-21680 Filed 9-17-87; 8:45 a.m.]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845-7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure and opening; request for comments.

SUMMARY: NOAA announces the closure of the commercial all-species season from Cape Arago to Cape Blanco, Oregon, and the opening of the all-except-coho season in the same area three days later. The Director, Northwest Region, NMFS, has determined in consultation with representatives of the Pacific Fishery Management Council (Council) and the Oregon Department of Fish and Wildlife (ODFW), that this modification meets the criteria for inseason adjustments to management measures. The three-day closure of the commercial fishery between Cape Arago and Cape Blanco is necessary to protect Klamath River fall chinook.

EFFECTIVE DATE: Closure of the commercial all-species season in the exclusive economic zone (EEZ) from Cape Arago to Cape Blanco, Oregon, is effective at 2400 hours local time, September 15, 1987. Opening of the commercial all-except-coho season in the same area is effective at 0001 hours local time, September 19, 1987. Comments on this notice will be received until September 30, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director) at 206-526-6150, or E. Charles Fullerton at 213-514-6196.

SUPPLEMENTARY INFORMATION: The ocean salmon fisheries are managed under a framework fishery management plan (50 CFR Part 661). An amendment to the plan (52 FR 4146, February 10, 1987) authorizes inseason adjustments to management measures if the adjustments are consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the framework amendment. In addition, all inseason adjustments must be based on consideration of the following factors: Predicted sizes of salmon runs; harvest quotas and hooking mortality limits for the area and total allowable impact limitations if applicable; amount of recreational, commercial, and treaty Indian catch for each species in the area to date; amount of recreational, commercial, and treaty Indian fishing effort in the area to date; estimated average daily catch per fisherman; predicted fishing effort for the area to the end of the scheduled season; and other factors as appropriate.

Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). In this preseason notice, NOAA announced that—

> . . . When the entire coho quota for the area south of Cape Falcon has been reached, an additional three-day closure will occur from Cape Arago to Point Delgada. (Table 1, footnote h)

The preseason regulations also stipulate that the commercial all-except-coho fishery in areas immediately north and south of the Cape Arago-Point Delgada area will open immediately after the all-species closure (Table 1).

The commercial fishery from Cape Blanco, Oregon, to Point Delgada, California, was closed effective June 25, 1987 (52 FR 24297, June 30, 1987), when the revised harvest quota of 113,300 chinook was projected to have been caught.

The 1987 troll catch quota for the area south of Cape Falcon is 401,700 coho salmon. The commercial catch of coho in the area has been slower than predicted preseason. A commercial all-species season ending date from Cape Falcon to Cape Blanco was established as September 15, 1987 (52 FR 33244, September 2, 1987) to protect Oregon coastal natural coho stocks which are impacted to a greater extent by late-season fishing.

Based on the best available information, the commercial coho catch quota for the area south of Cape Falcon will not be reached before the season ending date of September 15, 1987. The original purpose of the three-day closure was to protect Klamath River fall chinook which comprise a high percentage of the chinook catch between Cape Arago and Cape Blanco. The need for Klamath River fall chinook protection still exists, even though the triggering mechanism, the attainment of the coho quota, will not occur.

Therefore, NOAA issues this notice, after consideration of the factors specified for inseason adjustments, to (1) close the commercial all-species season in the EEZ from Cape Arago to Cape Blanco, Oregon, effective 2400 hours, local time, September 15, and (2) open the commercial all-except-coho season in the same area effective 0001 hours, local time, September 19, 1987. This notice does not affect other fisheries which may be operating in this or other areas.

The Regional Director consulted with the Chairman of the Council and representatives of ODFW regarding this closure of the commercial all-species season and the opening of the commercial all-except-coho season between Cape Arago and Cape Blanco. The ODFW representative confirmed that Oregon will manage the commercial fishery in state waters adjacent to these areas of the EEZ in accordance with this federal action.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: September 15, 1987.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-21664 Filed 9-15-87; 4:42 pm]

BILLING CODE 3510-22-M

VOL 52 ISS 181 SE 18 1987 UMI

Proposed Rules

Federal Register
Vol. 52, No. 181
Friday, September 18, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed action would make changes to three provisions in the regulations governing the Special Supplemental Food Program for Women, Infants and Children (WIC). The three provisions are unrelated, except that each has been a subject of concern to the WIC community and has been found by the Department to require consideration. First, this proposal would allow the age of the medical data required for certification (height, weight and bloodwork) to be up to 60 days old. A full certification period would be allowed provided that the data is 60 or fewer days old. Second, this proposal would allow the disqualification from WIC of vendors who have been assessed a Civil Money Penalty (CMP) in the Food Stamp Program. Finally, this proposal would authorize disclosure of information obtained from WIC Program applicants and participants to representatives of public organizations which administer health or welfare programs serving persons categorically eligible for WIC. Current WIC regulations restrict the disclosure of such information to persons directly connected with the administration or enforcement of the program and the Comptroller General.

DATE: To be assured of consideration, comments must be received on or before December 17, 1987.

ADDRESS: Comments should be sent to Patrick J. Clerkin, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, Virginia 22302, (703) 756–3746. All written comments will be available for public inspection during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at the offices of the Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, Virginia 22302, (703) 756–3730, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291, and has been determined to be *nonmajor*. The proposed rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions. Nor will this rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service has certified that this proposal does not have significant economic impact on a substantial number of small entities. This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Background

1. Age of Medical Data and Length of Certification Period § 246.7(f))

Program regulations have not previously attempted to place a temporal limit on the age of required medical intake data (i.e., bloodwork, weight, height or length) allowed in determining nutritional risk. Prior to the final rule published on February 13, 1985 (50 FR 6108), regulations implicitly allowed old data to be used, stating that if data used in nutritional risk determinations were taken before entrance to the Program, the certification intervals for participants (other than pregnant women) would be based on the date when the data were taken, rather than on the date of certification. Pregnant women were certified for the duration of their pregnancy and for up to 6 weeks postpartum.

On July 8, 1983 (48 FR 31502), the Department proposed to permit a person to be certified for a full certification period based on medical data collected within a six-month period preceding certification. However, many who commented on this proposal strenuously opposed the use of old data, especially data approaching 6 months old, contending that it is invalid for determining nutritional status. The Department evaluated the recommendations and agreed that older data would not accurately reflect an applicant's current status. There was no clear concensus among commenters regarding what shorter time limit would be appropriate. The final rule, therefore, retained the stipulations of previous regulations. In further consideration of concerns expressed by commentors, the regulations additionally required that the use of data gathered before the time of certification be restricted to that which is "reflective of" an applicant's current categorical status.

Following publication of the final rule, the issue of the age of medical data continued to concern State agencies. In response to requests for clarification, the Department issued guidance to the effect that information can be up to 30 days old without affecting the length of the certification period. The 30-day provision is consistent with the long-standing authority to shorten or extend certification periods by 30 days. In both instances, the 30-day leeway was

intended to facilitate coordination and scheduling of WIC certification and health care, and in the process to avoid repetitive testing, particularly bloodwork, over short periods of time.

Since issuance of this clarification, concerns have been voiced about the 30-day limit and the shortening of the certification period to reflect the age of data. Some State agencies have contended that more than 30 days is sometimes needed for the required medical data to reach WIC clinics through referral systems. They have suggested that 60 days would allow enough time for referral data to be received while at the same time assuring that the data accurately represents the applicant's health status. They believe that older data should not be used, and that a 60-day limit would make it unnecessary to shorten certification periods based on the age of data.

After an extensive review of these suggestions, as well as other materials pertinent to this issue, the Department proposes to allow only required intake medical data (i.e., bloodwork, weight and height or length) up to 60 days old to be used in determining nutritional risk. Certification periods will not be shortened based on the age of the data. This provides for a uniform, equitable certification process. The 60-day period allows for referral data to reach a WIC clinic within a reasonable time limit, while assuring that the data permits an accurate assessment of current health status. The Department proposes that the 60-day period run from the date of application. This would be more practical than allowing the period to run from the date of certification, since the date of application would be known at the time the medical data is evaluated, whereas the date of certification would not then be known.

Following publication of the final rule, concern was also expressed about the requirement in § 246.7(f)(4) that the mandatory intake medical data be "reflective of the applicant's categorical status at the time of certification," by which the Department intended that data can be used only if taken while the applicant is in the category—pregnant woman, infant, etc.—that the person occupied at the time of certification. Some States have argued that only the changes from nonpregnant status to pregnancy, and from pregnancy to postpartum, are dramatic and abrupt enough to justify this restrictive requirement. For this reason, and because the 60-day limit would be generally effective in ensuring that medical data accurately reflects the applicant's current status, the Department proposes, in place of the current provision, to require that data used to certify pregnant women be taken during their pregnancy, and to prohibit the use of data taken during pregnancy to certify postpartum women.

2. Vendor Sanctions (§§ 246.12(f) and 246.12(k)

A number of State agencies have requested that Program regulations be amended to allow a WIC State agency to disqualify a vendor sanctioned through a Civil Money Penalty in the Food Stamp Program. Section 278.6(f) of the Food Stamp Program regulations states that FNS may impose a Civil Money Penalty as a sanction in lieu of disqualification "only when the firm subject to a disqualification is selling a substantial variety of staple food items, and the firm's disqualification would cause hardship to food stamp households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices."

In the past, the WIC Program has not allowed State agencies to disqualify vendors solely because they have been assessed a Food Stamp Civil Money Penalty based on the Department's concern for participant hardship. If it had been determined that removal of a vendor from the Food Stamp Program would create a hardship for food stamp recipients, the Department believed that disqualifying this vendor from WIC would inevitably cause a concomitant hardship for WIC recipients who reside in the same area.

However, hardship to WIC participants does not always arise in such situations. Many State agencies have asserted that the composition and distribution of the WIC population in an area may differ significantly from that of food stamp recipients. In addition, Civil Money Penalties are fines generated by violations serious enough to warrant a disqualification from the Food Stamp Program. Currently, WIC regulations allow State agencies the option of disqualifying a vendor from the program if that vendor is disqualified from the Food Stamp Program. Subject to specific controls which ensure participants reasonable access to WIC vendors, the Department proposes to allow State agencies to disqualify a vendor from the WIC Program in response to a Civil Money Penalty in the Food Stamp Program. Under the proposed rule, States would not be allowed to disqualify a vendor from WIC based on a Civil Money Penalty unless the State documents that disqualification of the vendor from WIC would not create undue hardship for WIC participants. Undue hardship would result if, after disqualification, WIC participants in the area would no longer have sufficient opportunity to obtain supplemental foods. The documentation requirement would carry out the mandate in current regulations that the State agency "consider whether the disqualification would create undue hardship for participants" (§ 246.12(k)(1)(iv)). In addition, State agencies exercising this option would be required to include notification in their vendor agreement.

The proposed rule would not be unduly harsh with regard to retailers. Food Stamp Program participants often account for a major share of retail food vendors' business. However, this is not generally true of the smaller WIC Program. Therefore, disqualification from WIC is less likely to have critically adverse effects on retailers than disqualification from the Food Stamp Program. The long-established regulatory authority of WIC State agencies to limit participation of vendors to the number needed for program purposes, and to select the most viable from among applicants (§ 246.12(e)), has been accepted by the vendor community. Both this established limitation authority and the proposed disqualification provision implement the principle of quality control through selectivity. The Department believes that this proposal serves the best interests of the WIC Program in a manner consistent with fair and reasonable treatment of vendors.

As with any adverse action, the State agency decision to disqualify the vendor who has received a Food Stamp Civil Money Penalty is subject to appeal. Therefore, a high standard of documentation must be upheld.

When making disqualification determinations on this basis, demographic information, volume of WIC sales and other indicators of the need for, and utilization of, WIC vendors may have to be considered.

3. Confidentiality (§§ 246.26(d) and 246.7(h))

A number of questions have recently been raised by States regarding the confidentiality provision in the WIC Program. This provision currently prohibits the disclosure of information obtained from applicants and participants to persons not directly connected with WIC Program administration or enforcement or the Comptroller General of the United States. Based on this provision, the States have had a variety of concerns regarding their responsibility to safeguard, and their authority to share,

information collected on applicants and participants by the WIC Program. Some States have expressed interest in the exchange of participant data and other information between the WIC Program and other State health department programs. Many wish to encourage such exchanges to avoid duplication of administrative efforts, such as the taking and storing of income information, necessary when more than one program serves the same population. The exchange could facilitate coordination of all health and social service needs of an individual, which would be consistent with efforts to coordinate activities between programs and thereby increase efficiency. Also, local WIC agencies could provide referrals to other health and social service programs, so that the latter could initiate contact with WIC participants for the purpose of program outreach. In that way, WIC participants could learn of other programs for which they are categorically eligible.

This proposal, therefore, authorizes disclosure of information provided by WIC applicants and participants, at the discretion of the chief State health officer, to public health or welfare programs that serve persons categorially eligible for the WIC Program. In Indian State agencies, approval would be granted by the governing authority. The State agency would be required to execute a written agreement with any agency to which it discloses information specifying the purposes of the disclosure and containing the receiving agency's assurance that it will not, in turn, disclose this information. States choosing to exercise this optional disclosure would be required to include, in their certification forms to be signed by the applicant, a statement which acknowledges that the information may be released to approved health or welfare agencies.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For the reasons set out in the preamble, 7 CFR Part 246 is proposed to be amended, as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAMS FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for Part 246 continues to read as follows:

Authority: Sec. 341–353, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 3, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786); sec. 203, Pub. L. 96–499, 94 Stat. 2599; sec. 815, Pub. L. 97–35, 95 Stat. 521.

2. In § 246.7, paragraph (f)(4) is revised, and a new paragraph (h)(9) is added to read as follows:

§ 246.7 Certification of participants.

* * * * *

(f) * * *

(4) Data on bloodwork, weight and height or length that are collected not more than 60 days prior to application for program participation may be used in nutritional risk determinations, except that data used to determine the risk status of pregnant women shall be taken during their pregnancy, and data used to determine the risk of postpartum women shall be taken after the termination of their pregnancy.

* * * * *

(h) * * *

(9) In States exercising the authority to disclose information pursuant to § 246.26(d)(2), a statement, to be added to the statement required under paragraph 246.7(h)(8) of this section, acknowledging that the chief State health officer (or in the case of Indian State agencies, the governing authority) may authorize disclosure to representatives of public organizations, designated by such chief State health officer or governing authority, which administer health or welfare programs that serve persons categorically eligible for the WIC Program.

* * * * *

3. Section 246.12 is amended by revising paragraph (f)(3), redesignating paragraph (k)(1)(iv) as paragraphs (k)(1)(v), and adding a new paragraph (k)(1)(iv) to read as follows:

§ 246.12 Food delivery systems.

* * * * *

(f) * * *

(3) Other provisions shall be added to the contracts or agreements to implement State agency options in paragraphs (k)(1)(iii), (k)(1)(iv), and (s)(5)(iv) of this section.

* * * * *

(k) * * *

(1) * * *

(iv) The State agency may disqualify a vendor who has been assessed a Civil Money Penalty in the Food Stamp Program in lieu of disqualification, as provided in 7 CFR 278.6, only if the State agency:

(A) Documents that any such disqualification will not create undue hardship for participants; and

(B) Includes notification that it will take such disqualification action in its vendor agreement, in accordance with paragraph (f)(3) of this section.

* * * * *

4. In § 246.26, paragraph (d) is revised to read as follows:

§ 246.26 Other provisions.

* * * * *

(d) *Confidentiality.* The State agency shall restrict the use or disclosure of information obtained from Program applicants and participants to:

(1) Persons directly connected with the administration or enforcement of the Program, including persons investigating or prosecuting violations in the WIC Program under Federal, State or local authority;

(2) Representatives of public organizations designated by the chief State health officer (or, in the case of Indian State agencies, the governing authority) which administer health or welfare programs that serve persons categorically eligible for the WIC Program. The State agency shall execute a written agreement with each such designated organization:

(i) Specifying the purposes for which the receiving agency may employ WIC Program information,

(ii) Containing the receiving agency's assurance that WIC Program information will be used only for designated purposes, and

(iii) Containing the receiving agency's assurance that it will not, in turn, disclose the information to a third party; and

(3) The Comptroller General of the United States for audit and examination authorized by law.

Date: September 11, 1987.

Anna Kondratas,

Administrator, Food and Nutrition Service.

[FR Doc. 87–21554 Filed 9–17–87; 8:45 am]

BILLING CODE 3410–30–M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 5; Doc. No. 4631S]

General Crop Insurance Regulations; Texas Citrus Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 crop year, by adding a new section, 7

CFR 401.115 to be known as the Texas Citrus Endorsement. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on Texas citrus crops in an endorsement to the General Crop Insurance policy which contains the standard terms and conditions common to most corps. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 19, 1987, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: /This action has been reviewed under USDA procedures established by Departmental Regulation 1512.–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as August 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 28 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.115, the Texas Citrus Endorsement, effective for the 1989 and succeeding crop years, to provide the provisions for insuring citrus.

Upon publication of 7 CFR 401.115 as a final rule, the provisions for insuring citrus contained therein will supersede those provisions contained in 7 CFR Part 413, the Texas Citrus Crop Insurance Regulations, effective with the beginning of the 1989 crop year. The present policy contained in 7 CFR Part 413 will be terminated at the end of the 1988 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 413 by separate document so that the provisions therein are effective only through the 1988 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Texas Citrus Endorsement to 7 CFR Part 401, FCIC is proposing other changes in the Provisions for insuring citrus. FCIC itemizes such proposed changes as follows:

1. Section 1—Move Rio Red grapefruit from Type III designation to the Star Ruby Type IV designation. This change is made to combine varieties with similar characteristics.

2. Section 2—Replace "cyclone" with "excess wind" as an insurable cause of loss. This change is made to insure shear wind of a defined force which more accurately reflects the crop hazard in the area.

3. Section 4—Lengthen the end of the first stage from April 1 to May 1 to allow additional fruit development and to better estimate the potential in determining the second stage guarantee.

4. Section 7—Add unit definition guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies that show an increased risk when units are divided.

5. Section 8—Add a provision to require notice of damage within 72 hours if the cause of loss is excessive moisture. Because evidence of damage from excess moisture is difficult to appraise if too much time passes, this change will better enable FCIC to adjust the loss.

6. Section 12—Add definitions of "excess moisture," "excess wind," and "yield limit." Remove the "cyclone" definition. Replace the definition of "contiguous land" with "non-contiguous land." Non-contiguous land is used as a criterion for unit division.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this notice will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Texas citrus endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 5101 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.115 Texas Citrus Endorsement, effective for the 1989 and Succeeding Crop Years, to read as follows:

§ 401.115 Texas Citrus Endorsement

The provisions of the Texas Citrus Crop Insurance Endorsement for the 1989 and subsequent crop year are as follows:

Federal Crop Insurance Corporation Texas Citrus Endorsement

1. Insured crop.

a. The crop insured will be any of the following citrus types you elect:

Type I Early and mid-season oranges;

Type II Late oranges (including temples);

Type III Grapefruit, except types IV and V;

Type IV Rio Red and Star Ruby grapefruit; or

Type V Ruby Red grapefruit.

b. In addition to the citrus not insurable in section 2 of the general crop insurance policy, we do not insure any citrus:

(1) Which is not irrigated;

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(2) If the producing trees have not produced an average yield of three tons of oranges or grapefruit per acre the previous year unless the trees are inspected by us and we agree, in writing, to the amount of insurance coverage;

(3) If acceptable production records of at least the previous crop year are not available; or

(4) Which we inspect and consider not acceptable.

2. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Freeze;
(2) Frost;
(3) Excess moisture;
(4) Hail;
(5) Fire;
(6) Tornado;
(7) Excess wind;
(8) Wildlife;
(9) Failure of the irrigation water supply; or
(10) Direct Mediterranean Fruit Fly damage;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure against any loss of production due to fire if weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove. We also specifically do not insure against the inability to market the fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production unless production has actual physical damage due to a cause specified in subsection 2.a.

3. Report of acreage, share, type, and practice (acreage report).

a. In addition to the information required in section 3 of the general crop insurance policy, you must report the crop type.

b. The date by which you must annually submit the acreage report is June 30 of the calendar year the insured crop normally blooms.

4. Production reporting and production guarantees.

a. In addition to the production report required in section 4 of the general crop insurance policy, you must report:

(1) The number of bearing trees; and
(2) The number of trees topped, hedged, or pruned.

b. In lieu of the method described in section 4 of the general crop insurance policy to determine the yield used to compute your production guarantee, your second stage (final stage) production guarantee will be based on our appraisal of current crop potential.

c. The production guarantees per acre are progressive by states and increase, at specified intervals, to the final stage production guarantees. The stages and production guarantees are:

(1) First state is from the date insurance attaches until May 1 of the calendar year of normal bloom, the production guarantee will be:

(a) Forty percent (40%) of the yield used to determine the previous year's production guarantee multiplied by the percentage of yield (coverage level) for the current crop year if you had insurance for the previous crop year; or

(b) Forty percent (40%) of your previous production per acre multiplied by the percentage of yield (coverage level) for the current crop year if you did not have insurance for the previous crop year.

(2) Second stage (final stage) is from May 1 of the calendar year of normal bloom until the end of the insurance period, the production guarantee is the final stage production guarantee.

d. Any acreage of citrus damaged to the extent that growers in the area would not further care for the citrus, will be deemed to have been destroyed even though the citrus continues to be cared for. The production guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

5. Annual premium.

The annual premium amount is computed:

a. For citrus damaged in the first stage to the extent that growers in the area would not further care for the citrus, by multiplying the yield used to determine the previous year production guarantee times the current crop year coverage level, times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches (if insurance is not in effect the previous crop year, the previous production per acre will be used in place of the yield used to determine the previous year production guarantee).

b. If subsection 5.a. does not apply, by multiplying the second stage production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

6. Insurance period.

In lieu of section 7 of the General Crop Insurance Policy, insurance attaches on December 1 prior to the calendar year of normal bloom except if we accept your application for insurance after November 30, insurance will attach on the thirtieth (30th) day after you sign and submit a properly completed application. Insurance will not attach to any acreage inspected by us and determined to be unacceptable. Insurance ends on each unit at the earliest of:

(1) Total destruction of the citrus;
(2) Harvest;
(3) The date harvest would normally start on any acreage which will not be harvested;
(4) Final adjustment of a loss; or
(5) May 31 of the calendar year following the normal year of bloom.

7. Unit division.

a. Citrus acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided by citrus type.

b. Citrus acreage that would otherwise be one unit as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be divided into more than one unit if you agree to pay additional premium as required by the actuarial table and if, for each proposed unit, you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year. The acreage planted to insured citrus must be located in separate legally identifiable sections, the boundaries of the sections must be clearly identified, the insured acreage must be easily determined, and each unit must be non-contiguous. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units be to combined.

8. Notice of damage or loss.

In addition to the notices required in section 8 of the general crop insurance policy, if the insured citrus is damaged by excess moisture, you must give us notice of such damage within seventy-two (72) hours of occurrence.

9. Claim for indemnity.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee for the applicable stage (see subsection 4.c.);

(2) Subtracting therefrom the total production of citrus to be counted (see subsection 9.e.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production to be counted for a unit will include all harvested and appraised production.

(1) Any citrus production which is not marketed as fresh fruit and due to insurable causes does not contain 120 or more gallons of juice per ton, will be adjusted by:

(a) Dividing the gallons of juice per ton obtained from the damaged citrus by 120; and

(b) Multiplying the result by the number of tons of such citrus. If records of actual juice content are not available, an average juice content will be used.

(2) Where the actuarial table provides for and you elect the fresh fruit option, citrus production which is not marketable as fresh fruit due to insurable causes will be adjusted by:

(a) Dividing the value per ton of the damaged citrus by the price of undamaged citrus; and

(b) Multiplying the result by the number of tons of such citrus.

The applicable price for undamaged citrus will be the local market price the week before damage occurred, or the contract price if the contract was entered into between the producer and buyer before damage occurred.

(3) Any production will be considered marketed or marketable as fresh fruit unless due to insurable causes, such production was not marketed as fresh fruit.

(4) In the absence of acceptable records to determine the disposition of harvested citrus, we may elect to determine such disposition and the amount of such production to be counted for the unit.

(5) Any citrus on the ground which is not picked up and marketed will be considered lost if the damage was due to an insured cause.

(6) Appraised production to be counted will include:

(a) Unharvested production, and potential production lost due to uninsured causes and

failure to follow recognized good citrus farming practices; and

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our consent.

(7) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Further damaged by an insured cause and is reappraised by us; or

(b) Harvested.

10. Cancellation and termination dates.

The cancellation and termination dates are November 30 prior to the calendar year of the normal bloom.

11. Contract changes.

The date by which contract changes will be available in your service office is August 31 preceding the cancellation date.

12. Meaning of terms.

a. "Crop year" means the period beginning with the date insurance attaches to the citrus crop and extending through normal harvest time, and will be designated by the calendar year following the year in which the bloom is normally set.

b. "Direct Mediterranean fruit fly damage" means the actual physical damage to the citrus on the unit which causes such citrus to be unmarketable and will not include inability to market such citrus as a direct result of a quarantine, boycott, or refusal to accept the citrus by any entity without regard to actual physical damage to such citrus.

c. "Excess moisture" means more than 20 inches of precipitation on the grove within a 72-hour period.

d. "Excess wind" means a natural movement of air which has sustained speeds in excess of 58 miles per hour recorded at the U.S. Weather Service reporting station nearest to the crop at the time of crop damage.

e. "Freeze" means the condition that exists when air temperatures over a widespread area remain at or below 32 degrees Fahrenheit.

f. "Frost" means the condition that exists when the air temperature around the tree falls to 32 degrees Fahrenheit or below.

g. "Harvest" means the severance of mature citrus from the tree either by pulling, picking, or by mechanical or chemical means, or picking up the marketable fruit from the ground.

h. "Hedged" means to cut back the side branches for better or more fruitful growth.

i. "Non-contiguous land" means land which is not touching at any point. Land which is separated by only a public or private right-of-way will be considered to be touching (contiguous).

j. "Topped" means to cut back the upper branches for better or more fruitful growth.

k. "Yield limit" means a yield level established by us based on citrus type and tree age.

Done in Washington, DC, on September 14, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-21589 Filed 9-17-87; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 424

[Amdt. No. 2; Doc. No. 4725S]

Rice Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Rice Crop Insurance Regulations (7 CFR Part 424), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Rice Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this part will be issued as an endorsement to the newly proposed 7 CFR Part 401, General Crop Insurance Regulations (§ 401.120, Rice Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 will be a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and will substantially reduce: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 19, 1987, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consulation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC will publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for the crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter

IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 424 will be effective only through the end of the 1987 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Rice Endorsement will be published as an endorsement to 7 CFR 401 (§ 401.120, Rice Endorsement), and become effective for the 1988 and succeeding crop years. Upon final publication, the provisions of the Rice Crop Insurance Regulations, now contained in 7 CFR Part 424, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 424 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 424

Crop insurance, Rice.

Proposed Rule

Accordingly, pursuant to the authority contained in the Rice Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation proposes to amend the Subpart heading to the Rice Crop Insurance Regulations (7 CFR Part 424), as follows:

PART 424—[AMENDED]

1. The authority citation for 7 CFR Part 424 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The subpart heading in 7 CFR Part 424 is revised to read as follows:

Subpart—Regulations For The 1986 and 1987 Crop Years

Done in Washington, DC, on September 14, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-21588 Filed 9-17-87; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 448

[Amdt. No. 1; Doc. No. 4730S]

ELS Cotton Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the ELS Cotton Crop Insurance Regulations (7 CFR Part 448), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present ELS Cotton Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this part will be issued as an endorsement to the newly proposed 7 CFR Part 401, General Crop Insurance Regulations (§ 401.121, ELS Cotton Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 will be a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and will substantially reduce: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 19, 1987, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1989.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC will publish a "crop endorsement" which will contain the language of the policy unqiue to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 448 will be effective only through the end of the 1987 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new ELS Cotton Endorsement will be published as an endorsement to 7 CFR Part 401 (§ 401.121, ELS Cotton Endorsement), and become effective for the 1988 and succeeding crop years. Upon final

publication, the provisions of the ELS Cotton Crop Insurance Regulations, now contained in 7 CFR Part 448, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 448 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 448

Crop insurance, ELS cotton.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Subpart heading to the ELS Cotton Crop Insurance Regulations (7 CFR Part 448), as follows:

PART 448—[AMENDED]

1. The authority citation for 7 CFR Part 448 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The subpart heading in 7 CFR Part 448 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC, on September 14, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–21587 Filed 9–17–87; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 1

[INS Number: 87–1017]

Definitions, Applications, Petitions, Motions and Appeals for Benefits Under The Immigration and Nationality Act; Withdrawal of Proposed Rule

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule; withdrawal.

SUMMARY: On May 15, 1987 the Immigration and Naturalization Service proposed to amend the definition of the term "day" as contained in Chapter I of Title 8, Code of Federal Regulations, Part 1 (52 FR 19733). Upon further consideration, it has been determined that the proposed rulemaking is superfluous, since a change in definition had already occurred in a final rule regarding conforming regulations to the Rules of Procedure for Immigration Judge proceedings published January 29, 1987 (52 FR 2931). Accordingly, the proposed rulemaking is hereby withdrawn.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3946.

Dated: August 12, 1987.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87–21598 Filed 9–17–87; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86–089]

Vaccinating Birds in Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to permit birds in privately operated commercial bird quarantine facilities to be vaccinated against certain diseases by use of certain Veterinary Services-licensed vaccines. Only licensed veterinarians under the direct supervision of a veterinarian employed by Veterinary Services would be authorized to vaccinate the birds in question. Available evidence indicates that this proposed vaccination would increase the survival rate of imported birds without interfering with procedures used to isolate Newcastle disease, avian influenza, and other hemagglutinating viruses of poultry.

DATE: Consideration will be given only to comments postmarked or received on or before November 17, 1987.

ADDRESSES: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 86–089. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Harvey A. Kryder, Jr., Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 809, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. 301–436–8695.

SUPPLEMENTARY INFORMATION: Regulations in 9 CFR Part 92 (referred to below as the regulations) prohibit the vaccination of imported birds before their release from privately operated commercial bird quarantine facilities. Testing and observing birds in quarantine enables Veterinary Services (VS) to identify carriers of communicable diseases of poultry and prevent them from entering the United States.

Exotic Newcastle disease, avian influenza, and other hemagglutinating viruses, primarily spread by imported birds, constitute major threats to U.S. birds and poultry. Until recently, veterinarians believed that vaccines might interfere with efforts to detect signs of these highy communicable hemagglutinating viruses. The current regulations evolved from the then-prevalent scientific view. Experience now indicates that certain vaccines do not interfere with the VS tests and procedures used to qualify birds to entry into the United States.

To reflect this develoment, we propose to amend the regulations to allow the use of certain VS-licensed vaccines. Veterinary Services issues licenses for biological products meeting VS standards of purity, safety, potency, and efficacy, as required in 9 CFR Chapter I, Subchapter E. On the basis of documentation submitted by veterinary biologics manufacturers during the VS licensing and approval period, and of information obtained by tests performed on currently licensed biologics, vaccines that have been demonstrated not to interfere with tests and procedures established to qualify birds for entry into the United States would be approved for use with birds in quarantine. Authority to approve vaccines that do not interfere with efforts to detect hemagglutinating viruses would rest with the Deputy Administrator, Veterinary Services. The Veterinary Services Import-Export Operations Staff would maintain, and provide upon request, a list of the vaccines approved for use in quarantine. The prohibition of vaccines now in effect would remain in force for all vaccines not specifically approved, including, but not limited to, vaccines for Newcastle disease, avian influenza, and other hemagglutinating viruses of poultry.

Only licensed veterinarians under the direct supervision of a veterinarian employed by Veterinary Services would be authorized to vaccinate birds in

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quarantine. This would ensure that vaccines were administered properly.

By amending the regulations in this way, we would relinquish no control over the tests and procedures in quarantine facilities, established to protect birds and poultry in this country. The data now available indicates that the use of certain vaccines for birds in quarantine would not interfere with tests for exotic Newcastle disease, avian influenza, or other hemagglutinating viruses. Relaxing restrictions in this way should improve the survival rate of birds not otherwise succumbing to Newcastle disease, avian influenza, and other hemagglutinating viruses of poultry. Importers would benefit from reduced losses if their birds could be vaccinated against specific diseases during the quarantine period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We expect only three or four large importing concerns with an expressed interest in vaccinating birds to be affected by this proposed rule. We therefore expect it to have no effect on small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control numbers 0579–.0040 and 0579–0060.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 would be amended to read as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.11 would be amended by revising paragraph (f)(3)(ii)(B) to read as follows:

§ 92.11 Quarantine requirements.

* * * * *

(f) * * *

(3) * * *

(ii) * * *

(B) The birds may be vaccinated during quarantine only with a vaccine that has been approved by the Deputy Administrator, Veterinary Services, and is administered by a licensed veterinarian under the direct supervision of a veterinarian employed by Veterinary Services. The Deputy Administrator, Veterinary Services, will approve a vaccine if:

(*1*) The vaccine is licensed by Veterinary Services in accordance with § 102.5 of this chapter; and

(*2*) The vaccine is not one that is used to prevent Newcastle disease, avian influenza, or any other hemagglutinating virus of poultry.[4]

* * * * *

§ 92.11 [Amended]

3. In § 92.11, footnotes 6, 7, 8, and 1 and the references to them would be redesignated 1, 2, 3, and 5, respectively.

[4] A list of approved vaccines is available from the Import-Export Operations Staff, Veterinary Services, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Done in Washington, DC, this 15th day of September, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–21633 Filed 9–17–87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR–87–8]

Petitions for Rulemaking, Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before November 17, 1987.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 916, FAA Headquarters Building (FOB–10A).

Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on September 10, 1987.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR RULEMAKING

Docket No	Petitioner	Description of the petition
25152	Frank J. Kelley	*Description of the petition:* Petitioner proposes to permit issuance of flight engineer certificates to those military flight engineers who are currently performing duties and have passed the FAA written examination. *Regulations affected:* 14 CFR Part 63. *Petitioner's reason for rule.* Petitioner states that there would be a substantial increase in the number of well trained personnel available for flight engineer duties. Petitioner states that this is necessary to correct the oversight of qualified military flight engineers when Part 63 was written and amended. Petitioner states that a minimum retraining time for the civilian employee would be a result since the military flight engineer would have already been performing the duties and would only have to be given differences training.

[FR Doc. 87-21646 Filed 9-17-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-99-AD]

Airworthiness Directives; Fokker B.V. Model F28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to Fokker B.V. Model F28 series airplanes, that would require inspection for cracks, and replacement, if necessary, of all cargo door fuselage mounted hinge lugs. This amendment is prompted by several reports that cracks have been discovered in the hinge lugs. This condition, if not corrected, could result in sudden decompression and loss of the cargo door.

DATE: Comments must be received no later than October 18, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-99-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft, 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-99-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Ministrie van Verkeer en Waterstaat, Rijksluchtvaartdienst (RLD), the Civil Aviation Authority of the Netherlands, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition, which may exist or develop on Fokker Model F-28 airplanes. It has been reported that cracks have occurred in the cargo door hinge lugs. The cracking is believed to be the result of stress corrosion in the 2014 aluminum alloy. This condition, if not corrected, could result in sudden decompression of the airplane.

Fokker Aircraft issued Service Bulletin F28/52-a100, dated June 6, 1987, which describes a one-time dye penetrant inspection on both side faces of all cargo door hinge lugs on the fuselage, and replacement of hinges, as necessary. The RLD has classified the service bulletin as mandatory. On June 19, 1987, Fokker issued Revision 1 to Service Bulletin F28/52-a 100, which describes an alternate visual inspection method that is equivalent to the dye penetrant inspection, described in the original issue of the service bulletin, for the assessment of the structural condition of the hinges.

This airplane model is manufactured in The Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection of the cargo door hinge lugs for cracks, and replacement as specified, in accordance with the service bulletin previously mentioned. The FAA may consider further rulemaking on this subject once data is obtained from the results of the required inspections.

It is estimated that 51 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost

impact of this AD to U.S. operators is estimated to be $3,060.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($60). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F-28 series airplanes, as listed in Fokker B.V. Service Bulletin F28/52-a/100, Revision 1, dated June 19, 1987, certificated in any category. Compliance required within 120 flight hours after the effective date of this AD, unless previously accomplished.

To prevent sudden decompression of the airplane as a result of failure of a cargo hinge lugs, accomplish the following:

A. Visually or dye penetrant inspect the cargo door hinge lugs for cracks, in accordance with Fokker Service Bulletin F28/52-a/100, Revision 1, dated June 19, 1987. Any lugs found to be cracked must be replaced with a serviceable part prior to further flight in accordance with the limitations set forth in the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft, 1199 N. Fairfax St., Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 21, 1987.

Temple H. Johnson,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-21544 Filed 9-17-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

Proposed Customs Regulations Amendments Relating to Sureties

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide that a continuous importation and entry bond secured by a corporate surety may only be filed with Customs under cover of a letter signed by an authorized officer or agent of that surety. Such an amendment would protect the Government from unnecessary delays in receiving payment from sureties of an importer's liabilities for which the surety is also responsible, when the surety denies liability because it claims to have no record of the bond upon which the demand is made. It also would guarantee that sureties have a reliable data base concerning the amount of bonds they have outstanding, enabling them to make more intelligent decisions regarding management of those potential liabilities. The document also proposes that continuous importation and entry bonds secured by corporate sureties be filed at the Customs National Finance Center to increase the efficiency and integrity of the information input in Customs Automated Commercial System.

DATES: Comments must be received on or before November 17, 1987.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2324, Washington, DC 20229 (202-566-8237).

FOR FURTHER INFORMATION CONTACT:

Bond Aspects: William Lawlor, Drawback and Bonds Division (202-566-5856).

Operational Aspects: Robert J. Koval, Commercial Compliance Division (202-566-2345).

SUPPLEMENTARY INFORMATION:

Background

Part 113, Customs Regulations (19 CFR Part 113), sets forth a description of the various bonds used by the Customs Service and the general requirements applicable to Customs bonds. It contains the general authority and powers of the Commissioner of Customs to require bonds, the general and special bond requirements which must be met by either a principal or a surety, requirements concerning the production of documents, and the authority and manner of assessing liquidated damages for violations of the conditions of bonds, and of cancelling the bond or charges against a bond.

Pursuant to T.D. 84-213, published in the **Federal Register** (49 FR 41152) on October 19, 1984, one standardized bond form covers all the situations for which bonds may be issued (excluding special use bonds for specific situations). This standardized bond can be used either as a single transaction bond or a continuous bond. A single transaction bond is used for one transaction at a specific port. A continuous bond is used to secure multiple transactions or imports through more than one port. Only one continuous bond for a particular activity will be authorized for each principal. A continuous bond is in effect until Customs is notified by either party to the bond contract that the bond is terminated. Pursuant to § 113.27, Customs Regulations (19 CFR 113.27), the written notification of termination must be transmitted to Customs in a reasonable time period before the termination date. Although bond renewal and premium payment procedures between the principal and surety must be made, there is no need to annually refile a continuous bond with Customs.

All bonds require security. They can be secured by an approved corporate or individual surety which gives assurance against default of the bond, or by cash or certain types of Government obligations. Distinctions between the different kinds of sureties are set forth in §§ 113.30 through 113.40, Customs Regulations (19 CFR 113.30-113.40).

Most bonds are issued through Customs brokers. Generally, a broker issues bonds either under a grant of

power of attorney from a corporate surety or by means of having a supply of a corporate surety's bonds in its possession that have been preexecuted by the surety by means of a facsimile seal and signature. Because some brokers do not always report the fact that they have issued a bond for a particular importer to the corporate surety, the corporate surety is sometimes unaware that it is liable on a particular entry for a particular importer. In these situations, when Customs bills a corporate surety for payment on a bond, the surety, to verify its liability, frequently requests copies of the bond and entry documents from Customs. This causes delay in payment of the importer's liabilities to Customs. Also, in some instances, it is discovered that bills thought to be the obligation of one corporate surety are actually the obligation of a different corporate surety.

This control problem occurs mostly with continuous bonds secured by corporate sureties. Single entry bonds relate to only one transaction and the bond remains as part of the transaction papers. Accordingly, questions as to who is liable as the surety on a particular single entry bond usually do not arise. Likewise, the question of who is liable on the bond generally does not arise when a bond is filed by an individual surety or is secured by cash or a Government obligation.

In its continuing efforts to simplify transactions between Customs, brokers, the importing public, and corporate sureties, and to increase the efficiency and integrity of its computerized bond system, Customs is proposing to amend Part 113, Customs Regulations (19 CFR Part 113), to create a procedure providing corporate sureties with accurate information regarding outstanding continuous bonds. Except for conforming changes relating to individual sureties and deposits of cash or Government obligations in lieu of surety, this document proposes a change regarding only corporate sureties.

Customs is proposing to amend § 113.12, Customs Regulations (19 CFR 113.12), to require that when a continuous basic importation and entry bond is filed that is secured by a corporate surety, a cover letter signed by an authorized agent or officer of the surety attesting to the fact that a copy of the bond is on file with the surety or its claim-handling agent, be submitted to Customs with the bond.

This will guarantee that corporate sureties are aware of bonds on which they are the surety. They will then have a reliable data base concerning their outstanding bonds, permitting them to make more intelligent decisions regarding management of those potential liabilities. This will also protect Customs from unnecessary delays in payment due to denial of liability by sureties who are uncertain that they are responsible for an importer's liablities because they have no record of the bond for which they are being billed.

In addition, Customs is proposing that basic importation and entry (I&E) continuous bonds secured by corporate sureties be directly filed at the Customs National Finance Center in Indianapolis, Indiana and that other continuous bonds be forwarded to the National Finance Center by the district director or regional commissioner who approves them. Currently, continuous bonds must be filed with the district director unless they are bonds relating to the payment of an erroneous drawback payment. The latter bonds are now filed with the appropriate regional commissioner. Since all continuous I&E bonds secured by corporate sureties will be directly filed at the National Finance Center rather than with district directors or regional commissioners, it is proposed that mandatory minimum amounts of $100,000 be set for continuous I&E bonds filed by corporate sureties.

To increase the efficiency and integrity of the information input into the Automated Commercial System (ACS), Customs is centralizing the location for the filing of continuous bonds secured by corporate sureties. A centralized system will help to reduce the volume of paper flow between Customs and corporate sureties.

Conforming amendments

Section 113.35, Customs Regulations (19 CFR 113.35), now states that it is the responsibility of the district director to determine whether an individual surety is financially responsible. This is not consistent with § 113.11, Customs Regulations (19 CFR 113.11), as now worded, or as this document proposes to amend § 113.12, that a bond relating to repayment of an erroneous drawback payment shall be filed with the regional commissioner for approval. Accordingly, this document proposes to amend § 113.35 to make it consistent with § 113.12 by deleting the words "district director" whenever it appears in § 113.35(d) and (e), and substituting the words "appropriate Customs officer".

In addition, numerous other conforming changes are proposed throughout Part 113 to reflect that continuous I&E bonds secured by corporate sureties are to be filed at the National Finance Center. Further, it is proposed to amend § 113.37 and § 113.39, Customs Regulations (19 CFR 113.37 and 113.39), to reflect that the Bureau of Government Financial Operations of the Department of the Treasury has been renamed the Financial Management Service.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2324, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW, Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the previsions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified by E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

The collections of information required by the Customs bond (Customs Form 301) and Part 113, Customs Regulations (19 CFR Part 113), have been cleared by the Office of Management and Budget pursuant to the Paper Reduction Act of 1980 (44 U.S.C. 3507) and assigned control number 1515-0144.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 113

Air carriers, Customs duties and inspection, Exports, Freight, Imports, Surety bonds, Vessels.

VOL 52 ISS 181 SE 18 1987 UMI

Proposed Amendments

It is proposed to amend Part 113, Customs Regulations (19 CFR 113), as set forth below.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113, Customs Regulations (19 CFR Part 113), continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624. Subpart F also issued under 19 U.S.C. 1484, 1551, 1565.

§ 113.11 [Removed and Reserved]

2. It is proposed to amend Part 113 by removing § 113.11 and marking it "Reserved".

3. It is proposed to revise the section heading, paragraphs (a), (b) introductory text, (b)(2), and (c), and adding introductory text, paragraphs (b)(3), and (d) of § 113.12 to read as follows:

§ 113.12 Bond application and approval.

Each person who is required by law, regulations or specific instruction to post a bond to secure a Customs transaction or multiple transactions, must submit the bond on Customs Form 301.

(a) *Single transaction bond.* Single transaction bonds whether secured by individual sureties, corporate sureties or by cash or obligations of the U.S., shall be filed with and approved by the district director in the district in which the transaction will take place. To ensure that the revenue is adequately protected, the district director may require a person who will be engaged in a single Customs transaction relating to the importation or entry of merchandise to file a written bond application which may be in the form of a letter. The application shall identify the value and nature of the merchandise involved in the transaction to be secured. When the proper bond in a sufficient amount is filed with the entry summary or, when the entry summary is filed at the time of entry, with the entry, an application will not be required.

(b) *Continuous importation and entry bonds secured by corporate sureties.* A bond application for a continuous importation and entry bond secured by a corporate surety may be in the form of a letter. The application shall be submitted by the applicant, through the corporate surety, to the Customs National Finance Center, Indianapolis, Indiana 46268.

(1) * * *

(2) *Application updates.* If the bond is approved based upon the application, whenever there is a significant change in the information provided under this paragraph, the principal on the bond shall submit a new application through the surety containing an update of the information required by paragraph (b)(1) of this section. The new application shall be filed no later than 30 days after the new facts become known to the principal.

(3) *Approval.* Continuous importation and entry bonds secured by corporate sureties shall be set in the amount stated in § 113.13(a). These bonds shall be filed at the National Finance Center under cover of a letter signed by an officer or authorized agent of the corporate surety who is authorized to accept and/or process claims thereunder, and attesting that a copy of the bond is on file with such surety or agent. Only one continuous bond for a particular activity will be authorized for each principal.

(c) *Continuous bonds secured by individual surety, cash or obligation of the U.S., or corporate surety for other than importation and entry*—(1) *Application.* Any bond application for a continuous bond secured by a corporate surety other than an importation and entry bond or for a continuous bond secured by an individual surety or by cash or obligation of the U.S. shall be submitted to the appropriate district director. It may be in the form of a letter.

(2) *Approval.* If the transactions will occur in a single Customs district, the bond shall be submitted to and approved by the district director of the district in which the transactions will occur. If the transactions will occur in more than one district, the bond may be submitted to and approved by a district director in any of the districts in which the transaction will occur. Only one continuous bond for a particular activity will be authorized for each principal. Except for continuous bonds to secure erroneous drawback payments, the district director approving the bond will determine whether the bond is in proper form and whether it provides adequate security for the transactions. A continuous bond to secure erroneous drawback payments shall be submitted to the regional commissioner who is to process the claims. The regional commissioner will determine the sufficiency of that bond's coverage. Upon approval, the district director or regional commissioner shall forward the bond to the National Finance Center for filing. A continuous entry and drawback bond shall be submitted to the regional commissioner. The regional commissioner, after approval of the bond, shall send it to the surety who shall transmit it to the National Finance Center. In the case of individual sureties, the district director shall be responsible for the continuancy of financial responsibility (see § 113.35(e)).

(i) Procedures for acceptance of continuous bonds with individual sureties are set forth in § 113.35.

(ii) Procedures for acceptance of continuous bonds with cash or obligations of the U.S. in lieu of surety are set forth in § 113.40.

(iii) Procedures relating specifically to the acceptance of bonds, notes or bills are set forth in Part 225 and Part 306, Subpart O, Financial Management Services Regulations (31 CFR Part 225 and 31 CFR Part 306, Subpart 0).

(d) *Certification.* Any application submitted under this section shall be signed by the applicant and contain the following certification:

I certify that the factual information contained in this application is true and accurate and any information provided which is based upon estimates is based upon the best information available on the date of this application.

4. It is proposed to revise paragraph (a), the introductory language of paragraph (b), and paragraphs (c) and (d) of § 113.13 to read as follows:

§ 113.13 Amount of bond.

(a) *Minimum amount of bond.* The amount of any Customs bond shall not be less than $100, except when the law or regulation expressly provides that a lesser amount may be taken. Continuous importation and entry bonds secured by corporate sureties shall be in the amount of at least $100,000. For all bonds other than continuous importation and entry bonds secured by corporate sureties, fractional parts of a dollar shall be disregarded in computing the amount of a bond; the bond shall always be stated as the next highest dollar. For continuous entry and importation bonds secured by corporate sureties, if the principal has duties in excess of $1,000,000 in the previous year, the bond shall be in the amount of 10 percent of those duties rounded to the nearest $100,000.

(b) *Guidelines for determining amount of bond.* In determining whether the amount of a bond is sufficient, the National Finance Center, district director, or regional commissioner, as appropriate (see § 113.12), should at least consider:

* * * * *

(c) *Periodic review of bond sufficiency.* The National Finance Center shall periodically compare charges against each outstanding continuous importation and entry bond secured by corporate sureties with charges and claims against that bond. District directors and regional commissioners shall periodically review each bond approved in their respective

district or region to determine whether the bond is adequate to protect the revenue and insure compliance with the law and regulations. If the National Finance Center, district director, or regional commissioner determines that the bond is inadequate, the principal shall be immediately notified in writing. The principal shall have 30 days from the date of notification to remedy the deficiency.

(d) *Additional security.* Notwithstanding the provisions of this section or any other provision of this chapter, if the National Finance Center, district director, or regional commissioner believes that acceptance of a transaction secured by a continuous bond would place the revenue in jeopardy or otherwise hamper enforcement of Customs laws or regulations, additional security shall be required.

5. It is proposed to revise § 113.15 to read as follows:

§ 113.15 Retention of approved bonds.

All approved continuous bonds shall remain on file at the National Finance Center. All single transaction bonds shall remain on file with the documents associated with the transaction for which they are given and retained by the appropriate Customs officer having jurisdiction over that transaction. The bond containing the agreement to pay court costs (condemned goods) (see § 113.72), shall be transmitted to the United States attorney, as required by section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608). Other disposition of the bonds can occur only if so ordered by the Director, Carriers, Drawback and Bonds Division.

§ 113.24 [Amended]

6. It is proposed to amend the first sentence of § 113.23(d) by inserting "National Finance Center, regional commissioner, or" between "the" and "district director".

7. It is proposed to revise the introductory text of §113.24(a) to read as follows:

§ 113.24 Riders.

(a) *Types of riders.* The National Finance Center may accept the following types of bond riders.

* * * * *

8. It is proposed to revise § 113.27 (a) and (b) to read as follows:

§ 113.27 Effective dates of termination of bond.

(a) *Termination by principal.* A request by a principal to terminate a bond shall be made in writing to the National Finance Center. The termination shall take effect on the date requested if the date is at least 10 business days after the date of receipt of the request. Otherwise the termination shall be effective on the close of business 10 days after the request is received. If no termination date is requested, the termination shall take effect on the tenth business day following the date of receipt of the request.

(b) *Termination by surety.* A surety may, with or without the consent of the principal, terminate a Customs bond on which it is obligated. The surety shall provide reasonable written notice to both the principal and, depending on where the bond was approved, either the National Finance Center or the district director or regional commissioner in the district or region where the bond was approved, of the intent to terminate. The written notice shall state the date on which the termination shall be effective and shall be sent to both Customs and the principal by certified mail, with a return receipt requested. Thirty days shall constitute reasonable notice unless the surety can show to the satisfaction of the Customs office where the bond was approved that lesser time is reasonable under the facts and circumstances.

* * * * *

9. It is proposed to revise § 113.32(a) to read as follows:

§ 113.32 Partnerships as principals.

(a) *Names of partners on the bond.* Unless written notice of the full names of all partners in the firm has been previously filed with the National Finance Center, or the district director or regional commissioner in the district or region where the bond was approved, the names of all persons composing the partnership shall appear in the body of the bond; for example, "Aaron A. Abel, Bertrand B. Bell and Charles C. Cole, composing the firm of Abel, Bell, Cole and Co."

* * * * *

§ 113.33 [Amended]

10. It is proposed to amend the first sentence of § 113.33(c) by inserting "or the National Finance Center" between "Commissioner" and "to".

11. It is proposed to amend § 113.33(d) by inserting "or National Finance Center" between "director" and "unless".

12. It is proposed to revise § 113.37(a) to read as follows:

§ 113.37 Corporate sureties.

(a) *Lists of corporations and limits on their bonds.* Treasury Department Circular 570 contains a list of corporations authorized to act as sureties on bonds, with the amount in which each may be accepted. The Circular shall be furnished annually to all district directors and to the National Finance Center by the Secretary of the Treasury. Unless otherwise directed by the Commissioner of Customs, no corporation shall be accepted as surety on a bond if not named in the current Circular as amended by **Federal Register** notice, and no bond shall be for a greater amount than the respective limit stated in the Circular, unless the excess is protected as prescribed in § 223.11, Financial Management Service Regulations (31 CFR 223.11).

* * * * *

13. It is proposed to amend the second sentence of § 113.37(f) by removing "Bureau of Government Financial Operations" and inserting, in its place, "Financial Management Service."

14. It is proposed to amend § 113.37(g)(2) by revising the first sentence to read as follows:

(g) * * *

(2) *Filing.* The corporate surety power of attorney executed on Customs Form 5297 for continuous importation and entry bonds shall be filed at the National Finance Center. All other corporate surety powers of attorney shall be filed at a district office unless the district director permits filing at any port within the district, in which case the corporate surety power of attorney must be submitted in duplicate. * * *

15. It is proposed to amend the last sentence of § 113.37(g)(4) by inserting "National Finance Center" between "the" and "district".

16. It is proposed to revise § 113.38(c) to read as follows:

§ 113.38 Delinquent sureties.

* * * * *

(c)(1) *Nonacceptance of continuous importation and entry bond secured by corporate surety by National Finance Center.* The National Finance Center may refuse to accept a continuous importation and entry bond secured by a corporate surety when the surety, without just case, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof. If the National Finance Center believes that a substantial question of law exists as to whether a breach of bond obligation has occurred, it should request internal advice under the provisions of § 177.11 of this chapter from the Director, Carriers, Drawback and Bonds Division, Customs Headquarters.

(2) *Nonacceptance of other bonds by district director or regional commissioner.* A district director or regional commissioner, as appropriate, may refuse to accept a bond secured by

an individual or corporate surety when the surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amount thereof. If the district director believes that a substantial question of law exists as to whether a breach of bond obligation has occurred, he should request internal advice under the provisions of § 177.11 of this chapter from the Director, Carriers, Drawback and Bonds Division, Customs Headquarters.

(3) *Nonacceptance of bond upon instructions by Commissioner.* The Commissioner may, when circumstances warrant, issue instructions to the National Finance Center, district directors, and regional commissioners, that they shall not accept a bond secured by an individual or corporate surety when that surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof.

(4) *Notice of surety.* The appropriate Customs officer may take the above actions only after the surety has been provided reasonable notice with an opportunity to pay delinquent amounts, provide justification for the failure to pay, or demonstrate the existence of a significant legal issue justifying further delay in payment.

(5) *Review and final decision.* After a review of any submission made by the surety under paragraph (c)(4) of this section, if the appropriate Customs officer is still of the opinion bonds secured by the surety should not be accepted, written notice of the decision shall be provided to the surety in person or by certified mail, return receipt requested, at least 5 days before the date that Customs will no longer accept the bonds of the surety. When notice is sent to the surety of the decision not to accept the surety's bonds, the appropriate Customs office shall notify the Director, Carriers, Drawback and Bonds Division, Customs Headquarters. The decision shall also be published in the Customs Bulletin.

(6) *Duration of decision.* Any decision not to accept a given surety's bond shall remain in effect for a minimum of 5 days or until all outstanding delinquencies are resolved, whichever is later.

(7) *Actions consistent with requirements.* Any action not to accept the bonds of a surety under paragraphs (c) (1), (2), and (3), of this section shall be consistent with the requirements of this section.

17. It is proposed to revise § 113.39 to read as follows:

§ 113.39 Procedure to remove a surety from Treasury Department Circular 570.

If the National Finance Center, a district director or regional commissioner is unsatisfied with a surety company because the company has neglected or refused to pay a valid demand made on the surety company's bond or otherwise has filed to honor an obligation on that bond, the National Finance Center, district director, or regional commissioner may take the following steps to recommend that the surety company be removed from Treasury Department Circular 570. The fact that collection proceedings have been, or are to be, started on a bond does not preclude use of this procedure if the National Finance Center, district director, or regional commissioner believes such action is warranted.

(a) *Report to Headquarters.* The National Finance Center, district director, or regional commissioner shall send the following evidence to Headquarters, Attn: Director, Carriers, Drawback and Bonds Division. If the report is from a district director it shall be submitted through the appropriate regional commissioner.

(1) A copy of the bond in issue;

(2) A copy of the entry or other evidence which shows that there was a default on the bond;

(3) A copy of all notices, demands or correspondence sent to the surety company requesting the honoring of the bond obligation;

(4) A copy of all correspondence from the surety company; and

(5) A written report of the facts known to the National Finance Center, district director, or regional commissioner showing the unsatisfactory performance by the surety company of the bond obligation(s).

(b) *Review by Headquarters.* The Director, Carriers, Drawback and Bonds Division, shall review submitted evidence and determine whether further action against the surety company is warranted. If it is determined that further action is warranted, a report recommending appropriate action will be submitted to the Fiscal Assistant Secretary, Department of the Treasury, as required by § 223.18(a), Financial Management Service Regulations (31 CFR 223.18(a)). The National Finance Center or district director and regional commissioner will be informed in writing of Headquarters action regarding their request for removal of the surety.

William von Raab,

Commissioner of Customs.

Approved.

Francis A. Keating II,

Assistant Secretary of the Treasury.

[FR Doc. 87-21497 Filed 9-17-87; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Parts 1 and 602

[LR-83-86]

Low-Income Housing Credit, Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the low-income housing credit under section 42 of the Internal Revenue Code of 1986, as enacted by the Tax Reform Act of 1986 (Pub. L. 99-514). These regulations provide guidance concerning the State low-income housing credit authority limitation.

DATES: The public hearing will be held on Monday, November 9, 1987, beginning at 10:00 a.m. Outlines of oral comments must be delivered on or mailed by Friday, October 23, 1987.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, 1111 Constitution Avenue, NW., Attn: CC:LR:T, Room 4429, (LR-83-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Angela D. Wilburn of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935, (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 42 of the Internal Revenue Code of 1986 as enacted by the Tax Reform Act of 1986, (Pub. L. 99-514). The proposed regulations appeared in the **Federal Register** for Monday, June 22, 1987 at (52 FR 23471).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, October 23, 1987, an outline of the oral comments to be presented at the hearing

and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Donald E. Osteen,

Director, Legislation and Regulations Division.

[FR Doc. 87-21630 Filed 9-17-87; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3263-3]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking; extension of the public comment period.

SUMMARY: On July 14, 1987 (52 FR 26424), USEPA proposed rulemaking and solicited public comment on a revision to the Illinois State Implementation Plan for Ozone. USEPA proposed to disapprove the State's plan as not meeting all requirements of Part D (sections 171–178) of the Clean Air Act (Act). Based on that finding, USEPA also proposed to impose a construction ban as set forth in section 110(a)(2)(I) of the Act on major new stationary sources of volatile organic compounds (VOC) in the Illinois portions of the Chicago and St. Louis ozone nonattainment areas.

At the request of the State of Illinois, the public comment period is being extended until October 29, 1987, to allow additional time to develop comments on the complex issues presented in the proposed rulemaking.

DATE: Comments must be received on or before October 29, 1987.

ADDRESS: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch Region V, U.S. Environmental Protection Agency (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, (312) 886-6036.

Dated: September 10, 1987.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 87-21605 Filed 9-17-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3263-9]

Approval and Promulgation of Implementation Plans; Dallas and Tarrant Counties, TX; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: EPA is giving notice that the public comment period for the notice of proposed rulemaking published July 14, 1987 (52 FR 26421), regarding the proposed disapproval of the Dallas and Tarrant Counties State Implementation Plan (SIP) for ozone, is being extended an additional 60 days to November 13, 1987. EPA is taking this action in response to requests from the North Central Texas Council of Governments and the Texas Air Control Board. The Texas Air Control Board's request was for a 120 day extension to the comment period. However, it is EPA's position that an additional 60 days is an appropriate time period to provide comments on the content of the proposed disaporoval package.

DATE: Comments are now due on or before November 13, 1987.

ADDRESS: Send comments to the Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Thomas H. Diggs, State Implementation Plan/New Source Review Section, Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655-7214 or FTS 255-7214.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Authority: 42 U.S.C. 7401-7642.

Date: September 11, 1987.

Robert E. Layton Jr.,

Regional Administrator (6A).

[FR Doc. 87-21609 Filed 9-17-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[FRL-3263-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availablity and request for comment.

SUMMARY: On September 25, 1981, the Environmental Protection Agency (EPA) issued an interim final rule and request for comment that excluded from regulation waste samples collected for the sole purpose of testing to determine their characteristics or composition. In the preamble to the interim final rule, EPA stated that it did not intend the exclusion to include the larger-size samples used in treatability studies or other tests at pilot-scale or experimental facilities. Several commenters raised issues about the scope of the exclusion. As a result of the comments received on the interim final rule and other available data, the Agency is reopening the comment period on the September 25, 1981, rule and soliciting comment on a number of specific issues concerning the applicability of the exemption to treatability studies.

DATES: EPA will accept public comments on this notice until October 19, 1987. Comments postmarked after this date may not be considered.

ADDRESSES: The public must send an original and two copies of their comments to: EPA RCRA Docket (S-212) (WH-562), 401 M Street SW., Washington, DC 20460.

Place "Docket number F-87-TSEF-FFFFF" on your comments. The Office of Solid Waste (OSW) docket is located in the sub-basement at the above address, and is open from 9:00 am to 4:00 pm, Monday through Friday, excluding Federal holidays. The public must make an appointment by calling (202) 475-9327 to review docket materials. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page. Copies of the comments on the interim final rule and the petitions received are available for *viewing and copying only* in the OSW docket.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contract Paul Mushovic, Office of Solid Waste (WH-562B), U.S. Environmental Protection

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Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7392.

SUPPLEMENTARY INFORMATION:

I. Background

On September 25, 1981 (46 FR 47426), EPA issued an interim final rule and request for comment. This rule conditionally excluded waste samples and other samples, which are collected solely for the purpose of testing to determine their characteristics or composition, from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA), including the generator and transporter requirements of Parts 262 and 263 and the permitting requirements. The Agency granted this exclusion because it believes that certain incentives already existed for the safe transport and management of waste samples, and that these incentives would assure protection of human health and the environment without requiring samples to be subject to the full set of hazardous waste management requirements. These incentives include: (1) The avoidance of duplicative costs associated with sample collection, transportation, testing, and storage, (2) the need to receive analysis results before the generator can comply with the hazardous waste regulations and other state or local requirements, (3) the laboratory's return of the sample to the generator is typically part of a contractual agreement (usually under the premise that the generator may have proprietary information to protect), and (4) the laboratory's avoidance of the costs of disposal by returning the sample to the generator. The preamble stated that EPA did not intend to exclude from regulation the larger-size samples used in treatability or other studies. The preamble, however, did not discuss treatability studies that typically require smaller-size samples.

The preamble also stated that the Agency had considered and rejected a quantity limit for the samples subject to the exclusion. Our rationale was that available information indidcated that, typically, the size of samples shipped for characterization or analytical purposes was about 1 gallon. However, the Agency stated that it would consider imposing a limit on sample size if comments or experience indicated that larger shipments of samples do occur. While most commenters supported the exclusion, several expressed concern that § 261.4(d) did not explicitly apply to samples used in treatability studies.

II. Availability of Data

Since the interim final rule, the Agency has received the following new data:

(1) Comments received in response to the interim final rule;

(2) Two recent rulemaking petitions submitted by the Hazardous Waste Treatment Council (HWTC) (only the one received on June 2, 1987 is being considered in this notice); and

(3) A Memorandum entitled "Waste Quantity Required for Offsite Treatability studies." This memorandum was written from Joan Knapp and Bill Glynn, REM II Contractor, on May 18, 1987, to John Smith, EPA/Washington. It was written to provide to the personnel involved in Superfund cleanup activities information on the sample sizes required for various treatability studies.

Copies of these documents are available in the RCRA docket (see "**ADDRESSES**" section).

The Agency received 22 comments on the interim final rule. Approximately one-half of the commenters suggested that the laboratory sample exclusion should be expanded explicitly to include treatability studies. Some commenters suggested a limit on sample sizes (*e.g.*, less than 5 gallons, 5–10 gallons, or 55 gallons). It should also be noted that in the Agency's export rule (see 51 FR 28664), comments were reviewed which suggest that EPA exempt such samples from the export requirements (see RCRA docket for export rule for specific comments).

The commenters, and the HWTC in its rulemaking petitions, have argued that the sample exclusion should be expanded to include treatability studies requiring smaller-size samples. They maintain that such an expansion will not create a significant risk to public health and the environment, and will move substantial impediments to timely CERCLA cleanup activities and RCRA corrective actions. The principal focus of these arguments is that the present RCRA Subtitle C permit requirements unnecessarily interfere with the experimentation and research necessary to evaluate effective treatment technologies. The most frequently cited regulatory barriers are the costs of applying for a RCRA permit, the delays associated with obtaining Agency approval of the application, and delays prior to final granting of the permit.

On June 2, 1987, EPA received a rulemaking petition from the HWTC. This petition specifically requests that EPA amend the RCRA regulations to include small-scale treatability studies in the § 261.4(d) exclusion and to establish conditional exclusions for larger-scale tests.[1] The HWTC defined a treatability study as an analysis in which a relatively small amount of hazardous waste is subjected to a known treatment process to determine: (1) Whether the waste is amendable to a treatment process, (2) what pretreatment (if any) is required, (3) the optimal process conditions needed to achieve the desired treatment, (4) the efficiency of the treatment process for a specific waste or wastes, and (5) the characteristics and volume of residuals from a particular treatment process. Such a treatability study can be performed in bench-scale, pilot-scale, or full-scale equipment.

Current RCRA regulations require that facilities treating hazardous waste have a RCRA permit or have interim status. The HWTC's petition argues that this requirement, when applied to small-scale treatability studies causes unwarranted difficulties in the implementation of CERCLA and will have a similar effect on RCRA corrective action.

The petition requests that § 261.4(d) be interpreted and explicitly amended to exclude limited quantities of samples of hazardous wastes used for treatability studies, and the shipment and storage of those samples. The petition suggests the following limits: (1) No one shipment may exceed 250 kg (which, based on the density of water, is approximately the volume of a 55-gal drum), (2) no more than 1,000 kg of exempted waste may be present at the treatability study facility at any one time, and (3) no more than 250 kg of exempted waste may be subjected to treatability studies in any one day.

The Agency has included in the docket a memorandum (item 3, above), which summarizes information concerning the sample sizes required for conducting bench-scale and pilot-scale treatability studies for Superfund cleanups. This memorandum indicates that 250 kg appears to be an adequate sample size for most smaller-scale studies.

The Agency is currently considering only smaller-scale treatability studies. The second part of HWTC's proposal concerning exclusions for larger-scale treatabilities studies, and HWTC's petition for amending the NCP, will be addressed separately, at a later date.

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[1] Also, the HWTC submitted a companion rulemaking petition on May 21, 1987 requesting that the Agency amend the CERCLA National Contingency Plan (NCP) to extend the present on-site treatability exemption from permitting to include off-site treatability studies. That petition is not being considered in this notice.

This exclusion, if expanded, also would exclude such samples from the export requirement codified at 40 CFR 262.50.

III. Reopening of the Comment Period

Since the publication of the interim final rule, the new data identified above has been made available to the Agency. The Agency currently is reviewing these data to decide whether the sample exclusion is 40 CFR 261.4(d) should include waste used in smaller-scale treatability studies. As part of this review, the Agency also is reopening the comment period and soliciting comment on the following issues:

(1) Should the Agency promulgate a final rule that expands the sample exclusion to apply to small-scale treatability studies?

(2) Is the definition of treatability studies as proposed by the HWTC appropriate?

(3) Should the exclusion be further expanded to include other types of studies, such as liner compatability studies? If so, what other types of studies would benefit from this exclusion?

(4) Are the limitations proposed by the HWTC on sample size, shipment size, and storage adequate to provide for meaningful treatability studies and to protect human health and the environment by minimizing risk? If not, please specify: (1) The limit (*i.e.*, sample size, shipment size, storage quantity), (2) whether it is practicable to conduct treatability studies under the specified limitation, and (3) whether the size limit would protect human health and the environment by presenting *de minimis* risk?

(5) Should there be an upper limit in the exclusion to prevent a facility from storing and treating an unlimited amount of hazardous waste samples so the facility would be operating as a large scale treatment, storage, and disposal facility? For example, should a limit, such as the number of days allowed to treat a particular waste or the total number of days in which studies will be allowed per month, be set? We solicit comments on these or any other specific limits that could be imposed.

(6) The Agency is concerned that many samples of the same waste could be subjected to and endless set of varying treatment conditions to circumvent proper treatment or disposal under RCRA Subtitle C. Is this a valid concern, or would this practice be economically infeasible?

(7) Are the incentives for safe transport and storage of waste characterization samples also present for treatibility samples? If not, why not?

(8) After the treatability study is completed, should a limit be imposed for the time the sample may be present at the facility until it, or its residue, leaves the facility?

Comments are solicited on those issues presented above, and on any other issues directly relevant to an expansion of the § 261.4(d) exclusion to include treatability studies. Comments on the petition for CERCLA exemptions or on issues relating to other portions of the interim final rule will not be considered.

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling.

Date: September 14, 1987.

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 87-21607 Filed 9-17-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket 87-312, RM 5662; FCC 87-262]

Private Land Mobile Radio Services, Special Emergency Radio Service, Private Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to allow private carriers who offer medical communications services to be licensed directly in the Special Emergency Radio Service (SERS). Such private carriers would be able to offer communications services to other SERS eligibles.

DATES: Interested parties may file comments on or before October 30, 1987, and reply comments on or before November 16, 1987.

ADDRESS: Federal Communications Commission, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Gay Ludington, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, PR Docket 87-312, adopted August 4, and released September 9, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20037. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. This *Notice of Proposed Rulemaking* proposes to amend the Commission's rule governing the eligibility requirements in the Special Emergency Radio Service (SERS). In this *Notice*, we propose to allow commercial enterprises offering medical communications services to be licensed directly in the SERS to operate on a private carrier basis. Such private carriers would be able to offer communications services to other entities eligible in the SERS.

2. ProNet, a supplier of medical equipment and communications systems, has filed a Petition for Rulemaking, requesting that § 90.35 of the Commission's Rules be amended to extend eligibility in the SERS to entities who provide communications services to the medical service industry. Communications service providers not having independent grounds of eligibility themselves, i.e., ProNet, are not presently eligible. Instead, they must arrange for eligible users to become licensees. In turn, the licensees contract with the service providers to manage and operate the system.

3. In its Petition, ProNet argues that licensing of commercial operators promotes efficient spectrum use through consolidation of conflicting or inefficient systems, and encourages development of spectrum-efficient technology. Licensing commercial entities won't compromise the integrity of the SERS, says ProNet, because only eligibles will be permitted to use a commercial system, and the commercial licensee will be subject to Commission rules, regulations and sanctions.

4. We received comments and reply comments from nearly sixty parties. Those in favor of ProNet's petition consisted generally of hospitals, ambulance services and physicians who maintain that ProNet's service has dramatically improved their hospital-run communications systems. On the other hand, state and private emergency medical services (EMS) providers oppose ProNet's proposal, because they fear that its adoption would lead to inappropriate and inefficient use of SERS spectrum, especially ten frequency pairs known as "MED" channels.

5. After close analysis of the comments and reply comments, and

taking into consideration our experience with SERS spectrum users, we believe the public interest, and the interests specifically of the medical community, would best be served by allowing commercial entities to offer private carrier service to SERS eligibles. We wish to make very clear, however, that we do not propose to change the eligibility requirements for using SERS frequencies, including MED channels. Nor do we propose to change the use restrictions to which any of these frequencies are subject.

6. Over the years, the Commission has maintained two parallel objectives regarding the availability and use of SERS spectrum. On the one hand, we have been concerned that the special needs of state and local government agencies and private EMS operators be safeguarded. We recognize the need to protect health and safety as a paramount reason to protect the integrity of SERS frequencies from other less critical uses. On the other hand, we believe that concerns of the medical community and the public's interest in having readily available medical services are best met by fostering equipment and systems development which uses all of the available SERS spectrum, including channels utilized by EMS providers, in increasingly efficient and versatile ways.

7. Satisfying the special needs of SERS eligibles, and at the same time encouraging effective spectrum usage, are compatible objectives. Private carriers can increase efficient spectrum utilization and allow more users to operate in less spectrum. This will help lessen the very overcrowding and interference which plagues EMS users today. In order to be successful commercial ventures, we believe that private carriers will give special attention to the unique requirements of the special emergency community.

Initial Regulatory Flexibility Analysis

8. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a initial regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full test of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction

9. The rule amendment set forth here has been analyzed with respect to the Paperwork Reduction Act of 1980 and has been found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public. Additionally, no new compliance requirements are being promulgated.

Ordering Clauses

10. Authority for issuance of this Notice of Proposed Rule Making is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Interested persons may file comments on or before October 30, 1987, and reply comments on or before November 16, 1987. All relelvant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that the fact of the Commission's reliance on such information is noted in the report and order.

11. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters at 1919 M Street, NW., Washington, DC 20554.

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Special Emergency Radio Service, private carriers.

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. Section 90.33 is revised to read as follows:

§ 90.33 Scope.

The Special Emergency Radio Service covers the licensing of the radio communications of the following categories of activities: Medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated places, communications standby facilities, and emergency repair of public communications facilities. Private carriers may also be licensed in the Special Emergency Radio Service to provide radio communications service to eligibles. Rules as to eligibility for licensing, permissible communications, classes and numbers of stations, and any special requirements as to each of these categories are set forth in the following sections. Frequencies available for these categories of services are shown in a separate frequency table.

2. Section 90.52 is added to read as follows:

§ 90.52 Private carriers.

Eligibility. Private carriers, as defined in § 90.7, may be licensed to provide service to any Special Emergency Radio Service eligible, subject to the requirements and limitations set out for use of the frequencies listed in § 90.53.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-21408 Filed 9-17-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Independence Valley Speckled Dace and Clover Valley Speckled Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes endangered status for the Clover Valley speckled dace (*Rhinichthys osculus oligoporus*) and Independence Valley speckled dace (*Rhinichthys osculus lethoporus*), pursuant to the Endangered Species Act of 1973, as amended. The former is known from only two small springs in northwestern Nevada and the latter from only one spring in the same area. Both are in jeopardy because of their extremely limited distribution, the vulnerability of their habitats to perturbation by human irrigation practices, and the introduction of non-native aquatic species.

Such activities have eliminated one population of the Clover Valley speckled dace and caused extinction of another fish, the Independence Valley tui chub (*Gila bicolor isolata*), formerly found in the spring inhabited by the Independence Valley speckled dace. The Service seeks comments from the public on this proposal.

DATES: Comments from all interested parties must be received by November 17, 1987. Public hearing requests must be received by November 2, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Lloyd 500 Building, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The Clover Valley speckled dace was first collected on September 14, 1934, by Dr. C.L. Hubbs and his family (Hubbs *et al.* 1974). It was not recognized as a unique form of speckled dace until Drs. Hubbs and Miller (1972) described it as a subspecies endemic to two springs in Clover Valley, Elko County, Nevada. The Independence Valley speckled dace was not collected until August 25, 1965. It was also described by Hubbs and Miller (1972) as a distinct subspecies of speckled dace found only in Independence Valley.

Speckled dace are members of the minnow family of fishes (Cyprinidae), which is found in many waters of western North America. They are able to occupy a wide variety of habitats, ranging from cold streams and rivers with rocky substrates to small thermal springs with silt substrates. Their adaptability to a broad range of environments has allowed them to persist in habitats too harsh for the survival of many other fish species. Isolation of populations has permitted genetic divergence and resulted in a number of morphologically distinct forms recognized as subspecies. Their diet consists primarily of insects, and their maximum length rarely exceeds 4 inches.

Speckled dace are distinguished from other minnows by, among other characters, the shape and arrangement of pharyngeal teeth (usually slightly curved and hooked in a 1, 4–4, 1 formula) and the presence of well-developed radii completely around the scales. Coloration is typically olive-green on the back, fading to silver/gold on the stomach. As the vernacular name suggests, black spots may be randomly arranged over the body. A distinct black lateral stripe usually extends from the forebody to the caudal fin.

The Clover Valley speckled dace and Independence Valley speckled dace are believed to be derived from an ancestral form similar to the Lahontan speckled dace (*Rhinichthys osculus robustus*), which presently occupies the Humboldt River system in northern Nevada. They are distinguished from the latter by their less developed lateral line system on both the body and head. The Clover Valley speckled dace is further distinguished by the anterior location of its pectoral fins and a lower number of pelvic fin rays (6 versus typically 8 for speckled dace) (Hubbs and Miller 1972). The Independence Valley speckled dace is dwarfed, with a more laterally compressed body than is characteristic of speckled dace in general. Its lateral line is less developed, its caudal peduncle is deeper, and its pectoral fin rays are fewer than in the Clover Valley speckled dace. It is also distinguished from the latter by its straighter and more oblique mouth (Hubbs and Miller 1972).

Both of these speckled dace are restricted to small springs and their outflows. Vinyard (1983) and Hubbs *et al.* (1974) located the Clover Valley speckled dace in small irrigation impoundments and in ditches radiating from them into irrigated pasture land. Hubbs *et al.* (1974) also recorded the dace in isolated portions of spring-fed streams located upstream from these impoundments. Vinyard (1983) and Hubbs *et al.* (1974) recorded the Independence Valley speckled dace from shallow marshlands spreading away from deep pools associated with spring sources.

All habitats of both species are situated on private land supporting ranch operations. Neither of these speckled dace have been widespread in historic times. Early collections made in 1934 did not locate the Independence Valley speckled dace, and located only one Clover Valley speckled dace population (Hubbs *et al.* 1974). Subsequent surveys conducted in 1965, however, located the Independence Valley speckled dace and an additional population of Clover Valley speckled dace (Hubbs *et al.* 1974). Both dace were noticeably scarce when these surveys were conducted.

Hubbs *et al.* (1974) attributed the rarity of these speckled dace to habitat alterations to facilitate irrigation, and to the presence of rainbow trout (Salmo gairdneri) and largemouth bass (Micro terus salmoides) introduced for sport fisheries. Population sizes of these speckled dace have been known to fluctuate in response to the presence of the non-native fish species. For example, in 1964 numerous Clover Valley speckled dace were present in a spring-fed impoundment that had recently been stocked with rainbow trout; however, a 1965 survey of the same locality found the dace scarce and restricted to a small portion of stream near the spring source where they could best avoid rainbow trout (Hubbs *et al.*, 1974). Vinyard (1983) failed to locate any dace at this site during several surveys in 1983.

Hubbs *et al.* (1974) noted the scarcity of the Independence Valley speckled dace in its sole habitat during 1965, the first time this fish was collected. Vinyard (1983) also observed its scarcity and recorded dace only in shallow water not inhabited by bass and bluegill (*Lepomis macirochirus*). That the presence of the latter threatens the Independence Valley speckled dace is evident by the extinction of the Independence Valley tui chub (*Gila bicolor isolata*). This chub was endemic to the same spring inhabited by the dace, and disappeared following the introduction of the bass and bluegill

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Clover Valley speckled dace (*Rhinichthys osculus oligoporus*) and Independence Valley speckled dace (*Rhinichthys osculus lethoporus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

As presented in the "Background" section, several factors have affected the decline of these speckled dace. Neither the dace nor their habitats were known before settlers moved into the area and began manipulating springs to facilitate irrigation. Therefore, precise limits of their historical ranges are unknown. However, information gathered about other dace occupying other springs within northern Nevada indicates these speckled dace occupied all of the streams and wetlands maintained by local spring discharge The quantity of habitat was probably never large, because the springs utilized are small; none of these habitats are supported by springs discharging more than 2,000 gallons per minute (Garside and Schilling 1979).

Initial surveys for the Clover Valley speckled dace in 1934 found that springs occupied by the dace had been altered at a much earlier date. The outflows were impounded in small reservoirs prior to being distributed to various irrigated pastures (Hubbs *et al.* 1974). The ditched habitats existing down gradient from these reservoirs varied from watered to dried depending on where irrigated lands were situated relative to the location of reserviors. The variable water application regime, which continues today (Vinyard 1983), prohibited the long-term presence of dace and their habitat in areas downstream from the reservoirs and was probably responsible for the scarcity of dace in these streams.

Manipulation of habitats downstream from the reservoirs relegated dace populations to reserviors and the small sections of stream between the impoundments and the springs. Vinyard (1983) reported a heavy growth of aquatic vegetation in these reservoirs, which was controlled in the past by application of aquatic herbicides. Use of these particular herbicides has not continued to the present, because they are no longer manufactured. Many of these types of chemicals are toxic and, unless carefully applied are lethal to fish life. It is possible, therefore, that populations of Clover Valley speckled dace were further reduced during aquatic weed control. Continued interest in controlling aquatic vegetation indicates that these populations may be affected by future herbicide applications.

Viability of dace populations has also been affected by introductions of non-native fishes. Hubbs *et al.* (1974) reported low dace populations when rainbow trout were introduced into reservoirs. Large dace populations were, however, reported at times when trout had not been stocked and were, therefore, scarce or absent. Courtenay and Stauffer (1984) reviewed the detrimental impacts of introduced fishes on native fish populations throughout the world.

The manipulation of reservoir levels may also adversely affect dace populations by effectively decreasing the amount of pond habitat and forcing the fish to take refuge in downstream irrigation ditches. There the dace are vulnerable to extirpation when their habitat is dried by water management practices that require continuous changes in the water flow in the ditches being used to irrigate different pastures.

The known distribution of the Clover Valley speckled dace has changed over the past 20 years. It presently occurs in two springs, but has been eliminated from Warm Springs in Clover Valley (Hubbs *et al.* 1974, Vinyard 1983). Both of the existing populations are restricted to local habitats within impoundments and seasonally in their tributary streams (Vinyard 1983). The size of these populations is unknown, but each is believed to exceed several hundred individuals during the summer when they reach their maximum levels.

The Independence Valley speckled dace has never been known to be abundant and has always been known from a single spring system. Hubbs *et al.* (1974) reported the dace to be so scarce during their attempts to collect it in 1965 that it was difficult to locate the number required for taxonomic analysis. Vinyard (1983) confirmed its existence in only one spring and noted that the dace was only in those areas not occupied by largemouth bass and bluegill. Therefore, the dace presently occupies less habitat than it did in 1965. The limited habitat occupied by this speckled dace implies that any increase in ranch operations, which adversely affects its habitat, is likely to cause a population decline.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The small population size and limited distribution of these fish makes them vulnerable to deleterious depletion by collection.

C. Disease or Predation

Neither of these speckled dace have been examined for disease. A number of diseases are known to occur naturally in other speckled dace populations in the Great Basin; however, these are not believed to have a substantial impact on population viability. The establishment of non-native fishes in these habitats may have provided an avenue for foreign diseases to be introduced. Such introductions of disease have occurred in other portions of Nevada. Minckley and Deacon (1968) reported the introduction of foreign parasites into the Moapa River system in southern Nevada, which apparently accompanied the establishment of exotic fishes in the local springs and streams. Analysis of native fishes in the Moapa Valley showed that these parasites have successfully infected the local fish community and may be depressing populations. No introduced parasites or diseases are known to infect these two speckled dace.

Sport fishes introduced into North America have frequently been reported as preying upon or competing with native fishes. In many instances exotic species have caused the native fishes to be eliminated (Minckley 1973, Moyle 1976, Taylor *et al.* 1984). Extinction of the Independence Valley tui chub following introductions of largemouth bass and bluegill provides strong evidence that such introductions have significantly impacted the native fishes occupying springs in northeastern Nevada. The presence of predatory species in springs occupied by these two speckled dace is noted as being a major factor depressing their populations (Hubbs *et al.* 1974).

D. The Inadequacy of Existing Regulatory Mechanisms

These species are not protected by any known regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Vandalous acts have never been known to affect rare aquatic species in Nevada; however, threats of vandalism were made that, if carried out, would have reduced or eliminated populations of rare species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list both the Clover Valley speckled dace and Independence Valley speckled dace as endangered. The restricted distribution of these species, and the immediate and potential problems jeopardizing their continued existence, indicate that endangered, rather than threatened, is the appropriate classification. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. With regard to the two speckled dace, the Service finds that designation of critical habitat is not prudent at this time. As discussed under Factors A, B, and E, in the "Summary of Factors Affecting the Species," these fish are vulnerable to unlawful collection and vandalism. Designation of critical habitat would entail publication of precise habitat locations, delineating the distribution of these fishes and, therefore, would make the species more susceptible to unlawful collection and vandalism. All involved parties and landowners will be notified of the location and importance of

protecting the habitat of these species. Protection of habitat will be addressed through the recovery process and the section 7 consultation process, as explained below.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Some actions may be initiated prior to listing, circumstances permitting. Recovery actions that may be beneficial to these species include conservation easements and consequent effective management of the springs where the fish live, and protective measures to prevent vandalism, habitat disturbance, and introduction of predatory fish. Specific management actions that might be negotiated pursuant to conservation easements with private landowners would be leaving sufficient water in springs and outflows during irrigation work, leaving some vegetation intact in the course of clearing irrigation canals, and not using herbicides. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The restriction of the two speckled dace to private land indicates that the involvement of Federal activities regarding these species will be minimal. The U.S. Army Corps of Engineers may be required to issue permits, in compliance with section 404 of the Clean Water Act, for activities that dredge and fill wetlands occupied by the fish. No other Federal activities are known to be involved.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to U.S. Fish and Wildlife Service, 500 NE., Multnomah Street, Suite 1602, Portland, Oregon 97232.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Courtenay W.R., Jr., and J.R. Stauffer, Jr. (eds.). 1984. Distribution, biology, and management of exotic fishes. Johns Hopkins University Press, Baltimore.

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Vinyard, G.L. 1983. A status report about the Independence Valley speckled dace (*Rhinichthys osculus lethoporus*), Independence Valley tui chub (*Gila bicolor isolata*), and Clover Valley speckled dace (*Rhinichthys osculus oligoporus*); three fishes restricted to the northeastern portion of Nevada. Unpublished report to the U.S Fish and Wildlife Service, Reno.

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Author

The primary author of this proposed rule is Mr. Donald W. Sada, U.S. Fish and Wildlife Service, Great Basin Complex, 4600 Kietzke Lane, Reno, Nevada 89502 (702/784–5227).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "FISHES," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
Dace, Clover Valley speckled	*Rhinichthys osculus oligoporus*	U.S.A. (NV)	Entire	E		NA	NA
Dace, Independence Valley speckled	*Rhinichthys osculus lethoporus*	U.S.A. (NV)	Entire	E		NA	NA

Dated: August 26, 1987.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–21582 Filed 9–17–87; 8:45 am]

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Notices

Federal Register
Vol. 52, No. 181
Friday, September 18, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: October 26–28, 1987.

Time: 8:00 a.m.—5:30 p.m., October 26–27, 1987

8:00 a.m.—12:00 Noon, October 28, 1987

Place: Sheraton World, Orlando, Florida.

Type of Meeting: Open to the public. Persons may participate in the meeting and site visits as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be meeting with the Joint Council on Food and Agricultural Sciences to explore programmatic opportunities of encouraging cooperation of scientists in land-grant universities, other universities, Federal laboratories, and industry to enhance the potential of agriculture biotechnology.

Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 316–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250; telephone (202) 447–3684.

Done in Washington, DC, this 4th day of September 1987.

John Patrick Jordan,
Administrator.

[FR Doc. 87–21635 Filed 9–17–87; 8:45 am]

BILLING CODE 3410–22–M

Food and Nutrition Service

Food Stamp Program; Demonstration Projects Using Electronic Benefit Transfer (EBT) Technology

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of intent.

SUMMARY: This notice announces the Department of Agriculture's intention to sponsor demonstrations of electronic methods of issuing food stamp benefits. These demonstrations will operate under the authority of subsections 17(a) and (b) of the Food Stamp Act of 1977 (7 U.S.C. 2026(a) and (b)). The demonstrations will allow the Department to gain further knowledge of the impact of electronic issuance technologies on the food stamp issuance, redemption and reconciliation processes. They are an outgrowth of the Electronic Benefit Transfer (EBT) Demonstration currently being conducted in Reading, Pennsylvania.

The Department is first soliciting concept papers from interested State and local agencies. Based on an evaluation of these concept papers, full proposals will be solicited from a limited number of sites. A final selection decision will be made based on the full proposals. It is expected that as many as three sites will be chosen. In selecting sites, particular emphasis will be placed on systems with potential to reduce current issuance costs and improve accountability and security, while maintaining or improving service to recipients.

DATES: This action is effective September 18, 1987. Concept papers should be received no later than November 17, 1987.

ADDRESSES: Completed concept papers shall be submitted to the: Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Room 711, 3101 Park Center Drive, Alexandria, Va. 22302.

FOR FURTHER INFORMATION CONTACT: Russ Gardiner, Supervisor, RD&E Section, Administation Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Va. 22302.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This notice has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been classified not major because the provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10551. For the reasons set forth in the final rule and related notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This notice has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). S. Anna Kondratas, Administrator, Food and Nutrition Service (FNS), has certified that the action will not have a significant economic impact on a substantial number of small entities.

Reporting and Recordkeeping

This notice does not contain reporting and recordkeeping requirements subject to approval by the Office of Management and Budget under the provisions of the paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Since the early 1980's, the Department has been experimenting with various means to improve the efficiency and

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integrity of the Food Stamp Program (FSP). One major effort has been the initiation of a demonstration project which tests the use of an electronic benefit transfer (EBT) system in the benefit issuance and redemption process.

On January 10, 1983, the Department issued a Request for Proposal (RFP) seeking an independent contractor to demonstrate an EBT system in cooperation with State and local food stamp authorities, retailers, and financial institutions. In July 1983, FNS awarded a contract to Planning Research Corporation (PRC). The operational site was Reading, Pennsylvania. The system began operating in October 1984. It served an average food stamp caseload of about 3,400 households, who made over 25,000 electronic food purchases in about 100 retail food stores each month. The demonstration ended in December 1985; the Pennsylvania Department of Public Welfare (PDPW) subsequently assumed responsibility for extended demonstration project operations.

In parallel with that demonstration contract, FNS awarded a contract on June 23, 1983 to Abt Associates, Inc. to evaluate the demonstration. The evaluation's main objective was to compare the EBT system to the coupon-based issuance and redemption procedures previously utilized in Reading. The evaluation measured the difference between the two systems in terms of their administrative cost, their vulnerability to benefit loss and abuse, and their impacts on participating food retailers, recipients, and financial institutions.

In the EBT demonstration, the recipient has a magnetic-stripe plastic card and a computerized account at the EBT Center. When they are certified eligible for benefits, food stamp applicants receive the card, training in how to use it, and a secret four-digit personal identification number (PIN). Benefits are electronically deposited in each household's account. Once benefits are posted to accounts, recipients may use them to buy food in any store participating in the demonstration.

All retailers authorized to participate in the Food Stamp Program and located within a five-mile radius of central Reading are eligible to take part in the demonstration, and virtually all of them do participate. Checkout counters are equipped with terminals. To buy food with EBT benefits, the recipient presents the EBT card to the cashier, who passes it through the terminal's card reader. The recipient keys in his or her PIN, which is verified within the terminal. The cashier then enters the amount of the purchase. The terminal makes a dial-up connection with the EBT Center computer, which checks the recipient's account, debits it for the amount of the purchase, credits the grocer's account, and sends an authorizing message back to the store terminal. The terminal prints a receipt for the recipient showing the purchase amount and the remaining balance in the food stamp account.

Once a day, the EBT Center runs a program to total all retailer credits. Center staff then initiate an electronic funds transfer process, using the Automated Clearing House (ACH) network operated by the Federal Reserve. Grocers' bank accounts are credited for their food stamp sales the following business day.

The evaluation results, as compiled by Abt Associates, were as follows:

(1) The EBT system was found to be operationally feasible. It worked and was well received by the various parties involved in its use.

(2) Retailers prefer the EBT system to coupons, primarily because it reduces the post-sale handling effort required for coupons.

(3) Recipients prefer the EBT system to coupons—they found it easier to use and spent less time and money than they previously had spent to obtain coupons.

(4) Banks strongly prefer the EBT system because their role as issuance agents is eliminated and their costs for handling and redeeming food stamp benefits are substantially reduced.

(5) By eliminating cash change, an EBT system directs all food stamp benefits to food purchases.

(6) Due to the short duration of project operations, the impact of the EBT system in reducing error, fraud and abuse was generally unmeasurable.

(7) EBT system costs exceeded ATP/coupon costs by about 9:1. This was primarily due to high operating costs and the small demonstration caseload. (Fixed costs were averaged over a relatively small number of households).

(8) EBT operating costs could be reduced by increasing the size of the caseload, integrating the system, purchasing rather than leasing equipment, and/or operating the system in a routine setting.

(9) Integrated systems offer the most promise for reducing program costs because system costs can either be spread over a larger number of users or more organizations can share in such costs. Integration can be accomplished by developing a combined EBT system which would merge food stamps and other benefit programs operated by the State, i.e., Aid to Families with Dependent Children (AFDC), General Assistance (GA). Alternatively, the food stamp EBT system could be "piggy backed" onto a commercial point of sale (POS) system, becoming one of multiple users.

The final report on *The Impact of An Electronic Benefit Transfer System in the Food Stamp Program*, Abt Associates, Inc., May 1987, can be obtained from Dr. Carol Olander, Project Officer, Evaluation Staff, Office of Analysis and Evaluation, FNS, USDA, Room 1016, 3101 Park Center Drive, Alexandria, Va. 22302. Telephone: (703) 756–3115.

In January 1986, the Pennsylvania State Department of Public Welfare (PDPW) assumed responsibility from PRC for the Extended EBT Demonstration Project. During the extension, PDPW first took over administration of the PRC contract, next took over operation of the project using the original computer equipment, and in the third stage is operating the system on existing State equipment. This latter stage of integration with other agency functions has been accompanied by technical enhancements designed to improve the system's service to recipients and retailers. The evaluation of this extension will assess the costs and benefits of the extension on major constituencies, e.g., FNS, recipients, food retailers, and financial institutions. The final report will also describe State agency procedures for assuming operational responsibilities. This information will assist FNS in making decisions regarding the future of EBT in the Food Stamp Program.

Related Studies

On April 25, 1986, FNS announced in the *Commerce Business Daily* a study to review The Feasibility of Off-Line System Applications to Food Stamp Program Functions. This study will determine the relevance and practicality of applying off-line technology to food stamp operations in view of rapid technological developments, lower costs and anticipated user trends. In contrast to the Reading EBT Project, where household benefits are maintained on a central computer file, off-line technology stores recipient data in an individual access device that is in the possession of each household. Direct and simultaneous communications with a central computer are not required to access household data. The expected products of the study are an analysis of off-line technology applications to a range of food stamp functions, further review of applications judged acceptable, and cost estimates for development and operation. The findings will provide FNS with a sound basis for making decisions about the appropriateness of demonstrating a

variety of off-line applications. The study began in October 1986 and the final report is due to FNS in the latter half of 1987.

Notice of Intent

Subsections 17(a) and (b) of the Food Stamp Act of 1977 permit the Department of Agriculture to undertake research that will improve the administration and effectiveness of the Food Stamp Program in delivering nutrition-related benefits, and to conduct, on a trial basis, in one or more areas of the United States, pilot or experimental projects designed to test program changes which might increase the efficiency of the Food Stamp Program and improve the delivery of benefits to eligible households. Accordingly, the Department announces its intent to sponsor demonstrations using electronic benefit transfer (EBT) technology in the issuance and redemption of food stamp benefits. Under this demonstraton, States and/or local agencies will design, develop, implement and operate an EBT system. If a vendor is used in the operation of such a system, the State will be solely responsible for ensuring its performance.

FNS Research Priorities

The findings from the Reading, Pennsylvania EBT Demonstration, with the exception of the administrative cost differential, were encouraging to the Department. USDA now wants to determine if it is possible to design and operate an EBT system which will be secure and acceptable to participants, yet reduce total costs below those associated with the current coupon system. This demonstration project's goal will be to determine if these three outcomes can be simultaneously achieved.

The Department has identified three types of EBT system configurations which it believes would be useful to test in the Food Stamp Program. It is recognized that other acceptable EBT systems designs may exist; the following list is not intended to be exhaustive. However, USDA wishes to stress that it will not be demonstrating off-line technologies, i.e., the use of a self-contained benefit access device, at this time. The results of the feasibility study discussed earlier, which is currently being conducted, will serve to guide our further actions in this area. Descriptions of the three EBT system configurations follow:

(1) The use of food stamp benefit cards in conjunction with an existing, private electronic funds transfer (EFT) system. This would be a "piggy-back" system where food stamp benefit cards would be read by point-of-sale (POS) machines. States would be required to ensure that all authorized stores within the boundaries of the demonstration area are given the opportunity to have POS devices located in their stores.

(2) An EBT system which is backed up by a coupon issuance system. This would serve as an alternative to ensuring that POS devices were available to all stores within the demonstration area. States would set up coupon issuance terminals at designated issuance points where benefit cards could be read, debited and food stamp coupons issued.

(3) An EBT/cash benefit card system, where a single card provides access to food stamp benefits, AFDC, GA and/or other benefits. Food stamp benefits would have to be separately identified to preserve their use for food purchases at authorized stores.

Scope of Project

This notice may result in one or more cooperative agreements with a State agency or agencies for the design, development, implementation and operation of an EBT systems for the issuance of FSP benefits. FNS has chosen a cooperative agreement as the appropriate funding mechanism because FNS will be substantially involved in the development, management and/or oversight of the project. State and/or local agencies are invited to submit concept papers in response to this Notice. Local agency submissions must have the support of their respective State agency. All concept papers will be formally reviewed and evaluated based on the criteria set forth in this notice. Evaluation of the concept papers is expected to take 30 days. Following the evaluation, a limited number of State and/or local agencies will be given six months in which to submit full proposals. (It is FNS' belief that six months will be sufficient to allow a State agency to initiate a contract with a vendor(s), if the use of any is planned, which could be activated based on the availability of Federal funds; and that design work could begin immediately upon State agency selection.) It should be noted that every agency asked to submit a full proposal may not be selected as a project site.

Subject to the availability of funds, FNS has earmarked approximately $1.8 million for demonstration project operations. The number of sites actually selected will depend on the quality of the proposals and their costs. It is possible that only one site will be selected or that numerous sites will be selected. 100% funding of the costs of project design, development and implementation, up to the approved budget amount, will be provided. Since this is a developmental area, FNS may also provide for up to 50/50 cost sharing should such costs go above the specified cap for 100% funding. It should be emphasized, however, that FNS is looking to develop a cost-effective EBT system and that costs will be a major factor both in final project selection and long term decisions. Ongoing operational costs will be reimbursed at the normal 50-50 match rate, with Federal costs capped at per-care-month costs associated with a coupon issuance costs

The demonstration project shall be conducted in phases. Movement from one phase to the next shall be predicated on a "GO/NO GO" decision from FNS. In Phase I, the State agency shall design an EBT system to meet the FSP functional and special requirements as specified in this Notice and mandated by laws and regulations. Further, each system shall be designed to meet specific performance standards prescribed by FNS. Performance standards shall be provided to States selected to submit full proposals. They will be tailored to the proposed system configuration and will address issues such as processing capacity, response times, and system reliability, security and ease of use.

As part of Phase II, each State agency shall develop the EBT system and then test, on a limited scale, its functional capabilities. Such tests must include all the system operators and include a small sample of recipients, retailers, and finanicial institutions.

In Phase III, each State agency shall oversee the implementation and operation of the EBT demonstration system. As part of each demonstration project, the State agency shall be responsible for providing, at a minimum, all management, coordination between major participants, equipment, software, and services (e.g., site preparation, equipment installation and maintenance, application software development, training, system documentation, transition support, and necessary evaluation data). The State agency shall be the primary point of contact for the Federal Government. Demonstration project participants shall coordinate all efforts through the State agency and shall present all issues/questions requiring decisions to the State agency for resolution.

The EBT System

This section provides detailed information on the operational

requirements for an EBT demonstration project.

(1) *EBT Operating Environment and Functional Responsibilities.* An EBT system for the issuance of FSP benefits requires changes to the present operating environment and functional responsibilities. The design of the State agency's proposed EBT system shall dictate, to a large extent, the operating environment and the major participants' functional responsibilities. The EBT system shall provide manual and automated procedures necessary to satisfy the functional requirements and the special FSP requirements as described in this document.

An overview of the basic EBT system's operating environment and the functional responsibilities, by program function, are provided below:

(a) Authorizing client benefits—

- Certifying households in accordance with FSP regulations.
- Establishing certified households on an automated Master File and Issuance Authorization File.
- Issuing identification cards and benefit access devices.
- Assigning personal identification numbers (PIN's) or providing an alternative verification mechanism.
- Initializing benefit cards/accounts.
- Training participants in system usage.
- Authorizing benefit delivery.
- Posting benefits to clients' accounts.
- Providing recipients' access to information on benefit availability.
- Inventorying and securing accountable documents, including unissued blank transaction documents.

(b) Providing food benefits to clients—

- Verifying the identity of authorized recipients or recipients' representatives at issuance terminals or POS.
- Debiting/crediting client benefit accounts at POS in conjunction with appropriate account and balance validation.
- Providing back-up purchase procedures for those instances in which the electronic system is not functional.
- Delivering food benefits to clients or clients' representatives.
- Providing clients' receipts for benefits redeemed and balance remaining at POS.

(c) Crediting retailers and financial institutions for benefits redeemed—

- Verifying bank account information for all retailers involved in the system.
- Creating records of EBT transactions and totaling all credits accumulated by each retailer.
- Preparing a daily Automated Clearing House (ACH) tape with information on benefits redeemed for each retailer.
- Transmitting the ACH tape to a financial clearinghouse institution for transmission to the Federal Reserve.
- Transferring the ACH tape to the Federal Reserve using EFT technology. The Federal Reserve takes action which results in crediting retailers accounts, debiting and crediting the financial clearinghouse accounts and debiting USDA's Treasury Account.
- Providing deposit information to retailers on a timely basis.

(d) Benefit Reconciliation and Management Report Production—

- Reconciling posted benefits to the Issuance Authorization File.
- Reconciling individual recipient account balances against account activities on a daily basis.
- Reconciling individual retail stores' food stamp transactions to deposit on a daily basis
- Reconciling total funds into, exiting from, and, remaining in the system.
- Verifying retailer credits against deposit information entered into the ACH network.
- Transmitting information to FNS on retailer deposits.
- Producing management reports.
- Maintaining audit trails.

(e) Managing Retailer Participation—

- Receiving information from FNS on stores authorized or disqualified to redeem food stamp benefits.
- Ensuring that stores have the necessary equipment and supplies and that such equipment and supplies are removed when stores lose their authorization.
- Ensuring that equipment is maintained in working order.
- Training store employees in system operation.
- Providing a mechanism for compliance investigations.

(2) *Special Food Stamp Program Requirements.* The EBT system shall maintain the level and quality of service to participants that is mandated by law and program regulations. If there is no way to avoid a conflict with basic program requirements, any deviations necessary to accomplish a successful project implementation must be described and waivers of requirements, where necessary to implement the design, must be requested.

The State agency shall consider the following items in the design of the EBT demonstration system, the demonstration of the EBT system, and the possible transition to a broader EBT system implementation.

- Recipient Access: The EBT system shall provide for minimal disruption of recipients' access to retail outlets. The system, therefore, must ensure the cooperation of currently authorized stores. Because recipient access is a critical element of the FSP, the State must consider how retailers' participation will be maintained under the EBT system.
- Equal Treatment: The EBT system shall maintain equal treatment for food stamp customers. Retailers may be tempted to require recipients to check out at exclusive registers or particular areas of the store. It will not be acceptable to establish special lines which are only for food stamp customers. However, if special lines are established for check cashers and holders of other debit cards, food stamp customers could also be assigned to such lines. Strategy for avoiding unequal treatment and negative impacts on food stamp transaction time should be developed.
- Knowledge of Allotment Balance: The EBT system shall provide recipients with informational access to the system without their having to make a purchase. Recipients must also receive information about their allotment balance at the time of food purchases. Households will need to know their balance in order to plan purchases.
- Retention of Remaining Monthly Balance: The EBT system shall allow for the carryover from month to month of accumulated balances of household benefits during the course of the demonstration. However, if household accounts are inactive for a period of time, the State could arrange to "store" such benefits pending recontact by recipients.
- Replacement of Lost, Stolen or Damaged Cards: The EBT system should be capable of quickly replacing the benefit card for any household claiming its damage or loss, while ensuring that the household does not obtain more than one account with which to access the system. Similarly, households believing that someone else has unauthorized knowledge of their PIN or code must be able to obtain a new PIN within one business day.
- Benefit Adjustment: Procedures must be available to restore/debit benefits and sales that have been erroneously debited/credited. Authority for such functions shall be limited to appropriate managers and any corrections must be fully documented.
- Expedited Service: Program regulations at § 273.2(i) require that certain types of households demonstrating immediate need be provided benefits as soon as possible. Therefore, the EBT system should provide for the creation of a household

issuance record file, and production and issuance of identification and benefit cards within the specified timeframes.

• Household Mobility: The EBT system must provide a mechanism to allow households leaving or entering an EBT project area to convey their current benefit allotment with them. If a "pure" EBT system is in place, appropriate benefits must be converted to coupons for those leaving the demonstration area. This provision is intended to accommodate those situations where participants are permanently or temporarily (vacation, emergency, etc.) relocating their place of residence. Requests for instrument conversion solely for purposes of shopping across boundary lines shall not be approved.

• Project Boundary and Transition Problems: The area selected for the pilot test site should ideally be a contained grocery shopping area, in order to minimize participants shopping in and out of the test site. The State agency shall specify how transitional problems will be handled if all stores are not simultaneously brought into the system.

• Restricted Access to System: The EBT system shall include procedures to limit access to information about household entitlement. While households and their representatives need easy access, this need cannot open the system to abuse by retailers, cashiers, or other employees. If participants must provide a PIN or other access code to enable verification, this code should not subsequently be available for a clerk or others to use in obtaining unauthorized benefits. Similarly, if households fail to exhaust the contents of their accounts, unauthorized individuals should not be able to divert the remaining entitlement to their own use. These are critical elements to the success of this system, and must be provided for in any design considered.

• Issuance of Household Benefit Card: The EBT system shall provide for separation of certification, issuance and card initialization functions. By substituting the benefit card for other authorizing documents, such as the ATP, access to benefits is more rapid since the intermediate step of ATP exchange for food coupons is removed. Elimination of the ATP, however, makes security of the benefit card more important since it becomes the authorizing instrument for access to benefits. By having benefit card production and initialization done by an issuance unit employee or staff other than certification unit personnel, no single agency employee or unit will have the ability to both authorize and provide access to the benefit allotments.

• Retailer Identification/Clearance: The EBT system shall include a retailer validation check to ensure that only currently-authorized stores can access the system. Stores whose program participation has been withdrawn or disqualified must be denied access immediately, while newly authorized stores must be included in the system quickly to ensure maximum convenience for participants. Stores newly authorized should be granted system access as quickly as possible.

• System Reliability and Back-up: The reliability of the EBT system is absolutely essential to its success. In contrast to existing credit-card or debit-card systems, the unavailability of the EBT system, even temporarily, would impose severe hardship on households largely or totally dependent on it for purchasing their food. This may be addressed through full redundancy of critical system components, through a manual back-up system for emergency use or through an alternative mechanism (or some combination). Any system chosen must be fully consistent with FSP security requirements and acceptable to stores.

• Applicability to Entire Food Stamp Program on a Larger Scale: The EBT demonstration will originally be implemented in a small scale environment. However, the design of the EBT demonstration system must be suitable for a larger scale implementation, i.e., in project areas or jurisdictions with large-scale caseloads, should this later be deemed desirable.

• Integrity: The system shall be designed to ensure the integrity of personnel and data through separation of responsibilities, data reconciliation and other safeguards such as encryption, limited access and security bonding. Points of particular vulnerability in an EBT system include: tampering with or creating recipient accounts; manipulation of retailer accounts; erroneous posting of issuances to recipients accounts; and tampering with information on the National Automated Clearing House Association (NACHA) tape.

(3) *Evaluation of the Demonstration.* A comprehensive description and impact evaluation of each demonstration will be independently carried out for FNS through an independent contractor. State and local welfare agency staff as well as any vendors involved in the demonstration are expected to work closely with the evaluation contractor, and cooperate fully in the evaluation. This section describes the evaluation and the requirements it places on the demonstration site. The evaluation's general purpose is to obtain information that can be used in making decisions about agency support for alternative issuance systems. Four more specific evaluation objectives are stated below:

• Describe and compare the development, operation and performance of each demonstration system that is implemented.

• Estimate and compare the costs for each demonstration system that are assumed by FNS, State and local food stamp agencies, demonstration vendors, food retailers, recipients, and financial institutions.

• Assess and compare the feasibility of extending each demonstration system.

• Provide technical assistance to FNS.

The State agency shall provide, as part of the proposed system, those procedures and/or mechanisms needed to produce data specified by the evaluation contractor. At a minimum, each demonstration system shall be required to:

(a) Routinely report costs associated with system design, development and operations. Cost data shall be based on a complete and enumerated inventory of resources used to develop and implement the system. Categorical costs to major participant groups, i.e., State and local welfare agencies, vendors, etc., shall be identified.

(b) Maintain and submit a variety of documents that describe the development, operation and performance of the demonstration. These documents shall include, but are not limited to: (1) Planning materials (e.g., design documents, system test results, and training manuals); (2) communications between system participants (e.g., memoranda and meeting notes); (3) materials pertinent to system operation (e.g., organizational charts, position descriptions, operator manuals, benefit usage and reconciliation and (4) performance indicators (e.g., problem call logs, response time data, line busy reports, downtime logs and reconciliation data).

(c) Periodically complete data collection forms developed by the evaluation contractor in cases where existing information is unavailable or inadequate. This activity shall include, but not be limited to maintaining logs that describe recipient issuance problems reported to Food Stamp Program or vendor staff and completing time ladders to identify time spent on tasks by select Food Stamp Program and vendor staff.

(d) Participate in monthly interviews conducted by the evaluation contractor. Personal interviews shall be conducted

periodically with key staff in vendor organization(s), State and local food stamp agencies, authorized retail food stores, and participating financial institutions. Phone interviews shall be carried out each month with a similar sample of key system providers.

(e) Facilitate a variety of site observations and system tests to be conducted by the evaluation contractor. These activities include but shall not be limited to: system planning meetings, acceptance testing, sessions and security analyses. Demonstration vendors shall provide a schedule of system activities to the evaluation contractor at the beginning of each month and interim updates as needed.

Criteria for Sponsoring Electronic Issuance Demonstrations

- The project must be proposed by a State or local agency. Local agencies wishing to apply must obtain the support of the State agency.
- Initial operations on a Statewide basis will not be permitted. However, if FNS determines that the initial, limited area project is successful, expansion may be permitted.
- The project shall not have an adverse impact on the amount of benefits available to eligible households.
- The project must not test unproven technology. Rather, FNS is seeking the adaptation of established technology to the FSP environment.
- The project must not result in any degradation of State or Federal fraud controls in the certification or issuance processes. The system must be secure from tampering to prohibit unauthorized access to client and/or financial information, and the State must agree to do or to permit security testing of the system. Should any losses occur, the State agency would be strictly liable.
- Each selected site will receive a specified amount for design, developmental and implementation costs. Allowable expenses over that amount may be reimbursed at up to a 50-50 match rate. Ongoing project operation costs will be reimbursed at the normal 50-50 match rate, with Federal costs capped at percase worth costs associated with coupon issuance costs.

Design costs would include the development of operating manuals, the system test plan, the implementation plan and system design. Development cost would include acquiring and/or modifying system hardware which will be used for initial testing, writing and testing software modules, resolving outstanding design issues, preparing for system implementation, and testing the system prototype. In the implementation phase, costs would include equipment installation and testing, acceptance testing, and training. All evaluation costs incurred as a result of cooperating with the evaluation contractor and approved in advance will be eligible for 100% Federal funding. All demonstration activity is subject to the availability of FY '88 Section 17 funds.

- The concept paper should address research priorities stated by FNS in this notice. Proposals containing certain aspects which are not specifically stated research priorities and/or go beyond the scope of electronic benefit technology envisioned by FNS should be justified and fully explained as an attachment to the concept paper.
- System design, development, implementation, and operations shall be carried out by the proposing State or local agency and/or a contractor(s) of the State or local agency which has been selected in a manner that provides maximum open and free competition or on a noncompetitive basis under circumstances permitted by OMB Circular A–102, Attachment O, Subpart 11.d.
- The State must agree to participate in an evaluation of the system's cost effectiveness and must agree to provide the data described above in No. (3), *Evaluation of the Demonstration.*
- Any selected project will be monitored by an advisory committee composed of State, FNS regional and national office staff. The State will be required to keep FNS apprised of the status of the project at every stage of development. The committee will review all major project documents, cost and performance data, and conduct periodic on-site observations.
- The project's level of staffing shall not have an adverse impact on the level of staffing committed to other food stamp related activities.
- Once implemented, the project shall operate under demonstration status for a period mutually agreed upon between the State and FNS. FNS currently envisions such projects operating for up to three years. However, a decision on continued operation will be made on an annual basis.

The Concept Paper

To avoid having all State and local agencies complete the process of full proposal preparation, interested State and local agencies are being required to initially submit brief concept papers. Using the criteria stated in the following section, FNS will select those State or local agencies from which full proposals are desired.

It is in the full proposal stage that States will be expected to initiate contracts with vendors, if they are appropriate to project operations. Such contracts would be established under the caveat that final acceptance was subject to the availability of Federal funds.

I. *System Description.* In up to seven single-spaced pages, provide a brief description of how the EBT system would operate. Indicate how your system addresses FNS' stated research priorities. Include a short description of how each of the following program functions would be carried out: (a) Authorizing client benefits; (b) providing food benefits to clients; (c) crediting retailers and financial institutions for benefits accepted; (b) benefit reconciliation and management report production; and (e) managing retailer participation. Describe the different agencies which would be involved in the operation and the functions which they would perform. If the use of a contractor(s) is planned, describe what functions it would perform. Describe how the proposed EBT system would improve your current coupon issuance/reconciliation process. If you are able to quantify such benefits, please do so. Additional pages may be added for flowcharts or graphic presentations.

II. *Site Description.* In up to four single-spaced pages, provide the following information on the area where you would implement the EBT demonstration. If an alternative site(s) is being proposed, four pages per site will be accepted.

(a) Number of food stamp households;

(b) Number of authorized retailers;

(c) Food stamp household demographics, with particular emphasis on the shopping patterns of the proposed project participants;

(d) Current level of automation for food stamp certification and issuance functions and a description of how the proposed system would interface with the existing system; and

(e) Costs associated with the existing issuance system. This should be monthly per household issuance costs which would include issuance file generation, preparation and mailing of authorization documents or coupons, vendor fees for any aspect of benefit delivery or reconciliation, and other reconciliation costs. Benefit losses associated with duplicate issuances or other misapplication of benefits should be separately identified.

III. *Management.* Describe, in up to two single-spaced pages, how the EBT project would be managed through design, development, implementation and operation. Identify who, by position title, would be responsible for the

various project phases. Include an organizational chart. If you plan on using a contractor, describe in what capacity.

FNS has tentatively established that State agencies whose concept papers are accepted would need 180 days in which to submit full proposals, including cost estimates. Provide a proposed timeline for development and submission of a full proposal, indicating if the 180 day deadline could be met, and if not, why not.

IV. *Related Experience.* Describe, in up to three single-spaced pages, previous experience of the State agency in developing, implementing and operating automated systems applications. If currently employed staff possesses specific background in electronic payment systems or related technology and will be working on the project, describe that experience.

V. *Support of Affected Groups.* The successful functioning of an EBT project depends on the commitment of all affected groups, i.e., food stamp households, retailers and financial institutions. Describe, in up to two single-spaced pages, the contact you have made with advocacy and retailer groups and potentially affected financial institutions, and their reactions (both positive and negative) to the project's concept.

Evaluation of the Concept Papers

FNS has established the following weights which will be used in evaluating the concept papers. These weights have been established in a manner which will give the most recognition to those proposals showing insight and creativity in system design, development and operation. Later phases of selection will focus on cost issues. In addition, points will be deducted if the page length exceeds the maximum stated above.

Criteria	Maximum value
(1) System Description	40
(2) Site Description	20
(3) Management	20
(4) Related Experience	15
(5) Support of Affected Groups	5

Date: September 15, 1987.

Anna Kondratas,

Administrator.

[FR Doc. 87-21627 Filed 9-17-87; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Electronic Site Rental Fee Schedule for the Northern Region (R-1)

AGENCY: Forest Service, USDA.

ACTION: Notice of adoption of rental fee schedule for electronic sites.

SUMMARY: The Forest Service hereby gives notice that it is adopting a new schedule of rental fees for electronic uses on National Forest System lands in the Northern Region.

The fee schedule provides an annual rental fee for electronic uses based on the type of use authorized. Electronic site fees will be updated annually through application of the Implicit Price Deflator—Gross National Product (IPD-GNP) and the fee schedule will be reviewed every 5 years based on an updated market analysis and adjusted accordingly as required by agency special-use rules at 36 CFR 251.57(a). The schedule is based on sound business management principles and as required by law is in accordance with comparable commercial practices for establishing fair market rental fees.

This schedule of rental fees has been approved and issued as a Regional Supplement to Forest Service Manual 2720—Special Uses Management.

EFFECTIVE DATE: The fee schedule is effective September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Jim Schoenbaum, (406) 329-3601 or Jim Hathaway, (406) 329-3110.

Background Information

We are publishing a new fee schedule in response to new direction from the Chief, Forest Service. Revised Forest Service. National Policy contained in **Federal Register** Vol. 50, p. 40574, dated October 4, 1985, established that electronic use fees are now to be based on the fair market value of the rights and privileges authorized.

Since the early 1950's, through numerous directives, Congress has directed that users of Federal land and facilities pay fees representing fair market value as an equitable return to the public. Most recently, the Federal Land Policy and Management Act of 1976 included this requirement. Past fee systems involving investment value or other methods were not fully consistent with this direction. Although holders have received the benefits of comparatively low fees for many years, such fees are not equitable to other National Forest System users or the general public as land owners.

On April 30, 1987, the Northern Region of the Forest Service published a proposed fee schedule for electronic communication sites (52 FR 15740) and requested comments. That schedule set forth proposed annual rental fees for different types of electronic use in Montana, North Dakota, part of South Dakota and north Idaho. Comments on the proposal were due by July 1, 1987.

Summary of Public Responses

The Region received a total of 228 written responses to the proposal; of these, 37 were from existing holders of electronic site permits. The Northern Region has 305 existing electronic site special-use authorizations. All holders were provided direct notice of the fee schedule proposal. All comments were reviewed and given full consideration in reaching a decision on the final fee schedule. Major concerns are summarized by topic. The number and percentage of comments by type of respondent were as follows:

Type of respondent	No.	Percent
1. Individuals	[1] 177	78
2. Amateur radio organizations/affiliations	14	6
3. Federal, State, local government agencies/representatives	11	5
4. Utility companies (electric and telephone)	7	3
5. TV/radio companies/broadcasters	6	3
6. Cable TV/broadcast translator districts and associations	10	4
7. Industry/business	3	1
Total	228	100

[1] 160 were from broadcast translator subscribers, 157 representing one translator district.

The comments addressed a number of topics relative to nine basic categories of electronic communication sites and their proposed fees. The number and percentage of comments by use type are shown below. This total is slightly higher than the total shown in the first chart because four respondents each addressed two different use categories.

Responses per use type	No.	Percent
1. Common carrier microwave	6	3
2. Industrial (and military) microwave	3	1
3. Passive reflector	1	0.5
4. TV and radio broadcast	3	1
5. Cable TV	4	2
6. Broadcast translators	[1] 169	73
7. Two-way radio (site only and with FS building space)	7	3
8. Commercial communicator	1	0.5
9. Miscellaneous uses (including amateur and personal antenna	38	16
Total	232	100

[1] 160 were from individual subscribers, 157 representing one translator district; six from other translator districts; three from Government representatives.

Broadcast Translators

Proposal: The market study supports an annual fee of $900 as fair market value for this use.

Comments Received: One hundred sixty-nine respondents expressed concern over fee increases. One hundred sixty of these were from subscribers not directly subject to special-use permit fees who commented about anticipated increases in membership rates, tax increases, or the rising cost of living.

Many broadcast translator respondents felt that the proposed fee schedule should recognize tax support attributable to translator installations. They tend to view fee increases as "double taxation" because the Federal land is owned by taxpayers. They stated that there are no exceptional Federal costs since the Government owns the land, does not own or maintain the facilities, nor provides any services to justify increasing fees. In addition, several of this group believe that there is no other better use for the land (referring to a rocky mountaintop in an isolated area).

Response: No comments were received suggesting an alternative fee basis or analyzing the fee proposal for broadcast translators. The comments were not specific about the fee schedule itself. By law and administrative order the Forest Service must charge fees for special uses. A special-use fee is a charge for private, exclusive use of Federal land which does not serve or benefit the public at large and often limits other uses of that land. It is a charge for a privileged use of Federal land. The Federal Land Policy and Management Act of 1976 requires that fair market value be paid for such uses. The elevation afforded by mountaintops relates directly to their value and desirability for electronic uses. This value is demonstrated in the market place.

Current charges for broadcast translators across the Region were reviewed comparing several factors. These included the annual special-use rental fee currently charged to translator permit holders, that fee converted into the annual cost per subscriber, and the annual subscription cost currently charged by each holder.

Translator groups charge their subscriber's fees ranging from $0 to $90 annually. The current annual Forest Service fee for broadcast translators ranges from no charge to $100. This amounts to a total annual cost range per subscriber of about $0.07 to $1.63. Clearly, current Forest Service fees are below fair market value.

The final rule as adopted establish broadcast translator fees at $900. This amounts to an actual annual cost per subscriber ranging from $.05 to $20.00 (with two exceptions at $56.25), and is not unreasonable. The highest rate of $56.25 per year per subscriber is less than individual subscriber rates in the private market or costs of alternative electronic reception services.

Miscellaneous Uses

Proposal: Several uses were identified in the proposal as requiring a $150 charge per unit. These include installations of equipment used without financial gain and solely for the owners private/personal purposes. The Region identifies: (1) "Receive only" equipment such as personal TV and radio antennas and satellite dishes, (2) amateur two-way radio equipment, and (3) resource monitoring facilities within this category.

Comments Received: Eight personal use "receive only" antenna permit holders and two Forest Service Officers suggested that, in consideration of the restricted application and benefits derived, the proposed $150 annual fee is excessive for that use. Three of these holders state the fee will cause them to relinquish their permits.

Thirty four of the comments addressing fee increases for the miscellaneous use category were from individuals who have special-use permits for private personal "receive only" antennas or amateur radio operations. Comments pertaining to amateur radio operations were submitted by both holder and non-holder amateur radio operators (individually, or with group affiliations) and public agencies. The current annual fee charged for most of these uses is $25. The majority of amateur radio respondents felt that in addition to being high, fees for amateur radio operators should be waived. This particular topic is further discussed under Section E below.

Fourteen respondents provided information on the requirements which licensed amateur radio stations must fulfull in terms of emergency and general public service. Some respondents advised the Region of the extent of Federal and state support provided to the amateur radio program and indicated high regard for essential services that amateur radio is required to provide.

Response: In reviewing the comments regarding personal use receiving antennas, the Region recognizes the need to accommodate such uses which cannot for technical reasons be located off National Forest System lands. The Region considered the personal use non-profit orientation and usual limited reception of these installations, and the final rule as adopted establishes a fee of $75 for personal use "receive only" equipment. In establishing this fee, respondents' concerns are adequately provided for.

In response to comments regarding amateur radio, the final rule as adopted establishes the annual fee for qualifying amateur electronic uses at $75. It is the responsibility of each amateur radio applicant and holder to present its qualifications for this consideration to the authorized Forest Service Officer.

Other Comments Received

A. Appraisal/Fair Market Value Assessment

Proposal: Fees would be based on fair market value of the use, developed through market analysis, and annually adjusted by index.

Comments Received: Eleven respondents discussed the differences in proposed fees among the various Forest Service Regions. The Federal Land Policy and Management Act of 1976 (FLPMA) authorizes electronic site use and requires that special-use fees be based on fair market value. All Regions are directed to determine fair market value and to implement fees accordingly. The Forest Service is striving to attain a uniform fee system while recognizing that variations in markets exist between Regions. The Northern Region has coordinated its effort with adjacent Regions to help insure as much uniformity as possible considering these market area differences.

Three respondents objected to the use of the Urban Consumer Price Index (CPI–U) for adjusting fees. However, actual lease information used in the rental study (including two leases involving one respondent) indicates that adjusting by that index is an accepted common practice.

Several respondents pointed out that the IPD–GNP has been adopted by the Forest Service for adjusting linear rights-of-way fees. It was suggested that the IPD–GNP second-quarter index be used in lieu of CPI–U. While either index satisfies the "fair market value" requirement, The Region agrees that for consistency, it is more appropriate to use the IPD–GNP index.

One respondent discussed the "value of the use authorized" concept. The

Secretary of Agriculture's regulations (36 CFR 251.57) require that fees be based on the fair market value of the rights and privileges authorized and this is an established practice. Concurrence with this regulation is accomplished by stratifying market data by specific electronic-use types and determining fees accordingly.

Several respondents suggested that averaging used in the rental study may not have statistical legitimacy. The study selected reasonably comparable rentals from arrays of private lease rentals. In some cases, the average was determined to be a reasonable fee. No statistical legitimacy is implied.

Two respondents questioned the use of renegotiated leases. Renegotiated (reissued) leases constitute the majority of the private electronic site rental market and represent valid transaction data. The majority of electronic uses on National Forest sites involve reissued permits which represent a situation similar to renegotiated leases in the private market.

Three respondents expressed the need to adjust fees for differences between the terms and conditions of typical private leases and Forest Service special-use permits. This was addressed In the market rental study. No significant difference was found.

One respondent stated that value added to the site by the holder was not recognized in the rental study. Value added by the holder would be considered where it was recognized in the market. The value contributed by holder-owned buildings has been recognized by relying on ground lease rentals.

Response: The final rule as adopted reflects use of the IPD–GNP Index rather than the CPI–U Index.

B. Fee Increase

Proposal: The proposed schedule reflects increases in electronic use fees.

Comments Received: The subject of most overall interest, identified in about 145 comments representing all fee groups, was the incremental increase in fees. Although many conceded that some increase was appropriate, respondents generally felt that the proposed rates were high. One utility company and one State-Governmental agency commented that the fee amounts appeared to be reasonable and accurately reflected fair market value.

Response: As indicated previously, fees have been below fair market value. The final rule as adopted will provide for fair market value fees, and provide for phasing-in fee increases.

C. Size/Location/Type of Market Served

Proposal: The proposed fee schedule recognized size and type of market only with cable TV.

Comments Received: Thirty three respondents representing five fee groups including 26 broadcast translator respondents, suggested that fees be adjusted according to the size, location, or type of market served. The particular interest was for reducing fees for installations which serve isolated communities with limited amenities. Some implied that most of these communities have a high ratio of retired persons on fixed incomes.

Response: We recognize that the nature of the market served is a consideration in determining appropriate fees. Population was considered in the market rental study. The rate schedule reflects this factor insofar as it could be established in the market for this Region.

D. Type of Use/Service Provided

Proposal: The proposed fee schedule recognized differences in type of electronic use and services.

Comments Received: Nine respondents from five fee groups suggested that fees be adjusted on the basis of the type of use or service provided. Specifically addressed were the value differences between small and large commercial operations and between TV and radio broadcasting. With the exception of cable TV, the market analysis discloses that markets in the Northern Region have not yet developed to the extent that demonstrable value differences exist based on the size of a user's operation or potential for clientele. Another comment stressed the lower value of a radio station in comparison to a TV station and the need for the fee to reflect this difference.

Three comments were received from Rural Electrification Act (REA) cooperatives requesting fee waivers for REA-financed electric facilities. These uses included common carrier microwave and two-way radio sites which the cooperatives stated were essential to their power and telephone line operations. One respondent cited Pub. L. 98-300 in which Congress amended the Federal Land Policy Management Act of 1976 to exclude REA-financed power and phone lines from fair market value fees.

Response: Private lease data in the rental study indicated no significant difference between radio and TV broadcasting ground rentals.

As to REA facilities, the Forest Service concurs, having recently interpreted the Act to include all REA-financed facilities such as common carrier microwaves, two-way radio sites and related facilities (Forest Service Manual 2728.32, Interim Directive No. 57, July 7, 1987). Fees will not be charged for qualifying REA-financed electronic site facilities.

E. Non-Profit Public Service Organizations

Proposal: The Notice states that authority and procedures for fee reductions or waivers are not affected by the proposed fee schedule.

Comments Received: Responses mentioning fee waivers and reductions were second in number only to those pertaining to the overall increase in fees (Section B). Twenty one respondents requested fee waivers or reductions for their respective interests. Only eight of these are permit holders, including one Federal agency, two REA cooperatives, and three of the four responding amateur radio holders. Eleven non-holders (both individuals and organizations) responded on behalf of amateur operators suggesting a categorical eligibility for either fee waiver or reduction.

Response: Conditions under which fee waivers or reductions may be granted are specified under 36 CFR 251.57(b) and in Title 2700, Forest Service Manual. Fees may be waived when equitable and in the public interest. The equitability requirement is met by achieving a balance between the interests of the general public and local public. The term "public interest" pertains to the whole of the general public of the United States and beyond those living in a particular geographic area.

In this context, public interest is met when an action benefits the general public without imposing an undue burden on any specific group. The criteria also state that the user must be non-profit and the holder must be "engaged in public or semi-public activity to further public health, safety, or welfare." More specifically, the holder must provide "a valuable benefit to the public or to the programs of the Secretary (of Agriculture)."

Secretary of Agriculture's Regulation 36 CFR 251.57(c) provides that "no rental fee will be charged when the holder is the Federal Government." This includes electronic site uses. Fees will not be charged other Federal agencies unless a charge for similar privileges is made to the Forest Service.

F. Shared Space/Secondary Users

Proposal: The Region proposed that fees for secondary and subsequent users be established at 50 percent of the full fee for the kind of use.

Comments Received: A point raised by two-way radio and the common carrier microwave user groups was that the users' investments toward developing a shared site be recognized in setting the fee schedule. As addressed in Section A, the relative values of improved versus unimproved locations was taken into consideration in the market rental study.

One utility company commented that, given a multiplicity of users sharing a site, the Forest Service could collect more than the fair market value of the raw land. The Federal Land Policy Management Act of 1976, and subsequent regulations and policy clearly require that the rental fee be based on the fair market value of the rights and privileges authorized, not simply on the value of the raw land as the respondent suggests.

Another comment was that under the shared space concept the primary user would be serving as a coordinator and fee collector between the secondary users and the Forest Service. One primary user mentioned the additional responsibility and liability of their role. This responsibility and liability would burden the primary user only when provided for in their particular special-use permit. Such responsibility exists only in permits issued specifically as multiple user authorizations pursuant to the new concepts of site associations and site managers. Under older, existing permits, considered single user authorizations, holders remain individually responsible for requirements of their individual permits, including the payment of fees calculated on the shared space concept considering primary and secondary users. The primary user is the owner/controller of the equipment shelter structure. Shelter tenants/occupants are secondary users. Regardless of whether primary users hold multiple user or single user authorizations, they have an advantage of being able to distribute costs proportionately to secondary users.

Response: We recognize those situations where individual holders have formed associations and as such converted from individual permits to multiple user authorizations. We acknowledge the benefits association permits afforded both the Forest Service and users. In recognition of existing electronic site association permits, and to encourage the continued implementation of multiple use authorizations by associations, the final rule as adopted will provide for local modification to the fee schedule. Authorized officers may make adjustments to association fees, subject to the Regional Forester's approval, on a case-by-case basis.

The final rule will also establish that shared space fee differentials (50 percent of the full fee) are not applicable to users within Forest Service buildings. In addition to regularly prescribed fees, authorized officers may also require users to perform or share in the costs of major or unforeseen building or facility maintenance and repair, as provided by section 7, Act of April 24, 1950 (Granger-Thye).

Summary of Final Notice

Review and consideration of the many comments and suggestions received establishes that, while much useful and important information was presented, commentors provided no substantive information or factual evidence demonstrating that our market rental study does not accurately portray fair market value or that the proposed fee schedule is not a correct and appropriate comparison to the market. Accordingly, with certain adjustments in the schedule pertaining to the miscellaneous category, REA financed facilities and shared space situations, the Northern Region, Forest Service, hereby adopts a final electronic site fee schedule and procedures that are intended to keep pace with changing economic conditions and better reflect conditions in the non-Federal market place for electronic communications and related uses, as required by the Federal Land Policy and Management Act of 1976.

The fee schedule is:

A. Northern Region Annual Fee Schedule

1. *Common Carrier Microwave*—$1,500
2. *Industrial Microwave*—$1,000
3. *Passive Reflector*—$500
4. *TV and Radio Broadcast*—$3,000
5. *Cable TV:*
   $2,150—over 60,000 population served
   $1,200—10,000–60,000 population served
   $250—Under 10,000 population served
6. *TV and Radio Broadcast Translators*—$900
7. *Two-Way Radio:*
   Site Only—$500
   Site With Forest Service Building Space—$700
8. *Commercial Communicator*—$600 with one user plus $250/additional two-way radio user
9. *Miscellaneous Electronic Uses*—$75

The miscellaneous fee of $75 is the lowest fee that will be charged and collected for any electronic use, and is not subject to further reduction.

(a) *Amateur Radio Facilities*

These facilities are qualified and licensed by FCC according to the purpose, nature, and degree of emergency public service communications provided.

(b) *Personal/Private "Receive Only" Uses*

These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals serving private homes, recreation residences or commercial establishments, which are personally owned and not operated for profit.

(c) *Resource Monitoring Facilities*

These include electronic facilities for gathering, recording, transmitting or receiving resource, atmospheric or other natural resource data or phenomenon. This charge does not apply to wildlife monitoring activities conducted or approved by wildlife management agencies.

The charge shall apply to each monitoring or study site or station installation.

B. Adjustments and Updating

The full annual fee as provided from the schedule and pursuant to Section E below, will be adjusted annually by the annual change (second quarter to second quarter) in the IPD–GNP and updated by new market studies and analysis at 5-year intervals.

C. Fees for Shared Space Users

Where shared space is occupied under single user-type authorizations, primary users (building owner/controller) will be charged the full annual fee for the kind of electronic use of their particular authorization. Secondary and subsequent users in a facility will be charged fees of 50 percent of the full annual fee for the kind of electronic use(s) authorized.

Under multiple user permits, primary users (site managers or associations—except for those established by prospectus-bid processes) will pay the Forest Service the appropriate shared service fee for each of their tenants/users and are free to negotiate a reasonable charge with their tenants.

The shared service adjustment does not apply to holders occupying Forest Service facilities; full fees are charged for these situations.

D. Phase-In of Fee Increases

So that holders may adjust their operations to the fee schedule, that portion of the new fee that exceeds a 100 percent increase will be phased in over a 3-year period beginning with C.Y. 1988 fees.

To facilitate calculation of phased-in fee amounts, IPD–GNP annual adjustments will be deferred until full fees are attained in C.Y.1990.

E. Effective Date

The fee schedule is effective September 8, 1987, and will be reflected in the next billing period.

James C. Overbay,

Regional Forester.

[FR Doc. 87–21183 Filed 9–17–87; 8:45 am]

BILLING CODE 3410–11–M

Forest Resource Inventory Statistics

AGENCY: Forest Service, USDA.

ACTION: Notice of changes in policy and procedure.

SUMMARY: The Forest Service has changed its internal procedures to clarify when final forest resource inventory statistics may be released to the public and in what form. These changes are being issued as amendments to Forest Service Handbook 4809.11—Forest Survey Handbook, part of the Forest Service Directive System. The effect of thse changes is to provide public access to State, unit, and where appropriate, county statistical information in consistent and compatible formats.

DATE: The inventory process is a continuing one and dates for completion of individual State statistical reports cannot be predicted precisely.

ADDRESSES: Data requesters with an interest in forest resource inventory statistics for a particular State should contact the appropriate Forest Inventory and Analysis (FIA) Project Leader listed below for the status of the inventory in that State.

Experiment station	State
1 FIA Project Leader, Intermountain Research Station, 324 25th Street Ogden, Utah 84401.	Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming, Oklahoma and Texas (west of 100th Meridian)
2. FIA Project Leader, North Central Forest Experiment Station, 1992 Folwell Avenue, St. Paul, Minnesota 55108.	Illinois, Indiana, Iowa Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin
3 FIA Project Leader, Northeastern Forest Experiment Station, 370 Reed Road, Broomall, Pennsylvania 19008	Connecticut, Delaware, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New York, New Jersey, Ohio, Pennsylvania, Rhode Island Vermont, West Virginia
4 FIA Project Leader, Pacific Northwest Forest and Range Experiment Station, P.O. Box 3890, Portland, Oregon 97208	California, Hawaii, Oregon, Washington
5 FIA Project Leader, Southeastern Forest Experiment Station, 200 Weaver Boulvard, P.O Box 2680, Asheville, North Carolina 28802.	Florida, Georgia, north Carolina, South Carolina, Virginia.
6. FIA Project Leader, Southern Forest Experiment Station, Forestry Sciences Laboratory, Box 906, Starkville, Mississippi 39759	Alabama, Arkansas, Louisiana, Mississippi, Tennessee, Puerto Rico, Oklahoma and Texas (east of the 100th Meridian)
7 FIA Project Leader, Pacific Northwest Forest and Range Experiment Station, 201 East 9th Avenue, Suite 309, Anchorage, Alaska 99501	Alaska

FOR FURTHER INFORMATION CONTACT: James T. Bones, Forest Inventory and Analysis, Forest Inventory and Economics Research, U.S. Department of Agriculture, Forest Service, Washington, DC 20090–6090, Area Code 202–382–9343.

SUPPLEMENTARY INFORMATION: Through its Research organization, the Forest Service conducts continuing Statewide inventories of the Nation's forest land resources to ascertain trends in the extent, condition, ownership, quantity, and quality of the forest resources. These statistics and subsequent analyses are released as unit, State, regional, and national resource bulletins and forest resource reports.

The Forest Service has revised its internal procedures to require Forest Service personnel to produce each State statistical report using a standard set of core tables containing like statistics in the same tabular format. This standardization will allow data requesters to compare the same forest resource statistics for adjoining States. Previously, analysts were unable to compare forest resources across state boundaries because data for adjoining States was gathered by different Experiment Stations using different formats and display standards.

Upon completion of a forest resource inventory, an Experiment Station Director must prepare a Statewide statistical report. In the process a Director may choose to prepare and assemble statistical data by unit and county and, upon request, may release ths data before the State report is final.

The new directive seeks to eliminate inconsistent interpretation of when State, unit, and county data are considered final. Under the new policy, unit and county data released to requesters must be considered preliminary until the State statistical report has been transmitted to the editorial services staff for publication. Any unit or county data released after that time is final data.

In addition, in the Eastern United States, the Forest Service will also provide requesters with field records on computer tapes with a uniform format for a nominal fee. This will allow requesters to perform their own statistical analyses for States or geographic regions within two or more States. Requests for nonstandard data or unique statistical summaries and analyses should be sent to the appropriate FIA project leader(s) to ascertain how best to accomplish the work, the time required, and the cost. The Agency plans to expand this service nationwide as technology and resources permit.

Dated: September 11, 1987.

George M. Leonard,

Associate Chief.

[FR Doc. 87–21637 Filed 9–17–87; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 4:00 p.m., on September 30, 1987 at the Holiday Inn Downtown, 424 Minnesota Avenue, Kansas City, Kansas. The purpose of the meeting is to develop program plans for fiscal year 1988 and to hold a community forum to obtain information on the status of civil rights and bigotry and violence in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Burdett A. Loomis, or Melvin Jenkins, Director of the Central Regional Division, (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 14, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-21657 Filed 9-17-87; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 2:30 p.m. on September 30, 1987, at the Greensboro Ramada Inn, 830 West Market Street, Greensboro, NC 27401. The purpose of the meeting is to review the status of project plans on the topic of desegregation and resegregation in public schools and plan activities for FY 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Traciel V. Reid or John I. Binkley, Director of the Eastern Regional Division at (202) 523-5264, (TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 10, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-21658 Filed 9-17-87; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Case No. OEE-2-87]

Order Denying Export Privileges; for the Fortune Enterprise Co.

In the matter of: Fortune Enterprise Company, Room 1, 13/F, Pun Tak Building, 482 Lockhard Road, Wanchai, Hong Kong, Respondent.

The Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), pursuant to the provisions of § 387.8 of the Export Administration Regulations (15 CFR Parts 368-399 (1987)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended, 50 U.S.C. app. 2401-2420 (1982 and Supp. III 1985) (the Act), has asked the Deputy Assistant Secretary for Export Enforcement to issue an order denying all export privileges to Fortune Enterprise Company of Hong Kong (hereinafter referred to as respondent).

The Department states that, in accordance with Section 387.8 of the Regulations, on April 11, 1985, it issued a letter to the respondent requesting that it answer a series of interrogatories concerning its export-related activities involving U.S.-origin goods and technical data. The interrogatories were served on the respondent between July 31, 1985 and August 5, 1985. To date, the respondent has failed to answer or otherwise respond to the interrogatories. Section 387.8 of the Regulations provides that, if no response is made to the interrogatories within 20 days after receipt, the person or persons to who the interrogatories are directed may be denied export privileges for a period of five years, or until a response to the interrogatories is made or adequate reasons for the failure or refusal to respond are given.

Accordingly, it is hereby ordered:

I. All outstanding individual validated export licenses in which the respondent or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of the respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. For a period of five years from the date of this Order, or until respondent answers the interrogatories or presents adequate reasons for its failure or refusal to respond, the respondent, its successors or assignees, officers partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to a validated export license application, (ii) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith, (iii) in obtaining or using any validated or general export license or other export control document, (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical date which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which the respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services. Those parties now known to be related to the respondent by affiliation in the conduct of trade, and which are accordingly subject to the provisions of this order, are:

Paul Leung, also known as Leung Yiu Hung and Wong Sau Hin, Both with an address at 11/F, Flat B, Blk. 4, Balwin Court, 154-164 Argyle Street, Hong Kong

A.M.P. Industries, Room 2409, Block A, 24/F, Sun Hing Building, 607 Nathan Road, Kowloon, Hong Kong

International Rental Services, Ltd. and Gutsland Holding Company, both with an address at 1/F Mai Lok Building, 322 Ma Tau Wai Road, Kowloon, Hong Kong

IV. No person, firm corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, or behalf of or in any association with the respondent or any related party, or whereby the respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, direclty or indirectly: (i) apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport,

transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for the respondent or any related party denied export privileges; or (ii) order, buy, receive, use, sell, deliverer, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. Section 387.8(c) of the Regulations states that procedures for the application for issuance of denial orders under Section 387.8(a) "shall conform substantially to that provided for temporary denial orders by § 388.19." 15 CFR 387.8(c). In accordance with the provisions of Section 388.19(e) of the Regulations, the respondent or any related party may, at any time, appeal this order by filing with the Office of the Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support thereof.

VI. This order is effective immediately.

A copy of this order and of Parts 387 and 388 of the Regulations shall be served upon respondent and upon the named related parties.

Date: September 14, 1987.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 87-21628 Filed 9-17-87; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

[P5G]

Marine Mammals; Application for Permit; Dr. Donald B. Siniff

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Dr. Donald B. Siniff, Department of Ecology and Behavioral Biology, University of Minnesota, Minneapolis, Minnesota 55455.

2. *Type of Permit:* Scientific Research.

3. *Name of Marine Mammals:* Weddell seal (*Leptonychotes weddelli*), Crabeater seal (*Lobondon carcinophagus*), Leopard seal (*Hydruga leptonyx*), Ross seal (*Ommatophoca rossi*), Elephant seal (*Mirounga leonina*), Antarctic fur seal (*Arctocephalus gazella*).

4. *Location of Type of Take:* The Applicant is requesting authorization to take marine mammals of the above species at McMurdo Sound, Antarctica.

This project specifically requests permission to: (1) Capture, with physical restraint using a canvas bag placed over the head, and tag up to 1200 individual Weddell seals, including 600 pups, 400 adult females, and 200 adult males, with plastic cattle ear tags in both rear flippers; (2) collect toenails from up to 100 subadult animals for age determinations; and to approach and read tag numbers of up to 2000 Weddell seals, not more than 10 times each; (3) conduct weekly censuses of the eastern McMurdo Sound population to count all seals present on the surface of the ice and record tag numbers; (4) sacrifice up to 5 Weddell seals if the promise of unique scientific return exists; salvage and import material from seals of any species found dead or sacrificed by other Antarctic research programs; and (5) tag and release up to 30 animals of the other species listed.

5. *Period of Activity:* October 1 to December 31, 1987. Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Date: September 14, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-21666 Filed 9-17-87; 8:45 am]

BILLING CODE 3510-22-M

[P77#24]

Marine Mammals; Withdrawal of Permit Application; NMFS, Northwest and Alaska Fisheries Center

On December 5, 1986, notice was published in the **Federal Register** (51 FR 43959) that a permit application had been received from the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, NE., Seattle, Washington, 98115, for a Permit to take California sea lion (*Zalophus californianus*), Pacific harbor seal (*Phoca vitulina*), northern elephant seal (*Mirounga angustirostris*), and northern sea lion (*Eumetopias jubatus*) for scientific research.

Notice is hereby given that this permit application was withdrawn, and the withdrawal request has been acknowledged and accepted without prejudice.

Documents submitted in connection with the above permit application request are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conversation, National Marine Fisheries Service, Room 805, 1825 Connecticut Avenue NW., Washington, DC;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415

Date: September 14, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-21667 Filed 19-17-87; 8:45 am]

BILLING CODE 3510-22-M

[P395]

Marine Mammals; Withdrawal of Permit Application; Dr. Suzanne Macy-Marcy and Dr. J. Ward Testa

On July 23, 1987, notice was published in the **Federal Register** (52 FR 27697) that a permit application had been received from Dr. Suzanne Macy-Marcy, 521 Lakeshore Drive, Leesville, Louisiana

71446 and Dr. J. Ward Testa, Institute of Marine Science, University of Alaska, Fairbanks, Alaska 99775–1080, for a Permit to take harbor seals (*Phoca vitulina richardsi*).

Notice is hereby given that this permit application was withdrawn, and the withdrawal request has been acknowledged and accepted without prejudice.

Documents submitted in connection with the above permit application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, Room 805, 1825 Connecticut Avenue, NW., Washington, DC;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: September 14, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–21665 Filed 9–17–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

September 15, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 21, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established restraint limit for man-made fiber textile products in Category 635, produced or manufactured in the People's Republic of China. As a result, the current limit for Category 635, which has been filled, will reopen.

Background

CITA directives dated December 23, 1986 and February 24, 1987 (51 FR 47041 and 52 FR 6057) established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 635 and 360, respectively, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, and at the request of the Government of the People's Republic of China, the limit for Category 635 is being increased by application of swing. The limit for Category 360 is being reduced to account for the swing applied to Category 635.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 15, 1987.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel the directives of December 23, 1986 and February 24, 1987, concerning import into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on September 21, 1987, the directives of December 23, 1986 and February 24, 1987 are amended to include the following adjustments to the previously established restraint limits for cotton and man-made fiber textile products in Categories 360 and 635, as provided under the terms of the bilateral agreement of August 19, 1983, as amended[1]:

Category	Adjusted 12-month limit[1]
360.....	4,791,467 numbers.
635.....	488,584 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

The Committee for the Implementation of Textile Agreement has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

James H. Babb,

Chairman Committee for the Implementation of textile Agreements.

[FR Doc. 87–21611 Filed 9–17–87; 8:45 am]

BILLING CODE 3510–DR–M

Deduction In Charges of Certain Cotton Textile Products Produced or Manufactured in the Dominican Republic

September 15, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United

[1] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yard equivalent total, provided that the amount of increase is compensated by an equivalent square yard decrease in one or more other specific limits in that agreement year (2) the specific limits for categories may be increased for carryover or carryforward; and (3) administrative arrangement or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

States, pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986), has issued the directive published below to the Commissioner of Customs to be effective on September 21, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to deduct 2,654 dozen from charges made to the restraint limit established for Category 340 for the period which began on June 1, 1987 and extends through May 31, 1988.

Subsequently, this same amount will be charged to the guaranteed access level established for properly certified textile products in Category 340 which are assembled in the Dominican Republic from fabric formed and cut in the United States and exported from the Dominican Republic during this same period.

Background

On May 21, 1987 a notice was published in the **Federal Register** (52 FR 19190) announcing import restraint limits for certain cotton and man-made fiber textile products, including Category 340, produced or manufactured in the Dominican Republic and exported during the period which began on June 1, 1987 and extends through May 31, 1988.

A further notice was published in the **Federal Register** on May 22, 1987 (52 FR 19375) which announced guaranteed access levels for properly certified cotton and man-made fiber textile products assembled in the Dominican Republic from fabric formed and cut in the United States, including products in Category 340.

During consultations between the Governments of the United States and the Dominican Republic, the United States agreed to deduct charges for shipments qualifying for guaranteed access levels which were made to designated consultation levels. It was further agreed that those goods would be charged to the corresponding guaranteed access levels.

The Government of the Dominican Republic has provided documentation to the U.S. Government establishing that additional products in Category 340 were assembled exclusively from U.S. formed and cut fabric and qualified for entry under the guaranteed access level. These goods were charged to the designated consultation level because of the unavailability of proper documentation (CBI Export Declaration (Form ITA–370P)) required for entry under TSUSA 807.0010.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 15, 1987

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of December 18, 1986 between the Governments of the United States and the Dominican Republic, I request that, effective on September 21, 1987, you deduct 2,654 dozen from charges made to the import restraint limit established in the directive of May 18, 1987 for cotton textile products in Category 340, produced or manufactured in the Dominican Republic and exported during the period which began on June 1, 1987 and extends through May 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

This letter will be published in the **Federal Register**.

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–21594 Filed 9–17–87; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Hungarian People's Republic

September 15, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 21, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the current limits for Categories 434, 435, 444 and 445/446 for goods produced or manufactured in Hungary and exported during the periods which began, in the case of Category 434, on November 1, 1986; and, in the case of Categories 435, 444 and 445/446, on January 1, 1987; and extend through December 31, 1987.

Background

On December 22, 1986 and March 5, 1987 notices were published in the **Federal Register** (51 FR 45795 and 52 FR 7296), which announced import restraint limits for wool textile products, produced or manufactured in Hungary and exported during the periods which began, in the case of Category 434, on November 1, 1986; and, in the case of Categories 435, 444 and 445/446, on January 1, 1987; and extend through December 31, 1987. Under the terms of the Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic and at the request of the Hungarian People's Republic, the limits for Categories 434, 435 and 444 are being increased, variously, by application of carryover and swing. The limit for Category 445/446 is being reduced to account for the swing applied to Categories 434, 435 and 444.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 15, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on December 16, 1986 and March 5, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain wool textile products, produced or manufactured in the Hungarian People's Republic and exported during the periods which began, in the case of Category 434, on November 1, 1986; and, in the case of Categories 435, 444 and 445/446, on January 1, 1987; and extend through December 31, 1987.

Effective on Sept. 21, 1987, the directives of December 16, 1986 and March 5, 1987 are hereby amended to adjust the previously established limits for wool textile products in the following categories, as provided under the terms of the bilateral agreement of February 15 and 25, 1983, as amended [1]:

Category	Adjusted limit [1]
433	9,713 dozen
435	11,339 dozen
444	5,670 dozen
445/446	40,941 dozen of which not more than 33,969 dozen shall be in Category 445 and not more than 33,969 dozen shall be in Category 446

[1] The limits have not been adjusted to account for any imports exported after October 31, 1986 for Category 434 and December 31, 1987 for Categories 435, 444 and 445/446.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-21592 Filed 9-17-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement provides, in part, that: (1) specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Request for Public Comment on Bilateral Textile Consultations With the Government of Thailand To Review Trade in Category 369-L

September 15, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 21, 1987. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

Background

On August 19, 1987, the Government of the United States requested consultations with the Government of Thailand with respect to Category 369-L (cotton luggage). This request was made under the agreement between the Governments of the United States and Thailand of July 27 and August 8, 1983, relating to trade in cotton, wool and man-made fiber textile products which provides for consultations when imports increase to the point where they cause or threaten market disruption.

According to the terms of the bilateral agreement, if no mutually satisfactory solution is reached during consultations, the United States may establish a prorated specific limit for the period which began on August 19, 1987 and extends through December 31, 1987 at a level of 241,390 pounds.

The Government of the United States has decided, pending a mutually satisfactory solution, to control imports in Category 369-L exported during the ninety-day consultation period which began on August 19, 1987 and extends through November 16, 1987 at the prescribed limit of 190,356 pounds.

In the event the limit established for the ninety-day period is exceeded, such excess amounts, if allowed to enter, may be charged to the prorated specific limit specified above.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987)*.

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

Anyone wishing to comment or provide data or information regarding the treatment of Category 369-L under the agreement with Thailand, or in any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating

to matters which constitute "a foreign affairs function of the United States."

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Thailand Market Statement—

Category 369 Pt.—Cotton Luggage

August 1987.

Summary and Conclusions

U.S. imports of Category 369 pt. cotton luggage from Thailand were 543,873 pounds for the year ending May 1987, nearly ninety times greater than the 6,117 pounds imported a year earlier. Thailand was the third largest supplier of Category 369 Pt. cotton luggage during the first five months of 1987, accounting for 9 percent of the total imports in this part category. Thailand's imports during the first five months of 1987, reached 533,894 pounds, over a hundred times greater than its January–May 1986 level.

The market for Category 369 pt. cotton luggage is being disrupted by imports. The sharp and substantial increase in low valued imports from Thailand is contributing to this disruption.

Production and Market Share

U.S. production of cotton fabric for luggage has been on the decline since 1983, dropping from 5.8 million pounds in 1983 to 3.7 million pounds in 1986, a 36 percent decline.

During this same period the domestic producers' share of the market for domestically produced and imported cotton luggage nearly halved, dropping from 72 percent in 1983 to 37 percent in 1986.

Imports and Import Penetration

U.S. imports of Category 369 pt. cotton luggage, measured in terms of the cotton fabric content, nearly tripled, increasing from 2.3 million pounds of cotton fabric in 1983 to 6.2 million pounds in 1986. The ratio of imports to domestic production more than quadrupled, increasing from 40 percent in 1983 to 167 percent in 1986.

Duty Paid Landed Values and U.S. Producer Price

Nearly all of Category 369 pt. cotton luggage imports from Thailand entered under TSUSA No. 706.3650. The duty-paid values of these imports are far below the U.S. producers' prices for comparable U.S. produced luggage.

Committee for the Implementation of Textile Agreements

September 15, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983 between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 21, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 369–L,[1] produced or manufactured in Thailand and exported during the ninety-day period which began on August 19, 1987 and extends through November 16, 1987, in excess of 190,356 pounds.[2]

Textile products in Category 369–L which have been exported to the United States prior to August 19, 1987 shall not be subject to this directive.

Textile products in Category 369–L which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Tedxtile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–21591 Filed 9–17–87; 8:45 am]

BILLING CODE 3510–DR–M

Textile and Apparel Categories; Proposed United States Tariff Schedule In the Harmonized System Nomenclature

September 15, 1987.

FOR FURTHER INFORMATION CONTACT: Kathy Davis, International Agreements and Monitoring Division, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

On March 4, 1987, a notice was published in the **Federal Resgister** (52 FR 6597), as amended, annoucing revisions to the textile category structure for use in the implementation of the textile and apparel import program under the Harmonized System (HS).

Recently a July 1987 edition of the *Proposed United States Tariff Schedule in the Harmonized System Nomenclature* was published by the Office of the United States Trade Representative. (This document is available from the Government Printing Office.)

[1] The limit has not been adjusted to account for any imports exported after August 18, 1987.

[2] In Category 369–L, only TSUSA numbers 706.3210, 706.3650 and 706.4111.

The proposed Tariff Schedule should be amended to reflect the changes indicated below:

(1) The following HS items are in Category 624, not Category 413;

5407.91.05.00	5515.22.10.00
5407.92.10.00	5515.92.10.00
5407.94.10.00	5516.31.10.00
5408.31.10.00	5516.32.10.00
5408.32.10.00	5516.33.10.00
5408.33.10.00	5516.34.10.00
5408.34.10.00	

(2) The following HS items are it Category 611:

5516.11.00.10	5516.12.00.70
5516.11.00.20	5516.12.00.90
5516.11.00.30	5516.13.00.10
5516.11.00.40	5516.13.00.20
5516.11.00.50	5516.13.00.90
5516.11.00.60	5516.14.00.10
5516.11.00.70	5516.14.00.20
5516.11.00.90	5516.14.00.30
5516.12.00.10	5516.14.00.40
5516.12.00.20	5516.14.00.50
5516.12.00.30	5516.14.00.60
5516.12.00.40	5516.14.00.70
5516.12.00.50	5516.14.00.90
5516.12.00.60	

(3) The following HS items are in Category 222;

6002.92.00.00	6002.93.00.60
6002.93.00.20	6002.93.00.80
6002.93.00.40	

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–21593 Filed 9–17–87; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Agency Information Collection Activities Under OMB Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information:

(1) Type of submission.

(2) Title of Information Collection and applicable OMB Control Number and form Number;

Abstract statement of the need for and the uses to be made of the information collected;

(4) Type of Respondent;

(5) An estimate of the number of responses;

(6) An estimate of the total number of hours needed to provide the information;

(7) To whom comments regarding the information collection are to be forwarded; and

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(8) The point of contact from whom a copy of the proposed information collection may be obtained.

This information collection is as follows:

(1) Reinstatement;

(2) "1988 Post Election Survey," 0704-0125, Survey forms B & D;

3. The 1988 Post-Election Survey will collect information from 10,000 U.S. citizens not affiliated with the federal government and living overseas and 500 local officials, who desire to participate in DoD's absentee voting survey. This survey is used to obtain absentee voting statistical data from U.S. citizen's residing overseas and local election officials. These potential voters and election officials are requested to voluntarily complete the survey questionnaire form. The form solicits information on procedural and problem areas encountered in the absentee voting process. This information is used by the Federal Voting Program to prepare the report to the President and Congress as required by 42 USC 1973ff.

(4) Individuals;

(5) Current responses of 10,500;

(6) Current burden hours of 1,749;

ADDRESSES: (7) Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

FOR FURTHER INFORMATION CONTACT: (8) A copy of the information collection proposal may be obtained from Mr. Vitiello, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

Linda M. Bynum

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 14, 1987.

[FR Doc. 87–21581 Filed 9–17–87; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Armor Anti-Armor Competition; Meeting Cancellation

ACTION: Cancellation of Meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Armor Anti-Armor Competition for August 24 and September 17, 1987 as published in the **Federal Register** (Vol. 52, No. 133, Page 26171, Monday, July 13, 1987, FR Doc 87–15844.) has been cancelled.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 14, 1987.

[FR Doc. 87–21579 Filed 9–17–87; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Low Observable Technology; Meeting Cancellation

ACTION: Cancellation of Meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Low Observable Technology for October 15, 1987 as published in the **Federal Register** (Vol. 52, No. 121, Page 23711, Wednesday, June 24, 1987, FR Doc 87–14305) has been cancelled. In all other respects the original notice remains unchanged.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 14, 1987.

[FR Doc. 87–21580 Filed 9–17–87; 8:45]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATES: Monday and Tuesday, 5–6 October 1987, 9:00 a.m. to 5:00 p.m. each day.

ADDRESS: The Pentagon, Washington, DC (on 5 October). The DIAC, Bolling AFB, Washington, DC (on 6 October)

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340–1328 (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on intelligence support systems.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 15, 1987.

[FR Doc. 87–21653 Filed 9–17–87; 8:45 am]

BILLING CODE 3810–01–M

Defense Logistics Agency

Privacy Act of 1974; Revised Record System

AGENCY: Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: Notice of a revision of a DLA system of records for public comment.

SUMMARY: The Defense Logistics Agency of the Department of Defense proposes to revise an existing system of records subject to the Privacy Act of 1974.

DATE: The proposed action will be effective without further notice on October 19, 1987 unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the System Manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, DLA–XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6130, Telephone: 202–274–6234, Autovon: 284–6234.

SUPPLEMENTARY INFORMATION: This existing record system was published at 50 FR 22902, May 29, 1985. The revision includes changes to the system identification and name from S153.20 DLA–T, Personnel Security Clearance Status CAPSTONE to S153.20 DLA–I, Personnel Security Information Subsystem of COSACS and modification of the basic text. The Defense Logistics Agency systems of records as prescribed by the Privacy Act of 1974 (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR Doc. 85–10237 50 FR 22897, May 29, 1985 (Compilation)

FR Doc. 85–30123 50 FR 51898, December 20, 1985

FR Doc. 86–17259 51 FR 27443, July 31, 1986

FR Doc. 86–19035 51 FR 30104, August 22, 1986

This proposed revision does not require an altered system report as set

forth by 5 U.S.C. 552a(o) of the Privacy Act.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 15, 1987.

§ 153.20 DLA–I

SYSTEM NAME:

Personnel Security Information Subsystems of COSACS

SYSTEM LOCATION:

Primary System-Central computer programs and files maintained at the Defense Logistics Agency Administrative Support Center (DASC) which is located at Cameron Station, Alexandia, VA provides a central index for information regarding personnel security clearance and security eligibility of civilian employees and military personnel within the Defense Logistics Agency (DLA). Ready reference on-line acess is furnished to Defense Logistics Agency Primary Level Field Activities (PLFAs), to Principal Staff Elements (PSEs) at Headquarters, DLA and to Department of Defense Management Support Activities (DoDMSAs) supported by DASC, concerning personnel under their jurisdiction.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DLA civilian and military personnel who have been found eligible for employment in a sensitive position or eligible for or granted a security clearance or access to information classified in the interests of national security.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer record on each individual in the Personnel Security Information Subsystem of COSACS (Command Security Automated Control System) Master File. Computer listings are generated from this master, in the form of a Master File Archival Record and Record Activity Clearance Eligibility Listing (RACEL), and identify those DLA personnel who are assigned to or who are eligible to occupy sensitive positions and those DLA personnel who have been either authorized access to classified information or found eligible for such access.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders (E.O.) 9397, 10450, 10865, 12333, 12356.

PURPOSE(S):

Provide a computerized, centralized source of security eligibility and clearance information for all DLA security officers and appropriate supervisors. The purpose for soliciting and using the SSAN is for positive identification and retrieval of records.

These records are used by DLA Security Officers at all levels as well as by other appropriate DLA supervisors to determine whether or not DLA civilian employees are eligible for or occupy sensitive positions; whether they or assigned military personnel have been cleared for or granted access to classified information; and the level of such clearance of access, if granted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Clearance status and other clearance related information of individual DLA employees may be provided to the appropriate officials of other Federal Government agencies and Federal Government contractors when necessary in the course of official business. See also the Blanket Routine Uses set forth at the beginning of the DLA record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a combination of paper and automated files.

RETRIEVABILITY:

Records are contained in the data base and are retrievable by name, social security account number (SSAN), job series, security eligibility, security clearance, organization, and type of investigation.

SAFEGUARDS:

Records, as well as on-line input and computer terminals, are maintained in areas that conform to applicable DLA security policy. Access to and retrieval from computerized files is limited to authorized users and is password protected/restricted.

RETENTION AND DISPOSAL:

New listings are published quarterly and prior microfiche and listings are destroyed as soon as the new lists are verified but in no case beyond 90 days. Magnetic records are purged one year after the individual departs DLA.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Office of Command Security, Attn: DLA–I, Headquarters DLA, Cameron Station, Alexandria, VA 22304–6130, and Command Security Officers of all DLA PLFAs. Refer to the appendix at the end of the DLA notices for the applicable addresses.

NOTIFICATION PROCEDURE:

Written or personal requests for information may be directed to the appropriate System Manager.

RECORDS ACCESS PROCEDURES:

Official mailing addresses of the DLA System Managers are in the DLA address directory of the appendix to the DLA system of records notices. Written requests for information should contain the full name, SSAN, current address and telephone number of the individual. For personal visits, the individual should be able to provide some acceptable identification, such as driver's license or employing office identification card, and give some verbal information that can be verified from his or her file.

DLA users may utilize an Audio Response Unit (ARU) accessed by SSAN to retrieve the individual's security clearance only.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records, contesting contents, and appealing initial determinations about an individual concerned may be obtained from the System Manager and are set forth in DLA Regulation 5400.21 (32 CFR Part 1286).

RECORD SOURCE CATEGORIES:

Certificates of clearance or personnel security investigation previously completed by the Office of Personnel Management, the Federal Bureau of Investigation, the Defense Investigative Service, investigative units of the Army, Navy and Air Force, and other Federal agencies. Personnel security files maintained on individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 87–21654 Filed 9–17–87; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) on the Joint Military Medical Command's Proposed New Brooke Army Medical Center at Fort Sam Houston, San Antonio, TX

AGENCY: U.S. Army Corps of Engineers, DOD, Fort Worth District.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: 1. The proposed action consists of construction and operation of

a 200 bed (expandable to 450 bed) regional medical teaching hospital with out-patient clinic to replace facilities of the existing Brooke Army Medical Center. The new facilities would be located in the area of Fort Sam Houston bounded by IH–35, Benz-Engleman Road, and the MK&T Railroad. Support facilities associated with the proposed action would include an on-site energy plant, several off-post road improvements, clinical investigation facility, medical research laboratory, medical administrative facility, and use of public electric and sanitation utilities.

2. *Reasonable Alternatives.* Alternatives to be evaluated include: construction and operation of the new facilities, renovation and upgrading of existing facilities, and no action.

3. *Scoping Process.* a. *Public Involvement.* A comprehensive public involvement program will be conducted locally by the Fort Worth District in support of the Joint Military Command and Fort Sam Houston as a means of soliciting public views and disseminating information. Techniques will include formal public meetings, informal public information sessions as necessary, and continuing dialogue with Federal, State, and local agencies, organizations, and the interested public.

b. *Significant Issues.* At present, significant issues to be addressed in depth in the DEIS include size and capacity of the new facilities, impacts on transportation facilities, socio-economic effects on local residents, and effects on public utility resources.

c. *Assignments.* Other than normal coordination, no cooperating agency assignments have been made.

d. *Environmental Review and Consultation Requirements.* The DEIS will be circulated for review and all comments will be incorporated into a final environmental impact statement.

4. Although not currently scheduled, a public scoping meeting is anticipated to be held in November 1987. A public notice announcing the scoping meeting will be mailed to the project mailing list prior to the meeting.

5. The DEIS is expected to be available to the public by March 1988.

ADDRESS: For additional information, contact Mr. Paul Hathorn, Environmental Project Manager, Environmental Resources Branch, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, Texas 76102–0300. Telephone (817) 334–2095.

John E. Schaufelberger,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87–20976 Filed 9–17–87; 8:45 am]

BILLING CODE 3710–FR–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.193]

Invitation for Applications for New Awards Under the Demonstration Centers for the Retraining of Dislocated Workers Program (Demonstration Centers) for Fiscal Year 1988

Purpose: To provide assistance to establish demonstration centers to retrain dislocated workers in order to demonstrate the applicability of general theories of vocational education to the specific problems of retraining displaced workers.

Deadline for transmittal of applications: November 17, 1987

Deadline for intergovernmental review comments: January 18, 1988

Applications available: September 17, 1987

Available funds anticipated: $310,000

Estimated average size of awards: $310,000

Estimated number of awards: 1

Project period: Up to 24 months

Invitational priority: Under 34 CFR 75.105(c)(1), the Secretary invites applications from community colleges with existing dislocated worker training programs for a project to establish and operate a demonstration center for the retraining of dislocated workers in which there is significant State, local, and/or private sector involvement, commitment, and support and for which materials will be prepared, as appropriate, for dissemination to other dislocated worker training centers. Applications that meet this invitational priority will not receive a competitive or absolute preference over other applications that do not meet this priority.

Criteria for evaluating applications: The Secretary assigns the fifteen points, reserved in 34 CFR 411.30(b), to the selection criterion (h)—Private Sector Involvement—in 34 CFR 411.31(h) for a total of 20 points for that criterion.

Applicable regulations: (a) The regulations in 34 CFR Parts 400 and 411; and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, and 79.

Other information: An award will be made through a cooperative agreement that gives the Department a significant role in monitoring the entire course of the project.

For applications or information contact: Richard F. DiCola, National Projects Branch, Division of Innovation and Development, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 519, Reporters Building), Washington, DC 20202–5516. Telephone (202) 732–2362.

Program authority: 20 U.S.C. 2415.

Dated: September 14, 1987.

Bonnie Guiton,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 87–21624 Filed 9–17–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER87–630–000 et al.]

Electric Rate and Corporate Regulation Filings; Alabama Power Co. et al.

September 15, 1987.

Take notice that the following filings have been made with the Commission:

1. Alabama Power Company

[Docket No. ER87–630–000]

Take notice that on September 8, 1987, Alabama Power Company tendered for filing a change in rates for transmission services provided to the Tennessee Valley Authority under a Transmission Service Agreement dated August 11, 1980. The proposed change will reduce the return on common equity component of the formula rate incorporated in the Transmission Service Agreement.

Comment date: September 29, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. American Municipal Power-Ohio, Inc. v. Ohio Edison Company

[Docket No. EL87–62–000]

Take notice that on August 27, 1987, American Municipal Power-Ohio, Inc. (AMP-Ohio) tendered for filing, pursuant to Rule 206 of the Rules of Practice and Procedure and Section 206 of the Federal Power Act, a formal Complaint and request for summary judgment against Ohio Edison Company.

AMP-Ohio states that Ohio Edison has presented no reasons whatever for refusing to grant AMP-Ohio's request for

second delivery points for Cuyahoga Falls and Hudson, and because no issue of material fact is thus involved, AMP-Ohio requests that the Commission grant summary judgment of this matter.

Comment date: October 15, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Cliffs Electric Service Company, Upper Peninsula Power Company, Upper Peninsula Generating Company

[Docket No. ER87-632-000]

Take notice that on September 9, 1987, Upper Peninsula Power Company (Power Co.), Upper Peninsula Generating Company (Generating Co.) and Cliffs Electric Service Company (Service Co.) tendered for filing an amendment, Amendment No. 3, to the 1978 Basic Agreement (FERC Rate Schedule No. 22) that is dated as of March 20, 1987. The principal purpose of this amendment is to revise the basis on which Service Co. and Power Co. will share the dispatching costs associated with the operation of the control center. Power Co. is in the process of completing the development of a new control center in Ishpeming, Michigan. In place of the arrangement pursuant to which Service Co. and Power Co. shared one-half of those costs, the parties have agreed to substitute a new arrangement whereby Power Co. will charge Service Co. a fixed dollar amount for the portion of the costs which the parties have agreed should be allocated to Service Co. The parties do not anticipate that the new basis for compensating Power Co. will result in any significant change in payments which would otherwise have to be made by Service Co. for dispatch and control services.

The parties request that this amendment be made effective on November 1, 1987, the first day of the month by which the parties expect the new Ishpeming Control Center will become operational and further request a waiver of the Commission's notice provision.

Comment date: September 29, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Connecticut Light and Power Company

[Docket No. ER85-720-004]

Take notice that on September 8, 1987, Connecticut Light and Power Company (CL&P) tendered for filing pursuant to Commission Order issued July 10, 1987, a compliance report and a lump sum payment from Bozrah Light and Power Company (BL&P), a customer, of $95,558.47 on August 18, 1987.

This report contains the following:

Schedule A—Monthly billing determinants and revenues at prior, present, and settlement rates for the period March 30, 1986 through February, 1987, the date at which Bozrah ceased to be a customer of CL&P.

Schedules I through VI—Computation of the monthly refunds, including interest, for the monthly billings for the period March 30, 1986 through July 10, 1987.

Schedules I through VI—Computations and accounting for the phase-in plan deferrals, carrying charges, and amortizations.

Copies of this filing have been served upon BL&P and the Connecticut State Commission.

Comment date: September 29, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Power & Light Company, Washington Water Power Company, Puget Sound Power & Light Company, Portland General Electric Company

[Docket No. ER87-631-000]

Take notice that on September 9, 1987, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing, on behalf of itself, Washington Water Power Company (Water Power), Puget Sound Power & Light Company (Puget) and Portland General Electric Company (Portland General), the Agreement for Hourly Coordination of the Projects on the Mid-Columbia River (Agreement) among Pacific, Waster Power, Puget, Portland General and eleven other parties.

The Agreement, except to extend the term to June 30, 1997, restates in substance the same terms and conditions as the July 1, 1977 Agreement, which it supersedes. There are no revenues to any party resulting from this Agreement.

Pacific has submitted Certificates of Concurrence endorsed by Water Power, Puget and Portland General as part of its application in accordance with 18 CFR 35.1. Pacific requests waiver of prior notice and requests an effective date of July 1, 1987.

Copies of the filing were served upon the Washington Utilities and Transportation Commission, the Oregon Public Utilities Commission, and all parties to the Agreement.

Comment date: September 29, 1987, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Captiol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21615 Filed 9-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-532-000 et al.]

Natural gas certificate filings; Northwest Pipeline Corp. et al.

Take notice that the following fillings have been made with the Commission:

1. Northwest Pipeline Company

[Docket No. CP87-532-000]

September 11, 1987.

Take notice that on September 9, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87-532-000, an application pursuant to section 7(c) of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) Regulations thereunder for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce for the account of Nu-West Industries, Inc. (Nu-West), all as more fully set forth in the application which is on file and open to public inspection.

Northwest proposes to transport up to 13.0 billion Btu of natural gas per day, on an interruptible basis, for the account of Nu-West, for a term of two years pursuant to a transportation agreement dated August 24, 1987, which provides for transportation service under Rate Schedules T-4 and T-5 of Northwest's FERC Gas Tariff Volume 1-A.

It is said that Nu-West, through its agent, IGI Resources Inc., has acquired supplies of natural gas which it would cause to be delivered to existing receipt points on Northwest's transmission system. Northwest proposes to allow Nu-West the flexibility to switch to new suppliers behind any authorized transportation receipt point. Northwest

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also states that no new facilities are required to implement the service.

Northwest proposes to transport Nu-West's volumes through its transmission system and redeliver thermally equivalent volumes less transmission fuel, on an interruptible basis, to Intermountain Gas Company, (Intermountain) for Nu-West's account, at an existing delivery point at Soda Springs, in Caribou County, Idaho. Northwest indicates that Intermountain would then deliver the subject gas to Nu-West's plant facilities in Conda, Idaho.

It is asserted that the proposed transportation service would provide Nu-West with access to low-cost gas supplies that would enable it to re-open and operate its fertilizer plant complex formerly owned by Beker Industries Corporation.

Northwest proposes to charge Nu-West for all volumes of gas transported and delivered under the transportation agreement at either the interruptible, incremental on system transportation rate or the interruptible, replacement on-system transportation rate as set forth, respectively, in Northwest's Rate Schedules T–4 and T–5, FERC Gas Tariff, Volume No. 1–A. Northwest indicates that the T–4 transportation rate would apply to volumes transported during any months which are incremental to the corresponding 1984 monthly volumes for the end-users as indicated on Exhibit C of the Transportation Agreement. It is indicated that the T–5 transportation rate would apply to all volumes transported which are not incremental to the corresponding 1984 monthly volumes.

Comment date: September 25, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP87–523–000]

September 15, 1987.

Take notice that on September 3, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87–523–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add two new delivery points and the construction and operation of appurtenant facilities to accommodate natural gas deliveries to Minnegasco Inc. (Minnegasco), under the certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Nautral Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern Proposes to add two small volume delivery points to accommodate natural gas deliveries to the communities of Forest Ridge and New Market, Minnesota, to be served by Minnegasco. Northern states that the volumes to be delivered to Minnegasco at the proposed delivery points in the fifth year of service would be 32 Mcf of gas on a peak day, with an annual delivery of 4,877 Mcf at the Forest Ridge delivery point and 10 Mcf of gas on a peak day, with an annual delivery of 1,950 Mcf at the New Market delivery point. It is stated that such volumes are within the currently authorized firm entitlement to Minnegasco as authorized by order issued January 3, 1985, in Docket No. CP84–49–000, therefore would have no impact on Northern's peak day and annual deliveries. It is further stated that the required volumes would be served from the firm entitlement designated by Minnegasco for delivery to Prior Lake, Minnesota.

It is stated that Northern would install the necessary tap and metering facilities at an estimated cost of $7,300. It is stated that Minnegasco will be required to make a contribution of $5,380 in aid of construction.

Comment date: October 30, 1987, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP87–521–000]

September 15, 1987.

Take notice that on September 2, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87–521–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) for the authority to modify its Glenns Ferry Meter Station to increase the capacity of the meter station and to reassign gas volumes from its Declo Meter Station to facilitate the sale and delivery of gas to an existing customer Intermountain Gas Company (IGC), for resale, under Northwest's blanket certificate issued in Docket No. CP82–433–000 (20 F.E.R.C. ¶ 62,412), pursuant to section 7(c) of the NGA, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to modify its Glenns Ferry Meter Station located in Elmore County, Idaho, by replacing the existing 4-inch displacement meter setting with a 3-inch turbine meter setting and upgrade the related piping to accommodate the increased deliveries of gas requested by IGC. Northwest states that the additional gas volumes will be used by IGC as system supply for resale to an industrial potato processing plant. Northwest further states that IGC has agreed to reimburse Northwest $6,000 for the cost of construction and required filing fee.

Northwest further proposes to provide IGC, pursuant to its ODC–1 Rate Schedule, at the Glenns Ferry Meter Station an additional 1,400 therms of gas per day for a total Maximum Daily Quantity (MDQ) of 7,000 [1] therms of gas per day and reduce deliveries to IGC by 1,400 therms of gas per day at Northwest's Delco Meter Station located in Cassia County, Idaho. Northwest states that there will be no increase in the total MDQ of gas that Northwest is presently authorized to sell to IGC as a result of the subject proposal.

Comment date: October 30, 1987, in accordance with Standard Paragraph G at the end of this notice.

4. Consolidated Gas Transmission Corporation

[Docket No. CP85–110–006]

September 15, 1987.

Take notice that on August 28, 1987, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP85–110–006 a petition to amend the order issued June 21, 1985, in Docket No. CP85–110–000, pursuant to section 7(c) of the Natural Gas Act to authorize the exchange of natural gas with Cranberry Pipeline Corporation (Cranberry) at two additional points of delivery, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued June 21, 1985, Consolidated and Cranberry were authorized to exchange gas pursuant to a March 1, 1983 exchange agreement (Agreement). It is further stated that Consolidated and Cranberry have entered into an amendment to the Agreement to provide for the receipt by Consolidated of gas at two additional existing interconnections between Consolidated and Cranberry. The amendment also increases the contractual delivery pressure limitation and limits daily deliveries at the primary

[1] Northwest is presently authorized to deliver 5,600 therms of gas to IGC at the Glenns Ferry Meter Station and 2,500 therms of gas at the Declo Meter Station.

point of delivery to Consolidated under the Agreement, it is asserted.

It is averred that as a result of operating conditions, pipeline pressures have increased at the primary point of delivery to Consolidated such that Cranberry is unable to deliver to Consolidated the quantities specified under the Agreement. The additional delivery points and the increase in the contractual delivery pressure limitation at the primary point of delivery are necessary in order for Cranberry to deliver to Consolidated the quantities provided for under the Agreement. It is stated that no additional facilities are proposed or required to be constructed in connection with the proposed service.

Comment date: October 6, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. National Fuel Gas Supply Corporation

[Docket No. CP87–511–000]

September 15, 1987.

Take notice that on August 26, 1987, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP87–511–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act for authorization to construct and operate sales tap facilities connecting its pipelines with those of its affiliate, National Fuel Gas Distribution Corporation (Distribution), under the certificate issued in Docket No. CP83–4–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Tennessee proposes to construct sales tap facilities in the Towns of Vowinckel, Forest County; Hempfield, Mercer County; Clarion, Allegany County; Columbus, Warren County; Sandy Creek, Venango County; Heath, Jefferson County; Conewango, Warren County; and Reynoldsville, Jefferson County, Pennsylvania, in order to serve additional residential customers of Distribution.

National Fuel states that the proposed deliveries will have niminal impact on its peak and annual deliveries. National Fuel further states that it has sufficient capacity to accomplish the proposed deliveries without detriment or disadvantage to any of its other customers.

Comment date: October 30, 1987, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP87–517–000]

September 15, 1987.

Take notice that on August 31, 1987, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP87–517–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization permitting and approving certain changes in the location of a delivery point, and for abandonment of a delivery point and related services for U.S. Industrial Chemical Company (USI), under the authorization issued in Docket No. CP83–83–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to add a new sales tap (proposed delivery point) including measuring and appurtenant facilities to serve USI, an existing direct industrial customer. Applicant further proposes to reassign 15,000 Mcf per day of natural gas from an existing point of delivery located on the USI plant site to an adjacent site owned by the Applicant and located at Applicant's Tuscola, Illinois compressor station.

It is stated that Applicant would abandon the existing sales tap located at the USI facility and the related services associated with such facilities, as authorized in Docket No. G–2047, to be replaced by the tap, measuring and adjacent facilities identified as the proposed delivery point. It is further stated that the Applicant would abandon a portion of the direct interruptible natural gas service to the USI plant, reducing the volumes to 15,000 Mcf per day from the previously authorized levels of 18,000 Mcf per day in the winter period, and 29,000 Mcf per day during the summer period. Applicant would also abandon the transportation for direct sale of hydrocarbon extraction and shrinkage previously provided at 38,000 Mcf per day to the USI Plant at Tuscola, Illinois, it is stated.

Applicant indicates that the total volumes to be delivered to USI, after the proposed changes become effective, would be 15,000 Mcf per day to be delivered at the proposed delivery point. Applicant asserts that USI has consented in writing to the proposed abandonment. Applicant further contends that the change in the delivery point would have no impact on its peak day or annual deliveries.

Comment date: October 30, 1987, in accordance with Standard Paragraph G at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP87–526–000]

September 15, 1987.

Take notice that on September 4, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP87–526–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act for permission and approval to abandon certain regulating facilities, and for authorization to change the operation of two existing delivery points by increasing the contract delivery pressure at those points, under the certificate issued in Docket No. CP82–406–000 pursuant to section 7 of the Natural Gas Act all as more fully set forth in the request with the Commission and open to public inspection.

Southern states that it provides natural gas service to Atlanta Gas Light Company (Atlanta) at various delivery points on Atlanta's distribution system including the Jackson Meter Station (Jackson) in Lamar County, Georgia and the Douglasville Meter Station (Douglasville) in Douglas County, Georgia. Southern indicates that in response to a request by Atlanta it proposes to increase the contract delivery pressure at Jackson from a Contract Delivery Pressure of 200 pounds per square inch, guage (psig) to main line pressure not less than 200 psig, and to increase the contract delivery pressure at Douglasville from a Contract Delivery Pressure of 250 psig to main line pressure not less than 250 psig. Southern states that it further proposes the abandonment of obsolete regulators and auxiliary facilities at Jackson and Douglasville to permit the gas to be delivered to these stations at the proposed higher pressures.

Southern states that the abandonment and increase in delivery pressure proposed in its application will not result in any termination of service, and that said changes will not result in a change to the Contract Demand of Atlanta at Jackson or Douglasville. Further, Southern states that it has sufficient capacity to accomplish deliveries at the revised delivery pressures without detriment or disadvantaged to its other customers, and deliveries at the increased delivery pressures will have no significant impact on Southern's peak day and annual deliveries. Additionally, Southern indicates that the proposed

abandonment and change are not prohibited by any existing tariff of Southern.

Comment date: October 30, 1987, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21616 Filed 9-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-41-004]

Filing To Put Interim Rates Into Effect; Alabama-Tennessee Natural Gas Co.

September 14, 1987.

Take notice that on September 11, 1987, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) filed an unopposed motion to approve, subject to refund, interim settlement rates in order to avoid the institution of a rate increase scheduled to become effective on September 1, 1987. If approved, the interim rates, which are equal to the non-gas component of the base tariff rates and charges shown on Alabama-Tennessee's Substitute Second Revised Tariff Sheet No. 4, would be effective for the period September 1, 1987 through December 31, 1987. Alabama-Tennessee also requests a waiver of the Commission's § 154.22 notice requirement and a waiver of § 154.67(a) of the Commission's regulations so that the following tariff sheets in First Revised Volume No. 1 of its FERC Gas Tariff may become effective September 1, 1987:

Original Sheet Nos. 1–3
Substitute Second Revised Sheet No. 4
Original Sheet Nos. 5–9
Second Revised Sheet No. 10
First Revised Sheet No. 11
Second Revised Sheet No. 12
Original Sheet Nos. 13–15
Second Revised Sheet No. 16
First Revised Sheet No. 17
Original Sheet Nos. 18–23
First Revised Sheet Nos. 24–25
Original Sheet No. 26
First Revised Sheet No. 27
Original Sheet No. 27A
First Revised Sheet No. 28
Original Sheet Nos. 29–36
First Revised Sheet No. 37
Original Sheet Nos. 38–45
First Revised Sheet Nos. 46–47
Original Sheet No. 47A
Original Sheet Nos. 48–49
First Revised Sheet No. 50
Original Sheet No. 50A
Original Sheet Nos. 51–82
First Revised Sheet No. 83
Original Sheet Nos. 84–88
First Revised Sheet No. 89
Original Sheet No. 90
First Revised Sheet No. 91
Original Sheet Nos. 92–100
Second Revised Sheet No. 101

Alabama-Tennessee states that the active participants in this proceeding, including the Commission Staff, have achieved an overall settlement in principle in this case and have also reached a limited interim settlement for the period September 1, 1987 through December 31, 1987, to permit interim rates to go into effect and thereby forestall an immediate rate increase.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21617 Filed 9-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-889-000]

Application of Associated Natural Gas, Inc. for Blanket Certificate of Public Convenience and Necessity With Pregranted Abandonment Authority and for Expedited Consideration; Associated Natural Gas, Inc.

September 15, 1987.

Take notice that on September 8, 1987, Associated Natural Gas, Inc., of 1401 17th Street, Suite 600, P.O. Box 5493, Denver, Colorado 80217 ("Applicant") filed an application for blanket certificate of public convenience and necessity with pregranted abandonment authority pursuant to sections 4 and 7 of the Natural Gas Act and Part 157 of the Commission's Regulations.

Applicant requests authority to (1) make sales in interstate commerce for resale; (2) permit sales to Applicant by others; and (3) permit Applicant to act as agent for others in connection with sales in interstate commerce for resale. Such sales will include natural gas made available pursuant to abandonment authority granted by the Commission in separate proceedings without regard to the NGPA category of such gas. Applicant also requests pregranted

abandonment authority with respect to all such sales.

The certificate and abandonment authority sought herein, if granted, will enable Applicant to expand its activities as a marketer of natural gas. The authority will enable Applicant to purchase Natural Gas Act gas from various producers and resell natural gas in the interstate market and also enable Applicant to act as agent of broker for producers in the sale in interstate commerce for resale of Natural Gas Act gas in the spot market. Applicant also requests that the Commission declare that its jurisdiction over the activities and operations of Applicant is limited to the transactions for which authorization is sought in the Application. A more detailed description of the authority sought by Applicant is contained in its Application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said Application should, on or before September 29, 1987 file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant a party to the proceeding. Persons desiring to become parties to the proceeding or to participate as a party in any hearing herein must file motions to intervene in accordance with the Commission's Rules.

Under the procedures herein provided for, unless othewise advised, it will not be necessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-27618 Filed 9-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-750-000]

Application for Permanent Abandoment; FMP Operating Co.

September 15, 1987.

Take notice that on July 8, 1987, as supplemented on September 4, 1987, FMP Operating Company (FMP), P.O. Box 60004, New Orleans, Louisiana 70160-0004, filed an application in Docket No. CI87-750-000 requesting permanent abandonment of sales of gas to United Gas Pipe Line Company (United), from Bastian Bay, Southeast Flank Field, Plaqumines Parish Louisiana.

FMP states that the takes of gas under the terms of the Gas Purchase Contract dated October 17, 1973, have been substantially reduced without payment. FMP therefore requests that its application be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85-1-000, at 18 CFR 2.77.[1] Deliverability is approximately 2.6 MMcf/day. The gas is NGPA section 104 1973-1974 biennium gas.

FMP states that it currently holds an LTA consisting of blanket limited-term abandonment and blanket limited-term certificate with pregranted abandonment authorization in Docket No. CI87-531-000, 40 FERC ¶ 61,017 (1987). Accordingly FMP may sell gas from Bastian Bay for resale under authority contained in such LTA. In the event FMP's LTA expires on March 31, 1988, as the Commission's Order in Docket No. CI87-531-000 states, FMP states it will seek any required certificate authority needed for future sales for resale in interstate commerce of the Bastian Bay gas.

Since FMP states that it is subject to substantially reduced takes without payment and has requested that its application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for FMP to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21619 Filed 9-17-87; 8:45 am]

BILLING CODE 6717-01-M

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to subetantially reduced takes without payment.

[Docket No. TC87-8-000]

Change in FERC Gas Tariff; Natural Gas Pipeline Co. of America

September 11, 1987.

Take notice that on September 2, 1987, Natural Gas Pipeline Company of America (Natural) submitted for filing First Revised Sheet No. 139 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1.

Natural filed the tariff sheet to be effective November 1, 1987. The revised tariff sheet changes section 23 of the General Terms and Conditions in Volume No. 1 by revising the method that Natural allocates, to its existing DMQ-1 and G-1 sales customers and purchasers under firm direct sales contracts, the gas it has available during a temporary curtailment on its system. The revised method bases the allocation of gas supply on the average quantity which that Buyer purchased within Daily Quantity Entitlement or Daily Contract Quantity during the seven days prior to the temporary curtailment of deliveries.

Natural states that this filing is required because of the changing nature of the gas industry and the current patterns of purchases by Natural's DMQ-1 customers due to the expansion of the spot market. Daily Quantity Entitlements no longer accurately reflect purchasing behavior of Natural's customers. A change is required to minimize disruption to actual purchases. The proposed revision will more equitably allocate the quantity for sale by Natural should Natural be required to temporarily curtail deliveries to its DMQ-1, G-1 and direct sales customers.

Natural also requested waiver of the Commission's Regulations to the extent necessary to permit the revised tariff sheet to become effective November 1, 1987.

A copy of this filing was mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before September 18,

1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21620 Filed 9-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-39-000]

Rate Change; Pacific Interstate Transmission Co.

September 14, 1987.

Take notice that Pacific Interstate Transmission Company (Pacific Interstate) on September 3, 1987, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following sheets:

Thirty-Second Revised Sheet No. 4
Fifteenth Revised Sheet No. 4-A
Twenty-Seventh Revised Sheet No. 5
First Revised Sheet No. 6

Pacific Interstate states that these tariff sheets are issued pursuant to Pacific Interstate's Purchased Gas Cost Adjustment (PGCA) Provision and Incremental Pricing Provisons as set forth in sections 16 and 17, respectively, of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 2. The proposed effective date of these tendered tariff sheets and the rates thereon is October 1, 1987.

Pacific Interstate also states that the above-tendered tariff sheets reflect a proposed October 1, 1987, Pacific Interstate Rate Schedule S-G-1 commodity rate of 615.46¢ per decatherm, an increase of 200.37¢ per decatherm from the 415.09¢ per decatherm rate effective April 1, 1987, the date of the last S-G-1 commodity rate change, and that such increase reflects a current Gas Cost Adjustment and a change in the Surcharge Adjustment

Pacific Interstate states that the current Gas Cost Adjustment is based on an annualized gas cost increase of $13,005.00 and that the Surcharge Adjustment is designed to collect, over a six-month period beginning October 1, 1987, an amount of $122,201.44, which is the amount of Pacific Interstate's Unrecovered Purchased Gas Cost Account on June 30, 1987. Furthermore, Pacific Interstate states that there is no incremental pricing surcharge adjustment applicable to this filing, since its only customer, SoCal Gas, has informed Pacific Interstate that it has no surcharge absorption capability.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before September 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21621 Filed 9-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI87-663-000 and CI87-679-000]

Application for Permanent Abandonment and Blanket Limited-Term Certificate With Pregranted Abandonment; Sabine Corp.

September 15, 1987.

Take notice that on June 1, 1987, as supplemented on August 21, 1987, Sabine Corporation (Applicant) filed an application in Docket No. CI87-679-000 requesting permanent abandonment of sales of gas to El Paso Natural Gas Company (El Paso). The application also requests in Docket No. CI87-663-000 that Applicant receive a blanket three-year limited-term certificate with pregranted abandonment for sales of the released gas to other purchasers in interstate commerce.

Applicant states expedited relief is sought for the reason that takes of gas under the terms of the Gas Purchase Contract dated March 31, 1964, have been substantially reduced since 1985, and that Applicant has not received any take-or-pay payments as a result of reduced takes. Applicant states that the contract term expired on September 28, 1986. Applicant requests that its application be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85-1-000, at 18 CFR 2.77.[1]

Deliverability is approximately 14,000 Mcf per month. The gas is NGPA section 104 small producer flowing gas. Sales have been made under Applicant's small producer certificate issued in Docket No. CS66-96.

Since Applicant states that it is subject to substantially reduced takes without payment and has requested that its application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21622 Filed 9-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-140-000]

Tariff Filing; Transco Gas Supply Co.

September 14, 1987.

Take notice that on September 9, 1987 Transco Gas Supply Company (Gasco) tendered for filing First Revised Substitute Sixth Revised Sheet No. 106, Second Revised Substitute Sixth Revised Sheet No. 106 and Substitute Seventh Revised Sheet No. 106 to its FERC Gas Tariff, Original Volume No. 2. The revised tariff sheets provide for a change in the percentage applicable to return and income taxes for Gasco's rate base to 19.41% effective April 1, 1987 and 16.81% effective July 1, 1987. These tariff sheets are being filed to comply

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[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

with Section 1B of Appendix A of Gasco's FERC Gas Tariff which requires that Gasco's rate of return and income tax factor be the same as that of its affiliate, Transcontinental Gas Pipe Line Corporation (Transco). In that regard, on October 6, 1986 Transco revised its return and tax factor in a general rate case filing in Docket No. RP87–7 which became effective after suspension on April 1, 1987. Gasco's First Revised Substitute Sixth Revised Sheet No. 106 reflects Transco's return and tax factor of 19.41% effective April 1, 1987. On August 21, 1987 Transco made a compliance filing in Docket No. FP87–7 in accordance with Ordering Paragraph (B) of the Commission's July 23, 1987 Order. The purpose of the filing was to reflect a change in the federal corporate income tax rate from 46% to 34% effective July 1, 1987. Gasco's Second Revised Substitute Sixth Revised Sheet No. 106 reflects Transco's revised return and tax factor of 16.81% resulting from the reduced federal income tax rate effective July 1, 1987.

In addition, on August 31, 1987 Gasco filed to reflect in its tariff a provision to provide for recovery of annual charges assessed by the Commission to pipelines and other pursuant to Commission Order No. 472 dated May 29, 1987. The proposed effective date of the tariff sheets reflected therein was October 1, 1987. Gasco's Substitute Seventh Revised Sheet No. 106 is being filed to incorporate the return and tax factor of 16.81% with the aforementioned tariff changes filed pursuant to Commission Order No. 472. The proposed effective date of this tariff sheet is October 1, 1987.

Gasco states that copies of the filing have been served upon Transco, and for information purposes, upon each of Transco's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–21623 Filed 9–17–87; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Proposed Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in disbursing to adversely affected parties $37,798,318 (plus accrued interest) obtained by the DOE under the terms of a consent order entered into with Exxon Corporation. The funds are being held in escrow following the settlement of claims and disputes arising from an Economic Regulatory Administration audit of Exxon, a major integrated refiner marketing crude oil and refined petroleum products throughout the United States.

DATE AND ADDRESS: Comments must be filed by October 19, 1987, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to case number KEF-0087.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director *or* Christopher Ashley, Staff Analyst, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2860 (Dugan), (202) 586–6802 (Ashley).

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order tentatively establishes procedures to distribute to eligible claimants $37,798,318, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Exxon Corporation on October 8, 1986. The funds were paid by Exxon towards the settlement of possible violations of the DOE price and allocation regulations relating to transactions by Exxon involving the production, refining, and marketing of crude oil and petroleum products during the period January 1, 1973 through January 28, 1981 (the consent order period).

The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Exxon. The DOE has tentatively decided that the Exxon consent order fund will be divided into two pools. Seventy-five percent of the consent order fund will be made available to qualified purchasers of Exxon refined petroleum products who file Applications for Refund. However, Applications for Refund should *not* be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims. The remaining 25 percent will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy, 51 FR 27889 (August 4, 1986), unde which crude oil overcharge revenues will be divided among the States, the United States Treasury, and eligible purchasers of crude oil and refined petroleum products.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copeis of their submissions. Comments should be submitted by October 19, 1987, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, 1000 Independence Avenue SE., Washington, DC between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays.

Dated: September 10, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

September 10, 1987.

Name of Firm: Exxon Corporation.

Date of Filing: February 6, 1987.

Case Number: KEF–0087.

February 6, 1987, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed with the Office of Hearings and Appeals (OHA) a Petition for the Implementation of Special Refund Procedures to distribute funds received from Exxon Corporation (Exxon) under the terms of an October 8, 1986 consent order

between the DOE and Exxon. In accordance with the provisions of the procedural regulations at 10 CFR Part 205, Subpart V, the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were settled by the Exxon consent order.

I. Background

Exxon is a major integrated refiner which produced and sold crude oil and a full range of refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR Part 150 and 10 CFR Parts 210, 211, and 212. During the course of controls, the ERA conducted an extensive audit of Exxon's operations and alleged in several judicial and administrative proceedings that Exxon had violated certain applicable DOE price and allocation regulations in its sales of crude oil and refined petroleum products. Settlement discussions were held, and on October 8, 1986, the ERA and Exxon finalized a consent order (Consent Order No. REXL00201Z) that resolved issues pertaining to Exxon's crude oil and refined petroleum product operations during the period January 1, 1973 through January 28, 1981 (the consent order period). Pursuant to the consent order, Exxon remitted a total of $37,798,318 (the consent order fund)[1] to the DOE for distribution through Subpart V. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of enforcement proceedings. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We have considered the ERA's petition that we implement a Subpart V proceeding with respect to the Exxon consent order fund and have determined that such a proceeding is appropriate. We will grant the ERA's request. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Comments are solicited.

III. Proposed Refund Procedures

Because the consent order resolves alleged violations involving both sales of crude oil and refined petroleum products, we propose to divide the consent order fund into two pools. *See Standard Oil Co. (Indiana)*, 10 DOE ¶ 85,048 (1982) (*Amoco*). According to the ERA, approximately 75 percent of the aggregate dollar amount of the alleged violations settled by the consent order were attributable to Exxon's sales of refined petroleum products. 51 FR 26737 (July 25, 1986) (Notice of Proposed Consent Order). We therefore propose that 75 percent of the principal contained in the Exxon escrow account, $28,348,738.50, plus interest accrued on that amount, be made available for distribution to purchasers of Exxon refined petroleum products who demonstrate that they were injured as a result of Exxon's alleged regulatory violations. We further propose that the remaining 25 percent, or $9,449,579.50, plus accrued interest, be set aside as a pool of crude oil funds available for disbursement.

A. Crude Oil Claims

We propose that the funds in the crude oil pool be distributed in accordance with the Modified Statement of Restitutionary Policy (MSRP) which was issued by the DOE on July 28, 1986. 51 FR 27899 (August 4, 1986).[2] The MSRP, which was issued as a result of a court-approved Settlement Agreement in *The Department of Energy Stripper Well Litigation*, M.D.L. 378 (D. Kan. July 7, 1986), 3 Fed. Energy Guidelines ¶ 26,563,[3] provides that crude oil overcharge revenues will be divided among the States, the United States Treasury, and eligible purchasers of crude oil and refined products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved to satisfy valid claims by eligible purchasers of crude oil and refined petroleum products. Remaining funds are to be disbursed to the state and federal governments for indirect restitution also in accordance with the MSRP. In the present case, we have decided to reserve the full 20 percent, or $1,889,915.90 of the crude oil pool, plus an appropriate share of the accrued interest, for direct refunds to purchasers of crude oil and refined petroleum products who prove that they were injured by these alleged crude oil violations.[4]

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986).

As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations (i.e., that they did not pass on alleged overcharges to their customers). We propose to utilize standards for the showing of injury which the OHA has developed in analyzing non-crude oil claims. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). These standards include a presumption that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry absorbed the increased costs resulting from a consent order firm's alleged overcharges. *See A. Tarricone, Inc.*, 15 DOE ¶ 85,495 (1987). Reseller and retailer claimants must submit detailed evidence of injury, but may not rely upon the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They can, however, use econometric evidence of the type employed n the OHA Report in *In Re: The Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507.

Refunds to eligible claimants will be calculated on the basis of a volumetric refund amount derived by dividing the money available in the crude oil pool ($9,449,579.50) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). The crude oil volumetric refund amount in this proceeding is $0.000004676. In addition,

[1] This amount consists of the principal consent order amount of $36,930,356 plus $867,962 in interest which accrued prior to Exxon's payment to the DOE.

[2] In the Order implementing the MSRP, the OHA solicited comments and objections regarding the proper application of the MSRP to OHA refund proceedings involving alleged crude oil violations. On April 6, 1987, the OHA issued a notice which analyzes the comments that were submitted and explains the procedures which the Office will follow in processing applications filed under the Subpart V regulations for refunds from the crude oil overcharge funds. 52 FR 11737 (April 10, 1987).

[3] The Settlement Agreement resolves a number of matters, including the distribution of funds collected by the Court and the distribution of alleged crude oil violation amounts collected by the DOE in other cases.

[4] Under the Settlement Agreement, firms which apply for a portion of the Stripper Well funds generally must sign a waiver releasing their claims to any crude oil funds to be distributed by the OHA under Subpart V. Settlement Agreement, Part III. Accordingly, those firms will not be eligible for a refund from the Exxon crude oil pool.

after all valid claims are paid, unclaimed funds from the 20 percent claims reserve will be divided equally between federal and state governments. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

We propose that the remaining 80 percent of the crude oil pool, or $7,559,663.60, be disbursed in equal shares to the federal and state governments for indirect restitution. *See Stripper Well Exemption Litigation*, 16 DOE ¶ 85,200 at 88,386 (1987). If this proposal is adopted, we will direct the DOE's Office of the Controller to segregate this amount and distribute $3,779,831.80, plus appropriate interest, to the states and the same amount to the federal government. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share (ratio) of the funds in the account which each state will receive if these procedures are adopted is contained in Exhibit H of the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

B. Refined Produce Claims

With regard to the remainder of the Exxon settlement fund, $28,348,738.50, we propose to implement a two-stage refund process by which firms and individuals who purchased Exxon refined petroleum products during the consent order period may submit Applications for Refund in the initial stage. From our experience with Subpart V proceedings, we expect that potential applicants will fall into the following categories of Exxon refined product purchasers: (i) End-users, i.e., ultimate consumers; (ii) regulated entities, such as public utilities or cooperatives; and (iii) refiners, resellers and retailers.

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Exxon refined petroleum products during the consent order period. If the product was not purchased directly from Exxon, the claimant must provide a statement setting forth its reasons for maintaining that the produce originated with Exxon.

In addition, a refiner, reseller, or retailer claimant, except those who choose to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by the alleged overcharges. This showing will generally consist of two distinct elements. First, a claimant will be required to show that it maintained "banks" of unrecouped increased product costs (banked costs) in excess of the refund claimed.[5] Second, because a showing of banks alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from Exxon. *Id.; see also Panhandle Eastern Pipeline Co./I.V. Cole Petroleum Co.*, 10 DOE ¶ 85,051 at 88,265 (1983).

1. Presumptions for Claims Based Upon Refined Product Purchases

Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense, and ensures that refund claims are evaluated in the most efficient manner possible. *See, e.g., Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986) (*Marathon*). Presumptions in refund cases are specifically authorized by the applicable DOE procedural regulations at 10 CFR 205.282(e). Accordingly, we propose to adopt the presumptions set forth below.

First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of Exxon's sales of refined petroleum products during the consent order period. In accordance with this presumption, refunds are to be made on a pro-rate or volumetric basis. In the absence of better information, a volumetric refund approach is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's allocable share of the refined product pool is equal to the number of gallons purchased times the per gallon refund amount (plus an appropriate share of the interest which has accrued on the Exxon consent order fund).[6] In the present case, the per gallon refund amount is $0.0002419. We derived this figure by dividing the consent order funds in the refined product refund pool ($28,348,738.50) by the approximate number of gallons of covered products other than crude oil which Exxon sold from March 6, 1973, the date that Exxon became subject to the Federal price controls under Special Rule No. 1 (38 FR 6283 (March 8, 1973)), through the date of decontrol for the relevant product (117,185,000,000 gallons).[7]

In addition to the volumetric presumption, we also propose to adopt a number of presumptions regarding injury for claimants in each category listed below.

a. End-users. In accordance with prior Subpart V proceedings, we propose to adopt the presumption that an end-user or ultimate consumer of Exxon petroleum products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the consent order. *See, e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, member so this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *Id.* We therefore propose that end-users of Exxon refined petroleum products need only document their purchase volumes from Exxon during the consent order period to make a sufficient showing that they were injured by the alleged overcharges.

b. Regulated firms and cooperatives. We further propose that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement needs only to submit documentation of purchase volume used by itself or, in the case of a cooperative,

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[5] Claimants who have previously relied upon their banked costs in order to be eligible to receive refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. *See Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090 at 88,179 (1987).

[6] Because we realize that the impact on an individual claimant may have been greater than the volumetric amount, we will allow any purchaser to file a refund application based upon a claim that it suffered a disproportionate share of Exxon's alleged overcharges. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

[7] As in previous cases, we will establish a minimum refund amount of $15.00. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15.00 are sought outweighs the benefits of restitution in those instances. *See Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985).

sold to its members.[8] However, a regulated firm or cooperative will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of its receipt of the refund. *See Marathon*, 14 DOE at 88,515; *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). This latter requirement is based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers through the operation of automatic adjustment mechanisms. Similarly, any refunds received would be passed through to its customers. With respect to a cooperative, in general, the cooperative agreements which control prices would ensure that the alleged overcharges and, similarly, refunds would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.

c. Refiners, resellers, and retailers seeking refunds of $5,000 or less. We propose to adopt a presumption that a firm who resold Exxon products and requests a small refund was injured by the alleged regulatory violations. Under the small claims presumption, a refiner, reseller, or retailer seeking a refund of $5,000 or less, exclusive of interest (i.e., who purchased less than 20,669,700 gallons of Exxon refined petroleum products during the consent order period), will not be required to submit evidence of injury beyond documentation of the volume of Exxon covered products it purchased during the consent order period. *See TOGCO.* As we have noted in numerous prior proceedings, there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; in some cases, that expense might possibly exceed the expected refund. Consequently, failure to allow simplified application procedures for small claims could therefore deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable in that it allows the OHA to process the large number of routine refund claims expected in an efficient manner.[9]

d. Medium-range refiner, reseller and retailer claimants. In lieu of making a detailed showing of indury, a refiner, reseller, or retailer claimant whose allocable share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000.[10] The use of this presumption reflects our conviction that these larger claimants were likely to have experienced some injury as a result of the alleged overcharges. *See Marathon*, 14 DOE at 88,515. In prior special refund proceedings, we performed detailed economic analysis in order to determine product-specific levels of injury. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). However, in *Gulf Oil Corp.*, 6 Fed. Energy Guidelines ¶ 90,052, No. HEF–0590 (September 15, 1986) (Proposed Decision) we tentatively determined that it was most efficient to adopt a single general presumptive level of injury of 40 percent for all medium-range claimants, regardless of the refined products they purchased, based upon the results of our analyses in prior proceedings. We therefore propose to adopt the 40 percent presumptive level of injury for all medium-range claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Exxon refined petroluem products during the consent order period in order to be eligible to receive a refund of 40 percent of its total volumetric share.[11]

e. Spot purchasers. We propose to adopt a rebuttable presumption that a refiner, reseller or retailer that made only spot purchases from Exxon did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers tend to have considerable discretion as to the timing and market in which to make purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Exxon.[12]

f. Consignees. A consignee agent is a firm that distributed covered products pursuant to a contractural agreement with a refiner, under which the refiner retained title to the products, specified the price to be paid by the purchaser and paid the consignee a commission based upon the volume of covered products it distributed. 10 CFR 212.31 (definition of "consignee agent"). As in previous decisions, we propose to adopt the rebuttable presumption that consignees of Exxon refined petroleum products were not injured as a result of their arrangement with their refiner/supplier. *See, e.g., Jay Oil Co.*, 16 DOE ¶ 85,147 (1987). However, we also propose that a consignee may rebut this presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of [the consent order firm's] practices. *See Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 at 88,962 (1986).

2. Allocation Claims

We also recognize that we may receive claims based upon Exxon's alleged failure to furnish petroleum products that it was obliged to supply to the claimant under the DOE allocation regulations. *See* 10 CFR Part 211. We will evaluate refund applications based upon allocation claims by referring to the standards set forth in Decisions such as *Amoco*, 10 DOE at 88,220, and *Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984). Under those standards an allocation claimant first must demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order

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[8] A cooperative's sales to non-members will be treated in the same manner as sales by other resellers. *See Marathon*, 14 DOE at 88, 515.

[9] Claimants who attempt to make a detailed showing of injury in order to support a large refund claim but, instead, provide evidence that leads us to conclude that they passed through all of the alleged overcharges or are eligible for a refund of less than $5,000, will not be entitled to a $5,000 small claims threshold refund. *See Union Texas Petroleum Corp./Arrow Enterprises, Inc.*, 15 DOE ¶ 85,087 (1986); *Quaker State Oil Refining Corp./Campbell Oil Co.*, 15 DOE ¶ 85,089 (1986).

[10] That is, claimants who purchased between 20,669,700 gallons and 516,742,460 gallons of Exxon refined petroleum products during the consent order period (medium-range claimants) may elect to utilize this presumption. Claimants who purchased more than 516,742,460 gallons may elect to limit their claim to $50,000.

[11] A medium-range claimant may elect not to receive a refund based upon this presumption and may instead attempt to show that it is eligible for a refund equal to its full allocable share by making a detailed showing of injury using the general criteria set forth above. However, as with the small claims presumption, the 40 percent presumption will not be available to medium-range claimants who submit a detailed injury showing which leads us to conclude that they are eligible for a refund of less than 40 percent of their volumetric share. *See n.9 infra.*

[12] In prior proceedings we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped. *See Quaker State Oil Refining Corp./Certified Gasoline Co.*, 14 DOE ¶ 85,465 (1986).

firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR Part 211. Secondly, it should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, it must establish that it was injured and document the extent of the injury..

C. Distribution of Fund Remaining after First Stage

We propose that any funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. 99–509, Title III. *See* Fed. Energy Guideline ¶ 11,702 et seq. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODRA, sections 3003 (c) and (d). The Secretary has delegated these responsibilities to the OHA, and any funds in the Exxon consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured Exxon customers will be distributed in accordance with the provisions of PODRA.

IV. Applications for Refund

Applications for Refund should not be filed at this time. Detailed procedures for filing Applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the Exxon consent order, we intend to publicize the distribution process in order to solicit comments on all aspects of the foregoing Proposed Decision and Order from interested parties. All comments must be filed with 30 days of the publication of this / Proposed Decision in the **Federal Register.**

It is Therefore Ordered That: The refund amount remitted to the Department of Energy by Exxon Corporation pursuant to Consent Order No. REXL00201Z, finalized on October 8, 1986, will be distributed in accordance with the foregoing Decision.

[FR Doc. 87–21584 Filed 9–17–87; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $250,000 obtained as the result of a Consent Order which the DOE entered into with Bernard A. Krouse d/b/a BAK Ltd.

DATE AND ADDRESS: Applications for Refund of a portion of the BAK Ltd. consent order fund must be received within 90 days of publication of this notice in the Federal Register and should be addressed to BAK Ltd. Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to case number HEF–0034.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a consent order entered into by the DOE and BAK Ltd., which settled possible pricing violations in the firm's sales of No. 2 heating oil to customers during the November 1, 1973 through July 31, 1974 audit period.

A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the BAK Ltd. consent order funds was issued on April 21, 1987. 52 FR 15374 (April 28, 1987).

As the Decision and Order published with this Notice indicates, Applications for Refund may now be filed by customers who purchased No. 2 heating oil from BAK Ltd. during the audit period. Applications will be accepted provided they are received no later than 90 days after publication of the Decision and Order in the **Federal Register.** The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: September 10, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

September 10, 1987.

Name of Case: Bernard A. Krouse d/b/a BAK LTD., Krouse Fuel Company, Allan Fuel Company, Kealy Fuel Company, Walter T. Hoff & Son.

Date of Filing: October 13, 1983.

Case Number: HEF–0034.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that OHA implement a special refund proceeding to distribute the funds received pursuant to a Consent Order entered into by the DOE and BAK LTD et al. (BAK).[1]

I. Background

BAK is a "reseller-retailer" of No. 2 heating oil as that term was defined in 10 CFR 212.31 and 6 CFR 150.352, and is located in Narberth, Pennsylvania. An audit of BAK's business records by the Federal Energy Administration (FEA), a predecessor of the DOE, revealed possible pricing violations with respect to the firm's sales of No. 2 heating oil during the period November 1, 1973 through July 31, 1974 (the audit period). In a Notice of Probable Violation (NOPV) issued to BAK on July 27, 1977, the FEA tentatively concluded that, during the audit period, BAK overcharged its customers in sales of No. 2 heating oil by $497,948. In order to settle all claims and disputes between BAK and the DOE regarding the firm's compliance with the price regulations in sales of No. 2 heating oil during the nine-month audit period, BAK and the DOE entered into a Consent Order on August 16, 1979, in which BAK agreed to remit $250,000 to the DOE. This sum is currently being held in an interest-bearing escrow account maintained by the Department of the Treasury pending distribution by the DOE.

On April 21, 1987, we issued a Proposed Decision and Order in which

[1] The Consent Order was entered into with Bernard A. Krouse d/b/a/ BAK LTD. and the following related firms: Krouse Fuel Company, Allan Fuel Company, Kealy Fuel Company, and Walter T. Hoff & Son.

we tentatively determined that it was appropriate to establish a special refund proceeding with respect to the BAK consent order fund. In that Proposed Decision, we tentatively set forth procedures to distribute refunds to parties injured by BAK's alleged pricing violations in sales of No. 2 heating oil during the consent order period. (In the present case, the consent order period is coterminous with the audit period: November 1, 1973 through July 31, 1974.) Specifically, we proposed to disburse funds in the first stage of the proceeding to claimants who could demonstrate that they were adversely affected by BAK's alleged overcharges during the audit period. We suggested that these injured parties were most likely a group of BAK customers identified in the NOPV issued to BAK on July 27, 1977, but indicated that we would consider claims from any individual or firm that could show that it purchased No. 2 heating oil from BAK during the consent order period. We also stated that the money remaining in the BAK escrow account after payment of refunds to eligible claimants in the first stage would be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99–509, Title III.

The Proposed Decision was published in the **Federal Register** on April 28, 1987 (52 FR 15374), and comments on the proposed refund mechanism were due to be submitted within 30 days of publication. No comments were received. Therefore, we will adopt the first-stage procedures as proposed. The purpose of this Decision and Order is to establish procedures to be used for filing and processing claims in the first stage of the BAK refund proceeding. This Decision sets forth the information that a purchaser of BAK No. 2 heating oil should submit in order to establish eligibility for a portion of the consent order funds. As we stated in the Proposed Decision, once individual refund claims are evaluated, residual funds shall be distributed in accordance with the Petroleum Overcharge Distribution and Restitution Act of 1986.

II. Jurisdiction

The Subpart V regulations set forth general guidelines by which OHA may formulate and implement a plan of distribution for funds received as a result of enforcement proceedings. It is the DOE policy to use the Subpart V process to distribute such funds. For a detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981). As we stated in the Proposed Decision, we have determined that a Subpart V proceeding is an appropriate method for distributing the BAK consent order fund. Therefore, we will grant the ERA's petition and assume jurisdiction over the funds received pursuant to the BAK consent order.

III. Refund Procedures

A. Eligible Claimants

In the first stage, refund monies will be distributed to those parties which were directly injured in transactions with BAK during the consent order period. As discussed in the Proposed Decision, we believe that the BAK customers who were adversely affected by the alleged overcharges are most likely those identified in the exhibits to the BAK NOPV (and in the Appendix to this Decision and Order), as well as residential customers referred to as a class in the NOPV but not specifically identified. These parties may file for refunds in this proceeding. However, we will also accept claims from parties which are able to show that they purchased BAK No. 2 heating oil during the consent order period, even if they were not specifically identified by the BAK NOPV or members of the residential class.

As in previous Subpart V Decisions, we find that those customers who were ultimate consumers of BAK No. 2 heating oil absorbed BAK's alleged overcharges. This presumption was outlined in the Proposed Decision and shall be adopted. These parties will only be required to document their claimed purchase volumes in order to receive a refund. In contrast, as outlined in the Proposed Decision, firms who resold BAK's No. 2 heating oil will be required to demonstrate that they did not pass on cost increases implemented by BAK to their own customers. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597 (1981). This can be done by showing that during the period covered by the BAK consent order they would have kept their No. 2 heating oil prices at the same level had the alleged overcharges not occurred. While there are a variety of means by which a claimant could make this showing, a reseller (including a refiner, retailer, or wholesaler) should generally demonstrate that at the time it purchased BAK No. 2 heating oil, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In addition, the reseller must show that it had a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank does not, however, automatically establish injury. *See Tenneco Oil Co.*, 10 DOE ¶ 85,014 (1982).

In the Proposed Decision, we stated that resellers which made spot purchases from BAK should be presumed to have suffered no injury and therefore should be ineligible to receive a refund. As we have received no adverse comments on this proposal, we shall adopt it as a rebuttable presumption. We will however, consider evidence from a spot purchaser which rebuts the spot purchaser presumption and establishes the extent to which it was injured by the spot purchase(s). *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982).

In the Proposed Decision, we noted that a detailed demonstration of injury requirement may be too complicated and burdensome for resellers which purchased relatively small quantities of No. 2 heating oil from BAK. We proposed to adopt a small claims presumption which would relieve any reseller claimant seeking a refund of $5,000 or less from the necessity of making a detailed demonstration of injury. As we have received no adverse comments regarding this proposal, we shall adopt it for all reseller claimants seeking refunds below the $5,000 threshold with the exception of spot purchasers, who must demonstrate injury before being eligible to receive any refund in this proceeding.

As we indicated in the Proposed Decision, we will establish a minimum amount of $15 for refund claims. We have found that the cost of processing claims in which refunds are sought for amounts less than $15 outweight the benefits of restitution in those situations. *See, e.g., Urban Oil Co.*, 9 DOE ¶ 82,541 at 82,225 (1982). *See also* 10 CFR 205.286(b).

B. Calculation of Refund Amounts

As indicated in the Proposed Decision, the FEA audit which gave rise to the BAK NOPV identified those BAK customers allegedly overcharged during the consent order period. Ten BAK customers who were identified by name account for 87.94 percent of the alleged overcharges, while the remaining 12.06 percent of the alleged BAK overcharges were attributed to BAK sales to its "Retail/Residential Class" of purchaser. With respect to the 10 identified customers, we have determined that the use of the audit results to establish maximum potential refunds on a firm-specific basis is more likely than any other method to relate probable injury to

refund amount. We shall therefore base the identified customers' maximum potential refund on the amount each of these firms was allegedly overcharged as determined by the FEA audit. Each firm's maximum refund is approximately 50.2 percent of the alleged BAK overcharges attributable to transactions with that individual party. The 50.2 percent factor takes into account the fact that the $250,000 BAK settlement payment represents 50.2 percent of the BAK alleged overcharge amount ($497,948). The identified firms and their potential refunds (exclusive of interest) are listed in the Appendix to this Decision and Order.

We shall use a volumetric methodology to distribute that portion of the settlement fund attributable to those parties belonging to BAK's residential class of purchaser. The volumetric method presumes that the alleged overcharges were spread equally over all gallons of product marketed by the consent order firm. In the absence of better information, such as audit records, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. Therefore, in calculating a refund for an eligible residential claimant, we shall multiply the number of gallons of BAK product purchased by the claimant during the consent order period by a volumetric refund factor derived by dividing $30,144.21 (that portion of the BAK settlement fund attributable to BAK's sales to its residential class of purchaser) by 3,069,393 (BAK's total volume of sales of No. 2 heating oil to residential customers during the consent order period.) This results in a volumetric factor of $0.009820 per gallon. This procedure is consistent with the methodology outlined in the Proposed Decision.

C. Application for Refund Procedures

We have concluded that applications for refunds should now be accepted from parties who purchased BAK No. 2 heating oil during the consent order period and believe they have been injured by BAK's pricing practices. Applications must be postmarked within 90 days after publication of this Decision and Order in the Federal Register. *See* 10 CFR 205.286. An application must be in writing, signed by the applicant, and specify that it pertains to the BAK Ltd. Consent Order Fund, Case No. HEF-0034.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is alleged to be privileged or confidential. Each application must indicate whether the applicant or any person acting on its instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying BAK enforcement proceeding. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: BAK Ltd. Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, DC 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the consent order funds, the following subjects should be covered in each application:

A. Each applicant should certify that it purchased No. 2 heating oil from BAK Ltd. during the consent order period and list its purchase volumes for each month of that period (November 1, 1973–July 31, 1974).[2]

B. Each applicant should specify how it used the BAK No. 2 heating oil—i.e., whether it was a reseller, or ultimate consumer.

C. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also

(i) State whether it maintained banks of unrecouped product cost increases from November 1, 1973 through June 30, 1976 and furnish OHA with quarterly bank calculations.

(ii) State whether it or any of its affiliates have filed any other applications for refund in which they have referred to their banks to demonstrate injury.

(iii) Submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

D. The applicant should report whether it is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status while its application for refund is pending. *See* 10 CFR 205.9(d).

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by BAK Ltd. pursuant to the Consent Order executed on August 16, 1979 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

George B. Breznay,

Director, Office of Hearings and Appeals

Date: September 10, 1987.

Appendix

Name and address	Potential refund
Acme Fuel *	$61
Amoco Oil Co., 200 East Randolph Dr. P.O Box 87703, Chicago, IL 60680-0703	32,347
Commonwealth of Virginia, State Treasurer's Office, P.O. Box 6H, Richomnd, VA 23215	139,768
Delany Oil Co.*	11,790
Marchese Interstate Trucking, 500 N. Egg Handley Rd., Mammonton, NJ	10,371
Portland Oil Co., 1601 W. Cumberland, Philadelphia, PA	1,377
Solcar, Inc., 310 Rt. 206 South, Somerville, NJ 08876	16,222
Supreme Petroleum, P.O Box 756, Somerville, NJ 06876	5,009
Thompson *	732
Vitale *	179
Retail Residential Class	#$30,144
Total	$250,000

*No address available
#$0.009820 per gallon.

[FR Doc. 87-21585 Filed 9-17-87; 8:45 am]

BILLING CODE 6450-01-M

[2] Although refunds to the identified applicants listed in the Appendix will not be based on their purchase volumes, this information is necessary to establish eligibility. If it would be excessively difficult for any of these applicants to retrieve this information, the firm may fulfill this requirement by certifying that it purchased No. 2 heating oil from BAK during the consent order period. *See F.O. Fletcher, Inc./Bestfire Oil Co.*, 14 DOE ¶ 85,281 (1986). A certification will not be sufficient, however, if the applicant is a reseller who requests a refund in excess of $5,000.

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3263-7]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382–5073 or (202) 383–5075.

Availability of Environmental Impact Statements Filed September 9, 1987 Through September 11, 1987 Pursuant to 40 CFR 1506.9

EIS No. 870304, Draft, SCS, IN, Muddy Fork of Silver Creek Watershed, Flood Prevention and Watershed Protection, Clark, Floyd and Washington Counties, Due: November 2, 1987, Contact: Robert Eddleman (317) 248–4350.

EIS No. 870305, Draft, FHW, PA, Mount Union Borough Traffic Relief Traffic Route 522/Legislative Route 121, Section 001 Improvement, Juniata Drive to TR–522 and US 22, Huntingdon County, Due: November 25, 1987, Contact: Manuel Marks (717) 782–2222.

EIS No. 870306, Draft, AFS, WA, Colville National Forest, Land and Resource Management Plan, Perry, Pend Oreille, and Stevens Counties, Due: December 18, 1987, Contact: Cecil Armstrong (509) 684–3711.

EIS No. 870307, Final, BLM, NV, Schell Resource Area Wilderness Study Areas, Wilderness Recommendations, Designation, Nye, White Pine, and Lincoln Counties, Due: October 19, 1987, Contact: Gerald Smith (702) 289–4865.

EIS No. 870308, Draft, COE, LA, Louisiana Army Ammunition Plant, Chemical and Industrial Complex, Construction and Operation, Research Development Explosive and High Melt Explosive (RDX/HMX) Expansion Program, Bossier and Webster Parishes, Due: November 2, 1987, Contact: Richard Makinen (202) 272–0166.

Dated: September 15, 1987.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 87–21677 Filed 9–17–87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3263-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 31, 1987 through September 4, 1987 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act (CAA) and Section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D–AFS–L65107–OR, Rating EC2, Bull Run Blowdown, Wind Damaged Trees Management Plan, Mt. Hood Nat'l Forest, OR. **SUMMARY:** EPA believes the final EIS should explain how past climatic conditions are representative of long-term climatic trends, including error analysis, and that the effects of bedload sediment storage and delivery in the watershed should be addressed. EPA also recommended that the final EIS examine a new alternative that focuses only on harvesting blowdown trees.

ERP No. D–BLM–J70013–MT, Rating EC2, West Hiline Planning Area, Resource Mgmt. Plan, MT. **SUMMARY:** EPA reviewed the draft EIS and Alternative C appears to provide a greater degree of protection for natural resources than the other alternatives including BLM's preferred Alternative D. EPA stated that detailed plans for monitoring, and mitigation of impacts to air and water quality should be developed including the criteria for implementation of these plans. These plans should be summarized and referenced or included as appendices to the EIS. Further, potential impacts to wetlands should be discussed in Chapter 4 for all the alternatives.

ERP No. D–COE–C35010–VI, Rating 3, Limetree Bay, Third Port Project, Expansion, Port Facilities and Deepwater Port Improvement, Sect. 10 and 404 Permit, VI. **SUMMARY:** EPA concludes that the document does not provide adequate analyses of project need and alternatives, and does not adequately address the potentially significant impacts to wetlands, water quality, and cultural resources. EPA requests that additional information be provided in a supplemental draft EIS, prior to preparation of the final EIS for the project. If EPA concerns are not addressed adequately, this project may be a candidate for referral to the Council on Environmental Quality.

ERP No. D–COE–H30000–IA, Rating LO, Des Moines Recreational River and Greenbelt Area, Development, Operation and Maintenance, Des Moines River, IA. **SUMMARY:** EPA is concerned about the draft EIS's failure to identify the adverse impacts that may result from implementation of several of the planned projects, but understands that each project will ultimately be evaluated separately for NEPA compliance. EPA suggests that future documentation fully address potential adverse impacts of individual projects.

ERP No. D–FHW–C40120–NY, Rating EC2, Lockport Expressway/I–990 Extension, North French Rd. to Millersport Highway/NY–263 to Transit Rd., Sect. 404 Permit, NY. **SUMMARY:** EPA has environmental concerns about the project's potential impacts to wetlands, water quality and induced secondary development. EPA requested additional information regarding these impacts in the final EIS.

ERP No. D–FHW–E40613–FL, Rating EC2, Apollo Hickory Corridor/Bridge Improvements and Construction, US 1 at Apollo II Blvd. to US 1 at Aurora Rd., Crane Creek and Eau Gallie River, Sect. 404 and 10 Permits, FL. **SUMMARY:** EPA's main concern with the draft EIS was that some substantial noise impacts would result if a build alternative were implemented from the highway segments presented. Elevations as high as +25 dBA were predicted. EPA requested that the final EIS include reconsideration of noise mitigation, mitigation of wetland losses on a 1.5:1 basis, and avoidance of hazardous waste sites.

ERP No. D–FHW–E40707–MS, Rating EC2, MS–301 Reconstruction, MS–304 to Tennessee State Line, MS. **SUMMARY:** EPA's main concerns with the draft EIS were that some predicted noise impacts were substantial and that wetland sites in the project area were not reflected in the draft EIS. Noise mitigation and description and mitigation of wetland losses were requested.

Final EISs

ERP No. FS–COE–A34109–OK, Clayton (Sardis) Lake, Jackfork Creek, Dam and Lake Construction, Daisy to Sardis Lake Access Road Construction, Additional Information, OK. **SUMMARY:** EPA has no objections to the proposed action as described. The final EIS has adequately addressed EPA's previous concerns expressed on the draft EIS.

Regulations

ERP No. R–BLM–A65153–00, 43 CFR Part 4100, Grazing Administration, Exclusive of Alaska (52 FR 19032). **SUMMARY:** EPA supports the objectives of the proposed regulation, but is concerned that provisions for monitoring and enforcement under Cooperative

Management Agreements need strengthening.

ERP No. R-FAA-A52063-00, 14 CFR Parts 36 and 91, Noise Standards and Air Traffic Operating and Flight Rules; Proposed Limits on the Growth of Noise From Certain Airplanes and Airplane Types (52 FR 23144). **SUMMARY:** EPA has no objection to the rule as proposed.

Dated: September 15, 1987.

William D. Dickerson,

Acting Director, Office of Federal Activities

[FR Doc. 87-21678 Filed 9-17-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3264-1]

Designation of Ocean Dredged Material Disposal Site (ODMDS) off Port Aransas, TX; Intent To Prepare an Environmental Impact Statement (EIS)

AGENCY: Environmental Protection Agency (EPA), Region VI.

ACTION: Notice of intent to prepare an environmental impact statement on the final designation of an ODMDS off Port Aransas, Texas.

Purpose: The U.S. EPA, Region VI, in accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA) and in cooperation with the U.S. Navy will prepare a Draft EIS on the designation of an ODMDS off Port Aransas, Texas. An EIS is needed to provide the information necessary to designate an ODMDS. This Notice of Intent is issued pursuant to section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

For Further Information and To Be Placed on the ODMDS Project Mailing List Contact:

Norm Thomas (6E-F), EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-2260, (FTS) 255-2260

or

Laurens Pitts, Naval Facilities, Engineering Command, P.O. Box 10068, Charleston, South Carolina 29411-0068, (803) 743-0797

Summary: The U.S. Navy proposes to establish a new homeport for a group of ships of Corpus Christi/Ingleside, Texas (Homeport Project). Widening and deepening of the Corpus Christi Ship Channel is required by the project. Approximately 5.3 million cubic yards of new work and maintenance material is proposed for disposal.

Need for Action: The U.S. Navy has requested that EPA designate an ODMDS offshore Port Aransas, Texas for the disposal of dredged material from the Homeport Project when ocean disposal is the preferred disposal alternative. An EIS is required to provide the necessary information to evaluate alternatives and designate the preferred ODMDS.

Alternatives: Alternatives to be evaluted include no action (defined as not designating an ODMS), upland disposal and several offshore disposal site alternatives (e.g., mid-shelf site, continental slope site and two near shore sites).

Scoping: A scoping meeting is not contemplated. Scoping with affected federal, state and local agencies and with interested parties is being accomplished by correspondence.

Estimated Date of Release: The Draft EIS will be made available in November 1987.

Responsible Official: Mr. Robert E. Layton Jr., P.E., Regional Administrator, Region VI.

Date: September 15, 1987

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 87-21679 Filed 9-17-87; 8:45 am]

BILLING CODE 6560-50-M

[ECAO-R-204; (FRL-3261-6)]

Workshop on Interim Methods for Development of Inhalation Reference Doses; Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This Notice announces a workshop to be held by EPA's Office of Health and Environmental Assessment in Classroom I, EPA Technical Center, Research Triangle Park, North Carolina 27711. The meeting will focus on a peer review of a draft document entitled "Interim Methods for Development of Inhalation Reference Doses" ("Methods Document").

DATES: The workshop will be held on October 5 and 6, 1987, from 10:00 am to 5:00 pm. Members of the public are invited to attend as observers.

FOR FURTHER INFORMATION CONTACT: Mark Greenberg, Environmental Criteria and Assessment Office (MD-52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, (919) 541-4156 (FTS 629-4156).

SUPPLEMENTARY INFORMATION: The Methods Document proposes procedures for EPA's evaluation of potential risks from inhalation exposure to chemicals in the environment. The draft of a paper reviewing the appropriateness of using workplace exposure levels for estimating the risk of ambient air exposure will also be discussed.

Copies of the workshop draft will be available to the public at the meetings, and observers will have an opportunity to make brief oral statements.

Topics to be discussed include: Factors modulating species-comparative inhaled dose; guidelines for selection of key studies; dose-response relationships and the uncertainty factor approach; identification of sensitive population sub-groups; and use of occupational exposure levels in inhalation risk estimation.

Date: September 9, 1987.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 87-21604 Filed 9-17-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59831; FRL 3261-4]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of ten such PMNs and provides the summary.

DATES: Close of Review Period:

Y 87-240 and 87-241, September 17, 1987
Y 87-242 and 87-243, September 20, 1987
Y 87-244 and 87-245, September 21, 1987
Y 87-246, 87-247, 87-248 and 87-249, September 23, 1987

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the exemption received by EPA. The complete non-confidential documents are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-240

Manufacturer. The Dow Chemical Company.
Chemical. (G) Modified polyethylene.
Use/Production. (G) Film. Prod. range: Confidential.

Y 87-241

Importer. Air Products and Chemicals, Incorporated.
Chemical. (S) Polymer of vinyl acetate; vinyl laurate; vinyl versatate; and polyvinyl alcohol.
Use/Import. (S) Industrial and commercial polymer modifier for Portland cement stucco. Import range: 50,000 to 150,000 kg/yr.

Y 87-242

Manufacturer. Confidential.
Chemical. (G) Polymer of alkyl diol; monocyclic dicarboxylic acid, dimethyl ester; monocyclic monosulfonated monocarboxylic acid, monosodium salt cyclic ether; and water.
Use/Production. (G) Component of consumer products. Prod. range: Confidential.

Y 87-243

Manufacturer. Confidential.
Chemical. (G) Polymer of alkyl diol; monocyclic dicarboxylic acid, dimethyl ester; monocyclic monosulfonated monocarboxylic acid, methyl ester, monosodium salt cyclic ether; and water.
Use/Production. (G) Component of consumer products. Prod. range: Confidential.

Y 87-244

Importer. Unitika America Corporation.
Chemical. (G) Co-polyester.
Use/Import. (S) Industrial resin powder for coating on metal surface. Import range: 30,000 to 50,000 kg/yr.

Y 87-245

Importer. Mitsubishi International Corporation.
Chemical. (S) Methylmethacrylate, laurylmethacrylate, tridecylmethacrylate.
Use/Import. (S) Industrial and commercial resin for conductive coating. Import range: 50,000 to 100,000 kg/yr.

Y 87-246

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Industrial vehicle for making printing ink. Prod. range: 70,000 to 105,000 kg/yr.

Y 87-247

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use Production. (S) Industrial ingredient in another reaction combining this resin with toluenediisocyanate to produce a polyurethane resin. Prod. range: 16,500 to 24,750 kg/yr.

Y 87-248

Manufacturer. Confidential.
Chemical. (G) Polyurethane resin.
Use Production. (S) Industrial vehicle for making printing ink. Prod. range: 18,500 to 28,000 kg/yr.

Y 87-249

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Industrial typical use involves blending with laquer type-systems for the purpose of performance/physical property modification. Prod. range: 33,00O to 50,00O kg/yr.

Date: September 8, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-21338 Filed 9-17-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51692; FRL-3261-3]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-two such PMNs and provides a summary of each.

DATES: *Close of Review Period:*

P 87-1658, 87-1659 and 87-1660, November 25, 1987
P 87-1661, 87-1662, 87-1663, 87-1664, 87-1665, 87-1666, 87-1667 and 87-1668, November 28, 1987
P 87-1669, 87-1670, 87-1671, 87-1672, 87-1673, 87-1674, 87-1675, 87-1676, 87-1677, 87-1678, 87-1679, 87-1680, 87-1681, 87-1682, 87-1683, 87-1684 and 87-1685, November 29, 1987
P 87-1686, 87-1687, 87-1688, 87-1689, 87-1690, 87-1691, 87-1692, 87-1693 and 87-1694, November 30, 1987
P 87-1695, 87-1696, 87-1697, 87-1698 and 87-1699, December 1, 1987
Written comments by:
P 87-1658, 87-1659 and 87-1660, October 26, 1987
P 87-1661, 87-1662, 87-1663, 87-1664, 87-1665, 87-1666, 87-1667 and 87-1668, October 29, 1987
P 87-1669, 87-1670, 87-1671, 87-1672, 87-1673, 87-1674, 87-1675, 87-1676, 87-1677, 87-1678, 87-1679, 87-1680, 87-1681, 87-1682, 87-1683, 87-1684 and 87-1685, October 30, 1987
P 87-1686, 87-1687, 87-1688, 87-1689, 87-1690, 87-1691, 87-1692, 87-1693 and 87-1694, October 31, 1987
P 87-1695, 87-1696, 87-1697, 87-1698 and 87-1699, November 1, 1987

ADDRESS: Written comments, identified by the document control number "[OPTS-51692]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-1658

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Pyridylphenylindole.
Use/Production. (S) Site-limited and industrial intermediate. Prod. range: 7.33 to 22 kg/yr.

P 87-1659

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Pyridinylethanone diphenylhydrazone.

Use/Production. (S) Site-limited and industrial intermediate. Prod. range: 16 to 48 kg/yr.

P 87–1660

Importer. The Dow Chemical Company.
Chemical. (G) Halogenated alkene.
Use/Import. (S) Industrial intermediate. Import range: Confidential.

P 87–1661

Manufacturer. Confidential.
Chemical. (G) Cycloalkenyl substituted alkyl alkenal.
Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.

P 87–1662

Manufacturer. Confidential.
Chemical. (G) Blocked aliphatic aromatic polyurethane.
Use/Production. (S) Industrial polymeric automotive coating component. Prod. range: 22,200 to 43,000 kg/yr.

P 87–1663

Manufacturer. Confidential.
Chemical. (G) Oil modified high solids aliphatic urethane.
Use/Production. (S) Exterior industrial coatings. Prod. range: Confidential.

P 87–1664

Importer. Uniroyal Chemical Company, Incorporated.
Chemical. (G) Substituted aromatic amine.
Use/Import. (S) Industrial modifier for amine-cured epoxy systems. Import range: Confidential.

P 87–1665

Manufacturer. Confidential.
Chemical. (G) Trimer acid polyamine salts.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 87–1666

Manufacturer. Confidential.
Chemical. (G) Alkenylsuccinic acid polyamine salts.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 87–1667

Importer. Confidential.
Chemical. (G) Diphenylmethane diisocyanate terminated polyether prepolymer.
Use/Import. (S) Industrial polyurethane prepolymer for adhesives, various substrates. Import range: Confidential.

P 87–1668

Importer. Asahi Chemical Manufacturing Company, Incorporated.
Chemical. (S) Sodium 5-nitroguaiacolate.
Use/Import. (S) Commercial and consumer plant and soil auxiliary substance. Import range: 5 to 20 kg/yr.
Toxicity Data. Ames test: Non-mutagenic.

P 87–1669

Manufacturer. Arizona Chemical Company.
Chemical. (G) Substituted terpene resin.
Use/Production. (G) Resin for use in adhesives. Prod. range: Confidential.

P 87–1670

Manufacturer. Arizona Chemical Company.
Chemical. (G) Substituted terpene resin.
Use/Production. (G) Resin for use in adhesives. Prod. range: Confidential.

P 87–1671

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Aromatic polyhydroxy compound, mixed diazonaphthoquinone sulfonic acid esters.
Use/Production. (S) Industrial photoresist sensitizer. Prod. range: Confidential.

P 87–1672

Importer. Confidential.
Chemical. (G) Salt of a substituted heterocyclicimino alkenyl, substituted thiazole.
Use/Import. (G) Commercial contained use in an article. Import range: 10 to 20 kg/yr.
Toxicity Data. Acute oral: 5.0 g/kg; Acute dermal: >2,000 mg/kg.

P 87–1673

Manufacturer. Confidential.
Chemical. (G) Ester of alkenyl succinic anhydride.
Use/Production. (G) Alkaline sizing agent in paper processing. Prod. range: Confidential.

P 87–1674

Manufacturer. Confidential.
Chemical. (G) Methylphenyl substituted spiro[isobenzofuranxanthenone].
Use/Production. (G) Minor color-forming component in paper coatings. Prod. range: Confidential.

P 87–1675

Manufacturer. Confidential.
Chemical. (G) Alkyl substituted diphenylamine.
Use/Production. (G) Captive intermediate. Prod. range: Confidential.

P 87–1676

Manufacturer. Confidential.
Chemical. (G) Ester of alkenyl succinic anhydride.
Use/Production. (G) Alkaline sizing agent in paper processing. Prod. range: Confidential.

P 87–1677

Manufacturer. Confidential.
Chemical. (G) Ester of alkenyl succinic anhydride.
Use/Production. (G) Alkaline sizing agent in paper processing. Prod. range: Confidential.

P 87–1678

Importer. Nuodex Incorporated.
Chemical. (S) 3-Dodecyl-1-(1,2,2,6,6,-pentamethyl-4-piperidinyl)-2,5-pyrrolidinedione.
Use/Import. (S) Light stabilizer for plastics lacquers and coatings.
Import range: 3,000 to 30,000 kg/yr.
Toxicity Data. Acute oral: >2,500 mg/kg; Irritation:
Skin—Severely corrosive.

P 87–1679

Manufacturer. Confidential.
Chemical. (G) Ester of alkenyl succinic anhydride.
Use Production. (G) Alkaline sizing agent in paper processing. Prod. range: Confidential.

P 87–1680

Manufacturer. Confidential.
Chemical. (G) Ester of alkenyl succinic anhydride.
Use/Production. (G) Alkaline sizing agent in paper processing. Prod. range: Confidential.

P 87–1681

Manufacturer. Confidential.
Chemical. (G) Disubstituted aminophenyl azo disubstituted heteropolycycle.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1682

Manufacturer. Confidential.
Chemical. (G) An alkoxide.
Use/Production. (G) Reactant for use in organic synthesis. Prod. range: Confidential.

P 87–1683

Manufacturer. PPG Glass Group.
Chemical. (G) Acrylic terpolymer.
Use/Production. (G) Open, non-dispersive use as a component in coating. Prod. range: 25 to 50 kg/yr.

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P 87-1684

Manufacturer. Sherex Chemical Company.

Chemical. (S) Hexadecanaminium, N,N-dihexadecyl-N-methyl-, chloride.

Use/Production. (G) Personal care. Prod. range: Confidential.

P 87-1685

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Fiber reactive monoazo dyestuff.

Use/Production. (G) Fiber reactive dye for fibers. Prod. range: 19,000 to 57,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizer; LC_{50} 96 hr. (Zebra Fish): >500 mg/1.

P 87-1686

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified impact polystyrene.

Use/Production. (S) Industrial extrusion and injection molding of plastic articles. Prod. range: Confidential.

P 87-1687

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified impact polystyrene.

Use/Production. (S) Industrial extrusion and injection molding of plastic articles. Prod. range: Confidential.

P 87-1688

Manufacturer. The Dow Chemical Company.

Chemical. (G) Halogenated alkyl pyrimidine.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 87-1689

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified methacrylate.

Use/Production. (S) Site-limited and industrial monomer for preparation of cross-linked resins. Prod. range: Confidential. Toxicity Data. Acute oral: >2,000 mg/kg.

P 87-1690

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified methacrylate.

Use/Production. (S) Site-limited and industrial monomer for preparation of cross-linked resins. Prod. range: Confidential.

Toxicity Data. Acute oral: >2,000 mg/kg.

P 87-1691

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified methacrylate.

Use/Production. (S) Site-limited and industrial monomer for preparation of cross-linked resins. Prod. range: Confidential.

Toxicity Data. Acute oral: >2,000 mg/kg.

P 87-1692

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified methacrylate.

Use/Production. (S) Site-limited and industrial monomer for preparation of cross-linked resins. Prod. range: Confidential.

Toxicity Data. Acute oral: > 2,000 mg/kg.

P 87-1693

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (G) Intermediate for electrical insulation coating. Prod. range: Confidential.

P 87-1694

Manufacturer. Confidential.

Chemical. (G) Metalated alkylphenol formaldehyde copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87-1695

Manufacturer. Confidential.

Chemical. (G) Mercapto tetrazole derivative.

Use/Production. (G) Contained use in article. Prod. range: Confidential.

P 87-1696

Importer. Confidential.

Chemical. (G) Amine salt of phosphoric acid.

Use/Import. (G) Commercial open, non-dispersive use. Import range: Confidential.

P 87-1697

Manufacturer. Confidential.

Chemical. (G) Pyrazolone ester.

Use/Production. (G) Captive intermediate. Prod. range: Confidential.

P 87-1698

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified polycarbonate.

Use/Production. (G) Industrial and commercial thermoplastic resin for sheet and film; transportation and recreational; electronics/appliance and medical/ophthalmic/media storage. Prod. range: Confidential.

P 87-1699

Importer. Dragoco, Incorporated.

Chemical. (S) Bicyclo[3.2.1]octan-8-one, 1,5-dimethyl-, oxime. Use/Import. (S) Fragrance mixture in soaps, detergents, room fresheners, and household cleaners. Import range: 1,200 to 1,500 kg/yr.

Toxicity Data. Acute oral: > 730 mg/kg; Irritation: Eye—Non-irritant; Skin sensitization: Non-sensitizer.

Date: September 8, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-21339 Filed 9-17-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3260-8]

Underground Injection Control Program; Radioactive Tracer Survey Approval

AGENCY: Environmental Protection Agency.

ACTION: Notice with request for comments.

SUMMARY: Notice is hereby given today that the Director of the Office of Drinking Water, Environmental Protection Agency (EPA), is proposing to grant approval for use of the Radioactive Tracer Survey (RTS) as an alternate mechanical integrity test (MIT) to demonstrate that there is: (1) No significant leak in the casing, tubing or packer; and (2) under certain conditions where the underground source of drinking water (USDW) directly overlies an injection zone, separated only by a confining zone, no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore. The radioactive tracer survey will also demonstrate that there is no significant upward migration of injection fluids behind the casing from the injection zone. The RTS alternative mechanical integrity test is proposed for all classes of injection wells, and both Federal and State-administered UIC programs could accept the radioactive tracer survey as a means of meeting the requirements of 40 CFR 146.8(b) and, under the conditions previously described, (c). The Agency is requesting comments and data relating to the viability of this alternative.

DATES: Written comments and any referenced data must be submitted on or

before October 19, 1987. If significant comments are received, EPA will publish a subsequent notice. If no significant public comments are received which warrant changes to this proposal, this proposal will become final on November 17, 1987.

ADDRESSES: Send written comments on this alternative to Eric J. Callisto, Environmental Protection Agency, Office of Drinking Water (WH–550A), 401 M Street SW., Washington, DC 20460. A copy of the comments and supporting documents will be available for review during normal business hours at the EPA, Room 1013C, East Tower, 401 M Street SW., Washington, DC, and in the UIC Section at all EPA Regional offices.

FOR FURTHER INFORMATION CONTACT: Bruce J. Kobelski, Office of Drinking Water (WH–550A) U.S. EPA, Washington, DC 20460; (202) 382–7275.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Drinking Water Act (SDWA) (42 U.S.C. 300h, *et seq.*) protects underground sources of drinking water from contamination by injection wells. One of the cornerstones of the Underground Injection Control (UIC) program is the mechanical integrity of the wells. The regulations for the UIC program define mechanical integrity as the absence of significant leaks in the casing, tubing, or packer and the absence of significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore. Acceptable methods of evaluating mechanical integrity are specified in 40 CFR 146.8. That section also provides that the Director of a State program may allow alternate mechanical integrity tests under certain conditions.

Section 146.8(d) states that: "the Director may allow the use of a test to demonstrate mechanical integrity other than those listed in paragraph (b) and (c)(2) of this section with the written approval of the Administrator. To obtain approval, the Director shall submit a written request to the Administrator, which shall set forth the proposed test and all technical data supporting its use. The Administrator shall approve the request if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed. Any alternate method approved by the Administrator shall be published in the **Federal Register** and may be used in all States unless its use is restricted at the time of approval by the Administrator."

The Director of the Office of Drinking Water has been delegated the authority to approve alternative tests. The Director of the UIC program for the State of Arkansas originally requested that the EPA approve this method to demonstrate mechanical integrity.

EPA has approved the use of the radioactive tracer survey for several individual States. Most of those were approved with the State's primacy application. The following States are allowed to use the radioactive tracer survey for demonstrating no fluid movement from the injection zone subject to certain conditions: Louisiana (Class I Wells); and Texas (all wells); and the Osage Mineral Reserve, Oklahoma (Class II wells). Furthermore, the States of Texas and Kansas, and the Osage Mineral Reserve, Oklahoma, have approval to use the tracer survey for demonstrating no significant leak in the casing, tubing or packer.

II. Basis for Approval

EPA has reviewed several reports, studies and other data on which to base this proposal. Ransom (1975) has stated that radioactive tracer surveys are used to study the movement of radioactive tracers in the immediate vicinity of the borehole. These surveys also can be used in injection wells to determine the presence of tubing, casing or packer leaks or to aid in the detection of channeling from the injection zone behind the casing (Nielsen and Aller, 1984). Furthermore, EPA has learned that numerous Class I and II facilities use this test during normal operation to demonstrate no flow up along casings and no flow outside casing. In addition, the radioactive tracer survey (RTS) is now used widely throughout the oil and gas industry to verify that injection fluids are properly emplaced into the desired injection zone, because the tracer survey provides more definitive information on this fluid movement than temperature or noise logs.

Although many references exist regarding the design and applicability of the radioactive tracer survey in injection wells, one comprehensive publication is the "Society of Petroleum Engineers (SPE) Production Logging Reprint, Volume 19." Some States, such as Louisiana, have established guidelines for logging companies and well operators to follow in running the radioactive tracer survey. An EPA-sponsored study by the Louisiana Department of Natural Resources entitled, "Radioactive Tracer Survey—Cement Bond Log Study as Related to the Mechanical Integrity Testing of Injection Wells" also demonstrates that tracer surveys can be used to help determine casing, tubing, and packer leaks and can help detect channeling in the cement beind casing if other logs, such as a cement bond log, are run in conjunction with the RTS.

III. Description of the Test

A. Leak Detection

The tracer survey is based on the principle that when a controlled slug of a short-lived radioactive material is released into the injeciton stream, it can be detected as it progresses down the well. As the radioactive material moves downward, it will exit the casing or tubing where the leak exists. The tracer survey will locate this leak. It should be noted that a tracer survey will only detect leaks in the string in which the tool is run. Accordingly, if the casing is to be examined, the tubing must be pulled.

B. Fluid Migration Detection

For the determination of fluid migration, a series of logging runs using a gamma ray detector will define the pathway of injected fluids. If the fluids are contained in the injection zone, then the tracer survey will indicate this. More than one logging run should be made; interpretation is accomplished by comparing logs obtained before and after radioactive tracer ejection (Nielsen and Aller, 1984).

C. Radioactive Tracer Surveys Methods

The radioactive tracer survey can be run in two different manners. The velocity-shot method measures the travel time of the radioactive material between the ejector and detector(s). This method is normally used to detect flow into perforations and to quantify the flow rate. The velocity shot method is useful for detailing specific portions of the wellbore; however, it does not offer assurance that the entire lenght of the wellbore is free from additional fluid leaks.

The second manner of running the radioactive tracer survey is the timed-run method. With this method, the vertical variation of the radioactive slug with time is measured. The timed-run method allows detection of any vertical migration of the slug from leaks in the tubing, casing, or from improperly isolated injection zones. Therefore it can determine if fluids are being properly emplaced into the injection zone. It is this method that is primarily used to detect unwanted movement of the injected fluid and leaks.

IV. Special Conditions

A. Limitations on ths Use of the RTS

EPA has investigated the characteristics of the radioactive tracer

survey, and believes at this time that the following limitations and conditions should be placed on its use.

(1) The most important limitation of the tracer survey is its inability to identify fluid movement between formations behind the casing of wells in which: (1) There are no casing leaks; and (2) the injection zone is adequately isolated with no fluid movement from the injection zone through vertical channels adjacent to the wellbore. Therefore, it is not capable of verifying interformational fluid movement of non-injected fluids between or into USDWs above a confined injection zone. In the case where interformational fluid movement exists in a channel behind a leakless casing, the RTS will not be effective since it can only test the integrity of the cement at the casng shoe. However, in a case where the USDW is above the injection zone, and where only an impermeable confining zone intervenes, then the radioactive tracer survey can adequately demonstrate the existence or absence of significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore. Only in his case does the radioactive tracer survey meet the demonstration for 40 CFR 146.8(c).

(2) Approval of the radioactive tracer survey is limited at this time to the timed-run method of logging, which is the method best suited for the detection of unwanted movement or release of injected fluids and excludes logs using the velocity-shot method;

(3) The tubing and packer must be pulled from the well if the tracer survey will be used to locate a casing leak. This enables the logging tool to be properly centralized in the hole and prevents an undetected tubing or packer leak to affect RTS log interpretation;

(4) A base gamma ray log must be run for comparison with the tracer runs. The base gamma ray log (or background run) should be run immediately prior to the tracer survey; however, an existing gamma ray log which can be compared to the tracer survey (based on factors such as logging speed, scale, etc.) is acceptable;

(5) A casing collar locator (CCL) must be run for depth control in conjunction with the base gamma ray log;

(6) The test must be performed at the actual maximum operating pressure to ensure adequate detection of the tracer slug in the wellbore;

(7) RTS logs must be interpreted by a competent log analyst.

B. Procedures for conducting the RTS

Specific logging procedures or guidelines for running this test must be approved by the Director or by the EPA Region as applicable.

C. Determination

On the basis of the independent studies, the experience of the States, and its own research, EPA has concluded that the RTS, subject to the limitations and conditions previously outlined, has the ability to demonstrate mechanical integrity. Specifically it can show that there is:

(1) No significant leak in the casing, tubing or packer; and

(2) No significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore, but only where the USDW is separated by an impermeable confining zone and is directly above the injection zone. The test has the added advantage of specifically demonstrating that the cement at the base of the well bore is not leaking.

EPA is therefore proposing its approval under 40 CFR 146.8(d) of the UIC regulations.

Date: September 8, 1987.

Michael B. Cook,

Director, Office of Drinking Water.

[FR Doc. 87-21608 Filed 9-17-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing, PN Radio Co. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant city/State	File No.	MM Docket No.
A. PN Radio Company, Upper Arlington, OH.	BPH-860505MK	87-370
B. Mary Storer Mahaffey, Upper Arlington, OH.	BPH-860505MM	
C. Upper Arlington Radio, Inc., Upper Arlington, OH	BPH-860505MN	
D. Knight Communications Corp., Upper Arlington, OH.	BPH-860505MO	
E. Andrew Love and Sheridan Broadcasting Corp. d/b/a/ New World Broadcasting Limited Partnership, Upper Arlington, OH.	BPH-860506MR	
F. Mirage Broadcasting Co., Inc., Upper Arlington, OH.	BPH-860506MS	
G. Loretta Mane Madved, Upper Arlington, OH.	BPH-860506MT	
H. Paul L. Parshall d/b/a/ Upper Arlington Broadcasting Col, Upper Arlington, OH.	BPH-860506MU	
I. John W. Saeger *et al.*, d/b/a/ Tri-Village Broadcasting Association, Upper Arlington, OH.	BPH-860506MX	
J. G.C. Communications, A Limited Partnership, Upper Arlington, OH.	BPH-860507OQ	
K. Benjamin Macwan, Upper Arlington, OH.	BPH-860507OR	
L. Claire Tow, Upper Arlington, OH.	BPH-860507OS	
M. Walker Broadcasting Company, Upper Arlington, OH.	BPH-860507OT	
N. Donna Y. McDonnell, Upper Arlington, OH.	BPH-860507OU	
O. FM Telecommunications of Columbus, Inc., Upper Arlington, OH.	BPH-860507OV	
P. Johanna S. DeStefano, Upper Arlington, OH.	BPH-860507OX	
Q. Reginald Davis and Debra Davenport d/b/a/ DDB Communications, Ltd., Upper Arlington, OH.	BPH-860507OZ	
R. Geri Taczak, Upper Arlington, OH.	BPH-860507PA	
S. Carol Hector-Harris, Upper Arlington, OH.	BPH-860507PB	
T. Scioto Broadcasting, Ltd., Upper Arlington, OH.	BPH-860507PC	
U. James E. Martin, Jr. *et al.*, d/b/a/ BMS Communications of Upper Arlington, Upper Arlington, OH.	BPH-860507PD	
V. Rakel Communications, Inc., Upper Arlington, OH.	BPH-860507PE	
W. Kenneth E. Harris, Upper Arlington, OH.	BPH-860507PG	
X. First Ohio Broadcasting Corporation, Upper Arlington, OH.	BPH-860507PH	
Y. Innovatve Broadcasting, Inc., Upper Arlington, OH.	BPH-860507PI	
Z. Haynes Broadcasting Group, Upper Arlington, OH.	BPH-860507PJ	
AA. Christine Michael Broadcasting, Inc., Upper Arlington, OH.	BPH-860507PK	
AB. American Radio Broadcasting Network, Inc., Upper Arlington, OH.	BPH-860507PL	
AC. Richard L. Plessinger, Sr., Upper Arlington, OH.	BPH-860507PM	
AD. Marlene V. Borman, Upper Arlington, OH.	BPH-860507PP	
AE. Energy Broadcasting, Upper Arlington, OH.	ARN-8600428MK	(DISMISSED)

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR. 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Environmental, AB, AC

2. Air Hazard, K,L,U,W,Y,Z,AB
3. Comparative, All Applicants
4. Ultimate, All Applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text may also be purchased from the Commission's duplicating contracotr, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–21599 Filed 9–17–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007680–067.
Title: American West African Freight Conference.
Parties:
America-Africa-Europe Line GMBH
Barber West Africa Line
Farrell Lines, Inc.
Maersk Line
Societe Ivorienne de Transport Maritime, SITRAM
Torm West Africa Line
Westwind Africa Line
Synopsis: The proposed amendment would permit the parties to exercise independent action on the level of compensation paid to an ocean freight forwarder who is also a customs broker.

Agreement No.: 202–009420–011.
Title: United States Great Lakes and St. Lawrence River Conference.
Parties:
Black Star Line
Westwind Africa Line
Synopsis: The proposed amendment would permit the parties to exercise independent action on the level of compensation paid to an ocean freight forwarder who is also a customs broker.

Agreement No.: 203–011148.
Title: Western Mediterranean Stabilization Agreement.
Parties:
South Europe/U.S.A. Freight Conference
Ocean Star Container Line A.G.
Synopsis: The proposed agreement would permit the parties to agree upon rates, charges, service contracts, rules and practices governing the transportation of cargo in the trade from Italian, Yugoslavian, French Mediterranean and Spanish ports including Spanish North African, Mediterranean Island and Canary Island ports and Portuguese ports including ports on Madeira Island and points in Continental Europe via such ports to United States Atlantic and Gulf ports and all U.S. interior and coastal points via such ports. Cargo moving under service contracts of one party may be counted under any volume requirements in service contracts of the other.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: September 14, 1987.

[FR Doc. 87–21568 Filed 9–17–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 2, 1987.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *James R. Cole,* Many, Louisiana; to acquire 52.50 percent of the voting shares of Sabine Bancshares, Inc., Many, Louisiana, and thereby indirectly acquire Sabine State Bank & Trust Company, Many, Louisiana.

Board of Governors of the Federal Reserve System, September 14, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–21562 Filed 9–17–87; 8:45 am]

BILLING CODE 6210–01–M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; FNB Financial Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 9, 1987.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *FNB Financial Corporation,* McConnellsburg, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of McConnellsburg, McConnellsburg, Pennsylvania.

BEST COPY AVAILABLE

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Huntington Bancshares Incorporated,* Columbus, Ohio; to acquire 100 percent of the voting shares of United Midwest Bancorporation, Troy, Michigan, and thereby indirectly acquire Liberty State Bank and Trust Company, Hamtramck, Michigan, and Liberty State Bank of Oakland, Troy, Michigan. In connection with this application, Huntington Bancshares Michigan, Inc., Columbus, Ohio; to merge with United Midwest Bancorporation, Troy, Michigan, and thereby indirectly acquire Liberty State Bank and Trust Company, Hamtramck, Michigan, and Liberty State Bank of Oakland, Troy, Michigan.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *FMB Financial Holdings, Inc.,* Fayetteville, Georgia; to become a bank holding company by acquiring 89.1 percent of the voting shares of Farmers and Merchants Bank, Fayetteville, Georgia.

2. *Heritage Enterprises II,* Fayetteville, Georgia; to become a bank holding company by acquiring 89.1 percent of the voting shares of Farmers and Merchants Bank, Fayetteville, Georgia.

3. *SouthTrust Corporation,* Birmingham, Alabama; to merge with First Bankshares, Inc., Marianna, Florida, and thereby indirectly acquire The First Bank of Marianna, Marianna, Florida.

Board of Governors of the Federal Reserve System, September 14, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-21560 Filed 9-17-87; 8:45 am]

BILLING CODE 6210-01-M

Applications To Engage de Novo in Permissible Nonbanking Activities; Independence Bancorp, Inc., et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 1987.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Independence Bancorp, Inc.,* Perkasie, Pennsylvania; to engage *de novo* through its subsidiary, Independence Life Insurance Company, Phoenix, Arizona, in acting as a reinsurer of credit life, accident and health insurance issued in connection with extensions of credit made by the Applicant's subsidiary banks pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Bucks, Montgomery, Chester, Delaware, Lehigh, Northampton and Lackawana Counties in Pennsylvania.

2. *USBANCORP, Inc.,* Johnstown, Pennsylvania; to engage *de novo* through its subsidiary, United Bancorp Life Insurance Company, Phoenix, Arizona, in acting as a reinsurer of credit life, accident and health insurance issued in connection with extensions of credit made by the Applicant's subsidiary banks pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Allegheny, Blair, Cambria, Clearfield, Somerset, Washington and Westmoreland Counties in Pennsylvania.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Manufacturers National Corporation,* Detroit, Michigan; to engage *de novo* though its subsidiary, Manufacturers Affiliated Trust Company, Chicago, Illinois, in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 14, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-21561 Filed 9-17-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87M-0241]

Visioncare Laboratories, Inc.; Premarket Approval of Vis-Sol ™ Saline Solution for Sensitive Eyes

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Visioncare Laboratories, Inc., Los Angeles, CA, for premarket approval, under the Medical Device Amendments of 1976, of VIS-SOL™ SALINE SOLUTION for SENSITIVE EYES. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by October 19, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring , MD 20910. 301-427-7940.

SUPPLEMENTARY INFORMATION: On April 15, 1987, Visioncare Laboratories, Inc. ("Visioncare"), Los Angeles, CA 90048, submitted to CDRH an application for premarket approval of VIS-SOL™ SALINE SOLUTION for SENSITIVE

EYES. The device is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. The application includes authorization to Visioncare from Stericon Laboratories, Inc. ("Stericon"), Hollywood, CA, for purposes of obtaining a PMA approval to facilitate a licensing agreement between Stericon and Visioncare, to incorporate the information contained in its approved premarket approval application for the Stericon™ Saline Solution (Docket No. 86M–0502).

On January 24, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the Stericon™ application. On June 25, 1987, CDRH approved the Visioncare application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of VIS-SOL™ SALINE SOLUTION for SENSITIVE EYES states that the solution is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solutions at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 19, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 11, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87–21558 Filed 9–17–87; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

General Hospital and Personal Use Devices Panel

Date, time and place. October 5 and 6, 1987, 9 a.m., Rm. 703A, Hubert H. Humphrey Bldg., 200 Independence Avenue SW., Washington, DC.

Type of meeting and contact person. Open public hearing, October 5, 1987, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 2:30 p.m.; open committee discussion 2:30 p.m. to 4 p.m.; October 6, 1987, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 2:30 p.m.; open committee discussion 2:30 p.m. to 4 p.m.; Andrea A. Wargo, Center for Devices and Radiological Health (HFZ–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 25, 1987, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss safety and effectiveness data for a long term percutaneous intraspinal catheter and for a programmable implantable infusion pump for intraspinal morphine.

Closed presentation of data. Trade secret and/or confidential commercial information will be presented to the committee regarding materials and manufacturing information for the long term percutaneous intraspinal catheter; and materials, design, computer software, and manufacturing information for the infusion pump. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information on materials and design of the long term percutaneous intraspinal catheter; and materials, design, computer software, and manufacturing information regarding the infusion pump. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ophthalmic Devices Panel

Date, time, and place. October 22 and 23, 1987, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, DC.

Type of meeting and contact person. Open public hearing, October 22, 1987, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open public hearing, October 23, 1987, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Richard E. Lippman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7320.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety and effectiveness and their suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 1, 1987, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 22, 1987, the committee will discuss general issues relating to approvals of premarket approval applications (PMA's) for Nd:YAG lasers and intraocular lenses (IOL's), and may discuss specific PMA's for these devices. If discussion of all pertinent Nd:YAG laser or IOL issues is not completed, discussion will be continued the following day. On October 23, 1987, the committee will discuss general ophthalmic issues and PMA's for contact lenses and other devices and requirements for PMA approval.

Closed committee deliberation. On October 22 and 23, 1987, the committee may discuss trade secret and/or confidential commercial information relevant to PMA's for IOL's, Nd:YAG lasers, contact lenses, or other ophthalmic devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(C)(4)).

Veterinary Medicine Advisory Committee

Date, time, and place. October 27 and 28, 1987, 8 a.m., conference room E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of Meeting and contact person. Closed committee deliberations, October 27, 1987, 8 a.m. to 10:45 a.m.; open committee discussion; 10:45 a.m. to 2 p.m.; open public hearing, 2 p.m. to 2:45 p.m., unless public participation does not last that long; open committee discussion, 2:45 p.m. to 4:30 p.m.; October 28, 1987, 8 a.m. to 8:30 a.m.; open public hearing, 8:30 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 11:30 a.m.; Max L. Crandall, Center for Veterinary Medicine (HFV–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3450.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal diseases and increased animal production.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss the following: (1) Model veterinary drug code, (2) classification and labeling of Rx and OTC Products, (3) residues and sulfamethazine, and (4) drug listing and adverse drug reactions reporting systems.

Closed committee deliberations. The committee will review and discuss trade secret and/or confidential commercial information relevant to pending new animal drug applications (NADA's) and investigational new animal drugs (INAD's). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participaton does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: September 11, 1987.

John A. Norris,

Acting Commissioner of Food and Drugs.

[FR Doc. 87–21559 Filed 9–17–87; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee Meeting Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Circulatory System Devices Panel scheduled for September 25, 1987. The meeting was announced by notice in the **Federal Register** of August 17, 1987 (52 FR 30738).

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

Dated: September 14, 1987.

Richard J. Davis,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–21595 Filed 9–15–87; 3:29 pm]

BILLING CODE 4160–01–M

Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration.

ACTION: Notice; amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice of the Clinical Chemistry and Clinical Toxicology Devices Panel to reflect changes in the type of meeting on September 22, 1987, and in the open committee discussion. As a result of these changes, there will not be a closed session on September 22, 1987. Notice of the September 21 and 22, 1987, meetings was published in the **Federal Register** of August 17, 1987 (52 FR 30738).

SUPPLEMENTARY INFORMATION: In FR Doc. 87–18669, appearing at page 30738 in the **Federal Register** of Monday, August 17, 1987, the following corrections are made under the heading, "Clinical Chemistry and Clinical Toxicology Devices Panel" beginning in the third column:

(1) On page 30738, third column, lines 8–14 of the *Type of meeting and contact person* paragraph, the type of meeting scheduled for September 22, 1987, is revised to read as follows:

Type of meeting and contact person. * * * ; open public hearing, September 22, 1987, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; open presentation of data, 1 p.m. to 3 p.m. when adjournment is scheduled; * * *

(2) On page 30739, first column, the *Open committee discussion* paragraph is revised to read as follows:

Open committee discussion. The committee will discuss one premarket approval application: a histochemical assay designed to detect estrogen binding cancer cells in human breast cancer.

Dated: September 14, 1987.

Richard J. Davis,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–27596 Filed 9–15–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–963–4213–15]

Native Primary Place of Residence in Alaska; Evan Ignatti et al.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of section 14(h)(5) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(5), will be issued to Evan Ignatti, Nastatia Moxie, Ignaty Ignatti, and Evan Nick. The lands involved are in the vicinity of Sleetmute, Alaska.

A previous notice of decisions to issue conveyance to the named claimants was published in the **Federal Register** on July 24, 1987. Due to special circumstances, the decisions could not be issued in time to allow a sufficient appeal period.

Serial number	Land description	Approximate acreage
Evan Ignatti, AA–9013.	T. 9 N., R. 48 W., Seward Meridian Sec. 20.	85 acres.

Serial number	Land description	Approximate acreage
Nastaba Moxie, F-19736.	T. 12 N., R. 47 W., Seward Meridian, Sec. 35.	65 acres.
Ignaty Ignatti, F-19737.	T. 9 N., R. 48 W., Seward Meridian, Sec. 20.	53 acres.
Evan Nick, F-19738.	T. 12 N., R. 47 W., Seward Meridian, Sec. 25.	96 acres.

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in The Tundra Drums. Copies of the decisions may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until October 19, 1987, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Ann Johnson,

Chief, Branch of Calista Adjudication.

[FR Doc. 87-21659 Filed 9-17-87; 8:45 am]

BILLING CODE 4310-JA-M

[NM-016-07-4410-08]

Availability of Proposed Farmington Resource Management Plan/Final Environmental Impact Statement (RMP-EIS)

AGENCY: Bureau of Land Management (BLM), Albuquerque District, Farmington Resource Area, Farmington, New Mexico.

ACTION: Notice of availability.

SUMMARY: The BLM announces the availability of the Proposed Farmington RMP/Final EIS for public review. This document analyzes the management options and impacts of allocating lands and resources on about 1.5 million acres of public land surface and 3.0 million acres of Federal mineral estate. These public lands are located in San Juan, Rio Arriba, Mckinley and Sandoval Counties in northwest New Mexico.

The Draft RMP/EIS was made available for a 90-day public comment period from March through June 1987. Comments received were incorporated in the preparation of the Proposed Plan. All parts of the Proposed Plan may be protested.

DATE: Protests on the Proposed Plan must be postmarked no later than October 26, 1987.

ADDRESS: Protests must be sent to the Director (760), Bureau of Land Management, Premier Bldg., Room 909, 18th and C Streets NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: Any person who is on record for participating in the planning process and has an interest that is or may be affected by approval of the RMP may file a protest. Protests should be presented to the BLM Director with the following information: (1) Name, mailing address, telephone number, and interest of the person filing the protest; (2) statement of the issue or issues being protested; (3) a statement of the part or parts being protested; (4) a copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records; and (5) a concise statement explaining why the BLM New Mexico State Director's decision is wrong.

At the end of the 30-day protest period, the Proposed Plan, excluding any portions under protest, will become final. Approval will be withheld on any portion of the plan under protest until final action has been completed on such protest. The approval process and the Approved Plan will be published with the Record of Decision. Individuals not wishing to protest the plan, but wanting to comment, may send comments to the BLM, Farmington Resource Area, at the address below. All comments received will be considered in preparation of the Record of Decision.

FOR FURTHER INFORMATION CONTRACT: Bill Overbaugh, RMP Team Leader, Farington Resource Area, Caller Service 4104, Farmington, New Mexico 87499, or telephone (505) 325-3581

A limited number of documents are available, and review copies may be examined at:

BLM State Office, Joseph M. Montoya Federal Bldg., Santa Fe, New Mexico
BLM Farmington Resource Area, 900 La Plata Highway, Farmington, New Mexico
San Juan College Library, 4601 College Blvd., Farmington, New Mexico
University of New Mexico, School of Law Library, 1117 Stanford, NE., Albuquerque, New Mexico
BLM DSC Library, Building 50, Denver Federal Center, Denver, Colorado
BLM Albuquerque District Office, 435 Montano Road, NE., Albuquerque, New Mexico
Aztec Public Library, 201 W. Chaco, Aztec, New Mexico
State of New Mexico, 325 Don Gaspar, Santa Fe, New Mexico
Farmington Public Library, 100 W. Broadway, Farmington, New Mexico

Dated: September 14, 1987.

Monte G. Jordan,

Associate State Director.

[FR Doc. 87-21555 Filed 9-17-87; 8:45 am]

BILLING CODE 4310-FB-M

[NV-930-07-4332-09; FES 87-38]

Availability of Final Environmental Impact Statement for Schell Resource Area Wilderness, Ely District, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final Environmental Impact Statement (EIS) on the wilderness recommendations for the Schell Resource Area, Ely District, Nevada.

SUMMARY: This EIS assesses the environmental consequences of managing eight wilderness study ares (WSA's) as wilderness or nonwilderness. The alternatives analyzed included: (1) A No Wilderness/No Action alternative for each WSA, (2) an All Wilderness alternative for each WSA, and (3) Partial Wilderness alternatives for six of the WSA's.

The names of the WSA's analyzed in the EIS, their total acreage, and the proposed action for each are as follows:

WSA	Acres suitable	Acres nonsuitable
Mount Grafton WSA	30,115	43,101
Far South Egans WSA	42,316	10,908
Fortification Range WSA	0	41,615
Table Mountain WSA	0	35,958
White Rock Range WSA	23,625	0
Parsnip Peak WSA	53,560	34,615
Worthington Mountains WSA	26,587	21,046
Weepah Spring WSA	50,499	10,638
Total	226,702	197,881

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to the Congress. The final decision on wilderness designation rests with Congress. In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10B(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS

may be ontained from the Area Manager, Schell Resource Area, Star Route 5, Box 1, Ely, Nevada, 89301, or call (702) 289–4865. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Street NW., Washington, DC 20240
Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520
Bureau of Land Management, Ely District, Star Route 5, Box 1, Ely, NV 89301

FOR FURTHER INFORMATION CONTACT: Shaaron Netherton, EIS Team Leader, at Star Route 5, Box 1, Ely District, Ely, Nevada, 89301.

Dated: September 10, 1987.

Bruce Blanchard,

Director, Office of Environmental Projects Review.

[FR Doc. 87–21309 Filed 9–17–87; 8:45 am]

BILLING CODE 4310–HC–M

[NV–040–07–4212–14; N–37052]

Realty Action; Noncompetitive Land Sale, White Pine County, Nevada; Ely District Schell Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action. Noncompetitive land sale, White Pine County.

SUMMARY: This Notice is Realty Action (NORA) supersedes the NORA Published in the **Federal Register** on March 4, 1983, in Vol. 48 No. 44, page 9380.

The following land has been examined and identified for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713):

Mount Diablo Meridian

T. 2 N., R. 69 E.
Sec. 35, SW¼NW¼NE¼SE¼.

The above-described land, comprising 2.5 acres, is being offered by direct sale to Timothy Olson at the current fair market value.

The lands are being offered as a direct, noncompetitive sale to Timothy Olson, the owner of the adjoining tract and improvements on the sale tract. The first cadastral survey of this area was performed in 1872. There were a number of errors in this original survey. The location of the private land in Ursine was established from the survey. In 1970 it was discovered the survey was inaccurate and in 1973 the area was resurveyed.

Mr. Olson found that with the change in the new survey the house he owned was partially on public land. Disposal by direct sale to Mr. Olson will legalize his occupancy of the land, protect his equity investment in the improvements on the land, and resolve a complicated unauthorized use situation.

The lands have not been used and are not required for any federal purpose. Disposal would best serve the public interest. The sale is consistent with the Bureau's planning system. The land will not be offered for sale for at least 60 days after the date of this notice.

There will be no reduction of AUM's from the grazing allotment due to this action.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Ely District, Ely, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

Patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Conveyance of the available mineral estate having no known mineral value will occur simultaneously with the sale of the lands under section 209 of the aforementioned Act of 1976. Acceptance of the direct sale offer will constitute an application for conveyance of those mineral estates. A $50 nonrefundable fee for the available mineral estates must accompany the purchase money. In addition, the costs of publishing this notice in the **Federal Register** and in the local newspaper must be paid by the purchaser before patent may be issued. Failure to submit the purchase money for the land, the aforementioned filing fee, and the publishing costs within the timeframe specified by the authorized officer (43 CFR 2710.0–5(c)), shall result in cancellation of the sale.

Detailed information concerning the sale is available for review at the Ely District Office, Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301. For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the Ely District Manager, Star Route 5, Box 1, Ely, Nevada 89301. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. If no action is taken by the State Director, this realty action will become a final determination of the Department of the Interior.

DATE: September 10, 1987.

ADDRESS: Comments and suggestions should be sent to: Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: David L. Redmond, (702) 289–4865.

Date: September 9, 1987.

Kenneth G. Walker,

District Manager.

[FR Doc. 87–21660 Filed 9–17–87; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Endangered Species Permit Issued for the Months of April, May, and June 1987

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Additional information on these permit actions may be requested by contacting the Federal Wildlife Permit Office, 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, telephone (703/235–1903) between the hours of 7:45 a.m. to 4:15 p.m. weekdays.

April 1987:

Gibbon & Gallinaceous Bird Center	715693	04/01/87
Henry Doorly Zoo	715691	04/01/87
New York Zoological Society	714273	04/03/87
Steurer, Donald R.	715479	04/06/87
Wood Family Shows	711457	04/08/87
Exotic Cats of Georgia, Inc.	713584	04/09/87
Taylor, George Kelly	715828	04/20/87
Frank Todd Sea World, Inc.	716347	04/20/87

Memphis Zoo & Aquarium	714959	04/22/87
Adventure World	715460	04/22/87
Columbus Zoo	715749	04/22/87
Harris, Roger	711637	04/22/87
Harris, James C.	716609	04/24/87
May 1987:		
U.S. Fish & Wildlife Service	702631	05/04/87
Rickards, Ginger VA	712134	05/04/87
Webb, Carl Jr.	715429	05/06/87
New York Zoological Society	715930	05/06/87
New York Zoological Society	718191	05/08/87
AAZPA (SRT)	716136	05/08/87
National Zoological Park	716519	05/11/87
Fortier Robert Fredrick	719941	05/12/87
San Francisco Zoological Garden	717177	05/12/87
Florida State Museum	716310	05/12/87
Rosenbrough, Jimmie	690379	05/25/87
Walker, Susan R.	716524	05/25/87
June 1987:		
Frank Buck Bring 'Em Back Alive, Inc.	716947	06/02/87
San Antonio Zoo Garden & Aquarium	717813	06/11/87
San Diego Zoo	717784	06/11/87
The Cousteau Society Inc.	716284	06/11/87

Dated: September 15, 1987.

R.K. Robinson, Chief,

Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-21655 Filed 9-17-87; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Aniakchak National Monument Resource Commission; Meeting

AGENCY: National Park Service, Alaska Region, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order
(2) Introduction of guests
(3) Review and discuss input on draft recommendation
(4) Finalize recommendation
(5) Research data needs
(6) Status of previous recommendations
(7) Old business
(8) New business
(9) Adjourn

DATE: The meeting will begin at 9:00 a.m. on October 14, 1987, and conclude the afternoon of October 15, 1987.

ADDRESS: The meeting will be held at the Fish and Wildlife Service, Conference Room, King Salmon, Alaska.

FOR FURTHER INFORMATION CONTACT: Ray Bane, Superintendent, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613, Phone (907) 246-3305.

SUPPLEMENTARY INFORMATION: The Aniakchak National Monument Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96-487.

Dated: September 8, 1987.

Boyd Evison,

Regional Director, Alaska.

[FR Doc. 87-21569 Filed 9-17-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31106]

The Chesapeake and Ohio Railway Co. and CSX Transportation, Inc., Merger Exemption; Exemption

Decided: September 10, 1987.

CSX Corporation (CSX), The Chesapeake and Ohio Railway Company (C&O), and CSX Transportation, Inc. (CSXT) have filed a notice of exemption for C&O to merge into CSXT on August 31, 1987. The merger participants are part of the CSX system and have been commonly controlled and managed since 1980. *See CSX Corp.—Control—Chessie and Seaboard C.L.I.*, 363 I.C.C. 518 (1980).

CSX owns 100 percent of the voting equity securities of C&O and CSXT. This merger is a further step in an overall process of consolidating the CSX rail companies into a single, efficient operating company. Consummation of the merger will eliminate the inefficiencies inherent in maintaining two carrier entities in areas such as record keeping and through coordination and consolidation will improve the efficiency of the operations and services presently being provided by the carriers as separate entities.

Under the merger plan, C&O will cease to exist as a separate entity and CSXT will succeed to all of its rights, assets, liabilities, and obligations. All outstanding shares of C&O common stock will be cancelled, and all outstanding shares of C&O preferred stock will be converted into preferred stock of CSXT.

This merger is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). It is a transaction which will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under sections 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), will be imposed.[1]

Petitions to revoke this exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Peter J. Shudtz, One James Center, Richmond, VA 23219.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen King,

Acting Secretary.

[FR Doc. 87-21576 Filed 9-17-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31051]

The Shore Fast Line, Inc., Operation, NJDOT "Winslow Branch" Rail Properties; Modified Rail Certificate

September 14, 1987.

On May 21, 1987, The Shore Fast Line, Inc. (Shore), filed a notice for a modified certificate of public convenience and necessity under 49 CFR Part 1150, Subpart C. As of May 12, 1987, it is authorized to provide service over the Southern Branch ("Winslow Branch") formerly owned by Consolidated Rail Corporation (Conrail) between milepost 114.3 at Buena Vista and milepost 103.6 at Winslow Township, NJ, a distance of approximately 10.7 miles.

Conrail abandoned the line after being issued a certificate in Docket No. AB-167 (Sub-No. 611N), *Conrail Abandonment in Camden, Gloucester, and Atlantic Counties, NJ* (not printed), served August 2, 1984. Subsequently, the New Jersey Department of Transportation (NJDOT) purchased the line from Conrail. Shore will operate the line pursuant to an agreement with NJDOT for a period of 10 years from May 12, 1987.[1]

[1] The Railway Labor Executives' Association (RLEA) filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 11343, imposition of the labor protection condition is mandatory and has been imposed above.

[1] The agreement initially provided that the 10-year period starts on October 1, 1986. By a

Continued

This notice shall be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and upon the American Short Line Railroad Association.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-21577 Filed 9-17-87; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-18505]

GLI Acquisition Co., Purchase of Trailways Lines, Inc.; GLI Acquisition Co., Control of Continental Panhandle Lines, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file replies.

SUMMARY: Notice of the filing of this application was published on July 17, 1987, in the **Federal Register** at 52 FR 27068, and in the *ICC Register*. The due date for comments in opposition to the application was set as August 31, 1987, and the due date for replies in support of the application was set as September 22, 1987. Pursuant to applicants' request, the time for filing replies has been extended until October 7, 1987.

DATE: Replies in support of this application may be filed on or before October 7, 1987.

ADDRESSES: Send replies (an original and 20 copies), referring to Docket No. MC-F-18505, to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Andrew L. Lyon, (202) 275-7291

or

Warren C. Wood, (202) 275-7977

TDD for hearing impaired: (202) 275-1721

Decided: September 15, 1987.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 87-21746 Filed 9-17-87; 8:45 am]

BILLING CODE 7035-01-M

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subsequent letter, counsel for Shore clarified that the 10-year period runs from May 12, 1987.

[Finance Docket No. 31094]

Grainbelt Corp., Exemption Acquisition and Operation of Certain Lines of Burlington Northern Railroad Co

Grainbelt Corporation (Grainbelt) has filed a notice of exemption to acquire and operate 186.4 miles of line of Burlington Northern Railroad Company (BN) from Enid, OK (milepost 588.3) to Davidson, OK (milepost 774.7). BN has also agreed to grant Grainbelt incidental overhead trackage rights over that portion of BN's line of railroad from Snyder, OK (milepost 664.0) to Quanah, TX (milepost 723.3), a distance of 59.3 miles, for interchange purposes. Any comments must be filed with the Commission and served on William P. Quinn, Rubin, Quinn & Moss, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.[1]

This decision will not significantly affect the quality of the human environment or energy conservation.

Decided: September 14, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-21747 Filed 9-17-87; 8:45 am]

BILLING CODE 7035-01-M

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[1] By decision entered September 9, 1987, the Commission considered a petition for stay filed by the Attorney General of Oklahoma as well as a number of letters filed by affected individuals. In that decision, that petition and those letters were treated as petitions to revoke the exemption, and were denied.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984, the Importance of Lubricating Oil in Diesel Particulate Emissions (Southwest Research Institute)

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, Southwest Research Institute ("SwRI") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled: "The Importance of Lubricating Oil in Diesel Particulate Emissions." The notification discloses (1) the identities of the parties to the project and (2) the nature and objective of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below.

The parties to the project are:

Ethyl Petroleum additives, Inc.
Daimler-Benz
Lubrizol Corporation
Isuzu Technical Center of America
Fiat Research Center
Mitsubishi Motors Corporation
Navistar International Corporation
Texaco, Inc.
Euron, S.p.A
Nippon Schokubai Kagaku Kogyo Co., Ltd.

The purpose of the project is to determine quantitatively and qualitatively the contribution of lubricating oil to diesel particulate emissions, and the impact of this contribution on efforts to reduce engine-out particulates as needed to meet upcoming particulate standards. The study will contain four objectives. The four objectives are to: (1) Evaluate methodology capable of identifying the lubricating oil contributions to both the organic-soluble and insoluble portions of the total particulate, (2) determine the effects of engine design and operating parameters on oil-related particulate emissions, (3) study the effects of engine condition (wear) and oil formulations, and (4) assess the interaction of aftertreatment devices with oil-derived particulate.

Membership in this group research project remains open.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 87-21586 Filed 9-17-87; 8:45 am]

BILLING CODE 4410-01-M

Office of Juvenile Justice and Delinquency Prevention

Meeting of State Advisory Group Chairs

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule for the forthcoming meeting of the State Advisory Groups. Notice of the

meeting is required by the Federal Advisory Committee Act.

DATE: Monday, September 28, 1987, 1:30 p.m.—6:00 p.m. (The meeting may be continued to the following morning, September 29, for the purpose of concluding Advisory Committee business.)

ADDRESS: Holiday Inn—Capitol, 550 C Street, SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION: The State Advisory Groups, an advisory committee established pursuant to section 3(2)(A) of the Federal Advisory Committee Act (5 U.S.C. App. 2) will meet to carry out its advisory functions under section 241(f)(3) and (4) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

These sessions which will be open to the public, are scheduled at the above listed dates and times.

Time constraints precluded publishing the Notice 15 days prior to the meeting, as required. To delay the meeting for the purpose of allowing 15 days would not be in the best interest of the advisory committee; because the agenda has been set, meeting space has been secured, and participants have made travel arrangements.

FOR FURTHER INFORMATION CONTACT: For information please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Washington, DC 20531, (202) 724–7655.

Diane M. Munson,

Deputy Administrator, Office of Juvenile and Delinquency Prevention.

Date: September 16, 1987.

[FR Doc. 87–21752 Filed 9–17–87; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

District of Columbia:
DC87–1 (January 2, 1987)..... pp. 86, 88, pp. 92, 94.

Maryland:
MD87–4 (January 2, 1987)..... pp. 426–426a.

Volume II:

Kansas:
KS87–6 (January 2, 1987)..... p. 348.

Texas:
TX87–10 (January 2, 1987).... pp. 946–947.

Volume III:

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the County. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 14th day of September 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-21502 Filed 9-17-87; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel to the National Council on the Arts;

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Challenge III/ Advancement Section) to the National Council on the Arts will be held on October 5-6, 1987 from 9:00 a.m.-5:30 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 6, 1987 from 4:30 p.m.-5:30 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on October 5, 1987 from 9:00 a.m.-5:30 p.m. and on October 6, 1987 from 9:00 a.m.-4:30 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

September 14, 1987.

[FR Doc. 87-21661 Filed 9-17-87; 8:45 am]

BILLING CODE 7537-01-M

Literature Advisory Panel to the National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Creative Writing Fellowships—Prose Section) to the National Council on the Arts will be held on October 8-9, 1987 from 9:00 a.m.-5:30 p.m. and on October 10, 1987, from 9:00-2:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 10, 1987 from 12:00 noon-2:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on October 8-9, 1987 from 9:00 a.m.-5:30 p.m. and on October 10, 1987 from 9:00 a.m.-12:00 noon are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

September 14, 1987.

[FR Doc. 87-21662 Filed 9-17-87; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel to the National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Opera-Musical Theater Challenge III Section) to the National Council on the Arts will be held on October 7, 1987, from 9:00 a.m.-5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

September 14, 1987.

[FR Doc. 87-21663 Filed 9-17-87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Standardization of Nuclear Facilities; Meeting

The ACRS Subcommittee on Standardization of Nuclear Facilities will hold a meeting on October 6, 1987, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, October 6, 1987-8:30 A.M. until the conclusion of business

The Subcommittee will review the Staff SER and Chapter I of the EPRI Requirements document.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be

considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff members, Mr. Elpidio Igne or Mr. Herman Alderman (telephone 202/634–1413) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: September 14, 1987

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–21613 Filed 9–17–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Availability of the Draft Integrated Safety Assessment Report; Connecticut Yankee Atomic Power Co. Haddam Neck Plant

The Nuclear Regulatory Commission's (NRC) Office of Nuclear Reactor Regulation has published its Draft Integrated Safety Assessment Report (ISAR) (NUREG–1185) related to the Connecticut Yankee Atomic Power Company's (licensee) Haddam Neck Plant, located in Middlesex County, Connecticut.

The Integrated Safety Assessment Program (ISAP) was initiated by the NRC to conduct integrated assessments for operating reactors to establish integrated implementation schedules. This report documents the review of the Haddam Neck Plant, which is one of two plants being reviewed under the pilot program for ISAP. This report indicates how 82 topics selected for review were addressed and presents the staff's recommendations regarding the corrective actions to resolve the 82 topics and other actions to enhance plant safety. The report is being issued in draft form to obtain comments from the licensee, nuclear safety experts, and the Advisory Committee for Reactor Safeguards. Once those comments have been resolved, the staff will present its positions, along with a long-term implementation schedule from the licensee, in the final version of this report.

A free single copy of draft NUREG–1185, to the extent of supply, may be obtained by writing to the Distribution Section, Document Control Branch, Division of Information Support Service, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Dated at Bethesda, Maryland, this 18th day of August 1987

For the Nuclear Regulatory Commission

Cecil O. Thomas,

Director Integrated Safety Assessment Project Directorate, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 87–21610 Filed 9–17–87; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENT'S COMMISSION ON PRIVATIZATION

Meeting

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Commission on Privatization will be held.

DATE: September 18, 1987, from 11:00 a.m.–1:00 p.m.

ADDRESS: Room 476 of the Old Executive Office Building, 17th and Pennsylvania Avenue, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wiley Horsely, Commission Staff Manager, temporary at the Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, 202/343–3347.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Commission members to be briefed by the Chairman and Administration officials on the purpose and charter of the Commission and the scope of its required activities. The briefing will include a summary and overview of the general opportunities and obstacles confronting the Federal government in extending the scope of privatization. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including committee members). Places will be allocated on a first call, first served basis. All persons who wish to attend the meeting must call 395–6116 by September 18 for clearance into the building.

James C. Miller, III,

Director, Office of Management and Budget.

[FR Doc. 87–21775 Filed 9–17–87; 10:34 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 270–36]

Forms Under Review By Office of Management and Budget Extension of Rule 17f–2(d)

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17f–2(d) (17 CFR 240.17f–2(d)) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*), which generally requires covered entities or their designated examining authorities to keep fingerprint cards (or microfilm copies) together with criminal histories (if any) returned by the FBI to the entities. A total of 9,500 respondents produce an annual total of 8,024 burden hours in complying with Rule 17f–2(d).

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary

September 15, 1987.

[FR Doc. 87–21574 Filed 9–17–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24918; File No. SR–NYSE–87–20]

Self-Regulatory Organizations; Order Granting Partial Accelerated Approval to Proposed Rule Change by the New York Stock Exchange Relating to Amendments to Rule 124 To Modify Pricing Procedures for Standard Odd-Lot Market Orders

The New York Stock Exchange, Inc. ("NYSE") submitted, on July 13, 1987, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934

("Act") [1] and Rule 19b-4 thereunder [2] to amend NYSE Rule 124 to modify its pricing procedures for standard odd-lot market orders. Under current rules, standard odd-lot market orders are executed at a price based on the next NYSE round-lot sale after the order has been received in the system designated to process such orders. The proposal would amend this pricing procedure by permitting standard odd-lot orders to be executed at a price based on the prevailing NYSE quote in the stock at the time the orders reache the system designated to process these orders. Under the proposal, no commission would be charged on standard odd-lot market orders. The proposal would also change the present system for pricing and reporting odd-lot orders from the Automated Pricing and Reporting System (APARS) to the NYSE's Limit System.

On August 27, 1987, the Commission received an amendment to the filing, requesting partial accelerated approval to permit the Exchange to implement, for testing purposes, the new odd-lot pricing system at one Exchange specialist post.[3] The NYSE has stated that such a preliminary testing period needs to be completed prior to the major expansion that will occur, contingent upon Commission approval, within the next few months.

Notice of the proposal was given by the issuance of a Commission release (Securities Exchange Act Release No. 24783, August 7, 1987) and by publication in the **Federal Register** (52 FR 30474, August 14, 1987). No comments were received regarding the proposal.

The Commission has examined carefully the request of the NYSE, and has determined that there is good cause for approving the preliminary portion of the NYSE filing prior to the thirtieth day after the date of publication of the notice. Although the Commission has not made a final determination on all aspects of the NYSE's proposed rule, it is relying on both the satisfactory completion of a pilot program utilizing the proposed odd-lot pricing system for AT&T divestiture issues,[4] and the absence of any negative comments, on that pilot and the current proposal, in permitting the NYSE to commence testing the program prior to the thirtieth day. The Commission finds that the proposal for partial accelerated approval is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in that it should facilitate the execution of odd-lot transactions, should the Commission grant final approval, for the benefit of investors and the public interest. The Commission therefore is approving the implementation of the proposed odd-lot pricing system on the single NYSE post until such time that the Commission reaches a final determination on the entirety of the rule filing.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposal be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 14, 1987.

[FR Doc. 87-21575 Filed 9-17-87; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b).

[2] 17 CFR 240.19b-4 (1986).

[3] *See* letter from Anne E. Allen, Vice President, NYSE, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated August 26, 1987. The letter noted that the Exchange wants first to implement the system for the forty-six securities traded by Agora Securities, Inc., to be followed by implementing the system for that entire post (Post No. 5). This initial phase would encompass 112 stocks, and would be completed prior to full implementation of the system.

See Securities Exchange Act Release No. 20400 (November 18, 1983), 48 FR 53627.

[Release No. IC-15794 (File No. 812-6759)]

Andelsbanken A/S and Andelsbanken Danebank Finance Inc.; Application

Date: September 11, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Andelsbanken A/S ("Bank") and Andelsbanken Danebank Finance Inc. ("Company").

Relevant 1940 Act Sections: Exemption requested pursuant to Section 6(c) from all provisions.

Summary of Application: Applicant seek an order permitting them to issue and sell their respective debt securities in the United States.

Filing Dates: The application was filed on June 12, 1987, and amended on August 26, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on October 1, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Jonathan Birenbaum, Esq., Mudge Rose Guthrie Alexander & Ferdon, 180 Maiden Lane, New York, NY 10038.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272-3033, or Brion R. Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Bank is a Danish commercial bank which at December 31, 1986, ranked as the fifth largest commercial bank in Denmark on the basis of assets. As a commercial bank, it is regulated under the Danish Commercial Banks and Savings Bank Act of 1974, which regulates the capital, use of funds and liquidity of commercial banks in Denmark. The Bank's principal business is the receipt of deposits and the making of loans. The Bank has a long tradition in international banking and plays an active role in the international activities of a growing number of corporate and institutional customers.

2. The Company was incorporated under the laws of the State of Delaware on March 10, 1987. At the time of any issuance of the Company's debt securities, and so long as any such securities are outstanding, the Company will be a directly or indirectly wholly-owned subsidiary of the Bank. The Company's sole business will be the issuance of debt obligations unconditionally guaranteed by the Bank and the distribution of substantially all of the proceeds thereof to the Bank or other directly or indirectly wholly-owned subsidiaries of the Bank. Substantially all the Company's assets will consist of the right to receive repayment from the Bank and such subsidiaries arising from the distribution of such proceeds.

3. Applicants presently propose to issue and offer for sale in the United

States short-term prime quality negotiable promissory notes denominated in United States dollars of the type generally referred to as commercial paper ("Notes"). The Notes will be sold in minimum denominations of $100,000, will have maturities not exceeding nine months, exclusive of days of grace, and will neither be payable on demand prior to maturity nor subject to automatic "rollover". The Notes will be (i) issued directly by the Bank, (ii) issued by the Company and unconditionally guaranteed by the Bank, or (iii) some combination of (i) and (ii).

4. Applicants represent that if the Notes are issued by the Bank, they will be the direct liabilities of the Bank, will rank pari passu among themselves and equally with all deposit liabilities and all other unsecured, unsubordinated indebtedness of the Bank and prior to claims of holders of the Bank's common stock. If the Notes are issued by the Company and guaranteed by the Bank, the Notes will rank pari passu among themselves and equally with all other unsecured, unsubordinated indebtedness of the Company, and prior to the claims of holders of the Company's common stock, and the Bank's guarantee on the Notes will rank equally with all deposit liabilities and all other unsecured, unsubordinated indebtedness of the Bank and prior to the claims of holders of the Bank's common stock. The Bank's guarantee on any Notes issued by the Company will be unconditional and irrevocable and will apply to all amounts due in respect of the Notes. Thus, holders of the Notes could be considered holders of the Bank's debt securities.

5. The terms of the Notes and the use of the proceeds from the sale thereof will qualify the Notes for the exemption from registration afforded by Section 3(a)(3) of the Securities Act of 1933 ("1933 Act"). Applicants will not issue and sell any Notes until receiving an opinion of their special United States legal counsel to the effect that, under the circumstances of the proposed offering, the Notes will be entitled to such exemption. The Applicants do not request SEC review or approval of such counsel's opinion regarding the availability of that exemption.

6. Prior to issuance of the Notes or any other debt securities in the future, the Notes or such other debt securities shall have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and Applicants' special United States legal counsel shall have certified that such a rating has been received; however, no such rating shall be required if, in the opinion of such counsel (having taken into account the doctrine of "integration" referred to in Rule 502 of Regulation D under the 1933 Act and various "no-action" letters made publicly available by the SEC), an exemption from registration is available pursuant to section 4(2) of the 1933 Act.

7. The Notes will be issued and sold to a commercial paper dealer or dealers (each, a "Dealer") in the United States which will reoffer the Notes to investors. The Notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold by each Dealer only to institutional investors and other entities that normally purchase commercial paper.

8. Although not presently intended, Applicants may, from time to time, issue and offer debt securities other than the Notes ("Future Securities") for sale in the United States. Any such offerings would be made only pursuant to a registration statement filed under the 1933 Act, or pursuant to an applicable exemption from such registration provided Applicants have received an opinion of United States legal counsel or a "no-action" letter issued by the staff of the SEC to the effect that the proposed offering may be made pursuant to such exemption. If such securities are registered under the 1933 Act, Applicants will not sell such securities until the registration statement pertaining thereto has been declared effective by the SEC.

9. Prior to issuance of any Notes or Future Securities, the Bank will expressly accept the jurisdiction of any State or Federal court in the Borough of Manhattan in the City and State of New York in respect of any legal proceedings based upon the Notes or Future Securities or the Bank's guarantee thereon, and will also appoint an authorized agent in New York, New York to accept service of process on behalf of the Bank in respect of any such action. Such consent to jurisdiction and such appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due with respect to the Notes or Future Securities have been paid in full.

Applicants' Legal Conclusion

1. Applicants contend that it is impractical and unnecessary to regulate either of them under the 1940 Act. Specifically, Applicants believe that the Bank is clearly engaged in the commercial banking business and not in the business of investing, reinvesting, or trading securities, and that the Company should not be regulated under the 1940 Act because it will serve merely as a financing conduit for the Bank. Accordingly, Applicants submit that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

1. Applicants undertake to ensure that each Dealer will provide each offeree of the Notes in the United States with a memorandum ("Offering Memorandum") briefly describing the business of the Bank, in the case of Notes issued by the Bank, and the business of both the Bank and the Company, in the case of Notes issued by the Company and guaranteed by the Bank. Applicants undertake that each Offering Memorandum will also include the most recent annual audited financial statements of the Bank, together with a brief description of the material differences betwen the Danish accounting principals utilized in the preparation of the Bank's financial statements and generally accepted accounting principles as applied in the United States. Applicants additionally undertake that the Offering Memorandum will be at least as comprehensive as those customarily used in offering commercial paper offerings in the United States and will be updated promptly to reflect material changes in the financial condition of the Applicants.

2. Any offering of Future Securities will be made on the basis of appropriate disclosure documents which are at least as comprehensive as those used in connection with the proposed issuance of the Notes and in no event less comprehensive than those customarily used in offerings of similar securities in the United States.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21572 Filed 9-17-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15977; (812-6803)]

Benham Target Maturities Trust and Capital Preservation Fund, Inc.; Application

Date: September 14, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption and approval under the Investment Company Act of 1940 ("1940 Act").

Applicants: Benham Target Maturities Trust ("Target Fund") and Capital Preservation Fund, Inc. ("Money Market Fund").

Relevant 1940 Act Sections: Exemption requested pursuant to sections 6(c) and 17(b) from the provisions of sections 17(a)(1) and (2) and approval sought under section 17(d) and Rule 17d–1.

Summary of Application: Applicants seek an order to permit the Money Market Fund to sell its shares to, and redeem its shares from, the existing and future series of the Target Fund, and to permit Benham Management Corporation, as adviser to the Money Market Fund and the Target Fund, to effect such purchases and sales of shares of the Money Market Fund by the Target Fund.

Filing Dates: The application was filed on July 24, 1987, and amended on September 1, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC. 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Jeffrey L. Steele, Esq., Dechert Price & Rhoads, 1730 Pennsylvania Avenue NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272–3033, or Brion R. Thompson, Special Counsel (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Target Fund and the Money Market Fund are registerd under the 1940 Act as open-end, diversified, management investment companies. The Target Fund is a series fund currently consisting of six series ("Series"). Applicants' investment adviser is Benham Management Corporation ("BMC"), a wholly-owned subsidiary of Benham Management International. Applicants request that the order sought hereby extend to any subsequently created Series of Applicants and in connection therewith, undertake that such prospective relief will be availed of only upon the terms and conditions set forth in the application.

2. The Money Market Fund invests solely in short-term U.S. Treasury debt securities guaranteed by the direct "full faith and credit" pledge of the United States and is designed as a cash reserve investment vehicle. The Series of the Target Fund invest only in zero-coupon U.S. securities and in U.S. Treasury bills, notes and bonds. The Series of the Target Fund may have relatively small cash reserves emanating from a variety of sources, including interest received on portfolio securities, unsettled or "failed" securities transactions, cash arising from the liquidation of investment securities to meet anticipated redemptions, and new monies received from investors.

3. Applicants state that BMC will be in the best position to know at any given moment the cash reserves held by the Series of the Target Fund, to know the purpose and need for these reserves, and to make and implement decisions with respect to the investment of these reserves. Applicants further state that if the requested order is granted, BMC could immediately invest the Target Fund's uninvested monies into the Money Market Fund while considering the purchase of appropriate portfolio securities for the Series of the Target Fund. Applicants assert that if each Series were required to invest small cash balances directly in U.S. Treasury securities rather than purchasing shares of the Money Market Fund, each Series is likely to be adversely affected by increased transaction costs and reduced and lost investment opportunities. Applicants also state that the securities in which the Target Fund invests are normally unavailable in small lots and that it often proves impractical to invest small cash balances of the Series of the Target Fund.

4. Applicants represents that the proposed transactions will comply with the limitations set forth in section 12(d)(1) and will not result in layering of sales charges, advisory fees or administrative expenses. BMC will receive no additional advisory fee based on the proposed investments in the Money Fund because such investments will be removed from the base upon which the advisory fee for the Target Fund is calculated. Applicants further represent that Benham Financial Services, Inc., Applicants' administrative services company and transfer agent, will receive no additional fee based on the proposed investments in the Money Market Fund because such investments will be removed from the base upon which the administrative fee for the Target Fund is calculated. Applicants also note that the Money Market Fund does not impose a fee pursuant to a Rule 12b–1 plan. Applicants assert that because the Series of the Target Fund retain the freedom to invest cash assets directly in U.S. Treasury securities, there exists an independent check upon the investment of the Target Fund's assets in an investment which produces a non-competitive rate of return. Conversely, the Money Market Fund reserves the right to discontinue selling shares to the Series of the Target Fund if such sales adversely affect its portfolio management and operations.

Applicants' Legal Analysis

1. Applicants request an order pursuant to sections 6(c), 17(b) and 17(d) of the 1940 Act, and Rule 17d–1 thereunder, to permit the Money Market Fund to sell to, and redeem its shares from, the Series of the Target Fund and to permit BMC, as Applicants' investment adviser, to effect such purchases and sales of shares of the Money Market Fund by the Series of the Target Fund. Because the Money Market Fund and the Target Fund have a common investment adviser they may be deemed affiliated persons within the meaning of section 2(a)(3). Therefore, the issuance of Money Market Fund shares to Series of the Target Fund may be deemed a sale of securities to a registered investment company by an affiliated person of such company in violation of section 17(a)(1) of the 1940 Act. Conversely, the redemption by Money Market Fund of its share may be deemed a purchase of securities by a registered investmernt company from an affiliated person thereof, in violation of section 17(a)(2) of the 1940 Act. Finally, pursuant to section 17(d) of the 1940 Act and Rule 17d–1 thereunder, the contemplated transactions may be deemed a joint arrangement requiring prior SEC approval under Rule 17d–1.

2. Applicants submit that the proposed transactions satisfy the section 17(b) standard for exemption from section 17(a). In this regard, Applicants point out that the Money Market Fund will always sell to, and redeem from the Target Fund at net asset value, and all administrative and

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management fees will be waived with respect to transactions involving the Target Fund. Thus, the consideration paid will ve fair and reasonable and no overreaching will occur. Moreover, the proposed affiliated transactions were approved by the Target Fund's shareholders thereby making the proposal consistent with the Target Fund's investment policies. Applicants also submit that the proposed transactions are consistent with the purposes of the 1940 Act.

3. Applicants contend that their proposal provides no basis on which to predict that either Applicant, or Series thereof, would receive greater benefits than another. Applicants represent that the Series will participate in the proposed transactions on the same basis, and thus, that neither Applicant will participate in a transaction on a basis "different from or less advantageous" than that of any other participant. Applicants note that although BMC as adviser, may experience nominal cost savings and administrative convenience, the most significant benefit is the elimination of the need to invest relatively small sums of money in cash instruments. Finally, Applicants contend that no conflict of interest exists between or among the Applicants or the respective Series, and that no inherent bias exists to favor one Applicant or Series thereof over another.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21573 Filed 9-17-87; 8.45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 87-9-35, Docket 40508]

Proposed Revocation of the Section 401 Certificate of Air Atlanta, Inc.

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the certificate of Air Atlanta, Inc., issued under section 401 of the Federal Aviation Act.

DATE: Persons wishing to file objections should do so no later than September 30, 1987.

ADDRESS: Responses should be filed in Docket 40508 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC, 20590, and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Terry, Air Carrier Fitness Division, P-56, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-2343.

Dated: September 15, 1987.

Philip W. Haseltine,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-21651 Filed 9-17-87; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 11, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Supbart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45127

Date Filed: September 8, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 6, 1987.

Description: Application of Pan Am Express, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property and mail.

Doclet No. 45130

Date Filed: September 8, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 6, 1987.

Description: Application of Continental Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, for renewal of its certificate of public convenience and necessity for Route 368 authorizing foreign air transportation of persons, property and mail between Houston, Texas and Acapulco, Mexico.

Docket No. 45131

Date Filed: September 8, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 6, 1987.

Description: Application of Continental Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, for renewal of its certificate of public convenience and necessity for Route 381, authorizing foreign air transportation of persons, property and mail between the coterminal points of New Orleans, Louisiana, Houston and Dallas/Ft. Worth, Texas and the coterminal points of Maracaibo and Caracas, Venezuela.

Docket No. 45134

Date Filed: September 11, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 9, 1987.

Description: Application of Soundair Corporation pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to operate a class 9-2, International, Regular Specific Point, commercial air service to transport persons, goods and mail, using fixed wing aircraft between Toronto, Ontario, Canada, and the co-terminal points of Harrisburg/Allentown, Pennsylvania.

Docket No. 39959

Date Filed: September 11, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 9, 1987.

Description: Application of Hispaniola Airways, C. Por A., pursuant to section 402 of the Act and Subpart Q of the Regulations, requests renewal of its foreign air carrier permit authorizing the carriage of persons, property and mail in foreign air transportation over the following routes: Between Puerta Plata, Dominican Republic and the terminal point, Miami, Florida; Between Puerta Plata, Dominican Republic and the terminal point, San Juan, Puerto Rico; Between Puerta Plata, Dominican Republic and the terminal point, New York, New York.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-21652 Filed 9-17-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Advisory Circular on Circuit Protective Device Accessibility

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) 25.1357–1, and request for comments.

SUMMARY: This notice announces the availability of an requests comments on a proposed advisory circular (AC) pertaining to circuit protective device accessibility. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATE: Comments must be received on or before January 18, 1988.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM–110, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (206) 432–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Commenters should identify AC 25.1357–1 and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

The proposed advisory circular (AC) sets forth two specific methods, either of which is considered to provide an acceptable means of compliance with the accessibility requirement of § 25.1357(d). This requirement provides that the circuit protective device(s) used for the power supply wire(s) for each load (system, subsystem, equipment, component, or part) that is essential to safety in flight be accesible so that the flightcrew can readily restore power following its automatic disconnection during flight. The two methods are provided for guidance purposes and as examples of methods that have been and would be found acceptable. Issued in Seattle Washington, on September 2, 1987.

Leroy A. Keith,

Manger, Aircraft Certification Division, ANM–100.

[FR Doc. 87–21648 Filed 9–17–87; 8:45 am]

BILLING CODE 4910–13–M

Approval of Noise Compatibility Program Revision; Hartsfield Atlanta International Airport, Atlanta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA announces its findings on the noise compatibility program revision submitted by the City of Atlanta under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of federal and non-Federal responsibilities in Senate Report No. 96–52 (1980). On October 16, 1984, the FAA determined that the noise exposure maps submitted by the City of Atlanta under Part 150 were in compliance with applicable requirements. On April 10, 1985, the Administrator approved the Hartsfield Atlanta International Airport noise compatibility program, and on June 25, 1987, the Administrator approved a revision to the noise compatibility program. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator in the original or revised noise compatibility program.

EFFECTIVE DATE: The effective date of the FAA's approval of the Hartsfield Atlanta International Airport noise compatibility program revision is June 25, 1987.

FOR FURTHER INFORMATION CONTACT: Charles V. Prouty, Program Manager, Atlanta Airports District Office, Suite 310, 3420 Norman Berry Drive, Hapeville, Georgia 30354, telephone (404) 763–7631. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program revision for Hartsfield Atlanta International Airport, effective June 25, 1987.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties, including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with the Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program, including revisions, was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of the airport noise compatibility program, including revisions, are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise

compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Atlanta, Georgia.

The City of Atlanta submitted to the FAA on June 19, 1984, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from 1982 through 1984. The Hartsfield Atlanta International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on October 16, 1984. Notice of this determination was published in the **Federal Register** on October 29, 1984.

The revised Hartsfield Atlanta International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1987 and beyond. It was requested that the FAA evaluate and approve this material as a noise compatibility program revision as described in section 104(b) of the Act. The FAA began its review of the program revision on January 14, 1987, and was required by a provision of the Act to approve or disapprove the program revision within 180 days other than the use of new flight procedures for noise control. Failure to approve or disapprove such program revision within the 180-day period shall be deemed to be an approval of such revision.

The submitted program contained five proposed actions for noise mitigation, three of which were changed by the proposed program revision. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program revision, therefore, was approved by the Administrator effective June 25, 1987.

Outright approval was granted for all proposed revisions to the specific program elements.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on June 25, 1987. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Commissioner of Aviation, Hartsfield Atlanta International Airport.

Issued in Atlanta, Georgia, September 4, 1987.

Samuel F. Austin,

Manager, Atlanta Airports District Office.

[FR Doc. 87-21639 Filed 9-17-87; 8:45 am]

BILLING CODE 4910-13-M

Closing of Flight Service Station at Needles, CA

Notice is hereby given on or about August 28, 1987, the Flight Service Station at Needles, California, will be closed. Services to the general aviation public of Needles, formerly provided by this office, will be provided by the Flight Service Station in Riverside, California. This information will be reflected in the reissuance of the FAA Organization Statement.

Issued in Lawndale, California, on August 26, 1987.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Arlene B. Feldman,

Acting Director, Western-Pacific Region.

[FR Doc. 87-21649 Filed 9-17-87; 8:45 am]

BILLING CODE 4910-3-M

[Summary Notice No. PE-87-214]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: October 8, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on September 10, 1987.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25344	General Electric	14 CFR 145.73	To allow petitioner to perform maintenance, preventive maintenance and alterations on components of CF6-6, CF6-50, CF6-80, and CFM56 engines utilized in U.S.-registered aircraft without regard to the geographic scope of their operations.
25314	Basler Flight Service, Inc	14 CFR 121.343, 121.359, and 121.360	To allow petitioner to operate turbine-engine-powered DC-3 cargo aircraft without the equipment required by these regulations. *Denied, September 1, 1987.*

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
15590	Embry-Riddle Aeronautical University	14 CFR Part 141, Appendices A, C, D, F, and H.	To allow petitioner to continue to graduate students after they have been trained to a performance standard instead of requiring minimum total flight time. This exemption does not allow reduction of the maximum solo cross-country flight time of Part 141. *Granted, August 31, 1987.*
12638	Air Transport Association of America	14 CFR 121.99 and 121.351(a)	To allow petitioner to operate turbojet airplanes on certain routes between certain New York oceanic control area reporting points and San Juan, Puerto Rico, with one of two installed high frequency communications systems inoperative at the time of departure and without maintaining two-way radio communications between each airplane and dispatch office along the named routes, subject to certain conditions. *Granted, August 27, 1987.*
25122	Wings West Airlines, Inc	14 CFR 135.181(a)(2)	To allow petitioner to operate its Swearingen SA 227AC Metro III airplanes under instrument flight rules or visual flight rules over the top and permit an alternate means of compliance with the performance requirements and the use of procedures for compliance with the en route limitations. *Granted, September 2, 1987.*
24819	United Airlines	14 CFR Part 121, Appendix H	To allow petitioner the continued use of its Interim Simulator Upgrade Plan to permit Phase II training and checking in a Phase I L-1011-500 simulator under an approved Phase IIA training program and to extend the termination date of United Airlines Interim Simulator Upgrade Plan to December 31, 1987. *Rescinded, September 2, 1987.*

[FR Doc. 87-21647 Filed 9-17-87; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 80-9; Notice 2]

Request for Comments on Use of Reflective Material for Increasing the Conspicuity of Large Trucks

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of request for comments.

SUMMARY: This notice requests comments concerning the use of reflective material to increase the conspicuity of large trucks and trailers. Numerous studies have shown that there may be a potential for reduction in the frequency with which other vehicles crash into large articulated trucks following treatment of the trucks with retroreflective material. The National Highway Traffic Safety Administration (NHTSA) has recently completed a fleet study in which large articulated trucks were treated with retroreflective material in a manner designed to increase their conspicuity. The conclusion reached by the contractor was that trailers equipped with this material were involved in approximately 15% fewer road crashes (significant at p. .09). However, the results obtained are of course sensitive to which crashes are considered relevant, their number, and the statistical methods used to evaluate the data, etc. NHTSA is seeking comments relative to these issues as they pertain to the research results (Docket No. 80-9; Notice 2), as well as obtaining information regarding the experiences of others with the use of reflective conspicuity enhancements. Of particular interest are comments concerning benefits, longevity, and any installation and maintenance problems associated with the use of relfective materials on large articulated trucks. The agency seeks comments from the trucking industry, truck and trailer manufacturers, and other interested persons, including the general public, on these issues as well as on any related issues commentors may choose to provide.

DATE: Closing date for comments is November 9, 1987.

ADDRESS: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, (Docket hours are from 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Mark Edwards, Office of Crash Avoidance Research, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202-366-5677).

SUPPLEMENTARY INFORMATION: In May, 1980, NHTSA issued an advance notice of proposed rulemaking (NPRM) to amend Federal Motor Vehicle Safety Standard No. 108. The objective of the proceeding was to improve the noticeability of large articulated trucks through the use of enhanced markings and/or lights as a means of reducing their involvement in crashes where the trailer unit was struck in the rear or side (45 FR 35405; May 27, 1980). Of particular interst to NHTSA was the potential utility of reflective material as a means of enhancing truck conspicuity.

A central theme expressed among the comments to the ANPRM was the need to undertake a systematic approach to the development of an integrated set of large truck lighting, signaling, and marking requirements rather than merely to modify existing requirements to require additional devices without any assessment of their utility given existing lighting/marking regulations.

Shortly before the ANPRM was issued, NHTSA had initiated a three phase research project the objective of which was to develop and evaluate an optimal configuration of trailer markings and lights. NHTSA's desire to undertake improvements in the lighting and marking requirements for large combination unit trucks was based largely on the results of several studies of large truck crashes, all of which found that in many of these crashes the driver of the other vehicle did not appear to detect the presence of the large truck in time to avoid a collision. On the basis of these findings it was concluded that improvements in the conspicuity of these vehicles might reduce the frequency with which they were involved in these types of crashes.

The initial phase of this project consisted of a review of available literature and accident data, the results of which indicated that crashes wherein conspicuity of the truck might conceivably be a factor were about equall distributed between day and night, and involved collisions with both the sides and rear of the trailer. Subsequent to these findings, a series of laboratory and field studies was initiated to devise a means of marking large tractor-trailers so as to improve drivers' abilities to:

(1) Quickly and accurately identify large trucks in the traffic stream.

(2) Estimate their distance from large trucks.

(3) Judge their rate of closure.

The most effective marking scheme identified in these studies consisted of a strip of alternating colors outlining the side and rear perimeters of the trailer.

A fleet test of a variation of this marking scheme was initiated to establish the safety benefits of this approach to enhancing large truck conspicuity. This marking scheme consisted of a 2-inch wide strip of retroreflective tape alternately hatched red and white, or blue and white, outlining the lower side rail and rear perimeter of the trailer. A total of 3,820 trailers chosen at random from the fleets of participating trucking firms was involved in the fleet study. Half were marked with the experimental conspicuity treatment, half were not. During the 23 month evaluation period, each group accumulated over 106 million trailer miles of travel. The reported results of this fleet test indicated a reduction of approximately 15% (significant at p .09) in crashes considered relevant by the contractor performing this study. However, it is evident that which crashes are deemed relevant to conspicuity treatment significantly affect the overall results, and the conclusions derived from those results. In addition, the number of accidents considered necessary for determining effectiveness and the statistical methods used to analyze study data must be considered. Therefore, the agency is soliciting opinions from outside persons on their evaluation of these aspects of the study. To make such evaluations feasible, a version of the contractor's data base is being placed in Docket No. 80–9; Notice 2.

Final reports for Phases I and II are referenced in Docket No. 80–9; Notice 2 and can be reviewed in NHTSA Technical Reference Division, Room 5108, Nassif Building. A final report of the fleet test phase of this project (Contract No. DTNH22–80–C–07034) will be referenced in the same docket in September of 1987. NHTSA seeks comments on each of these reports as well as comments regarding the experiences of others with the use of reflective conspicuity enhancements. Of particular interest are comments concerning benefits, longevity, and any installation and maintenance problems associated with the use of reflective materials on large articulated trucks. The agency seeks comments from the trucking industry, truck and trailer manufacturers, and other interested persons, including the general public, on these issues as well as any on related issues commentors may choose to provide.

Findings from other evaluations of conspicuity enhancements also indicate reduced crash experience for treated vehicles. While not all of these studies meet accepted prerequisites for scientifically valid evaluations, all concluded that conspicuity enhancement reduces crash involvement. Among these are studies by the Greyhound Bus Lines, U.S. Army, U.S. Post Office, and the Toronto Transit Authority. Summaries of these and other studies are presented in SAE Paper 830566, and the 28th Annual Proceedings, American Association of Automotive Medicine, October 8–10, 1984, Denver, Colorado, PP 63–68. Copies of both documents are available in the docket.

NHTSA believes that there continue to be questions which must be answered before decisions on whether to proceed with rulemaking can be made. To this end NHTSA is considering additional research in this area, and would appreciate any data or information on the following:

Brightness—How "bright" must this material be to improve conspicuity? At present reflective materials can be made with such high reflectivity that they may create discomfort or disabling glare.

Viewing Angle—At what angles of view should conspicuity markings remain reflective? Presently available materials vary widely in this characteristic, some remaining effective only through relatively small viewing angles.

Colors—What consideration should be given to color?

Reflective Logos—Should reflective conspicuity treatments accommodate reflective logos and other reflective markings used in the trucking industry?

Trailer Types—What patterns are best for trailer types other than vans? Only markings for vans were addressed in NHTSA's sponsored study of large truck conspicuity enhancements. While this trailer type represents the vast majority of trailers, conspicuity markings could be cost beneficial for other trailer types such as tankers, flat beds, and auto carriers.

NHTSA is interested in obtaining comments as to:

1. The NHTSA research conducted to date as described in the three reports DOT–HS–806–100, DOT–HS–806–098, and DOT–HS–806–923, included in Docket No. 80–9; Notice 1.

2. Additional data regarding reflective conspicuity treatments, including fleet or individual experience. In particular, NHTSA is interested in obtaining crash data or other documented experience which could be used to assess the potential benefits and/or problems associated with using this approach to increasing truck conspicuity.

3. The general public's opinion of this approach to improving large truck conspicuity.

4. Manufacturer's data and actual field experience with the longevity of reflective conspicuity treatments in regards to any changes in its photometric properties, maintenance problems, and durability.

5. Potential benefits and disbenefits of using this material to increase the conspicuity of large trucks.

Interested persons are invited to submit comments in response to this request. It is requested, but not required, that 10 copies be submitted.

All comments must be limited to no more than 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, included purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business regulation, 49 CFR Part 512.

All comments submitted before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, agency decision making may proceed at any time after that date and comments received after the closing date and too late for consideration in regard to the action will be treated as suggetions for future rulemaking. NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: Sections 103, 119 Pub. L. 89-563,80 Stat. 718 (15 U.S.C. 1381 *et seq*); Delegations of Autority at 49 CFR 1.50 and 501.8.

Issued on: September 15, 1987.

Michael M. Finkelstein,

Associate Administrator for Research and Development.

[FR Doc. 87-21650 Filed 9-17-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 14, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 1120-RIC
Type of Review: Resubmission
Title: U.S. Income Tax Return for Regulated Investment Companies
Description: Form 1120-RIC is filed by a domestic corporation electing to be taxed as a RIC in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120-RIC to determine whether the RIC has correctly reported its income, deductions, and tax liability.
Respondents: Businesses or other for-profit
Estimated Burden: 12,906 hours

OMB Number: 1545-0687
Form Number: 990-T
Type of Review: Resubmission
Title: Exempt Organization Business Income Tax Return
Description: Form 990-T is needed to compute the section 511 tax on unrelated business income of a charitable organization. IRS uses the information to enforce the tax.
Respondents: Non-profit institutions
Estimated Burden: 293,897 hours

Clearance Officer: Garrick Shear (202) 535-4297, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-21563 Filed 9-17-87; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 15, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0002
Form Number: ATF F 1600.7
Type of Review: Extension
Title: ATF Distribution Center Contractor Survey
Description: Information provided on ATF Form 1600.7 is used to evaluate the Bureau's Distribution Center contractor and the services it provides to users of ATF forms and publications.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 2 hours

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

U.S. Customs Service

OMB Number: 1515-0120
Form Number: None
Type of Review: Reinstatement
Title: Commercial Invoice
Description: The information on the commercial invoice is used for the proper assessment of Customs Duties. The invoice is attached to the CF 7501. It is used to assure compliance with statutes and regulations.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 14,847 hours
OMB Number: 1515-0134
Form Number: None
Type of Review: Reinstatement
Title: Bonded Warehouses—Alterations, Suspensions, Relocations and Discontinuance
Description: The proprietor of a bonded warehouse may wish to alter, relocate, temporarily suspend all or part of the bonded space, or discontinue the bonded status of the warehouse. The district director may approve these changes upon receipt of a written application by the proprietor.
Respondents: Businesses of other for-profit
Estimated Burden: 193 hours.
OMB Number: 1515-0135
Form Number: None
Type of Review: Reinstatement
Title: Required Records for Smelting and Refining Warehouses
Description: Each manufacturer engaged in smelting or refining must file an annual statement with the Regional Director, Regulatory Audit, showing any material change in the character of the metal-bearing materials smelted or refined, or changes in the method of smelting or refining. Also, the records must show the receipt and disposition of each shipment and any losses incurred.
Respondents: Businesses or other for-profit
Estimated Burden: 288 hours

Clearance Officer: B.J. Simpson (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW, Washington, DC 20229

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC. 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-21564 Filed 9-17-87; 8:45 am]

BILLING CODE 4810-25-M

Establishment of Office of Depreciation Analysis

The Department of the Treasury today announced the establishment of a new Office of Depreciation Analysis as part of the Office of Tax Analysis. The function of this new office, creation of which was mandated by the Tax Reform Act of 1986, is to study the anticipated declines in value and the anticipated

BEST COPY AVAILABLE

useful lives of depreciable assets. Using criteria set forth in the Tax Reform Act of 1986, the office will report to the Assistant Secretary for Tax Policy the appropriate class lives of various asset groups. The Office of Depreciation Analysis will also study the classification of existing asset groupings and existing Asset Depreciation Range (ADR) class lives.

The data needed for the asset depreciation studies include information on asset holdings and dispositions, the original cost and the price received on the sale of used assets, the terms of leasing and financing transactions, and the depreciation methods used for financial reporting purposes. Persons wishing to contact the Office of Depreciation Analysis regarding these studies should write to: Office of Depreciation Analysis, Room 4217, Department of the Treasury, 15th & Pennsylvania Avenue, NW., Washington, DC 20220.

O. Donaldson Chapoton,

Acting Assistant Secretary (Tax Policy).

September 14, 1987.

[FR Doc. 87-21631 Filed 9-17-87; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 14, 1987.

By direction of the Administrator.

Raymond S. Blunt,

Director, Office of Program Analysis and Evaluation.

Extension

1. Department of Veterans Benefits
2. Request for Change of Program or Place of Training, Survivors' and Dependents' Educational Assistance
3. VA Form 22-5495
4. This information is completed by a veteran's spouse, surviving spouse, or child to determine if the student is eligible for dependents' educational assistance for the new program and/or place of training.
5. On occasion
6. Individuals or households
7. 9,600 responses
8. 3,200 hours
9. Not applicable

1. Department of Veterans Benefits
2. Request for Armed Forces Separation Records
3. VA Form Letter 21-80e
4. This information is necessary to determine veteran's eligibility for benefits.
5. On occasion
6. Individuals or households
7. 102,000 responses
8. 17,000 hours
9. Not applicable

1. Department of Veterans Benefits
2. Claim for Monthly Payment, United States Government Life Insurance
3. VA Form Letter 29-4125k
4. This information is necessary to determine the beneficiary's eligibility for monthly payments of life insurance benefits.
5. On occasion
6. Individuals or households
7. 5,700 responses
8. 1,425 hours
9. Not applicable

[FR Doc. 87-21566 Filed 9-17-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 181
Friday, September 18, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (Eastern time) Tuesday, September 29, 1987.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Building, 2401 E Street, NW., Washington, DC 20507.

STATUS: Part of the meeting will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed section 630 of Volume II of EEOC's Compliance Manual, Unions
4. Pre-Complaint Processing and Complaint Processing for Fiscal Year 1986
5. Annual Report on the Employment of Minorities, Women and Individuals with Handicaps in the Federal Government for Fiscal Year 1986
6. Designation of Field Offices for 1987

Closed Session

Litigation Authorizations: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.

Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Acting Executive officer on (202) 634-6748.

Date: September 15, 1987.

Cynthia Clark Matthews,

Executive Officer (Acting), Executive Secretariat.

[FR Doc. 87-21632 Filed 9-15-87; 4:22 pm]

BILLING CODE 6750-06-M

FARM CREDIT ADMINISTRATION

Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 22, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Kirby, Acting Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Farm Credit Administration Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

1. Summary Prior Approval Items
2. Final Regulations: Part 606—Handicapped Regulations
3. Directive on the Retirement of Stock
*4. Compensation Approval of CEO Salary for Farm Credit System Bank
**5. Examination and Enforcement Matters
***6. Legislative Review and Update

*Session closed to the public—exempt pursuant to 5 U.S.C. § 552b(c)(6)(8).

**Session closed to the public-exempt pursuant to 5 U.S.C. § 552b(c) (4), (8) and (9).

***Session closed to the public—xempt pursuant to 5 U.S.C. § 552b(c)(9).

Dated: September 16, 1987.

Elizabeth A. Kirby,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 87-21710 Filed 9-16-87; 3:01 pm]

BILLING CODE 6705-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, September 24, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on September 14, 1987.)
2. Personnel actions (appointments, promotions, assignments reassignments, and salary actions) involving inidividual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: September 16, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-21724 Filed 9-16-87; 3:55 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 52, No. 181
Friday, September 18, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 87-077]

Imported Fire Ant Regulated Areas

Correction

In rule document 87-20078 beginning on page 32907 in the issue of Tuesday, September 1, 1987, make the following corrections:

1. On page 32908, in the third column, in the first line, "*Etowah*" should read "*Etawah*".

2. On page 32909 in the first column, in the sixth line, "*Quachita* should read "*Ouachita*".

3. On page 32910, in the first column, in the 18th line, "*Oktibeha* should read "*Oktibbeha*".

4. On page 32912, in the first column, in the fifth line, "Ranch 965" should read "Ranch Road 965".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93 and 99

[Docket No. 86-073]

Importation of Elephants, Hippopotami, Rhinoceroses, and Tapirs

Correction

In rule document 87-18125 beginning on page 29498 in the issue of Monday, August 10, 1987, make the following corrections:

1. On page 29499, in the first column, in the first complete paragraph, in the sixth line from the bottom, "must be" should read "must not be".

2. On page 29500—

a. In the first column, in the 24th line, "or, a" should read "or, on a".

b. In the second column, in the first complete paragraph, in the fourth line, "§ 93.2(b)(5)(ii)" should read "§ 93.6(b)(5)(ii)".

c. In the third column, in the second complete paragraph, in the 12th line, "§ 93.(b)(2)" should read "§ 93.6(b)(2)".

PART 93—[CORRECTED]

§ 93.4 [Corrected]

3. On page 29503, in the first column, in § 93.4(a)(4), in the ninth line, "Service" should read "Services,".

§ 93.5 [Corrected]

4. On page 29503, in the first column, in § 93.5, in the third line, "of the" should read "or the".

§ 93.8 [Corrected]

5. On page 29504, in the second column, in § 93.8(a)(1)(ii), in the third line, "physical" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Modification No. 1 to Permit No. 552]

Marine Mammals; Permit Modification; Dr. Gerald L. Kooyman

Correction

In notice document 87-18194 appearing on page 29715 in the issue of Tuesday, August 11, 1987, make the following corrections in the second column:

1. In paragraph 3., in the third line "adopt" should read "adapt".

2. In paragraph 8.a., in the second line "unreasonable" should read "unreleasable".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-62035F; FRL 3217-1]

Polychlorinated Biphenyls in Electrical Transformers

Correction

In proposed rule document 87-19198 beginning on page 31738 in the issue of Friday, August 21, 1987, make the following corrections:

PART 761—[CORRECTED]

§ 761.30 [Corrected]

On page 31746—

1. In the second column, in § 761.30(a)(1)(iv)(A), in the 10th line, "paragraph (a)(l)(v)" should read "paragraph (a)(1)(v)".

2. In the third column, in § 761.30(a)(1)(iv)(B), in the eighth line, "paragraph (a)(l)(iv)(A)" should read "paragraph (a)(1)(iv)(A)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 412, 413, and 466

[BERC-400-F]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1988 Rates

Correction

In rule document 87-19988 beginning on page 33034 in the issue of Tuesday, September 1, 1987, make the following corrections:

§ 412.113 [Corrected]

1. On page 33058, in the first column, in the amendatory instruction concerning § 412.113, in the third line, "of the cost" should read "of a cost".

§ 412.208 [Corrected]

2. On page 33059, in § 412.208(h)(2)(i), in the first column, in the fourth line, "an urban area" should read "a rural area".

Table 4a [Corrected]

3. In Table 4a, on page 33096, in the first column, in the entry for "Chattanooga, TN-GA", the wage index was omitted and should read "0.9165".

BILLING CODE 1505-01-D

Federal Register

Friday
September 18, 1987

Part II

Department of Health and Human Services

Health Resources and Services Administration

Council on Graduate Medical Education; Public Hearing; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education; Public Hearing

AGENCY: Health Resources and Services Administration .

ACTION: Notice of public hearing, Council on Graduate Medical Education.

TIME AND DATE: 9:00 a.m to 5:00 p.m.; November 19, 1987, and if necessary November 20.

PLACE: Hyatt Regency-Bethesda, One Bethesda Metro Center, Bethesda, Maryland.

SUPPLEMENTARY INFORMATION: The Council is required by statute to provide advice and make recommendations to the Secretary of the Department of Health and Human Services, the Senate Labor and Human Resources and Finance Committees, and the House Energy and Commerce and Ways and Means Committees with respect to:

(A) The supply and distribution of physicians in the United States;

(B) Current and future shortages or excesses of physicians in medical and surgical specialties and subspecialties;

(C) Issues relating to foreign medical school graduates;

(D) Appropriate Federal policies with respect to the matters specified above, including policies concerning changes in the financing of undergraduate and graduate medical education programs and changes in the types of medical education training in graduate medical education programs;

(E) Appropriate efforts to be carried out by hospitals, schools of medicine, schools of osteopathy, and accrediting bodies with respect to the matters specified in (A), (B) and (C), including efforts for changes in undergraduate and graduate medical education programs; and

(F) Deficiencies in, and needs for improvements in, existing data bases concerning the supply, distribution of, and post-graduate training programs for, physicians in the U.S. and steps that should be taken to eliminate those deficiencies.

The Council also is required to encourage entities providing graduate medical education to conduct activities to voluntarily achieve the recommendations of the Council.

The Council has been established for a 10-year period, with its first report due no later than July 1, 1988.

To facilitate its work, the Council established three subcommittees: Physician Manpower; Foreign Medical Graduates; and Graduate Medical Education Programs and Financing. Each of these subcommittees, in turn, developed a list of issues to guide its deliberations both for the short term as well as for subsequent reports. These issues, which were collectively reviewed and approved by the Council meeting in plenary session on June 30, 1987, are listed at the end of this announcement.

The testimony offered at the Public Hearing should concentrate on this list of issues, with particular attention given to those issues that are asterisked. The asterisked items represent issues which Council members have identified as priority matters for the Council's first report. (Note: At the same time, this Hearing is not meant to preclude any organizations/individuals from providing testimony on non-asterisked issues or on any issues not listed in this notice that are believed to be related to the statutory charge of the Council.)

The Hearing is viewed by the Council as an opportunity to obtain a broad span of views concerning these issues. For example, the Foreign Medical Education Subcommittee has had panel presentations regarding the issue of whether there are different obligations to U.S. citizen FMGs than to non-citizen FMGs regarding opportunities for graduate medical education, as well as the issue of whether there is a need for formal recognition of foreign medical schools. The Hearing provides an opportunity to solicit additional views on such matters.

The Physician Manpower Subcommittee, for example, has already been in contact with a number of professional medical specialty organizations regarding their views on the adequacy of physician supply by specialty. The Hearing provides an opportunity to solicit views on this matter from other organizations and individuals. (Note: At the same time, this Hearing is not meant to preclude any organizations/individuals that have already addressed the Council from providing testimony as part of the Hearing process.)

The Graduate Medical Education Programs and Financing Subcommittee, for example, has had extensive discussions regarding such matters as: what are the costs of graduate medical education; who are the beneficiaries; who should bear the responsibility for its financing; whether it is desirable to increase the emphasis on teaching in non-inpatient settings, and, if so, how should medical education be financed in ambulatory or other non-inpatient settings. The Hearing provides an added opportunity to obtain additional views and proposals that address these matters.

Those wishing to testify should contact Mr. Paul M. Schwab, Executive Secretary of the Council, no later than October 15, 1987, either by telephone at 301/443–2033 or by writing to Mr. Paul M. Schwab, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, 5600 Fishers Lane, Room 14–05, Rockville, Maryland 20857. Organizations and individuals are encouraged to provide any studies, reports, or data that could be referenced in support of the testimony. Once final arrangements have been made, those persons or organizations who expressed a desire to testify will be notified of the time limitations and other procedures which will apply to the Hearing. For example, there may be a limitation placed on the number of people testifying on behalf of any one organization. In the event that the number of those interested in personally testifying exceeds the number of individuals/organizations that can be accommodated on November 19 and 20, preference will be given to the order of written requests to testify received, beginning with requests postmarked September 21. Written testimony pertinent to the issues being considered at the Hearing may be submitted to Mr. Schwab at the above address by persons unable to attend.

List of COGME Issues

A. Physician Manpower

*1. Assuming a continuation of current policies and present trends, what conclusions can be drawn about the adequacy of the expected supply of physicians over the next two decades?

*a. in the aggregate?

*b. primary care physicians?

c. by specialty?

2. What conclusions can be drawn about the effects of new technologies, scientific breakthroughs, new diseases, and demographic changes on the demand for physician manpower? Furthermore, what conclusions can be drawn about the effects of changes in the areas of geriatrics and long-term care on the demand for physician manpower?

3. What conclusions can be drawn about the impact of the cost of medical education on the number of qualified students seeking such an education, particularly those from underrepresented groups?

*4. What policy changes in the public and private sectors are recommended to

deal with any projected imbalances in the physician supply? What is the relative role of marketplace versus other initiatives to remedy these imbalances?

*5. What impact will these recommendations have on:

a. the quality of health care?

b. health care costs?

c. access to health care?

d. minority representation in the medical profession?

e. physician function?

6. To what extent can the goals of quality, affordability, and accessibility of health care be achieved by substituting non-physician providers for physicians?

7. Is it desirable to create a buffer to avoid rapid swings in physician supply imbalances? If so, how can this be achieved?

8. To what extent can the above issues be addressed and resolved in time for the first report, given the adequacy of studies and data presently/potentially available for the Physician Manpower Subcommittee to draw conclusions and make recommendations about the adequacy of the expected supply of physicians?

B. Foreign Medical Graduates

*1. What effect will the removal (abrupt or phased) of FMGs from hospital training have on the availability of hospital-based services? What policies should be implemented if short-term effects are disproportionately distributed among hospitals and/or specialties?

2. What effect will there be on the total number, specialty and geographic distribution of practicing M.D.'s if the number of FMG entrants decline?

*3. Are there different obligations to U.S. citizen FMGs (born and naturalized) than to non-U.S. citizen FMGs (permanent residents, refugees, and international visitors) regarding opportunities for graduate medical education?

4. Is there a need for a different financing system for FMGs in GME than for graduates of U.S. medical schools?

*5. Should the United States continue to provide specialty training for international exchange visitors who will return to their native country to practice? If so, should existing graduate medical education training be modified with opportunities for other models of training/assistance?

*6. Should additional mechanisms for evaluating FMGs prior to their entry into graduate medical education be established?

*7. Is there a need for formal recognition of foreign medical schools? If so, how should this be accomplished?

8. Are there quality of care issues specific to FMGs which require attention?

9. Are there other graduate medical education training program issues specific to FMGs which require attention?

C. Graduate Medical Education Programs and Financing

*1. What should be paid for in graduate medical education?

a. How should direct graduate medical education costs be financed?

b. How should the financing of faculty be handled?

c. What should be incorporated into indirect teaching adjustments?

*2. What are appropriate sources for financing graduate medical education? Should the Federal Government fund graduate medical education? If so, how and to what degree?

3. Should graduate medical education costs be separately identified at all, or should they be integrated into payment for services?

*4. How should funding for graduate medical education be channeled? To hospitals, ambulatory care settings, practice groups, residents, etc.?

5. How should funding of graduate medical education costs for foreign medical graduates be handled? How should funding of graduate medical education costs for international exchange visitors be handled?

*6. If it is desirable to increase the emphasis on teaching in non-inpatient settings, how should medical education be financed in ambulatory or other non-inpatient settings?

a. What can be done in graduate and undergraduate medical education to provide incentives and eliminate barriers to increased teaching in non-patient settings?

b. What is the role of the public versus the private sector in achieving these objectives? What steps should be taken by academic health centers?

7. What choices should be made in regard to numbers of years of residency training? Who should make the choices and how should they be made?

8. Should the numbers and types of physicians trained be largely guided by the health care delivery needs of individual facilities, or by national manpower considerations?

*9. What is the relationship between the delivery of health care for the poor and graduate medical education?

FOR ADDITIONAL INFORMATION CONTACT: Paul M. Schwab, Health Resources and Services Administration, Executive Secretary, Council on Graduate Medical Education, 301/443–2033.

Date: September 10, 1987.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 87–21282 Filed 9–17–87; 8:45 am]

BILLING CODE 4160–15–M

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Federal Register

Friday
September 18, 1987

Part III

Department of Energy

10 CFR Part 961

Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste; Final Rule

VOL 52 ISS 181 SE 18 1987 UMI

DEPARTMENT OF ENERGY

10 CFR Part 961

Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This rule amends the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste (standard disposal contract) originally published by the Department of Energy (DOE) on April 18, 1983, to be used by DOE in furnishing disposal services to the owners or generators of nuclear fuel and/or high-level radioactive waste (48 FR 16590). This rule modifies Article I.13, Articles VIII.A.1. and B.1., and Appendix G of the standard disposal contract in conformance with the December 6, 1985 ruling of the United States Court of Appeals for the District of Columbia that the ongoing 1.0 mill per kilowatt hour (1M/KWH) fee in DOE's standard disposal contract should be based on net generation of electricity, rather than gross generation of electricity as adopted in the final rule (*Wisconsin Electric Power Co. v. Dept. of Energy*, 778 F.2d 1 (D.C. Cir. 1985)).

EFFECTIVE DATE: April 7, 1983.

FOR FURTHER INFORMATION CONTACT:

Alan B. Brownstein, Office of Civilian Radioactive Waste Management, Department of Energy, 1000 Independence Avenue SW., Room GB–270, Washington, DC 20585, (202) 586–1652

Christopher T. Jedrey, Office of Procurement Operations, Department of Energy, 1000 Independence Avenue SW., Room 1J–027, Washington, DC 20585, (202) 586–1009

Robert Mussler, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A–113, Washington, DC 20585, (202) 586–6947

SUPPLEMENTARY INFORMATION:

I. Background
II. Comments
A. Areas of Primary Interest
B. Sectional Analysis of Public Comments
1. Article I—Definitions
a. Treatment of Transmission and Distribution Losses
b. Conventional Definition of Net Generation
2. Annex A to Appendix G
a. Clarification of "At All Times"
b. Deductions for "Out-of-Service" Periods
c. Certification Requirements and Metering Equipment
d. Non-Collocated Nuclear Stations
e. Other Modifications
C. Additional Public Comments and Modifications
III. Final Rule
IV. Procedural Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
C. National Environmental Policy Act
D. Paperwork Reduction Act

I. Background

The Nuclear Waste Policy Act of 1982, enacted on January 7, 1983 (hereinafter referred to as "the Act," Pub. L. 97–425, 96 Stat. 2201 (42 U.S.C. 10101 et seq.)), provides a comprehensive framework for disposing of commercial spent nuclear fuel (SNF) and high-level radioactive waste (HLW) of domestic origin. Section 302 of the Act requires DOE and each owner or generator (hereinafter referred to as "utility" or "purchaser") of SNF and/or HLW to execute, by June 30, 1983, a standard disposal contract under which DOE will accept and dispose of such material.

On April 18, 1983, DOE published its final rule (48 FR 16590) which established the standard disposal contract. Article I.13 defined "kilowatt hours generated" as "electricity generated by nuclear fuel at a civilian nuclear power reactor specified in Appendix A hereto as measured at the output terminals of the turbine generator, including an equivalent amount of electricity for any process heat generated by the reactor and used other than at the reactor" [gross generation].[1] Article VIII.A.1 and B.1 used this definition as a basis for calculating the ongoing 1M/KWH fee.

By its decision on December 6, 1985 (*Wisconsin Electric Power Co. v. Dept. of Energy*, 778 F.2d (D.C. Cir. 1985)), the United States Court of Appeals for the District of Columbia held that the definition in the standard disposal contract of "kilowatt hours generated" was invalid, in part, on the ground that section 302(a)(2) of the Act meant to establish disposal charges based on electricity "generated * * * and sold," i.e., "net" generation. The issue before the Court was whether the " * * * fee levied on nuclear generation of electricity applies to all nuclear-generated electricity (gross generation) or, instead, only to that nuclear-generated electricity which is sold by utilities, thus excluding electricity that the generating plant itself consumes (net generation)." Id. at 2. The Court held that "generated * * * and sold" excluded electricity which the generating plant itself consumes.

On November 7, 1986, DOE published its proposed rule [51 FR 40684] which was intended to amend the standard disposal contract consistent with the Court's ruling. This final rule implements the Court's decision.

[1] Definition as corrected on May 24, 1983 (48 FR 23160)

II. Comments

Written comments on the proposed rule were received from a total of 17 organizations representing nuclear power companies and an electric power association (whose members include nuclear power utilities). Copies of all comments received are available in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC.

All comments received by DOE in response to its proposed rule of November 7, 1986, including four late comments, were carefully reviewed and fully considered in the formulation of this final rule. A summary of the substantive comments received by DOE is set forth below together with the Department's action regarding these comments.

A. Areas of Primary Interest

Most of the public comments received on the proposed rule addressed the definition and measurement of net generation [discussed below in Section II.B.], as follows: (1) Whether net generation should be measured at the output side of the station transformer as proposed, or at the point of sale (i.e., whether transmission and distribution losses, other offsite company use, and free service should be excluded from the KWH fee basis); (2) whether gross generation should be reduced by electricity used by onsite nonnuclear units and/or onsite unmetered diesel generation; (3) the appropriate time interval for measuring net generation; and (4) whether single-unit stations at multiple locations should be treated differently from multi-unit stations.

B. Sectional Analysis of Public Comments

The proposed rule was published on November 7, 1986 [see 51 FR 40684]. As described more fully below, several provisions were revised, clarified or added as a result of the comments received.

1. Article I.—Definitions

a. Treatment of transmission and distribution losses. Six commentors (including as association representing 43 utilities) suggested that DOE's proposed definition of net generation failed to adequately reflect the "generated * * * and sold" language of the NWPA and the Court of Appeals December 6, 1985 decision. These

commentors stated that the NOPR definition did not allow that portion of electricity not actually sold to be deducted from gross generation. The definition suggested by the commenters differs from that in the NOPR primarily in that it would permit deductions for transmission and distribution losses between the nuclear plant and the customers' meters. Also included in the "not sold" category would be other offsite company use and lost service.

Recognizing that transmission and distribution losses are not measured, and that metering costs would be prohibitive, three commenters recommended that DOE adopt a standard deduction based on an industry-wide average of kilowatt hours not sold. This averaging concept would result in a proposed 8.65 percent standard deduction in addition to the deduction of approximately 5 percent for station service loads. One commenter suggested that this standard deduction be made utility-specific in the future to provide for maximum equity, while the other commenters recommended annual updating and retention of the industry-wide averaging approach. In total, this alternative would result in a ratio of net generation to gross generation for fee calculation purposes of approximately 87 percent, rather than the ratio of roughly 95 percent based on DOE's proposed definition.

DOE has not adopted the recommendation of an 8.65 percent standard deduction for numerous reasons. Contrary to the commenters' assertion, DOE's approach does not disregard the Court's December 6, 1985 decision. In footnote 10 of its opinion, the Court noted that the petitioners chose not to assert the point that "and sold" should exclude transmission losses. *Id.* at 5. Accordingly, these losses were not addressed in the Court's interpretation of the term "generated * * * and sold" as used in the Act.

Furthermore, DOE has determined that, if adopted, this 8.65 percent standard deduction would result in substantial inequities among utilities. Geographic, organizational, and specific service characteristics contribute to significant differences in transmission and distribution losses among various power plants. For example, if the commenters' simplified calculation methodology were adopted, utilities with load centers far from the reactors, or with a lower proportion of more efficient, high-voltage AC or DC transmission lines, would subsidize utilities whose service territory or grid systems exhibit opposite characteristics. Joint ownership arrangements of nuclear utilities and intra- and inter-utility power transfers would further challenge the accuracy and equity of using an industry-wide average deduction. Moreover, transmission and distribution losses reported on the Federal Energy Regulatory Commission Form 1 showed an average 6.9 percent (rather than the 8.65 percent) value of electricity "not sold" and variations among individual plants ranging from 0.18 to 19.2 percent. Therefore, use of a standard deduction for electricity not sold would result in cross-subsidization among utilities and would violate the equity principle underlying the NWPA.

DOE also examined several alternative approaches using a disaggregated utility-specific basis for estimating and verifying transmission and distribution losses. However, DOE found that, if more elaborate estimation techniques were employed to quantify that portion of electricity generated and lost in transmission, the additional data DOE would require from utilities would substantially increase the administrative burden of the utilities as well as that of DOE. Furthermore, the accuracy of the fee verification process would decrease if DOE adopted the commenters' approach.

DOE's proposed definition is consistent with the definition of net generation originally put forward in the NOPR for the standard disposal contract on February 4, 1983. At that time, DOE received no substantive comment on, or objection to, that definition from utilities, either during the public hearing or the public comment period.

For the foregoing reasons and upon careful consideration of all comments received, DOE has determined that the definition of net generation as set forth in the November 7, 1986 NOPR reflects the intent of Congress as expressed in the NWPA, as well as the December 6, 1985 opinion of the Court of Appeals. Accordingly, for clarity, DOE has revised the term "kilowatt hours generated" set forth in the NOPR to "net kilowatt hours generated." The use of this definition of net generation for purposes of calculating the fee assures a reasonable balance between maximum achievable accuracy and additional costs to the utilities and to DOE. Finally, the Court of Appeals was concerned that DOE adopt a "modest" approach in defining net generation of electricity so as not to defeat Congress' intent that an unfair burden not be placed on future ratepayers if DOE initially collects insufficient revenues. *Wisconsin Electric Power Co.*, 778 F.2d at 11.

Therefore, DOE's definition follows the guidance of the Court and ensures that, as envisioned by Congress, current ratepayers carry their fair share of the burden of paying for the disposal of nuclear waste.

b. Conventional definition of net generation. One commenter suggested using the "conventional" definition of net generation which is used in "* * * reporting to the NRC on Form EIA–759." DOE interprets this comment as a reference to the monthly reports sent to the Nuclear Regulatory Commission (NRC) on the Operating Data Report (ODR) and to the Energy Information Administration (EIA) on the Electric Power Monthly Form EIA–759. Careful review of these forms, their respective definitions of net generation, and the manner in which the utilities have completed their submissions indicated that the definitions are not identical, and that no single conventional procedure for completing the forms exists. The NRC's ODR definitions require calculations of net generation on a unit-by-unit basis over a monthly interval, while the Form EIA–759 requires a monthly calculation on a station basis, with submission on a unit basis. The ODR also contains the Average Daily Unit Power Level (ADUPL) report which collects net generation data for each 24-hour period.

Both the ODR and the ADUPL allow the utility to select one of two definitions of net generation. One appears in the NRC publication, "Licensed Operating Reactors" (NUREG–0020), the other in the 1974 NRC Regulatory Guide 1.16, which has never been officially superseded by the NRC. The former definition allows the use of negative values (deduction of electricity generated offsite), while the latter does not. The EIA–759 definition instructs utilities to deduct offsite generation. However, some utilities appear not to follow this definition, instead submitting data which are consistent with their NRC submissions based on the 1974 definition.

In addition, the method for measuring and reporting net generation varies among utilities from daily manual recordings of meter readings to automated, real-time computer readings which are stored hourly. Both the manual and the computerized measurements may then be reported on a monthly basis without consideration of the disaggregated daily or hourly data. Administrative adjustments based on readings from meters not located in control rooms also appear to be made occasionally to account for specific aspects of station use and to either

include or exclude generation from diesel-powered generators. These administrative corrections are generally performed using a computerized accounting system. Of all the existing potential definitions and implementation procedures, the proposed definition matches most closely the data available on the ADUPL.

Based on a review of utility fee payments using the proposed definition, DOE concluded that the vast majority of these payments are consistent with the ADUPL data. The fee verification studies performed by DOE showed that the data needed to conform to the proposed definition exist within each utility. Therefore, DOE has not adopted the commenters' recommendation that the fee be based on net generation as reported on Form EIA–759.

2. Annex A to Appendix G

a. Clarification of "At All Times". Eleven commenters suggested that the instructions for Appendix G, Annex A, Section 2.3, which included the phrase "at all times," in reference to the time frame required for metering, were vague and subject to differing interpretations by utilities. Moreover, some commentors argued that the term "at all times" could be interpreted in the extreme to mean "instantaneously," or each time a plant is phased in or out of service, and that it could thus impose an unnecessary burden on the plant operator, which, in turn, could impact negatively on plant safety. The commentors' recommendation that DOE appropriately define a common time denominator for reading meters ranged from hourly, daily, and monthly to quarterly.

DOE agrees that the phrase "at all times" requires further clarification. Accordingly, the Department has modified the Annex A instructions to indicate that the appropriate common time denominator is daily. The daily period was selected because it: (1) Does not add to the utilities' administrative burden; (2) is already reported to the NRC on the ADUPL report; and (3) reduces the potential for non-station-generated electricity (negative megawatt hour values resulting during periods of no or low power when station use is supplied from outside the station) to offset the megawatt hours on which the fee is based.

b. Deductions for "Out-of-Service" periods. One commenter suggested that dividing the calendar quarter into in-service and out-of-service time periods does not allow appropriate deductions for out-of-service periods from gross electrical generation.

DOE is allowing an out-of-service offset to gross generation for days on which generation exceeds consumption of electricity generated from nonnuclear energy sources. Also, DOE is allowing this out-of-service offset for multi-unit stations when at least one reactor is generating station power, and, therefore, the energy source is clearly nuclear power. DOE is similarly allowing such deductions when there exist metered power lines between two offsite nuclear units or between two nuclear units connected through a shared transformer. DOE believes that to allow one utility to make deductions for electricity generated from nonnuclear sources in excess of that which is routinely recorded (daily) would not be equitable to other utilities. Similarly, to require more frequent reporting intervals (e.g. hourly) would place an excessive burden on many utilities. Therefore, while DOE has not adopted the commenters' specific recommendation, DOE recognizes that potential inequities could result if utilities implemented allowable deductions differently. Therefore, to assist in assuring uniform implementation of allowable deductions as discussed above, the Annex A form has been modified to distinguish between station power from a nuclear unit and station power from nonnuclear sources.

c. Certification requirements and metering equipment. Two commenters stated that the requirements of the proposed rule for certification of net generation cannot be satisfied unless new, expensive metering equipment is installed. In one instance, the commentor indicated that nonnuclear generation was embedded in normal station service loads, while the other commenter indicated that nonnuclear load could not be accurately divided among the units of a multi-unit station. In the former case, it was suggested that utilities be allowed the flexibility to disregard such nonnuclear generation since it involved "paltry" amounts of electricity. In the latter case, it was suggested that the Annex A forms be adjusted so that utilities could continue to report net generation by unit, but provide certification for total net generation only.

DOE recognizes the validity of the commenters' concerns and has adopted their recommendations. The new Annex A form is to be submitted for each station (rather than for each unit as previously required), with a column provided for each unit at the station. If a utility is unable to provide metered unit data, the estimated unit data may be used, and a brief explanation of the estimation methodology must be provided. For those utilities whose gross generation includes small quantities of unmetered nonnuclear electrical generation, estimates of such unmetered generation may be deducted for fee calculation purposes. In such cases, utilities must provide a brief explanation of how the data were estimated. The certification statement on the Appendix G form has also been modified to require certification of the Total Remittance Section 6.0.

d. Non-collocated nuclear stations. One commenter expressed concern that non-collocated nuclear stations are treated inequitably by the proposed rule relative to collocated, multi-unit stations. Specifically, DOE had proposed that, when at least one nuclear unit was operating (generation from at least one unit exceeds station use), electricity generated from that unit should be assumed to be supplying the normal nuclear station load, whether or not it could be separately metered. The commenter recommended that a utility should be allowed to assume that, whenever all units at a station are not operating, the electricity used by that station is provided in part by offsite nuclear generation from the system in the same ratio as that of total nuclear generation to total utility generation.

The commenter's observation is correct. DOE's reason for originally proposing the assumption for collocated plants was to allow utilities to avoid the cost of additional metering equipment. However, there is little assurance that nuclear electricity generated offsite will actually serve the load of a non-operating station because: (1) The contribution of nuclear generation to total system generation fluctuates from minute to minute according to customer demands and (2) the stations may be hundreds of miles apart. This situation would also differ significantly from that of a collocated multi-unit station where a direct relationship exists between nuclear generation and station use. If a direct line were to exist between non-collocated units, and if this line were metered, DOE would treat these units according to the collocated multi-unit assumption. If the commenter's recommended methodology were adopted, the additional burden and cost of the data collection and verification effort that would be needed to maintain current confidence levels for fee calculations would likely far outweigh any financial benefit to a particular utility. Since it is believed that the administrative costs of verification would exceed any reduction in the fee that would result from adoption of the

commenter's suggestion, DOE has not adopted this recommendation.

e. Other modifications. Annex A instructions have been modified slightly in other areas in response to editorial suggestions by commenters or based on combined DOE/utility experience with the forms since 1983. An example of the latter is the elimination of examples in Section 1.0, Identification Information. In addition, the elimination of the three data items proposed in the NOPR has been adopted.

One commenter suggested that the forms be modified to include a "current revision date" next to the form number to accommodate any future revisions and preclude the future use of obsolete forms. This suggestion was adopted by placing "OMB Number" and "Effective Through:" at the upper right corner of the forms. One commenter suggested that, since some terms could be interpreted as having more than one meaning, Article I, Definition, of the standard disposal contract should be expanded. DOE has not adopted this suggestion since the changes made to the forms, including revised instructions, are believed to have minimized the potential for confusion.

C. Additional Public Comments and Modifications

In addition to the public comments keyed to the standard disposal contract discussed in Section II.B. above, DOE received several other comments relating to the proposed rule of November 7, 1986. Two commenters observed that the NOPR did not specify a retroactive date for changing the basis of the ongoing fee from gross to net generation. The Department agrees with the commenters. Accordingly, since the standard disposal contracts provided for April 7, 1983, as the effective date the ongoing fee commenced, the Department has determined that this is the proper date for changing the basis for calculating the ongoing fee from gross to net generation.

Although not within the scope of the NOPR, five commenters requested that DOE pay interest on utility overpayments into the Nuclear Waste Fund as a result of the Court of Appeals' decision. By letter of May 18, 1987, DOE informed all affected utilities that, as a consequence of sovereign immunity, such interest cannot be paid.

For purposes of consistency with the definition in Article I, DOE has also made minor changes to Articles VIII.A.1 and B.1. that were not raised in public comments. Specifically, the term "kilowatt-hour" in Article VIII.A.1. has been replaced by the term "net kilowatt hour." Similarly, the term "net electricity generated" has replaced the term "electricity generated" in Article VIII.B.1.

III. Final Rule

As set forth below, the purpose of this final rule is to amend the standard disposal contract consistent with the Court ruling that the ongoing fee should be based on net generation of electricity.

Section 961.11 (amended) sets forth changes to the contract necessary to implement the payment of the ongoing fee pursuant to the Court's decision:

Article I—Definitions—Replaces the term "kilowatt hours generated" with the term "net kilowatt hours generated."

Article VIII.A.—Fees—Substitutes the term "net kilowatt hour" for the term "kilowatt-hour."

Article VIII.B.—Payment—Substitutes the term "net electricity generated" for the term "electricity generated."

Appendix G—Remittance Advice (RA) for Payment of Fees—Revises both the RA form and the Annex A to Appendix G form [2] currently used by utilities to reflect payment based on net generation. Instructions for the Annex A form have also been changed to reflect the procedures for determining net generation for fee calculation purposes. In addition, three data items have been eliminated since they dealt with equivalent electrical energy generation (process heat) which is no longer applicable.

IV. Procedural Requirements

A. Executive Order No. 12291

Under Executive Order 12291, agencies are required to determine whether proposed rules are major rules as defined in the Order. DOE has reviewed this final rule and has determined that it is not a major rule because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

B. Regulatory Flexibility Act

In accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., DOE finds that Sections 603 and 604 of the Act do not apply to this rule because it will not have a significant economic impact on a substantial number of small entities. This finding is based on the fact that the parties to the contract, who are owners or generators of spent nuclear fuel or high-level radioactive waste, are not small entities.

C. National Environmental Policy Act

Execution of amendments to the standard contract in this rulemaking will not result in any effect on the quality of the human environment. Therefore, DOE has concluded that the rulemaking is not a major Federal action significantly affecting the quality of the human environment. Accordingly, preparation of neither an environmental assessment nor an environmental impact statement is required.

D. Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), this rule has been submitted to the Office of Management and Budget (OMB) which has approved the data collection requirements contained herein.

List of Subjects in 10 CFR Part 961

Government contracts, Nuclear materials, Nuclear powerplants and reactors, Radiation protection, Waste treatment and disposal.

In consideration of the foregoing, Part 961, Chapter III of Title 10, Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, September 14, 1987.

Benton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 961—[AMENDED]

1. The authority citation for Part 961 continues to read as follows:

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254) and Sec. 302, Pub. L. 97–425, 96 Stat. 2257 (42 U.S.C. 10222).

2. The Contract in § 961.11 is amended by revising Article I, paragraph 13, Articles VIII. A.1. and B.1., and Appendix G to the Contract, including Annex A to Appendix G as set forth below. Annex B to Appendix G remains unchanged.

§ 961.11 Text of the contract.

* * * * *

Article I—Definitions

* * * * *

13. The term "net kilowatt hours generated" means the gross electrical output produced by a civilian nuclear

[2] Current forms are modified versions of the original forms published on April 18, 1983 (48 FR 16590).

power reactor measured at the output terminals of the turbine generator minus the normal onsite nuclear station service loads during the time electricity is being generated. Instructions to Annex A to Appendix G provide further guidance on the calculation procedures for reporting purposes. The term "net kilowatt hours generated" is also referred to as "net electricity generated".

* * * * *

Article VIII—Fees and Terms of Payment

* * * * *

A. Fees

1. Effective April 7, 1983, Purchaser shall be charged a fee in the amount of 1.0 mill per net kilowatt hour generated (1M/KWH) by Purchaser's nuclear power reactor(s). The said fee shall be paid as specified in paragraph B of this Article VIII.

* * * * *

B. Payment

1. For net electricity generated by the Purchaser's civilian nuclear power reactor(s) on or after April 7, 1983, fees shall be paid quarterly by the Purchaser and must be received by DOE not later than the close of business on the last business day of the month following the end of each assigned 3-month period. The first payment shall be due on July 31, 1983, for the period April 7, 1983, to June 30, 1983. [add as applicable: A one-time adjustment period payment shall be due on _____, for the period _____ to _____]. The assigned 3-month period, for purposes of payment and reporting of net kilowatt hours generated shall begin _____.

* * * * *

BILLING CODE 6450-01-M

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NWPA-830G

U.S. DEPARTMENT OF ENERGY
Germantown, MD 20874

OMB No.: 1901-0260
Expires: 12/31/89

APPENDIX G - STANDARD REMITTANCE ADVICE FOR PAYMENT OF FEES

This information is being collected under mandatory authorities vested in the U.S. Department of Energy under Public Law 97-425. Late filing, failure to file or to otherwise comply with the instructions provided may result in interest penalties as provided by Article VIII.C of the Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste.

For information concerning confidentiality of information see item 6 of the instructions.

1.0 IDENTIFICATION INFORMATION

1.1 Purchaser Information
- (a) Name _____
- (b) Address _____
- (c) City, State & Zip Code _____

1.2 Contact Person
- (a) Name _____
- (b) Telephone (Include Area Code) _____

1.3 Standard Contract Identification Number: _____

1.4 Period Covered by this Remittance Advice
- (a) From _____ (Month/Day/Year) to _____ (Month/Day/Year)
- (b) Date of This Payment: _____ (Month/Day/Year)

2.0 SPENT NUCLEAR FUEL (SNF) FEE

2.1 Number of Reactors Covered _____

2.2 Total Purchaser Obligation as of April 7, 1983 $ _____

2.3 Date of First Payment:

Month	Day	Year

2.4 10-Year Treasury Note Rate as of the Date of First Payment _____ %

2.5 Unpaid Balance Prior to this Payment $ _____

2.6 Option Chosen _____

2.7 Fee Data
- (a) Principal _____
- (b) Interest _____
- (c) Total Spent Nuclear Fuel Fee Transmitted with this Payment $ _____

3.0 FEE FOR NET ELECTRICITY GENERATED (MILLS PER KILOWATTHOUR, M/KWh)

3.1 Number of Reactors Covered: _____

3.2 Total Net Electricity Generated (Megawatthours) (Sum of Line 2.6 from All Annex A's) _____

3.3 Current Fee Rate _____ (M/KWh)

3.4 Total Fee for Net Electricity Generated (M/KWh) Transmitted with this Payment $ _____

4.0 UNDERPAYMENT/LATE PAYMENT (As notified by DOE)

Type of Payment (a)	Date of Notification (Month/Day/Year) (b)	DOE Invoice Number (c)	Date of Payment Transmittal (Month/Day/Year) (d)	Interest Paid (e)	Amount Transmitted (f)
4.1 SNF Underpayment					
4.2 Electricity Generation Underpayment					
4.3 TOTAL UNDERPAYMENT					
4.4 SNF Late Payment					
4.5 Electricity Generation Late Payment					
4.6 TOTAL LATE PAYMENT					

5.0 OTHER CREDITS CLAIMED (Attach Explanation)

Enter the Total Amount Claimed for All Credits $ (_____)

6.0 TOTAL REMITTANCE

- 6.1 Total Spent Nuclear Fuel Fee Transmitted (from 2.7(c)) $ _____
- 6.2 Total Fee for Net Electricity Generated (from 3.4) $ _____
- 6.3 Total Underpayment (from 4.3(f)) $ _____
- 6.4 Total Late Payment (from 4.6(f)) $ _____
- 6.5 Total Credits (from 5.0) $ _____
- 6.6 TOTAL REMITTANCE (Sum of 6.1 through 6.4 less 6.5) $ _____

7.0 CERTIFICATION

I certify that the Total Remittance is true and accurate to the best of my knowledge

Name Date Signature

TITLE 18 USC 1001 makes it a crime for any person to knowingly and willfully make to any department or agency of the United States any false, fictitious, or fraudulent statements as to any matter within its jurisdiction.

Copy Distribution: White, DOE-Controller; Canary, DOE-OCRWM; Pink, DOE-EIA; Goldenrod, Utility Copy

DEPARTMENT OF ENERGY
Germantown, MD 20874
APPENDIX G - STANDARD REMITTANCE ADVICE FOR PAYMENT OF FEES

General Information

1. Purpose.
Standard Remittance Advice (RA) form is designed to serve as the source document for entries into the Department's accounting records to transmit data from Purchasers concerning payment of their contribution to the Nuclear Waste Fund.

2. Who Shall Submit.
The RA must be submitted by Purchasers who signed the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste. Submit Copy 1, 2, and 3 to DOE, Office of the Controller, Special Accounts and Payroll Division and retain Copy 4.

3. Where to Submit.
Purchasers shall forward completed RA to.

U.S. Department of Energy
Office of the Controller
Special Accounts and Payroll Division (C-216 GTN)
Box 500
Germantown, MD 20874-0500

Request for further information, additional forms, and instructions may be directed in writing to the address above or by telephone to (301) 353-4014.

4. When to Submit.
For electricity generated on or after 4-7-83 fees shall be paid quarterly by the Purchaser and must be received by DOE not later than the close of business on the last business day of the month following the end of each assigned three month period. Payment is by electronic wire transfer only.

5. Sanctions.
The timely submission of RA by a Purchaser is mandatory. Failure to file may result in late penalty fees as provided by Article VIII.C of the Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste.

6. Provisions Regarding the Confidentiality of Information.
The information contained in these forms may be (i) information which is exempt from disclosure to the public under the exemption for trade secrets confidential commercial information specified in the Freedom of Information Act of 5 USC 522(b) (4) (FOIA) or (ii) prohibited from public release by 18 USC 1905. However, before a determination can be made that particular information is within the coverage of either of these statutory provisions, the person submitting the information must make a showing satisfactory to the Department concerning its confidential nature.

Therefore, respondents should state briefly and specifically (on an element-by-element basis if possible), in a letter accompanying submission of the form why they consider the information concerned to be a trade secret or other proprietary information, whether such information is customarily treated as confidential information by their companies and the industry, and the type of competitive hardship that would result from disclosure of the information. In accordance with the provisions of 10 CFR 1004.11 of DOE's FOIA regulations, DOE will determine whether any information submitted should be withheld from public disclosure.

If DOE receives a response and does not receive a request, with substantive justification, that the information submitted should not be released to the public, DOE may assume that the respondent does not object to disclosure to the public of any information submitted on the form.

A new written justification need not be submitted each time the NWPA-830G is submitted if:

a . views concerning information items identified as privileged or confidential have not changed and

b . a written justification setting forth respondent's views in this regard was previously submitted.

In accordance with the cited statutes and other applicable authority, the information must be made available, upon request, to the Congress or any committee of Congress, the General Accounting Office, and other Federal agencies authorized by law to receive such information.

INSTRUCTIONS FOR COMPLETING STANDARD REMITTANCE ADVICE FOR PAYMENT OF FEES

Section 1.0 *Identification Information*

1.1 Name of Purchaser as it appears on the Standard Contract, the mailing address, state and zip code

1.2 Name and telephone number of person responsible for the completion of this form.

1.3 Standard Contract identification number as assigned by DOE.

1.4 Period covered by this advice and date of this payment. Any period different from the assigned three month period should be explained on a separate attachment.

Section 2.0 *Spent Nuclear Fuel (SNF) Fee*

2.1 Enter the number of reactors for which the Purchaser had irradiated fuel as of midnight between 6/7 April 1983 (equal to the number of Annex B Forms attached).

2.2 Total amount owed to the Nuclear Waste Fund for spent fuel used to generate electricity prior to April 7, 1983. (See Annex B for calculation.)

2.3 Self explanatory.

2.4 Ten year Treasury Note rate on the date the payment is made, to be used if payments are being made using the 40 quarter option, or if lump sum payment is made after June 30, 1985.

2.5 Unpaid balance before this payment is made

2.6 Enter the payment option (1, 2, or 3) chosen. The selection of payment option must be made within two years of Standard Contract execution.

2.7 Total payment of fee which this advice represents. Show principal, interest, and total.

Section 3.0 *Fee for Net Electricity Generated (M/KWh)*

3.1 Enter the number of reactors the Purchaser is reporting on during this reporting period.

3.2 Enter total net electricity generated during the reporting period from all reactors being reported. This is the sum of Station Total figures of line 2.6 from all Annex A forms attached, expressed in megawatthours.

3.3 Current Fee Rate as provided by DOE (initially 1.0 M/KWh which is equal to 1.0 $/MWh).

3.4 Total Fee for Net Electricity Generated (M/KWh) represented by this advice.

Section 4.0 *Underpayment/Late Payment (as notified by DOE)*

4.1-4.6 Self explanatory.

Section 5.0 *Other Credits Claimed*

Represents all items for which a Purchaser may receive credit, as specified in the Standard Contract

Section 6.0 *Total Remittance*

6.1-6.6 This section is a summary of the payments made in the previously mentioned categories with this remittance.

Section 7.0 *Certification*

Enter the name and title of the individual your company has designated to certify the accuracy of the data. Sign the "Certification" block and enter the current date.

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ANNEX A
to
APPENDIX G
Standard Remittance Advice for Payment of Fees

- Please read all instructions before completing form.
- Complete a separate Annex A for each station.
- Submit Annex A's quarterly with Appendix G--Standard Remittance Advice for Payment of Fees.

1.0 Identification Information

1.1 Purchaser Information
(a) Name _____
(b) Address _____
(c) City, State and Zip Code _____
(d) Utility ID number ☐☐

1.2 Contact Person
(a) Name _____
(b) Telephone (Include area code)
_____

1.3 Station Name
_____

1.4 Standard Contract Identification Number
_____

1.5 Period Covered
(a) From _____ (Month/Day/Year) to _____ (Month/Day/Year)
(b) Date of this submission: _____ (Month/Day/Year)

2.0 Fee Calculation for Net Electricity Generated

	Unit 1	Unit 2	Unit 3	Station Total
2.1 Unit ID Codes				
2.2 Gross Thermal Energy Generated (MWh)				
2.3 Gross Electricity Generated (MWh)				
2.4 Nuclear Station Use While At Least One Nuclear Unit Is In Service* (MWh)				
2.5 Nuclear Station Use While All Nuclear Units Are Out Of Service* (MWh)				
2.6 Net Electricity Generated (MWh) (Item 2.3 minus Item 2.4)				
2.7 Current Fee Rate (mills/KWh = $/MWh)				
2.8 Current Fee Due (Dollars) Enter on Line 3.4 of Appendix G				

*Utilities unable to meter individual unit use shall report estimated unit use and shall explain in a footnote how the unit data were estimated.

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INSTRUCTIONS FOR COMPLETING ANNEX A TO APPENDIX G – STANDARD REMITTANCE ADVICE FOR PAYMENT OF FEES

Section 1.0 *Identification Information*

1.1 Utility name, address, and ID number. The ID number is assigned by DOE.

1.2 Contact person for additional information on data submitted in this annex.

1.3 Station name. Enter the name of the Station covered in this annex.

1.4 Self-explanatory.

1.5a The dates shown should be the beginning and ending days of the reporting period for which electrical output is reported.

1.5b Self-explanatory.

Section 2.0 *Fee Calculation for Net Electricity Generated*

2.1 Unit ID Code: Enter the reactor unit identification (ID) code as assigned by DOE, one per column, for each reactor associated with this station.

2.2 Gross Thermal Energy (Generated (MWh). The thermal output of the nuclear steam supply system during the gross hours of the reporting period, expressed in megawatthours.

2.3 Gross Electricity Generated (MWh).

Utilities shall report Gross Electricity Generated for each unit in the appropriate column and shall report the total in the column labeled "Station Total." The Gross Electricity Generated is measured at the output terminals of the turbine generator during the reporting period, expressed in megawatthours.

Note: Utilities that have small quantities of unmetered non-nuclear electrical generation included in Gross Electricity Generated should see Note D, Item 2.4.

2.4 Nuclear Station Use While At Least One Nuclear Unit Is In Service (MWh).

Utilities shall report Nuclear Station Use While At Least One Nuclear Unit Is In Service data for each unit in the appropriate column, and shall report the total in the column labeled "Station Total." In this row, utilities are to report the consumption of electricity by the nuclear portion of the station during days in which at least one of the nuclear units at the station was on-line and producing electricity, expressed in megawatthours. Utilities unable to meter inidividual unit use shall report estimated unit use and shall explain in a footnote how the unit data were estimated.

Note:

A. During days in which nuclear station use exceeds nuclear station generation, utilities shall treat all resulting negative values as zero for fee calculation purposes.

B. Utilities that have multiple nuclear units at one station:

- when at least one nuclear unit is operating and when generation from that one unit exceeds the nuclear station's use, the utility may assume that the operating unit is supplying electricity for nuclear station use, whether or not the electricity has been metered separately or the units terminate to a common electrical busbar, and
- shall report under Item 2.5 any electricity use by the nuclear portion of the station during days in which all nuclear units at the station were out of service simultaneously.

C. Utilities that have a metered transmission line connecting an off-station nuclear reactor with another nuclear station may treat the off-station plant as part of this station for fee calculation purposes and report accordingly.

D. Utilities may deduct small quantities of unmetered non-nuclear electricity generation included in Gross Electricity Generated, provided they identify and explain the generation estimates in a footnote.

2.5 Nuclear Station Use While All Nuclear Units Are Out Of Service (MWh).

Utilities shall report Nuclear Station Use While All Nuclear Units Are Out Of Service data for each unit in the appropriate column, and shall report the total in the column labeled "Station Total." In this row, utilities shall report the consumption of electricity by the nuclear portion of the station during days in which total nuclear unit use exceeds nuclear generation (e.g., a day in which all nuclear units at the station were out of service simultaneously), expressed in megawatthours. Utilities unable to meter individual unit use shall report estimated unit use and shall explain in a footnote how the unit data were estimated.

2.6 Net Electricity Generated (MWh).

Utilities shall report Net Electricity Generated data for each unit in the appropriate column, and shall report the total in the column labeled "Station Total." Utilities shall report the gross electrical output produced by a civilian nuclear power reactor measured at the output terminals of the turbine generator minus the normal onsite nuclear station service loads during the time electricity is being generated, expressed in megawatthours (Item 2.3 minus Item 2.4).

2.7 Current Fee Rate (mills/KWh = $MWh). Initially 1.0 mills/KWh or 1.0 dollars/MWh. The units mills/KWh are exactly equivalent to dollars/MWh. Enter the rate here and on line 3.3 of the Remittance Advice.

2.8 Current Fee Due (dollars). The product of Items 2.6 and 2.7. The Current Fee Due for this station must be added to the Current Fee Due for all other reactors operated by the Purchaser and the sum entered on line 3.4 of the Remittance Advice.

[FR Doc. 87-21583 Filed 9-17-87; 8:45 am]
BILLING CODE 6450-01-C

Federal Register

Friday
September 18, 1987

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Bay Checkerspot Butterfly (Euphydryas editha bayensis); Final Rule

VOL 52 ISS 181 SE 18 1987 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Bay Checkerspot Butterfly (Euphydryas editha bayensis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the bay checkerspot butterfly to be a threatened species. This butterfly subspecies occurred historically in isolated colonies, many of which have been eliminated as a result of drought, urban development, highway and road construction, livestock overgrazing, and other land use activities that altered the natural plant communities upon which it depends. Although recorded in the literature from more than 16 separate localities on the San Francisco Peninsula and adjacent outer Coast Range of California, only a few of the largest colonies, perhaps only two, retain habitat extensive enough now to permit survival through drought and other stresses predictable on a time scale of decades. This determination that the bay checkerspot butterfly is threatened implements the protection provided by the Endangered Species Act of 1973, as amended. The Service will defer designation of critical habitat for the bay checkerspot butterfly in order to complete the necessary economic analyses.

DATE: The effective date of this rule is October 19, 1987.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The bay checkerspot butterfly (*Euphydryas editha bayensis*) was described by Sternitzky (1937) as a race on the basis of its physical characteristics. Dos Passos (1964) and all subsequent published treatments recognize the bay checkerspot as a distinct subspecies. It has been the subject of extensive research by Dr. Paul R. Ehrlich and his associates at Stanford University and colleagues elsewhere since 1959. The butterfly's distribution, behavior, ecology, and population dynamics are relatively well-understood.

Euphydryas editha bayensis is a medium-sized butterfly with a wingspan of between 1½ inches (38 mm) and 2¼ inches (56 mm). The forewings have black bands along all the veins on the upper wing surface, which contrast sharply with bright red and yellow spots. The black basal coloration gives a more decidedly checkered appearance than in other subspecies such as the smaller *E. e. wrighti* of Southern California, or the montane *E. e. editha* (Sternitzky 1937). *E. editha bayensis* is typically darker than *E. e. luestherae* and lacks a relatively uninterrupted red band demarking the outer wing third (Murphy and Ehrlich 1980), but the bay checkerspot is not as dark overall and has brighter red and yellow colors than *E. e. insularis* (Emmel and Emmel 1975).

All habitat of the bay checkerspot butterfly exists as isolated islands of native grassland on shallow serpentine-derived or similar soils that support abundant growth of the butterfly's two larval foodplants, annual plantain (*Plantago erecta*) and the hemiparasitic annual owl's clover (*Orthocarpus densiflorus*). Presence of both foodplants is evidently required for successful completion of the bay checkerspot's life cycle in nature (Singer 1971, Ehrlich et al. 1975).

The bay checkerspot's known and likely habitat is considered here under three general categories. Primary habitat occurs directly on outcrops of serpentine (geologically identified as mesozoic ultrabasic intrusive rock) larger than about 800 acres. Large and topographically diverse areas of habitat appear to insure survival against drought stresses that occur predictably several times in each century. These large areas function as primary population reservoirs. Only four such areas appear on geologic maps within the butterfly's known range, and only two now support colonies of significant size. Secondary, or "satellite," habitat islands are smaller serpentine outcrops with native grassland typically capable of developing robust bay checkerspot colonies in years of favorable climate when the habitat is relatively undisturbed. Wet years often correlate with population declines, and severe drought has been observed to cause local extirpation of such satellite colonies. Extirpation of satellite colonies is likely on a time scale of decades. Following local extirpation, satellite habitat is thought to be recolonized naturally from neighboring "reservoir" colonies, if other surviving colonies exist within a few miles. A third habitat category consists of areas where both foodplants occur on other soil types similar to those derived from serpentine. All such tertiary habitat found has been located on areas mapped geologically as the Franciscan formation. Strong seasonal variation in numbers of individuals characterize populations in this kind of habitat, and they seldom support dense populations, evidence that this habitat category contributes only marginally to long-term survival of the species, providing only temporary recruitment of individuals and possible stepping stones for colonization.

Habitat difficulties faced by the bay checkerspot butterfly can be summarized as: (1) Permanent loss of more than half of its primary habitat, with two out of the four primary habitat sites believed large enough to function as population reservoirs; (2) present extirpation from about 29 of 32 probable and 5 of 8 known secondary habitat areas, with permanent loss through habitat modification of at least half of such secondary habitat areas; and (3) recent probable extirpation from at least 5 of 6 known areas of marginal habitat and more than 9 likely such areas.

Natural recolonization appears to be a very rare event. For example, in 21 years of study with marked populations less than four miles apart at Woodside and Jasper Ridge, translocation of a single individual from one colony to the other was observed only once (Murphy and Ehrlich 1980). Because the number of habitat islands potentially available to the butterfly continues to decline as a result of habitat modification, and the distance between suitable sites is thus increasing, the actual likelihood of natural recolonization is approaching zero.

On October 21, 1980, the Service was petitioned by Drs. Bruce O. Wilcox, Dennis D. Murphy, and Paul R. Ehrlich to list the bay checkerspot butterfly as an endangered species. The petition was later supplemented with a letter and other materials received on December 11, 1980. The Service included the bay checkerspot butterfly in a **Federal Register** Notice of Review on February 13, 1981 (46 FR 43709). A review of its status was made to determine if it should be added to the U.S. List of Endangered and Threatened Wildlife. On October 13, 1983, the Service found the proposed listing to be warranted but precluded by other pending listing actions, and reported this finding in the **Federal Register** on January 20, 1984 (49 FR 2485). On September 11, 1984, the

Service published a proposed rule to list the bay checkerspot butterfly as an endangered species and determine its critical habitat (49 FR 35665), which constituted a final petition finding affirming that the petitioned action was warranted.

A public hearing regarding the proposed rule was held on November 13, 1984, in San Mateo County, California. The comment period had been scheduled to close on November 13, 1984, but was extended on October 26, 1984 (49 FR 43076), until November 23, 1984. It was reopened on March 14, 1985 (50 FR 43076), at the request of lawyers for United Technologies Corp. It was reopened again on August 12, 1985 (50 FR 32455), to avail the Service of complete and current information, and reopened a third time on September 13, 1985 (50 FR 37391), because information and reports prepared by Dr. Richard Arnold and formally submitted to the Service on behalf of United Technologies Corp. indicated a substantial scientific disagreement regarding the sufficiency and accuracy of available data supporting the listing. On July 2, 1986, the comment period was reopened a fourth and final time (51 FR 24178) to meet with Dr. Murphy and representatives of United Technologies Corp. and others, to clarify information on alleged new populations of the bay checkerspot butterfly from San Luis Obispo, and San Benito Counties, California.

The testimony recorded at the public hearing and all written comments received by the close of the comment period on November 13, 1984, and meeting of July 16, 1986, and all written comments received by the close of the last comment period on August 1, 1986, are part of the public record and have been carefully considered in the drafting of this final rule. The Service has also considered the findings of a panel of scientists asked to address the sufficiency and accuracy of available taxonomic information. As a result of this extensive consideration, the Service determines that the bay checkerspot is a threatened species. Pursuant to section 4(b)(6)(C)(ii) of the Endangered Species Act, as amended, the Service determines that critical habitat is not now determinable. The Service is completing its analyses of potential critical habitat in accordance with sections 4(a)(3)(A) and 4(b)(2), and intends to designate critical habitat for the bay checkerspot butterfly when these analyses are complete.

Summary of Comments and Recommendations

In the September 11, 1984, proposed rule (49 FR 35665) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment.

On July 25, 1984, Mr. Paul Koening, Department of Environmental Services, County of San Mateo, requested a public hearing on the proposal to list the San Mateo thornmint, which was published June 18, 1984 (49 FR 24906). After discussions with the County and other interested agencies and individuals, the Service decided to hold a combined public hearing for the thornmint and bay checkerspot proposals. Notification of the combined public hearing was published in the **Federal Register** on Friday, October 26, 1984 (49 FR 43076). Notifications of the proposed listing of the bay checkerspot butterfly and the public hearing of November 13, 1984, were published in the following local newspapers: *San Jose Mercury News* on October 31, 1984, *San Francisco Chronicle/Examiner* on October 28, 1984, *Palo Alto Times* on October 30, 1984 and the *San Mateo Times and News Leader* on October 30, 1984. Written notifications also were sent to State, local and Federal agencies, and to interested individuals and organizations.

On November 13, 1984, the Service held a public hearing at the Hillsdale Inn in San Mateo County, California, on the proposals to list the San Mateo thronmint and bay checkerspot butterfly as endangered species and to designate critical habitat for the butterfly. Approximately 120 people attended the hearing. The comment period closed on November 23, 1984, but was reopened on March 14, 1985, August 12, 1985, September 13, 1985, and again on July 2, 1986. An open meeting was held in Sacramento on July 16, 1986, during the final open comment period. Approximately 15 people attended the meeting and five presented oral comments. Notification of this meeting was made in the **Federal Register** (51 FR 24178) and by letter to those individuals submitting previous comments. The last comment period closed on August 1, 1986.

Comments from the public hearing of November 13, 1984, and meeting of July 16, 1986, as well as written comments have been carefully considered in preparing this final rule. Public comments were received during the period from September 11, 1984, to August 1, 1986. During that time 37 oral and 95 written comments were received from various individuals, organizations, and government agencies. Of those, 35 were additional comments by persons who had commented at least once before. Among persons who expressed opinions, four opposed what they feared was premature listing, 24 others either opposed listing altogether or at least to the extent that they expected it to interfere with planned or ongoing activities, nine expressed confidence that all apparent conflicts threatening survival of the butterfly could be resolved, 59 expressed belief in a need for Federal listing of the butterfly, and eight gave no clear indication of their opinion in regard to listing. In the following discussion, comments related primarily to habitat of the butterfly are considered only as they relate to threats and the butterfly's status for listing, and not as they relate to possible exclusion or inclusion of certain areas as critical habitat or to possible economic consequences of critical habitat designation. As mentioned, the Service is deferring the critical habitat designation until a later time.

Three principal subject areas of comments that relate to the butterfly's status are; (1) Scientific definition of the subspecies, (2) adequacy of the distribution data, and (3) threats to habitat from various activities and projects. Only a minor threat is believed to exist from overutilization of individuals by collectors, and it was not a subject of significant comment. This section of the rule will summarize and discuss these three subject areas in order, followed by mention of some general comments from agencies and organizations, and end with a summary of comments that criticized the Service's adherence to rulemaking procedures.

Six of the comments questioned the rationale for listing a butterfly only experts could identify. One suggested that the bay checkerspot is one of the most plentiful of all butterflies. Several comments indicated belief that the designation was inappropriate because the bay checkerspot is a subspecies and the Act was designed to protect full species.

The Service replies that the term "species," pursuant to section 3(16) of the Endangered Species Act, includes any species or subspecies of fish, wildlife, or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature. The bay

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checkerspot butterfly (*Euphydryas editha* subspecies *bayensis*) qualifies as a "species" under the Act. Its taxonomic status is recognized in all the major treatments in the scientific literature, and the Service has found no alternative taxonomic treatments that controvert this conclusion.

Lawyers for United Technologies Corp., on the basis of analyses prepared for them under contract by the entomologist Dr. Richard A. Arnold, submitted four sets of comments in 1985, all emphasizing a claim that the subspecies *E. e. bayensis* is not defined in a way that would limit it to the geographic range indicated in the proposed rule. Their comments on May 16 and June 26 claimed the Service had failed to demonstrate that a separate subspecies eligible for listing exists. In a November 11 comment letter, they modified that position somewhat, and made it clear that they did not question the separateness of the bay checkerspot subspecies, but rather its "definition." Their comments incorporated a letter from Dr. Arnold dated November 7, 1985, in which he suggested that two checkerspot colonies known from coastal grassland areas of Santa Barbara and San Luis Obispo Counties, as well as other populations of *E. editha* in the outer coast range north of San Francisco Bay, might be more properly classified as *E. e. bayensis*.

In the November 7 letter, and also in previous comments, Dr. Arnold's argument placed strong and selective emphasis on the use by Drs. Ehrlich and Murphy in their original petition and subsequent comments, and by Dr. Murphy in one publication (1982), of genetic (specifically enzyme biochemistry) information, as well as ecotypic (specifically foodplant and habitat type) information to supplement the conventional phenotypic (features of appearance) information. The Service accepted his position as evidence for substantial scientific disagreement in the matter, and asked four of its own scientists to conduct a panel evaluation of *Euphydryas* systematics as they might affect *E. e. bayensis* on these particular claims.

The Service notes that Murphy (1982) used a lack of clear-cut enzymatic differentiation, taken together with consistent habitat ecotype (chaparral), foodplant (typically *Pedicularis densiflora*) and general phenotypic (or phenetic) similarity to reclassify certain populations of checkerspots formerly treated as *E. e. baroni*, assigning them to *E. e. Luestherae*. Dr. Murphy's use is somewhat different from the one advocated by Dr. Arnold for a reported lack of clear-cut enzymatic differentiation between *E. e. bayenis* and isolated grassland checkerspot colonies found in Santa Barbara and San Luis Obispo Counties. Dr. Arnold's usage implies that such a lack of enzymatic differentiation should in effect enlarge the subspecific definition, and outweigh other observable phenotypic or behavioral differences.

Dr. Peter F. Brussard of Montana State University, who conducted much of the enzyme electrophoretic work cited by the petitioners and by Dr. Arnold in this context, provided some specifics and his opinion in a letter of comment dated August 21, 1985. He stated that electrophoretic analysis conducted subsequent to the studies on which statements made in the petition were based show mainly that enzyme variation from year to year is quite large in this genus, effectively masking any normal subspecific variability that may be present. The net effect, he stated, is a severe limitation on the taxonomic utility of enzyme electrophoresis as a basis for any decisions about distinctiveness or nondistinctiveness of any *Euphydryas* populations.

In their original petition, the petitioners suggested that the checkerspot colonies on grassland in Santa Barbara and San Luis Obispo Counties represented isolated intermediates or intergrades between *E. e. bayensis* far to the north and *E. e. wrighti* of southern California. Emmel and Emmel (1975), in describing the subspecies *E. e. insularis*, had characterized coastal *E. editha* found in those counties as "near" *E. e. bayensis*, a common taxonomic usage that implies kinship but does not merge it with a named entity. In a letter of comment dated November 5, 1985, Drs. Ehrlich and Murphy stated that they consider the mainland colonies in question actually assignable to *E. e. insularis*.

Dr. Arnold's comments of November 7, 1985, further stated that Murphy (1982) had left unresolved which subspecific name to apply to Outer Coast Range populations of the species from north of San Francisco. This comment also recalled a 1981 mention by Dr. Raymond White in a letter to the Service of a note by Doudoroff (1935) reporting some seasonal division of the checkerspot butterfly flight period in Napa County near Calistoga. Dr. White interpreted this as possible evidence of a former bay checkerspot colony, subsequently extirpated.

The Service responds that this comment neglected to mention that the only such populations Murphy (1982) considered to still exist, other than those of the redefined *E. e. baroni*, were from the extreme north of Mendocino County. Murphy (1982) did state that he considered their affinities to probably lie with populations in Oregon that use a different larval foodplant than *E. e. bayensis*, and "which may be" referable to *E. e. taylori*. Doudoroff's (1935) note antedated the 1937 description of *E. e. bayensis*, of course, but did not specify anything about morphology or habitat, and mentioned no voucher specimens. Since Dr. Doudoroff's note did not account for another checkerspot butterfly species that was probably present, and because serpentine chaparral rather than grassland predominates in that area, this note must be considered very doubtful as evidence for including Napa County in the former range of the bay checkerspot butterfly.

Drs. Arnold, Ehrlich, and Murphy, using the medium of letters of comment on this rule, engaged in an argumentative exchange in respect to taxonomic philosophy and motives for making various statements. Much of the exchange pertained to Dr. Arnold's published analysis of variation in another butterfly species (one conclusion of his paper was that no one, including himself, had found features to reliably distinguish subspecies in that taxon). Although the discussion is part of the public record, the Service did not find it specifically relevant to the present consideration. One letter of comment from a journal editor also concerned itself primarily with that debate and with the validity of subunits in another species.

Under the second subject of comments stated above, the accuracy of existing distributional data, the County of San Mateo and four individuals commenting on the proposal indicated belief that there has been insufficient effort to locate additional bay checkerspot colonies. The lawyers' comments for United Technologies cited above follow a logical course from the effort to include widely separated populations within the subspecific scope of the bay checkerspot butterfly, to a listing of available reasons for doubt about the completeness of the existing data. Their comments also follow leads established in Dr. Arnold's analyses and discuss a number of other letters of comment. The detailed exposition has as themes the wide and plentiful distribution of serpentine rock outcrops in California, and a claim for recent discovery of six bay checkerspot butterfly populations in the preceding two years, of which the centerpiece is the large colony near Morgan Hill.

The Service responds that except for discovery of the Morgan Hill colony, which exists in a very large area of private property that is mostly to trespass and that was indeed unknown to the petitioners at the time of original petition, a review of several related factors that United Technologies' comments did not address gives an entirely different perspective. First, there is a critical distinction between serpentine rock outcrops that support native grassland and the more numerous ones that support chaparral (and other subspecies of checkerspot butterflies, if any). An article on California serpentine by Kruckeberg (1984), submitted as an exhibit to one of Dr. Arnold's letters, devoted considerable attention to serpentine chaparral, but gave only passing mention to serpentine grassland, citing Jasper Ridge as its primary example. Even at Jasper Ridge there is a considerable amount of chaparral, which does not support the bay checkerspot butterfly (Ehrlich 1965). Second, a significant interruption in Outer Coast Range serpentine outcrops likely to support the required grassland habitat type begins near the line between Santa Clara and Santa Cruz Counties and extends southward along the Outer Coast Range. It figures prominently in the geological maps submitted to illustrate the wide distribution of serpentine occurrences. Third, two others of the six "new bay checkerspot populations" are based on assignment of two previously known and reported colonies of uncertain taxonomic status in southern California to *E. e. bayensis* in accordance with Dr. Arnold's interpretation of the species' taxonomy. The remaining three may or may not be colonies able to persist; one exists on a very small remnant of a formerly extensive habitat near San Mateo, and two were recorded as occurrences on small serpentine outcrops in the vicinity of the largest colony near Morgan Hill.

The Service accepts one implication of the foregoing comments, that undiscovered colonies or stray individuals of the bay checkerspot butterfly may be found in the future at various locations in the bay area, or indeed may establish themselves in the vicinity of the two remaining reservoir populations. Dr. Arnold's explorations in 1985 provided useful additional data, and it was appropriate for him to concentrate his search in areas of serpentine outcrops supporting grassland habitat. His report of overgrazing observed on most of them is discouraging from a viewpoint of long-term protection of butterfly habitat. Most discouraging is the lack of any additional large serpentine outcrops supporting grassland habitat. Even more significant, though, is a lack of any additional serpentine grassland left to search within the known or probable range of the subspecies.

Lawyers for United Technologies raised a number of issues in a letter of comment dated July 31, 1986, which will be treated below. Many of those issues related to information brought forward for the record during the public meeting of July 16, 1986. A primary concern was evidently discovery of two previously unreported checkerspot (*E. editha*) populations well to the south of the Bay area, one in San Luis Obispo County, found by Dr. Richard Arnold, and one in San Benito County, found by Dr. Dennis Murphy.

The July 31 letter restated an earlier claim that the taxonomy of these southern checkerspot populations, and, by extension, the taxonomy of the bay checkerspot, *E. editha bayensis*, is not yet resolved. The Service agrees that subspecific taxonomy of *E. editha* collected from areas south of Santa Clara County needs further elucidation. However, the subspecific name *bayensis* was apparently not applied to such specimens, despite ample opportunities to do so, before the issue of possible listing for this taxon was raised.

The July 31 comment letter claims further that the Service refused to consider the taxonomic status of southern *E. editha* colonies in determining whether the bay checkerspot butterfly is endangered. On the contrary, the Service received and considered information from the area, some of it in published form, but concluded after due consideration that the kind of monographic taxonomic work that is clearly needed to resolve all the existing uncertainties is simply not available now. Some specific examples of facts, ideas, and opinions that the Service considered follow.

A colony of *E. editha* utilizing at least one of the bay checkerspot's two obligate foodplants was mentioned by Singer (1971) and McKechnie *et al.* (1975) to exist in San Luis Obispo County near Madonna Inn, not far from one of Dr. Arnold's newly reported colonies (whose foodplant is unknown). Similarly, Emmel and Emmel (1975) illustrated a specimen they identified as "near *bayensis*" from Monterey County, closer than any other known grassland colony to Dr. Murphy's newly reported colony in San Benito County. Geographically close colonies are apt to be closer phylogenetically than are ones farther apart, other factors being equal.

A different vernacular name, "coastal checkerspot" was applied by Emmel and Emmel (1973) to a number of these southern entities otherwise identified only as "near *bayensis*." Emmel and Emmel (1975), however, did not explore possible relationships of these southern entities to either *E. e. insularis*, a subspecies they described, or to *E. e. bayensis*. Subsequently, colonies mentioned by Emmel and Emmel (1973) from sands in Santa Barbara County were indicated to be ecologically different from *E. e. bayensis* (Ehrlich and Murphy 1981), and a colony near Pozo, San Luis Obispo County, was indicated by Murphy (1982) to represent the serpentine chaparral form, *E. e. luestherae*.

At the July 16, 1986, hearing, Dr. Arnold asserted that the butterflies located in San Luis Obispo County appeared to be bay checkerspots because of the favorable comparison to descriptions in scientific literature and specimens in reference collections. Dr. Arnold also indicated that both essential food plants were present at the San Luis Obispo population sites. (Hearing transcript at 13.) He noted, however, that statistical measurements were not done for butterflies collected from San Luis Obispo County (hearing transcript at 14), and that he had not seen any butterflies from the "near *bayensis*" samples to compare them to bay checkerspot specimens. (Hearing transcript at 22.) Dr. Dennis Murphy, one of the petitioners for this action, professed no knowledge of the existence of bay checkerspots between the Morgan Hill colony and San Luis Obispo County. He noted that serpentine grasslands are rare in the areas between these populations, and that the distance between these checkerspot colonies is several orders of magnitude greater than any recorded movement of bay checkerspot butterflies. Dr. Murphy further noted that the areas in between the Morgan Hill colony and the San Luis Obispo County population generally include unsuitable habitat, and that the populations are effectively isolated by a wall of chaparral. (Hearing transcript at 41.) Noting first that it is generally accepted that the San Benito County populations belong to the subspecies *luestherae*, Dr. Murphy speculated that an assignment of San Luis Obispo County populations to the subspecies *bayensis* would most probably involve a determination that the populations arose independently at habitat locations using the same host plants and involving the same color patterns, features which have yet to be established. (Hearing transcript at 42.) Consequently, a similar

appearance may have arisen between genetically distinct lineages on northern and southern grasslands through parallel or convergent changes instead of through migration and/or colonization from one grassland to another. Thus one or more populations resembling *bayensis* may, in fact, be separately derived. To treat similar but convergent entities as a single entity for convenience is contrary to accepted basic biological principles, and the Service would not knowingly do so. In the present case, evidence is insufficient to determine whether convergent evolution has occurred.

At the July 16, 1986, public hearing Dr. Arnold also raised a question concerning the alternative idea, already mentioned, that some of the southern colonies could represent genetic intermediates between named subspecies, which arose as a result of a previous contiguous or widespread distribution. Dr. Murphy conceded that habitat continuity may have been a possibility in the ecologically recent past. (Hearing transcript at 48.) The Service agrees that intermediate populations or clinal intergrades often are found where the ranges of adjacent subspecies approach one another (when such intermediates are lacking, specific rather than subspecific recognition is usually indicated). However, normal taxonomic usage does not require that any intermediates found must be allocated either to one subspecies or the other, but lets them be recognized simply for what they are. Furthermore, Dr. Murphy made the point that, even if the San Luis Obispo and San Benito County serpentine grassland populations were included within the subspecies *bayensis*, the subspecies as a whole would still be threatened in a significant portion of its range and listing would still be justified. (Hearing transcript at 44–45.) Noting that the taxonomy issue would not resolve the threats posed to the bay Checkerspot butterfly, Dr. Murphy observed that no one had taken the position that the San Luis Obispo populations would support the long-term survival of the bay checkerspot butterfly in a significant portion of its range. (Hearing transcript at 52.) The Service concurs that a listing determination is justified regardless of the taxonomic classification of the San Benito and San Luis Obispo County populations. Noting that the petitioners do not use subspecific classifications in their studies on checkerspot butterflies, Dr. Murphy indicated that their attention had been drawn to discrete populations that were historically referred to as *bayensis*. (Hearing transcript at 52–53.) Dr. Murphy indicated that the petitioners were not taxonomic experts of the checkerspot butterfly, and he reaised the question of whether any such experts really exist. (Hearing transcript at 54.)

Replacing the prevailing uncertain scientific opinions regarding identities of southern colonies with detailed evidence for relationships is a task for skilled biologists using the array of techniques available for phylogenetic investigation. Separation and identification of genetic lineages is time-consuming, tedious research. Acceptance and consensus among scientific peers requires additional review and time. As discussed below in the findings of the bay checkerspot butterfly review panel, the Service concludes on the basis of the best presently available scientific information that the known *E. editha* grassland populations from south of Santa Clara County are not bay checkerspot butterflies.

The July 31 letter of comment from United Technologies Corp. advocates that the Service must take responsibility for filling the existing gap of information about the southern checkerspot colonies and should "define" or commission to be "defined" some distinction between *E. e. bayensis* and "near *bayensis*," based on biological "criteria." The comment presents the standard of acting on "the best available scientific and commercial information" as a primary basis for the action advocated, namely that the Service withdraw the proposed rule to list the bay checkerspot as endangered, and refrain from protecting known colonies of *Euphydryas editha bayensis*. The Service responds that the Endangered Species Act does not redefine either species or subspecies, except to include subspecies within the concept of "species" in respect to its own provisions. Species and subspecies are biological entities, not "defined" by *criteria* but instead representing relationships among organisms, to be identified through a process of research and the reasoned exercise of scientific judgment. Such research seeks to arrive at taxonomic interpretations that best reflect current knowledge of biological relations among populations. To postpone protection for the known remnants of the bay checkerspot butterfly while all issues that may be relevant are researched does not accord with the Service's interpretation of the Endangered Species Act, and could result in elimination of that taxon from a very significant portion of any range ever likely to be established for it. The idea that the standard of "best available scientific or commercial information" could be used as a basis to delay protective actions otherwise needed is unsupportable.

The Service also wishes to acknowledge for the record the intensive search for "stepping stone" populations throughout the range of the species and the State of California reported by McKechnie *et al.* (1975). Those studies were conducted over many years by groups of experienced collectors from Stanford University and elsewhere in connection with projects to study quantitative gene flow and other biological features of this species (Brussard *et al.* 1974, Ehrlich 1965, 1979, Ehrlich *et al.* 1975, Ehrlich *et al.* 1980, Johnson *et al.* 1968, Murphy and Ehrlich 1980, White and Singer 1974). In attempting to actually measure gene flow, these researchers risked error to the extent that they were unable to locate all existing geographic links or stepping-stone colonies. The Service believes that the distribution data for *Euphydryas editha*, of all subspecies, are both generally accurate and reasonbly complete.

The Bay Checkerspot Butterfly Review Panel (1986) examined the relevant literature, and reviewed it in considerable detail. Its members reported unanimous agreement that *Euphydryas editha bayensis* is a valid subspecies whose description meets all the pertinent requirements of the International Code of Zoological Nomenclature, that it has been continuously recognized as a valid subspecies in all major works since its description, that its recognized populations considered together have phenotypic, geographic and ecological integrity, and that its currently recognized range (present and former) is in San Francisco, San Mateo, western Santa Clara, and Alameda Counties, California. They believed no other known populations should be included in the subspecies *E. e. bayensis*. On the basis of the best scientific information presently available, therefore, the Service accepts the recommendation of its scientific review panel.

The remaining subject of comments relating to status for listing (threats to bay checkerspot butterfly habitat from various human activities and projects) attracted by far the most attention and comment.

Three comments indicated that the bay checkerspot butterfly cannot be endangered if it survived farming, construction of an interstate highway, carbon monoxide poisoning from cars using that highway, repeated sprayings of malathion, destruction by off-road

vehicles, and years of intensive livestock grazing. Two comments opposed to the listing of the bay checkerspot butterfly stated that Interstate 280 destroyed hundreds of acres of serpentine outcrops and presumably many bay checkerspot butterflies and their larval host plants. The latter comments also noted that construction of Interstate 280 was vigorously supported by many of those now hoping to block development of a golf course at Edgewood Park.

The Service responds that, except for carbon monoxide, the factors referred to in these comments may have all contributed to the critical situation now faced by the bay checkerspot butterfly. The fact that the butterfly survives despite these many assaults on its habitat and populations cannot be construed as evidence for its immortality. Processes leading up to extinction happen over time, usually resulting from a combination of many factors and events. The butterfly survives now in a much depleted and highly vulnerable condition. Determination of threatened status relates to the application of the five factors identified in section 4(a) of the Endangered Species Act, any one of which may make a species eligible for listing. The five factors and their application to the bay checkerspot butterfly are presented in the section "Summary of Factors Affecting the Species." The elimination of former extensive serpentine grasslands as a result of the construction of Interstate 280 is well known. This is one of the activities contributing to the decline of the bay checkerspot identified in the original proposal.

One comment in opposition to the bay checkerspot listing stated that the Service merely assumes that modification of present bay checkerspot habitat would seriously reduce the size of the colonies and that habitat will be adversely modified by the various proposed projects. Another comment stated that the Service only assumes that a reduction in the size of the butterfly colonies would result from a severe, prolonged drought.

The Service responds that several developments are proposed or underway for the largest remaining habitats of the bay checkerspot butterfly. Many of those plans call for elimination and/or increased fragmentation of portions of the bay checkerspot's habitat. The Service also notes that the past detrimental effects of drought on bay checkerspot populations are well documented in the literature cited (Ehrlich et al. 1980, Ehrlich and Murphy 1981). The Service believes that these various factors and activities have the potential to contribute to significant further declines in an already severely depleted and geographically fragmented subspecies. Without measures to actively manage and enhance colonies of the bay checkerspot butterfly, the likelihood of its extinction will be increased significantly.

Only a few threats to the largest and therefore the most important habitat, near Morgan Hill, California, were described in comments. Lawyers for United Technologies Corp. evidently assumed that controlled burning there in continued conformance with Santa Clara County fire safety codes would pose a threat to the colony and automatically be prevented. They also mentioned a great number of activities involving the Federal Government, national security, and/or national defense that might be involved in threats to the colony at some future time. They criticized the Service for failing to list these aspects of the Morgan Hill proposed critical habitat in the proposed rule.

The Service responds that the comments and other available information regarding habitat on the property owned by United Technology Corp. indicate the colony there is numerically small and scattered on serpentine deposits having suboptimum conditions, but is otherwise in relatively good condition. The Service believes that the past activities conducted on the property, including limited grazing, and controlled burning outside of areas actually occupied by the butterfly, have presented no significant threats to the colony. Consultation with the Santa Clara County and San Jose City Planning Departments indicated that there are no plans for urban or commerical development on United Technologies property that would seriously alter the habitat. At present, all of the serpentine grassland habitat at Morgan Hill is zoned as open space. On that basis no specific threats were identified for United Technologies property actually occupied by the butterfly when the rule was proposed. The situation remains unchanged. Threatened status is appropriate for the bay checkerspot butterfly because, although the Morgan Hill site provides the largest remaining habitat for the butterfly, and a conservation agreement has been developed to help protect the species over about thirty percent of the habitat there, approximately seventy percent of the habitat remains in an uncertain, highly vulnerable status and could later be rezoned for development under the State zoning laws. Moreover, while it is the intent of the conservation agreement to restore habitat damaged by the landfill, through reconstitution of serpentine grassland and enhancement of carrying capacity on undisturbed habitat by intensive grazing controls or other artificial methods, the Service notes that the best-intentioned restoration and management programs for biological systems can and often do inadvertently sustain losses or otherwise fail to fully achieve their intended goals. Appropriate long-term assurances are provided in the Morgan Hill conservation agreement in case the restoration and management programs do not adequately minimize or compensate for adverse impacts from the landfill project.

Former U.S. representative Ed Zschau, the U.S. Air Force, the U.S. Navy, the Bureau of Reclamation, the Western Area Power Administration, the County of Santa Clara, the City of San Jose, United Technologies Corp., Pacific Gas and Electric Company, and Waste Management of California Inc. all expressed concern over the listing of the bay checkerspot butterfly as an endangered species and the proposed designation of critical habitat in the Morgan Hill area. Several expressed the hope that the Service would not list the species prematurely, without benefit of adequate study. Congressional and military concern was general, the correspondents expressing fears that activities at United Technologies Corp. vital to the national interest could conflict with the butterfly and possibly be affected by the listing or designation of critical habitat. The County of Santa Clara and United Technologies Corp. also questioned the inclusion of large areas of non-serpentine habitat in the description of critical habitat at Morgan Hill.

The Service refers these correspondents to its response to United Technologies Corp. above. Although the Service is not directly concerned in this final rule with designation of or exclusions from the proposed critical habitat, it also wants to elaborate to these correspondents the function of its regulations at 50 CFR 424.12, according to which the description in the proposed rule was made. Section 424.12(e) provides that if several sites, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated. Section 424.12(c) directs the Service to use non-ephemeral reference points in making any designation. The informational function of such

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designation is served best if the reference points can be located easily on maps and in the field. Inclusive references inform Federal agencies of critical habitat within, and are easily revised if better data, maps, or landmarks become available. Reports by Harvey and Stanley Associates (1983), Dibblee (1973), Soil Conservation Service (1974), and Dr. Dennis Murphy (pers. comm.) illustrate that the appropriate serpentine habitat near Morgan Hill is patchy and discontinuous in a generally linear band approximately 7,500 feet wide, extending from northwest to southeast between Metcalfe Road and Anderson Dam.

The Bureau of Reclamation, the Western Area Power Administration, the County of Santa Clara, and Pacific Gas and Electric Company were all concerned about a 115 kV transmission line proposed to cross the Morgan Hill habitat area between Metcalfe Substation and a planned Bureau of Reclamation pumping plant at Coyote, part of the San Felipe Project. The Bureau of Reclamation indicated that the Western Area Power Administration would address the impacts of this proposed action in the environmental documents being prepared for the project.

The Service responds that it is aware of this project and has been in communication with the Western Area Power Administration. Adequate planning and some design modifications have been implemented to avoid adverse impacts to the butterfly.

Waste Management of California, Inc. requested that the bay checkerspot butterfly be listed as threatened as opposed to endangered. The company developed and is now implementing a conservation agreement for the butterfly in conjunction with their landfill project in the Morgan Hill habitat area. This agreement is intended to off-set and compensate for the adverse impacts of Waste Management's landfill on the butterfly and its habitat. Waste Management believes that the implementation of this program decreases the threats to the species. Waste Management further requested that if threatened status were determined then special regulations be issued to authorize the incidental taking of butterflies for the landfill. Waste Management's representative also requested that the Service delay the designation of critical habitat in this area until the final habitat conservation program has been submitted to the Service.

The Service acknowledges the conservation agreement for the landfill and encourages such coordination efforts. The decision to change the listing status of the bay checkerspot butterfly from endangered to threatened is, in part, a result of the landfill agreement. However, the agreement *per se*, does not significantly change the status of the species as a whole, or benefit a majority of the species' distribution. The landfill will eliminate an estimated 6–10 percent of the low to moderate quality proposed critical habitat at Morgan Hill. The agreement commits Waste Management, or any of its assigns, responsibility to undertake species conservation activities and funding for 10 years, including managing grazing to enhance population levels and carrying capacity, developing and implementing methods for reestablishing and repopulating serpentine grassland habitat destroyed by the landfill, establishing butterflies in former habitat, and providing for habitat acquisition in the event the other measures prove unsuccessful or inadequate. As a consequence of the above, the Service issued a conference opinion that the conservation agreement was not expected to reduce appreciably the likelihood of survival and recovery of the bay checkerspot butterfly. Although this program does not substantially improve the status of the species as a whole, it does provide a significant legal mechanism that is expected to compensate for the adverse impacts of the landfill project. If further efforts were undertaken to manage the remainder of the Morgan Hill proposed critical habitat, the conservation of the species could be substantially advanced. A further discussion of why threatened status has been determined is provided in the section "Summary of Factors". The delay of critical habitat designation announced in this final rule is not a response to Waste Management's specific request.

With regard to Waste Management's request for special regulations to allow the take of the bay checkerspot butterfly if threatened status is determined, the Service acknowledges the availability of special regulations under section 4(d) of the Endangered Species Act, but finds in this situation special regulations are not necessary. The landfill activity has been covered by the incidental take statement in the Service's conference biological opinion, which will be evaluated for adoption as a final biological opinion after this listing becomes effective, provided there are no significant changes in the facts or the project design since the date of the conference opinion.

Three comments in favor of listing the bay checkerspot as an endangered species stated that the proposed sanitary landfill poses a significant threat to the butterfly. One also expressed concern that excavation at the landfill site would produce crysotile asbestos dust that could extend damage or adverse effects to areas well outside the actual landfill site and excavation area.

The Service concurs with the concerns expressed about asbestos dust, which has been an issue in other areas having the same soil type. The Service also is aware that the landfill itself could eliminate butterfly habitat, which relates more directly to the status of the species. The Service, in coordinating through the section 7 conference process with all parties involved in the development of the landfill site, has determined that careful and attentive implementation of Waste Management's habitat conservation program is not likely to reduce appreciably the survival and recovery of the bay checkerspot butterfly.

Since elimination of the large bay checkerspot butterfly colony at Woodside, the second largest area of primary habitat for the butterfly is in Edgewood Park in San Mateo County. A golf course and recreation facility proposed by the county for the park were identified as posing threats to this habitat in the proposed rule. The greatest number of individual comments, for and against listing this butterfly, related directly to the Edgewood Park habitat area.

An entomologist provided additional data on the bay checkerspot population numbers at Edgewood Park, indicating a dramatic decline since 1981 from more than 100,000 down to between 2,000 and 3,000 in 1984. He attributed the reductions in 1983 and 1984 to adverse weather conditions in 1982 and 1983. In 1985 the population was estimated at fewer than 1,000, in 1986 fewer than 500, and in 1987 the population remained at about 500 to 1,000 (Murphy, pers. comm., July 1987). The Service notes that the Edgewood population may now be considerably smaller than that needed for recovery and long-term population viability at this site.

A geologist who supported the proposed listing discussed the possible transmission of waters through the serpentine body at Edgewood Park. He expressed concern that golf course irrigation could enter the serpentine fracture system and resurface within or near bay checkerspot populations. He noted that this water could carry various chemicals such as insecticides, herbicides, and fertilizers from the nearby golf course and that such transmissions could inadvertently

damage or destroy the bay checkerspot population at Edgewood Park.

A licensed pest control operator, in support of listing the bay checkerspot butterfly, provided information on likely adverse effects of insecticide and herbicide applications for a golf course at Edgewood Park. He warned of that chemical drift could either kill the bay checkerspot outright and/or kill the butterfly's obligate host plants.

The County of San Mateo and 10 individuals expressed concern that listing the bay checkerspot butterfly would block the proposed golf course at Edgewood Park. Most of those commenting in this vein indicated that the Endangered Species Act is being used by local environmentalists to halt San Mateo County's recreation plans for Edgewood Park, specifically, the golf course development.

The Service responds that identifying and listing endangered or threatened species pursuant to the Endangered Species Act, as amended, is a requirement mandated by Congress. Furthermore, as noted by another comment, the Service must look *solely* to the best scientific and commercial information available when making a decision on a proposed listing of an endangered or threatened species under section 4 of the Endangered Species Act. Economic or other non-biological factors can not be considered in the listing decision. (See H.R. Conf. Rep. No. 835, 97th Cong., 2d Sess. 19 (1982).) In making its decision in this issue, the Service has relied solely upon the best available biological and commercial information. The Service recognizes that such listings may affect various State and local entities and planned and approved development proposals through the local planning process, even though Federal listings primarily affect Federal activities that may pose impacts to the bay checkerspot butterfly.

Twelve comments pointed out that the golf course as planned was designed to protect as much of the butterfly's habitat as possible. They further indicated that the golf course would not "wipe out" the butterfly and thus does not pose a threat. One comment stated that there is no basis for inferring that any future single event will cause the demise of the bay checkerspot butterfly. The County of San Mateo submitted a Specific Conservation Program that it believes can accommodate the golf course as well as protection of the butterfly.

The Service responds that the proposed golf course at Edgewood Park is only one of many activities and factors that may adversely affect the bay checkerspot butterfly. San Mateo County's Stage II Final Supplement to the Environmental Impact Report (1984) identified environmental effects of the proposed Master Plan for Edgewood Park, which includes the proposed golf course development and other recreation facilities. This document indicated that 42 to 64 percent of the serpentine grassland habitat at Edgewood Park would be destroyed as a result of Master Plan implementation and that there would be significant adverse effects to the bay checkerspot butterfly and irreversible losses of individuals and colonies. Because local extirpation or further declines of the bay checkerspot are likely even without disturbance, the Service believes that the existing Master Plan (San Mateo County 1984) contains substantial additional threats to the bay checkerspot butterfly. This does not mean, however, that modifications or alternative designs could not alleviate or significantly reduce these threats. The Specific Conservation Program (San Mateo County 1985) provides one alternative design. San Mateo County and one individual opposed to the listing pointed out that not all of the serpentine area within Edgewood Park is occupied by the butterfly. San Mateo County further stated that some of the proposed habitat area at Edgewood Park has not been and could not be viable habitat for the butterfly.

The Service responds that habitat identification in all areas is based on detailed survey information from a variety of sources. In the Edgewood Park area, information sources included Torrey and Torrey Inc. (1982), Reid and Murphy (1983), and Dr. Dennis Murphy (pers. comm.). The situation there is similar to that at Morgan Hill, in that serpentine grassland occupies about 20 percent of the park. It forms a nearly continuous band varying in width from about 250 to 2,500 feet surrounding a central ridge formed by an uplifted core of Franciscan greenstone. The distribution of adult butterflies, larvae, and host plants within the encircling serpentine matrix shows two disjunct areas of high butterfly concentration, one along the western edge of Edgewood Park, and the other near Hillcrest Way. There are several sites of lesser occurrence between these two sites and on the north side of the central ridge. Again, because of the disjunct distribution of host plants, larvae, adults and serpentine soils within the park, the map in the proposed rule outlined an inclusive area with convenient, non-ephemeral boundaries. Such boundaries serve to inform Federal agencies that habitat exists within that may be affected by Federal activities, funding or permits.

One comment stated that the habitats of the bay checkerspot butterfly at Jasper Ridge and San Bruno Mountain are not threatened. The commenter further qualified the statement by noting that the San Bruno colony is protected by the San Bruno Mountain Area Habitat Conservation Plan and the Jasper Ridge colony is protected as a biological preserve.

The Service replies that, indeed, no developments are proposed in these two areas that would adversely affect the bay checkerspot. However, observations of the bay checkerspot at San Bruno Mountain over the last four years indicate the colony is small, declining, and likely to disappear. The habitat is considered marginal as described below under "Summary of Factors." In 1984, fewer than 50 bay checkerspot butterflies were observed at the site. In 1986, a wildfire swept through the site. In 1987, no bay checkerspot butterflies were observed at San Bruno Mountain, and it is possible the population has been extirpated. The San Bruno Mountain Habitat Conservation Plan (County of San Mateo 1982) provides no specific provisions for protecting or managing the bay checkerspot colony other than leaving the habitat as natural open space.

The Jasper Ridge colony occurs within a biological preserve of Stanford University that is used for biological research. Although no developments are proposed for this area, the serpentine outcrop is small, and the grassland habitat is fragmented and interspersed with chaparral non-habitat. Consequently, the attendant small bay checkerspot colony is subject to severe fluctuations in population levels. This colony once consisted of three demographic units (Ehrlich and Murphy 1981), but it now consists of two as a result of drought-induced extirpation of one unit in the mid-1970s. If the drought had continued one more year, it is considered likely that all three units would have succumbed (Ehrlich and Murphy 1981, Ehrlich *et al.* 1980). These factors were emphasized in a letter of comment from the President of Stanford University that supported the listing.

The Service believes that the San Bruno Mountain and Jasper Ridge colonies, although relatively unthreatened by human activities, face a high probability of extirpation from natural factors such as prolonged drought.

The California Department of Fish and Game called attention to the proposed rule's inaccuracy of referring to habitat in Redwood City as the Woodside zone. Although the colony there is or was a

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remnant on the edge of the former large butterfly colony in Woodside, the Service agrees with this recommendation and will refer to that area in the future as the Redwood City area or zone.

One comment stated that the Service assumes that because no Federal or State regulations exist to protect the bay checkerspot, no efforts are being made to preserve it. The City of San Jose, the County of San Mateo, and Santa Clara County all indicated that their environmental review process and various regulations help protect and provide measures to mitigate impacts to the butterfly. One comment stated that Federal listing cannot help these local efforts to protect the butterfly. Several comments stated that we should try to refurbish the habitats or move the organisms rather than just declare them to be endangered and then allow them to become extinct.

The Service replies that it recognizes the efforts of local agencies and individuals to protect the butterfly; however, Federal listing is required for any species fitting the definition of a threatened or endangered species after careful consideration of the five criteria outlined in seciton 4(a) of the Act. The Service is required by law to list the bay checkerspot as threatened because it clearly qualifies under these criteria. Whether the listing will assist local efforts to protect the butterfly is not pertinent to listing itself; recognition of threatened status makes a statement about the survival prospects of the species. The Service hopes, however, that Federal listing will help promote the conservation of the bay checkerspot through protective measures otherwise unavailable to local agencies and individuals. For example, Federal listing restricts the taking of the bay checkerspot butterfly pursuant to section 9(a)(1) of the Act. Moreover, Federal listing provides additional opportunities for the management and recovery of the species directly, by developing and implementing a recovery plan, and through cooperation with the State of California via Section 6 of the Act. Further discussion of the benefits of listing can be found below under the heading "Available Conservation Measures".

Agencies whose comments extended general support for listing included the National Park Service (Regional Office and Golden Gate National Recreation Area), which commented that Federal listing is required for the bay checkerspot butterfly to effect needed protection, and the California Department of Fish and Game, which also provided specific information on the occurrence of, and threats to, the butterfly. Their data was in agreement with the information presented in the proposed rule.

The Conservation Monitoring Centre and the Butterfly Specialist Group of the International Union for the Conservation of Nature and Natural Resources (IUCN), and Dr. Thomas W. Davies of California Academy of Sciences (Department of Entomology) also provided opinions and substantive data from other scientists. An IUCN report on this butterfly (Wells et al. 1983) in the Invertebrae Red Data Book affirms significant threats for the San Bruno, Jasper Ridge and Edgewood Park colonies. The letter from the California Academy of Sciences described former habitats and confirmed the loss of bay checkerspot colonies in Alameda County that resulted from home construction, plantings of Monterey pine, and drought.

Twelve chapters representing eight private conservation organizations registered support for the listing in letters and oral comments at the public hearings. A person that testified for one private organization did not support the listing. None of these testimonials added substantive information regarding the butterfly's status or threats not already in the record, but the Service appreciates the interest and concern shown.

With respect to procedures related to the proposed listing, one comment complained about the conditions at the public hearing. The complainant stated that the public address system did not work at first, and then later it played music, making it difficult to hear the speakers. He stated that the Service used too much time explaining the reasons for listing the species; concepts that were previously discussed in the **Federal Register**. He noted equal time was not allowed for each side to present relevant facts; with the specific example that a videotaped presentation prepared by Mr. Robert Trent Jones was delayed until after 10 o'clock and by that time most of the audience had left.

The Service apologizes for any inconvenience to the audience for the public address system, but this did not appear to be a significant problem at the meeting. Several other commenters stated that they thought the procedures and conditions at the public hearing were very good. The court recorder did not report difficulties, and the transcripts are evidently complete. The hearing officer ensured that all those wishing to comment were given adequate time to present relevant facts. No one was denied an opportunity to speak, and the hearing was extended to accommodate all speakers. Mr. Jones' video recording was held until last so that all individuals actually present would be given an opportunity to speak first. The Service considered that presentations on the provisions of the Act and background information in support of the listings were necessary to clarify the proposal and ensure everyone was familiar with the purpose of the public hearing.

United Technologies Corp. and two individuals commented on listing procedures noting that there was insufficient notification of the proposal and the public hearing. A concerned citizen stated that the file information on the listings was not reasonably available to people in the local area. United Technologies further alleged that they were denied due process in this proceeding, that the Service failed to follow the notice requirements specified in the listing regulations, that the newspaper publication was inadequate for the proposed rule, that the Service erred by adding the Morgan Hill critical habitat site to the proposed rule after the petition had been filed with the Service, and that the Service erred in denying United Technologies an opportunity for a second public hearing.

The Service responds that the Act and 50 CFR 424.16(c) require that notifications of the proposal and the public hearing be made public through notices published in the **Federal Register** and in local newspapers (refer to the previous background section for specific newspapers and publication dates). The Service provided all required notices under 50 CFR 424.16(c)(1)(iii). The Service published its proposed rulemaking in the **Federal Register** on September 11, 1984. "Actual notice" of the proposal was given to the California Department of Fish and Game and to each county in which the bay checkerspot butterfly was believed to occur. To the extent the Service had knowledge of the potential impacts proposed by the listing to any Federal agencies, local authorities, or private individuals or organizations, notice was provided to these entities and individuals. It should also be noted, however, that actual notice (by individual letter) is not a regulatory requirement under 50 CFR 424.16(c)(1)(iii) and that only a good faith effort is required on the part of the Service to notify states and counties and to determine the jurisdictions within which the species is believed to occur. "[A]n unintentional and unplanned failure of the notification system shall

not invalidate the proposed regulation." (H.R. Conf. Rep. No. 1804, 95th Cong., 2d Sess. 27 (1978).) With regard to the newspaper publication, United Technologies Corp. fails to point out specific facts concerning why the newspaper publications were inadequate. Given the extensive public record developed by the Service on the proposed rule and the full participation by development interests, the public, environmental groups, and various Federal, State, county, and city officials in the rulemaking process (and in particular the extensive participation by United Technologies), the Service is confident that it has fully complied with the procedural requirements of the regulations. To the extent it is entitled to procedural due process in an Endangered Species Act rulemaking, United Technologies and all other interested parties have been accorded adequate opportunity to comment numerous times on the proposed rulemaking and, along with all other members of the general public, have received all of the public notices that are provided for by the statute and the regulations. No other notice or hearing responsibilities are required to be fulfilled by the Service under the Endangered Species Act or the listing regulations, and United Technologies has failed to point out facts that would entitle it to any special procedural rights.

With respect to the reasonable availability of the file information, the information was available at the Service's Regional Office in Portland, Oregon. A phone number and address were provided in the notifications for those wishing to ask questions or inquire about the file information. The Service's file information was also available through the Freedom of Information Act, and was requested by several parties. The Service considers that all procedural requirements of the Act have been met.

With respect to United Technologies comments regarding inclusion of the proposed Morgan Hill critical habitat after the petition, the site was clearly indicated in the proposed rule. Any failure on the petitioner's part to include the site within the scope of their petition is not fatal to the rulemaking process, since the proposed rule undergoes a complete regulatory review that provides for public notice and comment on the expanded proposal. Moreover, the petitioner was under no duty to address the issue of critical habitat in a listing petition. The Service had complete authority to accept the new information concerning the Morgan Hill critical habitat site and incorporate it into a proposed rule after evaluating the information.

With respect to the requirement for a second hearing, as recommended by United Technologies, although the Service was not required to do so, the Service held a second hearing on July 16, 1986, to resolve differing scientific interpretations of data concerning newly discovered populations of checkerspot butterflies. United Technologies fully participated in the second public hearing, and, therefore, allegations that they have been denied the opportunity to personally appear before the Service during a public hearing no longer have weight. The Service further clarifies that written comments carry equal weight with those presented at public hearings. No special authority or significance is accorded oral statements made at public hearings.

In light of all of the notice and public comment opportunities accorded by the Service in the rulemaking process for the bay checkerspot butterfly listing, it is not necessary that the Service publish a second proposed rule to rectify alleged procedural infirmities. The Service's administrative record is complete for the issuance of a final listing rule.

In its May 16, 1985, comments, United Technologies objected to the listing of the bay checkerspot butterfly and designation of its critical habitat on the grounds that such proposed actions "would constitute a (taking) of [United Technologies] private property for public use without just compensation, in violation to the Fifth Amendment" to the Constitution of the United States. United Technologies also contended that the listing and critical habitat procedures provided for in the Endangered Species Act are unconstitutionally vague.

The Service responds that the constitutional issues raised by United Technologies challenge the fundamental procedural process provided by Congress for the listing of endangered and threatened species and the designation of their critical habitats, if any. As such, these contentions cannot be addressed in the final rule because the Service's determination on whether to list the bay checkerspot butterfly cannot be influenced by non-biological factors. The Service can state, however, that no federal court has determined that the listing procedure provided for in Section 4 of the Endangered Species Act is unconstitutionally vague. Furthermore, the biological standards specified in section 4(a)(1) of the Act are not vague and have been followed by the Service since the Act was first passed in 1973 to determine the appropriateness of listing species under section 4. In regard to the contention that the property of United Technologies has been "taken" by the Service's action, the Service replies that United Technologies failed to indicate how such taking will occur and why this rulemaking process *per se* would effect such a taking. The section 4 listing procedure requires the Service merely to analyze biological factors to determine the scientific appropriateness of classifying wildife or plant species as endangered or threatened. Once that procedure is accomplished, other procedures exist, either through section 7 of section 10 of the Act, to analyze impacts posed by particular development projects on endangered or threatened species. At present, facts have not been presented to show that a taking of United Technologies property would occur as a result of a final listing of the bay checkerspot butterfly. United Technologies has failed to make a showing of actual conflicts between its activities and the regulatory action taken by the Service in listing the bay checkerspot butterfly under Section 4 of the Endangered Species Act. Further, United Technologies has failed to show that the statutory procedures for listing species as endangered or threatened, or the application of such procedures to the bay checkerspot butterfly, are unconstitutionally vague. The Service is under a statutory obligation to follow through with the listing process based on the best available scientific and commercial information.

Further, United Technologies is not entitled to compensation for its expenses incurred in investigating and defending against this proceeding. The section 4 listing process is not an adversary proceeding, but rather is the Service's public involvement process for obtaining the best available information before making a final decision on listing proposals.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the bay checkerspot butterfly *(Euphydryas editha bayensis)* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section

4(a)(1). These factors and their application to the bay checkerspot butterfly *(Euphydryas editha bayensis)* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Geologic map sheets show four large serpentine outcrops that all probably once constituted primary habitat for the bay checkerspot butterfly. A large outcrop at San Leandro in Alameda County had a historic bay checkerspot population, but apparently no longer supports the butterfly. San Mateo County has two such large outcrops, one at San Mateo, lying northeast of Crystal Springs Reservoir and extending southeast beyond the intersection of Interstate Highway 280 and Highway 92, and a second one extending from what is now Edgewood Park eastward to Woodside Road. Habitat on the San Mateo outcrop was almost eliminated by construction of Interstate Highway 280, although a remnant colony or recolonization is reported near the highway intersection mentioned. Habitat on the second outcrop is fragmented into smaller units by urbanization and road construction. A very significant fraction remains in Edgewood Park, but the portion in Woodside was largely eliminated by housing development, leaving a very small (approximately 26 acre) remnant inside the city limits of Redwood City. The Edgewood Park habitat segment is now the second largest remaining area of bay checkerspot habitat and appears to be vital to the species' continued survival. The fourth and largest serpentine outcrop in the known range occurs in Santa Clara County. It extends in a narrow belt about 16 miles from Hellyer Canyon to near the southeast end of Anderson Lake. The portions of this outcrop northwest of Metcalf Road and southeast of the Coyote Creek outlet from Anderson Lake appear to have been adversely modified by overgrazing. The remaining segment on the east face of Coyote Creek Valley between Metcalf Road and the Anderson Lake outlet supports the largest and most robust remaining colony of these butterflies and also appears to constitute the most vital population reservoir.

Approximately 26 smaller serpentine outcrops are mapped in or close to the known range of the bay checkerspot butterfly in Alameda, San Francisco, San Mateo and Santa Clara Counties. The best-studied bay checkerspot butterfly colony on such an outcrop is in the Jasper Ridge Biological Preserve of Stanford University, located east of Searsville Reservoir. Very detailed studies there revealed the existence of three distinguishable demographic (interbreeding) units within the single colony, but drought extirpated one of those in 1964 and again in 1974, and conservative extrapolations predicted the extirpation of the other two units as well if the 1975–1977 drought had lasted only one year longer.

Satellite colonies similar to the one at Jasper Ridge were observed to become extirpated by habitat modification at Joaquin Miller in Alameda County, and in 1977 by combined drought and habitat modification near Hillsborough in San Mateo County, near Silver Creek and west of Uvas Reservoir in Santa Clara County, and at Morgan Territory Road, in Alameda County. The colony at Morgan Territory Road had previously existed in close proximity to a *Euphydryas editha luestherae* colony on a serpentine formation at nearby Mount Diablo. In 1985, Dr. Richard Arnold found bay checkerspot butterflies at two small outcrop localities in Santa Clara County where they were previously unreported, one west of Calero Reservoir, and one about 2.5 miles west southwest of San Martin. Whether these are recolonizations since 1977 from the Morgan Hill colony about 5 miles away, or survived the last severe drought stress *in situ* cannot be determined, but they are on serpentine grassland habitats smaller than some occupied by colonies that disappeared in 1977. The small portions of former primary habitat in Redwood City and in San Mateo have been fragmented by urbanization, and colonies on them can be expected to act in the future as satellite colonies. The colony in Redwood City may be extirpated, as no butterflies have been observed there in the past four years.

Serpentine grassland sites that have probably supported satellite colonies of *E. e. bayensis* at one time or another are found in San Francisco County in a row of seven sites from Fort Point to Hunter's Point, at two sites in Alameda County, near Albany and near Lexington, and at 15 more sites in Santa Clara County, one south of Saratoga, one east of Lexington Reservoir, four sites between Guadalupe Reservoir and New Almaden, three sites lying north, south and west of Chesbro Reservoir, two sites in Santa Theresa Park, and four sites near Gilroy and along Sargent Fault. Many of these sites were surveyed briefly by Dr. Richard Arnold during the adult butterfly flight season in 1985 without establishing the presence of bay checkerspot butterflies, and his comments note that most of the sites he visited in Santa Clara County appeared to be overgrazed.

Marginal non-serpentine grassland habitat that has supported recorded colonies of the bay checkerspot butterfly occurred in Alameda County at Berkeley (extirpated), San Francisco County at Twin Peaks and Mount Davidson (both extirpated), San Mateo County at Brisbane (extirpated) and San Bruno Mountain (possibly extirpated), and in Santa Clara County near Coyote Reservoir (extirpated). Dr. Arnold has noted the presence of similar possible habitat in the vicinity of San Francisco Jail, on Sweeny Ridge, and in San Pedro Valley in San Mateo County.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although specimens of the bay checkerspot butterfly are valuable to collectors, overcollecting has not been identified as a threat to any colony. To discourage unnecessary collecting, Stanford University offers old specimens from its museum on an exchange basis.

C. Disease or Predation

Ninety to ninety-nine percent of bay checkerspot butterfly larvae die of starvation while in prediapause instars. Three to twenty-four percent of the remaining postdiapause larvae at the Jasper Ridge colony are killed by three species of parasitoids (Ehrlich et al. 1975). Because of high prediapause mortality and because the greatest parasitism only occurs during years of high butterfly numbers, even this high rate of parasitism is not a major factor in determining the size of any bay checkerspot butterfly population. In years of large butterfly numbers, the majority of the butterflies still escape parasitism and provide recruitment in subsequent years.

D. The Inadequacy of Existing Regulatory Mechanisms

The bay checkerspot butterfly is not adequately protected from habitat loss, illegal collection, or harm under State or local regulations. Federal listing would provide additional protection to wild populations of this butterfly.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Habitat damage can reduce the carrying capacity of a habitat or the size of a colony to a level at which natural climatic changes lead to extinction. The drought of 1976 and 1977 in association with overgrazing caused the disappearance of four colonies of the bay checkerspot butterfly (Murphy and Ehrlich 1980), and greatly reduced the

Jasper Ridge population (Ehrlich et al. 1980). This drought also caused the extirpation of some populations of another subspecies of *Euphydryas editha* (Ehrlich et al. 1980). It is likely that a particularly severe or prolonged drought would be disastrous to most of the remaining colonies.

The bay checkerspot butterfly occurs on grasslands of Montara or other serpentine or similar soils that function as habitat islands, disjunct from one another, and surrounded by unsuitable habitat. The five known occupied sites are geographically disjunct, the northernmost site on San Bruno Mountain and the southernmost, a 6000+ acre area located near Morgan Hill. Two of the five disjunct colonies are small enough to be subject to periodic natural extinctions. Threats of continued habitat and population losses, and the already substantially increased distances among the remaining colonies has significantly reduced the likelihood of natural recolonization and survival.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the bay checkerspot butterfly *(Euphydryas editha bayensis)* as a threatened species. The documented loss of many former populations throughout a significant portion of the butterfly's range, the low population levels at all but one of the remaining colonies, and the high potential for continued habitat loss from planned and ongoing urban development, support listing as threatened. The Service finds that the conservation agreement initiated by Waste Management at the Morgan Hill site provides a useful legal mechanism that is expected to compensate for the adverse impacts of the landfill project. The Service also finds that the Waste Management conservation agreement could substantially assist with the conservation of the species at the Morgan Hill site if such efforts were expanded to include the additional habitat outside of the landfill area and leased lands, which encompass the remaining portion (about 70 percent) of the habitat at Morgan Hill. Threats at Edgewood Park are largely potential, depending upon the pending golf course proposal. The Jasper Ridge colony, although in protective ownership, remains susceptible to periodic threats of drought. The two recently extirpated colonies at San Bruno Mountain and Woodside seem to be in secure, protective ownership and, although small and thus more susceptible to periodic environmental stochasticity, remaining habitat at each appears to offer substantial potential for reestablishment. Thus, while the bay checkerspot butterfly is not presently in danger of extinction throughout a significant portion of its range, the Service finds that this subspecies is likely to become an endangered species within the foreseeable future throughout a significant portion of its range, and a "threatened" classification is appropriate.

Critical Habitat

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. The Service believes that prompt determination of threatened status for the bay checkerspot butterfly is essential and warranted by the best scientific information available. However, critical habitat is not determinable at this time and it must be postponed.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The remaining colony sites for the bay checkerspot butterfly exist in an area with a large human population and competing proposals for land use. The habitat identification process seeks to resolve a complex interdigitation of primary, permanent habitat, habitat having transitory and variable value to survival, and non-habitat. Because of these complexities and the extent of the activities being assessed, the Service has not completed the analyses required by sections 4(a)(3)(A) and 4(b)(2) of the Act in respect to the designation of critical habitat, and, therefore, a final critical habitat designation is not yet determinable.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires initiation of recovery actions by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provisions of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities that could affect this species and its habitat in the future include, but are not limited to, the following: the development of the San Bruno or Edgewood Park areas for recreation, the issuance of Federal permits or approvals for roads or transmission lines, or Federal funding or approval to build or construct any structures or facilities that might affect the bay checkerspot butterfly. The Act and implementing regulations found at 50 CFR 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered or threatened wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23 and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. The permit issued to the County of San Mateo and the Cities of South San Francisco, Brisbane and Daly City under section 10(a) for incidental take of three endangered species pursuant to the San Bruno Mountain Habitat Conservation Plan does not cover the bay checkerspot butterfly. As a result, listing of the bay checkerspot

butterfly may require issuance of a new or amended section 10(a) permit.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary authors of this final rule are George E. Drewry, of the Service's Washington Office of Endangered Species, and Monty D. Knudsen of the Sacramento Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Insects," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Insects							
Butterfly, bay checkerspot	*Euphydryas editha bayensis*	U.S.A. (CA)		T	288	NA	NA

Dated: September 14, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–21603 Filed 9–17–87; 8:45 am]

BILLING CODE 4310–55–M

Friday
September 18, 1987

Part V

Department of Education

National Institute on Disability and Rehabilitation Research; Notices of Final Funding Priorities for Fiscal Year 1988 and Extension of Closing Date for Applications

VOL
52
ISS
181
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DEPARTMENT OF EDUCATION

Final Funding Priorities for Fiscal Year 1988; National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal year 1988.

SUMMARY: The Secretary of Education announces final funding priorities for some of the research activities to be supported under the Rehabilitation Research and Training Center (RRTC) program of the National Institute on Disability and Rehabilitation Research (NIDRR) in fiscal year 1988. This notice covers those research priorities in physical restoration and rehabilitation in which NIDRR intends to establish RRTCs in 1988.

EFFECTIVE DATE: These priorities take effect 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732–1139). Deaf and hearing impaired individuals may call (202) 732–1198 for TDD services.

SUPPLEMENTARY INFORMATION: Authority for the research program of NIDRR is contained in section 204 of the Rehabilitaion Act of 1973. Under this program, awards are made to public and private agencies and organizations including institutions of higher education, Indian tribes, and tribal organizations. NIDRR can make awards for up to sixty months.

NIDRR supports a program of Rehabilitation Research and Training Centers to conduct programmatic, multidisciplinary, and coordinated research, training, and information dissemination in disignated areas of high priority. NIDRR regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 352.32).

NIDRR published a Notice of Proposed Funding Priorities in the **Federal Register** on June 5, 1987, at 52 FR 21345. NIDRR received many letters of comment on the proposed priorities and, as a result, some changes have been made to the priorities. These changes involve a reconfiguration of the research objectives for two of the Centers in traumatic brain injury, incorporating stroke and removing categorical restrictions on the level of brain injury to be addressed. The Institute has also specified head trauma as one type of disability for consideration in the RRTC on childhood trauma, and has included a reference to communication deficits in the priority for an RRTC in neuromuscular disorders. In response to public comments, the Institute will also consider awarding grants rather than cooperative agreements when circumstances indicate a grant would be more appropriate. NIDRR has also clarified that individuals with the particular type of disability under study must be involved in the planning and conduct of activities at each Center. A Summary of the comments and the Secretary's responses to them is included in this notice.

The publication of these final priorities does not bind the Federal Government to fund RRTCs in any of these areas. Funding of particular RRTCs depends on availability of funds, and on the number and quality of applications that NIDRR receives. NIDRR published a closing date notice on June 24, 1987 at 52 FR 23712. The closing date for receipt of applications under these priorities, as announced at the time, is September 25, 1987.

The following nine priorities represent areas in which NIDRR intends to support research and related activities through grants or cooperative agreements in the RRTC program. Rehabilitation Research and training Centers have been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. RRTCs must be operated in collaboration with institutions of higher education and must be associated with rehabilitation service programs. Each Center conducts a coordinated program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings as well as for related findings of other studies. Centers generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as writing and publishing undergraduate and graduate texts and curricula and publishing findings in professsional journals. RRTCs also conduct programs of in-service training for rehabilitation practitioners, education at the pre-and postdoctoral levels, and continuing education. Each RRTC will conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Centers will also conduct state-of-the-art studies in relevant aspects of their priority areas. NIDRR intends to sponsor consensus conferences at which scientists and service providers will be convened for the purpose of resolving differences in rehabilitation treatments based on new scientific findings. NIDRR expects each of the RRTCs to develop and document at least one new rehabilitation technique or intevention that is suitable for presentation at a consensus conference of researchers and clinicians convened to consider the adoption of the new technique as standard practice. Each RRTC will also provide training to individuals with disabilities and their families in managing and coping with disabilities.

NIDRR will conduct, not later than three years after the establishment of any RRTC, one or more reviews, using NIDRR staff or program peers, of the activities and achievements of each Center. Continued funding depends at all times on satisfactory performance and accomplishment, and is subject to the standards in 34 CFR 75.253.

Final Priorities (9)

RRTC in Progressive Neuromuscular Diseases

Progressive neuromuscular diseases constitute a range of chronic, degenerative conditions that are of particular concern for rehabilitation because they result in significant loss of function and impaired ability to perform normal activities of daily living. This group of disorders impairs primarily the motor system, causing paralysis and weakness, as well as significant secondary impairments. Because some neuromuscular diseases affect children and young adults, there may be significant effects on educational and vocational preparation and function. Serious progressive neuromuscular disorders include spinal muscular atrophy, motor neuron disease, and muscular dystrophy.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to restore neuromuscular performance and maintain physical function. A critical element of any Center to be funded under this priority will be the involvement of individuals with neuromuscular diseases and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is announced for a Center in rehabilitation of progressive neuromuscular diseases that will:

- Evaluate quantitative measures of neuromuscular function leading to improved techniques for assessing physical functioning;
- Evaluate the effects of various therapeutic interventions on the natural course of the disease processes and on functional ability;
- Develop effective rehabilitation interventions to improve vocational, educational, communicative, and independent living options;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and
- Serve as a national resource for information and referral for research scientists, service providers, and affected individuals and their families, on issues related to rehabilitation of progressive neuromuscular disease, develop a central database for research on low-incidence neuromuscular disabilities, and conduct at least one comprehensive state-of-the-art study on a significant facet of rehabilitation of neuromuscular disease.

RRTC in Multiple Sclerosis

Multiple Sclerosis is a chronic, unpredictable disease of the nervous system which affects as many as forty in every one hundred thousand persons in the United States. Because it affects individuals at the onset of their careers and adult responsibilities, the disease has far-reaching implications for family, community, and vocational adjustment.

While there have been considerable recent advances in knowledge about the disease, there is, however, no consensus on appropriate interventions to modify the course of the disease or on the most effective approaches to rehabilitation. A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to restore and maintain physical, psychological, vocational, and social function. A critical element of any Center to be funded under this priority will be the involvement of individuals with multiple sclerosis and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is announced for a Center in rehabilitation of multiple sclerosis that will:

- Identify the natural course of the disease in order to predict the likelihood and severity of resultant disability, and to develop intervention strategies;
- Determine the best techniques for managing disabling fatigue, cognitive and conceptual effects, impaired motor function, and psychological dysfunction;
- Develop effective vocational rehabilitation approaches, including accommodations at the workplace and auxiliary community support services;
- Develop public education programs to aid patients and their families to cope with the disease and to increase public understanding of the disease;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and
- Conduct at least one comprehensive state-of-the-art study on a significant aspect of vocational rehabilitation in multiple sclerosis.

RRTC in Rehabilitation and Childhood Trauma

Injury is the leading cause of death and disability in childhood. Each year, over 100,000 children become disabled as a result of major trauma, including head trauma. While NIDRR-sponsored researchers have been accumulating information on the natural history of trauma and the consequent disability experienced by children, little is known about the potential for rehabilitation services to improve the health, function, and quality of life of injured children.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to restore and maintain physical, psychological, family, and social functions for children who have incurred trauma. A critical element of any Center to be funded under this priority will be the involvement of the families of children who have incurred trauma, and the children themselves, as appropriate, in the planning, conduct, and review of the research and related activities.

An absolute priority is announced for an RRTC in Childhood Trauma that will:

- Establish and maintain a national pediatric trauma data base to study the mechanisms and causes of injury, the relationships between the impairment, disability, and the resultant handicap, the impact of childhood trauma on families, the need for and use of rehabilitative services, and methods of financing rehabilitative care;
- Develop methods to describe and quantify the physical, communicative, sensory, and cognitive functioning of injured children, and develop and test prognostic measures that accurately predict clinical outcomes and rehabilitation and educational needs;
- Assess the efficacy of existing physical restoration and rehabilitation interventions, in order to develop improved or new interventions;
- Assess the impact of injury on family members and the role of the family in rehabilitation, and develop interventions to improve the ability of families to cope with childhood trauma;
- Develop and disseminate public education programs to prevent the occurrence of injuries in children;
- Assess the influence of childhood trauma on the peer relationships, sexual maturation, and career aspirations of injured children;
- Provide educational materials and training programs for health professionals, educators, health care policymakers and families about injury prevention, care, and rehabilitation;
- Develop, evaluate, and disseminate model programs to assist children with handicaps resulting from trauma in the transition from school to work;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and
- Serve as a national resource center for the collection and dissemination of information and conduct at least one state-of-the-art study on a significant aspect of rehabilitation in childhood trauma.

RRTC in Arthritis and Related Musculoskeletal Disabilities

Approximately thirty-seven million Americans have arthritis, and some seven million of those are disabled by the disease. The prevalence of this chronic disease increases by about one million each year, and it incapacitates more people than any other chronic disease. Although arthritis is commonly associated with aging, there are about one-quarter of a million children under age eighteen with the disease. Arthritis affects twenty-three million individuals of employment age, and thus is a leading cause of work absenteeism, activity limitation, and workers' compensation claims.

There is currently a very active biomedical research effort on the causes and treatment of arthritis. There has not been, however, a similar emphasis on scientific investigation and development of techniques of rehabilitation for the preservation and restitution of joint function or for the prevention and management of chronic pain and its associated complications. Additional research is needed to develop improved models of service delivery that facilitate continued employment.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to restore and maintain physical, psychological, and

vocational functioning for individuals disabled by arthritis. A critical element of any Center to be funded under this priority will be the involvement of individuals with arthritis or other musculoskeletal disabilities and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is announced for an RRTC in rehabilitation of arthritis and related musculoskeletal diseases that will:

- Evaluate currently accepted techniques for assessing physical performance and develop and evaluate improved rehabilitation treatment techniques emphasizing maintenance and restoration of function and reduction of chronic pain;
- Develop and test functional performance appraisal strategies to evaluate new rehabilitation techniques;
- Develop and demonstrate innovative rehabilitation models to promote full participation in work, family, and community life;
- Provide needed education and training to professionals, persons with arthritis, and their families to promote adjustment to community living and work;
- Serve as a national resource for information and referral for scientific researchers, service providers, and affected individuals and their families, and develop a research database on low-incidence musculoskeletal disabilities;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and
- Conduct at least one state-of-the-art study on a significant aspect of rehabilitation of individuals severely disabled by arthritis.

RRTC in Rehabilitation of Traumatic Brain Injury (TBI) and Stroke

Traumatic brain injury (TBI) is a problem of major and increasing magnitude. The incidence of hospitalization for head injury in the United States is approximately 200 per 100,000 population. Each year, between 30,000 and 50,000 individuals acquire serious disabilities as a result of brain injuries, and most of these are youth and young adults, with life expectancies of an additional thirty-five to fifty years. Advances in emergency and acute care for head injury have resulted in a dramatic reduction in mortality, thereby crating a large population needing appropriate rehabilitative, educational, social, and independent living services. The cost of long-term care and maintenance for individuals with head injuries can be significant.

Cerebrovascular accidents (CVA's), or strokes, are among the most frequent causes of disabilities that range from physical, neurological, and sensory limitations to problems of emotional and social adjustment. While strokes most frequently affect an older population than do other head injuries, they may result in similar disruptions to brain functioning and require comprehensive rehabilitation services.

Individuals with moderate head injuries, as measured by standard neurological and other techniques, have varying prospects for recovery of function and are likely to require an array of rehabilitative and independent living services over an extended period of time. Severe traumatic brain injury is generally marked by a lengthy period of unconsciousness, a longer period of post-traumatic amnesia than in moderate injury, higher degrees of intracranial pressure, and predicted greater deficits in long-term functioning and adjustment. There is only limited information available on severe head injury, especially on issues related to coma management, assessment, and rehabilitation. Strokes may result in limitations to physical performance, sensory and communicative deficits, cognitive deficits, and loss of social skills.

A program of coordinated and interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to restore and maintain physical, psychological, social, independent living, and vocational functioning for individuals disabled by head injury or stroke or both. A critical element of any Center to be funded under this priority will be the involvement of individuals with head injury or stroke and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is announced for at least two RRTCs in TBI/CVA that will:

- Conduct studies on the pathophysiology of brain injury, in order to identify the clinical course of brain injury or stroke and the most effective rehabilitation interventions for different phases of neural recovery;
- Develop, test, and validate prognostic measures that accurately predict clinical outcomes and rehabilitation needs;
- Identify and define the role of rehabilitation in brain injury or stroke, or both, in order to develop and test innovative rehabilitation techniques, including physical restoration to enhance impaired motor function, and techniques for coma arousal, behavioral adjustment, improving communication, and cognitive retraining;
- Develop methods to prevent and treat major secondary complications of brain injury or stroke or both;
- Develop and evaluate new models of community-based services, including family participation in rehabilitation, and provide training for service providers and family members in approaches to adjustment, independent living, and managing and financing care in the community;
- Develop linkage with appropriate NIDRR-supported and other research and development resources to assure that appropriate technological aids and devices, such as supportive wheelchair seating and augmentative communication devices, and used;
- Serve as a national resource center for information on research and related innovations in all aspects of rehabilitation and service delivery for individuals with TBI;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and
- Conduct at least one state-of-the-art study on a significant aspect of traumatic brain injury rehabilitation.

RRTC in Psychological and Social Adjustment and Community Integration in TBI

The increasing frequency with which TBI individuals recover function and can return to some level of living in the community—either independently or with special support systems—focuses attention on the need for more knowledge about the most effective mechanisms to promote independent living, employment, and community integration. A definite priority in this area is a focus on the behavior management, community reintegration, and social adjustment of individuals with TBI of all degrees of severity. There is also a definite need for an information database on rehabilitation research in TBI as well as an information resource on available services and resources. This priority emphasizes the establishment of a cooperative database, which will include data from all NIDRR-supported research efforts in traumatic brain injury, and the dissemination of research-based information.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to promoting psychological adjustment, independent living, employment, and community

integration for individuals with head injury. A critical elememt of any Center to be funded under this priority will be the involvement of individuals with traumatic brain injury and their families in the planning, conduct, and review of the reserch and related activities.

An absolute priority is announced for an RRTC in psychological adjustment and community integration in TBI that will:

- Conduct studies on all aspects of psychological and social adjustment and behavior management in TBI, including family education and participation, in order to develop effective rehabilitation techniques;
- Evaluate current models, and develop improved models, of community reintegration, including new community-based recreational and respite care models, and models for vocational preparation, adjustment, and maintenance;
- Develop, with other NIDRR research Centers and projects, including the NIDRR designated model projects for TBI rehabilitation, a coordinated TBI research database;
- Conduct a state-of-the-art study on a significant aspect of psychological or social adjustment or community integration in TBI;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and
- Serve as a national resource and information center on all aspects of psychological, social, community and family-oriented research and service delivery issues.

RRTC in Prevention and Treatment of Secondary Complications of Spinal Cord Injury (SCI)

The rehabilitation community throughout the world has long recognized the enormous economic demands and general societal impact made by the lifetime care needs of persons with spinal cord injuries. The prevalence of spinal cord injury (SCI) in the United States is estimated to be between 1500,000 and 200,000, with 8,000–10,000 new spinal cord injuries occurring each year. Secondary medical complications are the most debilitating, life-threatening, and costly conditions associated with SCI, often resulting in extended acute care hospitalization that decreases the potential for successful rehabilitation and return to independence.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to preventing and treating secondary complications from SCI. A critical element of any Center to be funded under this priority will be the involvement of individuals with spinal cord injury and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is announced for an RRTC in secondary complications of SCI that will:

- Develop methods to prevent and treat secondary complications of spinal cord injury such as deep vein thrombosis, pulmonary-respiratory problems, autonomic dysreflexia, gastrointestinal infections, stress ulcers, ossification, mass reflex spasticity, infertility, genitourinary infection, and pressure sores;
- Develop techniques to remedy psychological and social problems that occur in individuals with SCI;
- Serve as a national resource and information center on secondary complications of SCI, and establish linkages and coordinate with other NIDRR-supported research and demonstration activities in this area;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and
- Conduct at least one state-of-the-art study on a significant aspect of prevention and treatment of secondary complications of SCI.

RRTC in Neural Recovery and Enhanced Function in SCI

Rehabilitation treatments to promote functional recovery and restoration after spinal cord injury can make a significant impact on long-term outcomes for the individual with SCI. This priority focuses on new rehabilitation interventions to increase neural recovery and enhance function following impairment.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to promoting restoration and maintenance of function after SCI. A critical element of any Center to be funded under this priority will be the involvement of individuals with SCI and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is announced for an RRTC in neural recovery from SCI that will:

- Develop and evaluate therapies for maximizing neural recovery and functioning;
- Develop, test, and validate instruments that assess physical function and predict rehabilitation outcomes;
- Serve as a national resource and information center on all appropriate aspects of neural recovery and return of function;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and
- Conduct at least one state-of-the-art study on a significant aspect of neural recovery and enhanced function in SCI.

RRTC in Community-Oriented Servcies in SCI

The improvements in acute and rehabilitative care have resulted not only in longer life expectancies for individuals with SCI, but in a greater likelihood of return to the community and enhanced expectations for quality of life and work. A third priority in the area of SCI emphasizes innovative followup and health maintenance strategies, methods and resources for community reintegration and social participation, and psychological-social-vocational preparation and adjustment. Attention must also be directed to a fuller understanding of the aging process in spinal cord injury.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to promoting psychological adjustment and community reintegration after SCI. A critical element of any Center to be funded under this priority will be the involvement of individuals with SCI and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is announced for an RRTC in community-based rehabilitation of SCI that will:

- Develop and test innovative post-acute rehabilitation followup models, including programs of health maintenance, to assure continued rehabilitation;
- Develop and evaluate techniques to improve psychological, social, and vocational preparation, including community reintegration and adjustment, for individuals with SCI;
- Provide training to individuals with SCI and their families on home-based management of pain, financial reimbursements, health insurance, new techniques and devices for communication, and recruitment, training, and financing of personal attendants;
- Conduct one or more studies on the aging process in spinal cord injury, to include the identification and elucidation of changing needs for

medical care, psychological services, and adaptive equipment;

- Serve as a national SCI resource and information center on innovations in followup care, psychological and social adjustment, community reintegration, financial management, management of attendent care, vocational preparation, and employment;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and
- Conduct at least one state-of-the-art study on a significant aspect of community-oriented services in spinal cord injury.

Summary of Comments and Respones

NIDRR received one hundred and fity comments in response to the proposed priorities. Several changes were made as a result of those comments. A summary of the comments and the Secretary's responses to them follows.

Comment: A large number of commenters objected to the fact that stroke was not specifically mentioned as an area of focus in the priorities. Many commenters also noted that stroke is currently studied in the RRTCs on traumatic brain injury, and that the research issues for both TBI and stroke are similar.

Response: A change has been made. NIDRR has specifically included stroke, or cerebral vascular accident (CVA), as a category of disability that could be studied within the Centers on general rehabilitation and physical restoration in TBI. NIDRR has not included stroke in the priority for psychological-social rehabilitation in TBI. The differences between the typical populations with stroke (CVA) and TBI are significant, and the social adjustment issues are so different as to indicate separate studies. Accordingly, NIDRR intends to propose a priority for a Research and Demonstration Project in psychological and social adjustment for persons who have had cerebral vascular accidents.

Comment: Many commenters objected to the division of research on TBI into the categories of moderate brain injury and severe injury, arguing that the classifications are imprecise; that they do not determine who will be served in a clinical program; they do not lead to discrete research issues; and that individuals do not remain static with respect to these classifications.

Response: A change has been made. The Secretary is persuaded that the physical restoration and rehabilitation of individuals with TBI can best be studied in a comprehensive context, encompassing individuals at all stages on the continuum of severity of injury. Accordingly, NIDRR has revised the priority statement to focus on at least two general Centers for physical restoration and rehabilitation in traumatic brain injury.

Comment: Two commenters suggested that issues of neural recovery and coma management in TBI are well-funded by the National Institute on Neurological and Communicative Disorders (NINCDS) and that NIDRR funds should not be allocated to these issues.

Response: No change has been made. NIDRR has consulted with NINCDS and concludes that there is not sufficient research on the rehabilitation aspects of neural recovery and coma management and these remain appropriate subjects for NIDRR-sponsored research.

Comment: Several commenters suggested that the RRTC on childhood trauma should include specific reference to traumatic brain injury in children and should develop prognostic measures that predict future service needs.

Response: A change has been made. A specific reference to head trauma has been incorporated into the priority on childhood trauma, as has a reference to prognostic measures.

Comment: One commenter noted that all priorities should contain the requirement that individuals with the particular types of disability under study should be involved in the planning and operation of the Center.

Response: A change has been made. The Secretary agrees that it is appropriate not only to assure the involvement of individuals with disabilities in the program, but to assure that each Center involves individuals who have the specific disability being studied in the planning and conduct of the activities of the Center.

Comment: One commenter recommended that the priorities on neuromuscular disorders and on traumatic brain injury should make specific reference to communicative deficits associated with these disorders.

Response: A change has been made. The Secretary agrees that communicative deficits are among the impairments associated with neuromuscular disorders and traumatic brain injury and has incorporated reference to communicative disorders in these priorities.

Comment: Several commenters stated that the priorities for three RRTCs on spinal cord injury were too restrictive in separating different aspects of rehabilitation into different Centers.

Response: No change has been made. The Secretary believes that the research of these Centers should be focused on development of techniques and interventions to solve specific problems. NIDRR funds a network of special projects for comprehensive treatment, data analysis, and research in spinal cord injury. The Secretary believes that the RRTCs should be distinct from these model projects by focusing on particular rehabilitation objectives.

Comment: One commenter objected to a priority for a Center to study childhood trauma, arguing that the purpose of the Rehabilitation Act, as amended, is to focus on disabled persons with vocational potential.

Response: No change has been made. Title II of the Rehabilitation Act, as amended, specifically authorizes NIDRR to conduct research related to disabled children.

Comment: Two commenters recommended that NIDRR announce a priority for an RRTC in cardiovascular rehabilitation.

Response: No change has been made. NIDRR has held planning meetings with representatives of the National Institutes of Health and with other scientists to discuss needs for research in cardiovascular rehabilitation. As a result of the planning activity, NIDRR intends to explore the possibility of a Research and Demonstration Project in cardiovascular rehabilitation.

Comment: Several commenters urged that NIDRR consider funding additional RRTCs in certain areas, mainly arthritis and traumatic brain injury.

Response: No change has been made. The Secretary has the option of funding more than one Center under any priority if funds are available and the quality of the applications indicates that funding additional Centers would significantly enhance new solutions to rehabilitation problems.

Comment: Several commenters recommended that mild head injury be included in the priorities, either through a separate RRTC priority or through expanding the scope of the proposed priorities.

Response: A change has been made. The scope of the priorities in traumatic brain injury has been expanded to permit researchers to propose important research unconstrained by categories of severity of injury.

Comment: One commenter recommended that a priority be announced for the development of model long-term residential alternatives for TBI and SCI individuals.

Response: No change has been made. These priorities do not preclude applicants from addressing the issues of optimal and affordable long-term housing options within the framework of community-oriented services and

community integration. Investigators who are interested in exploring these issues may also consider submitting applications under the Field-Initiated Research or Innovation Grants programs.

Comment: One commenter recommended that the studies of the state-of-the-art required in the Centers on TBI should emphasize that they are studies of the state-of-the-art in TBI rehabilitation.

Response: A change has been made. The RRTCs on physical restoration and rehabilitation in TBI and stroke must conduct studies of the state-of-the-art in rehabilitation of these two disabilities. No change has been made in the priority on psychological-social adjustments and community integration as the Secretary considers the issues specified for that state-of-the-art study to be aspects of rehabilitation.

Comment: Two commenters suggested that NIDRR should also consider awarding grants rather than cooperative agreements for some of the Centers where the grant would be the more appropriate funding mechanism.

Response: A change has been made. The Secretary agrees that cooperative agreements may not always be the most appropriate funding vehicle, and that there may be circumstances in which the Department will elect to award grants.

(20 U.S.C. 761a, 762)

Dated: August 28, 1987.

(Catalog of Federal Domestic Assistance No. 84.133B, National Institute on Disability and Rehabilitation Research)

William J. Bennett,

Secretary of Education.

[FR Doc. 87-21626 Filed 9-17-87 8:45 am]

BILLING CODE 4000-01-M

Extension of Closing Date for Applications for Certain Rehabilitation Research and Training Centers (CFDA 84.133B) Under the National Institute of Disability and Rehabilitation Research (NIDRR) for Fiscal Year 1988

Purpose

On June 5, 1987, NIDRR published in the **Federal Register** at 52 FR 21345 a notice of proposed priorities for Rehabilitation Research and Training Centers (RRTC) in the area of physical restoration. On June 24, 1987, NIDRR published a notice in the **Federal Register** at 52 FR 23712 requesting the transmittal of applications based on those proposed priorities by September 25, 1987.

Because NIDRR has made changes in two of the proposed priorities relating to traumatic brain injury, in response to comments received from the public, the Secretary has decided to extend the closing date for applications for a center under the final priority for an *RRTC in Rehabilitation of Traumatic Brain Injury (TBI) and Stroke.* A description of this final priority is published in the issue of the **Federal Register.** This extension applies to applications under that one priority only. NIDRR intends to fund these projects through grants or cooperative agreements; the estimated funding levels in the notice are estimates for each year of the award.

Deadline for transmittal of applications: Applications must be submitted by October 9, 1987.

Applications available: June 26, 1987

Estimated number of awards: At least 3

Estimated range of awards: $600,000–$650,000

Project period: Up to 60 months

Available funds: $1,900,000

Applicable regulations: (a) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, (b) the regulations for this program in 34 CFR Parts 350 and 352, and (c) the final priorities for this program.

For Applications or Information Contact: Betty Jo Berland, National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 732-1207; deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

Program Authority: 29 U.S.C. 762(b)(1).

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

Dated: September 15, 1987.

[FR Doc. 87-21625 Filed 9-17-87; 8:45 am]

BILLING CODE 4000-01-M

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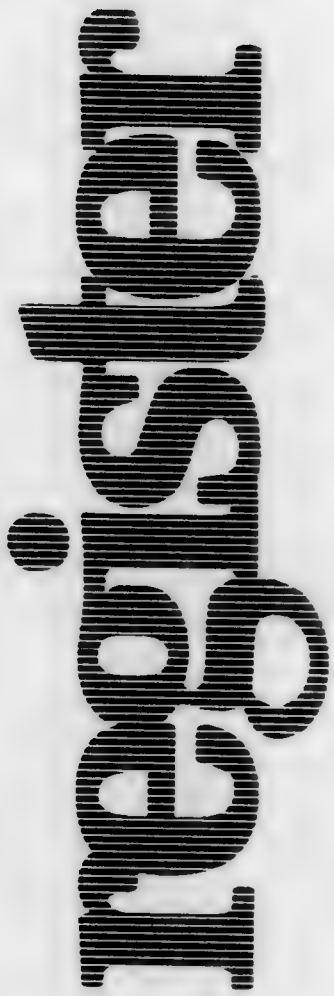

Friday
September 18, 1987

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Final Rule

BEST COPY AVAILABLE

VOL 52 ISS 181 SE 18 1987 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-42]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at Akron-Canton Regional Airport, OH; Grand Rapids Kent County International Airport, MI; Rochester-Monroe County Airport, NY, and Toledo Express Airport, OH. The locations designated are public airports at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 UTC, October 22, 1987, for Grand Rapids Kent County International Airport, MI; Rochester-Monroe County Airport, NY, and Toledo Express Airport, OH; 0901 UTC, October 20, 1988, for Akron-Canton Regional Airport, OH.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Laser, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 89 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On March 19, 1987, the FAA proposed to designate ARSA's at Akron-Canton Regional Airport, OH; Grand Rapids Kent County International Airport, MI; Rochester-Monroe County Airport, NY, and Toledo Express Airport, OH, (52 FR 8730). This rule designates ARSA's at these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held informal airspace meetings for each of these proposed airports.

Discussion of Comments

The FAA has received comments on the basic ARSA program as well as comments directed toward the proposed individual designation. Additionally, several of the comments on individual designation are common or speak to the basic program itself. Discussion of the comments is divided into two sections. The first addresses common and ARSA program comments; the second addresses comments on the proposal at each of the specific airports.

ARSA Program Comments

Aircraft Owners and Pilots Association (AOPA) and others commented that, notwithstanding the statement by the FAA in the Regulatory Evaluation contained in the notice, increased air traffic controller personnel and equipment would be needed to handle the increased traffic expected due to the mandatory provisions of the ARSA. FAA's experience with the current ARSA's has been that while there is an increase in the amount of traffic being handled by controllers, this increase is significantly offset by the reduction in the amount of control instructions that must be issued under ARSA procedures as compared to TRSA procedures. However, the FAA recognizes that the potential exists for a need to establish additional controller positions at some facilities due to increased workload should the expected efficiency improvements in handling traffic not fully offset the increased number of aircraft handled. Further, FAA does not expect to incur additional equipment costs in implementing the ARSA program. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no new equipment is expected to be required as a result of the ARSA program.

Several commenters, including AOPA, disagreed with the FAA's conclusion that the additional air traffic could be accommodated with existing manpower at locations where TRSA participation was low. The FAA's conclusion for the total program was in part based upon the fact that participation in the existing TRAS's was quite high and, therefore, an increase from the present levels to 100 percent would not be a significant change. The commenters, while not agreeing with this conclusion, claimed that the FAA's rationale did not apply where participation was low and thus additional manpower would be needed at these locations if ARSA was designated. The FAA recognizes that participation in the TRAS program is relatively low at some of the candidate locations. However, this is in large part due to the controllers' walkout of 1981 and the subsequent reduction in fully qualified controllers which led to the discontinuance of TRSA services. A sufficient number of controllers is assigned at the facilities to which the commenters refer and those facilities are ready to provide the service to the increased number of pilots. This factor was considered by the FAA in its initial evaluation of the ARSA program.

The Soaring Society of America (SSA) objected to the ARSA program because it does not provide the same level of safety and service to all classes of aviation. As with other regulations, this rule affects different operators in different ways depending on their respective need to operate in controlled airspace or near the airports involved. The FAA does not agree that this variation in impact is reason not to adopt a rule which benefits the majority of users.

The SSA claimed that the ARSA rule should state that the ultimate responsibility for separation from other aircraft operating in visual flight rule (VFR) conditions rests with the pilot. While the FAA agrees that such is the

case, the agency does not agree that the ARSA rule must so state. Unless a new or amending provision to the Federal Aviation Regulations (FAR) specifically deletes, amends, or supersedes existing sections, the existing regulations still apply. The ARSA rule (50 FR 9252, 9257, March 6, 1985) did not alter the sections of the FAR that established that level of responsibility.

AOPA faulted the FAA's implementation of the ARSA program. The FAA stated in the proposal that the benefits of standardization and simplicity were nonquantifiable, and that the safety benefits anticipated by the FAA were not attributable to any given candidate but were based upon implementation of the program on a national basis. According to AOPA, this evidenced the need to further evaluate the program at the current locations so that benefits could be individually assessed and each candidate evaluated accordingly. The FAA does not agree. The benefits of standardization and simplicity would always be nonquantifiable, regardless of the amount of evaluation, yet they received considerable emphasis by the NAR Task Group. Overall national midair collision accident rates are relatively low, and accident rates within individual categories of airspace are lower still. Additionally, accidents at specific locations are random occurrences. Therefore, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Additionally, the FAA does not believe that these considerations should be cause for delaying a program that was recommended by a majority of the members of the National Airspace Review, and which has already produced positive results at most of the designated locations.

Numerous commenters also objected to the proposals based upon their belief that the volume of air traffic in several of the proposed locations was too great for the ARSA program. The FAA believes that such a point argues strongly for the establishment of an ARSA rather than the converse.

Some commenters, including AOPA, predicted that user costs incurred due to delays will be greater than expected by the FAA, and that these costs will be experienced more at some sites than at others. In the NPRM, FAA acknowledged that initial delay problems would vary from site to site, that at some facilities the transition process is expected to go very smoothly, and that at other sites delay problems will dominate the initial adjustment period. Any delay that may result is expected to be transitory in nature in that actual delays will be reduced as pilots and controllers become experienced with ARSA procedures. This has been the experience at those locations where ARSA's have been in effect for the longest period of time, and is the trend at most of the locations that have been more recently designated.

Several comments claimed that some aircraft would have to purchase two-way radios in order to enter the ARSA and land at or depart from airports within the ARSA. The FAA does not agree. Each primary airport receiving ARSA designation has an airport traffic area requiring two-way radio communications at present. Therefore, no additional cost will be incurred for purchase of radios for aircraft landing at or departing from primary airports receiving ARSA designation.

Further, some commenters, including AOPA, expressed concern that older 360 channel transceivers will not be adequate to operate within an ARSA. Frequencies compatible with 360 channel transceivers are available at all ARSA locations. Therefore, operators of 360 channel equipment will not need to install new radios to operate within an ARSA.

AOPA and other commenters stated that the proposed ARSA's would derogate rather than improve safety, as a result of increased frequency congestion, pilots concentrating on their instruments and placing too much reliance upon ATC rather than "see and avoid," and the compression of air traffic into narrow corridors as pilots elect to circumnavigate an ARSA rather than receive ARSA services. In addition to increasing the risk of aircraft collision, the commenters claimed that compression would increase the impact of aircraft noise on underlying communities and cause aircraft to be flown closer to obstructions.

As indicated above, while an increased number of aircraft will be using radio frequencies, the amount of "frequency time" needed for each aircraft is reduced in an ARSA compared to the current TRSA. This has been the experience of the FAA at the current ARSA facilities.

AOPA claims that since the communications and readback procedures in ARSA's do not differ from those utilized in TRSA's there would be no reduction in "frequency time" needed for each pilot to acknowledge instructions or information, and thus, the partial offset indicated by the FAA was not justified. The offset is based upon fewer as well as shorter transmissions for each pilot; thus, the FAA does not agree with this claim.

The FAA evaluated the flow of air traffic around the Austin, TX, and Columbus, OH, ARSA's during the confirmation period to determine if compression was occurring. This evaluation was performed by observing the radar at Austin, TX, and by both radar observations and the use of extracted computer data at Columbus, OH. Following the designation of an ARSA at Baltimore/Washington International Airport (BWI), the FAA evaluated the flow of air traffic there for a period of 90 days by observing the radar and extracting the computer data to determine if compression was occurring. Additionally, the FAA has continually monitored for the possibility of compression at all recently designated locations. Compression has not been detected at any of these locations. However, compression of air traffic is a site-specific effect that could occur at a particular location regardless of its absence elsewhere. Thus, although the FAA does not believe compression of traffic will occur at any of the proposed airports, the agency will continue to monitor each designated ARSA and make adjustments if necesssary.

AOPA, and other commenters claimed that the FAA provided no demonstrable evidence that the ARSA program would improve aviation safety. The FAA continues to believe the implementation of the ARSA program will enhance aviation safety. The program requires two-way radio communication between ATC and all pilots within the designated areas. Air traffic controllers will thus be in a much improved position to issue complete traffic information to the pilots involved, and thus, safety will be improved.

AOPA, and several other commenters, requested that VFR corridors be established at several of the subject locations along routes that are currently contained within an airport traffic area (ATA). The NAR Task Group noted in their evaluation of the TRSA program that under FAR § 91.87 pilots operating under VFR to or from a satellite airport within an ATA are excluded from the two-way radio communications requirement. The Task Group noted that this was acceptable until the volume of air traffic at the primary airport dictated the installation of a radar approach control. The Task Group recommended, and the FAA adopted, the ARSA program as a safety improvement addressing this problem. Thus, the FAA does not believe provisions for VFR

corridors that penetrate an ATA in most cases are warranted or in keeping with that recommendation.

One commenter claimed that the grouping of ARSA's, such as that adopted in the Sacramento Valley area, would create "squeezing" of traffic in the corridors between the blocks of ARSA airspace. One area in question, between Sacramento and Beale Air Force Base (AFB), is approximately 20 miles wide. The FAA does not agree that "squeezing" will occur in this area. Additionally, other user organizations have requested VFR corridors between adjacent or grouped ARSA's and these ARSA's have been modified to accommodate this request.

AOPA and others commented that several of the proposals will require pilots to violate FAR § 91.79 (14 CFR § 91.79) regarding minimum safe altitudes. The section states in part, "Except when necessary for takeoff or landing, no person may operate an aircraft below * * * an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft [when over any congested area of a city, town, or settlement, or over any open air assembly of persons]." The commenters claim that the 1,200-foot base altitude of the 5- to 10-mile portion of the ARSA will force pilots to violate FAR § 91.79 where obstacles extend more than 200 feet above the ground. There are two alternatives available to pilots in such a situation which permit compliance with the regulation. First, pilots may participate in ARSA services and thus not be limited to the 1,200-foot base, and second, a pilot may deviate 2,000 feet horizontally from the obstacle.

Furthermore, AOPA claims that the above response does not adequately respond to the issue. The claim that deviations of 2,000 feet horizontally would increase workload and reduce the efficiency of see-and-avoid, and thus, potentially reduce safety. The FAA does not encourage deviation but encourages participation which will not require deviation and will result in controllers providing radar assistance for see-and-avoid.

Several commenters noted that the proposal did not contain an environmental assessment. Under existing environmental regulations, the proposed establishment of a Terminal Control Area (TCA) or a TRSA does not require an environmental assessment. The agency environmental regulations have not been amended to reflect ARSA procedures. However, because the potential environmental impact and regulatory effects of ARSA designation fall between those of the TCA and TRSA designations, the FAA finds that no environmental assessment is required for an ARSA designation.

AOPA, the Experimental Aircraft Association (EAA), and other commenters indicated that the FAA had failed to demonstrate a need for the ARSA program itself, as well as a need for several of the individual proposed locations. Additionally, comments were received that faulted the standard configuration and some of the features of the ARSA. Most of these comments went beyond the scope of the subject proposal and were addressed when the FAA adopted the recommendation of National Airspace Review (NAR) Task Group 1–2.2 (50 FR 9252, March 6, 1985). However, the FAA believes the need for the ARSA program was adequately demonstrated by the task group that reviewed the TRSA program and recommended the ARSA as the former's replacement. The task group faulted the TRSA prgram in several of its aspects and through consensus agreement determined the preferred features of the ARSA prior to making their recommendation to the FAA. Justification for the ARSA program has been the subject of previous FAA rulemaking, and the program was adopted after consideration of public comment. Response to comments on ARSA's at particular locations is made below.

AOPA, EAA, and others commented that several of the proposed ARSA's failed to meet the criteria for designation or that the FAA was changing the criteria. The FAA has not departed from the NAR criteria which would replace TRSA with ARSA at airports with an operating control tower served by a Level III, IV, or V radar approach control facility. The criteria for this airport was recommended by the NAR Task Group and adopted by the FAA. Namely, "* * * excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by a Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location." (49 FR 47184, November 30, 1984).

Several commenters suggested the top of the ARSA be lowered from 4,000 feet above field elevation. Absent strong justification for lowering this altitude, the FAA has not adopted these recommendations.

Several commenters, including AOPA and EAA, indicated that at several of the proposed ARSA's the TRSA was working quite well and that there was no need to change something that was working. The FAA acknowledges that TRSA's are functional and beneficial, to a point. However, the NAR Task Group did not fault individual TRSA locations but the TRSA program itself and recommended its replacement. The FAA concurred with that assessment and has determined that the ARSA program is an improvement over the TRSA program from the standpoints of both safety and service. Thus, the quality of service being provided at TRSA locations should not constitute a roadblock to improvement.

Several commenters claimed the reduced separation standards of the ARSA program would derogate rather than enhance safety. The elimination of the Stage III separation requirements was recommended by users, all of whom are vitally interested in aviation safety, and adopted by the FAA. This aspect of the ARSA program received considerable FAA attention during the confirmation period at Austin, TX, and Columbus, OH. The FAA agrees with the task group that the Stage III separation standards are not needed for safety in a mandatory participation area.

Several commenters requested that the ARSA be described in statute rather than nautical miles. Numerous user organizations and the NAR itself have recommended that the FAA adopt nautical-mile descriptions rather than statute. It is the intention of the FAA to establish all new descriptions according to that recommendation.

Several commenters objected to proposals where the ARSA was in proximity to other airports. According to these commenters, pilots would not know whether they should be in contact with the ARSA approach control facility or in contact with the control tower at the secondary airport, or on unicom. The FAA does not view this situation as different from that existing at many of these locations today. Through pilot education programs and experience with ARSA procedures, this situation will improve. Also, as at present, when a pilot contacts the wrong FAA facility, the controllers will give appropriate instructions.

AOPA, and other commenters objected to several of the proposed ARSA's based upon the claim that the FAA had failed to evaluate the cumulative effect of the proposed ARSA's and other regulatory airspace. The evaluation for each ARSA included all factors known to the FAA, including the proximity of other regulatory airspace.

Underlying a great many of the comments received was the idea that some provision should be made so that

pilots could continue their current practices without contacting the responsible ATC facility. While the FAA has made modifications from the standard ARSA in cases where circumstances warrant, the basic thrust of the ARSA program is to require two-way communication with the responsible approach control facility, and not to make modifications in the program to provide for nonparticipation.

Information on ARSA's following the establishment of a new site will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and, therefore, will not involve additional costs strictly as a result of the ARSA program.

SSA faulted the FAA for using the aviation safety seminars for pilot education on ARSA's. They claim these seminars do not reach many pilots and the seminars are reserved during this year for the FAA "Back to Basics" program. The FAA does not agree. The aviation safety seminars are for all pilots and for education on all aspects of aviation which would include the ARSA program.

Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

SSA commented that the FAA should take into consideration the unique operating characteristics of gliders in defining the ARSA airspace at some locations. The FAA has modified the configurations of the ARSA at some locations where glider operations would be adversely affected by a standard configuration. Additionally, comparable accommodations have been facilitated through local agreements at several ARSA locations.

Numerous commenters objected to the ARSA designations claiming they would simply provide the FAA with the basis for additional regulatory restrictions. The FAA does not believe this to be a valid objection. While the agency has no current plans for further regulatory action which imposes additional restrictions, such action, if it should ever become a reality, would be the subject of additional rulemaking and would of necessity be judged on its own merits, as should these proposals.

The Air Line Pilots Association (ALPA) concurred with the proposal as an improvement in operational efficiency and a significant contribution to a reduction of midair collision potential.

The Air Transport Association (ATA) endorsed the proposed designations as an improvement in safety with specific comments indicated below.

The General Aviation Manufacturers Association endorsed the ARSA's as an improvement in safety and concurred with the FAA's philosophy regarding some deviation from the standard model.

Comments were received which were supportive of each of the ARSA's addressed here as an improvement in aviation safety, and stating that participation by all pilots was only equitable and that normal safety concerns dictated mandatory two-way communications. The FAA agrees.

Comments on Specific Locations

Akron-Canton Regional Airport, OH

Several commenters objected to this ARSA on the grounds of reduced separation standards, controller workload and unsubstantiated safety enhancements. The FAA does not agree with these objections as stated previously in this document.

Several commenters recommended the base altitude between five and ten miles should be raised to 3,000 feet to accommodate towers and other obstructions as well as FAR requirements related to minimum flight altitudes. The FAA does not agree that the proposed base altitude would place unsafe restrictions on pilots or prohibit compliance with applicable FAR's. Sufficient lateral maneuvering airspace for circumnavigating obstacles, as well as sufficient vertical airspace to overfly areas in compliance with the FAR's, exists under the original proposal.

SSA, while acknowledging that soaring operations were based beyond the 10-mile boundary of the ARSA, suggested the implementation of the ARSA may have an impact on soaring activities. The FAA will continue to cooperate with local glider operators and cross country operations to ensure safety with the minimum impact on both operations.

AOPA and others objected to establishment of an ARSA based on insufficient controller workforce being available to accommodate changes in air traffic workload. The FAA does not believe a significant increase in workload will result from implementation of an ARSA as discussed previously; however, the FAA does recognize the necessity to have sufficient resources in place to ensure that a full capability exists to provide services associated with the ARSA program. Although adequate staffing levels are established for the Akron-Canton ATC facility, an unforeseen loss of personnel resulting from transfers and retirements has created less than optimum conditions. The FAA prefers to allow sufficient time for this situation to stabilize prior to implementing new procedures and airspace requirements. The staffing levels are adequate, with recently assigned personnel progressing through various levels of training and qualification, to enable an implementation date of October 20, 1988. This action is in consonance with objectives and policies stated in the ARSA program wherein the FAA assured the public it would evaluate and take appropriate action regarding each location's unique requirements and issues related to ARSA implementation.

AOPA recommended a cutout for Lockridge Airport, a private airport located approximately 4½ miles south of Akron-Canton Regional Airport. The FAA does not concur. Private airports generally do not have sufficient transit operations to warrant exclusionary action. Alternate methods, be they through agreement or individual coordination, may be utilized to accommodate nonradio equipped flights.

Grand Rapids Kent County International Airport, MI

Congressman Paul B. Henry, AOPA and others recommended a cutout around the Somerville Airport. This airport has 11 based aircraft of which four are not radio equipped. The FAA does not consider the level of flight activity nor the number of nonradio equipped aircraft to be sufficient as to warrant exclusion from the ARSA inner area. The intent of the ARSA program is to enhance safety in the terminal area through increased participation and increased ATC awareness of all flight operations in the terminal area. Sufficient alternative methods exist to accommodate the nonradio aircraft flights without modifying the ARSA.

SSA, while acknowledging that soaring operations were based beyond the 10-mile boundary of the ARSA, suggested the implementation of the ARSA may have an impact on soaring activities. The FAA will continue to cooperate with local glider operators and cross country operations to ensure safety with the minimum impact on both operations.

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Rochester-Monroe County Airport, NY

SSA, while acknowledging that soaring operations were based beyond the 10-mile boundary of the ARSA, suggested the implementation of the ARSA may have an impact on soaring activities. The FAA will continue to cooperate with local glider operators and cross country operations to ensure safety with the minimum impact on both operations.

Other comments received were in suppport of this ARSA.

Toledo Express Airport, OH

AOPA recommended cutouts for private airports within the inner area. FAA does not support this exclusionary action for reasons previously stated above.

AOPA recommended a reduction of the ARSA to accommodate VFR flights operating north/south over the Waterville VORTAC. This NAVAID, located approximately 11 miles southeast of Toledo Express Airport, may serve as a navigational reference to pilots transiting the area; however, participation in the services of the ARSA program are not mandatory in this outer area. The FAA does not support an exclusion and encourages aircraft utilizing this "VFR flyway" to participate in the ARSA services particularly if, as has been reported, a substantial number of aircraft operations are being conducted along this route in close proximity to Toledo Express Airport.

SSA, while acknowledging that soaring operations were based beyond the 10-mile boundary of the ARSA, suggested the implementation of the ARSA may have an impact on soaring activities. The FAA will continue to cooperate with local glider operators and cross country operations to ensure safety with the minimum impact on both operations.

Other commenters, including AOPA, addressed issues which were of a national scope and were addressed in the general comments above.

Other Comments

A number of other comments were received addressing matters beyond the scope of these proposals, such as charting, the number of frequencies depicted on a chart, the general design features of an ARSA, etc. The FAA will give consideration to all of the points raised in these comments but will not address them as a part of this rulemaking.

Regulatory Evaluation

Those comments that addressed information presented in the Regulatory Evaluation of the notice have been discussed above. The Regulatory Evaluation of the notice, as clarified by the "Discussion of Comments" contained in the preamble to the final rule, constitutes the Regulatory Evaluation of the final rule. Both documents have been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the intitial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding some satellite airports located within the 5-mile ring to avoid adversely impacting their operations, and in other cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to eliminate virtually any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates Airport Radar Service Areas (ARSA) at Akron-Canton Regional Airport, OH; Grand Rapids Kent County International Airport, MI; Rochester-Monroe County Airport, NY, and Toledo Express Airport, OH. Each location designated is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air

traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation Safety, airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Akron-Canton Regional Airport, OH [New]

That airspace extending upward from the surface to and including 5,200 feet MSL within a 5-mile radius of the Akron-Canton Regional Airport (lat. 40°55'01"N., long. 81° 26'30"W); and that airspace extending upward from 2,500 feet MSL to 5,200 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and hours of operation of the Akron Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Grand Rapids Kent County International Airport, MI [New]

That airpspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Kent County International Airport (lat. 42°52'57"N. long. 85°31'26"W.); and that airspace extending upward from 2,000 feet MSL to 4,800 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and hours of operation of the Grand Rapids Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Rochester-Monroe County Airport, NY [New]

That airspace extending upward from the surface to and including 4,600 feet MSL within a 5-mile radius of the Rochester-Monroe County Airport (lat. 43°07'08"N., long 77° 40'22"W.); and that airspace extending upward from 2,100 feet MSL to 4,600 feet MSL within a 10-mile radius of the airport.

Toledo-Express Airport, OH [New]

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the Toledo-Express Airport (lat. 41°35'15"N., long. 83°48'19"W.); and that airspace extending upward from 2,000 feet MSL to and including 4,700 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and hours of operation of the Toledo Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will be thereafter continuously published in the Airport/Facility Directory.

Issued in Washington, DC. on September 14, 1987.

Signed by:

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-21638 Filed 9-17-87; 8:45 am]

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VOL
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federal register

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

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Federal Register
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Monday, September 21, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 579]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 579 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 280,438 cartons during the period September 20 through September 26, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: Regulation 579 (§ 910.879) is effective for the period September 20 through September 26, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1521–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601 through 674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on September 16, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by an unanimous vote a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.879 is added to read as follows:

§ 910.879 Lemon Regulation 579.

The quantity of lemons grown in California and Arizona which may be handled during the period September 20 through September 26, 1987, is established at 280,438 cartons.

Dated: September 17, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–21822 Filed 9–18–87; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 1137

Milk in Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends, for the months of September 1987 through February 1988, the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February period under the Eastern Colorado order. Suspension of the provisions was requested by a cooperative association representing producers supplying the market. The action is necessary to assure that the milk of producers who regularly have supplied the fluid milk needs of the market will continue to be priced and pooled under the order without requiring unnecessary and unecomomic movements of milk.

EFFECTIVE DATE: September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formualtion Branch, Room 2968,

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South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Suspension: Issued August 24, 1987; published August 27, 1987 (52 FR 32308).

The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires the agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule has been reviewed under Executive Order 12291 and Department Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 27, 1987 (52 FR 32308) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the proposed action were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of September 1987 through February 1988 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In the second sentence of § 1137.7(b), the words "plant which has qualified as a", and "of March through August".

Statement of Consideration

This action suspends for the months of September 1987 through February 1988 the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February period.

The suspension was requested by Mid-America Dairymen, Inc., (Mid-Am), a cooperative association of producers supplying the market. The cooperative association indicated that in spite of the Dairy Termination Program, after two years of increasing production, producer receipts on the Eastern Colorado market during the first six months of 1987 declined only 0.4 percent from the level of production during the same period of 1986, while producer milk used in Class I fell 2.0 percent. Mid-Am expects that, with suspension of the requested provisions, ample supplies of locally produced milk will still be available to the Eastern Colorado marketing area due to the relative decline in Class I use, ideal weather conditions for milk production and ample feed supplies. In the absence of the suspension Mid-Am would be required to move 50 percent of the receipts at its supply plants located in Kansas and Nebraska to the Denver area. Without the suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market. No comments in opposition to the proposed action were received. Mid-Am filed comments that provided additional information in support of the suspension.

Milk production is little changed from year-earlier levels and consequently about the same proportion of the available milk supplies will have to be shipped to manufacturing plants for surplus uses as in 1986. Favorable weather conditions and ample feed supplies provide strong indications that the current production trends will not abate substantially in spite of the Dairy Termination Program. Significant increases in Class I use are not expected. In view of these circumstances, it is concluded that the provisions limiting the period of automatic pool plant status for a supply plant that met pool shipping standards during a previous September through February period should be suspended for the months of September 1987 through February 1988, as they were for the same 1986–87 period, to ensure the orderly marketing of milk supplies. The suspension will eliminate the need to make uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning this suspension. No views in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions § 1137.7(b) of the Eastern Colorado order are hereby suspended for the months of September 1987 through February 1988, as follows:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1137.7 [Amended]

2. In 7 CFR Part 1137, in the second sentence of § 1137.7(b), the words "plant which has qualified as a", and "of March through August".

Effetive Date: September 21, 1987.

Signed at Washington, DC, on September 15, 1987.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 87–21706 Filed 9–18–87; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 308

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control; Rules of Practice and Procedures

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final agency rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is amending its regulations to redelegate

authority to act on those applications and administrative enforcement matters formerly exercised by the Board of Review to officials in the FDIC's Division of Bank Supervision ("division"). The amendments also delegate additional authority to act on certain applications and administrative enforcement matters to the Director of the Division of Bank Supervision ("Director") and, where confirmed in writing by the Director, to an associate director of the Division of Bank Supervision ("associate director"), or to the appropriate regional director or deputy regional director. The changes are expected to make better use of the FDIC's resources and make the processing of applications and administrative enforcement matters more efficient. The amendments therefore benefit both the FDIC and the banking system by allowing the FDIC to act expeditiously on applications and to attempt to correct unsafe and unsound banking practices in a prompt fashion.

EFFECTIVE DATE: September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Alan J. Kaplan, Counsel, Legal Division, (202) 898–3734 or Michael A. Hovan, Jr., Associate Director, Administration & Corporate Applications Branch, Division of Bank Supervision, (202) 898–6851 (applications) and Eugene A. Miller, Counsel, Legal Division, (202) 898–3705 or George J. Masa, Assistant Director, Supervision and Enforcement Activities, Division of Bank Supervision, (202) 898–6915, or William R. Taylor, Chief, Special Situation Section, Division of Bank Supervision, (202) 898–6773 (enforcement matters), Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Currently, Part 303 of the FDIC's regulations sets forth delegations of authority by the Board of Directors ("Board") to act on certain applications and enforcement matters to the FDIC's Board of Review, the Director of the Division of Bank Supervision and the Deputy General Counsel for Regional and Corporate Affairs, and, where confirmed in writing, to the appropriate regional director or regional counsel, or both. The number of both applications and administrative enforcement proceedings under the FDIC's purview has increased dramatically in the past ten years. This increase has been borne particularly by the FDIC's Washington staff since virtually all actions currently come to Washington at some stage in the proceeding, whether to the Board of Directors, the Board of Review, or the Director. The Board has undertaken an effort to make better use of the FDIC's resources by processing applications and enforcement actions more efficiently and promptly in order to benefit both the FDIC and the banking system. The FDIC is, therefore, making, among other changes,[1] amendments to the delegations of authority discussed below. The amendments reflect the Board's conclusion that the division and the regions [2] can be given additional authority to handle the processing of applications and enforcement actions.

Part 303

Section 303.6 Application procedures.

In addition to the technical amendments to § 303.6 (b) and (e) discussed below, § 303.6(e) is amended to remove the uncertainty over which officials within the division make the threshold determination whether a petition for reconsideration of a denied application, petition, or other request warrants reconsideration. The FDIC's regulation requires that petitions for reconsideration of denied applications, petitions, or requests (1) specify reasons why the FDIC should reconsider its action and (2) set forth relevant, substantive information that for good cause was not previously set forth in the application, petition, or request to be reconsidered. Under existing § 303.6(e), the Board has reserved to itself the right to reconsider applications, petitions, or requests denied by the Board and has directed that any application, petition, or request denied under delegated authority by the FDIC's Board of Review, the Director, or a regional director will be reconsidered by the Board of Review.

Section 303.6(e) requires clarification because, in addition to the restructuring of the Board of Review, the rule is unclear regarding who within the FDIC makes the threshold determination about a petition's compliance with the requirements that it specify the reasons for reconsideration and contain new relevant and substantive information. The amendment to § 303.6(e) removes any doubt present in the existing regulation by providing that the Director, and, where confirmed in writing by the Director, the associate director, or the appropriate regional director or deputy regional director, or the General Counsel or designee in the case of a petition which does not relate to a particular bank or institution, shall make the threshold determination of the petition's compliance with the provisions of § 303.6(e)(1). The amended § 303.6(e) merely states the FDIC's current practice that incomplete or improper petitions will not be considered on the merits.

If the regional director, deputy regional director, or General Counsel (or designee) determine that a petition for reconsideration does not comply with the provisions of § 303.6(e)(1), an applicant may appeal such decision to the Director, or where confirmed in writing by the Director, to the associate director, or, for petitions filed with the Executive Secretary, to the Chairman of the FDIC or designee. An applicant may not submit additional information or evidence with the appeal and the decisions by the Director or associate director or the Chairman or designee regarding this threshold determination are final and not appealable to the Board.

Amended § 303.6(e) states that a petition for reconsideration which complies with the threshold requirements shall be considered by the Board if the Board denied the original application or request, or by the Director, or where confirmed in writing by the Director, an associate director, if the Director, associate director, regional director or deputy regional director denied the original application or request. The amendments also make clear the FDIC's current practice that decisions by the Director or associate director on the merits of petitions for reconsideration are final and not appealable to the Board. The amendments do not, however, limit in any manner the rights an aggrieved party or person may have under the Administrative Procedure Act to request the Board to exercise its discretionary authority to review an action taken under delegated authority. This right to request review by the Board, however, is distinct from the right to present a meritorious petition for reconsideration in that the right to petition for reconsideration amounts to an "appeal by right" whereas requests for Board review need only be considered by the Board at its discretion.

Lastly, § 303.6 is amended by deleting existing paragraph (*l*)and redesignating paragraphs (m) and (n) as paragraphs (*l*) and (m). The deleted provision dealt with tentative denials of applications

[1] In addition to reorganizing Part 303 to improve its clarity and overall utility to the reader, one layer of decision makers has been removed by the restructuring of the Board of Review. This action necessitates revisions to Part 303 in order to redelegate the authority formerly exercised by the Board of Review.

[2] As used herein, "division" refers to the Director and the associate directors and "regions" refers to the regional directors and the deputy regional directors (or assistant regional directors in those FDIC regions which do not have deputy regional directors).

and provides in substantial part as follows:

> Generally, in the case of an application subject to the provisions of this section, where the Board of Directors, based upon the information available at that time, plans to deny the application and no hearing has been held thereon pursuant to paragraph (i) of this section, the Director of the Division of Bank Supervision or his designee will send the applicant a written statement by registered or certified mail which shall specify the reasons for such tentative denial.

The FDIC has always viewed the provision for a tentative denial to be an optional rather than a mandatory procedure. The Board is choosing, nonetheless, to eliminate the above-quoted provision for two reasons. First, the introductory term "generally" is confusing and provides no guidance as to when the tentative denial procedure will be used. Second, as a matter of practice, the function of a tentative denial—to provide an applicant the opportunity to correct deficiencies in its application that would otherwise result in a denial or, if it cannot remedy the deficiencies, to withdraw the application—has been fulfilled in recent years by the greatly increased amount of interaction between an applicant and the appropriate FDIC regional officer over the quality of the application. In this way, the regional office has been able to indicate to an applicant when its application is insufficient to the degree that it is likely to be denied. As a result, the majority of problems or deficiencies that would warrant the use of a formal tentative denial notification by the Board has been eliminated during the processing of the application at the regional office level. The continual interaction between regional office personnel and an applicant leads to correction of surmountable problems or the opportunity for withdrawal of the application. Moreover, the Board has the authority to issue a formal tentative denial without the express language to do so in the regulation. Therefore, the present practice of working closely with the applicant and the rare usage of the formal notification of a tentative denial indicate that the elimination of the tentative denial procedures from Part 303 will not prejudice an applicant's position or rights.

Section 303.7 Delegation of authority to the Director of the Division of Bank Supervision and to the associate directors and to the regional directors and deputy regional directors to act on certain applications, requests, and notices of acquisition of control.

The current version of § 303.7 is organized according to those applications, requests and notices of acquisition of control which are not subject, and those which are subject, to conditions precedent for the exercise of delegated authority by specifically named delegates. The amendments, in addition to modifying the delegations, reorganize § 303.7 according to types of applications, requests and notices of acquisition of control. The Board feels that this structure better presents the delegations in a clear and concise manner, thereby improving the utility of Part 303 to the reader.

(a) *Applications for branches and relocations and for trust and other banking powers.* Under the existing delegations of authority, the authority of the Director, and, where confirmed in writing by the Director, the Director's delegate(s) or the appropriate regional director, to act on applications to establish branches or relocate offices or for trust or other banking powers is limited by the applicant's Uniform Financial Institutions Rating System ("composite CAMEL"), Uniform Interagency Compliance System ("Compliance"), and Community Reinvestment Act ("CRA") ratings. If all of the applicant's ratings are 1 or 2, the application may be approved but not denied. If any of the three composite ratings are 3 but none are 4 or 5, the application may be approved or denied. If, however, any of the ratings are 4 or 5, the division may only deny the application. The Board of Review has been delegated the authority to approve or deny any such application without restriction.

Experience indicates that there are extenuating circumstances which warrant approval of applications for branches or relocations submitted by banks rated a composite 4 or 5. Such circumstances include situations where it may be financially beneficial for the applicant to relocate an office to more cost-effective quarters or where the only available alternative to relocation is closing an office when a lease expires or is terminated. Another extenuating circumstance is the courier service offered by certain banks, some of which have been operated without the prior consent of the FDIC. These services may be beneficial to the institution; therefore, it may be more reasonable to approve, than deny, the branch-courier service even though the applicant has a rating of 4 or 5. Similarly, experience has shown that applications for trusts or other banking powers are, for the most part, routine and can be handled more efficiently and promptly at the regional level.

In view of the foregoing, the FDIC is expanding the authority of the Director, associate directors, regional directors and deputy regional directors [3] to act on applications for branches and relocations and for trust and other banking powers by eliminating the tiered criteria relating to the composite CAMEL, compliance, and CRA ratings. The amendments retain the existing restrictions on the exercise of delegated authority to act on branch or relocation applications by the delegates unless (1) the six factors set forth in section 6 of the Federal Deposit Insurance Act ("Act") (12 U.S.C. 1816) have been considered and favorably resolved; (2) the applicant meets the minimum capital requirements set forth in 12 CFR Part 325 and the FDIC's "Statement of Policy on Capital" or agrees in writing to be in compliance before or at the consummation of the transaction which is the subject of the application; (3) any financial arrangements in connection with the proposed branch or relocation involving the applicant's officers, directors, and major shareholders are fair and reasonable in comparison with similar arrangements that could have been made with independent third parties; and (4) the requirements of the National Historic Preservation Act, the National Environmental Policy Act, and the CRA have been considered and favorably resolved. Further, the regions may not act on branch and relocation applications unless comments protesting an application on CRA grounds filed by an organization other than a competing institution are favorably resolved.

The "standard conditions" provision for branch and relocation applications has also been retained, but has been moved from § 303.10(a) to § 303.7(a). Delegates may impose conditions on branch and relocation applicants, but the authority of a regional director or deputy regional director to act on such applications where conditions other than those listed in § 303.7(a)(1)(iv) have been imposed is limited to situations where the applicant agrees in writing to comply with such conditions. The Director or associate directors may exercise delegated authority to act on branch or relocation applications where any condition has been imposed even if the applicant has not agreed in writing to comply with them.

As for applications for trust and other banking powers, the amendments retain the restrictions on the exercise of

[3] In the amendments, the Board has delegated its authority to the Director. Under specific circumstances, the Director may subdelegate this authority to an associate director, or to a regional director or deputy regional director. Any subdelegations by the Director must be confirmed in writing

delegated authority by the Director, associate directors, regional directors or deputy regional directors unless (1) the six factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved; (2) the proposed management of the trust or other banking business is determined capable of satisfactorily handling the anticipated business; and (3) for trust applications only, the applicant's board of directors has formally adopted Form 114—"Statement of Principles of Trust Department Management."

(b) *Merger transactions.* Under existing delegations, the Director (or his delegate(s)) or the regional directors can approve but not deny any merger application where the resulting bank warrants a composite CAMEL, a compliance, and a CRA rating of 1 or 2. If the resulting bank warrants a rating of 3 on any three of the standards, but none would be 4 or 5, then a delegate may approve or deny an application. If any of the resulting ratings are a 4 or 5, a delegate can only deny a merger application. The exercise of delegated authority is further limited to applications where the resulting bank would not have more than 15% of the deposits in the relevant market.

As with branch and trust applications, experience indicates that the current limitations on the exercise of delegated authority to act on merger applications unnecessarily delay final action on the applications up to 4 to 6 weeks. Experience also indicates that the FDIC approves the vast majority of merger applications. Consequently, there is little reason why the division and regions should not have broadened authority to approve such applications.

The Board has determined, however, that the authority of the division and the regions to approve merger applications should not be without restriction and has, consequently, placed market share and competitive factors limitations on the exercise of this delegated authority. The division or the region may approve a merger application where the resulting bank's market share [4] is not more than 15% or where the resulting bank's market share is not more than 25% and the Attorney General has not issued an adverse competitive factors opinion. The division may approve a merger application where the resulting bank's market share is not more than 35% and the Attorney General has not issued an adverse competitive factors opinion.

Another change from the existing delegations concerns the competitive factors opinion. Currently, an opinion provided by the FDIC's legal Division is used when the Attorney General has not provided an opinion within 30 days of a request by the FDIC (although no delegation is effective if either the Legal Division or the Attorney General issues an adverse opinion). With the broadened delegations, the Board has concluded that a delegate may not approve a merger application without a formal opinion by the Attorney General if the market share of the resultant bank is in excess of 15%.

Also, where a merger transaction involves both an FDIC-insured institution and an institution whose deposits are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"), the Board has delegated to the division the authority to approve such a transaction if the transaction will not result in (and is not part of a series of transactions that would result in) a substantial volume of deposits insured by the FSLIC becoming deposits insured by the FDIC or vice versa. In applying the "substantial volume of deposits" test, it is intended that the volume of deposits being transferred may be measured either in absolute terms or in relation to the total deposits of the institution from which the deposits are being acquired or assumed, and that, if the volume of deposits being transferred is substantial under either measure, the application will be referred to the Board of Directors for action.

Finally, the amendments make explicit the current FDIC practice that the division or the region do not have the authority to approve merger applications falling within the scope of the "probable failure" or "emergency" provisions of 12 U.S.C. 1828(c)(6) or where the resulting bank does not meet the capital requirements in accordance with Part 325 of the FDIC's rules and regulations (12 CFR Part 325).

(c) *Notices of acquisition of control.* Under the existing delegations, the division and the regions can issue written notices of the FDIC's intent not to disapprove acquisitions of control of insured state nonmember banks, but they can not disapprove such acquisitions of control. The amendments make additional delegations to the Director, and where confirmed in writing by the Director, to an associate director, so that the division has the authority to disapprove acquisitions of control. The Board has concluded that this additional delegation to the division will expedite and streamline the processing of disapprovals of acquisition of control of insured state nonmember banks.

(d) *Deposit insurance applications.* The amendments make few changes to the existing delegations of authority to act on applications for deposit insurance. The division and the regions will have the authority to approve applications for deposit insurance by newly organized banks, by operating noninsured or nonfederally insured institutions and by state member banks withdrawing from membership in the Federal Reserve System, subject to the applicants satisfying specific requisites. The "standard conditions" provision formally found in § 303.10(a) has been moved to § 303.7(d)(4) and limits the exercise of delegated authority by the division or the regions to act on deposit insurance applications where conditions other than those listed in § 303.7(d)(4) have been imposed to situations where the applicants agree in writing to comply with such conditions.

The amendments restrict the delegation of authority to approve deposit insurance applications by operating noninsured or nonfederally insured institutions with total assets of $250,000,000 or more to the division. The Board has limited the delegation to approve applications for deposit insurance submitted by this particular class of applicants to the division because it has determined that decisions on deposit insurance applications from large institutions are better handled at the division level.

(e) *Applications pursuant to section 19 of the Act.* The amendments make additional delegations to the division, giving the Director, and where confirmed in writing, an associate director, the authority to deny applications made by insured banks pursuant to section 19 of the Act (12 U.S.C. 1829) for the employment of any director, officer, or employee who has been convicted or is hereafter convicted of any criminal offense involving dishonesty or a breach of trust. This change reflects the Board's conclusion that the processing of section 19 applications will be streamlined and made more efficient, thereby better serving the banking industry. The procedures for processing petitions for reconsideration of denied section 19 applications are governed by the procedures set forth in § 303.6(e).

(f) *Other applications.* The amendments move the existing

[4] Market share is measured by the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s). What constitutes an "appropriate" combination of commercial and/or thrift deposits is determined by an analysis of the business conducted by commercial banks and thrift institutions in the relevant market(s).

delegations found in § 303.7(a)(1–5)[5] and § 303.7(b) to § 303.7(f)(1), with only minor changes. The division and the regions now have the authority to act upon applications seeking to establish temporary banking facilities for up to ninety days rather than the current restriction on delegated authority to act on applications seeking to establish such facilities for one month. The division and the regions also now have the authority both to approve and to deny applications for "phantom" bank mergers (except where any of the merging institutions has deposits insured by the FSLIC and the transaction would result in a substantial volume of deposits insured by the FSLIC becoming deposits insured by the FDIC or vice versa), applications for deposit insurance filed in connection with "phantom" bank mergers and requests to establish a management official interlock pursuant to 12 CFR 348.4(b)(3). The Board feels that there is no reason to restrict the exercise of delegated authority on these applications to the authority only to approve. The amendments restrict the delegation of authority to approve or deny applications for acquisition of stock in foreign banks to the division based on the Board's conclusion that these applications are not routine and present some unique policy issues better handled at the division level.

Section 303.8 Other delegations of authority.

Except for newly designated § 303.8(a), which was formerly found at § 303.7(c)(7), existing § 303.11 is redesignated § 303.8. Current § 303.11(i) has been deleted since the statute which imposed time deposit withdrawal penalties has sunset. The Board has delegated additional authority to the division and the regions to act on the routine disclosure matters pursuant to 12 CFR 335.703 (confidential treatment to be accorded to information required to be filed in a disclosure report) and to 12 CFR 335.204(e) (disclosure to departments and agencies of the United States of otherwise confidential information submitted in copies of preliminary proxy solicitation material).

Section 303.9 Delegation of authority to act on certain enforcement matters.

Under the existing delegations, the Board of Review has the authority to act on certain enforcement matters, such as issuing notices of charges and of hearing pursuant to section 8(b) of the Act (12 U.S.C. 1818(b)), issuing certain stipulated section 8(b), and other stipulated orders, issuing notices of assessments of civil money penalties and withdrawing and terminating such assessments, issuing capital directives, and accepting written agreements. The existing delegations also impose conditions and limitations on the authority of the division and the regions to accept stipulated orders and to terminate outstanding orders.

Since the Board last revised the delegations, the division and regional staffs have gained sufficient experience operating under delegated authority such that the majority of the conditions and limitations on the exercise of delegated authority are no longer necessary. The Board concludes that additional delegations to the division and the regions will speed up the processing of enforcement matters. The additional delegations also mean that the banks in need of corrective action can deal directly with the decision makers at the regional level without having to wait for the enforcement process to go through Washington, DC staff. The more efficient processing of enforcement matters and the easier access to decision makers will not only make better use of the FDIC's resources, but will help the FDIC to be more responsive to the needs of the banking industry.

Lastly, the amendments condition the exercise of delegated authority on enforcement matters by the division and the regions upon the concurrent certification by officials in the FDIC's Legal Division that the actions taken under delegated authority are not inconsistent with the Act.

(a) *Actions pursuant to section 8(a) of the Act.* In order to streamline the processing of section 8(a) (12 U.S.C. 1818(a)) actions so that the FDIC acts in a more prompt and responsive manner, the Board has delegated additional authority to initiate section 8(a) actions to the division and the regions. The amendments give the regions the authority to issue orders of correction where a respondent's book capital is less than 3% of its total assets (unless the bank has issued any mandatory convertible debt or any form of secondary capital). Under the amendments, the division has the authority to issue orders of correction when a respondent's adjusted primary capital is less than 3% of its adjusted Part 325 total assets.

(b) *Actions pursuant to section 8(b) of the Act.* The authority of the division and the regions to act on section 8(b) (12 U.S.C. 1818(b)) matters is expanded to include (1) the authority to issue notices of charges and (2) the authority to issue stipulated orders at any time prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and a recommended decision with the FDIC's Executive Secretary.

(c) *Actions pursuant to section 8(c) of the Act.* The enforcement power granted by section 8(c) of the Act (12 U.S.C. 1818(c)) enables the FDIC to issue temporary cease-and-desist orders, which are effective upon service, where violations of law or unsafe and unsound practices threaten the respondent bank's solvency or the interests of its depositors. Since the purpose behind section 8(c) calls for prompt, corrective actions, the Board has delegated to the division the authority to issue temporary cease-and-desist orders.

(d) *Actions pursuant to section 8(e) of the Act.* The division has also been delegated the authority to issue notices of charges pursuant to sections 8(e) (1), (2) and (3) of the Act (12 U.S.C. 1818(e) (1), (2) and (3)) and to agree to stipulated orders of removal and prohibition at any time prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and a recommended decision with the FDIC's Executive Secretary.

(e) *Actions pursuant to section 8(g) of the Act.* Consistent with the Board's policy to delegate the authority to agree to stipulated orders, the amendments delegate authority to the division to agree to stipulated orders suspending and prohibiting an indicted director, officer or person from participating in the conduct of the affairs of an insured bank.

(f) *Civil money penalties.* With the restructuring of the Board of Review, the authority to issue notices of assessments of civil money penalties pursuant to sections 7(j)(15), 8(i), and 18(j) of the Act (12 U.S.C. 1817(j)(15), 1818(i) and 1828(j)), section 106(b) of the Bank Holding Company Act (12 U.S.C. 1972) and section 910(d) of the International Lending Supervision Act of 1923 (12 U.S.C. 3909) has been delegated to the division. The General Counsel or designee retains the authority to assess civil money penalties under section 7(a)(1) of the Act (12 U.S.C. 1817(a)(1)) for late filings of Reports of Condition, Reports of Income and any other reports required by the Board under the authority of that section.

(h) *Capital directives.* The amendments, due to the restructuring of the Board of Review, redelegate the authority to issue notices of intent to

[5] Current § 303.7(a)(6) has been deleted since the amendments do not differentiate between applications to establish initial remote service facilities and those to establish such facilities other than an initial remote service facility.

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issue capital directives and to issue directives to the division and the regions.

(i) *Truth in Lending Act.* The amendments move the authority to act on requests for relief from the requirements for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1607(e)(2)) found in existing § 303.8(b) to newly designated § 303.9(i), and, due to the restructuring of the Board of Review, redelegate the authority to act on such requests to the division and the regions. The regions have the authority to act on routine requests, *i.e.*, to deny requests where the estimated amount of reimbursement is $10,000 or less. The division has been delegated the authority to grant requests for relief, to deny requests where the estimated amount of reimbursement is greater than $10,000 and to act on meritorious petitions for reconsideration of previous denials.

(j) *Acceptance of written agreements.* Under the existing delegations, the Board of Review has the authority to accept or enter into written agreements with insured banks or their officials pertaining to any matter which may be addressed by the FDIC pursuant to sections 8 (a) and (b) of the Act (12 U.S.C. 1818 (a) and (b)). The amendments redelegate this authority to the division.

(k) *Modifications and terminations.* Under existing Part 303, the authority of the division or the regions to modify or terminate outstanding orders or pending administrative enforcement proceedings was limited and subject to a number of conditions. The amendments reflect the Board's determination (1) that the person initiating a proceeding or issuing an order should have the authority to modify or terminate the proceeding or order and (2) that once the Board has issued an order, modifications or terminations are better and more efficiently handled at the regional or divisional level.

The amendments permit the Director to subdelegate to the regions the authority to terminate outstanding orders and pending administrative enforcement actions upon either the closing or the merger of the respondent bank. The amendments also delegate to the division and regions the authority to terminate outstanding section 8(b) orders issued by the Board in cases of material compliance or for good cause shown. Authority is delegated to the division to modify or terminate section 8(a) orders of correction and section 8(g) orders of suspension and prohibition issued by the Board and to terminate actions pending pursuant to notices of intent to terminate insured status issued by the Board where the respondent bank is either in material compliance with the applicable order of correction or for good cause shown.

Section 303.10 Applications and enforcement matters where authority is not delegated.

Paragraph (a) of existing § 303.10 was revised and moved to § 303.7(a)(1)(iv) and § 303.7(d)(4). New paragraph (a)(1) of § 303.10 was formerly found at § 303.11(a). Paragraph (a)(2) of newly designated § 303.10, formerly found at § 303.10(b), makes clear that the Board may act on any application or enforcement matter even if the authority to act on such has been delegated.

Paragraph (b) of revised § 303.10 is new and lists, without limiting the Board's authority, the applications and enforcement matters where the Board has not delegated its authority to act. The Board has retained authority to deny merger applications and to approve such applications where (1) the resulting bank would have more than a 35% market share, (2) the Attorney General has issued an adverse competitive factors opinion, or (3) a merger transaction between an FDIC-insured institution and an FSLIC-insured institution will result in a substantial volume of deposits insured by the FSLIC becoming deposits insured by the FDIC or vice versa. The Board has also retained authority to deny deposit insurance applications and to approve such applications where the applicant is a U.S. branch of a foreign bank or has deposits insured by FSLIC.

Regarding enforcement matters, the Board has retained the authority (1) to issue administrative orders when respondents do not consent to the issuance of the orders, (2) to issue (i) orders of correction when a respondent bank's book capital is at or above 3% of total assets and adjusted primary capital is at or above 3% of adjusted Part 325 total assets, (ii) notices of intent to terminate insured status, and (iii) orders terminating insured status pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)), and (3) to deny requests for modifications or terminations of orders issued pursuant to section 8(g) of the Act (12 U.S.C. 1818(g)).

Section 303.11 Confirmation, limitations, rescissions, and special cases.

Existing § 303.9 is redesignated as § 303.11 and is revised to remove all references to the Board of Review. Newly designated § 303.11 makes explicit that action under delegated authority is not mandated. As a result, the Director may rescind, in writing, any subdelegation of authority to an associate director, or to a regional director or deputy regional director. Additionally, any subdelegate may recommend that he not exercise the authority to act on an application or enforcement matter. In such cases, the Director may take any necessary action. The Director may similarly recommend that he not exercise the authority to act on an application or enforcement matter, wherein the Board shall act. Amended § 303.11 retains the provision of existing Part 303 that the conditions to which the exercise of delegated authority are subject are procedural in nature only and shall not be construed as standards or criteria which will be used in determining the merits of a specific application or enforcement matter. Paragraph (c) of § 303.11 also retains the provision of existing Part 303 that any aggrieved party or person may request the Board to review any action taken under delegated authority.

Technical Amendments

Part 303

The amendments expand the "Definitions" paragraph of Part 303 (§ 303.0(b)) to include terms used in the revised delegations. The revisions to § 303.2 are the result of moving the definition for "remote service facilities" out of § 302.2 and into the "Definitions" paragraph, § 303.0(b)(16). Paragraphs (b) and (e) of § 303.6 have been amended to delete all references to the Board of Review and to add associate directors of the division and deputy regional directors as officials to whom authority to act on certain matters have been delegated by the Board. Section 303.8 (delegations to the Board of Review) has been removed and §§303.9, 303.11, and 303.13 have been redesignated as §§ 303.11, 303.8 and 303.12 for clarification purposes.

Part 308

Part 308 of the FDIC's rules and regulations (12 CFR Part 308) sets forth the FDIC's rules of practice and procedure for administrative enforcement proceedings. The amendments to Part 303 necessitate several minor changes to Part 308 for consistency purposes.

Regulatory Considerations

The above changes to Part 303 and Part 308 are being made in an effort to handle the flow of, and make better use of the FDIC's resources in, processing applications and enforcement actions. The changes do not create any insured bank publication requirements or affect

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the bank's or other respondent's right to challenge any action. The changes also do not impair the availability of access to the Board, to the extent it exists currently in Part 303, for review of decisions on any application or enforcement matter.

The amendments to the regulations are procedural in nature, *i.e.*, the conditions establishing the delegations are not standards against which the merits of an application or enforcement action are to be measured to determine substantively whether the FDIC should approve the application or proceed with the enforcement action. The delegations are merely guideposts by which the FDIC's staff can determine who has the authority to proceed on a particular application or action. The changes in the delegation of authority do not alter any of the rights or obligations of any bank or other respondent.

The amendments are being published in final form without opportunity for public comment under authority of 5 U.S.C. 553(b)(A) (Administrative Procedure Act) which exempts from required publication for comment interpretive rules, general statements of policy, and rules of agency practice and procedure. The amendments, which constitute nonsubstantive changes to FDIC's rules of practice and procedure, are being made immediately effective inasmuch as the requirement found in 5 U.S.C. 553(d) that substantive rules be published not less than 30 days prior to their effective date is inapplicable. As these amendments neither alter existing nor create new recordkeeping or reporting requirements, the Paperwork Reduction Act is inapplicable. Finally, the requirements of the Regulatory Flexibility Act are inapplicable as the amendments are not subject to required public comment under the Administrative Procedure Act.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations, Bank deposit insurance, Banks, Banking.

12 CFR Part 308

Administrative practice and procedure, Claims, Courts, Equal access to justice, Lawyers, Penalties.

For the reasons set out above, Parts 303 and 308 of Title 12 of the Code of Federal Regulations are amended as set forth below.

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

1. The authority citation for Part 303 continues to read as follows:

Authority: Secs. 2(5), 2(6), 2(7)(j), 2(8), 2(9 "Seventh" and "Tenth"), 2(18), 2(19), Pub. L. 797, 64 Stat. 876, 881, 891, 893 as amended by Pub. L. 86–643, 74 Stat. 129; sec. 2, Pub. L. 87–827, 76 Stat. 953; Pub. L. 88–593, 78 Stat. 940; Pub. L. 89–79; 79 Stat. 244; sec. 1, Pub. L. 89–356, 80 Stat. 7; sec. 12(c), Pub. L. 89–485, 80 Stat. 242, sec. 3, Pub. L. 89–597, 80 Stat. 824; Title II, secs. 201, 205, Pub. L. 89–695, 80 Stat. 1055; sec. 2(b), Pub. L. 90–505, 82 Stat. 856; secs. 6(c) (7), (12), (13), Pub. L. 95–369, 92 Stat. 616–620; Title III, secs. 306, 309 and Title VI, sec. 602, Pub. L. 95–630, 92 Stat. 3677, 3683 (12 U.S.C. 1815, 1816, 1817(j), 1818, 1819 "Seventh and "Tenth", 1828, 1829); Title I, sec. 108, Pub. L. 90–321, 82 Stat. 150 as amended by Title IV, sec. 403, Pub. L. 93–495, 88 Stat. 1517 and Title VI, sec. 608, Pub. L. 96–221, 94 Stat. 171 (15 U.S.C. 1607).

2. Section 303.0 is revised to read as follows:

§ 303.0 Scope and definitions.

(a) *Scope.* This part prescribes (1) where applications, requests, and notices of acquisition of control (hereinafter, collectively, "applications") should be filed, (2) the contents of the applications when the application is to be made by letter, and (3) the location where forms and instructions may be obtained when the application is to be made on a form. Part 303 also prescribes procedures to be followed by both the FDIC and applicants during the process of considering an application. Finally, this part sets forth delegations of authority by the FDIC's Board of Directors to the Director of the Division of Bank Supervision, and to the associate directors of the Division of Bank Supervision and to the regional directors and deputy regional directors to act on certain applications and other matters and the conditions, where applicable, that limit such delegations.

(b) *Definitions.* For purposes of this Part 303:

(1) The term "division" shall mean the Division of Bank Supervision.

(2) The term "Director" shall mean the Director of the Division of Bank Supervision, or in the event the title of Director becomes obsolete, any official of comparable authority within the division.

(3) The term "associate director" shall mean any associate director of the Division of Bank Supervision, or in the event the title of associate director become absolete, any official of comparable authority within the division.

(4) The term "regional director" shall mean a regional director (Bank Supervision), or in the event the title of regional director becomes obsolete, any official of comparable authority within the division.

(5) The term "regional counsel" shall mean a regional counsel (Bank Supervision), or in the event the title of regional counsel become obsolete, any official of comparable authority within the Office of the General Counsel. The duties and responsibilities of a regional counsel may be performed by the assistant general counsel or a counsel in the Compliance and Enforcement Section of the Office of the General Counsel in the FDIC's Washington, DC, office.

(6) The term "deputy regional director" shall mean a deputy regional director (Bank Supervision), or in those FDIC regions where there is no deputy regional director, an assistant regional director (Bank Supervision). In the event the title of deputy regional director or assistant regional director becomes obsolete, the term "deputy regional director" shall then mean any official of comparable authority within the same FDIC region of the division.

(7) The terms "appropriate FDIC region," "appropriate regional director," "appropriate deputy regional director" and "appropriate regional counsel" shall refer to the FDIC region, the Regional Director (Bank Supervision), the deputy regional director (Bank Supervision), and the regional counsel (Bank Supervision), respectively, of the FDIC region in which

(i) The applicant bank, the proposed or newly organized nonmember bank, the insured branch of a foreign bank, the resulting or assuming bank, or the bank in which stock is being acquired, as appropriate, is or will be located, or

(ii) A bank,

(A) Which is the subject of an administrative action or

(B) With which an individual who is the subject of an administrative action is associated, is located.

(8) The term "the Act" shall mean the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(9) The term "order of correction" shall mean findings of unsafe or unsound practices or condition and an order of correction issued under section 8(a) of the Act (12 U.S.C. 1818(a)).

(10) The term "section 8(a) order" shall mean an order terminating insured status under section 8(a) of the Act (12 U.S.C. 1818(a)).

(11) The term "notice of charges" shall mean a notice of charges and of hearing setting forth the allegations of unsafe or unsound practices and/or violations and fixing the time and place of the hearing issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(12) The terms "section 8(b) order" and "cease-and-desist order"shall mean a final order to cease and desist issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(13) The terms "section 8(c) order" and "temporary cease-and-desist order" shall mean a temporary order to cease and desist issued under section 8(c) of the Act (12 U.S.C. 1818(c)).

(14) The term "section 8(e) order" shall mean a final order of removal or prohibition issued under section 8(e) of the Act (12 U.S.C. 1818(e)).

(15) The term "section 8(e)(4) order" and "temporary section 8(e) order" shall mean a temporary order of suspension or prohibition issued under section 8(e)(4) of the Act (12 U.S.C. 1818(e)(4)).

(16) The term "section 8(g) order" shall mean an order of suspension and prohibition issued under section 8(g) of the Act (12 U.S.C. 1818(g)).

(17) The term "remote service facility" shall mean an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received, checks paid, or money lent.

(18) The term "notice of assessment of civil money penalties" shall mean a notice of assessment of civil penalties issued pursuant to section 7(j)(15), 8(i) or 18(j) of the Act (12 U.S.C 1817(j)(15), 1818(i), or 1828(j)), section 106(b) of the Bank Holding Company Act (12 U.S.C. 1972), or section 910(d) of the International Lending Supervision Act of 1983 (12 U.S.C. 3909).

(19) The term "final order to pay" shall mean an order to forfeit and pay civil money penalties which has become final and which has been issued pursuant to section 7(j)(15), 8(i), or 18(j) of the Act (12 U.S.C. 1817(j)(15), 1818(i), or 1828(j)), section 106(b) of the Bank Holding Company Act (12 U.S.C. 1972), or section 910(d) of the International Lending Supervision Act of 1983 (12 U.S.C. 3909).

(20) The term "book capital" shall mean total equity capital (comprised of perpetual preferred stock, common stock, surplus, undivided profits and capital reserves) plus allowance for loan and lease losses, as those items are defined in the instructions of the Federal Financial Institutions Examination Council ("FFIEC") for the preparation of Consolidated Reports of Condition and Income for insured banks.

(21) The term "adjusted primary capital" shall mean adjusted primary capital as calculated and reflected in the FDIC's Reports of Examination.

(22) The term "total assets" shall mean total assets plus allowance for loan and lease losses as those terms are defined in the instructions of the FFIEC for the preparation of Consolidated Reports of Condition and Income for insured banks.

(23) The term "adjusted Part 325 total assets" shall mean adjusted Part 325 total assets as calculated and reflected in the FDIC's Reports of Examination.

(24) Any use of the masculine, feminine, or neuter gender shall be read as encompassing all three, if such use would be appropriate.

§ 303.2 [Amended]

3. In § 303.2, paragraph (c)(1) is removed and paragraphs (c)(2)(i) and (c)(2)(ii) are redesignated as paragraphs (c)(1) and (c)(2). The newly designated § 303.2(c)(1) is amended by removing the heading, "Application procedures.", by removing the term "303.8," in the fifth sentence and by substituting the term "303.11" for the term "303.9" in the fifth sentence. The newly designated § 303.2(c)(2) is amended by removing everything which follows first occurrence of the word "paragraph" and by inserting "(1) of this paragraph (c)."

4. Section 303.6 is amended by removing paragraph (l), redesignating paragraphs (m) and (n) as paragraphs (l) and (m) respectively, and revising paragraphs (b) and (e) to read as follows:

§ 303.6 Application procedures.

* * * * *

(b) *Investigations and examinations.* With respect to all applications, requests, or submittals, the Board of Directors, or the Director, the associate director or the appropriate regional director or deputy regional director acting under delegated authority, may require any investigation or examination, or both, to be performed as deemed appropriate. Upon receipt of the report of any investigation or examination and any recommendations based on the report, the Board of Directors, or the Director, the associate director, the regional director, or the deputy regional director acting within the scope of delegated authority, as the case may be, will take any action determined necessary or appropriate under the circumstances.

* * * * *

(e) *Opportunity to petition for reconsideration of a denied application, petition, or other request.* (1) Within 15 days of its receipt of notice that its application, petition, or request has been denied, any applicant may petition the FDIC for reconsideration of such application, petition, or request (except an application, petition or request already previously denied upon reconsideration). The petition must be in writing and should (i) specify reasons why the FDIC should reconsider its action and (ii) set forth relevant, substantive information that for good cause was not previously set forth in the application, petition, or request to be reconsidered. The petition should be filed with the appropriate regional director. If a particular insured bank or insured branch of a foreign bank was not the subject of the application, petition, or request on which reconsideration is sought, the petition should be filed with the Executive Secretary of the FDIC at the FDIC's principal office.

(2)(i) The Director of the Division of Bank Supervision or, where confirmed in writing by the Director, and associate director or the appropriate regional director or deputy regional director, or, in the case of a petition for reconsideration filed with the Executive Secretary, the General Counsel or designee, shall determine whether the petition satisfies paragraphs (e)(1) (i) and (e)(1) (ii) of this section and shall promptly notify the petitioner of such determination.

(ii) If, pursuant to paragraph (e)(2)(i), of this section, a petition for reconsideration is determined not satisfy paragraphs (e)(1)(i) and (e)(1)(ii) of this section, an applicant may appeal such decision to the Director, and where confirmed in writing by the Director, to an associate director, or, in the case of a petition for reconsideration filed with the Executive Secretary, to the Chairman of the FDIC or designee. An applicant may not submit additional information or evidence with the appeal and the determination by the Director or associate director, or the Chairman of the FDIC or designee whether the petition satisfies paragraph (e)(1)(i) and (e)(1)(ii) of this section is final and not appealable to the Board of Directors.

(iii) If a petition for reconsideration is determined to satisfy paragraphs (e)(1)(i) and (e)(1)(ii) of this section, then the previously denied application, petition, or request will be reconsidered (A) by the Board of Directors if originally denied by the Board of Directors, or (B) by the Director, or where confirmed in writing by the Director, by an associate director, if originally denied by the Director, associate director, regional director or

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deputy regional director. The decisions by the Director or associate director on petitions for reconsideration are final and not appealable to the Board of Directors.

5. Section 303.7 is revised to read as follows:

§ 303.7 Delegation of authority to the Director of the Division of Bank Supervision and to the associate directors and to the regional directors and deputy regional directors to act on certain applications, requests, and notices of acquisitions of control.

The Board of Directors of the Federal Deposit Insurance Corporation has delegated to officials in the Division of Bank Supervision and other employees of the FDIC the authority on behalf of the Board of Directors to act (subject to the provisions of § 303.11 of this part) on the following applications, requests, and notices of acquisition of control.

(a) *Applications for branches (including remote service facilities and courier services) and relocations, and for trust and other banking powers*—(1) *Branch and relocation applications.* (i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve applications for consent to establish branch facilities (including remote service facilities and courier services) or relocations where the applicant satisfies the requisites listed in paragraph (a)(1)(iii) of this section and agrees in writing to comply with any condition imposed by the delegate other than those listed in paragraph (a)(1)(iv) of this section.

(ii) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, (A) To deny applications for consent to establish branch facilities (including remote service facilities and courier services) or relocations and (B) To approve such applications where the applicant satisfies the requisites listed in paragraph (a)(1)(iii) of this section but does not agree in writing to comply with any condition imposed by the delegate.

(iii) The requisites which must be satisfied before the authority delegated by paragraphs (a)(1)(i) and (a)(1)(ii)(B) of this section to approve applications for consent to establish branch facilities or relocations may be exercised are:

(A) The six factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved (except that this requisite does not apply to applications to establish courier services);

(B) The applicant meets the capital requirements set forth in 12 CFR Part 325 and the FDIC's "Statement of Policy on Capital" or agrees in writing to increase capital so as to be in compliance with the requirements of 12 CFR Part 325 before or at the consummation of the transaction which is the subject of the application (except that this requisite does not apply to applications to establish courier services, remote service facilities, and relocations of branches or main offices);

(C) Any financial arrangements which have been made in connection with the proposed branch or relocation and which involve the applicant's directors, officers, major shareholders, or their interests, are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties; and

(D) The requirements of the National Historic Preservation Act (16 U.S.C. 470), the National Environmental Policy Act (42 U.S.C. 4321), and the Community Reinvestment Act of 1977 (12 U.S.C. 2901 through 2905) and its applicable implementing regulation (12 CFR Part 345) have been considered and favorably resolved (except that this requisite does not apply to applications to establish foreign branches); *Provided However,* That a regional director or deputy regional director is not authorized to exercise delegated authority to approve applications for branches and relocations where an organization other than a competing institution has filed a protest under the Community Reinvestment Act.

(iv) The conditions which may be imposed by a delegate in approving applications for branches and relocations without affecting the authority granted under paragraph (a)(1)(i) of this section are:

(A) The applicant has obtained all necessary and final approvals from the appropriate state authority; and

(B) Until the conditional commitment of the FDIC becomes effective, the FDIC retains the right to alter, suspend, or withdraw its commitment should any interim development be deemed to warrant such action.

(2) *Applications for consent to exercise trust and other banking powers.* (i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve applications for the FDIC's consent to exercise trust or other banking powers where the applicant satisfies the requisities listed in paragraph (a)(2)(iii) of this section and agrees in writing to comply with any other conditions required by the delegate.

(ii) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director,

(A) To deny applications for trust or other banking powers, and

(B) To approve such applications where the applicant satisfies the requisites listed in paragraph (a)(2)(iii) of this section but does not agree in writing to comply with other conditions required by the delegate.

(iii) The requisites which must be satisfied before the authority delegated by paragraphs (a)(2)(i) and (a)(2)(ii)(B) of this section to approve applications for trust or other banking powers may be exercised are:

(A) The six factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(B) The proposed management of the trust or other banking business is determined capable of satisfactorily handling the anticipated business; and

(C) In regards to trust applications only, the applicant's board of directors has formally adopted Form 114—"Statement of Principle of Trust Department Management."

(b) *Merger transactions.* (1) Except as provided in paragraph (b)(5) of this section and in § 303.10(b) of this part, authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or the appropriate regional director or deputy regional director, to approve any application for permission to merge or consolidate with any other bank or, either directly or indirectly, to acquire the assets of, or assume the liability to pay any deposits made in, any other bank or branch of a foreign bank (hereinafter referred to as "merger transaction") where:

(i) The resulting bank, upon consummation of the merger transaction, would not have more than 15% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s); or

(ii) The resulting bank, upon consummation of the merger transaction, would not have more than 25% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s) and the Attorney General has determined that the proposed merger transaction would not have a significantly adverse effect on competition.

(2) Except as provided in paragraph (b)(5) of this section, authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to approve applications for merger transactions where the resulting bank, upon consummation of the merger transaction, would not have more than 35% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s) and the Attorney General has determined that the proposed merger transaction would not have a significantly adverse effect on competition.

(3) In cases where applicable, the delegate will review any reports on the competitive factors involved in the merger transaction that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Attorney General may have provided in response to a request for such reports by the FDIC. In the absence of a formal written opinion by the Attorney General, the delegate may also request the FDIC's General Counsel or designee to provide a formal written opinion on the question whether the merger transaction may have a significantly adverse effect on competition but the authority delegated under paragraphs (b)(1)(ii) and (b)(2) of this section may not be exercised in the absence of a formal written opinion by the Attorney General where the resulting bank, upon consummation of the merger transaction, would have more than 15% of the individual, partnership, and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s).

(4) Subject to the same limitations relating to market share and competition as are set forth in paragraph (b)(2) of this section, authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to approve any application for a merger transaction between an FDIC-insured institution and an institution insured by the Federal Savings and Loan Insurance Corporation (hereinafter the "FSLIC") when the delegate determines that the transaction will not result in (and is not part of a series of transactions that would result in) a substantial volume of deposits insured by the FSLIC becoming deposits insured by the FDIC or vice versa.

(5) The delegations contained in paragraphs (b)(1), (b)(2), and (b)(4) of this section to approve applications for merger transactions do not extend to such applications (i) falling within the scope of the "probable failure" or "emergency" provisions of 12 U.S.C. 1828(c)(6) or (ii) where the resulting bank, upon consummation of the merger transaction, does not meet the capital requirements set forth in 12 CFR Part 325 and the FDIC's "Statement of Policy on Capital." (If the applicant is a foreign bank, the delegated authority to approve does not extend to instances where, upon consummation of the merger transaction, the foreign bank's insured branch is not in compliance with 12 CFR Part 346.)

(c) *Notices of acquisition of control.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to issue a written notice of the FDIC's intent not to disapprove an acquisition of control of an insured State nonmember bank.

(2) The authority delegated by paragraph (c)(1) of this section shall include the power:

(i) To act in situations where information is submitted on acquisitions arising out of estate or intestate succession, bona fide gifts, or foreclosure;

(ii) To extend notice periods;

(iii) To determine the informational adequacy of a notice;

(iv) To determine whether a notice should be filed under section 7(j) of the Act (12 U.S.C. 1817(j)) by a person acquiring less than 25 percent of any class of voting securities of an insured state nonmember bank; and

(v) To waive publication, waive or shorten the public comment period, or act on a proposed acquisition of control prior to the expiration of the public comment period, as provided in 12 CFR 303.4(b)(3).

(3) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to disapprove an acquisition of control of an insured state nonmember bank.

(d) *Deposit insurance applications—* (1) *Proposed or newly organized banks.* (i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or subject to the limitations set forth in paragraph (d)(1)(iii) of this section, to the appropriate regional director or deputy regional director, to approve applications for deposit insurance by proposed or newly organized banks where the applicant satisfies the requisites listed in paragraph (d)(1)(ii) of this section and agrees in writing to comply with any condition imposed by the delegate other than those listed in paragraph (d)(4) of this section.

(ii) The requisites which must be satisfied before the authority delegated by paragraph (d)(1)(i) of this section to approve applications for deposit insurance by proposed or newly organized banks may be exercised are:

(A) Each of the six factors set forth in section 6 of the Act (12 U.S.C. 1816) has been considered and favorably resolved; and

(B) The guidelines set forth in the FDIC's policy statement, "Applications for Deposit Insurance," have been satisfied, including, but not limited to the following:

(*1*) Equity capital is not less than $1,000,000;

(*2*) Legal fees and other expenses incurred in connection with the proposal are determined to be reasonable;

(*3*) No unresolved "management interlocks," as prohibited by Part 348 of this chapter (12 CFR Part 348), exist;

(*4*) The projected ratio of equity capital and reserves to assets, including projected profits and losses, is at least 10 percent at the end of the third year of operation;

(*5*) Profitable operations are projected at least for the third year of operations;

(*6*) The proposed aggregate direct and indirect investment in fixed assets is determined to be reasonable relative to the applicant's proposed equity capitalization, projected earnings capacity, and other pertinent bases of consideration;

(*7*) Any financial arrangements made or proposed in connection with the proposed bank involving the applicant's directors, officers, 5 percent shareholders or their interests are determined to be fair and made on substantially the same terms as those prevailing at the time for comparable transactions with noninsiders and do not involve more than normal risk or present other unfavorable features. The applicant also must have fully disclosed, or agreed to disclose fully, any such arrangement to all of its proposed directors and shareholders prior to the opening of the bank;

(*8*) Stock financing arrangements conform to the guidelines established in the FDIC's policy statement on "Applications for Deposit Insurance;" and

(*9*) Fidelity coverage, accrual accounting, and compliance with the National Historic Preservation Act (16 U.S.C. 470), the National Environmental Policy Act (42 U.S.C. 4321), and the Community Reinvestment Act of 1977 (12 U.S.C. 2901 through 2905) and the

applicable implementing regulation (12 CFR Part 345) are adequate and favorably resolved in accordance with the guidelines set forth in FDIC's policy statement on "Applications for Deposit Insurance."

(iii) The authority to approve an application may not be subdelegated to a regional director or deputy regional director where—(A) A protest under the Community Reinvestment Act is filed (other than a protest filed for competitive reasons by a financial institution) or (B) Where,

(*1*) There is direct or indirect financing, by proposed directors and officers and 5 percent or more shareholders, of more than 75 percent of the purchase price of the stock subscribed to by any one shareholder,

(*2*) There is aggregate financing of stock subscriptions in excess of 50 percent of the total capital offered, or

(*3*) Warehoused or trusteed stock exceeds 10 percent of initial capital funds.

(2) *Operating noninsured institutions or nonfederally insured institutions.* (i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or, for applicant institutions with total assets of less than $250,000,000, to the appropriate regional director or deputy regional director, to approve applications for deposit insurance by operating noninsured institutions or nonfederally insured institutions where the applicant satisfies the requisites listed in paragraph (d)(2)(ii) of this section and agrees in writing to comply with any condition imposed by the delegate other than those listed in paragraph (d)(4) of this section.

(ii) The requisites which must be satisfied before the authority delegated by paragraph (d)(2)(i) of this section to approve applications for deposit insurance by operation noninsured institutions or nonfederally insured institutions may be exercised are:

(A) The applicant is determined to be eligibile for federal deposit insurance for the class of institution to which the applicant belongs in the state (as defined in 12 U.S.C. 1813(a)) in which the applicant is located;

(B) The six factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(C) The applicant meets the minimum capital requirements as set forth in Part 325 of this chapter (21 CFR Part 325) and the FDIC's "Statement of Policy on Capital" or agrees in writing to increase capital so as to be in compliance with the requirements of 12 CFR Part 325 before or at the time deposit insurance becomes effective;

(D) All "management interlocks" as prohibited by Part 348 of this chapter (12 CFR Part 348) have been resolved; and

(E) The applicant has no fewer than five directors.

(3) *Banks withdrawing from Federal Reserve System.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director and deputy regional director, to approve applications for deposit insurance by state nonmember banks that have withdrawn from membership in the Federal Reserve System where the applicant agees in writing to comply with any condition imposed by the delegate other than those listed in paragraph (d)(4) of this section and satisfies the following requisites;

(i) The six factors set forth in section 6 of the Act 12 U.S.C. 1816) have been considered and favorably resolved; and

(ii) The bank has agreed to continue any corrective program imposed by the Board of Governors of the Federal Reserve System or previously agreed to by the bank where the bank is not in material compliance with that corrective program.

(4) *Conditions for exercise of delegated authority.* The conditions which may be imposed by a delegate in approving applications for deposit insurance without affecting the authority granted under paragraphs (d)(1), (d)(2), and (d)(3) of this section are:

(i) The applicant has provided a specific amount and a specific allocation of beginning paid-in capital;

(ii) Any changes in proposed management or proposed ownership to the extent of 5 of more percent of stock, including new acquisitions of or subscriptions to 5 or more percent of stock shall be approved by the FDIC prior to the opening of the bank;

(iii) The applicant adopts an accrual accounting system for maintaining the books of the bank;

(iv) Where applicable, federal deposit insurance will not become effective until the applicant has been established as a state bank (not a member of the Federal Reserve System), has authority to conduct a banking business, and its establishment and operation as a bank have been fully approved by the state banking authority;

(v) Where applicable, a registered or proposed bank holding company has obtained approval of the Board of Governors of the Federal Reserve System to acquire voting stock control of the proposed bank prior to its opening;

(vi) Where applicable, the applicant, has submitted any proposed contracts, leases, or agreements relating to construction or rental of permanent quarters to the regional director for review and comment;

(vii) Where applicable, full disclosure has been made to all proposed directors and stockholders of the facts concerning the interest of any insider (one who is or stands to be a director, an officer, or an incorporator of an applicant or a shareholder who directly or indirectly controls 5 or more percent of any class of the applicant's outstanding voting stock, or the associates and interests of any such person) in any bank transactions being effected or then contemplated, including the identity of the parties to the transaction and the terms and costs involved;

(viii) The person(s) selected to serve as the principal operating officer(s) shall be acceptable to the regional director;

(ix) The applicant has obtained adequate blanket bond coverage; and

(x) Until the conditional commitment of the FDIC becomes effective, the FDIC retains the right to alter, suspend, or withdraw its commitment should any interim development be deemed to warrant such action.

(e) *Applications pursuant to section 19 of the Act.* (1) Authority is delegated to the Director, or where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve applications made by insured banks pursuant to section 19 of the Act (12 U.S.C. 1829) for the employment of any director, officer, or employee who has been convicted or is hereafter convicted of any criminal offense involving dishonesty or a breach of trust; *Provided However,* That authority may not be delegated to the regional director or deputy regional director where the applicant bank's primary supervisory authority interposes any objection to such application.

(2) (i) Authority is delegated to the Director, and where confirmed by writing by the Director, to an associate director, to deny applications made by insured banks pursuant to section 19 of the Act.

(ii) The authority delegated under paragraph (e)(2)(i) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Regional and Corporate Affairs or the Assistant General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 19 of the Act.

(iii) An applicant may still request a hearing following a denial of the application under this paragraph in accordance with the provisions of Part 308 of this chapter (12 CFR Part 308).

(f) *Other applications.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve and to deny the following applications, requests or petitions:

(i) Applications to establish and operate any new teller's window, drive-in facility, or any like office, as an adjunct to a main office or a branch office (including offices not considered branches under state law);

(ii) Applications to operate temporary banking facilities as a public service for a period not to exceed ninety days during conventions, State and local fairs, college registration periods, and similar occasions, as well as during emergencies;

(iii) Applications to reduce the amount or retire any part of common or preferred capital stock, or retire any part of capital notes or debentures;

(iv) Requests for approval of any deviations from requirements prescribed by prior delegated action (to be acted upon by the delegate who acted previously in the matter);

(v) Except as provided in § 303.10(b) of this part, applications for "phantom" bank mergers [8] and other mergers which are corporate reorganizations, *i.e.*, transactions involving banks controlled by the same holding company or transactions involving banks and their subsidiaries which would have no effect on competition or otherwise have significance under relevant statutory standards as set forth in 12 U.S.C. 1828(c);

(vi) Applications for deposit insurance filed by proposed state nonmember banks which are formed in connection with a "phantom" bank merger; and

(vii) Requests to establish a management official interlock pursuant to 12 CFR 348.4(b)(3) of this chapter.

(2) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to approve or to deny applications for the acquisition and holding of stock or other evidences of ownership in a foreign bank or other financial entity that results in less than 25 percent ownership interest in such bank or entity.

6. Section 303.8 is revised to read as follows:

[8] As used in this Part 303, the term "phantom bank merger" applies to any merger or other transaction involving an existing operating bank and a newly chartered bank or corporation which is for the purpose of corporate reorganization and which would have no effect on competition or otherwise have significance under the relevant statutory standards as set forth in 12 U.S.C. 1828(c).

§ 303.8 Other delegations of authority.

(a) *Extensions of time.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve and to deny requests for extensions of time, not to exceed one year on any one request relating to the same application, within which to perform acts or conditions required by prior FDIC action on bank applications.

(b) *Disclosure law and regulations.* (1) Except as provided in paragraph (b)(2) of this section, authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to act on disclosure matters under and pursuant to sections 12, 13, 14, 17 and 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78) or Parts 335 and 341 of this chapter (12 CFR Parts 335 and 341).

(2) Authority to act on disclosure matters is retained by the Board of Directors when such matters involve:

(i) Exemption from disclosure requirements pursuant to section 12(h) of the Securities Exchange Act of 1934 (15 U.S.C. 781(h));

(ii) Exemption from tender offer requirements pursuant to section 14(d)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)(8)); or

(iii) Exemption from registration requirements pursuant to section 17A(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1(c)(1)).

(c) *Security devices and procedures and bank service arrangements.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to administer the provisions of Part 326 of this chapter (12 CFR Part 326).

(d) *In emergencies.* For the purpose of assuring the performance of, and continuity in the management functions and activities of the FDIC, the Board of Directors has delegated, to the extent deemed necessary, authority with respect to the management of the FDIC's affairs, to certain designated officers, such authority to be exercised only in the event of an emergency involving an enemy attack on the continental United States or other warlike occurrence which renders the Board of Directors unable to perform the management functions and activities normally performed by it.

(e) *Competitive factor reports.* (1) Authority is delegated to the Director, and where confirmed by the Director, to an associate director, or to the regional director or deputy regional director in the appropriate FDIC region in which the applicant bank [9] is located, to furnish required reports to the Board of Governors of the Federal Reserve System or the Comptroller of the Currency on the competitive factors involved in any "phantom" bank merger and other mergers that are corporate reorganizations (*i.e.*, transactions involving banks controlled by the same holding company or transactions involving banks and their subsidiaries which would have no effect on competition or otherwise have significance under relevant statutory standards as set forth in 12 U.S.C. 1828(c)).

(2) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to furnish to the Board of Governors of the Federal Reserve System or the Comptroller of the Currency reports on the competitive factors involved in any merger required to be approved by one of those agencies, if the division is of the view that the proposed merger would have no significant effects on competition.

(f) *Deposit agreements for pledge of assets by foreign banks.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to enter into deposit agreements with foreign banks and depositories in connection with the pledge of asset requirements pursuant to 12 CFR 346.19.

(2) Authority is delegated to the General Counsel or designee to modify the terms of the model deposit agreement used for such deposit agreements.

(g) *National Historic Preservation Act.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to enter into memoranda of agreement pursuant to regulations of the Advisory Council of Historic Preservation which implement the National Historic Preservation Act (16 U.S.C. 470).

(2) The Director may limit the delegation of authority to the associate director, the regional director or deputy

[9] As used in paragraph (d)(1) of this section, the term "applicant bank" means the bank which is applying for merger approval either to the Board of Governors of the Federal Reserve System or to the Comptroller of the Currency.

regional director to applications wherein the applicant has agreed in writing to conditions relating to the National Historic Preservation Act which may be imposed by the FDIC.

7. Section 303.9 is revised to read as follows:

§ 303.9 Delegation of authority to act on certain enforcement matters.

The Board of Directors of the Federal Deposit Insurance Corporation has delegated to officials in the Division of Bank Supervision and other employees of the FDIC the authority on behalf of the Board of Directors to act (subject to the provisions of § 303.11 of this part) on the following enforcement matters.

(a) *Actions pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)).* (1) Authority delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to issue orders of correction when the respondent bank's book capital is less than 3% of total assets; *Provided However,* That authority may not be delegated to the regional director or deputy regional director whenever the respondent bank has issued any mandatory convertible debt or any form of secondary capital (such as limited life preferred stock/ subordinated notes and debentures).

(2) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to issue orders of correction when the respondent bank's adjusted primary capital is less than 3% of adjusted Part 325 total assets.

(3) The authority delegated under paragraphs (a)(1) and (a)(2) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Regional and Corporate Affairs or the Assistant General Counsel for Compliance and Enforcement, or, in cases where a regional director or deputy regional director issues orders of correction, by the appropriate regional counsel, that the allegations contained in the findings of unsafe or unsound practices or conditions, if proven, constitute a basis for the issuance of an order of correction pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)).

(b) *Actions pursuant to section 8(b) of the Act (12 U.S.C. 1818(b)).* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to issue:

(i) Notices of charges and

(ii) Cease-and-desist orders (with or without a prior notice of charges) where the respondent bank or individual respondent consents to the issuance of the cease-and-desist order prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and a recommended decision with the Executive Secretary of the FDIC.

(2) The authority delegated under paragraph (b)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Regional and Corporate Affairs or the Assistant General Counsel for Compliance and Enforcement, or, in cases where a regional director or deputy regional director issues the notice of charges or the stipulated cease-and-desist order, by the appropriate regional counsel, that the allegations contained in the notice of charges, if proven, constitute a basis for the issuance of a notice of charges pursuant to section 8(b) of the Act (12 U.S.C. 1818(b)) or that the stipulated cease-and-desist order is authorized under section 8(b) of the Act and is a cease-and-desist order which has become final for purposes of enforcement pursuant to the Act.

(c) *Actions pursuant to section 8(c) of the Act (12 U.S.C. 1818(c)).* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to issue temporary cease-and-desist orders.

(2) The authority delegated under paragraph (c)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Regional and Corporate Affairs or the Assistant General Counsel for Compliance and Enforcement that the action is not inconsistent with section 8(c) of the Act (12 U.S.C. 1818(c)) and the temporary cease-and-desist order is enforceable in a United States District Court.

(d) *Actions pursuant to section 8(e) of the Act (12 U.S.C. 1818(e)).* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to issue (i) notices of intent to remove an individual from office or to prohibit an individual from further participation in the conduct of the affairs of an insured bank pursuant to sections 8(e) (1), (2), and (3) of the Act (12 U.S.C. 1818(e) (1), (2), and (3)) and (ii) orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured bank where the individual consents to the issuance of such orders prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and a recommended decision with the Executive Secretary of the FDIC.

(2) The authority delegated under paragraph (d)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Regional and Corporate Affairs or the Assistant General Counsel for Compliance and Enforcement that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a notice of intent pursuant to section 8(e) of the Act or that the stipulated section 8(e) order is not inconsistent with section 8(e) of the Act and is an order which has become final for purposes of enforcement pursuant to the Act.

(e) *Actions pursuant to section 8(g) of the Act (12 U.S.C. 1818(g)).* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to issue orders of suspension and prohibition to an indicted director, officer or person participating in the conduct of the affairs of an insured bank when such director, officer or person consents to the suspension or removal.

(2) The authority delegated under paragraph (e)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Regional and Corporate Affairs or the Assistant General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 8(g) of the Act (12 U.S.C. 1818(g)).

(f) *Actions pursuant to section 8(p) of the Act (12 U.S.C. 1818(p)).* (1) Authority is delegated to the Executive Secretary to issue consent orders terminating the insured status of insured banking institutions that have ceased to engage in the business of receiving deposits other than trust funds pursuant to section 8(p) of the Act (12 U.S.C. 1818(p)).

(2) The authority delegated under paragraph (f)(1) of this section shall be exercised only upon the recommendation and concurrence of the Director or associate director and the Deputy General Counsel for Regional and Corporate Affairs or the Assistant General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 8(p) of the Act.

(g) *Civil money penalties.* (1)(i) Except as provided for in paragraph (g)(2) of this section, authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to issue notices of assessment of civil money penalties.

(ii) The authority delegated under paragraph (g)(1)(i) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Regional and Corporate Affairs or the Assistant General Counsel

for Compliance and Enforcement that the allegations contained in the notice of assessment, if proven, constitute a basis for assessment of civil money penalties.

(2) Authority is delegated to the General Counsel or designee for the levying and enforcement of civil money penalties under section 7(a)(1) of the Act (12 U.S.C. 1817(a)(1)) for the late filing of Reports of Condition and Report of Income, and such other reports as the Board of Directors may require under the authority of that section. In the exercise of the delegated authority, the General Counsel or designee shall consult with the Director or Associate Director before imposing any penalty.

(h) *Capital directives.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to issue

(i) Notices of intent to issue directives and

(ii) Directives to insured state nonmember banks that fail to maintain capital in accordance with the requirements for contained in Part 325 of this chapter (12 CFR Part 325).

(2) The authority delegated under paragraph (h)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Regional and Corporate Affairs or the Assistant General Counsel for Compliance and Enforcement, or in cases where a regional director or deputy regional director issues the notice of intent to issue capital directives or directives, by the appropriate regional counsel, that the action taken is not inconsistent with the Act and Part 325.

(i) *Truth in Lending Act.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to deny requests for relief from the requirements for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1607(e)(2)): *Provided However,* That a regional director or deputy regional Director are not authorized to deny any request where the estimated amount of reimbursement is greater than $10,000.

(2) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director,

(i) To grant requests for relief from the requirements for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1670(e)(2)) and

(ii) To act on petitions for reconsiderations of any action taken under paragraphs (i)(1) and (i)(2) of this section.

(3) The authority delegated under paragraphs (i)(1) and (i)(2)(i) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Regional and Corporate Affairs or the Assistant General Counsel for Compliance and Enforcement, or, in cases where a regional director or deputy regional director denies requests for relief, by the appropriate regional counsel, that the action taken is not inconsistent with the Truth in Lending Simplification and Reform Act.

(j) *Acceptance of written agreements.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to accept or enter into any written agreements with insured banks, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank, pertaining to any matter which may be addressed by the FDIC pursuant to sections 8(a) and (b) of the Act (12 U.S.C. 1818(a) and (b)).

(2) The authority delegated under paragraph (j)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Regional and Corporate Affairs or the Assistant General Counsel for Compliance and Enforcement that the action taken is not inconsistent with sections 8(a) and (b) of the Act.

(k) *Modifications and terminations of enforcement actions*—(1) *Upon failure or merger of bank.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate outstanding section 8(a), section 8(b) and section 8(c) orders and to terminate actions which are pending pursuant to sections 8(a), 8(b), and 8(c) of the Act (12 U.S.C. 1818 (a), (b), (c)) when the bank is closed by a federal or state authority or merges into another institution.

(2) *Section 8(a) actions (12 U.S.C. 1818(a)).* (i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to modify or terminate orders of correction issued by the Board of Directors pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)) where either the respondent bank is in material compliance with the order of correction or for good cause shown.

(ii) In cases where the Board of Directors has issued a notice of intent to terminate insured status pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)), authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to terminate the actions pending pursuant to that notice of intent to terminate insured status where either the respondent bank is in material compliance with the applicable order of correction or for good cause shown.

(3) *Section 8(b) orders issued by the Board of Directors.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate outstanding section 8(b) orders issued by the Board of Directors where either material compliance with the section 8(b) order has been achieved by the respondent bank or individual respondent or for good cause shown.

(4) *Section 8(g) orders issued by the Board of Directors.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to approve requests for modifications or terminations of section 8(g) orders issued by the Board of Directors.

(5) *Other matters not specifically addressed.* For all other outstanding orders or pending actions not specifically addressed in paragraphs (k)(1), (k)(2), (k)(3) and (k)(4) of this section, the delegations of authority contained in paragraphs (a)(1) and (a)(2), (b)(1), (c)(1), (d)(1), (e)(1), (g)(1), and (g)(2), (h)(1), (i)(1) and i(2), and (j)(1) of this section shall be construed to include the authority to modify or terminate any outstanding order, directive or agreement, as may be appropriate, issued pursuant to delegated authority and to terminate any pending action (including withdrawal of notice of charges) initiated pursuant to delegated authority.

(6) *Certification.* Any modifications or terminations pursuant to paragraphs (k)(1), (k)(2), (k)(3), (k)(4), and (k)(5) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Regional and Corporate Affairs or the Assistant General Counsel for Compliance and Enforcement, or in cases where a regional director or deputy regional director acts under delegated authority, by the appropriate regional counsel, that the action taken is not inconsistent with the Act.

(l) *Enforcement of oustanding orders.* After consultation with the Director, or associate director, or the appropriate regional director or deputy regional

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director, as may be appropriate, the General Counsel or designee is authorized to initiate and prosecute any action to enforce any effective and outstanding order or temporary order issued under 12 U.S.C. 1817, 1818, 1820, 1828(i), 1829, 1972, or 3909(d), or any provision thereof, in the appropriate United States District Court.

8. Section 303.10 is revised to read as follows:

§ 303.10 Applications and enforcement matters where authority is not delegated.

(a) *Authority not specifically delegated is retained by the Board of Directors.* (1) Except as otherwise provided in this part, or with respect to matters which generally involve conditions or circumstances requiring prompt action in the field for the better protection of the interests of the FDIC and to achieve flexibility and expedition in its operations and in the exercise of its functions in connection with the FDIC's litigation and liquidation matters and with the payment of claims for insured deposits, the Board of Directors does not delegate its authority and no delegations of final authority are made by the Board of Directors. Any person having a proper and direct concern therein may ascertain the scope of authority of any officer, agent, or employee of the FDIC by communicating with the Executive Secretary of the FDIC.

(2) In all cases where authority to act on applications, requests or enforcement matters listed in this part is not delegated to the Director, or to an associate director or a regional director or deputy regional director, the authority to act on such applications, requests, or enforcement matters remains vested in the Board of Directors of the FDIC. In addition, the Board of Directors retains the authority to act on any application, request or enforcement matter upon which any member of the Board of Directors wishes to act even if the authority to act on such application, request or enforcement matter has been delegated.

(b) *Applications and requests.* Without limiting the Board of Directors' authority, the Board of Directors has retained the authority to act upon the following applications and requests:

(1) To deny applications for merger transactions, and to approve applications for merger transactions where:

(i) The resulting bank, upon consummation of the merger transaction, would have more than 35% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s),

(ii) Irrespective of the resulting market share, the Attorney General has determined that the proposed merger transaction may have a significantly adverse effect on competition, or

(iii) Irrespective of the resulting market share or the Attorney General's opinion, a merger transaction between an FDIC-insured institution and an FSLIC-insured institution will result in (or is part of a series of transactions that would result in) a substantial volume of deposits insured by the FSLIC becoming deposits insured by the FDIC or vice versa;

(2) To deny applications for deposit insurance, and to approve applications for deposit insurance where:

(i) The applicant bank does not agree in writing to comply with any condition imposed by the FDIC,

(ii) The applicant bank is a United States branch of a foreign bank, or

(iii) The applicant bank has deposits insured by the Federal Savings and Loan Insurance Corporation; and

(3) To consider an application made by an insured bank pursuant to section 19 of the Act (12 U.S.C. 1829) for the employment of any director, officer, or employee who has been convicted or is hereafter convicted of any criminal offense involving dishonesty or a breach of trust following a hearing held in accordance with the provisions of Part 308 of this chapter (12 CFR Part 308).

(c) *Enforcement matters.* Without limiting the Board of Directors' authority, the Board of Directors has retained the authority to act upon the following enforcement matters:

(1) To issue

(i) Orders of correction when the respondent bank's book capital is at or above 3% of total assets and adjusted primary capital is at or above 3% of adjusted Part 325 total assets,

(ii) Notices of intent to terminate insured status and

(iii) Orders terminating insured status pursuant to section 8(a) of the Act (12 U.S.C. 1818(a));

(2) To issue cease-and-desist orders pursuant to section 8(b) of the Act (12 U.S.C. 1818(b)) when the respondent bank or individual does not consent to the issuance of such orders;

(3) To issue (i) temporary orders of suspension and prohibition pursuant to section 8(e)(4) of the Act (12 U.S.C. 1818(e)(4)) and (ii) orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured bank pursuant to section 8(e) (1), (2) and (3) of the Act (12 U.S.C. 1818(e) (1), (2) and (3)) when the individual does not consent to the issuance of such orders;

(4) To issue orders of suspension or prohibition to an indicated director, officer or person participating in the conduct of the affairs of an insured bank and orders of removal or prohibition to a convicted director, officer or person participating in the conduct of the affairs of an insured bank pursuant to section 8(g) of the Act (12 U.S.C. 1818(g)) when such director, officer or person does not consent to the suspension or removal;

(5) To issue final orders to pay civil money penalties where respondents do not consent to the assessment of civil money penalties and hearings have been held; and

(6) To deny requests for modifications or terminations of orders issued pursuant to section 8(g) of the Act (12 U.S.C. 1818(g)).

9. Section § 303.11 is revised to read as follows:

§ 303.11 Confirmation, limitations, rescissions and special cases.

(a) *Written confirmation, limitations or subsequent rescission.* (1) The authority delegated in §§ 303.7, 303.8 and 303.9 of this part by the Board of Directors to the associate director, the appropriate regional director or deputy regional director is subject, as to each associate director, regional director and deputy regional director, to written confirmation, limitations, or subsequent rescission of any confirmation, by the Director. Such written confirmation, limitations or rescissions shall be filed with the Executive Secretary of the FDIC at its offices in Washington, DC, and at the office of the regional director or deputy regional Director concerned, and shall be available for public inspection by interested parties.

(2) The conditions set forth in this part to which the exercise of delegated authority is subject are procedural in nature only and shall not be construed as standards or criteria which will be used in determining the merits of a specific application, petition, request or enforcement matter.

(b) *Action under delegated authority not mandated.* (1) The Director may, in writing, rescind the authority of an associate director, regional director to act on an application request, notice of acquisition of control or enforcement matter, and may himself act on the same.

(2) (i) An associate director, regional director or deputy regional director may, in writing, recommend that the authority to act on an application, request, notice of acquisition of control or enforcement

matter not be exercised by him; in such cases the authority to act on such application, request, notice of acquisition of control or enforcement matter may be exercised by the Director. The Director may, in writing, recommend that the authority to act on an application, request, notice of acquisition of control or enforcement matter may not be exercised by him; in such cases the Board of Directors will act on the application, request, notice of acquisition of control or enforcement matter.

(ii) A regional counsel may, in writing, recommend that the authority to act on an application made by insured banks pursuant to section 19 of the Act (12 U.S.C. 1829) or an enforcement matter not be exercised by him; in such cases the authority to act in such enforcement matters may be exercised by the Deputy General Counsel for Regional and Corporate Affairs or the Assistant General Counsel for Compliance and Enforcement. The Deputy General Counsel for Regional and Corporate Affairs or the Assistant General Counsel may, in writing, recommend that the authority to act on an application pursuant to section 19 of the Act or enforcement matter not be exercised by him; in such cases the Board of Directors will act on the application or enforcement matter.

(iii) Upon determining not to act upon the application, request, notice of acquisition of control or enforcement matter under delegated authority, the deputy regional director, regional director, associate director or the director, and/or the regional counsel or the Assistant General Counsel for Compliance and Enforcement or the Deputy General Counsel for Regional and Corporate Affairs, as the case may be, shall forward the application, request, notice of acquisition of control or enforcement matter together with his recommendations as to the disposition of such application, request, notice of acquisition of control or enforcement matter to the appropriate authority as determined by the rules set forth in paragraphs (b)(2)(i) and/or (b)(2)(ii) of this section.

(c) *Request for review.* Any aggrieved party or person may request the Board of Directors to review any action taken under authority delegated in §§ 303.7, 303.8 and 303.9 of this part.

§ 303.12 [Removed]

§ 303.13 [Redesignated as § 303.12]

10. Section 303.12 is removed and 303.13 is redesignated as § 303.12.

PART 308—RULES OF PRACTICE AND PROCEDURES

11. The authority citation for Part 308 continues to read as follows:

Authority: 12 U.S.C. 1819, 15 U.S.C. 78w, 12 U.S.C. 1972, 5 U.S.C. 504.

§ 308.01 [Amended]

12. Section 308.01 is amended by removing the phrase "303.11 and 303.13" in paragraph (b) thereof and inserting in its place the term "303.9".

13. Section 308.03 is amended by removing the word "or" before paragraph (c)(2) and before paragraph (c)(2)(ii); replacing the semicolon at the end of paragraph (c)(2)(iii) with a comma; adding the word "or" after that comma; and adding new paragraphs (c)(2)(iii) and (c)(3) to read as follows:

§ 308.03 Scope.

* * * * *

(c) * * *

(2) * * * or (iii) the provisions of the International Lending Supervision Act of 1983, or (3) any person for violation of the provisions of the Change in Bank Control Act of 1978 (12 U.S.C. 1817 (j)) or any regulation or order issued pursuant there to;

* * * * *

By Order of the Board of Directors. Dated at Washington, DC, this 15th day of September, 1987.

Hoyle L. Robinson,

Executive Secretary.

NOTE.—DERIVATION TABLE

New section	Old section (as revised)
303.0(a)	303.0(a).
303.0(b)(1) through (3) new	
303.0(b)(4)	303.0(b)(1).
303.0(b)(5) through (6) new	
303.0(b)(7)	303.0(b)(2)
303.0(b)(8) through (16) new	
303.0(b)(17)	303.2(c)(1)
303.0(b)(18) through (23) new	
303.0(b)(24)	303.0(b)(3).
303.2(c)(1)	303.2(c)(2)(i).
303.2(c)(2)	303.2(c)(2)(ii).
303.6(b)	303.6(b).
303.6(e)(1)	303.6(e).
303.6(e)(2)	303.6(e).
303.6(l)	303.6(m).
303.6(m)	303.6(n)
303.7(a)(1)(i) through (ii)	303.7(a)(6), (c)(1)
303.7(a)(1)(iii)	303.7(c)(1)(i)(A) through (D), (iii).
303.7(a)(1)(iv)	303.10(a)
303.7(a)(2)(i) through (ii) new	
303.7(a)(2)(iii)	303.7(c)(6)(ii)
303.7(b)(1) through (2) new	
303.7(b)(3)	303.7(c)(5)(i)
303.7(b)(4) through (5) new	
303.7(c)(1) through (2)	303.7(c)(8).
303.7(c)(3)	303.8(g)
303.7(d)(1)	303.7(c)(2).
303.7(d)(2)	303.7(c)(4)
303.7(d)(3)	303.7(c)(3)
303.7(d)(4)	303.10(a)
303.7(e)(1)	303.7(c)(9)
303.7(e)(2) new	
303.7(f)	303.7(a)(1) through (5), (b)

NOTE.—DERIVATION TABLE—Continued

New section	Old section (as revised)
303.8(a)	303.7(c)(1).
303.8(b)(1)	303.11(b)
303.8(b)(2)	303.11(c)
303.8(c)	303.11(d)
303.8(d)	303.11(e)
303.8(e)(1)	303.11(f)
303.8(e)(2)	303.11(g)
303.8(f)	303.11(h)
303.8(g)	303.11(j)
303.9(a) through (e) new	
303.9(f)	303.12(d).
303.9(g)(1) new	
303.9(g)(2)	303.12(e).
303.9(h)	303.12(c)(10)
303.9(i) new	
303.9(j)	303.12(c)(12)
303.9(k)(1)	303.12(a).
303.9(k)(2) new	
303.9(k)(3)	303.12(c)(3)(i)
303.9(k)(4) through (6) new	
303.9(l)	303.12(b)
303.10(a)(1)	303.11(a)
303.10(a)(2)	303.10(b)
303.10(b) through (c) new	
303.11(a)(1)	303.9(a)
303.11(a)(2)	303.7(c)
303.11(b)(1)	303.9(b)(1).
303.11(b)(2)(i)	303.9(b)(1)
303.11(b)(2)(ii) new	
303.11(b)(2)(iii)	303.9(b)(2)
303.11(c)	303.12(c)(7).
303.12	303.13.

[FR Doc. 87-21705 Filed 9-18-87; 8:45 am]

BILLING CODE 6714-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Revision 2; Amdt. 45]

Delegation of Authority To Conduct Program Activities in Field Offices

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule increases the authority of the Branch Manager in the Sacramento, California Branch Office to approve or decline section 7(a) Guaranty Business Loans to $500,000.

In addition this rule increases the authority of the Assistant Branch Manager for Finance and Investment in Sacramento to approve direct and immediate participation section 7(a) Business Loans up to $250,000 and authority to decline the same type of loans to $350,000.

The same official's authority to approve or decline section 7(a) Guaranty Business Loans is increased to approve loans up to $350,000 and decline loans up to $500,000.

The Assistant Branch Manager for Finance and Investment in Sacramento is also delegated authority to execute written loan authorizations and cancel, reinstate, modify, or amend loan authorizations. This person is also delegated authority to extend

disbursement periods and approve service charges by participating lenders.

The Assistant Branch Manager for Finance and Investment in Sacramento is delegated authority to approve loans to Local Development Companies up to $500,000 in cases where overall project authority is less than $700,000.

Increasing the delegated authority of these officials will improve and speed program delivery by placing direct responsibility for delivering SBA assistance in an office which is easily accessible to potential applicants.

EFFECTIVE DATE: September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Georgia K. Cannady, Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Telephone No. (202) 653–8538.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules relating to the Agency's organization and procedures; therefore, notice of proposed rulemaking, public participation, and a regulatory flexibility review, 5 U.S.C. 501 *et seq.*, are not required and this amendment is adopted without resort to those procedures.

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies), Administrative practice and procedure, Organization and functions (Government agencies).

13 CFR Part 101 is amended as follows:

PART 101—[AMENDED]

1. The authority citation for Part 101 continues to read as follows:

Authority: Secs. 4 and 5, Pub. L. 85–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634 as amended); sec. 308, Pub. L. 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93–386 (Aug. 23, 1974); and 5 U.S.C. 552.

§ 101.3–2 [Amended]

2. In § 101.3–2, Part I, Section A, 1, a (13) is revised as follows:

(13) Assistant Branch Manager/F&I, Gulfport, Milwaukee, Springfield, Ill., and Sacramento B.O.'s only.
Approve—$250,000
Decline—$350,000

3. In § 101.3–2, Part I, Section A, 1, b, (11) is revised as follows:

(11) Branch Manager, Corpus Christi, Milwaukee, Springfield, Ill., Springfield, Mo., and Sacramento.
Approve—$500,000
Decline—$500,000

4. In § 101.3–2, Section A, 1, b, (15) is revised as follows:

(15) Assistant Branch Manager/F&I, Milwaukee, Springfield, Ill., and Sacramento B.O.'s.
Approve—$350,000
Decline—$500,000

5. In § 101.3–2, Section B, 2, a, (12) is revised as follows:

(12) Assistant Branch Manager/F&I, Gulfport, Corpus Christi, Milwaukee, Springfield, Ill., and Sacramento B.O.'s only.

6. In § 101.3–2, Section B, 2, B, (12) is revised as follows:

(12) Assistant Branch Manager/F&I, Gulfport, Corpus Cristi, Milwaukee, Springfield, Ill., and Sacramento B.O.'s only.

7. In § 101.3–2, Section B, 3, a, (10) is revised as follows:

(10) Assistant Branch Manager/F&I, Gulfport, Corpus Christi, Milwaukee, and Sacramento B.O.'s.

8. In § 101.3–2, Section B, 4, k is revised as follows:

Assistant Branch Manager/F&I, Gulfport, Corpus Christi, Milwaukee, Springfield, Ill., and Sacramento B.O.'s only.

9. In § 101.3–2, Part I, Section C, 2, c, (11) is added to read:

(11) Assistant Branch Manager/F&I, Sacramento B.O.—$500,000.

10. In § 101.3–2, Part IV, Section A, 1, d, (12) is revised as follows:

(12) Assistant Branch Manager/F&I, Gulfport, Corpus Christi, Milwaukee, Springfield, Ill., and Sacramento B.O.'s only.

Dated: September 9, 1987.

James Abdnor,

Administrator.

[FR Doc. 87–21395 Filed 9–18–87; 8:45 am]

BILLING CODE 8025–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C–3214]

Prohibited Trade Practices, and Affirmative Corrective Actions; Walgreen Co.

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits among other things, a Deerfield, Ill.-based retail drugstore chain from making unsubstantiated advertising claims for "Advil" pain reliever or any other over-the-counter analgesic drug product.

DATE: Complaint and Order issued June 10, 1987 [1].

FOR FURTHER INFORMATION CONTACT: FTC/A–4002, Donna Siegel Moffa, Washington, DC 20580. (202) 326–3084.

SUPPLEMENTARY INFORMATION: On Monday, March 2, 1987, there was published in the **Federal Register**, 52 FR 6172, a proposed consent agreement with analysis In the Matter of Walgreen Co., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: Section 13.10 Advertising falsely or misleadingly; S.13.20 Comparative data or merits; S.13.45 Consent; S.13.85–75 Use; S.13.170 Qualities or properties of product or service; S.13.170–6 Analgesic; S.13.190 Results; S.13.205 Scientific or other relevant facts. Subpart—Corrective Actions And/Or Requirements: S.13.533 Corrective actions and/or requirements; S.13.533–45 Maintain records; S.13.533–45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Goods: S.13.1710 Qualities or properties; S.13.1730 Results; S.13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: S.13.1885 Qualities or properties; S.13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Advertising, Over-the-counter drugs, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Emily H. Rock,

Secretary.

[FR Doc. 87–21696 Filed 9–18–87; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

16 CFR Part 13

[Docket No. C-3213]

Prohibited Trade Practices, and Affirmative Corrective Actions; Plas-Tix USA, Inc.

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits among other things, a Miamisburg, Ohio manufacturer of lighter-to-lighter automobile battery chargers from claiming that the chargers are jumper cables or that they can restart a disabled vehicle as quickly as jumper cables. Also, respondent is required to make specified disclosures on its packaging and in advertisements for a period of five years.

DATE: Complaint and Order issued June 5, 1987.[1]

FOR FURTHER INFORMATION CONTACT: FTC/H-238A, Allen Hile, Washington, DC 20580. (202) 326-3122.

SUPPLEMENTARY INFORMATION: On Wednesday, March 18, 1987, there was published in the **Federal Register**, 52 FR 8461, a proposed consent agreement with analysis In the Matter of Plas-Tix USA, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: Section 13.10 Advertising falsely or misleadingly; § 13.170 qualities or properties of product or service; § 13.170–78 Renewing, restoring; § 13.205 Scientific or other relevant facts. Subpart—Corrective Actions And/Or Requirements: Section 13.533 Corrective actions and/or requirements; § 13.533–10 Corrective advertising; § 13.533–20 Disclosures; § 13.533–45 Maintain records. Subpart—Misbranding Or Mislabeling: Section 13.1170 Advertising and promotion; § 13.1290 Qualities or properties. Subpart—Misrepresenting Oneself and Goods—Goods: Section 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: Section 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Lighter-to-lighter auto battery charges, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 87-21695 Filed 9-18-87; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th St. and Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 17

[Docket No. R-87-1350; FR-2375]

Administrative Claims; Authority To Compromise Claims or To Suspend or Terminate Collection Action

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule expands the authority of HUD claims collection officers under the Debt Collection Act to compromise claims or to suspend or terminate collection actions by raising the current $400 claim limit to a maximum amount to be established periodically by the Assistant Secretary for Administration. Further, the requirement that collection action may be compromised, suspended or terminated only when the cost of collection exceeds the amount of recovery is abolished. These changes are intended to provide the Department with greater flexibility in settling claims and in suspending or terminating collection actions. In addition, this rule will enable HUD to compromise, suspend or terminate collection action on claims under $20,000 that involve property improvement loans *and* manufactured home loans under Title I of the National Housing Act. The purpose of this latter revision is to correct an oversight in the existing regulation that limits such authority to property improvement loans under Title I.

EFFECTIVE DATE: October 26, 1987.

FOR FURTHER INFORMATION CONTACT: Samuel B. Rothman, Office of the General Counsel, Room 10240, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, telephone (202) 755-7184. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: This final rule revises 24 CFR 17.65(a) by authorizing HUD claims collection officers to compromise a claim or to suspend or terminate collection action when the claim does not exceed a maximum amount to be established periodically by the Assistant Secretary for Administration. This revision abolishes the $400 claim limit under the existing regulation, while providing greater flexibility to the Department in modifying the maximum claim amount in the future. The initial claim limit has been established in the Department's Delinquent Debt Collection Handbook at $2500.

In addition, the requirement that collection action may be compromised, suspended or terminated only when the cost of collection exceeds the amount of recovery is removed. Claims collection officers are authorized to use the same standards for ceasing collection action as those used by Department Claims Officers under 4 CFR Parts 103 and 104 (the GAO-Department of Justice Federal Claims Collection Standards).

This rule also revises 24 CFR 17.65(b)(1) to permit HUD to compromise, suspend or terminate collection action for claims under $20,000 that arise either from property improvement loans *or* manufactured home loans under Title I of the National Housing Act. Under the existing regulation, the Department is authorized to compromise, suspend or terminate collection action only on property improvement loan claims. There appears to be no rational basis for distinguishing between property improvement loans and manufactured home loans for the purpose of collection procedures, and this revision is intended to correct an apparent drafting oversight.

In undertaking these revisions, the Department has proceeded by way of final rule rather than a proposed rulemaking, because the changes are limited to expediting internal debt processing, and public notice and comment were considered to be unnecessary.

Other Matters

The Department has determined that this rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal

Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321 through 4347) is unnecessary since the subject matter of this rule is categorically exempt under HUD regulations at 24 CFR 50.20.

In accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since the effect of this rule is limited to expediting internal debt processing.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 17

Administrative practice and procedure, Claims, Government employees.

Accordingly, the Department amends 24 CFR Part 17, Subpart C as follows:

PART 17—ADMINISTRATIVE CLAIMS

1. The authority citation for Part 17, Subpart C, is revised to read as follows:

Authority: Federal Claims Collection Act, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3711, 3716–18, and 5 U.S.C. 5514); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 17.65, paragraphs (a) and (b)(1) are revised to read as follows:

§ 17.65 Authority of offices to compromise claims or suspend or terminate collection action.

(a) *Small claims.* The Assistant Secretary for Administration periodically shall establish and disseminate to claims collection officers a maximum dollar amount up to which claims collection officers are authorized to compromise a claim or suspend or terminate collection action on a claim.

(b) *Claims arising under certain programs.* The office primarily responsible for the following programs of the Department is authorized, in those cases where initial collection attempts are not wholly successful, to compromise or to suspend or terminate collection action on claims not exceeding $20,000 with respect to:

(1) A claim under Title I of the National Housing Act;

* * * * *

Date: August 19, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87–21743 Filed 9–18–87; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8161]

Income Tax; Taxable Years Beginning After December 31, 1953; Mortality Table Used To Determine Exclusion for Deferred Payments of Life Insurance Proceeds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that prescribe the mortality table to be used in determining the extent to which deferred payments of life insurance proceeds are excluded from gross income. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**. Changes to the applicable law were made by the Tax Reform Act of 1986. The regulations affect beneficiaries of life insurance contracts who receive life insurance proceeds at a date later than the death of the insured and provide them with the guidance needed to comply with the law.

EFFECTIVE DATE: The regulations are effective October 23, 1986, and apply to amounts received with respect to deaths occurring after October 22, 1986, in taxable years ending after October 22, 1986.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202) 566–3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) to provide temporary rules under sections 101(d) of the Internal Revenue Code of 1986. The temporary regulations reflect the amendment of section 101(d)(2)(B)(ii) by section 1001(b) of the Tax Reform Act of 1986 (100 Stat. 2387).

Section 101(d) provides rules relating to the payment by an insurer of life insurance proceeds at a date later than the death of the insured. Under section 101(d)(1), the amounts held by an insurer with respect to a beneficiary are prorated over the period or periods with respect to which the payments are to be made. A portion of each payment made to the beneficiary is excluded from income of the beneficiary on the basis of this proration.

In determining the amount held by an insurer with respect to a beneficiary, section 101(d)(2)(A) provides that the amount must be held by the insurer under an agreement provided for in the life insurance contract to pay that amount on a date or dates later than the death of the insured. Section 101(d)(2)(B) provides that the amount held by the insurer is equal to the value of this agreement to the beneficiary determined as of the date of death of the insured, and as discounted on the basis of the interest rate used by the insurer in calculating payments made under the agreement and mortality tables prescribed by the Secretary.

These regulations prescribe a mortality table, which does not distinguish among individuals on the basis of sex, to be used in determining the amount held by the insurer for purposes of section 101(d)(2) and in determining the period or periods with respect to which payments are to be made for purposes of section 101(d)(1). The mortality table prescribed in the regulation is the table set forth in § 1.72–7(c)(1), relating to the adjustment of investment in a contract for the refund feature in the case of a joint and survivor annuity. Life expectancy tables based on this mortality table are set forth in Tables V through VIII of § 1.72–9.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary

regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is Sharon L. Hall of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Parts 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Amendments to the Regulations

For the reasons set out in the preamble, Title 26, Chapter 1, Subchapter A, Part 1 of the Code of Federal Regulations is amended as set forth below.

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.101–7T also issued under 26 U.S.C. 101(d)(2)(B)(ii).

Par. 2. The following new section is added immediately after § 1.101–6.

§ 1.101–7T Mortality table used to determine exclusion for deferred payments of life insurance proceeds. (Temporary).

(a) *Mortality Table.* Notwithstanding any provision of § 1.101–4 that otherwise would permit the use of a mortality table not described in this section, the mortality table set forth in § 1.72–7(c)(1) must be used to determine—

(1) The amount held by an insurer with respect to a beneficiary for purposes of section 101(d)(2) and § 1.101–4; and

(2) The period or periods with respect to which payments are to be made for purposes of section 101(d)(1) and § 1.101–4.

(b) *Examples.* The principles of this section may be illustrated by the following examples:

Example (1). A life insurance policy provides only for the payment of $5,000 per year for the life of the beneficiary, A, beginning with the insured's death. If A is 59 years of age at the time of the insured's death, the period with respect to which the payments are to be made is 25 years. This period is determined by using the mortality table set forth in § 1.72–7(c)(1), and is shown in Table V of § 1.72–9 (which contains life expectancy tables determined using this mortality table). If the present value of the proceeds, determined by reference to the interest rate used by the insurance company and the mortality table set forth in § 1.72–7(c)(1), is $75,000, $3,000 of each $5,000 payment ($75,000 divided by 25) is excluded from the gross income of A.

Example (2). A life insurance policy provides for the payment of $82,500 in a lump sum to the beneficiary, A, at the death of the insured. Upon the insured's death, however, A selects an option for the payment of $2,000 per year for life and for the same amount to be paid after A's death to B for B's life. If A is 51 years of age and B is 28 years of age at the death of the insured, the period with respect to which the payments are to be made is 55 years. This period is determined by using the mortality table set forth in § 1.72–7(c)(1), and is shown in Table VI of § 1.72–9 (which contains life expectancy tables determined using this mortality table). Accordingly $1,500 of each $2,000 payment ($82,500 divided by 55) is excluded from the gross income of the recipient.

(c) *Effective date.* This section applies to amounts received with respect to deaths occurring after October 22, 1986, in taxable years ending after October 22, 1986.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: August 25, 1987.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87–21711 Filed 9–18–87; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 697

Industries in American Samoa; Wage Order

AGENCY: Employment Standards Administration, Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: Under the Fair Labor Standards Act, minimum wage rates in American Samoa are set by a special industry committee appointed by the Secretary of Labor. After such a committee has investigated conditions in American Samoa, it recommends minimum wage rates which must be published in the **Federal Register** and which become the new wage rates. Industry Committee No. 18 for American Samoa has completed its review and established new minimum wage rates, which are published herewith.

EFFECTIVE DATE: This rule shall become effective on October 7, 1987.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Room S3502, Washington, DC 20210, phone: 202–523–8305.

SUPPLEMENTARY INFORMATION: Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064), as amended (29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and by means of Administrative Order No. 659 (52 FR 5219), the Secretary of Labor appointed and convened Industry Committee No. 18 for Industries in American Samoa, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 8 of FLSA to employees within the industries, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

The recommendations call for hourly minimum rate increases for certain industries ranging up to $.10 with an additional increase of $.10 after a year for some of these industries. For other industries, the Committee recommended no increase in the minimum wage rates. The Committee was unable to reach a recommendation for the tuna canning industry or for the American Samoa Government (its employees comprise the government employees industry and a portion of the miscellaneous activities industry). The Committee found the existing industry classifications appropriate with the exception of the laundry, ship maintenance, government employment, and miscellaneous classifications. The ship maintenance industry was established as a separate classification, while the laundry classification was eliminated, thus bringing any employers in the latter classification within the coverage of the

miscellaneous activities classification. The miscellaneous activities classification was changed to include "all traditional government employment" as was the government employees classification to include "business operations, nontraditional activities".

The wage rates established by committee recommendation supersede those established by operation of section 11 of the Insular Areas Regulation Act (Pub. L. 99–396), which was signed by the President on August 27, 1986. These rates were published in the **Federal Register** on October 31, 1986 (51 FR 39751). Section 11 denied effect to the rates established by the recommendations of Industry Committee No. 17 which were published on June 20, 1986 (51 FR 22517) and corrected on July 15, 1986 at 51 FR 25525.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950 and 29 CFR 511.18, the recommendations of Industry Committee No. 18 are hereby published, revising §§ 697.1 and 697.3 of Part 697, Title 29, Code of Federal Regulations.

Because, under sections 5, 6, and 8 of the Fair Labor Standards Act and 29 CFR 511.18, the Department has no authority to disapprove the recommended rates set by the industry committee, the Department finds, pursuant to 5 U.S.C. 553(b)(3)(B), that notice and public procedure thereon under the Administrative Procedure Act are not necessary.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division.

Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 because it is not likely to result in: (1) An annual effect in the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or foreign markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b) the requirements of the Regulatory Flexibility Act, Pub. L. 96–354, Stat. 1164, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See: 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 697

Minimum wages, American Samoa.

Accordingly, Part 697 of Chapter V of Title 29, Code of Federal Regulations is amended as set forth below.

PART 697—INDUSTRY IN AMERICAN SAMOA

Part 697 of Title 29 CFR is amended as follows:

1. The authority citation for Part 697 is revised to read as follows:

Authority: Secs. 5, 6, 8, 52 Stat. 1062, 1064; 29 U.S.C. 205, 206, 208.

2. Section 697.1 (b)(1), (e)(1), (f)(1), (g)(1), (h) (1) and (2), (i)(1), (j)(1), (k)(1), (m)(2), (n)(2), are revised to read as follows:

§ 697.1 Wage rates and industry definitions.

* * * * *

(b) *Shipping and transportation industry.* (1) The minimum wage for classification A, stevedore, lighterage and maritime shipping agency activity, is $2.90 an hour for a period of 1 year following the October 7, 1987 effective date specified in § 697.3 and $3.00 an hour thereafter. The minimum wage for classification B, all other activities, is $2.75 an hour for a period of 1 year following the October 7, 1987 effective date specified in § 697.3 and $2.85 an hour thereafter.

* * * * *

(e) *Construction industry.* (1) The minimum wage for this industry is $2.50 an hour for a period of 1 year following the October 7, 1987 effective date specified in § 697.3 and $2.60 an hour thereafter.

* * * * *

(f) *Hotel industry.* (1) The minimum wage for this industry is $1.85 an hour effective October 7, 1987.

* * * * *

(g) *Retailing, wholesaling and warehousing industry.* (1) The minimum wage for this industry is $2.15 an hour for a period of 1 year following the October 7, 1987 effective date specified in § 697.3 and $2.25 an hour thereafter.

* * * * *

(h) *Ship maintenance industry.* (1) The minimum wage for this industry is $2.50 an hour effective October 7, 1987.

(2) This industry is defined as all work activity associated with ship repair and maintenance, including marine railway and dry dock operations.

* * * * *

(i) *Bottling and dairy products.* (1) The minimum wage for this industry is $2.15 an hour for a period of 1 year following the October 7, 1987 effective date specified in § 697.3 and $2.25 an hour thereafter.

* * * * *

(j) *Printing and publishing industry.* (1) The minimum wage for this industry is $2.40 an hour for a period of 1 year following the October 7, 1987 effective date specified in § 697.3 and $2.50 an hour thereafter.

* * * * *

(k) *Finance and insurance industry.* (1) The minimum wage for this industry is $2.61 an hour for a period of 1 year following the October 7, 1987 effective date specified in § 697.3 and $2.71 an hour thereafter.

* * * * *

(m) *Government employees industry.*

* * *

(2) This industry includes all activities of employees of the Government of American Samoa (business operations, nontraditional activities). This industry does not include any employees of the United States or its agencies.

* * * * *

(n) *Miscellaneous activities industry.*

* * *

(2) This industry shall include every activity not included in any other industry defined herein. This classification includes all traditional government employment.

* * * * *

3. Section 697.3 is revised to read as follows:

§ 697.3 Effective dates.

The wage rates specified in § 697.1 are effective as follows:

(a) Paragraphs (b), (e), (f), (g), (h), (i), (j), and (k) of § 697.1, on October 7, 1987.

(b) Paragraphs (a), (c), (d), (l), (m), and (n) of § 697.1, on August 27, 1986.

Signed at Washington, DC, this 10th day of September 1987.

Paula V. Smith,

Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc. 87–21686 Filed 9–18–87; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 368

[DOD Directive 5100.1]

Functions of the Department of Defense and Its Major Components

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY. This part revises 32 CFR Part 368 to incorporate changes mandated by the Goldwater-Nichols DOD Reorganization Act of 1986 and other changes recommended by the President's Blue Ribbon Commission on Defense Management.

EFFECTIVE DATE: April 3, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Furtner, Office of the Deputy Assistant Secretary of Defense (Organization and Management Planning), Pentagon, Washington, DC 20301, telephone (202) 695–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 368

Organization and functions (government agencies).

Accordingly, Title 32 CFR Part 36 is revised to read as follows:

PART 368—FUNCTIONS OF THE DEPARTMENT OF DEFENSE AND ITS MAJOR COMPONENTS

Sec.

368.1 Purpose.
368.2 Organizational relationships in the Department of Defense.
368.3 Functions of the Department of Defense.
368.4 Functions of the Joint Chiefs of Staff.
368.5 Functions of the Unified and Specified Combatant Commanders.
368.6 Functions of the Military Departments.
368.7 Functions of DoD Agencies.

Authority: 50 U.S.C. 401; 10 U.S.C. 125.

§ 368.1 Purpose.

This part promulgates the statement of the functions of the Department of Defense and its major components.

§ 368.2 Organizational relationships in the Department of Defense.

(a) All functions in the Department of Defense and its component agencies are performed under the authority, direction, and control of the Secretary of Defense.

(b) The Department of Defense is composed of the Office of the Secretary of Defense (OSD), the Military Departments and the Military Services within those Departments, the Joint Chiefs of Staff (JCS) and the Joint Staff, the Unified and Specified Combatant Commands, the Defense Agencies and DOD Field Activities, and such other offices, agencies, activities and commands as may be established or designated by law, or by the President or the Secretary of Defense. The functions of the heads of these offices shall be as assigned by the Secretary of Defense in accordance with existing law.

(1) In providing immediate staff assistance and advice to the Secretary of Defense, the Office of the Secretary of Defense and the Joint Chiefs of Staff, though separately identified and organized, function in full coordination and cooperation in accordance with 32 CFR Part 371.

(i) The Office of the Secretary of Defense includes the Deputy Secretary of Defense, Under Secretaries of Defense, Director of Defense Research and Engineering, Assistant Secretaries of Defense, Comptroller of the Department of Defense, Director of Operational Test and Evaluation, General Counsel of the Department of Defense, Inspector General of the Department of Defense, and such other offices and officials as may be established by law or by the Secretary of Defense.

(ii) The Chairman and the Joint Chiefs of Staff are directly responsible to the Secretary of Defense for the functions assigned to them. To the extent it does not impair his independence in the performance of the duties as a member of the Joint Chiefs of Staff, each member of the Joint Chiefs of Staff, except the Chairman, shall inform the Secretary of his Military Department regarding military advice rendered by members of the Joint Chiefs of Staff on matters affecting his Military Department.

(2) Each Military Department (the Department of the Navy to include the United States Marine Corps, and the United States Coast Guard when transferred in accordance with sections 2, 3, and 145 of 14 U.S.C.) shall be separately organized under its own Secretary and shall function under the direction, authority, and control of the Secretary of Defense. Orders to the Military Departments shall be issued through the Secretaries of these Departments, or their designees, by the Secretary of Defense or under authority specifically delegated in writing by the Secretary of Defense or as provided by law.

(i) The Secretary of each Military Department, and the civilian employees and members of the Armed Forces under the jurisdiction of the Military Department Secretary, shall cooperate fully with the Office of the Secretary of Defense to achieve efficient administration of the Department of Defense and to carry out effectively the authority, direction, and control of the Secretary of Defense.

(ii) The Secretary of Defense shall keep the Secretaries of the Military Departments informed with respect to military operations and activities of the Department of Defense that directly affect their respective responsibilities.

(3) The Commanders of the Unified and Specified Combatant Commands are responsible to the President and the Secretary of Defense for accomplishing the military missions assigned to them and shall excercise command authority over forces assigned to them as directed by the Secretary of Defense pursuant to section 10 U.S.C. 164. The operational chain of command runs from the President to the Secretary of Defense to the Commanders of the Unified and Specified Combatant Commands. The Chairman, JCS functions within the chain of command by transmitting to the Commanders of the Unified and Specified Combatant Commands the orders of the President or the Secretary of Defense.

(i) Orders to such commanders shall be issued by the President or the Secretary of Defense or by the Chairman, JCS with the authority and direction of the President or the Secretary of Defense.

(ii) Communications from the President or the Secretary of Defense to the Commanders of the Unified and Specified Combatant Commands, shall be transmitted through the Chairman, JCS. Communications from the Commanders of the Unified and Specified Combatant Commands to the President and/or the Secretary of Defense shall be transmitted through the Chairman, JCS.

(iii) Communications in matters of joint interest, addressed to the Commanders of the Unified and Specified Combatant Commands by other authority, shall, unless urgent circumstances do not permit, be coordinated with the Chairman, JCS. Information copies of all communications in matters of joint interest between Washington level offices, agencies, activities and commands and the Unified and Specified Combatant Commands shall be provided to the Chairman, JCS.

(iv) Subject to the authority, direction, and control of the Secretary of Defense, the Chairman acts as the spokesman for Commanders of the Unified and Specified Commands, especially on the operational requirements of their commands and shall be responsible for overseeing the activities of the

combantant commands. The President and the Secretary of Defense may assign other duties to the Chairman to assist the President and the Secretary of Defense in performing their command functions.

§ 368.3 Functions of the Department of Defense.

As prescribed by higher authority, the Department of Defense shall maintain and employ armed forces to:

(a) Support and defend the Constitution of the United States against all enemies, foreign and domestic.

(b) Ensure, by timely and effective military action, the security of the United States, its possessions, and areas vital to its interest.

(c) Uphold and advance the national policies and interests of the United States.

§ 368.4 Functions of the Joint Chiefs of Staff.

The Joint Chiefs of Staff, consisting of the Chairman; the Chief of Staff, U.S. Army; the Chief of Naval Operations; the Chief of Staff, U.S. Air Force; and the Commandant of the Marine Corps, and supported by the Joint Staff, constitute the immediate military staff of the Secretary of Defense.

(a) The Chairman of the Joint Chiefs of Staff is the principal military advisor to the President, the National Security Council, and the Secretary of Defense. Subject to the authority, direction, and control of the President and the Secretary of Defense, the Chairman shall be responsible for the following principal functions:

(1) Advise and assist the Secretary of Defense of the preparation of annual policy guidance for the heads of Department of Defense components for the preparation and review of program recommendations and budget proposals.

(2) Advise the Secretary of Defense on the preparation of policy guidance for the preparation and review of contingency plans.

(3) Assist the President and the Secretary of Defense in providing for the strategic direction of the armed forces, including the direction of operations conducted by the Commanders of Unified and Specified Combatant Commands.

(4) Prepare strategic plans, including plans which conform with resource levels projected by the Secretary of Defense to be available for the period of time for which the plans are to be effective.

(5) Prepare joint logistic and mobility plans to support those strategic plans and recommend the assignment of logistics and mobility responsibilities to the armed forces in accordance with those logistic and mobility plans.

(6) Prepare military strategy and assessments of the associated risks. These will include the following:

(i) A military strategy to support national objectives within policy and resource level guidance provided by the Secretary of Defense. Such strategy will include broad military option prepared by the Chairman with the advice of the Joint Chiefs of Staff and the Commanders of the Unified and Specified Combatant Commands.

(ii) Net assessments to determine the capabilities of the Armed Forces of the United States and its allies as compared to those of possible adversaries.

(7) Provide for the preparation and review of contingency plans which conform to policy guidance from the President and the Secretary of Defense.

(8) Prepare joint logistics and mobility plans to support those contingency plans and recommend the assignment of logistic and mobility responsibilities to the Armed Forces in accordance with those logistic and mobility plans.

(9) Advise the Secretary of Defense on critical deficiencies and strengths in force capabilities (including manpower, logistic, and mobility support) identified during the preparation and review of contingency plans, and assess the effect of such deficiencies and strengths on meeting national security objectives and policy and on strategic plans.

(10) After consultation with the Commanders of the Unified and Specified Combatant Commands, establish and maintain a uniform system for evaluating the preparedness of each unified and specified combatant command to carry out missions assigned to the command.

(11) Advise the Secretary of Defense on the priorities of the requirements, especially operational requirements, identified by the Commanders of the Unified and Specified Combatant Commands.

(12) Advise the Secretary of Defense on the extent to which the program recommendations and budget proposals of the Military Departments and other components of the Department of Defense conform with the priorities established in strategic plans and with the priorities established for requirements of the Commanders of the Unified and Specified Combatant Commands.

(13) If deemed necessary, submit to the Secretary of Defense alternative program recommendations and budget proposals, within projected resource levels and guidance provided by the Secretary of Defense, to achieve greater conformance with the priorities established in strategic plans and with the priorities for the requirements of the Commanders of the Unified and Specified Combatant Commands.

(14) In accordance with guidance of the Secretary of Defense, recommend budget proposals for activities of each unified and specified combatant command, as appropriate. Activities for which funding may be requested include:

(i) Joint Exercises.

(ii) Force Training.

(iii) Contingencies.

(iv) Selected Operations.

(15) Advise the Secretary of Defense on the extent to which the major programs and policies of the armed forces in the area of manpower conform with strategic plans.

(16) Assess military requirements for defense acquisition programs.

(17) Develop and establish doctrine for all aspects of the joint employment of the Armed Forces.

(18) Formulate policies for coordinating the military education and training of members of the Armed Forces.

(19) Provide for representation of the United States on the Military Staff Committee of the United Nations in accordance with the Charter of the United Nations.

(20) Submit to the Secretary of Defense, not less than once every three years, a report containing such recommendations for changes in the assignment of functions (roles and missions) to the Armed Forces as the Chairman considers necessary to achieve maximum effectiveness of the Armed Forces.

(21) Prescribe the duties and functions of the Vice Chairman, JCS, subject to approval of the Secretary of Defense.

(22) Exercise exclusive direction of the Joint Staff.

(23) Subject to the direction of the President, attend and participate in meetings of the National Security Council.

(24) Advise and assist the President and the Secretary of Defense on establishing unified and specified combatant commands to perform military missions and on prescribing the force structure of those commands.

(25) Periodically, not less than every two years, review the missions, responsibilities (including geographic boundaries), and force structure of each unified and specified combatant command; and recommend to the President through the Secretary of Defense, any changes to missions, responsibilities, and force structure, as may be necessary.

(26) Transmit communications between the President or the Secretary of Defense and the Commanders of the Unified and Specified Combatant Commands, as directed by the President.

(27) Perform duties, as assigned by the President or the Secretary of Defense, to assist the President and the Secretary of Defense in performing their command function.

(28) Oversee the activities of the unified and specified combatant commands.

(29) Advise the Secretary of Defense on whether a Commander of a Unified or Specified Combatant Command has sufficient authority, direction, and control over the commands and forces assigned to the command to exercise effective command of those commands and forces.

(30) Advise and assist the Secretary of Defense on measures to provide for the administration and support of forces assigned to each unified and specified combatant command.

(31) Advise the Secretary of Defense on whether aspects of the administration and support necessary for the accomplishment of missions should be assigned to the Commander of a Unified or Specified Combatant Command.

(32) Serve as the spokesman for Commanders of the Unified and Specified Combatant Commands, especially on the operational requirements of their commands.

(33) Provide overall supervision of those Defense Agencies and Department of Defense Field Activities for which the Chairman, JCS has been designated by the Secretary of Defense to oversee. Perform such other functions with respect to the Defense Agencies and Department of Defense Field Activities as may be assigned by the Secretary of Defense.

(34) Periodically, not less than every two years, report to the Secretary of Defense on the responsiveness and readiness of designated combat support agencies.

(35) Provide for the participation of combat support agencies in joint training exercises, assess their performance, and take steps to provide for changes to improve their performance.

(36) Develop, in consultation with the director of each combat support agency, and maintain a uniform readiness reporting system for combat support agencies.

(37) Advise and assist the Secretary of Defense on the periodic review and revision of the curriculum of each professional military education school to enhance the education and training of officers in joint matters.

(38) Review the reports of selection boards that consider for promotion officers serving, or having served, in joint duty assignments in accordance with guidelines furnished by the Secretary of Defense and return the reports with determinations and comments to the Secretary of the appropriate Military Department.

(39) Advise the Secretary of Defense on the establishment of career guidelines for officers with the joint specialty.

(40) Submit to the Secretary of Defense an evaluation of the joint duty performance of officers recommended for an initial appointment to the grade of lieutenant general or vice admiral, or initial appointment as general or admiral.

(41) Promulgate Joint Chiefs of Staff publications (JCS Pubs) to provide military guidance for joint activities of the Armed Forces.

(42) Review the plans and programs of the Commanders of Unified and Specified Combatant Commands to determine their adequacy and feasibility for the performance of assigned missions.

(43) Provide military guidance for use by the Military Departments, the Military Services, and the Defense Agencies in the preparation of their respective detailed plans.

(44) Participate, as directed, in the preparation of combined plans for military action in conjunction with the armed forces of other nations.

(45) Determine the headquarters support, such as facilities, personnel, and communications, required by unified and specified combatant commands, and recommend the assignment to the Military Departments of the responsibilities for providing such support.

(46) Prepare and submit to the Secretary of Defense, for information and consideration, general strategic guidance for the development of industrial and manpower mobilization programs.

(47) Prepare and submit to the Secretary of Defense military guidance for use in the development of military aid programs and other actions relating to foreign military forces.

(48) Formulate policies for the joint training of the Armed Forces.

(49) Assess joint military requirements for command, control and communications, recommend improvements, and provide guidance on aspects that relate to the conduct of joint operations.

(50) Prepare and submit to the Secretary of Defense, for information and consideration in connection with the preparation of budgets, statements of military requirements based upon U.S. strategic war plans. These statements of requirements shall include tasks, priority of tasks, force requirements, and general strategic guidance for developing military installations and bases, and for equipping and maintaining military forces.

(51) In carrying out his functions, duties, and responsibilities, the Chairman, JCS shall, as he considers appropriate, consult with and seek the advice of the other members of the Joint Chiefs of Staff and the Commanders of the Unified and Specified Combatant Commands.

(52) Perform such other duties as the President or the Secretary of Defense may prescribe.

(b) The other members of the Joint Chiefs of Staff are military advisers to the President, the National Security Council, and the Secretary of Defense as specified below:

(1) A member of the Joint Chiefs of Staff may submit to the Chairman advice or an opinion in disagreement with, or in addition to the advice or opinion presented by the Chairman. If a member submits such advice or opinion, the Chairman shall present that advice or opinion to the President, Secretary of Defense, or National Security Council, at the same time that he presents his own advice. The Chairman will also, as he considers appropriate, inform the President, the National Security Council, or the Secretary of Defense of the range of military advice and opinion with respect to any matter.

(2) The members of the Joint Chiefs of Staff, individually or collectively, in their capacity as military advisers, will provide advice to the President, the National Security Council, or the Secretary of Defense on a particular matter when the President, the National Security Council, or the Secretary of Defense requests such advice.

(c) The Vice Chairman of the Joint Chiefs of Staff shall perform such duties as may be prescribed by the Chairman with the approval of the Secretary of Defense. When there is a vacancy in the Office of the Chairman or in the absence or disability of the Chairman, the Vice Chairman acts as Chairman and performs the duties of the Chairman until a successor is appointed or the absence or disability ceases.

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§ 368.5 Functions of the Unified and Specified Combatant Commanders.

(a) Unless otherwise directed by the President or the Secretary of Defense, the authority, direction, and control of the Commander of a Unified or Specified Combatant Command with respect to the commands and forces assigned to that command include the command functions of:

(1) Giving authoritative directions to subordinate commands and forces necessary to carry out missions assigned to the command, including authoritative direction over all aspects of military operations, joint training, and logistics;

(2) Prescribing the chain of command to the commands and forces within the command;

(3) Organizing commands and forces within that command as he considers necessary to carry out missions assigned to the command;

(4) Employing forces within that command as he considers necessary to carry out missions assigned to the command;

(5) Assigning command functions to subordinate commanders;

(6) Coordinating and approving those aspects of administration and support (including control of resources and equipment, internal organization, and training), and discipline necessary to carry out missions assigned to the command; and

(7) Exercising the authority with respect to selecting subordinate commanders, selecting combatant command staff, suspending subordinates, and convening courts-martial, as provided in 10 U.S.C.

(b) If a commander of a combatant command at any time considers his authority, direction, or control with respect to any of the commands or forces assigned to the command to be insufficient to command effectively, the commander shall promptly inform the Secretary of Defense.

(c) Unless otherwise directed by the President or the Secretary of the Defense, Commanders of Unified and Specified Combatant Commands exercise authority over subordinate commanders as follows:

(1) Commanders of commands and forces assigned to a unified or specified combatant command are under the authority, direction, and control of, and are responsible to, the Commander of the Unified or Specified Combatant Command on all matters for which the Commander of the Unified or Specified Combatant Command has been assigned authority under § 386.5(a);

(2) The commander of a command or force referred to in § 386.5(c)(1) shall communicate with other elements of the Department of Defense on any matter for which the Commander of the Unified or Specified Combatant Command has been assigned authority under § 386.5(a) in accordance with procedures, if any, established by the Commander of the Unified or Specified Combatant Command;

(3) Other elements of the Department of Defense shall communicate, with the commander of a command or force referred to in § 386.5(c)(1) on any matter for which the Commander of the Unified or Specified Combatant Command has been assigned authority under § 386.5(a) in accordance with procedures, if any, established by the Commander of the Unified or Specified Combatant Command; and

(4) If directed by the Commander of the Unified or Specified Combatant Command, the commander of a command or force referred to in § 386.5(c)(1) shall advise the Commander of the Unified or Specified Combatant Command of all communications to and from other elements of the Department of Defense on any matter for which the Commander of the Unified or Specified Combatant Command has not been assigned authority under § 386.5(a).

§ 368.6 Functions of the Military Departments.

(a) The chain of command for purposes other than the operational direction of unified and specified combatant commands runs from the President to the Secretary of Defense to the Secretaries of the Military Departments to the commanders of Service forces.

(b) Subject to the authority, direction, and control of the Secretary of Defense, the Secretaries of the Military Departments are responsible for, and have the authority necessary to conduct, all affairs of their respective Departments, including the following:

(1) Recruiting.

(2) Organizing.

(3) Supplying.

(4) Equipping (including research and development).

(5) Training.

(6) Servicing.

(7) Mobilizing.

(8) Demobilizing.

(9) Administering (including the morale and welfare of personnel).

(10) Maintaining.

(11) The construction, outfitting, and repairs of military equipment.

(12) The construction, maintenance, and repair of buildings, structures, and utilities; the acquisition, management and disposal; and the management of real property of natural resources.

(c) Subject to the authority, direction, and control of the Secretary of Defense, the Secretaries of the Military Departments are responsible to the Secretary of Defense for the following activities of their respective Departments:

(1) The functioning and efficiency of their Departments;

(2) The formulation of policies and programs that are fully consistent with national security objectives and policies established by the President and the Secretary of Defense;

(3) The effective and timely implementation of policy, program, and budget decisions and instructions of the President or Secretary of Defense relating to the functions of each Military Department;

(4) Carrying out the functions of the Military Departments so as to fulfill (to the maximum extent practicable) the current and future operational requirements of the unified and specified combatant commands;

(5) Effective cooperation and coordination between the Military Departments and agencies of the Department of Defense to provide for more effective, efficient, and economical administration and to eliminate duplication;

(6) The presentation and justification of the positions of their respective departments on the plans, programs, and policies of the Department of Defense;

(7) The effective supervision and control of Military Department intelligence activities; and

(8) Such other activities as may be prescribed by law or by the President or Secretary of Defense.

(d) *Common functions of the Military Departments.* The functions of the Military Departments, under their respective Secretaries, are as follows:

(1) To prepare forces and establish reserves of manpower, equipment, and supplies for the effective prosecution of war and military operations short of war and plan for the expansion of peacetime components to meet the needs of war.

(2) To maintain in readiness mobile reserve forces, properly organized, trained, and equipped for employment in emergency.

(3) To provide adequate, timely, and reliable intelligence and counterintelligence for the Military Department and other agencies as directed by competent authority.

(4) To recruit, organize, train, and equip interoperable forces for assignment to unified and specified combatant commands.

(5) To prepare and submit budgets for their respective departments; justify before the Congress budget requests as approved by the President; and administer the funds made available for maintaining, equipping, and training the forces of their respective departments, including those assigned to unified and specified combatant commands. The budget submissions to the Secretary of Defense by the Military Departments will be prepared on the basis, among other things, of the recommendations of CINCs and of Service component commanders of forces assigned to unified and specified combatant commands.

(6) To conduct research; develop tactics, techniques, and organization; and develop and procure weapons, equipment, and supplies essential to the fulfillment of the functions assigned in this publication.

(7) To develop, garrison, supply, equip, and maintain bases and other installations, including lines of communication, and to provide administrative and logistics support for all forces and bases, unless otherwise directed by the Secretary of Defense.

(8) To provide, as directed, such forces, military missions, and detachments for service in foreign countries as may be required to support the national interests of the United States.

(9) To assist in training and equipping the military forces of foreign nations.

(10) To provide, as directed, administrative and logistic support to the headquarters of unified and specified combatant commands, to include direct support of the development and acquisition of the command and control systems of such headquarters.

(11) To assist each other in the accomplishment of their respective functions, including the provisions of personnel, intelligence, training, facilities, equipment, supplies, and services.

(12) To prepare and submit, in coordination with other Military Departments, mobilization information to the Joint Chiefs of Staff.

(e) *Common service functions.* The Army, Navy, Air Force, and Marine Corps, under their respective Secretaries, are responsible for the following functions:

(1) Determining Service force requirements and making recommendations concerning force requirements to support national security objectives and strategy and to meet the operational requirements of the unified and specified combatant commands.

(2) Planning for the use of the intrinsic capabilities of resources of the other Services which may be made available.

(3) Recommending to the Joint Chiefs of Staff the assignment and deployment of forces to unified and specified combatant commands established by the President through the Secretary of Defense.

(4) Administering Service forces.

(5) Providing logistic support for Service forces, including procurement, distribution, supply, equipment, and maintenance, unless otherwise directed by the Secretary of Defense.

(6) Developing doctrines, procedures, tactics, and techniques employed by Service forces.

(7) Conducting operational testing and evaluation.

(8) Providing for training for joint operations and joint exercises in support of unified and specified combatant command operational requirements, including the following:

(i) Development of Service training, doctrines, procedures, tactics, techniques, and methods of organization in accordance with policies and procedures established in Service publications.

(ii) Development and preparation of Service publications to support the conduct of joint training.

(iii) Determination of Service requirements to enhance the effectiveness of joint training.

(iv) Support of that joint training directed by the Commanders of the Unified and Specified Combatant Commands and conduct of such additional joint training as is mutually agreed upon by the Services concerned.

(9) Operating organic land vehicles, aircraft, and ships or craft.

(10) Consulting and coordinating with with other Services on all matters of joint concern.

(11) Participating with the other Services in the development of the doctrines, procedures, tactics, techniques, training, publications, and equipment for such joint operations as are the primary responsibility of one of the Services.

(f) The forces developed and trained to perform the primary functions set forth hereafter shall be employed to support and supplement the other Military Service forces in carrying out their primary functions, where and whenever such participation shall result in increased effectiveness and shall contribute to the accomplishment of the overall military objectives. As for collateral functions, while the assignment of such functions may establish further justification for stated force requirements, such assignment shall not be used as the sole basis for establishing additional force requirements.

(1) *Functions of the Department of the Army.* (i) The Army, within the Department of the Army, includes land combat and service forces and any organic aviation and water transport assigned. The Army is responsible for the preparation of land forces necessary for the effective prosecution of war and military operations short of war, except as otherwise assigned and, in accordance with intergrated joint mobilization plans, for the expansion of the peacetime components of the Army to meet the needs of war.

(ii) The primary functions of the Army are:

(A) To organize, train, and equip forces for the conduct of prompt and sustained combat operations on land—specifically, forces to defeat enemy land forces and to seize, occupy, and defend land areas.

(B) To organize, train, equip, and provide forces for appropriate air and missile defense and space control operations, including the provisions of forces as required for the strategic defense of the United States, in accordance with joint doctrines.

(C) To organize, equip, and provide Army forces, in coordination with the other Military Services, for joint amphibious, airborne, and space operations and to provide for the training of such forces, in accordance with joint doctrines. Specifically, the Army will:

(*1*) Develop, in coordination with the other Military Services, doctrines, tactics, techniques, and equipment of interest to the Army for amphibious operations and not provided for elsewhere.

(*2*) Develop, in coordination with the other Military Services, the doctrines, procedures, and equipment employed by Army and Marine Corps forces in airborne operations. The Army will have primary responsibility for developing those airborne doctrines, procedures, and equipment that are of common interest to the Army and the Marine Corps.

(*3*) Develop, in coordination with the other Military Services, doctrines, procedures and equipment employed by Army forces in the conduct of space operations.

(D) To organize, train, equip, and provide forces for the support and conduct of special operations.

(E) To provide equipment, forces procedures, and doctrine necessary for the effective prosecution of electronic

warfare operations and, as directed, support of other forces.

(F) To organize, train, equip, and provide forces for the support and conduct of psychological operations.

(G) To provide forces for the occupation of territories abroad, including initial establishment of military government pending transfer of this responsibility to other authority.

(H) To develop doctrines and procedures, in coordination with the other Military Services, for organizing, equipping, training, and employing forces operating on land, except that the development of doctrines and procedures for organizing, equipping, training, and employing Marine Corps units for amphibious operations will be a function of the Marine Corps coordinating, as required, with the other Military Services.

(I) To organize, train, equip, and provide forces, as directed, to operate land lines of communication.

(J) To conduct the following activities:

(*1*) Functions relating to the management and operation of the Panama Canal, as assigned by the Secretary or Deputy Secretary of Defense.

(*2*) The authorized civil works program, including projects for improvement of navigation, flood control, beach erosion control, and other water resource developments in the United States, its territories, and its possessions.

(*3*) Certain other civil activities prescribed by law.

(iii) A collateral function of the Army is to train forces to interdict enemy sea and air power and communications through operations on or from land.

(iv) Army responsibilities in support of space operations include the following:

(A) Organizing, training, equipping, and providing Army forces to support space operations.

(B) Developing in coordination with the other Military Services, tactics, techniques, and equipment employed by Army forces for use in space operations.

(C) Conducting individual and unit training of Army space operations forces.

(D) Participating with other Services in joint space operations, training, and exercises as mutually agreed to by the Services concerned, or as directed by competent authority.

(E) Providing forces for space support operations for the Department of Defense when directed.

(v) Other responsibilities of the Army. With respect to close air support of ground forces, the Army has specific responsibility for the following:

(A) Providing, in accordance with inter-Service agreements, communications, personnel, and equipment employed by Army forces.

(B) Conducting individual and unit training of Army forces.

(C) Developing equipment, tactics, and techniques employed by Army forces.

(2) *Functions of the Department of the Navy.* (i) The Navy, within the Department of the Navy, includes, in general, naval combat and service forces and such aviation as may be organic therein. The Marine Corps, within the Department of Navy, includes not less than three combat divisions and three air wings and such other land combat, aviation, and other services as may be organic therein. The Coast Guard, when operating as a Service within the Department of the Navy, includes naval combat and service forces and such aviation as may be organic therein.

(A) The Navy and Marine Corps, under the Secretary of the Navy, are responsible for the preparation of Navy and Marine Corps forces necessary for the effective prosecution of war and military operations short of war, except as otherwise assigned and, in accordance with the integrated joint mobilization plans, for the expansion of the peacetime components of the Navy and Marine Corps to meet the needs of war.

(B) During peacetime, the Department of Transportation is responsible for maintaining the United States Coast Guard in a state of readiness so that it may function as a specialized Service in the Navy in time of war or when the President directs. The Coast Guard may also perform its military functions in times of limited war or defense contingency, in support of Naval Component Commanders, without transfer to the Department of the Navy.

(ii) The primary functions of the Navy and/or Marine Corps are:

(A) To organize, train, equip and provide Navy and Marine Corps forces for the conduct of prompt and sustained combat incident to operations at sea, including operations of sea-based aircraft and land-based naval air components—specifically, forces to seek out and destroy enemy naval forces and to suppress enemy sea commerce, to gain and maintain general naval supremacy, to control vital sea areas and to protect vital sea lines of communication, to establish and maintain local superiority (including air) in an area of naval operations, to seize and defend advanced naval bases, and to conduct such land, air, and space operations as may be essential to the prosecution of a naval campaign.

(B) To maintain the Marine Corps which will be organized, trained, and equipped to provide Fleet Marine Forces of combined arms, together with supporting air components, for service with the fleet in the seizure or defense of advanced naval bases and for the conduct of such land operations as may be essential to the prosecution of a naval campaign. In addition, the Marine Corps will provide detachments and organizations for service on armed vessels of the Navy, provide security detachments for the protection of naval property at naval stations and bases, and perform such other duties as the President or the Secretary of Defense may direct. However, these additional duties must not detract from or interfere with, the operations for which the Marine Corps is primarily organized. These functions do not contemplate the creation of a second land army.

(C) Further, the Marine Corps will:

(*1*) Develop, in coordination with the other Military Services, the doctrines, tactics, techniques, and equipment employed by landing forces in amphibious operations. The Marine Corps will have primary responsibility for the development of those landing force doctrines, tactics, techniques, and equipment which are of common interest to the Army and the Marine Corps.

(*2*) Train and equip as required, forces for airborne operations, in coordination with the other Military Services, and in accordance with joint doctrines.

(*3*) Develop, in coordination with the other Military Services, doctrines, procedures, and equipment of interest to the Marine Corps for airborne operations and not provided for by the Army, which has primary responsibility for the development of airborne doctrines, procedures, and techniques, which are of common interest to the Army and Marine Corps.

(D) To organize and equip, in coordination with the other Military Services, and to provide naval forces, including naval close air support and space forces, for the conduct of joint amphibious operations, and to be responsible for the amphibious training of all forces assigned to joint amphibious operations in accordance with joint doctrines.

(E) To develop, in coordination with the other Services, the doctrines, procedures, and equipment of naval forces for amphibious operations and the doctrines and procedures for joint amphibious operations.

(F) To organize, train, equip, and provide forces for strategic nuclear warfare to support strategic deterrence.

(G) To furnish adequate, timely, reliable intelligence for the Coast Guard.

(H) To organize, train, equip, and provide forces for reconnaissance, antisubmarine warfare, protection of shipping, aerial refueling and minelaying, including the air and space aspects thereof, and controlled minefield operations.

(I) To provide the afloat forces for strategic sealift.

(J) To provide air support essential for naval operations.

(K) To organize, train, equip, and provide forces for appropriate air and missile defense and space Control operations, including the provision of forces as required for the strategic defense of the United States, in accordance with joint doctrines.

(L) To provide equipment, forces, procedures, and doctrine necessary for the effective prosecution of electronic warfare operations and, as directed, support of other forces.

(M) To furnish aerial photography, as necessary, for Navy and Marine Corps operations.

(N) To develop, in coordination with the other Services, doctrines, procedures, and equipment employed by Navy and Marine Corps forces in the conduct of space operations.

(O) To provide sea-based launch and space support for the Department of Defense when directed.

(P) To organize, train, equip, and provide forces, as directed, to operate sea lines of communication.

(Q) To organize, train, equip, and provide forces for the support and conduct of special operations.

(R) To organize, train, equip, and provide Navy and Marine Corps forces for the support and conduct of psychological operations.

(S) To coordinate with the Department of Transportation for the peacetime maintenance of the Coast Guard. During war, the Coast Guard will function as a Military Service. The specific wartime functions of the Coast Guard are as follows:

(*1*) To provide an integrated port security and coastal defense force, in coordination with the other Military Services, for the United States.

(*2*) To provide specialized Coast Guard units, including designated ships and aircraft, for overseas deployment required by naval component commanders.

(*3*) To organize and equip, in coordination with the other Military Services, and provide forces for maritime search and rescue, icebreaking, and servicing of maritime aids to navigation.

(iii) The collateral functions of the Navy and Marine Corps include the following:

(A) To interdict enemy land power, air power, and communications through operations at sea.

(B) To conduct close air and naval support for land operations.

(C) To furnish aerial imagery for cartographic purposes.

(D) To be prepared to participate in the overall air and space effort, as directed.

(E) To establish military government, as directed, pending transfer of this responsibility to other authority.

(iv) Navy and Marine Corps responsibilities in support of space operations include:

(A) Organizing, training, equipping, and providing Navy and Marine Corps forces to support space operations.

(B) Developing, in coordination with the other Military Services, tactics, techniques, and equipment employed by Navy and Marine Corps forces for use in space operations.

(C) Conducting individual and unit training of Navy and Marine Corps space operations forces.

(D) Participating with the other Services in joint space operations, training, and exercises, as mutually agreed to by the Services concerned or as directed by competent authority.

(v) Other responsibilities of the Navy and Marine Corps include:

(A) Providing, when directed, logistic support of Coast Guard forces, including procurement, distribution, supply, equipment, and maintenance.

(B) Providing air and land transport essential for naval operations and not otherwise provided for.

(C) Providing and operating sea transport for the Armed Forces other than that which is organic to the individual Services.

(D) Developing, in coordination with the other Services, doctrine and procedures for close air support for naval forces and for joint forces in amphibious operations.

(3) *Functions of the Department of the Air Force.* (i) The Air Force, within the Department of the Air Force, includes aviation forces, both combat and service, not otherwise assigned. The Air Force is responsible for the preparation of the air forces necessary for the effective prosecution of war and military operations short of war, except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Air Force to meet the needs of war.

(ii) The primary functions of the Air Force include:

(A) To organize, train, equip, and provide forces for the conduct of prompt and sustained combat operations in the air—specifically, forces to defend the United States against air attack in accordance with doctrines established by the Joint Chiefs of Staff, gain and maintain general air supremacy, defeat enemy air forces, conduct space operations, control vital air areas, and establish local air superiority except as otherwise assigned herein.

(B) To organize, train, equip, and provide forces for appropriate air and missile defense and space control operations, including the provision of forces as required for the strategic defense of the United States, in accordance with joint doctrines.

(C) To organize, train, equip, and provide forces for strategic air and missile warfare.

(D) To organize, equip, and provide forces for joint amphibious, space, and airborne operations, in coordination with the other Military Services, and to provide for their training in accordance with joint doctrines.

(E) To organize, train, equip, and provide forces for close air support and air logistic support to the Army and other forces, as directed, including airlift, air support, resupply of airborne operations, aerial photography, tactical air reconnaissance, and air interdiction of enemy land forces and communications.

(F) To organize, train, equip and provide forces for air transport for the Armed Forces, except as otherwise assigned.

(G) To develop, in coordination with the other Services, doctrines, procedures, and equipment for air defense from land areas, including the United States.

(H) To organize, train, equip, and provide forces to furnish aerial imagery for use by the Army and other agencies as directed, including aerial imagery for cartographic purposes.

(I) To develop, in coordination with the other Services, tactics, techniques, and equipment of interest to the Air Force for amphibious operations and not provided for elsewhere.

(J) To develop, in coordination with the other Services, doctrines, procedures, and equipment employed by Air Force forces in airborne operations.

(K) To provide launch and space support for the Department of Defense, except as otherwise assigned.

(L) To develop, in coordination with the other Services, doctrines, procedures, and equipment employed by

Air Force forces in the conduct of space operations.

(M) To organize, train, equip, and provide land-based tanker forces for the in-flight refueling support of strategic operations and deployments of aircraft of the Armed Forces and Air Force tactical operations, except as otherwise assigned.

(N) To organize, train, equip, and provide forces, as directed to operate air lines of communications.

(O) To organize, train, equip, and provide forces for the support and conduct of special operations.

(P) To organize, train, equip, and provide forces for the support and conduct of psychological operations.

(Q) To provide equipment, forces, procedures, and doctrine necessary for the effective prosecution of electronic warfare operations and, as directed, support of other forces.

(iii) Collateral functions of the Air Force include the following:

(A) Surface sea surveillance and antisurface ship warfare through air operations.

(B) Antisubmarine warfare and antiair warfare operations to protect sea lines of communications.

(C) Aerial minelaying operations.

(D) Air-to-air refueling in support of naval campaigns.

(iv) Air Force responsibilities in support of space operations include:

(A) Organizing, training, equipping, and providing forces to support space operations.

(B) Developing, in coordination with the other Military Services, tactics, techniques, and equipment employed by Air Force forces for use in space operations.

(C) Conducting individual and unit training of Air Force space operations forces.

(D) Participating with the other Services in joint space operations, training, and exercises as mutually agreed to by the Services concerned, or as directed by competent authority.

(v) Other responsibilities of the Air Force include:

(A) With respect to amphibious operations, the Air Force will develop, in coordination with the other Services, tactics, techniques, and equipment of interest to the Air Force and not provided for by the Navy and Marine Corps.

(B) With respect to airborne operations, the Air Force has specific responsibility to:

(*1*) Provide Air Force forces for the air movement of troops, supplies, and equipment in joint airborne operations, including parachute and aircraft landings.

(*2*) Develop tactics and techniques employed by Air Force forces in the air movement of troops, supplies, and equipment.

(C) With respect to close air support of ground forces, the Air Force has specific responsibility for developing, in coordination with the other Services, doctrines and procedures, except as provided for in Navy responsibilities for amphibious operations and in responsibilities for the Marine Corps.

§ 368.7 Functions of DoD Agencies.

(a) Defense Advanced Research Projects Agency (DARPA). See 32 CFR Part 358.

(b) Defense Communications Agency (DCA). See 32 CFR Part 362.

(c) Defense Contract Audit Agency (DCAA). See 32 CFR Part 357.

(d) Defense Intelligence Agency (DIA). See 32 CFR Part 354.

(e) Defense Investigative Service (DIS). See 32 CFR Part 361.

(f) Defense Legal Services Agency (DLSA). See DoD Directive 5145.4,[1] August 12, 1981.

(g) Defense Logistics Agency (DLA). See 32 CFR Part 359.

(h) Defense Mapping Agency (DMA). See 32 CFR Part 360.

(i) Defense Nuclear Agency (DNA). See DoD Directive 5105.31,[1] March 18, 1987.

(j) Defense Security Assistance Agency (DSAA). See 32 CFR Part 363.

(k) The National Security Agency and the Central Security Service (NSA/CSS). See DoD Directive S–5100.20, December 23, 1971.

(l) Strategic Defense Initiative Organization (SDIO). See DoD Directive 5141.5,[1] February 21, 1986.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 15, 1987.

[FR Doc. 87–21704 Filed 9–18–87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 61220–7033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Target Quota (TQ) amounts for Pacific ocean perch (POP) in Western and Central Regulatory Areas of the Gulf of Alaska will be taken by September 16, 1987. Directed fishing for, and retention of, POP is prohibited for vessels fishing in the Western and Central Regulatory areas on September 16, 1987, through the remainder of the year. This action is necessary to limit the harvest of POP to the amount that is permissible under Federal regulations implementing the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: This notice is effective at noon, September 16, Alaska Daylight Time (ADT), until midnight, Alaska Standard Time, December 31, 1987. Public comments on this notice should be submitted by October 1, 1987.

ADDRESSES: Comments should be addressed to Robert W. McVey, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 021668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS) 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the Exclusive Economic Zone (EEZ) in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672. Section 672.2 of the regulations defines the Western, Central, and Eastern Regulatory Areas in the Gulf of Alaska. Under the procedure set forth at § 672.20(a), 1987 Target Quotas (TQ's) were established for each of the groundfish species, which were then apportioned among the regulatory areas or districts. One of the groundfish species is POP, for which the 1987 TQs in the Western and Central Regulatory Areas are each 1,500 mt. These TQ's were apportioned entirely to domestic annual processing (DAP).

Since July, a small fleet of factory-trawlers and several longliners have targeted or are targeting on POP and others have reported bycatch amounts of POP. The estimated catch through September 5 in the Western Regulatory Area is 1,418 mt and in the Central Regulatory Area is 1,239 mt. At current harvest levels, the quotas in each area will be reached within a week. Under § 672.20(c)(2)(i), if the Regional Director

[1] Copies may be obtained, if needed, from the U.S. Naval Publication and Forms Center, 5801 Tabor Avenue, ATTN: Code 301, Philadelphia, PA 19120.

determines that the TQ for any target species or of the "other species" category in any regulatory area or district has been or will be reached, directed fishing for that species will be prohibited and that species will be declared a prohibited species. Therefore, after 12:00 noon on September 16, further directed fishing for POP in both the Western and Central Regulatory areas is prohibited. Fishing for other groundfish species for which a quota is available in the Western and Central Regulatory Areas is permitted, but any catches of POP must be treated as a prohibited species and discarded at sea.

In making this decision, the Regional Director considered: (1) The risk of biological harm to POP stocks; (2) the risk of socioeconomic harm to authorized users of POP; and (3) the impact that a continued closure might have on the socioeconomic well-being of other domestic fisheries. The Regional Director made these findings: (1) The only fishery which would be expected to take substantial amounts of POP, that for "other rockfish", has been closed since July 15 and bycatches of POP in other groundfish fisheries are expected to be negligible: therefore there is no threat of overfishing of POP stocks; (2) the long-term economic interests of authorized users of the POP fishery are protected because the stocks are protected from additional decline; and (3) a continued closure will have no significant impact on the socioeconomic well-being of other domestic fisheries since other species of fish and shellfish will not be significantly affected.

These closures will be effective when this notice is filed for public inspection with the Federal Register and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game, pursuant to the Cooperative Enforcement Agreement between the Government of the United States and the State of Alaska, dated December 21, 1978.

Classification

The continued health of stocks of POP could be jeopardized unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. This action is taken under § 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 16, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87-21741 Filed 9-16-87; 4:50 pm]

BILLING CODE 3510-22-M

VOL
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ISS
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Proposed Rules

Federal Register
Vol. 52, No. 182
Monday, September 21, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 85P-0584]

Cheeses; Proposal To Permit Expanded Use of Antimycotics on Exterior of Bulk Cheeses During Curing and Aging and To Update Formats of Several Standards

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend standards of identity for several cheeses to permit the use of antimycotics on the exterior of bulk cheeses during curing and aging and on the exterior of cheeses for manufacturing. The agency is also proposing to amend several standards to update the formats and language, provide for functional group designations of safe and suitable optional ingredients, and provide for optional ingredient labeling requirements. This action will reduce waste in cheese manufacture and will promote honesty and fair dealing in the interest of consumers.

DATES: Comments by November 20, 1987. The agency proposes that any final rule that may issue based upon this proposal shall become effective 60 days after date of publication of the final rule in the **Federal Register**.

ADDRESS: Written comments, data, or information to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0110.

SUPPLEMENTARY INFORMATION:

I. Antimycotics

The National Cheese Institute (NCI), 699 Prince Street, Alexandria, VA 22314, a trade association representing U.S. cheese manufacturers, has submitted a citizen petition dated December 18, 1985, requesting that FDA amend the standards of identity for brick cheese (21 CFR 133.108), brick cheese for manufacturing (21 CFR 133.109), washed curd and soaked curd cheese (21 CFR 133.136), washed curd cheese for manufacturing (21 CFR 133.137), edam cheese (21 CFR 133.138), granular and stirred curd cheese (21 CFR 133.144), granular cheese for manufacturing (21 CFR 133.145), monterey cheese and monterey jack cheese (21 CFR 133.153), muenster and munster cheese (21 CFR 133.160), muenster and munster cheese for manufacturing (21 CFR 133.161), and, by cross-reference, gouda cheese (21 CFR 133.142) and high-moisture jack cheese (21 CFR 133.154) to permit the broader use of safe and suitable antimycotics (currently permitted on cuts and slices in consumer-sized packages for a number of standardized cheeses) so that they may be used on the exterior of bulk cheeses during curing and aging and on the exterior of cheeses for manufacturing. Cheddar cheese (21 CFR 133.113), cheddar cheese for manufacturing (21 CFR 133.114), colby cheese (21 CFR 133.118), and colby cheese for manufacturing (21 CFR 133.119) were also included in NCI's petiton, but are being dealt with in a separate document on low sodium cheeses, published elsewhere in this issue of the **Federal Register**.

The grounds given by NCI in support of permitting the expanded use of safe and suitable antimycotics are: (1) It is not possible, even with advances in technology and manufacturing practices, to prevent the growth of mold on cheese surfaces; (2) the results of a survey of NCI membership indicate that, in 1983, 29 million pounds (0.83 percent) of the 3.5 billion pounds of semihard and semisoft cheese produced in the United States (70 percent of the total 5 billion pounds of all cheese products produced, excluding cottage cheese) was lost to mold spoilage through trim loss, product rejection, loss of grade, disposal as waste, store returns, product replacement, and consumer dissatisfaction; and (3) the current standards for brick cheese, washed curd and soaked curd cheese; edam cheese, granular and stirred curd cheese, monterey and monterey jack cheese, muenster and munster cheese and, by cross-reference, gouda cheese and high-moisture jack cheese permit the use of safe and suitable antimycotics on cuts and slices in consumer-sized packages of the cheeses.

FDA believes that NCI's request has merit and that the use of antimycotics will reduce waste in the manufacture of cheese and is in the best interest of both consumers and industry. FDA is, therefore, proposing to revise the standards of identity for brick cheese (§ 133.108), washed curd and soaked curd cheese (§ 133.136), edam cheese (§ 133.138), granular and stirred curd cheese (§ 133.144), monterey cheese and monterey jack cheese (§ 133.153), muenster and munster cheese (§ 133.160), and, by cross-reference, gouda cheese (§ 133.142) and high-moisture jack cheese (§ 133.154) to permit the use of safe and suitable antimycotics on the surfaces of bulk forms of these cheeses during the storage, curing, and packaging operations, in addition to use on consumer-sized cuts and slices.

FDA is also proposing, as requested by NCI, to revise the standards of identity for brick cheese for manufacturing (§ 133.109), washed curd cheese for manufacturing (§ 133.137), granular cheese for manufacturing (§ 133.145), and muenster and munster cheese for manufacturing (§ 133.161) to permit the use of safe and suitable antimycotics on the exterior of these types of cheese. Cheeses for manufacturing are made and packaged to be used as ingredients in other cheese products and in other foods. The agency agrees with NCI that this action is necessary. These types of cheeses are very often packaged in large barrels and the packaging methods used result in the cheese curd being loosely filled into the container. Because the curd is loosely packed, the exposed surface area on the curd in larger thus increasing the opportunity for mold growth. The agency wants to emphasize, and NCI concurs, that this broader use of antimycotics is not to be used in lieu of the use of good manufacturing practices or sanitary procedures, but to supplement them.

II. Format and Language Changes

NCI also requested that FDA amend §§ 133.108, 133.136, 133.144, 133.153, and 133.160 to make them consistent with the format and language amendments made in the nine cheese standards

revised in consideration of the Codex Alimentarius Recommended International Standards of Identity (Codex standards) (see 48 FR 2736; January 21, 1983). The grounds given by NCI in support of updating the format and language of these standards are that (1) the format and language used in the cheese standards revised in consideration of the Codex standards are preferable because they make the standards easier to read and use and (2) it is in the interest of both consumers and industry to promote uniformity in the format and language of food standards, including cheese standards.

FDA agrees with NCI and is therefore proposing, as requested, to update, consistent with the nine revised cheese standards, the format and language, including provisions for the label declaration of optional ingredients, in the standards of identity for brick cheese (§ 133.108), washed curd and soaked curd cheese (§ 133.136), granular and stirred curd cheese (§ 133.144), monterey cheese and monterey jack cheese (§ 133.153), and muenster and munster cheese (§ 133.160). In addition, based on the reasoning given by NCI in support of the requested format and language changes, FDA is also proposing to update the standards of identity for: Cook cheese, koch kaese (21 CFR 133.127); cream cheese (21 CFR 133.133); cream cheese with other foods (21 CFR 133.134); gammelost cheese (21 CFR 133.140); gorgonzola cheese (21 CFR 133.141); grated cheeses (21 CFR 133.146); neufchatel cheese (21 CFR 133.162); nuworld cheese (21 CFR 133.164); roquefort, sheep's milk blue-mold, and blue-mold cheese from sheep's milk (21 CFR 133.184); sap sago cheese (21 CFR 133.186); spiced cheeses (21 CFR 133.190); and by cross-reference, part-skim spiced cheeses (21 CFR 133.191).

FDA is specifically proposing to: (1) Adopt the use of functional group designations for safe and suitable optional ingredients, where appropriate; (2) provide for various forms of milk, nonfat milk, and cream; and (3) require label declaration of optional ingredients in accordance with 21 CFR Part 101. FDA believes that adopting the functional group designations will benefit consumers because manufacturers will be permitted to select less expensive or more readily available ingredients that are equally appropriate for a functional purpose. The safety and suitability of ingredients chosen from a functional group are governed by the definition of "safe and suitable" in 21 CFR 130.3(d) in conjunction with appropriate food additive regulations established under 21 CFR Parts 170, 171, and 172. The agency also believes that the use of safe and suitable functional categories will minimize any future need to amend the standards to provide for additional specific ingredients and that the cost benefits resulting from this action will be passed on to the consumer. Regarding provisions for the use of various forms of milk, nonfat milk, and cream, the agency has concluded that, from a technological standpoint, alternative forms of milk, nonfat milk, and cream, i.e., concentrated, dried, and reconstituted forms, can be used to produce the same cheese as that produced from fluid cow's milk. The agency believes that this action is consistent with the provisions in the existing standards which permit alternative manufacturing procedures as long as they do not adversely affect the physical and chemical properties of the cheese.

Finally, the agency would like to point out that, in regard to the optional ingredient labeling requirement, all ingredients in these cheeses, with the exception of salt in many standards, are optional. Only one optional ingredient is exempted from label declaration and that is artificial coloring. Artificial coloring is specifically exempted by section 403(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(k)). However, the agency urges manufacturers to declare both the presence of artificial coloring, when used, and salt.

The agency is taking this opportunity to propose revising the standard of identity for blue cheese (21 CFR 133.106) by removing § 133.106(a)(2) which establishes a maximum phenol equivalent value when unpasteurized dairy ingredients are used in the manufacture of the cheese. This provision was erroneously included in the standard when it was revised in consideration of the Codex standard (see 43 FR 42127; September 19, 1978). The purpose of the test for phenol equivalent value is to measure the presence of phosphatase, an indication that inadequately pasteurized dairy ingredients were used in the manufacture of the cheese. Many microbial curing agents, including the ones used on blue cheese, produce phosphatase. Because the test cannot distinguish between phosphatase from inadequately pasteurized dairy ingredients and microbial phosphatase from the curing agents, an maximum phenol equivalent value is not appropriate in the standard for blue cheese. Therefore, the agency is proposing to delete § 133.106(a)(2) and to correct the references to that paragraph, where necessary.

III. Related Pending Actions

In the **Federal Register** of July 19, 1984 (49 FR 29242), FDA published a proposal to amend the regulations for label designation of ingredients (21 CFR 101.4(b)(22)) to permit enzymes of animal, plant, or microbial origin used in cheese and cheese products to be declared as "enzymes." Should this proposed change in the labeling regulations become effective before the proposed amendments set out below become effective, the labeling provisions in the proposed amendments will be changed to reference new 21 CFR 101.4(b)(22).

IV. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601), FDA has reviewed this proposal to determine its impact on small businesses. The proposal will provide for the expanded use of antimycotics and update the format and language of several standards of identity to include alternative forms of dairy ingredients, functional groups of optional ingredients, and requirements for optional ingredient labeling.

The agency believes that this proposal provides increased flexibility in product formulation to manufacturers of cheeses. The agency recognizes that the optional ingredient labeling requirements in the proposed amendments to the standards for brick cheese, washed curd and soaked curd cheese, granular and stirred curd cheese, monterey cheese and monterey jack cheese, and muenster and munster cheese may impose a burden on those manufacturers who are not already including ingredient declarations on their labels. However, FDA points out that industry, itself, is petitioning for this requirement. FDA recognizes that some manufacturers of these cheeses may experience some economic impact as the result of these labeling regulations, however, for the most part, manufacturers will have ample opportunity to use up existing label stores. The only cost to the manufacturers will then be in the redesigning of labels that do not already include label declarations of ingredients.

Regarding the portion of the proposal dealing with expanded use of antimycotics, NCI presented data showing that, in 1983, an estimated total of 29 million pounds of semihard and semisoft cheese was lost due to mold growth on the cheese. This represents

an monetary loss of $33 million for that year alone.

Therefore, based on this information, FDA certifies that this proposed action will not have a significant economic impact on a substantial number of small entities.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Comments

Interested persons may, on or before November 20, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 133

Cheese, Food standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Comissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that Part 133 be amended as follows:

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

1. The authority citation for 21 CFR Part 133 continues to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)); 21 CFR 5.10 and 5.61

§ 133.106 [Amended]

2. Section 133.106 *Blue cheese* is amended in paragraph (a)(1) by revising "(a)(3)" to read "(a)(2)," by removing paragraph (a)(2), and by redesignating existing paragraph (a)(3) as (a)(2).

3. By revising § 133.108 to read as follows:

§ 133.108 Brick cheese.

(a) *Description.* (1) Brick cheese is the food prepared from dairy ingredients and other ingredients specified in this section by the procedure set forth in paragraph (a)(3) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 44 percent by weight, as determined by the methods described in § 133.5. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(2) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of brick cheese is not more than 5 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is brought to a temperature of about 88 °F and subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into cubes with sides approximately ⅜ inch long, and stirred and heated so that the temperature rises slowly to about 96 °F. The stirring is continued until the curd is sufficiently firm. Part of the whey is then removed, and the mixture diluted with water or salt brine to control the acidity. The curd is transferred to forms, and drained. During drainage it is pressed and turned. After drainage the curd is salted, and the biological curing agents characteristic of brick cheese are applied to the surface. The cheese is then cured to develop the characteristics of brick cheese. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.*—(i) *Coloring.*

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, the cumulative level of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(c) *Nomenclature.* The name of the food is "brick cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

4. By revising § 133.109 to read as follows:

§ 133.109 Brick cheese for manufacturing.

Brick cheese for manufacturing conforms to the definition and standard of identity for brick cheese prescribed by § 133.108, except that the dairy ingredients are not pasteurized and curing is not required.

5. By revising § 133.127 to read as follows:

§ 133.127 Cook cheese, koch kaese.

(a) *Description.* (1) Cook cheese, koch kaese, is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The maximum moisture content is 80 percent by weight, as determined by the method prescribed in § 133.5. The dairy ingredients used may be pasteurized.

(2) The phenol equivalent value of 0.25 gram of cook cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut, stirred, and heated with continued stirring, so as to separate the curd and whey. The whey is drained from the curd and the curd is cured for 2 or 3 days. It is then heated to a temperature of not less than 180 °F until the hot curd will drop from a ladle with a consistency like that of honey. The hot cheese is filled into packages and cooled. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Nonfat milk, as defined in § 133.3.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(ii) Culture of white mold.

(iii) Pasteurized cream.

(iv) Caraway seed.

(v) Salt.

(c) *Nomenclature.* The name of the food is "cook cheese" or, alternatively, "koch kaese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101, except that enzymes of animal, plant, microbial origin may be declared as "enzymes".

6. By revising § 133.133 to read as follows:

§ 133.133 Cream cheese.

(a) *Description.* (1) Cream cheese is the soft, uncured cheese prepared by the procedure set forth in paragraph (a)(2) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 33 percent by weight of the finished food, and the maximum moisture content is 55 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used are pasteurized.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be homogenized and is subjected to the action of lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to coagulate the dairy ingredients. The coagulated mass may be warmed and stirred and it is drained. The moisture content may be adjusted with one or more of the optional ingredients specified in paragraph (b)(3)(ii) of this section. The curd may be pressed, chilled, and worked and it may be heated until it becomes fluid. It may then be homogenized or otherwise mixed. One or more of the optional dairy ingredients specified in paragraph (b)(1) and the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients*—(i) *Salt.* (ii) Cheese whey, concentrated cheese whey, dried cheese whey, or reconstituted cheese whey prepared by addition of water to concentrated cheese whey or dried cheese whey.

(iii) Stabilizers, in a total amount not to exceed 0.5 percent of the weight of the finished food, with or without the addition of dioctyl sodium sulfosuccinate in a maximum amount of 0.5 percent of the weight of the stabilizer(s) used.

(c) *Nomenclature.* The name of the food is "cream cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial original may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

7. By revising § 133.134 to read as follows:

§ 133.134 Cream cheese with other foods.

(a) *Description.* Cream cheese with other foods is the class of foods prepared by mixing, with or without the aid of heat, cream cheese with one or a mixture of two or more types of foods (except other cheeses) listed in paragraph (b)(1) of this section, in an amount sufficient to differentiate the mixture from cream cheese. One or more of the other optional ingredients in paragraph (b)(2) of this section may be used. The maximum moisture content of the mixture is 60 percent by weight. The minimum milkfat is 33 percent by weight of the cream cheese and in no case less than 27 percent of the finished food. The moisture and fat contents will be determined by the methods described in § 133.5, except that the method for determination of fat content is not applicable when the added food contains fat.

(b) *Optional ingredients.* The following safe and suitable optional ingredients may be used:

(1) *Foods.* Properly prepared fresh, cooked, canned, or dried fruits or vegetables; cooked or canned meats, relishes, pickles, or other suitable foods.

(2) *Other optional ingredients.* (i) Stabilizers, in a total amount not to exceed 0.8 percent, with or without the addition of dioctyl sodium sulfosuccinate in a maximum amount of 0.5 percent of the weight of the stabilizer(s) used.

(ii) Coloring.

(c) *Nomenclature.* The name of the food is "cream cheese with _____" or, alternatively, "cream cheese and _____", the blank being filled in with the name of the foods used in order of predominance by weight.

(d) *Labeling.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

8. By revising § 133.136 to read as follows:

§ 133.136 Washed curd and soaked curd cheese.

(a) *Description.* (1) Washed curd, soaked curd cheese is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 42 percent by weight, as determined by the methods described in § 133.5. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(2) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of washed curd cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(3) One of more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed, treated with hydrogen peroxide/catalase, and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clottling enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote and regulate the separation of whey and curd. The whey is drained off, and the curd is matted into a cohesive mass. The mass is cut into slabs, which are so piled and

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handled as to promote the drainage of whey and the development of acidity. The slabs are then cut into pieces, cooled in water, and soaked therein until the whey is partly extracted and water is absored. The curd is drained, salted, stirred, and pressed into forms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or micorbial origin.

(3) *Other optional ingredients.*—(i) *Coloring.* (ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Hydrogen peroxide, followed by a sufficient quantity of catalase preparation to eliminate the hydrogen peroxide. The weight of the hydrogen peroxide shall not exceed 0.05 percent of the weight of the dairy ingredients and the weight of the catalase shall not exeed 20 parts per million of the weight of dairy ingredients treated.

(c) *Nomenclature.* The name of the food is "washed curd cheese" or, alternatively, "soaked curd cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

9. By revising § 133.137 to read as follows:

§ 133.137 Washed cured cheese for manufacturing.

Washed curd cheese for manufacturing conforms to the definition and standard of identity prescribed for washed curd cheese by § 133.136, except that the dairy ingredients are not pasteurized and curing is not required.

10. By revising § 133.140 to read as follows:

§ 133.140 Gammelost cheese.

(a) *Description.* (1) Gammelost cheese is the food prepared from nonfat milk, as defined in § 133.3, by the procedure set forth in paragraph (a)(2) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The maximum moisture content is 52 percent by weight, as determined by the methods described in § 133.5.

(2) The dairy ingredients are subjected to the action of a lactic acid-producing bacterial culture. The development of acidity is continued until the dairy ingredients coagulate to a semisolid mass. The mass is stirred and heated until a temperature of about 145 °F is reached, and is held at that temperature for at least 30 minutes. The whey is drained off and the curd removed and placed in forms and pressed. The shaped curd is placed in whey and heated for 3 or 4 hours, and may again be pressed. It is then stored under conditions suitable for curing.

(b) *Nomeclature.* The name of the food is "gammelost cheese".

(c) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

11. By revising § 133.141 to read as follows:

§ 133.141 Gorgonzola cheese.

(a) *Description.* (1) Gorgonzola cheese is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It is characterized by the presence of bluish-green mold, *Penicillium roquefortii*, throughout the cheese. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 42 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used may be pasteurized. Gorgonzola cheese is at least 90 days old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into smaller portions and allowed to stand for a time. The mixed curd and whey is placed into forms permitting further drainage. While being placed in forms, spores of the mold *Penicillium roquefortii* are added. The forms are turned several times during drainage. When sufficiently drained, the shaped curd is removed from the forms and salted with dry salt or brine. Perforations are then made in the shaped curd and it is held at a temperature of approximately 50 °F at 90 to 95 percent relative humidity, until the characteristic mold growth has developed. During storage, the surface of the cheese may be scraped to remove surface growth of undesirable microorganisms. One or more of the other optional ingredients specified in paragraph (b)(3) of the this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, or corresponding products of goat origin, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Blue or green color in an amount to neutralize the natural yellow color of the curd.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Benzoyl peroxide, or a mixture of benzoyl peroxide with potassium alum, calcium sulfate, and magnesium carbonate used to bleach the dairy ingredients. The weight of the benzoyl peroxide is not more than 0.002 percent of the weight of the dairy ingredients being bleached, and the weight of the potassium alum, calcium sulfate, and magnesium carbonate, singly or combined, is not more than six times the weight of the benzoyl peroxide used. If the dairy ingredients are bleached in this manner, vitamin A is added to the curd in such quantity as to compensate for the vitamin A or its precursors destroyed in the bleaching process, and artificial coloring is not used.

(vi) Vegetable fats or oil, which may be hydrogenated, used as a coating for the rind.

(c) *Nomenclature.* The name of the food is "goronzola cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be cleared as "enzymes"; and

(2) the dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate; "milkfat from goat's milk and nonfat goat's milk", etc.

12. By revising § 133.144 to read as follows:

§ 133.144 Granular and stirred curd cheese.

(a) *Description.* (1) Granular cheese, stirred curd cheese is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 39 percent by weight as determined by the methods described in § 133.5. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(2) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of granular cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed, treated with hydrogen peroxide/catalase, and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote and regulate the separation of whey and curd. A part of the whey is drained off. The curd is then alternately stirred and drained to prevent matting and to remove whey from curd. The curd is then salted, stirred, drained, and pressed into forms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.*—(i) Coloring. (ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) by weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimyucotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Hydrogen peroxide, followed by a sufficient quantity of catalase preparation to eliminate the hydrogen peroxide. The weight to the hydrogen peroxide shall not exceed 0.05 percent of the weight of the dairy ingredients and the weight of the catalase shall not exceed 20 parts per million of the weight of the dairy ingredients treated.

(c) *Nomenclature.* The name of the food is "granular cheese" or, alternatively, "stirred curd cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat nonfat milk" or "nonfat milk and milkfat", as appropriate.

13. By revising § 133.145 to read as follows:

§ 133.145 Granular cheese for manufacturing.

Granular cheese for manufacturing conforms to the definition and standard of identity prescribed for granular cheese by § 133.144, except that the dairy ingredients are not pasteurized and curing is not required.

14. By revising § 133.146 to read as follows:

§ 133.146 Grated cheeses.

(a) *Description.* Grated cheeses is the class of foods prepared by grinding, grating, shredding, or otherwise comminuting cheese of one variety or a mixture of two or more varieties. The cheese varieties that may be used are those for which there are definitions and standards of identity, except that cream cheese, neufchatel cheese, cottage cheese, creamed cottage cheese, cook cheese, and skim milk cheese for manufacturing may not be used. All cheese ingredients used are either made from pasteurized milk or held at a temperature of not less than 35 °F for at least 60 days. Moisture may be removed from the cheese ingredients in the manufacture of the finished food, but no moisture is added. One or more of the optional ingredients specified in paragraph (c) of this section may be used.

(b) *Composition.* (1) Each cheese ingredient used is present at a minimum level of 2 percent of the weight of the finished food.

(2) When one variety of cheese is used, the minimum milkfat content of the food is not more than 1 percent lower than the minimum prescribed by the standard of identity for that cheese.

(3) When two or more varieties of cheese are used, the minimum milkfat content is not more than 1 percent below the arithmetical average of the minimum fat content percentages prescribed by the standards of identity for the varieties of cheese used, and in no case is the milkfat content less than 31 percent.

(4) Milkfat and moisture contents are determined by the methods described in § 133.5.

(c) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Antimycotics.

(2) Anticaking agents.

(3) Spices.

(4) Flavorings other than those which, singly or in combination with other ingredients, simulate the flavor of cheese of any age or variety.

(d) *Nomenclature.* (1) The name of the food is "grated cheese" or "grated cheeses", as appropriate. The name of the food shall be accompanied by a declaration of the specific variety of cheese(s) used in the food and by a declaration indicating the presence of any added spice or flavoring.

(2) Any cheese varietal names used in the name of the food are those specified by applicable standards of identity, except that the designation "American cheese" may be used for cheddar, washed curd, colby, or granular cheese or for any mixture of these cheeses.

(3) The following terms may be used in place of the name of the food to describe specific types of grated cheese:

(i) If only one variety of cheese is used, the name of the food is "grated _____ cheese", the name of the cheese filling the blank.

(ii) If only parmesan and romano cheeses are used and each is present at a level of not less than 25 percent by weight of the finished food, the name of the food is "grated _____ and _____ cheese", the blanks being filled with the names "parmesan" and "romano" in order of predominance by weight. The name "reggiano" may be used for "parmesan".

(iii) If a mixture of cheese varieties (not including parmesan or romano) is used and each variety is present at a level of not less than 25 percent of the weight of the finished food, the name of the food is "grated _____ cheese", the blank being filled in with the names of the varieties in order of predominance by weight.

(iv) If a mixture of cheese varieties in which one or more varieties (not including parmesan or romano) are each present at a level of not less than 25 percent by weight of the finished food, and one or more other varieties (which may include parmesan and romano cheese) are each present at a level of not less than 2 percent but in the aggregate not more than 10 percent of the weight of the finished food, the name of the food is "grated _____ cheese with other grated cheese" or "grated _____ cheese with other grated cheeses", as appropriate, the blank being filled in with the name or names of those cheese varieties present at levels of not less than 25 percent by weight of the finished food in order of predominance, in letters not more than twice as high as the letters in the phrase "with other grated cheese(s)".

(4) The following terms may be used in place of "grated" to describe alternative forms of cheese:

(i) "Shredded", if the particles of cheese are in the form of cylinders, shreds, or strings.

(ii) "Chipped" or chopped", if the particles of cheese are in the form of chips.

(e) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", "milkfat from goat's milk" and "nonfat goat's milk", "milkfat from sheet's milk" and "nonfat sheep's milk", etc., as appropriate.

15. By revising § 133.153 to read as follows:

§ 133.153 Monterey cheese and monterey jack cheese.

(a) *Description.* (1) Monterey cheese, monterey jack cheese is the food prepared by the procedure set forth in paragraph (a)(3) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids, and the maximum moisture content is 44 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used are pasteurized.

(2) The phenol equivalent of 0.25 gram of monterey cheese is not more than 3 micrograms, as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote and regulate the separation of whey and curd. Part of the whey is drained off, and water or salt brine may be added. The curd is drained and placed in a muslin or sheeting cloth, formed into a ball, and pressed; or the curd is placed in a cheese hoop and pressed. Later, the cloth bandage is removed, and the cheese may be covered with a suitable coating. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) by weight of the dairy ingredients, used as a coagulation aid.

(ii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iii) Salt.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Vegetable oil, with or without rice flour sprinkled on the surface, used as a coating for the rind.

(c) *Nomenclature.* The name of the food is "monterey cheese" or, alternatively, "monterey jack cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes", and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

16. By revising § 133.160 to read as follows:

§ 133.160 Muenster and munster cheese

(a) *Description.* (1) Muenster cheese, munster cheese, is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 46 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used are pasteurized.

(2) The phenol equivalent of 0.25 gram of muenster cheese is not more than 3 micrograms, as determined by the methods described in § 133.5.

(3) One of more of the dairy ingredients specified in paragraph(b)(1) of this section may be warmed and is subjected to the action of a harmless lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph(b)(2) of this section is added to set the dairy ingredients to a semisolid mess. After coagulation the mass is divided into small portions, stirred, and heated, with or without dilution with water or salt brine, so as to promote and regulate the separation of whey and curd. The curd is transferred to forms permitting drainage of the whey. During drainage the curd may be pressed and turned. After drainage of the curd is removed from the forms and is salted. One or more of the other optional ingredients specified in paragraph(b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbal origin.

(3) *Other optional ingredients*—(i) *Coloring.* (ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin used in curing or flavor development.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Vegetable oil, used as a coating for the rind.

(c) *Nomenclature.* The name of the food is "muenster cheese" or, alternatively, "munster cheese",

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes", and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

17. By revising § 133.161 to read as follows:

§ 133.161 Muenster and munster cheese for manufacturing.

Muenster cheese for manufacturing conforms to the definition and standard of identity for muenster cheese prescribed by § 133.160, except that the dairy ingredients are not pasteurized.

18. By revising § 133.162 to read as follows:

§ 133.162 Neufchatel cheese.

(a) *Description.* (1) Neufchatel cheese is the soft uncured cheese prepared by the procedure set forth in paragraph(a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The milkfat content is not less than 20 percent but less than 33 percent by weight of the finished food and the maximum moisture content is 65 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used are pasterurized.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is subjected to the action of a harmless lactic acid-producing bacterial culture, with or without one or more of the clotting enzymes specified in paragraph (b)(2) of this section. The mixture is held until the dairy ingredients coagulate. The coagulated mass may be warmed and stirred and it is drained. The moisture content may be adjusted with one of the optional ingredients in paragraph (b)(3)(ii) of this section. The curd may be pressed, chilled, worked, and heated until it becomes fluid. It may then be homogenized or otherwise mixed. One or more of the dairy ingredients specified in paragraph (b)(1) of this section or the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.*—(i) *Salt.* (ii) Cheese whey, concentrated cheese whey, dried cheese whey, or reconstituted cheese whey prepared by addition of water to concentrated cheese whey or dried cheese whey.

(ii) Stabilizers, in a total amount not to exceed 0.5 percent of the weight of the finished food, with or without the addition of dioctyl sodium sulfosuccinate in a maximum amount of 0.5 percent of the weight of the stabilizer(s) used.

(c) *Nomenclature.* The name of the food is "neufchatel cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

19. By revising § 133.164 to read as follows:

§ 133.164 Nuworld cheese.

(a) *Description.* (1) Nuworld cheese is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It is characterized by the presence of creamy-white mold, a white mutant of *Penicillium roquefortii*, throughout the cheese. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 46 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used may be pasteurized. Nuworld cheese is at least 60 days old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into smaller portions and allowed to stand for a time. The mixed curd and whey is placed into forms permitting further drainage. While being placed in forms, spores of a white mutant of the mold *Penicillium roquefortii* are added. The forms are turned several times during drainage. When sufficiently drained, the shaped curd is removed from the forms and salted with dry salt or brine. Perforations are then made in the shaped curd and it is held at a temperature of approximately 50 °F at 90 to 95 percent relative humidity, until the characteristic mold growth has developed. During storage, the surface of the cheese may be scraped to remove surface growth of undesirable microorganisms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Blue or green color in an amount to neutralize the natural yellow color of the curd.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(c) *Nomenclature.* The name of the food is "nuworld cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

20. By revising § 133.184 to read as follows:

§ 133.184 Roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk.

(a) *Description.* (1) Roquefort cheese, sheep's milk blue-mold cheese, blue-mold cheese from sheep's milk, is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It is characterized by the presence of bluish-green mold, *Penicillium roquefortii*, throughout the cheese. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 45 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used may be pasteurized. Roquefort cheese is at least 60 days old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into smaller portions and allowed to stand for a time. The mixed curd and whey is placed into forms permitting further drainage. While being placed in forms, spores of the mold *Penicillium roquefortii* are added. The forms are turned several times during drainage. When sufficiently drained, the shaped curd is removed from the forms and salted with dry salt or brine. Perforations are then made in the shaped curd and it is held at a temperature of approximately 50 °F at 90 to 95 percent relative humidity, until the characteristic mold growth has developed. During storage, the surface of the cheese may be scraped to remove surface growth of undesirable microorganisms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Forms of milk, nonfat milk, or cream, as defined in § 133.3, of sheep origin, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(c) *Nomenclature.* The name of the food is "roquefort cheese", or alternatively, "sheep's milk blue-mold cheese" or "blue-mold cheese from sheep's milk".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat from sheep's milk" and "nonfat sheep's milk" or "nonfat sheep's milk" and "milkfat from sheep's milk", as appropriate.

21. By revising § 133.186 to read as follows:

§ 133.186 Sap sago cheese.

(a) *Description.* (1) Sap sago cheese is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The cheese is pale green in color and has the shape of a truncated cone. The maximum moisture content is 38 percent by weight, as determined by the method described in § 133.5. Sap sago cheese is not less than 5 months old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is allowed to become sour, and is heated to boiling temperature, with stirring. Sufficient sour whey is added to precipitate the casein. The curd is removed, spread out in boxes, and pressed, and while under pressure is allowed to drain and ferment. It is ripened for not less than 5 weeks. The ripened curd is dried and ground; salt and dried clover of the species *Melilotus coerulea* are added. The mixture is shaped into truncated cones and ripened. The optional ingredient in paragraph (b)(2) of this section may be added during this procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Nonfat milk, as defined in § 133.3.

(2) *Other optional ingredients.* Buttermilk.

(c) *Nomenclature.* The name of the food is "sap sago cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

22. By revising § 133.190 to read as follows:

§ 133.190 Spiced cheeses.

(a) *Description.* (1) Spiced cheeses are cheeses for which specifically applicable definitions and standards of identity are not prescribed by other sections of this part. The food is prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids, as determined by the method described in § 133.5. The food contains spices, in a minimum amount of 0.015 ounce per pound of cheese, and may contain spice oils. If the dairy ingredients are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(2) The phenol equivalent of 0.25 gram of spiced cheese is not more than 3 micrograms, as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a harmless lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is divided into smaller portions, and so handled by stirring, heating, and diluting with water or salt brine as to promote and regulate the separation of whey and curd. The whey is drained off. The curd is removed and may be further drained. The curd is then shaped into forms, and may be pressed. At some time during the procedure, spices are added so as to be evenly distributed throughout the finished cheese. One or more of the other optional ingredients

specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, or corresponding products of goat or sheep origin, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients*— (i) *Coloring.* (ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Salt.

(iv) Spice oils which do not, alone or in combination with other ingredients, simulate the flavor of cheese of any age or variety.

(v) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(vi) Antimycotic agents, applied to the surface of slices or cuts in consumer-sized packages.

(c) *Nomenclature.* The name of the food is "spiced cheese". The following terms shall accompany the name of the food, as appropriate:

(1) The specific common or usual name of the spiced cheese, if any such name has become generally recognized; or

(2) An arbitrary or fanciful name that is not false or misleading in any particular.

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", or "milkfat from goat's milk" and "nonfat goat's milk", etc., as appropriate.

Dated: September 14, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-21708 Filed 9-18-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 133

[Docket No. 85P-0584]

Cheeses; Proposal To Remove Standards of Identity for Low Sodium Cheeses and To Amend Standards of Identity for Cheddar Cheese and Colby Cheese

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to remove the standards of identity for low sodium cheddar cheese and low sodium colby cheese and to amend the standards of identity for cheddar cheese and colby cheese to provide for salt substitutes as optional ingredients and for expanded use of antimycotics. The agency is also proposing to amend the standards for colby cheese and colby cheese for manufacturing to update the formats and language, to provide for safe and suitable functional ingredient categories, and to provide for optional ingredient labeling requirements. This action is taken to achieve consistency with FDA's sodium labeling regulations and to promote honesty and fair dealing in the interest of consumers .

DATE: Comments by November 20, 1987. The agency proposes that any final rule that may issue based upon this proposal shall become effective 60 days after its date of publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW, Washington, DC 20204, 202-485-0110.

SUPPLEMENTARY INFORMATION: The National Cheese Institute (NCI), 699 Prince St., Alexandria, VA 22314, a trade association representing U.S. cheese manufacturers, has submitted a citizen petition dated December 18, 1985, requesting that FDA (1) repeal the standards of identity for low sodium cheddar cheese (21 CFR 133.116) and low sodium colby cheese (21 CFR 133.121), and (2) amend the standards of identity for cheddar cheese (21 CFR 133.113) and for colby cheese (21 CFR 133.118) to provide for salt substitutes as optional ingredients. NCI asserts that the former action is necessary because (1) the low sodium cheese standards specify criteria and nomenclature that are not consistent with the current sodium labeling regulations (21 CFR 101.13) and (2) the best interest of consumers would be served by eliminating these inconsistencies. NCI contends that the other requested action is consistent with reducing unnecessary dietary intake of sodium and, therefore, is in the best interest of consumers.

NCI also requested that FDA amend 16 cheese standards of identity to provide for additional use of antimycotics on the exterior of bulk cheeses during curing to make them consistent with revised cheese standards which permit the use of safe and suitable antimycotics (see 48 FR 49012; October 24, 1983) and amend 6 cheese standards of identity to update the format and language of the standards to make them consistent with the language promulgated by the agency for 9 natural cheeses that were revised based on international standards of identity (see 48 FR 2736; January 21, 1983). A proposal, encompassing all of the cheese standards cited by NCI, with the exception of the standards for cheddar cheese (21 CFR 133.113), cheddar cheese for manufacturing (21 CFR 133.114), colby cheese (21 CFR 133.118), and colby cheese for manufacturing (21 CFR 133.119), based on these latter two issues appears elsewhere in this issue of the **Federal Register**. For the convenience of the reader, NCI's suggestions regarding format changes and the use of antimycotics with respect to cheddar and colby cheese products (21 CFR 133.113, 133.114, 133.118, and 133.119) have been included in this document.

I. The Proposal

A. Repeal of Standards of Identity for Low Sodium Cheddar Cheese and Low Sodium Colby Cheese

FDA has reviewed the petition and agrees with NCI that the existing standards for low sodium cheddar cheese (21 CFR 113.116) and low sodium colby cheese (21 CFR 133.121) specify criteria and nomenclature that are not consistent with the agency's sodium labeling requirements)21 CFR 101.13). Both standards of identity set a maximum sodium content requirement of 96 milligrams per pound (6 milligrams per ounce) of finished cheese and require the cheese to be labeled "low sodium," whereas the sodium labeling regulation (21 CFR 101.13(a)(2)) permits products containing less than 35 milligrams of sodium per ounce (serving) to be labeled "very low sodium." Another inconsistency lies in use of descriptors such as "low sodium." Sections 133.116 and 133.121 require the

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term "low sodium" to be declared as part of the name of the food; § 101.13 prohibits declaration of "low sodium" or any other descriptor in conjunction with the name of the food. The agency is, therefore, proposing to eliminate these inconsistencies by repealing the standards of identity for low sodium cheddar cheese and low sodium colby cheese.

B. Amendment of Standards of Identity for Cheddar Cheese and Colby Cheese

FDA also agrees with NCI that, with the increased emphasis on reducing the sodium content in the diet, it would be in the best interest of consumers to provide for salt substitutes as optional ingredients in cheddar cheese (21 CFR 133.113) and colby cheese (21 CFR 133.118). The proposed removal of the standards of identity for low sodium cheddar cheese and low sodium colby cheese would result in the standards of identity for cheddar cheese and colby cheese governing the composition of lowered sodium versions of the foods. Both of the cheese standards require the use of salt in the manufacturing process, although neither standard specifies the quantity of salt to be used. Thus, a manufacturer can produce, within the compositional requirements of §§ 133.113 and 133.118, lower sodium versions of cheddar and colby cheeses that would meet the sodium labeling requirements of § 101.13. However, a manufacturer could not, without further amendment of the standards, produce cheddar or colby cheeses using only a salt substitute, as is now the case. Therefore, the agency is proposing to amend the standards to provide for the use of salt substitutes. The agency is requesting, however, data and information on the need to provide for the manufacture of cheddar and colby cheeses made without salt, as is now permitted by the standards.

C. Standards for Other Natural Cheeses

The agency believes that any of the natural cheeses for which salt is a mandatory ingredient may be made with lowered levels of sodium as long as the compositional requirements of the applicable standard and the labeling requirements of § 101.13 are both met. Most of the standards for natural cheeses require the mandatory use of salt; none provides for the optional use of salt substitutes. Because there is no mandatory minimum level of salt required in the current standards, it would be possible to manufacture cheeses containing less sodium than the traditional product. However, it would not be permissible to make the product without salt, or with salt substitutes, or with a combination of salt substitutes and salt. The agency is, therefore, requesting information on the need to provide for the use of salt substitutes as optional ingredients in other standardized natural cheeses.

The agency recognizes that sodium plays a role in the control of microbial growth (both desirable and undesirable) in natural cheeses during curing and aging. When these cheeses are made to contain less sodium than in traditional products, there is the potential for increased growth of undesirable microorganisms in the cheese. Accordingly, any information submitted in support of providing for the use of salt substitutes in the manufacture of other standardized cheeses or for their manufacture without salt should be accompained by data regarding the safety and quality of the finished foods.

D. Additional Amendments

The agency is also proposing, based on the NCI petition, to amend the standards for cheddar cheese (21 CFR 133.113) and colby cheese (21 CFR 133.118), and, by cross-reference, cheddar cheese for manufacturing (21 CFR 133.114) and colby cheese for manufacturing (21 CFR 133.119) to provide for use of optional antimycotics on the surfaces of bulk cheeses during curing and storage as well as on consumer-sized cuts and slices. This expanded use of antimycotics will reduce losses that result from mold growth on cheeses. In addition, the agency is proposing to amend the colby cheese standard to update the format and language, to provide for safe and suitable functional ingredient categories, and to provide for optional ingredient labeling requirements. These amendments will provide consistency with revisions of nine natural cheese standards that FDA amended in consideration of Codex Alimentarius Recommended International Standards (see 48 FR 2736; January 21, 1983). For simplicity, all proposed amendments to the standards of identity for cheddar cheese and colby cheese are being dealt with in this document, rather than the other cheese proposal pertaining to antimycotics usage, published elsewhere in this issue of the **Federal Register**.

The agency is also taking this opportunity to correct the language in §§ 133.113(b)(3)(v), 133.114, and 133.119 by changing the word "milk" to "dairy ingredients" wherever it appears.

In summary, the agency believes that the proposed amendments would (1) eliminate the inconsistencies that currently exist between the low sodium cheddar cheese and colby cheese standards and the requirements of the sodium labeling regulations, (2) provide for the manufacture of cheddar and colby cheeses with a wider range of sodium contents, (3) provide for expanded use of antimycotics on these cheeses, and (4) promote consistency in format and labeling requirements of cheese standards of identity.

II. Related Pending Actions

In the **Federal Register** of July 19, 1984 (49 FR 29242), FDA published a proposal to amend the regulations for label designation of ingredients (21 CFR 101.4(b)(22)) to permit enzymes of animal, plant, or microbial origin used in cheese and cheese products to be declared as "enzymes." Should this proposed change in the labeling regulations become effective before the proposed amendment of the colby cheese standard becomes effective, the labeling provisions of this proposed amended standard will be changed to reference new 21 CFR 101.4(b)(22).

III. Effective Date

The agency proposes that any final rule that may issue based upon this proposal shall become effective 60 days after its date of publication in the **Federal Register**.

IV. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601), FDA has reviewed this proposal to determine its impact on small businesses. The proposal will revoke the standards of identity for low sodium cheddar cheese and low sodium colby cheese and amend the standards of identity for cheddar cheese and colby cheese to provide for salt substitutes as optional ingredients and to provide for appropriate labeling when these cheeses are made to contain less sodium than the traditional products. In addition, this proposal would revise the standards for cheddar cheese and colby cheese and their counterpart standards for cheeses for manufacturing to provide for use of antimycotics on the exterior of bulk cheeses. This proposal would also revise the colby cheese standard to make it consistent with revised cheese standards of identity in format, language, provision for functional ingredient categories, and labeling requirements. The agency believes that by repealing the low sodium cheddar and colby cheese standards and amending the parent standards, this proposal would provide increased flexibility in product formulation to manufacturers of cheddar cheese and colby cheese who wish to produce lower sodium versions of these foods. In

addition, the proposed amendments to the cheddar cheese and colby cheese standards would provide manufacturers with increased flexibility in selection and use of other ingredients of those foods.

Regarding labeling requirements in the proposed amendment of the colby cheese standard, manufacturers would have ample opportunity to use up existing label stores before the requirements become effective. The only costs incurred would be in the redesigning of labels that do not already include label declarations of ingredients and that declare the name of the food as either "low sodium cheddar cheese" or "low sodium colby cheese."

The agency believes that these changes, which have been requested by the industry, would not impose a significant additional burden on the industry. Therefore, FDA certifies that this proposed action would not have a significant economic impact on a substantial number of small entities.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Comments

Interested persons may, on or before November 20, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 133

Cheese, Food standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that Part 133 be amended as follows:

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

1. The authority citation for 21 CFR Part 133 continues to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)); 21 CFR 5.10 and 5.61.

2. In § 133.113 by revising paragraphs (b)(3)(iv) and (v) and by adding paragraphs (b)(3)(vi) and (d)(3) to read as follows:

§ 113.113 Cheddar cheese.

* * * * *

(b) * * *

(3) * * *

(iv) Antimycotic agents, the cumulative levels of which shall not exceed good manufacturing practice, may be added to the surface of the cheese.

(v) Hydrogen peroxide, followed by a sufficient quantity of catalase preparation to eliminate the hydrogen peroxide. The weight of the hydrogen peroxide shall not exceed 0.05 percent of the weight of the dairy ingredients, and the weight of the catalase shall not exceed 20 parts per million of the weight of the dairy ingredients treated.

(vi) Salt substitutes.

* * * * *

(d) * * *

(3) Salt substitutes are declared using the phrase, "_____ added as a salt substitute", with the blank being filled in with the name(s) of the ingredient(s).

3. By revising § 133.114 to read as follows:

§ 133.114 Cheddar cheese for manufacturing.

Cheddar cheese for manufacturing conforms to the definition and standard of identity prescribed for cheddar cheese by § 133.113, except that the dairy ingredients are not pasteurized and curing is not required.

§ 131.116 [Removed]

4. By removing § 133.116 *Low sodium cheddar cheese.*

5. By revising § 133.118 to read as follows:

§ 133.118 Colby cheese.

(a) *Description.* (1) Colby cheese is the food prepared by the procedure set forth in paragraph (a)(3) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 40 percent by weight, as determined by the methods described in § 133.5. If the dry ingredients used are not pasteurized, the cheese is cured at a temperature of not less than 35°F for at least 60 days.

(2) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of colby cheese is not more than 3 micrograms, as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed, treated with hydrogen peroxide/catalase, and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote and regulate the separation of whey and curd. A part of the whey is drained off, and the curd is cooled by adding water, the stirring being continued so as to prevent the pieces of curd from matting. The curd is drained, salted, stirred, further drained, and pressed into forms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.*

(i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Hydrogen peroxide, followed by a sufficient quantity of catalase preparation to eliminate the hydrogen peroxide. The weight of the hydrogen peroxide shall not exceed 0.05 percent of the weight of the dairy ingredients, and the weight of the catalase shall not exceed 20 parts per million of the weight of the dairy ingredients treated.

(vi) Salt substitutes.

(c) *Nomenclature.* The name of the food is "colby cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

(3) Salt substitutes are declared using the phrase, "_____ added as a salt substitute", with the blank being filled in with the name(s) of the ingredients(s).

6. By revising § 133.119 to read as follows:

§ 133.119 Colby cheese for manufacturing.

Colby cheese for manufacturing conforms to the definition and standard of identity prescribed for colby cheese by § 133.118, except that the dairy ingredients are not pasteurized and curing is not required.

§ 131.121 [Removed]

7. By removing § 131.121 *Low sodium colby cheese.*

Dated: September 14, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-21709 Filed 9-18-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[L-183-82]

Basis Adjustment for Investment Tax Credits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the adjustment in the basis of property for which the investment credit has been claimed as provided in section 205 (a) and (c) of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 324) as amended by section 306 (a) (3) of the Technical Corrections Act of 1982 (Pub. L. 97-448) and sections 113 (b) (4) and 712 (b) of the Tax Reform Act of 1984 (Pub. L. 98-369). These amendments would provide guidance to taxpayers who claim an investment credit subjecting them to the basis adjustment rules with respect to that credit.

DATES: Except as provided in § 1.48-7 (m) (2), the proposed regulations are proposed to be effective for and applicable to periods beginning after December 31, 1982. Written comments and requests for a public hearing must be mailed or delivered by November 20, 1987.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-183-82), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: David R. Haglund of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone: 202-566-3297 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 205 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (as amended by section 306 (a) (3) of the Technical Corrections Act of 1982 and sections 113 (b) (4) and 712 (b) of the Tax Reform Act of 1983) amended the Internal Revenue Code of 1954 to provide for the adjustment in basis of property for which an investment credit has been claimed. The proposed amendments to the Income Tax Regulations under sections 48, 196, 312, and 705 of the Internal Revenue Code of 1954 contained herein would conform the regulations to the provisions of section 205 as amended.

Explanation of Provisions

Section 48 (q) provides generally that if there is an investment tax credit determined with respect to property the basis of such property will be reduced by 50 percent of the credit (10 percent in the case of qualified rehabilitation expenditures) so determined. If the property is subsequently disposed of before the close of the useful life or the recovery period used in computing the investment tax credit, 50 percent (100 percent for qualified rehabilitation expenditures) of the credit required to be recaptured is to be added back to the basis of the property immediately before the disposition occurs. Section 1.48-7 provides rules and examples for determining the reduction of basis for the investment tax credit calculated with respect to property, and for determining the increase in basis for early dispositions of property subject to the basis reduction. Section 1.48-7 further provide that the basis reduction is to be made notwithstanding the fact that the amount of credit allowed is limited by the tax liability for the taxable year. A basis reduction is not required when the lessor of property makes a valid election under section 48 (d) to treat the lessee as the purchaser of the property for purposes of the investment tax credit. The lessee, however, will be subject to the rules under § 1.48-4 for the credit determined with respect to property for which he is treated as the purchaser.

Section 1.48-7 also provides rules with respect to the necessary adjustment in the basis of a partner's interest in a partnership or an S corporation shareholder's basis in S corporation stock to reflect the basis adjustment made at the partnership or S corporation level.

Section 48 (q) (4) provides for an election to enable taxpayers to opt out of the basis reduction rules in favor of claiming a reduced credit with respect to the property. Section 1.48-7 (i) provides rules regarding the time and manner for making the election and the percentages to use for calculating the reduced credit. The proposed regulation provides that the election to take the reduced credit is revocable only with the consent of the Commissioner and provides rules for requesting the revocation.

Section 48 (q) (5) provides that the basis reduction made with respect to property as a result of the investment tax credit will be treated as a deduction allowed for depreciation for purposes of the recapture provisions of sections 1245 and 1250. Section 1.48-7 (j) provides that a net basis reduction will be treated as a deduction allowed for depreciation under sections 1245 and 1250. Section 1.312-15 (a) (4), however, provides that in computing the earnings and profits of a corporation, the allowance for depreciation (or amortization, if any) will be computed without regard to the basis adjustment.

Section 1.48-4, relating to the lessor's election under section 48 (d) to treat the lessee of property as the owner of such property for purposes of the investment tax credit, sets forth rules, in paragraph (n), coordinating such election with the basis adjustment rules of section 48 (q). The lessee subject to a section 48 (d) election will ratably include 50 percent of the investment credit in his gross income over the shortest recovery period available under the accelerated cost recovery system instead of reducing the basis of his property by 50 percent of the credit. Such lessee will include the ratable portion of the entire credit regardless of its limitation by the amount of tax under section 38 (c) (or, in the case of taxable years beginning on or before December 31, 1983, section 46 (a) (3)). If the investment tax credit recapture rules are triggered, causing a recapture of the unused credit, and adjustment will be made to the lessee's gross income for any discrepancies

between the total amount included in gross income and the total credit allowed after recapture.

Section 1.48–4 (p) provides that a lessees may make an election (pursuant to section 48 (d) (5) (A)) to take a reduced credit in lieu of the ratable inclusions in income, and provides for election and revocation rules similar to the rules in § 1.48–7 (i).

Section 48(q)(6) (7) provides special rules for the basis reduction where the investment tax credit has been determined with respect to a qualified film under section 48(k). In such a case, there is a two-step reduction in lieu of the general basis reduction under section 48(q)(1). First, to the extent that the credit is determined with respect to residuals and participations (as defined in section 48(k)(5)(B)), any deduction allowable with respect to those amounts is to be reduced by 50 percent of the credit so determined. Second, the basis of the taxpayer's ownership interest (as defined in section 48(k)(1)(C)), is to be reduced by the excess of 50 percent of the amount of the credit determined under section 48(k) over the amount of the reduction in deductions attributable to the credit determined with respect to residuals and participations. Proposed § 1.48–7(k) sets forth the basis reduction rules applicable to investment tax credits determined with respect to qualified films and provides special rules for their operation.

Section 1.196–1 provides rules with respect to the deduction allowed by section 196 for any investment tax credit (to the extent attributable to property the basis of which was reduced as a result of the credit) not allowed as a credit either because the carryover period expired or because the taxpayer died or ceased to exist before the carryover period expired.

The rules provided by the proposed regulations are generally effective for and applicable to periods beginning after December 31, 1982, as provided in § 1.48–7(m). Section 1.48–7(m)(2) sets forth the transition rules.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments to OMB on these requirements also send copies of those comments to the Service.

Special Analyses

The Commissioner of Internal Revenue has determined that these proposed regulations are not major regulations subject to review under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

The Commissioner of Internal Revenue has concluded that these proposed regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations are regulations not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these proposed regulations is Gail H. Morse, formerly of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

List of Subjects

26 CFR 1.0–1 through 1.58–8

Income taxes, Tax liability, Tax rates, Credits.

26 CFR 1.61–1–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.301–1 through 1.385–6

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

26 CFR 1.701–1 through 1.771–1

Income taxes, Partnerships.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805. * * * § 1.48–4(n) is also issued under 26 U.S.C. 48(d)(5). * * * § 1.196–1 is also issued under 26 U.S.C. 196.

Par. 2. Section 1.48–4 is amended by adding new paragraphs (n), (o), and (p) to read as follows:

§ 1.48–4 Election of lessor of new section 38 property to treat lessee as purchaser.

* * * * *

(n) *Adjustment to lessee's income*—(1) *In general.* If a lessor of new section 38 property makes a valid election under section 48(d) with respect to such property, section 48(d) (except paragraph (4) thereof) and § 1.48–7 (except paragraphs (l and (m) thereof) shall not apply. Thus, the lessor is not required under section 48(q) to reduce the basis of such property. However, if such an election is made, the lessee shall include ratably in gross income, over the shortest recovery period which could be applicable under section 168 with respect to the property, an amount equal to 50 percent of the amount of the credit allowable under section 38 with respect to such property. For purposes of this paragraph (n), the amount of the credit allowable is determined by multiplying the qualified investment (as defined in section 46(c)) with respect to such property by the percentage specified in section 46(a) (section 46(a)(2) in the case of taxable years beginning on or before December 31, 1983) for such property, without regard to the limitation based on tax which, under section 38(c) (section 46(a)(3) in the case of taxable years beginning on or before December 31, 1983), may limit the amount of credit the lessee may take into account in any one year.

(2) *Adjustments as a result of an early disposition, etc.* (i) Except as provided in paragraph (n)(2)(iii) of this section, if section 47 requires an increase in the lessee's tax or a reduction in the carryback or carryover of an unused credit as a result of an early disposition, etc., of leased property for which an election had been made under section 48(d), the lessee's gross income shall be reduced by an amount equal to the excess (if any) of the total increases in gross income previously made under paragraph (n)(1) of this section over 50 percent of the portion of the credit that is not recaptured for the taxable year in which the early disposition, etc., occurred.

(ii) If the total increases in gross income of the lessee previously made under paragraph (n)(1) of this section are less than 50 percent of the credit that is not recaptured for the taxable year in which the early disposition, etc., occurred, the lessee shall include the difference in income in the year of disposition.

(iii) If, after the event which caused section 47 to apply, the lessee continues the use of the property in a trade or business or in the production of income, the amount described in paragraph (n)(2) (i) or (ii) of this section shall be taken into account ratably over the remaining portion of the recovery period described in paragraph (n)(1) of this section.

(iv) If paragraph (n)(2)(iii) of this section applies, and if, prior to the expiration of the recovery period described in paragraph (n)(1) of this section, the lease is terminated other than by purchase of the property by the lessee, any deduction allowable or inclusion necessitated under this paragraph not previously taken into account shall be taken into account for the taxable year in which the lease is terminated. In the case of a purchase of the property by the lessee, see paragraph (b) of § 1.48–7.

(3) *Effective dates.* The effective dates described in paragraph (m) of § 1.48–7 (relating to adjustment to basis) shall apply to this paragraph.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). Corporation X is engaged in the business of manufacturing and leasing new equipment. X constructs a machine at a cost of $20,000, which Corporation Y, a calendar year taxpayer, leases from X and places in service on July 1, 1983. The machine is 5-year recovery property. The fair market value of the machine on the date possession is transferred to Y is $25,000. If X elects to treat Y as the purchaser of the machine under this section, Y's investment credit determined under section 46(a) for 1983 is $2,500 (10 percent of $25,000). Under paragraph (n) of this section, Y's increase in gross income for each of the five years beginning with 1983 will be $250 ($1,250/5-year recovery period).

Example (2). The facts are the same as in example (1) except that Y disposes of its interest in the lease on January 1, 1985, and that there is an increase in Y's tax for 1985 under section 47(a)(1) in the amount of $2,000 (80 percent of $2,500). The amount of $250 (fifty percent of the unrecaptured credit) is compared to the amount previously included in income, $500 ($250 in 1983 + $250 in 1984), to determine whether Y is entitled to a reduction in income as a result of a possible over-inclusion in income under paragraph (n)(1) of this section. In this case, Y has over-included $250 ($500 − $250) and, as a result, will decrease its gross income in the year of disposition by $250.

Example (3). A lessor elects under section 48(d) to treat a lessee as making qualified rehabilitation expenditures with respect to a qualified rehabilitated building in the amount of $100,000. The property subject to such expenditures is placed in service on March 1, 1984, generating an investment tax credit of $15,000 ($100,000 × 15%) and potential income inclusions of $1,000 a year for 15 years. Assuming the lessee is a calendar year taxpayer, if the property were to be disposed of on June 1, 1985, the lessee would be entitled to a credit that is not recaptured of $3,000 ($15,000 × 20%) but would have included only $1,000 in income for 1984. In this case the lessee has under-included $2,000 ($3,000 − $1,000) and will increase gross income by such amount in the year of disposition (*i.e.*, 1985).

(o) *Special rule for qualified rehabilitated buildings.* In the case of a credit determined under section 46(a) (section 46(a)(2) in the case of taxable years beginning on or before December 31, 1983) for any qualified rehabilitation expenditure in connection with a qualified rehabilitated building other than a certified historic structure, paragraph (n) of this section shall be applied by substituting the phrase "100 percent of" for the phrase "50 percent of".

(p) *Lessee's election for a reduction in credit in lieu of adjustment to lessee's income*—(1) *In general.* An election may be made by the lessee not to have the rules of paragraph (n) of this section apply with respect to so much of the credit determined under section 46(a) (section 46(a)(2) in the case of taxable years beginning on or before December 31, 1983) as is attributable to the regular percentage. The election is made on a property-by-property basis. In the case of such an election, the amount of the investment credit with respect to the regular percentage shall be determined under paragraph (p)(2) of this section. A separate election must be made for each taxable year in which the reduced regular credit is elected. In the case of a partnership, S corporation, trust, or estate, the election shall be made by the partnership, S corporation, trust, or estate.

(2) *Reduction in credit.* In the case of any property for which an election under this paragraph has been made, the investment credit shall be determined as follows:

(i) The regular percentage shall be—

(A) 8 percent in the case of recovery property other than 3-year recovery property (RRB replacement property under section 168(f)(3)(B) shall be treated as property which is other than 3-year property), or

(B) 4 percent in the case of recovery property which is 3-year property.

(ii) For purposes of applying the regular percentage in paragraph (p)(2)(i) of this section, the applicable percentage under subsection (c) or (d) of section 46 shall be deemed to be 100 percent.

(3) *Time and manner of making the election.* The election specified in paragraph (p)(1) of this section shall be made by attaching a statement to the first income tax return for the taxable year for which the election is made (whether or not the return is timely) or to an amended return filed within the time prescribed by law (including extensions) for filing the return for such taxable year. For purposes of this paragraph (p), the term "income tax return for the taxable year for which the election is made" with respect to any property is the tax return for the taxable year in which such property is placed in service, or in the case of property to which an election under section 46(d) (relating to qualified progress expenditures) applies, the appropriate return is the return for the first taxable year which includes a period after December 31, 1982, for which qualified progress expenditures were taken into account with respect to such property. Except as otherwise provided in the return or instructions accompanying the return for the taxable year, the statement shall—

(i) Contain the name, address, and taxpayer identification number of the electing lessee,

(ii) Identify the election by indicating that the election is being made under sections 48(d)(5)(A) and 48(q)(4) of the Code,

(iii) Specify that the election is being made by the lessee of new section 38 property where the lessor of such property has made a valid election under section 48(d) to treat such lessee as the purchaser of the property for purposes of the section 38 credit, and

(iv) Specify the property to which the election is to apply.

The election to claim a reduced credit in lieu of increasing gross income is revocable only with the consent of the Commissioner.

(4) *Revocation.* Any election under section 48(q)(4), and any specification contained in such election, may be revoked only with the consent of the Commissioner. Such consent will be granted only in extraordinary circumstances. Requests for consent must be filed with the Commissioner of Internal Revenue, Washington, DC 20224. The request shall include the name, address, and taxpayer identification number of the lessee and shall be signed by the taxpayer or his duly authorized representative. The

request shall set forth the following information:

(i) The taxable year for which the election was made,

(ii) The Code sections applicable to the revocation (sections 48(d)(5)(A) and 48(q)(4)),

(iii) The property subject to the election for which the renovation is requested, and

(iv) The reasons why the revocation is sought.

Par. 3. Section 1.48–7 is revised to read as follows:

§ 1.48–7 Adjustment to basis.

(a) *Reduction of basis*—(1) *In general.* Under section 48(q)(l), except as provided in this section, the basis of section 38 property shall be reduced by 50 percent of the amount of the credit determined under section 46(a) (section 46(a)(2) in the case of taxable years beginning on or before December 31, 1983) with respect to such property. The reduction in basis shall be made in the year in which the credit is allowable. The basis of such property must be reduced by 50 percent of the credit determined under section 46(a) (or formerly under section 46(a)(2)) even though the limitation based on the amount of tax under section 38(c) (or formerly under section 46(a)(3)) reduces the amount of the credit allowed by section 38 for the taxable year in which the property is placed in service. The reduction in basis of section 38 property shall be taken into account for all purposes of Subtitle A of the Code, except in computing (or recomputing in the case of early disposition, etc.) the qualified investment with respect to such property.

(2) *Special rules.* For purposes of applying paragraph (a)(l) of this section—

(i) If, under section 48(d), the lessor of new section 38 property makes a valid election to treat the lessee as having purchased such property for purposes of the credit allowed by section 38, the basis of such property shall not be reduced.

(ii) If property is used section 38 property and if the cost, or any part thereof, of such property is not, because of the application of the dollar limitation on the cost of used section 38 property, taken into account in computing qualified investment by the person who placed such property in service or by a person to whom the cost of such property was apportioned, no reduction shall be made to the basis of such property to the extent such cost, or any part thereof, is not so taken into account.

(iii) In the case of used section 38 property within a particular class of recovery property the cost of which is apportioned by an estate or trust, if any part of such cost is not taken into account by the beneficiary in computing qualified investment under section 46 (c) (as a result of the dollar limitation in section 48 (c)), the estate or trust shall choose, to the extent such cost is not taken into account, the item (or items) of used section 38 property, within such class of recovery property, with respect to which no reduction in basis shall be made.

(iv) The basis of section 38 property that is disposed of or otherwise ceases to be section 38 property in the taxable year in which it is placed in service (except where section 47 (b) applies) shall not be reduced.

(3) *Examples.* This paragraph may be illustrated by the following examples:

Example (1). (i) X Corporation, which makes its return on the basis of a calendar year, acquires and places in service on January 2, 1983, an item of new section 38 property with a basis of $15,000 and a recovery period of 5 years. The qualified investment with respect to such property is $15,000 ($15,000 x 100 percent applicable percentage). For the taxable year 1983, the tax liability for X Corporation is $2,000. The corporation is allowed a credit of $1,500 (10 percent of $15,000) against its tax liability of $2,000.

(ii) Under section 48 (q) (1) the basis of the property, $15,000, is reduced by $750 (50 percent of $1,500) for an adjusted basis of $14,250 (for purposes of computing cost recovery deductions, the unadjusted basis is also reduced to $14,500).

Example (2). (i) The facts are the same as in example (1) except that for the taxable year 1983 the tax liability of X Corporation is $500. The credit to X Corporation, allowed by section 38, is limited to $500. The excess of $1,000 ($1,500 earned minus $500 limitation) is an investment credit carryover.

(ii) Under section 48 (q) (1), the basis of the property is reduced to $14,250, as in example (1), notwithstanding the limitation on the allowable credit.

Example (3). (i) X Corporation acquires and places in service on January 2, 1983, an item of new section 38 property with a cost of $26,000 and a recovery period of 5 years. X Corporation makes a valid election under section 179 to expense $5,000 of the cost of the asset. The cost of the asset for purposes of the investment credit is $21,000 ($26,000–$5,000) generating a credit of $2,100 (10 percent of $21,000 qualified investment)

(ii) Under section 48 (q) (1) the basis of the asset, $21,000 ($26,000–$5,000), is reduced by $1,050 (50 percent of $2,100) to $19,950.

Example (4). (i) X Corporation acquires and places in service on January 2, 1983, used assets nos. 1, 2, and 3 which qualify as used section 38 property. Each asset has a cost of $62,500 and a recovery period of 5 years. X Corporation selects the $62,500 cost of asset no. 1 and the $62,500 cost of asset no. 2 to be taken into account in computing an investment credit of $6,250 for each asset (10 percent of $62,500 qualified investment).

(ii) Under section 48 (q) (1), the basis of asset no. 1 is reduced to $59,375 ($62,500 minus 50 percent of $6,250). The basis of asset no. 2 is similarly reduced to $59,375 ($62,500 minus 50 percent of $6,250). The basis of asset no. 3 is not reduced.

Example (5). (i) X Corporation acquires and places in service on January 2, 1983, used assets nos. 1, 2, and 3 which qualify as used section 38 property. Each asset has a cost of $60,000 and a cost recovery period of 5 years. X Corporation selects the $60,000 cost of asset no. 1, the $60,000 cost of asset no. 2 and $5,000 of the cost of asset no. 3 to be taken into account in computing a total investment credit of $12,500 (10 percent of $60,000 qualified investment for assets nos. 1 and 2 plus 10 percent of $5,000 qualified investment for asset no. 3).

(ii) Under section 48 (q) (1), the basis of assets no. 1 and 2 is reduced to $57,000 each ($60,000–$3,000) and the basis of asset no. 3 is reduced to $59,750 ($60,000–$250.

Example (6). (i) XYZ Trust, which files its return on a calendar year basis, operates a manufacturing business. M. M acquires and places in service on January 2, 1983, five used assets which qualify as used section 38 property. The cost and the cost recovery period of each asset are as follows:

Asset No.	Cost	Cost recovery period (years)
1	$95,000	5
2	$12,000	5
3	$15,000	3
4	$ 6,000	3
5	$ 3,000	3

XYZ Trust has two current income beneficiaries, A and B. Forty percent of the trust income is allocable to A, 40 percent to B and 20 percent to XYZ Trust. The trust selects the $95,000 cost of asset no. 1, the $12,000 cost of asset no. 2, the $15,000 cost of asset no. 3 and $3,000 of the cost of asset no. 4 to be apportioned among the trust and beneficiaries. Under § 1.48–6, the total cost of the used section 38 property selected is apportioned as follows:

Cost recovery category	5 year recovery property	3 year recovery property
Total cost	$107,000	$18,000
Beneficiary A (.4)	42,800	7,200
Beneficiary B (.4)	42,800	7,200
XYZ Trust (.2)	21,400	3,600

Assume beneficiaries A and B did not place in service during their taxable years ending December 31, 1983, any section 38 property and that they did not own any interests in other trusts, estates, partnerships or S corporations. Under § 1.48–6, the investment credit applicable to A, B, and XYZ Trust is as follows:

	Apportioned asset cost	Applicable percentage	Qualified investment	Section 46(a)(2) credit
Beneficiary A:				
5 yr property	$42,800	100	$42,800	$4,280
3 yr property	7,200	60	4,320	432
Total				4,712
Beneficiary B:				
5 yr property	42,800	100	42,800	4,280
3 yr property	7,200	60	4,320	432
Total				4,712
XYZ Trust:				
5 yr property	21,400	100	21,400	2,140
3 yr property	3,600	60	2,160	216
Total				2,356

(ii) Under section 48 (q) (1), the basis of each asset (except no. 5) is reduced by 50 percent of the credit determined under section 46 (a) (2) as follows:

Asset No.	Basis before reduction	Reduction in basis	Basis after reduction
1	$95,000	50% of $9,500	$90,250
2	12,000	50% of $1,200	11,400
3	15,000	50% of $900	14,550
4	6,000	50% of $180	5,910
5	3,000	None	3,000

Example (7). (i) The facts are the same as in example (6) except that beneficiary A acquired and placed in service on June 1, 1983, in his individual proprietorship, used asset no. 6 with a cost of $81,000 and a cost recovery period of 5 years. In computing his investment credit, beneficiary A selects the $81,000 cost of asset no. 6, the $42,800 cost of used 5 year property apportioned to him by XYZ Trust, and $1,200 of the cost of 3 year property apportioned to him by XYZ Trust. Under § 1.48–6, A computes his investment credit as follows:

	Asset cost	Applicable percentage	Qualified investment	Section 46(a)(2) credit
Proprietorship: 5 yr property	$81,000	100	$81,000	$8,100
Apportioned by XYZ Trust:				
5 yr property	42,800	100	42,800	4,280
3 yr property	1,200	60	720	72
Total				12,452

(ii) Since only $12,000 of the $18,000 cost of used 3 year recovery property apportioned by XYZ Trust was taken into account by A, B, and XYZ Trust in computing their credit under section 46(a)(2), only 50 percent of the credit determined on a cost of $12,000 will reduce the basis of the 3 year recovery property. Under paragraph (a)(2)(iii) of this section, XYZ Trust must choose an item of property in the 3 year recovery property category, $6,000 of the basis of which is not subject to reduction. Therefore, XYZ Trust chooses to reduce the basis of asset no. 3 by 50 percent of the credit determined on a cost of $9,000 (in lieu of the $15,000 previously selected). The basis of each asset is reduced as follows:

Asset No.	Basis before reduction	Reduction in basis	Basis after reduction
1	$95,000	50% of $9,500	$90,250
2	12,000	50% of $1,200	11,400
3	15,000	50% of $540	14,730
4	6,000	50% of $180	5,900
5	3,000	None	3,000

(iii) The basis of asset no. 6 in the hands of A is reduced to $76,950 ($81,000 minus 50 percent of $8,100).

Example (8). (i) ABC Partnership, which makes its return on the basis of a calendar year, acquires and places in service on January 2, 1983, five used assets which qualify as used section 38 property. The cost and the cost recovery period of each asset are as follows:

Asset No	Cost	Cost recovery period (years)
1	$95,000	5
2	12,000	5
3	15,000	3
4	6,000	3
5	3,000	3

Partners A, B, and C share the profits and the losses of Partnership ABC in the ratio of 50 percent, 30 percent, and 20 percent, respectively. ABC Partnership selects the $95,000 cost of asset no. 1, the $12,000 cost of asset no. 2, the $15,000 cost of asset no. 3, and $3,000 of the cost of asset no. 4 to be taken into account by its members in computing qualified investment. Under § 1.46–3(f)(2), each partner's share of the cost of the partnership-selected used section 38 property is allocated as follows:

Asset No.	Cost recovery period (years)	Cost	Partner's share		
			A (50%)	B (30%)	C (20%)
1	5	$95,000	$47,500	$28,500	$19,000
2	5	12,000	6,000	3,600	2,400
3	3	15,000	7,500	4,500	3,000
4	3	3,000	1,500	900	600

Each partner makes his return on the basis of the calendar year. Assume that partners A, B, and C did not place in service during their taxable years ending December 31, 1983, any section 38 property and that the partners did not own any interests in other partnerships, S corporations, trusts or estates. Under section 46(c), each partner computes his qualified investment and credit as follows:

Asset No.	Share of cost	Applicable percentage	Qualified investment	Section 46(a)(2) credit
Partner A:				
1	$47,500	100	$47,500	$4,750
2	6,000	100	6,000	600
3	7,500	60	4,500	450
4	1,500	60	900	90
Total				5,890
Partner B:				
1	$28,500	100	28,500	2,850
2	3,600	100	3,600	360
3	4,500	60	2,700	270
Partner C:				
1	19,000	100	19,000	1,900
2	2,400	100	2,400	240
3	3,000	60	1,800	180
4	600	60	360	36
Total				2,356

(ii) Under section 48(q)(1), the basis of each asset selected by the partnership is reduced as follows:

Asset No	Basis before reduction	Reduction in basis	Basis after reduction
1	$95,000	50% of $9,500	$90,250
2	12,000	50 % of $1,200	11,400
3	15,000	50% of $900	14,550
4	6,000	50% of $180	5,910
5	3,000	None	3,000

(iii) Each partner will reduce the basis in his interest in the partnership as described in example (1) of paragraph (c)(2) of this section.

Example (9). (i) The facts are the same as in example (8) except that partner A acquired and placed in service on June 1, 1983, in his individual proprietorship, used asset no. 6 with a cost of $63,500 and a cost recovery period of 5 years. Partner A selects the $63,500 cost of asset no. 6, his $47,500 share of asset no. 1, his $6,000 share of asset no. 2, his $7,500 share of asset no. 3, and $500 of his share of the cost of asset no. 4, to be taken into account in determining his qualified investment under section 46(c). His credit under section 46(a)(2) is computed as follows:

	Asset cost	Applicable percentage	Qualified investment	Section 46(a)(2) credit
Proprietorship No. 6	$63,500	100	$63,500	6,350
Share from ABC partnership:				
No. 1	47,500	100	47,500	4,750
No. 2	6,000	100	6,000	600
No. 3	7,500	60	4,500	450
No. 4	500	60	300	30
Total				12,180

(ii) Under section 48(q)(1) the basis of each asset selected by the partnership is reduced as follows:

Asset No	Basis before reduction	Reduction in basis	Basis after reduction
1	$95,000	50% of $9,500	$90,250
2	12,000	50% of $1,200	11,400
3	15,000	50% of $900	14,550
4	6,000	50% of $120	5,940
5	3,000	None	3,000

(iii) The basis of asset no. 6 in the hands of A is reduced to $60,325 ($63,500) minus 50 percent of $6,350).

(iv) Partner A will reduce the basis in his interest in the ABC partnership as described

in example (2) of paragraph (c)(2) of this section.

(b) *Purchase of leased property by lessee treated as purchaser.* If a lessor of new section 38 property makes a valid election under section 48(d) to treat the lessee as having purchased such property for purposes of the investment credit and if such lessee at a later date actually purchases such property, the lessee-purchases shall continue the ratable inclusion in income under § 1.48–4 (n) and (o) and continue to be subject to the rules in such section with respect to the property purchased from the lessor.

(c) *Reduction in the basis of a partner's interest in a partnership*—(1) *In general.* In the case of a reduction in the basis of section 38 property by a partnership under section 48 (q)(1) and paragraph (a) of this section resulting from the credit determined by each partner under § 1.46–3(f) with respect to such property, there shall be a corresponding reduction in the basis of each partner's interest in the partnership equal to 50 percent of the credit determined under section 46(a) (section 46(a)(2) in the case of taxable years beginning on or before December 31, 1983) and § 1.46–3(f) with respect to such property. Such decrease in the basis of each partner's interest in the partnership shall be taken into account for all purposes of subtitle A of the Code.

(2) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example (1). Partners A, B, and C in example (8) of paragraph (a)(3) of this section will reduce the bases of their interests in the ABC partnership as follows: partner A by $2,945 (.5 × $5,890), partner B by $1,767 (.5 × $3,534), and partner C by $1,178 (.5 × $2,356).

Example (2). Partner A in example (9) of paragraph (a)(3) of this section will reduce the basis of his interest in the ABC partnership by $2,915 (.5 × $5,830).

(d) *Reduction in the basis of stock in an S corporation.*—In the case of a reduction in the basis of section 38 property by an S corporation under section 48(q)(1) and paragraph (a) of this section resulting from the credit determined by each shareholder (see sections 1366 and 1377(a)(1)) with respect to such property, there shall be a corresponding decrease in the basis of such shareholders' stock in the S corporation (see section 1367(a)(2)(D)) and to the S corporation's accumulated adjustments account (see section 1368(e)(1)(A)) equal to 50 percent of the credit determined with respect to such property. The decrease in the basis of each shareholder's stock in the S corporation shall be taken into account for all purposes of subtitle A of the Code.

(e) *Increase in basis on account of early disposition, etc.*—(1) *In general.* If, as a result of an early disposition, etc., during any taxable year, there is a recapture amount determined with respect to any section 38 property, the basis of which was reduced under paragraph (a) or (b) of this section, the basis of such property shall be increased by 50 percent of the recapture amount. For purposes of this paragraph, the term "recapture amount" means any increase in tax or adjustments in carrybacks or carryovers determined under section 47. The increase in basis shall be in an amount equal to 50 percent of the sum of the portion of such increase in tax and the portion of such adjustment in carrybacks or carryovers attributable to such property. See paragraph (a)(2) of this section for rules indicating when basis is not reduced under paragraph (a) of this section. This increase in basis shall be made immediately before the event which causes section 47 to apply, and such increase in basis shall be taken into account for all purposes of Subtitle A of the Code. If, after the event which causes section 47 to apply, the taxpayer continues the use of the recovery property in a trade or business or in the production of income, the increase in basis shall be considered a redetermination of the unadjusted basis of such property for purposes of section 168(d)(1)(B)(ii) and shall be taken into account in computing the cost recovery deductions with respect to such property under principles consistent with that section and the regulations thereunder. If the property in the preceding sentence is property other than recovery property, the increase in basis under this section shall be taken into account in computing the allowances for depreciation under section 167 over the remaining useful life of the property. In determining depreciation allowances with respect to the property for periods after such increase in basis, appropriate adjustments shall be made, whenever necessary, so that the total depreciation allowances made during the remaining useful life of the property, plus the allownaces for the expired useful life, will equal or approximate the allowances which would have resulted if section 48(q) had not applied.

(2) *Examples.* The operation of this paragraph may be illustrated by the following examples:

Example (1). (i) The facts are the same as those in example (1) of paragraph (a)(3) of this section except that on June 15, 1984, X Corporation sold the property, causing section 47(a)(5) to apply. This gives rise to an increase in tax of $1,200 (80 percent of the $1,500 credit allowed).

(ii) Section 48(q)(2) requires that the basis of such property be increased immediately before the sale by the amount of $600 (50 percent of the increase in tax for the 1984 taxable year arising under section 47(a)(5)).

Example (2). (i) The facts are the same as in the previous example except that for taxable year 1983, X Corporation had a tax liability of only $500, with a resulting $1,000 unused credit carryover to 1984. Thus, there is an increase in tax of $400 (80% of the $500 credit allowed) and a reduction in the credit carryover from $1,000 to $200.

(ii) As in example (1) above, the basis of the property is increased under section 48(q)(2) by $600. Such amount is equal to 50 percent of the increase in tax and adjustment to the carryover under section 47(a)(5) and (b).

(f) *Increase in the basis of a partner's interest in a partnership upon early disposition, etc.*—(1) *Disposition or cessation in the hands of the partnership.* Where a partnership disposes of any partnership section 38 property (or if any partnership section 38 property otherwise ceases to be section 38 property in the hands of the partnership) before the close of the cost recovery period, causing the recapture rules of § 1.47–6(a)(1) of the basis restoration rules of paragraph (e) of this section to apply, and where the basis of each partner's interest in the partnership was reduced under paragraph (c) of this section with respect to that property, the basis of each partner's interest in the partnership shall be increased by 50 percent of the recapture amount determined with respect to such partner. The term "recapture amount" shall have the same meaning as in paragraph (e) of this section. The increase in basis of each partner's interest in the partnership shall be made immediately before the event which causes § 1.47–6 to apply, and such increase to basis shall be taken into account for all purposes of subtitle A of the Code.

(2) *Disposition of partner's interest.* Where a partner disposes of an interest in a partnership causing the recapture rules of § 1.47–6(a)(2) to apply and where the basis of such partner's interest in the partnership was reduced under paragraph (c) of this section, the basis of such partner's interest in the partnership shall be increased by 50 percent of the recapture amount determined with respect to that partner. The term "recapture amount" shall have the same meaning as in paragraph (e) of this section. The increase in the basis of the partner's interest in the partnership shall be made immediately before the event which causes § 1.47–6 to apply, and such increase to basis shall be

taken into account for all purposes of subtitle A of the Code.

(g) *Increase in the basis of stock in an S corporation upon early disposition, etc.—(1) Disposition or cessation in the hands of the S corporation.* Where an S corporation disposes of any section 38 property (or if any section 38 property otherwise ceases to be section 38 property in the hands of the S corporation) before the close of the cost recovery period, causing the recapture rules under section 47 and the basis restoration rules under paragraph (e) of this section to apply, and where the basis of each shareholder's stock in the S corporation and, where applicable, the S corporation's accumulated adjustments account were reduced under paragraph (d) of this section with respect to that property, the basis of each shareholder's stock in the S corporation as well as the S corporation's accumulated adjustments account shall be increased by 50 percent of the recapture amount determined with respect to such shareholder. The term "recapture amount" shall have the same meaning as in paragraph (e) of this section. The increase in basis of each shareholder's stock in the S corporation and the increase to the S corporation's accumulated adjustments account shall be made immediately before the event which causes the recapture rules under section 47 to apply. The increase in basis of each shareholder's stock in the S corporation shall be taken into account for all purposes of subtitle A of the Code.

(2) *Disposition of shareholder's interest.* Where a shareholder disposes of an interest in an S corporation, causing the recapture rules under section 47 to apply, and where the basis of such shareholder's stock in the S corporation and, where applicable, the S corporation's accumulated adjustments account were reduced under paragraph (d) of this section, the basis of such shareholder's stock in the S corporation as well as the S corporation's accumulated adjustments account shall be increased by 50 percent of the recapture amount determined with respect to that shareholder. The term "recapture amount" shall have the same meaning as in paragraph (e) of this section. The increase in the basis of the shareholder's stock in the S corporation and the increase to the S corporation's accumulated adjustments account shall be made immediately before the event which causes the recapture rules under section 47 to apply. The increase in the basis of the shareholder's stock in the S corporation shall be taken into account for all purposes of subtitle A of the Code.

(h) *Basis adjustment; special rule for qualified rehabilitated buildings.* For purposes of this section, in the case of a credit determined under section 46(a) (section 46(a)(2) in the case of taxable years beginning before December 31, 1983) for any qualified rehabilitation expenditure in connection with a qualified rehabilitated building other than a certified historic structure, the increase in basis of such property which would (but for this paragraph) result from such expenditure shall be reduced by 100 percent of the credit so determined. Accordingly, the rules of paragraphs (a), (b), (c), and (d) of this section shall be applied to qualified rehabilitation expenditures in connection with a qualified rehabilitated building other than a certified historic structure by substituting the phrase "100 percent of" in lieu of the phrase "50 percent of".

(i) *Election for reduction in credit in lieu of basis adjustment*—(1) *In general.* An election may be made not be have the rules in paragraph (a) of this section apply with respect to so much of the credit determined under section 46(a) (section 46(a)(2) in the case of taxable years beginning on or before December 31, 1983) as is attributable to the regular percentage set forth in section 46(b)(1) (section 46(a)(2)(B) in the case of taxable years beginning on or before December 31, 1983). The election is made on a property-by-property basis. In the case of such an election, the amount of the investment credit with respect to the regular percentage shall be determined under paragraph (i)(2) of this section. In the case of a partnership, S corporation, trust, or estate, the election shall be made by the partnership, S corporation, trust, or estate.

(2) *Reduction in credit.* In the case of any property for which an election under this paragraph has been made, the investment credit shall be determined as follows:

(i) The regular percentage shall be—

(A) 8 percent in the case of recovery property other than 3 year property (RRB replacement property under section 168(f)(3)(B) shall be treated as property which is other than 3 year property), or

(B) 4 percent in the case of recovery property which is 3 year property.

(ii) For purposes of applying the regular percentage in paragraph (i)(2)(i) of this section, the applicable percentage under subsection (c) or (d) of section 46 shall be deemed to be 100 percent.

(3) *Time and manner of making the election.* The election specified in paragraph (i)(1) of this section shall be made by attaching a statement to the first income tax return for the taxable year for which the election is made (whether or not the return is timely), or to an amended return filed within the time prescribed by law (including extensions) for filing the return for such taxable year. For purposes of this paragraph (i), the term "income tax return for the taxable year for which the election is made" with respect to any property is the tax return for the taxable year in which such property is placed in service, or in the case of property to which an election under section 46(d) (relating to qualified progress expenditures) applies, the appropriate return is the return for the first taxable year which includes a period after December 31, 1982, for which qualified progress expenditures were taken into account with respect to such property. Except as otherwise provided in the return or instructions accompanying the return for the taxable year, the statement shall—

(i) Contain the name, address and taxpayer identification number of the electing taxpayer,

(ii) Identify the election, by indicating that the election is being made under section 48(q)(4) of the Code, and

(iii) Specify the property to which the election is to apply.

The election to claim a reduced credit in lieu of reducing basis with respect to recovery property is revocable only with the consent of the Commissioner. In the absence of revocation, the election shall be binding for the taxable year for which it is made and for all subsequent taxable years.

(4) *Revocation.* Any election under section 48(q)(4), and any specification contained in such election, may be revoked only with the consent of the Commissioner. Such consent will be granted only in extraordinary circumstances. Requests for consent must be filed with the Commissioner of Internal Revenue, Washington, DC 20224. The request shall include the name, address, and taxpayer identification number of the taxpayer and shall be signed by the taxpayer or his duly authorized representative. The request shall set forth the following information:

(i) The taxable year for which the election was made,

(ii) The Code section applicable to the revocation (section 48(q)(4)),

(iii) The property subject to the election for which the revocation is requested, and

(iv) The reasons why the revocation is sought.

(j) *Recapture of reduction*—(1) *In general.* For purposes of sections 1245 and 1250, the basis reduction amount under this section shall be treated as a deduction allowed for depreciation. For purposes of section 1250(b), the determination of what would have been the depreciation adjustments under the straight line method shall be made as if there had been no reduction under this section.

(2) *Early disposition, etc.* If paragraph (e) of this section applies, the basis reduction amount in paragraph (j)(1) of this section shall be decreased by 50 percent of the recapture amount as defined in paragraph (e) of this section.

(k) *Special rules for qualified films*—(1) *In general.* If a credit is allowed under section 38 with respect to any qualified film (within the meaning of section 48(k)(1)(B)) section 48(q)(1) and paragraphs (a) through (j) and (l) of this section shall not apply to such credit and the rules of this paragraph (k) shall apply.

(2) *Applicable rules*—(i) Where a credit has been determined under section 48(k) with respect to a qualified film, any deduction allowed under chapter 1 of the Code with respect to "residuals" (as described in section 48(k)(5)(B)(v)) and "participations" (as described in section 48(k)(5)(B)(vi)), shall be reduced by 50 percent of the credit so determined, and

(ii) The basis of the taxpayer's ownership interest (within the meaning of section 48(k)(1)(C) and § 1.48–8(a)(4)) shall be reduced by the excess of—

(A) 50 percent of the credit determined under section 48(k) over,

(B) The amount of the reduction in paragraph (k)(2)(i) of this section with respect to the deduction applicable to residuals and participations.

The reduction in the basis of a taxpayer's ownership interest in a qualified film (under paragraph (k)(2)(ii)) shall be made in the year in which the credit is allowable and shall be taken into account for all purposes of subtitle A of the Code, except in computing the qualified investment with respect to such film.

(3) *Special rules applicable to the basis reduction of a taxpayer's ownership interest in a qualified film*—(i) *Certain lenders and guarantors.* With respect to lenders and guarantors of all or a portion of the funds used to produce or acquire a qualified film or a portion thereof that are regarded as having a depreciable interest in the film under § 1.48–8(a)(4)(iii), the basis of the ownership interest which must be reduced under this paragraph (k)(2)(ii) shall be the principal amount of the loan which was made or guaranteed. Consequently, such lenders and guarantors will reduce the basis of their ownership interest in the film as well as the principal amount of the loan which was made or guaranteed. That portion of each amount received in repayment of the loan principal which bears the same ratio to the amount repaid as the basis reduction amount of paragraph (k)(2)(ii) of this section bears to the total loan principal (prior to reduction under this paragraph (k)(3)) shall constitute income (see example (2)(b) in paragraph (k)(4) of this section). For purposes of the preceding sentence, where the loan principal exceeds the qualified United States production costs, the term "loan principal" refers to the portion of the loan equal to such costs, and any loan payments shall be treated first as a repayment of such costs.

(ii) *Partner's interest in the partnership*—In the case of a reduction in the basis of an ownership interest of a qualified film by a partnership under paragraph (k)(2)(ii) of this section resulting from a credit determined by each partner under section 48(k) and § 1.48–8(a)(4)(iv) with respect to the partnership's ownership interest in the qualified film, there shall be a corresponding reduction in the basis of each partner's interest in the partnership equal to 50 percent of that partner's share of the credit determined under section 48(k). Such decrease in the basis of each partner's interest in the partnership shall be taken into account for all purposes of subtitle A of the Code.

(iii) *S corporation shareholder's stock basis*—In the case of a reduction in the basis of an ownership interest of a qualified film by an S corporation under paragraph (k)(2)(ii) of this section resulting from a credit determined by each shareholder with respect to the S corporation's ownership interest in the qualified film (see sections 1366 and 1377(a)(1)) there shall be a corresponding reduction in the basis of each shareholder's stock in the S corporation (see section 1367(a)(2)(D)) and to the S corporation's accumulated adjustments account (see section 1368(e)(1)(A)) equal to 50 percent of the credit determined under section 48(k). Such decrease in the basis of each shareholder's stock in the S corporation shall be taken into account for all purposes of Subtitle A of the Code.

(4) *Examples.* This paragraph (k) may be illustrated by the following examples:

Example (1). Production company P produces a new feature-length film M and incurs $150,000 in qualified United States production costs. Fifteen thousand dollars ($15,000) of such costs are attributable to residuals (as described in section 48(k)(5)(B)(v)), and $15,000 are attributable to participations (as described in section 48(k)(5)(B)(vi)), which are currently deductible. Under section 48(k), P is entitled to a credit of $10,000 [($150,000 × 66⅔%) × 10%] with respect to film M. Under section 48(q)(6)(7), P's deduction with respect to both the residuals and participations will be reduced by $500 each [((15,000 × 66⅔%) × 10%) × 50%]. Thus P may deduct $14,500 as residuals and $14,500 as participations with respect to film M. The basis of P's ownership interest in film M is also subject to reduction under section 48(g)(6)[7] as a result of the investment credit taken for such film. P will reduce its basis in its ownership interest by $4,000 (50 percent of the credit determined with respect to the qualified film minus the amount of the reduction of deductions for residuals and participations under section 48(q)(6)[7](A)).

Example (2). (i) P executes a production-distribution agreement with D, a motion picture distribution company, for P to produce a new feature-length motion picture. D agrees to provide the funds for the production by direct loans to P. The amounts borrowed by P would be repayable only out of net profits from the distribution of the picture. P assumes no liability for the repayment of any amount. In consideration for the sum advanced by D, P assigns to D the sole and exclusive right to rent, lease, exhibit, license and otherwise dispose of, or trade and deal in and with, the picture. Proceeds realized from the sale or distribution of the picture would first be used to reimburse D for amounts advanced. Any amount remaining following the reimbursement to D would be distributed 50 percent to D and 50 percent to P. For purposes of this example, neither a partnership nor a joint venture is assumed created. The total loan from D equals $150,000 and the total qualified United States production costs (as defined in section 48(k)(4)(B)) equal $100,000; no part of these costs is attributable to either residuals (as described in section 48(k)(5)(B)(v)) or participations (as described in section 48(k)(5)(B)(vi)).

(ii) Under § 1.48–8(a)(4)(iii), D has a depreciable interest in the picture for purposes of the investment tax credit in the amount of $100,000 because only D's capital is at risk. The credit determined under section 48(k) with respect to D's ownership interest in the film is $6,666.67 (($100,000 × 66⅔%) × 10%). The basis reduction amount under section 48(6)[7] with respect to the credit is $3,333.33 ($6,666.67 × 50%). The basis of D's ownership interest for purposes of section 48(q)(6)(7), in accordance with paragraph (k)(3)(i) of this section, is the portion of the principal amount of the loan to P equal to the qualified U.S. production costs ($100,000). Consequently, the basis of D's ownership interest in the film is reduced to $96,666.67 ($100,000–$3,333.33). Thus 3,333.33/100,000 of every principal amount repaid to D on the loan (up to $100,000 of principal repaid) represents income to D.

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Example (3). (i) A and B execute a partnersihp agreement under which B agrees to provide the funds for the production of a motion picture in return for a 50–percent interest in the net profits of the film. A agrees to provide his services and to supply the necessary talent to produce the film in exchange for the remaining 50-percent interest. Any lease, exhibition, license, or other disposition of the film is subject to the veto of either party. B provides $200,000 for the production of the film. One hundred and fifty thousand dollars ($150,000) of these costs are qualified United States production costs under section 48(k)(5) and none of the costs are attributable to either residuals (as described in section 48(k)(5)(B)(v)] or participations (as described in section 48(k)(5)(B)(vi)).

(ii) The AB partnership has a depreciable interest in the film. Under § 1.48–8(a)(4)(iv), the qualified investment will be apportioned among the partners on the basis of their percentage of capital at risk in the parntership. A has no capital at risk in the partnership and, therefore, is not entitled to any credit with respect to the film. B has supplied all the risk capital and, therefore, may claim a credit of $10,000 ($15,000 × 66⅔%) × 10%). The basis of AB partnership's ownership interest in the film must be reduced under section 48(q)(6)[7] by 50 percent of the credit taken by B. Thus, the reduced basis of AB partnership's ownership interest in the film is $145,000 ($150,000–$5,000). In addition, pursuant to § 1.48–7(k)(3)(ii), B must reduce the basis of his interest in the AB partnership by $5,000, 50 percent of the credit determined with respect to the qualified film.

(l) *Special rule for reforestation expenditures.* In the case of a credit for qualified investment in section 38 property described in section 48(a)(1)(F), the amortizable basis of such property for purposes of section 194 shall be reduced by 50 percent of the credit.

(m) *Effective date rules*—(1) *In general.* This section is effective for—

(i) Property to which section 46(d) (relating to qualified progress expenditures) does not apply, the construction, reconstruction, or erection of which is completed by the taxpayer on or after January 1, 1983, but only to the extent of the basis thereof attributable to the construction, reconstruction, or erection after 1982,

(ii) Property to which section 46(d) does not apply, acquired by the taxpayer and subsequently placed in service by the taxpayer after 1982, and

(iii) Property to which section 46(d) applies, but only to the extent of the qualified investment (as determined under subsections (c) and (d) of section 46) with respect to qualified progress expenditures made after 1982.

(2) *Exception.* This section shall not apply to any property which—

(i) Was constructed, reconstructed, erected, or acquired pursuant to a contract which was entered into after August 13, 1981, and was, on July 1, 1982, and at all times thereafter, binding on the taxpayer,

(ii) Was placed in service after December 31, 1982, and before January 1, 1986,

(iii) With respect to which an election under section 168(f)(8)(A) (relating to the safe-harbor leasing provisions) is not in effect at any time, and

(iv) Is not public utility property described in section 167(l)(3)(A).

(3) *Special rules.* For special rules relating to integrated manufacturing facilities and historic structures, see section 205(c) of Pub. L. 97–430 (1982).

Par. 4. There is inserted after § 1.194–4 a new § 1.196–1 to read as follows:

§ 1.196–1 Deduction for certain unused investment credits.

(a) *In general.* Where the amount of the section 38 credit (determined under section 46(a)(2)) for any taxable year exceeds the limitation based on the amount of tax (determined under section 46(a)(3)) for such taxable year and the amount of such excess has not, after the application of 46(b), been allowed to the taxpayer as a credit under section 38 for any taxable year, an amount equal to 50 percent of such excess (to the extent attributable to property the basis of which was reduced under section 48(q)) not so allowed as a credit will be allowed as a deduction in the first taxable year following the last taxable year in which such excess could have been allowed as a credit under section 46(b).

(b) *Taxpayers dying or ceasing to exist—*

(1) *In general.* Except as provided in this paragraph, where the taxpayer dies or ceases to exist prior to the first taxable year following the last taxable year in which the excess credit (described in paragraph (a) of this section) could have been allowed as a credit under section 46(b), then 50 percent of such excess shall be allowed as a deduction to the taxpayer for the taxable year in which such death or cessation occurs.

(2) *Special rules.* (i) Where the taxpayer dies or ceases to exist prior to the end of the recovery period of section 38 property which was taken into account in computing the section 38 credit with respect to such property, and where the recapture rules of section 47 are applicable, 50 percent of the excess credit described in paragraph (a) of this section that is not required to be recaptured by section 47 shall be allowed as a deduction to the taxpayer for the taxable year in which such death or cessation occurs. The recaptured credit shall be subject to the basis adjustment rules of § 1.48–7 (c) or (d). For purposes of this paragraph, a taxpayer (other than an individual) ceases to exist when it no longer continues the active operation of or permanently terminates its trade or business.

(ii) In a case where the taxpayer is a corporation and such corporation ceases to exist, and transfers the assets of its trade or business to a corporation that is entitled to take into account the excess credit of the transferor corporation, the transferor corporation shall not be allowed a deduction for any excess section 38 credit under paragraph (b) of this section.

(c) *Qualified rehabilitated buildings.* In the case of any credit determined under section 46(a)(2) for any qualified rehabilitation expenditure in connection with a qualified rehabilitated building other than a certified historic structure, the rules of this section shall be applied by inserting the phrase" 100 percent of" where the the phrase "50 percent of" appears.

(d) *Effective date rules*—(1) *In general.* This section is effective for taxable years beginning before 1984 for—

(i) Property to which section 46(d) (relating to qualified progress expenditures) does not apply, the construction, reconstruction, or erection of which is completed by the taxpayer on or after January 1, 1983, but only to the extent of the basis thereof attributable to the construction, reconstruction, or erection after 1982,

(ii) Property to which section 46(d) does not apply, acquired by the taxpayer and subsequently placed in service by the taxpayer after 1982, and

(iii) Property to which section 46(d) applies, but only to the extent of the qualified investment (as defined under subsections (c) and (d) of section 46) with respect to qualified progress expenditures made after 1982.

(2) *Exception.* This section shall not apply to any property which—

(i) Was constructed, reconstructed, erected, or acquired pursuant to a contract which was entered into after August 13, 1981, and was, on July 1, 1982, and at all times thereafter, binding on the taxpayer,

(ii) Was placed in service after December 31, 1982, and before January 1, 1986,

(iii) With respect to which an election under section 168(f)(8)(A) (relating to the safe-harbor leasing provisions) is not in effect at any time, and

(iv) Is not public utility property described in section 167(l)(3)(A).

(3) *Special rules.* For special rules relating to integrated manufacturing facilities and historic structures, see section 205(c) of Pub. L. 97–248, 96 Stat. 430 (1982).

Par. 5. Section 1.312–15 is amended by adding a new paragraph (a)(4) to read as follows:

§ 1.312–15 Effect of depreciation on earnings and profits.

(a) *Depreciation for taxable years beginning after June 30, 1972.* * * *

(4) *Basis adjustment under section 48(q).* In the case of property to which the basis adjustment rules of section 48(q) and § 1.48–7 apply, the allowance for depreciation (and amortization, if any) shall be computed without regard to such adjustment.

Par. 6. Section 1.705–1(a)(3)(ii) is revised to read as follows:

§ 1.705–1 Determination of basis of partner's interest.

(a) * * *

(3) * * *

(ii) Partnership expenditures which are not deductible in computing partnership taxable income or loss and which are not capital expenditures [see § 1.48–7(c), § 1.48–7(f), and § 1.48–7(k)(3)(ii) with respect to the necessary adjustment to reflect the investment tax credit).

* * * * *

James I. Owens,

Acting Commissioner of Internal Revenue.

[FR Doc. 87–21629 Filed 9–18–87; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[LR–135–86]

Mortality Table Used to Determine Exclusion for Deferred Payments of Life Insurance Proceeds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary regulations that prescribe the mortality table to be used in determining the extent to which deferred payments of life insurance proceeds are excluded from gross income. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 20, 1987. The regulations are proposed to be effective on October 23, 1986, and to apply to amounts received with respect to deaths occurring after October 22, 1986, in taxable years ending after October 22, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–135–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T), (202) 566–3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations section of this issue of the Federal Register amend the Income Tax Regulations (26 CFR Part 1) to provide rules under sections 101(d) of the Internal Revenue Code of 1986, as amended by section 1001(b) of the Tax Reform Act of 1986 (100 Stat. 2387). This document proposes to adopt those temporary regulations as final regulations. Accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. The preamble to the temporary regulations provides a discussion of the proposed and temporary rules.

For the text of the temporary regulations, see FR Doc. [T.D. 8161] published in the Rules and Regulations Section of this issue of the Federal Register.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for A Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Sharon L. Hall of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87–21712 Filed 9–18–87; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 505

Labor Standards on Projects or Productions Assisted by Grants From the National Endowments for the Arts and Humanities

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Proposed rule.

SUMMARY: This is a proposal to revise existing regulations 29 CFR Part 505 to extend the labor standards provisions now applicable to professional performers and related or supporting professional personnel employed on projects funded by the National Endowment for the Arts to such performers and supporting personnel employed on projects funded by the National Endowment for the Humanities. Other revisions proposed include broadening the definition of "amateur" to include those performers

and supporting personnel who may receive reimbursement for expenses, simplification of the procedures for obtaining exceptions from the prevailing minimum compensation standards, and conforming the references to safety and health standards with currently applicable requirements.

DATE: Comments must be received on or before October 21, 1987.

ADDRESS: Written comments should be addressed to Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8305 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Since issued in 1967, the existing regulations, 29 CFR Part 505, Labor Standards on Projects or Productions Assisted by Grants from the National Endowment for the Arts, have provided that the minimum compensation (including fringe benefits) set forth in collective bargaining agreements negotiated by ten national or international labor organizations or their local affiliates named in the regulations constitute the prevailing minimum compensation required to be paid under the Act to professional performers and related or supporting professional personnel employed on projects receiving financial assistance from the National Endowment for the Arts. Provisions are included to permit any professional performer, supporting personnel, or grant applicant to protest that determination and obtain a variation from the negotiated rates upon written application to the Administrator of the Wage and Hour Division.

Congress amended the National Foundation on the Arts and the Humanities Act of 1965 (NFAHA) in 1976 (Sec. 105, Pub. L. 94–462, 90 Stat. 1971; 20 U.S.C. 956(g)), to provide that professional performers and related or supporting professional personnel employed under Humanities grants would also be subject to prevailing minimum compensation standards. The Department published a regulatory proposal in the **Federal Register** on December 19, 1980 (45 FR 83914) to carry out the provisions of these amendments. However, that proposal was subsequently withdrawn from the Department's Semiannual Agenda of Regulations on October 26, 1982 (47 FR 48538).

On December 20, 1985, the Arts, Humanities, and Museums Amendments of 1985, Pub. L. 99–194, 99 Stat. 1332, were enacted which, among other things, directed the Secretary of Labor to prescribe prevailing minimum compensation standards for professional performers and related or supporting professional personnel employed on projects or productions assisted by grants from the National Endowment for the Humanities. These proposed revisions to 29 CFR Part 505 extend the existing prevailing minimum compensation standards now applicable to professional performers and related or supporting professional personnel employed on projects receiving financial assistance from the National Endowment for the Arts to such employees employed on projects receiving assistance from the National Endowment for the Humanities, and replace the 1980 regulatory proposal. Other revisions proposed would ease the administrative procedures and minimize burdens associated with obtaining approval to provide prevailing minimum compensation as an alternative to such determinations contained in the regulations. In this regard, the section in the current rule which sets forth a formal variance procedure has been replaced with a simplified process to permit interested parties to request an alternative determination of prevailing minimum compensation from the Wage and Hour Administrator at any time, in lieu of the compensation negotiated by the labor organizations named in the regulations, in connection with any grant application or approved grant. Pending a final decision on such a request, it is also proposed to provide that grantees may be required to set aside in an escrow account sufficient funds to cover the difference between the amount paid to employees and the amount otherwise required under the terms of the applicable collective bargaining agreement, or, alternatively, furnish a surety bond. It is also proposed that professional performers and related or supporting professional personnel performing activities which do not come within the jurisdiction of the named labor organizations shall be paid minimum compensation as determined by agreement between such personnel and the grantee.

In 1967, evidence available to the Department indicated that, at that time, the majority of persons employed in activities performed by professional performers and related or supporting professional personnel were covered by collective bargaining agreements between their employers and the labor organizations listed in § 505.3(a) of the regulations. The Department continues to believe this to be the case today. However, some comments received on the 1980 proposal suggested that this presumption may no longer be correct. Consequently, comments are invited on the presumption in § 505.3(a) of the regulations that the compensation negotiated by the named labor organizations accurately reflects prevailing compensation standards (i.e., that a majority of the professional performers and related or supporting professional personnel employed in activities that are similar to those performed by performers and related personnel employed under grants from the National Endowment for the Arts or the National Endowment for the Humanities are paid such compensation, by both for-profit and not-for-profit entities). Commenters are requested to provide specific information and supporting documentation of the actual rates being paid in the industry and the number of employees paid such rates to support their particular views on this point.

In addition, it is proposed to revise the definition of amateur to include those performers and supporting personnel who may receive reimbursement for expenses but who do not work for compensation, and to conform the references to safety and health standards with the currently applicable requirements.

Classification—Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

This rule, if promulgated, will have no "significant economic impact on a substantial number of small entities"

within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is based on the fact that the number of affected small entities receiving grants under which professional performers and related or supporting professional personnel are employed subject to the prevailing minimum compensation requirements is not believed to be substantial.

Paperwork Reduction Act

The recordkeeping and information collection requirements that are included in this regulation are a restatement of requirements contained in 29 CFR Part 516 (Records to be Kept by Employers Under the Fair Labor Standards Act), which have been previously cleared by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and assigned OMB control number 1215–0017.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 505

Arts and crafts, Education, Foundations, Grant programs, Minimum wages, Occupational safety and health.

Accordingly, it is proposed to revise 29 CFR Part 505 as set forth below.

Signed at Washington, DC, on this 15th day of September 1987.

William E. Brock,

Secretary of Labor.

Fred W. Alvarez,

Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

1. 29 CFR Part 505 is revised as set forth below:

PART 505—LABOR STANDARDS ON PROJECTS OR PRODUCTIONS ASSISTED BY GRANTS FROM THE NATIONAL ENDOWMENTS FOR THE ARTS AND HUMANITIES

Sec.

505.1 Purpose and scope.
505.2 Definitions.
505.3 Prevailing minimum compensation.
505.4 Receipt of grant funds.
505.5 Adequate assurances.
505.6 Safety and health standards.
505.7 Failure to comply.

Authority: Sec. 5(j), Pub. L. 89–209, 79 Stat. 848 (20 U.S.C. 954(i)); sec. 7(g), Pub. L. 94–462, 90 Stat. 1971, as amended by Sec. 107(4), Pub. L. 99–194, 99 Stat. 1337 (20 U.S.C. 956(g)); Secretary's Order 9–83 (48 FR 35736) and Secretary's Order 6–84 (49 FR 32473).

§ 505.1 Purpose and scope.

(a) The regulations contained in this part set forth the procedures which are deemed necessary and appropriate to carry out the provisions of section 5(i) and section 7(g) of the National Foundation on the Arts and Humanities Act of 1965, as amended, 20 U.S.C. 954(i), 20 U.S.C. 956(g). As a condition to the receipt of any grant, the grantees must give adequate assurances that all professional performers and related to supporting professional personnel employed on projects or productions assisted by grants from the National Endowment for the Arts and the National Endowment for the Humanities shall receive not less than the prevailing minimum compensation as determined by the Secretary of Labor.

(b) Regulations and procedures relating to wages on construction projects as provided in section 5(j) and section 7(j) may be found in Parts 3 and 5 of this title.

(c) Standards of overtime compensation for laborers or mechanics may be found in the Contract Work Hours and Safety Standards Act, 76 Stat. 357, 40 U.S.C. 327 *et seq.* and Part 5 of this title.

§ 505.2 Definitions.

(a) The term "Act" means the National Foundation on the Arts and the Humanities Act of 1965, as amended, 79 Stat. 848, as amended, 20 U.S.C. 951 *et seq.*

(b) The term "Secretary" means the Secretary of Labor.

(c) The term "Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative, to whom is assigned the performance of functions of the Secretary pertaining to wages under the National Foundation on the Arts and the Humanities Act of 1965, as amended.

(d) The term "Assistant Secretary" means the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, or authorized representative, to whom is assigned the performance of functions of the Secretary pertaining to safety and health under the National Foundation on the Arts and the Humanities Act of 1965, as amended.

(e) "Professional" in the phrase "professional performer and related or supporting professional personnel" shall include all those who work for compensation on a project or production which is assisted by a grant from the National Endowment for the Arts or the National Endowment for the Humanities regardless of whether paid out of grant funds. It shall not include those whose status is "amateur" because their engagement for performance or supporting work contemplates no compensation. Compensation does not include reimbursement of expenses (i.e., meals, costumes, make-up, etc.). The words "related or supporting . . . personnel" in the same phrase shall include all those whose work is related to the particular project or production such as musicians, stage hands, scenery designers, technicians, electricians and moving picture machine operators, as distinguished from those who operate a place for receiving an audience without reference to the particular project or production being exhibited, such as ushers, janitors, and those who sell and collect tickets. The phrase does not include laborers and mechanics employed by contractors or subcontractors on construction projects, whose compensation is regulated under section 5(j) and section 7(j) of the Act. The phrase "professional performers and related or supporting professional personnel" shall not include persons employed as regular faculty or staff of an educational institution primarily performing duties commonly associated with the teaching profession. It shall include persons employed by educational institutions primarily to engage in activities customarily performed by performing artists or by those who assist in the presentation of performances assisted by grants from the National Endowment for the Arts or the National Endowment for the Humanities.

§ 505.3 Prevailing minimum compensation.

In the absence of an alternative determination made by the Administrator under paragraph (b) of this section, and except as provided in paragraph (a)(2) of this section, the prevailing minimum compensation required to be paid under the Act to the various professional performers and related or supporting professional personnel employed on projects or productions assisted by grants from the National Endowment for the Arts and the National Endowment for the Humanities shall be the compensation (including fringe benefits) contained in collective bargaining agreements negotiated by the following national or international labor organizations or their local affiliates.

Actors' Equity Association.

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Screen Actors Guild, Inc.
Screen Extras Guild, Inc.
American Guild of Musical Artists, Inc.
International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators.
American Federation of Musicians.
National Association of Broadcast Employees and Technicians.
American Federation of Television and Radio Artists.
International Brotherhood of Electrical Workers.
American Guild of Variety Artists.
Writers Guild.

(2) Professional performers and related or supporting professional personnel who are to perform activities which do not come within the jurisdiction of any collective bargaining agreement negotiated by the labor organizations named in paragraph (a)(1) of this section shall be paid minimum compensation as determined by agreement of the grant applicant or grantee and the personnel who will perform such activities or their representatives. Evidence of the agreement reached by the parties shall be submitted by the grant applicant to the grant agency, together with evidence of the prevailing minimum compensation for similar activities. If the parties do not agree on the minimum compensation to be paid to such personnel, the matter shall be referred to the Administrator of the Wage and Hour Division for final determination.

(b)(1) Interested parties, including grant applicants, grantees, professional performers or related or supporting professional personnel and their representatives, may at any time submit to the Administrator a request for a determination of prevailing minimum compensation. The Administrator will make a determination concerning each such request in accordance with paragraph (b)(4) of this section.

(2) Any request for a determination of prevailing minimum compensation shall include or be accompanied by information as to the locality or localities, the class or classes of professional performers or related or supporting professional personnel for the project or production in question, the names and addresses (to the extent known) of interested parties, and all available information relating to prevailing minimum compensation currently being paid to such persons or to persons employed in similar activities. No particular form is prescribed for submission of information under this section.

(3) If the information specified in paragraph (b)(2) of this section is not submitted with a request for an alternative determination of prevailing minimum compensation or is insufficient to permit a determination, the Administrator may deny the request or request additional information, at the Administrator's discretion. Pertinent information from any source may be considered by the Administrator in connection with any request.

(4) The Administrator will respond to a request for determination under this section within 30 days of receipt, by issuing a determination of alternative prevailing minimum compensation or denying the request or advising that additional time is necessary for a decision. If the Administrator determines from a preponderance of all relevant evidence obtained in connection with the request that the compensation provided for in the agreements negotiated by the labor organization set forth in paragraph (a) of this section does not prevail for any professional performer or related or supporting professional personnel employed on similar activities in the locality, the Administrator will issue a determination of the prevailing minimum compensation required to be paid under the Act to such persons. If the Administrator finds that the compensation provided for in the agreements negotiated by the labor organizations set forth in paragraph (a) of this section does prevail for the professional performers or related or supporting professional personnel in question, the requesting party will be so notified.

(c) All professional performers and related or supporting professional personnel (other than laborers or mechanics with respect to whom labor standards are prescribed in sections 5(j) and 7(j) of the Act) employed on projects or productions which are financed in whole or in part under section 5 or section 7 of the Act will be paid, without subsequent deduction or rebate on any account, not less than the prevailing minimum compensation determined in accordance with paragraph (a) of this section, unless an alternative determination is made under paragraph (b) of this section. Pending the decision of the Administrator on a request for determination under paragraph (b) of this section, the grantee may be required to set aside in a separate escrow account sufficient funds to satisfy the difference between the compensation (including fringe benefits) actually paid to the employee(s) in question, and the compensation (including fringe benefits) required under the applicable collective bargaining agreement negotiated by the labor organization named in paragraph (a) of this section, or furnish a bond with a surety or sureties satisfactory to the Administrator for the protection of the compensation of the affected employees.

§ 505.4 Receipt of grant funds.

(a) The grantee shall not receive funds authorized by section 5 or section 7 of the Act until adequate initial assurances have been filed with the Chairperson of the National Endowment for the Arts or the Chairperson of the National Endowment for the Humanities, pursuant to section 5(i) (1) and (2) and section 7(g) (1) and (2) of the Act as provided in § 505.5(a), that all professional performers and related or supporting professional personnel will be paid not less than the prevailing minimum compensation and that the safety and health requirements will be complied with. Neither shall the grantee receive any such funds if and after the Chairperson of the National Endowment for the Arts or Chairperson of the National Endowment for the Humanities is advised by the Secretary that continuing assurances as provided in § 505.5(b) are inadequate or that labor standards contemplated by sections 5(i) (1) and (2) or section 7(g) (1) and (2) of the Act have not been observed.

(b) In order to facilitate such assurances so that the grantee may receive the grant funds promptly, the Chairpersons of the National Endowment for the Arts and the National Endowment for the Humanities will transmit with the grant letter, to each grantee of a grant that will provide assistance to projects or productions employing professional performers or related or supporting professional personnel under section 5 or section 7 of the Act, a copy of these regulations together with two copies of the assurance form (Form No. ESA–38). The Chairperson will advise the grantee that before the grant may be received, the grantee must give assurances that all professional performers and related or supporting professional personnel (other than laborers or mechanics with respect to whom labor standards are prescribed in section 5(j) and section 7(j) of the Act), will be paid, without subsequent deduction or rebate on any account not less than the minimum compensation determined in accordance with § 505.3 (a) or (b) and that the safety and health requirements under § 505.6 will be met. The Chairpersons will maintain on file in Washington, D.C., for a period of three (3) years and make available upon request of the Secretary the original signed Form ESA–38 and a copy of the grant letter together with any

supplementary documents needed to give a description of the project or production to be financed in whole or part under the grant.

§ 505.5 Adequate assurances.

(a) *Initial assurances.* The grantee shall give adequate initial assurances that not less than the prevailing minimum compensation determined in accordance with § 505.3 will be paid to all professional performers and related or supporting professional personnel, and that no part of the project or production will be performed under working conditions which are unsanitary or hazardous or dangerous to the health and safety of the employees, by executing and filing with the Chairperson of the National Endowment for the Arts or the Chairperson of the National Endowment for the Humanities, as appropriate, Form ESA–38.

(b) *Continuing assurances.* (1) The grantee shall maintain and preserve sufficient records as an assurance of compliance with section 5(i) (1) and (2) and section 7(g) (1) and (2) of the Act and shall make such reports therefrom to the Secretary as necessary or appropriate to assure the adequacy of the assurances given. Such records shall be kept for a period of three (3) years after the end of the grant period to which they pertain. These records shall include the following information relating to each performer and related or supporting professional personnel to whom a prevailing minimum compensation determination applies pursuant to § 505.3. In addition the record required in paragraph (b)(1)(vii) of this section shall be kept for all employees engaged in the project or production assisted by the grant.

(i) Name.

(ii) Home address.

(iii) Occupation.

(iv) Basic unit of compensation (such as the amount of a weekly or monthly salary, talent or performance fee, hourly rate or other basis on which compensation is computed), including fringe benefits or amounts paid in lieu thereof.

(v) Work performed for each pay period expressed in terms of the total units of compensation fully and partially completed.

(vi) Total compensation paid each pay period, deductions made, and date of payment, including amounts paid for fringe benefits and the person to whom they were paid, and

(vii) Brief description of any injury incurred while performing under the grant and the dates and duration of disability.

(Approved by the Office of Management and Budget under control number 1215–0017)

(2) The grantee shall permit the Administrator and the Assistant Secretary or their representatives to investigate and gather data regarding the wages, hours, safety, health, and other conditions and practices of employment related to the project or production, and to enter and inspect such project or production and such records (and make such transcriptions there of interview of), such employees during normal working hours, and investigate such facts, conditions, practices, or matters as may be deemed necessary or appropriate to determine whether the grantee has violated the labor standards contemplated by section 5(i) and section 7(g) of the Act.

(c) *Determination of adequacy.* The Administrator and Assistant Secretary shall determine the adequacy of assurances given pursuant to paragraphs (a) and (b) of this section within each of their respective areas of responsibilities, and may revise any such determination at any time.

§ 505.6 Safety and health standards.

(a) *Standards.* Section 5(i)(2) and section 7(g)(2) of the Act provide that "no part of any project or production which is financed in whole or in part under this section will be performed or engaged in under working conditions which are unsanitary or hazardous or dangerous to the health and safety of the employees engaged in such project or production. Compliance with the safety and sanitary laws of the State in which the performance or part thereof is to take place shall be prima facie evidence of compliance." * * *" The applicable safety and health standards shall be those set forth in 29 CFR Parts 1910 and 1926, including matters incorporated by reference therein. Evidence of compliance with State laws relating to health and sanitation will be considered prime facie evidence of compliance with the safety and health requirements of the Act, and it shall be sufficient unless rebutted or overcome by a preponderance of evidence of a failure to comply with any applicable safety and health standards set forth in 29 CFR Parts 1910 and 1926, including matters incorporated by reference therein.

(b) *Variances.* (1) Variances from standards applied under paragraph (a) of this section may be granted under the same circumstances in which variances may be granted under section 6(b)(6)(A) or 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 655). The procedures for the granting of variances and for related relief are those published in Part 1905 of this title.

(2) Any requests for variances shall also be considered requests for variances under the Williams-Steiger Occupational Safety and Health Act of 1970, and any variance from a standard applied under paragraph (a) of this section and in Part 1910 of this title shall be deemed a variance from the standards under both the National Foundation on the Arts and Humanities Act of 1965 and the Williams-Steiger Occupational Safety and Health Act of 1970.

§ 505.7 Failure to comply.

The Secretary's representatives shall maintain a list of those grantees who are considered to be responsible for instances of failure to comply with the obligation of the grantees specified in section 5(i) (1) and (2) and section 7(g) (1) and (2) of the Act, which are considered to have been willfull or of such nature as to cast doubt on the reliability of formal assurances subsequently given and there shall be maintained a similar list where adjustment of the violations satisfactory to the Secretary was not properly made. Assurances from persons or organizations placed on either such list or any organization in which they have a substantial interest shall be considered inadequate for purposes of receiving further grants for a period not to exceed three (3) years from the date of notification by the Secretary that they have been placed on the lists unless, by appropriate application to the Secretary, they demonstrate a current responsibility to comply with section 5(i) (1) and (2) and section 7(g) (1) and (2) of the Act, and demonstrate that correction of the violations has been made.

[FR Doc. 87–21689 Filed 9–18–87 8:45 am]
BILLING CODE 4510–27–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, 207, 210, and 241

43 CFR Part 3160

Revision of Oil and Gas Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of intent to issue a second further notice of proposed rulemaking.

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SUMMARY: The Minerals Management Service (MMS) is hereby giving notice that it intends to issue a second further notice of proposed rulemaking for both the gas and oil product value regulations. The purpose of this notice is to advise lessees and other interested persons of the procedures MMS intends to follow before issuing final regulations.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Minerals Management Service, Royalty Management Program, Chief, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 628, Denver, Colorado, 80225, telephone number (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The MMS earlier this year issued proposed valuation regulations for gas (52 FR 4732, February 13, 1987) and oil (52 FR 1858, January 15, 1987. Many comments were received both in written form and at the several public hearings.

Because of the complexity of the issues and the diversity of the comments, MMS issued further notices of proposed rulemaking for gas (52 FR 30776, August 17, 1987) and oil (52 FR 30826, August 17, 1987), which had attached as an appendix to each of those notices a draft of the final rules. The public comment period for these notices originally was due to close on September 2, 1987, but at the request of several persons was extended to September 11, 1987. During the comment period, MMS held separate meetings with the three principal interested constituencies, including the States, Indian lessors, and the oil and gas industry.

The MMS received many written comments during the public comment period on the further notices of proposed rulemaking. However, MMS also received several requests to further extend the comment period because of the length of the rules and the complexity of the issues, and to give representatives of the interested constituencies an opportunity to meet and consider the draft final rules.

The MMS has decided that rather than extend the comment period on the August 17 further notices of proposed rulemaking, it instead will publish a second further notice of proposed rulemaking with a second set of draft final rules for both oil and gas. It is expected that the second further notices of proposed rulemaking will be issued by the end of October.

To accommodate those persons who needed additional time to comment on the first draft final rules, MMS will include in the rulemaking record any comments on the first draft final rules received after September 11. These comments will be considered in issuing final regulations along with comments received on the second draft final rules.

Although several modifications are being incorporated in response to the public comments, the second draft final rules will not be substantially different from the first draft final rules. Therefore, MMS intends to have only a 30-day public comment period. This should be ample time to comment since, as explained above, MMS will continue to expect comments on the first draft final rules. Morever, MMS will not expect commenters to resubmit comments previously provided on the proposed rules and on the first further notice of proposed rulemaking, but will expect comments to focus primarily on the differences between the first and second draft final rules.

Date: September 16, 1987.

David W. Crow,

Deputy Director, Minerals Management Service.

[FR Doc. 87-21675 Filed 9-18-87; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3264-3]

Final Authorization of State Hazardous Waste Management Program; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Wisconsin has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The program revisions were applied for by Wisconsin through two applications. The first application is for State program revisions to attain equivalence with the following Federal regulatory changes: (1) November 21, 1984, **Federal Register** (FR)—Interim Status Standards Applicability, (2) January 4, 1985, FR—Definitions of Solid Waste, (3) November 8, 1984, FR—section 3006(f) of the Hazardous and Solid Waste Amendments (HSWA), Availability of Information. The second application is for a State program revision regarding public participation procedures during the modification of hazardous waste management facility permits, as required by 40 CFR 271.14 (t) through (aa). The Environmental Protection Agency (EPA) has reviewed Wisconsin's applications and has made a decision, subject to public review and comment, that Wisconsin's Hazardous Waste Program Revision Applications satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Wisconsin's hazardous waste program revisions. Wisconsin's applications are available for public review and comment.

DATE: Comments on the Wisconsin applications must be received by the close of business on October 21, 1987.

ADDRESSES: Copies of Wisconsin's applications are available from 8:30 a.m., to 4:30 p.m., at the following addresses for inspection and copying: Wisconsin Department of Natural Resources, Bureau of Solid Waste Management, 101 South Webster Street, Madison, Wisconsin 53707, Contact—St. Clair Thompson (608) 266–5376; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, Phone: 202/382–5926; U.S. EPA Region V, Waste Management Division, Solid Waste Branch, 230 South Dearborn Street, Chicago, Illinois 60604, Contact—Charles Wilk (312) 886–4177.

Written comments should be sent to Mr. Charles Wilk, U.S. EPA, Region V, Waste Management Division, Solid Waste Branch, 230 South Dearborn Street, 5HS–JCK–13, Chicago, Illinois 60604. Written comments must specify which of the applications is being addressed.

FOR FURTHER INFORMATION CONTACT: Charles Wilk, Wisconsin Regulatory Specialist, Solid Waste Branch, U.S. EPA, Region V, 230 South Dearborn, 5HS–JCK–13, Chicago, Illinois 60604, (312) 886–4177 [FTS 8–886–4177].

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the

HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260 through 266 and 124 and 270.

B. Wisconsin

Wisconsin initially received final authorization on January 30, 1986. Today, Wisconsin is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(4). On November 10, 1986, EPA received an application from Wisconsin that concerned State regulatory revisions for equivalence with the following provisions of the RCRA program:

- November 21, 1984, FR—Interim Status Standards Applicability,
- January 4, 1985, FR—Definition of Solid Waste,
- November 8, 1984, FR—section 3006(f)—Availability of Information,
- April 23, 1985, FR—Interim Status Standards for Landfill Cover Design.

EPA's review, dated February 3, 1987, of the application concluded that the State could be authorized for three of the four provisions applied for, contingent on the State's satisfactory response to EPA's comments on the application. EPA also notified the State that State regulatory revisions would be necessary before the State could be authorized for Interim Status Standards for Landfill Cover Design.

One June 30, 1987, the State submitted a revised application for the provisions above, less those for Interim Status Standards for Landfill Cover Design. EPA has reviewed Wisconsin's revised application and has made a decision, subject to public review and comment, that Wisconsin's hazardous waste program revision satisfies all of the requirements necessary to qualify for these additional program modifications. Consequently, EPA intends to grant Wisconsin final authorization for the additional program modifications.

On July 23, 1987, Wisconsin submitted another final authorization application to modify its authorized hazardous waste program for State regulatory revisions analogous to 40 CFR 124 as required by 40 CFR 271.14 (t) through (aa). These modifications to the State's program involve the codification into State regulations of agreements from the Wisconsin Department of Natural Resources/USEPA Memorandum of Agreement (MOA) dated January 17, 1986. The MOA is a document drafted in the process of authorization of a State. It serves as a vehicle for specifying areas of consideration and cooperation in the respective roles and responsibilities of EPA and the authorized State. The MOA may also contain State-EPA agreements that are relevant to the implementation of the hazardous waste program. For the final authorization of Wisconsin's program received on January 30, 1986, the MOA included a State agreement to employ certain procedures analogous to 40 CFR Part 124 as required by 40 CFR 271.14 (t) through (aa).

Since receiving authorization, Wisconsin has proceeded to revise its regulations to codify the MOA agreements concerning 400 CFR 271.14 (t) through (aa). Wisconsin's revised regulations have been approved and adopted by the Wisconsin Natural Resources Board (NRB). On July 27, 1987, the presiding officers of both houses of the Wisconsin legislature received the NRB adopted regulations.

The presiding officers have seven days to assign the regulations to standing legislative committees. These committees have thirty days to review the regulations After the regulations complete legislative review they are signed by the Secretary of the WDNR. The certified copies of the regulations are filed by the WDNR with the Revisor of Statutes for publication with the Secretary of State.

Today Wisconsin is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(4). EPA has reviewed the application dated July 23, 1987, and has made a decision, that Wisconsin's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. This decision is contingent on the signing by the Secretary of WDNR of the above referenced regulations in substantially the same form as they were approved and adopted by the NRB. This decision is subject to public review and comment. Consequently, EPA intends to grant Wisconsin final authorization for these additional program modifications.

The public may submit written comments on one or both of EPA's decisions up until October 21, 1987. Each written comment must specify which of the two decisions is being addressed. Copies of Wisconsin's applications are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of one or both of Wisconsin's program revisions shall become effective when the Administrator's final approval is published in the **Federal Register**. If adverse comments pertaining to one or both of Wisconsin's program revisions discussed in this notice is received, EPA will publish either (1) a notice of disapproval or (2) a final rulemaking approving the modificaitons, which would include a response to all significant comments. Depending on the comments received, EPA may publish a notice of disapproval for one decision and a final rulemaking for the other. Publication of the notices on the final decision may also be made independently of each other.

Any RCRA hazardous waste permits, or portions of permits, issued by EPA under the provisions for which the State is applying for authorization, prior to the effective date of authorization, shall be administered by EPA. EPA will suspend issuance of any further permits under the provisions for which the State is authorized on the effective date of authorization. EPA had previously suspended issuance of permits for other provisions on January 30, 1986, the effective date of Wisconsin's authorization for the RCRA program.

Wisconsin is not authorized nor seeking to be authorized to operate the Federal Program on Indian Lands. This authority shall remain with EPA.

C. Effect of HSWA on Wisconsin's Authorization

Prior to the Hazardous and Solid Waste Amendments amending RCRA, a State with Final Authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA provisions apply in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Wisconsin. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce these portions of the HSWA in Wisconsin until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Today's proposed rulemaking does not include authorization of Wisconsin's program for any requirement implementing the HSWA. Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a signfiicant economic impact on a substantial number of small entities. This authorization is for modifications to the State's existing authorized program and is not designed to increase the regulated population. It does not impose any new burdens on small entities.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transporation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Frank M. Covington,
Acting Regional Administrator.

[FR Doc. 87-21721 Filed 9-18-87; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Family Assistance

Office of Child Support Enforcement

Office of the Secretary

45 CFR Parts 95, 205 and 307

Automatic Data Processing Equipment and Services; Conditions for Federal Financial Participation

AGENCY: Office of Family Assistance, Office of Child Support Enforcement, and Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In September 1978, the Department of Health and Human Services (HHS—then the Department of Health, Education and Welfare) published a regulation containing requirements that State and local governments must observe to claim Federal reimbursement for the costs of automatic data processing (ADP) equipment or services. The regulation is applicable to certain public assistance programs under the Social Security Act. The regulation was modified in February 1980, January 1986, and on December 18, 1986.

This document proposes adoption of amendments which would change requirements for the claiming of Federal matching funds for the acquisition of ADP equipment or services in the administration of public assistance programs under Titles I, IV, X, XIV, XVI (AABD) and XIX of the Social Security Act. The changes revise the process under which State and local governments submit requests for Federal Financial Participation (FFP) in support of the acquisition of Automatic Data Processing Equipment or Services.

DATE: Comments must be received by November 20, 1987.

ADDRESS: Comments should be forwarded to: Barbara S. Wamsley, Director, Office of Assistance Policy and Systems Review, Hubert H. Humphrey Building, Room 530G, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ron Lentz (202) 245–0422.

SUPPLEMENTARY INFORMATION:

Regulatory History

HHS, then the Department of Health, Education and Welfare, published final regulations entitled "Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation", Subpart F of 45 CFR Part 95 in the **Federal Register** (43 FR 44851), on September 29, 1978. The September 29, 1978 regulations required State and local governments to obtain prior written approval by the Department for the acquisition of ADP equipment or ADP services when the acquisition costs exceeded $25,000. These regulations were modified by a rule change published on February 19, 1980 in the **Federal Register** (45 FR 10794), to raise the prior approval threshold to $100,000 for acquisitions costing that amount or more in Federal and State funds over a twelve-month period and to $200,000 in Federal and State funds for the total acquisition. The change also required States to submit a brief prior notice of acquisition for ADP equipment and services that cost $25,000 to $100,000 over a twelve-month period.

On November 19, 1984, HHS published a Notice of Proposed Rulemaking (NPRM) "Automatic Data Processing Equipment and Services; Conditions for Federal Financial Participation" with comment period in the **Federal Register** (49 FR 45617). That NPRM was applicable to the administration of Public Assistance programs under Titles I, IV–A, B, C, D, and E, X, XIV, XVI (AABD), and XIX of the Social Security Act. The NPRM proposed raising the prior approval threshold to $200,000 for acquisitions costing that amount or more in Federal (regular matching) and State funds over a twelve-month period and to $300,000 in Federal (regular matching) and State funding for the total acquisition, revising the prior approval requirements and eliminating the prior notice requirement. This NPRM also proposed modifying the current regulation to conform to legislative changes in the administration of some Social Security Act programs and to clarify the regulatory language.

On January 27, 1986, the Department published a separate but related Interim Final Rule with Comment Period in the **Federal Register** (51 FR 3337) which established the conditions and the procedures under which a State can obtain consideration for Federal Financial Participation (FFP) in emergency and certain other circumstances for the acquisition of automatic data processing (ADP) equipment or services in affected programs. The Interim Final Rule added

§ 95.623 to address the waiver of the prior approval requirement.

Consequently, the public was invited to submit comments pertaining to both the November 19, 1984 NPRM and the Interim Final Rule. Comments received on the 1984 NPRM were addressed in the rule that HHS finalized on December 18, 1986. HHS will address comments received on the Interim Final Rule when we finalize this NPRM.

The Final Regulation published on December 18, 1986 raised the prior approval threshold to $200,000 for acquisitions costing that amount or more in Federal (regular matching) and State funds over a twelve-month period and to $300,000 in Federal (regular matching) and State funding for the total acquisition, revised the prior approval requirements and eliminated the prior notice requirement. That final regulation also modified the then current regulation to conform to legislative changes in the administration of some Social Security Act programs and to clarify the regulatory language.

Substantive Background

In August of 1985 HHS established an Interdepartmental Task Force consisting of representatives of the Health Care Financing Administration (HCFA), the Office of Family Assistance (OFA), the Office of Child Support Enforcement (OCSE), the Office of Human Development Services (OHDS) and the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA) to review the existing HHS and USDA approval procedures for FFP for the acquisition of ADP equipment and services followed by these agencies.

The Task Force reviewed HHS and USDA approval procedures and identified areas that should be revised, deleted or added in order to streamline the process in such a way as to eliminate redundant Federal/State reviews, allow for a more comprehensive review and result in a more timely response to State governments. The Task Force's efforts have resulted in the new process presented in these proposed rules.

The proposed new process is intended to respond to two problem areas that delay the acquisition, development and implementation of State procured ADP equipment and services. The first problem area, for both Federal and State agencies administering the programs covered by this subpart, is one of inadequate State planning prior to the acquisition of ADP equipment or services. Under the present process for acquiring Federal matching funds, set out in 45 CFR 95.601 et seq., States have proceeded to request Federal funding of their ADP services and/or ADP acquisitions of equipment without adequate planning in order to begin the flow of Federal funding as soon as possible. This has resulted in inadequate funding requests which require substantial revisions and result in lost time before HHS will approve them, and in a number of instances has resulted in the funding of projects which have either failed or had substantial cost and time overruns.

The proposed new process will encourage State agencies to request Federal funding in support of planning activities that will contribute to a more effective, efficient and economical acquisition of ADP equipment and/or services. It will consist of two phases. The first phase is a project planning phase that would allow States to request funding, through the submission of a "Planning APD". Upon completion of the project planning phase of the new process the State would then be adequately prepared to submit an "Implementation APD" for the acquisition of ADP equipment or services. We anticipate that due to better project planning this new process will result in more timely processing of funding requests, since the funding requests will be based on more complete information, and result in fewer system development failures and cost and time overruns.

The other problem area that hinders State agencies in their ADP system development activities is the current Federal requirement at 45 CFR 95.611(b)(1) that requires State agencies to request and receive HHS prior written approval for any change to the Advance Planning Document (APD). This Federal requirement can cause major disruption in State ADP system development projects, since until HHS written approval is granted, the project is not allowed to proceed with the assurance of Federal funding. This delay is especially critical where States have existing contractual arrangements with private contractors. Project delays of this type can result in higher Federal and State expenditures, and delay system implementation.

As explained in greater detail below, the proposed new process will alleviate this problem by allowing States to proceed with project development activities when changes to the "Planning APD" or "Implementation APD" occur and permit approval of a "Planning APD" or "Implementation APD" change after a State initiates action to implement a change.

The existing regulations at 45 CFR Part 95 Subpart F require:

—HHS written prior approval for the APD, where a State will claim the regular matching rate, for projects which exceed the dollar thresholds contained in the existing § 95.611(a), and APD changes;

—HHS written prior approval in all cases for RFPs, contracts and contract amendments, where a State will claim the enhanced matching rate;

—HHS written prior approval, when required by HHS for RFPs, contracts and contract amendments, where a State will claim the regular matching rate. For example, the Department may require prior approval of RFPs, contracts and contract amendments if the project is complex or the State has a history of poor performance; and

—HHS written prior approval when required by HHS, for feasibility studies, system studies, system designs, system specifications and acceptance documents.

In addition for title IV–A (45 CFR 205.35–205.38) and title IV–D (45 CFR Part 307) the regulations require:

—HHS approval for initial and annually updated advance automatic data processing planning document in all cases, where a State will claim the enhanced matching rate, regardless of the project cost.

The proposed amendments to 45 CFR Part 95 Subpart F, 45 CFR 205.35, 205.37 and 45 CFR 307.1, 307.15, 307.20 and 307.30 as presented herein and supplemented by existing regulations at 45 CFR 205.36, 205.38, 45 CFR 307.10, 307.25, 307.35, 307.40 and 42 CFR 433 Subpart C, would require:

—HHS written prior approval in all cases for the APD, both planning and implementation, where a State will claim the enhanced matching rate, regardless of the total project cost;

—HHS written prior approval for the APD, both planning and implementation, where a State will claim the regular matching rate for projects whose total costs (planning, development and implementation) exceed the dollar thresholds specified in the proposed § 95.611(a);

—HHS written prior approval, when required by HHS, for RFPs and contract amendments for which a State will claim the enhanced matching rate and for contracts regardless of the matching rate to be claimed;

—HHS written approval, regardless of the matching rate to be claimed, for the Advance Planning Document Modifications (APDMs) as defined in § 95.605 of these proposed rules, and

contract amendments for regular matching rates if HHS required;

—Submission to HHS for approval regardless of the matching rate to be claimed, of Annually Updated APDs, as defined in § 95.605 of these proposed rules, contracts not requiring prior approval, contract amendments not requiring approval, RFPs for enhanced funding not requiring prior approval and all RFPs for which a State will claim the regular matching rate. RFPs, contracts and contract amendments, for regular funding, which are less than $50,000 and are an integral part of an approved APD need not be submitted.

We expect that these proposed changes in our regulations would:

—Enhance State planning for system development by encouraging State agencies to request federal funding in support of planning activities that will result in the development of better prepared "Implementation APDs";

—Streamline the APD review and approval process by reducing and simplifying the Federal prior approval requirements for States requesting FFP for ADP system development;

—Establish a more cooperative partnership with State agencies in which much of the current Federal oversight and monitoring requirements may be reduced as States assume a fuller responsibility for meeting all commitments contained in the "Planning APD" or "Implementation APD"; and,

—Encourage the transfer of State systems by requiring the State to include, as part of the APD "a statement of alternative considerations including a transfer of an existing system and an explanation of why such a transfer is not feasible if another alternative is proposed". Other suggestions, by State agencies, that might further encourage the transfer of State systems (e.g. more streamlined approval procedures) are encouraged.

HHS would like to explore the feasibility of establishing cost/output and performance guidelines for developing a system. If these guidelines could be set, a State proposing a performance level and cost within the guidelines might be subject to an expedited review and approval process. HHS would like States to comment on the feasibility of setting guidelines, how they might be set and to suggest changes in the APD review and approval process in this regard.

Although we are streamlining the process, we intend to continue to closely follow State development projects for the following reasons:

(a) HHS wants to know of projects which deviate from approved APDs in order to bring corrective action to bear on such projects. HHS would not be acting responsibly by waiting until a project failed when it could have acted to help prevent such a failure.

(b) Since HHS monitors State systems closely in the APD process, HHS is able to share good practices from State to State. HHS believes that it has had many notable successes (e.g., system transfers) in the past because of its monitoring activities.

(c) Systems development is not an isolated function. The system activities have a close relationship with State error reduction initiatives and program policy questions. Automated systems result in more accurate eligibility determinations and grant calculations.

(d) Studies by Federal agencies (e.g., the General Accounting Office) have pointed to the need for considerable oversight of systems activities to assure that scarce Federal resources are spent in the most cost-effective manner.

Specific Rule Changes

Specific changes to the rule to accomplish the objectives listed above are:

1. We propose to amend § 95.605 to define new documents introduced into the process and to revise definitions of existing terminology for greater clarity.

The definitions that would be added are:

—"Planning APD" as defined in the regulation at § 95.605. This definition is in keeping with one of the overall thrusts of this regulatory revision, which is to improve State APD equipment and/or services acquisition planning. The Planning APD as proposed to be implemented by this regulation will require a State to commit to performing certain planning activities as a condition for acquiring Federal funding for their planning activities. As an example, a Planning APD for the acquisition of a Management Information System will include the activity of developing a General Systems Design (GSD). The existence of a GSD will allow the State to submit a better defined Implementation APD and improve significantly the prospects of completing the project on schedule and within the original cost estimates.

The requirement for a statement in the "Planning APD" that ADP equipment or services eventually acquired meet a need or problem is a special "functional" requirement necessary to be eligible for enhanced HHS funding. Additional APD requirements at 45 CFR 205.37(a) (1) through (8), 45 CFR 307.15 and Part 11 of the State Medicaid Manual would apply to the extent that information is required in an APD to justify a proposed acquisition for which the enhanced matching rate will be claimed.

—"Implementation APD" means a written plan of action to acquire the proposed ADP services or equipment. The required format and content of the Implementation APD would be further defined in the regulation at § 95.605. This definition is established to distinguish the "Implementation APD" which presents the plan of action for acquiring ADP equipment and/or services from the "Planning APD" which addresses the activities to be undertaken in order to determine the equipment and/or services needed to be acquired.

The State must carefully consider all possible Implementation APD activity costs (e.g. system conversion, computer capacity planning, supplies, training, and miscellaneous ADP expenses) when developing the projected project costs. The Planning APD must include activities that would support this Implementation APD requirement.

The requirement for a statement in the "Implementation APD" that ADP equipment or services eventually acquired meet a need or problem is a special "functional" requirement necessary to be eligible for enhanced HHS funding. Additional APD requirements at 45 CFR 205.37(a) (1) through (8), 45 CFR 307.15 and Part 11 of the State Medicaid Manual would apply to the extent that information required in an APD to justify a proposed acquisition for which the enhanced matching rate will be claimed.

—"Advance Planning Document Update" for the planning or implementation of ADP equipment or services or "APDU" means a revision to the "Planning APD" or the "Implementation APD" that is not significant enough to cause any of the following:

• A projected change in total approved project costs for enhanced matched projects;

• A projected change of $50,000 or 10%, whichever is less, in total approved project costs for regular matched projects;

• A change of $50,000 or 10 percent, whichever is less, in the allocation of costs among project years;

• An extension of 10 percent or more in timeframes for projected milestones

or an extension of 90 days in timeframes for projected milestones, whichever is greater;

• A change in procurement activities; or

• A significant change in system concept.

This definition would establish thresholds for changes to previously approved "Planning APDs" or "Implementation APDs" for which HHS will no longer require prior approval. This new definition would modify the interpretation of 45 CFR 205.37(a)(4) as contained in the preamble of a final rule titled "General Administration of Public Assistance Programs; Federal Financial Participation in the Cost of a Statewide Mechanized Claims Processing and Information Retrieval System in the Aid to Families With Dependent Children Program," 45 CFR Part 205, which was published in the **Federal Register** (51 FR 13001), on April 17, 1986. That interpretation provided that "[if] cost projections outlined in the approved APD should change, a modified APD must be submitted for approval." (51 FR 13002). Thus any change in cost would require the submission of a new APD. Under these proposed regulations, this would no longer be the case.

A change in procurement activities includes:

—A change in procurement methodology that would limit competition beyond what was described in the APD (e.g., a change from a competitive to a non-competitive procurement);
—A reduction or increase in the procurement activities which were described in the APD; or,
—A change from an acquisition which supports the needs of more than the State Agency (e.g., a "blanket" contract), to an acquisition which will benefit solely the State Agency.

A significant change in system concept, includes:

—A proposal of a different system alternative; a different "mix" of system hardware and software; a change in project plan; a change in the cost/benefits projection; or, a change to the approved cost allocation methodology.
—"Advance Planning Document Modification for planning an acquisition or implementation" ("APDM") means a revision to the APD that is significant enough to cause any of the following:
—A projected change in total approved project costs for enhanced matching projects;
—A projected change of $50,000 or 10%, whichever is less, in total approved project costs for regular matched projects;
—A change of $50,000 or 10 percent, whichever is less, in the allocation of costs among project years;
—An extension of 10 percent or more in timeframes for projected milestones or an extension of 90 days in timeframes for projected milestones, whichever is greater;
—A change in procurement activity; or,
—A significant change in system concept.

The APDM must include an updated cost benefit analysis.

This definition would establish thresholds for changes to previously approved "Planning APDs" or "Implementation APDs" for which HHS would require approval as a condition for a State to receive FFP to fund the proposed change. HHS believes that project changes of this order of magnitude are sufficient to warrant HHS approval to ensure that projects continue to be cost effective and properly carried out and managed. The descriptions of procurement activity and system concept changes, described above, apply here also.

—"Annually Updated APD" is added. The "Annually Updated APD" would be defined in this proposed regulatory change to provide HHS with a report of previous year activities. HHS, under this proposed rule, would define when an "Annually Updated APD"must be submitted. The submission of the "Annually Updated APD" would be within 90 days after the anniversary of the approval of the "Planning APD" or "Implementation APD". An Annually Updated APD is not required when certification specifications are met. Significant changes to either APD that occur during the year, prior to the anniversary date, would be submitted individually as they occur as APDMs.
—"General Systems Design" would be added.

The definitions that would be revised are:

—"Advance Planning Document" ("APD"), "Initial advance automatic data processing planning document" or "Initial APD" would mean a "Planning APD" and an "Implementation APD" which have been further defined in revisions to § 95.605 as proposed by this rule. For projects for which States will claim enhanced funding under Titles IV–A, IV–D and XIX the definition of APD includes the additional, specific requirements contained in 45 CFR 205.37(a) (1) through (8), 45 CFR 307.15 and Part 11 the State Medicaid Manual.
—"Automatic Data Processing Services" or "ADP Services" would be expanded to include the following ADP services:

(a) Systems Training;
(b) Systems Development;
(c) Site Preparation;
(d) Data Entry; and
(e) Personal services related to automated systems development and operations that are specifically identified as part of a "Planning APD" or "Implementation APD". As an example, a personal service would be the service of an "expert individual" to provide advice on the use of ADP software or hardware in developing a State automated management information system.

This would expand on the existing definition of ADP services in order to clarify those ADP services that are subject to this regulation. This change would also establish when "personal services" constitute ADP services. In the past some States interpreted "personal services" covered by these regulations to include all management consultant contracts, regardless of their relationship to the State's acquisition of ADP equipment or services. This was not the intent of the original definition of ADP services. We would extend the definition of "ADP services" to indicate that only those "personal services" that are directly related to a specific "Planning APD" or "Implementation APD" are covered by these regulations.

2. Section 95.611(a) would be modified to require a State to submit requests (in the form of a "Planning APD" or an "Implementation APD") for prior approval signed by the appropriate State official, to the Assistant Secretary for Management and Budget (ASMB), Department of Health and Human Services. The State would have to send the ASMB the original and one copy of the request for each HHS component from which the State is requesting funding and one for the ASMB. The State would also have to send one copy of the request directly to each Regional program component and one copy to the HHS Regional Director's office.

We would expect to provide the States with appropriate guidance and the mailing addresses for regional office distribution. The purpose of these new distribution requirements would be to allow Central and Regional Offices to begin the document review at the same time and avoid delays in transmission of requests from the Central Office to the Regional Offices.

3. We propose to delete § 95.611(b)(2). The current regulation requires HHS prior approval of all RFPs, contracts, and contract amendments for enhanced funding. The NPRM would limit this requirement to RFPs for enhanced FFP when HHS specifically requires prior approval of the RFP when rendering a decision on the "Planning APD" or "Implementation APD". This lesser requirement is contained in the NPRM at § 95.611(b)(3).

The NPRM would require prior approval of contracts if HHS specifically required prior approval of the contract, when rendering a decision on the "Planning APD" or "Implementation APD". This lesser requirement is contained in the NPRM at § 95.611(b)(4).

The NPRM would require the State agency to submit to the Department for approval contract amendments that require HHS approval as a result of the Department's specifically stated requirement in the APDM approval letter. This lesser requirement is contained in the NPRM at § 95.611(c).

The NPRM would require the State agency to submit, for the Department's review all other contracts and contract amendments awarded by the State while executing activities detailed in the "Planning APD", "Implementation APD", APDMs or APDUs. This requirement is contained in the NPRM at § 95.611(d).

4. Section 95.611(b)(1) would be redesignated § 95.611(b)(2) and modified to change the document name to "Implementation APD" and delete "or any change of the Advance Planning Document". This section would also be modified to allow for approval of funding of ADP acquisitions in phases. Under this approach the project, including a detailed estimate of the total project cost would be approved initially in concept. However, specific funding would be approved incrementally and contingent upon the State's achievement of specified project milestones.

5. A new § 95.611(b)(1) would be added to require the States, if they choose to request any FFP for planning, to obtain written prior approval of the Department for a "Planning APD" prior to entering into contractual agreements or making any other commitment for acquiring ADP planning services prior to the acquisition of ADP equipment or services.

The purpose of this new requirement is to encourage and allow States to initiate planning activities prior to the procurement of large-scale ADP equipment or services. It is anticipated that through improved planning, on the part of State agencies, more effective, efficient and economical acquisitions of ADP equipment and/or services will result. It is also anticipated that due to better planning more timely processing of State requests will occur, as these requests will be based on more complete supporting information and there will be fewer system development failures and cost and time overruns. It should be noted that the proposed new planning process (the submission of a Planning APD) does not reflect changes in the FFP rates for planning. HCFA funds planning activities at the 50 percent FFP rate. However, development of a General Systems Design (GSD) is considered developmental activity and will be funded by HCFA at the enhanced funding rate.

A State would not receive FFP for planning costs unless a "Planning APD" is submitted and approved. However, State agencies could submit an "Implementation APD" directly without prior submission or approval of the "Planning APD" if they do not wish to receive FFP for project planning.

6. Section 95.611(b)(3) would be revised to require States to submit only those Requests for Proposals (RFPs), for which States will claim enhanced funding, if HHS so requests. Currently the Department may require prior approval for RFPs for which regular funding will be claimed and if, for example, the procurement is complex or the grantee has a history of performance problems.

7. Section 95.611(b)(4) would be deleted since the new process does not require prior approval of any of the documents that are mentioned in § 95.611(b)(4).

8. A new § 95.611(b)(4) would be added to require prior approval of a contract (for regular and enhanced funding), or a contract amendment for enhanced funding, when HHS specifically requires it,when it renders a decision on the "Planning APD" or "Implementation APD". Currently the Department may require prior approval of contracts when the State is requesting funding at the regular matching rate and, for example, if the procurement is complex or the grantee has a history of performance problems.

9. Section 95.611(c) would be deleted since this requirement has been accommodated by § 95.611(d) of the NPRM.

10. Since the NPRM would relieve States of the requirement to submit certain documents for prior approval, a new § 95.611(c) would be added to require States to submit APDMs, feasibility studies (when required as specified in the "Planning APD" or "Implementation APD" approval letter), contract amendments (when required as specified in the APDM approval letter) for HHS approval.

If the documents submitted for HHS approval do not meet applicable Federal requirements, no FFP would be allowed for the activities which are the subject of the documents. The Department would allow, the State, through the addition of this new section, to proceed with the process of acquiring ADP equipment or services, without acquiring HHS written prior approval of the documents listed in this section. However, the Department would retain the right to disallow FFP already provided if it disapproves the documents mentioned in this section *or if the required documents do not conform to the approved APD or APDM.*

If the State is not willing to accept this risk, the State could submit these documents for prior approval. In such cases, while specific prior claimed costs might be subject to disallowance (just as any State claim is always open to review and analysis) a State would be assured that the major element of its APDM or feasibility study, for example, had received federal authorization.

11. Section 95.611(d) would be redesignated § 95.611(e).

12. A new § 95.611(d) would be added to require State and local agencies to submit for HHS approval the following documents:

—Annually Updated APDs;
—Contracts and Contract amendments (not requiring approval or prior approval under §§ 95.611(b) and (c));
—RFPs for enhanced funding (not requiring prior approval under § 95.611(b)) not later than when released to the public; and
—RFPs for regular funding not later than when released to the public.

Contracts, contract amendments and RFPs for regular funding which are less than $50,000 and are an integral part of the approved APD need not be submitted.

States would be required to issue an addendum or revision to the RFP, contract or contract amendment should HHS determine during its review that the RFP, contract or contract amendment requires modification or clarification. The documents covered by this new section would be submitted to the Department and would be deemed approved if HHS took no action to disapprove within 45 days of receipt by the ASMB, unless HHS notified the State that HHS needed additional time to evaluate the documents.

If the documents submitted to HHS under this section for a specific project do not meet Federal requirements (i.e.,

the rules contained herein and previous HHS approvals related to the same project), no FFP would be allowed for activities which are the subject of the documents.

13. A new § 95.612 Disallowance of Federal Financial Participation (FFP) would be added which provides that if the Department finds that any equipment or services acquisition approved or modified under the provisions of § 95.611 fails to substantially comply with the criteria, requirements, and other undertakings prescribed in the approved advance planning document, payment of FFP maybe disallowed. The Department approves FFP on the basis that the equipment or services acquisitions proposed under APDs will add to the proper and efficient operation of Social Security Act programs to which this subpart applies. By the same token, if the Department finds that a State fails to substantially comply with the terms of an approved APD, to the detriment of the proper and efficient operation of these affected programs, the Department may disallow FFP. The reasons for which the Department may disallow FFP include, but will not be limited to, failure of the proposed system to meet program effectiveness and efficiency objectives contained in the approved APD, and schedule slippages which result in cost over runs which eliminate expected future cost savings or otherwise adversely affect cost-benefit projections. In the case of a suspension of approval of an APD for enhanced funding, see 45 CFR 205.37(c), 307.40(a) and 305.37(d).

14. A new § 95.621(f) is proposed to establish minimum standard requirements for the security of non-Federal ADP systems used by State and local governments to administer programs covered under 45 CFR Part 95, Subpart F. HHS believes that increased reliance on automated systems to administer such programs and greater sophistication and complexity of the systems have resulted in the need to establish standard regulatory requirements to ensure the security of ADP facilities, operations and privacy of information. The need for standard regulatory requirements was demonstrated by a recent audit of the security of non-Federal ADP systems conducted by the U.S. Department of Agriculture's Office of Inspector General (USDA/IG).

The USDA/IG reviewed the security of 13 non-Federal ADP systems used by State and local governments to support the administration of Federal assistance programs. Although that review focused on Food Stamp systems, the review also included AFDC and Medicaid systems. The USDA/IG Audit Report Number 50651-2-CH issued October 1985, disclosed a wide range of computer security weaknesses and related problems. A copy of that report can be obtained by contacting the USDA/IG for Audit, Room 247-E, Administration Building, NW., Washington, DC 20250. Some of the more serious weaknesses concerned inadequate controls over physical security which could allow unrestricted access to computer hardware and inadequate software controls which could permit improper manipulation of data or payments. The USDA/IG found weaknesses in the organizational controls of data processing in all 13 States audited. Further, the USDA/IG found that none of the 13 States audited had established formal procedures or requirements to ensure that such ADP systems met minimum ADP security standards.

The sum of HHS' existing information safeguarding regulations for State data files is presented in separate HHS program specific regulations (e.g., 45 CFR 205.50, 45 CFR 303.21 and 42 CFR 431.300ff). While these regulations generally require State agencies to provide for data file safeguards, the requirements contain no specific ADP system security standards. HHS regulations do not impose specific system security requirements. Individual HHS agencies (FSA, OCSE and HCFA) have issued documents regarding agency system security requirements.

Although these documents establish certain specific program system security requirements, HHS recognizes the need to establish a broad basis for HHS system security requirements and State system security programs.

To accomplish this, HHS is proposing the addition of a new § 95.621(f) to 45 CFR Part 95, Subpart F entitled, "ADP Systems Security Requirements and Review Processes." The proposed new section would specify that State agencies are directly responsible for the security of ADP equipment, operations and information used in the administration of HHS programs covered under 45 CFR Part 95, Subpart F. The proposed security section would establish the following three basic minimum requirements for the security of such ADP systems:

- States shall develop appropriate standards and requirements to properly safeguard ADP resources and information processing.

This requirement is intended to establish a baseline in each State for safeguarding ADP resources and information processing against which States and HHS can measure the effectiveness of a State's security program. HHS considers the establishing of such a baseline to be critical to effectively safeguarding ADP resources and information processing and to evaluating the effectiveness of a State's security program.

- States shall establish an ongoing ADP security program to implement plans, policies and/or procedures to meet the State's ADP security standards and requirements and to maintain an ongoing program for conducting periodic risk analyses to evaluate potential threats to the system and incorporate appropriate safeguards.

This consists of the operating procedures, including establishing organizational responsibility and timeframes, which a State will undertake to meet the standards and requirements to properly safeguard ADP resources and information processing. HHS believes that such procedures are critical to meeting the ADP security standards and requirements established by a State.

- States shall establish an ongoing program of physical security reviews of ADP installations and provide the results of these reviews to HHS upon completion.

HHS believes that an effective security program requires follow-up to ensure established security procedures and processes meet established security standards and requirements. HHS intends this specific requirement for States to establish an on-going program of physical security reviews of ADP installations to meet this purpose. Requiring States to provide the results of their reviews to HHS is intended to provide HHS with information it needs to ensure that States are properly safeguarding ADP resources and information processing.

In summary, HHS proposes to require States to put in place ADP security programs which include establishing: Standards and requirements for such a program; procedures and processes for meeting established standards and requirements; and security reviews for ensuring established standards and requirements are met.

HHS believes it is more appropriate to allow States to determine the specific minimum standards and requirements to govern the security of their own ADP systems based on the unique circumstances of each State, rather than mandate general standards for all States and local agencies. Therefore, the rule specifies that States shall use standards governing the security of Federal ADP systems—Federal Information

Processing Standards (FIPS), FIPS numbers 31 and 73 entitled "Guidelines for ADP Physical Security and Risk Management" and "Guidelines for Security of Computer Applications"; Departmental/agency publications; recognized industry standards; and/or ADP systems security reviews and risk analyses conducted by or for local agencies, as the basis for the development of State specific requirements. Although the rule gives States this flexibility, HHS expects States to establish their particular security programs using tried and tested Federal or recognized industry standards, and not to establish new, untested standards. This is intended to minimize program cost, and help assure program effectiveness by taking advantage of the experiences of others in government and in industry.

The rule proposes eight specific areas of ADP security in § 95.621(f)(2)(ii) which must, at a minimum, be included in the State's ADP security requirements and program. These eight areas comprise what the Department has determined to be the major components of a security program for automatic data processing activities. The Department has made this determination based on experience gained from dealing with the security of internal Department automatic data processing activities, dealing with other Federal agencies in this area, and dealings with private industry on matters pertaining to automatic data processing security.

A final section is proposed which would specify that the ADP security requirements of § 95.621(f) are applicable to all ADP systems used to administer HHS programs covered under 45 CFR Part 95, Subpart F. The requirements apply to departmental ADP projects and currently operating systems. HHS does not intend that States would submit any of the State ADP security standards, requirements or plans to HHS agencies for review or approval. It would be the responsibility of the State agency to ensure proper security of the ADP system and information processing. Only the completed State ADP security reviews would be required for submission to HHS agencies.

15. 45 CFR 205.35 would be revised to add the terms "Annually updated advance automatic data processing planning document" and "Initial advance automatic data processing planning document" and indicate that these terms would be defined at 45 CFR Part 95, Subpart F, § 95.605.

16. Since the content requirements of the "Annually updated advance automatic data processing planning document" would be totally defined at § 95.605, § 205.37(a) would be revised to eliminate these requirements from that section.

17. 45 CFR 307.1 would be revised to add the terms "Annually Updated APD" and "Initial APD" and indicate that these terms would be defined at 45 CFR Part 95, Subpart F, § 95.605.

18. 45 CFR 307.15(a) would be revised to refer to 45 CFR Part 95, Subpart F, §§ 95.611 (a), (b), (c), and (d) for the appropriate process for approval of APDs.

19. 45 CFR 307.15 (c) and (d) would be removed, since these functions are now accounted for under 45 CFR Part 95, Subpart F.

20. 45 CFR 307.20 (b) and (c) would be removed since the requirements of these sections are superseded by 45 CFR Part 95, Subpart F.

21. 45 CFR 307.20(d) would be redesignated 45 CFR 307.20(b).

22. 45 CFR 307.30(e) would be removed since the requirements of this section are superseded by 45 CFR Part 95, Subpart F.

Effective Date

Since this proposed rule would revise the existing process whereby the State requests FFP for the acquisition of ADP equipment or services, we recognize that States would need some time for a transition from the old process to the proposed new process. With this thought in mind we solicit comments on the length of time and the manner necessary to make that transition. For example, we are considering having the procedures and requirements set forth in the proposed rule be applicable to new system planning and implementation acquisitions submitted for approval after 60 days following publication of the final rule.

HHS will evaluate the effectiveness of these proposed regulations, when they are finalized, in minimizing burden and improving States' accountability and planning for ADP projects. HHS will publish a Notice of Proposed Rule Making (NPRM) based on these findings. Unless extended or revised these regulations will expire on December 31, 1992.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule because it will not have an annual impact on the economy of $100 million or more, result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions, or otherwise meet the thresholds of the Executive Order.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act (Pub. L. 96–354) which requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Secretary certifies that this rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

Sections 95.611(b), 95.611(c) and 95.611(d) of this proposed rule contain information collection requirement in the form of Planning and Implementation APDs, Advance Planning Document Updates, Advance Planning Document Modifications and Annually Updated Advance Planning Documents. As required by 44 U.S.C. 3504(h) (the Paperwork Reduction Act of 1980) we will submit a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements.

Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3028), Washington, DC 20503, ATTN: Desk Officer for HHS.

(Catalog of Federal Domestic Assistance Program Numbers 13.645 Child Welfare Services—State Grants; 13.658, Foster Care Maintenance; 13.659, Adoption Assistance; 13.679, Child Support Enforcement Program; 13.714, Medical Assistance Program; 13.808, Assistance Payments-Maintenance Assistance; 13.810, Assistance Payments—State and Local Training).

List of Subjects

45 CFR Part 95

Claims, Computer Technology, Grant programs—health, Grant programs, Social programs, Social security.

45 CFR Part 205

Computer technology, Grant programs—social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

45 CFR Part 307

Child support, Computer technology, Grant programs—social programs,

Reporting and recordkeeping requirements.

Dated: May 5, 1987.

Otis R. Bowen,

Secretary Department of Health and Human Services.

PART 95—[AMENDED]

For the reasons set out in the preamble, 45 CFR Parts 95, 205 and 307 are proposed to be amended as follows:

1. The authority citation for Subpart F of Part 95 continues to read as follows:

Authority: Secs. 402(a)(5), 452(a)(1), 1102 and 1902(a)(4) of the Social Security Act, 42 U.S.C. 602(a)(5), 652(a)(1), 1302 and 1396a(a)(4); 5 U.S.C. 301.

2. Section 95.605 is amended by revising the definition of "Advance planning document" and "Automatic data processing services" and adding the following six new definitions in alphabetical order as follows:

§ 95.605 Definitions.

* * * * *

"Advance Planning Document" ("APD"), "Initial advance automatic data processing planning document" or "Initial APD" means a "Planning APD" or an "Implementation APD".

"Advance Planning Document Modification for the planning or implementation of ADP equipment or services" ("APDM") means a revision to the "Planning APD" or the "Implementation APD" that is significant enough to cause any of the following: A projected change in total approved project costs for enhanced matched projects; a projected change of $50,000 or 10%, whichever is less, in total-approved project costs for regular matched projects; a change of $50,000 or 10 percent, whichever is less, in the allocation of costs among project years; an extension of 10 percent or more in timeframes for projected milestones, or an extension of 90 days in timeframes for projected milestones, whichever is greater; a change in procurement activities; or, a significant change in system concept. The APDM must include an updated cost benefit analysis.

"Advance Planning Document Update for the planning or implementation of ADP equipment or services" or "APDU" means a revision to the "Planning APD" or the "Implementation APD" that is not significant enough to cause any of the following: A projected change in total approved project costs for enhanced matched projects; a projected change of $50,000 or 10%, whichever is less, in total-approved project costs for regular matched projects; a change of $50,000 or 10 percent, whichever is less, in the allocation of costs among project years; an extension of 10 percent or more in timeframes for projected milestones, or an extension of 90 days in timeframes for projected milestones, whichever is greater; a change in procurement activities; or, a significant change in system concept.

"Annually Updated APD" or "Annually updated advance automatic data processing planning document" must include:

(a) *Prior related documents.* Reference to the previously approved original APD and all changes to the APD (i.e., APDUs and APDMs).

(b) *Project activity status.* (1) Report of all major tasks and milestones in the approved "Planning APD", "Implementation APD" or previous "Annually Updated APDs" Project Activity Schedule for the past year. The "Annually Updated APD" includes all major tasks and milestones completed in the past year and degree of completion for unfinished tasks.

(2) Report of all project deliverables completed in the past year and degree of completion for unfinished products.

(3) Report of past and/or anticipated problems or delays in meeting target dates in the approved "Planning APD", "Implementation APD" orprevious "Annually Updated APD" Project Activity Schedule for the remainder of the project. The "Annually Updated APD" includes an explanation of the need to extend any major project target dates.

(i) Extensions of less than 10 percent or 90 days, which ever is less, to the target dates for major tasks and milestones, constitute APDUs and must be submitted as part of the "Annually Updated APD".

(ii) Extensions of more than 10 percent or 90 days, whichever is less, to the target dates for major tasks and milestones, constitute APDMs and require the approval of HHS in accordance with § 95.611(c)(1).

(c) *Project expenditures.* (1) A detailed accounting of all expenditures for project development over the past year.

(2) An explanation of the differences between projected expenses in the approved "PlanningAPD", "Implementation APD"or previous "Annually Updated APD" budget and actual expenditures for the past year.

(3) Revisions to the "Planning APD", "Implementation APD" or previous "Annually Updated APD" that are not significant enough to cause any of the following: A projected change in total approved project costs for enhanced matched projects; a projected change of $50,000 or 10%, whichever is less, in total approved project costs for regular matched projects; a change of $50,000 or 10 percent, whichever is less, in the allocation of costs among project years constitute APDUs, which must be submitted as part of the "Annually Updated APD".

(4) Revisions to the "Planning APD", "Implementation APD" or previous "Annually Updated APDs" that are significant enough to cause a projected change in total approved project costs for enhanced matched projects; a projected change of $50,000 or 10%, whichever is less, in total approved project costs for regular matched projects; a change of $50,000 or 10 percent, whichever is less, in the allocation of costs among project years constitute APDMs, which require approval in accordance with § 95.611(c)(1).

(5) Changes to the allocation basis in the APD's approved cost allocation methodology.

* * * * *

"Automatic Data Processing Services" or "ADP Services" means:

(a) Services to operate ADP equipment, either by agency, or by State or local organizations other than the State agency; and/or

(b) Services provided by private sources or by employees of the State agency or by State and local organizations other than the State agency to perform such tasks as feasibility studies, system studies, system design efforts, development of system specifications, system analysis, programming, system conversion and system implementation and includes the following:

(1) Systems Training,

(2) Systems Development,

(3) Site Preparation,

(4) Data Entry, and

(5) Personal services related to automated systems development and operations that are specifically identified as part of a "Planning APD" or "Implementation APD". As an example, a personal service would be the service of an "expert individual" to provide advice on the use of ADP software or hardware in developing a State automated management information system.

* * * * *

"General Systems Design" means a combination of narrative and diagrams describing the generic architecture of a system as opposed to the detailed architecture of the system. For example, a general systems design would include a systems diagram; narrative identifying overall logic flow and systems functions;

a description of equipment (including capacity) requirements; a description of other resource requirements which will be necessary to operate the system; a description of system performance requirements; and a description of the environment in which the system will operate including how the system will function within that environment (e.g. how workers will interface with the system).

* * * * *

"Implementation APD" means a written plan of action to acquire the proposed ADP services or equipment. The "Implementation APD" must include: A statement of needs and objectives; a requirements analysis; a feasibility study; a statement of alternative considerations including a transfer of an existing system and an explanation of why such a transfer is not feasible if another alternative is identified; a conceptual system design; a cost benefits analysis; a personnel resource statement indicating availability of qualified and adequate staff, including a project director to accomplish the project objectives; a detailed description of the nature and scope of the objectives to be undertaken and the methods to be used to accomplish the project; the proposed activity schedule for the project; a proposed budget including a detailed estimate of total project costs as well as a description of how this estimate was developed (Including a consideration of all possible Implementation APD activity costs (e.g. system conversion, computer capacity planning, supplies, training, and miscellaneous ADP expenses) when developing the projected project costs.); a statement indicating the period of time the State expects to use the equipment or system; an estimate of prospective cost distribution to the various State and Federal funding sources; the proposed procedures for distributing costs; and a statement setting forth the security and interface requirements to be employed and the backup and fallback contingency procedures available. Additional "Implementation APD" content requirements, for acquisitions for which the State is requesting enhanced funding, are contained at 45 CFR 205.37(a) (1) through (8), 45 CFR 307.15 and Part 11 of the State Medicaid Manual.[1]

* * * * *

[1] Copies are available from: Health Care Financing Administration, Room 416, East High Rise, 6325 Security Blvd., Baltimore, Md. 21207, 301–594–9050.

"Planning APD" means a document that requests FFP to accomplish the planning necessary for a State to determine whether it needs to acquire ADP equipment or services and to acquire information necessary to develop a General Systems Design (GSD) or "Implementation APD". The "Planning APD" is further defined as including: A description of the programmatic and organizational problem(s) and/or needs for which it is to be determined through the planning project, whether and what ADP equipment and/or services need to be acquired; the specific objectives to be accomplished by the planning project; a commitment to conduct a requirements analysis, feasibility study, alternatives analysis and cost benefit analysis, and to develop a conceptual system design and general systems design as part of the planning project; a description of the planning project organization, the project plan schedule of activities and deliverables; the required resources (both State and contractor); the planning project costs and budget; an estimate of the total project costs, including both the cost of the planning project and the cost of any eventual ADP equipment and/or services acquisition (the total project cost is to be used only for the purpose of determining whether or not the thresholds of § 95.611(a) are met); a description and schedule of procurement activities to be undertaken in support of the planning project; an estimate of prospective cost distribution to the various State and Federal funding sources; the proposed procedure for distributing costs to the participating Federal and State programs; the cost of the GSD should be specifically identified; and a statement, when enhanced funding is requested for the planning project, that eventual ADP equipment and/or services acquired to meet the need or problem which is under study, will meet the functional requirements necessary to be eligible for enhanced HHS funding. Additional "Planning APD" content requirements, for acquisitions for which the State is requesting enhanced funding, are contained at 45 CFR 205.37(a) (1) through (8), 45 CFR 307.15 and Part 11 of the State Medicaid Manual.

* * * * *

3. Section 95.611 is amended by revising paragraphs (a), (b), and (c); redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as follows:

§ 95.611 Specific conditions for FFP.

(a) *General acquisition requirement.* A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section, when it plans to acquire ADP equipment or services with proposed FFP at the regular matching rate that it anticipates will have total acquisition costs of $200,000 or more in Federal and State funds over any twelve-month period, or $300,000 or more in Federal and State funds for the total acquisition. A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section, when it plans to acquire ADP equipment or services with proposed FFP at the enhanced matching rate authorized by 45 CFR 205.35, 45 CFR Part 307 or 42 CFR Part 433, Subpart C, regardless of the acquisition cost. A State shall also obtain prior written approval from the Department as specified in paragraph (b) of this section, when it plans to acquire noncompetitively from a nongovernmental source ADP equipment or services that cost more than $25,000 in Federal and State funds. The State shall submit requests (in the form of a "Planning APD" or "Implementation APD") for prior approval signed by the appropriate State official, to the Assistant Secretary for Management and Budget (ASMB), Department of Health and Human Services. The State shall send to the ASMB the original and one copy of the request for each HHS component, from which the State is requesting funding, and one for the ASMB. The State must also send one copy of the request directly to each Regional program component and one copy to the HHS Regional Director's office.

(b) *Specific prior approval requirements.* The State agency shall obtain prior written approval of the Department:

(1) For the "Planning APD" prior to entering into contractual agreements or making any other commitment for acquiring the necessary planning services;

(2) For the "Implementation APD" prior to entering into contractual agreements or making any other commitment for acquisition of ADP equipment or services. The Department may approve funding of the "Implementation APD" in phases. Under this approach the project, including an estimate of the total project cost would be approved initially in concept. Specific funding would be approved incrementally and contingent upon the State's achievement of specified project milestones.

(3) For the Request for Proposal (RFP) for enhanced funding if HHS specifically

required prior approval of the RFP when rendering a decision on the "Planning APD" or "Implementation APD".

(4) For the contract for regular and enhanced funding), or a contract amendment for enhanced funding, if HHS specifically required prior approval of the contract when rendering a decision on the "Planning APD" or "Implementation APD" and APDM.

The Department will not approve any planning or Implementation APD that does not contain all the data required as defined in § 95.605 including consideration of systems transfer.

(c) *Approval requirements.* The State agency must submit the following documents to the Department for approval of the following actions:

(1) APDMs, no later than 90 days after the occurrence of the project modification to be reported in the APDM; and,

(2) Contract amendments (for regular funding) that require approval as a result of the Department's specifically stated requirement in the APD Modification approval letter.

Failure to submit any of the above, to the satisfaction of the Department, may result in disapproval of the above documents.

(d) *Submission of other State documents.* States are required to submit contracts that did not require prior approval under § 95.611(b)(4), contract amendments that did not require approval under § 95.611(c), RFPs for enhanced funding that did not require prior approval, RFPs for regular funding and Annually Updated APDs for HHS information. Submission of these documents to HHS will be required as follows:

(1) State agencies are required to submit all RFPs for enhanced funding that did not require prior approval under § 95.611(b)(3) and RFPs for regular funding not later than when released to the public. RFPs for regular funding which are less than $50,000 and are an integral part of the approved APD need not be submitted.

(2) State agencies are required to submit all contracts that did not require prior approval under § 95.611(b)(4) and contract amendments that did not require approval under § 95.611(c), within 90 days of their effective date (i.e. signature of the State contracting officer). Contracts and contract amendments for regular funding which are less than $50,000 and are an integral part of the approved APD need not be submitted.

(3) Annually Updated APDs are to be submitted to the Department within 90 days after the annual anniversary of the "Planning APD' or "Implementation APD". Annually Updated APDs, for regular funded projects, need not be submitted to DHHS if there is a change of less than $25,000 or 10% of the annual budget, whichever is less, and a change of 10% or less in the total project costs, and delays in meeting project milestones of less than 90 days or 10% of milestone dates, whichever is less, and there has been no change in the system concept and procurement activities. Instead, for these projects the State would be required to submit an annual statement certifying that changes greater than the criteria listed above did not occur. The format for the certification in lieu of an Annually Updated APD (for regular funded projects) is as follows: In accordance with the provisions of § 95.611(d)(3), I certify that for the period _____ to _____, that the State/County project identified below did not experience a change exceeding $25,000 or 10% of the project's annual budget (whichever is less), and did not experience a change in total project costs greater than 10%. I further certify that all major tasks and milestones contained in the approved advance planning document are on schedule and have experienced delays of less than 90 days or 10% of the project milestone dates (whichever is less) and there has been no change in the system concept and procurement activities."

(4) Documents submitted under § 95.611(d) are deemed approved if HHS takes no action to disapprove within 45 days of receipt by the ASMB, unless HHS notifies the State that HHS needs additional time to evaluate the documents.

Failure to submit any of the above documents, to the satisfaction of the Department, may result in disapproval of the above documents.

* * * * *

4. Section 95.612 is added to read as follows:

§ 95.612 Disallowance of Federal Financial Participation (FFP).

If the Department finds that any management information system approved or modified under the provisions of § 95.611 fails to substantially comply with the criteria, requirements, and other undertakings prescribed in the approved advance planning document for a proper and efficient system, payment of FFP may be disallowed. In the case of a suspension of approval of an APD for enhanced funding, see 45 CFR 205.37(c), 307.40(a) and 307.35(d).

5. Section 95.621 is amended by adding a new paragraph (f) to read as follows:

§ 95.621 ADP reviews.

* * * * *

(f) *ADP system security requirements and review process*—(1) *ADP system security requirement.* State agencies are responsible for the security of all ADP projects under development, and operational systems involved in the administration of HHS programs. State agencies shall determine the appropriate ADP security requirements based on recognized industry standards or standards governing security of Federal ADP systems and information processing.

(2) *ADP security program.* State ADP Security requirements shall include the following components:

(i) Determination and implementation of appropriate security requirements as specified in paragraph (f)(1) of this section.

(ii) Establishment of a security plan and, as appropriate, policies and procedures to address the following areas of ADP security:

(A) Physical security of ADP resources;

(B) Equipment security to protect equipment from theft and unauthorized use;

(C) Software and data security;

(D) Telecommunications security;

(E) Personnel security; and

(F) Contingency plans to meet critical processing needs in the event of shortor long-term interruption of service; March 6, 1987 54.

(G) Emergency preparedness; and,

(H) Designation of an Agency ADP security Manager.

(iii) *Periodic risk analyses.* State agencies must establish and maintain a program for conducting periodic risk analyses to ensure that appropriate, cost effective safeguards are incorporated into new and existing systems. State agencies must perform risk analyses whenever significant system changes occur.

(3) *ADP system security reviews.* State agencies shall review the ADP system security of installations involved in the administration of HHS programs on a biannual basis. At a minimum, the reviews shall include an evaluation of physical and data security operating procedures, and personnel practices. State agencies shall provide copies of ADP system security review reports to HHS upon completion.

(4) Costs incurred for complying with provisions of § 95.621(f) (1) through (3) of this section are considered regular administrative costs which are funded at the regular match rate, unless they meet the requirements for enhanced funding.

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(5) The security requirements of this section apply to all ADP systems used by State and local governments to administer programs covered under 45 CFR Part 95, Subpart F.

6. Section 95.699 is added to read as follows:

§ 95.699 Regulation evaluation.

HHS will evaluate the effectiveness of these regulations in minimizing burden and improving States' accountability and planning for ADP projects, and publish a Notice of Proposed Rule Making (NPRM) based on these findings. Unless extended or revised these regulations will expire on December 31, 1992.

PART 205—[AMENDED]

7. Section 205.35 paragraph (c) is revised to read as follows:

§ 205.25 Mechanized claims processing and information retrieval systems; definitions.

* * * * *

(c) The following terms are defined at 45 CFR Part 95, Subpart F, § 95.605:

"Annually updated advance automatic data processing planning document"; "Design" or "System Design"; "Development"; "Initial advance automatic data processing planning document"; "Installation"; "Operation"; and, "Software".

8. Section 205.37 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 205.37 Responsibilities of the Social Security Administration (SSA).

(a) SSA shall not approve the initial and annually updated advance automatic data processing planning document unless the document, when implemented, will carry out the requirements of the law and the objectives of Title IV–A (AFDC) Automated Application Processing and Information Retrieval System Guide.[2] The initial advance automatic data processing planning document must include:

* * * * *

PART 307—[AMENDED]

9. Section 307.1 paragraph (c) is revised to read as follows:

§ 307.1 Definitions.

* * * * *

(c). The following terms are defined at 45 CFR Part 95, Subpart F, § 95.605:

"Advance Planning Document"; "Annually updated APD"; "Design" or "System Design"; "Development"; "Initial APD"; "Installation"; "Operation"; "Requirements Analysis"; and, "Software".

9. Section 307.15(a) is revised to read as follows:

§ 307.15 Approval of advance planning documents for computerized support enforcement systems eligible for 90 percent FFP.

(a) Approval of an APD. Procedures for APD approval are specified at 45 CFR 95.611 (a) through (d). The Office shall not approve or recommend approval of the initial and annually updated APD unless the document, when implemented, will carry out the requirements of § 307.10 of this part and the conditions for APD approval specified in this section.

* * * * *

§ 307.15 [Amended]

10. Section 307.15 (c) and (d) are removed.

§ 307.20 [Amended]

11. Section 307.20 (b) and (c) are removed.

§ 307.30 [Amended]

12. Section 307.30(e) is removed.

March 26, 1987.

[FR Doc. 87–21342 Filed 9–18–87; 8:45 am]
BILLING CODE 4150–04–M

[2] Copies are available from Administrator, Family Support Administration, HHS North Bldg., Room 5627, Washington, DC 20201, 202–245–2074.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178, and 179

[Docket HM–200, Advance Notice No. 87–6]

Hazardous Materials in Intrastate Commerce; Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Extension of time to file comments.

SUMMARY: On June 29, 1987, RSPA published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (52 FR 24195); Docket HM–200, Notice No. 87–6) which proposes to extend the application of the DOT's Hazardous Material Regulations (HMR; 49 CFR Parts 171 through 179) to all intrastate transportation of hazardous materials in commerce. In order to evaluate the proposals contained in the ANPRM, the National LP-Gas Association (NLPGA) has requested that the comment period of the ANPRM be extended until November 28, 1987. RSPA concurs with their request and this notice extends that comment period.

DATE: The date for filing the comments is extended from September 28, 1987 to November 28, 1987.

ADDRESS: Address comments to Dockets Unit (DHM–30), Office of Hazardous Materials Transportation, RSPA, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8426 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Office hours are 8:30 am to 5:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John A. Gale, Standards Division, Office of Hazardous Materials Transportation, 400 Seventh Street SW., Washington, DC 20590, phone: (202) 366–4488.

Issued in Washington, DC, on September 16, 1987, under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts

Director, Office of Hazardous Materials Transportation.

[FR Doc. 87–21725 Filed 9–18–87; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

Atlantic Sea Scallop Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to the fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the New England Fishery Management Council (Council) has submitted Amendment 2 to the Fishery Management Plan for Atlantic Sea Scallops for Secretarial review and is requesting comments from the public. copies of the amendment may be obtained from the address below.

DATE: Comments on the amendment should be submitted on or before November 13, 1987.

ADDRESS: All comments should be sent to Richard Roe, Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930. Clearly mark the outside of the envelope "Comments on Amendment 2 to the Sea Scallop FMP."

Copies of the amendment are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Peter Colosi, Atlantic Sea Scallop FMP Coordinator, 617–281–3600.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) requires that each regional fishery management council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Act also requires that the Secretary, upon receiving the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary considers any public comments in determining whether to approve the plan or amendment.

Amendment 2 specifies adjusted values for the 30-meat count management standard during the months of October through January that are more consistent with the actual, average meat weights, which decrease during the spawning season, and that serve as better threshold criteria for focusing mortality primarily on the entering and all older year classes. The purpose of this amendment is to restore the benefits to the industry that would otherwise have been temporarily withheld under the current management program, and thereby provide regulatory relief. The count management standard is redefined by Amendment 2 as follows: The number of scallops in a one-pint sample (on average) must be 30 or less during the months of February through September, and 33 or less during the months of October through January. Additionally, the Council intends that the duration and timing of the adjustment be based on the best information available. Accordingly, as new information is developed that might affect either the duration or the extent of the adjustment, the Council will recommend a regulatory change to be implemented by the Regional Director.

Regulations proposed by the council to implement this amendment are scheduled to be published within 15 days.

(16 U.S.C. 1801 et seq.)

Dated: September 16, 1987.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 87–21744 Filed 9–16–87; 4:50 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 52, No. 182
Monday, September 21, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Environmental Statement; East High Street Critical Area Treatment RC&D Measure, New York

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the East High Street Critical Area Treatment RC&D Measure, Saratoga County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423–5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The measure concerns a plan to provide for reducing critical erosion along a road ditch in the Town of Malta which results from storm water runoff and seepage from adjacent farmland. The integrity of the adjacent highway will be assured through the installation of project measures. The planned works of improvement include the grading and shaping of the road shoulder and ditch sideslopes, installing filter fabric and placing rock riprap in the channel, and seeding and mulching of all disturbed areas.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials)

Paul A. Dodd,

State Conservationist.

Date: September 11, 1987.

[FR Doc. 87–21707 Filed 9–18–87; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration,

Initiation of Antidumping and Countervailing Duty Administrative Reviews; France et al

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: September 21, 1987.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), (a)(5), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than September 30, 1988.

Antidumping duty proceedings and firms	Periods to be reviewed
Industrial Nitrocellulose from France.	
SNPE	08/01/86–07/31/87
High Capacity Pagers from Japan:	
Matsushita	08/01/86–07/31/87
NEC	08/01/86–07/31/87
Steel wire rope from Japan	
Chrysanthemum/Ataka	10/01/82–09/30/84
Chrysanthemum/C. Itoh	10/01/82–09/30/84
Chrysanthemum/Kent-Moore Japan	10/01/82–09/30/84
Chrysanthemum/Watanabe Trading	10/01/82–09/30/84
Daiyu Kogyo (Dia Steel Wire)	02/01/82–02/28/83
Dia Kogyo	02/01/82–02/28–83
Dia Steel Wire/J. Gerber	03/01/75–03/31/78
Hannan/Far East	10/01/82–09/30/84
Hannan Rope	02/01/82–09/30/84
Hannan Wire Rope/Higashishiba	11/01/74–03/31/78
	10/01/82–09/30/84
Higashishiba	02/01/82–09/30–84
Kawatetsu Wire/Taisei Int'l	08/01/75–02/28/83
Kokoku/Ataka	01/01/77–09/30/80
Kokoku/C. Itoh	01/01/77–09/30/80
Kokoku/Itotaka	01/01/77–09/30/80
Kokoku/Kanematsu-Gosho	04/01/78–09/30/80
	10/01/83–03/31/84
Kokoku/Kohshin	01/01/77–09/30/80
10/01/82–03/31/84	
Kokoku/Maruka Machinery	04/01/78–09/30/80
Kokoku/Nichimen	04/01/78–09/30/80
Kokoku/Nissho-Iwai	04/01/78–09/30/80
	10/01/82–03/31/84
Kokoku/Shibamoto	01/01/77–09/30/80
Kokoku/Shinkyo Shoji (Shinsho)	04/01/78–09/30/80
	10/01/82–03/31/84
Kokoku/U.N.A.	04/01/78–09/30/80
Sanyo Bussan	02/01/82–02/28/83
Sanyo Shokai (Sanyo Co., Ltd.)/J. Gerber	10/01/75–03/31/79
Shinko Wire Rope/Kanematsu-Gosho	01/01/83–09/30/84
Shinyo Wire Rope/Nissho-Iwai	01/01/75–03/31/78
	10/01/82–09/30/84
Shinyo Ropes/Higashishiba	03/01/83–09/30–84
Shinyo Ropes/Vanguard	10/01/83–03/31/84

Antidumping duty proceedings and firms	Periods to be reviewed
Shinyo Ropes/Yutoku	10/01/82–09/30/84
Teikoku/C. Itoh	04/01/78–01/31/82
Teikoku/Kanematsu-Gosho	12/01/76–01/31/82
Teikoku/Okura Trading	12/01/76–01/31/82
Teikoku/Sakai	12/01/76–01/31/82
Teikoku/Shinko Shoji (Shinko Wire Corp.)	12/01/76–01/31/82
Teikoku/Showa Boeki	04/01/78–01/31/82
Teikoku/Taisei Int'l	12/01/76–01/31/82
Tokyo Rope/Alaska Boeki	10/01/74–09/30–81
Tokyo Rope/Ataka	04/01/78–09/30–84
Tokyo Rope/Mitsubishi Corp.	04/01/78–02/28/83
Union Wire Rope/Sanyo Bussan	02/01/82–09/30/84
Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan:	
Isuzu	08/01/86–07/31/87
Koyo Seiko	08/01/86–07/31/87
Nachi Fujikoshi	08/01/86–07/31/87
Nippon Seiko	08/01/86–07/31/87
Nissan	08/01/86–07/31/87
Toyota	08/01/86–07/31/87
Candles from the People's Republic of China: P & C Enterprises	02/19/86–07/31/87
Photo albums and filler pages from the Republic of Korea:	
Ace Trading	07/16/85–11/30/86
Anjun	07/16/85–11/30/86
Bowon	07/16/85–11/30/86
Chungwoo	07/16/85–11/30/86
Costco Wholesale	07/16/85–11/30/86
Daechun Silup	07/16/85–11/30/86
Deho Industries	07/16/85–11/30/86
Eun Jeong Trading	07/16/85–11/30/86
G.I. Corporation	07/16/85–11/30/86
Gyeongjin	07/16/85–11/30/86
Hankook Trading	07/16/85–11/30/86
Hansang	07/16/85–11/30/86
Honey Stationery	07/16/85–11/30/86
J & C Int'l	07/16/85–11/30/86
Korea Trading Int'l	07/16/85–11/30/86
Lee Tung	07/16/85–11/30/86
Metro Industrial	07/16/85–11/30/86
Nam Doo Trading	07/16/85–11/30/86
Scandecor	07/16/85–11/30/86
Seoul General Stationery	07/16/85–11/30/86
Sinhan Trading	07/16/85–11/30/86
Sooter Studios	07/16/85–11/30/86
Sung Ill	07/16/85–11/30/86
Sungshim	07/16/85–11/30/86
Tradepower	07/16/85–11/30/86
Universal	07/16/85–11/30/86

Countervailing duty proceedings	Periods to be reviewed
Live Swine from Canada	04/01/86–03/31/87
Low-Fuming Brazing Copper Rod and Wire from New Zealand	08/01/86–07/31/87

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

Date: September 12, 1987.

[FR Doc. 87–21719 Filed 9–18–87;8:45am]

BILLING CODE 3510–DS–M

[A-412-602]

Antidumping Duty Order; Certain Forged Steel Crankshafts From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning certain forged steel crankshafts (CFSC) from the United Kingdom (U.K.), the U.S. Department of Commerce (the Department) and the U.S. International Trade Commission (ITC) determined that CFSC from the U.K. are being sold at less than fair value and that imports of CFSC from the U.K. are materially injuring a U.S. industry.

Therefore, based on these findings, all unliquidated entries of CFSC from the U.K. which were entered, or withdrawn from warehouse, for consumption on or after May 13, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouses, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen, Office of Investigations, or William Matthews, Office of Compliance, 377–0167 or 377–3601, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. These products are currently classified under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127 and 660.7147 of the *Tariff Schedules of the United States Annotated* (TSUSA). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject to this investigation.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on May 7, 1987, the Department made its preliminary determination that there was reason to believe or suspect that CFSC from the U.K. were being sold at less than fair value (52 FR 1800, May 13, 1987). On August 26, 1987, the Department made its final determination that these imports are being sold at less than fair value (52 FR 32951, September 1, 1987).

On September 9, 1987, in accordance with section 735(d) of the Act [19 U.S.C. 1673(d)], the ITC notified the Department that such imports are materially injuring a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs U.S. Customs officers to assess, upon further advice by the administering-authority pursuant to section 736(a)(1) of the Act [19 U.S.C. 1673e(a)(1)], antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of CFSC from the U.K. These antidumping duties will be assessed on all unliquidated entires fo CFSC from the U.K. entered, or withdrawn from warehouse, for consumption on or after May 13, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**.

On and after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 14.67 percent, equal to the estimated weighted-average antidumping duty margin.

This determination constitutes an antidumping duty order with respect to CFSC from the U.K., pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act [19 U.S.C. 1675(a)(1)], the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact William Matthews at (202) 377–3601.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

September 15, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-21718 Filed 9-18-87; 8:45 am]

BILLING CODE 3510-DS-M

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group Meeting

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety.

ACTION: Notice of meeting.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety will meet on September 21, 1987, in Washington, DC, to review and approve a draft of its final technical report.

DATE: The meeting will be on September 21, 1987, from 9:30 to 5:30 p.m.

DATES: The meeting will be in Room 503A, Hubert Humphrey Building, 200 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Buggs, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC. 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION: The Cigarette Safety Act of 1984 (Pub. L. 98-567, 98 Stat. 2925, October 30, 1984; as amended by sec. 110, Pub. L. 99-591) created the Technical Study Group on Cigarette and Little Cigar Fire Safety to prepare a final technical report concerning the technical and commercial feasibility of developing cigarettes and little cigars with minimum propensity to ignite upholstered furniture and mattresses.

The Technical Study group will meet on September 21, 1987, to review and approve a draft of the final technical report specified by the Cigarette Safety Act of 1984, as amended. The meeting will be open to observation by the public, but only members of the Technical Study Group may participate in the discussion. Persons desiring to obtain a copy of the draft report to be considered at the meeting of September 21, 1987, should write or call Ms. Terri Buggs, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC. 20207. The draft is available without charge, and may be changed by the technical report specified by the Cigarette safety Act, as amended.

Dated: September 15, 1987.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 87-21669 Filed 9-18-87; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Meeting; Community College of the Air Force (CCAF Board of Visitors)

The Community College of the Air Force Board of Visitors will hold a meeting on October 27, 1987 at 8:00 a.m., and on October 28, 1987 at 8:00 a.m., in the Conference Room, Room 203, Building 900, located at Randolph Air Force Base, San Antonio, Texas.

The meeting is open to the public.

Agenda items include: Briefings by Air Training Command (ATC) staff agencies on the ATC training mission to include a tour of selected CCAF system schools and agencies at Lackland Air Force Base, State of the College, CCAF Course Analysis and Degree Program Development, 1989-90 CCAF Catalog, CCAF's Interface with Professional Organizations, Documentation Fraud, Advancement and Assessment Procedures, and a briefing on Professional Military Education Curriculum Review.

For further information, contact Major Peter Macchia, Jr., (205) 293-7937, Community College of the Air Force, Maxwell Air Force Base, Alabama 36112-6655.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-21751 Filed 9-18-87; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the return of 10 kilograms of irradiated research reactor fuel of U.S. origin from the FRM reactor in the Federal Republic of Germany for reporcessing and storage at Department of Energy facilities. The return of highly enriched uranium (HEU) is consistent with U.S. nonproliferation policy in that it serves to reduce the amount of HEU abroad.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice. For the Department of Energy.

Date: September 8, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-21700 Filed 9-18-87; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the return of 20 kilograms of irradiated research reactor fuel of U.S. origin from the Orphee reactor in France for reprocessing and storage at Department of Energy Facilities. The return of highly enriched uranium (HEU) is consistent with U.S. nonproliferation policy in that it serves to reduce the amount of HEU abroad.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended,

it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: September 14, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-21701 Filed 9-18-87; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; European Atomic Energy Community and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involve approval of the following retransfer: RTD/EU (JA)-95, for the transfer of 4.6 grams of uranium enriched to 19.72 percent in the isotope uranium-235 from Japan to the United Kingdom for irradiation and examination of fission gasses in gadolinium-uranium oxide fuels.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: September 14, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary For International Affairs and Energy Emergencies.

[FR Doc. 87-21702 Filed 9-18-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86-674-001 et al.]

Electric Rate and Corporate Regulation Filings; Duke Power Co. et al.

September 16, 1987.

Take notice that the following filings have been made with the Commission:

1. Duke Power Co.

[Docket No. ER86-674-001]

Take notice that on August 24, 1987, Duke Power Company tendered for filing a refund report in compliance with Commission Order dated July 22, 1987.

Copies of this filing have been served upon all parties affected by this filing and North Carolina Utilities Commission, the Public Service Commission of South Carolina and Southeastern Power Administration.

Comment date: October 1, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Power

[Docket No. ER87-634-000]

Take notice that on September 11, 1987, Puget Sound Power (Puget) tendered for filing pursuant to 18 CFR 35.30(c) and revised Average System Cost (ASC) methodology which was approved by the Federal Energy Regulatory Commission effective October 1, 1984, the calculation of Average System Cost (ASC) for Puget for the exchange period effective February 1, 1987, through May 31, 1987.

Comment date: October 1, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Power & Light Co., An Assumed Business Name of PacifiCorp

[Docket No. ER87-633-000]

Take notice that on September 10, 1987, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing, in accordance with § 35.30 of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Oregon and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Oregon (Bonneville's Docket No. 5-A1-8701). The Revised Appendix 1 calculates the ASC for the state of Oregon applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective January 8, 1987, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Public Utility Commission of Oregon, and Bonneville's Direct Service Industrial Customers.

Comment date: October 1, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Co.

[Docket No. ER87-635-000]

Take notice that on September 11, 1987, Southern California Edison Company (Edison) tendered for filing changes of monthly carrying charges under the provisions of the Power Sales Agreement among Edison, Arizona Public Service Company, Nevada Power Company, Tucson Gas and Electric Company (now known as Tucson Electric Power Company), and Arizona Power Pooling Association, Inc., as embodied in Rate Schedule FERC No. 92, and a change of rate for transmission service under the provision of the Edison-APPA Transmission Service Agreement as embodied in Rate Schedule FERC No. 93.

Edison requests waiver of the Commission's prior notice requirement and an effective date for these rate changes of January 1, 1985, January 1, 1986, and January 1, 1987, respectively, for Rate Schedule FERC No. 92 and an effective date of January 1, 1987, for Rate Schedule FERC No. 93.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 1, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Co.

[Docket No. ER87-636-000]

Take notice that on September 11, 1987, Southern California Edison Company tendered for filing pursuant to § 35.15 of the Federal Energy Regulatory Commission's Regulations under the Federal Power Act, a Notice of Cancellation of Rate Schedule FERC No. 184, Edison-Salt River Project Interruptible Transmission Service Agreement Between Southern California Edison Company and Salt River Project Agricultural Improvement and Power District (Agreement).

Inasmuch as all obligations under this Agreement have terminated, Edison respectfully requests waiver of prior notice requirements and asks the Commission to assign an effective date of April 26, 1987, to the cancellation of Rate Schedule FERC No. 184.

Copies of this filing have been served upon each person designated on the official service list in this proceeding.

BEST COPY AVAILABLE

VOL 52 ISS 182 SE 21 1987 UMI

Comment date: October 1, 1987, in accordance with Standard Paragraph E at the end of this document.

6. Southern California Edison Co.

[Docket No. ER87-637-000]

Take notice that on September 11, 1987, Southern California Edison Company tendered for filing, pursuant to § 35.15 of the Federal Energy Regulatory Commission's Regulations under the Federal Power Act, a Notice of Cancellation of Rate Schedule FERC No. 186, Edison-Citizens Short-Term Service Agreement Between Southern California Edison Company and Citizens Utilities Company (Agreement).

Inasmuch as all obligations under this Agreement have terminated, Edison respectfully requests waiver of prior notice requirements and asks the Commission to assign an effective date of October 1, 1986, to the cancellation of Rate Schedule FERC No. 186.

Copies of this filing have been served upon each person designated on the official service list in this proceeding.

Comment date: October 1, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21733 Filed 9-18-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-512-000 et al.]

Natural Gas Certificate Filings; Southern Natural Gas Co. et al.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Co.

[Docket No. CP87-512-000]

September 15, 1987.

Take notice that on August 27, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-512-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing for a term to expire September 30, 1989, the transportation of natural gas for Arco Oil and Gas Company, Division of Atlantic Richfield Company (Arco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport on an interruptible basis up to 98,000 MMBtu of gas per day on behalf of Arco in accordance with the terms and conditions of a transportation agreement between Southern and Arco dated June 16, 1987. It is stated that the gas would be produced by Arco in Matagorda Island Blocks 703 and 710, offshore Texas. It is further stated that Arco would cause gas to be delivered to Southern for transportation at the existing subsea interconnection between the 16-inch lateral pipeline extending from Matagorda Island Block 703 to Matagorda Island Block 686 and the facilities of the Matagorda offshore Pipeline System (MOPS) located in Block 686.

Southern indicates that it would transport the gas through MOPS and make redeliveries to Arco at existing interconnections of the facilities of MOPS and Houston Pipeline Company, MOPS and Florida Gas Transmission Company, and MOPS and Northern Natural Gas Company all located in Refugio County, Texas. Southern has not indicated the ultimate users of this gas or the volume of gas to be delivered at the various redelivery points.

Southern proposes to charge Arco a transportation rate of 5.0 cents for each MMBtu of gas redeliverered by Southern. Southern also proposes to redeliver an equivalent quantity of gas less 0.7 percent of such amount which would be deemed to be used as company-use gas and system unaccounted-for gas losses, less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas and less Arco's pro-rata share of the fuel required to operate the compression facilities located in Matagorda Island Block 686.

Southern states that Arco and Southern have entered into a Settlement Agreement which resolves certain disputes regarding the proper interpretation, applicability, and enforceability of particular provisions of certain gas purchase contracts. It is further stated that the proposed transportation service is part of the consideration upon which Arco agreed to fully release Southern from liability for all post claims of Arco against Southern under such gas purchase contracts and to grant Southern considerable future relief under such contracts. Southern states that the terms and provisions of the Settlement Agreement are subject to an agreement of confidentiality between the parties. Southern states that the proposed transportation service would assist Arco in selling gas reserves on the spot market that might otherwise be shut-in.

Comment date: October 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Co. of America

[Docket Nos. CP86-136-010, CP86-438-002]

September 15, 1987.

Take notice that on September 8, 1987, Natural Gas Pipeline Company of America (petitioner), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP86-136-010, a petition to amend the orders issued May 1, 1986, as amended November 7, 1986, and April 30, 1987, and in Docket No. CP86-438-002, a petition to amend the order issued March 13, 1987, pursuant to section 7 of the Natural Gas Act, Petitioner seeks authority to extend the term until April 30, 1989, of its transportation services for USI Chemicals Co., Inc. (USI) authorized at Docket Nos. CP86-136-000, as amended and CP86-438-000 and add a receipt point in Custer County, Oklahoma to its service for USI authorized at Docket No. CP86-438-000, all as more fully set forth in the petitions which are on file with the Commission and open to public inspection.

Petitioner indicates that in Docket No. CP86-136-000, as amended, it is currently authorized to transport up to a maximum of 25.0 billion Btu per day for USI for use at its Morris, Illinois plant until the earlier of April 30, 1988, or the date on which petitioner accepts a blanket certificate under Order No. 436.

Petitioner indicates that in Docket No. CP86-136-000, as amended, it is currently authorized to transport up to a maximum of 25.0 billion Btu per day for USI for use at its Morris, Illinois plant until the earlier of April 30, 1988, or the date on which petitioner accepts a blanket certificate under Order No. 436.

Petitioner proposes pursuant to Article VIII of the gas transportation agreement dated June 28, 1985, as amended, between petitioner and USI

(then known as Northern Petrochemical Company) to extend the term of the agreement until April 30, 1989. No other changes are proposed.

Petitioner indicates that in Docket No. CP86–438–000, it is currently authorized to transport up to a maximum of 18.0 billion Btu per day for USI for use at its Clinton, Iowa plant until the earlier of March 13, 1988, or the date on which Petitioner accepts a blanket certificate under order No. 436.

Petitioner now proposes pursuant to Article VIII of the gas transportation agreement dated March 21, 1986, between petitioner and USI (then known as Norchem, Inc.) to extend the term of the agreement until April 30, 1989.

Petitioner and USI also propose to add a receipt point in Custer County, Oklahoma to the service authorized at Docket No. CP86–438–000. Petitioner requests one other change in the previously authorized service. Petitioner indicates that under the present authorization, it reduces the volumes delivered to USI by an amount equal to fuel consumed and lost and unaccounted for as provided by the original transportation agreement. Petitioner not indicates that pursuant to an amendment dated June 25, 1987, petitioner would at its option either reduce the volumes of gas delivered to compensate for fuel and lost and unaccounted for or institute a monetary charge for fuel and lost and unaccounted-for gas calculated by multiplying the volume of gas that would otherwise be deducted by petitioner's weighted average cost of gas for the previous month. Petitioner also indicates it would credit to its Account No. 191 any revenues received from monetary charges for fuel. No other changes are proposed.

Comment date: October 6, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

[Docket No. CP87–132–001]

September 15, 1987.

Take notice that on August 31, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 251, Houston, Texas 77252, filed in Docket No. CP87–132–001 an amendment to the pending application in Docket No. CP87–132–000 pursuant to section 7(c) of the Natural Gas Act to request authority: (1) To change the facilities for which construction authorization is sought; (2) to allow Ocean State Power (Ocean State) to use capacity that may be temporarily available in Tennessee's Niagara Spur line in order to defer construction of a portion of the proposed facilities; and (3) to change the depreciation rate used to compute rates to Ocean State, all as more fully set forth in the amendment which is on file and open to public inspection.

In its pending application in Docket No. CP87–132–000, filed December 18, 1986, Tennessee states that it requests authority (1) to transport on a firm basis 50,000 dt equivalent of natural gas per day for Ocean State from the U.S.-Canadian border near Niagara, New York, to the facilities of Ocean State in Burrillville, Rhode Island, and (2) to construct pipeline, compression, and appurtenant facilities necessary to transport and deliver this quantity. Tennessee states, in its amendment, that it requests authority to add an additional 1,000 horsepower unit to its compressor station 230B in Niagara County, New York, and to modify certain existing measurement facilities due to a reduction in the pressure at which Ocean State has arranged to deliver the gas to Tennessee. In addition, Tennessee states that it proposes to delete from its application its proposal to construct and operate a total of 7.6 miles of pipeline looping in Wyoming and Livingston Counties, New York, due to a change in facilities design.

Tennessee further requests authority to allow Ocean State to use natural gas transmission capacity that may be temporarily available in Tennessee's existing 20-inch Niagara Spur line from Niagara to Tennessee's "200" main line at East Aurora, New York, thus allowing Tennessee to defer for one year construction of the incremental Niagara Spur facilities for which construction authority is requested, until the capacity of the Niagara Spur must be recalled for Tennessee's system supply. It is stated that, during the period in which such capacity on the Niagara Spur would be available to Ocean State, Tennessee proposes to include in Ocean State's rate a pro rata allocation of the incremental cost of the Niagara Spur Expansion Project, proposed by Tennessee in Docket Nos. CP87–131–000 and CP87–131–001. Tennessee proposes to remove this pro rata allocation and substitute the cost of service associated with the incremental Niagara Spur facilities upon completion of the incremental Niagara Spur facilities proposed herein.

Finally, Tennessee proposes to reflect, in computing rates to Ocean State, the same five percent depreciation rate on Tennessee's facilities dedicated to Ocean State that the Commission has authorized Ocean State to reflect in its rates to its electric power purchasers.

Tennessee estimates that the changes proposed in its amendment would reduce the project cost from $25,010,000 to $44,904,000.

Comment date: October 6, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Texas Gas Transmission Corp.

[Docket No. CP87–205–001]

September 15, 1987.

Take notice that on September 4, 1987, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP87–205–001 an amendment to its pending application in Docket No. CP87–205–000 pursuant to section 7(c) of the Natural Gas Act to reflect a change in the proposed route and the related change in the proposed facilities for which authority to construct and operate is sought, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In Docket No. CP87–205–000, filed February 13, 1987, Texas Gas requests authority to initiate firm sales of natural gas to Citizens Gas & Coke Utility (Citizens Gas) of up to 122,125 MMBtu's per day and up to 30,000,000 MMBtu's on an annual basis, under Texas Gas' Rate Schedule G–3, commencing November 1, 1988. Texas Gas also requests authority, in Docket No. CP87–205–000, to construct and operate 61.83 miles of 16-inch pipeline loop, 60.28 miles of new 20-inch pipeline, and a meter station, and to reactivate a 12,000 horsepower compressor at a total estimated cost of $45,188,000.

In the instant proposal, Texas Gas states that it seeks to amend the application to make certain changes to the proposed facilities which are necessitated by a change in the proposed route of the pipeline. Texas Gas states that the facilities for which it now seeks authority to construct and operate are as follows:

(1) 59.01 miles of 16-inch pipeline loop paralleling Texas Gas' Hardinsburg-Bedford 16-inch pipeline at a cost of $18,136,000;

(2) 68.28 miles of 20-inch pipeline from the north end of Texas Gas' Hardinsburg-Bedford 16-inch pipeline in Lawrence County, Indiana, to the Citizens Gas system in Johnson County, Indiana, at a cost of $26,038,000;

(3) 3.42 miles of 20-inch pipeline loop paralleling Texas Gas' Hardinsburg-Bedford 16-inch pipeline in Breckinridge

County, Kentucky, at a cost of $1,362,000;

(4) Dual 12-inch orifice run sales measuring station and related facilities interconnecting with Citizens Gas in Johnson County, Indiana, at a cost of $445,000; and

(5) One 12,000 horsepower turbine/centrifugal compressor addition to Texas Gas' Hardinsburg compressor station in Breckinridge County, Kentucky, at a cost of $3,320,000.

Texas Gas estimates that the total cost of the amended facilities, including filing fees, would be $49,316,000. Texas Gas states that, even with the proposed increase in cost of the facilities, the annual incremental revenues generated by the proposed service to Citizens Gas would still exceed by approximately $1,500,000 the annual incremental costs of providing such service. It is stated that in all other respects the service as proposed in the original application remains unchanged.

Comment date: October 6, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Trunkline Gas Co.

[Docket No. CP87–515–000]

September 15, 1987.

Take notice that on August 28, 1987, Trunkline Gas Company (Trunkline), 3000 Bissonnet, Houston, Texas filed in Docket No. CP87–515–000 an application pursuant to section 7(b) of the Natural Gas Act requesting authorization to abandon by sale to Exxon Corporation (Exxon) Trunkline's pipeline segment which extends from a point at Exxon's Platform in South Timbalier Block 170, offshore Louisiana to a point in South Timbalier Block 165, offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Trunkline requests Commission authorization to abandon by sale to Exxon approximately 7.7 miles of 16-inch diameter pipeline, and appurtenances, right-of-way easements, permits and property interest related thereto. Trunkline states that Exxon has agreed to pay Trunkline net book value, to be calculated as of the time of transfer of title, less any incremental transportation charges associated with said lateral, if any paid by Exxon or any of its affiliates. The net book value of the subject facilities is $1,600,872, as of June 30, 1987, it is stated. Trunkline states that all gas supply to this pipeline belongs to Exxon and that it has no present or future use for this system. It is stated that the sale to Exxon will lower Trunkline's cost of service by reducing its rate base by relieving Trunkline of the necessity of maintaining these facilities.

Comment date: October 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Washington Natural Gas Co.

[Docket No. CP87–516–000]

September 15, 1987.

Take notice that on August 31, 1987, Washington Natural Gas Company, as Project Operator (Applicant), 815 Mercer Street, Seattle, Washington 98109, filed in Docket No. CP87–516–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to increase the firm daily withdrawal rate, and to make other modifications, in operating the Jackson Prairie Storage Project (Storage Project) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the Storage Project, located in Lewis County, Washington, adjacent to the mainline facilities of Northwest Pipeline Corporation (Northwest) provides the natural gas storage capacity for a winter season peaking service rendered by Northwest pursuant to Rate Schedule SGS–1 in its FERC Gas Tariff, First Revised Volume No. 1. Applicant further states that the Storage Project is owned in equal and individual interests by applicant, The Washington Water Power Company and Northwest. Applicant has been designated as Project Operator to operate the storage facility for the owners pursuant to the Gas Storage Project Agreement on file with the Commission as applicants Rate Schedule S–1, FERC Gas Tariff, Original Volume No. 1. 47 FPG 1527 (1972). According to applicant, during off-peak periods, Northwest tenders gas to the Project Operator at the connection between Northwest's mainline facilities and the Project facilities, and the gas is transported to the Storage Project and injected. Applicant states that during the withdrawal season, the Project Operator withdraws gas from the Storage Project pursuant to Northwest's directions and redelivers it to Northwest for further delivery by Northwest to customers who purchase the winter season peaking service under Northwest's Rate Schedule SGS–1.

Applicant further states that, under existing authorizations from the Commission, the Storage Project now operates at the levels of storage gas and service shown below:

Seasonal working gas:	12,800,000 Mcf
Cushion gas—Zone 2:	19,300,000 Mcf
Cushion gas—Zone 9:	2,000,000 Mcf
Zone 2 storage gas:	34,400,000 Mcf
Firm daily delivery rate:	325,000 Mcfd
Daily "Best Efforts" rate:	71,800 Mcfd

It is stated that, over the past several years, the conformance of the storage reservoir and the performance of the withdrawal wells have improved so that capability of the Storage Project exceeds presently certificated limits. Applicant states that it proposes to increase the firm daily withdrawal delivery rate from 325,000 Mdf/d to 375,000 Mcf/d without any additional facilities or additional cushion gas. Also applicant states that the firm daily withdrawal rate can now by maintained until 50% of the working gas inventory is withdrawn instead of 60% under present authorizations. It is stated that Northwest intends to file a related application providing for increased firm service under Rate Schedule SGS–1 because of the increase in the available firm daily withdrawal rate from 325,000 Mcf/d to 375,000 Mcf/d.

Applicant further states that the Storage Project owners propose to revise the Gas Storage Project Agreement to permit reinjections of gas during the normal winter season withdrawal period when operating conditions permit. Because Rate Schedule SGS–1 customers can inject gas for their own account, applicant states that it proposes to require that such gas be tendered for injection during the preceding injection season according to the following schedules: by June 30, no less than 35% of the maximum working gas quantity required during the subsequent withdrawal season; by August 31, not less that 80% of such requirement; and, by October 31, not less than 100% of such requirement.

Comment date: October 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

Trunkline Gas Co.

[Docket No. CP87–518–000]

September 16, 1987.

Take notice that August 31, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP87–518–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline proposes to transport up to 250,000 Mcf of natural gas per day on an interruptible basis on behalf of Exxon Corporation (Exxon). Trunkline states that it would receive natural gas from Exxon at the existing points of interconnection between the facilities of Trunkline and Exxon located in South Timbalier Block 165 offshore Louisiana, and in South Timbalier Block 171 offshore Louisiana. Trunkline further states that it would redeliver the gas on behalf of Exxon at various existing points of interconnection on Trunkline's system and at one point of interconnection near Katy in Harris County, Texas to be constructed by Exxon. Trunkline further explains that the gas to be transported is gas that would be released from prior commitment to Trunkline pursuant to an amendment dated July 17, 1987 to the sales contract between Trunkline and Exxon dated July 9, 1969.

Trunkline proposes to charge Exxon the maximum applicable rate pursuant to Rate Schedule PT. Trunkline states that the transportation agreement provides for rate flexibility so that Trunkline will offer Exxon a discount from the maximum applicable Rate Schedule PT rate pursuant to a take-or-pay settlement agreement between the parties. Trunkline requests that the Commission authorize the rate flexibility discount mechanism and waive the Section 154 tariff requirements necessary to effectuate such changes to the transportation rate.

Comment date: October 7, 1987, in accordance with Standard Paragraph F at the end of this notice.

7. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP87-508-000]

September 16, 1987.

Take notice that on August 25, 1987, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP87-508-000, a request pursuant to §§ 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.212) for authorization to construct and operate two sales taps, to enlarge an existing delivery point and to perform services associated therewith, under the certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, AER requests authorization to construct and operate a sales tap and related facilities to Francis School in Ada, Oklahoma and to Edwin Ross in Wellington, Kansas. AER estimates that the sales tap for the school would deliver approximately 2,000 Mcf per year and approximately 10 Mcf on a peak day. Deliveries at the customer's sales tap are estimated to be 104 Mcf per year and 2 Mcf on a peak day and such volumes would be used for residential purpose, it is explained. AER estimates the cost of installing the facilities ot be $1,350.

AER also proposes to enlarge an existing tap on its Line AM-46 in Section 32, Hempstead County, Arkansas, to serve future industrial customers in the Hope Industrial Park, which would use approximately 124,250 Mcf per year. AER states that the cost of enlarging the tap is estimated to be $14,692.

Comment date: October 7, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, futher notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21732 Filed 9-18-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF87-637-00 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.; Owl Energy Resources et al.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Owl Energy Resources

[Docket Nos. QF87-637-000, et al.]

September 15, 1987.

On September 1, 1987, Owl Energy Resources (Applicant), of 2495 Campus Drive, Suite 203B, Irvine, California 92715, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on Staten Island, New York. The facility will consist of a biomass-fired steam generator and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used in the Proctor & Gamble Manufacturing Company's Port Ivory plant for production of soap and orange juice. The primary energy source for the facility will be biomass in the form of wood chips. The maximum net electric power production capacity will be 24 MW. Installation of the facility will be begin in January 1988.

2. Owl Energy Resources

[Docket No. QF87-637-001]

September 15, 1987.

On September 1, 1987, Owl Energy Resources (Applicant), of 2495 Campus Drive, Suite 203B, Irvine, California 92715, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Staten Island, New York. The facility will consist of a biomass-fired steam generator and an extraction/condensing steam turbine generator. The primary energy source for the facility will be biomass in the form of wood chips. The maximum net electric power production capacity of the facility will be 24 MW. Installation of the facility will begin in January 1988.

3. Crescent Hotels

[Docket No. QF87-642-000]

September 16, 1987.

On September 4, 1987, Crescent Hotels (Applicant), of 2735 East Camelback Road, Phoenix, Arizona 85016, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Scottsdale, Arizona. The facility will consist of a reciprocating engine generator and heat recovery equipment. The thermal energy recovered from the facility will be used for domestic water heating and space cooling. The net electric power production capacity will be 320 kilowatts. The primary energy source will be natural gas. Construction of the facility began in September 1987.

4. Methane Resource Development, Inc.

[Docket No. QF87-639-000]

September 16, 1987.

On September 3, 1987, Methane Resource Development, Inc. (Applicant), of 79 West Monroe Street, Suite 700, Chicago, Illinois 60603 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Albion, New York. The facility will consist of a gas fired internal combustion generator. The electric power production capacity will be 3 megawatts. The primary energy source will be biomass in the form of landfill methane gas. There are no plans to use any natural gas, oil or coal.

5. Western Power Group Unit II, Inc.

[Docket No. QF87-640-000]

September 16, 1987.

On September 3, 1987, Western Power Group Unit II, Inc. (Applicant), of 620 Newport Center Drive, Suite 820, Newport Beach, California 92660 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Imperial Valley, California. The net electric power production capacity will be 15 megawatts. The primary energy source will be biomass in the form of agricultural waste products.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21734 Filed 9-18-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-61-000]

Filing; Wabash Valley Power Association, Inc. v. Public Service Co. of Indiana, Inc.

September 15, 1987.

Take notice that on August 25, 1987, Wabash Valley Power Association, Inc. (Wabash Valley) tendered for filing pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, and to Rule 206 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure, 18 CFR 385.206, a complaint against Public Service Company of Indiana, Inc. as follows: (i) A reduction in rates for wholesale firm power supplied to Wabash Valley by Public Service Company of Indiana, Inc. (PSI), (ii) modification of the rate design by which those rates are billed and (iii) for relief from anti-competitive (price-squeeze) behavior by PSI.

Wabash Valley asserts that due to recent changes in circumstances and the increasingly competitive environment for distribution service to retail customers, the current rates charged by PSI to Wabash Valley under Service Schedule C of the Power Coordination Agreement between PSI and Wabash Valley by authority of this Commission (Service Schedule C) are excessive, unjust, unlawfully anti-competitive, and therefore unreasonable.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21735 Filed 9-18-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Special Refund Procedures; Berry Holding Co. et al.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $19,773,783.59 (plus accrued interest) obtained from four crude oil producers: Berry Holding Company, *et al.*, Saxon Oil Company, Armstrong Petroleum Corporation, *et al.*, and Marathon Petroleum Company, Case Nos. KEF-0027, KEF-0028, KEF-0041 and KFX-0023. The OHA has determined that the funds will be distributed in accordance with the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for refund must be filed by December 31, 1987 and should be addressed to: Subpart V Crude Oil Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue

SW., Washington, DC 20585. All applications should be printed or typed.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director, or Irene Bleiweiss, Attorney, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2390 (Wieker) or, (202) 586–2400 (Bleiweiss).

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute monies obtained from four crude oil producers: Berry Holding Company, *et al.*, Saxon Oil Company, and Armstrong Petroleum Corporation, *et al.*, and Marathon Petroleum Company. Each company remitted monies to the DOE to settle possible pricing violations with respect to its sales of crude oil. Ecah firm's payment is being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has decided that distribution of the monies received from the four companies will be governed by the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986). That policy states that crude oil overcharge monies will be divided among the States, the Federal government, and eligible purchasers of refined products.

Refunds to the States will be distributed in proportion to each State's consumption of petroleum products.

Refunds to eligible purchasers will be based on the number of gallons of refined products which they purchased and the extent to which they can demonstrate injury. Applications for refund must be filed by December 31, 1987 and should be sent to the address set forth at the beginning of this notice. The information that a claimant should include in its application is explained in section III of the Decision and Order.

Date: September 14, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 14, 1987.

Decision and Order of the Department of Energy; Implementation of Special Refund Procedures

Names of Cases: Berry Holding Company, *et al.*
Dates of Filings: April 11, 1986, *et al.*
Case Numbers: KEF–0027, *et al.*

This Decision and Order establishes the procedures the Office of Hearings and Appeals (OHA) will use to distribute $19,773,783.59 plus interest received from the four companies identified in the Appendix. Each firm remitted monies to the Department of Energy (DOE) to settle alleged crude oil overcharges.[1] The requirements which an applicant must meet to be eligible for a refund appear in Section III of this Decision.

I. Background

A. Proposed Decision and Orders

In July 1986, the OHA issued Proposed Decisions and Orders announcing tentative refund procedures for the monies received from three of the four companies involved in this proceeding. The Proposed Decisions were published in the **Federal Register** and the OHA solicited comments to the proposed procedures. 51 FR 27083 (July 29, 1986) (Armstrong); 51 FR 27595 (August 1, 1986) (Berry and Saxon). A Proposed Decision in the fourth case, Marathon Petroleum Company, was issued in April 1986. A final decision establishing Marathon refund procedures and evaluating comments received was issued on June 11, 1986. *Marathon Petroleum Company*, 14 DOE ¶ 85,269 (1986). Under the Decisions issued in each of the four cases, DOE's restitutionary policies concerning crude oil overcharges would govern distribution of the funds. At that time, the DOE Policy was to hold all crude oil overcharge funds in escrow to afford Congress the opportunity to select a means of making indirect restitution to injured parties. *See* 50 FR 27400 (July 2, 1985) (the 1985 Policy). If Congress did not act, the 1985 Policy contemplated that the funds would be deposited in the U.S. Treasury.

B. The Modified Statement of Restitutionary Policy

Since the dates of the four Decisions, the DOE modified its crude oil policy. In its *Modified Statement of Restitutionary Policy* (hereinafter MSRP), issued in conjunction with a federal District Court's approval of a settlement agreement in *The DOE Stripper Well Litigation*, the DOE announced that crude oil overcharge monies will be divided among the states, the federal government, and eligible purchasers of refined products. 51 FR 27899 (August 4, 1986).

The MSRP provides that the DOE will use the procedures codified at 10 CFR Part 205, Subpart V to conduct a crude oil refund process. Up to 20 percent of the alleged crude oil violation amounts may be reserved initially for direct restitution. The remaining 80 percent of the funds will be disbursed to the state and federal governments for indirect restitution. After all valid claims are paid, any remaining funds from the 20 percent reserve will also be divided between the state and federal governments. The federal government's share of the funds will ultimately be deposited into the general fund of the Treasury of the United States.

On August 8, 1986, the OHA announced its intention to follow the MSRP. *Notice of Order Implementing Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges*, 51 FR 29689 (August 20, 1986).[2]

C. The Marathon Proposed Supplemental Order

In October 1986, we issued a Proposed Supplemental Order expressing the OHA's intention to distribute the Marathon crude oil monies in accordance with the MSRP.[3] The OHA proposed to reserve the full 20 percent of the Marathon crude oil monies for direct restitution to claimants. We also proposed to require refund applicants to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged overcharges. However, the Proposed Supplemental Order stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured and therefore, need only submit documentation of their purchase volumes of refined petroleum products during the control period. Finally, we proposed to calculate refunds on the basis of a per gallon refund amount derived by dividing the total amount of

[1] Berry Holding Company and its affiliates Berry & Ewing and Surprise Oil Company (hereinafter "Berry") entered into an agreed Final Judgement on December 15, 1983. Saxon Oil Company (hereinafter "Saxon") signed a Consent Order on December 31, 1984. Armstrong Petroleum Corporation and the City of Newport Beach (hereinafter "Armstrong") entered into a Consent Order on June 4, 1985. Marathon Petroleum Company (hereinafter "Marathon") entered into a Consent Order on January 30, 1986.

[2] The OHA considered comments to this action in a Notice published in the **Federal Register** on April 10, 1987. 52 FR 11737.

[3] Marathon remitted $21,082,535.86 to settle alleged violations concerning both crude oil and refined products. The OHA determined that $8,433,014 of the Marathon monies were attributable to alleged crude oil violations and this proceeding concerns only the crude oil portion of the Marathon Settlement. *See Marathon*, 14 DOE at 88,506. As of May 18, 1987, $656,276.29 in interest accrued on the crude oil portion.

crude oil overcharge funds received from Marathon by the total consumption of petroleum products in the United States during the period of price controls. The OHA solicited comments regarding the tentative distribution process set forth in the Marathon Proposed Supplemental Order. 51 FR 40497 (November 7, 1986).

II. Comments Received And Procedures Adopted

In response to the three Proposed Decisions issued before the MSRP, we received comments from a group of states. The states urge the OHA to follow the MSRP rather than the previous 1985 Policy. We agree that the MSRP governs the monies in these cases.

In response to the Marathon Proposed Supplemental Order, issued after the MSRP, we received comments from groups of states, foreign ocean carriers, foreign airlines, and Philip Kalodner, counsel for potential claimants. The comments all suggest methods which the OHA should use to distribute crude oil monies under the MSRP. The comments are concerned with issues in four general areas: (i) Whether 20 percent of the Subpart V crude oil funds is necessary to satisfy crude oil refund claims; (ii) the timing of refund payments; (iii) the calculation of refund amounts in crude oil proceedings; and (iv) standards for showing injury. The issues raised by the commenters were addressed in our recent decision in *A. Tarricone, Inc.*, 15 DOE § 85,495 (1987) (*Tarricone*), and in our April 1987 **Federal Register** notice, 52 FR 11737 (April 10, 1987). We will not reiterate that discussion here.

In a supplemental filing Philip Kalodner raises two issues that merit discussion.[4] First, Mr. Kalodner points out that the OHA's decision in *Tarricone* established a presumption that end-users of refined products were injured as a result of crude oil overcharges. Mr. Kalodner asks the OHA to clarify whether this presumption is rebuttable or irrebuttable. The end-user presumption is intended to be rebuttable. Thus, any party who contends that a particular end-user applicant suffered no compensable injury will have the opportunity to so prove. 10 CFR § 205.284(b); *See In Re: The Department of Energy Stripper Well Litigation*, M.D.L. 378. Opinion and Order of Judge Frank Theis (D. Kan. August 17, 1987) (discussing and approving the OHA's end-user presumption).

Any person who wishes to file comments in a particular crude oil refund case may do so within thirty days of the date the application was filed with the OHA or by October 15, 1987 whichever occurs later. To ensure that the comments are considered, a commenter should follow DOE procedures. *See generally* 10 CFR Part 205, Subpart A ("General Provisions"). These procedures include: (1) Referring to a particular case number in each submission; (2) for each case, filing two copies of the comments with the OHA along with proof of service on the application itself; and (3) submitting comments directed to the specific facts of each case. Any comments that purport to be filings in multiple cases will be dismissed. *See* 10 CFR 205.9(g). Due process requires that the refund applicant and other potentially aggrieved persons be served with a copy of the comments and be provided an opportunity to respond. Comments that are not served on the applicant and interested parties listed in the OHA public case file will be dismissed.

Mr. Kalodner also expresses concern that enough funds be reserved to satisfy claims for direct restitution. He suggests that disbursement of the residual portion of the 20 percent reserve to the state and federal governments be deferred until Subpart V claimants have received maximum refunds on the funds available. Mr. Kalodner's comments are premature. The OHA is not yet in a position to evaluate the whether the full twenty percent reserve will always be necessary to satisfy claims. Were we to accept Mr. Kalodner's approach at this time, it could unnecessarily delay future refunds to the state and federal governments for indirect restitution. Although at present, it appears that the full twenty percent is necessary to satisfy claims, the percentage needed may vary. In accordance with the Stripper Well Settlement Agreement and MSRP, the OHA reserves the right to adjust the reserve downward and/or upward as the circumstances may warrant, provided that the OHA will not reserve greater than twenty percent. *See Settlement Agreement*, IV(B)(6); *Modified Statement of Restitutionary Policy*, 51 FR 27899 at 27902 (August 4, 1986).

After considering the comments submitted, we conclude that the monies received from the four firms should be distributed in accordance with the MSRP, using the procedures described in *Tarricone*. In that case we decided to: (i) Reserve 20 percent of the funds for direct restitution; (ii) determine the logistics of payments to approved claimants at a later date; (iii) use a volumetric approach to calculate refunds; and (iv) requires claimants, other than certain end-users and certain utilities, to prove injury in order to be eligible for a refund.

The OHA will use the DOE refund regulations codified at 10 CFR Part 205, Subpart V to distribute the 20 percent reserve. Refunds to eligible petroleum purchasers will be based on a per gallon refund amount derived by dividing the crude oil overcharge monies received by the total U.S. consumption of petroleum products during the period of Federal petroleum price controls.[5] *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 at 88,867–68. The total principal volumetric refund amount for this proceeding is $0.0000098 per gallon. Interest accrued on the funds through August 31, 1987 will increase this amount to $0.000011 per gallon. Further information concerning application procedures is explained in Section III below.

III. Refunds to Eligible Purchasers

A. General Information for All Applicants

Persons who believe they were injured by crude oil overcharges may file claims for direct restitution by December 31, 1987. Claims should be in the form of an Application for Refund following the guidelines explained in section III(A)(1) End-users, utilities, retailers, and resellers who purchased refined petroleum products should also pay particular attention to the requirements applicable to those groups which are explained in Section III(B). Purchasers of crude oil should note the requirements discussed in section III(C).

1. *Applications for refund.* In order to receive a refund from the crude oil funds involved in this Decision, a claimant will be required to file an application for refund. Applicants may complete an application form available from the OHA or may instead submit the material outlined below in the form of a

[4] Mr. Kalodner's supplemental filing also raises two issues which we need not discuss at length. The possibility that monies from pre-existing crude oil Subpart V cases may be included in our calculations was addressed at 52 FR 11739 (April 10, 1987). Mr. Kalodner also argues that refunds to government-related applicants be delayed. The OHA will not unnecessarily delay a refund proceeding. 10 CFR 205.288. Even if Mr. Kalodner were to show that the delay is necessary, the present proceeding is not the proper forum for Mr. Kalodner's argument. If Mr. Kalodner wishes to object to a specific applicant's claim, he may file comments in the case which considers that claim. 10 CFR 205.284(b).

[5] It is estimated that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 at 88,868 n. 4. (1986).

letter. The letter should be clearly labelled "Application for Crude Oil Refund" and should include the following information:

(1) Identifying information including: (a) The applicant's name, (b) the applicant's address, (c) the applicant's social security number or employer identification number, (d) an indication whether the applicant is a corporation, (e) the name and telephone number of a person to contact for additional information, and (f) the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and use of petroleum products. If the applicant did business under more than one name or a different name during the period of price controls, the applicant should list those names;

(3) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons on which the applicant bases its claim;

(4) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(5) A statement that neither the applicant, its parents, subsidiaries, affiliates, successors nor assigns has waived any right it may have to receive a refund in these cases (e.g., that none of these firms has a claim to monies in the Stripper Well escrows);

(6) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e., that the applicant did not pass the overcharges through to own customers); and

(7) If the applicant is a regulated energy utility, a certification that it will notify the state utility commission of any refund received and that it will pass on the entirety of its refund to its retail customers.

The application should be typed or printed and mailed in duplicate to the following address: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

The DOE is required to maintain a Public Reference Room where submissions are made available for public inspection. To ensure that no confidential material is placed in the Public Reference Room, an applicant must delete material it considers confidential from two copies of its filing and forward these copies together with an undeleted version to the Office of Hearings and Appeals. If there is nothing confidential in an applicant's filing, the applicant should so indicate and provide one additional copy of its submission. Failure to claim confidential treatment will result in disclosure of the entire filing.

Applicants may be required to submit additional information to document their refund claims. The deadline for filing refund applications is December 31, 1987. Applicants who file a crude oil refund application by that date will be considered for all crude oil monies available for distribution at that time. Therefore, any applicant who has already filed a refund application in any Subpart V crude oil refund proceeding need not file another application. That application will be deemed to be filed in these proceedings. Depending upon the type of refund applications received, we may establish a minimum refund amount for eligible claimants. *See Tarricone*, 15 DOE at 88,898.

B. Injury Requirements For Purchasers of Refined Petroleum Products

1. *End-users and regulated utilities.* End-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to be injured. *Greater Richmond Transit Company*, 15 DOE ¶85,028 (1986). Regulated energy utilities will also be presumed injured, provided that each utility applicant must submit documentation that it will notify the appropriate regulatory authority of any refund received, and must provide an explanation of how the refund, when received, will be passed on to its customers. *Tarricone*, 15 DOE ¶88,897–98.

2. *Resellers and retailers.* Reseller and retailer purchasers of petroleum products must submit detailed evidence of injury, and may not rely upon the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type used in the OHA Report on Stripper Well Oil Overcharges, 6 Fed. Energy Guidelines ¶90,507. Furthermore, as noted in *Tarricone*, resellers and retailers who were spot purchasers will not be subject to the presumption of non-injury applicable in refined product refund cases.

C. Injury Requirements For Purchasers of Crude Oil

Purchasers of crude oil may also apply for refunds in this proceeding. Because the pricing regulations for crude oil specified ceiling prices based on the locality from which the crude oil was produced rather than on the basis of the cost banks of the seller, the DOE has traditionally applied a more individualized standard of injury for purchasers of crude oil than it has for purchasers of refined petroleum products. *See Tenneco Oil Company*, 9 DOE ¶82,538 at 85,206 (1982). In addition, it is especially difficult for a crude oil purchaser who participated in the Entitlements Program to demonstrate injury. *Id.* However, a crude oil purchaser who is eligible to participate in this proceeding may attempt to affirmatively demonstrate that it has been injured by an alleged crude oil violation and that it should therefore receive a refund. *See Tenneco*, 9 DOE at 85,206.

D. Parties With Claims to Stripper Well Escrow Funds

Pursuant to the Stripper Well Settlement Agreement, escrow funds were established for Refiners, Resellers, Retailers, Airlines, Agricultural Cooperatives, Utilities, Surface Transporters, and Rail & Water Transporters. Parties who submitted valid waivers to any of those M.D.L. 378 escrows have waived their rights to apply for crude oil refunds under Subpart V and therefore are ineligible to apply for a refund under the present proceeding.

IV. Refunds to the State and Federal Governments

In accordance with the MSRP, 80 percent of the funds in these proceedings ($15,819,026.87) plus any portion of the 20 percent reserve which is not distributed, will be disbursed to the State and Federal governments for indirect restitution. The States and the Federal Government will divide these funds equally.[6] We will direct the DOE's Office of the Controller to segregate the $15,819,026.87 available and to distribute half of that amount ($7,909,513.43) plus appropriate interest immediately to the Federal Government. The other half of the funds plus appropriate interest will be placed in an interest bearing escrow account and will be distributed to the States pursuant to a future directive of the OHA. Including interest accrued as

[6] In previous crude oil implementation orders we noted that the States would receive one-fourth of the 80 percent and the Federal Government would receive three-quarters of that amount in order to repay an advance the Federal Government gave the States. The States have fully repaid the advance and, therefore, the States and Federal Government will share the 80 percent in this proceeding equally.

of August 31, 1987, the State and Federal governments will both receive $9,070,862.04. The share or ratio of the funds in the State account which each State will receive is based on each State's consumption of petroleum products during the period of price control. These funds are subject to the same limitations and reporting requirements as all other crude oil monies received by the States under the Settlement.

It is therefore ordered that:

(1) Applications for Refund from the crude oil overcharge funds remitted by the firms identified in the Appendix to this Decision and Order may now be filed.

(2) All applications submitted pursuant to paragraph (1) above must be filed no later than December 31, 1987.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer as provided in Paragraphs (4), (6), and (7) below the total current net crude oil equity as of August 31, 1987, from each of the subaccounts (within the Deposit Fund Escrow Account maintained by the DOE at the Treasury of the United States) listed in the Appendix to this Decision and Order.

(4) The Director of Special Accounts and Payroll shall transfer $9,070,862.04 of the funds obtained pursuant to Paragraph (3) above into a subaccount denominated "Crude Tracking-States," Number 999DOE003W0. The Director of Special Accounts and Payroll shall disburse to each state, upon future directive from the OHA, its share of that amount, determined pursuant to the calculation of ratios for distribution to states and territories set forth in the Settlement Agreement, plus interest. Interest shall be calculated from September 1, 1987 to the date of disbursement on funds received from Berry, Saxon, and Armstrong. Interest shall be calculated from May 19, 1987 to the date of disbursement on crude oil funds received from Marathon. Disbursements to the states shall be accomplished pursuant to instructions previously received from each state in the Stripper Well Exemption Litigation refund proceeding.

(5) The funds distributed pursuant to Paragraph (4) above are subject to the same limitations and reporting requirements as are all other crude oil moneys received by the states under the Settlement Agreement.

(6) The Director of Special Accounts and Payroll shall transfer $9,070,862.04 plus appropriate interest on the funds obtained pursuant to Paragraph (3) above into a subaccount denominated "Crude Tracking-Federal," Number 999DOE002W0. Interest shall be calculated from September 1, 1987 to the date of disbursement on funds received from Berry, Saxon, and Armstrong. Interest shall be calculated from May 19, 1987 to the date of disbursement on crude oil funds received from Marathon.

(7) The Director of Special Accounts and Payroll shall transfer $4,535,431.01 appropriate interest on the funds obtained pursuant to Paragraph (3) above into a subaccount denominated "Crude Tracking-Claimants 1," Number 999DOE007Z. Interest shall be calculated from September 1, 1987 to the date of disbursement on funds received from Berry, Saxon, and Armstrong. Interest shall be calculated from May 19, 1987 to the date of disbursement on crude oil funds received from Marathon.

(8) This is a final Order of the Department of Energy.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: September 14, 1987.

APPENDIX

Name of firm(s)	OHA Case number	Consent order number	Crude oil settlement amount	Interest [1]
Berry Holding Co. Berry & Ewing; Surprise Oil Co.	KEF-0027	910C00059Z	$9,111,869.56	$2,058,636.78
Saxon Oil Co.	KEF-0028	670C00311Z	120,000.00	23,725.80
Armstrong Petroleum Corp. and City of Newport Beach, CA	KEF-0041	960C0023Z	2,108,900.03	164,729.63
Marathon Petroleum Co.	KFX-0023	RMNA00001Z	8,433,014.00	656,279.29

[1] All interest is reported through August 31, 1987 except for Marathon which is reported through May 18, 1987.

[FR Doc. 87-21703 Filed 9-18-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3264-4]

Open Meeting; Science Advisory Board, Environmental Health Committee Drinking Water Subcommittee

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Drinking Water Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on October 8-9, 1987 in the West Park Hotel, 1900 N. Ft. Myer Drive, Arlington, VA 22209 in the Dogwood Conference Room. The meeting will start at 8:30 a.m. on October 8th and adjourn no later than 4:00 p.m. on October 9th.

The purpose of the meeting is to review the Office of Drinking Water's Report to Congress on Comparative Health Effects and Criteria Document for Xylene.

The meeting will be open to the public. Any member of the public wishing to present information to the Subcommittee must contact, in writing, Dr. C. Richard Cothern, Executive Secretary to the Committee, or Ms. Renee' Butler, by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A101F), 401 M Street, SW., Washington, DC 20460 no later than C.O.B. October 5, 1987.

Date: September 14, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87-21727 Filed 9-18-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3264-5]

Open Meeting on October 8, 1987; Science Advisory Board Executive Committee

Under Pub. L. 92-463, notice is hereby given that the Executive Committee of the Science Advisory Board will hold a meeting on October 8, 1987 at the U.S. Environmental Protection Agency, in the Administrator's Conference Room, Room 1103 of the West Tower. The meeting will begin at 9:00 a.m. on

Thursday, October 8, and adjourn no later than 5:00 p.m. on that day.

Issues to be discussed by the Committee at this meeting include draft Science Advisory Board reports on review of: The Underground Storage Tank Release Simulation Model; The Land Disposal Research Program; and The Waste Minimization Research Program; The Idaho Radionuclide Study; and The National Radon Survey Design. In addition, the Committee will hear a status report on review of revisions to the Hazard Ranking System.

The meeting is open to the public. Any member of the public wishing to attend or submit written comments should notify Dr. Terry F. Yosie, Director, Science Advisory Board, at 202–382–4126 or Joanna Foellmer by October 2, 1987.

Date: September 14, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–21728 Filed 9–18–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3264–6]

Science Advisory Board Long-Range Ecological Research Needs Subcommittee; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that a one and one half day meeting of the Long-Range Ecological Research Needs Subcommittee of the Science Advisory Board will be held on October 6 and 7, 1987. The meeting will begin at 9:00 a.m. on October 6, and will be held in the Administrator's Conference Room 1103 at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. Adjourment on October 7 will take place no later than 1:00 p.m.

The main purpose of the meeting is to continue an assessment of EPA's ecological research needs, specifically those research needs that address ecological problems that may be encountered or may persist in the future. The Subcommittee will begin to build on a framework of ideas developed at the last meeting, and will identify endpoints that may be applied to help formulate a research plan. The Subcommittee will continue to receive information about ecological research conducted by other Agencies. Speakers from other Agencies and some private concerns will provide briefings based on their activities related to these issues. EPA research program representatives will also provide information to the Subcommittee.

The meeting will be open to the public. Anyone who wishes to attend, present information to the Subcommittee, or obtain information concerning the meeting, should contact Ms. Janis Kurtz, Executive Secretary, or Mrs. Lutithia Barbee, Staff Secretary, (A101–F), Environmental Effects, Transport and Fate Committee, Science Advisory Board, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. 20460, Telephone (202) 382–2552 or FTS 8–382–2552. Written comments will be accepted, and can be sent to Ms. Kurtz at the address above. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than October 1, 1987 in order to be assured of space on the agenda.

Date: September 11, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–21729 Filed 9–18–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0184

Title: Superfund Cost Share Eligibility Criteria for Permanent and Temporary Relocation

Abstract: This Information is required by FEMA from the States as documentation of matching relocation assistance contributions submitted by the States. The documentation is used by FEMA to substantiate the State's completed work and matching contribution under cost sharing, 44 CFR Part 222. Except as otherwise noted, there is a 90% Federal/10% State cost share relationship

Type of Respondents: State or local governments

Number of Respondents: 3

Burden Hours: 300

Frequency of Recordkeeping or Reporting: On occasion

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: September 8, 1987.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 87–21683 Filed 9–18–87; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–798–DR]

Amendment to Notice of Major-Disaster Declaration; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–798–DR), dated August 21, 1987, and related determinations.

DATED: September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliot, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

Notice: The notice of a major disaster for the State of Illinois, dated August 21, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 21, 1987:

The portion of Cook County located within Berwyn, Cicero, and Oak Park Townships, and the portion of Cook County north of the Cook-DuPage County line and north of Roosevelt Road; and all areas of DuPage County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83,516, Disaster Assistance)

Joseph A. Moreland,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 87–21685 Filed 9–18–87; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3092–EM

Emergency and Related Determinations; Wyoming

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Wyoming.

(FEMA–3092–EM), dated September 4, 1987, and related determinations.

DATED: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

Notice: Notice is hereby given that, in a letter of August 4, 1987, the President declared an emergency under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the potential threat of fire and explosion caused by the presence of methane gas in the Rawhide Village/Horizon Subdivision in Campbell County, Wyoming is of sufficient severity and magnitude to warrant an emergency declaration under PL 93–288. I therefore declare that such an emergency exists in the State of Wyoming.

You are hereby authorized to provide temporary housing assistance as required beginning on the date of my declaration of an emergency. You are further authorized to allocate, from funds available for these purposes, such amounts as you find necessary.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. David P. Grier IV of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area of the State of Wyoming to have been affected adversely by this declared emergency.

Rawhide Village/Horizon Subdivision located in Campbell County for assistance as authorized by the President's declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director.

[FR Doc. 87–21684 Filed 9–18–87; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; The Bank Line, Limited, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–009502–018.

Title: United States/South and East Africa Conference.

Parties:

The Bank Line, Limited
Lykes Bros. Steamship Co., Inc.
South African Marine Corp., Ltd.
United States Lines, Inc.

Synopsis: The proposed amendment would permit the parties to exercise independent action on the level of compensation paid to an ocean freight forwarder who is also a customs broker.

By Order of the Federal Maritime Commission.

Dated: September 16, 1987.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 87–21736 Filed 9–18–87; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; Schroeder Marine Terminal, Inc., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200036.

Title: Port of Houston Authority Terminal Agreement.

Parties:

Port of Houston Authority
Schroeder Marine Terminal Inc.

Synopsis: The proposed agreement provides for freight handling services at the Port Authority's wharves and transit sheds Number 41 and 42. Handling is to include allocating space within the facility to accommodate the cargo of ships assigned by the Port to berths within the facility.

Agreement No.: 224–003939–003.

Title: City of Long Beach Preferential Assignment Agreement.

Parties:

City of Long Beach
Metropolitan Stevedore Company

Synopsis: The proposed agreement provides for substantial modifications to the conveyor systems to increase the efficiency and effectiveness of bulk loading systems at the dry bulk Terminal. The agreement also extends the term of the Preferential Assignment for a period of twelve years ending on March 31, 2008.

Agreement No.: 224–200031.

Title: Virgin Islands Port Authority Terminal Agreement.

Parties:

Virgin Islands Port Authority
Tropical Shipping and Construction, Ltd.,

Synopsis: The proposed agreement provides terms and condition under which Tropical Shipping and Construction Co., Ltd. will utilize warehouse space and land for its terminal marine operations.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: September 16, 1987.

[FR Doc. 87–21738 Filed 9–18–87; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations; Navigato International, Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2491
Name: Navigato International, Inc.
Address: 625 Chase Ave., Elk Grove Village, IL 60007
Date Revoked: May 9, 1987
Reason: Failed to maintain a valid surety bond

License Number: 2354
Name: Professional Transportation Consultants, Inc.
Address: 23779 Madison St., Torrance, CA 90505

Date Revoked: June 25, 1987
Reason: Failed to maintain a valid surety bond

License Number: 1588
Name: James Moyles & Associates, Inc.
Address: 801 Chase Ave., Elk Grove Village, IL 60007
Date Revoked: July 4, 1987
Reason: Failed to maintain a valid surety bond

License Number: 1969
Name: Trans-World International, Inc.
Address: 7230 N.W. 77 St., Miami, FL 33166
Date Revoked: July 7, 1987
Reason: Failed to maintain a valid surety bond

License Number: 1907
Name: Navarrete Forwarding Co., Inc.
Address: 333 St. Charles Ave., #613, New Orleans, LA 70130
Date Revoked: July 8, 1987
Reason: Surrendered license voluntarily

License Number: 1360
Name: Gross & Flannelly Inc.
Address: 140 Eastern Ave., Chelsea, MA 02150
Date Revoked: July 21, 1987
Reason: Surrendered license voluntarily

License Number: 161
Name: J.T. Steeb & Co., Inc. (Oregon)
Address: 520 Yamhill Street, #422 Portland, OR 97204
Date Revoked: July 21, 1987
Reason: Surrendered license voluntarily

License Number: 753
Name: J.T. Steeb & Co., Inc. (Washington)
Address: 801 Second Ave., #318, Seattle, WA 91804
Date Revoked: July 21, 1987
Reason: Surrendered license voluntarily

License Number: 625
Name: Miguel C. Nazario dba Cuban American Forwarders
Address: 27 Park Place, No. 211, New York, NY 10007
Date Revoked: July 24, 1987
Reason: Failed to maintain a valid surety bond

License Number: 1376
Name: Sunvan International, Inc.
Address: 3028 Cascadia Ave., S., Seattle, WA 98144
Date Revoked: August 25, 1987
Reason: Voluntarily requested revocation

License Number: 500
Name: Yellow Freight System, Inc.
Address: P. O. Box 7563, 10990 Roe Ave., Overland Park, KS 66207
Date Revoked: August 29, 1987
Reason: Voluntarily requested revocation

Robert G. Drew,
Director, Bureau of Domestic Regulation.

[FR Doc. 87-21737 Filed 9-18-87; 8:45 am]
BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Production and Health Effects of Rubber Products Manufacturing; Request for Comments and Secondary Data on The National Institute for Occupational Safety and Health

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Request for comments and secondary data.

SUMMARY: NIOSH is requesting comments and secondary data from all interested parties concerning the potential exposure of workers to hazardous substances during the manufacture of rubber products and the possible adverse health effects among these workers. Interested parties may submit (1) existing data on exposure concentrations of substances used or by-products found in the manufacture of rubber products, (2) available reports of adverse health effects or injuries observed in rubber products manufacturing, (3) descriptions of production processes or control technology in use today, or (4) any other information regarding this industry and its workers. Exposures that occur during the production of elastomers are not included in this request. This information will be used by NIOSH to evaluate whether the exposure of workers to substances found during the manufacture of rubber products or any existing work practices pose health or safety risks, and to determine the need for preventive health measures or additional research.

DATE: Comments concerning this notice should be submitted by November 20, 1987.

ADDRESS: Any information, comments, suggestions, or recomendations should be submitted in writing to: Mr. Richard A. Lemen, Director, Division of Standards Development and Technology Transfer, NIOSH, CDC, 4676 Columbia Parkway, C-14, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Votaw, Division of Standards Development and Technology Transfer, NIOSH, CDC, 4676 Columbia Parkway, C-31, Cincinnati, Ohio 45226, (513) 533-8313, or FTS 684-8313.

SUPPLEMENTARY INFORMATION: Under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*), NIOSH is directed to gather information for improving occupational safety and health. NIOSH has received reports indicating that exposure generated during the manufacture of rubber products can cause adverse health effects in workers. Cancer, respiratory disease, dermatologic effects, coronary heart disease, injuries, and cumulative trauma disorders have been reported.

Rubber products manufacturing requires the use of a large number of chemicals which vary from one plant or process to another. Occupational exposures that occur during the mixing of rubber or elastomers with various chemicals and their subsequent fabrication into rubber products are of specific concern. However, exposures that occur during the production of elastomers and chemicals used in this industry are not included in this request for comments and secondary data.

Chemicals used in rubber products manufacturing and the by-products such as dusts, curing fumes, and solvents can be inhaled or dermally absorbed. Studies of workers from this industry have found excess deaths due to cancers of the stomach, large intestine, lymphatic and hematopoietic system, lungs, and bladder. In addition to the excess cancer deaths, adverse health effects reported for rubber workers include increased respiratory morbidity, dermatologic effects, coronary heart disease, injuries, and cumulative trauma disorders.

The International Agency for Research on Cancer lists 401 chemicals used in the rubber industry in its Monograph on the Evaluation of the Carcinogenic Risk of Chemicals to Humans, The Rubber Industry, Vol. 28. Occupational Safety and Health Administration Permissible Exposure Limits, NIOSH Recommended Exposure Limits, or American Conference of Governmental Industrial Hygienists Threshold Limit Values exist for 17 percent of these substances.

NIOSH is interesterd in obtaining existing and available materials including reports and research findings to evaluate whether recommendations for health protection or further research on the rubber products manufacturing industry are needed. Examples of requested information include:

1. Industrial hygiene data and airborne exposure concentrations of

substances in the production, formulation, transfer, or storage of rubber products.

2. Work practices, personal protective equipment, or engineering controls used in the workplace during the production, formulation, transfer, or storage of rubber products.

3. Adverse health effects or injuries observed in workers in rubber products manufacturing.

4. Epidemiology data on rubber products manufacturing workers published since 1984.

5. Descriptions of production processes in use today.

All information received in response to this notice, except that designated as trade secret and protected by section 15 of the Occupational Safety and Health Act, or personal identifying information contained in medical case reports or data, will be available for public examination and copying at the above address.

Larry W. Sparks,

Executive Officer, National Institute for Occupational Safety and Health.

[FR Doc. 87-21713 Filed 9-18-87; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 87F-0281]

Ciba-Geigy Corp; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate as an antioxidant and/or stabilizer in rubber articles for repeated use in contact with food and in lubricants with incidental food contact.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 7B4028) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that the food additive regulations be amended to provide for the safe use of octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate as an antioxidant and/or stabilizer in rubber articles for repeated use in contact with food by amendment of § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) and as an antioxidant and/or stabilizer in lubricants with incidental food contact by amendment of § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570).

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 14, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-21673 Filed 9-18-87; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program; Chemicals (8) Nominated for Toxicological Studies; Request for Comments

SUMMARY: On July 29, 1987, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review eight chemicals nominated for toxicology studies and to recommend the types of studies to be performed. With this notice, the NTP solicits public comments on the eight chemicals listed herein.

FOR FURTHER INFORMATION CONTACT: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-3511.

SUPPLEMENTARY INFORMATION: As part of the chemical selection process of the National Toxicology program, nominated chemicals which have been reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the **Federal Register**. This is done to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response to this request are reviewed and summarized by NTP technical staff, are forwarded to the NTP Board of Scientific Counselors for use in their evaluation of the nominated chemicals, and then to the NTP Executive Committee for decision-making. The NTP chemical selection process is summarized in the **Federal Register**, April 14, 1981 (46 FR 21828), and also in the NTP FY 1986 *Annual Plan*, pages 201-203.

On July 29, 1987, the CEC met to evaluate eight chemicals nominated to the NTP for toxicological studies. The following table lists the chemicals, and their Chemical Abstract Service (CAS) registry numbers.

Chemical	CAS No.
1. 1,4-Butanediol	110-63-4
2. Diethylene glycol	111-46-6
3. Dipropylene glycol	25265-71-8
4. Conjugated estrogens	.....
5. Oxymetholone	434-07-1
6. Treosulfan	299-75-2
7. Carbon disulfide	75-15-0
8. Methylene diphenyl diisocyanate	101-68-8

Dipropylene glycol was nominated for subchronic studies; the remaining seven chemicals were nominated for carcinogenicity testing.

Of the eight chemicals, three have been previously selected for study by the NTP. Diethylene glycol was nonmutagenic in the *Salmonella* microsomal assay. Short term *in vivo* reproductive toxicity and continuous breeding studies were also conducted on this chemical.

Carbon disulfide was nonmutagenic in the *Salmonella* microsomal assay in studies conducted by two independent laboratories. A 90-day inhalation study and conventional teratology studies have been performed on carbon disulfide. A National Cancer Institute/NTP gavage carcinogenicity study in mice and rats was conducted in the early 1970s. However, the data were judged to be inadequate due to the poor survival of the animals, and no technical report was written. Carbon disulfide is currently on test for chromosomal abberrations and sister chromatid exchanges in Chinese hamster ovary cells.

Methylene diphenyl diisocyanate was nonmutagenic in the *Salmonella* microsomal assay. A gavage subchronic study was completed for this chemical but a chronic study was not initiated due to technical difficulties.

Interested parties are requested to submit pertinent information. The

following types of data are of particular relevance:

(1) Modes of production, present production levels, and occupational exposure potential.

(2) Uses and resulting exposure levels, where known.

(3) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimented protocols and results, in the case of completed studies.

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing by thirty days after date of publication. Any submissions received after the above date will be accepted and utilized where possible.

Dated: September 16, 1987.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 87-21739 Filed 9-18-87; 8:45 am]

BILLING CODE 4140-01-M

Notification of the Disposal of Wet Tissues From Toxicology and Carcinogenesis Studies Stored in the National Toxicology Program Archives

The National Toxicology Program (NTP) Archives currently maintains records and pathology materials for over 300 National Cancer Institute and NTP toxicology and carcinogenesis studies, some of which were started and completed more than 10 years ago. The storage space for the wet tissues (animal organs and carcasses in formalin) is no longer adequate and additional storage space would be required. Since these studies were completed years ago, and for most studies histological slides and paraffin blocks are available, we plan to discard the wet tissues from selected studies where it is anticipated that there is either little current interest or the tissues are considered no longer viable. The histological slides and paraffin blocks will remain available for these studies.

Attached is the third list of studies for which the wet tissues are to be discarded. (The first list was published in the **Federal Register** on September 19, 1986, 51 FR 33303–33304 and the second list was published on February 9, 1987, 52 FR 4060–4062.) The chemicals are from studies conducted at Southern Research Institute where the final sacrifices occurred between 1971 and 1976. Anyone who has questions about the studies listed should contact Dr. Gary A. Boorman, Project Officer for the NTP Archives, by telephone at (919) 541–3440, FTS 629–3440, or in writing at NIEHS, MD C2–01, P.O. Box 12233, Research Triangle Park, NC 27709.

If no objections are received by 30 days after publication of this notice, the formalin fixed wet tissues from these studies will be discarded.

Attachment.

Dated: September 14, 1987.

David P. Rall,

Director, National Toxicology Program.

LIST III—PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY & CARCINOGENESIS STUDIES

Exp. No. Chemical	Single dose study		14-Day study		90-day study		2-Year study	
	Start	End	Start	End	Start	End	Start	End
61 Records on list Chem:								
C03247 Acetohexamide	09/00/72A		11/00/72A		12/00/72A	06/00/73A	09/00/73A	10/00/75A
TR-050 P It is concluded that under the conditions of this bioassay, Acetohexamide was not carcinogenic for either Fischer 344 rats or B6C3F1 mice								
C00384A 2-Acetylamnofluorene							03/15/69A	03/15/71A
Ref. No. 21 Positive controls and studies with inadequate data. Positive control-no Technical Report issued.								
C00384B 2-Acetylaminofluorene							01/15/71A	03/15/75A
Ref. No. 21 Positive controls and studies with inadequate data Positive control-no Technical Report issued.								
C00384C 2-Acetylaminofluorene	09/00/70A		11/00/70A		12/00/70A	08/00/71A	09/00/71A	12/00/73A
Ref. No. 21 Positive controls and studies with inadequate data Positive control-no Technical Report issued								
C00384D 2-Acetylaminofluorene	02/00/71A		04/00/71A		05/00/71A	10/00/71A	02/00/72A	04/00/73A
Ref. No. 21 Positive controls and studies with inadequate data. Positive control-no Technical Report issued.								
C00384E 2-Acetylaminofluorene	05/00/71A		07/00/71A		08/00/71A	01/00/72A	05/00/72A	06/00/74A
Ref. No. 21 Positive controls and studies with inadequate data. Positive control-no Technical Report issued.								
C00384F 2-Acetylaminofluorene	03/00/72A		05/00/72A		06/00/72A	11/00/72A	02/00/73A	03/00/75A
Ref. No. 21 Positive controls and studies with inadequate data. Positive control-no Technical Report issued.								
C00384G 2-Acetylaminofluorene							03/15/73A	02/15/75A
Ref. No. 21 Positive controls and studies with inadequate data. Positive control-no Technical Report issued.								
C00384H 2-Acetylaminofluorene	11/00/70A		01/00/71A		02/00/71A	08/00/71A	03/00/73A	03/00/75A
Ref. No. 21 Positive controls and studies with inadequate data. Positive control-no Technical Report issued.								
C04739 1-Acetyl-2-Picolinoyl HYD	06/00/68A		08/00/68A		09/00/68A	03/00/69A	06/00/69A	07/00/71A
Ref. No. 21 Positive controls and studies with inadequate data Data inconclusive-no Technical Report issued								
C03190 N-(4-(9-Acridinylamino)-3	10/00/72A		12/00/72A		01/00/73A	06/00/73A	10/00/73A	02/00/76A
Ref. No. 21 Positive controls and studies with inadequate data Data inadequate, no report. DEG 12/16/76, recommends no report: (1) inadequate survival in treated groups. (2) No statistically significant occurrence of tumors								
C01536 Acronycine	02/00/71A		04/00/71A		05/00/71A	12/00/71A	02/00/72A	02/00/76A
TR-049 P Under the conditions of this bioassay, the low survival of the dosed and control mice and the possible procedural problems associated with intrapentoneal injection of the chemical do not allow a determination to be made of the carcinogenicity of Acronycine in this species In Sprague-Dawley rats, Acronycine in the vehicle of 0.05% polysorbate 80 in phosphate-buffered saline was carcinogenic, producing tumors of the mammary gland in females, osteosarcomas in males, and sarcomas and other related tumors of the peritoneum in both males and females.								
C04682 Actinomycin D	03/00/68A		05/00/68A		06/00/68A	11/00/68A	03/00/69A	03/00/71A
TR-00A P various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual component.								
C01730 0-Anthranilic Acid	01/00/72A		03/00/72A		04/00/72A	11/00/72A	01/00/73A	03/00/75A
TR-036 P It is concluded that under the conditions of this bioassay, Anthranilic Acid was not carcinogenic for either Fischer 344 rats or B6C3F1 mice								
C01569 5-Azacytidine	04/00/71A		06/00/71A		07/00/71A	12/00/71A	04/00/72A	11/00/73A

LIST III—PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY & CARCINOGENESIS STUDIES—Continued

Exp. No. Chemical	Single dose study		14-Day study		90-day study		2-Year study	
	Start	End	Start	End	Start	End	Start	End
TR-042 P Under the conditions of this bioassay, the short life span and short duration of treatment of Sprague-Dawley rats of either sex and of male B6C3F1 mice precluded evaluation of the carcinogenicity of 5-Azacytidine in these groups. However, the induction of tumors of the hematopoietic system in female B6C3F1 mice was associated with the administration of 5-Azacytidine								
C03474 Azathioprine	06/00/68A		08/00/68A		09/00/68A	02/00/69A	06/00/69A	06/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components								
C04773 1,3-Bis(Chloroethyl)-1-Nit	04/00/68A		06/00/68A		07/00/68A	12/00/68A	04/00/69A	04/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C03485 Chlorambucil	04/00/68A		06/00/68A		07/00/68A	12/00/68A	04/00/69A	04/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that generally less than that of the individual components								
C01752 Chlorpropamide	07/00/72A		09/00/72A		10/00/72A	03/00/73A	07/00/73A	07/00/75A
TR-045 P It is concluded that under the conditions of this bioassay, Chlorpropamide was not carcinogenic for Fischer 344 rats or B6C3F1 mice.								
C04900 Cyclophosphamide	05/00/68A		07/00/68A		08/00/68A	01/00/69A	05/00/69A	05/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04728 Cytarabine	06/00/68A		08/00/68A		09/00/68A	09/00/69A	06/00/69A	01/00/72A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04922 Cytoxal Alcohol	09/00/68A		11/00/68A		12/00/68A	05/00/69A	09/00/69A	09/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components								
C04717 Dacarbazine	07/00/68A		09/00/68A		10/00/68A	07/00/69A	07/00/69A	11/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04693 Daunomycin	04/00/68A		06/00/68A		07/00/68A	12/00/68A	04/00/69A	04/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04933 O,P'-DDD	09/00/68A		11/00/68A		12/00/68A	05/00/69A	09/00/69A	09/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components								
C04806 (4,4'-Diacetyldiphenylure	08/00/68A		10/00/68A		11/00/68A	05/00/69A	08/00/69A	09/00/71A
Ref. No. 21 Positive controls and studies with inadequate data Data inadequate-no Technical Report issued								
C04795 Dibromodulcitol	07/00/68A		09/00/68A		10/00/68A	04/00/69A	07/00/69A	08/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04762 Dibromomannitol	08/00/68A		10/00/68A		11/00/68A	01/00/69A	08/00/69A	11/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04875 Dichloromethotrexate	06/00/68A		08/00/68A		09/00/68A	02/00/69A	06/00/69A	06/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components								
C01605 Emetine	06/00/71A		08/00/71A		09/00/71A	05/00/72A	06/00/72A	10/00/74A
TR-043 P It is concluded that the results of this study do not allow evaluation of the possible carcinogenicity of Emetine.								
C01570 Estradiol Mustard	07/00/71A		09/00/71A		10/00/71A	04/00/72A	07/00/72A	04/00/74A
TR-059 P Under the conditions of this bioassay, Estradiol Mustard administered in a buffered saline vehicle was not carcinogenic in Sprague-Dawley rats. Estradiol Mustard was carcinogenic in both male and female B6C3F1 mice, causing Lymphoma, Sarcoma of the Myocardium, Alveolar Adenoma of Carcinoma, and Squamous-cell carcinoma of the stomach.								
C01694 Ethionamide	04/00/72A		06/00/72A		07/00/72A	12/00/72A	04/00/73A	04/00/75A
TR-046 P It is concluded that under the conditions of this bioassay, Ethionamide was not carcinogenic in either Fischer 344 rats or B6C3F1 mice.								
C04819 Guanazole	05/00/68A		07/00/68A		08/00/68A	04/00/69A	05/00/69A	08/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04831 Hydroxyurea	04/00/68A		06/00/68A		07/00/68A	12/00/68A	04/00/69A	04/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components								
C01616 Imidazole Mustard	09/00/68A		11/00/68A		12/00/68A	05/00/69A	09/00/69A	09/00/71A
Ref. No. 21 Positive controls and studies with inadequate data. Data inconclusive-no Technical Report issued.								
C01547 IPD (3,3'-Iminobis-1-Prop	05/00/71A		07/00/71A		08/00/71A	01/00/72A	05/00/72A	12/00/74A
TR-018 P Conclusions from this study are limited by early deaths and toxicity, the appearance of tumors in the peritoneum near the injection sites in both Sprague-Dawley rats and B6C3F1 mice indicate carcinogenic potential of IPD.								
C01638 Isophosphamide	02/00/71A		04/00/71A		05/00/71A	12/00/71A	02/00/72A	10/00/73A
TR-032 P Under the conditions of this bioassay, isophosphamide was not carcinogenic in male Sprague-Dawley rats or in male B6C3F1 mice. The incidence of leiomyosarcomas of the uterus indicated that isophosphamide was carcinogenic in female Sprague-Dawley rats, and the incidence of fibroadenoma of the mammary gland in female rats was associated with treatment with isophosphamide. Isophosphamide was carcinogenic in female B6C3F1 mice, producing malignant lymphomas of the hematopoietic system.								
C04740 Lomustine	02/00/69A		04/00/69A		05/00/69A	11/00/69A	02/00/70A	03/00/72A

LIST III—PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY & CARCINOGENESIS STUDIES—Continued

Exp. No. Chemical	Single dose study		14-Day study		90-day study		2-Year study	
	Start	End	Start	End	Start	End	Start	End
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04886 6-Mercaptopurine		06/00/68A		08/00/68A		09/00/68A	02/00/69A	06/00/69A	06/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04944 Merphalan		09/00/68A		11/00/68A		12/00/68A	05/00/69A	09/00/69A	09/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04671 Methotrexate		03/00/68A		05/00/68A		06/00/68A	11/00/68A	03/00/69A	03/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04955 Methyl CCNU		10/00/68A		12/00/68A		01/00/67A	05/00/67A	10/00/67A	10/00/69A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C01627 (+-)-4,4'-(1-Metyl-1,2-E		05/00/71A		07/00/71A		08/00/71A	01/00/72A	05/00/72A	01/00/74A
TR-078 P Under the conditions of this bioassay, ICRF-159 was carcinogenic for female Sprague-Dawley rats, producing uterine adenocarcinomas, and was also carcinogenic for female B6C3F1 mice, producing lymphomas.								
C04784 6-Methylmercaptopurine Rl		04/00/68A		06/00/68A		07/00/68A	12/00/68A	04/00/69A	04/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04706 Mitomycin C		05/00/68A		07/00/68A		08/00/68A	01/00/69A	05/00/69A	05/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C01592 Myleran		07/00/71A		09/00/71A		10/00/71A	06/00/72A	07/00/72A	11/00/74A
Ref. No. 21 Positive controls and studies with inadequate data. Data inadequate-no report. DEG recomm no report 12/16/76 DUE TO (1) inadeq. Survival in treated groups, (2) No statistically significant occurrence of tumors								
C01672 Phenazopyridine Hydrochlo		10/00/71A		12/00/71A		01/00/72A	09/00/72A	10/00/72A	01/00/75A
TR-099 P Under the conditions of this bioassay, Phenazopyridine Hydrochloride was carcinogenic in Fischer 344 rats, inducing adenocarcinomas of the colon in both males and females. Although administration of Phenazopyridine Hydrochloride was not carcinogenic in male B6C3F1 mice, the chemical was carcinogenic in females, inducing hepatocellular adenomas and carcinomas.								
C01558 Phenesterin		06/00/71A		08/00/71A		09/00/71A	04/00/72A	06/00/72A	02/00/76A
TR-060 P Under the conditions of this bioassay, Phenesterin was carcinogenic in female Sprague-Dawley rats, producing adenocarcinomas of the mammary gland and in both sexes of B6C3F1 mice, producing alveolar/bronchiolar carcinomas, hematopoietic tumors, and myocardial sarcomas.								
C01741 Phenformin		02/00/72A		04/00/72A		05/00/72A	10/00/72A	02/00/73A	02/00/75A
TR-007 P No evidence for carcinogenicity under the conditions of this bioassay of Phenformin. Stability of test material in feed not determined, however test performed in male mice be inconclusive. Confidence intervals for all tumor sites in rats and mice which were subjected to statistical analysis include a positive value indicating the theoretical possibility of tumor induction by Phenformin which could not be detected under the conditions of this test.								
C01661 Phenoxybenzamine Hydrochl		07/00/71A		09/00/71A		10/00/71A	04/00/72A	07/00/72A	07/00/76A
TR-072 P Under the conditions of this bioassay, Phenoxybenzamine Hydrochloride was carcinogenic for the peritoneum of both sexes of Sprague-Dawley rats and B6C3F1 mice.								
C04897 Prednisone		05/00/68A		07/00/68A		08/00/68A	01/00/69A	05/00/69A	05/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C01810A Procarbazine Hydrochlond		06/00/68A		08/00/68A		09/00/68A	07/00/69A	06/00/69A	11/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C01810B Procarbazine Hydrochlorid		05/00/71A		07/00/71A		08/00/71A	01/00/72A	05/00/72A	01/00/74A
TR-019 P It is concluded that under the conditions of this bioassay, Procarbazine was carcinogenic for both Sprague-Dawley rats and B6C3F1 mice, producing several types of tumors in both sexes of these two species.								
C01785 Pyrazinamide		01/00/72A		03/00/72A		04/00/72A	09/00/72A	01/00/73A	02/00/75A
TR-048 P It is concluded that under the conditions of this bioassay the early deaths and small size of the control group precluded a conclusion regarding the carcinogenicity of Pyrazinamide in female B6C3F1 mice. Pyrazinamide was not carcinogenic for Fischer 344 rats or for male mice.								
C01683 Pyrimethamine		01/00/72A		03/00/72A		04/00/72A	09/00/72A	01/00/73A	01/00/75A
TR-077 P It is concluded that under the conditions of this bioassay, Pyrimethamine was not carcinogenic for male or female Fischer 344 rats or for female B6C3F1 mice. The carcinogenic potential of Pyrimethamine for male B6C3F1 mice cannot be assessed by this bioassay, because of the markedly reduced life span.								
C03167 Streptozotocin		12/00/68A		02/00/69A		03/00/69A	08/00/69A	12/00/69A	12/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components. (Note: C05485 Streptozotocin + NAA is not the system and it is not cited in TR-00A)								
C01718 4,4'-Sulfonyldianiline		05/00/71A		07/00/71A		08/00/71A	01/00/72A	05/00/72A	05/00/74A
TR-020 P It is concluded that under the conditions of this bioassay, Dapsone (4,4-Sulfonyldianiline) was not carcinogenic for female Fischer 344 rats or B6C3F1 mice of either sex. Dapson was carcinogenic (sarcomagenic) for male Fischer 344 rats causing mesenchymal tumors in the spleen and peritoneum.								
C01707 4,4'-Thiodianiline		09/00/71A		11/00/71A		12/00/71A	05/00/72A	09/00/74A	09/00/74A
TR-047 P Under the conditions of this bioassay, 4,4'-Thiodianiline was carcinogenic for Fischer 344 rats, inducing tumors in the liver, thyroid, colon and ear canal of male rats and the thyroid, uterus, and ear canal of female rats. 4,4'-Thiodianiline was carcinogenic for B6C3F1 mice, including tumors in the liver and thyroid of both males and females.								
C01581 Beta-Thioguanidine Deoxyr		07/00/73A		09/00/73A		10/00/73A	03/00/74A	07/00/73A	04/00/75A
TR-057 P Under the conditions of this bioassay, the low survival of the doses and vehicle-control groups of mice, as well as the possible procedural problem that may have affected the incidences of tumors in these groups, does not allow a determination to be made of the carcinogenic potential of B-TGDR in this species. B-TGDR in the vehicle of 0.05% polysorbate 80 was, however, carcinogenic in rats, producing carcinomas of the ear canal in the females and possibly also in the males.								
C03327 Tolazamide		10/00/72A		12/00/72A		01/00/73A	07/00/73A	10/00/73A	11/00/75A
TR-051 P It is concluded that under the conditions of this bioassay, Tolazamide was not carcinogenic for Fischer 344 rats or B6C3F1 mice.								
C01763 Tolbutamide		03/00/72A		05/00/72A		06/00/72A	01/00/73A	03/00/73A	05/00/75A
TR-031 P It is concluded that under the conditions of this bioassay, Tolazamide was not carcinogenic for either Fischer 344 rats or B6C3F1 mice.								
C01649 Tris(Aziridinyl)-Phosphin		05/00/71A		07/00/71A		08/00/71A	01/00/72A	05/00/72A	03/00/75A

LIST III—PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY & CARCINOGENESIS STUDIES—Continued

Exp. No Chemical	Single dose study		14-Day study		90-day study		2-Year study	
	Start	End	Start	End	Start	End	Start	End
TR-058 P Under the conditions of the bioassay, THIO-TEPA was carcinogenic in both Sprague-Dawley rats and B6C3F1 mice. In the rats, the chemical induced squamous-cell carcinoma of the skin or ear canal in both males and females, and nematopoietic neoplasms in the males. In the mice, it induced lymphoma or lymphocytic leukemia in both sexes and squamous-cell carcinoma in the skin and associated glands of males.								
C01729 L-Tryptophan	02/00/72A		04/00/72A		05/00/72A	10/00/72A	02/00/73A	02/00/75A
TR-071 P It is concluded that under the conditions of this bioassay, L-Tryptophan was not carcinogenic for Fisher 344 rats or B6C3F1 mice								
C04820 Uracil Mustard	04/00/68A		06/00/68A		07/00/68A	12/00/68A	04/00/69A	04/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual component.								
C04842 Vinblastine	05/00/68A		07/00/68A		08/00/68A	01/00/69A	05/00/69A	05/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components								

[FR Doc. 87-21740 Filed 9-18-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-(965)-4213-15; F-14955-A]

Alaska Native Claims Selection; Wales Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Wales Native Corporation for approximately 15.97 acres. The lands involved are in the vicinity of Wales, Alaska.

Kateel River Meridian

T. 2 N., R. 45 W., (unsurveyed)
Within Secs. 23 and 24, those lands formerly within ANSCA Sec. 3(e) application F-64899, excluded from Interim Conveyance No. 491, dated March 25, 1982.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *The Nome Nugget*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 21, 1981 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Elizabeth Bonnell,

Acting Chief, Branch of Northwest Adjudication.

[FR Doc. 87-21668 Filed 9-18-87; 8:45 am]

BILLING CODE 4310-JA-M

[UT-060-07-4322-13]

Proposed Commercial Hunting in Desolation, Turtle, and Jack Canyons Wilderness Study Areas, UT

September 11, 1987.

AGENCY: Bureau of Land Management, Moab, Utah.

ACTION: Notice of 30 day comment period on proposed commercial hunting in Desolation Canyon, Turtle Canyon, and Jack Canyon Wilderness Study Areas (WSAs).

SUMMARY: Pursuant to the Federal Land Policy and Management Act, section 603, and the Bureau's Interim Management Policy notice is hereby given of a 30 day public comment period concerning proposed permitting for commercial hunting in the Book Cliffs region of Carbon and Emery Counties in Utah. Proposed hunting areas often overlap into WSAs. At present one application submitted by Bucks and Bulls of Lindon, Utah is pending. An environmental assessment is being prepared and is available on request. All facilities would be provided on private lands outside WSAs. The affected WSAs are:

WSA	WSA number
Turtle Canyon WSA	UT-060-067
Desolation Canyon	UT-060-068A UT-060-068C
Jack Canyon	

FOR FURTHER INFORMATION CONTACT: Jim Kenna, Bureau of Land Management, Price River Resource Area, P.O. Drawer AB, Price, Utah 84501 (Phone: 801-637-4584).

Gary L. Hanson,

Acting District Manager.

[FR Doc. 87-21676 Filed 9-18-87; 8:45 am]

BILLING CODE 7310-DQ-M

[UT-942-07-4220-10; U 61675]

Utah; Proposed Withdrawal and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 132,150.26 acres of public land for the protection of sites currently being considered by the State of Utah for the Department of Energy's Superconducting Supercollider project, near Salt Lake City, Utah. This notice closes the land for up to 2 years from mining location. The land will remain open to surface entry and mineral leasing.

DATE: Comments and request for a public meeting should be received by December 21, 1987.

ADDRESS: Comments and meeting requests should be sent to the Utah State Director, Bureau of Land Management, 324 South State, Suite 301, Salt Lake City, Utah 84111-2303.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, BLM, Utah State Office, 801-524-3074.

SUPPLEMENTARY INFORMATION: On August 28, 1987, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from location under the mining laws, subject to valid existing rights.

Salt Lake Meridian, Utah

T. 1 N., R. 8 W.,

Sec. 5, All;
Sec. 6, Lots 1–4, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Secs. 7, 8, 17–20, 29, 30, 31, All.
T. 2 N., R. 9 W.,
Secs. 19–21, All;
Sec. 22, N½N½, N½S½N½, S½SW¼NW¼, SW¼SE¼NW¼, W½NE¼SW¼, W½SW¼, SE¼SW¼, S½SW¼SE¼, SW¼SE¼SE¼;
Sec. 23, N½, N½SW¼, E½SW¼SW¼, SE¼SW¼, SE¼;
Sec. 24, NW¼NE¼, W½, W½SE¼;
Sec. 25, All;
Sec. 26, E½, E½NW¼, E½NW¼NW¼, SW¼NW¼, SW¼;
Sec. 27, W½NE¼NE¼, SE¼NE¼NE¼, W½NE¼, SE¼NE¼, W½, SE¼;
Sec. 28–31, 33, 34, All;
Sec. 35, N½, SW¼, W½W½SE¼.
T. 2 N., R. 10 W.,
Secs. 19–31, 33–35, All.
T. 2 N., R. 11 W.,
Secs. 19–31, 33–35, All.
T. 1 N., R. 14 W.,
Secs. 4–9, 17–21, 29–31, 33, All.
T. 1 S., R. 8 W.,
Secs. 1, 3, 4, All;
Sec. 5, Lots 1–4, S½NE¼, SE¼NW¼, S½;
Secs. 6–15, 17–31, 33–35, All.
T. 2 S., R. 8 W.,
Secs. 1–11, All;
Sec. 12, N½N½, SW¼NW¼, W½SW¼;
Sec. 13, W½NW¼;
Secs. 14, 15, 17–21, All;
Sec. 22, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 23, NW¼, N½SW¼;
Secs. 28–31, 33, All.
T. 3 S., R. 8 W.,
Secs. 5–8, All;
Sec. 17, W½;
Sec. 18, All.
T. 3 S., R. 9 W.,
Secs. 19–31, 33–35, All.
T. 3 S., R. 10 W.,
Secs. 19–13, 33–35, All.
T. 3 S., R. 11 W.,
Secs. 19–31, 33–35, All.
T. 1 S., R. 14 W.,
Secs. 4–9, 17–21, 28–31, 33, All.
T. 2 S., R. 14 W.,
Secs. 5–9, 17, 18, A.

The area described contains 132,150.26 acres in Tooele County, Utah.

There are no lands to be excepted from those described above, except as noted above.

The purpose of the proposed withdrawal is protection of sites currently being considered by the State of Utah for the Department of Energy's Superconducting Supercollider Project.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Utah State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request of the Utah State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the land by the Bureau of Land Management.

Date: September 11, 1987.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–21681 Filed 9–18–87; 8:45 am]

BILLING CODE 4310-DQ-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Agricultural Cooperative; Notice To the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers; Ag Processing, Inc.,

Date: September 16, 1987.

The following Notices were filed in accordance with section 10526 (a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.:

(1) Ag Processing Inc.
(2) 11235 Davenport St. Omaha, NE 68154
(3) P.O. Box 220, 804 2nd Avenue Sheldon, IA 51201
(4) Mike Maranell P.O. Box 220 Sheldon, IA 51201

Noreta R. McGee,

Secretary.

[FR Doc. 87–21748 Filed 9–18–87; 8:45am]

BILLING CODE 7035-01

Summary Grant Application Involving the Purchase, Merger, Lease or Control of a Motor Passenger Carrier; Blue & White Lines, of Arizona; Inc.

MC–F–18640, filed August 19, 1987. Blue & White Lines of Arizona, Inc. (Arizona) (4001 South 34th St., Phoenix, AZ 85040)—Control—Sun Valley Bus Lines, Inc. (Sun Valley) (1350 North 22nd Ave., P.O. Box 247, Phoenix, AZ 85002). Representatives: Christian V. Graf and David H. Radcliff, 407 North Front St., Harrisburg, PA 17101. Arizona (MC–162388) seeks authority to acquire control of Sun Valley (MC–108378) through the purchase of all of Sun Valley's outstanding stock. Dennis R. Long (Long) is Chairman of the Board and owns 100 percent of the Class I common stock of Arizona. Dennis Long also controls Blue & White Lines of Florida, Inc. (Florida) (MC–158455) and Blue & White Lines, Inc. (Blue & White) (MC–46614) through majority stock ownership. R.A. Long, the father of Dennis R. Long, owns a minority stock interest in Florida and Blue & White. Blue & White in turn, controls Lincoln Coach Lines, Inc. (MC–120083), a motor carrier, and Lincoln Coach Travel, Inc. (MC–157167) a passenger broker.

Decided: September 14, 1987.

Noreta R. McGee,

Secretary.

[FR Doc. 87–21749 Filed 9–18–87; 8:45 am]

BILLING CODE 7035-01-M

VOL 52 ISS 182 SEP 21 1987 UMI

DEPARTMENT OF LABOR

Office of the Secretary

Renewal; Advisory Committee on Special Minimum Wages

Notice is given that after consultation with the General Services Administration (GSA), it has been determined that the Advisory Committee on Sheltered Workshops whose charter expires October 11, 1987, is hereby renewed and redesignated as the Advisory Committee on Special Minimum Wages for the period October 11, 1987 to October 11, 1989. This action is necessary and in the public interest.

The Committee will advise the Secretary on issues concerning the application of the Fair Labor Standards Act, the Service Contract Act, and the Public Contracts Act to workers with impaired productive capacity.

Committee membership is designed to insure that all major groups affected by the Acts and the regulations issued thereunder are represented. The Committee will consist of 23 members: 9 consumer members (workers with disabilities or representatives of organizations representing workers with disabilities or the parents or guardians of such workers); 9 officials from workshops, hospitals, or institutions or from organizations of workshops, hospitals, or institutions; 1 member representing organized labor; 1 member representing industry (other than the sheltered workshop industry); 1 member representing a State vocational rehabilitation agency; 1 member representing a State labor department; and 1 member representing the public. The members are selected on the basis of their expertise and serve in their individual capacities, not as representatives of their organizations.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. The charter will be filed with GSA and the appropriate Congressional Committees.

Further information may be obtained from: Paula V. Smith, Administrator, Wage and Hour Division, Department of Labor, Room S3502, 200 Constitution Avenue NW., Washington, DC 20210, Phone 202–523–8305.

Signed at Washington, DC, this 16th day of September 1987.

William E. Brock,

Secretary of Labor.

[FR Doc. 87–21690 Filed 9–18–87; 8:45 am]

BILLING CODE 4510–27

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance; Airfoil Textron, Inc.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 1, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 1, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 8th day of September 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No	Articles produced
Airfoil Textron Inc (workers)	E. Windsor, CT	9/8/87	8/25/87	20,066	Blades & vanes
Ampex Corp (workers)	Colorado Springs, CO	9/8/87	8/31/87	20,067	Video equipment
Armco Building Systems (workers)	Nicholasville KY	9/8/87	8/27/87	20,068	Steel trusses
Arrow Specialty Co. (workers)	Tulsa, OK	9/8/87	8/16/87	20,069	Oilfield engines
Augat-Vitek, Inc. (workers)	El Paso, TX	9/8/87	8/27/87	20,070	Security devices
Cumberland Steel Co. (workers)	Cumberland, MD	9/8/87	9/1/87	20,071	Bars
Donaldson, Inc. (workers)	Nicholasville, KY	9/8/87	8/31/87	20,072	Muffers
Duchess Footwear Corp (workers)	S. Berwick, ME	9/8/87	8/24/87	20,073	Shoes
Gleason Works (workers)	Rochester, NY	9/8/87	8/24/87	20,074	Tools
L. Farber, Co (workers)	Worcester, MA	9/8/87	8/21/87	20,075	Shoe components
Malouf Mfg., CO (workers)	Whitesbord, TX	9/8/87	8/13/87	20,076	Sportswear
McFashion, Inc. (workers)	Mt. Carmel, PA	9/8/87	8/28/87	20,077	Blouses
Oil Recovery Systems Corp. (O.R.S.) (workers)	Tulsa, OK	9/8/87	8/25/87	20,078	Oil & gas
Olympic Exploration & Production Co. (workers)	Denver, CO	9/8/87	8/26/87	20,079	Oil & gas.
Otis Engineering, Corp (workers)	Lindsay, OK	9/8/87	8/26/87	20,080	Oilfield machinery
Paper Calmenson-Blade Operation (workers)	St. Paul, MN	9/8/87	8/13/87	20,081	Steel blades.
Powerex, Inc. (workers)	Auburn, NY	9/8/87	8/26/87	20,082	Semi-conductors
Texaco, Inc (workers)	Erath, LA	9/8/87	8/21/87	20,083	Gas
Thermal Transfer Corp. (workers)	Monroeville, PA	9/8/87	8/30/87	20,084	Boilers
Westinghouse Electric Corp. (I.B.E.W.)	Beaver, PA	9/8/87	8/28/87	20,085	Circuit breakers
White Consolidated Industries (IUE)	Columbus, OH	9/8/87	8/28/87	20,086	Appliance parts.

[FR Doc. 87–21688 Filed 9–18–87; 8:45 am]

BILLING CODE 4570–30–M

[TA-W-18,329]

Notification of Revised Determinations on Reconsideration; AT&T Technologies, Inc., AT&T Technology Systems, Kansas City, MO

On June 18, 1987, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers of AT&T Technologies, Inc., AT&T Technology Systems, Kansas City, Missouri. The affirmed notice regarding application for reconsideration was published in the Federal Register on June 30, 1987 (52 FR 24354).

Counsel for the Communication Workers of America (CWA) claims that workers in the "clean room" and "Epi room" were two separately identifiable groups of workers at the Kansas City plant involved in the production of 256 K semiconductor microchips which were impacted by increased imports. Counsel also claims that another "clean room" was not put into operation at Kansas City because of increased imports of semiconductor microchips.

On reconsideration, the Department found that workers in the "Epi room" and "clean room" at AT&T Technology Systems' plant in Kansas City produced wafers and metal oxide semiconductors (MOS) 256 K chips, respectively. A major percent of wafer production from the "Epi room" was integrated into the production of microchips produced in the "clean room".

On reconsideration, the Department reviewed counsel's claims and found that the entire production of the "clean room" in Kansas City had been integrated into the production of the 256 K Packaged Devices at AT&T Network Systems' Final Package and Test Data Department in Orlando, Florida. Workers in the Final Package and Test Data Department of AT&T Network Systems, Orlando, Florida were certified eligible to apply for worker adjustment assistance on September 3, 1987 (TA-W-20,037).

Counsel claims that a second "clean room" at the Kansas City plant was planned for the purpose of expanding its microchip production but was never opened. This would not form a basis for certification since there was no actual loss of production or sales. Section 222(2) of the Group Eligibility Requirements of the Trade Act states that sales or production, or both, of such firm or subdivision must have decreased absolutely.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with the 256 K Packaged Devices produced by the Final Package and Test Data Department at AT&T Network Systems' plant in Orlando, Florida contributed importantly to the decline in sales or production and to the total or partial separation of workers of the "Epi room" and "clean room" at AT&T Technology Systems in Kansas City, Missouri. In accordance with the provisions of the Trade Act of 1974, I make the following revised determinations:

All workers of the "Epi room" and "clean room" of AT&T Technologies, Inc., AT&T Technology Systems, Kansas City, Missouri who became totally or partially separated from employment on or after January 1, 1987 and before May 1, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

I further determine that all other workers at the Kansas City, Missouri plant are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of September 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-21691 Filed 9-18-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,868]

Dismissal of Application for Reconsideration; United Engineers and Constructors, Stearns Roger Division, Denver, CO

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at United Engineers and Constructors, Stearns Roger Division, Denver, Colorado. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-19,868; United Engineers and Constructors, Stearns Roger Division, Denver, Colorado (September 3, 1987)

Signed at Washington, DC, this 9th day of September 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-21693 Filed 9-18-87; 8:45 am]

BILLING CODE 4370-30-M

Mine Safety and Health Administration

[Docket No. M-87-202-C]

Petition for Modification of Application of Mandatory Safety Standard; Rainbow Coal Co.

Rainbow Coal Company, Route 2, Box 420, Corbin, Kentucky 40701 has filed a petition to modify the application of 30 CFR 75.313 (methane monitors) to its No. 1 Mine (I.D. No. 15-16040) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane is detected between trips;

BEST COPY AVAILABLE

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 21, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: September 8, 1987.

[FR Doc. 87-21687 Filed 9-18-87; 8:45 am]

BILLING CODE 4510-43-M

LEGAL SERVICES CORPORATION

Grant Awards for Expansion and Development of Law School Civil Clinical programs; George Washington University & University of Texas at Austin

AGENCY: Legal Services Corporation

ACTION: Announcement of intention to make grant awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award two grants to law schools to assist their clinical programs in providing service to LSC-eligible clients in civil cases. The one-year grants are being made as part of the 1987–88 Law School Civil Clinical Project, purusant to authority conferred by sections 1006(a) (1) (B) and 1006(a) (3) of the Legal Services Corporation Act of 1974, as amended. Law schools and grant amounts are:

George Washington University.....$37,200
University of Texas at Austin.....$39,848

The original announcement of funding availability under this program appeared in volume 52, No. 90, page 17649 of the **Federal Register** of May 11, 1987, and a list of other grantees appeared in Volume 52, No. 146, page 28495 of the **Federal Register** of July 30, 1987. Total funding under the 1987–88 Law School Civil Clinical Project is $1,114,384.

The Corporation requests public comments and recommendations on these intended grants. Grant awards will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period. This public notice is issued pursuant to section 1007(F) of the Act.

DATE: Comments and recommendations must be received by the Program Development and Substantive Support Division of the Legal Services Corporation by October 21, 1987.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses, III, Legal Services Corporation, Program Development and Substantive Support Division, 400 Virginia Avenue SW., Washington, DC 20024–2751, (202) 863–1837.

John H. Bayly, Jr.,

President.

[FR Doc. 87-21750 Filed 9-18-87; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL SCIENCE FOUNDATION

Grants; Program Announcement and Guidelines; Undergraduate Science, Engineering, and Mathematics Education; Career Access Opportunities in Science and Technology for Women, Minorities and the Disabled; Target Date for Preliminary Proposals: December 15, 1987

Please note.—The page and appendixes references in this document refer to, and are included in, the ACCESS Program Announcement and Guidelines. These appendixes are not included in this document.

The Career Access Program for Women, Minorities and the Disabled (ACCESS) is an integral part of NSF's overall plan to strengthen undergraduate science, engineering, and mathematics education throughout the United States. The NSF plan also includes support for: Instrumentation and Laboratory Improvement Program (ILI), Undergraduate Faculty Enhancement Program (UFE), Research Experiences for Undergraduates Program (REU), and the Undergraduate Curriculum Development Program (UCD).

The ACCESS Program will be coordinated by the newly established Office of Undergraduate Science, Engineering, and Mathematics Education (USEME), in the Directorate for Science and Engineering Education. The magnitude of the fiscal year 1988 ACCESS Program will depend on the quality of proposals the Foundation receives and the availability of funds.

Inquiries

Questions not addressed in this publication may be directed to the NSF staff by contacting:

Career Access Opportunities Program, Office of Undergraduate Science, Engineering and Mathematics Education, Directorate for Science and Engineering Education, Room 639, National Science Foundation, Washington, DC 20550, (202) 357–7051

Electronic Mail: Bitnet: undergrad@nsf, Arpanet, CSnet: undergrad@note.nsf.gov.

Career Access Opportunities in Science and Technology for Women, Minorities and the Disabled

I. Introduction

The National Science Foundation's mandate to ensure the vitality of the Nation's scientific enterprise includes responsibility for the quality, distribution and effectiveness of the human resource base in science and engineering. The underrepresentation of women, minorities, and the disabled in this resource base is of concern to the Foundation. The talent of a significant fraction of the potential pool of scientific and technological expertise is lost when substantial underrepresentation continues to exist. In response to this concern, the NSF Directorate for Science and Engineering Education has established a new Program: Career Access Opportunities in Science and Technology for Women, Minorities and the Disabled (ACCESS). The activities supported by this Program are Comprehensive Regional Centers for Minorities and Prototype and Model Projects. Although the categories of awards that will be described are expected to include the majority of projects supported through the Career Access Program, additional ideas and mechanisms will be considered by NSF.

II. Comprehensive Regional Centers for Minorities

A Purpose and Scope

This activity will support the establishment of major, regional centers designed to increase the minority presence in science and engineering. The projects are intended to be centered at colleges and universities with

significant minority enrollments, both institutionally and in science and engineering, and will have the objectives of:

Developing the institutional capability in undergraduate science, mathematics, and engineering education for minority students, particularly at the freshman and sophomore level;

Developing cooperative activities, with regional precollege schools having substantial minority enrollments, to improve science, mathematics and engineering education and to coordinate and facilitate the transition of minority students from high school to college status;

Stimulating and coordinating the efforts of other colleges and universities in the region, with substantial minority populations, to strengthen their undergraduate programs in science, mathematics, and engineering, and to serve as foci for additional cooperative activities in precollege science, mathematics and engineering education;

Taking a leadership role in nurturing and encouraging minority students to undertake graduate studies in science, mathematics and engineering by increasing the opportunities for such activities and by stimulating minority students confidence and interest.

Enhancing the potential for a stable, long term continuation of the project activities.

Proposals will be evaluated on their potential for achieving these objectives and on the more general evaluation criteria found in "Grants for Research and Education in Science and Engineering" (NSF 83–57, rev. 1/87), page 9.

B. Eligibility Criteria and Limitations

1. Eligible Institutions

Proposals may be submitted by U.S. colleges and universities with significant enrollments of minority [1] students in science and engineering and a demonstrated history of commitment to minority concerns. These aspects should be discussed with the Program staff by telephone and/or letter prior to proposal preparation.

2. Eligible Activities

Projects are expected to focus on instructional activities, with an undergraduate emphasis on the freshman and sophomore levels and extensive outreach to the school systems from elementary to high school. Community involvement at all levels will be an important aspect of project activities. Plans for evaluation and assessment will be required so that project development and implementation can be monitored at all stages.

Specific mechanisms might include teacher workshops, faculty seminars, enrichment experiences for students at all levels, materials development, conferences for parents and other interested members of the public, regional networks, etc. These activities will support the development of major centers for the instruction of minorities in science and engineering that will bring together into a coherent plan, a spectrum of efforts suited to the region. An important element to be sought in all projects is evidence of, and a mechanism for, nurturing minority students, beginning at an early age, through their education from elementary school through college.

Comprehensive Regional Centers for Minorities will necessarily be complex endeavors normally requiring considerable time and resources to implement fully. To develop the cooperation, coordinate the efforts, and marshall the resources of a region, will require an effort of some magnitude and duration. A region might comprise a set of school systems, instituitons and agencies covering a considerable geographic area of the geographic focus could be restricted to a more densely populated metropolitan area. In either case, the full involvement and participation of all of the appropriate organizations, groups, and individuals will be critical. Given this complexity and sensitivity, the activities in a project might initially begin on a modest scale and proceed in stages to full implementation as the total complement of organizations are brought into play. However, the extent of implementation in the intitial stage of a project will vary depending on the past history of experience and accomplishment in regional cooperative activities dealing with minority concerns.

Supportable activities could include developmental aspects such as the establishment of formal commitment and networks among the various target sectors of the region (including operating structures), the establishment and functioning of advisory committees with appropriate regional and wider representation, and regional conferences to solicit community input and support (including financial support). Implementation activities ranging from pilot or prototype in natures to fully develop (depending on the circumstances) could be included. Since regional cooperation and commitment are critical aspects of a Comprehensive Regional Center for Minorities, convincing evidence that these conditions already exist in the region must be presented, or activities to establish them must be proposed, as one of the essential features of a proposal.

It should be emphasized again that a blend of developmental and implementation activities is quite appropriate in a project. The balance between them will vary depending on the history of previous similar activities in the region. The magnitude of the total effort initially proposed will likewise vary depending on the same factors. In any event, since it is expected that projects will evolve and change with time, the Foundation will take the position of responding flexibly and positively to changing circumstances suject only to the condition that increasing the participation of minorities in science, mathematics, and engineering remains the fundamental goal and expectation.

C. Awards and Duration

The initial grant under the Comprehensive Regional Center for Minorities will depend on the extent and scope of activities and the stage of development represented. For projects with a significant focus on developmental activities or prototype implementation an initial award of $100,000–$200,000 might be appropriate. For projects involving extensive implementation and a full complement of regional activities, awards of up to $1,000,000 per year would be in order. Projects intermediate in nature between the two examples quoted would involve funding totals and duration times consistent with their scope.

It should be emphasized that in the long term, Comprehensive Regional Centers for Minorities Projects are intended to be major efforts to develop regional resource centers with support in the range of $4–5,000,000 over a five year period. It is expected that fully developed projects will show a reduction in NSF support and an increased level of support from other quarters during the term of the grant.

III. Prototype and Model Projects for Women, Minorities and the Disabled

A. Purpose and Scope

A principal goal of this activity is to increase the participation of women, or minorities, or the disabled in careers in science, mathematics, and engineering by encouraging *all* colleges and universities and *other eligible*

[1] For the purpose of this announcement, minorities are defined as members of those racial and ethnic groups underrepresented in science and engineering: American Indians, Blacks, Hispanics, Native Alaskans, or Native Pacific Islanders.

organizations to design and create special instructional and outreach activities which are innovative, and intended to be models with high potential for dissemination and extended impact. *In the longer term, these projects are also intended to offer the possibility of becoming the initial stages in the development of Comprehensive Regional Centers directed at any of the underrepesented target audiences.* Objectives should include:

Identifying effective strategies, activities, and/or materials to encourage entry into, or improve retention by members of the target audience in the scientific/technological enterprise of the Nation.

Testing these strategies, activities, and/or materials in an institutional community or wider context to validate those having greatest utility for the various target groups.

Evaluating and assessing the potential for wider dissemination of successful project outcomes.

Disseminating the more successful models by an active transport system.

Proposals will be evaluated on their potential for achieving these objectives and on the more general criteria found in "Grants for Research and Education in Science and Engineering" (NSF 83–57, rev. 1/87).

B. Eligibility Criteria and Limitations

1. Eligible Organizations

The ACCESS Program will accept proposals initiated by scientists, engineers, mathematicians and educators submitted by their employing organizations. These include colleges and universities, national laboratories, professional societies, other non-profit organizations, for-profit industries with the scientific expertise and facilities, and other organizations which can conduct the described activities.

2. Eligible Activities

Prototype and Model Projects are not intended to be comprehensive or major efforts. Therefore, projects should be sharply focused on a defined target audience with a special characteristic or need, as for example, a project specially designed for the hearing-impaired, or one focusing on the significant underrepresentation of women in geology or physics, etc.

An individual project might be directed at one or more of the following activities: Awareness seminars for college and/or precollege faculty, consideration of math and science "anxiety", subject-matter workshops oriented to the special needs of the target group, recruitment efforts and attention to the problem of retention at the various entry and exit points in the pipeline, role model activities, development of educational materials, software, or technologies specially designed for the target group, etc. However, a principal purpose of this activity is to encourage faculties and administrations to test new ideas and to test as yet untried mechanisms for increasing the numbers of underrepresented groups who are successfully taking up the study of science and engineering.

C. Awards and Duration

Support will normally not exceed $100,000 per year for up to two years.

IV. Proposal Preparation and Submission

Proposal Preparation

Proposers are urged to initiate discussions with the Program staff by telephone or by letter before preparing a proposal for either activity. In some instances, a preliminary proposal will be required. The target date for submission of *preliminary* proposals to Comprehensive Regional Centers for Minorities is December 15, 1987. The submission of *formal* proposals for this activity will be governed by individual circumstances. Proposals for Prototype and Model Projects will be accepted at any time.

Proposers should consult the publication Grants for Research and Education in Science and Engineering (GRESE) (NSF 83–57 rev. 1/87), for additional guidance. This publication is available from the Forms and Publications Unit, National Science Foundation, 1800 G Street NW., Washington, DC. 20550; (202/357–7452). ACCESS proposers must use the forms contained in this announcement, not those in GRESE.

Except as modified by the guidelines set forth in this announcement, standard, NSF guidelines on proposal preparation, submission, evaluation, NSF awards (general information and highlights), declinations and withdrawals contained in GRESE are applicable.

More comprehensive information is contained in the NSF Grant Policy Manual, Revised, (NSF 77–47) available for purchase at $12.00 from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

In the event that the submitting organization has never been the recipient of an NSF award, it is recommended that appropriate administrative officials become familiar with the NSF policies and procedures contained in the NSF Grant Policy Manual, Revised, which are applicable to most NSF awards. (If a proposal from such an institution is recommended for an award, the NSF Division of Grants and Contracts will request certain organizational, management, and financial information. These requirements are contained in Chapter III of the Manual.)

An ACCESS proposal consists of the following parts:

0. Information About Principal Investigator (NSF form 1225)
1. Cover Sheet
2. Project Summary Form
3. Detailed Budget (NSF form 1030)
4. Narrative (Limited to 15 double-spaced pages)
5. Current and Pending Support (NSF 1239)

0. Information About Principal Investigator Form 1225, Information about Principal Investigators, which provides data on sex, ethnic origin, and handicap, is found on page 00. Only one copy of this form is to be submitted. It should be attached to the signature copy of the proposal cover sheet. While providing the requested data is voluntary, SUBMITTING THIS FORM IS REQUIRED BY NSF. OMMISSION OF THIS FORM WILL CAUSE CONSIDERABLE DELAY IN PROCESSING THE PROPOSAL. Any individual not wishing to submit the information should check the box provided for this purpose. Data will be treated as confidential, and will be maintained in secure data files in accordance with the Privacy Act of 1974. The information contained in this form will be available only to the NSF staff and will not be used in the external merit review process. All analyses conducted on the data will report aggregate statistical findings only and will not identify individuals.

1. *Cover Sheet.* The first page of the proposal will be the cover sheet prepared in the form found on page 00. This cover sheet form should be duplicated and completed. It must bear the signatures of the proposed principal investigator and of an administrative official who is empowered to commit the proposing organization to the conduct and prudent management of the project if NSF agrees to support it.

It is important that the cover sheet be completed with the full information requested. Most of the items are self-explanatory. Note that:

- Social security numbers are used by the Foundation to monitor and facilitate

the receipt and processing of numerous proposals, as well as to maintain award data. The number is solicited pursuant to the general authority of the Foundation under the NSF Act of 1950, as amended. However, submission of social security numbers is voluntary and refusal to disclose a social security number will not affect any proposal's eligibility for an award.

• If funds for this project are being requested from another Federal agency or another NSF program, this must be indicated in the upper right hand section of the cover sheet.

2. *Project Summary Form.* The second page of the proposal will be the project summary form, which should follow the cover sheet. The information provided on this form is used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers. Name of institution and project title must be written exactly as given on the cover sheet. Please enter the data requested in the boxes according to the instructions on the back of the form. The information is needed in the indicated format to provide direct input to the NSF data collection system. The Summary of Proposed Work should be a concise description of the project proposal, limited to 22 pica or 18 elite lines. It should be single spaced. The summary should tell briefly the aim of the project and why the project is significant. Considerable care should be taken when writing the Summary. The Summary is the reviewers' first impression of the project's merit. If the project is supported, the Summary will be published by the Foundation to inform the general public about its programs. Accordingly, it should be written so that a scientifically literate layperson can understand the use of Federal funds in support of the project.

3. *Detailed Budget.* Complete NSF form 1030 according to the instructions on the back of the form.

4. *Proposal Narrative.* In composing the narrative, the principal investigator is urged to bear in mind the criteria to be used by reviewers in judging the merits of the proposal. The narrative section must not exceed 15 double-spaced pages. Pages must be numbered.

5. *Current and Pending Support.* All current and pending support must be listed on NSF form 1239 included as Appendix V of this document.

Material that is supplementary to the narrative of the proposal should be included in the appendices, and may be single spaced. Each appendix should be printed on colored paper to make it easily distinguishable from the body of the proposal. The following appendices are required.

1. Curriculum vitae of the principal investigator, plus a one-page resume for each staff member who will participate in the project.

2. Statement of current and pending support. All current and pending externally-funded support to the principal investigator and co-principal investigator (if any), including this proposed project, must be listed on the form found in the appendices of this document, even if this proposed project is the *only* item to list. This information is needed to assure that the project leaders will have time to carry out the project and that there is no duplication of support.

3. Statement of results of prior support. If either the prospective principal investigator or the co-principal investigator received support from any of NSF's targeted programs for women, minorities or the disabled in the last five years, the proposal must include and appendix entitled "Results from Prior NSF Support". This appendix must describe any such project(s) and the outcomes in sufficient detail to permit a reviewer to reach an informed conclusion on the value of the results achieved. The following information must be included in this summary statement:

The NSF award number, amount, and period of support;

Title of the project;

A summary of the results of the completed work; and

A list of publications and/or formal presentations acknowledging the NSF award.

Proposals must be self-contained documents. Reviewers will not have access to ancillary reports or institutional catalogs. Each proposal should contain the following items in order (samples of all of the required forms can be found in the appendices of this announcement):

Proposal Submission

Proposals must be received in the Foundation by 5:00 p.m. on the appropriate due date to insure inclusion in the competitive review process established for this Program.

Materials required:

Fifteen legible copies of the complete proposal;

One copy of the NSF form, 1225 attached to the signature copy of the proposal only;

Three sets of extra forms, each stapled into a unit and containing

One copy of the Cover Sheet,

One copy of the Budget, and

One copy of the Project Sumamry Form.

These materials should be submitted to: USEME/SEE—ACCESS PROGRAM, Proposal Processing Unit, Room 223, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

V. Proposal Evaluation

The proposal format and general criteria to be used in the evaluation of all proposals coming to the Foundation are described in "Grants for Research and Education in Science and Engineering" (NSF 83–57, rev. 1/87). The general evaluation criteria are:

Performance competence
Intrinsic merit
Utility or relevance
Effect on the infrastructure of science and engineering

Proposals will be evaluated using these standard NSF criteria, plus the following criteria as appropriate:

Magnitude of impact on target population;

Potential to sustain and institutionalize project activities beyond the NSF grant period;

Appropriativeness and cost-effectiveness of the project relative to its objectives and anticipated results;

Extent to which the project builds partnerships and networks;

Adequacy of evaluation plans to determine outcomes and effects of proposed activities;

Uniqueness of the project and potential for its replication;

Inquiries should be addressed to: Career ACCESS Opportunity Program, Office of Undergraduate Science, Engineering, and Mathematics Education, Room 639, National Science Foundation, Washington, DC 20550, Telephone: (202) 357–7051.

VI. Other Related Programs

The NSF Guide to Programs (NSF 87–57) briefly describes all Foundation programs, most of which are open to all institutions. It is available at most institutions or may be obtained at no cost by contacting the Forms and Publications Unit, Room 232, NSF, Washington, DC 20550 (202/357–7861). Some programs of special interest to undergraduate faculty are described below.

• The NSF has several programs directed toward improving precollege science, mathematics and technology education. In most cases, college and university faculty write proposals and direct the projects supported by these programs. For information on Applications of Advanced Technologies, Informal Science Education, Instructional Materials Development, or Research in Teaching and Learning,

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contract the Division of Materials Development, Research and Informal Science Education, Room 635, NSF, Washington, DC 20550 (202/357–7452). For information on Science and Mathematics Education Networks, Teacher Preparation, Teacher Enhancement, or Presidential Awards for Excellence in Science and Mathematics Teaching, contact the Division of Teacher Preparation and Enhancement, Room 635, NSF, Washington, DC 20550 (202/357–7073).

• Information on Graduate Research Fellowships and Minority Graduate Research Fellowships may be obtained by contacting the National Research Council, 2101 Constitution Avenue, Washington, DC 20418.

• Research Experiences for Undergraduates (REU) provides an opportunity for college students to gain hands-on experience in science, mathematics or engineering research programs or equivalent projects conducted with the needs of undergraduates in mind. REU provides funds to operate REU Research Participation Sites. Each such site usually will involve several college students. REU also will supplement ongoing NSF research awards to enable them to provide research training experience for one or two undergraduates. More information is available through the REU Brochure, NSF 87–63 (copies of which may be obtained from the Forms and Publications Unit, NSF, Washington, DC 20550), or from the Divisional REU Coordinator, (Name of Discipline), NSF, Washington, DC 20550. Names and telephone numbers of the REU Coordinators for the various disciplines are listed in the REU brochure.

• The Undergraduate Faculty Enhancement Program (UFE) offers Grants for Undergraduate Faculty Seminars and Conferences to provide opportunities for groups of faculty to learn about new techniques and new developments in their fields. Awards are made to conduct seminars, short courses, workshops or similar activities for groups of faculty members from outside the grantee institution. For further information about the Undergraduate Faculty Enhancement Program, contact the Office of Undergraduate Science, Engineering, and Mathematics Education, Room 639, NSF, Washington, D.C. 20550 (202/357–7051).

• Through Research Opportunity Awards (ROA), faculty members at institutions with limited research opportunities may work with investigators who already hold or are applying for an NSF research grant. The experience gained under ROA may help the faculty member from the participating institution to become more competitive in submitting an independent research proposal, and may provide experience that will be reflected in improved teaching at the home institution. Full-time faculty members interested in ROA collaborations must make their own arrangements with a host investigator and institution. Formal application to NSF is made by the host institution as part of an initial proposal to NSF or, if an award already is in progress, as a supplement to that award. For further information about Research Opportunity Awards, contact the Research Opportunities Award Program, Room 1225, NSF, Washington, DC 20550 (202/357–7456)

• The Research in Undergraduate Institutions (RUI) activity is part of the Foundation's effort to broaden the base for science and engineering research and to enhance the scientific and technical training of students. The objectives of the RUI activity are to strengthen the research environments in academic departments that are oriented primarily to undergraduate education in science and engineering, and to promote the coupling of research and education at predominantly undergraduate institutions. RUI provides support for research and research equipment for investigators in non-doctoral departments in predominantly undergraduate institutions. RUI proposals are evaluated and funded on a competitive basis by NSF's research programs. For further information contact the Division of Research Initiation and Improvement, Room 1225, NSF, Washington, DC 20550 (202/357–7456).

• NSF's Facilitation Awards for Handicapped Scientists and Engineers (FAH) activity enhances opportunities for disabled individuals to participate in research. Funds are provided to purchase special equipment, modify equipment, or provide other services required specifically for the work undertaken on an NSF-supported project (see NSF 84–62, Rev 5–87). Funds from regular program budgets are provided for handicapped senior personnel, other professionals, and students, as a supplement to an existing award or as part of a new award. General inquiries may be made to the Coordinator, Facilitation Awards for Handicapped Scientists and Engineers, Room 1225, NSF, Washington, DC 20550 (202/357–7456).

• The Minority Research Initiation Program (MRI) supports research by minority scientists and engineers who hold full-time faculty or research-related positions, who (1) are members of ethnic minority groups that are significantly underrepresented in the science and engineering career pool; (2) have not previously received Federal research support as faculty members; and (3) wish to initiate research efforts on their campuses, thereby increasing their ability to compete successfully for other research support. Information about programs for minority scientists and engineers may be obtained from the MRI Program Director, Room 1225, NSF, Washington, DC 20550 (202/357–7350).

• The Visiting Professorships for Women Program (VPW) enables experienced women scientists and engineers to undertake advanced research at a host institution—a university or 4-year college which has the necessary facilities. In addition to her research responsibilities, the visiting professor undertakes lecturing, counseling and other activities to increase the visibility of women scientists in the academic environment of the host institution, and to provide encouragement for other women to pursue science, mathematics or engineering careers. Additional information may be obtained by contacting the VPW Program Director, Room 1225, NSF, Washington, DC 20550 (202/357–7734).

• The Research Opportunities for Women Scientists and Engineers Program (ROW) is designed to provide opportunities for independent research for women who previously have not been principal investigators, or who are reentering the research community. Additional information may be obtained by contacting the ROW Coordinator, NSF, Washington, DC 20550 (202/357–7734).

• The Undergraduate Curriculum Development Program includes two components: Engineering Curriculum Development and Calculus Curriculum Development.

—The Undergraduate Engineering Curriculum Development Program is designed to revise and improve undergraduate engineering education. There is a pressing need to revise the curricula of undergraduate engineering education with a view toward more emphasis on the laboratory experience and on technology-driven fields such as design, manufacturing, and computer-integrated engineering. There is also a need to explore the use of new technologies to improve the quality and productivity of the undergraduate engineering education system. Additional information about this program may be obtained from the

Undergraduate Engineering Curriculum Development Program, Room 1238, NSF, Washington, DC., 20550 (202/357–5102).

—The Division for Mathematical Sciences Undergraduate Curriculum Program supports proposals that will have significant impact on the nature of calculus instruction in this Nation through the development of model curricula and prototypical instructional materials. For additional information contact the Division of Mathematical Sciences, Room 339, NSF, Washington, DC 20550 (202/357–9669).

• MOSIS is a joint NSF/DARPA Program that allows qualifying universities to use the DARPA fast turnaround VLSI implementation facility as part of university based research and educational programs. Students taking undergraduate VLSI design courses can now have digital systems that they design, fabricated and packaged and returned to them for testing and experimentation. For more information, contact the Division of Microelectronic Information Processing Systems, Room 504, NSF, Washington, DC 20550 (202/357–7853).

• The goal of the Instrumentation and Laboratory Improvement Program is to improve the quality of the undergraduate curriculum by supporting projects to develop new or improved instrument-based undergraduate laboratory and/or field courses in science, mathematics or engineering. For additional information contact the Office of Undergraduate Science, Engineering and Mathematics Education, Room 639, NSF, Washington, DC 20550 (202/357–7051).

The Foundation welcomes proposals on behalf of all qualified scientists and engineers, and strongly encourages women, minorities, and the disabled to compete fully in any of the programs described in this document.

In accordance with Federal statutes and regulations and NSF policies, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

NSF has TDD (Telephone Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for information relating to NSF programs, employment, or general information. This number is (202) 357–7492.

The Foundation provides awards for research in the sciences and engineering. The awardee is wholly responsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

Catalogue of Federal Domestic Assistance Numbers: 47.071 Science and Engineering Education

Animal Welfare

If any of the equipment listed in a ILI proposal is likely to be employed in conducting experiments using non-human vertebrate animals or in maintaining such animals in captivity, the "Animal Welfare" block on the cover sheet must be checked. In such proposals, the narrative must contain an assurance that the proposing institution complies with the relevant guidelines issued by the National Institutes of Health in the *Guide for the Care and Use of Laboratory Animals* (NIH Publication 85–23, Revised 1985). The particular attention of proposers is directed to "U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research and Training", to be found in the Appendix of that Guide. Individuals desiring a copy of these Guidelines can obtain one from the Division of Research Services, Building 31, Room 4B59, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. (NSF does not maintain a supply of this document).

Robert F. Watson,

Acting Head, Office of Undergraduate Science, Engineering and Mathematics Education.

September 16, 1987.

[FR Doc. 87–21731 Filed 9–18–87; 8:45 am]

BILLING CODE 7555–01–M

Grants, Undergraduate Science, Engineering and Mathematics Education; Instrumentation and Laboratory Improvement; Program Announcement and Guidelines

The Instrumentation and Laboratory Improvement Program (ILI) is an integral part of NSF's overall plan to strengthen U.S. undergraduate education. In fiscal year 1988, this support extends to instructional instrumentation, research opportunities for undergraduate students, faculty enhancement, and curriculum development in undergraduate calculus and engineering. ILI will be coordinated by the newly established Office of Undergraduate Science, Engineering, and Mathematics Education (USEME) but proposals will be reviewed collaboratively and funded throughout NSF.

ILI, which builds on the College Science Instrumentation Program (CSIP), is budgeted in the Science and Engineering Education Directorate (SEE), with additional support budgeted through the research directorates. ILI broadens institutional eligibility to include universities and two-year colleges and increases the maximum amount of funds that may be requested in a proposal. The magnitude of the fiscal year 1988 ILI Program will depend on the quality of proposals the Foundation receives and the availability of funds.

Inquiries

Questions of a general nature not addressed in this publication may be directed to the NSF staff by contacting:

Instrumentation and Laboratory Improvement Program, Office of Undergraduate Science, Engineering, and Mathematics Education, Directorate for Science and Engineering Education, Room 639, National Science Foundation, Washington, DC 20550, Telephone: (202) 357–7051. Electronic Mail: Bitnet: undergrad@nsf. Arpanet, CSnet: undergrad@note.nsf.gov.

Other inquiries may be directed to the following offices:

Biological, Behavioral and Social Sciences: (202) 357–9880.

Computer and Information Science and Engineering: (202) 357–7936.

Engineering: (202) 357–5102.

Geosciences: (202) 357–7615.

Mathematical and Physical Sciences:

Astronomical Sciences: (202) 357–7622.

Chemistry: (202) 357–7503.

Materials Research: (202) 357–9737.

Mathematical Sciences: (202) 357–3695.

Physics: (202) 357–7611.

Scientific, Technological and International Affairs: (202) 357–7456.

Please Note

The page and appendixes references in this document refer to, and are included in, the ILI Program Announcement and Guidelines. These appendixes are not included in this document.

Undergraduate Science, Engineering, and Mathematics Education Instrumentation and Laboratory Improvement Program

I. Program Description

A. Purpose and Scope

Undergraduate instruction is a vital element in the preparation of our Nation's future scientists and engineers, teachers, leaders in business and

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government and technically literate citizens. Students in undergraduate science, engineering and mathematics courses—majors and non-majors alike—must have laboratory and/or field experiences with suitable, up-to-date equipment in order to become involved in the work that is at the heart of scientific progress and understanding.

The goal of NSF's Instrumentation and Laboratory Improvement program (ILI) is to improve the quality of the undergraduate curriculum by supporting projects to develop new or improved instrument-based undergraduate laboratory and/or field courses in science, mathematics or engineering. ILI provides matching support for the instrumentation necessary to implement undergraduate instructional improvements at U.S. two-year and four-year colleges and universities.

ILI proposals are evaluated and funded collaboratively by NSF's education and research directorates. In this way, ILI is fully integrated into ongoing research and education activities of the Foundation.

The specific objectives of ILI are to encourage and support the:

- Introduction of modern instruments to improve the education of undergraduate students in science, mathematics and engineering courses, laboratories, and field work;
- Interfacing of computers with scientific instrumentation and other appropriate uses of current technology in science, mathematics and engineering instruction;
- Development of new ways for using instrumentation to extend instructional capabilities; and
- Establishment of equipment-sharing capability via consortia or centers.

The strategy underlying the highly competitive nature of the Instrumentation and Laboratory Improvement program is to produce projects that will:

- Set standards for instrumentation and its instructional use against which other institutions can measure their own performance: Standards which they will strive to equal or exceed;
- Yield products such as laboratory manuals, scholarly publications, etc., thus serving a common good as well as bringing local improvement.

The Program supports well-focused projects which will result in a clear improvement in the quality of undergraduate education. This may be done by providing for:

- Acquisition of new, state-of-the-art instructional scientific equipment;
- Upgrading of obsolete or unreliable equipment with current models that significantly improve instructional capabilities.

Because the objective of the program is to improve the quality of instruction, projects based primarily on financial need or increased enrollments are not appropriate. Projects are expected to involve activities which go well beyond the basic level of support that the institution itself must provide in order to maintain a viable teaching program.

Although the categories of awards just described are expected to include the majority of projects supported through ILI, additional ideas and mechanisms will be considered by NSF.

ILI seeks proposals that request funds for instructional scientific equipment. A maximum of $100,000 may be requested from NSF; grantee institutions must provide an equal or greater matching contribution. (See the requirements for matching funds below.) The minimum grant request to ILI is $5,000 in NSF funds.

Grants in support of ILI activities routinely are made for a period of 30 months. It is expected that the requested equipment will be acquired during this time.

Presentation of the results of successful projects at professional meetings or in appropriate journals is highly encouraged in order that institutions other than the grantees also may benefit from ILI projects.

B. Eligibility Criteria and Limitations

1. Eligible Institutions. Proposals to the Instrumentation and Laboratory Improvement program will be accepted from:

a. All two-year colleges, four-year colleges, and universities in the United States or its territories;

b. Any formally organized consortium of institutions which has an established central office and an approved fiscal management capability. Proposals from informal consortia of institutions are not eligible.

Proposals from a consortium should be submitted only in those instances when several institutions propose to make joint use of a single major piece (or an assemblage of closely related pieces) of equipment.

2. Eligible Fields. The Foundation will consider proposals for support of projects in:

- Any field of science, mathematics and engineering ordinarily supported by the National Science Foundation, including the mathematical, physical and biological sciences, the social sciences, computer science, and engineering. A detailed list is shown on page 00.
- Interdisciplinary fields composed of overlapping areas of two or more eligible sciences.
- Multiple disciplines—as distinct from interdisciplinary fields. Multidisciplinary proposals should be submitted only in instances where several departments propose to make joint use of a single major piece of equipment, or an assemblage of closely related pieces of equipment. Departments are advised not to combine individual proposals in order to submit them in the multidisciplinary category; each department should submit its own proposal unless equipment is to be shared.

Specifically excluded from ILI support are:

- Projects addressed to clinical fields associated with the sciences, such as medicine, nursing, clinical psychology and physical education.
- Projects which primarily involve social work, home economics, or the arts and humanities.

3. Eligible Departments and Individuals.

- All science, mathematics and engineering departments in an eligible institution may participate in the ILI competition. ILI does not impose the constraint of "one proposal per department" that previously applied to NSF's College Science Instrumentation Program.
- Each principal investigator may submit only one ILI proposal per closing date. While one or more co-principal investigators may be named, one specific individual must be identified on the cover sheet as *the* principal investigator.

4. Eligible Activities. Although ILI proposals are encouraged for the improvement of formal courses and laboratories traditionally associated with undergraduate instruction for science, mathematics or engineering majors, the Program is in no way restricted to these activities. Examples of other equally welcome activities include:

- Projects aimed at acquainting nonscience majors with the principles and methods of science, mathematics and engineering, or with the impact of science and technology on society;
- Projects concerned with the undergraduate science education of prospective teachers that emphasize science content or teaching methods especially relevant to the sciences;
- Projects that involve fundamental scientific, mathematical or engineering concepts within technical, professional or pre-professional programs;

• Projects to improve undergraduate honors programs, student research and independent study. (See also the program announcements for Research Experiences for Undergraduates, NSF 87.63, and Research in Undergraduate Institutions, NSF 85–59).

Projects involving women, minorities, and/or disabled persons as part of the staff or as target audiences are especially encouraged, particularly if they represent models for increasing the numbers of qualified young people in these groups who may decide to choose careers in mathematics, science, and engineering.

5. Eligible Equipment. The types of equipment eligible for inclusion in a ILI proposal are listed under the section "Detailed Budget".

The primary use of each of the equipment items to be acquired must be to benefit of undergraduate science, mathematics and/or engineering instruction. Items may serve additional purposes in the department at those times when they are not being used for undergraduate instruction, but these ancillary uses neither form nor augment the justification required for ILI funding.

6. Ineligible Items. Neither NSF funds nor institutional matching funds may be used to purchase any of the ineligible items listed below:

• Teaching Aids (e.g., films, slides, projectors, "drill and practice" software), word-processing equipment, library reference materials, or expendables (e.g., glassware, chemicals);

• Faculty research instrumentation;

• Laboratory furnishings or general utility items such as office equipment, benches, tables, desks, chairs, laboratory carts, storage cases, routine supplies and general consumables;

• Maintenance or service contracts—even when these are for equipment procured through the ILI program;

• Salaries, honoraria, consulting fees, travel, etc.;

• Institutional indirect costs or overhead;

• Costs of building or laboratory modification, or construction; and

• A flat percentage inflation allowance.

7. Eligible Project Size. As noted previously, no proposal may request more than $100,000 from NSF; project costs in excess of $200,000 must be funded by overmatching. Proposals requesting less than $5,000 from NSF (for a total minimum project cost of $10,000) are not eligible.

C. Requirements for Matching Funds

A proposing institution must agree to provide matching funds in an amount equal to or greater than the funds provided by the Foundation. The proposal budget must detail all expenditures for the project as a whole—that is, for the combined total of requested NSF funds and the institution's funds. Matching funds must be from non-Federal sources. Funds from an ILI grant, or the institutional matching contribution to it, may not be counted as an institutional contribution to another Federally supported project. If a grantee receives a gift of equipment from non-Federal sources that is identical or equivalent to items listed in the project's approved budget, the cash value of such gifts may be counted as institutional matching funds.

An institution may obligate its matching funds or receive gifts to be counted toward matching at any time following the closing date which the awarded proposal was submitted, but before the grant expiration date specified in the grant document. This normally provides a period of nearly three years during which the institution must fulfill the agreement to match NSF funds. To count as matching, these funds must be used specifically for the equipment listed in the project's approved budget (or its equivalent).

II. Preparation and Submission of Proposals

A. General Information

This announcement sets forth basic information needed to initiate planning for proposal submission. Proposals must also consult the publication Grants for Research and Education in Science and Engineering (GRESE) (NSF 83–57 rev. 1/87), for additional guidance. This publication is available from the Forms and Publications Unit, National Science Foundation, 1800 G Street NW, Washington, DC 20550; (202) 357–7452. ILI proposers must use the forms contained in this announcement (pp. 00—00), not those in GRESE.

Except as modified by the guidelines set forth in this announcement, standard NSF guidelines on proposal preparation, submission, evaluation, NSF awards (general information and highlights), declinations and withdrawals contained in GRESE are applicable.

More comprehensive information is contained in the NSF Grant Policy Manual, Revised (NSF 77–47) available for purchase at $12.00 from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The Grant Policy Manual ordinarily is not needed in the process of preparing a ILI proposal.

In the event that the submitting organization has never been the recipient of an NSF award, however, it is recommended that appropriate administrative officials become familiar with the NSF policies and procedures contained in the NSF Grant Policy Manual, Revised, which are applicable to most NSF awards. (If a proposal from such an institution is recommended for an award, the NSF Division of Grants and Contracts will request certain organizational, management, and financial information. These requirements are contained in Chapter III of the Manual.)

B. Proposal Preparation

A successful proposal must outline the way in which the planned project will improve the present program of undergraduate science, mathematics or engineering instruction. Each proposal should demonstate that:

• The plan is a logical step to take at this time toward developing the academic program in question;

• Informed, realistic planning already has taken place;

• The faculty are competent to carry out the project; and

• Provision of the requested equipment will make possible full implementation of the improvements proposed.

The equipment requested must be appropriate for the project's objectives. Since the Foundation aims to support projects with maximum potential for continuing impact, each proposal should show how the equipment fits into the department's current holdings and give a clear outline of the institution's plans for the extended care and maintenance of the equipment.

C. Proposal Format

A proposal to ILI consists of the following parts:

1. Cover Sheet
2. Project Summary Form
3. Detailed Budget (Equipment List)
4. Narrative (Limited to 12 double-spaced pages)
5. Appendices

1. Cover Sheet. The first page of the proposal will be the cover sheet prepared in the form found on page 00. This cover sheet form should be duplicated and completed. It must bear the signatures of the proposed principal investigator and of an administrative official who is empowered to commit the proposing organization to the conduct and prudent management of the project if NSF agrees to support it.

It is important that the cover sheet be completed with the full information requested. Most of the items are self-explanatory. Note that:

• Social security numbers are used by the Foundation to monitor and facilitate the receipt and processing of numerous proposals, as well as to maintain award data. The number is solicited pursuant to the general authority of the Foundation under the NSF Act of 1950, as amended. However, submission of social security numbers is voluntary and refusal to disclose a social security number will not affect any proposal's eligibility for an award.

• If funds for this project are being requested from another Federal agency or another NSF program, this must be indicated in the upper right hand section of the cover sheet. If they are not being so requested at the time of proposal submission, but are requested subsequently (prior to the Foundation's anticipated ILI announcement date), a letter so stating should be sent at that time to the ILI office. This letter should identify the proposal by its NSF number.

• Form 1225, Information about Principal Investigators, which provides data on sex, ethnic origin, and handicap, is found on page 00. Only one copy of this form is to be submitted. It should be attached to the signature copy of the proposal cover sheet. While providing the requested data is voluntary, *Submitting this form is required by NSF. Omission of this form will cause considerable delay in processing the proposal.* Any individual not wishing to submit the information should check the box provided for this purpose. Data will be treated as confidential, and will be maintained in secure data files in accordance with the Privacy Act of 1974. The information contained in this form will be available only to the NSF staff and will not be used in the external merit review process. All analyses conducted on the data will report aggregate statistical findings only and will not identify individuals.

2. Project Summary Form. The second page of the proposal will be the project summary form (page 00), which would follow the cover sheet. The information provided on this form is used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers. Name of institution and project title must be written exactly as given on the cover sheet. Please enter the data requested in the boxes according to the instructions on the back of the form. The information is needed in the indicated format to provide direct input to the NSF data collection system.

The Summary of Proposed Work should be a concise description of the project (not of the proposal), limited to 22 pica or 18 elite lines. It should be single spaced. The summary should tell briefly the aim of the project, the major instruments which will be purchased, in what applications they will be used, and why the project is significant. Considerable care should be taken when writing the Summary. The Summary is the reviewers' first impression of the project's merit. If the project is supported, the Summary will be published by the Foundation to inform the general public about its programs. Accordingly, it should be written so that a scientifically literate layperson can understand the use of Federal funds in support of the project.

3. Detailed Budget. The third page of the proposal will be the budget prepared according to the format on page 00. This is a complete, detailed list of anticipated equipment acquisitions showing list and discounted unit prices and discounted totals. The budget must be limited to the following categories, with a subtotal shown for each:

a. Scientific Equipment
b. Computing Equipment
c. Construction of Equipment
d. Safety Equipment
e. Maintenance Equipment
f. Shipping Costs

Guidelines for the assignment of eligible items to the six budget categories follow. Each item or functional unit of equipment must have a minimum unit acquisition cost of $500 (list) and a life expectancy of more than two years. (The specifics of a functional unit are discussed in note (ii), immediately following the six budget categories.) Note that these guidelines and restrictions apply to equipment purchased with institutional matching funds as well as to that bought with NSF funds.

a. Scientific Equipment—to be used in any phase of undergraduate science, mathematics and/or engineering education.

b. Computing Equipment—digital, analog, analog-digital hybrid computers, mini- or micro-computers, or ancillary equipment that provides remote access to central digital computing systems. The equipment must be for use in specific curricular improvements; for example, interfacing with scientific instruments to assist student data acquisition and interpretation, or teaching computer science. Software essential to the scientific and educational objectives of the project is permitted. Each software package must be itemized, justified, and the cost indicated. Software ordered in conjunction with new computing equipment is regarded as part of a functional unit and, accordingly, need not cost $500 in order to be eligible.

c. Equipment Fabrication—including materials and labor. Sufficient justification must accompany requests for equipment construction funds, such as a detailed explanation of the advantages of the proposed units over commercially available items. Requests for equipment fabrication must be supported by drawings, diagrams, parts listed and estimates for labor charges, as appropriate. Any use of project funds (NSF or institutional matching monies) for the modification or construction of laboratories or other buildings, or for the installation of equipment, is specifically prohibited.

d. Safety Equipment—such as fire control devices, fume hoods, etc., may be purchased under this program where necessary for the safe utilization of the equipment requested in the above categories.

e. Maintenance Equipment—unique items specifically required for calibration, repair and maintenance of the scientific equipment itemized in the categories a., b., and c. above. If such items are part of a "package" offered by the vendor at a comprehensive price, they may be folded into the basic item of equipment.

f. Shipping Costs—reasonable estimates should be used, as opposed to a flat percentage.

Following the total amount of projects costs, list the actual dollar amount requested from NSF. The amount requested from the National Science Foundation may not exceed 50% of the total budget, or $100,000, and may not be less than $5,000.

Please note:

(i) It is important that reviewers be able to recognize the function of requested equipment. Therefore, the detailed budget should list all individual items by a descriptive name, and the probable brand, model, and price. (Such selections may be changed after an award.) Each category should be subdivided by function or by course so as to correspond as closely as possible to the narrative which is to follow. Each item should be lettered to be consistent with the categories above, and to facilitate reference to and from the justification presented in the narrative.

(ii) Budget items may be either single items meeting the minimum list cost requirement ($500), or part(s) of a functional unit where the sum of the components meets the minimum cost requirement. A functional unit is an assemblage of instruments, modules, and components which together perform a specific task and which, once assembled, ordinarily will be kept

together as a unit. Examples of functional units would be an oxcilloscope with appropriate probes, or a recording infrared spectrophotometer with a demountable cell assembly and appropriate windows, or a computer and its operating system (including software needed for it to achieve the curricular goals for which it is being purchased). A combination of independent instruments needed for some specific experiment or for a single laboratory station would not meet the definition of functional unit.

Each component of a functional unit must be itemized and the cost indicated; the subtotal for the entire unit should be entered as the unit cost (at least $500).

(iii) Many equipment manufacturers routinely offer educational or institutional discounts. In preparing the ILI budget, manufacturers or distributers should be contacted in order to obtain discounted prices. On the budget page, the list price should be shown, the standard educational discount noted and subtracted, and the discounted price used to compute the total cost of the project.

If the proposer is able to negotiate on an individual basis a special discount not routinely available to educational institutions, the usual discounted selling price should be listed in the project's budget. The amount by which the special discount exceeds the standard educational discount may be counted as matching funds.

4. Narrative. The narrative presents most of the information that determines whether or not a grant will be awarded. Proposals should be written to respond to criteria to be used by reviewers in judging the merit of the proposal. (See Proposal Evaluation, page 00.)

The narrative must focus on one coherent project which would improve undergraduate instruction in a definite way. The narrative must show how the requested equipment is necessary for the project, and how the various pieces of equipment will be used together to implement it. A proposal seeking support for several unrelated projects or for a list of equipment that is to be used in unrelated ways is not appropriate.

The narrative section must not exceed 12 double-spaced pages. Pages must be numbered. Reviewers wil not be responsible for studying additional narrative pages. Information applicable in more than one place may be referred to by page and paragraph. Appended information should be restricted to those appendices required in Section 5 below and to tabular presentations of items required to supplement the narrative. The use of tabular form for reporting details is encouraged. Such information should be cross-referenced to the appropriate portions of the narrative.

The narrative should conform to the following outline:

a. The Present Situation. This section should first present information about the institution and the department, and then should discuss the perceived deficiency that is to be addressed. It should open with a discussion of the institutional context: a brief description of the institution, the students it serves, the department, and the intended student clientele for the project being proposed. It also should discuss the curriculum of which the courses which will be served by the project are a part. (It cannot be assumed that the reviewers are acquainted with the institution and its sceince, mathematics or engineering programs.) Catalog descriptions of specific courses affected should be included in Appendix IV.

Second, this section should briefly describe the ongoing support from the institution to the department in order to answer the question: "Does the department have adequate resources and equipment to provide a sound program into which the present project will fit?" A list of major departmental equipment holdings should be included as Appendix IV (see section 5 on page xx).

Finally, this section should present the curricular deficiency which the project would remedy. It should answer the question: "What is currently missing from the curriculum or is not being done effectively?"

b. The Development Plan. This section should answer the question: "How is the course and/or curriculum to be improved by this project?" It should contain a detailed description of the specific developments intended. Specific experiments, student projects, or course work that would be conducted with the new equipment must be presented in terms of the scientific principles or phenomena to be taught, and in terms of the teaching methods to be employed. This portion of the narrative must enable a group of colleagues to judge the suitability of the planned change for the intended student audience, in the academic setting described. Both the scientific and pedagogical aspects of the proposed project will be weighed to assess the relative impact on science, mathematics or engineering education that would be realized through the funding of this project.

c. Equipment—(1) The Equipment Request. This section should answer the question: "Is each item of equipment requested actually needed to implement this development, is it the right piece of equipment for the job, and is the request appropriate for the department?" It should consist of some brief indication as to just how each major equipment item requested will be used to effect what instructional development. It should also include a discussion of why the particular equipment was chosen and what alternatives were considered and rejected, and why.

It is the purpose of this part of the proposal to establish the precise correlation between the subject-matter developments described in the previous sections and the items of equipment being requested. In the event of a grant, any items regarded as ineligible, not germane or inadequately justified will be deleted from the authorized list of purchases.

Logical groupings of items should be made to minimize repetition, with each entry cross-referenced to the item numbrs given in the budget (equipment list). Special arguments may be needed to explain requests for apparatus of a quality or cost not usually encountered in undergraduate instruction, equipment which is to be fabricated rather than purchased as a unit, or purchases which might appear to be at variance with the academic setting in which the project would operate. Such statements must be keyed to developments desired in undergraduate instruction. Therefore, proposers are cautioned against providing arguments based on enhancements of graduate-level courses, improvement of faculty research capabilities, or other activities outside the scope of ILI. (cf. Research in Undergraduate Institutions Program Announcement, NSF 85–59.)

(2) The Equipment on Hand for the Project. This section should answer the question: "Has there been a thorough survey of the current equipment inventory and does the proposal plan to make full use of it?" It should consist of a list indicating major equipment on hand that will be available for the project, but that is not included in this request.

(3) Equipment Maintenance. This section should answer the question: "Is a reasonable plan presented to ensure a maximum usable lifetime for the equipment?" Each proposal should briefly but clearly outline the institution's plan for extended care and maintenance of the equipment.

d. Faculty Expertise. This section should answer the question: "Does the department presently have personnel with the expertise needed to complete the project successfully, or is there a firm commitment to make an appropriate hire?" It should contain enough information about the present

faculty of the academic unit seeking support to convince reviewers that the technical expertise to carry out the proposed project will be present. Special attention should be given to the individual named to direct the project. Since the effective accomplishment of the project's goals depends in large measure on the principal investigator's knowledge of the discipline, the curriculum, and the equipment, this person must teach in the academic unit receiving support. A summary of experience must indicate that the principal investigator is an appropriate person to direct this particular project.

5. Appendices. Material that is supplementary to the text of the proposal should be included in the appendices, and may be single spaced. Each appendix should be printed on colored paper to make it easily distinguishable from the body of the proposal. The following seven appendices, if relevant to the project, are required. Their omission can delay processing or impede evaluation.

I. Curriculum vitae of the principal investigator (include a list of significant publications), plus a one-page resume' for each faculty associate who will participate in the project.

II. Statement of current and pending support. All current and pending externally-funded support to the principal investigator and co-principal investigator (if any), including this proposed project, must be listed on the form found on page 00. This information is needed to assure that the project leaders will have time to carry out the project and that there is no duplication of support.

III. Statement of results of prior support. If either the prospective principal investigator or the co-principal investigator received support from NSF's College Science Instrumentation Program in either 1985 or 1986, the proposal must include an Appendix III entitled "Results from Prior NSF Support". This appendix must describe the earlier CSIP project and its outcomes in sufficient detail to permit a reviewer to reach an informed conclusion regarding the value of the results achieved. The following information must be included in this summary statement:

- The NSF award number, amount, and period of support;
- Title of the project;
- A summary of the results of the completed work. (To facilitate review, this summary should not exceed—for ILI—three double-spaced pages); and
- A list of publications and/or formal presentations acknowledging the NSF award (copies of such papers are not to be submitted with the proposal).

Appendices IV through VII need provide no more information than should be readily available to a department. Please limit each to a maximum of two pages.

IV. A list of all major equipment held by the department, whether relevant to the proposed project or not, including model, date of purchase, and approximate cost. Where this equipment list is too extensive to include in two pages, list only the most expensive and most relevant items. Minor items of equipment may be listed, if so desired, by categories (e.g., "12 pH meters of various models").

V. A catalog description of each course directly affected by this project, the frequency of offering, approximate enrollment, and whether or not required of majors.

VI. (Only for projects which are intended for majors.) Summarize the number of majors graduated each year for the past five years. Provide an estimate of the number of graduates who went on to graduate or professional schools, and the number who went directly into the workforce. Where the information is available, list graduate schools attended and organizations which hired substantial numbers of graduates.

VII. (Only for projects which include a student research component.) A list of recent talks and papers involving undergraduate students in the department. Identify student authors with an asterisk.

Other appropriate appendices might include schematic diagrams of equipment, detailed description of specialized equipment, examples of experiments, etc. It is important that appendices be brief and easy to read. Voluminous appendices cannot be read by reviewers in the time available for proposal evaluation. It is inappropriate to include institutional catalogues, departmental curricula, whole laboratory manuals, or other general material.

D. Proposal Submission

Proposals must be received in the Foundation by 5:00 p.m. on November 20, 1987 to insure inclusion in the competitive review process established for this Program.

Materials required:

Fifteen legible copies of the complete proposal;
One copy of the NSF form, 1225 attached to the signature copy of the proposal only;
Three sets of extra forms, each stapled into a unit and containing
One copy of the Cover Sheet,
One copy of the Budget (Equipment List), and
One copy of the Project Summary Form.

These materials should be submitted to: Proposal Processing Unit for Instrumentation and Laboratory Improvement Program, Room 223, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

The following requirements also must be met:

- All materials submitted to the Foundation must be contained in a single package. Secure packaging is mandatory. The Foundation cannot be responsible for the processing of proposals damaged in transit;
- Each copy of the proposal should be on standard size duplicating or mimeograph paper of regular weight. It should be stapled only in the upper left corner. All pages must be numbered. The duplicating process should ensure legibility for at least 5 years. Typing of the narrative must be double-spaced; and
- One copy must be signed both by the principal investigator and by an administrative official who has been designated as an Authorized Institutional Representative.

Do Not:

- Staple the sets of extra cover sheets, project summary forms, and equipment budgets to a proposal;
- Put covers on the proposals; or
- Send separate "information" copies or several packages containing parts of a single proposal.

A checklist of items to remember in preparing and submitting a proposal is located on page 00.

III. Proposal Evaluation and Award Selection

NSF evaluates proposals on the basis of four general criteria:

1. *Performance competence*—This criterion relates to the capability of the investigator(s), the technical soundness of the proposed approach, the adequacy of the institutional resources available, and the proposer's recent research/science, mathematics or engineering education performance.

2. *Intrinsic merit*—This criterion is used to assess the quality, currency, and significance of the scientific/technical content and related instructional activity of the project within the context of undergraduate science, mathematics, and engineering education.

3. *Utility or relevance of the project*—This criterion is used to assess the

impact the project will have at the proposing institution, and the appropriateness of the project in the local context.

4. *Effect on the infrastructure of science, mathematics and/or engineering*—This criterion relates to the potential of the proposed project to contribute to better understanding or to improvement of the quality, distribution, or effectiveness of the Nation's scientific/mathematics/engineering research, education, and human resources base.

See page 9 of GRESE for an additional discussion of these criteria.

ILI grants are awarded on a competitive basis. In selecting proposals to be supported, the Foundation is assisted by merit reviewers who are mathematicians, scientists or engineers, drawn primarily from the academic community, and also from research organizations and professional associations.

IV. Announcement and Administration of Awards

• The evaluation and processing of proposals will require approximately 6 months. Decisions will be announced individually through written notices to the institution and to the principal investigator. The last award and declination notices are expected to be mailed in late May, 1988. Before such notice is dispatched, the Foundation can give no information concerning the probability that any particular proposal will be supported or declined. Proposals are urged to refrain from making premature inquiries.

• Grants are administered in accordance with the terms and conditions described in this announcement, the GRESE, and NSF F.L. 200, Grant General Conditions, copies of which may be requested from the NSF Forms and Publications Unit. More comprehensive information is contained in the NSF Grant Policy Manual (Revised) available through the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

The Foundation strongly encourages publication of research results and instructional experiments developed. The awardee, however, is wholly responsible for the conduct of the project and for preparation of the results for publication. The Foundation does not assume responsibility for project results or their interpretation.

Within 90 days after the expiration of a grant, the principal investigator is required to submit a Final Project Report (NSF Form 98A). Final expenditure information is supplied by the grantees through the Federal Cash Transactions Report (SF 272), normally submitted by the grantee's financial officer. Annual reports of progress are not required of ILI grantees.

V. Check List

The following checklist of steps in completing a ILI proposal is provided for the convenience of the proposal writer.

A. Eligibility

Determined for
- Department
- Field and/or Project
- Equipment

B. Forms Completed

- Cover Sheet
- Project Director's signature on one copy Authorized Organizational Representative's signature on same copy
- Form 1225 (Information about Principal [and Co-Principal] Investigators), submit only one copy, attached to signature copy.
- Submission of the *form* is required.
- Project Summary Form (Project Summary single-spaced)
- Budget (Equipment List) completed, using the required format.

  Must contain no item with a unit list cost of under $500 (unless it is part of a functional unit)

  Equipment items numbered and categorized

  Subtotals for categories indicated

  Total cost for project indicated

  Arithmetic checked for accuracy

  NSF request indicated (it may not exceed 50% of total project cost, nor be more than $100,000, nor be less than $5,000)

The Principal Investigator must have submitted NSF form 98A for all completed NSF-funded projects.

C. Narrative Completed

- All points covered
  (a) Present situation
  (b) Development plan
  (c) Equipment
  (d) Personnel
- Does not exceed 12 double-spaced, numbered pages

D. Appendices

I. Curriculum vitae
II. Statement of current and pending support
III. Statement of prior support results
IV. List of departmental equipment
V. Catalog description of courses affected
VI. Information on past graduates (needed if majors are to be affected)
VII. Student research papers and talks (needed if the project features a student research component)
VIII. Other necessary information, if any

E. Format Checked

- Sections in proper order
- Correct number of copies of proposal and forms included

F. Submission

- All materials forwarded in a single package
- Materials submitted in time to reach NSF on or before November 20, 1987

VI. Other Programs

NSF Guide to Programs (NSF 86-40) briefly describes all Foundation programs, most of which are open to all institutions. It is available at most institutions or may be obtained at no cost by contacting the Forms and Publications Unit, Room 232, NSF, Washington, DC 20550 (202/357-7861). Some programs of special interest to undergraduate faculty are described below.

• The NSF has several programs directed toward improving precollege science, mathematics and technology education. In most cases, college and university faculty write proposals and direct the projects supported by these programs. For information on Applications of Advanced Technologies, Informal Science Education, Instructional Materials Development, or Research in Teaching and Learning, contact the Division of Materials Development, Research and Informal Science Education, Room 635, NSF, Washington, DC 20550 (202/357-7452). For information on Science and Mathematics Education Networks, Teacher Preparation, Teacher Enhancement, or Presidential Awards for Excellence in Science and Mathematics Teaching, contact the Division of Teacher Preparation and Enhancement, Room 635, NSF, Washington, DC 20550 (202/357-7083).

• Information on Graduate Research Fellowships and Minority Graduate Research Fellowships may be obtained by containing the National Research Council, 2101 Constitution Avenue, Washington, DC 20418.

• Research Experiences for Undergraduates (REU) provides an opportunity for college students to gain hands-on experience in science, mathematics or engineering research programs or equivalent projects conducted with the needs of undergraduates in mind. REU provides funds to operate REU Research Participation Sites. Each such site

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usually will involve several college students. REU also will supplement ongoing NSF research awards to enable them to provide research training experience for one or two undergraduates. More information is available through the REU Brochure, NSF 87–63 (copies of which may be obtained from the Forms and Publications Unit, NSF, Washington, DC 20550), or from the Divisional REU Coordinator, (Name of Discipline), NSF, Washington, DC 20550. Names and telephone numbers of the REU Coordinators for the various disciplines are listed in the REU brochure.

• The Undergraduate Faculty Enhancement Program (UFE) offers Grants for Undergraduate Faculty Seminars and Conferences to provide opportunities for groups of faculty to learn about new techniques and new developments in their fields. Awards are made to conduct seminars, short courses, workshops or similar activities for groups of faculty members from outside the grantee institution. For further information about the Undergraduate Faculty Enhancement Program, contact the Office of Undergraduate Science, Engineering, and Mathematics Education, Room 639, NSF, Washington, D.C. 20550 (202/357–7051).

• Through Research Opportunity Awards (ROA), faculty members at institutions with limited research opportunities may work with investigators who already hold or are applying for an NSF research grant. The experience gained under ROA may help the faculty member from the participating institution to become more competitive in submitting an independent research proposal, and may provide experience that will be reflected in improved teaching at the home institution. Full-time faculty members interested in ROA collaborations must make their own arrangements with a host investigator and institution. Formal application to NSF is made by the host institution as part of an initial proposal to NSF or, if an award already is in progress, as a supplement to that award. For further information about Research Opportunity Awards, contact the Research Opportunities Award Program, Room 1225, NSF, Washington, DC 20550 (202/357–7456).

• The Research in Undergraduate Institutions (RUI) activity is part of the Foundation's effort to broaden the base for science and engineering research and to enhance the scientific and technical training of students. The objectives of the RUI activity are to strengthen the research environments in academic departments that are oriented primarily to undergraduate education in science and engineering, and to promote the coupling of research and education at predominantly undergraduate institutions. RUI provides support for research and research equipment for investigators in non-doctoral departments in predominantly undergraduate institutions. RUI proposals are evaluated and funded on a competitive basis by NSF's research programs. For further information contact the Division of Research Initiation and Improvement, Room 1225, NSF, Washington, DC 20550 (202/357–7456).

• NSF's Facilitation Awards for Handicapped Scientists and Engineers (FAH) activity enhances opportunities for disabled individuals to participate in research. Funds are provided to purchase special equipment, modify equipment, or provide other services required specifically for the work undertaken on an NSF-supported project (see NSF 84–62, Rev 5–87). Funds from regular program budgets are provided for handicapped senior personnel, other professionals, and students, as a supplement to an existing award or as part of a new award. General inquiries may be made to the Coordinator, Facilitation Awards for Handicapped Scientists and Engineers, Room 1225, NSF, Washington, DC 20550 (202/357–7456).

• The Minority Research Initiation Program (MRI) supports research by minority scientists and engineers who hold full-time faculty or research-related positions, who (1) are members of ethnic minority groups that are significantly underrepresented in the science and engineering career pool; (2) have not previously received Federal research support as faculty members; and (3) wish to initiate research efforts on their campuses, thereby increasing their ability to compete successfully for other research support. Information about programs for minority scientists and engineers may be obtained from the MRI Program Director, Room 1225, NSF, Washington, DC 20550 (202/357–7350).

• The Visiting Professorships for Women Program (VPW) enables experienced women scientists and engineers to undertake advanced research at a host institution—a university or 4-year college which has the necessary facilities. In addition to her research responsibilities, the visiting professor undertakes lecturing, counseling and other activities to increase the visibility of women scientists in the academic environment of the host institution, and to provide encouragement for other women to pursue science, mathematics or engineering careers. Additional information may be obtained by contacting the VPW Program Director, Room 1225, NSF, Washington, DC 20550 (202/357–7734).

• The Research Opportunities for Women Scientists and Engineers Program (ROW) is designed to provide opportunities for independent research for women who previously have not been principal investigators, or who are reentering the research community. Additional information may be obtained by contacting the ROW Coordinator, NSF, Washington, DC 20550 (202/357–7734).

• The Undergraduate Curriculum Development Program includes two components: Engineering Curriculum Development and Calculus Curriculum Development.

—The Undergraduate Engineering Curriculum Development Program is designed to revise and improve undergraduate engineering education. There is a pressing need to revise the curricula of undergraduate engineering education with a view toward more emphasis on the laboratory experience and on technology-driven fields such as design, manufacturing, and computer-integrated engineering. There is also a need to explore the use of new technologies to improve the quality and productivity of the undergraduate engineering education system. Additional information about this program may be obtained from the Undergraduate Engineering Curriculum Development Program, Room 1238, NSF, Washington, DC 20550 (202/357–5102).

—The Division for Mathematical Sciences Undergraduate Curriculum Program supports proposals that will have significant impact on the nature of calculus instruction in this Nation through the development of model curricula and prototypical instructional materials. For additional information contact the Division of Mathematical Sciences, Room 339, NSF, Washington, DC 20550 (202/357–9669).

• MOSIS is a joint NSF/DARPA Program that allows qualifying universities to use the DARPA fast turnaround VLSI implementation facility as part of university based research and educational programs. Students taking undergraduate VLSI design courses can now have digital systems that they design, fabricated and packaged and returned to them for testing and experimentation. For more inforamtion, contact the Division of Microelectronic Information Processing Systems, Room

504, NSF, Washington, DC 20550 (202/357–7853).

• The Career Access Opportunities in Science and Technology for Women, Minorities and the Disabled is an undergraduate program that supplements efforts at the pre-college level to address the underrepresentation of women, minorities and the disabled in the Nation's ranks of science and engineering professionals. There are two activities:

—Comprehensive Projects for Minorities supports the establishment of regional centers designed to increase the minority presence in science and engineering and to strengthen such efforts in institutions with significant minority enrollments, and

—Prototype and Model Projects for Women, Minorities and the Disabled encourages institutions to create special outreach programs for these target audiences.

For more information, contact the Office of Undergraduate Science, Engineering, and Mathematics Education, Room 639, NSF, Washington, DC 20550 (202/357–7051).

Animal Welfare

If any of the equipment listed in a ILI proposal is likely to be employed in conducting experiments using non-human vertebrate animals or in maintaining such animals in captivity, the "Animal Welfare" block on the cover sheet must be checked. In such proposals, the narrative must contain an assurance that the proposing institution complies with the relevant guidelines issued by the National Institutes of Health in the *Guide for the Care and Use of Laboratory Animals* (NIH Publication 85–23, Revised 1985). The particular attention of proposers is directed to "U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research and Training," to be found in the Appendix of that Guide. Individuals desiring a copy of these Guidelines can obtain one from the Division of Research Services, Building 31, Room 4B59, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. (NSF does not maintain a supply of this document.)

Robert F. Watson,

Acting Head, Office of Undergraduate Science, Engineering and Mathematics Education.

September 16, 1987.

[FR Doc. 87–21730 Filed 9–18–87; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published August 17, 1987 (52 FR 30749). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings will be discussed during full Committee meetings and when Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the October 1987 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634–3265, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

Extreme External Phenomena, September 29, 1987, Washington, DC. The Subcommittee will discuss the NRC Staff's Seismic Design Margins Program and the application of the methodology to Maine Yankee.

Generic Items, September 30, 1987, Washington, DC. The Subcommittee will continue the discussion on the effectiveness of the programs that address generic issues and USIs. Also, it will discuss with selected licensees the contribution to plant safety resulting from the implementation of the resolved generic issues and USIs.

Auxiliary Systems, October 1, 1987, Washington, DC. The Subcommittee will discuss the following: (1) Heating, ventilating, and air conditioning (HVAC) system malfunctions and their impact on safety systems, and (2) problems associated with instrument air systems, AEOD findings on instrument air system malfunctions and its recommendations to alleviate this problem.

TVA Organizational Issues, October 2, 1987, Washington, DC has been deferred.

Standardization of Nuclear Facilities, October 6, 1987, Washington, DC. The Subcommittee will review the Staff SER and Chapter I of the EPRI Requirements Document.

Safety Philosophy, Technology, and Criteria, October 7, 1987, Washington, DC. The Subcommittee will meet with the NRC Staff and discuss their plans for incorporating the ACRS recommendations on Safety Goal Policy implementation into the Policy implementation plan.

Instrumentation and Control Systems, October 14, 1987, Washington, DC. The Subcommittee will discuss the NRC's proposed final resolution of USI A–47, "Safety Implications of Control Systems." In addition, the Subcommittee will discuss and consider the comments by Mr. Basdekas regarding the resolution of this USI.

Waste Management, October 15 and 16, 1987, Washington, DC. The Subcommittee will review pertinent HLW, LLW, and associated research topics to be determined at an agenda planning session with NMSS and RES staffs on September 23, 1987.

Joint Scram Systems Reliability and Core Performance, October 28, 1987, Washington, DC. The Subcommittees will review the current status of PWR plant operations (core reload designs, etc.) as they impact on core moderator temperature coefficients in general, and ATWS analyses in particular.

Systematic Assessment of Operating Experience, November 3, 1987, Washington, DC. The Subcommittee will discuss AEOD's role in helping the NRC learn from operating experience.

Maintenance Practices and Procedures, November 12, 1987, Washington, DC. The Subcommittee will be briefed and will discuss the proposed Policy Statement on Maintenance of Nuclear Power Plants.

Quality and Quality Assurance in Design and Construction, November 23 or 24, 1987, Washington, DC. The Subcommittee will review QA Experience in Readiness Reviews as applied to nuclear power plants, with a view toward possible application to HLW geologic repositories and monitored retrievable storage (MRS) facilities.

Thermal Hydraulic Phenomena, Date to be determined (September/October), Washington, DC. The Subcommittee will

review: (1) the final version of the revised ECCS Rule, (2) the status of the NRC–RES thermal hydraulic research program.

Severe Accidents, Date to be determined (October) (tentative), Washington, DC. The Subcommittee will review the final version of the NRC Staff's proposed generic letter on Individual Plant Examinations (IPEs).

Decay Heat Removal Systems, Date to be determined (October), Washington, DC. The Subcommittee will continue its review of the NRR Resolution Position for USI A–45.

TVA Organizational Issues, Date to be determined (October/November), Washington, DC. The Subcommittee will review the safety issues associated with TVA management reorganization and the Sequoyah restart.

Containment Requirements, Date to be determined (October/November), Washington, DC. The Subcommittee will review the hydrogen control measures for BWRs and Ice Condenser PWRs (USI A–48). May also involve EPGs for BWRs.

Metal Components, Date to be determined (October/November), Charlotte, NC. The Subcommittee will review the status of the NDE of cast stainless steel piping.

Advanced Reactor Designs, Date to be determined (November), Washington, DC. The Subcommittee will review and comment on the draft Commission paper that will be prepared by the NRC Staff regarding the severe accidents and containment issues for the DOE-sponsored advanced reactor designs.

Containment Requirements, Date to be determined (November/December), Washington, DC. The Subcommittee will review the proposed Containment Performance/Improvement Program Plan. The Plan is in three parts: (1) Improved plant operations including EOPs, (2) severe accident vulnerabilities via IPEs, and (3) containment performance in the event of a severe accident.

Diablo Canyon, Date to be determined (late November/early December), Location to be determined. The Subcommittee will review the status of the Diablo Canyon Long-Term Seismic Program.

Combustion Engineering Reactor Plants, Date to be determined (November/December), Washington, DC. The Subcommittee will initiate its review of CESSAR–Plus (CE's Advanced LWR for the 1990's).

Babcock & Wilcox Reactor Plants, Date to be determined (November/December), Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors. This effort was begun during the summer of 1986; initial Committee comments offered on July 16, 1986 in a letter to V. Stello, EDO.

Westinghouse Reactor Plants, Date to be determined (December/January 1988), Washington, DC. The Subcommittee will discuss and hear presentations from Westinghouse representatives regarding the important design features and objectives of WAPWR (RESAR SP/90) and the AP 600 designs.

Structual Engineering, Date to be determined (January 1988), Albuquerque, NM. The Subcommittee will review the results of the model concrete containment test.

Auxiliary System, Date to be determined (January 1988) (tentative), Washington, DC. The Subcommittee will discuss: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water System design, and (3) criteria being used by the NRC Staff to review the Chilled Water System design. To facilitate this discussion, some members of the Subcommittee will tour the Shearon Harris plant to look at the Chilled Water System design at that plant.

Containment Requirements, Date to be determined (April 1988), Washington, DC. The Subcommittee will review the NRC Staff's document on containment performance and improvements (all containment types.).

ACRS Full Committee Meeting

October 8–10, 1987: Items are *tentatively* scheduled.

*A. *Station Blackout, USI A–44 (Open)*—Discuss proposed NRC Staff resolution of ACRS comments in its report of June 9, 1987, Subject: ACRS Comments on the NRC Staff Proposal for the Resolution of USI A–44 "Station Blackout," and related activities of NUMARC regarding this subject.

*B. *Integrated Safety Assessment Program (Open)*—Discuss proposed NRC Staff's plan for implementation of ISAP taking into account ACRS's comments in its report of July 15, 1987.

*C. *Seismic Qualification of Nuclear Power Plant Equipment and Systems (Open)*—Report and discussion regarding results of seismic walk-through of the Zion Nuclear Station. Representatives of the NRC Staff and the nuclear industry Seisimic Qualification Utility Group.

*D. *Zion Nuclear Plant Full Field Exercise (Open)*—Briefing by and discussion with representatives of the NRC Staff regarding the results of the exercise which simulated a fuel failure in this plant.

*E. *Implication of Chernobyl Accident (Open)*—Discuss proposed NRC Staff implementation of ACRS recommendations in its report of January 15, 1987.

F. *Appointment of New ACRS Members (Closed)*—Discuss qualifications of candidates proposed as nominees for appointment to the Committee.

*G. *Future ACRS Activities (Open)*—Discuss anticipated ACRS subcommittee activity and items proposed for consideration by the full Committee.

*H. *TVA Management and Nuclear Power Plant Operations (Open)*—Consider proposed TVA Nuclear Management reorganization plan and proposed restart of the TVA Sequoyah Nuclear Plant.

*I. *Operating Events and Incidents (Open)*—Hear and discuss reports regarding recent nuclear power plant operating events and incidents.

*J. *Probabilistic Risk Assessment (Open)*—Discuss proposed NRC staff response to ACRS recommendations in its report of July 15, 1987, Subject: ACRS Comments on Draft NUREG–1150, "Reactor Risk Reference Document."

*K. *Advanced LWR Design (Open)*—Consider proposed EPRI Advanced LWR Requirements. Representatives of the NRC Staff and the nuclear industry (EPRI) will participate as appropriate.

L. *Management Meeting with NRC Commissioners (Closed)*—Preparation for and discussion with NRC Commissioners regarding ACRS conclusions/recommendations regarding internal allocation of resources to provide outside technical advice regarding nuclear waste management and disposal.

*M. *Reorganization of Nuclear Industry Activities (Open)*—Briefing by representatives of the nuclear industry regarding reorganization and realignment of responsiblities among industry groups to achieve operational excellence, improve the interface with NRC, and effectively address the full spectrum of unresolved generic safety issues.

*N. *ACRS Subcommittee Activities (Open)*—Hear reports and discuss the status of designated subcommittee activities regarding safety related and regulatory matters including PWR seismic design margins, thermalhydraulic phenomena, systematic evaluation of nuclear power plant operating experience, auxiliary nuclear power plant systems, and reactor coolant pump seal failure (GI A–23).

November 5–7, 1987—Agenda to be announced.

December 3–5, 1987—Agenda to be announced.

Date: September 16, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–21714 Filed 9–18–87; 8:45 am]

BILLING CODE 7590–01–M

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Correction to Bi-Weekly Notice

On September 9, 1987, the **Federal Register** published the Bi-Weekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations. On page 34027, for the Browns Ferry Nuclear Plant, Units 1, 2 and 3 (application dated February 6, 1987 (TS 225)), the Amendment Nos. read, "134, 131, 106." The correct Amendment Nos. should have been "135, 131, 106."

Dated at Bethesda, Maryland this 16th day of September 1987.

For The Nuclear Regulatory Commission.

John A. Zwolinski,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 87–21715 Filed 9–18–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–440, 50–441]

Final Director's Decision on Petition; Cleveland Electric Illuminating Co. et al., Perry Nuclear Power Plant, Units 1 & 2

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated November 7, 1986, filed by Terry J. Lodge on behalf of the Sunflower Alliance, Inc. (Petitioner). The Petitioner requested that the Nuclear Regulatory Commission (NRC) issue an order to show cause why the operating license for the Perry Nuclear Power Plant, Unit 1, should not be modified or revoked on the basis of alleged emergency planning deficiencies. The operating license for Unit 1 of the Perry facility was issued on November 13, 1986 to the Cleveland Electric Illuminating Company, et al. On February 25, 1987, the NRC notified the Petitioner that this matter would be considered pursuant to 10 CFR 2.206.

The Petitioner raised a number of offsite emergency planning issues, including the adequacy of (1) Geauga County reception/congregate care centers, (2) emergency planning commitments of local area school districts, (3) bus driver response, and (4) Ashtabula County Medical Center. The Director has now determined that the Petitioner's request should be denied for the reasons explained in the "Director's Decision Pursuant to 10 CFR 2.206" (DD–87–15), which is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the local Public Document Room for the Perry Nuclear Power Plant at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

A copy of the decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the decision will become the final action of the Commission twenty-five (25) days after issuance, unless the Commission on its own motion institutes review of the decision within that time.

Dated at Bethesda, Maryland, this 14th day of September 1987.

For The Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87–21716 Filed 9–18–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327, 50–328]

Denial of Amendments to Facility Operating Licenses and Opportunity For Hearing; Tennessee Valley Authority

The U.S. Nuclear Regulatory Commission (the Commission) has denied a portion of requests by the Tennessee Valley Authority (TVA) for amendents to Facility Operating License Nos. DRP–77 and DPR–79, issued to TVA for operation of the Sequoyah Nuclear Plant, Units 1 and 2, respectively, located in Hamilton County, Tennessee.

The amendments, as proposed by TVA, would change section 6—Administrative Control—to reflect the new plant organization, a restructuring of the Independent Safety Engineering Group, and changes to the Plant Organization Review Committee responsibilities. The licensee's application for the amendments was dated May 18, 1987, as supplemented June 4, 1987. Notice of Consideration of Issuance of these amendments was published in the **Federal Register** on July 1, 1987 (52 FR 24561). All of the requested changes were granted except for the changes to sections 6.8.3, 6.8.3.a, and 6.8.3.b to delete the requirement for Plant Operating Review Committee (PORC) review of temporary procedure "intent" changes. Notice of the issuance of Amendment Nos. 58 and 50 will be published in the Commission's biweekly **Federal Register** notice.

The proposed changes to delete the requirement for PORC review of temporary procedure "intent" changes were denied. All procedures where the original intent of the procedure is changed must receive a full and complete review. It is not acceptable to the staff that quick changes be made to the intent of procedures.

The licensee was notified of the Commission's denial of the proposed Technical Specification changes by letter dated September 10, 1987.

By October 21, 1987, the licensee may demand a hearing with respect to the denial described above and any person whose intent may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, by the above date.

A copy of any petitAlaskaions should also be sent to the Office of the General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington DC 20555, and to the General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902, attorney for the licensee.

For further details with respect to this action, see (1) the applications for amendments dated May 18, 1987, as supplemented June 4, 1987, and (2) the Commission's letter and enclosed Safety Evaluation to TVA dated August 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402. A copy of item (2) may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, TVA Projects Division.

Dated at Bethesda, Maryland, this 10th day of September 1987.

For The Nuclear Regulatory Commission.

John A. Zwolinksi,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 87–21717 Filed 9–18–87; 8:45 am]

BILLING CODE 7590–01–M

VOL 52 ISS 182 SEP 21 1987 UMI

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24916; File No. SR-CBOE-87-35]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Retail Automatic Execution System ("RAES") in Equity Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1987, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Since September 1986, the Exchange has conducted a pilot program of its retail automatic-execution system ("RAES") in six classes of options on individual equity securities ("equity options"). By this proposed rule change, the Exchange describes the making of RAES permanent in such classes of equity options as designed by the Exchange.

Firms currently on the Exchange's Order Routing System ("ORS") will automatically be on RAES for purposes of routing small public customer market orders into the RAES system. Firms on ORS have the ability to go on and off ORS at will. Firms not on ORS that wish to participate will be given access to RAES from terminals at their boths on the floor.

When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry to the system. A buy order will pay the offer; a sell order will sell the bid. A participating market-marker will be designated as contra-broker on the trade.

It is possible that the prevailing market bid or offer may be equal to the best bid or offer on the Exchange's book. In no case can a RAES order be executed at a price better than the best bid or offer on the book because the prevailing market may be no better than the best bid or offer on the book. A RAES sell order cannot be filled at a price lower than the best book bid, nor can a RAES buy order be filled at a price higher than the best book offer. However, in the case of options on IMB, and in the case of unusual market conditions for other option classes, a transaction can take place at the price of a booked order.

Under ordinary circumstances, in options classes other than IBM, if a RAES order would be executed at the price of one or more booked orders, the order will be rerouted on ORS under the existing ORS parameters. Currently, such an order would be routed to a Floor Broker in the crowd via a printer. In the event that the firm routing the order is not routing orders to the printer in that crowd, the order would print at the firm's booth. The representation, execution and reporting of such an order would occur as it does for all orders so routed.

The Exchange may suspend book participation in RAES for an options class upon a declaration of unusual market conditions. Such a declaration may be made in an options class whenever the Exchange's Vice Chairman and President (or their respective nominees) concur in determining that conditions in that options class are such that it is no longer possible for Exchange operations personnel to conduct normal trading operations and to handle the manual integration of booked and RAES orders. Such concurrence is also required to restore book participation in RAES.

Participating market-makers will be assigned by RAES on a rotating basis, with the first market-maker selected at random from the list of signed-on market-makers, subject to book interaction as described above. Participating market-makers are obligated to trade at the displayed market quote at the time an order enters the system. Exchange rules shall not apply to the extent that they are inconsistent with the terms including but no tlimited to Rule 6.45, (Priority of Bids and Offers), Rule 6.43 (Manner of Bidding and Offering), and Rule 8.1 (Market-Maker Defined). Position and exercise limits will remain in effect for RAES transactions. Transactions executed through RAES orders will count towards fulfillment of the in-person requirement of Rule 8.7.

All participants will be informed of trades immediately upon execution. A fill report will be generated to the firm at the firm's point of entry into the system (i.e., either its branch office or floor booth). A trade acknowledgement ticket ("TAT") will be printed at locations in trading posts where selected options classes are located, for delivery to market-makers. TAT's for market-makers not present at the trading post will be set aside for pickup. The Exchange may make available an electronically transmitted TAT in lieu of a printed TAT. A log for all transactions will be available throughout the day for review by participants. Audit reports will be sent to the Exchange's Regulatory Services Division. The Exchange may provide electronic reporting of trades to participating market-markers in lieu of hard copy TAT's.

Eligible orders must be market or marketable limit orders for ten or fewer contracts on series placed on the system. The Exchange, in its discretion, may determine to restrict eligible orders, including but not limited to, limiting orders to market orders and to lowering contract limits. The Exchange will have discretion to place on the system such series in the eligible classes of options as it determines are appropriate. Announcements concerning eligible series will be made daily by the Exchange in the same way new strike prices are currently anounced, that is, by memoranda and taped telephone messages.

Each day the system is available, a post director or his representative will start the system, after quotes in the eligible series have been updated following opening rotation. If no market-makers sign on, the system will not be started. If the system is or becomes unavailable, for any reason, eligible orders will be handled as they are handled currently in other equity option classes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to enable the Exchange to extend its RAES pilot in six classes of options of individual stocks ("RAES in equity options") to additional equity options, and to make the pilot permanent. By the pilot, the Exchange has been able to assess better the system's effects and capabilities. RAES in equity options has generally proven to benefit public customers, market-

makers, floor brokers and member firms. It has reduced the amount of paper entering trading crowds, has improved fill-reporting turnaround time, and has offered a guaranteed price at the displayed market. RAES has also aided in timeliness of price reports, and accuracy of the trade-match data and last-sale audit trail. It is hoped that these same benefits will accrue as the program is expanded.

In light of the foregoing, the Exchange believes that the use of RAES in equity options is consistent with the provisions of the Securities Exchange Act of 1934, and in particular, section 6(b)(5), in that it will protect the public interest and enhance market efficiency.

RAES in equity options generally will preserve limit order book priority in all options except IBM. At present, this will be accomplished by rerouting on ORS orders which would be executed at the price of an order on the book. The order rerouting will be consistent with existing ORS parameters. Currently, such orders would be routed to a printer in the trading crowd, for Floor Broker representation. If the firm is not routing orders to that printer, the order would be rerouted to the firm's booth. Once rerouted, such orders would be handled as are all orders similarly routed.

Options on IBM are the most active of any equity option. Average daily volume in April and May 1987, for example, was in excess of 50,000 contracts, which meets or exceeds the aggregate options contract volume of several options exchanges. Operationally, given the manual handling of booked orders, and the various steps necessary to integrate the book with RAES, there is an activity level at which RAES would materially interfere with normal book operations. Activity in IBM clearly exceeds that level.

The proposed rule change also provides for the Exchange to suspend book priority in other pilot options classes in unusual market conditions. Although not expected to be used, such a suspension would be called for if the activity level in an option class materially interfered with the ability of Exchange personnel to handle the manual tasks necessary to integrate the book with RAES, such as assigning trades and book bids and offers with RAES trade prices. The concurrence of the Exchange president and vice-chairman, or their respective designees, is required to suspend or reinstate book interaction with RAES.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

In a vote concluded July 23, 1987, the membership voted 705.2 to 226.1 to endorse this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within any longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by [October 13, 1987].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

September 11, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21697 Filed 9-18-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 7-048]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 15, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following security:

Battle Mountain Gold Co.
Common Stock, $0.10 Par Value (File No. 7-048)

This security is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 6, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21698 Filed 9-18-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 15, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission

pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following security:

Diamond Shamrock R & M, Inc.
Common Stock, $0.01 Par Value (File No. 7-0486)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 6, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based on all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21699 Filed 9-18-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2288; Amdt. No. 1]

Declaration of Disaster Loan Area; Illinois

The above-numbered Declaration (52 FR 3298, September 1, 1987) is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated August 27, 1987, to include the following areas in the State of Illinois because of damage from severe storms and flooding beginning on August 13, 1987:

Barrington, Berwyn, Cicero, Evanston, Jefferson, Lake View, New Trier, Niles, Northfield, Oak Park, and Rogers Park Townships, and that portion of the City of Chicago north of Roosevelt Road, in Cook County; and all areas of DuPage County.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on October 22, 1987, and for economic injury until the close of business on May 23, 1988.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: August 28, 1987.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 87-21672 Filed 9-18-87; 8:45 am]

BILLING CODE 8025-01-M

Notice of Action Subject to Intergovernmental Review; Refunds, SBDC's; Arkansas, et al.

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund twenty-five presently existent Small Business Development Centers (SBDCs) on January 1, 1988. Currently, there are 49 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded, subject to the availability of funds: Arkansas, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Maine, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Washington, Wisconsin. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through December 21, 1987.

ADDRESS: Comments should be addressed to Ms. Janice E. Wolfe, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Ms. Janice E. Wolfe.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of twenty-five presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published three months in advance of the expected date of refunding of these SBDCs. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Janice E. Wolfe, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 90 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 90-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDCs are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDCs operate pursuant to the provisions of section 21 a Notice of Award (Cooperative Agreement) issued by SBA and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDCs operate on the basis of a State plan

which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDCs focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDCs act in an advocacy role to promote local small business interests. SBDCs concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDCs coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDCs shall operate on a 40-hour week basis, or during normal State business hours of the host institution, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

Dated: September 11, 1987.

James Abdnor,

Administrator.

Addresses of Relevant SBDC Directors

Mr. Paul McGinnis, State Director, Small Business Development Center, University of Arkansas, 5th Floor Library, Room 512, 33rd and University, Little Rock, AR 72204, (501) 371–5381

Ms. Nancy Flake, SBDC Director, Small Business Development Center, Howard University, 6th and Fairmount St., NW., Room 128, Washington, DC 20059, (202) 636–5150

Mr. Gregory Higgins, State Director, Small Business Development Center, University

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of West Florida, Building 38, Pensacola, FL 32514, (904) 474–3016
Dr. Frank Hoy, State Director, Small Business Development Center, University of Georgia, Chicopee Complex, Athens, GA 30602, (404) 542–5760
Mr. Ronald R. Hall, State Director, Small Business Development Center, Boise State University, 1910 University Drive, Boise, ID 83725, (208) 385–1640
Mr. Jeff Mitchell, State Director, Small Business Development Center, Dept. of Commerce & Community Affairs, 620 East Adams Street, Springfield, IL 62701, (217) 524–5856
Mr. Steve Thrash, State Director, Small Business Development Center, Indiana Economic Development Council, One North Capitol, Suite 425, Indianapolis, IN 46204, (317) 634–1690
Ms. Susan Osborne-Howes, State Director, Small Business Development Center, Wichita State University, Campus Box 48, 021 Clinton Hall, Wichita, KS 67208, (316) 689–3193
Mr. Warren Purdy, State Director, Small Business Development Center, University of Southern Maine, 246 Deering Avenue, Portland, ME 04102, (207) 780–4423
Mr. Jerry Cartwright, State Director, Small Business Development Center, College of St. Thomas, 1107 Hazeltine Gates Boulevard, Suite 452, Chaska, MN 55318, (612) 448–8810
Mr. Robert Bernier, State Director, Small Business Development Center, University of Nebraska at Omaha, Peter Kiewit Center, Omaha, NE 68182, (402) 554–2521
Mr. Samuel Males, State Director, University of Nevada in Reno, Small Business Development Center, College of Business Administration, Reno, NV 89557–0016, (702) 784–1717
Mr. James Bean, State Director, Small Business Development Center, University of New Hampshire, 370 Commercial Street, Manchester, NH 03103, (603) 625–4522
Ms. Janet Holloway, State Director, Small Business Development Center, Rutgers University, Ackerson Hall—3rd Floor, 180 University Street, Newark, NJ 07102, (201) 648–5950
Mr. Scott R. Daugherty, State Director, Small Business Development Center, University of North Carolina, 820 Clay Street, Raleigh, NC 27605, (919) 733–4643
Mr. Lloyd B. Miller, State Director, Small Business Development Center, SE Oklahoma State University, Station A, Box 4194, Durant, OK 74701, (405) 924–0277
Mr. Sandy Cutler, State Director, Small Business Development Center, Lane Community College, Downtown Center, 1059 Willamette Street, Eugene, OR 97401, (503) 726–2250
Ms. Susan Garber, State Director, Small Business Development Center, University of Pennsylvania, The Wharton School, 3201 Steinberg-Dietrich Hall/CC, Philadelphia, PA 19104, (215) 898–1219
Mr. Douglas Jobling, State Director, Small Business Development Center, Bryant College, Smithfield, RI 02917, (401) 232–6000
Mr. W.F. Littlejohn, State Director, Small Business Development Center, University of South Carolina, College of Business Administration, Columbia, SC 29208, (803) 777–4907
Mr. Donald Greenfield, State Director, Small Business Development Center, University of South Dakota, School of Business, 414 East Clark, Vermillion, SD 57069, (605) 677–5272
Dr. Leonard Rosser, State Director, Small Business Development Center, Memphis State University, Memphis, TN 38152, (901) 454–2500
Mr. Kumen Davis, State Director, Small Business Development Center, University of Utah, 660 South 200 East—Suite 418, Salt Lake City, UT 84111, (801) 581–7905
Mr. Lyle M. Anderson, State Director, Small Business Development Center, Washington State University, College of Business and Economics, Pullman, WA 99164, (509) 335–1576
Dr. Peggy Wireman, State Director, Small Business Development Center, University of Wisconsin, 602 State Street, Second Floor, Madison, WI 53703, (608) 263–7766

[FR Doc. 87–21670 Filed 9–18–87; 8:45 am]
BILLING CODE 8025–01–M

Notice of Action Subject to Intergovernmental Review; Refund; North Dakota SBDC

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund the North Dakota Small Business Development Centers (SBDC) on October 1, 1988' subject to the availability of funds. Currently the University of North Dakota is hosted by the University of North Dakota, however, effective October 1 the North Dakota Economic Development Commission plans to host the North Dakota Small Business Development Center. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact designated pursuant to Executive Order 12372 and other interested State and local entities the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through September 25 1987.

ADDRESS: Comments should be addressed to Ms. Janice E. Wolfe. Deputy Associate Administrator for SBDC Programs U.S. Small Business Administration' 1441 L Street NW.' Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372. "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135 effective September 30 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of one presently existent Small Business Development Center (SBDC) for refunding. Also published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published with a short comment period in order to allow refunding on October 1 and provide uninterrupted service to the small business community. Relevant information identifying this SBDC and providing its mailing address is provided below. In addition to this publication a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Janice E. Wolfe. Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration 1441 L Street, NW., Washington DC 20416. Comments will be accepted by the relevant SBDC and SBA through September 25, 1987. The relevant SBDC will make every effort to accommodate these comments during the comment period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management

assistance delivery program of the U.S. Small Business Administration. SBDCs are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDCs operate pursuant to the provisions of section 21 a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDCs operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDCs focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion innovation increased productivity and management improvement. SBDCs act in an advocacy role to promote local small business interests. SBDCs concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDCs coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

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(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDCs shall operate on a 40-hour week basis, or during normal State business hours of the host institution, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

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Date: September 11, 1987.

James Abdnor,

Administrator.

Address of Relevant SBDC Director

Mr. Bill Patrie,
North Dakota Economic Development Commission,
Liberty Memorial Buildin·,
Bismarck, ND 58505,
(701) 224–2810

[FR Doc. 87–21671 Filed 9–18–87; 8:45 am]

BILLING CODE 8025–01–M

VETERANS ADMINISTRATION

Meeting; Voluntary Service National Advisory Committee

The Veterans Administration gives notice that the annual meeting of the Veterans Administration Voluntary Service National Advisory Committee, comprised of 56 national voluntary organizations, will be held at the Holiday Inn Surfside, Clearwater Beach, FL, on October 22 through October 25, 1987.

Registration of the conferees and orientation of new committee members will be held beginning at 1:00 p.m. on October 22, 1987. The committee will officially convene with the Opening Session at 9:00 a.m., October 23, 1987, and will conclude at 12 noon, October 25, 1987.

The purposes of the meeting are to instruct committee members and organization officials of the obligations they have accepted for volunteer recruitment, communications and program interpretation, and to seek the advice of the committee in further developing volunteer participation in the care and treatment of veteran patients throughout the agency's nationwide medical program.

For further information contact Mr. Edward F. Rose, Director, Voluntary Service (135), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, Telephone (202) 233–4110.

Dated: September 11, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87–21694 Filed 9–18–87; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 182
Monday, September 21, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

September 16, 1987.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: September 23, 1987, 10:00 a.m.

PLACE: 825 North Capitol Street NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 863rd Meeting—September 23, 1987, Regular Meeting (10:00 a.m.)

CAP–1.
Docket No. EL86–1–001 and Project No. 553–011, The City of Seattle, Washington Department of Lighting
CAP–2.
Project No. 3285–004, Trinity River Authority of Texas
CAP–3.
Project No. 8763–003, Power Mining, Inc.
CAP–4.
Project No. 5984–001, Niagara Mohawk Power Corporation and City of Oswego, New York
CAP–5.
Project No. 9391–002, Pan Pacific Hydro, Inc.
CAP–6.
Project No. 3449–009, City of North Little Rock, Arkansas
CAP–7.
Project No. 3083–029, KAMO Electric Cooperative, Inc. and Oklahoma Municipal Power Authority
CAP–8.
Project No. 9656–004, Marble Creek Hydro, Inc.
Project No. 9664–001, St. Joe River Rafters, Inc.
Project No. 9666–002, Marble Creek Associates
CAP–9.
Project No. 8245–002, Bellows-Tower Hydro, Inc.
CAP–10.
Project No. 5923–003, Long Lake Energy Corporation
CAP–11.
Project Nos. 9977–001 and 9812–000, The City of Augusta, Georgia
CAP–12.
Project No. 5137–003, Twin River Resources Company
CAP–13.
Omitted
CAP–14.
Project No. 9683–001, Dunn and McCarthy, Inc.
CAP–15.
Project Nos. 10228–001 and 10037–001, West Virginia Hydro, Inc.
Project No. 10035–000, Hynergix, Inc.
CAP–16.
Project No. 7037–003, Okanogan Public Utility District No. 1
CAP–17.
Project No. 6895–002, Hy-Tech Company
CAP–18.
Docket No. ER87–476–000, Minnesota Power & Light Company
CAP–19.
Docket Nos. ER87–435–000 and ER87–554–001, Wisconsin Power & Light Company
CAP–20.
Docket No. ER87–556–000, Delmarva Power & Light Company
CAP–21.
Docket No. ER87–573–000, Mississippi Power Company
CAP–22.
Docket Nos. EF87–2011–000 and EF87–2021–000, United States Department of Energy—Bonneville Power Administration
CAP–23.
Docket No. EF87–2011–001, United States Department of Energy—Bonneville Power Administration
CAP–24.
Docket Nos. ER85–204–007 and ER85–603–005, South Carolina Generating Company, Inc.
CAP–25.
Omitted
CAP–26.
Docket Nos. EL86–37–002 and EL86–38–002, Allegheny Generating Company
CAP–27.
Docket No. ER84–705–005, Boston Edison Company
CAP–28.
Docket No. ER87–279–001, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
CAP–29.
Docket No. ER87–396–001, Golden Spread Electric Cooperative, Inc.
CAP–30.
Docket Nos. QF86–900–001, QF86–1025–001, QF86–1026–001, QF86–1027–001, QF86–1028–001, QF86–1029–001, QF86–1030–001, QF86–1031–001, QF86–1032–001, and QF86–1033–001, Turbo Power Systems
CAP–31.
Docket No. ER86–354–002, Niagara Mohawk Power Corporation
CAP–32.
Docket No. ER86–558–011, Gulf States Utilities Company
CAP–33.
Docket Nos. ER87–44–001 and EL87–36–000, Wisconsin Public Service Corporation
CAP–34.
Docket Nos. ER82–427–006, ER84–75–010 and ER87–483–001, Southern California Edison Company
CAP–35.
Docket No. ER87–464–000, The Detroit Edison Company
CAP–36.
Docket No. ER83–628–012, Kansas Gas and Electric Company
CAP–37.
Omitted
CAP–38.
Docket No. ER87–75–001, Niagara Mohawk Power Corporation
CAP–39.
Docket No. ER87–277–001, Public Service Company of New Hampshire
CAP–40.
Docket Nos. ER84–571–003 (Phase II) and ER86–300–002, Utah Power & Light Company
CAP–41.
Docket No. EL87–50–000, Howell Gas Management Company
CAP–42.
Docket No. QF87–274–000, Union Carbide Corporation and Fina Oil and Chemical Company

Consent Miscellaneous Agenda

CAM–1.
Docket No. FA86–51–000, Indianapolis Power & Light Company
CAM–2.
Docket No. FA87–64–000, Consumers Power Company
CAM–3.
Docket No. FA87–60–000, Georgia Power Company
CAM–4.
Docket No. RM87–13–000, Implementation of Section 8 of the Electric Consumers Protection Act of 1986 Governing Hydroelectric Applicants Seeking Benefits Under Public Utility Regulatory Policies Act of 1978 for Projects Located at a New Dam or Diversion
CAM–5.
Docket Nos. RM86–2–002, 003 and 004, Revision of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act and to the

Methodology for Assessing Federal Land Use Charges
CAM–6.
Docket No. RM87–4–001, Rate Changes Relating to Federal Corporate Income Tax Rate for Public Utilities
CAM–7.
Docket Nos. RM87–34–001 through RM87–34–045, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol
CAM–8.
Docket No. GP87–39–000, North Dakota Industrial Commission, § 102 NGPA Determination, Hunt Energy Corporation, Pederson #1 Sec. 20, T158N, R–95W, Williams County, N.D., FERC JD82–4052
CAM–9.
Docket No. GP87–43–000, Floyd A. Gearhart—Stanley K. Odell
CAM–10.
Docket No. GP83–41–000, Aminoil USA, Inc., State Lease 2028 No. 17–D Well
CAM–11.
Docket No. GP87–32–000, Oklahoma Corporation Commission, Section 102(c) NGPA Determination, Fox No. 1 Well, FERC J.D. No. 8630785
CAM–12.
Docket No. GP87–48–000, Minerals Management Service, Louisiana, § 102(d) NGPA Determination Conoco, Inc., OCS–0129 No. D–11 Well, MMS Docket No. G5–4802
CAM–13.
Docket No. GP87–61–000, Chapman Energy, Inc. (formerly Continental Resources Corporation), Herring No. 22–1 Well
CAM–14.
Docket No. GP87–51–000, Northern Natural Gas Company and Phillips Petroleum Company
CAM–15.
Docket Nos. RM83–72–011 and 012, First Sales of Pipeline Production Under Section 2(21) of the Natural Gas Policy Act of 1978
Docket Nos. RM82–16–011 and 012, First Sales by Affiliates

Consent Gas Agenda

CAG–1.
Docket No. RP87–78–001, Penn-York Energy Corporation
CAG–2.
Docket No. RP86–110–001, Texas Eastern Transmission Corporation
Docket No. RP86–93–004, United Gas Pipe Line Company
Docket No. RP85–175–000, Transwestern Pipeline Company
Docket No. CP86–585–000, Panhandle Eastern Pipe Line Company
Docket No. CP86–586–000, Trunkline Gas Company
Docket Nos. CP86–521–005 and –006, Texas Gas Transmission Corporation
Docket No. CP86–578–000, Northwest Pipeline Corporation
Docket Nos. CP86–589–000 and RP86–104–000, Colorado Interstate Gas Company
Docket Nos. RP85–169–000 and CP86–311–000, Consolidated Gas Transmission Corporation
Docket No. RP86–155–000, Northwest Central Pipeline Corporation (Williams Natural Gas Company)
Docket No. RP86–97–003, Natural Gas Pipeline Company of America
Docket No. RP85–206–029, Northern Natural Gas Company, Division of Enron Corporation
Docket No. RP86–134–000, MIGC, Inc.
Docket No. RP86–105–000, ANR Pipeline Company
CAG–3.
Docket No. RP87–94–000, Transcontinental Gas Pipe Line Corporation
CAG–4.
Docket Nos. RP87–102–000 and TA88–1–40–000, Raton Gas Transmission Company
CAG–5.
Omitted
CAG–6.
Docket No. RP87–115–000, Williston Basin Interstate Pipeline Company
CAG–7.
Docket Nos. RP86–168–012 and 013, Columbia Gas Transmission Corporation
Docket No. RP86–167–010, Columbia Gulf Transmission Corporation
CAG–8.
Docket Nos. TA88–1–37–000, TA87–1–37–009, TA87–1–37–000 and RP82–56–000, Northwest Pipeline Corporation
CAG–9.
Docket No. TA87–3–16–002, National Fuel Gas Supply Corporation
CAG–10.
Docket No. TA88–1–35–000, West Texas Gas, Inc.
CAG–11.
Docket Nos. TA87–4–49–002, TA84–2–49–000, TA85–1–49–000, TA85–2–49–000, TA85–3–49–000, TA86–1–49–000, TA86–2–49–000, TA87–1–49–000, TA87–3–49–000, CP82–487–000 and CP82–487–002, Williston Basin Interstate Pipeline Company
CAG–12.
Omitted
CAG–13.
Docket Nos. RP86–105–004, 011, RP86–169–002 and 006, ANR Pipeline Company
CAG–14.
Docket Nos. CP86–589–003, 004, RP86–104–004 and 005, Colorado Interstate Gas Company
CAG–15.
Docket Nos. RP80–55–011, RP80–118–013, RP81–73–005, and RP82–32–006, Sea Robin Pipeline Company
CAG–16.
Docket No. RP86–157–000, El Paso Natural Gas Company
CAG–17.
Docket No. RP86–151–000, Seagull Interstate Corporation
CAG–18.
Docket No. RP86–116–000, 009, 010, 011 and 012, Panhandle Eastern Pipe Line Company
CAG–19.
Docket Nos. RP81–49–024 and GT84–14–000, Natural Gas Pipeline Company of America
CAG–20.
Docket Nos. ST87–2410–000 and ST87–2411–000, Dow Pipeline Company
CAG–21.
Docket No. ST86–1431–000, Weirton Service Pipeline Company
CAG–22.
Docket Nos. ST87–2415–000, ST87–2416–000, ST87–2417–000, ST87–2418–000, ST87–2586–000 and ST87–2587–000, Lear Gas Transmission Company
CAG–23.
Docket No. RI87–553–000, Cities Service Oil and Gas Company
CAG–24.
Docket Nos. RI74–188–105 and RI75–21–100, Independent Oil & Gas Association of West Virginia
Docket No. GP80–11–006, Columbia Gas Transmission Corporation
CAG–25.
Docket No. G–2758–001, Kerr-McGee Corporation
Docket No. CI86–695–001, Amoco Production Company
Docket No. CI86–726–001, Amoco Production Company
Docket No. CI87–571–001, Texaco Producing Inc.
Docket No. CI64–196–001, Texaco Inc.
Docket No. CI87–575–001, Texaco Producing Inc.
Docket No. G–12568–001, Texaco Inc.
Docket No. CI87–576–001, Texaco Producing Inc.
Docket No. CI87–591–001, Texaco Inc.
Docket No. CI87–624–001, Cities Service Oil and Gas Corporation
Docket No. CI87–647–001, Exxon Corporation
CAG–26.
Docket No. CI85–632–004, Tenngasco Corporation and Tenngasco Exchange Corporation
CAG–27.
Docket No. CI85–633–004, Tenneco Oil Company, Houston Oil and Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., TINCO, Ltd., and Tenneco West, Inc.
Docket No. CI87–666–000 Texaco Inc., Texaco Producing Inc. and Getty Oil Company
Docket No. CP85–710–006, Northern Natural Gas Company
CAG–28.
Docket No. CI87–713–000, Hondo Oil & Gas Company
CAG–29.
Docket No. CI87–547–000, Enron Gas Marketing, Inc.
Docket No. CI87–729–000, Phillips Gas Marketing Company
Docket No. CI87–734–000, Northwest Marketing Company
Docket No. CI87–736–000, Chevron Natural Gas Services, Inc.
Docket No. CI87–737–000, SEMCO Energy Services, Inc.
Docket No. CI87–738–000, Williams Gas Marketing Company
Docket No. CI87–747–000, Maxus Exploration Company and Diamond Shamrock Offshore Partners Limited Partnership
Docket No. CI87–751–000, Pennzoil Gas Marketing Company
Docket No. CI87–759–000, Eastex Hydrocarbons, Inc. and Mesa-Eastex Gas Marketers
Docket No. CI87–764–000, BHP Gas Marketing Company

Docket No. CI87-785-000, Phillips 66 Natural Gas Company
Docket No. CI87-786-000, Val Gas, L.P.
CAG-30.
Docket No. CP85-390-004, Transcontinental Gas Pipe Line Corporation and Marengo Corporation
CAG-31.
Docket No. CP87-20-001, Williston Basin Interstate Pipeline Company
CAG-32.
Docket No. CP87-57-002, Florida Gas Transmission Company
CAG-33.
Docket No. CP81-296-011, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
Docket No. CP81-108-007, Boundary Gas, Inc.
CAG-34.
Docket No. CP87-196-001, Transcontinental Gas Pipe Line Corporation
Docket No. CP87-203-001, Consolidated Gas Transmission Corporation and North Penn Gas Company
CAG-35.
Omitted
CAG-36.
Docket No. CP86-693-001 through CP86-693-007, Washington Gas Light Company
CAG-37.
Docket No. CP86-521-002, CP86-521-003, CP86-521-004, CP87-306-000 and RP86-85-003, Texas Gas Transmission Corporation
CAG-38.
Docket No. CP84-132-003, CP84-133-002, CP84-134-002 and CP84-196-003, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
Docket Nos. CP84-132-002 and CP84-196-002, Columbia Gulf Transmission Corporation
CAG-39.
Docket No. RP86-15-017, Columbia Gas Transmission Corporation
Docket No. RP86-14-017, Columbia Gulf Transmission Company
CAG-40.
Docket No. CP87-396-000, Northwest Pipeline Corporation
CAG-41.
Docket No. CP87-717-000, Western Transmission Corporation
CAG-42.
Docket No. CP87-154-000, Southern Natural Gas Company
CAG-43.
Docket No. CP86-633-000 and 001, Northern Natural Gas Company, Division of Enron Corporation
CAG-44.
Docket No. CP87-308-000, United Gas Pipe Line Company
CAG-45.
Docket No. CP87-243-000, Mountain Fuel Resources, Inc.
CAG-46.
Docket No. CP61-132-000, Northern Natural Gas Company, a Division of Enron Corporation and Enron Gas Processing Company
CAG-47.
Docket Nos. RP86-116-007, RP86-116-008, CP86-585-003, and CP86-585-004, Panhandle Eastern Pipe Line Company
CAG-48.
Docket No. CP87-39-001, Granite State Gas Transmission, Inc.
CAG-49.
Docket No. CP86-599-001, Transcontinental Gas Pipe Line Corporation
CAG-50.
Docket No. CI87-1-002, CI87-2-002, CI87-3-002, CI87-4-002, CI87-5-002, CI87-6-002, CI87-7-002, CI87-8-002, CI87-9-002, CI87-10-002, CI87-11-002, CI87-12-002, CI87-13-002, CI87-14-002, CI87-15-002, CI87-16-002, CI87-17-002, CI87-18-002, CI87-19-002, CI87-20-002, CI87-21-002, CI87-22-002, CI87-23-002, CI87-24-002, CI87-25-002, CI87-26-002 and CI87-27-002, American Royalty Producing Company (Successor-in-interest to Petro-Lewis Corporation (Operator)), *et al.*
CAG-51.
Docket No. CP87-76-000, Trunkline Gas Company
Docket No. CP87-124-000, Transcontinental Gas Pipe Line Corporation
Docket No. CP87-149-000, Natural Gas Pipeline Company of America
CAG-52.
Docket No. RP74-50-025, Florida Gas Transmission Company
Docket No. RP74-50-024, Florida Gas Transmission Company (Basic Incorporated)
Docket No. RP74-50-026, Florida Gas Transmission Company (Gardinier, Inc. and Coopers & Lybrand, Trustee)

I. Licensed Project Matters

P-1.
Reserved

II. Electric Rate Matters

ER-1.
Docket No. EL87-21-001, Yankee Atomic Electric Company. Opinion and order determining just and reasonable rates.
ER-2.
Docket No. EL87-22-001, Vermont Yankee Nuclear Power Corporation. Opinion and order determining just and reasonable rates.
ER-3.
Docket No. EL87-23-001, Connecticut Yankee Atomic Power Company. Opinion and order determining just and reasonable rates.
ER-4.
Docket No. ER76-205-003, Southern California Edison Company. Opinion and order determining just and reasonable rates.

Miscellaneous Agenda

M-1.
Reserved
M-2.
Reserved
M-3.
Omitted

I. Pipeline Rate Matters

RP-1.
Docket No. RP87-71-000, Gas Research Institute. Order regarding GRI's proposed funding unit.
RP-2.
Docket No. RP86-126-000, Transwestern Pipeline Company. Order regarding Transwestern's proposal to recover take-or-pay costs.
RP-3.
Docket No. RP85-177-019 through 042; RP85-176-009 through 016, 018 through 025; RP86-110-002 through 004; RP83-35-042 through 049, 051 through 058; CP86-378-001 through 003, 005 through 007; CP86-379-001 through 002, and 004 through 006; CP86-380-001 through 002, 004 through 006; Texas Eastern Transmission Corporation. Rehearing of order approving Order No. 436 settlement.
RP-4.
Omitted
RP-5.
Docket No. RP85-169-008, through 025, RP82-115-006 through 018, RP81-80-011 through 023, CP86-311-001 through 003, and CP86-312-011, Consolidated Gas Transmission Corporation. Rehearing of order approving Order No. 436 settlement.
RP-6.
Docket No. RP86-32-003, RP86-32-004, RP86-32-005, RP86-68-005, RP86-68-006 and RP86-68-007, Williams Natural Gas Company. Rehearing of order approving Order No. 436 settlement.
RP-7.
Omitted

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket No. RP71-29-029 (Phase II), United Gas Pipe Line Company. Order on court remand regarding compensation system for a curtailment plan.
CP-2.
Docket No. CP87-451-001, 002, and 003, Northeast U.S. Pipeline Projects. Order on rehearing of notice inviting applications to provide new gas service to the Northeast U.S.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21831 Filed 9-17-87; 4:00 pm]

BILLING CODE 6717-01-M

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: At 8:00 a.m., Friday, October 2, 1987.

PLACE: In the Board Room, 6th Floor, 1700 G Street, NW., Washington, DC

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6679).

MATTERS TO BE CONSIDERED: Amendments to regulations concerning the qualified thrift lender test, notice and disapproval procedures for

applications, classification of assets, and appraisal standards.

John F. Ghizzoni,

Assistant Secretary.

No. 10, September 17, 1987.

[FR Doc. 87-21833 Filed 9-17-87; 4:30 pm]

BILLING CODE 6720-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1393]

TIME AND DATE: 10 a.m. (e.d.t.), Wednesday, September 23, 1987.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on September 9, 1987.

Discussion Item

1. Report on Status of Reclamation of Abandoned Noncoal Mineral Lands in the TVA Region.

Action Items

A—Budget and Financing

A1. Adoption of Supplemental Resolution Authorizing 1987 Series E Power Bonds.

A2. Resolution Authorizing the Chairman and Other Executive Officers To Take Further Action Relating to Issuance and Sale of 1987 Series E Power Bonds.

A3. Short-Term Borrowing from the U.S. Treasury.

B—Purchase Awards

B1. Invitation BA-41243A—Indefinite Quantity Term Agreement for Galvanized Structural Steel for Transmission Line Towers, Laced and Low Profile Substation Steel, and Anchor Bolts for any TVA Project or Warehouse Excluding Nuclear Plants.

*B2. Negotiation WC-05573A—Fire Fighting Trucks for the Office of Nuclear Power.

C—Power Items

C1. Renewal Power Contract with ARAB Electric Cooperative.

C2. Renewal Power Contract with City of Lawrenceburg, Tennessee.

C3. Supplement to Contract No. TV-58784A Between TVA and the Department of Energy (DOE) for DOE to Provide Technical Assistance and Perform Tasks as Requested by TVA at the Oak Ridge National Laboratory.

D–Personnel Items

D1. Recommendations on Rates of Pay and Certain Monetary Fringe Benefits for Salary Policy Employees in Represented Positions Resulting from the 35th (1987) Annual Salary Negotiations.

D2. Recommendations on Rates of Pay and Certain Monetary Fringe Benefits for Employees in Excluded Pay Schedules.

D3. Proposal for Sabbatical Leave for James M. Kelly, Employee in the Division of Air and Water Resources.

D4. Personal Services Contract with Manpower Temporary Services of Chattanooga, Tennessee, for Temporary Clerical Services in the TVA Service Area, Requested by the Office of Corporate Services.

D5. Personal Services Contract with Upgrade Temporary Service of Knoxville, Tennessee, for Temporary Clerical Services in the TVA Service Area, Requested by the Office of Corporate Services.

D6. Supplement to Personal Services Contract No. TV-60066A with the University of Tennessee, Knoxvill, Tennessee, for Report Preparation in Connection with Archaeological Investigations, Requested by the Office of Natural Resources and Economic Development

D7. Supplement to Personal Services Contract No. TV-63868A with Praxis Engineers, Inc., Milpitas, California, for Development of a Coal Preparation Process Control System, Requested by the Office of Power.

D8. Supplement to Personal Services Contract No. TV-69324A with Stone & Webster Engineering Corporation, Boston, Massachusetts, for Engineering, Construction and Operation Support Services, Requested by the Office of Nuclear Power.

D9. Supplement to Personal Services Contract No. TV-65374A with United Engineers and Constructors, Inc., Philadelphia, Pennsylvania, Providing for the Performance of General Engineering, Design, and Architectural Services, Requested by the Office of Nuclear Power.

D10. Supplement to Personal Services Contract No. TV-69838A with Daniel International Corporation of Greeneville, South Carolina, for Services in Connection with the Employee Concerns Special Project at Watts Bar Nuclear Plant, Requested by the Office of Nuclear Power.

D11. Personal Services Contract with Associated Project Analysts of Los Gatos, California, for Assistance Relating to Restart Schedule and Licensing Activities at TVA Nuclear Plants, Requested by Office of Nuclear Power.

E—Real Property Transactions

E1. Grant of Permanent Easement to the City of Muscle Shoals, Alabama, for a Stormwater Discharge Pipeline, Affecting 0.9-acre of Muscle Shoals Reservation Land in Colbert County, Alabama—Tract No. XT2NPT-16E.

F—Unclassified

F1. Contract with Alabama-Tennessee Natural Gas Company for Supply of Interruptible Gas to the Office of Agricultural and Chemical Development Facilities at Muscle Shoals, Alabama (TV-72822A).

F2. Research Grant Agreement with the Binational Agricultural Research and Development Fund Covering Arrangements for Cooperative Research Relating to Development of Technology to Improve the Growth and Production of Tilapia, a Group of Food Fishes.

*F3. Agreement Between TVA and the United States Headquarters, Air Force Engineering and Services Center, Covering Arrangements for a Cooperative Research Agreement with Auburn University Relating to Reduction of Waste.

F4. Agreement Between TVA and the U.S. Department of the Navy, Naval Air Systems Command, Covering Arrangements for Development of a Welding Database System Utilizing the American Welding Institute Staff (TV73321A).

F5. Supplement to Letter Agreement No. TV-69657A with the Missouri River Division Laboratory, Corps of Engineers, U.S. Department of the Army, for Performance of Environmental Laboratory Analyses to Determine Priority Pollutants at Certain Sampling Sites Located in the Missouri River Division of the Corps of Engineers.

F6. Supplement to Contract No. TV-67693A Between TVA and Agency for International Development (AID) Providing for TVA Technical Assistance in Support of the AID Infrastructure Revitalization Project in Grenada West Indies.

F7. Contract No. TV-73319A Between TVA and Alabama Department of Economic and Community Affairs, Office of Employment and Training for a Multicraft Upgrade Training Program for former Bellefonte Nuclear Plant Employees—Scottsboro Craft Training Program.

F8. Contract No. TV-73320A Between TVA and Alabama Department of Economic and Community Affairs, Office of Employment and Training—Muscle Shoals Craft Training Project.

F9. Contract No. TV-72806A Between TVA and Industrial Development Board of Scott County, Tennessee, for Cooperation in the Development and Implementation of a Project to Construct an Industrial Building, as a Part of the TVA Special Opportunity Counties Program.

F10. Supplement to Cooperative Agreement TV-66539A Among TVA, Agricultural Stabilization and Conservation Service, and Soil Conservation Service Covering Arrangements for a Project to Demonstrate the Use of Animal Waste Management Systems to Improve Water Quality in the Bear Creek Floatway in Franklin and Marion Counties, Alabama.

F11. Supplement to Contract No. TV-34108A with Tennessee Department of Transportation and Supplement to Contract No. TV-34108A with Tellico Reservoir Development Agency Providing for Financial Assistance in the Completion of Construction of 5.9 Miles of Tennessee State Highway 72 in the Tellico Project Area.

F12. Payments to States and Counties in Lieu of Taxes for Fiscal Year Ending September 30, 1987, as Provided Under Section 13 of the TVA Act, as Amended.

F13. TVA Code on Cost Sharing and Cost Recovery In TVA Programs.

F14. TVA Contribution to Retirement System for Fiscal Year 1988.

F15. Amendments to the Rules and Regulations of the TVA Retirement System and Terms and Conditions of the Voluntary Retirement Savings and Investment Plan.

F16. Proposed Trust Agreement with Fidelity Management Trust Company.

*Items approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: September 16, 1987.

W.F. Willis,

General Manager.

[FR Doc. 87–21753 Filed 9–17–87; 9:15 am]

BILLING CODE 8120–01–M

Corrections

Federal Register
Vol. 52, No. 182
Monday, September 21, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid With Melengestrol Acetate

Correction

In rule document 87-20503 beginning on page 33803 in the issue of Tuesday, September 8, 1987, make the following correction:

On page 33804, in the first column, in the second complete paragraph, in the third line, "2 CFR" should read "21 CFR".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87N-0303]

Drug Export; Abbott HIV Antigen EIA

Correction

In notice document 87-20890 beginning on page 34422 in the issue of Friday, September 11, 1987, make the following corrections:

1. On page 34422, in the second column, in the second line from the bottom, "Act of 1987" should have read "Act of 1986."

2. On the same page, in the third column, in the last line, "to the Commission" should have read "to the Commissioner."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-010-07-4212-13:GP7-265]

Realty Action; Exchange of Public and Private Lands in Lake and Harney Counties, OR

Correction

In notice document 87-19730 beginning on page 32353 in the issue of Thursday, August 27, 1987, make the following correction:

On page 32353, in the third column, in the sixth line of the document, "*T. 30 S.*" should have read "*T. 29 S.*"

BILLING CODE 1505-01-D

VOL 52 ISS 182 SEP 21 1987 UMI

Federal Register

Monday
September 21, 1987

Part II

Department of Agriculture

Farmers Home Administration

7 CFR Part 1957

Sale of Section 502 Rural Housing Loans; Final Rule; Guidelines

VOL 52 ISS 182 SEP 21 1987 UMI

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1957

Sale of Section 502 Rural Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; guidelines.

SUMMARY: The Farmers Home Administration (FmHA) adds a regulation to issue guidelines for the protection of the rights of borrowers whose loans are sold to the private sector under the provisions of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509 (OBRA). This action is necessary as these guidelines have been incorporated into the sale documents. The intended effect of this action is to notify the public of how FmHA is protecting these borrowers' rights.

EFFECTIVE DATE: September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Phil Girard, Senior Loan Specialist, Servicing Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures in Secretary's Memorandum 1512–1 which implements Executive Order 12291 and has been determined to be exempt because of time constraints in complying with the Omnibus Budget Reconciliation Act of 1986.

FmHA is providing in the sale documents that servicing of loans sold under OBRA will be accomplished substantially in conformity with regulations governing section 502 rural housing loans held and serviced by FmHA, except as provided for in FmHA regulations. Once normal servicing has ended because action to collect a debt is required, or property is acquired on behalf of the purchaser which is to be managed and/or sold, the purchaser will be responsible for further actions.

During a transition period, FmHA will be subservicing, by contract with a Master Servicer, the loans which are sold. In the event that a loan sold by FmHA is found after the sale not to be legally transferable, FmHA will, during a two year period, substitute a different loan. Loans subserviced by FmHA will be serviced as any 502 rural housing loan, except that certain provisions of FmHA regulations pertaining to protecting the interests of the mortgage holder will not apply. These provisions include those dealing with subordination and management and sale of acquired security property. In addition, due to the possible adverse tax consequences to the purchaser of the loans, the regulations governing assumptions of mortgages will not apply, though FmHA will give a priority to purchasers eligible for a section 502 loan.

Since these loans are being sold to the private sector, they will no longer be subject to the graduation requirement.

Prior to the transfer of subservicing to the private sector, FmHA will publish further guidelines, after notice and comment, establishing the procedural parameters for such private sector subservicers.

It is the policy of this Department to publish for comment, rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking because it is impractical to do so because Congress mandated these guidelines be issued for the loan sale which, by law, must be completed by September 30, 1987. Until the structure of the entity purchasing the loans was firmly established, it was impossible to determine which FmHA regulations could not be translated into the private sector. The terms of the sale are still evolving, the nature of and limits on the purchasing entity have only recently been finalized.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, *Environmental Program*. It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of human environment and in accordance with the National Environment Policy Act of 1969, Pub. L. 91–190, an Environment Impact Statement is not required.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, *Intergovernmental Review of Farmers Home Administration Programs and Activities* (December 23, 1983). The Catalog of Federal Domestic Assistance title and number is section 502 Rural Housing Loans, 10.410.

List of Subjects in 7 CFR Part 1957

Account servicing, Interest credit, Loan programs—housing and community development, Mortgages, Rural housing.

Accordingly, 7 CFR Chapter XVIII is amended by adding Part 1957 consisting of Subpart A to read as follows:

PART 1957—ASSET SALES

Subpart A—Rural Housing Asset Sales

Sec.
1957.1 General.
1957.2 Transfer with assumption.
1957.3 Security servicing.
1957.4 Graduation.
1957.5 Assignment of interest.
1957.6–1957.50 [Reserved]

Authority: Pub. L. 99–509, sec. 2001(b)(1).

Subpart A—Rural Housing Asset Sales

§ 1957.1 General

Pursuant to the Omnibus Budget Reconciliation Act of 1986 (OBRA), the Farmers Home Administration is selling certain of the loans it has made under section 502 of the Housing Act of 1949 to the Rural Housing Trust, 1987–1. The sale is without recourse to FmHA except for certain provisions in an insurance contract providing for FmHA's payment of interest credit amounts and to compensate for future cash flow changes due to revised borrowers rights. After these loans are sold, FmHA would normally not be responsible for seeing that the terms of the mortgages were enforced and that borrowers were given the rights to which they may be entitled. OBRA provides that the Secretary of Agriculture establish guidelines for the sale of loans which guidelines shall include the kind of protections to be provided to borrowers. These guidelines to protect borrowers' rights have been incorporated into the sale documents. The Trust has agreed to service the loans in accordance with FmHA regulations as provided for in these guidelines.

§ 1957.2 Transfer with assumption.

Regulations governing transfers and assumptions will not apply to these loans. Applicants to purchase property securing a sold loan who are eligible for a section 502 loan will be given the same priority under § 1944.26(b) as a transferee of a section 502 loan if the property is then suitable for the program.

§ 1957.3 Security servicing.

Various regulations relating to security servicing (i.e., not borrower rights servicing) which are intended to protect the security interests of the mortgage holder and/or to maximize its return on acquired security property do not apply to properties securing loans

which have been sold to the public under OBRA. These include regulations governing subordination of liens, management of acquired property and the sale of acquired property.

§ 1957.4 Graduation.

Borrowers will not be required to graduate to other credit.

§ 1957.5 Assignment of interest.

FmHA will have assigned all of its interest under the mortgages to the Trust. All rights and obligations of the Government will have been assigned to the Trust, except that the right to recapture of previously granted interest credit has been retained by the Government, with collection of same to be accomplished by the Trustee through the Master Servicer.

§§ 1957.6–1957.50 [Reserved]

Date: September 18, 1987.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 87–21861 Filed 9–18–87; 10.32 am]

BILLING CODE: 3410–07–M

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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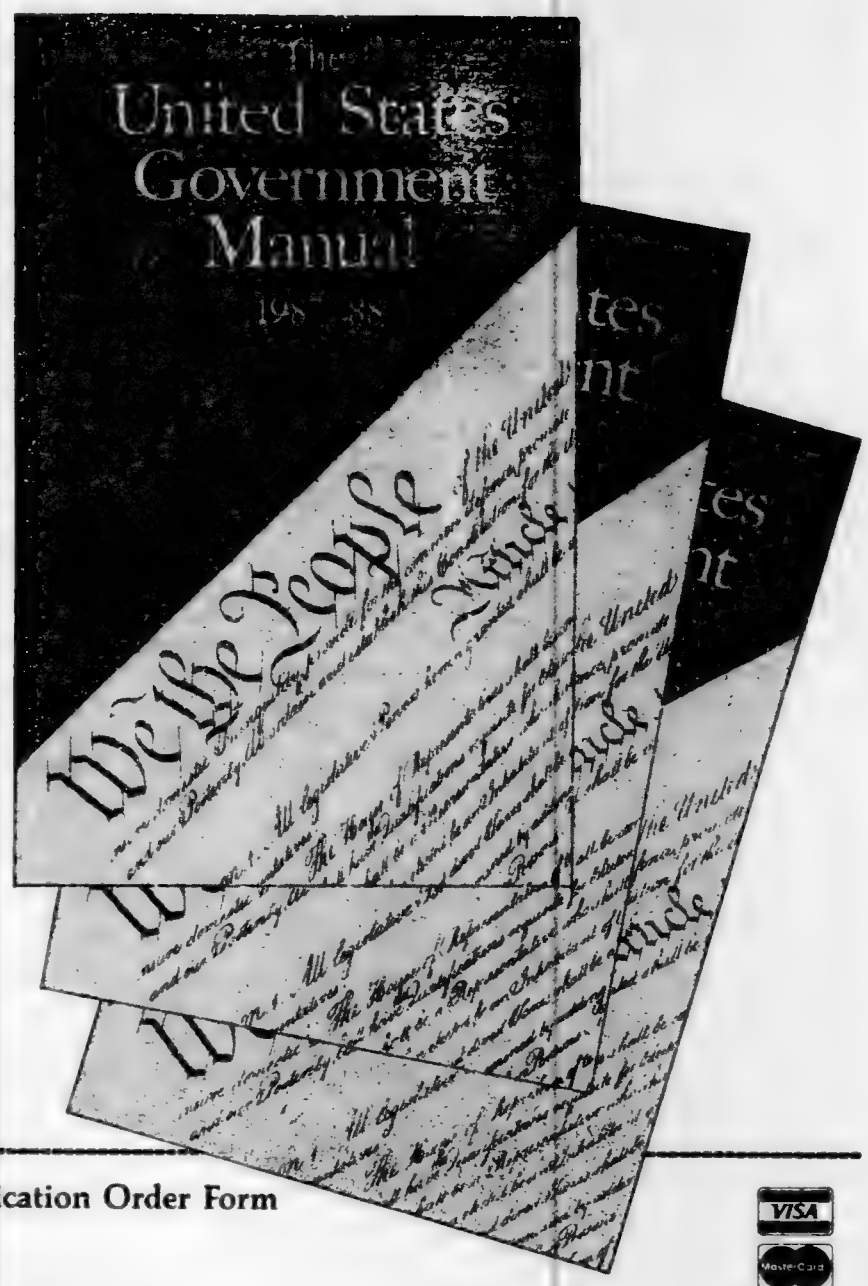

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Pages 35523-35678

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The President

Proclamation 5702 of September 17, 1987

National Employ the Handicapped Week, 1987

By the President of the United States of America

A Proclamation

The American people are becoming more and more aware of the great potential of citizens with disabilities. We are also realizing that providing equal employment opportunities to handicapped individuals is both the right thing to do and a matter of economic common sense and necessity.

Competitive reality is causing business, industry, and organized labor to urge complete integration of the disabled into the job market. Federal, State, and local governments have also provided significant opportunities for these men and women. They are filling critical gaps in the work force and contributing to productivity, because the demands placed on America's labor resources have changed; because medical and technological developments are opening doors; and, most of all, because these Americans continue to prove that they can perform effectively on the job.

The Congress, by Joint Resolution approved August 11, 1945, as amended (36 U.S.C. 155), has called for the designation of the first full week in October of each year as "National Employ the Handicapped Week." This special week is a time for all Americans to join together to renew their dedication to meeting the goal of full opportunities for handicapped people.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 4, 1987, as National Employ the Handicapped Week. I urge all governors, mayors, other public officials, leaders in business and labor, and private citizens to help meet the challenge of ensuring equal employment opportunities and full citizenship rights and privileges for disabled Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Proclamation 5703 of September 17, 1987

National School Yearbook Week, 1987

By the President of the United States of America

A Proclamation

School yearbooks not only chronicle educational achievement and school tradition but are a part of them. For nearly two centuries American students have produced yearbooks to commemorate the accomplishments of the school year and to compose a lasting record, written and pictorial, of campus, classmates, teachers, and school staff.

In later years, alumni treasure their yearbooks for the memories they hold of times gone by and friends of long ago. The students who compile yearbooks likewise treasure all that the experience can teach them about teamwork and about writing, the graphic arts, and business skills. The practical cooperation and specialization that students learn in yearbook production stand them in good stead when they enter college or pursue other opportunities.

The Congress, by Public Law 100–105, has designated the week beginning October 4, 1987, as "National School Yearbook Week," and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 4, 1987, as National School Yearbook Week. I call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87–21971
Filed 9–21–87; 8:54 am]
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Presidential Documents

Proclamation 5704 of September 17, 1987

National Year of Friendship With Finland, 1988

By the President of the United States of America

A Proclamation

Finnish settlers first arrived in this country in 1638, when Nordics, many of them natives of Finland or Swedes who spoke Finnish, established the colony of New Sweden in present-day Delaware. They introduced European civilization to the Delaware River Valley and began the transformation of a vast wilderness. Theirs were the pioneer spirit and virtues that are the foundation of our national character. The 350th anniversary of their landing is a most fitting time to celebrate the legacy of America's Finnish pioneers and their descendants and to recall that the friendship of the United States and Finland has deep historical roots.

To commemorate the relationship between the peoples of Finland and the United States on the 350th anniversary of New Sweden, the Congress, by Public Law 99–602, has designated 1988 as "National Year of Friendship with Finland," and has authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim 1988 as National Year of Friendship with Finland. I call upon all Americans to observe the year with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87–21972
Filed 9–21–87; 8:55 am]
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Rules and Regulations

Federal Register
Vol. 52, No. 183
Tuesday, September 22, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

Domestic Dates Produced or Packed In Riverside County, CA; Change of Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will add a two-pound plastic container to the existing regulations prescribed for whole and pitted DAC dates of any variety handled in the United States under the Federal marketing order for California dates. Date container sizes are limited under the marketing order to prevent pricing confusion in the marketplace. The change will give handlers additional marketing flexibility. DAC dates are the highest quality of dates shipped under the marketing order.

EFFECTIVE DATE: September 22, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, USDA, AMS, Fruit and Vegetable Division, Marketing Order Administration Branch, Room 2526-South Building, P.O. Box 96456, Washington, DC 20090-6456, telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 987, as amended (7 CFR Part 987), regulating the handling of dates produced or packed in Riverside County, California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of California dates subject to regulation under the date marketing order, and approximately 150 producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1) as those having annual gross revenues for the last three of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the date handlers and producers may be classified as small entities.

Notice of this rule was published in the **Federal Register** (52 FR 26688, July 16, 1987). That notice provided that interested persons could file public comments through August 17. No comments were received.

Date production in the United States is in the Coachella Valley of California. Nearly all of the dates are grown and packed within 20 miles of Indio, California. In 1986, 17,600 tons of California dates were produced. This is about 39 percent smaller than the record large 1985 crop of 29,000 tons. Shipments of California whole and pitted dates in domestic markets totaled 4,937 tons in the 1985-86 marketing year, and 4,425 tons in 1984-85 (October through September). Through May of the 1986-87 marketing year, the industry has shipped almost 7,300 tons to domestic markets. The farm value of the 1985 crop was $25.1 million. For 1985, bearing acreage was 4,373 acres and nonbearing acreage was 1,297 acres. Since 1980, more date palms have been planted than have been removed.

It is the Department's veiw that permitting use of an additional container will provide handlers additional marketing flexibility and benefit both growers and handlers.

This rule will amend § 987.112a(b)(3) (i) and (ii) of Subpart—Administrative Rules (7 CFR 987.101 through 987.172) to authorize the marketing of whole and pitted DAC dates in the domestic market in two-pound plastic containers. The provisions are issued under § 987.48 of the marketing order.

Section 987.112a(b)(3) prescribes consumer sizes of plastic containers, in terms of net weight content, that handlers must use when they package DAC dates in such containers for handling in domestic markets. The largest plastic containers currently authorized for whole and pitted date shipments are 1 pound 8 ounces, and more than two pounds. The committee believes that a two-pound container will fit advantageously into the array of sizes currently authorized. The committee also believes that the use of two-pound plastic containers will foster increased whole and pitted date sales.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because (1) this action relaxes restrictions on handlers by permitting handlers to use an additional plastic container; (2) some handlers are waiting to use the additional container; and (3) the new container is expected to further California date sales and shipments during the course of the current season and future seasons.

List of Subjects in 7 CFR Part 987

Marketing agreements and orders, California, Dates.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 987 is taken:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CA

1. The authority citation for 7 CFR Part 987 continues to read as follows:

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Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 987.112a [Amended]

2. Sections 987.112a(b)(3) (i) and (ii) of Subpart—Administrative Rules (7 CFR 987.101–987.172), are amended by inserting the words "two pounds or more" in place of the words "more than two pounds".

Dated: September 15, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–21836 Filed 9–21–87; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 110

[Notice 1987–11]

Contributions to and Expenditures by Delegates to National Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations at 11 CFR 110.14 governing the role of delegates and delegate committees in the Presidential delegate selection process. These regulations implement the contribution and expenditure limitations applicable to delegates and delegate committees, and set forth the reporting obligations of delegate committees under the Federal Election Campaign Act ("the Act" or "FECA"), 2 U.S.C. 431 *et seq.* The revisions clarify the distinction between the treatment of individual delegates and the treatment of delegate committees under these rules. The amended rules also establish criteria for determining whether delegate committees are affiliated with the campaign committee of the Presidential candidate they support. In addition, the Commission has made several corresponding amendments to 11 CFR 100.5(e), 110.1 and 110.2 to bring those provisions into conformity with the revised delegate selection rules. Further information on these revisions is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376–5690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revised rules governing the delegate selection process at 11 CFR 110.14. The Commission is also publishing conforming amendments to §§ 100.5, 110.1 and 110.2 to reflect the changes made in the delegate selection regulations.

On March 4, 1987, the Commission issued a Notice of Proposed Rulemaking seeking comments on proposed revisions to these regulations. 52 FR 6580. Three comments were received in response to the Notice. A public hearing was scheduled for April 22, 1987, but was subsequently cancelled because no requests to testify were received.

Section 438(d) of Title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on September 17, 1987.

Explanation and Justification

The Notice of Proposed Rulemaking raised several questions concerning the role of draft committees and multicandidate committees closely associated with potential Presidential candidates in the delegate selection process, but did not put forward draft language to resolve the issues presented. One comment addressed these areas. The Commission also raised the same questions concerning multicandidate committees in a separate rulemaking regarding affiliation between political committees. See 51 FR 27183 (July 30, 1986). The Commission has concluded that it is more appropriate to address the multicandidate committee questions in the affiliation regulations rather than in the delegate regulations. Similarly, the Commission has decided that it would be better to address the draft committee issues in a separate rulemaking project at a later date. Consequently, the revised delegate selection regulations do not specifically cover these areas.

Section 110.14 Contributions to and expenditures by delegates and delegate committees.

Section 110.14 of the Commission's regulations establishes guidelines for delegates and delegate committees as to the impact of the FECA on a range of activities they may wish to undertake in the process of selecting delegates to a national nominating convention. Under § 110.14, funds received and spent for delegate selection activities are contributions and expenditures made to influence federal elections. This results from the definition of "election," which includes both a national nominating convention and a primary election held to select delegates to such a convention. 2 U.S.C. 431(1) (B) and (C). Consequently, only funds permissible under the Act may be used for such activities. However, because delegates are not candidates for federal office under the FECA, individual delegates are not subject to the same limitations on contributions they receive or the same reporting requirements as federal candidates. By contrast, delegate committees that qualify as political committees under 2 U.S.C. 431(4) have the same reporting requirements and are subject to the same contribution limits as other political committees, with certain limited exceptions explained below. The Commission's regulations also contain provisions explaining when certain expenditures by delegates and delegate committees may trigger the limits on contributions to a federal candidate, or may affect a publicly-financed Presidential candidate's spending limits.

A major focus of the revisions to § 110.14 is the reorganization of this section to clarify which provisions apply to individual delegates and which ones apply to delegate committees. Section 110.14 has also been retitled "Contributions to and expenditures by delegates and delegate committees" to reflect this reorganization. The provisions pertaining to contributions made to an individual delegate and expenditures made by that delegate are located in new paragraphs (d), (e) and (f). The corresponding provisions that apply to delegate committees are set forth in new paragraphs (g), (h) and (i). The other major change in § 110.14 is the addition of new paragraphs (j) and (k), which provide guidance as to when delegate committees may be deemed to be affiliated with a Presidential candidate's authorized committee or with other delegate committees.

Section 110.14(a) Scope.

This paragraph generally follows the current rule by stating that § 110.14 applies to all levels of the delegate selection process. Although no substantive changes have been made, paragraph (a) was slightly reworded for clarity and designated "Scope."

In response to a question posed in the Notice of Proposed Rulemaking, one commenter urged the Commission to

amend this provision to state more precisely what activities are part of the delegate selection process. Given that delegate selection procedures vary from state to state and from party to party, the Commission has concluded that more detailed language would not provide sufficient flexibility to examine individual situations.

Section 110.14(b) Definitions.

There is no change in the definition of "delegate" in paragraph (b)(1).

The definition of "delegate committee" in paragraph (b)(2) has been revised to make clear that a delegate committee may not necessarily be a political committee under the Act. Consequently, only delegate committees that qualify as political committees under 11 CFR 100.5 are required to register with the Commission pursuant to Part 102 and file reports of receipts and disbursements in accordance with Part 104.

Section 110.14(c) Funds received and expended; prohibited funds.

Section 110.14(c)(1) contains new language to clarify that funds received or disbursements made for the purpose of furthering the selection of a delegate to a national nominating convention are contributions or expenditures made for the purpose of influencing a federal election. This represents a continuation of previous Commission policy. *See* Explanation and Justification for 11 CFR 110.14, 45 FR 34865, 34866 (May 23, 1980); AO 1980–5; and AO 1975–12.

This paragraph also sets forth two exceptions to the general rule, following current § 110.14(a) (1) and (2). First, fees paid by a delegate to a State or subordinate State party committee as a condition for ballot access as a delegate are not contributions or expenditures for the purpose of influencing federal elections. Payments made to a State party committee by individuals who seek to qualify for selection as delegates are analogous to payments made by candidates for Federal office as a condition of ballot access that are specifically excluded from the definition of "contribution" and "expenditure." 2 U.S.C. 431(8)(B)(xiii); and 431(9)(B)(x); 11 CFR 100.7(b)(18); and 11 CFR 100.8(b)(19). *See also* AO 1980–5. The second category of payments that are exempted are administrative expenses incurred by a State or subordinate State party committee in connection with the sponsoring of conventions or caucuses during which delegates to a national nominating convention are selected.

Paragraph (c)(2) follows current § 110.14(f) by requiring that all funds received and disbursements made for the purpose of furthering a delegate's selection to a national nominating convention, including payments required as a condition of ballot access and administrative expenses incurred by a State or subordinate State committee, be made from funds permissible under the Act. The Commission received one comment strongly supporting the permissible funds requirement.

Section 110.14(d) Contributions to a delegate.

This paragraph generally follows current § 110.14(c) in explaining the application of the contribution limits to contributions made to individual delegates. Although no substantive changes have been made, this paragraph has been reorganized for clarity. Contributions to delegates are not subject to the limits on contributions to candidates or political committees set forth at 11 CFR 110.1 and 110.2 because delegates do not come within the definition of "candidate" in the Act. 2 U.S.C. 431(2). However, contributions from an individual to a delegate are subject to that individual's $25,000 annual limit on contributions because the aggregate annual limit applies generally to all contributions made for the purpose of influencing a federal election.

The Commission received one comment on this section, which supported the requirement that contributions to delegates count against the individual contributor's $25,000 annual contribution limit. The commenting organization also urged the Commission to revise the regulations in certain respects. It suggested treating authorized and committed delegates as agents of the Presidential candidate's principal campaign committee, and counting contributions to and expenditures by such delegates against the committee's contribution limits. Alternatively, the commenter proposed counting such contributions and expenditures against the candidate's limits only in the event that the individual delegate is directly or indirectly financed by the Presidential candidate or the campaign committee. The Commission does not believe that such a substantial change in the regulations is necessary. If there is evidence in a particular case demonstrating that an individual delegate is in fact serving as an agent of a Presidential campaign committee or of a delegate committee, the Commission's regulations allow for the attribution of the delegate's contributions and expenditures to the committee. The new provisions on affiliation of delegate committees also resolve some of the commenter's concerns.

Section 110.14(e) Expenditures by a delegate to advocate only his or her selection.

New paragraph (e) follows current § 110.14(d) regarding expenditures by delegates to advocate only their own selection. This provision has been reorganized for clarity, but contains no substantive changes.

Section 110.14(f) Expenditures by a delegate referring to a candidate for public office.

New § 110.14(f) governs delegate expenditures for communications which advocate the delegate's selection and which also include information on or reference to a candidate for public office, including a Presidential candidate. The new provisions concerning such "dual purpose" expenditures are based on current § 110.14(d)(2), although they have been revised in several respects. First, the "dual purpose" expenditure provisions have been reorganized into two separate paragraphs. New § 110.14(f) governs dual purpose expenditures made by individual delegates, and the corresponding provisions for delegate committees are located in new § 110.14(i). Second, the new regulations apply to references to candidates for any public office, not just references to Presidential candidates. This revision recognizes that delegates and delegate committees may wish to mention federal, state or local candidates in their campaign materials. Although the Commission considered more fundamental changes to these provisions, it decided to continue the overall approach taken in the current rules. None of the public comments addressed the possible changes to these regulations put forth by the Commission.

Paragraph (f)(1) generally follows current § 110.14(d)(2)(i) with regard to "dual purpose" expenditures that are made in connection with volunteer activities. Such expenditures are neither contributions subject to the § 110.1 contribution limits, nor subject to the § 110.8 spending limits for Presidential candidates, provided that two conditions are satisfied. The materials must be used in connection with volunteer activity, and the expenditures cannot be made for general public communications or political advertising. This provision is based on the so-called "coattail" exemption from the definition of contribution in 2 U.S.C. 431(8)(B)(xi). This exemption applies to delegate expenditures because it applies to

payments by candidates for public office. Although delegates are not candidates for federal office under the Act, they may be considered candidates for public office. As the Commission has stated previously, this exemption is intended to encourage volunteer activity in the delegate selection process and to permit delegates to campaign as part of a team. Explanation and Justification for 11 CFR 110.14, 45 FR 34865, 34867 (May 23, 1980); *See also* 125 Cong. Rec. H23815 (Sept. 10, 1979) (statement of Rep. Frenzel).

Paragraph (f)(2) governs "dual purpose" expenditures by delegates involving the use of general public political advertising, such as broadcasting, newspapers, magazines, billboards and direct mail. This provision has been slightly revised from current § 110.14(d)(2)(ii) for clarity, but has not been changed substantively. Thus, this paragraph applies the standards established by the FECA at 2 U.S.C. 431 (8) and (17) to determine whether such expenditures by individual delegates are in-kind contributions or independent expenditures for the candidates referred to in the communications. As in-kind contributions, such delegate expenditures are subject to the contribution limits of 11 CFR 110.1 and the Presidential candidate's spending limits under 11 CFR 110.8. Although individual delegates do not have to report making such in-kind contributions, the recipient candidate's committee does incur reporting obligations. On the other hand, if the delegate's expenditures qualify as independent expenditures, they are not subject to limitation in amount, but they must be made and reported in accordance with the requirements of 11 CFR Part 109.

Paragraph (f)(3), which is based upon the provisions of current § 110.14(d)(2)(ii)(A)(*2*), addresses delegate expenditures for the purpose of disseminating, distributing or republishing a candidate's campaign materials. It has been amended in two respects. First, the wording of this provision has been revised to recognize that delegates might wish to republish materials produced by federal candidates other than Presidential candidates. Second, the new language clarifies that such expenditures are in-kind contributions subject to the contribution limits and reportable by the federal candidate whose material is used. The new provision follows the current rule by not requiring such expenditures to be charged against a publicly financed Presidential candidate's spending limits unless they were made with the cooperation or prior consent of, or in consultation with, or at the request or suggestion of the candidate or his or her campaign committee.

New § 110.14(f)(4) follows current § 110.14(d)(2)(ii)(D) in defining the term "direct mail" for the purposes of the delegate selection regulations.

Section 110.14(g) Contributions made to and by a delegate committee.

New § 110.14(g) follows current § 110.14(d) in applying the contribution limitations and reporting requirements of the Act to contributions made and received by delegate committees. The Commission has reorganized this provision, but has made no substantive revisions. Thus, contributions received from a Presidential candidate's campaign committee will count against that candidate's spending limits under 11 CFR 110.8 if the candidate elects to receive public financing.

Section 110.14(h) Expenditures by a delegate committee to advocate only the selection of one or more delegates.

The Commission has added new § 110.14(h) to the regulations to provide a more complete explanation of how the contribution and expenditure limits apply to delegate committee expenditures that advocate only the selection of one or more delegates. This provision, which generally follows new § 110.14(e), states that such expenditures are not considered to be contributions to any candidate, and are not subject to the § 110.1 contribution limits. Similarly, they are not chargeable to the expenditure limits of any Presidential candidate under § 110.8(a). Finally, new paragraph (h) continues the current requirement that delegate committees must report these expenditures in accordance with 11 CFR Part 104.

Section 110.14(i) Expenditures by a delegate committee referring to a candidate for public office.

New § 110.14(i) has been added to the delegate selection regulations to provide an explicit statement concerning expenditures by delegate committees for communications which advocate the selection of one or more delegates and which also include information on or reference to a candidate for public office, including a Presidential candidate. This provision parallels new § 110.14(f), which governs "dual purpose" expenditures made by individual delegates. New paragraph (i) was included in response to questions that were raised during the 1984 Presidential election cycle as to whether the "dual purpose" expenditure provision (current § 110.14(d)(2)) applied only to individual delegates, or to delegate committees as well. *See* MURs 1667 and 1704 (1984). The Commission has previously stated that the "dual purpose" expenditure rules apply to delegates who form political committees. *See* AO 1980–5. Moreover, current paragraph (d)(2) contains parentheticals indicating that delegate committees must report such expenditures. Thus, new § 110.14(i) represents a continuation of the Commission's previous approach with regard to delegate committee expenditures.

New § 110.14(i)(1) generally follows revised § 110.14(f)(1) by explaining when "dual purpose" expenditures by delegate committees made in connection with volunteer activities are not treated as contributions to the federal candidates mentioned. However, delegate committees must report such expenditures, although individual delegates need not do so.

"Dual purpose" expenditures by delegate committees for general public communications or political advertising are covered in new § 110.14(i)(2). This provision generally follows new § 110.14(f)(2) and the current rules in setting forth the conditions under which such "dual purpose" expenditures must be treated as in-kind contributions to or independent expenditures on behalf of the candidates mentioned.

During this rulemaking, the Commission considered alternatives to the current requirement that delegate committee expenditures for general public political advertising be allocated between the delegates and the candidates mentioned. One possibility was to not allow allocation, and to treat the entire expenditure as an in-kind contribution or independent expenditure for the candidate named. The opposite approach would be to eliminate the need for allocation by considering the entire expenditure to be solely for the purpose of influencing the selection of the delegates mentioned. The Commission has decided to reject both of these alternatives, and to reaffirm the current approach requiring allocation. The FECA establishes standards as to what is considered an in-kind contribution and what is an independent expenditure. 2 U.S.C. 431 (8) and (17). Those standards apply to disbursements by delegate committees in precisely the same way that they apply to disbursements made by other persons and political committees. Consequently, the Commission's regulations must

continue to apply these standards to delegate committees.

The Commission notes that in allocating "dual purpose" expenditures under § 110.14(i)(2), delegate committees should be guided by the general principles set out in the allocation regulations at 11 CFR Part 106. Thus, the amount to be attributed to each delegate or candidate should reflect the benefit reasonably expected to be derived. 11 CFR 106.1(a). This can be based on readily apparent factors such as the number of candidates mentioned and the amount of space or time accorded to each.

Paragraph (i)(3) addresses expenditures by delegate committees to disseminate, distribute or republish a candidate's campaign materials. It follows new § 110.14(f)(3), except that delegate committees must report such expenditures in the same manner as they report other types of expenditures.

New § 110.14(i)(4), which explains what is meant by the term "direct mail," follows new § 110.14(f)(4).

Section 110.14(j) Affiliation of a delegate committee with a Presidential candidate's authorized committee.

The Commission has added new § 110.14(j) to provide guidance as to when a delegate committee will be considered affiliated with the authorized committee of the Presidential candidate it supports. Paragraph (j)(1) states that these two committees are affiliated if they are established, financed, maintained or controlled by the same person, such as the Presidential candidate, or the same group of persons. Paragraph (j)(2) sets forth a list of factors that the Commission may consider in making affiliation determinations. These provisions implement the statutory requirement that, for purposes of the contribution limitations, all political committees established, financed, maintained or controlled by the same person or group of persons be treated as a single political committee. 2 U.S.C. 441a(a)(5).

The Notice of Proposed Rulemaking indicated that questions arose during the 1984 Presidential election cycle concerning possible affiliation between delegate committees and a Presidential candidate's authorized committee. *See* Matters Under Review 1667 and 1704 (1984). Specifically, the Notice sought comment as to when the relationship between two such committees is sufficiently close that they must be treated as affiliated under the Act. The Commission also posed the question as to what circumstances should cause the committees to be considered affiliated *per se*, and what circumstances should raise a presumption of affiliation. Comments were also requested as to the types of interactions that demonstrate common establishment, financing, maintenance or control.

One comment was received on these issues. The commenter took the position that delegate committees and Presidential campaign committees should be affiliated *per se* if any delegate associated with the delegate committee is formally authorized by the Presidential candidate or runs on the ballot as committed to that candidate. The commenting organization advocated a case-by-case approach for delegate committees consisting solely of uncommitted delegates, and submitted a list of proposed factors that it felt are particularly significant in this regard. The commenter urged the Commission to adopt this approach to prevent circumvention of the contribution and expenditure limits.

The Commission has evaluated the affiliation issues in light of the public comment and the Commission's previous advisory opinions and compliance matters, particularly MURs 1667 and 1704, and has decided that a *per se* rule would not be advisable. Although a *per se* approach would eliminate the need for extensive and intrusive investigations, one problem is that it would not give the Commission sufficient flexibility to examine these situations on a case-by-case basis. Nevertheless, Presidential campaigns and prospective delegates need guidance as to whether specific actions will jeopardize their nonaffiliated status. Accordingly, the Commission is including in the new rules a set of indicia of affiliation to be applied in examining the relationship between delegate committees and Presidential campaign committees.

The indicia focus on several pertinent factors that the Commission has considered in other situations involving delegate committees. These include: Common or overlapping staff; direct and indirect financing of the delegate committee; providing other goods or services, including a mailing list; and directing or organizing the specific campaign activities to be undertaken by the delegate committee. In general, the presence of any particular factor or factors will not automatically result in a finding of affiliation. However, the presence of these factors and the extent to which the committees engage in such activities may be considered by the Commission in making its determination and can increase the likelihood that the committees will be deemed affiliated.

There are several consequences resulting from a finding of affiliation between a delegate committee and a Presidential campaign committee. First, the two affiliated committees share a single contribution limit with regard to all contributions they make or receive. This means that individual contributions to the delegate committee must be aggregated with any contributions made by those individuals to the candidate's campaign committee for that election. Such aggregation serves to further the goal of minimizing "the adverse impact on the statutory scheme caused by political committees that appear to be separate entities pursuing their own ends, but are actually a means for advancing a candidate's campaign." H.R. Rep. No. 94–1057, 94th Cong., 2d Sess. 57–58 (1976). It is also supported by the statutory requirement that "all contributions made by a person, either directly or indirectly, on behalf of a particular candidate . . . shall be treated as contributions from such person to such candidate." 2 U.S.C. 441a(a)(8).

Another consequence of affiliation is that there is no limit on the amount of funds that may be transferred between the two affiliated committees. 11 CFR 102.6(a). The amount transferred from a Presidential candidate's authorized committee to an affiliated delegate committee is not treated as a contribution to that delegate committee or as an expenditure by the Presidential committee.[1] Consequently, the transfer, itself, is not subject to the contribution limits set forth in § 110.1 and § 110.2, and does not trigger the expenditure limits of § 110.8. However, all of the delegate committee's expenditures, including expenditures made from the funds transferred, automatically count against the Presidential candidate's spending limits, as a result of affiliation.

Finally, it is impossible for a delegate committee affiliated with a Presidential campaign committee to make independent expenditures on behalf of the Presidential candidate.

Section 110.14(k) Affiliation between delegate committees.

New § 110.14(k) has been added to the delegate regulations to address affiliation between different delegate committees. It states that the criteria for affiliation set out at 11 CFR 100.5(g) will be applied to determine whether delegate committees are affiliated with each other. Under § 100.5(g)(2), delegate committees are affiliated if they are

[1] The disbursement should be reported as a transfer to an affiliated committee and not as a contribution or expenditure. The recipient committee should also report receipt of the transfer. *See* 11 CFR 104.3(a)(2)(v).

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established, financed, maintained or controlled by the same corporation, labor organization, person or group of persons, including any parent, subsidiary, branch, division, department or local unit thereof. The indicia of affiliation set out at § 100.5(g)(2)(ii) will be used to ascertain whether the delegate committees are commonly established, financed, maintained or controlled.

If the Commission finds that two or more delegate committees are affiliated, the committees will share a single contribution limit for all contributions made or received. This means that they must aggregate contributions received from the same contributor. In addition, the affiliated delegate committees must aggregate the contributions they make to the same candidate or political committee, including any expenditures that qualify as in-kind contributions to such candidate. Finally, affiliated delegate committees must file separate financial disclosure reports under Part 104, and must list affiliated committees on their statements of organization. *See* 11 CFR 102.2.

Conforming Amendments

In addition to the foregoing revisions to 11 CFR 110.14, several additional amendments have been made to other sections of the Commission's regulations for clarification and to make those sections consistent with the new language of 11 CFR 110.14. The revisions are located in 11 CFR 100.5(e), 110.1 and 110.2. The Commission received no public comments on these changes.

Section 100.5 Political committee.

The definition of "delegate committee" in § 100.5(e)(5) has been revised to follow the definition in new § 110.14(b)(2).

Section 110.1 Contributions by persons other than multicandidate political committees.

New paragraph (m) has been added to § 110.1 to provide that the contribution limits set forth in that section do not apply to contributions made to an individual delegate, but are applicable to contributions given to a delegate committee. The new language is consistent with current § 110.14 (c) and (e) and new § 110.14 (d)(1) and (g)(1), and does not represent a substantive change in this area.

Section 110.2 Contributions by multicandidate political committees.

There are no substantive changes in this section. However, new paragraph (j) has been added to state that the § 110.2 limits on contributions by multicandidate committees do not apply to funds given to an individual delegate, but are applicable to contributions made to a delegate committee. This provision follows new § 110.1(m) and is consistent with both current and new § 110.14.

List of Subjects

11 CFR Part 100

Campaign funds, Elections.

11 CFR Part 110

Campaign funds, Elections, Political candidates, Political committees and parties.

For the reasons set out in the preamble, Subchapter A, Chapter I of Title 11, Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. 11 CFR Part 100 is amended by revising § 100.5(e)(5) to read as follows:

§ 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).

* * * * *

(e) * * *

(5) *Delegate committee.* A delegate committee is a group of persons that receives contributions or makes expenditures for the sole purpose of influencing the selection of one or more delegates to a national nominating convention. The term "delegate committee" includes a group of delegates, a group of individuals seeking selection as delegates and a group of individuals supporting delegates. A delegate committee that qualifies as a political committee under 11 CFR 100.5 must register with the Commission pursuant to 11 CFR Part 102 and report its receipts and disbursements in accordance with 11 CFR Part 104. (See definition of "delegate" at 11 CFR 110.14(b)(1).)

* * * * *

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for Part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441i.

4. Section 110.1 is amended by adding paragraph (m) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

* * * * *

(m) *Contributions to delegates and delegate committees.* (1) Contributions to delegates for the purpose of furthering their selection under 11 CFR 110.14 are not subject to the limitations of this section.

(2) Contributions to delegate committees under 11 CFR 110.14 are subject to the limitations of this section.

5. Section 110.2 is amended by adding paragraph (j) to read as follows:

§ 110.2 Contributions by multicandidate political committees (2 U.S.C. 441a(a)(2)).

* * * * *

(j) *Contributions to delegates and delegate committees.* (1) Contributions to delegates for the purpose of furthering their selection under 11 CFR 110.14 are not subject to the limitations of this section.

(2) Contributions to delegate committees under 11 CFR 110.14 are subject to the limitations of this section.

6. Section 110.14 is revised to read as follows:

§ 110.14 Contributions to and expenditures by delegates and delegate committees.

(a) *Scope.* This section sets forth the prohibitions, limitations and reporting requirements under the Act applicable to all levels of a delegate selection process.

(b) Definitions—(1) *Delegate.* Delegate means an individual who becomes or seeks to become a delegate, as defined by State law or party rule, to a national nominating convention or to a State, district, or local convention, caucus or primary that is held to select delegates to a national nominating convention.

(2) *Delegate committee.* A delegate committee is a group of persons that receives contributions or makes expenditures for the sole purpose of influencing the selection of one or more delegates to a national nominating convention. The term "delegate committee" includes a group of delegates, a group of individuals seeking selection as delegates and a group of individuals supporting delegates. A delegate committee that qualifies as a political committee under 11 CFR 100.5 must register with the Commission pursuant to 11 CFR Part 102 and report its receipts and disbursements in accordance with 11 CFR Part 104.

(c) *Funds received and expended; Prohibited funds.* (1) Funds received or disbursements made for the purpose of furthering the selection of a delegate to

a national nominating convention are contributions or expenditures for the purpose of influencing a federal election, see 11 CFR 100.2 (c)(3) and (e), except that—

(i) Payments made by an individual to a State committee or subordinate State committee as a condition for ballot access as a delegate are not contributions or expenditures. Such payments are neither required to be reported under 11 CFR Part 104 nor subject to limitation under 11 CFR 110.1; and

(ii) Payments made by a State committee or subordinate State party committee for administrative expenses incurred in connection with sponsoring conventions or caucuses during which delegates to a national nominating convention are selected are not contributions or expenditures. Such payments are neither required to be reported under 11 CFR Part 104 nor subject to limitation under 11 CFR 110.1 and 110.2.

(2) All funds received or disbursements made for the purpose of furthering the selection of a delegate to a national nominating convention, including payments made under paragraphs (c)(1)(i) and (c)(1)(ii) of this section, shall be made from funds permissible under the Act. *See* 11 CFR Parts 110, 114 and 115.

(d) *Contributions to a delegate.* (1) The limitations on contributions to candidates and political committees under 11 CFR 110.1 and 110.2 do not apply to contributions made to a delegate for the purpose of furthering his or her selection; however, such contributions do count against the limitation on contributions made by an individual in a calendar year under 11 CFR 110.5.

(2) Contributions to a delegate made by the authorized committee of a presidential candidate count against the presidential candidate's expenditure limitation under 11 CFR 110.8(a).

(3) A delegate is not required to report contributions received for the purpose of furthering his or her selection.

(e) *Expenditures by delegate to advocate only his or her selection.* (1) Expenditures by a delegate that advocate only his or her selection are neither contributions to a candidate, subject to limitation under 11 CFR 110.1, nor chargeable to the expenditure limits of any Presidential candidate under 11 CFR 110.8(a). Such expenditures may include, but are not limited to: Payments for travel and subsistence during the delegate selection process, including the national nominating convention, and payments for any communications advocating only the delegate's selection.

(2) A delegate is not required to report expenditures made to advocate only his or her selection.

(f) *Expenditures by a delegate referring to a candidate for public office*—(1) *Volunteer activities that do not use public political advertising.* (i) Expenditures by a delegate to defray the costs of certain campaign materials (such as pins, bumper stickers, handbills, brochures, posters and yard signs) that advocate his or her selection and also include information on or reference to a candidate for the office of President or any other public office are neither contributions to the candidate referred to nor subject to limitation under 11 CFR 110.1 provided that:

(A) The materials are used in connection with volunteer activities; and

(B) The expenditures are not for costs incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising.

(ii) Such expenditures are not chargeable to the expenditure limitation of a presidential candidate under 11 CFR 110.8(a).

(iii) A delegate is not required to report expenditures made pursuant to this paragraph.

(2) *Use of public political advertising.* A delegate may make expenditures to defray costs incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising to advocate his or her selection and also include information on or reference to a candidate for the office of President or any other public office.

(i) Such expenditures are in-kind contributions to a Federal candidate if they are made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate, his or her authorized political committee(s), or their agents. *See* 11 CFR 100.7(a)(iii)(A); 2 U.S.C. 441a(a)(7)(B).

(A) The portion of the expenditure allocable to a Federal candidate is subject to the contribution limitations of 11 CFR 110.1.

(B) A Federal candidate's authorized committee must report the portion of the expenditure allocable to the candidate as a contribution pursuant to 11 CFR Part 104.

(C) The portion of the expenditure allocable to a presidential candidate is chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8(a).

(ii) Such expenditures are independent expenditures under 11 CFR Part 109 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, the candidate or any agent or authorized committee of such candidate.

(A) Such independent expenditures must be made in accordance with the requirements of 11 CFR Part 109.

(B) The delegate shall report the portion of the expenditure allocable to the Federal candidate as an independent expenditure in accordance with 11 CFR 109.2.

(3) *Republication of candidate materials.* Expenditures made to finance the dissemination, distribution or republication, in whole or in part, of any broadcast or materials prepared by a Federal candidate are in-kind contributions to the candidate.

(i) Such expenditures are subject to the contribution limits of 11 CFR 110.1.

(ii) The Federal candidate must report the expenditure as a contribution pursuant to 11 CFR Part 104.

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were made with the cooperation, or with the prior consent of, or in consultation with, or at the request or suggestion of, the candidate or any agent or authorized committee of such candidate.

(4) For purposes of this paragraph, "direct mail" means any mailing(s) by commercial vendors or any mailing(s) made from lists that were not developed by the delegate.

(g) *Contributions made to and by a delegate committee.* (1) The limitations on contributions to political committees under 11 CFR 110.1 and 110.2 apply to contributions made to and by a delegate committee.

(2) Contributions to a delegate committee count against the limitation on contributions made by an individual in a calendar year under 11 CFR 110.5.

(3) A delegate committee shall report contributions it makes and receives pursuant to 11 CFR Part 104.

(h) *Expenditures by a delegate committee to advocate only the selection of one or more delegates.* (1) Expenditures by a delegate committee that advocate only the selection of one or more delegates are neither contributions to a candidate, subject to limitation under 11 CFR 110.1 nor chargeable to the expenditure limits of any Presidential candidate under 11 CFR 110.8(a). Such expenditures may include but are not limited to: Payments for

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travel and subsistence during the delegate selection process, including the national nominating convention, and payments for any communications advocating only the selection of one or more delegates.

(2) A delegate committee shall report expenditures made pursuant to this paragraph.

(i) *Expenditures by a delegate committee referring to a candidate for public office*—(1) *Volunteer activities that do not use public political advertising.* (i) Expenditures by a delegate committee to defray the costs of certain campaign materials (such as pins, bumper stickers, handbills, brochures, posters and yard signs) that advocate the selection of a delegate and also include information on or reference to a candidate for the office of President or any other public office are neither contributions to the candidate referred to, nor subject to limitation under 11 CFR 110.1 provided that:

(A) The materials are used in connection with volunteer activities; and

(B) The expenditures are not for costs incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising.

(ii) Such expenditures are not chargeable to the expenditure limitation of a presidential candidate under 11 CFR 110.8(a).

(iii) A delegate committee shall report expenditures made pursuant to this paragraph.

(2) *Use of public political advertising.* A delegate committee may make expenditures to defray costs incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising to advocate the selection of one or more delegates and also include information on or reference to a candidate for the office of President or any other public office. If such expenditures are in-kind contributions or independent expenditures under paragraphs (i) or (ii) below, the delegate committee shall allocate the portion of the expenditures relating to the delegate(s) and candidate(s) referred to in the communications between them and report the portion allocable to each.

(i) Such expenditures are in-kind contributions to a Federal candidate if they are made in cooperation, consultation or concert with or at the request or suggestion of the candidate, his or her authorized political committee(s), or their agents.

(A) The portion of the expenditure allocable to a Federal candidate is subject to the contribution limitations of 11 CFR 110.1. The delegate committee shall report the portion allocable to the Federal candidate as a contribution in-kind.

(B) The Federal candidate's authorized committee shall report the portion of the expenditure allocable to the candidate as a contribution pursuant to 11 CFR Part 104.

(C) The portion of the expenditure allocable to a presidential candidate is chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8(a).

(ii) Such expenditures are independent expenditures under 11 CFR Part 109 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, the candidate or any agent or authorized committee of such candidate.

(A) Such independent expenditures must be made in accordance with the requirements of 11 CFR Part 109.

(B) The delegate committee shall report the portion of the expenditure allocable to the Federal candidate as an independent expenditure in accordance with 11 CFR 109.2.

(3) *Republication of candidate materials.* Expenditures made to finance the dissemination, distribution or republication, in whole or in part, of any broadcast or materials prepared by a Federal candidate are in-kind contributions to the candidate.

(i) Such expenditures are subject to the contribution limitations of 11 CFR 110.1. The delegate committee shall report the expenditure as a contribution in-kind.

(ii) The Federal candidate's authorized committee shall report the expenditure as a contribution pursuant to 11 CFR Part 104.

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, the candidate or any agent or authorized committee of such candidate.

(4) For purposes of this paragraph, "direct mail" means any mailing(s) by commercial vendors or any mailing(s) made from lists that were not developed by the delegate committee or any participating delegate.

(j) *Affiliation of delegate committees with a Presidential candidate's authorized committee.* (1) For purposes of the contribution limits of 11 CFR 110.1 and 110.2, a delegate committee shall be considered to be affiliated with a Presidential candidate's authorized committee if both such committees are established, financed, maintained or controlled by the same person, such as the Presidential candidate, or the same group of persons.

(2) Factors the Commission may consider in determining whether a delegate committee is affiliated under paragraph (j)(1) of this section with a Presidential candidate's authorized committee may include, but are not limited to:

(i) Whether the Presidential candidate or any other person associated with the Presidential authorized committee played a significant role in the formation of the delegate committee;

(ii) Whether any delegate associated with a delegate committee is or has been a staff member of the Presidential authorized committee;

(iii) Whether the committees have common or overlapping officers or employees;

(iv) Whether the Presidential authorized committee provides funds or goods in a significant amount or on an ongoing basis to the delegate committee, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17 or 9034.8;

(v) Whether the Presidential candidate or any other person associated with the Presidential authorized committee suggested, recommended or arranged for contributions to be made to the delegate committee;

(vi) Similar patterns of contributions received by the committees;

(vii) Whether one committee provides a mailing list to the other committee;

(viii) Whether the Presidential authorized committee or any person associated with that committee provides ongoing administrative support to the other committee;

(ix) Whether the Presidential authorized committee or any person associated with that committee directs or organizes the specific campaign activities of the delegate committee; and

(x) Whether the Presidential authorized committee or any person associated with that committee files statements or reports on behalf of the delegate committee.

(k) *Affiliation between delegate committees.* Delegate committees will be considered to be affiliated with each

other if they meet the criteria for affiliation set forth at 11 CFR 100.5(g).

Scott E. Thomas,

Chairman, Federal Election Commission.

Dated: September 17, 1987.

[FR Doc. 87-21788 Filed 9-21-87; 8:45 am]
BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; Docket No. R-0580]

Equal Credit Opportunity; Determination of Effect of State Laws (Wisconsin)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Preemption determination.

SUMMARY: The Board is publishing in final form a determination as to whether certain provisions in the Family Code of Wisconsin are inconsistent with the Equal Credit Opportunity Act (ECOA) or Regulation B and therefore preempted. The Board has made a determination not to preempt any of the provisions in question.

EFFECTIVE DATE: November 1, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Brueger, Attorney, Division of Consumer and Community Affairs, at (202) 452-2412 (for TDD users only, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) *General.*

Section 705(f) of the ECOA authorizes the Board to determine whether an inconsistency exists between a provision of the act and a state law relating to credit discrimination. If, in addition to being inconsistent, a state law provides no greater protection for credit applicants than does the federal law, the state law is preempted to the extent of the inconsistency, and creditors in that state may not follow the inconsistent state requirement. In addition, section 705(b) of the ECOA provides that consideration or application of state property laws directly or indirectly affecting creditworthiness do not constitute discrimination under the act.

This determination regarding Wisconsin law is issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR Part 265).

(2) *Discussion of Wisconsin law and final determination.*

The Board examined Wisconsin Statutes §§ 766.56(3)(b), 766.565(5), and 766.56(2)(d) to determine whether requirements imposed by these sections are inconsistent with the ECOA or the Board's Regulation B, which implements the act. On October 6, 1986, the Board published a preliminary determination (51 FR 35521). In that notice, the Board proposed to preempt a portion of § 766.565(5), specifically, the requirement that creditors terminate certain accounts in response to a unilateral request to do so from a nonapplicant spouse. The Board proposed not to preempt §§ 766.56(3)(b) or 766.56(2)(d), dealing with marital status and other inquiries, as no inconsistency was found between these sections and the federal law. Ten comments were received in response to the proposed determination.

After analysis and review, the Board has determined that Wisconsin may properly be viewed as a community property state for Regulation B purposes. This determination takes into account the presumption (established by the Wisconsin statute) that all property acquired and all debts incurred during the marriage are community debts, as well as the stated legislative intent that marital property is a form of community property. Therefore, the marital status inquiries allowed under § 766.56(2)(d) and the inquiry as to marital status and name and address of the spouse required under § 766.56(3)(b) are not in conflict with the federal act or regulation. In a community property state it is permissible for creditors to obtain information about the nonapplicant spouse under § 202.5(c)(2)(iv) of Regulation B, and to ask about marital status under § 202.5(d)(1).

The Board also considered whether the language of § 766.56(2)(d) to the effect that a creditor may inquire whether the applicant is "married, unmarried or separated, under a decree of legal separation," is inconsistent with the federal law. At issue is the use of the words "under a decree of legal separation," since the federal law prescribes that only the terms "married," "unmarried," and "separated" are to be used in any inquiry into marital status. The Board has concluded that the language in § 766.56(2)(d) is not mandatory and only clarifies the nature of the permissible inquiry. Under §§ 202.5(d) and 202.2(u) of Regulation B, creditors may explain to applicants the state law meaning of the terms "married," "unmarried," or "separated." Thus, no conflict exists between § 766.56(2)(d) of the Wisconsin law and § 202.5(d)(1) of Regulation B.

Finally, the Board considered an inconsistency between § 766.565(5) of the Wisconsin law and § 202.7(a) of Regulation B. Section 202.7(a) prohibits creditors from refusing to grant an individual account to a creditworthy applicant on the basis of marital status. Under § 766.565(5), a nonapplicant spouse is able unilaterally to terminate an account, leaving the applicant (who already has been found creditworthy) unable to maintain an open-end account with that creditor. The applicant may also be precluded from obtaining an account in the future from that creditor, since the creditor may consider a prior termination by the spouse in the evaluation process and may refuse on that basis to open a new account for the applicant.

While a clear inconsistency exists between the state law and the federal, the Board has made a determination not to preempt the state law. This determination is based on § 705(b) of the ECOA and implementing § 202.6(c) of Regulation B, which allow creditors to take into account state property laws that directly or indirectly affect creditworthiness. Although the Board believes that a strong legal argument can be made that § 766.565(5) primarily governs the extension of credit and the relationship between the creditor and the nonapplicant spouse, the Board has concluded after lengthy analysis that an equally valid basis exists for finding that § 766.565(5) governs the exercise of a property right since it establishes a nonapplicant spouse's authority over marital property in which he or she has or will have an ownership interest. For example, the right to terminate an open-end account, created by § 766.565(5), provides a mechanism by which the nonapplicant spouse can limit the availability of his or her interest in marital property for debts incurred under the open-end credit plan granted to the applicant spouse. Consequently, the Board has determined that § 766.565(5) is entitled to deference under § 705(b) of the ECOA and § 202.6(c) of Regulation B, and is not preempted by the act or the regulation.

List of Subjects in 12 CFR Part 202

Banks, Banking, Civil rights, Consumer protection, Credit, Federal Reserve System, Marital status discrimination, Minority groups, Penalties, Sex discrimination, Women.

Board of Governors of the Federal Reserve System.

William W. Wiles,

Secretary of the Board.

September 16, 1987.

[FR Doc. 87-21760 Filed 9-21-87; 8:45 am]

BILLING CODE 6210-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

Administrative Authority and Policy

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1204 by adding § 1204.509, "Delegation of Authority—To Take Actions Regarding "Liquidated Damage" Assessments Under the Contract Work Hours and Safety Standards Act, and Associated Labor Statutes." This delegates responsibility and authority to the Director, Industrial Relations Office, to act for the Administrator in all matters where the "Agency Head" is authorized to act under 29 CFR Part 5 in matters regarding the assessment of liquidated damages.

EFFECTIVE DATE: September 22, 1987.

ADDRESS: Director, Industrial Relations Office, Code NR, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Gordon K. Gilson (202) 453-2882.

SUPPLEMENTARY INFORMATION: Since this delegation involves administrative management decisions, no public comment period is required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1204

Airports, Authority delegations (Government agencies), Federal buildings and facilities, Government contacts, Government employees, Government procurement, Grants programs science and technology, Intergovernmental regulations, Labor unions, Security measures, Liquidated damages, Labor standards, Small businesses.

For reasons set forth in the Preamble, 14 CFR Part 1204 is amended as follows:

PART 1204—[AMENDED]

1. The authority citation for 14 CFR Part 1204 Subpart 5 continues to read as follows:

Authority: 42 U.S.C. 2473.

2. Section 1204.509 is added to read as follows:

§ 1204.509 Delegation of authority to take action regarding "liquidated damage" assessments under the Contract Work Hours and Safety Standards Act, and associated labor statutes.

(a) *Delegation of authority.* The Director, Industrial Relations Office, is hereby delegated the authority to act for the Administrator in all matters where the "Agency Head" is authorized to act under 29 CFR Part 5, labor standards provisions applicable to contracts covering federally financed and assisted construction and labor standards provisions applicable to nonconstruction contracts as they are subject to the Conract Work Hours and Safety Standards Act, in regards to the assessment of liquidated damages.

(b) *Redelegation.* None authorized except by virtue of succession.

(c) *Reporting.* The official to whom authority is delegated in this regulation will assure that feedback is provided to keep the Administrator informed of significant actions, problems, or other matters of substance related to the exercise of the authority delegated hereunder.

James C. Fletcher,

Administrator.

[FR Doc. 87-21757 Filed 9-21-87; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 70610-7110]

Revision of Validated License Controls on Controllable Pitch Propellers

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls.

This rule amends the validated export license controls on certain controllable pitch propellers described in paragraph (e)(2) of the "List of Equipment Controlled by ECCN 1416A" in ECCN 1416A on the CCL (Supplement No. 1 to § 399.1). This action is in accordance with a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Controllable pitch propellers rated at 40,000 hp capacity and below (controlled under ECCN 1416A on the CCL) now require a validated license for export only to destinations in Country Groups Q, S, W, Y, and Z, the People's Republic of China, and Afghanistan for national security reasons.

Notice of the foreign availability determination on this equipment has been published previously (52 FR 34976, Sept. 16, 1987).

EFFECTIVE DATE: September 22, 1987.

FOR FURTHER INFORMATION CONTACT: Donald J. Brychczynski, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-3564.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections

603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information that is subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368–399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 2, 1986) (22 U.S.C. 5001 *et seq.*); and E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1416A is amended by revising the "*Validated License Required*" paragraph to read as follows:

1416A Vessels, surface-effect vehicles, water-screw propellers and hub assemblies, water-screw propeller systems, moisture and particulate separator systems and specially designed components.

Controls for ECCN 1416A

* * * * *

Validated License Required: Country Groups QSTVWYZ. Controllable pitch propellers and hub assemblies rated at greater than 20,000 hp but less than or equal to 40,000 hp require a validated license only for Country Groups QSWYZ, the People's Republic of China, and Afghanistan.

* * * * *

Dated: September 17, 1987.

Dan Hoydysh,

Acting Director, Office of Technology and Policy Analysis.

[FR Doc. 87–21809 Filed 9–21–87; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM87–34–000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

September 16, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule and statement of policy; notice of effective date.

SUMMARY: The Federal Energy Regulatory Commission gives notice that Order No. 500, issued on August 7, 1987 (52 FR 30334), became effective on September 15, 1987 upon issuance of the mandate of the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors* v. *FERC*, No. 85–1811 (D.C. Cir. June 23, 1987). The Commission also amends the regulations adopted in Order No. 500 to reflect the September 15, 1987 effective date of the order. In addition, the Commission gives notice that the suspension of § 284.10 of the Commission's regulations is removed effective November 1, 1987 and all waivers of that section will terminate on the same day. Accordingly, § 284.10, as amended by Order No. 500, is effective on November 1, 1987.

EFFECTIVE DATE: Order No. 500 is effective September 15, 1987. The suspension of § 284.10 of the Commission's regulations is removed effective November 1, 1987, and waivers of that section will terminate on the same date. Accordingly, § 284.10, as amended by Order No. 500, is effective on November 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357–8274.

SUPPLEMENTARY INFORMATION: On August 7, 1987, the Commission issued Order No. 500 responding on an interim basis to the decision of the United States Court of Appeals for the District of Columbia Circuit concerning Order No. 436 in *Associated Gas Distributors* v. *FERC*, No. 85–1811 (D.C. Cir. June 23, 1987). In Order No. 500, the Commission stated that Order No. 500 would become effective immediately upon issuance of the Court's mandate or upon leave of the Court. The Court's mandate issued on September 15, 1987. Accordingly, Order No. 500 became effective on September 15, 1987. The Commission also stated in Order No. 500 that the stay of the effectiveness of § 284.10 which the Commission issued on July 2, 1987, 52 FR 27796 (July 24, 1987), would be removed effective the first day of the second month after the effective date of Order No. 500. In addition, in a companion order to Order No. 500, issued on August 7, 1987, the Commission stated that the waivers of § 284.10(a)(1) granted individual pipelines would also terminate on the first day of the second month after the effective date of Order No. 500, *Texas Eastern Transmission Corp.*, 40 FERC ¶61,137 (Aug. 7, 1987). Therefore, the suspension of § 284.10 is removed effective November 1, 1987, and all waivers of that section will terminate on the same day. Accordingly, § 284.10, as amended by Order No. 500, is effective on November 1, 1987.

Part 2 and Part 284, Chapter I, Title 18, Code of Federal Regulations, are amended as set forth below.

Kenneth F. Plumb,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp. p. 142; Federal Power Act, 16 U.S.C. 792–825r (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); and the National Environmental Policy Act, 42 U.S.C. 4321–4361 (1978); unless otherwise indicated.

§ 2.104 [Amended]

2. In § 2.104(f) the phrase "on the effective date of this order [The Commission will publish a notice of the effective date as soon as leave is obtained from the Court or the mandate of the Court issues]" is removed and the date "on September 15, 1987," is inserted in its place.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp. p. 142.

§ 284.8 [Amended]

4. In § 284.8(f)(6), the phrase "on the effective date of this rule [The Commission will publish a notice of the effective date as soon as leave is obtained from the Court or the mandate of the Court issues]," is removed and the date "on September 15, 1987," is inserted in its place, and the phrase "on the first day of the second month after the effective date of this rule" is removed and the date "on November 1, 1987," is inserted in its place.

§ 284.9 [Amended]

5. In § 284.9(f)(6), the phrase "on the effective date of this rule [The Commission will publish a notice of the effective date as soon as leave is obtained from the Court or the mandate of the Court issues]," is removed and the date "on September 15, 1987," is inserted in its place, and the phrase "on the first day of the second month after the effective date of this rule" is removed and the date "on November 1, 1987," is inserted in its place.

§ 289.10 [Amended]

6. The suspension of § 284.10 is removed effective November 1, 1987.

[FR Doc. 87-21829 Filed 9-21-87; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 86F-0437]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyarylate resins, formed by reaction of bisphenol-A with diphenylisophthalate and diphenylterephthalate, as articles or components of articles intended for use in contact with food. This action responds to a petition filed by Celanese Engineering Resins, Inc.

DATES: Effective September 22, 1987; objections by October 22, 1987.

ADDRESS: Writen objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 18, 1986 (51 FR 45393), FDA announced that a petition (FAP 6B3965) had been filed by Celanese Engineering Resins, Inc., c/o 1150 17th Street NW., Washington, DC 20036, proposing that the food additive regulations be amended to provide for the safe use of polyarylate resin, a product of bisphenol-A with diphenylisophthalate and diphenylterephthalate, as articles or components of articles intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that polyarylate resins are safe for use in contact with food. The agency is amending 21 CFR Part 177 by adding § 177.1555, which prescribes the conditions of use for polyarylate resins.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before October 22, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Part 177 is amended by adding § 177.1555 to read as follows:

§ 177.1555 Polyarylate resins.

Polyarylate resins (CAS Reg. No. 51706-10-6) may be safely used as articles or components of articles intended for use in contact with food in accordance with the following prescribed conditions:

(a) *Identity.* Polyarylate resins (1, 3-benzenedicarboxylic acid, diphenyl ester, polymer with diphenyl 1,4-benzenedicarboxylate and 4-4'-(1-methylethylidine) bis(phenol)) are formed by melt polycondensation of bisphenol-A with diphenylisophthalate and diphenylterephthalate.

(b) *Specifications.* (1) The finished copolymers shall contain from 70 to 80 weight percent of polymer units derived from diphenylisophthalate and 20 to 30 weight percent of polymer units derived from diphenylterephthalate.

(2) Polyarylate resins shall have a minimum weight average molecular weight of 20,000,

(3) Polyarylate resins may be identified by their characteristic infrared spectra.

(c) *Extractive limitations.* The finished polyarylate resins in sheet form at least 0.5 millimeter (0.020 inch) thick, when extracted with water at 121 °C (250 °F) for 2 hours, shall yield total nonvolatile extractives not to exceed 2.33 micrograms per square centimeter (15 micrograms per square inch) of the exposed resin surface.

(d) *Limitations.* Polyarylate resin articles may be used in contact with all foods except beverages containing more than 8 volume percent ethanol under conditions of use A through H, described in Table 2 of § 176.170(c) of this chapter.

Dated: September 8, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-21783 Filed 9-21-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 178

[Docket No. 87F-0083]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,2'-methylenebis(4-methyl-6-*tert*-butylphenol) monoacrylate as an antioxidant for polymers intended to contact food. This action responds to a petition filed by Sumitomo Chemical America, Inc.

DATES: Effective September 22, 1987; objections by October 22, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 13, 1987 (52 FR 11887), FDA announced that a petition (FAP 5B3897) had been filed by Sumitomo Chemical America, Inc., 385 Park Avenue, New York, NY 10154, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 2-propenoic acid, 2-(1,1-dimethylethyl)-6-[3-1,1-dimethylethyl)-2-hydroxy-5-methylbenzyl]-4-methyl phenylester as an antioxidant for polymer intended to contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the name of the proposed food additive should be changed from that used in the filing notice to one that is more consistent with names used in the Code of Federal Regulations for related compounds. As such, the name of the additive has been changed to 2,2'-methylenebis(4-methyl-6-*tert*-butylphenol) monoacrylate. The agency further concludes that the additive is safe for the proposed use, and that 21 CFR 178.2010(b) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before October 22, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.2010(b) by alphabetically inserting in the list of substances a new item to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* *
2,2'-Methylenebis(4-methyl-6-*tert*-butylphenol) monoacrylate (CAS Reg. No. 61167-58-6).	For use at levels not to exceed 0.5 percent by weight of polystyrene and rubber-modified polystyrene complying with § 177.1640 of this chapter.
* * *	* *

Dated: September 3, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-21782 Filed 9-21-87; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

[Docket No. R-87-1274; FR-2137]

Manufactured Home Construction and Safety Standards

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes two revisions to the Department's Manufactured Home Construction and Safety Standards. First, the rule revises 24 CFR 3280.403(e)(2) and 3280.405(e)(2), which prescribe inspection and testing methods for determining compliance with manufactured home construction and safety standards for windows, sliding glass doors, and swinging exterior passage doors. The rule removes annual production unit testing requirements that were added in a final rule published February 12, 1987 (52 FR 4574, 4583–84) and announces HUD's intent to publish a proposed rule addresing alternate testing requirements.

Second, this rule amends § 3280.807 to modify slightly HUD's previous incorporation by reference of the 1984 National Electric Code (NEC). HUD's February 12, 1987 rule incorporated the 1984 NEC in its entirety. This rule establishes two definitions that differ from those contained in the 1984 NEC, and modifies the code's requirements for electrical installations associated with hydromassage bathtubs.

DATES: Effective dates: October 27, 1987. The incorporation by reference of certain publication listed in the regulations is approved by the Director of the Federal Register as of October 27, 1987.

FOR FURTHER INFORMATION CONTACT: Donald R. Fairman, Acting Chief, Standards Branch, Manufactured Housing and Construction Standards Division, Home and Construction Standards Division, Department of Housing and Urban Development, 451 7th Street SW., Room 9152, Washington, DC 20410–8000. Telephone (202) 755–6716. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 12, 1987 (52 FR 4574), HUD published a final rule revising Part 3280, which contains Federal Manufactured Home Construction and Safety Standards (standards). The effective date of the final rule is August 11, 1987.

As a part of the final rule, HUD prescribed methods for inspecting and testing products to determine compliance with standards for windows and sliding glass doors (24 CFR 3280.403(e)(2)), and for swinging exterior passage doors (24 CFR 3280.405(e)(2)). These provisions require an independent quality assurance agency to conduct preproduction specimen tests and to inspect the product manufacturer's facility at least twice a year. One of these semiannual inspections must include production unit testing of the largest size of each design available at the time of the inspection.

Upon reconsideration of the prescribed production unit testing requirements, HUD has concluded that they may impose an excessive financial burden on product manufacturers and may be more stringent than necessary to assure compliance with the standards. (Some product manufacturers have from 15 to 20 design models in production at any one time. Independent quality assurance agencies can charge up to $2,000 per unit tested. Thus, these requirements may cause producers to spend up to $40,000 per year to comply with the production unit testing requirements.)

HUD believes that there may be less burdensome testing requirements that will offer equal assurance of compliance with the standards. HUD anticipates that new testing requirements can be formulated and proposed for inclusion in Part 3280 within six months of the effective date of the February 12, 1987 final rule. Until this new production unit testing requirement is developed, HUD believes that it is necessary to delete the annual production unit testing requirements contained in §§ 3280.403(e)(2) and 3280.405(e)(2).

The February 12, 1987 final rule referenced the 1984 National Electric Code (NEC) in its entirety. This reference has the unintended effect of reducing design flexibility associated with the use of hydromassage bathtubs in manufactured homes. This would result in unnecessary expense to industry and consumers. The problem dealt with in this revision was recognized by the NEC in its issuance of a Tentative Interim Amendment on the subject in mid-1985; the 1987 NEC was corrected on the subject of hydromassage bathtubs. While HUD is not here proposing wholesale adoption of the 1987 NEC, the effect of this final rule is to modify HUD's incorporation of the 1984 NEC to deal with the single issue of hydromassage bathtubs in a manner comparable to the 1987 NEC.

Section 3282.105(a) requires the Department to issue notices of proposed rulemaking, with an opportunity for public participation, unless the Secretary "finds that notice is impractical, unnecessary or contrary to the public interest * * *". In this case, the Secretary has so determined. With respect to the testing requirements for windows, the requirement for window testing only recently became effective, and may impose an unnecessary financial burden on manufacturers. Further, HUD intends to promulgate alternate testing procedures in the near future. With respect to the changes relating to hydromassage bathtubs, the Department believes that the requirements contained in the February 12, 1987 final rule would also impose an unnecessary financial burden on both manufacturers and consumers. Moreover, the Department believes that the requirements published herein, which are comparable to those contained in the 1987 NEC, are generally recognized to be adequate. For these reasons, the Secretary has determined that a notice of proposed rulemaking is not required.

Section 604(e) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (Act) provides that amendments or revocations to the standards are to become effective no sooner than one hundred and eighty days from their issuance, unless the Secretary finds that an earlier date is in the public interest. For the reasons stated above, the Secretary has determined that it would be in the public interest to establish an earlier effective date for these requirements.

Similarly, section 605 of the Act requires the Secretary to consult with the National Manufactured Home Advisory Council before establishing, amending or revoking a standard to the extent feasible. Under the circumstances of this case, the Secretary has determined that it is not feasible to consult with the Advisory Council.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. The rule does not: (1) Have an annual effect on the economy of one hundred million dollars or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule merely deletes or modifies requirements that have only recently become effective and that have not, as yet, imposed any economic impact on any entities.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environment Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk at Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

This rule was listed as item 1001 in the Department's Semiannual Agenda of Regulations (publsihed at 52 FR 14362, 14393) on April 27, 1987, under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number is 14.171—Manufactured Housing Construction and Safety Standards.

List of Subjects in 24 CFR Part 3280

Fire prevention, Housing standards, Manufactured homes, Incorporation by reference.

Accordingly, 24 CFR Part 3280 is amended as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for 24 CFR Part 3280 continues to read as follows:

Authority: Secs. 604 and 625 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403 and 5424; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

2. Section 3280.403(e)(2) is revised to read as follows:

§ 3280.403 Standard for windows and sliding glass doors used in manufactured homes.

* * * * *

(e) * * *

(2) In determining certifiability of the products, an independent quality assurance agency shall conduct preproduction specimen tests in accordance with AAMA 1701.2–1985. Further, such agency shall inspect the product manufacturer's facility at least twice per year.

3. Section 3280.405(e)(2) is revised to read as follows:

§ 3280.405 Standard for swinging exterior passage doors for use in manufactured homes.

* * * * *

(e) * * *

(2) In determining certifiability of the products, an independent quality assurance agency shall conduct preproduction specimen test in accordance with AAMA 1702.2–1985. Further, such agency shall inspect the product manufacturer's facility at least twice per year.

4. Section 3280.807 is amended by adding a new paragraph (g) to read as follows:

§ 3280.807 Fixtures and appliances.

* * * * *

(g) The National Electric Code (NFPA No. 70–1984), incorporated by reference in Subpart I of this part, is modified for purposes of this subpart in the following respects:

(1) In lieu of the definitions of the following terms that appear in paragraph 680–4, the following definitions will be used:

(i) *Hydromassage bathtub.* A permanently installed bathtub equipped with a recirculating piping system, pump and associated equipment. It is designed so it can accept, circulate, and discharge water upon each use.

(ii) *Spa or hot tub.* A hydromassage pool or tub for recreational or therapeutic use, not located in health care facilities, designed for immersion of users and usually having a filter, heater, and motor-driven blower. It may be installed indoors or outdoors, on the ground or supporting structure, or in the ground or supporting structure.

(2) *Hyrdomassage bathtubs.* (i) Hydromassage bathtubs and their associated electric components shall be supplied by a circuit protected by a ground-fault circuit-interrupter.

(ii) *Other electric equipment.* Lighting fixtures, switches, receptacles, and other electric equipment located in the same room, and not directly associated with a hydromassage bathtub, shall be installed in accordance with the requirements of Chapters 1 through 4 in this Code covering the installation of that equipment in bathrooms.

Dated: September 10, 1987.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87–21742 Filed 9–21–87; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF JUSTICE

28 CFR Part 602

[Attorney General Order No. 1222–87]

Jurisdiction of the Independent Counsel: In re Franklyn C. Nofziger

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the provisions establishing the Office of Independent Counsel: In re Franklyn C. Nofziger. This amendment amends the regulations issued on March 6, 1987 and published at 52 FR 22438 (June 12, 1987) and provides additional jurisdiction to the Office of the Independent Counsel: In re Franklyn C. Nofziger. This amendment to the regulations supersedes an earlier amendment issued on June 5, 1987 and published at 52 FR 22439 (June 12, 1987). The additional jurisdiction granted herein is exactly parallel to the jurisdiction provided to Independent Counsel James C. McKay by the order of the Special Division of the United States Court of Appeals for the District of Columbia Circuit dated August 18, 1987. These amendments are in no way meant to question the independence or authority of the Independent Counsel appointed under the Act or to interfere in any way with his activities. To the contrary, this rule is intended to make certain that the necessary investigation and appropriate legal proceedings can proceed in a timely manner.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Margaret C. Love, Special Counsel, Office of Legal Counsel, Room 5258, U.S. Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. Telephone: (202) 633–2030. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 605(b), I certify that this rule will not have a significant impact on a substantial number of small entities. This rule is not a major rule within the meaning of Executive Order No. 12291.

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List of Subjects in 28 CFR Part 602

Crime, Conflict of interests, Government employees, Authority delegations (Government agencies).

By the authority vested in me by 28 U.S.C. 509, 510, and 515, and 5 U.S.C. 301, and pursuant to the President's general responsibility to enforce the laws of the United States pursuant to Article II of the United States Constitution, Part 602 of Title 28, Code of Federal Regulations, is amended as follows.

PART 602—[AMENDED]

1. The authority citation for 28 CFR Part 602 continues to read as follows:

Authority: 28 U.S.C. 509, 510, and 515; 5 U.S.C. 301.

§ 602.1 [Amended]

2. Section 602.1 is amended by removing paragraph (c), redesignating paragraph (d) as paragraph (e), and adding new paragraphs (c) and (d) to read as follows:

(c) The Independent Counsel: In re Franklyn C. Nofziger shall have jurisdiction to investigate to the maximum extent authorized by Title 28 U.S.C. 594, whether the conduct of Edwin Meese III specified in this section constituted a violation of any federal criminal law, as referred to in 28 U.S.C. 591, and more specifically whether the federal conflict of interest laws, 18 U.S.C. 201–211, or any other provision of the federal criminal law, was violated by Mr. Meese's relationship or dealings at any time from 1981 to the present with any of the following: Welbilt Electronic Die Corporation/Wedtech Corporation (including any of its contracts with the U.S. Government, or efforts to obtain same); Franklyn C. Nofziger; E. Robert Wallach; W. Franklyn Chinn; and/or Financial Management International, Inc.

(d) The Independent Counsel: In re Franklyn C. Nofziger shall have jurisdiction and authority to investigate other allegations and evidence of violation of any federal criminal law by Edwin Meese III developed during the Independent Counsel's investigation referred to in paragraph (c) of this section, and connected with or arising out of that investigation, and to seek indictments and to prosecute any persons or entities involved in any of the foregoing events or transactions that Independent Counsel believes constitute a federal offense and that there is reasonable cause to believe that the admissible evidence probably will be sufficient to obtain and sustain a conviction (28 U.S.C. 594(f)) of any federal criminal law (other than a violation constituting a Class B or C misdemeanor, or an infraction, or a petty offense) arising out of such events, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any criminal offense related to the prosecutorial jurisdiction of the Independent Counsel as herein established.

Arnold I. Burns,
Acting Attorney General.
Date: September 14, 1987.

[FR Doc. 87-21779 Filed 9-21-87; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendment to the Bank Secrecy Act Regarding Disclosure of Bank Secrecy Act Data

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: Treasury is clarifying the regulation pertaining to disclosure of information reported under the Bank Secrecy Act and adding a new provision that authorizes charging of fees for costs incidental to certain disclosures to state and local government agencies. On June 9, 1987, Treasury published in the **Federal Register** [52 FR 21699] a proposed clarification of 31 CFR 103.43. After review of the comments, Treasury is publishing a final rule that is unchanged from the proposal.

EFFECTIVE DATE: October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Rusch, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 566–8022.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. No. 91–508, as amended (codified at 31 U.S.C. 5311–5324, 12 U.S.C. 1829b, and 12 U.S.C. 1951–1959), empowers the Secretary of Treasury to require financial institutions to keep records and file reports that the Secretary of the Treasury determines have a high degree of usefulness in criminal, tax, or regulatory matters. *See* 31 U.S.C. 5311. The Secretary has the authority to make disclosures of information reported under the Bank Secrecy Act consistent with the purposes of the Act.

On June 9, 1987, Treasury published in the **Federal Register** [52 FR 21699] a proposed clarification of 31 CFR 103.43. The regulations implementing the Bank Secrecy Act, 31 CFR Part 103, contain provisions setting forth some of the categories of authorized disclosures of information reported under the Bank Secrecy Act. 31 CFR 103.43(a) and (b). In the Notice of Proposed Rulemaking, Treasury proposed to amend the regulations to make explicit the authority to disclose report information to the United States Congress consistent with the purposes of the Bank Secrecy Act, as set forth in proposed new paragraph 103.43(c). This authority is not specifically set forth in the current regulations.

Treasury also proposed to make explicit the existing authority to make other types of disclosures of Bank Secrecy Act records where disclosure is consistent with the purposes of the Act, such as to states that have enacted cash reporting statutes similar to the Bank Secrecy Act for equivalent law enforcement purposes. *See, e.g.*, California Monetary Instrument Transaction Reporting Law, Cal. Pen. Code sections 14160 *et seq.* Treasury will entertain requests by these states for periodic disclosure of all Currency Transaction Report (CTR) information filed with Treasury, by financial institutions within the state that are subject to both state and Federal reporting requirements. Such a procedure has the potential for substantial savings to both the state and its financial institutions. The state would be relieved of the cost of initial processing of cash reporting forms, and the state's financial institutions would be relieved of the burden of filing with the state.

The State of California has requested that the Treasury Department provide access to CTR data in order to ensure statewide compliance with its law and to permit it to exempt from state cash reporting requirements financial institutions that file reports with Treasury under the Bank Secrecy Act. As stated in the Notice of Proposed Rulemaking, Treasury believes the disclosure requested by the State of California is permissible under the current law as an authorized disclosure consistent with the purposes of the Bank Secrecy Act, and presents a fine opportunity for Federal and state cooperation in the fight against money laundering.

Finally, Treasury also proposed to amend 31 CFR 103.43 to provide that the Secretary may impose a fee for costs incidental to disclosures of Bank Secrecy Act information to State and local agencies, to be imposed in accordance with the statute governing fees for government services, 31 U.S.C.

9701. Such fees will be charged only when disclosures are made on a routine basis, such as in the California situation described above, and not when a state or local law enforcement agency makes a request for a limited number of records in connection with a particular case.

Comments

Five comments were received in response to the Notice of Proposed Rulemaking, all supporting the proposed clarification. The comments noted that this clarification avoids duplicative filing of reports, and results in a saving of time and money for both the government and financial institutions.

Conclusion

After consideration of all the comments, Treasury is issuing this final rule unchanged from the original proposal.

Executive Order 12291

This final rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this final rule will not have a significant economic impact on a substantial number of small entities. The only costs of this rule are for reimbursement of Treasury costs by state or local government agencies requesting routine disclosure of Bank Secrecy Act data.

Paperwork Reduction Act

The collection of information requirements mandated by this final rule have been reviewed and approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act. [OMB Control No. 1505–0104]

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

For the reasons set forth in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 is amended to read as follows:

Authority: Pub. L. 91–508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b and 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5324).

2. Section 103.43 is amended by redesignating paragraphs (a), (b) and (c) as paragraphs (b), (d) and (e) respectively, revising newly redesignated paragraph (b), and adding new paragraphs (a), (c) and (f) to read as follows:

§ 103.43 Availability of information.

(a) The Secretary may within his discretion disclose information reported under this part for any reason consistent with the purposes of the Bank Secrecy Act, including those set forth in paragraphs (b) through (d) of this section.

(b) The Secretary may make any information set forth in any report received pursuant to this part available to another agency of the United States, to an agency of a state or local government or to an agency of a foreign government, upon the request of the head of such department or agency made in writing and stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information.

(c) The Secretary may make any information set forth in any report received pursuant to this part available to the Congress, or any committee or subcommittee thereof, upon a written request stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information.

* * * * *

(f) The Secretary may require that a state or local government department or agency requesting information under paragraph (b) of this section pay fees to reimburse the Department of the Treasury for costs incidental to such disclosure. The amount of such fees will be set in accordance with the statute on fees for government services, 31 U.S.C. 9701.

(Approved by the Office of Management and Budget under control number 1505–0104)

Dated: August 14, 1987.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 87–21756 Filed 9–21–87; 8:45 am]

BILLING CODE 4810–25–M

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31 CFR Part 103

Amendment to the Bank Secrecy Act Instituting an Administrative Ruling System

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: In order to facilitate dissemination of Treasury Department interpretations of the Bank Secrecy Act and regulations, the Office of the Assistant Secretary (Enforcement) is instituting an administrative ruling system similar to those used by the Internal Revenue Service and the Customs Service.

EFFECTIVE DATE: October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Rusch, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., 20220, (202) 566–8022.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. No. 91–508 (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951 *et seq.*, and 31 U.S.C. 5311–5324), empowers the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, and regulatory matters. Treasury regulations implementing the Act, 31 CFR Part 103, require a variety of financial institutions to file reports of large currency transactions. The Secretary also is authorized to impose civil penalties for violations of these regulations.

The Office of Financial Enforcement, within the Office of the Assistant Secretary (Enforcement), and the Office of the Assistant General Counsel (Enforcement) receive daily calls and letters asking for interpretations of the Bank Secrecy Act and regulations.

Those offices are available to assist financial institutions, and welcome any and all requests for information and assistance. Treasury notes, however, that many of these inquiries are duplicative. In order to ensure uniformity of advice and the effective and efficient dissemination of Treasury interpretations throughout the affected financial community, Treasury is establishing a centralized administrative ruling system to provide for publication of official interpretations of the regulations.

Under the rulings system established by this final rule, a written request for an administrative ruling with respect to any question regarding the interpretation of 31 CFR Part 103 can be submitted to the Office of Financial Enforcement. Such requests must contain all relevant information needed to issue the ruling; administrative rulings will not be issued in response to oral requests. Administrative rulings also may be issued upon the initiative of the Office of Financial Enforcement. While oral discussion of the request after its submission generally is not necessary, the Director of the Office of Financial Enforcement may grant a request for a conference or telephone conference within his discretion. Treasury will make every effort to respond within 90 days of receiving a request for a ruling. Treasury will determine whether a request has precedential value and, if it does, respond with a published letter ruling which will be published in the **Federal Register** and may be relied upon by others in interpreting Part 103. If Treasury determines that the request has no precedential value, then the request for a ruling will be answered by a private letter of no precedent except to the requestor, and will not be published in the **Federal Register**.

The rulings system is designed with two tasks in mind. First, it provides a mechanism whereby a financial institution can obtain a binding ruling interpreting Part 103 with respect to an actual situation. Second, the system provides a method for obtaining interpretations of Part 103 for hypothetical situations posited by the requestor and issuance of rulings with precedential value for interpretations of Part 103 that are of interest to the financial community. A published ruling by the Assistant Secretary (Enforcement), or his designee, concerning an actual situation involving interpretation of Part 103 shall be binding upon the Treasury Department with respect to that specific situation described by the requestor and shall have precedential value with respect to similar situations and may be relied upon by others similarly situated. A private letter ruling with respect to such an actual situation shall be binding with respect to that specific situation but shall have no precedential value and therefore may not be relied upon by others. A published ruling with respect to a hypothetical situation involving an interpretation of Part 103 may be relied upon by the requestor in dealing with the situation posited should it arise and shall have precedential value for others who find themselves similarly situated. No private letter rulings shall be issued with respect to hypothetical situations.

Rulings with precedential value shall be published at least quarterly in the **Federal Register**, unless Treasury determines that more frequent publication is necessary. Such rulings also shall appear in the annual compilation of the Code of Federal Regulations, and will be available by mail to other persons upon written request specifically identifying the ruling sought. Copies of all current precedential rulings and an index also will be available for inspection in the Treasury public reading room. Appointments must be made through the Office of Financial Enforcement, at the number listed above. Finally, the new procedures outline conditions regarding modification and rescission of rulings.

Applicability of Notice and Effective Date Requirements

This amendment promulgates general statements of policy, procedures and practices governing the scope and operation of an administrative ruling system. Hence, pursuant to 5 U.S.C. 553(b)(A), notice and public procedure thereon are unnecessary.

Executive Order 12291

As this final rule promulgates a regulation dealing solely with issues of agency management and organization, compliance with Executive Order 12291 and a Regulatory Impact Analysis are not required.

Regulatory Flexibility Act

Since no notice of proposed rulemaking is required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or by any other statute, this document is not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information requirements mandated by this final rule have been reviewed and approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act. (OMB Control No. 1505-0105)

Drafting Information

The principal authors of this document are the Office of the Assistant General Counsel (Enforcement) and the Office of Financial Enforcement. However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

For the reasons set forth in the preamble, 31 CFR Part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: Pub. L. No. 91-508, Title I, 84 Stat. 1114, 1116 (12 U.S.C. 1829b, 1951-1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. No. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5324).

2. Part 103 is amended by adding a new Subpart F to read as follows:

Subpart F—Administrative Rulings

Sec.
- 103.70 Scope.
- 103.71 Submitting requests.
- 103.72 Nonconforming requests.
- 103.73 Oral communications.
- 103.74 Withdrawing requests.
- 103.75 Issuing rulings.
- 103.76 Modifying or rescinding rulings.
- 103.77 Disclosing information.

Subpart F—Administrative Rulings

§ 103.70 Scope.

This subpart provides that the Assistant Secretary (Enforcement), or his designee, either unilaterally or upon request, may issue administrative rulings interpreting the application of Part 103.

§ 103.71 Submitting requests.

(a) Each request for an administrative ruling must be in writing and contain the following information:

(1) A complete description of the situation for which the ruling is requested,

(2) A complete statement of all material facts related to the subject transaction,

(3) A concise and unambiguous question to be answered,

(4) A statement certifying, to the best of the requestor's knowledge and belief, that the question to be answered is not applicable to any ongoing state or federal investigation, litigation, grand jury proceeding, or proceeding before any other governmental body involving either the requestor, any other party to the subject transaction, or any other party with whom the requestor has an agency relationship,

(5) A statement identifying any information in the request that the requestor considers to be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, and the reason therefor,

(6) If the subject situation is hypothetical, a statement justifying why the particular situation described warrants the issuance of a ruling,

(7) The signature of the person making the request, or

(8) If an agent makes the request, the signature of the agent and a statement certifying the authority under which the request is made.

(b) A request filed by a corporation shall be signed by a corporate officer and a request filed by a partnership shall be signed by a partner.

(c) A request may advocate a particular proposed interpretation and may set forth the legal and factual basis for that interpretation.

(d) Requests shall be addressed to: Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 4320, Washington, DC 20220.

(e) The requester shall advise the Director, Office of Financial Enforcement, immediately in writing of any subsequent change in any material fact or statement submitted with a ruling request in conformity with paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1505–0105)

§ 103.72 Nonconforming requests.

The Director, Office of Financial Enforcement, shall notify the requester if the ruling request does not conform with the requirements of § 103.71. The notice shall be in writing and shall describe the requirements that have not been met. A request that is not brought into conformity with such requirements within 30 days from the date of such notice, unless extended for good cause by the Office of Financial Enforcement, shall be treated as though it were withdrawn.

(Approved by the Office of Management and Budget under control number 1505–0105)

§ 103.73 Oral communications.

(a) The Office of the Assistant Secretary (Enforcement) will not issue administrative rulings in response to oral requests. Oral opinions or advice by Treasury, the Customs Service, the Internal Revenue Service, the Office of the Comptroller of the Currency, or any other bank supervisory agency personnel, regarding the interpretation and application of this Part, do not bind the Treasury Department and carry no precedential value.

(b) A person who has made a ruling request in conformity with § 103.71 may request an opportunity for oral discussion of the issues presented in the request. The request should be made to the Director, Office of Financial Enforcement, and any decision to grant such a conference is wholly within the discretion of the Director. Personal conferences or telephone conferences may be scheduled only for the purpose of affording the requester an opportunity to discuss freely and openly the matters set forth in the administrative ruling request. Accordingly, the conferees will not be bound by any argument or position advocated or agreed to, expressly or impliedly, during the conference. Any new arguments or facts put forth by the requester at the meeting must be reduced to writing by the requester and submitted in conformity with § 103.71 before they may be considered in connection with the request.

(Approved by the Office of Management and Budget under control number 1505–0105)

§ 103.74 Withdrawing requests.

A person may withdraw a request for an administrative ruling at any time before the ruling has been issued.

§ 103.75 Issuing rulings.

The Assistant Secretary (Enforcement), or his designee may issue a written ruling interpreting the relationship between Part 103 and each situation for which such a ruling has been requested in conformity with § 103.71. A ruling issued under this section shall bind the Treasury Department only in the event that the request describes a specifically identified actual situation. A ruling issued under this section shall have precedential value, and hence may be relied upon by others similarly situated, only if it is published or will be published by the Office of Financial Enforcement in the **Federal Register**. Rulings with precedential value will be published periodically in the **Federal Register** and yearly in the Appendix to this part. All rulings with precedential value will be available by mail to any person upon written request specifically identifying the ruling sought. Treasury will make every effort to respond to each requestor within 90 days of receiving a request.

(Approved by the Office of Management and Budget under control number 1505–0105)

§ 103.76 Modifying or rescinding rulings.

(a) The Assistant Secretary (Enforcement), or his designee may modify or rescind any ruling made pursuant to § 103.75:

(1) When, in light of changes in the statute or regulations, the ruling no longer sets forth the interpretation of the Assistant Secretary (Enforcement) with respect to the described situation,

(2) When any fact or statement submitted in the original ruling request is found to be materially inaccurate or incomplete, or

(3) For other good cause.

(b) Any person may submit to the Assistant Secretary (Enforcement) a written request that an administrative ruling be modified or rescinded. The request should conform to the requirements of § 103.71, explain why rescission or modification is warranted, and refer to any reasons in paragraph (a) of this section that are relevant. The request may advocate an alternative interpretation and may set forth the legal and factual basis for that interpretation.

(c) Treasury shall modify an existing administrative ruling by issuing a new ruling that rescinds the relevant prior ruling. Once rescinded, an administrative ruling shall no longer have any precedential value.

(d) An administrative ruling may be modified or rescinded retroactively with respect to one or more parties to the original ruling request if the Assistant Secretary determines that:

(1) A fact or statement in the original ruling request was materially inaccurate or incomplete,

(2) The requestor failed to notify in writing the Office of Enforcement of a material change to any fact or statement in the original request, or

(3) A party to the original request acted in bad faith when relying upon the ruling.

(Approved by the Office of Management and Budget under control number 1505–0106)

§ 103.77 Disclosing information.

(a) Any part of any administrative ruling, including names, addresses, or information related to the business transactions of private parties, may be

disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552. If the request for an administrative ruling contains information which the requestor wishes to be considered for exemption from disclosure under the Freedom of Information Act, the requestor should clearly identify such portions of the request and the reasons why such information should be exempt from disclosure.

(b) A requestor claiming an exemption from disclosure will be notified, at least 10 days before the administrative ruling is issued, of a decision not to exempt any of such information from disclosure so that the underlying request for an administrative ruling can be withdrawn if the requestor so chooses.

[Approved by the Office of Management and Budget under control number 1505–0105]

Dated: August 14, 1987.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 87–21755 Filed 9–21–87; 8:45 am]

BILLING CODE 4810–25–M

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Libyan Sanctions Regulations by the addition of §§ 550.630 and 550.635, providing, respectively, for a census of blocked assets and a census of claims against the Government of Libya and any Libyan entity. The amendments impose a requirement that reports be filed (1) under § 550.630 with respect to blocked Libyan assets held by any U.S. person between January 8, 1986 and June 30, 1987; and (2) under § 550.635 with respect to claims by U.S. nationals against the Government of Libya and any Libyan entity as of June 30, 1987.

EFFECTIVE DATE: September 22, 1987.

FOR FURTHER INFORMATION CONTACT: Loren L. Dohm, Chief, Census Unit, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220; telephone (202) 376–0968.

SUPPLEMENTARY INFORMATION: The Libyan Sanctions Regulations, 31 CFR Part 550 (51 FR 1354, January 10, 1986; 51 FR 2462, January 16, 1986; 51 FR 19751, June 2, 1986; 51 FR 22802, June 23, 1986; and 51 FR 25634, July 15, 1986) ("the Regulations"), were issued by the Treasury Department in implementation of Executive Order 12543 of January 7, 1986 (51 FR 875, January 9, 1986) and Executive Order 12544 of January 8, 1986 (51 FR 1235, January 10, 1986). In an appendix to this amendment, the Office of Foreign Assets Control has provided samples of forms TFR–630 (TDF 90–22.32) and TFR–635 (TDF 90–22.33), with instructions to be used in reporting information on blocked assets and claims. The reports are needed to obtain information, on a one-time basis, regarding blocked Libyan assets and claims by U.S. persons against the Government of Libya or any Libyan entities, for planning and administrative purposes. Copies of the printed forms with reporting instructions will be available after September 28, 1987, and will also be available at regional Federal Reserve System Banks. Other persons required to report or otherwise interested in obtaining copies of the printed forms and instructions may do so by contacting the nearest regional Federal Reserve System Bank after September 28, 1987 or by contacting the Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220. Photocopies of the report forms may be used.

Forms are to be completed in triplicate and two copies are to be returned in a set to either Unit 630 (for reports concerning blocked assets) or Unit 635 (for reports concerning claims), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, by November 20, 1987. Observance of the filing deadline is extremely important. Reporting under these sections is mandatory.

The submission of a Form TFR–635 (TDF 90–22.33) report on a claim against the Government of Libya or a Libyan entity does not constitute the filing with the United States Government of a formal claim for compensation. No formal claims adjudication program currently exists. However, failure to file complete information with respect to claims in a timely fashion not only would constitute failure to comply with the Regulations, but would also prevent the inclusion of the information in U.S. Government planning and may therefore be prejudicial to the interests of the claimant and other U.S. claimants. Espousal of claims of U.S. nationals against a foreign government is within the discretion of the United States Government.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations. Approval has been granted by the Office of Management and Budget for the information collection requests contained in this rule.

List of Subjects in 31 CFR Part 550

Blocked assets, Claims, Exports, Imports, Libya, Loans, Reporting and recordkeeping requirements.

31 CFR Chapter V, Part 550, is amended as set forth below:

PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for Part 550 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12543, 51 FR 875, January 9, 1986; E.O. 12544, 51 FR 1235, January 10, 1986.

2. Section 550.630 is added to Subpart F as follows:

§ 550.630 Reports on Form TFR–630 (TDF 90–22.32).

(a) *Requirement for reports.* Reports on Form TFR–630 (TDF 90–22.32) are hereby required to be filed on or before November 20, 1987, in the manner prescribed herein, with respect to all property held by any United States person at any time between 4:10 p.m. e.s.t., January 8, 1986, and June 30, 1987, in which property the Government of Libya or any Libyan entity has or has had any interest.

(b) *Who must report.* Reports on Form TFR–630 (TDF 90–22.32) must be filed by each of the following:

(1) Any U.S. person, or his successor, who at 4:10 p.m. e.s.t., January 8, 1986, or any subsequent date up to and including June 30, 1987, had in his custody, possession or control, directly or indirectly, in trust or otherwise, property in which there was, within such period, any direct or indirect interest of the Government of Libya or any Libyan entity, whether or not such property continued to be held by that person on June 30, 1987; and

(2) Any business or non-business entity in the United States in which the Government of Libya or any Libyan entity held any financial interest on January 8, 1986, or any subsequent date up to and including June 30, 1987.

(c) *Property not required to be reported.* A report on Form TFR–630

(TDF 90–22.32) is not required with respect to:

(1) Property of a private Libyan national; and

(2) Patents, copyrights, trademarks and inventions, but this exemption shall not constitute a waiver of any reporting requirement with respect to royalties due and unpaid.

(d) *Filing Form TFR–630 (TDF 90–22.32).* Reports on Form TFR–630 (TDF 90–22.32) shall be prepared in triplicate. On or before November 20, 1987, two copies shall be sent in a set to Unit 630, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220. The third copy must be retained with the reporter's records.

(e) *Certification.* Every report on Form TFR–630 (TDF 90–22.32) shall contain the certification required in Part E of the form. Failure to complete the certification shall render the report ineffective, and the submission of such a report shall not constitute compliance with this section.

(f) *Confidentiality of reports.* Reports on Form TFR–630 (TDF 90–22.32) are regarded as privileged and confidential.

(Approved by the Office of Management and Budget under control number 1505–0102)

3. Section 550.635 is added to subpart F as follows:

§ 550.635 Reports on Form TFR–635 (TDF 90–22.33).

(a) *Requirement for reports.* Reports on Form TFR–635 (TDF 90–22.33) are hereby required to be filed on or before November 20, 1987, in the manner prescribed herein, with respect to claims for losses due to expropriation, nationalization, or other taking of property or businesses in Libya, including any special measures such as Libyan exchange controls directed against such property or businesses; claims for debt defaults, for damages for breach of contract or similar damages; and personal claims for salaries or for injury to person or property.

(b) *Who must report.* Reports on Form TFR–635 (TDF 90–22.33) must be filed by every U.S. person who had a claim outstanding against the Government of Libya or any Libyan entity which arose before June 30, 1987. No report is to be submitted by a U.S. branch of a foreign firm not owned or controlled by a U.S. person.

(c) *Filing Form TFR–635 (TDF 90–22.33).* Reports on Form TFR–635 (TDF 90–22.33) shall be prepared in triplicate. On or before November 20, 1987, two copies shall be sent in a set to Unit 635, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220. The third copy must be retained with the reporter's record.

(d) *Certification.* Every report on Form TFR–635 (TDF 90–22.33) shall contain the certification required on Part C of the form. Failure to complete the certification shall render the report ineffective, and the submission of such a report shall not constitute compliance with this section.

(e) *Confidentiality of reports.* Reports on Form TFR–635 (TDF 90–22.33) are regarded as privileged and confidential.

(Approved by the Office of Management and Budget under control number 1505–0103)

Dated: August 27, 1987.

Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: September 1, 1987.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

Editorial Note: These instructions and forms will not appear in the Code of Federal Regulations.

[TDF 90–22.32; OMB Number 1505–0102; Expiration Date—12/31/88]

Census of Blocked Libyan Assets

Instructions for Reporting on Form TFR–630 (TDF 90–22.32)

The Office of Foreign Assets Control, Department of the Treasury, under § 550.630 of the Libyan Sanctions Regulations (31 CFR Part 550), is conducting a census of all blocked Libyan assets.

Reporting under the census is mandatory for all persons holding blocked Libyan property. Reports on Form TFR–630 (TDF 90–22.32) are hereby required to be filed on or before November 20, 1987, in the manner prescribed herein, by any holder of blocked Libyan property who is a U.S. person. The reporting requirement applies to any U.S. person who had in his possession or control, between 4:10 p.m., e.s.t., January 8, 1986, and June 30, 1987, any property in which the Government of Libya or any Libyan entity has or had any interest during the period. The information to be reported is needed by the United States Government for planning purposes and to monitor compliance with the Regulations.

Each question on the form must be answered and all the specific information called for must be given. When there is nothing to report under any question, or if information is lacking, state "No," "None," or "Unknown," as the case may be. If the space provided on the form for answers should prove inadequate, the answer may be made or continued on a blank sheet of paper securely attached to the form. No person is excused from furnishing any information he reasonably should have furnished.

Filing Deadline: November 20, 1987. (See GENERAL INSTRUCTIONS, Item A.(5) Filing Form TFR–630.)

FOR FURTHER INFORMATION CONTACT: Unit 630, (202) 376–0968 or 376–0969.

Part I—General Instructions

A. Reporting Requirements

1. Who must report

a. Any United States person, or his successor, who as of 4:10 p.m., e.s.t., January 8, 1986, or any subsequent date through June 30, 1987, had in his custody, control or possession, directly or indirectly, in trust or otherwise, property in which there was, within such period, any direct or indirect interest of the Government of Libya, whether or not such property continued to be held by that person on June 30, 1987. If the property was no longer held by the reporting person on June 30, 1987, the identity and address of the transferee and an explanation of the transfer must be provided, including the number of any license issued by the Office of Foreign Assets Control authorizing the transfer, if applicable. A U.S. company with blocked property held by its foreign branches or agencies must submit a Form TFR–630 (TDF 90–22.32) for itself and any such branches or agencies. The U.S. firm must certify any report for its foreign branch or agency in Part E.

b. Any business or nonbusiness entity in the United States in which the Government of Libya or any Libyan entity held any financial interest on January 8, 1986, or on any subsequent date through June 30, 1987.

c. In general, the following U.S. persons who between 4:10 p.m., e.s.t., January 8, 1986 and June 30, 1987 held property in which the Government of Libya or any Libyan entity had any interest, will have reporting obligations:

(1) All banks within the United States, including U.S. subsidiaries, branches, and agencies of foreign banks which held deposits or other property;

(2) Foreign branches and agencies of U.S. banks which held dollar deposits or other property;

(3) Foreign branches and agencies of U.S. subsidiaries of foreign banks which held dollar deposits or other property;

(4) All banks, brokers, dealers or other custodians (including their foreign branches which held securities or other property);

(5) Nonbanking business enterprises and other entities subject to the

jurisdiction of the United States, including the foreign branches of such enterprises and entities, which had commercial or financial liabilities to the Government of Libya or any Libyan entity, or which had in their possession or control other property in which the Government of Libya or any Libyan entity had any interest; and

(6) All U.S. persons not otherwise defined who act as agents for the Government of Libya or any Libyan entity with property in the United States, including U.S. Government agencies which are custodians of property of the Government of Libya or of a Libyan entity.

2. What must be reported

a. Property subject to the jurisdiction of the United States or in the possession or control of U.S. persons, in which the Government of Libya or any Libyan entity had an interest of any nature whatsoever between 4:10 p.m., e.s.t., January 8, 1986 and June 30, 1987. A separate Form TFR–630 (TDF 90–22.32) must be filed with respect to each blocked account held by the holder.

b. The following property should not be reported:

(1) Property of a Libyan company or firm not owned or controlled by the Government of Libya; or the property of an individual Libyan national, unless such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act, directly or indirectly, on behalf of the Government of Libya.

(2) Patents, trademarks, copyrights and inventions, but this exemption shall not constitute a waiver of any reporting requirement with respect to royalties due and unpaid.

3. Primary responsibility for reporting

Primary responsibility for reporting any property rests with the actual holder of the property with the following exceptions: primary responsibility for reporting any asset held by a foreign firm or branch owned or controlled by a U.S. person rests with the U.S. parent or head office; primary responsibility for reporting any trust assets rests with the trustee; primary responsibility for reporting any estate assets rests with the personal representative, executor, or administrator; and primary responsibility for reporting real property rests with the Libyan owner's co-owner, legal representative, agent, or property manager in the United States. A report may be filed on behalf of a holder by an attorney, agent, or other person. However, information regarding the person actually holding the property must be reported in Part B, line 16. No person is excused from filing Form TFR–630 (TDF 90–22.32) by reason of the fact that another person has submitted a report with regard to the same property, unless he has actual knowledge that the other person has filed a report with respect to the property as full and complete as that which such person would otherwise be required to file.

4. Obtaining Form TFR–630 (TDF 90–22.32)

Copies of Form TFR–630 (TDF 90–22.32) with reporting instructions will be distributed through the Federal Reserve System to all regional Federal Reserve Banks. In addition, copies of Form TFR–630 (TDF 90–22.32) will be mailed directly to certain persons believed by the Treasury Department to be affected by the reporting requirements. Other persons required to report or otherwise interested in obtaining copies of Form TFR–630 (TDF 90–22.32) and the reporting instructions may do so by calling the Office of Foreign Assets Control, Unit 630, Department of the Treasury, Washington, DC 20220, at (202) 376–0968 or 376–0969, or by contacting the nearest regional Federal Reserve Bank.

Photocopies of the report form may be used.

5. Filing Form TFR–630 (TDF 90–22.32)

Reports on Form TFR–630 (TDF 90–22.32) shall be prepared in triplicate. On or before November 20, 1987, two copies shall be sent in a set to the Office of Foreign Assets Control, Unit 630, Department of the Treasury, Washington, DC 20220. The reporter shall retain a copy of the completed report.

6. Certification

Every report filed on Form TFR–630 (TDF 90–22.32) must be certified in Part E of the form. Failure to complete the certification shall render the report ineffective, and the submission of such a report shall not constitute compliance with the reporting requirements of § 550.630 of the Regulations.

7. Confidentiality of reports

Reports filed on Form TFR–630 (TDF 90–22.32) are regarded as privileged and confidential.

8. Penalties

Reporting on Form TFR–630 (TDF 90–22.32) is mandatory under § 550.630 of the Libyan Sanctions Regulations for persons who are subject to the reporting requirements. Penalties are provided for persons violating the Regulations.

B. Definitions

The definitions below shall be used for the purpose of reporting on Form TFR–630 (TDF 90–22.32). Any reference to "the Regulations" in these instructions or in Form TFR–630 (TDF 90–22.32) shall refer to the Libyan Sanctions Regulations (31 CFR Part 550), and any term not defined in these instructions shall have the meaning ascribed to it in the Regulations.

1. Person

An individual, partnership, association, corporation or other organization.

2. U.S. Person

Any United States citizen, permanent resident alien, juridical person organized under the laws of the United States, or any person in the United States.

3. Successor

A person who succeeds to the ownership or custody of blocked property by operation of law (such as a trustee in bankruptcy, administrator, etc.), by inheritance, or by change in organization (such as by merger, dissolution, or acquisition).

4. Financial Interest

Any right or claim to ownership or control, or participation in ownership or control, or other financial interest as follows:

(a) Any shares of stock of any business or nonbusiness entity;

(b) Any profits or income derived from shares of stock;

(c) Any bonds, debentures, notes or other funded obligations of any business or nonbusiness entity;

(d) Any other outstanding securities of any business or nonbusiness entity; or

(e) Any other right or claim with respect to any trust or similar organization.

5. Government of Libya

(a) The term "Government of Libya" includes:

(1) The State and the Government of Libya, as well as any political subdivision, agency or instrumentality thereof, including the Central Bank of Libya;

(2) Any partnership, association, corporation or other organization substantially owned or controlled by any of the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since January 7, 1986, acting or purporting to

act, directly or indirectly, on behalf of any of the foregoing;

(4) Any other person or organization determined by the Secretary of the Treasury to be included within paragraph (a) hereof.

(b) A person specified in paragraph (a)(2) of this section shall not be deemed to fall within the definition of Libya solely by reason of being located in, organized under the laws of, or having its principal place of business in Libya.

6. Entity of the Government of Libya; Libyan entity

The terms "entity of the Government of Libya" and "Libyan entity" include:

(a) Any corporation, partnership, association, or other entity in which the Government of Libya owns a majority or controlling interest, any entity substantially managed or funded by that government, and any entity which is otherwise controlled by that government;

(b) Any agency or instrumentality of the Government of Libya, including the Central Bank of Libya.

7. Property; Property Interests

The terms "property" or "property interests" shall, for purposes of reporting on Form TFR–630 (TDF 90–22.32), include, but not be limited to, money, checks, drafts, bullion, bank deposits, savings accounts, any debts, indebtedness obligations, notes, debentures, stocks, bonds, coupons, any other financial securities, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidence of wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendor's sales agreements, land contracts, real estate and any interest therein, leaseholds, ground rents, options, negotiable instruments, letters of credit, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks, copyrights, contracts or licenses affecting or involving patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, contracts of any nature whatsoever, and any other property, real, personal or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

8. Interest

Any interest of any nature whatsoever, direct or indirect.

C. Valuation Principles

1. Valuation

Where valuation is called for, the following table may be used as a guide.

Examples of property types	Principle
Checks, drafts, acceptances and notes.	Face or estimated value.
Commodities, including gold and other metals.	Market value.
Currency and coin	Face value or market value, whichever is higher.
Debts, claims and demands	Face or estimated value.
Deposits and cash balances	Balance of the account.
Foreign exchange futures	Difference between market price of currency and price specified in contract.
Franchises and concessions	Market or estimated value.
Goods, merchandise and other personal property.	Market or estimated value.
Land, buildings and mortgages on real estate.	Market or estimated value.
Letters of credit	Available amount.
Royalties, gas and oil	Capitalized value.
Securities	Market or estimated value.

All amounts reported should be given in dollars to the nearest dollar.

2. Valuation Date

Values shall be given as of the close of business on June 30, 1987.

3. Market or Estimated Values

Where market or estimated value is required, enter the market price at the close of business on June 30, 1987, or, if such price is not available, the estimated value on that date. In estimating value, the last sale price or bid, if reasonably close to June 30, 1987, may be used as a basis.

4. Value Expressed in Foreign Currency

Property valued in a foreign currency, or which is to be paid or liquidated in a foreign currency, shall be valued in dollars if a dollar market value exists for such property itself. If a dollar market value does not exist, the foreign currency value thereof shall be converted into a dollar value in accordance with the latest rate before June 30, 1987, as generally quoted by foreign exchange dealers or other recognized sources of information. In no case shall a value expressed in a foreign currency be entered in the report, but the fact that property was originally valued in a foreign currency should be indicated in Part B, question 14.

5. Property of Indeterminable Value

In reporting property of indeterminable value, enter "IN" in the space opposite the appropriate property type and describe the property briefly in Part B, question 14. When both property of indeterminable value and property of determinable value are to be reported under any one property type, only the determinable value should be reported. However, in response to Part B, question 14, both kinds of property should be described and the property of indeterminable value should be so described.

Part II—Specific Instructions

Part A. Information Concerning Libyan Entity Whose Property Is Reported

If any non-Libyan entity has an interest in the property reported the full value of the property shall be reported in Part B of Form TFR–630 (TDF 90–22.32). The name and pro rata interest of all non-Libyan entities shall be identified in line 4 of Part A. If more than one Libyan entity has an interest in property required to be reported, a separate report shall be made with respect to each such entity. The value of the property reported in Part B of Form TFR–630 (TDF 90–22.32) shall be an amount equivalent to the pro rata share to which the entity would be entitled. The other Libyan entities (including the Government of Libya) with an interest in this property shall be identified in line 4 of Part A.

Part B. Schedule of Property Required To Be Reported

Report the amount held on the effective date, i.e., as of 4:10 p.m., e.s.t., January 8, 1986, in column (1) and the amount held at the close of business on June 30, 1987, in column (2). If the property was acquired after the effective date, report in column (1) the amount as of date of acquisition and explain in line 15.

IMPORTANT: Be certain to report in column (1) of Part B the full amount of any property held regardless of any subsequent debit to the account or other licensed transfer after the effective date or date of acquisition (see line 15). Be certain to report in column (2) the full amount of any property held on June 30, 1987, notwithstanding adverse claims asserted against the property (see Part C).

Line 1.

Include certificates of deposit, Federal Funds, and variable rate accounts.

Line 3.

Include any negotiable instruments or other obligations held for the account of the Libyan Government or a Libyan entity not reportable in other specific lines. Obligations of the holder would generally not be reported in line 3 but in line 1; or line 4 (if non-marketable); or line 5 or 6. (if marketable).

Line 4.

This does not include deposits (line 1) or marketable debt securities issued by the reporter (lines 5–6).

Lines 5–6.

Include marketable equity and debt securities of all types, regardless of issuer, including government securities, regardless of maturity. Do not report securities on these lines if the Government of Libya or the Libyan entity holds a 10 percent or greater interest in the equity securities of the issuer; in that case, the Libyan Government's or entity's holdings should be reported as direct investment in line 7.

Line 7.

"Direct investment" means a 10 percent or greater interest in the equity of a U.S. business. Where the Libyan Government's or entity's interest is represented by marketable securities, report market value of all holdings including debt securities, in line 7. Where the Libyan Government's or entity's interest is not represented by marketable securities, report sum of the U.S. company's debt obligations to the Libyan Government or entity and the Libyan Government's or entity's share of the equity of the business (as represented by the book value of the business). Identify in line 14 the U.S. firm and percentage of Libyan ownership reported.

Line 9a.

Report market value of goods held which are owned by the Government of Libya or any Libyan entity and are or were intended for export to Libya.

Line 9b.

Report the value of other Libyan property in the possession or control of a U.S. person. Examples include: a Libyan vessel under charter; any Libyan aircraft, machinery, or equipment held for servicing or any other reason; or any furniture and office equipment of the U.S. branch of a Libyan entity.

Line 10.

Report the outstanding amounts of commercial letters of credit issued by U.S. banks in favor of the Libyan Government or entity.

Line 11.

Report the outstanding amounts of commercial letters of credit confirmed by U.S. banks in favor of the Libyan Government or entity.

Line 12.

Report the amount available under any standby letter of credit issued by a U.S. bank in favor of the Libyan Government or entity.

Line 14.

Describe briefly the property reported. If the property is a deposit or securities account be sure to include the account number or similar identifying reference and a description of the account or the securities held. If the property is an interest-bearing deposit include the rate as of June 30, 1987, or the index or other rate to which it is pegged (e.g., Federal Funds rate, London Inter-Bank Offered Rate, variable money market rate determined by bank). If the property is held in a non-interest bearing account, so indicate, and explain why. Tangible property should be described more thoroughly than financial items but breakdowns into specific items or detailed descriptions are not necessary.

Line 15.

Explain any increase or decrease in amounts reported in column (1) and column (2) above. If increases or decreases have resulted from actions taken under a specific Treasury Department license indicate license number and date issued (e.g., account debited under Treasury Department license L–9999, issued 2/11/86). If increases or decreases have occurred due to normal fluctuations in market value, crediting of interest, transfer of assets to another U.S. custodian, or any other reason, so state and explain. If a transfer of property has occurred, indicate the successor or prior custodian and the date or dates on which the transfer or transfers occurred.

Line 16.

If the property is held (or booked, in the case of a deposit) at any location other than the address of the reporter shown in Part D, so describe.

Part C. Adverse Claims

Line 1.

Report amounts involved and identities of all adverse claimants known by the reporter to be asserting claims against the property reported. Examples include specific claims such as writs of attachment and liens, or more general claims such as setoff rights asserted by the holder of the property against Libya. Any unusual circumstances (such as conflicts with local law) with respect to the property which the reporter deems to be of particular importance should be so described here.

Part D. Person Reporting Property

State reporter's name and address in lines 1 and 3. If the holder is an individual, state social security number on line 2. If reporter is a business firm, state the reporter's employer identification number on line 2. Be sure to include name, title, organization and telephone number of the appropriate person to contact concerning the report on line 5.

Part E. Certification

Be certain not to omit the required certification in Part E. THE REPORT IS NOT VALID WITHOUT CERTIFICATION.

[TDF 90–22.32; OMB Number 1505–0102; Expiration Date–12/31/88]

Form TFR–630

CENSUS OF BLOCKED LIBYAN ASSETS

Office of Foreign Assets Control, Unit 630, Department of the Treasury, Washington, DC 20220

Form TFR–630 (TDF 90–22.32) is to be used by all persons required to file reports pursuant to § 550.630 of Title 31 of the Code of Federal Regulations. BEFORE PREPARING THIS REPORT READ THE INSTRUCTIONS CAREFULLY. All information reported will be regarded as privileged and confidential. For assistance, call (202) 376–0968 or 376–0969.

Filing Deadline: November 20, 1987.

The report is to be completed in triplicate and two copies are to be filed with the Office of Foreign Assets Control, Unit 630, Department of the Treasury, Washington, DC 20220 by the November 20, 1987 deadline.

To the Secretary of the Treasury:

The undersigned, pursuant to § 550.630 of Title 31 of the Code of Federal Regulations, hereby makes the following report:

Part A—Information Concerning Libyan Entity Whose Property is Reported

1. Name _____
2. Address _____

3. Type of person or entity:

A. Libyan Government or agency thereof.....
B. Libyan diplomatic or consular mission .....
C. Central Bank of Libya.....
D. Libyan commercial bank.....
E. Libyan corporation.....
F. Other (Describe) .....

4. Describe the extent of ownership or control by the Libyan Government or other Libyan entities in the above entity. Also describe any other person or persons known to have an interest in the property (See instructions).

_____

_____

Part B—Description of Property Required To Be Reported

	Amount 1/8/86	Amount 6/30/87
1. Deposits		
2. Bullion, currency, or coin		
3. Notes, checks, or drafts		
4. Debts		
5. U.S. Dollar denominated securities		
6. Securities denominated in other currencies		
7. Direct investment in U.S. business		
8. Real estate		
9. Personal Property:		
a. Goods consigned to Libya		
b. Other property held		
10. Commercial letters of credit issued in favor of Libya		
11. Commercial letters of credit confirmed in favor of Libya		
12. Standby letters of credit		
13. Miscellaneous		
Total (1 through 13)		

14. Describe the property reported. If the property is a deposit or securities account, state account number or similar identifying reference, and describe the account or the securities held (See instructions).

_____

_____

15. Explain any increases or decreases in amounts reported in column (1) and column (2) above. Include the license number of any Treasury Department license known to be issued with respect to the account or property reported (See instructions).

_____

_____

16. If the property in this report is located at a place other than the address of the reporter as stated in Part D, so describe.

_____

_____

Part C—Adverse Claims

1. Describe briefly any adverse claims known to be asserted against the property reported (See instructions).

_____

_____

Part D—Person Reporting Property

1. Name _____
2. EIN/SSN _____
3. Address _____

_____

4. Type of reporter:
   - A. Bank.....
   - B. Broker or securities dealer.....
   - C. Oil company.....
   - D. Agent (for holder described in Part B, line 16.) .....
   - E. Other (explain below).....

_____

_____

5. Person to contact regarding this report:
Name _____
Title _____
Organization _____
Telephone Number _____

Part E—Certification

I, _____, certify that I am the _____ of the _____, that I am authorized to make this certification, and that, to the best of my knowledge and belief, the statements set forth in this report, including any papers attached hereto or filed herewith, are true and accurate, and that all material facts in connection with said report have been set forth herein.

Date _____

Signature _____

Address _____

_____

[TDF 90–22.33; OMB Number 1505–0103; Expiration Date—12/31/88]

Census of Claims by United States Persons Against Libya

Instructions for Reporting on Form TFR–635 (TDF 90–22.33)

The Office of Foreign Assets Control, Department of the Treasury, under § 550.635 of the Libyan Sanctions Regulations (31 CFR Part 550), is conducting a census of information relative to claims of U.S. persons against the Government of Libya, its agencies or instrumentalities or controlled entities, the Central Bank of Libya, or other Libyan entities.

The information to be reported is needed by the United States Government for planning purposes. The submission of this report does not constitute the filing with the United States Government of a formal claim for compensation. No formal claims adjudication program currently exists. However, failure to file complete information in a timely fashion would not only constitute failure to comply with the Regulations but would also prevent the inclusion of the information in U.S. government planning, which could be prejudicial to the interests of the claimant and other U.S. claimants. Espousal of claims of U.S. nationals against a foreign government is within the discretion of the United States Government.

Reporting under the census is mandatory for persons who are subject to the reporting requirements. Reports on Form TFR–635 (TDF 90–22.33) are hereby required to be filed on or before November 20, 1987, in the manner prescribed herein. The report must describe any outstanding claims of any U.S. persons against the Government of Libya or any Libyan entity which arose before June 30, 1987.

All the specific information asked for on the form must be reported. When there is nothing to report under any question, or if information is lacking, state "No," "None," or "Unknown," as the case may be. If the space provided on the form for any answer should prove inadequate, the answer may be made or continued on a blank sheet of paper securely attached to the form and identified as a continuation of a particular response. This pamphlet contains reporting instructions, one copy of report Form TFR–635 (TDF 90–22.33), and three copies of Schedule B1—Schedule For Separate Description Of Claims. Photocopies of the form and schedule may be used.

Filing Deadline: November 20, 1987 (See Instructions, Item A.(5) Filing Form TFR–635.)

For Further Information Contact: Unit 635, (202) 376–0968 or 376–0969.

A. Reporting Requirements

1. Who Must Report

Any U.S. person, whether an individual or a business enterprise, who, on June 30, 1987, had a claim outstanding against the Government of Libya or any Libyan entity. Claims of U.S. branches of foreign firms not owned or controlled by U.S. persons and claims of nonresident aliens should not be reported on Form TFR–635 (TDF 90–22.33).

If a U.S. parent company or any foreign firm(s) that it owns or controls is subject to the reporting requirements, a consolidated claims report on Form TFR–635 (TDF 90–22.33) must be filed by the U.S. parent company covering its claims and those of such foreign firm(s).

2. What Must be Reported

a. Business Claims. United States businesses and individuals conducting or formerly conducting business in Libya should report losses due to expropriation, nationalization, or other takings of property or businesses by Libya. Claims against Libyan entities for other business losses, such as debt defaults, damages for breach of contract, and other damages, should also be reported.

b. Personal Claims. Any United States citizen or permanent resident alien who has suffered losses due to expropriation or who has claims for salaries or for loss or injury to person or property resulting

from actions of the Government of Libya or any Libyan entity must report such claims.

3. Primary Responsibility for Reporting

Primary responsibility for reporting any claim rests with the claimant with the following exceptions: Primary responsibility for reporting any claim of a foreign firm owned or controlled by a U.S. person rests with the U.S. parent; primary responsibility for reporting the claim of any trust rests with the trustee; and primary responsibility for reporting the claim of any estate rests with the executor or administrator. A report may be filed on behalf of a claimant by an attorney, agent, bank, insurance company, or other person. However, the pertinent information regarding the person making the report must be included in Part A., line 7 and in Part C of the form. No person is excused from filing Form TFR–635 (TDF 90–22.33) by reason of the fact that another person has submitted a report with regard to the same claim unless he has actual knowledge that the other person has filed a report with respect to the claim as full and complete as that which such person would otherwise be required to file.

4. Obtaining Form TFR–635 (TDF 90–22.33)

Copies of Form TFR–635 (TDF 90–22.33) with reporting instructions will be distributed through the Federal Reserve System to all regional Federal Reserve Banks. In addition, copies of Form TFR–635 (TDF 90–22.33) will be mailed directly to certain persons believed by the Treasury Department to be affected by the reporting requirements. Other persons required to report or otherwise interested in obtaining copies of Form TFR–635 (TDF 90–22.33) may do so by calling the Office of Foreign Assets Control, Unit 635, Department of the Treasury, Washington, DC 20220, at (202) 376–0968, or by contacting the nearest regional Federal Reserve bank.

Photocopies of the report form may be used.

5. Filing Form TFR 635 (TDF–90–22.33)

Reports on Form TFR–635 (TDF 90–22.33) shall be prepared in triplicate. On or before November 20, 1987, two copies shall be sent in a set to Unit 635, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220. The reporter shall retain a copy of the completed report.

6. Certification

Every report filed on Form TFR–635 (TDF 90–22.33) must be certified in Part C of the form. Failure to complete this certification shall render the report ineffective, and the submission of such a report shall not constitute compliance with the reporting requirements of section 550.635 of the Regulations.

7. Confidentiality of Reports

Reports filed on Form TFR–635 (TDF 90–22.33) are regarded as privileged and confidential.

8. Penalties

Reporting on Form TFR–635 (TDF 90–22.33) is mandatory under § 555.635 of the Libyan Sanctions Regulations. Penalties are provided for persons violating the Regulations.

B. Definitions

The definitions below shall be used for the purpose of reporting on Form TFR–635 (TDF 90–22.33). Any reference to "the Regulations" in these instruction or in Form TFR–635 (TDF 90–22.33) shall refer to the Libyan Sanctions Regulations (31 CFR Part 550), and any term not defined in these instructions shall have the meaning ascribed to it in the Regulations.

1. Person

An individual, partnership, association, corporation or other organization.

2. U.S. Person

Any United States citizen, permanent resident alien, juridical person organized under the laws of the United States, or any person in the United States.

3. Successor

A person who has succeeded to a claim by operation of law (such as a trustee in bankruptcy, an executor or administrator, etc.), by inheritance, or by change in organization (such as by merger, dissolution or acquisition).

4. Financial Interest

Any right or claim to ownership or control, or participation in ownership or control, or other financial interests as follows:

(a) Any shares of stock of any business or nonbusiness entity;

(b) Any profits or income derived from shares of stock;

(c) Any bonds, debentures, notes or other funded obligations of any business or nonbusiness entity;

(d) Any other outstanding securities of any business or nonbusiness entity; or

(e) Any other right or claim with respect to any trust or similar organization.

5. Government of Libya

(a) The term "Government of Libya" includes:

(1) The State and the Government of Libya, as well as any political subdivision, agency or instrumentality thereof, including the Central Bank of Libya;

(2) Any partnership, association, corporation or other organization substantially owned or controlled by any of the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since January 7, 1986, acting or purporting to act, directly or indirectly, on behalf of any of the foregoing;

(4) Any other person or organization determined by the Secretary of the Treasury to be included within paragraph (a) hereof.

(b) A person specified in paragraph (a)(2) of this section shall not be deemed to fall within the definition of Libya solely by reason of being located in, organized under the laws of, or having its principal place of business in Libya.

6. Entity of the Government of Libya; Libyan Entity

The terms "entity of the Government of Libya" and "Libyan entity" include:

(a) Any corporation, partnership, association, or other entity in which the Government of Libya owns a majority or controlling interest, any entity substantially managed or funded by that government, and any entity which is otherwise controlled by that government;

(b) Any agency or instrumentality of the Government of Libya, including the Central Bank of Libya.

7. Property; Property Interests

The terms "property" or "property interests," for purposes of reporting claims on Form TFR–635 (TDF 90–22.33), shall include, but not be limited to, money, checks, drafts, bullion, bank deposits, savings accounts, and debts, indebtedness obligations, notes, debentures, stocks, bonds, coupons, any other financial securities, bankers' acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidence of title, ownership or indebtedness, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, real estate and any interest therein, leaseholds, ground rents, options, negotiable

instruments, letters of credit, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, contracts or licenses affecting or involving patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, contracts of any nature whatsoever, and any other property, real, personal or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

8. Interest

Any interest of any nature whatsoever, direct or indirect.

C. Valuation Principles

1. Valuation

The following table may be used as a guide to valuation principles for various type of property:

Examples of property types	Principle
Checks, drafts, acceptances and notes.	Face or estimated value.
Commodities, including gold and other metals.	Market value
Currency and coin	Face value or market value, whichever is higher.
Debts, claims and demands	Face or estimated value.
Deposits and cash balances	Balance of the account.
Foreign exchange futures	Difference between market price of currency and price specified in contract.
Goods, merchandise and other personal property.	Market or estimated value.
Land, buildings and mortgages on real estate.	Market or estimated value.
Letters of credit	Available amount.
Royalties, gas and oil	Capitalized value.
Franchises and concessions	Market or estimated value.
Securities	Market or estimated value.

If alternative valuation principles are employed to assess the value of the claim be sure to describe fully in Schedule B1, line 8, the principles or methodology employed.

2. Valuation Date

Date of loss.

3. Market or Estimated Values

Where market or estimated value is required, enter the market price on the date of loss, or, if such price is not available, the estimated value on that date. In estimating value, the last sale price or bid, if reasonably close to the date of loss, may be used as a basis.

4. Dollar Value

Report claims in U.S. dollars to nearest dollar. Convert foreign currency values at exchange rate prevailing on date of loss, as generally quoted by foreign exchange dealers or other recognized sources of information.

Form TFR–635

CENSUS OF CLAIMS BY UNITED STATES PERSONS AGAINST LIBYA

Office of Foreign Assets Control, Unit 635, Department of the Treasury, Washington, DC 20220

Important Note: The submission of this report does not constitute the filing with the United States Government of a formal claim for compensation, nor does it guarantee that the claim will be included in any future agreement. However, failure to file complete information in a timely fashion not only would constitute failure to comply with the Regulations but would also prevent the inclusion of information in U.S. Government planning, which could be prejudicial to the interests of the claimant and other U.S. claimants.

Form TFR–635 (TDF 90–22.33) is to be used by all persons required to file reports pursuant to § 550.635 of Title 31 of the Code of Federal Regulations. The report form, along with required schedules, must describe any claim outstanding of any such person against any Libyan entity which arose before June 30, 1987. Before Preparing This Report Read the Instructions Carefully. All information reported will be regarded as privileged and confidential. For assistance, call (202) 376–0988 or 376–0969.

Filing Deadline: November 20, 1987.

The report is to be completed in triplicate and two copies are to be filed with the Office of Foreign Assets Control, Unit 635, Department of the Treasury, Washington, D.C. 20220 by the November 20, 1987 deadline.

To the Secretary of the Treasury:

The undersigned, pursuant to § 550.635 of Title 31 of the Code of Federal Regulations, hereby makes the following report:

PART A—INFORMATION CONCERNING U.S. CLAIMANT.

EIN or SSN _____

1. Name _____

2. Address _____

_____

3. Nationality _____

4. If claimant is a corporation or other legal entity, state date and place of incorporation, and percentage of outstanding capital stock of all classes owned, directly or indirectly, by persons who were U.S. nationals on the date of loss.

_____

5. If there has been any change in the nationality status of claimant since the date of loss, explain circumstances.

_____

6. If any other person, firm, corporation, or other entity (other than claimant's subsidiary, branch, or office reported on Schedule B1) has or has had, either at present or since the date of loss, any interest in the claim, state names and present addresses of all such parties.

_____

7. If the person reporting the claim is a person other than the claimant named in line 1 of this part, state name, address, and relationship to claimant.

Name _____

Address _____

_____

Relationship to claimant _____

_____

8. Individual to contact regarding this report:

Name _____

Title _____

Organization _____

Telephone number _____

PART B—SUMMARY OF CLAIMS AGAINST LIBYA.

Report aggregate value of all claims in the appropriate category or categories below as of date of loss. Detailed information concerning specific claims should be reported on one or more attached Schedule B1 submissions. Amounts reported on all Schedule B1 submissions should total the aggregate amounts reported in this summary. A separate Schedule B1 should be submitted for each claim. Claims of a given type or involving a common set of circumstances against the same Libyan entity may be aggregated on a single Schedule B1 submission. Three copies of Schedule B1 are attached to this pamphlet. Additional photocopies may be used, if needed. If claims are made for subsidiaries, at least one separate Schedule B1 submission must be included for each subsidiary, with amounts allocated appropriately to each category of claim.

1. Business Claims

a. Loans or credits:

(1) Total outstanding: _____

(2) Total amount overdue or in default _____

b. Expropriation losses:

(1) Loss of equity, concessions, or going concern value _____

(2) Loss of tangible assets _____

c. Receivables or other amounts due and unpaid _____

d. Breach of contract damages _____

e. Other damages _____

Subtotal 1. (Righthand column amounts only. Do not include amount in a. (1)) _____

2. Personal Claims

a. Expropriation losses: _____

b. Salaries, benefits, receivables or other items due and unpaid _____

c. Lost future benefits or other contractual claims _____

d. Personal injury or other tort claims _____

e. Other damages _____

Subtotal 2 _____

Total Claims (Subtotals 1. and 2.) _____

Part C—Certification

I _____, certify that I am the _____ of the _____, that I am authorized to make this certification, and that, to the best of my knowledge and belief, the statements set forth in this report,

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including any papers attached hereto or filed herewith, are true and accurate, and that all material facts in connection with this report have been set forth herein.

Date _____

Signature _____

Address _____

Schedule B1—Schedule for Separate Description of Claims

EIN or SSN of U.S. claimant _____

This is (number) out of (total) Schedule B1's submitted.

Note.—Lines 1 and 2 below *should not* be completed if claim reported on this Schedule B1 belongs directly to claimant named in Part A. Lines 1 and 2 *should* be completed in full if claim belongs to a separate subsidiary, branch, or office of claimant named in Part A.

1. State name and address.

Name _____

Address _____

2. State relationship to U.S. claimant named in Part A. If this Schedule B1 is for a subsidiary, state percentage of direct or indirect ownership as of date of loss, indicate type of corporate entity, and state date and place of incorporation.

3. Libyan entity against which claim is asserted.

Name _____

Address _____

4. State basis for belief that entity is owned or controlled by Government of Libya:

5. If claimant has filed an attachment order or other judicial proceeding with respect to this claim, indicate date and place.

6. If claimant holds any property (e.g., tangible property, bank deposits, or obligations to Libya) against which a remedy for this claim, such as a setoff, could be asserted, so describe.

7. Type and amount of claim.

A. Business Claims

a. Loans or credits:
(1) Total outstanding: _____
(2) Total amount overdue or in default.....
b. Expropriation losses:
(1) Loss of equity, concessions, or going concern value.....
(2) Loss of tangible assets.....
c. Receivables or other amounts due.....
d. Breach of contract damages .....
e. Other damages .....
Subtotal A. (Righthand column amounts only. Do not include amount in a.(1)) .....

B. Personal Claims

a. Expropriation losses .....
b. Salaries, benefits, receivables or other items due and unpaid.....
c. Lost future benefits or other contractual claims.....
d. Personal injury or other tort claims.....
e. Other damages .....
Subtotal B .....
Total Claim (A. and B.)—This Schedule B1.....

8. Describe the circumstances surrounding the loss, including a description of the property or the nature of the business which is the subject of the claim, the date of loss, and the methods used to value the property, business, or damages. If the claim involves contractual damages, describe any clauses in the contract referring to choice of law or forum for settling disputes. Indicate whether documentary evidence is available. Do not submit documentary evidence.

[FR Doc. 87-21761 Filed 9-17-87; 11:18 am]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3263-5]

Final Authorization of State Hazardous Waste Management Program; Washington

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Immediate final rule; notice of compliance schedule to adopt program modification.

SUMMARY: The State of Washington has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Washington's application and has made a decision, subject to public review and comment, that their hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Washington's hazardous waste program revisions. Washington's application for program revision is available for public review and comment.

EPA is also publishing a compliance schedule for Washington to modify its program in accordance with 40 CFR 271.21(g) to adopt an additional Federal program modification.

DATES: Final authorization for Washington shall be effective November 23, 1987 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Washington's program revision application must be received by the close of business October 22, 1987.

ADDRESSES: Copies of Washington's program revision application are available from 8:00 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Washington Department of Ecology (Rowesix) 4224 6th Avenue SE., Bldg. 4, Olympia, Washington 98504, Phone (206) 459-6516; U.S. EPA Headquarters Library (PM 211A), 401 M Street, SW., Washington, DC 20460, Phone: (202) 382-5926; U.S. EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101, Phone: (206) 442-1289. Written comments should be sent to the EPA contact person listed below.

FOR FURTHER INFORMATION CONTACT: Michael A. Bussell, Mail Stop HW-112, 1200 Sixth Avenue, Seattle, Washington 98101, Phone: (206) 442-2857.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, herein-after "HSWA"), allow States to revise their programs to become substantially equivalent instead of equivalent to the RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260 through 266 and 124 and 270 through 271.

B. Washington

Washington initially received final authorization on January 30, 1986, (51 FR 3782-3783). Today, Washington is seeking final authorization for several state program revisions, as necessitated by changes to EPA's regulations in 40 CFR Parts 260 through 266 and 124 and 270. Specifically, Washington is requesting approval for state program revisions which incorporate the Federal redefinition of solid waste (50 FR 614-668), revisions to interim status

standards for hazardous waste landfills (50 FR 16044–16048), hazardous waste listings (50 FR 42936–42943 and 53314–53320) and the regulation of radioactive mixed wastes (51 FR 24504–24505).

3006(f)—Availability of Information

As part of their application, Washington had sought authorization for the RCRA section 3006(f)—availability of information requirement (50 FR 28754). However, in reviewing the State's application, EPA determined that Washington had not fully met the corresponding authorization requirements. Washington has, therefore, agreed to postpone seeking authorization for this program component and will make the necessary State program revision on the following schedule:

Prepare proposed regulation amendments by 8/31/87
File proposed amendments with the State Code Reviser by 9/15/87
Public comment period and public hearings completed by 10/30/87
Final decision-making and adoption of amendments by 11/31/87

Washington expects to submit an application to EPA for authorization for the section 3006(f)-availability of information requirement by December 30, 1987.

EPA has reviewed Washington's application and, with the exception of the availability of information requirement discussed above, had made an immediate final decision that Washington's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Accordingly, EPA intends to grant Washington final authorization for these additional program modifications. The public may submit written comments on EPA's immediate final decision up until October 22, 1987. Copies of Washington's application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of the Washington program revisions shall become effective in 60 days, unless an adverse comment pertaining to the State's revision application is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

C. Decision

I conclude that the Washington program revisions, discussed above, meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Washington is granted final authorization to operate its hazardous waste program as revised. Washington continues to have responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Washington also continues to have primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA. Washington is not authorized by the Federal government to operate the RCRA program on Indian lands; this authority remains with EPA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Washington's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sec. 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6947(b).

Robie G. Russell,

Regional Administrator.

Dated: September 2, 1987.

[FR Doc. 87–21602 Filed 9–21–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Hearings and Appeals Procedures; Correction

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule; correction.

SUMMARY: This rule corrects Departmental regulations 43 CFR 4.236, 4.320, and 4.323 in order to use the current designation of the Bureau of Indian Affairs office maintaining the records of the probate of estates of decreased Indians for whom the United States held property in Indian trust or restricted status. The old designation of that office was inadvertently used in the final rule published July 14, 1987 (52 FR 26344).

EFFECTIVE DATE: August 13, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce A. Johnson, Deputy Director, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203; Telephone (703) 235–3810 (not toll free).

Dated: September 15, 1987.

Earl Gjelde,

Chief Operating Officer.

September 17, 1987.

43 CFR Part 4 is corrected as follows:

PART 4—[AMENDED]

1. Section 4.236(b) is correctly revised to read as follows:

§ 4.236 Record.

* * * * *

(b) The administrative law judge shall lodge the original record with the designated Land Titles and Records Office in accordance with 25 CFR Part 150. A duplicate copy shall be lodged with the Superintendent originating the probate. A partial record may also be furnished to the Superintendents of other affected agencies. In those cases in which a hearing transcript has not been prepared, the verbatim recording of the hearing shall be retained in the office of the administrative law judge issuing the decision until the time allowed for rehearing or appeal has expired. In cases in which a transcript is not prepared, the original record returned to the Land Titles and Records Office shall contain a statement indicating no transcript was prepared.

* * * * *

2. Section 4.320(c) is correctly revised to read as follows:

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§ 4.320 Who may appeal; scope of review.

* * * * *

(c) *Action by administrative law judge; record inspection.* The administrative law judge, upon receiving a copy of the notice of appeal, shall notify the Superintendent concerned to return the duplicate record filed under §§ 4.236(b) and 4.241(d), or under § 4.242(f), to the Land Titles and Records Office designated under § 4.236(b). The duplicate record shall be conformed to the original by the Land Titles and Records Office and shall thereafter be available for inspection either at the Land Titles and Records Office or at the office of the Superintendent. In those cases in which a transcript of the hearing was not prepared, the administrative law judge shall have a transcript prepared which shall be forwarded to the Board within 30 days from receipt of a copy of the notice of appeal.

3. Section 4.323 is correctly revised to read as follows:

§ 4.323 Disposition of the record.

Subsequent to a decision of the Board, other than remands, the record filed with the Board and all documents added during the appeal proceedings, including any transcript prepared because of the appeal and the Board's decision, shall be forwarded by the Board to the Land Titles and Records Office designated under § 4.236(b). Upon receipt of the record by the Land Titles and Records Office, the duplicate record required by § 4.320(c) shall be conformed to the original and forwarded to the Superintendent concerned.

[FR Doc. 87-21813 Filed 9-21-87; 8:45 am]

BILLING CODE 4310-79-M

Proposed Rules

Federal Register
Vol. 52, No. 183
Tuesday, September 22, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil, Gas, and Sulphur Operations in the Outer Continental Shelf; Documents Incorporated by Reference; List Update

AGENCY: Minerals Management Service, Interior.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The proposed rule would update the list of specific editions of documents incorporated by reference in § 250.1, *Documents incorporated by reference,* which was published in the **Federal Register** on March 18, 1986 (51 FR 9316), as part of the proposed Consolidated Offshore Operating Rules (COOR). This proposal would eliminate references or update references by replacing them with editions of documents that have superseded those listed previously. Proposed § 250.1 would also incorporate by reference additional documents suggested to the Minerals Management Service (MMS) as a result of its March 1986 request for comments on COOR.

DATES: Comments must be hand-delivered or postmarked no later than October 22, 1987.

ADDRESSES: Written comments must be mailed or hand-delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646, Room 6A110; Reston, Virginia 22091; Attention: Gerald D. Rhodes.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, telephone (703) 648–7816 or (FTS) 959–7816.

SUPPLEMENTARY INFORMATION:

The MMS published a notice of proposed rulemaking in the **Federal Register** on March 18, 1986 (51 FR 9316), which would consolidate all the rules governing oil, gas, and sulphur lease operations in the Outer Continental Shelf (OCS) into one comprehensive set of regulations. Under this proposal, current requirements would be comibined into a revised and restructured Part 250 of Title 30 of the Code of Federal Regulations. The proposed rule was organized into 14 subparts with each subpart concentrating on a specific subject matter.

The March 18, 1986, proposed rule incorporated, by reference, numerous documents developed by various standard writing groups which were listed in Subpart A at § 250.1, Documents incorporated by reference. References to these documents are incorporated at various locations in 5 of the 14 proposed subparts. The list of documents in § 250.1 identifies the edition of the document and specifies where a copy of the document may be obtained and where the document in incorporated by reference in MMS regulation.

During the time that has elapsed since the preparation of proposed § 250.1, several of the documents incorporated by reference have been superseded by later editions or other authoritative documents.

The MMS is publishing this notice of proposed rulemaking to update the identification of specific editions of documents that are incorporated by reference. This updated provision includes some documents which either were not included in the proposed rule or are later editions of documents which were included. For the convenience of the reader, documents incorporated by reference in this document, which were not incorporated by reference in the March 18, 1986, proposed rule, are marked with an asterick "*", and documents that are later editions are marked with two astericks "**".

The specific paragraphs listed in this proposed rule refer to those paragraphs which incorporated documents by reference in the March 18, 1986, proposal. The specific location where a document is referenced may be different in the final rule due to organizational changes in the rule which were made as a result of comments received in response to the March 18, 1986, proposal.

Executive Order 12291

Since the major purpose of the proposed rule is to reduce or eliminate unnecessary burdens on lessees, its implementation, as proposed, is expected to reduce lessees' operating costs. Implementation of the proposed rule is not expected to cause an increase in costs or prices to consumers, other industries, or governmental entities and, in fact, could cause a slight decrease as cost savings might be passed on.

The Department of the Interior (DOI) has determined that this document does not constitute a major rule under Executive Order 12291; and therefore, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The DOI has also determined that this document will not have a significant economic effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical complexities and financial resources necessary to conduct such activities.

Paperwork Reduction Act

The information collection requirements contained in proposed 30 CFR Part 250 have been either approved by or submitted to OMB for approval under 44 U.S.C. 3504(h).

Authors

The principal authors of this document are John Mirabella and Mario Rivero, Offshore Rules and Operations Division, MMS.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: August 28, 1987.

David W. Crow,

Acting Director, Minerals Management Service.

For the reasons set forth in the preamble, Part 250 of Title 30 of the Code of Federal Regulations which was proposed to be revised on March 18, 1986 (51 FR 9316), would be amended as follows:

PART 250—[AMENDED]

1. The authority citation for Part 250 continues to read as follows:

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Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1331).

2. Section 250.1 is revised to read as follows:

§ 250.1 Documents incorporated by reference.

The documents listed below are incorporated by reference as requirements in this part. The Director of the **Federal Register** approved the incorporation by reference of these documents on [Insert date of **Federal Register** approval]. These documents are incorporated as they exist on the date of the approval, and a notice of any change in these documents will be published as a rule change in the **Federal Register**. Each document or specific portion thereof is incorporated by reference in the corresponding sections noted. The entire document is incorporated by reference unless the text of the corresponding sections calls for compliance with specific portions of the listed documents. In each instance, the applicable document is the specific edition and/or its supplement which is cited in this section. In accordance with § 250.3, Performance requirements, the lessee may comply with a later edition of a specific document incorporated by reference, provided the lessee can demonstrate that compliance with the later edition provides a degree of protection, safety, or performance equal to or better than that which would be achieved by compliance with the listed edition and provided the lessee obtains prior written approval of the Regional or District Supervisor, as appropriate, for such alternative compliance. The list includes the name and address of at least one organization from which the document may be purchased. In order to facilitate correlation of the text of the corresponding sections with the list of documents incorporated by reference, the documents are listed in alphanumerical order.

(a) *American Concrete Institute (ACI) Document.* The ACI documents listed in this paragraph may be purchased from the American Concrete Institute, P.O. Box 19150, Detroit, Michigan 48219–0150

ACI Standard 318–83, Building Code Requirements for Reinforced Concrete, plus Supplement and Commentary, 1983. Incorporated by Reference at: § 250.138 (b)(4)(i), (b)(6)(i), (b)(7), (b)(8)(i), (b)(9), (b)(10), (c)(3)(ii), (d)(1)(v), (d)(5), (d)(6), (d)(7), (d)(8), (d)(9), (e)(1)(i), and (e)(2)(i).

*ACI Standard 357–R–84 Guide for the Design and Construction of Fixed Offshore Concrete Structures, 1984. Incorporated by Reference at: §§ 250.130 and 250.138.

(b) *American Institute of Steel Construction (AISC) Document.*

The AISC document listed in this paragraph may be purchased from the American Institute of Steel Construction, Inc., P.O. Box 4588, Chicago, Illinois 60680.

AISC Standard S326, Specification for the Design, Fabrication, and Erection of Structural Steel for Buildings, 1978 Edition, Incorporated by Reference at: § 250.137(b)(1)(ii), (c)(4)(ii), and (c)(4)(vii).

(c) *American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) Documents.* The ANSI/ASME documents listed in this paragraph may be purchased from the American National Standards Institute, Attention: Sales Department, 1430 Broadway, New York, New York 10018, and from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017.

ANSI/ASME Boiler and Pressure Vessel Code, Section I, Power Boilers, 1983 Edition, Incorporated by Reference at: § 250.123(b)(1).

ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Heating Boilers, 1983 Edition, Incorporated by Reference at: § 250.123(b)(1).

ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Pressure Vessels, 1983 Edition, Incorporated by Reference at: § 250.123(b)(1).

*ANSI/ASME B 31.8–1986, Gas Transmission and Distribution Piping Systems, Incorporated by Reference at: § 250.152 (a) and (b).

ANSI/ASME SPPE–1–1985, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations, Incorporated by Reference at: §§ 250.121(b) and 250.126.

*ANSI B 16.5–1981, Pipe Flanges and Flanged Fittings, Incorporated by Reference at: §§ 250.150(a) and 250.152(d)

ANSI Z88.2–1980, Practices for Respiratory Protection, Incorporated by Reference at: § 250.67(h)(2)(iv) and (6)(i).

(d) *American Petroleum Institute (API) Documents.* The API documents listed in this paragraph may be purchased from the American Petroleum Institute, Production Department, 211 N. Ervay, Suite 1700, Dallas, Texas 75201, or American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005.

*API RP 2A, Recommended Practice for Planning, Designing, and Constructing Fixed Offshore Platforms, Seventeenth Edition, April 1, 1987, API Stock No. 811–00200, Incorporated by Reference at: § 250.130.

API RP 2D, Recommended Practice for Operation and Maintenance of Offshore Cranes, Second Edition, June 20, 1984, API Stock No. 811–00500, Incorporated by Reference at: § 250.51(g).

**API RP T–2, Recommended Practice for Qualification Programs for Offshore Production Personnel Who Work with Anti-Pollution Safety Devices, Revised October 1975, API Stock No. 811–13710, Incorporated by Reference at: § 250.125 (a) and (c).

*API Spec 6A, Specification for Wellhead Equipment, Fifteenth Edition, April 1986, with Supplement 1, December 1986, API Stock No. 811–03100, Incorporated by Reference at: § 250.152(c).

*API Spec 6D, Specification for Pipeline Valves, End Closures, Connectors and Swivels, Eighteenth Edition, January 1982, with Supplement 3, July 1985, API Stock No. 811–03200, Incorporated by Reference at: § 250.152(c).

*API Spec 14A, Specification for Subsurface Safety Valve Equipment, Sixth Edition, April 30, 1984, with Supplement 2, June 1986, Incorporated by Reference at: § 250.121(b).

*API RP 14B, Recommended Practice for Design, Installation, and Operation of Subsurface Safety Valve Systems, Second Edition, November 1981, with Supplement 3, June 1986, Incorporated by Reference at: §§ 250.121(e)(4) and 250.124(a)(1)(i).

**API RP 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems on Offshore Production Platforms, Fourth Edition, September 1986, API Stock No. 811–07180, Incorporated by Reference at: §§ 250.122 (b) and (e)(2); 250.123(b) (2)(i), (4), (5)(i), (7), and (9)(v); 250.124 (a) and (a)(5); and 250.152(e).

*API Spec 14D, Specification for Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, Sixth Edition, April 1984, API Stock No. 811–07183, Incorporated by Reference at: not yet decided.

API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fourth Edition, April 1984, API Stock No. 811–07185, Incorporated by Reference at: § 250.122(e)(3).

**API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms, Second Edition, July 1985, API Stock No. 811–07190, Incorporated by Reference at: §§ 250.53(c) and 250.123(b)(9)(v).

**API RP 14G, Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms, Second Edition, May 1986, API Stock No. 811–07194, Incorporated by Reference at: § 250.123(b) (8) and (9)(v).

*API RP 14H, Recommended Practice for Use of Surface Safety Values and Underwater Safety Values Offshore, Second Edition, April 1984, Incorporated by Reference at: § 250.122(d).

*API RP 500B, Recommended Practice for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms, Second Edition, July 1973, and Supplement 2, May 1981, API Stock No. 811–06000, Incorporated by Reference at: §§ 250.53(b), 250.122(e)(4), and 250.123(b)(9)(i).

API Standard 2545, USA Standard Method of Gaging Petroleum and Petroleum Products, October 1965, also ANSI/ASTM D 1085, API Stock No. 852–25450, Incorporated by Reference at: § 250.180(f)(2)(ii)(B).

API Standard 2550, Method for Measurement and Calibration of Upright Cylindrical Tanks, October 1965, also ANSI/ASTM D 1220, API Stock No. 852–25500, Incorporated by Reference at: § 250.180(f)(2)(ii)(A).

API Standard 2551, Method for Measurement and Calibration of Horizontal Tanks, First Edition, 1965, also ANSI/ASTM D 1410, API Stock No. 852–25510, Incorporated by Reference at: § 250.180(f)(2)(ii)(A).

API Standard 2552, Measurement and Calibration of Spheres and Spheroids, First Edition, 1966, also ANSI/ASTM D 1408, API Stock No. 852–25520, Incorporated by Reference at: § 250.180(f)(2)(ii)(A).

API Standard 2555, Method for Liquid Calibration of Tanks, First Edition, September 1966, also ANSI/ASTM D 1406–65, API Stock No. 852–25550, Incorporated by Reference at: § 250.180(f)(2).

API RP 2556, Recommended Practice for Correcting Gage Tables for Incrustation, First Edition, August 1968, API Stock No. 852–25560, Incorporated by Reference at: § 250.180(f)(2).

The following chapter and section citations refer to the API Manual of Petroleum Measurement Standards:

*Chapter 4, Proving Systems, First Edition, May 1978, also ANSI/API MPMS 4–1978, API Stock No. 852–30080, Incorporated by Reference at: § 250.180(c)(6).

*Chapter 5.1, Foreward, General Considerations, and Scope of Metering, First Edition, November 1976, also ANSI/API MPMS 5.1–1976, API Stock No. 852–30101, Incorporated by Reference at: § 250.180(c)(6).

*Chapter 5.2, Measurement of Liquid Hydrocarbons by Displacement Meter Systems, First Edition, January 1977, also ANSI/API MPMS 5.2–1977, API Stock No. 852–30102, Incorporated by Reference at: § 250.180(c)(6).

*Chapter 5.3, Turbine Meters, First Edition, July 1976, API Stock No. 852–30103, Incorporated by Reference at: § 250.180(c)(6).

*Chapter 5.4, Instrumentation or Accessory Equipment for Liquid Hydrocarbon Metering Systems, First Edition, July 1976, also ANSI/API MPMS 5.4–1976, API Stock No. 852–30104, Incorporated by Reference at: § 250.180(c)(6).

*Chapter 5.5, Fidelity and Security of Flow Measurement Pulsed-Data Transmission Systems, First Edition, June 1982, API Stock No. 852–30105, Incorporated by Reference at: § 250.180(c)(6).

*Chapter 6.1, LACT Systems, First Edition, February 1981, also ANSI/API MPMS 6.1–1981, API Stock No. 852–30121, Incorporated by Reference at: § 250.180(c)(6).

*Chapter 6.6, Pipeline Metering Systems, First Edition, August 1981, also ANSI/API MPMS 6.6–1981, API Stock No. 852–30126, Incorporated by Reference at: § 250.180(c)(6).

*Chapter 6.7, Metering Viscous Hydrocarbons, First Edition, January 1981, also ANSI/API MPMS 6.7–1981, API Stock No. 852–30127, Incorporated by Reference at: § 250.180(c)(6).

*Chapter 7.2, Dynamic Temperature Determination, First Edition, June 1985, API Stock No. 852–30142, Incorporated by Reference at: § 250.180(c)(6).

*Chapter 7.3, Static Temperature Determination Using Portable Electronic Thermometers, First Edition, June 1985, Incorporated by Reference at: § 250.180(c)(6).

Chapter 8.1, Manual Sampling of Petroleum and Petroleum Products, First Edition, October 1981, also ANSI/ASTM D 4057, API Stock No. 852–30161, Incorporated by Reference at: § 250.180(c)(6)(ii)(A) and (f)(2)(ii)(C).

Chapter 8.2, Automatic Sampling of Petroleum and Petroleum Products, First Edition, April 1983, also ANSI/ASTM D 4177, API Stock No. 852–30162, Incorporated by Reference at: § 250.180(c)(6)(ii)(A) and (f)(2)(ii)(C).

Chapter 9.1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products, First Edition, June 1981, also ANSI/ASTM D 1298, API Stock No. 852–30181, Incorporated by Reference at: § 250.180(c)(6)(ii)(B) and (f)(2)(ii)(D).

Chapter 9.2, Pressure Hydrometer Test Method for Density or Relative Density, First Edition, April 1982, API Stock No. 852–30182, Incorporated by Reference at: § 250.180(c)(6)(ii)(B) and (f)(2)(ii)(D).

Chapter 10.1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method, First Edition, April 1981, also ANSI/ASTM D 473, API Stock No. 852–30201, Incorporated by Reference at: § 250.180(c)(6)(ii)(C) and (f)(2)(ii)(E).

Chapter 10.2, Determination of Water in Crude Oil by Distillation, First Edition, April 1981, also ANSI/ASTM D 4006, API Stock No. 852–30202, Incorporated by Reference at: § 250.180(c)(6)(ii)(C) and (f)(2)(ii)(E).

Chapter 10.3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure), First Edition, April 1981, also ANSI/ASTM D 4007, API Stock No. 852–30203, Incorporated by Reference at: § 250.180(c)(6)(ii)(C) and (f)(2)(ii)(E).

Chapter 10.4, (Publ 2542), Methods of Test for Water and Sediment in Crude Oils, October 1970, also ANSI/ASTM D 96/68, API Stock No. 825–30204, Incorporated by Reference at: § 250.180(c)(6)(ii)(C) and (f)(2)(ii)(E).

Chapter 11.1, Volume I, August 1980, Table 5A—Generalized Crude Oils Correction of Observed API Gravity to API Gravity at 60 °F, and Table 6A—Generalized Crude Oils, Correction of Volume to 60 °F Against API Gravity at 60 °F, API Stock No. 852–27000, Incorporated by Reference at: § 250.180(c)(6)(ii)(D), (d)(3)(v)(B), and (f)(2)(ii)(F).

* Chapter 11.2.1, Compressibility Factors for Hydrocarbons: 0–90° API Gravity Range, First Edition, August 1984, API Stock No. 852–27300, Incorporated by Reference at: § 250.180(c)(6).

* Chapter 11.2.2, Compressibility Factors for Hydrocarbons: 0.350–637 Relative Density (60 °F/60 °F) and ×50°F to 140°F Metering Temperature, Second Edition, October 1986, also GPA 8286-86 API, Stock No. 852–27307, Incorporated by Reference at: § 250.180(c)(6).

* Chapter 11.2.3, Water Calibration of Volumetric Provers, First Edition, 1984, API Stock No. 852–27310, Incorporated by Reference at: § 250.180(c)(6)

Chapter 12.2, Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meters, First Edition, September 1981, also ANSI/API MPMS 12.2—1981, API Stock No. 852–30302, Incorporated by Reference at: § 250.180(d)(3)(v)(C).

Chapter 14.3 Orifice Metering of Natural Gas and other Related Hydrocarbon Fluids, Second Edition, September 1985, also ANSI/API 2530, API Stock No. 852–30343, Incorporated by Reference at: § 250.181(d)(1).

Chapter 14.5, Calculation of Gross Heating Value, Specific Gravity, and Compressibility of Natural Gas Mixtures from Compositional Analysis, January 1981, also AGA 2172 and ANSI/API MPMS 14.5–1981, API Stock No. 852–30345, Incorporated by Reference at: § 250.181(d)(1).

Chapter 14.6 Installing and Proving Density Meters, September 1979, API Stock No. 852–30346, Incorporated by Reference at: § 250.181(d)(1).

* Chapter 14.8, Liquefied Petroleum Gas Measurements, February 1983, API Stock No. 852–30348, Incorporated by Reference at: § 250.181(d).

(e) *American Society for Testing and Materials (ASTM) Documents.* The ASTM documents listed below may be purchased from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103–1187.

** ASTM Standard C33–86, Specification for Concrete Aggregates, 1986, Incorporated by Reference at: § 250.138(b)(4)(i).

** ASTM Standard C94–86e, Specification for Ready-Mixed Concrete, 1986, Incorporated by Reference at: § 250.138(e)(2)(i).

** ASTM Standard C150–86, Specification for Portland Cement, 1986, Incorporated by Reference at: § 250.138(b)(2)(i).

** ASTM Standard 330–87, Specification for Lighweight Aggregates for Structural Concrete, 1987, Incorporated by Reference at: § 250.138(b)(4)(i).

** ASTM Standard C595–86, Specification for Blended Hydraulic Cements, 1986 Incorporated by Reference at: § 250.138(b)(2)(i)

(f) *American Welding Society (AWS) Documents.* The AWS documents listed in this paragraph may be purchased form the American Welding Society, P.O. Box 351040, Miami, Florida 33135.

** D1.–86, Structural Welding Code—Steel, 1986, Incorporated by Reference at: § 250.137(b)(1)(i).

D1.4–79, Structural Welding Code—Reinforcing Steel, 1979, Incorporated by Reference at: § 250.138(e)(3)(ii).

(g) *National Association of Corrosion Engineers (NACE) Documents.* The NACE documents listed in this paragraph may be purchased from the National Association of Corrosion Engineers, P.O. Box 218340, Houston, Texas 77218.

NACE Standard MR–01–75, Material Requirement, Sulfide Stress Cracking

Resistant Metallic Material for Oil Field Equipment (1984 Revision), Supplement 1 issued January 1985, Supplement 2 issued February 1985, Supplement 3 issued March 1985, Supplement 4 issued May 1985, Supplement 5 issued July 1985, Supplement 6 issued August 1985, Supplement 7 issued February 1986, and Supplement 8 issued September 1986, Incorporated by Reference at: § 250.67 (1)(1), (1)(2), (1)(3), and (1)(6).

NACE Standard RP-01-76 (1983 Revision), Recommended Practice, Corrosion Control of Steel, Fixed Offshore Platforms Associated with Petroleum Production Incorporated by Reference at: § 250.137(d)

[FR Doc. 87-21674 Filed 9-21-87; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Reporting Requirements of United States Postal Service

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Treasury is proposing to place the United States Postal Service under the reporting requirements of the Bank Secrecy Act with respect to cash purchases of postal money orders exceeding $10,000, in response to the problem of drug money laundering through the purchase of postal money orders.

DATES: Deadline for comments: October 22, 1987.

ADDRESSES: Send comments to: Jonathan J. Rusch, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Rusch, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 566-8022.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. No. 91-508, as amended (codified at 31 U.S.C. 5311-5324, 12 U.S.C. 1829b, and 12 U.S.C. 1951-1959), empowers the Secretary of the Treasury to require "financial institutions," as defined in 31 U.S.C. 5312, to keep records and file reports that the Secretary of the Treasury determines have a high degree of usefulness in criminal, tax, or regulatory matters. See 31 U.S.C. 5311. The Secretary shall prescribe by regulation which "financial institutions" described in section 5312 will be required to report on their cash transactions.

Section 1362(a) of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570 (October 27, 1986), amended 31 U.S.C. 5312 to include the Postal Service in the definition of "financial institutions" under the Bank Secrecy Act. This measure followed testimony before the House Committee on Banking, Finance and Urban Affairs by a "smurf," or drug money launderer, who testified that he had successfully laundered money by converting the cash proceeds of drug sales into Postal money orders in Miami, Florida. The money launderer had taken advantage of the fact that a postal customer could buy an unlimited number of money orders at one time and that the Postal Service was not required to report cash transactions over $10,000 to Treasury under the Bank Secrecy Act, as are banks and other specified financial institutions.

At the same time this problem was being considered by Congress, the Department of the Treasury, through the Criminal Investigation Division of the Internal Revenue Service, concluded that the practice of drug money laundering through postal money orders was not confined to Miami. After review of the situation and discussions between Treasury and the Postal Service, the Postal Service has proposed to limit to $10,000 the amount of postal money orders any customer may purchase during one day. See 52 FR 27992, July 27, 1987. While Treasury commends this action, Treasury has determined this voluntary measure on the part of the Postal Service does not obviate the need for Treasury to designate the Postal Service as a financial institution subject to the requirements of the Bank Secrecy Act. For example, in order to prosecute a money launderer under section 5324 of Title 31, United States Code, which prohibits "structuring" of transactions to avoid a reporting requirement under the Bank Secrecy Act, the financial institution through which a money launderer structures transactions must itself be subject to Bank Secrecy Act reporting.

Therefore, Treasury proposes to put the United States Postal Service under the reporting requirements of the Bank Secrecy Act and its implementing regulations. This would be accomplished by including the U.S. Postal Service within the definition of "financial institution" in 31 CFR 103.11, and by adding a new paragraph in §103.22(a) to require that the Postal Service file a report of each cash purchase of money orders in excess of $10,000. Multiple cash purchases totaling more than $10,000 shall be treated as a single transaction if the Postal Service has knowledge that they are by or on behalf of any person during any one day. "Knowledge," as used in the proposal, clearly includes the concept of "willful blindness" as well. See *United States* v. *Jewell*, 532 F.2d 697 (9th Cir.), *cert. denied*, 426 U.S. 951 (1976). This concept applies to a person who has deliberately avoided positive knowledge; that is, "if a person has his suspicion aroused but then deliberately omits to make further inquiries, because he wishes to remain in ignorance, he is deemed to have knowledge." *Jewell* at 700.

Executive Order 12291

This proposed rule, if adopted, would not be a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

Comments

Treasury requests comments from all interested persons concerning the proposed amendments. All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. The Treasury Department will not recognize any materials or comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in the comments. All comments submitted will be available for public

inspection during the hours that the Treasury Library is open to the public. The Treasury Library is located in Room 5030, 1500 Pennsylvania Avenue, NW., Washington, DC. Appointments must be made to view the comments. Persons wishing to view the comments submitted should contact the Office of Financial Enforcement at the number listed above.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks, Banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendment

For the reasons set forth in the preamble, 31 CFR Part 103 is proposed to be amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 would continue to read as follows:

Authority: Pub. L. 91–508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b and 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5324).

2. It is proposed to amend § 103.11 by adding a new paragraph (g)(9) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(g) *Financial Institution.* * * *

(9) The United States Postal Service with respect to the sale of money orders.

* * * * *

3. It is proposed to further amend § 103.11 by adding at the end the following paragraph (r):

§ 103.11 Meaning of terms.

* * * * *

(r) *Postal Service.* The United States Postal Service.

4. It is proposed to revise the first sentence of § 103.22(a)(1) as follows:

§ 103.22 Reports of currency transactions.

(a)(1) Each financial institution other than a casino or the Postal Service shall file a report of each deposit, wihthdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than $10,000. * * *

* * * * *

5. It is proposed to further amend § 103.22(a) by redesignating paragraph (a)(3) as paragraph (a)(4) and adding a new paragraph (a)(3) to read as follows:

§ 103.22 Reports of currency transactions.

(a) * * *

(3) The Postal Service shall file a report of each cash purchase of postal money orders in excess of $10,000. Multiple cash purchases totalling more than $10,000 shall be treated as a single transaction if the Postal Service has knowledge that they are by or on behalf of any person during any one day.

* * * * *

Dated: August 13, 1987.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 87–21754 Filed 9–21–87; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Availability of Draft Supplemental Environmental Impact Statement for Issuance of Annual Regulations Permitting Sport Hunting of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that a Draft Supplemental Environmental Impact Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 87) is available for public review. Comments and suggestions are requested.

FOR FURTHER INFORMATION CONTACT: Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, (202–254–3207).

ADDRESSES: Copies of the Draft Statement can be obtained by writing to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Washington, DC 20240, or by visiting the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536 Matomic Building, 1717 H Street NW., Washington, DC 20240. Written comments can be sent to the same address. Comments may be presented in person at public hearings to be held at: Washington, DC, the Department of the Interior Auditorium, 18th and C Streets NW., on November 19, 1987, 9:00 a.m. (contact John Tautin (202–254–3207) for details); St. Louis, Missouri, the Stouffer Concourse Hotel, 9801 Natural Bridge Road, on November 19, 1987, 7:00 p.m. (contact Stephen Lewis (612–725–3313) for details); Lakewood, Colorado, the Sheraton Hotel, 360 Union Boulevard, November 17, 1987, 7:00 p.m. (contact Robert Croft (303–236–8152) for details); Sacramento, California, the Ramada Inn, 1900 Canterbury Road, on November 19, 1987, 7:00 p.m. (contact Richard Bauer (503–231–6164) for details).

DATE: Written comments are requested by December 31, 1987.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) announced its intention to supplement its 1975 Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75) on July 31, 1986 (51 FR 27430). FES 75 has served as the programmatic foundation for annual migratory bird hunting regulations. SEIS 87 updates technical material in FES 75 and, in view of changes occurring since 1975, considers new approaches (alternatives) in issuing annual regulations. The proposed action of SEIS 87 is the same at that of FES 75, i.e. to continue issuing annual migratory bird hunting regulations. The Service's preferred alternative is to stabilize the so-called "framework" regulations (season lengths and daily bag limits) for fixed periods of time and to control the use of "special" regulations (e.g., bonus bags, special seasons). SEIS 87 presents detailed information on migratory bird hunting regulations and on the current status of migratory bird populations.

Dated: September 14, 1987.

Frank M. Dunkle,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 87–21835 Filed 9–21–87; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 52, No. 183
Tuesday, September 22, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Meeting; Committee on Rulemaking

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Rulemaking of the Administrative Conference of the United States. The committee has scheduled this meeting to consider the Administrative Conference study of OSHA rulemaking procedures and future projects.

DATE: Monday, October 5, 1987, at 2:00 p.m.

Location: Library of the Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC.

Public Participation: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7065.

Dated: September 18, 1987.

Jeffrey S. Lubbers,

Research Director.

FR Doc. 87–21910 Filed 9–21–87; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meetings.

Name: National Commission on Diary Policy.

Time and place: Beginning at 8:00 a.m. on October 5 at the Washington Blvd., Arlington, Virginia.

Status: Open.

Matters to be considered: On October 5 and 6, the Commission will meet to consider issues related to the dairy price support program, new dairy technologies, and the influence of the program and technologies on the family farm. The meeting on October 5 is expected to include presentations concerning dairy programs in other nations and the potential applicability of any features of those programs to the U.S. dairy program. The meeting on October 6 is expected to include discussions of methods by which milk support prices might be set.

Written statements may be filed before or after the meeting with: Contact person named below.

Contact person for more information: Mr. T. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Ave., NW, Suite 1100, Washington, DC 20005, (202) 638–6222.

Signed at Washington, DC., this 14th day of September 1987.

David R. Dyer,

Executive Director, National Commission on Dairy Policy.

[FR Doc. 87–21781 Filed 9–21–87; 8:45 am]

BILLING CODE 3410–05–M

Federal Crop Insurance Corporation

Board of Directors; Meeting

AGENCY: Federal Crop Insurance Corporation (FCIC).

ACTION: Notice of meeting.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby gives notice that a meeting of the Board of Directors has been scheduled as follows:

Date: October 9, 1987.

Time: 9:00 A.M.

Place: Room 4045–S, 4th Floor, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Dated: September 15, 1987.

Peter F. Cole,

Secretary, to the Board of Directors, Federal Crop Insurance Corporation.

[FR Doc. 87–21776 Filed 9–21–87; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered Species; Application for Permit; Georgia Department of Natural Resources (P403)

Notice is hereby given that an Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), and National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant: a, Georgia Department of Natural Resources, Coastal Resources Division, 1200 Glynn Avenue, Brunswick, Georgia 31523–9990.

2. Type of Permit: Scientific Research.

3. Names of Marine Mammals:

Loggerhead sea turtle (*Caretta caretta*)
Leatherback sea turtle (*Dermochelys coriacea*)
Kemp's Atlantic ridley sea turtle (*Lepiodochelys kempi*)
Green sea turtle (*chelonia mydas*)
Hawksbill sea turtle (*Eretmochelys imbricata*)
Shortnose sturgeon (*Acipenser brevirostrum*)

4. Summary of Activity: An unspecified number of sea turtles captured incidentally during agency monitoring and assessment of commercially and recreationally important fish stocks will be immediately removed from sampling gear, identified, sexed, measured, tagged with metal monel tags in the front flippers, and released in area of capture.

An unspecified number of shortnose sturgeon captured during gill netting activities will be identified, measured, and released with monel tags attached to the dorsal fin.

5. Location of Activity: Georgia waters.

6. Period of Activity: 3 years.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW, Rm. 805, Washington, DC; and

Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: September 15, 1987.

Samuel W. McKeen,

Director, Management and Budget Office, National Marine Fisheries Service.

[FR Doc. 87-21808 Filed 9-21-87; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 9, 1987.

The USAF Scientific Advisory Board Fall General Membership Meeting will be held at Fort McNair, Washington, DC, on October 21 and 22, 1986 from 8:00 a.m. to 5:00 p.m. each day.

The purpose of the meeting will be to receive classified briefings on results of recent SAB studies.

These meetings concern matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-21768 Filed 9-21-87; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Grants Availability; Southern States Energy Board

AGENCY: Department of Energy.

ACTION: Notice of solicitation for a grant application.

SUMMARY: DOE announces that it is conducting negotiations with the Southern States Energy Board (SSEB) to support the development of a proposed regulatory regime.

The negotiations are expected to result in a grant, DE-FG01-87PE79023, in which DOE will provide approximately $200,000 for a period of performance of 18 months estimated to commence on September 23, 1987.

Scope of Study: The principal objective of this project is to support the development of a proposed regulatory regime, suitable for consideration by the SSEB's 16-member states, which would facilitate the striking of an appropriate balance between electricity demand management and electricity supply options, and provide incentives for investment in new generation capacity, where and when appropriate. This regime is to be developed with active participation from pertinent state and federal agencies, utilities, and other organizations, as appropriate.

The results generated by this grant will improve DOE's understanding of regulatory options and help foster a consensus for reform among utilities and regulators, as well as provide timely, credible, and relevant information that would support public policy development and other decision-making by federal, state and local governments.

Stephen J. Michelsen,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 87-21826 Filed 9-21-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 9645-001]

Surrender of Preliminary Permit; Hydrodynamics, Inc.

September 15, 1987.

Take notice that Hydrodynamics, Inc., permittee for the Lower South Fork Project, has requested that its preliminary permit be terminated. The preliminary permit was issued on July 8, 1986, and would have expired on June 30, 1989. The project would have been located on the South Fork Dry Creek in Carbon County, Montana.

The permittee filed the request on August 25, 1987, and the preliminary permit for Project No. 9645 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21828 Filed 9-21-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI70-63-002 et al.]

Applications for Abandonment of Service; Exxon Corp.

September 16, 1987.

Take notice that on September 1, 1987, Exxon Corporation (Exxon) filed applications to abandon service to Trunkline Gas Company (Trunkline), as more fully set forth in the tabulation and footnotes hereto.

In its application in Docket No. CI70-63-002 Exxon states it is subject to substantially reduced takes without payment and that it has entered into a take-or-pay buy-out as contemplated by § 2.76 of the Commission's Regulations. In its applications in Docket Nos. CI87-869-000 through CI87-871-000 Exxon states it has entered into a take-or-pay buy-out with Trunkline. Exxon requests that its applications be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85-1-000, at 18 CFR 2.77.[1]

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its

Continued

Since Exxon states that it is subject to substantially reduced takes without payment, and has entered into take-or-pay buy-out, and has requested that its applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Exxon to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [3]	Pressure base
CI70-63-002, B, Sept. 1, 1987.	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252-2180.	Trunkline Gas Company, South Timbalier Block 172 Field, Offshore Louisiana.	(1)(2)(3)	
CI87-869-000 (CI60-259), B, Sept. 1, 1987.	.....do	Trunkline Gas Company, Bayou Sale/Bayou Carlin Field, St. Mary Parish, Louisiana.	(2)(4)(5)	
CI-870-000 (CI64-1119), B, Sept. 1, 1987.	.....do	Trunkline Gas Company, Bayou Carlin Field, St. Mary Parish, Louisiana.	(2)(4)(6)	
CI87-871-000 (CI65-841), B, Sept. 1, 1987.	.....do	Trunkline Gas Company, Kelsey Field, Brooks County, et al., Texas.	(2)(4)(7)	

[1] Exxon requests permanent partial abandonment of its sale to Trunkline to reflect the permanent reservation and associated abandonment of up to one-half of the deliverability from each NGPA pricing category in the South Timbalier Block 172 Field. In support of its application Exxon states that it is subject to substantially reduced takes with payment. Trunkline has been purchasing gas substantially below take-or-pay and minimum take levels and has not made payment for gas not taken. In recent years Trunkline has only purchased about 30% of deliverability. The deliverability of the wells involved is 191,289 Mcf/d. The gas is NGPA section 104 flowing gas (25%), recompletion gas (2%), post-1974 gas (62%), and section 102(d) gas (11%).

[2] In support of its application Exxon states that the parties have entered into a take-or-pay buy-out. Exxon states that that this application is being filed pursuant to a settlement agreement between Exxon and Trunkline. Under the settlement, Exxon agreed to waive all claims against Trunkline for take-or-pay and minimum take obligations accrued through February 28, 1987. In addition, Exxon agreed to reduce contractual minimum take and take-or-pay quantities and to lower the contract price for gas taken, effective March 1, 1987. Exxon states that Trunkline has made a one-time non-recoupable payment in lieu of accrued take-or-pay and minimum take obligations.

[3] Exxon states that as part of the settlement agreement, Trunkline and Exxon agreed to amend their July 9, 1969, contract to reserve from commitment up to one-half of the deliverability produced from each NGPA pricing category in the South Timbalier Block 172 Field, effective upon the granting of abandonment authorization, and to file for abandonment of the reserved production.

[4] Exxon requests authorization to permanently abandon its sale of gas to Trunkline. Exxon states that as part of its settlement agreement with Trunkline, the parties agreed to terminate gas sales, effective upon the granting of abandonment authorization.

[5] The deliverability from the wells involved is 5,900 Mcf/d. The gas is NGPA section 104 post-1974 gas (3%) and section 106(a) gas (97%).

[6] The deliverability from the wells involved is 500 Mcf/d. The gas is NGPA section 104 flowing gas.

[7] The deliverability from the wells involved is 4,200 Mcf/d. The gas is NGPA section 104 flowing gas (38%), recompletion gas (50%), 1973-1974 biennium gas (2%), post-1974 gas (5%) and section 108 gas (5%).

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-21827 Filed 9-21-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA86-19-001]

Order Establishing Hearing Procedures; System Energy Resources, Inc.

Issued September 16, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On June 18, 1987, the Commission issued a letter order noting System Energy Resources, Inc. (SERI) disagreement with certain items contained in staff's audit report of SERI's books and records. The disagreement relates to SERI's accounting and the affect the accounting had on the monthly computation of the amounts billed customers under the Company's cost-of-service tariff. SERI was requested to advise whether it would agree to the disposition of the issues under the shortened procedures provided by § 41.3 of the Commission's regulations. 18 CFR 41.3 (1987).

On July 17, 1986, SERI responded that it did not consent to the shortened procedures. Instead, SERI requested that the matter be set for hearing pursuant to § 41.7 of the Commission's regulations. SERI also notified the Commission that it also disagreed with a third accounting matter noted in the audit report, related to the accounting and tariff billing for miscellaneous expenses that were capitalized as part of the cost of utility plant. A summary of the three disagreed issues is presented on Attachment A to this order.

Section 41.7 of the regulations provides that the proceeding will be assigned for hearing in case consent to the shortened procedures is not given. Accordingly, the Commission will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a

Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register**.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act, the provisions of the Federal Power Act, particularly section 205, 206, and 301 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 CFR Chapter I), a public hearing shall be held concerning the appropriateness of SERI's accounting practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A—Summary of Contested Accounting and Tariff Matters

The Company did not agree to take the corrective action recommended by the Division of Audits on the following accounting and tariff matters:

1. *Accounting for income tax benefits during the construction and operations of the Grand Gulf Project.*

The Company's method of determining the cost of funds for the construction was deficient because it did not factor into the computation certain available no-cost funds. The Company's failure to recognize the no-cost funds resulted in the following accounting and tariff billing deficiencies:

(A) Overaccrual of allowance for funds used during construction (AFUDC) on both Grand Gulf Unit Nos. 1 and 2.

(B) Overstatement of rate base in tariff billings for service from Unit No. 1.

A. Prior to the in-service date of Unit No. 1, the Company used a project financing method to accrue allowance for funds used during construction (AFUDC) during the construction of Grand Gulf Unit Nos. 1 and 2. The Company used a net-of-tax method to derive the amount to be capitalized for the debt component of the AFUDC. Under the net-of-tax method, the interest capitalized is reduced by the tax effect of deducting the interest currently for income tax purposes. The Company made AFUDC computations monthly, determined as follows: The actual cost of debt funds used during construction (on a net-of-tax basis) was capitalized and an allowance was provided for all equity funds recorded in its accounts. Other construction costs for which there were book/tax basis differences were capitalized gross, with the tax effects deferred in Account 282, Accumulated Deferred Income Taxes—Other Property.

In determining the net-of-tax debt cost, SERI assumed that all the interest related to the construction debt would be deducted for Federal income tax purposes. Therefore, to recognize that not all tax deductions generated by SERI could be used to reduce current consolidated income tax liability as hereafter described, SERI recorded an additional AFUDC allowance to compensate it for the lack of cost-free capital from income tax deductions initially contemplated in adopting the net-of-tax rate. SERI recorded amounts in Account 186, Miscellaneous Deferred Debits, and credited income tax expense that it claimed represented the unrealized no-cost capital associated with interest capitalized. SERI computed an additional AFUDC allowance on the balance recorded in Account 186.

During the examination, the Division of Audits (DOA) determined that the amount recorded in Account 186, which SERI claimed represented unrealized no-cost capital, was overstated as a result of the income tax allocation procedures followed by the MSU group. As a result, the Company overcapitalized AFUDC on equity funds. DOA determined that use of the overstated amounts resulted in an overaccrual of AFUDC of $152,770,741 from January 1974 to July 1, 1985.

The Company joined its parent Middle South Utilities Corporation (MSU) and other subsidiaries of the Middle South Energy System in filing consolidated Federal income tax returns during the audit period. During this period, the associated companies of the consolidated group (referred to as the MSU group) did not have sufficient current taxable income in total to permit use of all tax deductions and tax credits generated by SERI during the construction periods for the Grand Gulf generating units. However, a substantial portion of the tax deductions of SERI was used to reduce the consolidated income tax liability during the construction period.

SERI was reimbursed for much less than the full reduction in income tax liability on consolidated returns attributable to SERI deductions claimed on the returns. The failure to reimburse SERI for use of income tax deductions generated by costs incurred by SERI stems from MSU procedures for distributing current income taxes among system companies as provided for in an agreement entered into by each of MSU group members.

The MSU group's consolidated income tax distribution procedures applicable to situations where consolidated taxable revenues were sufficient to permit the use of all deductions and available investment tax credits (ITC) generated by group members provided for each member to receive credit for the deductions and ITC it generated and used in determining current consolidated income tax liabilities. Under such procedures a company could be required to pay into or be reimbursed from a consolidated income tax pool of funds depending on whether its taxable revenues were greater or elss than its deductions and ITC used to determine consolidated income tax liability.

However, the MSU group's distribution procedures included special rules applicable to situations where a company experienced a tax net operating loss (tax deductions exceeded taxable revenue) and the loss reduced consolidated taxable income to a level so as to preclude the use of ITC of another group member, which could have been used to reduce income taxes payable computed before use of the credits in the absence of the tax loss. The use of ITC to reduce consolidated income tax liability is limited to specified percentages of income taxes otherwise payable. Accordingly, a situation can arise where tax losses (tax deductions exceed taxable revenues) of a group member could reduce net taxable income to such an extent that ITC, which a tax gain member could have used if the member had filed a separate corporate tax return, could not be used in determining consolidated income tax liability. The special tax distribution rules of the MSU group, for use in such situations, called for inputing use of the ITC by the tax gain company. The tax gain company would then be given an income tax expense credit equivalent to the imputed ITC amount and the same amount would be

withheld from amounts that otherwise would have been credited or reimbursed to the tax loss member for use of its deductions. In later tax years, when the imputed ITC are actually used to reduce consolidated income tax liability, the withheld amounts would be credited to the tax loss member.

Conditions for application of the MSU group's special distribution rules existed during the years examined. Until July 1985, when Grand Gulf Unit No. 1 went in service, SERI's income tax deductions included in consolidated income tax returns far exceeded the taxable revenues SERI generated and substantial amounts of tax reimbursements were withheld from MSU tax distributions to SERI. The withheld amounts were distributed to other system companies for imputed utilization of ITC.

In accounting for the income tax effects of all deductions for cost generated by SERI and included in consolidated income tax returns, SERI recognized in its accounts the tax effects of all the deductions without distinction as to whether the deductions were utilized or not utilized to reduce consolidated taxable income. SERI recorded credits to income tax expense for the reimbursements received from the pool of tax funds to be distributed through procedures previously described. For any unreimbursed amounts, an asset was recorded by a charge to Account 186, Miscellaneous Deferred Debits, with a concurrent credit to Account 409.1, Income taxes, Utility Operating Income.

As of the in-service date claimed by SERI for Grand Gulf Unit No. 1, July 1, 1985, the balance in Account 186 consisted of amounts representing the tax effect of SERI's cost for: (1) Interest capitalized on a net-of-tax basis to the extent the interest was not used to reduce consolidated taxable income, and (2) interest and other costs capitalized that were used to reduce consolidated taxable income for which SERI was not reimbursed for the tax effects. As of July 1, 1985, the unreimbursed amount was about $345.5 million.

The $345.5 million amount was distributed to other members of the consolidated group under the MSU distribution procedures previously described, based on the imputed use of unused ITC. When the ITC is actually used to reduce consolidated income tax liability, the $345.5 million will be reimbursed to SERI under the MSU group's procedures.

DOA concluded that the undistributed amounts as they were accumulated in Account 186 during the construction of Units No. 1 and No. 2 resulted in excessive accruals of AFUDC on common equity. DOA based its conclusion on the policies announced by the Commission as to where the benefits of cost-free capital arising from book/tax timing differences should be recognized and the application of the benefits-burdens test for determining income tax allowances includable in the cost-of-service for ratemaking purposes in Docket No. RM80–42, et al. In Order No. 144, issued May 6, 1981, which adopted comprehensive income tax procedures for accounting and ratemaking, the Commission included the following discussion on the use of cost-free capital in determining construction costs.

Deferred taxes arising from construction related taxes and pensions, for example, reduce the financing requirements to be met from other sources during the construction period of a plant. Having the use of these interest-free funds results in benefits that the Commission has traditionally passed immediately through to customers by deducting the associated accumulated deferred taxes from rate base. But since these benefits arise from costs associated with the new plant, it is more equitable to allocate them over the service life of the plant. By using the construction related accumulated deferred taxes as an offset to the balance used in the calculation of AFUDC (rather than rate base), the net plant value going into rate base when the new plant goes on line is reduced. In this way the benefits a company receives from having the use of deferred tax funds during the plant construction period would be reflected in lower costs to be allocated over the plant's operating life.

The benefits/burdens test is one that says the question of who gets the benefit of an income tax deduction should be resolved based on who will bear the burden of costs which give rise to a deduction. Thus, if a cost incurred by a utility in providing service using cost-based rates generates a tax deduction by incurring costs in providing the service the tax benefit related to such cost shall be assigned to the cost of that service when computing an income tax allowance. A discussion on the benefits/burdens test appears in a discussion for the U.S. Court of Appeals for the District of Columbia, issued in Case No. 83.2059, on October 18, 1985, City of Charlottesville, which upheld the use of the test for ratemaking purposes. Certiorari was denied by the U.S. Supreme Court in Case No. 83–2059, on April 6, 1986.

SERI's failure to consider the benefits of cost-free capital associated with income tax deductions it generated resulted in an overstatement of the investment base for Grand Gulf Unit Nos. 1 and 2 during the construction period for the computation of allowance for funds used during construction (AFUDC).

If SERI had computed AFUDC under the method recommended by the DOA, which recognizes the benefit of cost-free capital, the Company would have reduced AFUDC (and the cost of utility plant) by $152,770,741 between the period January 1974 to July 1, 1985.

Recommendations: The Company (1) Revise procedures for determining unrealized tax benefits on no-cost capital includable in Account 186 for purposes of AFUDC, (2) record the entry shown below to properly state the cost to construct Grand Gulf, and (3) recompute all previous billings to customers reflecting the corrected plant and equity balances. The recomputed billings should reflect corrections of rate base and equity balances, correction of depreciation expense and adjustment of the return and income taxes applicable to the restatement of equity. The staff also recommends that differences between the recomputed billings and the amounts previously charged the ratepayers be refunded with interest, in accordance with Section 35.19(a) of the Commission's regulations.

419.1	Allowance for other funds used during construction	$152,770,741	
106	Completed construction not classified—Electric		$120,688,886
186	Miscellaneous deferred debits		32,081,855

To reverse AFUDC accrued on Grand Gulf Unit No. 1 ($120,688,886) and Unit No. 2 ($32,081,855) through July 1, 1985 that was excessive because the AFUDC calculation failed to take into account all cost-free capital generated by SERI expenditures and claimed on consolidated income tax returns. The computation reflects tax reductions realized by the Consolidated Group through 1984 and tax deductions estimated to be realized as recorded on the Company books through July 1, 1985

An additional correction is necessary to reduce AFUDC computed subsequent to July 1, 1985 for the Company's tax deductions that were included as a part of estimated tax payments

B. In addition to the matter discussed in Item A above, the Company also improperly included certain of the amounts receivable for income taxes from associated companies recorded in Account 186, Miscellaneous Deferred Debits, as part of the "Net Unit Investment" in tariff billings to customers.

At the time the tariff authorizing cost-of-service billings for Grand Gulf Unit No. 1 was approved, the Commission recognized that the Company's investment in the unit included AFUDC on a net-of-tax basis and that the Company's claim that it had not realized the benefit of the deductions contemplated under the net-of-tax AFUDC method. Accordingly, the Company's approved tariff, which became effective on July 1, 1985, the commercial operation date for Unit No. 1, states, in part,

Net Unit Investment" shall consist of the following: . . . recoverable income taxes to the extent previously credited to utility plant accounts and *not yet realized*, . . . (emphasis added)

SERI included in tariff billings as recoverable taxes about $345 million recorded in Account 186 that were already realized by the MSU group but not distributed to SERI. DOA concluded that the appropriate accounting for the $345 million (as of July 1, 1985) was Account 146, Accounts Receivable from Associated Companies, and not Account 186. DOA further concluded that SERI's tariff billings were not consistent with the terms of its tariff since the $345 million was realized by the MSU group.

As mentioned in Item A above, DOA supports its position based upon the Commission's stated policy with respect to the benefits of cost-free capital arising from book/tax timing differences and the application of the benefits/burdens test for determining income tax allowances includable in the cost-of-service for ratemaking purposes in Docket No. RM80-42, et al.

Recommendations: The Company (1) revise procedures to record future amounts due from associated companies for use of its tax deductions on the consolidated income tax return in Account 146, (2) record the entry shown below as of December 31, 1984 and the additional entries for the years 1985 and 1986 to transfer those amounts included in Account 186 which represent amounts owed to the Company for use of its tax deductions, and (3) recalculate all previous billings to customers and eliminate from the "Net Unit Investment" and from the equity balances included in the weighted cost of capital, the amounts receivable from associated companies for the tax effect of deductions generated by SERI and used to reduce consolidated taxable income, which was withheld from SERI under MSU tax distribution procedures. Any differences between the recomputed billings and the amounts previously charged the ratepayers shall be refunded with interest, in accordance with § 35.19(a) of the Commission's regulations.

146	Accounts receivable from associated companies	$345,563,172	
186	Miscellaneous deferred debits		$345,563,172
	To reclassify amounts receivable from associated companies for use of the Company's tax deductions for the period 1978 through December 31, 1984		
	An additional correction is necessary to reclassify the tax receivable amounts related to the 1985 and 1986 estimated income tax payments.		

2. *Accounting and tariff billings for bank fees.*

During the period July 1985 through February 1986 the Company improperly classified about $7.5 million of bank fees in Account 921, Office Supplies and Expenses, an administrative and general operating expense account. Amounts properly includible in Account 921 are permitted in cost of service tariff billings for Grand Gulf Unit No. 1. However, DOA considered the cost to be a cost of issuing debt and therefore, treated as an increment to the cost of debt interest. Under the tariff, only debt cost applicable to Unit No. 1 is includible in tariff billings.

The construction of the Grand Gulf placed a heavy financial burden on SERI. Because of its Single A bond ratings, SERI was required to use Letters of Credit from banks as a condition for issuance of Series A, B and C tax-exempt pollution control bonds. The Letters of Credit required payment of bank fees every three months. In addition, fees were paid to banks for release from escrow of proceeds from the Series C bonds. Fees were also paid to banks for restructuring certain debt consisting of foreign and domestic loans. A summary of the fees and the purposes for which they were paid follows.

	thousands
Letters of Credit—A, B, & C bonds	$5,643
Release of escrowed funds—C Bonds	1,173
Restructuring-foreign and domestic loans	648
Total	7,464

The Company should have accrued the quarterly fees for maintaining letters of credit in Account 427, Interest on Long-Term Debt. DOA further concluded the Company should have charged the fees for release of escrow funds and restructuring of loans to Account 181, Unamortized Debt Discount and Expense, and amortized such amounts by charges to Account 427, Amortization of Debt Discount and Expense, over the life of the related debt issues. The amounts charged to Account 427 constitute increments to the cost of interest on the debt that are recoverable to the extent provided in the tariff for Unit No. 1.

The instructions to Account 427 specifically provide for including interest on outstanding long-term debt issues but do not provide any item list or other descriptions of what constitutes interest. However, it is well known that interest cost is not limited to the nominal rate specified on debt instruments. The Line of Credit fees are just as much a cost for long-term borrowing as the nominal rates of interest payable to debt holders.

The instructions to Account 181 specifically provide for including therein expenses related to the issuance or assumption of debt securities. The release and restructing fees were related to SERI's debt.

General Instruction No. 6, Item Lists, of the Uniform System of Accounts makes it clear that the lists are intended to be representative and not complete, and that classification of a listed item to an account is warranted only when consistent with the instructions to that account.

Recommendations: The Company (1) adopt procedures effective January 1, 1987, to classify fees for maintaining Letters of Credit to Account 427, Interest on Long-Term Debt; (2) establish in Account 181, Unamortized Debt Discount and Expense, an amount representing the unamortized portion of escrow release and restructing fees through January 1, 1987, and thereafter amortize the fees monthly over the remaining life of the related debt issues by charges to Account 428, Amortization

of Debt Discount and Expense; and (3) recalculate and refund prior tariff billings based on a restatement of accounts as they would have been if the recommended procedures had been followed from inception of the fees.

3. *Miscellaneous expenses capitalized as plant in service.*

The Company improperly capitalized certain expenditures as part of the cost of the Grand Gulf Unit No. 1. The expenses improperly capitalized included:

Year	Description of the payments	Amount
1983	Zum fine	$25,000
1984	NRC fine	12,000
1984	Diesel fuel (for emergency back up power).	167,800
1984 and 1985	U.S. Committee for Energy Awareness.	940,770

The above expenses do not meet the cost criteria contained in Electric Plant Instruction No. 3, Components of Construction Cost.

The Company should have assigned the payments for diesel fuel to Account 154, Plant Materials and Operating Supplies. The Company should have obtained information on the activities of the U.S. Committee for Energy Awareness so as to properly allocate the costs between Accounts 930.2, Miscellaneous General Expenses, and Account 426.4, Expenditures for Certain Civic, Political, and Related Activities. The other payments were period costs that the Company should have charged to nonoperating expense accounts as incurred. The Company should not have included the amounts properly assignable to Account 930.2 in cost-of-service billings to current customers without specific Commission approval, since the costs related to a period prior to the operational date of the Grand Gulf Unit No. 1.

Recommendations: The Company (1) record the entry shown below to remove the above noted costs (except for the amount transferred to Account 154) from utility plant and (2) recalculate all previous tariff billings to customers by eliminating the above costs from the Net Unit Investment and refund with interest, return, tax and depreciation expenses collected from the customers to date. A billing adjustment for the balance transferred to Account 154 is not required because the Company's tariff permits the inclusion of Account 154 as well as plant in service balances in the computation of net unit investment for billings purposes.

154	Plant materials and operating supplies	$167,800	
426.3	Penalties	37,000	
426.5	Other deductions	940,770	
106	Completed construction not classified—Electric		$1,145,570

To correct the plant accounts for: (1) Certain operating expenses that were improperly capitalized as a cost of construction and (2) the cost of diesel fuel that should have been included in materials and supplies.

[FR Doc. 87-21832 Filed 9-21-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of August 21 Through 28, 1987

During the Week of August 21 through August 28, 1987, the appeal and the applications for exception or other relief listed in the Appendix of this Notice were filed with the Office of Hearing and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of the Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 15, 1987.

George, B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 21 through August 28, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 24, 1987	Kentucky, Frankfort, KY	KER-0032	Request for Modification/Rescission. If granted: The July 14, 1987 Decision and Order (Case No. KEG-0012) issued to Kentucky would be modified regarding Kentucky's expenditure plan in the Stripper Well Settlement Agreement.
Aug. 25, 1987	Coalition for Safe Power, Portland, OR	KFA-0116	Appeal of an Information Request Denial. If granted: Coalition for Safe Power would receive access to copies of agency records pertaining to environmental reviews underway at the Hanford Nuclear Reservation at Richland, Washington.
Aug. 25, 1987	Deaton Oil Co., Murfreesboro, AR	KEE-0152	Exception to the Reporting Requirements. If granted: Deaton Oil Company would not be required to file Form EIA-782B, "Reseller/Retailer Monthly Petroleum Products Sales Report."
Aug. 25, 1987	Economic Regulatory Administration, Washington, DC	KRD-0028	Motion for Discovery. If granted: Discovery would be granted to Economic Regulatory Administration in connection with the Statement of Objections submitted in response to the Proposed Remedial Order (Case No. HRO-0285) issued to Cities Service Company.
Aug. 26, 1987	Northern Mariana Islands, Saipan, Mariana Islands	KEE-0151	Exception from the Energy Conservation Program. If granted: Northern Mariana Islands would be exempted from the Department of Energy's regulations governing the Institutional Conservation Program, 10 CFR Part 455
Aug. 26, 1987	Wholesale Petroleum Agency, Owensboro, KY	KEE-0150	Exception to the Reporting Requirements. If granted: Wholesale Petroleum Agency would not be required to file Form EIA-782B, "Reseller/Retailer Monthly Petroleum Products Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of August 21 to August 28, 1987]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
08/14/87	Floyd D. Crow	RF265-2545
08/20/87	Lenox Crystal	RF277-86
08/21/87	Pruden Shell	RF298-17
08/21/87	C.J. Winchip & Sons, Inc.	RF225-10903
08/21/87	Pennzoil/West Virginia	RQ10-392
08/24/87	Dixie Chemical Corp.	RF277-87
08/24/87	Peabody Skelly Service	RF265-2546
08/24/87	Sure Fire Fuel Corp.	RF286-9
08/25/87	Horn Oil Co	RF265-2547
08/25/87	Celanese Chemical Co	RF265-2548
08/25/87	Celanese Chemical Co	RF52-7
08/25/87	North Reading B/P.	RF262-5
08/25/87	Township Oil Co	RF250-2733
08/21/87 thru 08/28/87	Crude Oil Refunds Applications Received.	RF272-4479 thru RF272-5033

[FR Doc. 87-21825 Filed 9-21-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of August 3 Through August 7, 1987

During the week of August 3 through August 7, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Mobil Oil Corporation, 8/5/87, KFA-0111

A Decision and Order was issued by the Department of Energy (DOE) on July 24, 1987, concerning a Freedom of Information Act (FOIA) Appeal filed by Steptoe & Johnson (Steptoe) on June 10, 1987. *Steptoe & Johnson*, 16 DOE ¶ , Case No. KFA-0103 (July 24, 1987) (Steptoe). On July 24, 1987, subsequent to issuance of the decision, the DOE received comments relating to the proceeding from Mobil Oil Corporation (Mobil). On the basis of Mobil's comments, the DOE determined that the July 24, 1987 Decision and Order should be modified to prohibit release of Mobil's Transfer Pricing Data under the FOIA. Therefore, the decision in Steptoe was modified to include Mobil among those firms whose data would not be released.

Refund Applications

Albert Hogoboom Tank Truck Service, et al., 8/5/87, RF270-2360, et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for Surface Transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the volumes of refined petroleum products claimed by six Surface Transporters and will use those volumes as a basis for the refunds that will ultimately be issued to the six firms. The DOE stated that because the size of a Surface Transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amount of the six firm's refunds will be determined at a later date. The total volume approved in this Decision is 5,650,788 gallons.

American President Lines Ltd., et al., 8/5/87, RF271-120, et al.,

The Department of Energy (DOE) issued a Decision and Order approving applications submitted by six water transporters for refunds from the Rail and Water Transporters Escrow established as a result of the Stripper Well Settlement Agreement. The methods used by the applicants were similar to those accepted by the DOE in previous Rail and Water decisions. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Rail and Water claims.

American Transfer Company, et al., 8/4/87, RF270-1424 et al.

The Department of Energy (DOE) issued a Decision and order approving in part the volumes of six applicants for refund from the Surface Transporters Escrow, established as a result of the Stripper Well Settlement Agreement. The DOE eliminated from the six applications a portion of the claim that was based on gallons of fuel purchased by owner/operators of the firm. The DOE will determine a per gallon refund amount and establish the amount of each company's refund based on this adjusted volume after it completes its analysis of all Surface Transporter claims.

Camas Prairie Railroad Co., et al., 8/7/87, RF271-7, et al.

The DOE issued a Decision and Order approving applications submitted by five companies for refunds from the Rail and Water Transporters (RWT) Escrow established as a result of the Stripper Well Settlement Agreement. OHA found that all five applicants had established that they were members of the RWT class, and had substantiated their purchases of the volumes of U.S. petroleum products claimed in their respective applications. Accordingly, OHA approved all five applications. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Rail and Water claims.

Cartwright Van Lines, Inc. and Colonial Fast Freight Lines, Inc., 8/4/87 RF270-1436 and RF270-1439.

The Department of Energy (DOE) issued a Decision and Order denying two Applications for Refund from the Surface Transporters Escrow, established as a result of the Stripper Well Settlement Agreement. The DOE determined that the claims of both Cartwright Van Lines, Inc. and Colonial fast Freight Lines, Inc. were based on gallons of fuel purchased by owner/operators, not the firm itself. These gallons are ineligible for a refund because they were not purchased by the applicants. Therefore, the applicants did not meet the minimum requirements for a Surface Transporter Refund Application and were denied.

Canadian National Railway Co., 8/6/87, RF271-70.

Canadian National Railway (CNR), filed an Application for Refund from the Rail and Water Transporters Escrow. In considering that application, OHA determined that CNR was not incorporated under the laws of any state of the United States, as required by Paragraph 16 of the Order Establishing Transporters Escrow. Accordingly, OHA held that CNR was not a member of the class of Rail Water Transporters, and denied the firm's application.

Charles C. Towne & Sons, Inc., et al., 8/4/87, RF270-981, et al.

The DOE issued a Decision and Order to 15 firms that applied for refunds from the $10.75 million Surface Transporters Escrow fund established pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. Each applicant demonstrated that it operated motor vehicles during the Settlement Period and that it was either a "for hire" carrier or a private fleet operator for the purposes of this proceeding. In addition, each applicant demonstrated that it purchased a certain volume of eligible petroleum products above the 250,000 gallon minimum prescribed in the Order establishing the Surface Transporters Escrow. Non-vehicle and/or off-road fuel had to be subtracted from three of the claims. Once these adjustments were made, however, all 15 Applications were approved. The respective volumes will be used to calculate each company's final refund. The total number of gallons approved in this Decision is 100,124,858.

Colonial Rubber Works, Inc., et al., 8/5/87, RF270-1343 et al.

The DOE issued a Decision and Order approving the volumes of nine Applications for Refund from the Surface Transporters Escrow, established as a result of the Stripper Well Settlement Agreement. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Cook Moving Systems, Inc., et al., 8/4/87, RF270-1442 et al.

The Department of Energy (DOE) issued a Decision and Order approving in part the volumes of sixteen applicants for refund from the Surface Transporters Escrow, established as a result of the Stripper Well Settlement Agreement. The DOE eliminated from the sixteen applications a portion of the claim that was based on gallons of fuel purchased by owner/operators of the firm. The DOE will determine a per gallon refund amount and establish the amount of each company's refund based on this adjusted volume after it completes its analysis of all Surface Transporter claims.

Corinth and Counce Railroad Co., 8/6/87, RF271-4.

Corinth and Counce Railroad (CCR) filed a Motion for Reconsideration, seeking to reverse our grant of the firm's October 10,

1986 Application for Refund from the Rail and Water Transporters (RWT) Escrow. According to CCR, its Application for Refund was not proper because the firm lacked the authority to sign the waiver which is part of the court approved application form. OHA dismissed this argument and denied CCR's Motion for Reconsideration. When a firm which is actually a member of the RWT class signs the waiver which is part of the court approved application form, that application constitutes an irreversible election of benefits. In this case, it was CCR's responsibility to determine the most advantegeous forum in which to seek a refund before filing its original application. It would be inappropriate to disrupt the entire RWT proceeding by allowing CCR or other firms to continuously reposition themselves vis-a-vis the various refund proceedings pending before OHA.

Curtis Transport, Inc., et al., 8/4/87, RF270–1443 et al.

The Department of Energy (DOE) issued a Decision and Order denying nine Applications for Refund from the Surface Transporters Escrow, established as a result of the Stripper Well Settlement Agreement. The DOE determined that each of the claims of the nine companies was based on gallons of fuel purchased by owner/operators of the firm. These gallons are ineligible for a refund because they were not purchased by the applicant. Therefore, the applicants did not meet the minimum requirements for a Surface Transporter Refund Application and were denied.

Getty Oil Company/Aker's Skelly, et al., 8/5/87, RF265–0023, et al.

The DOE issued a Decision and Order concerning 59 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. None of them was entitled to a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $230,074, representing $115,526 in principal and $114,548 in accrued interest.

Getty Oil Company/Alamo Service, et al., 8/5/87, RF265–1011, et al.

The DOE issued a Decision and Order concerning 44 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. None of them was entitled to a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $125,962, representing $63,250 in principal and $62,712 in accrued interest.

Getty Oil Company/Armstrong Oil Company, et al., 8/6/87, RF265–1474, et al.

The DOE issued a Decision and Order concerning 96 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. None of them was entitled to a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $309,615, representing $155,475 in principal and $154,140 in accrued interest.

Gulf Oil Corporation/H.M. Oppel, 8/6/87, RF40–2600

The DOE issued a Decision concerning the Application for Refund from the Gulf Oil Corporation consent order fund filed by H.M. Oppel. In considering the application, the DOE found that H.M. Oppel had failed to meet the cost-absorption requirement. Rather, the applicant stated that it passed through to its customers any Gulf price increases. Accordingly, the firm's refund application was denied.

Gulf Oil Corporation/Hughes Service, 8/6/87, RF40–1873 et al.

The DOE issued a Decision granting four Applications for Refund from the Gulf Oil Corporation consent order fund filed by retailers and resellers of Gulf refined products. In considering the applications, the DOE found that each of the claimants had demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed. Accordingly, the firms were granted refunds totalling $4,100, representing $3,248 in principal plus $852 in interest.

Gulf Oil Corporation/May's Gulf, 8/4/87, RF40–229

The DOE issued a Decision concerning the Application for Refund from the Gulf Oil Corporation consent order fund filed by May's Gulf. In considering the application, the DOE found that May's Gulf had failed to meet the cost-absorption requirement. Rather, the applicant stated that it passed through to its customers any Gulf price increases. Accordingly, the firm's refund application was denied.

Gulf Oil Corporation/Three Brothers Gulf, 8/6/87, RF40–3703

The DOE granted a refund from the Gulf Oil Corporation deposit fund escrow account to the Three Brothers Gulf, a retailer of Gulf petroleum products. Three Brothers demonstrated that it would not have been required to reduce their selling prices to their customers by the amount of the refund received. The refund to Three Brothers totalled $1,575.

Kaiser Sand & Gravel Company and Reed Crushed Stone Co., Inc., 8/4/87, RF270–1515, RF270–1518

The Department of Energy (DOE) issued a Decision and Order approving in part the volumes of two applicants for refunds from the Surface Transporters Escrow, established as a result of the Stripper Well Settlement Agreement. The DOE eliminated from the applications of Kaiser Sand & Gravel Company and Reed Crushed Stone Company, Inc. the portion of the claims based on ineligible gallons of asphalt oil and ineligible gallons used in quarrying equipment and water transportation. The DOE will determine a per gallon refund amount and establish the amount of each company's refund based on their adjusted volumes after it completes its analysis of all Surface Transporter claims.

Marathon Petroleum Company/Cheker Oil Company, 8/4/87, RF250–1984, RF 250–2730

The DOE issued a Decision and Order denying an Application for Refund submitted by Cheker Oil Company in connection with the Marathon Petroleum Company refund proceeding. The DOE found that it would be inappropriate to issue a refund to Cheker because the firm is a division of a wholly owned subsidiary of Marathon. For the same reason, the DOE rescinded a refund previously granted to Cheker in the Marathon proceeding. Cheker was directed to remit $4,904, the total refund it received pursuant to a previous decision, plus $123 in interest.

Poole Truck Line, Inc. and Lucky Stores, Inc., 8/5/87, RF270–2355, RF270–2392

The DOE issued a Decision and Order approving the purchase volumes claimed by a "for hire" carrier and a private carrier in connection with the Surface Transporters Escrow. Poole Truck Line, Inc. and Lucky Stores, Inc. substantiated their claims by providing copies of the records they used in deriving their claim amounts. The DOE stated that because the size of a Surface refund will depend upon the total number of gallons that are ultimately approved, the actual amount of the two firms' refunds will be determined at a later date. The total volume approved for the two firms in this Decision is 104,062,889 gallons.

Pyrofax Gas Corporation/Central Foundry Company, 8/4/87, RF277–41

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Central Foundry Company (CFC), an ultimate consumer of Pyrofax Gas Corporation propane. CFC applied for a refund based on the procedures outlined in *Pyrofax Gas Corporation*, 15 DOE ¶ 85,494 (1987), governing the disbursement of settlement funds received from Pyrofax pursuant to a March 23, 1981 Consent Order. Since CFC was an end-user, the firm was found to have been injured by Pyrofax's alleged overcharges. After examining the application and supporting documentation submitted by CFC, the DOE granted the firm a refund of $389,574, representing $225,629 in principal and $163,945 in accrued interest.

Student Transit—Eau Claire, Inc. et al., 8/4/87, RF270–586 ET AL.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by four bus companies and will use those gallonages as a basis for the refunds that will ultimately be issued to the four firms. The DOE stated that because of the size of a surface transporter, applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the four firms' refunds will be determined at a later date.

Dismissals

The following submissions were dismissed:

Name and Case No.

City Taxicab & Transfer Co., Inc., RF270–132
Duluth Transit Authority, RF270–16
Joseph L. Redding, Jr., KFA–0108
Money Saver Station, RF238–79
Redding Petroleum, Inc., RF238–48
Remsen Tank Line Co., RF225–5647

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

September 15, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 87–21823 Filed 9–21–87; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of August 10 Through August 14, 1987

During the week of August 10 through August 14, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

David R. Soler, 8/13/87, KFA–0106

David R. Soler filed an Appeal from a denial by the Freedom of Information Authorizing Official of the Princeton Area Office of the Department of Energy (DOE) of a Request for Information which he submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that an adequate search had been conducted in response to the request and that no responsive documents existed. Therefore, the Appeal was denied.

Remedial Order

Aweco, Inc. and Billy K. Hargis, 8/13/87, HRO–0179

The DOE issued a final Remedial Order to AWECO, Inc. and Billy K. Hargis (the Respondents). In that Order, the DOE found that during the period March 1977 through December 1978, the Respondents violated 10 CFR 212.131 in 364 transactions by miscertifying 11,330,733 barrels of crude oil. The DOE also found that in those same 364 transactions, the Respondents violated 10 CFR 210.62(c) and 205.202 by entering into a series of paper "balancing" transactions in order to conceal their miscertification violations. On this latter point, DOE determined that the Respondents' sole purpose in engaging in these paper transactions was to subvert the certification regulations. DOE concluded by finding that the Respondents' actions in this regard caused them to reap unwarranted profits at the expense of the consuming public who needlessly paid the resulting increase in the price of petroleum products. For these regulatory violations, the DOE ordered the Respondents to pay the DOE $50,914,843.25 plus appropriate interest.

The DOE also found that during the period January through December 1978 the Respondents received illegal revenues totalling $2,386,171.03 as a result of reselling crude oil in 51 transactions at prices in excess of those permitted by 10 CFR 212.186. The Remedial Order requires the Respondents to pay to the DOE the above-stated amount plus appropriate interest.

Further, the DOE determined in the Remedial Order that the Respondents violated 10 CFR 212.186 in certain of their crude oil resales during October 1978. With respect to this regulatory violation, the DOE found that in a series of transactions the Respondents sold the same crude oil twice at prices in excess of the actual prices they paid for the crude, while failing to perform any service or other function traditionally and historically associated with the resale of crude oil. The Remedial Order requires the Respondents to pay $409,120.02 plus appropriate interest in restitution for their layering activities in October 1978.

Finally, the DOE determined that in seven transactions during the period March through December 1977 the Respondents violated 10 CFR 210.62(c) and 205.202 when they inserted themselves between two other resellers and sold crude oil at a substantial mark-up to their customers. The DOE further found that while the Respondents were engaged in the above-described practice, they performed no role in the production, distribution, or refining of the crude oil they purchased and sold. As a result of these regulatory violations, the Remedial Order requires the Respondents to pay the DOE $800,568.36, plus appropriate interest.

In summation, the DOE held that the Respondents jointly and severally liable for regulatory violations in the amount of $54,510,702.66, exclusive of interest. According to the Remedial Order, the Respondents are obligated to pay the above-stated sum, plus appropriate interest, to the DOE for ultimate distribution pursuant to 10 CFR Part 205, Subpart V.

Interlocutory Orders

Powerine Oil Company, 8/14/87, KRZ–0036, KRZ–0037, KRZ–0038, HRD–0131, HRD–0094 and HRH–0094

The DOE issued a Decision and Order considering six procedural motions filed in connection with a Proposed Remedial Order (PRO) issued to Powerine Oil Company by the Economic Regulatory Administration (ERA). Powerine filed three Motions to Dismiss, asserting that (1) the Office of Hearings and Appeals has no authority to adjudicate DOE enforcement actions, (2) the interest and refund provisions of the PRO should be dismissed, and (3) a declaration by the auditing DOE employee should be dismissed; a Motion for Discovery concerning ERA's calculations in the PRO exhibits, DOE rulemakings, contemporaneous construction of certain crude oil regulations, and negotiations surrounding an earlier settlement agreement between Powerine and the FEA; a Motion for Evidentiary Hearing; and a Request for Production of Documents. The DOE denied all of the above motions, finding that (1) no basis existed for dismissal of the PRO, (2) the requested discovery (including document production) was either irrelevant or had already been provided to Powerine by ERA, and (3) the evidentiary hearing motion did not establish the existence of disputed facts.

Reinauer Petroleum Company, Economic Regulatory Administration, 8/14/87, KRZ–0045, KRZ–0061 and KRR–0027

Reinauer Petroleum Company objected to a Motion to Amend the Proposed Remedial Order issued to the firm by the Economic Regulatory Administration on November 19, 1982. In the PRO, as supplemented by the Motion to Amend, the ERA alleged that Reinauer received $224,541.33 in overcharges as a result of its violation of the petroleum price regulations set forth in 10 CFR 212.93 in its sales of motor gasoline during the period April 1, 1979 through September 30, 1979. The PRO was remanded to the ERA for recomputation of the alleged overcharges. *Reinauer Petroleum Co.*, 12 DOE ¶ 83,016 (1984). In considering the firm's objections, the DOE determined that most of the firm's arguments fell outside the narrow scope of the remand proceeding. The DOE also rejected the firm's alternative method of recomputing overcharges on the grounds that the method was not sanctioned by the regulations. Accordingly, the DOE issued a rinal Remedial Order to Reinauer which requires the firm to remit the overcharges to the DOE for deposit into a DOE escrow account for ultimate disbursement pursuant to 10 CFR Part 205, Subpart V.

In the Decision, the DOE also denied a Motion to Strike filed by the ERA and a Motion for Reconsideration filed by Reinauer. The Motion to Strike was denied on the grounds that the ERA had not shown that unusual or prejudicial circumstances existed which would warrant approval of the Motion. The Motion for Reconsideration, which requested reconsideration of the DOE's determination in the remand order to impose interest on the alleged overcharges, was denied on the grounds the firm had not provided evidence of significantly changed circumstances which would necessitate reconsideration. Specifically, the DOE found that TECA's decision in *Joseph Stertz* v. *Gulf Oil Corp.*, 783 F. 2d 1064 (Temp. Emer. Ct. App. 1986), was not grounds for reconsideration of the interest issue.

Supplemental Order

J.D. Streett & Company, Inc./Economic Regulatory Administration, 8/14/87, KRX–0040, KRZ–0063 and KRR–0022

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The DOE issued a major Interlocutory Order (Case No. KRX–0040) which resolved most of the issues in the Proposed Remedial Order (PRO) proceeding involving J.D. Streett & Company, Inc. (Streett). The PRO alleges that during the audit period January 1, 1978 through November 30, 1979, Streett sold motor gasoline in violation of the price regulations codified at 10 CFR Part 212, Subpart F and as a result overcharged its customers in the amount of $2,948,350.46. Since the filing of the initial pleadings in the proceeding, both the ERA and Streett have submitted revisions of the overcharges alleged in the PRO based upon the ERA's audit methodology. In the Order, the DOE determined that the overcharge recalculations submitted by Streett and the ERA are inaccurate. Accordingly, the DOE directed Streett to supply the ERA with additional information concerning its product costs, prices, and pre-audit and audit period unrecouped product cost banks, and remanded for revisions based on the rulings made on the legal issues and the new factual data to be submitted by the firm.

In the Order, the DOE determined that the PRO establishes a prima facie case of regulatory violation and that the ERA correctly determined that Streett was a gasoline "reseller" during the audit period. Further, the DOE upheld the ERA's application of the general gasoline price rule codified at 10 CFR 212.93 in auditing Streett's sales of unleaded gasoline. In addition to the legal challenges to the PRO, the DOE addressed the validity of the ERA's audit methodology. First, the DOE determined that in the absence of a specific unleaded gasoline price rule, the ERA acted reasonably in imputing the May 15, 1973 price of leaded regular gasoline to Streett's sales of unleaded gasoline. Second, in an issue of first impression, the DOE considered whether unleaded and regular leaded gasoline should be treated as the same product for product costs. Noting that historically resellers maintained price differentials between those two grades of gasoline, the DOE determined that the increased costs of unleaded gasoline should be determined separately from leaded gasoline. In so holding, the DOE also rejected Streett's contention that it be allowed to "commingle" its unrecouped product cost banks for leaded and unleaded gasoline. While upholding the ERA's audit methodology concerning unleaded gasoline sales, the DOE rejected the ERA's treatment of Streett's product costs. The ERA had revised Streett's costs on a separate inventory basis. After reviewing Streett's unorthodox inventory cost accounting method, the DOE determined that Streett had in fact used firm-wide inventory cost accounting and ordered the ERA to revise Streett's product costs accordingly. At the same time, the DOE rejected certain cost adjustments claimed by Streett, finding that they were in fact phantom costs or non-product costs.

In addition to resolving the issues noted above, the Order also denied two motions relating to the PRO. First, the DOE rejected a Motion to Amend the PRO filed by the ERA on December 19, 1986 (Case No. KRX–0040), finding that the ERA's proposed PRO revisions contained the above-noted audit methodology errors. Second, the DOE rejected a Motion for Reconsideration filed by Streett on March 12, 1987 (Case No. KRR–0022) in which Streett requested that OHA reconsider a prior determination not to dismiss the PRO.

Refund Applications

Allied Materials/Poteau Petroleum Products, 8/14/87, RF194–6

Poteau Petroleum Products (Poteau) filed an Application for Refund in which it sought a portion of the consent order funds obtained from Allied Materials Corp. and Excell Corp. (Allied) (consent order no. 660S00302Z). The applicant's level of refined petroleum product purchases from Allied during the consent order period resulted in it being eligible for a refund in excess of the small claims threshold amount. Based on the price and unrecouped cost data which the applicant submitted, the DOE determined that the applicant was injured during 14 months of the consent order period. In accordance with the procedures set forth in *Allied Materials Corp. and Excell Corp.*, 13 DOE ¶ 85,095 (1985), Poteau's refund was calculated based upon the amount of refined petroleum products purchased during these 14 months. The DOE determined that Poteau was entitled to a refund of $6,183 ($4,223 in principal and $1,960 in interest).

Bluebird, et al., 8/10/87, RF270–1799 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by twenty-four trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the twenty-four firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the twenty-four firms' refunds will be determined at a later date.

Brown's Bakery, Inc. et al., 8/13/87, RF270–1651 et al.

The Department of Energy (DOE) issued a Decision and Order approving the volumes of twenty-one Applications for Refund from the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Coline Gasoline Corp./Pennsylvania et al., 8/13/87, RQ2–362 et al.

The DOE issued a Decision and Order granting a second-stage refund application submitted by the Commonwealth of Pennsylvania and disapproving a second-stage refund application submitted by the State of Montana. Pennsylvania will use $3,889,798 from the Coline Gasoline Corp., the National Helium Corp., the Pennzoil Company and the Standard Oil Company (Indiana) escrow accounts to fund the weatherization of low-income housing. The DOE denied Montana's proposal to fund the replacement of mercury vapor outdoor lighting with a more efficient variety of high pressure sodium lights.

D&P Trucking Company, Inc., Schafer Bakeries, Inc. and Einck Trucking, 8/14/87, RR270-1, RR270-5 and RR270-7.

D&P Trucking Company, Inc., Schafer Bakeries, Inc. and Einck Trucking filed Motions for Reconsideration of the dismissal by the DOE of their Applications for Refund from the Surface Transporters Escrow fund. Each firm's refund application had been dismissed because it was filed after the filing deadline established for Surface Transporter applications. In considering each firm's reason for late filing set forth in its Motion, the DOE found that none of the firms had convincingly demonstrated that its filing burden differed from any of the approximately 2400 firms that managed to file timely applications. Accordingly, the Motions for Reconsideration were denied.

Dravo Mechling Corporation et al., 8/13/87, RF271–87 et al.

The Department of Energy (DOE) issued a Decision and Order approving applications submitted by six water transporters for refunds from the Rail and Water Transporters Escrow established as a result of the Stripper Well Settlement Agreement. The methods used by the applicants for estimating their consumption of petroleum products were similar to those accepted by the DOE in previous Rail and Water decisions. Two of the applicants erred in the calculation of their respective claims and the DOE recalculated their gallonage correctly. The DOE rejected the estimation technique used by one of the applicants and recalculated its gallonage by averaging the year immediately prior to and the year immediately following the time period for which the estimate was used. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Rail and Water claims.

Getty Oil Company/Alma Gas & Equipment Co. et al., 8/14/87, RF265–1092 et al.

The DOE issued a decision and Order concerning five Applicants for Refund filed by purchasers of products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In two of these cases, the applicants were eligible for a claim below the $5,000 threshold. In the remaining three cases, the applicants elected to limit their claims to $5,000. The sum of the refunds approved in this Decision is $24,625, representing $12,365 in principal and $12,260 in accrued interest.

Getty Oil Company/Johnny's Getty Service,Inc., 8/14/87, RF265–1390.

The DOE issued a Decision and Order concerning an Application for Refund filed by

Johnny's Getty Service, Inc. (JGS) with respect to its purchases of products covered by a consent order that the agency entered into with Getty Oil Company. JGC submitted information indicating the volume of its Getty purchases which establishes eligibility for a claim below the $5,000 threshold. The sum of the refund approved in this Decision is $5,925, representing $2,975 in principal and $2,950 in accrued interets.

Gulf Oil Corporation/F.J. Stanford, Jr., 8/13/87, RF40–321.

The DOE issued a Decision concerning the Application for Refund from the Gulf Oil Corporation consent order fund filed by F.J. Stanford, Jr. In considering the application, the DOE found that F.J. Stanford had failed to meet the cost-absorption requirement. Rather, the applicant stated that it passed through to its customers any Gulf price increases. Accordingly, the firm's refund application was denied.

Gulf Oil Corporation/Smethport Gulf et al., 8/14/87, RF40–2376 et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed by retailers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corporation*, 12 DOE ¶ 85,048 (1984), which governs the disbursement of settlement funds received from Gulf pursuant to a 1978 Consent Order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the amount of the refund claimed. After examining the applications and supporting documentation submitted by the claimants, the DOE concluded that they should receive refunds totaling $10,646, representing $8,435 in principal and $2,211 in accrued interest.

Gulf Oil Corporation/Strubes Propane, Inc., 8/13/87, RF40–3579.

The DOE issued a Decision and Order concerning an Application for Refund filed by Energy Refunds, Inc. on behalf of Strubes Propane, Inc. (Strubes), a reseller/retailer of Gulf refined petroleum products. The firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In reviewing the application, the DOE determined that Strubes' application was based on purchases made by Duncan Gulf Service Stations and Butane Company, which Strubes purchased after the Gulf consent order period. The DOE further determined that although the right to a refund was not one of the assets of Duncan that Strubes acquired pursuant to the purchase and sale agreement between Strubes and Duncan, Strubes was eligible to receive a refund because the Trustee for Duncan subsequently assigned to Strubes Duncan's right to the Gulf refund. Accordingly, the DOE concluded that Strubes should receive a refund of $3,142 ($2,489 principal plus $653 interest).

Hall's Motor Transit Company, 8/14/87, RF270–1126.

The DOE issued a Decision evaluating a trucking company's Surface Transporter claim. After correcting mathematical errors in the application and excluding volumes purchased by owner operators, the DOE approved the company for a refund. The Decision describes the method by which the DOE verified and adjusted the company's large volume claim.

The Decision distinguishes between: (1) Volumes purchased by owner operators who leased their vehicles and services to a carrier and (2) volumes purchased by a carrier for use in other rented vehicles. In most carrier/owner operator relationships, the owner operator was responsible for the fuel costs and therefore owner operator volumes should be excluded from the carrier's claim. However, if the carrier did not use owner operators but merely rented vehicles and paid for the vehicles' fuel, the carrier would be eligible for a refund based on the fuel.

Luzerne County Transportation Authority, 8/12/87, RF270–1713.

The Department of Energy (DOE) issued a Decision and Order denying an Application for Refund from the Surface Transporters Escrow, estalished as the result of the Stripper Well Settlement Agreement. In its analysis of the Application, the DOE discovered that Luzerne County Transportation Authority was a governmental authority and was therefore not eligible to receive a refund from the Surface Transporters Escrow.

Marine Petroleum Company and Mars Oil Company/Moffit Oil Company et al., 8/14/87, RF257–1 et al.

The DOE issued a Decision and Order concerning 17 Applications for Refund filed by resellers and retailers of Marine Petroleum Company and Mars Oil Company motor gasoline. Each firm applied for a refund based on the procedures outlined in *Marine Petroleum Company and Mars Oil Company*, 14 DOE ¶ 85,361 (1986), governing the disbursement of settlement funds received from Marine pursuant to a September 1, 1981 Consent Order. Since all of the applicants claimed refunds of $5,000 or less, they were presumed to have been injured by Marine's alleged overcharges. After examining the applications and supporting documentation submitted by the claimants, the DOE concluded that they should receive refunds totalling $44,526, representing $28,467 in principal and $16,059 in accured interest.

Midland Enterprises Inc. et al., 8/12/87, RF271–113 et al.

The Department of Energy (DOE) issued a Decision and Order approving applications submitted by six water transporters for refunds from the Rail and Water Transporters Escrow established as a result of the Stripper Well Settlement Agreement. The methods used by the applicants were similar to those accepted by the DOE in previous Rail and Water decisions. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Rail and Water claims.

New England Telephone and Telegraph Company, 8/14/87, RR270–4.

New England Telephone and Telegraph Company (NETTCO) filed a Motion for Reconsideration of the dismissal by the DOE of its Application for Refund from the Surface Transporters Escrow fund. The firm's refund application had been dismissed because it was filed after the filing deadline established for Surface Tansporter applications. In its Motion, NETTCO claimed that it had been granted an extension of time to file its refund application by an OHA employee. The DOE found NETTCO's claim to be both unsubstantiated and unpersuasive. Accordingly, the firm's Motion for Reconsideration was denied.

Palo Pinto Oil & Gas/Texas et al. 8/13/87, RQ5–376 et al.

The DOE issued a Supplemental Order regarding a second-stage refund application filed by Texas and approved by the OHA in 1984. *Standard Oil Company (Indiana)/Texas*, 12 DOE ¶ 85,154 (1984). That Decision required that Texas file a post-plan report within two years of the date of the Decision, specifying the manner in which the funds approved by OHA had been spent. On May 22, 1987, Texas submitted this post-plan report. However, the report indicated that none of the funds approved by OHA had as yet been spent. The DOE found that Texas should file a motion for modification within 90 days of the date of this Decision.

Paull's Transport, 8/12/87, RF270–1695.

The Department of Energy (DOE) issued a Decision and Order denying an Application for Refund from the Surface Transporters Escrow that was established as the result of the Stripper Well Settlement Agreement. In its analysis of the Application, the DOE determined that Paull's Transport was a self-serve service station during the Settlement Period and was therefore barred from receiving a refund from the Surface Transporters Escrow.

Robert E. Griffith Enterprises, 8/12/87, RF270–1689.

The Department of Energy (DOE) issued a Decision and Order denying an Application for Refund from the Surface Transporter Escrow that was established as the result of the Stripper Well Settlement Agreement. In its analysis of the Application, the DOE determined that Robert E. Griffith Enterprises (Griffith) has purchased less than the 250,000 gallon minimum for Surface Transporters claims set forth in the *Order Establishing Surface Transporters Escrow*. As a result, the DOE determined that Griffith was not a member of the class of Surface Transporters for purposes of the Surface Transporters refund proceeding and therefore was ineligible to receive a refund from the Surface Transporters Escrow.

Shupe Brothers Company, et al., 8/14/87, RF270–2446, et al.

The DOE issued a Decision and Order concerning four Applications for Refund from the Surface Transporters Escrow submitted after the filing deadline. Each of the applicants stated that it had difficulty assembling the records it needed to file its claim. The DOE determined that none of the applicants had demonstrated that its burden was greater than that of the 2400 Surface Transporters that managed to file timely applications. Therefore, all four applications were dismissed as untimely.

BEST COPY AVAILABLE

Southern Union Company/Chevron, U.S.A., Inc., 8/14/87, RF182–1.

The DOE issued a Decision and Order granting a refund to Chevron, U.S.A. Inc., from the Southern Union Company escrow account. Chevron is a refiner of Southern Union petroleum products. Chevron's refund was limited to the threshold level because it could not provide adequate proof of injury. Accordingly, the DOE granted a refund to Chevron totalling $8,409 ($5,000 in principal plus $3,409 in interest).

St. Mary's Railroad Co., et al., 8/10/87, RF 271–2 et al.

The DOE issued a Decision and Order approving applications submited by 16 companies for refunds from the Rail and Water Transporters (RWT) Escrow established as a result of the Stripper Well Settlement Agreement. OHA found that all 16 applicants had established that they were members of the RWT class, and had substantiated their purchases of the volumes of U.S. petroleum products claimed in their respective applications. Accordingly, OHA approved all 16 applications. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Rail and Water claims.

Standard Oil Company (Indiana)/New York, 8/13/87, RQ21–385.

The DOE issued a Supplemental Order regarding a second-stage refund application filed by New York and approved in 1984. *Standard Oil Company (Indiana)/Nevada*, 12 DOE ¶ 85,090 (1984). That Decision required New York to file a post-plan report within two years of the date of the Decision, specifying the manner in which the funds approved by OHA had been spent. On July 6, 1987, New York submitted this post-plan report. However, the report indicated that funding for the Homesteading Rehabilitation Program had not been approved by the New York legislature and that the State intends to use the funds for energy conservation improvements in a building being rehabilitated by the New York City Department of Housing. The DOE found that New York is not permitted to use Amoco second-stage refund monies to fund a program about which the OHA knew nothing and that the State must submit a motion for modification within 90 days.

Strothman Express, Inc., et al., 8/12/87, RF270–1197, et al.

The Department of Energy issued a Decision approving applications submitted by five trucking companies and a company that maintained a private fleet for refunds from the Surface Transporter Escrow, established as a result of the Stripper Well Agreement. These companies were Strothman Express, Inc., National Tank Truck Delivery, Merritt Packing & Crafting, Ohio Delivery, Inc., Superior Transfer Company and Parts Transport, Inc. Each applicant applied for a refund based on its purchases of motor gasoline and diesel fuel between August 19, 1973 and January 27, 1981. Each applicant demonstrated that it was a Surface Transporter and purchased a certain volume above the 250,000 gallon minimum established in the *Order Establishing Surface Transporter Escrow and Prescribing Provision for Administration of the Fund.* ¶ 16. Accordingly, the companies' volume of gallons were approved in full. The approved volumes will be used to calculate each applicant's final refund. The DOE stated that because the size of a Surface Transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amount of the applicant's refund will be determined at a later date. The total number of gallons approved in the Decision is 6,799,993.

Tenneco Oil Corporation/Ryan's Jet Gas, et al., 8/12/87, RF7–150 et al.

The DOE issued a Decision and Order granting five Applications for Refund from the Tenneco Oil Corporation escrow account. The applicants were retailers of Tenneco petroleum products. The DOE granted refunds totalling $6,476 ($5,223 in principal and $1,253 in interest).

Dismissals

The following submissions were dismissed:

Name and Case No.

American Transit Corp.—RF271–129.
Anton A. Bond—RF225–4557.
Bob Hunt—RF225–2572, RF225–2574.
Buxton Oil Co.—RF225–8711, RF225–8712, RF225–8713, RF225–8714.
Dave's Mobile Inc.—RF225–5526.
Earl Phillips—RF225–2633.
Erickson's Diversified Corp.—RF270–2347.
Golden City Fuel Oil Co., Inc.—RF225–6461.
Grigus Mechanical, Inc.—RF225–467.
Joseph S. Hilbert—RD225–530, RF225–531.
Pepe Motors Corp.—RF225–4253.
Progressive Oil Co., Inc.—RF225–4270.
Richard R. Vanasse—RD225–3299.
Riffle Petroleum Co.—RF225–8106.
Robert Meadows—RD225–4572.
Superior Companies, Inc.—RF225–4603.
W. Greg Ryberg—RF225–2636.
Wallace E. Osburn—RF225–5057.
Zakaria A. Shams—RD225–2648.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

September 15, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 87–21824 Filed 9–21–87; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3265–4]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between February 1, 1987 and June 30, 1987, the New York State Department of Environmental Conservation (NYSDEC) issued four final determinations pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

This notice also announces one final determination made by the NYSDEC on January 28, 1987 which was inadvertently omitted from Region II's last **Federal Register** notice on PSD final actions.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264–4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the NYSDEC has made final determinations relative to the sources listed below:

Name of applicant	Location	Project description	Reviewing agency	Final action	Date of final action
Moench Tanning Company	Persia, New York	Construction of a leather tanning line	NYSDEC	PSD Nonapplicability determination	1/28/87
Barrett Paving Materials, Inc	Pamelia, New York	Construction of a new asphalt concrete plant including limestone mining and crushing operations.	NYSDEC	PSD Nonapplicability determination.	4/29/87
Metal Container Corp	New Windsor, New York.	Construction of a beverage can manufacturing plant	NYSDEC	PSD Applicability determination.	5/27/87
Jones Black River Services, Inc	Fort Drum, New York	Installation of a new coal and wood-fired fluidized bed combustion facility.	NYSDEC	PSD Permit approval	6/01/87

Name of applicant	Location	Project description	Reviewing agency	Final action	Date of final action
TBG Cogen	Bethpage, New York	Construction of a combined cycle cogeneration plant with a maximum usable capacity of 49.9 megawatts.	NYSDEC	PSD Applicability determination.	8/24/87

This notice lists only the sources that have received final PSD determinations. Anyone wishing to review these determinations and related materials should contact the following office:

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233–0001.

If available pursuant to the Consolidated Permit Regulations (40 CFR Part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register**. Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: September 3, 1987.

Christopher J. Daggett,

Regional Administrator.

[FR Doc. 87–21804 Filed 9–21–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL—3265–6]

Superfund; Proposed Settlement Under Comprehensive Environmental Response Compensation and Liability Act; Union Chemical Co., Inc.

In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1986, as amended, notice is hereby given of a proposed administrative settlement concerning the Union Chemical Co. Inc. hazardous waste site in South Hope, Maine. The settlement agreement has been proposed by the Regional Administrator for EPA Region I on September 16, 1987. The agreement has been signed jointly with the Maine Department of Environmental Protection. Below are listed the settling parties to the agreement:

Action Manufacturing, Inc.; J.K. Adams Company, Inc.; Adams-Russell Electronics, Co., Inc.; Affiliated Laboratory, Inc.; Albany International Corp.; Alco Standard Corp.; Standard Uniform Rental Services, Inc.; American Business Systems, Inc.; American National Can Company; National Integrated Industries, Inc. dba American Electro Products; American Stabilis Inc.; AMF Inc.; Ampad Corp.; Amtrol, Inc.; Anson, Inc.; Arden Jewelry Mfg., Co., Inc.; Ark-les Corp.; Arkwright, Inc.; Artfaire/CPS Corp.; Ascutney Metal Products, Inc.; Astro Wire & Cable; Audio Accessories, Inc.; ITT Corp./ITT Autowize Unit; Axton Cross Company, Inc.; BIF; The Baker Company Inc.; L.G. Balfour Company, Inc.; Banton, Inc.; Barry Wright Corp.; Becton, Dickinson and Co.; BenMont Corp.; The Stanley Works (Bostitch/Division); Boston Whaler; Bottoms USA Inc.; Bryant Grinder Corporation; Burndy Corporation; Camden Tanning Corporation; Carleton Woolen Mills Inc.; TRW (Carr); Central Coating Co., Inc.; Genicom Corp. Chem-Clean Furniture Restoration (Allentown, PA); Chem-Clean of Union County; Chemical Pollution Control Inc.; Chemical Recovery, Inc.; Church Seat Company; Cianbro Corporation; Cincinnati Milacron-Heald Corporation; Clarostat Mfg. Company, Inc.; Clean Harbors of Kingston, Inc.; Columbia Services, Inc. dba Columbia Dry Cleaners; Columbia Manufacturing Co.; Commercial Disposal Company, Inc.; Congress Technical Spray Co., Inc.; Eaton Corp. (Consolidated Controls); The Continental Corp.; Conway Office Products, Inc.; Cooley, Inc.; Data General Corp.; Data Products, New England Inc.; Datel Inc.; Davidson Interior Trim/Textron; Davol, Inc.; Devcon Corporation; Dexter Shoe Company; Diamond Machine Company; Diaphragm Industries; Dielectric Communications; Dienes Corp.; Digital Equipment Corporation; Dresser Industries, Inc.; Eastern Fine Paper, Inc.; Edwards Company, Inc.; Elektrisola, Inc.; Electrix Inc.; Electronics Corporation of America; Ellis Paperboard Products; Elmier's Pipe Inc.; the Ensign-Bickford Company; Environmental Systems Corp.; Erving Papaer Mills; Esten Machine Company; Colgate Footwear Inc. for Etonic, Inc.; Fairchild Semiconductor Corp.; Emhart Corp.; Fenwal, Inc.; Fiberglass Products Incorporated; FLEXcon Co., Inc.; FMC Corporation; Fonda Cup & Container Group; Forster Manufacturing Company, Inc.; S. N. Foster Company, Inc.; Fothergill Composites, Inc.; The Foxboro Co.; Franklin Electroplating Co., Inc.; Frem Corp.; G & L Machine Corp.; General Electric Company; Diversitech General, Inc./A GenCorp Co.; Great Falls Product Division/Brockhouse Corp.; B. B. Greenberg Company; Grumbacher Inc.; GTE Products Corp.; The Haartz Corp.; Hadco Corp.; Hallowell Shoe Co.; Hamblett & Hayes, Co.; Samuel P. Harris Inc.; Hazen Paper Co.; Hebron Academy; Joseph M. Herman Shoe Co.; Hi-G Company Inc.; Hill-Loma, Inc. dba Hill Acme; Henry R. Hinckley & Company Inc.; Imperial Machine Corporation; Independent Cable Inc.; Indiana Screw Machine Products, Inc.; Sheldahl, Inc. (formerly Interconics); IPC Limited Partnership; Unifirst (Interstate Uniform Services); Ionics, Inc.; Irving Tanning Company; ITT Corp./ITT Vulcan Electrict Unit; James River-Otis Division; CF Jameson & Company Inc.; Eaton Corp. (JBT Switches); Jet Line Pollution Control Inc.; Jones & Vining Inc.; Karelis Heel Corp.; Kenway Corporation; Kingfield Wood Products; Kittery Laundry, Inc.; Knox Semiconductor, Inc.; Knox Woolen Company; Kyanize Paints, Inc.; L & A Heel Corp.; Keene Corp.-Laminates Division; Lamson and Goodnow Mfg., Co., A.C. Lawrence Leather Co. Inc.; LCP Chemicals and Plastics, Inc.; Leen Company; Levin Plating, Inc.; W.S. Libery Company; Liberty Research Company, Inc.; Lunt Silversmiths; Keys Fibre Co. on behalf of Madico Incorporated; Maine Dept. of Transportation; Maine Electronics; Maine Medical Center; Maine Printing & Business Forms Co.; Maine Yankee Atomic Power Company; Manville Sales Corp.; Saco Defense, Inc.; Markem Corp.; McCord Winn Division; The Mearl Corporation; W.A. Messer Company; Metalart Buckle Company; Meyerworld; Microwave Techniques Incorporated; Mid-State Machine Products, Inc.; Milton Bradley Company; Modern Electroplating Company, Inc.; Crompton Modutec Incorporated; Monarch Industries, Incorporated; Moore Chemical Company; Morgan Construction Company; Costar Corp.; Nachi Bearing Corp.; Nashua Corporation; Nashua Wood Products Incorporated; NCT Corp.; NEPTCO, Inc.; Newport Plastics Corporation; Parker-Hannifan Corp. dba W.H. Nichols Company; Parker-Hannifan Corp. dba Nichols Fluid Machinery Division; Nike Incorporated/Blue Ribbon Sports; North

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East Solvents Rec. Corp.; Northeast Shoe Company; NRC Incorporated; Nu Style Company, Inc.; Nuroco Woodwork Inc.; Omni-Wave Electrnics Corporation; William Ornsteen Heel Company, Inc.; Pak 2000/Division of Ocor Products; Parametrics; Parker Metal Corporation; Parlex Corporation; Permuthane; Phalo Corporation; Philips Elmet Corporation; Photo Fabrication Engineering, Inc.; Poly-Structures Incorporated; Pontiac Weaving Corporation; Port-Poly Incorporated; The Pressmet Corporation; Prime Tanning Company, Inc.; Quin-T Corporation-NH; The Reece Corporation; Rich Tool & Die Company; Rudolph Beaver Inc.; S & H Precision Manufacturing Co., Inc.; SNS Plastics; Sabre Yachts; Safety-Kleen Corp; ChemWaste Mgt, Inc. on behalf of SCA Chemical Services, Inc.; Scola Enterprises, Inc.; Scott Paper Co.; Security Heel Company; Tech/Ops Sevcon, Inc.; Shape, Inc.; Shepherd Chevrolet, Inc.; Silicon Transistor Corporation; Spaulding & Slye Co.; Spectrum Coating Labs; Speidel Div. Textron Inc.; Sprague Electric Co.; Spray Me. Inc.; Spray-O-Matic Corp.; Winnrich, Inc. dba Sproul Dry Cleaners; Stadium Auto Body, Inc.; Stahl Finish; Sterling-Clark-Lurton Corp.; Stinson Canning Co.; Striar Textile Mill; Stultz Electric Motor Systems; Sturm, Ruger & Company, Inc.; Compo Industries Inc.; Suffolk Services, Inc.; Summagraphics Corporation; Surface Coatings, Inc.; Swank, Inc.; Tadco, Inc.; Tek Coatings Co.; Tex-Tech Industries, Inc.; KW Thompson Tool Company, Inc.; Shark Oil dba Three-R Services; Tibbetts Industries, Inc.; Tillotson Rubber Co., Inc.; Touraine Paints, Inc.; Transcom Electronics, Inc.; Troy Mills, Inc.; U.S. Coast Guard; Union/Butterfield; Union Camp Corp.; Union Industries, Inc.; Unitrode Corp.; Upaco Adhesives, Div. Worthen Industries, Inc.; Emhart Corp., on behalf of USM Corporation-Bailey Division; Valiant Finishing Company; Velcro USA, Inc.; Vermont Tap & Die, Division of Vermont American Corp. of Nevada; Borden, Inc.; Watts Fluid-Air; Southern Maine Medical Center; Wilner Wood Products Co.; G.F. Wright Steel and Wire Co.; Xidex Corporation; Colgate Footwear Inc. for Etonic and on behalf of Charles A. Eaton Company, its predecessor; Kalloch Fuel Service, Inc.; Merrill Transport Co.; Sanborn Motor Express, Inc.; St. Johnsbury Trucking Company Inc.

EPA is entering into the agreement under the authority of section 122(h) and 122(d)(3) of CERCLA. The agreement obligates the settling parties: To reimburse EPA for 80% of its past response costs at the site incurred up to May 22, 1987; to conduct a Remedial Investigation/Feasibility Study at the site; to reimburse all EPA contractor oversight costs associated with the RI/FS; and to pay internal EPA oversight costs up to a maximum of $75,000.

The Environmental Protection Agency will receive for thirty days from the date of publication of this notice written comments relating to the agreement. Comments should be addressed to the Regional Administrator, U.S. EPA, Region I, J.F.K. Federal Building, Boston, MA 02208 and should refer to: In the Matter of Union Chemical Co. Inc. Site, U.S. EPA Docket No. 1–87–1104.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the Region I Office of Regional Counsel, J.F.K. Federal Building, Boston, MA 02203.

Michael R. Deland,

Regional Administrator.

[FR Doc. 87-21802 Filed 9-21-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59832; FRL-3265-2]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such PMNs and provides the summary.

DATES: Close of Review Period:

Y 87–250, 87–251, and 87–252—September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–GO04 at the above address betw 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87–250

Importer. Confidential.

Chemical. (G) Substituted polycarbonate.

Use/Import. (G) Industrial substrate. Import range: Confidential.

Y 87–251

Manufacturer. Confidential.

Chemical. (G) Polymer of acrylic acid esters, a vinyl monomer, and a methacrylic acid ester.

Use/Production. (G) Laminating adhesive to prepare plastic laminations over printed paper or paper board stock. Prod. range: Confidential.

Y 87–252

Manufacturer. Confidential.

Chemical. (G) Polymer of acrylic acid esters and acrylic acid.

Use/Production. (G) Pressure sensitive adhesives for plastic or paper identification labels. Prod. range: Confidential.

Date: September 11, 1987.

Linda K. Smith,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-21806 Filed 9-21-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51693; FRL-3265-3]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-nine such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87–1700, 87–1701 and 87–1702—December 2, 1987.

P 87–1703, 87–1704 and 87–1705—December 6, 1987.

P 87–1706, 87–1707, 87–1708, 87–1709, 87–1710, 87–1711, 87–1712, 87–1713, 87–1714, 87–1715, 87–1716, 87–1717, 87–1718, 87–1719, 87–1720, 87–1721, 87–1722, 87–1723, 87–1724, 87–1725, 87–1726, 87–1727, 87–1728, 87–1729, 87–1730, 87–1731, 87–1732, 87–1733, 87–1734, 87–1735, 87–1736, 87–1737, 87–1738 and 87–1739—December 7, 1987.

P 87–1740, 87–1741, 87–1742, 87–1743, 87–1744, 87–1745, 87–1746, 87–1747 and 87–1748—December 8, 1987.

Written comments by:

P 87–1700, 87–1701 and 87–1702—November 2, 1987.

P 87–1703, 87–1704 and 87–1705—November 6, 1987.

P 87–1706, 87–1707, 87–1708, 87–1709, 87–1710, 87–1711, 87–1712, 87–1713, 87–1714, 87–1715, 87–1716, 87–1717, 87–1718, 87–1719, 87–1720, 87–1721, 87–1722, 87–1723, 87–1724, 87–1725, 87–1726, 87–1727, 87–1728, 87–1729, 87–1730, 87–1731, 87–1732, 87–1733, 87–1734, 87–1735, 87–1736, 87–1737, 87–1738 and 87–1739—November 7, 1987.

P 87–1740, 87–1741, 87–1742, 87–1743, 87–1744, 87–1745, 87–1746, 87–1747 and 87–1748—November 8, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS–51693]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room L–100, 401 M Street SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87–1700

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Industrial and commercial photopolymer. Prod. range: 1,000 to 3,000 kg/yr.

P 87–1701

Manufacturer. Confidential.

Chemical. (G) Polymer of diaminodiphenylsulfone and carboxyl terminated butadiene acrylonitrile polymer.

Use/Production. (G) Industrial component in resin formulation. Prod. range: Confidential.

P 87–1702

Manufacturer. Hercules Incorporated.

Chemical. (G) Carboxyl modified hydrocarbon resin.

Use/Production. (S) Industrial manufacture of printing inks and adhesives. Prod. range: Confidential.

P 87–1703

Importer. Orient Chemical Corporation.

Chemical. (G) Salicylic aluminum salt.

Use/Import. (S) Commercial charge control agent component of electrographic toner. Import range: 2,000 to 5,000 kg/yr.

P 87–1704

Manufacturer. Confidential.

Chemical. (G) Saturated hydroxy acrylic resin.

Use/Production. (G) In-mold coating for reaction injection molding. Prod. range: Confidential.

P 87–1705

Manufacturer. Farbest.

Chemical. (G) Alkyl amine, ethoxylated, ester.

Use/Production. (G) Industrial additive to metal working lubricants. Prod. range: 67,500 to 114,000 kg/yr.

Toxicity Data. Acute oral: >.5 g/kg; Irritation: Skin—Mild.

P 87–1706

Manufacturer. USI Chemicals Company.

Chemical. (S) Butyl 1,1,1,3,3,3-hexamethyl disilazanoto magnesium.

Use/Production. (S) Industrial reagent for catalyst manufacture and catalyst for olefin polymerization. Prod. range: 275 to 3,000 kg/yr.

P 87–1707

Manufacturer. Lyndal Chemical Company.

Chemical. (G) Quaternized fatty amidoamine.

Use Production. (S) Industrial textile processing softener. Prod. range: 46,000 kg/yr.

P 87–1708

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 4,4'-Bis[3-chloro,5-[1-hydroxy 2-[1,5-disulfo-2-naphthylazo] 3-sulfo-6-naphthylamino] S-triazinylamino]benzidine 2,2'-disulfonic acid octasodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1709

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-Amino-8-hydroxy-2-[4-(sulfo)-phenylazo]-7-[2-(sulfo)-5-[3,5-dichloro-S-triazinylamino]phenylazo]naphthalene 3,6-disulfonic acid, tetrasodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1710

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-Hydroxy-2-[[4-[[2-[sulfooxy]ethyl]sulfonyl] phenyl]azo]-7-acetylamino naphthalene-3-sulfonic acid-dipotassium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1711

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) Benzene sulfonic acid 4-[4-[[2-(sulfooxy)ethyl] sulfonyl]phenylazo]-4,5-dihydro-3-carboxy-5-oxy-1-H-pyrazol-1-Yl]trisodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1712

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) Copper complex of 1-(4'-sulphophenyl potassium salt)-3-methyl-4-(2"-methoxy-5"-ethylsulfonyl sulphonic acid ester potassium salt phenylazo)-5-pyrazolone.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1713

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-Hydroxy 8-amino 2,7-bis[4-[[2-[sulfooxy] ethyl]sulfonyl]phenylazo] 3,6-disulfonaphthalene-tetrasodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1714

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) Naphthalene-2-(3',5'-dichloro S-triazynylamino)-5-hydroxy-6-(3" sulfonic acid potassium salt, 4"-

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methoxy benzeneazo 7-sulfonic acid potassium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1715

Importer. T.G. Tomasi Consultants, Ltd. *Chemical.* (S) 44'-Diamino-bis-[2''-triazinyl-6''-chloro-4'' [2' ''-N-methyl-amino-5' ''-hydroxy-7' ''-sulfonyl-6' ''-azo-naphthalene]-2'' ''-{1'' '',5'' ''-disulfonyl) naphthalene)]-stilbene-22'-disulfonic acid.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1716

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) Copper complex of 1-hydroxy-2-[2-hydroxy, 4-[ethylsulfonyl sulfuric acid ester] phenyl azo] naphthalene-4-sulfonic acid disodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1717

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-Ethyl 3-aminocarbonyl-4-methyl-5-[2,4-disulfo 5-[3,5-dichloro S-triazinylamino] phenylazo] 6-hydroxy pyrid-2-one-disodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1718

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 4-[1-Amino-8-hydroxy-2-[4-[[2-[sulfooxy]ethyl]sulfonyl] phenyl-azo]naphthyl-azo 3,6-disulfonic acid]-4'-[1-[3,5-dichloro-S-triazinylamino] 8-hydroxy-7-naphthyl-azo 3,6-disulfonic acid] stilbene-2,2'-disulfonic acid—hepta potassium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1719

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-Naphthol-2-[3-sulfo 4-methoxy phenylazo] 6-[3-chloro 5-[2-methoxy 5-[[2-sulfooxy]ethyl]sulfonyl] phenylamino] S-triazinyl amino] 3-sulfonic acid trisodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1720

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-Hydroxy-8-amino-2-[2-methoxy 5-methyl, 4-[[2-[sulfooxy]ethyl]sulfonyl]phenylazo] 7-[4-[[2-[sulfooxy]ethyl]sulphonyl] phenylazo] 3,6-disulfonaphthalene-tetra sodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1721

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 4,4'-Bis[3-chloro-5-]3-ureide-4-[1,3,6-trisulfonaphthyl-7-azo]phenylamino]S-triazinylamino]stilbene 2,2'-disulfonic acid, octa sodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1722

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 4,4'-Bis[[3-chloro 5-[3,6-disulfo-8-hydroxy-7-[1,5-disulfo naphthyl-2-azo]naphthyl amino] S-triazinyl] amino] benzene, octa potassium salt.

Use-Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1723

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) Copper complex of 1-hydroxy-2-[2,5-dimethoxy-4-[ethyl sulfonyl sulfuric acid ester] phenyl azo]-8-acetylamine naphthalene, 3,6-disulfonic acid trisodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1724

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) [4-Ethyl sulfonyl sulfuric ester—sodium-salt benzene sulfonamido] 1.4[sulfonic acid sodium salt] 2.6 of nickel phthalocyamine.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1725

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) Benzene sulfonic acid 4-[4-[(2,-methoxy-5-methyl-4-[[2-(sulfo-oxy)-ethyl] sulfonyl]phenyl]azo]-4,5-dihydro-3-methyl-5-oxo-1H-pyrazol-1-Yl] disodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1726

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-Hydroxy-2-(4'-ethylsulfonyl sulfuric acid ester sodium salt phenylazo)-8-[5''-chloro-3''-(4' ''-ethyl sulfonyl sulfuric acid ester sodium salt phenyl amino)-S-triazinyl] amino naphthalene-3,6-disulfonic acid disodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1727

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-(p-Sulfo phenyl potassium salt)-3-carboxylic acid potassium salt 4-[3'-[3''-chloro-5''-(p-ethylsulfonyl sulfuric ester potassium salt-phenylamino)-S-triazinylamino]-6'-sulfonic acid potassium salt phenylazo-]-5-pyrazolone.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1728

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-Hydroxy-2-(1',5'-disulfonic acid dipotassium salt -2'-naphthyl-azo)-8-[3'' (4' ''-ethyl sulfonyl sulfuric acid ester potassium salt phenyl amino)-5''-chloro-S-triazinylamino]naphthalene-3,6-disulfonic acid dipotassium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1729

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-[4- [Sulfo] phenyl] -3-methyl-4-[2-methoxy-5-[[2-[sulfooxy]ethyl]sulfonyl]phenylazo] pyrazol-5-one-disodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1730

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) [4-Sulphonamido-benzene-ethyl sulfonyl sulfuric ester—sodium salt]1.6—[sulfonic—acid sodium salt) 2.4 of copper phthalocyanine.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1731

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-Hydroxy-2-[[1,5-disulfonic acid]napthylazo]6-[3-chloro-5-[4-[ethyl sulfonyl sulfuric acid ester]phenyl amino] -5-triazynylamino]naphthalene-3-sulfonic acid-tetrasodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1732

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) [[3-Chloro-5-methoxy-S-triazinylamino] ethyl—sulfonamido] 1.4—(sulfonic acid sodium salt)2.6 of copper phthalocyanine.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1733

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) Cuprate (4-), [1- [4-sulfophenyl] -3- carboxy-5-hydroxy -4-[[5-hydroxy -6-[[2-hydroxy -5-methoxy -4- [[2-[sulfooxy] ethyl] sulfonyl]phenyl]azo]-7-sulfo-3-napthalenyl]azo]pyrezol (6-)]-tetra sodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1734

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 3-Carbamoyl-4-methyl-5-[2-[sulfonic acid] -5-[[3-chloro 5-[[4 ethylsulfonyl sulfuric acid ester]phenyl amino] -S-triazinyl]amino]phenylazo]-6-hydroxy N-ethyl pyrid-2-one-disodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1735

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-[3'-Chloro 5'-(p-ethyl sulfonyl sulfuric ester sodium salt-phenylamine)-S-triazinylamino]-7-[2''-napthyl azo-1''-sulfonic acid sodium salt]-8-naphthol-3,6 disulfonic acid sodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1736

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-Hydroxy-2-[4'-ethylsulfonyl sulfuric acid ester potassium salt phenylazo]-8-[3''-[4' ''-ethylsulfonyl sulfuric acid ester potassium salt phenylamino]-5''-chloro-S-triazinylamino] naphthalene-3,6-disulfonic acid dipotassium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1737

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-[3'-Chloro-5'-(p-ethyl-sulfonyl-sulfuric acid ester-potassium salt-phenyl-amino)-S-triazinylamino]-5-[1''-ethyl-2''-hydroxy-3''-azo-4''-methyl-5''-carbamido-6''-pyridonyl]-2,4-benzene-disulfonic acid-potassium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1738

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 2-Napthylazo-[2'-ureado,4'-[3''-chloro 5''-(p-ethyl sulfonyl sulfuric ester potassium salt-phenyl amino)-S-triazinyl amino phenyl]] 3,6,8-trisulfonic acid potassium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1739

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 2-(3',5'-Dichloro-S-triazinylamino)-4-amino 5-(p-ethyl sulfonyl sulfuric ester-potassium salt-benzeneazo)-benzene sulfonic acid-potassium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1740

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 2-[[-1-Acetylamino, 8-hydroxy 3,6-disulfonic acid] napthylazo]4-[3-chloro, 5-[4-[ethyl sulfonyl sulfuric acid ester] phenyl amino]S-triazynylamino] benzene sulfonic acid tetra potassium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1741

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) Benzene sulfonic acid, 4-[4-[[2,5-dimethoxy-4-[[2-(sulfooxy) ethyl]sulfonyl]-phenyl]azo]-4,5-dihydro-3-methyl-5-oxo-1H-pyrazol-1-Yl]sodium salt (unspecified).

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1742

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-Hydroxy-8-acetylamino 7-[2-methoxy 5-[[2-[sulfooxy]ethyl]sulfonyl]phenylazo] naphthalene 3,6-disulfonic acid-tri potassium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1743

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) Copper complex of 1-acetylamino-8-hydroxy-7-(4'-ethyl sulfonyl sulfuric acid ester potassium salt phenylazo) naphthalene 3,6-disulfonic acid potassium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1744

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-Hydroxy-2-[2'-sulfonic acid potassium salt-5'-[3''5''-dichloro-S-triazinyl-amino]-benzene azo]-7-[p-ethyl-sulfonyl sulfonic ester-potassium salt-benzene-azo]-8-amino-naphthalene,3,6-disulfonic acid-potassium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1745

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-Hydroxy-2-(2'-sulfonic acid potassium salt phenylazo)-8-[5''-chloro 3''-(4' ''-ethyl sulfonyl sulfuric acid ester potassium salt phenylamino)-S-triazinylamino]naphthalene-3,6-disulfonic acid dipotassium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1746

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 1-Hydroxy-2-[4-phenylamino-3-(sulfonic acid) phenylazo]-8-[3-chloro-5-[4-[ethyl sulfonyl sulfuric acid ester] phenylamino]-S-triazynylamino]naphthalene-3,6-disulfonic acid tetrasodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87-1747

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) [(4'-Ethyl sulfonyl sulfonic acid ester sodium salt phenyl sulfonamide)1.4 (sulfonic acid sodium salt)1.6 sulfonamide] of copper phthalocyanine.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87-1748

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 2-[[N-Ethyl-2-oxo-3-amino carbonyl 4-methyl 6-hydroxy pyridinyl] 5-azo] 6-[3-chloro 5-[4-[[2-[sulfooxy] ethyl] sulfonyl] phenylamino] S-triazinylamino] benzene 3,5-disulfonic acid—tripotassium salt.

Use/Import. (S) Reactive dye for textile. Import range: 200,000 to 800,000 kg/yr.

Date: September 11, 1987.

Linda K. Smith,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-21805 Filed 9-21-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3265-5]

Water Pollution Control; Utilization of Saltwater Marsh Ecosystem for Management of Seafood Processing Wastewater

AGENCY: Environmental Protection Agency.

ACTION: Announcing the availability of the final report "Utilization of a Saltwater Marsh Ecosystem for the Management of Seafood Processing Wastewater" (EPA 904/9-86-142).

SUMMARY: EPA Region IV, the Alabama Marine Environmental Sciences Consortium and the Alabama Department of Environmental Management have recently completed a study of the potential for using a saltwater wetland to manage seafood processing wastewater. The study examined an irregularly flooded coastal Alabama black needlerush (*Juncus roemerianus*) marsh before, during and after construction and operation of a small pilot facility that distributed screened seafood processing wastewater at various loading rates to controlled areas of the marsh. The study documents the impacts of the project on the physical, chemical and biological characteristics of the marsh, shallow groundwater and nearby surface water. The final report contains all data, analyses and conclusions resulting from this study.

ADDRESS: Copies of "Utilization of a Saltwater Marsh Ecosystem for the Management of Seafood Processing Wastewater" may be obtained by contacting Robert Lord, Environmental Assessment Branch, US EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, 404-347-3776 or FTS 257-3776.

Dated: June 25, 1987.

Lee A. DeHihns,

Acting Regional Administrator.

[FR Doc. 87-21803 Filed 9-21-87; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3266-3]

Water Quality Act of 1987 Implementation; Draft Guidance Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice is a supplement to a notice of availability of five draft Water Quality Act guidance documents which appeared in the September 4, 1987 **Federal Register** under the heading, "Water Quality Act of 1987 Implementation; Draft Guidance Availability." Today's notice announces the availability for public comment of a sixth draft guidance document. This additional draft document is entitled, "Draft Final: Guidance for Implementation of Requirements Under section 304(1) of the Clean Water Act as Ameded."

DATE: Copies of this document will be available for public comment from EPA Headquarters Office of Water for a period of 30 calendar days, beginning September 22, 1987.

ADDRESSES: Copies of this document can be obtained by writing Mr. Mario Hegewald, Office of Water, WH-556, U.S. Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460 or telephoning him at (202) 382-5700. All comments should be forwarded to Mr. Hegewald at the same address.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Water, at above address and telephone number.

SUPPLEMENTARY INFORMATION: The WOA establishes a program for identification of waters affected by toxic pollutants and implementation of specific controls, section 304(1) individual control strategies, to reduce those toxics.

This program requires States to assess and list waters where there are impairments of water quality due to point source discharges, and to idenfity the discharges. By February 1989, States are to set effluent limitations in section 402 National Pollutant Discharge Elimination System (NPDES) permits ("individual control strategies") for these discharges to assure that water quality standards are attained. "Draft Final: Guidance for Implementation of Requirements Under section 304(1) of the Clean Water Act as Amended," is now available from EPA at the above address.

The comment period for the above noticed draft quidance document is, as noted above, 30 calendar days. Anyone intending to make comments on this draft document, however, is encouraged to forward comments by early October so that they can be discussed at the October 14 public meeting of the Water Quality Act Steering Committee. For details on this public meeting, see the notice of public meeting of the Water Quality Act Steering Committee which appeared in the September 10, 1987 **Federal Register** under the heading: "Water Quality Act Steering Committee: Meeting."

Anyone who is interested in reviewing public comments received on the six draft Water Quality Act implementation guidance documents which are presently available for public comment can do so by consulting the public docket which is housed in the EPA Library Public Information Reference Unit in Room 2904 of the Waterside Mall, 401 M Street SW., Washington, DC The Library is open from 9:00 a.m. to 4:00 p.m. weekdays and photo copying is available at a reasonable cost. The telephone number of the Public Information Reference Unit is (202) 382-5926.

Dated: September 18, 1987.

Lawrence J. Jensen,

Assistant Administrator for Water.

[FR Doc. 87-21919 Filed 9-21-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-660]

Approval of Conversion Application; Fidelity Savings Association, Pittsburgh, PA

Date: September 17, 1987.

Notice is hereby given that on September 14, 1987, the Office of the General Counsel or the Federal Home Loan Bank Board, acting pursuant to the

authority delegated to the General Counsel of his designee, approved the application of Fidelity Savings Association, Pittsburgh, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan bank Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, 20 Stanwix Street, Pittsburgh, Pennsylvania 15222–4893.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–21837 Filed 9–21–87; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–659]

Approval of Conversion Application; Kent Savings and Loan Association, F.A., Chestertown, MD

Date: September 17, 1987.

Notice is hereby given that on September 11, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel of his designee, approved the application of Kent Savings and Loan Association, F.A., Chestertown, Maryland for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Center Station NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–21838 Filed 9–21–87; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200035

Title: Jacksonville Terminal Agreement

Parties:

Jacksonville Port Authority (JPA)

Trailer Marine Transport Corporation (TMT)

Synopsis: The proposed agreement would grant TMT the exclusive use of 17.14 acres of JPA's Talleyrand Dock and Terminal (TDT) in Jacksonville, Florida and preferential use of the facilities at TDT.

Agreement No.: 224–200037

Title: Port of St. Petersburg Terminal Agreement

Parties:

City of St. Petersburg (City)

SeaEscape, Ltd. (SeaEscape)

Synopsis: The proposed agreement permits the City and SeaEscape to agree upon charges to be assessed for port and terminal facilities and services rendered by the City for the operation of SeaEscape's cruise vessel service at the Port of St. Petersburg.

Agreement No.: 224–001792–004

Title: Port of New Orleans Terminal Agreement

Parties:

Port of New Orleans

New Orleans Cold Storage and Warehouse Company, Limited (NOCS)

Synopsis: The proposed agreement permits NOCS to execute a first mortgage on its leasehold estate and improvements as security for the issuance of industrial development revenue bonds, the proceeds of which would be used for construction of an additional cold storage facility in the City of New Orleans.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: September 17, 1987.

[FR Doc. 87–21840 Filed 9–21–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 16, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before October 7, 1987.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may be also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into

OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal to approve under OMB delegated authority the extension with revision of the following reports:

1. *Report title:* Weekly Report of Assets and Liabilities for Large Banks and Weekly Report of Selected Assets.
Agency form numbers: FR 2416 and FR 2644, respectively.
OMB Docket number: 7100–0075.
Frequency: Weekly.
Reporters: U.S. commercial banks.
Annual reporting hours: 48,573.
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 225(a)) and 248(a)) and is given confidential treatment (5 U.S.C. 552(b)(4) and (8)).

These reports provide basic data from U.S. commercial banks for estimating bank credit and nondeposit funds and for analyzing banking and monetary developments. The proposed revisions include minimal changes to the current reporting panel, two changes in content to improve monitoring, and elimination of one item.

2. *Report title:* Domestic Finance Company Report of Assets and Liabilities.
Agency form number: FR 2488 and FR 2248a.
OMB Docket number: 7100–0005.
Frequency: Monthly. The FR 2248 is filed at the end of each month, except for March, June, September and December, which is when the FR 2248a is filed.
Reporters: Domestic finance companies.
Annual reporting hours: 2,045. Small businesses are affected.
General description of report: This information collection is voluntary (12 U.S.C. 225(a)) and is given confidential treatment (5 U.S.C. 552(b)(4) and (8)).

These reports collect information on major categories of consumer and business credit extended and held by finance companies and on major short-term liabilities outstanding. These data are used by the Federal Reserve for assessing aggregate credit market activity. The proposed revisions include a substantial reduction in the approved size of the panel, the consolidation of the two report forms into one, and several item changes designed to reduce the average response time.

3. *Report title:* Senior Loan Officer Opinion Survey on Bank Lending Practices.
Agency form number: FR 2018.
OMB Docket number: 7100–0058.
Frequency: Up to six times per year.
Reporters: Large U.S. commercial banks.
Annual reporting hours: 720.
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 248(a)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This survey, in which responses are collected through a telephone interview with a senior loan officer at each of 60 large commercial banks, collects qualitative information about changes in business loan demand and various aspects of bank lending practices. It serves as a very important tool for monitoring and understanding the evolution of lending practices at banks and developments in credit markets generally. The proposed revision will reduce the number of authorized surveys from eight to six per year.

4. *Report title:* Monthly Survey of Eligible Bankers Acceptances.
Agency form numbers: FR 2006.
OMB Docket number: 7100–0055.
Frequency: Monthly.
Reporters: U.S. commercial banks, U.S. branches and agencies of foreign banks and Edge corporations.
Annual reporting hours: 3,236.
Small businesses are affected.
General description of report: This information collection is voluntary (12 U.S.C. 248(a) 625, and 3105(b)) and is given confidential treatment (5 U.S.C. 552(b)(4) and (8)).

This report provides timely and detailed information on eligible dollar acceptances that are payable in the United States. The data are used in constructing monetary and credit aggregates and are relied upon to provide information on the acceptance market to the Federal Reserve's trading desk. A reduction of 40 percent in panel size is proposed, owing to a modification in the reporting threshold to limit coverage to only those banks with more than $100 million in total acceptances, up from the current minimum of $50 million. Two minor modifications in item content would reduce burden slightly.

Board of Governors of the Federal Reserve System, September 16, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–21759 Filed 9–21–87; 8:45 am]

BILLING CODE 6210–01–M

[Docket No. R–0586]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board has adopted a set of factors that it will consider when reviewing proposals to consolidate Federal Reserve Bank priced services across District lines.

EFFECTIVE DATE: September 18, 1987.

FOR FURTHER INFORMATION CONTACT: Charles W. Bennett, Assistant Director (202–452–3442), Gerald D. Manypenny, Manager (202–452–3954), or Donna DeCorleto, Program Leader (202–452–3954), Division of Federal Reserve Bank Operations; Joseph R. Alexander, Senior Attorney (202–452–2489), Legal Division; or, *for the hearing impaired* only, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

In November, 1986, the Board of Governors solicited public comment on six factors that it proposed to consider when reviewing proposals to consolidate Reserve Bank priced-service activities across District lines. (51 FR 43472, Dec. 2, 1986) The factors were:

a. Maintenance or improvement of cost recovery in a service.

b. Improvement of the efficiency of Federal Reserve Bank operations.

c. Maintenance or improvement in the level or quality of service.

d. Responsiveness to changes in the financial services industry.

e. Impact on private sector providers of the service that is being consolidated.

f. Amount of advance notice that would be needed prior to effecting an interdistrict consolidation.

These factors had been developed following the Board's October, 1985, solicitation of public comment on the issue of interdistrict consolidation. (50 FR 45938, Nov. 5, 1985.) It was expected that consolidation proposals would be evaluated based on these factors, and that public comment would be solicited only when a proposal appeared to have a significant, longer-run effect on the nation's payments mechanism.

Discussion

Sixteen comments were received. Thirteen respondents believed that the

factors adequately addressed the potential effect of an interdistrict consolidation, or could with some modifications or additions. Three respondents opposed the factors, indicating that the factors suggested appropriate areas for consideration but were vague and ambiguous and did not guarantee that consolidation decisions would be made in the sole interest of promoting an efficient and effective payments mechanism.

Two related issues, namely the effect of consolidation on the private sector and the need to solicit public comment before consolidating a service because of the potential effect on the private sector, drew considerable comment from supporters and opponents of the factors. In response to these comments, the Board has made two revisions to the original factors.

First, 12 respondents commented on factor (e), "impact on private sector providers of the service that is being consolidated." Half of these respondents suggested that the Board consider the effect of a consolidation on service users and not just private-sector service providers. Respondents stated that users could experience the following problems: (1) Unequal distribution of the cost burden due to increased transportation costs, or (2) delay in credit availability if a service was consolidated in a Reserve Bank that is a greater distance from the user. The Board agrees that these concerns are valid, and has determined that the effect on service users be considered separately from the effect on private sector service providers.

The second concern raised by commenters related to the Board's proposal to solicit public comment on consolidations only when a consolidation would appear to have a significant, longer-run effect on the nation's payments mechanism (Pricing Principle Number 7). Twelve respondents commented on this issue, mostly to propose alternatives. Seven commenters proposed that every consolidation be published for comment, two of these suggesting that pilot program consolidations be included; six believed that staff's analysis should also be published so that commenters can consider the facts that contribute to a consolidation proposal. Three respondents suggested that the Board solicit comments from depository institutions located within the area affected by a proposed consolidation.

The Board continues to believe that soliciting public comment on every proposed consolidation is not necessary because most consolidation efforts would not have a significant long-run effect on the nation's payments mechanism or on service users and providers. Nevertheless, the Board believes that it should also have the benefit of public comments when making its first decision regarding interdistrict consolidation in a particular service in order to ensure that all the pertinent issues have been considered. Accordingly, the Board will solicit public comment the first time any Reserve Bank priced service is proposed for interdistrict consolidation. Reserve Banks that would be effected by a consolidation proposal can also be expected to continue to solicit comment from depository institutions in their Districts on an informal basis.

The Board also agrees with commenters that the analysis which supports the consolidation proposal should be provided when soliciting public comment so that respondents will know what facts where considered in the decision to propose the consolidation. The staff's memorandum to the Board seeking approval to publish a consolidation proposal for comment, which would include its analysis supporting the proposal, will normally be made available to the public on request after the Board meeting at which the proposal will be discussed. Further, a summary of the analysis will also be discussed in the published request for comment.

Several respondents focused on the Federal Reserve Banks' potential competitive advantage over private-sector providers due to size and nationwide presence. Two respondents also focused on the System's unique role as service provider and policy maker. In response to these concerns, the Board emphasizes that the Federal Reserve System was established, in part, to provide payment services on a nationwide basis, and the Board believes that interdistrict consolidation is consistent with that mandate. Moreover, there are mechanisms in place within the Federal Reserve System that preclude any potential conflict of interest.

Among the other issues raised, five respondents addressed the possibility of assigning relative weights to each of the proposed factors, although respondents disagreed on whether or not any individual factor should carry sufficient weight to be a sole determinant of whether a consolidation should occur. The Board agrees that factor weighting is appropriate; however, each service is unique and circumstances may vary. It is also possible that one factor might be the primary determinant in a particular consolidation decision. Therefore, factor weighting will be used, but will not be standardized.

Other issues raised by the commenters include:

- Amount of advance notice before consolidation—Eight respondents commented on this issue, two of them suggesting a 90-day notice, a third suggesting retaining pre-consolidation fees for a year after a consolidation, and the rest only suggesting sufficient time "well in advance of implementation." Private-sector service providers and service users might require significantly different amounts of time to prepare for a consolidation, depending on the service. The Board believes that advance notice of 60 days would be adequate in most cases, although a more extended comment period will be provided if circumstances warrant.
- Contingency Planning—Three commenters expressed concern that, with consolidation, there would be greater need for back-up systems and contingency planning to minimize service interruptions. The Federal Reserve Banks, however, as a standard practice, already work to maintain adequate back-up systems to minimize service interruptions, accordingly no contingency factor has been adopted.

Policy

The Board has adopted the following factors that it will consider when evaluating proposals to consolidate Reserve Bank priced services across District lines:

a. Maintenance of improvement of cost recovery in a service.

b. Improvement of the efficiency of Federal Reserve Bank operations.

c. Maintenance of improvement of the level or quality of service.

d. Responsiveness to changes in the financial services industry.

e. Effect on private sector providers of the service.

f. Effect on users of the service.

The Board will use the following procedures when implementing consolidation of Federal Reserve Bank priced services across District lines:

1. Public comment will be solicited when changes in fees and service arrangements are proposed that would have significant longer-run effects on the nation's payments mechanism. Public comment will also be solicited the first time any Reserve Bank priced service is proposed for consolidation across District lines.

2. Advance notice prior to implementing an interdistrict consolidation will be at least 60 days and may be longer to enable private-sector users and providers of the service

a reasonable amount of time to adjust to the change.

Board of Governors of the Federal Reserve System, September 16, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-21762 Filed 9-21-87; 8:45 am]

BILLING CODE 6210-01-M

Application To Engage de Novo in Permissible Nonbanking Activities; Alma Bancshares Corp.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Alma Bancshares Corporation*, Alma, Missouri; to engage *de novo* in offering discount brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 16, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-21763 Filed 9-21-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Boston Private Bancorp et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 9, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Boston Private Bancorp*, Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Boston Private Bank and Trust Company, Boston, Massachusetts.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Pikeville National Corporation*, Pikeville, Kentucky; to acquire 100 percent of the voting shares of Commercial Bank of West Liberty, West Liberty, Kentucky.

2. *Security Financial Corp.*, Niles, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Security Dollar Bank Company, Niles, Ohio.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Commercial BancShares, Incorporated*, Parkersburg, West Virginia; to acquire 100 percent of the voting shares of Farmers and Merchants Bank of Cairo, Harrisville, West Virginia.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First National Bancorp*, Gainesville, Georgia; to acquire 100 percent of the voting shares of First State Bank of Gilmer County, Ellijay, Georgia. Comments on this application must be received by September 25, 1987.

2. *The Gwinnett Financial Corporation*, Lawrenceville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Gwinnett County, Lawrenceville, Georgia.

E. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Boulevard Bancorp, Inc.*, Chicago, Illinois; to acquire 100 percent of the voting shares of Keekins Financial Corporation, Downers Grove, Illinois, and thereby indirectly acquire Citizens National Bank of Downers Grove, Downers Grove, Illinois.

2. *Miami Corporation*, Chicago, Illinois; to acquire 100 percent of the voting shares of Keekins Financial Corporation, Downers Grove, Illinois, and thereby indirectly acquire Citizens National Bank of Downers Grove, Downers Grove, Illinois.

3. *National Bancorp, Inc.*, Melrose Park, Illinois; to acquire 100 percent of the voting shares of The American National Bank of DeKalb, DeKalb, Illinois.

Board of Governors of the Federal Reserve System, September 16, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-21764 Filed 9-21-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Shares of Banks or Bank Holding Companies; David F. Stein et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank

holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 7, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *David F. Stein*, Laguna Beach, California; to acquire 11.49 percent of the voting shares of PNB Financial Group, Newport Beach, California, and thereby indirectly acquire Pacific National Bank, Newport Beach, California.

2. *United Bancorp Employee Stock Option Plan*, Roseburg, Oregon; to acquire 17.9 percent of the voting shares of United Bancorp, Roseburg, Oregon, and thereby indirectly acquire Douglas National Bank, Roseburg, Oregon.

Board of Governors of the Federal Reserve System, September 16, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-21765 Filed 9-21-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Mental Health Services Demonstration Grants for the Homeless Mentally Ill

AGENCY: National Institute of Mental Health, ADAMHA, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The National Institute of Mental Health announces the availability of Mental Health Services Demonstration Grants for the Homeless Mentally Ill, MH-87-21. These grants will be made under the authority of section 612 of Public Law 100-77, the Stewart B. McKinney Homeless Assistance Act, which authorizes funds under section 504(f) of the Public Health Service Act for a new program of mental health services demonstration grants for the homeless mentally ill.

The goals of this program are to: Respond comprehensively to the needs of homeless mentally ill adults by providing a coordinated system of mental health and other supportive services; test targeted approaches that address the mental health problems of severely emotionally disturbed homeless children and adolescents; stimulate cooperation and formal linkages among mental health, health, housing, education, rehabilitation, and social welfare agencies in addressing the multiple needs of the target populations; and document and evaluate successful and replicable approaches to the provision of coordinated treatment, housing, and supportive services for the target populations.

In Fiscal Year 1988, NIMH will make up to twelve grant awards for comprehensive community-based services demonstration projects for homeless adults with severe, long-term mental illness and approximately four grant awards for projects for homeless children and adolescents with severe emotional disturbance. Grant awards will be for 2-year projects. A total of approximately $7.7 million will be available for adult projects; an additional total of approximately $1 million will be available for child and adolescent projects.

NIMH is limiting potential applicants under this announcement to State mental health authorities. There are three reasons for this eligibility restriction. First, because multiple agencies and providers will necessarily be involved at both the State and local levels in coordinating these complex demonstration initiatives, centralized State assistance is needed, so that all the appropriate resources are involved. The State mental health authorities are best qualified to undertake this coordination function, since they oversee a wide range of mental health service providers. Prior NIMH demonstration efforts under section 504(f) of the PHS Act [NIMH Community Support Program (CSP) and Child and Adolescent Service Systems Program (CASSP)] have shown the State mental health authorities to be extremely effective in stimulating the development of coordinated community-based services. Second, two related Federal initiatives (the Block Grant Program for Services to Homeless Individuals Who Are Chronically Mentally Ill authorized under Section 611 of the Homeless Assistance Act and the State Comprehensive Mental Health Planning Act of 1986) require State governments to coordinate services for homeless mentally ill persons. Finally, if these systems of care are to survive beyond the period of Federal funding, it is probable that the main source of funding will come from State mental health authorities and other related State human service agencies.

In making application for assistance, the State mental health authority must designate the type of grant (adults or children) for which it is applying and identify the community and the organization(s) that will carry out the demonstration activities at the local level. Each State may submit only one application.

This program is subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs and 45 CFR Part 100. Executive Order 12372 allows States/territories the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit (Form PHS-5161) will contain a listing of States which have chosen to set up a review system and will provide a point of contact in the States for that review. Since 60 days are allowed for the State review, applicants are advised to discuss projects with and provide copies of their applications to State contact points as early as possible.

Receipt and Review Procedures for Applications:

Applications in response to this announcement will be accepted under the single receipt date of December 1, 1987. The following criteria will be used in the review of applications: extent to which the applicant demonstrates a clear understanding of the scope and range of service needs among the target population; level of need for the demonstration project in the proposed locality; adequacy of the proposed plan of action; adequacy of proposed management and coordination strategy; cultural relevance of proposed services for ethnic and racial minority persons; quality of the proposed evaluation plan; qualifications and prior experience of the proposed staff and consultants in working with the seriously mentally disabled and/or homeless population; and adequacy and feasibility of proposed plans for continued funding of the project after the demonstration period.

For additional program guidance, potential applicants should contact: James W. Stockdill, Director or Irene Shifren Levine, Ph.D., Associate Director, Division of Education and Service Systems Liaison, National Institute of Mental Health, 5600 Fishers Lane, Room 11C25, Rockville, Maryland 20857, Telephone: (301) 443-3706.

The Catalog of Federal Domestic Assistance number for this program is 13.125.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87-21801 Filed 9-21-87; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 87M-0260]

Premarket Approval of the Tangent-Streak Bifocal™ (Polyacrylate-Silicone) Contact Lens; Fused Kontacts, Inc.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Fused Kontacts, Inc., Chicago, IL, for premarket approval, under the Medical Device Amendments of 1976, of the Tangent-Streak Bifocal™ (polyacrylate-silicone) Contact Lens (clear and tinted). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administration review by October 22, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On October 20, 1986, Fused Kontacts, Inc, Chicago, IL 60602, submitted to CDRH an application for premarket approval of the Tangent-Streak Bifocal™ (polyacrylate-silicone) Contact Lens (Clear and tinted). The lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased presbyopic eyes that are myopic or hyperopic and for the correction of corneal astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The lens ranges in distance powers from −20.00 D to +12.00 D and add powers from 0.75 D to 3.50 D and is to be disinfected using a chemical lens care system only. The tinted lens contains the color additive [phthalocyaninato(2-)] copper in accordance with the color additive listing provisions of 21 CFR 74.3045.

On May 29, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On July 17, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be indentified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the approved contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive lebeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylemethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 22, 1987 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 3, 1987.

John C. Villfoth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87-21784 Filed 9-21-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted for Review to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days to the Bureau

Clearance Officer and to the Office of Management and Budget Interior Desk Officer at (202) 395–7340.

Title: Higher Education Annual Report, 25 U.S.C. 13, and 254 CFR Part 40.

Abstract: The Office of Indian Education Programs needs and uses this information for program integrity while performing its mission of educating Native American Indian College students.

Bureau Form Number:

Frequency: Annually.

Description of Respondents: Indian/Alaskan Native students applying for admission to postsecondary schools.

Annual Response: 93.

Annual Burden Hours: 3720 Hours.

Bureau Clearance Officer: Cathie Martin, (202) 343–3577.

Ronal D. Eden,

Acting Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs).

[FR Doc. 87–21769 Filed 9–21–87; 8:45 am]

BILLING CODE 4310–02–M

Information Collection Submitted for Review to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information below listed has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed Collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days to the Bureau Clearance officer and to the Office of Management and Budget, Interior Desk Officer at (202) 395–7340.

Title: Higher Education Grant Application.

Abstract: This information is needed to determine the eligibility of Native American student seeking financial aid program assistance to attend accredited institutions of higher education.

Bureau Form Number: BIA 6237.

Frequency: Annually.

Description of Respondents: Indian/Alaskan Native students applying for admission to postsecondary schools.

Annual Response: 26,000.

Annual Burden Hours: 6,500 hours.

Bureau Clearance Officer: Cathie Martin, (202) 343–3577.

Ronal D. Eden,

Acting Deputy to the Assistant Secretary/Director-Indian Affairs (Indian Education Programs).

[FR Doc. 87–21770 Filed 9–21–87; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[OR–050–4322–11; GP7–295]

Emergency Closure of Public Lands; Oregon

Notice is herey given that effective immediately all public lands in Township 11 South, Range 21 East of the Willamette Meridian:

Section 1: All.
Section 2: Lots 1 and 2; S½NE¼; S½.
Section 3: All.
Section 5: All that part lying East and North of Bridge Creek.
Section 6: All that part of Lot 1 lying North and East of Bridge Creek.
Section 8: N½NE¼; S½N½; S½.
Section 9: All.
Section 10: All.
Section 11: All.
Section 12: All.
Section 13: All that part lying North and West of the Oregon State Highway No. 207 right-of-way.
Section 14: All.
Section 15: All.
Section 16: All.
Section 17: All.
Section 18: All.
Section 19: All that part lying North of the Ochoco U.S. Highway No. 26 right-of-way.
Section 21: E½ and all that part of the SW¼ lying South of the Ochoco U.S. Highway No. 26 right-of-way.
Section 22: All.
Section 23: All that part lying North and West of the Oregon State Highway No. 207 right-of-way.
Section 24: All that part lying North and West of the Oregon State Highway No. 207 right-of-way.
Section 26: All that part of the NW¼NE¼; N½NW¼; S½N½; and the S½ lying West of the Oregon State Highway No. 207.
Section 27: All.
Section 28: All.
Section 29: All.
Section 32: All.
Section 33: All.
Section 34: All.
Section 35: All those portions of the W½, W½E½, and E½NE¼ lying West of the Oregon State Highway No. 207 right-of-way. in Township 11 South, Range 22 East of the Willamette Meridian:
Section 6: Lots 3, 4, 5, 6, and 7; SE¼NW¼; E½SW¼; W½SE¼; SE¼SE¼.
Section 7: Lots 1, 2, 3, and 4; E½W½; W½E½; E½SE¼.
Section 18: All that fractional part lying North of the Oregon State Highway No. 207 right-of-way. in Township 12 South, Range 21 East of the Willamette Meridian:
Section 2: Lots 3 and 4; S½NW¼; N½SW¼.
Section 3: Lots 1, 2, 3, and 4; S½N½; NE¼SW¼; N½SE¼.
Section 4: Lots 1, 2, and 3; SE¼NW¼; S½NE¼.
Section 5: Lots 1, 2, 3, and 4.

and with the exception of designated roads, are closed to all vehicle access and travel.

The purpose of this closure is to protect the steep highly erosive waterhed, sparse vegetation, wildlife, and cultural resources.

The only exception would be for special authorized use and emergency needs.

The authority for this closure is 43 CFR 8341.2.

This closure will remain in effect until an ORV designation plan is completed for the area.

September 14, 1987.

Donald L. Smith,

Acting District Manager.

[FR Doc. 87–21815 Filed 9–21–87; 8:45 am]

BILLING CODE 4310–33–M

[ES 970–07–4121–14–2410; ES 36413]

Request for Public Comment on Fair Market Value, Maximum Economic Recovery and Environmental Assessment; Emergency Coal Lease; Alabama

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Comment; Correction.

SUMMARY: This document corrects a Notice of Public Comment with respect to Emergency Coal Lease Application, ES–36413, published in the **Federal Register** on April 27, 1987 (52 FR 13877). This action is necessary to delete the SW¼SW¼ of Section 17, T. 17 S., R. 11 W., Huntsville Meridian, Alabama. All other information is unchanged.

Stuart F. Carlson,

Acting State Director.

[FR Doc. 87–21767 Filed 9–21–87; 8:45 am]

BILLING CODE 4310–GJ–M

[CA–060–07–4333–12; 8342]

Off-Road Vehicle Route Designation Decisions for the California Desert District, Barstow Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Decisions to open, close, or limit use of routes of travel on public lands in the Barstow Resource Area.

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SUMMARY: Notice is hereby given that final route designation decisions have been made for that portion of the Barstow Resource Area covered by the Amargosa, Dumont/Clark, Irwin, Johnson Valley and Sheephole Mountains Desert Access Guide Map areas. These decisions have been made in accordance with authority and requirements of Executive Orders 11644 and 11989 and 43 CFR Part 8340.

The majority of routes in the affected area have been approved for use. However, some routes have been closed to all use by motorized vehicles, while other routes have been limited to permitted uses only. Maps showing open, closed and limited routes may be reviewed at the BLM offices listed at the end of this notice.

Both written and oral public comments were solicited and evaluated in reaching these decisions. Draft designation proposals were made available on March 17, 1987 with a 45-day public comment period ending on May 4, 1987. Open houses were held at the California Desert Information Center on April 11 and 12, 1987 and an Ad Hoc committee meeting was held on April 14, 1987 to provide for additional in-person public review. Draft proposals were then revised based on public input, and a second Ad Hoc committee meeting was held on May 14 to review draft modifications. Proposal final decisions were issued on June 25, 1987 with a public comment period extending until July 25, 1987. Final decisions are now being implemented as proposed with the following exceptions:

1. Routes B22, B23 and D1 will be closed only until such time that identified mitigation measures are implemented. Once mitigation measures are in place, these routes will automatically be designated "open" without further processing.

2. Route D077, which runs parellel to the dismantled Tonopah and Tidewater Railroad line from Silver Lake north to the historic Riggs Site, will be designated open.

DATE: These designations are effective upon publication of this notice and will remain in effect until rescinded or modified by the authorized officer. Enforcement of these decisions will be implemented as routes are signed or as maps are printed and made available to the public.

FOR FURTHER INFORMATION CONTACT: Tim Read, Chief, Branch of Resource Protection and Visitor Management, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, (619) 256–3591; hours: 7:45 a.m. to 4:30 p.m., Monday through Friday or Dave Mensing, District Outdoor Recreation Planner, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, California 92507, (714) 351–6402; hours: 7:45 a.m. to 4:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: These vehicle route designations are enforceable under the authority provided in the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.), EO 11644 (Use of Off-Road Vehicle on the Public Lands), and 3 CFR 74.332 as amended by EO 11989, 42 FR 26959 (May 25, 1977). Any person who violates or fails to comply with the vehicle route designations as governed by 43 CFR Part 8341 is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000.00 and/or imprisonment for not longer than twelve months.

Date: September 14, 1987.

Gerald E. Hillier,

District Manager.

[FR Doc. 87–21772 Filed 9–21–87; 8:45 am]

BILLING CODE 4310–40–M

Salt Lake District Multiple Use Advisory Council Meeting and Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of district multiple use advisory board meeting and tour.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Salt Lake District Multiple Use Advisory Council will be held on October 7 and 8, 1987. The tour will begin at 9:00 p.m. at the Salt Lake District Office. During the 2-day trip, Council members will tour proposed supercollider and hazardous waste facility sites and visit other sites of current development and/or interest (e.g., American Salt Plant, AMAX construction site, and Clover Reservoir).

A morning meeting will be held on October 8th at 8:30 a.m. at the State Line Inn, Wendover, Utah. The major focus of this meeting will be to identify issues and Advisory Council recommendations for the Pony Express Resource Management Plan. Updates on general District programs and Advisory Council vacancies and 1988 nominations will also be presented. The public is invited to attend this meeting or to file written statements for the Council's consideration. Those wishing to make oral statements must notify Deane Zeller, District Manager, 2370 South 2300 West, Salt Lake City, Utah 84119 by October 2, 1987. Time limits may be established for each speaker.

Deane H. Zeller,

District Manager.

[FR Doc. 87–21786 Filed 9–21–87; 8:45 am]

BILLING CODE 4310–DQ–M

[MT–920–07–4111–12; NDM 62722 Acq.]

Proposed Reinstatement of Terminated Oil and Gas Lease; McKenzie County, ND

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease NDM 62722 Acq., McKenzie County, North Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this notice.

Dated: September 11, 1987.

Cynthia L. Embretson,

Chief, Fluids Adjudication Section.

[FR Doc. 87–21817 Filed 9–21–87; 8:45 am]

BILLING CODE 4310–DN–M

[NV–930–07–4212–11; N–1743]

Order Providing for Opening of Public Land; Nevada

September 10, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; order providing for opening of public land, Nevada.

SUMMARY: This notice will open public land to the operation of the public land laws and the mining laws.

EFFECTIVE DATE: October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Rod Harris, District Manager, Elko District Office, P.O. Box 831, Elko, Nevada 89801, (702) 738–4071.

SUPPLEMENTARY INFORMATION: The following described land was reconveyed to the United States by quitclaim deed executed May 7, 1987:

Mount Diablo Meridian, Nevada

T. 47 N., R. 64 E.,
Sec. 1, S½NW¼NW¼SW¼SE¼.

The area described contains 1.25 acres in Elko County, Nevada.

No development has taken place on this land which was transferred out of Federal ownership pursuant to the Recreation and Public Purposes Act. Therefore, since the land was not being used for the purpose for which it was conveyed, i.e., golf course facilities, it was reconveyed to the United States. Title was accepted on behalf of the United States on September 9, 1987.

At 10:00 a.m., on October 22, 1987, the land will be open to the operation of the public land laws, subject to valid existing rights. All valid applications received prior to or at 10:00 a.m., on October 22, 1987, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10:00 a.m., on October 22, 1987, the land will also be open to the operation of the mining laws.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

The land remains open to the mineral leasing and material sale laws.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87-21818 Filed 9-21-87; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-07-4212-11; Nev-056718]

Order Providing for Opening of Public Land; Nevada

September 10, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; order providing for opening of public land, Nevada.

SUMMARY: This notice will open public land to the operation of the public land laws and the mining laws.

EFFECTIVE DATE: October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Rod Harris, District Manager, Elko District Office, P.O. Box 831, Elko, Nevada 89801, (702) 738-4071.

SUPPLEMENTARY INFORMATION: The following described land was reconveyed to the United States by quitclaim deed executed May 20, 1987:

Mount Diablo Meridian, Nevada

T. 47 N., R. 64 E.,
Sec. 12, S½NW¼SW¼NW¼NE¼.

The area described contains 1.25 acres in Elko County, Nevada.

The land was transferred out of Federal ownership pursuant to the Recreation and Public Purposes Act. No development has taken place on the land. Therefore, since it was not being used for the purpose for which it was conveyed, i.e., sewage facilities, the land was reconveyed to the United States. Title was accepted on behalf of the United States on September 9, 1987.

At 10:00 a.m., on October 22, 1987, the land will be open to the operation of the public land laws, subject to valid existing rights. All valid applications received prior to or at 10:00 a.m., on October 22, 1987, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10:00 a.m., on October 22, 1987, the land will also be open to the operation of the mining laws.

Appropriation of lands under the general mining laws prior to the date and time or restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

The land remains open to the mineral leasing and material sale laws.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87-21819 Filed 9-21-87; 8:45 am]

BILLING CODE 4310-HC-M

[MT-930-07-4212-13; MTM 66052]

Conveyance of Public Land in Beaverhead County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public and interested state and local governmental officials of the issuance of the conveyance document.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-657-6082.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), the following described surface estate was conveyed to James Easley and Gloria Lee Easley:

Principal Meridian, Montana

T. 1 S., R. 11 W.,
Sec. 1, lots 5 and 9.
Containing 9.77 acres.

2. The following described land was conveyed to Ralston Ranch, Inc.:

Principal Meridian, Montana

T. 1 N., R. 12 W.,
sec. 4, SW¼NE¼
Containing 40 acres.

3. In exchange for the above selected land, the United States acquired the surface estate of the following described land in Beaverhead County:

Principal Meridian, Montana

T. 1 S., R. 11 W.,
Sec. 1, a tract of land located in lots 3 and 4, described as Parcel No. 1 of Certificate of Survey No. 555, filed for record June 1, 1987, Clerk and Recorder's Reception No. 193100, Beaverhead County, Montana.
Containing 7.02 acres, more or less.

4. The value of federal public land was appraised at $30,500 and the nonfederal land was appraised at $30,250. A $250 cash equalization payment was made to the United States.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

September 11, 1987.

[FR Doc. 87-21816 Filed 9-21-87; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-040-07-4410-08]

Intent To Prepare a Resource Management Plan/Environmental Impact Statement; Safford District, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare a Resource Management Plan (RMP) and Environmental Impact Statement (EIS).

SUMMARY: The area to be included in this RMP/EIS is the entire Safford District and consists of nearly 1,500,000 acres of public lands lying within Cochise, Gila, Graham, Greenlee, and

Pinal counties in southeastern Arizona. The RMP/EIS will guide BLM management programs in Safford District.

The public is invited to participate in the planning process beginning with the identification of issues. Scoping meetings for public input will be held in Safford, Bisbee, Winkelman, Tucson, Mesa, and Willcox, Arizona.

DATE: Comments relating to identification of issues will be accepted until December 7, 1987.

ADDRESS: Comments should be sent to: Steve Knox, Team Leader, Bureau of Land Management, Safford District, 425 E. 4th St., Safford, AZ 85546.

FOR FURTHER INFORMATION CONTACT: Keith L. Cook, Gila Area Resource Manager, Lyle K. Rolston, San Simon Resource Area Manager, or Steve Knox, Team Leader at (602) 428–4040.

SUPPLEMENTARY INFORMATION: Anticipated issues related to the designation and management of public lands as open, limited or closed to motor vehicles; management of public lands along the Gila River; access to public lands; management of riparian zones; Areas of Critical Environmental Concern (ACECs); land ownership adjustments; and management of newly acquired lands. An interdisciplinary team has been formed to resolve these issues. Skills possessed by the team are in the fields of recreation, wildlife habitat, range/livestock, realty, soils, vegetation, cultural, paleontology, fire management, minerals/energy, and water.

Public meetings/workshops to identify issues will be held as follows:

Safford—October 27, Lafe Nelson School Cafeterium, 1100 10th Ave., Safford
Willcox—October 28, Plaza Inn, 1100 W. Rex Allen Drive, Willcox
Bisbee—October 29, Shepherds Inn, 67 Main St., Bisbee
Tucson—November 3, Radisson Suites Hotel, 6555 E. Speedway, Tucson
Winkelman—November 4, Central Arizona College, Aravaipa Campus, Aravaipa Rd. and Hgwy. 77, Winkelman
Mesa—November 5, Mesa Community Center, Palo Verde III Room, Conference Center, 201 N. Center St., Mesa.

All meetings begin at 7:00 P.M.

With public input a comprehensive range of alternatives will be developed, including the No Action alternative. A plan will be selected from one or more of the alternatives which will best resolve the issues and management concerns developed in this process.

Documents used in the preparation of the plan and EIS will be located in the Safford District Office.

Date: September 10, 1987

Beaumont C. McClure,

Acting State Director.

[FR Doc. 87–21773 Filed 9–21–87; 8:45 am]

BILLING CODE 4310–32–M

[MT–920–07–4520–11]

Land Resource Management; Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: Plats of survey of the lands described below accepted August 18, 1987, were officially filed in the Montana State Office effective 10 a.m. on August 31, 1987.

Principal Meridian, Montana

T. 27 N., R. 49 E.

This plat represents the dependent resurvey of a portion of the center 1/16 line of section 2, the westerly boundaries of tracts 41 and 42 on the former left bank of the Missouri River in section 11, the northerly boundary of tract 45 on the former left bank of the Missouri River in section 14, the easterly boundaries of tract 41 and a portion of tract 40 in sections 2 and 11, and the lines between tracts 43 and 44, 42 and 43, 41 and 42, 40 and 41, and 39 and 40; and the survey of the 1916 left bank of the Missouri River in sections 2, 11, and 14, Township 27 North, Range 49 East, Principal Meridian, Montana. The area described is in Roosevelt County.

This survey was executed at the request of the Department of Justice Re: "United States v. Holen, "Civil No. 82–25–GF, USDC, Montana, and authorized by the Director in a memorandum dated July 3, 1986.

Principal Meridian, Montana

T. 30 N., R. 10 W.

The plat, in two sheets, represents the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines; and the survey of sections 8, 17, 20, 29, and 32, Township 30 North, Range 10 West, Principal Meridian, Montana. The area described is in Glacier County.

This survey was executed at the request of the Superintendent, Blackfeet Agency, Bureau of Indian Affairs, dated March 8, 1983.

Principal Meridian, Montana

T. 31 N., R. 19 W.

This plat, in seven sheets, represents the dependent resurvey of portions of the south, east, west, and north boundaries, a portion of the subdivisional lines, portions of the adjusted original meanders of the left and right banks of the Flathead River, the right bank of the North Fork of the Flathead River, the left bank of the Middle Fork of the Flathead River, and Homestead Entry Survey No. 962 and No. 963 in unsurveyed section 12; and the survey of the subdivision of certain sections, lot 14 of section 17, and the division line between parcels A and B of lot 1 of section 33, Township 31 North, Range 19 West, Principal Meridian, Montana. The area described is in Flathead County.

This survey was executed at the request of the U.S. Forest Service.

EFFECTIVE DATE: August 31, 1987.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: September 14, 1987.

Robert A. Teegarden,

Acting State Director.

[FR Doc. 87–21820 Filed 9–21–87; 8:45 am]

BILLING CODE 4310–DN–M

[UT–942–07–4220–10; U–59197]

Proposed Withdrawal and Opportunity for Public Meeting; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to withdraw 830.67 acres of public land for the Jordanelle Dam and Reservoir, near Park City, Utah. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by December 28, 1987.

ADDRESS: Comments and meeting requests should be sent to the Utah State Director, BLM, 324 South State, Suite 301, Salt Lake City, Utah 84111–2303.

FOR FURTHER INFORMATION CONTACT: Nancy Bloyer, BLM, Utah State Office, 801–524–4036.

SUPPLEMENTARY INFORMATION: On September 9, 1987, a petition was approved allowing the Bureau of Reclamation to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws,

including the mining laws, subject to valid existing rights:

Salt Lake Meridian

T. 2 S., R. 4 E.,
Sec. 13, SE¼.
T. 2 S., R. 5 E.,
Sec. 7, N½SE¼;
Sec. 8, W½SW¼;
Sec. 17, SE¼NW¼, E½SW¼, SW¼SE¼;
Sec. 20, W½NE¼, except patented portion, and SE¼, except patented portion;
Sec. 28, lot 4, except patented portion;
Sec. 29, E½, except patented portion;
Sec. 30, lot 3, NE¼NE¼, S½NE¼.

The area described contains approximately 830.67 acres in Wasatch County, Utah.

The purpose of the proposed withdrawal is for construction, control, operation, and maintenance of the Jordanelle Dam and Reservoir.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting wil be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are licenses, permits, temporary cooperative agreements, and other land use authorizations of a temporary nature.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Bureau of Reclamation.

Dated: September 14, 1987.

JoAn Robbins,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-21787 Filed 9-21-87; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Endangered and Threatened Species; Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

PRT 721301

Applicant: International Council for Bird Preservation/American Association of Zoological Parks and Aquariums, Columbia, SC.

The applicant requests a permit to export up to 80 Rothschild's (myna) starlings (*Leucopsar rothschildi*) to the Surabaya Zoological Park, East Java, Indonesia. These male and female birds, all captive born in the United States, will be used in a breeding program for eventual reintroduction of the species to the wild.

PRT 721349

Applicant: Duke University, Durham, NC.

The applicant requests a permit to import two captive-born female brown lemurs (*Lemur fulvus*) from the University Louis Pasteur, Cedex, France for captive breeding.

PRT 721343

Applicant: Cincinnati Zoo, Cincinnati, OH.

The applicant requests a permit to import blood and semen samples from 30-40 black rhinoceros (*Diceros bicornis*) in Kenya. The semen will be used in the North American captive breeding program. The four researchers will be using the blood samples to determine the incidence of exposure to Leptospirosis titers, assay for hepadnovirus antigens and antibodies, conduct genetic studies and determine vitamin E and mineral levels in a wild black rhinoceros population.

PRT 721477

Applicant: Duke University, Durham, NC.

The applicant requests a permit to import one male and one female, wild caught, diademed sifakas (*Propithecus diadema*), captured in eastern Madagascar, for captive breeding.

PRT 721479

Applicant: Duke University, Durham, NC.

The applicant requests a permit to import three male and three female, wild caught, sportive lemurs (*Lepilemur mustelinus*), captured in eastern Madagascar, for captive breeding and life history research.

PRT 721480

Applicant: Cincinnati Zoo, Cincinnati, OH.

The applicant requests a permit to export one male and one female, captive born, ocelot (*Felis pardalis*) to the London Zoo, London, England, for captive breeding and exhibition.

PRT 721400

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import two male and three female captive born golden-shouldered parakeets (*Psephotus chrysopterygius*) from the Royal Zoological Society of South Australia for the purpose of enhancement of propagation and public display.

PRT 721367

Applicant: University of Kansas, Lawrence, KS.

The applicant requests a permit to import and reexport one preserved specimen of New Zealand owl parrot or kakapo (*Strigops habroptilus*) held in the collection of the British Museum, London, England, for the purpose of scientific research.

PRT 721494

Applicant: Craig Boddington, Sepulveda, CA.

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of Phil van der Merwe in Cape Province, Republic of South Africa, for the purpose of enhancement of propagation.

PRT 721555

Applicant: Duke University, Durham, NC.

The applicant requests a permit to import two male and two female wild caught, aye-ayes (*Daubentonia madagascariensis*) from Madagascar for captive breeding.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 p.m.) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

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Date: September 17, 1987.

R.K. Robinson,

Chief, Branch of Permits.

[FR Doc. 87-21791 Filed 9-21-87; 8:45 am]

BILLING CODE 4310-55-M

Marine Mammal Permits; Receipt of Application

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq., and the regulations governing marine mammals (50 CFR Part 18).

Applicant: Paul Jensen Arctic Museum, Western Oregon State College, Monmouth, Oregon 97361.
File No.: PRT-721041
Type of Permit: Public Display
Name of Animals: One adult walrus
Summary of Activity To Be Authorized: The applicant proposes to take this animal to display in a panorama of Eskimo life
Source of Marine Mammals for Display: St. Lawrence Island, Alaska
Period of Activity: April 1988 to July 1989

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for reveiw during normal business hours (7:45 am to 4:15 pm) in Room 601, N. Glebe Road, Arlington, Virginia.

Dated: September 17, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-21790 Filed 9-21-87; 8:45 am]

BILLING CODE 4310-55

Minerals Management Service

Renewal of the Royalty Management Advisory Committee Charter

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of renewal.

SUMMARY: The Secretary of the Interior (Secretary) is renewing the Royalty Management Advisory Committee (Committee) Charter, which expires August 29, 1987. The new charter will terminate in 2 years. This renewal is required to allow the Committee sufficient time to complete its work relative to the various royalty management policies and procedures. This Notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), and this renewal action has been reviewed and concurred in by the Administrator of the General Services Administration.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 651, Denver, Colorado, 80225, telephone number (303) 231-3360, (FTS) 326-3360.

SUPPLEMENTARY INFORMATION: The Committee was established for a 2-year period by the Secretary in August 1985, to provide advice and recommendations on different elements of the Royalty Management Program. The Committee consists of 31 members representing the diversified interests of Indian Tribes and allottees, State governments, and the minerals industry.

During the past 2 years, the Committee has reviewed several areas of the Royalty Management Program. It is presently evaluating how best to improve the Royalty Management accounting and production systems. A work panel has been established and is expected to report to the full Committee at a meeting in late September (21-23) 1987

Certification

I hereby certify that the Royalty Management Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by numerous legislative requirements, most recently by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* Significant and continuing statutory requirements can also be found in the Allotted Lands Indian Leasing Act of March 3, 1909 (25 U.S.C. 396 *et seq.*), the Tribal Lands Leasing Act of May 11, 1938 (25 U.S.C. 396a *et seq.*), the Indian Mineral Development Act of December 22, 1982 (25 U.S.C. 2101 *et seq.*), the Mineral Lands Leasing Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C. 351 *et seq.*), the Geothermal Steam Act of 1970 (30 U.S.C. 1001 *et seq.*), the Submerged Lands Act of 1953 (43 U.S.C. 1301 *et seq.*), the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331 *et seq.*), as amended in 1978 (43 U.S.C. 1801 *et seq.*) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711).

Date: September 16, 1987.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 87-21758 Filed 9-21-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5383, Block 221, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 11, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is

considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: September 14, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-21777 Filed 9-21-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipts of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc., Unit Operator of the High Island Block 160 Federal Unit Agreement No. 14-08-0001-8666, has submitted a DOCD describing the activities it proposes to conduct on the High Island Block 160 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on September 8, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8:00 a.m. to 4:40 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Al Durr; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2659.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 14, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-21778 Filed 9-21-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places: Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 12, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by October 7, 1987.

Patrick Andrus,

Acting Chief of Registration, National Register.

Connecticut

Litchfield County

Goshen, *West Goshen Historic District,* Roughly bounded by CT 4, Beach St., Canterbury, & Thompson Rds.

Florida

Florida County

DeLand, *Downtown Deland Historic District,* Roughly bounded by Florida & Rich Aves., Woodland Blvd., & Howry Ave.

Indiana

Noble County

Ligonier, *Ligonier Historic District,* Roughly bounded by Conrail right-of-way, Smith, Union, College, & Grand Sts.

Wayne County

Richmond, *Richmond Railrood Station Historic District,* Roughly bounded by Norfolk & Southern RR tracks, N. Tenth St., Elm Pl. & N. D St., & Ft. Wayne Ave.

Montana

Gallatin County

Bozeman, *Beall Park Community Center (Bozeman MRA),* 409 N. Bozeman

Bozeman, *Bohart House (Bozeman MRA),* 510 N. Church

Bozeman, *Bon Ton Historic District (Bozeman MRA),* Roughly bounded by Olive St., Wilson Ave., Cleveland St., & Fourth Ave.

Bozeman, *Bozeman Armory (Bozeman MRA),* 24 W. Mendenhall

Bozeman, *Bozeman Brewery Historic District (Bozeman MRA),* 700-800 Wallace Ave.

Bozeman, *Bozeman Sheet Metal Works (Bozeman MRA),* 26 S. Grand

Bozeman, *Bozeman YMCA (Bozeman MRA),* 6 W. Babcock

Bozeman, *Brandenburg House (Bozeman MRA),* 122 W. Lamme

Bozeman, *Bridger Arms Apartments (Bozeman MRA),* 103-111 S. Fourth Ave.

Bozeman, *Busch House (Bozeman MRA),* 224 N. Church

Bozeman, *Colburn House (Bozeman MRA),* 607 W. Lamme

Bozeman, *Cooper Park Historic District (Bozeman MRA),* 200-700 blks. S. Fifth, Sixth, Seventh, Eighth, & Cross Sts.

Bozeman, *Dokken-Nelson Funeral Home (Bozeman MRA),* 113 S. Wilson

Bozeman, *First Baptist Church (Bozeman MRA),* 120 S. Grand

Bozeman, *First Presbyterian Church (Bozeman MRA),* 26 W. Babcock

Bozeman, *Gallatin County Courthouse (Bozeman MRA),* 301 W. Main

Bozeman, *Gallatin Valley Seed Company (Bozeman MRA),* 209 S. Wallace

Bozeman, *Gifford House (Bozeman MRA),* 112 S. Grand

Bozeman, *Graf Building (Bozeman MRA),* 219-21 W. Arthur

Bozeman, *Hamill Apartments (Bozeman MRA),* 427 E. Main

Bozeman, *Hamill House (Bozeman MRA),* 205 S. Church

Bozeman, *Holy Rosary Church Rectory (Bozeman MRA),* 220 W. Main

Bozeman, *House at 22 W. Lamme (Bozeman MRA),* 22 W. Lamme

Bozeman, *Kolble House (Bozeman MRA),* 716 S. Black

Bozeman, *Lindley Place Historic District (Bozeman MRA),* 200-330 Lindley Pl.

Bozeman, *Litening Gas (Bozeman MRA),* 424 E. Main

Bozeman, *MISCO Grain Elevator (Bozeman MRA),* 700 N. Wallace

Bozeman, *Main Street Historic District (Bozeman MRA),* 100 blk. W. Main-300 blk. E. Main

Bozeman, *Methodist Episcopal Church (Bozeman MRA),* 121 S. Willson

Bozeman, *Newman House (Bozeman MRA),* 216 N. Church

Bozeman, *North Edge Dairy (Bozeman MRA),* 315 W. Peach

Bozeman, *North Tracy Avenue Historic District (Bozeman MRA),* 300-500 blks. N. Tracy Ave., Bozeman, & Montana

Bozeman, *Orton House (Bozeman MRA),* 323 N. Church

Bozeman, *Panton House (Bozeman MRA),* 801 S. Seventh

Bozeman, *Rouse House (Bozeman MRA),* 506 E. Babcock

BEST COPY AVAILABLE

Bozeman, *South Tracy Avenue Historic District (Bozeman MRA)*, 802–824 S. Tracy Ave.
Bozeman, *South Tracy-South Black Historic District (Bozeman MRA)*, 200–600 blks. of S. Tracy & S. Black Aves.
Bozeman, *Spieth Houses (Bozeman MRA)*, 204 N. Bozeman & 209 E. Lamme
Bozeman, *St. James Episcopal Church and Rectory (Bozeman MRA)*, 9 W. Olive
Bozeman, *Story Motor Company (Bozeman MRA)*, 202 W. Main

New Jersey

Burlington County

Site III (18th century vessel) (28-Bu-329)
Chesterfield, *Taylor-Newbold House*, Off Old York Rd. (Rt. 660)

Puerto Rico

Ponce County

Ponce, *Armstrong-Toro House*, Calle Union No. 9
Ponce, *Casino de Ponce*, Calle Marina & Calle Luna
Ponce, *Font-Ubides House*, Calle Castillo No. 34
Ponce, *Missionary Society of the Methodist Episcopal Church*, Calle Villa No. 135
Ponce, *Oppenheimer House*, Calle Salud No. 34
Ponce, *Subira House*, Calle Raina No. 107

Sabana Grande County

Sabana Grande, *Lassise-Schettini House*, Calle Angel Ramirez, final

Virginia

Culpeper County

Culpeper, *Culpeper Historic District*, Roughly bounded by Edmondson St., Southern Railroad, Stevens, & West Sts.

Wisconsin

Taylor County

Big Indian Farms

[FR Doc. 87–21811 Filed 9–21–87; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31108]

Railroad Operation; Burlington Northern Railroad Co.

On September 2, 1987, Burlington Northern Railroad Company (BN) filed a notice of exemption for the acquisition of trackage rights from The Atchison, Topeka and Santa Fe Railway Company (ATSF) over certain lines of railroad between Trinidad and Jansen, in Las Animas County, Colorado, a distance of approximately 3 miles. ATSF will grant overhead trackage rights to BN between ATSF milepost 635 + 4291.4 feet at Trinidad and ATSF milepost 638 + 4185.4 feet at Jansen. The trackage rights will be effective on September 14, 1987.

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).[1]

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: September 14, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–21842 Filed 9–21–87; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 31100]

Railroad Operation; Oil Creek Railway Historical Society, Inc.

The Oil Creek Railway Historical Society, Inc., has filed a notice of exemption to acquire and operate certain properties of the Consolidated Rail Corporation. The properties consist of: The line between Rouseville, PA and Oil Creek Township, PA (milepost 133.8 to milepost 118.0) and the line between Titusville, PA and Oil Creek Township, PA (milepost 0.00 to milepost 2.52). Rail operations will be conducted on the property by Oil Creek & Titusville Lines, Inc. Any comments must be filed with the Commission and served upon Barbara L. Smith, 101 West Main St., P.O. Box 325, Titusville, PA 16354, telephone (814) 827–1844.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 9, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–21843 Filed 9–21–87; 8:45 am]
BILLING CODE 7035–01–M

[1] The Railway Labor Executives' Association (RLEA) has requested the imposition of labor protective conditions. As an exemption is sought from the requirements of 49 U.S.C. 11343, such conditions have been routinely imposed.

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research; AMP, Inc., et al.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the NAHB Research Foundation, Inc. ("NAHB") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on August 25, 1987 disclosing (1) the identities of additional parties to the Smart House Project and (2) the nature and objectives of the Smart House Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of current and additional parties to the Smart House Project, and its general areas of planned activity, are given below.

The Smart House Project is a joint venture project that, will be implemented in a series of stages by separate agreements at each stage. The following parties have signed agreements to fund or otherwise participate in the first stage organizational activities:

AMP, Incorporated
Apple Computer, Inc.
Arco Solar, Inc.
AT&T Technologies, Inc.
Bell Northern Research Ltd.
Bose Corporation
BrinTec Corp.
Broan Mfg. Co., Inc.
Burndy Corp.
Carrier Corp.
Challenger Electrical Equipment Corp.
Dukane Corp.
E. I. duPont de Nemours & Co. (Inc.)
Emerson Electric Co.
Federal Pioneer, Ltd.
Gas Research Institute
General Electric Co.
Honeywell Inc.
Johnson Controls
Kohler Company
Landis & Gyr Metering, Inc.
Lennox Industries Inc.
NAHB Research Foundation, Inc.
National Semiconductor Corp.
NOMA Inc.
North American Philips Consumer Electronics Corp., on its own behalf and on behalf of Signetics Corp.
Onan Corp.
Pass & Seymour Inc.
Robertshaw Controls Co.
Schlage Lock Co.
Scott Instruments Corp.
Scovill Inc.

Shell Development Co. (Division of Shell Oil Co.)
Siemens-Allis, Inc.
Slater Electric, Inc.
Smart House Development Venture, Inc.
Smart House, L.P.
Sola Basic Industries, Inc.
Southwire Co.
Square D Co.
Systems Control, Inc.
Whirlpool Corp.
The Wiremold Co.

The following entites are serving as advisors to the venture:

AguipPetroli
American Gas Association
Baltimore Gas & Electric Co.
Bell Canada
Bell Communications Research, Inc.
The Bell Telephone Company of Pennsylvania
Boston Edison Co.
Copper Development Association Inc.
The Dayton Power and Light Co.
Delmarva Power and Light Co.
Detroit Edison Co.
Duke Power Co.
Electric Power Research Institute
Gas Research Institute
Home Builders Institute
Hydro Quebec
National Association of Home Builders
Oklahoma Gas & Electric Co.
Ontario Hydro
Potomac Electric Power Co.
Professional Builder
Southern California Edison Co.
Southwest Gas
Southwestern Bell Telephone Co.
U.S. Dept. of Housing & Urban Dev.
Virginia Electric and Power Co.
Washington Gas Light Co.
Wisconsin Electric Power Co.

The Smart House Project will engage in activities the purpose of which will be to develop a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features. The project is intended to design and develop a set of compatible products, including integrated power and signal cabling to tie home electrical products into a single power and communications network; communications-capable appliances, heating and cooling equipment, utility meters and home electrial and electronic products; electric power conditioning and conversion equipment; controllers and software to make logical decisions, issue control instructions, and regulate the distribution of energy, information and instructions throughout the network; monitoring and control devices to detect and neutralize malfunctions in energy distribution within the home; telephone and CATV interfaces to allow information to be passed to and from the home over telephone and CATV lines; and input and output devices with which users can control and receive information from the network and the devices attached to it.

On June 14, 1985 NAHB filed its original notification pursuant to section 6(a) of the Act. On September 13, 1985, January 9, 1986, April 25, 1986, July 30, 1986, December 16, 1986, April 3, 1987 and June 30, 1987, NAHB filed additional written notifications. The Department of Justice published notices in the **Federal Register** in response to these additional notifications on October 10, 1985 (50 FR 41428), on January 28, 1986 (51 FR 3520), on May 16, 1986 (51 FR 18049), on August 28, 1986 (51 FR 30724), on January 15, 1987 (52 FR 1673), on May 8, 1987 (52 FR 17490) and on July 30, 1987 (52 FR 28494), respectively.

The principal business address of the Smart House Project is P.O. Box 1627, Rockville, Maryland 20850.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-21789 Filed 9-21-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Office, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Office for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Occupational Safety and Health Administration

Hazardous Waste Operations and Emergency Response—Interim Final Rule
On occasion
State and local governments; Businesses or other for profit
920 responses; 2,497,076 hours;

This information is needed by employers and employees involved in hazardous waste operations and emergency responses to prevent illnesses and injury due to exposure to hazardous wastes.

Occupational Safety and Health Administration

Hazardous Waste Operations and Emergency Response—Proposed Rule
On occasion
State and local governments; Businesses or other for profit
920 responses; 1 hour;

This information is needed by employers and employees involved in hazardous waste operations and emergency responses to prevent illnesses and injury due to exposure to hazardous wastes.

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New

Occupational Safety and Health Administration

Hazardous Communication
OMB No. 1218–0072; OSHA 245
On occasion
Businesses or other for profit; Federal agencies or employees; Small businesses or organizations
3,892,371 respondents; 34,780,000 hours; 1 form

The recently published (August 24, 1987, 52 FR 31852) Hazard Communication Standard requires all employers to establish hazard communication programs to transmit information on the hazards associated with chemicals to their employees by means of container labels, material safety data sheets and training programs. This action will reduce the incidence of chemical related illness and injury in American workplaces.

Extension

Employment and Training Administration

Job Corps Placement and Assistance Record
1205–0035; ETA 678
On occasion
State or local governments; businesses or other for-profit; Non-profit institutions
60,000 respondents; 43,000 burden hours; 1 form

This information is used in evaluating overall program effectiveness. It provides placement agencies with basic information regarding terminated corpsmembers and provides the Department of Labor with information on the status of corpsmembers subsequent to termination from the program.

Reinstatement

Occupational Safety and Health Administration

1,2-Dibromo-3-Chloropropane, 1218–0101
OSHA 252
Recordkeeping; On occasion
Businesses and other for-profit
82 respondents; 237 burden hours; 0 forms

This regulation requires employers to train employees about the hazards of 1,2-dibromo-3-chloropropane (DBCP), to monitor employee exposure, to provide medical surveillance, and maintain accurate records of employee exposure to DBCP. These records will be used by employers, employees, physicians and the government to ensure that employees are not harmed by exposure to DBCP in the workplace.

Occupational Safety and Health Administration

Inorganic Arsenic
1218–0104;
Recordkeeping; On occasion
State or local governments; Businesses or other for-profits; Federal agencies or employees
42 respondents; 7500 burden hours; 0 forms

This regulation requires employers to train employees about the hazards of inorganic arsenic exposure, to monitor employee exposure, to provide medical surveillance, and to maintain accurate records of employee exposure to inorganic arsenic. These records will be used by employers, employees, physicians and the Government to ensure that employees are not harmed by their occupational exposure to inorganic arsenic.

Reinstatement

Occupational Safety and Health Administration

Coke Oven Emissions
1218–0128
Recordkeeping; On occasion
Businesses and other for-profit
25 respondents; 102,189 burden hours; 0 forms

The purpose of this standard and its information collection requirements is to provide protections for employees against the health effects associated with occupational exposure to coke oven emissions. Employers must monitor employee exposure, keep employee exposures within permissible limits and provide employees with medical exams and training.

Signed at Washington, DC, this 17th day of September, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87–21846 Filed 9–21–87; 8:45 am]

BILLING CODE 4510–26–M

Establishment of Advisory Council on Employee Welfare and Pension Benefit Plans

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his functions under ERISA, and to submit to the Secretary recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on Saturday, November 14, 1987. The groups or fields represented are as follows: Employee organizations, employers (multiemployers), corporate trust field, investment management, and the general public. In addition to the foregoing, a vacancy in the field of employee organizations (multiemployers) is to be filled, the appointment of which will be for a period of one year.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefits Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to the Secretary of Labor, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Recommendations must be delivered or mailed on or before October 9, 1987. Recommendations may be in the form of a letter, resolution, or petition, signed by the person making the recommendation, or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation shall identify the candidate by name, occupation or position, telephone number and address. It shall include a brief description of the candidate's qualifications and shall specify the group or field which he or

she would represent for the purposes of section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, DC, this 17th day of September, 1987.

David M. Walker, CPA

Assistant Secretary Designate for Pension and Welfare Benefits.

[FR Doc. 87-21837 Filed 9-21-87; 8:45 am]

BILLING CODE 4510-20-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance, Agrico Chemical Co.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 2, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 2, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 14th day of September 1987.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition	Articles produced
Agrico Chemical Co. (Workers)	Tulsa, OK	9/14/87	8/4/87	20,087	Ammonium Nitrate
Aliquippa & Southern Railroad (USWA)	Aliquippa, PA	9/14/87	9/2/87	20,088	Steel
Continental Can Co. (USWA)	Fairfield, AL	9/14/87	9/3/87	20,089	Cans
Control Data Corp. (Workers)	Hampton, VA	9/14/87	9/9/87	20,090	Computers
Dynapac Mfg. Incorp. (UAW)	Stanhope, NJ	9/14/87	8/31/87	20,091	Steam Rollers
Harris Metals, Inc. (Boilermakers)	Racine, WI	9/14/87	9/4/87	20,092	Castings
Larry P. Wyman, Inc. (Company)	Conifer, CO	9/14/87	9/1/87	20,093	Oil & Gas.
Storage Technology Corp. (Workers)	Shawnee Mission, KS	9/14/87	9/9/87	20,094	Tape Disk Equipment
Veeder-Root Co. (Company)	Hartford, CT	9/14/87	9/3/87	20,095	Electronic Devices
Westview Health Care Center (Workers)	Racine,WI	9/14/87	8/22/87	20,096	Computers Equipment.

[FR Doc. 87-21847 Filed 9-21-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,872 et al]

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Knickerbocker Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 31, 1987–September 4, 1987 and September 7, 1987–September 11, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,872; The Knickerbocker Co., Jackson, MI

TA-W-19,874; Palm Beach Co., Danville, KY

TA-W-19,878; Singer Co., Link Simulation Systems Div., Cherry Hill, NJ

TA-W-19,896; Johnson Controls, Inc., Owosso, MI

TA-W-19,885; W.R. Steel & Fabrication, Inc., Maloney-Crawford, Div., New Iberia, LA

TA-W-19,956; General Electric Co., Lighting Business Group, Lighting Products Div., Austintown, OH

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,012; Hydro-Test, Inc., Pearland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,993; Cedar Coal Co., Central Rebuild Shop, South Charleston, WV

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,876; Rochester Button Co., Rochester, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,919; Roadmaster Corp., Olney, IL

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevent period as required for certification.

TA–W–19,905; Terex Corp., Cleveland, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,965; Temex Energy, Inc., Oklahoma City, OK

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA–W–19,841; Better Belts, Inc., West New York, NJ

A certification was issued covering all workers of the firm separated on or after June 17, 1986.

TA–W–19,975; C.F. Industries, Inc., Terre Haute, IN

A certification was issued covering all workers of the firm separated on or after July 28, 1986.

TA–W–19,846; Columbus Auto Parts Co., Columbus, OH

A certification was issued covering all workers of the firm separated on or after June 19, 1986.

TA–W–19,855; Judith Michaels Co., New York, NY

A certification was issued covering all workers of the firm separated on or after June 3, 1986.

TA–W–19,880; The Plainville Castings Co., Westfield, MA

A certification was issued covering all workers of the firm separated on or after June 25, 1986.

TA–W–19,979; J. B. Stuart, Glenville, WV

A certification was issued covering all workers of the firm separated on or after July 21, 1986.

TA–W–19,822; A.O. Smith Electrical Products Co., Mt. Sterling, KY

A certification was issued covering all workers of the firm separated on or after June 8, 1986.

TA–W–19,917; General Electric Co., Morristown, TN

A certification was issued covering all workers of the firm separated on or after July 10, 1986.

TA–W–19,892; Ensearch Exploration, Inc., Midland District, Midland, TX

A certification was issued covering all workers of the firm separated on or after June 30, 1986.

TA–W–19,892A; Ensearch Exploration, Inc., Texas (State Wide)

A certification was issued covering all workers of the firm separated on or after June 30, 1986.

TA–W–19,892; Ensearch Exploration, Inc., New Mexico (State Wide)

A certification was issued covering all workers of the firm separated on or after June 30, 1986.

TA–W–19,840; Baker Packers, Houston, TX

A certification was issued covering all workers of the firm separated on or after June 8, 1986.

TA–W–19,838; Aynor Manufacturing Co., Aynor, SC

A certification was issued covering all workers of the firm separated on or after May 27, 1986, and before July 7, 1987.

TA–W–19,858; Mathewson Corp., Quincy, MA

A certification was issued covering all workers of the firm separated on or after June 29, 1986.

TA–W–19,910; Adell Sportswear Co., Inc., Brooklyn, NY

A certification was issued covering all workers of the firm separated on or after July 13, 1986, and before July 12, 1987.

TA–W–19,913; Cincy Sportswear, Inc., Cincinnati, OH

A certification was issued covering all workers of the firm separated on or after July 2, 1986, and before July 19, 1987.

TA–W–20,037; AT & T Network Systems, Final Package & Test Data Department, Orlando, FL

A certification was issued covering all workers of the firm separated on or after August 26, 1986.

TA–W–19,895; Helfrecht Corp., Traverse City, MI

A certification was issued covering all workers of the firm separated on or after July 3, 1986.

TA–W–19,889–19,890; Clevite Industries, Inc., Engine Parts Div., Bridgeport, OH and Bellaire, OH

A certification was issued covering all workers of the firm separated on or after June 23, 1986.

TA–W–19,773; Ahoskie Wrangler, Ahoskie, NC

A certification was issued covering all workers of the firm separated on or after May 28, 1986 and before February 21, 1987.

TA–W–19,696; Eastman Kodak Co., Apparatus Div., Depart #32, Rochester, NY

A certification was issued covering all workers of the firm separated on or after May 5, 1986.

TA–W–19,951; Berkron Manufacturing Co., Inc., Bethlehem, PA

A certification was issued covering all workers of the firm separated on or after July 10, 1986 and before April 30, 1987.

TA–W–19,860; Pacific Western Systems, Hillsboro, OR

A certification was issued covering all workers of the firm separated on or after June 4, 1986.

TA–W–19,860B; Pacific Western Systems, Manufacturing Operation, Mountain View, CA

A certification was issued covering all workers of the firm separated on or after June 4, 1986.

I hereby certify that the aforementioned determinations were issued during August 31, 1987—September 4, 1987 and September 7, 1987—September 11, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 15, 1987.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 87–21848 Filed 9–21–87; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–19,676]

Dismissal of Application for Reconsideration; Lamb-Grays Harbor Co., Hoquiam, WA

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Lamb-Grays Harbor Company, Hoquiam, Washington. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–19,676; Lamb-Grays Harbor Co., Hoquiam, WA (September 9, 1987)

Signed at Washington, DC, this 9th day of September 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87–21692 Filed 9–21–87; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87-75]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by October 22, 1987. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Rayburn A. Metcalfe, NASA Agency Clearance Officer, Code NP, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: NASA Contractor Financial Management Reports.
OMB Number: 2700–0003.
Type of Request: Extension.
Frequency of report: MO, QU.
Type of Respondent: Businesses or other for-profit.
Annual responses: 15,400.
Annual burden hours: 184,800.
Abstract-need/uses: The NASA Form 533 series is the basic financial management medium for reporting data needed by project management for evaluation of contractor cost as it relates to schedule and technical performance; and reporting actual and projected data assuring that contractor performance is realistically planned and supported by dollar resources.

Rayburn A. Metcalfe,
Acting Director, General Management Division.
September 10, 1987.
[FR Doc. 87–21795 Filed 9–21–87; 8:45 am]
BILLING CODE 7510–01–M

[Notice 87-76]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by October 22, 1987. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Rayburn A. Metcalfe, NASA Agency Clearance Officer, Code NP, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: DoD Industrial Plant Equipment Requisition (NASA Use).

OMB Number: 2700–0021.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: Businesses or other for-profit, non-profit institutions, small businesses or organizations.
Annual Responses: 34.
Annual Burden Hours: 44.
Abstract-Need/Uses: Before NASA contractors acquire new equipment under NASA contracts, they must check for availability of the equipment within NASA. DoD has an existing Form 1419 for this purpose. Rather than creating a new form, NASA uses a portion of DoD's form which serves NASA's use adequately.

Ray A. Metcalfe,
General Management Division.
September 10, 1987.
[FR Doc. 87–21796 Filed 9–21–87; 8:45 am]
BILLING CODE 7510–01–M

[Notice 87-77]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by October 22, 1987. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Rayburn A. Metcalfe, NASA Agency Clearance Officer, Code NP, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: DoD Property Record (NASA Use).

OMB Number: 2700–0025.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: Businesses or other for-profit, non-profit institutions, small businesses or organizations.
Annual Responses: 3,000.
Annual Burden Hours: 1,476.
Abstract-Need/Uses: For NASA contractors to use Government-owned equipment they must report the status of that equipment. Rather than creating another form, NASA contractors prepare Section I of DD Form 1342 which is already used by DoD contractors for this purpose.

Rayburn A. Metcalfe,
Acting Director, General Management Division.
September 10, 1987.
[FR Doc. 87–21797 Filed 9–21–87; 8:45 am]
BILLING CODE 7510–01–M

[Notice 87–78]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by October 22, 1987. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Rayburn A. Metcalfe, NASA Agency Clearance Officer, Code NP, NASA Headquarters, Washington, DC 20548; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: Information Collection from the Public in Support of the NASA Acquisition Process.
OMB Number: 2700–0042.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Individuals or households, state or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.
Annual Responses: 376,782.
Annual Burden Hours: 12,040,000.
Abstract-Need/Uses: Information collection is required to evaluate bids and proposals from offerors in order to award contracts for required goods and services in support of NASA's mission. It also includes reporting requirements under NASA contracts.

Rayburn A. Metcalfe,
Acting Director, General Management Division.
September 10, 1987.
[FR Doc. 87–21798 Filed 9–21–87; 8:45 am]
BILLING CODE 7510–01–M

[Notice 87–79]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by October 22, 1987. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Rayburn A. Metcalfe, NASA Agency Clearance Officer, Code NP, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 452–1090.

Reports

Title: NASA FAR Supplement, Part 18–23, Environment, Conservation, and Occupational Safety.
OMB Number: 2700–0051.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.
Annual Responses: 750.
Annual Burden Hours: 30,000.
Abstract—Need/Uses: Where unique facility safety or health requirements exist, including hazardous deliverables or operations, suitable contractor's safety and health plans are required as are accident reports.

Rayburn A. Metcalfe,
Acting Director, General Management Division.
September 10, 1987.
[FR Doc. 87–21799 Filed 9–21–87; 8:45 am]
BILLING CODE 7510–01–M

[Notice 87–80]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATE AND TIME: October 6, 1987, 9 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 7002, Federal Building 6, 400 Maryland Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code F, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–8335.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of

NASA's programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of 24 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, life sciences, space applications, space and earth science, space systems and technology, and history, as they relate to NASA's activities.

Visitors will be admitted to the meeting room up to its seating capacity, which is approximately 60 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Agenda:

October 6, 1987.

9 a.m.—Introductory Remarks.

9:15 a.m.—Review of Chairmen's Meeting.

10:15 a.m.—Report of Task Force on International Relations in Space.

1 p.m.—National Research Council Report on Space Station Program; NASA Response.

2 p.m.—Status Report: "Ozone Hole" Research.

2:30 p.m.—New Business.

4:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 16, 1987.

[FR Doc. 87-21800 Filed 9-21-87; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Environmental Assessment and Finding of No Significant Impact; Boston Edison Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from certain requirements of 10 CFR Part 50, Appendix R, to the Boston Edison Company (BECo/licensee) for the Pilgrim Nuclear Power Station located at the licensee's site in Plymouth County, Massachusetts.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant exemptions from certain requirements of Appendix R of 10 CFR Part 50. Specifically, exemptions were requested from Section III.G.2.a to the extent that it requires:

(a) Separation of redundant trains of residual heat removal (RHR), automatic depressurization system (ADS), core spray and emergency diesel generator fuel oil transfer pump cables located in Fire Zones 1.1., 1.6/1.8, and 1.30A, respectively, by 3-hour fire rated barriers.

(b) Structural steel in the torus compartment forming a part of or supporting the fire barrier between redundant trains of safe shutdown components in Fire Zone 1.30A and Fire Zones 1.9 and 1.10 to be protected to provide fire resistance equivalent to that required of the barrier.

(c) Structural steel in the steam tunnel forming a part of or supporting the fire barrier between Fire Zone 1.32 and Fire Zones 1.11 and 1.12 to be protected to provide fire resistance equivalent to that required of the barrier.

Need for the Proposed Action

To meet the requirements of Subsection III.G.2 of Appendix R, one train of cables and equipment necessary to achieve and maintain safe shutdown shall be maintained free of fire damage.

Subsection III.G.3 of Appendix R requires that for areas where alternative or dedicated shutdown capability is provided, fire detection and a fixed fire suppression system shall also be installed in the area, room, or zone under consideration.

The proposed action is needed to allow the licensee to complete less costly modifications, including rerouting of power cables out of the fire zones of concern, and to employ existing fire protection features. This will provide the level of fire safety which is equivalent to that achieved by compliance with the technical requirements of Section III.G of Appendix R.

Environmental Impacts of the Proposed Action

The proposed exemptions would provide an equivalent level of fire safety such that there is no increase in the risk of not achieving safe shutdown at the Pilgrim Station. Consequently, the probability of achieving safe shutdown has not been decreased and the post-accident radiological releases would not be greater than previously determined nor do the proposed exemptions otherwise affect radiological plant effluents. The proposed exemptions do not affect plant nonradiological effluents and will have no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemptions, other alternatives need not be evaluated. The principal alternative to the exemptions would be to require rigid compliance with the Section III.G.2 requirements. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement related to the operation of Pilgrim Nuclear Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's requests and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions. Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated November 16, 1983 supplemented on December 27, 1984, July 28, and November 14, 1986, and April 21 and August 4, 1987. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Plymouth Public Library, 11 North Street, Plymouth County, Massachusetts.

Dated at Bethesda, Maryland this 16th day of September 1987.

For the Nuclear Regulatory Commission.

Victor Nerses,

Acting Director, Project Directorate I-3, Division of Reactor Regulations I/II.

[FR Doc. 87-21834 Filed 9-21-87; 8:45 am]

BILLING CODE 7590-01-M

Meeting; Advisory Committee on Reactor Safeguards, Subcommittee on Safety Philosophy, Technology, and Criteria

The ACRS Subcommittee on Safety

Philosophy, Technology, and criteria will hold a meeting on October 7, 1987, Room 1047, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 7, 1987—6:00 p.m. until the conclusion of business

The Subcommittee will meet with the NRC Staff and discuss their plans for incorporating the ACRS recommendations on Safety Goal Policy implementation into the Policy implementation plan.

Oral statements may be presented by members of the public with the concurrence of the subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: September 16, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review Activities.

[FR Doc. 87–21841 Filed 9–21–87; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3264–9]

Conceptual Design Approach for Commercial Mixed Low-Level Radioactive and Hazardous Waste Disposal Facilities

AGENCY: Nuclear Regulatory Commission/Environmental Protection Agency.

ACTION: Notice of availability of a joint guidance document.

SUMMARY: The Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) are announcing the availability of a joint guidance document which provides a conceptual design approach for commercial mixed low-level radioactive and hazardous waste. (Mixed LLW) disposal facilities. The guidance has been jointly developed by NRC and EPA to demonstrate that their dual regulatory requirements for land disposal of commercial low-level mixed waste can be successfully integrated. The guidance is intended to assist States and compact regions in their efforts to design Mixed LLW land disposal units, and to assist existing commercial low-level radioactive waste disposal site operators as they expand facilities to accommodate Mixed LLW. Both agencies reiterate that the guidance conceptually depicts a single design approach that integrates the requirements of both agencies. The EPA and NRC acknowledge, however, that alternate designs, or variations of the proposed design approach, may be acceptable under the requirements of both agencies and provide a comparable level of environmental protection. The conceptual design reflects the EPA and NRC regulations in existence on August 1, 1987.

DATES: The guidance was jointly endorsed by the Director, Office of Nuclear Material Safety and Safeguards, NRC and the Assistant Administrator, Office of Solid Waste and Emergency Response, EPA.

ADDRESSES: Copies of the guidance document may be obtained free of charge from NRC upon written request to the Docket Control Center, Division of High Level Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623–SS, Washington, DC 20555, telephone (301) 427–4226. Copies are available for inspection and copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555. It may also be obtained free of charge from EPA by calling the RCRA Hotline telephone (800) 424–9346, or in Washington, DC, by calling 382–3000. In addition, this document is available for viewing in the EPA RCRA Docket in Room LG–100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 a.m. to 4:00 p.m. Monday through Friday, except Federal holidays. The public must make an appointment to review docket materials. Call (202) 475–9327 for appointments.

FOR FURTHER INFORMATION CONTACT: Dr. Sher Bahadur, Division of Low-Level Waste Management and Decommissioning, U.S. Nuclear Regulatory Commission, Mail Stop 623–SS, Washington, DC 20555, or Mr. Kenneth Skahn, Waste Management Division, Environmental Protection Agency, Mail Code WH–565, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: This announcement notices availability of the Joint NRC–EPA Guidance on a Conceptual Design Approach for Commercial Mixed Low-Level Radioactive and Hazardous Waste Disposal Facilities.

For the Environmental Protection Agency.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

August 7, 1987.

For the Nuclear Regulatory Commission.

Hugh L Thompson, Jr.,

Director, Office of Nuclear Materials Safety and Safeguards.

August 28, 1987.

[FR Doc. 87–21807 Filed 9–21–87; 8:45 am]

BILLING CODE 6560–50–M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the Presidential Commission on the Human Immunodeficiency Virus Epidemic will hold a meeting on Wednesday, September 30, 1987, from 2:00 p.m. to 5:00 p.m. The meeting will be held in Room 106, Dirksen Senate Office Building, Washington, DC 20510.

The purpose of the meeting is to exchange views with appropriate members of the Senate and House of Representatives on the human immunodeficiency virus epidemic.

Because of the need to obtain the views of the Members of Congress as soon as possible and because of the early deadlines for the reports required

of the Commission, this notice is being provided at the earliest possible time.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 655 15th Street, NW., Suite 901, Washington, DC 20005.

William J. Walsh, III,

Executive Secretary, Presidential Commission on the Human Immunodeficiency Virus Epidemic.

[FR Doc. 87-21959 Filed 9-21-87; 8:45 am]

BILLING CODE 4160-15-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-0401]

Issuer Delisting; Application To Withdraw From Listing and Registration; Anchor Hocking Corporation (8⅝% Sinking Fund Debentures, Due July 1, 2006)

September 16, 1987.

Anchor Hocking Corporation ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated there under, to withdraw its 8⅝% Sinking Fund Debentures, due July 1, 2006, from listing and registration on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The indenture dated as of July 1, 1976, between the Company and Morgan Guaranty Trust Company of New York, as trustee, governs the Debentures the Company seeks to deregister and delist. The authorized principal amount of $45,000,000 was issued as of July 1, 1976 and bears interest at an annual rate of 8⅝%, payable January 1 and July 1 of each year. The Debentures are entitled to a sinking fund, which commenced July 1, 1987, in the amount of $2,150,000 each year. The Company has the ability to double its sinking fund deposit each year, and also can credit Debentures otherwise acquired against its sinking fund obligations. Sinking fund redemptions are at par plus accrued interest. The Debentures may be redeemed by the Company at any time, but at a premium. The premium is currently 104.4% At present, approximately $15,120,000 principal amount of Debentures are outstanding and the Debentures are held by approximately forty-seven holders.

On July 2, 1987, in accordance with an Agreement and Plan of Reorganization dated as of February 24, 1987, by and among Newell Co. (formerly known as New Newell Co., ("Newell")), Newell Operating Company (formerly known as Newell Co., ("Old Newell")) and the Company, the Company became an indirectly wholly-owned subsidiary of Newell (the "Combination"). At the time the Combination was consummated, a wholly-owned subsidiary of Newell merged into the Company, the name of Newell was changed to "Newell Co.," and the name of Old Newell was changed to "Newell Operating Company."

In the Combination, each share of common stock, $1.00 Par Value, of the Company was converted into either (i) one share of $2.08 convertible preferred stock, $1.00 par value, of Newell ("Convertible Preferred Stock") or (ii) the right to receive $16.00 in cash and $16.00 principal amount of a new issue of 10.5% Senior Subordinated Debentures due 1999 of Newell ("Newell Debentures"). Newell issued 4,267,533 shares of Convertible Preferred Stock, $77,294,400 principal amount of Newell Debentures and delivered $77,357,632 in cash in connection with the Combination.

Immediately following consummation of the Combination, the Company's common stock and preference share purchase rights were delisted and subsequently the Company filed certification/notices on Form 15 with respect to both securities. In addition, a Form 15 was filed with respect to the Company's 5⅛% Sinking Fund Debentures, due April 13, 1991, which were not registered under section 12 of the Act. As a result, the Debentures are the only securities of the Company registered under the Act. But for the listing on the NYSE of the Debentures, the Company would not be subject to the reporting requirements of section 13(a) or 15(d) of the Act. The Company, therefore, has filed this application to withdraw the Debentures from listing and registration.

Any interested person may, on or before October 17, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be improved by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21785 Filed 9-21-87; 8:45 am]

BILLING CODE 8010-01-M

Office of the United States Trade Representative

Trade Policy Staff Committee (TPSC); Review and Solicitation of Public Comment; Proposed Modification of List of Articles Eligible for Duty-Free Treatment Under U.S. Generalized System of Preferences (GSP) To Remove Leather Cut Soles; Expedited Review

I. Initiation of Expedited Review

The purpose of this notice is to announce that the TPSC has granted a request from Howes Leather Company, Inc. to conduct the review of case numbers 87-70 and 87-HS-69 on an expedited basis.

In light of the TPSC's decision to expedite its review of the subject cases, the public hearing and comment period specified in (52 FR 28896) will not apply to these cases. A separate public hearing will be held and comments will be accepted on these cases as described below.

II. Public Hearing and Comment Period

The GSP subcommittee of the TPSC invites submissions in support of or in opposition to the cases that are the subject of this notice. All such submissions should conform to 15 CFR Part 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3).

A hearing will be held on October 16 beginning at 10:00 a.m. in room 403, 600 17th Street, NW., Washington, DC provided that requests to testify are received as specified below. The hearing will be open to the public and the transcript will be made available for public inspection or purchase from the reporting company.

Requests to present oral testimony in connection with public hearings should be accompanied by 20 copies, in English, of all written briefs or statements and should be received by the Chairman of the GSP Subcommittee no later than the close of business Friday, October 9. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in

briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if submitted in twenty copies, in English, no later than close of business Friday, October 30. Rebuttal briefs should be submitted in twenty copies, in English, by close of business Friday, November 13.

Parties not wishing to appear may submit written briefs or statements in twenty copies, in English, in connection with articles or countries under consideration in the public hearings, provided that such submissions are filed by Friday, October 30 and conform with the regulations cited above.

All submissions should be submitted in 20 copies, in English, to the chairman of the GSP Subcommittee of the Trade Policy Staff Committee, 600 17th Street, NW., Room 517, Washington, DC 20506. Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Briefs or statements must be submitted in twenty copies in English. If the document contains business confidential information, 20 copies of a nonconfidential version of the submission along with 12 copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "nonconfidential").

All communications with regard to this review should be addressed to the GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., Room 517, Washington, DC 20506. Questions may be directed to the GSP Information Center at (202) 395–6971.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 87–21874 Filed 9–21–87; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Advisory Committee for Trade Negotiations Investment Policy Advisory Committee; Meetings and Determination of Closing of Meetings

The meetings of the Advisory Committee for Trade Negotiations to be held Wednesday, September 30, 1987, from 1:30 p.m. to 4:00 p.m.; the Investment Policy Advisory Committee to be held Wednesday, October 14, 1987, from 9:30 a.m. to 12:00 noon in Washington, DC, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Inquiries may be directed to Barbara W. North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Michale B. Smith,

Acting United States Trade Representative.

[FR Doc. 87–21771 Filed 9–21–87; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Boise County, ID

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement will be prepared for a proposed highway project in Boise County, Idaho.

FOR FURTHER INFORMATION CONTACT: Mr. Allan J. Stockman, Location/Environmental Engineer, Environmental Planning Branch, Western Direct Federal Division, Federal Highway Administration, 610 East Fifth Street, Vancouver, Washington 98661–3893, telephone 206–696–7751.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Forest Service; Idaho Transportation Department, Division of Highways; and Boise County will prepare a supplement to the Final Environmental Impact Statement (FEIS) approved on January 16, 1984, for Idaho Forest Highway Route 24, the Banks-Lowman Highway, between Sweet Creek (Milepost 17) and Lowman (Milepost 33.6). Since 1984, a number of important conditions have changed in the study area as described in FHWA's June 10, 1987 re-evaluation of the FEIS. Consequently, a supplemental environmental impact statement (SEIS) is required to investigate these changed conditions and the selected improvement alternative, especially for a 5 mile long section of highway between Sweet Creek and Little Gallagher Creek.

The currently selected improvement alternative provides for the reconstruction of 16.6 miles of the Banks-Lowman Highway including the relocation of a 5 mile segment between Sweet Creek and Little Gallagher Creek to the south shore of the South Fork Payette River. The SEIS will re-assess the existing conditions and impacts of all alternatives, especially the north shore alternatives, to determine if the currently approved location is still appropriate.

Announcements of the proposed SEIS preparation are being sent to appropriate Federal, state and local agencies; private organizations; and citizens who have previously expressed interest in the proposal. Public Notices are also being sent to newspapers having general circulation in the study area. Any public meeting or gatherings used to obtain additional public input will be announced at a later date.

To ensure that the full range of issues and existing conditions related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the SEIS should be directed to the FHWA at the address provided above

"Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program."

Issued on: September 10, 1987.

James N. Hall,

Division Engineer, Vancouver, Washington.

[FR Doc. 87–21780 Filed 9–21–87; 8:45 am]

BILLING CODE 4910–22–M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: Pub. L. 99–500 signed into law by President Reagan on October 18, 1986, contained a provision requiring the Urban Mass Transportation

Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, (202) 366–2053, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas.

Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to Pub. L. 99–500, UMTA reports the following grant information.

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Date Obligated
Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA	GA–03–0023–10	$45,000,000	8/20/87
Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA	GA–03–0029–01	$6,098,900	8/20/87
Section 9 Grants: None			

Issued on: September 15, 1987.

Alfred A. DelliBovi,

Deputy Administrator.

[FR Doc. 87–21766 Filed 9–21–87; 8:45 am]

BILLING CODE 4910–57–M

VETERANS ADMINISTRATION

Advisory Committee on Former Prisoners of War; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee on Former Prisoners of War has been renewed for a two year period beginning September 9, 1987, through September 9, 1989.

Dated: September 10, 1987.

By direction of the Administrator.

Rosa Marie Fontanez,

Committee Management Officer.

[FR Doc. 87–21814 Filed 9–21–87; 8:45 am]

BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 183
Tuesday, September 22, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

September 15, 1987.

The Federal Communications Commission will consider an additional item on the subject listed below at the Open Meeting scheduled for 9:30 a.m., Thursday, September 17, 1987 at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Mass Media—3—Title: Application for transfer of control of WBC Broadcasting Corp., license of television station WTVJ(TV), Miami, Florida. Summary: The Commission will consider the above captioned application, as well as a petition and request to deny that application.

The prompt and orderly conduct of Commission business requires that less than 7 days notice be given consideration of this additional item.

Action by the Commission, September 15, 1987. Commissioners Patrick, Chairman; Quello, Dawson and Dennis voting to consider this item.

Additional information concerning this item may be obtained from Sarah Lawrence, FCC Office of Congressional and Public Affairs, telephone number (202) 632–5050.

Issued: September 15, 1987.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–21866 Filed 9–18–87; 11:01 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, September 15, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clark (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of: (1) A recommendation regarding the Corporation's assistance agreement with an insured bank, and (2) requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 16, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87–21907 Filed 9–18–87; 12:37 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS.

TIME AND DATE: 11:00 a.m., Monday, September 28, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of check processing equipment within the Federal Reserve System.
2. Proposed relocation of check operations at a Federal Reserve Bank.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: September 18, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–21926 Filed 9–18–87; 3:37 pm]

BILLING CODE 6210–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 21, 28, October 5, and 12, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 21

Wednesday, September 23

2:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Request for Hearing by Atlas Corporation on Denial of Its Application to Renew Its Source Materials License

Week of September 28—Tentative

Thursday, October 1

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)
2:00 p.m.
Briefing on Technical Specifications Improvement Project (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 5—Tentative

Tuesday, October 6

2:00 p.m.
Briefing on Transportation and the Modal Study (Public Meeting)

Thursday, October 8

2:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 12—Tentative

Tuesday, October 13

2:00 p.m.
Briefing on the Federally Funded Research Development Center (FFRDC) (Public Meeting)

Friday, October 16

10:00 a.m.
Briefing on Status of Rancho Seco (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION:
Affirmation of "Imports of South African-Origin Uranium" and "Deferred Plant Policy Statement" (Public Meeting) was held on September 17.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410

Robert B. McOsker,

Office of the Secretary.

September 17, 1987.

[FR Doc. 87–21927 Filed 9–18–87; 3:41 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 21, 1987:

A closed meeting will be held on Tuesday, September 22, 1987, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 22, 1987, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Report of investigation.

Opinions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272–3077.

Jonathan G. Katz,

Secretary.

September 16, 1987.

[FR Doc. 87–21903 Filed 9–18–87; 12:10 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 52, No. 183
Tuesday, September 22, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Intent To Contract for Sanitation Inspection of Cruise Ships

Correction

In notice document 87-19014 beginning on page 31448 in the issue of Thursday, August 20, 1987, make the following correction:

On page 31448, in the first column, the words "Cooperative Agreement;" should not have appeared in the subject heading.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N-052T]

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for OTC Antitussive Drug Products

Correction

In rule document 87-18144 beginning on page 30042 in the issue of Wednesday, August 12, 1987, make the following correction:

§ 341.74 [Corrected]

On page 30056, in § 341.74(c)(2), in the first column, in the sixth line, insert "or" after "asthma,".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 310, 341, and 369

[Docket No. 76N-052H]

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for OTC Antihistamine Drug Products

Correction

In proposed rule document 87-19062 beginning on page 31892 in the issue of Monday, August 24, 1987, make the following corrections:

1. The word "chlorcyclizine" was misspelled in the following places:

a. On page 31892, in the third column, in the first complete paragraph, in the second line.

b. On the same page, in the third column, in the third complete paragraph, in the 7th and 10th lines.

c. On page 31911, in the second column, in paragraph 3, in the 17th line.

2. On page 31895, in the second column, in the 13th line from the bottom, "dicyclomine" was mispelled.

3. On page 31904, in the first column, in the second line, "dontaining" should read "containing".

4. On page 31906, in the first column, in paragraph 37, in the third line, "Dicyclomine" was misspelled.

BILLING CODE 1505-01-D

VETERANS ADMINISTRATION

38 CFR Part 4

Evaluations of Diplopia (Double Vision)

Correction

In proposed rule document 87-19602 beginning on page 32318 in the issue of Thursday, August 27, 1987, make the following correction:

§ 4.84a [Corrected]

On page 32321, in the first column, in § 4.84a, in the table, in the right hand column, in the second line, "5/200" should read "15/200".

BILLING CODE 1505-01-D

VOL 52 ISS 183 SE 22 1987 UMI

Tuesday
September 22, 1987

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 1, 15, 30, 31, and 52

Federal Acquisition Regulation; Incorporation of Cost Accounting Standards; Final Rule

VOL 52 ISS 183 SE 22 1987 UMI

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 15, 30, 31, and 52

[Federal Acquisition Circular 84-30]

Federal Acquisition Regulation; Incorporation of Cost Accounting Standards

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84–30 amends the Federal Acquisition Regulation (FAR) to incorporate the Cost Accounting Standards (CAS) and certain rules and regulations promulgated by the Cost Accounting Standards Board (CASB).

EFFECTIVE DATE: September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

FAC 84–30. The revisions to FAR Parts 1, 15, 30, 31, and 52 do not change or otherwise affect information collection requirements by Federal Agencies from offerors, contractors, or members of the public because the rules previously existed as CAS Board Standards and Rules and Regulations. A paperwork burden estimate was prepared pursuant to 44 U.S.C. 3501, et seq. and submitted to OMB. Notice of such submission was published in the **Federal Register** on June 2, 1987 (52 FR 20635). The Office of Management and Budget assigned OMB Control No. 9000–0093.

B. Regulatory Flexibility Act

FAC 84–30. The revisions to FAR Parts 1, 15, 30, 31, and 52 are not expected to impact adversely upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq. because the changes cover Cost Accounting Standards (CAS) and associated rules and regulations from which small business concerns are exempt.

C. Public Comments

FAC 84–30. A notice of proposed rule and request for comment was published in the **Federal Register** on June 3, 1986 (51 FR 20238). The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have considered the public comments in developing this final rule.

List of Subjects in 48 CFR Parts 1, 15, 30, 31, and 52

Government procurement.

Date: September 11, 1987.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84–30]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–30 is effective September 30, 1987.

Eleanor R. Spector,

Deputy Assistant Secretary of Defense for Procurement.

Terence C. Golden,

Administrator, General Services Administration.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84–30 amends the Federal Acquisition Regulation (FAR) as specified below.

Item I—Cost Accounting Standards Incorporation Into FAR; Facilities Capital Cost of Money

FAR Part 30 is amended to incorporate into the FAR as regulations, the Cost Accounting Standards (CAS) and certain rules and regulations promulgated by the Cost Accounting Standards Board (CASB) under Pub. L. 91–379.

The revisions to FAR Part 30 incorporating the CAS and CASB rules into the FAR as regulations require corollary changes to FAR Parts 1, 15, 30, 31, and 52. No changes to the substance of the CAS or existing rules and regulations have been made. However, it is anticipated that revisions to the CAS in Subpart 30.4 will be processed as FAR revisions in accordance with normal procedures for revising the FAR.

The procedures for administering Facilities Capital Cost of Money under CAS 414 were previously published in FAR Subpart 30.5 as a proposed rule in the **Federal Register** on June 3, 1986 (51 FR 20238). However, various references in Subpart 30.5 were found to be inconsistent with the new DoD profit policy, which is in the final stages of completion. Pending resolution of these inconsistencies, FAR Subpart 30.5 has been removed from the final rule and will be republished in revised form in the future.

The clauses at FAR 52.215–30, Facilities Capital Cost of Money, and 52.215–31, Waiver of Facilities Capital Cost of Money, have been rewritten to facilitate their use.

As a result of the public comments, it has been determined that the CASB preambles will be fully adopted and accepted in their entirety as part of this promulgation. Since the CASB preambles have already been published in 4 CFR, they will not be republished in 48 CFR; however, they are published as an Appendix in Part 30 of the FAR looseleaf.

It is anticipated that in the future, the Form CASB CMF, "Facilities Capital Cost of Money Factors Computation," will be changed to an Optional form, and Form CASB–DS–1, "Disclosure Statement," will be changed to a Standard form with no substantive change in format. The CASB forms should continue to be used pending publication of the new Optional and Standard forms.

Therefore, 48 CFR Parts 1, 15, 30, 31, and 52 are amended as set forth below.

1. The authority citation for 48 CFR Parts 1, 15, 30, 31, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISTION REGULATIONS SYSTEM

2. Section 1.105 is amended by adding, in numerical order, a FAR segment and a corresponding OMB Control Number to read as follows:

1.105 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR Segment	OMB Control No.
. . . . .	
30	9000-0093
. . . . .	

3. Section 1.402 is amended by adding a final sentence to read as follows:

1.402 Policy.

* * * Deviations are not authorized with respect to Part 30. Refer to 30.201–5 for instructions concerning waivers pertaining to Cost Accounting Standards.

PART 15—CONTRACTING BY NEGOTIATION

4. Section 15.904 is revised to read as follows:

15.904 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.215–30, Facilities Capital Cost of Money, in solicitations expected to result in contracts that are subject to the cost principles for contracts with commercial organizations (see Subpart 31.2).

(b) If the propsective contractor does not propose facilities capital cost of money in its offer, insert the clause at 52.215–31, Waiver of Facilities Capital Cost of Money, in the resulting contract.

5. Part 30 is revised to read as follows:

PART 30—COST ACCOUNTING STANDARDS

30.000 Scope of part.

SUBPART 30.1—GENERAL

30.101 Cost Accounting Standards.

Subpart 30.2—CAS Program Requirements

30.201 Contract requirements.
30.201–1 CAS applicability.
30.201–2 Types of CAS coverage.
30.201–3 Solicitation provisions.
30.201–4 Contract clauses.
30.201–5 Waiver.
30.202 Disclosure requirements.
30.202–1 General requirements.
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Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2473(c).

30.000 Scope of part.

This part describes policies and procedures for applying the Cost Accounting Standards to negotiated national defense contracts and subcontracts. This part also prescribes policies and procedures for applying those standards to certain nondefense contracts. This part does not apply to sealed bid contracts or to any contract with a small business concern (see 30.201–1(b) for these and other exemptions).

Subpart 30.1—General

30.101 Cost Accounting Standards.

(a) Pub. L. 91–379 (50 U.S.C. App. 2168) requires certain national defense contractors and subcontractors to comply with Cost Accounting Standards (CAS) and to disclose in writing and follow consistently their cost accounting practices.

(b) The obligation to comply with the CAS is extended to certain nondefense contracts as a matter of policy. This decision has resulted in differences in application between national defense and nondefense contracts and these differences are noted in the appropriate sections throughout this part.

Subpart 30.2—CAS Program Requirements

30.201 Contract requirements.

30.201–1 CAS applicability.

(a) This subsection describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. (See Subpart 30.4.) Negotiated contracts not exempt in accordance with 30.201–1(b) shall be subject to CAS. A CAS-covered contract may be subject to either full or modified coverage. The rules for determining whether full or modified coverage applies are in 30.201–2.

(b) The following categories of contracts and subcontracts are exempt from all CAS requirements:

(1) Sealed bid contracts.

(2) Negotiated contracts and subcontracts not in excess of $100,000.

(3) Contracts and subcontracts with small businesses.

(4) Contracts and subcontracts with foreign governments or their agents or instrumentalities or, insofar as the requirements of CAS other than 30.401 and 30.402 are concerned, any contract or subcontract awarded to a foreign concern.

(5) Contracts and subcontracts in which the price is set by law or regulation.

(6) Contracts and subcontracts when the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public (see 15.804–3(c)). A prospective contractor requesting exemption from CAS on this basis must provide supporting justification in accordance with 15.804–3(e). When the contracting officer determines that the justification is adequate, this exemption from CAS shall be used even though the award is made on the basis of adequate price competition.

(7) Contracts and subcontracts of $500,000 or less if the business unit is not currently performing any national defense CAS-covered contracts.

(8) Nondefense contracts awarded based on adequate price competition (see 15.804–3(b)).

(9) Nondefense contracts and subcontracts awarded to business units that are not currently performing any CAS-covered national defense contracts.

(10) Contracts and subcontracts with educational institutions other than those to be performed by Federally Funded Research and Development Centers (FFRDC's) operated by such institutions.

(11) Contracts awarded to labor surplus area concerns pursuant to a labor surplus area set-aside (see Part 20).

(12) Contracts and subcontracts awarded to a United Kingdom contractor for performance substantially in the United Kingdom, provided that the contractor has filed with the United Kingdom Ministry of Defense, for retention by the Ministry, a completed Disclosure Statement (Form No. CASB–DS–1) which shall adequately describe its cost accounting practices. Whenever that contractor is already required to follow U.K. Government Accounting Conventions, the disclosed practices shall be in accord with the requirements of those conventions. (See 30.201–4(d).

(13) Subcontracts under the NATO PHM Ship program to be performed outside the United States by a foreign concern.

(14) Contracts and subcontracts to be executed and performed entirely outside the United States, its territories, and possessions.

(15) Firm-fixed-price contracts and subcontracts awarded without submission of any cost data; (*provided*, that the failure to submit such data is not attributable to a waiver of the requirement for certified cost or pricing data.

30.201–2 Types of CAS coverage.

(a) *Full coverage.* Full coverage requires that the business unit comply with all of the CAS in effect on the date of the contract award and with any CAS that become applicable because of later award of a national defense CAS-covered contract. However, the award of a new nondefense CAS-covered contract shall not trigger application of new CAS having effective dates later than the award date of the last national defense CAS-covered contract. Full coverage applies to contractor business units that—

(1) Receive a single national defense CAS-covered contract award of $10 million or more;

(2) Received $10 million or more in national defense CAS-covered contract awards during its preceding cost accounting period; or

(3) Received less than $10 million in national defense CAS-covered contract awards during its preceding cost accounting period but such awards were 10 percent or more of total sales.

(b) *Modified coverage.* (1) Modified CAS coverage requires only that the contractor comply with Standard 401, Consistency in Estimating, Accumulating, and Reporting Costs, and Standard 402, Consistency in Allocating costs Incurred for the Same Purpose. Modified, rather than full, CAS coverage

may be applied to a covered contract of less than $10 million awarded to a business unit that received less than $10 million in national defense CAS-covered contracts in the immediately preceding cost accounting period if the sum of such awards was less than 10 percent of the business unit's total sales during that period. For the purpose of determining whether the sum of covered contract awards equals 10 percent of the business unit's total sales, an order received by the one segment from another segment shall be treated in the same way that a subcontract award to the receiving segment would be treated. In measuring sales for a year, a transfer by one segment to another shall be deemed to be a sale by the transferor.

(2) If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to that business unit during that cost accounting period must also have modified coverage with the following exception: if the business unit receives a single national defense contract award of $10 million or more, that contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage.

(3) A contract awarded with modified CAS coverage shall remain subject to such coverage throughout its life regardless of changes in the business unit's CAS status during subsequent cost accounting periods.

(c) *Nondefense contracts.* Nondefense contracts subject to CAS shall have the same type of CAS coverage as the most recently awarded national defense contract currently being performed by the same business unit.

(d) *Subcontracts.* Subcontract awards subject to CAS require the same type of CAS coverage as would prime contracts awarded to the same business unit.

(e) *Foreign concerns.* Contracts with foreign concerns subject to CAS shall only be subject to modified coverage.

30.201-3 Solicitation provisions.

(a) *Cost Accounting Standards Notices and Certification (National Defense).* The contracting officer shall insert the provision at 52.230-1, Cost Accounting Standards Notices and Certification (National Defense), in solicitations for proposed national defense contracts subject to CAS as specified in 30.201. The provision allows offerors to—

(1) Certify their Disclosure Statement status.;

(2) Claim exemption from CAS if they are not currently performing any CAS-covered contracts and the proposal will result in an award of $500,000 or less;

(3) Claim exemption from full CAS coverage and elect modified CAS coverage when appropriate; and

(4) Certify whether award of the contemplated contract would require a change to existing cost accounting practices.

(b) *Cost Accounting Standards Notices and Certification (Nondefense).* The contracting officer shall insert the provision at 52.230-2, Cost Accounting Standards Notices and Certification (Nondefense), in solicitations for proposed nondefense contracts that do not meet the criteria for CAS exemption in 30.201-1. The provision allows offerors to claim exemption from CAS if they are not currently performing any CAS-covered national defense contracts or to certify what type of CAS coverage applies to them.

30.201-4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause at 52.230-3, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 30.201-1) the contract is subject to modified coverage (see 30.201-2), or the clause prescribed in paragraph (d) of this subsection is used.

(2) The clause at 52.230-3 requires the contractor to disclose actual cost accounting practice (applicable to national defense contracts only) and to follow these practices consistently.

(b) *Administration of Cost Accounting Standards.* (1) The contracting officer shall insert the clause at 52.230-4, Administration of Cost Accounting Standards, in contracts containing either the clause prescribed in paragraph (a) of this subsection, or the clause prescribed in paragraph (c) of this subsection.

(2) The clause at 52.230-3, Cost Accounting Standards, specifies rules for administering CAS requirements and procedures to be followed in cases of failure to comply.

(c) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause 52.230-5, Disclosure and Consistency of Cost Accounting Practices, in negotiated contract when the contract amount is over $100,000, but less that $10 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 30.201-2, unless the clause prescribed in paragraph (d) of this subsection is used).

(2) The clause at 52.230-5 requires the contractor to comply with CAS 401 and 402, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

(d) *Consistency in Cost Accounting Practices.* The contracting officer shall insert the clause 52.230-6, Consistency in Cost Accounting Practices, in negotiated defense contracts that are exempt from CAS requirements solely on the basis of the fact that the contract is to be awarded to a United Kingdom contractor and is to be performed substantially in the United Kingdom (see 30.201-1(b) (12)).

30.201-5 Waiver.

(a) In some instances, contractors or subcontractors may refuse to accept all or part of the requirements of the CAS clauses (52.230-3, Cost Accounting Standards and 52.230-5, Disclosure and Consistency of Cost Accounting Practices). If the contracting officer determine that it is impractical to obtain the materials supplies, or services from any other source, the contracting officer shall prepare a request for waiver describing the proposed contract or subcontract and containing—

(1) An unequivocal statement that the proposed contractor or subcontractor refuses to accept a contract containing all or a specified part of a CAS clause and the specific reason for that refusal;

(2) A statement as to whether the proposed contractor or subcontractor has accepted any prime contract or subcontract containing a CAS clause;

(3) The amount of the proposed award and the sum of all awards by the agency requesting the waiver to the proposed contractor or subcontractor in each of the preceding 3 years;

(4) A statement that no other source is available to satisfy the agency's needs on a timely basis;

(5) A statement of alternative methods considered for fulfilling the need and the agency's reasons for rejecting them;

(6) A statement of steps being taken by the agency to establish other sources of supply for future contracts for the products or services for which a waiver is being requested; and

(7) Any other information that may be useful in evaluating the requests.

(b) (1) For national defense contracts of the DOD, waivers shall be controlled and approved by the Deputy Assistant Secretary of Defense (Procurement) and shall be processed for review by the Defense Acquisition Regulatory (DAR) Council in accordance with agency procedures.

(2) For national defense contracts of National Aeronautics and Space Administration (NASA), waivers shall be controlled and approved by the Assistant Administrator for

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Procurement after consultation with the Deputy Assistant Secretary of Defense (Procurement). Requests for waiver shall be processed in accordance with agency regulations.

(c) For nondefense contracts, and defense contracts of agencies other than DOD or NASA, the agency head or designee may waive CAS requirements. Agencies shall ensure consistent treatment of—

(1) Waivers within the agency; and

(2) Contractors performing under both defense and nondefense contracts.

(d) For purchases of substantially the same product from the same contractor for which a waiver was previously granted, approval authority is redelegated in the Department of Defense to the Secretaries of the Military Departments and the Director, Defense Logistics Agency.

30.202 Disclosure requirements.

30.202-1 General requirements.

(a) A Disclosure Statement is a written description of a contractor's cost accounting practices and procedures. The submission of a new or revised Disclosure Statement is not required for any nondefense contract or from any small business concern. However, if a Disclosure Statement has been submitted in connection with a CAS-covered defense contract, the contractor must also comply with such disclosed practices under nondefense CAS-covered contracts (see subparagraph (a)(1) of the clause at 52.230-3, Cost Accounting Standards).

(b) Completed Disclosure Statements are required in the following circumstances:

(1) Any business unit that is selected to receive a CAS-covered negotiated national defense contract or subcontract of $10 million or more shall submit a Disclosure Statement before award.

(2) Any company which, together with its segments, received net awards of negotiated national defense prime contracts and subcontracts subject to CAS totaling more than $10 million in its most recent cost accounting period must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of 90 days.

(c) When a Disclosure Statement is required, a separate Disclosure Statement must be submitted for each segment whose costs included in the total price of any CAS-covered contract or subcontract exceed $100,000, unless the contract or subcontract is of the type or value exempted by 30.201-1. If the cost accounting practices are identical for more than one segment, then only one Disclosure Statement, clearly identifying each such segment, need be submitted. A Disclosure Statement will also be required for each corporate or group office whose costs of any amount are allocated to one or more segments performing CAS-covered contracts.

(d) Each corporate or other home office that allocates costs to one or more disclosing segments performing CAS-covered contracts must submit a Part VIII of the Disclosure Statement.

(e) Foreign contractors and subcontractors who are required to submit a Disclosure Statement may, in lieu of filing a Form No. CASB-DS-1, make disclosure by using a disclosure form prescribed by an agency of its Government, provided that the official designated to approve waivers in 30.201-5 determines that the information disclosed by that means will satisfy requirements of Subpart 30.2. The use of alternative forms has been approved for the contractors of the following countries:

(1) Canada.

(2) Federal Republic of Germany.

30.202-2 Impracticality of submission.

The agency head may determine that it is impractical to secure the Disclosure Statement, although submission is required, and authorize contract award without obtaining the Statement. This authority may not be delegated.

30.202-3 Amendment and revisions.

(a) Contractors and subcontractors are responsible for maintaining accurate Disclosure Statements and complying with disclosed practices. Amendments and revisions to Disclosure Statements may be submitted at any time and may be proposed by either the contractor or the Government. Resubmission of complete, updated, Disclosure Statements is discouraged except when extensive changes require it to assist the review process.

(b) Should the obligation to maintain the Disclosure Statement cease because the contractor no longer meets the financial thresholds, the contractor shall still be required to follow the disclosed practices for those contracts awarded during a period in which the contractor was obligated to submit a Disclosure Statement.

30.202-4 Privileged and confidential information.

If the offeror or contractor notifies the contracting officer that the Disclosure Statement contains trade secrets and commercial or financial information, which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside the Government.

30.202-5 Filing Disclosure Statements.

(a) Disclosure must be on Form Number CASB-DS-1. Forms may be obtained from the cognizant administrative contracting officer (ACO).

(b) Offerors are required to file Disclosure Statements as follows:

(1) Original and one copy with the cognizant ACO; and

(2) One copy with the cognizant contract auditor.

(c) Amendments and revisions shall be submitted to the currently cognizant ACO and auditor.

30.202-6 Responsibilities.

(a) The contracting officer is responsible for determining when a proposed contract may require CAS coverage and for including the appropriate notice in the solicitation. The contracting officer must then ensure that the offeror has made the required solicitation certifications and that required Disclosure Statements are submitted.

(b) The contracting officer shall not award a CAS-covered contract until the ACO has made a written determination that a required Disclosure Statement is adequate unless, in order to protect the Government's interest, the contracting officer waives the requirement for an adequacy determination before award. In this event, a determination of adequacy shall be required as soon as possible after the award.

(c) The cognizant auditor is responsible for conducting reviews of Disclosure Statements for adequacy and compliance.

(d) The cognizant ACO is responsible for determinations of adequacy and compliance of the Disclosure Statement.

30.202-7 Determinations.

(a) *Adequacy determination.* The contract auditor shall conduct an initial review of a Disclosure Statement to ascertain whether it is current, accurate, and complete and shall report the results to the cognizant ACO, who shall determine whether or not it adequately describes the offeror's cost accounting practices. If the ACO identifies any areas of inadequacy, the ACO shall request a revised Disclosure Statement. If the Disclosure Statement is adequate, the ACO shall notify the offeror in writing, with copies to the auditor and contracting officer. The notice of

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adequacy shall state that a disclosed practice shall not, by virtue of such disclosure, be considered an approved practice for pricing proposals or accumulating and reporting contract performance cost data. Generally, the ACO shall furnish the contractor notification of adequacy or inadequacy within 30 days after the Disclosure Statement has been received by the ACO.

(b) *Compliance determination.* After the notification of adequacy, the auditor shall conduct a detailed compliance review to determine whether or not the disclosed practices comply with Part 31 and the CAS and shall advise the ACO of the results. The ACO shall take action regarding noncompliance with CAS under FAR 30.602–2. The ACO may require a revised Disclosure Statement and adjustment of the prime contract price or cost allowance. Noncompliance with Part 31 shall be processed separately, in accordance with normal administrative practices.

30.202–8 Subcontractor Disclosure Statements.

(a) The contractor or higher tier subcontractor is responsible for administering the CAS requirements contained in subcontracts.

(b) If the subcontractor has previously furnished a Disclosure Statement to an ACO, the subcontractor may satisfy the submission requirement by identifying to the contractor or higher tier subcontractor the ACO to whom it was submitted.

(c)(1) If the subcontractor considers the Disclosure Statement (or other similar information) privileged or confidential, the subcontractor may submit it directly to the ACO and auditor cognizant of the subcontractor, notifying the contractor or higher tier subcontractor. A preaward determination of adequacy is not required in such cases. Instead, the ACO cognizant of the subcontractor shall (i) notify the auditor that the adequacy review will be performed during the postaward compliance review and, upon completion, (ii) notify the subcontractor, the contractor or higher tier subcontractor, and the cognizant ACO's of the findings.

(2) Even though a Disclosure Statement is not required, a subcontractor may (i) claim that CAS-related reviews by contractors or higher tier subcontractors would reveal proprietary data or jeopardize the subcontractor's competitive position and (ii) request that the Government perform the required reviews.

(d) When the Government requires determinations of adequacy or inadequacy, the ACO cognizant of the subcontractor shall make such recommendation to the ACO cognizant of the prime contractor or next higher tier subcontractor. ACO's cognizant of higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor.

(e) Postaward submission of the subcontractor's Disclosure Statement must be approved by the ACO having cognizance of the prime contractor. Before authorizing postaward submission, the ACO shall coordinate with the ACO cognizant of the subcontractor to ensure that this action will not have an adverse impact on other contracts and subcontracts subject to the CAS requirements, and with the contracting officer to obtain the information needed to make the required written determination.

(f) Any determination that it is impractical to secure a subcontractor's Disclosure Statement must be made in accordance with 30.202–2.

Subpart 30.3—CAS Rules and Regulations

30.301 Definitions.

The definitions set forth in section 31.001 also apply to this part.

"Actual cost," as used in this part, means an amount determined on the basis of cost incurred as distinguished from forecasted cost. Actual cost includes standard cost properly adjusted for applicable variance.

"Asset accountability unit," as used in this part, means a tangible capital asset which is a component of plant and equipment that is captialized when acquired or whose replacement is capitalized when the unit is removed, transferred, sold, abandoned, demolished, or otherwise disposed of.

"Assignment of cost to cost accounting periods." (See 30.302–1(b).)

"Bid and proposal (B&P) cost," as used in this part, means the cost incurred in preparing, submitting, or supporting any bid or proposal which effort is neither sponsored by a grant, nor required in the performance of a contract.

"CAS-covered contract," as used in this part, means any negotiated contract or subcontract in which a CAS clause is required to be included.

"Category of material," as used in this part, means a particular kind of goods, comprised of identical or interchangeable units, acquired or produced by a contractor, which are intended to be sold, or consumed or used in the performance of either direct or indirect functions.

"Change to a cost accounting practice." (See 30.302–2.)

"Cost accounting practice." (See 30.302–1.)

"Cost objective," as used in this part, means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

"Currently performing," as used in this part, means that a contractor has been awarded a contract, but has not yet received notification of final acceptance of all supplies, services, and data deliverable under the contract (including options).

"Defense contractor," as used in this part, means any person who enters into a contract with the United States for the production of material or the performance of services for the national defense.

"Defense subcontractor," as used in this part, means any person other than the United States who contracts, at any tier, to perform any part of a defense contractor's contract.

"Direct cost," as used in this part, means any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.

"Disclosure statement," as used in this part, means the Disclosure Statement required by 30.202–1.

"Entitlement," as used in this part, means an employee's right whether conditional or unconditional to receive a determinable amount of compensated personnel absence, or pay in lieu thereof.

"Established catalog or market price of commercial items sold in substantial quantities to the general public" is as defined in 15.804–3(c).

"Funded pension cost," as used in this part, means the portion of pension costs for a current or prior cost accounting period that has been paid to a funding agency or, under a pay-as-you-go plan to plan participants or beneficiaries.

"Funding agency," as used in this part, means an organization or individual which provides facilities to receive and accumulate assets to be used either for the payment of benefits under a pension plan, or for the purchase of such benefits.

"Indirect cost," as used in this part, means any cost not directly identified

with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

"Indirect cost pool," as used in this part, means a grouping of incurred costs identified with two or more objectives but not identified specifically with any final cost objective.

"Material inventory record," as used in this part, means any record used for the accumulation of actual or standard costs of a category of material recorded as an asset for subsequent cost allocation to one or more cost objectives.

"Measurement of cost." (See 30.302–1(a).)

"Multiemployer pension plan," as used in this part, means a plan to which more than one employer contributes and which is maintained pursuant to one or more collective bargaining agreements between an employee organization and more than one employer.

"Negotiated subcontract," as used in this part, means any subcontract except a firm fixed-priced subcontract made by a contractor or subcontractor after receiving offers from at least two persons not associated with each other or with such contractor or subcontractor, providing (a) the solicitation to all competitors is identical, (b) price is the only consideration in selecting the subcontractor from among the competitors solicited, and (c) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

"Net awards," as used in this part, means the total obligated value of negotiated national defense prime contract and subcontract awards received during the reporting period minus cancellations, terminations, and other related credit transactions.

"Operating revenue," as used in this part, means amounts accrued or charged to customers, clients, and tenants, for the sale of products manufactured or purchased for resale, for services, and for rental of property held primarily for leasing to others. It includes both reimbursable costs and fees under cost-type contracts and percentage-of-completion sales accruals, except it includes only the fee for management contracts under which the contractor acts essentially as an agent of the Government in the erection or operation of Government-owned facilities. It excludes incidental interest, dividends, royalty, and rental income and proceeds from the sale of assets used in the business.

"Production unit," as used in this part, means a grouping of activities which either uses homogeneous inputs of direct material and direct labor or yields homogeneous outputs such that costs or statistics related to these homogeneous inputs or outputs are appropriate as bases for allocating variances.

"Repairs and maintenance," as used in this part, means the total endeavor to obtain the expected service during the life of tangible capital assets. Maintenance is the regularly recurring activity of keeping assets in normal or expected operating condition. Repair is the activity of putting them back into normal or expected operating condition.

"Reporting costs," as used in this part, is the provision of cost information to others. The reporting of costs involves selecting relevant cost data and presenting it in an intelligible manner for use by the receipient.

"Small business," as used in this part, means any concern, firm, person, corporation, partnership, cooperative, or other business enterprise which, under 15 U.S.C. 637(b)(6) and the rules and regulations of the Small Business Administration in Part 121 of Title 13 of the Code of Federal Regulations, is determined to be a small business concern for the purpose of Government contracting.

30.302 Definitions, explanations, and illustrations of the terms, "cost accounting practice" and "change to a cost accounting practice."

30.302–1 Cost accounting practice.

"Cost accounting practice," as used in this part, means any disclosed or established accounting method or technique which is used for allocation of cost to cost objectives, assignment of cost to cost accounting periods, or measurement of cost.

(a) "Allocation of cost to cost objectives," as used in this part, includes both direct and indirect allocation of cost. Examples of cost accounting practices involving allocation of cost to cost objectives are the accounting methods or techniques used to accumulate cost, to determine whether a cost is to be directly or indirectly allocated to determine the composition of cost pools, and to determine the selection and composition of the appropriate allocation base.

(b) "Assignment of cost to cost accounting periods," as used in this part, refers to a method or technique used in determining the amount of cost to be assigned to individual cost accounting periods. Examples of cost accounting practices which involve the assignment of cost to cost accounting periods are requirements for the use of specified accrual basis accounting or cash basis accounting for a cost element.

(c) "Measurement of cost," as used in this part, encompasses accounting methods and techniques used in defining the components of cost, determining the basis for cost measurement, and establishing criteria for use of alternative cost measurement techniques. The determination of the amount paid or a change in the amount paid for a unit of goods and services is not a cost accounting practice. Examples of cost accounting practices which involve measurement of costs are—

(1) The use of either historical cost, market value, or present value;

(2) The use of standard cost or actual cost; or

(3) The designation of those items of cost which must be included or excluded from tangible capital assets or pension cost.

30.302–2 Change to a cost accounting practice.

"Change to a cost accounting practice," as used in this part, means any alteration in a cost accounting practice, as defined in 30.302–1, whether or not such practices are covered by a Disclosure Statement, except for the following:

(a) The initial adoption of a cost accounting practice for the first time a cost is incurred, or a function is created, is not a change in cost accounting practice. The partial or total elimination of a cost or the cost of a function is not a change in cost accounting practice. As used here, function is an activity or group of activities that is identifiable in scope and has a purpose or end to be accomplished.

(b) The revision of a cost accounting practice for a cost which previously had been immaterial is not a change in cost accounting practice.

30.302–3 Illustrations of changes which meet the definition of "change to a cost accounting practice."

(a) The method or technique used for measuring costs has been changed.

Description	Accounting treatment
(1) Contractor changes its actuarial cost method for computing pension costs.	(1)(i) *Before change*: The contractor computed pension costs using the aggregate cost method. (ii) *After change*: The contractor computes pension cost using the unit credit method.
(2) Contractor uses standard costs to account for its direct labor. Labor cost at standard was computed by multiplying labor-time standard by actual labor rates. The contractor changes the computation by multiplying labor-time standard by labor-rate standard.	(2)(i) *Before change*: Contractor's direct labor cost was measured with only one component set at standard. (ii) *After change*: Contractor's direct labor cost is measured with both the time and rate components set at standard.

(b) The method or technique used for assignment of cost to cost accounting periods has been changed.

Description	Accounting treatment
(1) Contractor changes his established criteria for capitalizing certain classes of tangible capital assets whose acquisition costs totaled $1 million per cost accounting period.	(1)(i) *Before change*: Items having acquisition costs of between $200 and $400 per unit were capitalized and depreciated over a number of cost accounting periods. (ii) *After change*: The contractor charges the value of assets costing between $200 and $400 per unit to an indirect expense pool which is allocated to the cost objectives of the cost accounting period in which the cost was incurred.
(2) Contractor changes his methods for computing depreciation for a class of assets.	(2)(i) *Before change*: The contractor assigned depreciation costs to cost accounting periods using an accelerated method. (ii) *After change*: The contractor assigns depreciation costs to cost accounting periods using the straight line method.
(3) Contractor changes his general method of determining asset lives for classes of assets acquired prior to the effective date of CAS 409.	(3)(i) *Before change*: The contractor identified the cost accounting periods to which the cost of tangible capital assets would be assigned using guideline class lives provided in IRS Rev. Proc. 72-10. (ii) *After change*: The contractor changes the method by which he identifies the cost accounting periods to which the costs of tangible capital assets will be assigned. He now uses the expected actual lives based on past usage.

(c) The method or technique used for allocating costs has been changed.

Description	Accounting treatment
(1) Contractor changes his method of allocating G&A expenses under the requirements of Cost Accounting Standard 410.	(1) (i) *Before change:* The contractor operating under Cost Accounting Standard 410 has been allocating his general and administrative expense pool to final cost objectives on a total cost input base in compliance with the Standard. The contractor's business changes substantially such that there are significant new projects which have only insignificant quantities of material. (ii) *After change:* After the addition of the new work, an evaluation of the changed circumstances reveals that the continued use of a total cost input base would result in a significant distortion in the allocation of the G&A expense pool in relation to the benefits received. To remain in compliance with Standard 410, the contractor alters his G&A allocation base from a total cost input base to a value added base.
(2) The contractor changes the accounting for hardware common to all projects.	(2) (i) *Before change:* The contractor allocated the cost of purchased or requisitioned hardware directly to projects. (ii) *After change:* The contractor charges the cost of purchased or requisitioned hardware to an indirect expense pool which is allocated to projects using an appropriate allocation base.

Description	Accounting treatment
(3) The contractor merges operating segments A and B which use different cost accounting practices in accounting for manufacturing overhead costs.	(3) (i) *Before change:* In segment A, the costs of the manufacturing overhead pool have been allocated to final cost objectives using a direct labor hours base; in segment B, the costs of the manufacturing overhead pool have been allocated to final cost objectives using a direct labor dollars base. (ii) *After change:* As a result of the merger of operations, the combined segment decides to allocate the cost of the manufacturing overhead pool to all final cost objectives, using a direct labor dollars base. Thus, for those final cost objectives referred to in segment A, the cost of the manufacturing overhead pool will be allocated to the final cost objectives of segment A using a direct labor dollars base instead of a direct labor hours base.

30.302-4 Illustrations of changes which do not meet the definition of "Change to a cost accounting practice."

Description	Accounting treatment.
(a) Changes in the interest rate levels in the national economy have invalidated the prior actuarial assumption with respect to anticipated investment earnings. The pension plan administrators adopted an increased (decreased) interest rate actuarial assumption. The company allocated the resulting pension costs to all final cost objectives.	(a) Adopting the increase (decrease) in the interest rate actuarial assumption is not a change in cost accounting practice.
(b) The basic benefit amount for a company's pension plan is increased from $8 to $10 per year of credited service. The change increases the dollar amount of pension cost allocated to all final cost objectives.	(b) The increase in the amount of the benefits is not a change in cost accounting practice.
(c) A contractor who has never paid pensions establishes for the first time a pension plan. Pension costs for the first year amounted to $3.5 million.	(c) The initial adoption of an accounting practice for the first time incurrence of a cost is not a change in cost accounting practice.
(d) A contractor maintained a Deferred Incentive Compensation Plan. After several year's experience, the plan was determined not to be attaining its objective, so it was terminated, and no future entitlements were paid.	(d) There was a termination of the Deferred Incentive Compensation Plan. Elimination of a cost is not a change in cost accounting practice.
(e) A contractor eliminates a segment that was operated for the purpose of doing research for development of products related to nuclear energy.	(e) The projects and expenses related to nuclear energy projects have been terminated. No transfer of these projects and no further work in this area is planned. This is an elimination of cost and not a change in cost accounting practice.
(f) For a particular class of assets for which technological changes have rarely affected asset lives, a contractor starts with a 5-year average of historical lives to estimate future lives. He then considers technological changes and likely use. For the past several years the process resulted in an estimated future life of 10 years for this class of assets. This year, a technological change leads to a prediction of a useful life of 7 years for the assets acquired this year for the class of assets.	(f) The change in estimate (not in method) is not a change in cost accounting practice. The contractor has not changed the method or technique used to determine the estimate. The methodology applied has indicated a change in the estimated life, and this is not a change in cost accounting practice.
(g) The marketing department of a segment has reported directly to the general manager of the segment. The costs of the marketing department have been combined as part of the segment's G&A expense pool. The company reorganizes and requires the marketing department to report directly to a vice president at corporate headquarters.	(g) After the organization change in the company's reporting structure, the parties agree that the appropriate recognition of the beneficial or causal relationship between the costs of the marketing department and the segment is to continue to combine these costs as part of the segment's G&A expense pool. Thus, the organizational change has not resulted in a change in cost accounting practice.

30.303 Effect of filing Disclosure Statement.

(a) A disclosure of a cost accounting practice by a contractor does not determine the allowability of particular items of cost. Irrespective of the practices disclosed by a contractor, the question of whether or not, or the extent to which, a specific element of cost is allowed under a contract remains for consideration in each specific instance. Contractors are cautioned that the determination of the allowability of cost items will remain a responsibility of the contracting officers pursuant to the provisions of the applicable procurement regulations.

(b) The individual Disclosure Statement may be used in audits of contracts or in negotiation of prices leading to contracts. The authority of the audit agencies and the contracting officers is in no way abrogated by the material presented by the contractor in his Disclosure Statement. Contractors are cautioned that their disclosures must be complete and accurate; the practices disclosed may have a significant impact on ways in which contractors will be required to comply with Cost Accounting Standards.

30.304 Concurrent full and modified coverage.

Contracts subject to full coverage may be performed during a period in which a previously awarded contract subject to modified coverage is being performed. Compliance with full coverage may compel the use of cost accounting practices that are not required under modified coverage. Under these circumstances the cost accounting

practices applicable to contracts subject to modified coverage need not be changed. Any resulting differences in practices between contracts subject to full coverage and those subject to modified coverage shall not constitute a violation of CAS 30.401 and CAS 30.402. This principle also applies to contracts subject to modified coverage being performed during a period in which a previously awarded contract subject to full coverage is being performed.

30.305 Materiality.

In determining whether amounts of cost are material or immaterial, the following criteria shall be considered where appropriate; no one criterion is necessarily determinative:

(a) *The absolute dollar amount involved.* The larger the dollar amount, the more likely that it will be material.

(b) *The amount of contract cost compared with the amount under consideration.* The larger the proportion of the amount under consideration to contract cost, the more likely it is to be material.

(c) *The relationship between a cost item and a cost objective.* Direct cost items, especially if the amounts are themselves part of a base for allocation of indirect costs, will normally have more impact than the same amount of indirect costs.

(d) *The impact on Government funding.* Changes in accounting treatment will have more impact if they influence the distribution of costs between Government and non-Government cost objectives than if all cost objectives have Government financial support.

(e) *The cumulative impact of individually immaterial items.* It is appropriate to consider whether such impacts (1) tend to offset one another, or (2) tend to be in the same direction and hence to accumulate into a material amount.

(f) *The cost of administrative processing of the price adjustment modification shall be considered.* If the cost to process exceeds the amount to be recovered, it is less likely the amount will be material.

30.306 Interpretations.

In determining amounts of increased costs in the clauses at 52.230–3, Cost Accounting Standards, and 52.230–5, Disclosure and Consistency of Cost Accounting Practices, the following considerations apply:

(a) Increased costs shall be deemed to have resulted whenever the cost paid by the Government results from a change in a contractor's cost accounting practices or from failure to comply with applicable Cost Accounting Standards, and such cost is higher than it would have been had the practices not been changed or applicable Cost Accounting Standards complied with.

(b) If the contractor under any fixed-price contract, including a firm fixed-price contract, fails during contract performance to follow its cost accounting practices or to comply with applicable Cost Accounting Standards, increased costs are measured by the difference between the contract price agreed to and the contract price that would have been agreed to had the contractor proposed in accordance with the cost accounting practices used during contract performance. The determination of the contract price that would have been agreed to will be left to the contracting parties and will depend on the circumstances of each case.

(c) The Government policy underlying this interpretation is that the United States not pay increased costs, including a profit enlarged beyond that in the contemplation of the parties to the contract when the contract costs, price, or profit is negotiated, by reason of a contractor's failure to use applicable Cost Accounting Standards, or to follow consistently its cost accounting practices. In making price adjustments under the Cost Accounting Standard clause at 52.230–3 in fixed price or cost reimbursement incentive contracts, or contracts providing for prospective or retroactive price redetermination, the Federal agency shall apply this requirement appropriately in the circumstances.

(d) The contractor and the contracting officer may enter into an agreement as contemplated by subdivision (a)(4)(ii) of the Cost Accounting Standards clause at 52.230–3, covering a change in practice proposed by the Government or the contractor for all of the contractor's contracts for which the contracting officer is responsible, provided that the agreement does not permit any increase in the cost paid by the Government. Such agreement may be made final and binding, notwithstanding the fact that experience may subsequently establish that the actual impact of the change differed from that agreed to.

(e) An adjustment to the contract price or of cost allowances pursuant to the Cost Accounting Standards clause at 52.230–3 may not be required when a change in cost accounting practices or a failure to follow Standards or cost accounting practices is estimated to result in increased costs being paid under a particular contract by the United States. This circumstance may arise when a contractor is performing two or more covered contracts, and the change or failure affects all such contracts. The change or failure may increase the cost paid under one or more of the contracts, while decreasing the cost paid under one or more of the contracts. In such case, the Government will not require price adjustment for any increased costs paid by the United States, so long as the cost decreases under one or more contracts are at least equal to the increased cost under the other affected contracts, provided that the contractor and the affected contracting officers agree on the method by which the price adjustments are to be made for all affected contracts. In this situation, the contracting agencies would, of course, require an adjustment of the contract price or cost allowances, as appropriate, to the extent that the increases under certain contracts were not offset by the decreases under the remaining contracts.

30.307 Cost Accounting Standards Preambles.

Following Part 30, an Appendix containing the nonregulatory preambles to the Cost Accounting Standards and preambles to related Rules and Regulations is provided in the looseleaf edition only. The preambles are not regulatory, but are intended to explain why the Standards and related Rules and Regulations were written, and to provide rationale for positions taken relative to issues raised in the public comments. The preambles are printed in chronological order to provide an administrative history. As revisions are made to Part 30, preambles will be published under the FAR system. Part I, Preambles to the Cost Accounting Standards, and Part II, Preambles to the Related Rules and Regulations published by the Cost Accounting Standards Board, were originally published in Title 4 of the Code of Federal Regulations. Part III is reserved for preambles to be published under the FAR System.

Subpart 30.4—Cost Accounting Standards

30.400 General.

This subpart contains the Cost Accounting Standards (CAS). The requirements for use of these Standards are contained in Subpart 30.2. Normal FAR paragraph numbering conventions are modified in Subpart 30.4 to maintain the original CAS numbering and referencing scheme. For example, CAS 401 now reads 30.401.

30.401 Cost accounting standard—consistency in estimating, accumulating and reporting costs.

30.401-10 [Reserved]

30.401-20 Purpose.

The purpose of this Cost Accounting Standard is to ensure that each contractor's practices used in estimating costs for a proposal are consistent with cost accounting practices used by him in accumulating and reporting costs. Consistency in the application of cost accounting practices is necessary to enhance the likelihood that comparable transactions are treated alike. With respect to individual contracts, the consistent application of cost accounting practices will facilitate the preparation of reliable cost estimates used in pricing a proposal and their comparison with the costs of performance of the resulting contract. Such comparisons provide one important basis for financial control over costs during contract performance and aid in establishing accountability for costs in the manner agreed to by both parties at the time of contracting. The comparisons also provide an improved basis for evaluating estimating capabilities.

30.401-30 [Reserved]

30.401-40 Fundamental requirement.

(a) A contractor's practices used in estimating costs in pricing a proposal shall be consistent with his cost accounting practices used in accumulating and reporting costs.

(b) A contractor's cost accounting practices used in accumulating and reporting actual costs for a contract shall be consistent with his practices used in estimating costs in pricing the related proposal.

(c) The grouping of homogeneous costs in estimates prepared for proposal purposes shall not per se be deemed an inconsistent application of cost accounting practices under paragraphs (a) and (b) of this section when such costs are accumulated and reported in greater detail on an actual cost basis during contract performance.

30.401-50 Techniques for application.

(a) The standard allows grouping of homogeneous costs in order to cover those cases where it is not practicable to estimate contract costs by individual cost element or function. However, costs estimated for proposal purposes shall be presented in such a manner and in such detail that any significant cost can be compared with the actual cost accumulated and reported therefor. In any event the cost accounting practices used in estimating costs in pricing a proposal and in accumulating and reporting costs on the resulting contract shall be consistent with respect to:

(1) The classification of elements or functions of cost as direct or indirect; (2) the indirect cost pools to which each element or function of cost is charged or proposed to be charged; and (3) the methods of allocating indirect costs to the contract.

(b) Adherence to the requirement of 30.401–40(a) of this standard shall be determined as of the date of award of the contract, unless the contractor has submitted cost or pricing data pursuant to Pub. L. 87–653, in which case adherence to the requirement of 30.401–40(a) shall be determined as of the date of final agreement on price, as shown on the signed certificate of current cost or pricing data. Notwithstanding 30.401–40(b), changes in established cost accounting practices during contract performance may be made in accordance with FAR Part 30.

30.401-60 Illustrations.

(a) The following examples are illustrative of applications of cost accounting practices which are deemed to be consistent.

Practices used in estimating costs for proposals	Practices used in accumulating and reporting costs of contract performance
1. Contractor estimates an average direct labor rate for manufacturing direct labor by labor category or function.	1. Contractor records manufacturing direct labor based on actual cost for each individual and collects such costs by labor category or function.
2. Contractor estimates an average cost for minor standard hardware items, including nuts, bolts, washers, etc.	2. Contractor records actual cost for minor standard hardware items based upon invoices or material transfer slips.
3. Contractor uses an estimated rate for manufacturing overhead to be applied to an estimated direct labor base. He identifies the items included in his estimate of manufacturing overhead and provides supporting data for the estimated direct labor base.	3. Contractor accounts for manufacturing overhead by individual items of cost which are accumulated in a cost pool allocated to final cost objectives on a direct labor base.

(b) The following examples are illustrative of application of cost accounting practices which are deemed not to be consistent.

Practices used for estimating costs for proposals	Practices used in accumulating and reporting costs of contract performance
4. Contractor estimates a total dollar amount for engineering labor which includes disparate and significant elements or functions of engineering labor. Contractor does not provide supporting data reconciling this amount to the estimates for the same engineering labor cost functions for which he will separately account in contract performance.	4. Contractor accounts for engineering labor by cost function, i.e., drafting, designing, production engineering, etc.
5. Contractor estimates engineering labor by cost function, i.e., drafting, production engineering, etc	5. Contractor accumulates total engineering labor in one undifferentiated account.
6. Contractor estimates a single dollar amount for machining cost to cover labor, material and overhead.	6. Contractor records separately the actual cost of machining labor and material as direct costs, and factory overhead as indirect costs.

30.401-70 Interpretation.

30.401, Cost Accounting Standard—Consistency in Estimating, Accumulating and Reporting Costs, requires in 30.401–40 that a contractor's "practices used in estimating costs in pricing a proposal shall be consistent with his cost accounting practices used in accumulating and reporting costs."

In estimating the cost of direct material requirements for a contract, it is a common practice to first estimate the cost of the actual quantities to be incorporated in end items. Provisions are then made for additional direct material costs to cover expected material losses such as those which occur, for example, when items are scrapped, fail to meet specifications, are lost, consumed in the manufacturing process, or destroyed in testing and qualification processes. The cost of some or all of such additional direct material requirements is often estimated by the application of one or more percentage factors to the total cost of basic direct material requirements or to some other base.

Questions have arisen as to whether the accumulation of direct material costs in an undifferentiated account where a contractor estimates a significant part of such costs by means of percentage factors is in compliance with 30.401. The most serious questions pertain to such percentage factors which are not supported by the contractor with accounting, statistical, or other relevant data from past experience, nor by a program to accumulate actual costs for comparison with such percentage estimates. The accumulation of direct costs in an undifferentiated account in this circumstance is a cost accounting practice which is not consistent with the practice of estimating a significant part of costs by means of percentage factors. This situation is virtually identical with that described in Illustration 30.401-60(b)(5), which deals with labor.

30.401 does not, however, prescribe the amount of detail required in accumulating and reporting costs. The amount of detail required may vary considerably depending on the percentage factors used, the data presented in justification or lack thereof, and the significance of each situation. Accordingly, it is neither appropriate nor practical to prescribe a single set of accounting practices which would be consistent in all situations with the practices of estimating direct material costs by percentage factors. Therefore, the amount of accounting and statistical detail to be required and maintained in accounting for this portion of direct material costs has been and continues to be a matter to be decided by Government procurement authorities on the basis of the individual facts and circumstances.

30.402 Cost accounting standard—consistency in allocating costs incurred for the same purpose.

30.402-10 [Reserved]

30.402-20 Purpose.

The purpose of this standard is to require that each type of cost is allocated only once and on only one basis to any contract or other cost objective. The criteria for determining the allocation of costs to a product, contract, or other cost objective should be the same for all similar objectives. Adherence to these cost accounting concepts is necessary to guard against the overcharging of some cost objectives and to prevent double counting. Double counting occurs most commonly when cost items are allocated directly to a cost objective without eliminating like cost items from indirect cost pools which are allocated to that cost objective.

30.402-30 [Reserved]

30.402-40 Fundamental requirement.

All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Further, no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.

30.402-50 Techniques for application.

(a) The Fundamental Requirement is stated in terms of cost incurred and is equally applicable to estimates of costs to be incurred as used in contract proposals.

(b) The Disclosure Statement to be submitted by the contractor will require that he set forth his cost accounting practices with regard to the distinction between direct and indirect costs. In addition, for those types of cost which are sometimes accounted for as direct and sometimes accounted for as indirect, the contractor will set forth in his Disclosure Statement the specific criteria and circumstances for making such distinctions. In essence, the Disclosure Statement submitted by the contractor, by distinguishing between direct and indirect costs, and by describing the criteria and circumstances for allocating those items which are sometimes direct and sometimes indirect, will be determinative as to whether or not costs are incurred for the same purpose. Disclosure Statement as used herein refers to the statement required to be submitted by contractors as a condition of contracting as set forth in Subpart 30.2.

(c) In the event that a contractor has not submitted a Disclosure Statement the determination of whether specific costs are directly allocable to contracts shall be based upon the contractor's cost accounting practices used at the time of contract proposal.

(d) Whenever costs which serve the same purpose cannot equitably be indirectly allocated to one or more final cost objectives in accordance with the contractor's disclosed accounting practices, the contractor may either: (1) use a method for reassigning all such costs which would provide an equitable distribution to all final cost objectives, or (2) directly assign all such costs to final cost objectives with which they are specifically identified. In the event the contractor decides to make a change for either purpose, the Disclosure Statement shall be amended to reflect the revised accounting practices involved.

(e) Any direct cost of minor dollar amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives, provided that such treatment produces results which are substantially the same as the results which would have been obtained if such cost had been treated as a direct cost.

30.402-60 Illustrations.

(a) Illustrations of costs which are incurred for the same purpose:

(1) Contractor normally allocates all travel as an indirect cost and previously disclosed this accounting practice to the Government. For purposes of a new proposal, contractor intends to allocate the travel costs of personnel whose time is accounted for as direct labor directly to the contract. Since travel costs of personnel whose time is accounted for as direct labor working on other contracts are costs which are incurred for the same purpose, these costs may no longer be included within indirect cost pools for purposes of allocation to any covered Government contract. Contractor's Disclosure Statement must be amended for the proposed changes in accounting practices.

(2) Contractor normally allocates planning costs indirectly and allocates this cost to all contracts on the basis of direct labor. A proposal for a new contract requires a disproportionate amount of planning costs. The contractor prefers to continue to allocate planning costs indirectly. In order to equitably allocate the total planning costs, the contractor may use a method for allocating all such costs which would provide an equitable distribution to all final cost objectives. For example, he may use the number of planning documents processed rather than his former allocation base of direct labor. Contractor's Disclosure Statement must be amended for the proposed changes in accounting practices.

(b) Illustrations of costs which are not incurred for the same purpose:

(1) Contractor normally allocates special tooling costs directly to contracts. The costs of general purpose tooling are normally included in the indirect cost pool which is allocated to contracts. Both of these accounting practices were previously disclosed to the Government. Since both types of

costs involved were not incurred for the same purpose in accordance with the criteria set forth in the contractor's Disclosure Statement, the allocation of general purpose tooling costs from the indirect cost pool to the contract, in addition to the directly allocated special tooling costs, is not considered a violation of the standard.

(2) Contractor proposes to perform a contract which will require three firemen on 24-hour duty at a fixed-post to provide protection against damage to highly inflammable materials used on the contract. Contractor presently has a fire fighting force of 10 employees for general protection of the plant. Contractor's costs for these latter firemen are treated as indirect costs and allocated to all contracts; however, he wants to allocate the three fixed-post firemen directly to the particular contract requiring them and also allocate a portion of the cost of the general firefighting force to the same contract. He may do so but only on condition that his disclosed practices indicate that the costs of the separate classes of firemen serve different purposes and that it is his practice to allocate the general firefighting force indirectly and to allocate fixed-post firemen directly.

30.402-70 Interpretation.

30.402, Cost Accounting Standard—Consistency in Allocating Costs Incurred for the Same Purpose, provides, in 30.402-40, that "* * * no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective."

This interpretation deals with the way 30.402 applies to the treatment of costs incurred in preparing, submitting, and supporting proposals. In essence, it is addressed to whether or not, under the Standard, all such costs are incurred for the same purpose, in like circumstances.

Under 30.402, costs incurred in preparing, submitting, and supporting proposals pursuant to a specific requirement of an existing contract are considered to have been incurred in different circumstances from the circumstances under which costs are incurred in preparing proposals which do not result from such specific requirement. The circumstances are different because the costs of preparing proposals specifically required by the provisions of an existing contract relate only to that contract while other proposal costs relate to all work of the contractor.

This interpretation does not preclude the allocation, as indirect costs, of costs incurred in preparing all proposals. The cost accounting practices used by the contractor, however, must be followed consistently and the method used to reallocate such costs, of course, must provide an equitable distribution to all final cost objectives.

30.403 Allocation of home office expenses to segments.

30.403-10 [Reserved]

30.403-20 Purpose.

(a) The purpose of this Cost Accounting Standard is to establish criteria for allocation of the expenses of a home office to the segments of the organization based on the beneficial or causal relationship between such expenses and the receiving segments. It provides for: (1) identification of expenses for direct allocation to segments to the maximum extent practical; (2) accumulation of significant nondirectly allocated expenses into logical and relatively homogeneous pools to be allocated on bases reflecting the relationship of the expenses to the segments concerned; and (3) allocation of any remaining or residual home office expenses to all segments. Appropriate implementation of this Standard will limit the amount of home office expenses classified as residual to the expenses of managing the organization as a whole.

(b) This Standard does not cover the reallocation of a segment's share of home office expenses to contracts and other cost objectives.

30.403-30 [Reserved]

30.403-40 Fundamental requirement.

(a) (1) Home office expenses shall be allocated on the basis of the beneficial or causal relationship between supporting and receiving activities. Such expenses shall be allocated directly to segments to the maximum extent practical. Expenses not directly allocated, if significant in amount and in relation to total home office expenses, shall be grouped in logical and homogeneous expense pools and allocated pursuant to paragraph (b) of this subsection. Such allocations shall minimize to the extent practical the amount of expenses which may be categorized as residual (those of managing the organization as a whole). These residual expenses shall be allocated pursuant to paragraph (c) of this subsection.

(2) No segment shall have allocated to it as an indirect cost, either through a homogeneous expense pool, or the residual expense pool, any cost, if other costs incurred for the same purpose have been allocated directly to that or any other segment.

(b) The following subparagraphs provide criteria for allocation of groups of home office expenses.

(1) *Centralized service functions.* Expenses of centralized service functions performed by a home office for its segments shall be allocated to segments on the basis of the service furnished to or received by each segment. Centralized service functions performed by a home office for its segments are considered to consist of specific functions which, but for the existence of a home office, would be performed or acquired by some or all of the segments individually. Examples include centrally performed personnel administration and centralized data processing.

(2) *Staff management of certain specific activities of segments.* The expenses incurred by a home office for staff management or policy guidance functions which are significant in amount and in relation to total home office expenses shall be allocated to segments receiving more than a minimal benefit over a base, or bases, representative of the total specific activity being managed. Staff management or policy guidance to segments is commonly provided in the overall direction or support of the performance of discrete segment activities such as manufacturing, accounting, and engineering (but see subparagraph (b)(6) of this subsection).

(3) *Line management of particular segments or groups of segments.* The expense of line management shall be allocated only to the particular segment or group of segments which are being managed or supervised. If more than one segment is managed or supervised, the expense shall be allocated using a base or bases representative of the total activity of such segments. Line management is considered to consist of management or supervision of a segment or group of segments as a whole.

(4) *Central payments or accruals.* Central payments or accruals which are made by a home office on behalf of its segments shall be allocated directly to segments to the extent that all such payments or accruals of a given type or class can be identified specifically with individual segments. Central payments or accruals are those which but for the existence of a number of segments would be accrued or paid by the individual segments. Common examples include centrally paid or accrued pension costs, group insurance costs,

State and local income taxes and franchise taxes, and payrolls paid by a home office on behalf of its segments. Any such types of payments or accruals which cannot be identified specifically with individual segments shall be allocated to benefited segments using an allocation base representative of the factors on which the total payment is based.

(5) *Independent research and development costs and bid and proposal costs.* Independent research and development costs and bid and proposal costs of a home office shall be allocated in accordance with 30.420.

(6) *Staff management not identifiable with any certain specific activities of segments.* The expenses incurred by a home office for staff management, supervisory, or policy functions, which are not identifiable to specific activities of segments shall be allocated in accordance with paragraph (c) of this subsection as residual expenses.

(c) *Residual expenses.* (1) All home office expenses which are not allocable in accordance with paragraph (a) of this subsection and subparagraphs (b)(1) through (b)(5) of this subsection shall be deemed residual expenses. Typical residual expenses are those for the chief executive, the chief financial officer, and any staff which are not identifiable with specific activities of segments. Residual expenses shall be allocated to all segments under a home office by means of a base representative of the total activity of such segments, except where paragraph (c) (2) or (3) of this subsection applies.

(2) Residual expenses shall be allocated pursuant to 30.403–50(c)(1) if the total amount of such expenses for the contractor's previous fiscal year (excluding any unallowable costs and before eliminating any amounts to be allocated in accordance with subparagraph (c)(3) of this section) exceeds the amount obtained by applying the following percentage(s) to the aggregate operating revenue of all segments for such previous year:

3.35 percent of the first $100 million;
0.95 percent of the next $200 million;
0.30 percent of the next $2.7 billion;
0.20 percent of all amounts over $3 billion.

The determination required by this paragraph for the 1st year the contractor is subject to this Standard shall be based on the pro forma application of this Standard to the home office expenses and aggregate operating revenue for the contractor's previous fiscal year.

(3) Where a particular segment receives significantly more or less benefit from residual expenses than would be reflected by the allocation of such expenses pursuant to subparagraph (c) (1) or (2) of this subsection (see 30.403–50(d)), the Government and the contractor may agree to a special allocation of residual expenses to such segment commensurate with the benefits received. The amount of a special allocation to any segment made pursuant to such an agreement shall be excluded from the pool of residual expenses to be allocated pursuant to subparagraph (c) (1) or (2) of this subsection, and such segment's data shall be excluded from the base used to allocate this pool.

30.403-50 Techniques for application.

(a) (1) Separate expense groupings will ordinarily be required to implement 30.403–40. The number of groupings will depend primarily on the variety and significance of service and management functions performed by a particular home office. Ordinarily, each service or management function will have to be separately identified for allocation by means of an appropriate allocation technique. However, it is not necessary to identify and allocate different functions separately, if allocation in accordance with the relevant requirements of 30.403–40(b) can be made using a common allocation base. For example, if the personnel department of a home office provides personnel services for some or all of the segments (a centralized service function) and also established personnel policies for the same segments (a staff management function), the expenses of both functions could be allocated over the same base, such as the number of personnel, and the separate functions do not have to be identified.

(2) Where the expense of a given function is to be allocated by means of a particular allocation base, all segments shall be included in the base unless: (i) Any excluded segment did not receive significant benefits from, or contribute significantly to the cause of the expense to be allocated and, (ii) any included segment did receive significant benefits from or contribute significantly to the cause of the expense in question.

(b) (1) Section 30.403–60 illustrates various expense pools which may be used together with appropriate allocation bases. The allocation of centralized service functions shall be governed by a hierarchy of preferable allocation techniques which represent beneficial or casual relationships. The preferred representation of such relationships is a measure of the activity of the organization performing the function. Supporting functions are usually labor-oriented, machine-oriented, or space-oriented. Measures of the activities of such functions ordinarily can be expressed in terms of labor hours, machine hours, or square footage. Accordingly, costs of these functions shall be allocated by use of a rate, such as a rate per labor hour, rate per machine hour or cost per square foot, unless such measures are unavailable or impractical to ascertain. In these latter cases the basis for allocation shall be a measurement of the output of the supporting function. Output is measured in terms of units of end product produced by the supporting function, as for example, number of printed pages for a print shop, number of purchase orders processed by a purchasing department, number of hires by an employment office.

(2) Where neither activity nor output of the supporting function can be practically measured, a surrogate for the beneficial, or causal relationship must be selected. Surrogates used to represent the relationship are generally measures of the activity of the segments receiving the service; for example, for personnel services reasonable surrogates would be number of personnel, labor hours, or labor dollars of the segments receiving the service. Any surrogate used should be a reasonable measure of the services received and, logically, should vary in proportion to the services received.

(c) (1) Where residual expenses are required to be allocated pursuant to 30.403–40(c)(2), the three factor formula described below must be used. This formula is considered to result in appropriate allocations of the residual expenses of home offices. It takes into account three broad areas of management concern: The employees of the organization, the business volume, and the capital invested in the organization. The percentage of the residual expenses to be allocated to any segment pursuant to the three factor formula is the arithmetical average of the following three percentages for the same period:

(i) The percentage of the segment's payroll dollars to the total payroll dollars of all segments.

(ii) The percentage of the segment's operating revenue to the total operating revenue of all segments. For this purpose, the operating revenue of any segment shall include amounts charged to other segments and shall be reduced by amounts charged by other segments for purchases.

(iii) The percentage of the average net book value of the sum of the segment's tangible capital assets plus inventories to the total average net book value of

such assets of all segments. Property held primarily for leasing to others shall be excluded from the computation. The average net book value shall be the average of the net book value at the beginning of the organization's fiscal year and the net book value at the end of the year.

(d) The following paragraphs provide guidance for implementing the requirements of 30.403–40(c)(3).

(1) An indication that a segment received significantly less benefit in relation to other segments can arise if a segment, unlike all or most other segments, performs on its own many of the functions included in the residual expense. Another indication may be that, in relation to its size, comparatively little or no costs are allocable to a segment pursuant to 30.403–40(b) (1) through (5). Evidence of comparatively little communication or interpersonal relations between a home office and a segment, in relation to its size, may also indicate that the segment receives significantly less benefit from residual expenses. Conversely, if the opposite conditions prevail at any segment, a greater allocation than would result from the application of 30.403–40(c) (1) or (2) may be indicated. This may be the case, for example, if a segment relies heavily on the home office for certain residual functions normally performed by other segments on their own.

(2) Segments which may require special allocations of residual expenses pursuant to 30.403–40(c)(3) include, but are not limited to foreign subsidiaries, GOCO's, domestic subsidiaries with less than a majority ownership, and joint ventures.

(3) The portion of residual expenses to be allocated to a segment pursuant to 30.403–40(c)(3) shall be the cost of estimated or recorded efforts devoted to the segments.

(e) Home office functions may be performed by an organization which for some purposes may not be a part of the legal entity with which the Government has contracted. This situation may arise, for example, in instances where the Government contracts directly with a corporation which is wholly or partly owned by another corporation. In this case, the latter corporation serves as a "home office," and the corporation with which the contract is made is a "segment" as those terms are defined and used in this Standard. For purposes of contracts subject to this Standard, the contracting corporation may only accept allocations from the other corporation to the extent that such allocations meet the requirements set forth in this Standard for allocation of home office expenses to segments.

30.403–60 Illustrations.

(a) The following table lists some typical pools, together with illustrative allocation bases, which could be used in appropriate circumstances:

Home office expense or function	Illustrative allocation bases
Centralized service functions	
1. Personnel administration	1. Number of personnel, labor hours, payroll, number of hires.
2. Data processing services	2. Machine time, number of reports.
3. Centralized purchasing and subcontracting	3. Number of purchase orders, value of purchases, number of items.
4. Centralized warehousing	4. Square footage, value of material, volume.
5. Company aircraft service	5. Actual or standard rate per hour, mile, passenger mile, or similar unit.
6. Central telephone service	6. Usage costs, number of instruments.

(b) The selection of a base for allocating centralized service functions shall be governed by the criteria established in 30.403–50(b).

(c) The listed allocation bases in this section are illustrative. Other bases for allocation of home office expenses to segments may be used if they are substantially in accordance with the beneficial or casual relationships outlined in 30.403–40.

Home office expense or function	Illustrative allocation bases
Staff management of specific activities:	
1. Personnel management	1. Number of personnel, labor hours, payroll, number of hires.
2. Manufacturing policies (quality control, industrial engineering, production, scheduling, tooling, inspection and testing, etc.).	2. Manufacturing cost input, manufacturing direct labor.
3. Engineering policies	3. Total engineering costs, engineering direct labor, number of drawings.
4. Material/purchasing policies	4. Number of purchase orders, value of purchases.
5. Marketing policies	5. Sales, segment marketing costs.
Central payments or accruals:	
1. Pension expenses	1. Payroll or other factor on which total payment is based.
2. Group insurance expenses	2. Payroll or other factor on which total payment is based.
3. State and local income taxes and franchise taxes	3. Any base or method which results in an allocation that equals or approximates a segment's proportionate share of the tax imposed by the jurisdiction in which the segment does business, as measured by the same factors used to determine taxable income for that jurisdiction.

30.403–70 Interpretation.

Questions have arisen as to the requirements of 30.403, Cost Accounting Standard, Allocation of Home Office Expenses to Segments, for the purpose of allocating State and local income taxes and franchise taxes based on income (hereinafter collectively referred to as income taxes) from a home office of an organization to its segments.

By means of an illustrative allocation base in 30.403–60, the Standard provides that income taxes are to be allocated by "any base or method which results in an allocation that equals or approximates a segment's proportionate share of the tax imposed by the jurisdiction in which the segment does business, as measured by the same factors used to determine taxable income for that jurisdiction."

This provision contains two essential criteria for the allocation of income taxes from a home office to segments. First, the taxes of any particular jurisdiction are to be allocated only to those segments that do business in the taxing jurisdiction. Second, where there is more than one segment in a taxing jurisdiction, the taxes are to be allocated among those segments on the

basis of "the same factors used to determine the taxable income for that jurisdiction." The questions that have arisen relate primarily to whether segment book income or loss is a "factor" for this purpose.

Most States tax a fraction of total organization income, rather than the book income of segments that do business within the State. The fraction is calculated pursuant to a formula prescribed by State statute. In these situations the book income or loss of individual segments is not a factor used to determine taxable income for that jurisdiction. Accordingly, in States that tax a fraction of total organization income, rather than the book income of segments within the State, such book income is irrelevant for tax allocation purposes. Therefore, segment book income is to be used as a factor in allocating income tax expense from a home office to segments only where this amount is expressly used by the taxing jurisdiction in computing the income tax.

30.404 Capitalization of tangible assets.

30.404-10 [Reserved]

30.404-20 Purpose.

This Standard requires that, for purposes of cost measurement, contractors establish and adhere to policies with respect to capitalization of tangible assets which satisfy criteria set forth herein. Normally, cost measurements are based on the concept of enterprise continuity; this concept implies that major asset acquisitions will be capitalized, so that the cost applicable to current and future accounting periods can be allocated to cost objectives of those periods. A capitalization policy in accordance with this Standard will facilitate measurement of costs consistently over time.

30.404-30 [Reserved]

30.404-40 Fundamental requirement.

(a) The acquisition cost of tangible capital assets shall be capitalized. Capitalization shall be based upon a written policy that is reasonable and consistently applied.

(b) The contractor's policy shall designate economic and physical characteristics for capitalization of tangible assets.

(1) The contractor's policy shall designate a minimum service life criterion, which shall not exceed 2 years, but which may be a shorter period. The policy shall also designate a minimum acquisition cost criterion which shall not exceed $1,000, but which may be a smaller amount.

(2) The contractor's policy may designate other specific characteristics which are pertinent to his capitalization policy decisions (e.g., class of asset, physical size, identifiability and controllability, the extent of integration or independence of constituent units).

(3) The contractor's policy shall provide for identification of asset accountability units to the maximum extent practical.

(4) The contractor's policy may designate higher minimum dollar limitations for original complement of low cost equipment and for betterments and improvements than the limitation established in accordance with subparagraph (b)(1) of this subsection, provided such higher limitations are reasonable in the contractor's circumstances.

(c) Tangible assets shall be capitalized when both of the criteria in the contractor's policy as required in subparagraph (b)(1) of this subsection are met, except that assets described in subparagraph (b)(4) of this section shall be capitalized in accordance with the criteria established in accordance with that paragraph.

(d) Costs incurred subsequent to the acquisition of a tangible capital asset which result in extending the life or increasing the productivity of that asset (e.g., betterments and improvements) and which meet the contractor's established criteria for capitalization shall be capitalized with appropriate accounting for replaced asset accountability units. However, costs incurred for repairs and maintenance to a tangible capital asset which either restore the asset to, or maintain it at, its normal or expected service life or production capacity shall be treated as costs of the current period.

30.404-50 Techniques for application.

(a) The cost to acquire a tangible capital asset includes the purchase price of the asset and costs necessary to prepare the asset for use.

(1) The purchase price of an asset shall be adjusted to the extent practical by premiums and extra charges paid or discounts and credits received which properly reflect an adjustment in the purchase price.

(i) Purchase price is the consideration given in exchange for an asset and is determined by cash paid, or to the extent payment is not made in cash, in an amount equivalent to what would be the cash price basis. Where this amount is not available, the purchase price is determined by the current value of the consideration given in exchange for the asset. For example, current value for a credit instrument is the amount immediately required to settle the obligation or the amount of money which might have been raised directly through the use of the same instrument employed in making the credit purchase. The current value of an equity security is its market value. Market value is the current or prevailing price of the security as indicated by recent market quotations. If such values are unavailable or not appropriate (thin market, volatile price movement, etc.), an acceptable alternative is the fair value of the asset acquired.

(ii) Donated assets which, at the time of receipt, meet the contractor's criteria for capitalization shall be capitalized at their fair value at that time.

(2) Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use. Where material in amount, such costs, including initial inspection and testing, installation and similar expenses, shall be capitalized.

(b) Tangible capital assets constructed or fabricated by a contractor for its own use shall be capitalized at amounts which include all indirect costs properly allocable to such assets. This requires the capitalization of general and administrative expenses when such expenses are identifiable with the constructed asset and are material in amount (e.g., when the in-house construction effort requires planning, supervisory, or other significant effort by officers or other personnel whose salaries are regularly charged to general and administrative expenses). When the constructed assets are identical with or similar to the contractor's regular product, such assets shall be capitalized at amounts which include a full share of indirect costs.

(c) In circumstances where the acquisition by purchase or donation of previously used tangible capital assets is not an arm's length transaction, acquisition cost shall be limited to the capitalized cost of the asset to the owner who last acquired the asset through an arm's-length transaction, reduced by depreciation charges from date of that acquisition to date of gift or sale.

(d) Under the "purchase method" of accounting for business combinations, acquired tangible capital assets shall be assigned a portion of the cost of the acquired company, not to exceed their fair value at date of acquisition. Where the fair value of identifiable acquired assets less liabilities assumed exceeds the purchase price of the acquired company in an acquisition under the "purchase method," the value otherwise

assignable to tangible capital assets shall be reduced by a proportionate part of the excess.

(e) Under the "pooling of interest method" of accounting for business combinations, the values established for tangible capital assets for financial accounting shall be the values used for determining the cost of such assets.

(f) Asset accountability units shall be identified and separately capitalized at the time the assets are acquired. However, whether or not the contractor identifies and separately capitalizes a unit initially, the contractor shall remove the unit from the asset accounts when it is disposed of and, if replaced, its replacement shall be capitalized.

30.404-60 Illustrations.

(a) *Illustrations of costs which must be capitalized.* (1) Contractor has an established policy of capitalizing tangible assets which have a service life of more than 1 year and a cost of $2,000. The contractor's policy must be modified to conform to the $1,000 policy limitation on minimum acquisition cost established by the Standard.

(i) Contractor acquires a tangible capital asset with a life of 18 months at a cost of $1,200. The Standard requires that the asset be capitalized in compliance with contractor's policy as to service life.

(ii) Contractor acquires a tangible asset with a life of 18 months at a cost of $900. The asset need not be capitalized unless the contractor's revised policy establishes a minimum cost criterion below $900.

(2) Contractor has an established policy of capitalizing tangible assets which have a service life of more than 1 year and a cost of $250. The Standard requires that, based upon contractor's policy, the asset be capitalized.

(3) Contractor establishes a major new production facility. In the process, a number of large and small items of equipment were acquired to outfit it. The contractor has an established policy of capitalizing individual items of tangible assets which have a service life of over 1 year and a cost of $500, and all items meeting these requirements were capitalized. In addition, the contractor's policy requires capitalization of an original complement which has a service life of over 1 year and a cost of $5,000. Items of durable equipment acquired for the production facility costing less than $500 each aggregated $50,000. Based upon the contractor's policy, the durable equipment items must be capitalized as the original complement of low cost equipment. (The concept of original complement applies to such items as books in a new library, impact wrenches in a new factory, work benches and racks in a new production facility, or furniture and fixtures in a new office building.)

(4) Contractor has an established policy for treating its heavy presses and their power supplies as separate asset accountability units. A power supply is replaced during the service life of the related press. The Standard requires that, based upon the contractor's policy, the new power supply be capitalized with appropriate accounting for the replaced unit.

(b) *Illustrations of costs which need not be capitalized.* (1) The contractor has an established policy of capitalizing tangible assets which have a service life of 2 years and a cost of $500. The contractor acquires an asset with a useful life of 18 months and a cost of $5,000. The tangible asset should be expensed because it does not meet the 2 year criterion.

(2) The contractor establishes a new assembly line. In outfitting the line, the contractor acquires $5,000 of small tools. On similar assembly lines under similar conditions, the original complement of small tools was expensed because the complement was replaced annually as a result of loss, pilferage, breakage, and physical wear and tear. Because the unit of original complement does not meet the contractor's service life criterion for capitalization (1 year), the small tools may be expensed.

30.405 Accounting for unallowable costs.

30.405-10 [Reserved]

30.405-20 Purpose.

(a) The purpose of this Cost Accounting Standard is to facilitate the negotiation, audit, administration and settlement of contracts by establishing guidelines covering: (1) identification of costs specifically described as unallowable, at the time such costs first become defined or authoritatively designated as unallowable; and (2) the cost accounting treatment to be accorded such identified unallowable costs in order to promote the consistent application of sound cost accounting principles covering all incurred costs. The Standard is predicated on the proposition that costs incurred in carrying on the activities of an enterprise—regardless of the allowability of such costs under Government contracts—are allocable to the cost objectives with which they are identified on the basis of their beneficial or causal relationships.

(b) This Standard does not govern the allowability of costs. This is a function of the appropriate procurement or reviewing authority.

30.405-30 [Reserved]

30.405-40 Fundamental requirement.

(a) Costs expressly unallowable or mutually agreed to be unallowable, including costs mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract.

(b) Costs which specifically become designated as unallowable as a result of a written decision furnished by a contracting officer pursuant to contract disputes procedures shall be identified if included in or used in the computation of any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this subsection.

(c) Costs which, in a contracting officer's written decision furnished pursuant to contract disputes procedures, are designated as unallowable directly associated costs of unallowable costs covered by either paragraph (a) or (b) of this subsection shall be accorded the identification required by paragraph (b) of this subsection.

(d) The costs of any work project not contractually authorized, whether or not related to performance of a proposed or existing contract, shall be accounted for, to the extent appropriate, in a manner which permits ready separation from the costs of authorized work projects.

(e) All unallowable costs covered by paragraphs (a) through (d) of this subsection shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In circumstances where these unallowable costs normally would be part of a regular indirect-cost allocation base or bases, they shall remain in such base or bases. Where a directly associated cost is part of a category of costs normally included in an indirect-cost pool that will be allocated over a base containing the unallowable cost with which it is associated, such a directly associated cost shall be retained in the indirect-cost pool and be allocated through the regular allocation process.

(f) Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a contract, full direct and indirect cost allocation shall be made to the contract cost objective, in accordance with established cost accounting practices and Standards which regularly govern a given entity's

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allocations to Government contract cost objectives. In any determination of unallowable cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

30.405-50 Techniques for application.

(a) The detail and depth of records required as backup support for proposals, billings, or claims shall be that which is adequate to establish and maintain visibility of identified unallowable costs (including directly associated costs), their accounting status in terms of their allocability to contract cost objectives, and the cost accounting treatment which has been accorded such costs. Adherence to this cost accounting principle does not require that allocation of unallowable costs to final cost objectives be made in the detailed cost accounting records. It does require that unallowable costs be given appropriate consideration in any cost accounting determinations governing the content of allocation bases used for distributing indirect costs to cost objectives. Unallowable costs involved in the determination of rates used for standard costs, or for indirect-cost bidding or billing, need be identified only at the time rates are proposed, established, revised or adjusted.

(b) The visibility requirement of paragraph (a) of this subsection, may be satisfied by any form of cost identification which is adequate for purposes of contract cost determination and verification. The Standard does not require such cost identification for purposes which are not relevant to the determination of Government contract cost. Thus, to provide visibility for incurred costs, acceptable alternative practices would include: (1) the segregation of unallowable costs in separate accounts maintained for this purpose in the regular books of account; (2) the development and maintenance of separate accounting records or workpapers; or (3) the use of any less formal cost accounting techniques which establishes and maintains adequate cost identification to permit audit verification of the accounting recognition given unallowable costs. Contractors may satisfy the visibility requirements for estimated costs either: (1) By designation and description (in backup data, workpapers, etc.) of the amounts and types of any unallowable costs which have specifically been identified and recognized in making the estimates; or (2) by description of any other estimating technique employed to provide appropriate recognition of any unallowable costs pertinent to the estimates.

(c) Specific identification of unallowable costs is not required in circumstances where, based upon considerations of materiality, the Government and the contractor reach agreement on an alternate method that satisfies the purpose of the Standard.

30.405-60 Illustrations.

(a) An auditor recommends disallowance of certain direct labor and direct material costs, for which a billing has been submitted under a contract, on the basis that these particular costs were not required for performance and were not authorized by the contract. The contracting officer issues a written decision which supports the auditor's position that the questioned costs are unallowable. Following receipt of the contracting officer's decision, the contractor must clearly identify the disallowed direct labor and direct material costs in his accounting records and reports covering any subsequent submission which includes such costs. Also, if the contractor's base for allocation of any indirect cost pool relevant to the subject contract consists of direct labor, direct material, total prime cost, total cost input, etc., he must include the disallowed direct labor and material costs in his allocation base for such pool. Had the contracting officer's decision been against the auditor, the contractor would not, of course, have been required to account separately for the costs questioned by the auditor.

(b) A contractor incurs, and separately identifies, as a part of his manufacturing overhead, certain costs which are expressly unallowable under the existing and currently effective regulations. If manufacturing overhead is regularly a part of the contractor's base for allocation of general and administrative (G&A) or other indirect expenses, the contractor must allocate the G&A or other indirect expenses to contracts and other final cost objectives by means of a base which includes the identified unallowable manufacturing overhead costs.

(c) An auditor recommends disallowance of the total direct indirect costs attributable to an organizational planning activity. The contractor claims that the total of these activity costs are allowable under the Federal Acquisition Regulation as "Economic planning costs" (FAR 31.205-12); the auditor contends that they constitute "Organization costs" (FAR 31.205-27) and therefore are unallowable. The issue is referred to the contracting officer for resolution pursuant to the contract disputes clause. The contracting officer issues a written decision supporting the auditor's position that the total costs questioned are unallowable under the FAR. Following receipt of the contracting officer's decision, the contractor must identify the disallowed costs and specific other costs incurred for the same purpose in like circumstances in any subsequent estimating, cost accumulation or reporting for Government contracts, in which such costs are included. If the contracting officer's decision had supported the contractor's contention, the costs questioned by the auditor would have been allowable "Economic planning costs," and the contractor would not have been required to provide special identification.

(d) A defense contractor was engaged in a program of expansion and diversification of corporate activities. This involved internal corporate reorganization, as well as mergers and acquisitions. All costs of this activity were charged by the contractor as corporate or segment general and administrative (G&A) expense. In the contractor's proposals for final Segment G&A rates (including corporate home office allocations) to be applied in determining allowable costs of its defense contracts subject to FAR Part 31, the contractor identified and excluded the expressly unallowable costs (as listed in FAR 31.205-12) incurred for incorporation fees and for charges for special services of outside attorneys, accountants, promoters, and consultants. In addition, during the course of negotiation of interim bidding and billing G&A rates, the contractor agreed to classify as unallowable various in-house costs incurred for the expansion program, and various directly associated costs of the identifiable unallowable costs. On the basis of negotiations and agreements between the contractor and the contracting officers' authorized representatives, interim G&A rates were established, based on the net balance of allowable G&A costs. Application of the rates negotiated to proposals, and on an interim basis to billings, for covered contracts constitutes compliance with the Standard.

(e) An official of a company, whose salary, travel, and subsistence expenses are charged regularly as general and administrative (G&A) expenses, takes several business associates on what is clearly a business entertainment trip. The entertainment costs of such trips is expressly unallowable because it constitutes entertainment expense, and

is separately identified by the contractor. The contractor does not regularly include his G&A expenses in any indirect-expense allocation base. In these circumstances, the official's travel and subsistence expenses would be directly associated costs for identification with the unallowable entertainment expense. However, unless this type of activity constituted a significant part of the official's regular duties and responsibilities on which his salary was based, no part of the official's salary would be required to be identified as a directly associated cost of the unallowable entertainment expense.

30.406 Cost accounting standard—cost accounting period.

30.406-10 [Reserved]

30.406-20 Purpose.

The purpose of this Cost Accounting Standard is to provide criteria for the selection of the time periods to be used as cost accounting periods for contract cost estimating, accumulating, and reporting. This Standard will reduce the effects of variations in the flow of costs within each cost accounting period. It will also enhance objectivity, consistency, and verifiability, and promote uniformity and comparability in contract cost measurements.

30.406-30 [Reserved]

30.406-40 Fundamental requirement.

(a) A contractor shall use this fiscal year as his cost accounting period, except that:

(1) Costs of an indirect function which exists for only a part of a cost accounting period may be allocated to cost objectives of that same part of the period as provided in 30.406-50(a).

(2) An annual period other than the fiscal year may, as provided in 30.406-50(d), be used as the cost accounting period if its use is an established practice of the contractor.

(3) A transitional cost accounting period other than a year shall be used whenever a change of fiscal year occurs.

(4) Where a contractor's cost accounting period is different from the reporting period required by Renegotiation Board regulations, the latter may be used for such reporting.

(b) A contractor shall follow consistent practices in his selection of the cost accounting period or periods in which any types of expense and any types of adjustment to expense (including prior-period adjustments) are accumulated and allocated.

(c) The same cost accounting period shall be used for accumulating costs in an indirect cost pool as for establishing its allocation base, except that the contracting parties may agree to use a different period for establishing an allocation base as provided in 30.406-50(e).

30.406-50 Techniques for application.

(a) The cost of an indirect function which exists for only a part of a cost accounting period may be allocated on the basis of data for that part of the cost accounting period if the cost is (1) material in amount, (2) accumulated in a separate indirect cost pool, and (3) allocated on the basis of an appropriate direct measure of the activity or output of the function during that part of the period.

(b) The practices required by 30.406-40(b) of this Standard shall include appropriate practices for deferrals, accruals, and other adjustments to be used in identifying the cost accounting periods among which any types of expense and any types of adjustment to expense are distributed. If an expense, such as taxes, insurance or employee leave, is identified with a fixed, recurring, annual period which is different from the contractor's cost accounting period, the Standard permits continued use of that different period. Such expenses shall be distributed to cost accounting periods in accordance with the contractor's established practices for accruals, deferrals and other adjustments.

(c) Indirect cost allocation rates, based on estimates, which are used for the purpose of expediting the closing of contracts which are terminated or completed prior to the end of a cost accounting period need not be those finally determined or negotiated for that cost accounting period. They shall, however, be developed to represent a full cost accounting period, except as provided in paragraph (a) of this subsection.

(d) A contractor may, upon mutual agreement with the Government, use as his cost accounting period a fixed annual period other than his fiscal year, if the use of such a period is an established practice of the contractor and is consistently used for managing and controlling the business, and appropriate accruals, deferrals or other adjustments are made with respect to such annual periods.

(e) The contracting parties may agree to use an annual period which does not coincide precisely with the cost accounting period for developing the data used in establishing an allocation base: *Provided*,

(1) The practice is necessary to obtain significant administrative convenience, (2) the practice is consistently followed by the contractor, (3) the annual period used is representative of the activity of the cost accounting period for which the indirect costs to be allocated are accumulated, and (4) the practice can reasonably be estimated to provide a distribution to cost objective of the cost accounting period not materially different from that which otherwise would be obtained.

(f) When a transitional cost accounting period is required under the provisions of 30.406-40(a)(3), the contractor may select any one of the following:

(1) The period, less than a year in length, extending from the end of his previous cost accounting period to the beginning of his next regular cost accounting period; (2) a period in excess of a year, but not longer than 15 months, obtained by combining the period described in subparagraph (f)(1) of this subsection with the previous cost accounting period; or (3) a period in excess of a year, but not longer than 15 months, obtained by combining the period described in subparagraph (f)(1) of this section with the next regular cost accounting period. A change in the contractor's cost accounting period is a change in accounting practices for which an adjustment in the contract price may be required in accordance with paragraph (a)(4)(ii) or (iii) of the contract clause set out at FAR 52.230-3.

30.406-60 Illustrations.

(a) A contractor allocates general management expenses on the basis of total cost input. In a proposal for a covered negotiated fixed-price contract, he estimates the allocable expenses based solely on the estimated amount of the general management expense pool and the amount of the total cost input base estimated to be incurred during the 8 months in which performance is scheduled to be commenced and completed. Such a proposal would be in violation of the requirements of this Standard that the calculation of the amounts of both the indirect cost pools and the allocation bases be based on the contractor's cost accounting period.

(b) A contractor whose cost accounting period is the calendar year, installs a computer service center to begin operations on May 1. The operating expense related to the new service center is expected to be material in amount, will be accumulated in a separate indirect cost pool, and will be allocated to the benefiting cost objectives on the basis of measured usage. The total operating expenses of the computer service center for the 8-

month part of the cost accounting period may be allocated to the benefiting cost objectives of that same 8-month period.

(c) A contractor changes his fiscal year from a calendar year to the 12-month period ending May 31. For financial reporting purposes, he has a 5-month transitional "fiscal year." The same 5-month period must be used as the transitional cost accounting period; it may not be combined as provided in 30.406–50(f), because the transitional period would be longer than 15 months. The new fiscal year must be adopted thereafter as his regular cost accounting period. The change in his cost accounting period is a change in accounting practices; adjustments of the contract prices may thereafter be required in accordance with subparagraph (a)(4)(ii) or (iii) of the contract clause at 52.230–3.

(d) Financial reports to stockholders are made on a calendar year basis for the entire contractor corporation. However, the contracting segment does all internal financial planning, budgeting, and internal reporting on the basis of a "model year." The contracting parties agree to use a "model year" and they agree to overhead rates on the "model year" basis. They also agree on a technique for prorating fiscal year assignment of corporate home office expenses between model years. This practice is permitted by the Standard.

(e) Most financial accounts and contract cost records are maintained on the basis of a fiscal year which ends November 30 each year. However, employee vacation allowances are regularly managed on the basis of a "vacation year" which ends September 30 each year. Vacation expenses are estimated uniformly during each "vacation year." Adjustments are made each October to adjust the accrued liability to actual, and the estimating rates are modified to the extent deemed appropriate. This use of a separate annual period for determining the amounts of vacation expense is permitted under 30.406–50(b).

30.407 Use of standard costs for direct material and direct labor.

30.407–10 [Reserved]

30.407–20 Purpose.

(a) The purpose of this Cost Accounting Standard is to provide criteria under which standard costs may be used for estimating, accumulating, and reporting costs of direct material and direct labor; and to provide criteria relating to the establishment of standards, accumulation of standard costs, and accumulation and disposition of variances from standard costs. Consistent application of these criteria where standard costs are in use will improve cost measurement and cost assignment.

(b) This Cost Accounting Standard is not intended to cover the use of preestablished measures solely for estimating.

30.407–30 [Reserved]

30.407–40 Fundamental requirement.

Standard costs may be used for estimating, accumulating, and reporting costs of direct material and direct labor only when all of the following criteria are met:

(a) Standard costs are entered into the books of account.

(b) Standard costs and related variances are appropriately accounted for at the level of the production unit.

(c) Practices with respect to the setting and revising of standards, use of standard costs, and disposition of variances are stated in writing and are consistently followed.

30.407–50 Techniques for application.

(a) (1) A contractor's written statement of practices with respect to standards shall include the bases and criteria (such as engineering studies, experience, or other supporting data) used in setting and revising standards; the period during which standards are to remain effective; the level (such as ideal or realistic) at which material-quantity standards and labor-time standards are set; and conditions (such as those expected to prevail at the beginning of a period) which material-price standards and labor-rate standards are designed to reflect.

(2) Where only either the material price or material quantity is set at standard, with the other component stated at actual, the result of the multiplication shall be treated as material cost at standard. Similarly, where only either the labor rate or labor time is set at standard, with the other component stated at actual, the result of the multiplication shall be treated as labor cost at standard.

(3) A labor-rate standard may be set to cover a category of direct labor only if the functions performed within that category are not materially disparate and the employees involved are interchangeable with respect to the functions performed.

(4) A labor-rate standard may be set to cover a group of direct labor workers who perform disparate functions only under either one of the following conditions:

(i) Where that group of workers all work in a single production unit yielding homogeneous outputs (in this case, the same labor-rate standard shall be applied to each worker in that group), or

(ii) Where that group of workers, in the performance of their respective functions, forms an integral team (in this case, a labor-rate standard shall be set for each integral team).

(b) (1) Material-price standards may be used and their related variances may be recognized either at the time purchases of material are entered into the books of account or at the time material cost is allocated to production units.

(2) Where material-price standards are used and related variances are recognized at the time purchases of material are entered into the books of account, they shall be accumulated separately by homogeneous groupings of material. Examples of homogeneous groupings of material are:

(i) Where prices of all items in that grouping of material are expected to fluctuate in the same direction and at substantially the same rate, or

(ii) Where items in that grouping of material are held for use in a single production unit yielding homogeneous outputs.

(3) Where material-price variances are recognized at the time purchases of material are entered into the books of account, variances of each homogeneous grouping of material shall be allocated (except as provided in paragraph (b)(4) of this section), at least annually, to items in purchased-items inventory and to production units receiving items from that homogeneous grouping of material, in accordance with either one of the following practices, which shall be consistently followed:

(i) Items in purchased-items inventory of a homogeneous grouping of material are adjusted from standard cost to actual cost; the balance of the material-price variance, after reflecting these adjustments, shall be allocated to production units on the basis of the total of standard cost of material received from that homogeneous grouping of material by each of the production units; or

(ii) Items, at standard cost, in purchased-items inventory of a homogeneous grouping of material, are treated, collectively, as a production unit; the material-price variance shall be allocated to production units on the basis of standard cost of material received from that homogeneous grouping of material by each of the production units.

(4) Where material-price variances are recognized at the time purchases of material are entered into the books of

account, variances of each homogeneous grouping of material which are insignificant may be included in appropriate indirect cost pools for allocation to applicable cost objectives.

(5) Where a material-price variance is allocated to a production unit in accordance with subparagraph (b)(3) of this subsection, it may be combined with material-quantity variance into one material-cost variance for that production unit. A separate material-cost variance shall be accumulated for each production unit.

(6) Where material-price variances are recognized at the time material cost is allocated to production units, these variances and material-quantity variances may be combined into one material-cost variance account.

(c) Labor-cost variances shall be recognized at the time labor cost is introduced into production units. Labor-rate variances and labor-time variances may be combined into one labor-cost variance account. A separate labor-cost variance shall be accumulated for each production unit.

(d) A contractor's established practice with respect to the disposition of variances accumulated by production unit shall be in accordance with one of the following subparagraphs:

(1) Variances are allocated to cost objectives (including ending in-process inventory) at least annually. Where a variance related to material is allocated, the allocation shall be on the basis of the material cost at standard, or, where outputs are homogeneous, on the basis of units of output. Similarly, where a variance related to labor is allocated, the allocation shall be on the basis of the labor cost at standard or labor hours at standard, or, where outputs are homogeneous, on the basis of units of output; or

(2) Variances which are immaterial may be included in appropriate indirect cost pools for allocation to applicable cost objectives.

(e) Where variances applicable to covered contracts are allocated by memorandum worksheet adjustments rather than in the books of account, the bases used for adjustment shall be in accordance with those stated in subparagraphs (b)(3) and (d) of this subsection.

30.407–60 Illustrations.

(a) Contractor A's written practice is to set his material-price standard for an item on the basis of average purchase prices expected to prevail during the calendar year. For that item whose usage from month to month is stable, a purchase contract is generally signed on May 1 of each year for a one-year commitment. The current purchase contract calls for a purchase price of $3 per pound; an increase of 5 percent, or 15¢ per pound, has been announced by the vendor when the new purchase contract comes into effect next May. Contractor A sets his material-price standard for this item at $3.10 per pound for the year ([$3.00×4+$3.15×8]÷12). Since Contractor A sets his material-price standard in accordance with his written practice, he complies with provisions of 30.407–40(c) of this Cost Accounting Standard.

(b) Contractor B accumulates, in one account, labor cost at standard for a department in which several categories of direct labor of disparate functions, in different combinations, are used in the manufacture of various dissimilar outputs of the department. Contractor B's department is not a production unit as defined in 30.407–30(a)(7) of this Cost Accounting Standard. Modifying his practice so as to comply with the definition of production unit in 30.407–30(a)(7), he could accumulate the standard costs and variances separately, (1) for each of the several categories of direct labor, or (2) for each of several subdepartments, with homogeneous output for each of the subdepartments.

(c) Contractor C allocates variances at the end of each month. During the month of March, a production unit has accumulated the following data with respect to labor:

	Labor hours at standard	Labor dollars at standard	Labor cost variance
Balance, March 1	5,000	$25,000	$2,000
Additions in March	15,000	75,000	5,000
Total	20,000	100,000	7,000
Transfers-out in March	8,000	40,000	
Balance, March 31	12,000	60,000	

Using labor hours at standard as the base, Contractor C establishes a labor-cost variance rate of $.35 per standard labor hour ($7,000÷20,000), and deducts $2,800 ($.35×8,000) from the labor-cost variance account, leaving a balance of $4,200 ($7,000—$2,800). Contractor C's practice complies with provisions of 30.407–50(d)(1) of this Cost Accounting Standard.

(d) Contractor D, who uses materials the prices of which are expected to fluctuate at different rates, recognizes material-price variances at the time purchases of material are entered into the books of account. He maintains one purchase-price variance account for the whole plant. Purchased items are requisitioned by various production units in the plant. Since prices of material are expected to fluctuate at different rates, this plant-wide grouping does not constitute a homogeneous grouping of material. Contractor D's practice does not comply with provisions of 30.407–50(b)(2) of this Cost Accounting Standard. However, if he would maintain several purchased-items inventory accounts, each representing a homogeneous grouping of material, and maintain a material-price variance account for each of these homogeneous groupings of material, Contractor D's practice would comply with 30.407–50(b)(2) of this Cost Accounting Standard.

(e) Contractor E recognizes material-price variances at the time purchases of material are entered into the books of account and allocates variances at the end of each month. During the month of May, a homogeneous grouping of material has accumulated the following data:

	Material cost at standard	Material price variance
Inventory, May 1	$150,000	$20,000
Additions in May	1,850,000	120,000
Total	2,000,000	140,000
Requisitions:		
Production unit 1	900,000	
Production unit 2	450,000	
Production unit 3	300,000	
Production unit 4	150,000	
Inventory, May 31	200,000	

Contractor E establishes a material-price variance rate of 7% ($140,000÷$2,000,000) and allocates as follows:

	Material cost at standard	Material-price variance rate (percent)	Material-price variance allocation
Production unit 1	$900,000	7	$63,000
Production unit 2	450,000	7	31,500
Production unit 3	300,000	7	21,000
Production unit 4	150,000	7	10,500
Ending inventory of homogeneous grouping of material	200,000	7	14,000
Total	2,000,000		140,000

Contractor E's practice complies with provisions of 30.407–50(b)(3)(ii) of this Cost Accounting Standard.

(f) Contractor F makes year-end adjustments for variances attributable to covered contracts. During the year just ended, a covered contract was processed in four production units, each with homogeneous outputs. Data with respect to output and to labor of each of the four production units are as follows:

Production unit	Total units of output	Total units used by the covered contract	Total labor cost at standard	Total labor-cost variance
1	100,000	10,000	$400,000	$20,000
2	30,000	6,000	900,000	30,000
3	20,000	5,000	600,000	10,000
4	10,000	4,000	500,000	20,000

Since the outputs of each production unit are homogeneous, Contractor F uses the units of output as the basis of making memorandum worksheet adjustments concerning applicable variances, and establishes the following figures:

	Labor-cost variance per unit of output	Units used by the covered contract	Labor-cost variance attributable to the covered contract
Production unit 1	$0.20	10,000	$2,000
Production unit 2	1.00	6,000	6,000
Production unit 3	.50	5,000	2,500
Production unit 4	2.00	4,000	8,000
Total labor-cost variance attributable to the covered contract			18,500

Contractor F makes a year-end adjustment of $18,500 as the labor-cost variances attributable to the covered contract. Contractor F's practice complies with provisions of 30.407–50(e) of this Cost Accounting Standard.

30.408 Accounting for costs of compensated personal absence.

30.408–10 [Reserved]

30.408–20 Purpose.

The purpose of this Standard is to improve, and provide uniformity in, the measurement of costs of vacation, sick leave, holiday, and other compensated personal absence for a cost accounting period, and thereby increase the probability that the measured costs are allocated to the proper cost objectives.

30.408–30 [Reserved]

30.408–40 Fundamental requirement.

(a) The costs of compensated personal absence shall be assigned to the cost accounting period or periods in which the entitlement was earned.

(b) The costs of compensated personal absence for an entire cost accounting period shall be allocated pro-rata on an annual basis among the final cost objectives of that period.

30.408–50 Techniques for application.

(a) *Determinations.* Each plan or custom for compensated personal absence shall be considered separately in determining when entitlement is earned. If a plan or custom is changed or a new plan or custom is adopted, then a new determination shall be made beginning with the first cost accounting period to which such new or changed plan or custom applies.

(b) *Measurement of entitlement.* (1) For purposes of compliance with 30.408–40(a), compensated personal absence is earned at the same time and in the same amount as the employer becomes liable to compensate the employee for such absence if the employer terminates the employee's employment for lack of work or other reasons not involving disciplinary action, in accordance with a plan or custom of the employer. Where a new employee must complete a probationary period before the employer becomes liable, the employer may nonetheless treat such service as creating entitlement in any computations required by this Standard, provided that he does so consistently.

(2) Where a plan or custom provides for entitlement to be determined as of the first calendar day or the first business day of a cost accounting period based on service in the preceding cost accounting period, the entitlement shall be considered to have been earned, and the employer's liability to have arisen, as of the close of the preceding cost accounting period.

(3) In the absence of a determinable liability, in accordance with subparagraph (b)(1) of this subsection, compensated personal absence will be considered to be earned only in the cost accounting period in which it is paid.

(c) *Determination of employer's liability.* In computing the cost of compensated personal absence, the computation shall give effect to the employer's liability in accordance with the following paragraphs:

(1) The estimated liability shall include all earned entitlement to compensated personal absence which exists at the time the liability is determined, in accordance with paragraph (b) of this subsection.

(2) The estimated liability shall be reduced to allow for anticipated nonutilization, if material.

(3) The liability shall be estimated consistently either in terms of current or of anticipated wage rates. Estimates may be made with respect to individual employees, but such individual estimates shall not be required if the total cost with respect to all employees in the plan can be estimated with reasonable accuracy by the use of sample data, experience or other appropriate means.

(d) *Adjustments.* (1) The estimate of the employer's liability for compensated personal absence at the beginning of the first cost accounting period for which a contractor must comply with this Standard shall be based on the contractor's plan or custom applicable to that period, notwithstanding that some part of that liability has not previously been recognized for contract costing purposes. Any excess of the amount of the liability as determined in accordance with paragraph (c) of this subsection over the corresponding amount of the liability as determined in accordance with the contractor's previous practice shall be held in suspense and accounted for as described in subparagraph (d)(3) of this subsection.

(2) If a plan or custom is changed or a new plan or custom is adopted, and the new determination made in accordance with paragraph (a) of this subsection results in an increase in the estimate of the employer's liability for compensated personal absence at the beginning of the first cost accounting period for which the new plan is effective over the estimate made in accordance with the contractor's prior practice, then the amount of such increase shall be held in suspense and accounted for as described in subparagraph (d)(3) of this subsection.

(3) At the close of each cost accounting period, the amount held in suspense shall be reduced by the excess of the amount held in suspense at the beginning of the cost accounting period over the employer's liability (as estimated in accordance with paragraph (c) of this subsection) at the end of that cost accounting period. The cost of compensated personal absence assigned to that cost accounting period shall be increased by the amount of the excess.

(e) *Allocations.* Except where the use of a longer or shorter period is permitted by the provisions of the Cost Accounting Standard on Cost Accounting Period (30.406 of this Subpart), the costs of compensated personal absence shall be allocated to cost objectives on a pro-rata basis which reflects the total of such costs and the total of the allocation base for the entire cost accounting period. However, this provision shall not preclude revisions to an allocation rate during a cost accounting period based on revised estimates of period totals.

30.408–60 Illustrations.

(a) Company A's vacation plan provides that on the anniversary of each employee's hiring date, that employee shall become eligible to receive a 2-week vacation with pay. Vacation entitlement must be used within 2 years or forfeited. An employee who leaves the company voluntarily will be paid for

any remaining unused vacation entitlement which was earned through the emloyee's last anniversary date. An employee who is laid off for lack of work will also be paid a pro-rata vacation allowance for service since the employee's last anniversary date. Company A accrues vacation costs each month based on an estimate of the anniversary years which will be completed in that month. At the end of its cost accounting period, Company A adjusts its estimated liability to agree with its actual liability for completed years of service on an individual employee basis.

(1) In order to comply with 30.408–50(c), Company A must increase its estimated liability for vacation pay at all times to include the estimated additional amount which would be payable to employees in the event of layoff. The additional liability may be calculated on an individual employee basis or it may be estimated for the employees as a group by the use of sample or historical data.

(2) The following illustrates one method of estimating Company A's liability at the end of its cost accounting period, December 31, with respect to individual employees, in accordance with 30.408–50(c).

John Doe Anniversary date July 10	
Unused entitlement resulting from completed service years, 24 hrs. at $5	$120
Full months of service since anniversary, 5 Pro-rata entitlement on lay-off - 80 hrs. x 5/12 = 33.3 hrs. at 15	167
Total	287
Less estimated allowance for forfeitures, 3½ percent	10
Net liability	277

(b) Company B has a vacation plan similar to Company A's, but Company B does not pay pro-rata vacation pay on lay-off for service since the last anniversary date. Company B must include in its estimate of its liability at the end of its cost accounting period only that unused vacation entitlement which results from completed years of service, with allowance for forfeitures if material.

(c) Company C's sick leave plan provides that an employee will accumulate one-half day of sick leave entitlement for each full month of service. Sick leave entitlement may be accumulated without limit, but an employee is paid for sick leave only during actual illness; the Company does not pay for unused sick leave on lay-off. Despite the fact that Company C might be able to estimate the amount which will be paid for sick leave in a future cost accounting period with a high degree of accuracy, it has no liability for payment for unused sick leave entitlement in the event of lay-off. Therefore, in accordance with 30.408–50(b)(3), it must assign to each cost accounting period only the costs of sick leave which it pays in that period.

(d) Company D's vacation plan provides that on July 1, each employee who has been employed by the Company for at least 1 year shall be entitled to 2 weeks of vacation. All vacation must be taken between July 1 and September 30. An employee who terminates after September 30 and before July 1 receives no vacation pay. Company D has a cost accounting period which ends on December 31; however, Company D customarily accrues its anticipated liability for vacation pay at July 1 in 12 equal installments over the "vacation year" starting on July 1 of the previous year and ending on June 30 of the current year. Company D has no liability for vacation pay at January 1 or at December 31. In accordance with 30.408–50(b)(3), the amount of vacation cost which Company D must assign to each cost accounting period is the amount of such costs paid in that period. Therefore, Company D may not use the "vacation year" ending June 30 to apportion these costs between cost accounting periods.

(e) Company E's cost accounting period ends on December 31. Its vacation plan provides that on January 1, each employee who has been employed for at least 1 year shall become entitled to 2 weeks of vacation. The Company does not recognize a liability for vacation pay at December 31 because an employee must be employed on January 1 to be eligible.

(1) Despite the requirement that the employee also be employed on January 1, the necessary service was completed in the preceding cost accounting period. If the other terms of the plan are such that in accordance with this Standard, Company E must recognize its vacation costs on the accrual basis, then in accordance with 30.408–50(b)(2), Company E must estimate its vacation costs as if the liability arose on December 31 rather than on the following January 1.

(2) Assume that Company E must comply with this Standard beginning on January 1, 1976. Assume that the employees of Company E earned $90,000 in vacation pay in 1975, all of which will be taken in 1976. Assume, further, that because of reduced employment levels, the employees of Company E will earn only $80,000 in vacation pay in 1976, $5,000 of which will be paid in 1976 because of layoffs. The following example illustrates the computation of vacation pay costs for Company E in 1976:

1976 beginning liability:	
With Standard (30.408-50(d)(1))	$90,000
Without Standard	0
Amount to be held in suspense (30.408-50(d)(1))	90,000
1976 ending liability	75,000
Plus: Paid in 1976	95,000
Subtotal	170,000
Less: 1976 beginning liability	90,000
1976 vacation cost, basic amount	80,000
Amount in suspense at beginning of 1976	90,000
Less: 1976 ending liability	75,000
Suspense to be written off in 1976, additional 1976 vacation cost (30.408-50(d)(3))	15,000
1976 basic vacation cost	80,000
Plus: 1976 reduction of suspense	15,000
1976 total vacation cost	95,000

(3) Assume, further, that all of the vacation entitlement which remained at December 31, 1976 ($75,000) is taken in 1977. Also, Company E hires a substantial number of additional employees in 1977, so that the amount of vacation entitlement earned in 1977 is $85,000. The following example illustrates the computation of vacation pay costs for Company E in 1977:

1977 ending liability	$85,000
Plus: Paid in 1977	75,000
Subtotal	160,000
Less: 1977 beginning liability	75,000
1977 vacation cost, basic amount	85,000
Amount in suspense at beginning of 1977[1]	75,000
1977 ending liability[1]	85,000
1977 basic vacation cost	85,000
Plus: 1977 reduction of suspense[1]	0
1977 total vacation cost	85,000

[1] Because the 1977 ending liability exceeds the amount in suspense at the beginning of 1977, there is no reduction of suspense in 1977.

(4) Assume further, that Company E goes out of business in 1978. All employees are terminated and paid both for the $85,000 vacation liability at the end of 1977 and an additional $40,000 earned in 1978. The following example illustrates the computation of vacation pay costs for Company E in 1978:

1978 ending liability	0
Plus: Paid in 1978	$125,000
Subtotal	125,000
Less: 1978 beginning liability	85,000
1978 vacation cost, basic amount	40,000
Amount in suspense at beginning of 1978	75,000
Less: 1978 ending liability	0
Suspense to be written off in 1978, additional 1978 vacation cost (30.408-50(d)(3))	75,000
1978 basic vacation cost	40,000
Plus: 1978 reduction in suspense	75,000
1978 total vacation cost	115,000

(f) All of the salary costs of Company F's salaried employees are charged to service, administrative, or overhead functions. No accounting entries are made to segregate costs of compensated personal absence of these employees from their other salary costs, although other records are maintained to control the total amount of such absences.

(1) This policy does not violate the requirement of 30.408–40(b) if such salaries are charged to overhead or indirect cost pools for subsequent allocation to final cost objectives over annually determined allocation bases which are appropriate for those pools.

(2) If the same policy were followed in the case of engineers whose salaries were directly allocated to two or more final cost objectives, or to both intermediate and final cost objectives, so that costs of compensated personal absence were charged directly to the jobs on which the individuals were working when paid, then this would violate the requirement of 30.408–40(b) that these costs be allocated among cost objectives on the basis of the costs of the entire cost accounting period. Only if all salaries were directly allocated to a single final cost objective, as might be the case with personnel assigned to an overseas base for the performance of a single contract, would this practice be in accord with that requirement.

(g) Company G determines a "charging rate" for each employee. The charging rate includes an allowance for compensated personal absence based on average experience. As the employee performs services, the related cost objectives are charged for the services at the charging rate, the employee is paid at his base rate, and the excess is credited to the accrued liability for each benefit. As benefits are paid, the costs are charged against the accrued liabilities. The amount of each accrued liability is adjusted at the end of the costs accounting period, and any difference is adjusted through appropriate overhead accounts in accordance with company policy.

(1) This method is not a violation of 30.408–40(b) if it results in allocating the estimated annual costs of compensated personal absence at a rate which reflects the anticipated costs of the entire cost accounting period.

(2) The computation itself must comply with the criteria of 30.408–40(a). For example, if the terms of the Company's sick leave plan are such that in accordance with this Standard, the costs should be recognized in the cost accounting period when they are paid, then the computation should be intended to amortize the expected costs of sick leave over the activity of that cost accounting period, leaving no accrued liability for sick leave at the end of the cost accounting period.

30.409 Cost accounting standard—depreciation of tangible capital assets.

30.409–10 [Reserved]

30.409–20 Purpose.

The purpose of this Standard is to provide criteria and guidance for assigning costs of tangible capital assets to cost accounting periods and for allocating such costs in cost objectives within such periods in an objective and consistent manner. The Standard is based on the concept that depreciation costs identified with cost accounting periods and benefiting cost objectives within periods should be a reasonable measure of the expiration of service potential of the tangible assets subject to depreciation. Adherence to this Standard should provide a systematic and rational flow of the costs of tangible capital assets to benefited cost objectives over the expected service lives of the assets. This Standard does not cover nonwasting assets or natural resources which are subject to depletion.

30.409–30 [Reserved]

30.409–40 Fundamental requirement.

(a) The depreciable cost of a tangible capital asset (or group of assets) shall be assigned to cost accounting periods in accordance with the following criteria:

(1) The depreciable cost of a tangible capital asset shall be its capitalized cost less its estimated residual value.

(2) The estimated service life of a tangible capital asset (or group of assets) shall be used to determine the cost accounting periods to which the depreciable cost will be assigned.

(3) The method of depreciation selected for assigning the depreciable cost of a tangible capital asset (or group of assets) to the cost accounting periods representing its estimated service life shall reflect the pattern of consumption of services over the life of the asset.

(4) The gain or loss which is recognized upon disposition of a tangible capital asset shall be assigned to the cost accounting period in which the disposition occurs.

(b) The annual depreciation cost of a tangible capital asset (or group of assets) shall be allocated to cost objectives for which it provides service in accordance with the following criteria:

(1) Depreciation cost may be charged directly to cost objectives only if such charges are made on the basis of usage and only if depreciation costs of all like assets used for similar purposes are charged in the same manner.

(2) Where tangible capital assets are part of, or function as, an organizational unit whose costs are charged to other cost objectives based on measurement of the services provided by the organizational unit, the depreciation cost of such assets shall be included as part of the cost of the organizational unit.

(3) Depreciation costs which are not allocated in accordance with subparagraph (b) (1) or (2) of this subsection, shall be included in appropriate indirect cost pools.

(4) The gain or loss which is recognized upon disposition of a tangible capital asset, where material in amount, shall be allocated in the same manner as the depreciation cost of the asset has been or would have been allocated for the cost accounting period in which the disposition occurs. Where such gain or loss is not material, the amount may be included in an appropriate indirect cost pool.

30.409–50 Techniques for application.

(a) Determination of the appropriate depreciation charges involves estimates both of service life and of the likely pattern of consumption of services in the cost accounting periods included in such life. In selecting service life estimates and in selecting depreciation methods, many of the same physical and economic factors should be considered. The following are among the factors which may be taken into account: quantity and quality of expected output, and the timing thereof; costs of repair and maintenance, and the timing thereof; standby or incidental use and the timing thereof; and technical or economic obsolescence of the asset (or group of assets), or of the product or service it is involved in producing.

(b) Depreciation of a tangible capital asset shall begin when the asset and any others on which its effective use depends are ready for use in a normal or acceptable fashion. However, where partial utilization of a tangible capital asset is identified with a specific operation, depreciation shall commence on any portion of the asset which is substantially completed and used for that operation. Depreciable spare parts which are required for the operation of such tangible capital assets shall be accounted for over the service life of the assets.

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(c) A consistent policy shall be followed in determining the depreciable cost to be assigned to the beginning and ending cost accounting periods of asset use. The policy may provide for any reasonable starting and ending dates in computing the first and last year depreciable cost.

(d) Tangible capital assets may be accounted for by treating each individual asset as an accounting unit, or by combining two or more assets as a single accounting unit, provided such treatment is consistently applied over the service life of the asset or group of assets.

(e) Estimated service lives initially established for tangible capital assets (or groups of assets) shall be reasonable approximations of their expected actual periods of usefulness, considering the factors mentioned in paragraph (a) of this subsection. The estimate of the expected actual periods of usefulness need not include the additional period tangible capital assets are retained for standby or incidental use where adequate records are maintained which reflect the withdrawal from active use.

(1) The expected actual periods of usefulness shall be those periods which are supported by records of either past retirement or, where available, withdrawal from active use (and retention for standby or incidental use) for like assets (or groups of assets) used in similar circumstances appropriately modified for specifically identified factors expected to influence future lives. The factors which can be used to modify past experience include:

(i) Changes in expected physical usefulness from that which has been experienced such as changes in the quantity and quality of expected output.

(ii) Changes in expected economic usefulness, such as changes in expected technical or economic obsolescence of the asset (or group of assets), or of the product or service produced.

(2) Supporting records shall be maintained which are adequate to show the age at retirement or, if the contractor so chooses, at withdrawal from active use (and retention for standby or incidental use) for a sample of assets for each significant category. Whether assets are accounted for individually or by groups, the basis for estimating service life shall be predicated on supporting records of experienced lives for either individual assets or any reasonable grouping of assets as long as that basis is consistently used. The burden shall be on the contractor to justify estimated service lives which are shorter than such experienced lives.

(3) The records required in subparagraphs (e) (1) and (2) of this subsection, if not available on the date when the requirements of this Standard must first be followed by a contractor, shall be developed from current and historical fixed asset records and be available following the second fiscal year after that date. They shall be used as a basis for estimates of service lives of tangible capital assets acquired thereafter. Estimated service lives used for financial accounting purposes (or other accounting purposes where depreciation is not recorded for financial accounting purposes for some non-commercial organizations), if not unreasonable under the criteria specified in paragraph (e) of this subsection, shall be used until adequate supporting records are available.

(4) Estimated service lives for tangible capital assets for which the contractor has no available data or no prior experience for similar assets shall be established based on a projection of the expected actual period of usefulness, but shall not be less than asset guideline periods (mid-range) established for asset guideline classes under the Revenue Procedure 72-10 published by the Internal Revenue Service, and any additions, supplements or revisions thereto, which are in effect as of the first day of the cost accounting period in which the assets are acquired. Use of this alternative procedure shall cease as soon as the contractor is able to develop estimates which are appropriately supported by his own experience.

(5) The contracting parties may agree on the estimated service life of individual tangible capital assets where the unique purpose for which the equipment was acquired or other special circumstances warrant a shorter estimated service life than the life determined in accordance with the other provisions of this 30.409-50(e) and where the shorter life can be reasonably predicted.

(f) (1) The method of depreciation used for financial accounting purposes (or other accounting purposes where depreciation is not recorded for financial accounting purposes) shall be used for contract costing unless (i) such method does not reasonably reflect the expected consumption of services for the tangible capital asset (or group of assets) to which applied, or (ii) the method is unacceptable for Federal income tax purposes. If the contractor's method of depreciation used for financial accounting purposes (or other accounting purposes as provided above) does not reasonably reflect the expected consumption of services or is unacceptable for Federal income tax purposes, he shall establish a method of depreciation for contract costing which meets these criteria, in accordance with subparagraph (f)(3) of this subsection.

(2) After the date of initial applicability of this Standard, selection of methods of depreciation for newly acquired tangible capital assets, which are different from the methods currently being used for like assets in similar circumstances, shall be supported by projections of the expected consumption of services of those assets (or groups of assets) to which the different methods of depreciation shall apply. Support in accordance with subparagraph (f)(3) of this subsection shall be based on the expected consumption of services of either individual assets or any reasonable grouping of assets as long as the basis selected for grouping assets is consistently used.

(3) The expected consumption of asset services over the estimated service life of a tangible capital asset (or group of assets) is influenced by the factors mentioned in paragraph (a) of this subsection which affect either potential activity or potential output of the asset (or group of assets). These factors may be measured by the expected activity or the expected physical output of the assets, as for example: hours of operation, number of operations performed, number of units produced, or number of miles traveled. An acceptable surrogate for expected activity or output might be a monetary measure of that activity or output generated by use of tangible capital assets, such as estimated labor dollars, total cost incurred or total revenues, to the extent that such monetary measures can reasonably be related to the usage of specific tangible capital assets (or groups of assets). In the absence of reliable data for the measurement or estimation of the consumption of asset services by the techniques mentioned, the expected consumption of services may be represented by the passage of time. The appropriate method of depreciation should be selected as follows:

(i) An accelerated method of depreciation is appropriate where the expected consumption of asset services is significantly greater in early years of asset life.

(ii) The straight-line method of depreciation is appropriate where the expected consumption of asset services is reasonably level over the service life of the asset (or group of assets).

(g) The estimated service life and method of depreciation to be used for an original complement of low-cost equipment shall be based on the expected consumption of services over the expected useful life of the

complement as a whole and shall not be based on the individual items which form the complement.

(h) Estimated residual values shall be determined for all tangible capital assets (or groups of assets). For tangible personal property, only estimated residual values which exceed ten percent of the capitalized cost of the asset (or group of assets) need be used in establishing depreciable costs. Where either the declining balance method of depreciation or the class life asset depreciation range system is used consistent with the provisions of this Standard, the residual value need not be deducted from capitalized cost to determine depreciable costs. No depreciation cost shall be charged which would significantly reduce book value of a tangible capital asset (or group of assets) below its residual value.

(i) Estimates of service life, consumption of services, and residual value shall be reexamined for tangible capital assets (or groups of assets) whenever circumstances change significantly. Where changes are made to the estimated service life, residual value, or method of depreciation during the life of a tangible capital asset, the remaining depreciable costs for cost accounting purposes shall be limited to the undepreciated cost of the assets and shall be assigned only to the cost accounting period in which the change is made and to subsequent periods.

(j) (1) Gains and losses on disposition of tangible capital assets shall be considered as adjustments of depreciation costs previously recognized and shall be assigned to the cost accounting period in which disposition occurs except as provided in subparagraphs (j) (2) and (3) of this subsection. The gain or loss for each asset disposed of is the difference between the net amount realized, including insurance proceeds in the event of involuntary conversion, and its undepreciated balance. However, the gain to be recognized for contract costing purposes shall be limited to the difference between the original acquisition cost of the asset and its undepreciated balance.

(2) Gains and losses on the disposition of tangible capital assets shall not be recognized where:

(i) Assets are grouped and such gains and losses are processed through the accumulated depreciation account, or,

(ii) the asset is given in exchange as part of the purchase price of a similar asset and the gain or loss is included in computing the depreciable cost of the new asset. Where the disposition results from an involuntary conversion and the asset is replaced by a similar asset, gains and losses may either be recognized in the period of disposition or used to adjust the depreciable cost base of the new asset.

(3) The contracting parties may account for gains and losses arising from mass or extraordinary dispositions in a manner which will result in treatment equitable to all parties.

(4) Gains and losses on disposition of tangible capital assets transferred in other than an arms-length transaction and subsequently disposed of within 12 months from the date of transfer shall be assigned to the transferor.

(k) Where, in accordance with 30.409–40(b)(1), the depreciation costs of like tangible capital assets used for similar purposes are directly charged to cost objectives on the basis of usage, average charging rates based on cost shall be established for the use of such assets. Any variances between total depreciation cost charged to cost objectives and total depreciation cost for the cost accounting period shall be accounted for in accordance with the contractor's established practice for handling such variances.

(l) Practices for determining depreciation methods, estimated service lives and estimated residual values need not be changed for assets acquired prior to compliance with this Standard if otherwise acceptable under applicable procurement regulations. However, if changes are effected such changes must conform to the criteria established in this Standard and may be effected on a prospective basis to cover the undepreciated balance of cost by agreement between the contracting parties pursuant to negotiation under (a)(4)(B) or (C) of the Contract Clause set out at FAR 52.230–3.

30.409–60 Illustrations.

The following examples are illustrative of the provisions of this Standard.

(a) X, Y, and Z companies purchase identical milling machines to be used for similar purposes.

(1) Company X estimates service life for tangible capital assets on a individual asset basis. Its experience with similar machines is that the average replacement period is 14 years. Under the provisions of the Standard, Company X shall use the estimated service life of 14 years for the milling machine unless it can demonstrate changed circumstances or new circumstances to support a different estimate.

(2) Company Y estimates service life for tangible capital assets by grouping assets of the same general kind and with similar service lives. Accordingly, all machine tools are accounted for as a single group. The average replacement life for machine tools for Company Y is 12 years. In accordance with the provisions of the Standard, Company Y shall use a life of 12 years for the acquisition unless it can support a different estimate for the entire group.

(3) Company Z estimates service life for tangible capital assets by grouping assets according to use without regard to service lives. Accordingly, all machinery and equipment is accounted for as a single group. The average replacement life for machinery and equipment in Company Z is 10 years. In accordance with the provisions of the Standard, Company Z shall use an estimated service life of ten years for the acquisition unless it can support a different estimate for the entire group.

(b) Company X desires to charge depreciation of the milling machine described in paragraph (a) of this subsection, directly to final cost objectives. Usage of the milling machine can be measured readily based on hours of operation. Company X may charge depreciation cost directly on a unit of time basis provided he uses one depreciation charging rate for all like milling machines in the machine shop and charges depreciation for all such milling machines directly to benefiting cost objectives.

(c) A contractor acquires, and capitalizes as an asset accountability unit, a new lathe. The estimated service life is 10 years for the lathe. He acquires, and capitalizes as an original complement of low-cost equipment related to the lathe, a collection of tool holders, chucks, indexing heads, wrenches, and the like. Although individual items comprising the complement have an average life of six years, replacements of these items will be made as needed and, therefore, the expected useful life of the complement is equal to the life of the lathe. An estimated service life of 10 years should be used for the original complement.

(d) A contractor acquires a test facility with an estimated physical life of ten years, to be used on contracts for a new program. The test facility was acquired for $5 million. It is expected that the program will be completed in 6 years and the test facility acquired is not expected to be required for other products of the contractor. Although the facility will last 10 years, the contracting parties may agree in advance to depreciate the facility over 6 years.

(e) Contractor acquires a building by donation from its local Government. The building had been purchased new by another company and subsequently

acquired by the local Government. Contractor capitalizes the building at its fair value. Under the Standard the depreciable cost of the asset based on that value may be accounted for over its estimated service life and allocated to cost objectives in accordance with contractor's cost allocation practices.

(f) A major item of equipment which was acquired prior to the applicability of this Standard was estimated, at acquisition, to have a service life of 12 years and a residual value of no more than 10 percent of acquisition cost. After 4 years of service, during which time this Standard has become applicable, a change in the production situation results in a well-supported determination to shorten the estimated service life to a total of 7 years. The revised estimated residual value is 15 percent of acquisition cost. The annual depreciation charges based on this particular asset will be appropriately increased to amortise the remaining cost, less the current estimate of residual value, over the remaining 3 years of expected usefulness. This change is not a change of cost accounting practice, but a correction of numeric estimates. The requirement of 30.409–50(l) for an adjustment pursuant to subdivision (a)(4)(ii) or (iii) of the CAS clause does not apply.

(g) The support required by 30.409–50(e) can, in all likelihood, be derived by sampling from almost any reasonable fixed asset records. Of course, the more complete the data in the records which are available, the more confidence there can be in determinations of asset service lives. The following descriptions of sampling methods are illustrations of techniques which may be useful even with limited fixed asset records.

(1) A company maintains an inventory of assets in use. The company should select a sampling time period which, preferably, is significantly longer than the anticipated life of the assets for which lives are to be established. Of course, the inventory must be available for each year in the sampling time period. The company would then select a random sample of items in each year except the most recent year of the time period. Each item in the sample would be compared to the subsequent year's inventory to determine if the asset is still in service; if not, then the asset had been retired in the year from which the sample was drawn. The item is then traced to prior year inventories to determine the year in which acquired.

Note: Sufficient items must be drawn in each year to ensure an adequate sample.

(2) A company maintains an inventory of assets in use and also has a record of retirements. In this case the company does not have to compare the sample to subsequent years to determine if disposition has occurred. As in Example (1) above, the sample items are traced to prior years to determine the year in which acquired.

(3) A company maintains retirement records which show acquisition dates. The company should select a sampling time period which, preferably, is significantly longer than the anticipated life of the assets for which lives are to be estimated. The company would then select a random sample of items retired in each year of the sampling time period and tabulate age at retirement.

(4) A company maintains only a record of acquisitions for each year. The company should select a random sample of items acquired in the most recent complete year and determine from current records or observations whether each item is currently in service. The acquisitions of each prior year should be sampled in turn to determine if sample items are currently in service. This sampling should be performed for a time period significantly longer than the anticipated life of assets for which the lives are to be established, but can be discontinued at the point at which sample items no longer appear in current use. From the data obtained, mortality tables can be constructed to determine average asset life.

(5) A company does not maintain accounting records on fully depreciated assets. However, property records are maintained, and such records are retained for 3 years after disposition of an asset in groups by year of disposition. An analysis of these retirements may be made by selecting the larger dollar items for each category of assets for which lives are to be determined (for example, at least 75 percent of the acquisition values retired each year). The cases cited above are only examples and many other examples could have been used. Also, in any example, a company's individual circumstances must be considered in order to take into account possible biased results because of changes in organizations, products, acquisition policies, economic factors, etc. The results from example (g)(5) of this subsection, for instance, might be substantially distorted if the 3 year period was unusual with respect to dispositions. Therefore, the examples are illustrative only and any sampling performed in compliance with this Standard should take into account all relevant information to ensure that reasonable results are obtained.

30.410 Allocation of business unit general and administrative expenses to final cost objectives.

30.410–10 [Reserved]

30.410–20 Purpose.

The purpose of this Cost Accounting Standard is to provide criteria for the allocation of business unit general and administrative (G&A) expenses to business unit final cost objectives based on their beneficial or causal relationship. These expenses represent the cost of the management and administration of the business unit as a whole. The Standard also provides criteria for the allocation of home office expenses received by a segment to the cost objectives of that segment. This Standard will increase the likelihood of achieving objectivity in the allocation of expenses to final cost objectives and comparability of cost data among contractors in similar circumstances.

30.410–30 [Reserved]

30.410–40 Fundamental requirement.

(a) Business unit G&A expenses shall be grouped in a separate indirect cost pool which shall be allocated only to final cost objectives.

(b) (1) The G&A expense pool of a business unit for a cost accounting period shall be allocated to final cost objectives of that cost accounting period by means of a cost input base representing the total activity of the business unit except as provided in subparagraph (b)(2) of this subsection. The cost input base selected shall be the one which best represents the total activity of a typical cost accounting period.

(2) The allocation of the G&A expense pool to any particular final cost objectives which receive benefits significantly different from the benefits accruing to other final cost objectives shall be determined by special allocation (30.410–50(j)).

(c) Home office expenses received by a segment shall be allocated to segment cost objectives as required by 30.410–50(g).

(d) Any costs which do not satisfy the definition of G&A expense but which have been classified by a business unit as G&A expenses, can remain in the G&A expense pool unless they can be allocated to business unit cost objectives on a beneficial or causal relationship which is best measured by a base other than a cost input base.

30.410–50 Techniques for application.

(a) G&A expenses of a segment incurred by another segment shall be

removed from the incurring segment's G&A expense pool. They shall be allocated to the segment for which the expenses were incurred on the basis of the beneficial or causal relationship between the expenses incurred and all benefiting or causing segments. If the expenses are incurred for two or more segments, they shall be allocated using an allocation base common to all such segments.

(b) The G&A expense pool may be combined with other expenses for allocation to final cost objectives provided that—

(1) The allocation base used for the combined pool is appropriate both for the allocation of the G&A expense pool under this Standard and for the allocation of the other expenses; and

(2) Provision is made to identify the components and total of the G&A expense pool separately from the other expenses in the combined pool.

(c) Expenses which are not G&A expenses and are insignificant in amount may be included in the G&A expense pool for allocation to final cost objectives.

(d) The cost input base used to allocate the G&A expense pool shall include all significant elements of that cost input which represent the total activity of the business unit. The cost input base selected to represent the total activity of a business unit during a cost accounting period may be—total cost input, value-added cost input, or single element cost input. The determination of which cost input base best represents the total activity of a business unit must be judged on the basis of the circumstances of each business unit.

(1) A total cost input base is generally acceptable as an appropriate measure of the total activity of a business unit.

(2) Value-added cost input shall be used as an allocation base where inclusion of material and subcontract costs would significantly distort the allocation of the G&A expense pool in relation to the benefits received, and where costs other than direct labor are significant measures of total activity. A value-added cost input base is total cost input less material and subcontract costs.

(3) A single element cost input base; e.g., direct labor hours or direct labor dollars, which represents the total activity of a business unit may be used to allocate the G&A expense pool where it produces equitable results. A single element base may not produce equitable results where other measures of activity are also significant in relation to total activity. A single element base is inappropriate where it is an insignificant part of the total cost of some of the final cost objectives.

(e) Where, prior to the effective date of this Standard, a business unit's disclosed or established cost accounting practice was to use a cost of sales or sales base, that business unit may use the transition method set out in Appendix A hereof.

(f) Cost input shall include those expenses which by operation of this Standard are excluded from the G&A expense pool and are not part of a combined pool of G&A expenses and other expenses allocated using the same allocation base.

(g) (1) Allocations of the home office expenses of (i) line management of particular segments or groups of segments, (ii) residual expenses, and (iii) directly allocated expenses related to the management and administration of the receiving segment as a whole shall be included in the receiving segment's G&A expense pool.

(2) Any separate allocation of the expenses of home office (i) centralized service functions, (ii) staff management of specific activities of segments, and (iii) central payments or accruals, which is received by a segment shall be allocated to the segment cost objectives in proportion to the beneficial or causal relationship between the cost objectives and the expense if such allocation is significant in amount. Where a beneficial or causal relationship for the expense is not identifiable with segment cost objectives, the expense may be included in the G&A expense pool.

(h) Where a segment performs home office functions and also performs as an operating segment having a responsibility for final cost objectives, the expense of the home office functions shall be segregated. These expenses shall be allocated to all benefiting or causing segments, including the segment performing the home office functions, pursuant to disclosed or established accounting practices for the allocation of home office expenses to segments.

(i) For purposes of allocating the G&A expense pool, items produced or worked on for stock or product inventory shall be accounted for as final cost objectives in accordance with the following paragraphs:

(1) Where items are produced or worked on for stock or product inventory in a given cost accounting period, the cost input to such items in that period shall be included only once in the computation of the G&A expense allocation base and in the computation of the G&A expense allocation rate for that period and shall not be included in the computation of the base or rate for any other cost accounting period.

(2) A portion of the G&A expense pool shall be allocated to items produced or worked on for stock or product inventory in the cost accounting period or periods in which such items are produced at the rates determined for such periods except as provided in subparagraph (i)(3) of this subsection.

(3) Where the contractor does not include G&A expense in inventory as part of the cost of stock or product inventory items, the G&A rate of the cost accounting period in which such items are issued to final cost objectives may be used to determine the G&A expenses applicable to issues of stock or product inventory items.

(j) Where a particular final cost objective in relation to other final cost objectives receives significantly more or less benefit from G&A expense than would be reflected by the allocation of such expenses using a base determined pursuant to paragraph (d) of this subsection, the business unit shall account for this particular final cost objective by a special allocation from the G&A expense pool to the particular final cost objective commensurate with the benefits received. The amount of a special allocation to any such final cost objective shall be excluded from the G&A expense pool required by 30.410–40(a), and the particular final cost objective's cost input data shall be excluded from the base used to allocate this pool.

30.410–60 Illustrations.

(a) Business Unit A has been including the cost of scientific computer operations in its G&A expense pool. The scientific computer is used predominately for research and development, rather than for the management and administration of the business unit as a whole. The costs of the scientific computer operation do not satisfy the Standard's definition of G&A expense; however, they may remain in the G&A expense pool unless they can be allocated to business unit cost objectives on a beneficial or causal relationship which is best measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

(b) Segment B performs a budgeting function, the cost of which is included in its G&A expense pool. This function includes the preparation of budgets for another segment. The cost of preparing the budgets for the other segment should be removed from B's G&A expense pool and transferred to the other segment.

(c) (1) Business Unit C has a personnel function which is divided into two parts

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(i) a vice president of personnel who establishes personnel policy and overall guidance, and (ii) a personnel department which handles hirings, testing, evaluations, etc. The expense of the vice president is included in the G&A expense pool. The expense of the personnel department is allocated to the other indirect cost pools based on the beneficial or causal relationship between that expense and the indirect cost pools. This procedure is in compliance with the requirements of this Standard.

(2) Unit C has included selling costs as part of its G&A expense pool. Business Unit C wishes to continue to include selling costs in its G&A expense pool. Under the provisions of this Standard, Unit C may continue to include selling costs in its G&A pool, and these costs will be allocated over a cost input base selected in accordance with the provisions of 30.410–50(d).

(3) Business Unit C has included IR&D and B&P costs in its G&A expense pool. Unit C has used a cost of sales base to allocate its G&A expense pool. As of January 1, 1978 (assumed for purposes of this illustration), the date on which Unit C must first allocate its G&A expense pool in accordance with the requirements of this Standard, Unit C has among its final cost objectives several cost reimbursement contracts and fixed price contracts subject to the CAS clause (referred to as the pre-existing contracts). If Unit C chooses to use the transition method in 30.410–50(e):

(i) Unit C shall allocate IR&D and B&P costs during the transition period (from January 1, 1978, to and including the cost accounting period during which the pre-existing contracts are completed), to the pre-existing contracts as part of its G&A expense pool using a cost of sales base pursuant to 30.410–50(e) and Appendix A.

(ii) During the transition period such costs, as part of the G&A expense pool, shall be allocated to new cost reimbursement contracts and new fixed price contracts subject to the CAS clause using a cost input base as required by 30.410–50 (d) and (e) and Appendix A.

(iii) Beginning with the cost accounting period after the transition period the IR&D and B&P costs, as part of the G&A expense pool, shall be allocated to all final cost objectives using a cost input base as required by 30.410–50(d). If Unit C chooses not to use the transition method in 30.410–50(e), the contractual provision requiring appropriate equitable adjustment of the prices of affected prime contracts and subcontracts will be implemented.

(4) Business Unit C has accounted for and allocated IR&D and B&P costs in a cost pool separate and apart from the G&A expense pool, Unit C may continue to account for these costs in a separate cost pool under the provision of this Standard. If Unit C is to use a total cost input base, these costs when accounted for and allocated in a cost pool separate and apart from the G&A expense pool will become part of the total cost input base used by Unit C to allocate the G&A expense pool.

(5) Business Unit C has included selling costs as part of its G&A expense pool. Unit C has used a cost of sales base to allocate the G&A expense pool. Unit C desires to continue to allocate selling costs using the costs of sales base. Under the provisions of this Standard, Unit C would account for selling costs as a cost pool separate and apart from the G&A expense pool, and continue to allocate these costs over a cost of sales base. If Unit C uses a total cost input base to allocate the G&A expense pool, the selling costs will become part of the total cost input base.

(d) (1) Business Unit D has accounted for selling costs in a cost pool separate and apart from its G&A expense pool and has allocated these costs using a cost of sales base. Under the provisions of this Standard, Unit D may continue to account for those costs in a separate pool and allocate them using a cost of sales base. Unit D has a total cost input base to allocate its G&A expense pool. The selling costs will become part of the cost input base used by Unit D to allocate the G&A expense pool.

(2) During a cost accounting period, Business Unit D buys $2,000,000 of raw materials. At the end of that cost accounting period, $500,000 of raw materials inventory have not been charged out to contracts or other cost objectives. The $500,000 of raw materials are not part of the total cost input base for the cost accounting period, because they have not been charged to the production of goods and services during that period. If all of the $2,000,000 worth of raw material had been charged to cost objectives during the cost accounting period, the cost input base for the allocation of the G&A expense pool would include the entire $2,000,000.

(3) Business Unit D manufactures a variety of testing devices. During a cost accounting period, Unit D acquires and uses a small building, constructs a small production facility using its own resources, and keeps for its own use one unit of a testing device that it manufactures and sells to its customers. The acquisition cost of the building is not part of the total cost input base; however, the depreciation taken on the building would be part of the total cost input base. The costs of construction of the small production facility are not part of the total cost input base. The requirements of 30.404 provide that those G&A expenses which are identifiable with the constructed asset and are material in amount shall be capitalized as part of the cost of the production facility. If there are G&A expenses material in amount and identified with the constructed asset, these G&A expenses would be removed from the G&A expense pool prior to the allocation of this pool to final cost objectives. The cost of the testing device shall be part of the total cost input base per the requirements of 30.404 which provides that the costs of constructed assets identical with the contractor's regular product shall include a full share of indirect cost.

(e) (1) Business Unit E produces Item Z for stock or product inventory. The business unit does not include G&A expense as part of the inventory cost of these items for costing or financial reporting purposes. A production run of these items occurred during Cost Accounting Period 1. A number of the units produced were not issued during Period 1 and are issued in Period 2. However, those units produced in Period 1 shall be included in the cost input of that period for calculating the G&A expense allocation base and shall not be included in the cost input of Period 2.

(2) Business Unit E should apply the G&A expense rate of Period 1 to those units of Item Z issued during Period 1 and may apply the rate of Period 2 to the units issued in Period 2.

(3) If the practice of Business Unit E is to include G&A expense as part of the cost of stock or product inventory, the inventory cost of all units of Item Z produced in Period 1 and remaining in inventory at the end of Period 1, should include G&A expense using the G&A rate of Period 1.

(f) (1) Business Unit F produced Item X for stock or product inventory. The business unit does not include G&A expense as part of the inventory cost of these items. A production run of these items was started, finished, and placed into inventory in a single cost accounting period. These items are issued during the next cost accounting period.

(2) The cost of items produced for stock or product inventory should be included in the G&A base in the same year they are produced. The cost of such items is not to be included in the G&A base on the basis of when they are issued to final cost objectives.

Therefore, the time of issuance of these items from inventory to a final cost objective is irrelevant in computing the G&A base.

(g) The normal productive activity of Business Unit G includes the construction of base operating facilities for others. G uses a total cost input base to allocate G&A expense to final cost objectives. As part of a contract to construct an operating facility, G agrees to acquire a large group of trucks and other mobile equipment to equip the base operating facility. G does not usually supply such equipment. The cost of the equipment constitutes a significant part of the contract cost. A special G&A allocation to this contract shall be agreed to by the parties if they agree that in the circumstances the contract as a whole receives substantially less benefit from the G&A expense pool than that which would be represented by a cost allocation based on inclusion of the contract cost in the total cost input base.

(h) (1) The home office of Segment H separately allocates to benefiting or causing segments significant home office expenses of (i) staff management functions relative to manufacturing, (ii) staff management functions relative to engineering, (iii) central payment of health insurance costs, and (iv) residual expenses. H receives these expenses as separate allocations. H maintains three indirect cost pools: (i) G&A expense, (ii) manufacturing overhead, and (iii) engineering overhead; all home office expenses allocated to H are included in H's G&A expense pool.

(2) This accounting practice of H does not comply with 30.410–50(g)(2). Home office residual expenses should be in the G&A expense pool, and the expenses of the staff management functions relative to manufacturing and engineering should be included in the manufacturing overhead and engineering overhead pools, respectively. The health insurance costs should be allocated in proportion to the beneficial and causal relationship between these costs and H's cost objectives.

Appendix A to 30.410—Transition From a Cost of Sales or Sales Base to a Cost Input Base

A business unit may use the method described below for transition from the use of a cost of sales or sales base to a cost input base.

(1) Calculate the cost of sales or sales base in accordance with the cost accounting practice disclosed or established prior to the date established by 30.410–80(b) of this Cost Accounting Standard.

(2) Calculate the G&A expense allocation rate using the base determined in subparagraph (1) of this Appendix and use that rate to allocate from the G&A expense pool to the final cost objectives which were in existence prior to the date on which the business unit must first allocate costs in accordance with the requirements of this Cost Accounting Standard.

(3) Calculate a cost input base in compliance with 30.410–50(d) of this Appendix.

(4) Calculate the G&A expense rate using the base determined in subparagraph (3) of this Appendix and use that rate to allocate from the G&A expense pool to those final cost objectives which arise under contracts entered into on or after the date on which the business unit must first allocate costs in accordance with the requirements of this Cost Accounting Standard.

(5) The calculations set forth in paragraphs (1)–(4) of this Appendix shall be performed for each cost accounting period during which final cost objectives described in (2) are being performed.

(6) The business unit shall establish an inventory suspense account. The amount of the inventory suspense account shall be equal to the beginning inventory of contracts subject to the CAS clause of the cost accounting period in which the business unit must first allocate costs in accordance with the requirements of this Cost Accounting Standard.

(7) In any cost accounting period, after the cost accounting periods described in (5) of this Appendix, if the ending inventory of contracts subject to the CAS clause is less than the balance of the inventory suspense account, the business unit shall calculate two G&A expense allocation rates, one to allocate G&A expenses to contracts subject to the CAS clause and one applicable to other work.

(a) The G&A expense pool shall be divided in the proportion which the cost input of the G&A expense allocation base of the contracts subject to the CAS clause bears to the total of the cost input allocation base, selected in accordance with 30.410–50(d), for the cost accounting period.

(b) The G&A expenses applicable to contracts subject to the CAS clause shall be reduced by an amount determined by multiplying the difference between the balance of the inventory suspense account and the ending inventory of contracts subject to the CAS clause by the cost of sales rate, as determined under (1) of this Appendix, of the cost accounting period in which a business unit must first allocate costs in accordance with the requirements of this Cost Accounting Standard.

(8) In any cost accounting period in which such a reduction is made, the balance of the inventory suspense account shall be reduced to be equal to the ending inventory of contracts subject to the CAS clause of that cost accounting period.

* * * * *

The following illustrates how a business unit would use this transition method.

1. Business Unit R has been using a cost of sales base to allocate its G&A expense pool to final cost objectives. Unit R uses a calendar year as its cost accounting period. On October 1, 1976 (assumed for purposes of this illustration) Cost Accounting Standard 410 becomes effective. On October 2, 1976, Unit R receives a 3-year contract containing the Cost Accounting Standards clause. As a result, Unit R must comply with the requirements of the Standard in the cost accounting period beginning in January 1978.

As of January 3, 1978, Business Unit R has the following contracts:

(1) Contract I—A 4-year contract awarded in January, 1975.

(2) Contract II—A 3-year contract which was negotiated in March 1976, and was awarded on October 2, 1976.

(3) Contract III—A 4-year contract awarded on January 2, 1978.

If Business Unit R chooses to use the transition method provided in 30.410–50(e), it will allocate the G&A expense pool to these contracts as follows:

(a) Contract I—Since Contract I was in existence prior to January 1, 1978, the G&A expense pool shall be allocated to it using a cost of sales base as provided in 30.410–50(e).

(b) Contract II—Since this contract was in existence prior to January 1, 1978, the G&A expense pool shall be allocated to it using a cost of sales base as provided in 30.410–50(e).

(c) Contract III—Since this contract was awarded after January 1, 1978, the G&A expense pool shall be allocated to this contract using a cost input base.

Having chosen to use 30.410–50(e), Business Unit R will use the transition method of allocating the G&A expense pool to final cost objectives until all contracts awarded prior to January 1, 1978, are completed (1979 if the contracts are completed on schedule). Beginning with the cost accounting period subsequent to that time, 1980, Unit R will use a cost input base to allocate the G&A expense pool to all cost objectives. Unit R will also carry forward an inventory suspense account in accordance with the requirements of this Standard.

2.A. Business Unit N is first required to allocate its costs in accordance with the requirements of 30.410 during the fiscal year beginning January 1, 1978. Unit N has used a cost of sales base to allocate its G&A expense pool.

During the years 1978, 1979, 1980, Business Unit N reported the following data:

	Contracts prior to Jan. 1, 1978				Contracts after Jan. 1, 1978		
	Total	Non-CAS work	CAS-fixed price work	CAS-cost contracts	Non-CAS work	CAS-fixed price work	CAS-cost contracts
Year 1978							
Beginning inventory	$500	300	200	0	0	0	0
Cost input	+3000	400	600	700	500	500	300
Total	3500	700	800	700	500	500	300
Cost of sales	−3000	600	550	700	450	400	300
Ending inventory	500	100	250	0	50	100	0
Year 1979							
Beginning inventory	500	100	250	0	50	100	0
Cost input	+3000	400	600	700	500	500	300
Total	3500	500	850	700	550	600	300
Cost of sales	−2500	450	650	700	150	250	300
Ending inventory	1000	50	200	0	400	350	0
Year 1980							
Beginning inventory	1000	50	200	0	400	350	0
Cost input	+3000	400	600	700	500	500	300
Total	4000	450	800	700	900	850	300
Cost of sales	−3250	450	800	700	450	550	300
Ending inventory	750	0	0	0	450	300	0

NOTES:
Operating data is in thousands of dollars.
G. & A. expense $375,000 in accordance with the requirements of this standard.

Work existing prior to January 1, 1978, may include—

(1) Government contracts which contain the CAS clause;

(2) Government contracts which do not contain the CAS clause;

(3) Contracts other than Government contracts or customer orders; and

(4) Production not specifically identified with contracts or customer orders under production or work orders existing prior to the date on which a business unit must first allocate its costs in compliance with this Standard and which are limited in time or quantity.

Production under standing or unlimited work orders, continuous flow processes and the like, not identified with contracts or customer orders are to be treated as final cost objectives awarded after the date on which a business unit must first allocate its costs in compliance with the requirements of this Standard.

Business Unit N may allocate the G&A expense pool as follows:

[In dollars]

	Year 1978		Year 1979		Year 1980	
1. G. & A. expense pool		375		375		375
Cost of sales rate	375/3,000=	.125	375/2,500=	.15	375/3,250=	.115
Cost input rate	375/3,000=	.125	375/3,000=	.125	375/3,000=	.125
2. G. & A. allocations:						
Prior contracts:						
Non-CAS work	600×0.125=	75.00	450×0.15=	67.50	450×0.115=	51.75
CAS-fixed price work	550×0.125=	68.75	650×0.15=	97.50	800×0.115=	92.00
CAS-cost contracts	700×0.125=	87.50	700×0.15=	105.00	700×0.115=	80.50
After contracts:						
Non-CAS work	500×0.125=	62.50	500×0.125=	62.50	500×0.125=	62.50
CAS-fixed price work	500×0.125=	62.50	500×0.125=	62.50	500×0.125=	62.50
CAS-cost contracts	300×0.125=	37.50	300×0.125=	37.50	300×0.125=	37.55
		393.75		432.50		386.80
3. Inventory suspense account[1]		200				
G. & A. rate applicable		.125				

[1] Beginning inventory of contracts subject to the CAS clause, January 1978.

2.B. In cost accounting period 1982, Business Unit N has an ending inventory of contracts subject to the CAS clause of $100,000. This is the first cost accounting period after the transition in which the amount of the ending inventory is less than the amount of the inventory suspense account. During this cost accounting period, Business Unit N had G&A expenses of $410,000 and cost input of $3,500,000; $1,500,000 applicable to contracts subject to the CAS clause and $2,000,000 applicable to other work.

Business Unit N would compute its G&A expense allocation rate applicable to contracts subject to the CAS clause as follows:

(1) Amount of inventory suspense account	$200,000
Amount of ending inventory	100,000
Difference	100,000
G. & A. rate applicable (see 2.A. above)	×0.125
Adjustment to G. & A. expense applicable to contracts subject to the CAS clause	12,500
(2) G. & A. expense pool	410,000
G. & A. expenses applicable to contracts subject to the CAS clause ($1,500,000/$3,500,000 ×$410,000)	175,890
G. & A. expenses applicable to other work	234,110
(3) G. & A. expenses applicable to contracts subject to the CAS clause	175,890
Adjustment to G. & A. expenses applicable to contracts subject to the CAS clause	−12,500
G. & A. expenses allocable to contracts subject to the CAS clause	163,390

(4) G. & A. expense allocation rate applicable to contracts subject to the CAS clause for cost accounting period 1982—$163,390/$1,500,000=0.109.

The amount of the inventory suspense account would be reduced to $100,000.

30.411 Cost accounting standard—accounting for acquisition costs of material.

30.411-10 [Reserved]

30.411-20 Purpose.

(a) The purpose of this Cost Accounting Standard is to provide criteria for the accounting for acquisition costs of material. The Standard includes provisions on the use of inventory costing methods. Consistent application of this Standard will improve the measurement and assignment of costs to cost objectives.

(b) This Cost Accounting Standard does not cover accounting for the acquisition costs of tangible capital assets nor accountability for Government-furnished materials.

30.411-30 [Reserved]

30.411-40 Fundamental requirement.

(a) The contractor shall have, and consistently apply, written statements of accounting policies and practices for accumulating the costs of material and for allocating costs of material to cost objectives.

(b) The cost of units of a category of material may be allocated directly to a cost objective provided the cost objective was specifically identified at the time of purchase or production of the units.

(c) The cost of material which (1) is used solely in performing indirect functions, or (2) is not a significant element of production cost, whether or not incorporated in an end product, may be allocated to an indirect cost pool. When significant, the cost of such indirect material not consumed in a cost accounting period shall be established as an asset at the end of the period.

(d) Except as provided in paragraphs (b) and (c) of this subsection, the cost of a category of material shall be accounted for in material inventory records.

(e) In allocating to cost objectives the costs of a category of material issued from company-owned material inventory, the costing method used shall be selected in accordance with the provisions of 30.411-50, and shall be used in a manner which results in systematic and rational costing of issues of material to cost objectives. The same costing method shall, within the same business unit, be used for similar categories of materials.

30.411-50 Techniques for application.

(a) Material cost shall be the acquisition cost of a category of material, whether or not a material inventory record is used. The purchase price of material shall be adjusted by extra charges incurred or discounts and credits earned. Such adjustments shall be charged or credited to the same cost objective as the purchase price of the material, except that where it is not practical to do so, the contractor's policy may provide for the consistent inclusion of such charges or credits in an appropriate indirect cost pool.

(b) One of the following inventory costing methods shall be used when issuing material from a company-owned inventory:

(1) The first-in, first-out (FIFO) method.

(2) The moving average cost method.

(3) The weighted average cost method.

(4) The standard cost method.

(5) The last-in, first-out (LIFO) method.

(c) The method of computation used for any inventory costing method selected pursuant to the provisions of this Standard shall be consistently followed.

(d) Where the excess of the ending inventory over the beginning inventory of material of the type described in 30.411-40(c) is estimated to be significant in relation to the total cost included in the indirect cost pool, the cost of such unconsumed material shall be established as an asset at the end of the period by reducing the indirect cost pool by a corresponding amount.

30.411-60 Illustrations.

(a) Contractor "A" has one contract which requires two custom-ordered, high-value, airborne cameras. The contractor's established policy is to order such special items specifically identified to a contract as the need arises and to charge them directly to the contract. Another contract is received which requires three more of these cameras, which the contractor purchases at a unit cost which differs from the unit cost of the first two cameras ordered. When the purchase orders were placed, the contractor identified the specific contracts on which the cameras being purchased were to be used. Although these cameras are identical, the actual cost of each camera is charged to the contract for which it was acquired without establishing a material inventory record. This practice would not be a violation of this Standard.

(b) (1) A Government contract requires use of electronic tubes identified as "W." The contractor expects to receive other contracts requiring the use of tubes of the same type. In accordance with its written policy, the contractor establishes a material inventory record for electronic tube "W," and allocates the cost of units issued to the existing Government contract by the FIFO method. Such a practice would conform to the requirements of this Standard.

(2) The contractor is awarded several additional contracts which require an electronic tube which the contractor concludes is similar to the one described in subparagraph (b)(1) of this subsection and which is identified as "Y." At the time a purchase order for these tubes is written, the contractor cannot identify the specific number of tubes to be used on each contract. Consequently, the contractor establishes an inventory record for these tubes and allocates their cost to the contracts on an average cost method. Because a FIFO method is used for a similar category of material within the same business unit, the use of an average cost method for "Y" would be a violation of this Standard.

(c) A contractor complies with the Cost Accounting Standard on standard costs (30.407), and he uses a standard cost method for allocating the costs of essentially all categories of material. Also, it is the contractor's established practice to charge the cost of purchased parts which are incorporated in his end products, and which are not a significant element of production cost to an indirect cost pool. Such practices conform to this Standard.

(d) A contractor has one established inventory for type "R" transformers. The contractor allocates by the LIFO method the current costs of the individual units issued to Government contracts. Such a practice would conform to the requirements of this Standard.

(e) A contractor has established inventories for various categories of material which are used on Government contracts. During the year the contractor allocates the costs of the units of the various categories of material issued to contracts by the moving average cost method. The contractor uses the LIFO method for tax and financial reporting purposes and, at year end, applies a pooled LIFO inventory adjustment for all categories of material to Government contracts. This application of pooled costs to Government contracts would be a violation of this Standard because the lump sum adjustment to all of the various categories of material is, in effect, a noncurrent repricing of the material issues.

30.412 Cost accounting standard for composition and measurement of pension cost.

30.412-10 [Reserved]

30.412-20 Purpose.

The purpose of this Standard is to provide guidance for determining and measuring the components of pension cost. The Standard establishes the basis on which pension costs shall be assigned to cost accounting periods. The provisions of this Cost Accounting Standard should enhance uniformity and consistency in accounting for pension costs and thereby increase the probability that those costs are properly allocated to cost objectives.

30.412-30 [Reserved]

30.412-40 Fundamental requirement.

(a) *Components of pension cost.* (1) For defined-benefit pension plans, the components of pension cost for a cost accounting period are (i) the normal cost of the period, (ii) a part of any unfunded actuarial liability, (iii) an interest equivalent on the unamortized portion of any unfunded actuarial liability, and (iv) an adjustment for any actuarial gains and losses.

(2) For defined-contribution pension plans, the pension cost for a cost accounting period is the net contribution required to be made for that period, after taking into account dividends and other credits, where applicable.

(b) *Measurement of pension cost.* (1) For defined-benefit pension plans, the amount of pension cost of a cost accounting period shall be determined by use of an actuarial cost method which measures separately each of the components of pension cost set forth in subparagraph (a)(1) of this subsection, or which meets the requirements set forth in 30.412–50(b)(2).

(2) Each actuarial assumption used to measure pension cost shall be separately identified and shall represent the contractor's best estimates of anticipated experience under the plan, taking into account past experience and reasonable expectations. The validity of the assumptions used may be evaluated on an aggregate, rather than on an assumption-by-assumption, basis.

(c) *Assignment of pension cost.* The amount of pension cost computed for a cost accounting period is assignable only to that period. Except for pay-as-you-go plans, the cost assignable to a period is allocable to cost objectives of that period to the extent that liquidation of the liability for such cost can be compelled or liquidation is actually effected in that period. For pay-as-you-go plans, the entire cost assignable to a period is allocable to cost objectives of that period only if the payment of benefits earned by plan participants can be compelled. If such payment is optional with the company, the amount of assignable costs allocable to cost objectives of that period is limited to the amount of benefits actually paid to retirees or beneficiaries in that period.

30.412-50 Techniques for application.

(a) *Components of pension cost.* (1) Any portion of an unfunded actuarial liability included as a separately identified part of the pension cost of a cost accounting period shall be included in equal annual installments. Each installment shall consist of an amortized portion of the unfunded actuarial liability plus an interest equivalent on the unamortized portion of such liability. The period of amortization shall be established as follows:

(i) If amortization of an unfunded actuarial liability has begun prior to the date this Standard first becomes applicable to a contractor, no change in the amortization period is required by this Standard.

(ii) If amortization of an unfunded actuarial liability has not begun prior to the date this Standard first becomes applicable to a contractor, the amortization period shall begin with the period in which the Standard becomes applicable and shall be no more than 30 years nor less than 10 years. However, if the plan was in existence as of January 1, 1974, the amortization period shall be no more than 40 years nor less than 10 years.

(iii) Each unfunded actuarial liability resulting from the institution of new pension plans or from adoption of improvements to pension plans subsequent to the date this Standard first becomes applicable to a contractor shall be amortized over no more than 30 years nor less than 10 years.

(2) Pension costs applicable to prior years that were specifically unallowable in accordance with then existing Government contractual provisions shall be separately identified and eliminated from any unfunded actuarial liability being amortized pursuant to the provision of subparagraph (a)(1) of this subsection, or from future normal costs if the actuarial cost method in use does not separately develop an unfunded actuarial liability. Interest earned on funded unallowable pension costs, based on the valuation rate of return, need not be included by contractors as a reduction of future years' computations of pension costs made pursuant to this Standard.

(3) A contractor shall establish and consistently follow a policy for selecting specific amortization periods for unfunded actuarial liabilities, if any, that are developed under the actuarial cost method in use. Such policy may give consideration to factors such as the size and nature of unfunded actuarial liabilities.

(4) Actuarial assumptions used in calculating the amount of an unfunded actuarial liability shall be the same as those used for other components of pension cost. If any assumptions are changed during an amortization period, the resulting increase or decrease in an unfunded actuarial liability shall be separately amortized over no more than 30 years nor less than 10 years.

(5) Actuarial gains and losses shall be identified separately from unfunded actuarial liabilities that are being amortized pursuant to the provisions of this Standard. The accounting treatment to be afforded to such gains and losses shall be consistently applied for each pension plan.

(6) An excise tax assessed pursuant to a law or regulation because of inadequate or delayed funding of a pension plan is not a component of pension cost.

(7) If any portion of the pension cost computed for a cost accounting period is not funded in that period, no amount for interest on the portion not funded in that period shall be a component of pension cost of any future cost accounting period. Conversely, if a contractor prematurely funds pension costs in a current cost accounting period, the interest earned on such premature funding, based on the valuation rate of return, may be excluded from future years' computations of pension cost made pursuant to this Standard.

(8) For purposes of this Standard, defined-benefit pension plans funded exclusively by the purchase of individual or group permanent insurance or annuity contracts shall be treated as defined-contribution pension plans. However, all other defined-benefit pension plans administered wholly or in part through insurance company contracts shall be subject to the provisions of this Standard relative to defined-benefit pension plans.

(9) If a pension plan is supplemented by a separately-funded plan which provides retirement benefits to all of the participants in the basic plan, the two plans shall be considered as a single plan for purposes of this Standard. If the effect of the combined plans is to provide defined-benefits for the plan participants, the combined plan shall be treated as a defined-benefit plan for purposes of this Standard.

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(10) A multiemployer pension plan established pursuant to the terms of a collective bargaining agreement shall be considered to be a defined-contribution pension plan for purposes of this Standard.

(11) A pension plan applicable to colleges and universities that is part of a State pension plan shall be considered to be a defined-contribution pension plan for purposes of this Standard.

(b) *Measurement of pension cost.* (1) The amount of pension cost assignable to cost accounting periods shall be measured by the accrued benefit cost method or by a projected benefit cost method which identifies separately normal costs, any unfunded actuarial liability, and periodic determinations of actuarial gains and losses, except as provided in subparagraph (b)(2) of this subsection.

(2) Any other projected benefit cost method may be used, provided that:

(i) The method is used by the contractor in measuring pension costs for financial accounting purposes;

(ii) The amount of pension cost assigned to a cost accounting period computed under such method is reduced by the excess, if any, of the value of the assets of the pension fund over the actuarial liability of the plan as determined by a projected benefit cost method set forth in subparagraph (b)(1) of this subsection;

(iii) The contractor accumulates supplementary information identifying the actuarial gains and losses (and, separately, gains or losses resulting from changed actuarial assumptions) that have occurred since the last determination of gains and losses and the extent to which such gains and losses have been amortized through subsequent pension contributions or offset by gains and losses in subsequent cost accounting periods, and

(iv) The cost of future pension benefits is spread over the remaining average working lives of the work force.

(3) Irrespective of the projected benefit cost method used, the calculation of normal cost shall be based on a percentage of payroll for plans where the pension benefit is a function of salaries and wages and on employee service for plans where the pension benefit is not a function of salaries and wages.

(4) The cost of benefits under a pay-as-you-go pension plan shall be measured in the same manner as are the costs of defined-benefit plans whose benefits are provided through a funding agency.

(5) Actuarial assumptions should reflect long-term trends so as to avoid distortions caused by short-term fluctuations.

(6) Pension cost shall be based on provisions of existing pension plans. This shall not preclude contractors from making salary projections for plans whose benefits are based on salaries and wages, or from considering improved benefits for plans which provide that such improved benefits must be made.

(7) If the evaluation of the validity of actuarial assumptions shows that, in the aggregate, the assumptions were not reasonable, the contractor shall (i) identify the major causes for the resultant actuarial gains or losses and (ii) provide information as to the basis and rationale used for retaining or revising such assumptions for use in the ensuing cost accounting period(s).

(c) *Assignment of pension cost.* (1) Amounts funded in excess of the pension cost computed for a cost accounting period pursuant to the provisions of this Standard shall be applied to pension costs of future cost accounting periods.

(2) Evidence that the liquidation of a liability for pension cost can be compelled includes (i) provisions of law such as the funding provisions of the Employee Retirement Income Security Act of 1974, except as provided in subparagraph (c)(3) of this subsection, (ii) a contractual agreement which requires liquidation of the liability, or (iii) the existence of rights by a third party to required liquidation of the liability.

(3) Any portion of pension cost computed for a cost accounting period that is deferred to future periods pursuant to a waiver granted under provisions of the Employee Retirement Income Security Act of 1974, shall not be assigned to the current period. Rather, such costs shall be assigned to the cost accounting period(s) in which the funding takes place.

(4) A liability for pension cost for a cost accounting period (or, for pay-as-you-go plans, for payments to retirees or beneficiaries for a period) shall be considered to be liquidated in the period if funding is effected by the date established for filing a Federal income tax return (including authorized extensions). For contractors not required to file Federal income tax returns, the date shall be that established for filing Federal corporation income tax returns.

30.412–60 Illustrations.

(a) *Components of pension cost.* (1) Contractor A has a defined-benefit pension plan for its employees. The contractor's policy has been to compute and fund as annual pension cost normal cost plus only interest on the unfunded actuarial liability. Pursuant to 30.412–40(a)(1), the components of pension cost for a cost accounting period must now include not only the normal cost for the period and interest on the unfunded actuarial liability, but also an amortized portion of the unfunded actuarial liability. The amortization of the liability and the interest equivalent on the unamortized portion of the liability must be computed in equal annual installments.

(2) Contractor B has insured pension plans for each of two small groups of employees. One plan is funded through a group permanent insurance contract; the other plan is funded through a group deferred annuity contract. Both plans provide for defined benefits. Pursuant to 30.413–50(a)(8), for purposes of this Standard the plan financed through a group permanent insurance contract shall be considered to be a defined-contribution pension plan; the net premium required to be paid for a cost accounting period (after deducting dividends and any credits) shall be the pension cost for that period. However, the group deferred annuity plan is subject to the provisions of this Standard that are applicable to defined-benefit plans.

(3) Contractor C provides pension benefits for certain hourly employees through a multiemployer defined-benefit plan. Under the collective bargaining agreement, the contractor pays six cents into the fund for each hour worked by the covered employees. Pursuant to 30.412–50(a)(10), the plan shall be considered to be a defined-contribution pension plan. The payments required to be made for a cost accounting period shall constitute the assignable pension cost for that period.

(4) Contractor D provides pension benefits for certain employees through a defined-contribution pension plan. However, the contractor has a separate fund which is used to supplement pension benefits provided for all of the participants in the basic plan in order to provide a minimum monthly retirement income to each participant. Pursuant to 30.412–50(a)(9), the two plans shall be considered as a single plan for purposes of this Standard. Because the effect of the supplemental fund is to provide defined-benefits for the plan's participants, the provisions of this Standard relative to defined-benefit pension plans shall be applicable to the combined plan.

(b) *Measurement of pension cost.* (1) Contractor E has a pension plan whose costs are assigned to cost accounting periods by use of an actuarial cost

method which does not separately identify actuarial gains and losses or the effect on pension cost resulting from changed actuarial assumptions. If this cost method is used to measure costs for financial accounting purposes, it may be used for purposes of this Standard, provided that the contractor develops the supplementary information set forth in 30.412–50(b)(2)(iii) regarding such gains and losses and changed actuarial assumptions. In addition, the contractor must develop an actuarial liability determined by a projected benefit cost method set forth in 30.412–50(b)(1). If the resultant actuarial liability is less than the value of the pension fund, the pension cost computed for the cost accounting period must be reduced by that amount (30.412–50(b)(2)(ii)).

(2) For a number of years Contractor F has had a pay-as-you-go pension plan which provides for payments of $200 a month to employees after retirement. The contractor is currently making such payments to several retired employees and charges such payments against current income as its pension cost. For the current cost accounting period, the contractor paid benefits totaling $24,000. Contractor F's method of accounting for pension cost does not comply with the provisions of this Standard relative to pay-as-you-go plans as set forth in 30.412–40(c) and 30.412–50(b)(4). The contractor should:

(i) Compute, by use of an actuarial cost method, its actuarial liability for benefits earned by plan participants. This entire liability is always unfunded for a pay-as-you-go plan.

(ii) Compute a level amount which, including an interest equivalent, would amortize the unfunded actuarial liability over a period of no less than 10 or more than 40 years.

(iii) Compute, by use of the actuarial cost method selected, a normal cost for the period.

The sum of subdivisions (b)(2)(ii) and (iii) of this subsection represents the amount of pension cost assignable to the period. If payment of benefits earned by plan participants can be compelled, the entire amount of cost assignable to the period is allocable to cost objectives of that period. If such payments cannot be compelled, the amount of assignable cost allocable to cost objectives of that period is limited to the amount of benefits actually paid in that period ($24,000).

(3) Contractor G has two defined-benefit pension plans which provide for fixed dollar payments to hourly employees. Under one plan, the contractor's actuary believes that the contractor will be required to increase the level of benefits by specified percentages over the next several years. In calculating pension costs, the contractor may not assume future benefits greater than that currently required by the plan. With regard to the second plan, a collective bargaining agreement negotiated with the employee's labor union provided that pension benefits will increase by specified percentages over the next several years. Because the improved benefits are required to be made, the contractor can consider such increased benefits in computing pension costs for the current cost accounting period (30.412–50(b)(6)).

(c) *Assignment of pension cost.* Contractor H has a trusteed pension plan for its salaried employees. It computes $1 million of pension cost for a cost accounting period. Pursuant to the funding provisions of the Employee Retirement Income Security Act of 1974, the company must fund at least $800,000. Because liquidation of the liability for the portion of pension cost required by law to be funded ($800,000) can be compelled, such cost is allocable to cost objectives of the period, in accordance with 30.412–40(c). If Contractor H can be compelled by the trustee or the plan participants to fund the remaining $200,000, the liability therefor is also allocable to cost objectives of that period.

30.413 Adjustment and allocation of pension cost.

30.413–10 [Reserved]

30.413–20 Purpose.

A purpose of this Standard is to provide guidance for adjusting pension cost by measuring actuarial gains and losses and assigning such gains and losses to cost accounting periods. The Standard also provides the bases on which pension cost shall be allocated to segments of an organization. The provisions of this Cost Accounting Standard should enhance uniformity and consistency in accounting for pension costs.

30.413–30 [Reserved]

30.413–40 Fundamental requirement.

(a) *Assignment of actuarial gains and losses.* Actuarial gains and losses shall be calculated annually and shall be assigned to the cost accounting period for which the actuarial valuation is made and subsequent periods.

(b) *Valuation of the assets of a pension fund.* The value of all pension fund assets shall be determined under an asset valuation method which takes into account unrealized appreciation and depreciation of pension fund assets, and shall be used in measuring the components of pension cost.

(c) *Allocation of pension cost to segments.* Contractors shall allocate pension cost to each segment having participants in a pension plan. A separate calculation of pension cost for a segment is required when the conditions set forth in 30.413–50(c) (2) and (3) are present. When these conditions are not present, allocations may be made by calculating a composite pension cost for two or more segments and allocating this cost to these segments by means of an allocation base.

30.413–50 Techniques for application.

(a) *Assignment of actuarial gains and losses.* (1) In accordance with the provisions of 30.412, actuarial gains and losses shall be identified separately from unfunded actuarial liabilities being amortized.

(2) Actuarial gains and losses determined under a pension plan whose costs are measured by an immediate-gain actuarial cost method shall be amortized over a 15-year period in equal annual installments, beginning with the date as of which the actuarial valuation is made. The installment for a cost accounting period shall consist of an element for amortization of the gain or loss and an element for interest on the unamortized balance at the beginning of the period. If the actuarial gain or loss determined for a cost accounting period is not material, the entire gain or loss may be included as a component of the current or ensuing year's pension cost.

(3) Actuarial gains and losses applicable to a pension plan whose costs are measured by a spread-gain actuarial cost method shall be included as part of current and future normal cost and spread over the remaining average working lives of the work force.

(b) *Valuation of the assets of a pension fund.* (1) The actuarial value of the assets of a pension fund shall be used (i) in measuring actuarial gains and losses, and (ii) for purposes of measuring other components of pension cost.

(2) The actuarial value of the assets of a pension fund may be determined by the use of any recognized asset valuation method which provides equivalent recognition of appreciation and depreciation of pension fund assets. However, the total asset value produced by the method used shall fall within a corridor from 80 to 120 percent of the market value of the assets, determined as of the valuation date. If the method produces a value that falls outside the

corridor, the value of the assets shall be adjusted to equal the nearest boundary of the corridor.

(3) The method selected for valuing pension fund assets shall be consistently applied from year to year within each plan.

(4) The provisions of subparagraphs (b) (1) through (3) of this subsection are not applicable to plans that are funded with insurance companies under contracts where the insurance company guarantees benefit payments.

(c) *Allocation of pension cost to segments.* (1) For contractors who compute a composite pension cost covering plan participants in two or more segments, the base to be used for allocating such costs shall be representative of the factors which the pension benefits are based. For example, a base consisting of salaries and wages shall be used for pension costs that are calculated as a percentage of salaries and wages; a base consisting of the number of employees shall be used for pension costs that are calculated as an amount per employee.

(2) Separate pension cost for a segment shall be calculated whenever any of the following conditions exist for that segment, provided that such condition(s) materially affect the amount of pension cost allocated to the segment:

(i) There is a material termination gain or loss attributable to the segment,

(ii) The level of benefits, eligibility for benefits, or age distribution is materially different for the segment than for the average of all segments, or

(iii) The appropriate assumptions relating to termination, retirement age, or salary scale are, in the aggregate, materially different for the segment than for the average of all segments. Calculations of termination gains or losses shall give consideration to factors such as unexpected early retirements, benefits becoming fully vested, and reinstatements or transfers without loss of benefits. An amount may be estimated for future reemployments.

(3) Pension cost shall also be separately calculated for a segment under circumstances where—

(i) The pension plan for that segment becomes merged with that of another segment, and

(ii) The ratios of assets to actuarial liabilities for each of the merged plans are materially different from one another after applying the benefits in effect after the merger.

(4) Whenever the pension cost of a segment is required to be calculated separately pursuant to subparagraphs (c) (2) and (3) of this subsection, such calculations shall be prospective only; pension costs need not be redetermined for prior years.

(5) For a segment whose pension costs are required to be calculated separately pursuant to subparagraph (c)(2) of this subsection, there shall be an initial allocation of a share in the undivided pension fund assets to that segment, as follows:

(i) If the necessary data are readily determinable, the amount of assets to be allocated to the segment shall be the amount of funds contributed by, or on behalf of, the segment, increased by income received on such funds, and decreased by benefits and expenses paid from such funds; (ii) if the data specified in subdivision (i) of this subparagraph (c)(5), are not readily determinable the actuarial value of the pension fund's assets shall be allocated to the segment in a manner consistent with the actuarial cost method or methods used to compute pension cost. For a segment whose pension costs are required to be calculated separately pursuant to subparagraph (c)(3) of this subsection the initial allocation of assets to the segment shall be the market value of the segment's assets as of the date of the merger.

(6) If, prior to the time a contractor is required to use this Standard, it has been calculating pension cost separately for individual segments, the amount of assets previously allocated to those segments need not be changed.

(7) After the initial allocation of assets, the contractor shall maintain a record of the portion of subsequent contributions, income, benefit payments, and expenses attributable to the segment and paid from the pension fund; income and expenses shall include a portion of any investment gains and losses attributable to the assets of the pension fund. Fund income and expenses shall be allocated to the segment in the same proportion that the assets allocated to the segment bears to total fund assets as of the beginning of the period for which fund income and expenses are being allocated.

(8) If plan participants transfer among segments, contractors need not transfer assets or liabilities unless a transfer is sufficiently large to distort the segments' ratio of fund assets to actuarial liabilities.

(9) Contractors who separately calculate the pension cost of one or more segments may calculate such cost either for all pension plan participants assignable to the segment(s) or for only the active participants of the segment(s). If costs are calculated only for active participants, a separate segment shall be created for all of the inactive participants of the pension plan and the cost thereof shall be calculated. When a contractor makes such an election, assets shall be allocated to the segment for inactive participants in accordance with paragraphs (c) (5), (6), and (7) of this section. When an employee of a segment becomes inactive, assets shall be transferred from that segment to the segment established to accumulate the assets and actuarial liabilities for the inactive plan participants. The amount of funds transferred shall be that portion of the actuarial liabilities for these inactive participants that have been funded. If inactive participants become active, funds and liabilities shall similarly be transferred to the segments to which the participants are assigned. Such transfers need be made only as of the last day of a cost accounting period. The total annual pension cost for a segment having active lives shall be the amount calculated for the segment plus an allocated portion of the pension cost calculated for the inactive participants. Such an allocation shall be on the same basis as that set forth in subparagraph (c)(1) of this subsection.

(10) Where pension cost is separately calculated for one or more segments, the acturaial cost method used for a plan shall be the same for all segments, as required by 30.412–50(b). Unless a separate calculation of pension cost for a segment is made because of a condition set forth in subdivision (c)(2)(iii) of this subsection, the same actuarial assumptions may be used for all segments covered by a plan.

(11) If a pension plan has participants in the home office of a company, the home office shall be treated as a segment for purposes of allocating the cost of the pension plan. Pension cost allocated to a home office shall be a part of the costs to be allocated in accordance with the appropriate requirements of 30.403.

(12) If a segment is closed, the contractor shall determine the difference between the actuarial liability for the segment and the market value of the assets allocated to the segment, irrespective of whether or not the pension plan is terminated. The determination of the actuarial liability shall give consideration to any requirements imposed by agencies of the United States Government. In computing the market value of assets for the segment, if the contractor has not already allocated assets to the segment, such an allocation shall be made in accordance with the requirements of subdivisions (c)(5) (i) and (ii) of this section. The market value of the assets allocated to the segment shall be the segment's proportionate share of the

total market value of the assets of the pension fund. The calculation of the difference between the market value of the assets and the actuarial liability shall be made as of the date of the event (e.g., contract termination) that caused the closing of the segment. If such a date cannot be readily determined, or if its use can result in an inequitable calculation, the contracting parties shall agree on an appropriate date. The difference between the market value of the assets and the actuarial liability for the segment represents an adjustment of previously-determined pension costs.

30.413–60 Illustrations.

(a) *Assignment of actuarial gains and losses.* Contractor A has a defined-benefit pension plan whose costs are measured under an immediate-gain actuarial cost method. The contractor makes actuarial valuations every other year. In the past, at each valuation date, the contractor has calculated the actuarial gains and losses that have occurred since the previous valuation date and has merged such gains and losses with the unfunded actuarial liabilities that are being amortized. Pursuant to 30.413–40(a), the contractor must make an actuarial valuation annually. Any actuarial gains or losses measured must be separately amortized over a 15-year period beginning with the period for which the actuarial valuation is made (30.413–50(a) (1) and (2)).

(b) *Valuation of the assets of a pension fund.* Contractor B has a defined benefit pension plan, the assets of which are invested in equity securities, debt securities, and real property. The contractor, whose cost accounting period is the calendar year, has an annual actuarial valuation of the pension fund in June of each year; the effective date of the valuation is the beginning of that year. The contractor's method for valuing the assets of the pension fund is as follows: debt securities expected to be held to maturity are valued on an amortized basis running from initial cost at purchase to par value at maturity; land and buildings are valued at cost less depreciation taken to date; all equity securities and debt securities not expected to be held to maturity are valued on the basis of a 5-year moving average of market values. In making an actuarial valuation, the contractor must compare the values reached under the asset valuation method used with the market values of all of the assets (30.413–40(b)). In this case, the assets are valued as of January 1 of that year. The contractor established the following values as of the valuation date.

	Asset valuation method	Market
Cash	$100,000	$100,000
Equity securities	6,000,000	7,800,000
Debt securities expected to be held to maturity	550,000	600,000
Other debt securities	600,000	750,000
Land and buildings, net of depreciation	400,000	750,000
Total	$7,650,000	$10,000,000

Section 30.413–50(b)(2) requires that the total value of the assets of the pension fund fall within a corridor from 80 to 120 percent of market. The corridor for the plan's assets as of January 1 is from $12 million to $8 million. Because the asset value reached by the contractor—$7,650,000—falls outside the corridor, the value reached must be adjusted to equal the nearest boundary of the corridor: $8 million. In subsequent years the contractor must continue to use the same method for valuing assets (30.413–50(b)(3)). If the value produced falls inside the corridor, such value shall be used in measuring pension cost.

(c) *Allocation of pension cost to segments.* (1) Contractor C has a defined-benefit pension plan covering employees at five segments. Pension cost is computed by use of an immediate-gain actuarial cost method. One segment (X) is devoted primarily to performing work for the Government. During the current cost accounting period, Segment X had a large and unforeseeable reduction of employees because of a contract termination at the convenience of the Government and because the contractor did not receive an anticipated follow-on contract to one that was completed during the period. As a result, the plan has a large net termination gain. As a consequence of this gain a separate calculation of the pension cost for Segment X would result in a materially different allocation of costs to that segment than would a composite calculation and allocation by means of a base. Accordingly, pursuant to 30.413–50(c)(2), the contractor must calculate a separate pension cost for Segment X. In doing so, the entire termination gain must be assigned to Segment X and amortized over 15 years. If the actuarial assumptions for Segment X continue to be substantially the same as for the other segments, the termination gain may be separately amortized and allocated only to Segment X; all other Segment X computations may be included as part of the composite calculation. After the gain is amortized, the contractor is no longer required to separately calculate the costs for Segment X unless subsequent events require such separate calculation.

(2) Contractor D has a defined-benefit pension plan covering employees at 10 segments, all of which have some contracts subject to Cost Accounting Standards. The contractor uses a spread-gain actuarial cost method and calculates pension cost by developing a pension cost rate and applying that rate to the salaries and wages of the work force. One of the segments (Segment Y) is entirely devoted to Government work. The contractor's policy is to place junior employees in this segment. The age distribution of the employees of the segment is so different from that of the other segments that the pension cost for Segment Y would be materially different if computed separately than if computed as part of a computation which averages the ages of all employees covered by the plan. Pursuant to 30.413–50(c)(2), the contractor must compute the pension cost for Segment Y as if it were a separate pension plan. Accordingly, the contractor must allocate a portion of the pension fund's assets to Segment Y. Memorandum records may be used in making the allocation. However, because this portion cannot be readily determined, 30.413–50(c)(5)(ii) permits the allocation to be made on the basis of the actuarial cost method or methods used to calculate prior years' pension cost for the plan. Once the assets have been allocated, in future cost accounting periods the contractor shall make separate pension cost calculations for Segment Y based on the actual age distribution for the segment. Because the factors comprising pension cost for the other nine segments are relatively equal, the contractor may compute pension cost for these nine segments by using composite factors and developing a percentage of payroll for the nine segments. The pension cost allocated to each of the nine segments shall be the product of the percentages developed and the payroll of each segment (30.413–50(c)(1)).

(3) Contractor E has a defined-benefit pension plan which covers employees at 12 segments. The contractor uses composite actuarial assumptions to develop a pension cost for all segments. Three of these segments primarily perform Government work; the work at the other nine segments is primarily commercial. Employee turnover at the segments performing commercial work is relatively stable. However, employment experience at the Government segments has been very volatile; there have been large fluctuations in employment levels and the contractor assumes that this pattern of employment will continue to occur. It is evident that separate termination

assumptions for the Government segments and the commercial segments will result in materially different pension costs for the Government segments. Therefore, the cost for these segments must be separately calculated, using the appropriate termination assumptions for these segments (30.413–50(c)(2)(iii)).

(4) Contractor F has a defined-benefit pension plan covering employees at 25 segments. Twelve of these segments primarily perform Government work; the remaining segments perform primarily commercial work. The contractor's records show that the termination experience and projections for the 12 segments are so different from that of the average of all of the segments that separate pension cost calculations are required for these segments pursuant to 30.413–50(c)(2). However, because the termination experience and projections are about the same for all 12 segments, contractor F may calculate a composite pension cost for the 12 segments and allocate the cost to these segments by use of an appropriate allocation base.

(5) After this Standard becomes applicable to Contractor G, it acquires Contractor H and makes it Segment H. Prior to the merger, each contractor had its own defined-benefit pension plan. Under the terms of the merger, Contractor H's pension plan and plan assets were merged with those of Contractor G. The actuarial assumptions, current salary scale, and other plan characteristics and about the same for Segment H and Contractor G's other segments. However, based on the same benefits at the time of the merger, the plan of Contractor H had a disproportionately larger unfunded actuarial liability than did Contractor G's plan. Any combining of the assets and actuarial liabilities of both plans would result in materially different pension cost allocation to Contractor G's segments than if pension cost were computed for Segment H on the basis that it had a separate pension plan. Accordingly, pursuant to 30.413–50(c)(5), Contractor G must allocate to Segment H a portion of the assets of the combined plan. The amount to be allocated shall be the market value of Segment H's pension plan assets at the date of the merger, adjusted for subsequent receipts and expenditures applicable to the segment (30.413–50(c)(7)). Contractor G must use these amounts of assets as a basis for calculating the annual pension cost applicable to Segment H.

(6) Contractor I has a defined-benefit pension plan covering employees at seven segments. The contractor has been making a composite pension cost calculation for all of the segments. However, the contractor determines that, pursuant to this Standard, separate pension costs must be calculated for one of the segments. In accordance with 30.413–50(c)(9), the contractor elects to allocate fund assets only for the active participants of that segment. The contractor must then create a segment to accumulate the assets and actuarial liabilities for the plan's inactive participants. When active participants of a segment become inactive, the contractor must transfer assets to the segment for inactive participants to cover the actuarial liabilities for the participants that become inactive. However, the amount to be transferred shall be proportionate to the percentage of such liabilities that are funded.

(7) Contractor J has a defined-benefit pension plan covering employees at 10 segments. The contractor makes a composite pension cost calculation for all segments. The contractor's records show that the termination experience for one segment—primarily performing Government work—has been significantly different from the average turnover experience of the other segments. Moreover, the contractor assumes that such different experience will continue. Because of this fact, and because the application of a different termination assumption would result in significantly different costs being charged to the Government, the contractor must develop separate pension cost for that segment. In accordance with 30.413–50(c)(2), the amount of pension cost must be based on an acceptable termination assumption for that segment; however, as provided in 30.413–50(c)(10), all other assumptions for that segment may be the same as those for the remaining segments.

(8) Contractor K has a 5-year contract to operate a Government-owned facility. The employees of that facility are covered by the contractor's overall defined-benefit pension plan which covers salaried and hourly employees at other locations. At the conclusion of the 5-year period, the Government decides not to renew the contract. Although some employees are hired by the successor contractor, as far as Contractor K is concerned, the facility is closed. Pursuant to 30.413–50(c)(12), Contractor K must compute an unfunded actuarial liability for the pension plan for that facility. The contractor first calculates the actuarial liability as of the date the contract expired. Because many of Contractor K's employees are terminated from the pension plan, the Internal Revenue Service considers it to be a partial plan termination, and thus requires that the terminated employees become fully vested in their accrued benefits to the extent such benefits are funded. Taking this factor into consideration, the actuary calculates the actuarial liability as amounting to $12.5 million. The contractor must then determine the market value of the pension fund assets allocable to the facility, pursuant to 30.413–50(c)(5), as of the date agreed to by the contracting parties (30.413–50(c)(12))—the date the contract expired. In making this determination, the contractor establishes the ratio of the actuarial value of the assets allocable to the segment to the total actuarial value of the assets of the pension fund. The product of this ratio and the market value of all pension fund assets is the market value of the assets allocated to the segment. In this case, the market value of the segment's assets amounted to $13.8 million. Thus, for this facility the value of pension fund assets exceeded the actuarial liability by $1.3 million. This amount indicates the extent to which the Government over-contributed to the pension plan for the segment and, accordingly, indicates the extent to which prior years' pension costs are subject to adjustment.

30.414 Cost accounting standard—cost of money as an element of the cost of facilities capital.

30.414–10 [Reserved]

30.414–20 Purpose.

The purpose of this Cost Accounting Standard is to establish criteria for the measurement and allocation of the cost of capital committed to facilities as an element of contract cost. Consistent application of these criteria will improve cost measurement by providing for allocation of cost of contractor investment in facilities capital to negotiated contracts.

30.414–30 [Reserved]

30.414–40 Fundamental requirement.

(a) A contractor's facilities capital shall be measured and allocated in accordance with the criteria set forth in this Standard. The allocated amount shall be used as a base to which a cost of money rate is applied.

(b) The cost of money rate shall be based on interest rates determined by the Secretary of the Treasury, pursuant to Pub. L. 92–41 (85 Stat. 97).

(c) The cost of capital committed to facilities shall be separately computed for each of contract using facilities

capital cost of money factors computed for each cost accounting period.

30.414-50 Techniques for application.

(a) The investment base used in computing the cost of money for facilities capital shall be computed from accounting data used for contract cost purposes. The form and instructions stipulated in this Standard shall be used to make the computation.

(b) The cost of money rate for any cost accounting period shall be the arithmetic mean of the interest rates specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat 97). Where the cost of money must be determined on a prospective basis the cost of money rate shall be based on the most recent available rate published by the Secretary of the Treasury.

(c) (1) A facilities capital cost of money factor shall be determined for each indirect cost pool to which a significant amount of facilities capital has been allocated and which is used to allocate indirect costs to final cost objectives.

(2) The facilities capital cost of money factor for an indirect cost pool shall be determined in accordance with Form CASB CMF, and its instructions which are set forth in Appendix A. One form will serve for all the indirect cost pools of a business unit.

(3) For each CAS-covered contract, the applicable cost of capital committed to facilities for a given cost accounting period is the sum of the products obtained by multiplying the amount of allocation base units (such as direct labor hours, or dollars of total cost input) identified with the contract for the cost accounting period by the facilities capital cost of money factor for the corresponding indirect cost pool. In the case of process cost accounting systems the contracting parties may agree to substitute an appropriate statistical measure for the allocation base units identified with the contract.

30.414-60 Illustrations.

The use of Form CASB CMF and other computations anticipated for this Cost Accounting Standard are illustrated in Appendix B.

30.414-70 Exemption.

(a) This Standard shall not apply to any prime contract or subcontract providing that (1) the date of award of such contract, or (2) if the contractor has submitted cost or pricing data, the date of final agreement on price as shown on the contractor's signed certificate of current cost or pricing data, precedes the effective date of this Standard.

(b) This Standard shall not apply where compensation for the use of tangible capital assets is based on use rates or allowances such as provided by the provisions of OMB Circular A-21 (Cost Principles for Educational Institutions), OMB Circular A-87 (Cost Principles for State and Local Governments), § 15.402-1(a) of the Armed Services Procurement Regulation, or other appropriate Federal procurement regulations.

Appendix A to 30.414—Instructions for Form CASB CMF

APPENDIX A

FACILITIES CAPITAL
COST OF MONEY FACTORS COMPUTATION

CONTRACTOR:
BUSINESS UNIT:
ADDRESS:

COST ACCOUNTING PERIOD:		1. APPLICABLE COST OF MONEY RATE ____ %	2. ACCUMULATION & DIRECT DISTRIBUTION OF N.B.V.	3. ALLOCATION OF UNDISTRIBUTED	4. TOTAL NET BOOK VALUE	5. COST OF MONEY FOR THE COST ACCOUNTING PERIOD	6. ALLOCATION BASE FOR THE PERIOD	7. FACILITIES CAPITAL COST OF MONEY FACTORS
BUSINESS UNIT FACILITIES CAPITAL	RECORDED			BASIS OF ALLOCATION	COLUMNS 2 + 3	COLUMNS 1X4	IN UNITS OF MEASURE	COLUMNS 5 ÷ 6
	LEASED PROPERTY							
	CORPORATE OR GROUP							
	TOTAL							
	UNDISTRIBUTED							
	DISTRIBUTED							
OVERHEAD POOLS								
G&A EXPENSE POOLS								
TOTAL							//////////	//////////

Purpose

The purpose of this form is to (a) accumulate total facilities capital net book values allocated to each business unit for the contractor cost accounting period, and (b) convert those values to facilities capital cost of money factors applicable to each overhead or G&A expense allocation base employed within a business unit.

Basis

All data pertain to the cost accounting period for which the contractor prepares overhead and G&A expense allocations. The cost of money computations should be compatible with those allocation procedures. More specifically, facilities capital values used should be the same values that are used to generate depreciation or amortization that is allowed for Federal Government contract costing purposes; land which is integral to the regular operation of the business unit shall be included.

Applicable Cost of Money Rate (Col. 1)

Enter here the rate as computed in accordance with 30.414-50(b).

Accumulation and Direct Distribution of Net Book Value (Col. 2)

Recorded, Leased Property, Corporate. The net book value of facilities capital items in this column shall represent the average balances outstanding during the cost accounting period. This applies both to items that are subject to periodic depreciation or amortization and also to such items as land that are not subject to periodic write-offs. Unless there is a major fluctuation, it will be adequate to ascertain the net book of these assets at the beginning and end of each cost accounting period, and to compute an average of those two sets of figures. "Recorded" facilities are the facilities capital items owned by the contractor, carried on the books of the business unit, and used in its regular business activity. "Leased property" is the capitalized value of leases for which constructive costs of ownership are allowed in lieu of rental costs under Government procurement regulations. Corporate or group facilities are the business unit's allocable

share of corporate-owned and leased facilities. The net book value of items of facilities capital which are held or controlled by the home office shall be allocated to the business unit on a basis consistent with the home office expense allocation.

Distributed and Undistributed. All facilities capital items that are identified in the contractor's records as solely applicable to an organizational unit corresponding to a specific overhead, G&A or other indirect cost pool which is used to allocate indirect costs to final cost objectives, are listed against the applicable pools and are classified as "distributed." "Undistributed" is the remainder of the business unit's facilities capital. The sum of "distributed" and "undistributed" must also correspond to the amount shown on the "total" line.

Allocation of Distributed. List in the narrative column all the overhead and G&A expense pools to which "distributed" facilities capital items have been allocated. Enter the corresponding amounts in (Col. 2). The sum of all the amounts shown against specific overhead and G&A expense pools must correspond to the amount shown in the "distributed" line.

Allocation of Undistributed (Col. 3)

Business unit "undistributed" facilities are allocated to overhead and the G&A expense pools on any reasonable basis that approximates the actual absorption of depreciation or amortization of such facilities. For instance, the basis of allocation of undistributed assets in each business unit between; e.g., engineering overhead pool and the manufacturing overhead pool, should be related to the manner in which the expenses generated by these assets are allocated between the two overhead pools. Detailed analysis of this allocation is not required where essentially the same results can be obtained by other means. Where the cost accounting system for purposes of Government contract costing uses more than one "charging rate" for allocating indirect costs accumulated in a single cost pool, one representative base may be substituted for the multiplicity of bases used in the allocation process. The net book value of service center facilities capital items appropriately allocated should be included in this column. The sum of the entries in Column 3 is equal to the entry in the undistributed line, Column 2.

A supporting work sheet of this allocation should be prepared if there is more than one service center or other similar "intermediate" cost objective involved in the reallocation process.

Alternative Allocation Process—As an alternative to the above allocation process all the undistributed assets for one or more service centers or similar intermediate cost objectives may be allocated to the G&A expense pool. Consequently, the cost of money for these undistributed assets will be distributed to the final cost objectives on the same basis that is used to allocate G&A expense. This procedure may be adopted for any cost accounting period only when the contracting parties agree (a) that the depreciation or amortization generated by these undistributed assets is immaterial or (b) that the results of this alternative procedure are not likely to differ materially from those which would be obtained under the "regular" allocation process described previously.

Total Net Book Value (Col. 4)

The sum of Columns 2 and 3. The total of this column should agree with the business unit's total shown in Column 2.

Cost of Money for the Cost Accounting Period (Col. 5)

Multiply the amounts in Column 4 by the percentage rate in Column 1.

Allocation Base for the Period (Col. 6)

Show here the total units of measure used to allocate overhead and G&A expense pools (e.g., direct labor dollars, machine hours, total cost input, etc.). Include service centers that make charges to final cost objectives. Each base unit-of-measure must be compatible with the bases used for applying overhead in the Federal Government contract cost computation.

The total base unit of measure used for allocation in this column refers to all work done in an organizational unit associated with the indirect cost pool and not to Government work alone.

Facilities Capital Cost of Money Factors (Col. 7)

The quotients of cost of money for the cost accounting period (Col. 5) separately divided by the corresponding overhead or G&A expense allocation bases (Col. 6). Carry each computation to five decimal places. This factor represents the cost of money applicable to facilities capital allocated to each unit of measure of the overhead or G&A expense allocation base.

Appendix B to 30.414—Example—ABC Corporation

ABC Corporation has a home office that controls three operating divisions (Business Units A, B & C). The home office includes an administrative computer center whose costs are allocated separately to the business units. The separate allocation conforms to the requirements specified in the Cost Accounting Standard No. 403. Tables I through VI deal with home office expense allocations to business units.

The A Division is a business unit as defined by the CASB, and it uses one engineering and one manufacturing overhead pool to accumulate costs for charging overhead to final cost objectives. In addition, the indirect cost allocation process also uses two "service centers" with their own indirect cost pools: occupancy and technical computer center.

The costs accumulated in the occupancy pool are allocated among manufacturing overhead, engineering overhead, and the technical computer center on the basis of floor space occupied. The costs accumulated in the technical computer center cost pool are allocated to users on the basis of a CPU hourly rate. Some of these allocations are made to engineering or manufacturing overhead while others are allocated direct to final cost objectives.

At the business unit level, all the indirect expense incurred is regarded either as an engineering or manufacturing expense. Thus the sole item that enters into the business unit G&A expense pool is the allocation received by the A Division from the home office.

Operating results for the A Division are given in Table VII. Facilities capital items for the division are given in Table IX.

The example is based on a single set of illustrative contract cost data given in Table VIII. Since two methods, the "regular" and the "alternative" method, are potentially available for computing cost of money on facilities capital items two sets of different results can be considered.

In addition, total cost input is used in the example as the allocation base for the G&A expense. Two variations of this example have been prepared to illustrate the impact of excluding or including cost of money from total cost input. Variation I, summarized in Table XIII, excludes cost of money from the cost input allocation base. Variation II, summarized in Tables XVII and XVIII, includes cost of money in the cost input allocation base.

Throughout the example, where appropriate, cross references have been made to the text of the relevant parts of the Standard.

VARIATION I—TOTAL COST INPUT ALLOCATION BASE EXCLUDES COST OF MONEY—TABLE I—NET BOOK VALUE OF HOME OFFICE FACILITIES CAPITAL

	Dec. 31, 1974	Dec. 31, 1975
Administrative computer center facilities capital	$550,000	$450,000
Other home office facilities capital	420,000	380,000
Total	970,000	830,000

The assets in the above table generate allowable depreciation or amortization, as explained in Instructions for Form CASB CMF (Basis). Thus, they should be included in the asset base for cost of money computation.

TABLE II—HOME OFFICE FACILITIES CAPITAL ANNUAL AVERAGE BALANCES

Administrative computer center facilities capital	$500,000
Other home office facilities capital	400,000
Total	900,000

The above averages are based on data in Table I computed in accordance with the criteria in Instructions for Form CASB CMF (Recorded, Leased Property, Corporate).

$970,000 + $830,000 = $1,800,000 ÷ 2 = $900,000

TABLE III—HOME OFFICE DEPRECIATION AND AMORTIZATION FOR 1975

Administrative computer center facilities capital	$100,000
Other home office facilities capital	40,000
Total	140,000

TABLE IV—ALLOCATION OF ABC HOME OFFICE EXPENSES TO DIVISIONS (*business units*)

	Total expense	Allocation to business units		
		A	B	C
Administrative computer center	$1,800,000	$900,000	$900,000	
Other home office	4,800,000	2,400,000	1,200,000	$1,200,000
Total	6,600,000	3,300,000	2,100,000	1,200,000

The above allocation is carried out in accordance with CAS 403. The expense allocated to individual business units above includes depreciation and amortization as reflected in Table V.

TABLE V—DEPRECIATION AND AMORTIZATION COMPONENT OF ABC HOME OFFICE EXPENSE

	Total depreciation and amortization expense	Allocation to business units		
		A	B	C
Administrative computer center	$100,000	$50,000	$50,000	
Other home office	40,000	20,000	10,000	$10,000
Total	140,000	70,000	60,000	10,000

TABLE VI—ALLOCATION OF HOME OFFICE FACILITIES CAPITAL TO BUSINESS UNITS

(a) Depreciation and amortization allocation in Table V converted to percentages

	Total depreciation and amortization expense (in percent)	Allocation to business units (in percent)		
		A	B	C
Administrative computer center	100	50	50	
Other home office	100	50	25	25

(b) Application of percentages in (a) to average net book values in Table II, in accordance with criteria in Instructions for Form CASB CMF (Recorded, Leased Property, Corporate).

	Total net book value	Allocation to business units		
		A	B	C
Administrative computer center facilities capital	$500,000	$250,000	$250,000	
Other home office facilities capital	400,000	200,000	100,000	$100,000
Total	900,000	450,000	350,000	100,000

TABLE VII—"A" DIVISION 1975 OPERATING RESULTS

	Total cost input and G. & A.	Fixed price CAS-covered contracts	Cost reimbursement, CAS-covered contracts	Commercial and other work
Direct material				
Purchased parts	$2,000,000	$100,000	$100,000	$1,800,000
Subcontract items	21,530,000	11,750,000	7,205,000	2,575,000
Total	23,530,000	11,850,000	7,305,000	4,375,000
Direct labor and overhead				
Engineering labor	2,000,000	1,500,000	500,000	
Engineering overhead (80 pct of direct engineering labor)	1,600,000	1,200,000	400,000	
Manufacturing labor	3,000,000	1,200,000	200,000	1,600,000
Manufacturing overhead (200 pct of direct management labor)	6,000,000	2,400,000	400,000	3,200,000
Other direct charges				
Technical computer center direct charge—2,280 h at $250/h	570,000	200,000	370,000	

TABLE VII—"A" DIVISION 1975 OPERATING RESULTS—Continued

	Total cost input and G. & A.	Fixed price CAS-covered contracts	Cost reimbursement, CAS-covered contracts	Commercial and other work
Total cost input (excluding cost of money)	36,700,000	18,350,000	9,175,000	9,175,000
G. & A. (8.99 pct of cost input)	3,300,000	1,650,000	825,000	825,000
Total	40,000,000	20,000,000	10,000,000	10,000,000

TABLE VIII—COST DATA FOR THE CONTRACT

Purchased parts	$85,000
Subcontract items	990,000
Technical computer time 280 h at $250/h	70,000
Engineering labor	330,000
Engineering overhead at 80 pct	264,000
Manufacturing labor	1,210,000
Manufacturing overhead at 200 pct	2,420,000
Total cost input (excluding cost of money)	5,369,000
G. & A. at 8.99 pct	483,000
Total cost input and G. & A. (excluding cost of money)	5,852,000

TABLE IX—DIVISION A FACILITIES CAPITAL

Average net book values are computed in accordance with instructions to Form CASB CMF. Average figures only are given, the underlying beginning and ending balances for 1975 have not been reproduced.

Name of indirect cost pool the asset is associated with	Average net book value	Annual depreciation
Engineering overhead	$320,000	$40,000
Manufacturing overhead	4,500,000	900,000
Technical computer center	450,000	90,000
Occupancy	3,000,000	200,000
Facilities capital recorded by division A (see Form CASB CMF instructions for description of recorded)	8,270,000	1,230,000
Allocated from home office, table VI	450,000	
Total division A	8,720,000	

TABLE X—ALLOCATION OF UNDISTRIBUTED FACILITIES CAPITAL

(a) *Occupancy Pool Assets.* Total occupancy pool expenses are assumed to be $1,000,000 of which $200,000 is depreciation per Table IX. Allocation of the $3,000,000 net book value of assets per Table IX is performed on the basis of floor space utilization.

Indirect cost pool	Occupancy expense and depreciation allocation	Percent of total floor space utilized	Asset allocation
Engineering	$200,000	20	$600,000
Manufacturing	750,000	75	2,250,000
Technical computer	50,000	5	150,000
Total	1,000,000	100	3,000,000

(b) *Technical Computer Center Assets.* Total technical computer center expenses for the year are assumed to be $770,000 including $90,000 depreciation per Table IX and $50,000 charge from the occupancy pool per paragraph (a) of this table. A charging rate of $250 per hour is computed assuming a total of 3,080 chargeable CPU hours per annum. The net book value of assets amounting to $600,000 [$450,000 per Table IX plus the $150,000 allocated per (a) above] is allocated on the basis of CPU hours utilized.

Overhead pool or cost objective	Hours charged	Amount charged	Percent	Asset allocation
Fixed price contracts, table VII	800	$200,000	26	$156,000
Cost reimbursement contracts, table VII	1,480	370,000	48	288,000
Engineering overhead pool	800	200,000	26	156,000
Total	3,080	770,000	100	600,000

(c) **Summary of Undistributed Facilities Capital Allocation.** Undistributed (per Table IX).

Technical computer center	$450,000
Occupancy	3,000,000
Total	3,450,000

Distribution per paragraph (a) or (b) of this table of balances to overhead pools that result in charges direct to final cost objectives.

Overhead pool	(a)	(b)	Total
Engineering	$600,000	$156,000	$756,000
Manufacturing	2,250,000		2,250,000
Technical computer center (direct charge to contracts)		444,000	444,000
Total	2,850,000	600,000	3,450,000

TABLE XI

FACILITIES CAPITAL
COST OF MONEY FACTORS COMPUTATION
("Regular" Method - Cost of Money Excluded from Total Cost Input)

CONTRACTOR: ABC Corp.
BUSINESS UNIT: A Division
ADDRESS:

COST ACCOUNTING PERIOD: Y.E. 12/31/75		1. APPLICABLE COST OF MONEY RATE ___%	2. ACCUMULATION & DIRECT DISTRIBUTION OF N.B.V.	3. ALLOCATION OF UNDISTRIBUTED	4. TOTAL NET BOOK VALUE	5. COST OF MONEY FOR THE COST ACCOUNTING PERIOD	6. ALLOCATION BASE FOR THE PERIOD	7. FACILITIES CAPITAL COST OF MONEY FACTORS
			BASIS OF ALLOCATION	COLUMNS 2 + 3	COLUMNS 1X4	IN UNIT(S) OF MEASURE	COLUMNS 5 ÷ 6	
BUSINESS UNIT FACILITIES CAPITAL	RECORDED Table IX		8,270,000					
	LEASED PROPERTY							
	CORPORATE OR GROUP Table VI		450,000	Worksheet Table X			Table VII	
	TOTAL		8,720,000					
	UNDISTRIBUTED		3,450,000					
	DISTRIBUTED		5,270,000					
OVERHEAD POOLS	Engineering Table IX		320,000	756,000	1,076,000	96,000	$2,000,000	.04304
	Manufacturing Table IX		4,500,000	2,250,000	6,750,000	540,000	$3,000,000	.18
	Technical Computer			444,000	444,000	35,520	2,280 hr	15.57895
G&A EXPENSE POOLS	G&A Expense Table VI		450,000		450,000	36,000	$36,700,000	.00098
TOTAL			5,270,000	3,450,000	8,720,000	697,600	//////////	//////////

TABLE XII

FACILITIES CAPITAL
COST OF MONEY FACTORS COMPUTATION
("Alternative" Method - Cost of Money Excluded from Total Cost Input)

CONTRACTOR: ABC Corp.
BUSINESS UNIT: A Division
ADDRESS:

COST ACCOUNTING PERIOD: Y.E. 12/31/75		1. APPLICABLE COST OF MONEY RATE ___%	2. ACCUMULATION & DIRECT DISTRIBUTION OF N.B.V.	3. ALLOCATION OF UNDISTRIBUTED	4. TOTAL NET BOOK VALUE	5. COST OF MONEY FOR THE COST ACCOUNTING PERIOD	6. ALLOCATION BASE FOR THE PERIOD	7. FACILITIES CAPITAL COST OF MONEY FACTORS
			BASIS OF ALLOCATION	COLUMNS 2 + 3	COLUMNS 1X4	IN UNITS OF MEASURE	COLUMNS 5 ÷ 6	
BUSINESS UNIT FACILITIES CAPITAL	RECORDED Table IX		8,270,000					
	LEASED PROPERTY							
	CORPORATE OR GROUP Table VI		450,000	All to G&A Expense Pool	-		Table VII	
	TOTAL		8,720,000					
	UNDISTRIBUTED		3,450,000					
	DISTRIBUTED		5,270,000					
OVERHEAD POOLS	Engineering Table IX		320,000		320,000	25,600	$2,000,000	.0128
	Manufacturing Table IX		4,500,000		4,500,000	360,000	$3,000,000	.12
G&A EXPENSE POOLS	G&A Expense Table VI		450,000	3,450,000	3,900,000	312,000	$36,700,000	.00850
TOTAL			5,270,000	3,450,000	8,720,000	697,600	//////////	//////////

TABLE XIII—SUMMARY OF COST OF MONEY COMPUTATION ON FACILITIES CAPITAL (*cost of money excluded from total cost input*)

Allocation base	Allocated to contract table VIII	Computation using regular facilities capital cost of money factor, table XI	Amount	Computation using alternative facilities capital cost of money factor, table XII	Amount
Engineering labor	$330,000	0.04304	$14,203	0.0128	$4,224
Manufacturing labor	$1,210,000	.18	217,800	.12	145,200
Technical computer time	[1] 280	15.57895	4,362		
Cost input	$5,369,000	.00098	5,261	00850	45,636
Total cost of money on facilities capital			241,626		195,060

[1] Hours.

VARIATION II—TOTAL COST INPUT ALLOCATION BASE INCLUDES COST OF MONEY

TABLE XIV—RECOMPUTATION OF "A" DIVISION TOTAL COST INPUT TO REFLECT INCLUSION OF COST OF MONEY

(a) Regular method:	
Total cost input per table VII	$36,700,000
Cost of money applicable to facilities capital identified with overhead pools per subtotal in column 5, table XV	661,600
Total cost input including cost of money	37,361,600
(b) Alternative method:	
Total cost input per table VII	36,700,000
Cost of money applicable to facilities capital identified with overhead pools per subtotal in column 5, table XVI	385,600
Total cost input including cost of money	37,085,900

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TABLE XV

FACILITIES CAPITAL
COST OF MONEY FACTORS COMPUTATION
("Regular" Method - Cost of Money Included in Total Cost Input)

CONTRACTOR: ABC Corp.
BUSINESS UNIT: A Division
ADDRESS:

COST ACCOUNTING PERIOD: Y.E. 12/31/75		1. APPLICABLE COST OF MONEY RATE 6 %	2. ACCUMULATION & DIRECT DISTRIBUTION OF N.B.V.	3. ALLOCATION OF UNDISTRIBUTED	4. TOTAL NET BOOK VALUE	5. COST OF MONEY FOR THE COST ACCOUNTING PERIOD	6. ALLOCATION BASE FOR THE PERIOD	7. FACILITIES CAPITAL COST OF MONEY FACTORS
BUSINESS UNIT FACILITIES CAPITAL	RECORDED Table IX		8,270,000	BASIS OF ALLOCATION	COLUMNS 2 + 3	COLUMNS 1X6	IN UNITS OF MEASURE	COLUMNS 5 ÷ 6
	LEASED PROPERTY							
	CORPORATE OR GROUP Table VI		450,000	Worksheet Table X			Table VII & Table XIV	
	TOTAL		8,720,000					
	UNDISTRIBUTED		3,450,000					
	DISTRIBUTED		5,270,000					
OVERHEAD POOLS	Engineering Table IX		320,000	756,000	1,076,000	86,080	$2,000,000	.04304
	Manufacturing Table IX		4,500,000	2,250,000	6,750,000	540,000	$3,000,000	.18
	Technical Computer			444,000	444,000	35,520	2,200 hr	15.57895
	Subtotal: Cost of Money to be included in Total Cost Input					661,600		
G&A EXPENSE POOLS	G&A Expense Table VI		450,000		450,000	36,000	$37,361,600	.00096
TOTAL			5,270,000	3,450,000	8,720,000	697,600	//////////	//////////

TABLE XVI

FACILITIES CAPITAL
COST OF MONEY FACTORS COMPUTATION
("Alternative" Method - Cost of Money Included in Total Cost Input)

CONTRACTOR: ABC Corp.
BUSINESS UNIT: A Division
ADDRESS:

COST ACCOUNTING PERIOD: Y.E. 12/31/75		1. APPLICABLE COST OF MONEY RATE 6 %	2. ACCUMULATION & DIRECT DISTRIBUTION OF N.B.V.	3. ALLOCATION OF UNDISTRIBUTED	4. TOTAL NET BOOK VALUE	5. COST OF MONEY FOR THE COST ACCOUNTING PERIOD	6. ALLOCATION BASE FOR THE PERIOD	7. FACILITIES CAPITAL COST OF MONEY FACTORS
BUSINESS UNIT FACILITIES CAPITAL	RECORDED Table IX		8,270,000	BASIS OF ALLOCATION	COLUMNS 2 + 3	COLUMNS 1X6	IN UNITS OF MEASURE	COLUMNS 5 ÷ 6
	LEASED PROPERTY							
	CORPORATE OR GROUP Table VI		450,000	All to G&A Expense Pool			Table VII & Table XIV	
	TOTAL		8,720,000					
	UNDISTRIBUTED		3,450,000					
	DISTRIBUTED		5,270,000					
OVERHEAD POOLS	Engineering Table IX		320,000		320,000	25,600	$2,000,000	.0128
	Manufacturing Table IX		4,500,000		4,500,000	360,000	$3,000,000	.12
	Subtotal: Cost of Money to be included in Total Cost Input					385,600		
G&A EXPENSE POOLS	G&A Expense Table VI		450,000	3,450,000	3,900,000	312,000	$37,005,600	.00841
TOTAL			5,270,000	3,450,000	8,720,000	697,600	//////////	//////////

TABLE XVII—SUMMARY OF COST OF MONEY COMPUTATION ON FACILITIES CAPITAL (cost of money included in total cost input—regular method)

Allocation base	Allocated to contract, table VIII	Computation using regular facilities, capital cost of money factor, table XV	Amount
Engineering labor	$330,000	0.04304	$14,203
Manufacturing labor	$1,210,000	18	217,800
Technical computer time	[1]280	15.57895	4,362
Cost of money related to overheads			236,365
Cost of money above to be included in cost input	$236,365		
Cost input, table VIII	$5,369,000		
Cost input including cost of money	$5,605,365	.00096	5,381
Total cost of money on facilities capital			241,674

[1] Hours.

TABLE XVIII—SUMMARY OF COST OF MONEY COMPUTATION ON FACILITIES CAPITAL (cost of money included in total cost input—alternative method)

Allocation base	Allocated to contract, table VIII	Computation using alternative facilities, capital cost of money factor, table XVI	Amount
Engineering labor	$330,000	0.0126	$4,224
Manufacturing labor	1,210,000	12	145,200
Cost of money related to overheads			149,424
Cost of money above to be included in cost input	$149,424		
Cost input, table VIII	5,369,000		
Cost input including cost of money	$5,518,424	.00841	$46,410
Total cost of money on facilities capital			195,834

30.415 Accounting for the cost of deferred compensation.

30.415–10 [Reserved]

30.415–20 Purpose.

(a) The purpose of this Standard is to provide criteria for the measurement of the cost of deferred compensation and the assignment of such cost to cost accounting periods. The application of these criteria should increase the probability that the cost of deferred compensation is allocated to cost objectives in a uniform and consistent manner.

(b) This Standard is applicable to the cost of all deferred compensation except for compensated personal absence and pension plan costs which are covered in other Cost Accounting Standards.

30.415–30 [Reserved]

30.415–40 Fundamental requirement.

(a) The cost of deferred compensation shall be assigned to the cost accounting period in which the contractor incurs an obligation to compensate the employee. In the event no obligation is incurred prior to payment, the cost of deferred compensation shall be the amount paid and shall be assigned to the cost accounting period in which the payment is made.

(b) The measurement of the amount of the cost of deferred compensation shall be the present value of the future benefits to be paid by the contractor.

(c) The cost of each award of deferred compensation shall be considered separately for purposes of measurement and assignment of such costs to cost accounting periods. However, if the cost of deferred compensation for the employees covered by a deferred compensation plan can be measured with reasonable accuracy on a group basis, separate computations for each employee are not required.

30.415–50 Techniques for application.

(a) The contractor shall be deemed to have incurred an obligation for the cost of deferred compensation when all of the following conditions have been met. However, for awards which require that the employee perform future service in order to receive the benefits, the obligation is deemed to have been incurred as the future service is performed for that part of the award attributable to such future service:

(1) There is a requirement to make the future payment(s) which the contractor cannot unilaterally avoid.

(2) The deferred compensation award is to be satisfied by a future payment of money, other assets, or shares of stock of the contractor.

(3) The amount of the future payment can be measured with reasonable accuracy.

(4) The recipient of the award is known.

(5) If the terms of the award require that certain events must occur before an employee is entitled to receive the benefits, there is a reasonable probability that such events will occur.

(6) For stock options, there must be a reasonable probability that the options ultimately will be exercised.

(b) If any of the conditions in 30.415–50(a) is not met, the cost of deferred compensation shall be assignable only to the cost accounting period or periods in which the compensation is paid to the employee.

(c) If the cost of deferred compensation can be estimated with reasonable accuracy on a group basis, including consideration of probable forfeitures, such estimate may be used as the basis for measuring and assigning the present value of future benefits.

(d) The following provisions are applicable for plans that meet the conditions of 30.415–50(a) and the compensation is to be paid in money.

(1) If the deferred compensation award provides that the amount to be paid shall include the principal of the award plus interest at a rate fixed at the

date of award, such interest shall be included in the computation of the amount of the future benefit. If no interest is included in the award, the amount of the future benefit is the amount of the award.

(2) If the deferred compensation award provides for payment of principal plus interest at a rate not fixed at the time of award but based on a specified index which is determinable in each applicable cost accounting period, e.g., a published corporate bond rate, such interest shall be included in the computation of the amount of future benefit. The interest rate to be used shall be the rate in effect at the close of the period in which the cost of deferred compensation is assignable. Since that interest rate is likely to vary from the actual rates in future periods, adjustments shall be made in any such future period in which the variation in rates materially affects the cost of deferred compensation.

(3) If the deferred compensation award provides for payment of principal plus interest at a rate not based on a specified index or not determinable in each applicable year, the

(i) Cost of deferred compensation for the principal of the award shall be measured by the present value of the future benefits of the principal and shall be assigned to the cost accounting period in which the employer incurs an obligation to compensate the employee;

(ii) Interest on such awards shall be assigned to the cost accounting period(s) in which the payment of the deferred compensation is made.

(4) If the terms of the award require that the employee perform future service in order to receive benefits, the cost of the deferred compensation shall be appropriately assigned to the periods of current and future service based on the facts and circumstances of the award. The cost of deferred compensation for each cost accounting period shall be the present value of the future benefits of the deferred compensation calculated as of the end of each such period to which such cost is assigned.

(5) In computing the present value of the future benefits, the discount rate shall be equal to the interest rate as determined by the Secretary of the Treasury pursuant to Pub. L. 92–41, 85 Stat. 97, at the time the cost is assignable.

(6) If the award is made under a plan which requires irrevocable funding for payment to the employee in a future cost accounting period together with all interest earned thereon, the amount assignable to the period of award shall be the amount irrevocably funded.

(7) In computing the assignable cost for a cost accounting period, any forfeitures which reduce the employer's obligation for payment of deferred compensation shall be a reduction of contract costs in the period in which the forfeiture occurred. The amount of the reduction for a forfeiture shall be the amount of the award that was assigned to a prior period, plus interest compounded annually, using the same Treasury rate that was used as the discount rate at the time the cost was assigned. For irrevocably funded plans, pursuant to 30.415–50(d)(6), the amount of the reduction for a forfeiture shall be the amount initially funded plus or minus a pro-rata share of the gains and losses of the fund.

(8) If the cost of deferred compensation for group plans measured in accordance with 30.415–50(c) is determined to be greater than the amounts initially assigned because the forfeiture was overestimated, the additional cost shall be assignable to the cost accounting period in which such cost is ascertainable.

(e) The following provisions are applicable for plans that meet the conditions of 30.415–50(a) and the compensation is received by the employee in other than money. The measurements set forth herein constitute the present value of future benefits for awards made in other than money and, therefore, shall be deemed to be a reasonable measure of the amount of the future payment:

(1) If the award is made in the stock of the contractor, the cost of deferred compensation for such awards shall be based on the market value of the stock on the measurement date; i.e., the first date the number of shares awarded is known. Market value is the current or prevailing price of the security as indicated by market quotations. If such values are unavailable or not appropriate (thin market, volatile price movements, etc.) an acceptable alternative is the fair value of the stock.

(2) If an award is made in the form of options to employees to purchase stock of the contractor, the cost of deferred compensation of such award shall be the amount by which the market value of the stock exceeds the option price multiplied by the number of shares awarded on the measurement date; i.e., the first date on which both the option price and the number of shares is known. If the option price on the measurement date is equal to or greater than the market value of the stock, no cost shall be deemed to have been incurred for contract costing purposes.

(3) If the terms of an award of stock or stock option require that the employee perform future service in order to receive the stock or to exercise the option, the cost of the deferred compensation shall be appropriately assigned to the periods of current and future service based on the facts and circumstances of the award. The cost to be assigned shall be the value of the stock or stock option at the measurement date as prescribed in 30.415–50(e)(1) or (e)(2).

(4) If an award is made in the form of an asset other than cash, the cost of deferred compensation for such award shall be based on the market value of the asset at the time the award is made. If a market value is not available, the fair value of the asset shall be used.

(5) If the terms of an award, made in the form of an asset other than cash, require that the employee perform future service in order to receive the asset, the cost of the deferred compensation shall be appropriately assigned to the periods of current and future service based on the facts and circumstances of the award. The cost to be assigned shall be the value of the asset at the time of award as prescribed in 30.415–50(e)(4).

(6) In computing the assignable cost for a cost accounting period, any forfeitures which reduce the employer's obligation for payment of deferred compensation shall be a reduction of contract costs in the period in which the forfeiture occurred. The amount of the reduction shall be equal to the amount of the award that was assigned to a prior period, plus interest compounded annually, using the Treasury rate (see 30.415–50(d)(5)) that was in effect at the time the cost was assigned. If the recipient of the award of stock options voluntarily fails to exercise such options, such failure shall not constitute a forfeiture under provisions of this Standard.

(7) Stock option awards or any other form of stock purchase plans containing all of the following characteristics shall be considered noncompensatory and not covered by this Standard:

(i) Substantially all full-time employees meeting limited employment qualifications may participate.

(ii) Stock is offered equally to eligible employees or based on a uniform percentage of salary or wages.

(iii) An option or a purchase right must be exercisable within a reasonable period.

(iv) The discount from the market price of the stock is no greater than would be reasonable in an offer of stock to stockholders or others.

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30.415–60 Illustrations.

(a) Contractor A has a deferred compensation plan in which all cash awards are increased each year by an interest factor equivalent to the long-term borrowing rate of the contractor prevailing during each such year. The interest factor based on a variable long-term borrowing rate meets the criteria of 30.415–50(d)(2). Consequently, the cost of deferred compensation for Contractor A shall be measured by the present value of the future benefits and shall be assigned to the cost accounting period in which the contractor initially incurs an obligation to compensate the employee. If the long-term borrowing rate for Contractor A was nine percent at the close of the period to which the cost of deferred compensation was assignable, then that rate should be used to calculate the future benefit. Any adjustment in the cost of deferred compensation which results from a material change in the nine percent rate in future applicable periods shall be made in each such future period or periods (see 30.415–50(d)(2)).

(b) Contractor B made a deferred compensation award of $10,000 to an employee on December 31, 1976, for services performed in 1976 to be paid in equal annual payments of $2,000 starting at December 31, 1981. The terms of the award do not provide for an interest factor to be included in the payment; consequently, according to provisions of 30.415–50(d)(1), interest may not be included in the computation of the future benefit. The assignable cost for 1976 is computed as follows, assuming that the interest rate determined by the Secretary of the Treasury (pursuant to Pub. L. 92–41, 85 Stat. 97) at the time of award is eight percent and the conditions set forth in 30.415–50(a) are met.

Year	Amount of future payment × Discount rate 8-pct present value factor = Present value
1981	$2,000 × 0.6805 = $1,361
1982	2,000 × .6301 = 1,260
1983	2,000 × .5834 = 1,167
1984	2,000 × .5402 = 1,080
1985	2,000 × .5002 = 1,000
Assignable cost for 1976	5,868

(c) Contractor C awarded stock options for 1,000 shares of the contractor to key employees on December 31, 1976, under a deferred compensation plan requiring 2 years of additional service before the awards can be exercised. The facts and circumstances of the awards indicate that the deferred compensation applies only to the periods of future service. The market price of the stock was $26 per share, the option price was $22, and the interest rate established by the Secretary of the Treasury in effect at the time of award was 8 percent.

(1) In accordance with 30.415–50(e)(2), the cost of the stock options is the amount by which the current value of the stock exceeds the option price multiplied by the number of shares awarded on the measurement date. Thus, the total cost of the stock options is 1,000 shares multiplied by the difference of the option price and the market price ($26 – 22) or $4,000.

(2) Under provisions of 30.415–50(e)(3), the cost for stock options is assigned to each future cost accounting period in which employee service is required and is computed as follows:

	Assignable Cost [1]
Year of required service	
1977	$2,000
1978	2,000
Total amount of award	4,000

[1] Note that this illustration assumes that the facts and circumstances of the award indicate that the award relates equally to each period of future service. Thus, the assignable cost was allocated on a pro-rata basis.

(d) (1) Contractor D has a deferred compensation plan that specifies that an employee receiving a cash award must remain with the company for 3 calendar years after the award in order to qualify and receive the award and the facts and circumstances indicate that the deferred compensation applies only to the periods of future service. In accordance with 30.415–50(d)(4), the cost of deferred compensation is assignable to the periods of future service. Thus, the amount of cost of deferred compensation to be assigned by Contractor D for each of the 3 years shall be the present value of the future benefits of the deferred compensation award calculated as of the end of each such period to which such cost is assigned.

(2) Under this plan, Contractor D made an award to an employee of $3,000 to be paid at the end of the third year. The assignable cost for each of the 3 years is computed as follows:

Year [1]	Amount of future payment	×	Present value factor [2] using prevailing Treasury rate [3]	=	Assignable cost for each year
1	$1,000	×	0.8573 (8 pct for 2 yr)	=	$857.30
2	1,000	×	0.9302 (7.5 pct for 1 yr)	=	930.20
3	1,000	×	1.000 (8 pct for 0 yr)	=	1,000.00

[1] Note that in accordance with the facts and circumstances of the award no deferred compensation is assignable to the period in which the award is made and that the award relates equally to each period of future service.
[2] Note that since the costs are measured at the end of each year of required service, the present value factors are based on the number of years from the year of assignment to the date of payment.
[3] Note that the prevailing Treasury rate changed from year 1 to year 2.

(e) (1) Contractor E has a deferred compensation plan that specifies that an employee receiving a cash award must remain with the company for two calendar years after the award in order to qualify and receive the award.

Contractor E made an award of $6,000 at the end of 1976 to an employee to be paid at the end of 1978. However, the employee voluntarily terminated his employment before the end of 1977. The facts and circumstances of the award indicate that $2,000 of the award represents compensation for services rendered in the period of award (1976). The remaining portion of the award represents compensation for services to be rendered in future periods. The assignable cost for 1976, which was the only period to which costs were assigned before termination, was the present value of $2,000, the amount of the award attributable to the services of that period. Thus, the cost assigned for 1976 was:

Amount of future payment × Discount rate present value factor for 2 yr at 8 pct = Assignable cost

$2,000 × 0.8573 = $1,714.60

(2) According to provisions of 30.415–50(d)(7), the amount of the forfeiture shall be the amount of the cost that was assigned to a prior period, plus interest compounded annually, from the year the cost was assigned to the year of forfeiture, using the same Treasury rate (see 30.415–50(d)(5)) that was used as the discount rate at the time the cost was assigned. The Treasury rate in effect at the date of award was eight percent.

(3) The amount of the forfeiture is computed as follows:

Assignable cost × Discount rate future value factor for 1 yr at 8 pct = Forfeiture

$1,714.60 × 1.08 = $1,851.77

30.416 Accounting for insurance costs.

30.416–10 [Reserved]

30.416–20 Purpose.

The purpose of this standard is to provide criteria for the measurement of insurance costs, the assignment of such costs to cost accounting periods, and their allocation to cost objectives. The application of these criteria should increase the probability that insurance costs are allocated to cost objectives in a uniform and consistent manner.

30.416–30 [Reserved]

30.416–40 Fundamental requirement.

(a) The amount of insurance cost to be assigned to a cost accounting period is the projected average loss for that period plus insurance administration expenses in that period.

(b) The allocation of insurance costs to cost objectives shall be based on the beneficial or causal relationship between the insurance costs and the benefiting or causing cost objectives.

30.416–50 Techniques for application.

(a) *Measurement of projected average loss.*

(1) For exposure to risk of loss which is covered by the purchase of insurance or by payments to a trusteed fund, the premium or payment, adjusted in accordance with the following criteria, shall represent the projected average loss:

(i) The premium cost applicable to a given policy term shall be assigned pro rata among the cost accounting periods covered by the policy term, except as provided in subdivisions (a)(1)(ii) through (vi) of this subsection. A refund, dividend or additional assessment shall become an adjustment to the pro rata premium costs for the earliest cost accounting period in which the refund or dividend is actually or constructively received or in which the additional assessment is payable.

(ii) Where insurance is purchased specifically for, and directly allocated to, a single final cost objective, the premium need not be prorated among cost accounting periods.

(iii) Any part of a premium or payment to an insurer or trustee, or any part of a dividend or premium refund retained by an insurer or trustee which would be includable as a deposit in published financial statements prepared in accordance with generally accepted accounting principles shall be accounted for as a deposit for the purpose of determining insurance costs.

(iv) Any part of a premium or payment to an insurer or to a trustee, or any part of a dividend or premium refund retained by an insurer, for inclusion in a reserve or fund established and maintained on behalf of the insured or the policyholder or trustor, shall be accounted for as a deposit unless the following conditions are met:

(A) The objectives of the reserve or fund are clearly stated in writing.

(B) Measurement of the amount required for the reserve or fund is actuarially determined and is consistent with the objectives of the reserve or fund.

(C) Payments and additions to the reserve or fund are made in a systematic and consistent manner.

(D) If payments to accomplish the stated objectives of the reserve or fund are made from a source other than the reserve or fund, the payments into the reserve or fund are reduced accordingly.

(v) If an objective of an insurance program is to prefund insurance coverage on retired persons, then, in addition to the requirements imposed by subdivision (a)(1)(iv) of this subsection:

(A) Payments must be made to an insurer or trustee to establish and maintain a fund or reserve for that purpose;

(B) The policyholder or trustor must have no right of recapture of the reserve or fund so long as any active or retired participant in the program remains alive unless the interests of such remaining participants are satisfied through adequate reinsurance or otherwise; and

(C) The amount added to the reserve or fund in any cost accounting period must not be greater than an amount which would be required to apportion the cost of the insurance coverage fairly over the working lives of the active employees in the plan. If a contractor establishes a terminal-funded plan for retired persons or converts from a pay-as-you-go plan to a terminal-funded plan, the actuarial present value of benefits applicable to employees already retired shall be amortized over a period of 15 years.

(vi) The contractor may adopt and consistently follow a practice of determining insurance costs based on the estimated premium and assessments net of estimated refunds and dividends. If this practice is adopted, then any difference between an estimated and actual refund, dividend, or assessment shall become an adjustment to the pro rata net premium costs for the earliest cost accounting period in which the refund or dividend is actually or constructively received or in which the additional assessment is payable.

(2) For exposure to risk of loss which is not covered by the purchase of insurance or by payments to a trusteed fund, the contractor shall follow a program of self-insurance accounting according to the following criteria:

(i) Except as provided in subdivisions (a)(2) (ii) and (iii) of this subsection actual losses shall not become a part of insurance costs. Instead, the contractor shall make a self-insurance charge for each period for each type of self-insured risk which shall represent the projected average loss for that period. If insurance could be purchased against the self-insured risk, the cost of such insurance may be used as an estimate of the projected average loss; if this method is used, the self-insurance charge plus insurance administration expenses may be equal to, but shall not exceed, the cost of comparable purchased insurance plus the associated insurance administration expenses. However, the contractor's actual loss experience shall be evaluated regularly, and self-insurance charges for subsequent periods shall reflect such experience in the same manner as would purchased insurance. If insurance could not be purchased against the self-insured risk, the amount of the self-insurance charge for each period shall be based on the contractor's experience, relevant industry experience, and anticipated conditions in accordance with accepted actuarial principles.

(ii) Where it is probable that the actual amount of losses which will occur in a cost accounting period will not differ significantly from the projected average loss for that period, the actual amount of losses in that period may be considered to represent the projected average loss for that period in lieu of a self-insurance charge.

(iii) Under self-insurance programs for retired persons, only actual losses shall be considered to represent the projected average loss unless a reserve or fund is established in accordance with 30.416–50(a)(1)(v).

(iv) The self-insurance charge shall be determined in a manner which will give appropriate recognition to any indemnification agreement which exists between the contracting parties.

(3) In measuring actual losses under subparagraph (a)(2) of this subsection:

(i) The amount of a loss shall be measured by (A) the actual cash value of property destroyed, (B) amounts paid

or accrued to repair damage, (C) amounts paid or accrued to estates and beneficiaries, and (D) amounts paid or accrued to compensate claimants, including subrogation. Where the amount of a loss which is represented by a liability to a third party is uncertain, the estimate of the loss shall be the amount which would be includable as an accrued liability in financial statements prepared in accordance with generally accepted accounting principles.

(ii) If a loss has been incurred and the amount of the liability to a claimant is fixed or reasonably certain, but actual payment of the liability will not take place for more than 1 year after the loss is incurred, the amount of the loss to be recognized currently shall not exceed the present value of the future payments, determined by using a discount rate equal to that prescribed for settling such claims by the State having jurisdiction over the claim. If no such rate is prescribed by the State, then the rate shall be equal to the interest rate as determined by the Secretary of the Treasury pursuant to Pub. L. 92–41, 85 Stat. 97, in effect at the time the loss is recognized. Alternatively, where settlement will consist of a series of payments over an indefinite time period, as in worker's compensation, the contractor may follow a consistent policy of recognizing only the actual amounts paid in the period of payment.

(4) The contractor may elect to recognize immaterial amounts of self-insured losses or insurance administration expenses as part of other expense categories rather than as "insurance costs."

(b) *Allocation of insurance costs:* (1) Where actual losses are recognized as an estimate of the projected average loss, in accordance with 30.416–50(a)(2), or where actual loss experience is determined for the purpose of developing self-insurance charges by segment, a loss which is incurred in a given segment shall be identified with that segment. However, if the contractor's home office is, in effect, a reinsurer of its segments against catastrophic losses, a portion of such catastrophic losses shall be allocated to, or identified with, the home office.

(2) Insurance costs shall be allocated on the basis of the factors used to determine the premium, assessment, refund, dividend, or self-insurance charge, except that insurance costs incurred by a segment or allocated to a segment from a home office may be combined with costs of other indirect cost pools if the resultant allocation to each final cost objective is substantially the same as it would have been if separately allocated under this provision.

(3) Insurance administration expenses which are material in relation to total insurance costs shall be allocated on the same basis as the related premium costs or self-insurance charge.

(c) *Records.* The contractor shall maintain such records as may be necessary to substantiate the amounts of premiums, refunds, dividends, losses, and self-insurance charges, paid or accrued, and the measurement and allocation of insurance costs. Memorandum records may be used to reflect any material differences between insurance costs as determined in accordance with this standard and as includable in financial statements prepared in accordance with generally accepted accounting principles.

30.416–60 Illustrations.

(a) Contractor A pays a company-wide property and casualty insurance premium for the policy term July 1, 1980, to July 1, 1983, and includes the entire amount as cost in its cost accounting period which ended December 31, 1980. This is a violation of 30.416–50(a)(1)(i) in that only one-sixth of the policy term fell within the cost accounting period which ended December 31, 1980, and therefore only one-sixth of the premium should have been included in cost in that cost accounting period.

(b) Contractor B has a retrospectively rated worker's compensation insurance program. The policy term corresponds with the contractor's cost accounting period. Premium refunds are normally received and applied in the following cost accounting period. The contractor's practice is to include the entire gross premium in insurance cost in the cost accounting period in which it is paid and to credit the refund against insurance cost in the cost accounting period in which it is received. This practice conforms with 30.416–50(a)(1)(i). The contractor could also, under the provisions of 30.416–50(a)(1)(vi), have followed a consistent practice of estimating such refunds in advance and including the estimated net premium in insurance cost.

(c) Contractor C establishes a self-insured program of life insurance for active and retired persons. The contractor pays death benefits directly to the beneficiaries of deceased employees and includes such payments in insurance costs at the time of payment. This practice complies with 30.416–50(a)(2)(iii) which requires that only the actual losses be recognized unless a trusteed reserve or fund is established in accordance with 30.416–50(a)(1)(v).

(d) Instead of paying death benefits directly, contractor D purchases annual group term life insurance on active and retired persons and charges the premiums to insurance costs (with proper recognition for refunds and dividends). Contractor D's retired persons wish to be protected against possible discontinuance of the program. Contractor D, therefore, establishes a trusteed fund. As each employee retires, contractor D deposits in the fund an amount which is equal to the premium on a paid-up policy for that employee, and he advises the trustee that the fund is to be used to continue to pay premiums on retired persons in the event the program is discontinued. The contractor also continues to purchase group term insurance on both active employees and retired persons and charges both the premiums and the deposits to insurance costs. This practice does not comply with 30.416–50(a)(1)(iv)(D) which requires that if payments to accomplish the stated objectives of the reserve or funds are made from a source other than the reserve or fund, the payments into the fund shall be reduced accordingly.

Note: In this instance the contractor could comply with the standard by paying from the fund that portion of the group term premium which represented the retired persons or by reducing the deposits to the fund by an equivalent amount in accordance with 30.416–50(a)(1)(iv)(D). This practice would also comply with the requirement of 30.416–50(a)(1)(v)(C) that the amount added to the fund not be greater than an amount which would be required to fairly allocate the cost over the working lives of the active employees in the plan.

(e) Contractor E wishes to provide assurance of his life insurance program continuance to both active and retired employees. He establishes a trusteed fund in accordance with 30.416–50(a)(1)(iv) and (v) and thereafter pays into the fund each year for each active employee an actuarially determined amount which will accumulate to the equivalent of the premium on a paid-up life insurance policy at retirement. He charges the annual payments to insurance costs. Benefits are paid directly from the fund (or the fund is used to pay the annual premiums on group term life insurance for all employees). This practice also complies with the requirement of 30.416–50(a)(1)(v)(C) that the amount added to the fund not be greater than an amount which would be required to fairly allocate the cost over the working lives of the active employees in the plan.

(f) Contractor F has a fire insurance policy which provides that the first $50,000 of any fire loss will be borne by

the contractor. Because the risk of loss is dispersed among many physical units of property and the average potential loss per unit is relatively low, the actual losses in any period may be expected not to differ significantly from the projected average loss. Therefore, the contractor intends to let the actual losses represent the projected average loss for this exposure to risk. Property with an actual cash value of $80,000 is destroyed in a fire. The contractor charges the $50,000 of the loss not covered by the policy to insurance costs for contract costing purposes. The practice complies with the requirement of 30.416–50(a)(2). However, had the contractor's plan been to make a self-insurance charge for such losses, then any difference between the self-insurance charge and actual losses in that cost accounting period would not have been allocable as an insurance cost.

(g) Contractor G is preparing to enter into a Government contract to produce explosive devices. The contractor is unable to purchase adequate insurance protection and must act as a self-insurer. There is a significant possibility of a major loss, against which the Government will not undertake to idemnify the contractor. The contractor, therefore, intends to make a self-insurance charge for this exposure to risk. The contractor may, in accordance with 30.416–50(a)(2)(i), use data obtained from other contractors or any other reasonable method of estimating the projected average loss in order to determine the self-insurance charge.

(h) Contractor H purchases liability insurance for all of its motor vehicles in a single, company-wide policy which contains a $50,000 deductible provision. However, the company's management policy provides that when a loss is incurred in a segment, only the first $5,000 of the loss will be charged to the segment; the balance of the loss will be absorbed at the home-office level and reallocated among all segments. Because the risk of loss is dispersed among many physical units and the maximum potential loss per occurrence is limited, the actual losses in any cost accounting period may be expected not to differ significantly from the projected average loss. Therefore, the contractor intends to let the actual losses represent the projected average loss for this exposure to risk. An analysis of the loss experience shows that many past losses exceeded $5,000. Contractor H's practice of allocating the loss in excess of $5,000 to the home office is a violation of 30.416–50(b)(1)(ii). The limit of $5,000 cannot realistically be considered a measure of a "catastrophic" loss when losses frequently exceed this amount, and the use of a limit this low would obscure segment loss experience.

30.417 Cost of money as an element of the cost of capital assets under construction.

30.417–10 [Reserved]

30.417–20 Purpose.

The purpose of this Cost Accounting Standard is to establish criteria for the measurement of the cost of money attributable to capital assets under construction, fabrication or development as an element of the cost of those assets. Consistent application of these criteria will improve cost measurement by providing for recognition of cost of contractor investment in assets under construction, and will provide greater uniformity in accounting for asset acquisition costs.

30.417–30 [Reserved]

30.417–40 Fundamental requirement.

The cost of money applicable to the investment in tangible and intangible capital assets being constructed, fabricated, or developed for a contractor's own use shall be included in the capitalized acquisition cost of such assets.

30.417–50 Techniques for application.

(a) The cost of money for an asset shall be calculated as follows:

(1) The cost of money rate used shall be based on interest rates determined by the Secretary of the Treasury pursuant to Pub. L. 92–41 (85 Stat. 97).

(2) A representative investment amount shall be determined each cost accounting period for each capital asset being constructed, fabricated, or developed giving appropriate consideration to the rate at which costs of construction are incurred.

(3) Other methods for calculating the cost of money to be capitalized, such as the method used for financial accounting and reporting, may be used, provided the resulting amount does not differ materially from the amount calculated by use of subparagraphs (a) (1) and (2), of this subsection.

(b) If substantially all the activities necessary to get the asset ready for its intended use are discontinued, cost of money shall not be capitalized for the period of discontinuance. However, if such discontinuance arises out of causes beyond the control and without the fault or negligence of the contractor, cessation of cost of money capitalization is not required.

30.417–60 Illustrations.

(a) A contractor decided to build a major addition to his plant using both his own labor and outside subcontractors. It took 13 months to complete the building. The first 10 months of the construction period were in one cost accounting period. At the end of the cost accounting period the total charges, including cost of money computed in accordance with 30.414, accumulated in the construction-in-progress account for this project amounted to $750,000. However, most of these construction costs were incurred towards the end of the cost accounting period. In developing a method for determining a representative investment amount, appropriate consideration must be given to the rate at which costs have been incurred in accordance with 30.417–50(a)(2). Therefore, the contractor averaged the 10 month-end balances and determined that the average investment in the project was $245,000. Two cost of money rates were in effect during the 10-month period; their time-weighted average was determined to be 8.6 percent. Application of the 8.6 percent rate for ten-twelfths of a year to the representative balance of $245,000 resulted in the determination that $17,448 should be added to the construction-in-progress account in recognition of the cost of money related to this project in its first cost accounting period. The project was completed with the addition of $750,000 of additional costs during the first 3 months of the subsequent cost accounting period. The contractor considered the 3 month-end balances (which included the $17,558 capitalized cost of money described in the preceding paragraph) and determined that the representative balance was $1,234,000. The cost of money rate in effect during this 3-month period was 7.75 percent. Applying the rate of 7.75 percent for one-fourth of a year to the balance of $1,234,000 resulted in a determination that $23,909 should be added to the construction-in-progress account in recognition of the cost of money while under construction in the second cost accounting period. The capitalized project was put into service at the recognized cost of acquisition of $1,541,467 which consists of the "regular" costs of $1,500,000 plus $17,558 and $23,909 cost of money. This practice is in accordance with 30.417–50(a) and other applicable provisions of the Standard.

Note: An alternative technique would be to make separate calculations, using an appropriate investment amount and cost of money rate, for each month. The sum of the monthly cost of money amounts could be

entered in the construction-in-progress account once each cost accounting period.

(b) A contractor built a major addition with identical basic data to those described in 30.417–60(a) except that the costs were incurred at a fairly uniform rate throughout the period. Because of the pattern of cost incurrence, the contractor used beginning and ending balances of the cost accounting period to find the representative amounts. For the first cost accounting period the representative investment amount was the average of the beginning and ending balances (zero and $750,000), or $375,000. Application of the average interest rate of 8.6 percent for ten-twelfths of a year resulted in the determination that $26,875 should be added to the construction-in-progress account in recognition of the cost of money related to this project in its first cost accounting period. During the subsequent three months the contractor used the representative balance of $1,151,875, derived by averaging the beginning balance of $776,875 ($750,000 "regular" cost plus the $26,875 imputed cost from the prior period) and the balance at the end, $1,526,875. Applying the 7.75% cost of money rate to this balance for a three-month period resulted in a determination that $22,317 should be added to the construction-in-progress account in recognition of the cost of money while under construction in the second cost accounting period. The capitalized project was put into service at the recognized cost of acquisition of $1,549,192 which consists of the "regular" costs of $1,500,000 plus $26,875 and $22,317 imputed cost of money. This practice is in accordance with 30.417–50(a) and other applicable provisions of the Standard.

Note: If this contractor, acting in accordance with established Standards for financial accounting, allocated a portion of its paid interest expense to this construction project and the resultant acquisition cost for financial reporting purposes was not materially different from $1,549,192, the contractor could, in accordance with 30.417–50(a)(iii), use the same acquisition cost for contract costing purposes.

30.418 Allocation of direct and indirect costs.

30.418–10 [Reserved]

30.418–20 Purpose.

The purpose of this Cost Accounting Standard is (a) to provide for consistent determination of direct and indirect costs, (b) to provide criteria for the accumulation of indirect costs, including service center and overhead costs, in indirect cost pools, and (c) to provide guidance relating to the selection of allocation measures based on the beneficial or causal relationship between an indirect cost pool and cost objectives. Consistent application of these criteria and guidance will improve classification of costs as direct and indirect and the allocation of indirect costs.

30.418–30 [Reserved]

30.418–40 Fundamental requirements.

(a) A business unit shall have a written statement of accounting policies and practices for classifying costs as direct or indirect which shall be consistently applied.

(b) Indirect costs shall be accumulated in indirect cost pools which are homogeneous.

(c) Pooled costs shall be allocated to cost objectives in reasonable proportion to the beneficial or causal relationship of the pooled costs to cost objectives as follows:

(1) If a material amount of the costs included in a cost pool are costs of management or supervision of activities involving direct labor or direct material costs, resource consumption cannot be specifically identified with cost objectives. In that circumstance, a base shall be used which is representative of the activity being managed or supervised.

(2) If the cost pool does not contain a material amount of the costs of management or supervision of activities involving direct labor or direct material costs, resource consumption can be specifically identified with cost objectives. The pooled cost shall be allocated based on the specific identifiability of resource consumption with cost objectives by means of one of the following allocation bases:

(i) A resource consumption measure, (ii) an output measure, or (iii) a surrogate that is representative of resources consumed. The base shall be selected in accordance with the criteria set out in 30.418–50(e).

(d) To the extent that any cost allocations are required by the provisions of other Cost Accounting Standards, such allocations are not subject to the provisions of this Standard.

(e) This Standard does not cover accounting for the costs of special facilities where such costs are accounted for in separate indirect cost pools.

30.418–50 Techniques for application.

(a) *Determination of direct cost and indirect cost.* (1) The business unit's written policy classifying costs as direct or indirect shall be in conformity with the requirements of this Standard.

(2) In accounting for direct costs a business unit shall use actual costs, except that—

(i) Standard costs for material and labor may be used as provided in 30.407; or

(ii) An average cost or pre-established rate for labor may be used provided that (A) the functions performed are not materially disparate and employees involved are interchangeable with respect to the functions performed, or (B) the functions performed are materially disparate but the employees involved either all work in a single production unit yielding homogeneous outputs, or perform their respective functions as an integral team.

Whenever average cost or pre-established rates for labor are used, the variances, if material, shall be disposed of at least annually by allocation to cost objectives in proportion to the costs previously allocated to these cost objectives.

(3) Labor or material costs identified specifically with one of the particular cost objectives listed in subparagraph (d)(3) of this subsection shall be accounted for as direct labor or direct material costs.

(b) *Homogeneous indirect cost pools.* (1) An indirect cost pool is homogeneous if each significant activity whose costs are included therein has the same or a similar beneficial or casual relationship to cost objectives as the other activities whose costs are included in the cost pool. It is also homogeneous if the allocation of the costs of the activities included in the cost pool result in an allocation to cost objectives which is not materially different from the allocation that would result if the costs of the activities were allocated separately.

(2) An indirect cost pool is not homogeneous if the costs of all significant activities in the cost pool do not have the same or a similar beneficial or causal relationship to cost objectives and, if the costs were allocated separately, the resulting allocation would be materially different. The determination of materiality shall be made using the criteria provided in Subpart 30.3.

(3) A homogeneous indirect cost pool shall include all indirect costs identified with the activity to which the pool relates.

(c) *Change in Allocation Base.* No change in an existing indirect cost pool allocation base is required if the allocation resulting from the existing base does not differ materially from the

allocation that results from the use of the base determined to be most appropriate in accordance with the criteria set forth in paragraphs (d) and (e) of this subsection. The determination of materiality shall be made using the criteria provided in Subpart 30.3.

(d) *Allocation measures for an indirect cost pool which includes a material amount of the costs of management or supervision of activities involving direct labor or direct material costs.* (1) The costs of the management or supervision of activities involving direct labor or direct material costs do not have a direct and definitive relationship to the benefiting cost objectives and cannot be allocated on measures of a specific beneficial or causal relationship. In that circumstance, the base selected to measure the allocation of the pooled costs to cost objectives shall be a base representative of the activity being managed or supervised.

(2) The base used to represent the activity being managed or supervised shall be determined by the application of the criteria below. All significant elements of the selected base shall be included.

(i) A direct labor hour base or direct labor cost base shall be used, whichever in the aggregate is more likely to vary in proportion to the costs included in the cost pool being allocated, except that

(ii) A machine-hour base is appropriate if the costs in the cost pool are comprised predominantly of facility-related costs, such as depreciation, maintenance, and utilities, or

(iii) A units-of-production base is appropriate if there is common production of comparable units, or

(iv) A material cost base is appropriate if the activity being managed or supervised is a material-related activity.

(3) Indirect cost pools which include material amounts of the costs of management or supervision of activities involving direct labor or direct material costs shall be allocated to—

(i) Final cost objectives;

(ii) Goods produced for stock or product inventory;

(iii) Independent research and development and bid and proposal projects;

(iv) Cost centers used to accumulate costs identified with a process cost system (i.e., process cost centers);

(v) Goods or services produced or acquired for other segments of the contractor and for other cost objectives of a business unit; and

(vi) Self-construction, fabrication, betterment, improvement, or installation of tangible capital assets.

(e) *Allocation measures for indirect cost pools that do not include material amounts of the costs of management or supervision of activities involving direct labor or direct material costs.* Homogeneous indirect cost pools of this type have a direct and definitive relationship between the activities in the pool and benefiting cost objectives. The pooled costs shall be allocated using an appropriate measure of resource consumption. This determination shall be made in accordance with the following criteria taking into consideration the individual circumstances:

(1) The best representation of the beneficial or causal relationship between an indirect cost pool and the benefiting cost objectives is a measure of resource consumption of the activities of the indirect cost pool.

(2) (i) If consumption measures are unavailable or impractical to ascertain, the next best representation of the beneficial or causal relationship for allocation is a measure of the output of the activities of the indirect cost pool. Thus, the output is substituted for a direct measure of the consumption of resources.

(ii) The use of the basic unit of output will not reflect the proportional consumption of resources in circumstances in which the level of resource consumption varies among the units of output produced. Where a material difference will result, either the output measure shall be modified or more than one output measure shall be used to reflect the resources consumed to perform the activity.

(3) If neither resources consumed nor output of the activities can be measured practically, a surrogate that varies in proportion to the services received shall be used to measure the resources consumed. Generally, such surrogates measure the activity of the cost objectives receiving the service.

(4) Allocation of indirect cost pools which benefit one another may be accomplished by use of (i) the cross-allocation (reciprocal) method, (ii) the sequential method, or (iii) another method the results of which approximate those achieved by either of the methods in subdivisions (e)(4)(i) or (e)(4)(ii) of this subsection.

(5) Where the activities represented by an indirect cost pool provide services to two or more cost objectives simultaneously, the cost of such services shall be prorated between or among the cost objectives in reasonable proportion to the beneficial or causal relationship between the services and the cost objectives.

(f) *Special allocation.* Where a particular cost objective in relation to other cost objectives receives significantly more or less benefit from an indirect cost pool than would be reflected by the allocation of such costs using a base determined pursuant to paragraphs (d) and (e) of this subsection, the Government and contractor may agree to a special allocation from that indirect cost pool to the particular cost objective commensurate with the benefits received. The amount of a special allocation to any such cost objective made pursuant to such an agreement shall be excluded from the indirect cost pool and the particular cost objective's allocation base data shall be excluded from the base used to allocate the pool.

(g) *Use of pre-established rates for indirect costs.* (1) Pre-established rates, based on either forecasted actual or standard cost, may be used in allocating an indirect cost pool.

(2) Pre-established rates shall reflect the costs and activities anticipated for the cost accounting period except as provided in subparagraph (g)(3) of this subsection. Such pre-established rates shall be reviewed at least annually, and revised as necessary to reflect the anticipated conditions.

(3) The contracting parties may agree on pre-established rates which are not based on costs and activities anticipated for a cost accounting period. The contractor shall have and consistently apply written policies for the establishment of these rates.

(4) Under subparagraphs (g)(2) and (3) of this subsection where variances of a cost accounting period are material, these variances shall be disposed of by allocating them to cost objectives in proportion to the costs previously allocated to these cost objectives by use of the pre-established rates.

(5) If pre-established rates are revised during a cost accounting period and if the variances accumulated to the time of the revision are significant, the costs allocated to that time shall be adjusted to the amounts which would have been allocated using the revised pre-established rates.

30.418–60 Illustrations.

(a) Business Unit A has various classifications of engineers whose time is spent in working directly on the production of the goods or services called for by contracts and other final cost objectives. In keeping with its written policy, detailed time records are kept of the hours worked by these engineers, showing the job/account numbers representing various cost

objectives. On the basis of these detailed time records, Unit A allocates the labor costs of these engineers as direct labor costs of final cost objectives. This practice is in accordance with the requirements of 30.418–50(a)(1).

(b) Business Unit B has a fabrication department, employees of which perform various functions on units of the work-in-process of multiple final cost objectives. These employees are grouped by labor skills and are interchangeable within the skill grouping. The average wage rate for each group is multiplied by the hours worked on each cost objective by employees in that group. The contractor classifies these costs as direct labor costs of each final cost objective. This cost accounting treatment is in accordance with the provisions of 30.418–50(a)(2)(ii)(B).

(c) Business Unit C accumulates the costs relating to building ownership, maintenance, and utility into one indirect cost pool designated "Occupancy Costs" for allocation to cost objectives. Each of these activities has the same or a similar beneficial or causal relationship to the cost objectives occupying a space. Unit C's practice is in conformance with the provisions of 30.418–50(b)(1).

(d) Business Unit D includes the indirect costs of machining and assembling activities in a single manufacturing overhead pool. The machining activity does not have the same or similar beneficial or causal relationship to cost objectives as the assembling activity. Also, the allocation of the cost of the machining activity to cost objectives would be significantly different if allocated separately from the costs of the assembling activity. Unit D's single manufacturing overhead pool is not homogeneous in accordance with the provisions of 30.418–50(b), and separate pools must be established in accordance with 30.418–40(b).

(e) In accordance with 30.418–50(b)(3), Business Unit E includes all the cost of occupancy in an indirect cost pool. In selecting an allocation measure for this indirect cost pool, the contractor establishes that it is impractical to ascertain a measurement of the consumption of resources in relation to the use of facilities by individual cost objectives. An output base, the number of square feet of space provided to users, can be measured practically; however, the cost to provide facilities is significantly different for various types of facilities such as warehouse, factory, and office and each type of facility requires a different level of resource consumption to provide the same number of square feet of usable space. Allocation on a basic unit measure of square feet of space occupied will not adequately reflect the proportional consumption of resources. Unit E establishes a weighted square foot measure for allocating occupancy costs, which reflects the different levels of resource consumption required to provide the different types of facilities. This practice is in conformance with provisions of 30.418–50(e)(2)(ii).

(f) Business Unit F has an indirect cost pool containing a significant amount of material-related costs. The contractor allocates these costs between his machining overhead cost pool and his assembly overhead cost pool. The business unit finds it impractical to use an allocation measure based on either consumption or output. The business unit selects a dollars of material-issued base which varies in proportion to the services rendered. The dollars of material-issued base is a surrogate base which conforms to the provisions of 30.418–50(e)(3).

(g) Business Unit G has a machining activity for which it develops a separate overhead rate, using direct labor cost as the allocation base. The machining activity occasionally does significant amounts of work for other activities of the business unit. The labor used in doing the work for other activities is of the same nature as that used for contract work. However, the machining labor for other activities is not included in the base used to allocate the overhead costs of the machining activity. This practice is not in conformance with 30.418–50(d)(2). Unit G must include the cost of labor doing work for the other activities in the allocation base for the machining activity indirect cost pool.

(h) Business Unit H accounts for the costs of company aircraft in a separate homogeneous indirect cost pool and allocates the cost to benefiting cost objectives using flight hours. Unit H prorates the cost of a single flight between benefiting cost objectives whenever simultaneous services have been rendered. Manager of Contract 2 learns of the trip and goes along with Manager of Contract 1. Unit H prorates the cost of the trip between Contract 1 and Contract 2. This practice is in conformance with the provision of 30.418–50(e)(5).

(i) During a cost accounting period, Business Unit I allocates the cost of its flight services indirect cost pool to other indirect cost pools and final cost objectives using a pre-established rate. The pre-established rate is based on an estimate of the actual costs and activity for the cost accounting period. For the cost accounting period, Unit I establishes a rate of $200 per hour for use of the flight services activity. In March, the contractor's operating environment changes significantly; the contractor now expects a significant increase in the cost of this activity during the remainder of the year. Unit I estimates the rate for the entire cost accounting period to be $240 an hour. Pursuant to the provisions of 30.418–50(g)(4), the Business Unit may revise its rate to the expected $240 an hour. If the accumulated variances are significant, the business unit must also adjust the costs previously allocated to reflect the revised rates.

30.418–70 Exemptions.

This standard shall not apply to contractors who are subject to the provisions of OMB Circular A–87 (Cost Principles for State and Local Governments.)

30.420 Accounting for independent research and development costs and bid and proposal costs.

30.420–10 [Reserved]

30.420–20 Purpose.

The purpose of this Cost Accounting Standard is to provide criteria for the accumulation of independent research and development costs and bid and proposal costs, and for the allocation of such costs to cost objectives based on the beneficial or causal relationship between such costs and cost objectives. Consistent application of these criteria will improve cost allocation.

30.420–30 [Reserved]

30.420–40 Fundamental requirement.

(a) The basic unit for the identification and accumulation of Independent Research and Development (IR&D) and Bid and Proposal (B&P) costs shall be the individual IR&D or B&P project.

(b) IR&D and B&P project costs shall consist of all allocable costs, except business unit general and administrative expenses.

(c) IR&D and B&P cost pools consist of all IR&D and B&P project costs and other allocable costs, except business unit general and administrative expenses.

(d) The IR&D and B&P cost pools of a home office shall be allocated to segments on the basis of the beneficial or causal relationship between the IR&D and B&P costs and the segments reporting to that home office.

(e) The IR&D and B&P cost pools of a business unit shall be allocated to the final cost objectives of that business unit on the basis of the beneficial or

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causal relationship between the IR&D and B&P costs and the final cost objectives.

(f) (1) B&P costs incurred in a cost accounting period shall not be assigned to any other cost accounting period.

(2) IR&D costs incurred in a cost accounting period shall not be assigned to any other cost accounting period, except as may be permitted pursuant to provisions of existing laws, regulations, and other controlling factors.

30.420–50 Techniques for application.

(a) IR&D and B&P project costs shall include (1) costs, which if incurred in like circumstances for a final cost objective, would be treated as direct costs of that final cost objective, and (2) the overhead costs of productive activities and other indirect costs related to the project based on the contractor's cost accounting practice or applicable Cost Accounting Standards for allocation of indirect costs.

(b) IR&D and B&P cost pools for a segment consist of the project costs plus allocable home office IR&D and B&P costs.

(c) When the costs of individual IR&D or B&P efforts are not material in amount, these costs may be accumulated in one or more project(s) within each of these two types of effort.

(d) The costs of any work performed by one segment for another segment shall not be treated as IR&D costs or B&P costs of the performing segment unless the work is a part of an IR&D or B&P project of the performing segment. If such work is part of a performing segment's IR&D or B&P project, the project will be transferred to the home office to be allocated in accordance with paragraph (e) of this subsection.

(e) The costs of IR&D and B&P projects accumulated at a home office shall be allocated to its segments as follows:

(1) Projects which can be identified with a specific segment(s) shall have their costs allocated to such segment(s).

(2) The costs of all other IR&D and B&P projects shall be allocated among all segments by means of the same base used by the company to allocate its residual expenses in accordance with 30.403; provided, however, where a particular segment receives significantly more or less benefit from the IR&D or B&P costs than would be reflected by the allocation of such costs to the segment by that base, the Government and the contractor may agree to a special allocation of the IR&D or B&P costs to such segment commensurate with the benefits received. The amount of a special allocation to any segment made pursuant to such an agreement shall be excluded from the IR&D and B&P cost pools to be allocated to other segments and the base data of any such segment shall be excluded from the base used to allocate these pools.

(f) The costs of IR&D and B&P projects accumulated at a business unit shall be allocated to cost objectives as follows:

(1) Where costs of any IR&D or B&P project benefit more than one segment of the organization, the amounts to be allocated to each segment shall be determined in accordance with paragraph (e) of this subsection.

(2) IR&D and B&P cost pools which are not allocated under subparagraph (f)(1) of this subsection, shall be allocated to all final cost objectives of the business unit by means of the same base used by the business unit to allocate its general and administrative expenses in accordance with 30.410–50; provided, however, where a particular final cost objective receives significantly more or less benefit from IR&D or B&P costs than would be reflected by the allocation of such costs the Government and the contractor may agree to a special allocation of the IR&D or B&P costs to such final cost objective commensurate with the benefits received. The amount of special allocation to any such final cost objective made pursuant to such an agreement shall be excluded from the IR&D and B&P cost pools to be allocated to other final cost objectives and the particular final cost objective's base data shall be excluded from the base used to allocate these pools.

(g) Notwithstanding the provisions of paragraphs (d), (e) or (f) of this subsection, the costs of IR&D and B&P projects allocable to a home office pursuant to 30.420–50(d) may be allocated directly to the receiving segments, provided that such allocation not be substantially different from the allocation that would be made if they were first passed through home office accounts.

30.420–60 Illustrations.

(a) Business Unit A's engineering department in accordance with its established accounting practice, charges administrative effort including typing to its overhead cost pool. In submitting a proposal, the engineering department assigns several typists to the proposal project on a full time basis and charges the typists' time directly to the proposal project, rather than to its overhead pool. Because the engineering department under its established accounting practice does not charge the cost of typing directly to final cost objectives, the direct charge does not meet with the requirements of 30.420–50(a).

(b) Company B has five segments. The company undertakes an IR&D project which is part of the IR&D plans of segments X, Y, and Z, and will be of general benefit to all five segments. The company designates Segment Z as the project leader in performing the project. In accumulating the costs, each segment allocates overhead to its part of the project but does not allocate segment G&A. The IR&D costs are then allocated to the home office by each segment. The costs are combined with other IR&D costs that benefit the company as a whole. The costs are allocated to all five segements by means of the same base by which the company allocates its residual home office expense costs to all segments. This practice meets the requirements of 30.420–40(b), 30.420–50(e)(2), and 30.420–50(f)(1).

(c) Business Unit C normally accounts for its B&P effort by individual project. It accumulates directly allocated costs and departmental overhead costs by project. The business unit also submits large numbers of bids and proposals whose individual costs of preparation are not material in amount. The business unit collects the cost of these efforts under a single project. Since the cost of preparing each individual bid and proposal is not material, the practice of accumulating these costs in a single project meets the requirements of 30.420–50(c).

(d) Segment D requests that Segment Y provide support for a Segment D IR&D project. The work being performed by Y is similar in nature to Y's normal product and is not part of its annual IR&D plan. Segment Y allocates to the project all costs it allocates to other final cost objectives, including G&A expense. Segment Y then directly transfers the cost of the project to Segment D in accordance with its normal intersegment transfer procedure. This accounting treatment meets the requirements of 30.420–50(d) and 30.410.

(e) Contractor E has six operating segments and a research segment. The research segment performs work under (1) research and development contracts, (2) projects which are not part of its own IR&D plan but are specifically in support of other segments' IR&D projects, and (3) IR&D projects for the benefit of the company as a whole.

(i) The research segment directly allocates the cost of the projects in support of another segment's IR&D projects, including an allocation of its general and administrative expenses, to the receiving segment. This practice meets the requirements of 30.420–50(d).

(ii) The costs of the IR&D projects which benefit the company as a whole

exclude any allocation of the research segment's general and administrative expenses and are transferred to the home office. The home office allocates these costs on the same base it uses to allocate its residual expenses to all seven segments. This practice meets the requirements of 30.420–50(e)(2) and (f)(1).

(f) Company F accumulates at the home office the costs of IR&D and B&P projects which generally benefit all segments of the company except Segment X. The company and the contracting officer agree that the nature of the business activity of Segment X is such that the home office IR&D and B&P effort is neither caused by nor provides any benefit to that segment. For the purpose of allocating its home office residual expenses, the company uses a base as provided in 30.403. For the purpose of allocating the home office IR&D and B&P costs, the company removes the data of Segment X from the base used for the allocation of its residual expenses. This practice meets the requirements of 30.420–50(e)(2).

(g) Company G has 10 segments. Segment X performs IR&D projects, the results of which benefit it and two other segments but none of the other seven segments. The cost of those projects performed by Segment X are transferred to the home office and allocated to the three segments on the basis of the benefits received by the three segments. This practice meets the requirements of 30.420–50(e)(1) and 30.420–50(f)(1).

30.420–70 Exemptions.

This Standard shall not apply to contractors who are subject to the provisions of OMB Circular A–87 (Cost Principles for State and Local Government).

Subpart 30.5—[Reserved]

Subpart 30.6—CAS Administration

30.601 Responsibility.

(a) The cognizant ACO shall perform CAS administration for all contracts in a business unit notwithstanding retention of other administration functions by the contracting officer.

(b) Within 30 days of the award of any new contract or subcontract subject to CAS, the contracting officer, contractor, or subcontractor making the award shall request the cognizant ACO to perform administration for CAS matters (see Subpart 42.2).

30.602 Changes to disclosed or established cost accounting practices.

Adjustments to contracts for CAS noncompliance, new standards, or voluntary changes are required only if the amounts involved are material. The ACO has the right to forego action to adjust contracts if the amount involved is not considered material; however, in the case of noncompliance issues, the ACO shall inform the contractor that (a) the Government reserves the right to make appropriate contract adjustments if, in the future, the ACO determines that the cost impact has become material and (b) the contractor is not excused from the obligation to comply with the applicable Standard or rules and regulations involved. In determining materiality, the ACO shall use the criteria in 30.305.

30.602–1 Equitable adjustment for new or modified standards.

(a) The clause at 52.230–1, Cost Accounting Standards Notices and Certification (National Defense), requires offerors to state whether or not the award of the contemplated contract would require a change to established cost accounting practices affecting existing contracts and subcontracts. The contracting officer shall ensure that the contractor's response to the notice is made known to the cognizant ACO.

(b) Contracts and subcontracts containing the clause at 52.230–3, Cost Accounting Standards, may require equitable adjustments to comply with new or modified CAS. Such adjustments are limited to contracts and subcontracts awarded before the effective date of each new or modified standard. A new or modified standard becomes applicable prospectively to these contracts and subcontracts when a new national defense contract or subcontract containing the clause at 52.230–3, Cost Accounting Standards, is awarded on or after the effective date of the new standard.

(c) Contracting officers shall encourage contractors to submit to the cognizant ACO any change in accounting practice in anticipation of complying with a new or modified standard as soon as practical after the new or modified standard has been incorporated into the FAR.

(d) Upon receipt of information from the contractor indicating that an accounting change is required to comply with a new or modified standard, the cognizant ACO shall review the proposed change concurrently for adequacy and compliance. If the review indicates that the change is both adequate and in compliance (see 30.202–7), the contractor shall be notified and requested to submit a cost impact proposal in sufficient detail to determine the impact on each CAS-covered contract and subcontract. The proposal shall identify each additional standard and all contracts and subcontracts containing the CAS clause and having an award date before the effective date of that standard. The proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each affected contract and subcontract containing the clause at 52.230–3, Cost Accounting Standards, and shall be in the form and manner specified by the cognizant contracting officer.

(e) The cognizant ACO shall promptly analyze the proposal with the assistance of the auditor, determine the impact, and negotiate the contract price adjustments on behalf of all Government agencies. The ACO shall invite contracting officers to participate in negotiations of adjustments when the price of any of their contracts may be increased or decreased by $10,000 or more. At the conclusion of negotiations, the ACO shall—

(1) Execute supplemental agreements to contracts of the ACO's own agency (and, if additional funds are required, request them from the appropriate contracting officer);

(2) Prepare a negotiation memorandum and send copies to cognizant auditors and contracting officers of other agencies having prime contracts affected by the negotiation (those agencies shall execute supplemental agreements in the amounts negotiated); and

(3) Furnish copies of the memorandum indicating the effect on costs to the ACO of the next higher tier subcontractor or prime contractor, as appropriate, if a subcontract is to be adjusted. This memorandum shall be the basis for negotiation between the subcontractor and the next higher tier subcontractor or prime contractor and for execution of a supplemental agreement to the subcontract.

(f) If the contractor does not submit a proposal in the form and time specified (see paragraph (b) of the clause at 52.230–4, Administration of Cost Accounting Standards, or if the parties fail to agree concerning the cost impact, the cognizant ACO, with the assistance of the auditor, shall estimate the cost impact on contracts and subcontracts containing the clause at 52.230–3, Cost Accounting Standards. The ACO shall request the contractor to agree to the cost or price adjustment. The ACO may withhold an amount not to exceed 10 percent of each subsequent payment request related to the contractor's CAS-covered prime contracts, which contain the appropriate withholding provisions, until the proposal has been furnished by

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the contractor. The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, action may be taken in accordance with the clause at 52.233–1, Disputes. If the ACO issues a unilateral determination under the Disputes clause, the ACO shall consider appropriate action to protect the Government's interests under Subpart 32.6.

30.602–2 Noncompliance with CAS requirements.

(a) Within 15 days of the receipt of a report of alleged noncompliance from the auditor, the cognizant ACO shall make an initial finding of compliance or noncompliance and advise the auditor.

(b) If an initial finding of noncompliance is made, the ACO shall immediately notify the contractor in writing of the exact nature of the noncompliance and allow 30 days within which to agree or to submit reasons why the existing practices are considered to be in compliance.

(c) If the contractor agrees with the initial finding of noncompliance—

(1) The contractor shall be required to correct the noncompliance and submit a complete description of any accounting change and the general dollar magnitude of the change of all CAS-covered contracts and subcontracts;

(2) The cognizant ACO shall review the accounting change for adequacy and compliance concurrently (if the change is both adequate and in compliance, the ACO shall notify the contractor and request a cost impact proposal);

(3) The cost impact proposal must identify all contracts and subcontracts containing the clause at 52.230–3, Cost Accounting Standards, or the clause at 52.230–5, Disclosure and Consistency of Cost Accounting Practices, and shall be in sufficient detail to permit evaluation and negotiation of the cost impact of each separate CAS-covered contract and subcontract from the date of failure to comply until the noncompliance is corrected; and

(4) The ACO shall then follow the procedures in 30.602–1(e).

(d) If the contractor disagrees with the initial noncompliance finding, the cognizant ACO shall review the reasons why the contractor considers the existing practices to be in compliance and make a determination of compliance or noncompliance.

(1) If the ACO makes a determination of compliance, the ACO shall notify the contractor and send a copy to the auditor.

(2) If the ACO makes a determination of noncompliance, or if the contractor fails to furnish the cost impact proposal, the ACO, with the assistance of the auditor, shall determine the cost impact of the noncompliance on contracts and subcontracts containing CAS clauses. The ACO may withhold an amount not to exceed 10 percent of each subsequent payment request related to the contractor's CAS-covered prime contracts, which contain the appropriate provisions, until the proposal has been furnished by the contractor.

(3) If the ACO determines that the noncompliance results in material increased costs to the Government, the ACO shall notify the contractor and request agreement as to the cost or price adjustment, together with any applicable interest. The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, action may be taken in accordance with the clause at 52.233–1, Disputes. If the ACO issues a unilateral determination under the Disputes clause, the ACO shall consider appropriate action to protect the Government's interests under Subpart 32.6.

(4) If the ACO estimate indicates there is no material increase in costs as a result of the noncompliance and the contractor refuses to take corrective action, the ACO shall notify the contractor in writing that the contractor is in noncompliance, that corrective action should be taken, and that if such noncompliance subsequently results in materially increased costs to the Government, the provisions of the clause at 52.230–3, Cost Accounting Standards, and/or the clause at 52.230–5, Disclosure and Consistency of Cost Accounting Practices, will be enforced.

30.602–3 Voluntary changes.

(a) The contract price may be adjusted for voluntary changes to a contractor's Disclosure Statement or cost accounting practices. The contractor must first notify the cognizant ACO by submission, not less than 60 days (or such other date as may be mutually agreed to) before proposed implementation, of a description of the accounting change and the general dollar magnitude of the change (including the sum of all increases and the sum of all decreases) for all CAS-covered contracts and subcontracts.

(b) The cognizant ACO shall review the accounting change concurrently for adequacy and compliance (see 30.202–7). If the change meets both tests, the ACO shall so notify the contractor and request that the contractor submit a cost impact proposal identifying all contracts and subcontracts containing the clause at 52.230–3, Cost Accounting Standards, and the clause at 52.230–2, Disclosure and Consistency of Cost Accounting Practices. The cost impact proposal shall be in sufficient detail to allow evaluation and negotiation of the cost impact upon each affected CAS-covered contract and subcontract.

(c) With the assistance of the auditor, the ACO shall promptly analyze the cost impact proposal to determine whether or not the proposed change will result in increased costs being paid by the Government. The ACO shall consider all of the contractor's affected CAS-covered contracts and subcontracts, but any cost changes to higher-tier subcontracts or contracts of other contractors over and above the cost of the subcontract adjustment shall not be considered. Increased costs resulting from a voluntary change may be allowed only if the ACO determines that the change is desirable and not detrimental to the Government. The ACO shall then follow the procedures in 30.602–1(e).

(d) If the contractor fails to submit a cost impact proposal in the form and time specified or if the parties fail to agree concerning the cost impact, the cognizant ACO, with the assistance of the auditor, shall estimate the cost impact on contracts and subcontracts containing a CAS clause and shall then request the contractor to agree to the cost or price adjustment. The ACO may withhold an amount not to exceed 10 percent of each subsequent payment request related to the contractor's CAS-covered prime contracts, which contain the appropriate withholding provisions, until the proposal has been furnished by the contractor. The contractor shall also be advised that, in the event no agreement on the cost or price adjustment is reached within 20 days, action may be taken in accordance with the clause at 52.233–1, Disputes. If the ACO issues a unilateral determination under the Disputes clause, the ACO shall consider appropriate action to protect the Government's interests under Subpart 32.6.

30.603 Subcontract administration.

When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the ACO cognizant of the subcontractor shall make the determination and advise the ACO cognizant of the prime contractor or next higher tier subcontractor of his decision. ACO's cognizant of higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

5. Part 31 is amended wherever the references "CAS 400" through "CAS 420" appear by removing the word "CAS" and inserting in its place "30." preceding the CAS number.

31.205–10 [Amended]

6. Section 31.205–10 is amended by removing in paragraph (a)(2)(i) the words "CAS 414" and inserting in their place the word "30.414", and by removing in paragraph (b)(2)(i)(A) the words "CAS 417" and inserting in their place the words "CAS 30.417".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 52.215–30 is revised to read as follows:

52.215–30 Facilities Capital Cost of Money.

As prescribed in 15.904(a), insert the following provision:

FACILITIES CAPITAL COST OF MONEY (SEP 1987)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in subparagraph 31.205–10(a)(2) of the Federal Acquisition Regulation are met. One of the allowability criteria requires the prospective contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

(End of provision)

8. Section 52.215–31 is revised to read as follows:

52.215–31 Waiver of Facilities Capital Cost of Money.

As prescribed in 15.904(b), insert the following clause:

WAIVER OF FACILITIES CAPITAL COST OF MONEY (SEP 1987)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

(End of clause)

9. Section 52.230–1 is revised to read as follows:

52.230–1 Cost Accounting Standards Notices and Certification (National Defense).

As prescribed in 30.201–3(a), insert the following provision:

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (NATIONAL DEFENSE) (SEP 1987)

Note: This notice does not apply to small businesses or foreign governments.

This notice is in four parts, identified by Roman numerals I through IV.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

I. Disclosure Statement—Cost Accounting Practices and Certification

(a) Any contract in excess of $100,000 resulting from this solicitation, except contracts in which the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities of the general public, or (2) prices set by law or regulation, will be subject to the requirements of Federal Acquisition Regulation (FAR) Subparts 30.3 and 30.4, except for those contracts which are exempt as specified in FAR 30.201–1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of FAR Subparts 30.3 and 30.4 must, as a condition of contracting, submit a Disclosure Statement as required by FAR 30.202. The Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution:

A practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO), and (ii) one copy to the cognizant contract auditor.

(Disclosure must be on Form No. CASB DS–1. Forms may be obtained from the cognizant ACO.)

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO where filed: _____

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) Certificate of Previously Submitted Disclosure Statement.

The offeror hereby certifies that Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO where filed: _____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable disclosure statement.

☐ (3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated national defense prime contracts and subcontracts subject to CAS totaling more than $10 million in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) Certificate of Interim Exemption.

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) above, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with FAR 30.202–1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under subparagraphs (c)(1) or (c)(2) or Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

Caution:

Offerors currently required to disclose because they were awarded a CAS-covered national defense prime contract or subcontract of $10 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. Cost Accounting Standards—Exemption for Contracts of $500,000 or Less

If this proposal is expected to result in the award of a contract of $500,000 or less, the offeror shall indicate whether the exemption below is claimed. Failure to check the box below shall mean that the resultant contract is subject to CAS requirements or that the offeror elects to comply with such requirements.

☐ The offeror hereby claims an exemption from the CAS requirements under the provisions of Federal Acquisition Regulation (FAR) 30.201–1(b)(7) and certifies that notification of final acceptance of all deliverable items has been received on all prime contracts or subcontracts containing the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause. The offeror further certifies that the Contracting Officer will be immediately notified in writing when an award of any other contract or subcontract containing Cost Accounting Standards clauses is received by the offeror subsequent to this certificate but before the date of any award resulting from this proposal.

III. Cost Accounting Standards—Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of Federal Acquisition Regulation (FAR) 30.201–2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of FAR 30.201–2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because (i) during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than $10 million in awards of CAS-covered national defense prime contracts and subcontracts, and (ii) the sum of such awards equaled less than 10 percent of total sales during that cost accounting period. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

Caution:

An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a national defense contract of $10 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered national defense prime contract or subcontract of $10 million or more.

IV. Additional Cost Accounting Standards Applicable to Existing Contracts

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ YES ☐ NO

Note: If the offeror has checked "yes" above and is awarded the contemplated contract, the offeror will be required to comply with the requirements of subparagraph (a)(1) and paragraphs (b) and (c) of the Administration of Cost Accounting Standards clause.

(End of provision)

10. Section 52.230–2 is revised to read as follows:

52.230–2 Cost Accounting Standards Notices and Certification (Nondefense).

As prescribed in 30.201–3(b), insert the following provision:

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (NONDEFENSE) (SEP 1987)

Note: This notice does not apply to small businesses or foreign governments.

(a) Any contract over $100,000 resulting from this solicitation shall be subject to Cost Accounting Standards (CAS) if it is awarded to a business unit that is currently performing a national defense CAS-covered contract or subcontract, except when——

(1) The award is based on adequate price competition;

(2) The price is set by law or regulation;

(3) The price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(4) One of the exemptions in Federal Acquisition Regulation (FAR) 30.201–1(b) applies.

(b) Contracts not exempted from CAS shall be subject to full or modified coverage as follows:

(1) If the business unit receiving the award is currently performing a national defense contract or subcontract subject to full CAS coverage FAR 30.201–2(a), this contract will have full CAS coverage and will contain the clauses from the FAR entitled Cost Accounting Standards, 52.230–3 and Administration of Cost Accounting Standards, 52.230–4.

(2) If the business unit receiving the award is currently performing a national defense contract or subcontract subject to modified CAS coverage FAR 30.201–2(b), this contract will have modified coverage and will contain the clauses entitled Disclosure and Consistency of Cost Accounting Practices, 52.230–5 and Administration of Cost Accounting Standards, 52.230–4.

A. Certificate of CAS Applicability

The offeror hereby certifies that—

☐ The offeror is not performing any CAS-covered national defense contract or subcontract. The offeror further certifies that it will immediately notify the Contracting Officer in writing if it is awarded any national defense CAS-covered contract or subcontract subsequent to the date of this certificate but before the date the award of a contract resulting from this solicitation. (If this statement applies, no further certification is required.)

☐ The offeror is currently performing a negotiated national defense contract or subcontract that contains the Cost Accounting Standards clause at FAR 52.230–3.

☐ The offeror is currently performing a negotiated national defense contract or subcontract that contains the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230–5.

B. Additional Certification—CAS Applicable Offerors

☐ The offeror subject to Cost Accounting Standards further certifies that practices used in estimating costs in pricing this proposal are consistent with the practices disclosed in the Disclosure Statement where it has been submitted as required by FAR 30.202–1 through 30.202–5.

C. Data Required—CAS Covered Offerors

The offeror certifying that it is currently performing a national defense contract containing either CAS clause (see A above) is required to furnish the name, address (including agency or department component), and telephone number of the cognizant Contracting Officer administering the offeror's CAS-covered contracts.

Name of Contracting Officer———————

Address: ———————

Telephone Number: ———————

(End of provision)

11. Section 52.230–3 is revised to read as follows:

52.230–3 Cost Accounting Standards.

As prescribed in 30.201–4(a), insert the following clause:

COST ACCOUNTING STANDARDS (SEP 1987)

(a) Unless the contract is exempt under FAR 30.201–1 and 30.201–2, the provisions of Federal Acquisition Regulation (FAR) Subpart 30.3 are incorporated herein by reference and the Contractor) in connection with this contract, shall—

(1) (National Defense Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by FAR 30.202–1 through 30.202–5. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in FAR Subpart 30.4, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under

which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92–41, 85 Stat. 97, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in FAR Subpart 30.4 or a CAS rule or regulation in FAR Subpart 30.3 and as to any cost adjustment demanded by the United States, such failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontract's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of $100,000 where the price negotiated is not based on—

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in FAR 30.201–1.

Note (1): New or modified CAS shall be applicable to both national defense and nondefense CAS-covered contracts upon award of a new national defense CAS-covered contract containing the new or modified Standard. The award of a new nondefense CAS-covered contract shall not trigger application of new CAS or modification to CAS.

Note (2): Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted its Disclosure Statement to a Government Administrative Contracting Officer (ACO), it may satisfy that requirement by certifying to the Contractor the date of the Statement and the address of the ACO.

Note (3): In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Contractor or higher tier subcontractor, the Contractor may authorize direct submission of that subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability as provided in subparagraph (a)(5) of this clause. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards as specified in FAR Subparts 30.3 and 30.4 in connection with covered subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor, provided that they do not conflict with the duties of the Contractor under its contract with the Government. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (4): If the subcontractor is a business unit which, pursuant to FAR 30.201–2(b) is entitled to elect modified contract coverage and to follow FAR 30.401 and FAR 30.402, the clause at 52.230–5, "Disclosure Consistency of Cost Accounting Practices," of the Federal Acquisition Regulation shall be inserted in lieu of this clause.

Note (5): The terms defined in FAR 30.301 and FAR 31.001 shall have the same meanings herein. As there defined "negotiated subcontract" means any subcontract except a firm-fixed-price subcontract made by a Contractor or subcontractor after receiving offers from at least two persons not associated with each other or with such Contractor or subcontractor, providing (1) the solicitation to all competitors is identical, (2) price is the only consideration in selecting the subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

(End of clause)

12. Section 52.230–4 is revised to read as follows:

52.230–4 Administration of Cost Accounting Standards.

As prescribed in FAR 30.201–4(b)(1), insert the following clause:

ADMINISTRATION OF COST ACCOUNTING STANDARDS (SEP 1987)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (f) of this clause:

(a) Submit to the cognizant Contracing Officer a description of any accounting change, the potential impact of the change on contracts containing a CAS clause, and if not obviously immaterial, a general dollar magnitude cost impact analysis of the change which displays the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed-fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should display the potential impact of funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required to comply with a new CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the CAS clause, within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (a)(4)(iii) of the CAS clause or with subparagraph (a)(3) of the Disclosure and Consistency of Cost Accounting Practices clause, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the CAS clause or by subparagraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause, within 60 days (or such other date as may be mutually agreed to) after the date of agreement of noncompliance by the Contractor.

(b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracing Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. If the cost impact proposal is not submitted within the specified time, or any extension granted by the cognizant Contracing Officer, an amount not to exceed 10 percent of each payment made after that date may be withheld until such time as a proposal has been provided in the form and manner specified by the cognizant Contracting Officer.

(c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the CAS clause or with subparagraphs (a)(3) or (a)(4) of the CAS Disclosure and Consistency of Cost Accounting Practices clause.

(d) For all subcontracts subject either to the CAS clause or to the Disclosure and Consistency of Cost Accounting Practices clause—(1) so state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and (2) include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(iv) Any changes the subcontractor has made or proposes to make to accounting practices that affect prime contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(e) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contractor's price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(f) For subcontracts containing the CAS clause, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

13. Section 52.230–5 is revised to read as follows:

52.230–5 Disclosure and Consistency of Cost Accounting Practices.

As prescribed in 30.201–4(c)(1), insert the following clause:

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (SEP 1987)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 30.401, Consistency in Estimating, Accumulating, and Reporting Costs, and 30.402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract as indicated in Federal Acquisition Regulation (FAR) Subpart 30.4.

(2) (National Defense Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by FAR 30.202–1 through 30.202–5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

Note (1): Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted its Disclosure Statement to a Government Administrative Contracting Officer (ACO), it may satisfy that requirement by certifying to the Contractor the date of the Statement and the address of the Contracting Officer.

Note (2): In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Contractor or higher tier subcontractor, the Contractor may authorize direct submission of the subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability if it or a subcontractor fails to comply with an applicable Cost Accounting Standard (CAS) or to follow any practice disclosed pursuant to this paragraph and such failure results in any increased costs paid by the United States. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and standards as specified in FAR Subparts 30.3 and 30.4 in connection with covered subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and subcontractor, provided that they do not conflict with the duties of the Contractor under its contract with the Government. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (3): The terms defined in FAR Subpart 30.3 and FAR 31.001 shall have the same meanings in this clause. As there defined, "negotiated subcontract" means any subcontract except a firm-fixed-price subcontract made by a Contractor or subcontractor after receiving offers from at least two persons not associated with each other or such Contractor or subcontractor, providing (1) the solicitation to all competitors is identical, (2) price is the only consideration in selecting the subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92–41, 85 Stat. 97, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in FAR Subparts 30.3 and 30.4 and as to any cost adjustment demanded by the United States, such failure to agree shall be a dispute within the meaning of the Disputes clause of this contract.

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to FAR 30.201 is required to follow all CAS, the clause entitled "Cost Accounting Standards," set forth in FAR 52.230–3, shall be inserted in lieu of this clause; or

(2) This requirement shall apply only to negotiated subcontracts in excess of $100,000 where the price negotiated is not based on—

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Price set by law or regulation; or

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in FAR 30.201–1.

(End of clause)

14. Section 52.230–6 is revised to read as follows:

52.230–6 Consistency in Cost Accounting Practices.

As prescribed in 30.201–4(d), insert the following clause:

CONSISTENCY IN COST ACCOUNTING PRACTICES (SEP 1987)

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on Form No. CASB DS–1 in estimating, accumulating and reporting costs under this contract. In the event the Contractor fails to follow such practices, it agrees that the contract price shall be adjusted, together with payment of interest, if such failure results in increased cost paid by the U.S. Government. Interest shall be computed at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92–41 (85 Stat. 97) from the time payment by the Government was made to the time adjustment is effected. The Contractor agrees that the Disclosure Statement filed with the U.K. Ministry of Defence shall be available for inspection and use by authorized representatives of the United States Government.

(End of clause)

[FR Doc. 87–21682 Filed 9–21–87; 8:45 am]

BILLING CODE 6820–61–M

VOL 52 ISS 183 SEP 22 1987 UMI

Federal Register

Tuesday
September 22, 1987

Part III

Department of the Interior

National Park Service

Native American Relationships Managment Policy; Final Management Policy

VOL
52
ISS
183
SE
22
1987
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DEPARTMENT OF THE INTERIOR

National Park Service

Native American Relationships Management Policy

AGENCY: National Park Service, Interior.

ACTION: Final management policy.

SUMMARY: The National Park Service (NPS) is issuing a final management policy on Native American Relationships. It has been revised in response to comments received on the proposed policy, which had been published for a second time in the Federal Register on January 22, 1987, with a thirty-day comment period ending February 23, This policy replaces the current Special Directive 78–1, *Policy Guidelines for Native American Cultural Resources Management.*

FOR FURTHER INFORMATION CONTACT: Geraldine Smith, Office of the Special Assistant for Policy Development, 202–343–4298; Muriel Crespi, Anthropology Division, 202–343–8156; Douglas H. Scovill, Anthropology Division, 202–343–8161. National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127.

SUPPLEMENTARY INFORMATION:

Background

Groups covered by this action are American Indians, including Carib and Arawak; Eskimo; Aleut; Native Americans of the Pacific Islands, including Native Hawaiians, Native Samoans, Chamorros and Carolinians. This policy will provide guidance to NPS personnel for management actions affecting Native Americans as defined. The policy emphasizes implementation of such activity in a knowledgeable, aware and sensitive manner. The policy directs park managers to enage in the identification of and consultation with Native American groups traditionally associated with park lands and other resources. The policy also expands and clarifies Special Directive 78–1, incorporates management needs as identified by a Service task force, and provides the Service's response to the policy guidance provided in the American Indian Religious Freedom Act, Pub. L. 95–341.

This policy defines NPS management responses to the requirements of the American Indian Religious Freedom Act and other legislation. In addition, the policy defines terms, discusses Native American traditional activities in NPS units, Native American involvement in planning, and Native American concerns in resources management, research, and interpretation.

The Service has, in the past, recognized and sought to accommodate Native American requests to use areas of the National Park System (System) for traditional religious and other cultural activities, including lawful subsistence pursuits. Such uses must be within the bounds of existing legislation as well as NPS rules and policies that implement legislative mandates to protect and preserve the System's resources, both natural and cultural, and provide for their use and enjoyment by present and future generations.

This final Native American Relationship Policy has become part of the National Park Service Management Policies effective immediately.

Major Components

Section I presents the philosophy of the National Park Service regarding Native American Relationships and lists some of the major legislation that will affect the interpretation and implementation of this policy.

Section II explains terms used throughout the policy.

Section III discusses the practice of Native American traditional activities in NPS areas. The first paragraph discusses Native American religious practices and NPS responsibilities as addressed in Pub. L. 95–341, the American Indian Religious Freedom Act. This section also addresses the use of controlled substances in religious ceremonies. Part B of this section discusses access to and use of park areas for both religious and non-religious purposes. Part C of this section addresses the taking of natural resources including fish, wildlife, plants and other objects. The identification and protection of sacred resources, including sites, as well as policies on burial and cemetery sites are discussed in Part D.

Section IV provides for the involvement and consultation of Native Americans with traditionally established interests in parks when NPS planning and management decisions may affect such interests. It affirms the park managers' responsibilities to identify and institute continuing communication with interested Native American groups and individuals.

Section V establishes general policies on research, interpretation, and collections that may affect Native American interests. Provisions are made for confidentiality in the conduct of ethnographic and archaeological studies; proper acquisition use and display of artifacts; and accuracy in the interpretation of past and present Native American cultures.

Changes in Response to Comments

Written comments were received from one Native American organization and two Federal agencies, as follows.

Section 11 Explanation of Terms.

One commentor expressed concern that the policy does not consider "special interest" groups such as unrecognized Native American groups who were relocated from their historic areas. No change is made regarding relocated groups because the discussion in Section IV B., 52 FR 2454, of the draft policy published January 22 already stated that "Members of Native American tribes or groups who were relocated from traditional homelands but have demonstrable historical associations with park resources have the same access to traditional sacred resources as those who remained near ancestral lands."

With regard to unrecognized groups, the proposed policy noted in *II. Explanation of Terms*, 52 FR 2456, that the terms tribe or group already included people who are identified by themselves and others as "members of a named cultural unit that historically has shared linguistic, cultural, social (kinship) and related characteristics that distinguish it ethnically from other Native American groups." To eliminate any ambiguity, however, the phrase in the second paragraph of *II. Explanation of Terms*, beginning with ". . . or any group . . ." has been modified as follows: ". . . or any group of Native Americans not recognized in statue or treaty by Federal or State governments but identified by themselves and known by others as members of a named cultural unit that historically has shared linguistic, cultural, social (kinship) and related characteristics that distinguish it ethnically from other Native American groups."

To further clarify the kinds of groups covered by this action and provide for native Pacific peoples other than those presently specified by the proposed policy, the general phrase "Native Americans of the Pacific Islands, including . . . has been inserted in the definition of groups. The new wording for Pacific groups is: "Native Americans of the Pacific Islands, including Native Hawaiians, Native Samoans, Chamorros and Carolinians."

It also was noted that the term traditional was omitted from the definition of "Ethnographic Resource." The term has been added so that the definition now reads: "Ethnographic resources" refers to park resources with traditonal subsistence, sacred

ceremonial or religious, or other cultural meaning for contemporary Native Americans."

Section IIIC Taking of Natural Resources.

One commentor suggested that NPS jurisdiction does not negate traditional subsistence use on reservation lands that overlap at the boundary with Park Service lands. No charge is made because consideration of boundary problems involving reservation lands and the National Park Service are beyond the scope of this policy, which can only address issues involving Park Service holdings.

Concern about consumptive use prompted one respondent to ask if references to Park Service regulations in 36 CFR are to be taken literally or if the policy intends to emphasize consumptive use despite the regulations, as might be interpreted from Section I.A.(1), which states that Service regulations should be applied in an informed and balanced manner that does not unreasonably interfere with traditional use nor lead to resource degradation, and Section III.B.2, which permits religious activities at traditional sites, subject to limitations in III.A.B.1, and C, and at non-traditional places subject to conditions in 36 CFR Parts 1 and 2.

No change is made, but we wish to emphasize that all policy references to National Park Service regulations are to be taken literally, as are references to the need to be informed about Native American traditions. The policy does not override regulations but is intended as a general statement that management should use existing options and administrative discretion to reach decisions that are responsive to Native American concerns.

Section III.D.2 Burial and Cemetery Sites.

One respondent suggested that managers be provided with more explicit direction regarding decisionmaking about burial sites when science conflcits with tradition or religious practices. The suggestion is not incorporated for the following reasons: The policy regarding burials and cemetery sites is intended to provide direction as well as maximum flexibility when managers can exercise administrative discretion in reaching decisions that reflect Native American preferences, and are also in accord with law. In addition, it is inappropriate for the National Park Service to weigh the merits of religious practices. As already noted in the first paragraph of Section II, on page 2453, of the subject draft. "it would be presumptuous of the National Park Service to define what constitutes Native American or any other religion and religious activity."

It was noted that Section IIID.2. does not reference the Guidelines for the Disposition of Human Remains, NPS–28, "Cultural Resources Management Guideline", Technical Supplement, Chapter 7. This citation has been added to paragraph 1 of that Section.

Section V.B. Museum Collections.

One respondent suggested that the final paragraph implies that only Indians can inspect records, and that only records relevant to that tribe can be studied. That implication was unintended and the paragraph is revised as follows: "Interested persons shall be able to inspect or study Service artifacts, specimens and museum records consistent with standards for the use and preservation of collections."

Native American Relationships

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The National Park Service, to the extent consistent with each park's legislated purpose, shall develop and execute its programs in a manner that reflects knowledge of and respect for the cultures, including religious and subsistence traditions, of native American tribes or groups with demonstrable ancestral ties to particular resources in or within the National Park system. Such ties shall be established through evidence from systematic archeological or ethnographic studies, including ethnographic oral history and ethnohistory studies, or a combination of these sources.

I. Introduction

A. Philosophy

In many units of the National Park System (System), the National Park Service (Service) is specifically charged with the mission to preserve and interpret the cultural heritage of Native American tribes or groups. In addition, many units contain natural resources as well as features of the built environment, objects and structures that are associated with traditional sacred, subsistence or other cultural practices of contemporary Native American peoples, and necessary for their cultural continuity. Service plans, programs and activities all have the potential to affect such places and resources, and the cultural activities associated with them. Implementation of this policy is meant to ensure that (1) the Service's general regulations on access to and use of park natural and cultural resources are applied in an informed and balanced manner that does not unreasonably interfere with Native American use of traditional areas or sacred resources nor result in degradation of unit resources, (2) Service managers establish and maintain effective consulting relationships with potentially affected Native American tribes and groups, and (3) management decisions will consider the concerns of potentially affected Native American tribes or groups.

B. Legislation

Numerous laws, Executive Orders, treaties, and cooperative agreements provide for assistance, give rights of use to resources administered by the Service or define relationships between the Service and Native Americans. In addition to the National Park Service Organic Act of 1916, and park-specific enabling legislation, the following are some of the principal documents that will affect the implementation of this policy:

Antiquities Act of 1906 (Pub. L. 209) as amended.
Historic Sites Act of 1935 (Pub. L. 74–292).
National Historic Preservation Act of 1966 (Pub. L. 89–665, as amended by Pub. L. 91–423, Pub. L. 94–422, Pub L. 94–458 and Pub. L. 96–515).
National Environmental Policy Act of 1969 (Pub. L. 91–190).
Endangered Species Act of 1973 (Pub. L. 93–205, as amended by Pub. L. 94–325, Pub. L. 94–359).
The American Indian Religious Freedom Act of 1978 (Pub. L. 95–341).
The Archaeological Resources Protection Act of 1979 (Pub. L. 96–95).
Alaska National Interest Lands Conservation Act of 1980 (Pub. L. 96–487).
Museum Properties Management Act of 1955 (Pub. L. 84–127).

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E.O. 11593 Protection and Enhancement of the Cultural Environment (1971).
36 CFR Chapter 1, National Park Service, Department of the Interior.
40 CFR Parts 1500 through 1517 Council on Environmental Quality.
43 CFR Part 7 Archaeological Resources Protection Act of 1979: Final Uniform Regulations.
National Park Service *Management Policies*, 1978.
NPS–28, National Park Service *Cultural Resources Management Guideline*. Release No. 3, August 1985.
National Park Service *Museum Handbook*.

C. Application

This policy applies only to those groups specified in Section II.

II. Explanation of Terms

For purposes of this policy, the term "Native American" applies to American Indians, including Carib and Arawak; Eskimo; and Aleut; Native Americans of the Pacific Islands, including Native Hawaiians, Native Samoans, Chamorros and Carolinians.

"Tribe or Group" applies to any Nation, tribe, band or group of Native Americans recognized in statute or treaty by Federal or State governments; or any group of Native Americans not recognized in statute or treaty by Federal or State governments but identified by themselves and known by others as members of a named cultural unit that historically has shared linguistic, cultural, social (kinship) and related characteristics that distinguish it ethnically from other Native American groups. "Tribe or group" does not apply here to Native Americans of diverse cultural backgrounds (pan-tribal organizations) who voluntarily associate together for some purpose or purposes.

"Sacred Resources" applies to traditional sites, places or objects that Native American tribes or groups, or their members, perceive as having religious significance.

"Traditional" applies to beliefs and behaviors that have been transmitted across generations, and are identified by their Native American practitioners to be necessary for the perpetuation of their cultures. Characteristically, cultural practices are so interrelated that religious activities are not totally separable from subsistence, family life or other feature. Traditional also applies to the sites, objects, or places intimately associated with those beliefs or behaviors.

"Ethnographic resource" refers to park resources with traditional subsistence, sacred ceremonial or religious, or other cultural meaning for contemporary Native Americans.

"Historic" refers to prehistoric, ancestral, or traditional relationships, practices, or cultural resources that demonstrate cultural significance or persistence over time, as evidenced by archeological and ethnographic studies, including oral histories and ethnohistories.

III. Native American Traditional Activities

A. Practice of Native American Religion

Public Law 95–341, the American Indian Religious Freedom Act, enacted on August 11, 1978, states that "henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites." This statute does not create additional rights or change existing authorities. It has, however, led Federal agencies to develop policies that managers become informed about Native American religious culture, consult Native Americans about religious effects of proposed actions, and avoid unnecessary interference with traditional religious practices that Federal undertakings might affect. Agency decision-making regarding Native American access to and use of traditional sacred resources for customary ceremonials should reflect the least restrictive regulatory means available.

The non-drug use of peyote for ceremonial purposes is limited to members of the Native American Church during religious ceremonies. The following holds in accord with regulations of the Department of Justice, Drug Enforcement Administration: 21 CFR 1307.31, Special Exempt Persons: Native American Church:

> The listing of peyote as a controlled substance in Schedule 1 does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the Native American Church, however, is required to obtain registration annually and to comply with all other requirements of the law.

B. Access and Use

1. Access

The Superintendent shall provide reasonable access to Native Americans for pursuit of religious activities in National Park Service areas to the extent permitted by provisions of NPS *Management Policies* on Religious Activities VII–18 and Public Assembly VII–21 to 23. When appropriate, a permit may be required in accord with 36 CFR 2.50 "Special Events" or 2.51 "Public Assemblies, Meetings."

Native Americans may obtain a waiver of fees from the Superintendent when making a non-recreational visit to a unit of the National Park System for religious or other traditional purposes.

2. Use

Members of Native American tribes or groups shall be permitted to perform traditional religious or other customary activities at places within park areas which have been used historically for such purposes, in accordance with the principles stated in section A and B.1 above and the limitations noted in section C. Native Americans may enter and camp overnight for the duration of religious ceremonies without entrance and camping fees.

Use of non-historical or non-traditional locations, and activities that physically impact park resources, shall be subject to regulations in 36 CFR Part 1, General Provisions, and 36 CFR Part 2, Resource Protection, Public Use and Recreation. Superintendents may require a permit in accord with 36 CFR 2.50 or 2.51. Performance of a traditional ceremony or the conduct of a religious activity at a particular place shall not form the basis for prohibiting others from using such areas.

Native Americans seeking to use park areas under this section should consult with the park Superintendent about the proposed activity, orally or in writing. The denial of permission to carry out the activity or the imposition of any condition thereon may be appealed by the applicant to the Regional Director.

C. Taking of Natural Resources

1. *Plants, Fish and Wildlife*

The taking of fish and wildlife, by Native Americans, for the pursuit of traditional subsistence or religious activities is permitted when authorized by law or existing treaty rights, or in accord with 36 CFR 2.1 to 2.3 and National Park Service *Management Policies*, IV–3 to IV–11.

Disposal of surplus wildlife and carcasses shall continue as outlined in NPS *Management Policies* IV–10, with preference given to Native American groups.

Gathering of plants that are controlled substances is permitted when in accord with the exemption noted in 21 CFR

1307.31 regarding peyote for use by the Native American Church.

2. Other Natural Resources

In accord with 36 CFR 2.1(c)(1) the Superintendent may designate certain fruits, berries, nuts or unoccupied seashells that can be gathered by hand for personal use or consumption upon a written determination that the gathering or consumption will not adversely affect park wildlife, the reproductive potential of a plant species, or otherwise adversely affect park resources. The collection of minerals and rocks is permitted when authorized by law or treaty rights, or in accord with NPS regulation.

D. Traditional Sacred Resources

1. Identification and Protection

The Service shall establish and maintain consultative relationships with Native American groups who have historical ties to specific park lands, to discuss their concerns about protection for and access to sacred resources, including sites, places, or objects under Service stewardship. To the extent consistent with legislation and Service capabilities, the Service will provide for the protection of sacred resources in a manner consistent with the goals of the associated Native American group.

Under the provisions of the Archaeological Resources Protection Act of 1979, and the 1966 National Historic Preservation Act, as amended, information on the location and character of qualified sites is excepted from public disclosure under the Freedom of Information Act. Undertakings affecting properties that are on or eligible for inclusion on the National Register of Historic Places shall comply with current procedures of the Advisory Council on Historic Preservation.

2. Burial and Cemetery Sites

Historic or prehistoric Native American Burial areas whether or not formally plotted and enclosed as cemeteries shall be located, identified and appropriately protected to the extent practicable. Burial areas generally shall not be disturbed, destroyed, or archeologically investigated unless there are no feasible and prudent alternatives, consistent with the Guidelines for the Disposition of Human Remains, NPS–28, Technical Supplement, Chapter 7.

The Service will consult appropriate Native American individuals and groups concerning the proper treatment and disposition of human remains historically or prehistorically associated with such individuals or groups, when such remains may be disturbed or encountered as a result of activities carried out on National Park System lands. The Service shall make every reasonable effort to consult individuals presently linked to the disturbed sites by ties of kinship or culture when ethnically identifiable remains are encountered. The objective of consultation will be to acquire data needed for informed decisions concerning the treatment and/or disposition of the remains.

In reaching its decision, the Service will consider the preferences of Native American consultants and any existing formal burial policy established by the tribe to the maximum extent feasible under current law. Park managers shall also acquire the recommendations of Service archeologists as well as applied anthropologists or ethnographers and, if circumstances require it, representatives from the State Historic Preservation Office and the Advisory Council on Historic Preservation.

Management decisions shall give full consideration to the following range of principal decision alternatives:

—Redesign of project to avoid disturbance of interment;
—Removal of remains and reburial without recordation and study;
—Removal of remains and reburial with limited recordation and study;
—Removal of remains and reburial with full recordation and study;
—Removal of remains, full recordation and study, and retention of remains as part of the Service museum collection.

IV. Planning, Resources, Management, and Operation

A. Native American Involvement and Consultation

The Service shall implement a consultation program conforming to NPS–28, "Cultural Resources Management Guidelines" Technical Supplement, Chapter 7, (Ethnographic Program) August 1985. The program shall promote and provide for regular active consultation with Native American groups in planning, management, and operations decisions that affect the subsistence and sacred materials or places, or other ethnographic resources with which the group is historically associated.

Superintendents shall maintain a current roster of potential consultants from the associated groups, and meet with individuals on the list as well as with other members of the tribe or group as the need arises. Consultation shall occur at the earliest practicable time, as soon as a need is defined or an action is foreseeable, and continue through all phases of decision-making. The Service shall seek the broadest feasible range of views from members of the involved group, while recognizing that it must also respect the views of the group's tribal chair or other formal leaders. The Service shall become informed about the diverse views held by people who differ in age, sex, and technical and religious expertise and consider these in formulating alternative actions or reaching decisions affecting their traditional interests in resources or programs within the park.

While the NPS shall seek the broadest feasible spectrum of views, it will negotiate legal issues with individuals selected or approved by the group or tribe, and empowered to speak or act on its behalf, when matters concern the larger group. Individual concerns will be considered on a case by case basis.

Documentation of the decision-making process and the final decision, whether or not carried out under the National Environmental Policy Act (NEPA), shall be made available to the consulting group by the Superintendent or Regional Director. Although final decisions in all cases shall consider the results of consultations, the authority and the responsibility for the decision rests with the Service.

V. Research and Interpretation

A. Archeological and Ethnographic Studies

In some instances differences may arise between the NPS and Native Americans over the National Park Service's need to know and understand current and past lifeways and the Native Americans' need to protect from desecration and public knowledge their religious or other cultural values and practices. This is further complicated by the fact that some information acquired by the National Park Service is used in public programs that interpret cultural and national resources. Studies in archeology, ethnography, history, or other discipline carried out or sponsored by the National Park Service shall reflect sensitivity to the privacy of community consultants regarding their practices, beliefs, and identities, and follow the relevant procedures noted in NPS–28, *Cultural Resources Management Guideline* August 1985.

B. Museum Collections

In acquiring, maintaining, using and disposing of museum collections associated with a particular Native American tribe or group, the Service will

carry out consultations in accordance with section IV, A, above.

The Service shall acquire only collections having a legal and ethical pedigree in accord with existing laws, Service *Management Policies*, and implementing guidelines and standards. Objects from museum collections may be loaned, exchanged or disposed of in accordance with the Museum Properties Management Act, 43 CFR 7.13, other applicable laws, and the NPS *Museum Handbook*.

The Service shall repatriate artifacts and specimens only when otherwise lawful and it can be shown by a Native American tribe or group that the material is their inalienable communal property. Requests for repatriations must be made by the representatives selected by the tribe or group, and empowered to act on its behalf. Requests and conditions of repatriation shall be considered by the Service only on a case by case basis.

Interested persons shall be able to inspect or study Service artifacts, specimens and museum records consistent with standards for the use and preservation of collections.

C. Interpretation

The Service shall actively seek Native American consultation in the planning, development, and operation of park interpretive programs that relate to the culture and history of the particular tribe or group, shall develop cooperative programs with tribes and groups to assist the Service in the interpretation of their cultural heritage in parks, and shall provide for presentration of Native American perspectives of their own lifeways and resources, both cultural and natural. Etrhnographic or cultural anthropological data and concepts will also be used as appropriate.

To avoid ethnocentrism, the Service will present factual, balanced and, to the extent achievable, value-neutral presentations of both Native American and non-Native American cultures, heritage and history.

The Service shall not display disinterred skeletal or mummified human remains or grave goods and other objects that Native Americans, culturally associated with them, regard as traditionally sacred. Consultation with associated Native Americans will precede the display of any object, the sacred nature of which is suspected, but not confirmed, to determine its religious status before selecting an appropriate course of action.

Denis P. Galvin,

Acting Director.

[FR Doc. 87-21810 Filed 9-21-87; 8:45 am]

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